BILAL A. ESSAYLI
Acting United States Attorney
DAVID M. HARRIS
Assistant United States Attorney
Chief, Civil Division
DANIEL A. BECK
Assistant United States Attorney
Chief, Complex and Defensive Litigation Section
YUJIN CHUN (Cal. Bar No. 306298)
Assistant United States Attorney
Federal Building, Suite 7516
300 North Los Angeles Street
Los Angeles, California 90012
Telephone: (213) 894-0929
Facsimile: (213) 894-7819
E-mail: Yujin.Chun@usdoj.gov

Attorneys for Federal Respondents
Kristi Noem, et al.

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

OMID DELKASH,

Petitioner,

v.

KRISTI NOEM, Secretary of the Department of Homeland Security; et. al,

Respondents.

No. 5:25-cv-01675-HDV-AGR

FEDERAL RESPONDENTS' RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

[*Filed concurrently with* Declaration of Lourdes Palacios]

Honorable Hernán D. Vera
United States District Judge

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

As discussed in Respondent's prior filings, Petitioner Omid Delkash was repeatedly convicted of felonies including burglary, forgery, and possession of controlled substance without prescription, and in 1998, was charged as deportable. And even as removal proceedings were happening, Petitioner was convicted of more felony offenses. Petitioner was ordered removed, although his removal to Iran was withheld.

Petitioner was not detained or removed at the time of the removal order, and he continued to engage in more criminal acts. Petitioner was convicted of multiple misdemeanors including battery of former spouse, spousal battery, reckless driving, and public fighting from 2001 to 2018. He was convicted for driving while his license was suspended, and in 2018 served jail time for selling controlled substances without a permit and destroying or concealing evidence thereof. Most recently, on April 23, 2025, Petitioner was arrested for violation of a domestic violence restraining order. Based on these circumstances, Respondent re-detained Petitioner.

This Court issued a preliminary injunction ordering Petitioner's release. However, this does not change the fact that Petitioner is deportable and can be removed, nor the fact that Respondent has the authority to detain him pending removal. The Petition, indeed, cites no authority that would allow Petitioner to forever avoid detention and removal, in light of the Notice of Removal which Petitioner did not appeal.

II. STATEMENT OF FACTS

Petitioner Delkash is a native and citizen of Iran. Declaration of Lourdes Palacios ("Palacios Decl."), ¶ 4. He was adjusted to lawful permanent resident in 1988. *Id.*

On August 8, 1990, Petitioner was convicted for the offense of Forgery. *Id.*, ¶ 5. On October 3, 1996, Petitioner was again convicted for felony offenses: Three counts of Possession of Completed Check with Intent to Defraud, in violation of CPC §475(a) with a three-year sentence on one count and an eight-month sentence for each remaining count; Burglary, in violation of CPC §§459/460(b)/461.2; Two counts of Burglary, 2nd degree,

in violation of CPC §459; and Receiving Stolen Property, in violation of CPC §496(a) with an eight-month sentence. *Id.*, ¶ 6. Then, on December 20, 1996, Petitioner was convicted for even more felony offenses: Fictitious Drivers License to Facilitate Forgery, in violation of CPC §470a with a three-year sentence; Acquire the Access Code of Another with Intent to Use it Fraudulently, in violation of CPC §484e; Forge Name: Access Card etc., in violation of CPC §484f(2) with an eight-month sentence; and Fraudulent Use of Another's Access Card, in violation of CPC §484g with an eight-month sentence. *Id.*, ¶ 7. Later on August 7, 1996, Petitioner was convicted of the offense of Possession of Controlled Substance without Prescription. *Id.*, ¶ 8.

