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8
9 **UNITED STATES DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA

10 SAYED NASER NOORI,

11 Petitioner,

12 v.

13 CHRISTOPHER J. LAROSE; et al.,

14 Respondents.
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Case No.: 25-cv-1824-GPC-MSB

**RESPONDENTS' RETURN TO
HABEAS PETITION**

TABLE OF CONTENTS

PAGE

I.	INTRODUCTION	1
II.	FACTUAL BACKGROUND.....	1
III.	ARGUMENT	3
A.	Petitioner’s claims regarding expedited removal and his ability to apply for asylum are moot.....	3
B.	Petitioner brings improper habeas claims	4
C.	Petitioner’s claims and requested relief are barred by 8 U.S.C. § 1252	5
D.	Petitioner is lawfully detained.....	11
IV.	CONCLUSION.....	16

TABLE OF AUTHORITIES

PAGES

CASES

<i>Aguilar v. ICE</i> , 510 F.3d 1 (1st Cir. 2007)	7
<i>Ajlani v. Chertoff</i> , 545 F.3d 229 (2d Cir. 2008)	8
<i>Alvarez v. ICE</i> , 818 F.3d 1194 (11th Cir. 2016)	6
<i>Ass'n of American Medical Colleges v. United States</i> , 217 F.3d 770	3, 5
<i>Azimov v. U.S. Dep't of Homeland Sec.</i> , No. 22-56034, 2024 WL 687442 (9th Cir. Feb. 20, 2024)	8, 10
<i>Biden v. Texas</i> , 597 U.S. 785 (2022)	13
<i>Church of Scientology of California v. United States</i> , 506 U.S. 9 (1992)	3, 4
<i>Cnty. of Los Angeles v. Davis</i> , 440 U.S. 625 (1979)	3
<i>Crawford v. Bell</i> , 599 F.2d 890 (9th Cir. 1979)	4
<i>Demore v. Kim</i> , 538 U.S. 510 (2003)	12
<i>Dep't of Homeland Sec. v. Thuraissigiam</i> , 591 U.S. 103 (2020)	5, 9, 13–15
<i>Finley v. United States</i> , 490 U.S. 545	3, 5

1	<i>Flores-Miramontes v. INS,</i>	
2	212 F.3d 1133 (9th Cir. 2000)	5, 15
3	<i>Fund for Animals, Inc. v. U.S. Bureau of Land Mgmt.,</i>	
4	460 F.3d 13 (D.C. Cir. 2006)	15
5	<i>Giron Rodas v. Lyons, No. 25cv1912-LL-AHG,</i>	
6	2025 WL 2300781 (S.D. Cal. Aug. 1, 2025)	5
7	<i>Gomez-Cantillano v. Garland, No. 19-72682,</i>	
8	2021 WL 5882034 (9th Cir. Dec. 13, 2021)	10
9	<i>Guerrier v. Garland,</i>	
10	18 F.4th 304 (9th Cir. 2021)	9, 15
11	<i>Guselnikov v. Noem, No. 25-cv-1971-BTM-KSC,</i>	
12	2025 WL 2300873 (S.D. Cal. Aug. 8, 2025)	5
13	<i>Herrera-Correra v. United States, No. 08-2941 DSF (JCx),</i>	
14	2008 WL 11336833 (C.D. Cal. Sept. 11, 2008)	6, 7
15	<i>I.N.S. v. Lopez-Mendoza,</i>	
16	468 U.S. 1032 (1984)	13
17	<i>J.E.F.M. v. Lynch,</i>	
18	837 F.3d 1026 (9th Cir. 2016)	7, 8, 10
19	<i>Jennings v. Rodriguez,</i>	
20	583 U.S. 281 (2018)	8, 12, 13
21	<i>Landon v. Plasencia,</i>	
22	459 U.S. 21 (1982)	13, 14
23	<i>Limpin v. United States,</i>	
24	828 Fed. App'x 429 (9th Cir. 2020)	6
25	<i>Matter of M.S.,</i>	
26	27 I&N Dec. 509 (A.G. 2019)	2
27	<i>Mendoza-Linares v. Garland,</i>	
28	51 F.4th 1146 (9th Cir. 2022)	8, 9, 10

1	<i>Mendoza-Linares v. Garland</i> , No. 21-cv-1169-BEN (AHG),	
2	2024 WL 3316306 (S.D. Cal. June 10, 2024)	14
3	<i>Murphy v. Hunt</i> ,	
4	455 U.S. 478 (1982)	3
5	<i>Navajo Nation v. Dep't of the Interior</i> ,	
6	876 F.3d 1144 (9th Cir. 2017)	15
7	<i>Nettles v. Grounds</i> ,	
8	830 F.3d 922 (9th Cir. 2016)	5
9	<i>Nishimura Ekiu v. United States</i> ,	
10	142 U.S. 651 (1892)	14
11	<i>Pinson v. Carvajal</i> ,	
12	69 F.4th 1059 (9th Cir. 2023)	4, 5, 15
13	<i>Powell v. McCormack</i> ,	
14	395 U.S. 486 (1969)	3
15	<i>Prieto-Romero v. Clark</i> ,	
16	534 F.3d 1053 (9th Cir. 2008)	11
17	<i>Rauda v. Jennings</i> ,	
18	8 F.4th 1050 (9th Cir. 2021)	14
19	<i>Reno v. Am.-Arab Anti-Discrimination Comm.</i> ,	
20	525 U.S. 471 (1999)	6, 7
21	<i>Rosario v. Holder</i> ,	
22	627 F.3d 58 (2d Cir. 2010)	8
23	<i>Rosemere Neighborhood Ass'n v. U.S. Env't Prot. Agency</i> ,	
24	581 F.3d 1169	3
25	<i>SEC v. Medical Comm. for Human Rights</i> ,	
26	404 U.S. 403 (1972)	3
27	<i>Shaughnessy v. United States ex rel. Mezei</i> ,	
28	345 U.S. 206 (1953)	14, 15

