

District Judge Tana Lin

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

GIRALDIE JESUS AGUILAR LOZADA,

Petitioner,

v.

JULIO HERNANDEZ, *et al.*,¹

Respondents.

Case No. 2:26-cv-00967-TL

FEDERAL RESPONDENTS'
RETURN MEMORANDUM²

Noted for Consideration:
April 13, 2026

¹ Pursuant to Federal Rule of Civil Procedure 25(d), Federal Respondents substitute Markwayne Mullin for Kristi Noem and Todd Blanche for Pamela Bondi.

² Respondent Bruce Scott is not a federal official and is not represented by undersigned counsel.

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I. INTRODUCTION

U.S. Immigration and Customs Enforcement (“ICE”) lawfully detains Petitioner Giralde Jesus Aguilar Lozada at the Northwest ICE Processing Center (“NWIPC”) in Tacoma, Washington, pending the completion of his removal proceedings. On December 18, 2025, ICE initiated removal proceedings against Petitioner, charging him as removable from the United States under 8 U.S.C. § 1227(a)(1)(B). This commenced Petitioner’s removal proceedings. Because Petitioner’s removal proceedings are ongoing, he is subject to detention under 8 U.S.C. § 1226(a). On February 23, 2026, Petitioner appeared at a bond redetermination hearing. The immigration judge denied Petitioner’s request for bond following a full and fair hearing at which Petitioner appeared with counsel.

Petitioner challenges the immigration judge’s discretionary findings as unconstitutional under the Due Process Clause of the Fifth Amendment. *See* Dkt. 1 (“Pet.”) at 10-12. However, a closer review of the Petition demonstrates that Petitioner really takes issue with how the immigration judge weighed the evidence presented at his bond hearing. Instead of appealing the immigration judge’s decision, Petitioner immediately jumped to district court review, filing the instant Petition before the deadline for his administrative appeal had even lapsed. Petitioner has therefore not exhausted his administrative remedies through the “substantial procedural protections” available under Section 1226(a). *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1214 (9th Cir. 2022). Moreover, Petitioner fails to state a cognizable constitutional claim for relief.

Petitioner also challenges the legal sufficiency of his charging document. *Pet.* at 12-15. This challenge improperly circumvents the statutory scheme of judicial review prescribed by Congress as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”). Finally, Petitioner cites no authority in support of his contention that his “presence in the U.S. is authorized while his application for adjustment of status remains pending.” *Id.* at

13. However, this assertion contradicts Petitioner's January 22, 2026, concession of removability in his removal proceedings. *See* Declaration of Deportation Officer Freite Subero Arias ("Arias Decl."), ¶ 13. Accordingly, the Court should deny the Petition in its entirety.

II. BACKGROUND

A. Detention Under 8 U.S.C. § 1226(a)

This case concerns the Government's responsibilities under 8 U.S.C. § 1226(a), which "authorizes the Attorney General to arrest and detain an alien pending a decision on whether the alien is to be removed from the United States." *Jennings v. Rodriguez*, 583 U.S. 281, 306 (2018) (quoting 8 U.S.C. § 1226(a)). Because his removal proceedings are ongoing, Petitioner is lawfully detained pursuant to 8 U.S.C. § 1226(a). The Ninth Circuit has found that Section 1226(a) and its implementing regulations satisfy due process. *Rodriguez Diaz*, 53 F.4th at 1209-10.

At an initial bond hearing before an immigration judge for a noncitizen detained under Section 1226(a), the noncitizen bears the burden of establishing that he "does not present a danger to persons or property, is not a threat to the national security, and does not pose a risk of flight." *Matter of Guerra*, 24 I&N Dec. 37, 38 (BIA 2006). Bond hearings are separate and apart from, and form no part of, a noncitizen's removal proceedings. 8 C.F.R. § 1003.19(d). The noncitizen may appeal the immigration judge's custody redetermination to the Board of Immigration Appeals ("BIA"). 8 C.F.R. §§ 236.1(d)(3)(i), 1236.1(d)(3)(i); *Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011). Further, a noncitizen who remains detained pursuant to Section 1226(a) after their initial bond hearing may request that the immigration judge conduct another custody redetermination whenever "circumstances have changed materially since the prior bond redetermination." 8 C.F.R. § 1003.19(e).

