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

9
10 FANJUN CONG,
Petitioner,
11 v.
12 KRISTI NOEM, et al.,
13 Respondents.

Case No.: 25-cv-3730-GPC-DEB

RETURN TO PETITION

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21 **I. Introduction**

22 Petitioner requests that this Court order his release from Immigration and
23 Customs Enforcement (ICE) custody, order a bond hearing, or order Respondents to
24 terminate his expedited removal proceedings. However, as Petitioner's claims are direct
25 and indirect challenges to his expedited removal proceedings, jurisdiction over his
26 claims is barred under 8 U.S.C. § 1252(a)(2)(A), § 1252(e), and § 1252(g). Moreover,
27 as Petitioner is inadmissible, his claims lack merit. Respondents respectfully request
28 that the Court deny Petitioner's requests for relief.

II. Factual Background

Petitioner is a native and citizen of China. ECF No. 1 at 16. In January 2017, Petitioner entered the United States on a B-2 visa, and applied for asylum through his mother. *Id.* at ¶ 17.

On May 6, 2025, Petitioner “inadvertently entered the Mexican border.” ECF No. 1 at ¶ 18. Petitioner did not have any valid entry documents to enter the United States and was subsequently apprehended. Petitioner was determined to be inadmissible under 8 U.S.C. § 1182(a)(7)(i)(I), as an immigrant not in possession of a valid entry document and was issued a Notice and Order of Expedited Removal under section 235(b)(1) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1225(b)(1).

On May 6, 2025, Petitioner was issued a Notice and Order of Expedited Removal under section 235(b)(1) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1225(b)(1). *See* Ex. 1, Smith Decl. at ¶ 5. After requesting asylum and/or protection under the Convention Against Torture, Petitioner was provided with a credible fear interview. *Id.* at ¶ 6. On May 7, 2025, the asylum officer found that Petitioner did not have a credible fear of persecution or torture. *Id.* Petitioner requested a review of that determination by an immigration judge. *Id.* On October 2, 2025, an Immigration Judge (IJ) affirmed DHS’s credible fear determination. *See* Ex. 2, IJ Order. This is a final order and there is no appeal from the IJ’s decision. Smith Decl. at 7.

Petitioner is currently detained by ICE at the Otay Mesa Detention Facility under 8 U.S.C. § 1225(b)(1)(B)(IV). ICE requested a travel document on December 7, 2025, to remove Petitioner to China and is working on effectuating his removal. Smith Decl. at 10-11.

III. Argument

A. Petitioner’s Claims and Requested Relief are Barred by 8 U.S.C. § 1252

The Court lacks jurisdiction to hear Petitioner’s 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). Petitioner brings his habeas action under 28 U.S.C.

1 § 2241, but jurisdiction over his claims is barred under 8 U.S.C. § 1252(a)(2)(A),
2 § 1252(e), and § 1252(g).

3 In general, courts lack jurisdiction to review a decision to commence or
4 adjudicate removal proceedings or execute removal orders. *See* 8 U.S.C. § 1252(g)
5 (“[N]o court shall have jurisdiction to hear any cause or claim by or on behalf of any
6 alien arising from the decision or action by the Attorney General to commence
7 proceedings, adjudicate cases, or execute removal orders.”); *Reno v. Am.-Arab Anti-*
8 *Discrimination Comm.*, 525 U.S. 471, 483 (1999) (“There was good reason for
9 Congress to focus special attention upon, and make special provision for, judicial
10 review of the Attorney General’s discrete acts of “commenc[ing] proceedings,
11 adjudicat[ing] cases, [and] execut[ing] removal orders”—which represent the initiation
12 or prosecution of various stages in the deportation process.”); *Limpin v. United States*,
13 828 Fed. App’x 429 (9th Cir. 2020) (holding district court properly dismissed under 8
14 U.S.C. § 1252(g) “because claims stemming from the decision to arrest and detain an
15 alien at the commencement of removal proceedings are not within any court’s
16 jurisdiction”).