1	<i>Sissoko v. Rocha,</i>	
2	509 F.3d 947 (9th Cir. 2007)	7
3	<i>Tazu v. Attorney General United States,</i>	
4	975 F.3d 292 (3d Cir. 2020)	8
5	<i>U.S. ex rel. Knauff v. Shaughnessy,</i>	
6	338 U.S. 537 (1950)	14
7	<i>Valecia-Meja v. United States, No. 08-2943 CAS (PJWz),</i>	
8	2008 WL 4286979 (C.D. Cal. Sept. 15, 2008)	8
9	<i>Wang v. United States, No. CV 10-0389 SVW (RCX),</i>	
10	2010 WL 11463156 (C.D. Cal. Aug. 18, 2010)	7, 8
11	<i>Wild Fish Conservancy v. Jewell,</i>	
12	730 F.3d 791 (9th Cir. 2013)	15
13	<i>Zelaya-Gonzalez v. Matuszewski, No. 23-CV-151 JLS (KSC),</i>	
14	2023 WL 3103811 (S.D. Cal. Apr. 25, 2023)	14
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

STATUTES

5 U.S.C. § 551(13)	15
5 U.S.C. § 704	15
8 U.S.C. § 1182(a)(7)(A)(i)(I)	1, 3
8 U.S.C. § 1182(d)(5)	13
8 U.S.C. § 1182(d)(5)(A)	13
8 U.S.C. § 1225(a)(1)	12
8 U.S.C. § 1225(b)	13
8 U.S.C. § 1225(b)(1)	2, 11
8 U.S.C. § 1225(b)(1)(B)	2
8 U.S.C. § 1225(b)(2)	11
8 U.S.C. § 1226(a)	12
8 U.S.C. § 1226(a)(2)	1, 12
8 U.S.C. § 1226(b)	1, 11, 12
8 U.S.C. § 1226(e)	12
8 U.S.C. § 1229a	1
8 U.S.C. § 1229a(a)(1)	4
8 U.S.C. § 1229a(b)(1)-(4)	4
8 U.S.C. § 1231(a)(1)(A)	4
8 U.S.C. § 1231(b)(3)	4
8 U.S.C. § 1252	1, 5, 11
8 U.S.C. § 1252(a)(2)(A)	5, 10
8 U.S.C. § 1252(a)(2)(D)	7
8 U.S.C. § 1252(a)(5)	7
8 U.S.C. § 1252(b)(9)	5, 7
8 U.S.C. § 1252(e)(1)(A)	10
8 U.S.C. § 1252(e)(3)	11
8 U.S.C. § 1252(e)(5)	11
8 U.S.C. § 1252(g)	5, 6, 7
28 U.S.C. § 2241	4, 5
28 U.S.C. § 2241(c)	4

I. INTRODUCTION

This Court should deny Petitioner's habeas petition for four reasons. First, the Petition is premised on Petitioner being placed in expedited removal proceedings and being unable to apply for asylum. However, Plaintiff is no longer in expedited removal proceedings. He is now in removal proceedings under Section 240 of the Immigration and National Act (INA), 8 U.S.C. § 1229a (240 proceedings), and he can apply for asylum in front of an immigration judge. As such, those claims in the Petition are moot. Second, Petitioner does not bring proper habeas claims. Third, Petitioner requests that this Court find his detention unlawful and order his release from Immigration and Customs Enforcement (ICE) custody. But as Petitioner's claims stem from the Department of Homeland Security's (DHS) decision to arrest and detain Petitioner pending removal proceedings, jurisdiction over his claims is barred under 8 U.S.C. § 1252. Finally, Petitioner's claims fail on the merits. Respondents respectfully request that the Court deny Petitioner's requests for relief.

II. FACTUAL BACKGROUND

Petitioner is a native and citizen of Afghanistan. ECF No. 1 at ¶ 40. In July 2024, Petitioner arrived at the San Ysidro Port of Entry and applied for admission to the United States from Mexico. *Id.* at ¶ 42. Petitioner did not possess legal documentation to be in or enter the United States. Exhibit 1 (Form I-213, Record of Deportable/Inadmissible Alien). Petitioner was determined to be inadmissible under 8 U.S.C. § 1182(a)(7)(A)(i)(I) as an immigrant not in possession of a valid entry document. *Id.* He was then placed into 240 proceedings and issued a Notice to Appear. *Id.*; *see also* Exhibit 2 (Notice to Appear, dated July 6, 2024).

