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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

JOAQUIN DAVID RICO-TAPIA,

Petitioner,

vs.

SHIKHA DOSANJ, Warden, Federal
Detention Center, Honolulu, Hawaii,
in his official capacity; SERGIO
ALBARRAN, Field Office Director,
San Francisco Field Office
Immigration and Customs
Enforcement, in his official capacity;
PAM BONDI, Attorney General of
the United States, in her official
capacity; KRISTI NOEM, Secretary
of Homeland Security, in her official
capacity,

Respondents.

CASE NO. CV25-00379 SASP-KJM

RESPONDENTS' RETURN TO
HABEAS PETITION [ECF No. 2];
DECLARATION OF
DEPORTATION OFFICER LEON
HO; EXHIBIT "A"; CERTIFICATE
OF SERVICE

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RESPONDENTS'¹ RETURN TO HABEAS PETITION [ECF No. 2]

I. INTRODUCTION

Petitioner is a Venezuelan national who is currently in removal proceedings under 8 U.S.C. § 1229a (“240 Proceedings”) and is lawfully detained in Immigration and Customs Enforcement (“ICE”) custody pursuant to 8 U.S.C. § 1225(b). The Petition for Writ of Habeas Corpus (“the Petition”) challenges Petitioner’s detention without notice and alleges that Petitioner was improperly placed in expedited removal proceedings. Petitioner seeks release and a bond hearing. *See* ECF No. 2 at PageID.12–13 ¶¶ 9, 10.

The Petition should be denied because (1) the claims are moot as Petitioner is no longer in expedited removal proceedings and has been given a credible fear interview; (2) Petitioner’s claims are barred by statute; (3) Petitioner does not bring proper habeas claims; and (4) contrary to his claims, his continued detention is lawful under the INA, is not in violation of the Administrative Procedures Act, and he is being afforded all the process he is due.

¹ Respondents have amended the caption to reflect the current Warden of Federal Detention Center Honolulu, as well as the current Field Officer Director, San Francisco Field Office Immigration and Customs Enforcement. *See* Fed. R. Civ. P. 25(d).

At the status conference on September 16, 2025, the Court posed several questions to the parties. Respondents provide short answers here, which are more fully explained *infra*.

- **Why did the Department of Homeland Security dismiss Petitioner’s removal proceedings in July 2025, and under what authority?**

The Department of Homeland Security (“DHS”) exercised its discretion and moved to dismiss the Petitioner’s removal proceedings because it determined that he was subject to expedited removal pursuant to 8 U.S.C. § 1225(b). Declaration of Deportation Officer Leon Ho (“Ho Dec.”) at ¶ 12.

- **Under what authority was Petitioner arrested and taken into custody in July 2025?**

Petitioner was arrested pursuant to a Warrant for Arrest of Alien, Form I-200, which he was served with on July 23, 2025. Petitioner was served that same day with Form I-286, Notice of Custody Determination. Ho Dec. at ¶ 13.

- **Is Petitioner’s current detention pursuant to 8 U.S.C. §§ 1225 or 1226?**

Petitioner is detained pursuant to 8 U.S.C. § 1225(b)(1). *See id.* at ¶ 14.

- **What efforts has the DHS taken against Petitioner following the dismissal of his removal proceedings in July 2025?**

After the Immigration Judge (“IJ”) dismissed the removal proceedings in July 2025, DHS arrested, detained, and transferred Petitioner from the San Francisco area to the Federal Detention Center in Honolulu, Hawaii. *See id.* at ¶¶ 14, 16. Since then, Petitioner has been interviewed by an asylum officer, who found that Petitioner has a credible fear of return to Venezuela, and he has been

placed into new removal proceedings in immigration court here in Honolulu. *See id.* at ¶ 15.

