

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
COVINGTON

PARAMJIT SINGH,

PETITIONER

v.

NO. 2:25-CV-161-DCR

KRISTI NOEM, in her official capacity as  
Secretary of Homeland Security, *et al.*,

RESPONDENTS

**UNITED STATES'S RESPONSE TO PETITIONER'S HABEAS PETITION**

Federal Respondents,<sup>1</sup> by and through the U.S. Attorney for the Eastern District of Kentucky, respond to the writ of habeas corpus petition [R. 1] filed by Petitioner Paramjit Singh, consistent with this Court's Order of October 22, 2025 [R. 6].<sup>2</sup>

Petitioner is a native and citizen of India who was detained upon returning to the United States from an overseas trip on or about July 30, 2025. [See generally R. 1: Petition at Page ID# 1, 3-4 (¶¶ 1, 11)]; *see also* Declaration of Supervisory Detention and Deportation Officer (SDDO) Carly Schilling, attached herein as Exhibit 1, at ¶¶ 6-7. He is currently being detained in this district. [*Id.* at Page ID# 7-8 (¶¶ 29-30)]; *see also* Exh. 1: Schilling Decl. at ¶ 8. Petitioner seeks habeas relief from his mandatory detention while his removal proceedings play out before an

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<sup>1</sup> This response is filed on behalf of Federal Respondents Samuel Olson, Kristi Noem, and Pamela Bondi. 28 U.S.C. § 517 allows the Office of the United States Attorney to make appearances in court to attend to the United States' interests, and consistent with that statute and *Roman v. Ashcroft*, 340 F.3d 314, 319-20 (6th Cir. 2003), this filing attends to the United States' interests to the extent that the Petition names Marc Fields, the Kenton County Detention Center Jailer, as a respondent. Respondent Fields may file his own response.

<sup>2</sup> This Court should dismiss the Secretary of Homeland Security and the Attorney General because a party "must demonstrate standing for each claim that they press' against each defendant, 'and for each form of relief that they seek.'" *Murthy v. Missouri*, 603 U.S. 43, 61 (2024). That rule dictates dismissal of the Respondents Noem and Bondi since a writ of habeas corpus may be issued only "to the person having custody of the person detained." 28 U.S.C. § 2243. Thus, except in extraordinary circumstances, the only proper respondent in a habeas case is the detainee's immediate custodian. *See, e.g., Trump v. J.G.G.*, 604 U.S. 670, 672 (2025); *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004). Because Singh was detained at the Kenton County facility at the time of filing, only the ICE Field Office Director is the proper respondent. *See Kholyavskiy v. Achim*, 443 F.3d 946, 953 (7th Cir. 2006).

immigration judge. [*Id.* at Page ID# 2, 7, 13-17 (¶¶ 3, 23, 52-66)]. But Singh’s habeas petition should be denied for numerous reasons.

First, this Court lacks jurisdiction to entertain Singh’s habeas challenge because 8 U.S.C. § 1252(g) strips district courts of jurisdiction to intervene in ongoing removal proceedings, including the method by which those proceedings are conducted and decisions related to bond or release from custody during those proceedings—which is how those proceedings are adjudicated. Further, the Court should reject Singh’s petition because he is an “arriving alien” under 8 U.S.C. § 1225 and ineligible for bond. Finally, Singh’s challenge to the constitutionality of his detention under 8 C.F.R. § 1003.19(i)(2) should be denied, as this provision is not violative of the Fifth Amendment, the INA or any other statute.

#### **FACTUAL BACKGROUND**

Singh is a native and citizen of India. [R. 1-4 at Page ID# 41]; *see also* Exh. 1: Schilling Decl. at ¶ 6. He was lawfully admitted to the United States as a lawful permanent resident (LPR) on or about December 17, 1994. [*Id.*] On August 18, 2000, the respondent was convicted of three counts of felony theft under Indiana Code § 35-43-4-2. [*Id.*] The convictions stemmed from the respondent’s knowing and intentional exertion of unauthorized control over the property of another, with the intent to deprive the owner of its value or use. The respondent was sentenced to 1.5 years of incarceration, with all but 10 days suspended, and placed on probation. [*Id.*]

On July 30, 2025, Singh arrived at Chicago O’Hare International Airport, returning from a trip to India. [*Id.*] He presented himself for inspection bearing an Indian passport issued on July 17, 2020 and expiring on July 16, 2030. Exh.1: Schilling Decl. at Attachment A (Form I-213). He was referred to an admissibility unit for status verification and criminal history review, which turned up the 2000 felony convictions. [*Id.*] The U.S. Department of Homeland Security (DHS)

found Singh inadmissible for entry to the United States and served him with a Notice to Appear (NTA) by for violating Section 212(a)(2)(A)(i)(I) – Crime (Moral Turpitude) of the Immigration and Nationality Act (INA).<sup>3</sup> [*Id.*; *see also* R. 1-4 at Page ID# 38].

