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9
10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA

12 ANTHONY BERTHNELL HALL,
13 Petitioner,
14
15 v.
16 CHRISTOPHER J. LAROSE; et al.,
17 Respondents.

Case No.: 26-cv-01850-BAS-DDL
**RESPONDENTS' RETURN TO
HABEAS PETITION**

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I. Introduction

Petitioner has filed a habeas petition under 28 U.S.C. § 2241. Petitioner is currently in removal proceedings under 8 U.S.C. § 1229a and is charged with deportability/removability under 8 U.S.C. § 1227(a)(1)(B), as an individual who was admitted to the United States but remained for a time longer than permitted by law (i.e., a visa overstay). As such, Petitioner is detained pursuant to 8 U.S.C. § 1226(a). On February 12, 2026, Petitioner had a bond hearing before an immigration judge (IJ) pursuant to 8 U.S.C. § 1226(a). Petitioner was ultimately denied bond. Based on the arguments set forth below, the Court should deny any requests for relief and dismiss the petition.

II. Factual Background¹

Petitioner is a native and citizen of Jamaica. *See* Exhibit 1 (Notice to Appear). On March 7, 2015, he was admitted into the United States on a nonimmigrant visa. *See id.* On December 31, 2025, Petitioner was encountered by immigration authorities at the Walton County Jail, in Florida, pursuant to an arrest by the Walton County Sheriff's Office. *See* Exhibit 2 (I-213). On that same day, a Form I-200, Warrant for Arrest, was issued for Petitioner's arrest and he was apprehended by immigration authorities on that arrest warrant. *See id.*; *see also* Exhibit 3 (I-200). DHS determined that Petitioner is deportable/removable under 8 U.S.C. § 1227(a)(1)(B), as an individual who was admitted to the United States and has remained for a time longer than permitted by law (i.e., a visa overstay). *See* Exhibit 1. Based on that charge, he was issued a Notice to Appear (NTA) and placed in removal proceedings under 8 U.S.C. § 1229a. *See id.* Within his removal proceedings under § 1229a, Petitioner has the opportunity to apply for relief from removal before an IJ, including asylum under 8 U.S.C. § 1158, withholding of removal under 8 U.S.C. § 1231(b)(3), and relief under the Convention Against Torture.

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

1 Petitioner is currently detained at the Otay Mesa Detention Center under 8 U.S.C.
2 § 1226(a). On February 12, 2026, Petitioner had a bond hearing before an IJ pursuant
3 to 8 U.S.C. § 1226(a). *See* Exhibit 4 (IJ Order denying bond). Petitioner was ultimately
4 denied bond as the IJ determined that Petitioner was both a “[d]anger to the community
5 and [a] flight risk.” *See id.* Any appeal with Board of Immigration Appeals (“the
6 Board”) was due no later than March 16, 2026. *See id.* As of today, Petitioner has not
7 filed an appeal before the Board regarding the denial of his bond. *See id.*; *see also* ECF
8 1 at 2. Based on the arguments set forth below, the Court should deny any requests for
9 relief and dismiss the petition.

10 III. Argument

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

12 Section 1226 provides for arrest and detention “pending a decision on whether
13 the alien is to be removed from the United States.” 8 U.S.C. § 1226(a). Under § 1226(a),
14 the government may detain an alien during her removal proceedings, release her on
15 bond, or release her on conditional parole. By regulation, immigration officers can
16 release aliens upon demonstrating that the alien “would not pose a danger to property
17 or persons” and “is likely to appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8).
18 An alien can also request a custody redetermination (i.e., a bond hearing) by an IJ at
19 any time before a final order of removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§
20 236.1(d)(1), 1236.1(d)(1), 1003.19.

21 As set forth above, on December 31, 2025, a Form I-200, Warrant for Arrest, was
22 issued pursuant to § 1226(a) for Petitioner’s arrest. On the same date, he was
23 apprehended on that arrest warrant and detained pursuant to 8 U.S.C. § 1226(a). DHS
24 determined that Petitioner is deportable/removable under 8 U.S.C. § 1227(a)(1)(B), as
25 an individual who was admitted to the United States and has remained for a time longer
26 than permitted by law (i.e., a visa overstay). As such, Petitioner is detained pursuant to
27 8 U.S.C. § 1226(a). Accordingly, Petitioner was entitled to a bond hearing before an IJ.
28 As explained above, Petitioner had a bond hearing before an IJ on February 12, 2026.

1 Petitioner was ultimately denied bond based on the grounds of “danger to the
2 community” and “flight risk.” *See* Exhibit 4. Therefore, because Petitioner’s bond was
3 denied by an IJ, Petitioner is lawfully detained pursuant to 8 U.S.C. § 1226(a).

