ADAM GORDON
United States Attorney
MARY CILE GLOVER-ROGERS
California State Bar No. 321254
ERIN M. DIMBLEBY
California State Bar No. 323359
Assistant U.S. Attorneys
Office of the U.S. Attorney
880 Front Street, Room 6293
San Diego, CA 92101-8893
Telephone: (619) 546-7643/6987
Facsimile: (619) 546-7751
Email: mary.glover-rogers@usdoj.gov
Email: erin.dimbleby@usdoj.gov

Attorneys for Respondent

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

ASTGHIK KARAKHANYAN, Petitioner, v. WARDEN OF OTAY MESA DETENTION CENTER, Respondent.	Case No.: 25-cv-03454-JO-MMP **RETURN IN OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS**

I. INTRODUCTION

Petitioner requests that this Court order his immediate release from Immigration and Customs Enforcement (ICE) custody. As an arriving alien found to have a credible fear of persecution, however, Petitioner's detention is mandated by 8 U.S.C. § 1225(b)(1)(B). Moreover, Petitioner's individual hearing is scheduled to be completed on January 2, 2026. Accordingly, the Court should deny Petitioner's requests for relief.

II. FACTUAL AND PROCEDURAL BACKGROUND[1]

Petitioner is a native and citizen of Armenia. On or about December 20, 2024, Petitioner arrived at the San Ysidro Port of Entry, in San Ysidro, California. *See* Form I-862, attached as Exhibit 1. Petitioner did not then possess a valid entry document and was determined to be inadmissible under 8 U.S.C. § 1182(a)(7)(A)(i). Petitioner was placed in expedited removal proceedings pursuant to 8 U.S.C. § 1225(b)(1) and mandatorily detained pursuant to 8 U.S.C. § 1225(b)(1)(B). On January 12, 2025, pursuant to 8 U.S.C. § 1225(b)(1)(B), Petitioner was interviewed by a USCIS asylum officer to determine whether she had a credible fear of persecution or torture if removed to Armenia. The interview resulted in a positive determination.

On January 13, 2025, Petitioner was issued a Notice to Appear, charging her as inadmissible under 8 U.S.C. §§ 1182(a)(7)(A)(i) (as an immigrant not in possession of a valid entry document). The filing of the NTA initiated removal proceedings against Petitioner, and those proceedings remain ongoing. Within her removal proceedings under § 1229a, Petitioner has the opportunity to apply for relief from removal before an immigration judge (IJ), including asylum under 8 U.S.C. § 1158, withholding of removal under 8 U.S.C. § 1231(b)(3), and relief under the Convention Against Torture.

On January 27, 2025, Petitioner appeared pro se for her initial master calendar hearing before an immigration judge (IJ). Petitioner's case was reset to February 20, 2025, to allow Petitioner to retain an attorney and answer to the charges in the Notice

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[1] The information contained within this factual background has been obtained from ICE counsel. Further, the attached exhibits are true copies, with redactions of private information, of documents obtain from ICE counsel.

to Appear (NTA). On February 20, 2025, Petitioner again appeared pro se for her master calendar hearing without an attorney. The IJ found Petitioner removable as charged in the NTA and designated Armenia as the country of removal.

On June 12, 2025, Petitioner successfully filed a Form I-589, application for asylum and withholding of removal (after it was previously rejected as improperly formatted on March 11, 2025. *See* Rejection Notice (Mar. 12, 2025), attached as Exhibit 2; Notice of Filing I-589 (June 12, 2025), attached as Exhibit 3. The immigration court set an individual merits hearing for September 24, 2025. *See* ECF No. 1, Ex. A at 10. On April 14, 2025, the immigration court held a bond hearing but found no jurisdiction to set bond. *See Matter of M-S*, 27 I&N Dec. 509, 519 (AG 2019) ("all aliens transferred from expedited to full [removal] proceedings after establishing a credible fear are ineligible for bond"). The merits hearing was then reset to July 15, 2025 and reset again to September 26, 2025. *See* ECF No. 1, Ex. A at 11-15. At the September 26 merits hearing, Petitioner's counsel failed to appear, therefore, the immigration court reset the merits hearing to October 9, 2025. *Id.* at 16-18. The October 9 merits hearing was converted to a *Matter of M-A-M* competency hearing to assess Petitioner's competency, where an immigration judge determined that she was competent. The merits hearing was reset to November 24, 2025. *Id.* at 18-19.

