IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

OZGUR ALCAN, Petitioner, v. KRISTI NOEM, Secretary, United States Department of Homeland Security, *et al.*, Respondents.	Case No. 1:25-cv-00961 District Judge Douglas R. Cole Magistrate Judge Chelsey M. Vascura

RETURN OF WRIT

INTRODUCTION

Petitioner Ozgur Alcan ("Petitioner") seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2241, challenging the lawfulness of his detention by Immigration and Customs Enforcement ("ICE") under the Due Process Clause of the 5th Amendment to the U.S. Constitution and Immigration and Nationality Act ("INA"). (Petition, ECF 1, PageID 6-8, Prayer for Relief.) He likewise misapplies his circumstances of detention to a claim pursuant to INA 8 U.S.C. § 1231(a), the "legal framework" of 28 U.S.C. § 2243, and the precedent of *Zadvydas v. Davis*, 533 U.S. 678 (2001). (*Id.* at PageID 4-8, Prayer for Relief.) Despite the absence of citation in this Petition to the only two United States Codes governing detention of noncitizens pending final order of removal, Petitioner's pre-final order of removal status and want of a bond hearing discloses that he is currently detained under 8 U.S.C. § 1225(b)(2)(A) and is therefore ineligible for release under 8 U.S.C. § 1226(a). (*Id.* at PageID 1-2, 4, ¶¶ 2, 4, 9, 17.) His petition must be denied.

The Court must deny the Petition as Petitioner has failed to exhaust administrative remedies. In fact, Petitioner has not availed himself of even the threshold of administrative

remedies available to him. Mr. Alcan, nor anyone on his behalf has made a motion to an Immigration Judge ("IJ") of the U.S. Department of Justice ("DOJ"), Executive Office for Immigration Review, ("EOIR"), Immigration Court, for a bond hearing, thus, there has been no denial of bond by an IJ let alone an appeal of said denial of bond to the Board of Immigration Appeals ("BIA").

Additionally, Petitioner is currently detained under 8 U.S.C. § 1225(b)(2)(A) and is therefore ineligible for release under 8 U.S.C. § 1226(a). He seeks to circumvent the detention statute under which he is rightfully detained to secure a custody redetermination hearing to which he is not entitled. Petitioner's demand for a bond hearing – better understood to arise under 8 U.S.C. § 1226(a), a detention statute that allows for release on bond or conditional parole –fails to square with the fact that he falls neatly and precisely within the statutory definition of aliens subject to detention pursuant to 8 U.S.C. § 1225(b)(2)(A).

FACTUAL AND PROCEDURAL BACKGROUND

Petitioner, a native and citizen of Turkey, entered the United States without admission or parole at or near San Luis, Arizona, on or about April 7, 2022. (Department of Homeland Security, ("DHS"), Notice to Appear, ("NTA"), dated April 11, 2022, attached hereto and hereinafter referred to as 2022 NTA, Form I-862, Exhibit A; "You are Ordered to appear before an Immigration Judge of the United States Department of Justice at EOIR…Eloy, Arizona…on May 3, 2022 at 01:00 PM to show why you should not be removed from the United States based on the charges set forth above."; *see also* Petition, ECF 1, PageID 2-4, ¶¶ 9, 15, 16.)

In his report dated April 11, 2022, the arresting Border Patrol Agent attested that Petitioner "had unlawfully entered the United States of America from Mexico," whereupon Petitioner "stated that he is a citizen and national of Turkey without the necessary legal documents to enter, pass through, or remain in the United States," and that he "also stated he illegally crossed the international boundary without being inspected by an Immigration Officer at a designated Port of

Entry." ("POE") (DHS, Record of Deportable/Inadmissible Alien, Subject ID: 376824253, Form I-213, dated April 11, 2022, attached hereto and hereinafter referred to as Form I-213, Exhibit B.)

