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**UNITED STATES DISTRICT COURT
DISTRICT OF OREGON**

Y-Z-L-H, an adult,

Petitioner,

v.

Case No.: 3:25-cv-00965-SI

**RESPONSE TO PETITION FOR
WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241**

**DREW BOSTOCK, Seattle Field
Office Director, Immigration and
Customs Enforcement and
Removal Operations (“ICE/ERO”);
TODD LYONS, Acting Director of
Immigration Customs Enforcement
(“ICE”); U.S. IMMIGRATION AND
CUSTOMS ENFORCEMENT;
KRISTI NOEM, Secretary of the
Department of Homeland Security
(“DHS”); U.S. DEPARTMENT OF
HOMELAND SECURITY; and
PAMELA BONDI, Attorney General
of the United States,**

Respondents.

Petitioner Y-Z-L-H-, a Mexican citizen, claims that he has been unlawfully placed into expedited removal proceedings and seeks, among other things, immediate release from mandatory immigration detention. *See* Pet. 18–19, ECF No. 1.

On June 5, 2025, U.S. Immigration and Customs Enforcement (“ICE”) lawfully detained Petitioner pursuant to Section 235(b) of the Immigration and Nationality Act (“INA”), codified at 8 U.S.C. § 1225(b). As an “arriving alien,” he remains subject to the statutory expedited removal provisions, which mandate his continued detention. *See* 8 U.S.C. § 1225(b)(1)(A)(i), (B)(iii)(IV). Contrary to Petitioner’s claims, his continued detention is lawful under the INA, is not in violation of the Administrative Procedure Act, and he is being afforded all the process he is due. Accordingly, this Court should deny the Petition.

BACKGROUND

A. The Constitution and federal statutes confer broad powers on the Executive Branch to administer the immigration system.

“Control over immigration is a sovereign prerogative.” *El Rescate Legal Servs., Inc. v. Exec. Off. of Immigr. Rev.*, 959 F.2d 742, 750 (9th Cir. 1991). The primary immigration statute, the Immigration and Nationality Act (“INA”), provides the Executive Branch with a comprehensive scheme to administer the immigration system. *See generally* 8 U.S.C. Ch. 12. Among those powers: The President, through the Department of State and the Department of Homeland Security, decides which noncitizens may enter and remain in the country. *See generally* 8 U.S.C. §§ 1103, 1104.

Under the INA, if an applicant for admission seeks admission to the United States without a valid entry document, a DHS immigration officer may charge the alien¹ as inadmissible. *See* 8 U.S.C. § 1229a(a)(2) (indicating that an alien placed in removal proceedings may be charged with any applicable removability ground). The immigration officer notifies the noncitizen of the charges and statutory provisions violated by issuing the noncitizen a document called a notice to appear.

Removal proceedings begin when the immigration officer files the notice to appear with an immigration court, which is part of the Executive Office of Immigration Review at the U.S. Department of Justice. 8 C.F.R. §§ 239.1 (listing which DHS authorities may issue a notice to appear), 1003.14 (establishing that proceedings commence when a notice to appear is filed in immigration court). The notice to appear indicates when and where the proceedings will be held. 8 U.S.C. § 1229(a)(1)(G). An immigration judge (“IJ” or “Immigration Judge”) conducts the proceedings for deciding the inadmissibility or removability of a noncitizen. 8 U.S.C. § 1229a(a)(1). If the IJ sustains a charge of removability or inadmissibility in the notice to appear, the noncitizen may file an application for relief. The grant of an application for relief would result in the ability to lawfully remain in the United States. One such application is a Form I-589, Application for Asylum, Withholding of Removal, and Protection under the Convention Against Torture.

¹ The word “alien” corresponds with Congress’s choice of words in the statute; this brief uses “alien” and “noncitizen” interchangeably.

