United States District Court
Western District of Texas
San Antonio Division

Aydelys Del Socorro Ponce-Pineda, Petitioner-Plaintiff, v. Kristi Noem, in her official capacity as Secretary, U.S. Department of Homeland Security, et. al., Respondents-Defendants.	No. 5:25-CV-01021-FB-RBF

Federal Respondents' Response to Petitioner's Writ of Habeas Corpus and Opposition to Partial Motion for Summary Judgment

Federal[1] Respondents timely[2] submit this response per this Court's Order dated August 25, 2025, granting their unopposed motion for extension of time and ordering a response by September 24, 2025. *See* ECF No. 9dkt. In her Complaint/Petition, Aydelys Del Socorro Ponce-Pineda ("Petitioner"), lodges six causes of action, alleging that her arrest and continued detention without bond during removal proceedings is an unlawful violation of the immigration statutes and

[1] The Department of Justice does not represent the warden in this action. Federal Respondents, however, have detention authority over aliens detained under Title 8 of the U.S. Code.

[2] Respondents deny herein that Petitioner is entitled to any claims for relief raised in her Complaint for Preliminary Injunctive Relief and Petition for a Writ of Habeas Corpus, but Respondents do not herein waive their full 60 days from proper service to fully respond to any non-habeas claims. *See* Fed. R. Civ. P. Rules 4(i), 12(a)(2); *see also* ECF No. 9 (acknowledging that any claims arising outside of habeas are governed by the appropriate rule). *See Ndudzi v. Castro*, No. SA–20–CV–0492–JKP, 2020 WL 3317107 at *2 (W.D. Tex. June 18, 2020) (citing 28 U.S.C. § 1914(a)).

regulations, the Administrative Procedure Act (APA),[3] and due process, both procedural and substantive. *See* ECF No. 1 ¶¶ 40–79. In her Prayer for Relief, Petitioner seeks an order: (1) declaring she is detained under 8 U.S.C. § 1226(a); (2) declaring that application of 8 U.S.C. § 1225(b)(2) to her is unlawful, arbitrary, capricious, and contrary to law; (3) declaring that the application of § 1225(b)(2) to her violates her due process rights; (4) releasing her from detention, or alternatively, granting her a bond hearing before an immigration judge and (5) award her attorney's fees under the Equal Access to Justice Act (EAJA). *Id.* at 18-19. This petition should be denied.

Petitioner is lawfully detained on a mandatory basis without access to a bond hearing during her removal proceedings as an alien present in the United States without inspection or parole. *See* ECF No. 1-1 at 5–6, 12–13, Petitioner's Exhibit B (Notice to Appear) and D (Bond Order); 8 U.S.C. § 1225(b)(2). If there were any doubt as to which statute governs the detention of aliens present in the United States without admission or parole, that doubt is now resolved: on September 5, 2025, the Board of Immigration Appeals (BIA) issued a precedent decision finding that aliens present in the United States without having been admitted or paroled, like this Petitioner, are subject to mandatory detention under § 1225(b)(2) as applicants for admission. *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025). Moreover, Petitioner is in full removal proceedings

[3] Petitioner's counts under the APA are outside the scope of habeas relief. *See Ndudzi v. Castro*, 2020 WL 3317107 at *2. "When a filing contains both habeas and non-habeas claims, 'the district court should separate the claims and decide the [non-habeas] claims' separately from the habeas ones given the differences between the two types of claims. *Id* (collecting cases and further noting the "vast procedural differences between the two types of actions"). Because Petitioner did pay the filing fee associated with non-habeas claims, Respondents urge the Court to sever the non-habeas claims, rather than dismiss them, so that the claims can be processed orderly, depending on the appropriate rule. *Id.* at *3.

