UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 25-cv-25466-WILLIAMS

JHONN JAIRO RAMIREZ-FRANCO,

Petitioner

v.

KRISTI NOEM et al.

Respondents.
_____/

RESPONDENTS' RETURN AND MEMORANDUM OF LAW

Respondents, by and through the undersigned Assistant U.S. Attorney, hereby respond to the Court's Order to Show Cause (ECF No. 4). As set forth fully below, the Court should deny the "Petition for Writ of Habeas Corpus" (ECF No. 1) ("Petition").

I. BACKGROUND

Petitioner, Jhonn Jairo Ramirez-Franco is a native and citizen of Colombia who last entered the United States on or about May 9, 2022, without inspection or admission by an immigration officer. Exh. A, Declaration; *see also* Exh. B, Form I-213, Record of Deportable/Inadmissible Alien dated September 30, 2025 (2025 I-213). Petitioner claimed to have entered the United States by crossing the Rio Grande River near Eagle Pass, Texas. Exh. A, Declaration. At that time, Petitioner stated he did not fear being returned to his native country, and Customs and Border Protection officers processed him for expedited removal. Exh. A, Declaration; *see also* Exh. B, 2025 I-213.

On May 12, 2022, Petitioner was ordered removed pursuant to INA § 235(b)(1). Exh. B, Form I-860, Notice and Order of Expedited Removal, dated May 12, 2022. On or about May 14, 2022, Petitioner was detained by ICE ERO and was subsequently released on parole on or about May 21, 2022. Exh. A, Declaration; *see also* Exh. B, 2025 I-213.

On or about September 30, 2025, United States Citizenship and Immigration Services (USCIS) determined that Petitioner did not have a credible fear of persecution. Exh. C, Form I-863. Petitioner requested that an Immigration Judge review USCIS's negative credible fear determination, and the matter was referred to an Immigration Judge. Exh. D, Form I-863, Notice of Referral to Immigration Judge. On September 30, 2025, Petitioner was taken into ICE custody. Exh. A, Declaration; *see also* Exh. E, Form I-200, Warrant for Arrest of Alien.

On October 10, 2025, the Immigration Judge vacated USCIS's negative credible fear determination. *See* Order of the Immigration Judge, Hab. Pet., Document 1-2. On October 14, 2025, ICE ERO issued a Notice to Appear (NTA) placing Petitioner in in removal proceedings under INA § 240. *See* NTA, Hab. Pet., Document 1-2. In the NTA, Petitioner was charged with inadmissibility under INA §§ 212(a)(6)(A)(i), as an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General; and under 212(a)(7)(A)(i)(I) as an immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Immigration and Nationality Act (INA), and a valid unexpired passport, or other suitable travel documen.., or

document of identity and nationality as required under the regulations issued by the Attorney General under section 2ll(a) of the Act. *See* NTA, Hab. Pet., Document 1-2.

Petitioner requested a custody redetermination, which the Immigration Judge denied on October 30, 2025, on the basis that he had no jurisdiction under *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) and *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019). *See* Order of the Immigration Judge, Hab. Pet., Document 1-2.

To date, Petitioner has not filed an appeal of this decision to the Board of Immigration Appeals (Board). Exh. A, Declaration.

At Petitioner's first master calendar hearing on October 30, 2025, Petitioner, through counsel, requested additional preparation time. Exh. A, Declaration. His next master calendar hearing is scheduled for December 4, 2025. Exh. A, Declaration.

Petitioner has not requested that ICE ERO release him via parole. Exh. A, Declaration. Petitioner remains in ICE custody at the Krome North Service Processing Center while proceedings are pending, pursuant to INA § 235(b)(1)(B)(ii). *See* Exh. A, Declaration; *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019).

II. ARGUMENT

Petition should be Dismissed for Lack of Jurisdiction

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 claims is barred by § 1252(g).

Furthermore, 8 U.S.C. § 1252(b)(9) bars review of Petitioner's claim in this case. Under § 1252(b)(9), "judicial review of all questions of law . . . including interpretation and application of statutory provisions . . . arising from any action taken . . . to remove an alien from the United States" is only proper before the appropriate court of appeals in the form of a petition for review of a final removal order. *See* 8 U.S.C. § 1252(b)(9); *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999) ("*AADC*"). 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 non-statutory), . . . 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. 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).

