

1 ADAM GORDON
United States Attorney
2 SHELDON A. SMITH
New Jersey Bar No. 041482009
3 Special Assistant United States Attorney
4 880 Front Street, Room 6293
San Diego, CA 92101-8893
5 Telephone: (619) 546-7304
6 Facsimile: (619) 546-7751
Email: sheldon.smith@usdoj.gov

7 Attorneys for Respondents

8
9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 HELMER CASTRO CABALLERO,

12 Petitioner,

13 v.
14

15 KRISTI NOEM, et al.,

16 Respondents.
17

Case No. 25-cv-3407-BJC-BJW

**RETURN IN OPPOSITION TO
PETITION FOR WRIT OF HABEAS
CORPUS**

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). Accordingly, the Court should
6 deny Petitioner's requests for relief.

7 II. FACTUAL AND PROCEDURAL BACKGROUND¹

8 Petitioner is a native and citizen of Venezuela. ECF No. 1 at ¶ 1. On or about
9 September 22, 2024, Petitioner applied for admission into the United States from
10 Mexico at the San Ysidro, California Port of Entry. Form I-213, attached as Exhibit A.
11 Petitioner did not then have any valid entry documents to enter the United States.
12 Petitioner was determined to be inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) and
13 placed in expedited removal proceedings pursuant to 8 U.S.C. § 1225(b)(1). On August
14 26, 2025, an Immigration Judge (IJ) deferred Petitioner's removal to Venezuela
15 pursuant to the Convention Against Torture. ECF No. 1 at ¶ 2. An appeal of that
16 decision is pending. *Id.*

17 On October 10, 2024, Petitioner was issued a Notice to Appear, charging him as
18 inadmissible under 8 U.S.C. § 1182(a)(7)(A)(i)(I) (as an immigrant not in possession
19 of a valid entry document). Notice to Appear, Attached as Exhibit B. The filing of the
20 NTA initiated removal proceedings against Petitioner, and those proceedings remain
21 ongoing. Within his removal proceedings under § 1229a, Petitioner has the opportunity
22 to apply for relief from removal before an immigration judge (IJ), including asylum
23 under 8 U.S.C. § 1158, withholding of removal under 8 U.S.C. § 1231(b)(3), and relief
24 under the Convention Against Torture.

25 Petitioner remains detained in ICE custody under 8 U.S.C. § 1225(b)(1)(B)(ii),
26 as his detention is mandatory.

27
28 ¹ The attached exhibits are true copies, with redactions of private information, of documents obtained from ICE counsel.

1 **III. STATUTORY BACKGROUND**

2 **A. Mandatory Detention Under 8 U.S.C. § 1225**

3 Section 1225 applies to an “applicant for admission,” defined as an “alien
4 present in the United States who has not been admitted” or “who arrives in the United
5 States.” 8 U.S.C. § 1225(a)(1). “[A]pplicants for admission fall into one of two
6 categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2).”
7 *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

8 Section 1225(b)(1) applies to arriving aliens and “certain other” aliens “initially
9 determined to be inadmissible due to fraud, misrepresentation, or lack of valid
10 document.” *Id.* (citing 8 U.S.C. § 1225(b)(1)(A)(i)). These aliens are generally subject
11 to expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(A)(i). But if “the alien
12 indicates an intention to apply for asylum . . . or a fear of persecution,” immigration
13 officers will refer the alien for a credible fear interview. 8 U.S.C. § 1225(b)(1)(A)(ii).
14 “If the officer determines at the time of the interview that [the] alien has a credible fear
15 of persecution . . . , the alien *shall be detained* for further consideration of the
16 application for asylum.” 8 U.S.C. § 1225(b)(1)(B)(ii) (emphasis added). If the alien
17 does not indicate an intent to apply for asylum, does not express a fear of persecution,
18 or is “found not to have such a fear,” they “shall be detained . . . until removed” from
19 the United States. 8 U.S.C. §§ 1225(b)(1)(A)(i), (B)(iii)(IV).