Finally, Petitioner claims entitlement to attorney fees under the Equal Access to Justice Act ("EAJA"), but the Fifth Circuit no longer recognizes EAJA fees in the habeas context. ECF No. 1 at 25; *see also Barco v. Witte*, 65 F.4th 782 (5th Cir. 2023).

before an immigration, as opposed to expedited removal proceedings, which provide her with robust due process protections. Release on bond, however, is not one of those protections to which she is entitled by statute. For these reasons and those that follow, the Court should deny this petition.

I. Facts and Procedural History

Petitioner is a native and citizen of Nicaragua. ECF No. 1 ¶ 5. The Department of Homeland Security (DHS) apprehended Petitioner shortly after she entered the United States unlawfully on December 2, 2021, without having been admitted or paroled. *Id.* at ¶ 11 Following the arrest, DHS commenced removal proceedings against her by issuing, serving, and filing a Notice to Appear with the Immigration Court. *See* ECF No. 1 ¶ 13. Shortly thereafter, Petitioner was released from custody via an Order of Release on Recognizance (OREC). *Id* at ¶ 14.

In June 2025, ICE took Petitioner into custody when she appeared for a routine check-in with ICE as a condition of her release. *Id.* Petitioner requested and received a custody review hearing with an immigration judge, and on June 25, 2025, the immigration judge found her to be subject to mandatory detention under INA § 235(b), 8 U.S.C. § 1225(b) as "an applicant for admission." *See* ECF No. 1-1 at 12–13 Petitioner's Exhibit D. (Bond Order). Petitioner did not timely file any notice of appeal of the bond order with the BIA. Petitioner remains detained with her next (and final) hearing scheduled for October 7, 2025.[4]

II. Relevant Immigration Law

Congress enacted a multi-layered statutory scheme for the civil detention of aliens pending a decision on removal, during the administrative and judicial review of removal orders, and in

[4] *See* Automated Case Information (last accessed Sept. 23, 2025).

preparation for removal. *See generally* 8 U.S.C. §§ 1225, 1226, 1231. It is the interplay between these statutes that is at issue here.

A. Inspection and Detention under 8 U.S.C. § 1225

"To implement its immigration policy, the Government must be able to decide (1) who may enter the country and (2) who may stay here after entering." *Jennings v. Rodriguez*, 583 U.S. 281, 286 (2018). Section 1225 governs inspection, the initial step in this process, *id.*, stating that all alien "applicants for admission . . . shall be inspected by immigration officers." 8 U.S.C. § 1225(a)(3). The statute—in a provision entitled "ALIENS TREATED AS APPLICANTS FOR ADMISSION"—dictates who "shall be deemed for purposes of this chapter an applicant for admission," defining that term to encompass *both* an alien "present in the United States who has not been admitted *or* [one] who arrives in the United States . . . ." *Id.* § 1225(a)(1) (emphasis added).

Paragraph (b) of § 1225 governs the inspection procedures applicable to all applicants for admission. They "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings*, 583 U.S. at 287. Section 1225(b)(1) applies to those "arriving in the United States" and "certain other"[5] aliens "initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation." *Id.* § 1225(b)(1)(A)(i), (iii). Aliens falling under this subsection are generally subject to expedited removal proceedings "without further

[5] The "certain other aliens" referred to are addressed in § 1225(b)(1)(A)(iii), which gives the Attorney General sole discretion to apply (b)(1)'s expedited procedures to an alien who "has not been admitted or paroled into the United States, and who has not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility," subject to an exception inapplicable here. The statute therefore explicitly confirms application of its inspection procedures for those already in the country, including for a period of years.

hearing or review." *See id.* § 1225(b)(1)(A)(i). But where the applicant "indicates an intention to apply for asylum . . . or a fear of persecution," immigration officers will refer him or her for a credible fear interview. *Id.* § 1225(b)(1)(A)(ii). An applicant "with a credible fear of persecution" is "detained for further consideration of the application for asylum." *Id.* § 1225(b)(1)(B)(ii). If the alien 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 removal from the United States. *Id.* §§ 1225(b)(1)(A)(i), (B)(iii)(IV).

