

1 ADAM GORDON
United States Attorney
2 BETSEY BOUTELLE
California Bar No. 299754
3 ERIN M. DIMBLEBY
California Bar No. 323359
4 Assistant U.S. Attorneys
Office of the U.S. Attorney
5 880 Front Street, Room 6293
San Diego, CA 92101-8893
6 Telephone: (619) 546-8764/6987
Facsimile: (619) 546-7751
7 Email: betsey.boutelle@usdoj.gov
Email: erin.dimbleby@usdoj.gov

8 Attorneys for Respondents
9

10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 VINCENTE SALAZAR-OSORIO,

13
14 Petitioner,

15 v.

16 KRISTI NOEM, et al.,

17 Respondents.
18
19
20
21
22
23
24
25
26
27
28

Case No.: 25-cv-3296-JES-MMP

**RESPONDENTS' RETURN TO
HABEAS PETITION AND
OPPOSITION TO PETITIONER'S
MOTION FOR INJUNCTIVE
RELIEF**

1 **I. INTRODUCTION AND SUMMARY OF ARGUMENT**

2 Petitioner has filed a habeas petition under 28 U.S.C. § 2241. Petitioner re-
3 entered the United States after being ordered removed. He is now subject to a reinstated
4 removal order and is currently in withholding-only proceedings to determine whether
5 he is eligible for relief from that removal order. Accordingly, Petitioner is lawfully
6 detained in Immigration and Customs Enforcement (ICE) custody pursuant to 8 U.S.C.
7 § 1231.

8 Based on the arguments below, the Court should deny any requests for relief and
9 dismiss the petition. Pursuant to the Court’s order to show cause (ECF No. 3),
10 Respondents submit that an evidentiary hearing is not necessary as the Court’s
11 resolution of the Petition turns on questions of law rather than fact. Moreover, because
12 the Court notified the parties that it intends to consolidate Petitioner’s Motion for a
13 Temporary Restraining Order with a determination on the merits of the Petition,
14 Respondents address only the merits below.

15 **II. FACTUAL AND PROCEDURAL BACKGROUND¹**

16 Petitioner is a citizen and national of Mexico. ECF No. 1 at 2.² He has been
17 removed from the United States multiple times and remains subject to a reinstated order
18 of removal. *Id*; Ex. 1 (Form I-213, Record of Deportable/Inadmissible Alien). At some
19 point after the issuance of that order, Petitioner re-entered the United States. ECF No.
20 1 at 2. On August 4, 2018, DHS issued a Notice of Intent/Decision to Reinstate Prior
21 Order, which reinstated a removal order that had been effectuated against Petitioner in
22 2014. Ex. 2. After receiving a positive credible fear determination by an asylum officer,
23 Petitioner was placed in withholding-only proceedings to determine whether he was
24 eligible for relief from his reinstated order of removal. Ex. 3. On February 7, 2019,
25

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

28 ² Unless otherwise indicated, citations to pages of documents filed on the Court’s
CM/ECF system refer to the automatically generated page numbers stamped at the top
of each ECF-filed document.

1 Petitioner was granted an *Aleman-Gonzalez* bond by an immigration judge, pursuant to
2 *Aleman-Gonzalez v. Sessions*, 325 F.R.D. 616 (N.D. Cal. 2018). Ex. 4. On September
3 12, 2025, ICE cancelled his *Aleman-Gonzalez* bond and Petitioner was re-detained. Ex.
4 5. Petitioner’s withholding-only proceedings remain ongoing; a hearing on the merits
5 of his application for relief from removal is scheduled for December 19, 2025. Ex. 6.

6 **III. ARGUMENT**

7 **A. Petitioner’s Claims and Requested Relief Are Jurisdictionally Barred**

8 Petitioner bears the burden of establishing that this Court has subject matter
9 jurisdiction over asserted claims. *See Ass’n of Am. Med. Coll. v. United States*, 217 F.3d
10 770, 778-79 (9th Cir. 2000); *Finley v. United States*, 490 U.S. 545, 547-48 (1989).