On May 6, 1998, the former Immigration and Naturalization Service (INS) issued a Notice to Appear (NTA) and served it on Petitioner. *Id.*, ¶ 9. Petitioner was charged as being deportable under INA §§ 237(a)(2)(A)(ii); 237(a)(2)(A)(iii) to wit, 101(a)(43)(F), (G), and (R); and 237(a)(2)(B)(i). *Id.* While in these removal proceedings, Petitioner was convicted of even more crimes in May 1996. Under Case # 98CF2726 he was convicted of the felony offense of Attempted Possession of a Narcotic Controlled Substance (Cocaine), with a sentence of one year in prison. *Id.*, ¶ 10. Under Case # 99HF0330 he was convicted and received two years for Unlawful Taking of Vehicle and Evading While Driving Recklessly. *Id.*, ¶ 11. Under Case # 99HF0371 Petitioner was convicted of the following felony offenses with a term of two years sentence each: Two counts of Forgery and Two counts of Burglary, 2nd Degree – Commercial Structure. *Id.*, ¶ 12.

On January 17, 2001, the immigration judge ordered Petitioner removed but withheld his removal to Iran under INA Section 241(b)(3) (Withholding of Removal). *Id.*, ¶ 13. Petitioner did not appeal the decision. *Id.*

Following the order of removal, Petitioner continued his criminal activities. On July 30, 2001, Petitioner was convicted of the misdemeanor offense of Permit Alcohol Consumption After Hours. *Id.*, ¶ 15. On April 22, 2004, Petitioner was convicted of the misdemeanor of Battery: Non-cohabitant Former Spouse. *Id.*, ¶ 16. On October 4, 2005 Petitioner was convicted of the misdemeanor offense of Fight/Challenge Fight Public

Place. *Id.*, ¶ 17. On November 13, 2006, Petitioner was convicted of the misdemeanor offense of Driving While License Suspended. *Id.*, ¶ 18. On December 14, 2006, Petitioner was convicted of misdemeanor again, of Spousal battery and Damage/Use/Etc Power Lines. *Id.*, ¶ 19. Petitioner further committed probation violations and/or sentence modifications and/or probation extensions in 2008, 2010, and 2011 for these misdemeanors. *Id.* On August 25, 2008, Petitioner was convicted of the misdemeanor offense of Driving While License Suspended. *Id.*, ¶ 20.

On August 13, 2010, Petitioner was convicted of the misdemeanor of Reckless Driving: Highway. *Id.*, ¶ 21. On August 15, 2013, Petitioner was convicted of the misdemeanor offense of Driving While License Suspended. *Id.*, ¶ 22. On September 26, 2018, Petitioner was convicted for the misdemeanor offense of Infliction of Corporal Injury. *Id.*, ¶ 23. In a separate case on September 26, 2018, Petitioner was convicted for the following misdemeanor offenses with a sentence of 18 days in jail: Five counts of Transportation/Sale/Furnishing Marijuana, Maintaining Place for Selling or Using Controlled Substance; Possession of Marijuana for Sale; Doing Business without Valid License; Destroying or Concealing Evidence; and Engaging in Business as a Seller Without Permit. *Id.*, ¶ 24.

On or about April 23, 2025 Petitioner was arrested for violation of a Domestic Violence Restraining Order. *Id.*, ¶ 25. Based on Petitioner's lengthy history of arrests and criminal convictions, and the immigration judge's order of removal, ICE determined that Petitioner was subject to arrest. *Id.*, ¶ 26. Petitioner was advised that there was an arrest warrant for Petitioner for violation of immigration law, and arrested on June 24, 2025. *Id.*, ¶ 31.

The Court granted Petitioner's request for a preliminary injunction on August 28, 2025 and ordered Petitioner released. *See* Dkt. 18.

I. ARGUMENT

A. The Government is Authorized to Arrest and Detain Non-Citizens in Connection with Removal Proceedings and Following Removal Orders

1. Pre-Removal Order Arrest and Detention

8 U.S.C. § 1226 provides for arrest and detention of non-citizens "pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). Under § 1226(a), the government may detain a non-citizen during his removal proceedings, release him on bond, or release him on conditional parole. By regulation, immigration officers can release a non-citizen if the non-citizen demonstrates that he "would not pose a danger to property or persons" and "is likely to appear for any future proceeding." 8 C.F.R. § 236.1(c)(8). A non-citizen can also request a custody redetermination (i.e., a bond hearing) by an IJ at any time before a final order of removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1), 1003.19.