Section 1225(b)(2) is "broader" than (b)(1), "serv[ing] as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1)." *Jennings*, 583 U.S. at 287. Subject to exceptions not applicable here, "if the examining immigration officer determines that the alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien *shall* be detained for a removal proceeding." 8 U.S.C. § 1225(b)(2)(A) (emphasis added); *see also 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). DHS retains sole discretionary authority to temporarily release on parole "any alien applying for admission" on a "case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022).

B. Apprehension and Discretionary Detention under 8 U.S.C. § 1226(a)

"Even once inside the United States, aliens do not have an absolute right to remain here. For example, an alien present in the country may still be removed if he or she falls 'within one or more . . . classes of deportable aliens.' §1227(a)." *Jennings*, 583 U.S. at 288 (citing 8 U.S.C. §

1227(a), which outlines "classes of deportable aliens" among those already "in *and admitted* to the United States") (emphasis added)). "Section 1226 generally governs the process of arresting and detaining that group of aliens pending their removal." *Id.* Applicable "[o]n a warrant issued by the Attorney General," it provides that an alien may be arrested and detained pending a decision" on the removal. 8 U.S.C. § 1226(a). For aliens arrested under §1226(a), the Attorney General and the DHS have broad discretionary authority to detain an alien during removal proceedings.[6] *See* 8 U.S.C. § 1226(a)(1) (DHS "may continue to detain the arrested" alien during the pendency of removal proceedings).

Following apprehension under § 1226(a), a DHS officer makes an initial discretionary determination concerning release. *See* 8 C.F.R. § 236.1(c)(8). DHS "may continue to detain the alien." 8 U.S.C. § 1226(a)(1). "To secure release, the alien must show that he does not pose a danger to the community and that he is likely to appear for future proceedings." *Johnson v. Guzman Chavez,* 594 U.S. 523, 527 (2021) (citing 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8); *Matter of Adeniji*, 22 I. & N. Dec. 1102, 1113 (BIA 1999)). If DHS decides to release, it may set a bond or condition the release. *See* 8 U.S.C. § 1226(a)(2); 8 C.F.R. § 236.1(c)(8).

If DHS determines that an alien should remain detained during the pendency of his removal proceedings, the alien may request a bond hearing before an immigration judge. *See* 8 C.F.R. §§

[6] Although the relevant statutory sections refer to the Attorney General, the Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (2002), transferred all immigration enforcement and administration functions vested in the Attorney General, with few exceptions, to the Secretary of Homeland Security. The Attorney General's authority—delegated to immigration judges, *see* 8 C.F.R. § 1003.19(d)—to detain, or authorize bond for aliens under section 1226(a) is "one of the authorities he retains . . . although this authority is shared with [DHS] because officials of that department make the initial determination whether an alien will remain in custody during removal proceedings." *Matter of D-J-*, 23 I. & N. Dec. 572, 574 n.3 (A.G. 2003).

236.1(d)(1), 1003.19, 1236.1(d). The immigration judge conducts a bond hearing and decides whether release is warranted, based on a variety of factors that account for ties to the United States and risks of flight or danger to the community. *See Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006) (identifying nine non-exhaustive factors); 8 C.F.R. § 1003.19(d) ("The determination . . . as to custody status or bond may be based upon any information that is available to the Immigration Judge or that is presented to him or her by the alien or [DHS].").

Section 1226(a) does not grant "any *right* to release on bond." *Matter of D-J-*, 23 I. & N. Dec. at 575 (citing *Carlson*, 342 U.S. at 534). Nor does it address the applicable burden of proof or particular factors that must be considered. *See generally* 8 U.S.C. § 1226(a). Rather, it grants DHS and the Attorney General broad discretionary authority to determine, after arrest, whether to detain or release an alien during his removal proceedings. *See id.* If, after the bond hearing, either party disagrees with the decision of the immigration judge, that party may appeal that decision to the BIA. *See* 8 C.F.R. §§ 236.1(d)(3), 1003.19(f), 1003.38, 1236.1(d)(3). Included within the Attorney General and DHS's discretionary authority are limitations on the delegation to the immigration court. Under 8 C.F.R. § 1003.19(h)(2)(i)(B), the immigration judge does not have authority to redetermine the conditions of custody imposed by DHS for any arriving alien.

