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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

LUZ LOAIZA ARIAS,

Petitioner,

v.

CHRISTOPHER J. LAROSE; et al.,

Respondents.

Case No.: 25-cv-2595-BTM-MMP

RESPONDENTS' RETURN TO HABEAS PETITION

I. Introduction

Petitioner is currently detained in Immigration and Customs Enforcement (ICE) custody pursuant to 8 U.S.C. § 1225(b)(2). Petitioner's habeas petition seeks release or a bond hearing. Through multiple provisions of 8 U.S.C. § 1252, Congress has stripped federal courts of jurisdiction over challenges to the commencement of removal proceedings, including the consequent detention pending removal proceedings. Moreover, Petitioner's detention is mandated by statute. The Court should deny and dismiss the petition.

II. Factual Background[1]

Petitioner is a citizen and national of Colombia. On October 19, 2023, Petitioner arrived at the San Ysidro Port of Entry as a CBP-One appointment and applied for admission to the United States. At the time of her arrival, she was not in possession of a valid entry document. She was determined to be an arriving alien applying for admission and inadmissible under 8 U.S.C. § 1182(a)(7)(i)(I), as an immigrant not in possession of a valid entry document. She then was placed in removal proceedings under 8 U.S.C. § 1229a (240 proceedings) and issued a Notice to Appear (NTA). On the same day of the initial encounter—October 19, 2023— Petitioner was released from DHS custody on humanitarian parole. *See* 8 U.S.C. § 1182(d)(5)(A). That parole was valid for two years and has now expired.

On May 16, 2025, Petitioner filed written pleadings with the immigration court, wherein Petitioner admitted to being an arriving alien who applied for admission to the United States on October 19, 2023, and at that time was not in possession of a valid entry document. She also conceded her inadmissibility under 8 U.S.C. § 1182(a)(7)(i)(I), as an immigrant not in possession of a valid entry document.

On July 28, 2025, at a master calendar hearing, an immigration judge (IJ) granted DHS's oral motion to dismiss Petitioner's 240 removal proceedings. On the same day,

[1] The attached exhibits are true copies, with redactions of private information, of documents obtained from ICE counsel.

a Form I-200, Warrant for Arrest, was issued for Petitioner's arrest. On July 28, 2025, Petitioner was apprehended by San Diego ICE/ERO. At that same time, a Form I-860, Notice and Order of Expedited Removal,[2] was issued and served upon Petitioner, which terminated Petitioner's previously granted parole. On July 29, 2025, Petitioner filed an appeal of the IJ's dismissal order with the Board of Immigration Appeals (BIA), which remains pending. Petitioner is currently detained at the Otay Mesa Detention Center and is subject to mandatory detention under 8 U.S.C. § 1225(b)(2).

III. Argument

A. Petitioner's Claims and Requested Relief are Jurisdictionally Barred

Petitioner bears the burden of establishing that this Court has subject matter jurisdiction over her 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). As a threshold matter, Petitioner's claims are jurisdictionally barred under 8 U.S.C. § 1252(g) and 8 U.S.C. § 1252(b)(9).

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."); *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*,

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[2] Upon resolution of the appeal of the immigration judge's dismissal order, and if the termination order becomes final, DHS will move forward with the Order of Expedited Removal, which has not been signed or executed. ERO is not seeking to pursue expedited removal proceedings, under 8 U.S.C. § 1225(b)(1), until the pending appeal before the BIA becomes administratively final. Declaration of Denise Barroga (Barroga Decl.) at ¶ 11.

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*, 525 U.S. at 482 (emphasis removed). Petitioner's claims necessarily arise "from the decision or action by the Attorney General to commence proceedings [and] adjudicate cases," over which Congress has explicitly foreclosed district court jurisdiction. 8 U.S.C. § 1252(g).

Section 1252(g) also bars district courts from hearing challenges to the method by which the government chooses to commence removal proceedings, including the decision to detain an alien pending removal. *See Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016) ("By its plain terms, [§ 1252(g)] bars us from questioning ICE's discretionary decisions to commence removal" and bars review of "ICE's decision to take [plaintiff] into custody and to detain him during his 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*, 2010 WL 11463156, at *6; 8 U.S.C. § 1252(g). *But see Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MMP, 2025 WL 2549431, at *4 (S.D. Cal. Sept. 3, 2025).

Moreover, under 8 U.S.C. § 1252(b)(9), "[j]udicial review of all questions of law and fact . . . *arising from any action taken or proceeding brought to remove an alien*

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

Critically, "1252(b)(9) is a judicial channeling provision, not a claim-barring one." *Aguilar v. ICE*, 510 F.3d 1, 11 (1st Cir. 2007). Indeed, 8 U.S.C. § 1252(a)(2)(D) provides that "[n]othing . . . in any other provision of this chapter . . . shall be construed as precluding review of constitutional claims or questions of law raised upon a petition for review filed with an appropriate court of appeals in accordance with this section." *See also Ajlani v. Chertoff*, 545 F.3d 229, 235 (2d Cir. 2008) ("[J]urisdiction to review such claims is vested exclusively in the courts of appeals[.]"). The petition-for-review process before the court of appeals ensures that noncitizens have a proper forum for claims arising from their immigration proceedings and "receive their day in court." *J.E.F.M.*, 837 F.3d at 1031–32 (internal quotations omitted); *see also Rosario v. Holder*,

627 F.3d 58, 61 (2d Cir. 2010) ("The REAL ID Act of 2005 amended the [INA] to obviate . . . Suspension Clause concerns" by permitting judicial review of "nondiscretionary" BIA determinations and "all constitutional claims or questions of law."). These provisions divest district courts of jurisdiction to review both direct and indirect challenges to removal orders, including decisions to detain for purposes of removal or for proceedings. *See Jennings*, 583 U.S. at 294–95 (section 1252(b)(9) includes challenges to the "decision to detain [an alien] in the first place or to seek removal").