20 **IV. ARGUMENT**

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

22 Petitioner bears the burden of establishing that this Court has subject matter
23 jurisdiction over his claims. *See Ass’n of Am. Med. Coll. v. United States*, 217 F.3d
24 770, 778-79 (9th Cir. 2000); *Finley v. United States*, 490 U.S. 545, 547-48 (1989). As
25 a threshold matter, to the extent Petitioner is challenging the detention authority that
26 he his subjected to (8 U.S.C. § 1225(b)(1)), those claims are jurisdictionally barred by
27 8 U.S.C. § 1252.
28

1 In general, courts lack jurisdiction to review a decision to commence or
2 adjudicate removal proceedings or execute removal orders. *See* 8 U.S.C. § 1252(g)
3 (“[N]o court shall have jurisdiction to hear any cause or claim by or on behalf of any
4 alien arising from the decision or action by the Attorney General to commence
5 proceedings, adjudicate cases, or execute removal orders.”); *Limpin v. United States*,
6 828 Fed. App’x 429 (9th Cir. 2020) (holding district court properly dismissed under
7 8 U.S.C. § 1252(g) “because claims stemming from the decision to arrest and detain an
8 alien at the commencement of removal proceedings are not within any court’s
9 jurisdiction”). In other words, § 1252(g) removes district court jurisdiction over “three
10 discrete actions that the Attorney may take: [his] ‘decision or action’ to ‘commence
11 proceedings, adjudicate cases, or execute removal orders.’” *Reno v. Am.-Arab*
12 *Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999) (emphasis removed). Plainly
13 stated, Petitioner requests that this Court review a decision to dismiss her 240
14 proceedings, her placement into expedited removal, and the type of review she receives
15 over her asylum claims. Thus, Petitioner’s claims necessarily arise “from the decision
16 or action by the Attorney General to commence proceedings [and] adjudicate cases,”
17 over which Congress has explicitly foreclosed district court jurisdiction. 8 U.S.C. §
18 1252(g).

19 Section 1252(g) also bars district courts from hearing challenges to the *method*
20 by which the government chooses to commence removal proceedings, including the
21 decision to detain an alien pending removal. *See Alvarez v. ICE*, 818 F.3d 1194,
22 1203 (11th Cir. 2016) (“By its plain terms, [§ 1252(g)] bars us from questioning ICE’s
23 discretionary decisions to commence removal” and also to review “ICE’s decision to
24 take [plaintiff] into custody to detain him during removal proceedings”).

25 Other courts have held, “[f]or the purposes of § 1252, the Attorney General
26 commences proceedings against an alien when the alien is issued a Notice to Appear
27 before an immigration court.” *Herrera-Correra v. United States*,
28 No. 08-2941 DSF (JCx), 2008 WL 11336833, at *3 (C.D. Cal. Sept. 11, 2008). “The

1 Attorney General may arrest the alien against whom proceedings are commenced and
2 detain that individual until the conclusion of those proceedings.” *Id.* at *3. “Thus, an
3 alien’s detention throughout this process arises from the Attorney General’s decision to
4 commence proceedings” and review of claims arising from such detention is barred
5 under § 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007)); *Wang*
6 *v. United States*, No. CV 10-0389 SVW (RCX), 2010 WL 11463156, at *6 (C.D. Cal.
7 Aug. 18, 2010); 8 U.S.C. § 1252(g).

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

1 Critically, “1252(b)(9) is a judicial channeling provision, not a claim-barring
2 one.” *Aguilar v. ICE*, 510 F.3d 1, 11 (1st Cir. 2007). Indeed, 8 U.S.C. § 1252(a)(2)(D)
3 provides that “[n]othing . . . in any other provision of this chapter . . . shall be construed
4 as precluding review of constitutional claims or questions of law raised upon a petition
5 for review filed with an appropriate court of appeals in accordance with this section.”
6 *See also Ajlani v. Chertoff*, 545 F.3d 229, 235 (2d Cir. 2008) (“[J]urisdiction to review
7 such claims is vested exclusively in the courts of appeals[.]”). The petition-for-review
8 process before the court of appeals ensures that aliens have a proper forum for claims
9 arising from their immigration proceedings and “receive their day in court.” *J.E.F.M.*,
10 837 F.3d at 1031–32 (internal quotations omitted); *see also Rosario v. Holder*,
11 627 F.3d 58, 61 (2d Cir. 2010) (“The REAL ID Act of 2005 amended the [INA] to
12 obviate . . . Suspension Clause concerns” by permitting judicial review of
13 “nondiscretionary” BIA determinations and “all constitutional claims or questions of
14 law”). These provisions divest district courts of jurisdiction to review both direct and
15 indirect challenges to removal orders, including decisions to detain for purposes of
16 removal or for proceedings. *See Jennings v. Rodriguez*, 583 U.S. 281, 294–95 (2018)
17 (stating section 1252(b)(9) includes challenges to the “decision to detain [an alien] in
18 the first place or to seek removal”).

