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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 LONG XIAOMING, *also known as*
11 XIAOMING LONG,

12 Petitioner,

13 v. .

14 CHRISTOPHER J. LAROSE,
Warden, Otay Mesa Detention Center,

15 Respondent.

Case No.: 26-cv-02146-JO-VET

**RETURN TO PETITION FOR WRIT
OF HABEAS PETITION**

1 **I. Introduction**

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

9 **II. Factual Background**

10 Petitioner is a native and citizen of China. On August 31, 2025, Petitioner
11 unlawfully entered the United States without inspection. Shortly after, Petitioner was
12 apprehended by CBP and issued an expedited removal. Petitioner claimed fear of
13 returning to China and was scheduled for a credible fear interview with a USCIS asylum
14 officer. Declaration of Hugo Lara Ramirez (Ramirez Decl.) at ¶ 4; Exhibit 1 (Form I-
15 213) at 1.

16 On September 23, 2025, the asylum officer conducted the credible fear interview
17 and Petitioner was found to not have a credible fear. *Id.* at ¶ 5. On September 25, 2025,
18 the asylum officer issued an I-863, referring the decision to an Immigration Judge for
19 review. *Id.* at ¶ 6. On October 2, 2025, the Immigration Judge affirmed the asylum
20 officer’s finding and the order became final. *Id.* at ¶ 7.

21 ERO has worked expeditiously to effectuate Petitioner’s removal to People’s
22 Republic of China and continues to do so. *Id.* at ¶ 9. On November 6, 2025, ERO
23 submitted a travel document request for Petitioner to ERO’s Removal and International
24 Operations (RIO). *Id.* at ¶ 9. ERO received a travel documents for Petitioner on March
25 18, 2026. *Id.* at ¶ 10. ERO then scheduled a flight for Petitioner to be removed to the
26 People’s Republic of China on April 7, 2026. *Id.* at ¶ 11. However, Petitioner failed to
27 comply with ERO’s removal efforts and refused to exit the transport van on the day
28 scheduled for his removal. *Id.* Despite the previously failed attempt to remove

1 Petitioner, Respondents believe there is still a high likelihood of Petitioner’s removal to
2 China in the near future. *Id.* at ¶ 12.

3 **III. Argument**

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

5 The Court lacks jurisdiction to hear Petitioner’s claims. *See Ass’n of Am. Med.*
6 *Coll. v. United States*, 217 F.3d 770, 778-79 (9th Cir. 2000); *Finley v. United States*,
7 490 U.S. 545, 547-48 (1989). Petitioner brings his habeas action under 28 U.S.C.
8 § 2241, but jurisdiction over his claims is barred under 8 U.S.C. § 1252(a)(2)(A),
9 § 1252(e), and § 1252(g).

10 In general, courts lack jurisdiction to review a decision to commence or
11 adjudicate removal proceedings or execute removal orders. *See* 8 U.S.C. § 1252(g)
12 (“[N]o court shall have jurisdiction to hear any cause or claim by or on behalf of any
13 alien arising from the decision or action by the Attorney General to commence
14 proceedings, adjudicate cases, or execute removal orders.”); *Reno v. Am.-Arab Anti-*
15 *Discrimination Comm.*, 525 U.S. 471, 483 (1999) (“There was good reason for
16 Congress to focus special attention upon, and make special provision for, judicial
17 review of the Attorney General’s discrete acts of “commenc[ing] proceedings,
18 adjudicat[ing] cases, [and] execut[ing] removal orders”—which represent the initiation
19 or prosecution of various stages in the deportation process.”); *Limpin v. United States*,
20 828 Fed. App’x 429 (9th Cir. 2020) (holding district court properly dismissed under 8
21 U.S.C. § 1252(g) “because claims stemming from the decision to arrest and detain an
22 alien at the commencement of removal proceedings are not within any court’s
23 jurisdiction”).

24 Moreover, “[s]ection 1252(a)(2)(A) is a jurisdiction-stripping and channeling
25 provision, which bars review of almost ‘every aspect of the expedited removal
26 process.’” *Azimov v. U.S. Dep’t of Homeland Sec.*, No. 22-56034, 2024 WL 687442, at
27 *1 (9th Cir. Feb. 20, 2024) (quoting *Mendoza-Linares v. Garland*, 51 F.4th 1146, 1154
28 (9th Cir. 2022) (describing the operation of § 1252(a)(2)(A)). These jurisdiction-

