

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

EDUVIGES MARTINEZ HERNANDEZ,	)	CASE NO.: 3:25CV02591
	)	
Petitioner,	)	JUDGE DAVID A. RUIZ
	)	MAGISTRATE JONATHAN D.
	)	GREENBERG
v.	)	
	)	
KEVIN RAYCRAFT, Acting Director of	)	<u>REPLY IN SUPPORT OF DISMISSING</u>
Detroit Field Office, U.S. Immigration and	)	<u>THE PETITION FOR WRIT OF HABEAS</u>
Customs Enforcement,	)	<u>CORPUS</u>
	)	
Respondent.	)	

Petitioner's Traverse does not negate the fact that her petition is subject to dismissal because she is lawfully detained, the Court lacks jurisdiction over the petition, and she failed to exhaust her administrative remedies. Recent court decisions addressing substantially similar claims have found that noncitizens such as Petitioner are lawfully detained pursuant to 1225(b), that district courts lack jurisdiction, and that petitioners are required to exhaust their administrative remedies prior to filing suit. Accordingly, this Court should dismiss the petition.

I. PETITIONER IS LAWFULLY DETAINED

Although Petitioner claims that detaining her pursuant to § 1225 is unlawful, the Fifth Circuit's findings and rationale in *Buenrostro-Mendez v. Bondi*, the first Circuit Court opinion in the United States to address this question, further support the government's position that undocumented aliens like Petitioner are "applicants for admission" and subject to mandatory detention under the plain language of § 1225. *Buenrostro-Mendez v. Bondi*, No. 25-20496

consol. 25-40701, --- F.4th ---, 2026 U.S. App. LEXIS 3899, *4-5 (5th Cir. Feb. 6, 2026).¹ The length of time that an undocumented alien has resided in the United States does not negate mandatory detention under the plain language of § 1225 because they are nonetheless “applicants for admission.” *Id.* at *3; *see also Singh v. Noem*, No. 2:25-cv-00157, 2026 U.S. Dist. LEXIS 3842, at *9-10 (E.D. Ky Jan. 9, 2026) (finding that § 1225(b)(2)(A) still applies even though the petitioner had been in the United States for years).

The Court held that “seeking admission” is equivalent to being an “applicant for admission.” *Id.* at *4-5. The Court rejected the *Buenrostro-Mendez* petitioners’ statutory interpretation arguments and held that “petitioners are deemed, by statute, to be applicants for admission pending the resolution of removal proceedings.” *Id.* at *5. The opinion also rejects the argument that the government’s interpretation of § 1225 renders portions of § 1226, including the Laken Riley Act, superfluous. 2026 WL 323330 at *7. Finally, the Fifth Circuit considers, and rejects, the argument that the prior practice and decisions of previous Administrations preclude the current application of § 1225. *Id.* at *8.

Petitioner argues that because she “was apprehended inside the United States . . . she does not fall under § 1225(b)(2) and that her detention is governed by § 1226.” (Traverse ECF No. 10, PageID # 153.) The fact that she was apprehended inside the United States does not determine detention authority. Petitioner illegally entered the United States years ago, like the petitioners in *Buenrostro-Mendez*. The fact that she remained in the United States for a lengthy

¹ This issue (as to whether § 1225 or § 1226 applies to Petitioner’s detention) is currently on appeal in at least three circuit courts, including the Sixth Circuit in *Reyes v. Raycraft*, E.D. Mich. Case No. 25-12546.

period of time prior to being apprehended does not constitute an “admission.” *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

Moreover, the Supreme Court’s decision in *Jennings v. Rodriguez*, 583 U.S. 281 (2018) does not support Petitioner’s argument that she should be detained under § 1226. (Traverse ECF No. 10, PageID # 154-55.) “[T]he *Jennings* court did not opine on the difference between detention authority under § 1225 and § 1226.” *Buenrostro-Mendez*, 2026 U.S. App. LEXIS 3899, at *20. In order for Petitioner “to find support in *Jennings*, [she] must overread the Supreme Court’s language.” *Id.* While she argues that § 1226 applies to aliens inside the United States, nothing precludes § 1225 from also applying to aliens inside the United States. *Id.* at *20-21. “It seems strange to suggest that Congress would have preserved bond hearings exclusively for unlawful entrants.” *Id.* at *9 (citing H.R. Rep. No. 104-469, pt. 1, at 225).

Recent decisions are clear that aliens who entered the United States without parole or inspection, like Petitioner, “shall be detained.” 8 U.S.C. § 1225(a)(2)(A); *see also Buenrostro-Mendez*, 2026 U.S. App. LEXIS 3899, at *4-5; *Singh*, 2026 U.S. Dist. LEXIS 3842, at *9-10; *Lucero v. Field Off. Dir.*, No. 1:25-cv-823, 2025 U.S. Dist. LEXIS, at *11 (S.D. Ohio Dec. 23, 2025). Accordingly, this court should dismiss the Petition in its entirety.