DHS ordered Singh detained without bond and he sought a custody redetermination. After a hearing before an Immigration Judge on August 25, 2025, the Court set bond in the amount of \$10,000. [R. 1-5 at Page ID# 43]. On that same day, under the authority of 8 C.F.R. § 1003.19(i)(2), DHS filed its Notice of Intent to Appeal. [R. 1-6 at Page ID# 46]. In the notice, DHS specified as the reason for the appeal the fact that the IJ erred by exercising jurisdiction over an arriving alien and issuing a bond order. [*Id.* at Page ID# 51]. Specifically, pursuant to INA § 101(a)(13)(c), “an alien lawfully admitted for permanent residence in the United States is considered to be ‘seeking admission’ to the United States when returning from a trip abroad if, among other things, he has been convicted of an offense identified in INA § 212(a)(2).” [*Id.*] Subsequently, the Immigration Judge reversed his bond determination, stating that upon “[r]eviewing the Immigration and Nationality Act, the Court has reconsidered its earlier position. Thus, [Singh] is an arriving alien charged with an offense identified in INA section 212(a)(2) and his custody status may not be reviewed by the Immigration Judge.” [R. 1-9 at Page ID# 68-69 (citing INA 101(a)(13)(C)(v) and 8 CFR 1003.19(h)(2).]

Following the IJ’s reversal of his bond determination, DHS moved to withdraw its Notice of Appeal, which the BIA memorialized in a written order. Exh. 1: Schilling Decl. at ¶¶ 13-14. Singh filed a number of motions, including motions to reissue bond and to terminate his removal proceedings. [R. 1 at Page ID# 7 (¶ 23)]; *see also* Exh. 1: Schilling Decl. at ¶ 9. The IJ has not

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<sup>3</sup> Although Singh’s convictions were later reduced to misdemeanors following the successful completion of probation, the original charges and sentencing remain accurate and are the basis for the Notice to Appear (NTA) charging the respondent as inadmissible under INA § 212(a)(2)(A)(i)(I).

yet entered findings regarding Singh's removability. A Master Hearing is set before the IJ on November 13, 2025. Exh.1: Schilling Decl. at ¶ 9, Attachment B (Notice of Hearing).

Singh filed his Petition for writ of habeas corpus on October 17, 2025. [R. 1]. In the Petition, he asserts that Singh is eligible for release on bond because he is subject to discretionary detention under 8 U.S.C. § 1226(a) and is not an arriving alien subject to mandatory detention under 8 U.S.C. § 1225(b). [*Id.* at Page ID# 2 (¶ 3)]. He further contends that his continued detention is unlawful because (1) the automatic stay invoked by DHS under 8 C.F.R. § 1003.19(i)(2) violates his procedural and substantive due process rights, as well as the INA; (2) that he has been deprived of a constitutionally adequate bond hearing in violation of the Fifth Amendment and the INA; and (3) that the automatic stay is *ultra vires* and violative of the INA and the Administrative Procedure Act (APA). [*Id.*; Page ID# 13-16 (¶¶ 52-66)]. Singh requests sweeping relief in his Petition. He requests that this Court assume jurisdiction, enjoin Petitioner's transfer outside of the district, declare that his continued detention violates the INA and/or the Due Process Clause of the Fifth Amendment, grant the habeas petition and order Petitioner's immediate release from ICE custody or alternatively, order release on bond in the previous amount set, and award costs and EAJA fees. [*Id.* at Page ID# 16-17].

### **LEGAL BACKGROUND**

#### **I. 8 U.S.C. § 1252 Limits the Court's Jurisdiction to Review Certain Immigration Decisions and Actions**

Relevant here, Congress included two separate provisions of the INA to prohibit the Court from entertaining certain habeas challenges—8 U.S.C. §§ 1252(b)(9), (g). First, Section 1252(g) provides that “no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.” 8

U.S.C. § 1252(g). This provision bars review of an alien’s claim that the government is “selectively enforcing immigration laws against them in violation of their First and Fifth Amendment rights,” because such claims represent a “challenge to the Attorney General’s decision to ‘commence proceedings’ against them.” *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 474, 487 (1999) (quoting 8 U.S.C. § 1252(g)). Detention during removal proceedings is an “aspect of the deportation process.” *Demore v. Kim*, 538 U.S. 510, 523 (2003); *see also Carlson v. Landon*, 342 U.S. 524, 538 (1952) (“Detention is necessarily a part of [the] deportation procedure”).

Second, Section 1252(b)(9) provides that “[j]udicial 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 an alien from the United States under this subchapter shall be available only in judicial review of a final order.” 8 U.S.C. § 1252(b)(9). Indeed, Congress specified that “no court shall have jurisdiction, by habeas corpus under [28 U.S.C. § 2241] or any other habeas corpus provision . . . or by any other provision of law (statutory or nonstatutory), to review such an order or such questions of law or fact.” *Id.*; *see also id.* § 1252(a)(5) (applying the same jurisdictional bar to “judicial review of an order of removal”). Habeas petitions challenging the legal basis for detaining in the first place require a court to answer “legal questions” that arise from “an action taken to remove an alien,” so the claims “fall within the scope of § 1252(b)(9).” *Jennings v. Rodriguez*, 583 U.S. 281, 295 n.3 (2018) (plurality opinion) (assuming that detention is an action taken to remove an alien).<sup>4</sup>

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<sup>4</sup> *See also id.* at 317 (Thomas, J., concurring in part and concurring in the judgment) (“Section 1252(b)(9) is a general jurisdictional limitation that applies to all claims arising from deportation proceedings and the many decisions or actions that may be part of the deportation process. Detaining an alien falls within this definition . . . . The phrase any action taken to remove an alien from the United States must at least cover congressionally authorized portions of the deportation process that necessarily serve the purpose of ensuring an alien’s removal.”) (cleaned up).

