

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 25-CV-62308-WPD

RICARDO JOSE BRICENO TAFFUR,

Petitioner,

v.

**KRISTI NOEM, Secretary, U.S. Department
of Homeland Security, *et al.*,**

Respondents.

**RESPONDENTS' RETURN IN OPPOSITION
TO THE PETITION FOR WRIT OF HABEAS CORPUS**

Respondents, by and through the undersigned Assistant United States Attorney, consistent with this Court's Order requiring a response by November 20, 2025 (ECF No. 5), respectfully submit the following return in opposition to the Petition for Writ of Habeas Corpus (ECF No. 1) (Petition). For the reasons set forth below, this Court should deny the Petition.

INTRODUCTION

By way of the Petition, Petitioner Ricardo Jose Briceno Taffur, in relevant part, asks this Court to “[d]eclare that Petitioner is not subject to detention under 8 U.S.C. § 1225(b), and that he is lawfully detainable, if at all, only under 8 U.S.C. § 1226(a)” (ECF No. 1 at 30). Accordingly, this case comes down to a question of statutory interpretation.¹ Specifically, what statutory provision controls Petitioner's detention.

¹ Respondents recognize that courts have reached opposite conclusions as to the statutory interpretation issue presented here, and a Westlaw search revealed no opinions from the Judge assigned this matter on this issue.

Section 1225(b)(2)(A) mandates detention for “an alien who is an applicant for admission.” 8 U.S.C. § 1225(b)(2)(A). Pursuant to § 1225(a), “[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.” 8 U.S.C. § 1225(a)(1). Petitioner admits that he “entered the United States *without inspection* on June 19, 2022” and “remained continuously” in the United States since then (ECF No. 1 at 18) (emphasis added). *See also* Attachment A (Declaration of Deportation Officer Shane Baksh). Accordingly, under a plain language reading of § 1225, Petitioner is an applicant for admission and is subject to mandatory detention pursuant to § 1225(b)(2)(A). For the reasons explained more fully below, the Petition should be denied.

ARGUMENT

I. **Section 1225(b)(2) Mandates Detention of Aliens, Like Petitioner, Who Are Present in the United States Without Having Been Lawfully Admitted.**

Under the plain language of § 1225(b)(2), DHS is required to detain all aliens, like Petitioner, who are present in the United States without admission and are subject to removal proceedings—regardless of how long the alien has been in the United States or how far from the border they ventured. That unambiguous language resolves this case. *See Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 591 U.S. 657, 676 (2020) (“Our analysis begins and ends with the text.”).

A. **The Plain Language of § 1225(b)(2) Mandates Detention of Applicants for Admission.**

“As with any question of statutory interpretation, [the] analysis begins with the plain language of the statute. It is well established that, when the statutory language is plain, [courts] must enforce it according to its terms.” *Jimenez v. Quartermar*, 555 U.S. 113, 118 (2009). Section 1225(a) defines “applicant for admission” to encompass an alien who either

“arrives in the United States” or who is “present in the United States who has not been admitted.” 8 U.S.C. § 1225(a)(1). And “admission” under the Immigration and Nationality Act (“INA”) means lawful entry after inspection by immigration authorities, and not mere physical entry. 8 U.S.C. § 1101(a)(13)(A). Thus, an alien who enters the country without permission is and remains an applicant for admission, regardless of the duration of the alien’s presence in the United States or the alien’s distance from the border.

In turn, § 1225(b)(2) provides that “an alien who is an applicant for admission” “shall be detained” pending removal proceedings if the “alien seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A) (emphasis added). The statute’s use of the term “shall” makes clear that detention is mandatory, *see Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 35 (1998), and the statute makes no exception based upon the duration of the alien’s presence in the country or where in the country the alien is located. Therefore, the statute’s plain text mandates that DHS detain all “applicants for admission” who are not clearly and beyond a doubt entitled to be admitted.

Petitioner falls squarely within the statutory definition. He was “present in the United States,” and there is no dispute that he has “not been admitted.” 8 U.S.C. § 1225(a); *see* ECF No. 1 at 18; Attachment A. Moreover, Petitioner cannot establish—and has not even alleged that he can establish—that he is “clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A). Therefore, § 1225(b)(2) mandates Petitioner “be detained for a proceeding under [8 U.S.C. § 1229a].” 8 U.S.C. § 1225(b)(2)(A).