Throughout a noncitizen's removal proceedings, the noncitizen may be represented by counsel at no expense to the government. 8 U.S.C. § 1229a(b)(4)(A). Noncitizens also have the opportunity to examine the evidence against them, to present evidence on their own behalf, and to cross-examine the government's witnesses. 8 U.S.C. § 1229a(b)(4)(A). Noncitizens may request asylum, withholding of removal, or withholding of removal under regulations implementing the Convention Against Torture, which would allow them to remain and work in the United States. A noncitizen who is dissatisfied with an IJ's decision may appeal to the Board of Immigration Appeals ("BIA" or "Board"). After an adverse BIA decision, the noncitizen may seek Article III judicial review in a federal court of appeals. 8 U.S.C. § 1252.

The INA "authorizes the Attorney General to arrest and detain an alien 'pending a decision on whether the alien is to be removed from the United States.'" *Jennings v. Rodriguez*, 583 U.S. 281, 306 (2018) (quoting 8 U.S.C. § 1226(a)). The courts have recognized that "there is little question that the civil detention of [noncitizens] during removal proceedings can serve a legitimate government purpose, which is 'preventing deportable ... [noncitizens] from fleeing prior to or during their removal proceedings, thus increasing the chance that, if ordered removed, the [noncitizens] will be successfully removed.'" *Prieto-Romero v. Clark*, 534 F.3d 1053, 1065 (9th Cir. 2008) (citing *Demore v. Kim*, 538 U.S. 510, 528 (2003)).

B. Overview of Expedited Removal and Credible Fear Proceedings

Before 1996, the INA provided for “two types of proceedings in which aliens can be denied the hospitality of the United States: deportation hearings and exclusion hearings.” *Vartelas v. Holder*, 566 U.S. 257, 261 (2012) (citation and internal quotation marks omitted). Exclusion hearings, which afforded noncitizens fewer procedural rights than deportation hearings, were for individuals who were “seeking entry to the United States,” while deportation hearings were for those “who had already entered this country.” *Id.* As a result, noncitizens who entered without inspection could avail themselves “of the greater procedural and substantive rights afforded in deportation proceedings, while non-citizens who actually presented themselves to authorities for inspection were restrained by more summary exclusion proceedings.” *Martinez v. Att’y Gen.*, 693 F.3d 408, 413 n.5 (3d Cir. 2012). To eliminate an incentive to enter unlawfully, Congress, in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”), Pub. L. No. 104-208, Div. C, Tit. I, 110 Stat. 3009-546, replaced the dual “exclusion” and “deportation” procedures with a uniform “removal” procedure. *Vartelas*, 566 U.S. at 262.

Congress did retain certain elements of the distinction between exclusion and deportation, however. Particularly, in IIRIRA, Congress established the expedited removal process to ensure that the Executive Branch could “expedite removal of aliens lacking a legal basis to remain in the United States.”² *Kucana v. Holder*,

² In establishing procedures for expedited removal, Congress was particularly concerned with abuses of the asylum system. See H.R. Rep. No. 469, 104th Cong.,

558 U.S. 233, 249 (2010); *see also Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 106 (2020) (“[When Congress enacted [IIRIRA], it crafted a system for weeding out patently meritless claims and expeditiously removing the aliens making such claims from the country.”). Under the expedited removal process, certain noncitizens who lack valid entry documentation or make material misrepresentations are “order[ed] . . . removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum . . . or a fear of persecution.” 8 U.S.C. § 1225(b)(1)(A)(i).

