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9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 ORLANDO ALFREDO GIMENEZ GIL,

12 Petitioner,

13 v.

14 WARDEN, OTAY MESA DETENTION
15 CENTER, *et al.*,

16 Respondents.
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Case No.: 3: 25-cv-03279-DMS-VET

**RESPONDENTS' RETURN TO
PETITIONER'S HABEAS
PETITION**

1 **I. INTRODUCTION**

2 Petitioner requests that this Court order his immediate release from Immigration
3 and Customs Enforcement (ICE) custody or require that he be afforded a bond hearing.
4 As an arriving alien found to have a credible fear of persecution, however, Petitioner’s
5 detention is mandated by 8 U.S.C. § 1225(b)(1)(B)(ii) while his removal proceedings
6 are ongoing. For the reasons set forth below, Respondents ask the Court to dismiss the
7 Petition and deny the relief requested.

8 **II. FACTUAL BACKGROUND¹**

9 Petitioner is a citizen and national of Venezuela. ECF No. 1. On or about July 13,
10 2024, Petitioner entered the United States at Paso del Norte Port of Entry and was
11 encountered by U.S. Customs and Border Protection. On the same day, he was charged
12 with inadmissibility under 8 U.S.C. § 1182(a)(7)(A)(i)(I), as an alien not in possession
13 of a valid entry document. Ex. 1. He was placed in removal proceedings under 8 U.S.C.
14 § 1229a (“240 proceedings”) and issued a Notice to Appear. Ex. 2. Petitioner was then
15 released from custody on humanitarian parole. *See* 8 U.S.C. § 1182(d)(5)(A).

16 On June 24, 2025, Petitioner appeared before an immigration judge, and the
17 Department of Homeland Security (DHS) moved to dismiss Petitioner’s 240
18 proceedings. Ex. 3. The IJ granted DHS’s motion. *Id.* On the same day, ICE
19 Enforcement and Removal Operations (ERO) detained Petitioner and issued him a
20 Notice and Order of Expedited Removal under section 235(b)(1) of the Immigration
21 and Nationality Act (INA), 8 U.S.C. § 1225(b)(1). Exs. 4, 5. Petitioner was placed in
22 expedited removal proceedings under 8 U.S.C. § 1225(b)(1). *Id.* He was then detained
23 in ICE custody under 8 U.S.C. § 1225(b)(1). Ex. 6.

24 Pursuant to 8 U.S.C. § 1225(b)(1)(B), Petitioner requested asylum and/or
25 protection under the Convention Against Torture, and he was interviewed by a U.S.
26 Citizenship and Immigration Services asylum officer. Based on a positive determination
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¹ The attached exhibits are true copies, with redactions of private information, of documents obtained from ICE counsel.

1 by the asylum officer, Petitioner was issued a new Notice to Appear on July 6, 2025,
2 again charging Petitioner as an arriving alien inadmissible under 8 U.S.C.
3 § 1182(a)(7)(A)(i)(I). Ex. 7. The filing of the new Notice to Appear commenced new
4 240 proceedings under 8 U.S.C. § 1229a. Within those proceedings, Petitioner sought
5 relief from removal before an immigration judge, including asylum under 8 U.S.C.
6 § 1158, withholding of removal under 8 U.S.C. § 1231(b)(3), and relief under the
7 Convention Against Torture. Ex. 8.

8 On October 6, 2024, the immigration judge denied all relief and ordered that
9 Petitioner be removed to Mexico or, in the alternative, Venezuela. *Id.* Petitioner filed
10 an appeal of that order with the Board of Immigration Appeals. Ex. 9. As such, the
11 removal order has not become administratively final and Petitioner’s 240 proceedings
12 remain ongoing. While Petitioner’s removal proceedings remain ongoing, he continues
13 to be detained under 8 U.S.C. § 1225(b)(1)(B)(ii).

14 III. ARGUMENT

15 A. Petitioner’s Claims are Barred by 8 U.S.C. § 1252.

16 Petitioner bears the burden of establishing that this Court has subject matter
17 jurisdiction over his claims. *See Ass’n of Am. Med. Coll. v. United States*, 217 F.3d
18 770, 778-79 (9th Cir. 2000); *Finley v. United States*, 490 U.S. 545, 547-48 (1989). As
19 a threshold matter, to the extent Petitioner is challenging the detention authority that
20 he is subjected to (8 U.S.C. § 1225(b)(1)), those claims are jurisdictionally barred by
21 8 U.S.C. § 1252.

