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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Miguel Angel Hernan Dez-Luna,

Petitioner,

v.

Kristi Noem, Secretary of Homeland Security, U.S. Department of Homeland Security, Pamela J. Bondi, Attorney General, Todd Lyons, Acting Direct and Senior Official, Jason Knight, as Acting Field Office Director, Salt Lake City Field Office, U.S. Immigration and Customs Enforcement, and John Mattos, Warden of the Nevada Southern Detention Facility, in their official capacities,

Respondents.

Case No. 2:25-cv-01818-GMN-EJY

Federal Respondents' Response to the Petition for Writ of Habeas Corpus (ECF No. 1)

Federal Respondents Kristi Noem, the United States Department of Homeland Security, Pamela Bondi, Todd Lyons, Jason Knight, the United States Immigration and Customs Enforcement, and John Mattos, though undersigned counsel, file their collective response to Petitioner Miguel Angel Hernan Dez-Luna's Verified Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 (ECF No. 1). The Petition should be denied.

First, the Court lacks subject matter jurisdiction to consider Petitioner's claims. Second, Petitioner fails to show, and indeed cannot establish, that his detention is unlawful. And finally, Petitioner admittedly failed to exhaust his administrative remedies prior to filing his petition. Accordingly, for any of these independent reasons, the Court should deny the Petition.

I. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner, a 28-year-old Mexican National, arrived illegally in the United States without being admitted or paroled, in 2005. *See* ECF No. 1 at ¶¶ 1-2, 13. After his arrest for his second DUI, DHS initiated removal proceedings against him. *See* ECF No. 1 at ¶¶ 2, 42-43. DHS charged Petitioner with, among other charges, entering the United States without inspection in violation of Title 8 U.S.C. § 1182(a)(6)(A)(i) (ECF No. 1 at ¶ 2).

On June 30, 2025, an immigration judge ("IJ") ordered Petitioner's removal from the United States (ECF No. 1 at ¶ 2). Petitioner appealed the IJ's removal order to the Board of Immigration Appeals ("BIA") (ECF No. 1 at ¶ 2). That appeal remains pending.[1]

Once DHS initiated removal proceedings, Petitioner sought and was provided a bond redetermination hearing before an IJ (ECF No. 1 at ¶ 2). At the bond redetermination hearing, the IJ denied bond after concluding that Petitioner presented a danger to the community (ECF No. 1-1). Although Petitioner reserved his right to appeal, he failed to either request a rehearing before the IJ or appeal the IJ's bond decision to the BIA. *See* ECF No. 1 at ¶ 2. Indeed, in his Petition, Petitioner claims that he "planned to file a motion to reconsider with the Immigration Court" but doing so "would be moot due to the BIA's" interpretation of Petitioner's immigration status. *See* ECF No. 1 at ¶ 2.

Now, having been ordered removed and been deemed a danger by the IJ and having failed to administratively appeal his bond decision, Petitioner instead makes this last-ditch effort to escape immigration detention by asking this Court to "[i]ssue a writ of habeas corpus requiring" Petitioner's release and to order "a new hearing to reconsider [Petitioner's] eligibility for bond." ECF No. 1 at 14 ¶ b.

II. STATUTORY BACKGROUND

a. Detention under 8 U.S.C. § 1225.

Section 1225 applies to "applicants for admission," who are defined as "alien[s]

[1] It is the United States' understanding that Petitioner has since moved to withdraw his appeal of the IJ's removal order. Such motion, if granted, would render Petitioner's removal order final. Petitioner would then be legally detained under 8 U.S.C. § 1231(a)(2)(A).

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)[2] 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.*

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[2] 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 DHS wishes to pursue inadmissibility charges other than under 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]").

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 IJ.

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, "[c]urrently, 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.)" *Id.* 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." *Id*. 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; *Matter of Q. Li*, 29 I. & N. Dec. 66, 70 (BIA 2025); *see also Matter of M-S-*, 27 I. & N. Dec. 509, 516 (A.G. 2019) (describing 8 U.S.C. § 1226(a) as a "permissive" detention authority separate from the "mandatory" detention authority under 8 U.S.C. § 1225).[3] Under § 1226(a), the government may detain an alien

[3] 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 Matter of 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," *Matter of 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

during his removal proceedings, release him on bond, or release him on conditional parole.[4] 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). An alien falling within this category of detention, can also request a custody redetermination (i.e., a bond hearing) by 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 by the 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

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arrest under 8 U.S.C. § 1225 cannot have been arrested pursuant to a warrant. *See Jennings*, 583 U.S. at 302.