Therefore, on the same date, April 11, 2022, an Immigration Officer served Petitioner a NTA for removal proceedings based on his presence in the United States without being admitted or paroled, subject to removal from the United States pursuant to the following provision(s) of law;

> 1) § 212(a)(6)(A)(i) of the Immigration and Nationality Act (Act), as amended, in that you are 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 2022 NTA, Exhibit A.

"On July 18, 2022, based on [Petitioner]'s admissions and concession, the [IJ] Court sustained removability as charged and directed Turkey as the country for removal, should removal become necessary. On July 22, 2022, [Petitioner] filed his Form I-589, Application for Asylum and for Withholding of Removal (Form I-589) with the Court," and upon hearing, briefing, and a Decision of the Immigration Judge, dated April 1, 2024, Petitioner's "application for asylum pursuant to INA § 208(a)" was denied, his "application for withholding of removal pursuant to INA § 241(b)(3)" was denied, his "application for protection pursuant to Article 3 of the Convention Against Torture" was denied, and Petitioner was ordered removed to Turkey on the charge contained in the NTA. (*quoting* United States DOJ EOIR, Immigration Court, Tucson, Arizona, "In the Matter of Alcan, Ozgur, In Removal Proceedings, 4/1/2024, "Decision of the Immigration Judge," attached hereto and hereinafter referred to as IJ Decision denying asylum application, ordering removal, 4/1/2024, Exhibit C; 2022 NTA, Form I-862, Exhibit A; *see also* Petition, ECF 1, PageID 2, 4, ¶¶ 9, 17.)

Pursuant to the EOIR "Automated Case Information," of Petitioner, "a case appeal" of the foregoing IJ Decision denying asylum application, ordering removal, 4/1/2024, (Exhibit C), was

received by the BIA "on April 22, 2024," "is currently pending," with "no brief due date" assigned to either Petitioner or Respondent. (Attached hereto and hereinafter referred to as BIA 4/22/2024 receipt of appeal, pending, Exhibit D.) Instead of asserting the foregoing, documented fact, that is, on April 22, 2024, the BIA acknowledged receipt of Petitioner's appeal of the April 1, 2024, IJ order of removal, and denial of application of asylum, and BIA briefing and ruling remains pending, Petitioner makes a vaguely tacit admission at the "Introduction" of his Petition:

> Petitioner's detention is not reasonably foreseeable, as the Petitioner is stateless, because Turkey is not a country the Petitioner can be removed to due to his asylum application and claim. Absent an order from this Court, Petitioner will likely remain detained for many more months, if not years. (Petition, ECF 1, PageID 1, ¶ 2, Introduction).

Referring to Petitioner as "stateless" and claiming his detention could last for "years" is exaggeration of this Petitioner's administrative procedural status that a BIA final ruling remains pending on the IJ order of removal and denying of asylum.[1]

Petitioner's Petition before this Court misstates the documented date of his most recent ICE incarceration, and likewise omits entirely the circumstances of his "incarcerat[ion] since November 14, 2025..." (*Id.* at PageID 1-2, ¶¶ 1, 4.) Petitioner was detained by ICE on November 22, 2025, at the ICE Detention Facility identified as Butler County Jail. (*quoting* DHS, ICE, "Notice to EOIR: Alien Address," Event No: [redacted] attached hereto and hereinafter referred to as Notice to EOIR: Alien Address, Exhibit E.) That November 22, 2025, detention only happened upon ICE notification by the Dayton (Ohio) Municipal Court, of the November 21, 2025, dismissal of Petitioner's criminal charges of "Felonious Assault/Deadly Weapon," pursuant to 2903.11A2AF2, and "Criminal Damage," pursuant to 2909.06A1.M2. (Dayton Municipal Court, Case Summary, #2025-CRA-004182, Case Description, Criminal Felony, Defendant Name: Ozgur

[1] Further example of Petitioner's obtuse hyperbole in lieu of the otherwise dry recitation of the pending administrative IJ appeal to the BIA is found at paragraph 31 of his Petition; "Due to no country the Petitioner is removable to and no alternative country is available." (*Id.* at PageID 7; ¶ 31.)

