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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 FILIPPO ELEUTERI,

11 Petitioner,

12 v.

13 GREGORY J. ARCHAMBRAULT, et al.,

14 Respondents.  
15  
16

Case No.: 25-cv-3620-BAS-DDL

**RESPONDENTS' RETURN TO  
HABEAS PETITION**

Hon. Cynthia Bashant, Chief Judge

**NO ORAL ARGUMENT REQUESTED**

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18  
19 **I. Introduction**

20 Petitioner, a native and citizen of Italy, has filed a habeas petition under 28 U.S.C.  
21 § 2241. Petitioner failed to maintain his F-1 student visa status and his pending  
22 applications do not provide lawful status. Petitioner is charged under 8 U.S.C.  
23 § 1227(a)(1)(C)(i) and detained pursuant to 8 U.S.C. § 1226(a). Petitioner had a bond  
24 hearing before an immigration judge pursuant to 8 U.S.C. § 1226(a) on December 22,  
25 2025, at 1:00 p.m. The IJ granted bond and Petitioner may be released upon posting. As  
26 such, this Petition is moot and should be dismissed.

27 //

28

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

2 Petitioner is a native and citizen of Italy. On October 20, 2023, United States  
3 Customs and Border Protection (CBP) admitted Petitioner until January 17, 2024. *See*  
4 Ex. 1, I-213. On November 17, 2023, the Department of State approved Petitioner’s F-  
5 1 student visa. *Id.* On February 28, 2025, United States Citizenship and Immigration  
6 Services (USCIS) approved Petitioner’s Petition for Alien Relative, Form I-130, after  
7 he married a U.S. citizen. *Id.* He has pending an I-485 (Application to Register  
8 Permanent Residence or Adjust Status). *Id.*

9 On December 11, 2025, Petitioner attempted to enter Camp Pendleton Marine  
10 Base, where authorities determined that he does not have current lawful status. *Id.* He  
11 was detained and on December 13, 2025, issued a Notice to Appear (NTA). *See* Ex. 2,  
12 NTA. Petitioner had a bond hearing before an immigration judge pursuant to 8 U.S.C.  
13 § 1226(a) on December 22, 2025, at 1:00 p.m. The IJ granted bond. *See* Ex. 3, Bond  
14 Order.

15 **III. Argument**

16 **A. Petitioner was Lawfully Detained Under 8 U.S.C. § 1226(a)**

17 Section 1226 provides for arrest and detention “pending a decision on whether  
18 the alien is to be removed from the United States.” 8 U.S.C. § 1226(a). Under § 1226(a),  
19 the government may detain an alien during his removal proceedings, release him on  
20 bond, or release him on conditional parole. By regulation, immigration officers can  
21 release aliens upon demonstrating that the alien “would not pose a danger to property  
22 or persons” and “is likely to appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8).  
23 An alien can also request a custody redetermination (i.e., a bond hearing) by an IJ at  
24 any time before a final order of removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§  
25 236.1(d)(1), 1236.1(d)(1), 1003.19.

26 As set forth above, DHS determined that Petitioner is removable under 8 U.S.C.  
27

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

1 § 1227(a)(1)(C)(i), as an individual who was admitted to the United States but did not  
2 maintain his visa status. A pending application for status change does not confer current  
3 lawful status. Based on that charge, DHS issued a Notice to Appear (NTA) and placed  
4 him in removal proceedings under 8 U.S.C. § 1229a. As such, Petitioner is detained  
5 pursuant to 8 U.S.C. § 1226(a). Accordingly, Petitioner was entitled to a bond hearing  
6 before an immigration judge, which was held on December 22, 2025.

