UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 1:25-cv-24964-DPG

DIMITRI ALBERT EDOUARD VORBE,

Petitioner,

v.

FIELD OFFICE DIRECTOR, Miami Field Office,
U.S. Immigration and Customs Enforcement,

Respondent.
_____/

RESPONDENT'S RETURN AND MEMORANDUM OF LAW TO PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

Respondent, Field Office Director, Miami Field Office, U.S. Immigration and Customs Enforcement ("ICE") ("Respondent"), by and through the undersigned Assistant United States Attorney, and in accordance with this Court's Order to Show Cause [ECF Nos. 6, 8], respectfully submits this Return to Petitioner Dimitri Albert Edouard Vorbe's ("Petitioner") Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2241 [ECF No. 1], as follows:

INTRODUCTION

Petitioner commenced this action on October 27, 2025, seeking an Order providing him with a custody redetermination, or in the alternative, immediate release from custody. ECF No. 1 ¶¶ 10-14, and at PRAYER FOR RELIEF. As an alien charged as removable under 8 U.S.C. § 1227(a)(4)(C) for foreign policy concerns, Petitioner alleges that he is not subject to mandatory detention under 8 U.S.C. § 1226(c)(1)(D) [INA § 236(c)(1)(D)], and therefore, his continued detention violates the Due Process Clause of the Fifth Amendment of the Constitution. *Id.* ¶¶ 53, 59, 73-76 (COUNT I).

The Court should deny the Petition. *First*, Petitioner must exhaust the procedures available to him through his ongoing bond and removal proceedings. *Second*, as noted, Petitioner has been charged as removable under 8 U.S.C. § 1227(a)(4)(C) for foreign policy concerns and therefore is subject to detention pursuant to 8 U.S.C. § 1226. In this regard, federal immigration laws deprive the Court of jurisdiction to grant Petitioner the relief he seeks. *Third*, Petitioner's due process claim lacks merit. *Finally*, Petitioner's challenge to the Secretary's determination invokes an unreviewable political question.

BACKGROUND

I. Petitioner's Immigration History and Detention.

Petitioner is a native and citizen of Haiti. *See* Ex. A, Record of Deportable/Inadmissible Alien (I-213), [redacted]; *see also* Ex. B, Declaration of Officer DAngelo L. Eiland, Jr., ¶ 6. He first entered the United States on or about January 4, 2020, as a nonimmigrant with authorization to remain in the United States for a temporary period not to exceed six months. *See* Ex. A, I-213; *see also* Ex. B, Declaration, ¶ 7. However, he failed to depart the United States as required. *See* Ex. A, I-213; *see also* Ex. B, Declaration, ¶ 8. On July 1, 2020, Petitioner filed a Form I-539, Application to extend Nonimmigrant Status with United States Citizenship and Immigration Services ("USCIS"), which was denied. *See* Ex. A, I-213; *see also* Ex. B, Declaration, ¶ 9.

On July 23, 2020, the Republic of Haiti Superior Courts in Port-Au-Prince, Haiti issued a criminal arrest warrant against Petitioner for corruption, forgery, money laundering, illicit enrichment, and conspiracy in Haiti. *See* Ex. C, Arrest Warrant; *see also* Ex. A, I-213; Ex. B, Declaration, ¶ 10.

On August 21, 2020, Petitioner was detained by U.S. Immigration and Customs Enforcement ("ICE") and taken into ICE custody at the Krome Service Processing Center ("Krome"). *See* Ex. A, I-213; *see also* Ex. B, Declaration, ¶ 11. Thereafter, Petitioner was placed in removal proceedings via a Notice to Appear ("NTA") charging him with removability pursuant to Section 237(a)(1)(B) of the Immigration and Nationality Act ("INA"), in that after admission as a nonimmigrant, Petitioner remained in the United States for a time longer than permitted. *See* Ex. D, NTA; *see also* Ex. B, Declaration, ¶ 12.

On August 25, 2020, Petitioner's adult U.S. citizen son filed a Form I-130, Petition for Alien Relative, on Petitioner's behalf, which USCIS approved on December 18, 2020. *See* Ex. B, Declaration, ¶ 13. On August 27, 2020, an Immigration Judge ("IJ") granted Petitioner a $5,000 bond. *See* Ex. E, Bond Order; *see also* Ex. B, Declaration, ¶ 14. On August 28, 2020, he was released from ICE custody. *See* Ex. B, Declaration, ¶ 15.

On February 24, 2021, Petitioner filed a Form I-485, Application to Register Permanent Residence or Adjust Status, with USCIS. *Id.* ¶ 16. On June 28, 2022, the charges set forth in the Haitian criminal arrest warrant were dismissed. *Id.* ¶ 17.

On September 8, 2023, Petitioner appeared with counsel before the Immigration Court in Miami, Florida for a merits hearing on his application to adjust status to lawful permanent resident. *Id.* ¶ 18. At the conclusion of the hearing, the IJ left the record open for the parties to file additional documents. *Id.* ¶ 19. On April 22, 2025, ICE filed a brief arguing that Petitioner is inadmissible under INA § 212(a)(6)(C)(i) because he willfully and deliberately lied on applications submitted to DHS to obtain immigration benefits. *Id.* ¶ 20. The Immigration Court has not yet ruled on Petitioner's eligibility for this relief. *Id.* ¶ 21.