22 In general, courts lack jurisdiction to review a decision to commence or
23 adjudicate removal proceedings or execute removal orders. *See* 8 U.S.C. § 1252(g)
24 (“[N]o court shall have jurisdiction to hear any cause or claim by or on behalf of any
25 alien arising from the decision or action by the Attorney General to commence
26 proceedings, adjudicate cases, or execute removal orders.”); *Limpin v. United States*,
27 828 Fed. App’x 429 (9th Cir. 2020) (holding district court properly dismissed under
28 8 U.S.C. § 1252(g) “because claims stemming from the decision to arrest and detain an

1 alien at the commencement of removal proceedings are not within any court’s
2 jurisdiction”). In other words, § 1252(g) removes district court jurisdiction over “three
3 discrete actions that the Attorney may take: [his] ‘decision or action’ to ‘commence
4 proceedings, adjudicate cases, or execute removal orders.’” *Reno v. Am.-Arab*
5 *Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999) (emphasis removed). Plainly
6 stated, Petitioner requests that this Court review a decision to dismiss her 240
7 proceedings, her placement into expedited removal, and the type of review she receives
8 over her asylum claims. Thus, Petitioner’s claims necessarily arise “from the decision
9 or action by the Attorney General to commence proceedings [and] adjudicate cases,”
10 over which Congress has explicitly foreclosed district court jurisdiction. 8 U.S.C. §
11 1252(g).

12 Section 1252(g) also bars district courts from hearing challenges to the *method*
13 by which the government chooses to commence removal proceedings, including the
14 decision to detain an alien pending removal. *See Alvarez v. ICE*, 818 F.3d 1194,
15 1203 (11th Cir. 2016) (“By its plain terms, [§ 1252(g)] bars us from questioning ICE’s
16 discretionary decisions to commence removal” and also to review “ICE’s decision to
17 take [plaintiff] into custody to detain him during removal proceedings”).

18 Other courts have held, “[f]or the purposes of § 1252, the Attorney General
19 commences proceedings against an alien when the alien is issued a Notice to Appear
20 before an immigration court.” *Herrera-Correra v. United States*,
21 No. 08-2941 DSF (JCx), 2008 WL 11336833, at *3 (C.D. Cal. Sept. 11, 2008). “The
22 Attorney General may arrest the alien against whom proceedings are commenced and
23 detain that individual until the conclusion of those proceedings.” *Id.* at *3. “Thus, an
24 alien’s detention throughout this process arises from the Attorney General’s decision to
25 commence proceedings” and review of claims arising from such detention is barred
26 under § 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007)); *Wang*
27 *v. United States*, No. CV 10-0389 SVW (RCX), 2010 WL 11463156, at *6 (C.D. Cal.
28 Aug. 18, 2010); 8 U.S.C. § 1252(g).

1 Moreover, under 8 U.S.C. § 1252(b)(9), “[j]udicial review of all questions of law
2 and fact . . . arising from any action taken or proceeding brought to remove an alien
3 from the United States under this subchapter shall be available only in judicial review
4 of a final order under this section.” Further, judicial review of a final order is available
5 only through “a petition for review filed with an appropriate court of appeals.”
6 8 U.S.C. § 1252(a)(5). The Supreme Court has made clear that § 1252(b)(9) is “the
7 unmistakable ‘zipper’ clause,” channeling “judicial review of all” “decisions and
8 actions leading up to or consequent upon final orders of deportation,” including
9 “non-final order[s],” into proceedings before a court of appeals. *Reno*, 525 U.S. at 483,
10 485; see *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (noting § 1252(b)(9)
11 is “breathtaking in scope and vise-like in grip and therefore swallows up virtually all
12 claims that are tied to removal proceedings”). “Taken together, § 1252(a)(5) and
13 § 1252(b)(9) mean that any issue—whether legal or factual—arising from any removal-
14 related activity can be reviewed *only* through the [petition for review] PFR process.”
15 *J.E.F.M.*, 837 F.3d at 1031 (“[W]hile these sections limit *how* immigrants can challenge
16 their removal proceedings, they are not jurisdiction-stripping statutes that, by their
17 terms, foreclose *all* judicial review of agency actions. Instead, the provisions channel
18 judicial review over final orders of removal to the courts of appeal.”) (emphasis in
19 original); see *id.* at 1035 (“[Sections] 1252(a)(5) and [(b)(9)] channel review of all
20 claims, including policies-and-practices challenges . . . whenever they ‘arise from’
21 removal proceedings.”).