C. Review of custody determinations at the BIA

The BIA is an appellate body within 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).

III. Respondents Deny Petitioner's Non-Habeas Claims and Aver that Petitioner Is Not Entitled to Summary Judgment.

Respondents do not fully respond herein to Petitioner's non-habeas claims or to her partial motion for summary judgment filed under Rule 56, because the time has not elapsed under Rule 12 for such a response. Until such time that response is due, a motion for summary judgment is not ripe. For purposes of a clean record, however, Respondents herein deny that Petitioner's claims, habeas or otherwise, have merit. Respondents further deny that Petitioner is entitled to summary judgment on these issues.

To the extent that this Court finds the summary judgment motion ripe for the habeas claims, Respondents request that the Court construe this response to the order to show cause also as an opposition to Petitioner's partial motion for summary judgment. Petitioner's directly arise from the decision to commence and/or adjudicate removal proceedings against this alien, specifically the decision to detain her on a mandatory basis as an applicant for admission during her removal proceedings. As a result, any statutory interpretation or constitutional challenge, if not barred under § 1252(g), must be channeled through the circuit court upon judicial review of any removal order. 8 U.S.C. § 1252(b)(9). Alternatively, whether Petitioner is an applicant for admission is a contested and material mixed question of fact and law, which makes summary judgment here inappropriate.

IV. Petitioner Is Subject to Mandatory Detention Without a Bond Hearing under the Plain Language of 8 U.S.C. § 1225(b)(2).

On September 5, 2025, the BIA issued a precedent decision in *Matter of Yajure-Hurtado*, affirming that under the plain language of § 1225(b)(2), aliens present in the United States without admission, like Petitioner here, are subject to mandatory detention without a bond hearing during their removal proceedings, until removed. The Court should reject Petitioner's argument that § 1226(a) governs her detention instead of § 1225(b)(2).

Petitioner is an "applicant for admission" under § 1225(a)(1). *See* ECF No. 1-1 at 12–13, Petitioner's Exhibit B (Bond Order). She nonetheless argues that, unlike other applicants for admission, she cannot be subjected to § 1225(b)(2)'s mandatory-detention provision because she has been present in the interior of the United States. *See, e.g.*, ECF 1 ¶¶ 30–38.

First, consider the plain text. Statutory language "is known by the company it keeps." *Marquez-Reyes v. Garland*, 36 F.4th 1195, 1202 (9th Cir. 2022) (quoting *McDonnell v. United States*, 579 U.S. 550, 569 (2016)). "Seeking admission" and "appl[ying] for admission," in this context, are plainly synonymous. Congress linked these two variations of the same phrase in § 1225(a)(3), which requires all aliens "who are applicants for admission or otherwise seeking admission" to be inspected by immigration officers. 8 U.S.C. § 1225(a)(3). The word "or" here "introduce[s] an appositive—a word or phrase that is synonymous with what precedes it ('Vienna or Wien,' 'Batman or the Caped Crusader')." *United States v. Woods*, 571 U.S. 31, 45 (2013). As a result, a person "seeking admission" is just another way of saying someone is applying for admission—that is, he is an "applicant for admission"—which includes both those individuals arriving in the United States and those already present without admission. *See* 8 U.S.C. § 1225(a)(1); *Lemus-Losa*, 25 I. & N. Dec. at 743.

