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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

RAMIRO CHAVEZ VALDOVINOS,

Petitioner,

v.

KRISTI NOEM, Secretary, U.S.
Department of Homeland Security; et al.,

Respondents.

Case No.: 25cv2439-TWR(KSC)

**RESPONDENTS' RETURN TO
HABEAS PETITION**

1 **I. Introduction**

2 Petitioner has filed a habeas petition pursuant to 28 U.S.C. § 2241. For the
3 reasons set forth below, the Court should deny and dismiss the petition.

4 **II. Factual Background¹**

5 Petitioner is a citizen and national of Mexico. In 2012, he entered the United
6 States without being admitted, paroled, or inspected. On August 21, 2025, Petitioner
7 was apprehended by Department of Homeland Security (DHS) agents and was charged
8 with inadmissibility under 8 U.S.C. § 1182(a)(6)(A)(i), as an alien present in the United
9 States who has not been admitted or paroled. He was then placed in removal
10 proceedings under 8 U.S.C. § 1229a (240 proceedings) and issued a Notice to Appear
11 (NTA). Petitioner is currently detained in Immigration and Customs Enforcement (ICE)
12 custody at the Otay Mesa Detention Center and is subject to mandatory detention under
13 8 U.S.C. § 1225(b)(2). He has not requested a bond hearing before an immigration
14 judge.

15 **III. Argument**

16 **A. Petitioner's Claims Present No Case or Controversy**

17 The Constitution limits federal judicial power to designated “cases” and
18 “controversies.” U.S. Const., Art. III, § 2; *SEC v. Medical Committee for Human Rights*,
19 404 U.S. 403, 407 (1972) (federal courts may only entertain matters that present a
20 “case” or “controversy” within the meaning of Article III). “Absent a real and
21 immediate threat of future injury there can be no case or controversy, and thus no Article
22 III standing for a party seeking injunctive relief.” *Wilson v. Brown*, No. 05-cv-1774-
23 BAS-MDD, 2015 WL 8515412, at *3 (S.D. Cal. Dec. 11, 2015) (citing *Friends of the*
24 *Earth, Inc. v. Laidlow Env't Servs., Inc.*, 528 U.S. 167, 190 (2000); see *Lujan v.*
25 *Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). Petitioner has not yet had a bond
26 hearing, nor has he been denied a bond hearing. As such, there is no controversy
27

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

1 concerning his bond hearing for the Court to resolve. Federal courts do not have
2 jurisdiction “to give opinion upon moot questions or abstract propositions, or to declare
3 principles or rules of law which cannot affect the matter in issue in the case before it.”
4 *Church of Scientology of Cal. v. United States*, 506 U.S. 9, 12 (1992). The Court
5 therefore lacks jurisdiction over Petitioner’s requests because there is no live case or
6 controversy. *See Powell v. McCormack*, 395 U.S. 486, 496 (1969); *see also Murphy v.*
7 *Hunt*, 455 U.S. 478, 481 (1982).

8 **B. Petitioner’s Claims and Requested Relief are Barred by 8 U.S.C. § 1252**

9 Petitioner bears the burden of establishing that this Court has subject matter
10 jurisdiction over his claims. *See Ass’n of Am. Med. Coll. v. United States*, 217 F.3d 770,
11 778-79 (9th Cir. 2000); *Finley v. United States*, 490 U.S. 545, 547-48 (1989). As a
12 threshold matter, Petitioner’s claims are jurisdictionally barred under 8 U.S.C.
13 § 1252(g) and 8 U.S.C. § 1252(b)(9).

14 In general, courts lack jurisdiction to review a decision to commence or
15 adjudicate removal proceedings or execute removal orders. *See* 8 U.S.C. § 1252(g)
16 (“[N]o court shall have jurisdiction to hear any cause or claim by or on behalf of any
17 alien arising from the decision or action by the Attorney General to commence
18 proceedings, adjudicate cases, or execute removal orders.”); *Reno v. Am.-Arab Anti-*
19 *Discrimination Comm.*, 525 U.S. 471, 483 (1999) (“There was good reason for
20 Congress to focus special attention upon, and make special provision for, judicial
21 review of the Attorney General’s discrete acts of “commenc[ing] proceedings,
22 adjudicat[ing] cases, [and] execut[ing] removal orders”—which represent the initiation
23 or prosecution of various stages in the deportation process.”). In other words, § 1252(g)
24 removes district court jurisdiction over “three discrete actions that the Attorney may
25 take: [his] ‘decision or action’ to ‘commence proceedings, adjudicate cases, or execute
26 removal orders.’” *Reno*, 525 U.S. at 482 (emphasis removed). Petitioner’s claims
27 necessarily arise “from the decision or action by the Attorney General to commence
28

1 proceedings [and] adjudicate cases,” over which Congress has explicitly foreclosed
2 district court jurisdiction. 8 U.S.C. § 1252(g).

