UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

JOSE IGNACIO DE LA CRUZ DE LA ROSA, Petitioner, v. DONALD J. TRUMP, in his official capacity as President of the United States; PATRICIA HYDE, in her official capacity as Acting Boston Field Office Director, Immigration and Customs Enforcement, Enforcement and Removal Operations; DAVID W. JOHNSTON, in his official capacity as Vermont Sub-Office Director of Immigration and Customs Enforcement, Enforcement and Removal Operations; TODD M. LYONS, in his official capacity as Acting Director, U.S. Immigration and Customs Enforcement; PETE R. FLORES, in his official capacity as Acting Commissioner for U.S. Customs and Border Protections; KRISTI NOEM, in her official capacity as Secretary of the United States Department of Homeland Security; MARCO RUBIO, in his official capacity as Secretary of State; and PAMELA BONDI, in her official capacity as U.S. Attorney General, Respondents.	Case No. 2:25-cv-00580

RESPONDENTS' OPPOSITION TO PETITION FOR HABEAS CORPUS AND MOTION TO DISMISS

Respondents submit this Response to Petitioner Jose Ignacio De La Cruz De La Rosa's Petition for a Writ of Habeas Corpus, ECF No. 1, and this Court's Order to Show Cause, ECF No. 7. Additionally, Respondents move the Court to dismiss the Petition under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6).

INTRODUCTION

Petitioner admits he has twice entered the United States without inspection. *See* Pet. ¶ 2. Because he is unlawfully present, he is inadmissible and thus removable. Petitioner does not allege–nor can he–that his inadmissibility is due to any unlawful action by Respondents. Indeed, Petitioner's inadmissibility, and thus his detention pending removal proceedings, are due to his own unlawful conduct. Under these circumstances, the Supreme Court has been reluctant to extend constitutional remedies that afford release to individuals in civil deportation proceedings because that "would compel the courts to release from custody persons who would then immediately resume their commission of a crime through their continuing, unlawful presence in this country." *I.N.S. v. Lopez-Mendoza*, 468 U.S. 1032, 1050 (1984).

Immigration and Customs Enforcement (ICE) has placed Petitioner in removal proceedings and detained him pursuant to 8 U.S.C. § 1226(a). As a threshold issue, the Immigration and Nationality Act (INA) eliminated district court jurisdiction to hear challenges to the commencement of removal proceedings and detention. Moreover, the Supreme Court has confirmed that "detention during deportation proceedings [is] a constitutionally valid aspect of the deportation process." *Demore v. Kim*, 538 U.S. 510, 523 (2003).

Petitioner also fails to state claims under the First, Fourth, and Fifth Amendments. Petitioner contends he was targeted due to his speech and other protected activities, while at the same time claiming he was detained without reasonable suspicion or probable cause of illegal activity. In light of his concession that he is unlawfully present in the United States, however, these allegations are facially inconsistent and inadequate. Either Border Patrol Agents (BPAs) knew Petitioner's identity to target him, and thus would also know he was present unlawfully; or the BPAs did not know his identity when they stopped him, and thus could not have been targeting

him. With regard to his First Amendment claim, given that he concedes his unlawful immigration status, Petitioner has failed to plausibly allege that his detention would not have occurred but-for a retaliatory motive. Next, even assuming that a Fourth Amendment violation occurred (though it did not), the Fourth Amendment does not provide the habeas remedy of release from subsequent proceedings because a person's identity and body are not suppressible. Furthermore, Petitioner's concession of facts confirming he is inadmissible and thus removable constitutes independent evidence that is not subject to suppression. Therefore, Petitioner has not plausibly alleged a Fourth Amendment claim. Additionally, Petitioner's Fifth Amendment claim fails because Congress has specified by statute the process he is due, which is through the immigration court, and that process has not yet occurred.

Finally, the Court lacks authority to order Petitioner's release because he has failed to name his immediate custodian, which provides another ground for dismissal. For these reasons, the Court should deny the petition for habeas corpus.

FACTUAL AND PROCEDURAL BACKGROUND

Petitioner is a Mexican citizen who admits he entered the United States unlawfully at least twice. *See* Pet. ¶ 2. On June 14, 2025, Customs and Border Protection determined that Mr. De La Cruz De La Rosa had entered the United States without being inspected and admitted or paroled, and so was removable from the United States pursuant to 8 U.S.C. § 1182(a)(6)(A). *See* Ex. A, Declaration of Assistant Field Office Director Keith Chan ¶ 8. CBP served Petitioner with a Notice to Appear, and detained him the same day. *Id.* He is currently in ICE custody pursuant to 8 U.S.C. § 1226(a) and remains detained at Northwest State Correctional Facility in Vermont. *Id.* ¶ 4.

