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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

ADRIANA GONZALEZ SALAZAR,

Petitioner-Plaintiff,

v.

JEREMY CASEY, Warden at Imperial Regional Detention Center, Imperial, California; JOSEPH FREDEN, Field Office Director of San Diego Office of Detention and Removal, U.S. Immigrations and Customs Enforcement; U.S. Department of Homeland Security; TODD M. LYONS, Acting Director, Immigration and Customs Enforcement, U.S. Department of Homeland Security; KRISTI NOEM, in her Official Capacity, Secretary, U.S. Department of Homeland Security; PAM BONDI, in her Official Capacity, Attorney General of the United States;

Respondents-Defendants.

Case No.: 25-cv-2784-JLS-VET

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 Venezuela. On July 16, 2024, Petitioner arrived at the San Ysidro Port of Entry 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 was placed in removal proceedings under 8 U.S.C. § 1229a (240 proceedings) and issued a Notice to Appear (NTA). On the same day—July 16, 2024—Petitioner was released from DHS custody on humanitarian parole pursuant to 8 U.S.C. § 1182(d)(5)(A).

At that time–July 16, 2024–the Department of Homeland Security (DHS) maintained a program that allowed Venezuelans to be paroled into the United States upon meeting certain threshold requirements. 87 Fed. Reg. at 63507 (Oct. 19, 2022). Similar programs were also implemented for aliens from Cuba, Haiti, and Nicaragua. *See* 87 Fed. Reg. at 63508; 88 Fed. Reg. at 1244, 1256, and 1268. Together, these parole programs were known as the CHNV parole programs.

The CHNV parole programs were terminated on March 25, 2025, when DHS published in the Federal Register a notice stating that, effective immediately, "the

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

categorical parole programs for inadmissible aliens from Cuba, Haiti, Nicaragua and Venezuela" were terminated. 90 Fed. Reg. at 13611. The notice provided that "the temporary parole period of aliens in the United States under the CHNV parole programs and whose parole ha[d] not already expired by April 24, 2025[,] w[ould] terminate on that date" absent an individual determination by the Secretary for DHS as to the specific country whose citizens would be granted parole. *Id.* The notice further provided that CHNV parolees must depart the United States. *Id* at 13618-19.

Petitioner did not depart the United States but remained in the country and reported to San Diego Enforcement and Removal Operations (ERO) on October 16, 2025, pursuant to a scheduled appointment. At that time, Deportation Officers served her with a Form I-200, Warrant for Arrest of Alien to be remanded back into custody, and remanded her into custody. She is currently detained pursuant to 8 U.S.C. § 1225(b)(2) at the Imperial Regional Detention Facility in Imperial County, California.

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*, 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: [her] '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).

1 Moreover, under 8 U.S.C. § 1252(b)(9), "[j]udicial review of all questions of law
2 and fact . . . *arising from any action taken or proceeding brought to remove an alien*
3 *from the United States* under this subchapter shall be available only in judicial review
4 of a final order under this section." (emphasis added). Further, judicial review of a final
5 order is available only through "a petition for review filed with an appropriate court of
6 appeals." 8 U.S.C. § 1252(a)(5). The Supreme Court has made clear that § 1252(b)(9)
7 is "the unmistakable 'zipper' clause," channeling "judicial review of all" "decisions and
8 actions leading up to or consequent upon final orders of deportation," including "non-
9 final order[s]," into proceedings before a court of appeals. *Reno*, 525 U.S. at 483, 485;
10 *see J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (noting § 1252(b)(9) is
11 "breathtaking in scope and vise-like in grip and therefore swallows up virtually all
12 claims that are tied to removal proceedings"). "Taken together, § 1252(a)(5) and
13 § 1252(b)(9) mean that *any* issue—whether legal or factual—arising from *any* removal-
14 related activity can be reviewed *only* through the [petition for review] PFR process."
15 *J.E.F.M.*, 837 F.3d at 1031 ("[W]hile these sections limit *how* immigrants can challenge
16 their removal proceedings, they are not jurisdiction-stripping statutes that, by their
17 terms, foreclose *all* judicial review of agency actions. Instead, the provisions channel
18 judicial review over final orders of removal to the courts of appeal.") (emphasis in
19 original); *see id.* at 1035 ("§§ 1252(a)(5) and [(b)(9)] channel review of all claims,
20 including policies-and-practices challenges . . . whenever they 'arise from' removal
21 proceedings").

