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

10 VINOD KUMAR,

11 Petitioner,

12 v.

13 PAM BONDI, et al.,

14 Respondents.
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Case No.: 26-cv-00337-RBM-MMP

RETURN TO HABEAS PETITION

I. Introduction

Petitioner is currently detained in Immigration and Customs Enforcement (ICE) custody pursuant to 8 U.S.C. § 1225(b)(2). Petitioner's habeas petition seeks release. Through multiple provisions of 8 U.S.C. § 1252, Congress has stripped federal courts of jurisdiction over challenges to the commencement of removal proceedings, including the consequent detention pending removal proceedings. Moreover, Petitioner's detention is mandated by statute. The Court should deny and dismiss the petition.

II. Factual Background¹

Petitioner is a citizen and national of India. On May 8, 2023, Petitioner applied for entry into the United States at the Lukeville, Arizona Port of Entry. *See* Exhibit (Ex.) 1 at 2-3 (I-213). Petitioner was apprehended by Customs and Border Protection for being an inadmissible alien and released from custody on parole pursuant to 8 U.S.C. § 1182(d)(5) due to a lack of bed space. *Id.* at 3. On July 20, 2023, Petitioner was issued a Notice to Appear (NTA) and removal proceedings were initiated pursuant to Immigration and Nationality Act (INA) §§ 212(a)(6)(A)(i), (7)(A)(i)(I). *See* Ex. 2 at 1, 4 (2023 NTA). Petitioner then applied for Asylum on November 1, 2023. Ex. 1 at 3.

On November 30, 2025, Petitioner was arrested after attempting to enter Marine Corps Base Camp Pendleton while driving for Uber and he was remanded into DHS custody. *Id.* On January 26, 2026, Petitioner was served with a new² NTA and DHS initiated removal proceedings charging Petitioner as inadmissible under 8 U.S.C. § 1182(a)(7)(A)(i)(I), as an alien not in possession of an unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Immigration and Nationality. *See* Ex. 3 (2026 NTA). Petitioner remains detained at the

¹ The attached exhibits are true copies, with redactions of private information, of documents obtained from agency counsel.

² On May 3, 2024, an Immigration Judge terminated the original removal proceedings based on both parties' failure to comply with the briefing schedule and accordingly, finding that DHS failed to adequately support its charges of removability. *See* Ex. 4 (IJ Order). The termination was without prejudice, and DHS has initiated new removal proceedings based on the 2026 NTA. *Id.* Petitioner's next master calendar hearing is scheduled for February 9, 2026.

Otay Mesa Detention Center and is subject to mandatory detention under 8 U.S.C. § 1225(b)(2). *See* Ex. 5 (I-830).

III. Argument

B. Claims and Requested Relief Jurisdictionally Barred

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

Courts lack jurisdiction over any claim or cause of action arising from any decision to commence or adjudicate removal proceedings or execute removal orders. *See* 8 U.S.C. § 1252(g) (“[N]o court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to *commence proceedings, adjudicate cases, or execute removal orders.*”) (emphasis added). Section 1252(g) also bars district courts from hearing challenges to the method by which the government 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 bars review of “ICE’s decision to take [plaintiff] into custody and to detain him during his removal proceedings”).

Removal proceedings commence by the filing of a notice to appear in immigration court. *See Jimenez-Angeles v. Ashcroft*, 291 F.3d 594, 600 (9th Cir. 2002). “The Attorney General may arrest the alien against whom proceedings are commenced and detain that individual until the conclusion of those proceedings.” *Herrera-Correra v. United States*, No. 08-2941 DSF (JCx), 2008 WL 11336833, at *3 (C.D. Cal. Sept. 11, 2008). “[A]n alien’s detention throughout this process arises from the Attorney General’s decision to commence proceedings.” *Id.* (citing *Sissoko v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007)); 8 U.S.C. § 1252(g); *but see Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MMP, 2025 WL 2549431, at *4 (S.D. Cal. Sept. 3, 2025).

Here, Petitioner’s claims arise from his detention during removal proceedings,

1 which stem from the Attorney General’s decision to commence such proceedings. As
 2 such, § 1252(g) bars this Court’s review over Petitioner’s claims. *See S.Q.D.C. v. Bondi*,
 3 No. 25-3348 (PAM/DLM), 2025 WL 2617973, at * 2 (D. Minn. Sept. 9, 2025) (finding
 4 that § 1252(g) jurisdictionally bars review of a petitioner’s challenge to ongoing
 5 detention during removal proceedings).