- **Are there any other current proceedings involving Petitioner and the DHS?**

Petitioner is currently in removal proceedings in the immigration court located in Honolulu. The IJ will determine whether Petitioner is entitled to asylum or subject to removal. *See id.* at ¶¶ 16–19; 8 U.S.C. § 1225(b)(1)(B)(ii).

- **If Petitioner is ordered to be released, where will he be released to?**

Petitioner would likely be released in Honolulu, though that decision would be left to ICE’s unreviewable discretion. Section 1231(g) grants discretion to decide at what location to detain individuals. Decisions within the government’s discretion are not subject to judicial review. 8 U.S.C. § 1252(a)(2)(B)(ii). As the Ninth Circuit has noted, where an alien is detained “is within the province of the Attorney General to decide.” *See Rios–Berrios v. INS*, 776 F.2d 859, 863 (9th Cir.1985) (interpreting former statute now codified as § 1231(g)).

- **Does this Court have jurisdiction to hold a bond hearing?**

No. 8 U.S.C. § 1225(b)(1)(B)(ii) states that an alien “shall be detained for further consideration of the application for asylum.”

- **Are there any other jurisdictional issues?**

Yes. Petitioner’s claims are barred by 8 U.S.C. § 1252. Petitioner’s claims are also moot considering the parallel Section 240 Proceedings.

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II. BACKGROUND

A. **Petitioner's Arrival and First Section 240 Proceedings**

Petitioner is a Venezuelan native and citizen of Colombia, arrested approximately one mile north of the port of entry at Eagle Pass, Texas in August 2022. Ho Dec. at ¶¶ 7, 8. At the time his arrest, Petitioner was determined to have unlawfully entered the United States without inspection from Mexico. *Id.* at ¶ 8. On August 14, 2022, Petitioner was issued a Form I-94 and paroled into the United States pursuant to 8 U.S.C. § 1182(d)(5); his parole expired on October 14, 2022. *Id.* at ¶ 9.

On October 5, 2022, Petitioner reported to San Francisco ICE Enforcement and Removal Operations (“ERO”). *Id.* On December 27, 2022, the Petitioner reported to ICE ERO Alternatives to Detention (“ATD”) Unit for further processing, where he was served with a Form I-862, Notice to Appear (“NTA”), as well as a Form I-220A, Order of Release on Recognizance. *Id.* at ¶ 10. He was released on his own recognizance. *Id.*

On February 13, 2024, the Section 240 Proceedings commenced against the Petitioner in the Concord Immigration Court outside of San Francisco, California. *Id.* at ¶ 11. On July 23, 2025, DHS exercised its discretion and moved to dismiss the removal proceedings because it determined that Petitioner qualified for expedited removal. *Id.* at ¶ 12. That same day, the immigration court granted

DHS's motion to dismiss without prejudice. *Id.* Petitioner, appearing *pro se*, opposed the motion but did not appeal the decision, as was his right. *See* 8 C.F.R. §§ 1003.3 (Notice of Appeal), 1003.38 (Appeals). Petitioner was arrested that same day. *Id.* at ¶ 13. In connection with his arrest and detention, he was issued a Form I-200 Warrant for Arrest of Alien, and a Form I-286, Notice of Custody Determination. *Id.*

B. Expedited Removal and Current Section 240 Proceedings

DHS issued Petitioner a Form I-860, Notice and Order of Expedited Removal, on August 12, 2025. Petitioner was referred to U.S. Citizenship and Immigration Services (“USCIS”) for a credible fear interview with an asylum officer, pursuant to 8 U.S.C. § 1225(b)(1)(B). That asylum officer determined that Petitioner has a credible fear of persecution and may be eligible for asylum. *Ho Dec.* at ¶ 15. On September 16, 2025, based on the credible fear determination by the asylum officer, Petitioner was issued a new NTA Form I-862, charging Petitioner as an alien present without admission or parole who is inadmissible under 8 U.S.C. § 1182(a)(6)(A)(I) and as an immigrant not in possession of a valid entry document under 8 U.S.C. § 1182(a)(7)(A)(i)(I). *Id.* at ¶ 16. This new NTA commenced new Section 240 Proceedings. Petitioner appeared before an immigration judge on September 17 and 25, 2025, for master calendar hearings. *Id.* at ¶¶ 16–19. While Petitioner's removal proceedings remain ongoing, he

continues to be detained under 8 U.S.C. § 1225(b)(1)(B)(ii), as mandated by the statute. *Id.* at ¶ 16.

