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6 Attorneys for Respondents

7 UNITED STATES DISTRICT COURT  
8 SOUTHERN DISTRICT OF CALIFORNIA  
9

10 R.M.,  
11 Petitioner,  
12 v.  
13 CHRISTOPHER J. LAROSE; *et al.*,  
14 Respondents.  
15

Case No.: 25-cv-3186-AGS-DEB  
**RESPONDENTS' RETURN AND  
OPPOSITION TO PETITIONER'S  
HABEAS PETITION AND  
MOTION FOR TEMPORARY  
RESTRAINING ORDER**

16 **I. Introduction**

17 Petitioner R.M. has filed a habeas petition pursuant to 28 U.S.C. § 2241. For the  
18 reasons set forth below, the Court should deny Petitioner's requests for relief and  
19 dismiss the petition.

20 **II. Factual and Procedural Background**

21 Petitioner is a citizen and national of Azerbaijan. ECF No. 1 at ¶ 17. On or about  
22 March 8, 2024, he unlawfully entered the United States near Tecate, California without  
23 being admitted, paroled, or inspected. Exhibit 1. That same day, DHS placed Petitioner  
24 in removal proceedings under 8 U.S.C. § 1229a and issued Petitioner a Notice to Appear  
25 (NTA), charging Petitioner as inadmissible under 8 U.S.C. § 1182(a)(6)(i), as an alien  
26 present in the United States who has not been admitted or paroled. *Id.* On March 9,  
27 2024, Petitioner was released from the DHS custody on an order of release on  
28 recognizance. Declaration of Hugo Lara Ramirez ("Ramirez Decl."), ¶ 3.

1 On June 25, 2025, Petitioner appeared before an immigration judge at a master  
2 calendar hearing and DHS moved to dismiss Petitioner’s § 1229a removal proceedings.  
3 Exhibit 2. The same day, Petitioner was apprehended and detained in ICE custody  
4 pursuant to the execution of a warrant. Ramirez Decl., ¶ 4; Exhibit 3. On June 25, 2025,  
5 he issued a Notice and Order of Expedited Removal under 8 U.S.C. § 1225(b)(1).  
6 Ramirez Decl., ¶ 4; Exhibit 4. On July 9, 2025, an immigration judge granted DHS’s  
7 motion to dismiss Petitioner’s § 1229a removal proceedings despite Petitioner’s  
8 opposition. Ramirez Decl., ¶ 5; Exhibit 5.<sup>1</sup> On July 25, 2025, pursuant to 8 U.S.C.  
9 § 1225(b)(1)(B), Petitioner was given a credible fear interview where the asylum officer  
10 found that he demonstrated a credible fear of persecution or torture. Ramirez Decl., ¶ 6.  
11 On September 4, 2025, as a result of the positive credible fear determination, Petitioner  
12 was issued a new Notice to Appear, charged as inadmissible under USC  
13 § § 1182(a)(6)(A)(i) and 1182(a)(7)(A)(i)(I), and placed in new § 1229a proceedings.  
14 *Id.*, ¶ 7; Exhibit 6. Petitioner has a master hearing scheduled for December 2, 2025.  
15 Ramirez Decl., ¶ 8. He is not currently subject to a final order of removal and remains  
16 detained in Otay Mesa Detention Facility pursuant to 8 U.S.C. § 1225(b)(1)(B)(ii). *Id.*,  
17 ¶ 9.

### 18 III. Statutory Background

#### 19 A. Individuals Seeking Admission to the United States

20 For more than a century, this country’s immigration laws have authorized  
21 immigration officials to charge noncitizens as removable from the country, arrest those  
22 who are subject to removal, and detain them during removal proceedings. *See Abel v.*  
23 *United States*, 362 U.S. 217, 232–37 (1960). “The rule has been clear for decades:  
24 ‘[d]etention during deportation proceedings [i]s ... constitutionally valid.’” *Banyee v.*  
25 *Garland*, 115 F.4th 928 (8th Cir. 2024) (quoting *Demore v. Kim*, 538 U.S. 510, 523  
26

27  
28 <sup>1</sup> Neither DHS’s motion to dismiss nor the immigration judge’s order occurred at or during a merits hearing on Petitioner’s asylum application. *See Ex. 2.*

1 (2003)), *rehearing by panel and en banc denied*, *Banyee v. Bondi*, No. 22-2252, 2025  
2 WL 837914 (8th Cir. Mar. 18, 2025); *see Carlson v. Landon*, 342 U.S. 524, 538 (1952)  
3 (“Detention is necessarily a part of this deportation procedure.”); *Demore*, 538 U.S. at  
4 523 n.7 (“In fact, prior to 1907 there was no provision permitting bail for *any* aliens  
5 during the pendency of their deportation proceedings.”). The Supreme Court even  
6 recognized that removal proceedings ““would be [in] vain if those accused could not be  
7 held in custody pending the inquiry into their true character.”” *Demore*, 538 U.S. at  
8 523 (quoting *Wong Wing v. United States*, 163 U.S. 228, 235 (1896)). Over the century,  
9 Congress has enacted a multi-layered statutory scheme for the civil detention of aliens  
10 pending a decision on removal, during the administrative and judicial review of removal  
11 orders, and in preparation for removal. *See generally* 8 U.S.C. §§ 1225, 1226, 1231. It  
12 is the interplay between these statutes that is at issue here.