Petitioner filed this habeas action seeking his release on June 15, 2025. ECF No. 1. He asserts his detention violates the First, Fourth, and Fifth Amendments of the Constitution and

requests release on bail pending adjudication of his claims. *Id.* ¶¶ 36-61. On June 16, 2025, Petitioner filed a motion for a temporary restraining order to prevent him from being transferred out of this district, ECF. No. 2, which the Court granted the same day, ECF No. 5. The Court also issued an Order to Show Cause why a writ of habeas corpus should not be granted. ECF No. 7.

LEGAL BACKGROUND

A noncitizen is inadmissible to the United States if he is present in the country without being admitted or paroled or if he entered the country at a place other than a designated port of entry. *See* 8 U.S.C. § 1182(a)(6)(a)(i). A person who is inadmissible may be subject to removal proceedings, 8 U.S.C. § 1229a(2), and "may be arrested and detained pending a decision on whether the alien is to be removed from the United States[,]" U.S.C. § 1226(a).

ICE initiates removal proceedings by serving an alien with a Notice to Appear (NTA). *See* 8 U.S.C. § 1229; 8 C.F.R. § 1003.14. Such proceeding "shall be the sole and exclusive procedure for determining whether an alien may be . . . removed from the United States." *Id.* § 1229a(a)(3). Once removal proceedings are initiated, an ICE official makes an initial custody determination, including the setting of a bond. *See* 8 C.F.R. §§ 236.1(c)(8), 236.1(d). An ICE officer may "in the officer's discretion, release an alien" provided that "the alien demonstrates to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding." 8 C.F.R. § 236.1(c)(8). If ICE determines that detention during the pendency of removal proceedings is necessary, the detainee may request a custody redetermination hearing before an Immigration Judge (IJ). *See* 8 C.F.R. §§ 236.1(d), 1003.19, 1236.1(d). Generally, IJs have broad discretion in deciding whether to release someone on bond. *Matter of Guerra*, 24 I. & N. Dec. 37, 39 (BIA 2006). In order to be eligible for bond or conditional parole, the "alien must demonstrate to the satisfaction of the [decision maker] that such release

would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding." 8 C.F.R. § 1236.1(c)(8).

In removal proceedings, the noncitizen bears the burden of establishing he "is clearly and beyond doubt entitled to be admitted and is not inadmissible under [8 U.S.C. § 1182]." 8 U.S.C. § 1229a(c)(2). If the IJ orders an individual removed, that person can appeal to the Board of Immigration Appeals (BIA) and is not subject to removal until the BIA issues a decision on the appeal. *See* 8 C.F.R. § 1241.1(a). If the BIA affirms the IJ's denial of an application for relief from removal, petition for review (PFR) with a United States Court of Appeals is available. 8 U.S.C. § 1252(a)(5) ("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…").

APPLICABLE LEGAL STANDARDS

A. DISMISSAL UNDER FEDERAL RULE OF CIVIL PROCEDURE 12(b)(1)

On a Rule 12(b)(1) motion, "[d]etermining the existence of subject matter jurisdiction is a threshold inquiry . . . and a claim is properly dismissed for lack of subject matter jurisdiction . . . when the district court lacks the statutory or constitutional power to adjudicate it." *Arar v. Ashcroft*, 532 F.3d 157, 168 (2d Cir. 2008) (citation and internal quotation marks omitted). "The plaintiff bears the burden of proving subject matter jurisdiction by a preponderance of the evidence." *Liranzo v. United States*, 690 F.3d 78, 84 (2d Cir. 2012) (citation omitted). "[W]hen the question to be considered is one involving the jurisdiction of a federal court, jurisdiction must be shown affirmatively, and that showing is not made by drawing from the pleadings inferences favorable to the party asserting it." *Shipping Fin. Servs. Corp. v. Drakos*, 140 F.3d 129, 131 (2d Cir. 1998). Finally, "where jurisdictional facts are placed in dispute, the court has the power and obligation to

decide issues of fact by reference to evidence outside the pleadings, such as affidavits." *Nguyen v. I.N.S.*, No. 06-CV-80, 2007 WL 1725572, at *1 (D. Vt. June 13, 2007) (quoting *LeBlanc v. Cleveland*, 198 F.3d 353, 356 (2d Cir. 1999)).