B. Applicants for Admission Under § 1225(b)(2) Are Seeking to Be Legally Admitted into the United States.

As explained above, Petitioner is an “applicant[] for admission” under § 1225(b)(2) and is, therefore, seeking to be legally admitted into the United States. The statute itself makes

clear that an alien who is an “applicant for admission” *is* necessarily “seeking admission.” Moreover, an alien like Petitioner, who is identified by immigration authorities as unlawfully present, and who does not choose to depart from the United States voluntarily, is “seeking admission,” *i.e.*, seeking legal authority to remain in the United States.

1. The “seeking admission” clause does not negate or otherwise limit the statutorily defined term “applicant for admission”.

Section 1225(b)(2) requires the detention of an “applicant for admission, if the examining immigration officer determines that [the] alien *seeking admission* is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A) (emphasis added). The statutory text and context show that being an “applicant for admission” is a means of “seeking admission”—no additional affirmative step is necessary. In other words, every “applicant for admission” is inherently and necessarily “seeking admission,” at least absent a choice to pursue voluntary withdrawal or voluntary departure.

For example, § 1225(a) provides that “[a]ll aliens … who are applicants for admission or otherwise seeking admission or readmission … shall be inspected.” 8 U.S.C. § 1225(a)(3) (emphasis added). The word “[o]therwise” means ‘in a different way or manner[.]’” *Texas Dep’t of Hous. & Cnty. Affs. v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 535 (2015) (quoting Webster’s Third New International Dictionary 1598 (1971)); *see also Villarreal v. R.J. Reynolds Tobacco Co.*, 839 F.3d 958, 963-64 (11th Cir. 2016) (*en banc*) (“or otherwise” means “the first action is a subset of the second action”). Being an “applicant for admission” is thus a particular “way or manner” of seeking admission, such that an alien who is an “applicant for admission” *is* “seeking admission” for purposes of § 1225(b)(2)(A).² No separate

² As § 1225 shows, being an “applicant for admission” is only *one* “way or manner” of “seeking admission,” not the exclusive way. 8 U.S.C. § 1225(a)(3). For example, lawful

affirmative act is necessary. *See Matter of Lemus*, 25 I & N. Dec. 734, 743 (BIA 2012) (“[M]any people who are not *actually* requesting permission to enter the United States in the ordinary sense are nevertheless deemed to be ‘seeking admission’ under the immigration laws”). Accordingly, § 1225(b) unambiguously provides that an alien who is an “applicant for admission” is “seeking admission,” even if the alien is not engaged in some separate, affirmative act to obtain lawful admission.

2. Any perceived redundancy in the statute cannot serve as a basis to avoid the clear language of the statute.

As explained above, an “applicant for admission” is “seeking admission” under § 1225. To the extent this reading results in some redundancy in § 1225(b)(2)(A), that “is not a license to rewrite” § 1225 “contrary to its text.” *See Barton v. Barr*, 590 U.S. 222, 239 (2020); *Heyman v. Cooper*, 31 F.4th 1315, 1322 (11th Cir. 2022) (“sometimes drafters *do* repeat themselves and *do* include words that add nothing of substance” especially when “the arguably redundant words that the drafters employed … are functional synonyms” (alterations accepted and emphasis in original)).

“The canon against surplusage is not an absolute rule.” *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 385 (2013). “Redundancies are common in statutory drafting—sometimes in a congressional effort to be doubly sure, sometimes because of congressional inadvertence or lack of foresight, or sometimes simply because of the shortcomings of human communication.” *Barton*, 590 U.S. at 239. “[R]edundancy in one portion of a statute is not a license to rewrite or eviscerate another portion of the statute contrary to its text.” *Id.* Thus,

permanent residents returning to the United States are not “applicants for admission” because they are already admitted, but they still may be “seeking admission.” *See* 8 U.S.C. § 1103(A)(13)(C).

as the Supreme Court explained in *Barton*, “Sometimes the better overall reading of [a] statute contains some redundancy.” *Id.*

Moreover, “the surplusage canon … must be applied with the statutory context in mind” and should not be employed to undermine congressional intent. *United States v. Bronstein*, 849 F.3d 1101, 1110 (D.C. Cir. 2017). As explained in greater detail below, in 1996, Congress passed the Illegal Immigration Reform and Immigration Responsibility Act (“IIRIRA”), Pub. L. 104-208, 110 Stat. 3009 (Sept. 30, 1996), with the goal of ensuring that aliens who enter the United States unlawfully do not receive greater privileges and benefits than aliens who lawfully present themselves for inspection at a port of entry. The canon against surplusage should not be employed to re-write the statute in contravention of this statutory context.