4 **B. Administrative Remedies Should Be Exhausted**

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

16 Here, on February 12, 2026, Petitioner had a bond hearing before an immigration
17 judge pursuant to 8 U.S.C. § 1226(a). Petitioner was ultimately denied bond and his
18 appeal before the Board was due no later than March 16, 2026. As of today, Petitioner
19 has not filed an appeal before the Board. Accordingly, the Court should dismiss without
20 prejudice or stay these proceedings until a bond appeal is conducted and concluded
21 before the Board.

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

23 To the extent Petitioner asserts claims regarding the commencement of removal
24 proceedings and the conditions of his detention, such claims are improper. An
25 individual may seek habeas relief under 28 U.S.C. § 2241 if he is “in custody” under
26 federal authority “in violation of the Constitution or laws or treaties of the United
27 States.” 28 U.S.C. § 2241(c). But habeas relief is available to challenge only the legality
28 or duration of confinement. *Pinson v. Carvajal*, 69 F.4th 1059, 1067 (9th Cir. 2023);

1 *Crawford v. Bell*, 599 F.2d 890, 891 (9th Cir. 1979); *Dep't of Homeland Security v.*
2 *Thraissigiam*, 591 U.S. 103, 117 (2020) (The writ of habeas corpus historically
3 “provide[s] a means of contesting the lawfulness of restraint and securing release.”).
4 The Ninth Circuit squarely explained how to decide whether a claim sounds in habeas
5 jurisdiction: “[O]ur review of the history and purpose of habeas leads us to conclude
6 the relevant question is whether, based on the allegations in the petition, release is
7 *legally required* irrespective of the relief requested.” *Pinson*, 69 F.4th at 1072 (emphasis
8 in original); *see also Nettles v. Grounds*, 830 F.3d 922, 934 (9th Cir. 2016) (The key
9 inquiry is whether success on the petitioner’s claim would “necessarily lead to
10 immediate or speedier release.”). Here, a review of such claims would not automatically
11 entitle Petitioner to release from detention. *See Guselnikov v. Noem*, No. 25-cv-1971-
12 BTM-KSC, 2025 WL 2300783, at *1 (S.D. Cal. Aug. 8, 2025) (finding petitioners’
13 claims did not arise under § 2241 because they were not arguing they were unlawfully
14 in custody and receiving the requested relief would not entitle them to release); *Giron*
15 *Rodas v. Lyons*, No. 25cv1912-LL-AHG, 2025 WL 2300781, at *3 (S.D. Cal. Aug. 1,
16 2025) (“Like in *Pinson*, the Court lacks jurisdiction over Petitioner’s § 2241 habeas
17 petition since it cannot be fairly read as attacking ‘the legality or duration of
18 confinement.’”) (quoting *Pinson*, 69 F.4th at 1065).

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

20 Petitioner bears the burden of establishing that this Court has subject matter
21 jurisdiction over asserted claims. *See Ass’n of Am Med. Coll. v. United States*, 217 F.3d
22 770, 778-79 (9th Cir. 2000); *Finley v. United States*, 490 U.S. 545, 547-48 (1989).

23 In general, courts lack jurisdiction to review a decision to commence or
24 adjudicate removal proceedings or execute removal orders. *See* 8 U.S.C. § 1252(g)
25 (“[N]o court shall have jurisdiction to hear any cause or claim by or on behalf of any
26 alien arising from the decision or action by the Attorney General to commence
27 proceedings, adjudicate cases, or execute removal orders.”); *Reno v. Am -Arab Anti-*
28 *Discrimination Comm.*, 525 U.S. 471, 483 (1999) (“There was good reason for

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

14 Section 1252(g) also bars district courts from hearing challenges to the method
15 by which the government chooses to commence removal proceedings, including the
16 decision to detain an alien pending removal. *See Alvarez v. ICE*, 818 F.3d 1194, 1203
17 (11th Cir. 2016) (“By its plain terms, [§ 1252(g)] bars us from questioning ICE’s
18 discretionary decisions to commence removal” and bars review of “ICE’s decision to
19 take [plaintiff] into custody and to detain him during his removal proceedings”).