Under INA § 237(a)(4)(C) (8 U.S.C. 1227(a)(4)(C)), an alien is deportable from the United States if the Secretary of State has reasonable grounds to believe the alien's presence or activities in the United States would have potentially serious adverse foreign policy consequences for the United States. INA§ 237(a)(4)(C). On September 22, 2025, U.S. Secretary of State Marco Rubio determined that Petitioner is removable under INA § 237(a)(4)(C). *See* Ex. F, Memorandum for the Secretary of Homeland Security from Secretary of State Marco Rubio (Rubio Memorandum); *see also* Ex. G, I-213, Sept. 23, 2025; Ex. B, Declaration, ¶ 22. Secretary Rubio further stated that Petitioner engaged in a campaign of violence and gang support that contributed to Haiti's destabilization, and that allowing Petitioner to remain in the United States undermines U.S. foreign policy interests in stabilizing Haiti and the region. *See* Ex. F, Rubio Memorandum; *see also* Ex. B, Declaration, ¶ 23.

On September 23, 2025, ICE cancelled Petitioner's bond, and he was taken into ICE custody at Krome. *See* Ex. G, I-213; *see also* Ex. B, Declaration, ¶ 24; Ex. H, Form I-200, Warrant for Arrest of Alien; Ex. I, Form I-286, Notice of Custody Determination; Ex. J, Bond Cancellation; *see also* INA § 236(b).

That same day, ICE filed a Form I-261, Additional Charges of Inadmissibility/ Deportability, charging Petitioner with an additional charge of removability pursuant to Section 237(a)(4)(C) of the INA. *See* Ex. K, Form I-261; *see also* Ex. B, Declaration, ¶ 25.

On October 23, 2025, an IJ denied Petitioner's request for custody redetermination, finding the Immigration Court lacked jurisdiction. *See* Exhibit L, Bond Order; *see also* Ex. B, Declaration, ¶ 26; *see also Matter of Ruiz-Massieu*, 22 I&N Dec. 833 (BIA 1999). To date, Petitioner has not appealed the denial of bond to the Board of Immigration Appeals ("BIA"). *See* Ex. B, Declaration, ¶ 27. Petitioner has a master calendar hearing before the Immigration Court at Krome on

November 12, 2025, to plead to the INA § 237(a)(4)(C) charge in the NTA. *See* Ex. B, Declaration, ¶ 28.

APPLICABLE LEGAL STANDARDS

I. Legal Standard for 28 U.S.C. § 2241.

A district court may grant a writ of habeas corpus to any person who demonstrates he is in custody in violation of the Constitution or laws of the United States. 28 U.S.C. § 2241(c)(3). The right to challenge the legality of a person's confinement through a petition for a writ of habeas corpus extends to those persons challenging the lawfulness of immigration-related detention. *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001); *Demore v. Kim*, 538 U.S. 510, 517 (2003). "Petitioner 'bears the burden of proving that he is being held contrary to law; and because the habeas proceeding is civil in nature, he must satisfy his burden of proof by a preponderance of the evidence.'" *Freeman v. Pullen*, 658 F. Supp. 3d 53, 58 (D. Conn. 2023) (quoting *McDonald v. Feeley*, 535 F. Supp. 3d 128, 135 (W.D.N.Y. 2021)); *Bradin v. United States Prob. and Pretrial Servs.*, No. 22-cv-3032, 2022 U.S. Dist. LEXIS 72062, 2022 WL 1154622, at *3 (D. Kan. Apr. 19, 2022) (citing cases discussing burden of proof in a habeas case under § 2241).

II. Legal Framework for Detention.

In the INA, Congress enacted a multi-layered statutory scheme for civil detention pending a decision on removal, during the administrative and judicial review of removal orders, and in preparation for removal. *See generally* 8 U.S.C. §§ 1225, 1226, 1231. The time and circumstances of entry, as well as the stage of the removal process, determine where a detainee falls within this scheme and whether detention is discretionary or mandatory. For individuals like Petitioner, Section 1226 "generally governs the process of arresting and detaining … aliens pending their removal." *Jennings v. Rodriguez*, 138 S. Ct. 830, 837 (2018). Within Section 1226, subsection (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).

Section 1226(a) detainees may be detained for the duration of the removal proceedings or be released "on bond of at least $1,500," or conditional parole. 8 U.S.C. § 1226(a)(1)-(2). When an individual is taken into custody under Section 1226(a), an ICE official makes an initial custody determination, including the setting of a bond. 8 C.F.R. §§ 236.1(c)(8), 236.1(d). The ICE officer may "in [his] discretion, release an alien" provided that the officer is satisfied that "the alien is likely to appear for any future proceeding." 8 C.F.R. § 236.1(c)(8). If ICE determines that detention during the pendency of removal proceedings is necessary, the detainee may request a custody redetermination hearing before an IJ. 8 C.F.R. §§ 236.1(d), 1003.19, 1236.1(d). Generally, IJs have broad discretion in deciding whether to release someone on bond. *Matter of Guerra*, 24 I. & N. Dec. 37, 39 (BIA 2006).