17 Moreover, “[s]ection 1252(a)(2)(A) is a jurisdiction-stripping and channeling
18 provision, which bars review of almost ‘every aspect of the expedited removal
19 process.’” *Azimov v. U.S. Dep’t of Homeland Sec.*, No. 22-56034, 2024 WL 687442, at
20 *1 (9th Cir. Feb. 20, 2024) (quoting *Mendoza-Linares v. Garland*, 51 F.4th 1146, 1154
21 (9th Cir. 2022) (describing the operation of § 1252(a)(2)(A)). These jurisdiction-
22 stripping provisions cover “the ‘procedures and policies’ that have been adopted to
23 ‘implement’ the expedited removal process; the decision to ‘invoke’ that process in a
24 particular case; the ‘application’ of that process to a particular alien; and the
25 ‘implementation’ and ‘operation’ of any expedited removal order.” *Mendoza-Lineras*,
26 51 F.4th at 1155. “Congress chose to strictly cabin this court’s jurisdiction to review
27 expedited removal orders.” *Guerrier v. Garland*, 18 F.4th 304, 313 (9th Cir. 2021)
28 (finding that the Supreme Court abrogated any “colorable constitutional claims”

1 exception to the limits placed by § 1252(a)(2)(A)); *see Dep't of Homeland Sec. v.*
2 *Thuraissigiam*, 591 U.S. 103 (2020) (holding that limitations within § 1252(a)(2)(A) do
3 not violate the Suspension Clause). “Congress has chosen to explicitly bar nearly all
4 judicial review of expedited removal orders concerning such aliens, including ‘review
5 of constitutional claims or questions of law.’” *Mendoza-Linares*, 51 F.4th at 1148
6 (citing 8 U.S.C. § 1252(a)(2)(A), (D)); *see Dept' of Homeland Sec. v. Thuraissigiam*,
7 591 U.S. 103, 138-39 (2020) (explicitly rejecting Ninth Circuit’s holding that an
8 arriving alien has a “constitutional right to expedited removal proceedings that conform
9 to the dictates of due process”).

10 “Congress could scarcely have been more comprehensive in its articulation of the
11 general prohibition on judicial review of expedited removal orders.” *Mendoza-Lineras*,
12 51 F.4th at 1155. Specifically, Section 1252(a)(2)(A) states:

13 (2) Matters not subject to judicial review

14 (A) Review relating to section 1225(b)(1)

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

19 (i) except as provided in subsection (e), any individual
20 determination or to entertain any other cause or claim arising from or
21 relating to the implementation or operation of an order of removal pursuant
22 to section 1225(b)(1) of this title,

23 (ii) except as provided in subsection (e), a decision by the Attorney
24 General to invoke the provisions of such section,

25 (iii) the application of such section to individual aliens, including
26 the determination made under section 1225(b)(1)(B) of this title, or

27 (iv) except as provided in subsection (e), procedures and policies
28 adopted by the Attorney General to implement the provisions of section
1225(b)(1) of this title.

25 8 U.S.C. § 1252(a)(2)(A). Thus, “Section 1252(a)(2)(A)(i) deprives courts of
26 jurisdiction to hear a ‘cause or claim arising from or relating to the implementation or
27 operation of an order of removal pursuant to section 1225(b)(1),’ which plainly includes
28 [Petitioner’s] collateral attacks on the validity of the expedited removal order.” *Azimov*,

