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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

MARLON JUVENAL CHAVEZ MERCHAN,

Petitioner,

v.

WARDEN, OTAY MESA DETENTION CENTER; *et al.*,

Respondents.

Case No. 26-cv-03075-LL-GC

RETURN TO PETITION FOR WRIT OF HABEAS CORPUS

I. INTRODUCTION

Petitioner requests that this Court order his release from Immigration and Customs Enforcement (ICE) custody, or in the alternative, order a bond hearing. However, as Petitioner's claims are direct and indirect challenges to his expedited removal proceedings, jurisdiction over his claims is barred under 8 U.S.C. § 1252(a)(2)(A), § 1252(e), and § 1252(g). Moreover, Petitioner's detention is mandated by 8 U.S.C. § 1225(b)(1) until the conclusion of his removal proceedings. Respondents respectfully request that the Court deny Petitioner's requests for relief.

II. BACKGROUND

Petitioner is a native and citizen of Ecuador, who originally entered the United States without inspection on February 25, 2024 near the El Paso, Texas port of entry. *See* Exhibit 1 (Form I-213).[1] At that time, Petitioner was detained by Immigration and Customs Enforcement (ICE). On February 27, 2024, Petitioner was issued a Notice to Appear (NTA) and released on his own recognizance. *See* Exhibit 2 (Notice to Appear and Order of Release on Recognizance). On January 30, 2026, an immigration judge granted Petitioner's application for voluntary departure, in lieu of removal, to occur on or before February 28, 2026. *See* Exhibit 3 (Order of the Immigration Judge).

On May 9, 2026, Petitioner was re-encountered and detained by ICE after entering the United States without inspection near Tecate, California. *See* Exhibit 4 (Notice and Order of Expedited Removal). Petitioner was determined to be inadmissible under 8 U.S.C. § 1182(a)(7)(A)(i)(I), an immigrant who at the time of application for admission was not in possession of any valid entry documents. *Id.* Petitioner was issued a Notice and Order of Expedited Removal pursuant to 8 U.S.C. 1225(b)(1). *Id.* At that time, Petitioner expressed no fear of returning to Ecuador. *See* Exhibit 5 (Record of Sworn Statement in Proceedings). ICE therefore placed Petitioner into custody pursuant to 8 U.S.C. § 1231(a). On May 19, 2026, Petitioner claimed to have a fear of returning to Ecuador. On June 2, 2026, Petitioner was interviewed by an asylum officer, finding no credible fear. *See* Exhibit 6 (Record of Negative Credible Fear Finding). Petitioner requested an immigration judge to review the negative credible fear determination. *See id.* As such, Petitioner's removal proceedings are still pending and he remains mandatorily detained under 8 U.S.C. 1225(b)(1).

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[1] The attached exhibits are true copies, with redactions of private information, of documents obtained from Immigration and Customs Enforcement (ICE) counsel. Other facts have been obtained from ICE counsel.

III. ARGUMENT

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

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

In general, courts lack jurisdiction to review a decision to commence or adjudicate removal proceedings or execute removal orders. *See* 8 U.S.C. § 1252(g) ("[N]o 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."); *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999) ("There was good reason for Congress to focus special attention upon, and make special provision for, judicial review of the Attorney General's discrete acts of "commenc[ing] proceedings, adjudicat[ing] cases, [and] execut[ing] removal orders"—which represent the initiation or prosecution of various stages in the deportation process."); *Limpin v. United States*, 828 Fed. App'x 429 (9th Cir. 2020) (holding district court properly dismissed under 8 U.S.C. § 1252(g) "because claims stemming from the decision to arrest and detain an alien at the commencement of removal proceedings are not within any court's jurisdiction").

Moreover, "[s]ection 1252(a)(2)(A) is a jurisdiction-stripping and channeling provision, which bars review of almost 'every aspect of the expedited removal process.'" *Azimov v. U.S. Dep't of Homeland Sec.*, No. 22-56034, 2024 WL 687442, at *1 (9th Cir. Feb. 20, 2024) (quoting *Mendoza-Linares v. Garland*, 51 F.4th 1146, 1154 (9th Cir. 2022) (describing the operation of § 1252(a)(2)(A)). These jurisdiction-stripping provisions cover "the 'procedures and policies' that have been adopted to 'implement' the expedited removal process; the decision to 'invoke' that process in a

particular case; the 'application' of that process to a particular alien; and the 'implementation' and 'operation' of any expedited removal order." *Mendoza-Lineras*, 51 F.4th at 1155. "Congress chose to strictly cabin this court's jurisdiction to review expedited removal orders." *Guerrier v. Garland*, 18 F.4th 304, 313 (9th Cir. 2021) (finding that the Supreme Court abrogated any "colorable constitutional claims" exception to the limits placed by § 1252(a)(2)(A)); *see Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020) (holding that limitations within § 1252(a)(2)(A) do not violate the Suspension Clause). "Congress has chosen to explicitly bar nearly all judicial review of expedited removal orders concerning such aliens, including 'review of constitutional claims or questions of law.'" *Mendoza-Linares*, 51 F.4th at 1148 (citing 8 U.S.C. § 1252(a)(2)(A), (D)); *see Dept' of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 138-39 (2020) (explicitly rejecting Ninth Circuit's holding that an arriving alien has a "constitutional right to expedited removal proceedings that conform to the dictates of due process").