**II. Alternatively, Singh Bears the Burden of Proving his Detention Is Unlawful under 8 U.S.C. § 1225(b), Because He Is an Applicant for Admission**

Should the Court exercise jurisdiction over this case, the Court may only grant a writ of habeas corpus if the Petitioner is in federal custody in violation of the Constitution or a federal law. 28 U.S.C. § 2241. Petitioner bears “the burden to show that he is in custody in violation of the Constitution of the United States.” *Morrison v. Holder*, 2012 WL 5830435, 2012 U.S. Dist. LEXIS 164910, at 6 (N.D. Ohio Nov. 16, 2012) (quoting *Dodge v. Johnson*, 471 F.2d 1249, 1251 (6th Cir. 1973)); see also *Martinez v. Larose*, 968 F.3d 555, 565 (6th Cir. 2020) (placing the burden on Petitioner to prove his removal is reasonably foreseeable).

As an applicant for admission, Singh’s detention is governed by 8 U.S.C. § 1225(b). The Supreme Court’s decision in *Jennings* controls this determination. Therein, the Court explained, “the Government must determine whether an alien seeking to enter the country is admissible.” *Jennings*, 583 U.S. at 281. An alien—such as Petitioner— “who arrives in the United States, or is present in this country but has not been admitted, is treated as an applicant for admission.” *Id.* (cleaned up). This is further defined in 8 U.S.C. § 1225(a)(1) (“[a]n alien present in the United States who has not been admitted . . . shall be deemed for purposes of this chapter an applicant for admission”) and 8 U.S.C. § 1101(a)(13)(A) (“[a]dmission” is “the lawful entry of the alien into the United States after inspection and authorization by an immigration officer”).

As an “applicant for admission,” Petitioner must “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), also known as Expedited Removal Proceedings, addresses both the detention and removal of “aliens initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation.” *Id.* (cleaned up). Such aliens “are normally ordered removed without

further hearing or review . . . [unless the alien] indicates either an intention to apply for asylum . . . or a fear of persecution, then that alien is referred for an asylum interview.” *Id.*

Section 1225(b)(2), however, “is broader . . . [and] serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1) (with specific exceptions not relevant here).” *Jennings*, 583 U.S. at 287. Such aliens are subject to the 8 U.S.C. § 1229a removal statute and referred “for a removal proceeding if an immigration officer determines that they are not clearly and beyond a doubt entitled to be admitted into the country.” *See Jennings*, 583 U.S. at 288 (cleaned up). Further, they “shall be detained” for those removal proceedings. 8 U.S.C. § 1225(b)(2)(A).

### **III. 8 U.S.C. § 1226(a)**

Section 1226 “generally governs the process of arresting and detaining . . . aliens pending their removal.” *Jennings*, 583 U.S. at 288. Section 1226(a) provides that “an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States.” 8 U.S.C. § 1226(a). The Attorney General and the Department of Homeland Security (“DHS”) thus have broad discretionary authority to detain a noncitizen during removal proceedings.<sup>5</sup> *See* 8 U.S.C. § 1226(a)(1) (DHS “may continue to detain the arrested alien” during the pendency of removal proceedings); *Nielsen v. Preap*, 139 S. Ct. 954, 966 (2019) (highlighting that “subsection (a) creates authority for *anyone’s* arrest or release under § 1226—and it gives the Secretary broad discretion as to both actions”).

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<sup>5</sup> 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 noncitizens 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).

When a noncitizen is apprehended, a DHS officer makes an initial custody determination. *See* 8 C.F.R. § 236.1(c)(8). DHS “may continue to detain the arrested 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*, 141 S. Ct. 2271, 2280–81 (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 the noncitizen, it may set a bond or place other conditions on release. *See* 8 U.S.C. § 1226(a)(2); 8 C.F.R. § 236.1(c)(8). If DHS determines that a noncitizen should remain detained during the pendency of his removal proceedings, the noncitizen 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 then conducts a bond hearing and decides whether to release the noncitizen, based on a variety of factors that account for the noncitizen’s ties to the United States and evaluate whether the noncitizen poses a flight risk or danger to the community. *See Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006);<sup>6</sup> *see also* 8 C.F.R. § 1003.19(d) (“The determination of the Immigration Judge 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 provide a noncitizen with a right to release on bond. *See Matter of D-J-*, 23 I. & N. Dec. at 575 (citing *Carlson*, 342 U.S. at 534). Nor does § 1226(a) explicitly address the burden of proof that should apply or any particular factor that must be considered in

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<sup>6</sup> The BIA has identified the following non-exhaustive list of factors the immigration judge may consider: “(1) whether the alien has a fixed address in the United States; (2) the alien’s length of residence in the United States; (3) the alien’s family ties in the United States, and whether they may entitle the alien to reside permanently in the United States in the future; (4) the alien’s employment history; (5) the alien’s record of appearance in court; (6) the alien’s criminal record, including the extensiveness of criminal activity, the recency of such activity, and the seriousness of the offenses; (7) the alien’s history of immigration violations; (8) any attempts by the alien to flee prosecution or otherwise escape from authorities; and (9) the alien’s manner of entry to the United States.” *Guerra*, 24 I. & N. Dec. at 40.

bond hearings. Rather, it grants DHS and the Attorney General broad discretionary authority to determine whether to detain or release a noncitizen 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 is a provision that allows DHS to invoke an automatic stay of any decision by an immigration judge to release an individual on bond when DHS files an appeal of the custody redetermination. 8 C.F.R. § 1003.19(i)(2) (“The decision whether or not to file [an automatic stay] is subject to the discretion of the Secretary.”). If an automatic stay is invoked, regulations require the BIA to track the progress of the custody appeal “to avoid unnecessary delays in completing the record for decision.” 8 C.F.R. § 1003.6(c)(3). The stay lapses in 90 days, unless the detainee seeks an extension of time to brief the custody appeal, 8 C.F.R. § 1003.6(c)(4), or unless DHS seeks, and the BIA grants, a discretionary stay. 8 C.F.R. § 1003.6(c)(5).

