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18 **UNITED STATES DISTRICT COURT**
19 **FOR THE DISTRICT OF ARIZONA**

20 Samir Aghar,

21 Petitioner,

22 v.

23 Fred Figueroa, Warden, *et al.*,

24 Respondents.

Case No. 2:25-cv-03147-KML-CDB

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

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INTRODUCTION

Respondents Fred Figueroa, Warden of Eloy Detention Center; John Cantu, Phoenix Field Office Director of U.S. Citizenship and Immigration Enforcement (“USCIS”); Pamela Bondi, Attorney General; and Kristi Noem, Secretary of the Department of Homeland Security (“DHS”), in their official capacities, hereby file a return in opposition to Petitioner Samir Aghar’s Petition for a Writ of Habeas Corpus (“Petition”) filed on August 28, 2025. The Petition alleges that his detention in civil immigration custody is an illegal violation of his Fifth Amendment Due Process rights on three grounds, including (1) his detention may one day become prolonged “if his asylum proceedings should result in his being ordered removed to [Afghanistan];” (2) ICE’s alleged “failure to consider Mr. Aghar for placement with a sponsor;” and (3) “he is being denied a bond hearing before a neutral decisionmaker.” Pet. ¶¶ 20–31, ECF No. 1. However, the Court should dismiss the Petition in its entirety. Petitioner’s claim that his detention may *one day* be indefinite is unripe, ICE has considered Petitioner for the “least restrictive placement” and in any case this claim cannot be resolved by this court, and Petitioner has no constitutional right to a bond hearing. Because Petitioners’ claims fail, the Petition should be dismissed.

RELEVANT FACTS

I. Factual Background

Petitioner is a native and citizen of Afghanistan who was encountered with his younger brother by U.S. Border Patrol on October 28, 2023. Ortega Decl. ¶ 5, ECF No. 12-1. Petitioner was found inadmissible pursuant to 8 U.S.C. § 1182(a)(6)(A)(i) and placed into removal proceedings. *Id.* Because Petitioner was underage at the time, he was placed

1 in the care of the Department of Health and Human Services Office of Refugee
2 Resettlement. *Id.* ¶ 7. On April 17, 2025, Immigration and Customs Enforcement (“ICE”)
3 completed an Age-Out Review of Petitioner, determining the least restrictive placement
4 was detention in Eloy, Arizona. *Id.* ¶ 11. The review also determined the Petitioner to be a
5 danger to the community and a flight risk. *Id.* Petitioner, after he turned eighteen, was
6 brought into ICE custody under 8 C.F.R. 235.3(b)(ii) (8 U.S.C. § 1225(b)) on April 21,
7 2025, for the duration of his removal proceedings. *Id.* ¶ 13. Petitioner’s next immigration
8 court hearing is September 25, 2025, in Eloy, Arizona. *Id.* ¶ 20.

11 II. Procedural Background

12 On August 28, 2025, Petitioner Samir Aghar filed a Petition for a Writ of Habeas
13 Corpus (“Petition”), alleging that his detention in civil immigration custody is an illegal
14 violation of his Fifth Amendment Due Process rights. Pet. ¶¶ 20–31, ECF No. 1. On the
15 same date, Petitioner filed a Motion for a Preliminary Injunction and a Temporary
16 Restraining Order (“PI motion”), arguing he was likely to succeed on the merits of his
17 claim that his present detention is unlawful “because there is no significant likelihood that
18 he can be removed to Afghanistahn [sic] should he ultimately be ordered removed to that
19 country,” and seeking immediate release. ECF No. 3. Pursuant to Court order, Respondents
20 filed an opposition to the PI motion on September 8, 2025. ECF Nos. 5, 12. On September
21 11, 2025, Petitioner filed a Motion for Discovery and Extension of Time (“discovery
22 motion”) seeking production of all documents relating to his claim that ICE failed to
23 consider placing him with a sponsor and an extension of time to file a reply to the PI
24 motion. ECF No. 13. On September 12, 2025, the Court granted the discovery motion,
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1 requiring Respondents to produce “all documentation in their possession that relates to
2 petitioner’s Age-Out Review and the conclusion that he should be detained as described in
3 paragraph eleven of the declaration of Brian Ortega” by September 18, 2025. ECF No. 15.
4 Respondents sought, and the Court granted, an extension of discovery production until
5 September 25, 2025. ECF No. 19, 20. On September 24, 2025, Respondents sought an
6 unopposed stay of discovery while the arguments in this Return are pending. ECF No. 21.
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8 **III. Regulatory Background**