C. Section 1226 Does Not Support Petitioner’s Argument.

Petitioner’s reliance upon, and reference to, 8 U.S.C. § 1226 is unavailing. Petitioner’s detention is controlled by § 1225(b)(2), not § 1226.

Sections 1225 and 1226 are separate statutory provisions that provide independent bases for detention and, generally, apply to different groups of aliens. While there is some overlap between the aliens subject to detention under the two detention provisions, that overlap does not create a redundancy because the two statutes provide for different bases for release.

Section 1226(a) authorizes the Executive to “arrest[] and detain[]” *any* “alien” pending removal proceedings but provides that the Executive also “may release the alien” on bond or conditional parole. 8 U.S.C. § 1226(a). Section 1226(a) provides the detention authority for the significant group of aliens who are *not* “applicants for admission” subject to §

1225(b)(2)(A)—specifically, aliens who have been admitted to the United States but are now removable. *See RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012) (“the specific governs the general”). For example, the detention of any of the millions of aliens who have overstayed their visas will be governed by § 1226(a), because those aliens (unlike Petitioner) *were* lawfully admitted to the United States. Petitioner’s detention is not controlled by § 1226(a).

Section 1226(c) provides for mandatory detention and is an exception to § 1226(a)’s discretionary detention regime. It requires the Executive to detain “any alien” who is deportable or inadmissible for having committed specified offenses or engaged in terrorism-related actions. *See* 8 U.S.C. § 1226(c)(1)(A)-(E). Petitioner has not committed one of the specified offenses and has not engaged in terrorism-related actions. Accordingly, he is not detained under § 1226(c).

Earlier this year, Congress passed the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 2 (2025), which amended portions of § 1226(c). While that amendment adds some overlap between the Government’s reading of § 1225(b)(2) and § 1226(c), that overlap does not apply to Petitioner, and as explained below, it does not create a redundancy as the amendment does independent work.

The Laken Riley Act provides for mandatory detention for an alien who is “present ... without being admitted or paroled”—*i.e.*, is inadmissible under § 1182(a)(6)(A)—and “is charged with, is arrested for, is convicted of, admits having committed, or admits committing” one of the enumerated criminal acts. 8 U.S.C. § 1226(c)(1)(E). Aliens subject to detention under § 1226(c)(1)(E) are effectively applicants for admission that committed one of the enumerated acts and, as applicants for admission, would also be subject to mandatory

detention under § 1225(b)(2). There is no redundancy, however, because the two statutes provide for different forms of release. Aliens detained under § 1225(b)(2) are eligible for “humanitarian” parole under 8 U.S.C. § 1182(b)(5), while aliens detained under § 1226(c) are not and may only be released pursuant to that statute.

Under § 1182(b)(5), “[t]he Secretary of Homeland Security may … in his [or her] discretion parole into the United States temporarily under such conditions as he [or she] may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States.” Section 1226(c)(1) takes that option off the table for aliens who have also committed the offenses or engaged in the conduct specified in § 1226(c)(1)(A)-(E). As to those aliens, § 1226(c) *prohibits* their parole and authorizes their release only if “necessary to provide protection to” a witness or similar person “and the alien satisfies the Attorney General that the alien will not pose a danger to the safety of other persons or of property and is likely to appear for any scheduled proceeding.” 8 U.S.C. § 1226(c)(4). So even as to aliens who are already subject to mandatory detention under § 1225(b)(2), § 1226(c) is not superfluous: It significantly narrows the Executive’s parole power with respect to those aliens.

In fact, Congress’s desire to further limit the parole power with respect to criminal aliens was one of the principal reasons that it enacted the Laken Riley Act. The Act was adopted in the wake of a heinous murder committed by an inadmissible alien who was “paroled into this country through a shocking abuse of that power,” 171 Cong. Rec. at H278 (daily ed. Jan. 22, 2025) (Rep. McClintock), and an abdication of the Executive’s “fundamental duty under the Constitution to defend its citizens,” 171 Cong. Rec. at H269 (Rep. Roy). The Act thus reflects a “congressional effort to be doubly sure,” *Barton*, 590 U.S.

at 239, that unadmitted criminal aliens are not paroled into the country through an abuse of the Secretary's exceptionally narrow parole authority. It does not suggest congressional uncertainty about § 1225(b)(2)(A)'s detention mandate, but rather congressional desire to shut down a parole loophole that allowed the Government to circumvent that mandate.