Following his initial encounter, Petitioner was released from ICE custody on conditional parole pursuant to 8 U.S.C. § 1226(a)(2). Declaration of Daniel Negrin (Negrin Decl.) ¶ 5. On June 12, 2025, Petitioner's conditional parole was revoked pursuant to 8 U.S.C. § 1226(b). Negrin Decl. ¶ 7. On June 12, 2025, Petitioner appeared before an immigration judge and DHS moved to dismiss Petitioner's 240 proceedings.

1 Exhibit 3 (Order on Motion to Dismiss). The immigration judge dismissed
2 Petitioner's 240 proceedings. *Id.*

3 On June 12, 2025, a Form I-200, Warrant for Arrest, was issued for the arrest of
4 Petitioner. Negrin Decl. ¶ 8. On June 12, 2025, Petitioner was apprehended by ICE
5 Enforcement and Removal Operations (ERO) and placed in expedited removal
6 proceedings under 8 U.S.C. § 1225(b)(1) and issued an Order of Expedited Removal
7 under section 235(b)(1) of the Immigration and Nationality Act (INA), 8 U.S.C.
8 § 1225(b)(1). Negrin Decl. ¶ 8; *see also* Exhibit 4 (Form I-213, Record of
9 Deportable/Inadmissible Alien); Exhibit 5 (Form I-860, Notice and Order of Expedited
10 Removal). He was subsequently detained in ICE custody under 8 U.S.C. § 1225(b)(1).
11 Negrin Decl. ¶ 8.

12 On July 11, 2025, pursuant to 8 U.S.C. § 1225(b)(1)(B), Petitioner was
13 interviewed by a U.S. Citizenship and Immigration Services asylum officer. Negrin
14 Decl. ¶ 9. On July 12, 2025, based on a positive determination by the asylum officer,
15 Petitioner was issued a Notice to Appear, charging Petitioner as an arriving alien
16 inadmissible under 8 U.S.C. § 1182(a)(7)(A)(i)(I), as an immigrant not in possession of
17 a valid entry document. Negrin Decl. ¶ 9; *see also* Exhibit 6 (Notice to Appear, dated
18 July 12, 2025). The Notice to Appear commenced new 240 proceedings. Negrin Decl.
19 ¶ 9. Petitioner remained detained in ICE custody under 8 U.S.C. § 1225(b)(1)(B)(ii), as
20 his detention is mandatory. *See* Negrin Decl. ¶ 9. Petitioner's new 240 proceedings
21 remain ongoing. Petitioner appeared before an immigration judge on August 14 and 27,
22 2025, for master calendar hearings. Negrin Decl. ¶ 10. While Petitioner's removal
23 proceedings remain ongoing, he continues to be detained under 8 U.S.C.
24 § 1225(b)(1)(B)(ii). *See Matter of M.S.*, 27 I&N Dec. 509 (A.G. 2019).

25 On July 17, 2025, Petitioner commenced this case, seeking to have this Court
26 order his release from ICE custody and reinstate his 240 proceedings. *See generally*
27 ECF No. 1. Subsequently, the Court issued an order requiring Respondents to file a
28 response to Petitioner's habeas petition. ECF No. 2. The parties jointly moved to vacate

1 the briefing schedule to allow Petitioner to appear in 240 proceedings and apply for
2 asylum. ECF No. 5. The Court granted the joint motion. ECF No. 6. In a joint status
3 report, the parties requested a briefing schedule on the Petition, which the Court granted.
4 ECF Nos. 7, 8.

5 **III. ARGUMENT**

6 **A. Petitioner's claims regarding expedited removal and his ability to apply for** 7 **asylum are moot.**

8 Petitioner bears the burden of establishing that this Court has subject matter
9 jurisdiction over his claims. *See Ass'n of Am. Med. Coll. v. United States*, 217 F.3d 770,
10 778–79 (9th Cir. 2000); *Finley v. United States*, 490 U.S. 545, 547–48 (1989). However,
11 Petitioner cannot establish jurisdiction over his claims that he is in expedited removal
12 proceedings and unable to apply for asylum because these claims are moot. Petitioner
13 is no longer in expedited removal proceedings, and he can apply for asylum in front of
14 an immigration judge.

15 The Constitution limits federal judicial power to designated “cases” and
16 “controversies.” U.S. Const., Art. III, § 2; *SEC v. Medical Comm. for Human Rights*,
17 404 U.S. 403, 407 (1972) (stating federal courts may only entertain matters that present
18 a “case” or “controversy” within the meaning of Article III). Federal courts do not have
19 jurisdiction “to give opinion upon moot questions or abstract propositions, or to declare
20 principles or rules of law which cannot affect the matter in issue in the case before it.”
21 *Church of Scientology of Cal. v. United States*, 506 U.S. 9, 12 (1992). “A claim is moot
22 if it has lost its character as a present, live controversy.” *Rosemere Neighborhood Ass'n*
23 *v. U.S. Env't Prot. Agency*, 581 F.3d 1169, 1172–73 (9th Cir. 2009). A case becomes
24 moot “when the issues presented are no longer ‘live’ or the parties lack a legally
25 cognizable interest in the outcome.” *Cnty. of Los Angeles v. Davis*, 440 U.S. 625, 631
26 (1979). The Court therefore lacks jurisdiction because there is no live case or
27 controversy remaining. *See Powell v. McCormack*, 395 U.S. 486, 496 (1969); *see also*
28 *Murphy v. Hunt*, 455 U.S. 478, 481 (1982).