An immigration judge in Tacoma, Washington held a bond hearing on February 23, 2026. This is not disputed. The dispute relates to the outcome of the bond hearing: Petitioner disagrees

1 with the immigration judge's bond redetermination. Petitioner alleges that the "no bond" order is
 2 deficient because "the order consists of a brief checkbox form indicating that bond was denied,"
 3 and "contains no factual findings, no articulated reasoning, no individualized findings of the
 4 evidence presentence." Pet. at 9. Although Petitioner claims the immigration judge "did not
 5 engage with the extensive record of positive equities," such a challenge is undoubtedly best suited
 6 to review by the BIA through the standard administrative appellate process. *Id.* Petitioner cannot
 7 assert a challenge to the absence of an "explanation of how the evidence supports detention," by
 8 unilaterally creating the absence of a more wholistic administrative record in choosing to forgo
 9 an administrative appeal. *Id.*

10 Importantly, this Court does not have jurisdiction to set aside the immigration judge's
 11 determination merely because Petitioner disagrees with the result. *See* 8 U.S.C. § 1226(e) ("No
 12 court may set aside any action or decision by the Attorney General under this section regarding
 13 the detention of any alien or the revocation or denial of bond or parole."); *see also Valenzuela v.*
 14 *Semaia*, No. 5:25-cv-02853, 2025 WL 4041920, at *2 (C.D. Cal. Dec. 10, 2025). Moreover, as
 15 discussed below, Petitioner fails to allege colorable legal errors or constitutional issues
 16 concerning the procedures at the bond hearing that fall within the purview of this Court's habeas
 17 review.

18 III. LEGAL STANDARD

19 "The district courts of the United States . . . are courts of limited jurisdiction. They possess
 20 only that power authorized by Constitution and statute." *Exxon Mobil Corp. v. Allopach Servs.,*
 21 *Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted). "[T]he scope of habeas has been
 22 tightly regulated by statute, from the Judiciary Act of 1789 to the present day." *Dep't of Homeland*
 23 *Sec. v. Thuraissigiam*, 591 U.S. 103, 125 n.20 (2020). Title 28 U.S.C. § 2241 provides district
 24 courts with jurisdiction to hear federal habeas petitions. To warrant a grant of habeas corpus, the

burden is on the petitioner to prove that his or her custody is in violation of the Constitution, laws, or treaties of the United States. *See* 28 U.S.C. § 2241(c)(3); *Lambert v. Blodgett*, 393 F.3d 943, 969 n.16 (9th Cir. 2004).

IV. ARGUMENT

A. Petitioner Has Not Identified Valid Constitutional or Legal Errors that Occurred in His Bond Hearing.

“[T]he essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and . . . the traditional function of the writ is to secure release from illegal custody.” *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). ICE lawfully detains Petitioner under 8 U.S.C. § 1226(a). On February 23, 2026, an immigration judge held a bond hearing for Petitioner and determined that Petitioner presents a danger to the community. Andrade Decl., Ex. E (Bond Order). While Petitioner reserved his right to appeal, Petitioner did not file an appeal of this decision. *Id.* at 2. Thus, Petitioner seeks to improperly bypass his administrative remedies.

To the extent that Petitioner disagrees with the immigration court’s analysis and findings, the discretionary decision is not reviewable by this Court. 8 U.S.C. § 1226(e). Federal district courts retain habeas jurisdiction to review bond hearing determinations for constitutional claims and legal errors. *Singh v. Holder*, 638 F.3d 1196, 1200 (9th Cir. 2011); *see also Hernandez v. Sessions*, 872 F.3d 976, 987 (9th Cir. 2017) (citing *Leonardo*, 646 F.3d at 1160). The determination of whether a noncitizen is “dangerous” for immigration detention purposes is a mixed question of law and fact. *Martinez v. Clark*, 124 F.4th 775, 779 (9th Cir. 2024). However, habeas jurisdiction over such legal and constitutional claims is proper only if they are “colorable,” *i.e.*, “the claim must have some possible validity.” *Hernandez*, 872 F.3d at 988 (quoting *Torres-Aguilar*, 246 F.3d at 1271 (quotation marks omitted); *Mendez-Castro v. Kukasey*, 552 F.3d 975, 978 (9th Cir. 2009)). “[A] petitioner may not create the jurisdiction that Congress chose to remove