D. The Government's Reading Comports with Congressional Intent.

Before 1996, federal immigration laws required the detention of aliens who presented at a port of entry but allowed aliens who were already unlawfully present in the United States to obtain release pending removal proceedings. In 1996, Congress passed the IIRIRA specifically to stop conferring greater privileges and benefits on aliens who enter the United States unlawfully as compared to those who lawfully present themselves for inspection at a port of entry. Accordingly, the Government's reading of the statute is not only supported by the express language of § 1225, but it also comports with congressional intent. *See King v. Burwell*, 576 U.S. 473, 492 (2015) (rejecting interpretation that would lead to result "that Congress designed the Act to avoid"); *New York State Dep't of Soc. Servs. v. Dublino*, 413 U.S. 405, 419-20 (1973) ("We cannot interpret federal statutes to negate their own stated purposes.").

The INA, as amended, contains a comprehensive framework governing the regulation of aliens, including the creation of proceedings for the removal of aliens unlawfully in the United States and requirements for when the Executive is obligated to detain aliens pending removal.

Prior to 1996, the INA treated aliens differently based on whether the alien had physically "entered" the United States. *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 222-223 (BIA 2025) (citing 8 U.S.C. §§ 1225(a), 1251 (1994)); *see Hing Sum v. Holder*, 602 F.3d 1092,

1099-1100 (9th Cir. 2010) (same). “Entry” referred to “any coming of an alien into the United States,” 8 U.S.C. § 1101(a)(13) (1994), and whether an alien had physically entered the United States (or not) “dictated what type of [removal] proceeding applied” and whether the alien would be detained pending those proceedings, *Hing Sum*, 602 F.3d at 1099. Accordingly, the INA’s prior framework, which distinguished between aliens based on physical “entry,” had

the ‘unintended and undesirable consequence’ of having created a statutory scheme where aliens who entered without inspection ‘could take advantage of the greater procedural and substantive rights afforded in deportation proceedings,’ *including the right to request release on bond*, while aliens who had ‘actually presented themselves to authorities for inspection … were subject to mandatory custody.

Yajure Hurtado, 29 I. & N. Dec. at 223 (emphasis added) (quoting *Martinez v. Att’y General of U.S.*, 693 F.3d 408, 413 n.5 (3d Cir. 2012)); *see also Hing Sum*, 602 F.3d at 1100 (similar); H.R. Rep. No. 104-469, pt. 1, at 225 (1996) (“House Rep.”) (“illegal aliens who have entered the United States without inspection gain equities and privileges in immigration proceedings that are not available to aliens who present themselves for inspection”).

Congress discarded that regime through enactment of IIRIRA. Among other things, that law had the goal of “ensur[ing] that all immigrants who have not been lawfully admitted, regardless of their legal presence in the country, are placed on equal footing in removal proceedings under the INA.” *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc). To that end, IIRIRA replaced the prior focus on physical “entry” and instead made lawful “admission” the governing touchstone. IIRIRA defined “admission” to mean “the *lawful* entry of the alien into the United States after inspection and authorization by an immigration officer.” 8 U.S.C. § 1101(a)(13)(A) (emphasis added). In other words, the immigration laws would no longer distinguish aliens based on whether they had managed to evade detection and enter the country without permission. Instead, the “pivotal factor in determining an

alien's status" would be "whether or not the alien has been *lawfully* admitted." House Rep., *supra*, at 226 (emphasis added); *Hing Sum*, 602 F.3d at 1100 (similar).

Petitioner's interpretation would restore the regime Congress sought to discard: It would require detention for those who present themselves for inspection at the border in compliance with law, yet grant bond hearings to aliens who evade immigration authorities, enter the United States unlawfully, and remain here unlawfully for years, or even decades, until an involuntary encounter with immigration authorities. That is *exactly* the perverse preferential treatment for illegal entrants that IIRIRA sought to eradicate. Accordingly, this Court should reject Petitioner's interpretation. *King*, 576 U.S. at 492 (rejecting "petitioners' interpretation because it would ... create the very [thing] that Congress designed the Act to avoid"). The Government's reading, on the other hand, is true to Congress's intent and should be adopted.