11 In general, courts lack jurisdiction to review a decision to commence or
12 adjudicate removal proceedings or execute removal orders. *See* 8 U.S.C. § 1252(g)
13 (“[N]o court shall have jurisdiction to hear any cause or claim by or on behalf of any
14 alien arising from the decision or action by the Attorney General to commence
15 proceedings, adjudicate cases, or execute removal orders.”); *Reno v. Am.-Arab Anti-*
16 *Discrimination Comm.*, 525 U.S. 471, 483 (1999) (“There was good reason for
17 Congress to focus special attention upon, and make special provision for, judicial
18 review of the Attorney General’s discrete acts of ‘commenc[ing] proceedings,
19 adjudicat[ing] cases, [and] execut[ing] removal orders’—which represent the initiation
20 or prosecution of various stages in the deportation process.”); *Limpin v. United States*,
21 828 Fed. App’x 429 (9th Cir. 2020) (holding district court properly dismissed under 8
22 U.S.C. § 1252(g) “because claims stemming from the decision to arrest and detain an
23 alien at the commencement of removal proceedings are not within any court’s
24 jurisdiction”). In other words, § 1252(g) removes district court jurisdiction over “three
25 discrete actions that the Attorney General may take: her ‘decision or action’ to
26 ‘commence proceedings, adjudicate cases, or execute removal orders.’” *Reno*, 525 U.S.
27 at 482 (emphasis removed). Congress has explicitly foreclosed district court jurisdiction
28

1 over claims that necessarily arise “from the decision or action by the Attorney General
2 to commence proceedings [and] adjudicate cases” 8 U.S.C. § 1252(g).

3 Section 1252(g) also bars district courts from hearing challenges to the method
4 by which the government chooses to commence removal proceedings, including the
5 decision to detain an alien pending removal. *See Alvarez v. ICE*, 818 F.3d 1194, 1203
6 (11th Cir. 2016) (“By its plain terms, [§ 1252(g)] bars us from questioning ICE’s
7 discretionary decisions to commence removal” and bars review of “ICE’s decision to
8 take [plaintiff] into custody and to detain him during his removal proceedings”).

9 Other courts have held, “[f]or the purposes of § 1252, the Attorney General
10 commences proceedings against an alien when the alien is issued a Notice to Appear
11 before an immigration court.” *Herrera-Correra v. United States*, No. 08-2941 DSF
12 (JCx), 2008 WL 11336833, at *3 (C.D. Cal. Sept. 11, 2008). “The Attorney General
13 may arrest the alien against whom proceedings are commenced and detain that
14 individual until the conclusion of those proceedings.” *Id.* at *3. “Thus, an alien’s
15 detention throughout this process arises from the Attorney General’s decision to
16 commence proceedings” and review of claims arising from such detention is barred
17 under § 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007)); *Wang*
18 *v. United States*, No. CV 10-0389 SVW (RCx), 2010 WL 11463156, at *6.

19 Moreover, under 8 U.S.C. § 1252(b)(9), “[j]udicial review of all questions of law
20 and fact . . . arising from any action taken or proceeding brought to remove an alien
21 from the United States under this subchapter shall be available only in judicial review
22 of a final order under this section” (emphasis added). Further, judicial review of a final
23 order is available only through “a petition for review filed with an appropriate court of
24 appeals.” 8 U.S.C. § 1252(a)(5). The Supreme Court has made clear that § 1252(b)(9)
25 is “the unmistakable ‘zipper’ clause,” channeling “judicial review of all” “decisions and
26 actions leading up to or consequent upon final orders of deportation,” including “non-
27 final order[s],” into proceedings before a court of appeals. *Reno*, 525 U.S. at 483, 485;
28 *see J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (noting § 1252(b)(9) is

1 “breathtaking in scope and vise-like in grip and therefore swallows up virtually all
2 claims that are tied to removal proceedings”). “Taken together, § 1252(a)(5) and
3 § 1252(b)(9) mean that *any* issue—whether legal or factual—arising from *any* removal-
4 related activity can be reviewed *only* through the [petition for review] PFR process.”
5 *J.E.F.M.*, 837 F.3d at 1031 (emphasis in original) (“[W]hile these sections limit *how*
6 immigrants can challenge their removal proceedings, they are not jurisdiction-stripping
7 statutes that, by their terms, foreclose *all* judicial review of agency actions. Instead, the
8 provisions channel judicial review over final orders of removal to the courts of appeal.”)
9 (emphasis in original); *see id.* at 1035 (“§§ 1252(a)(5) and [(b)(9)] channel review of
10 all claims, including policies-and-practices challenges . . . whenever they ‘arise from’
11 removal proceedings”).

