

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 25-CV-25763-RKA

FINDENCIO FLORIES,<sup>1</sup>

Petitioner,

v.

CHARLES PARRA, IN HIS OFFICIAL  
CAPACITY AS ASSISTANT FIELD OFFICE  
DIRECTOR IN CHARGE OF KROME  
DETENTION CENTER, *et al.*,<sup>2</sup>

Respondents.

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**RESPONDENTS' RESPONSE 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 December 19, 2025 (ECF No. 6)<sup>3</sup> submit the following return in opposition to the Petition for Writ of Habeas Corpus (ECF No. 1) (Petition). For the reasons set forth below, the Petition should be denied.

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<sup>1</sup> Respondents adopt Petitioner's case caption, which spells Petitioner's last name as *Flories*, but note that the proper spelling is *Flores* (*see, e.g.*, Exh. A).

<sup>2</sup> The Petition is ambiguous as to the parties. On the one hand, the Petition names the U.S. Immigration and Customs Enforcement (ECF No. 1 at 1), but elsewhere names only Charles Parra, in his official capacity as the assistant field office director in charge of the Krome Detention Center and Toddy M. Lyons, the Acting Director of USCIS (*id.* at 3). The proper respondent in the instant case is Mr. Parra in his official capacity, *see* 28 U.S.C. § 2243; *Rumsfeld v. Padilla*, 542 U.S. 426, 438 (2004). The remaining Respondents should be dismissed as parties to the instant action. *See Doe v. Garland*, 109 F.4th 1188, 1197 (9th Cir. 2024).

<sup>3</sup> This Court also ordered the Respondents to list the name of the Assistant United States Attorney assigned this matter and to provide "documentation showing" that certain materials were requested. Through the filing of this Response with its attached exhibits, the United States is complying with that Order.

## INTRODUCTION

By way of the Petition, Petitioner, Fidencio Flores, in relevant part, asks this Court to order that Respondent “immediately hold a bond hearing” during which Petitioner “can demonstrate that he is neither a danger to the community nor a flight risk...” (ECF No. 1 at 8), and claims that “[w]ithout an order from this Court, Respondents cannot grant Petitioner a bond hearing” because of *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) (ECF No. 1 at 3-4). Accordingly, this case comes down to a question of statutory interpretation and whether the *Yajure Hurtado* opinion properly interpreted the law as to the provisions governing Petitioner’s detention.<sup>4</sup>

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 is a native and citizen of Mexico, who illegally entered the United States at an unknown date and place (Exh. A, Record of Deportable/Inadmissible Alien, (Form I-213), dated June 6, 2024). 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.

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<sup>4</sup> Respondents recognize that opinions in this District reached conflicting conclusions. Compare, e.g. *Izquierdo v. Ripa*, Case No. 25-CV-61845-Smith (S.D. Fla. 2025) ECF No. 15 (finding petitioner an “applicant for admission”) with *Puga v. Assistant Field Office Director, Krome North Service Processing Center*, Case No. 25-CV-24535-CMA, 2025 WL 2938369 (S.D. Fla. 2025). A Westlaw search conducted on December 17, 2025, revealed no opinions from the Judge assigned this matter discussing *Matter of Jonathan Javier Yajure Hurtado, Respondent*, 29 I. & N. Dec. 216, 216, 2025 WL 2674169 (2025).

### FACTUAL BACKGROUND

Petitioner is a native and citizen of Mexico, who illegally entered the United States at an unknown date and place (*see* Exh. A, Record of Deportable/Inadmissible Alien, (Form I-213), dated June 6, 2024). On May 10, 2024, ICE ERO issued a warrant of arrest for the Petitioner (*see* Exh. B, Form I-200, dated May 10, 2024). On June 6, 2024, Immigration Customs and Enforcement (ICE), Enforcement and Removal Operations (ERO) encountered the Petitioner, and he freely admitted to entering the United States illegally (*see* Exh. A; *see also* Exh. C, Declaration). On that same day, Petitioner was detained by ICE, who filed a Notice to Appear, charging Petitioner with inadmissibility under section 212(a)(6)(A)(i) of the Immigration and Nationality Act (“INA”) 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 (*see* Exh. D, Notice to Appear (NTA), dated June 6, 2024). ICE ERO released Petitioner on his own recognizance and enrolled him in an Alternative to Detention (ATD) program (*see* Exh. E, Form I-286, Notice of Custody Determination, dated June 6, 2024; *see also* Exh. F, Form I-213, dated October 8, 2025; Exh. C). Petitioner attended his initial master calendar with the Executive Office for Immigration Review (EOIR) on March 28, 2025, and his case was reset to March 8, 2028, to allow him to obtain an attorney (*see* Exh. G, Notice of Hearing (NOH), dated March 28, 2025; *see also* Exh. C).