E. The Government's Reading Accords with *Jennings*.

The Government's interpretation is consistent with the Supreme Court's decision in *Jennings v. Rodriguez*, 583 U.S. 281 (2018). *Jennings* reviewed a Ninth Circuit decision that applied constitutional avoidance to "impos[e] an implicit 6-month time limit on an alien's detention" under § 1225(b) and § 1226. *Id.* at 292. The Court held that neither provision is so limited. *Id.* at 292, 296-306. In reaching that holding, the Court did not—and did not need to—resolve the precise groups of aliens subject to § 1225(b) or § 1226. Nonetheless, consistent with the Government's reading, the Court recognized in its description of § 1225(b) that § "1225(b)(2) serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1)." *Id.* at 287.

For all these reasons, Petitioner's claims of a "Violation of 8 U.S.C. § 1226" (ECF No. 1 at 21-25), "Failure to Provide Bond Hearing Under 8 U.S.C. § 1226" (ECF No. 1 at 24-26), and a "Violation of the Administrative Procedure Act" (ECF No. 1 at 28-30) all lack merit, and this Court should deny the Petition.³

II. This Court Lacks Jurisdiction to Hear Petitioner's Claims.

This Court can, in the alternative, dismiss the Petition for lack of jurisdiction.

A. 8 U.S.C. § 1252(e)(3) Bars Review of Petitioner's Claims.

Section 1252(e)(3) deprives this Court of jurisdiction, including *habeas corpus* jurisdiction, over Petitioner's challenge to his detention under § 1225(b)(2)(A). Section 1252(e)(3) limits judicial review of "determinations under section 1225(b) of this title and its implementation" to only in the District Court for the District of Columbia. 8 U.S.C. § 1252(e)(3). Paragraph (e)(3) further confines this limited review to (1) whether § 1225(b) or an implementing regulation is constitutional or (2) whether a regulation or other written policy directive, guideline, or procedure implementing the section violates the law. *See* 8 U.S.C. § 1252(e)(3)(A)(i)-(ii); *see also* *M.M.V. v. Garland*, 1 F.4th 1100, 1109 (D.C. Cir. 2021). Unlike other provisions within 1252(e), section 1252(e)(3) applies broadly to judicial review of section 1225(b), not just determinations under section 1225(b)(1). *Compare* 8 U.S.C. § 1252(e)(1)(A), (e)(2), *with* 8 U.S.C. § 1252(e)(3)(A). *See Russello v. United States*, 464 U.S. 16, 23 (1983) (quoting *United States v. Wong Kim Bo*, 472 F.2d 720, 722 (5th Cir. 1972)) ("[W]here Congress includes particular language in one section of a statute but omits it in another section

³ To the extent that Petitioner argues that his detention violates his Due Process rights, as interpreted by the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678 (2001) (ECF No. 1 at 26-28), this Court should reject that claim because Petitioner failed to allege that he is subject to "prolonged or indefinite" detention, which (as Petitioner admits) was at issue in *Zadvydas* (*see* ECF No. 1 at 7).

of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.’ … We refrain from concluding here that the differing language in the two subsections has the same meaning in each. We would not presume to ascribe this difference to a simple mistake in draftsmanship.”).

Here, Petitioner challenges the determination, set forth in writing by both the Department of Justice and DHS, that aliens who entered the United States without inspection are subject to mandatory detention under § 1225(b)(2). *See, e.g.*, ECF No. 1 at 2 (“The government is detaining him under 8 U.S.C. § 1225(b), claiming he is subject to mandatory detention without the possibility of a bond hearing. This is incorrect.”). Petitioner thus seeks judicial review of a written policy or guideline implementing § 1225(b), which is covered by § 1252(e)(3)(A)(ii).

