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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 FARZAD KARAMI,  
11 Petitioner,  
12 v.  
13 CHRISTOPHER J. LAROSE, *et al.*,  
14 Respondents.

Case No.: 3:25-cv-02983-BJC-BJW

**RESPONDENTS' RESPONSE IN  
OPPOSITION TO PETITIONER'S  
HABEAS PETITION AND  
APPLICATION FOR TEMPORARY  
RESTRAINING ORDER**

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1 **I. INTRODUCTION**

2 Petitioner has filed a habeas petition and a motion for temporary restraining  
3 order. Respondents herein respond to both for the sake of judicial efficiency. For the  
4 reasons set forth below, Respondents ask the Court to deny Petitioner’s habeas petition  
5 and request for interim relief.

6 **II. FACTUAL BACKGROUND<sup>1</sup>**

7 Petitioner is a citizen and national of Iran. ECF No. 1 ¶ 19. On or about September  
8 23, 2023, Petitioner unlawfully entered the United States without being admitted,  
9 paroled, or inspected. *Id.* ¶ 41. On September 25, 2023, he was apprehended by  
10 Immigration and Customs Enforcement (“ICE”) and charged with inadmissibility under  
11 8 U.S.C. § 1182(a)(6)(A)(i), as an alien present in the United States who has not been  
12 admitted or paroled. Ex. 1. He was then placed in removal proceedings under 8 U.S.C.  
13 § 1229a (“240 proceedings”) and issued a Notice to Appear. *Id.* That same day,  
14 Petitioner was released from ICE custody under an Order of Release on Recognizance.  
15 ECF No. 1 ¶ 42; Ex. 2.

16 On June 27, 2025, Petitioner appeared before an immigration judge and the  
17 Department of Homeland Security (“DHS”) moved to dismiss Petitioner’s 240  
18 proceedings. ECF No. 1 ¶ 5. After taking the motion under submission, the immigration  
19 judge dismissed Petitioner’s 240 proceedings on July 14, 2025. Ex. 3.

20 On June 27, 2025, a Form I-200, Warrant for Arrest, was issued for the arrest of  
21 Petitioner. Ex. 4. That same day, Petitioner was apprehended by ICE Enforcement and  
22 Removal Operations (“ERO”) and placed in expedited removal proceedings under 8  
23 U.S.C. § 1225(b)(1) and issued a Notice of Expedited Removal under section 235(b)(1)  
24 of the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1225(b)(1). Ex. 5. He was  
25 subsequently detained in ICE custody under 8 U.S.C. § 1225(b)(1).

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<sup>1</sup> The attached exhibits are true copies, with redactions of private information, of documents obtained from ICE counsel.

1 Pursuant to 8 U.S.C. § 1225(b)(1)(B), Petitioner was interviewed by a U.S.  
2 Citizenship and Immigration Services asylum officer. ECF No. 1 ¶ 7. Based on a  
3 positive determination by the asylum officer, Petitioner was issued a new Notice to  
4 Appear on August 7, 2025, and charged as an arriving alien inadmissible under 8 U.S.C.  
5 § 1182(a)(7)(A)(i)(I), as an immigrant not in possession of a valid entry document. Ex.  
6 6. The filing of the new Notice to Appear commenced new 240 proceedings, wherein  
7 Petitioner was charged as inadmissible under 8 U.S.C. §§ 1182(a)(6)(A)(i),  
8 1182(a)(7)(A)(i)(I). Within his 240 proceedings, Petitioner has the opportunity to apply  
9 for relief from removal before an immigration judge, including asylum under 8 U.S.C.  
10 § 1158, withholding of removal under 8 U.S.C. § 1231(b)(3), and relief under the  
11 Convention Against Torture. While Petitioner’s new 240 proceedings remain ongoing,  
12 he continues to be detained under 8 U.S.C. § 1225(b)(1)(B)(ii).

### 13 III. ARGUMENT

#### 14 A. Petitioner Brings Improper Habeas Claims

15 To the extent Petitioner bases claims on applications for relief from removal and  
16 removal proceedings, such claims are an improper basis for habeas review. An  
17 individual may seek habeas relief under 28 U.S.C. § 2241 if he is “in custody” under  
18 federal authority “in violation of the Constitution or laws or treaties of the United  
19 States.” 28 U.S.C. § 2241(c). But habeas relief is available to challenge only the legality  
20 or duration of confinement. *Pinson v. Carvajal*, 69 F.4th 1059, 1067 (9th Cir. 2023);  
21 *Crawford v. Bell*, 599 F.2d 890, 891 (9th Cir. 1979); *Dep’t of Homeland Security v.*  
22 *Thuraissigiam*, 591 U.S. 103, 117 (2020) (The writ of habeas corpus historically  
23 “provide[s] a means of contesting the lawfulness of restraint and securing release.”). To  
24 determine if a claim sounds in habeas jurisdiction, a court considers “whether, based on  
25 the allegations in the petition, release is *legally required* irrespective of the relief  
26 requested.” *Pinson*, 69 F.4th at 1072 (emphasis in original); *see also Nettles v. Grounds*,  
27 830 F.3d 922, 934 (9th Cir. 2016) (The key inquiry is whether success on the  
28 petitioner’s claim would “necessarily lead to immediate or speedier release.”). Any

