

1 ADAM GORDON
United States Attorney
2 LAURA C. SAMBATARO
Maryland Bar
3 Assistant U.S. Attorney
Office of the U.S. Attorney
4 880 Front Street, Room 6293
San Diego, CA 92101-8893
5 Telephone: (619) 546-9613
Facsimile: (619) 546-7751
6 Email: Laura.Sambataro@usdoj.gov

7 Attorneys for Respondents

8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 ALEJANDRO ZAVALA-JIMENEZ,
11 Petitioner,
12
13 v.
14 CHRISTOPHER J. LAROSE, et al.,
15 Respondents.
16
17
18
19
20
21
22
23
24
25
26
27
28

Case No.: 26-CV-3017-JO-AHG
RETURN TO PETITION

I. INTRODUCTION

As an alien who has been detained pursuant to a reinstated and final removal order, Petitioner is not entitled to release or a bond hearing. The governing statute, 8 U.S.C. § 1231, provides for *mandatory* detention of noncitizens with final removal orders. While a constitutional challenge to detention exists where removal obstacles cause detention to be prolonged and indefinite, that is not the case here. Further, Petitioner asserts errors in the credible fear determination process—those objections are beyond the habeas jurisdiction of this Court under binding precedent and should not be considered. For the reasons more fully set forth below, the petition should be denied.

II. FACTUAL BACKGROUND¹

On June 20, 1997, Petitioner was ordered removed from the United States to Mexico. Petitioner was subsequently removed to Mexico. *See* Exh. 1, at 3 (I-213).

On April 16, 2026, Petitioner was arrested on a criminal arrest warrant for a violation of Title 8, United States Code Section 1326. *Id.* at 2-3; *United States v. Zavala-Jimenez*, No. 3:26-MJ-851-AHG, ECF No. 1. On April 20, 2026, the District Court judge granted Petitioner a bond, and an I-247 immigration detainer was lodged. No. 3:26-MJ-851-AHG, ECF No. 8; Exh. 1 at 3. On April 20, 2026, Petitioner was taken into custody of the Department of Homeland Security (DHS) and served with a notice of intent to reinstate the prior removal order. Exh. 1 at 3-4; Exh. 2 (Notice of Intent/Decision to Reinstate Prior Order). These actions essentially reactivated the removal order in effect on June 20, 1997.

Based on Petitioner's claim of reasonable fear of returning to Mexico, however, the agency conducted a reasonable fear interview. The asylum officer made a negative fear finding, and Petitioner sought review of that finding by an immigration judge (IJ). After a hearing on May 15, 2026, the IJ affirmed the negative fear finding, and returned the case to DHS for Petitioner's removal. Exh. 3 (IJ decision). ICE is ready and able to execute the removal order once the stay of movement is lifted.

¹ The attached exhibits are copies of true documents obtained from ICE counsel.

1 //

2 **III. LEGAL ANALYSIS**3 **A. This Court Lacks Jurisdiction to Review the Denial of Petitioner's**
4 **Credible Fear Claim**5 **1. Habeas Jurisdiction is Limited to Challenging the Legality or**
6 **Duration of Confinement**

7 The Court should deny Petitioner's petition to the extent he asserts claims
8 regarding the credible fear process and the reinstate of his final removal order. An
9 individual may seek habeas relief under 28 U.S.C. § 2241 if he is "in custody" under
10 federal authority "in violation of the Constitution or laws or treaties of the United
11 States." 28 U.S.C. § 2241(c). But habeas relief is available to challenge only the legality
12 or duration of confinement. *Pinson v. Carvajal*, 69 F.4th 1059, 1067 (9th Cir. 2023);
13 *Crawford v. Bell*, 599 F.2d 890, 891 (9th Cir. 1979); *Dep't of Homeland Security v.*
14 *Thraissigiam*, 591 U.S. 103, 117 (2020) (The writ of habeas corpus historically
15 "provide[s] a means of contesting the lawfulness of restraint and securing release.").
16 The Ninth Circuit squarely explained how to decide whether a claim sounds in habeas
17 jurisdiction: "[O]ur review of the history and purpose of habeas leads us to conclude
18 the relevant question is whether, based on the allegations in the petition, release is
19 *legally required* irrespective of the relief requested." *Pinson*, 69 F.4th at 1072 (emphasis
20 in original); *see also Nettles v. Grounds*, 830 F.3d 922, 934 (9th Cir. 2016) (The key
21 inquiry is whether success on the petitioner's claim would "necessarily lead to
22 immediate or speedier release."). Here, a review of such claims would not automatically
23 entitle him to release from detention. *See Guselnikov v. Noem*, No. 25-cv-1971-BTM-
24 KSC, 2025 WL 2300873, at *1 (S.D. Cal. Aug. 8, 2025) (finding petitioners' claims did
25 not arise under § 2241 because they were not arguing they were unlawfully in custody
26 and receiving the requested relief would not entitle them to release); *Giron Rodas v.*
27 *Lyons*, No. 25cv1912-LL-AHG, 2025 WL 2300781, at *3 (S.D. Cal. Aug. 1, 2025)
28 ("Like in *Pinson*, the Court lacks jurisdiction over Petitioner's § 2241 habeas petition