Petitioner has Failed to Exhaust his Administrative Remedies

The Court should dismiss the petition for writ of habeas corpus for lack of jurisdiction as Petitioner has failed to exhaust 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 taken advantage of the administrative remedies available to him. An IJ entered an order denying release under 8 U.S.C. § 1226(a) on October 30, 2025. Petitioner has not filed an appeal of that decision on with the BIA. By regulation, the BIA has authority to review IJ custody determinations. *See* 8 C.F.R. §§ 1003.1(b)(7), 1003.19(f), 1003.38, 1236.1(d)(3).

Petitioner is Properly Detained Under 8 U.S.C. § 1225

Because the Petitioner was processed through expedited removal, the detention authority in this case is INA Section 235(b)(1), not (b)(2), This is an important distinction. Under 235(b)(1)(B)(ii), individuals situated like the Petitioner "shall be detained for further consideration of the application for asylum." This is important because Petitioner argues that, since he is now in 240 proceedings, he is subject to Section 236. This is incorrect for a number of reasons, but primarily because INA 235(b)(1) contemplates that detention will be mandatory throughout the consideration of the asylum application, which takes place in 240 proceedings. As such, Section 236 does not apply.

Petitioner is not entitled to any procedures beyond those prescribed by the expedited removal statute because he is an applicant for admission who was processed for expedited removal pursuant to the 2004 Designation. *See* 2004 Designation, 69 Fed. Reg. at 48, 880. The procedures in the expedited removal statute were followed in this case.

Not only is the Petitioner subject to mandatory detention pursuant to *Jennings*, but he is also subject to mandatory detention under *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019), where mandatory detention was ordered in the case of a positive credible fear finding. Therefore, the only mechanism for Petitioner's potential release would be parole, which is within the DHS's sole authority to grant or deny.

The government also respectfully notes that Petitioner's reliance on *Aguilar Merino* and *Alvarez Puga* is misplaced because neither case involved an alien in expedited removal

proceedings or an allegation of credible fear. (*Aguilar* was an unaccompanied child, such that expedited removal would not have been proper, and *Alvarez Puga* involved an interior arrest).

"As with any question of statutory interpretation, [the] analysis begins with the plain language of the statute." *Jimenez v. Quarterman*, 555 U.S. 113, 118 (2009) (citing *Lamie v. U.S. Tr.*, 540 U.S. 526, 534 (2004)). Section 1225(a)(1) defines an "applicant for admission" as either an "alien *present in the United States who has not been admitted* or [an alien] who arrives in the United States []whether or not at a designated port of arrival." 8 U.S.C. § 1225(a)(1) (emphasis added); *see generally Matter of Velasquez-Cruz*, 26 I&N Dec. 458, 463 n.5 (BIA 2014) ("[R]egardless of whether an alien who illegally enters the United States is caught at the border or inside the country, he or she will still be required to prove eligibility for admission."). Accordingly, by its very definition, the term "applicant for admission" as used in § 1225 includes two categories of aliens: (1) aliens, such as Petitioner, present in the United States without admission; and (2) arriving aliens. *See Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (explaining that "an alien who tries to enter the country illegally is treated as an 'applicant for admission'" (citing 8 U.S.C. § 1225(a)(1)); *Matter of Lemus*, 25 I&N Dec. 734, 743 (BIA 2012) ("Congress has defined the concept of an 'applicant for admission' in an unconventional sense, to include not just those who are expressly seeking permission to enter, but also those who are present in this country without having formally requested or received such permission"); *Matter of E-R-M- & L-R-M-*, 25 I&N Dec. 520, 523 (BIA 2011) (stating that "the broad category of applicants for admission … includes, inter alia, any alien present in the United States who has not been admitted" (citing 8 U.S.C. § 1225(a)(1))).

All aliens who are applicants for admission "shall be inspected by immigration officers." 8 U.S.C. § 1225(a)(3); *see also* 8 C.F.R. § 235.1(a) ("Application to lawfully enter the United States shall be made in person to an immigration officer at a U.S. [POE] when the port is open for inspection"). An applicant for admission seeking admission at a United States POE "must present whatever documents are required and must establish to the satisfaction of the inspecting officer that the alien is not subject to removal … and is entitled, under all of the applicable provisions of the immigration laws … to enter the United States." 8 C.F.R. § 235.1(f)(1); *see* 8 U.S.C. § 1229a(c)(2)(A) (describing the related burden of an applicant for admission in removal proceedings). "An alien present in the United States who has not been admitted or paroled or an alien who seeks entry at other than an open, designated [POE] … is subject to the provisions of [8 U.S.C. § 1182(a)] and to removal under [8 U.S.C. § 1225(b)] or [8 U.S.C. § 1229a]." 8 C.F.R. § 235.1(f)(2).