Alcan, attached hereto and hereinafter referred to as Dayton Municipal Court, Petitioner Criminal Felony, Exhibit F.)

On December 23, 2025, Petitioner filed this Petition for Writ of Habeas Corpus. (Petition, ECF 1.) This Petition makes no allegation that Petitioner ever requested a bond hearing in any forum (i.e., IJ, BIA, etc.). The Court must deny the Petition as Petitioner has failed to exhaust administrative remedies and because he is properly detained under 8 U.S.C. § 1225(b)(2)(A).

ARGUMENT

I. PETITIONER'S CLAIMS SHOULD BE DISMISSED PURSUANT TO THIS COURT'S OPINIONS AND ORDERS IN *CORONADO, LUCERO & PHURTSKHVANDIZE*

A. The circumstances of Petitioner's administrative history and ultimate detention pursuant to removal are identical in all relevant terms to controlling case precedent.

The present Petition in Habeas is at least the fourth time that this Court has been called upon to make statutory interpretation of the two United States Codes governing detention of noncitizens pending final order of removal; 8 U.S.C. § 1225(b)(2), which mandates detention, versus 8 U.S.C. § 1226(a) which provides for discretionary detention.

In the 32-page Opinion and Order in *Coronado v. Sec'y, Dep't of Homeland Sec.*, No. 1:25-cv-831, 2025 WL 3628229 (S.D. Ohio Dec. 15, 2025) this Court made painstaking analysis of the distinctions between § 1225 and § 1226 with a pragmatic emphasis on the question; to which class, or category of aliens were either Code meant to apply? Therein, the standard was set defining the class, category and unique circumstances of those aliens who are <u>not</u> beneficiaries of discretionary terms of detention, including bond or parole, (8 U.S.C. § 1226(a)), but are instead subject to the mandatory detention, pursuant to pending final order of removal under 8 U.S.C. § 1225(b)(2).

In this Court's words, "...applicants for admission as a textual matter fall within § 1225(b)(2)," (Op. and Order, ECF No. 15, PageID 170, 180), wherein "an applicant for admission

includes any 'alien present in the United States who has not been admitted.' And to be clear, 'admission' specifically means *lawful* entry..." If the burden were raised to establish that even after many years of physical presence in the United States an alien may still be an applicant for *lawful* entry, seeking legal 'admission,'" the simple fact that the alien has applied for asylum, albeit pending appeal, "[t]hat application seeks to allow the alien to remain in this country – i.e., to be admitted." Also, no "examining immigration officer" has decided that the alien "is not clearly and beyond a doubt entitled to be admitted," citing 8 U.S.C. § 1225(b)(2)(A). (Op. and Order, ECF No. 15, PageID 171.) Simply said, by this Court; "...if ICE detains an alien who entered without permission, mandatory detention under § 1225(b)(2) is appropriate." (*Id.*, at ECF No. 15, PageID 176.)

This Court folded the forgoing analysis and conclusion into its Opinion and Order *Lucero v. Field Off. Dir. of Enf't and Removal Operations*, No. 1:25-cv-823, 2025 WL 3718730 (S.D. Ohio Dec. 23, 2025), another 1225 vs. 1226:

> Start with a quick recap of *Coronado*. Recall that the issue here (and there) is whether a noncitizen like Masis Lucero falls within the scope of § 1225(b)(2)(A). (Doc. 1, #2–3); 2025 WL 3628229, at *1. That statutory section applies to an "applicant for admission," other than those who fall within § 1225(b)(1) (and subject to certain other exceptions not relevant here, *see* 8 U.S.C. § 1225(b)(2)(B)). Section 1225(b)(2)(A) then goes on provide that, as to any such "applicant for admission," "if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title." In *Coronado*, the Court concluded: (1) that noncitizens, like Masis Lucero, who are present in the country without having been "admitted" (which refers to lawful entry after inspection and authorization by an immigration officer, *see* 8 U.S.C. § 1101(a)(13)(A)), are "deemed" to be "applicant[s] for admission," *see id.* § 1225(a)(1) (defining the term "applicant for admission"); (2) the phrase "alien seeking admission" in § 1225(b)(2)(A) is merely another way to refer to "applicant[s] for admission," and thus the same "deeming" that makes someone an applicant for admission also makes them an "alien seeking admission," whether that is so as a matter of fact or not; and (3) an examining officer had not determined that Coronado was clearly entitled to be admitted. *Coronado*, 2025 WL 3628229, at *7–9. Thus, Coronado fell within § 1225(b)(2)(A) and "shall be detained for a proceeding under section 1229a." *See id.* at *12. The Court then found further support for this interpretation in *Jennings*, which the Court understands as distinguishing between those

