IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

JOSE RAFAEL ESPINAL GUEVARA, Petitioner, v. PAMELA BONDI, in her capacity as United States Attorney General, BRET BRADFORD, in his official capacity as Houston Field Office Director, Immigration and Customs Enforcement, and ALEXANDER SANCHEZ, in his official capacity as Warden, IAH Secure Adult Facility, Respondents.	§ § § § § § § § § § § § § § §	Case 9:25-cv-266-MJT

FEDERAL RESPONDENTS' RESPONSE TO PETITIONER'S
<u>PETITION FOR WRIT OF HABEAS CORPUS</u>

Federal[1] Respondents timely submit this response per the Court's Order dated September 18, 2025. ECF No. 3.

In his petition for writ of habeas corpus (the "Petition"), Petitioner Jose Rafael Espinal Guevara (hereinafter "Petitioner") requests the Court grant his Petition and order the Respondents to accept payment of bond previously set by an immigration judge ("IJ") and release him upon payment of bond, ECF No. 1, at 7, alleging that Respondent's refusal to accept payment of bond and their failure to release him is premised on a flawed interpretation, ECF No. 1, at 4–6. The Petition should be denied.

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

Petitioner is lawfully detained on a mandatory basis as an alien present in the United States without inspection or parole. *See* ECF No. 1; 8 U.S.C. § 1225(b)(2). To the extent there was ever an ambiguity regarding which statue governs detention of illegal aliens such as Petitioner, the Boad of Immigration Appeals ("BIA") resolved that ambiguity on September 5, 2025. In a precedent decision, the BIA held that aliens present in the United States without being admitted or paroled such as Petitioner are subject to mandatory detention under Section 1225(b)(2) as applicants for admission. *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). Moreover, Petitioner is in full removal proceedings before an immigration judge, as opposed to expedited removal proceedings, which provides him with robust due process protection. However, release on bond is not one of the protections guaranteed by statute. For these reasons, and those herein, the Court should deny the Petition.

FACTS AND PROCEDURAL HISTORY

Petitioner is a citizen of Honduras. ECF No. 1, at 2. Petitioner entered the United States without inspection on or about April 20, 2018. *Id.* On August 7, 2025, Petitioner came to the attention of the Department of Homeland Security ("DHS") during a Department of Transportation check. ECF No. 1, at 1. Since that time Petitioner has been in the DHS custody. *Id.* On September 2, 2025, the IJ in Conroe Texas entered an order providing for Petitioner's release from custody on a $15,000 bond. *Id.* The same day, DHS filed a Notice of Intent to Appeal Custody Redetermination. *See* Noice of Intent to Appeal, *attached hereto as* Exhibit "A". The filing of the Notice of Intent to Appeal automatically stayed the effect of the IJ's custody redetermination order. *Id.*; 8 C.F.R. § 1003.19(i)(2). On September 5, 2025, DHS filed a notice of appeal of the IJ's September 2, 2025, order. *See* Notice of Appeal, *attached hereto as* Exhibit "B". On September 16, 2025, BIA set a schedule for briefing DHS's appeal of the custody redetermination order. *See*

Notice – Briefing Schedule, *attached hereto as* Exhibit "C". Pursuant to the briefing schedule, Petitioner's appellate brief is due on October 7, 2025. Ex. C, Briefing Schedule at 1. DHS's appeal of the custody determination order remains pending.

RELEVANT IMMIGRATION LAW

This case implicates the interplay of various statutes that govern the civil detention of illegal aliens pending a decision on removal, during the administration of removal orders, and in preparation for removal. *See generally* 8 U.S.C. §§ 1225, 1226, 1231. Properly construed, individual such as petitioner are considered applicants for admission to the United States and therefore subject to mandatory detention.

I. Inspection and Detention Under 8 U.S.C. § 1225.

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

Paragraph (b) of § 1225 governs the inspection procedures applicable to all applicants for admission. They "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings*, 583 U.S. at 287. Section 1225(b)(1) applies to those "arriving in the

United States" and "certain other"[2] aliens "initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation." *Id.* § 1225(b)(1)(A)(i), (iii). Aliens falling under this subsection are generally subject to expedited removal proceedings "without further hearing or review." *See id.* § 1225(b)(1)(A)(i). But where the applicant "indicates an intention to apply for asylum . . . or a fear of persecution," immigration officers will refer him or her for a credible fear interview. *Id.* § 1225(b)(1)(A)(ii). An applicant "with a credible fear of persecution" is "detained for further consideration of the application for asylum." *Id.* § 1225(b)(1)(B)(ii). If the alien does not indicate an intent to apply for asylum, express a fear of persecution, or is "found not to have such a fear," he is detained until removal from the United States. *Id.* §§ 1225(b)(1)(A)(i), (B)(iii)(IV).

