

1 ADAM GORDON
United States Attorney
2 ANTONIO ESTRADA
Special Assistant United States Attorney
3 California Bar Number 321247
Office of the U.S. Attorney
4 880 Front Street, Room 6293
San Diego, CA 92101-8893
5 Telephone: (619) 546-8664
Email: Antonio.Estrada@usdoj.gov

6 Attorneys for Respondents
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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 BOYU WANG,
11

12 Petitioner,

13 v.

14 CHRISTOPHER J. LAROSE; et al.,

15 Respondents.
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Case No.: 26-cv-02648-RSH-MSB

**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)(C), as an alien who was admitted as a non-immigrant and failed to maintain that status (i.e., a status violator). As such, Petitioner is detained pursuant to 8 U.S.C. § 1226(a). Because Petitioner is detained pursuant to 8 U.S.C. § 1226(a), he is entitled to a bond hearing before an immigration judge (IJ). Petitioner has yet to request a bond hearing before an IJ. 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 China. *See* Exhibit 1 (Department of Justice – Executive Officer for Immigration Review case details) at 2. On November 4, 2010, he was admitted into the United States on a nonimmigrant visa. *See id* at 11. On April 18, 2015, the Department of Homeland Security (DHS) determined that Petitioner was deportable/removable under 8 U.S.C. § 1227(a)(1)(C), as a status violator. *See* Exhibit 1 at 11. 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 had 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. On February 20, 2020, the IJ deemed Petitioner’s applications for relief abandoned and ordered him removed to China. *See* Exhibit 1 at 2; *see also* Exhibit 2 (IJ Removal Order). Petitioner timely filed an appeal of his removal order before the Board of Immigration Appeals (BIA). *See id*. Petitioner’s appeal remains pending before the BIA.² *See* Exhibit 1 at 3.

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

² Petitioner is not subject to a final order of removal. *See* 8 C.F.R. § 1241.1.

On March 31, 2026, he was apprehended by Immigration and Customs Enforcement (ICE), San Diego Criminal Apprehension Program (CAP). *See* Exhibit 3 (I-213). Petitioner is currently detained at the Otay Mesa Detention Center under 8 U.S.C. § 1226(a); *as of today Petitioner has only been in custody for about 34 days.* Petitioner is entitled to bond hearing before an IJ pursuant to 8 U.S.C. § 1226(a). Yet, Petitioner has failed to request a bond hearing. Based on the arguments set forth below, the Court should deny any requests for relief and dismiss the petition.

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 is deportable/removable under 8 U.S.C. § 1227(a)(1)(C), as a status violator. Based on that charge, he was issued an NTA and placed in removal proceedings under 8 U.S.C. § 1229a. As such, Petitioner is detained pursuant to 8 U.S.C. § 1226(a). Accordingly, Petitioner is entitled to a bond hearing before an IJ. Significantly, as of today, Petitioner has failed to request a bond hearing. Therefore, because Petitioner’s has failed to request a bond hearing, Petitioner is lawfully detained pursuant to 8 U.S.C. § 1226(a).

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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 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).

Again, despite being entitled to a bond hearing before an IJ, Petitioner has failed to request a bond hearing. Accordingly, the Court should dismiss without prejudice or stay these proceedings until a Petitioner exhausts his administrative remedies and requests a bond hearing before an IJ.

C. Petitioner’s Improper Habeas Claims

To the extent Petitioner asserts claims regarding the commencement of removal proceedings, relief applications, and the conditions of his detention, 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 contesting the lawfulness of restraint and securing release.”). The Ninth Circuit squarely explained how to decide whether a claim sounds in habeas jurisdiction: “[O]ur review of the history and purpose of habeas leads us to

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

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

15 Petitioner bears the burden of establishing that this Court has subject matter
 16 jurisdiction over asserted claims. *See Ass’n of Am. Med. Coll. v. United States*, 217 F.3d
 17 770, 778-79 (9th Cir. 2000); *Finley v. United States*, 490 U.S. 545, 547-48 (1989).

18 In general, courts lack jurisdiction to review a decision to commence or
 19 adjudicate removal proceedings or execute removal orders. *See* 8 U.S.C. § 1252(g)
 20 (“[N]o court shall have jurisdiction to hear any cause or claim by or on behalf of any
 21 alien arising from the decision or action by the Attorney General to commence
 22 proceedings, adjudicate cases, or execute removal orders.”); *Reno v. Am.-Arab Anti-*
 23 *Discrimination Comm.*, 525 U.S. 471, 483 (1999) (“There was good reason for
 24 Congress to focus special attention upon, and make special provision for, judicial
 25 review of the Attorney General’s discrete acts of “commenc[ing] proceedings,
 26 adjudicat[ing] cases, [and] execut[ing] removal orders”—which represent the initiation
 27 or prosecution of various stages in the deportation process.”); *Limpin v. United States*,
 28 828 Fed. App’x 429 (9th Cir. 2020) (holding district court properly dismissed under 8

1 U.S.C. § 1252(g) “because claims stemming from the decision to arrest and detain an
2 alien at the commencement of removal proceedings are not within any court’s
3 jurisdiction”). In other words, § 1252(g) removes district court jurisdiction over “three
4 discrete actions that the Attorney may take: [his] ‘decision or action’ to ‘commence
5 proceedings, adjudicate cases, or execute removal orders.’” *Reno*, 525 U.S. at 482
6 (emphasis removed). Congress has explicitly foreclosed district court jurisdiction over
7 claims that necessarily arise “from the decision or action by the Attorney General to
8 commence proceedings [and] adjudicate cases,” over which. 8 U.S.C. § 1252(g).

