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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

FEDERICO NAVARRO PEREZ, Petitioner, v. CHRISTOPHER J. LAROSE; et al., Respondents.	Case No.: 25-cv-2620-RBM-JLB **RESPONDENTS' RETURN TO HABEAS PETITION**

I. Introduction

Petitioner is currently in removal proceedings under 8 U.S.C. § 1229a and is 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 Guatemala. On December 12, 2024, he arrived at the Calexico West, California Port of Entry as a CBP-One appointment and applied for admission to the United States. At the time of his arrival, he was not in possession of a valid entry document. Petitioner was determined to be an arriving alien seeking admission and inadmissible under 8 U.S.C. § 1182(a)(7)(i)(I) as an immigrant not in possession of a valid entry document. He was then issued a Notice to Appear (NTA), which placed him in removal proceedings under 8 U.S.C. § 1229a. Following this encounter, Petitioner was paroled into the United States. *See* 8 U.S.C. § 1182(d)(5)(A).

On July 30, 2025, a Form I-200, Warrant for Arrest, was issued for Petitioner's arrest. On July 30, 2025, he was apprehended in San Diego by ICE Enforcement and Removal Operations (ERO). Petitioner is currently detained at the Otay Mesa Detention Center and is subject to mandatory detention under 8 U.S.C. § 1225(b)(2).

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

IV. 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 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). 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*, 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 General 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. See 8 U.S.C. § 1252(g). "[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." *See Herrera-Correra v. United States*, No. 08-2941 DSF (JCx), 2008 WL 11336833, at *3 (C.D. Cal. Sept. 11, 2008).

Relatedly, Section 1252(g) also bars district courts from hearing challenges to the government's 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"). "The Attorney General may arrest the alien against whom proceedings are commenced and detain that individual until the conclusion of those proceedings." *Herrera-Correra v. United States*, 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 e.g., Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MMP, 2025 WL 2549431, at *4 (S.D. Cal. Sept. 3, 2025) (Holding that § 1252(g) did not strip the court of jurisdiction).

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").

For the foregoing reasons, this Court lacks jurisdiction over this petition under 8 U.S.C. § 1252.[2]

B. Petitioner is Lawfully Detained

Petitioner's claims for alleged statutory and constitutional violations fail because he is subject to mandatory detention under 8 U.S.C. § 1225(b)(2).

While Petitioner was previously released from custody on parole[3], the Attorney General has discretion to revoke parole and detain him at any time. *See* 8 U.S.C. § 1226(b). 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."). As Petitioner challenges the decision to remand him back into custody, Respondents positions is that his claims are barred by Section 1226(e). *See Jennings v. Rodriguez*, 583 U.S. 281, 295 (2018) ("As we have previously explained, § 1226(e)

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[2] 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 his administrative remedies.

[3] An alien paroled into the United States has been permitted to physically enter the country but has not been admitted. *See* 8 U.S.C. § 1182(d)(5)(A) ("such parole of such alien shall not be regarded as an admission of the alien.").

Admission" means the lawful entry of an alien into the United States after inspection and authorization by an immigration officer. 8 U.S.C. § 1101(a)(13). Prior to 1996, the Immigration and Nationality Act primarily distinguished individuals on the basis of "entry" and not "admission." *Hing Sum v. Holder*, 602 F.3d 1092, 1099 (9th Cir. 2010). See § 1101(a)(13) (1994) (defining "entry" as "any coming of an alien into the United States, from a foreign port or place or from an outlying possession, whether voluntarily or otherwise").

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 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 a "applicant for admission" and subject to the mandatory detention provisions of § 1225(b)(2).

Because Petitioner is properly detained under § 1225(b)(2), he cannot show entitlement to relief.

V. CONCLUSION

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

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Respectfully submitted,

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