13 **B. Detention Under 8 U.S.C. § 1225**

14 “To implement its immigration policy, the Government must be able to decide  
15 (1) who may enter the country and (2) who may stay here after entering.” *Jennings v.*  
16 *Rodriguez*, 583 U.S. 281, 286 (2018). Section 1225 governs inspection, the initial step  
17 in this process, *id.*, stating that all “applicants for admission . . . shall be inspected by  
18 immigration officers.” 8 U.S.C. § 1225(a)(3). The statute—in a provision entitled  
19 “ALIENS TREATED AS APPLICANTS FOR ADMISSION”—dictates who “shall be  
20 deemed for purposes of this chapter an applicant for admission,” defining that term to  
21 encompass *both* an alien “present in the United States who has not been admitted *or*  
22 [one] who arrives in the United States . . . .” *Id.* § 1225(a)(1) (emphasis added). Section  
23 1225(b) governs the inspection procedures applicable to all applicants for admission.  
24 They “fall into one of two categories, those covered by § 1225(b)(1) and those covered  
25 by § 1225(b)(2).” *Jennings*, 583 U.S. at 287.

26 Section 1225(b)(1) applies to arriving aliens and “certain other” aliens “initially  
27 determined to be inadmissible due to fraud, misrepresentation, or lack of valid  
28 documentation.” *Jennings*, 583 U.S. at 287; 8 U.S.C. § 1225(b)(1)(A)(i), (iii). These

1 aliens are generally subject to expedited removal proceedings. *See* 8 U.S.C. §  
2 1225(b)(1)(A)(i). But if the alien “indicates an intention to apply for asylum . . . or a  
3 fear of persecution,” immigration officers will refer the alien for a credible fear  
4 interview. *Id.* § 1225(b)(1)(A)(ii). An alien “with a credible fear of persecution” is  
5 “detained for further consideration of the application for asylum.” *Id.* §  
6 1225(b)(1)(B)(ii). If the alien does not indicate an intent to apply for asylum, express a  
7 fear of persecution, or is “found not to have such a fear,” they are detained until removed  
8 from the United States. *Id.* §§ 1225(b)(1)(A)(i), (B)(iii)(IV).

9 Section 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*,  
10 583 U.S. at 287. It “applies to all applicants for admission not covered by § 1225(b)(1).”  
11 *Id.* Under § 1225(b)(2), an alien “who is an applicant for admission” shall be detained  
12 for a removal proceeding “if the examining immigration officer determines that [the]  
13 alien seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8  
14 U.S.C. § 1225(b)(2)(A); *see Matter of Yajure Hurtado*, 29 I&N Dec. 216, 220 (BIA  
15 2025) (“[A]liens who are present in the United States without admission are applicants  
16 for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C.  
17 § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings.”);  
18 *Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) (“for aliens arriving in and seeking  
19 admission into the United States who are placed directly in full removal proceedings,  
20 section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention ‘until  
21 removal proceedings have concluded.’”) (citing *Jennings*, 583 U.S. at 299). However,  
22 DHS has the sole discretionary authority to temporarily release on parole “any alien  
23 applying for admission to the United States” on a “case-by-case basis for urgent  
24 humanitarian reasons or significant public benefit.” *Id.* § 1182(d)(5)(A); *see Biden v.*  
25 *Texas*, 597 U.S. 785, 806 (2022).

26 **C. Detention Under 8 U.S.C. § 1226(a)**

27 Section 1226 provides for arrest and detention “pending a decision on whether  
28 the alien is to be removed from the United States.” 8 U.S.C. § 1226(a). Under § 1226(a),

1 the government may detain an alien during his removal proceedings, release him on  
2 bond, or release him on conditional parole. By regulation, immigration officers can  
3 release an alien who demonstrates that he “would not pose a danger to property or  
4 persons” and “is likely to appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8). An  
5 alien can also request a custody redetermination (i.e., a bond hearing) by an IJ at any  
6 time before a final order of removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§  
7 236.1(d)(1), 1236.1(d)(1), 1003.19.

8 At a custody redetermination, the IJ may continue detention or release the alien  
9 on bond or conditional parole. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). IJs have  
10 broad discretion in deciding whether to release an alien on bond. *In re Guerra*, 24 I. &  
11 N. Dec. 37, 39-40 (BIA 2006) (listing nine factors for IJs to consider). But regardless  
12 of the factors IJs consider, an alien “who presents a danger to persons or property should  
13 not be released during the pendency of removal proceedings.” *Id.* at 38.

14 Section 1226(a) does not grant “any *right* to release on bond.” *Matter of D-J-*, 23  
15 I. & N. Dec. at 575 (citing *Carlson v. Landon*, 342 U.S. 524, 534 (1952)). Nor does it  
16 address the applicable burden of proof or particular factors that must be considered. *See*  
17 *generally* 8 U.S.C. § 1226(a). Rather, it grants DHS and the Attorney General broad  
18 discretionary authority to determine, after arrest, whether to detain or release an alien  
19 during his removal proceedings. *See id.* If, after the bond hearing, either party disagrees  
20 with the decision of the IJ, that party may appeal the decision to the BIA. *See* 8 C.F.R.  
21 §§ 236.1(d)(3), 1003.19(f), 1003.38, 1236.1(d)(3).