22 Critically, “1252(b)(9) is a judicial channeling provision, not a claim-barring
23 one.” *Aguilar v. ICE*, 510 F.3d 1, 11 (1st Cir. 2007). Indeed, 8 U.S.C. § 1252(a)(2)(D)
24 provides that “[n]othing . . . in any other provision of this chapter . . . shall be construed
25 as precluding review of constitutional claims or questions of law raised upon a petition
26 for review filed with an appropriate court of appeals in accordance with this section.”
27 See also *Ajlani v. Chertoff*, 545 F.3d 229, 235 (2d Cir. 2008) (“[J]urisdiction to review
28 such claims is vested exclusively in the courts of appeals[.]”). The petition-for-review

1 process before the court of appeals ensures that aliens have a proper forum for claims
2 arising from their immigration proceedings and “receive their day in court.” *J.E.F.M.*,
3 837 F.3d at 1031–32 (internal quotations omitted); *see also Rosario v. Holder*,
4 627 F.3d 58, 61 (2d Cir. 2010) (“The REAL ID Act of 2005 amended the [INA] to
5 obviate . . . Suspension Clause concerns” by permitting judicial review of
6 “nondiscretionary” BIA determinations and “all constitutional claims or questions of
7 law”). These provisions divest district courts of jurisdiction to review both direct and
8 indirect challenges to removal orders, including decisions to detain for purposes of
9 removal or for proceedings. *See Jennings v. Rodriguez*, 583 U.S. 281, 294–95 (2018)
10 (stating section 1252(b)(9) includes challenges to the “decision to detain [an alien] in
11 the first place or to seek removal”).

12 Here, Petitioner’s claims stem from his detention during removal proceedings.
13 However, that detention arises from DHS’s decision to commence such proceedings
14 against him. *See, e.g., Valecia-Meja v. United States*, No. 08-2943 CAS (PJWz),
15 2008 WL 4286979, at *4 (C.D. Cal. Sept. 15, 2008) (“The decision to detain plaintiff
16 until his hearing before the Immigration Judge arose from this decision to commence
17 proceedings.”); *Wang*, 2010 WL 11463156, at *6; *Tazu v. Att’y Gen. U.S.*, 975 F.3d
18 292, 298–99 (3d Cir. 2020) (holding that 8 U.S.C. § 1252(g) and (b)(9) deprive district
19 court of jurisdiction to review action to execute removal order).

20 Moreover, to the extent that the Petitioner can be understood to challenge the
21 dismissal of his original 240 proceedings and the issuance of an *expedited* removal
22 order, that claim is particularly foreclosed. “Section 1252(a)(2)(A) is a jurisdiction-
23 stripping and channeling provision, which bars review of almost ‘every aspect of the
24 expedited removal process.’” *Azimov v. U.S. Dep’t of Homeland Sec.*, No. 22-56034,
25 2024 WL 687442, at *1 (9th Cir. Feb. 20, 2024) (quoting *Mendoza-Linares v. Garland*,
26 51 F.4th 1146, 1154 (9th Cir. 2022) (describing the operation of § 1252(a)(2)(A)).
27 These jurisdiction-stripping provisions cover “the ‘procedures and policies’ that have
28 been adopted to ‘implement’ the expedited removal process; the decision to ‘invoke’

1 that process in a particular case; the ‘application’ of that process to a particular alien;
2 and the ‘implementation’ and ‘operation’ of any expedited removal order.” *Mendoza-*
3 *Lineras*, 51 F.4th at 1155. “Congress chose to strictly cabin this court’s jurisdiction to
4 review expedited removal orders.” *Guerrier v. Garland*, 18 F.4th 304, 313 (9th Cir.
5 2021) (finding that the Supreme Court abrogated any “colorable constitutional claims”
6 exception to the limits placed by § 1252(a)(2)(A)); *see Thuraissigiam*, 591 U.S. 103
7 (holding that limitations within § 1252(a)(2)(A) do not violate the Suspension Clause).
8 “Congress has chosen to explicitly bar nearly all judicial review of expedited removal
9 orders concerning such aliens, including ‘review of constitutional claims or questions
10 of law.’” *Mendoza-Linares*, 51 F.4th at 1148 (citing 8 U.S.C. § 1252(a)(2)(A), (D)); *see*
11 *Thuraissigiam*, 591 U.S. at 138-39 (explicitly rejecting Ninth Circuit’s holding that an
12 arriving alien has a “constitutional right to expedited removal proceedings that conform
13 to the dictates of due process”).