> noncitizens who entered unlawfully (who are subject to § 1225) and those who entered lawfully (who are subject to § 1226). *Id.* at *9–10.

(Op. and Order, ECF No. 20, PageID 183-184.)

And less than a week before the filing of this Return of Writ, this Court issued an Opinion and Oder in *Phurtskhvanidze v. Field Off. Dir. of Enf't and Removal Operations*, No. 1:25-cv-827:

> According to Phurtskhvanidze, ICE is incorrectly claiming that 8 U.S.C. § 1225(b)(2), which mandates detention, applies to him. (Doc. 1, #9–10). Instead, he says, 8 U.S.C. § 1226(a), which provides for discretionary detention, governs. (*Id.*). This Court recently addressed that precise question of statutory interpretation in *Coronado v. Sec'y, Dep't of Homeland Sec.*, No. 1:25-cv-831, 2025 WL 3628229 (S.D. Ohio Dec. 15, 2025), and further explained its reasoning in *Lucero v. Field Off. Dir. of Enf't and Removal Operations*, No. 1:25-cv-823, 2025 WL 3718730 (S.D. Ohio Dec. 23, 2025). Like the petitioners there, Phurtskhvanidze was charged with having entered the United States without admission or inspection. (Doc. 1, #2). Thus, for the reasons more fully explained in *Coronado* and *Lucero*, the Court finds that Phurtskhvanidze falls within the express definition of an "applicant for admission," who, as such, is "seeking admission," and thus subject to § 1225(b)(2).

(Op. and Order, ECF No. 10, PageID 140-141.)

The present action in Habeas does not challenge the foregoing statutory interpretation. It does not present novel theories adverse to the foregoing statutory interpretation. In *Lucero v. Field Off. Dir. of Enf't and Removal Operations*, No. 1:25-cv-823, 2025 WL 3718730 (S.D. Ohio Dec. 23, 2025) and *Phurtskhvanidze v. Field Off. Dir. of Enf't and Removal Operations*, No. 1:25-cv-827, amidst preliminary telephonic status conference, this Court invited, received and dispensed with any challenge or nuance to the statutory interpretation spelled out in *Coronado v. Sec'y, Dep't of Homeland Sec.*, No. 1:25-cv-831, 2025 WL 3628229 (S.D. Ohio Dec. 15, 2025).

This Petitioner does not make a corresponding motion for declaratory relief as occurred in *Coronado*, (Op. and Order, ECF No. 15, PageID 184-186.), and *Phurtskhvanidze*. (Op. and Order, ECF No. 10, PageID 140-144.) Indeed, having omitted in his Petition any reference whatsoever to 8 U.S.C. § 1225(b)(2) or 8 U.S.C. § 1226(a) it is unclear if Petitioner is aware of the basis of his current detention, much less the string citation of foregoing cases adverse to his Petition. Through

a combination of sparse, incomplete, and vague factual allegations in the Petition, and Petitioner's administrative process documentation attached here as evidence, the record before this Court demonstrates that Petitioner is the poster child for "...applicants for admission as a textual matter fall[ing] within § 1225(b)(2)," (*Coronado v. Sec'y, Dep't of Homeland Sec.*, No. 1:25-cv-831, Op. and Order, ECF No. 15, PageID 170-171, 176, 180.)

