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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Garcia Vergara Nelson Javier, Petitioner, v. Pamela Bondi, U.S. Attorney General Respondent.	Case No. 2:25-cv-02495-JAD-DJA **Response to Petitioner for Writ of Habeas Corpus**

Federal Respondent Pamela Bondi, U.S. Attorney General through undersigned counsel, hereby file her response to Petitioner Garcia Vergara Nelson Javier's Petition for Writ of Habeas Corpus. ECF No. 1-1. The petition should be denied for the following reasons. This response is supported by the following memorandum of points and authorities.

I. Introduction

Petitioner, Nelson Javier, is currently detained subject to an administratively final removal order dated September 23, 2025, to Venezuela by U.S. Immigration and Customs Enforcement ("ICE") pending removal proceedings from the United States *See* Removal Order, attached as Exhibit A. He is held in 1241 detention which pertains to the apprehension and detention of aliens ordered removed. Petitioner unsuccessfully appealed the removal order to the Board of Immigration Appeals (BIA). *See* BIA decision, attached as Exhibit B. His detention is governed by the discretionary provision of 8 U.S.C. § 1226(a).

His removal is currently stayed pending his appeal before the Ninth Circuit Court of Appeals which Petitioner filed on December 1, 2025. ECF No. 1-1, p. 5. This Court, however, lacks jurisdiction to review Petitioner's claims. Multiple provisions of the Immigration and Nationality Act—including 8 U.S.C. §§ 1252(g), 1252(b)(9), and 1226(e)—expressly preclude district-court jurisdiction over challenges that arise from the Government's decisions to commence removal proceedings, detain an alien pending those proceedings, or execute a removal order. Even assuming jurisdiction could be found, Petitioner cannot prevail on the merits. His detention remains lawful, statutorily authorized, and consistent with due process. Although Petitioner did not request a bond hearing, he appealed his administratively final removal order from the Immigration Judge to the BIA unsuccessfully. Exhibit B. He is now appealing the BIA decision to the Ninth Circuit Court of Appeals. Because of his pending appeal, his final removal order is currently stayed. These procedures satisfy the constitutional standards articulated in *Diaz v. Garland*, 53 F.4th 1189 (9th Cir. 2022), which held that detainees afforded individualized bond hearings with appellate review have received all process that is due. Because the governing statutes divest this Court of jurisdiction and, in any event, the record confirms that Petitioner's detention comports with both statute and due process, the United States respectfully requests that the Court dismiss the Petition for Writ of Habeas Corpus

II. Statement of Facts and Procedural History

Petitioner, Nelson Javier, is a Venezuelan native who is also an arriving alien in the United States. *See* NTA, attached as Exhibit C. On November 12, 2024, Petitioner was encountered by United States Border Patrol (USBP) near Eagle Pass, Texas and determined that he had unlawfully entered the US. *See* I-213, attached as Exhibit D. USPB issued Petitioner an expedited removal order and served him with forms I-860 and I-296. *Id.* On November 15, 2024, USPB removed Petitioner to Mexico. *Id.* On December 30, 2024, US Customs and Border Protection (USCBP), encountered the Petitioner at San Ysidro, CA port of entry. *Id.* On that same day, USCBP issued Petitioner an NTA, form I-862 and paroled him into the US for his immigration proceedings. *Id.* On September 23, 2025, an

Immigration Judge with the Executive Office for Immigration Review (EOIR) ordered Petitioner removed in absentia when he failed to appear for his court hearing. *Id.* On September 24, 2025, ERO Salt Lake City/Las Vegas arrested Petitioner to affect the final order of removal issued against him. *Id.* Subsequently he was transferred in DHS detention. Petitioner never requested a bond hearing. He is held in 1241 detention since he has an administratively final removal order, though that order is currently stayed with the pending appeal that Petitioner filed on December 1, 2025, with the Ninth Circuit Court of Appeals. ECF No. 1-1, p. 5. On December 15, 2025, Petitioner filed the instant bare bones petition in which he seeks the Court to release him from detention. ECF No. 1-1.

III. Jurisdiction and Legal Standards

A. Jurisdiction and Burden of Proof in Federal Habeas Petitions

It is axiomatic that "[t]he district courts of the United States . . . are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute." *Exxon Mobil Corp. v. Allopath Servs., Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted). "[T]he scope of habeas has been tightly regulated by statute, from the Judiciary Act of 1789 to the present day." *Dep't of Homeland Sec. v. Thuraissigiam*, 140 S. Ct. 1959, 1974 n. 20 (2020). Title 28 U.S.C. § 2241 provides district courts with jurisdiction to hear federal habeas petitions. To warrant a grant of writ of habeas corpus, the burden is on the petitioner to prove that his or her custody is in violation of the Constitution, laws, or treatises of the United States. *See* 28 U.S.C. § 2241(c)(3); *Lambert v. Blodgett*, 393 F.3d 943, 969 n. 16 (9th Cir. 2004); *Snook v. Wood*, 89 F.3d 605, 609 (9th Cir. 1996).