III. STATUTORY FRAMEWORK

“Control over immigration is a sovereign prerogative.” *El Rescate Legal Servs., Inc. v. Exec. Off. of Immigr. Rev.*, 959 F.2d 742, 750 (9th Cir. 1991). Courts “review the immigration decisions of the political branches ‘only with the greatest caution’ where [the courts’] action may ‘inhibit their flexibility to respond to changing world conditions.’” *E. Bay Sanctuary Covenant v. Trump*, 932 F.3d 742, 756 (9th Cir. 2018) (cleaned up) (quoting *Mathews v. Diaz*, 426 U.S. 67, 81 (1976)). The primary immigration statute, the Immigration and Nationality Act (“INA”) 8 U.S.C. §§ 1101, *et seq.*, provides the Executive Branch with a comprehensive scheme to administer the immigration system. *See generally* 8 U.S.C. Ch. 12. The INA empowers the President, through the Secretary of the Department of Homeland Security (“the Secretary” or “DHS”), to decide which aliens may enter and remain in the country, and set conditions regarding the same. *See generally* 8 U.S.C. §§ 1103, 1104.

A. “Applicants for Admission” under 8 U.S.C. § 1225

Section 1225 of the INA governs the expedited removal of aliens deemed “applicants for admission.” *See* 8 U.S.C. § 1225. An “applicant for admission” is an “alien present in the United States who has not been admitted or who arrives in

the United States[,] regardless of whether they arrived at a designated port of arrival. 8 U.S.C. § 1225(a)(1); *see also Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (“an alien who tries to enter the country illegally is treated as an ‘applicant for admission[.]’”). Regardless of how long an alien has resided in the United States, an alien who is present in the United States but has not been admitted “is treated as ‘an applicant for admission.’” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). An alien is “admitted” when he or she has been inspected and authorized by an immigration officer. 8 U.S.C. § 1101(a)(13)(A).

B. Mandatory Detention Under 8 U.S.C. § 1225

Applicants for admission may be removed from the United States by expedited removal under § 1225(b)(1), or removal proceedings before an immigration judge under 8 U.S.C. § 1229a, pursuant to § 1225(b)(2). All applicants for admission “fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2),” both of which are subject to mandatory detention. *Jennings*, 583 U.S. at 297 (“read most naturally, §§ 1225(b)(1) and (b)(2) *mandate* detention for applicants for admission until certain proceedings have concluded.”) (emphasis added).

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1. Section 1225(b)(1)

a. *Expedited Removal Process*

Congress established the § 1225(b)(1) expedited removal process to ensure that the Executive Branch could aggressively “expedite removal of aliens lacking a legal basis to remain in the United States.” *Kucana v. Holder*, 558 U.S. 233, 249 (2010). This provision allows immigration officers to order certain inadmissible aliens “removed from the United States without further hearing or review.” 8 U.S.C. § 1225(b)(1)(A)(i). 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 documentation” as well as “certain other aliens designated by the Attorney General in his discretion.” *Jennings*, 583 U.S. 281, 287 (2018) (citations omitted).

