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

11 CARLOS JESUS MORAO QUERO,

12 Petitioner,

13 v.
14

15 CHRISTOPHER LAROSE, Warden, Otay
Mesa Detention Center; *et al.*,

16 Respondents.
17

Case No.: 26-cv-03478-RBM-AHG

RETURN TO HABEAS PETITION

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21 **I. Introduction**

22 Petitioner is currently detained in Immigration and Customs Enforcement (ICE)
23 custody pursuant to 8 U.S.C. § 1225(b)(2). Petitioner's habeas petition seeks release, or
24 in the alternative, a bond hearing. However, this Court lacks jurisdiction because
25 Petitioner's claims are barred by 8 U.S.C. § 1252(g). Moreover, Petitioner's detention
26 is mandated by statute. Finally, Petitioner already received a bond hearing before an
27 immigration court and was denied bond. Therefore, the Court should deny and dismiss
28 the petition.

II. Factual Background

Petitioner is a citizen and national of Venezuela. On or about May 15, 2024, Petitioner was granted parole, under 8 U.S.C. § 1182(d)(5), valid until June 12, 2025.¹ See ECF No. 1; Exhibit 1 (Additional Charges of Inadmissibility/Deportability).² On April 1, 2025, Petitioner received notice from the Department of Homeland Security (DHS) that his parole will terminate on April 24, 2025. See Exhibit 2 (Termination of Parole). On May 1, 2026, Petitioner was apprehended and detained by ICE/Enforcement Removal Operations. See Exhibit 3 (Form I-213). At the time of re-detention, DHS issued and served on Petitioner, a Notice to Appear (NTA), which commended removal proceedings against Petitioner. See Exhibit 4 (Notice to Appear). On May 13, 2026, DHS filed a Form I-261, correctly charging Petitioner as inadmissible under 8 U.S.C. § 1182(a)(7)(A)(i)(I), as an alien not in possession of an unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Immigration and Nationality. See Exhibit 1.

On May 14, 2025, Petitioner requested and received a custody redetermination hearing before an immigration judge. See Exhibit 5 (Order of the Immigration Judge). The immigration judge denied bond for lack of jurisdiction. See *id.* Petitioner did not appeal the adverse bond decision. Instead, Petitioner subsequently asked for another bond hearing. See Exhibit 6 (Order of the Immigration Judge). On June 4, 2026, the immigration judge denied Petitioner's request noting Petitioner "was already provided an opportunity to appeal the court's prior ruling." *Id.* Petitioner remains detained at the Otay Mesa Detention Center and is subject to mandatory detention under 8 U.S.C. § 1225(b)(2).

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¹ Agency counsel informed the undersigned that according to U.S. Citizenship and Immigration Services' (USCIS) database, Petitioner's I-94 (see ECF No. 1-2 at 2) reflected an admission date that expired on June 12, 2025.

² The attached exhibits are true copies, with redactions of private information, of documents obtained from agency counsel.

III. Argument

B. 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).

Courts lack jurisdiction over any claim or cause of action arising from any 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.*”) (emphasis added). 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 (11th Cir. 2016) (“By its plain terms, [§ 1252(g)] bars us from questioning ICE’s discretionary decisions to commence removal” and bars review of “ICE’s decision to take [plaintiff] into custody and to detain him during his removal proceedings”).

Removal proceedings commence by the filing of a notice to appear in immigration court. *See Jimenez-Angeles v. Ashcroft*, 291 F.3d 594, 600 (9th Cir. 2002). “The Attorney General may arrest the alien against whom proceedings are commenced and detain that individual until the conclusion of those proceedings.” *Herrera-Correra v. United States*, No. 08-2941 DSF (JCx), 2008 WL 11336833, at *3 (C.D. Cal. Sept. 11, 2008). “[A]n alien’s detention throughout this process arises from the Attorney General’s decision to commence proceedings.” *Id.* (citing *Sissoko v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007)); 8 U.S.C. § 1252(g); *but see Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MMP, 2025 WL 2549431, at *4 (S.D. Cal. Sept. 3, 2025).