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10 Petitioner is detained in ICE custody pursuant to 8 U.S.C. § 1225(b) as an
11 inadmissible applicant for admission subject to mandatory detention. Ortega Decl. ¶ 13.
12 The Immigration and Nationality Act (“INA”) defines an “applicant for admission” as
13 “[a]n alien present in the United States who has not been admitted or who arrives in the
14 United States (whether or not at a designated point of arrival . . .).” 8 U.S.C. § 1225(a)(1);
15 *see also Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). The category of “arriving alien”
16 includes a person who is “an applicant for admission coming or attempting to come into
17 the United States at a port-of-entry.” 8 C.F.R. § 1001.1(q). *See also Matter of M-S-*, 27 I.
18 & N. Dec. 509, 510 (A.G. 2019).
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21 In general, “applicants for admission fall into one of two categories, those covered
22 by § 1225(b)(1) and those covered by § 1225(b)(2).” *Jennings*, 583 U.S. at 287. When the
23 “examining” official “determines that an alien seeking admission is not clearly and beyond
24 a doubt entitled to be admitted,” then that noncitizen receives proceedings under 8 U.S.C.
25 § 1229a. 8 U.S.C. § 1225(b)(2)(A). In short, Section 1229a proceedings are “full removal
26 proceedings.” *Matter of M-S-*, 27 I. & N. Dec. at 510. By contrast, aliens who meet certain
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1 qualifications qualify for “expedited removal.” *See* 8 U.S.C. § 1225(b)(2); *Matter of M-S*,
2 27 I. & N. at 509, 510. In some circumstances, ‘an immigration official may determine that
3 a noncitizen qualifies for full removal proceedings under Section 1225(b)(2), and also for
4 expedited removal proceedings under Section 1225(b)(1). When that happens, “[t]he
5 government has discretion to place noncitizens in standard removal proceedings even if the
6 expedited removal statute could be applied to them.” *Flores v. Barr*, 934 F.3d 910, 916-17
7 (9th Cir. 2019) (*citing Matter of E-R-M- & L-R-M-*, 25 I. & N. Dec. 520, 524 (BIA 2011));
8 *see also Matter of M-S-*, 27 I. & N. at 510 (stating “DHS may place him in either”).
9 Ultimately, it is the manner in which an alien arrived and the timing and location of his
10 arrest and detention, rather than the type of removal proceedings in which he may be
11 placed, that determine his status as an arriving alien under Section 1225(b). *See Dep’t of*
12 *Homeland Security v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (An alien “who tries to
13 enter the country illegally is treated as an ‘applicant for admission.’”) (quoting 8 U.S.C. §
14 1225(a)(1)); *id.* (“[A]nd an alien who is detained shortly after unlawful entry cannot be
15 said to have ‘effected an entry,’” and is in the same position as an alien seeking admission
16 at a port of entry) (quoting *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001)).

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21 Petitioner’s claim that he is detained pursuant to Section 1226(a) and not Section
22 1225(b), “because he is not now and was never in expedited removal proceedings described
23 in § 1225(b),” is incorrect. Pet. ¶ 21.c. As explained above, ICE retains discretion as to
24 whether to place an arriving alien into expedited removal proceedings or full removal
25 proceedings under Section 1229a. And in either circumstance, the alien’s detention is
26 mandatory through the course of those proceedings.
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STANDARD OF REVIEW