B. DISMISSAL UNDER FEDERAL RULE OF CIVIL PROCEDURE 12(b)(6)

To survive a motion to dismiss pursuant to Rule 12(b)(6), "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "[C]onclusory allegations or legal conclusions masquerading as factual conclusions will not suffice to defeat a motion to dismiss." *Achtman v. Kirby, McInerney & Squire, LLP*, 464 F.3d 328, 337 (2d Cir. 2006). Ultimately, when considering a motion to dismiss under Rule 12(b)(6), this Court "must accept the truth of factual allegations, and draw all reasonable inferences in a plaintiff's favor, [but] it need not accept as true a legal conclusion couched as a factual allegation." *Jenkins v. Miller*, 983 F. Supp. 2d 423, 450 (D. Vt. 2013).

ARGUMENT

A. THE PETITION SHOULD BE DISMISSED FOR LACK OF SUBJECT MATTER JURISDICTION.

The Court lacks jurisdiction over Petitioner's claims because the INA eliminates district court jurisdiction over challenges to the commencement of removal proceedings and detention. *See* 8 U.S.C. § 1252(a)(5), (b)(9), (g). Section 1252(g) provides that, "notwithstanding any other provision of law (statutory or non-statutory), including [habeas corpus provisions] . . . no court shall have jurisdiction to hear any cause or claim by or on behalf of an alien arising from the decision or action . . . to commence proceedings . . . ." Moreover, Congress has removed district court jurisdiction over removal proceedings by designating the courts of appeal as the exclusive judicial forum through which challenges to immigration proceedings may be brought. 8 U.S.C. §

1252(a)(5), (b)(9). Finally, Congress has made clear that a "discretionary judgment regarding the application of [Section 1226's requirements regarding apprehension and detention of aliens] shall not be subject to review." 8 U.S.C. § 1226(e). Section 1226(e) further emphasizes: "No court may set aside any action or decision by [ICE] under this section regarding the detention of any alien or the revocation of denial of bond or parole." Petitioner's claims amount to challenges of his detention pending removal proceedings, as well as the underlying proceedings.[1] Therefore, Petitioner's claims must be dismissed for lack of subject matter jurisdiction.

B. THE PETITION SHOULD BE DENIED BECAUSE PETITIONER IS LAWFULLY DETAINED PURSUANT TO 8 U.S.C. § 1226(a).

Petitioner's contention that he is entitled to habeas relief from allegedly unlawful detention is belied by his admission that he entered the United States without inspection.[2] ICE detained Petitioner pursuant to 8 U.S.C. § 1226(a) which allows for the detention of aliens for the purpose of removal proceedings. *See* Exh. A, Chan Decl., ¶ 4. Section 1226(a) provides that "an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States." The Supreme Court has recognized that "detention during deportation proceedings [is] a constitutionally valid aspect of the deportation process." *Demore v. Kim*, 538 at 523.

Noncitizens may be subject to removal proceedings–and thus detainable under 8 U.S.C. § 1226(a)–if they are inadmissible. 8 U.S.C. § 1229a(a)(2). Inadmissible aliens include those who

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[1] Respondents acknowledge that the issue of the extent to which the INA bars district court review of immigration proceedings through a habeas petition is currently pending review in the Second Circuit. *See Ozturk v. Hyde, et al.*, No. 25-1019 (2d Cir. 2025); *Mahdawi v. Trump et al*, No. 25-1113 (2d Cir. 2025). Respondents incorporate by reference the arguments made in the district court and in support of their pending appeals in those matters.

[2] Petitioner has pleaded no allegations that indicate he has a pending application for an immigration benefit or lawful status and Respondents are aware of none.

are present in the United States without being admitted or paroled or who entered at a place other than a designated port of entry. *See* 8 U.S.C. § 1182(a)(6)(a)(i). By his own admission, Petitioner entered the United States without inspection on at least two prior occasions, Pet. ¶ 2, *i.e.*, that he entered the United States without being admitted or paroled or entered at a place other than a designated port of entry. *See, e.g.*, *Guamanrrigra v. Holder*, 670 F.3d 404, 406 n.4 (2d Cir. 2012) (explaining that the "term of art 'without inspection'" refers to entering the United States without being admitted or paroled, or arriving at any time or place other than a designated port of entry, as specified in 8 U.S.C. § 1182(a)(6)(a)(i)). Petitioner has thus admitted facts that render him inadmissible, and hence, subject to detention pending removal proceedings. Therefore, the Court should deny the petition for a writ of habeas corpus.

