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11 UNITED STATES DISTRICT COURT
12 FOR THE CENTRAL DISTRICT OF CALIFORNIA
13

14 DANNA LUCIANO et al.,
15 Petitioners,
16 v.
17 KRISTI NOEM et al.,
18 Respondents.

Case No. 5:25-cv-03156-RGK-MAA

**ANSWER TO PETITION FOR WRIT
OF HABEAS CORPUS**

1 **I. INTRODUCTION**

2 Petitioners are not entitled to release from custody because they are subject to
3 mandatory detention as aliens present without admission or parole, pursuant to 8 U.S.C. §
4 1225(b)(2), pending their removal proceedings. Additionally, evidence (attached hereto as
5 Exhibits A-H) of Petitioners' criminal history, multiple illegal entries, and multiple
6 voluntary departures strongly demonstrate that Petitioners pose a danger to the community
7 and are flight risks if released from custody. Respondents respectfully request that the
8 Court deny the Petition because: (1) Petitioners' detention by Immigration and Customs
9 Enforcement ("ICE") pending removal is authorized by statute; (2) this Court lacks
10 jurisdiction over the Petition to the extent it seeks to review ICE's decisions to arrest,
11 detain, and remove Petitioners; (3) the Petition fails to allege any specific factual basis for
12 habeas relief, violating the habeas pleading standard; and (4) Petitioners are not likely to
13 succeed on the merits of the Petition.

14 **II. ARGUMENT**

15 **A. The Government is Authorized to Arrest and Detain Noncitizens in**
16 **Connection with Removal Proceedings and Following Removal Orders**

17 1. Pre-Removal Order Arrest and Detention

18 8 U.S.C. § 1226 provides for arrest and detention of non-citizens "pending a
19 decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a).
20 Under § 1226(a), the government may detain a non-citizen during his removal
21 proceedings, release him on bond, or release him on conditional parole. By regulation,
22 immigration officers can release a non-citizen if the non-citizen demonstrates that he
23 "would not pose a danger to property or persons" and "is likely to appear for any future
24 proceeding." 8 C.F.R. § 236.1(c)(8). A non-citizen can also request a custody
25 redetermination (i.e., a bond hearing) by an immigration judge ("IJ") at any time before a
26 final order of removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d)(1),
27 1236.1(d)(1), 1003.19.

28 At a custody redetermination, the IJ may continue detention or release the non-

1 citizen on bond or conditional parole. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). IJs
2 have broad discretion in deciding whether to release a non-citizen on bond. *In re Guerra*,
3 24 I. & N. Dec. 37, 39–40 (BIA 2006) (listing nine factors for IJs to consider). But
4 regardless of the factors IJs consider, a non-citizen “who presents a danger to persons or
5 property should not be released during the pendency of removal proceedings.” *Id.* at 38.

6 Non-citizens may also be detained pursuant to 8 U.S.C. § 1225, which applies to
7 “applicants for admission,” who are defined as “alien[s] present in the United States who
8 [have] not been admitted” or “who arrive[] in the United States.” 8 U.S.C. § 1225(a)(1).
9 Applicants for admission “fall into one of two categories, those covered by § 1225(b)(1)
10 and those covered by § 1225(b)(2).” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

11 Section 1225(b)(1) applies to arriving non-citizens and “certain other” non-citizens
12 “initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid
13 documentation.” *Id.*; 8 U.S.C. § 1225(b)(1)(A)(i), (iii). These non-citizens are generally
14 subject to expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(A)(i). But if the non-
15 citizen “indicates an intention to apply for asylum . . . or a fear of persecution,”
16 immigration officers will refer the non-citizen for a credible fear interview. *Id.* §
17 1225(b)(1)(A)(ii). A non-citizen “with a credible fear of persecution” is “detained for
18 further consideration of the application for asylum.” *Id.* § 1225(b)(1)(B)(ii). If the non-
19 citizen does not indicate an intent to apply for asylum, express a fear of persecution, or is
20 “found not to have such a fear,” he is detained until removed. *Id.* §§ 1225(b)(1)(A)(i),
21 (B)(iii)(IV).

