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7
8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 N.A.,

11 Petitioner,

12 v.

13 CHRISTOPHER J. LAROSE; et al.,

14 Respondents.
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Case No.: 25-cv-2384-RSH-BLM

**RESPONDENTS' RESPONSE IN
OPPOSITION TO PETITIONER'S
HABEAS PETITION**

I. Introduction

Petitioner N.A.¹ has filed a habeas petition pursuant to 28 U.S.C. § 2241. For the reasons set forth below, the Court should deny Petitioner's requests for relief and dismiss the petition.

II. Factual and Procedural Background

Petitioner is a citizen and national of Iran. ECF No. 1 at ¶ 22. On or about October 29, 2024, she unlawfully entered the United States near Tecate, California without being admitted, paroled, or inspected. Exhibit 1. That same day, DHS placed Petitioner in removal proceedings under 8 U.S.C. § 1229a and issued Petitioner a Notice to Appear (NTA), charging Petitioner as inadmissible under 8 U.S.C. § 1182(a)(6)(i), as an alien present in the United States who has not been admitted or paroled. Exhibit 2. On October 29, 2024, Petitioner was released from the DHS custody on an order of release on recognizance. Exhibit 3.

At a master calendar hearing on July 15, 2025, DHS, pursuant to 8 C.F.R. § 1239.2(c), made an oral motion to dismiss Petitioner's § 1229a removal proceedings. ECF No. 1 at ¶ 74. Petitioner verbally opposed the motion at the hearing, and later filed written opposition to the motion, but the IJ ultimately granted DHS's motion to dismiss. *Id.* at ¶¶ 74, 77, 78. Petitioner did not appeal the IJ's order dismissing her proceedings. On July 15, 2025, Petitioner was apprehended and detained in ICE custody pursuant to the execution of a warrant. Exhibit 4. She was placed in expedited removal proceedings under 8 U.S.C. § 1225(b)(1). Exhibit 5. Petitioner indicated that she had a fear of returning to Iran. Exhibit 6. Based on her indication of fear, she was referred for a credible fear interview before a U.S. Citizenship and Immigration Services asylum

¹ The Petition indicates that the Petitioner will move for leave to proceed under a pseudonym using the initials N.A. *See* ECF No. 1, at 1. Although such a motion has not been filed at the time of this filing, in good faith the Government is referring to Petitioner only by those initials, redacting all records, and proceeding as though there was an order granting such motion.

1 officer pursuant to 8 U.S.C. § 1225(b)(A)(ii). ECF No. 1 at ¶ 79. Petitioner received a
2 positive credible fear determination from the asylum officer and, on August 28, 2025,
3 was issued a Notice to Appear, placing her in new removal proceedings pursuant to 8
4 U.S.C. § 1229(a). *Id.* at ¶¶ 79, 80. *See also* Exhibit 7. Petitioner has a master hearing
5 scheduled for October 9, 2025. Exhibit 8. She is not currently subject to a final order of
6 removal and remains detained in Otay Mesa Detention Facility pursuant to 8 U.S.C.
7 § 1225(b)(1)(B)(ii).

8 **III. Statutory Background**

9 **A. Individuals Seeking Admission to the United States**

10 For more than a century, this country's immigration laws have authorized
11 immigration officials to charge noncitizens as removable from the country, arrest those
12 who are subject to removal, and detain them during removal proceedings. *See Abel v.*
13 *United States*, 362 U.S. 217, 232–37 (1960). “The rule has been clear for decades:
14 ‘[d]etention during deportation proceedings [i]s ... constitutionally valid.’” *Banyee v.*
15 *Garland*, 115 F.4th 928 (8th Cir. 2024) (quoting *Demore v. Kim*, 538 U.S. 510, 523
16 (2003)), *rehearing by panel and en banc denied*, *Banyee v. Bondi*, No. 22-2252, 2025
17 WL 837914 (8th Cir. Mar. 18, 2025); *see Carlson v. Landon*, 342 U.S. 524, 538 (1952)
18 (“Detention is necessarily a part of this deportation procedure.”); *Demore*, 538 U.S. at
19 523 n.7 (“In fact, prior to 1907 there was no provision permitting bail for *any* aliens
20 during the pendency of their deportation proceedings.”). The Supreme Court even
21 recognized that removal proceedings ““would be [in] vain if those accused could not be
22 held in custody pending the inquiry into their true character.”” *Demore*, 538 U.S. at
23 523 (quoting *Wong Wing v. United States*, 163 U.S. 228, 235 (1896)). Over the century,
24 Congress has enacted a multi-layered statutory scheme for the civil detention of aliens
25 pending a decision on removal, during the administrative and judicial review of removal
26 orders, and in preparation for removal. *See generally* 8 U.S.C. §§ 1225, 1226, 1231. It
27 is the interplay between these statutes that is at issue here.