### ARGUMENT

#### **I. Singh Is Now in Removal Proceedings and this Court Lacks Jurisdiction to Intervene in Those Ongoing Proceedings**

To the extent Singh is attempting to use his petition to undermine his ongoing removal proceedings, this effort is unavailing. The Court lacks jurisdiction to consider Singh's petition under two provisions of the INA.

First, 8 U.S.C. § 1252(g) strips the Court of subject matter jurisdiction over Petitioner's claims as they are “arising from the decision or action by [DHS] to commence proceedings, adjudicate cases, or execute removal orders against any alien . . . .” 8 U.S.C. § 1252(g); *see also Karki v. Jones*, 2025 U.S. App. LEXIS 20660, at \*8-9, 2025 WL 1638070 at \*4-8 (6th Cir. Aug.

13, 2025) (explaining that § 1252(g) applies to habeas claims and does not violate the Suspension Clause). Here, Petitioner is challenging ICE’s decision to detain him, under 8 U.S.C. § 1225(b)(2), at the commencement of his removal proceedings, under 8 U.S.C. § 1229a. The decision to detain him arose from the commencement of his removal proceedings, which began once the NTA was issued upon his arrival at Chicago O’Hare International Airport and DHS’s finding him inadmissible for entry to the United States. Exh.1: Schilling Decl. at Attachment A (Form I-213). The detention, therefore, is “connected directly and immediately” with the commencement of Singh’s removal proceedings. *See Tsering v. ICE*, 403 F. App’x 339, 343 (10th Cir. 2010) (cleaned up); *see also Humphries v. Various Federal USINS Employees*, 164 F.3d 936, 943 (5th Cir. 1999). Thus, the Court cannot review the Agency’s decision to detain him.

“Other circuits have recognized this straightforward point.” *Öztürk v. Hyde*, 2025 WL 2679904, at \*2 (2d Cir. Sept. 19, 2025) (Menashi, J., concurring). “By its plain terms,” Section 1252(g) “bars [the courts] from questioning [the government’s] discretionary decisions to commence removal” of the Petitioner, which include the “decision to take him into custody and to detain him during his removal proceedings.” *Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016); *see also Gupta v. McGahey*, 709 F.3d 1062, 1065 (11th Cir. 2013) (“Securing an alien while awaiting a removal determination constitutes an action taken to commence proceedings.”); *Suri v. Trump*, 2025 WL 1806692, at 11 (4th Cir. July 1, 2025) (Wilkinson, J., dissenting) (When the government detains an alien “pending a decision on whether the alien is to be removed—the detention arises from the commencement of proceedings or adjudication of cases.”). Accordingly, “claims stemming from the decision to arrest and detain an alien at the commencement of removal proceedings are not within any court’s jurisdiction.” *Limpin v.*

*United States*, 828 F. App'x 429, 429 (9th Cir. 2020); *see also Sissoko v. Rocha*, 509 F.3d 947, 949-50 (9th Cir. 2007) (upon his return to the United States, an immigration inspection officer took petitioner into custody as an “arriving alien” without proper documentation; therefore his “detention arose from [the Agency]’s decision to commence expedited removal proceedings. As a result, 8 U.S.C. § 1252(g) applies to the [petitioners]’ claim . . . . [W]e hold that 8 U.S.C. § 1252(g)’s jurisdiction-stripping language covers [their] false arrest claim . . . [which] directly challenges [the Agency’s] decision to commence expedited removal proceedings.”); *Jimenez-Angeles v. Ashcroft*, 291 F.3d 594, 599 (9th Cir. 2002) (“We construe § 1252(g), which removes our jurisdiction over ‘decisions to commence proceedings’ to include not only a decision in an individual case *whether* to commence, but also *when* to commence, a proceeding.”) (cleaned up).

Respondents acknowledge that Section 1252(g) does not cover “all claims” arising from decisions to commence proceedings, adjudicate cases, or execute removal orders. *See Dep’t of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 19 (2020). But it continues to bar review of narrow matters “arising from” those decisions—such as the Agency’s decision to detain Singh. *See id.* Holding otherwise ignores the term “arising from” in the statute and flouts the maxim of statutory construction against superfluities. That maxim “instructs courts to interpret a statute to effectuate all its provisions, so that no part is rendered superfluous.” *Hibbs v. Winn*, 542 U.S. 88, 89 (2004). Deciding that Section 1252(g) only revokes the Court’s jurisdiction over the Agency’s ultimate decision to commence proceedings, adjudicate cases, or executive removal orders renders the provision “arising from” superfluous. Accordingly, the Court should interpret section 1252(g) to revoke the Court’s jurisdiction to review the Agency’s decision to detain Singh, as it was “arising from” the Agency’s decision to commence his removal proceedings upon his arrival and attempted entry into the United States.