22 Critically, "1252(b)(9) is a judicial channeling provision, not a claim-barring
23 one." *Aguilar v. ICE*, 510 F.3d 1, 11 (1st Cir. 2007). Indeed, 8 U.S.C. § 1252(a)(2)(D)
24 provides that "[n]othing . . . in any other provision of this chapter . . . shall be construed
25 as precluding review of constitutional claims or questions of law raised upon a petition
26 for review filed with an appropriate court of appeals in accordance with this section."
27 *See also Ajlani v. Chertoff*, 545 F.3d 229, 235 (2d Cir. 2008) ("[J]urisdiction to review
28 such claims is vested exclusively in the courts of appeals[.]"). The petition-for-review

1 process before the court of appeals ensures that noncitizens have a proper forum for
2 claims arising from their immigration proceedings and "receive their day in court."
3 *J.E.F.M.*, 837 F.3d at 1031–32 (internal quotations omitted); *see also Rosario v. Holder*,
4 627 F.3d 58, 61 (2d Cir. 2010) ("The REAL ID Act of 2005 amended the [INA] to
5 obviate . . . Suspension Clause concerns" by permitting judicial review of
6 "nondiscretionary" BIA determinations and "all constitutional claims or questions of
7 law."). These provisions divest district courts of jurisdiction to review both direct and
8 indirect challenges to removal orders, including decisions to detain for purposes of
9 removal or for proceedings. *See Jennings*, 583 U.S. at 294–95 (section 1252(b)(9)
10 includes challenges to the "decision to detain [an alien] in the first place or to seek
11 removal").
12 Accordingly, this Court lacks jurisdiction over this petition under 8 U.S.C.
13 § 1252.
14 **B. Petitioner is Lawfully Detained**
15 Petitioner's claims for alleged statutory and constitutional violations fail because
16 she is subject to mandatory detention under 8 U.S.C. § 1225.
17 While Petitioner was previously released from custody on humanitarian parole,
18 her parole was terminated when DHS published the Termination Notice in the Federal
19 Register on March 25, 2025. *See* 90 Fed. Reg. at 13611; *Doe v. Noem*, 152 F. 4th 272,
20 279-82 (1st Cir. 2025) (publication in the Federal Register lawfully terminated the
21 CHNV parole programs).[2] The termination of her parole emphasizes her status as an
22 applicant for admission, subject to mandatory detention under 8 U.S.C. § 1225(b)(2).
23 *See* 8 U.S.C. § 1182(d)(5)(A) (". . . *such parole of such alien shall not be regard as an*
24
25 [2] *Doe v. Noem*, is a class action pending in the District of Massachusetts. The
court certified the class of "[a]ll individuals who have received a grant of parole that is
26 subject to the *Termination of Parole Process for Cubans, Haitians, Nicaraguans, and*
Venezuelans, 90 Fed. Ref. 13611 (Mar. 25, 2025). D. Mass. Case No. 25-CV-10495-IT,
27 Dk. No. 98 (Order Granting Class Certification). As a member of that class, Petitioner
28 is bound by the First Circuit's order that recognized termination of parole through
publication in the Federal Register.

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).

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 is not entitled 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 ¶ 34 (complaining that continued detention puts at risk Petitioner's mental health), 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.

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IV. CONCLUSION

2 For the foregoing reasons, Respondents respectfully request that the Court deny
3 the petition and dismiss this action.
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5 DATED: October 23, 2025

Respectfully submitted,

6 ADAM GORDON
7 United States Attorney

8 *s/Stephen H. Wong*
STEPHEN H. WONG
9 Assistant United States Attorney
Attorneys for Respondents

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