B. Detention Under 8 U.S.C. § 1225

“To implement its immigration policy, the Government must be able to decide (1) who may enter the country and (2) who may stay here after entering.” *Jennings v. Rodriguez*, 583 U.S. 281, 286 (2018). Section 1225 governs inspection, the initial step in this process, *id.*, stating that all “applicants for admission . . . shall be inspected by immigration officers.” 8 U.S.C. § 1225(a)(3). The statute—in a provision entitled “ALIENS TREATED AS APPLICANTS FOR ADMISSION”—dictates who “shall be deemed for purposes of this chapter an applicant for admission,” defining that term to encompass *both* an alien “present in the United States who has not been admitted *or* [one] who arrives in the United States” *Id.* § 1225(a)(1) (emphasis added). Section 1225(b) governs the inspection procedures applicable to all applicants for admission. They “fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2).” *Jennings*, 583 U.S. at 287.

Section 1225(b)(1) applies to arriving aliens and “certain other” aliens “initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation.” *Jennings*, 583 U.S. at 287; 8 U.S.C. § 1225(b)(1)(A)(i), (iii). These aliens are generally subject to expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(A)(i). But if the alien “indicates an intention to apply for asylum . . . or a fear of persecution,” immigration officers will refer the alien for a credible fear interview. *Id.* § 1225(b)(1)(A)(ii). An alien “with a credible fear of persecution” is “detained for further consideration of the application for asylum.” *Id.* § 1225(b)(1)(B)(ii). If the alien does not indicate an intent to apply for asylum, express a fear of persecution, or is “found not to have such a fear,” they are detained until removed from the United States. *Id.* §§ 1225(b)(1)(A)(i), (B)(iii)(IV).

Section 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*, 583 U.S. at 287. It “applies to all applicants for admission not covered by § 1225(b)(1).” *Id.* Under § 1225(b)(2), an alien “who is an applicant for admission” shall be detained for a removal proceeding “if the examining immigration officer determines that [the]

1 alien seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8
2 U.S.C. § 1225(b)(2)(A); *see Matter of Yajure Hurtado*, 29 I&N Dec. 216, 220 (BIA
3 2025) (“[A]liens who are present in the United States without admission are applicants
4 for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C.
5 § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings.”);
6 *Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) (“for aliens arriving in and seeking
7 admission into the United States who are placed directly in full removal proceedings,
8 section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention ‘until
9 removal proceedings have concluded.’”) (citing *Jennings*, 583 U.S. at 299). However,
10 DHS has the sole discretionary authority to temporarily release on parole “any alien
11 applying for admission to the United States” on a “case-by-case basis for urgent
12 humanitarian reasons or significant public benefit.” *Id.* § 1182(d)(5)(A); *see Biden v.*
13 *Texas*, 597 U.S. 785, 806 (2022).

14 **C. Detention Under 8 U.S.C. § 1226(a)**

15 Section 1226 provides for arrest and detention “pending a decision on whether
16 the alien is to be removed from the United States.” 8 U.S.C. § 1226(a). Under § 1226(a),
17 the government may detain an alien during his removal proceedings, release him on
18 bond, or release him on conditional parole. By regulation, immigration officers can
19 release an alien who demonstrates that he “would not pose a danger to property or
20 persons” and “is likely to appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8). An
21 alien can also request a custody redetermination (i.e., a bond hearing) by an IJ at any
22 time before a final order of removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§
23 236.1(d)(1), 1236.1(d)(1), 1003.19.

24 At a custody redetermination, the IJ may continue detention or release the alien
25 on bond or conditional parole. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). IJs have
26 broad discretion in deciding whether to release an alien on bond. *In re Guerra*, 24 I. &
27 N. Dec. 37, 39-40 (BIA 2006) (listing nine factors for IJs to consider). But regardless
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1 of the factors IJs consider, an alien “who presents a danger to persons or property should
2 not be released during the pendency of removal proceedings.” *Id.* at 38.

3 Section 1226(a) does not grant “any *right* to release on bond.” *Matter of D-J-*, 23
4 I. & N. Dec. at 575 (citing *Carlson v. Landon*, 342 U.S. 524, 534 (1952)). Nor does it
5 address the applicable burden of proof or particular factors that must be considered. *See*
6 *generally* 8 U.S.C. § 1226(a). Rather, it grants DHS and the Attorney General broad
7 discretionary authority to determine, after arrest, whether to detain or release an alien
8 during his removal proceedings. *See id.* If, after the bond hearing, either party disagrees
9 with the decision of the IJ, that party may appeal the decision to the BIA. *See* 8 C.F.R.
10 §§ 236.1(d)(3), 1003.19(f), 1003.38, 1236.1(d)(3).