The expedited removal system’s “streamline[d] rules and procedures” for “deny[ing] admission to inadmissible aliens” include added protections for noncitizens who claim a fear of return to their home countries or express an intent to apply for asylum. *See* House Report at 157-58; *see also* 8 U.S.C. § 1225(b)(1)(A)(ii), (B); H.R. Conf. Rep. No. 828, 104th Cong., 2d Sess. 209 (1996) (“The purpose of these provisions is to expedite the removal from the United States of aliens who indisputably have no authorization to be admitted to the United States, while providing an opportunity for such an alien who claims asylum to have

2d Sess. Pt. 1, at 107 (1996) (“House Report”). At the time IIRIRA was enacted, “[t]housands of smuggled aliens arrive[d] in the United States each year with no valid entry documents and declare[d] asylum.” *Id.* at 117. Without the procedures for expedited removal, those noncitizens would be placed in full removal proceedings under 8 U.S.C. § 1229a and “could reasonably expect that the filing of an asylum application would allow them to remain indefinitely in the United States.” *Id.* at 118. Congress designed the expedited removal system to bypass the more “cumbersome and duplicative” procedures for noncitizens “who arrive in the United States with no valid documents.” *Id.* at 107.

the merits of his or her claim promptly assessed by officers with full professional training in adjudicating asylum claims.”).

Rather than immediately being ordered removed, asylum seekers are referred for screening before a USCIS asylum officer, who conducts an interview, reviews relevant facts, and makes a credible fear determination. *See* 8 U.S.C. § 1225(b)(1)(A)(ii), (B); 8 C.F.R. § 208.30(d),(e); *see also Thuraissigiam*, 591 U.S. at 109-11 (describing the credible fear process). The noncitizen “may consult with a person or persons of [his] choosing” before the credible fear screening, so long as it does not unreasonably delay the process. *See* 8 C.F.R. § 208.30(d)(4) (further allowing for a representative to be present, “at the discretion of the asylum officer, to present a statement at the end of the interview”); *see also* 8 C.F.R. § 1003.42(c) (consultation before IJ review).

A credible fear exists when there is a “significant possibility,” 8 U.S.C. § 1225(b)(1)(B)(v), that the noncitizen could establish eligibility for asylum, withholding of removal, or protection under the Convention Against Torture. *See* 8 U.S.C. § 1225(b)(1)(B)(iii)(II). If the asylum officer finds that the individual lacks a credible fear, that finding “shall not become final until reviewed by a supervisory asylum officer.” 8 C.F.R. § 208.30(e)(7). If the supervisory asylum officer agrees, the asylum officer “shall” provide the noncitizen a “written notice of decision” that informs the noncitizen that he can request review by an IJ. *See* 8 C.F.R. §§ 208.30(g)(1), 235.3(b)(4)(i)(C); *see also* 8 U.S.C. § 1225(b)(1)(B)(iii)(III). If the noncitizen requests further review, the IJ reviews de novo the asylum officers’

determination. 8 C.F.R. § 1003.42(d). In doing so, the IJ “may receive into evidence any oral or written statement which is material and relevant to any issue in the review.” 8 C.F.R. § 1003.42(c).

If the asylum officer or IJ finds that the noncitizen has a credible fear, he is referred for full removal proceedings under 8 U.S.C. § 1229a, at which he may apply for asylum or other relief or protection from removal. *See* 8 C.F.R. §§ 208.30(e)(5), (f), 235.6(a), 1208.30(g)(2)(iv)(B); *see also* 8 U.S.C. § 1225(b)(1)(B)(ii). If the asylum officer, the supervisory officer, and (if review is sought) the IJ find that the noncitizen lacks a credible fear of persecution on account of protected ground or a credible fear of torture, the statute provides that he shall be ordered “removed from the United States without further hearing or review.” 8 U.S.C. § 1225(b)(1)(B)(iii)(I).

C. Factual Background³

On July 21, 2023, Petitioner, a native and citizen of Mexico, presented for inspection at the Paso Del Norte Port of Entry in El Paso, Texas. Declaration of Cleveland Wilson (“Wilson Decl.”) at ¶ 3. That day, he was deemed inadmissible under section 212(a)(7)(A)(i)(I) of the INA, 8 U.S.C. § 1182(a)(7)(A)(i)(I), because he lacked a valid visa or other entry documents. *Id.*, ¶ 4.