22 Section 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*, 583
23 U.S. at 287. It “applies to all applicants for admission not covered by § 1225(b)(1).” *Id.*
24 Under § 1225(b)(2), a non-citizen “who is an applicant for admission” shall be detained
25 for a removal proceeding “if the examining immigration officer determines that [the] alien
26 seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. §
27 1225(b)(2)(A); *see Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) (“for aliens arriving
28 in and seeking admission into the United States who are placed directly in full removal

proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention ‘until removal proceedings have concluded.’”) (citing *Jennings*, 583 U.S. at 299). Still, DHS has the sole discretionary authority to temporarily release on parole “any alien applying for admission to the United States” on a “case-by-case basis for urgent humanitarian reasons or significant public benefit.” *Id.* § 1182(d)(5)(A); see *Biden v. Texas*, 597 U.S. 785, 806 (2022).

2. Detention Following a Final Order of Removal

When a non-citizen receives a final removal order, their detention is mandatory for the following 90 days. 8 U.S.C. § 1231(a)(2). After that time, detention is within ICE’s discretion under 8 U.S.C. § 1231(a)(6). Detention for six months pursuant to a final removal order is presumptively valid. See *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). After that amount of detention time, a noncitizen may bring a habeas petition seeking release, and it is his burden to show “there is no significant likelihood of removal in the reasonably foreseeable future.” *Id.* The law does not require that “every [noncitizen] not removed must be released after six months.” *Id.* Instead, it prevents only “indefinite” or “potentially permanent” detention. *Id.* at 689–91. Furthermore, when a valid removal order is issued and a non-citizen is released under an order of supervision, the government is authorized to revoke supervised release pursuant to 8 C.F.R. § 241.1(l)(1), and 8 CFR § 241.4(l)(2).

3. Review at the Board of Immigration Appeals (“BIA”)

The BIA is an appellate body within the Executive Office for Immigration Review (“EOIR”). See 8 C.F.R. § 1003.1(d)(1). Members of the BIA possess delegated authority from the Attorney General. 8 C.F.R. § 1003.1(a)(1). The BIA is “charged with the review of those administrative adjudications under the [INA] that the Attorney General may by regulation assign to it,” including IJ custody determinations. 8 C.F.R. § 1003.1(d)(1), 236.1; 1236.1. The BIA not only resolves particular disputes before it, but also “through precedent decisions, [it] shall provide clear and uniform guidance to DHS, the immigration judges, and the general public on the proper interpretation and administration of the [INA]

1 and its implementing regulations.” *Id.* § 1003.1(d)(1). “The decision of the [BIA] shall be
2 final except in those cases reviewed by the Attorney General.” 8 C.F.R. § 1003.1(d)(7).

3 **B. The Court Lacks Jurisdiction to Entertain Petitioners’ Action under 8**
4 **U.S.C. § 1252(g) and 8 U.S.C. § 1252(b)(9).**

5 A federal court generally may not rule on the merits of a case without first
6 determining that it has jurisdiction. *Sinochem Int’l Co. v. Malaysia Int’l Shipping Corp.*,
7 549 U.S. 422, 430-31 (2007). “The limits upon federal jurisdiction, whether imposed by
8 the Constitution or by Congress, must be neither disregarded nor evaded.” *Owen Equip.*
9 *& Erection Co. v. Kroger*, 437 U.S. 365, 374 (1978). In general, a district court may
10 exercise jurisdiction over a § 2241 habeas petition when the petitioner is in custody and
11 alleges that the custody violates the Constitution, laws, or treaties of the United States. 28
12 U.S.C. § 2241(c); *Maleng v. Cook*, 490 U.S. 488, 490 (1989). However, that jurisdiction
13 is constrained in immigration contexts by two specific statutes. First, 8 U.S.C. § 1252(g)
14 provides that:

15 [e]xcept as provided in this section and notwithstanding any other provision
16 of law (statutory or nonstatutory), including section 2241 of title 28, or any
17 other habeas corpus provision, and sections 1361 and 1651 of such title, no
18 court shall have jurisdiction to hear any cause or claim by or on behalf of any
19 alien arising from the decision or action by the Attorney General to
20 commence proceedings, adjudicate cases, or execute removal orders against
21 any alien under this chapter.

