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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ALVARDO GONZALEZ, Eduardo,

Petitioner,

v.

John Mattos, Warden of the Southern Detention Center
Jason Knight, Director of the Salt Lake City U.S. Immigration and Customs Enforcement Field Office;
Kristi Noem, Secretary of the U.S. Department of Homeland Security; and
Pam Bondi,
Attorney General of the United States,
in their official capacities,

Respondents.

Case No. 2:25-cv-01599-JAD-NJK

Federal Respondents' Response to Petition for Writ of Habeas Corpus

Federal Respondents Jason Knight, Kristi Noem, and Pam Bondi ("Federal Defendants"), though undersigned counsel, file their response to Petitioners Eduardo Alvardo Gonzalez's ("Gonzalez" and/or "Petitioner") Petition for Writ of Habeas Corpus (ECF No. 1) ("Petition"). Gonzalez, who does not have a legal status in the United States, is asking this Court to issue an Order to Show Cause why his Petition should not be granted within three days, declare that Gonzalez's ongoing detention without a bond hearing (which he has had) violated the Fourth Amendment of the Constitution, and declare that Gonzalez's request for bond and Immigration Customs Enforcement's ("ICE") detaining him under 8 U.S.C. § 1125(b) is unlawful, denied him his statutory rights under 8

U.S.C. § 1126(a), and asks the Court to issue a writ of habeas corpus ordering Federal Defendants to release him (or alternatively, issue an order to schedule Gonzalez's bond hearing within 20 days). ECF No. 1, pp. 16-17.

Gonzalez's Petition should be denied. Gonzalez's detainment is mandated by Congress pursuant to 8 U.S.C. § 1225(b)(2)(A), under which the Petitioner is rightfully detained, and (2) Petitioner has failed to exhaust his administrative remedies which further strips this Court of jurisdiction.

Federal Defendants further notify the Court that on September 5, 2025, the Bureau of Immigration Appeals ("BIA") published an opinion applicable to, and in support of Federal Defendants' arguments. According to the BIA decision the Petitioner, who entered the United States illegally, is properly detained under 8 U.S.C. § 1225(b)(2). See *In Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2005). Therefore, the Petition should be denied as a matter of law.

I. INTRODUCTION

The Petition should be denied for the following reasons.

First, Petitioner fails to demonstrate that he is entitled to relief as he seeks to circumvent the detention statute under which he is rightfully detained. Petitioner falls precisely within the statutory definition of an alien who is subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2) and is thus ineligible for release from the Department of Homeland Security ("DHS") custody on bond or conditional parole under 8 U.S.C. § 1226(a).

Second, Petitioner is required to exhaust his administrative remedies before petitioning this Court for the impermissible relief he seeks here, which is a release from detention pending the outcome of DHS' appeal on his bond redetermination. Petitioner has not exhausted his administrative remedies, and his attempt to avail himself of the exceptions to the exhaustion requirement is unpersuasive and further strips this Court of jurisdiction.

Third, there is no violation of Petitioner's procedural and substantive due process rights. Petitioner is provided with due process through his administrative proceeding.

Furthermore, the case law supports the Petitioner's detention while the appeal on his bond redetermination is pending. For these reasons, and those set forth below, the Court should deny Petitioner's request for relief and dismiss this action in its entirety.

II. FACTUAL BACKGROUND AND PETITIONER'S IMMIGRATION HISTORY

Gonzalez is a native and citizen of Mexico. Ex. A, p. 1, 2. He entered the United States on an unknown date and claims to have lived in the United States since 2003. ECF No. 1 (*Pet.*), p. 10, Ex. A, p. 2. Petitioner did not enter at a port of entry and was not admitted, inspected, or paroled by an immigration officer. Ex. A, p. 2.

Petitioner's U.S. Citizen sister-in-law filed an I-130, Petition for Alien Relative, on March 7, 2025, with U.S. Citizenship and Immigration Services ("USCIS"). *See Pet.*, p. 10, Gonzalez's filed his related I-485, Application to Register Permanent Residence or Adjust Status, on March 7, 2025, with USCIS and is pending adjudication. *Pet.*10, p. Ex. A., p. 2. Petitioner was also granted a work authorization (through an I-765 petition) that is valid from April 30, 2025, through April 29, 2030. Ex. A, p. 2.

However, on July 27, 2025, Gonzales was charged with domestic violence pursuant to Idaho Code 18-918(2). *Pet.*, p. 11, Ex. A, pp. 5-7. Specifically, he was charged with a felony count of domestic-battery- traumatic injury for an incident involving his wife. Ex A, pp. 5-7.

Also, on June 18, 2020, a default judgment was entered against him by the State of Idaho for speeding, operating a vehicle without a license, and for being uninsured. Ex. A, p. 8.

Following Petitioner's arrest for domestic violence, he was taken to the Canyon Country Jail in Caldwell, Idaho on July 27, 2025. Ex. A, p. 2. On August 8, 2025, he was granted conditional release on his own cognizance, subject to his complying with a designated curfew, not consuming or possessing alcoholic beverages or drugs, and submitting to any evidentiary testing for alcohol or drugs. Ex. A, p. 4.

Stemming from his arrest for domestic violence, while at the Canyon County Jail, Petitioner was taken into custody by U.S. Immigration and Customs Enforcement ("ICE") on August 9, 2025. Ex A, p. 2. On August 9, 2025, while in ICES's custody, he called and left a message with his attorney and called and spoke with his wife. Ex. A, p. 3.