At the November 24 merits hearing, Petitioner was sought to substitute new counsel. On November 10, 2025, a new asylum application was filed, but it was rejected as incomplete and the immigration judge granted Petitioner up through December 24, 2025, to file a complete asylum application. The immigration court reset the merits hearing for January 2, 2026. *Id.* at 20-21.

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

III. STATUTORY BACKGROUND

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

Section 1225 applies to an "applicant for admission," defined as an "alien

present in the United States who has not been admitted" or "who arrives in the United States." 8 U.S.C. § 1225(a)(1). "[A]pplicants for admission fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

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

IV. ARGUMENT

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

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

Courts lack jurisdiction over any claim or cause of action arising from any decision to commence or adjudicate removal proceedings or execute removal orders. *See* 8 U.S.C. § 1252(g) ("[N]o court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General

to *commence proceedings*, *adjudicate cases*, or execute removal orders.") (emphasis added); *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999) ("There was good reason for Congress to focus special attention upon, and make special provision for, judicial review of the Attorney General's discrete acts of "commenc[ing] proceedings, adjudicat[ing] cases, [and] execut[ing] removal orders" – which represent the initiation or prosecution of various stages in the deportation process."). In other words, § 1252(g) removes district court jurisdiction over "three discrete actions that the [AG] may take: [her] 'decision or action' to 'commence proceedings, adjudicate cases, or execute removal orders.'" *Reno*, 525 U.S. at 482 (emphasis removed). Petitioner's claims necessarily arise "from the decision or action by the Attorney General to commence proceedings [and] adjudicate cases," over which Congress has explicitly foreclosed district court jurisdiction. 8 U.S.C. § 1252(g).

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

Petitioner's claims stem from his detention during removal proceedings. However, that detention arises from the decision to commence such proceedings against him. *See, e.g.*, *Valecia-Meja v. United States*, No. 08-2943 CAS (PJWz), 2008 WL 4286979, at *4 (C.D. Cal. Sept. 15, 2008) ("The decision to detain plaintiff until his hearing before the Immigration Judge arose from this decision to commence proceedings."); *Wang v. United States*, No. CV 10-0389 SVW (RCx), 2010 WL 11463156, at *6 (C.D. Cal. Aug. 18, 2010); *Tazu v. Att'y Gen. U.S.*, 975 F.3d 292, 298–99 (3d Cir. 2020) (holding that 8 U.S.C. § 1252(g) and (b)(9) deprive district court of jurisdiction to review action to execute removal order).

"For the purposes of § 1252, the Attorney General commences proceedings against an alien when the alien is issued a Notice to Appear before an immigration court." *Herrera-Correra v. United States*, No. 08-2941 DSF (JCx), 2008 WL 11336833, at *3 (C.D. Cal. Sept. 11, 2008). "The Attorney General may arrest the alien against whom proceedings are commenced and detain that individual until the conclusion of those proceedings." *Id.* at *3. "Thus, an alien's detention throughout this process arises from the Attorney General's decision to commence proceedings" and review of claims arising from such detention is barred under § 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007)); *Wang*, 2010 WL 11463156, at *6; 8 U.S.C. § 1252(g). Accordingly, the Court should dismiss Petitioner's claims for lack of jurisdiction under 8 U.S.C. § 1252.

B. Petitioner's Detention is Lawful and Mandatory.

Petitioner challenges his detention on the basis that it has been prolonged in violation of his Fifth Amendment due process rights. This request should be denied because Petitioner's detention is mandated by 8 U.S.C. § 1225(b)(1).

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

In *Jennings*, 583 U.S. 281, 296-303 (2018), the Supreme Court evaluated the

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

Here, Petitioner claims that, despite the statutory prohibition on such relief, the Fifth Amendment's Due Process Clause requires that he be immediately released. ECF No. 1 at 6. Petitioner's due process claim, however, is foreclosed by the statutory constraints discussed above.

In *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 207-09 (1953), a noncitizen in exclusion proceedings filed a habeas petition claiming that his prolonged detention without a hearing violated his constitutional rights. The Supreme Court rejected the petition, concluding that the noncitizen's continued detention did not deprive him of any due process rights, stating: "[A]n alien on the threshold of initial entry stands on a different footing: 'Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned.'" *Id.* at 212 (citation omitted).

