

1 ADAM GORDON
United States Attorney
2 JACOB T. METZGER
Special Assistant U.S. Attorney
3 Ohio State Bar No. 104783
HUNTER V. NORTON
4 Assistant U.S. Attorney
Washington D.C. Bar No. 1780736
5 Office of the U.S. Attorney
880 Front Street, Room 6293
6 San Diego, CA 92101-8893
Telephone: (619) 546-8693/8592
7 Facsimile: (619) 546-7751
Email: jacob.metzger@usdoj.gov
8 Email: hunter.norton2@usdoj.gov

9 Attorneys for Respondents

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

13 AMOS NKONGOLO MUBANGA,
14

15 Petitioner,
16

17 v.
18

18 JEREMY CASEY,
19

19 Respondents.
20
21

Case No.: 26-cv-02565-JO-AHG

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

22 **I. INTRODUCTION**

23 Petitioner and Respondents agree that Petitioner's detention is mandated by 8
24 U.S.C. § 1225(b)(2). Petitioner argues his rights have been violated under the Fifth
25 Amendment and he is entitled to immediate release. The government's position is that
26 while removal proceedings are ongoing Petitioner has no due process right, whether
27 substantive or procedural, "other than those afforded by statute." *Department of*
28 *Homeland Security v. Thuraissigiam*, 591 U.S. 103, 107 (2020). However, the

1 government acknowledges that this Court has repeatedly inferred a constitutional right
2 against prolonged mandatory detention. Taking into consideration those prior rulings
3 and the length of time Petitioner has been in custody, the government concedes that
4 this Court should order that Petitioner receive a bond hearing, where the government
5 would bear the burden of proof of establishing, by clear and convincing evidence, that
6 Petitioner poses a danger to the community or a risk of flight.

7 II. STATUTORY BACKGROUND

8 Section 235 of the Immigration and Nationality Act (INA), codified at 8 U.S.C.
9 § 1225, applies to an “applicant for admission,” defined as an “alien present in the
10 United States who has not been admitted” or “who arrives in the United States.” 8
11 U.S.C. § 1225(a)(1). “[A]pplicants for admission fall into one of two categories, those
12 covered by § 1225(b)(1) and those covered by § 1225(b)(2).” *Jennings v. Rodriguez*,
13 583 U.S. 281, 287 (2018).

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

26 Section 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*,
27 583 U.S. at 287. It “applies to all applicants for admission not covered by §
28 1225(b)(1).” *Id.* Under § 1225(b)(2), an alien “who is an applicant for admission” shall

1 be detained for a removal proceeding “if the examining immigration officer determines
2 that [the] alien seeking admission is not clearly and beyond a doubt entitled to be
3 admitted.” 8 U.S.C. § 1225(b)(2)(A); *Matter of Q. Li*, 29 I&N Dec. 66, 68 (BIA 2025)
4 (“for aliens arriving in and seeking admission into the United States who are placed
5 directly in full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. §
6 1225(b)(2)(A), mandates detention ‘until removal proceedings have concluded.’”)
7 (citing *Jennings*, 583 U.S. at 299). However, DHS has the sole discretionary authority
8 to temporarily release on parole “any alien applying for admission to the United States”
9 on a “case-by-case basis for urgent humanitarian reasons or significant public benefit.”
10 *Id.* § 1182(d)(5)(A); see *Biden v. Texas*, 597 U.S. 785, 806 (2022).

11 III. ARGUMENT

12 A. Petitioner’s Claim is Barred Under 8 U.S.C. § 1252(g).

13 Respondents contend that judicial review over Petitioner’s claim is barred by 28
14 U.S.C. § 1252(g), which states that “[n]o court shall have jurisdiction to hear any cause
15 or claim by or on behalf of any alien arising from the decision or action by the Attorney
16 General to commence proceedings, adjudicate cases, or execute removal orders.”

17 Here, Petitioner’s claims of unlawful detention necessarily arise from the
18 Department of Homeland Security’s¹ decision to commence removal proceedings
19 against him because that decision unavoidably triggers mandatory detention under 8
20 U.S.C. § 1225(b)(2) until the conclusion of his removal proceedings. See, e.g., *Wang v.*
21 *United States*, No. CV 10-0389 SVW (RCx), 2010 WL 11463156, at *6 (C.D. Cal. Aug.
22 18, 2010) (finding section 1252(g) bars judicial review of false imprisonment claim
23 because the plaintiff’s detention arose from the decision to commence removal
24 proceedings, and in turn, the “statute mandating detention during removal proceedings
25 of a person charged as an ‘arriving alien.’”).

