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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 KEVIN RODRIGUES MACEDO,
11

12 Petitioner,

13 v.

14 CHRISTOPHER J. LAROSE, et al.,
15

16 Respondents.

Case No.: 26-cv-02544-JO-MSB

RETURN TO HABEAS PETITION

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1 **I. Introduction**

2 Petitioner is currently detained in Immigration and Customs Enforcement (ICE)
3 custody pursuant to 8 U.S.C. § 1225(b)(2). Petitioner’s habeas petition seeks his release.
4 Through multiple provisions of 8 U.S.C. § 1252, Congress has stripped federal courts of
5 jurisdiction over challenges to the commencement of removal proceedings, including
6 the consequent detention pending removal proceedings. Moreover, Petitioner’s detention
7 is mandated by statute. The Court should deny and dismiss the petition. Alternatively,
8 if the Court is inclined to grant relief, it should order a bond hearing to address ICE’s
9 newly obtained evidence to address whether Petitioner is a danger to the community or
10 a flight risk.

11 **II. Factual Background¹**

12 Petitioner is a citizen and national of Brazil. *See* Exhibit 1 (Notice to Appear).
13 He was initially encountered by Border Patrol officers when he entered the United
14 States without inspection on August 7, 2023. *See id.* He was issued a Notice to Appear
15 on August 20, 2023, after an Asylum Officer found he had established a credible fear
16 of prosecution or torture. *See id.* On September 22, 2023, Petitioner was granted
17 humanitarian parole, under 8 U.S.C. § 1182(d)(5). *See* Exhibit 2 (Form I-213).

18 However, just recently, Enforcement and Removal Operations (ERO) discovered
19 the Petitioner had an active criminal arrest warrant in Brazil. Exhibit 3 (Brazilian Arrest
20 Warrant). Significantly, Petitioner did not disclose this information at the time of his
21 initial encounter upon entry to the U.S. *See* Exhibit 2. On October 30, 2025, Petitioner
22 was encountered by ERO during a field office appointment. *See id.* Petitioner was
23 provided with an I-200 arrest warrant, was detained and provided with a letter formally
24 revoking his parole. *See* Exhibit 4 (I-200); *see also* Exhibit 5 (Notice of Parole
25 Revocation). Petitioner acknowledged that he was aware of the arrest warrant against
26 him and did not dispute its validity. *See* Exhibit 3. Petitioner was taken into Department
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28 ¹ The attached exhibits are true copies, with redactions of private information, of documents obtained from agency counsel.

1 of Homeland Security (DHS) custody and his removal proceedings were transferred to
2 the Otay Mesa Immigration Court on the detained docket. *See* Exhibit 6 (Notice of
3 Hearing). Petitioner remains detained at the Otay Mesa Detention Center and is subject
4 to mandatory detention under 8 U.S.C. § 1225(b)(2).

5 **III. Argument**

6 **B. Claims and Requested Relief Jurisdictionally Barred**

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

10 Courts lack jurisdiction over any claim or cause of action arising from any
11 decision to commence or adjudicate removal proceedings or execute removal orders.
12 *See* 8 U.S.C. § 1252(g) (“[N]o court shall have jurisdiction to hear any cause or claim
13 by or on behalf of any alien arising from the decision or action by the Attorney General
14 to *commence proceedings, adjudicate cases, or execute removal orders.*”) (emphasis
15 added). Section 1252(g) also bars district courts from hearing challenges to the method
16 by which the government chooses to commence removal proceedings, including the
17 decision to detain an alien pending removal. *See Alvarez v. ICE*, 818 F.3d 1194, 1203
18 (11th Cir. 2016) (“By its plain terms, [§ 1252(g)] bars us from questioning ICE’s
19 discretionary decisions to commence removal” and bars review of “ICE’s decision to
20 take [plaintiff] into custody and to detain him during his removal proceedings”).

21 Removal proceedings commence by the filing of a notice to appear in
22 immigration court. *See Jimenez-Angeles v. Ashcroft*, 291 F.3d 594, 600 (9th Cir. 2002).
23 “The Attorney General may arrest the alien against whom proceedings are commenced
24 and detain that individual until the conclusion of those proceedings.” *Herrera-Correra*
25 *v. United States*, No. 08-2941 DSF (JCx), 2008 WL 11336833, at *3 (C.D. Cal. Sept.
26 11, 2008). “[A]n alien’s detention throughout this process arises from the Attorney
27 General’s decision to commence proceedings.” *Id.* (citing *Sissoko v. Rocha*, 509 F.3d
28 947, 949 (9th Cir. 2007)); 8 U.S.C. § 1252(g); *but see Vasquez Garcia v. Noem*, No.