1 since it cannot be fairly read as attacking ‘the legality or duration of confinement.’”) (quoting *Pinson*, 69 F.4th at 1065).

3 **2. Petitioner’s Claims Are Jurisdictionally Barred**

4 Further, Petitioner’s claims related to credible fear and reinstatement are
5 jurisdictionally barred under 8 U.S.C. § 1252(g) and 8 U.S.C. § 1252(b)(9). Congress
6 has stripped District Courts of jurisdiction to review credible fear determinations and
7 reinstatements – such review is available by a petition for review to the Ninth Circuit.
8 *See Ayala v. Sessions*, 855 F.3d 1012, 1015-16 (9th Cir. 2017) (describing credible fear
9 process in the context of a reinstatement of a prior removal order). This petition
10 represents an improper attempt to circumvent that process.

11 Generally, courts lack jurisdiction to review a decision to commence or
12 adjudicate removal proceedings or execute removal orders. *See* 8 U.S.C. § 1252(g)
13 (“[N]o court shall have jurisdiction to hear any cause or claim by or on behalf of any
14 alien arising from the decision or action by the Attorney General to commence
15 proceedings, adjudicate cases, or execute removal orders.”); *Reno v. Am.-Arab Anti-*
16 *Discrimination Comm.*, 525 U.S. 471, 483 (1999) (“There was good reason for
17 Congress to focus special attention upon, and make special provision for, judicial
18 review of the Attorney General’s discrete acts of “commenc[ing] proceedings,
19 adjudicat[ing] cases, [and] execut[ing] removal orders”—which represent the initiation
20 or prosecution of various stages in the deportation process.”); *Limpin v. United States*,
21 828 Fed. App’x 429 (9th Cir. 2020) (holding district court properly dismissed under 8
22 U.S.C. § 1252(g) “because claims stemming from the decision to arrest and detain an
23 alien at the commencement of removal proceedings are not within any court’s
24 jurisdiction”). In other words, § 1252(g) removes district court jurisdiction over “three
25 discrete actions that the Attorney may take: [his] ‘decision or action’ to ‘commence
26 proceedings, adjudicate cases, or execute removal orders.’” *Reno*, 525 U.S. at 482
27 (emphasis removed). Petitioner’s claims necessarily arise “from the decision or action
28

1 by the Attorney General to commence proceedings [and] adjudicate cases,” over which
2 Congress has explicitly foreclosed 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. *See Alvarez v.*
5 *ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016) (“By its plain terms, [§ 1252(g)] bars us
6 from questioning ICE’s discretionary decisions to commence removal”).

7 Moreover, under 8 U.S.C. § 1252(b)(9), “[j]udicial review of all questions of law
8 and fact . . . arising from any action taken or proceeding brought to remove an alien
9 from the United States under this subchapter shall be available only in judicial review
10 of a final order under this section.” Further, judicial review of a final order is available
11 only through “a petition for review filed with an appropriate court of appeals.” 8 U.S.C.
12 § 1252(a)(5). The Supreme Court has made clear that § 1252(b)(9) is “the unmistakable
13 ‘zipper’ clause,” channeling “judicial review of all” “decisions and actions leading up
14 to or consequent upon final orders of deportation,” including “non-final order[s],” into
15 proceedings before a court of appeals. *Reno*, 525 U.S. at 483, 485; *see J.E.F.M. v.*
16 *Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (noting § 1252(b)(9) is “breathtaking in
17 scope and vise-like in grip and therefore swallows up virtually all claims that are tied to
18 removal proceedings”). “Taken together, § 1252(a)(5) and § 1252(b)(9) mean that *any*
19 issue—whether legal or factual—arising from *any* removal-related activity can be
20 reviewed *only* through the [petition for review] PFR process.” *J.E.F.M.*, 837 F.3d at
21 1031 (“[W]hile these sections limit *how* immigrants can challenge their removal
22 proceedings, they are not jurisdiction-stripping statutes that, by their terms, foreclose
23 *all* judicial review of agency actions. Instead, the provisions channel judicial review
24 over final orders of removal to the courts of appeal.”) (emphasis in original); *see id.* at
25 1035 (“§§ 1252(a)(5) and [(b)(9)] channel review of all claims, including policies-and-
26 practices challenges . . . whenever they ‘arise from’ removal proceedings”).