26
27 ¹ “In 2002, Congress transferred the Attorney General’s immigration enforcement
28 responsibilities to the Secretary of Homeland Security.” *Ibarra-Perez v. United States*,
154 F.4th 989, 995 n.2 (9th Cir. 2025).

1 As explained by another district court, removal proceedings are commenced
2 when, as occurred here, “the alien is issued a Notice to Appear before an immigration
3 court.” *Herrera-Correra v. United States*, No. CV 08–2941 DSF (JCx), 2008 WL
4 11336833, at *3 (C.D. Cal. Sept. 11, 2008); *see also* Exhibit 3 (Notice to Appear). The
5 government “may arrest the alien against whom proceedings are commenced and detain
6 that individual until the conclusion of those proceedings.” *Herrera-Correra*, 2008 WL
7 11336833, at *3. “Thus, an alien’s detention throughout this process arises from the
8 [government’s] decision to commence proceedings” and review of claims arising from
9 such detention is barred under section 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509 F.3d
10 947, 949 (9th Cir. 2007)); *see also* *Wang*, 2010 WL 11463156, at *6.

11 Because this habeas petition brings a claim “arising from the decision or action
12 by the [government] to commence proceedings,” review of Petitioner’s claim is barred
13 under 8 U.S.C § 1252(g). Thus, the Court must dismiss the petition.

14 **B. Petitioner is Lawfully Detained Under the INA and the Constitution.**

15 Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2). Under
16 8 U.S.C. § 1225(a)(1), an “applicant for admission” is defined as an “alien present in
17 the United States who has not been admitted or who arrives in the United States.” As
18 explained above, applicants for admission “fall into one of two categories, those
19 covered by § 1225(b)(1) and those covered by § 1225(b)(2).” *Jennings*, 583 U.S. at
20 287.

21 Section 1225(b)(2)(A) requires mandatory detention of “an alien who is *an*
22 *applicant for admission*, if the examining immigration officer determines that an alien
23 seeking admission is not clearly and beyond a doubt entitled to be admitted[.]” *Chavez*
24 *v. Noem*, No. 3:25-cv-02325, 2025 WL 2730228, at *4 (S.D. Cal. Sept. 24, 2025)
25 (quoting 8 U.S.C. § 1225(b)(2)(A)) (emphasis in original). Petitioner contends that he
26 is entitled to a bond hearing. But the Supreme Court has rejected such contention,
27 explaining: “Read most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of
28 applicants for admission until certain proceedings have concluded. . . . Nothing in the

1 statutory text imposes any limit on the length of detention. And neither § 1225(b)(1)
2 nor § 1225(b)(2) says anything whatsoever about bond hearings.” *Jennings*, 583 U.S. at
3 297. Except for temporary parole granted at the discretion of the Attorney General “for
4 urgent humanitarian reasons or significant public benefit” under 8 U.S.C. § 1182(d)(5),
5 “there are no *other* circumstances under which aliens detained under § 1225(b) may be
6 released.” *Id.* at 300 (emphasis in original).

7 As Petitioner’s removal proceedings are pending, and he has not been granted
8 temporary parole, section 1225(b)(2) mandates his detention until the proceedings have
9 concluded. *Jennings*, 583 U.S. at 297 (“Once those proceedings end, detention under
10 § 1225(b) must end as well.”). Because Petitioner is lawfully detained under
11 section 1225(b) and the statute does not entitle him to a bond hearing at this time, his
12 petition must be denied. *See, e.g., Zelaya-Gonzalez v. Matuszewski*, No. 23-CV-151
13 JLS-KSC, 2023 WL 3103811, at *3 (S.D. Cal. April 25, 2023) (applying *Jennings* to
14 find that the petitioner had no right to release or a bond hearing under 1225(b)(1)
15 because “[b]inding Ninth Circuit and Supreme Court precedents are clear that Petitioner
16 lacks any rights beyond those conferred by statute, and no statute entitles Petitioner to
17 a bond hearing”).

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

1 in original). “In sum, [8 U.S.C.] §§ 1225(b)(1) and (b)(2) mandate detention of aliens
2 throughout the completion of applicable proceedings[.]” *Id.* at 302.

3 In *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 207–09 (1953), a
4 noncitizen in exclusion proceedings filed a habeas petition claiming that his prolonged
5 detention without a hearing violated his constitutional rights. The Supreme Court
6 rejected the petition, concluding that the noncitizen’s continued detention did not
7 deprive him of any due process rights, stating: “[A]n alien on the threshold of initial
8 entry stands on a different footing: ‘Whatever the procedure authorized by Congress
9 is, it is due process as far as an alien denied entry is concerned.’” *Id.* at 212 (citation
10 omitted).