14 “Congress could scarcely have been more comprehensive in its articulation of the
15 general prohibition on judicial review of expedited removal orders.” *Mendoza-Lineras*,
16 51 F.4th at 1155. Specifically, Section 1252(a)(2)(A) states:

17 (2) Matters not subject to judicial review

18 (A) Review relating to section 1225(b)(1)

19 Notwithstanding any other provision of law (statutory or nonstatutory),
20 including section 2241 of Title 28, or any other habeas corpus provision,
21 and sections 1361 and 1651 of such title, no court shall have jurisdiction
22 to review-

- 23 (i) except as provided in subsection (e), any individual determination
24 or to entertain any other cause or claim arising from or relating to
25 the implementation or operation of an order of removal pursuant
26 to section 1225(b)(1) of this title,
- 27 (ii) except as provided in subsection (e), a decision by the Attorney
28 General to invoke the provisions of such section,
- (iii) the application of such section to individual aliens, including the
determination made under section 1225(b)(1)(B) of this title, or

1 (iv) except as provided in subsection (e), procedures and policies
2 adopted by the Attorney General to implement the provisions of
3 section 1225(b)(1) of this title.

4 8 U.S.C. § 1252(a)(2)(A). Thus, “Section 1252(a)(2)(A)(i) deprives courts of
5 jurisdiction to hear a ‘cause or claim arising from or relating to the implementation or
6 operation of an order of removal pursuant to section 1225(b)(1),’ which plainly includes
7 [Petitioner’s] collateral attacks on the validity of the expedited removal order.” *Azimov*,
8 2024 WL 687442, at *1 (quoting *Mendoza-Linares*, 51 F.4th at 1155) (citing *J.E.F.M.*
9 *v. Lynch*, 837 F.3d 1026, 1031-35 (9th Cir. 2016) (concluding that the “arising from”
10 language in neighboring § 1252(b)(9) sweeps broadly)). By challenging the standards
11 and process of expedited removal proceedings, Petitioner necessarily asks the Court “to
12 do what the statute forbids [it] to do, which is to review ‘the application of such section
13 to [her].” *Mendoza-Linares*, 51 F.4th at 1155. Most notably, a determination made
14 concerning inadmissibility “is not subject to judicial review.” *Gomez-Cantillano v.*
15 *Garland*, No. 19-72682, 2021 WL 5882034 (9th Cir. Dec. 13, 2021) (citing
16 8 U.S.C § 1252(a)(2)(A)(iii)). “And § 1252(a)(2)(A)(iv) deprives courts of jurisdiction
17 to review ‘procedures and policies adopted by the Attorney General to implement the
18 provisions of section 1225(b)(1) of this title,’ which plainly includes [Petitioner’s]
19 claims regarding how [Respondents may] implement[]” § 1225(b)(1). *Azimov*,
20 2024 WL 687442, at *1 (citing *Mendoza-Linares*, 51 F.4th at 1154–55).

21 In setting forth provisions for judicial review of § 1225(b)(1) expedited removal
22 orders, Congress expressly limited available relief: “Without regard to the nature of the
23 action or claim and without regard to the identity of the party or parties bringing the
24 action, no court may” “enter declaratory, injunctive, other equitable relief in any action
25 pertaining to an order to exclude an alien in accordance with section § 1225(b)(1) of
26 this title except as specifically authorized in a subsequent paragraph of this subsection.”
27 8 U.S.C. § 1252(e)(1)(A). Congress delineated two limited avenues for judicial review
28 concerning expedited removal orders: (1) narrow habeas corpus proceedings under
§ 1252(e)(2); and (2) challenges to the validity of the system under § 1252(e)(3). Any

1 permissible challenge to the validity of the system “is available [only] in an action in
2 the United States District Court for the District of Columbia” 8 U.S.C. § 1252(e)(3).