27 Critically, “1252(b)(9) is a judicial channeling provision, not a claim-barring
28 one.” *Aguilar v. ICE*, 510 F.3d 1, 11 (1st Cir. 2007). Indeed, 8 U.S.C. § 1252(a)(2)(D)

1 provides that “[n]othing . . . in any other provision of this chapter . . . shall be construed
2 as precluding review of constitutional claims or questions of law raised upon a petition
3 for review filed with an appropriate court of appeals in accordance with this section.”
4 *See also Ajlani v. Chertoff*, 545 F.3d 229, 235 (2d Cir. 2008) (“[J]urisdiction to review
5 such claims is vested exclusively in the courts of appeals[.]”). The petition-for-review
6 process before the court of appeals ensures that noncitizens have a proper forum for
7 claims arising from their immigration proceedings and “receive their day in court.”
8 *J.E.F.M.*, 837 F.3d at 1031–32 (internal quotations omitted); *see also Rosario v. Holder*,
9 627 F.3d 58, 61 (2d Cir. 2010) (“The REAL ID Act of 2005 amended the [INA] to
10 obviate . . . Suspension Clause concerns” by permitting judicial review of
11 “nondiscretionary” BIA determinations and “all constitutional claims or questions of
12 law.”). These provisions divest district courts of jurisdiction to review both direct and
13 indirect challenges to removal orders, including negative credible fear determinations.
14 *See Ayala*, 855 F.3d at 1017 (recognizing that the court of appeals “clearly ha[s]
15 jurisdiction over timely petitions for review of reasonable fear determinations that arise
16 out of the reinstatement of ‘ordinary’—that is, not expedited—removal orders.”); *see*
17 *also Andrade-Garcia v. Lynch*, 828 F.3d 829, 833 (9th Cir. 2016) (“An IJ’s negative
18 determination regarding the alien’s reasonable fear makes the reinstatement order final
19 . . . and thus subject to review under 8 U.S.C. § 1252.”) (internal citations omitted).

20 Accordingly, this Court lacks jurisdiction over this petition under 8 U.S.C.
21 § 1252.

22 **B. The Statute Requires Mandatory Detention of Noncitizens Subject to**
23 **Final Removal Orders.**

24 Petitioner is subject to a final removal order, and thus detained under 8 U.S.C.
25 § 1231. The relevant statute, 8 U.S.C. § 1231, provides for mandatory detention of
26 noncitizens with final removal orders, including aliens subject to reinstatement of
27 removal and those in withholding-only proceedings. The statute directs a final order of
28 removal to be carried out within the ninety-day period after the removal order becomes

1 final, often referred to as the “removal period.” 8 U.S.C. § 1231. It further requires that
2 people subject to final orders of removal be detained during the 90-day removal period.

3 *Id.*

4 Reinstated removal orders are a part of “an expedited process for aliens who
5 reenter the United States without authorization after having already been removed.”
6 *Johnson v. Guzman Chavez*, 594 U.S. 523, 529 (2021). When faced with a reinstated
7 removal order, an individual cannot challenge removal but can pursue “withholding-
8 only relief to prevent DHS from executing his removal to the particular country
9 designated in his reinstated removal order.” *Johnson*, 594 U.S. at 530. This requires the
10 individual to express a fear of returning to the designated country, at which point he is
11 referred to an asylum officer for a reasonable fear determination; if the asylum officer
12 makes a positive reasonable fear determination, the matter will be referred to an
13 immigration judge for initiation of withholding-only proceedings. *Id.* at 531. “Those
14 proceedings are limited to a determination of whether the alien is eligible for
15 withholding or deferral of removal, and as such, all parties are prohibited from raising
16 or considering any other issues, including but not limited to issues of admissibility,
17 deportability, eligibility for waivers, and eligibility for any other form of relief.” *Id.*
18 (citations omitted).