On August 11, 2025, ICE transferred Petitioner to the Nevada Southern Detention Center in Pahrump, Nevada, where he is currently being detained pending his removal proceedings.

Petitioner was issued a Notice to Appear on August 9, 2025, by the Department of Homeland Security ("DHS"), charging him under INA § 212(a)(6)(A)(i) (an alien present in the United States without being admitted or paroled, who arrived in the United States at any time or place other than as designated by the Attorney General) and under §212(a)(7)(A)(i)(I) (an immigrant, who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality as required under the regulations issued by the Attorney General under section 211(a) of the Act). Ex. B, pp. 1-4.

On September 3, 2025, Petitioner's bond redetermination hearing was held. Ex. C. Petitioner was granted a bond in the amount of $3,000.00, with alternatives to detention at the discretion of DHS. *Id.* DHS appealed the bond issuance on September 17, 2025, and filed a Form E-43 for an automatic stay on September 4, 2025.

III. STATUTORY BACKGROUND

a. Detention under 8 U.S.C. § 1225.

Section 1225 applies to "applicants for admission," who are defined as "alien[s] present in the United States who [have] not been admitted" or "who arrive[] in the United States." 8 U.S.C. § 1225(a)(1); *see Matter of Velasquez-Cruz*, 26 I&N Dec. 458, 463 n.5 (BIA 2014) ("[R]egardless of whether an alien who illegally enters the United States is caught at the border or inside the country, he or she will still be required to prove eligibility for admission."). Accordingly, by its very definition, the term "applicant for admission"

includes two categories of aliens: (1) arriving aliens, and (2) aliens present without admission. *See Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (explaining that "an alien who tries to enter the country illegally is treated as an 'applicant for admission'" (citing 8 U.S.C. § 1225(a)(1)); *Matter of Lemus*, 25 I&N Dec. 734, 743 (BIA 2012) ("Congress has defined the concept of an 'applicant for admission' in an unconventional sense, to include not just those who are expressly seeking permission to enter, but also those who are present in this country without having formally requested or received such permission . . . ."); *Matter of E-R-M- & L-R-M-*, 25 I&N Dec. 520, 523 (BIA 2011) (stating that "the broad category of applicants for admission . . . includes, *inter alia*, any alien present in the United States who has not been admitted" (citing 8 U.S.C. § 1225(a)(1))). An arriving alien is defined, in pertinent part, as "an applicant for admission coming or attempting to come into the United States at a port-of-entry [("POE")] . . . ." 8 C.F.R. §§ 1.2, 1001.1(q).

All aliens who are applicants for admission "shall be inspected by immigration officers." 8 U.S.C. § 1225(a)(3); *see also* 8 C.F.R. § 235.1(a) ("Application to lawfully enter the United States shall be made in person to an immigration officer at a U.S. [POE] when the port is open for inspection . . . ."). An applicant for admission seeking admission at a United States POE "must present whatever documents are required and must establish to the satisfaction of the inspecting officer that the alien is not subject to removal . . . and is entitled, under all of the applicable provisions of the immigration laws . . . to enter the United States." 8 C.F.R. § 235.1(f)(1); *see* 8 U.S.C. § 1229a(c)(2)(A) (describing the related burden of an applicant for admission in removal proceedings). "An alien present in the United States who has not been admitted or paroled or an alien who seeks entry at other than an open, designated [POE] . . . is subject to the provisions of [8 U.S.C. § 1182(a)] and to removal under [8 U.S.C. § 1225(b)] or [8 U.S.C. § 1229a]." 8 C.F.R. § 235.1(f)(2).

Both arriving aliens and aliens present without admission, as applicants for admission, may be removed from the United States by, *inter alia*, expedited removal

procedures under 8 U.S.C. § 1225(b)(1)[1] or removal proceedings before an IJ under 8 U.S.C. § 1229a. 8 U.S.C. §§ 1225(b)(1), (b)(2)(A), 1229a; *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) (describing how "applicants for admission fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)"). Section 1225(b)(1) applies to arriving aliens and "certain other" aliens "initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation." *Id.*; 8 U.S.C. § 1225(b)(1)(A)(i), (iii). These aliens are generally subject to expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(A)(i). But if the alien "indicates an intention to apply for asylum . . . or a fear of persecution," immigration officers will refer the alien for a credible fear interview. *Id.* § 1225(b)(1)(A)(ii). An alien "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 neither indicates an intention to apply for asylum, nor expresses a fear of persecution, or is "found not to have such a fear," he is detained until removed. *Id.* § 1225(b)(1)(A)(i), (B)(iii)(IV).

Section 1225(b)(2) is "broader" and "serves as a catchall provision." *Jennings*, 583 U.S. at 287. It "applies to all applicants for admission not covered by § 1225(b)(1)." *Id.* Under 8 U.S.C. § 1225(b)(2), an alien "who is an applicant for admission" shall be detained for a removal proceeding under 8 U.S.C. § 1229a "if the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). Applicants for admission whom DHS places in 8 U.S.C. § 1229a removal proceedings are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and ineligible for a custody redetermination hearing before an immigration judge.