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

9 Other courts have held, “[f]or the purposes of § 1252, the Attorney General
10 commences proceedings against an alien when the alien is issued a Notice to Appear
11 before an immigration court.” *Herrera-Correra v. United States*, No. 08-2941 DSF
12 (JCx), 2008 WL 11336833, at *3 (C.D. Cal. Sept. 11, 2008). “The Attorney General
13 may arrest the alien against whom proceedings are commenced and detain that
14 individual until the conclusion of those proceedings.” *Id.* at *3. “Thus, an alien’s
15 detention throughout this process arises from the Attorney General’s decision to
16 commence proceedings” and review of claims arising from such detention is barred
17 under § 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007)); *Wang*,
18 2010 WL 11463156, at *6; 8 U.S.C. § 1252(g). *But see Vasquez Garcia v. Noem*, No.
19 25-cv-02180-DMS-MMP, 2025 WL 2549431, at *4 (S.D. Cal. Sept. 3, 2025).

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

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

12 Critically, “1252(b)(9) is a judicial channeling provision, not a claim-barring
13 one.” *Aguilar v. ICE*, 510 F.3d 1, 11 (1st Cir. 2007). Indeed, 8 U.S.C. § 1252(a)(2)(D)
14 provides that “[n]othing . . . in any other provision of this chapter . . . shall be construed
15 as precluding review of constitutional claims or questions of law raised upon a petition
16 for review filed with an appropriate court of appeals in accordance with this section.”
17 The petition-for-review process before the court of appeals ensures that noncitizens
18 have a proper forum for claims arising from their immigration proceedings and “receive
19 their day in court.” *J.E.F.M.*, 837 F.3d at 1031–32 (internal quotations omitted). These
20 provisions divest district courts of jurisdiction to review both direct and indirect
21 challenges to removal orders, including decisions to detain for purposes of removal or
22 for proceedings. *See Jennings*, 583 U.S. at 294–95 (section 1252(b)(9) includes
23 challenges to the “decision to detain [an alien] in the first place or to seek 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[.]”). Here, Petitioner challenges the government’s
3 decision and action to detain him, which arises from DHS’s decision to commence
4 removal proceedings, and is thus an “action taken . . . to remove [her] from the United
5 States.” *See* 8 U.S.C. § 1252(b)(9); *see also, e.g., Jennings*, 583 U.S. at 294–95; *Velasco*
6 *Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020) (finding that 8 U.S.C. § 1226(e) did
7 not bar review in that case because the petitioner did not challenge “his initial
8 detention”); *Saadulloev v. Garland*, No. 3:23-CV-00106, 2024 WL 1076106, at *3
9 (W.D. Pa. Mar. 12, 2024) (recognizing that there is no judicial review of the threshold
10 detention decision, which flows from the government’s decision to “commence
11 proceedings”). *But see Vasquez Garcia*, No. 25-cv-02180-DMS-MMP, 2025 WL
12 2549431, at *3-4. As such, the Court lacks jurisdiction over this action. The reasoning
13 in *Jennings* outlines why Petitioner’s claims are unreviewable here.

14 While holding that it was unnecessary to comprehensively address the scope of
15 § 1252(b)(9), the Supreme Court in *Jennings* provided guidance on the types of
16 challenges that may fall within the scope of § 1252(b)(9). *See Jennings*, 583 U.S. at
17 293–94. The Court found that “§ 1252(b)(9) [did] not present a jurisdictional bar” in
18 situations where “respondents . . . [were] not challenging the decision to detain them in
19 the first place.” *Id.* at 294–95. In this case, Petitioner does challenge the government’s
20 decision to detain him in the first place. Though Petitioner attempts to frame his
21 challenge as one relating to detention authority, rather than a challenge to DHS’s
22 decision to detain him in the first instance, such creative framing does not evade the
23 preclusive effect of § 1252(b)(9). Indeed, that Petitioner is challenging the basis upon
24 which he is detained is enough to trigger § 1252(b)(9) because “detention is an ‘action
25 taken . . . to remove’ an alien.” *See Jennings*, 583 U.S. 318, 319 (Thomas, J.,
26 concurring); 8 U.S.C. § 1252(b)(9). As such, Petitioner’s claims would be more
27 appropriately presented before the appropriate federal court of appeals because they
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1 challenge the government’s decision or action to detain him, which must be raised
2 before a court of appeals, not this Court. *See* 8 U.S.C. § 1252(b)(9).