1 simply by cloaking an abuse of discretion argument in constitutional garb.” *Hernandez*, 872 F.3d
 2 at 988 (quoting *Torres-Aguilar*, 246 F.3d at 1271). To wit, it is in “rare case[s] where future
 3 plaintiffs allege a colorable constitutional or legal challenge to the government’s procedures.” *Id.*
 4 at 989. This is not one of those “rare cases.”

5 When a bond hearing has already occurred, “the question before the Court is whether
 6 those reviews were sufficient to satisfy the due process requirements for prolonged, pre-removal
 7 order detention[.]” *Herrera v. Mayorkas*, C24-1933-JNW-MLP, 2025 WL 2382093, at *6 (W.D.
 8 Wash. May 19, 2025) (Report & Recommendation, adopted 2025 WL 2380669, at *1 (W.D.
 9 Wash. Aug. 15, 2025)). Courts in this District consider procedural due process claims like
 10 Petitioner’s under *Mathews v. Eldridge*, 424 U.S. 319, 334-35 (1976). See e.g., *Ramirez Tesara*
 11 *v. Wamsley*, 800 F. Supp. 3d 1130, 1135 (W.D. Wash. 2025).

12 Here, an analysis of the *Mathews* test reflects Petitioner was afforded due process in his
 13 bond proceedings. *Id.* As to the first *Mathews* factor, Federal Respondents recognize the “weighty
 14 liberty interests implicated by the Government’s detention of noncitizens.” *Reyes v. King*, No.
 15 19-cv-8674, 2021 WL 3727614, at *11 (S.D.N.Y. Aug. 20, 2021). The Supreme Court has
 16 repeatedly recognized that “[f]reedom from imprisonment—from government custody, detention,
 17 or other forms of physical restraint—lies at the heart of the liberty” protected by the Fifth
 18 Amendment’s Due Process Clause. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

19 Petitioner has been in ICE custody since December 17, 2025. See Declaration of Barbara
 20 Andrade, (“Andrade Decl.”) Ex. B at 2 (Form I-213). Thus, his civil detention has not reached
 21 the length of what many courts have found to be “prolonged.” See *Diouf v. Napolitano*, 634 F.3d
 22 1081, 1192 n.13 (9th Cir. 2011) (noting “[a]s a general matter, detention is prolonged when it has
 23 lasted six months and is expected to continue more than minimally beyond six months.”); see also
 24 *Herrera*, 2025 WL 238093 at *6. Moreover, the Court must “consider the process petitioner

1 received during the time he was detained, [and] the further process available to him[.]” *See id.*
2 (citing *Rodriguez Diaz*, 53 F.4th at 1208). Even if the Court were to find “[t]he private interest at
3 stake weighs in Petitioner’s favor,” in light of the substantial process available to him during his
4 confinement, “this factor should not be accorded overwhelming weight.” *Id.*

5 Turning to the second *Mathews* factor, the risk of an erroneous deprivation of Petitioner’s
6 liberty through the procedures used does not weigh in his favor. The Ninth Circuit has upheld the
7 constitutionality of procedures under § 1226(a). *See Rodriguez Diaz*, 53 F.4th at 1212. The fact
8 that Petitioner’s bond hearing was not recorded does not undermine the sufficiency of the process
9 provided because Petitioner had every right to file an appeal challenging the immigration judge’s
10 findings. Andrade Decl., Ex. B (Bond Order). Petitioner’s decision to not pursue an appeal of the
11 immigration judge’s decision does not undermine the adequacy of the process provided; due
12 process requires an opportunity to be heard; it does not require that a Petitioner avails themselves
13 of that opportunity. *Id.*