Accordingly, this Court lacks jurisdiction over this petition under 8 U.S.C. § 1252.[3]

B. Petitioner is Lawfully Detained

Petitioner's claims for alleged statutory and constitutional violations fail because she is subject to mandatory detention under 8 U.S.C. § 1225.

While Petitioner was previously released from custody on humanitarian parole, her parole was terminated and, in any event, has expired. When Petitioner was detained on July 28, 2025, she was served with a Notice of Expedited Removal, which served to terminate her parole status. *See* 8 CFR § 212.5(e)(2)(i) ("When a charging document is served on the alien, the charging document will constitute written notice of termination of parole . . . ."); Barroga Decl. at ¶ 10. Moreover, Petitioner's grant of parole was valid for only two years and that period has now expired. The termination and expiration of

[3] On an alternative basis, the Court should deny the Petition for failure to exhaust administrative remedies. The Ninth Circuit requires that "habeas petitioners exhaust available judicial and administrative remedies before seeking relief under § 2241." *Castro–Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001). "When a petitioner does not exhaust administrative remedies, a district court ordinarily should either dismiss the petition without prejudice or stay the proceedings until the petitioner has exhausted remedies, unless exhaustion is excused." *Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011); *see also Alvarado v. Holder*, 759 F.3d 1121, 1127 n.5 (9th Cir. 2014) (issue exhaustion is a jurisdictional requirement); *Tijani v. Holder*, 628 F.3d 1071, 1080 (9th Cir. 2010) (no jurisdiction to review legal claims not presented in the petitioner's administrative proceedings before the BIA). Here, Petitioner is attempting to bypass the administrative scheme by not seeking a bond hearing nor appealing the hypothetical underlying bond denial to the BIA. Thus, the Court should dismiss or stay this matter to allow Petitioner an opportunity to exhaust her administrative remedies.

her parole emphasizes her status as an applicant for admission, subject to mandatory detention under 8 U.S.C. § 1225(b)(2). *See* 8 U.S.C. § 1182(d)(5)(A) (". . . *such parole of such alien shall not be regard as an admission* of the alien and when the purposes of such parole shall . . . have been served the alien shall forthwith return or be return to the custody from which [s]he was paroled and thereafter h[er] case shall continue to be dealt with in the same manner as that of any other *applicant for admission* to the United States") (emphasis added).

Furthermore, 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 of 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."). As Petitioner challenges the decision to remand her back into custody, her claim is barred by Section 1226(e). *See Jennings v. Rodriguez*, 583 U.S. 281, 295 (2018) ("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(b)(2)(A) requires mandatory detention of "'an alien who is *an applicant for admission*, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted[.]'" *Chavez v. Noem*, No. 3:25-cv-02325, 2025 WL 2730228, at *4 (S.D. Cal. Sept. 24, 2025) (quoting 8 U.S.C. § 1225(b)(2)(A)) (emphasis in original). Section 1225(a)(1) "expressly defines that '[a]n alien present in the United States who has not been admitted … shall be deemed for purposes of this Act *an applicant for admission*.'" *Id.* (quoting 8 U.S.C. § 1225(a)(1)) (emphasis in original).

Here, Petitioner is an "alien present in the United States who has not been

admitted." *See* Exhibits 1, 2; *see also* 8 U.S.C. § 1182(d)(5)(A) ("such parole of such alien shall not be regarded as an admission of the alien."). Thus, as found by the district court in *Chavez v. Noem* and as mandated by the plain language of the statute, Petitioner is an "applicant for admission" and subject to the mandatory detention provisions of § 1225(b)(2).

Because Petitioner is properly detained under § 1225, she cannot show entitlement to relief.

C. Conditions of Confinement Allegations are Not Proper Habeas Claims

To the extent Petitioner asserts claims regarding conditions of her confinement, ECF No. 1 at ¶ 26, the Court lacks jurisdiction over such claims because they do not challenge the lawfulness of her custody. An individual may seek habeas relief under 28 U.S.C. § 2241 if she 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. Thraissigiam*, 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 (emphasis in original); *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."). Here, Petitioner's claims regarding the conditions of her confinement do not arise under § 2241. *See Nettles*, 830 F.3d at 933 ("We have long held that prisoners may not challenge mere conditions of confinement in habeas corpus."); *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); *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). Thus, Petitioner's claims do not arise under § 2241 and the petition should be dismissed.

IV. CONCLUSION

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

DATED: October 20, 2025

Respectfully submitted,

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