3 Narrow habeas corpus proceedings are expressly “limited to determinations” of
4 three questions: (1) “whether the petitioner is an alien”; (2) “whether the petitioner was
5 ordered removed under [section 1225(b)(1)]”; and (3) “whether the petitioner can prove
6 by a preponderance of the evidence that the petitioner is an alien” who has been granted
7 status as a lawful permanent resident, refugee, or asylee. 8 U.S.C. § 1252(e)(2)(A)-(C).
8 “In determining whether an alien has been ordered removed under section 235(b)(1)
9 [8 U.S.C. § 1225(b)(1)], the court’s inquiry shall be limited *to whether such an order*
10 *in fact was issued and whether it relates to the petitioner.* There shall be no review of
11 whether the alien is actually inadmissible or entitled to any relief from removal.”
12 8 U.S.C. § 1252(e)(5) (emphasis added). To the extent Petitioner is challenging the
13 expedited process, each of Petitioner’s claims fall outside the limited habeas corpus
14 authority provided within § 1252(e)(2).

15 Thus, as Petitioner’s claims arise from the decision to commence proceedings,
16 this Court lacks jurisdiction under 8 U.S.C. § 1252.

17 **B. Even if Petitioner’s Claims Are Not Barred, Petitioner’s Detention is Lawful**
18 **and Mandatory**

19 Petitioner argues that his continued detention during the pendency of his removal
20 proceedings violates his Fifth Amendment due process rights and his Eighth
21 Amendment right against cruel and unusual punishment. This argument is without merit
22 because Petitioner is an “applicant for admission” whose detention is mandated by
23 8 U.S.C. § 1225(b)(1).

24 Under 8 U.S.C. § 1225(a)(1), an “applicant for admission” is defined as an “alien
25 present in the United States who has not been admitted or who arrives in the United
26 States.” As explained above, applicants for admission “fall into one of two categories,
27 those covered by § 1225(b)(1) and those covered by § 1225(b)(2).” *Jennings*, 583 U.S.
28 at 287. Section 1225(b)(1)—the provision relevant here—applies because Petitioner is

1 an arriving alien. And that statute further mandates detention when an immigration
2 officer determines that the alien has a credible fear of persecution. *See* 8 U.S.C.
3 § 1225(b)(1)(B)(ii) (“If the officer determines at the time of the interview that [the]
4 alien has a credible fear of persecution . . . , the alien shall be detained for further
5 consideration of the application for asylum.”) (emphasis added); *see also Matter of M-*
6 *S*, 27 I. & N. Dec. 509, 519 (AG 2019) (“all aliens transferred from expedited to full
7 [removal] proceedings after establishing a credible fear are ineligible for bond”).

8 In *Jennings*, 583 U.S. 281, 296-303 (2018), the Supreme Court evaluated the
9 proper interpretation of 8 U.S.C. § 1225(b). The Supreme Court stated that, “[r]ead most
10 naturally, [8 U.S.C.] §§ 1225(b)(1) and (b)(2) . . . mandate detention of applicants for
11 admission until certain proceedings have concluded.” *Id.* at 297. In other words, neither
12 8 U.S.C. § 1225(b)(1) nor § 1225(b)(2) “impose[] any limit on the length of detention”
13 and “neither § 1225(b)(1) nor § 1225(b)(2) say[] anything whatsoever about bond
14 hearings.” *Id.* The Supreme Court added that the sole means of release for noncitizens
15 detained pursuant to 8 U.S.C. §§ 1225(b)(1) or (b)(2) prior to removal from the United
16 States is temporary parole at the discretion of the Attorney General under 8 U.S.C.
17 § 1182(d)(5). *Id.* at 300 (“That express exception to detention implies that there are no
18 other circumstances under which aliens detained under [8 U.S.C.] § 1225(b) may be
19 released.”) (emphasis in original). “In sum, [8 U.S.C.] §§ 1225(b)(1) and (b)(2) mandate
20 detention of aliens throughout the completion of applicable proceedings[.]” *Id.* at 302.

21 Here, Petitioner claims that, despite the statutory prohibition on such relief, the
22 Fifth Amendment and Eighth Amendment require that he be immediately released. ECF
23 No. 1 at 2–3. Petitioner’s constitutional claims, however, are foreclosed by the statutory
24 constraints discussed above.

