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10 UNITED STATES DISTRICT COURT  
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
12

13 GUILHERME SOUZA-QUINO,

14 Petitioner,

15 v.

16 DEPARTMENT OF HOMELAND  
SECURITY,

17 Respondent.  
18

Case No. 5:25-cv-01661-KK-AS

**NOTICE OF MOTION AND MOTION  
TO DISMISS PETITION FOR WRIT  
OF HABEAS CORPUS**

Filed Concurrently with the Declaration of  
Rogelio Torres and (Proposed) Order

Honorable Alka Sagar  
United States Magistrate Judge

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1 **NOTICE OF MOTION AND MOTION TO DISMISS**

2 Respondent Department of Homeland Security (“Respondent”) hereby moves to  
3 dismiss the Petition for a Writ of Habeas Corpus under Fed. R. Civ. P. 12(b)(6) on the  
4 ground that Petitioner Guilherme Souza Quino (“Petitioner”) fails to state a claim for  
5 habeas relief. This motion is made before the Honorable Alka Sagar, United States  
6 Magistrate Judge. This motion is made in accordance with the Court’s Order Requiring  
7 Return to Petition for Writ of Habeas Corpus. *See Dkt. 6.*

8 This motion is made upon this Notice, the attached Memorandum of Points and  
9 Authorities, Declaration of Rogelio Torres, and all pleadings, records, and other  
10 documents on file with the Court in this action.

11 The parties are exempt from compliance with Local Rule 7-3. *See* L.R. 16-12(a).

12  
13 Dated: September 11, 2025

Respectfully submitted,

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19 /s/ Julian J. Xu  
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21 Attorneys for Respondent  
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Petitioner filed his Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241  
4 requesting immediate release from immigration detention at the Adelanto Immigration  
5 Processing Center. Respondent respectfully requests that the Court deny the Petition  
6 because: (1) Petitioner’s detention by Immigration and Customs Enforcement pending  
7 removal is authorized by statute; (2) this Court lacks jurisdiction over the Petition to the  
8 extent it seeks to review ICE’s decisions to arrest, detain, and remove Petitioner; (3) the  
9 Petition fails to allege any specific factual basis for habeas relief, violating the habeas  
10 pleading standard; and (4) the Petition fails to name the correct respondent.

11 **II. STATEMENT OF FACTS**

12 Petitioner is a native and citizen of Brazil. Declaration of Rogelio Torres (“Torres  
13 Decl.”) ¶ 4. Petitioner was encountered by Border Patrol on January 22, 2022, near the El  
14 Paso, TX border. *Id.* ¶ 5. It was determined that Petitioner had illegally entered the United  
15 States without inspection, and he was transported to El Paso Central Processing Center.  
16 *Id.* ¶ 6.

17 Petitioner was referred to removal proceedings and served with a Notice to Appeal  
18 on January 31, 2022, charging Petitioner as inadmissible under Section 212(a)(6)(A)(i) of  
19 the Immigration and Nationality Act. *Id.* ¶ 7. Petitioner or his representative appeared in  
20 immigration court hearings on March 23, 2022, October 3, 2022, and December 7, 2022.  
21 *Id.* ¶ 8. Petitioner failed to appear at his merits hearing on January 18, 2023, and was  
22 ordered removed in absentia by the immigration judge. *Id.*

23 On January 15, 2025, Petitioner was taken into ICE custody at Folkston Main ICE  
24 Processing Center. *Id.* ¶ 9. On April 4, 2025, Petitioner filed an appeal with the Board of  
25 Immigration Appeals (“BIA”), which is currently pending. *Id.* ¶ 10. On June 9, 2025,  
26 Petitioner was transferred to Adelanto ICE Processing Center where he remains today. *Id.*  
27 ¶ 11. Petitioner was scheduled for a bond hearing on July 15, 2025, but withdrew his  
28 request at the hearing in order to gather supporting documents.

1 Because Petitioner has been ordered removed in absentia, he is being detained under  
2 8 U.S.C. § 1231.

3 **III. ARGUMENT**

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

6 When a non-citizen receives a final removal order, their detention is mandatory for  
7 the following 90 days. 8 U.S.C. § 1231(a)(2). After that time, detention is within ICE’s  
8 discretion under 8 U.S.C. § 1231(a)(6). Detention for six months pursuant to a final  
9 removal order is presumptively valid. *See Zadvydas v. Davis*, 533 U.S. 678, 701 (2001).  
10 After that amount of detention time, a noncitizen may bring a habeas petition seeking  
11 release, and it is his burden to show “there is no significant likelihood of removal in the  
12 reasonably foreseeable future.” *Id.* The law does not require that “every [noncitizen] not  
13 removed must be released after six months.” *Id.* Instead, it prevents only “indefinite” or  
14 “potentially permanent” detention. *Id.* at 689–91. Furthermore, when a valid removal order  
15 is issued and a non-citizen is released under an order of supervision, the government is  
16 authorized to revoke supervised release pursuant to 8 C.F.R. § 241.1(l)(1), and 8 CFR §  
17 241.4(l)(2).