Petitioner entered the United States without admission or parole at or near San Luis, Arizona, on or about April 7, 2022. (2022 NTA, Form I-862, Exhibit A; *see also* Petition, ECF 1, PageID 2-4, ¶¶ 9, 15, 16.)

Petitioner "stated that he is a citizen and national of Turkey without the necessary legal documents to enter, pass through, or remain in the United States," and "he illegally crossed the international boundary without being inspected by an Immigration Officer at a designated POE." (Form I-213, Exhibit B.)

Pursuant to an NTA served upon Petitioner on April 11, 2022, and a hearing before an IJ on July 18, 2022, based on that NTA, the IJ sustained removability as charged. "On July 22, 2022, [Petitioner] filed his Form I-589, Application for Asylum and for Withholding of Removal (Form I-589) with the Court," and upon hearing, briefing, and a Decision of the Immigration Judge, dated April 1, 2024, Petitioner's "application for asylum pursuant to INA § 208(a)" was denied, his "application for withholding of removal pursuant to INA § 241(b)(3)" was denied, his "application for protection pursuant to Article 3 of the Convention Against Torture" was denied, and Petitioner was ordered removed to Turkey on the charge contained in the NTA. (*quoting* IJ Decision denying asylum application, ordering removal, 4/1/2024, Exhibit C; 2022 NTA, Form I-862, Exhibit A; *see also* Petition, ECF 1, PageID 2, 4, ¶¶ 9, 17.) Petitioner alleges himself that he "...was ordered removed following proceedings under 8 U.S.C. § 1229a. (*Id.*, ECF 1, PageID 2, ¶ 9.)

Petitioner does not allege ICE detention upon arrest on April 11, 2022, upon "illegally cross[ing] the international boundary without being inspected by an Immigration Officer at a designated POE." (Form I-213, Exhibit B.) Petitioner omits mention of release, upon his own recognizance, or otherwise, pursuant to arrest on April 11, 2022. The plain words of the Petition allege precisely one ICE detention, and that "has been [] since or about November 14, 2025." (Petition, ECF 1, PageID 1-2, 7, ¶¶ 1, 4, 30.)

On April 22, 2024, the BIA acknowledged receipt of Petitioner's appeal of the April 1, 2024, IJ order of removal, and denial of application of asylum, and BIA briefing and ruling remain pending. (Exhibit C; BIA 4/22/2024 receipt of appeal, pending, Exhibit D; *see also* Petition, ECF 1, PageID 1, 7, ¶ 2, Introduction, ¶ 31.)

Petitioner was detained by ICE on November 22, 2025, at the ICE Detention Facility identified as Butler County Jail. (*quoting* Notice to EOIR: Alien Address, Exhibit E.) That November 22, 2025, detention only happened upon ICE notification by the Dayton (Ohio) Municipal Court, of the November 21, 2025, dismissal of Petitioner's criminal charges of "Felonious Assault/Deadly Weapon," pursuant to 2903.11A2AF2, and "Criminal Damage," pursuant to 2909.06A1.M2. (Dayton Municipal Court, Petitioner Criminal Felony, Exhibit F.)

Based on the foregoing facts and controlling law, ICE detained this Petitioner who entered without permission, and so mandatory detention under § 1225(b)(2) is appropriate. (*quoting Coronado v. Sec'y, Dep't of Homeland Sec.*, No. 1:25-cv-831, Op. and Order, ECF No. 15, PageID 176, "...if ICE detains an alien who entered without permission, mandatory detention under § 1225(b)(2) is appropriate.") Respondents ask simply for an identical application of law for the very same facts evidenced in this Return of Writ.

II. PETITIONER'S CLAIMS SHOULD BE DISMISSED FOR LACK OF JURISDICTION UNDER RULE 12(b)(1)

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.").

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); *see also Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482

(1999) ("*AADC*"). The Sixth Circuit distinguishes detention-based challenges from removal-based challenges. *Hamama v. Adducci*, 912 F.3d 869, 877-80 (6th Cir. 2018) (district court jurisdiction over detention-based claims independent of jurisdiction over removal-based claims).

