

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 JAVIER HARO BECERRA,

13 Petitioner,

14 v.

15 JEREMY CASEY, et al.,

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

Case No.: 26-cv-03074-JAO-SBC

**RESPONDENTS' RETURN TO  
HABEAS PETITION**

1 **I. Introduction**

2 Petitioner has filed a second habeas petition under 28 U.S.C. § 2241. Petitioner  
3 is currently in removal proceedings under 8 U.S.C. § 1229a. On March 3, 2026,  
4 Petitioner had a bond hearing before an immigration judge (IJ) pursuant to 8 U.S.C.  
5 § 1226(a), in compliance with this Court’s order.<sup>1</sup> Petitioner was ultimately denied  
6 bond. On April 14, 2026, at the request of Petitioner, another bond hearing was held.  
7 Again, Petitioner was denied bond. Based on the arguments set forth below, the Court  
8 should deny any requests for relief and dismiss the petition.

9 **II. Factual Background<sup>2</sup>**

10 On February 11, 2026, Petitioner filed his first petition for writ of habeas corpus.  
11 *Haro Becerra v. Kristi Noem et al*, 26-cv-00878-AGS-BJW, No. 1. On February 18,  
12 2026, this Court partially granted Petitioner’s first habeas petition and ordered  
13 Respondents to “provide petitioner with a bond hearing before an immigration judge by  
14 March 4, 2026.” *See id.*, No. 4. On March 3, 2026, Respondents provided Petitioner  
15 with a bond hearing pursuant to 8 U.S.C. § 1226(a) before an IJ in compliance with this  
16 Court’s order. *See Exhibit 1* (IJ Order dated March 3, 2026). The IJ denied bond,  
17 holding that Petitioner was a “Risk of flight.” *See id.* Petitioner failed to file an appeal  
18 of his bond denial before the Board of Immigration Appeals (BIA). ECF 3-4. On April  
19 14, 2026, Petitioner requested another bond hearing. *See Exhibit 2* (IJ Order dated April  
20 14, 2026). The IJ denied Petitioner’s second bond request holding that there were “No  
21 change in circumstances when the bond was previously denied in March of this year.”  
22 *See id.* Petitioner yet again failed to file a bond appeal before the BIA. ECF 3-4.

23 On May 17, 2026, Petitioner filed a second petition for writ of habeas corpus.  
24 *Haro Becerra v Casey, et al*, 26-cv-03074-JAO-SBC. Based on the arguments set forth  
25 below, the Court should deny any requests for relief and dismiss the petition.

26  
27 <sup>1</sup> Petitioner is not subject to a final order of removal. See 8 C.F.R. § 1241.1.

28 <sup>2</sup> The attached exhibits are true copies, with redactions of private information, of documents obtained from ICE counsel.

1 **III. Argument**

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

3 Section 1226 provides for arrest and detention “pending a decision on whether  
4 the alien is to be removed from the United States.” 8 U.S.C. § 1226(a). Under § 1226(a),  
5 the government may detain an alien during his removal proceedings, release him on  
6 bond, or release him on conditional parole. By regulation, immigration officers can  
7 release aliens upon demonstrating that the alien “would not pose a danger to property  
8 or persons” and “is likely to appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8).  
9 An alien can also request a custody redetermination (i.e., a bond hearing) by an IJ at  
10 any time before a final order of removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§  
11 236.1(d)(1), 1236.1(d)(1), 1003.19.

12 As set forth above, pursuant to this court’s previous order, Petitioner was already  
13 given a bond hearing under to 8 U.S.C. § 1226(a). Notably, Petitioner was provided  
14 with two bond hearings. Both his bond hearings were adjudicated on the merits, and the  
15 IJ denied both of Petitioner’s bond requests accordingly. Therefore, Petitioner is  
16 lawfully detained pursuant to 8 U.S.C. § 1226(a).

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

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

1 Here, as explained above, Respondents provided Petitioner with the Court  
2 ordered bond hearing before an IJ pursuant to 8 U.S.C. § 1226(a). Again, Petitioner was  
3 provided with two bond hearings. The IJ properly denied bond on both instances.  
4 Petitioner failed to file a BIA appeal in both bond denials. In other words, Petitioner has  
5 failed to exhaust administrative remedies. Accordingly, the Court should dismiss  
6 without prejudice or stay these proceedings until a bond appeal is conducted and  
7 concluded before the BIA.

### 8 **C. Petitioner's Improper Habeas Claims**

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

1 *Rodas v. Lyons*, No. 25cv1912-LL-AHG, 2025 WL 2300781, at \*3 (S.D. Cal. Aug. 1,  
2 2025) (“Like in *Pinson*, the Court lacks jurisdiction over Petitioner’s § 2241 habeas  
3 petition since it cannot be fairly read as attacking ‘the legality or duration of  
4 confinement.’”) (quoting *Pinson*, 69 F.4th at 1065).

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

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

9 In general, courts lack jurisdiction to review a decision to commence or  
10 adjudicate removal proceedings or execute removal orders. *See* 8 U.S.C. § 1252(g)  
11 (“[N]o court shall have jurisdiction to hear any cause or claim by or on behalf of any  
12 alien arising from the decision or action by the Attorney General to commence  
13 proceedings, adjudicate cases, or execute removal orders.”); *Reno v. Am.-Arab Anti-*  
14 *Discrimination Comm.*, 525 U.S. 471, 483 (1999) (“There was good reason for  
15 Congress to focus special attention upon, and make special provision for, judicial  
16 review of the Attorney General’s discrete acts of “commenc[ing] proceedings,  
17 adjudicat[ing] cases, [and] execut[ing] removal orders”—which represent the initiation  
18 or prosecution of various stages in the deportation process.”); *Limpin v. United States*,  
19 828 Fed. App’x 429 (9th Cir. 2020) (holding district court properly dismissed under 8  
20 U.S.C. § 1252(g) “because claims stemming from the decision to arrest and detain an  
21 alien at the commencement of removal proceedings are not within any court’s  
22 jurisdiction”). In other words, § 1252(g) removes district court jurisdiction over “three  
23 discrete actions that the Attorney may take: [his] ‘decision or action’ to ‘commence  
24 proceedings, adjudicate cases, or execute removal orders.’” *Reno*, 525 U.S. at 482  
25 (emphasis removed). Congress has explicitly foreclosed district court jurisdiction over  
26 claims that necessarily arise “from the decision or action by the Attorney General to  
27 commence proceedings [and] adjudicate cases,” over which. 8 U.S.C. § 1252(g).

28

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

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

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

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

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

27 In evaluating the reach of subsections (a)(5) and (b)(9), the Second Circuit has  
28 explained that jurisdiction turns on the substance of the relief sought. *Delgado v.*

1 *Quarantillo*, 643 F.3d 52, 55 (2d Cir. 2011). Those provisions divest district courts of  
2 jurisdiction to review both direct and indirect challenges to removal orders, including  
3 decisions to detain for purposes of removal or for proceedings. *See Jennings*, 583 U.S.  
4 at 294–95 (section 1252(b)(9) includes challenges to the “decision to detain [an alien]  
5 in the first place or to seek removal[.]”).

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

15 Accordingly, this Court lacks jurisdiction over this petition under 8 U.S.C.  
16 § 1252.

#### 17 IV. CONCLUSION

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

20 DATED: May 21, 2026

Respectfully submitted,

21 ADAM GORDON  
22 United States Attorney

23 *s/ Antonio Estrada*  
24 ANTONIO ESTRADA  
Special Assistant United States Attorney  
Attorneys for Respondents