

1 TODD BLANCHE
Deputy Attorney General
2 BILAL A. ESSAYLI
First Assistant United States Attorney
3 DAVID M. HARRIS
Assistant United States Attorney
4 Chief, Civil Division
DANIEL A. BECK
5 Assistant United States Attorney
Chief, Complex and Defensive Litigation Section
6 MALLORY LYNN (Fla. Bar No. 57243)
Special Assistant United States Attorney
7 Federal Building, Suite 7516
300 North Los Angeles Street
8 Los Angeles, California 90012
Telephone: (714) 338-3513
9 E-mail: Mallory.Lynn@usdoj.gov

10 Attorneys for Federal Respondents

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

14 Marzban Mody,
15 Petitioner,
16 v.
17 Warden of the Adelanto Detention
18 Center, *et al.*,
19 Respondents.

No. 5-25-CV-03400-FMO-RAO

**FEDERAL RESPONDENTS'
OPPOSITION TO PETITIONER'S *EX*
PARTE APPLICATION FOR
TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION**

Hon. Fernando M. Olguin
United States District Judge

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1 **I. INTRODUCTION**

2 Respondents oppose Petitioner's *ex parte* application for a temporary restraining
3 order ("TRO Application" [Dkt. 6]). Petitioner is detained and is in removal proceedings
4 before the immigration court.

5 Petitioner's attempt to misuse habeas to try to end his removal proceedings and be
6 released from detention is fatally defective. First, the government's decision to initiate
7 removal proceedings against Petitioner is barred from challenge in District Court
8 pursuant to 8 U.S.C. § 1252(g), which strips jurisdiction over challenges to the
9 government's decision to initiate removal proceedings. Whether the Petitioner is eligible
10 for adjustment of status remains to be adjudicated by the immigration judge, and
11 Petitioner's criminal history may impact the outcome of the adjudication, including
12 whether the Petitioner merits a favorable exercise of discretion in light of his conviction
13 of a serious federal offense. But in any event, Petitioner cannot block the initiation of
14 removal proceedings against him by arguing, in habeas, that the government might in the
15 future exercise its discretion in his favor by granting him lawful status—status which he
16 does not currently have. Simply asserting that he has a "pathway" to obtaining legal
17 status does not provide immunity from being placed in removal proceedings.

18 With respect to Petitioner's argument that he is entitled to a bond hearing under §
19 1226(a), this case is distinct from the class action in *Maldonado Bautista v. Santacruz*,
20 5:25-cv-01873-SSS-BFM, 2025 WL 3289861 (C.D. Cal. Nov. 20, 2025). On December
21 18, 2025, Judge Sykes entered final judgment in that action [Dkt nos. 92 and 93], with
22 respect to "Bond Eligible Class" defined as:

23 All noncitizens in the United States without lawful status who (1) have
24 entered or will enter the United States without inspection; (2) were not or
25 will not be apprehended upon arrival; and (3) are not or will not be subject to
26 detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the
27 Department of Homeland Security makes an initial custody determination.
28 [Dkt. no. 92, p. 2]. Here, the Petitioner applied for admission at a port of entry, unlike

1 the *Bautista* petitioners, all of whom had entered without inspection. Accordingly, he
2 would not fall under the class definition, and is properly detained under § 1225(b)(2).

3 The TRO Application should be denied as Petitioner is lawfully detained pursuant
4 to his removal proceedings and has not yet exhausted administrative remedies.

5 **II. STATUTORY BACKGROUND**

6 **A. Detention under 8 U.S.C. § 1225**

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

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

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

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

7 **B. Detention under 8 U.S.C. § 1226(a)**

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

17 At a custody redetermination, the IJ may continue detention or release the alien on
18 bond or conditional parole. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). IJs have broad
19 discretion in deciding whether to release an alien on bond. *In re Guerra*, 24 I. & N. Dec.
20 37, 39–40 (BIA 2006) (listing nine factors for IJs to consider). But regardless of the
21 factors IJs consider, an alien “who presents a danger to persons or property should not be
22 released during the pendency of removal proceedings.” *Id.* at 38.