Non-citizens may also be detained pursuant to 8 U.S.C. § 1225, which applies to "applicants for admission," who are defined as "alien[s] present in the United States who [have] not been admitted" or "who arrive[] in the United States." 8 U.S.C. § 1225(a)(1). Applicants for admission "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

Section 1225(b)(1) applies to arriving non-citizens and "certain other" non-citizens "initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation." *Id.*; 8 U.S.C. § 1225(b)(1)(A)(i), (iii). These non-citizens are generally subject to expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(A)(i). But if the non-citizen "indicates an intention to apply for asylum . . . or a fear of persecution," immigration officers will refer the non-citizen for a credible fear interview. *Id.* § 1225(b)(1)(A)(ii). A non-citizen "with a credible fear of persecution" is "detained for further consideration of the application for asylum." Id. § 1225(b)(1)(B)(ii). If the non-citizen does not indicate an intent to apply for asylum, express a fear of persecution, or is "found not to have such a fear," he is detained until removed. *Id.* §§ 1225(b)(1)(A)(i),

(B)(iii)(IV).

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

2. Detention Following a Final Order of Removal

When a non-citizen receives a final removal order, their detention is mandatory for the following 90 days. 8 U.S.C. § 1231(a)(2). After that time, detention is within ICE's discretion under 8 U.S.C. § 1231(a)(6). Furthermore, when a valid removal order is issued and a non-citizen is released under an order of supervision, the government is authorized to revoke supervised release pursuant to 8 C.F.R. § 241.1(l)(1), and 8 CFR § 241.4(l)(2).

Here, however, as the Petition acknowledges, there was no supervised release. There was no order of supervision to revoke, and thus, the requirements that apply to release revocation procedures are not applicable. The parties do not dispute that Petitioner was ordered removed but simply not detained 24 years ago. The fact that he was not detained at the time—and that this failure to detain him resulted in decades more of criminal activities—does not negate the fact that he *is* subject to removal. Indeed, "Petitioner does not dispute that, if certain conditions are present, he is subject to removal to a third country." Petition at 13. Rather, Petitioner argues that no authority "mandates"

re-detention after the "removal period expired" which he contends began on January 19, 2001. But the government is not acting upon a mandate, but simply within its authority to act, pursuant to 8 C.F.R. § 241.2 and 8 CFR § 241.4. Detention after the first 90 days have passed is within ICE's discretion under 8 U.S.C. § 1231(a)(6).

Detention for six months pursuant to a final removal order is presumptively valid. *See Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). After that amount of detention time, a noncitizen may bring a habeas petition seeking release, and it is his burden to show "there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* The law does not require that "every [noncitizen] not removed must be released after six months." *Id.* Instead, it prevents only "indefinite" or "potentially permanent" detention. *Id.* at 689-91. Here, Petitioner has not been, and does not contend that he was, detained for six months.

B. The Government May Remove Petitioner Pursuant to the Order of Removal

1. 8 U.S.C. § 1252(g) and 8 U.S.C. § 1252(b)(9) Strip the Court of Jurisdiction over this Petition

A federal court generally may not rule on the merits of a case without first determining that it has jurisdiction. *Sinochem Int'l Co. v. Malaysia Int'l Shipping Corp.*, 549 U.S. 422, 430-31 (2007). "The limits upon federal jurisdiction, whether imposed by the Constitution or by Congress, must be neither disregarded nor evaded." *Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 374 (1978). In general, a district court may exercise jurisdiction over a § 2241 habeas petition when the petitioner is in custody and alleges that the custody violates the Constitution, laws, or treaties of the United States. 28 U.S.C. § 2241(c); *Maleng v. Cook*, 490 U.S. 488, 490 (1989). However, that jurisdiction is constrained in immigration contexts by two specific statutes. First, 8 U.S.C. § 1252(g) provides that:

> [e]xcept 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.