1 25-cv-02180-DMS-MMP, 2025 WL 2549431, at *4 (S.D. Cal. Sept. 3, 2025).

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

8 Moreover, under 8 U.S.C. § 1252(b)(9), “[j]udicial review of all questions of law
9 and fact . . . arising from any action taken or proceeding brought to remove an alien
10 from the United States under this subchapter shall be available only in judicial review
11 of a final order under this section.” (emphasis added). While holding that it was
12 unnecessary to comprehensively address the scope of § 1252(b)(9), the Supreme Court
13 in *Jennings* provided guidance on the types of challenges that may fall within the scope
14 of § 1252(b)(9). *See Jennings*, 583 U.S. at 293–94. The Court found that “§ 1252(b)(9)
15 [did] not present a jurisdictional bar” in situations where “respondents . . . [were] not
16 challenging the decision to detain them in the first place.” *Id.* at 294–95. In this case,
17 Petitioner does challenge the government’s decision to detain him in the first place.
18 Though Petitioner attempts to frame his challenge as one relating to detention authority,
19 rather than a challenge to DHS’s decision to detain him in the first instance, such
20 creative framing does not evade the preclusive effect of § 1252(b)(9). Indeed, that
21 Petitioner is challenging the basis upon which he is detained is enough to trigger §
22 1252(b)(9) because “detention is an ‘action taken . . . to remove’ an alien.” *See Jennings*,
23 583 U.S. at 319 (emphasis in original); *see also* 8 U.S.C. § 1252(b)(9).

24 The Court should dismiss this matter for lack of jurisdiction under 8 U.S.C.
25 § 1252. *See S.Q.D.C.*, 2025 WL 2617973.²

26
27 ² On an alternative basis, the Court should ensure Petitioner properly exhausts
28 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

1 **B. Petitioner is Lawfully Detained**

2 Petitioner's claims for alleged statutory and constitutional violations fail because
3 he is subject to mandatory detention under 8 U.S.C. § 1225.

4 While Petitioner was previously released from custody on humanitarian parole,
5 his parole was terminated. After Petitioner was detained on October 30, 2025, he was
6 served with a letter terminating his parole status. *See* 8 CFR § 212.5(e)(2)(i) ("upon
7 accomplishment of the purpose for which parole was authorized or when [] neither
8 humanitarian reasons nor public benefit warrants the continued presence of the alien in
9 the United States, parole shall be terminated upon written notice to the alien"). There is
10 no basis to order Petitioner's immediate release from immigration detention based on
11 the argument that he was provided insufficient notice of the revocation of his
12 humanitarian parole. *See Omer G. G. v. Kaiser*, No. 1:25-CV-01471-KES-SAB (HC),
13 2025 WL 3254999, *3 n. 6 (E.D. Cal. Nov. 22, 2025) ("Petitioner's claim concerning
14 the regulations is without merit because the regulations governing termination of
15 humanitarian parole provide that '[p]arole shall automatically be terminated without
16 written notice . . . at the expiration of the time for which parole was authorized . . .'" 8
17 C.F.R. § 212.5(e)(1). As petitioner's parole expired on August 28, 2025, *see* Doc. 1 at
18 33, petitioner was not entitled to notice under the regulations.").

19 The termination of his parole emphasizes his status as an applicant for admission,
20 subject to mandatory detention under 8 U.S.C. § 1225(b)(2). *See* 8 U.S.C.
21 § 1182(d)(5)(A) (" . . . *such parole of such alien shall not be regard as an admission of*
22 *the alien and when the purposes of such parole shall . . . have been served the alien shall*
23 *forthwith return or be return to the custody from which he was paroled and thereafter*
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25 not exhaust administrative remedies, a district court ordinarily should either dismiss the
26 petition without prejudice or stay the proceedings until the petitioner has exhausted
27 remedies, unless exhaustion is excused." *Leonardo v. Crawford*, 646 F.3d 1157, 1160
28 (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).

1 his case shall continue to be dealt with in the same manner as that of any other *applicant*
2 *for admission* to the United States”) (emphasis added).

3 Section 1225(b)(2)(A) requires mandatory detention of “an alien who is *an*
4 *applicant for admission*, if the examining immigration officer determines that an alien
5 seeking admission is not clearly and beyond a doubt entitled to be admitted[.]” *Chavez*
6 *v. Noem*, No. 3:25-cv-02325, 2025 WL 2730228, at *4 (S.D. Cal. Sept. 24, 2025)
7 (quoting 8 U.S.C. § 1225(b)(2)(A)) (emphasis in original). Section 1225(a)(1)
8 “expressly defines that ‘[a]n alien present in the United States who has not been
9 admitted ... shall be deemed for purposes of this Act *an applicant for admission*.” *Id.*
10 (quoting 8 U.S.C. § 1225(a)(1)) (emphasis in original).