³ Because of the expedited nature of this proceeding, undersigned counsel has not had a chance to review Petitioner’s A-file. An A-File is an “Index, and National File Tracking System of Records is the official record system that contains information regarding transactions involving an individual as he/she passes through the U.S. immigration and inspection process.” Privacy Act of 1974; U.S. Citizenship and Immigration Services, Immigration and Customs Enforcement, Customs and Border Protection—001 Alien File, Index, and National File Tracking System of Records, 76 FR 34233-01.

At the time he presented himself at the Paso Del Norte Port of Entry, Petitioner was an “arriving alien” who was eligible for expedited removal under 8 U.S.C. § 1225(b)(1)(A)(i) and 8 C.F.R. § 235.3(b)(1)(i). See *id.* However, on July 21, 2023, DHS issued him a Notice to Appear for immigration proceedings under Section 240 of the INA, 8 U.S.C. § 1229a, at the Portland Immigration Court. *Id.*, Ex. 1 at 1. He was also paroled into the United States under 8 U.S.C. § 1182(d)(5) for a temporary period until April 18, 2025. *Id.*, ¶ 4.

On June 5, 2025, Petitioner appeared at the Portland Immigration Court for an initial master calendar hearing. DHS orally moved for dismissal of the Notice Appeal and the IJ granted that motion. *Id.*, ¶¶ 8-9; Ex. 2. In his order, the Immigration Judge explained that he fully considered DHS’s bases for dismissal of removal proceedings and Petitioner’s arguments in opposition, in light of the controlling federal regulations and relevant Board caselaw. *Id.*, Ex. 2. Petitioner reserved his right to appeal the Immigration Judge’s dismissal order to the Board. *Id.*, ¶ 13.

Following the Immigration Judge’s dismissal order on June 5, 2025, and in anticipation of processing him for expedited removal, Petitioner was detained and transferred to the Portland Office of Enforcement and Removal Operations (“ERO”). *Id.*, ¶ 10. Because the Portland ERO does not have overnight detention facilities, on June 5, 2025, Petitioner was transferred to Washington and is presently detained at the Northwest ICE Processing Center in Tacoma, Washington. See *id.*, ¶ 11.

There is currently no final order of removal against Petitioner; he has until July 7, 2025 in which to file an administrative appeal with the Board. *See id.*, ¶¶ 8, 15. While the administrative appeal process plays out, Petitioner remains in removal proceedings under 8 U.S.C. § 1229a, where he retains all the substantive and procedural rights attendant to those proceedings and is subject to mandatory detention under 8 U.S.C. § 1225(b). *Id.*, ¶¶ 13, 16. Should the IJ's dismissal order become final, DHS intends to reprocess Petitioner as an expedited removal. *Id.*, ¶ 15. As part of that process, Petitioner will have the ability to claim fear of returning to Mexico and, should he do so, will be referred to an asylum officer for a credible fear interview. *Id.*

On June 5, 2025, Petitioner filed this Petition. In the Petition, Petitioner seeks, among other things, the following relief:

- “Declare that Petitioner’s re-detention without an individualized determination violates the Due Process Clause of the Fifth Amendment[.]”
- “Declare that Respondents’ application of the January 2025 Designation to Petitioner is illegal[.]”
- “Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner from custody[.]”
- “Issue an Order prohibiting the Respondents from transferring Petitioner from the district without the court’s approval[.]”

Pet. at 18-19.

LEGAL STANDARD

“The district courts of the United States . . . are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute[.]” *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted). “[T]he scope of habeas has been tightly regulated by statute, from the Judiciary Act of 1789 to the present day[.]” *Thuraissigiam*, 591 U.S. at 125 n.20. To warrant a grant of habeas corpus, a petitioner must demonstrate that his custody violates the Constitution, laws, or treaties of the United States. *See* 28 U.S.C. § 2241(c)(3).

ARGUMENT

A. ICE’s detention of Petitioner is lawful pursuant to 8 U.S.C. § 1225(b).

Petitioner’s detention is statutorily mandated as he is an “arriving alien” subject to expedited removal procedures under the procedures set forth in 8 U.S.C. § 1225(b).

