

1 ADAM GORDON
United States Attorney
2 ANTONIO ESTRADA
California Bar No. 321247
3 Special Assistant U.S. Attorney
4 Office of the U.S. Attorney
880 Front Street, Room 6293
5 San Diego, CA 92101-8893
Telephone: (619) 546-8664
6 Facsimile: (619) 546-7751
7 Email: antonio.estrada@usdoj.gov

8 Attorneys for Respondents

9
10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 GERARDO GARCIA RAMOS,

13 Petitioner,

14 v.

15 TODD LYONS; et al.,

16 Respondents.
17
18
19
20
21
22
23
24
25
26
27
28

Case No.: 26-cv-02587-RBM-BJW

**RESPONDENTS' RETURN TO
HABEAS PETITION**

I. Introduction

Petitioner has filed a second habeas petition under 28 U.S.C. § 2241 and motion for temporary restraining order. As the petition and motion assert the same claims and relief, Respondents respond to both herein for the sake of judicial efficiency. Petitioner is currently in removal proceedings under 8 U.S.C. § 1229a and is charged with deportability/removability under 8 U.S.C. § 1182(a)(6)(A), as an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General. As such, Petitioner is detained pursuant to 8 U.S.C. § 1226(a). On August 1, 2025, Petitioner had a bond hearing before an immigration judge pursuant to 8 U.S.C. § 1226(a). The immigration judge denied bond, the Petitioner timely filed an appeal yet he failed to file a brief as required by the briefing schedule. Furthermore, Petitioner's merits hearing in removal proceedings would have already been completed had it not been for Petitioner's request for a continuance. 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 Mexico. *See* Exhibit 1 (Notice to Appear). Petitioner entered the U.S. at or near an unknown place on or about an unknown date without being inspected and admitted or paroled by an immigration officer. *See id.* On March 31, 2025, Petitioner was encountered by Stuart ICE/ERO following a criminal arrest. *See* Exhibit 2 (I-213). Petitioner was transferred to ICE/ERO custody on May 29, 2025. DHS determined that Petitioner is deportable/removable under 8 U.S.C. § 1229a and was charged with deportability/removability under 8 U.S.C. § 1182(a)(6)(A), as an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General. *See* Exhibit 1; *see also* Exhibit 2. Based on that charge, he

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

1 was issued a Notice to Appear (NTA) and placed in removal proceedings under 8 U.S.C.
2 § 1229a. *See* Exhibit 1.

3 Petitioner is currently detained at the Otay Mesa Detention Center under 8 U.S.C.
4 § 1226(a). On August 1, 2025, Petitioner had a bond hearing before an immigration
5 judge (IJ) pursuant to 8 U.S.C. § 1226(a). *See* Exhibit 3 (IJ order denying bond). The IJ
6 denied bond finding that Petitioner presented both a danger to the community and a
7 flight risk. *See id.* On August 31, 2025, Petitioner timely filed an appeal before the
8 Board of Immigration Appeals (BIA) challenging the IJs decision to deny bond. *See*
9 Exhibit 4 (BIA Appeal receipt). On February 5, 2026, the BIA issued a briefing schedule
10 giving Petitioner a deadline for file the appellate brief no later than February 26, 2026.
11 *See* Exhibit 5 (BIA Briefing Schedule). However, the Petitioner failed to file an
12 appellate brief. *See* Exhibit 6 (Electronic Courts and Appeals System printout).

13 Within his removal proceedings under § 1229a, Petitioner has the opportunity to
14 apply for relief from removal before an immigration judge (IJ), including cancellation
15 of removal for non-permanent residents (cancellation of removal) under 8 U.S.C. §
16 1229b(b). Petitioner filed his application for cancellation of removal on September 19,
17 2025. Petitioner initial individual merits proceeded on April 6, 2026 at 1pm, but was
18 continued to April 24, 2026, as there was insufficient time to complete the hearing. *See*
19 Exhibit 7 (Department of Justice – Executive Officer for Immigration Review Details)
20 at 24-25. However, the continued merits hearing did not proceed as scheduled as it was
21 Petitioner who filed a Motion to Continue the merits hearing, requesting time to gather
22 more evidence. *See* Exhibit 8 (Petitioner’s Motion to Continue). The motion was
23 granted and Petitioners continued merits hearing was rescheduled for May 8, 2026 at
24 10am. *See* Exhibit 9 (IJ Order Granting Motion to Continue); *see also* Exhibit 10
25 (Notice of Hearing dated April 21, 2026).