These same regulations limit an IJ's discretion. IJs cannot review ICE's custody determinations for someone like Petitioner, who is described in Section 1227(a)(4), as evidenced by the IJ's October 23, 2025 denial of Petitioner's request for bond for lack of jurisdiction, which Petitioner has not appealed to the BIA. *See* Exhibit L, Bond Order; *see also* Ex. B, Declaration, ¶¶ 26, 27; *see also* 8 C.F.R. § 1003.19(h)(2)(i)(C).[1] Although the IJ has no authority[2] to review ICE's

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[1] 8 C.F.R. § 1003.19(h)(2)(i)(C) applies when an alien is "described in" the INA § 237(a)(4). Thus, an alien does not need to be charged with the deportability ground at INA § 237(a)(4), all that is required is that the alien be "described in" the INA § 237(a)(4). In other words, aliens who may not be subject to the ground of deportability, like an inadmissible alien, still fall within 8 C.F.R. § 1003.19(h)(2)(i)(C), and thus IJs have no authority to hold bond hearings in those cases.

[2] When describing 8 C.F.R. § 1003.19(h)(2)(i)(C), "authority" as opposed to "jurisdiction" is the proper term. "Jurisdiction refers to a court's adjudicatory authority." *Reed Elsevier, Inc. v. Muchnick*, 559 U.S. 154, 160 (2010). "[T]he word 'jurisdictional' is generally reserved for prescriptions delineating the classes of cases a court may entertain (subject-matter jurisdiction)

custody determination, Petitioner can request that an IJ determine whether he is properly "described in" Section 1227(a)(4). 8 C.F.R. § 1003.19(h)(2)(ii)[3]; *see also Hussain v. Gonzales*, 492 F. Supp. 2d 1024, 1033 (E.D. Wisc. 2007), *aff'd sub nom. Hussain v. Mukasey*, 510 F.3d 739 (7th Cir. 2007). He can submit evidence and legal authority as to whether he is properly included within the removability charge to allow the IJ to make the determination in the first place. *Hussain*, 492 F. Supp. 2d at 1033. If Petitioner disagrees with the IJ's determination, he can seek review before the BIA. 8 C.F.R. § 1003.19(f); *see also Hussain*, 492 F. Supp. 2d at 1033 (discussing the BIA's decision determining proper detention authority and custody review process).

ARGUMENT

I. Petitioner Failed to Exhaust Administrative Remedies.

In seeking release or an order to conduct a bond redetermination, Petitioner is asking this Court to reverse the Government's decision to detain him pending removal proceedings and circumvent the administrative review process pursuant to 8 C.F.R. § 1003.38. The Court should reject this invitation and require Petitioner to follow the immigration procedures set forth in the INA.

In this case, Petitioner has both bond and removal proceedings which are two separate proceedings under the regulations at 8 C.F.R. § 1003.19(d) ("Consideration by the Immigration

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and the persons over whom the court may exercise adjudicatory authority (personal jurisdiction)." *Fort Bend Cty. v. Davis*, 139 S. Ct. 1843, 1848 (2019). A rule should only be referred to as jurisdictional if "it governs a court's adjudicatory capacity, that is, its subject-matter or personal jurisdiction." *Henderson v. Shinseki*, 562 U.S. 428, 435 (2011) (citing, *inter alia, Reed Elsevier*, 559 U.S. at 160-61). Immigration Judges have personal jurisdiction over respondents and subject matter jurisdiction to interpret the Immigration and Nationality Act and its implementing regulations. Therefore, they have jurisdiction to conduct bond hearings over aliens in proceedings before them.

[3] Such hearings are colloquially referred to as "Joseph hearings." *See Demore v. Kim*, 538 U.S. 510, 514 (2003) (citing *Matter of Joseph*, 22 I. & N. Dec. 799, 1999 WL 339053 (BIA 1999).

Judge of an application or request of a respondent regarding custody or bond under this section shall be separate and apart from, and shall form no part of, any deportation or removal hearing or proceeding. 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 the Service.").

With respect to his bond proceedings, an IJ denied Petitioner bond on October 23, 2025. *See* Exhibit L, Bond Order (denying request for custody redetermination); *see also* Ex. B, Declaration, ¶ 26. Under 8 C.F.R. 1003.38, Petitioner is entitled to appeal the IJ's custody redetermination decision to the BIA which can consider whether the IJ properly found no jurisdiction to grant bond based on Petitioner's charge of removability. *See* 8 CFR § 1003.38(b) (Notice of Appeal must be filed within 30 days); *see also* Ex. B, Declaration, ¶ 27. To date, no appeal has been filed. Separately, with respect to his removal proceedings (which are subject to the petition for review process), Petitioner has a master calendar hearing before the Immigration Court at Krome on November 12, 2025, to plead to the INA § 237(a)(4)(C) charge in the NTA. *See* Ex. B, Declaration, ¶ 28.

Notwithstanding the procedures available to him, Petitioner commenced this habeas action. "Habeas is at its core a remedy for unlawful executive detention." *Munaf v. Geren*, 553 U.S. 674, 693 (2008). The writ of habeas corpus and its protections are "strongest" when reviewing "the legality of Executive detention." *INS v. St. Cyr.*, 533 U.S. 289, 301 (2001). Therefore, the traditional function of the writ is to seek one's release from unlawful detention. *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 117 (2020) (citing *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973)). But it is not without limits. In *Tazu v. AG United States*, 975 F.3d 292, 299 (3d Cir. 2020), the Court of Appeals for the Third Circuit carefully considered the habeas implications and