#### 22 **D. Review Before the Board of Immigration Appeals**

23 The BIA is an appellate body within the Executive Office for Immigration  
24 Review (EOIR) and possesses delegated authority from the Attorney General. 8 C.F.R.  
25 §§ 1003.1(a)(1), (d)(1). The BIA is “charged with the review of those administrative  
26 adjudications under the [INA] that the Attorney General may by regulation assign to  
27 it,” including IJ custody determinations. 8 C.F.R. §§ 1003.1(d)(1), 236.1, 1236.1. The  
28 BIA not only resolves particular disputes before it, but is also directed to, “through

1 precedent decisions, [] provide clear and uniform guidance to DHS, the immigration  
2 judges, and the general public on the proper interpretation and administration of the  
3 [INA] and its implementing regulations.” *Id.* § 1003.1(d)(1). Decisions rendered by the  
4 BIA are final, except for those reviewed by the Attorney General. 8 C.F.R. §  
5 1003.1(d)(7).

#### 6 IV. Argument

##### 7 A. Petitioner’s Claims Regarding Expedited Removal are Moot.

8 Petitioner bears the burden of establishing that this Court has subject matter  
9 jurisdiction over his claims. *See Ass’n of Am. Med. Coll. v. United States*, 217 F.3d 770,  
10 778–79 (9th Cir. 2000); *Finley v. United States*, 490 U.S. 545, 547–48 (1989). However,  
11 Petitioner cannot establish jurisdiction over his claims regarding his placement in  
12 expedited removal proceedings and his ability to apply for asylum because these claims  
13 are moot. Petitioner is no longer in expedited removal, and he is applying for asylum  
14 before an immigration judge.

15 The Constitution limits federal judicial power to designated “cases” and  
16 “controversies.” U.S. Const., Art. III, § 2; *SEC v. Medical Comm. for Human Rights*,  
17 404 U.S. 403, 407 (1972) (stating federal courts may only entertain matters that present  
18 a “case” or “controversy” within the meaning of Article III). Federal courts do not have  
19 jurisdiction “to give opinion upon moot questions or abstract propositions, or to declare  
20 principles or rules of law which cannot affect the matter in issue in the case before it.”  
21 *Church of Scientology of Cal. v. United States*, 506 U.S. 9, 12 (1992). “A claim is moot  
22 if it has lost its character as a present, live controversy.” *Rosemere Neighborhood Ass’n*  
23 *v. U.S. Env’t Prot. Agency*, 581 F.3d 1169, 1172–73 (9th Cir. 2009). A case becomes  
24 moot “when the issues presented are no longer ‘live’ or the parties lack a legally  
25 cognizable interest in the outcome.” *Cnty. of Los Angeles v. Davis*, 440 U.S. 625, 631  
26 (1979). The Court therefore lacks jurisdiction because there is no live case or  
27 controversy remaining. *See Powell v. McCormack*, 395 U.S. 486, 496 (1969); *see also*  
28 *Murphy v. Hunt*, 455 U.S. 478, 481 (1982).

1 Each of Petitioner’s causes of action arise from his placement in expedited  
2 removal proceedings. However, Petitioner is no longer in expedited removal  
3 proceedings. Petitioner is in 1229a proceedings, and he has the opportunity to present  
4 his asylum claim (and any claims for withholding of removal under 8 U.S.C.  
5 § 1231(b)(3), and the Convention Against Torture) directly to an immigration judge in  
6 a formal hearing. *See* 8 U.S.C. §§ 1229a(b)(1)-(4) (detailing authority of immigration  
7 judge, form of proceeding, and opportunity for a respondent to examine evidence  
8 against him and present evidence on his own behalf, among other things). Petitioner  
9 will not be removed from the United States until he is subject to a final order of removal,  
10 which will be issued by an immigration judge after full consideration of any claims for  
11 relief or protection from removal. *See* 8 U.S.C. § 1229a(a)(1), (3); 8 U.S.C.  
12 § 1231(a)(1)(A).

13 As Petitioner is no longer in expedited removal proceedings, the claims regarding  
14 his placement in expedited removal proceedings and ability to assert a claim for asylum  
15 no longer present a live case or controversy and are moot. *See Church of Scientology of*  
16 *Cal.*, 506 U.S. at 12.

17 **B. Petitioner Brings Improper Habeas Claims**

18 The Court should deny Petitioner’s petition to the extent he asserts claims  
19 regarding the termination of his first 1229a proceedings and placement into expedited  
20 removal proceedings, because such claims do not challenge the lawfulness of his  
21 custody. Rather, such claims challenge the decision to dismiss his 1229a proceedings,  
22 his placement into expedited removal, and the type of review he receives over his  
23 asylum claims. An individual may seek habeas relief under 28 U.S.C. § 2241 if he is  
24 “in custody” under federal authority “in violation of the Constitution or laws or treaties  
25 of the United States.” 28 U.S.C. § 2241(c). But habeas relief is available to challenge  
26 only the legality or duration of confinement. *Pinson v. Carvajal*, 69 F.4th 1059, 1067  
27 (9th Cir. 2023); *Crawford v. Bell*, 599 F.2d 890, 891 (9th Cir. 1979); *Dep’t of Homeland*  
28 *Security v. Thraissigiam*, 591 U.S. 103, 117 (2020) (The writ of habeas corpus

