

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

ALEXANDER BARROS MILLAN,	)	CASE NO.: 4:25-CV-02779
	)	
Plaintiff,	)	JUDGE CHARLES ESQUE FLEMING
	)	
v.	)	MAGISTRATE JUDGE
	)	REUBEN J. SHEPERD
	)	
WARDEN ED VOORHIES, et al.	)	<u>RESPONDENT'S OBJECTIONS TO</u>
	)	<u>REPORT AND RECOMMENDATION</u>
Defendants.	)	

Now comes Respondent, Kevin Raycraft, Acting Field Office Director of Enforcement and Removal Operations, Detroit Field Office, Immigration and Customs Enforcement pursuant to Federal Rule of Civil Procedure 72(b)(2), and hereby files his objections to the Report and Recommendation (R&R"). (ECF No. 15.) First, the R&R incorrectly determined that Petitioner is entitled to a bond hearing. Second, the R&R erred by not considering that Petitioner's parole was revoked which under 8 U.S.C. 1182(d)(5) commands that "his case shall ... be dealt with in the same manner as that of *any other* applicant for admission." 8 U.S.C. §1182(d)(5) (emphasis added). Third, the R&R incorrectly determined that the Court had jurisdiction to hear the petition. Finally, the R&R erred in finding that the Petitioner was not required to exhaust administrative remedies.

I. THE R&R INCORRECTLY DETERMINED THAT PETITIONER IS ENTITLED TO A BOND HEARING

The R&R incorrectly determined that § 1226, not §1225, applies to Petitioner. Under the plain language of Section 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.”).

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 INA means not physical entry, but lawful entry after inspection by immigration authorities. 8 U.S.C. § 1101(a)(13)(A); *Mejia Olalde v. Noem*, 2025 WL 3131942, at *3 (E.D. Mo. Nov. 10, 2025). 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, Section 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. § 1125(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 for the duration of the alien’s presence in the country or where in the country he is located. Therefore, the statute’s plain text mandates that DHS detain all “applicants for admission” who do not fall within one of its exceptions.

Petitioner is properly deemed an “arriving alien” subject to mandatory detention under Section 1225(b)(2). Indeed, Petitioner admitted that he is an “arriving alien” in the immigration proceedings. In immigration proceedings, “petitioners are bound by the concessions of their attorneys to the IJ unless they can show ineffective assistance of counsel or some other egregious

circumstances." *Hanna v. Holder*, 740 F.3d 379, 387 (6th Cir. 2014)(citation omitted); see also *In re Velasquez*, 19 I. & N. Dec. 377, 382 (BIA 1986) ("Absent egregious circumstances, a distinct and formal admission made . . . by an attorney acting in his professional capacity binds his client as a judicial admission."). "As a threshold matter, to establish egregious circumstances, an alien must argue 'that the factual admissions or concessions of [removability] were untrue or incorrect.'" *Hanna*, 740 F.3d at 387 (quoting *Velasquez*, 19 I. & N. Dec. at 383). Additionally, "an alien's argument that his attorney's concessions were incorrect must be supported by record evidence." *Id.* at 388 (citations omitted).

Because Petitioner is an arriving alien subject to mandatory detention, pursuant to 8 C.F.R. §1003.19(h)(2)(i)(B) the Immigration Judge lacks the authority to issue him a bond. 8 C.F.R. §236(c)(11).

II. THE R&R ERRED BY NOT CONSIDERING THAT PETITIONER'S PAROLE WAS REVOKED.

The R&R erred by finding that Section 1225 does not apply to Petitioner because he underwent inspection at the port of entry, was paroled into the United States, applied for asylum, and complied with all requirements of his parole. (R&R, ECF No. 15, PageID# 121.)

Petitioner's parole was revoked on April 18, 2025 (ECF No. 8-1, PageID # 70.) The INA makes clear that parole "shall not be regarded as an admission" and that once parole ends "the alien shall forthwith return ... to the custody from which he was paroled" and thereafter be treated "in the same manner as that of any other applicant for admission." 8 U.S.C. §1182(d)(5)(A).

Furthermore, the regulatory definitions provision states that "[a]n arriving alien remains an arriving alien even if paroled pursuant to 8 U.S.C. § 1182(d)(5), and even after any such parole is terminated or revoked." 8 C.F.R. § 1.2. Thus, Congress specified that parole is simply a temporary release of an alien into the United States that confers no vested immigration

status. Indeed, the parole statute and regulation reflect a foundational “legal fiction” in immigration law that aliens paroled into the United States are legally in the same position as aliens standing at the border, regardless of the duration of that parole. 8 C.F.R. § 212.5; 8 U.S.C. § 1182(d)(5)(A). The Supreme Court has repeatedly affirmed that legal fiction in an unbroken line of decisions spanning nearly a century. *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 139 (2020); *Leng May Ma v. Barber*, 357 U.S. 185, 188-91 (1958); *Kaplan v. Tod*, 267 U.S. 228, 230 (1925) (terminated parole had lasted more than 8 years). “The parole of aliens seeking admission is simply a device through which needless confinement is avoided while administrative proceedings are conducted. It was never intended to affect an alien’s status, and to hold that petitioner’s parole placed her legally within the United States is inconsistent with the congressional mandate, the administrative concept of parole, and the decisions of this Court.” *Leng May Ma*, 357 U.S. at 190 (cleaned up). “Lawful status and admission . . . are distinct concepts in immigration law: Establishing one does not necessarily establish the other.” *Sanchez v. Mayorkas*, 141 S. Ct. 1809, 1813 (2021).