reaffirmed that a petitioner does not have a constitutional right to anything more than the petition for review process. 975 F.3d at 300. That process is "an adequate substitute for a petitioner's historic right to habeas corpus." *Id.* Applied here, Petitioner's habeas action is a misapplication of the Great Writ; it is an attempt to work around his administrative proceedings and circumvent the INA, which the Court should deny. *See, e.g., Massieu v. Reno*, 91 F.3d 416, 417 (3d Cir. 1996) (Alito, J.) ("an alien attempting to prevent an exclusion or deportation proceeding from taking place" must first exhaust his administrative remedies before the Immigration Court and a petition for review); *Rodriguez v. Ratledge*, 715 F. App'x 261, 265 (4th Cir. 2017) (recognizing that exhaustion is a prudential constraint that "prevents premature judicial intervention" and stating that "[p]rior to hearing a § 2241 petition, federal courts require exhaustion of alternative remedies, including administrative appeals."); *Duvall v. Elwood*, 336 F.3d 228, 233–34 (3d Cir. 2003) (failure of a habeas petitioner to present claims first to the immigration courts is "fatal to the District Court's jurisdiction over [the petitioner's] habeas petition.") *Jean-Claude W. v. Anderson*, No. 19-cv-16282, 2021 WL 82250, at *2 (D.N.J. Jan. 11, 2021) ("To have jurisdiction to consider whether [petitioner] was denied due process, … I must confirm that [petitioner] has exhausted all available administrative remedies; if he has not, then I cannot review the merits of his claim." (citing *Yi v. Maugans*, 24 F.3d 500, 503–04 (3d Cir. 1994); *Okonkwo v. INS*, 69 F. App'x 57, 59–60 (3d Cir. 2003))).

II. Federal Immigration Laws Deprive the Court of Jurisdiction to Grant Petitioner the Relief He Seeks.

While the federal courts may have a general inherent authority to grant release in certain circumstances, that authority can be conditioned by statute. *Cf. Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 327–28 (2015) ("The power of federal courts of equity to enjoin unlawful executive action is subject to express and implied statutory limitations. Courts of equity can no

more disregard statutory and constitutional requirements and provisions than can courts of law."). In this case, the INA limits that authority and bars such relief.

By way of the INA and then the REAL ID Act, Congress divested federal district courts from hearing claims *related to removal*. 8 U.S.C. § 1252(b)(9). So too any claim *related to the decision* to commence removal proceedings, as well as the discretionary detention statute that authorizes detention pending a final decision in removal proceedings. *Id.* § 1252(g), and § 1226(e), respectively. This is precisely what Petitioner challenges here. However, Congress leaves these decisions to the Secretary of Homeland Security which are unreviewable.

A. Section 1252(b)(9) Bars Relief and Review of Petitioner's Claims.

The Eleventh Circuit has unequivocally stated that "since the passage of the REAL ID Act in 2005, a petition for review filed with the appropriate court is now a non-citizen's exclusive means of review of a removal order." *Fagan v. United States*, No. 21-13524, 2023 U.S. App. LEXIS 7329, at *4 (11th Cir. Mar. 28, 2023) (cleaned up) (citing *Alexandre v. U.S. Att'y Gen.*, 452 F.3d 1204, 1206 (11th Cir. 2006) and 8 U.S.C. § 1252(a)(5)). Through the REAL ID Act, Congress expanded the jurisdiction of the courts of appeals "to review all legal and constitutional errors in a removal order," but it precluded "habeas corpus relief" in the district courts under § 2241. *See Alexandre*, 452 F.3d at 1206. In passing the REAL ID Act, Congress prescribed a single path for judicial review of orders of removal: "a petition for review filed with an appropriate court of appeals." 8 U.S.C. § 1252(a)(5).

The REAL ID Act further 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 under this section." 8 U.S.C.

§ 1252(b)(9) (emphasis added). Read together with section 1252(b)(9), section 1252(a)(5) expresses Congress's intent to channel and consolidate judicial review of every aspect of removal proceedings into the petition-for-review process in the courts of appeals. H.R. Conf. Rep. No. 109-72, at 174–75; *see also Bonhometre v. Gonzales*, 414 F.3d 442, 446 (3d Cir. 2005) (highlighting Congress's "clear intent to have all challenges to removal orders heard in a single forum (the courts of appeals)" as part of a petition for review).

In fact, "most claims that even relate to removal"—such as Petitioner's claim of unlawful detention—are improper if brought before the district court. *EOHC v. Sec'y United States Dep't of Homeland Security*, 950 F.3d 177, 184 (3d Cir. 2020). Pursuant to 8 U.S.C. §§ 1252(b)(9) and 1252(a)(5), "Congress has stripped the District Courts of jurisdiction to decide all legal and factual questions related to an alien's eligibility for removal." *Guzman v. Barr*, No. 19-cv-07163, 2021 U.S. Dist. LEXIS 7555, 2021 WL 135909, at *3 (S.D.N.Y. Jan. 14, 2021) (citing *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483, (1999) ("AADC") (describing 8 U.S.C. § 1252 as a "zipper clause" which prohibits "non-final-order" judicial review of removal questions)); *JEFM v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) ("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.").

This Court should decide the same. Importantly, in this case, during immigration proceedings, and then later before the court of appeals, Petitioner will have the ability to press constitutional claims, along with any other bases he wishes to raise to contest his detention and/or removal. *See* 8 U.S.C. § 1252(b)(9) (preserving judicial review of "interpretation and application of constitutional and statutory provisions" for courts of appeals but stripping all other courts of jurisdiction, including under habeas, to review such questions of law and fact). Petitioner's claims

then would be reviewable through a petition for review; the appropriate court of appeals may either: (1) decide the claim if there is no genuine issue of material fact; or (2) transfer the matter to the district court where the petitioner resides if there is a genuine issue of material fact. 8 U.S.C. § 1252(b)(5)(A),(B).