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[1] Section 1225(b)(1) authorizes immigration officers to remove certain inadmissible aliens "from the United States without further hearing or review" if the immigration officer finds that the alien, "who is arriving in the United States or is described in [8 U.S.C. § 1225(b)(1)(A)(iii)] is inadmissible under [8 U.S.C. § 1182(a)(6)(C) or (a)(7)]." 8 U.S.C. § 1225(b)(1)(A)(i); *see* 8 C.F.R. § 235.3(b)(2)(i). If the Department of Homeland Security (DHS) wishes to pursue inadmissibility charges other than 8 U.S.C. § 1182(a)(6)(C) or (a)(7), DHS must place the alien in removal proceedings under 8 U.S.C. § 1229a. 8 C.F.R. § 235.3(b)(3). Additionally, an alien who was not inspected and admitted or paroled, but "who establishes that he or she has been continuously physically present in the United States for the 2–year period immediately prior to the date of determination of inadmissibility shall be detained in accordance with [8 U.S.C. § 1225(b)(2)] for a proceeding under [8 U.S.C. § 1229a]." *Id.* § 235.3(b)(1)(ii); *id.* § 1235.6(a)(1)(i) (providing that an immigration officer will issue and serve an NTA to an alien "[i]f, in accordance with the provisions of [8 U.S.C. § 1225(b)(2)(A)], the examining immigration officer detains an alien for a proceeding before an immigration judge under [8 U.S.C. § 1229a]").

As explained by the BIA in its recent decision, the statutory definition of an "applicant for admission" was added to the Immigration and Nationality Act (INA) at section 235(a)(1), 8 U.S.C. § 1225(a)(1) in 1996. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 222 (BIA 2025) (citing Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Pub., L. No. 104-208, Div. C, § 302(a), 110 Stat. 3009-546, 3009-579). The BIA examined the legislative history of IIRIRA, specifically regarding Congress's replacement of "entry" with a definition for "admission," and "admitted," and cited to the Congressional Record explaining that Congress, "intended to replace certain aspects of the 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. Hence, the pivotal factor in determining an alien's status will be whether or not the alien has been lawfully admitted." *Id.* at 223-24 (quoting H.R. Rep. No.104-469, pt. 1, at 225 (1996)).

The BIA referred to the House Judiciary Committee Report for what would become IIRIRA, which further explained, "Currently, aliens who have entered without inspection are deportable under section 241(a)(1)(B). Under the new 'admission' doctrine, such aliens will not be considered to have been admitted, and thus, must be subject to a ground of inadmissibility, rather than a ground of deportation, based on their presence without admission. (Deportation grounds will be reserved for aliens who have been admitted to the United States.)" *Matter of Yajure Hurtado*, 29 I. & N. at 224 (quoting H.R. Rep. No.104-469, pt. 1, at 226). "Thus, after the 1996 enactment of IIRIRA, aliens who enter the United States without inspection or admission are 'applicants for admission' under section 235(a)(1) of the INA, 8 U.S.C. § 1225(a)(1), and subject to the inspection, detention, and removal procedures of section 235(b) of the INA, 8 U.S.C. § 1225(b)." *Id.*

As the BIA further explained, "the legislative history confirms that, under a plain language reading of section 235(b)(1) and (2) of the INA, 8 U.S.C. § 1225(b)(1), (2), Immigration Judges do not have authority to hold a bond hearing for arriving aliens and applicants for admission." *Matter of Yajure Hurtado*, 29 I. & N. at 224. The statutory text of

the INA is "clear and explicit in requiring mandatory detention of all aliens who are applicants for admission, without regard to how many years the alien has been residing in the United States without lawful status." *Id.* at 226.

b. Detention under 8 U.S.C. § 1226(a).

Section 1226 is the applicable detention authority for those aliens who have been admitted and are deportable. Section 1226 provides for arrest and detention "pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). As the Supreme Court explained, 8 U.S.C. § 1226(a) "applies to aliens already present in the United States" and "creates a default rule for those aliens by permitting—but not requiring—the [Secretary] to issue warrants for their arrest and detention pending removal proceedings." *Jennings*, 583 U.S. at 289, 303; *Q. Li*, 29 I&N Dec. at 70; *see also M-S-*, 27 I&N Dec. at 516 (describing 8 U.S.C. § 1226(a) as a "permissive" detention authority separate from the "mandatory" detention authority under 8 U.S.C. § 1225).[2]

Under § 1226(a), the government may detain an alien during his removal proceedings, release him on bond, or release him on conditional parole.[3] Section 1226(a) does not, however, confer the *right* to release on bond. By regulation, immigration officers can release aliens if the alien demonstrates that he "would not pose a danger to property or persons" and "is likely to appear for any future proceeding." 8 C.F.R. § 236.1(c)(8).

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[2] Importantly, a warrant of arrest is not required in all cases. *See* 8 U.S.C. § 1357(a). For example, an immigration officer has the authority "to arrest any alien who in his presence or view is entering or attempting to enter the United States in violation of any law or regulation" or "to arrest any alien in the United States, if he has reason to believe that the alien so arrested is in the United States in violation of any such law or regulation and is likely to escape before a warrant can be obtained for his arrest . . . ." *Id.* § 1357(a)(2); 8 C.F.R. § 287.3(a), (b) (recognizing the availability of warrantless arrests); *see Q. Li*, 29 I&N Dec. at 70 n.5. Moreover, DHS may issue a warrant of arrest within 48 hours (or an "additional reasonable period of time" given any emergency or other extraordinary circumstances), 8 C.F.R. § 287.3(d); doing so does not constitute "post-hoc issuance of a warrant," *Q. Li*, 29 I&N Dec. at 69 n.4. While the presence of an arrest warrant is a threshold consideration in determining whether an alien is subject to 8 U.S.C. § 1226(a) detention authority under a plain reading of 8 U.S.C. § 1226(a), there is nothing in *Jennings* that stands for the assertion that aliens processed for arrest under 8 U.S.C. § 1225 cannot have been arrested pursuant to a warrant. *See Jennings*, 583 U.S. at 302.