1 2024 WL 687442, at *1 (quoting *Mendoza-Linares*, 51 F.4th at 1155) (citing *J.E.F.M.*
2 *v. Lynch*, 837 F.3d 1026, 1031-35 (9th Cir. 2016) (concluding that the “arising from”
3 language in neighboring § 1252(b)(9) sweeps broadly)). By challenging the standards
4 and process by which the expedited removal order was entered against Petitioner, he
5 necessarily asks the Court “to do what the statute forbids [it] to do, which is to review
6 ‘the application of such section to [him].’” *Mendoza-Linares*, 51 F.4th at 1155. Most
7 notably, a determination made concerning inadmissibility “is not subject to judicial
8 review.” *Gomez-Cantillano v. Garland*, No. 19-72682, 2021 WL 5882034 (9th Cir.
9 Dec. 13, 2021) (citing 8 U.S.C § 1252(a)(2)(A)(iii)). “And § 1252(a)(2)(A)(iv) deprives
10 courts of jurisdiction to review ‘procedures and policies adopted by the Attorney
11 General to implement the provisions of section 1225(b)(1) of this title,’ which plainly
12 includes [Petitioner’s] claims regarding how [Respondents] have implemented” §
13 1225(b)(1). *Azimov*, 2024 WL 687442, at *1 (citing *Mendoza-Linares*, 51 F.4th at
14 1154–55).

15 In setting forth provisions for judicial review of § 1225(b)(1) expedited removal
16 orders, Congress expressly limited available relief: “Without regard to the nature of the
17 action or claim and without regard to the identity of the party or parties bringing the
18 action, no court may” “enter declaratory, injunctive, other equitable relief in any action
19 pertaining to an order to exclude an alien in accordance with section § 1225(b)(1) of
20 this title except as specifically authorized in a subsequent paragraph of this subsection.”
21 8 U.S.C. § 1252(e)(1)(A). Congress delineated two limited avenues for judicial review
22 concerning expedited removal orders: (1) narrow habeas corpus proceedings under
23 § 1252(e)(2); and (2) challenges to the validity of the system under § 1252(e)(3). Any
24 permissible challenge to the validity of the system “is available [only] in an action in
25 the United States District Court for the District of Columbia” 8 U.S.C. § 1252(e)(3).

26 Narrow habeas corpus proceedings are expressly “limited to determinations” of
27 three questions: (1) “whether the petitioner is an alien”; (2) “whether the petitioner was
28 ordered removed under [section 1225(b)(1)]”; and (3) “whether the petitioner can prove

1 by a preponderance of the evidence that the petitioner is an alien” who has been granted
2 status as a lawful permanent resident, refugee, or asylee. 8 U.S.C. § 1252(e)(2)(A)-(C).
3 “In determining whether an alien has been ordered removed under section 235(b)(1) [8
4 U.S.C. § 1225(b)(1)], the court’s inquiry shall be limited *to whether such an order in*
5 *fact was issued and whether it relates to the petitioner.* There shall be no review of
6 whether the alien is actually inadmissible or entitled to any relief from removal.” 8
7 U.S.C. § 1252(e)(5) (emphasis added). Petitioner’s primary request within his petition
8 is to have this Court review DHS’s determination of his inadmissibility. However, “a
9 habeas court lacks jurisdiction to review ‘whether the alien [1] is actually inadmissible
10 or [2] entitled to any relief from removal.’” *Mendoza-Linares*, 51 F.4th at 1158 (quoting
11 8 U.S.C. § 1252(e)(5)).

12 None of the three narrow avenues for habeas relief apply here. Petitioner
13 concedes that he is a noncitizen. Petitioner also does not assert that he has been granted
14 status as a lawful permanent resident, refugee, or asylee. Moreover, “[t]here is no doubt
15 that an order ‘under section 235(b)(1)’ was in fact issued here, because (1) the order
16 that is in the record and that [Petitioner] challenges expressly states that it was entered
17 ‘under section 235(b)(1)’ of the INA.” *Mendoza-Linares*, 51 F.4th at 1158. Each of
18 Petitioner’s claims fall outside the limited habeas corpus authority provided within §
19 1252(e)(2).

20 Thus, as Petitioner’s claims are direct and indirect challenges to his § 1225(b)(1)
21 expedited removal order and the application of the expedited removal process to
22 Petitioner, this Court lacks jurisdiction under 8 U.S.C. § 1252.