18 1. Review at the Board of Immigration Appeals (“BIA”)

19 The BIA is an appellate body within the Executive Office for Immigration Review  
20 (“EOIR”). *See* 8 C.F.R. § 1003.1(d)(1). Members of the BIA possess delegated authority  
21 from the Attorney General. 8 C.F.R. § 1003.1(a)(1). The BIA is “charged with the review  
22 of those administrative adjudications under the [INA] that the Attorney General may by  
23 regulation assign to it,” including IJ custody determinations. 8 C.F.R. § 1003.1(d)(1),  
24 236.1; 1236.1. The BIA not only resolves particular disputes before it, but also “through  
25 precedent decisions, [it] shall provide clear and uniform guidance to DHS, the immigration  
26 judges, and the general public on the proper interpretation and administration of the [INA]  
27 and its implementing regulations.” *Id.* § 1003.1(d)(1). “The decision of the [BIA] shall be  
28 final except in those cases reviewed by the Attorney General.” 8 C.F.R. § 1003.1(d)(7).

1           **B. To the Extent Petitioner is Challenging his Removal Order, 8 U.S.C.**  
2                           **§ 1252(g) and 8 U.S.C. § 1252(b)(9) Strip the Court of Jurisdiction over**  
3                           **this Petition**

4           A federal court generally may not rule on the merits of a case without first  
5 determining that it has jurisdiction. *Sinochem Int’l Co. v. Malaysia Int’l Shipping Corp.*,  
6 549 U.S. 422, 430-31 (2007). “The limits upon federal jurisdiction, whether imposed by  
7 the Constitution or by Congress, must be neither disregarded nor evaded.” *Owen Equip.*  
8 *& Erection Co. v. Kroger*, 437 U.S. 365, 374 (1978). In general, a district court may  
9 exercise jurisdiction over a § 2241 habeas petition when the petitioner is in custody and  
10 alleges that the custody violates the Constitution, laws, or treaties of the United States. 28  
11 U.S.C. § 2241(c); *Maleng v. Cook*, 490 U.S. 488, 490 (1989). However, that jurisdiction  
12 is constrained in immigration contexts by two specific statutes. First, 8 U.S.C. § 1252(g)  
13 provides that:

14           [e]xcept as provided in this section and notwithstanding any other provision  
15 of law (statutory or nonstatutory), including section 2241 of title 28, or any  
16 other habeas corpus provision, and sections 1361 and 1651 of such title, no  
17 court shall have jurisdiction to hear any cause or claim by or on behalf of any  
18 alien arising from the decision or action by the Attorney General to  
19 commence proceedings, adjudicate cases, or execute removal orders against  
20 any alien under this chapter.

21 “When asking if a claim is barred by § 1252(g), courts must focus on the action being  
22 challenged.” *Canal A Media Holding, LLC v. U.S. Citizenship & Imm. Servs.*, 964 F.3d  
23 1250, 1257-58 (11th Cir. 2020).

24           Section 1252(g) applies “to three discrete actions[:]. . . [the] ‘decision or action’ to  
25 ‘commence proceedings, adjudicate cases, or execute removal orders.’” *Reno v.*  
26 *American-Arab Anti-Discrimination Comm.* (“AADC”), 525 U.S. 471, 482 (1999)  
27 (emphasis in original); *Rauda v. Jennings*, 55 F.4th 773, 777 (9th Cir. 2022) (§ 1252(g)  
28 precludes judicial review of execution of removal order). Thus, to the extent Petitioner’s

1 generic claims challenge these decisions, § 1252(g) renders this Court without jurisdiction  
2 to hear his habeas claims. *See Eliazar G.C. v. Wolford*, 2025 WL 1124688, at \*3 (E.D.  
3 Cal. Apr. 16, 2025) (no habeas jurisdiction over habeas petition seeking to stay execution  
4 of removal order); *Aransiola v. Warden, FCI Victorville Medium*, 2025 WL 576592, at \*6  
5 (C.D. Cal. Jan. 22, 2025) (no habeas jurisdiction to challenge commencement of removal  
6 proceedings), *report and recommendation adopted by* 2025 WL 1085125 (C.D. Cal. Apr.  
7 9, 2025).