19 Here, Petitioner’s claims stem from her detention during removal proceedings.
20 However, that detention arises from DHS’s decision to commence such proceedings
21 against her. *See, e.g., Valecia-Meja v. United States*, No. 08-2943 CAS (PJWz),
22 2008 WL 4286979; at *4 (C.D. Cal. Sept. 15, 2008) (“The decision to detain plaintiff
23 until his hearing before the Immigration Judge arose from this decision to commence
24 proceedings.”); *Wang*, 2010 WL 11463156, at *6; *Tazu v. Att’y Gen. U.S.*, 975 F.3d
25 292, 298–99 (3d Cir. 2020) (holding that 8 U.S.C. § 1252(g) and (b)(9) deprive district
26 court of jurisdiction to review action to execute removal order). Petitioner’s challenge
27 concerning the dismissal of her 1229a proceedings and commencement of expedited
28 removal proceedings is strictly barred by these provisions. As such, Petitioner’s claims

1 would be more appropriately presented before the BIA and Ninth Circuit. *See* 8 U.S.C.
2 §§ 1252(a)(5), (b)(9).

3 Moreover, “[s]ection 1252(a)(2)(A) is a jurisdiction-stripping and channeling
4 provision, which bars review of almost ‘every aspect of the expedited removal
5 process.’” *Azimov v. U.S. Dep’t of Homeland Sec.*, No. 22-56034, 2024 WL 687442, at
6 *1 (9th Cir. Feb. 20, 2024) (quoting *Mendoza-Linares v. Garland*, 51 F.4th 1146,
7 1154 (9th Cir. 2022) (describing the operation of § 1252(a)(2)(A)). These jurisdiction-
8 stripping provisions cover “the ‘procedures and policies’ that have been adopted to
9 ‘implement’ the expedited removal process; the decision to ‘invoke’ that process in a
10 particular case; the ‘application’ of that process to a particular alien; and the
11 ‘implementation’ and ‘operation’ of any expedited removal order.” *Mendoza-Lineras*,
12 51 F.4th at 1155. “Congress chose to strictly cabin this court’s jurisdiction to review
13 expedited removal orders.” *Guerrier v. Garland*, 18 F.4th 304, 313 (9th Cir. 2021)
14 (finding that the Supreme Court abrogated any “colorable constitutional claims”
15 exception to the limits placed by § 1252(a)(2)(A)); *see Thuraissigiam*, 591 U.S. 103
16 (holding that limitations within § 1252(a)(2)(A) do not violate the Suspension Clause).
17 “Congress has chosen to explicitly bar nearly all judicial review of expedited removal
18 orders concerning such aliens, including ‘review of constitutional claims or questions
19 of law.’” *Mendoza-Linares*, 51 F.4th at 1148 (citing 8 U.S.C. § 1252(a)(2)(A), (D)); *see*
20 *Thuraissigiam*, 591 U.S. at 138-39 (explicitly rejecting Ninth Circuit’s holding that an
21 arriving alien has a “constitutional right to expedited removal proceedings that conform
22 to the dictates of due process”).

23 “Congress could scarcely have been more comprehensive in its articulation of the
24 general prohibition on judicial review of expedited removal orders.” *Mendoza-Lineras*,
25 51 F.4th at 1155. Specifically, Section 1252(a)(2)(A) states:

- 26 (2) Matters not subject to judicial review
27 (A) Review relating to section 1225(b)(1)
28

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

- 4 (i) except as provided in subsection (e), any individual determination
5 or to entertain any other cause or claim arising from or relating to
6 the implementation or operation of an order of removal pursuant
7 to section 1225(b)(1) of this title,
8 (ii) except as provided in subsection (e), a decision by the Attorney
9 General to invoke the provisions of such section,
10 (iii) the application of such section to individual aliens, including the
11 determination made under section 1225(b)(1)(B) of this title, or
12 (iv) except as provided in subsection (e), procedures and policies
13 adopted by the Attorney General to implement the provisions of
14 section 1225(b)(1) of this title.

15 8 U.S.C. § 1252(a)(2)(A). Thus, “Section 1252(a)(2)(A)(i) deprives courts of
16 jurisdiction to hear a ‘cause or claim arising from or relating to the implementation or
17 operation of an order of removal pursuant to section 1225(b)(1),’ which plainly includes
18 [Petitioner’s] collateral attacks on the validity of the expedited removal order.” *Azimov*,
19 2024 WL 687442, at *1 (quoting *Mendoza-Linares*, 51 F.4th at 1155) (citing *J.E.F.M.*
20 *v. Lynch*, 837 F.3d 1026, 1031-35 (9th Cir. 2016) (concluding that the “arising from”
21 language in neighboring § 1252(b)(9) sweeps broadly)). By challenging the standards
22 and process of expedited removal proceedings, Petitioner necessarily asks the Court “to
23 do what the statute forbids [it] to do, which is to review ‘the application of such section
24 to [her].’” *Mendoza-Linares*, 51 F.4th at 1155. Most notably, a determination made
25 concerning inadmissibility “is not subject to judicial review.” *Gomez-Cantillano v.*
26 *Garland*, No. 19-72682, 2021 WL 5882034 (9th Cir. Dec. 13, 2021) (citing
27 8 U.S.C § 1252(a)(2)(A)(iii)). “And § 1252(a)(2)(A)(iv) deprives courts of jurisdiction
28 to review ‘procedures and policies adopted by the Attorney General to implement the
provisions of section 1225(b)(1) of this title,’ which plainly includes [Petitioner’s]
claims regarding how [Respondents may] implement[.]” § 1225(b)(1). *Azimov*,
2024 WL 687442, at *1 (citing *Mendoza-Linares*, 51 F.4th at 1154–55).

