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

12 L.R.G.,

13 Petitioner,

14 v.

15 CHRISTOPHER J. LAROSE, Warden,
16 Otay Mesa Detention Center; et al.,

17 Respondents.
18

Case No.: 25-cv-3490-CAB-MSB

**RESPONDENTS' RETURN TO
HABEAS PETITION**

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1 **I. Introduction**

2 Petitioner has filed a habeas petition pursuant to 28 U.S.C. § 2241. She asserts
3 that her detention violates her due process rights under *Zadvydas v. Davis*, 533 U.S.
4 678, 690 (2001). Dk. No. 1 at 5. But *Zadvydas* does not apply to aliens, such as
5 Petitioner, who are still in removal proceedings. It applies to aliens who have been
6 ordered removed but who are unable to be removed in the “reasonably foreseeable
7 future.” *Id.* at 685; *Rios v. U.S. Department of Homeland Security*, 2025 WL 3022854,
8 at *3 (S.D. Cal., 2025) (“*Zadvydas* due process analysis does not begin until the close
9 of the statutory 90-day removal period.”).

10 As an arriving alien the Constitution does not cover Petitioner, her due process
11 rights are limited to those provided by statute. *Department of Homeland Security v.*
12 *Thuraissigiam*, 591 U.S. 103, 138–40 (2020) (“[A]n alien in respondent’s position has
13 only those rights regarding admission that Congress has provided by statute.”). As set
14 forth below those statutes mandate detention while removal proceedings are pending.

15 The Court should deny and dismiss the petition.

16 **II. Factual Background¹**

17 Petitioner is a native of Columbia. On November 30, 2024, U.S. Border Patrol
18 agents apprehended Petitioner near Boulevard, California, after she unlawfully entered
19 the United States near Tecate, California. Petitioner did not have any valid entry
20 documents to enter the United States. Petitioner was determined to be inadmissible
21 under 8 U.S.C. § 1182(a)(7)(A)(i)(I) and placed in expedited removal proceedings
22 pursuant to 8 U.S.C. § 1225(b)(1). Petitioner was subsequently transferred to ICE
23 custody and detained at the Otay Mesa Detention Center.

24 Pursuant to 8 U.S.C. § 1225(b)(1)(B), Petitioner was interviewed by a USCIS
25 asylum officer to determine whether she had a credible fear of persecution or torture if
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27 ¹ The Factual Background is based on the attached exhibits which are true copies of
28 documents obtained from ICE counsel. The exhibits are being filed separately under
seal for the reasons stated in Petitioner’s Notice and Motion to Proceed
Pseudonymously. Dk. No. 3.

1 removed to Columbia. The interview resulted in a positive determination and on
2 December 18, 2025, the Department of Homeland Security (DHS) issued Petitioner a
3 Notice to Appear (NTA), charging Petitioner as inadmissible under 8 U.S.C.
4 § 1182(a)(6)(A)(i), as an alien present in the United States who has not been admitted
5 or paroled. Petitioner remained detained in ICE custody under 8 U.S.C.
6 § 1225(b)(1)(B)(ii), as her detention is mandatory.

7 On November 14, 2025, an immigration judge (IJ) held a merits hearing on
8 Petitioner's asylum claim. The IJ denied Petitioner's applications for Asylum,
9 Withholding of Removal under INA § 241(b)(3), Withholding of Removal under the
10 Convention Against Torture, and Deferral of Removal. On December 15, 2025,
11 Petitioner appealed that decision to the Board of Immigration Appeals. As of this date
12 that appeal is pending.

13 Petitioner filed a Motion for Bond on March 25, 2025. The IJ issued an order
14 denying bond on April 18, 2025, concluding that the immigration court lacked
15 jurisdiction to redetermine the bond because Petitioner is subject to mandatory
16 detention under § 1225(b)(1)(B)(ii), *see Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019).
17 Petitioner filed a motion for reconsideration of that decision on July 21, 2025, which
18 the IJ denied on September 30, 2025. Petitioner did not appeal the bond denial to the
19 Board of Immigration Appeals (BIA). Petitioner remains subject to mandatory
20 detention under 8 U.S.C. § 1225(b)(1)(B)(ii) as her removal proceedings continue.