8 Second, under § 1252(b)(9), “judicial review of all questions of law . . . including  
9 interpretation and application of statutory provisions . . . arising from any action  
10 taken . . . to remove an alien from the United States” is only proper before the appropriate  
11 federal court of appeals in the form of a petition for review of a final removal order. *See* 8  
12 U.S.C. § 1252(b)(9); *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471,  
13 483 (1999). Section 1252(b)(9) is an “unmistakable ‘zipper’ clause” that “channels judicial  
14 review of all [claims arising from deportation proceedings]” to a court of appeals in the  
15 first instance. *Id.*; *see Lopez v. Barr*, No. CV 20-1330 (JRT/BRT), 2021 WL 195523, at \*2  
16 (D. Minn. Jan. 20, 2021) (citing *Nasrallah v. Barr*, 590 U.S. 573, 579–80 (2020)).

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

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

25 8 U.S.C. § 1252(a)(5). “Taken together, § 1252(a)(5) and § 1252(b)(9) mean that *any*  
26 issue—whether legal or factual—arising from *any* removal-related activity can be  
27 reviewed *only* through the [petition-for-review] process.” *J.E.F.M. v. Lynch*, 837 F.3d  
28 1026, 1031 (9th Cir. 2016) (emphasis in original); *see id.* at 1035 (“§§ 1252(a)(5) and

1 [(b)(9)] channel review of all claims, including policies-and-practices challenges . . .  
2 whenever they ‘arise from’ removal proceedings”); *accord Ruiz v. Mukasey*, 552 F.3d 269,  
3 274 n.3 (2d Cir. 2009) (only when the action is “unrelated to any removal action or  
4 proceeding” is it within the district court’s jurisdiction); *cf. Xiao Ji Chen v. U.S. Dep’t of*  
5 *Justice*, 434 F.3d 144, 151 n.3 (2d Cir. 2006) (a “primary effect” of the REAL ID Act is to  
6 “limit all aliens to one bite of the apple” (internal quotation marks omitted)).

7 Critically, “[§] 1252(b)(9) is a judicial channeling provision, not a claim-barring  
8 one.” *Aguilar v. ICE*, 510 F.3d 1, 11 (1st Cir. 2007). Indeed, 8 U.S.C. § 1252(a)(2)(D)  
9 provides that “[n]othing . . . in any other provision of this chapter . . . shall be construed  
10 as precluding review of constitutional claims or questions of law raised upon a petition for  
11 review filed with an appropriate court of appeals in accordance with this section.” *See also*  
12 *Ajlani v. Chertoff*, 545 F.3d 229, 235 (2d Cir. 2008) (“[J]urisdiction to review such claims  
13 is vested exclusively in the courts of appeals[.]”). The petition-for-review process before  
14 the court of appeals ensures that non-citizens have a proper forum for claims arising from  
15 their immigration proceedings and “receive their day in court.” *J.E.F.M.*, 837 F.3d at 1031–  
16 32 (internal quotations omitted); *see also Rosario v. Holder*, 627 F.3d 58, 61 (2d Cir. 2010)  
17 (“The REAL ID Act of 2005 amended the [INA] to obviate . . . Suspension Clause  
18 concerns” by permitting judicial review of “nondiscretionary” BIA determinations and “all  
19 constitutional claims or questions of law.”).

20 In evaluating the reach of subsections (a)(5) and (b)(9), the Second Circuit  
21 explained that jurisdiction turns on the substance of the relief sought. *Delgado v.*  
22 *Quarantillo*, 643 F.3d 52, 55 (2d Cir. 2011). Those provisions divest district courts of  
23 jurisdiction to review both direct and indirect challenges to removal orders, including  
24 decisions to detain for purposes of removal or for proceedings. *See Jennings v. Rodriguez*,  
25 583 U.S. 281, 294–95 (2018) (noting that § 1252(b)(9) did not present jurisdictional bar  
26 where respondents were not asking for a review of order of removal, were not challenging  
27 decision to detain them in the first place or seek removal, and were not challenging process  
28 by which removability would be determined.”). Here, Petitioner appears to challenge the