12 Critically, “1252(b)(9) is a judicial channeling provision, not a claim-barring
13 one.” *Aguilar v. ICE*, 510 F.3d 1, 11 (1st Cir. 2007). Indeed, 8 U.S.C. § 1252(a)(2)(D)
14 provides that “[n]othing . . . in any other provision of this chapter . . . shall be construed
15 as precluding review of constitutional claims or questions of law raised upon a petition
16 for review filed with an appropriate court of appeals in accordance with this section.”
17 *See also Ajlani v. Chertoff*, 545 F.3d 229, 235 (2d Cir. 2008) (“[J]urisdiction to review
18 such claims is vested exclusively in the courts of appeals[.]”). The petition-for-review
19 process before the court of appeals ensures that noncitizens have a proper forum for
20 claims arising from their immigration proceedings and “receive their day in court.”
21 *J.E.F.M.*, 837 F.3d at 1031–32 (internal quotations omitted); *see also Rosario v. Holder*,
22 627 F.3d 58, 61 (2d Cir. 2010) (“The REAL ID Act of 2005 amended the [INA] to
23 obviate . . . Suspension Clause concerns” by permitting judicial review of
24 “nondiscretionary” BIA determinations and “all constitutional claims or questions of
25 law.”). These provisions divest district courts of jurisdiction to review both direct and
26 indirect challenges to removal orders, including decisions to detain for purposes of
27 removal or for proceedings. *See Jennings*, 583 U.S. at 294–95 (section 1252(b)(9)

28

1 includes challenges to the “decision to detain [an alien] in the first place or to seek
2 removal”).

3 In evaluating the reach of subsections (a)(5) and (b)(9), the Second Circuit has
4 explained that jurisdiction turns on the substance of the relief sought. *Delgado v.*
5 *Quarantillo*, 643 F.3d 52, 55 (2d Cir. 2011). Those provisions divest district courts of
6 jurisdiction to review both direct and indirect challenges to removal orders, including
7 decisions to detain for purposes of removal or for proceedings. *See Jennings*, 583 U.S.
8 at 294–95 (section 1252(b)(9) includes challenges to the “decision to detain [an alien]
9 in the first place or to seek removal[.]”). Here, Petitioner challenges the government’s
10 decision and action to detain, which arises from DHS’s decision to commence removal
11 proceedings, and is thus an “action taken . . . to remove [him/her] from the United
12 States.” *See* 8 U.S.C. § 1252(b)(9); *see also, e.g., Jennings*, 583 U.S. at 294–95; *Velasco*
13 *Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020) (finding that 8 U.S.C. § 1226(e) did
14 not bar review in that case because the petitioner did not challenge “his initial
15 detention”); *Saadulloev v. Garland*, No. 3:23-CV-00106, 2024 WL 1076106, at *3
16 (W.D. Pa. Mar. 12, 2024) (recognizing that there is no judicial review of the threshold
17 detention decision, which flows from the government’s decision to “commence
18 proceedings”).

19 Accordingly, this Court lacks jurisdiction over this petition under 8 U.S.C.
20 § 1252.

21 **B. Even if Petitioner’s Claims Are Not Barred, Petitioner is Lawfully**
22 **Detained**

23 ICE’s authority to detain, release, and re-detain noncitizens who are subject to a
24 final order of removal is governed by 8 U.S.C. § 1231(a). Under that provision,
25 reinstated removal orders are part of “an expedited process for aliens who reenter the
26 United States without authorization after having already been removed.” *Guzman*
27 *Chavez*, 594 U.S. at 529. The statute provides: “If the Attorney General finds that an
28 alien has reentered the United States illegally after having been removed or having

1 departed voluntarily, under an order of removal, the prior order of removal is reinstated
2 from its original date and is not subject to being reopened or reviewed, the alien is not
3 eligible and may not apply for any relief under this chapter, and the alien shall be
4 removed under the prior order at any time after the reentry.” 8 U.S.C. § 1231(a)(5).
5 However, when subject to a reinstated removal order, an individual is not precluded
6 “from pursuing withholding-only relief to prevent DHS from executing his removal to
7 the particular country designated in his reinstated removal order.” *Guzman Chavez*, 594
8 U.S. at 530. Because an individual subject to a reinstated removal order is not in normal
9 removal proceedings under 8 U.S.C. § 1229a, to pursue withholding-only relief that
10 individual must express a fear of returning to the designated country, at which point he
11 will be referred to an asylum officer for a reasonable fear determination; if the asylum
12 officer makes a positive reasonable fear determination, the matter will be referred to an
13 immigration judge for initiation of withholding-only proceedings. *Id.* at 531. “Those
14 proceedings are limited to a determination of whether the alien is eligible for
15 withholding or deferral of removal, and as such, all parties are prohibited from raising
16 or considering any other issues, including but not limited to issues of admissibility,
17 deportability, eligibility for waivers, and eligibility for any other form of relief.” *Id.*
18 (citations omitted).

19 Here, Petitioner does not dispute that he remains subject to a reinstated removal
20 order entered against him several years ago. While he is pursuing relief from that order
21 via withholding-only proceedings, ICE may lawfully detain him. *See* 8 U.S.C.
22 § 1231(a).