Here, Petitioner does not allege that he was admitted into the United States or that he presented himself at a POE. Rather, Petitioner merely alleges that he is a citizen of Colombia who has been residing in the United States. Petitioner is, therefore, an alien present without admission and, consequently, an applicant for admission.

On September 5, 2025, the Board of Immigration Appeals (BIA) issued a published decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). In its decision, the BIA affirmed "the Immigration Judge's determination that he did not have authority over [a] bond request because aliens who are present in the United States without admission are applicants for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and must

be detained for the duration of their removal proceedings." *Yajure Hurtado*, 29 I&N Dec. at 220.[1] The BIA concluded that aliens "who surreptitiously cross into the United States remain applicants for admission until and unless they are lawfully inspected and admitted by an immigration officer. Remaining in the United States for a lengthy period of time following entry without inspection, by itself, does not constitute an 'admission.'" *Id.* at 228. To hold otherwise would lead to an "incongruous result" that rewards aliens who unlawfully enter the United States without inspection and subsequently evade apprehension for number of years. *Id.*; *see Martinez v. Att'y Gen. of U.S.*, 693 F.3d 408, 413 n.5 (3d Cir. 2012) (concluding that 1996 amendments to the INA were passed to address the unintended and undesirable result of the pre-1996 law in which "non-citizens who had entered without inspection could take advantage of the greater procedural and substantive rights afforded in deportation proceedings, while non-citizens who actually presented themselves to authorities for inspection were restrained by more summary exclusion proceedings" (internal quotation marks omitted)). In so concluding, the BIA rejected the alien's argument that "because he has been residing in the interior of the United States for almost 3 years . . . he cannot be considered as 'seeking admission.'" *Yajure Hurtado*, 29 I&N Dec. at 221. The BIA determined that this argument "is not supported by the plain language of the INA" and creates a "legal conundrum." *Id.* If the alien "is not admitted to the United States (as he admits) but he is not

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[1] Previously, as alluded to in BIA decisions, DHS and the Department of Justice interpreted 8 U.S.C. § 1226(a) to be an available detention authority for aliens present without admission placed directly in 8 U.S.C. § 1229a removal proceedings. *See, e.g.*, *Matter of Cabrera-Fernandez*, 28 I&N Dec. 747, 747 (BIA 2023); *Matter of R-A-V-P-*, 27 I&N Dec. 803, 803 (BIA 2020); *Matter of Garcia-Garcia*, 25 I&N Dec. 93, 94 (BIA 2009); *Matter of D-J-*, 23 I&N Dec. 572 (A.G. 2003). However, as noted by the BIA, the BIA had not previously addressed this issue in a precedential decision. *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 216.

'seeking admission' (as he contends), then what is his legal status?" *Id.* (parentheticals in original). Further in M-S individuals like this guy are subject to mandatory detention and can only be released on parole.

The BIA's decision in *Matter of Yajure Hurtado* is consistent not only with the plain language of § 1225(b)(2), but also with *Jennings v. Rodriguez*, 583 U.S. 281 (2018) and other caselaw issued subsequent to *Jennings*. Specifically, in *Jennings*, the Supreme Court explained that § 1225(b) applies to all applicants for admission, noting that the language of § 1225(b)(2) is "quite clear" and "unequivocally mandate[s]" detention. 583 U.S. at 300, 303 (explaining that "the word 'shall' usually connotes a requirement" (quoting *Kingdomware Technologies, Inc. v. United States*, 579 U.S. 162, 171 (2016))).

Accordingly, for the reasons discussed above, Petitioner is an applicant for admission and an alien seeking admission and is therefore subject to detention under § 1225(b)(2)(A) and ineligible for release on bond.

Therefore, while Petitioner may have been detained under INA 236 in 2022, legal developments and the ongoing evolution of law, starting with *Jennings* and the caselaw that followed, through and including *Hurtado*, have led us to the conclusion that INA 235(b)(2) is the appropriate detention authority, and the one that applies now.

III. CONCLUSION

For the reasons set forth above, the Court should deny the Petition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 27, 2025, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF.

/s/Michele S. Vigilance

Michele S. Vigilance, AUSA