C. PETITIONER'S CONSTITUTIONAL CLAIMS MUST BE DISMISSED FOR FAILURE TO STATE A CLAIM.

1. Petitioner Has Failed to State a First Amendment Claim Because He Does Not Plausibly Allege His Detention Was Caused By Respondents' Retaliatory Motive.

Petitioner has failed to plausibly allege that his removability, and therefore detention, were caused as retaliation for his speech or other conduct protected by the First Amendment. Petitioner alleges that the government "targeted [him] on the basis of his past protected speech, and the past protected speech of . . . Migrant Justice." Pet. ¶ 43. "In order to state a claim for retaliation in violation of the First Amendment, a plaintiff must allege (1) that the speech or conduct at issue was protected, (2) that the defendant took adverse action against the plaintiff, and (3) that there was a causal connection between the protected speech and the adverse action." *Demarest v. Town of Underhill*, No. 24-147, 2025 WL 88417, at *2 (2d Cir. Jan. 14, 2025), *cert. denied sub nom. Demarest v. Underhill, VT*, No. 24-1085, 2025 WL 1426699 (U.S. May 19, 2025). With respect to causation, the retaliatory motive must be a "but-for" cause. *Hartman v. Moore*, 547 U.S. 250, 260 (2006). "It is not enough to show that an official acted with a retaliatory motive and that the

plaintiff was injured—the motive must *cause* the injury." *Nieves v. Bartlett*, 587 U.S. 391, 398 (2019) (emphasis in original).

First, given Petitioner's concession that he lacks lawful immigration status, he has failed to plead that, but for Respondents' retaliatory motive, his detention would not have occurred. Second, Petitioner's contention that he was targeted by Respondents for his past protected speech is implausible on its face. He has not alleged that his inadmissibility and resulting detention results from any action by Respondents, such as a denial of a visa application or change to his lawful status. To the contrary, Petitioner admits he entered the United States unlawfully. *See* Pet. ¶ 2. Indeed, Petitioner's unlawful entry into the United States necessarily predates any protected activity in which he engaged once he was here. Moreover, his contention that he was arrested without probable cause in violation of the Fourth Amendment is facially inconsistent with his First Amendment claims; if Respondents knew Petitioner's identity and targeted him for his speech, they would also know he lacked lawful status, thereby providing probable cause to arrest and detain him based on his unlawful presence. Because Petitioner cannot credibly contend he would not have been detained but-for Respondent's allegedly retaliatory motive, his First Amendment claim must be dismissed.

2. The Fourth Amendment Does Not Provide a Remedy of Release Through Habeas.

Petitioner's arrest was constitutional. But even if it was not, an order of release upon a habeas petition is not a proper remedy for a Fourth Amendment violation, and Petitioner does not cite any authority to the contrary. When a Fourth Amendment violation occurs, the typical remedy–the exclusionary rule–generally does not apply to subsequent civil deportation proceedings. *See United States v. Kisyorgy*, No 5:09-CR-81, 2010 WL 3323675, at *4 (D. Vt. Apr. 23, 2010) (citing *Lopez-Mendoza*, 468 U.S. at 1046). Indeed, "[t]he 'body' or identity of a

defendant or respondent in a criminal or civil proceeding is never itself suppressible as a fruit of an unlawful arrest, even if it is conceded that an unlawful arrest, search, or interrogation occurred." *Lopez-Mendoza*, 468 U.S. at 1039; *Pretzantzin v. Holder*, 736 F.3d 641, 646 (2d Cir. 2013) ("Because an individual cannot escape a tribunal's power over his 'body' despite being subject to an illegal seizure en route to the courthouse, he cannot contest that he is, in fact, the individual named in the charging documents initiating proceedings.").