1 Each of Petitioner's causes of action arise from his placement in expedited
2 removal proceedings. However, Petitioner is no longer in expedited removal
3 proceedings. Petitioner is in 240 proceedings, and he has the opportunity to present his
4 asylum claim (and any claims for withholding of removal under 8 U.S.C. § 1231(b)(3),
5 and the Convention Against Torture) directly to an immigration judge in a formal
6 hearing. *See* 8 U.S.C. §§ 1229a(b)(1)-(4) (detailing authority of immigration judge,
7 form of proceeding, and opportunity for a respondent to examine evidence against him
8 and present evidence on his own behalf, among other things). Petitioner will not be
9 removed from the United States until he is subject to a final order of removal, which
10 will be issued by an immigration judge after full consideration of any claims for relief
11 or protection from removal. *See* 8 U.S.C. § 1229a(a)(1), (3); 8 U.S.C. § 1231(a)(1)(A).

12 As Petitioner is no longer in expedited removal proceedings, the allegations in
13 the Petition regarding his placement in expedited removal proceedings and ability to
14 assert a claim for asylum no longer present a live case or controversy and are moot.
15 *See Church of Scientology of Cal.*, 506 U.S. at 12.

16 **B. Petitioner brings improper habeas claims.**

17 Moreover, the Court should deny the petition because Petitioner is not
18 challenging the lawfulness of his custody. Rather, he is challenging the decision to
19 dismiss his prior 240 proceedings, his placement into expedited removal, and the type
20 of review over his asylum claims within expedited removal. An individual may seek
21 habeas relief under 28 U.S.C. § 2241 if he is “in custody” under federal authority “in
22 violation of the Constitution or laws or treaties of the United States.”
23 28 U.S.C. § 2241(c). But habeas relief is available to challenge only the legality or
24 duration of confinement. *Pinson v. Carvajal*, 69 F.4th 1059, 1067 (9th Cir. 2023);
25 *Crawford v. Bell*, 599 F.2d 890, 891 (9th Cir. 1979); *Dep’t of Homeland Security v.*
26 *Thuraissigiam*, 591 U.S. 103, 117 (2020) (stating the writ of habeas corpus historically
27 “provide[s] a means of contesting the lawfulness of restraint and securing release”). The
28 Ninth Circuit squarely explained how to decide whether a claim sounds in habeas

jurisdiction: “[O]ur review of the history and purpose of habeas leads us to conclude the relevant question is whether, based on the allegations in the petition, release is *legally required* irrespective of the relief requested.” *Pinson*, 69 F.4th at 1072 (emphasis in original); *see also Nettles v. Grounds*, 830 F.3d 922, 934 (9th Cir. 2016) (stating the key inquiry is whether success on the petitioner’s claim would “necessarily lead to immediate or speedier release”). Notably, seeking judicial review under the Administrative Procedure Act (APA) is not properly sought through a habeas petition. *See 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.”). Here, a review on a decision to terminate 240 proceedings and a decision to place Petitioner into expedited removal proceedings would not automatically entitle Petitioner to release from detention. *See Guselnikov v. Noem*, No. 25-cv-1971-BTM-KSC, 2025 WL 2300873, at *1 (S.D. Cal. Aug. 8, 2025) (finding petitioners’ claims did not arise under § 2241 because they were not arguing they were unlawfully in custody and receiving the requested relief would not entitle them to release); *Giron Rodas v. Lyons*, No. 25cv1912-LL-AHG, 2025 WL 2300781, at *3 (S.D. Cal. Aug. 1, 2025) (“Like in *Pinson*, the Court lacks jurisdiction over Petitioner’s § 2241 habeas petition since it cannot be fairly read as attacking ‘the legality or duration of confinement.’”) (quoting *Pinson*, 69 F.4th at 1065). Thus, Petitioner’s claims do not arise under § 2241 and his petition should be dismissed.

C. Petitioner’s claims and requested relief are barred by 8 U.S.C. § 1252.

The Court lacks jurisdiction to hear Petitioner’s claims, which stem from DHS’s decision to arrest and detain Petitioner pending removal proceedings. *See Ass’n of Am. Med. Coll.*, 217 F.3d at 778–79; *Finley*, 490 U.S. at 547–48. 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(b)(9), § 1252(e), and § 1252(g).