Here, Petitioner presented himself at a port of entry and sought admission into the United States. Wilson Decl., ¶ 3. He thus satisfies the regulatory definition of “arriving alien” and was eligible for expedited removal at the time he came to the border and sought entry into this country.⁴ *See* 8 U.S.C.

⁴ Petitioner’s claims that DHS unlawfully applied a January 24, 2025 expedited removal designation to him, including his contentions regarding impermissible retroactivity, are of no moment. *See* Pet. at ¶¶ 51, 78-81, 91-94. In the end, regardless of the January 2025 Notice, the result for Petitioner is the very same: he is an “arriving alien” subject to expedited removal. Specifically, DHS has no need to designate Petitioner as a “certain other alien[.]” eligible for expedited removal under

§ 1225(b)(1)(A)(i). Indeed, the Notice to Appear served on Petitioner on July 21, 2023 charged him as an “arriving alien.” Wilson Decl., ¶ 4; Ex. 1 at 1. And, as Congress has determined, all noncitizens subject to Section 1225(b) must be detained. *See Matter of Q. Li*, 29 I. & N. Dec. 66, 69 (BIA 2025). If a noncitizen subject to Section 1225(b)(1) indicates an intention to apply for asylum or asserts a fear of persecution, the noncitizen “shall be detained for further consideration of the application for asylum.” 8 U.S.C. § 1225(b)(1)(B)(ii).

The sole means of release from detention under the expedited removal provisions is “temporary parole from § 1225(b) detention ‘for urgent humanitarian reasons or significant public benefit,’ § 1182(d)(5)(A)[.]” *Jennings*, 583 U.S. at 283; *see id.* at 300 (observing that 8 U.S.C. §§ 1225(b)(1) and (2) “unequivocally mandate that aliens falling within their scope ‘shall’ be detained”). But the fact that Petitioner was granted temporary parole for humanitarian reasons alters neither his arriving alien status nor the result in this case. Petitioner’s parole was authorized only until April 18, 2025. Wilson Decl., ¶ 7. It terminated automatically after the expiration date.⁵ *See* 8 C.F.R. § 212.5(e)(1) (allowing for automatic

Section 1225(b)(1)(A)(iii) because he was and is eligible for expedited removal as “an alien . . . who is arriving in the United States.” *See* 8 U.S.C. § 1225(b)(1)(A)(i); *Avendano-Ramirez v. Ashcroft*, 365 F.3d 813, 819 (9th Cir. 2004) (“[Avendano-Ramirez] bases that attack on the language of § 1225(b)(1)(A)(iii), which applies to aliens other than arriving aliens. But she does not contest the fact that she was an arriving alien, and she hardly could Thus, she was covered by § 1225(b)(1)(A)(i) instead.”).

⁵ In Count Two, Petitioner asserts a claim under the Administrative Procedure Act (“APA”), alleging that his parole was revoked and he was transferred from this district without consideration of whether there has been a change to this

termination of parole without written notice “at the expiration of the time for which parole was authorized”). Parole is not regarded under the INA as “an admission of the alien,” and, upon termination of parole, “the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.” 8 U.S.C. § 1182(d)(5)(A); *see* 8 U.S.C. § 1101(a)(13)(B) (“An alien who is paroled under section 1182(d)(5) . . . shall not be considered to have been admitted.”); *Altamirano v. Gonzales*, 427 F.3d 586, 590–91 (9th Cir. 2005) (agreeing with the government that parole status under § 1182(d)(5)(A) shall not be regarded as an admission); *see also Leng May Ma v. Barber*, 357 U.S. 185, 190 (1958) (stating that “[t]he parole of aliens seeking admission is simply a device through which needless confinement is avoided . . . was never intended to affect an alien’s status,” and to hold that an alien’s parole placed him legally within the United States “is inconsistent with the congressional mandate, the administrative concept of parole, and the decisions of this Court.”). Thus, with his temporary parole having expired, Petitioner is an “arriving alien” subject to mandatory detention under 8 U.S.C. § 1225(b).

