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

10 PRIMITIVO NICOLAS-JIMENEZ,
11 Petitioner,

12 v.

13 CRISTOPHER LAROSE, Warden at
Otay Mesa Detention Center, *et al.*,
14 Respondents.

Case No.: 26-cv-03720-BJC-VET
RESPONSE TO PETITION

16
17 Petitioner has filed a habeas petition under 28 U.S.C. § 2241. The government has
18 carefully reviewed this petition and determined that the legal issues presented concern the
19 statutory authority for U.S. Immigration and Customs Enforcement's (ICE) detention of
20 Petitioner under 8 U.S.C. §§ 1225(b)(2)(A) or 1226(a). While reserving all rights, including
21 the right to appeal, the government respectfully submits this abbreviated response to
22 preserve the legal issues, to conserve judicial and party resources, and to expedite the
23 Court's consideration of this matter.

24 Petitioner was previously released from immigration custody on conditional parole
25 issued under 8 U.S.C. § 1226(a). It is the government's position that Petitioner is subject
26 to mandatory detention under § 1225(b)(2). However, the government acknowledges that
27 this Court, and Courts in this District, have repeatedly reached the opposite conclusion
28 under the same and/or similar facts. *See, e.g., Arias Torres v. Bondi*, No. 25-cv-2457-BAS-

MSB, 2025 WL 3214773 (S.D. Cal. Nov. 18, 2025); *Martinez Lopez v. LaRose*, No. 25-cv-2717-JES-AHG, 2025 WL 3030457 (S.D. Cal. Oct. 30, 2025); *Beltran v. Noem*, No. 25cv2650-LL-DEB, 2025 WL 3078837 (S.D. Cal. Nov. 4, 2025); *Garcia v. Noem*, 803 F. Supp. 3d 1064 (S.D. Cal. 2025); *Esquivel-Ipina v. LaRose*, No. 25-CV-2672 JLS (BLM), 2025 WL 2998361 (S.D. Cal. Oct. 24, 2025); *Lucas-Miguel v. LaRose*, No. 25-cv-3022-RSH-JLB, 2025 WL 3251580 (S.D. Cal. Nov. 21, 2025); *Vasquez-Diaz v. LaRose*, No. 25-cv-3038-TWR-JLB, ECF No. 6 (S.D. Cal. Nov. 13, 2025); *Cardoso v. LaRose*, No. 25-cv-3043-BJC-VET, ECF No. 7 (S.D. Cal. Dec. 12, 2025); *Maceda-Garcia v. Noem*, No. 25-cv-2968-JO-JLB, ECF No. 9 (S.D. Cal. Nov. 13, 2025); *A.S. v. LaRose*, No. 25-cv-2876-RBM-VET, ECF No. 9 (S.D. Cal. Nov. 19, 2025); *Prieto-Cordova v. LaRose*, No. 25-cv-2824-CAB-DDL, 2025 WL 3228953 (S.D. Cal. Nov. 19, 2025); *Lagarda-Vega v. Noem*, No. 25-cv-2970-GPC-DDL, 2025 WL 3558931 (S.D. Cal. Dec. 11, 2025); *Nayyer v. LaRose*, No. 25-cv-3111-AGS-DDL, ECF No. 7 (S.D. Cal. Dec. 12, 2025); *Amaya v. Noem*, No. 25cv2892-BTM-DEB, 2025 WL 3182998 (S.D. Cal. Nov. 13, 2025).

In addition, Petitioner argues that 8 U.S.C. §§ 1252(b)(9) and 1252(g) do not bar this Court's jurisdiction. Respondents disagree. 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

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

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

1 “1252(b)(9) is a judicial channeling provision, not a claim-barring one.” *Aguilar v. ICE*,
 2 510 F.3d 1, 11 (1st Cir. 2007). Indeed, 8 U.S.C. § 1252(a)(2)(D) provides that “[n]othing .
 3 . . . in any other provision of this chapter . . . shall be construed as precluding review of
 4 constitutional claims or questions of law raised upon a petition for review filed with an
 5 appropriate court of appeals in accordance with this section.” *See also Ajlani v. Chertoff*,
 6 545 F.3d 229, 235 (2d Cir. 2008) (“[J]urisdiction to review such claims is vested
 7 exclusively in the courts of appeals[.]”). The petition-for-review process before the court
 8 of appeals ensures that noncitizens have a proper forum for claims arising from their
 9 immigration proceedings and “receive their day in court.” *J.E.F.M.*, 837 F.3d at 1031–32
 10 (internal quotations omitted); *see also Rosario v. Holder*, 627 F.3d 58, 61 (2d Cir. 2010)
 11 (“The REAL ID Act of 2005 amended the [INA] to obviate . . . Suspension Clause
 12 concerns” by permitting judicial review of “nondiscretionary” BIA determinations and “all
 13 constitutional claims or questions of law.”).

14 Alas, the government acknowledges that this Court’s prior decisions will control the
 15 result here if the Court adheres to its prior decisions, as the facts are not materially
 16 distinguishable for purposes of the Court’s decision,¹ and on that basis the government
 17 does not oppose the petition and defers to the Court on the appropriate relief.²

19 ¹ Petitioner also challenges his detention citing violations of the Administrative Procedure
 20 Act and Due Process. Should the Court grant the petition, it should decline to address
 21 these additional arguments. *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (“As a general
 22 rule courts and agencies are not required to make findings on issues the decision of which
 is unnecessary to the results they reach.”).

23 ² To the extent the Court issues an order directing a bond hearing under 1226(a),
 24 considering heavy caseloads and staffing levels, Respondents respectfully request that
 25 such order provide the government 14 days from issuance to hold such bond hearing.
 26 Respondents also respectfully note that the Ninth Circuit has confirmed that at a bond
 27 hearing under 8 U.S.C. § 1226(a), the burden is on the detainee to demonstrate by a
 28 preponderance of the evidence that he is not a flight risk or danger to the community. *See Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1197 (9th Cir. 2022); *see also Dos Santos v. Becerra*, No. 26-cv-01423-GPC-VET, 2026 WL 800201 (S.D. Cal. Mar. 23, 2026).

1 DATED: July 6, 2026

Respectfully submitted,

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