Secondly, 8 U.S.C. § 1252(b)(9) strips the Court of jurisdiction to review his habeas claims as the petition requires the Court to answer legal and factual questions “arising from any action taken or proceeding brought to remove . . .” him. *See* 8 U.S.C. § 1252(b)(9). Legally, Singh asks the Court to interpret the INA to determine which legal authority authorizes his detention during his removal proceedings, when he asserts that he is eligible for release on bond because he is subject to discretionary detention under 8 U.S.C. § 1226(a) and is not an arriving alien subject to mandatory detention under 8 U.S.C. § 1225(b). [R. 1 at Page ID# 2 (¶ 3)]. By making such a challenge, the adjudication of this habeas petition would require the Court to answer the “legal question” that arises from the Agency’s “action taken to remove an alien.” *See* 8 U.S.C. § 1252(b)(9). Further, Petitioner seeks a declaration that his continued detention violates the INA and/or the Due Process Clause of the Fifth Amendment. [R. 1 at Page ID# 16-17] Such a holding would require the Court to make the factual determination that Singh is not removable as inadmissible. It cannot do so.

If the Court exercised jurisdiction, in contravention of Section 1252(b)(9), to make the factual determination as to his admissibility and the legal holding identifying the statute governing his detention, it could create the absurd holding that “it is unconstitutional for the government to detain aliens pending removal for a reason that allows the government to remove them.” *Öztürk*, 2025 WL 2679904 at \*2 (Menashi, J., concurring). This is exactly what Congress sought to preclude in Section 1252(b)(9). “Congress channeled judicial review of removal proceedings into a single proceeding to avoid such an incoherent result.” *Id.* By enacting Section 1252(b)(9), “Congress plainly intended to put an end to the scattershot and piecemeal nature of the review process that previously had held sway in regard to removal proceedings.” *Aguilar v. ICE*, 510 F.3d 1, 9 (1st Cir. 2007) (citing H.R. Rep. No. 109-72, at 174). It designed the statutes

“to consolidate and channel review of *all* legal and factual questions that arise from the removal of an alien into the administrative process, with judicial review of those decisions vested exclusively in the courts of appeals.” *Id.* (emphasis in original). It is reasonable to conclude, therefore, that the jurisdictional bars do not prevent the adjudication of a claim that is “unrelated to any removal action or proceeding,” *Delgado v. Qurantillo*, 643 F.3d 52, 55 n.3 (2d Cir. 2011) (cleaned up), or “independent of challenges to removal orders,” H.R. Rep. No. 109-72, at 176 (2005). But when petitioners, such as Singh, are “challenging the decision to detain them in the first place” arguing there is no factual support for initiating removal proceedings or legal support for detaining them throughout the duration of those proceedings, that is a challenge to the removal proceedings that Congress has barred. *Jennings*, 583 U.S. at 294 (plurality opinion); *see also id.* at 314 (Thomas, J., concurring in part and concurring in the judgment) (“§ 1252(b)(9) removes jurisdiction over [aliens’] challenge to their detention.”).

The Supreme Court in *Jennings* and in *Nielsen v. Preap*, 586 U.S. 392, 402 (2019) found that § 1252(b)(9) did not limit the jurisdiction of the Court for the claims made in those cases. *See Jennings* at 294-95. In doing so, the Court gave district courts guidance as to the claims that *would* be limited by § 1252(b)(9).

The parties in this case have not addressed the scope of § 1252(b)(9), and it is not necessary for us to attempt to provide a comprehensive interpretation. For present purposes, it is enough to note that respondents are not asking for review of an order of removal; *they are not challenging the decision to detain them in the first place* or to seek removal; and they are not even challenging any part of the process by which their removability will be determined. Under these circumstances, § 1252(b)(9) does not present a jurisdictional bar.

*Id.* (emphasis added); *see also Preap*, 586 U.S. at 402 (quoting *Jennings*).

The petition here seeks to sidestep these jurisdictional bars by arguing about whether Singh is an arriving alien subject to mandatory detention under 8 U.S.C. § 1225(b)(2), [R. 1 at

Page ID# 2 (¶ 3)], and alleging that the automatic stay invoked by DHS under 8 C.F.R. § 1003.19(i)(2) violates various statutes and Singh’s Constitutional rights. [*Id.*; Page ID# 13-16 (¶¶ 52-66)]. But really, Singh is “challenging the decision to detain [him] in the first place” at the commencement of his formal removal proceedings when he attempted to reenter the United States from abroad. He specifically challenges ICE’s removal proceedings decision to detain him under § 1225(b)(2). *See, e.g., Li v. United States Citizenship & Immigr. Servs.*, 2021 WL 6882637, at \*2 (C.D. Cal. Dec. 2, 2021) (distinguishing *Jennings* and finding lack of jurisdiction under § 1252(b)(9)); and *Conteh v. Wolf*, 2020 WL 6363910 at \*5 (D. Mass. Oct. 29, 2020) (“Justice Alito’s framework is particularly instructive. In concluding that the claims in *Jennings* were *not* subject to § 1252(b)(9)’s jurisdictional bar, he seems to have set forth three categories of claims that *are*: (1) cases where an alien is seeking review of an order of removal; (2) cases where an alien is seeking review of the government’s decision to detain him or seek removal; and (3) cases where an alien is seeking to challenge ‘any part of the process by which [the alien’s] removability will be determined.’”).

Accordingly, the Court should dismiss Singh’s habeas petition for lack of jurisdiction, as it challenges decisions arising from the Agency’s action to commence his removal proceedings, requires the Court to answer legal and factual questions, and in any event, may be presented before the immigration judge, the Board of Immigration Appeals (BIA), and then to the Sixth Circuit Court of Appeals—but not to this Court.

