TIMOTHY COURCHAINE
United States Attorney
District of Arizona
LINDSEY E. GILMAN
Assistant U.S. Attorney
Arizona State Bar No. 034003
Two Renaissance Square
40 North Central Avenue, Suite 1800
Phoenix, Arizona 85004-4449
Telephone: (602) 514-7500
Facsimile: (602) 514-7760
Email: Lindsey.Gilman@usdoj.gov
Attorneys for Respondents

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Ibrakhim Bolotkanov, Petitioner, v. John Cantu, et al., Respondents.	No. CV-25-03025-PHX-KML **ANSWER TO PETITION FOR A WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241**

Respondents, Fred Figueroa, Warden, Eloy Detention Center, John Cantu, Arizona Field Office Director, U.S. Immigration and Customs Enforcement (ICE), Todd M. Lyons, Director, Kristi Noem, Secretary of the Department of Homeland Security, and Pamela J. Bondi, Attorney General of the United States, (Respondents), through undersigned counsel, answers the Petition for Writ of Habeas Corpus (Doc. 1). Petitioner is currently in removal proceedings under INA § 240, 8 U.S.C. § 1229, as an inadmissible arriving alien subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). Further, multiple provisions of 8 U.S.C. § 1252 strip federal courts of jurisdiction over Petitioner's challenges to the commencement of removal proceedings any claims arising from removal proceedings. To the extent Petitioner also attacks decisions that have not yet occurred, namely termination of his INA § 240, 8 U.S.C. § 1229a proceedings, and commencement

of expedited removal proceedings under INA § 235(b)(1), 8 U.S.C. § 1225(b)(1), he lacks standing to challenge actions that have not yet happened. For all these reasons, Petitioner's habeas should be denied. This Response is supported by the following Memorandum of Points and Authorities and attached declaration.

MEMORANDUM OF POINTS AND AUTHORITIES

I. FACTUAL BACKGROUND.

Ibrahim Bolotkanov is a native and citizen of Kyrgyzstan, born on [redacted] in Kyrgyzstan. *See* Declaration of Christopher Apodaca, Detention Officer, attached as Exhibit 1 at ¶ 3. On December 23, 2017, Mr. Bolotkanov applied for entry into the United States at the San Ysidro Port of Entry. *Id.* at ¶ 4. He presented his Kyrgyzstan passport and stated he was seeking asylum and wanted to go to Los Angeles, California. *Id.* On December 27, 2017, he was served with an M-44 (Information about credible fear interview), provided a list of legal services, and was taken into custody pursuant to 8 U.S.C. § 1225(b) pending a credible fear interview before an asylum officer. *Id.* at ¶¶ 5-6.

On or about January 12, 2018, Mr. Bolotkanov was served with a Form I-862 (Notice to Appear). *Id.* at ¶ 7. On February 21, 2018, ICE Enforcement and Removal Operations (ERO) released Mr. Bolotkanov from DHS custody on parole. *Id.* at ¶ 8. Mr. Bolotkanov filed a Form I-589 (Application for Asylum and Withholding of Removal) on or about May 7, 2018. *Id.* at ¶ 8. On or around March 30, 2018, the IJ granted Mr. Bolotkanov's motion to change venue and transferred his proceedings to the non-detained docket at the Los Angeles Immigration Court. *Id.* at ¶ 9. Mr. Bolotkanov filed a Form I-589 Application for Asylum and Withholding of Removal with the Immigration Court on May 7, 2018. *Id.* at ¶ 10. On that same date, the Immigration Court scheduled Mr. Bolotkanov for an individual merits hearing to adjudicate the I-589 for July 17, 2018. *Id.* at ¶ 11. The Immigration Court *sua sponte* continued Mr. Bolotkanov's hearing date and the case was scheduled to May 24, 2019. *Id.* at ¶ 13.