1 government’s decision and action to detain him, which arises from DHS’s decision to  
2 commence removal proceedings, and is thus an “action taken . . . to remove [them] from  
3 the United States.” See 8 U.S.C. § 1252(b)(9); see also, e.g., *Jennings*, 583 U.S. at 294–  
4 95; *Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020) (finding that 8 U.S.C.  
5 § 1226(e) did not bar review in that case because the petitioner did not challenge “his  
6 initial detention”); *Saadulloev v. Garland*, No. 3:23-CV-00106, 2024 WL 1076106, at \*3  
7 (W.D. Pa. Mar. 12, 2024) (recognizing that there is no judicial review of the threshold  
8 arrest and detention decision, which flows from the government’s decision to “commence  
9 proceedings”). As such, the Court lacks jurisdiction over this action. The reasoning in  
10 *Jennings* outlines why Petitioners’ claims are unreviewable here.

11 Insofar as Petitioner seeks to effectively block Petitioner’s arrest and detention  
12 pursuant to removal proceedings by an order releasing him from detention—as distinct  
13 from any claim challenging the length of post-removal order detention under *Zadvydas*—  
14 those claims are precluded by 8 U.S.C. § 1252(g) and § 1252(b)(9).

### 15 **C. The Petition Fails to Plead Any Factual Basis for Granting Relief**

16 Federal habeas petitioners are subject to a higher pleading standard than Fed. R.  
17 Civ. P. Rule 8 and must make specific factual allegations. See Rules Governing Section  
18 2254 Cases, Rule 2(c)(1)-(2) (federal habeas petitions must “specify all the grounds for  
19 relief,” and “state the facts supporting each ground”); see also *Mayle v. Felix*, 545 U.S.  
20 644, 655 (2005) (Fed. R. Civ. P. 8(a) requires only “fair notice” whereas Habeas Rule 2(c)  
21 is “more demanding” and that federal habeas petitions are “expected to state facts that  
22 point to a real possibility of constitutional error”) (citations omitted); *Jones v. Gomez*, 66  
23 F.3d 199, 204-05 (9th Cir. 1995) (conclusory allegations unsupported by a statement of  
24 specific facts do not warrant habeas relief), cert. denied, 517 U.S. 1143 (1996); *Hendricks*  
25 *v. Vasquez*, 908 F.2d 490, 491 (9th Cir. 1990) (allegations that are vague, conclusory, or  
26 unsupported by a statement of specific facts, are insufficient to warrant relief and subject  
27 to summary dismissal). Petitioner bears the burden of proving that he is being held  
28 contrary to law by a preponderance of the evidence. *Lorensen v. Hood*, 223 F.3d 950, 954

1 (9th Cir. 2000).

2 Here, the Petition is conclusory and vague, and unsupported by a statement of  
3 specific facts. The Petition does not meet the basic pleading requirements for federal  
4 habeas petitions, and it is insufficient to justify relief. The Petition simply states, “Fourth  
5 Amendment Illegal Arrest by ICE Agent,” “Fifth Amendment” “Sixth Amended,” and  
6 “Length of Confinement – Six month in custody no bond no court hearing.” Petition at 7-  
7 8. There are no specific factual allegations explaining why the arrest or detention is  
8 putatively unlawful, much less any allegations sufficient to establish that they are in fact  
9 unlawful. Accordingly, the Petition should be dismissed.

10 1. The Petition’s Fourth Amendment Allegations Are Insufficient

11 The Petition contends that Petitioner’s Fourth Amendment rights were violated  
12 because ICE illegally arrested him. Without further facts, the Petition’s conclusory  
13 statements cannot form the basis for a cognizable Fourth Amendment claim. The Petition  
14 does not plead any facts showing that ICE did not have reasonable suspicion in making  
15 the arrest. Furthermore, the Petitioner does not plead any facts showing that he is not  
16 properly subject to immigration detention independent of the circumstances of his arrest.

17 2. The Petition’s Fifth Amendment Allegations are Insufficient

18 Similarly, the Petition’s Fifth Amendment claim lacks sufficient specificity.  
19 Detention during removal proceedings has been upheld against procedural and substantive  
20 due process challenges. *See Demore v. Kim*, 538 U.S. 510, 528, 531 (2003) (noting that  
21 prior to the issuance of a final order of removal, “when the Government deals with  
22 deportable aliens, the Due Process Clause does not require it to employ the least  
23 burdensome means to accomplish its goal”); *Prieto-Romero v. Clark*, 534 F.3d 1053, 1063  
24 (9th Cir. 2008) (no habeas relief warranted where petitioner’s filing of petition for review  
25 with Ninth Circuit occasioned delay of removal). The Petition is devoid of any facts  
26 demonstrating any due process violation that would warrant release.