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

An alien can also request a custody redetermination (i.e., a bond hearing) by an Immigration Judge (IJ) at any time before a final order of removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1), 1003.19.

At a custody redetermination hearing, the IJ may continue detention or release the alien on bond or conditional parole. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). IJs have broad discretion in deciding whether to release an alien on bond. *In re Guerra*, 24 I.&N. Dec. 37, 39–40 (BIA 2006) (listing nine factors for IJs to consider).

c. Review at the Board of Immigration Appeals (BIA)

The BIA is an appellate body within the Executive Office for Immigration Review (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); *see also Id.* §§ 236.1(d)(3) (discussing appeals of bond and custody determinations to the BIA), 1236.1(d)(3) (same). 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).

Recently, the BIA ruled and provided clear guidance on an issue the Board has not previously addressed in a precedential decision on whether IJs have authority to consider the bond request of an alien who entered the United States without admission and who has been present in the United States for at least 2 years. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025); *see also Matter of Q. Li*, 29 I&N Dec. at 68 (quoting *Jennings*, 583 U.S. at 299) (holding that for aliens "seeking admission into the United States who are placed directly in full removal proceedings, [8 U.S.C. § 1225(b)(2)(A)] . . . mandates detention

'until removal proceedings have concluded'"). That is the same issue presented by the Petitioner.

IV. ARGUMENT

a. The Court Lacks Jurisdiction to Entertain Petitioner's Action under 8 U.S.C. § 1252.

As a threshold matter, 8 U.S.C. §§ 1252(g) and (b)(9) preclude review of Petitioner's claims. *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."[4] 8 U.S.C. § 1252(g) (emphasis added). 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."[5] Except as provided in § 1252, courts "cannot entertain challenges to the enumerated executive branch decisions or actions." *E.F.L. v. Prim*, 986 F.3d 959, 964–65 (7th Cir. 2021).

Section 1252(g) also bars district courts from hearing challenges to the *method* by which the Secretary of Homeland Security 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's claim stems from his detention during removal proceedings. *See, e.g.*, *Pet.* That detention arises from the decision to commence such proceedings against him. *See, e.g.*,

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[4] Much of the Attorney General's authority has been transferred to the Secretary of Homeland Security and many references to the Attorney General are understood to refer to the Secretary. *See Clark v. Martinez*, 543 U.S. 371, 374 n.1 (2005)

[5] 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.

Valencia-Mejia v. United States, No. CV 08–2943 CAS (PJWx), 2008 WL 4286979, at *4 (C.D. Cal. Sept. 15, 2008) ("The decision to detain plaintiff until his hearing before the Immigration Judge arose from this decision to commence proceedings[.]"); *Wang v. United States*, No. CV 10-0389 SVW (RCx), 2010 WL 11463156, at *6 (C.D. Cal. Aug. 18, 2010); *Tazu v. Att'y Gen. U.S.*, 975 F.3d 292, 298–99 (3d Cir. 2020) (holding that 8 U.S.C. § 1252(g) and (b)(9) deprive district court of jurisdiction to review action to execute removal order).

As other courts have held, "[f]or the purposes of § 1252, the Attorney General commences proceedings against an alien when the alien is issued a Notice to Appear before an immigration court." *Herrera-Correra v. United States*, No. CV 08-2941 DSF (JCx), 2008 WL 11336833, at *3 (C.D. Cal. Sept. 11, 2008). "The Attorney General may arrest the alien against whom proceedings are commenced and detain that individual until the conclusion of those proceedings." *Id.* at *3. "Thus, an alien's detention throughout this process arises from the Attorney General's decision to commence proceedings" and review of claims arising from such detention is barred under § 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007)); *Wang*, 2010 WL 11463156, at *6; 8 U.S.C. § 1252(g).

Based on the foregoing, judicial review of the Petitioner's detention is barred by § 1252(g) such that the Court should dismiss the Petition for lack of jurisdiction.

Further, 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); *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999). 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 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 (2nd 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[.]").

In this case, Petitioner challenges the government's decision and action to detain him pursuant to 8 U.S.C. § 1225(b)(2)(A) which arises from DHS's decision to commence removal proceedings, and is thus an "action taken . . . to remove [him] from the United States." *See, e.g. Pet.*; *See also* 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.

The fact that Petitioner is challenging the basis upon which he 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). As such, the Court should dismiss the Petitioner's claims for lack of jurisdiction under § 1252(b)(9). If anything, Petitioner must present his claims before the appropriate federal court of appeals because he challenges the government's decision or action to detain him, which must be raised before a court of appeals, not this Court. *See* 8 U.S.C. § 1252(b)(9). This Court does not have jurisdiction over Petitioner's claims.

V. Applicants for Admission in 8 U.S.C. § 1229a Removal Proceedings Are Detained Pursuant to 8 U.S.C. § 1225(b)(2)(A)

As discussed above, Petitioner is an applicant for admission such that he falls under 8 U.S.C. § 1225(b)(2)(A).