23 **B. Petitioner’s Statutory Claims Fail on the Merits**

24 Petitioner does not dispute that he applied for admission to the United States from
25 Mexico and that at that time did not then have legal documentation to enter the United
26 States. Nor does he point to anything in the statute that prevents ICE from applying the
27 expedited removal process to him. As Petitioner entered the United States less than two
28 years ago without a proper travel document, and without then being admitted or paroled,

1 he is subject to expedited removal and mandatory detention. *See* 8 U.S.C. § 1225(b)(1).

2 Accordingly, Petitioner’s statutory violation claims fail.

3 **C. Petitioner’s Due Process Claims Fail on the Merits**

4 Even assuming the Court has jurisdiction over his petition, Petitioner’s Fifth
5 Amendment due process claims fail. *See Thuraissigiam*, 591 U.S. at 139 (collecting
6 cases); 8 U.S.C. § 1225(b)(1)(B)(iii)(IV); *Landon v. Plasencia*, 459 U.S. 21, 32 (1982)
7 (“This Court has long held that an alien seeking initial admission to the United States
8 requests a privilege and has no constitutional rights regarding his application, for the
9 power to admit or exclude aliens is a sovereign prerogative.”) (citations omitted); *see*
10 *generally I.N.S. v. Lopez-Mendoza*, 468 U.S. 1032, 1038 (1984) (“Consistent with the
11 civil nature of the proceeding, various protections that apply in the context of a criminal
12 trial do not apply in a deportation hearing.”).

13 In *Jennings v. Rodriguez*, 583 U.S. 281, 296–303 (2018), The Supreme Court has
14 evaluated the proper interpretation of 8 U.S.C. § 1225(b) and has 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. The Supreme Court
17 noted that neither 8 U.S.C. § 1225(b)(1) nor § 1225(b)(2) “impose[] any limit on the
18 length of detention” and “neither § 1225(b)(1) nor § 1225(b)(2) say[] anything
19 whatsoever about bond hearings.” *Id.* The Supreme Court added that the sole means of
20 release for noncitizens detained pursuant to 8 U.S.C. §§ 1225(b)(1) or (b)(2) prior to
21 removal from the United States is temporary parole at the discretion of the Attorney
22 General under 8 U.S.C. § 1182(d)(5). *Id.* at 300 (“That express exception to detention
23 implies that there are no *other* circumstances under which aliens detained under [8
24 U.S.C.] § 1225(b) may be released.”) (emphasis in original).

25 In *Thuraissigiam*, the Supreme Court once again addressed the due process rights
26 of inadmissible arriving noncitizens and stated that such individuals have no due
27 process rights “other than those afforded by statute.” *Id.* at 107; *id.* at 140 (“[A]n alien
28 in respondent’s position has only those rights regarding admission that Congress has

1 provided by statute.”). The Supreme Court noted that its determination was supported
2 by “more than a century of precedent.” *Id.* at 138 (citing *Nishimura Ekiu v. United*
3 *States*, 142 U.S. 651, 660 (1892); *U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544
4 (1950); *Mezei*, 345 U.S. at 212; *Landon*, 459 U.S. at 32). “[I]n the expedited removal
5 context, a petitioner’s due process rights are coextensive with the statutory rights
6 Congress provides.” *Guerrier*, 18 F.4th at 310; *see also Mendoza-Linares*, 51 F.4th at
7 1149 (“Because Congress has clearly and unambiguously precluded us from asserting
8 jurisdiction over the merits of individual expedited removal orders, even with regard to
9 constitutional challenges to such orders, and because that prohibition on jurisdiction
10 raises no constitutional difficulty, we conclude that we lack jurisdiction over Mendoza-
11 Linares’s petition.”); *Rauda v. Jennings*, 8 F.4th 1050, 1058 (9th Cir. 2021) (“Congress
12 has already balanced the amount of due process available to petitioners with the
13 executive’s prerogative to remove individuals, and we decline to expand judicial review
14 beyond the parameters set by Congress.”); *Mendoza-Linares v. Garland*, No. 21-cv-
15 1169-BEN (AHG), 2024 WL 3316306, at *2 (S.D. Cal. June 10, 2024) (“[T]he Court
16 finds that Petitioner has no Fifth Amendment right to a bond hearing pending his
17 removal proceedings. The only due process due an alien seeking admission to the
18 United States is ‘those rights regarding admission that Congress has provided by
19 statute.’” (quoting *Thuraissigiam*, 591 U.S. at 140); *Zelaya-Gonzalez v. Matuszewski*,
20 No. 23-CV-151 JLS (KSC), 2023 WL 3103811, at *4 (S.D. Cal. Apr. 25, 2023)
21 (“Binding Ninth Circuit and Supreme Court precedents are clear that Petitioner lacks
22 any rights beyond those conferred by statute, and no statute entitles Petitioner to a bond
23 hearing.”).