Section 1225(b)(2) is "broader" than (b)(1), "serv[ing] as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1)." *Jennings*, 583 U.S. at 287. Subject to exceptions not applicable here, "if the examining immigration officer determines that the alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien *shall* be detained for a removal proceeding." 8 U.S.C. § 1225(b)(2)(A) (emphasis added); *see also Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) ("for aliens arriving in and seeking admission into the United States who are placed directly in full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention 'until removal proceedings have concluded.'")

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

(citing *Jennings*, 583 U.S. at 299). DHS retains sole discretionary authority to temporarily release on parole "any alien applying for admission" on a "case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022).

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

"Even once inside the United States, aliens do not have an absolute right to remain here. For example, an alien present in the country may still be removed if he or she falls 'within one or more . . . classes of deportable aliens.' §1227(a)." *Jennings*, 583 U.S. at 288 (citing 8 U.S.C. § 1227(a), which outlines "classes of deportable aliens" among those already "in *and admitted* to the United States") (emphasis added)). "Section 1226 generally governs the process of arresting and detaining that group of aliens pending their removal." *Id.* Applicable "[o]n a warrant issued by the Attorney General," it provides that an alien may be arrested and detained pending a decision" on the removal. 8 U.S.C. § 1226(a). For aliens arrested under §1226(a), the Attorney General and the DHS have broad discretionary authority to detain an alien during removal proceedings.[3] *See* 8 U.S.C. § 1226(a)(1) (DHS "may continue to detain the arrested" alien during the pendency of removal proceedings).

Following apprehension under § 1226(a), a DHS officer makes an initial discretionary determination concerning release. *See* 8 C.F.R. § 236.1(c)(8). DHS "may continue to detain the

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

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

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

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

III. Review of custody determinations at the BIA.

The BIA is an appellate body within EOIR. *See* 8 C.F.R. § 1003.1(d)(1). Members of the BIA possess delegated authority from the Attorney General. 8 C.F.R. § 1003.1(a)(1). The BIA is "charged with the review of those administrative adjudications under the [INA] that the Attorney General may by regulation assign to it," including IJ custody determinations. 8 C.F.R. §§ 1003.1(d)(1), 236.1; 1236.1. The BIA not only resolves particular disputes before it, but also "through precedent decisions, [it] shall provide clear and uniform guidance to DHS, the immigration judges, and the general public on the proper interpretation and administration of the [INA] and its implementing regulations." *Id.* § 1003.1(d)(1). "The decision of the [BIA] shall be final except in those cases reviewed by the Attorney General." 8 C.F.R. § 1003.1(d)(7).

ARGUMENT

The Petition should be denied for multiple reasons. First, the Petition is premature. DHS appealed the IJ's custody redetermination order, which ordered Petitioner released on $15,000 bond. DHS's notice of intent to appeal the order stayed its effect during the pendency of the appeal. Petitioner fails to address the stay of the IJ's order, which defeats the Petition's request that the Court order Respondents to accept payment of his bond. Second, because the appeal is still pending, the Court should exercise its discretion and dismiss the case while the administrative process completes. Even if the IJ's order was not stayed and administrative remedies had been exhausted, Petitioner's argument that he is entitled to release from custody on bond is flawed because the IJ lacked jurisdiction to issue the bond order in the first instance. Therefore, the Petition should be denied because IJ's lack authority to order aliens such as Petitioner released on bond. Finally, the Court lacks jurisdiction to entertain the Petition, which challenges Respondents efforts to remove him from the United States.