1 historically “provide[s] a means of contesting the lawfulness of restraint and securing  
2 release.”). The Ninth Circuit squarely explained how to decide whether a claim sounds  
3 in habeas jurisdiction: “[O]ur review of the history and purpose of habeas leads us to  
4 conclude the relevant question is whether, based on the allegations in the petition,  
5 release is *legally required* irrespective of the relief requested.” *Pinson*, 69 F.4th at 1072  
6 (emphasis in original); *see also Nettles v. Grounds*, 830 F.3d 922, 934 (9th Cir. 2016)  
7 (The key inquiry is whether success on the petitioner’s claim would “necessarily lead  
8 to immediate or speedier release.”). Here, a review on a decision to terminate  
9 Petitioner’s 1229a proceedings and a decision to place him into expedited removal  
10 proceedings would not automatically entitle him to release from detention. *See*  
11 *Guselnikov v. Noem*, No. 25-cv-1971-BTM-KSC, 2025 WL 2300873, at \*1 (S.D. Cal.  
12 Aug. 8, 2025) (finding petitioners’ claims did not arise under § 2241 because they were  
13 not arguing they were unlawfully in custody and receiving the requested relief would  
14 not entitle them to release); *Giron Rodas v. Lyons*, No. 25cv1912-LL-AHG, 2025 WL  
15 2300781, at \*3 (S.D. Cal. Aug. 1, 2025) (“Like in *Pinson*, the Court lacks jurisdiction  
16 over Petitioner’s § 2241 habeas petition since it cannot be fairly read as attacking ‘the  
17 legality or duration of confinement.’”) (quoting *Pinson*, 69 F.4th at 1065). Thus,  
18 Petitioner’s claims do not arise under § 2241 and his petition should be dismissed.

19 **C. Petitioner’s Claims and Requests Relief are Jurisdictionally Barred**

20 The Court lacks jurisdiction to hear Petitioner’s claims, which stem from DHS’s  
21 decision to arrest and detain Petitioner pending removal proceedings. *See Ass’n of Am.*  
22 *Med. Coll.*, 217 F.3d at 778–79; *Finley*, 490 U.S. at 547–48. Petitioner brings his habeas  
23 action under 28 U.S.C. § 2241, but jurisdiction over his claim is barred under  
24 8 U.S.C. § 1252(a)(2)(A), § 1252(b)(9), § 1252(e), and § 1252(g).

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

1 proceedings, adjudicate cases, or execute removal orders.”); *Limpin v. United States*,  
2 828 Fed. App’x 429 (9th Cir. 2020) (holding district court properly dismissed under  
3 8 U.S.C. § 1252(g) “because claims stemming from the decision to arrest and detain an  
4 alien at the commencement of removal proceedings are not within any court’s  
5 jurisdiction”). In other words, § 1252(g) removes district court jurisdiction over “three  
6 discrete actions that the Attorney may take: [his] ‘decision or action’ to ‘commence  
7 proceedings, adjudicate cases, or execute removal orders.’” *Reno v. Am.-Arab*  
8 *Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999) (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 also to review “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, under 8 U.S.C. § 1252(b)(9), “[j]udicial review of all questions of law  
5 and fact . . . arising from any action taken or proceeding brought to remove an alien  
6 from the United States under this subchapter shall be available only in judicial review  
7 of a final order under this section.” Further, judicial review of a final order is available  
8 only through “a petition for review filed with an appropriate court of appeals.”  
9 8 U.S.C. § 1252(a)(5). The Supreme Court has made clear that § 1252(b)(9) is “the  
10 unmistakable ‘zipper’ clause,” channeling “judicial review of all” “decisions and  
11 actions leading up to or consequent upon final orders of deportation,” including  
12 “non-final order[s],” into proceedings before a court of appeals. *Reno*, 525 U.S. at 483,  
13 485; see *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (noting § 1252(b)(9)  
14 is “breathtaking in scope and vise-like in grip and therefore swallows up virtually all  
15 claims that are tied to removal proceedings”). “Taken together, § 1252(a)(5) and  
16 § 1252(b)(9) mean that *any* issue—whether legal or factual—arising from *any* removal-  
17 related activity can be reviewed *only* through the [petition for review] PFR process.”  
18 *J.E.F.M.*, 837 F.3d at 1031 (“[W]hile these sections limit *how* immigrants can challenge  
19 their removal proceedings, they are not jurisdiction-stripping statutes that, by their  
20 terms, foreclose *all* judicial review of agency actions. Instead, the provisions channel  
21 judicial review over final orders of removal to the courts of appeal.”) (emphasis in  
22 original); see *id.* at 1035 (“[Sections] 1252(a)(5) and [(b)(9)] channel review of all  
23 claims, including policies-and-practices challenges . . . whenever they ‘arise from’  
24 removal proceedings.”).