II. THIS COURT LACKS JURISDICTION OVER THE PETITION

Recently, the Third Circuit in *Khalil v. President, United States*, __ F.4th __, 2026 WL 111933 (3d Cir. Jan. 15, 2026), citing *AADC* and circuit precedent, held that Section 1252(b)(9) bars subject matter jurisdiction over habeas claims arising from actions to remove an alien, including those where the injury cannot be remedied after the fact – such as alleged illegal detention claims. 2026 WL 111933, at *9. To avoid getting channeled to petition for review, “A now-or-never claim must raise legal or factual *questions* that a court of appeals will not later be

able to review meaningfully on a [Petition for Review];” “a claim must raise now-or-never questions, not now-or-never harms.” *Id.* (citing *Tazu v. U.S. Att’y Gen.*, 975 F.3d 292, 299 (3d Cir. 2020)). Addressing the dissent’s argument that the petition for review court cannot later redress harms, the majority stated that delay does not foreclose meaningful review; acknowledging “Congress has the power to balance concerns about the orderly adjudication of claims with concerns about remedying harms from illegal detentions[,]” and “[t]he balance that Congress struck in § 1252(b)(9) requires bringing legal questions later if they can be answered later.” *Id.*, at *10. Applying *Khalil*, the court lacks subject matter jurisdiction pursuant to § 1252(b)(9) in the within case because Petitioner’s claim does not raise a now-or-never question, but a now-or-never harm. Therefore, claims channeling to the petition of review prohibits this court from entertaining the habeas petition for illegal detention in this context. And as another Judge in this Court held:

[A] constitutional challenge to detention pending removal and entitlement to a bond hearing collapse into analysis of the statutory and regulatory regime—whether, for example, Section 1226(a) entitles an alien to bond pending removal or whether Section 1225(b) authorizes the government to detain an alien. Congress has made clear that district courts lack the jurisdiction to make such determinations, even on a habeas petition under Section 2241.

Amaya-Velis v. Raycraft, ___ F. Supp. 3d ___, 2026 WL 100596, at *3 (N.D. Ohio Jan. 14, 2026) (citing 8 U.S.C. § 1252(b)(9)); *see also Nataren v. Raycraft*, No. 4:26cv212, 2026 U.S. Disst. LEXIS 15396, at *7 (N.D. Ohio Jan. 28, 2026) (dismissing the petition for lack of jurisdiction). Similarly, 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 her, which arises from DHS’s decision to commence removal proceedings, and is thus an “action taken . . . to remove [her] 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); *Saadulloev v. Garland*, No. 3:23-CV-00106, 2024 WL 1076106, at *3 (W.D. Pa. Mar. 12, 2024). 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.

“Congress has made clear that district courts lack the jurisdiction [‘over a constitutional challenge to detention pending removal and entitlement to a bond hearing pending removal’], even on a habeas petition under Section 2241.” *Nataren*, 2026 U.S. Dist. LEXIS 15396, at *6-7; *see also Rabi v. Sessions*, No. 2017 U.S. App. LEXIS 19661, at *1-2 (6th Cir. 2018) (dismissing appeal for lack of jurisdiction to review denial of bond.) Since the main issue in this case centers on DHS’s decision to commence removal proceedings, which includes detaining Petitioner without bond, § 1252(g) bars judicial review, and the Petition should be dismissed.

III. PETITIONER MUST EXHAUST HER ADMINISTRATIVE REMEDIES

Petitioner claims that although her appeal to the Board of Immigration Appeals (“BIA”) is pending, with a hearing on the merits scheduled for March 11, 2026, requiring her to continue with the administrative process would be futile in light of the decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). (Traverse ECF No. 10, PageID # 145.) Petitioner’s position is without merit.

“A ‘petitioner must exhaust administrative remedies before raising the constitutional claims in a habeas petition when those claims are reviewable by the BIA on appeal.’” *Cortez v.*

Lynch, No. 1:25-cv-822, 2026 U.S. Dist. LEXIS 5272, at *15 (S.D. Ohio Jan. 12, 2026) (quoting *Rojas-Garcia v. Ashcroft*, 339 F.3d 814, 819 (9th Cir. 2003)). The court in *Cortez*, acknowledged the Board's decision in *Matter of Yajure Hurtado*, and that it has resulted in "a flurry of litigation . . . including a class action ruling in *Bautista v. Santacruz*, No. 5:25-CV-1873, 2025 U.S. Dist. LEXIS 262265, (C.D. Cal. Dec. 18, 2025)." *Cortez*, 2026 U.S. Dist. LEXIS at *18. Notwithstanding this, "even where there is a high probability of denial of a petitioner's appeal of an Immigration Judge's bond decision, such a probability does not weigh in favor of waiving exhaustion." *Id.* (quoting *Espinoza v. Dir. Of Detroit Field Off., U.S. Immigr. & Customs Enf't*, No. 4:25-CV-02107, 2025 U.S. Dist. LEXIS 200063, at *3 (N.D. Ohio Oct. 9, 2025) (J. Calabrese) (quoting *Torrealba v. U.S. Dep't of Homeland Sec.*, No. 1:25CV01621, 2025 U.S. Dist. LEXIS 164153, at *32 (N.D. Ohio Aug. 25, 2025) (J. Barker))).

Here, Petitioner has not exhausted her claim administratively. (Traverse ECF No. 10, PageID # 145.) She is scheduled for a hearing before the immigration court on the merits of her case in less than one month. (*Id.*) Accordingly, Petitioner has not "pursue[d] her administrative remedies to a final judgment from the Board of Immigration Appeals before seeking a writ of habeas corpus." *Nataren*, 2026 U.S. Dist. LEXIS 15396, at *9. Therefore, the petition should be dismissed for failure to exhaust.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1(F)

Pursuant to 28 U.S.C. § 1746, the undersigned declares under penalty of perjury that this Response to Petition for Writ of Habeas Corpus complies with the page limitations for a matter assigned to the standard track.

/s/ Kimberly L. Lubrani
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