11 Here, Petitioner is an “alien present in the United States who has not been
12 admitted.” *See* Exhibits 1, 2; *see also* 8 U.S.C. § 1182(d)(5)(A) (“such parole of such
13 alien shall not be regarded as an admission of the alien.”). Thus, as found by the district
14 court in *Chavez v. Noem* and as mandated by the plain language of the statute, Petitioner
15 is an “applicant for admission” and subject to the mandatory detention provisions of §
16 1225(b)(2).

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

19 **C. Should the Court be Inclined to Grant Relief in this Matter, Respondents**
20 **Respectfully Request that the Court Order a Bond Hearing to Address whether**
21 **Petitioner is a Danger to the Community or a Flight Risk, given this Newly**
22 **Discovered Evidence Regarding his Criminal History**

23 It is the government’s position that Petitioner is subject to mandatory detention
24 under § 1225(b)(2). However, the government acknowledges that this Court, and
25 Courts in this District, have repeatedly reached the opposite conclusion under the
26 similar facts. *See, e.g., Arias Torres v. Bondi*, No. 25-cv-2457-BAS-MSB, 2025 WL
27 3214773 (S.D. Cal. Nov. 18, 2025); *Martinez Lopez v. LaRose*, No. 25-cv-2717-JES-
28 AHG, 2025 WL 3030457 (S.D. Cal. Oct. 30, 2025); *Beltran v. Noem*, No. 25cv2650-

1 LL-DEB, 2025 WL 3078837 (S.D. Cal. Nov. 4, 2025); *Garcia v. Noem*, 803 F. Supp.
2 3d 1064 (S.D. Cal. 2025); *Esquivel-Ipina v. LaRose*, No. 25-CV-2672 JLS (BLM),
3 2025 WL 2998361 (S.D. Cal. Oct. 24, 2025); *Lucas-Miguel v. LaRose*, No. 25-cv-
4 3022-RSH-JLB, 2025 WL 3251580 (S.D. Cal. Nov. 21, 2025); *Vasquez-Diaz v.*
5 *LaRose*, No. 25-cv-3038-TWR-JLB, ECF No. 6 (S.D. Cal. Nov. 13, 2025); *Cardoso v.*
6 *LaRose*, No. 25-cv-3043-BJC-VET, ECF No. 7 (S.D. Cal. Dec. 12, 2025); *Maceda-*
7 *Garcia v. Noem*, No. 25-cv-2968-JO-JLB, ECF No. 9 (S.D. Cal. Nov. 13, 2025); *A.S.*
8 *v. LaRose*, No. 25-cv-2876-RBM-VET, ECF No. 9 (S.D. Cal. Nov. 19, 2025); *Prieto-*
9 *Cordova v. LaRose*, No. 25-cv-2824-CAB-DDL, 2025 WL 3228953 (S.D. Cal. Nov.
10 19, 2025); *Lagarda-Vega v. Noem*, No. 25-cv-2970-GPC-DDL, 2025 WL 3558931
11 (S.D. Cal. Dec. 11, 2025); *Nayyer v. LaRose*, No. 25-cv-3111-AGS-DDL, ECF No. 7
12 (S.D. Cal. Dec. 12, 2025); *Amaya v. Noem*, No. 25cv2892-BTM-DEB, 2025 WL
13 3182998 (S.D. Cal. Nov. 13, 2025).

14 However, the key distinction here is that Petitioner omitted relevant criminal
15 information that precluded the Department from properly assessing whether Petitioner
16 is a danger to the community or a flight risk. As such, if the court is include to grant
17 relief in this matter, the government respectfully requests that this court order a bond
18 hearing so that the Department can properly address whether Petitioner is a danger to
19 the community or a flight risk.³

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28 ³ To the extent the Court issues an order directing a bond hearing under 1226(a),
considering heavy caseloads and staffing levels, Respondents respectfully request that
such order provide the government 14 days from issuance to hold such bond hearing.

1 **IV. CONCLUSION**

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

4 DATED: April 29, 2026

Respectfully submitted,

5 ADAM GORDON
6 United States Attorney

7 s/Antonio Estrada
8 ANTONIO ESTRADA
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Attorneys for Respondents

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