In addition to the authority in 8 U.S.C. § 1225(b)(1)(A)(i), the Secretary (and earlier, the AG)² has previously designated categories of aliens for expedited removal under § 1225(b)(1)(A)(iii). In 2004, citing “the interests of focusing enforcement resources upon unlawful entries that have a close spatial and temporal nexus to the border,” the Secretary designated for expedited removal those “aliens

² Much of the Attorney General’s authority now resides in the Secretary of Homeland Security, and many references to the Attorney General are understood to refer to the Secretary. *See Clark v. Martinez*, 543 U.S. 371, 374 n. 1 (2005).

encountered within 14 days of entry without inspection and within 100 air miles of any U.S. international land border.” Exhibit (“Ex.”) A, *Designating Aliens for Expedited Removal*, 69 Fed. Reg. 48877, 48879 (Aug. 11, 2004) (“DHS 2004 Designation”).

The Secretary may exercise his or her discretion and “parole into the United States temporarily under such conditions as he [or she] may prescribe only on a case-by-case basis . . . but such parole of such alien *shall not be regarded as an admission of the alien[.]*” 8 U.S.C. § 1182(d)(5)(A). And when the Secretary determines that “when the purposes of such parole . . . have been served the alien shall forthwith return to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.” *Id.*

b. *Additional Procedures for Credible Fear and Asylum Considerations*

Expedited removal proceedings under § 1225(b)(1) include additional procedures if an alien indicates an intention to apply for asylum or expresses a fear of persecution, torture, or return to the alien’s country. *See* 8 U.S.C. § 1225(b)(1)(A)(ii); 8 C.F.R. § 235.3(b)(4). In that situation, the alien is given a non-adversarial interview with an asylum officer, who determines whether the alien has a “credible fear of persecution” or torture. 8 U.S.C. §§ 1225(b)(1)(A)(ii),

(b)(1)(B)(iii)(II), (b)(1)(B)(iv); *see also* 8 C.F.R. § 208.30; *Thuraissigiam*, 591 U.S. at 109–11 (describing the credible fear process). The alien may also pursue *de novo* review of the asylum officer’s determination by an IJ. 8 U.S.C. § 1225(b)(1)(B)(iii)(III); 8 C.F.R. §§ 1003.42(d), 1208.30(g). During the credible fear process, an alien may consult with an attorney or representative and engage an interpreter. 8 C.F.R. § 208.30(d)(4), (5). However, an alien subject to these procedures “shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed.” 8 U.S.C. § 1225(b)(1)(B)(iii)(IV).

If the asylum officer or IJ *does* determine that a credible fear exists, the alien is placed in removal proceedings before an IJ under 8 U.S.C. § 1229a, but remains subject to mandatory detention. *See* 8 U.S.C. § 1225(b)(1)(B)(ii) (“If the officer determines . . . that an alien has credible fear of persecution . . . the alien *shall be detained* for further consideration of the application for asylum); 8 C.F.R. § 208.30(f) (outlining the procedures following a positive credible fear finding). If the asylum officer or IJ *does not* determine that a credible fear exists, the alien is “removed from the United States without further hearing or review.” 8 U.S.C. §§ 1225(b)(1)(B)(iii)(I); 1252(a)(2)(A)(iii).

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2. Section 1225(b)(2)

Section 1225(b)(2) is “broader” than § 1225(b)(1) and “serves as a catchall provision.” *Jennings*, 583 U.S. at 287. It “applies to all applicants for admission not covered by § 1225(b)(1).” *Id.* Under § 1225(b)(2), an alien “who is an applicant for admission” is subject to mandatory detention pending full removal proceedings “if the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A) (requiring that such aliens “be detained for a proceeding under section 1229a of this title.”). And the Secretary has the sole discretionary authority to temporarily release on parole “any alien applying for admission to the United States” on a “case-by-case basis for urgent humanitarian reasons or significant public benefit.” 8 U.S.C. § 1182(d)(5)(A).

C. Detention Under 8 U.S.C. § 1226(a)

A different statutory detention authority, 8 U.S.C. § 1226, applies to aliens who are deportable and subject to removal proceedings under various circumstances. Section 1226(a) provides for the arrest and detention of these aliens “pending a decision on whether the alien is to be removed from the United States.” 8 U.S.C. § 1226(a). Under § 1226(a), DHS may, in its discretion, detain an alien during his removal proceedings, release him on bond, or release him on

conditional parole.”³ 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 also* 8 C.F.R. § 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.”).