1 alleged denial of the right to apply for asylum does automatically entitle Petitioner to  
2 release from detention. *See Guselnikov v. Noem*, No. 25-cv-1971-BTM-KSC, 2025 WL  
3 2300783, at \*1 (S.D. Cal. Aug. 8, 2025) (finding petitioners’ claims did not arise under  
4 § 2241 because they were not arguing they were unlawfully in custody and receiving  
5 the requested relief would not entitle them to release); *Giron Rodas v. Lyons*, No.  
6 25cv1912-LL-AHG, 2025 WL 2300781, at \*3 (S.D. Cal. Aug. 1, 2025) (“Like in  
7 *Pinson*, the Court lacks jurisdiction over Petitioner’s § 2241 habeas petition since it  
8 cannot be fairly read as attacking ‘the legality or duration of confinement.’”) (quoting  
9 *Pinson*, 69 F.4th at 1065).

10 Moreover, as explained below, under 8 U.S.C. § 1252(b)(9), “[j]udicial review  
11 of all questions of law and fact . . . arising from any action taken or proceeding brought  
12 to remove an alien from the United States under this subchapter shall be available only  
13 in judicial review of a final order under this section.” (emphasis added). Further, judicial  
14 review of a final order is available only through “a petition for review filed with an  
15 appropriate court of appeals.” 8 U.S.C. § 1252(a)(5). The Supreme Court has made clear  
16 that § 1252(b)(9) is “the unmistakable ‘zipper’ clause,” channeling “judicial review of  
17 all” “decisions and actions leading up to or consequent upon final orders of  
18 deportation,” including “non-final order[s],” into proceedings before a court of appeals.  
19 *Reno v. Am.-Arab Anti-Discrimination Committee*, 525 U.S. 471, 483, 485 (1999); *see*  
20 *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (noting § 1252(b)(9) is  
21 “breathtaking in scope and vise-like in grip and therefore swallows up virtually all  
22 claims that are tied to removal proceedings”). “Taken together, § 1252(a)(5) and  
23 § 1252(b)(9) mean that *any* issue—whether legal or factual—arising from *any* removal-  
24 related activity can be reviewed *only* through the [petition for review] PFR process.”  
25 *J.E.F.M.*, 837 F.3d at 1031 (“[W]hile these sections limit *how* immigrants can challenge  
26 their removal proceedings, they are not jurisdiction-stripping statutes that, by their  
27 terms, foreclose *all* judicial review of agency actions. Instead, the provisions channel  
28 judicial review over final orders of removal to the courts of appeal.”) (emphasis in

1 original); *see id.* at 1035 (“§§ 1252(a)(5) and [(b)(9)] channel review of all claims,  
2 including policies-and-practices challenges . . . whenever they ‘arise from’ removal  
3 proceedings”). Critically, “1252(b)(9) is a judicial channeling provision, not a claim-  
4 barring one.” *Aguilar v. ICE*, 510 F.3d 1, 11 (1st Cir. 2007). Indeed, 8 U.S.C. §  
5 1252(a)(2)(D) provides that “[n]othing . . . in any other provision of this chapter . . .  
6 shall be construed as precluding review of constitutional claims or questions of law  
7 raised upon a petition for review filed with an appropriate court of appeals in accordance  
8 with this section.” *See also Ajlani v. Chertoff*, 545 F.3d 229, 235 (2d Cir. 2008)  
9 (“[J]urisdiction to review such claims is vested exclusively in the courts of appeals[.]”).  
10 The petition-for-review process before the court of appeals ensures that noncitizens  
11 have a proper forum for claims arising from their immigration proceedings and “receive  
12 their day in court.” *J.E.F.M.*, 837 F.3d at 1031–32 (internal quotations omitted); *see*  
13 *also Rosario v. Holder*, 627 F.3d 58, 61 (2d Cir. 2010) (“The REAL ID Act of 2005  
14 amended the [INA] to obviate . . . Suspension Clause concerns” by permitting judicial  
15 review of “nondiscretionary” BIA determinations and “all constitutional claims or  
16 questions of law.”).

17 Thus, Petitioner’s claims unrelated to the lawfulness of his current detention do  
18 not arise under § 2241 and should be dismissed.