26 ///

27 ///

28 ///

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 her removal proceedings, release her on bond, or release her 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 entered the U.S. at or near an unknown place on or about an unknown date without being inspected and admitted or paroled by an immigration officer. On March 31, 2025, Petitioner was encountered by Stuart ICE/ERO following a criminal arrest. Petitioner was apprehended and detained pursuant to 8 U.S.C. § 1226(a). DHS determined that Petitioner is deportable/removable under 8 U.S.C. § 1182(a)(6)(A), as an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General. Based on that charge, he was issued a Notice to Appear (NTA) and placed in removal proceedings under 8 U.S.C. § 1229a. On August 1, 2025, Petitioner had a bond hearing before an IJ pursuant to 8 U.S.C. § 1226(a). The IJ denied bond finding that Petitioner presented both a danger to the community and a flight risk. Because Petitioner’s bond was denied by an immigration judge, he still remains lawfully detained pending his appeal.

B. Administrative Remedies Should Be Exhausted

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

1 F.3d 1037, 1047 (9th Cir. 2001). “When a petitioner does not exhaust administrative
2 remedies, a district court ordinarily should either dismiss the petition without prejudice
3 or stay the proceedings until the petitioner has exhausted remedies, unless exhaustion
4 is excused.” *Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011); *see also*
5 *Alvarado v. Holder*, 759 F.3d 1121, 1127 n.5 (9th Cir. 2014) (issue exhaustion is a
6 jurisdictional requirement); *Tijani v. Holder*, 628 F.3d 1071, 1080 (9th Cir. 2010) (no
7 jurisdiction to review legal claims not presented in the petitioner’s administrative
8 proceedings before the BIA).

9 Here, Petitioner already had a bond hearing before an IJ, pursuant to 8 U.S.C.
10 § 1226(a), on August 1, 2025. Petitioner’s bond was denied as the IJ determined that
11 Petitioner was both a danger to the community and a flight risk. Petitioner timely filed
12 an appeal before the BIA, and that appeal remains pending. Accordingly, the Court
13 should dismiss without prejudice or stay these proceedings until the bond appeal has
14 concluded before the BIA.

15 **C. Petitioner’s Detention is Not Unconstitutionally Prolonged**

16 Petitioner’s detention falls significantly short of the length courts have found to
17 raise due process concerns. *See, e.g., Durand v. Allen*, No. 3:23-cv-00279-RBM-BGS,
18 2024 WL 711607, at *5 (S.D. Cal. Feb. 21, 2024) (detained over two-and-a-half years);
19 *Sanchez-Rivera v. Matuszewski*, No. 22-cv-1357-MMA (JLB), 2023 WL 139801, at *6
20 (S.D. Cal. Jan. 9, 2023) (three years); *Yagao v. Figueroa*, No. 17-cv-2224-AJB-MDD,
21 2019 WL 1429582, at *2 (S.D. Cal. March 29, 2019) (two years). Courts in this district
22 have found detention for much longer periods to be unreasonably prolonged. *See*
23 *Durand v. Allen*, No. 3:23-cv-00279-RBM-BGS, 2024 WL 711607 at *5 (S.D. Cal.
24 Feb. 21, 2024) (32 months); *Sibomana*, 2023 WL 3028093, at *4 (19 months);
25 *Sanchez-Rivera*, 2023 WL 139801 at *6 (three years); *Kydyrali v. Wolf*, 499 F. Supp.
26 3d 768, 773 (S.D. Cal. 2020) (20 months); *Yagao*, 2019 WL 1429582, at *1 (two years
27 since last bond hearing). The length of detention “is the most important factor.”
28 *Sanchez-Rivera*, 2023 WL 139801, at *6 (citation omitted).

1 Here, Petitioner has been detained for about 11 months. As such, Petitioner's
2 current detention does not fall within the range these courts have found to be
3 unreasonable. Moreover, the length of Petitioner's detention, by itself, does not favor
4 granting habeas relief. *See Sadeqi v. LaRose*, No. 25-cv-2587-RSH-BJW, 2025 WL
5 3154520, at *3 (S.D. Cal. Nov. 12, 2025) ("The Court agrees with Respondents that
6 the length of Petitioner's detention to date—almost 12 months—does not by itself,
7 without more, establish prolonged detention in violation of due process.").
8 Significantly, as previously explained, it is Petitioner that has delayed his own removal
9 proceedings and bond appeal. As such, Petitioner's detention is not unconstitutionally
10 prolonged.

