

1 ADAM GORDON
United States Attorney
2 LAURA C. SAMBATARO
Assistant United States Attorney
3 Maryland Bar
Office of the U.S. Attorney
4 880 Front Street, Room 6293
San Diego, CA 92101-8893
5 Telephone(619) 546-9613
Email: laura.sambataro@usdoj.gov

6 Attorneys for Respondents
7
8

9 **UNITED STATES DISTRICT COURT**

10 **SOUTHERN DISTRICT OF CALIFORNIA**

11
12 KAMAL ABDUL NASIR KAROKHEL,

13 Petitioners,

14 v.

15 CHRISTOPHER LAROSE, et. al,

16 Respondents.
17
18
19
20
21
22
23
24
25
26
27
28

Case No.: 25-CV-3751-JLS-KSC

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 However, to the extent Petitioner asserts claims regarding asylum applications and
17 the commencement of removal proceedings, the Court should deny the Petition on those
18 grounds. 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). But habeas relief is available to challenge only the legality
21 or 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 “provide[s]
24 a means of contesting the lawfulness of restraint and securing release.”). The Ninth Circuit

25 _____
26 ¹ To the extent the Court issues an order directing a bond hearing under 1226(a),
27 considering current and forthcoming federal holidays, heavy caseloads, and staffing levels,
28 Respondents respectfully request that such order provide the government 14 days from
issuance to hold such bond hearing.

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

15 Further, courts lack jurisdiction over any claim or cause of action arising from any
16 decision to commence or adjudicate removal proceedings or execute removal orders. *See*
17 8 U.S.C. § 1252(g) (“[N]o court shall have jurisdiction to hear any cause or claim by or on
18 behalf of any alien arising from the decision or action by the Attorney General to *commence*
19 *proceedings, adjudicate cases, or execute removal orders.*”) (emphasis added). Section
20 1252(g) also bars district courts from hearing challenges to the method by which the
21 government chooses to commence removal proceedings, including the decision to detain
22 an alien pending removal. *See Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016) (“By
23 its plain terms, [§ 1252(g)] bars us from questioning ICE’s discretionary decisions to
24 commence removal”).

25 DHS’s decision to revoke Mr. Mirzaie’s parole status and commence removal
26 proceedings are squarely within the sole discretion of the Attorney General. Congress has
27 explicitly foreclosed district court jurisdiction over (“ . . . the decision or action by the
28

1 Attorney General to commence proceedings [and] adjudicate cases”). 8 U.S.C. § 1252(g).
2 Under 8 U.S.C. § 1252(b)(9), “[j]udicial review of all questions of law and fact . . . arising
3 from any action taken or proceeding brought to remove an alien from the United States
4 under this subchapter shall be available only in judicial review of a final order under this
5 section.” Further, judicial review of a final order is available only through “a petition for
6 review filed with an appropriate court of appeals.” 8 U.S.C. § 1252(a)(5).

7 “[A] court should first identify what legal (or factual) question the plaintiff raises
8 and then determine whether that question ‘arises from’ an action taken to remove an alien
9 or removal proceedings.” *Cancino-Castellar v. Nielsen*, 338 F. Supp. 3d 1107, 1115 (S.D.
10 Cal. 2018) (citing *Jennings v. Rodriguez*, 583 U.S. 281, 840 (2018)). Where the relief
11 sought “is the premise of removal proceedings—assessing whether an individual is
12 removable from the United States and the government's evidence on that issue,” the Court
13 should find that it lacks jurisdiction pursuant to Section 1252(b)(9). *Id.*; *Botezatu v. INS*,
14 195 F.3d 311 (7th Cir.1999) (no jurisdiction over challenge to a refusal to grant
15 humanitarian parole instead of enforcing removal order). “Immigration judges shall have
16 exclusive jurisdiction over asylum applications filed by an alien who has been served a . .
17 . Notice to Appear.” 8 C.F.R. § 208.2(b). Removal proceedings commence by the filing of
18 a notice to appear in immigration court. *See Jimenez-Angeles v. Ashcroft*, 291 F.3d 594,
19 600 (9th Cir. 2002). Meaning the filing of the Notice to Appear, which commenced
20 removal proceedings against Petitioner, gave the immigration court exclusive jurisdiction
21 over his asylum application. While Petitioner was previously released from custody,
22 discretionary decisions are not subject to judicial review. *See* 8 CFR § 212.5(e)(2)(i)
23 (“When a charging document is served on the alien, the charging document will constitute
24 written notice of termination of parole”); 8 U.S.C. § 1226(e) (“No court may set aside
25 any action or decision by the Attorney General under this section regarding the detention
26 or any alien or the revocation or denial of bond or parole.”); *Jennings*, 583 at 295 (“As we
27 have previously explained, § 1226(e) precludes an alien from ‘challeng[ing] a
28

1 “discretionary judgment” by the Attorney General or a “decision” that the Attorney
2 General has made regarding his detention or release.””).

3 Accordingly, the Court’s review of this matter should be limited to whether
4 Petitioner is entitled to a bond hearing. Any other claims or rights to relief asserted in the
5 Petition should be denied.

6
7 DATED: December 31, 2025

ADAM GORDON
United States Attorney

8
9 *s/ Laura C. Sambataro*
LAURA C. SAMBATARO

10 Assistant United States Attorney
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28