The decision to detain Petitioner and his removability are inextricably intertwined and confirms the importance of him pursuing this challenge *before an IJ first*. As explained above, Petitioner is permitted to challenge his detention and ask an IJ whether he is properly subject to the foreign policy removability charge. 8 C.F.R. § 1003.19(h)(2)(ii). Should a district court second-guess that decision in the habeas context, it would necessarily vacate the removability charge. This challenge sufficiently "relate[s] to removal," and is exactly the sort of piecemeal litigation the INA meant to avoid. *EOHC*, 950 F.3d at 184.

In this same regard, Congress has specifically preserved judicial review of "constitutional claims or questions of law raised upon a petition for review filed with an appropriate court of appeals[.]" 8 U.S.C. § 1252(a)(2)(D). The Supreme Court recognized that Section 1252(a)(2)(D) was intended to preserve the kind of review traditionally available in a habeas proceeding, including review of the "erroneous application or interpretation of statutes." *Guerrero-Lasprilla v. Barr*, 589 U.S. 221, 232 (2020). Petitioner can obtain meaningful Article III review of his removability through a petition for review. In *Massieu*, for instance, a petitioner challenged the predecessor to Petitioner's deportability ground,[4] arguing that it violated the due process clause because it was impermissibly vague. 91 F.3d at 417. In reversing the district court's order declaring the provision unconstitutional and enjoining deportation proceedings, the Third Circuit held that a petitioner must first exhaust his administrative remedies before the Immigration Court and a

[4] Previously found at 8 U.S.C. § 1251(a)(4)(C)(i).

petition for review. *Id.; see also id.* at 421 ("an alien attempting to prevent an exclusion or deportation proceeding from taking place in the first instance," he must avail himself of the administrative procedures.).

The same is true here. *Massieu* instructs that Petitioner can and must raise his Fifth Amendment challenge to detention through the process created by Congress, starting with removal proceedings before the Immigration Court and culminating in a petition for review before the appropriate court of appeals. *Id.* at 422 (recognizing that the court of appeals could review the final removal order and "'all matters on which the validity of the final order is contingent.'") (quoting *INS v. Chadha*, 462 U.S. 919, 937–39 (1983)); *id.* at 423 (reaffirming that district court review is not appropriate and review of removal is not meaningfully precluded when "the challenge by the aliens is neither procedural nor collateral to the merits"). To the extent that an IJ is not able to decide an issue, the record can be developed for further review. This includes reviewing whether the Secretary of State made the requisite finding before Petitioner was charged with the specific ground of removability. *See id.* at 424, 426 (noting that an IJ is not authorized to consider the constitutionality of the statute but could consider whether a petitioner is deportable).

To be clear, Petitioner's challenge to detention—the basis for which is the Secretary of State's determination pursuant 8 U.S.C. § 1227(a)(4)(C)(i)—is "part of the process by which . . . removability will be determined," and Petitioner's claims therefore "arise from" the removal proceedings. *P.L. v. U.S. Immigr. & Customs Enf't*, No. 19-cv-01336, 2019 U.S. Dist. LEXIS 104478, 2019 WL 2568648, at *3 (S.D.N.Y. June 21, 2019) ("In other words, because Plaintiffs are challenging, by seeking to enjoin, a 'part of the process by which … removability will be determined,' this court does not have jurisdiction.") (citation omitted). *See also Tazu*, 975 F.3d at 299 (finding that § 1252(b)(9) bars review to questions that "are bound up with (and thus 'arise

from') an 'action taken' to remove [an alien]."). Indeed, Petitioner's challenge to detention goes to the heart—and is certainly "part of"—his removal, and thus, falls squarely within the ambit of Section 1252(b)(9). *Tazu*, 975 F.3d at 299; *EOHC*, 950 F.3d at 185 ("the process of deciding … the Government's decision to detain" falls within the ambit of § 1252(b)(9)) (citing *Jennings*, 138 S. Ct. at 841); *see also Canal A Media Holdings v. USCIS*, 964 F.3d 1250, 1257 (11th Cir. 2020) (explaining the scope of the "zipper clause"). If Petitioner ultimately receives a removal order from an IJ, then he can raise any challenge that he sees fit with the BIA and then the appropriate court of appeals. That path remains available, and therefore, Section 1252(b)(9) bars this Court's review.

B. Section 1252(g) Bars Relief and Review of Petitioner's Claims.

Petitioner's claims and request for relief also run headlong into the independent jurisdictional bar contained in § 1252(g). His challenge to the Government's decision to detain him arises "from the decision [and] action" to "commence proceedings." 8 U.S.C. § 1252(g). Regardless of Petitioner's framing, this Court does not have jurisdiction to entertain such a challenge

Section 1252(g), as amended by the REAL ID Act, specifically deprives courts of jurisdiction, including habeas corpus jurisdiction, to review "any cause or claim by or on behalf of any 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). Section 1252(g) eliminates jurisdiction "[e]xcept as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory)."[5] *Id.* Though this section

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[5] Congress initially passed § 1252(g) in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 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),

"does not sweep broadly," *Tazu*, 975 F.3d at 296, its "narrow sweep is firm," *EFL v. Prim*, 986 F.3d 959, 964–65 (7th Cir. 2021). Except as provided by Section 1252, courts "cannot entertain challenges to the enumerated executive branch decisions or actions." *Id.*