11 **D. Review Before the Board of Immigration Appeals**

12 The BIA is an appellate body within the Executive Office for Immigration
13 Review (EOIR) and possesses delegated authority from the Attorney General. 8 C.F.R.
14 §§ 1003.1(a)(1), (d)(1). The BIA is “charged with the review of those administrative
15 adjudications under the [INA] that the Attorney General may by regulation assign to
16 it,” including IJ custody determinations. 8 C.F.R. §§ 1003.1(d)(1), 236.1, 1236.1. The
17 BIA not only resolves particular disputes before it, but is also directed to, “through
18 precedent decisions, [] provide clear and uniform guidance to DHS, the immigration
19 judges, and the general public on the proper interpretation and administration of the
20 [INA] and its implementing regulations.” *Id.* § 1003.1(d)(1). Decisions rendered by the
21 BIA are final, except for those reviewed by the Attorney General. 8 C.F.R. §
22 1003.1(d)(7).

23 **IV. Argument**

24 **A. Petitioner’s Claims Regarding Expedited Removal are Moot.**

25 Petitioner bears the burden of establishing that this Court has subject matter
26 jurisdiction over her claims. *See Ass’n of Am. Med. Coll. v. United States*, 217 F.3d 770,
27 778–79 (9th Cir. 2000); *Finley v. United States*, 490 U.S. 545, 547–48 (1989). However,
28 Petitioner cannot establish jurisdiction over her claims regarding her placement in

1 expedited removal proceedings and her ability to apply for asylum because these claims
2 are moot. Petitioner is no longer in expedited removal, and she is applying for asylum
3 before an immigration judge.

4 The Constitution limits federal judicial power to designated “cases” and
5 “controversies.” U.S. Const., Art. III, § 2; *SEC v. Medical Comm. for Human Rights*,
6 404 U.S. 403, 407 (1972) (stating federal courts may only entertain matters that present
7 a “case” or “controversy” within the meaning of Article III). Federal courts do not have
8 jurisdiction “to give opinion upon moot questions or abstract propositions, or to declare
9 principles or rules of law which cannot affect the matter in issue in the case before it.”
10 *Church of Scientology of Cal. v. United States*, 506 U.S. 9, 12 (1992). “A claim is moot
11 if it has lost its character as a present, live controversy.” *Rosemere Neighborhood Ass’n*
12 *v. U.S. Env’t Prot. Agency*, 581 F.3d 1169, 1172–73 (9th Cir. 2009). A case becomes
13 moot “when the issues presented are no longer ‘live’ or the parties lack a legally
14 cognizable interest in the outcome.” *Cnty. of Los Angeles v. Davis*, 440 U.S. 625, 631
15 (1979). The Court therefore lacks jurisdiction because there is no live case or
16 controversy remaining. *See Powell v. McCormack*, 395 U.S. 486, 496 (1969); *see also*
17 *Murphy v. Hunt*, 455 U.S. 478, 481 (1982).

18 Each of Petitioner’s causes of action arise from her placement in expedited
19 removal proceedings. However, Petitioner is no longer in expedited removal
20 proceedings. Petitioner is in 1229a proceedings, and she has the opportunity to present
21 her asylum claim (and any claims for withholding of removal under 8 U.S.C.
22 § 1231(b)(3), and the Convention Against Torture) directly to an immigration judge in
23 a formal hearing. *See* 8 U.S.C. §§ 1229a(b)(1)-(4) (detailing authority of immigration
24 judge, form of proceeding, and opportunity for a respondent to examine evidence
25 against him and present evidence on his own behalf, among other things). Petitioner
26 will not be removed from the United States until she is subject to a final order of
27 removal, which will be issued by an immigration judge after full consideration of any
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1 claims for relief or protection from removal. *See* 8 U.S.C. § 1229a(a)(1), (3); 8 U.S.C.
2 § 1231(a)(1)(A).

3 As Petitioner is no longer in expedited removal proceedings, the claims regarding
4 her placement in expedited removal proceedings and ability to assert a claim for asylum
5 no longer present a live case or controversy and are moot. *See Church of Scientology of*
6 *Cal.*, 506 U.S. at 12.