14 Although Petitioner acknowledges “not every [bond] hearing requires a recording,” he
15 argues “the record contains no explanation of how the evidence supports detention.” Pet. at 11.
16 This is factually inaccurate. Arias Decl., ¶ 16 (explaining the immigration judge “conducted an
17 individualized analysis of the facts and circumstances presented” at Petitioner’s bond hearing).
18 While the immigration judge indicated on the form that Petitioner was a danger to the community
19 and that was the ultimate reason why bond was denied, the immigration judge also provided the
20 rationale for the decision orally in accordance with its regulations. *See* 8 C.F.R. § 1003.19(f)
21 (“The determination of an Immigration Judge with respect to custody status or bond
22 redetermination shall be entered on the appropriate form at the time such decision is made and
23 the parties shall be informed orally or in writing of the reasons for the decision.”). To the extent
24 Petitioner wishes to be afforded the rationale for the denial of the bond *in writing, as opposed to*

1 orally, he could have appealed the immigration judge's denial of bond to the BIA; this, however,
2 he has chosen not to do. See OCIJ Immigration Court Practice Manual, § 8.3 (e)(7) ("Usually, the
3 Immigration Judge's decision is rendered orally. If either party appeals, the Immigration Judge
4 prepares a written decision based on notes from the hearing[.]").

5 The Government should not be penalized by this Court for the lack of a robust written
6 rationale for denying bond when the Petitioner could have readily obtained such in short order by
7 merely filing a bond appeal with the BIA. Accordingly, Petitioner's remedy is merely to exhaust
8 his administrative remedies by appealing the immigration judge's bond denial to the BIA, not
9 bring a petition for a writ of habeas corpus before the district court. This is precisely why
10 administrative exhaustion under these circumstances is necessary and should be required. These
11 procedures are sufficient to protect Petitioner's liberty interest in being free from indefinite
12 detention during the pendency of removal proceedings. Federal Respondents' claim that no due
13 process violation has occurred is further supported by the fact that the Ninth Circuit has upheld
14 the constitutionality of 8 U.S.C. § 1226(a)'s procedures, which were followed in this case.
15 *Rodriguez Diaz*, 53 F.4th at 1193-94. As such, the second *Mathews* factor favors Federal
16 Respondents' position.

17 The third and final factor similarly favors Federal Respondents. The Ninth Circuit has
18 emphasized that the *Mathews* test and procedural safeguards "must account for the heightened
19 government interest in the immigration detention context." *Rodriguez Diaz*, 53 F.4th at 1206.
20 Here, the Government's interest is substantial; it includes ensuring Petitioner's appearance at
21 removal proceedings, protecting the community from potential dangers, and efficiently
22 administering immigration laws. Petitioner's detention is subject to numerous levels of review,
23 and at each level of review, Petitioner had the opportunity to be heard by a neutral decisionmaker.
24 *Id.* at 1210.

Petitioner appears to rely on precedents like *Singh v. Holder*, 638 F.3d 1196 (9th Cir. 2011) in support of his argument that the procedures used are “fundamentally unfair.” Pet. at 11. The Ninth Circuit’s decision in *Singh* requires the government to prove danger or flight risk by clear and convincing evidence in bond hearings for noncitizens detained under 8 U.S.C. § 1226(c). *Singh*, 638 F.3d at 1203-04. However, the Ninth Circuit has explicitly distinguished *Singh* from cases involving 8 U.S.C. § 1226(a), noting that 8 U.S.C. § 1226(c) involves mandatory detention for individuals convicted of certain criminal offenses without any initial opportunity for release, which creates a higher risk of erroneous deprivation. *Rodriguez Diaz*, 53 F.4th at 1211. In contrast, 8 U.S.C. § 1226(a) provides for discretionary detention with a prompt initial bond hearing where the noncitizen bears the burden, a procedure that adequately safeguards due process. *Id.*; see also *Martinez*, 124 F.4th at 786 (“Nowhere in *Singh* did [the Ninth Circuit] suggest that due process also mandates that immigration courts consider release conditions or conditional parole before deciding that an alien is a danger to the community.”).

