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INTRODUCTION

Petitioner now replies to Respondent's Opposition to his Motion for a Temporary Restraining Order and Preliminary Injunction. None of the jurisdictional bars raised by Respondents in their Opposition apply to these claims. Because pursuing an appeal of the denial of a bond hearing to the Board of Immigration Appeals ("BIA) would be futile, the Court should excuse the general exhaustion requirement here. Recent amendments to 8 U.S.C. § 1226 through the Laken Riley Act further elucidate that Petitioner is detained under Section 1226(a).

ARGUMENT

I. Petitioner's claims are not subject to the jurisdictional bars found at 8 U.S.C. § 1252(a)(2)(B)(ii), (b)(9), and (g).

Respondents contend that 8 U.S.C. § 1252(a)(2)(B)(ii), (b)(9), and (g) deprive the Court of jurisdiction to review Petitioner's claims that his detention is unlawful. The "touchstones" of the Third Circuit's jurisdictional analysis are "two presumptions": "the usual strong presumption in favor of judicial review of administrative action" and that the "narrower construction of a jurisdiction-stripping provision is favored." *E.O.H.C. v. Sec'y U.S. DHS.*, 950 F.3d 177, 184 (3d Cir. 2020) (citing *INS v. St. Cyr*, 533 U.S. 289, 298 (2001)). These presumptions are reinforced by the interpretative canon requiring a "clear statement of congressional intent to repeal habeas jurisdiction" and "clear indication of congressional intent"

when a proposed interpretation would “push the outer limits of Congress’ power.” *DHS v. Thuraissigiam*, 591 U.S. 103, 137 (2020) (cleaned up). These presumptions can “only be overcome by clear and convincing evidence of congressional intent to preclude judicial review.” *Guerrero-Lasprilla v. Barr*, 589 U.S. 221, 229 (2020) (cleaned up). Respondents do not meet this burden here.

A. 8 U.S.C. § 1252(g) does not bar review because Petitioner does not challenge an action to commence proceedings, adjudicate a case, or execute a removal order.

8 U.S.C. § 1252(g) states that “no court shall have jurisdiction to hear any cause or claim by or on behalf of any [noncitizen] arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any noncitizen under this chapter.” 8 U.S.C. § 1252(g). The Supreme Court has read § 1252(g) narrowly to foreclose only challenges to discretionary decisions to commence or adjudicate removal proceedings or to execute removal orders. Specifically, the Court has held that the provision is “narrow[ly]” tethered to exercises of discretion by the Attorney General and “applies only to three distinct actions”: “To ‘commence proceedings, adjudicate cases, or execute removal orders.’” *Reno v. Am.-Arab Anti-Discrimination Comm.* (“AADC”), 525 U.S. 471, 482 (1999) (quoting 8 U.S.C. § 1252(g)). Other “decisions or actions that may be part of the deportation process” do not fall within 1252(g)’s limited scope because they do not interfere with the Attorney General’s,

or DHS Secretary’s prosecutorial discretion—the “particular evil” that 1252(g) was directed against. *Id.* at 482, 485 n. 9. Since *AADC*, the Supreme Court has reaffirmed 1252(g)’s “narrow” reach. *DHS v. Regents of the Univ. of Cal.*, 591 U.S. 1, 18 (2020); *see Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018). The Third Circuit has similarly state that Section 1252(g) does not sweep broadly[.]” *Tazu v. Att’y Gen.*, 975 F.3d 292, 296 (3d Cir. 2020).

Here, none of Petitioner’s claims challenge Respondents’ substantive use of discretion to commence proceedings, adjudicate cases, or execute removal orders. Instead, Petitioner challenges whether the way Respondents acted accords with the Constitution and the text of the INA. That is whether Respondents violated Mr. Kashranov’s due process rights under the Fifth Amendment when they failed to make any individualized determination into whether Mr. Kashranov was a danger to the community or flight risk prior to taking him into custody. *See* Doc 1 at 10-11. And secondly, Petitioner brings claims under the INA and regulations based on the unlawful denial of his right to a bond hearing. *See id.* at 11-14. Moreover, neither of the factual groundings for Mr. Kashranov’s claims occurred in the context of removal proceedings. At the time of Mr. Kashranov’s September 24, 2025 detention, removal proceedings had already been commenced against Mr. Kashranov, so this action is also not a challenge to a decision to commence proceedings. Doc 1-3 (Notice to Appear scheduling Mr. Kashranov’s initial

immigration court hearing for May 21, 2025). Nor has Mr. Kashranov been ordered removed, so there is no rationale for finding that he is challenging the execution of a removal order.