Legal developments have made clear that 8 U.S.C. § 1225 is the sole applicable immigration detention authority for *all* applicants for admission. In *Jennings*, the Supreme Court explained that 8 U.S.C. § 1225(b) applies to all applicants for admission, noting that the language of 8 U.S.C. § 1225(b)(2) is "quite clear" and "unequivocally mandate[s]" detention. 583 U.S. at 300, 303 (explaining that "the word 'shall' usually connotes a requirement" (quoting *Kingdomware Technologies, Inc. v. United States*, 579 U.S. 162, 171 (2016))). Similarly, the Attorney General, in *Matter of M-S-*, unequivocally recognized that 8 U.S.C. §§ 1225 and 1226(a) do not overlap but describe "different classes of aliens." 27 I&N Dec. at 516.

Given 8 U.S.C. § 1225 is the applicable detention authority for all applicants for admission—both arriving aliens and aliens present without admission alike, regardless of whether the alien was initially processed for expedited removal proceedings under 8 U.S.C. § 1225(b)(1) or placed directly into removal proceedings under 8 U.S.C. § 1229a — and "[b]oth [8 U.S.C. § 1225(b)(1) and (b)(2)] mandate detention … throughout the completion of applicable proceedings," *Jennings*, 583 U.S. at 301–03, IJs do not have authority to redetermine the custody status of an alien present without admission.

Accordingly, for the reasons discussed above, Petitioner, as an alien present without admission in 8 U.S.C. § 1229a removal proceedings, is an applicant for admission and an alien seeking admission and is therefore subject to detention under 8 U.S.C. § 1225(b)(2)(A) and ineligible for a bond redetermination hearing before an IJ; he should not be able to circumvent these jurisdictional restrictions by raising essentially the same claim in a district court.

VI. Applicants for Admission May Only Be Released from Detention on an 8 U.S.C. § 1182(d)(5) Parole

Importantly, applicants for admission may only be released from detention if DHS invokes its discretionary parole authority under 8 U.S.C. § 1182(d)(5). DHS has the exclusive authority to temporarily release on parole "any alien applying for admission to the United States" on a "case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5); *see* 8 C.F.R. § 212.5(b). In *Jennings*, the Supreme Court placed significance on the fact that 8 U.S.C. § 1182(d)(5) is the specific provision that authorizes release from detention under 8 U.S.C. § 1225(b), at DHS's discretion. *Jennings*, 583 U.S. at 300. Specifically, the Supreme Court emphasized that "[r]egardless of which of those two sections authorizes . . . detention, [8 U.S.C. § 1225(b)(1) or (b)(2)(A)], applicants for admission may be temporarily released on parole . . . ." *Id.* at 288.

Parole, like an admission, is a factual occurrence. *See Hing Sum*, 602 F.3d at 1098; *Matter of Roque-Izada*, 29 I&N Dec. 106 (BIA 2025) (treating whether an alien was paroled as a question of fact). The parole authority under 8 U.S.C. § 1182(d)(5) is "delegated solely to the Secretary of Homeland Security." *Matter of Castillo-Padilla*, 25 I&N Dec. 257, 261 (BIA 2010); *see* 8 C.F.R. § 212.5(a). Thus, DHS has the sole authority to parole an alien into the United States under 8 U.S.C. § 1182(d)(5). *Castillo-Padilla*, 25 I&N Dec. at 261; *see also Matter of Arrabally and Yerrabelly*, 25 I&N Dec. 771, 777 n.5 (BIA 2002) (indicating that "parole authority [under 8 U.S.C. § 1182(d)(5)] is now exercised exclusively by the DHS" and "reference to the Attorney General in [8 U.S.C. § 1182(d)(5)] is thus deemed to refer to the Secretary of Homeland Security"); *Matter of Singh*, 21 I&N Dec. 427, 434 (BIA 1996) (providing that "neither the [IJ] nor th[e] Board has jurisdiction to exercise parole power").

Further, because DHS has exclusive jurisdiction to parole an alien into the United States, the manner in which DHS exercises its parole authority may not be reviewed by an IJ or the Board. *Castillo-Padilla*, 25 I&N Dec. at 261; *see Matter of Castellon*, 17 I&N Dec. 616, 620 (BIA 1981) (noting that the Board does not have authority to review the way DHS exercises its parole authority).

Importantly, parole does not constitute a lawful admission or a determination of admissibility, 8 U.S.C. §§ 1101(a)(13)(B), 1182(d)(5)(A), and an alien granted parole remains

an applicant for admission, *id.* § 1182(d)(5)(A); *see* 8 C.F.R. §§ 1.2 (providing that "[a]n arriving alien remains an arriving alien even if paroled pursuant to [8 U.S.C. § 1182(d)(5)], and even after any such parole is terminated or revoked"), 1001.1(q) (same). Parole does not place the alien "within the United States." *Leng May Ma*, 357 U.S. at 190. An alien who has been paroled into the United States under 8 U.S.C. § 1182(d)(5) "is not . . . 'in' this country for purposes of immigration law . . . ." *Abebe*, 16 I&N Dec. at 173 (citing, *inter alia*, *Leng May Ma*, 357 U.S. at 185; *Kaplan*, 267 U.S. at 228). Following parole, the alien "shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States," 8 U.S.C. § 1182(d)(5)(A), including that they remain subject to detention pursuant to 8 U.S.C. § 1225(b)(2).