Evidence obtained following an unlawful arrest is also not suppressible in subsequent civil removal proceedings. *Lopez-Mendoza*, 468 U.S. at 1050. In balancing the benefits and costs of applying the exclusionary rule in civil removal proceedings, the Supreme Court has explained that that the cost of suppression is "unusual and significant" in the context of removal proceedings because "application of the exclusionary rule . . . would compel the courts to release from custody persons who would then immediately resume their commission of a crime through their continuing, unlawful presence in this country." *Id.* at 1046, 1050

Because an individual's identity is not suppressible, district courts have recognized that habeas is not an appropriate means to seek release on Fourth Amendment grounds pending removal proceedings. *See, e.g.*, *H.N. v. Warden, Stewart Det. Ctr.*, No. 7:21-CV-59-HL-MSH, 2021 WL 4203232, at *5 (M.D. Ga. Sept. 15, 2021) ("[E]ven if the Court accepted Petitioner's argument that his initial detention was somehow unlawful, he is still not entitled to habeas relief."); *Jorge S. v. Sec'y of Homeland Sec.*, No. 18-CV-1842 (SRN/HB), 2018 WL 6332717, at *4 (D. Minn. Nov. 15, 2018), *report and recommendation adopted*, No. 18-CV-1842 (SRN/HB), 2018 WL 6332507 (D. Minn. Dec. 4, 2018) ("Release from Jorge S.'s *current* detention because his detention *previously* had been unlawful would be a remedy ill-fitted to the specific injury alleged.") (emphasis in original); *Amezcua-Gonzalez v. Lobato*, No. C16-979-RAJ-JPD, 2016 WL 6892934,

at *2 (W.D. Wash. Oct. 6, 2016), *report and recommendation adopted sub nom. Amezcua–Gonzalez v. Lobato*, No. C16-979-RAJ, 2016 WL 6892547 (W.D. Wash. Nov. 22, 2016) ("[E]ven if petitioner's arrest amounts to an egregious Fourth Amendment violation, he is not entitled to habeas relief, and his petition should be denied."). Thus, even assuming for the sake of argument that a Fourth Amendment violation occurred here (though it did not), Petitioner would not be entitled to the habeas remedy of release because he cannot suppress his identity and status in connection with the removal proceedings upon which his detention is based.

Furthermore, no Fourth Amendment remedy is available to Petitioner because he has independently conceded his lack of lawful status, and thus removability, in his habeas petition. Voluntary concessions of removability during proceedings that result from an unlawful arrest constitute independent evidence that is not subject to suppression. *Vanegas-Ramirez v. Holder*, 768 F.3d 226, 235-36 (2d Cir. 2014) (collecting cases); *see also Lopez-Mendoza*, 468 U.S. at 1043 (recognizing that "regardless of how the arrest is effected," sufficient evidence to support removal could be "gathered independently of, or sufficiently attenuated from, the original arrest"). In *Vanegas-Ramirez*, an alien who was in removal proceedings conceded he was removable in a declaration that he provided in support of a motion to transfer venue. *Vanegas-Ramirez v. Holder*, 768 F.3d 226 at 231. When Vanegas-Ramirez filed a suppression motion, in which he alleged a government raid on his home was an egregious violation of the Fourth Amendment, the Second Circuit upheld the immigration court's denial of the motion "on the basis that Vanegas–Ramirez's concessions of removability constituted independently admissible evidence." *Id.* at 236-37.

Like Vanegas–Ramirez, Petitioner has conceded that he is removable by pleading that he entered the United States without inspection on two prior occasions. *See* Pet. ¶ 2. It is unlawful to enter the United States without inspection by immigration officers, *see* 8 U.S.C. §

1182(a)(6)(A)(i), and a person who does so may be subject to removal proceedings, 8 U.S.C. § 1229a(a)(2). Petitioner thus would not be entitled to any suppression remedy for a Fourth Amendment violation because his concessions of removability constitute independently admissible evidence. Because Petitioner is not entitled to a habeas remedy for any alleged Fourth Amendment violations, his Fourth Amendment claim should be dismissed.

3. The Process Available to Petitioner Under Section 1226(a) Is Constitutional.

Petitioner's claim that his detention violates the Fifth Amendment is without merit because he is not entitled to protections beyond those established by statute. "[D]etention during deportation proceedings [is] a constitutionally valid aspect of the deportation process." *Demore v. Kim*, 538 U.S. at 523. While "[i]t is well established that the Fifth Amendment entitles aliens to due process of law in deportation proceedings," *id.*, the Supreme Court has repeatedly held that noncitizens seeking entry into the United States are entitled only to the process as statutorily authorized by Congress, *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020) ("[A]n alien [who is inadmissible because he entered without inspection] has only those rights regarding admission that Congress has provided by statute."); *Landon v. Plasencia*, 459 U.S. 21, 32 (1982) ("This Court has long held that an alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application, for the power to admit or exclude aliens is a sovereign prerogative"); *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950) ("Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned"); *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) (same).