Section 1252(g) was "'directed against a particular evil: attempts to impose judicial constraints upon prosecutorial discretion,'" to protect "'no deferred action' decisions and similar discretionary decisions." *Tazu*, 975 F.3d at 297 (quoting *AADC*, 525 U.S. at 485). This limitation exists for "good reason:" so "[a]t each stage the Executive has discretion to abandon the endeavor." *AADC*, 525 U.S. at 483–84. In addition, through Section 1252(g) and other provisions of the INA, Congress "aimed to prevent removal proceedings from becoming 'fragment[ed], and hence prolong[ed].'" *Tazu*, 975 F.3d at 296 (alterations in original) (quoting *AADC*, 525 U.S. at 487); *see Rauda v. Jennings*, 55 F.4th 773, 777–78 (9th Cir. 2022) ("Limiting federal jurisdiction in this way is understandable because Congress wanted to streamline immigration proceedings by limiting judicial review to final orders, litigated in the context of petitions for review.").

The scope of 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. *See Alvarez v. U.S. Immigr. & Customs Enf't*, 818 F.3d 1194, 1203 (11th Cir. 2016) ("By its plain terms, [§ 1252(g)] bars us from questioning ICE's discretionary decisions to commence removal—and thus necessarily prevents us from considering whether the agency should have used a different statutory procedure to initiate the removal process."); *Saadulloev v. Garland*, No. 23-cv-00106, 2024 WL 1076106, at *3 (W.D. Pa. Mar. 12, 2024) ("The Government's decision to arrest

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119 Stat. 231, 311. After Congress enacted the Homeland Security Act of 2002, § 1252(g)'s reference to the "Attorney General" includes the Secretary of Homeland Security. 6 U.S.C. § 202(3); *see also Enriquez-Perdomo v. Newman*, 54 F.4th 855, 863 & nn.3–4 (6th Cir. 2022) (explaining the historical development of § 1252(g)).

Saadulloev on April 4, 2023, clearly is a decision to 'commence proceedings' that squarely falls within the jurisdictional bar of § 1252(g)."). Arresting Petitioner to commence removal proceedings is an "action . . . to commence proceedings" that this Court lacks jurisdiction to review. *See Tazu*, 975 F.3d at 298–99 ("Tazu also challenges the Government's re-detaining him for prompt removal. . . . While this claim does not challenge the Attorney General's decision to execute his removal order, it does attack the action taken to execute that order. So under § 1252(g) and (b)(9), the District Court lacked jurisdiction to review it.").

In *Tazu*, the Third Circuit carefully analyzed the plain text of the statute and determined that the word "decision" means "the act of settling or terminating (as a contest or controversy) by giving judgment." 975 F.3d at 297 (citing Decision, Webster's Third New International Dictionary (1966)). Applying this definition, the Court there held that "to settle or terminate the execution of a removal order, the Attorney General must choose a date for that removal." *Id.* Section 1252(g) expressly refers to the decision to commence proceedings, which includes whether and when to commence them. The decision whether to initiate a removal proceeding against an alien is the exact type of prosecutorial discretion Congress had in mind in enacting this provision and is consistent with the type of discretion the Third Circuit addressed in *Tazu*. Certainly, the act of detaining Petitioner is part and parcel of the initiation of the removal proceeding and therefore also barred by § 1252(g). *Id.* at 298-99.

That Petitioner frames his challenge as a Fifth Amendment due process claim does not change the analysis. *See Tazu*, 975 F.3d at 296–98 (holding that any constitutional claims must be brought in a petition for review, not a separate district court action); *Elgharib v. Napolitano*, 600 F.3d 597, 602–04 (6th Cir. 2010) (noting that "a natural reading of 'any other provision of law (statutory or nonstatutory)' includes the U.S. Constitution" and finding additional support for the

court's interpretation from the remainder of the statute). Indeed, the Supreme Court held that a prior version of § 1252(g) barred claims similar to those brought here. *See AADC*, 525 U.S. at 487–92. In *AADC*, the respondents alleged that the "INS was selectively enforcing immigration laws against them in violation of their First and Fifth Amendment rights." *Id.* at 473–74. The Supreme Court noted "an admission by the Government that the alleged First Amendment activity was the basis for selecting the individuals for adverse action." *Id.* at 488 n.10. The respondents argued that a lack of immediate review would have a "chilling effect" on their First Amendment rights. *Id.* at 488. Nonetheless, the Supreme Court held that the "challenge to the Attorney General's decision to 'commence proceedings' against them falls squarely within § 1252(g)." *Id.* at 487. Further, the Court found that "[a]s a general matter—and assuredly in the context of Petitioner's claim put forth in the present case—an alien unlawfully in this country has no constitutional right to assert selective enforcement as a defense against his deportation." *Id.* at 488; *see also, e.g., Cooper Butt ex rel QTR. v. Barr*, 954 F.3d 901, 908–09 (6th Cir. 2020) (holding that the district court did not have jurisdiction to review a claim that the plaintiffs' father "was removed 'based upon ethnic, religious and racial bias' in violation of the Equal Protection Clause of the Fifth Amendment").