6 Moreover, under 8 U.S.C. § 1252(b)(9), “[j]udicial review of all questions of law
 7 and fact . . . arising from any action taken or proceeding brought to remove an alien
 8 from the United States under this subchapter shall be available only in judicial review
 9 of a final order under this section.” (emphasis added). While holding that it was
 10 unnecessary to comprehensively address the scope of § 1252(b)(9), the Supreme Court
 11 in *Jennings* provided guidance on the types of challenges that may fall within the scope
 12 of § 1252(b)(9). *See Jennings*, 583 U.S. at 293–94. The Court found that “§ 1252(b)(9)
 13 [did] not present a jurisdictional bar” in situations where “respondents . . . [were] not
 14 challenging the decision to detain them in the first place.” *Id.* at 294–95. In this case,
 15 Petitioner does challenge the government’s decision to detain him in the first place
 16 which is enough to trigger § 1252(b)(9) because “detention is an ‘action taken . . . to
 17 remove’ an alien.” *See Jennings*, 583 U.S. at 319 (emphasis in original); *see also* 8
 18 U.S.C. § 1252(b)(9).

19 The Court should dismiss this matter for lack of jurisdiction under 8 U.S.C.
 20 § 1252. *See S.Q.D.C.*, 2025 WL 2617973.³

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 23 ³ On an alternative basis, the Court should ensure Petitioner properly exhausts
 24 administrative remedies. The Ninth Circuit requires that “habeas petitioners exhaust
 25 available judicial and administrative remedies before seeking relief under § 2241.”
 26 *Castro–Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001). “When a petitioner does
 27 not exhaust administrative remedies, a district court ordinarily should either dismiss the
 28 petition without prejudice or stay the proceedings until the petitioner has exhausted
 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).

B. Petitioner is Lawfully Detained

Petitioner's claims for alleged statutory and constitutional violations fail because he is subject to mandatory detention under 8 U.S.C. § 1225.

While Petitioner was previously released from custody on parole, his parole was terminated. After Petitioner was detained on November 30, 2025, he was served with a new Notice to Appear, which served to terminate his parole status. *See* 8 CFR § 212.5(e)(2)(i) ("When a charging document is served on the alien, the charging document will constitute written notice of termination of parole . . ."). Resultantly, there is no basis to order Petitioner's immediate release from immigration detention based on the argument that he was not provided written notice of the expiration of his humanitarian parole. *See Omer G. G. v. Kaiser*, No. 1:25-CV-01471-KES-SAB (HC), 2025 WL 3254999, *3 n. 6 (E.D. Cal. Nov. 22, 2025) ("Petitioner's claim concerning the regulations is without merit because the regulations governing termination of humanitarian parole provide that '[p]arole shall automatically be terminated without written notice . . . at the expiration of the time for which parole was authorized . . . ' 8 C.F.R. § 212.5(e)(1). As petitioner's parole expired on August 28, 2025, *see* Doc. 1 at 33, petitioner was not entitled to notice under the regulations.").

The termination and expiration of his parole emphasizes his status as an applicant for admission, subject to mandatory detention under 8 U.S.C. § 1225(b)(2). *See* 8 U.S.C. § 1182(d)(5)(A) (" . . . *such parole of such alien shall not be regard as an admission* of the alien and when the purposes of such parole shall . . . have been served the alien shall forthwith return or be return to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other *applicant for admission* to the United States") (emphasis added).

Section 1225(b)(2)(A) requires mandatory detention of "an alien who is *an applicant for admission*, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted[.]" *Chavez v. Noem*, No. 3:25-cv-02325, 2025 WL 2730228, at *4 (S.D. Cal. Sept. 24, 2025)

(quoting 8 U.S.C. § 1225(b)(2)(A)) (emphasis in original). Section 1225(a)(1) “expressly defines that ‘[a]n alien present in the United States who has not been admitted ... shall be deemed for purposes of this Act *an applicant for admission*.’” *Id.* (quoting 8 U.S.C. § 1225(a)(1)) (emphasis in original).

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

Because Petitioner is properly detained under 8 U.S.C. § 1225(b)(2), he cannot show entitlement to relief.

IV. CONCLUSION

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

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Respectfully submitted,

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