"When asking if a claim is barred by § 1252(g), courts must focus on the action being challenged." *Canal A Media Holding, LLC v. U.S. Citizenship & Imm. Servs.*, 964 F.3d 1250, 1257-58 (11th Cir. 2020).

Section 1252(g) applies "to three discrete actions[:] . . . [the] 'decision or action' to 'commence proceedings, adjudicate cases, or execute removal orders.'" *Reno v. American-Arab Anti-Discrimination Comm.* ("AADC"), 525 U.S. 471, 482 (1999) (emphasis in original); *Rauda v. Jennings*, 55 F.4th 773, 777 (9th Cir. 2022) (§ 1252(g) precludes judicial review of execution of removal order). Thus, to the extent Petitioner's generic claims challenge these decisions, § 1252(g) renders this Court without jurisdiction to hear his habeas claims. *See Eliazar G.C. v. Wolford*, 2025 WL 1124688, at *3 (E.D. Cal. Apr. 16, 2025) (no habeas jurisdiction over habeas petition seeking to stay execution of removal order); *Aransiola v. Warden, FCI Victorville Medium*, 2025 WL 576591, at *6 (C.D. Cal. Jan. 22, 2025) (no habeas jurisdiction to challenge commencement of removal proceedings).

Second, under § 1252(b)(9), "judicial review of all questions of law . . . including interpretation and application of statutory provisions . . . arising from any action taken . . . to remove an alien from the United States" is only proper before the appropriate federal court of appeals in the form of a petition for review of a final removal order. *See* 8 U.S.C. § 1252(b)(9); *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999). Section 1252(b)(9) is an "unmistakable 'zipper' clause" that "channels judicial review of all [claims arising from deportation proceedings]" to a court of appeals in the first instance. *Id.*; *see Lopez v. Barr*, No. CV 20-1330 (JRT/BRT), 2021 WL 195523, at *2 (D. Minn. Jan. 20, 2021) (citing *Nasrallah v. Barr*, 590 U.S. 573, 579–80 (2020)).

Moreover, § 1252(a)(5) provides that a petition for review is the exclusive means for judicial review of removal proceedings:

> Notwithstanding any other provision of law (statutory or nonstatutory), . . . a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision of this chapter, except as provided in subsection (e) [concerning aliens not admitted to the United States].

8 U.S.C. § 1252(a)(5). "Taken together, § 1252(a)(5) and § 1252(b)(9) mean that *any* issue—whether legal or factual—arising from *any* removal-related activity can be reviewed *only* through the [petition-for-review] process." *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (emphasis in original); *see id.* at 1035 ("§§ 1252(a)(5) and [(b)(9)] channel review of all claims, including policies-and-practices challenges . . . whenever they 'arise from' removal proceedings"); *accord Ruiz v. Mukasey*, 552 F.3d 269, 274 n.3 (2d Cir. 2009) (only when the action is "unrelated to any removal action or proceeding" is it within the district court's jurisdiction); *cf. Xiao Ji Chen v. U.S. Dep't of Justice*, 434 F.3d 144, 151 n.3 (2d Cir. 2006) (a "primary effect" of the REAL ID Act is to "limit all aliens to one bite of the apple" (internal quotation marks omitted)).