Petitioner's prior conditional release on his domestic violence charge has no bearing on that he has always been an applicant for admission and therefore is properly detained under 8 U.S.C. § 1225, nor had DHS exercised its discretion to grant Petitioner parole.

VII. Petitioner's temporary detention is not unconstitutional

Petitioner's temporary detention pursuant to the automatic stay of 8 C.F.R. § 1003.19(i)(2) is reinforced by Congress' mandate to detain him throughout his removal proceedings pursuant to 8 U.S.C. § 1225(b)(2) and does not exceed the statutory power Congress delegated. Pursuant to 8 U.S.C. § 1225(b)(2)(A), "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a." The Supreme Court has held that 8 U.S.C. § 1225(b)(2)(A) is a mandatory detention statute and that aliens detained pursuant to that provision are not entitled to bond. *Jennings*, 583 U.S. at 287.

In this case, Petitioner falls squarely within the ambit of Section 1225(b)(2)(A)'s mandatory detention requirement as he is an "applicant for admission" to the United States. As described above, an "applicant for admission" is an alien present in the United States who has not been admitted. The Supreme Court has confirmed an alien present in the country but never admitted is deemed "an applicant for admission" and that "detention must

continue" "until removal proceedings have concluded" based on the "plain meaning" of 8 U.S.C. § 1225. *Jennings*, 583 U.S. at 289 & 299.

Applying this reasoning, the United States District Court for the District of Massachusetts recently confirmed in a habeas action that an unlawfully present alien, who had been unlawfully present in the country for approximately 20 years, was nonetheless an "applicant for admission" upon the straightforward application of the statute. See *Webert Alvarenga Pena, Petitioner, v. Patricia Hyde, et al.,* No. CV 25-11983-NMG, 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.* DHS's invocation of the stay of release pending appeal in 8 C.F.R. § 1003.19(i)(2) not only is not contrary to law, but also ensures that DHS has an opportunity to vindicate Congress' mandatory detention scheme.

In this case, because Petitioner is being detained during his removal proceedings pursuant to 8 U.S.C. § 1225(b)(2) and his proceedings are uncontrovertibly ongoing through BIA, his temporary detention pursuant to 8 C.F.R. § 1003.19(i)(2) is lawful. The automatic stay will cease upon a decision of the BIA or 90 days, whichever is shorter. *See* 8 C.F.R. § 1003.6(c)(4).

Respondents' position is further supported by the recent ruling from the BIA that IJs lack authority to hear bond requests or to grant bond to aliens, like the Petitioner, who are present in the United States without admission. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

VIII. 8 C.F.R. § 1003.19(i)(2) Does not violate Petitioner's Procedural and Substantive Due Process Rights

a. Petitioner's procedural due process rights are not violated.

The temporary detention does not violate due process because Petitioner cannot show his temporary detention violates the law. "Detention during removal proceedings is a constitutionally permissible part of that process." *Demore v. Kim*, 538 U.S. 510, 531 (2003). The automatic stay does not violate due process because it permits the Government an

opportunity to appeal an IJ bond decision before the detainee is released. The Supreme Court has expressed a "longstanding view that the Government may constitutionally detain deportable aliens during the limited period necessary for their removal proceedings." *Demore*, 538 U.S. at 526. "As we said more than a century ago, deportation proceedings 'would be vain if those accused could not be held in custody pending the inquiry into their true character.'" *Id.* at 523 (citing *Wong Wing v. United States*, 163 U.S. 228, 235, 16 S. Ct. 977, 41 L. Ed. 140 (1896)).

Here, a stay of some length is afforded precisely because it allows the Government an opportunity to appeal before a detainee might flee. *El-Dessouki*, 2006 U.S. Dist. LEXIS 68745, 2006 WL 2727191, at *3 ("a finite period of detention to allow the BIA an opportunity to review the immigration judge's bond redetermination is a narrowly tailored procedure that serves the government's interest in preventing flight of aliens likely to be ordered removable and in protecting the community"). *Altayar v. Lynch*, 2016 U.S. Dist. LEXIS 175819, at 10-11.

Although Petitioner is detained pending appeal to the BIA, the question is whether permitting an automatic stay violates Petitioner's due process rights. Petitioner and others have a right to appeal an adverse custody decision to the BIA. *See* 8 CFR §§ 1003.19(a), 1236.1(d). Similarly, the Government may appeal an adverse bond decision. An automatic stay of limited duration allows the Government to pursue its appeal before the subject might post bond and flee. *See Demore*, 538 U.S. at 528 ("detention necessarily serves the purpose of preventing deportable criminal aliens from fleeing prior to or during their removal proceedings"). *Id. at* 11-12.

In this case, Petitioner who is present in the United States without admission or parole, is an applicant for admission in INA § 240 removal proceedings and is therefore detained pursuant to INA § 235(b)(2)(A). As discussed above, his detention is mandatory and the IJ does not have jurisdiction to issue a bond. The only mechanism for Petitioner's release is statutory, 8 U.S.C. § 1182(d)(5). Because the IJ conducted a bond hearing and ordered a bond in error, this matter is proceeding through the BIA appellate process

whereby DHS is seeking a review of the IJ's decision. 8 C.F.R. § 1003.19(i)(2) does not violate the due process of Petitioner because he does not have a right to a bond hearing and DHS is entitled to appeal the IJ's decision to the BIA, where this case is currently pending.