24 As Petitioner is detained pursuant to 8 U.S.C. § 1225(b)(1)(B)(iii)(IV), which
25 does not afford a right to a determination by this Court as to whether his release is
26 warranted nor a right to a bond hearing before an immigration judge, the Court should
27 reject his claim that his detention violates the Fifth Amendment’s Due Process Clause
28 and deny his requested relief. *See Thuraissigiam*, 591 U.S. at 107, 140; *Mezei*, 345 U.S.

1 at 212; *Guerrier*, 18 F.4th at 310.

2 **IV. CONCLUSION**

3 For the foregoing reasons, Respondents respectfully request that the Court
4 dismiss this action.

5
6 DATED: January 2, 2026

7 Respectfully submitted,

8 ADAM GORDON
9 United States Attorney

10 *s/ Juliet M. Keene*
11 JULIET M. KEENE
12 Assistant United States Attorney
13 Attorney for Respondents
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6 **UNITED STATES DISTRICT COURT**
7 **SOUTHERN DISTRICT OF CALIFORNIA**

8 FANJUN CONG,

9 Petitioner,

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11 KRISTI NOEM, et al.,

12 Respondents.
13
14

Case No. 25-cv-3730-GPC-DEB

**DECLARATION OF
RYAN ROBERT DALE SMITH**

15 I, Ryan Robert Dale Smith, pursuant to 28 U.S.C. § 1746, hereby declare under
16 penalty of perjury that the following statements are true and correct, to the best of my
17 knowledge, information, and belief:

18 1. I am currently employed by the U.S. Department of Homeland Security
19 (DHS), U.S. Immigration and Customs Enforcement (ICE), Enforcement and Removal
20 Operations (ERO), as a Deportation Officer assigned to the Otay Mesa suboffice of the
21 ICE ERO San Diego Field Office.

22 2. I have been employed by ICE as a law enforcement officer and serving as
23 a Deportation Officer since April 27, 2020. I currently remain serving in this position.
24 As a Deportation Officer, my responsibilities include case management of individuals
25 detained by ICE at the Otay Mesa Detention Center in Otay Mesa, California.

26 3. This declaration is based upon my personal knowledge and experience as
27 a law enforcement officer and information provided to me in my official capacity as a
28 Deportation Officer in the Otay Mesa suboffice of the ICE ERO San Diego Field Office,

1 as well as my review of government databases and documentation relating to Petitioner
2 Fanjun Cong (Petitioner).

3 4. Petitioner is a native and citizen of China. On May 6, 2025, Petitioner
4 arrived in the United States at or near San Ysidro, California. He did not then possess
5 or present a valid travel document.

6 5. On May 6, 2025, Petitioner was issued a Notice and Order of Expedited
7 Removal under section 235(b)(1) of the Immigration and Nationality Act (INA),
8 U.S.C. § 1225(b)(1).

9 6. After requesting asylum and/or protection under the Convention Against
10 Torture, Petitioner was provided with a credible fear interview. On May 7, 2025, the
11 asylum officer found that Petitioner did not have a credible fear of persecution or
12 torture. Petitioner requested a review of that determination by an immigration judge.

