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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

JOSE CRUZ CORONA RIOS,

Petitioner,

v.

U.S. DEPARTMENT OF HOMELAND SECURITY; KRISTI NOEM, Secretary of U.S. Department of Homeland Security, In Her Official Capacity; PAMELA BONDI, U.S. Attorney General, In Her Official Capacity; TODD M. LYONS, Acting Director of U.S. Immigration and Enforcement Operation, CHRISTOPHER J. LAROSE, Senior Warden at Otay Mesa ICE Detention Center,

Respondents.

Case No.: 25-cv-01796-JES-DEB

RETURN TO PETITION FOR WRIT OF HABEAS CORPUS

I. INTRODUCTION

Petitioner requests that this Court release him from Immigration and Customs Enforcement (ICE) custody because his detention is unlawful and prolonged. The habeas petition should be denied on multiple grounds. As a threshold matter, the Court lacks jurisdiction over any claim or cause of action arising from any decision to commence or adjudicate removal proceedings or execute removal orders, including ICE's decision to detain Petitioner pending removal. *See* 8 U.S.C. § 1252(g). In any event, Petitioner's detention is lawful. As an arriving alien currently in removal proceedings, Petitioner is subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(1)(B)(ii). Accordingly, the Court should deny his requests for relief.

II. FACTUAL BACKGROUND

Petitioner is a native and citizen of Mexico. *See* Decl. LaShaniece Wilson, ¶ 3 (August 27, 2025), filed contemporaneously herewith. On September 13, 2024, Petitioner arrived at the San Ysidro Port of Entry and applied for admission to the United States from Mexico. *Id.* at ¶ 3; *see also* Table of Exhibits, Ex. 1, filed contemporaneously herewith. Petitioner did not then have legal documentation to enter the United States at the time of his application for admission. Ex. 1. Petitioner was determined be inadmissible under 8 U.S.C. § 1182(a)(7)(A)(i)(I), as an alien not in possession of a valid entry document. *Id.* He was issued a Notice to Appear and Order of Expedited Removal under section 235(b)(1) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1225(b)(1). Ex. 2. He was subsequently detained in ICE custody under 8 U.S.C. § 1225(b)(1).

Pursuant to 8 U.S.C. § 1225(b)(1)(B), Petitioner was interviewed by a U.S. Citizenship and Immigration Services (USCIS) asylum officer. Wilson Decl., ¶ 4; *see also* Ex. 2. On September 27, 2024, based on a positive determination by the asylum officer, Petitioner was issued a Notice to Appear (NTA), charging Petitioner as an arriving alien inadmissible under 8 U.S.C. § 1182(a)(7)(A)(i)(I), as an immigrant not in possession of a valid entry document. *See* Ex. 2. Petitioner remained detained in ICE

custody under 8 U.S.C. § 1225(b)(1)(B)(ii), as his detention is mandatory.

On April 21, 2025, an Immigration Judge (IJ) ordered Petitioner removed to Mexico under 8 U.S.C. § 1182(a)(7)(A)(i)(I), but granted Withholding of Removal under the Convention Against Torture. Ex. 3. Both ICE and Petitioner waived their right to appeal. *Id.* On June 25, 2025, the IJ granted Petitioner's emergency motion to reopen and emergency motion to stay removal pending adjudication of Petitioner's fear-based claims for any removal to a third country. Ex. 4. The IJ's June 2025 order reopened Petitioner's removal proceedings and stayed execution of the April 2025 removal order. *See* 8 C.F.R. § 1003.23(b)(1)(v). While Petitioner's removal proceedings remain ongoing, he continues to be detained under 8 U.S.C. § 1225(b)(1)(B)(ii). *See Matter of M.S.*, 27 I&N Dec. 509 (A.G. 2019).

Petitioner appeared at master calendar hearings on July 9 and August 5, 2025, relating to his removal proceedings. Exs. 5-6. During the August 5 master calendar hearing, Petitioner requested to be released on bond and filed a motion for bond that same day. Wilson Decl. at ¶ 7. An IJ held a bond hearing on August 13, 2025, and denied bond finding that it did not have jurisdiction. Ex. 7. The IJ set a master calendar hearing for September 3, 2025. Ex. 8.

At present, there is no final order of removal in place because removal proceedings have been reopened. Wilson Decl. at ¶ 9; *see also* Ex. 4. Notwithstanding that there is no final order of removal in place and in anticipation of the same, ICE is continuing efforts to locate a third country for resettlement pursuant to 8 U.S.C. § 1158(a)(2)(A). Wilson Decl. at ¶ 9.