19 **B. Petitioner’s Claims are Barred by 8 U.S.C. § 1252.**

20 Petitioner bears the burden of establishing that this Court has subject matter  
21 jurisdiction over his claims. *See Ass’n of Am. Med. Coll. v. United States*, 217 F.3d  
22 770, 778-79 (9th Cir. 2000); *Finley v. United States*, 490 U.S. 545, 547-48 (1989). As  
23 a threshold matter and to the extent Petitioner is challenging the detention authority to  
24 which he is subject to (8 U.S.C. § 1225(b)(1)), those claims are jurisdictionally barred  
25 by 8 U.S.C. § 1252.

26 Courts lack jurisdiction to review a decision to commence or adjudicate removal  
27 proceedings or execute removal orders. *See* 8 U.S.C. § 1252(g) (“[N]o court shall have  
28 jurisdiction to hear any cause or claim by or on behalf of any alien arising from the

1 decision or action by the Attorney General to commence proceedings, adjudicate cases,  
2 or execute removal orders.”); *Limpin v. United States*, 828 Fed. App’x 429 (9th Cir.  
3 2020) (holding district court properly dismissed under 8 U.S.C. § 1252(g) “because  
4 claims stemming from the decision to arrest and detain an alien at the commencement  
5 of removal proceedings are not within any court’s jurisdiction”). In other words,  
6 § 1252(g) removes district court jurisdiction over “three discrete actions that the  
7 Attorney may take: [his] ‘decision or action’ to ‘commence proceedings, adjudicate  
8 cases, or execute removal orders.’” *Reno*, 525 U.S. at 483 (emphasis removed). Plainly  
9 stated, Petitioner requests that this Court review a decision to dismiss his 240  
10 proceedings, his placement into expedited removal, and the type of review he receives  
11 over his asylum claims. Thus, Petitioner’s claims necessarily arise “from the decision  
12 or action by the Attorney General to commence proceedings [and] adjudicate cases,”  
13 over which Congress has explicitly foreclosed district court jurisdiction. 8 U.S.C. §  
14 1252(g).

15 Section 1252(g) also bars district courts from hearing challenges to the *method*  
16 by which the government chooses to commence removal proceedings, including the  
17 decision to detain an alien pending removal. *See Alvarez v. ICE*, 818 F.3d 1194,  
18 1203 (11th Cir. 2016) (“By its plain terms, [§ 1252(g)] bars us from questioning ICE’s  
19 discretionary decisions to commence removal” and bars review of “ICE’s decision to  
20 take [plaintiff] into custody to detain him during removal proceedings”).

21 Other courts have held, “[f]or the purposes of § 1252, the Attorney General  
22 commences proceedings against an alien when the alien is issued a Notice to Appear  
23 before an immigration court.” *Herrera-Correra v. United States*,  
24 No. 08-2941 DSF (JCx), 2008 WL 11336833, at \*3 (C.D. Cal. Sept. 11, 2008). “The  
25 Attorney General may arrest the alien against whom proceedings are commenced and  
26 detain that individual until the conclusion of those proceedings.” *Id.* at \*3. “Thus, an  
27 alien’s detention throughout this process arises from the Attorney General’s decision to  
28 commence proceedings” and review of claims arising from such detention is barred

1 under § 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007)); *Wang*  
2 *v. United States*, No. CV 10-0389 SVW (RCX), 2010 WL 11463156, at \*6 (C.D. Cal.  
3 Aug. 18, 2010); 8 U.S.C. § 1252(g).

4 Moreover, as stated above, 8 U.S.C. § 1252(b)(9) directs review of all “decisions  
5 and actions leading up to or consequent upon final orders of deportation,” including  
6 “non-final order[s],” to a court of appeals. *Reno*, 525 U.S. at 483, 485. The petition-for-  
7 review process before the court of appeals ensures that aliens have a proper forum for  
8 claims arising from their immigration proceedings and “receive their day in court.”  
9 *J.E.F.M.*, 837 F.3d at 1031–32 (internal quotations omitted); *see also Rosario v. Holder*,  
10 627 F.3d 58, 61 (2d Cir. 2010) (“The REAL ID Act of 2005 amended the [INA] to  
11 obviate . . . Suspension Clause concerns” by permitting judicial review of  
12 “nondiscretionary” BIA determinations and “all constitutional claims or questions of  
13 law”). These provisions divest district courts of jurisdiction to review both direct and  
14 indirect challenges to removal orders, including decisions to detain for purposes of  
15 removal or for proceedings. *See Jennings v. Rodriguez*, 583 U.S. 281, 294–95 (2018)  
16 (stating section 1252(b)(9) includes challenges to the “decision to detain [an alien] in  
17 the first place or to seek removal”).