It is unchallenged that “[t]he 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. Allopah Servs., Inc.*, 545 U.S. 546, 552 (2005) (internal quotation 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. Title 28 U.S.C. § 2241 provides district courts with jurisdiction to hear federal habeas petitions. Habeas Corpus Rule 2(c) “provides that the petition must ‘specify all the grounds for relief available to the petitioner’ and ‘state the facts supporting each ground.’” *Mayle v. Felix*, 545 U.S. 644, 655 (2005) (quoting Rules Governing Section 2254 Cases in the United States District Court (“Habeas Rules”)); *see also James v. Borg*, 24 F.3d 20, 26 (9th Cir. 1994) (“Conclusory allegations which are not supported by a statement of specific facts do not warrant habeas relief.”). Petitioner bears the burden to prove he is entitled to the granting of the writ of habeas corpus by demonstrating that his custody violates the Constitution, laws, or treaties of the United States. *See* 28 U.S.C. § 2241(c)(3); *Lambert v. Blodgett*, 393 F.3d 943, 969 n.16 (9th Cir. 2004); *Snook v. Wood*, 89 F.3d 605, 609 (9th Cir. 1996). Where it “plainly appears from the face of the petition and any attached exhibits that the petitioner is not entitled to relief in the district court, the judge must dismiss the petition.” *Trollope v. Vaughn*, No. CV1803902JLSJDE, 2018 WL 3913922, at *2 (C.D. Cal. 2018) (citing Habeas Rules 1, 4). Similarly, “if the record refutes the applicant’s factual allegations or otherwise precludes habeas relief, a district court is not required to hold an evidentiary hearing.” *See Schriro v. Landrigan*, 550 U.S. 465, 474 (2007).

ARGUMENT

In the Petition, Petitioner claims that his Fifth Amendment Due Process rights were violated and seeks immediate release from custody because: (1) he is subject to indefinite detention; (2) he was not considered for placement in “the least restrictive setting”; and (3) he was not afforded a bond hearing. Each of Petitioner’s claims fail.

I. Petitioner’s Claim That He Is Subject To Indefinite Detention Is Unripe.

Petitioner claims he is subject to indefinite detention because there is no likelihood that he can returned to his home country of Afghanistan; however, this claim is not ripe. A claim is unripe if it rests upon “contingent future events that may not occur as anticipated, or indeed may not occur at all.” *Flaxman v. Ferguson*, No. 24-919, 2025 WL 2424420 (9th Cir. Aug. 22, 2025) (internal quotations omitted). Constitutional claims are generally ripe only if a petitioner has standing. *Id.* Article III standing requires that a plaintiff “must have (1) suffered an injury in fact (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.” *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016). “To establish injury in fact, a plaintiff must show that he or she suffered ‘an invasion of a legally protected interest’ that is ‘concrete and particularized’ and ‘actual or imminent, *not conjectural or hypothetical.*’” *Id.* at 339 (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)) (emphasis added).

Further, Petitioner fails to show how his detention violates Due Process because Section 1225(b) “mandate[s] detention of aliens throughout the completion of applicable proceedings and not just until the moment those proceedings begin.” *Jennings*, 583 U.S. at 302. This conclusion conforms with the long-running understanding that the due process

1 rights of arriving aliens are limited. *See Shaughnessy v. United States ex rel. Mezei*, 345
2 U.S. 206, 212 (1953). The Supreme Court reaffirmed this in *Thuraissigiam*, where it held
3 that “an alien at the threshold of initial entry” has no procedural due process rights “other
4 than those afforded by statute.” 591 U.S. at 107.

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6 The Ninth Circuit has continued to apply this principal to arriving aliens placed into
7 removal proceedings under 8 U.S.C. § 1225(b). *See Mendoza-Linares v. Garland*, 51 F.4th
8 1146, 1167 (9th Cir. 2022) (“any rights [Petitioner] may have in regard to removal or
9 admission are purely statutory in nature and are not derived from, or protected by, the
10 Constitution’s Due Process Clause.”). Sections 1225(b)(1) and (b)(2) “provide for
11 detention for a specified period of time,” namely “throughout the completion of applicable
12 proceedings.” *Jennings*, 583 U.S. at 299, 302; *id.* at 300 (“neither provision can reasonably
13 be read to limit detention to six months.”). And, *if* Petitioner is eventually ordered removed,
14 his detention pending removal would be mandated by a different statute: 8 U.S.C. §
15 1231(a)(2). *Kholesouvan v. Morones*, 386 F.3d 1298, 1300 (9th Cir. 2004) (“[D]uring the
16 90-day removal period . . . aliens must be held in custody.”) (citing *Zadvydas*, 533 U.S. at
17 683); *id.* at 1301 (“[T]he period of detention under § 1231(a)(2) also passes constitutional
18 scrutiny.”).