1 stripping provisions cover “the ‘procedures and policies’ that have been adopted to
2 ‘implement’ the expedited removal process; the decision to ‘invoke’ that process in a
3 particular case; the ‘application’ of that process to a particular alien; and the
4 ‘implementation’ and ‘operation’ of any expedited removal order.” *Mendoza-Lineras*,
5 51 F.4th at 1155. “Congress chose to strictly cabin this court’s jurisdiction to review
6 expedited removal orders.” *Guerrier v. Garland*, 18 F.4th 304, 313 (9th Cir. 2021)
7 (finding that the Supreme Court abrogated any “colorable constitutional claims”
8 exception to the limits placed by § 1252(a)(2)(A)); see *Dep’t of Homeland Sec. v.*
9 *Thuraissigiam*, 591 U.S. 103 (2020) (holding that limitations within § 1252(a)(2)(A) do
10 not violate the Suspension Clause). “Congress has chosen to explicitly bar nearly all
11 judicial review of expedited removal orders concerning such aliens, including ‘review
12 of constitutional claims or questions of law.’” *Mendoza-Linares*, 51 F.4th at 1148
13 (citing 8 U.S.C. § 1252(a)(2)(A), (D)); see *Dept’ of Homeland Sec. v. Thuraissigiam*,
14 591 U.S. 103, 138-39 (2020) (explicitly rejecting Ninth Circuit’s holding that an
15 arriving alien has a “constitutional right to expedited removal proceedings that conform
16 to the dictates of due process”).

17 “Congress could scarcely have been more comprehensive in its articulation of the
18 general prohibition on judicial review of expedited removal orders.” *Mendoza-Lineras*,
19 51 F.4th at 1155. Specifically, Section 1252(a)(2)(A) states:

20 (2) Matters not subject to judicial review

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

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

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

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

1 (iii) the application of such section to individual aliens, including
2 the determination made under section 1225(b)(1)(B) of this title, or
3 (iv) except as provided in subsection (e), procedures and policies
4 adopted by the Attorney General to implement the provisions of section
5 1225(b)(1) of this title.

6 8 U.S.C. § 1252(a)(2)(A). Thus, “Section 1252(a)(2)(A)(i) deprives courts of
7 jurisdiction to hear a ‘cause or claim arising from or relating to the implementation or
8 operation of an order of removal pursuant to section 1225(b)(1),’ which plainly includes
9 [Petitioner’s] collateral attacks on the validity of the expedited removal order.” *Azimov*,
10 2024 WL 687442, at *1 (quoting *Mendoza-Linares*, 51 F.4th at 1155) (citing *J.E.F.M.*
11 *v. Lynch*, 837 F.3d 1026, 1031-35 (9th Cir. 2016) (concluding that the “arising from”
12 language in neighboring § 1252(b)(9) sweeps broadly)). By challenging the standards
13 and process by which the expedited removal order was entered against Petitioner, he
14 necessarily asks the Court “to do what the statute forbids [it] to do, which is to review
15 ‘the application of such section to [him].’” *Mendoza-Linares*, 51 F.4th at 1155. Most
16 notably, a determination made concerning inadmissibility “is not subject to judicial
17 review.” *Gomez-Cantillano v. Garland*, No. 19-72682, 2021 WL 5882034 (9th Cir.
18 Dec. 13, 2021) (citing 8 U.S.C § 1252(a)(2)(A)(iii)). “And § 1252(a)(2)(A)(iv) deprives
19 courts of jurisdiction to review ‘procedures and policies adopted by the Attorney
20 General to implement the provisions of section 1225(b)(1) of this title,’ which plainly
21 includes [Petitioner’s] claims regarding how [Respondents] have implemented” §
22 1225(b)(1). *Azimov*, 2024 WL 687442, at *1 (citing *Mendoza-Linares*, 51 F.4th at
23 1154–55).

24 In setting forth provisions for judicial review of § 1225(b)(1) expedited removal
25 orders, Congress expressly limited available relief: “Without regard to the nature of the
26 action or claim and without regard to the identity of the party or parties bringing the
27 action, no court may” “enter declaratory, injunctive, other equitable relief in any action
28 pertaining to an order to exclude an alien in accordance with section § 1225(b)(1) of
this title except as specifically authorized in a subsequent paragraph of this subsection.”

1 8 U.S.C. § 1252(e)(1)(A). Congress delineated two limited avenues for judicial review
2 concerning expedited removal orders: (1) narrow habeas corpus proceedings under
3 § 1252(e)(2); and (2) challenges to the validity of the system under § 1252(e)(3). Any
4 permissible challenge to the validity of the system “is available [only] in an action in
5 the United States District Court for the District of Columbia” 8 U.S.C. § 1252(e)(3).

