

1 ADAM GORDON
United States Attorney
2 DANIELLE L. BROWN
Colorado State Bar No. 57814
3 Special Assistant U.S. Attorney
HUNTER V. NORTON
4 Washington D.C. Bar No. 1780736
Assistant U.S. Attorney
5 Office of the U.S. Attorney
880 Front Street, Room 6293
6 San Diego, CA 92101
Telephone: (619) 546-8693
7 Facsimile: (619) 546-7751
Email: Danielle.Brown2@usdoj.gov
8 Email: Hunter.Norton2@usdoj.gov

9 Attorneys for Respondent

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11 **UNITED STATES DISTRICT COURT**
12 **SOUTHERN DISTRICT OF CALIFORNIA**
13

14 SAKIROU BOUKOUBONGUE,

15 Petitioner,

16 v.
17

18 JEREMY CASEY, *Warden, Imperial*
19 *Regional Detention Facility,*

20 Respondent.
21

Case No.: 26-cv-02491-JO-VET

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

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23
24
25 **I. INTRODUCTION**

26 Petitioner and Respondents agree that Petitioner's detention is mandated by 8
27 U.S.C. § 1225(b)(2). Petitioner argues his rights have been violated under the Fifth
28

1 Amendment and he is entitled immediate release. The government's position is that
2 while removal proceedings are ongoing Petitioner has no due process right, whether
3 substantive or procedural, "other than those afforded by statute." *Department of*
4 *Homeland Security v. Thuraissigiam*, 591 U.S. 103, 107 (2020). However, the
5 government acknowledges that this Court has repeatedly inferred a constitutional right
6 against prolonged mandatory detention. Taking into consideration those prior rulings
7 and the length of time Petitioner has been in custody, the government concedes that
8 this Court should order that Petitioner receive a bond hearing, where the government
9 would bear the burden of proof of establishing, by clear and convincing evidence, that
10 Petitioner poses a danger to the community or a risk of flight.

11 II. STATUTORY BACKGROUND

12 Section 235 of the Immigration and Nationality Act (INA), codified at 8 U.S.C.
13 § 1225, applies to an "applicant for admission," defined as an "alien present in the
14 United States who has not been admitted" or "who arrives in the United States." 8
15 U.S.C. § 1225(a)(1). "[A]pplicants for admission fall into one of two categories, those
16 covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings v. Rodriguez*,
17 583 U.S. 281, 287 (2018).

18 Section 1225(b)(1) applies to arriving aliens and "certain other" aliens "initially
19 determined to be inadmissible due to fraud, misrepresentation, or lack of valid
20 document." *Id.* (citing 8 U.S.C. § 1225(b)(1)(A)(i)). These aliens are generally subject
21 to expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(A)(i). But if "the alien
22 indicates an intention to apply for asylum . . . or a fear of persecution," immigration
23 officers will refer the alien for a credible fear interview. 8 U.S.C. § 1225(b)(1)(A)(ii).
24 "If the officer determines at the time of the interview that [the] alien has a credible fear
25 of persecution . . . , the alien *shall be detained* for further consideration of the
26 application for asylum." 8 U.S.C. § 1225(b)(1)(B)(ii) (emphasis added). If the alien
27 does not indicate an intent to apply for asylum, does not express a fear of persecution,
28

1 or is “found not to have such a fear,” they “shall be detained . . . until removed” from
2 the United States. 8 U.S.C. §§ 1225(b)(1)(A)(i), (B)(iii)(IV).

3 Section 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*,
4 583 U.S. at 287. It “applies to all applicants for admission not covered by §
5 1225(b)(1).” *Id.* Under § 1225(b)(2), an alien “who is an applicant for admission” shall
6 be detained for a removal proceeding “if the examining immigration officer determines
7 that [the] alien seeking admission is not clearly and beyond a doubt entitled to be
8 admitted.” 8 U.S.C. § 1225(b)(2)(A); *Matter of Q. Li*, 29 I&N Dec. 66, 68 (BIA 2025)
9 (“for aliens arriving in and seeking admission into the United States who are placed
10 directly in full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. §
11 1225(b)(2)(A), mandates detention ‘until removal proceedings have concluded.’”) (citing *Jennings*, 583 U.S. at 299). However, DHS has the sole discretionary authority
12 to temporarily release on parole “any alien applying for admission to the United States”
13 on a “case-by-case basis for urgent humanitarian reasons or significant public benefit.”
14 *Id.* § 1182(d)(5)(A); see *Biden v. Texas*, 597 U.S. 785, 806 (2022).