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22 Thus, Petitioner’s claim of indefinite detention is entirely hypothetical. As of the
23 date of the filing of the Petition, Petitioner has been held in immigration detention for less
24 than five months. Ortega Decl. ¶ 13. Petitioner is currently in removal proceedings and has
25 a pending application for relief from removal. *Id.* at ¶ 17, 18, 20. Furthermore, DHS, aside
26 from removing individuals to their country of citizenship or residence, has the ability to
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1 remove individuals to third party countries in circumstances when it is unable to remove
2 individuals to their country of citizenship or residence. *See* 8 U.S.C. § 1231(b)(1)(C)(iv);
3 § 1231(b)(2)(E); *Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (2025). Thus, it is
4 uncertain whether Petitioner will be ordered removed at all, much less to what country.
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6 Additionally, in his Motion, Petitioner provides no evidence to show that his *current*
7 detention is indefinite, or in violation of the Constitution, *See* Mot. at 2. Even if Petitioner
8 was arguing that his current detention is a violation, Petitioner points to no authority that
9 has found Section 1225(b) detention under a year to be unconstitutionally prolonged.
10 Petitioner merely speculates that, because the United States and Afghanistan have no
11 diplomatic ties, he will be held indefinitely in immigration detention at some future time.
12 *Id.* Ultimately, Petitioner's speculative future claim about indefinite detention, when he
13 lacks a final order of removal or the conclusion of his removal proceedings, is unripe for
14 suit and should be dismissed.
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17 **II. Petitioner Received Proper Evaluation Under 8 U.S.C. § 1232(c)(2)(B).**

18 Petitioner, solely upon information and belief, alleges that the Secretary did not
19 consider Petitioner to be eligible for placement with a sponsor prior to placing him in
20 immigration detention. Pet. ¶ 15.c. Petitioner provides no evidence that Respondents did
21 not follow proper procedures under 8 U.S.C. § 1232(c)(2)(B). Further, Petitioner's claim
22 solely revolves around alleging that Respondents followed no required *process*, not that
23 the ultimate placement is unlawful. For the below reasons, this claim fails.
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26 **A. First, Petitioner fails to prove the required process in 8 U.S.C. §** 27 **1232(c)(2)(B) was not followed.** 28

1 Petitioner's claim that Respondents failed to follow any statutory required process
2 to consider him for the "least restrictive placement" fails. Petitioner here does not appear
3 to challenge the ultimate determination, but makes the allegation that "Respondent Noem
4 was required to consider the least restrictive custody placement for Mr. Aghar once he
5 turned 18... [and] Respondent Noem's failure to consider placing Mr. Aghar with the
6 available sponsor, Matthew House, violated § 1232(c)(2)(B)." Pet. ¶¶ 26–27. This claim is
7 similar to that of a challenge of a parole determination in the criminal context, which
8 requires "each substantive parole decision [to be] the product of a carefully delineated
9 process established by Congress." *See Wallace v. Christensen*, 802 F.2d 1539, 1546 (9th
10 Cir. 1986); *cf* 8 U.S.C. § 1232(c)(2)(B) ("the Secretary shall consider placement in the least
11 restrictive setting available after taking into account the alien's danger to self, danger to
12 the community, and risk of flight"). In criminal parole cases, bare allegations that the parole
13 Commission violated its discretionary process will not succeed. *Roberts v. Corrothers*, 812
14 F.2d 1173, 1776 (9th Cir. 1987) (citing *Wallace*, 802 F.2d at 1551); *see also Brown v.*
15 *Lundgren*, 528 F.2d 1050, 1054 (5th Cir. 1976) ("challenging the decision of the board or
16 the process by which that decision was reached must show that the action of the board was
17 so unlawful as to make his custody in violation of the laws of the United States. There must
18 be a sufficient nexus between the allegedly illegal action and the legality of his custody for
19 habeas corpus to lie.") (case cited in *Wallace*, 802 F.2d at 1551).

