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10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 HATEM MOHAMED S. E. A. ABDOU,

13 Petitioner,

14 v.

15 GREGORY J. ARCHAMBEAULT; et al.,

16 Respondents.
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Case No.: 26-cv-02474-JLS-BJW

**RESPONDENTS' RETURN TO
HABEAS PETITION**

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). Petitioner is entitled to and had a bond hearing before an immigration judge (IJ) pursuant to 8 U.S.C. § 1226(a). Petitioner's bond request was ultimately denied by the IJ. Based on the arguments set forth below, the Court should deny Petitioner's requests for relief and dismiss the petition.

II. Factual Background¹

Petitioner is a native and national of Egypt. *See* Exhibit 1 (Notice to Appear). On January 14, 2025, he was admitted into the United States on a nonimmigrant visa with advance parole. *See id.* On April 2, 2026, Petitioner was apprehended by Border Patrol Agents pursuant to a valid stop. *See* Exhibit 2 (Form I-213). Department of Homeland Security (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 2; *see also* 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* Exhibit 1. Within his removal proceedings under § 1229a, Petitioner has the opportunity to apply for relief from removal before an immigration judge (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. Petitioner's removal proceedings remain pending, and his next master calendar hearing is scheduled for May 1, 2026, at 1:30 P.M. *See* Exhibit 3 (Notice of Hearing).

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

Petitioner is currently detained at the Imperial Regional Detention Facility under 8 U.S.C. § 1226(a). *See* Exhibit 1. On April 13, 2026, Petitioner had bond hearing pursuant to 8 U.S.C. § 1226(a) before an IJ. *See* Exhibit 4 (IJ Bond Order). The IJ ultimately denied bond as he considered Petitioner a “[r]isk of [f]light as stated on the record.” *See id.* Petitioner has until May 13, 2026, to appeal the IJs decision denying bond to the Board of Immigration Appeals (BIA). *See id.* As of today, there is no appeal pending of the IJ bond order with the BIA. *See* Exhibit 5 (EOIR Courts and Appeals System Printout).

III. Argument

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

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

As set forth above, Petitioner was apprehended on April 2, 2026, on a valid stop pursuant to 8 U.S.C. § 1226(a). 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 but remained for a time longer than permitted by law (i.e., a visa overstay). Based on that charge, he was issued a Notice to Appear (NTA) and placed in removal proceedings under 8 U.S.C. § 1229a. Petitioner is detained pursuant to 8 U.S.C. § 1226(a) and is entitled to a bond hearing. Petitioner was provided with that bond hearing, which the IJ ultimately denied. Accordingly, petitioner is lawfully detained pursuant to 8 U.S.C. § 1226(a).

B. Administrative Remedies Should Be Exhausted

The Court should ensure Petitioner properly exhausts administrative remedies prior to seeking judicial action. 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).

Here, Petitioner was already provided with a bond hearing before an IJ, pursuant to 8 U.S.C. § 1226(a). As of today, there is no evidence that Petitioner has filed an appeal before the BIA. Instead, Petitioner makes assertions that the bond hearing was constitutionally defective without providing the Bond transcript or any other objective evidence. ECF 1 at 15. Accordingly, the Court should dismiss without prejudice or stay these proceedings until a bond appeal is conducted and concluded before the BIA.

C. Petitioner’s Revocation of Authorized Stay Claims Are Unfounded.

The Constitution limits federal judicial power to designated “cases” and “controversies.” U.S. Const., art. III, § 2; *see also SEC v. Med. Comm. for Human Rights*, 404 U.S. 403, 407 (1972) (federal courts may only entertain matters that present a “case” or “controversy” within the meaning of Article III). “Absent a real and immediate threat of future injury there can be no case or controversy, and thus no Article III standing for a party seeking injunctive relief.” *Wilson v. Brown*, No. 05-cv-1774-BAS-MDD, 2015 WL 8515412, at *3 (S.D. Cal. Dec. 11, 2015) (citing *Friends of the Earth, Inc. v. Laidlaw Env’tl. Servs. (TOC), Inc.*, 528 U.S. 167, 190 (2000) (“[I]n a lawsuit brought to force compliance, it is the plaintiff’s burden to establish standing by

demonstrating that, if unchecked by the litigation, the defendant's allegedly wrongful behavior will likely occur or continue, and that the threatened injury is certainly impending.") (simplified)). At the "irreducible constitutional minimum," standing requires that a petitioner demonstrate the following: (1) an injury in fact (2) that is fairly traceable to the challenged action of the United States and (3) likely to be redressed by a favorable decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992).

Here, Petitioner's asserts in his petition claims and allegations concerning a revocation of authorized stay regarding a pending derivative affirmative asylum application. However, Petitioner's only authorized stay was pursuant to his nonimmigrant status with advanced parole, which has since expired. Moreover, Petitioner's April 2, 2026, apprehension was his first and only DHS apprehension, so there was no prior release to revoke. As such, there is no controversy concerning a revocation of authorized stay for this Court to resolve. Federal courts do not have jurisdiction "to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it." *Church of Scientology of Cal. v. United States*, 506 U.S. 9, 12 (1992) (internal quotations and citations omitted). "A claim is moot if it has lost its character as a present, live controversy." *Am. Rivers v. Nat'l Marine Fisheries Serv.*, 126 F.3d 1118, 1123 (9th Cir. 1997) (citation omitted).

D. Petitioner's Improper Habeas Claims

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

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

17 **E. Claims and Requested Relief Jurisdictionally Barred**

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

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

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

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

18 Other courts have held, “[f]or the purposes of § 1252, the Attorney General
19 commences proceedings against an alien when the alien is issued a Notice to Appear
20 before an immigration court.” *Herrera-Correra v. United States*, No. 08-2941 DSF
21 (JCx), 2008 WL 11336833, at *3 (C.D. Cal. Sept. 11, 2008). “The Attorney General
22 may arrest the alien against whom proceedings are commenced and detain that
23 individual until the conclusion of those proceedings.” *Id.* at *3. “Thus, an alien’s
24 detention throughout this process arises from the Attorney General’s decision to
25 commence proceedings” and review of claims arising from such detention is barred
26 under § 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007)); *Wang*,
27 2010 WL 11463156, at *6; 8 U.S.C. § 1252(g).

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

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

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

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

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

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

IV. CONCLUSION

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

DATED: April 28, 2026

Respectfully submitted,

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