23 **C. Exhaustion of Administrative Remedies**

24 The BIA is an appellate body within the Executive Office for Immigration Review
25

26 ¹ Being “conditionally paroled under the authority of § 1226(a)” is distinct from
27 being “paroled into the United States under the authority of § 1182(d)(5)(A).” *Ortega-*
28 *Cervantes v. Gonzales*, 501 F.3d 1111, 1116 (9th Cir. 2007) (holding that because
release on “conditional parole” under § 1226(a) is not a parole, the alien was not eligible
for adjustment of status under § 1255(a)).

1 (“EOIR”). *See* 8 C.F.R. § 1003.1(d)(1). Members of the BIA possess delegated authority
2 from the Attorney General. 8 C.F.R. § 1003.1(a)(1). The BIA is “charged with the
3 review of those administrative adjudications under the [INA] that the Attorney General
4 may by regulation assign to it,” including custody redeterminations by immigration
5 judges. 8 C.F.R. §§ 1003.1(d)(1), 236.1; 1236.1. The BIA not only resolves particular
6 disputes before it, but also “through precedent decisions, [it] shall provide clear and
7 uniform guidance to DHS, the immigration judges, and the general public on the proper
8 interpretation and administration of the [INA] and its implementing regulations.” *Id.*
9 § 1003.1(d)(1). “The decision of the [BIA] shall be final except in those cases reviewed
10 by the Attorney General.” 8 C.F.R. § 1003.1(d)(7).

11 **II. STATEMENT OF FACTS**

12 Petitioner is a native of India. Decl. ¶ 4. He applied for admission to the United
13 States on or about September 6, 2010 without a valid visa or other document sufficient
14 for entry and was paroled into the United States until September 5, 2011, with one
15 extension granted until September 5, 2012. *Id.*; *see also* [Dkt. 2, Exhibit B]. He was
16 convicted of the federal offense of structuring transactions to evade reporting
17 requirements in violation of 31 U.S.C. § 5324(A)(3) on or about September 7, 2011.
18 Decl. ¶ 5. He was arrested and detained on or about December 9, 2025 and placed in
19 removal proceedings. ¶ 6.

20 **III. ARGUMENT**

21 **A. Under 8 U.S.C. § 1252(g) the Court Lacks Jurisdiction Over** 22 **Petitioner’s Challenge to Their Removal Proceedings**

23 To prevent what would otherwise be endless collateral attacks launched in District
24 Court against removal proceedings, 8 U.S.C. § 1252(g) deprives courts of jurisdiction,
25 including habeas corpus jurisdiction, to review “any cause or claim by or on behalf of
26 any alien arising from the decision or action by the Attorney General to [1] *commence*
27 *proceedings*, [2] *adjudicate cases*, or [3] *execute removal orders against any alien under*
28

1 this chapter.”² 8 U.S.C. § 1252(g) (emphasis added). Section 1252(g) eliminates
2 jurisdiction “[e]xcept as provided in this section and notwithstanding any other provision
3 of law (statutory or nonstatutory), including section 2241 of title 28, United States Code,
4 or any other habeas corpus provision, and sections 1361 and 1651 of such title.”³ Except
5 as provided in § 1252, courts “cannot entertain challenges to the enumerated executive
6 branch decisions or actions.” *E.F.L. v. Prim*, 986 F.3d 959, 964–65 (7th Cir. 2021).

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

13 Here, Petitioner’s claims stem from his arrest and subsequent placement in
14 removal proceedings. The detention arose from the decision to commence such
15 proceedings against them. *See, e.g., Valencia-Mejia v. United States*, 2008 WL 4286979,
16 at *4 (C.D. Cal. Sept. 15, 2008) (“The decision to detain plaintiff until his hearing before
17 the Immigration Judge arose from this decision to commence proceedings[.]”); *Wang v.*
18 *United States*, 2010 WL 11463156, at *6 (C.D. Cal. Aug. 18, 2010); *Tazu v. Att’y Gen.*
19 *U.S.*, 975 F.3d 292, 298–99 (3d Cir. 2020) (holding that 8 U.S.C. § 1252(g) and (b)(9)
20 deprive district court of jurisdiction to review action to execute removal order).