19 Significantly, the facts presented here closely mirror the scenario addressed by
20 the Supreme Court in *Johnson*. There, the Department of Homeland Security (DHS)
21 reinstated the prior removal orders of aliens who, like Petitioner, were removed from
22 the U.S. and reentered without authorization. Each alien sought to prevent DHS’s
23 execution of the removal orders based on fear of returning to their home country. While
24 their withholding-only proceedings were pending, DHS detained the aliens, who sought
25 release on bond. DHS argued that because the aliens were detained under 8 U.S.C. 1231,
26 which mandates detention when a removal order is administratively final, not section
27 1226, which governs detention pending a decision on whether the alien “is to be
28 removed,” they were not entitled to bond hearings. The Fourth Circuit ruled in favor of
the aliens.

1 The Supreme Court reversed, holding that Section 1231, not 1226, governs the
2 detention of aliens subject to reinstated orders of removal. In *Johnson*, the high court
3 noted that each alien was “ordered removed” by a valid removal order that was
4 reinstated from the original date under section 1231(a)(5) and was “administratively
5 final.” It further recognized that the possibility of a determination that the government
6 could not remove an alien to the specific country designated in the removal order does
7 not render the question of whether the alien is to be removed “pending.” If an IJ grants
8 withholding of removal, the removal order remains in full force; the government would
9 simply seek to remove the alien to a different authorized country.

10 The Court determined that the Immigration and Nationality Act’s (“INA”)
11 statutory structure indicated that § 241(a) governs detention during withholding-only
12 proceedings.² It noted that § 241 itself is titled “Detention and removal of aliens ordered
13 removed,” and that all the provisions relating to reinstatement of removal, withholding
14 of removal, and the countries to which aliens may be removed are found within § 241.
15 Based on how the INA’s sections were ordered, the Court determined, INA § 236(a)
16 applies when an alien is still in formal removal proceedings while § 241(a) applies later,
17 after an alien is ordered removed. Congress “had obvious reasons to treat these two
18 groups differently,” the Court opined, because aliens who have not been ordered
19 removed are less likely to abscond than those ordered removed, particularly those who
20 reentered unlawfully after removal. Finally, the Court determined that although § 241(a)
21 contemplates a 90-day removal period, the fact that withholding-only proceedings can
22 take longer than that does not mean that § 241(a)’s detention provisions do not apply at
23 that stage.

24 Accordingly, given the express terms of the statute and the Supreme Court’s
25 definitive interpretation in *Johnson*, Petitioner is properly detained.³

26 ² INA Section 241(a) and 8 U.S.C. Section 1231(a) refer to the same body of U.S.
27 immigration law. Section 241 of the INA is found at Section 1231 in the U.S. Code,
both governing the detention and removal of removable aliens

28 ³ Following *Johnson*, legal commentators have noted the federal government’s
broad power to detain aliens following issuance of a reinstated removal order. See, e.g.,
Congressional Research Service, Legal Sidebar, *Johnson v. Chavez: Aliens with*

1
2 **IV. CONCLUSION**

3 This Court lacks jurisdiction over Petitioner's claims of error regarding his
4 credible fear proceedings, as jurisdiction is expressly delegated to the Court of Appeals.
5 Further, Petitioner is subject to mandatory detention under § 1231. Therefore, this Court
6 should dismiss the Petition.

7 DATED: May 21, 2026

Respectfully submitted,

8
9 ADAM GORDON
United States Attorney

10
11 s/ Laura C. Sambataro
12 LAURA C. SAMBATARO
13 Assistant United States Attorney
14 Attorney for Respondents
15
16
17
18
19
20
21
22
23
24

25
26 Reinstated Removal Orders May Be Detained Without Bond Hearing,
www.congress.gov/crs_external_products/LSB/PDF/LSB10620/LSB10620.1.pdf
27 and Justia, Aliens Subject to Reinstated Orders of Removal are not Entitled to Bond
Hearings while Seeking Withholding of Removal,
28 www.supreme.justia.com/cases/federal/us/594/19-897/.