21 III. Argument

22 A. Petitioner's Claim and Requests are Barred by 8 U.S.C. § 1252.

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

1 Courts lack jurisdiction over any claim or cause of action arising from any
2 decision to commence or adjudicate removal proceedings or execute removal orders.
3 See 8 U.S.C. § 1252(g) (“[N]o court shall have jurisdiction to hear any cause or claim
4 by or on behalf of any alien arising from the decision or action by the Attorney General
5 to *commence proceedings, adjudicate cases, or execute removal orders.*”) (emphasis
6 added); *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999)
7 (“There was good reason for Congress to focus special attention upon, and make special
8 provision for, judicial review of the Attorney General’s discrete acts of “commenc[ing]
9 proceedings, adjudicat[ing] cases, [and] execut[ing] removal orders”—which represent
10 the initiation or prosecution of various stages in the deportation process.”). In other
11 words, § 1252(g) removes district court jurisdiction over “three discrete actions that the
12 Attorney General may take: her ‘decision or action’ to ‘commence proceedings,
13 adjudicate cases, or execute removal orders.’” *Reno*, 525 U.S. at 482 (emphasis
14 removed). Petitioner’s claim necessarily arises “from the decision or action by the
15 Attorney General to commence proceedings [and] adjudicate cases,” over which
16 Congress has explicitly foreclosed district court jurisdiction. 8 U.S.C. § 1252(g).

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

23 Petitioner’s claim stems from his detention during removal proceedings.
24 However, that detention arises from the decision to commence such proceedings against
25 him. See, e.g., *Valecia-Meja v. United States*, No. CV 08–2943 CAS (PJWx), 2008 WL
26 4286979, at *4 (C.D. Cal. Sept. 15, 2008) (“[T]he decision to detain plaintiff until his
27 hearing before the Immigration Judge arose from this decision to commence
28 proceedings.”); *Wang v. United States*, No. CV 10-0389 SVW (RCx), 2010 WL

1 11463156, at *6 (C.D. Cal. Aug. 18, 2010); *Tazu v. Attorney Gen. U.S.*, 975 F. 3d 292,
2 298–99 (3d Cir. 2020) (holding that 8 U.S.C. §§ 1252(g) and (b)(9) deprive district
3 court of jurisdiction to review action to execute removal order).

4 Other courts have held, “[f]or the purposes of § 1252, the Attorney General
5 commences proceedings against an alien when the alien is issued a Notice to Appear
6 before an immigration court.” *Herrera-Correra v. United States*, No. CV 08–2941 DSF
7 (JCx), 2008 WL 11336833, at *3 (C.D. Cal. Sept. 11, 2008) (citation omitted). “The
8 Attorney General may arrest the alien against whom proceedings are commenced and
9 detain that individual until the conclusion of those proceedings.” *Id.* (citations omitted).
10 “Thus, an alien’s detention throughout this process arises from the Attorney General’s
11 decision to commence proceedings” and review of claims arising from such detention
12 is barred under § 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509 F. 3d 947, 949 (9th Cir.
13 2007)); *Wang*, 2010 WL 11463156, at *6; 8 U.S.C. § 1252(g).

14 Thus, the Court should dismiss Petitioner’s claim for lack jurisdiction under 8
15 U.S.C. § 1252.²

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

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

20 Under 8 U.S.C. § 1225(a)(1), an “applicant for admission” is defined as an “alien
21 present in the United States who has not been admitted or who arrives in the United
22 States.” As explained above, applicants for admission “fall into one of two categories,
23 those covered by § 1225(b)(1) and those covered by § 1225(b)(2).” *Jennings*, 583 U.S.
24 at 287. Section 1225(b)(1)—the provision relevant here—applies because Petitioner
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26 ² Petitioner’s claims would be more appropriately presented before the Board of
27 Immigration Appeals or appropriate federal court of appeals because they challenge the
28 government’s decision or action to detain him, which must be raised before a court of
appeals, not this Court. *See* 8 U.S.C. § 1252(b)(9).

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

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

23 Here, Petitioner claims that, despite the statutory prohibition on such relief, the
24 Fifth Amendment’s Due Process Clause requires that he be released. ECF No. 1 at
25 ¶¶ 35-39. Petitioner’s due process claim, however, is foreclosed by the same statutory
26 constraints discussed above.