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21 Habeas proceeding are not "meant to be a fishing expedition for habeas petitioners
22 to 'explore their case in search of its existence.'" *Rich v. Calderon*, 187 F.3d 1064, 1067
23 (9th Cir. 1999) (quoting *Calderon v. United States Dist. Ct. (Nicolaus)*, 98 F.3d 1102, 1106
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1 (9th Cir. 1996)). Here, ICE completed an Age-Out Review on April 17, 2025. Ortega Decl.

2 ¶ 11. At the conclusion of that review, ICE determined that Petitioner was a danger to the
3 community and a flight risk, and thus detention was the least restrictive placement possible.

4 *Id.* And Petitioner has presented no evidence about how this alleged failure to follow
5 process led to his ultimate alleged unlawful detention.

6
7 Petitioner makes a new allegation in his discovery motion in support of his PI
8 motion that “the government presumably possesses information that bears on whether Mr.
9 Aghar’s due-process challenge to the decision to jail him once he turned 18 years old is
10 arbitrary or capricious, *as he has alleged.*” Discovery motion at 2, ECF No. 13 (emphasis
11 added). But Petitioner makes no allegation in his habeas petition (nor in his PI motion) that
12 ICE’s decision to detain him was arbitrary and capricious. He claims only that the age-out
13 process was not followed at all. *See, e.g.,* Pet. ¶¶ 25–27: “The failure to consider Mr. Aghar
14 for placement with a sponsor as required by statute violates the Due Process Clause of the
15 Fifth Amendment.”
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18 While Petitioner describes Secretary Noem’s alleged failure to follow Section
19 1232(c)(2)(B)’s requirement to conduct the age-out review as an “arbitrary decision,” Pet.
20 ¶ 27, that is not the same as a claim that ICE’s determination *under* Section 1232(c)(2)(B)
21 that Petitioner is a flight risk and danger to the community was arbitrary, capricious, or a
22 violation of law pursuant to 5 U.S.C. § 706(2)(A). Petitioner’s late effort to challenge ICE’s
23 flight risk and danger determination is clearly not found in the habeas petition and the Court
24 should reject it for that additional reason. *Mayle*, 545 U.S. at 655 (habeas petition “must
25 ‘specify all the grounds for relief available to the petitioner’ and ‘state the facts supporting
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1 each ground.”) (citing Habeas Corpus Rule 2(c)). And Plaintiff’s allegations also go
2 against the well-tread presumption of administrative regularity. *United States v. Chem.*
3 *Found., Inc.*, 272 U.S. 1, 14 (1926); see *Nat’l Archives & Records Admin.v. Favish*, 541
4 U.S. 157, 174 (2004) (collecting cases) (“[W]here the presumption is applicable, clear
5 evidence is usually required to displace it.”). Because Petitioner only advances an
6 unsubstantiated claim that the process required of Section 1232(c)(2)(B) was not followed,
7 the sworn declaration to the contrary defeats his claim and the Court should dismiss it.
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10 **B. *Second*, the Court is foreclosed from reviewing the ultimate custody**
11 **determination because of 8 U.S.C. § 1252(a)(2)(B)(ii).**