Accordingly, Petitioner's claims do not involve the three distinct actions covered by Section 1252(g). *See AADC*, 525 U.S. at 482.

B. 8 U.S.C. § 1252(b)(9) does not bar review because these claims cannot be brought in a petition for review of a final order of removal.

Respondents contend that section 1252(b)(9) bars review of Petitioner's claims. Doc 11 at 9-11. That provisions, reads:

(9)Consolidation of questions for judicial review

Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove [a noncitizen] from the United States under this subchapter shall be available only in judicial review of a final order under this section. Except as otherwise provided in this section, no court shall have jurisdiction, by habeas corpus under section 2241 of title 28 or any other habeas corpus provision, by section 1361 or 1651 of such title, or by any other provision of law (statutory or nonstatutory), to review such an order or such questions of law or fact.

8 U.S.C. § 1252(b)(9) (emphasis added).

The purpose of the provision is “[t]o prevent piecemeal litigation” in both district court actions as well as petitions for review before the court of appeals of claims arising from removal proceedings. *E.O.H.C.*, 950 F.3d at at 184.

The Supreme Court has described Section 1252(b)(9) as a “zipper clause” that “channels” certain claims from the district courts to the circuit courts. *AADC*, 525 U.S. at 482-83. Habeas review of Petitioner’s claims of unlawful detention is required to provide “meaningful” relief. *Jennings*, 583 U.S. at 293. “[T]he applicability of 1252(b)(9) turns on whether the legal questions that [a court] must decide ‘aris[e] from’ the actions taken to remove” noncitizens, and the phrase must be construed narrowly to avoid “extreme” results. *Id.* In *Jennings*, Justice Alito explained that “arising from” is not self-defining, but instead a technical term when used in jurisdictional statutes and that courts must “eschew [] uncritical literalism”, which could lead to “extreme” and “staggering results” that “no sensible person intended.”. *See* 53 U.S. at 293; *see also E.O.H.C.*, 950 F.3d at 185.

The Third Circuit has utilized a straightforward now-or-never principle that informs how it construes the phrase “arising from”. “When a detained [noncitizen] seeks relief that a court of appeals cannot meaningfully provide on petition for review of a final order of removal, § 1252(b) does not bar consideration by a district court.” *E.O.H.C.*, 950 F.3d at 180, 186.

Mr. Kashranov’s raises quintessentially “now-or-never” claims. In *Jennings* the Supreme Court held that the petitioner’s claim to periodic bail hearings was not the type of claim that could have been brought in a petition for review of his removal proceedings. *Jennings*, 138 S. Ct. at 838-39. And here, Mr. Kashranov’s claims that

he was not afforded pre-deprivation due process nor a statutory bond hearing are of the kind that “cannot be redressed at the end of removal proceedings.” *E.O.H.C.*, 950 F.3d at 188. Bond proceedings are separate and distinct from removal proceedings. 8 C.F.R. § 1003.19(d); *Matter of R-S-H-*, 23 I&N Dec. 629, 630 n. 7 (BIA 2003). As such, Mr. Kashranov’s claims that he was denied pre-detention due process and unlawfully denied a bond hearing cannot be brought through a petition for review.