B. Petitioner’s Detention Does Not Violate the Fifth Amendment’s Due Process Clause.

Petitioner appears to allege that his due process rights are being violated because “applying for asylum in removal proceedings comes with a panoply of

individualized facts and circumstances. Pet. at ¶¶ 69-76. But Petitioner’s parole was always temporary and terminated automatically. *See* 8 C.F.R. § 212.5(e)(1).

greater protections when compared with seeking asylum in expedited removal.” Pet. at ¶ 66. But Petitioner currently remains in removal proceedings because he has reserved his right to appeal the Immigration Judge’s dismissal order, and the order is therefore not yet administratively final. See Wilson Decl., ¶¶ 8; 13; cf. 8 U.S.C. § 1101(a)(47)(B). While the administrative appeal process plays out, Petitioner remains in removal proceedings under 8 U.S.C. § 1229a, where he retains all the substantive and procedural rights attendant to those proceedings. See Wilson Decl., ¶ 13. Petitioner is, however, subject to mandatory detention under 8 U.S.C. § 1225(b). See *Matter of Q. Li*, 29 I. & N. Dec. at 68-69.

Moreover, as “an alien seeking initial admission to the United States[,]” Petitioner “requests a privilege and has no constitutional rights regarding his application[.]” *Landon v. Plasencia*, 459 U.S. 21, 32 (1982); see also *Kleindienst v. Mandel*, 408 U.S. 753, 767 (1972) (“[T]hat the formulation of these policies is entrusted exclusively to Congress has become about as firmly embedded in the legislative and judicial tissues of our *body politic* as any aspect of our government.”) (citation omitted). Moreover, Congress may “entrust[]” the “supervision of the admission of aliens into the United States” to the Executive Branch. *Nishimura Ekiu v. United States*, 142 U.S. 651, 659–60 (1892). If it does so, “the decisions of executive or administrative officers, acting within powers expressly conferred by congress, are due process of law[,]” and it “is not within the province of the judiciary” to disturb them. *Id.* at 660. The Supreme Court recently reaffirmed this principle. See *Thuraissigiam*, 591 U.S. at 138-39.

To the extent that Petitioner may be subject to an expedited removal order at some point in the future, in that “context, a petitioner’s due process rights are coextensive with the statutory rights Congress provides.” *Guerrier v. Garland*, 18 F.4th 304, 310 (9th Cir. 2021). In *Mendoza-Linares v. Garland*, the Ninth Circuit explicitly noted the Supreme Court’s decision in *Thuraissigiam* and held that “any rights [a noncitizen seeking initial entry] may have in regard to removal or admission are purely statutory in nature and are not derived from, or protected by, the Constitution’s Due Process Clause.” *Mendoza-Linares v. Garland*, 51 F.4th 1146, 1167 (9th Cir. 2022). Ultimately, “[t]he recognized liberty interests of U.S. citizens and aliens are not coextensive: the Supreme Court has ‘firmly and repeatedly endorsed the proposition that Congress may make rules as to aliens that would be unacceptable if applied to citizens.’” *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022) (citation omitted).

C. Petitioner’s Remaining Administrative Procedure Act Claim Lacks Merit.

In Count Four, Petitioner claims that the June 5, 2025 dismissal of his Notice to Appear violated 5 U.S.C. § 706(2)(A) of the APA because that dismissal was “not made in furtherance of an enumerated reason set forth in” 8 C.F.R. § 239.2(a). Pet. at ¶¶ 82-86. To begin, Petitioner does not plausibly allege facts to raise such an inference. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007) (A viable complaint must include “enough facts to state a claim to relief that is plausible on its face.”). In any event, the federal regulations allow for cancellation of a Notice to Appear and dismissal of removal proceedings without prejudice when the

“[c]ircumstances of the case have changed after the notice to appear was issued to such an extent that continuation is no longer in the best interest of the government.” 8 C.F.R. § 239.2(a)(7); *see* 8 C.F.R. § 1239.2(c). And the Immigration Judge’s dismissal order confirms, consistent with that regulatory authority, that DHS “orally moved to dismiss removal proceedings . . . in an exercise of prosecutorial discretion based on changed circumstances since the issuance of the NTA.” Wilson Decl., Ex. 2 at 1.