22 “When asking if a claim is barred by § 1252(g), courts must focus on the action being
23 challenged.” *Canal A Media Holding, LLC v. U.S. Citizenship & Imm. Servs.*, 964 F.3d
24 1250, 1257-58 (11th Cir. 2020).

25 Section 1252(g) applies “to three discrete actions[:] . . . [the] ‘decision or action’ to
26 ‘commence proceedings, adjudicate cases, or execute removal orders.’” *Reno v.*
27 *American-Arab Anti-Discrimination Comm.* (“AADC”), 525 U.S. 471, 482 (1999)
28 (emphasis in original); *Rauda v. Jennings*, 55 F.4th 773, 777 (9th Cir. 2022) (§ 1252(g))

precludes judicial review of execution of removal order). Thus, to the extent Petitioners' generic claims challenge these decisions, § 1252(g) renders this Court without jurisdiction to hear his habeas claims. *See Eliazar G.C. v. Wolford*, 2025 WL 1124688, at *3 (E.D. Cal. Apr. 16, 2025) (no habeas jurisdiction over habeas petition seeking to stay execution of removal order); *Aransiola v. Warden, FCI Victorville Medium*, 2025 WL 576592, at *6 (C.D. Cal. Jan. 22, 2025) (no habeas jurisdiction to challenge commencement of removal proceedings), *report and recommendation adopted by* 2025 WL 1085125 (C.D. Cal. Apr. 9, 2025).

Second, under § 1252(b)(9), “judicial review of all questions of law . . . including interpretation and application of statutory provisions . . . arising from any action taken . . . to remove an alien from the United States” is only proper before the appropriate federal court of appeals in the form of a petition for review of a final removal order. *See* 8 U.S.C. § 1252(b)(9); *AADC*, 525 U.S. at 483. Section 1252(b)(9) is an “unmistakable ‘zipper’ clause” that “channels judicial review of all [claims arising from deportation proceedings]” to a court of appeals in the first instance. *Id.*; *see Lopez v. Barr*, No. CV 20-1330 (JRT/BRT), 2021 WL 195523, at *2 (D. Minn. Jan. 20, 2021) (citing *Nasrallah v. Barr*, 590 U.S. 573, 579–80 (2020)).

Moreover, § 1252(a)(5) provides that a petition for review is the exclusive means for judicial review of removal proceedings:

Notwithstanding any other provision of law (statutory or nonstatutory), . . . a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision of this chapter, except as provided in subsection (e) [concerning aliens not admitted to the United States].

8 U.S.C. § 1252(a)(5). “Taken together, § 1252(a)(5) and § 1252(b)(9) mean that *any* issue—whether legal or factual—arising from *any* removal-related activity can be reviewed *only* through the [petition-for-review] process.” *J.E.F.M. v. Lynch*, 837 F.3d

1 1026, 1031 (9th Cir. 2016) (emphasis in original); *see id.* at 1035 (“§§ 1252(a)(5) and
2 [(b)(9)] channel review of all claims, including policies-and-practices challenges . . .
3 whenever they ‘arise from’ removal proceedings”); *accord Ruiz v. Mukasey*, 552 F.3d 269,
4 274 n.3 (2d Cir. 2009) (only when the action is “unrelated to any removal action or
5 proceeding” is it within the district court’s jurisdiction); *cf. Xiao Ji Chen v. U.S. Dep’t of*
6 *Justice*, 434 F.3d 144, 151 n.3 (2d Cir. 2006) (a “primary effect” of the REAL ID Act is to
7 “limit all aliens to one bite of the apple” (internal quotation marks omitted)).