3 **C. Petitioner Has Failed to Exhaust Administrative Remedies**

4 “Exhaustion can be either statutorily or judicially required.” *Acevedo–Carranza*
5 *v. Ashcroft*, 371 F.3d 539, 541 (9th Cir. 2004). “If exhaustion is statutory, it may be a
6 mandatory requirement that is jurisdictional.” *Id.* (citing *El Rescate Legal Servs., Inc.*
7 *v. Exec. Off. of Immigr. Rev.*, 959 F.2d 742, 747 (9th Cir. 1991)). “If, however,
8 exhaustion is a prudential requirement, a court has discretion to waive the requirement.”
9 *Id.* (citing *Stratman v. Watt*, 656 F.2d 1321, 1325–26 (9th Cir. 1981)). Here, Petitioner
10 is attempting to bypass the administrative scheme by not requesting a bond hearing and
11 appealing a hypothetical denial to higher courts.

12 “District Courts are authorized by 28 U.S.C § 2241 to consider petitions for
13 habeas corpus.” *Castro–Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001). “That
14 section does not specifically require petitioners to exhaust direct appeals before filing
15 petitions for habeas corpus.” *Id.* That said, the Ninth Circuit “require[s], as a prudential
16 matter, that habeas petitioners exhaust available judicial and administrative remedies
17 before seeking relief under § 2241.” *Id.* Specifically, “courts may require prudential
18 exhaustion if (1) agency expertise makes agency consideration necessary to generate a
19 proper record and reach a proper decision; (2) relaxation of the requirement would
20 encourage the deliberate bypass of the administrative scheme; and (3) administrative
21 review is likely to allow the agency to correct its own mistakes and to preclude the need
22 for judicial review.” *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007) (internal
23 quotation marks omitted).

24 “When a petitioner does not exhaust administrative remedies, a district court
25 ordinarily should either dismiss the petition without prejudice or stay the proceedings
26 until the petitioner has exhausted remedies, unless exhaustion is excused.” *Leonardo v.*
27 *Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011); *see also Alvarado v. Holder*, 759 F.3d
28 1121, 1127 n.5 (9th Cir. 2014) (issue exhaustion is a jurisdictional requirement); *Tijani*

1 *v. Holder*, 628 F.3d 1071, 1080 (9th Cir. 2010) (no jurisdiction to review legal claims
2 not presented in the petitioner’s administrative proceedings before the BIA). Moreover,
3 a “petitioner cannot obtain review of procedural errors in the administrative process that
4 were not raised before the agency merely by alleging that every such error violates due
5 process.” *Vargas v. INS*, 831 F.3d 906, 908 (9th Cir. 1987); *see also Sola v. Holder*,
6 720 F.3d 1134, 1135-36 (9th Cir. 2013) (declining to address a due process argument
7 that was not raised below because it could have been addressed by the agency).

8 Here, exhaustion is warranted because agency expertise is required. “[T]he BIA
9 is the subject-matter expert in immigration bond decisions.” *Aden v. Nielsen*, No. C18-
10 1441RSL, 2019 WL 5802013, at *2 (W.D. Wash. Nov. 7, 2019). The BIA, and
11 immigration court, is well-positioned to assess how agency practice affects the interplay
12 between 8 U.S.C. §§ 1225 and 1226. *See Delgado v. Sessions*, No. C17-1031-RSL-JPD,
13 2017 WL 4776340, at *2 (W.D. Wash. Sept. 15, 2017) (noting a denial of bond to an
14 immigration detainee was “a question well suited for agency expertise”); *Matter of M-*
15 *S-*, 27 I&N Dec. 509, 515-18 (2019) (addressing interplay of §§ 1225(b)(1) and 1226).
16 *But see Vasquez-Rodriguez v. Garland*, 7 F.4th 888, 896-97 (9th Cir. 2021); *Vasquez*
17 *Garcia*, 2025 WL 2549431, at *4-5.