25 In *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 207-09 (1953), a
26 noncitizen in exclusion proceedings filed a habeas petition claiming that his prolonged
27 detention without a hearing violated his constitutional rights. The Supreme Court
28 rejected the petition, concluding that the noncitizen’s continued detention did not

1 deprive him of any due process rights, stating: “[A]n alien on the threshold of initial
2 entry stands on a different footing: ‘Whatever the procedure authorized by Congress is,
3 it is due process as far as an alien denied entry is concerned.’” *Id.* at 212 (citation
4 omitted).

5 In *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 138-40
6 (2020), the Supreme Court once again addressed the due process rights of individuals
7 like Petitioner—inadmissible arriving noncitizens seeking initial entry into the United
8 States. The Supreme Court stated that such individuals have no due process rights “other
9 than those afforded by statute.” *Id.* at 107; see also *id.* at 140 (“[A]n alien in
10 respondent’s position has only those rights regarding admission that Congress has
11 provided by statute.”). The Supreme Court noted that its determination was supported
12 by “more than a century of precedent.” *Id.* at 138 (citing *Nishimura Ekiu v. United*
13 *States*, 142 U.S. 651, 660 (1892); *U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544
14 (1950); *Mezei*, 345 U.S. at 212; *Landon v. Plasencia*, 459 U.S. 21, 32 (1982)).

15 Since the Supreme Court’s decision in *Thuraissigiam*, numerous published
16 decisions have acknowledged *Thuraissigiam*’s impact on the precise Fifth Amendment
17 Due Process Clause issue raised in this petition: Does an alien detained under 8 U.S.C.
18 § 1225(b)(1) have a due process right to release or a bond hearing after being detained
19 for a certain period of time? The answer is no. See *Rodriguez Figueroa v. Garland*, 535
20 F. Supp. 3d 122, 126–27 (W.D.N.Y. 2021); *Gonzales Garcia v. Rosen*, 513 F. Supp. 3d
21 329, 336 (W.D.N.Y. 2021); *St. Charles v. Barr*, 514 F. Supp. 3d 570, 579 (W.D.N.Y.
22 2021); *Petgrave v. Aleman*, 529 F. Supp. 3d 665, 667 (S.D. Tex. 2021); see also
23 *Mendoza-Linares v. Garland*, No. 21-CV-1169 BEN (AHG), 2024 WL 3316306, *2
24 (S.D. Cal. June 10, 2024) (“[T]he Court finds that Petitioner has no Fifth Amendment
25 right to a bond hearing pending his removal proceedings.”); *Zelaya-Gonzalez v.*
26 *Matuszewski*, No. 23-CV-151 JLS (KSC), 2023 WL 3103811, *3 (S.D. Cal. Apr. 25,
27 2023) (same).

28 Notably, while Petitioner was previously released from custody on humanitarian

1 parole pursuant to 8 U.S.C. § 1182(d)(5)(A), that statute expressly provides that “*such*
2 *parole of such alien shall not be regard as an admission* of the alien and when the
3 purposes of such parole shall . . . have been served the alien shall forthwith return or be
4 return to the custody from which he was paroled and thereafter his case shall continue
5 to be dealt with in the same manner as that of any other *applicant for admission* to the
6 United States”) (emphasis added). Here, when Petitioner was detained on June 24, 2025,
7 he was served with a Notice of Expedited Removal, which served to terminate his parole
8 status. *See* 8 CFR § 212.5(e)(2)(i) (“When a charging document is served on the alien,
9 the charging document will constitute written notice of termination of parole . . .”).
10 The termination of Petitioner’s parole thus emphasizes his status as an applicant for
11 admission, subject to mandatory detention under 8 U.S.C. § 1225(b)(2).²

12 In short, Petitioner is detained pursuant to 8 U.S.C. § 1225(b)(1)(B)(ii), which
13 provides, absent discretionary parole, that when an alien has a credible fear of
14 persecution, “the alien shall be detained for further consideration of the application for
15 asylum.” As the statutory authority Petitioner is detained under does not afford him a
16 right to immediate release or a bond hearing before an immigration judge, the Court
17 should reject his claim that his detention violates the Fifth Amendment’s Due Process
18 Clause or the Eighth Amendment’s prohibition on cruel and unusual punishment and
19 deny his requested relief. *See Thuraissigiam*, 591 U.S. at 107, 140; *Mezei*, 345 U.S. at
20 212; *Guerrier*, 18 F.4th at 310.

