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

12 CRECENCIO HERNANDEZ,

13 Petitioner,

14 v.

15 PAMELA BONDI, et al.,

16 Respondents.
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Case No.: 26-cv-02676-JES-DDL

**RESPONDENTS' RETURN TO
HABEAS PETITION**

I. Introduction

Petitioner has filed a habeas petition and a 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. § 1227(a)(2)(A)(iii), in that, at any time after admission, Petitioner has been convicted of an aggravated felony as defined in 8 USC § 1101(a)(43)(F), a crime of violence for which the term of imprisonment is at least one year, and 8 U.S.C. § 1227(a)(2)(A)(ii) in that, at any time after admission, Petitioner has been convicted of two crimes involving moral turpitude not arising out of a single scheme of criminal misconduct. As such, Petitioner is detained pursuant to 8 U.S.C. § 1226(a). On February 27, 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 Mexico. *See* Exhibit 1 (Notice to Appear). On April 14, 2006, Petitioner's status was adjusted to that of a lawful permanent resident. *See id.* On November 14, 2024, Petitioner was convicted for the offense of Assault by Means of Force Likely to Produce Great Bodily Injury in violation of the California Penal Code § 245(a)(4), for which he was sentenced to three years in prison. *See id.* Petitioner was detained on June 26, 2025, and DHS issued a Notice to Appear charging Petitioner with deportability/removability under 8 U.S.C. § 1227(a)(2)(A)(iii). *See id.* On August 11, 2025, the Department of Homeland Security (DHS) filed an I-261, lodging the additional charge of deportability 8 U.S.C. § 1227(a)(2)(A)(ii), due to Petitioner's June 25, 2020 conviction for the offense of arson, in violation of California

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

1 Penal Code § 455, for which he was sentenced to 16 months in State Prison. *See* Exhibit
2 2 (I-261).

3 The issuance of the NTA placed Petitioner in removal proceedings under 8
4 U.S.C. § 1229a. *See* Exhibit 1. Within his removal proceedings under § 1229a,
5 Petitioner had the opportunity to apply for relief from removal before an IJ, including
6 asylum under 8 U.S.C. § 1158, withholding of removal under 8 U.S.C. § 1231(b)(3),
7 and relief under the Convention Against Torture. However, Petitioner failed to file any
8 applications for relief, therefore the IJ ordered Petitioner removed on November 21,
9 2025. *See* Exhibit 3 (IJ order dated November 21, 2025). On December 2, 2025,
10 Petitioner timely filed an appeal of his removal order to the Board of Immigration
11 Appeals (BIA). *See* Exhibit 4 (BIA Filing Receipt). Petitioner's removal appeal remains
12 pending at the BIA. *See* Exhibit 5 (BIA Briefing Schedule).

13 Petitioner is currently detained at the Otay Mesa Center under 8 U.S.C.
14 § 1226(a).² On February 27, 2026, Petitioner had a bond hearing before an IJ pursuant
15 to 8 U.S.C. § 1226(a). *See* Exhibit 6 (IJ Order dated February 27, 2026). The IJ denied
16 bond holding that Petitioner "has not met his burden of demonstrating he is not a danger
17 to the community or a flight risk." *See id.* Petitioner has failed to file an appeal of his
18 bond denial to the BIA. *See* Exhibit 7 (EOIR Courts & Appeals System Printout).

19 Based on the arguments set forth below, the Court should deny any requests for
20 relief and dismiss the petition.

21 III. Argument

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

23 Section 1226 provides for arrest and detention "pending a decision on whether
24 the alien is to be removed from the United States." 8 U.S.C. § 1226(a). Under § 1226(a),
25 the government may detain an alien during her removal proceedings, release her on
26

27 ² As Petitioner is not subject to a final order of removal, *see* 8 C.F.R. § 1241.1, he is not subject to
28 mandatory detention under 8 U.S.C. § 1231. Accordingly, an analysis under 8 U.S.C. § 1231 and
Zadvydas v. Davis, 533 U.S. 678 (2001), is inapplicable to Petitioner's habeas petition. To the extent
the Court disagrees, Respondents respectfully request an opportunity to supplement this response.