7 **B. Petitioner Brings Improper Habeas Claims**

8 Moreover, the Court should deny Petitioner's petition to the extent she asserts
9 claims regarding the termination of her 1229a proceedings and placement into
10 expedited removal proceedings, because such claims do not challenge the lawfulness of
11 her custody. Rather, such claims challenge the decision to dismiss her 1229a
12 proceedings, her placement into expedited removal, and the type of review she receives
13 over her asylum claims. An individual may seek habeas relief under 28 U.S.C. § 2241
14 if she is "in custody" under federal authority "in violation of the Constitution or laws or
15 treaties of the United States." 28 U.S.C. § 2241(c). But habeas relief is available to
16 challenge only the legality or duration of confinement. *Pinson v. Carvajal*, 69 F.4th
17 1059, 1067 (9th Cir. 2023); *Crawford v. Bell*, 599 F.2d 890, 891 (9th Cir. 1979); *Dep't*
18 *of Homeland Security v. Thraissigiam*, 591 U.S. 103, 117 (2020) (The writ of habeas
19 corpus historically "provide[s] a means of contesting the lawfulness of restraint and
20 securing release."). The Ninth Circuit squarely explained how to decide whether a claim
21 sounds in habeas jurisdiction: "[O]ur review of the history and purpose of habeas leads
22 us to conclude the relevant question is whether, based on the allegations in the petition,
23 release is *legally required* irrespective of the relief requested." *Pinson*, 69 F.4th at 1072
24 (emphasis in original); *see also Nettles v. Grounds*, 830 F.3d 922, 934 (9th Cir. 2016)
25 (The key inquiry is whether success on the petitioner's claim would "necessarily lead
26 to immediate or speedier release."). Here, a review on a decision to terminate
27 Petitioner's 1229a proceedings and a decision to place her into expedited removal
28 proceedings would not automatically entitle her to release from detention. *See*

1 *Guselnikov v. Noem*, No. 25-cv-1971-BTM-KSC, 2025 WL 2300873, at *1 (S.D. Cal.
2 Aug. 8, 2025) (finding petitioners' claims did not arise under § 2241 because they were
3 not arguing they were unlawfully in custody and receiving the requested relief would
4 not entitle them to release); *Giron Rodas v. Lyons*, No. 25cv1912-LL-AHG, 2025 WL
5 2300781, at *3 (S.D. Cal. Aug. 1, 2025) ("Like in *Pinson*, the Court lacks jurisdiction
6 over Petitioner's § 2241 habeas petition since it cannot be fairly read as attacking 'the
7 legality or duration of confinement.'") (quoting *Pinson*, 69 F.4th at 1065). Thus,
8 Petitioner's claims do not arise under § 2241 and her petition should be dismissed.

9 **C. Petitioner's Claims and Requests are Barred by 8 U.S.C. § 1252**

10 The Court lacks jurisdiction to hear Petitioner's claims, which stem from DHS's
11 decision to arrest and detain Petitioner pending removal proceedings. *See Ass'n of Am.*
12 *Med. Coll.*, 217 F.3d at 778–79; *Finley*, 490 U.S. at 547–48. Petitioner brings her habeas
13 action under 28 U.S.C. § 2241, but jurisdiction over her claims is barred under
14 8 U.S.C. § 1252(a)(2)(A), § 1252(b)(9), § 1252(e), and § 1252(g).

15 In general, courts lack jurisdiction to review a decision to commence or
16 adjudicate removal proceedings or execute removal orders. *See* 8 U.S.C. § 1252(g)
17 ("[N]o court shall have jurisdiction to hear any cause or claim by or on behalf of any
18 alien arising from the decision or action by the Attorney General to commence
19 proceedings, adjudicate cases, or execute removal orders."); *Limpin v. United States*,
20 828 Fed. App'x 429 (9th Cir. 2020) (holding district court properly dismissed under
21 8 U.S.C. § 1252(g) "because claims stemming from the decision to arrest and detain an
22 alien at the commencement of removal proceedings are not within any court's
23 jurisdiction"). In other words, § 1252(g) removes district court jurisdiction over "three
24 discrete actions that the Attorney may take: [his] 'decision or action' to 'commence
25 proceedings, adjudicate cases, or execute removal orders.'" *Reno v. Am.-Arab*
26 *Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999) (emphasis removed). Plainly
27 stated, Petitioner requests that this Court review a decision to dismiss her 240
28 proceedings, her placement into expedited removal, and the type of review she receives

1 over her asylum claims. Thus, Petitioner’s claims necessarily arise “from the decision
2 or action by the Attorney General to commence proceedings [and] adjudicate cases,”
3 over which Congress has explicitly foreclosed district court jurisdiction. 8 U.S.C. §
4 1252(g).

5 Section 1252(g) also bars district courts from hearing challenges to the *method*
6 by which the government chooses to commence removal proceedings, including the
7 decision to detain an alien pending removal. *See Alvarez v. ICE*, 818 F.3d 1194,
8 1203 (11th Cir. 2016) (“By its plain terms, [§ 1252(g)] bars us from questioning ICE’s
9 discretionary decisions to commence removal” and also to review “ICE’s decision to
10 take [plaintiff] into custody to detain him during removal proceedings”).