Accordingly, because Petitioner’s parole was revoked, he is an applicant for admission. Section 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. § 1125(b)(2)(A). An “applicant for admission” and an “alien seeking admission” are the same. *Buenrostro-Mendez v. Bondi, et al.*, -- F.4th --, 2026 WL 323330, *4-5 (5th Cir. Feb. 6, 2026) (“[A]n applicant for admission to the United States is ‘seeking admission’ to the same, regardless whether the person actively engages in further affirmative acts to gain admission.”). The statute’s use of the term “shall” makes clear that detention is mandatory. *Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 35

(1998). Petitioner's detention is governed by Section 1225(b)(2)(A), and he is subject to mandatory detention. The R&R erred in determining otherwise.

III. THE R&R INCORRECTLY FOUND THAT THE COURT HAD JURISDICTION TO HEAR THE PETITION BY TOO NARROWLY CONSTRUING § 1252(b)(9).

The R&R erred in determining that the issue of Petitioner's detention is not subject to 1252(b)(9)'s limitation because it does not affect the validity of the final order of removal and therefore does not merge into the final order of removal. (R&R, ECF No. 15, PageID # 115.)

Section 1252(b)(9) provides that "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.* The R&R erred by reading this provision too narrowly.

Section 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); *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.”).

Recently, the Third Circuit in *Khalil v. President, United States*, __ F.4th __, 2026 WL 111933 (3d Cir. January 15, 2026), citing *AADC* and circuit precedent, held that § 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*, 975 F.3d at 299). 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)).

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—exactly what is happening here. *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[.]”). 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; *Khalil*, 2026 WL 111933, at *1; *Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020); *Amaya-Velis*, 2026 WL 100596, at *2; *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, and the R&R erred in finding § 1252(b)(9) inapplicable.

IV. THE R&R INCORRECTLY DETERMINED THAT PETITIONER WAS NOT REQUIRED TO EXHAUST ADMINISTRATIVE REMEDIES.

The Court should dismiss the petition for writ of habeas corpus for lack of jurisdiction because Petitioner has failed to exhaust administrative remedies. In the Petition, the Petitioner asserts that his attorney “declined to file bond on his behalf” because she agreed with the Immigration Judge (IJ) that Petitioner was an “arriving alien” and thus the IJ did not have jurisdiction for bond....” (Pet., ECF No. 1, PageID# 1.) Petitioner does not allege that he appealed the matter of bond to the BIA, nor that upon retaining new counsel he again sought bond before the IJ. Indeed, the IJ lacked authority to issue bond for an arriving alien. *See* 8 C.F.R. § 1003.19(h).

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.).

The R&R incorrectly determined that prudential exhaustion should not be required of Petitioner in this matter. (R&R, ECF No. 15, PageID #116-18.) The R&R largely determined

that prudential exhaustion was not required because the removal proceedings before the immigration court are distinct from the detention issue of the habeas petition. (*Id.*)

But Petitioner's removal proceedings cannot be separated from the detention issue. That would circumvent the detention statute under which Petitioner is rightfully detained to secure a custody redetermination hearing to which he is not entitled. 8 U.S.C. § 1225(b)(2)(A). In similar habeas petitions filed in this district, other judges have dismissed for failure to exhaust administrative remedies. *Amaya-Velis v. Raycraft*, __F.Supp.3d __, 2026 WL100596 (N.D. Ohio Jan. 14, 2026); *Tecum Pastor v. Director of Detroit Field Office, U.S. Immigration and Customs Enforcement*, __F. Supp.3d __ (N.D. Ohio 2025), 2025 WL 3746495 (N.D. Ohio Dec. 24, 2025); *Monroy Villalta v. Greene*, 794 F. Supp. 3d 528 (N.D. Ohio 2025); *Mendoza v. Raycraft, et al.*, No. 4:25cv2183, 2025 WL 3157796 (N.D. Ohio Nov. 12, 2025); *Ba v. Director of Detroit Field Office, U.S. Immigration and Customs Enforcement, et al.*, Case No. 4:25-cv-02208, 2025 WL 2977712 (N.D. Ohio Oct. 22, 2025); *Laguna Espinoza v. Director of Detroit Field Office, U.S. Immigration and Customs Enforcement, et al.*, Case No. 4:25-cv-02107, 2025 WL 2878173 (N.D. Ohio Oct. 9, 2025); *Hernandez Torrealba v. U.S. Dep't of Homeland Sec.*, No. 1:25-cv-01621, 2025 WL 2444114 (N.D. Ohio Aug. 25, 2025). Moreover, the Supreme Court has recognized that detention during deportation proceedings is a "constitutionally valid aspect of the deportation process." *Demore v. Kim*, 538 U.S. 510, 523 (2003).

Because Petitioner failed to exhaust his administrative remedies and there is no basis for excusing this failure, the Petition must be denied.

V. COMPLIANCE WITH THE COURT'S FEBRUARY 12, 2026 ORDER

Respondent is in receipt of the Court's Order dated February 12, 2026 (ECF No. 17). Based upon the Petitioner's Motion to Enforce or Amend Judgment (ECF No. 16), it appears Petitioner provided the R&R (ECF No. 15) to the immigration court and requested a hearing

based on the R&R, which was scheduled. (ECF No. 16, ¶¶ 4-10.) It appears the IJ indicated to Petitioner that the R&R was not a final order from the District Judge, but the nature of February 13, 2026, hearing is not in this record. (*Id.* at ¶9). The hearing that was set for February 13, 2026 did not proceed.

VI. CONCLUSION

For the foregoing reasons, this Court should find that it does not have jurisdiction to hear the petition and, in the alternative, that Petitioner is properly detained under 8 U.S.C. § 1225.

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 Objections to the Report and Recommendation is ten (10) pages in length and complies with the page limitations for a matter assigned to the standard track.

/s/Sara E. DeCaro
Sara E. DeCaro