IV. PETITIONER’S CLAIMS REGARDING EXPEDITED REMOVAL ARE MOOT.

The initiation of new Section 240 Proceedings mooted Petitioner’s claims regarded his expedited removal. The Constitution limits federal judicial review to designated “cases” and “controversies.” U.S. Const., art. III, § 2; *SEC v. Med. Comm. for Hum. Rts.*, 404 U.S. 403, 407 (1972). Absent a concrete injury-in-fact that can be redressed by the requested relief, no Article III standing exists. *See Friends of the Earth, Inc. v. Laidlow Env’t Servs., Inc.*, 528 U.S. 167, 190 (2000) (“[I]n a lawsuit brought to force compliance, it is the plaintiff’s burden to establish standing by demonstrating that, if unchecked by the litigation, the defendant’s allegedly wrongful behavior will likely occur or continue, and that the threatened

³ Being “conditionally paroled under the authority of § 1226(a)” is distinct from being “paroled into the United States under the authority of § 1182(d)(5)(A).” *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1116 (9th Cir. 2007) (holding that because release on “conditional parole” under § 1226(a) is not a parole, the alien was not eligible for adjustment of status under § 1255(a)).

injury is certainly impending.”). At the “irreducible constitutional minimum,” standing requires that Plaintiff demonstrate (1) an injury in fact (2) that is fairly traceable to the challenged action of the United States and (3) is likely to be addressed by a favorable decision. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992). A plaintiff bears the burden of establishing that he or she “has standing for each type of relief sought.” *Summers v. Earth Island Inst.*, 555 U.S. 488, 492–93 (2009).

Petitioner’s habeas Petition is largely based on the complaint that DHS placed him in expedited removal process without a credible fear interview. *See* ECF No. 2 PageIDs.12, 14 at ¶¶ 9, 28. However, that is no longer the case. Petitioner is currently in Section 240 Proceedings in immigration court and is no longer in expedited removal proceedings. Ho Dec. at ¶ 16. He participated in a credible fear interview, after which an asylum officer determined he has a credible fear of returning to Venezuela. *Id.* at ¶ 15. The IJ has provided Petitioner with an opportunity to seek counsel in the proceedings currently before the immigration court. *Id.* at ¶¶ 17–18. The IJ will decide, in the first place, whether to sustain the charge or removability that has been brought. Assuming the IJ does so, the relief stage of removal will resolve in one of two ways: (1) the IJ will grant Petitioner asylum and Petitioner will be released as an asylee; or (2) the IJ will deny Petitioner’s asylum claim and *the immigration court* will enter an order of removal.

See 8 C.F.R. § 1241.1 (Final Order of Removal). Regardless of the outcome, either party will have an opportunity to appeal the IJ’s final order to the Board of Immigration Appeals (“BIA”), and Petitioner – if necessary – has the opportunity to seek review in the Ninth Circuit. *See* 8 C.F.R. §§ 1003.3, 1003.38.

DHS cannot unilaterally dismiss these underlying proceedings and reinstate Petitioner in expedited removal proceedings because the credible fear determination removed Petitioner’s proceedings from the expedited removal “track” to the Section 240 proceedings. *See* 8 U.S.C. § 1225(b)(1)(B)(ii). The “capable of repetition, yet evading review” exception to the mootness doctrine thus does not apply to this case. *See, e.g., Habibi v. Barr*, 829 Fed.App’x 788, 788 (9th Cir. Nov. 18, 2020).

There is accordingly no active case or controversy here, and this Court lacks jurisdiction over Petitioner’s now-moot claims.