[4] 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)).

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 not previously addressed in a precedential decision — 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'").

III. ARGUMENT

A. The Court Lacks Subject Matter Jurisdiction under 8 U.S.C. § 1252

As a threshold matter, Title 8 U.S.C. §§ 1252(g) and (b)(9) preclude review of Petitioner's claims. First, Section 1252(g) specifically deprives federal district 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."[5] 8 U.S.C. § 1252(g). 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."[6] Except as

[5] 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).

[6] 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.

provided in § 1252, federal 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. U.S. Immigr. & Customs Enf't*, 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 claims here stem from his detention during his removal proceedings. *See generally* ECF No.1. Indeed, Petitioner's detention arises from DHS's decision to commence these specific removal proceedings against him. *See, e.g.*, *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. United States*, 975 F.3d 292, 298–99 (3d Cir. 2020) (holding that 8 U.S.C. § 1252(g) and (b)(9) deprive district courts of jurisdiction to review action to execute removal orders).

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.* "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). As such, the statute

bars this Court's review of Petitioner's detention under § 1252(g). Accordingly, the Court should deny and dismiss the Petition for lack of jurisdiction.

In addition, 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. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999). Thus, 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. U.S. Immigr. & Customs Enf't Div. of Dep't of Homeland Sec.*, 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[.]").

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* ECF No. 1. *See also* 8 U.S.C. § 1252(b)(9); *see also, e.g.*, *Jennings*, 583 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 reasoning in *Jennings* outlines why Petitioner's claims are unreviewable here.

Indeed, 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. at 319 (Thomas, J., concurring); 8 U.S.C. § 1252(b)(9). 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). Accordingly, the Court lacks jurisdiction over Petitioner's claims and the Petition should be dismissed.

B. Petitioner's Detention is Proper

Petitioner is properly detained. "ICE placed Petitioner in removal proceedings . . . pursuant to 8 U.S.C. § 1229a." ECF No. 1 at ¶ 44. Petitioner is an "alien present in the United States without being admitted or paroled, or who arrive[d] in the United States at any time or place other than as described by the Attorney General" and "is inadmissible." 8 U.S.C. § 1129(a)(6)(A)(i); *see* ECF No. 1. Petitioner's immigration status thus falls under 8 U.S.C. § 1225(b)(2)(A) as he is "an alien who is an applicant for admission" and thus "shall be detained for a proceeding under section 1229a . . . ." Accordingly, 8 U.S.C. § 1225(b)(2)(A) governs and mandates his detention. *See Matter of Q. Li*, 29 I. & N. Dec. at 68.

Legal developments make clear that 8 U.S.C. § 1225 is the sole applicable immigration detention authority for *all* applicants for admission — such as Petitioner. 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. The Attorney General also held — in an analogous context — that aliens present without admission and placed into expedited

removal proceedings are detained under 8 U.S.C. § 1225 even if later placed in 8 U.S.C. § 1229a removal proceedings. 27 I. & N. Dec. at 518-19.

This ongoing evolution of the law clarifies that all applicants for admission — including Petitioner — are subject to detention under 8 U.S.C. § 1225(b). *Cf. Niz-Chavez v. Garland*, 593 U.S. 155, 171 (2021) (providing that "no amount of policy-talk can overcome a plain statutory command"); *see generally Florida v. United States*, 660 F. Supp. 3d 1239, 1275 (N.D. Fla. 2023) (explaining that "the 1996 expansion of § 1225(b) to include illegal border crossers would make little sense if DHS retained discretion to apply § 1226(a) and release illegal border crossers whenever the agency saw fit").[7] *Florida's* conclusion "that § 1225(b)'s 'shall be detained' means what it says and . . . is a mandatory requirement . . . flows directly from *Jennings*." *Florida*, 660 F. Supp. 3d at 1273.

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, 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

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[7] Though not binding, *Camreta v. Greene*, 563 U.S. 692, 709 n.7 (2011) (quoting 18 J. Moore et al., Moore's Federal Practice § 134.02[1] [d], p. 134–26 (3d ed. 2011)) (providing that "[a] decision of a federal district court judge is not binding precedent in either a different judicial district, the same judicial district, or even upon the same judge in a different case"); *Evans v. Skolnik*, 997 F.3d 1060, 1067 (9th Cir. 2021) (same), the U.S. District Court for the Northern District of Florida's decision is instructive. There, the court held that 8 U.S.C. § 1225(b) mandates detention of applicants for admission throughout removal proceedings, rejecting the assertion that DHS has discretion to choose to detain an applicant for admission under either 8 U.S.C. §§ 1225(b) or 1226(a). 660 F. Supp. 3d at 1275. The court further held that such discretion "would render mandatory detention under 8 U.S.C. § 1225(b) meaningless." *Id.*

detention under 8 U.S.C. § 1225(b)(2)(A) and was, in fact, ineligible for a bond redetermination hearing before an IJ.