Respondents contend that Section 1252(b)(9) bars any claims challenging the decision to detain a noncitizen because “the habeas claims here require a court to answer ‘legal questions’ that arise from ‘an action taken to remove an alien’”. Doc 11 at 10 (citing *Jennings*, 583 U.S. at 295, n. 3). In theory any detention related claim could be swept into Section 1252(b)(9)’s ambit, but this is the type of “uncritical literalism” that Justice Alito foreclosed in *Jennings*. 53 U.S. at 293. The Third Circuit has also rejected this type of “but-for causation” in interpreting Section 1252(b)(9). *E.O.H.C.*, 950 F.3d at 185. And the footnote from Justice Alito’s plurality opinion in *Jennings* cited by Respondents recognized that the “legal questions”, including specifically in *Jennings*, whether the INA entitled the petitioners to a bond hearing, were “too remote from the actions taken” to remove a noncitizen from the country to be within the scope of Section 1252(b)(9). *Jennings*, 583 U.S. at 295, n. 3.

Accordingly, the Court should find that Section 1252(b)(9) does not bar review of Mr. Kashranov's claims.

C. 8 U.S.C. § 1252(a)(2)(B)(ii) does not bar review because Petitioner does not challenge a discretionary determination.

Finally, Respondents invocation of 8 U.S.C. § 1252(a)(2)(B)(ii) as a potential bar to the Court's jurisdiction is similarly unavailing. Section 1252(a)(2)(B) states:

(B) Denials of discretionary relief

Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, and except as provided in subparagraph (D), and regardless of whether the judgment, decision, or action is made in removal proceedings, no court shall have jurisdiction to review—

(i) any judgment regarding the granting of relief under section 1182(h), 1182(i), 1229b, 1229c, or 1255 of this title, or

(ii) any other decision or action of the Attorney General or the Secretary of Homeland Security the authority for which is specified under this subchapter to be in the discretion of the Attorney General or the Secretary of Homeland Security, other than the granting of relief under section 1158(a) of this title.

8 U.S.C. § 1252(a)(2)(B).

The Third Circuit has stated that Section 1252(a)(2)(B)(ii) does not apply to all discretionary decisions, “but to a narrower category of decisions where Congress has taken the additional step to specify that the sole authority for the action is in the Attorney General’s discretion.” *Alaka v. Att’y Gen.*, 456 F.3d 88, 96 (3d Cir. 2006) (overruled on other grounds by *Bastardo Vale v. Att’y Gen.*, 934 F.3d 255 (3d Cir. 2019)); *see also Khan v. Att’y Gen.*, 338 F.3d 226, 232 (3d Cir. 2006) (“The statutory

language is uncharacteristically pellucid on this score: it does not allude generally to ‘discretionary authority’ or to ‘discretionary authority exercised *under this statute*,’ but specifically to ‘authority for which it is *specified under this subchapter* to be in the discretion of the Attorney General.’”) (quoting *Zhao v. Gonzales*, 404 F.3d 295, 303 (5th Cir. 2005).

Petitioner’s due process claim that he was not provided with an individualized custody determination does not question the agencies’ discretion, but rather is a challenge to Respondents failure to make any determination that circumstances had changed since Mr. Kashranov and his family were released from DHS custody in 2023. *See Matter of Sugay*, 17 I&N Dec. 637, 640 (1981) (“[W]here a previous bond determination has been made by an immigration judge, no change should be made ... absent a change of circumstance.”); *Saravia for A.H. v. Sessions*, 905 F.3d 1137 , 1145 n. 10 (9th Cir. 2018) (“At the preliminary injunction hearing, the government explained that DHS complies with *Sugay* by conducting a ‘changed circumstances’” bond hearing before an immigration judge within seven to fourteen day days of an arrest.”). Tellingly, Respondents do not submit any documentation that ICE officials individually considered Mr. Kashranov’s circumstances. That lack of process is what Mr. Kashranov challenges with his due process claim—not an exercise of discretion.

Similarly, the denial of a bond hearing required by both statute and regulation is a pure question of law—not a challenge to a discretionary determination. In either case, the resolution of which is not “specified under” the relevant subchapter to be in the discretion of the Attorney General or the Secretary of the Department of Homeland Security. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(c)(8); 1236.1(c)(8). Nor, do Respondents contend that the Attorney General has the discretion to deny a bond hearing to a noncitizen who should be afforded one under Section 1226. *See generally* Doc 11. Therefore, the Court retains jurisdiction over Mr. Kashranov’s claims.

