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UNITED STATES DISTRICT COURT

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SOUTHERN DISTRICT OF CALIFORNIA

11

CRISTIAN SUAREZ ARTUNA,

Case No.: 25-cv-3627-CAB-KSC

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Petitioner,

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v.

**RESPONDENTS' RETURN TO
HABEAS PETITION**

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CHRISTOPHER J. LAROSE, et al.,

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Respondents.

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

2 Petitioner has filed a habeas petition under 28 U.S.C. § 2241, seeking a bond
3 hearing or immediate release from civil immigration custody. Petitioner is an “arriving
4 alien” currently in removal proceedings under 8 U.S.C. § 1229a and is charged with
5 inadmissibility under 8 U.S.C. § 1182(a)(7)(i)(I), as an immigrant not in possession of
6 a valid entry document. While the Department of Homeland Security temporarily
7 paroled Petitioner into the country in April 2024, that grant of parole expired in April
8 2025, and his status as an arriving alien is unaffected by the grant of parole.
9 Accordingly, Petitioner is mandatorily detained in Immigration and Customs
10 Enforcement (ICE) custody pursuant to 8 U.S.C. § 1225(b)(2). The Court should
11 dismiss the Petition.

12 **II. FACTUAL AND PROCEDURAL BACKGROUND¹**

13 Petitioner is a citizen and national of Colombia. ECF No. 1 at 2.² On or about
14 April 14, 2024, Petitioner applied for admission at the Laredo, Texas, Port of Entry. *Id.*
15 He was determined to be an arriving alien applying for admission and inadmissible
16 under 8 U.S.C. § 1182(a)(7)(i)(I), as an immigrant not in possession of a valid entry
17 document. *Id.* He was placed in removal proceedings under 8 U.S.C. § 1229a and issued
18 a Notice to Appear (NTA). Ex. 1. On that day or shortly thereafter, Petitioner was
19 released from DHS custody on parole. ECF No. 1 at 2. That parole was valid until April
20 13, 2025, and thus has now expired. Ex. 2 (Record of I-94 Parole stating “admit until”
21 4/13/2025). In the meantime, Petitioner’s removal proceedings were terminated in
22 August 2024. ECF No. 1 at 2.

23 On June 29, 2025, Petitioner was encountered and detained by military police at
24 the main gate of a United States Marine Corps facility for not having a driver’s license
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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 number appearing in the
header of each ECF-filed document.

1 while operating a motor vehicle. Ex. 3 (Form I-213, Record of Deportable/Inadmissible
2 Alien). The military police contacted ICE Enforcement and Removal Operations
3 (ERO), who took Petitioner into custody after he admitted that he did not have any
4 documents that allow him to live in or visit the United States. *Id.* Petitioner was issued
5 another Notice to Appear and placed in new removal proceedings under 8 U.S.C.
6 § 1229a. Ex. 4. On July 28, 2025, he was issued a Form I-261 regarding his charges of
7 inadmissibility and clarifying his status as an “arriving alien.” Ex. 5. As an arriving
8 alien charged with inadmissibility under 8 U.S.C. § 1182(a)(7)(i)(I) (an immigrant not
9 in possession of a valid unexpired immigrant visa, reentry permit, border crossing card,
10 or other valid entry document), Petitioner is mandatorily detained pursuant to 8 U.S.C.
11 § 1225(b)(2). He remains detained at the Otay Mesa Detention Center while his
12 removal case proceeds.

13 **III. ARGUMENT**

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

15 Petitioner bears the burden of establishing that this Court has subject matter
16 jurisdiction over asserted claims. *See Ass’n of Am. Med. Coll. v. United States*, 217 F.3d
17 770, 778-79 (9th Cir. 2000); *Finley v. United States*, 490 U.S. 545, 547-48 (1989).