1 In setting forth provisions for judicial review of § 1225(b)(1) expedited removal
2 orders, Congress expressly limited available relief: “Without regard to the nature of the
3 action or claim and without regard to the identity of the party or parties bringing the
4 action, no court may” “enter declaratory, injunctive, other equitable relief in any action
5 pertaining to an order to exclude an alien in accordance with section § 1225(b)(1) of
6 this title except as specifically authorized in a subsequent paragraph of this subsection.”
7 8 U.S.C. § 1252(e)(1)(A). Congress delineated two limited avenues for judicial review
8 concerning expedited removal orders: (1) narrow habeas corpus proceedings under
9 § 1252(e)(2); and (2) challenges to the validity of the system under § 1252(e)(3). Any
10 permissible challenge to the validity of the system “is available [only] in an action in
11 the United States District Court for the District of Columbia . . .” 8 U.S.C. § 1252(e)(3).

12 Narrow habeas corpus proceedings are expressly “limited to determinations” of
13 three questions: (1) “whether the petitioner is an alien”; (2) “whether the petitioner was
14 ordered removed under [section 1225(b)(1)]”; and (3) “whether the petitioner can prove
15 by a preponderance of the evidence that the petitioner is an alien” who has been granted
16 status as a lawful permanent resident, refugee, or asylee. 8 U.S.C. § 1252(e)(2)(A)-(C).
17 “In determining whether an alien has been ordered removed under section 235(b)(1)
18 [8 U.S.C. § 1225(b)(1)], the court’s inquiry shall be limited *to whether such an order*
19 *in fact was issued and whether it relates to the petitioner.* There shall be no review of
20 whether the alien is actually inadmissible or entitled to any relief from removal.”
21 8 U.S.C. § 1252(e)(5) (emphasis added). To the extent Petitioner is challenging the
22 expedited process, each of Petitioner’s claims fall outside the limited habeas corpus
23 authority provided within § 1252(e)(2).

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

26 **B. Petitioner’s Detention is Lawful and Mandatory.**

27 Petitioner’s claims for alleged statutory and constitutional violations fail because
28 Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(1).

1 Under 8 U.S.C. § 1225(a)(1), an “applicant for admission” is defined as an “alien
2 present in the United States who has not been admitted or who arrives in the United
3 States.” As explained above, applicants for admission “fall into one of two categories,
4 those covered by § 1225(b)(1) and those covered by § 1225(b)(2).” *Jennings*, 583 U.S.
5 at 287. Section 1225(b)(1) – the provision relevant here – applies because Petitioner is
6 an arriving alien. And that statute mandates detention when an immigration officer
7 determines that the alien has a credible fear of persecution. *See* 8 U.S.C.
8 § 1225(b)(1)(B)(ii) (“If the officer determines at the time of the interview that [the]
9 alien has a credible fear of persecution . . . , the alien *shall be detained* for further
10 consideration of the application for asylum.”) (emphasis added); *see also Matter of M-*
11 *S*, 27 I. & N. Dec. 509, 519 (AG 2019) (“all aliens transferred from expedited to full
12 [removal] proceedings after establishing a credible fear are ineligible for bond”).

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

27 In *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 207-09 (1953), a
28 noncitizen in exclusion proceedings filed a habeas petition claiming that his prolonged

1 detention without a hearing violated his constitutional rights. The Supreme Court
2 rejected the petition, concluding that the noncitizen’s continued detention did not
3 deprive him of any due process rights, stating: “[A]n alien on the threshold of initial
4 entry stands on a different footing: ‘Whatever the procedure authorized by Congress
5 is, it is due process as far as an alien denied entry is concerned.’” *Id.* at 212 (citation
6 omitted).