18 Here, Petitioner’s claims stem from his detention during removal proceedings.  
19 However, his detention arises from DHS’s decision to commence such proceedings  
20 against him. *See, e.g., Valecia-Meja v. United States*, No. 08-2943 CAS (PJWz),  
21 2008 WL 4286979, at \*4 (C.D. Cal. Sept. 15, 2008) (“The decision to detain plaintiff  
22 until his hearing before the Immigration Judge arose from this decision to commence  
23 proceedings.”); *Wang*, 2010 WL 11463156, at \*6; *Tazu v. Att’y Gen. U.S.*, 975 F.3d  
24 292, 298–99 (3d Cir. 2020) (holding that 8 U.S.C. § 1252(g) and (b)(9) deprive district  
25 court of jurisdiction to review action to execute removal order). Petitioner’s challenge  
26 concerning the dismissal of his 240 proceedings and commencement of expedited  
27 removal proceedings is strictly barred by these provisions. As such, Petitioner’s claims  
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1 would be more appropriately presented before the Board of Immigration Appeals and  
2 the Ninth Circuit. *See* 8 U.S.C. §§ 1252(a)(5), (b)(9).

3 Additionally, “[s]ection 1252(a)(2)(A) is a jurisdiction-stripping and channeling  
4 provision, which bars review of almost ‘every aspect of the expedited removal  
5 process.’” *Azimov v. U.S. Dep’t of Homeland Sec.*, No. 22-56034, 2024 WL 687442, at  
6 \*1 (9th Cir. Feb. 20, 2024) (quoting *Mendoza-Linares v. Garland*, 51 F.4th 1146,  
7 1154 (9th Cir. 2022) (describing the operation of § 1252(a)(2)(A)). These jurisdiction-  
8 stripping provisions cover “the ‘procedures and policies’ that have been adopted to  
9 ‘implement’ the expedited removal process; the decision to ‘invoke’ that process in a  
10 particular case; the ‘application’ of that process to a particular alien; and the  
11 ‘implementation’ and ‘operation’ of any expedited removal order.” *Mendoza-Lineras*,  
12 51 F.4th at 1155. “Congress chose to strictly cabin this court’s jurisdiction to review  
13 expedited removal orders.” *Guerrier v. Garland*, 18 F.4th 304, 313 (9th Cir. 2021)  
14 (finding that the Supreme Court abrogated any “colorable constitutional claims”  
15 exception to the limits placed by § 1252(a)(2)(A)); *see Thuraissigiam*, 591 U.S. at 107  
16 (holding that limitations within § 1252(a)(2)(A) do not violate the Suspension Clause).  
17 “Congress has chosen to explicitly bar nearly all judicial review of expedited removal  
18 orders concerning such aliens, including ‘review of constitutional claims or questions  
19 of law.’” *Mendoza-Linares*, 51 F.4th at 1148 (citing 8 U.S.C. § 1252(a)(2)(A), (D)); *see*  
20 *Thuraissigiam*, 591 U.S. at 138-39 (explicitly rejecting Ninth Circuit’s holding that an  
21 arriving alien has a “constitutional right to expedited removal proceedings that conform  
22 to the dictates of due process”).

23 “Congress could scarcely have been more comprehensive in its articulation of the  
24 general prohibition on judicial review of expedited removal orders.” *Mendoza-Lineras*,  
25 51 F.4th at 1155. Specifically, Section 1252(a)(2)(A) states:

26 (2) Matters not subject to judicial review

27 (A) Review relating to section 1225(b)(1)

28 Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other

1 habeas corpus provision, and sections 1361 and 1651 of such title,  
2 no court shall have jurisdiction to review-

- 3 (i) except as provided in subsection (e), any individual  
4 determination or to entertain any other cause or claim arising  
5 from or relating to the implementation or operation of an  
6 order of removal pursuant to section 1225(b)(1) of this title,  
7 (ii) except as provided in subsection (e), a decision by the  
8 Attorney General to invoke the provisions of such section,  
9 (iii) the application of such section to individual aliens, including  
10 the determination made under section 1225(b)(1)(B) of this  
11 title, or  
12 (iv) except as provided in subsection (e), procedures and policies  
13 adopted by the Attorney General to implement the provisions  
14 of section 1225(b)(1) of this title.

15 8 U.S.C. § 1252(a)(2)(A). Thus, “Section 1252(a)(2)(A)(i) deprives courts of  
16 jurisdiction to hear a ‘cause or claim arising from or relating to the implementation or  
17 operation of an order of removal pursuant to section 1225(b)(1),’ which plainly includes  
18 [Petitioner’s] collateral attacks on the validity of the expedited removal order.” *Azimov*,  
19 2024 WL 687442, at \*1 (quoting *Mendoza-Linares*, 51 F.4th at 1155) (citing *J.E.F.M.*,  
20 837 F.3d at 1031-35 (concluding that the “arising from” language in neighboring  
21 § 1252(b)(9) sweeps broadly)). By challenging the standards and process of expedited  
22 removal proceedings, Petitioner necessarily asks the Court “to do what the statute  
23 forbids [it] to do, which is to review ‘the application of such section to him.’” *Mendoza-*  
24 *Linares*, 51 F.4th at 1155. Most notably, a determination made concerning  
25 inadmissibility “is not subject to judicial review.” *Gomez-Cantillano v. Garland*, No.  
26 19-72682, 2021 WL 5882034 (9th Cir. Dec. 13, 2021) (citing  
27 8 U.S.C § 1252(a)(2)(A)(iii)). “And § 1252(a)(2)(A)(iv) deprives courts of jurisdiction  
28 to review ‘procedures and policies adopted by the Attorney General to implement the  
provisions of section 1225(b)(1) of this title,’ which plainly includes [Petitioner’s]  
claims regarding how [Respondents may] implement[]” § 1225(b)(1). *Azimov*,  
2024 WL 687442, at \*1 (citing *Mendoza-Linares*, 51 F.4th at 1154–55).