11 Other courts have held, “[f]or the purposes of § 1252, the Attorney General
12 commences proceedings against an alien when the alien is issued a Notice to Appear
13 before an immigration court.” *Herrera-Correra v. United States*,
14 No. 08-2941 DSF (JCx), 2008 WL 11336833, at *3 (C.D. Cal. Sept. 11, 2008). “The
15 Attorney General may arrest the alien against whom proceedings are commenced and
16 detain that individual until the conclusion of those proceedings.” *Id.* at *3. “Thus, an
17 alien’s detention throughout this process arises from the Attorney General’s decision to
18 commence proceedings” and review of claims arising from such detention is barred
19 under § 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007)); *Wang*
20 *v. United States*, No. CV 10-0389 SVW (RCX), 2010 WL 11463156, at *6 (C.D. Cal.
21 Aug. 18, 2010); 8 U.S.C. § 1252(g).

22 Moreover, under 8 U.S.C. § 1252(b)(9), “[j]udicial review of all questions of law
23 and fact . . . arising from any action taken or proceeding brought to remove an alien
24 from the United States under this subchapter shall be available only in judicial review
25 of a final order under this section.” Further, judicial review of a final order is available
26 only through “a petition for review filed with an appropriate court of appeals.”
27 8 U.S.C. § 1252(a)(5). The Supreme Court has made clear that § 1252(b)(9) is “the
28 unmistakable ‘zipper’ clause,” channeling “judicial review of all” “decisions and

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

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

1 indirect challenges to removal orders, including decisions to detain for purposes of
2 removal or for proceedings. *See Jennings v. Rodriguez*, 583 U.S. 281, 294–95 (2018)
3 (stating section 1252(b)(9) includes challenges to the “decision to detain [an alien] in
4 the first place or to seek removal”).

5 Here, Petitioner’s claims stem from her detention during removal proceedings.
6 However, that detention arises from DHS’s decision to commence such proceedings
7 against her. *See, e.g., Valecia-Meja v. United States*, No. 08-2943 CAS (PJWz),
8 2008 WL 4286979, at *4 (C.D. Cal. Sept. 15, 2008) (“The decision to detain plaintiff
9 until his hearing before the Immigration Judge arose from this decision to commence
10 proceedings.”); *Wang*, 2010 WL 11463156, at *6; *Tazu v. Att’y Gen. U.S.*, 975 F.3d
11 292, 298–99 (3d Cir. 2020) (holding that 8 U.S.C. § 1252(g) and (b)(9) deprive district
12 court of jurisdiction to review action to execute removal order). Petitioner’s challenge
13 concerning the dismissal of her 1229a proceedings and commencement of expedited
14 removal proceedings is strictly barred by these provisions. As such, Petitioner’s claims
15 would be more appropriately presented before the BIA and Ninth Circuit. *See* 8 U.S.C.
16 §§ 1252(a)(5), (b)(9).

17 Moreover, “[s]ection 1252(a)(2)(A) is a jurisdiction-stripping and channeling
18 provision, which bars review of almost ‘every aspect of the expedited removal
19 process.’” *Azimov v. U.S. Dep’t of Homeland Sec.*, No. 22-56034, 2024 WL 687442, at
20 *1 (9th Cir. Feb. 20, 2024) (quoting *Mendoza-Linares v. Garland*, 51 F.4th 1146,
21 1154 (9th Cir. 2022) (describing the operation of § 1252(a)(2)(A)). These jurisdiction-
22 stripping provisions cover “the ‘procedures and policies’ that have been adopted to
23 ‘implement’ the expedited removal process; the decision to ‘invoke’ that process in a
24 particular case; the ‘application’ of that process to a particular alien; and the
25 ‘implementation’ and ‘operation’ of any expedited removal order.” *Mendoza-Lineras*,
26 51 F.4th at 1155. “Congress chose to strictly cabin this court’s jurisdiction to review
27 expedited removal orders.” *Guerrier v. Garland*, 18 F.4th 304, 313 (9th Cir. 2021)
28 (finding that the Supreme Court abrogated any “colorable constitutional claims”

1 exception to the limits placed by § 1252(a)(2)(A)); *see Thuraissigiam*, 591 U.S. 103
2 (holding that limitations within § 1252(a)(2)(A) do not violate the Suspension Clause).
3 “Congress has chosen to explicitly bar nearly all judicial review of expedited removal
4 orders concerning such aliens, including ‘review of constitutional claims or questions
5 of law.’” *Mendoza-Linares*, 51 F.4th at 1148 (citing 8 U.S.C. § 1252(a)(2)(A), (D)); *see*
6 *Thuraissigiam*, 591 U.S. at 138-39 (explicitly rejecting Ninth Circuit’s holding that an
7 arriving alien has a “constitutional right to expedited removal proceedings that conform
8 to the dictates of due process”).