7 In *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 138-40
8 (2020), the Supreme Court once again addressed the due process rights of individuals
9 like Petitioner – inadmissible arriving noncitizens seeking initial entry into the United
10 States. The Supreme Court stated that such individuals have no due process rights
11 “other than those afforded by statute.” *Id.* at 107; *see also id.* at 140 (“[A]n alien in
12 respondent’s position has only those rights regarding admission that Congress has
13 provided by statute.”). The Supreme Court noted that its determination was supported
14 by “more than a century of precedent.” *Id.* at 138 (citing *Nishimura Ekiu v. United*
15 *States*, 142 U.S. 651, 660 (1892); *U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537,
16 544 (1950); *Mezei*, 345 U.S. at 212; *Landon v. Plasencia*, 459 U.S. 21, 32 (1982)).

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

1 Cal. Apr. 25, 2023) (same).

2 Even if the Court infers a constitutional right against prolonged mandatory
3 detention, Petitioner’s claim still fails. “In general, as detention continues past a year,
4 courts become extremely wary of permitting continued custody absent a bond hearing.”
5 *Sibomana v. LaRose*, No. 22-cv-933-LL-NLS, 2023 WL 3028093, at *4 (S.D. Cal.
6 Apr. 20, 2023) (citation omitted); *see also, e.g., Sanchez-Rivera v. Matuszewski*,
7 No. 22-cv-1357-MMA-JLB, 2023 WL 139801, at *6 (S.D. Cal. Jan. 9, 2023) (detained
8 for three years); *Durand v. Allen*, No. 3:23-cv-00279-RBM-BGS, 2024 WL 711607,
9 at *5 (S.D. Cal. Feb. 21, 2024) (over two-and-a-half years); *Yagao v. Figueroa*,
10 No. 17-cv-2224-AJB-MDD, 2019 WL 1429582, at *2 (S.D. Cal. Mar. 29, 2019) (two
11 years). Petitioner’s detention falls significantly short of the length courts have found to
12 raise due process concerns.

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

21 **V. CONCLUSION**

22 For the reasons stated above, the Court should deny the petition.

23
24 DATED: December 19, 2025

Respectfully submitted,

25 ADAM GORDON
26 United States Attorney
27 *s/ Sheldon Smith*
28 _____
SHELDON A. SMITH
Special Assistant U.S. Attorney
Attorneys for Respondents

ADAM GORDON
United States Attorney
SHELDON A. SMITH
New Jersey Bar No. 041482009
Special Assistant United States Attorney
880 Front Street, Room 6293
San Diego, CA 92101-8893
Telephone: (619) 546-7304
Facsimile: (619) 546-7751
Email: sheldon.smith@usdoj.gov

Attorneys for Respondents

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

HELMER CASTRO CABALLERO
Petitioner,

v.

CHRISTOPHER LaROSE, et al.,
Respondents.



Case No.: 25-cv-3407-BJC-BJW

TABLE OF EXHIBITS

Exhibits:










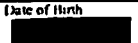





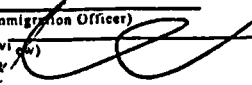
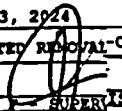
- A. Form I-213, Record of Deportable/Inadmissible Alien, dated September 23, 2024
- B. Notice to Appear, dated October 10, 2024

EXHIBIT A

SIGMA Event: 
 Subject ID : 



U.S. Department of Homeland Security

Record of Deportable/Inadmissible Alien

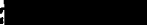
Family Name (CAPS) CASTRO CABALLERO, HELMER JAVIER		First	Middle	Sex M	Hair 	Eyes 	Complexion 
Country of Citizenship VENEZUELA	Passport Number and Country of Issue	Case No. 		Height 	Weight 	Occupation 	
U.S. Address DHS Custody, San Ysidro, CALIFORNIA 92173, UNITED STATES OF AMERICA				Scars and Marks NONE INDICATED			
Date, Place, Time, and Manner of Last Entry 09/22/2024, 2504 - SYS, 20:00, AFOOT		Passenger Boarded at N/A		F.B.I. Number 	<input checked="" type="checkbox"/> Single <input type="checkbox"/> Divorced <input type="checkbox"/> Married <input type="checkbox"/> Widower <input type="checkbox"/> Separated		
Number, Street, City, Province (State) and Country of Permanent Residence 				Method of Location/Apprehension ISP			
Date of Birth 	Age: 	Date of Action 09/23/2024	Location Code 2504 - SYS	AV Near SAN YSIDRO, CA		Date/Time 09/22/2024 2250	
City, Province (State) and Country of Birth SAN CRISTOBAL, VENEZUELA		AR <input type="checkbox"/>	Form: (Type and No.) Lifted <input type="checkbox"/> Not Lifted <input type="checkbox"/> NONE				
NIV Issuing Post and NIV Number None		Social Security Account Name None					
Date Visa Issued None		Social Security Number None					
Immigration Record NEGATIVE				Criminal Record None Known			
Name, Address, and Nationality of Spouse (Maiden Name, if Appropriate) NONE						Number and Nationality of Minor Children 0	
Father's Name, Nationality, and Address, if Known  NATIONALITY: VENEZUELA				Mother's Present and Maiden Names, Nationality, and Address, if Known  NATIONALITY: VENEZUELA			
Mones Due/Property in U.S. Not in Immediate Possession See Narrative		Fingerprinted? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Systems Checks See Narrative	Charge Code Word(s) See Narrative			
Name and Address of (Last) (Current) U.S. Employer NONE		Type of Employment NONE	Salary 0.0 USD	Employed from/to 0/0/00 - 0/0/00			
Narrative (Outline particulars under which alien was located/apprehended. Include details not shown above regarding time, place and manner of last entry, attempted entry, or any other entry, and elements which establish administrative and/or criminal violation. Indicate means and route of travel to interior.) FINS:  Left Index Finger Right Index Finger							
							