18 In general, courts lack jurisdiction to review a decision to commence or
19 adjudicate removal proceedings or execute removal orders. *See* 8 U.S.C. § 1252(g)
20 (“[N]o court shall have jurisdiction to hear any cause or claim by or on behalf of any
21 alien arising from the decision or action by the Attorney General to commence
22 proceedings, adjudicate cases, or execute removal orders.”); *Reno v. Am.-Arab Anti-*
23 *Discrimination Comm.*, 525 U.S. 471, 483 (1999) (“There was good reason for
24 Congress to focus special attention upon, and make special provision for, judicial
25 review of the Attorney General’s discrete acts of ‘commenc[ing] proceedings,
26 adjudicat[ing] cases, [and] execut[ing] removal orders’—which represent the initiation
27 or prosecution of various stages in the deportation process.”); *Limpin v. United States*,
28 828 Fed. App’x 429 (9th Cir. 2020) (holding district court properly dismissed under 8

1 U.S.C. § 1252(g) “because claims stemming from the decision to arrest and detain an
2 alien at the commencement of removal proceedings are not within any court’s
3 jurisdiction”). In other words, § 1252(g) removes district court jurisdiction over “three
4 discrete actions that the Attorney General may take: her ‘decision or action’ to
5 ‘commence proceedings, adjudicate cases, or execute removal orders.’” *Reno*, 525 U.S.
6 at 482 (emphasis removed). Congress has explicitly foreclosed district court jurisdiction
7 over claims that necessarily arise “from the decision or action by the Attorney General
8 to commence proceedings [and] adjudicate cases[.]” 8 U.S.C. § 1252(g).

9 Section 1252(g) also bars district courts from hearing challenges to the method
10 by which the government chooses to commence removal proceedings, including the
11 decision to detain an alien pending removal. *See Alvarez v. ICE*, 818 F.3d 1194, 1203
12 (11th Cir. 2016) (“By its plain terms, [§ 1252(g)] bars us from questioning ICE’s
13 discretionary decisions to commence removal” and bars review of “ICE’s decision to
14 take [plaintiff] into custody and to detain him during his removal proceedings”).

15 Other courts have held, “[f]or the purposes of § 1252, the Attorney General
16 commences proceedings against an alien when the alien is issued a Notice to Appear
17 before an immigration court.” *Herrera-Correra v. United States*, No. 08-2941 DSF
18 (JCx), 2008 WL 11336833, at *3 (C.D. Cal. Sept. 11, 2008). “The Attorney General
19 may arrest the alien against whom proceedings are commenced and detain that
20 individual until the conclusion of those proceedings.” *Id.* at *3. “Thus, an alien’s
21 detention throughout this process arises from the Attorney General’s decision to
22 commence proceedings” and review of claims arising from such detention is barred
23 under § 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007)); *Wang*,
24 2010 WL 11463156, at *6; 8 U.S.C. § 1252(g).

25 Moreover, under 8 U.S.C. § 1252(b)(9), “[j]udicial review of all questions of law
26 and fact . . . arising from any action taken or proceeding brought to remove an alien
27 from the United States under this subchapter shall be available only in judicial review
28 of a final order under this section.” (emphasis added). Further, judicial review of a final

1 order is available only through “a petition for review filed with an appropriate court of
2 appeals.” 8 U.S.C. § 1252(a)(5). The Supreme Court has made clear that § 1252(b)(9)
3 is “the unmistakable ‘zipper’ clause,” channeling “judicial review of all” “decisions and
4 actions leading up to or consequent upon final orders of deportation,” including “non-
5 final order[s],” into proceedings before a court of appeals. *Reno*, 525 U.S. at 483, 485;
6 *see J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (noting § 1252(b)(9) is
7 “breathtaking in scope and vise-like in grip and therefore swallows up virtually all
8 claims that are tied to removal proceedings”). “Taken together, § 1252(a)(5) and
9 § 1252(b)(9) mean that *any* issue—whether legal or factual—arising from *any* removal-
10 related activity can be reviewed *only* through the [petition for review] PFR process.”
11 *J.E.F.M.*, 837 F.3d at 1031 (emphasis in original) (“[W]hile these sections limit *how*
12 immigrants can challenge their removal proceedings, they are not jurisdiction-stripping
13 statutes that, by their terms, foreclose *all* judicial review of agency actions. Instead, the
14 provisions channel judicial review over final orders of removal to the courts of appeal.”)
15 (emphasis in original); *see id.* at 1035 (“§§ 1252(a)(5) and [(b)(9)] channel review of
16 all claims, including policies-and-practices challenges . . . whenever they ‘arise from’
17 removal proceedings”).