II. Exhaustion of administrative remedies is not required here because it would be futile, among other reasons.

Respondents point to Mr. Kashranov’s pending bond appeal before the BIA, and contend that the Court should require him to exhaust his administrative remedies prior to seeking habeas review. Doc 10 at 12-13. Exhaustion is the rule in most cases and failure to exhaust will generally preclude habeas review.” *Stokes v. Warden of FCI-Allenwood*, No. 1:24-CV-1048, 2024 WL 4567287 at *2 (M.D. Pa. Oct. 24, 2024) (citing *Moscato v. Fed Bureau of Prisons*, 98 F.3d 757, 761 (3d Cir. 1996). However, exhaustion is not required when it would be futile. *See Rose v. Lundy*, 455 U.S. 509, 516 n. 7 (1982); *see also Grant v. Zemski*, 54 F. Supp. 2d 437, 442 (E.D. Pa. 1999) (“exhaustion is not required where, as here, administrative remedies

may be inadequate because the administrative body has predetermined the issue before it".)

The Third Circuit excuses exhaustion where “administrative remedies would be futile, if the actions of the agency clearly and unambiguously violate statutory or constitutional rights, or if the administrative procedure is clearly shown to be inadequate to prevent irreparable injury.” *Lyons v. U.S. Marshals*, 840 F.2d 202, 205 (3d Cir. 1988) (citation omitted)

Exhaustion of Mr. Kashranov’s claim that he was denied a bond hearing would be futile here as the BIA has predetermined that noncitizens such as him are subject to mandatory detention under Section 1225(b)(2)(A). *See Matter of Yagure Hurtado*, 29 I&N Dec. 216 (BIA 2025). While Mr. Kashranov has submitted a bond appeal to the BIA, that appeal is a *fait accompli* as the BIA has announced its position through a precedential decision in *Yagure Hurtado*. In similar cases, district courts have generally found that exhaustion before the BIA would be futile in light of *Yagure Hurtado*. *See, e.g., Martinez-Elvir v. Olson*, No. 3:25-CV-589-CHB, 2025 WL 3006772, at *5 (W.D. Ky. Oct. 27, 2025); *Lomeli, v. Raycraft.*, No. 2:25-CV-12826, 2025 WL 2976739, at *4 (E.D. Mich. Oct. 21, 2025); *Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530, at *7 (C.D. Cal. Sept. 8, 2025).

Respondents' invocation of agency expertise as a justification for requiring exhaustion here; Doc 11 at 12; is misplaced as these claims allege that Respondents have violated statutory and constitutional rights. *See* Lyons, 840 F.2d at 205. The due process and statutory claims before the Court are questions of law that "fall more naturally into a judge's bailiwick" than the BIA's. *Kisor v. Wilkie*, 588 U.S. 558, 578 (2019); *see also Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 401 (2024).

Critically, there is no administrative remedy that can be pursued as to Mr. Kashranov's claim that his procedural due process rights were violated when he was detained without an individualized custody determination. *Contreras Maldonado v. Cabezas*, No. 25-13004202, 2025 WL 2985256 at *6 (D.N.J. Oct. 23, 2025) (citing *Calderon-Rosas v. Att'y Gen.*, 957 F.3d 378, 384 (3d Cir. 2020) ("Exhaustion is not required for 'colorable' due process claims that could not have been presented to the BIA in the first instance.")).

Finally, exhaustion is also not required when doing so would involve an "unreasonable or indefinite timeframe for administrative action." *McCarthy v. Madigan*, 503 U.S. 140 (1992) (citing *Gibson v. Berryhill*, 411 U.S. 564, 575, n. 5 (1973)). Bond appeals before the BIA routinely take several months to reach a final decision during which Mr. Kashranov would be subject to unlawful detention. As

such, pursuing an appeal of the Immigration Judge's denial of bond is an inadequate remedy here.