25 Critically, “1252(b)(9) is a judicial channeling provision, not a claim-barring  
26 one.” *Aguilar v. ICE*, 510 F.3d 1, 11 (1st Cir. 2007). Indeed, 8 U.S.C. § 1252(a)(2)(D)  
27 provides that “[n]othing . . . in any other provision of this chapter . . . shall be construed  
28 as precluding review of constitutional claims or questions of law raised upon a petition

1 for review filed with an appropriate court of appeals in accordance with this section.”  
2 *See also Ajlani v. Chertoff*, 545 F.3d 229, 235 (2d Cir. 2008) (“[J]urisdiction to review  
3 such claims is vested exclusively in the courts of appeals[.]”). The petition-for-review  
4 process before the court of appeals ensures that aliens have a proper forum for claims  
5 arising from their immigration proceedings and “receive their day in court.” *J.E.F.M.*,  
6 837 F.3d at 1031–32 (internal quotations omitted); *see also Rosario v. Holder*,  
7 627 F.3d 58, 61 (2d Cir. 2010) (“The REAL ID Act of 2005 amended the [INA] to  
8 obviate . . . Suspension Clause concerns” by permitting judicial review of  
9 “nondiscretionary” BIA determinations and “all constitutional claims or questions of  
10 law”). These provisions divest district courts of jurisdiction to review both direct and  
11 indirect challenges to removal orders, including decisions to detain for purposes of  
12 removal or for proceedings. *See Jennings v. Rodriguez*, 583 U.S. 281, 294–95 (2018)  
13 (stating section 1252(b)(9) includes challenges to the “decision to detain [an alien] in  
14 the first place or to seek removal”).

15 Here, Petitioner’s claims stem from his detention during removal proceedings.  
16 However, that detention arises from DHS’s decision to commence such proceedings  
17 against him. *See, e.g., Valecia-Meja v. United States*, No. 08-2943 CAS (PJWz),  
18 2008 WL 4286979, at \*4 (C.D. Cal. Sept. 15, 2008) (“The decision to detain plaintiff  
19 until his hearing before the Immigration Judge arose from this decision to commence  
20 proceedings.”); *Wang*, 2010 WL 11463156, at \*6; *Tazu v. Att’y Gen. U.S.*, 975 F.3d  
21 292, 298–99 (3d Cir. 2020) (holding that 8 U.S.C. § 1252(g) and (b)(9) deprive district  
22 court of jurisdiction to review action to execute removal order). Petitioner’s challenge  
23 concerning the dismissal of his 1229a proceedings and commencement of expedited  
24 removal proceedings is strictly barred by these provisions. As such, Petitioner’s claims  
25 would be more appropriately presented before the BIA and Ninth Circuit. *See* 8 U.S.C.  
26 §§ 1252(a)(5), (b)(9).

27 Moreover, “[s]ection 1252(a)(2)(A) is a jurisdiction-stripping and channeling  
28 provision, which bars review of almost ‘every aspect of the expedited removal

1 process.” *Azimov v. U.S. Dep’t of Homeland Sec.*, No. 22-56034, 2024 WL 687442, at  
2 \*1 (9th Cir. Feb. 20, 2024) (quoting *Mendoza-Linares v. Garland*, 51 F.4th 1146,  
3 1154 (9th Cir. 2022) (describing the operation of § 1252(a)(2)(A)). These jurisdiction-  
4 stripping provisions cover “the ‘procedures and policies’ that have been adopted to  
5 ‘implement’ the expedited removal process; the decision to ‘invoke’ that process in a  
6 particular case; the ‘application’ of that process to a particular alien; and the  
7 ‘implementation’ and ‘operation’ of any expedited removal order.” *Mendoza-Linares*,  
8 51 F.4th at 1155. “Congress chose to strictly cabin this court’s jurisdiction to review  
9 expedited removal orders.” *Guerrier v. Garland*, 18 F.4th 304, 313 (9th Cir. 2021)  
10 (finding that the Supreme Court abrogated any “colorable constitutional claims”  
11 exception to the limits placed by § 1252(a)(2)(A)); see *Thuraissigiam*, 591 U.S. 103  
12 (holding that limitations within § 1252(a)(2)(A) do not violate the Suspension Clause).  
13 “Congress has chosen to explicitly bar nearly all judicial review of expedited removal  
14 orders concerning such aliens, including ‘review of constitutional claims or questions  
15 of law.’” *Mendoza-Linares*, 51 F.4th at 1148 (citing 8 U.S.C. § 1252(a)(2)(A), (D)); see  
16 *Thuraissigiam*, 591 U.S. at 138-39 (explicitly rejecting Ninth Circuit’s holding that an  
17 arriving alien has a “constitutional right to expedited removal proceedings that conform  
18 to the dictates of due process”).

19 “Congress could scarcely have been more comprehensive in its articulation of the  
20 general prohibition on judicial review of expedited removal orders.” *Mendoza-Linares*,  
21 51 F.4th at 1155. Specifically, Section 1252(a)(2)(A) states:

22 (2) Matters not subject to judicial review

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

24 Notwithstanding any other provision of law (statutory or nonstatutory),  
25 including section 2241 of Title 28, or any other habeas corpus provision,  
26 and sections 1361 and 1651 of such title, no court shall have jurisdiction  
to review-

27 (i) except as provided in subsection (e), any individual determination  
or to entertain any other cause or claim arising from or relating to  
28

1 the implementation or operation of an order of removal pursuant  
2 to section 1225(b)(1) of this title,

3 (ii) except as provided in subsection (e), a decision by the Attorney  
4 General to invoke the provisions of such section,

5 (iii) the application of such section to individual aliens, including the  
6 determination made under section 1225(b)(1)(B) of this title, or

7 (iv) except as provided in subsection (e), procedures and policies  
8 adopted by the Attorney General to implement the provisions of  
9 section 1225(b)(1) of this title.