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. 08-cv-2943, 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. 10-cv-0389, 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*, 525 U.S. at 485 n.9 ("§ 1252(g) covers" a "specification of the decision to 'commence proceedings'").

Significantly, Petitioner is not without a remedy. As the Sixth Circuit explained in *Hamama v. Adducci*, "[w]hen Congress stripped the courts of jurisdiction to grant habeas relief in § 1252(g), it provided an aliens with an alternative method to challenge the legality an alien's detention . . . ." 912 F.3d at 876. Moreover, the Suspension Clause is not violated when courts are stripped of "habeas jurisdiction so long as it provides a substitute that is adequate and effective to test the legality of a person's detention." *Id.* As such, judicial review of the Petitioner's claims 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*, 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 v. Rodriguez*, 583 U.S. 281, 294–95 (2018) (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 for purposes of removal or for proceedings and is thus an "action taken . . . to remove his 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 for purposes of removal or for proceedings. (*See, e.g.*, Petition, ECF 1, PageID 4-8, ¶¶ 18-34.)

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) (emphasis in original); 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 ADMINISTRATIVE REMEDIES.

A. Petitioner has not engaged the administrative process pursuant to seeking bond.

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.'" *Guzman v. Joyce*, 786 F.Supp.3d 865, 869 (S.D. New York June 17, 2025) (quoting, *Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003) (Sotomayor, J.)).

"When a petitioner does not exhaust administrative remedies, a district court ordinarily should either dismiss the [habeas] petition without prejudice or stay the proceedings until the petitioner has exhausted remedies, unless exhaustion is excused." *Ba v. Director, Detroit Field Office of ICE*, Case No. 4:25-cv-2208, 2025 WL 2977712, at *2 (N.D. Ohio Oct. 22, 2025) (citing *Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011)) (requiring exhausting administrative

remedies by appealing IJ decision to BIA before filing in district court); *see also Rojas-Garcia v. Ashcroft*, 339 F.3d 814, 819 (9th Cir. 2003).

Courts within the Sixth Circuit have applied the Ninth Circuit's test for requiring prudential exhaustion. *See, e.g., Mendoza v. Raycraft*, Case No. 4:25-cv-2183, 2025 WL 3157796, at *9 (N.D. Ohio Nov. 12, 2025); *Espinoza v. Dir. of Detroit Field Off, U.S. Immigr. & Customs Enft*, No. 4:25-CV-2107, 2025 WL 2878173, at *2 (N.D. Ohio Oct. 9, 2025); *Hernandez Torrealba v. U.S. Dep't of Homeland Sec.*, Case No. 1:25-cv-1621, 2025 WL 2444114, at *8-9 (N.D. Ohio Aug. 25, 2025); *Monroy Villalta v. Greene*, 794 F. Supp. 3d 528, 530 (N.D. Ohio 2025); *Lopez-Campos v. Raycraft*, Case No. 2:25-cv-12486, 2025 WL 2496379, at *4 (E.D. Mich. Aug. 29, 2025) (citing *Shweika v. DHS*, Case No. 1:06-cv-11781, 2015 WL 6541689, at *12 (E.D. Mich. Oct. 29, 2015)). That is, courts will require prudential exhaustion when:

> (1) Agency expertise makes agency consideration necessary to generate a proper record and reach a proper decision;
>
> (2) Relaxation of the requirement would encourage the deliberate bypass of the administrative scheme; and
>
> (3) Administrative review is likely to allow the agency to correct its own mistakes and to preclude the need for judicial review.

Puga v. Chertoff, 488 F.3d 812, 815 (9th Cir. 2006) (quoting *United States v. California Care Corp.*, 709 F.2d 1241, 1248 (9th Cir. 1983) (citing *McGee v. United States*, 402 U.S. 479, 484 (1971); *McKart v. United States*, 395 U.S. 185, 193–95 (1969)); *see also Espinoza v. Director, Detroit Field Office, ICE*, Case No. 4:25-cv-2107, 2025 WL 2878173 (N.D. Ohio Oct. 9, 2025) (petition dismissed for failure to exhaust); *Guerra v. Woosley*, Case No. 4:25-cv-119, 2025 WL 3046187 (W.D. Ky. Oct. 31, 2025).