16 III. ARGUMENT

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

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

22 Here, Petitioner’s claims of unlawful detention necessarily arise from the
23 Department of Homeland Security’s¹ decision to commence removal proceedings
24 against him because that decision unavoidably triggers mandatory detention under 8
25 U.S.C. § 1225(b)(2) until the conclusion of his removal proceedings. See, e.g., *Wang v.*

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 *United States*, No. CV 10-0389 SVW (RCx), 2010 WL 11463156, at *6 (C.D. Cal. Aug.
2 18, 2010) (finding section 1252(g) bars judicial review of false imprisonment claim
3 because the plaintiff's detention arose from the decision to commence removal
4 proceedings, and in turn, the "statute mandating detention during removal proceedings
5 of a person charged as an 'arriving alien.'").

6 As explained by another district court, removal proceedings are commenced
7 when, as occurred here, "the alien is issued a Notice to Appear before an immigration
8 court." *Herrera-Correra v. United States*, No. CV 08-2941 DSF (JCx), 2008 WL
9 11336833, at *3 (C.D. Cal. Sept. 11, 2008); *see also* Exhibit 3 (Notice to Appear). The
10 government "may arrest the alien against whom proceedings are commenced and detain
11 that individual until the conclusion of those proceedings." *Herrera-Correra*, 2008 WL
12 11336833, at *3. "Thus, an alien's detention throughout this process arises from the
13 [government's] decision to commence proceedings" and review of claims arising from
14 such detention is barred under section 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509 F.3d
15 947, 949 (9th Cir. 2007)); *see also Wang*, 2010 WL 11463156, at *6.

16 Because this habeas petition brings a claim "arising from the decision or action
17 by the [government] to commence proceedings," review of Petitioner's claim is barred
18 under 8 U.S.C § 1252(g). Thus, the Court must dismiss the petition.

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

20 Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2). Under
21 8 U.S.C. § 1225(a)(1), an "applicant for admission" is defined as an "alien present in
22 the United States who has not been admitted or who arrives in the United States." As
23 explained above, applicants for admission "fall into one of two categories, those
24 covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings*, 583 U.S. at
25 287.

26 Section 1225(b)(2)(A) requires mandatory detention of "an alien who is *an*
27 *applicant for admission*, if the examining immigration officer determines that an alien
28 seeking admission is not clearly and beyond a doubt entitled to be admitted[.]" *Chavez*

1 v. *Noem*, No. 3:25-cv-02325, 2025 WL 2730228, at *4 (S.D. Cal. Sept. 24, 2025)
2 (quoting 8 U.S.C. § 1225(b)(2)(A)) (emphasis in original). Petitioner contends that he
3 is entitled to a bond hearing. But the Supreme Court has rejected such contention,
4 explaining: “Read most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of
5 applicants for admission until certain proceedings have concluded. . . . Nothing in the
6 statutory text imposes any limit on the length of detention. And neither § 1225(b)(1)
7 nor § 1225(b)(2) says anything whatsoever about bond hearings.” *Jennings*, 583 U.S. at
8 297. Except for temporary parole granted at the discretion of the Attorney General “for
9 urgent humanitarian reasons or significant public benefit” under 8 U.S.C. § 1182(d)(5),
10 “there are no *other* circumstances under which aliens detained under § 1225(b) may be
11 released.” *Id.* at 300 (emphasis in original).

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

23 In *Jennings*, the Supreme Court evaluated the proper interpretation of 8 U.S.C.
24 § 1225(b). The Supreme Court stated that, “[r]ead most naturally, [8 U.S.C.]
25 §§ 1225(b)(1) and (b)(2) . . . mandate detention of applicants for admission until certain
26 proceedings have concluded.” *Id.* at 297. In other words, neither 8 U.S.C. § 1225(b)(1)
27 nor § 1225(b)(2) “impose[] any limit on the length of detention” and “neither
28 § 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 in exclusion proceedings 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 inadmissible arriving noncitizens seeking initial 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)). Because the only process due Petitioner is that afforded under section 1225(b), the Court must reject his claim that his detention violates the Fifth Amendment’s Due Process Clause and deny his requested relief. *See Thuraissigiam*, 591 U.S. at 138–40; *Mendoza-Linares*, 51 F.4th at

1 1167; *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022) (“The
2 recognized liberty interests of U.S. citizens and aliens are not coextensive: the Supreme
3 Court has ‘firmly and repeatedly endorsed the proposition that Congress may make
4 rules as to aliens that would be unacceptable if applied to citizens.’”) (quoting *Demore*
5 *v. Kim*, 538 U.S. 510, 522 (2003)); *Zelaya-Gonzalez*, 2023 WL 3103811, at *4
6 (“Binding Ninth Circuit and Supreme Court precedents are clear that Petitioner lacks
7 any rights beyond those conferred by statute, and no statute entitles Petitioner to a bond
8 hearing.”).