B. Detention and Removal Under 1226(a)

Noncitizens are removable if they fall within any of several statutory classes of removable individuals. *Avilez v. Garland*, 69 F.4th 525, 529 (9th Cir. 2023) (citing 8 U.S.C. § 1227(a)). Four statutes grant the Government authority to detain noncitizens who have been placed in removal proceedings: 8 U.S.C. §§ 1225(b), 1226(a), 1226(c), and 1231(a). *Id.* A noncitizen's place within this statutory framework determines whether his detention is mandatory or discretionary, as well as the review process available to him if he wishes to

contest the necessity of his detention. *Rubin v. United States Immigr. & Customs Enf't Field Off. Dir.*, 2024 WL 3431914, at *4 (W.D. Wash. June 28, 2024), report and recommendation adopted, 2024 WL 3431163 (W.D. Wash. 2024)(internal citations and quotations omitted). Federal immigration law, under Section 1226(a), empowers the Secretary of Homeland Security to arrest and detain a deportable noncitizen pending a removal decision, and it generally gives the Secretary the discretion either to detain the noncitizen or to release him on bond or parole. 8 U.S.C. § 1226(a); *Nielsen v. Preap*, 586 U.S. 392, 397 (2019). Under Section 1226(a), a noncitizen is entitled to a bond hearing at which an Immigration Judge considers whether the noncitizen is a flight risk or a danger to the community. *See Jennings v. Rodriguez*, 583 U.S. 281, 306 (2018) ("Federal regulations provide that aliens detained under § 1226(a) receive bond hearings at the outset of detention. See 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1)."). An alien can also request a custody redetermination (i.e., a bond hearing) by an immigration judge ("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. If Petitioners receive an adverse ruling, they "may appeal the immigration judge's decision to the Board of Immigration Appeals (BIA)." *Johnson v. Guzman Chavez*, 594 U.S. 523, 527-28, 141 S. Ct. 2271, 210 L. Ed. 2d 656 (2021). In addition, following a showing of "change of circumstances," Petitioner can seek an additional bond redetermination hearing. *Diaz v. Garland*, 53 F.4th 1189, 1197, 1209 (9th Cir. 2022)("Rodriguez Diaz has had the right to seek an additional bond hearing if his circumstances materially change. See 8 C.F.R. § 1003.19(e).")

C. Review of the BIA

The BIA is an appellate body within the Executive Office for Immigration Review ("EOIR"). *See* 8 C.F.R. § 1003.1(d)(1). Members of the BIA possess delegated authority from the Attorney General. 8 C.F.R. § 1003.1(a)(1). The BIA is "charged with the review of those administrative adjudications under the [INA] that the Attorney General may by regulation assign to it," including IJ custody determinations. 8 C.F.R. §§ 1003.1(d)(1), 236.1; 1236.1. The BIA not only resolves particular disputes before it, but also "through precedent

decisions, [it] shall provide clear and uniform guidance to DHS, the immigration judges, and the general public on the proper interpretation and administration of the [INA] and its implementing regulations." Id. § 1003.1(d)(1). "The decision of the [BIA] shall be final except in those cases reviewed by the Attorney General." 8 C.F.R. § 1003.1(d)(7).

D. Jurisdiction Pursuant to 8 U.S.C. § 1226(e)

Section 1226 prohibits federal courts from reviewing "discretionary judgement[s]" as to detention determinations of noncitizens. The statute specifically provides that "[n]o court may set aside any action or decision by the Attorney General under this section regarding the detention or release of an alien or the grant, revocation, or denial of bond or parole." 8 U.S.C. § 1226(e). The Ninth Circuit has interpreted section 1226(e) to mean "that an alien may not use the federal courts to 'challeng[e] a 'discretionary judgment' . . . made regarding his detention or release.'" *Martinez v. Clark*, 36 F.4th 1219, 1227 (9th Cir. 2022) (quoting *Jennings v. Rodriguez*, 138 S. Ct. 830, 841 (2018) (plurality opinion)). However, section 1226(e) "does not limit habeas jurisdiction over 'constitutional claims or questions of law.'" *Martinez*, 36 F.4th at 1227 (quoting *Patel v. Garland*, 142 S. Ct. 1614, 1626 (2022) (holding that federal courts have habeas jurisdiction over "questions of law or constitutional questions" but not "an immigration court's determination that a noncitizen is a danger to the community"); *see also Singh v. Holder,* 638 F.3d 1196, 1207 n.6. (9th Cir. 2011).