10 8 U.S.C. § 1252(a)(2)(A). Thus, “Section 1252(a)(2)(A)(i) deprives courts of  
11 jurisdiction to hear a ‘cause or claim arising from or relating to the implementation or  
12 operation of an order of removal pursuant to section 1225(b)(1),’ which plainly includes  
13 [Petitioner’s] collateral attacks on the validity of the expedited removal order.” *Azimov*,  
14 2024 WL 687442, at \*1 (quoting *Mendoza-Linares*, 51 F.4th at 1155) (citing *J.E.F.M.*  
15 *v. Lynch*, 837 F.3d 1026, 1031-35 (9th Cir. 2016) (concluding that the “arising from”  
16 language in neighboring § 1252(b)(9) sweeps broadly)). By challenging the standards  
17 and process of expedited removal proceedings, Petitioner necessarily asks the Court “to  
18 do what the statute forbids [it] to do, which is to review ‘the application of such section  
19 to [her].’” *Mendoza-Linares*, 51 F.4th at 1155. Most notably, a determination made  
20 concerning inadmissibility “is not subject to judicial review.” *Gomez-Cantillano v.*  
21 *Garland*, No. 19-72682, 2021 WL 5882034 (9th Cir. Dec. 13, 2021) (citing  
22 8 U.S.C § 1252(a)(2)(A)(iii)). “And § 1252(a)(2)(A)(iv) deprives courts of jurisdiction  
23 to review ‘procedures and policies adopted by the Attorney General to implement the  
24 provisions of section 1225(b)(1) of this title,’ which plainly includes [Petitioner’s]  
25 claims regarding how [Respondents may] implement[.]” § 1225(b)(1). *Azimov*,  
26 2024 WL 687442, at \*1 (citing *Mendoza-Linares*, 51 F.4th at 1154–55).

27 In setting forth provisions for judicial review of § 1225(b)(1) expedited removal  
28 orders, Congress expressly limited available relief: “Without regard to the nature of the  
action or claim and without regard to the identity of the party or parties bringing the

1 action, no court may” “enter declaratory, injunctive, other equitable relief in any action  
2 pertaining to an order to exclude an alien in accordance with section § 1225(b)(1) of  
3 this title except as specifically authorized in a subsequent paragraph of this subsection.”  
4 8 U.S.C. § 1252(e)(1)(A). Congress delineated two limited avenues for judicial review  
5 concerning expedited removal orders: (1) narrow habeas corpus proceedings under  
6 § 1252(e)(2); and (2) challenges to the validity of the system under § 1252(e)(3). Any  
7 permissible challenge to the validity of the system “is available [only] in an action in  
8 the United States District Court for the District of Columbia . . .” 8 U.S.C. § 1252(e)(3).

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

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

23 **D. Petitioner Fails to Establish Entitlement to Interim Injunctive Relief**

24 Petitioner has not established entitlement to interim injunctive relief. Petitioner  
25 has failed to show a likelihood of success on the underlying merits, a showing of  
26  
27  
28

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 petitioner 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). Petitioner must demonstrate at least a “substantial  
11 case for relief on the merits.” *Leiva-Perez v. Holder*, 640 F.3d 962, 967–68 (9th Cir.  
12 2011). When “a plaintiff has failed to show the likelihood of success on the merits,  
13 [courts] need not consider the remaining three [*Winter* factors].” *Garcia v. Google, Inc.*,  
14 786 F.3d 733, 740 (9th Cir. 2015). The final two factors required for preliminary  
15 injunctive relief—balancing of the harm to the opposing party and the public interest—  
16 merge when the government is the opposing party. *See Nken*, 556 U.S. at 435. “Few  
17 interests can be more compelling than a nation’s need to ensure its own security.” *Wayte*  
18 *v. United States*, 470 U.S. 598, 611 (1985).

19 **1. No Likelihood of Success on the Merits**

20 Likelihood of success on the merits is a threshold issue. *See Garcia*, 786 F.3d at  
21 740. Petitioner cannot show a likelihood of success or serious questions going to the  
22 merits of the claim for alleged statutory and constitutional violations arising from  
23 Petitioner’s mandatory detention under 8 U.S.C. § 1225.

24 Even assuming Petitioner’s claims are not moot and the Court has jurisdiction  
25 over his petition, Petitioner has not stated a statutory violation or a Fifth Amendment  
26 due process violation. Petitioner is currently subject to mandatory detention under 8  
27 U.S.C. § 1225(b)(1). While Petitioner was previously released from custody, the  
28 decision to remand him back into custody is a discretionary decision not subject to

1 review. *See* 8 U.S.C. § 1225(b)(1)(B)(ii); 8 U.S.C. § 1226(e) (“No court may set aside  
2 any action or decision by the Attorney General under this section regarding the  
3 detention or any alien or the revocation or denial of bond or parole.”); *Demore v. Kim*,  
4 538 U.S. 510, 531 (2003) (“Detention during removal proceedings is a constitutionally  
5 permissible part of that process.”); *Jennings*, 583 U.S. at 295 (“As we have previously  
6 explained, § 1226(e) precludes an alien from ‘challeng[ing] a “discretionary judgment”  
7 by the Attorney General or a “decision” that the Attorney General has made regarding  
8 his detention or release.’ But § 1226(e) does not preclude ‘challenges [to] the statutory  
9 framework that permits [the alien’s] detention without bail.’”).