13 7. On October 2, 2025, an Immigration Judge (IJ) affirmed DHS's credible
14 fear determination. This is a final order and there is no appeal from the IJ's decision.

15 8. ICE is not seeking to remove Petitioner to a third country.

16 9. ICE has worked diligently to effectuate Petitioner's removal to China.
17 These removal efforts remain ongoing.

18 10. On December 27, 2025, ERO sent a Travel Document Request to ERO
19 Removal and International Operations (RIO).

20 11. Once ICE receives a travel document for Petitioner, his removal can be
21 effectuated promptly.

22 I declare under penalty of perjury under the laws of the United States that the
23 foregoing is true and correct.

24 Executed this 2nd day of January 2026.

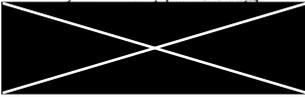
25 RYAN R SMITH Digitally signed by RYAN R SMITH
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27 Ryan Robert Dale Smith
28 Deportation Officer
San Diego Field Office



UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OTAY MESA IMMIGRATION COURT

Respondent Name:
CONG, FANJUN

To:
chen, chuangchuang


A-Number:


Riders:
In Credible Fear Review Proceedings
Initiated by the Department of Homeland Security
Date:
10/02/2025

ORDER OF THE IMMIGRATION JUDGE

On 10/02/2025, a review of the Department of Homeland Security’s (DHS’s) negative credible fear determination was held in this matter. This Court considered testimony and any documentary evidence submitted regarding the Applicant’s fear of persecution or torture.

Upon de novo consideration, the Court makes the findings below —

[complete section (1), then complete either section (2) or (3)]

(1) — For all cases

A. The Applicant —

- Is covered by the presumption of asylum ineligibility at 8 C.F.R. § 1208.33(a)(1)-(2),
or
- Is not covered by the presumption of asylum ineligibility at 8 C.F.R. § 1208.33(a)(1)-(2).

B. If the Applicant is covered by the presumption of asylum ineligibility, the Applicant —

- Has rebutted the presumption under 8 C.F.R. § 1208.33(a)(3),
or
- Has not rebutted the presumption under 8 C.F.R. § 1208.33(a)(3).

(2) — IF the Applicant *is not covered by the presumption OR has rebutted the presumption*

- The Applicant *has* established a *significant possibility* of eligibility for asylum under section 208 of the Immigration and Nationality Act (Act), withholding of removal under section 241(b)(3) of the Act, or withholding of removal under the Convention Against Torture (CAT).
- The Applicant *has not* established a *significant possibility* of eligibility for asylum under section 208 of the Immigration and Nationality Act (Act), withholding of removal under section 241(b)(3) of the Act, or withholding of removal under the Convention Against Torture (CAT).

(3) — IF the Applicant is covered by the presumption^{of 2} AND has not rebutted the presumption

The Applicant *has* established a *reasonable possibility* of persecution (meaning a reasonable possibility of being persecuted because of their race, religion, nationality, political opinion, or membership in a particular social group) or torture.

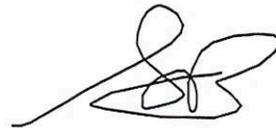
The Applicant *has not* established a *reasonable possibility* of persecution (meaning a reasonable possibility of being persecuted because of their race, religion, nationality, political opinion, or membership in a particular social group) or torture.

Based on the findings above, the Court issues the following order -

IT IS HEREBY ORDERED THAT:

- The DHS credible fear determination is **AFFIRMED**, and the case is returned to DHS for removal of the Applicant.
- The DHS credible fear determination is **VACATED**.

This is a final order. There is no appeal from this decision.



Immigration Judge: Samantha Begovich 10/02/2025

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Respondent Name : CONG, FANJUN | A-Number : 

Riders:

Date: 10/02/2025 By: Samantha Begovich, Immigration Judge