I. Respondents are not required to accept payment of bond and release Petitioner because the IJ's order is stayed pending resolution of DHS's appeal.[4]

In this case, the IJ's custody redetermination remains stayed pending DHS's appeal to the BIA. Section 1003.19, regarding Custody and Bond, provides that "[i]n any case in which DHS has determined that an alien should not be released or has set a bond of $10,000 or more, any order of the immigration judge authorizing release (on bond or otherwise) shall be stayed upon DHS's filing of a notice of intent to appeal the custody redetermination (Form EOIR-42) with the immigration court within one business day of the order…" 8 C.F.R. § 1003.19(i)(2). In this case, the IJ's ordered bond of $15,000 and DHS filed a notice of intent to appeal that order on the same day. *See generally* ECF No. 1, at 2; Ex. A, Notice of Intent to Appeal. Therefore, Section 1003.19(i)(2) applies and the IJ's order is stayed while the appeal is pending. For these reasons, Respondents cannot be forced to prematurely accept payment of the bond and be forced to release the Petitioner. The Petition should be denied.

II. Petitioner has not exhausted administrative remedies prior to filing the Petition.

The BIA is the appellate body within the EOIR that is "charged with the review of those administrative adjudications that the Attorney General may by regulation assign to it," including determinations related to bond, parole, or detention. 8 C.F.R. §§ 1003.1(d)(1); 1003.1(b)(7). The Supreme Court has "long acknowledged the general rule that parties exhaust prescribed administrative remedies prior to seeking relief from the federal courts." *McCarthy v. Madigan*, 503 U.S. 140, 144–45 (1992). Exhaustion "serves the twin purposes of protecting administrative agency authority and promoting judicial efficiency." *Id.* at 145. The rationale for administrative exhaustion applies equally in the context of seeking relief of denial of a bond hearing via a writ of

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[4] Petitioner failed to address the automatic stay in the Petition and has therefore waived any arguments regarding the automatic stay.

habeas corpus even though the INA does not mandate exhaustion for situations other than appeals for final orders of removal. *McCarthy*, 503 U.S. at 144 ("But where Congress has not clearly required exhaustion, sound judicial discretion governs."); *see* 8 U.S.C. § 1252(d)(1) ("A court may review a final order of removal only if … the alien has exhausted all administrative remedies.").

However, in cases such as this, where the exhaustion requirement is not mandated by statute, exhaustion can be forgiven by the Court. Here, the administrative process has not concluded because DHS's appeal of the custody redetermination remains pending before the BIA. *See* 8 C.F.R. § 236.1(d)(3) ("An appeal relating to bond and custody determinations may be filed to the [BIA] …"). "When a petitioner does not exhaust administrative remedies, a district court ordinarily should either dismiss the petition without prejudice or stay the proceedings until the petitioner has exhausted administrative remedies, unless exhaustion is excused." *Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011). The Fifth Circuit has held that "a petitioner must exhaust available avenues of relief and turn to habeas only when no other means of judicial review exists." *Lee v. Gonzalez*, 410 F.3d 778, 786 (5th Cir. 2005). Here, DHS's appeal of the custody redetermination order remains pending before the BIA. The BIA has established a briefing schedule and Petitioner's appellate brief is due on October 7, 2025. Even after the BIA resolves DHS's appeal, the parties will have an opportunity to appeal that decision to the Fifth Circuit Court of Appeals. Because the administrative process is ongoing, the Court should exercise its discretion and dismiss the Petition.

III. Petitioner is subject to mandatory detention and not entitled to bond under the plain language of 8 U.S.C. § 1225(b)(2).

On September 5, 2025, the BIA issued a precedential decision in *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), affirming that under the plain language of 8 U.S.C. § 1225(b)(2), aliens present in the United States without admission, such as Petitioner, are subject to mandatory detention without bond.[5] The Court should reject Petitioner's argument that Section 1226 governs his detention instead of Section 1225(b)(2).

Petitioner is an "applicant for admission" under Section 1225(a)(1). He argues that unlike other applicants for admission, he cannot be subjected to Section 1225(b)(2)'s mandatory-detention provisions because he has been present in the interior of the United States. *See* ECF No. 1, ¶¶ 6–11. Petitioner's theory is that the phrase "seeking admission" somehow narrows the category of "applicants of admission" subject to mandatory detention under Section 1225(b)(2) to only those aliens inspected at a port of entry. *Id.* ¶ 48. Although some courts that have considered the issue have adopted this reasoning, those opinions fail to give effect to the plain language of the statute, defy cannons of statutory interpretation, and are wrongfully decided.