On May 24, 2019, the Immigration Court continued Mr. Bolotkanov's case until December 16, 2020, for a final hearing to adjudicate Mr. Bolotkanov's Form I-589. *Id.* at

¶ 14. On July 13, 2021, the Immigration Court continued Mr. Bolotkanov's case to a master calendar hearing for December 9, 2022, due to a court closure. *Id.* at ¶ 16. Following some additional extensions, DHS filed a Motion to Dismiss proceedings under INA § 240 without prejudice pursuant to 8 C.F.R.239.2 (c) and 8 C.F.R.239.2 (a)(7), which was granted.[1] *Id.* at ¶¶ 17-20. On May 13, 2025, Mr. Bolotkanov was encountered by border patrol at the United States Border Patrol Checkpoint on Highway 78. *Id.* at ¶ 21. ICE officers arrested Mr. Bolotkanov and he was transferred to the Eloy Detention Center in Eloy, Arizona, that same day. *Id.* at ¶ 22. On May 13, 2025, A Form I-862 was filed, charging Mr. Bolotkanov with inadmissibility as an arriving alien who did not have a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document.[2] *Id.* at ¶ 23.

On May 19, 2025, Mr. Bolotkanov requested a custody redetermination hearing before the Immigration Court. *Id.* at ¶ 25. The Immigration Court denied Mr. Bolotkanov's request and indicated that it lacked jurisdiction to issue bond because Mr. Bolotkanov is an arriving alien under INA 235(b)(2)(A), 8 U.S.C § 1225(b)(2)(A). *Id.* at ¶ 26. On May 30, 2025, DHS made an oral motion to dismiss the INA § 240 proceedings to place Mr. Bolotkanov in expedited removal proceedings. *Id.* at ¶ 27. It was granted. *Id.* Mr. Bolotkanov filed a Notice of Appeal to the Board of Immigration Appeals (BIA) to appeal the Immigration Court's determination that it lacked jurisdiction to issue a bond.[3] *Id.* at ¶ 28. On September 25, 2025, the BIA dismissed his bond appeal. *Id.* at ¶ 31.

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[1] The dismissal relinquished the need to adjudicate the Form I-589.

[2] Generally, arriving aliens found at or near the border who have not been admitted or paroled are found to be inadmissible and processed under expedited removal proceedings pursuant to INA § 235, 8 U.S.C. § 1225, and subject to mandatory detention under INA § 235(b), 8 U.S.C. § 1225(b). However, Petitioner was issued a Notice to Appear in general removal proceedings under INA § 240, 8 U.S.C. § 1229a.

[3] Note that Petitioner filed an appeal with the BIA of the "entire case." Doc. 1 at ¶¶ 62-63. Because Petitioner appealed the dismissal from the IJ, he is still in regular removal proceedings. If the BIA agrees with the IJ's decision to dismiss the INA § 240 proceedings, Petitioner would then be placed in expedited removal proceedings.

ARGUMENT

II. Petitioner Lacks Standing to Challenge Any Expedited Removal Proceedings.

No case or controversy exists to the extent Petitioner challenges DHS's dismissal of his INA § 240, 8 U.S.C. § 1229a removal proceedings to pursue expedited removal proceedings under INA § 235, 8 U.S.C. § 1225. Ex. A at ¶ 27. The Constitution limits federal judicial power to designated "cases" and "controversies." U.S. Const., Art. III, § 2; *SEC v. Medical Committee for Human Rights*, 404 U.S. 403, 407 (1972) (federal courts may only entertain matters that present a "case" or "controversy" within the meaning of Article III). "Absent a real and immediate threat of future injury there can be no case or controversy, and thus no Article III standing for a party seeking injunctive relief." *Wilson v. Brown*, No. 05-cv-1774-BAS-MDD, 2015 WL 8515412, at *3 (S.D. Cal. Dec. 11, 2015) (citing *Friends of the Earth, Inc. v. Laidlow Env't Servs., Inc.*, 528 U.S. 167, 190 (2000)). At the "irreducible constitutional minimum," standing requires that Plaintiff demonstrate the following: (1) an injury in fact (2) that is fairly traceable to the challenged action of the United States and (3) likely to be redressed by a favorable decision. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992).

As of today, October 2, 2025, Petitioner is currently in removal proceedings under INA § 240, 8 U.S.C. § 1229a, and he is not in expedited removal proceedings pursuant to INA § 235, 8 U.S.C. § 1225. As such, there is currently no controversy concerning his INA § 240 proceedings or placement in expedited removal proceedings for the Court to resolve. This is true to the extent he challenges such a decision in this case or at large. Federal courts simply 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). The Court therefore lacks jurisdiction with respect to any challenge to DHS's motion to dismiss INA § 240, 8 U.S.C. § 1229(a) proceedings to pursue INA § 235, 8 U.S.C. § 1225 proceedings because it is premature and there is no live case or controversy. *See Powell v. McCormack*, 395 U.S. 486, 496 (1969); *see also Murphy v. Hunt*, 455 U.S. 478, 481 (1982).