V. PETITIONER’S CLAIMS ARE BARRED BY 8 U.S.C. § 1252.

In setting forth § 1225(b)(1), Congress elected to largely omit expedited removal proceedings from judicial review. *See* 8 U.S.C. § 1252(a)(2). 8 U.S.C. § 1252(e) outlines the limitation on available relief as well as the limited scope of habeas corpus proceedings in the expedited removal context. *See Garcia de Rincon v. Dep’t of Homeland Sec.*, 539 F.3d 1133, 1138–39 (9th Cir. 2008) (noting that a court’s review of expedited removal orders is limited to the grounds

enumerated in § 1252(e)). In relevant part, subsection (e) prohibits courts from entering “declarative, injunctive, or other equitable relief in any action pertaining to an order to exclude an alien in accordance with section 1225(b)(1)” unless specifically authorized by the statute. 8 U.S.C. § 1252(e)(1)(A). The subsequent paragraphs delineate two avenues for judicial review concerning expedited removal orders: (1) habeas corpus proceedings governed by § 1252(e)(2); and (2) challenges to the validity of the system under § 1252(e)(3). Challenges to the validity of the system must be brought in the District of Columbia, and so here, the only judicial review available to Petitioner is under § 1252(e)(2), which states:

(2) Habeas corpus proceedings

Judicial review of any determination made under section 1225(b)(1) of this title is available in habeas corpus proceedings, but shall be limited to determinations of –

- (A) whether the petitioner is an alien,
- (B) whether the petitioner was ordered removed under such section, and
- (C) whether the petitioner can prove by a preponderance of the evidence that the petitioner is an alien lawfully admitted for permanent residence, has been admitted as a refugee under section 1157 of this title, or has been granted asylum under section 1158 of this title, such status not having been terminated, and is entitled to such further inquiry as prescribed by the Attorney General pursuant to section 1225(b)(1)(C) of this title.

8 U.S.C. § 1252(e)(2).

The Petition makes clear that neither §§ 1252(e)(2)(A) nor (e)(2)(C) are at issue in this case, leaving § 1252(e)(2)(B) as Petitioner’s sole potential source of habeas relief. And the scope of a court’s inquiry under § 1252(e)(2)(B) is narrow. Indeed, when evaluating whether an alien has been “ordered removed” under § 1225(b)(1), “the court’s inquiry shall be limited *to whether such an order was in fact issued and whether it relates to the petitioner*” and “[t]here 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).

It is undisputed that Petitioner is an alien and that he cannot prove that he has been lawfully admitted, is an asylee, or is otherwise entitled to further inquiry by the attorney general. ECF No. 2 at PageID.10, 12 ¶¶ 2, 7, 8; *see also* 8 U.S.C. §§ 1252(e)(2)(A), (C). And it is likewise clear that Petitioner’s removal order “was in fact issued” and that it “relates to Petitioner.” Petitioner’s path to habeas relief under § 1252(e)(2)(B) therefore foreclosed under that subparagraph. He is not entitled to habeas relief, and this Court lacks jurisdiction over the remainder of his claims. *See* 8 U.S.C. §§ 1252(a)(2), (g).

Beyond this narrow habeas review, the Court lacks jurisdiction to hear Petitioner’s substantive claims. *See* 8 U.S.C. §§ 1252(a)(2)(A), (b)(9), and (g). Rather, Petitioner’s substantive claims about his asylum and deportation are appropriately determined by the immigration court, then potentially the BIA and

the Ninth Circuit. 8 U.S.C. § 1252(b)(9) channels claims like Petitioner's from the agency directly to the United States Circuit Courts. It states:

Judicial review of all questions of law and fact, *including interpretation of constitutional and statutory provisions*, 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. Except as otherwise provided in this section, *no court shall have jurisdiction, by habeas corpus under section 2241 of Title 28 or any other habeas corpus provision . . . or by any other provision of law (statutory or non-statutory), to review such an order or such questions of law or fact.*

8 U.S.C. § 1252(b)(9) (emphasis added); *see also* 8 U.S.C. § 1252(a)(5) (“a petition for review filed with an appropriate court of appeals . . . shall be the sole and exclusive means for judicial review of an order of removal[.]”).