1 In general, courts lack jurisdiction to review a decision to commence or
2 adjudicate removal proceedings or execute removal orders. *See* 8 U.S.C. § 1252(g)
3 (“[N]o court shall have jurisdiction to hear any cause or claim by or on behalf of any
4 alien arising from the decision or action by the Attorney General to commence
5 proceedings, adjudicate cases, or execute removal orders.”); *Limpin v. United States*,
6 828 Fed. App’x 429 (9th Cir. 2020) (holding district court properly dismissed under
7 8 U.S.C. § 1252(g) “because claims stemming from the decision to arrest and detain an
8 alien at the commencement of removal proceedings are not within any court’s
9 jurisdiction”). In other words, § 1252(g) removes district court jurisdiction over “three
10 discrete actions that the Attorney may take: [his] ‘decision or action’ to ‘commence
11 proceedings, adjudicate cases, or execute removal orders.’” *Reno v. Am.-Arab*
12 *Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999) (emphasis removed).
13 Petitioner’s claims necessarily arise “from the decision or action by the Attorney
14 General to commence proceedings [and] adjudicate cases,” over which Congress has
15 explicitly foreclosed district court jurisdiction. 8 U.S.C. § 1252(g).

16 Section 1252(g) also bars district courts from hearing challenges to the *method*
17 by which the government chooses to commence removal proceedings, including the
18 decision to detain an alien pending removal. *See Alvarez v. ICE*, 818 F.3d 1194,
19 1203 (11th Cir. 2016) (“By its plain terms, [§ 1252(g)] bars us from questioning ICE’s
20 discretionary decisions to commence removal” and also to review “ICE’s decision to
21 take [plaintiff] into custody to detain him during removal proceedings”).

22 Other courts have held, “[f]or the purposes of § 1252, the Attorney General
23 commences proceedings against an alien when the alien is issued a Notice to Appear
24 before an immigration court.” *Herrera-Correra v. United States*,
25 No. 08-2941 DSF (JCx), 2008 WL 11336833, at *3 (C.D. Cal. Sept. 11, 2008). “The
26 Attorney General may arrest the alien against whom proceedings are commenced and
27 detain that individual until the conclusion of those proceedings.” *Id.* at *3. “Thus, an
28 alien’s detention throughout this process arises from the Attorney General’s decision to

1 commence proceedings” and review of claims arising from such detention is barred
2 under § 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007)); *Wang*
3 *v. United States*, No. CV 10-0389 SVW (RCX), 2010 WL 11463156, at *6 (C.D. Cal.
4 Aug. 18, 2010); 8 U.S.C. § 1252(g).

5 Moreover, under 8 U.S.C. § 1252(b)(9), “[j]udicial review of all questions of law
6 and fact . . . arising from any action taken or proceeding brought to remove an alien
7 from the United States under this subchapter shall be available only in judicial review
8 of a final order under this section.” Further, judicial review of a final order is available
9 only through “a petition for review filed with an appropriate court of appeals.”
10 8 U.S.C. § 1252(a)(5). The Supreme Court has made clear that § 1252(b)(9) is “the
11 unmistakable ‘zipper’ clause,” channeling “judicial review of all” “decisions and
12 actions leading up to or consequent upon final orders of deportation,” including
13 “non-final order[s],” into proceedings before a court of appeals. *Reno*, 525 U.S. at 483,
14 485; see *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (noting § 1252(b)(9)
15 is “breathtaking in scope and vise-like in grip and therefore swallows up virtually all
16 claims that are tied to removal proceedings”). “Taken together, § 1252(a)(5) and
17 § 1252(b)(9) mean that *any* issue—whether legal or factual—arising from *any* removal-
18 related activity can be reviewed *only* through the [petition for review] PFR process.”
19 *J.E.F.M.*, 837 F.3d at 1031 (“[W]hile these sections limit *how* immigrants can challenge
20 their removal proceedings, they are not jurisdiction-stripping statutes that, by their
21 terms, foreclose *all* judicial review of agency actions. Instead, the provisions channel
22 judicial review over final orders of removal to the courts of appeal.”) (emphasis in
23 original); see *id.* at 1035 (“[Sections] 1252(a)(5) and [(b)(9)] channel review of all
24 claims, including policies-and-practices challenges . . . whenever they ‘arise from’
25 removal proceedings.”).

26 Critically, “1252(b)(9) is a judicial channeling provision, not a claim-barring
27 one.” *Aguilar v. ICE*, 510 F.3d 1, 11 (1st Cir. 2007). Indeed, 8 U.S.C. § 1252(a)(2)(D)
28 provides that “[n]othing . . . in any other provision of this chapter . . . shall be construed

1 as precluding review of constitutional claims or questions of law raised upon a petition
2 for review filed with an appropriate court of appeals in accordance with this section.”
3 *See also Ajlani v. Chertoff*, 545 F.3d 229, 235 (2d Cir. 2008) (“[J]urisdiction to review
4 such claims is vested exclusively in the courts of appeals[.]”). The petition-for-review
5 process before the court of appeals ensures that aliens have a proper forum for claims
6 arising from their immigration proceedings and “receive their day in court.” *J.E.F.M.*,
7 837 F.3d at 1031–32 (internal quotations omitted); *see also Rosario v. Holder*,
8 627 F.3d 58, 61 (2d Cir. 2010) (“The REAL ID Act of 2005 amended the [INA] to
9 obviate . . . Suspension Clause concerns” by permitting judicial review of
10 “nondiscretionary” BIA determinations and “all constitutional claims or questions of
11 law”). These provisions divest district courts of jurisdiction to review both direct and
12 indirect challenges to removal orders, including decisions to detain for purposes of
13 removal or for proceedings. *See Jennings v. Rodriguez*, 583 U.S. 281, 294–95 (2018)
14 (stating section 1252(b)(9) includes challenges to the “decision to detain [an alien] in
15 the first place or to seek removal”).