10 Section 1225 applies to “applicants for admission,” who are defined as “alien[s]  
11 present in the United States who [have] not been admitted” or “who arrive[] in the  
12 United States.” 8 U.S.C. § 1225(a)(1). Applicants for admission “fall into one of two  
13 categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2).”  
14 *Jennings*, 583 U.S. at 287. Section 1225(b)(1) applies to arriving aliens and “certain  
15 other” aliens “initially determined to be inadmissible due to fraud, misrepresentation,  
16 or lack of valid document.” *Id.*; 8 U.S.C. § 1225(b)(1)(A)(i), (iii). Though not relevant  
17 here, § 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*,  
18 583 U.S. at 287. In this statutory scheme, DHS has the sole discretionary authority to  
19 temporarily release on parole “any alien applying for admission to the United States”  
20 on a “case-by-case basis for urgent humanitarian reasons or significant public benefit.”  
21 *Id.* § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022).

22 In *Jennings*, the Supreme Court evaluated the proper interpretation of  
23 8 U.S.C. § 1225(b) and stated that “[r]ead most naturally, §§ 1225(b)(1) and (b)(2) []  
24 mandate detention of applicants for admission until certain proceedings have  
25 concluded.” 583 U.S. at 297. The Court noted that neither § 1225(b)(1) nor § 1225(b)(2)  
26 “impose[] any limit on the length of detention” and “neither § 1225(b)(1) nor  
27 § 1225(b)(2) say[] anything whatsoever about bond hearings.” *Id.* The Court added that  
28 the sole means of release for noncitizens detained under §§ 1225(b)(1) or (b)(2) prior

1 to removal from the United States is temporary parole at the discretion of the Attorney  
2 General under 8 U.S.C. § 1182(d)(5). *Id.* at 300. The Court observed that because aliens  
3 held under § 1225(b) may be paroled for “urgent humanitarian reasons or significant  
4 public benefit,” “[t]hat express exception to detention implies that there are no *other*  
5 circumstances under which aliens detained under 1225(b) may be released.” *Id.*  
6 (citations and internal quotation omitted) (emphasis in the original). Courts thus may  
7 not validly draw additional procedural limitations “out of thin air.” *Id.* at 312. The  
8 Supreme Court concluded: “In sum, §§ 1225(b)(1) and (b)(2) mandate detention of  
9 [noncitizens] throughout the completion of applicable proceedings.” *Id.* at 302.

10 As to the Fifth Amendment, the only due process rights Petitioner has are those  
11 rights statutorily afforded by Congress. *See Thuraissigiam*, 591 U.S. at 139 (collecting  
12 cases); 8 U.S.C. § 1225(b)(1)(B)(iii)(IV); *Landon v. Plasencia*, 459 U.S. 21, 32 (1982)  
13 (“This Court has long held that an alien seeking initial admission to the United States  
14 requests a privilege and has no constitutional rights regarding his application, for the  
15 power to admit or exclude aliens is a sovereign prerogative.”) (citations omitted); *see*  
16 *generally I.N.S. v. Lopez-Mendoza*, 468 U.S. 1032, 1038 (1984) (“Consistent with the  
17 civil nature of the proceeding, various protections that apply in the context of a criminal  
18 trial do not apply in a deportation hearing.”). In *Thuraissigiam*, the Supreme Court  
19 addressed the due process rights of inadmissible arriving noncitizens and stated that  
20 such individuals have no due process rights “other than those afforded by statute.”  
21 *Thuraissigiam*, 591 U.S. at 107; *id.* at 140 (“[A]n alien in respondent’s position has only  
22 those rights regarding admission that Congress has provided by statute.”). The Supreme  
23 Court noted that its determination was supported by “more than a century of precedent.”  
24 *Id.* at 138 (citing *Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892); *U.S. ex*  
25 *rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950); *Shaughnessy v. United States ex*  
26 *rel. Mezei*, 345 U.S. 206, 212 (1953); *Landon*, 459 U.S. at 32); *Rauda v. Jennings*,  
27 8 F.4th 1050, 1058 (9th Cir. 2021) (“Congress has already balanced the amount of due  
28 process available to petitioners with the executive’s prerogative to remove individuals,

1 and we decline to expand judicial review beyond the parameters set by Congress.”);  
2 *Mendoza-Linares v. Garland*, No. 21-cv-1169-BEN (AHG), 2024 WL 3316306, at \*2  
3 (S.D. Cal. June 10, 2024) (“[T]he Court finds that Petitioner has no Fifth Amendment  
4 right to a bond hearing pending his removal proceedings. The only due process due an  
5 alien seeking admission to the United States is ‘those rights regarding admission that  
6 Congress has provided by statute.’” (quoting *Thuraissigiam*, 591 U.S. at 140); *Zelaya-*  
7 *Gonzalez v. Matuszewski*, No. 23-CV-151 JLS (KSC), 2023 WL 3103811, at \*4 (S.D.  
8 Cal. Apr. 25, 2023) (“Binding Ninth Circuit and Supreme Court precedents are clear  
9 that Petitioner lacks any rights beyond those conferred by statute, and no statute entitles  
10 Petitioner to a bond hearing.”).

11 Here, Petitioner’s removal proceedings are ongoing, and thus, he continues to be  
12 subject to mandatory detention under 8 U.S.C. § 1225(b)(1)(B)(ii). Since the statutory  
13 authority Petitioner is detained under does not afford him a right to a determination by  
14 this Court as to whether his release is warranted, nor a right to a bond hearing before an  
15 immigration judge, the Court should reject his claim that his detention violates the  
16 Fifth Amendment’s Due Process Clause and deny his requested relief.  
17 See *Thuraissigiam*, 591 U.S. at 107, 140; *Mezei*, 345 U.S. at 212; *Guerrier v. Garland*,  
18 18 F. 4th 304, 310 (9th Cir. 2021).