Petitioner’s detention also does not warrant additional due process protections because it has not become prolonged. While due process may require heightened safeguards, such as a new bond hearing with the burden on the government, when detention extends beyond a reasonable period, the Supreme Court has clarified that immigration statutes like 8 U.S.C. § 1226 do not mandate periodic bond hearings every six months. *Jennings*, 583 U.S. at 292-306 (reversing the Ninth Circuit’s statutory interpretation requiring automatic hearings under 8 U.S.C. §§ 1225(b), 1226(a), and 1226(c)).

Following the Supreme Court’s decision in *Jennings*, the Ninth Circuit has confirmed that due process does not entitle a § 1226(a) detainee to a second bond hearing with a shifted burden based solely on the duration of detention. *Rodriguez Diaz*, 53 F.4th at 1202-06 (holding no due process violation after 14 months of detention, as the noncitizen could request a new hearing upon

1 showing materially changed circumstances under 8 C.F.R. § 1003.19(e)). The availability of a
 2 new hearing for changed circumstances mitigates any risk of indefinite detention. *Id.* at 1205.
 3 Accordingly, an analysis of the *Mathews* test demonstrates that Petitioner's February 23, 2026,
 4 bond hearing fully comports with due process.

5 In sum, Petitioner identifies no colorable constitutional claim or legal error. Petitioner's
 6 assertion that the immigration judge's bond determination "lacks a legally sufficient evidentiary
 7 basis," demonstrates that, at base, Petitioner disagrees with the substance of the immigration
 8 judge's decision, including how he weighed the evidence presented at Petitioner's bond hearing.
 9 Pet. at 11.

10 **B. Petitioner Has Failed to Exhaust His Administrative Remedies.**

11 The Ninth Circuit has cautioned that courts should be careful not to excuse exhaustion
 12 where, as here, "relaxation of exhaustion requirements would encourage the deliberate bypass of
 13 the administrative scheme." *Noriega-Lopez v. Ashcroft*, 335 F.3d 874, 882 (9th Cir. 2003). The
 14 Court has further cautioned that exhaustion should not be excused where "agency expertise makes
 15 agency consideration necessary to generate a proper record and reach a proper decision" or
 16 "administrative review is likely to allow the agency to correct its own mistakes and to preclude
 17 the need for judicial review." *Id.* All three factors favor enforcing the exhaustion requirement in
 18 this case.³

21 ³ Petitioner cites *W.T.M.* in support of his argument against exhaustion. Pet., 11-12. In *W.T.M. v. Bondi*, No. 2:25-
 22 cv-02428-RAJ-BAT, 2026 WL 262583, at *4 (W.D. Wash. Jan. 30, 2026), the district court found error in that the
 23 immigration judge did not provide *any* reasoning for his basis that the petitioner was an extreme flight risk. Federal
 24 Respondents respectfully disagree with this reasoning and posit that this is an example why administrative exhaustion
 of bond hearings is necessary, as holding otherwise allows detainees to bypass the administrative process by merely
 characterizing their disagreement with how an immigration judge viewed the evidence as a "procedural deficiency."
 Pet. at 12; *see also Zhibo Zuo v. Hermosillo*, No. 2:26-CV-00708-JHC, 2026 WL 809882, *1-2 (W.D. Wash. Mar.
 24, 2026) (concluding the *Puga* factors did not favor excusing prudential exhaustion where, as here, the record was
 inconclusive with respect to the immigration judge's reasoning for the denial of bond).

1 The court's decision in *Aden v. Nielson*, No. 18-cv-1441, 2019 WL 5802013 (W.D. Wash.
2 Nov. 7, 2019), is instructive as to why this Court should require Petitioner to exhaust his remedies
3 concerning the immigration judge's bond order before the BIA. In *Aden*, the Court required a
4 petitioner to exhaust his administrative remedies prior to bringing a claim that the immigration
5 judge erroneously applied the evidentiary standard during a court-ordered bond hearing, allegedly
6 depriving the petitioner of his due process rights. *Id.*, at *1. The court found that the BIA could
7 assess petitioner's assertions that the immigration judge relied too heavily on his criminal history.
8 *Id.*, at *2 ("the BIA is capable of re-assessing the evidence and determining whether the
9 government has carried its burden of demonstrating by clear and convincing evidence that [the
10 petitioner] is a current danger and must be detained"). Similarly, had Petitioner sought to appeal
11 the immigration judge's bond determination, the BIA would have been well equipped to address
12 any evidence he seeks to present regarding the immigration judge's dangerousness determination.
13 Like in *Aden*, this is a finding that the BIA is perfectly capable of reassessing.