Congress used the simple phrase "arriving alien" throughout § 1225. *E.g.*, 8 U.S.C. § 1225(a)(2), (b)(1), (c), (d)(2). That phrase plainly distinguishes an alien presently in, or recently "arriving" in, the United States from other "applicants for admission" who, like Petitioner, have been present in the United States without having been admitted. But Congress *did not* use the word "arriving" to limit the scope of § 1225(b)(2)'s mandatory-detention provision. If Congress meant to limit § 1225(b)(2)'s scope to "arriving" aliens, it could have simply used that phrase, like it did in § 1225(b)(1). Instead, Congress used the phrase "alien seeking admission" as a plain synonym for "applicant for admission."

Second, consider the statutory structure of § 1225(b). To be sure, § 1225(b)(1) applies to applicants for admission who are "arriving in the United States" (or those who have been present for less than two years) and provides for expedited removal proceedings. It also contains its own mandatory-detention provision applicable during those expedited proceedings. 8 U.S.C. § 1225(b)(1)(B)(iii)(IV). Section 1225(b)(2), by contrast, applies to "other" aliens—"in the case of an alien who is an applicant for admission"—those *not* subject to expedited removal under (b)(1). They too must "be detained" but instead for a more typical removal "proceeding under section 1229a of this title." 8 U.S.C. § 1225(b)(2)(A). Properly understood, § 1225(b) applies to two groups of "applicants for admission": (b)(1) applies to "arriving," or recently arrived, aliens who must be detained pending *expedited* removal proceedings; and (b)(2) is a "catchall provision that applies to all applicants for admission not covered by § 1225(b)(1)," *Jennings*, 583 U.S. at 287, who, like Petitioner, must be "detained for a [*non-expedited*] proceeding under section 1229a of this title," 8 U.S.C. § 1225(b)(2). A contrary interpretation limiting (b)(2) to "arriving" aliens would render it redundant and without any effect.

And *third*, compare § 1225's mandatory-detention provisions alongside the discretionary-detention provisions of § 1226. Unless there is a conflict, a specific provision governs over a more general provision encompassing that same matter. *See Nitro-Lift Technologies, LLC v. Howard*, 568 U.S. 17, 21 (2012); *Bloate v. U.S.*, 559 U.S. 196, 207–08 (2010). Section 1226(a) applies to aliens "arrested and detained pending a decision" on removal. 8 U.S.C. § 1226(a). Section 1225(b), by contrast, is narrower, applying only to aliens who are "applicants for admission,"—a specially defined subset of aliens that explicitly includes those "present in the United States who ha[ve] not be admitted." *Id.* § 1225(a). *See also Florida v. United States,* 660 F. Supp. 3d 1239, 1275 (N.D. Fla. 2023) ("§ 1225(a) treats a specific class of aliens as 'applicants for admission,' and § 1225(b) mandates detention of these aliens throughout their removal proceedings. Section 1226(a), by contrast, states in general terms that detention of aliens pending removal is discretionary unless the alien is a criminal alien."). Because Petitioner falls squarely within the definition of individuals deemed to be "applicants for admission," the specific detention authority under § 1225(b) governs over the general authority found at § 1226(a).

A court in Massachusetts recently confirmed that an alien, unlawfully present in the country for approximately 20 years, was nonetheless an "applicant for admission." *See Pena v. Hyde*, Civ. Action No. 25-11983, 2025 WL 2108913 (D. Mass. July 28, 2025). The court explained this resulted in the "continued detention" of an alien during removal proceedings as commanded by statute. *Id.* And the BIA has long recognized that "many people who are not *actually* requesting permission to enter the United States in the ordinary sense are nevertheless deemed to be 'seeking admission' under the immigration laws." *Matter of Lemus-Losa*, 25 I. & N. Dec. 734, 743 (BIA 2012).

When the plain text of a statute is clear, that meaning is controlling and courts "need not examine legislative history." *NPR Investments, LLC ex rel. Roach v. U.S.*, 740 F.3d 998, 1007 (5th Cir. 2014). Indeed, "in interpreting a statute a court should always turn first to one, cardinal canon before all others." *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992). The Supreme Court has "stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there." *Id.* (citations omitted). Thus, "[w]hen the words of a statute are unambiguous, then, this first canon is also the last: 'judicial inquiry is complete.'" *Id.* (citing *Rubin v. United States*, 449 U.S. 424 at 430 (1981)).