11 In *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 138–40
12 (2020), the Supreme Court once again addressed the due process rights of inadmissible
13 arriving noncitizens seeking initial entry into the United States. The Supreme Court
14 stated that such individuals have no due process rights “other than those afforded by
15 statute.” *Id.* at 107; *see also id.* at 140 (“[A]n alien in respondent’s position has only
16 those rights regarding admission that Congress has provided by statute.”). The
17 Supreme Court noted that its determination was supported by “more than a century of
18 precedent.” *Id.* at 138 (citing *Nishimura Ekiu v. United States*, 142 U.S. 651, 660
19 (1892); *U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950); *Mezei*, 345 U.S.
20 at 212; *Landon v. Plasencia*, 459 U.S. 21, 32 (1982)). Because the only process due
21 Petitioner is that afforded under section 1225(b), the Court must reject his claim that
22 his detention violates the Fifth Amendment’s Due Process Clause and deny his
23 requested relief. *See Thuraissigiam*, 591 U.S. at 138–40; *Mendoza-Linares*, 51 F.4th at
24 1167; *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022) (“The
25 recognized liberty interests of U.S. citizens and aliens are not coextensive: the Supreme
26 Court has ‘firmly and repeatedly endorsed the proposition that Congress may make
27 rules as to aliens that would be unacceptable if applied to citizens.’”) (quoting *Demore*
28 *v. Kim*, 538 U.S. 510, 522 (2003)); *Zelaya-Gonzalez*, 2023 WL 3103811, at *4

1 (“Binding Ninth Circuit and Supreme Court precedents are clear that Petitioner lacks
2 any rights beyond those conferred by statute, and no statute entitles Petitioner to a bond
3 hearing.”).

4 Since the Supreme Court’s decision in *Thuraissigiam*, numerous published
5 decisions have acknowledged *Thuraissigiam*’s impact on the precise Fifth Amendment
6 Due Process Clause that Petitioner might have raised in this petition: Does an alien
7 detained under 8 U.S.C. § 1225(b) have a due process right to release or a bond hearing
8 after being detained for a certain period of time? The answer is no. *See Mendoza-*
9 *Linares v. Garland*, No. 21-cv-1169-BEN (AHG), 2024 WL 3316306, *2 (S.D. Cal.
10 June 10, 2024) (“[T]he Court finds that Petitioner has no Fifth Amendment right to a
11 bond hearing pending his removal proceedings.”); *Zelaya-Gonzalez*, 2023 WL
12 3103811, *3 (S.D. Cal. Apr. 25, 2023) (same); *Rodriguez Figueroa v. Garland*, 535 F.
13 Supp. 3d 122, 126–27 (W.D.N.Y. 2021); *Gonzales Garcia v. Rosen*, 513 F. Supp. 3d
14 329, 336 (W.D.N.Y. 2021); *St. Charles v. Barr*, 514 F. Supp. 3d 570, 579 (W.D.N.Y.
15 2021); *Petgrave v. Aleman*, 529 F. Supp. 3d 665, 667 (S.D. Tex. 2021).

16 Petitioner relies on *Jennings* to apply *Zadvydas*’ due process analysis to general
17 removal proceedings. But *Jennings* did the opposite. It overruled the Ninth Circuit’s
18 requirement of periodic detention review hearings (bond hearings) while removal
19 proceedings are pending. *Jennings*, 583 U.S. at 283. In *Jennings*, an alien detained for
20 three years while litigating his removal filed a habeas petition asserting that he was
21 entitled to a bond hearing under *Zadvydas* to determine whether his continued detention
22 was justified. 583 U.S. at 290. The alien argued that the statutory detention provision in
23 the INA—§§ 1225(b), 1226(a), and 1226(c)—do not authorize “prolonged” detention
24 without an individualized bond hearing at which the government bears to burden to
25 prove continued detention is justified. *Id.* The district court entered an injunction
26 mandating periodic bond hearings every six months, and the Ninth Circuit affirmed. *Id.*
27 The Supreme Court reversed and affirmed the general detention provision in the INA.
28 *Id.* at 305–06 (explaining that the asylum statutes “mandate detention for a specific

1 period of time: until immigration officers have finished considering the asylum
2 application or until removal proceedings have concluded.”) (internal quotations and
3 citations omitted).

4 Thus, while removal proceedings are ongoing an arriving alien has no due
5 process right, whether substantive or procedural, “other than those afforded by statute.”
6 *Thuraissigiam*, 591 U.S. 107. “There is no constitutional right to political asylum
7 itself.” *Maldonado-Perez v. I.N.S.*, 865 F.2d 328, 332 (D.C. Cir. 1989). The plain
8 language of 8 U.S.C. § 1158(d)(7) expressly disclaims any substantive or procedural
9 rights under the statute. *See* 8 U.S.C. § 1158(d)(7) (“Nothing in this subsection shall be
10 construed to create any substantive or procedural right or benefit that is legally
11 enforceable by any party against the United States or its agencies or officers or any other
12 person.”).