11 **D. Petitioner's Improper Habeas Claims**

12 To the extent Petitioner asserts claims regarding the commencement of removal
13 proceedings and relief applications, such claims are improper. An individual may seek
14 habeas relief under 28 U.S.C. § 2241 if he is "in custody" under federal authority "in
15 violation of the Constitution or laws or treaties of the United States." 28 U.S.C. §
16 2241(c). But habeas relief is available to challenge only the legality or duration of
17 confinement. *Pinson v. Carvajal*, 69 F.4th 1059, 1067 (9th Cir. 2023); *Crawford v. Bell*,
18 599 F.2d 890, 891 (9th Cir. 1979); *Dep't of Homeland Security v. Thraissigiam*, 591
19 U.S. 103, 117 (2020) (The writ of habeas corpus historically "provide[s] a means of
20 contesting the lawfulness of restraint and securing release."). The Ninth Circuit squarely
21 explained how to decide whether a claim sounds in habeas jurisdiction: "[O]ur review
22 of the history and purpose of habeas leads us to conclude the relevant question is
23 whether, based on the allegations in the petition, release is *legally required* irrespective
24 of the relief requested." *Pinson*, 69 F.4th at 1072 (emphasis in original); *see also Nettles*
25 *v. Grounds*, 830 F.3d 922, 934 (9th Cir. 2016) (The key inquiry is whether success on
26 the petitioner's claim would "necessarily lead to immediate or speedier release."). Here,
27 a review of such claims would not automatically entitle Petitioner to release from
28 detention. *See Guselnikov v. Noem*, No. 25-cv-1971-BTM-KSC, 2025 WL 2300783, at

*1 (S.D. Cal. Aug. 8, 2025) (finding petitioners' claims did not arise under § 2241 because they were not arguing they were unlawfully in custody and receiving the requested relief would not entitle them to release); *Giron Rodas v. Lyons*, No. 25cv1912-LL-AHG, 2025 WL 2300781, at *3 (S.D. Cal. Aug. 1, 2025) ("Like in *Pinson*, the Court lacks jurisdiction over Petitioner's § 2241 habeas petition since it cannot be fairly read as attacking 'the legality or duration of confinement.'") (quoting *Pinson*, 69 F.4th at 1065).

E. 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).

In general, courts lack jurisdiction to review a decision to commence or adjudicate removal proceedings or execute removal orders. *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."); *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999) ("There was good reason for Congress to focus special attention upon, and make special provision for, judicial review of the Attorney General's discrete acts of 'commenc[ing] proceedings, adjudicat[ing] cases, [and] execut[ing] removal orders'—which represent the initiation or prosecution of various stages in the deportation process."); *Limpin v. United States*, 828 Fed. App'x 429 (9th Cir. 2020) (holding district court properly dismissed under 8 U.S.C. § 1252(g) "because claims stemming from the decision to arrest and detain an alien at the commencement of removal proceedings are not within any court's jurisdiction"). In other words, § 1252(g) removes district court jurisdiction over "three discrete actions that the Attorney may take: [his] 'decision or action' to 'commence proceedings, adjudicate cases, or execute removal orders.'" *Reno*, 525 U.S. at 482 (emphasis removed). Congress has explicitly foreclosed district court jurisdiction over

1 claims that necessarily arise “from the decision or action by the Attorney General to
2 commence proceedings [and] adjudicate cases,” over which. 8 U.S.C. § 1252(g).

3 Section 1252(g) also bars district courts from hearing challenges to the method
4 by which the government chooses to commence removal proceedings, including the
5 decision to detain an alien pending removal. *See Alvarez v. ICE*, 818 F.3d 1194, 1203
6 (11th Cir. 2016) (“By its plain terms, [§ 1252(g)] bars us from questioning ICE’s
7 discretionary decisions to commence removal” and bars review of “ICE’s decision to
8 take [plaintiff] into custody and to detain him during his removal proceedings”).