23 To the extent Petitioner claims ICE unlawfully re-detained Petitioner, those
24 claims fail. Petitioner was previously released on an *Aleman-Gonzalez* bond issued by
25 an immigration judge pursuant to *Aleman-Gonzalez v. Sessions*, 325 F.R.D. 616 (N.D.
26 Cal. 2018). Petitioner was not previously released on an order of supervision under 8
27 C.F.R. § 241.4; therefore, ICE was under no obligation to comply with 8 C.F.R.
28 § 241.4(l) upon re-detention. Moreover, as Petitioner’s bond was not issued pursuant 8

1 U.S.C. § 1226(a), Petitioner’s reliance on caselaw that interprets 8 U.S.C. § 1226(a)
2 bond orders and 8 U.S.C. § 1226(b) revocation of bond orders is misplaced and
3 inapplicable. But even if that were not the case, Petitioner cannot establish that he was
4 prejudiced nor that a constitutional violation has occurred. *See Brown v. Holder*, 763
5 F.3d 1141, 1148–50 (9th Cir. 2014) (“[T]he mere failure of an agency to follow its
6 regulations is not a violation of due process.”); *United States v. Tatoyan*, 474 F.3d 1174,
7 1178 (9th Cir. 2007) (holding that “[c]ompliance with . . . internal [customs] agency
8 regulations is not mandated by the Constitution”) (simplified); *Bd. of Curators of Univ.*
9 *of Mo. v. Horowitz*, 435 U.S. 78, 92 n.8 (1978) (holding that *Accardi* “enunciate[s]
10 principles of federal administrative law rather than of constitutional law”).

11 **C. Conditions of Confinement Allegations are Not Proper Habeas Claims**

12 To the extent Petitioner asserts claims regarding conditions of his confinement,
13 the Court lacks jurisdiction over such claims because they do not challenge the
14 lawfulness of his custody. An individual may seek habeas relief under 28 U.S.C. § 2241
15 if he is “in custody” under federal authority “in violation of the Constitution or laws or
16 treaties of the United States.” 28 U.S.C. § 2241(c). But habeas relief is available to
17 challenge only the legality or duration of confinement. *Pinson v. Carvajal*, 69 F.4th
18 1059, 1067 (9th Cir. 2023); *Crawford v. Bell*, 599 F.2d 890, 891 (9th Cir. 1979); *Dep’t*
19 *of Homeland Security v. Thraissigiam*, 591 U.S. 103, 117 (2020) (The writ of habeas
20 corpus historically “provide[s] a means of contesting the lawfulness of restraint and
21 securing release.”). The Ninth Circuit squarely explained how to decide whether a claim
22 sounds in habeas jurisdiction: “[O]ur review of the history and purpose of habeas leads
23 us to conclude the relevant question is whether, based on the allegations in the petition,
24 release is *legally required* irrespective of the relief requested.” *Pinson*, 69 F.4th at 1072
25 (emphasis in original); *see also Nettles v. Grounds*, 830 F.3d 922, 934 (9th Cir. 2016)
26 (The key inquiry is whether success on the petitioner’s claim would “necessarily lead
27 to immediate or speedier release.”). Here, Petitioner’s claims regarding the conditions
28 of his confinement do not arise under § 2241. *See Nettles*, 830 F.3d at 933 (“We have

1 long held that prisoners may not challenge mere conditions of confinement in habeas
2 corpus.”); *Giron Rodas v. Lyons*, No. 25cv1912-LL-AHG, 2025 WL 2300781, at *3
3 (S.D. Cal. Aug. 1, 2025) (“Like in *Pinson*, the Court lacks jurisdiction over Petitioner’s
4 § 2241 habeas petition since it cannot be fairly read as attacking ‘the legality or duration
5 of confinement.’”) (quoting *Pinson*, 69 F.4th at 1065); *Guselnikov v. Noem*, No. 25-cv-
6 1971-BTM-KSC, 2025 WL 2300873, at *1 (S.D. Cal. Aug. 8, 2025) (finding
7 petitioners’ claims did not arise under § 2241 because they were not arguing they were
8 unlawfully in custody and receiving the requested relief would not entitle them to
9 release).

10 **IV. CONCLUSION**

11 For the foregoing reasons, Respondents respectfully request that the Court
12 dismiss this action and deny Petitioner’s requested relief.

13 DATED: December 2, 2025

Respectfully submitted,

14 ADAM GORDON
United States Attorney

15 *s/ Betsey Boutelle*
16 BETSEY BOUTELLE
Assistant United States Attorney
17 Attorneys for Respondents