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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

PHUONG LAP NGUYEN,

Petitioner,

v.

MARK BOWEN, et al.,

Respondent.

Case No. 5:25-cv-03200-SRM-SP

ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS

[Filed Concurrently with the Declaration of Cane Langill]

Honorable Sheri Pym
United States Magistrate Judge

I. INTRODUCTION

Petitioner Phuong Lap Nguyen, a Vietnamese citizen, filed his Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 requesting immediate release from immigration detention at the Adelanto Immigration Processing Center. Dkt. 1. Respondents respectfully request that the Court deny the Petition because: (1) Petitioner's detention by U.S. Immigration and Customs Enforcement ("ICE") pending removal is authorized by statute, and (2) this Court lacks jurisdiction over the Petition to the extent it seeks to review ICE's decisions to arrest, detain, and remove Petitioner.

II. STATEMENT OF FACTS

Petitioner is a Vietnamese citizen. *See* Declaration of Cane Langill ("Langill Decl.") ¶ 3. On or about June 30, 1985, the Petitioner was admitted to the United States as a refugee. Dkt. 1, ¶ 46.

On or about March 9, 2001, Petitioner was convicted of burglary in the first-degree, in violation of California Penal Code § 460(a). Langill Decl., ¶ 18. He was sentenced to two years in prison. *Id.* On or about December 13, 2001, Petitioner was convicted of burglary in the second degree, in violation of California Penal Code § 460 (b). *Id.*, ¶ 17. He was sentenced to 30 days in jail. *Id.*

On or about April 5, 2002, Petitioner was issued a Notice to Appear ("NTA") and placed into removal proceedings. *Id.* ¶ 4. On or about April 10, 2002, the Immigration Judge ("IJ") denied relief and ordered the Petitioner removed to Vietnam. *Id.* ¶ 5. Petitioner did not appeal the removal order to the Board of Immigration Appeals ("BIA"). *Id.*, ¶ 6 Petitioner is subject to a final removal order. *Id.*

On or about June 11, 2003, Petitioner was convicted of drive with a suspended license, in violation of California Vehicle Code § 14601.1. *Id.* ¶ 19.

On or about September 28, 2005, Petitioner was convicted of possession of a bad check, in violation of California Penal Code § 475(a). *Id.* ¶ 20.

On or about May 24, 2010, Petitioner was convicted of terrorist threats, in violation of California Penal Code § 422, assault, in violation of California Penal Code § 240, and

for preventing/dissuading a witness, in violation of California Penal Code § 136(b)(1). Langill Decl., ¶ 21. For these crimes, Petitioner was sentenced to 365 days in jail. *Id.* On or about May 26, 2010, Petitioner was convicted of use or under the influence of a controlled substance, in violation of California Health & Safety § 11550. *Id.*, ¶ 22. He was sentenced to 245 days in jail. *Id.*

On or about January 13, 2012, Petitioner was convicted of receipt of stolen property, in violation of California Penal Code § 496(a), 3 counts of theft of credit card information, in violation of California Penal Code § 484e(d), and second-degree burglary, in violation of California Penal Code § 459-460(b). *Id.*, ¶ 23. Petitioner was sentenced to 16 months prison. *Id.* On or about March 15, 2018, Petitioner was transferred to the Adelanto Processing Center after he was released from Chuckwalla State Prison. *Id.* ¶ 7.

On April 2, 2018, ERO requested a travel document ("TD") for Petitioner. *Id.* ¶ 8. On July 10, 2018, ERO was advised that a TD would not be issued for him. *Id.* ¶ 9. On July 19, 2018, Petitioner was released from ERO custody on an Order of Supervision ("OSUP"). *Id.* ¶ 10.

On or about January 22, 2019, Petitioner failed to report to ERO as required under the terms of his OSUP release. *Id.* ¶ 11.

On October 23, 2025, Petitioner was taken back into custody by ERO. *Id.* ¶ 12. On that same date, Petitioner was served with a Notice of Revocation of his OSUP. *Id.* ¶ 13; Exhibit A (Notice of Revocation Release). At this time, Petitioner was advised that ERO would be in the process of removing him to Vietnam based on his removal order. *Id.* ¶ 13. On or about October 29, 2025, ERO completed a travel interview. *Id.* ¶ 14. On November 26, 2025, ERO requested a TD for Petitioner, which remains pending. *Id.* ¶ 15. ERO has obtained TDs for citizens of Vietnam. *Id.*, ¶ 16. The last charter flight to Vietnam was on November 26, 2025. *Id.*

III. ARGUMENT

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

1. Pre-Removal Order Arrest and Detention

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

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

Non-citizens may also be detained pursuant to 8 U.S.C. § 1225, which applies to "applicants for admission," 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)(1) applies to arriving non-citizens and "certain other" non-citizens "initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation." *Id.*; 8 U.S.C. § 1225(b)(1)(A)(i), (iii). These non-citizens are generally subject to expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(A)(i). But if the non-

citizen "indicates an intention to apply for asylum . . . or a fear of persecution," immigration officers will refer the non-citizen for a credible fear interview. *Id.* § 1225(b)(1)(A)(ii). A non-citizen "with a credible fear of persecution" is "detained for further consideration of the application for asylum." Id. § 1225(b)(1)(B)(ii). If the non-citizen does not indicate an intent to apply for asylum, express a fear of persecution, or is "found not to have such a fear," he is detained until removed. *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), a non-citizen "who is an applicant for admission" shall be detained for a removal proceeding "if the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A); *see Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) ("for aliens arriving 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] and its implementing regulations." *Id.* § 1003.1(d)(1). "The decision of the [BIA] shall be final except in those cases reviewed by the Attorney General." 8 C.F.R. § 1003.1(d)(7).