"As usual, we start with the statutory text." *Restaurant Law Center v. U.S. Dep't of Labor*, 120 F.4th 163, 177 (5th Cir. 2024). Statutory language "is known by the company it keeps." *Marquez-Reyes v. Garland*, 36 F.4th 1195, 1202 (9th Cir., 2022) (quoting *McDonnell v. United States*, 579 U.S. 550, 569 (2016)). In the context presented in this case, "seeking admission" and "applying for admission" are plainly synonymous. Congress has linked these two variations of the same phrase in Section 1225(a)(3), which requires all aliens "who are applicants for admission or otherwise seeking admission" to be inspected by immigration officers. 8 U.S.C. § 1225(a)(3). The word "or" here "introduce[s] an appositive—a word or phrase that is synonymous with what precedes it ('Vienna or Wien,' 'Batman or the Caped Crusader')." *United States v. Woods*, 571 U.S. 31, 45 (2013). Read properly, a person "seeking admission" is just another way of describing a person applying for admission, meaning he is an applicant for admission, which includes both

[5] DHS's appeal of the custody redetermination order remains pending. *See* Exhibit C (Briefing Schedule). *Hinojosa v. Horn*, 896 F.3d 305, 314 (5th Cir. 2018).

those individuals arriving in the United States and those already present without admission. 8 U.S.C. § 1225(a)(1).

Congress used the phrase "arriving alien" throughout Section 1225. *See, e.g.* 8 U.S.C. §§ 1225(a)(2), (b)(1), (c), (d)(2). The phrase plainly distinguishes an alien presently or recently "arriving" in the United States from other "applicants for admission" who, like Petitioner, have been in the United States without being admitted. But Congress *did not* use the word "arriving" to limit the scope of Section 1225(b)(2)'s mandatory-detention provision. Had Congress intended to limit Section 1224(b)(2)'s scope to "arriving" aliens, it could have simply used that phrase like it did in Section 1225(b)(1). Instead, Congress used the phrase "alien seeking admission" as a plain synonym for "applicant for admission."

The statutory structure of Section 1225(b) also supports the Respondent's interpretation. It is true that Section 1225(b)(1) applies to applicants for admission who are "arriving in the United States" (or whose who have been present for less than two years) and provides for expedited removal proceedings. It also contains its own mandatory-detention provision appliable during those expedited provisions. 8 U.S.C. § 1225(b)(1)(B)(iii)(IV). By contract, Section 1225(b)(2) applies to "other" aliens—"in the case of an alien who is an applicant for admission"—those *not* subject to expedited removal under (b)(1). They too must "be detained" but instead for a more typical removal "proceeding under section 1229a of this title." 8 U.S.C. § 1225(b)(2)(A). Thus, Section 1225(b) applies to two groups of "applicants for admission": (b)(1) applies to "arriving" or recently arrived aliens who must be detained pending *expedited* removal proceedings; and (b)(2) is a "catchall provision that applies to all applicants for admission not covered by § 1225(b)(1)," *Jennings*, 583 U.S. at 287, who like Petitioner, must be "detained for a [*non-expedited*] proceeding under section 1229a of this title," 8 U.S.C. § 1225(b0(2). A contrary interpretation limiting (b)(2) to "arriving" aliens would render it redundant and without any effect.

A comparison of Section 1225's mandatory-detention provisions alongside the discretionary detention provisions § 1226 also supports Respondent's interpretation. "A basic canon of statutory construction" is that "a specific provision applying with particularity to a matter should govern over a more general provision encompassing that same matter." *Hughes v. Canadian Nat'l Ry. Co.*, 105 F.4th 1060, 1067 (8th Cir. 2024). Section 1226(a) applies to aliens "arrested and detained pending a decision" on removal. 8 U.S.C. § 1226(a). Section 1225(b), by contrast, is narrower, applying only to aliens who are "applicants for admission,"—a specially defined subset of aliens that explicitly includes those "present in the United States who ha[ve] not be admitted." *Id.* § 1225(a). *See also Florida v. United States,* 660 F. Supp. 3d 1239, 1275 (N.D. Fla. 2023) ("§ 1225(a) treats a specific class of aliens as 'applicants for admission,' and § 1225(b) mandates detention of these aliens throughout their removal proceedings. Section 1226(a), by contrast, states in general terms that detention of aliens pending removal is discretionary unless the alien is a criminal alien."). Because Petitioner falls squarely within the definition of individuals deemed to be "applicants for admission," the specific detention authority under § 1225(b) governs over the general authority found at § 1226(a).