13 The Fifth Amendment provides that “[n]o person shall . . . be deprived of life,
14 liberty, or property, without due process of law[.]” U.S. Const. amend. V. The Due
15 Process Clause contains both a substantive and a procedural component. *United States*
16 *v. Salerno*, 481 U.S. 739, 746 (1987); *Cancino Castellar v. McAleenan*, 388 F. Supp.
17 3d 1218, 1231 (S.D. Cal. 2019) (finding aliens have a substantive due process right to
18 prompt presentment before an immigration judge following detention). Substantive due
19 process “forbids the government to infringe certain ‘fundamental’ liberty interests at
20 all, no matter what process is provided, unless the infringement is narrowly tailored to
21 serve a compelling state interest.” *Reno v. Flores*, 507 U.S. 292, 301–02 (1993).

22 A substantive due process analysis entails two elements. First, a plaintiff must
23 show a government deprivation of life, liberty, or property. *Squaw Valley Dev. Co. v.*
24 *Goldberg*, 375 F.3d 936, 948 (9th Cir. 2004). Second, whether substantive due process
25 is violated turns on the nature of the challenged government conduct. A plaintiff “must
26 allege conduct that ‘shock[s] the conscience and offend[s] the community’s sense of
27 fair play and decency.’” *Regents of the Univ. of Cal. v. U.S. Dep’t of Homeland Sec.*,
28 908 F.3d 476, 518 (9th Cir. 2018). Any “shock the conscience” analysis necessarily

1 requires consideration of the justification the government offers, if any, for the alleged
2 infringement. *See Reno*, 507 U.S. at 301–02.

3 “Substantive due process analysis must begin with a careful description of the
4 asserted right.” *Id.* (cleaned up). Here, Petitioner has not identified the liberty interest
5 implicating the Due Process Clause. Petitioner does not contest that 8 U.S.C. § 1225(b)
6 mandates his detention. The United States has legitimate interest in excluding aliens in
7 removal proceedings. *See Shaunessy v. United States ex. Rel. Mezei*, 345 U.S. 206, 208
8 (1953); *Demore*, 538 U.S. at 531 (immigration detention during removal proceedings
9 and for a limited period following a final order of removal is a constitutionally
10 permissible exercise of government’s power to administer immigration laws).

11 In assessing a substantive due process claim, the Court must keep in mind the
12 traditional “reluctan[ce] to expand the concept of substantive due process because
13 guideposts for responsible decision making in this uncharted area are scarce and open-
14 ended.” *Collins v. City of Harker Heights*, 503 U.S. 115, 125 (1992). As the Sixth
15 Circuit cautions: “[t]he ‘shock the conscience’ standard, fuzzy under the best of
16 circumstances, becomes fuzzy beyond a court’s power to interpret objectively where
17 there is a dearth of previous decisions on which to base the standard.” *Braley v. City of*
18 *Pontiac*, 906 F.2d 220, 225 (6th Cir. 1990). The Supreme Court further cautions that
19 “the mere novelty of . . . a claim is reason enough to doubt that ‘substantive due process’
20 sustains it[.]” *Reno*, 507 U.S. at 303.

21 To the extent Petitioner raises issues concerning interpretation in prior bond
22 hearings, Petitioner has shown no prejudice given that the bond hearings were denied
23 for lack of jurisdiction. Moreover, the government acknowledges that he has a right to
24 an interpreter in a language that he understands. *See Perez-Lastor v. INS*, 208 F.3d 773,
25 778 (9th Cir. 2000) (if an alien does not understand English, deportation proceedings
26 must be translated into a language that he *understands* because a competent translation
27 is fundamental to a ‘full and fair hearing’ under the Due Process Clause of the Fifth
28

Amendment) (“It is long-settled that a competent translation is fundamental to a full and fair hearing.”).

IV. CONCLUSION

The government’s position is that while removal proceedings are ongoing Petitioner has no due process right, whether substantive or procedural, “other than those afforded by statute.” However, the government acknowledges that this Court has repeatedly inferred a constitutional right against prolonged mandatory detention. Taking into consideration those prior rulings and the length of time Petitioner has been in custody, the government concedes that this Court should order that Petitioner receive a bond hearing, where the government would bear the burden of proof of establishing, by clear and convincing evidence, that Petitioner poses a danger to the community or a risk of flight.

Dated: May 28, 2026

Respectfully submitted,

ADAM GORDON
United States Attorney

s/ Jacob T. Metzger

JACOB T. METZGER
Special Assistant U.S. Attorney
Attorney for Respondents