B. 8 U.S.C. § 1252(g) Bars Review of Petitioner’s Claims.

Section 1252(g) categorically bars jurisdiction over “*any cause or claim by or on behalf of any alien arising from* the decision or action by the [Secretary of Homeland Security] to *commence proceedings*, adjudicate cases, or execute removal orders against any alien.” 8 U.S.C. § 1252(g) (emphasis added). The Secretary of Homeland Security’s decision to *commence removal proceedings*, including the decision to detain an alien pending such removal proceedings, squarely falls within this jurisdictional bar. In other words, detention clearly “*aris[es] from*” the decision to commence removal proceedings against an alien. *See Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016) (“By its plain terms, [§ 1252(g)] bars us from questioning ICE’s discretionary decisions to commence removal” and also to review “ICE’s decision to take [plaintiff] into custody and to detain him during removal proceedings”); *Tazu v. Att’y Gen. U.S.*, 975 F.3d 292, 298 (3d Cir. 2020) (“The text of § 1252(g)... strips us of

jurisdiction to review... [T]o perform or complete a removal, the [Secretary of Homeland Security] must exercise [her] discretionary power to detain an alien for a few days. That detention does not fall within some other part of the deportation process.") (cleaned up) (internal quotations and citations omitted); *Valencia-Mejia v. United States*, No. CV 08-2943 CAS (PJWx), 2008 WL 4286979, at *4 (C.D. Cal. Sept. 15, 2008) ("The decision to detain plaintiff until his hearing before the Immigration Judge *arose from* this decision to commence proceedings[.]") (emphasis added); *Wang v. United States*, No. CV 10-0389 SVW (RCx), 2010 WL 11463156, at *6 (C.D. Cal. Aug. 18, 2010) (citing *Khorrami v. Rolince*, 493 F. Supp. 2d 1061 (N.D. Ill. 2007) ("[Plaintiff's] detention necessarily *arises from* the decision to initiate removal proceedings against him.") (emphasis added); *Herrera-Correra v. United States*, No. CV 08-2941 DSF (JCx), 2008 WL 11336833, at *3 (C.D. Cal. Sept. 11, 2008) (citing *Sissoko v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007) ("The [Secretary] may arrest the alien against whom proceedings are commenced and detain that individual until the conclusion of those proceedings. ... Thus, an alien's detention throughout this process *arises from* the [Secretary]'s decision to commence proceedings[]") and review of claims arising from such detention is barred under § 1252(g)) (emphasis added). Put in the Supreme Court's words, detention pending removal is a "specification" of the decision to commence proceedings. *See Reno v. Am.-Arab Anti-Discrimination Comm.* ("AADC"), 525 U.S. 471, 485 n.9 (1999) ("§ 1252(g) covers" a "specification of the decision to 'commence proceedings'"). As such, judicial review of the Petitioner's claim[s] is barred by § 1252(g).

C. 8 U.S.C. § 1252(b)(9) Bars Review of Petitioner's Claims.

Under § 1252(b)(9), "judicial review of all questions of law . . . including interpretation and application of statutory provisions . . . arising from any action taken . . . to remove an

alien from the United States” is only proper before the appropriate court of appeals in the form of a petition for review of a final removal order. *See 8 U.S.C. § 1252(b)(9); Reno v. AADC*, 525 U.S. at 483. Section 1252(b)(9) is an “unmistakable ‘zipper’ clause” that “channels judicial review of all [claims arising from deportation proceedings]” to a court of appeals in the first instance. *Id.*; *see Lopez v. Barr*, No. CV 20-1330 (JRT/BRT), 2021 WL 195523, at *2 (D. Minn. Jan. 20, 2021) (citing *Nasrallah v. Barr*, 590 U.S. 573, 579–80 (2020)).

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

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

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

Critically, “[§] 1252(b)(9) is a judicial channeling provision, not a claim-barring one.” *Aguilar v. ICE*, 510 F.3d 1, 11 (1st Cir. 2007). Indeed, 8 U.S.C. § 1252(a)(2)(D) provides that

“[n]othing . . . in any other provision of this chapter . . . shall be construed as precluding review of constitutional claims or questions of law raised upon a petition for review filed with an appropriate court of appeals in accordance with this section.” *See also Ajlani v. Chertoff*, 545 F.3d 229, 235 (2d Cir. 2008) (“[J]urisdiction to review such claims is vested exclusively in the courts of appeals[.]”). The petition-for-review process before the court of appeals ensures that aliens have a proper forum for claims arising from their immigration proceedings and “receive their day in court.” *J.E.F.M.*, 837 F.3d at 1031–32 (internal quotations omitted); *see also Rosario v. Holder*, 627 F.3d 58, 61 (2d Cir. 2010) (“The REAL ID Act of 2005 amended the [INA] to obviate . . . Suspension Clause concerns” by permitting judicial review of “nondiscretionary” BIA determinations and “all constitutional claims or questions of law.”).