9 “Congress could scarcely have been more comprehensive in its articulation of the
10 general prohibition on judicial review of expedited removal orders.” *Mendoza-Linares*,
11 51 F.4th at 1155. Specifically, Section 1252(a)(2)(A) states:

12 (2) Matters not subject to judicial review

13 (A) Review relating to section 1225(b)(1)

14 Notwithstanding any other provision of law (statutory or nonstatutory),
15 including section 2241 of Title 28, or any other habeas corpus provision,
16 and sections 1361 and 1651 of such title, no court shall have jurisdiction
to review-

- 17 (i) except as provided in subsection (e), any individual determination
18 or to entertain any other cause or claim arising from or relating to
19 the implementation or operation of an order of removal pursuant
20 to section 1225(b)(1) of this title,
21 (ii) except as provided in subsection (e), a decision by the Attorney
22 General to invoke the provisions of such section,
23 (iii) the application of such section to individual aliens, including the
24 determination made under section 1225(b)(1)(B) of this title, or
25 (iv) except as provided in subsection (e), procedures and policies
26 adopted by the Attorney General to implement the provisions of
27 section 1225(b)(1) of this title.
28

8 U.S.C. § 1252(a)(2)(A). Thus, “Section 1252(a)(2)(A)(i) deprives courts of
jurisdiction to hear a ‘cause or claim arising from or relating to the implementation or
operation of an order of removal pursuant to section 1225(b)(1),’ which plainly includes

[Petitioner’s] collateral attacks on the validity of the expedited removal order.” *Azimov*, 2024 WL 687442, at *1 (quoting *Mendoza-Linares*, 51 F.4th at 1155) (citing *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031-35 (9th Cir. 2016) (concluding that the “arising from” language in neighboring § 1252(b)(9) sweeps broadly)). By challenging the standards and process of expedited removal proceedings, Petitioner necessarily asks the Court “to do what the statute forbids [it] to do, which is to review ‘the application of such section to [her].’” *Mendoza-Linares*, 51 F.4th at 1155. Most notably, a determination made concerning inadmissibility “is not subject to judicial review.” *Gomez-Cantillano v. Garland*, No. 19-72682, 2021 WL 5882034 (9th Cir. Dec. 13, 2021) (citing 8 U.S.C. § 1252(a)(2)(A)(iii)). “And § 1252(a)(2)(A)(iv) deprives courts of jurisdiction to review ‘procedures and policies adopted by the Attorney General to implement the provisions of section 1225(b)(1) of this title,’ which plainly includes [Petitioner’s] claims regarding how [Respondents may] implement[.]” § 1225(b)(1). *Azimov*, 2024 WL 687442, at *1 (citing *Mendoza-Linares*, 51 F.4th at 1154–55).

In setting forth provisions for judicial review of § 1225(b)(1) expedited removal orders, Congress expressly limited available relief: “Without regard to the nature of the action or claim and without regard to the identity of the party or parties bringing the action, no court may” “enter declaratory, injunctive, other equitable relief in any action pertaining to an order to exclude an alien in accordance with section § 1225(b)(1) of this title except as specifically authorized in a subsequent paragraph of this subsection.” 8 U.S.C. § 1252(e)(1)(A). Congress delineated two limited avenues for judicial review concerning expedited removal orders: (1) narrow habeas corpus proceedings under § 1252(e)(2); and (2) challenges to the validity of the system under § 1252(e)(3). Any permissible challenge to the validity of the system “is available [only] in an action in the United States District Court for the District of Columbia . . .” 8 U.S.C. § 1252(e)(3).

Narrow habeas corpus proceedings are expressly “limited to determinations” of three questions: (1) “whether the petitioner is an alien”; (2) “whether the petitioner was ordered removed under [section 1225(b)(1)]”; and (3) “whether the petitioner can prove

1 by a preponderance of the evidence that the petitioner is an alien” who has been granted
2 status as a lawful permanent resident, refugee, or asylee. 8 U.S.C. § 1252(e)(2)(A)-(C).
3 “In determining whether an alien has been ordered removed under section 235(b)(1)
4 [8 U.S.C. § 1225(b)(1)], the court’s inquiry shall be limited *to whether such an order*
5 *in fact was issued* and *whether it relates to the petitioner*. There shall be no review of
6 whether the alien is actually inadmissible or entitled to any relief from removal.”
7 8 U.S.C. § 1252(e)(5) (emphasis added). To the extent Petitioner is challenging the
8 expedited process, each of Petitioner’s claims fall outside the limited habeas corpus
9 authority provided within § 1252(e)(2).