STATUS AT ENTRY							
Other Applicant for Admission							
ARRESTING AGENT							
ARAUJO, Manuel E CBP OFFICER							
... (CONTINUED ON I-831)							
Alien has been advised of communication privileges 09/23/2024		(Date/Initials)		(Signature and Title of Immigration Officer)			
Distribution: A FILE		Received: (Subject and Documents) (Report of Interview) ARAUJO, Manuel E - CBP OFFICER 					
		Officer: _____					
		on: September 23, 2024 (time)					
		Disposition: EXPEDITED REMOVAL-CREDIBLE FEAR (ERCF)					
		Examinee Officer: TANGL, John E - SUPERVISORY CBP OFFICER 					

U.S. Department of Homeland Security

Continuation Page for Form 1213

Alien's Name CASTRO CABALLERO, HELMER JAVIER	File Number SIGMA Event:  Event No: 	Date September 23, 2024
---	--	----------------------------

CLAIMED DOCUMENTS

National ID - 

RECORDS CHECKED

- ATS-P Pos
- TECS Pos
- NCIC Pos
- CIS Neg
- CLAIM Pos
- CCD Pos
- IAFIS Pos
- EARM Pos



SECTION CODES


Sec212(a)(7)(A)(i)(I)
8 USC 1182-ALIEN INADMISSIBILITY UNDER SEC 212(a)

CLAIMED PROPERTY

Personal Property Baggage Check: 

Narrative:

On September 22, 2024 at approximately 1600 hours, CASTRO CABALLERO, Helmer Javier (DOB: ) applied for admission into the United States from Tijuana, Mexico through CBP ONE appointment at San Ysidro Port of Entry, Pedestrian West. CASTRO CABALLERO presented his Venezuelan passport and stated he intends to travel to INDIANA. CASTRO CABALLERO, Helmer Javier (DOB: ) is a citizen and national of Venezuela, and not in possession of valid documents to enter the United States. Subject was referred to the Admissibility Enforcement Unit at San Ysidro Port of Entry for further processing.

On September 23, 2024, in AEU, CASTRO CABALLERO, Helmer Javier (DOB: ) was put under oath at approximately 1130 hours to conduct an oral interview and sworn statement. The interview was conducted in the Spanish language at the request of CASTRO CABALLERO, translated by and interviewed by CBPO ARAUJO, Manuel E. CASTRO CABALLERO, Helmer Javier of his own volition, made the following statements:

Start time: 1130 HRS.

Q: Do you understand what I've said to you?
A: YES



Q: Do you have any questions?
A: NO

... (CONTINUED ON NEXT PAGE)

Signature ARAUJO, Manuel E 	Title CBP OFFICER
---	----------------------

U.S. Department of Homeland Security

Continuation Page for Form 1213

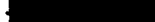
Alien's Name CASTRO CABALLERO, HELMER JAVIER	File Number SIGMA Event.  Event No: 	Date September 23, 2024
---	--	----------------------------

the following Point of Contact (POC) information in the United States:

POC Name: 
 POC Phone: 
 POC Address: 
 Indianapolis, IN 
 United States Of America

CASTRO CABALLERO voluntarily submitted a DNA Test Batch, .

System checks were done through super query, yielding positive results.
Apprehended: 06/10/2024 Expedited Removal: 07/17/2024

Disposition CASTRO CABALLERO, Helmer Javier (DOB:  was served with Form M-444 (Information of Credible Fear Interview) in both the English and Russian language with attached List of Free Legal Services; 296 (Notice to Alien Ordered Removed) and I-860 (Notice of Order of Expedited Removal). CASTRO CABALLERO was transferred to DHS custody pending credible fear interview with an Asylum Officer. CASTRO CABALLERO was presumed inadmissible in accordance with Section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act as amended, up until the decision of an Asylum Officer and Executive Office of Immigration Review.