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 v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483–85 (1999); *see also 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”). When considered together, §§ 1252(a)(5) and (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] process.” *J.E.F.M.*, 837 F.3d at 1031 (citing *Viloria v. Lynch*, 808 F.3d 764, 767 (9th Cir. 2015)).

The Ninth Circuit recently reaffirmed this principle and held that “section 1252(b)(9) 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)).

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.* Congress could scarcely have been more comprehensive in its articulation of the general prohibition on judicial review of expedited removal orders.

Mendoza-Linares, 51 F.4th at 1155 (emphasis added) (citing *Guerrier v. Garland*, 18 F.4th 304, 313 (9th Cir. 2021)). Accordingly, “[s]ection 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 [a 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); *see also Herrera-Correra v. United States*, No. 08-2941 DSF (JCx), 2008 WL 11336833, at *3 (C.D. Cal. Sept. 11, 2008)

(noting that “an alien’s detention through this process arises from the Attorney General’s decision to commence proceedings” and holding that review of claims arising from such detention is barred under § 1252(g)) (citing *Sissoko v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007)); *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.”).

The holdings in *Azimov*, *Mendoza-Linares*, and *Limpin* control here. This Court lacks jurisdiction to review questions of law or fact, including constitutional and statutory provisions, or to review DHS’s decision to invoke the expedited removal process, to apply that process to Petitioner, and to detain Petitioner pending the outcome of those proceedings. *See* 8 U.S.C. § 1252(b)(9); *Mendoza-Linares*, 51 F.4th at 1155. Pursuant § 1252’s “zipper clause,” those claims must be brought before the IJ, then to the BIA and the Ninth Circuit, as necessary. *See* 8 U.S.C. §§ 1252(a)(5), (b)(9).

VI. PETITIONER BRINGS IMPROPER HABEAS CLAIMS.

The Petition should also be denied because the habeas claims are improper. Petitioner sets forth six claims for relief that he believes entitles him to a writ of habeas corpus – styled as various forms of due process arguments and a violation of the APA. These six claims generally challenge the decision to place him in

expedited removal proceedings and allegedly unlawful deportation proceedings.

See ECF No. 2.

Habeas relief is available to challenge only the legality or duration of confinement. *Pinson v. Carvajal*, 69 F.4th 1059, 1067 (9th Cir. 2023); *Thuraissigiam*, 591 U.S. at 117 (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 and held that “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). Because release is not legally required, and in fact is prohibited under § 1225, this case does not sound in habeas. And notably, seeking judicial review under the APA is not properly sought through a habeas petition, as Petitioner has done in this case. 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 [APA], while habeas corpus refers to habeas petitions brought directly in district court to challenge illegal confinement.”).

Here, a review of DHS’s decision to seek dismissal of Section 240 proceedings and the decision to place Petitioner into expedited removal

proceedings does not automatically entitle Petitioner to a release from detention. The Petition thus does not sound in habeas. *See Guselnikov v. Noem*, No. 25-cv-1971-BTM-KSC, 2025 WL 2300783, 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. 25-cv-1912-LL-AHG, 2025 WL 2300781, at *3 (S.D. Cal. Aug. 1, 2025) (“Like in *Pinson*, the Court lack 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. PETITIONER’S CHALLENGES TO HIS DETENTION FAIL.

A. Petitioner’s detention is lawful pursuant to 8 U.S.C. § 1225(b).

If the Court reaches the merits of the Petition, the due process claims should be denied because Petitioner is lawfully detained. Petitioner’s detention is statutorily mandated as he is an “applicant for admission” initially subject to expedited removal proceedings, who is being detained pending further Section 240 Proceedings. 8 U.S.C. § 1225(b)(1)(B)(ii).