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

> (2) Matters not subject to judicial review
> (A) Review relating to section 1225(b)(1)
> 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 review-
> (i) except as provided in subsection (e), any individual determination or to entertain any other cause or claim arising from or relating to the implementation or operation of an order of removal pursuant to section 1225(b)(1) of this title,
> (ii) except as provided in subsection (e), a decision by the Attorney General to invoke the provisions of such section,
> (iii) the application of such section to individual aliens, including the determination made under section 1225(b)(1)(B) of this title, or

> (iv) except as provided in subsection (e), procedures and policies adopted by the Attorney General to implement the provisions of section 1225(b)(1) of this title.

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

In setting forth provisions for judicial review of § 1225(b)(1) expedited removal orders, Congress expressly limited available relief: "Without regard to the nature of the action or claim and without regard to the identity of the party or parties bringing the action, no court may" "enter declaratory, injunctive, other equitable relief in any action pertaining to an order to exclude an alien in accordance with section § 1225(b)(1) of this title except as specifically authorized in a subsequent paragraph of this subsection." 8 U.S.C. § 1252(e)(1)(A). Congress delineated two limited avenues for judicial review

concerning expedited removal orders: (1) narrow habeas corpus proceedings under § 1252(e)(2); and (2) challenges to the validity of the system under § 1252(e)(3). Any permissible challenge to the validity of the system "is available [only] in an action in the United States District Court for the District of Columbia . . . ." 8 U.S.C. § 1252(e)(3).

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

None of the three narrow avenues for habeas relief apply here. Petitioner concedes that he is a noncitizen. *See* ECF No. 1 at 2; Exhibit 5. Petitioner also does not assert that he has been granted status as a lawful permanent resident, refugee, or asylee. *See id.* Moreover, Petitioner's claim of ineffective assistance of counsel pertains to his representation during his removal proceedings. *See* ECF No. 1 at 3. Each of Petitioner's claims fall outside the limited habeas corpus authority provided within § 1252(e)(2).

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

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B. Petitioner's Due Process Claims Fail on the Merits.

Even assuming the Court has jurisdiction over his petition, Petitioner's Fifth Amendment due process claims fail. Petitioner contends that his "[c]ontinued detention without a meaningful individualized bond hearing is excessive and constitutionally defective." ECF No. 1 at 3. But the only due process rights he has are those rights statutorily afforded by Congress. *See Thuraissigiam*, 591 U.S. at 139 (collecting cases); 8 U.S.C. § 1225(b)(1)(B)(iii)(IV); *Landon v. Plasencia*, 459 U.S. 21, 32 (1982) ("This Court has long held that an alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application, for the power to admit or exclude aliens is a sovereign prerogative.") (citations omitted); *see generally I.N.S. v. Lopez-Mendoza*, 468 U.S. 1032, 1038 (1984) ("Consistent with the civil nature of the proceeding, various protections that apply in the context of a criminal trial do not apply in a deportation hearing.").

In *Jennings v. Rodriguez*, 583 U.S. 281, 296–303 (2018), The Supreme Court has evaluated the proper interpretation of 8 U.S.C. § 1225(b) and has stated that "[r]ead most naturally, [8 U.S.C.] §§ 1225(b)(1) and (b)(2) . . . mandate detention of applicants for admission until certain proceedings have concluded." *Id.* at 297. The Supreme Court noted that neither 8 U.S.C. § 1225(b)(1) nor § 1225(b)(2) "impose[] any limit on the length of detention" and "neither § 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 *Thuraissigiam*, the Supreme Court once again addressed the due process rights of inadmissible arriving noncitizens and stated that such individuals have no due process rights "other than those afforded by statute." *Id.* at 107; *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*, 459 U.S. at 32). "[I]n the expedited removal context, a petitioner's due process rights are coextensive with the statutory rights Congress provides." *Guerrier*, 18 F.4th at 310; *see also Mendoza-Linares*, 51 F.4th at 1149 ("Because Congress has clearly and unambiguously precluded us from asserting jurisdiction over the merits of individual expedited removal orders, even with regard to constitutional challenges to such orders, and because that prohibition on jurisdiction raises no constitutional difficulty, we conclude that we lack jurisdiction over Mendoza-Linares's petition."); *Rauda v. Jennings*, 8 F.4th 1050, 1058 (9th Cir. 2021) ("Congress has already balanced the amount of due process available to petitioners with the executive's prerogative to remove individuals, and we decline to expand judicial review beyond the parameters set by Congress."); *Mendoza-Linares v. Garland*, No. 21-cv-1169-BEN (AHG), 2024 WL 3316306, at *2 (S.D. Cal. June 10, 2024) ("[T]he Court finds that Petitioner has no Fifth Amendment right to a bond hearing pending his removal proceedings. The only due process due an alien seeking admission to the United States is 'those rights regarding admission that Congress has provided by statute.'" (quoting *Thuraissigiam*, 591 U.S. at 140); *Zelaya-Gonzalez v. Matuszewski*, No. 23-CV-151 JLS (KSC), 2023 WL 3103811, at *4 (S.D. Cal. Apr. 25, 2023) ("Binding Ninth Circuit and Supreme Court precedents are clear that Petitioner lacks any rights beyond those conferred by statute, and no statute entitles Petitioner to a bond hearing.").

As Petitioner is detained pursuant to 8 U.S.C. § 1225(b)(1)(B)(iii)(IV), which does not afford a right to a determination by this Court as to whether his release is warranted nor a right to a bond hearing before an immigration judge, the Court should 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 107, 140; *Mezei*, 345 U.S. at 212; *Guerrier*, 18 F.4th at 310.

IV. CONCLUSION

For the reasons stated herein, Respondents respectfully request the Court dismiss this petition.

DATED: June 5, 2026

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