16 Here, Petitioner’s claims stem from his detention during removal proceedings.
17 However, that detention arises from DHS’s decision to commence such proceedings
18 against him. *See, e.g., Valecia-Meja v. United States*, No. 08-2943 CAS (PJWz),
19 2008 WL 4286979, at *4 (C.D. Cal. Sept. 15, 2008) (“The decision to detain plaintiff
20 until his hearing before the Immigration Judge arose from this decision to commence
21 proceedings.”); *Wang*, 2010 WL 11463156, at *6; *Tazu v. Att’y Gen. U.S.*, 975 F.3d
22 292, 298–99 (3d Cir. 2020) (holding that 8 U.S.C. § 1252(g) and (b)(9) deprive district
23 court of jurisdiction to review action to execute removal order).

24 Moreover, “[s]ection 1252(a)(2)(A) is a jurisdiction-stripping and channeling
25 provision, which bars review of almost ‘every aspect of the expedited removal
26 process.’” *Azimov v. U.S. Dep’t of Homeland Sec.*, No. 22-56034, 2024 WL 687442, at
27 *1 (9th Cir. Feb. 20, 2024) (quoting *Mendoza-Linares v. Garland*, 51 F.4th 1146,
28 1154 (9th Cir. 2022) (describing the operation of § 1252(a)(2)(A)). These jurisdiction-

1 stripping provisions cover “the ‘procedures and policies’ that have been adopted to
2 ‘implement’ the expedited removal process; the decision to ‘invoke’ that process in a
3 particular case; the ‘application’ of that process to a particular alien; and the
4 ‘implementation’ and ‘operation’ of any expedited removal order.” *Mendoza-Lineras*,
5 51 F.4th at 1155. “Congress chose to strictly cabin this court’s jurisdiction to review
6 expedited removal orders.” *Guerrier v. Garland*, 18 F.4th 304, 313 (9th Cir. 2021)
7 (finding that the Supreme Court abrogated any “colorable constitutional claims”
8 exception to the limits placed by § 1252(a)(2)(A)); *see Thuraissigiam*, 591 U.S. 103
9 (holding that limitations within § 1252(a)(2)(A) do not violate the Suspension Clause).
10 “Congress has chosen to explicitly bar nearly all judicial review of expedited removal
11 orders concerning such aliens, including ‘review of constitutional claims or questions
12 of law.’” *Mendoza-Linares*, 51 F.4th at 1148 (citing 8 U.S.C. § 1252(a)(2)(A), (D)); *see*
13 *Thuraissigiam*, 591 U.S. at 138-39 (explicitly rejecting Ninth Circuit’s holding that an
14 arriving alien has a “constitutional right to expedited removal proceedings that conform
15 to the dictates of due process”).

16 “Congress could scarcely have been more comprehensive in its articulation of the
17 general prohibition on judicial review of expedited removal orders.” *Mendoza-Lineras*,
18 51 F.4th at 1155. Specifically, Section 1252(a)(2)(A) states:

19 (2) Matters not subject to judicial review

20 (A) Review relating to section 1225(b)(1)

21 Notwithstanding any other provision of law (statutory or nonstatutory),
22 including section 2241 of Title 28, or any other habeas corpus provision,
23 and sections 1361 and 1651 of such title, no court shall have jurisdiction
to review-

- 24 (i) except as provided in subsection (e), any individual determination
or to entertain any other cause or claim arising from or relating to
25 the implementation or operation of an order of removal pursuant
to section 1225(b)(1) of this title,
26
27 (ii) except as provided in subsection (e), a decision by the Attorney
General to invoke the provisions of such section,
28
(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 of expedited removal proceedings, Petitioner 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 may] implement[]” § 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

1 § 1252(e)(2); and (2) challenges to the validity of the system under § 1252(e)(3). Any
2 permissible challenge to the validity of the system “is available [only] in an action in
3 the United States District Court for the District of Columbia” 8 U.S.C. § 1252(e)(3).

4 Narrow habeas corpus proceedings are expressly “limited to determinations” of
5 three questions: (1) “whether the petitioner is an alien”; (2) “whether the petitioner was
6 ordered removed under [section 1225(b)(1)]”; and (3) “whether the petitioner can prove
7 by a preponderance of the evidence that the petitioner is an alien” who has been granted
8 status as a lawful permanent resident, refugee, or asylee. 8 U.S.C. § 1252(e)(2)(A)-(C).
9 “In determining whether an alien has been ordered removed under section 235(b)(1)
10 [8 U.S.C. § 1225(b)(1)], the court’s inquiry shall be limited *to whether such an order*
11 *in fact was issued* and *whether it relates to the petitioner*. There shall be no review of
12 whether the alien is actually inadmissible or entitled to any relief from removal.”
13 8 U.S.C. § 1252(e)(5) (emphasis added). To the extent Petitioner is challenging the
14 expedited process, each of Petitioner’s claims fall outside the limited habeas corpus
15 authority provided within § 1252(e)(2).