However, Petitioner received one nonetheless. Petitioner just did not like the outcome of that hearing. He now seeks to forum shop in hopes of receiving the outcome he seeks. The Court should not permit him to do so. Accordingly, the Court should deny the Petition.

C. Petitioner Failed to Exhaust his Administrative Remedies

Petitioner admits that he intentionally failed to exhaust his administrative remedies. *See* ECF No. 1 at ¶ 2. The Court should thus deny the Petition on that basis.

Petitioner received "a custody determination to continue Petitioner's detention" once taken into ICE custody. *See* ECF No. 1 at ¶ 46. Then, on August 15, 2025 — less than two months ago — "Petitioner filed a motion requesting bond redetermination by an IJ pursuant to 8 C.F.R. § 1003.19." ECF No. 1 at ¶ 47. As discussed above, though not entitled to such a hearing, Petitioner received that requested bond hearing on August 28, 2025. *See* ECF No. 1 at ¶ 47. There, although he was not entitled to a bond hearing because his detention is statutorily mandated, an IJ nevertheless proceeded to the merits of the bond redetermination and concluded that Petitioner presented a danger to the community. *See* ECF No. 1-1.

Despite Petitioner's issues with the IJ's dangerousness assessment as provided in the Petition, *see* ECF No. 1 at ¶ 2, Petitioner failed to pursue the proper administrative procedures to do anything about it. *See* ECF No. 1 at ¶ 2 (admitting that he "planned to file a motion to reconsider" but then deciding unilaterally not to do so). The Court should prevent Petitioner from circumventing the administrative process and engaging in this type of forum shopping.

The Ninth Circuit has 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 of those articulated reasons apply here. *See Puga*, 488 F.3d at 815. Accordingly, the Court should dismiss the Petition.

For the first factor, a rehearing or appeal to the BIA would have allowed for the agency's expertise to come into play and allowed for a proper record to be provided to this Court before reaching a proper decision as to Petitioner's claims. However, Petitioner instead unilaterally prevented the BIA from determining the issue. Such gamesmanship certainly weighs in favor of requiring exhaustion prior to this Court making any decision as to the claims presented.

The second factor clearly applies. Should the Court excuse Petitioner's decision to deliberately not exhaust his claims, it would encourage others to do likewise. The second factor weighs in favor of requiring exhaustion and thus in favor of denying the Petition.

Finally, Petitioner claims that IJ and BIA decisions are inaccurate. However, he intentionally failed to exhaust his claims before them, unilaterally determining that doing so would be moot. Unfortunately for Petitioner, the record in this case fails to reflect such a decision because he prevented the BIA from reviewing the detention decision. The third factor thus clearly weighs in favor of exhaustion because in the event that Petitioner's arguments about either his immigration status and the applicable law governing his detention or his arguments as to his dangerousness were wrongfully determined by the IJ, the BIA could and should have been provided an opportunity to correct such mistakes. 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." *Glob. Rescue Jets, LLC v. Kaiser Found. 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 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. at 515–18 (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"). Because Petitioner has sought to circumvent the proper administrative process in hopes of obtaining a favorable decision before this Court, the Petition should be denied.[8]

[8] Although less than clear, Petitioner also seemingly argues that his detention violates due process. *See* ECF No. 1, COUNT II. To the extent Petitioner argues that his detention violates due process by preventing him the opportunity to marry his fiancée to seek immigration relief, such argument fails. The IJ's removal order prevents Petitioner from attempting to change his immigration status. Thus, whether detained or not, and even if he did marry his fiancée, his current immigration status would remain the same. Thus, no due process violation has occurred.

IV. CONCLUSION

For these reasons, Federal Respondents respectfully request that the Petition be denied.

Respectfully submitted this 14th day of October 2025.

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Certificate of Service

I hereby certify that on October 14, 2025, I electronically filed and served the foregoing **Federal Respondents' Response to the Petition for Writ of Habeas Corpus (ECF No. 1)** with the Clerk of the Court for the United States District Court for the District of Nevada using the CM/ECF system as follows:

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