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

from the government's decision to "commence proceedings"). As such, the Court lacks jurisdiction over this action. The reasoning in *Jennings* outlines why the Petitioner's claims cannot be reviewed by the Court.

While holding that it was unnecessary to comprehensively address the scope of § 1252(b)(9), the Supreme Court in *Jennings* provided guidance on the types of challenges that may fall within the scope of § 1252(b)(9). *See Jennings*, 583 U.S. at 293–94. The Court found that "§1252(b)(9) [did] not present a jurisdictional bar" in situations where "respondents . . . [were] not challenging the decision to detain them in the first place." *Id.* at 294–95. In this case, the Petitioner *does* challenge the government's decision to detain him in the first place. *See, e.g.*, ECF No. 1 at 2 ("The government is detaining him under 8 U.S.C. § 1225(b), claiming he is subject to mandatory detention without the possibility of a bond hearing. This is incorrect."). Though the Petitioner frames his challenge as relating to detention authority, rather than a challenge to DHS's decision to detain him in the first instance, such creative framing does not evade the preclusive effect of § 1252(b)(9).

The fact that the Petitioner is challenging the basis upon which he is detained is enough to trigger § 1252(b)(9) because "detention *is* an 'action taken . . . to remove' an alien." *See Jennings*, 583 U.S. at 319 (Thomas, J., concurring); 8 U.S.C. § 1252(b)(9). The Court should dismiss the Petitioner's claims for lack of jurisdiction under § 1252(b)(9). The Petitioner must present his claims before the appropriate court of appeals because he challenges the government's decision or action to detain him, which must be raised before a court of appeals, not this Court. *See* 8 U.S.C. § 1252(b)(9).

III. Petitioner Failed to Exhaust His Administrative Remedies.

This Court can dismiss on the alternative grounds that Petitioner failed to exhaust his administrative remedies. A habeas petitioner must normally exhaust administrative remedies before seeking federal court intervention. The exhaustion requirement aims to provide the agency with a chance to correct its own errors, “protect[] the authority of administrative agencies,’ and otherwise conserve judicial resources by ‘limiting interference in agency affairs, developing the factual record to make judicial review more efficient, and resolving issues to render judicial review unnecessary.” *Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003) (Sotomayor, J.).

Here, Petitioner has not availed himself of the administrative remedies available to him. An IJ entered an extensive order denying release under 8 U.S.C. § 1226(a) on October 3, 2025 (Attachment B). Petitioner failed to file a timely appeal of that decision to the BIA (Attachment A) which has authority to review IJ custody determinations and constitutional challenges. *See* 8 C.F.R. §§ 1003.1(b)(7), 1003.19(f), 1003.38, 1236.1(d)(3).

IV. Petitioner Does Not Have Standing to Bring an Administrative Procedures Act (APA) Claim.

Petitioner also does not have standing to bring his APA claim. By the APA’s terms, it is available only for final agency action “for which there is no other adequate remedy in a court.” 5 U.S.C. § 704. Thus, Petitioner’s APA claim is independently barred by this limitation in 5 U.S.C. § 704.

In *Trump v. J.G.G.*, the Supreme Court held that where the claims for relief, as here, “necessarily imply the invalidity of their confinement” those claims “must be brought in habeas.” 604 U.S. 670, 672 (2025) (*per curiam*) (cleaned up) (internal quotation marks and citation omitted). As noted by Justice Kavanaugh in his concurrence in *J.G.G.*, “given 5

U.S.C. § 704, which states that claims under the APA are not available when there is another adequate remedy in a court, I agree with the Court that habeas corpus, not the APA, is the proper vehicle here.” *Id.* at 674 (Kavanaugh, J. concurring). Here, as in *J.G.G.*, habeas is an “adequate remedy” through which Petitioner can challenge his detention. Even if Petitioner’s APA claim had merit, which it does not, the result would be the same as that in habeas – release from detention. The Supreme Court’s holding is consistent with well-established law that habeas is generally the only possible district court vehicle for challenges brought pursuant to the immigration statutes. *Id.* at 672 (citing *Heikkila v. Barber*, 345 U.S. 229, 234-35 (1953)).

CONCLUSION

For the reasons set forth above, the Petition for Writ of Habeas Corpus should be denied or, in the alternative, dismissed for lack of jurisdiction.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that on November 11, 2025, I uploaded the attached document to the Court's PACER system.

By: */s/ H. Ron Davidson*
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