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10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 LUSINDA LEONARDO LUKIETO,

13 Petitioner,

14 v.

15 CHRISTOPHER J. LAROSE, et al.,

16 Respondents.
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Case No.: 26-cv-02446-TWR-MMP

**RESPONDENTS' RETURN TO
HABEAS PETITION**

I. Introduction

Petitioner has filed a second habeas petition under 28 U.S.C. § 2241. Petitioner is currently in removal proceedings under 8 U.S.C. § 1229a. On March 16, 2026, Petitioner had a bond hearing before an immigration judge (IJ) pursuant to 8 U.S.C. § 1226(a).¹ Petitioner was ultimately denied bond. Based on the arguments set forth below, the Court should deny any requests for relief and dismiss the petition.

II. Factual Background²

On February 12, 2026, Petitioner filed his first petition for writ of habeas corpus. *Lukieto v. Warden*, 26-cv-00915-TWR-MMP, No. 1. On March 5, 2025, this Court granted Petitioner's first habeas petition and ordered Respondent's to "provide Petitioner with an individualized bond hearing under 8 U.S.C. § 1226(a) within fourteen days." *See id.*, No. 6. On March 16, 2026, Respondents provided Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) before an immigration judge (IJ) in compliance with this court's order. *See* Exhibit 1 (IJ Order dated March 16, 2026). The IJ denied bond, holding that Petitioner "poses a risk of flight for which no amount of bond would suffice to alleviate that risk. His claim was denied on the merits and the likelihood of success on appeal is very low." *See id.* On April 2, 2026, Petitioner filed an amended petition due to the denial of his bond. *Lukieto*, 26-cv-00915-TWR-MMP, No. 11. On April 3, 2026, Petitioner filed a motion for reconsideration, and a motion to file motion for reconsideration nunc pro tunc. *See id.*, Nos 13, 14. On April 6, 2026, the court held that because "Petitioner has failed to exhaust his administrative remedies by appealing to the Board of Immigration Appeals and has not raised any basis for waiving exhaustion, the Court DISMISSES the 11 Amended Petition without prejudice, DENIES the 13 Motion for Reconsideration, and DENIES the 14 Motion to File Motion for Reconsideration Nunc Pro Tunc." *See id.*, No. 15. Petitioner failed to timely

¹ Petitioner is not subject to a final order of removal. See 8 C.F.R. § 1241.1.

² The attached exhibits are true copies, with redactions of private information, of documents obtained from ICE counsel.

1 file an appeal of his bond denial to the Board of Immigration Appeals (BIA). *See* Exhibit
2 2 (EOIR Courts & Appeals System).

3 On April 16, 2026, ten days after his first petition was denied, Petitioner filed this
4 second habeas petition. *Lukieta v. LaRose*, 26-cv-02446-TWR-MMP, No. 1. Based on
5 the arguments set forth below, the Court should deny any requests for relief and dismiss
6 the petition.

7 III. Argument

8 A. Petitioner is Lawfully Detained Under 8 U.S.C. § 1226(a)

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

18 As set forth above, pursuant to this court’s previous order, Petitioner was already
19 given a bond hearing under 8 U.S.C. § 1226(a). His bond hearing was adjudicated on
20 the merits, and the IJ denied bond, holding that Petitioner was a “flight risk.” Therefore,
21 Petitioner is lawfully detained pursuant to 8 U.S.C. § 1226(a).

22 B. Administrative Remedies Should Be Exhausted

23 The Court should ensure Petitioner properly exhausts administrative remedies.
24 The Ninth Circuit requires that “habeas petitioners exhaust available judicial and
25 administrative remedies before seeking relief under § 2241.” *Castro–Cortez v. INS*, 239
26 F.3d 1037, 1047 (9th Cir. 2001). “When a petitioner does not exhaust administrative
27 remedies, a district court ordinarily should either dismiss the petition without prejudice
28 or stay the proceedings until the petitioner has exhausted remedies, unless exhaustion

1 is excused.” *Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011); *see also*
 2 *Alvarado v. Holder*, 759 F.3d 1121, 1127 n.5 (9th Cir. 2014) (issue exhaustion is a
 3 jurisdictional requirement); *Tijani v. Holder*, 628 F.3d 1071, 1080 (9th Cir. 2010) (no
 4 jurisdiction to review legal claims not presented in the petitioner’s administrative
 5 proceedings before the BIA).

6 Here, as explained above, Respondents provided Petitioner with the Court
 7 ordered bond hearing before an IJ pursuant to 8 U.S.C. § 1226(a). The IJ denied bond,
 8 and Petitioner has failed to appeal his bond denial to the BIA. In other words, Petitioner
 9 has failed to cure the reasons for which his first Petitioner was denied, i.e., he has failed
 10 to exhaust administrative remedies. Accordingly, the Court should dismiss without
 11 prejudice or stay these proceedings until a bond appeal is conducted and concluded
 12 before the BIA.