In *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 138-40 (2020), the Supreme Court once again addressed the due process rights of individuals like Petitioner – inadmissible arriving noncitizens seeking initial entry into the United

1 States. The Supreme Court stated that such individuals have no due process rights
2 "other than those afforded by statute." *Id.* at 107; *see also id.* at 140 ("[A]n alien in
3 respondent's position has only those rights regarding admission that Congress has
4 provided by statute."). The Supreme Court noted that its determination was supported
5 by "more than a century of precedent." *Id.* at 138 (citing *Nishimura Ekiu v. United*
6 *States*, 142 U.S. 651, 660 (1892); *U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537,
7 544 (1950); *Mezei*, 345 U.S. at 212; *Landon v. Plasencia*, 459 U.S. 21, 32 (1982)).
8 Since the Supreme Court's decision in *Thuraissigiam*, numerous published
9 decisions have acknowledged *Thuraissigiam*'s impact on the precise Fifth Amendment
10 Due Process Clause issue raised in this petition: Does an alien detained under 8 U.S.C.
11 § 1225(b)(1) have a due process right to release or a bond hearing after being detained
12 for a certain period of time? The answer is no. *See Rodriguez Figueroa v. Garland*,
13 535 F. Supp. 3d 122, 126–27 (W.D.N.Y. 2021); *Gonzales Garcia v. Rosen*, 513 F.
14 Supp. 3d 329, 336 (W.D.N.Y. 2021); *St. Charles v. Barr*, 514 F. Supp. 3d 570, 579
15 (W.D.N.Y. 2021); *Petgrave v. Aleman*, 529 F. Supp. 3d 665, 667 (S.D. Tex. 2021); *see*
16 *also Mendoza-Linares v. Garland*, No. 21-CV-1169 BEN (AHG), 2024 WL 3316306,
17 *2 (S.D. Cal. June 10, 2024) ("[T]he Court finds that Petitioner has no Fifth
18 Amendment right to a bond hearing pending his removal proceedings."); *Zelaya-*
19 *Gonzalez v. Matuszewski*, No. 23-CV-151 JLS (KSC), 2023 WL 3103811. *3 (S.D.
20 Cal. Apr. 25, 2023) (same).
21 In short, Petitioner is detained pursuant to 8 U.S.C. § 1225(b)(1)(B)(ii), which
22 provides, absent discretionary parole, that when an alien has a credible fear of
23 persecution, "the alien shall be detained for further consideration of the application for
24 asylum." As the statutory authority Petitioner is detained under does not afford him a
25 right to immediate release or a bond hearing before an immigration judge, the Court
26 should reject his claim that his detention violates the Fifth Amendment's Due Process
27 Clause and deny his requested relief. *See Thuraissigiam*, 591 U.S. at 107, 140; *Mezei*,
28

345 U.S. at 212; *Guerrier*, 18 F.4th at 310.[2]

C. Petitioner's Detention is Not Unconstitutionally Prolonged

To determine whether a petitioner's detention is unconstitutionally prolonged, the Court should apply the three-factor balancing test from *Lopez v. Garland*, 631 F. Supp. 3d 870 (E.D. Cal. 2022). *See* S.D. Cal. Case No. 25-cv-02581-BJC-JLB, ECF No. 10 at 7. The *Lopez* three-factor test includes an evaluation of (1) the total length of detention, (2) the likely duration of future detention, and (3) delays in the removal proceedings caused by the petitioner and the government. *Lopez*, 631 F.Supp.3d at 879.

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

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[2] Petitioner's reliance and arguments that his continued detention violates his due process rights under *Zadvydas v. Davis*, 533 U.S. 678 (2001), is mistaken. Both Section 1231 and *Zadvydas* plainly govern 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 . . .").

Second, the likely duration of future detention weighs against Petitioner. There is no reason to believe that once Petitioner's individual hearing is concluded, the IJ will not issue an order resolving Petitioner's asylum application. *Id.* at 8:12-15 ("Although the outcome of this hearing is yet to be determined, this fact does not support Petitioner's claim that his detention will continue for a significant time in the future. At this juncture, the Court declines to engage in the speculation that Petitioner relies on in his argument on this point.").

Finally, although there have been several continuances during Petitioner's removal proceedings, the record does not reflect any unreasonable delays in processing Petitioner's case. *See* S.D. Cal. Case No. 25-cv-02581-BJC-JLB, ECF No. 10 at 8:16-18 (finding "the delay factor is neutral" even though the petitioner's hearings "were continued multiple times by the immigration judge"). Notably, Petitioner arguably benefitted and utilized the continuances to have assistance of counsel, retain a new attorney, and file a new asylum application on or before December 24, 2025.

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

V. CONCLUSION

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

DATED: December 17, 2025

Respectfully submitted,

ADAM GORDON
United States Attorney

s/ Mary Cile Glover-Rogers
MARY CILE GLOVER-ROGERS
Assistant United States Attorney
Attorney for Respondent