21 **C. Petitioner’s Detention Is Not Unconstitutionally Prolonged**

22 Apart from the statutory basis of his detention, Petitioner also repeatedly suggests
23 that his four-month detention has been unconstitutionally “prolonged.” ECF No. 1 at 2.
24 True, courts have recognized that in certain circumstances, mandatory detention during
25

26 ² Petitioner’s suggestion that his continued detention violates his due process
27 rights under *Zadvydas v. Davis*, 533 U.S. 678 (2001), is misplaced. ECF No. 1 at 3.
28 *Zadvydas* plainly governs the detention of a noncitizen subject to a *final* order of
removal, which Petitioner is not. *See Zadvydas*, 533 U.S. at 682. (“When an alien has
been found to be unlawfully present in the United States and a final order of removal
has been entered . . .”).

1 the pendency of removal proceedings may become so excessively prolonged that it
2 violates a detainee’s constitutional rights. *See, e.g., Lopez v. Garland*, 631 F. Supp. 3d
3 870 (E.D. Cal. 2022).

4 Those circumstances are not present here. The *Lopez* balancing test for prolonged
5 detention sets forth three factors indicative of a potential constitutional violation: (1) the
6 total length of detention, (2) the likely duration of future detention, and (3) delays in the
7 removal proceedings caused by the petitioner and the government. *Lopez*, 631
8 F.Supp.3d at 879. None of those factors favor Petitioner.

9 *First*, Petitioner’s approximate four-month detention is not particularly lengthy
10 in the context of ongoing removal proceedings. Courts in this district have found
11 detention for much longer periods to be unreasonably prolonged. *Durand v. Allen*, 23-
12 cv-00279-RBM-BGS, 2024 WL 711607 at *5 (S.D. Cal. Feb. 21, 2024) (thirty-two
13 months); *Sibomana v. LaRose*, No. 22-cv-933-LL-NLS, 2023 WL 3028093, at *4 (S.D.
14 Cal. Apr. 20, 2023) (nineteen months); *Sanchez-Rivera v. Matuszewski*, No. 22-cv-
15 1357-MMA-JLB, 2023 WL 139801 at *6 (S.D. Cal. Jan. 9, 2023) (three years);
16 *Kydyrali*, 499 F. Supp. 3d at 773 (twenty seven months). Petitioner’s relatively short
17 detention does not compare to other cases granting habeas relief. *See, e.g., Yagao v.*
18 *Figueroa*, No. 17-CV-2224-AJB-MDD, 2019 WL 1429582, at *1 (S.D. Cal. Mar. 29,
19 2019) (affording petitioner a bond hearing after 42 months of detention pending
20 removal proceedings). Notably, “the length of detention . . . is the most important
21 factor.” *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1118 (W.D. Wash. 2019). At this
22 stage, the length of Petitioner’s detention is reasonable. *See D.D. v. LaRose*, S.D. Cal.
23 Case No. 25-cv-02581-BJC-JLB (slip op.), ECF No. 10 at 8:22-24 (concluding that
24 “Petitioner’s continued *Banda v. McAleenan* detention, at this point, is not so
25 unreasonable that it requires a bond hearing to meet due process standards”).

26 *Second*, the likely duration of future detention weighs against Petitioner.
27 Petitioner offers no reason to believe that his ongoing 240 proceedings will not be
28 resolved in the reasonably foreseeable future once appellate briefing is complete and

1 the BIA appeal is decided.

2 *Third*, Petitioner offers no evidence of any unreasonable delay by the government
3 in his removal proceedings. *Cf. D.D.*, S.D. Cal. Case No. 25-cv-02581-BJC-JLB, ECF
4 No. 10 at 8:16-18 (finding “the delay factor is neutral” even though the petitioner’s
5 hearings “were continued multiple times by the immigration judge”). On the contrary,
6 his most recent 240 proceedings were initiated in July 2025 and yielded an order of
7 removal by October 2025.

8 In short, even if the Court were to consider a balancing test, Petitioner’s detention
9 is not unconstitutional at this stage.

10 Accordingly, as Petitioner is lawfully detained pursuant to 8 U.S.C.
11 § 1225(b)(1)(B)(ii), Petitioner’s claims fail on the merits.

12 **IV. CONCLUSION**

13 For the foregoing reasons, Respondents respectfully request that the Court deny
14 the petition and dismiss this action.

15 DATED: December 3, 2025

16 Respectfully submitted,

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