1 In setting forth provisions for judicial review of § 1225(b)(1) expedited removal  
2 orders, Congress expressly limited available relief: “Without regard to the nature of the  
3 action or claim and without regard to the identity of the party or parties bringing the  
4 action, no court may” “enter declaratory, injunctive, other equitable relief in any action  
5 pertaining to an order to exclude an alien in accordance with section § 1225(b)(1) of  
6 this title except as specifically authorized in a subsequent paragraph of this subsection.”  
7 8 U.S.C. § 1252(e)(1)(A). Congress delineated two limited avenues for judicial review  
8 concerning expedited removal orders: (1) narrow habeas corpus proceedings under  
9 § 1252(e)(2); and (2) challenges to the validity of the system under § 1252(e)(3). Any  
10 permissible challenge to the validity of the system “is available [only] in an action in  
11 the United States District Court for the District of Columbia . . . .” 8 U.S.C. § 1252(e)(3).

12 Narrow habeas corpus proceedings are expressly “limited to determinations” of  
13 three questions: (1) “whether the petitioner is an alien”; (2) “whether the petitioner was  
14 ordered removed under [section 1225(b)(1)]”; and (3) “whether the petitioner can prove  
15 by a preponderance of the evidence that the petitioner is an alien” who has been granted  
16 status as a lawful permanent resident, refugee, or asylee. 8 U.S.C. § 1252(e)(2)(A)-(C).  
17 “In determining whether an alien has been ordered removed under section 235(b)(1)  
18 [8 U.S.C. § 1225(b)(1)], the court’s inquiry shall be limited *to whether such an order*  
19 *in fact was issued and whether it relates to the petitioner.* There shall be no review of  
20 whether the alien is actually inadmissible or entitled to any relief from removal.”  
21 8 U.S.C. § 1252(e)(5) (emphasis added). To the extent Petitioner is challenging the  
22 expedited process, each of Petitioner’s claims fall outside the limited habeas corpus  
23 authority provided within § 1252(e)(2).

24 Thus, as Petitioner’s claims arise from the decision to commence proceedings,  
25 this Court lacks jurisdiction under 8 U.S.C. § 1252.

26 **C. Petitioner Fails to Establish Entitlement to Interim Injunctive Relief**

27 Petitioner has not established entitlement to interim injunctive relief. Petitioner  
28 has failed to show a likelihood of success on the underlying merits, a showing of

1 irreparable harm, and that the equities tip in Petitioner’s favor. Thus, Petitioner’s motion  
2 should be denied.

3 In general, the showing required for a temporary restraining order is the same as  
4 that required for a preliminary injunction. *See Stuhlberg Int’l Sales Co., Inc. v. John D.*  
5 *Brush & Co., Inc.*, 240 F.3d 832, 839 (9th Cir. 2001). To prevail on a motion for a  
6 temporary restraining order, a plaintiff must “establish that he is likely to succeed on  
7 the merits, that he is likely to suffer irreparable harm in the absence of preliminary  
8 relief, that the balance of equities tips in his favor, and that an injunction is in the public  
9 interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *accord Nken v.*  
10 *Holder*, 556 U.S. 418, 426 (2009). Plaintiffs must demonstrate a “substantial case for  
11 relief on the merits.” *Leiva-Perez v. Holder*, 640 F.3d 962, 967–68 (9th Cir. 2011).  
12 When “a plaintiff has failed to show the likelihood of success on the merits, we need  
13 not consider the remaining three [*Winter* elements].” *Garcia v. Google, Inc.*, 786 F.3d  
14 733, 740 (9th Cir. 2015) (citations omitted).

15 The final two factors required for preliminary injunctive relief—balancing of the  
16 harm to the opposing party and the public interest—merge when the government is the  
17 opposing party. *See Nken*, 556 U.S. at 435. “Few interests can be more compelling than  
18 a nation’s need to ensure its own security.” *Wayte v. United States*, 470 U.S. 598, 611  
19 (1985).

