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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

BEATRIZ URIBE TREJO, Petitioner, v. CHRISTOPHER J. LAROSE; et al., Respondents.	Case No.: 25-cv-3253-JES-DDL **RESPONDENTS' RETURN TO HABEAS PETITION AND RESPONSE IN OPPOSITION TO APPLICATION FOR TEMPORARY RESTRAINING ORDER** ORAL ARGUMENT REQUESTED

I. Introduction

Petitioner has filed a habeas petition under 28 U.S.C. § 2241 and a motion for temporary restraining order.[1] Petitioner is currently in removal proceedings under 8 U.S.C. § 1229a and is charged with deportability/removability under 8 U.S.C. § 1227(a)(1)(B), as an individual who was admitted to the United States but remained for a time longer than permitted by law (i.e., a visa overstay). As such, Petitioner is detained pursuant to 8 U.S.C. § 1226(a). Petitioner is currently scheduled for a bond hearing before an immigration judge pursuant to 8 U.S.C. § 1226(a) on December 4, 2025, at 8:00 a.m. Based on the arguments set forth below, the Court should deny any requests for relief and dismiss the petition.

II. Factual Background[2]

Petitioner is a native and citizen of Mexico. In 2007, she was admitted into the United States on a nonimmigrant visa. On November 18, 2025, a Form I-200, Warrant for Arrest, was issued for Petitioner's arrest. On November 18, 2025, she was apprehended by San Diego ICE/ERO on that arrest warrant. DHS determined that Petitioner is deportable/removable under 8 U.S.C. § 1227(a)(1)(B), as an individual who was admitted to the United States and has remained for a time longer than permitted by law (i.e., a visa overstay). Based on that charge, she was issued a Notice to Appear (NTA) and placed in removal proceedings under 8 U.S.C. § 1229a. Within her removal

[1] On November 25, 2025, the Court provided notice that it intends to consolidate the TRO motion with a determination on the merits of the habeas petition. ECF No. 7. Given that notice and the Court's familiarity with Respondents' arguments regarding irreparable harm and balance of equities under the *Winter* factors, Respondents submit this response in opposition to both the TRO motion and the habeas petition, which focuses on the merits of Petitioner's petition.

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

proceedings, Petitioner can apply for adjustment of status (Form I-485) before an immigration judge. *See* 8 C.F.R. 1245.2(a)(1)(i);[3] 8 C.F.R. § 245.2(a)(1).[4]

Petitioner is currently detained at the Otay Mesa Detention Center under 8 U.S.C. § 1226(a). A bond hearing pursuant to 8 U.S.C. § 1226(a) is currently scheduled for Petitioner to be held on December 4, 2025, at 8:00 a.m. before an immigration judge.

III. Argument

A. Petitioner is Lawfully Detained Under 8 U.S.C. § 1226(a)

Section 1226 provides for arrest and detention "pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). Under § 1226(a), the government may detain an alien during her removal proceedings, release her on bond, or release her on conditional parole. By regulation, immigration officers can release aliens upon demonstrating that the alien "would not pose a danger to property or persons" and "is likely to appear for any future proceeding." 8 C.F.R. § 236.1(c)(8). An alien can also request a custody redetermination (i.e., a bond hearing) by an IJ at any time before a final order of removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1), 1003.19.

As set forth above, on November 18, 2025, a Form I-200, Warrant for Arrest, was issued pursuant to § 1226(a) for Petitioner's arrest. On the same date, she was apprehended on that arrest warrant and detained pursuant to 8 U.S.C. § 1226(a). DHS determined that Petitioner is deportable/removable under 8 U.S.C. § 1227(a)(1)(B), as an individual who was admitted to the United States but remained for a time longer than permitted by law (i.e., a visa overstay). Based on that charge, she was issued a Notice to Appear (NTA) and placed in removal proceedings under 8 U.S.C. § 1229a. As such,

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[3] "In the case of any alien who has been placed in deportation proceedings or in removal proceedings (other than as an arriving alien), the immigration judge hearing the proceedings has exclusive jurisdiction to adjudicate any application for adjustment of status the alien may file."

[4] "USCIS has jurisdiction to adjudicate an application for adjustment of status filed by an alien, unless the immigration judge has jurisdiction to adjudicate the application under 8 C.F.R. § 1245.2(a)(1)."

Petitioner is detained pursuant to 8 U.S.C. § 1226(a). Accordingly, Petitioner is entitled to a bond hearing before an immigration judge, which has been scheduled and is set for December 4, 2025.