18 Waiving exhaustion would also “encourage other detainees to bypass the BIA
19 and directly appeal their no-bond determinations from the IJ to federal district court.”
20 *Aden*, 2019 WL 5802013, at *2. Individuals, like Petitioner, would have little incentive
21 to seek relief before an IJ and the BIA if this Court permits review here. Allowing a
22 skip-the-IJ-and-BIA-and-go-straight-to-federal-court strategy needlessly increases the
23 burden on district courts. *See Bd. of Tr. of Constr. Laborers’ Pension Trust for S. Calif.*
24 *v. M.M. Sundt Constr. Co.*, 37 F.3d 1419, 1420 (9th Cir. 1994) (“Judicial economy is
25 an important purpose of exhaustion requirements.”); *see also Santos-Zacaria v.*
26 *Garland*, 598 U.S. 411, 418 (2023) (noting “exhaustion promotes efficiency”).

27 Moreover, detention alone is not an irreparable injury. Discretion to waive
28 exhaustion “is not unfettered.” *Laing v. Ashcroft*, 370 F.3d 994, 998 (9th Cir. 2004).

Petitioners bear the burden to show that an exception to the exhaustion requirement applies. *Leonardo*, 646 F.3d at 1161; *Aden*, 2019 WL 5802013, at *3. “[C]ivil detention after the denial of a bond hearing [does not] constitute[] irreparable harm such that prudential exhaustion should be waived.” *Reyes v. Wolf*, No. C20-0377JLR, 2021 WL 662659, at *3 (W.D. Wash. Feb. 19, 2021), *aff’d sub nom. Diaz Reyes v. Mayorkas*, No. 21-35142, 2021 WL 3082403 (9th Cir. July 21, 2021). Because Petitioner has not exhausted his administrative remedies, this matter should be dismissed or stayed.

D. Petitioner is Lawfully Detained

Section 1225 applies to “applicants for admission,” such as Petitioner, who are defined as “alien[s] present in the United States who [have] not been admitted” or “who arrive[] in the United States.” 8 U.S.C. § 1225(a)(1). Applicants for admission “fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2).” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). Section 1225(b)(2)—the provision relevant here—is the “broader” of the two. *Id.* It “serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1) (with specific exceptions not relevant here).” *Id.* And § 1225(b)(2) mandates detention. *Id.* at 297; *see also Matter of Yajure Hurtado*, 29 I&N Dec. at 218-19 (for “those aliens who are seeking admission and who an immigration officer has determined are ‘not clearly and beyond a doubt entitled to be admitted’ . . . the INA explicitly requires that this third ‘catchall’ category of applicants for admission be mandatorily detained for the duration of their immigration proceedings”); *Matter of Q. Li*, 29 I&N Dec. at 69 (“[A]n applicant for admission who is arrested and detained without a warrant while arriving in the United States, whether or not at a port of entry, and subsequently placed in removal proceedings is detained under section 235(b) of the INA, 8 U.S.C. § 1225(b), and is ineligible for any subsequent release on bond under section 236(a) of the INA, 8 U.S.C. § 1226(a).”). Section 1225(b) therefore applies because Petitioner is present in the United States without being admitted. *See Matter of Lemus-Losa*, 25 I&N Dec. 734, 743 (BIA 2012) (“many people who are not *actually* requesting permission to enter the

1 United States in the ordinary sense are nevertheless deemed to be ‘seeking admission’
2 under the immigration laws”); *Matter of Yajure Hurtado*, 29 I&N Dec. at 221 (noting
3 “no legal authority for the proposition that after some undefined period of time residing
4 in the interior of the United States without lawful status, the INA provides that an
5 applicant for admission is no longer ‘seeking admission,’ and has somehow converted
6 to a status that renders him or her eligible for a bond hearing under section 236(a) of
7 the INA”).