Even if legislative history were relevant, the text of a law controls over purported legislative intentions. *Oklahoma v. Castro-Huerta*, 597 U.S. 629, 642 (2022). Indeed, the legislative history and evidence regarding the purpose of § 1225(b)(2) show that Congress did not mean to treat aliens arriving at ports of entry worse than those who successfully entered the nation's interior without inspection. *See Yajure-Hurtado*, 29 I&N Dec. at 222–25. Congress passed IIRIRA to correct "an anomaly whereby immigrants who were attempting to lawfully enter the United States were in a worse position than persons who had crossed the border unlawfully." *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc), *declined to extend by, United States v. Gambino-Ruiz*, 91 F.4th 981 (9th Cir. 2024). It "intended to replace certain aspects of the [then-]current 'entry doctrine,' under which illegal aliens who have entered the United States without inspection gain equities and privileges in immigration proceedings that are not available to aliens who present themselves for inspection at a port of entry." *Id.* (quoting H.R. Rep. 104-469, pt. 1, at 225).

The Court should reject Petitioner's interpretation because it rewards aliens, like her, who "crossed the border unlawfully," by making them bond-eligible, unlike arriving aliens, "who present themselves for inspection at a port of entry." *Id.* In other words, aliens who presented at ports of entry in compliance with the law would be subject to mandatory detention under § 1225, while those who successfully evaded detection and crossed without inspection would be eligible for bond under § 1226(a).

V. This Court Lacks Jurisdiction to Review Petitioner's Claims.

As a threshold matter, 8 U.S.C. §§ 1252(g) and (b)(9) preclude review of Petitioner's claims. This statutory interpretation issue is not properly before the district court and must be funneled through the court of appeals. *See SQDC v. Bondi*, No. 25–3348 (PAM/DLM), 2025 WL 2617973 (D. Minn. Sept. 9, 2025). While "the Fifth Amendment entitles aliens to due process of law in deportation proceedings, … this Court has recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process." *Demore v. Kim*, 538 U.S. 510, 523 (2003). Indeed, removal proceedings "'would be [in] vain if those accused could not be held in custody pending the inquiry into their true character.'" *Demore*, 538 U.S. at 523 (quoting *Wong Wing v. United States*, 163 U.S. 228, 235 (1896)).

A. Section 1252(g)

First, Section 1252(g) specifically deprives courts of jurisdiction, including habeas corpus jurisdiction, to review "any cause or claim by or on behalf of an alien arising from the decision or action by the Attorney General to [1] commence proceedings, [2] adjudicate cases, or [3] execute removal orders against any alien under this chapter." 8 U.S.C. § 1252(g). Section 1252(g) applies "to three discrete actions that the Attorney General may take: [the] 'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders.'" *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (emphasis in original).

Section 1252(g) eliminates jurisdiction "[e]xcept as provided in this section and notwithstanding any other provision of law (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."[7] Except as provided in § 1252, courts cannot entertain challenges arising from the decisions or actions to commence or adjudicate removal proceedings or execute a removal order. *Duron v. Johnson*, 898 F.3d 644, 647–48 (5th Cir. 2018) . Section 1252(g) also bars district courts from hearing challenges to the *method* by which the DHS Secretary chooses to commence removal proceedings, including the decision to detain an alien pending removal. *See Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016) ("By its plain terms, [§ 1252(g)] bars us from questioning ICE's discretionary decisions to commence removal" and also to review "ICE's decision to take [plaintiff] into custody and to detain him during removal proceedings").