14 To determine whether administrative exhaustion should be excused, the Court must
15 consider whether "(1) agency expertise makes agency consideration necessary to generate a
16 proper record and reach a proper decision; (2) relaxation of the requirement would encourage the
17 deliberate bypass of the administrative scheme; and (3) administrative review is likely to allow
18 the agency to correct its own mistakes and to preclude the need for judicial review." *Hernandez*,
19 872 F.3d at 988 (quoting *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007)). Here, the *Puga*
20 factors weigh in favor of requiring prudential exhaustion.

21 The first *Puga* factor weighs in favor of exhaustion because the BIA has subject-matter
22 expertise for individual immigration bond decisions. Here, the Court would benefit from an
23 administrative appellate record because the immigration judge has reached a finding that is factual
24 in nature, *i.e.*, whether Petitioner is a danger to the community. The second *Puga* factor also

1 weighs in favor of exhaustion because there is no question that where it has jurisdiction, the
2 immigration court has authority to deny bond if a person is deemed a flight risk or a danger to the
3 community. Allowing a “relaxation of the exhaustion requirement” for Petitioner would permit
4 other detainees to directly appeal their alternative bond determinations to federal district court
5 without an adequate development of the administrative appellate record. Last, the third *Puga*
6 factor weighs in favor of exhaustion because the BIA is capable of reviewing evidentiary findings
7 and could preclude the need for judicial review.

8 Petitioner argues exhaustion of administrative remedies should be waived because his
9 challenge “presents a pure question of law that does not depend on agency expertise.” Pet., at 15.
10 He is wrong. Petitioner’s entire claim takes issue with how the immigration judge applied the
11 evidence presented at his bond hearing, which is a mixed question of law and fact. *Id.* at 9-12,
12 *Martinez*, 124 F.4th at 783-84 (explaining that the application of the “dangerousness” standard is
13 a reviewable mixed question of law and fact).

14 Petitioner has also not had a final hearing on the merits of his application for relief from
15 removal. Arias Decl., ¶ 18. Because Petitioner will remain subject to the detention scheme under
16 § 1226(a) through the Ninth Circuit’s adjudication of any appeal filed in his removal proceedings,
17 he has failed to demonstrate that his bond appeal would be rendered moot by the ultimate
18 disposition of those proceedings. Administrative exhaustion also creates a more holistic appellate
19 record for this Court to review in a subsequent habeas case. Finally, Petitioner may get the relief
20 he seeks here through the BIA. Thus, the circumstances presented by the instant case do not favor
21 excusing the prudential exhaustion requirements.

22 //

23 **C. The Court Should Dismiss Petitioner’s Due Process Challenge to his Notice to**
24 **Appear for Lack of Subject Matter Jurisdiction.**

1 The habeas statute allows a petitioner who is “in custody” to challenge that custody on
2 various grounds, 28 U.S.C. § 2241(c), including that “[h]e is in custody in violation of the
3 Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(c)(3). Petitioner’s claims
4 concerning the legal sufficiency of his Notice to Appear (“NTA”) are not cognizable in this
5 habeas action. Pet., at 12-15; Andrade Decl., Ex. A (NTA). Since removal proceedings are
6 underway, Petitioner’s current custody flows from the authority delegated to the Executive under
7 the INA. *See, e.g.*, 8 U.S.C. § 1226(a).

8 The legal sufficiency of Petitioner’s NTA cannot be the basis for habeas relief because
9 such challenges must be to the legality of the detention itself, not the procedural adequacy of a
10 charging document. 28 U.S.C. § 2241(c)(3). The Board has held that the omission of required
11 information in an NTA is a claim-processing rule that does not require dismissal in all
12 circumstances through a precedential decision that expressly permits the DHS to remedy a
13 defective NTA. *See Matter of R-T-P-*, 28 I&N Dec. 828, 842 (BIA 2024) (noting the absence of
14 any “statutory or regulatory authority prohibiting an amendment or supplementation of the
15 contents of the notice to appear.”).