On October 7, 2025, ICE ERO revoked Petitioner’s conditional parole pursuant to INA § 236(b) and detained Petitioner during a check. ICE ERO transferred him to Krome Service Processing Center (Krome) on October 10, 2025, where he is currently detained pursuant to INA § 235(b)(2) (*see* Exh. H, Detention History; *see also* Exh. I, Form I-200,

Warrant of Arrest, dated October 8, 2025; *see also* Exh. C). On November 13, 2025, the Petitioner appeared at a master calendar hearing, during which the immigration court sustained the charges of inadmissibility and reset the case for an individual hearing on any applications for relief from removal, on January 14, 2025 (*see* Exh. J, NOH, dated November 13, 2025).

To date, Petitioner has not requested a bond redetermination hearing before EOIR (*see* Exh. C).

## 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. Quarterman*, 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 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* Exh. 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.

**I. 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 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. & Cmty. 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).<sup>5</sup> No separate

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<sup>5</sup> 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 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).

affirmative act is necessary. *See Matter of Lemus-Losa*, 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.” *Barton v. Barr*, 590 U.S. 222, 239 (2020); *see 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, 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 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.

**3. Applicants for admission are seeking admission when they remain in the United States.**

Even if “seeking admission” requires some separate affirmative conduct by the alien, an applicant for admission who remains in the United States, rather than withdrawing their application for admission and “depart[ing] immediately from the United States” is “seeking admission.” *See* 1225(a)(4).

Section 1225(b)(2)(A) applies to an alien who is present in the United States unlawfully, regardless of how long the alien has been in the United States. Although the alien may not have been affirmatively seeking admission during those years of illegal presence, § 1225(b)(2) is not concerned with the alien’s pre-inspection conduct. Rather, the statute’s use of present tense language (“seeking” and “determines”) shows that its focus is a specific point in time—when “the examining immigration officer” is making a “determin[ation]” regarding the alien’s admissibility. 8 U.S.C. § 1225(b)(2)(A). At *that* point, the alien is “seeking” admission into the United States and that application is a continuous one while the alien remains in the United States. *See* The American Heritage Dictionary of the English Language (defining “seek” and “seeking” as “to endeavor to obtain”). If it were otherwise, the applicant

would not attempt to show that he is “clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A). That inference is confirmed by § 1225(a)(4), which authorizes an alien to voluntarily withdraw their application for admission and “depart immediately from the United States.” 8 U.S.C. § 1225(a)(4). An applicant who forgoes that statutory option and instead endeavors to prove admissibility, specifically once placed in § 240 removal proceedings—proceedings in which the alien has the “burden of establishing that [he] is clearly and beyond a doubt entitled to be admitted,” *id.* § 1229a(c)(2)(A)—is plainly “endeavor[ing] to obtain” admission to the United States. Nonetheless, an affirmative act is not required, as an applicant for admission is clearly defined as one who is present in the United States and has not been admitted, like Petitioner. *See* 1225(a)(1).

**C. 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.

*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 (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.

**D. 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.

## 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

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 (describing how the BIA deviated “from the agency’s long-standing interpretation”). 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 *Khorrani 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).

### III. PETITIONER FAILED TO EXHAUST 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. Specifically, Petitioner has not requested a bond redetermination hearing before EOIR, (see Exh. C), which has authority to review his constitutional claims. See 8 C.F.R. §§ 1003.1(b)(7), 1003.19(f), 1003.38, 1236.1(d)(3). Thus, an administrative remedy is available.

### CONCLUSION

For the reasons set forth above, the Petition for Writ of Habeas Corpus should be denied.

Respectfully submitted,

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