7 **B. The Petition is Moot.**

8 “Mootness is a threshold jurisdictional issue.” *S. Pac. Transp. Co. v. Pub. Util.*  
9 *Comm’n of State of Or.*, 9 F.3d 807, 810 (9th Cir. 1993). The doctrine of mootness  
10 ensures a federal court presides only over those actions that present “a case or  
11 controversy under Article III, § 2 of the Constitution.” *Spencer v. Kemna*, 523 U.S. 1,  
12 7, 118 S. Ct. 978, 140 L.Ed.2d 43 (1998). An action is moot when a litigant no longer  
13 has “a personal stake in the outcome of the suit throughout ‘all stages of federal judicial  
14 proceedings.’ ” *Abdala v. I.N.S.*, 488 F.3d 1061, 1063 (9th Cir. 2007) (quoting *United*  
15 *States v. Verdin*, 243 F.3d 1174, 1177 (9th Cir. 2001)). If an event occurs “that prevents  
16 the court from granting effective relief, the claim is moot and must be dismissed.” *Am.*  
17 *Rivers v. Nat’l Marine Fisheries Serv.*, 126 F.3d 1118, 1123 (9th Cir. 1997).

18 An individual may seek habeas relief under 28 U.S.C. § 2241 if he is “in custody”  
19 under federal authority “in violation of the Constitution or laws or treaties of the United  
20 States.” 28 U.S.C. § 2241(c). Habeas relief is available to challenge only the legality or  
21 duration of confinement. *Pinson v. Carvajal*, 69 F.4th 1059, 1067 (9th Cir. 2023);  
22 *Crawford v. Bell*, 599 F.2d 890, 891 (9th Cir. 1979); *Dep’t of Homeland Security v.*  
23 *Thraissigiam*, 591 U.S. 103, 117 (2020) (The writ of habeas corpus historically  
24 “provide[s] a means of contesting the lawfulness of restraint and securing release.”).  
25 “[O]ur review of the history and purpose of habeas leads us to conclude the relevant  
26 question is whether, based on the allegations in the petition, release is *legally required*  
27 irrespective of the relief requested.” *Pinson*, 69 F.4th at 1072 (emphasis in original);  
28 *see also Nettles v. Grounds*, 830 F.3d 922, 934 (9th Cir. 2016) (The key inquiry is

1 whether success on the petitioner’s claim would “necessarily lead to immediate or  
2 speedier release.”).

3 The sole relief sought by the Petition filed in this matter was Petitioner’s release  
4 from detention, or alternatively, a bond hearing. *See* ECF No. 1 “Request for Relief.”  
5 Petitioner will be released from custody upon posting bond. To the extent that Petitioner  
6 brought claims that do not arise under § 2241, this Petition should be dismissed. Any  
7 additional order from this Court at this juncture would be superfluous. Because there  
8 are no remaining claims to be ruled upon, dismissal is appropriate.

### 9 **C. Petitioner’s Improper Habeas Claims**

10 To the extent Petitioner asserts claims regarding the commencement of removal  
11 proceedings and relief applications (including adjustment of status), such claims are  
12 improper. An individual may seek habeas relief under 28 U.S.C. § 2241 if he is “in  
13 custody” under federal authority “in violation of the Constitution or laws or treaties of  
14 the United States.” 28 U.S.C. § 2241(c). But habeas relief is available to challenge only  
15 the legality or duration of confinement. *Pinson v. Carvajal*, 69 F.4th 1059, 1067 (9th  
16 Cir. 2023); *Crawford v. Bell*, 599 F.2d 890, 891 (9th Cir. 1979); *Dep’t of Homeland*  
17 *Security v. Thraissigiam*, 591 U.S. 103, 117 (2020) (The writ of habeas corpus  
18 historically “provide[s] a means of contesting the lawfulness of restraint and securing  
19 release.”). The Ninth Circuit squarely explained how to decide whether a claim sounds  
20 in habeas jurisdiction: “[O]ur review of the history and purpose of habeas leads us to  
21 conclude the relevant question is whether, based on the allegations in the petition,  
22 release is *legally required* irrespective of the relief requested.” *Pinson*, 69 F.4th at 1072  
23 (emphasis in original); *see also Nettles v. Grounds*, 830 F.3d 922, 934 (9th Cir. 2016)  
24 (The key inquiry is whether success on the petitioner’s claim would “necessarily lead  
25 to immediate or speedier release.”). Here, a review of such claims would not  
26 automatically entitle Petitioner to release from detention. *See Guselnikov v. Noem*, No.  
27 25-cv-1971-BTM-KSC, 2025 WL 2300783, at \*1 (S.D. Cal. Aug. 8, 2025) (finding  
28 petitioners’ claims did not arise under § 2241 because they were not arguing they were

1 unlawfully in custody and receiving the requested relief would not entitle them to  
2 release); *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).