IV. Argument

A. Petitioner's Claims Fail and Should be Dismissed for Lack of Jurisdiction Under Rule 12(b)(1) as Multiple Provisions of 8 U.S.C. §1252 Preclude the Court's Review of Petitioner's Claims

1. *8 U.S.C. § 1252(g)*

Section 1252(g) specifically deprives courts of jurisdiction, including habeas corpus jurisdiction to review "any cause or claim by or on behalf of an alien arising from the decision or action by the Attorney General to [1] commence proceedings, [2] adjudicate cases, or [3] execute removal orders against any alien under this chapter." 8 U.S.C. § 1252(g) (emphasis added). Section 1252(g) eliminates jurisdiction "[e]xcept as provided in

this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title." Except as provided in § 1252, courts "cannot entertain challenges to the enumerated executive branch decisions or actions." *E.F.L. v. Prim*, 986 F.3d 959, 964–65 (7th Cir. 2021). Section 1252(g) also bars district courts from hearing challenges to the method by which the Secretary of Homeland Security 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 also to review "ICE's decision to take [plaintiff] into custody and to detain him during removal proceedings"). Petitioner's claims arise directly from his detention during ongoing removal. Proceedings pursuant to administratively final removal order. That detention flows from the Government's decision to commence such proceedings. *See Valencia-Mejia v. United States*, No. 08-2943 CAS (PJWx), 2008 WL 4286979, at *4 (C.D. Cal. Sept. 15, 2008) ("The decision to detain plaintiff until his hearing before the Immigration Judge arose from this decision to commence proceedings."); *Wang v. United States*, No. 10-0389 SVW (RCx), 2010 WL 11463156, at *6 (C.D. Cal. Aug. 18, 2010); *Tazu v. Att'y Gen. U.S.*, 975 F.3d 292, 298–99 (3d Cir. 2020) (holding that 8 U.S.C. § 1252(g) and (b)(9) deprive district court of jurisdiction to review action to execute removal order).

As 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. CV 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). Because Petitioner's

detention "arises from the Attorney General's decision to commence proceedings," review of such detention is barred by § 1252(g). Accordingly, this Court lacks jurisdiction and should dismiss the petition on that basis.

2. *8 U.S.C. § 1252(b)(9)*

Under § 1252(b)(9), "judicial review of all questions of law . . . including interpretation and application of statutory provisions . . . arising from any action taken . . . to remove an alien from the United States" is only proper before the appropriate court of appeals in the form of a petition for review of a final removal order. *See* 8 U.S.C. § 1252(b)(9); *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999) ("AADC"). Section 1252(b)(9) is an "unmistakable 'zipper' clause" that "channels judicial review of all [claims arising from deportation proceedings]" to a court of appeals in the first instance. *Id.*; *see Lopez v. Barr*, No. CV 20-1330 (JRT/BRT), 2021 WL 195523, at *2 (D. Minn. Jan. 20, 2021) (*citing Nasrallah v. Barr*, 590 U.S. 573, 579–80 (2020)).

Moreover, § 1252(a)(5) provides that a petition for review is the exclusive means for judicial review of immigration proceedings:

> Notwithstanding any other provision of law (statutory or nonstatutory), . . . a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision of this chapter, except as provided in subsection (e) [concerning aliens not admitted to the United States].

8 U.S.C. § 1252(a)(5). "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] process." *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (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"); *accord Ruiz v. Mukasey*, 552 F.3d 269, 274 n.3 (2d Cir. 2009) (only when the action is "unrelated to any removal action or proceeding" is it within the district court's jurisdiction); cf. *Xiao Ji Chen v. U.S. Dep't of Justice*, 434 F.3d 144, 151 n.3 (2d Cir.

2006) (a "primary effect" of the REAL ID Act is to "limit all aliens to one bite of the apple" (internal quotation marks omitted)).

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 aliens 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.").

In evaluating the reach of subsections (a)(5) and (b)(9), the Second Circuit 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, because Petitioner challenges the Government's decision to detain him pending removal, his claim fall squarely within § 1252(b)(9)'s jurisdictional bar, and is thus an "action taken . . . to remove [them] 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 subject-matter jurisdiction and should dismiss the petition.