C. Section 1226(e) Bars Review of the Decision to Detain Petitioner.

Section 1226(e) serves as yet another jurisdictional bar that precludes district court review. The decision to detain Petitioner is governed by 8 U.S.C. § 1226(a), which is the discretionary detention statute that authorizes detention pending a final decision in removal proceedings. *See* 8 U.S.C. § 1226(a) (authorizing ICE to arrest and detain an alien "pending a decision on whether the alien is to be removed from the United States"). The INA explicitly bars judicial review of the discretionary decision over whether to detain someone placed in removal proceedings. Section 1226(e) provides that: "The Attorney General's discretionary judgment regarding the application

of this section shall not be subject to review. No court may set aside any action or decision by the Attorney General under this section regarding the detention of any alien or the revocation or denial of bond or parole." 8 U.S.C. § 1226(e). Section 1226(e) covers the initial decision to detain Petitioner. *See Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020) (finding that § 1226(e) did not bar review because the petitioner did not challenge "his initial detention"); *see also Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019) (not applying § 1226(e) because the petitioner did not challenge the "initial detention or bond decision") (emphasis added); *Mayorga v. Meade*, No. 24-cv-22131, 2024 WL 4298815, at *7 (S.D. Fla. Sept. 26, 2024) (applying § 1226(e) to hold that a § 1226(a) detainee "failed to establish that his detention is subject to review"); *Saadulloev*, 2024 WL 1076106, at *3 (recognizing that there is no judicial review of the threshold detention decision).

That does not mean Petitioner is unable to challenge his custody determination. Indeed, to the contrary. As explained above, through his bond proceedings, he is entitled to appeal his bond denial to the BIA, which he has not done. Petitioner also may seek review as to whether he is properly subject to his removal provision. 8 C.F.R. § 1003.19(h)(2)(ii). If adverse, Petitioner may seek appeal of that determination. 8 C.F.R. § 1003.19(f). That Petitioner has not done so poses a separate jurisdiction hurdle that warrants dismissal of his habeas claim. *See Jean-Claude W.*, No., 2021 WL 82250, at *2; *Yi*, 24 F.3d at 503–04; *Okonkwo*, 69 F. App'x at 59–60; *Duvall*, 336 F.3d at 233–34; *see also Jelani B. v. Anderson*, No. 20-cv-6459, 2020 WL 5560161, at *2 (D.N.J. Sept. 17, 2020) (quoting *Duvall*). For this additional reason, the Court should refrain from reviewing the Petition.

III. Petitioner's Due Process Claim Lacks Merit.

It is well established that "[d]etention of aliens pending their removal in accordance with the INA is constitutional and is supported by legitimate governmental objectives." *Hope v. Warden York Cnty. Prison*, 972 F.3d 310, 328–29 (3d Cir. 2020) (citing *Demore*, 538 U.S. at 531, and *Wong Wing v. United States*, 163 U.S. 228, 235 (1896)); *SPLC*, 2023 U.S. Dist. LEXIS 43726, *10 ("[I]mmigration detention is presumptively constitutional."). Indeed, the Supreme Court "has firmly and repeatedly endorsed the proposition that Congress may make rules as to aliens that would be unacceptable if applied to citizens." *Demore*, 538 U.S. at 522. Because "any policy toward aliens is vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations, the war power, and the maintenance of a republican form of government." *Id.* at 522–23. Accordingly, the Supreme Court has long held that "detention during deportation proceedings [is] a constitutionally valid aspect of the deportation process." *Id.* at 522–23. This has resulted in the Supreme Court ruling that individuals held during the pendency of removal proceedings may be detained even without an individualized determination as to flight risk or dangerousness. *See, e.g., Carlson v. Landon*, 342 U.S. 524, 528–34, 538 (1952); *Wong Wing*, 163 U.S. at 235 (holding deportation proceedings "would be vain if those accused could not be held in custody pending the inquiry into their true character.").

Here, Petitioner contends that his detention violates his due process rights, and unpersuasively suggests it is punitive. *See* ECF No. 1 ¶¶ 49-52. But Congress "empowers the Secretary of Homeland Security [through 8 U.S.C. § 1226(a)] to arrest and hold an alien 'pending a decision on whether the alien is to be removed from the United States.'" *Nielsen v. Preap*, 586 U.S. 392, 397 (2019) (quoting 8 U.S.C. § 1226(a)). Congress also empowers the Secretary with "the discretion either to detain the alien or to release him on bond or parole." *Id.; Miranda v.*

Garland, 34 F.4th 338, 356 (4th Cir. 2022). These congressional objectives held constitutional by the Supreme Court—detention of aliens in removal proceedings and mandatory detention of criminal aliens—thus render unsound Petitioner's allegation that his detention is tantamount to punishment. *See Nielsen*, 586 U.S. at 397; *see also* 8 U.S.C. § 1226(c) (mandatory detention for those convicted of crimes of moral turpitude, controlled substances offenses, and terrorism offenses); 8 U.S.C. § 1231(a)(2) (mandatory detention for certain aliens ordered removed); 8 U.S.C. § 1231(a)(6) (detention beyond removal period for aliens ordered removed and determined a risk to the public or not likely to comply with the order); *Harvey v. Chertoff*, 263 F. App'x 188, 191 (3d Cir. 2008) (noting that "an immigration detainee is akin to that of a pretrial detainee").