10 Thus, as Petitioner’s claims arise from the decision to commence proceedings,
11 this Court lacks jurisdiction under 8 U.S.C. § 1252.

12 **D. Petitioner is Lawfully Detained**

13 Even assuming the Court has jurisdiction over her petition, Petitioner has not
14 stated a statutory violation or a Fifth Amendment due process violation. Petitioner is
15 currently subject to mandatory detention under 8 U.S.C. § 1225(b)(1).

16 While Petitioner was previously released from custody, the decision to remand
17 her back into custody is a discretionary decision not subject to review. *See* 8 U.S.C.
18 § 1225(b)(1)(B)(ii); 8 U.S.C. § 1226(e) (“No court may set aside any action or decision
19 by the Attorney General under this section regarding the detention or any alien or the
20 revocation or denial of bond or parole.”); *Demore v. Kim*, 538 U.S. 510, 531 (2003)
21 (“Detention during removal proceedings is a constitutionally permissible part of that
22 process.”); *Jennings*, 583 U.S. at 295 (“As we have previously explained, § 1226(e)
23 precludes an alien from ‘challeng[ing] a “discretionary judgment” by the Attorney
24 General or a “decision” that the Attorney General has made regarding his detention or
25 release.’ But § 1226(e) does not preclude ‘challenges [to] the statutory framework that
26 permits [the alien’s] detention without bail.’”).

27 Section 1225 applies to “applicants for admission,” who are defined as “alien[s]
28 present in the United States who [have] not been admitted” or “who arrive[] in the

1 United States.” 8 U.S.C. § 1225(a)(1). Applicants for admission “fall into one of two
2 categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2).”
3 *Jennings*, 583 U.S. at 287. Section 1225(b)(1) applies to arriving aliens and “certain
4 other” aliens “initially determined to be inadmissible due to fraud, misrepresentation,
5 or lack of valid document.” *Id.*; 8 U.S.C. § 1225(b)(1)(A)(i), (iii). Though not relevant
6 here, § 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*,
7 583 U.S. at 287. In this statutory scheme, DHS has the sole discretionary authority to
8 temporarily release on parole “any alien applying for admission to the United States”
9 on a “case-by-case basis for urgent humanitarian reasons or significant public benefit.”
10 *Id.* § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022).

11 In *Jennings*, the Supreme Court evaluated the proper interpretation of
12 8 U.S.C. § 1225(b) and stated that “[r]ead most naturally, §§ 1225(b)(1) and (b)(2) []
13 mandate detention of applicants for admission until certain proceedings have
14 concluded.” 583 U.S. at 297. The Court noted that neither § 1225(b)(1) nor § 1225(b)(2)
15 “impose[] any limit on the length of detention” and “neither § 1225(b)(1) nor
16 § 1225(b)(2) say[] anything whatsoever about bond hearings.” *Id.* The Court added that
17 the sole means of release for noncitizens detained under §§ 1225(b)(1) or (b)(2) prior
18 to removal from the United States is temporary parole at the discretion of the Attorney
19 General under 8 U.S.C. § 1182(d)(5). *Id.* at 300. The Court observed that because aliens
20 held under § 1225(b) may be paroled for “urgent humanitarian reasons or significant
21 public benefit,” “[t]hat express exception to detention implies that there are no *other*
22 circumstances under which aliens detained under 1225(b) may be released.” *Id.*
23 (citations and internal quotation omitted) (emphasis in the original). Courts thus may
24 not validly draw additional procedural limitations “out of thin air.” *Id.* at 312. The
25 Supreme Court concluded: “In sum, §§ 1225(b)(1) and (b)(2) mandate detention of
26 [noncitizens] throughout the completion of applicable proceedings.” *Id.* at 302.