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

When the plain text of a statute is clear, that meaning is controlling, and courts need not examine legislative history. *Doe v. Dep't of Veterans Affs. of U.S.*, 519 F.3d 456, 461 (8th Cir. 2008); *NPR Investments, LLC ex rel. Roach v. United States,* 740 F.3d 998, 1007 (5th Cir. 2014). Indeed, "in interpreting a statute a court should always turn first to one, cardinal canon before all others." *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253–54 (1992). The Supreme Court has "stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there." *Id.* (citations omitted). Thus, "[w]hen the words of a statute are unambiguous, then, this first canon is also the last: 'judicial inquiry is complete.'" *Id.* (citing *Rubin v. United States*, 449 U.S. 424 at 430 (1981)).

Even if legislative history were relevant, the text of a law controls over purported legislative intentions. *Oklahoma v. Castro-Huerta*, 597 U.S. 629, 642 (2022). Indeed, the legislative history and evidence regarding the purpose of Section 1225(b)(2) show that Congress did not mean to treat aliens arriving at ports of entry worse than those who successfully entered the nation's interior without inspection. *See Yajure-Hurtado*, 29 I. & N. Dec. at 222–25. Congress passed Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") to correct "an anomaly whereby immigrants who were attempting to lawfully enter the United States were in a worse position than persons who had crossed the border unlawfully." *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc), *declined to extend by, United States v. Gambino-Ruiz*, 91 F.4th 981 (9th Cir. 2024). It "intended to replace certain aspects of the [then-]current 'entry doctrine,' under which illegal aliens who have entered the United States without inspection gain equities and privileges in immigration proceedings that are not available to aliens who present themselves for inspection at a port of entry." *Id.* (quoting H.R. Rep. 104-469, pt. 1, at 225).

The Court should reject the Petitioner's interpretation because it would put aliens like him who "crossed the border unlawfully" in a better position than those "who present themselves for inspection at a port of entry." *Id.* Aliens who presented at ports of entry would be subject to mandatory detention under Section 1225, while those who successfully evaded detection and crossed without inspection would be eligible for bond under § 1226(a). Therefore, even if the automatic stay did not apply to the underlying custody redetermination order, the Petition should be denied because Petitioner is not entitled to bond.

IV. The Court lacks jurisdiction to review Petitioner's claims.

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

a. Section 1252(g)

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

Section 1252(g) eliminates jurisdiction "[e]xcept as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title."[6] 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 raises a statutory interpretation issue regarding the statute governing his detention during removal proceedings. That detention arises from the decision to commence and adjudicate such proceedings. *See, e.g.*, *Quezada v. U.S.*, 3:24–CV–564–L (BK), 2025 WL 747263 at *6 (N.D. Tex. Jan. 29, 2025) (barring FTCA claim under § 1252(g) where ICE arrested alien on

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[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.

the same day the NTA was issued and served on him); *Hodgson v. U.S.*, No. SA:13–CV–702, 2014 WL 4161777 at *6–8 (W.D. Tex. Aug. 19, 2014); *Rico-Pineda v. Lucero*, No. SA–15–CA–126–OLG, 2015 WL 13805331 at *3–4 (W.D. Tex. July 6, 2015).

Removal proceedings commence by filing a charging document, such as an NTA, with an Immigration Court. *See Pereida v. Wilkinson*, 592 U.S. 224, (2021) ("Removal proceedings begin when the government files a charge against an individual, and they occur before a hearing officer at the Department of Justice, someone the agency refers to as an immigration judge.")); *Pierre-Paul v. Barr*, 930 F.3d 684, 686 (5th Cir. 2019) ("[T]he government initiated removal proceedings [ ] by filing a notice to appear with the immigration court."); *see also* 8 C.F.R. § 1003.14(a) ("Jurisdiction vests, and proceedings before an Immigration Judge commence, when a charging document is filed with the Immigration Court."). An alien's detention throughout this process arises, therefore, from the Attorney General's decision to commence proceedings, and review of claims arising from such detention is barred under § 1252(g). *See Herrera-Correra v. United States*, No. CV 08-2941 DSF (JCX), 2008 WL 11336833, at *3 (C.D. Cal. Sept. 11, 2008). As such, judicial review of the claim that Petitioner is entitled to bond under § 1226(a) instead of detained on a mandatory basis under § 1225(b) is barred by § 1252(g). The Court should dismiss for lack of jurisdiction.

b. Section 1252(b)(9)