III. This Court Lacks Subject Matter Jurisdiction Under 8 U.S.C. § 1252(g).

Courts lack subject matter 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."); *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."); *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").

Specifically, 8 U.S.C. § § 1252(g) removes district court jurisdiction over "three discrete actions that the Attorney General may take: [the] 'decision or action' to 'commence proceedings, adjudicate cases, or execute removal orders.'" *Reno*, 525 U.S. at 482 (emphasis removed). Here, 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).

Here, this Court lacks subject matter jurisdiction to hear any challenge to the governments' decision to dismiss general removal proceedings brought under INA § 240 and pursue expedited removal proceedings instead.

IV. Sections 1252(b)(9) and 1252(a)(5) Are Also Subject Matter Stripping Statutes.

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").

Here, Petitioner's challenges to the administrations practice of dismissing INA § 240 proceedings to pursue INA § 235 proceedings are also foreclosed by sections 1252(a)(5) and (b)(9) in addition to section 1252(g).

V. Petitioner is an arriving alien subject to mandatory detention which comports with his due process rights under the Fifth Amendment.

An arriving alien is "an applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry, or an alien interdicted in international or United States waters and brought into the United States by any means, whether or not to a designated port-of-entry, and regardless of the means of transport. 8 C.F.R. § 1.2.

Here, Petitioner is an arriving alien subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A), and detention throughout the remainder of those proceedings are lawful.

Noncitizens in pre-final-removal-order civil immigration detention generally fall within two categories: 8 U.S.C. § 1225, which consists of noncitizens seeking an initial entry, and 8 U.S.C. § 1226, which consists of noncitizens who entered the United States. Petitioner falls under 8 U.S.C. § 1225 because he was found to be an inadmissible arriving alien. The difference between the noncitizens in these two categories is significant for due process purposes. *See Thuraissigiam*, 591 U.S. at 106–07, 138–40; *Mendoza-Linares v. Garland*, 51 F.4th 1146, 1148 (9th Cir. 2022) (noting the "unique constitutional status of arriving aliens with no ties to the United States").

The Supreme Court considered whether 8 U.S.C. § 1225(b) imposes a time-limit on the length of detention and whether such noncitizens detained under this statutory authority have a statutory right to a bond hearing. *See Jennings*, 583 U.S. at 296-303. The Supreme Court held that "nothing in the statutory text [of 8 U.S.C. § 1225(b)] imposes any limit on the length of detention" nor "says anything whatsoever about bond hearings." *Id.* at 842. The sole means of release for noncitizens detained pursuant to 8 U.S.C. § 1225(b) is temporary parole at the discretion of DHS under 8 U.S.C. § 1182(d)(5). *Id.* at 844.

Understanding the statutory interpretation of 8 U.S.C. § 1225(b) and the rights it affords to "arriving aliens" like Petitioner, is critical because, for "more than a century" now, the Supreme Court has held that the rights of such noncitizens are confined exclusively to those granted by Congress. *See Thuraissigiam*, 591 U.S. at 131; *see also Nishimura Ekiu*, 142 U.S. at 660 (holding that with regard to "foreigners who have never been naturalized, nor acquired any domicile or residence within the United States, nor even been admitted into the country pursuant to law," "the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law."); *Landon*, 459 U.S. at 32 ("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"); *Shaugnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) (rejecting noncitizens' habeas petitions premised on their claim that their detention without

a bond hearing violated their Fifth Amendment Due Process rights because "an alien on the threshold of initial entry stands on a different footing: 'Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned.'").

