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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

HASMIK KARAPETYAN,

Petitioner,

v.

CHRISTOPHER J. LAROSE, *et al.*,

Respondents.

Case No.: 25-cv-3640-JLS-AHG

RESPONDENTS' RETURN TO HABEAS PETITION

Judge: Hon. Janis L. Sammartino

NO ORAL ARGUMENT REQUESTED

I. Introduction

Petitioner, Hasmik Karapetyan, requests immediate release based on Respondents' alleged failure to provide adequate dental treatment. Petitioner's claim does not form a basis for relief under 28 U.S.C. § 2241, and this Court lacks jurisdiction. Even if the Court has jurisdiction under § 2241 over the Petition's claim of prolonged detention, Petitioner is not entitled to be released from custody. As an arriving alien with an order of removal, Petitioner's detention is mandated by 8 U.S.C. § 1225(b)(1)(B). Accordingly, the Court should deny the Petition.

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II. FACTUAL AND PROCEDURAL BACKGROUND[1]

Petitioner is a native and citizen of Armenia and has been ordered removed under 8 U.S.C. § 1182(a)(7)(A)(i)(I), as an alien present in the United States who has not been admitted or paroled. *See* Ex. 1, Immigration Judge (IJ) Order and Ex. 2, Notice to Appear (NTA). Petitioner was detained upon arriving to the United States, on or about January 15, 2025, denied asylum, and a final order of removal was entered on August 4, 2025. *Id.* CoreCivic's Chief Dental Officer and IHSC dentists have referred Petitioner for offsite oral and maxillofacial surgery. *See* Ex. 3, excerpts of Petitioner's medical records.

III. ARGUMENT

A. Petitioner's Requested Relief is not Available Under 28 U.S.C. § 2241.

Alleging "deliberate indifference to serious medical needs," Petitioner claims, "Respondents have failed to provide adequate medical treatment for her severe, urgent conditions." ECF No. 1 at 5. Petitioner is not entitled to habeas relief based on these claims. Habeas relief is available only to challenge the legality or duration of confinement. *Pinson v. Carvajal*, 69 F.4th 1059, 1067 (9th Cir. 2023); *Crawford v. Bell*, 599 F.2d 890 (9th Cir. 1979).

In *Pinson*, for example, two federal prisoners filed habeas corpus petitions asserting that their incarceration during the COVID-19 pandemic violated the Eighth Amendment and that the only appropriate relief was their immediate release from custody. The Ninth Circuit affirmed dismissal of the petitions, filed under § 2241, for lack of jurisdiction, concluding that "the Ninth Circuit has long held that the 'writ of habeas corpus is limited to attacks upon the legality or duration of confinement' and does not cover claims based on allegations 'that the terms and conditions of … incarceration constitute cruel and unusual punishment'." *Id.* at 1065 (quoting *Crawford*, 599 F.2d at 891)).

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

A section 2241 habeas petition is not the proper procedural vehicle for Petitioner's claims. *See Nettles v. Grounds*, 830 F.3d 922, 927–34 (9th Cir. 2016) ("Challenges to the validity of any confinement or to particulars affecting its duration are the province of habeas corpus; requests for relief turning on circumstances of confinement may be presented in a [civil rights] action."); *Brown v. Blanckensee*, 857 F. App'x 289, 290 (2021) (held a civil rights action is the appropriate vehicle for federal prisoner's claims relating to the conditions of confinement); *Smith v. Gutierrez*, 2021 WL 4033780, at *1 (C.D. Cal. Aug. 3, 2021) (federal prisoner's claims of deliberate indifference to medical needs should have been properly brought in a civil rights action, not a habeas action, and cites to *Nettles*); *see also Harrison v. Broomfield*, 2020 WL 5797871, at *2 (E.D. Cal. Sept. 29, 2020) ("there is a risk of turning 28 U.S.C. § 2241 into a general civil rights statute by the mere expedient of a petitioner seeking that release remedy, perhaps among other remedies, in every habeas action in which conditions of confinement are at issue, e.g., poor medical treatment, unsanitary conditions, overcrowding, assaultive environment, and so forth.").

Petitioner's allegations therefore fall in civil rights, not habeas, and the Court should deny the Petition at the outset.

B. Petitioner has Failed to Demonstrate that the Conditions are Unsafe.

For cases asserting that the conditions of confinement are so unsafe as to violate the Constitution, a petitioner must show that the precautions taken to prevent harm are "objectively unreasonable," not just that there is a potential risk. *See Kingsley v. Hendrickson*, 135 S. Ct. 2466, 2473 (2015). The institution is not charged with guaranteeing no injury and no risk to detainees; instead, the government is charged with taking reasonable steps to protect those in custody. *See Gordon v. Cty. of Orange*, 888 F.3d 1118, 1124–25 (9th Cir. 2018); *Castro v. Cty. of Los Angeles*, 833 F.3d 1060, 1071 (9th Cir. 2015); *Dawson v. Asher*, No. C20-0409 JLR-MAT, 2020 WL 1704324, at *12 (W.D. Wash. Apr. 8, 2020) (quoting *DeShaney v. Winnebago Cty. Dep't of Soc. Servs.*, 489 U.S. 189, 200 (1989)).