6 Narrow habeas corpus proceedings are expressly “limited to determinations” of
7 three questions: (1) “whether the petitioner is an alien”; (2) “whether the petitioner was
8 ordered removed under [section 1225(b)(1)]”; and (3) “whether the petitioner can prove
9 by a preponderance of the evidence that the petitioner is an alien” who has been granted
10 status as a lawful permanent resident, refugee, or asylee. 8 U.S.C. § 1252(e)(2)(A)-(C).
11 “In determining whether an alien has been ordered removed under section 235(b)(1) [8
12 U.S.C. § 1225(b)(1)], the court’s inquiry shall be limited *to whether such an order in*
13 *fact was issued and whether it relates to the petitioner.* There shall be no review of
14 whether the alien is actually inadmissible or entitled to any relief from removal.” 8
15 U.S.C. § 1252(e)(5) (emphasis added). Petitioner’s primary request within his petition
16 is to have this Court review DHS’s determination of his inadmissibility. However, “a
17 habeas court lacks jurisdiction to review ‘whether the alien [1] is actually inadmissible
18 or [2] entitled to any relief from removal.’” *Mendoza-Linares*, 51 F.4th at 1158 (quoting
19 8 U.S.C. § 1252(e)(5)).

20 None of the three narrow avenues for habeas relief apply here. Petitioner
21 concedes that he is a noncitizen. *See* ECF No. 1 at ¶ 6. Petitioner also does not assert
22 that he has been granted status as a lawful permanent resident, refugee, or asylee.
23 Moreover, “[t]here is no doubt that an order ‘under section 235(b)(1)’ was in fact issued
24 here, because (1) the order that is in the record and that [Petitioner] challenges expressly
25 states that it was entered ‘under section 235(b)(1)’ of the INA.” *Mendoza-Linares*, 51
26 F.4th at 1158. Each of Petitioner’s claims fall outside the limited habeas corpus
27 authority provided within § 1252(e)(2).
28

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

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

5 Even assuming the Court has jurisdiction over his petition, Petitioner has not
6 stated a statutory violation. Petitioner contends that Respondents lacks statutory
7 authority to detain him without a bond hearing under 8 U.S.C. § 1225(b)(1), which
8 provides, in part,

9 If an immigration officer determines that an alien (other than an alien
10 described in subparagraph (F)) who is arriving in the United States or is
11 described in clause (iii) is inadmissible under section 1182(a)(6)(C) or
12 1182(a)(7) of this title, the officer shall order the alien removed from the
13 United States without further hearing or review unless the alien indicates
either an intention to apply for asylum under section 1158 of this title or a
fear of persecution.

14 8 U.S.C. § 1225(b)(1)(A)(i).

15 However, Petitioner does not dispute that on August 31, 2025, he unlawfully
16 entered the United States and did not then have legal documentation to enter the United
17 States. Nor does he point to anything in the statute that prevents ICE from applying the
18 expedited removal process to him. As Petitioner entered the United States less than two
19 years ago without a proper travel document, and without then being admitted or paroled,
20 he is subject to expedited removal and mandatory detention. *See* 8 U.S.C. § 1225(b)(1).

21 Accordingly, Petitioner’s statutory violation claims fail.

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

23 Even assuming the Court has jurisdiction over his petition, Petitioner’s Fifth
24 Amendment due process claims fail. Petitioner contends that his “prolonged detention
25 and lack of timely bond hearing” as well as his “unnecessary detention under *Zadvydas*
26 *v. Davis*” constitutes a violation of his right to due process under the Fifth Amendment.”
27 ECF No. 1 at ¶ 13. But the only due process rights he has are those rights statutorily
28 afforded by Congress. *See Thuraissigiam*, 591 U.S. at 139 (collecting cases); 8 U.S.C.

1 § 1225(b)(1)(B)(iii)(IV); *Landon v. Plasencia*, 459 U.S. 21, 32 (1982) (“This Court has
2 long held that an alien seeking initial admission to the United States requests a privilege
3 and has no constitutional rights regarding his application, for the power to admit or
4 exclude aliens is a sovereign prerogative.”) (citations omitted); *see generally I.N.S. v.*
5 *Lopez-Mendoza*, 468 U.S. 1032, 1038 (1984) (“Consistent with the civil nature of the
6 proceeding, various protections that apply in the context of a criminal trial do not apply
7 in a deportation hearing.”).

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

20 In *Thuraissigiam*, the Supreme Court once again addressed the due process rights
21 of inadmissible arriving noncitizens and stated that such individuals have no due
22 process rights “other than those afforded by statute.” *Id.* at 107; *id.* at 140 (“[A]n alien
23 in respondent’s position has only those rights regarding admission that Congress has
24 provided by statute.”). The Supreme Court noted that its determination was supported
25 by “more than a century of precedent.” *Id.* at 138 (citing *Nishimura Ekiu v. United*
26 *States*, 142 U.S. 651, 660 (1892); *U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544
27 (1950); *Mezei*, 345 U.S. at 212; *Landon*, 459 U.S. at 32). “[I]n the expedited removal
28 context, a petitioner’s due process rights are coextensive with the statutory rights

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

19 As Petitioner was previously detained pursuant to 8 U.S.C. §
20 1225(b)(1)(B)(iii)(IV), which does not afford a right to a determination by this Court as
21 to whether his release is warranted nor a right to a bond hearing before an immigration
22 judge, the Court should reject his claim that his detention violates the Fifth
23 Amendment’s Due Process Clause and deny his requested relief. *See Thuraissigiam*,
24 591 U.S. at 107, 140; *Mezei*, 345 U.S. at 212; *Guerrier*, 18 F.4th at 310.