Section 1252(b)(9) also deprives the Court of jurisdiction in this case. 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, e.g.*, 8 U.S.C. § 1252(b)(9); *see also El Gamal v. Noem*, --- F.Supp.3d---, 2025 WL 1857593 at *5 (W.D. Tex. July 2, 2025) (collecting cases and finding that any challenge to ICE's initial decision to detain the alien during removal proceedings is protected from judicial review in district court, because the alien must appeal any order of removal to the BIA and ultimately petition for judicial review of any relevant constitutional claims by the court of appeals); *Lopez v. Barr*, No. CV 20-1330 (JRT/BRT), 2021 WL 195523, at *2 (D. Minn. Jan. 20, 2021) (citing *Nasrallah v. Barr*, 590 U.S. 573, 579–80 (2020)).

Moreover, § 1252(a)(5) provides that a petition for review is the exclusive means for judicial review of immigration proceedings:

> Notwithstanding any other provision of law (statutory or nonstatutory), . . . a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision of this chapter, except as provided in subsection (e) [concerning aliens not admitted to the United States].

8 U.S.C. § 1252(a)(5). "Taken together, § 1252(a)(5) and § 1252(b)(9) mean that *any* issue—whether legal or factual—arising from *any* removal-related activity can be reviewed *only* through the [petition-for-review] process." *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (emphasis in original); *see id.* at 1035 ("§§ 1252(a)(5) and [(b)(9)] channel review of all claims, including policies-and-practices challenges . . . whenever they 'arise from' removal proceedings"); *accord Ruiz v. Mukasey*, 552 F.3d 269, 274 n.3 (2d Cir. 2009) (only when the action is "unrelated to any removal action or proceeding" is it within the district court's jurisdiction); *cf. Xiao Ji Chen v. U.S. Dep't of Justice*, 434 F.3d 144, 151 n.3 (2d Cir. 2006) (a "primary effect" of the REAL ID Act is to "limit all aliens to one bite of the apple" (internal quotation marks omitted)).

Critically, "[§] 1252(b)(9) is a judicial channeling provision, not a claim-barring one." *Aguilar v. ICE*, 510 F.3d 1, 11 (1st Cir. 2007). Indeed, 8 U.S.C. § 1252(a)(2)(D) provides that "[n]othing . . . in any other provision of this chapter . . . shall be construed as precluding review of constitutional claims or questions of law raised upon a petition for review filed with an appropriate court of appeals in accordance with this section." *See also Ajlani v. Chertoff*, 545 F.3d 229, 235 (2d Cir. 2008) ("[J]urisdiction to review such claims is vested exclusively in the courts of appeals[.]"). The petition-for-review process before the court of appeals ensures that aliens have a proper forum for claims arising from their immigration proceedings and "receive their day in court." *J.E.F.M.*, 837 F.3d at 1031–32 (internal quotations omitted); *see also Rosario v. Holder*, 627 F.3d 58, 61 (2d Cir. 2010) ("The REAL ID Act of 2005 amended the [INA] to obviate . . . Suspension Clause concerns" by permitting judicial review of "nondiscretionary" BIA determinations and "all constitutional claims or questions of law.").

In evaluating the reach of subsections (a)(5) and (b)(9), the Second Circuit explained that jurisdiction turns on the substance of the relief sought. *Delgado v. Quarantillo*, 643 F.3d 52, 55 (2d Cir. 2011). Those provisions divest district courts of jurisdiction to review both direct and indirect challenges to removal orders, including decisions to detain for purposes of removal or for proceedings. *See Jennings*, 583 U.S. at 294–95 (section 1252(b)(9) includes challenges to the "decision to detain [an alien] in the first place or to seek removal[.]"). Here, Petitioner challenges the government's decision and action to detain, which arises from DHS's decision to commence removal proceedings against an arriving alien and is thus an "action taken . . . to remove [them] from the United States." *See* 8 U.S.C. § 1252(b)(9); *see also, e.g.*, *Jennings*, 583 U.S. at 294–95; *Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020) (finding that 8 U.S.C. § 1226(e) did not bar review in that case because the petitioner did not challenge "his initial detention"); *Saadulloev* *v. Garland*, No. 3:23-CV-00106, 2024 WL 1076106, at *3 (W.D. Pa. Mar. 12, 2024) (recognizing that there is no judicial review of the threshold detention decision, which flows from the government's decision to "commence proceedings"). As such, the Court lacks jurisdiction over this action.

