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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA

10 J.M.G.,

11 Petitioner,

12 v.

13 CHRISTOPHER J. LAROSE, *et al*,

14 Respondents.  
15

Case No.: 25-cv-3562-LL-MMP

**RESPONSE TO MOTION FOR  
TEMPORARY RESTRAINING  
ORDER AND RETURN IN  
OPPOSITION TO PETITION**

16 **I. Introduction and Summary of Argument**

17 Petitioner is currently detained in Immigration and Customs Enforcement (ICE)  
18 custody pursuant to 8 U.S.C. § 1225(b)(2). Petitioner’s habeas petition seeks release or  
19 a bond hearing. Through multiple provisions of 8 U.S.C. § 1252, Congress has stripped  
20 federal courts of jurisdiction over challenges to the commencement of removal  
21 proceedings, including the consequent detention pending removal proceedings.  
22 Moreover, Petitioner’s detention is mandated by statute. The Court should deny and  
23 dismiss the petition.

24 **II. Factual Background<sup>1</sup>**

25 Petitioner is a citizen and national of Venezuela. *See* Declaration of Rosendo  
26 Martinez, Jr. (“Martinez Decl.”), ¶ 4; *see also* Petition, ECF No. 1, at Exhibit A (Notice  
27

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

1 to Appear). On October 7, 2024, Petitioner arrived at the Brownsville, Texas Port of  
2 Entry and applied for admission to the United States. Martinez Decl., ¶ 5; ECF No. 1,  
3 Exhibit A. At the time of his arrival, he was not in possession of a valid entry document.  
4 *Id.* He was determined to be an arriving alien applying for admission and inadmissible  
5 under 8 U.S.C. § 1182(a)(7)(i)(I), as an immigrant not in possession of a valid entry  
6 document. *Id.* He then was placed in removal proceedings under 8 U.S.C. § 1229a (240  
7 proceedings) and issued a Notice to Appear (NTA). *Id.* On the same day of the initial  
8 encounter—October 7, 2024— Petitioner was released from DHS custody on parole.  
9 Martinez Decl., ¶ 5. That parole was valid until April 18, 2025, and thus has now  
10 expired. *See id.*

11 On June 25, 2025, at a master calendar hearing, DHS made an oral motion to  
12 dismiss Petitioner’s 240 removal proceedings. Martinez Decl. ¶ 6. On the same day, a  
13 Form I-200, Warrant for Arrest, was issued for Petitioner’s arrest and Petitioner was  
14 arrested. *Id.*; *see also* Ex. 1 (Warrant for Arrest of Alien). At that same time, a Form I-  
15 860, Notice and Order of Expedited Removal,<sup>2</sup> was issued and served upon Petitioner.  
16 Martinez Decl., ¶ 7; Ex. 2 (Notice and Order). On July 23, 2025, an immigration judge  
17 dismissed Petitioner’s 240 proceedings. Martinez Decl., ¶ 9; Ex. 3 (Order). Petitioner  
18 filed an appeal of the IJ’s dismissal order with the Board of Immigration Appeals (BIA),  
19 which remains pending. Martinez Decl., ¶ 9; Ex. 4 (Notice of Appeal). Petitioner is  
20 currently detained at the Otay Mesa Detention Center and is subject to mandatory  
21 detention under 8 U.S.C. § 1225(b)(2).

### 22 III. Argument

#### 23 A. Petitioner’s Claims and Requested Relief are Jurisdictionally Barred

24 Petitioner bears the burden of establishing that this Court has subject matter  
25 jurisdiction over his claims. *See Ass’n of Am. Med. Coll. v. United States*, 217 F.3d 770,  
26 778-79 (9th Cir. 2000); *Finley v. United States*, 490 U.S. 545, 547-48 (1989). As a

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28 <sup>2</sup> Upon resolution of the appeal of the immigration judge’s dismissal order, and if the  
termination order becomes final, DHS will issue Petitioner a new Notice to Appear.  
Martinez Decl., at ¶ 10.

1 threshold matter, Petitioner’s claims are jurisdictionally barred under 8 U.S.C.  
2 § 1252(g) and 8 U.S.C. § 1252(b)(9).

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

22 Section 1252(g) also bars district courts from hearing challenges to the method  
23 by which the government chooses to commence removal proceedings, including the  
24 decision to detain an alien pending removal. *See Alvarez v. ICE*, 818 F.3d 1194, 1203  
25 (11th Cir. 2016) (“By its plain terms, [§ 1252(g)] bars us from questioning ICE’s  
26 discretionary decisions to commence removal” and bars review of “ICE’s decision to  
27 take [plaintiff] into custody and to detain him during his removal proceedings”).  
28

1 Other courts have held, “[f]or the purposes of § 1252, the Attorney General  
2 commences proceedings against an alien when the alien is issued a Notice to Appear  
3 before an immigration court.” *Herrera-Correra v. United States*, No. 08-2941 DSF  
4 (JCx), 2008 WL 11336833, at \*3 (C.D. Cal. Sept. 11, 2008). “The Attorney General  
5 may arrest the alien against whom proceedings are commenced and detain that  
6 individual until the conclusion of those proceedings.” *Id.* at \*3. “Thus, an alien’s  
7 detention throughout this process arises from the Attorney General’s decision to  
8 commence proceedings” and review of claims arising from such detention is barred  
9 under § 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007)); *Wang*,  
10 2010 WL 11463156, at \*6; 8 U.S.C. § 1252(g). *But see Vasquez Garcia v. Noem*, No.  
11 25-cv-02180-DMS-MMP, 2025 WL 2549431, at \*4 (S.D. Cal. Sept. 3, 2025).