18 Critically, “1252(b)(9) is a judicial channeling provision, not a claim-barring
19 one.” *Aguilar v. ICE*, 510 F.3d 1, 11 (1st Cir. 2007). Indeed, 8 U.S.C. § 1252(a)(2)(D)
20 provides that “[n]othing . . . in any other provision of this chapter . . . shall be construed
21 as precluding review of constitutional claims or questions of law raised upon a petition
22 for review filed with an appropriate court of appeals in accordance with this section.”
23 *See also Ajlani v. Chertoff*, 545 F.3d 229, 235 (2d Cir. 2008) (“[J]urisdiction to review
24 such claims is vested exclusively in the courts of appeals[.]”). The petition-for-review
25 process before the court of appeals ensures that noncitizens have a proper forum for
26 claims arising from their immigration proceedings and “receive their day in court.”
27 *J.E.F.M.*, 837 F.3d at 1031–32 (internal quotations omitted); *see also Rosario v. Holder*,
28 627 F.3d 58, 61 (2d Cir. 2010) (“The REAL ID Act of 2005 amended the [INA] to

1 obviate . . . Suspension Clause concerns” by permitting judicial review of
2 “nondiscretionary” BIA determinations and “all constitutional claims or questions of
3 law.”). These provisions divest district courts of jurisdiction to review both direct and
4 indirect challenges to removal orders, including decisions to detain for purposes of
5 removal or for proceedings. *See Jennings*, 583 U.S. at 294–95 (section 1252(b)(9)
6 includes challenges to the “decision to detain [an alien] in the first place or to seek
7 removal”).

8 In evaluating the reach of subsections (a)(5) and (b)(9), the Second Circuit has
9 explained that jurisdiction turns on the substance of the relief sought. *Delgado v.*
10 *Quarantillo*, 643 F.3d 52, 55 (2d Cir. 2011). Those provisions divest district courts of
11 jurisdiction to review both direct and indirect challenges to removal orders, including
12 decisions to detain for purposes of removal or for proceedings. *See Jennings*, 583 U.S.
13 at 294–95 (section 1252(b)(9) includes challenges to the “decision to detain [an alien]
14 in the first place or to seek removal[.]”).

15 Here, Petitioner challenges the government’s decision and action to detain, which
16 arises from DHS’s decision to commence removal proceedings, and is thus an “action
17 taken . . . to remove [him/her] from the United States.” *See* 8 U.S.C. § 1252(b)(9); *see*
18 *also, e.g., Jennings*, 583 U.S. at 294–95; *Velasco Lopez v. Decker*, 978 F.3d 842, 850
19 (2d Cir. 2020) (finding that 8 U.S.C. § 1226(e) did not bar review in that case because
20 the petitioner did not challenge “his initial detention”); *Saadulloev v. Garland*, No.
21 3:23-CV-00106, 2024 WL 1076106, at *3 (W.D. Pa. Mar. 12, 2024) (recognizing that
22 there is no judicial review of the threshold detention decision, which flows from the
23 government’s decision to “commence proceedings”). Meanwhile, Petitioner also claims
24 that the circumstances of his arrest and placement into removal proceedings violated
25 the Fourth and Fifth Amendments, and he asks the Court to order his immediate release
26 on that basis. But allegations of constitutional violations in removal cases “belong in
27 front of an Immigration Judge, not a federal district court.” *See Marvan v. Slaughter*,
28 No. CV 25-49-H-DLC, 2025 WL 1940043, at *3 (D. Mont. July 15, 2025) (denying