III. ARGUMENT

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

Petitioner bears the burden of establishing that this Court has subject matter jurisdiction over his 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 petition, asserting violations of the Fifth Amendment, the INA and

the APA. Specifically, Petitioner alleges his detention has been unlawfully prolonged pending ICE's efforts to remove him to a country other than Mexico. However, these claims are jurisdictionally barred under 8 U.S.C. § 1252(g) and 8 U.S.C. § 1252(b)(9).

Courts lack jurisdiction over any claim or cause of action arising from any 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*.") (emphasis added); *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."). In other words, § 1252(g) removes district court jurisdiction over "three discrete actions that the Attorney may take: [his] 'decision or action' to 'commence proceedings, adjudicate cases, or execute removal orders.'" *Reno*, 525 U.S. at 482 (emphasis removed). Petitioner's claims necessarily arise "from the decision or action by the Attorney General to commence proceedings [and] adjudicate cases," over which Congress has explicitly foreclosed district court jurisdiction. 8 U.S.C. § 1252(g).

Section 1252(g) also bars district courts from hearing challenges to the *method* by which the government chooses to commence removal proceedings, including the decision to detain an alien pending removal. *See Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016) ("By its plain terms, [§ 1252(g)] bars us from questioning ICE's discretionary decisions to commence removal" and also to review "ICE's decision to take plaintiff] into custody to detain him during removal proceedings").

Petitioner's claims stem from his detention during removal proceedings. However, that detention arises from the decision to commence such proceedings against them. *See, e.g., Valecia-Meja v. United States*, No. 08-2943 CAS (PJWz), 2008 WL

4286979, at *4 (C.D. Cal. Sept. 15, 2008) ("The decision to detain plaintiff until his hearing before the Immigration Judge arose from this decision to commence proceedings."); *Wang v. United States*, No. CV 10-0389 SVW (RCx), 2010 WL 11463156, at *6 (C.D. Cal. Aug. 18, 2010); *Tazu v. Att'y Gen. U.S.*, 975 F.3d 292, 298–99 (3d Cir. 2020) (holding that 8 U.S.C. § 1252(g) and (b)(9) deprive district court of jurisdiction to review action to execute removal order).

Other courts have held, "[f]or the purposes of § 1252, the Attorney General commences proceedings against an alien when the alien is issued a Notice to Appear before an immigration court." *Herrera-Correra v. United States*, No. 08-2941 DSF (JCx), 2008 WL 11336833, at *3 (C.D. Cal. Sept. 11, 2008). "The Attorney General may arrest the alien against whom proceedings are commenced and detain that individual until the conclusion of those proceedings." *Id.* at *3. "Thus, an alien's detention throughout this process arises from the Attorney General's decision to commence proceedings" and review of claims arising from such detention is barred under § 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007)); *Wang*, 2010 WL 11463156, at *6; 8 U.S.C. § 1252(g).

Moreover, under 8 U.S.C. § 1252(b)(9), "[j]udicial review of all questions of law and fact . . . *arising from any action taken or proceeding brought to remove an alien from the United States* under this subchapter shall be available only in judicial review of a final order under this section." Further, judicial review of a final order is available only through "a petition for review filed with an appropriate court of appeals." 8 U.S.C. § 1252(a)(5). The Supreme Court has made clear that § 1252(b)(9) is "the unmistakable 'zipper' clause," channeling "judicial review of all" "decisions and actions leading up to or consequent upon final orders of deportation," including "non-final order[s]," into proceedings before a court of appeals. *Reno*, 525 U.S. at 483, 485; *see J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (noting § 1252(b)(9) is "breathtaking in scope and vise-like in grip and therefore swallows up virtually all claims that are tied to removal proceedings"). "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] PFR process." *J.E.F.M.*, 837 F.3d at 1031 ("[W]hile these sections limit *how* immigrants can challenge their removal proceedings, they are not jurisdiction-stripping statutes that, by their terms, foreclose *all* judicial review of agency actions. Instead, the provisions channel judicial review over final orders of removal to the courts of appeal.") (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").

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 aliens 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."). These 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 [an alien] in the first place or to seek removal").

Here, Petitioner challenges the government's decision and action to detain him, which arises from DHS's decision to commence removal proceedings, and is thus an "action taken . . . to remove [them] from the United States." *See* 8 U.S.C. § 1252(b)(9);

see also, e.g., *Jennings*, 583 U.S. at 294–95; *Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020) (finding that 8 U.S.C. § 1226(e) did not bar review in that case because the petitioner did not challenge "his initial detention"); *Saadulloev v. Garland*, No. 3:23-CV-00106, 2024 WL 1076106, at *3 (W.D. Pa. Mar. 12, 2024) (recognizing that there is no judicial review of the threshold detention decision, which flows from the government's decision to "commence proceedings"). The fact that Petitioner is challenging the basis upon which he is detained is enough to trigger § 1252(b)(9) because "detention *is* an 'action taken . . . to remove' an alien." *See Jennings*, 583 U.S. 318, 319 (Thomas, J., concurring); 8 U.S.C. § 1252(b)(9).