Petitioner raises a statutory interpretation issue regarding the statute governing her detention during removal proceedings. That detention arises from the decision to commence and adjudicate such proceedings. *See, e.g., Quezada v. U.S.*, 3:24–CV–564–L (BK), 2025 WL 747263 at *6 (N.D. Tex. Jan. 29, 2025) (barring FTCA claim under § 1252(g) where ICE arrested alien on the same day the NTA was issued and served on him); *Hodgson v. U.S.*, No. SA:13–CV–702, 2014 WL 4161777 at *6–8 (W.D. Tex. Aug. 19, 2014); *Rico-Pineda v. Lucero*, No. SA–15–CA–126–OLG, 2015 WL 13805331 at *3–4 (W.D. Tex. July 6, 2015)

Removal proceedings commence by filing a charging document, such as an NTA, with an Immigration Court. *See Pereida v. Wilkinson*, 592 U.S. 224, (2021) ("Removal proceedings begin when the government files a charge against an individual, and they occur before a hearing officer at the Department of Justice, someone the agency refers to as an immigration judge.")); *Pierre-Paul v. Barr*, 930 F.3d 684, 686 (5th Cir. 2019) ("[T]he

[7] 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.

government initiated removal proceedings [ ] by filing a notice to appear with the immigration court."); *see also* 8 C.F.R. § 1003.14(a) ("Jurisdiction vests, and proceedings before an Immigration Judge commence, when a charging document is filed with the Immigration Court."). An alien's detention throughout this process arises, therefore, from the Attorney General's decision to commence proceedings, and review of claims arising from such detention is barred under § 1252(g). *See Herrera-Correra v. United States*, No. CV 08-2941 DSF (JCX), 2008 WL 11336833, at *3 (C.D. Cal. Sept. 11, 2008).. As such, judicial review of the claim that Petitioner is entitled to bond under § 1226(a) instead of detained on a mandatory basis under § 1225(b) is barred by § 1252(g). The Court should dismiss for lack of jurisdiction.

B. Section 1252(b)(9)

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); *Monsalvo v. Bondi*, 604 U.S. ---, 145 S.Ct. 1232, 1241 (2025) (rejecting argument that § 1252(b)(9) limits the scope of circuit court review to only certain kinds of legal errors); *AAADC*, 525 U.S. at 483. 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, e.g.*, 8 U.S.C. § 1252(b)(9); *see also El Gamal v. Noem*, --- F.Supp.3d---, 2025 WL 1857593 at *5 (W.D. Tex. July 2, 2025) (collecting cases and finding that any challenge to ICE's initial decision to detain the alien during removal proceedings is protected from judicial review in district court, because the alien must appeal any order of removal to the BIA and ultimately petition for judicial review of any relevant constitutional claims by the court of appeals); *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 immigration 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 aliens 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 (section 1252(b)(9) includes challenges to the "decision to detain [an alien] in the first place or to seek removal[.]"). Here, Petitioner challenges the government's decision and action to detain her, which arises from DHS's decision to commence removal proceedings against an arriving alien and is thus an "action taken . . . to remove [her] 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 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. While holding that it was unnecessary to comprehensively address the scope of § 1252(b)(9), the Supreme Court in *Jennings* also provided guidance on the types of challenges that may fall within the scope of § 1252(b)(9). *See Jennings*, 583 U.S. at 293–94. The Court found that "§1252(b)(9) [did] not present a jurisdictional bar" in situations where "respondents . . . [were] not challenging the decision to detain them in the first place." *Id.* at 294–95. In this case, Petitioner *does* challenge the government's decision to detain her in the first place. Though Petitioner may attempt to frame this challenge as one relating to detention authority, rather than a challenge to DHS's decision to detain her in the first instance, pending removal proceedings, such creative framing does not evade the preclusive effect of § 1252(b)(9).