12 Any challenge to the ultimate decision of the Secretary to place Petitioner in
13 immigration custody is unreviewable by the Court, and thus Petitioner’s claim, even if the
14 Court construes it as challenging the ultimate decision, fails. When a detained minor turns
15 18 and is transferred to the custody of the Secretary of Homeland Security, “the Secretary
16 shall consider placement in the least restrictive setting available after taking into account
17 the alien’s danger to self, danger to the community, and risk of flight.” 8 U.S.C. §
18 1232(c)(2)(B). As explained in the Ortega Declaration at ¶ 11, the Secretary did just that.
19 Because Petitioner is challenging the *process*, and not the ultimate decision, this should be
20 the end of the Court’s analysis regarding whether Petitioner received his statutory right to
21 individualized review.
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24 District courts lack jurisdiction to review “any other decision or action of the . . .
25 Secretary of Homeland Security the authority for which is specified under this subchapter
26 to be in the discretion of . . . the Secretary of Homeland Security.” 8 U.S.C.
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1 § 1252(a)(2)(B)(ii). It is clear that the ultimate placement decision is within the Secretary's
2 discretion, as long as the statutorily required process is followed. *See* 8 U.S.C. §
3 1232(c)(2)(B) ("Such aliens shall be *eligible* to participate in alternative to detention
4 programs . . . which *may* include placement of the alien with an individual or an
5 organizational sponsor, or in a supervised group home.") (emphasis added); *see also Rodas*
6 *Godinez v. United States Immigr. & Customs Enf't*, No. 2:20-CV-466 KWR/SMV, 2020
7 WL 3402059 (D.N.M. June 19, 2020) ("§ 1252(a)(2)(B)(ii) clearly bars this Court's review
8 of Respondents' discretionary decision to "consider placement in the least restrictive
9 setting."). In *Garcia Ramirez v. U.S. Immigr. & Customs Enf't*, which challenged DHS's
10 purported failure to consider individuals for the least restrictive setting, the court inferred
11 that a challenge to an individual detention decision would be unreviewable. 338 F.Supp.3d
12 1, 39 (D.D.C. 2018) ("*Garcia Ramirez I*") ("Plaintiffs do not dispute that the decisions of
13 whether and where to detain each of them are not reviewable by this Court. And Plaintiffs
14 explicitly disclaim any suggestion that they seek review of any aspect of DHS's ultimate
15 choice of placements."). This Court is thus unable to review the specific nuances of the
16 Secretary's decision to place Petitioner in custody at Eloy Detention Center.

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21 Petitioner has failed to show the process was not followed, and the Court is unable
22 to review any ultimate discretionary decision made by the Secretary. The Court should
23 dismiss Petitioner's claim that he was not considered for the "least restrictive setting."

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25 **C. Petitioner's claim is more properly brought in the *Ramirez* court.**

26 As explained above, Petitioner, in his discovery motion, makes a new claim that
27 "respondents' determination that Mr. Aghar is a flight risk and a danger . . . was arbitrary
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1 or capricious.” Discovery motion at 2. Because this new claim is seeking relief *other* than
2 immediate release from custody, such as declaratory and/or injunctive relief due to failure
3 to follow Section 1232(c)(2)(B), Petitioner must raise it in the District Court for the District
4 of Columbia because he is a Rule 23(b)(2) class member of the *Garcia Ramirez v. U.S.*
5 *Immigr. & Customs Enf’t*, No. 1:18- cv-508 (D.D.C. 2021) litigation.
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7 The *Garcia Ramirez* litigation concerned individuals who contended that ICE failed
8 to follow proper procedures under 8 U.S.C. § 1232(c)(2)(B) when determining the “least
9 restrictive placement” of individuals who turned 18 while in HHS-ORR custody. *Garcia*
10 *Ramirez I*, 338 F. Supp. at 11. The *Garcia Ramirez* court certified a Rule 23(b)(2) class as:
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12 All former unaccompanied alien children who are detained or will be detained by
13 ICE after being transferred by ORR because they have turned 18 years of age and
14 as to whom ICE did not consider placement in the least restrictive setting available,
15 including alternatives to detention programs, as required by 8 U.S.C. §
1232(c)(2)(B).

16 *Id.* at 50. This is precisely the group to which Petitioner contends he belongs. Pet. ¶¶ 25–
17 27; Discovery motion. After final judgment was entered, the *Garcia Ramirez* court issued
18 a permanent injunction requiring ICE to follow certain protocols and retained exclusive
19 jurisdiction over the injunction for five years. *Garcia Ramirez v. U.S. Immigr. & Customs*
20 *Enf’t*, 568 F. Supp. 3d 10, 36 (D.D.C. 2021) (“*Garcia Ramirez II*”). Thus, Petitioner is a
21 member of a certified Rule 23(b)(2) class seeking injunctive and/or declaratory relief for
22 which there is no opt-out requirement. *Cooper v. Fed. Rsrv. Bank of Richmond*, 467 U.S.
23 867, 874 (1984); *see also Crawford v. Honig*, 37 F.3d 485, 487 n.2 (9th Cir. 1994) (“[Rule
24 23(b)(2)] does not require notice or permit members to opt out”); *C.G.B. v. Wolf*, 464 F.
25 Supp. 3d 174, 207 (D.D.C. 2020) (holding “certification of a 23(b)(2) class precludes
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1 individual suits for the same injunctive or declaratory relief”) (citing *United States v.*
2 *Sanchez-Gomez*, 138 S. Ct. 1532, 1538 (2018)).