1           3.     The Petition’s Sixth Amendment Claim is Not Cognizable

2           It is unclear what Sixth Amendment claim Petitioner is making. The Sixth  
3 Amendment does not apply in immigration proceedings. *Montes-Lopez v. Holder*, 694 F.3d  
4 1085, 1088 (9th Cir. 2012). The Sixth Amendment also does not afford a right to the  
5 assistance of counsel in immigration proceedings. *Gomez-Velazco v. Sessions*, 879 F.3d  
6 989, 993 (9th Cir. 2018). Although 8 U.S.C. § 1362 permits non-citizens in removal  
7 proceedings to have the privilege of being representing by counsel of their choosing,  
8 provided there is no expense to the government, because there are no facts alleged, there  
9 is no indication what the underlying basis for the Sixth Amendment claim is. The Petition  
10 fails to plead an actionable habeas claim based on a putative Sixth Amendment violation.

11           4.     Petitioner’s Detention is Not Indefinite

12           Petitioner’s fourth ground for relief states that he has been detained for “six  
13 months in custody no bond – no court hearing.” Petition at 8. With no further factual  
14 allegations, Petitioner fails to allege that his removal is “indefinite” or “potentially  
15 permanent.” *Zadvydas*, 533 U.S. at 689-91. Indeed, Petitioner’s removal is reasonably  
16 foreseeable. Petitioner’s April 4, 2025 appeal to the BIA is still pending. Torres Decl.  
17 ¶¶ 10. “Petitioner may not rely on the extra time resulting from his appeal to claim his  
18 prolonged detention violates substantive due process.” *Concepcion v. Barr*, 514 F. Supp.  
19 3d 555, 563 (W.D.N.Y. 2021) (internal quotations removed). Petitioner’s removal is  
20 “reasonably foreseeable” because Petitioner “would be removed if he withdrew his  
21 appeal of the IJ’s decision presently before the BIA.” *Id.*

22           Further, regardless of whether Petitioner is entitled to a bond hearing, Petitioner  
23 had a bond hearing on July 15, 2025, but withdrew his request in order to gather  
24 supporting documents. Torres Decl. ¶ 12.

25           **D.     The Petition’s Failure to Name the Proper Respondent Also Renders**  
26           **this Court without Jurisdiction**

27           Pursuant to the federal habeas statute, 28 U.S.C. § 2242, which applies to § 2241  
28 petitions, “there is generally only one proper respondent to a given prisoner’s habeas

1 petition [, and it is] ... ‘the person’ with the ability to produce the prisoner’s body before  
2 the habeas court.” *Rumsfeld v. Padilla*, 542 U.S. 426, 434–35 (2004); see 28 U.S.C.  
3 § 2242 (requiring a federal habeas petitioner to provide “the name of the person who has  
4 custody over him”) (emphasis added). When a habeas petitioner challenges his present  
5 physical confinement, “the default rule is that the proper respondent is the warden of the  
6 facility where the prisoner is being held, not the Attorney General or some other remote  
7 supervisory official.” *Padilla*, 542 U.S. at 435. Moreover, “jurisdiction lies in only one  
8 district: the district of confinement.” *Id.* at 443. Accordingly, “[w]henever a § 2241 habeas  
9 petitioner seeks to challenge his present physical custody within the United States, he  
10 should name his warden as respondent and file the petition in the district of confinement.”  
11 *Id.* at 447.

12 Here, the Petition names “Department of Homeland Security” as the Respondent.  
13 Because the Petition failed to name the immediate custodian—the Adelanto Immigration  
14 Processing Center warden—as Respondent, this Court lacks jurisdiction over the habeas  
15 petition. *See Doe v. Garland*, 109 F.4th 1188, 1194–95 (9th Cir. 2024) (“[The petitioner’s]  
16 failure to name [his immediate custodian as respondent] renders the district court’s  
17 exercise of jurisdiction erroneous.”); *see also id.* at 1199 (“The district court erred in  
18 exercising jurisdiction over Doe’s core habeas petition because Doe failed to name his  
19 immediate custodian as respondent to his petition ....”).

#### 20 **IV. CONCLUSION**

21 Respondent respectfully requests that the Court deny the habeas petition and dismiss  
22 the action.

1 Dated: September 11, 2025

Respectfully submitted,

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11 **L.R. 11-6.1 Certification**

12 Counsel of record for Federal Respondent certifies that this brief contains 3,049  
13 words, which complies with the word limit of L.R. 11-6.1.  
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