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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

Miguel Jose Rosas Rodriguez, Petitioner, v. **Christopher LaRose**, et al., Respondents.	Case No.: 26-cv-01723-JO-BJW **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 Background[1]

Petitioner is a citizen and national of Venezuela. *See* Exhibit 1 (Notice to Appear). On March 4, 2023, Petitioner applied for admission to the United States at the San Ysidro, California, port of entry. *See* Exhibit 2 (Form I-261). He was released on his own recognizance. *See* Exhibit 3 (Form I-213) at 3. On January 15, 2026, Petitioner was apprehended and detained by ICE/Enforcement Removal Operations. *See id.* At the time of re-detention, DHS issued and served on Petitioner, a Notice to Appear (NTA), which commended removal proceedings against Petitioner. *See* Exhibits 1-3. On January 27, 2026, DHS filed a Form I-261, adding the additional factual allegation 5: "You applied for admission at the San Ysidro, California, Port of Entry, on or about March 4, 2023." Petitioner remains detained at the Otay Mesa Detention Center and is subject to mandatory detention under 8 U.S.C. § 1225(b)(2).

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.

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

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

Moreover, under 8 U.S.C. § 1252(b)(9), "[j]udicial review of all questions of law and fact . . . *arising from any action taken or proceeding brought to remove an alien from the United States* under this subchapter shall be available only in judicial review of a final order under this section." (emphasis added). While holding that it was

unnecessary to comprehensively address the scope of § 1252(b)(9), the Supreme Court in *Jennings* provided guidance on the types of challenges that may fall within the scope of § 1252(b)(9). *See Jennings*, 583 U.S. at 293–94. The Court found that "§ 1252(b)(9) [did] not present a jurisdictional bar" in situations where "respondents . . . [were] not challenging the decision to detain them in the first place." *Id.* at 294–95. In this case, Petitioner does challenge the government's decision to detain him in the first place. Though Petitioner attempts to frame his challenge as one relating to detention authority, rather than a challenge to DHS's decision to detain him in the first instance, such creative framing does not evade the preclusive effect of § 1252(b)(9). Indeed, that Petitioner is challenging the basis upon which he is detained is enough to trigger § 1252(b)(9) because "detention *is* an 'action taken . . . to remove' an alien." *See Jennings*, 583 U.S. at 319 (emphasis in original); *see also* 8 U.S.C. § 1252(b)(9).

The Court should dismiss this matter for lack of jurisdiction under 8 U.S.C. § 1252. *See S.Q.D.C.*, 2025 WL 2617973.[2]

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 and, in any event, has expired. After Petitioner was detained on January 15, 2026, he was served with a 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,

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[2] On an alternative basis, the Court should ensure Petitioner properly exhausts administrative remedies. The Ninth Circuit requires that "habeas petitioners exhaust available judicial and administrative remedies before seeking relief under § 2241." *Castro–Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001). "When a petitioner does not exhaust administrative remedies, a district court ordinarily should either dismiss the 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).

the charging document will constitute written notice of termination of parole . . . ."). 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).

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 1, 2; *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 § 1225(b)(2).

Because Petitioner is properly detained under § 1225, he cannot show entitlement to relief.

IV. CONCLUSION

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

DATED: March 26, 2026

Respectfully submitted,

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