3 The Supreme Court noted that “the essence of habeas corpus is an attack by a person
4 in custody upon the legality of that custody.” *Thuraissigiam*, 591 U.S. at 117. In doing so,
5 the Supreme Court found that there is no habeas jurisdiction “to seek relief other than
6 immediate or earlier release from confinement.” *Id.* Accordingly, the Supreme Court held
7 that claims for relief that fall “outside the ‘core’ of habeas may not be pursued through
8 habeas.” *Id.* (citing *Skinner v. Switzer*, 562 U.S. 521, 525 (2011)). When a Petitioner’s
9 claim would not “‘necessarily spell speedier release,’” that claim does not lie at “‘the core
10 of habeas corpus,’” and must be brought, if at all, under some other mechanism. *See*
11 *Skinner*, 562 U.S. at 535 n.13 (quoting *Wilkinson v. Dotson*, 544 U.S. 74, 82 (2005)).

12 Therefore, Petitioner’s claim regarding whether the Secretary properly followed the
13 process prescribed in Section 1232(c)(2)(B) is more properly brought in the *Garcia*
14 *Ramirez* litigation, notably not a habeas case. The relief ultimately sought—for the
15 Secretary to consider Petitioner for placement with a sponsor according to Section
16 1232(c)(2)(B)—is not properly brought in habeas because it would not result in immediate
17 release. Further, permitting individual litigation regarding the injunctive relief awarded to
18 Petitioner as part of his membership in the mandatory class in *Ramirez* undermines the
19 purpose of the certified Rule 23(b)(2) class as it impacts the injunctive relief ordered to the
20 class as a whole. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 360–61 (2011). The
21 permanent injunction provides class members such as Petitioner with a mechanism to
22 resolve allegations that ICE is not in compliance with the injunction. *Garcia Ramirez II*,

1 568 F. Supp. 3d at 36 (“Plaintiffs’ counsel shall . . . monitor[] Defendants’ compliance with
2 this Order or with 8 U.S.C. § 1232(c)(2)(B), including without limitation litigating any
3 disputes relating to this Order and Defendants’ compliance with this Order or with 8 U.S.C.
4 § 1232(c)(2)(B).”). Because Petitioner fails to raise a proper habeas claim of unlawful
5 detention, and otherwise raises a claim that is already the subject of a classwide permanent
6 injunction with oversight and compliance mechanisms, the Court should dismiss the claim.
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8 **III. Petitioner Does Not Have A Constitutional Right To A Bond Hearing.**

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10 Petitioner’s claim that his Due Process rights were violated because he has been
11 denied a bond hearing fails because Petitioner, who is detained pursuant to 8 U.S.C.
12 § 1225(b), has no constitutional right to a bond hearing. Because Petitioner is held in
13 mandatory detention pursuant to 8 U.S.C. § 1225(b) pending further removal proceedings,
14 Petitioner is not entitled to a bond hearing by statute. 8 U.S.C. § 1225(b) “mandate[s]
15 detention of applicants for admission until certain proceedings have concluded.” *Jennings*,
16 583 U.S. at 297. Section 1225 does not afford Petitioner a right to a bond hearing by this
17 Court or before an immigration judge. *See Jennings*, 583 U.S. at 300 (holding that because
18 an individual detained under Section 1225(b) may be temporarily paroled under 8 U.S.C.
19 § 1182(d)(5)(A), it is “implied that there are no other circumstances under which aliens
20 detained under § 1225(b) may be released.”). Neither provision “imposes any limit on the
21 length of detention” or “says anything whatsoever about bond hearings.” *Id.* The Ninth
22 Circuit has held, by extending the logic of *Jennings*, that individuals in mandatory
23 detention prior to removal are not statutorily entitled to a bond hearing. *Avilez v. Garland*,
24 69 F.4th 525, 538 (9th Cir. 2023). The District of Arizona has also held that individuals
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1 subject to Section 1225(b) detention are not entitled to a bond hearing. *See, e.g., Ibarra-*
2 *Perez v. Howard*, 468 F. Supp. 3d 1156, 1178 (D. Ariz. 2020).