16 Even if an NTA is defective, a habeas petitioner must show that the defect caused a
17 violation of a concrete due process right, which Petitioner fails to do. *Id.* at 834-35. While
18 Petitioner asserts the omission of “core factual allegations has directly impaired” his ability to
19 contest his detention, he has failed to identify *how* the missing information has in any way
20 diminished his ability to contest the legality of his detention. Pet. at 14. In fact, Petitioner admitted
21 the allegations and conceded the sole charge of removability in his NTA at a master calendar
22 hearing on January 22, 2026. Arias Decl., ¶ 13. Thus, Petitioner has failed to demonstrate how a
23 technical insufficiency in his charging document – without any showing of prejudice to his actual
24

1 ability to defend against either his detention or removal – renders either his detention or removal
2 proceedings unlawful.

3 Furthermore, this Court does not have jurisdiction to hear Petitioner's claims that should
4 be raised in his immigration proceedings. In 8 U.S.C. §1252(b), Congress "consolidated judicial
5 review of immigration proceedings into one action in the court of appeals." *Guerrero-Lasprilla*
6 *v. Barr*, 589 U.S. 221, 233 (2020) (quotation marks and citation omitted). This provision is known
7 as the "zipper clause" because it "consolidates or 'zips' 'judicial review' of immigration
8 proceedings into one action in the court of appeals." *Singh v. Gonzales*, 499 F.3d 969, 976 (9th
9 Cir. 2007) (citation omitted). This statute provides:

10 Judicial review of all questions of law and fact, including interpretation and
11 application of constitutional and statutory provisions, arising from any action
12 taken or proceeding brought to remove an alien from the United States under
13 this subchapter shall be available only in judicial review of a final order under
14 this section. *Except as otherwise provided in this section, no court shall have*
jurisdiction, by habeas corpus under section 2241 of Title 28 or any other
habeas corpus provision, by section 1361 or 1651 of such title, or by any other
provision of law (statutory or nonstatutory), to review such an order or such
questions of law or fact.

15 8 U.S.C. § 1252(b)(9) (emphasis added); *see also* 8 U.S.C. § 1252(a)(5) ("a petition for review
16 . . . shall be the sole and exclusive means for judicial review of an order of removal"). "Taken
17 together, § 1252(a)(5) and § 1252(b)(9) mean that any issue – whether legal or factual – arising
18 from any removal-related activity can be reviewed only through the [petition for review] process."
19 *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016).

20 While claims "collateral to, or independent of" the removal process are still subject to
21 habeas review, "[w]hen a claim by an alien, however it is framed, challenges the procedure and
22 substance of an agency determination that is 'inextricably linked' to the order of removal, it is
23 prohibited by section 1252(a)(5)." *Id.* Here, Petitioner's challenges to the sufficiency of his NTA
24 are inextricably linked to "questions of law and fact, including interpretation and application of

1 constitutional and statutory provisions, *arising from any action taken or proceeding brought to*
2 *remove an alien.*" 8 U.S.C. § 1252(b)(9) (emphasis added).

3 Because Petitioner raises a legal challenge to the sufficiency of his charging document,
4 his claim is directly linked to the procedure and substance of an agency action taken in
5 proceedings to remove him. As such, Petitioner must raise these arguments in his immigration
6 proceedings and, in due course, through a petition for review with the appropriate court of appeals.
7 8 U.S.C. § 1252(b)(9). Accordingly, the Court should dismiss this claim.

8 **V. CONCLUSION**

9 For the foregoing reasons, Federal Respondents respectfully request that this Court deny
10 the habeas petition.

11 DATED this 6th day of April, 2026.

12 Respectfully submitted,

13 s/ Barbara Andrade

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24 *I certify that this memorandum contains 4,244 words, in compliance with Local Civil Rules*