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

21 In evaluating the reach of subsections (a)(5) and (b)(9), the Second Circuit
22 explained that jurisdiction turns on the substance of the relief sought. *Delgado v.*
23 *Quarantillo*, 643 F.3d 52, 55 (2d Cir. 2011). Those provisions divest district courts of
24 jurisdiction to review both direct and indirect challenges to removal orders, including
25 decisions to detain for purposes of removal or for proceedings. *See Jennings*, 583 U.S. at
26 294–95 (noting that § 1252(b)(9) did not present jurisdictional bar where respondents were
27 not asking for a review of order of removal, were not challenging decision to detain them
28 in the first place or seek removal, and were not challenging process by which removability

would be determined).”). Here, Petitioners appear to challenge the government’s decision and action to detain them, which arises from DHS’s decision to commence removal proceedings, and is thus an “action taken . . . to remove [them] from the United States.” See 8 U.S.C. § 1252(b)(9); see also, e.g., *Jennings*, 583 U.S. at 294–95; *Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020) (finding that 8 U.S.C. § 1226(e) did not bar review in that case because the petitioner did not challenge “his initial detention”); *Saadulloev v. Garland*, No. 3:23-CV-00106, 2024 WL 1076106, at *3 (W.D. Pa. Mar. 12, 2024) (recognizing that there is no judicial review of the threshold arrest and detention decision, which flows from the government’s decision to “commence proceedings”). As such, the Court lacks jurisdiction over this action. The reasoning in *Jennings* outlines why Petitioners’ claims are unreviewable here.

Insofar as Petitioners seeks to effectively block their arrest and detention pursuant to removal proceedings by an order releasing them from detention—as distinct from any claim challenging the length of post-removal order detention under *Zadvydas*—those claims are precluded by 8 U.S.C. § 1252(g) and § 1252(b)(9).

C. The Petition Fails to Plead Any Factual Basis for Granting Relief

Federal habeas petitioners are subject to a higher pleading standard than Fed. R. Civ. P. Rule 8 and must make specific factual allegations. See Rules Governing Section 2254 Cases, Rule 2(c)(1)-(2) (federal habeas petitions must “specify all the grounds for relief,” and “state the facts supporting each ground”); see also *Mayle v. Felix*, 545 U.S. 644, 655 (2005) (Fed. R. Civ. P. 8(a) requires only “fair notice” whereas Habeas Rule 2(c) is “more demanding” and that federal habeas petitions are “expected to state facts that point to a real possibility of constitutional error”) (citations omitted); *Jones v. Gomez*, 66 F.3d 199, 204-05 (9th Cir. 1995) (conclusory allegations unsupported by a statement of specific facts do not warrant habeas relief), cert. denied, 517 U.S. 1143 (1996); *Hendricks v. Vasquez*, 908 F.2d 490, 491 (9th Cir. 1990) (allegations that are vague, conclusory, or unsupported by a statement of specific facts, are insufficient to warrant relief and subject to summary dismissal). Petitioners bear the burden of proving that they are being held

1 contrary to law by a preponderance of the evidence. *See Lorentsen v. Hood*, 223 F.3d 950,
2 954 (9th Cir. 2000).

3 Here, the Petition is conclusory and vague, and unsupported by a statement of
4 specific facts. The Petition does not meet the basic pleading requirements for federal
5 habeas petitions, and it is insufficient to justify relief. There are no specific factual
6 allegations explaining why the arrest or detention is putatively unlawful, much less any
7 allegations sufficient to establish that they are in fact unlawful. Accordingly, the Petition
8 should be dismissed.