3 None of the case law to which Petitioner cites in his Petition supports the notion that
4 Petitioner, held pursuant to Section 1225(b), has a right to receive a bond hearing. Pet. ¶¶
5 28–31. This is because Petitioner has operated under the incorrect assumption that he is
6 either held pursuant to Section 1226(a) or 1231. As explained above, Petitioner is held
7 pursuant to Section 1225(b) as an inadmissible arriving alien subject to mandatory
8 detention. *See* Ortega Decl. at ¶ 13. Petitioner has no order of removal, *see id.* ¶ 20, and
9 thus cannot be held under Section 1231. Ultimately, *Jennings* clearly refutes all of
10 Petitioner’s arguments that he must receive a bond hearing. 583 U.S. at 302 (“In sum, §§
11 1225(b)(1) and (b)(2) mandate detention of aliens throughout the completion of applicable
12 proceedings....”). Therefore, Petitioner’s claim that the denial of a bond hearing is a
13 violation of his Due Process rights should be dismissed.
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17 **IV. There Is No Need For An Evidentiary Hearing.**

18 An evidentiary hearing on the Petition is unnecessary and Petitioner’s request for
19 the Court to “convene an evidentiary hearing” should be denied. *See* Pet. ¶ 32.d. A district
20 court has the discretion whether to hold such a hearing, and “if the record refutes the
21 applicant’s factual allegations or otherwise precludes habeas relief, a district court is *not*
22 required to hold an evidentiary hearing.” *Schriro*, 550 U.S. at 474 (emphasis added); *see*
23 *also Gwen v. Mascher*, No. CV208327PCTJATJFM, 2022 WL 19977288 at *1 (D. Ariz.
24 Feb. 4, 2022) (denying a request for an evidentiary hearing because Petitioner failed to
25 identify specific factual issues that could be resolved by discovery and to “proffer any
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evidence to be adduced” at the hearing). Here, the record can properly resolve the Petition. Respondents maintain that Petitioner has failed to establish that any of Respondents’ alleged acts have violated the Fifth Amendment. *See supra* §§ I–III. Like the petitioner in *Gwen*, Petitioner has not established a sound argument about what discoverable evidence could be produced at an evidentiary hearing, or how that evidence would help resolve his unsubstantiated claims. Thus, there is no need for an evidentiary hearing on this Petition.

V. The Court Should Grant The Stay Of Discovery Until It Resolves The Arguments Brought Forth In This Return.

This Court should grant the Unopposed Motion for Stay Of Discovery until it is able to resolve the arguments presented in *supra* § II.A-C in opposition of the Petition. Sections II.B and C specifically bring arguments that this Court is foreclosed from having jurisdiction over the claim and any related discovery. As noted in Respondents Unopposed Motion for Stay of Discovery, when there is a jurisdictional issue, a court has discretion to stay discovery pending resolution. *See In re Netflix Antitrust Litig.*, 506 F. Supp. 2d 308, 321 (N.D. Cal. 2007) (citing *Jarvis v. Regan*, 833 F.2d 149, 155 (9th Cir.1987)) (“District courts have broad discretion to stay discovery pending the resolution of a potentially dispositive motion”). Respondents contacted Petitioner’s counsel, who affirmed that Petitioner has no objection to a stay of discovery to allow for resolution of the Court’s jurisdiction over this Petition.

CONCLUSION

For the foregoing reasons, the Court should deny the Petition and stay its discovery order pending a decision on the Petition.

1 DATED this 24th day of September 2025.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing document on September 24, 2025 on the Electronic Case Filing (ECF) System, which will send notification of such filing to all counsel of record.

Respectfully submitted,

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