The Supreme Court's holding on this topic was reinforced most recently in *Thuraissigiam*, a habeas action involving a noncitizen, like Petitioner, seeking initial entry to the United States and detained under 8 U.S.C. § 1225(b) who raised a Fifth Amendment Due Process Clause challenge. 591 U.S. 106–07. Therein, the Supreme Court "reiterated th[e] important rule," *id.* at 138, that a noncitizen seeking initial entry to the United States "has no entitlement" to any legal rights, constitutional or otherwise, other than those expressly provided by statue. *Id.* at 107 ("Congress is entitled to set the conditions for an alien's lawful entry into this country and [] as a result [] an alien at the threshold of initial entry cannot claim any greater rights under the Due Process Clause."); *id.* (holding that a noncitizen seeking initial entry "has no entitlement to procedural rights other than those afforded by statute"); *id.* at 140 (A noncitizen seeking initial entry to the United States "has only those rights regarding admission that Congress has provided by statute" and "the Due Process Clause provides nothing more[.]").

More broadly, the Supreme Court has long recognized that the political branches' broad power over immigration is "at its zenith at the international border." *United States v. Flores-Montano*, 541 U.S. 149, 152–53 (2004). The power to admit or exclude aliens is a sovereign prerogative vested in the political branches, and "it is not within the province of any court, unless expressly authorized by law, to review [that] determination." *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 543 (1950); *see also Kleindienst v. Mandel*, 408 U.S. 753, 765–66 n.6 (1972) (noting that the Supreme Court's "general reaffirmations" of the political branches' exclusive authority to admit or exclude aliens "have been legion"). Control of the Nation's borders is vested in the political branches because that authority is "vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations," matters "exclusively entrusted to the political branches of government." *Harisiades v. Shaughnessy*, 342 U.S. 580, 588–89 (1952).

Preserving the political branches' authority to control the border serves "the obvious necessity that the Nation speak with one voice" on such matters. *Zadvydas v. Davis*, 533 U.S. 678, 711 (2001).

In addition to the sovereign, largely unreviewable prerogative of Congress and the Executive to admit or exclude aliens, *see Knauff,* 338 U.S. at 543 (1950), the Supreme Court also has recognized that aliens seeking admission to the United States do not have the same constitutional protections as individuals who have entered the United States. "[O]ur immigration laws have long made a distinction between those aliens who have come to our shores seeking admission . . . and those who are within the United States after an entry, irrespective of its legality. In the latter instance, the Court has recognized additional rights and privileges not extended to those in the former category who are merely 'on the threshold of initial entry.'" *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958) (quoting *Mezei*, 345 U.S. at 212). Accordingly, Congress may authorize the detention of aliens at the border, even for prolonged periods of time, and such detention does not deprive aliens "of any statutory or constitutional right." *See Mezei*, 345 U.S. at 212 (upholding detention of lawful permanent resident returning from trip abroad detained for over a year and a half).

Here, as an arriving alien, Petitioner has no due process protections beyond those afforded by statute. *See United States v. Verdugo-Urquidez*, 494 U.S. 259, 270-71 (1990) (Aliens "receive constitutional protections when they have come within the territory of the United States and developed substantial connections with this country."); *Landon*, 459 U.S. at 32 ("[A]n alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application."); *Mezei*, 345 U.S. at 212 ("[A]n alien on the threshold of initial entry stands on a different footing: 'Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned.'"); *Thuraissigiam*, 591 U.S. at 131. Petitioner received all the protections allowed by the relevant statutes. Finally, because Petitioner was mandatorily detained under 8 U.S.C. § 1225(b), the IJ properly found that he lacked jurisdiction to issue bond. Ex. A at ¶ 28.

VI. Petitioner Brings Improper Habeas Claims.

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) (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; *see also Nettles v. Grounds*, 830 F.3d 922, 934 (9th Cir. 2016) (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. Doc. 1 at 19. *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."). Doc. 1 at 19-21. Here, Petitioner's APA attack on the Trump Administration's policy regarding the expansion of expedited removals fall outside the scope of relief provided for in a habeas petition particularly where it fails to challenge the legality or duration of Petitioner's confinement. *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).

VII. Conclusion.

In light of the above, Respondents respectfully request the Court deny Petitioner's Petition for Writ of Habeas Corpus.

Respectfully submitted on October 2, 2025.

TIMOTHY COURCHAINE
United States Attorney
District of Arizona

/s/ Lindsey E. Gilman
LINDSEY E. GILMAN
Assistant United States Attorney
Attorneys for Respondents