Thus, as Petitioner's claims arise from the decision to commence proceedings, this Court lacks jurisdiction under 8 U.S.C. § 1252.

B. Petitioner's Claims Fail on the Merits as He is Lawfully Detained under 8 U.S.C. § 1225(b)(1)

Even assuming the Court has jurisdiction over his petition, Petitioner has not stated a statutory violation. Petitioner challenges his detention and requests release. This request should be denied because Petitioner's detention is mandated pursuant to 8 U.S.C. § 1225(b)(1).

Petitioner appears to suggest that he is detained pursuant to 8 U.S.C. § 1231(a). *See* ECF No. 1 at ¶¶ 18-24. "Section 1231(a) applies to detention after the entry of a final order of removal" and "governs detention during a ninety-day 'removal period' after the conclusion of removal proceedings." *Avilez v. Garland*, 69 F. 4th 525, 530–31 (9th Cir. 2023).[1] However, as Petitioner's removal proceedings have been reopened, the removal period has not commenced. Consequently, Petitioner remains subject to mandatory detention under 8 U.S.C. § 1225(b)(1)(B)(ii) as his removal proceedings continue.

[1] The government may continue detentions under § 1231(a) for "a period reasonably necessary to secure removal." *Zadvydas v. Davis*, 533 U.S. 678, 699–700 (2001).

Petitioner also appears to contend that he is not subject to mandatory detention under 8 U.S.C. § 1226(c). ECF No. 1 at ¶¶ 34-35. Respondents agree. Petitioner does not dispute that in September 2024, he applied for admission to the United States from Mexico and at that time did not have legal documentation to enter the United States. *See generally* ECF No. 1, ¶¶ 9, 12. As Petitioner entered the United States less than two years ago without a proper travel document, and without then being admitted or paroled, he is subject to mandatory detention. *See* 8 U.S.C. § 1225(b)(1).

Section 1225 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 aliens and "certain other" aliens "initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid document." *Id.*; 8 U.S.C. § 1225(b)(1)(A)(i), (iii). These aliens are generally subject to expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(A)(i). But if the alien "indicates an intention to apply for asylum . . . or a fear of persecution," immigration officers will refer the alien for a credible fear interview. *Id.* § 1225(b)(1)(A)(ii). An alien "with a credible fear of persecution" is "detained for further consideration of the application for asylum." *Id.* § 1225(b)(1)(B)(ii). If the alien does not indicate an intent to apply for asylum, express a fear of persecution, or is "found not to have such a fear," they are detained until removed from the United States. *Id.* §§ 1225(b)(1)(A)(i), (B)(iii)(IV). Though, not relevant here, § 1225(b)(2) is "broader" and "serves as a catchall provision." *Jennings*, 583 U.S. at 287. In this statutory scheme, Department of Homeland Security (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." 8 U.S.C. § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022).

In *Jennings*, the Supreme Court evaluated the proper interpretation of 8 U.S.C. § 1225(b) and stated that "[r]ead most naturally, §§ 1225(b)(1) and (b)(2) [] mandate detention of applicants for admission until certain proceedings have concluded." 583 U.S. at 297. The Court noted that neither § 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 Court added that the sole means of release for noncitizens detained pursuant to §§ 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. The Court observed that because aliens held under § 1225(b) may be paroled for "urgent humanitarian reasons or significant public benefit," "[t]hat express exception to detention implies that there are no *other* circumstances under which aliens detained under 1225(b) may be released." *Id.* (citations and internal quotation omitted) (emphasis in the original). Courts thus may not validly draw additional procedural limitations "out of thin air." *Id.* at 312. The Supreme Court concluded: "In sum, §§ 1225(b)(1) and (b)(2) mandate detention of [noncitizens] throughout the completion of applicable proceedings." *Id.* at. 302.

In *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 138–40 (2020), the Supreme Court once again addressed the due process rights of individuals like Petitioner, inadmissible arriving noncitizens seeking initial entry into the United States. The Supreme Court 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); *Shaughnessy v. U.S. ex rel. Mezei*, 345 U.S. 206, 212 (1953); *Landon v. Plasencia*, 459 U.S. 21, 32 (1982)).

Here, Petitioner's removal proceedings have been reopened and are ongoing, and thus, he continues to be subject to mandatory detention under 8 U.S.C. § 1225(b)(1). As the statutory authority Petitioner is detained under does not afford him 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 v. Garland*, 18 F. 4th 304, 310 (9th Cir. 2021).