Here, Petitioner’s claims arise from his detention during removal proceedings, which stem from the Attorney General’s decision to commence such proceedings. As such, § 1252(g) bars this Court’s review over Petitioner’s claims. *See S.Q.D.C. v. Bondi*,

1 No. 25-3348 (PAM/DLM), 2025 WL 2617973, at * 2 (D. Minn. Sept. 9, 2025) (finding
2 that § 1252(g) jurisdictionally bars review of a petitioner’s challenge to ongoing
3 detention during removal proceedings).

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

20 The Court should dismiss this matter for lack of jurisdiction under 8 U.S.C.
21 § 1252. *See S.Q.D.C.*, 2025 WL 2617973.³

22
23 ³ On an alternative basis, the Court should ensure Petitioner properly exhausts
24 administrative remedies. The Ninth Circuit requires that “habeas petitioners exhaust
25 available judicial and administrative remedies before seeking relief under § 2241.”
26 *Castro–Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001). “When a petitioner does
27 not exhaust administrative remedies, a district court ordinarily should either dismiss the
28 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).

B. Petitioner is Lawfully Detained

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

While Petitioner was previously released from custody on parole, his parole was terminated and, in any event, has expired. After Petitioner was detained on May 1, 2026, he was served with a Notice to Appear, which served to terminate his parole status. *See* 8 CFR § 212.5(e)(2)(i) (“When a charging document is served on the alien, the charging document will constitute written notice of termination of parole”). Moreover, Petitioner received notice on April 1, 2025 that his grant of parole will terminate on April 24, 2025. *See* Exhibit 2. There is no basis to order Petitioner’s immediate release from immigration detention based on the argument that he was not provided written notice of the expiration of his humanitarian parole. *See Omer G. G. v. Kaiser*, No. 1:25-CV-01471-KES-SAB (HC), 2025 WL 3254999, *3 n. 6 (E.D. Cal. Nov. 22, 2025) (“Petitioner’s claim concerning the regulations is without merit because the regulations governing termination of humanitarian parole provide that ‘[p]arole shall automatically be terminated without written notice . . . at the expiration of the time for which parole was authorized’ 8 C.F.R. § 212.5(e)(1). As petitioner’s parole expired on August 28, 2025, *see* Doc. 1 at 33, petitioner was not entitled to notice under the regulations.”).

The termination and expiration of his parole emphasizes his status as an applicant for admission, subject to mandatory detention under 8 U.S.C. § 1225(b)(2). *See* 8 U.S.C. § 1182(d)(5)(A) (“ . . . *such parole of such alien shall not be regard as an admission* of the alien and when the purposes of such parole shall . . . have been served the alien shall forthwith return or be return to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other *applicant for admission* to the United States”) (emphasis added).

Section 1225(b)(2)(A) requires mandatory detention of “an alien who is *an applicant for admission*, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted[.]” *Chavez*

1 v. *Noem*, No. 3:25-cv-02325, 2025 WL 2730228, at *4 (S.D. Cal. Sept. 24, 2025)
 2 (quoting 8 U.S.C. § 1225(b)(2)(A)) (emphasis in original). Section 1225(a)(1)
 3 “expressly defines that ‘[a]n alien present in the United States who has not been
 4 admitted ... shall be deemed for purposes of this Act *an applicant for admission.*’” *Id.*
 5 (quoting 8 U.S.C. § 1225(a)(1)) (emphasis in original).

6 Here, Petitioner is an “alien present in the United States who has not been
 7 admitted.” *See* Exhibit 4; *see also* 8 U.S.C. § 1182(d)(5)(A) (“such parole of such alien
 8 shall not be regarded as an admission of the alien.”). Thus, as found by the district court
 9 in *Chavez v. Noem* and as mandated by the plain language of the statute, Petitioner is
 10 an “applicant for admission” and subject to the mandatory detention provisions of §
 11 1225(b)(2). Moreover, Petitioner already requested a bond hearing which resulted in
 12 denial of bond. *See* Exhibit 5. Petitioner failed to appeal the adverse bond decision with
 13 the Board of Immigration Appeals (BIA).

14 Because Petitioner is properly detained under § 1225 and he failed to exhaust his
 15 administrative remedies, he cannot show entitlement to relief.

16 IV. CONCLUSION

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

19 DATED: June 16, 2026

Respectfully submitted,

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 24 Assistant United States Attorney
 25 Attorneys for Respondents
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