

1 **I. Introduction**

2 Petitioner has filed a habeas petition under 28 U.S.C. § 2241. Petitioner is
3 currently in removal proceedings under 8 U.S.C. § 1229a and is charged with
4 deportability/removability under 8 U.S.C. § 1227(a)(1)(B), as an individual who was
5 admitted to the United States but remained for a time longer than permitted by law (i.e.,
6 a visa overstay). As such, Petitioner is detained pursuant to 8 U.S.C. § 1226(a).
7 Petitioner already had a bond hearing before an immigration judge pursuant to 8 U.S.C.
8 § 1226(a) on March 4, 2026, where bond was ultimately denied. Based on the arguments
9 set forth below, the Court should deny any requests for relief and dismiss the petition.

10 **II. Factual Background**

11 Petitioner is a native and citizen of Russia. *See* Exhibit 1 (Notice to Appear). On
12 May 2, 2022, she was admitted into the United States on a nonimmigrant visa. *See id.*
13 On February 19, 2026, Petitioner was apprehended by San Diego ICE/ERO. *See* Exhibit
14 2 (Form I-213). DHS determined that Petitioner is deportable/removable under 8 U.S.C.
15 § 1227(a)(1)(B), as an individual who was admitted to the United States and has
16 remained for a time longer than permitted by law (i.e., a visa overstay). Based on that
17 charge, she was issued a Notice to Appear (NTA) and placed in removal proceedings
18 under 8 U.S.C. § 1229a. Within her removal proceedings, Petitioner can apply for relief
19 from removal before an immigration judge (IJ), including asylum under 8 U.S.C.
20 § 1158, withholding of removal under 8 U.S.C. § 1231(b)(3), relief under the
21 Convention Against Torture.

22 Petitioner is currently detained at the Otay Mesa Detention Center under 8 U.S.C.
23 § 1226(a). A bond hearing pursuant to 8 U.S.C. § 1226(a) was held for Petitioner on
24 March 4, 2026, before an IJ, where bond was ultimately denied. *See* Exhibit 3 (IJ Order
25 Denying Bond). Petitioner has until April 3, 2026 to appeal the denial of her bond to
26 the Board of Immigration Appeals (BIA). *See id.* As of today, Petitioner has not filed
27 an appeal before the BIA as to his denial of bond.

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1 **III. Argument**

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

3 Section 1226 provides for arrest and detention “pending a decision on whether
4 the alien is to be removed from the United States.” 8 U.S.C. § 1226(a). Under § 1226(a),
5 the government may detain an alien during her removal proceedings, release her on
6 bond, or release her on conditional parole. By regulation, immigration officers can
7 release aliens upon demonstrating that the alien “would not pose a danger to property
8 or persons” and “is likely to appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8).
9 An alien can also request a custody redetermination (i.e., a bond hearing) by an IJ at
10 any time before a final order of removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§
11 236.1(d)(1), 1236.1(d)(1), 1003.19.

12 As set forth above, on February 19, 2026, Petitioner was apprehended and
13 detained pursuant to 8 U.S.C. § 1226(a). DHS determined that Petitioner is
14 deportable/removable under 8 U.S.C. § 1227(a)(1)(B), as an individual who was
15 admitted to the United States but remained for a time longer than permitted by law (i.e.,
16 a visa overstay). Based on that charge, she was issued a Notice to Appear (NTA) and
17 placed in removal proceedings under 8 U.S.C. § 1229a. As such, Petitioner is detained
18 pursuant to 8 U.S.C. § 1226(a). Accordingly, Petitioner is entitled to a bond hearing
19 before an immigration judge, which was held on March 4, 2026. Petitioner was denied
20 bond by the IJ. Therefore, Petitioner remains detained.

21 **B. Petitioner’s Expedited Removal and Re-Detention Claims Are Unfounded**

22 The Constitution limits federal judicial power to designated “cases” and
23 “controversies.” U.S. Const., art. III, § 2; *see also SEC v. Med. Comm. for Human*
24 *Rights*, 404 U.S. 403, 407 (1972) (federal courts may only entertain matters that present
25 a “case” or “controversy” within the meaning of Article III). “Absent a real and
26 immediate threat of future injury there can be no case or controversy, and thus no Article
27 III standing for a party seeking injunctive relief.” *Wilson v. Brown*, No. 05-cv-1774-
28 BAS-MDD, 2015 WL 8515412, at *3 (S.D. Cal. Dec. 11, 2015) (citing *Friends of the*

1 *Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 190 (2000) (“[I]n a
2 lawsuit brought to force compliance, it is the plaintiff’s burden to establish standing by
3 demonstrating that, if unchecked by the litigation, the defendant’s allegedly wrongful
4 behavior will likely occur or continue, and that the threatened injury is certainly
5 impending.”) (simplified)). At the “irreducible constitutional minimum,” standing
6 requires that a petitioner demonstrate the following: (1) an injury in fact (2) that is fairly
7 traceable to the challenged action of the United States and (3) likely to be redressed by
8 a favorable decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992).