20 Other courts have held, “[f]or the purposes of § 1252, the Attorney General
21 commences proceedings against an alien when the alien is issued a Notice to Appear
22 before an immigration court.” *Herrera-Correra v. United States*, No. 08-2941 DSF
23 (JCx), 2008 WL 11336833, at *3 (C.D. Cal. Sept. 11, 2008). “The Attorney General
24 may arrest the alien against whom proceedings are commenced and detain that
25 individual until the conclusion of those proceedings.” *Id.* at *3. “Thus, an alien’s
26 detention throughout this process arises from the Attorney General’s decision to
27 commence proceedings” and review of claims arising from such detention is barred

1 under § 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007)); *Wang*,
2 2010 WL 11463156, at *6; 8 U.S.C. § 1252(g).

3 Moreover, under 8 U.S.C. § 1252(b)(9), “[j]udicial review of all questions of law
4 and fact . . . arising from any action taken or proceeding brought to remove an alien
5 from the United States under this subchapter shall be available only in judicial review
6 of a final order under this section.” Further, judicial review of a final order is available
7 only through “a petition for review filed with an appropriate court of appeals.” 8 U.S.C.
8 § 1252(a)(5). The Supreme Court has made clear that § 1252(b)(9) is “the unmistakable
9 ‘zipper’ clause,” channeling “judicial review of all” “decisions and actions leading up
10 to or consequent upon final orders of deportation,” including “non-final order[s],” into
11 proceedings before a court of appeals. *Reno*, 525 U.S. at 483, 485; see *J.E.F.M. v.*
12 *Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (noting § 1252(b)(9) is “breathtaking in
13 scope and vise-like in grip and therefore swallows up virtually all claims that are tied to
14 removal proceedings”). “Taken together, § 1252(a)(5) and § 1252(b)(9) mean that *any*
15 issue—whether legal or factual—arising from *any* removal-related activity can be
16 reviewed *only* through the [petition for review] PFR process.” *J.E.F.M.*, 837 F.3d at
17 1031 (“[W]hile these sections limit *how* immigrants can challenge their removal
18 proceedings, they are not jurisdiction-stripping statutes that, by their terms, foreclose
19 *all* judicial review of agency actions. Instead, the provisions channel judicial review
20 over final orders of removal to the courts of appeal.”) (emphasis in original); see *id.* at
21 1035 (“§§ 1252(a)(5) and [(b)(9)] channel review of all claims, including policies-and-
22 practices challenges . . . whenever they ‘arise from’ removal proceedings”).

23 Critically, “1252(b)(9) is a judicial channeling provision, not a claim-barring
24 one.” *Aguilar v. ICE*, 510 F.3d 1, 11 (1st Cir. 2007). Indeed, 8 U.S.C. § 1252(a)(2)(D)
25 provides that “[n]othing . . . in any other provision of this chapter . . . shall be construed
26 as precluding review of constitutional claims or questions of law raised upon a petition
27 for review filed with an appropriate court of appeals in accordance with this section.”
28 See also *Ajlani v. Chertoff*, 545 F.3d 229, 235 (2d Cir. 2008) (“[J]urisdiction to review

1 such claims is vested exclusively in the courts of appeals[.]”). The petition-for-review
2 process before the court of appeals ensures that noncitizens have a proper forum for
3 claims arising from their immigration proceedings and “receive their day in court.”
4 *J.E.F.M.*, 837 F.3d at 1031–32 (internal quotations omitted); *see also Rosario v. Holder*,
5 627 F.3d 58, 61 (2d Cir. 2010) (“The REAL ID Act of 2005 amended the [INA] to
6 obviate . . . Suspension Clause concerns” by permitting judicial review of
7 “nondiscretionary” BIA determinations and “all constitutional claims or questions of
8 law.”). These provisions divest district courts of jurisdiction to review both direct and
9 indirect challenges to removal orders, including decisions to detain for purposes of
10 removal or for proceedings. *See Jennings*, 583 U.S. at 294–95 (section 1252(b)(9)
11 includes challenges to the “decision to detain [an alien] in the first place or to seek
12 removal”).

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

20 Here, Petitioner challenges the government’s decision and action to detain, which
21 arises from DHS’s decision to commence removal proceedings, and is thus an “action
22 taken . . . to remove [him/her] from the United States.” *See* 8 U.S.C. § 1252(b)(9); *see*
23 *also, e.g., Jennings*, 583 U.S. at 294–95; *Velasco Lopez v. Decker*, 978 F.3d 842, 850
24 (2d Cir. 2020) (finding that 8 U.S.C. § 1226(e) did not bar review in that case because
25 the petitioner did not challenge “his initial detention”); *Saadulloev v. Garland*, No.
26 3:23-CV-00106, 2024 WL 1076106, at *3 (W.D. Pa. Mar. 12, 2024) (recognizing that
27 there is no judicial review of the threshold detention decision, which flows from the
28 government’s decision to “commence proceedings”).