1 habeas petition challenging detention based on Fourth Amendment violations for lack
2 of subject matter jurisdiction). Petitioner is permitted to bring motions within his
3 removal proceedings based on alleged Fourth and Fifth Amendment violations; should
4 the IJ ultimately issue him a final order of removal, he may seek review in accordance
5 with the procedures described above. Petitioner cannot simply “bypass the immigration
6 courts and proceed directly to district court. Instead, [he] must exhaust the
7 administrative process before [he] can access the federal courts.” *Id.* at *4 (quoting
8 J.E.F.M., 837 F.3d at 1029).

9 Accordingly, this Court lacks jurisdiction over this petition under 8 U.S.C.
10 § 1252. *See Acxel S.Q.D.C. v. Bondi*, No. 25-3348 (PAM/DLM), 2025 U.S. Dist.
11 LEXIS 175957 (D. Minn. Sept. 9, 2025).³

12 **B. Petitioner is Lawfully Detained**

13 Even if this Court assumes jurisdiction over this matter, Petitioner’s claims for
14 alleged statutory and constitutional violations fail because he is subject to mandatory
15 detention under 8 U.S.C. § 1225.

16 While Petitioner was previously released from custody on parole, his parole was
17 only valid until April 13, 2025 and terminated on the expiration date. When Petitioner
18 was detained on June 29, 2025, he was served with a Notice to Appear, which also
19 served to terminate his parole status. *See* 8 CFR § 212.5(e)(2)(i) (“When a charging
20 document is served on the alien, the charging document will constitute written notice
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22 ³ On an alternative basis, the Court should deny the Petition for failure to exhaust
23 administrative remedies. The Ninth Circuit requires that “habeas petitioners exhaust
24 available judicial and administrative remedies before seeking relief under § 2241.”
25 *Castro-Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001). “When a petitioner does
26 not exhaust administrative remedies, a district court ordinarily should either dismiss the
27 petition without prejudice or stay the proceedings until the petitioner has exhausted
28 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 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 of termination of parole”). The termination and expiration of Petitioner’s parole
2 emphasizes his status as an applicant for admission, subject to mandatory detention
3 under 8 U.S.C. § 1225(b)(2). *See* 8 U.S.C. § 1182(d)(5)(A) (“ . . . *such parole of such*
4 *alien shall not be regard as an admission* of the alien and when the purposes of such
5 parole shall . . . have been served the alien shall forthwith return or be return to the
6 custody from which he was paroled and thereafter his case shall continue to be dealt
7 with in the same manner as that of any other *applicant for admission* to the United
8 States”) (emphasis added).

9 Furthermore, discretionary decisions under section 1226—such as the Attorney
10 General’s revocation of parole—are not subject to judicial review. 8 U.S.C. § 1226(e)
11 (“No court may set aside any action or decision by the Attorney General under this
12 section regarding the detention of any alien or the revocation or denial of bond or
13 parole.”); *Demore v. Kim*, 538 U.S. 510, 531 (2003) (“Detention during removal
14 proceedings is a constitutionally permissible part of that process.”). As Petitioner
15 challenges the decision to remand him back into custody, his claim is barred by section
16 1226(e). *See Jennings v. Rodriguez*, 583 U.S. 281, 295 (2018) (“As we have previously
17 explained, § 1226(e) precludes an alien from ‘challeng[ing] a “discretionary judgment”
18 by the Attorney General or a “decision” that the Attorney General has made regarding
19 his detention or release.’ But § 1226(e) does not preclude ‘challenges [to] the statutory
20 framework that permits [the alien’s] detention without bail.’”).

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

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

7 Because Petitioner is properly detained under section 1225, he cannot show
8 entitlement to relief.

9 **IV. CONCLUSION**

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

12 DATED: December 23, 2025

Respectfully submitted,

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15 *s/ Betsey Boutelle*
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