B. Petitioner's Expedited Removal and Re-Detention Claims Are Unfounded

The Constitution limits federal judicial power to designated "cases" and "controversies." U.S. Const., art. III, § 2; *see also SEC v. Med. Comm. for Human Rights*, 404 U.S. 403, 407 (1972) (federal courts may only entertain matters that present a "case" or "controversy" within the meaning of Article III). "Absent a real and immediate threat of future injury there can be no case or controversy, and thus no Article III standing for a party seeking injunctive relief." *Wilson v. Brown*, No. 05-cv-1774-BAS-MDD, 2015 WL 8515412, at *3 (S.D. Cal. Dec. 11, 2015) (citing *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 190 (2000) ("[I]n a lawsuit brought to force compliance, it is the plaintiff's burden to establish standing by demonstrating that, if unchecked by the litigation, the defendant's allegedly wrongful behavior will likely occur or continue, and that the threatened injury is certainly impending.") (simplified)). At the "irreducible constitutional minimum," standing requires that a petitioner demonstrate the following: (1) an injury in fact (2) that is fairly traceable to the challenged action of the United States and (3) likely to be redressed by a favorable decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992).

Here, Petitioner's asserts in her petition claims and allegations concerning expedited removal proceedings and revocation of release.[5] However, Petitioner has not been placed into expedited removal; she is in removal proceedings under 8 U.S.C. § 1229a. Moreover, Petitioner's November 18, 2025 apprehension was her first DHS apprehension, so there was no prior release to revoke. As such, there is no controversy concerning expedited removal or re-detention/release for this Court to resolve. Federal courts do not have jurisdiction "to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in

[5] Expedited removal proceedings are conducted pursuant to 8 U.S.C. § 1225(b)(1).

issue in the case before it." *Church of Scientology of Cal. v. United States*, 506 U.S. 9, 12 (1992) (internal quotations and citations omitted). "A claim is moot if it has lost its character as a present, live controversy." *Am. Rivers v. Nat'l Marine Fisheries Serv.*, 126 F.3d 1118, 1123 (9th Cir. 1997) (citation omitted).

C. Petitioner's Improper Habeas Claims

To the extent Petitioner asserts claims regarding the commencement of removal proceedings and relief applications (including adjustment of status), such claims are improper. An individual may seek habeas relief under 28 U.S.C. § 2241 if he 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, a review of such claims would not automatically entitle Petitioner to release from detention. *See Guselnikov v. Noem*, No. 25-cv-1971-BTM-KSC, 2025 WL 2300783, 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); *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).

D. Claims and Requested Relief Jurisdictionally Barred

Petitioner bears the burden of establishing that this Court has subject matter jurisdiction over asserted 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).

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 may take: [his] 'decision or action' to 'commence proceedings, adjudicate cases, or execute removal orders.'" *Reno*, 525 U.S. at 482 (emphasis removed). Congress has explicitly foreclosed district court jurisdiction over claims that necessarily arise "from the decision or action by the Attorney General to commence proceedings [and] adjudicate cases," over which. 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).

Moreover, under 8 U.S.C. § 1252(b)(9), "[j]udicial review of all questions of law and fact . . . *arising from any action taken or proceeding brought to remove an alien from the United States* under this subchapter shall be available only in judicial review of a final order under this section." Further, judicial review of a final order is available only through "a petition for review filed with an appropriate court of appeals." 8 U.S.C. § 1252(a)(5). The Supreme Court has made clear that § 1252(b)(9) is "the unmistakable 'zipper' clause," channeling "judicial review of all" "decisions and actions leading up to or consequent upon final orders of deportation," including "non-final order[s]," into proceedings before a court of appeals. *Reno*, 525 U.S. at 483, 485; *see J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (noting § 1252(b)(9) is "breathtaking in scope and vise-like in grip and therefore swallows up virtually all claims that are tied to removal proceedings"). "Taken together, § 1252(a)(5) and § 1252(b)(9) mean that *any* issue—whether legal or factual—arising from *any* removal-related activity can be reviewed *only* through the [petition for review] PFR process." *J.E.F.M.*, 837 F.3d at 1031 ("[W]hile these sections limit *how* immigrants can challenge their removal

proceedings, they are not jurisdiction-stripping statutes that, by their terms, foreclose *all* judicial review of agency actions. Instead, the provisions channel judicial review over final orders of removal to the courts of appeal.") (emphasis in original); *see id.* at 1035 ("§§ 1252(a)(5) and [(b)(9)] channel review of all claims, including policies-and-practices challenges . . . whenever they 'arise from' removal proceedings").