21 As other courts have held, “[f]or the purposes of § 1252, the Attorney General
22 commences proceedings against an alien when the alien is issued a Notice to Appear
23 before an immigration court.” *Herrera-Correra v. United States*, 2008 WL 11336833, at

24
25 ² Much of the Attorney General’s authority has been transferred to the Secretary of
26 Homeland Security and many references to the Attorney General are understood to refer
27 to the Secretary. *See Clark v. Martinez*, 543 U.S. 371, 374 n.1 (2005)

28 ³ Congress initially passed § 1252(g) in the IIRIRA, Pub. L. 104-208, 110 Stat.
3009. In 2005, Congress amended § 1252(g) by adding “(statutory or nonstatutory),
including section 2241 of title 28, United States Code, or any other habeas corpus
provision, and sections 1361 and 1651 of such title” after “notwithstanding any other
provision of law.” REAL ID Act of 2005, Pub. L. 109-13, § 106(a), 119 Stat. 231, 311.

1 *3 (C.D. Cal. Sept. 11, 2008). “The Attorney General may arrest the alien against whom
2 proceedings are commenced and detain that individual until the conclusion of those
3 proceedings.” *Id.* at *3. “Thus, an alien’s detention throughout this process arises from
4 the Attorney General’s decision to commence proceedings” and review of claims arising
5 from such detention is barred under § 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509 F.3d
6 947, 949 (9th Cir. 2007)); *Wang*, 2010 WL 11463156, at *6; 8 U.S.C. § 1252(g).

7 Petitioner cannot attack that decision, in District Court, by arguing that the
8 government lacked legitimate grounds to commence removal proceedings against him.
9 To the extent he has arguments, he must attack that issue within the Immigration Court
10 process and its appeal process.

11 **B. Under 8 U.S.C. § 1252(b)(9), the Court Also Lacks Jurisdiction Over**
12 **the Immigration Court’s Decisions About Whether Petitioner Is**
13 **Subject to Removal Proceedings**

14 As a separate statutory provision that independently strips jurisdiction from
15 Petitioner’s attempted challenge to his removal proceedings, under 8 U.S.C. §
16 1252(b)(9), “judicial review of all questions of law . . . including interpretation and
17 application of statutory provisions . . . arising from any action taken . . . to remove an
18 alien from the United States” is only proper before the appropriate federal court of
19 appeals in the form of a petition for review of a final removal order. *See* 8 U.S.C. §
20 1252(b)(9); *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483
21 (1999). Section 1252(b)(9) is an “unmistakable ‘zipper’ clause” that “channels judicial
22 review of all [claims arising from deportation proceedings]” to a court of appeals in the
23 first instance. *Id.*; *see Lopez v. Barr*, No. CV 20-1330 (JRT/BRT), 2021 WL 195523, at
24 *2 (D. Minn. Jan. 20, 2021) (citing *Nasrallah v. Barr*, 590 U.S. 573, 579–80 (2020)).

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

27 Notwithstanding any other provision of law (statutory or nonstatutory), . . . a
28 petition for review filed with an appropriate court of appeals in accordance

1 with this section shall be the sole and exclusive means for judicial review of
2 an order of removal entered or issued under any provision of this chapter,
3 except as provided in subsection (e) [concerning aliens not admitted to the
4 United States].