9 Here, Petitioner’s asserts in her petition claims and allegations concerning
10 revocation of release. Petitioner’s February 19, 2026 apprehension was her first DHS
11 apprehension, so there was no prior release to revoke. As such, there is no controversy
12 concerning re-detention/release for this Court to resolve. Federal courts do not have
13 jurisdiction “to give opinions upon moot questions or abstract propositions, or to declare
14 principles or rules of law which cannot affect the matter in issue in the case before it.”
15 *Church of Scientology of Cal. v. United States*, 506 U.S. 9, 12 (1992) (internal
16 quotations and citations omitted). “A claim is moot if it has lost its character as a present,
17 live controversy.” *Am. Rivers v. Nat’l Marine Fisheries Serv.*, 126 F.3d 1118, 1123 (9th
18 Cir. 1997) (citation omitted).

19 **C. Petitioner’s Improper Habeas Claims**

20 To the extent Petitioner asserts claims regarding the commencement of removal
21 proceedings and relief applications (including adjustment of status), such claims are
22 improper. An individual may seek habeas relief under 28 U.S.C. § 2241 if he is “in
23 custody” under federal authority “in violation of the Constitution or laws or treaties of
24 the United States.” 28 U.S.C. § 2241(c). But habeas relief is available to challenge only
25 the legality or duration of confinement. *Pinson v. Carvajal*, 69 F.4th 1059, 1067 (9th
26 Cir. 2023); *Crawford v. Bell*, 599 F.2d 890, 891 (9th Cir. 1979); *Dep’t of Homeland*
27 *Security v. Thraissigiam*, 591 U.S. 103, 117 (2020) (The writ of habeas corpus
28 historically “provide[s] a means of contesting the lawfulness of restraint and securing

1 release.”). The Ninth Circuit squarely explained how to decide whether a claim sounds
2 in habeas jurisdiction: “[O]ur review of the history and purpose of habeas leads us to
3 conclude the relevant question is whether, based on the allegations in the petition,
4 release is *legally required* irrespective of the relief requested.” *Pinson*, 69 F.4th at 1072
5 (emphasis in original); *see also Nettles v. Grounds*, 830 F.3d 922, 934 (9th Cir. 2016)
6 (The key inquiry is whether success on the petitioner’s claim would “necessarily lead
7 to immediate or speedier release.”). Here, a review of such claims would not
8 automatically entitle Petitioner to release from detention. *See Guselnikov v. Noem*, No.
9 25-cv-1971-BTM-KSC, 2025 WL 2300783, at *1 (S.D. Cal. Aug. 8, 2025) (finding
10 petitioners’ claims did not arise under § 2241 because they were not arguing they were
11 unlawfully in custody and receiving the requested relief would not entitle them to
12 release); *Giron Rodas v. Lyons*, No. 25cv1912-LL-AHG, 2025 WL 2300781, at *3
13 (S.D. Cal. Aug. 1, 2025) (“Like in *Pinson*, the Court lacks jurisdiction over Petitioner’s
14 § 2241 habeas petition since it cannot be fairly read as attacking ‘the legality or duration
15 of confinement.’”) (quoting *Pinson*, 69 F.4th at 1065).

16 **D. Claims and Requested Relief Jurisdictionally Barred**

17 Petitioner bears the burden of establishing that this Court has subject matter
18 jurisdiction over asserted claims. *See Ass’n of Am. Med. Coll. v. United States*, 217 F.3d
19 770, 778-79 (9th Cir. 2000); *Finley v. United States*, 490 U.S. 545, 547-48 (1989).

20 In general, courts lack jurisdiction to review a decision to commence or
21 adjudicate removal proceedings or execute removal orders. *See* 8 U.S.C. § 1252(g)
22 (“[N]o court shall have jurisdiction to hear any cause or claim by or on behalf of any
23 alien arising from the decision or action by the Attorney General to commence
24 proceedings, adjudicate cases, or execute removal orders.”); *Reno v. Am.-Arab Anti-*
25 *Discrimination Comm.*, 525 U.S. 471, 483 (1999) (“There was good reason for
26 Congress to focus special attention upon, and make special provision for, judicial
27 review of the Attorney General’s discrete acts of “commenc[ing] proceedings,
28 adjudicat[ing] cases, [and] execut[ing] removal orders”—which represent the initiation

1 or prosecution of various stages in the deportation process.”); *Limpin v. United States*,
2 828 Fed. App’x 429 (9th Cir. 2020) (holding district court properly dismissed under 8
3 U.S.C. § 1252(g) “because claims stemming from the decision to arrest and detain an
4 alien at the commencement of removal proceedings are not within any court’s
5 jurisdiction”). In other words, § 1252(g) removes district court jurisdiction over “three
6 discrete actions that the Attorney may take: [his] ‘decision or action’ to ‘commence
7 proceedings, adjudicate cases, or execute removal orders.’” *Reno*, 525 U.S. at 482
8 (emphasis removed). Congress has explicitly foreclosed district court jurisdiction over
9 claims that necessarily arise “from the decision or action by the Attorney General to
10 commence proceedings [and] adjudicate cases,” over which. 8 U.S.C. § 1252(g).