Additionally, the limited nature of 90 days for the BIA to render a decision, the due process of Petitioner has not been violated. The United States District Court for the District of Massachusetts (case mentioned above) dismissed a habeas action, finding that it was not a violation of due process to detain an undocumented alien during the course of his removal proceedings. See *Webert Alvarenga Pena, Petitioner, v. Patricia Hyde, et al.*, Case No. CV 25-11983-NMG, 2025 WL 2108913, at *1 (D. Mass. July 28, 2025).

As explained in *Altayar*, the automatic stay also does not turn the IJ decision into a meaningless formality because it affords the BIA time to consider an appeal. The purpose of the automatic stay is to "avoid the necessity of having to decide whether to order a stay on extremely short notice with only the most summary presentation of the issues." Review of Custody Determinations, 71 FR 57873-01, 2006 WL 2811410. *Altayar* at 12-13. An automatic stay of up to 90 days does not violate due process because it is narrowly tailored to serve a compelling Government interest. *Id.* In *Altayar*, the Court found there is no procedural due process violation from § 1003.19(i)(2). An alien's right to procedural due process is violated "only if [1] the proceeding was 'so fundamentally unfair that the alien was prevented from reasonably presenting his case,'" and [2] the alien proves that "the alleged violation prejudiced his or her interests." *Id.* at 13, *Mendez—Garcia v. Lynch*, 840 F.3d 655 (9th Cir. 2016) (citations omitted).

In this case, Petitioner's temporary detention pending his removal proceedings does not violate his procedural due process rights. Petitioner was permitted to present his case to the IJ satisfying the first prong. DHS followed the law and invoked § 1003.19(i)(2) to appeal the decision by the IJ which satisfies the second prong.

b. Petitioner's substantive due process rights are not violated.

As explained in *Altayar*, the court found there was no substantive due process violation. Laws that infringe a "fundamental" right protected by the Due Process Clause are

constitutional only if "the infringement is narrowly tailored to serve a compelling state interest." *Reno*, 507 U.S. at 302 (1993). Substantive due process protections apply to resident aliens. *See, e.g., Mathews v. Diaz*, 426 U.S. 67, 77, 96 S. Ct. 1883, 48 L. Ed. 2d 478 (1976). *Id.* at 14. An automatic stay of up to 90 days does not violate due process because it remains in effect until the BIA has an opportunity to review the appeal. In the context of post-removal detention, the Court in *Zadvydas* wrote that "we think it practically necessary to recognize some presumptively reasonable period of detention...." *Zadvydas*, 533 U.S. at 701. The Court determined that "an argument can be made for confining any presumption to 90 days" but set a limit of 180 days before a detainee in removal proceedings would be entitled to a bond hearing. *Id.* In the absence of other authority (and Petitioner presents none), Petitioner has not established that an automatic stay of up to 90 days in this appeal provision violates due process. *Id. at* 14-15.

The purpose of the automatic stay provision is to provide a means for DHS to maintain the status quo in those cases where it chooses to seek an expedited review of the IJ's custody order by BIA. 71 Fed. Reg. 57873. To the extent the challenged regulation represents the judgment of the Attorney General as to how best to implement the authority granted him by 8 U.S.C. § 1226, judicial review may be barred by § 1226(e).

But even if it is not, providing for an automatic stay until the BIA can review the IJ's order for release is not unreasonable. *Hussain v. Gonzales*, 492 F. Supp. 2d 1024, 1031-1032. In *Hussain* the court explained, "It also appears that the lower court decisions finding the automatic stay provision invalid were based on a misunderstanding of the relationship between DHS, the IJs, and the BIA, and their respective roles in exercising the authority of the Attorney General to make custody determinations in cases involving the removal of aliens." *Id.* at 1032. As the Attorney General explained in connection with the implementation of the current regulation,

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> In most cases, an immigration judge's order granting an alien release will result in the alien's release upon the posting of bond or on recognizance, in compliance with the immigration judge's decision. The Attorney General has determined, however, that certain bond cases require additional safeguards before an alien is released during the pendency of removal proceedings against him or her. In these cases, the immigration judge's order is only an interim one, pending review and the exercise of discretion by another of the Attorney General's delegates, the Board. Barring review by the Attorney General, it is the Board's decision that the Attorney General has designated as the final agency action with respect to whether the alien merits bond. Thus, the Attorney General made an operational decision under section 236(a) of the INA with respect to how his discretion should be exercised in a limited class of cases where DHS, which now has independent statutory authority in this area, had sought to detain the alien without bond or with a bond of $ 10,000 or more and disagrees with the immigration judge's interim custody decision. citing to 71 Fed. Reg. 57873, 80. *Id. at* 1032.

In essence, the challenged regulation reveals the division of authority the Attorney General has established within the executive branch to exercise his overall authority to determine the custodial status of aliens facing removal proceedings. It is difficult to see how DHS's exercise of its responsibilities within that system operates as a denial of due process. *Id. at* 1032. This is particularly important in a case such as this one, where DHS's independent statutory authority to detain, and to release only in its sole discretion pursuant to 8 U.S.C. § 1182(d)(5), is the provision at issue and DHS is seeking to correct the IJ's legal error in reviewing the Petitioner's detention under the incorrect statutory provision.