5 8 U.S.C. § 1252(a)(5). “Taken together, § 1252(a)(5) and § 1252(b)(9) mean that *any*
6 issue—whether legal or factual—arising from *any* removal-related activity can be
7 reviewed *only* through the [petition-for-review] process.” *J.E.F.M. v. Lynch*, 837 F.3d
8 1026, 1031 (9th Cir. 2016) (emphasis in original); *see id.* at 1035 (“§§ 1252(a)(5) and
9 [(b)(9)] channel review of all claims, including policies-and-practices challenges . . .
10 whenever they ‘arise from’ removal proceedings”); *accord Ruiz v. Mukasey*, 552 F.3d
11 269, 274 n.3 (2d Cir. 2009) (only when the action is “unrelated to any removal action or
12 proceeding” is it within the district court’s jurisdiction); *cf. Xiao Ji Chen v. U.S. Dep’t of*
13 *Justice*, 434 F.3d 144, 151 n.3 (2d Cir. 2006) (a “primary effect” of the REAL ID Act is
14 to “limit all aliens to one bite of the apple” (internal quotation marks omitted)).

15 Petitioner could argue that his request for a bond hearing is unrelated to whether
16 he is properly removable and so is not subject to the channeling requirement. But with
17 respect to the government’s initiation and maintenance of removal proceedings against
18 Petitioner—and their validity—the Immigration Court rulings on that subject fall
19 squarely within the judicial channeling provision of § 1252(b)(9), and may not be
20 immediately challenged in District Court.

21 Critically, “[§] 1252(b)(9) is a judicial channeling provision, not a claim-barring
22 one.” *Aguilar v. ICE*, 510 F.3d 1, 11 (1st Cir. 2007). Indeed, 8 U.S.C. § 1252(a)(2)(D)
23 provides that “[n]othing . . . in any other provision of this chapter . . . shall be construed
24 as precluding review of constitutional claims or questions of law raised upon a petition
25 for review filed with an appropriate court of appeals in accordance with this section.”
26 *See also Ajlani v. Chertoff*, 545 F.3d 229, 235 (2d Cir. 2008) (“[J]urisdiction to review
27 such claims is vested exclusively in the courts of appeals[.]”). The petition-for-review
28 process before the court of appeals ensures that aliens have a proper forum for claims

1 arising from their immigration proceedings and “receive their day in court.” *J.E.F.M.*,
2 837 F.3d at 1031–32 (internal quotations omitted); *see also Rosario v. Holder*, 627 F.3d
3 58, 61 (2d Cir. 2010) (“The REAL ID Act of 2005 amended the [IIRIRA] to obviate . . .
4 Suspension Clause concerns” by permitting judicial review of “nondiscretionary” BIA
5 determinations and “all constitutional claims or questions of law.”).

6 In evaluating the reach of subsections (a)(5) and (b)(9), the Second Circuit
7 explained that jurisdiction turns on the substance of the relief sought. *Delgado v.*
8 *Quarantillo*, 643 F.3d 52, 55 (2d Cir. 2011). Those provisions divest district courts of
9 jurisdiction to review both direct and indirect challenges to removal orders, including
10 decisions to detain for purposes of removal or for proceedings. *See Jennings*, 583 U.S. at
11 294–95 (section 1252(b)(9) includes challenges to the “decision to detain [an alien] in
12 the first place or to seek removal[.]”).

13 Here, Petitioner challenges the government’s decision to detain him and
14 commence removal proceedings against them, which is an “action taken . . . to remove
15 [them] from the United States.” *See* 8 U.S.C. § 1252(b)(9); *see also, e.g., Jennings*, 583
16 U.S. at 294–95; *Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020) (finding that
17 8 U.S.C. § 1226(e) did not bar review in that case because the petitioner did not
18 challenge “his initial detention”); *Saadulloev v. Garland*, No. 3:23-CV-00106, 2024 WL
19 1076106, at *3 (W.D. Pa. Mar. 12, 2024) (recognizing that there is no judicial review of
20 the threshold detention decision, which flows from the government’s decision to
21 “commence proceedings”). As such, the Court lacks jurisdiction over Petitioner’s
22 challenge to that.