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

18 **D. Petitioner is lawfully detained.**

19 Even assuming the Court has jurisdiction over his petition, Petitioner has not
20 stated a statutory violation or a Fifth Amendment due process violation. Petitioner’s
21 previous parole was properly revoked under 8 U.S.C. § 1226(b) and Petitioner is
22 currently subject to mandatory detention under 8 U.S.C. § 1225(b)(1).

23 “To determine whether Congress has authorized [a petitioner’s] detention, we
24 must first identify the statutory provision that purports to confer such authority on the
25 Attorney General.” *Prieto-Romero v. Clark*, 534 F.3d 1053, 1057 (9th Cir. 2008).
26 Section 1226(a) provides that “[o]n a warrant issued by the Attorney General, an alien
27 may be arrested and detained pending a decision on whether the alien is to be removed
28 from the United States.” 8 U.S.C. § 1226(a). The statute also provides for release from

1 custody on bond or conditional parole. 8 U.S.C. § 1226(a)(2). However, “[t]he Attorney
2 General at any time may revoke a bond or parole authorized under subsection (a),
3 rearrest the alien under the original warrant, and detain the alien.” 8 U.S.C. § 1226(b);
4 *see* 8 U.S.C. § 236.1(c)(9) (“When an alien who, having been arrested and taken into
5 custody, has been released, such release may be revoked at any time . . . in which event
6 the alien may be taken into physical custody and detained.”).

7 While Petitioner was previously released from custody on parole under
8 § 1226(a)(2), such parole may be revoked “at any time.” 8 U.S.C. § 1226(b).
9 Importantly, discretionary decisions under Section 1226 are not subject to judicial
10 review. 8 U.S.C. § 1226(e) (“No court may set aside any action or decision by the
11 Attorney General under this section regarding the detention or any alien or the
12 revocation or denial of bond or parole.”); *Demore v. Kim*, 538 U.S. 510, 531 (2003)
13 (“Detention during removal proceedings is a constitutionally permissible part of that
14 process.”). To the extent Petitioner challenges the decision to remand him back into
15 custody, his claims are barred by Section 1226(e). *See Jennings*, 583 U.S. at 295 (“As
16 we have previously explained, § 1226(e) precludes an alien from ‘challeng[ing] a
17 “discretionary judgment” by the Attorney General or a “decision” that the Attorney
18 General has made regarding his detention or release.’ But § 1226(e) does not preclude
19 ‘challenges [to] the statutory framework that permits [the alien’s] detention without
20 bail.’”).

21 Section 1225 applies to “applicants for admission,” who are defined as “alien[s]
22 present in the United States who [have] not been admitted” or “who arrive[] in the
23 United States.” 8 U.S.C. § 1225(a)(1). Applicants for admission “fall into one of two
24 categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2).”
25 *Jennings*, 583 U.S. at 287. Section 1225(b)(1) applies to arriving aliens and “certain
26 other” aliens “initially determined to be inadmissible due to fraud, misrepresentation,
27 or lack of valid document.” *Id.*; 8 U.S.C. § 1225(b)(1)(A)(i), (iii). Though not relevant
28 here, § 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*,

1 583 U.S. at 287. In this statutory scheme, DHS has the sole discretionary authority to
2 temporarily release on parole “any alien applying for admission to the United States”
3 on a “case-by-case basis for urgent humanitarian reasons or significant public benefit.”
4 *Id.* § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022).

5 In *Jennings*, the Supreme Court evaluated the proper interpretation of
6 8 U.S.C. § 1225(b) and stated that “[r]ead most naturally, §§ 1225(b)(1) and (b)(2) []
7 mandate detention of applicants for admission until certain proceedings have
8 concluded.” 583 U.S. at 297. The Court noted that neither § 1225(b)(1) nor § 1225(b)(2)
9 “impose[] any limit on the length of detention” and “neither § 1225(b)(1) nor
10 § 1225(b)(2) say[] anything whatsoever about bond hearings.” *Id.* The Court added that
11 the sole means of release for noncitizens detained under §§ 1225(b)(1) or (b)(2) prior
12 to removal from the United States is temporary parole at the discretion of the Attorney
13 General under 8 U.S.C. § 1182(d)(5). *Id.* at 300. The Court observed that because aliens
14 held under § 1225(b) may be paroled for “urgent humanitarian reasons or significant
15 public benefit,” “[t]hat express exception to detention implies that there are no *other*
16 circumstances under which aliens detained under 1225(b) may be released.” *Id.*
17 (citations and internal quotation omitted) (emphasis in the original). Courts thus may
18 not validly draw additional procedural limitations “out of thin air.” *Id.* at 312. The
19 Supreme Court concluded: “In sum, §§ 1225(b)(1) and (b)(2) mandate detention of
20 [noncitizens] throughout the completion of applicable proceedings.” *Id.* at 302.