#### 6 **D. Claims and Requested Relief Jurisdictionally Barred**

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

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

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

7 Other courts have held, “[f]or the purposes of § 1252, the Attorney General  
8 commences proceedings against an alien when the alien is issued a Notice to Appear  
9 before an immigration court.” *Herrera-Correra v. United States*, No. 08-2941 DSF  
10 (JCx), 2008 WL 11336833, at \*3 (C.D. Cal. Sept. 11, 2008). “The Attorney General  
11 may arrest the alien against whom proceedings are commenced and detain that  
12 individual until the conclusion of those proceedings.” *Id.* at \*3. “Thus, an alien’s  
13 detention throughout this process arises from the Attorney General’s decision to  
14 commence proceedings” and review of claims arising from such detention is barred  
15 under § 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007)); *Wang*,  
16 2010 WL 11463156, at \*6; 8 U.S.C. § 1252(g).

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

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

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

27 In evaluating the reach of subsections (a)(5) and (b)(9), the Second Circuit has  
28 explained that jurisdiction turns on the substance of the relief sought. *Delgado v.*

1 *Quarantillo*, 643 F.3d 52, 55 (2d Cir. 2011). Those provisions divest district courts of  
2 jurisdiction to review both direct and indirect challenges to removal orders, including  
3 decisions to detain for purposes of removal or for proceedings. *See Jennings*, 583 U.S.  
4 at 294–95 (section 1252(b)(9) includes challenges to the “decision to detain [an alien]  
5 in the first place or to seek removal[.]”).

6 Here, Petitioner challenges the government’s decision and action to detain, which  
7 arises from DHS’s decision to commence removal proceedings, and is thus an “action  
8 taken . . . to remove [him] from the United States.” *See* 8 U.S.C. § 1252(b)(9); *see also*,  
9 *e.g.*, *Jennings*, 583 U.S. at 294–95; *Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir.  
10 2020) (finding that 8 U.S.C. § 1226(e) did not bar review in that case because the  
11 petitioner did not challenge “his initial detention”); *Saadulloev v. Garland*, No. 3:23-  
12 CV-00106, 2024 WL 1076106, at \*3 (W.D. Pa. Mar. 12, 2024) (recognizing that there  
13 is no judicial review of the threshold detention decision, which flows from the  
14 government’s decision to “commence proceedings”).

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

#### 16 **E. Administrative Procedure Claims Are Without Merit**

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

1 administrative agency.” *Wild Fish Conservancy v. Jewell*, 730 F.3d 791, 800–01 (9th  
2 Cir. 2013) (quoting *Fund for Animals, Inc. v. U.S. Bureau of Land Management*, 460  
3 F.3d 13, 19 (D.C. Cir. 2006)).

4 Here, it is not altogether clear what final agency action Petitioner seeks review  
5 over. Importantly, habeas relief is available to challenge only the legality or duration of  
6 confinement. *Pinson*, 69 F.4th at 1067; *see also Flores-Miramontes*, 212 F.3d at 1140  
7 (“For purposes of immigration law, at least, ‘judicial review’ refers to petitions for  
8 review of agency actions, which are governed by the Administrative Procedure Act,  
9 while habeas corpus refers to habeas petitions brought directly in district court to  
10 challenge illegal confinement.”). The Court should therefore reject Petitioner’s APA  
11 claim. *See* Petition at ¶ 36.

#### 12 IV. CONCLUSION

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

15  
16 DATED: December 22, 2025

Respectfully submitted,

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