23 **C. Petitioner Has Not Exhausted Administrative Remedies**

24 Petitioner has not yet received a bond hearing before the immigration court, nor
25 has the immigration judge adjudicated his application for adjustment of status. If the
26 immigration does not grant bond, or if Petitioner is ordered removed, he may appeal to
27 the Board of Immigration Appeals. When a noncitizen fails to exhaust appellate review
28 at the BIA, courts should “ordinarily” dismiss the habeas petition without prejudice or

1 stay proceedings until he exhausts his appeals. *Leonardo v. Crawford*, 646 F.3d 1157,
2 1160 (9th Cir. 2011). Bypassing review at the BIA is “improper.” *Id.* The Ninth Circuit
3 identifies three reasons to require exhaustion before entertaining a habeas petition. *See*
4 *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007). First, the agency’s “expertise”
5 makes its “consideration necessary to generate a proper record and reach a proper
6 decision.” *Id.* (quoting *Noriega-Lopez v. Ashcroft*, 335 F.3d 874, 881 (9th Cir. 2003)).
7 Second, excusing exhaustion encourages “the deliberate bypass of the administrative
8 scheme.” *Id.* (quoting *Noriega-Lopez*). And third, “administrative review is likely to
9 allow the agency to correct its own mistakes and to preclude the need for judicial
10 review.” *Id.* (quoting *Noriega-Lopez*). Each reason applies here.⁴

11 In sum, Petitioner’s challenge in habeas to his arrest and detention is defective
12 because he failed to exhaust administrative remedies.

13 **D. Petitioner’s Alternative Claim That He Is Entitled to a § 1226(a) Bond**
14 **Hearing Should be Denied Because He Applied For Admission and is**
15 **Not a *Bautista* Class Member**

16 Finally, with respect to Petitioner’s argument that he is entitled to a bond hearing
17 under § 1226(a), this case is distinct from the class action in *Maldonado Bautista v.*
18 *Santacruz*, 5:25-cv-01873-SSS-BFM, 2025 WL 3289861 (C.D. Cal. Nov. 20, 2025). As
19

20 ⁴ Detention alone is insufficient to excuse a lack of exhaustion. *See, e.g., Delgado*,
21 2017 WL 4776340, at *2. Adopting such a rationale “would essentially mandate the
22 release of all detainees while their appeals were pending, and thereby stand the
23 exhaustion requirement on its head.” *Meneses v. Jennings*, 2021 WL 4804293, at *5
24 (N.D. Cal. Oct. 14, 2021), *abrogated on other grounds by Doe v. Garland*, 109 F.4th
25 1188 (9th Cir. 2024); *see also Bogle v. DuBois*, 236 F. Supp. 3d 820, 823 n. 6 (S.D.N.Y.
26 2017) (noting that “continued detention . . . is insufficient to qualify as irreparable injury
27 justifying non-exhaustion”) (quotation marks omitted). “[C]ivil detention after the denial
28 of a bond hearing [does not] constitute[] irreparable harm such that prudential exhaustion
should be waived.” *Reyes v. Wolf*, 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); *see also Aden*, 2019 WL 5802013, at *3 (Plaintiff “cites no authority for the
position that detention following a bond hearing constitutes irreparable harm sufficient to
waive the exhaustion requirement.”).

1 interest in the United States' enforcement of its immigration laws is high"); *United*
2 *States v. Arango*, 2015 WL 11120855, at 2 (D. Ariz. Jan. 7, 2015) ("the Government's
3 interest in enforcing immigration laws is enormous.").

4 **IV. CONCLUSION**

5 Petitioner's TRO Application should be denied.

6 Respectfully submitted,

7 Dated: December 19, 2025

8 BILAL A. ESSAYLI
First Assistant United States Attorney
9 DAVID M. HARRIS
Assistant United States Attorney
Chief, Civil Division
10 DANIEL A. BECK
Assistant United States Attorney
Complex and Defensive Litigation Section
11

12 /s/ Mallory Lynn

13 MALLORY LYNN
Special Assistant United States Attorney
14

15 Attorneys for Federal Respondents

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Complex and Defensive Litigation Section
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