8 Statutory language “is known by the company it keeps.” *Marquez-Reyes v.*
9 *Garland*, 36 F.4th 1195, 1202 (9th Cir. 2022) (quoting *McDonnell v. United States*, 579
10 U.S. 550, 569 (2016)). The phrase “seeking admission” in § 1225(b)(2)(A) must be read
11 in the context of the definition of “applicant for admission” in § 1225(a)(1). Applicants
12 for admission are both those individuals present without admission and those who arrive
13 in the United States. *See* 8 U.S.C. § 1225(a)(1). Both are understood to be “seeking
14 admission” under § 1225(a)(1). *See Matter of Yajure Hurtado*, 29 I&N Dec. at 221;
15 *Lemus-Losa*, 25 I&N Dec. at 743. Congress made that clear in § 1225(a)(3), which
16 requires all aliens “who are applicants for admission or otherwise seeking admission”
17 to be inspected by immigration officers. 8 U.S.C. § 1225(a)(3). The word “or” here
18 “introduce[s] an appositive—a word or phrase that is synonymous with what precedes it
19 (‘Vienna or Wien,’ ‘Batman or the Caped Crusader’).” *United States v. Woods*, 571
20 U.S. 31, 45 (2013). If Congress did not want § 1225(b)(2)(A) to apply to “applicants
21 for admission,” then it would not have included the phrase “applicants for admission”
22 in the subsection. *See* 8 U.S.C. § 1225(b)(2)(A); *see also Corley*, 556 U.S. at 314.

23 When the plain text of a statute is clear, “that meaning is controlling” and courts
24 “need not examine legislative history.” *Washington v. Chimei Innolux Corp.*, 659 F.3d
25 842, 848 (9th Cir. 2011). Indeed, “in interpreting a statute a court should always turn
26 first to one, cardinal canon before all others.” *Conn. Nat’l Bank v. Germain*, 503 U.S.
27 249, 253-54 (1992). The Supreme Court has “stated time and again that courts must
28 presume that a legislature says in a statute what it means and means in a statute what it

1 says there.” *Id.* (citations omitted). Thus, “[w]hen the words of a statute are
2 unambiguous, then, this first canon is also the last: ‘judicial inquiry is complete.’” *Id.*
3 (citing *Rubin v. United States*, 449 U.S. 424 at 430 (1981)).

4 But to the extent legislative history is relevant here, nothing “refutes the plain
5 language” of § 1225. *Suzlon Energy Ltd. v. Microsoft Corp.*, 671 F.3d 726, 730 (9th
6 Cir. 2011). Congress passed IIRIRA to correct “an anomaly whereby immigrants who
7 were attempting to lawfully enter the United States were in a worse position than
8 persons who had crossed the border unlawfully.” *Torres v. Barr*, 976 F.3d 918, 928 (9th
9 Cir. 2020) (en banc), *declined to extend by*, *United States v. Gambino-Ruiz*, 91 F.4th
10 981 (9th Cir. 2024); *see Matter of Yajure Hurtado*, 29 I&N Dec. at 223-34 (citing H.R.
11 Rep. No. 104-469, pt. 1, at 225 (1996)). It “intended to replace certain aspects of the
12 [then] current ‘entry doctrine,’ under which illegal aliens who have entered the United
13 States without inspection gain equities and privileges in immigration proceedings that
14 are not available to aliens who present themselves for inspection at a port of entry.”
15 *Matter of Yajure Hurtado*, 29 I&N Dec. at 234 (quoting H.R. Rep. 104-469, pt. 1, at
16 225). Petitioner’s position requires an interpretation that would put aliens who “crossed
17 the border unlawfully” in a better position than those “who present themselves for
18 inspection at a port of entry.” *Id.* Such interpretation would allow aliens who presented
19 at a port of entry to be subject to mandatory detention under § 1225, but those who
20 crossed illegally would be eligible for a bond under § 1226(a). *See Matter of Yajure*
21 *Hurtado*, 29 I&N Dec. at 225 (“The House Judiciary Committee Report makes clear
22 that Congress intended to eliminate the prior statutory scheme that provided aliens who
23 entered the United States without inspection more procedural and substantive rights that
24 those who presented themselves to authorities for inspection.”).

25 As Petitioner is lawfully detained under 8 U.S.C. § 1225(b)(2), his claims fail.

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IV. CONCLUSION

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

DATED: September 23, 2025

Respectfully submitted,

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Case No.: 25cv2439-TWR(KSC)

TABLE OF EXHIBITS

21 Exhibits:

- 22 1. Form I-213, Record of Deportable/Inadmissible Alien, dated August 21, 2025
23 2. Notice to Appear, dated August 21, 2025
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