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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

SAYED NASER NOORI,

Petitioner,

v.

CHRISTOPHER J. LAROSE; et al.,

Respondents.

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

RESPONDENTS' RETURN TO HABEAS PETITION

TABLE OF CONTENTS

TABLE OF AUTHORITIES

PAGES

CASES

STATUTES

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 On June 12, 2025, Petitioner's conditional parole was revoked pursuant to 8 U.S.C. § 1226(b).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.

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

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

On July 11, 2025, pursuant to 8 U.S.C. § 1225(b)(1)(B), Petitioner was interviewed by a U.S. Citizenship and Immigration Services asylum officer. Negrin Decl. ¶ 9. On July 12, 2025, based on a positive determination by the asylum officer, Petitioner was issued a Notice to Appear, 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. Negrin Decl. ¶ 9; *see also* Exhibit 6 (Notice to Appear, dated July 12, 2025). The Notice to Appear commenced new 240 proceedings. Negrin Decl. ¶ 9. Petitioner remained detained in ICE custody under 8 U.S.C. § 1225(b)(1)(B)(ii), as his detention is mandatory. *See* Negrin Decl. ¶ 9. Petitioner's new 240 proceedings remain ongoing. Petitioner appeared before an immigration judge on August 14 and 27, 2025, for master calendar hearings. Negrin Decl. ¶ 10. 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).

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

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

III. ARGUMENT

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

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). However, Petitioner cannot establish jurisdiction over his claims that he is in expedited removal proceedings and unable to apply for asylum because these claims are moot. Petitioner is no longer in expedited removal proceedings, and he can apply for asylum in front of an immigration judge.

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

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

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

B. Petitioner brings improper habeas claims.

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

In general, courts lack jurisdiction to review a decision to commence or adjudicate removal proceedings or execute removal orders. *See* 8 U.S.C. § 1252(g) ("[N]o court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders."); *Limpin v. United States*, 828 Fed. App'x 429 (9th Cir. 2020) (holding district court properly dismissed under 8 U.S.C. § 1252(g) "because claims stemming from the decision to arrest and detain an alien at the commencement of removal proceedings are not within any court's jurisdiction"). 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 v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999) (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").

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 v. United States*, No. CV 10-0389 SVW (RCX), 2010 WL 11463156, at *6 (C.D. Cal. Aug. 18, 2010); 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 ("[Sections] 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 v. Rodriguez*, 583 U.S. 281, 294–95 (2018) (stating section 1252(b)(9) includes challenges to the "decision to detain [an alien] in the first place or to seek removal").

Here, Petitioner's claims stem from his detention during removal proceedings. However, that detention arises from DHS's decision to commence such proceedings against him. *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*, 2010 WL 11463156, at *6; *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).

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

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

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

> (2) Matters not subject to judicial review
>
> (A) Review relating to section 1225(b)(1)
>
> Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to review-
>
> (i) except as provided in subsection (e), any individual determination or to entertain any other cause or claim arising from or relating to the implementation or operation of an order of removal pursuant to section 1225(b)(1) of this title,
>
> (ii) except as provided in subsection (e), a decision by the Attorney General to invoke the provisions of such section,
>
> (iii) the application of such section to individual aliens, including the determination made under section 1225(b)(1)(B) of this title, or

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

8 U.S.C. § 1252(a)(2)(A). Thus, "Section 1252(a)(2)(A)(i) deprives courts of jurisdiction to hear a 'cause or claim arising from or relating to the implementation or operation of an order of removal pursuant to section 1225(b)(1),' which plainly includes [Petitioner's] collateral attacks on the validity of the expedited removal order." *Azimov*, 2024 WL 687442, at *1 (quoting *Mendoza-Linares*, 51 F.4th at 1155) (citing *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031-35 (9th Cir. 2016) (concluding that the "arising from" language in neighboring § 1252(b)(9) sweeps broadly)). By challenging the standards and process 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

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

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

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

D. Petitioner is lawfully detained.

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

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

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

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

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*, 583 U.S. at 287. 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). 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, 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).

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 under §§ 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.

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

trial do not apply in a deportation hearing."). In *Thuraissigiam*, the Supreme Court addressed the due process rights of inadmissible arriving noncitizens and stated that such individuals have no due process rights "other than those afforded by statute." *Thuraissigiam*, 591 U.S. 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. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953); *Landon*, 459 U.S. at 32); *Rauda v. Jennings*, 8 F.4th 1050, 1058 (9th Cir. 2021) ("Congress has already balanced the amount of due process available to petitioners with the executive's prerogative to remove individuals, and we decline to expand judicial review beyond the parameters set by Congress."); *Mendoza-Linares v. Garland*, No. 21-cv-1169-BEN (AHG), 2024 WL 3316306, at *2 (S.D. Cal. June 10, 2024) ("[T]he Court finds that Petitioner has no Fifth Amendment right to a bond hearing pending his removal proceedings. The only due process due an alien seeking admission to the United States is 'those rights regarding admission that Congress has provided by statute.'" (quoting *Thuraissigiam*, 591 U.S. at 140); *Zelaya-Gonzalez v. Matuszewski*, No. 23-CV-151 JLS (KSC), 2023 WL 3103811, at *4 (S.D. Cal. Apr. 25, 2023) ("Binding Ninth Circuit and Supreme Court precedents are clear that Petitioner lacks any rights beyond those conferred by statute, and no statute entitles Petitioner to a bond hearing.").

Here, Petitioner's removal proceedings are ongoing, and thus, he continues to be subject to mandatory detention under 8 U.S.C. § 1225(b)(1)(B)(ii). 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).

Similarly, the APA does not provide an avenue for relief in this case. 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) ("[Section] 704's requirement that to proceed under the APA, agency action must be final or otherwise reviewable by statute is an independent element without which courts may not determine APA claims."). 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*, 69 F.4th at 1067; *see also Flores-Miramontes*, 212 F.3d at 1140 ("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 on the merits.

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IV. CONCLUSION

For the foregoing reasons, Respondents respectfully request that the Court deny the Petition and dismiss this action.

DATED: August 29, 2025 Respectfully submitted,

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SAYED NASER NOORI,

Petitioner,

v.

CHRISTOPHER LAROSE; et al.,

Respondents.

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

TABLE OF EXHIBITS

Exhibits:

1. Form I-213, Record of Deportable/Inadmissible Alien, dated July 6, 2024
2. Notice to Appear, dated July 6, 2024
3. Order on Motion to Dismiss, dated June 26, 2025
4. Form I-213, Record of Deportable/Inadmissible Alien, dated June 12, 2025
5. Form I-860, Notice and Order of Expedited Removal, dated June 12, 2025
6. Notice to Appear, dated July 12, 2025