## **II. Singh Is an Arriving Alien Detained under 8 U.S.C. § 1225 and Ineligible for Bond**

Although not entirely clear, Singh appears to attack his designation by DHS and the IJ as subject to mandatory detention under § 1225 on the basis of the alleged 2008 forgery conviction that he contends DHS fabricated and filed in its appeal to the BIA, that was later withdrawn. [*See*

R. 1 at Page ID# 1-2, 5-7 (¶¶ 1-2, 17-23)]. He complains that the IJ’s decision reversing his bond determination “made no mention of what charge he was referring to and whether it was Petitioner’s sole 2000 conviction or the fake charge that DHS manufactured in its appeal.” [*Id.* at Page ID# 5-6 (¶ 20)]. This alleged omission, however, is irrelevant because Singh provides no legal support in his petition for the contention that the 2000 convictions do not meet the definition contained within INA section 212(a)(2) and are therefore insufficient, by themselves, to justify his detention. *See supra* n. 3 (notwithstanding their subsequent reduction to misdemeanors, the original charges and sentencing retain the immigration consequences of a conviction).<sup>7</sup>

Under INA §101(a)(13)(c), an alien lawfully admitted for permanent residence in the United States is considered to be “seeking admission” to the United States when returning from a trip abroad if he has been convicted of an offense identified in INA § 212(a)(2).<sup>8</sup> As Singh met these criteria, the IJ correctly held that “his custody status may not be reviewed by the Immigration Judge.” [R. 1-9 at Page ID# 68-69 (citing INA 101(a)(13)(C)(v) and 8 CFR 1003.19(h)(2).] To the extent that Singh argues that he is in “administrative limbo,” [R. 1 at Page ID# 2 (¶ 3)], his remedy is to file a motion to reconsider before the BIA, within thirty days of its October 30, 2025 order memorializing DHS’s withdrawal of its notice of appeal. *See* Ex. 1: Schilling Decl. at ¶ 14.

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<sup>7</sup> Singh has made these arguments – that he has not committed a crime involving moral turpitude (CIMT) under INA § 212(a)(2) – in the ongoing removal proceedings, including in his motions to reissue bond and to terminate the removal proceedings. Ex.1: Schilling Decl. at ¶9. The fact that he does not make them here underscores the impropriety of his efforts to persuade this Court to intervene in those proceedings.

<sup>8</sup> Although Singh did not raise the issue in his petition, he may note that his NTA did not classify him as an arriving alien. [*See* R. 1-4 at Page ID# 38]. This fact makes no difference to his case, however. Whether or not the correct box on a subsequently issued NTA is checked to classify the alien as an arriving alien does not change the alien’s legal posture in the United States; at most, it reflects a correctable scrivener’s error. *See Matter of Herrera-Vasquez*, 271&N Dec. 825, 827 (BIA 2020). Moreover, neither INA § 239(a)(a)(A) nor the regulation at 8 C.F.R. § 1003.15(b)(1) explicitly requires that the Department of Homeland Security “check” one of the three alien classification boxes on the NTA, so long as the required information is provided. *Id.*

### **III. The Automatic Stay under 8 C.F.R. § 1003.19(i)(2) Is Constitutional**

Even setting aside the jurisdictional problems, Petitioner does not show he is entitled to relief. Singh alleges that DHS's custody determination and the invocation of 8 C.F.R. § 1003.19(i)(2)'s automatic stay violates (1) his Fifth Amendment substantive and procedural due process rights and (2) the INA and the APA, and that § 1003.19(i)(2) is *ultra vires*. [R. 1 at Page ID# 13-16.] First, the automatic stay does not violate the substantive due process clause of the Fifth Amendment—"An automatic stay of up to 90 days does not violate due process because it is narrowly tailored to serve a compelling government interest." *Altayar v. Lynch*, 2016 U.S. Dist. LEXIS 175819, at \*13 (D. Ariz. Nov. 23, 2016). Additionally, § 1003.19(i)(2) is a valid application of the Attorney General's discretion that was provided to her under 8 U.S.C. § 1226: "In essence, the challenged regulation reveals the division of authority the Attorney General has established within the executive branch to exercise [her] overall authority to determine the custodial status of aliens facing removal proceedings." *Hussain v. Gonzales*, 492 F. Supp. 2d 1024, 1032 (E.D. Wis. 2007).

#### **A. The Automatic Stay Complies with the Fifth Amendment**

##### **1. Singh's Detention Does Not Offend Due Process**

The Fifth Amendment's Due Process Clause requires that "[n]o person shall ... be deprived of life, liberty, or property, without due process of law." U.S. Const. Amend. V. Due process contains both procedural components, which require the government to follow certain procedures before a deprivation, and substantive components, which "bar[] certain arbitrary, wrongful government actions regardless of the fairness of the procedures used to implement them." *Zinermon v. Burch*, 494 U.S. 113, 125 (1990) (internal quotation omitted); *Snider Int'l Corp. v. Town of Forest Heights*, 739 F.3d 140, 145 (4th Cir. 2014).

“[A]liens ... have a substantive due process right to be free of arbitrary confinement pending deportation proceedings.” *Rodriguez v. Perry*, 747 F. Supp. 3d 911, 917 (E.D. Va. 2024) (citing *Doherty v. Thornburgh*, 943 F.2d 204, 209 (2d Cir. 1991)). “It is axiomatic, however, that an alien’s right to be at liberty during the course of deportation proceedings is circumscribed by considerations of the national interest.” *Id.* See also *Rodriguez-Diaz v. Garland*, 53 F.4th 1189, 1213 (9th Cir. 2022) (recognizing that while both interests are substantial, “the private interest of a detained alien under § 1226(a) is lower than that of a detained U.S. citizen, and the governmental interests are significantly higher in the immigration detention context.”).