19 Similarly, the APA does not provide an avenue for relief in this case. The APA  
20 places limits on when agency action is subject to judicial review. “Agency action made  
21 reviewable by statute and final agency action for which there is no other adequate  
22 remedy in a court are subject to judicial review.” 5 U.S.C. § 704; *Navajo Nation v. Dep’t*  
23 *of the Interior*, 876 F.3d 1144, 1171 (9th Cir. 2017) (“[Section] 704’s requirement that  
24 to proceed under the APA, agency action must be final or otherwise reviewable by  
25 statute is an independent element without which courts may not determine APA  
26 claims.”). Reviewable “agency action” is defined to include “the whole or a part of an  
27 agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure  
28 to act.” 5 U.S.C. § 551(13). “While this definition is ‘expansive,’ federal courts ‘have

1 long recognized that the term [agency action] is not so all-encompassing as to authorize  
2 . . . judicial review over everything done by an administrative agency.” *Wild Fish*  
3 *Conservancy v. Jewell*, 730 F.3d 791, 800–01 (9th Cir. 2013) (quoting *Fund for*  
4 *Animals, Inc. v. U.S. Bureau of Land Management*, 460 F.3d 13, 19 (D.C. Cir. 2006)).  
5 Here, it is not altogether clear what final agency action Petitioner seeks review over.  
6 Importantly, habeas relief is available to challenge only the legality or duration of  
7 confinement. *Pinson*, 69 F.4th at 1067; *see also Flores-Miramontes*, 212 F.3d at 1140  
8 (“For purposes of immigration law, at least, ‘judicial review’ refers to petitions for  
9 review of agency actions, which are governed by the Administrative Procedure Act,  
10 while habeas corpus refers to habeas petitions brought directly in district court to  
11 challenge illegal confinement.”). The Court should therefore reject Petitioner’s claim,  
12 because it is beyond the scope of habeas jurisdiction.

13 Accordingly, since Petitioner is detained pursuant to 8 U.S.C.  
14 § 1225(b)(1)(B)(ii), Petitioner’s claims fail on the merits.

## 15 **2. Irreparable Harm Has Not Been Shown**

16 To prevail on the request for interim injunctive relief, Petitioner must  
17 demonstrate “immediate threatened injury.” *Caribbean Marine Services Co., Inc. v.*  
18 *Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988) (citing *Los Angeles Memorial Coliseum*  
19 *Commission v. National Football League*, 634 F.2d 1197, 1201 (9th Cir. 1980)). Merely  
20 showing a “possibility” of irreparable harm is insufficient. *See Winter*, 555 U.S. at 22.  
21 Detention alone is not an irreparable injury. *See Reyes v. Wolf*, No. C20-0377 JLR, 2021  
22 WL 662659, at \*3 (W.D. Wash. Feb. 19, 2021), *aff’d sub nom. Diaz Reyes v. Mayorkas*,  
23 854 Fed.Appx. 190 (9th Cir. 2021) (“[C]ivil detention after the denial of a bond hearing  
24 [does not] constitute[] irreparable harm such that prudential exhaustion should be  
25 waived.”). Further, “[i]ssuing a preliminary injunction based only on a possibility of  
26 irreparable harm is inconsistent with [the Supreme Court’s] characterization of  
27 injunctive relief as an extraordinary remedy that may only be awarded upon a clear  
28 showing that the plaintiff is entitled to such relief.” *Winter*, 555 U.S. at 22. Here,

1 because Petitioner’s alleged harm “is essentially inherent in detention, the Court cannot  
2 weigh this strongly in favor of” Petitioner. *Lopez Reyes v. Bonnar*, No 18-cv-07429-  
3 SK, 2018 WL 747861 at \*10 (N.D. Cal. Dec. 24, 2018).

4 **3. Balance of Equities Does Not Tip in Petitioner’s Favor**

5 It is well settled that “the public interest in enforcement of the immigration laws  
6 is significant.” *Blackie’s House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1221 (D.C. Cir.  
7 1981) (collecting cases); *see also Nken*, 556 U.S. at 436 (“There is always a public  
8 interest in prompt execution of removal orders: The continued presence of an alien  
9 lawfully deemed removable undermines the streamlined removal proceedings [the  
10 Illegal Immigration Reform and Immigrant Responsibility Act of 1996] established, and  
11 permits and prolongs a continuing violation of United States law.”) (simplified).  
12 Moreover, “ultimately the balance of the relative equities ‘may depend to a large extent  
13 upon the determination of the [movant’s] prospects of success.’” *Tiznado-Reyna v.*  
14 *Kane*, No. CV 12-1159-PHX-SRB (SPL), 2012 WL 12882387, at \*4 (D. Ariz. Dec. 13,  
15 2012) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 778 (1987)). Here, as explained  
16 above, there is no likelihood of success on the merits of Petitioner’s claims. The  
17 balancing of equities and the public interest weigh heavily against granting Petitioner’s  
18 equitable relief.

19 **V. CONCLUSION**

20 For the foregoing reasons, Respondents respectfully request that the Court deny  
21 the requested preliminary relief and dismiss the petition.

22 DATED: December 2, 2025

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