20 **1. Petitioner Has Not Shown Likelihood of Success on the Merits**

21 Likelihood of success on the merits is a threshold issue. *See Garcia*, 786 F.3d at  
22 740. Petitioner cannot establish that he is likely to succeed on the underlying merits of  
23 his claims because he is detained under 8 U.S.C. § 1225(b)(1)(B)(ii).

24 “To determine whether Congress has authorized [a petitioner’s] detention, we  
25 must first identify the statutory provision that purports to confer such authority on the  
26 Attorney General.” *Prieto-Romero v. Clark*, 534 F.3d 1053, 1057 (9th Cir. 2008).  
27 Section 1226(a) provides that “[o]n a warrant issued by the Attorney General, an alien  
28 may be arrested and detained pending a decision on whether the alien is to be removed

1 from the United States.” 8 U.S.C. § 1226(a). The statute also provides for release from  
2 custody on bond or conditional parole. 8 U.S.C. § 1226(a)(2). However, “[t]he Attorney  
3 General at any time may revoke a bond or parole authorized under subsection (a),  
4 rearrest the alien under the original warrant, and detain the alien.” 8 U.S.C. § 1226(b);  
5 *see* 8 U.S.C. § 236.1(c)(9) (“When an alien who, having been arrested and taken into  
6 custody, has been released, such release may be revoked at any time . . . in which event  
7 the alien may be taken into physical custody and detained.”).

8 While Petitioner was previously released from custody, such release may be  
9 revoked “at any time.” 8 U.S.C. § 1226(b). Importantly, discretionary decisions under  
10 §1226 are not subject to judicial review. 8 U.S.C. § 1226(e) (“No court may set aside  
11 any action or decision by the Attorney General under this section regarding the  
12 detention or any alien or the revocation or denial of bond or parole.”); *Demore v. Kim*,  
13 538 U.S. 510, 531 (2003) (“Detention during removal proceedings is a constitutionally  
14 permissible part of that process.”). To the extent Petitioner challenges the decision to  
15 remand him back into custody, his claims are barred by Section 1226(e). *See Jennings*,  
16 583 U.S. at 295 (“As we have previously explained, § 1226(e) precludes an alien from  
17 ‘challeng[ing] a “discretionary judgment” by the Attorney General or a “decision” that  
18 the Attorney General has made regarding his detention or release.’ But § 1226(e) does  
19 not preclude ‘challenges [to] the statutory framework that permits [the alien’s] detention  
20 without bail.’”).

21 Section 1225 applies to “applicants for admission,” who are defined as “alien[s]  
22 present in the United States who [have] not been admitted” or “who arrive[] in the  
23 United States.” 8 U.S.C. § 1225(a)(1). Applicants for admission “fall into one of two  
24 categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2).”  
25 *Jennings*, 583 U.S. at 287. Section 1225(b)(1) applies to arriving aliens and “certain  
26 other” aliens “initially determined to be inadmissible due to fraud, misrepresentation,  
27 or lack of valid document.” *Id.*; 8 U.S.C. § 1225(b)(1)(A)(i), (iii). Though not relevant  
28 here, § 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*,

1 583 U.S. at 287. In this statutory scheme, DHS has the sole discretionary authority to  
2 temporarily release on parole “any alien applying for admission to the United States”  
3 on a “case-by-case basis for urgent humanitarian reasons or significant public benefit.”  
4 *Id.* (quoting 8 U.S.C. § 1182(d)(5)(A)); *see Biden v. Texas*, 597 U.S. 785, 806 (2022).

5 In *Jennings*, the Supreme Court evaluated the proper interpretation of  
6 8 U.S.C. § 1225(b) and stated that “[r]ead most naturally, §§ 1225(b)(1) and (b)(2) []  
7 mandate detention of applicants for admission until certain proceedings have  
8 concluded.” 583 U.S. at 297. The Court noted that neither § 1225(b)(1) nor § 1225(b)(2)  
9 “impose[] any limit on the length of detention” and “neither § 1225(b)(1) nor  
10 § 1225(b)(2) say[] anything whatsoever about bond hearings.” *Id.* The Court added that  
11 the sole means of release for noncitizens detained under §§ 1225(b)(1) or (b)(2) prior  
12 to removal from the United States is temporary parole at the discretion of the Attorney  
13 General under 8 U.S.C. § 1182(d)(5). *Id.* at 300. The Court observed that because aliens  
14 held under § 1225(b) may be paroled for “urgent humanitarian reasons or significant  
15 public benefit,” “[t]hat express exception to detention implies that there are no *other*  
16 circumstances under which aliens detained under 1225(b) may be released.” *Id.*  
17 (citations and internal quotation omitted) (emphasis in original). Courts thus may not  
18 validly draw additional procedural limitations “out of thin air.” *Id.* at 312. The Supreme  
19 Court concluded: “In sum, §§ 1225(b)(1) and (b)(2) mandate detention of [noncitizens]  
20 throughout the completion of applicable proceedings.” *Id.* at 302.