To the extent Petitioner is attempting to assert a violation of the Administrative Procedure Act (APA), such attempt fails. The APA places limits on when agency action is subject to judicial review. "Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review." 5 U.S.C. § 704; *Navajo Nation v. Dep't of the Interior*, 876 F.3d 1144, 1171 (9th Cir. 2017). Reviewable "agency action" is defined to include "the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act." 5 U.S.C. § 551(13). "While this definition is 'expansive,' federal courts 'have long recognized that the term [agency action] is not so all-encompassing as to authorize . . . judicial review over everything done by an administrative agency.'" *Wild Fish Conservancy v. Jewell*, 730 F.3d 791, 800-01 (9th Cir. 2013) (quoting *Fund for Animals, Inc. v. U.S. Bureau of Land Management*, 460 F.3d 13, 19 (D.C. Cir. 2006)). Here, it is not altogether clear what final agency action Petitioner seeks review over. Importantly, habeas relief is available to challenge only the legality or duration of confinement. *Pinson v. Carvajal*, 69 F.4th 1059, 1065 (9th Cir. 2023); *see also Flores-Miramontes v. INS*, 212 F.3d 1133, 1140 (9th Cir. 2000) ("For purposes of immigration law, at least, 'judicial review' refers to petitions for review of agency actions, which are governed by the Administrative Procedure Act, while habeas corpus refers to habeas petitions brought directly in district court to challenge illegal confinement[.]"). The

Court should therefore reject Petitioner's claim, because it is beyond the scope of habeas jurisdiction.

Accordingly, as Petitioner is detained pursuant to 8 U.S.C. § 1225(b)(1)(B)(ii), Petitioner's claims fail.

VI. CONCLUSION

For the reasons stated above, the Court should deny the petition.

DATED: August 28, 2025

Respectfully submitted,

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s/ Mary Cile Glover-Rogers
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DECLARATION OF LASHANIECE WILSON

I, LaShaniece Wilson, pursuant to 28 U.S.C. § 1746, hereby declare under penalty of perjury that the following statements are true and correct, to the best of my knowledge, information, and belief:

1. I am a Deportation Officer with the U.S. Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations (ERO), in the San Diego Field Office. I have been with ICE since December 31,2024 and have held my position as a Deportation Officer since December 31,2024.

2. The following information is based on my personal knowledge, as well as my review of government databases and documentation relating to Petitioner Jose Cruz Corona Rios (Petitioner).

3. Petitioner is a citizen and national of Mexico. Petitioner arrived in the United States at or near the San Ysidro Port of Entry, on or about September 14, 2024, and applied for admission to the United States from Mexico. Petitioner did not then have legal documentation to enter the United States at the time of his application for admission. On September 14, 2024, DHS issued Petitioner a Notice to Appear and Order of Expedited Removal under section 235(b)(1) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1225(b)(1), charging Petitioner as inadmissible under 8 U.S.C. § 1182(a)(7)(i)(I), as an alien not in possession of a valid entry document.

4. On September 27, 2024, based on a positive determination by the United States Citizenship and Immigration Services (USCIS) asylum officer, Petitioner was placed in removal proceedings and was scheduled to appear before an Immigration Judge on October 8, 2024.

5. On April 21, 2025, an Immigration Judge ordered Petitioner removed to Mexico and granted him Withholding of Removal under the Convention Against Torture.

6. On June 24, 2025, Petitioner filed an "Emergency Motion to Reopen Based on DHS's Intent to Deport Respondent to a Nondesignated, Third County Without an

Opportunity to Contest Removal Based on His Fear of Persecution and Torture and Emergency Motion to Stay Removal Pending Adjudication of Respondent's Fear-Based Claims." The next day, on June 25, 2025, the Immigration Judge granted Petitioner's emergency motion.

7. At an August 5, 2025 master calendar hearing, Petitioner requested to be released on bond and filed a motion for bond that same day. The Immigration Judge held a bond hearing on August 13, 2025, and denied bond finding that it did not have jurisdiction.

8. A master calendar hearing is set for September 3, 2025.

9. As of the date of this filing, there is no final order of removal in place, therefore, Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(1)(B)(iii)(IV). Notwithstanding that there is no final order of removal in place and in anticipation of the same, ICE is continuing efforts to locate a third country for resettlement pursuant to 8 U.S.C. § 1158(a)(2)(A).

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on August 27, 2025, in San Diego, California.

LaShaniece Wilson
Deportation Officer

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TABLE OF EXHIBITS IN SUPPORT OF RESPONDENTS' RETURN TO HABEAS PETITION

Exhibits:

1. Notice and Order of Expedited Removal
2. Notice to Appear
3. Order of Immigration Judge (Apr. 21, 2025)
4. Order of Immigration Judge (June 25, 2025)
5. Notice of In-Person Hearing (June 25, 2025)
6. Notice of In-Person Hearing (July 9, 2025)
7. Order of the Immigration Judge (Aug. 13, 2025)
8. Notice of In-Person Hearing (Aug. 5, 2025)