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

1 over final orders of removal to the courts of appeal.”) (emphasis in original); *see id.* at  
2 1035 (“§§ 1252(a)(5) and [(b)(9)] channel review of all claims, including policies-and-  
3 practices challenges . . . whenever they ‘arise from’ removal proceedings”).

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

22 Accordingly, this Court lacks jurisdiction over this petition under 8 U.S.C.  
23 § 1252.<sup>3</sup>

24  
25 <sup>3</sup> On an alternative basis, the Court should deny the Petition for failure to exhaust  
26 administrative remedies. The Ninth Circuit requires that “habeas petitioners exhaust  
27 available judicial and administrative remedies before seeking relief under § 2241.”  
28 *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

1 **B. Petitioner is Lawfully Detained**

2 Petitioner's claims for alleged statutory and constitutional violations fail because  
3 he is subject to mandatory detention under 8 U.S.C. § 1225.

4 While Petitioner was previously released from custody on parole, his parole was  
5 only valid until April 18, 2025 and terminated on the expiration date. When Petitioner  
6 was detained on June 25, 2025, he was served with a Notice of Expedited Removal,  
7 which also would have served to terminate his parole status. *See* 8 CFR § 212.5(e)(2)(i)  
8 (“When a charging document is served on the alien, the charging document will  
9 constitute written notice of termination of parole . . .”). The termination and expiration  
10 of his parole emphasizes his status as an applicant for admission, subject to mandatory  
11 detention under 8 U.S.C. § 1225(b)(2). *See* 8 U.S.C. § 1182(d)(5)(A) (“ . . . *such parole*  
12 *of such alien shall not be regard as an admission* of the alien and when the purposes of  
13 such parole shall . . . have been served the alien shall forthwith return or be return to the  
14 custody from which [s]he was paroled and thereafter h[er] case shall continue to be  
15 dealt with in the same manner as that of any other *applicant for admission* to the United  
16 States”) (emphasis added).

17 Furthermore, discretionary decisions under Section 1226 are not subject to  
18 judicial review. 8 U.S.C. § 1226(e) (“No court may set aside any action or decision by  
19 the Attorney General under this section regarding the detention of any alien or the  
20 revocation or denial of bond or parole.”); *Demore v. Kim*, 538 U.S. 510, 531 (2003)  
21 (“Detention during removal proceedings is a constitutionally permissible part of that  
22 process.”). As Petitioner challenges the decision to remand him back into custody, his  
23 claim is barred by Section 1226(e). *See Jennings v. Rodriguez*, 583 U.S. 281, 295 (2018)  
24 (“As we have previously explained, § 1226(e) precludes an alien from ‘challeng[ing] a  
25 “discretionary judgment” by the Attorney General or a “decision” that the Attorney  
26 \_\_\_\_\_  
27 (9th Cir. 2010) (no jurisdiction to review legal claims not presented in the petitioner’s  
28 administrative proceedings before the BIA). Here, Petitioner is attempting to bypass the  
administrative scheme by not seeking a bond hearing nor appealing the hypothetical  
underlying bond denial to the BIA. Thus, the Court should dismiss or stay this matter  
to allow Petitioner an opportunity to exhaust his administrative remedies.

1 General has made regarding his detention or release.’ But § 1226(e) does not preclude  
2 ‘challenges [to] the statutory framework that permits [the alien’s] detention without  
3 bail.’”).

4 Section 1225(b)(2)(A) requires mandatory detention of “‘an alien who is *an*  
5 *applicant for admission*, if the examining immigration officer determines that an alien  
6 seeking admission is not clearly and beyond a doubt entitled to be admitted[.]” *Chavez*  
7 *v. Noem*, No. 3:25-cv-02325, 2025 WL 2730228, at \*4 (S.D. Cal. Sept. 24, 2025)  
8 (quoting 8 U.S.C. § 1225(b)(2)(A)) (emphasis in original). Section 1225(a)(1)  
9 “expressly defines that ‘[a]n alien present in the United States who has not been  
10 admitted ... shall be deemed for purposes of this Act *an applicant for admission*.” *Id.*  
11 (quoting 8 U.S.C. § 1225(a)(1)) (emphasis in original).

12 Here, Petitioner is an “alien present in the United States who has not been  
13 admitted.” *See* Exhibits 1, 2; *see also* 8 U.S.C. § 1182(d)(5)(A) (“such parole of such  
14 alien shall not be regarded as an admission of the alien.”). Thus, as found by the district  
15 court in *Chavez v. Noem* and as mandated by the plain language of the statute, Petitioner  
16 is an “applicant for admission” and subject to the mandatory detention provisions of §  
17 1225(b)(2).

18 Because Petitioner is properly detained under § 1225, he cannot show entitlement  
19 to relief.

#### 20 IV. CONCLUSION

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

23 DATED: December 21, 2025

Respectfully submitted,

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25 United States Attorney

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