13 **C. Petitioner’s Improper Habeas Claims**

14 To the extent Petitioner asserts claims regarding the commencement of removal
 15 proceedings and the conditions of his detention, such claims are improper. An
 16 individual may seek habeas relief under 28 U.S.C. § 2241 if he is “in custody” under
 17 federal authority “in violation of the Constitution or laws or treaties of the United
 18 States.” 28 U.S.C. § 2241(c). But habeas relief is available to challenge only the legality
 19 or duration of confinement. *Pinson v. Carvajal*, 69 F.4th 1059, 1067 (9th Cir. 2023);
 20 *Crawford v. Bell*, 599 F.2d 890, 891 (9th Cir. 1979); *Dep’t of Homeland Security v.*
 21 *Thraissigiam*, 591 U.S. 103, 117 (2020) (The writ of habeas corpus historically
 22 “provide[s] a means of contesting the lawfulness of restraint and securing release.”).
 23 The Ninth Circuit squarely explained how to decide whether a claim sounds in habeas
 24 jurisdiction: “[O]ur review of the history and purpose of habeas leads us to conclude
 25 the relevant question is whether, based on the allegations in the petition, release is
 26 *legally required* irrespective of the relief requested.” *Pinson*, 69 F.4th at 1072 (emphasis
 27 in original); *see also Nettles v. Grounds*, 830 F.3d 922, 934 (9th Cir. 2016) (The key
 28 inquiry is whether success on the petitioner’s claim would “necessarily lead to

1 immediate or speedier release.”). Here, a review of such claims would not automatically
 2 entitle Petitioner to release from detention. *See Guselnikov v. Noem*, No. 25-cv-1971-
 3 BTM-KSC, 2025 WL 2300783, at *1 (S.D. Cal. Aug. 8, 2025) (finding petitioners’
 4 claims did not arise under § 2241 because they were not arguing they were unlawfully
 5 in custody and receiving the requested relief would not entitle them to release); *Giron*
 6 *Rodas v. Lyons*, No. 25cv1912-LL-AHG, 2025 WL 2300781, at *3 (S.D. Cal. Aug. 1,
 7 2025) (“Like in *Pinson*, the Court lacks jurisdiction over Petitioner’s § 2241 habeas
 8 petition since it cannot be fairly read as attacking ‘the legality or duration of
 9 confinement.’”) (quoting *Pinson*, 69 F.4th at 1065).

10 **D. Claims and Requested Relief Jurisdictionally Barred**

11 Petitioner bears the burden of establishing that this Court has subject matter
 12 jurisdiction over asserted claims. *See Ass’n of Am. Med. Coll. v. United States*, 217 F.3d
 13 770, 778-79 (9th Cir. 2000); *Finley v. United States*, 490 U.S. 545, 547-48 (1989).

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.”); *Limpin v. United States*,
 24 828 Fed. App’x 429 (9th Cir. 2020) (holding district court properly dismissed under 8
 25 U.S.C. § 1252(g) “because claims stemming from the decision to arrest and detain an
 26 alien at the commencement of removal proceedings are not within any court’s
 27 jurisdiction”). In other words, § 1252(g) removes district court jurisdiction over “three
 28 discrete actions that the Attorney may take: [his] ‘decision or action’ to ‘commence

1 proceedings, adjudicate cases, or execute removal orders.” *Reno*, 525 U.S. at 482
2 (emphasis removed). Congress has explicitly foreclosed district court jurisdiction over
3 claims that necessarily arise “from the decision or action by the Attorney General to
4 commence proceedings [and] adjudicate cases,” over which. 8 U.S.C. § 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, 1203
8 (11th Cir. 2016) (“By its plain terms, [§ 1252(g)] bars us from questioning ICE’s
9 discretionary decisions to commence removal” and bars review of “ICE’s decision to
10 take [plaintiff] into custody and to detain him during his 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*, No. 08-2941 DSF
14 (JCx), 2008 WL 11336833, at *3 (C.D. Cal. Sept. 11, 2008). “The Attorney General
15 may arrest the alien against whom proceedings are commenced and detain that
16 individual until the conclusion of those proceedings.” *Id.* at *3. “Thus, an alien’s
17 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 2010 WL 11463156, at *6; 8 U.S.C. § 1252(g).

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

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

13 Critically, “1252(b)(9) is a judicial channeling provision, not a claim-barring
14 one.” *Aguilar v. ICE*, 510 F.3d 1, 11 (1st Cir. 2007). Indeed, 8 U.S.C. § 1252(a)(2)(D)
15 provides that “[n]othing . . . in any other provision of this chapter . . . shall be construed
16 as precluding review of constitutional claims or questions of law raised upon a petition
17 for review filed with an appropriate court of appeals in accordance with this section.”
18 *See also Ajlani v. Chertoff*, 545 F.3d 229, 235 (2d Cir. 2008) (“[J]urisdiction to review
19 such claims is vested exclusively in the courts of appeals[.]”). The petition-for-review
20 process before the court of appeals ensures that noncitizens have a proper forum for
21 claims arising from their immigration proceedings and “receive their day in court.”
22 *J.E.F.M.*, 837 F.3d at 1031–32 (internal quotations omitted); *see also Rosario v. Holder*,
23 627 F.3d 58, 61 (2d Cir. 2010) (“The REAL ID Act of 2005 amended the [INA] to
24 obviate . . . Suspension Clause concerns” by permitting judicial review of
25 “nondiscretionary” BIA determinations and “all constitutional claims or questions of
26 law.”). These provisions divest district courts of jurisdiction to review both direct and
27 indirect challenges to removal orders, including decisions to detain for purposes of
28 removal or for proceedings. *See Jennings*, 583 U.S. at 294–95 (section 1252(b)(9)

1 includes challenges to the “decision to detain [an alien] in the first place or to seek
2 removal”).

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

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

19 Accordingly, this Court lacks jurisdiction over this petition under 8 U.S.C.
20 § 1252.

21 IV. CONCLUSION

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

24 DATED: May 14, 2026

Respectfully submitted,

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