27 As to the Fifth Amendment, the only due process rights Petitioner has are those
28 rights statutorily afforded by Congress. *See Thuraissigiam*, 591 U.S. at 139 (collecting

cases); 8 U.S.C. § 1225(b)(1)(B)(iii)(IV); *Landon v. Plasencia*, 459 U.S. 21, 32 (1982) (“This Court has long held that an alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application, for the power to admit or exclude aliens is a sovereign prerogative.”) (citations omitted); *see generally I.N.S. v. Lopez-Mendoza*, 468 U.S. 1032, 1038 (1984) (“Consistent with the civil nature of the proceeding, various protections that apply in the context of a criminal trial do not apply in a deportation hearing.”). In *Thuraissigiam*, the Supreme Court addressed the due process rights of inadmissible arriving noncitizens and stated that such individuals have no due process rights “other than those afforded by statute.” *Thuraissigiam*, 591 U.S. at 107; *id.* at 140 (“[A]n alien in respondent’s position has only those rights regarding admission that Congress has provided by statute.”). The Supreme Court noted that its determination was supported by “more than a century of precedent.” *Id.* at 138 (citing *Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892); *U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950); *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953); *Landon*, 459 U.S. at 32); *Rauda v. Jennings*, 8 F.4th 1050, 1058 (9th Cir. 2021) (“Congress has already balanced the amount of due process available to petitioners with the executive’s prerogative to remove individuals, and we decline to expand judicial review beyond the parameters set by Congress.”); *Mendoza-Linares v. Garland*, No. 21-cv-1169-BEN (AHG), 2024 WL 3316306, at *2 (S.D. Cal. June 10, 2024) (“[T]he Court finds that Petitioner has no Fifth Amendment right to a bond hearing pending his removal proceedings. The only due process due an alien seeking admission to the United States is ‘those rights regarding admission that Congress has provided by statute.’” (quoting *Thuraissigiam*, 591 U.S. at 140); *Zelaya-Gonzalez v. Matuszewski*, No. 23-CV-151 JLS (KSC), 2023 WL 3103811, at *4 (S.D. Cal. Apr. 25, 2023) (“Binding Ninth Circuit and Supreme Court precedents are clear

1 that Petitioner lacks any rights beyond those conferred by statute, and no statute entitles
2 Petitioner to a bond hearing.”).

3 Here, Petitioner’s removal proceedings are ongoing, and thus, she continues to
4 be subject to mandatory detention under 8 U.S.C. § 1225(b)(1)(B)(ii). Since the
5 statutory authority Petitioner is detained under does not afford her a right to a
6 determination by this Court as to whether her release is warranted, nor a right to a bond
7 hearing before an immigration judge, the Court should reject her claim that her
8 detention violates the Fifth Amendment’s Due Process Clause and deny her requested
9 relief.² See *Thuraissigiam*, 591 U.S. at 107, 140; *Mezei*, 345 U.S. at 212; *Guerrier v.*
10 *Garland*, 18 F. 4th 304, 310 (9th Cir. 2021).

11 Similarly, the APA does not provide an avenue for relief in this case. The APA
12 places limits on when agency action is subject to judicial review. “Agency action made
13 reviewable by statute and final agency action for which there is no other adequate
14 remedy in a court are subject to judicial review.” 5 U.S.C. § 704; *Navajo Nation v. Dep’t*
15 *of the Interior*, 876 F.3d 1144, 1171 (9th Cir. 2017) (“[Section] 704’s requirement that
16 to proceed under the APA, agency action must be final or otherwise reviewable by
17 statute is an independent element without which courts may not determine APA
18 claims.”). Reviewable “agency action” is defined to include “the whole or a part of an
19 agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure
20 to act.” 5 U.S.C. § 551(13). “While this definition is ‘expansive,’ federal courts ‘have
21 long recognized that the term [agency action] is not so all-encompassing as to authorize
22 . . . judicial review over everything done by an administrative agency.’” *Wild Fish*
23 *Conservancy v. Jewell*, 730 F.3d 791, 800–01 (9th Cir. 2013) (quoting *Fund for*
24 *Animals, Inc. v. U.S. Bureau of Land Management*, 460 F.3d 13, 19 (D.C. Cir. 2006)).
25 Here, it is not altogether clear what final agency action Petitioner seeks review over.
26

27
28 ² Further, since Petitioner was arrested pursuant to a warrant, see Exhibit 4, her Fourth
Amendment claim should likewise be denied.

1 Importantly, habeas relief is available to challenge only the legality or duration of
2 confinement. *Pinson*, 69 F.4th at 1067; *see also Flores-Miramontes*, 212 F.3d at 1140
3 (“For purposes of immigration law, at least, ‘judicial review’ refers to petitions for
4 review of agency actions, which are governed by the Administrative Procedure Act,
5 while habeas corpus refers to habeas petitions brought directly in district court to
6 challenge illegal confinement.”). The Court should therefore reject Petitioner’s claim,
7 because it is beyond the scope of habeas jurisdiction.

8 Accordingly, as Petitioner is detained pursuant to 8 U.S.C. § 1225(b)(1)(B)(ii),
9 Petitioner’s claims fail on the merits.

10 V. CONCLUSION

11 For the foregoing reasons, Respondents respectfully request that the Court deny
12 the petition.

13 DATED: September 29, 2025

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