“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). Because § 1225(b)(1)(B)(ii) provides that all aliens subject to § 1225(b) *must* be detained while their application for asylum is considered, Petitioner’s detention is not only authorized by Congress, but also mandated.

Petitioner was arrested approximately one mile north of a port of entry near Eagle Pass, Texas without valid documentation. Ho Dec. at ¶ 8. He thus falls within the parameters of the DHS 2004 Designation, and was eligible for expedited removal at the time he crossed the border and sought entry into the United States. *See* 8 U.S.C. §§ 1225(b)(1)(A)(i), (iii). The Notices to Appear issued to Petitioner on December 27, 2022, and September 16, 2025 charged him as an alien present without admission or parole. Ho Dec. at ¶¶ 8, 10, 16. He was determined to have a credible fear of persecution while in expedited removal proceedings and was referred to new Section 240 Proceedings. *Id.* at ¶¶ 15–16. And, as Congress has determined, all aliens subject to § 1225(b) *must* be detained while their application for asylum is considered. 8 U.S.C. § 1225(b)(1)(B)(ii).

Petitioner’s sole means of release is “temporary parole from § 1225(b) detention ‘for urgent humanitarian reasons or significant public benefit,’ § 1182(d)(5)(A)[.]” *Jennings*, 583 U.S. at 283. 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. 297. The Court

further noted that neither provision imposed any limit on the length of detention, nor say anything about bond hearings. *Id.* The fact that Petitioner was granted temporary parole upon his 2022 arrest alters neither his “applicant for admission” status nor the result in this case. Petitioner’s parole was authorized until October 14, 2022. Ho Dec. at ¶ 9. Parole is not “an admission of the alien” under the INA, and upon termination of parole, “the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.” 8 U.S.C. § 1182(d)(5)(A). Thus, when his temporary parole expired, Petitioner was an “applicant for admission” subject to mandatory detention under 8 U.S.C. § 1225(b).

B. Jurisdiction over Bond Lies with the Immigration Court.

The only method for bond is under 8 U.S.C. § 1226, and even that scenario the bond decision is made by an IJ. *Jennings*, 583 U.S. at 281, 288. If an alien requests a bond hearing, the IJ will conduct a hearing and decide whether to release the alien based on a variety of factors. *Matter of Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006); 8 C.F.R. § 1003.19(d). The BIA has placed the burden of proof on the alien, who “must establish to the satisfaction of the Immigration Judge and this Board that he or she does not present a danger to persons or property, is not a threat to national security, and does not pose a flight risk.” *Matter of Guerra*, 24 I.

& N. Dec. at 38. If, after a bond hearing, the IJ concludes the alien should not be released, or set the bond for an amount the alien believes is too high, the alien may appeal that decision to the BIA. 8 C.F.R. §§ 236.1(d)(3), 1003.19(f), 1003.38, 1236.1(d)(3).

Moreover, the Court lacks jurisdiction to review any decision under § 1226(a)—including to continue to detain the petitioner or to release him on bond. Section 1252(a)(2)(B)(ii) provides that “no court shall have jurisdiction to review . . . any other decision or action of the Attorney General or the Secretary of Homeland Security the authority for which is specified under this subchapter to be in the discretion of the Attorney General or the Secretary of Homeland Security.” 8 U.S.C. § 1252(a)(2)(B). This is relevant because the Attorney General’s exercise of section 1226(a)’s detention authority is discretionary. *See* 8 U.S.C. § 1226(a). This discretionary language within § 1226(a) means Petitioner’s detention, even if under 1226(a), is a discretionary decision insulated from judicial review by the plain text of 8 U.S.C. § 1252(a)(2)(B)(ii).

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VIII. CONCLUSION

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

DATED: September 30, 2025, at Honolulu, Hawaii.

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CERTIFICATE OF SERVICE

I hereby certify that, on this date and by the method of service noted below,
a true and correct copy of the foregoing was served on the following at their last
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