1 bond, or release her on conditional parole. By regulation, immigration officers can
2 release aliens upon demonstrating that the alien “would not pose a danger to property
3 or persons” and “is likely to appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8).
4 An alien can also request a custody redetermination (i.e., a bond hearing) by an IJ at
5 any time before a final order of removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§
6 236.1(d)(1), 1236.1(d)(1), 1003.19.

7 As set forth above, Petitioner was detained and apprehended pursuant to 8 U.S.C.
8 § 1226(a). DHS determined that Petitioner is deportable/removable under 8 U.S.C. §§
9 1227(a)(2)(A)(iii); § 1227(a)(2)(A)(ii), and as such, Petitioner is properly detained
10 pursuant to 8 U.S.C. § 1226(a). Accordingly, Petitioner was entitled to a bond hearing
11 before an IJ. As explained above, was already provided with a bond hearing, which the
12 IJ ultimately denied on both “danger” and “flight risk” grounds. Therefore, because
13 Petitioner was already provided with a bond hearing, Petitioner is lawfully detained
14 pursuant to 8 U.S.C. § 1226(a).

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

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

27 Here, as explained above, Petitioner was already provided with a bond hearing
28 before an IJ pursuant to 8 U.S.C. § 1226(a). The IJ adjudicated the bond hearing on the

1 merits, and he ultimately denied bond based on “danger” and “flight risk.” Petitioner
2 has yet to file a bond appeal before the BIA. Accordingly, the Court should dismiss
3 without prejudice or stay these proceedings until a bond appeal is conducted and
4 concluded on the merits before the BIA.

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

6 To the extent Petitioner asserts claims regarding the commencement of removal
7 proceedings and the conditions of his detention, such claims are improper. An
8 individual may seek habeas relief under 28 U.S.C. § 2241 if he is “in custody” under
9 federal authority “in violation of the Constitution or laws or treaties of the United
10 States.” 28 U.S.C. § 2241(c). But habeas relief is available to challenge only the legality
11 or duration of confinement. *Pinson v. Carvajal*, 69 F.4th 1059, 1067 (9th Cir. 2023);
12 *Crawford v. Bell*, 599 F.2d 890, 891 (9th Cir. 1979); *Dep’t of Homeland Security v.*
13 *Thraissigiam*, 591 U.S. 103, 117 (2020) (The writ of habeas corpus historically
14 “provide[s] a means of contesting the lawfulness of restraint and securing release.”).
15 The Ninth Circuit squarely explained how to decide whether a claim sounds in habeas
16 jurisdiction: “[O]ur review of the history and purpose of habeas leads us to conclude
17 the relevant question is whether, based on the allegations in the petition, release is
18 *legally required* irrespective of the relief requested.” *Pinson*, 69 F.4th at 1072 (emphasis
19 in original); *see also Nettles v. Grounds*, 830 F.3d 922, 934 (9th Cir. 2016) (The key
20 inquiry is whether success on the petitioner’s claim would “necessarily lead to
21 immediate or speedier release.”). Here, a review of such claims would not automatically
22 entitle Petitioner to release from detention. *See Guselnikov v. Noem*, No. 25-cv-1971-
23 BTM-KSC, 2025 WL 2300783, at *1 (S.D. Cal. Aug. 8, 2025) (finding petitioners’
24 claims did not arise under § 2241 because they were not arguing they were unlawfully
25 in custody and receiving the requested relief would not entitle them to release); *Giron*
26 *Rodas v. Lyons*, No. 25cv1912-LL-AHG, 2025 WL 2300781, at *3 (S.D. Cal. Aug. 1,
27 2025) (“Like in *Pinson*, the Court lacks jurisdiction over Petitioner’s § 2241 habeas
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petition since it cannot be fairly read as attacking ‘the legality or duration of confinement.’”) (quoting *Pinson*, 69 F.4th at 1065).