Signature 	Title CBP OFFICER
--	----------------------

EXHIBIT B

Allegations: Admits All; | Charges: Concedes All;
Designated Country: VENEZUELA |

DEPARTMENT OF HOMELAND SECURITY
NOTICE TO APPEAR

In removal proceedings under section 240 of the Immigration and Nationality Act:

File No: [REDACTED]

In the Matter of:

Respondent: [REDACTED] currently residing at:

OTAY MESA DETENTION CENTER, 7488 CALZADA DE LA FUENTE, SAN DIEGO, CA 92154

619-861-4071

(Number, street, city, state and ZIP code)

(Area code and phone number)

- You are an arriving alien.
- You are an alien present in the United States who has not been admitted or paroled.
- You have been admitted to the United States, but are removable for the reasons stated below.

The Department of Homeland Security alleges that you:

1. You are not a citizen or national of the United States;
2. You are a native of Venezuela and a citizen of VENEZUELA;
3. You applied for admission at SAN YSIDRO CA on 2024-09-22;
4. You did not then possess or present a valid immigrant visa, reentry permit, border crossing identification card, or other valid entry document.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

Section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (Act), as amended, as an immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality as required under the regulations issued by the Attorney General under section 211(a) of the Act.

- This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.
- Section 235(b)(1) order was vacated pursuant to: 8CFR 208.30 8CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:

7488 CALZADA DE LA FUENTE, SAN DIEGO, CA, 92154

(Complete Address of Immigration Court, including Room Number, if any)

on 10/28/2024 at 8:00 am to show why you should not be removed from the United States based on the
(Date) (Time)

charge(s) set forth above.

Erika Mast Supervisory Asylum Officer
(Signature and Title of Issuing Officer)

Date: 10/10/2024

Tustin, CA
(City and State)

Allegations: Admits All; | Charges: Concedes All; **Notice to Respondent**

Designated Country: VENEZUELA |

Warning: Any statement you make may be used against you in removal proceedings.

Alien Registration: This copy of the Notice to Appear served upon you is evidence of your alien registration while you are in removal proceedings. You are required to carry it with you at all times.

Representation: If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review, pursuant to 8 CFR 1003.16. Unless you so request, no hearing will be scheduled earlier than ten days from the date of this notice, to allow you sufficient time to secure counsel. A list of qualified attorneys and organizations who may be available to represent you at no cost will be provided with this notice.

Conduct of the hearing: At the time of your hearing, you should bring with you any affidavits or other documents that you desire to have considered in connection with your case. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing. At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Notice to Appear, including that you are inadmissible or removable. You will have an opportunity to present evidence on your own behalf, to examine any evidence presented by the Government, to object, on proper legal grounds, to the receipt of evidence and to cross examine any witnesses presented by the Government. At the conclusion of your hearing, you have a right to appeal an adverse decision by the Immigration Judge. You will be advised by the Immigration Judge before whom you appear of any relief from removal for which you may appear eligible including the privilege of voluntary departure. You will be given a reasonable opportunity to make any such application to the Immigration Judge.

One-Year Asylum Application Deadline: If you believe you may be eligible for asylum, you must file a Form I-589, Application for Asylum and for Withholding of Removal. The Form I-589, Instructions, and information on where to file the Form can be found at www.uscis.gov/i-589. Failure to file the Form I-589 within one year of arrival may bar you from eligibility to apply for asylum pursuant to section 208(a)(2)(B) of the Immigration and Nationality Act.

Failure to appear: You are required to provide the Department of Homeland Security (DHS), in writing, with your full mailing address and telephone number. You must notify the Immigration Court and the DHS immediately by using Form EOIR-33 whenever you change your address or telephone number during the course of this proceeding. You will be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the Immigration Judge in your absence, and you may be arrested and detained by the DHS.

Mandatory Duty to Surrender for Removal: If you become subject to a final order of removal, you must surrender for removal to your local DHS office, listed on the internet at http://www.ice.gov/contact/ero, as directed by the DHS and required by statute and regulation. Immigration regulations at 8 CFR 1241.1 define when the removal order becomes administratively final. If you are granted voluntary departure and fail to depart the United States as required, fail to post a bond in connection with voluntary departure, or fail to comply with any other condition or term in connection with voluntary departure, you must surrender for removal on the next business day thereafter. If you do not surrender for removal as required, you will be ineligible for all forms of discretionary relief for as long as you remain in the United States and for ten years after your departure or removal. This means you will be ineligible for asylum, cancellation of removal, voluntary departure, adjustment of status, change of nonimmigrant status, registry, and related waivers for this period. If you do not surrender for removal as required, you may also be criminally prosecuted under section 243 of the Immigration and Nationality Act.