B. The Court Has No Jurisdiction Under 1226(e) Absent a Due Process Violation and Petitioner Has Been Afforded the Due Process to Which He is Entitled

Section 1226(e) bars judicial review of "any discretionary judgment regarding the application of this section," including decisions "to det[ain] or release an alien" pending removal. *Martinez v. Clark*, 36 F.4th 1219, 1227 (9th Cir. 2022) (quoting *Jennings*, 138 S. Ct. at 841). Although § 1226(e) does not preclude review of bona fide constitutional or legal questions (*Patel v. Garland*, 596 U.S. 328, 331 (2022)), Petitioner raises none. His only contention—that his detention is unconstitutional despite receiving a final removal order, appealing such order to the BIA and now appealing the BIA's decision to the Ninth Circuit Court of Appeals - is foreclosed by *Diaz v. Garland*, 53 F.4th 1189 (9th Cir. 2022).

In determinizing whether there has been a violation of a detainee's constitutional due process, the Ninth Circuit's decision in *Diaz v. Garland* provides dispositive guidance on the due process requirements for immigration bond proceedings for detainees held pursuant to section 1226(a). 53 F.4th 1189 (9th Cir. 2022). In *Diaz*, the court addressed whether petitioners who had received bond hearings before an immigration judge, with the opportunity to appeal adverse decisions to the Board of Immigration Appeals, had been afforded constitutionally adequate process. *Id.* at 1194-95. The court concluded that they had, holding that "so long as the government follows reasonable, individualized determinations to ensure that the alien is properly in removal proceedings, due process does not require more bond hearings even after a prolonged period." *Id.* at 1218.

The *Diaz* court emphasized that due process does not guarantee any particular outcome, but rather ensures access to adequate procedures for contesting detention. *Id.* at 1213. The court noted that petitioners had a right to and received bond hearings before an immigration judge and possessed "the right to appeal to the BIA." *Id.* at 1209. This procedural framework, the court held, satisfied constitutional requirements because it

provided a neutral decisionmaker, an opportunity to be heard, and appellate review of adverse determinations. *Id.* at 1210.

The instant matter is procedurally indistinguishable from *Diaz*. Although Petitioner did not request a bond hearing, he appealed his final removal order before the BIA and is currently appealing the BIA order to the Nonth Circuit Court of Appeals. This procedural posture mirrors precisely the circumstances in Diaz, where the Ninth Circuit held that such procedures satisfy constitutional due process requirements.

Under *Diaz*, the relevant inquiry is not whether Petitioner prevailed in his bond proceedings, but whether he received constitutionally adequate process to challenge his detention. 53 F.4th at 1194. The record establishes that he did. Petitioner appeared before an immigration judge who independently evaluated the evidence and applicable legal standards. He was permitted to present testimony and documentary evidence, and afforded the opportunity to challenge the government's basis for detention. Upon receiving an unfavorable decision, he pursued appellate review before the BIA and is currently appealing the BIA decision before the Ninth Circuit, thereby exhausting the administrative procedures available to him.

The Constitution guarantees procedural safeguards, not substantive outcomes. *See Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (establishing framework for evaluating procedural due process claims). Diaz makes clear that when an immigration detainee receives a bond hearing before an immigration judge with the opportunity for BIA review, "1226(a)'s procedures satisfy due process both facially and as applied." *Id.* at 1213. Petitioner has received exactly this process.

Moreover, Diaz forecloses any argument that continued detention following a bond hearing and appeal constitutes a constitutional violation. The Ninth Circuit explicitly rejected the notion that due process entitles immigration detainees to release on bond; rather, due process entitles them only to adequate procedures for contesting detention. *Id.* at 1209. Petitioner received those procedures. That the immigration judge and BIA ultimately determined that he is subject to removal to Venezuela and that his continued

detention was warranted does not transform an adequate process into an inadequate one. Because Petitioner has received precisely this process, his due process rights have been vindicated, and habeas relief on this ground is unwarranted.

C. Petitioner's Claims of Overlong Detention Are Not Supported by the Record

In *Diaz v. Garland*, the Ninth Circuit held that an 18-month period of detention during which Diaz had two bond hearings and sought an appeal through the BIA did not violate due process, as the petitioners had received constitutionally adequate procedures to contest their detention. *Diaz v. Garland*, 53 F.4th 1189, 1213 (9th Cir. 2022). By comparison, Petitioner less than a month and a half detention since the filing of his pending appeal before the Ninth Circuit falls well short of the duration found constitutionally permissible in *Diaz*, further undermining any claim that his continued detention violates due process.

V. Conclusion

For the foregoing reasons, this Court lacks jurisdiction to entertain Petitioner's claims under 8 U.S.C. §§ 1252(g), 1252(b)(9), and 1226(e). Even if jurisdiction were proper, Petitioner's detention is lawful, discretionary, and consistent with due process, as he is held in 1241 detention pursuant to an administratively final order of removal which is currently stayed pending his appeal before the Ninth Circuit. Accordingly, the United States respectfully requests that the Court dismiss the Petition for Writ of Habeas Corpus in its entirety.

Respectfully submitted this 8th day of January 2026.

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