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

13 L.S.,

14 Petitioner,

15 v.

16 WARDEN OF OTAY MESA  
17 DETENTION CENTER,

18 Respondents.  
19

Case No. 25-cv-03598-LL-BJW

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

1 **I. INTRODUCTION**

2 Petitioner requests that this Court order her immediate release from Immigration  
3 and Customs Enforcement (ICE) custody or require that she be afforded a bond  
4 hearing. As an arriving alien found to have a credible fear of persecution, however,  
5 Petitioner's detention is mandated by 8 U.S.C. § 1225(b)(1)(B)(ii). Accordingly, the  
6 Court should deny Petitioner's requests for relief.

7 **II. FACTUAL AND PROCEDURAL BACKGROUND<sup>1</sup>**

8 Petitioner is native of a native of Kyrgyzstan and a citizen of Russia, who applied  
9 for admission at the San Ysidro Port of Entry on October 25, 2024. *See* Form I-213,  
10 attached as Exhibit 1. Petitioner did not have any valid entry documents to enter the  
11 United States, but was in possession of a Russian Passport. *Id.* That same day,  
12 Petitioner was issued a Notice to Appear, charging her as inadmissible under 8 U.S.C.  
13 § 1182(a)(7)(A)(i)(I) (as an immigrant not in possession of a valid entry document).  
14 The filing of the NTA initiated removal proceedings against Petitioner, and those  
15 proceedings remain ongoing.<sup>2</sup>

16 During the removal process, Petitioner applied for asylum, and on April 8, 2025,  
17 an immigration judge (IJ) granted the Petitioner's application. *See* ECF No. 1-2 at 2-  
18 5. The Department of Homeland Security (DHS) appealed the decision of the IJ with  
19 the Board of Immigration Appeals (BIA). On October 10, 2025, the BIA remanded  
20 the case back to the IJ for additional fact finding as to Petitioner's fear of persecution.  
21 *See* BIA Written Decision, attached as Exhibit 2.<sup>3</sup> Petitioner sought a custody

22 <sup>1</sup> The attached exhibits are true copies, with redactions of private information, of  
23 documents obtained from ICE counsel.

24 <sup>2</sup> Petitioner's proceedings include her husband, native of Ukraine and citizen of  
25 Russia. Both applied for admission into the United States at the same time.

26 <sup>3</sup> During removal proceedings, Petitioner's case was consolidated with her  
27 husband's case, and Petitioner was listed as a rider to her husband on the BIA decision,  
28 as well as other related documents. Petitioner's husband also has a similar Petition  
pending under case number 25-cv-03599-CAB-BJW. A notice of related case has been

1 redetermination pursuant to 8 C.F.R. § 1236. On December 2, 2025, an IJ denied the  
2 Petitioner’s request because Petitioner is an “arriving alien,” and IJ lacked jurisdiction.  
3 *See* ECF No. 1-2 at 7.

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

### 6 III. STATUTORY BACKGROUND

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

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

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

25 //

26 \_\_\_\_\_  
27 filed under that matter, advising the Court that both Petitions raise the same claims  
28 arising from detention on the same date under the same circumstances, and that they  
appear to raise identical claims and seek identical relief. *See* ECF No. 5, Case No. 25-  
cv-03599-CAB-BJW

#### 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 her 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 she is subject to (8 U.S.C. § 1225(b)(1)), those claims are jurisdictionally barred by 8 U.S.C. § 1252.

In general, courts lack jurisdiction to review a 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.”); *Limpin v. United States*, 828 Fed. App'x 429 (9th Cir. 2020) (holding district court properly dismissed under 8 U.S.C. § 1252(g) “because claims stemming from the decision to arrest and detain an alien at the commencement of removal proceedings are not within any court’s jurisdiction”). In other words, § 1252(g) removes district court jurisdiction over “three discrete actions that the Attorney may take: [her] ‘decision or action’ to ‘commence proceedings, adjudicate cases, or execute removal orders.’” *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999) (emphasis removed). Plainly stated, Petitioner requests that this Court review a decision to dismiss her proceedings, her placement into expedited removal, and the type of review she receives over her asylum claims. Thus, 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

1 decision to detain an alien pending removal. *See Alvarez v. ICE*, 818 F.3d 1194,  
2 1203 (11th Cir. 2016) (“By its plain terms, [§ 1252(g)] bars us from questioning ICE’s  
3 discretionary decisions to commence removal” and also to review “ICE’s decision to  
4 take [plaintiff] into custody to detain [her] during removal proceedings”).