U.S. Citizenship Claims: If you believe you are a United States citizen, please advise the DHS by calling the ICE Law Enforcement Support Center toll free at (855) 448-6903.

Sensitive Locations: To the extent that an enforcement action leading to a removal proceeding was taken against Respondent at a location described in 8 U.S.C. § 1229(e)(1), such action complied with 8 U.S.C. § 1387.

Upon information and belief, the language that the alien understands is **SPANISH**

Request for Prompt Hearing

To expedite a determination in my case, I request this Notice to Appear be filed with the Executive Office for Immigration Review as soon as possible. I waive my right to a 10-day period prior to appearing before an Immigration Judge and request my hearing be scheduled.

Before:

(Signature of Respondent)

Date: _____

(Signature and Title of Immigration Officer)

Certificate of Service

This Notice To Appear was served on the respondent by me on 10/15/2024, in the following manner and in compliance with section 239(a)(1) of the Act.

- In person by certified mail, returned receipt # _____ requested by regular mail
- Attached is a credible fear worksheet.
- Attached is a list of organization and attorneys which provide free legal services.

The alien was provided oral notice in the Spanish language of the time and place of his or her hearing and of the consequences of failure to appear as provided in section 240(b)(7) of the Act.

~~_____~~
(Signature of Respondent if Personally Served)

DIO Hunter Deportation Officer
(Signature and Title of officer)

EOIR - 2 of 32

Allegations: Admits All; | Charges: Concedes All; Privacy Act Statement

Designated Country: VENEZUELA |

Authority:

The Department of Homeland Security through U.S. Immigration and Customs Enforcement (ICE), U.S Customs and Border Protection (CBP), and U.S. Citizenship and Immigration Services (USCIS) are authorized to collect the information requested on this form pursuant to Sections 103, 237, 239, 240, and 290 of the Immigration and Nationality Act (INA), as amended (8 U.S.C. 1103, 1229, 1229a, and 1360), and the regulations issued pursuant thereto.

Purpose:

You are being asked to sign and date this Notice to Appear (NTA) as an acknowledgement of personal receipt of this notice. This notice, when filed with the U.S. Department of Justice's (DOJ) Executive Office for Immigration Review (EOIR), initiates removal proceedings. The NTA contains information regarding the nature of the proceedings against you, the legal authority under which proceedings are conducted, the acts or conduct alleged against you to be in violation of law, the charges against you, and the statutory provisions alleged to have been violated. The NTA also includes information about the conduct of the removal hearing, your right to representation at no expense to the government, the requirement to inform EOIR of any change in address, the consequences for failing to appear, and that generally, if you wish to apply for asylum, you must do so within one year of your arrival in the United States. If you choose to sign and date the NTA, that information will be used to confirm that you received it, and for recordkeeping.

Routine Uses:

For United States Citizens, Lawful Permanent Residents, or individuals whose records are covered by the Judicial Redress Act of 2015 (5 U.S.C. § 552a note), your information may be disclosed in accordance with the Privacy Act of 1974, 5 U.S.C. § 552a(b), including pursuant to the routine uses published in the following DHS systems of records notices (SORN): DHS/USCIS/ICE/CBP-001 Alien File, Index, and National File Tracking System of Records, DHS/USCIS-007 Benefit Information System, DHS/ICE-011 Criminal Arrest Records and Immigration Enforcement Records (CARIER), and DHS/ICE-003 General Counsel Electronic Management System (GEMS), and DHS/CBP-023 Border Patrol Enforcement Records (BPER). These SORNs can be viewed at [https://www.dhs.gov/privacy-act/sorns](#). When disclosed to the DOJ's EOIR for immigration proceedings, this information that is maintained and used by DOJ is covered by the following DOJ SORN: EOIR-001, Records and Management Information System, or any updated or successor SORN, which can be viewed at [https://www.justice.gov/epo/epo-systems-records](#). Further, your information may be disclosed pursuant to routine uses described in the abovementioned DHS SORNs or DOJ EOIR SORN to federal, state, local, tribal, territorial, and foreign law enforcement agencies for enforcement, investigatory, litigation, or other similar purposes.

For all others, as appropriate under United States law and DHS policy, the information you provide may be shared internally within DHS, as well as with federal, state, local, tribal, territorial, and foreign law enforcement; other government agencies; and other parties for enforcement, investigatory, litigation, or other similar purposes.

Disclosure:

Providing your signature and the date of your signature is voluntary. There are no effects on you for not providing your signature and date; however, removal proceedings may continue notwithstanding the failure or refusal to provide this information.