Indeed, the fact that Petitioner is challenging the basis upon which she is detained is enough to trigger § 1252(b)(9) because "detention *is* an 'action taken . . . to remove' an alien." *See Jennings*, 583 U.S. 318, 319 (Thomas, J., concurring); 8 U.S.C. § 1252(b)(9). Petitioner must present her claims before the appropriate federal court of appeals because she challenges the government's decision or action to detain her, which cannot be raised in this Court. *See* 8 U.S.C. § 1252(b)(9). Petitioner is lawfully detained in removal proceedings as an alien charged with removability for unlawfully entering and remaining in the country without authorization. 8 U.S.C. § 1182(a)(6). Nothing in the petition provides a legal basis that obligates the government to set a bond for her release.

VI. Petitioner Is Not Entitled to Additional Process Because of Her Eligibility for Relief from Removal.

While as-applied constitutional challenges to immigration detention may be brought under certain circumstances, there is no colorable claim articulated in this habeas petition that Petitioner's detention without bond is unconstitutional. *See, e.g., Jennings v. Rodriguez*, 583 U.S. 281, 312 (2018). This Court's review is limited to whether ICE is providing due process of law to Petitioner within the scope of § 1225(b). *Id.; see also Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020). Indeed, Petitioner remains in "full" removal proceedings before the immigration court, which entitles her to robust procedural and substantive due process protections, including representation by counsel of her choice at no expense to the government and appellate review of any adverse decision. Petitioner is not entitled to anything beyond what § 1225(b) provides her. *Thuraissigiam*, 591 U.S. at 140.

Petitioner is afforded no additional process simply because she claims eligibility for relief from removal before an Immigration Judge. Here, Petitioner is not in expedited removal proceedings, and her present detention does not prohibit her from pursuing avenues of relief before the Immigration Judge; on the contrary, as a detained alien, she is likely to receive a decision on her relief applications far more quickly than she would on the non-detained docket.

Moreover, Petitioner's pre-removal custody is neither prolonged, nor indefinite. Petitioner has been detained for approximately three months while she is pending removal proceedings. ECF No. 1 ¶ 2. Pre-removal-order detention "has a definite termination point: *the conclusion of removal proceedings*." *Castaneda v. Perry*, 95 F.4th 750 (4th Cir. 2024) (emphasis in original) (paraphrasing *Jennings*, 583 U.S. at 304). Petitioner is scheduled for a hearing with the Immigration Judge in her removal proceedings on October 7, 2025. Petitioner's detention is not delayed beyond anything other than ordinary litigation processes. *See Linares v. Collins*, 1:25-CV-00584-RP-DH, ECF No. 14 at 15 (W.D. Tex. Aug. 12, 2025) (collecting cases and finding that aliens cannot assert viable due process claims when their detention is caused by their own plight, because delay due to litigation activity does not render detention indefinite).

At most, Petitioner claims she is entitled to a bond hearing, but she has already been given a bond hearing where she was represented by counsel. *See* ECF No. 1-1 at 12–13 (Bond Order). She is not entitled to more process than what Congress has provided her by statute, regardless of whether the applicable statute is § 1225(b) or § 1226(a). *See Jennings*, 583 U.S. at 297–303;

Thuraissigiam, 591 U.S. at 140 (finding that applicants for admission are entitled only to the protections set forth by statute and that "the Due Process Clause provides nothing more"). An "expectation of receiving process is not, without more, a liberty interest protected by the Due Process Clause." *Olim v. Wakinekona*, 461 U.S. 238, 250 n. 12 (1983). Petitioner's removal proceedings are pending before the immigration judge with a final hearing scheduled for October 7, 2025. Petitioner enjoys judicial review of any adverse decision through the BIA and then the circuit court. *Id.* Pre-removal-order detention here is both statutorily mandated and constitutional, as it is neither indefinite, nor prolonged.

VII. Conclusion

Petitioner is lawfully detained pending removal proceedings, and she does not claim any immigration status that would entitle her to immediate release from custody. Petitioner was already afforded a bond hearing, and she did not timely appeal that decision to the BIA. She remains in "full" removal proceedings with robust due process protections. Accordingly, the Court should deny this petition.

Respectfully submitted,

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