Critically, "1252(b)(9) is a judicial channeling provision, not a claim-barring one." *Aguilar v. ICE*, 510 F.3d 1, 11 (1st Cir. 2007). Indeed, 8 U.S.C. § 1252(a)(2)(D) provides that "[n]othing . . . in any other provision of this chapter . . . shall be construed as precluding review of constitutional claims or questions of law raised upon a petition for review filed with an appropriate court of appeals in accordance with this section." *See also Ajlani v. Chertoff*, 545 F.3d 229, 235 (2d Cir. 2008) ("[J]urisdiction to review such claims is vested exclusively in the courts of appeals[.]"). The petition-for-review process before the court of appeals ensures that noncitizens have a proper forum for claims arising from their immigration proceedings and "receive their day in court." *J.E.F.M.*, 837 F.3d at 1031–32 (internal quotations omitted); *see also Rosario v. Holder*, 627 F.3d 58, 61 (2d Cir. 2010) ("The REAL ID Act of 2005 amended the [INA] to obviate . . . Suspension Clause concerns" by permitting judicial review of "nondiscretionary" BIA determinations and "all constitutional claims or questions of law."). These provisions divest district courts of jurisdiction to review both direct and indirect challenges to removal orders, including decisions to detain for purposes of removal or for proceedings. *See Jennings*, 583 U.S. at 294–95 (section 1252(b)(9) includes challenges to the "decision to detain [an alien] in the first place or to seek removal").

In evaluating the reach of subsections (a)(5) and (b)(9), the Second Circuit has explained that jurisdiction turns on the substance of the relief sought. *Delgado v. Quarantillo*, 643 F.3d 52, 55 (2d Cir. 2011). Those provisions divest district courts of jurisdiction to review both direct and indirect challenges to removal orders, including decisions to detain for purposes of removal or for proceedings. *See Jennings*, 583 U.S.

at 294–95 (section 1252(b)(9) includes challenges to the "decision to detain [an alien] in the first place or to seek removal[.]").

Here, Petitioner challenges the government's decision and action to detain, which arises from DHS's decision to commence removal proceedings, and is thus an "action taken . . . to remove [him/her] from the United States." *See* 8 U.S.C. § 1252(b)(9); *see also, e.g.*, *Jennings*, 583 U.S. at 294–95; *Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020) (finding that 8 U.S.C. § 1226(e) did not bar review in that case because the petitioner did not challenge "his initial detention"); *Saadulloev v. Garland*, No. 3:23-CV-00106, 2024 WL 1076106, at *3 (W.D. Pa. Mar. 12, 2024) (recognizing that there is no judicial review of the threshold detention decision, which flows from the government's decision to "commence proceedings").

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

E. Administrative Remedies Should Be Exhausted

The Court should ensure Petitioner properly exhausts administrative remedies. The Ninth Circuit requires that "habeas petitioners exhaust available judicial and administrative remedies before seeking relief under § 2241." *Castro–Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001). "When a petitioner does not exhaust administrative remedies, a district court ordinarily should either dismiss the petition without prejudice or stay the proceedings until the petitioner has exhausted remedies, unless exhaustion is excused." *Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011); *see also Alvarado v. Holder*, 759 F.3d 1121, 1127 n.5 (9th Cir. 2014) (issue exhaustion is a jurisdictional requirement); *Tijani v. Holder*, 628 F.3d 1071, 1080 (9th Cir. 2010) (no jurisdiction to review legal claims not presented in the petitioner's administrative proceedings before the BIA). Here, Petitioner is set to have a bond hearing before an immigration judge, pursuant to 8 U.S.C. § 1226(a), on December 4, 2025. Accordingly, the Court should dismiss without prejudice or stay these proceedings until the bond hearing is conducted and concluded.