In an Opinion and Order dated December 19, 2025, Judge McFarland of this Court adopted the foregoing rationale and jurisprudence from both the Sixth Circuit and District Court decisions

and dismissed petitioner's petition for writ of habeas for his failure to abide the prudential exhaustion requirement. *Ronaldo Velasquez Bartolon v. Pam Bondi, et al.*, Case No. 1:25-cv-747, Order & Op., ECF No. 19, PageID 212-219.

Much of Judge McFarland's exhaustion analysis in *Bartolon* is controlling in the petition before this Court and thus worthy of quotation here:

> In his Reply, Petitioner argues that even if he appealed to the BIA and won, it would be a largely pyrrhic victory as the process can take over a year and he would remain detained until then. But, the Court finds this argument unpersuasive. At this point, it is "speculative to make any assumptions regarding when the BIA will resolve" a potential bond appeal by Petitioner, as "[t]here is insufficient information before the Court at this time to demonstrate that exhaustion of Petitioner['s] administrative remedies will be unduly prolonged." *Mendoza*, 2025 WL 3157796, at *13. Further, even if the BIA appeals process were to create additional delay, the Court has insufficient evidence before it to conclude that "the risk of irreparable harm to Petitioner[] outweighs the importance of requiring exhaustion under the circumstances presented." Id.
>
> Petitioner's apparent failure to timely file a notice of appeal with the BIA regarding his first bond denial is also insufficient to deem exhaustion futile, as "exhaustion may not be achieved through a litigant's procedural default of his or her available remedies." *Laing v. Ashcroft*, 370 F.3d 994, 998 (9th Cir. 2004). Moreover, waiver is inappropriate here because, if the exhaustion requirement were waived in every case where a party failed to timely file for an administrative appeal, then "any party could obtain judicial review of initial agency actions simply by waiting for the administrative appeal period to run and then filing an action in district court." *Stock W. Corp. v. Lujan,* 982 F.2d 1389, 1394 (9th Cir. 1993).
>
> Importantly, though, Petitioner has now received a second bond determination. And, notably, Petitioner reserved his right to appeal that determination. Thus, requiring Petitioner to exhaust his administrative remedies by appealing his second bond determination is not futile, as he is well within the time to lodge that appeal in the BIA.
>
> Petitioner further argues that exhaustion would be futile given the BIA's decision in *Matter of Hurtado*. Such futility must be "clear and positive," as a petitioner "must show that it is certain that his claim will be denied on appeal, not merely that he doubts that an appeal will result in a different decision." *Fallick v. Nationwide Mut. Ins. Co.,* 162 F.3d 410, 419 (6th Cir. 1998) (quotation omitted). The Court would note that a flurry of litigation has ensued since *Matter of Hurtado*, including-as the immigration judge observed in the bond redetermination hearing-a class action ruling in *Bautista v. Santacruz,* No. 5:25-CV-1873, 2025 WL 3288403 (C.D. Cal. Nov. 25, 2025). And, "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." *Espinoza,* 2025 WL 2878173, at *3 (quotation omitted); *see also Beharry,* 329 F.3d at 62 (explaining that merely because an "argument would likely have failed is not tantamount to stating that it would have been futile to raise it").