21 As to the Fifth Amendment, Petitioner’s due process rights consistent of those  
22 statutorily afforded by Congress. *See Thuraissigiam*, 591 U.S. at 139 (collecting cases);  
23 8 U.S.C. § 1225(b)(1)(B)(iii)(IV); *Landon v. Plasencia*, 459 U.S. 21, 32 (1982) (“This  
24 Court has long held that an alien seeking initial admission to the United States requests  
25 a privilege and has no constitutional rights regarding his application, for the power to  
26 admit or exclude aliens is a sovereign prerogative.”) (citations omitted); *see generally*  
27 *I.N.S. v. Lopez-Mendoza*, 468 U.S. 1032, 1038 (1984) (“Consistent with the civil nature  
28 of the proceeding, various protections that apply in the context of a criminal trial do not

1 apply in a deportation hearing.”). In *Thuraissigiam*, the Supreme Court addressed the  
2 due process rights of inadmissible arriving noncitizens and stated that such individuals  
3 have no due process rights “other than those afforded by statute.” 591 U.S. at 107; *id.*  
4 at 140 (“[A]n alien in respondent’s position has only those rights regarding admission  
5 that Congress has provided by statute.”). The Supreme Court noted that its  
6 determination was supported by “more than a century of precedent.” *Id.* at 138 (citing  
7 *Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892)); *U.S. ex rel. Knauff v.*  
8 *Shaughnessy*, 338 U.S. 537, 544 (1950); *Shaughnessy v. United States ex rel. Mezei*,  
9 345 U.S. 206, 212 (1953); *Landon*, 459 U.S. at 32; *Rauda v. Jennings*, 8 F.4th 1050,  
10 1058 (9th Cir. 2021) (“Congress has already balanced the amount of due process  
11 available to petitioners with the executive’s prerogative to remove individuals, and we  
12 decline to expand judicial review beyond the parameters set by Congress.”); *Mendoza-*  
13 *Linares v. Garland*, No. 21-cv-1169-BEN (AHG), 2024 WL 3316306, at \*2 (S.D. Cal.  
14 June 10, 2024) (“[T]he Court finds that [the petitioner] has no Fifth Amendment right  
15 to a bond hearing pending his removal proceedings. The only due process due an alien  
16 seeking admission to the United States is ‘those rights regarding admission that  
17 Congress has provided by statute.’” (quoting *Thuraissigiam*, 591 U.S. at 140); *Zelaya-*  
18 *Gonzalez v. Matuszewski*, No. 23-CV-151-JLS (KSC), 2023 WL 3103811, at \*4 (S.D.  
19 Cal. Apr. 25, 2023) (“Binding Ninth Circuit and Supreme Court precedents are clear  
20 that Petitioner lacks any rights beyond those conferred by statute, and no statute entitles  
21 Petitioner to a bond hearing.”).

22 Here, Petitioner’s removal proceedings are ongoing, and thus, he continues to be  
23 subject to mandatory detention under 8 U.S.C. § 1225(b)(1)(B)(ii). Because the  
24 statutory authority under which Petitioner is detained does not afford him a right for  
25 this Court to determine whether his release is warranted nor a right to a bond hearing  
26 before an immigration judge, the Court should reject his Fifth Amendment due process  
27 claim and deny his requested relief.

28 Similarly, the Administrative Procedure Act (“APA”) does not provide an avenue

1 for relief in this case. The APA places limits on when agency action is subject to judicial  
2 review. “Agency action made reviewable by statute and final agency action for which  
3 there is no other adequate remedy in a court are subject to judicial review.” 5 U.S.C.  
4 § 704; *Navajo Nation v. Dep’t of the Interior*, 876 F.3d 1144, 1171 (9th Cir. 2017)  
5 (“[Section] 704’s requirement that to proceed under the APA, agency action must be  
6 final or otherwise reviewable by statute is an independent element without which courts  
7 may not determine APA claims.”). Reviewable “agency action” is defined to include  
8 “the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent  
9 or denial thereof, or failure to act.” 5 U.S.C. § 551(13). “While this definition is  
10 ‘expansive,’ federal courts ‘have long recognized that the term [agency action] is not so  
11 all-encompassing as to authorize . . . judicial review over everything done by an  
12 administrative agency.’” *Wild Fish Conservancy v. Jewell*, 730 F.3d 791, 800–01 (9th  
13 Cir. 2013) (quoting *Fund for Animals, Inc. v. U.S. Bureau of Land Management*, 460  
14 F.3d 13, 19 (D.C. Cir. 2006)). Here, it is not altogether clear what final agency action  
15 Petitioner seeks review over. More importantly, habeas relief only allows challenges to  
16 the legality or duration of confinement. *Pinson*, 69 F.4th at 1067; *see also Flores-*  
17 *Miramontes v. I.N.S.*, 212 F.3d 1133, 1140 (9th Cir. 2000) (“For purposes of  
18 immigration law, at least, ‘judicial review’ refers to petitions for review of agency  
19 actions, which are governed by the [APA], while habeas corpus refers to habeas  
20 petitions brought directly in district court to challenge illegal confinement.”). Thus,  
21 because Petitioner’s claim is beyond the scope of habeas jurisdiction, it should be  
22 denied.