F. Administrative Procedure Claims Are Without Merit

The Administrative Procedure Act (APA) does not provide an avenue for relief in this case. The APA places limits on when agency action is subject to judicial review. "Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review." 5 U.S.C. § 704; *Navajo Nation v. Dep't of the Interior*, 876 F.3d 1144, 1171 (9th Cir. 2017) ("[Section] 704's requirement that to proceed under the APA, agency action must be final or otherwise reviewable by statute is an independent element without which courts may not determine APA claims."). Reviewable "agency action" is defined to include "the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act." 5 U.S.C. § 551(13). "While this definition is 'expansive,' federal courts 'have long recognized that the term [agency action] is not so all-encompassing as to authorize . . . judicial review over everything done by an administrative agency.'" *Wild Fish Conservancy v. Jewell*, 730 F.3d 791, 800–01 (9th Cir. 2013) (quoting *Fund for Animals, Inc. v. U.S. Bureau of Land Management*, 460 F.3d 13, 19 (D.C. Cir. 2006)). Here, it is not altogether clear what final agency action Petitioner seeks review over. Importantly, habeas relief is available to challenge only the legality or duration of confinement. *Pinson*, 69 F.4th at 1067; *see also Flores-Miramontes*, 212 F.3d at 1140 ("For purposes of immigration law, at least, 'judicial review' refers to petitions for review of agency actions, which are governed by the Administrative Procedure Act, while habeas corpus refers to habeas petitions brought directly in district court to challenge illegal confinement."). The Court should therefore reject Petitioner's APA claims.

G. Petitioner's Fourth Amendment Assertions Lack Jurisdiction

Petitioner's TRO motion asserts claims under the Fourth Amendment; however, the underlying habeas petition does not assert Fourth Amendment claims. This Court "does not have the authority to issue an injunction based on claims not pled in the complaint." *See LA Alliance for Hum. Rts. v. Cnty. of Los Angeles*, 14 F.4th 947, 957

(9th Cir. 2021) (cleaned up); *Omega World Travel, Inc. v. Trans World Airlines*, 111 F.3d 14, 16 (4th Cir. 1997) ("The purpose of interim equitable relief is to protect the movant, during the pendency of the action, from being harmed or further harmed in the manner in which the movant contends it was or will be harmed *through the illegality alleged in the complaint*." (emphasis added)); *Devose v. Herrington*, 42 F.3d 470, 471 (8th Cir. 1994) ("[A] party moving for a preliminary injunction must necessarily establish a relationship between the injury claimed in the party's motion and the conduct asserted in the complaint."); *Colvin v. Caruso*, 605 F.3d 282, 300 (6th Cir. 2010) ("[The plaintiff] had no grounds to seek an injunction pertaining to allegedly impermissible conduct not mentioned in his [operative] complaint."). Accordingly, as this Court "'does not have the authority to issue an injunction based on claims not pled in the complaint,'" any asserted Fourth Amendment claims must be dismissed. *Cottonwood Environmental Law Center v. Gianforte*, No. 20-36125, 2022 WL 612673, at *2 (9th Cir. Cir. Mar. 2, 2022) (quoting *Pac. Radiation Oncology, LLC v. Queen's Med. Ctr.*, 810 F.3d 631, 633 (9th Cir. 2015))

Alternatively, Petitioner fails to explain why release is the remedy for such alleged violations. *United States v. Crews*, 445 U.S. 463, 474 (1980) (noting, in the criminal context, that Fourth Amendment's "exclusionary principle" "delimits what proof the Government may offer against the accused at trial, closing the courtroom door to evidence secured by official lawlessness," but an individual "is not himself a suppressible 'fruit'"); *Cruz v. Barr*, 926 F.3d 1128, 1146 (9th Cir. 2019) (releasing petitioner on Fourth Amendment grounds because fruits of the regulatory violation were the only evidence of petitioner's alienage). Moreover, Fourth Amendment claims related to alienage "belong in front of an Immigration Judge, not a federal district court." *See Marvan v. Slaughter*, No. CV 25-49-H-DLC, 2025 WL 1940043, at *3 (D. Mont. July 15, 2025) (denying habeas petition challenging detention based on Fourth Amendment violations for lack of subject matter jurisdiction). Petitioner cannot simply "'bypass the immigration courts and proceed directly to district court. Instead, [she]

must exhaust the administrative process before [her] can access the federal courts.'" *Id.* at *4 (quoting *J.E.F.M.*, 837 F.3d at 1029). To the extent Petitioner desires to bring such claims, this Court does not have jurisdiction. Under 8 U.S.C. § 1252(b)(9), "[j]udicial review of all questions of law and fact . . . *arising from any action taken or proceeding brought to remove an alien from the United States* under this subchapter shall be available only in judicial review of a final order under this section." Further, judicial review of a final order is available only through "a petition for review filed with an appropriate court of appeals." 8 U.S.C. § 1252(a)(5).

IV. CONCLUSION

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

DATED: November 28, 2025

Respectfully submitted,

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