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

17 Other courts have held, “[f]or the purposes of § 1252, the Attorney General
18 commences proceedings against an alien when the alien is issued a Notice to Appear
19 before an immigration court.” *Herrera-Correra v. United States*, No. 08-2941 DSF
20 (JCx), 2008 WL 11336833, at *3 (C.D. Cal. Sept. 11, 2008). “The Attorney General
21 may arrest the alien against whom proceedings are commenced and detain that
22 individual until the conclusion of those proceedings.” *Id.* at *3. “Thus, an alien’s
23 detention throughout this process arises from the Attorney General’s decision to
24 commence proceedings” and review of claims arising from such detention is barred
25 under § 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007)); *Wang*,
26 2010 WL 11463156, at *6; 8 U.S.C. § 1252(g).

27 Moreover, under 8 U.S.C. § 1252(b)(9), “[j]udicial review of all questions of law
28 and fact . . . arising from any action taken or proceeding brought to remove an alien

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

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

1 627 F.3d 58, 61 (2d Cir. 2010) (“The REAL ID Act of 2005 amended the [INA] to
2 obviate . . . Suspension Clause concerns” by permitting judicial review of
3 “nondiscretionary” BIA determinations and “all constitutional claims or questions of
4 law.”). These provisions divest district courts of jurisdiction to review both direct and
5 indirect challenges to removal orders, including decisions to detain for purposes of
6 removal or for proceedings. *See Jennings*, 583 U.S. at 294–95 (section 1252(b)(9)
7 includes challenges to the “decision to detain [an alien] in the first place or to seek
8 removal”).

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

16 Here, Petitioner challenges the government’s decision and action to detain, which
17 arises from DHS’s decision to commence removal proceedings, and is thus an “action
18 taken . . . to remove [him/her] from the United States.” *See* 8 U.S.C. § 1252(b)(9); *see*
19 *also, e.g., Jennings*, 583 U.S. at 294–95; *Velasco Lopez v. Decker*, 978 F.3d 842, 850
20 (2d Cir. 2020) (finding that 8 U.S.C. § 1226(e) did not bar review in that case because
21 the petitioner did not challenge “his initial detention”); *Saadulloev v. Garland*, No.
22 3:23-CV-00106, 2024 WL 1076106, at *3 (W.D. Pa. Mar. 12, 2024) (recognizing that
23 there is no judicial review of the threshold detention decision, which flows from the
24 government’s decision to “commence proceedings”).

25 Accordingly, this Court lacks jurisdiction over this petition under 8 U.S.C.
26 § 1252.

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1 **E. Administrative Remedies Should Be Exhausted**

2 The Court should ensure Petitioner properly exhausts administrative remedies.
3 The Ninth Circuit requires that “habeas petitioners exhaust available judicial and
4 administrative remedies before seeking relief under § 2241.” *Castro–Cortez v. INS*, 239
5 F.3d 1037, 1047 (9th Cir. 2001). “When a petitioner does not exhaust administrative
6 remedies, a district court ordinarily should either dismiss the petition without prejudice
7 or stay the proceedings until the petitioner has exhausted remedies, unless exhaustion
8 is excused.” *Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011); *see also*
9 *Alvarado v. Holder*, 759 F.3d 1121, 1127 n.5 (9th Cir. 2014) (issue exhaustion is a
10 jurisdictional requirement); *Tijani v. Holder*, 628 F.3d 1071, 1080 (9th Cir. 2010) (no
11 jurisdiction to review legal claims not presented in the petitioner’s administrative
12 proceedings before the BIA). Here, Petitioner had a bond hearing before an immigration
13 judge, pursuant to 8 U.S.C. § 1226(a), on March 4, 2026. Petitioner has until April 3,
14 2026 to file an appeal before the BIA. Accordingly, the Court should dismiss without
15 prejudice or stay these proceedings until Petitioner’s bond appeal is decided and
16 concluded.

17 **F. Administrative Procedure Claims Are Without Merit**

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

1 all-encompassing as to authorize . . . judicial review over everything done by an
2 administrative agency.” *Wild Fish Conservancy v. Jewell*, 730 F.3d 791, 800–01 (9th
3 Cir. 2013) (quoting *Fund for Animals, Inc. v. U.S. Bureau of Land Management*, 460
4 F.3d 13, 19 (D.C. Cir. 2006)). Here, it is not altogether clear what final agency action
5 Petitioner seeks review over. Importantly, habeas relief is available to challenge only
6 the legality or duration of confinement. *Pinson*, 69 F.4th at 1067; *see also Flores-*
7 *Miramontes*, 212 F.3d at 1140 (“For purposes of immigration law, at least, ‘judicial
8 review’ refers to petitions for review of agency actions, which are governed by the
9 Administrative Procedure Act, while habeas corpus refers to habeas petitions brought
10 directly in district court to challenge illegal confinement.”). The Court should therefore
11 reject Petitioner’s APA claims.

12 IV. CONCLUSION

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

15 DATED: March 23, 2026

Respectfully submitted,

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