The reasoning in *Jennings* outlines why Petitioner's claims are unreviewable here. While holding that it was unnecessary to comprehensively address the scope of § 1252(b)(9), the Supreme Court in *Jennings* also provided guidance on the types of challenges that may fall within the scope of § 1252(b)(9). *See Jennings*, 583 U.S. at 293–94. The Court found that "§1252(b)(9) [did] not present a jurisdictional bar" in situations where "respondents . . . [were] not challenging the decision to detain them in the first place." *Id.* at 294–95. In this case, Petitioner *does* challenge the government's decision to detain him in the first place.

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

V. Petitioner has received all process that is due.

While as-applied constitutional challenges to immigration detention may be brought under certain circumstances, there is no colorable claim articulated in this habeas petition that

Petitioner's detention without bond is unconstitutional. See, e.g., *Jennings v. Rodriguez*, 583 U.S. 281, 312 (2018). This Court's review is limited to whether ICE is providing due process of law to Petitioner within the scope of § 1225(b). *Id.; see also Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020). Indeed, Petitioner remains in "full" removal proceedings before the immigration court, which entitles him to robust procedural and substantive due process protections, including representation by counsel of his choice at no expense to the government and appellate review of any adverse decision. Petitioner is not entitled to anything beyond what § 1225(b) provides him. *Thurajssigam*, 591 U.S. at 140.

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

Moreover, Petitioner's pre-removal custody is neither prolonged, nor indefinite. Petitioner has been detained for approximately four months while he is pending removal proceedings. ECF No. 1, at 2. In other contexts, the United States Supreme Court has explained that less than six months detention is presumed constitutional. *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). And even *Zadvydas* involved detention that was "indefinite" and "potentially permanent." *Id.* at 690–91. But there is no indication that Petitioner's removal proceedings pose similar concerns. Pre-removal-order detention "has a definite termination point: *the conclusion of removal proceedings*." *Castaneda v. Perry*, 95 F.4th 750 (4th Cir. 2024) (emphasis in original) (paraphrasing *Jennings*, 583 U.S. at 304). Petitioner's next master calendar hearing is scheduled of October 23, 2025, in front of IJ John McPhail. The IJ has set a deadline of that date for him to file all relief applications.

Clearly, Petitioner's pre-removal proceedings are progressing, are not indefinite, and satisfy all due process requirements. Petitioner's detention is not delayed beyond anything other than ordinary litigation processes. *See Linares v. Collins*, 1:25- CV-00584-RP-DH, ECF No. 14 at 15 (W.D. Tex. Aug. 12, 2025) (collecting cases and finding that aliens cannot assert viable due process claims when their detention is caused by their own plight, because delay due to litigation activity does not render detention indefinite).

Petitioner's temporary detention does not offend due process. In this case, Petitioner contends that Respondents are required to accept payment of bond and release him. That is not true. The custody redetermination order that Petitioner places so much weight on is currently stayed pursuant to applicable regulations while DHS appeals the IJ's order. During this process, Petitioner will be represented by counsel and will have the opportunity to oppose DHS's appeal. In the interim, his pre-removal proceedings are progressing, where he is represented by counsel. He is not entitled to more process than what Congress has provided him by statute, regardless of whether the applicable statute is § 1225(b) or § 1226(a). *See Jennings*, 583 U.S. at 297–303; *Thuraissigiam*, 591 U.S. at 140 (finding that applicants for admission are entitled only to the protections set forth by statute and that "the Due Process Clause provides nothing more"). An "expectation of receiving process is not, without more, a liberty interest protected by the Due Process Clause." *Olim v. Wakinekona*, 461 U.S. 238, 250 n. 12 (1983).

DHS's appeal of the custody redetermination order is pending, as are his removal proceedings. Petitioner enjoys judicial review of any adverse decision through the circuit court. *Id.* Pre-removal-order detention is both statutorily permissible and constitutional, and it is neither indefinite nor prolonged.

CONCLUSION

Petitioner is lawfully detained pending removal proceedings, and he does not claim any immigration status that would entitle her to immediate release from custody. He remains in "full" removal proceedings with robust due process protections. Accordingly, the Court should deny this petition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 6, 2025, a true and correct copy of the foregoing document was filed electronically with the court and has been sent to counsel of record via the court's electronic filing system.

/s/ James Gillingham
JAMES GILLINGHAM
Assistant United States Attorney