9 1. The Petition's Administrative Procedures Act Allegations ("APA")
10 Are Not Grounds For Release

11 Petitioners' argument that they should be released for violations of the APA should
12 be rejected. Only final agency action is reviewable under the APA. *See Bennett v Spear*,
13 520 U.S. 154, 177-78 (1997). A court may set aside such final agency action that is
14 "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5
15 U.S.C. § 706. Under this standard, "[t]he scope of [the Court's] review is narrow; ... 'a
16 court is not to substitute its judgment for that of the agency.'" *Judulang v. Holder*, 565
17 U.S. 42, 52-53 (2011) (citation omitted). For a district court to review an agency's action
18 pursuant to 5 U.S.C. § 706(2), there must be a "final agency action" that can be reviewed.
19 Two conditions must be met for there to be a "final agency action" sufficient for APA
20 review: "First, the action must mark the consummation of the agency's decision making
21 process . . . it must not be of a merely tentative or interlocutory nature. And second, the
22 action must be one by which rights or obligations have been determined, or from which
23 legal consequences will flow." *Gallo Cattle Co. v. U.S. Dep't of Agric.*, 159 F.3d 1194,
24 1198-99 (9th Cir. 1998) (internal quotation and citations omitted); *see also FTC v.*
25 *Standard Oil Co.*, 449 U.S. 232, 241 (1980) (action must be a definitive statement of the
26 agency's position).

27 The Honorable Judge Blumenfeld rejected a similar APA argument in *Ton v. Noem*,
28 *et al.*, 5:25-cv-02033-SB-AGR, Dkt. 17. Like here, the petitioner Ton "provide[d] little

1 more than conclusory assertions about the facts and the law” in support of the APA
2 argument. *Id.* at p.6. Judge Blumenfeld concluded that “Plaintiff has not shown in these
3 circumstances that there is a final agency action subject to APA review, much less that the
4 government failed to observe its own procedures in reaching its decision.” *Id.* at p.7. The
5 Court should reach the same conclusion here.

6 2. The Petition’s Fifth Amendment Allegations are Insufficient

7 Similarly, the Petition’s Fifth Amendment claim lacks sufficient specificity.
8 Detention during removal proceedings has been upheld against procedural and substantive
9 due process challenges. *See Demore v. Kim*, 538 U.S. 510, 528, 531 (2003) (noting that
10 prior to the issuance of a final order of removal, “[W]hen the Government deals with
11 deportable aliens, the Due Process Clause does not require it to employ the least
12 burdensome means to accomplish its goal”); *Prieto-Romero v. Clark*, 534 F.3d 1053, 1063
13 (9th Cir. 2008) (no habeas relief warranted where petitioner’s filing of petition for review
14 with Ninth Circuit occasioned delay of removal). The Petition is devoid of any facts
15 demonstrating any due process violation that would warrant release.

16 **D. Petitioners have not shown a likelihood of success on the merits because**
17 **they have not established that they are entitled to habeas relief**

18 Showing a likelihood of success on the merits is a requisite threshold issue. Indeed,
19 “when a plaintiff has failed to show the likelihood of success on the merits, [the court]
20 need not consider the remaining three Winters elements.” *Garcia v. Google, Inc.*, 786 F.3d
21 733, 740 (9th Cir. 2015) (cleaned up). To succeed on a habeas petition, Petitioners must
22 show that they are “in custody in violation of the Constitution or laws or treaties of the
23 United States.” 28 U.S.C. § 2241. Although Petitioners are being detained in this district,
24 they have not shown, and indeed cannot show, that their current custody is unlawful. As
25 discussed above, Petitioners are properly detained without bond pursuant to 8 U.S.C. §
26 1225(b)(2), pending their removal proceedings. The Petition fails to demonstrate any
27 putative violations that would warrant relief in the form of habeas relief.

28 Because Petitioners have failed to establish a likelihood of success on their claims

1 that their detention is unlawful, the petition should be denied.

2 **III. CONCLUSION**

3 Respondent respectfully requests that the Court deny the habeas petition and dismiss
4 the action.

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6 Dated: December 10, 2025

Respectfully submitted,

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16 **L.R. 11-6.1 Certification**

17 Counsel of record for Federal Respondents certifies that this brief contains 3,261
18 words, which complies with the word limit of L.R. 11-6.1.
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