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

19 Moreover, under 8 U.S.C. § 1252(b)(9), “[j]udicial review of all questions of law
20 and fact . . . arising from any action taken or proceeding brought to remove an alien
21 from the United States under this subchapter shall be available only in judicial review
22 of a final order under this section.” Further, judicial review of a final order is available
23 only through “a petition for review filed with an appropriate court of appeals.” 8 U.S.C.
24 § 1252(a)(5). The Supreme Court has made clear that § 1252(b)(9) is “the unmistakable
25 ‘zipper’ clause,” channeling “judicial review of all” “decisions and actions leading up
26 to or consequent upon final orders of deportation,” including “non-final order[s],” into
27 proceedings before a court of appeals. *Reno*, 525 U.S. at 483, 485; *see J.E.F.M. v.*
28 *Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (noting § 1252(b)(9) is “breathhtaking in

1 scope and vise-like in grip and therefore swallows up virtually all claims that are tied to
2 removal proceedings”). “Taken together, § 1252(a)(5) and § 1252(b)(9) mean that *any*
3 issue—whether legal or factual—arising from *any* removal-related activity can be
4 reviewed *only* through the [petition for review] PFR process.” *J.E.F.M.*, 837 F.3d at
5 1031 (“[W]hile these sections limit *how* immigrants can challenge their removal
6 proceedings, they are not jurisdiction-stripping statutes that, by their terms, foreclose
7 *all* judicial review of agency actions. Instead, the provisions channel judicial review
8 over final orders of removal to the courts of appeal.”) (emphasis in original); *see id.* at
9 1035 (“§§ 1252(a)(5) and [(b)(9)] channel review of all claims, including policies-and-
10 practices challenges . . . whenever they ‘arise from’ removal proceedings”).

11 Critically, “1252(b)(9) is a judicial channeling provision, not a claim-barring
12 one.” *Aguilar v. ICE*, 510 F.3d 1, 11 (1st Cir. 2007). Indeed, 8 U.S.C. § 1252(a)(2)(D)
13 provides that “[n]othing . . . in any other provision of this chapter . . . shall be construed
14 as precluding review of constitutional claims or questions of law raised upon a petition
15 for review filed with an appropriate court of appeals in accordance with this section.”
16 *See also Ajlani v. Chertoff*, 545 F.3d 229, 235 (2d Cir. 2008) (“[J]urisdiction to review
17 such claims is vested exclusively in the courts of appeals[.]”). The petition-for-review
18 process before the court of appeals ensures that noncitizens have a proper forum for
19 claims arising from their immigration proceedings and “receive their day in court.”
20 *J.E.F.M.*, 837 F.3d at 1031–32 (internal quotations omitted); *see also Rosario v. Holder*,
21 627 F.3d 58, 61 (2d Cir. 2010) (“The REAL ID Act of 2005 amended the [INA] to
22 obviate . . . Suspension Clause concerns” by permitting judicial review of
23 “nondiscretionary” BIA determinations and “all constitutional claims or questions of
24 law.”). These provisions divest district courts of jurisdiction to review both direct and
25 indirect challenges to removal orders, including decisions to detain for purposes of
26 removal or for proceedings. *See Jennings*, 583 U.S. at 294–95 (section 1252(b)(9)
27 includes challenges to the “decision to detain [an alien] in the first place or to seek
28 removal”).

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

8 Here, Petitioner challenges the government’s decision and action to detain, which
9 arises from DHS’s decision to commence removal proceedings, and is thus an “action
10 taken . . . to remove [him/her] from the United States.” *See* 8 U.S.C. § 1252(b)(9); *see*
11 *also, e.g., Jennings*, 583 U.S. at 294–95; *Velasco Lopez v. Decker*, 978 F.3d 842, 850
12 (2d Cir. 2020) (finding that 8 U.S.C. § 1226(e) did not bar review in that case because
13 the petitioner did not challenge “his initial detention”); *Saadulloev v. Garland*, No.
14 3:23-CV-00106, 2024 WL 1076106, at *3 (W.D. Pa. Mar. 12, 2024) (recognizing that
15 there is no judicial review of the threshold detention decision, which flows from the
16 government’s decision to “commence proceedings”).

17 Accordingly, this Court lacks jurisdiction over this petition under 8 U.S.C.
18 § 1252.

19 IV. CONCLUSION

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

22 DATED: May 1, 2026

Respectfully submitted,

23 ADAM GORDON
24 United States Attorney

25 s/ Antonio Estrada
26 ANTONIO ESTRADA
27 Special Assistant United States Attorney
28 Attorneys for Respondents