21 As to the Fifth Amendment, the only due process rights Petitioner has are those
22 rights statutorily afforded by Congress. *See Thuraissigiam*, 591 U.S. at 139 (collecting
23 cases); 8 U.S.C. § 1225(b)(1)(B)(iii)(IV); *Landon v. Plasencia*, 459 U.S. 21, 32 (1982)
24 (“This Court has long held that an alien seeking initial admission to the United States
25 requests a privilege and has no constitutional rights regarding his application, for the
26 power to admit or exclude aliens is a sovereign prerogative.”) (citations omitted); *see*
27 *generally I.N.S. v. Lopez-Mendoza*, 468 U.S. 1032, 1038 (1984) (“Consistent with the
28 civil nature of the proceeding, various protections that apply in the context of a criminal

1 trial do not apply in a deportation hearing.”). In *Thuraissigiam*, the Supreme Court
2 addressed the due process rights of inadmissible arriving noncitizens and stated that
3 such individuals have no due process rights “other than those afforded by statute.”
4 *Thuraissigiam*, 591 U.S. at 107; *id.* at 140 (“[A]n alien in respondent’s position has only
5 those rights regarding admission that Congress has provided by statute.”). The Supreme
6 Court noted that its determination was supported by “more than a century of precedent.”
7 *Id.* at 138 (citing *Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892); *U.S. ex*
8 *rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950); *Shaughnessy v. United States ex*
9 *rel. Mezei*, 345 U.S. 206, 212 (1953); *Landon*, 459 U.S. at 32); *Rauda v. Jennings*,
10 8 F.4th 1050, 1058 (9th Cir. 2021) (“Congress has already balanced the amount of due
11 process available to petitioners with the executive’s prerogative to remove individuals,
12 and we decline to expand judicial review beyond the parameters set by Congress.”);
13 *Mendoza-Linares v. Garland*, No. 21-cv-1169-BEN (AHG), 2024 WL 3316306, at *2
14 (S.D. Cal. June 10, 2024) (“[T]he Court finds that Petitioner has no Fifth Amendment
15 right to a bond hearing pending his removal proceedings. The only due process due an
16 alien seeking admission to the United States is ‘those rights regarding admission that
17 Congress has provided by statute.’” (quoting *Thuraissigiam*, 591 U.S. at 140); *Zelaya-*
18 *Gonzalez v. Matuszewski*, No. 23-CV-151 JLS (KSC), 2023 WL 3103811, at *4 (S.D.
19 Cal. Apr. 25, 2023) (“Binding Ninth Circuit and Supreme Court precedents are clear
20 that Petitioner lacks any rights beyond those conferred by statute, and no statute entitles
21 Petitioner to a bond hearing.”).

22 Here, Petitioner’s removal proceedings are ongoing, and thus, he continues to be
23 subject to mandatory detention under 8 U.S.C. § 1225(b)(1)(B)(ii). As the statutory
24 authority Petitioner is detained under does not afford him a right to a determination by
25 this Court as to whether his release is warranted nor a right to a bond hearing before an
26 immigration judge, the Court should reject his claim that his detention violates the
27 Fifth Amendment’s Due Process Clause and deny his requested relief.
28

1 See *Thuraissigiam*, 591 U.S. at 107, 140; *Mezei*, 345 U.S. at 212; *Guerrier v. Garland*,
2 18 F. 4th 304, 310 (9th Cir. 2021).

3 Similarly, the APA does not provide an avenue for relief in this case. The APA
4 places limits on when agency action is subject to judicial review. “Agency action made
5 reviewable by statute and final agency action for which there is no other adequate
6 remedy in a court are subject to judicial review.” 5 U.S.C. § 704; *Navajo Nation v. Dep’t*
7 *of the Interior*, 876 F.3d 1144, 1171 (9th Cir. 2017) (“[Section] 704’s requirement that
8 to proceed under the APA, agency action must be final or otherwise reviewable by
9 statute is an independent element without which courts may not determine APA
10 claims.”). Reviewable “agency action” is defined to include “the whole or a part of an
11 agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure
12 to act.” 5 U.S.C. § 551(13). “While this definition is ‘expansive,’ federal courts ‘have
13 long recognized that the term [agency action] is not so all-encompassing as to authorize
14 . . . judicial review over everything done by an administrative agency.’” *Wild Fish*
15 *Conservancy v. Jewell*, 730 F.3d 791, 800–01 (9th Cir. 2013) (quoting *Fund for*
16 *Animals, Inc. v. U.S. Bureau of Land Management*, 460 F.3d 13, 19 (D.C. Cir. 2006)).
17 Here, it is not altogether clear what final agency action Petitioner seeks review over.
18 Importantly, habeas relief is available to challenge only the legality or duration of
19 confinement. *Pinson*, 69 F.4th at 1067; see also *Flores-Miramontes*, 212 F.3d at 1140
20 (“For purposes of immigration law, at least, ‘judicial review’ refers to petitions for
21 review of agency actions, which are governed by the Administrative Procedure Act,
22 while habeas corpus refers to habeas petitions brought directly in district court to
23 challenge illegal confinement.”). The Court should therefore reject Petitioner’s claim,
24 because it is beyond the scope of habeas jurisdiction.

25 Accordingly, as Petitioner is detained pursuant to 8 U.S.C. § 1225(b)(1)(B)(ii),
26 Petitioner’s claims fail on the merits.

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DATED: August 29, 2025 Respectfully submitted,

s/ Kelly A. Reis
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