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

16 Moreover, under 8 U.S.C. § 1252(b)(9), “[j]udicial review of all questions of  
17 law and fact . . . arising from any action taken or proceeding brought to remove an  
18 alien from the United States under this subchapter shall be available only in judicial  
19 review of a final order under this section.” Further, judicial review of a final order is  
20 available only through “a petition for review filed with an appropriate court of  
21 appeals.” 8 U.S.C. § 1252(a)(5). The Supreme Court has made clear that § 1252(b)(9)  
22 is “the unmistakable ‘zipper’ clause,” channeling “judicial review of all” “decisions  
23 and actions leading up to or consequent upon final orders of deportation,” including  
24 “non-final order[s],” into proceedings before a court of appeals. *Reno*, 525 U.S. at 483,  
25 485; *see J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (noting § 1252(b)(9)  
26 is “breathtaking in scope and vise-like in grip and therefore swallows up virtually all  
27 claims that are tied to removal proceedings”). “Taken together, § 1252(a)(5) and  
28 § 1252(b)(9) mean that any issue—whether legal or factual—arising from any

1 removal-related activity can be reviewed *only* through the [petition for review] PFR  
2 process.” *J.E.F.M.*, 837 F.3d at 1031 (“[W]hile these sections limit *how* immigrants  
3 can challenge their removal proceedings, they are not jurisdiction-stripping statutes  
4 that, by their terms, foreclose *all* judicial review of agency actions. Instead, the  
5 provisions channel judicial review over final orders of removal to the courts of  
6 appeal.”) (emphasis in original); *see id.* at 1035 (“[Sections] 1252(a)(5) and [(b)(9)]  
7 channel review of all claims, including policies-and-practices challenges . . . whenever  
8 they ‘arise from’ removal proceedings.”).

9 Critically, “1252(b)(9) is a judicial channeling provision, not a claim-barring  
10 one.” *Aguilar v. ICE*, 510 F.3d 1, 11 (1st Cir. 2007). Indeed, 8 U.S.C. § 1252(a)(2)(D)  
11 provides that “[n]othing . . . in any other provision of this chapter . . . shall be construed  
12 as precluding review of constitutional claims or questions of law raised upon a petition  
13 for review filed with an appropriate court of appeals in accordance with this section.”  
14 *See also Ajlani v. Chertoff*, 545 F.3d 229, 235 (2d Cir. 2008) (“[J]urisdiction to review  
15 such claims is vested exclusively in the courts of appeals[.]”). The petition-for-review  
16 process before the court of appeals ensures that aliens have a proper forum for claims  
17 arising from their immigration proceedings and “receive their day in court.” *J.E.F.M.*,  
18 837 F.3d at 1031–32 (internal quotations omitted); *see also Rosario v. Holder*,  
19 627 F.3d 58, 61 (2d Cir. 2010) (“The REAL ID Act of 2005 amended the [INA] to  
20 obviate . . . Suspension Clause concerns” by permitting judicial review of  
21 “nondiscretionary” BIA determinations and “all constitutional claims or questions of  
22 law”). These provisions divest district courts of jurisdiction to review both direct and  
23 indirect challenges to removal orders, including decisions to detain for purposes of  
24 removal or for proceedings. *See Jennings v. Rodriguez*, 583 U.S. 281, 294–95 (2018)  
25 (stating section 1252(b)(9) includes challenges to the “decision to detain [an alien] in  
26 the first place or to seek removal”).

27 Here, Petitioner’s claims stem from her detention during removal proceedings.  
28 However, that detention arises from DHS’s decision to commence such proceedings

1 against her. *See, e.g., Valecia-Meja v. United States*, No. 08-2943 CAS (PJWz),  
2 2008 WL 4286979, at \*4 (C.D. Cal. Sept. 15, 2008) (“The decision to detain plaintiff  
3 until [her] hearing before the Immigration Judge arose from this decision to commence  
4 proceedings.”); *Wang*, 2010 WL 11463156, at \*6; *Tazu v. Att’y Gen. U.S.*, 975 F.3d  
5 292, 298–99 (3d Cir. 2020) (holding that 8 U.S.C. § 1252(g) and (b)(9) deprive district  
6 court of jurisdiction to review action to execute removal order). Petitioner’s challenge  
7 concerning the dismissal of her 1229a proceedings and commencement of expedited  
8 removal proceedings is strictly barred by these provisions. As such, Petitioner’s claims  
9 would be more appropriately presented before the BIA and Ninth Circuit. *See* 8 U.S.C.  
10 §§ 1252(a)(5), (b)(9).

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

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

## 25 **B. Petitioner’s Detention is Lawful and Mandatory.**

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

28 Under 8 U.S.C. § 1225(a)(1), an “applicant for admission” is defined as an “alien

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

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

26 In *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 207-09 (1953), a  
27 noncitizen in exclusion proceedings filed a habeas petition claiming that her prolonged  
28 detention without a hearing violated her constitutional rights. The Supreme Court

1 rejected the petition, concluding that the noncitizen’s continued detention did not  
2 deprive her of any due process rights, stating: “[A]n alien on the threshold of initial  
3 entry stands on a different footing: ‘Whatever the procedure authorized by Congress  
4 is, it is due process as far as an alien denied entry is concerned.’” *Id.* at 212 (citation  
5 omitted).

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

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

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

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 her a  
16 right to immediate release or a bond hearing before an immigration judge, the Court  
17 should reject her claim that her detention violates the Fifth Amendment’s Due Process  
18 Clause and deny her requested relief. *See Thuraissigiam*, 591 U.S. at 107, 140; *Mezei*,  
19 345 U.S. at 212; *Guerrier*, 18 F.4th at 310.

## 20 V. CONCLUSION

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

22  
23 DATED: December 23, 2025

Respectfully submitted,  
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