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

21 Petitioner relies on *Jennings* to apply *Zadvydas*’ due process analysis to general
22 removal proceedings. But *Jennings* did the opposite. It overruled the Ninth Circuit’s
23 requirement of periodic detention review hearings (bond hearings) while removal
24 proceedings are pending. *Jennings*, 583 U.S. at 283. In *Jennings*, an alien detained for
25 three years while litigating his removal filed a habeas petition asserting that he was
26 entitled to a bond hearing under *Zadvydas* to determine whether his continued detention
27 was justified. 583 U.S. at 290. The alien argued that the statutory detention provision in
28 the INA—§§ 1225(b), 1226(a), and 1226(c)—do not authorize “prolonged” detention

1 without an individualized bond hearing at which the government bears to burden to
2 prove continued detention is justified. *Id.* The district court entered an injunction
3 mandating periodic bond hearings every six months, and the Ninth Circuit affirmed. *Id.*
4 The Supreme Court reversed and affirmed the general detention provision in the INA.
5 *Id.* at 305–06 (explaining that the asylum statutes “mandate detention for a specific
6 period of time: until immigration officers have finished considering the asylum
7 application or until removal proceedings have concluded.”) (internal quotations and
8 citations omitted).

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

18 The Fifth Amendment provides that “[n]o person shall . . . be deprived of life,
19 liberty, or property, without due process of law[.]” U.S. Const. amend. V. The Due
20 Process Clause contains both a substantive and a procedural component. *United States*
21 *v. Salerno*, 481 U.S. 739, 746 (1987); *Cancino Castellar v. McAleenan*, 388 F. Supp.
22 3d 1218, 1231 (S.D. Cal. 2019) (finding aliens have a substantive due process right to
23 prompt presentment before an immigration judge following detention). Substantive due
24 process “forbids the government to infringe certain ‘fundamental’ liberty interests at
25 all, no matter what process is provided, unless the infringement is narrowly tailored to
26 serve a compelling state interest.” *Reno v. Flores*, 507 U.S. 292, 301–02 (1993).

27 A substantive due process analysis entails two elements. First, a plaintiff must
28 show a government deprivation of life, liberty, or property. *Squaw Valley Dev. Co. v.*

1 *Goldberg*, 375 F.3d 936, 948 (9th Cir. 2004). Second, whether substantive due process
2 is violated turns on the nature of the challenged government conduct. A plaintiff “must
3 allege conduct that ‘shock[s] the conscience and offend[s] the community’s sense of
4 fair play and decency.’” *Regents of the Univ. of Cal. v. U.S. Dep’t of Homeland Sec.*,
5 908 F.3d 476, 518 (9th Cir. 2018). Any “shock the conscience” analysis necessarily
6 requires consideration of the justification the government offers, if any, for the alleged
7 infringement. *See Reno*, 507 U.S. at 301–02.

8 “Substantive due process analysis must begin with a careful description of the
9 asserted right.” *Id.* (cleaned up). Here, Petitioner has not identified the liberty interest
10 implicating the Due Process Clause. Petitioner does not contest that 8 U.S.C. § 1225(b)
11 mandates his detention. The United States has legitimate interest in excluding aliens in
12 removal proceedings. *See Shaunessy v. United States ex. Rel. Mezei*, 345 U.S. 206, 208
13 (1953); *Demore*, 538 U.S. at 531 (immigration detention during removal proceedings
14 and for a limited period following a final order of removal is a constitutionally
15 permissible exercise of government’s power to administer immigration laws).

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

26 IV. CONCLUSION

27 The government’s position is that while removal proceedings are ongoing
28 Petitioner has no due process right, whether substantive or procedural, “other than those

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

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9 Dated: May 28, 2026

Respectfully submitted,

10 ADAM GORDON
11 United States Attorney

12 s/ Hunter V. Norton
13 HUNTER V. NORTON
14 Assistant United States Attorney
15 Attorneys for the Respondent

16 s/ Danielle L. Brown
17 DANIELLE L. BROWN
18 Special Assistant United States Attorney
19 Attorneys for the Respondent
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21
22
23
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25
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27
28