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

Section 1252(g) also bars district courts from hearing challenges to the method by which the government chooses to commence removal proceedings, including the decision to detain an alien pending removal. *See Alvarez v. ICE*, 818 F.3d 1194, 1203

1 (11th Cir. 2016) (“By its plain terms, [§ 1252(g)] bars us from questioning ICE’s
2 discretionary decisions to commence removal” and bars review of “ICE’s decision to
3 take [plaintiff] into custody and to detain him during his removal proceedings”).

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

14 Moreover, under 8 U.S.C. § 1252(b)(9), “[j]udicial review of all questions of law
15 and fact . . . arising from any action taken or proceeding brought to remove an alien
16 from the United States under this subchapter shall be available only in judicial review
17 of a final order under this section.” Further, judicial review of a final order is available
18 only through “a petition for review filed with an appropriate court of appeals.” 8 U.S.C.
19 § 1252(a)(5). The Supreme Court has made clear that § 1252(b)(9) is “the unmistakable
20 ‘zipper’ clause,” channeling “judicial review of all” “decisions and actions leading up
21 to or consequent upon final orders of deportation,” including “non-final order[s],” into
22 proceedings before a court of appeals. *Reno*, 525 U.S. at 483, 485; see *J.E.F.M. v.*
23 *Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (noting § 1252(b)(9) is “breathhtaking in
24 scope and vise-like in grip and therefore swallows up virtually all claims that are tied to
25 removal proceedings”). “Taken together, § 1252(a)(5) and § 1252(b)(9) mean that *any*
26 issue—whether legal or factual—arising from *any* removal-related activity can be
27 reviewed *only* through the [petition for review] PFR process.” *J.E.F.M.*, 837 F.3d at
28 1031 (“[W]hile these sections limit *how* immigrants can challenge their removal

1 proceedings, they are not jurisdiction-stripping statutes that, by their terms, foreclose
2 all judicial review of agency actions. Instead, the provisions channel judicial review
3 over final orders of removal to the courts of appeal.”) (emphasis in original); *see id.* at
4 1035 (“§§ 1252(a)(5) and [(b)(9)] channel review of all claims, including policies-and-
5 practices challenges . . . whenever they ‘arise from’ removal proceedings”).

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

24 In evaluating the reach of subsections (a)(5) and (b)(9), the Second Circuit has
25 explained that jurisdiction turns on the substance of the relief sought. *Delgado v.*
26 *Quarantillo*, 643 F.3d 52, 55 (2d Cir. 2011). Those provisions divest district courts of
27 jurisdiction to review both direct and indirect challenges to removal orders, including
28 decisions to detain for purposes of removal or for proceedings. *See Jennings*, 583 U.S.

1 at 294–95 (section 1252(b)(9) includes challenges to the “decision to detain [an alien]
2 in the first place or to seek removal[.]”).

3 Here, Petitioner challenges the government’s decision and action to detain, which
4 arises from DHS’s decision to commence removal proceedings, and is thus an “action
5 taken . . . to remove [him/her] from the United States.” *See* 8 U.S.C. § 1252(b)(9); *see*
6 *also, e.g., Jennings*, 583 U.S. at 294–95; *Velasco Lopez v. Decker*, 978 F.3d 842, 850
7 (2d Cir. 2020) (finding that 8 U.S.C. § 1226(e) did not bar review in that case because
8 the petitioner did not challenge “his initial detention”); *Saadulloev v. Garland*, No.
9 3:23-CV-00106, 2024 WL 1076106, at *3 (W.D. Pa. Mar. 12, 2024) (recognizing that
10 there is no judicial review of the threshold detention decision, which flows from the
11 government’s decision to “commence proceedings”).

12 Accordingly, this Court lacks jurisdiction over this petition under 8 U.S.C.
13 § 1252.

14 IV. CONCLUSION

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

17 DATED: May 13, 2026

Respectfully submitted,

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