III. Petitioner is detained pursuant to 8 U.S.C. § 1226(a), not § 1225(b)(2).

Respondents rely on a decision by the District of Nebraska's decision in *Vargas Lopez v. Trump* for the proposition that Sections 1225(b)(2) and 1226(a) "overlap and are not mutually exclusive." Doc 11 at 17-18 (citing *Vargas Lopez v. Trump*, 2025 WL 2780351, at *7 (D. Neb. Sept. 30, 2025)). Yet this conflicts with the Supreme Court's interpretation of the INA as containing distinct detention authorities. *Jennings*, 583 at 287-89.

For multiple reasons, the Court should give pause before adopting the reasoning from *Vargas Lopez*. First in *Vargas Lopez*, the district court conceded that "mistakes in the Petition....prevent[ed] Vargas Lopez from meeting his burden to show he is entitled to habeas relief." *Vargas-Lopez*, at *2. Second, the *Vargas Lopez* Court also did not grapple with the import and meaning of Section 1225(b)(2)(A)'s "seeking admission" admission language in the statute. *See generally, Vargas Lopez*, 2025 WL 2780351.

Finally, the *Vargas Lopez* court did not attempt to grapple with the impracticalities of a reading of the INA that would simultaneously make many noncitizens bond eligible and subject to mandatory detention. *See generally 2025*

WL 2780351 id. For these reasons, the Court should not adopt the reasoning of the *Vargas Lopez* court.

Untethering the concept of seeking admission from the act of presently seeking physical entry into the United States, as *Yagure Hurtado* does, will disrupt the complex immigration system created by Congress. 29 I&N Dec. at 221 (stating that only those who have been “admitted to the United States” are “eligible for a bond hearing”.) If only those who have been admitted to the United States are eligible for bond under Section 1226(a), then the Government would have the ability to subject noncitizens to indefinite detention without a possibility of a bail who have already been granted legal statuses such as asylum and temporary protected status, as the granting of those applications does not constitute an admission under the INA. *Matter of V-X-*, 26 I&N Dec. 147, 150-52 (BIA 2013) (parolee granted asylum has not been admitted and is subject to grounds of inadmissibility); *Sanchez v. Mayorkas*, 593 U.S. 409, 314 (2021) (“The TPS program gives foreign nationals nonimmigrant status, but it does not admit them.”). Surely, Congress did not intend for asylees and TPS holders to be subject to indefinite detention AFTER being granted humanitarian protection.

Lastly, Respondents misstep in dismissing the import of the Laken Riley Act. Doc 11 at 16-17. Earlier this year, Congress amended the text of Section 1226, creating a carve out of an additional category of noncitizens from Section 1226(a)’s

discretionary detention authority who now are subject to mandatory detention under Section 1226(c). *Laken Riley Act*, Pub. L. No. 119-1, 139 Stat. 3 (2025). This category now includes those noncitizens who are deemed inadmissible including for being “present in the United States without being admitted or paroled,” and who have been arrested, charged with, or convicted of certain crimes. 8 U.S.C. § 1226(c)(1)(E); *see* Pub. L. No. 119-1, 139 Stat. 3 (2025); 8 U.S.C. § 1182(a)(6)(A)(i). These exceptions for inadmissible noncitizens who are arrested, charged, or convicted of certain enumerated crimes logically leaves those noncitizens who have not been implicated in those offenses bond eligible under § 1226(a)’s discretionary detention authority. The BIA’s interpretation of the detention framework from *Yagure Hurtado*, would make these amendments to § 1226(c) superfluous. “When Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect.” *Stone v. I.N.S.*, 514 U.S. 386, 397 (1995).

For these reasons, the Court should find that Mr. Kashranov is presently detained under Section 1226(a).

CONCLUSION

For the reasons stated, and for those contained in Petitioner’s Motion for a Temporary Restraining Order and Preliminary Injunction, the Court should grant Petitioner’s Motion and order that Respondents immediately release Petitioner and

enjoin Respondents from re-detaining Petitioner without a pre-deprivation hearing.

In the alternative, the Court should order that a bond hearing be held.

Dated: November 7, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that this document, filed through the ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing.

Dated: November 7, 2025

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