Under Section 1226(a), a detainee may be released on bond. While the Second Circuit has recognized that detention under Section 1226(a) may implicate due process concerns when someone is subject to a "prolonged incarceration," *see Velasco Lopez v. Decker*, 978 F.3d 842,

855 (2d. Cir. 2020), those concerns are not present here where Petitioner has been detained for a short period, *see, e.g.*, *Castillo Lachapel v. Joyce*, No. 25-cv-4693, 2025 WL 1685576, at *3 (S.D.N.Y. June 16, 2025) (denying petition for habeas writ based on alleged due process violations when petitioner had been detained for less than two weeks and bond hearing had not yet occurred); *Guzman v. Joyce*, No. 25-cv-4777, 2025 WL 1696891, at *3 (S.D.N.Y. June 17, 2025) (distinguishing habeas due process claims brought after the petitioner had been denied bond with situation in which petitioner had not been denied bond). Petitioner fails to allege a procedural due process violation based on his detention under Section 1226(a). Instead, Petitioner merely presents arguments for why he should not be detained pending his removal proceedings. *See* Pet. ¶¶ 49-56. Therefore, Petitioner's Fifth Amendment claims must be dismissed.

D. THE IMMIGRATION COURT IS THE APPROPRIATE FORUM FOR PETITIONER TO RAISE HIS CLAIMS.

Petitioner may seek release through the immigration court. A noncitizen detained under 8 U.S.C. § 1226(a) may seek review of an immigration detention determination before an immigration judge and then the BIA. *See* 8 C.F.R. §§ 236.1(d), 1236.1(d). "A habeas petitioner must normally exhaust administrative remedies before seeking federal court intervention." *Castillo Lachapel v. Joyce*, 2025 WL 1685576, at *3 (quoting *Michalski v. Decker*, 279 F.Supp. 3d 487, 495 (S.D.N.Y. 2018)); *see also Guzman v. Joyce*, 2025 WL 1696891, at *2 ("Although there is no statutory requirement of administrative exhaustion before immigration detention may be challenged in federal court by a writ of habeas corpus, courts generally do require such exhaustion as a prudential matter.") (cleaned up). The Second Circuit has explained that this is because "[e]xhaustion of administrative remedies serves numerous purposes, including protecting the authority of administrative agencies, limiting interference in agency affairs, and promoting judicial efficiency by resolving potential issues and developing the factual record." *Beharry v.*

Ashcroft, 329 F.3d 51, 56 (2d Cir. 2003). The appropriate forum for Petitioner to raise his claims is thus through proceedings before the immigration court, not the instant court.

E. PETITIONER HAS FAILED TO NAME HIS IMMEDIATE CUSTODIAN.

Finally, Respondents note that Petitioner has failed to name the proper custodian, yet another ground on which dismissal is proper, as no extraordinary circumstances apply that excuse Petitioner's failure to name his immediate custodian. A habeas petition brought under § 2241 must "allege . . . the name of the person who has custody over" the petitioner "if known." 28 U.S.C. § 2242; *see also id.* § 2243 ("The writ . . .shall be directed to the person having custody of the person detained."). The Supreme Court has made clear that this language refers to the "person who has the *immediate custody* of the party detained, with the power to produce the body of such party before the court or judge, that he may be liberated if no sufficient reason is shown to the contrary." *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004) (quoting *Wales v. Whiney*, 114 U.S. 564, 574 (1885)). Thus, "in habeas challenges to present physical confinement–'core challenges'–the default rule is that the proper respondent is the warden of the facility where the prisoner is being held, not the Attorney General or some other remote supervisory official." *Id.* Because Petitioner's immediate custodian was "known," there are no special circumstances that excuse Petitioner's failure to name the immediate custodian. *Cf. Demjanjuk v. Meese*, 784 F.2d 1114, 1116 (D.D.C. 1986) (habeas petitioner may only name a more remote custodian "in very limited and special circumstances," such as when the petitioner "is held in an undisclosed location by an unknown custodian"). Therefore, dismissal of the petition is appropriate.

CONCLUSION

For the reasons stated above, this Court should decline to issue a writ of a habeas corpus and dismiss the Petition.

Dated: June 30, 2025

Respectfully submitted,

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