Critically, "[§] 1252(b)(9) is a judicial channeling provision, not a claim-barring one." *Aguilar v. ICE*, 510 F.3d 1, 11 (1st Cir. 2007). Indeed, 8 U.S.C. § 1252(a)(2)(D) provides that "[n]othing . . . in any other provision of this chapter . . . shall be construed as precluding review of constitutional claims or questions of law raised upon a petition for review filed with an appropriate court of appeals in accordance with this section." *See also Ajlani v. Chertoff*, 545 F.3d 229, 235 (2d Cir. 2008) ("[J]urisdiction to review such claims is vested exclusively in the courts of appeals[.]"). The petition-for-review process before the court of appeals ensures that non-citizens have a proper forum for claims arising from their immigration proceedings and "receive their day in court." *J.E.F.M.*, 837 F.3d at 1031–32 (internal quotations omitted); *see also Rosario v. Holder*, 627 F.3d 58, 61 (2d

Cir. 2010) ("The REAL ID Act of 2005 amended the [INA] to obviate . . . Suspension Clause concerns" by permitting judicial review of "nondiscretionary" BIA determinations and "all constitutional claims or questions of law.").

In evaluating the reach of subsections (a)(5) and (b)(9), the Second Circuit explained that jurisdiction turns on the substance of the relief sought. *Delgado v. Quarantillo*, 643 F.3d 52, 55 (2d Cir. 2011). Those provisions divest district courts of jurisdiction to review both direct and indirect challenges to removal orders, including decisions to detain for purposes of removal or for proceedings. *See Jennings*, 583 U.S. at 294–95 (section 1252(b)(9) includes challenges to the "decision to detain [a non-citizen] in the first place or to seek removal[.]").

While holding that it was unnecessary to comprehensively address the scope of § 1252(b)(9), the Supreme Court in *Jennings* also provided guidance on the types of challenges that may fall within the scope of § 1252(b)(9). *See Jennings*, 583 U.S. at 293–94. The Court found that "§1252(b)(9) [did] not present a jurisdictional bar" in situations where "respondents . . . [were] not challenging the decision to detain them in the first place." *Id.* at 294–95. Here, Petitioner *does* challenge DHS's decision to detain them in the first instance. Insofar as Petitioner seeks to effectively block Petitioner's future re-arrest and detention pursuant to removal proceedings—as distinct from any claim challenging the length of post-removal order detention under *Zadvydas*—those claims are precluded by 8 U.S.C. § 1252(g) and § 1252(b)(9).

2. Petitioner's Claim Is Unripe

As Petitioner acknowledges, his removal was previously withheld with respect to Iran only. Pursuant to his current detention and final removal order, Petitioner may be removed to a third country that is not Iran. Petitioner states that he fears that he will not be given *any* notice about such a third country, per an online article from a non-government website, and argues that he has due process rights relative to getting notice for that, but at the same time has confirmed that ICE indicated to his counsel that Petitioner has not been given notice *because* the third country has not yet been identified.

This speculation about lack of notice in the future makes his claim unripe—in addition to, again, not being relief he can seek via a habeas petition. Much less would insufficient notice establish that being freed from detention or barring removal would be the appropriate remedy. To the contrary, that would be barred by Section 1252(g).

II. CONCLUSION

For all the above reasons, the Respondents respectfully request that the Court deny the habeas petition.

Respectfully submitted,

Dated: September 22, 2025

BILAL A. ESSAYLI
United States Attorney
DAVID M. HARRIS
Assistant United States Attorney
Chief, Civil Division
DANIEL A. BECK
Assistant United States Attorney
Chief, Complex and Defensive Litigation Section

/s/ Yujin Chun
YUJIN CHUN
Assistant United States Attorney

Attorneys for Respondents
Kristi Noem, et al.

CERTIFICATE OF COMPLIANCE WITH L.R. 11-6.2

The undersigned, counsel of record for the Respondents, certifies that the memorandum of points and authorities complies with the word limit of L.R. 11-6.1.

Dated: September 22, 2025

Respectfully submitted,

BILAL A. ESSAYLI
United States Attorney
DAVID M. HARRIS
Assistant United States Attorney
Chief, Civil Division
DANIEL A. BECK
Assistant United States Attorney
Chief, Complex and Defensive Litigation Section

/s/ Yujin Chun
YUJIN CHUN
Assistant United States Attorney

Attorneys for Respondents
Kristi Noem, et al.