To the extent that Petitioner’s real complaint is that he believes DHS sought dismissal of Section 240 proceedings in order to commence the expedited removal process, “no court” has jurisdiction over that sort of claim. *See* 8 U.S.C. § 1252(g). As discussed above, in the exercise of its constitutional power to define federal court jurisdiction, Congress enacted IIRIRA, which repealed the existing scheme for judicial review of final orders of deportation and replaced it with a more restrictive scheme. *See Reno v. American-Arab Anti-Discrimination Committee (“AADC”)*, 525 U.S. 471, 474 (1999). Among the IIRIRA amendments to the INA, Congress provided that:

Except as provided in this section and notwithstanding any other provision of law, no 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 against any alien under this Act.

8 U.S.C. § 1252(g) (1996). In the 2005 REAL ID Act, Congress amended Section 1252(g) to clarify that the statute’s proscription against jurisdiction does in fact apply to habeas and mandamus actions. *See* REAL ID Act of 2005, Pub. L. No.

109-13, 119 Stat. 231, 310-11 (amending 8 U.S.C. § 1252(g)). As amended by the REAL ID Act, Section 1252(g), now provides:

Except as provided in this section and notwithstanding any other provision of law (*statutory or nonstatutory*), including section 2241 of Title 28, or any other habeas corpus provision, and *sections 1361 and 1651 of such title*, no 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 against any alien under this chapter.

8 U.S.C. § 1252(g) (2017) (emphasis added).

In *AADC*, the Supreme Court held that Section 1252(g) precludes judicial review of three discrete actions that DHS may take: the “‘decision or action’ to ‘commence proceedings, adjudicate cases, or execute removal orders[.]’” 525 U.S. at 482 (original emphasis). Here, any request for this Court to enjoin ICE’s decision to dismiss Petitioner’s recently-commenced removal proceedings under 8 U.S.C. § 1229(a) and place him instead into expedited removal proceedings under 8 U.S.C. § 1225(b) falls directly within at least one of the discrete actions precluded from judicial review. *See Sissoko v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007) (“Considering these circumstances, particularly the existence in the record of a half-completed Form I-860, we conclude that Sissoko’s detention arose from Rocha’s decision to commence expedited removal proceedings. As a result, 8 U.S.C. § 1252(g) applies[.]”); *Saadulloev v. Garland*, No. 3:23-cv-00106, 2024 WL 1076106, at *3 (W.D. Pa. Mar. 12, 2024) (“The Government’s decision to arrest [petitioner], clearly is a decision to ‘commence proceedings’ that squarely falls within the jurisdictional bar of § 1252(g).”). And, as Section 1252(g) prohibits judicial review of

“any cause or claim[,]” this provision applies to constitutional as well as statutory claims. *See Anderson, v. Moniz*, No. 21-cv-11584, 2022 WL 375231, at *4 (D. Mass. Feb. 7, 2022) (“Section 1252(g) can serve as a jurisdictional bar even when a petitioner contends that his due-process rights were violated.”); *cf. Rauda v. Jennings*, 55 F.4th 773, 777 (9th Cir. 2022) (“No matter how Matias frames it, his challenge is to the Attorney General’s exercise of his discretion to execute Matias’s removal order, which we have no jurisdiction to review.”).

CONCLUSION

For the foregoing reasons, this Court should deny the Petition in its entirety.

Dated this 12th day of June, 2025.

Respectfully submitted,

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