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

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

25 Moreover, under 8 U.S.C. § 1252(b)(9), “[j]udicial review of all questions of law
26 and fact . . . arising from any action taken or proceeding brought to remove an alien
27 from the United States under this subchapter shall be available only in judicial review
28 of a final order under this section.” Further, judicial review of a final order is available

1 only through “a petition for review filed with an appropriate court of appeals.” 8 U.S.C.
 2 § 1252(a)(5). The Supreme Court has made clear that § 1252(b)(9) is “the unmistakable
 3 ‘zipper’ clause,” channeling “judicial review of all” “decisions and actions leading up
 4 to or consequent upon final orders of deportation,” including “non-final order[s],” into
 5 proceedings before a court of appeals. *Reno*, 525 U.S. at 483, 485; *see J.E.F.M. v.*
 6 *Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (noting § 1252(b)(9) is “breathtaking in
 7 scope and vise-like in grip and therefore swallows up virtually all claims that are tied to
 8 removal proceedings”). “Taken together, § 1252(a)(5) and § 1252(b)(9) mean that *any*
 9 issue—whether legal or factual—arising from *any* removal-related activity can be
 10 reviewed *only* through the [petition for review] PFR process.” *J.E.F.M.*, 837 F.3d at
 11 1031 (“[W]hile these sections limit *how* immigrants can challenge their removal
 12 proceedings, they are not jurisdiction-stripping statutes that, by their terms, foreclose
 13 *all* judicial review of agency actions. Instead, the provisions channel judicial review
 14 over final orders of removal to the courts of appeal.”) (emphasis in original); *see id.* at
 15 1035 (“§§ 1252(a)(5) and [(b)(9)] channel review of all claims, including policies-and-
 16 practices challenges . . . whenever they ‘arise from’ removal proceedings”).

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

1 “nondiscretionary” BIA determinations and “all constitutional claims or questions of
 2 law.”). These provisions divest district courts of jurisdiction to review both direct and
 3 indirect challenges to removal orders, including decisions to detain for purposes of
 4 removal or for proceedings. *See Jennings*, 583 U.S. at 294–95 (section 1252(b)(9)
 5 includes challenges to the “decision to detain [an alien] in the first place or to seek
 6 removal”).

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

14 Here, Petitioner challenges the government’s decision and action to detain, which
 15 arises from DHS’s decision to commence removal proceedings, and is thus an “action
 16 taken . . . to remove [him/her] from the United States.” *See* 8 U.S.C. § 1252(b)(9); *see*
 17 *also, e.g., Jennings*, 583 U.S. at 294–95; *Velasco Lopez v. Decker*, 978 F.3d 842, 850
 18 (2d Cir. 2020) (finding that 8 U.S.C. § 1226(e) did not bar review in that case because
 19 the petitioner did not challenge “his initial detention”); *Saadulloev v. Garland*, No.
 20 3:23-CV-00106, 2024 WL 1076106, at *3 (W.D. Pa. Mar. 12, 2024) (recognizing that
 21 there is no judicial review of the threshold detention decision, which flows from the
 22 government’s decision to “commence proceedings”).

23 Accordingly, this Court lacks jurisdiction over this petition under 8 U.S.C.
 24 § 1252.

25 **E. Administrative Procedure Claims Are Without Merit**

26 The Administrative Procedure Act (APA) does not provide an avenue for relief
 27 in this case. The APA places limits on when agency action is subject to judicial review.
 28 “Agency action made reviewable by statute and final agency action for which there is

1 no other adequate remedy in a court are subject to judicial review.” 5 U.S.C. § 704;
 2 *Navajo Nation v. Dep’t of the Interior*, 876 F.3d 1144, 1171 (9th Cir. 2017)
 3 (“[Section] 704’s requirement that to proceed under the APA, agency action must be
 4 final or otherwise reviewable by statute is an independent element without which courts
 5 may not determine APA claims.”). Reviewable “agency action” is defined to include
 6 “the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent
 7 or denial thereof, or failure to act.” 5 U.S.C. § 551(13). “While this definition is
 8 ‘expansive,’ federal courts ‘have long recognized that the term [agency action] is not so
 9 all-encompassing as to authorize . . . judicial review over everything done by an
 10 administrative agency.’” *Wild Fish Conservancy v. Jewell*, 730 F.3d 791, 800–01 (9th
 11 Cir. 2013) (quoting *Fund for Animals, Inc. v. U.S. Bureau of Land Management*, 460
 12 F.3d 13, 19 (D.C. Cir. 2006)).

13 Here, it is not altogether clear what final agency action Petitioner seeks review
 14 over. Importantly, habeas relief is available to challenge only the legality or duration of
 15 confinement. *Pinson*, 69 F.4th at 1067; *see also Flores-Miramontes*, 212 F.3d at 1140
 16 (“For purposes of immigration law, at least, ‘judicial review’ refers to petitions for
 17 review of agency actions, which are governed by the Administrative Procedure Act,
 18 while habeas corpus refers to habeas petitions brought directly in district court to
 19 challenge illegal confinement.”). The Court should therefore reject Petitioner’s APA
 20 claims.

21 IV. CONCLUSION

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

24 DATED: May 4, 2026

Respectfully submitted,

25 ADAM GORDON
 26 United States Attorney

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