B. To the Extent Petitioner is Challenging his Removal Order, 8 U.S.C. § 1252(g) and 8 U.S.C. § 1252(b)(9) Strip the Court of Jurisdiction over this Petition

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

provides that:

> [e]xcept as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no 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 against any alien under this chapter.

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

Section 1252(g) applies "to three discrete actions[:] . . . [the] 'decision or action' to 'commence proceedings, adjudicate cases, or execute removal orders.'" *Reno v. American-Arab Anti-Discrimination Comm.* ("AADC"), 525 U.S. 471, 482 (1999) (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 Petitioner's 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); *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471,

483 (1999). 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 1026, 1031 (9th Cir. 2016) (emphasis in original); *see id.* at 1035 ("§§ 1252(a)(5) and [(b)(9)] channel review of all claims, including policies-and-practices challenges . . . whenever they 'arise from' removal proceedings"); *accord Ruiz v. Mukasey*, 552 F.3d 269, 274 n.3 (2d Cir. 2009) (only when the action is "unrelated to any removal action or proceeding" is it within the district court's jurisdiction); *cf. Xiao Ji Chen v. U.S. Dep't of Justice*, 434 F.3d 144, 151 n.3 (2d Cir. 2006) (a "primary effect" of the REAL ID Act is to "limit all aliens to one bite of the apple" (internal quotation marks omitted)).

Critically, "[§] 1252(b)(9) is a judicial channeling provision, not a claim-barring one." *Aguilar v. ICE*, 510 F.3d 1, 11 (1st Cir. 2007). Indeed, 8 U.S.C. § 1252(a)(2)(D) provides that "[n]othing . . . in any other provision of this chapter . . . shall be construed as precluding review of constitutional claims or questions of law raised upon a petition for review filed with an appropriate court of appeals in accordance with this section." *See also Ajlani v. Chertoff*, 545 F.3d 229, 235 (2d Cir. 2008) ("[J]urisdiction to review such claims

is vested exclusively in the courts of appeals[.]"). The petition-for-review process before the court of appeals ensures that non-citizens have a proper forum for claims arising from their immigration proceedings and "receive their day in court." *J.E.F.M.*, 837 F.3d at 1031–32 (internal quotations omitted); *see also Rosario v. Holder*, 627 F.3d 58, 61 (2d Cir. 2010) ("The REAL ID Act of 2005 amended the [INA] to obviate . . . Suspension Clause concerns" by permitting judicial review of "nondiscretionary" BIA determinations and "all constitutional claims or questions of law.").

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

Here, Petitioner challenges the government's decision and action to detain them on October 23, 2025, which is when Petitioner was taken back into custody. Langill Decl. ¶

12. At this time, Petitioner was also served with a Notice of Revocation of his OSUP and was advised that ERO would begin the process of removing him to Vietnam based on his removal order. *Id.* ¶13.

This action 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 Petitioner's claims are unreviewable here.

Insofar as the Petition seeks to effectively block Petitioner's 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's Fifth Amendment Allegations are Insufficient

Petitioner bears the burden of proving that he is being held contrary to law by a preponderance of the evidence. *See Lorentsen v. Hood*, 223 F.3d 950, 954 (9th Cir. 2000). Here, the Petitioner contends that his detention violates the Constitution. [Dkt. 1, ¶ 36]. Petitioner alleges that he is "being detained for immigration purposes when ICE knows that is [sic] cannot effect my prompt removal from the United States, that I am is [sic] neither a flight risk nor a danger and that I has not violated conditions of my Order of Supervision…." [Dkt. 1, ¶ 37]. Respondents respectfully disagree. As stated in the Langill Declaration, on or about January 22, 2019, Petitioner failed to report to ERO as required under the terms of his OSUP release. Langill Decl. ¶ 11. As such, the evidence is sufficient to revoke his supervised release. *United States v. Daniel*, 209 F.3d 1091, 1094 (9th

Cir.2000). There is no exception for de minimis violations. *See United States v. Tham,* 884 F.2d 1262, 1266 (9th Cir.1989). Moreover, Petitioner has a lengthy criminal history as further detailed in the Langill Declaration. *See* Langill Decl., ¶¶ 17-27.

IV. CONCLUSION

Respondents respectfully request that the Court deny the habeas petition and dismiss the action.

Dated: January 2, 2026

Respectfully submitted,

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* The undersigned, counsel of record for the Federal Respondents certifies that this brief contains 3,298 words, which complies with the word limit of L.R. 11-6.1.