Further, to the extent that Petitioner is basing his claim on *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001), that case has no application here where Petitioner has been detained for 44 days, since September 23, 2025. *Zadvydas*, 533 U.S. at 693 (adopting six months as a presumptively reasonable period of detention following a final order of removal); *see also Guerra-Castro v. Parra*, No. 1:25-cv-22487-DPG, 2025 WL 1984300, at *4 (S.D. Fla. July 17, 2025) (finding two-month detention lawful under *Zadvydas*); *see also, e.g., Williams v. Reed*, 145 S. Ct. 465, 471 (2025) ("…a plaintiff who asserts a due process claim without exhausting will usually lose because of the requirement that the challenged procedural deprivation must have already occurred…" (marks omitted)). For this additional reason, the Petition should be denied.

IV. The Secretary's Determination is an Unreviewable Political Question.

Petitioner states in his Petition that there was no evidence presented of his alleged activities supporting Haiti's destabilization. *See* ECF No. 1 ¶¶ 9, 40, 43. Even if this Court determined that the jurisdiction-stripping provisions on the INA did not apply and that Petitioner could seek an injunction in this habeas action, which it should not, the Secretary's foreign policy determination

under INA section 237(a)(4)(C) is an unreviewable political question and is thus barred by the political question doctrine.[6]

As noted by the Supreme Court, the gravamen of any political question is "essentially a function of the separation of powers." *Baker v. Carr*, 369 U.S. 186, 217 (1962). To guide courts in determining when such a question is raised, the Supreme Court identified six "formulations" that indicate a question has been committed to the political branches:

> Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question.

Id.; accord Gross v. German Foundation Indus. Initiative, 456 F.3d 363, 377 (3d Cir. 2006). "A finding of any one of the six factors indicates the presence of a political question." *Gross*, 456 F.3d at 377. Petitioner's request to second-guess the Secretary of State's determination and the Executive's foreign policy considerations implicates factors three, four, five, and six of the *Baker* test.

Necessarily, Petitioner's requested injunction sits at the intersection of two issues textually committed to the political branches of the government: (1) foreign affairs, *see State of California v. United States*, 104 F.3d 1086, 1091 (9th Cir. 1997) ("the issue of protection of the States from

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[6] This Court cannot review this question under the doctrine. On a petition for review, the appropriate court of appeals would consider whether its precedent allows for any review and if so, the extent of that review.

invasion implicates foreign policy concerns which have been constitutionally committed to the political branches."); *see also El-Shifa Pharmaceutical Industries Co. v. United States*, 607 F.3d 836, 842 (D.C. Cir. 2010) ("The political question doctrine bars our review of claims that, regardless of how they are styled, call into question the prudence of the political branches in matters of foreign policy or national security constitutionally committed to their discretion."); and (2) immigration policy, *see Mathews v. Diaz*, 426 U.S. 67, 81 (1976) ("the responsibility for regulating the relationship between the United States and our alien visitors has been committed to the political branches of the Federal Government."). As observed by the Supreme Court, "any policy towards aliens is vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations, the war power, and the maintenance of a republican form of government. Such matters are so exclusively entrusted to the political branches of government as to be largely immune from judicial inquiry or interference." *Harisiades v. Shaughnessy*, 342 U.S. 580, 588-89 (1952).

Additionally, there is simply no manageable standard on what constitutes "potentially serious adverse foreign policy consequences." 8 U.S.C. § 1227(a)(4)(C)(i). The Third Circuit has recognized that not all foreign policy concerns pose a political question but done so as long "as it involves normal principles of interpretation of the constitutional provisions at issue, normal principles of statutory construction, or normal principles of treat or executive agreement construction." *Gross*, 465 F.3d at 388 (cleaned up). This case does not manifest to a manageable standard that would not interfere with the Executive's recognized power to "expel or exclude aliens." *State of New Jersey v. United States*, 91 F.3d 463, 469-70 (3d Cir. 1996) (finding this power as implicating the second *Baker* factor).

Essentially, Petitioner is asking this Court to "displac[e] the Executive in its foreign policy making role" and to reverse a political decision that has already been made. *Gross*, 456 F.3d at 389-90. In other words, he is asking "the Court to second guess foreign policy decisions that the Constitution has expressly committed to the political branches." *Nguyen v. United States*, No. 23-cv-06047, 2024 WL 1382470, at *5 (N.D. Cal. Apr. 1, 2024), *aff'd*, No. 24-2221, 2025 WL 880141 (9th Cir. Mar. 21, 2025); *see also Mobarez v. Kerry*, 187 F. Supp. 3d 85, 92 (D.D.C. 2016) (Ketanji Brown Jackson, J.) ("[I]f the court is being called upon to serve as a forum for reconsidering the wisdom of discretionary decisions made by the political branches in the realm of foreign policy or national security, then the political-question doctrine is implicated, and the court cannot proceed."). Second-guessing of this sort of discretion is exactly what the political question doctrine was meant to insulate from judicial review. *See Gross*, 456 F.3d at 390 (noting that factors four, five, and six "is relevant only if judicial resolution of a question would contradict prior decisions taken by a political branch in those limited context where such contradiction would seriously interfere with important governmental interest") (quotations omitted).

CONCLUSION

For all the foregoing reasons, the Court should deny the Petition with prejudice.

Dated: November 6, 2025

Respectfully submitted,

JASON A. READING QUIÑONES
UNITED STATES ATTORNEY

By: */s/ Jennifer R. Andrade*

JENNIFER R. ANDRADE
Assistant U.S. Attorney
Federal Bar No. A5503107
United States Attorney's Office
Southern District of Florida
99 NE 4th Street, Suite 300
Miami, FL 33132
Telephone: (305) 961-9313
Email: Jennifer.Andrade@usdoj.gov

Counsel for Respondent