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 and he sought a bond
2 hearing for relief. The Supreme Court rejected the petition, concluding that the
3 noncitizen’s continued detention did not deprive him of any constitutional right, stating:
4 “[A]n alien on the threshold of initial entry stands on a different footing: ‘Whatever the
5 procedure authorized by Congress is, it is due process as far as an alien denied entry is
6 concerned.’” *Id.* at 212 (citation 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 “other
11 than those afforded by statute.” *Id.* at 107; *id.* at 140 (“[A]n alien in respondent’s
12 position has only those rights regarding admission that Congress has provided by
13 statute.”). The Supreme Court noted that its determination was supported by “more than
14 a century of precedent.” *Id.* at 138 (citing *Nishimura Ekiu v. United States*, 142 U.S.
15 651, 660 (1892); *U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950); *Mezei*,
16 345 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 been issued acknowledging *Thuraissigiam*’s impact on the precise Fifth
19 Amendment Due Process Clause issue raised in this petition: Does an alien detained
20 under 8 U.S.C. § 1225(b)(1) have a due process right to release or a bond hearing after
21 being detained for a certain period of time? The answer is no. *See Rodriguez Figueroa*
22 *v. Garland*, 535 F. Supp. 3d 122, 126–27 (W.D.N.Y. 2021); *Gonzales Garcia v. Rosen*,
23 513 F. Supp. 3d 329, 336 (W.D.N.Y. 2021); *St. Charles v. Barr*, 514 F. Supp. 3d 570,
24 579 (W.D.N.Y. 2021); *Petgrave v. Aleman*, 529 F. Supp. 3d 665, 667 (S.D. Tex. 2021).

25 Simply put, Petitioner is detained pursuant to 8 U.S.C. § 1225(b)(1)(B)(ii) which
26 provides, absent discretionary parole, that when an alien has a credible fear of
27 persecution, “the alien shall be detained for further consideration of the application for
28 asylum.” As the statutory authority Petitioner is detained under does not afford him a

1 right to a determination by this Court as to whether his release is warranted nor a right
2 to a bond hearing before an immigration judge, the Court should reject his claim that
3 his detention violates the Fifth Amendment’s Due Process Clause and deny his
4 requested relief. *See Thuraissigiam*, 591 U.S. at 107, 140; *Mezei*, 345 U.S. at 212;
5 *Guerrier v. Garland*, 18 F. 4th 304, 310 (9th Cir. 2021).

6 Even if the Court infers a constitutional right against prolonged mandatory
7 detention, Petitioner’s claim still fails. Petitioner has been detained for less than a year.
8 *See* ECF No. 1 at ¶ 18. “In general, as detention continues past a year, courts become
9 extremely wary of permitting continued custody absent a bond hearing.” *Sibomana v.*
10 *LaRose*, No. 22-cv-933-LL-NLS, 2023 WL 3028093, at *4 (S.D. Cal. Apr. 20, 2023)
11 (citation omitted); *see also, e.g., Sanchez-Rivera v. Matuszewski*,
12 No. 22-cv-1357-MMA-JLB, 2023 WL 139801, at *6 (S.D. Cal. Jan. 9, 2023) (detained
13 for three years); *Durand v. Allen*, No. 3:23-cv-00279-RBM-BGS, 2024 WL 711607, at
14 *5 (S.D. Cal. Feb. 21, 2024) (over two-and-a-half years); *Yagao v. Figueroa*,
15 No. 17-cv-2224-AJB-MDD, 2019 WL 1429582, at *2 (S.D. Cal. Mar. 29, 2019) (two
16 years). Petitioner’s current detention falls short of the length courts have found to raise
17 due process concerns.

18 Though the length of detention is considered the most important factor, courts
19 have also considered the likely duration of future detention and any delay in the removal
20 proceedings by the petitioner or the government to determine whether “detention has
21 become so unreasonable as to require an initial bond hearing.” *See Sanchez-Rivera*,
22 2023 WL 139801, at *6.³ Neither of these factors raise due process concerns either.

23
24 ³ In analyzing whether detention during removal proceedings has become
25 unreasonably prolonged, courts in this district under these circumstances typically apply
26 the test in *Lopez v. Garland*, 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022). *See Sanchez-*
27 *Rivera*, 2023 WL 139801, at *5 (“while the *Mathews* factors may be well-suited to
28 determining whether due process requires a second bond hearing, they are not
particularly dispositive of whether prolonged mandatory detention has become
unreasonable in a particular case.”); *see also Lopez v. Garland*, 631 F. Supp. 3d 870,
879 (E.D. Cal. 2022) (“To determine whether § 1226(c) detention has become
unreasonable, the Court will look to the total length of detention to date, the likely
duration of future detention, and the delays in the removal proceedings caused by the
petitioner and the government.”).

1 Petitioner’s removal proceedings are underway, and he is scheduled to appear for a
2 hearing on October 29, 2025. There is no indication that any final decision by the
3 immigration judge would be delayed. And there is no indication of any delay in the
4 removal proceedings by the government. On this record, the Court cannot find that
5 “detention has become so unreasonable as to require an initial bond hearing.”
6 *Sanchez-Rivera*, 2023 WL 139801, at *6.

7 **IV. CONCLUSION**

8 For the foregoing reasons, Respondents respectfully request that the Court (i)
9 dismiss this action and (ii) grant a motion to file the exhibits to this Return under seal.

10 DATED: December 17, 2025

Respectfully submitted,

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