In this case, DHS exercised its responsibility by lawfully invoking § 1003.19(i)(2) to appeal the decision by the IJ. It is the BIA's decision that the Attorney General has designated as the final agency action with respect to whether the Petitioner merits bond.

Petitioner's ample available process in his current removal proceedings demonstrate no lack of procedural due process. Congress simply made the decision to detain Petitioner pending removal which is a "constitutionally permissible part of that process." *See Demore v. Kim*, 538 U.S. 510, 531 (2003). Therefore, Petitioner's Petition should be denied.

IX. The Court should deny the Petition because Petitioner has failed to exhaust his administrative remedies before the BIA

DHS is appealing the IJ's custody redetermination decision regarding this Petitioner before the BIA. The Petitioner can respond to DHS' appeal on the IJ's bond decision. Instead of allowing the administrative process to be completed, Petitioner argues he should be released from detention in the meantime.

Bypassing review at the BIA is improper. The Ninth Circuit identified three reasons to require exhaustion before entertaining a habeas petition. *See Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007). First, the agency's "expertise" makes its "consideration necessary to generate a proper record and reach a proper decision." *Id.* (quoting *Noriega–Lopez v. Ashcroft*, 335 F.3d 874, 881 (9th Cir. 2003)). Second, excusing exhaustion encourages "the deliberate bypass of the administrative scheme." *Id.* (quoting *Noriega–Lopez*, 335 F.3d at 881). And third, "administrative review is likely to allow the agency to correct its own mistakes and to preclude the need for judicial review." *Id.* (quoting *Noriega–Lopez*, 335 F.3d at 881). Each reason applies here. *See Puga*, 488 F.3d at 815. The Court should dismiss the Petition.

a. The Government has a compelling interest in allowing the BIA to speak on the issue.

Where the moving party only raises "serious questions going to the merits," the balance of hardships must "tip sharply" in his favor. *All. for Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134–35 (9th Cir. 2011) (quoting *The Lands Council v. McNair*, 537 F.3d 981, 987 (9th Cir. 2008)). Petitioner fails to do so here. *See id.* The government has a compelling interest in the steady enforcement of its immigration laws. *See Miranda v. Garland*, 34 F.4th 338, 365–66 (4th Cir. 2022) (vacating an injunction that required a "broad change" in immigration bond procedure); *Ubiquity Press Inc. v. Baran*, No 8:20-cv-01809-JLS-DFM, 2020 WL 8172983, at *4 (C.D. Cal. Dec. 20, 2020) ("the public interest in the United States' enforcement of its immigration laws is high"); *United States v. Arango*, CV 09-178 TUC DCB, 2015 WL 11120855, at 2 (D. Ariz. Jan. 7, 2015) ("the Government's interest in enforcing immigration laws is enormous."). Judicial intervention would only disrupt the status quo. *See, e.g.*, *Slaughter v. White*, No. C16-1067-RSM-JPD, 2017 WL 7360411, at * 2 (W.D.

Wash. Nov. 2, 2017).

The BIA also has an "institutional interest" to protect its "administrative agency authority." *See McCarthy v. Madigan*, 503 U.S. 140, 145, 146 (1992) *superseded by statute as recognized in Porter v. Nussle*, 534 U.S. 516 (2002). "Exhaustion is generally required as a matter of preventing premature interference with agency processes, so that the agency may function efficiently and so that it may have an opportunity to correct its own errors, to afford the parties and the courts the benefit of its experience and expertise, and to compile a record which is adequate for judicial review." *Global Rescue Jets, LLC v. Kaiser Foundation Health Plan, Inc.*, 30 F.4th 905, 913 (9th Cir. 2022) (quoting *Weinberger v. Salfi*, 422 U.S. 749, 765 (1975)). Indeed, "agencies, not the courts, ought to have primary responsibility for the programs that Congress has charged them to administer." *McCarthy*, 503 U.S. at 145. The Court should allow the BIA the opportunity to weigh in on the issues he raises on appeal—which are the same issues raised in this action. *See Id.* The Court should deny the Petition.

The BIA is well-positioned to assess how agency practice affects the interplay between 8 U.S.C. §§ 1225 and 1226. *See Delgado v. Sessions*, No. C17-1031-RSL-JPD, 2017 WL 4776340, at *2 (W.D. Wash. Sept. 15, 2017) (noting a denial of bond to an immigration detainee was "a question well suited for agency expertise"); *Matter of M-S-*, 27 I&N Dec. 509, 515-18 (2019) (addressing interplay of §§ 1225(b)(1) and 1226). This is especially pertinent and relevant in light of the recent BIA decision in *In Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025) on the same issues Petitioner raised in his Petition.

Green-lighting Petitioners' skip-the-BIA-and-go-straight-to-federal-court strategy also needlessly increases the burden on district courts. *See Bd. of Tr. of Constr. Laborers' Pension Trust for S. Calif. v. M.M. Sundt Constr. Co.*, 37 F.3d 1419, 1420 (9th Cir. 1994) ("Judicial economy is an important purpose of exhaustion requirements."); *see also Santos-Zacaria v. Garland*, 598 U.S. 411, 418 (2023) (noting "exhaustion promotes efficiency"). This Court should allow the administrative process to correct itself. *See id.*

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X. CONCLUSION

For these reasons, Federal Respondents respectfully request that the Petition be denied as a matter of law and due to the Court's lack of jurisdiction.

Respectfully submitted this 30th day of September 2025.

SIGAL CHATTAH
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