To succeed on a habeas petition, a petitioner must show that she is "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241. Due process imposes a duty on the government "to assume some responsibility for [the] safety and general well-being" of persons it takes into its custody. *DeShaney v. Winnebago Cty. Dep't of Soc. Servs.*, 489 U.S. 189, 199–200 (1989) (citation omitted). Consequently, the government can be held liable for a due process violation where a government official affirmatively places individuals, with deliberate indifference to their health or safety, in a position of known danger "which he or she would not have otherwise faced." *Kennedy v. City of Ridgefield*, 439 F.3d 1055, 1061 (9th Cir. 2006) (citing *DeShaney*, 489 U.S. at 197, 201).

A plaintiff in custody must show that government officials acted in an objectively unreasonable manner such that: "(1) [t]he defendant made an intentional decision with respect to the conditions under which the plaintiff was confined; (2) [t]hose conditions put the plaintiff at substantial risk of suffering serious harm; (3) [t]he defendant did not take reasonable available measures to abate that risk, even though a reasonable officer in the circumstances would have appreciated the high degree of risk involved—making the consequences of the defendant's conduct obvious; and (4) [b]y not taking such measures, the defendant caused the plaintiff's injuries." *Castro v. Cty. of Los Angeles*, 833 F.3d 1060, 1071 (9th Cir. 2016). The Supreme Court has held that prison officials cannot "ignore a condition of confinement that is sure or very likely to cause serious illness and needless suffering the next week or month or year." *Helling v. McKinney*, 509 U.S. 25, 33 (1993).

Respondents do not dispute that Core Civic's clinic does not provide specialty dental care. However, Petitioner's medical records confirm that "[a]fter consultation with CoreCivic's Chief Dental Officer and IHSC dentists, approval was granted for an offsite oral and maxillofacial surgery evaluation." CoreCivic has authorized offsite dental treatment and agrees that "immediate referral is critical." *See* Ex. 3. Respondents' efforts to obtain outside dental care for her are "reasonable available measures," as

required to abate any risk to Petitioner's health. Petitioner has failed to establish that Respondents' efforts are inadequate or that Petitioner will not receive adequate dental care through an outside referral.

C. 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).

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 his subjected 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 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: [his] '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).

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").

Other courts have held, "[f]or 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*

v. United States, No. CV 10-0389 SVW (RCX), 2010 WL 11463156, at *6 (C.D. Cal. Aug. 18, 2010); 8 U.S.C. § 1252(g).

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

Critically, "1252(b)(9) is a judicial channeling provision, not a claim-barring one." *Aguilar v. ICE*, 510 F.3d 1, 11 (1st Cir. 2007). Indeed, 8 U.S.C. § 1252(a)(2)(D) provides that "[n]othing . . . in any other provision of this chapter . . . shall be construed as precluding review of constitutional claims or questions of law raised upon a petition for review filed with an appropriate court of appeals in accordance with this section."

See also Ajlani v. Chertoff, 545 F.3d 229, 235 (2d Cir. 2008) ("[J]urisdiction to review such claims is vested exclusively in the courts of appeals[.]"). The petition-for-review process before the court of appeals ensures that aliens have a proper forum for claims arising from their immigration proceedings and "receive their day in court." *J.E.F.M.*, 837 F.3d at 1031–32 (internal quotations omitted); *see also Rosario v. Holder*, 627 F.3d 58, 61 (2d Cir. 2010) ("The REAL ID Act of 2005 amended the [INA] to obviate . . . Suspension Clause concerns" by permitting judicial review of "nondiscretionary" BIA determinations and "all constitutional claims or questions of law"). These provisions divest district courts of jurisdiction to review both direct and indirect challenges to removal orders, including decisions to detain for purposes of removal or for proceedings. *See Jennings v. Rodriguez*, 583 U.S. 281, 294–95 (2018) (stating section 1252(b)(9) includes challenges to the "decision to detain [an alien] in the first place or to seek removal").

Here, Petitioner's claims stem from her detention during removal proceedings. *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*, 2010 WL 11463156, at *6; *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). Thus, as Petitioner's claims arise from the decision to commence proceedings, this Court lacks jurisdiction under 8 U.S.C. § 1252.

D. Petitioner's Detention is Lawful and Mandatory.

Petitioner's claims for alleged statutory and constitutional violations fail because Petitioner is subject to mandatory detention under 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 has at all times been an "arriving alien."

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.

In *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 207-09 (1953), a noncitizen 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 entry into the United States. The Supreme Court stated that such individuals have no due process rights "other than those afforded by statute." *Id.* at 107; *see also id.* at 140 ("[A]n alien in respondent's

position has only those rights regarding admission that Congress has provided by statute."). The Supreme Court noted that its determination was supported by "more than a century of precedent." *Id.* at 138 (citing *Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892); *U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950); *Mezei*, 345 U.S. at 212; *Landon v. Plasencia*, 459 U.S. 21, 32 (1982)).

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

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

CONCLUSION

For the foregoing reasons, Respondents respectfully request that the Court deny the Petition.

DATED: January 7, 2026

Respectfully submitted,

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