> Moreover, Petitioner expresses concern as to the delay that would result from requiring administrative exhaustion. Courts have discretion to waive the exhaustion requirement and rule on a matter when the "legal question is 'fit' for resolution and delay means hardship." *Shalala v. Ill. Council on Long Term Care, Inc.*, 529 U.S. 1, 13 (2000) (citation omitted). While some courts in this circuit have chosen to waive exhaustion because of the delay caused by a potentially lengthy appeal process, such a decision remains in the Court's discretion. *See Alvarez-Lopez v. U.S. Dep't of Homeland Security,* No. 25-CV-13098, 2025 WL 3525956, at *2 (E.D. Mich. Dec. 9, 2025) (surveying intra-circuit split on the issue). And, the Court notes that, in many of those cases, the district courts supported their decision to waive exhaustion with both a finding of futility and undue hardship, not just the latter. By comparison, the Court finds here that Petitioner has not made a showing of futility. Absent binding precedent to the contrary, this Court therefore declines to find that the risk of delay alone warrants a waiver of exhaustion.

Bartolon, Order & Op., ECF No. 19, pgs 19-21, PageID 217-219, (citations to record omitted).

Petitioner has not availed himself of even the threshold of administrative remedies available to him. There has been no denial of bond by an Immigration Judge let alone an appeal of said denial of bond to the BIA. The Petitioner in this district's *Alonso-Portillo v. Bondi* decision, was excused from the prudential exhaustion requirement because he, *inter alia*, "diligently pursued all available administrative remedies" by appealing to BIA. Case No. 1-25-cv-306, 2025 WL 2483393, at *6 (S.D. Ohio Aug. 28, 2025).

Until Petitioner filed in habeas before this Court, not five weeks ago, on December 23, 2025, he does not allege to have ever requested a bond hearing in any forum (i.e., IJ, BIA, etc.), and there is nothing preventing him from filing such a request for bond from the Immigration Judge now. (Petition, ECF 1, PageID 2, ¶ 4, "He has been detained since or about November 14, 2025. He has not received an individualized bond hearing before an immigration judge (IJ).").

Here, Petitioner offers the *illusion* that he has requested of the IJ the opportunity for a bond hearing without alleging or offering evidence that Petitioner has ever requested a bond hearing. More to the point, Petitioner's "Prayer for Relief" omits a demand for a bond hearing.

Bond hearings are triggered at the very least on Petitioner's request. Pursuant to controlling regulation:

> 8 CFR 1003.19(b) – Application for an initial bond redetermination by a respondent, or his or her attorney or representative, may be made orally, in writing, or, at the discretion of the Immigration Judge, by telephone.

Again, without alleging this Petitioner's attempt or effort whatsoever to request a bond hearing, much less appeal an adverse IJ ruling, denying the hearing, or bond upon hearing, to the BIA, Petitioner asserts simply that "He has not received an individualized bond hearing before an immigration judge (IJ)." (Petition, ECF 1, PageID 2, ¶ 4.) Petitioner's failure to request a bond hearing of the IJ forum, much less appeal to the BIA here counsels requiring exhaustion. An appeal to the BIA will allow the agency's expertise to generate a proper record and reach a proper decision, in the first instance. *See e.g., Espinoza*, 2025 WL 2878173, at *2 (petition dismissed for review of "interpretation and application of the governing removal regime" by the BIA "in the first instance").

In fact, not requiring the Petitioner to at the very least afford the deference to the IJ forum to which it is statutorily obliged to independently consider and adjudge bond, looking over what might then be an appeal to the BIA encourages the deliberate bypass of the entire administrative scheme, which Petitioner did here. 8 CFR 1003.19(b).

Because Petitioner has not alleged even the attempt of exhaustion, much less some basis for excusing all steps in the exhaustion process, and on the basis that the petitioner in the *Bartolon* Order & Op. had failed only to await ruling on the very end stage of the administrative process, yet he too was found to have failed to exhaust administrative remedies, this Petition should be denied.

CONCLUSION

Petitioner has failed to exhaust administrative remedies. He is properly detained under 8 U.S.C. § 1225(b). Accordingly, the Court should deny Petitioner's habeas petition.

Respectfully submitted,

DOMINICK S. GERACE II
United States Attorney

s/Christopher R. Yates
CHRISTOPHER R. YATES (0064776)
Assistant United States Attorney
Attorney for Respondents
303 Marconi Boulevard, Suite 200
Columbus, Ohio 43215
(614) 469-5715
christopher.yates@usdoj.gov