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10 **UNITED STATES DISTRICT COURT**

11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 SELIM KIRBOGA,

13 Petitioner,

14 v.
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16 CHRISTOPHER LAROSE, *et al.*,

17 Respondents.
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Case No.: 25-cv-3706-GPC-DDL

RESPONSE TO PETITION

1 On July 8, 2025, the Department of Homeland Security (“DHS”) instituted a notice
2 titled “Interim Guidance Regarding Detention Authority for Applicants for Admission”
3 (the “Notice”) requiring, in general, that anyone arrested in the United States and charged
4 with being inadmissible to be considered an “applicant for admission” under 8 U.S.C.
5 § 1225(b)(2)(A), subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and not
6 subject to detention under 8 U.S.C. § 1226(a).

7 In *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d
8 ---, 2025 WL 3289861 (C.D. Cal. Nov. 20, 2025), the district court declared the Notice
9 unlawful under the Administrative Procedures Act but did not issue a final judgment. On
10 December 18, 2025, however, the *Bautista* court entered final judgement. *Bautista*, ECF
11 No. 94. Accordingly, Respondents acknowledge that Petitioner is detained under 8 U.S.C.
12 § 1226(a) and is entitled to an order from this Court directing a bond hearing be held
13 pursuant to 8 U.S.C. § 1226(a).¹

14 Respondents reserve the right to supplement this response in the event of a stay of
15 enforcement of the *Bautista* final judgment, appellate relief, or a change in DHS policy.

16 To the extent Petitioner’s petition asserts claims regarding expedited removal
17 proceedings, termination of proceedings, and the commencement of removal proceedings,
18 such claims are improper habeas claims. An individual may seek habeas relief under 28
19 U.S.C. § 2241 if he is “in custody” under federal authority “in violation of the Constitution
20 or laws or treaties of the United States.” 28 U.S.C. § 2241(c). But habeas relief is available
21 to challenge only the legality or duration of confinement. *Pinson v. Carvajal*, 69 F.4th
22 1059, 1067 (9th Cir. 2023); *Crawford v. Bell*, 599 F.2d 890, 891 (9th Cir. 1979); *Dep’t of*
23 *Homeland Security v. Thraissigiam*, 591 U.S. 103, 117 (2020) (The writ of habeas corpus
24 historically “provide[s] a means of contesting the lawfulness of restraint and securing
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27 ¹ Respondents also acknowledge that Petitioner was previously released from DHS
28 custody an order of recognizance (OREC), issued under 8 U.S.C. § 1226(a), in June 2024.
See ECF No. 1-2.

1 release.”). The Ninth Circuit squarely explained how to decide whether a claim sounds in
2 habeas jurisdiction: “[O]ur review of the history and purpose of habeas leads us to conclude
3 the relevant question is whether, based on the allegations in the petition, release is *legally*
4 *required* irrespective of the relief requested.” *Pinson*, 69 F.4th at 1072 (emphasis in
5 original); *see also Nettles v. Grounds*, 830 F.3d 922, 934 (9th Cir. 2016) (The key inquiry
6 is whether success on the petitioner’s claim would “necessarily lead to immediate or
7 speedier release.”). Here, a review of such claims would not automatically entitle Petitioner
8 to release from detention. *See Guselnikov v. Noem*, No. 25-cv-1971-BTM-KSC, 2025 WL
9 2300873, at *1 (S.D. Cal. Aug. 8, 2025) (finding petitioners’ claims did not arise under
10 § 2241 because they were not arguing they were unlawfully in custody and receiving the
11 requested relief would not entitle them to release); *Giron Rodas v. Lyons*, No. 25cv1912-
12 LL-AHG, 2025 WL 2300781, at *3 (S.D. Cal. Aug. 1, 2025) (“Like in *Pinson*, the Court
13 lacks jurisdiction over Petitioner’s § 2241 habeas petition since it cannot be fairly read as
14 attacking ‘the legality or duration of confinement.’”) (quoting *Pinson*, 69 F.4th at 1065).

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

8 Moreover, under 8 U.S.C. § 1252(b)(9), “[j]udicial review of all questions of law
9 and fact . . . arising from any action taken or proceeding brought to remove an alien from
10 the United States under this subchapter shall be available only in judicial review of a final
11 order under this section.” Judicial review of a final order in removal proceedings is
12 available only through “a petition for review filed with an appropriate court of appeals.”
13 8 U.S.C. § 1252(a)(5). Further, the Supreme Court has made clear that § 1252(b)(9) is
14 “the unmistakable ‘zipper’ clause,” channeling “judicial review of all” “decisions and
15 actions leading up to or consequent upon final orders of deportation,” including “non-
16 final order[s],” into proceedings before a court of appeals. *Reno*, 525 U.S. at 483, 485;
17 see *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (noting § 1252(b)(9) is
18 “breathtaking in scope and vise-like in grip and therefore swallows up virtually all claims
19 that are tied to removal proceedings”). “Taken together, § 1252(a)(5) and § 1252(b)(9)
20 mean that any issue—whether legal or factual—arising from any removal-related activity
21 can be reviewed *only* through the [petition for review] PFR process.” *J.E.F.M.*, 837 F.3d
22 at 1031 (“[W]hile these sections limit *how* immigrants can challenge their removal
23 proceedings, they are not jurisdiction-stripping statutes that, by their terms, foreclose *all*
24 judicial review of agency actions. Instead, the provisions channel judicial review over
25 final orders of removal to the courts of appeal.”) (emphasis in original); see *id.* at 1035
26 (“§§ 1252(a)(5) and [(b)(9)] channel review of all claims, including policies-and-
27 practices challenges . . . whenever they ‘arise from’ removal proceedings”).

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

14 Here, the termination of proceedings and commencement of proceedings are issues
15 clearly arising from a removal-related activity which the Ninth Circuit has explained can
16 only be reviewed through the petition for review process. *See J.E.F.M.*, 837 F.3d at 1031.
17 (Taken together, § 1252(a)(5) and § 1252(b)(9) mean that *any* issue—whether legal or
18 factual—arising from *any* removal-related activity can be reviewed *only* through the
19 [petition for review] PFR process.”).

20 Importantly, Petitioner is currently in removal proceedings under 8 U.S.C. § 1229a,
21 within which he has the opportunity to apply for relief from removal before an immigration
22 judge, including asylum under 8 U.S.C. § 1158, withholding of removal under 8 U.S.C.
23 § 1231(b)(3), and relief under the Convention Against Torture.

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