Relevant here, the Supreme Court has consistently held that for certain purposes under the Fifth Amendment there is a constitutionally sound distinction in immigration law between applicants for admission and those who have already entered the United States. *Mbalivoto v. Holt*, 527 F. Supp. 3d 838, 845 (E.D. Va. 2020) (citing *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 138-39 (2020)); *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (citing *Kaplan v. Tod*, 267 U.S. 228, 230 (1925)) (“The distinction between an alien who has effected an entry into the United States and one who has never entered runs throughout immigration law.”); see also *Thuraissigiam*, 591 U.S. 103. “In that regard, an entering alien has only those rights concerning his admissibility as Congress has statutorily provided.” *Mbalivoto v. Holt*, 527 F. Supp. 3d 838, 845 (E.D. Va. 2020). Moreover, the Supreme Court has recognized that “[d]etention during removal proceedings is a constitutionally permissible part of that process.” *Demore v. Kim*, 538 U.S. 510, 531 (2003) (holding that mandatory detention under 8 U.S.C. § 1226(c) is facially constitutional); see also *Miranda v. Garland*, 34 F. 4th 338, 364 (4th Cir. 2022).

Laws that infringe a “fundamental” right protected by the Due Process Clause are constitutional only if “the infringement is narrowly tailored to serve a compelling state interest.”

*Reno*, 507 U.S. at 302 (1993). The automatic stay as applied here to Petitioner does not violate substantive due process, as it is narrowly tailored to serve the Government’s compelling interest in detaining him while the immigration judge’s decision is appealed. The filing of the bond appeal by DHS under 8 C.F.R. § 1003.19(i)(2) had the effect of automatically staying the bond decision of the immigration judge for a limited and defined period, as the automatic stay expires 90 days from the date of DHS’s appeal (8 C.F.R. § 1003.6(c)(3)). Here, as the District Court found in *Altayar v. Lynch*, “a stay of some length is afforded precisely because it allows the Government an opportunity to appeal before a detainee might flee.” 2016 WL 7383340, at \*4 (D. Ariz. Nov. 23, 2016) (citing *El-Dessouki, v Cangemi*, 2006 WL 2727191, at \*3 (D. Minn. Sept. 22, 2006) (“a finite period of detention to allow the BIA an opportunity to review the immigration judge’s bond redetermination is a narrowly tailored procedure that serves the government’s interest in preventing flight of aliens likely to be ordered removable and in protecting the community”).

An automatic stay of up to 90 days does not violate due process because it remains in effect only until the BIA has an opportunity to review the appeal. The limited stay is also narrowly tailored to enhance the agency’s ability to effect removal should that be the ultimate decision in a case. Moreover, the stay allows DHS to “maintain the status quo” while it seeks expedited review by the BIA of the custody order. 71 Fed. Reg. 57873, 57874 (November 1, 2006).

Contrary to Petitioner’s claims, the automatic stay is not arbitrary nor does it neuter the immigration judge’s decision simply because the Government may unilaterally continue Petitioner’s detention for a limited period of time. Rather, as observed by the Court in *Altayar*, “the regulations under 8 C.F.R. § 1003.38 provide for a constitutionally permissive appellate process in compliance with due process, which provides both parties in bond proceedings with an

avenue to appeal the Immigration Judge's custody and bond decision.” See 2016 WL 7383340, at \*5 (citing 8 C.F.R. § 1003.38). In this respect, the *Altayar* court concluded that “the automatic stay [] does not turn the IJ decision into a meaningless formality because it affords the BIA time to consider an appeal,” and “the purpose of the automatic stay is to ‘avoid the necessity of having to decide whether to order a stay on extremely short notice with only the most summary presentation of the issues.’” *Id.* (citing *Review of Custody Determinations*, 71 FR 57873-01, 2006 WL 2811410).

## **2. The Procedural Due Process Provided Was Adequate**

Procedural due process requires the “the opportunity to be heard ‘at a meaningful time and in a meaningful manner.’” *Ronald Fagan, M.D., P.C. v. U.S. Dep’t of Health & Hum. Servs.*, 2025 WL 1837402, at \*12 (D. Md. July 2, 2025); *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)). To determine whether administrative procedures afford adequate due process protection, courts must consider (1) “the private interest that will be affected by the official action;” (2) “the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards;” and (3) “the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” *Id.* at 335. When considered here, Petitioner’s limited due process rights as an inadmissible alien do not overcome the Government’s substantial interests, discussed *supra*, in maintaining his detention during the limited automatic stay time period. Further, as there is no indication that he is not properly detained as an applicant for admission, the risk that he is inappropriately being deprived of his freedom during this limited period of time is not significant.

Finally, Petitioner cannot show that the automatic stay in his case has rendered his proceeding so “fundamentally unfair” that it has “prejudiced the outcome of his case.” *See Anim v. Mukasey*, 535 F.3d 243, 256 (4th Cir. 2008) (“To succeed on a due process claim in an asylum or deportation proceeding, the alien must establish two closely linked elements: (1) that a defect in the proceeding rendered it fundamentally unfair and (2) that the defect prejudiced the outcome of the case.”) Prejudice requires that the “rights of [an] alien have been transgressed in such a way as is likely to impact the results of the proceedings.” *Rusu v. U.S. Immig. & Naturalization Serv.*, 296 F.3d 316, 320-321 (4th Cir. 2002). Petitioner does not argue that his current detention has prejudiced his removal proceedings. Further, Petitioner’s counsel received notice of the stay request and is opposing DHS’s efforts at overturning the immigration judge’s bond decision. *See Vargas–Hernandez v. Gonzales*, 497 F.3d 919, 926–27 (9th Cir. 2007) (“Where an alien is given a full and fair opportunity . . . to present testimony and other evidence in support of the application, he or she has been provided with due process.”).