23 Accordingly, as Petitioner is detained pursuant to 8 U.S.C. § 1225(b)(1)(B)(ii),  
24 Petitioner’s claims fail on the merits.

## 25 **2. Petitioner Has Not Shown Irreparable Harm**

26 To prevail on his request for interim injunctive relief, Petitioner must demonstrate  
27 “immediate threatened injury.” *Caribbean Marine Services Co., Inc. v. Baldrige*, 844  
28 F.2d 668, 674 (9th Cir. 1988) (citing *Los Angeles Memorial Coliseum Commission v.*

1 *National Football League*, 634 F.2d 1197, 1201 (9th Cir. 1980)). Merely showing a  
2 “possibility” of irreparable harm is insufficient. *See Winter*, 555 U.S. at 22. And  
3 detention alone is not an irreparable injury. *See Reyes v. Wolf*, No. C20-0377JLR, 2021  
4 WL 662659, at \*3 (W.D. Wash. Feb. 19, 2021), *aff’d sub nom. Diaz Reyes v. Mayorkas*,  
5 No. 21-35142, 2021 WL 3082403 (9th Cir. July 21, 2021). Further, “[i]ssuing a  
6 preliminary injunction based only on a possibility of irreparable harm is inconsistent  
7 with [the Supreme Court’s] characterization of injunctive relief as an extraordinary  
8 remedy that may only be awarded upon a clear showing that the plaintiff is entitled to  
9 such relief.” *Winter*, 555 U.S. at 22.

10 Petitioner suggests that being subjected to allegedly unjustified detention itself  
11 constitutes irreparable injury.<sup>2</sup> But this argument “begs the constitutional questions  
12 presented in [his] petition by assuming that petitioner has suffered a constitutional  
13 injury.” *Cortez v. Nielsen*, 2019 WL 1508458, at \*3 (N.D. Cal. Apr. 5, 2019). Moreover,  
14 Petitioner’s “loss of liberty” is “common to all [noncitizens] seeking review of their  
15 custody or bond determinations.” *See Resendiz v. Holder*, 2012 WL 5451162, at \*5  
16 (N.D. Cal. Nov. 7, 2012). He faces the same alleged irreparable harm as any habeas  
17 corpus petitioner in immigration custody, and he has not shown extraordinary  
18 circumstances warranting a mandatory preliminary injunction.

19 Importantly, the purpose of civil detention is facilitating removal, and the  
20 government is working to timely remove Petitioner. Here, because Petitioner’s alleged  
21 harm “is essentially inherent in detention, the Court cannot weigh this strongly in favor  
22 of Petitioner.” *Lopez Reyes v. Bonnar*, No. 18-CV-07429-SK, 2018 WL 7474861, at  
23 \*10 (N.D. Cal. Dec. 24, 2018).

### 24 **3. The Balance of Equities Does Not Tip in Petitioner’s Favor**

25 It is well settled that “the public interest in enforcement of the immigration laws  
26 is significant.” *Blackie’s House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1221 (D.C. Cir.

27  
28 <sup>2</sup> Detention is different than removal. But a removal is also not an inherently irreparable injury. *See Nken v. Holder*, 556 U.S. 418, 435 (2009).

1 1981) (collecting cases); *see Nken*, 556 U.S. at 436 (“There is always a public interest  
2 in prompt execution of removal orders: The continued presence of an alien lawfully  
3 deemed removable undermines the streamlined removal proceedings [the Illegal  
4 Immigration Reform and Immigrant Responsibility Act of 1996] established, and  
5 permits and prolongs a continuing violation of United States law.”) (simplified). And  
6 ultimately, “the balance of the relative equities ‘may depend to a large extent upon the  
7 determination of the [movant’s] prospects of success.’” *Tiznado-Reyna v. Kane*, Case  
8 No. C 12-1159-PHX-SRB (SPL), 2012 WL 12882387, at \* 4 (D. Ariz. Dec. 13, 2012)  
9 (quoting *Hilton v. Braunskill*, 481 U.S. 770, 778 (1987)).

10 Here, as explained above, Petitioner cannot succeed on the merits of his claims,  
11 and the public interest in the prompt execution of removal orders is significant. The  
12 balancing of equities and the public interest thus weigh heavily against granting  
13 equitable relief in this case.

#### 14 IV. CONCLUSION

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

17 DATED: November 24, 2025

18 Respectfully submitted,

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