25 **D. There is a Significant Likelihood of Removal in the Reasonably Foreseeable**
26 **Future**

27 The Petition should be denied on the merits as there is a significant likelihood of
28 removal in the reasonably foreseeable future—should Petitioner not continue to obstruct

1 his own removal. Ramirez Decl. at ¶ 11. An alien ordered removed must be detained
2 for ninety (90) days pending the government’s efforts to secure the alien’s removal
3 through negotiations with foreign governments. *See* 8 U.S.C. § 1231(a)(2) (the Attorney
4 General “shall detain” the alien during the 90-day removal period). The statute “limits
5 an alien’s post-removal detention to a period reasonably necessary to bring about the
6 alien’s removal from the United States” and does not permit “indefinite detention.”
7 *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). The Supreme Court has held that a six-
8 month period of post-removal detention constitutes a “presumptively reasonable period
9 of detention.” *Id.* at 683. Release is not mandated after the expiration of the six-month
10 period unless “there is no significant likelihood of removal in the reasonably foreseeable
11 future.” *Id.* at 701.

12 In *Zadvydas*, the Supreme Court held: “[T]he habeas court must ask whether the
13 detention in question exceeds a period reasonably necessary to secure removal. It should
14 measure reasonableness primarily in terms of the statute’s basic purpose, namely,
15 *assuring the alien’s presence at the moment of removal.*” *Id.* at 699 (emphasis added).
16 In so holding, the Court recognized that detention is presumptively reasonable pending
17 efforts to obtain travel documents, because the noncitizen’s assistance is needed to
18 obtain the travel documents, and a noncitizen who is subject to an imminent, executable
19 warrant of removal becomes a significant flight risk, especially if he or she is made
20 aware that removal is imminent.

21 The Supreme Court also held that the detention could exceed six months: “This
22 6-month presumption, of course, does not mean that every alien not removed must be
23 released after six months. To the contrary, an alien may be held in confinement until it
24 has been determined that there is no significant likelihood of removal in the reasonably
25 foreseeable future.” *Id.* at 701. “After this 6-month period, once the alien provides good
26 reason to believe that there is no significant likelihood of removal in the reasonably
27 foreseeable future, the Government must respond with evidence sufficient to rebut that
28 showing and that the noncitizen has the initial burden of proving that removal is not

1 significantly likely.” *Id.*

2 Petitioner has now been in ICE custody post-final order of removal for 6 months
3 and 13 days, and ICE has already attempted to remove him on April 7, 2026 (8 days
4 ago). Since the agency possesses a valid travel document for Petitioner, and will
5 continue to schedule flights and attempt to remove him, Petitioner cannot meet his
6 burden to demonstrate that there is no significant likelihood of removal in the
7 reasonably foreseeable future. The Ninth Circuit has made clear, “*Zadvydas* places the
8 burden on the *alien* to show, after a detention period of six months, that there is ‘good
9 reason to believe that there is no significant likelihood of removal in the reasonably
10 foreseeable future.’” *Pelich v. INS*, 329 F. 3d 1057, 1059 (9th Cir. 2003) (quoting
11 *Zadvydas*, 533 U.S. at 701) (emphasis added); *see also Xi v. INS*, 298 F.3d 832, 840
12 (9th Cir. 2003). Furthermore, there are no valid regulatory violations for the Court to
13 address, as Petitioner has been in immigration custody since apprehension since he was
14 subject to mandatory detention under 8 U.S.C. § 1225(b)(1). Petitioner’s own
15 obstruction of removal efforts are the only reason he wasn’t already removed from the
16 United States on April 7, 2026. Furthermore, it has only been 6 months and 13 days
17 since his expedited removal order became a final order. For the foregoing reasons, the
18 Court should not find that his due process rights have been violated, nor that he has met
19 his burden requiring that he demonstrate there is no significant likelihood of removal in
20 the reasonably foreseeable future.

21 **IV. CONCLUSION**

22 For the foregoing reasons, Respondents respectfully request that the Court deny
23 the petition on the merits.

24 DATED: April 15, 2026

Respectfully submitted,

25 ADAM GORDON
26 United States Attorney

27 *s/ Hunter V. Norton*
28 HUNTER V. NORTON
Assistant United States Attorney