**B. The Automatic Stay Is Not *Ultra Vires***

Petitioner also incorrectly argues that the automatic stay provision is *ultra vires* and exceeds ICE’s authority under the INA. [R. 1 at Page ID# 15 (¶ 63)]. As the District Court in Minnesota recently observed in facing a similar challenge to application of the automatic stay to a removal, the text of 1225(b) expressly commits the decision of whether to release or deny release to a person awaiting removal to the “Attorney General,” not to immigration judges. *See Farias v. Garland*, 2024 WL 6074470, 2024 U.S. Dist. LEXIS 246147, at \*3-8 (D. Minn. Dec. 6, 2024); *see also Hussain v. Gonzalez*, 492 F. Supp. 2d 1024, 1031-32 (E.D. Wisc. 2007). The regulations grant the Government the discretion to release certain aliens already detained under § 1225(b)(2)(A). However, the regulation contemplates such release only as an exercise of the Attorney General’s

parole power under 8 U.S.C. § 1182(d)(5)(A). *See* 8 C.F.R. § 235.3(c)(1) (“Parole of such alien [detained under 8 U.S.C. § 1225(b)] shall only be considered in accordance with § 212.5(b) of this chapter.”); 8 C.F.R. § 212.5 (citing § 1182 as authority for the Government’s power to parole those detained under § 1225). Like in *Farias*, Petitioner’s argument here “also [does] not find support in the regulations promulgated by the Attorney General which make clear that immigration judges act only ‘as the Attorney General’s delegates in the case that come before them.’” *Farias*, 2024 WL 6074470, \*2, citing 8 C.F.R. § 1003.10(b). As is clear from a plain reading, 8 U.S.C. § 1225(b)(2)(A) does not delegate authority to immigration judge but, instead, the effect of the provision under which Petitioner was found removable specifically prevents immigration judges from exercising their judgment independent of the Attorney General. Therefore, the Court should find Petitioner’s argument that DHS’s appeal of the immigration judge’s bond determination and invocation of the automatic stay were not *ultra vires* or otherwise inconsistent with the INA.

Likewise, Singh’s contention that his detention violates the APA is unavailing. He sets forth no argument nor legal citation, beyond quoting the APA itself and asserting that “[t]he arbitrary and capricious detention of Petitioner, despite having legal permanent resident status, causes him irreparable harm...[and] this Court should find that any decision to detain Petitioner is arbitrary, capricious, and unsupported by substantial evidence.” [R. 1 at Page ID# 16 (¶¶ 65-66)]. But “issues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived. It is not sufficient for a party to mention a possible argument in the most skeletal way, leaving the court to ... put flesh on its bones.” *McPherson v. Kelsey*, 125 F.3d 989, 995–96 (6th Cir. 1997) (internal quotations and citations omitted).

Moreover, Petitioner’s attempt to shoehorn APA claims into a habeas action is improper. It is black-letter law that habeas petitioners are limited to challenging the fact or duration of their

confinement, not the conditions of that confinement or the agency policies governing it. *Wilson v. Williams*, 961 F.3d 829, 838 (6th Cir. 2020); *Martin v. Overton*, 391 F.3d 710, 714 (6th Cir. 2004). And, as a prudential matter, courts in this Circuit have not permitted “combined habeas corpus and other civil claims to proceed together in one case.” *J.O.B. v. United States*, No. 3:23-CV-217, 2024 WL 4011825, at \*7 (S.D. Ohio Aug. 30, 2024) (collecting cases), *R. & R. adopted*, No. 3:23-CV-217, 2024 WL 4223636 (S.D. Ohio Sept. 18, 2024); *Ruza v. Michigan*, No. 1:20-CV-504, 2020 WL 4670556, at \*2 (W.D. Mich. Aug. 12, 2020), *aff’d*, No. 20-1841, 2021 WL 3856305 (6th Cir. Apr. 7, 2021) (same). Habeas petitions and civil actions “have distinct purposes and contain unique procedural requirements that make a hybrid action difficult to manage.” *Ruza*, 2020 WL 4670556, at \*2. Thus, Petitioner’s APA claims improperly are pleaded, and the Court should not consider them alongside his petition for writ of habeas corpus.

In addition, APA claims are unavailable where habeas relief presents an adequate alternative remedy. *Trump v. J.G.G.*, 604 U.S. 670, 674 (2025) (Kavanaugh, J., concurring). Habeas relief would be an adequate remedy for Petitioner’s claims, by addressing whether he is entitled to release from unlawful custody. That “fall[s] within the ‘core’ of the writ of habeas corpus and thus must be brought in habeas.” *Id.* at 672 (per curium). Petitioner’s APA claims are not properly before the Court.

### **CONCLUSION**

Petitioner’s petition for habeas relief should be denied because he is lawfully detained.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 5, 2025, I filed this document via CM/ECF, which will automatically provide service to all counsel of record.

/s/ Callie R. Owen  
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