

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

|                                               |   |                                      |
|-----------------------------------------------|---|--------------------------------------|
| Tarun Kumar,                                  | ) | Case No. 3:26-cv-132                 |
|                                               | ) |                                      |
| Petitioner,                                   | ) | Judge Jeffrey J. Helmick             |
|                                               | ) | Magistrate Judge Darrell A. Clay     |
| v.                                            | ) |                                      |
|                                               | ) |                                      |
| Frederick W. Stevens, in his official         | ) | <u>Return of Writ and Opposition</u> |
| capacity as Seneca County Sheriff; Kevin      | ) |                                      |
| Raycraft, in his official capacity as Detroit | ) |                                      |
| Field Office Director for U.S. Immigration    | ) |                                      |
| and Customs Enforcement, et al.,              | ) |                                      |
|                                               | ) |                                      |
| Respondents. <sup>1</sup>                     | ) |                                      |

Now comes Federal Defendant, U.S. Immigration and Customs Enforcement (ICE), (“Federal Defendant”), by and through undersigned counsel, and respectfully provides this Return of Writ and Opposition (“Return”). The Government moves this Honorable Court to deny and dismiss the Petition, (Doc. 1), filed by Petitioner Tarun Kumar for lack of subject matter jurisdiction, failure to exhaust administrative remedies, and failure to state a claim upon which relief can be granted.

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<sup>1</sup> Kevin Raycraft is currently the ICE Detroit Field Office Director and is automatically substituted as a party pursuant to Fed. R. Civ. P. 25(d).

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### **STATEMENT OF THE ISSUES**

1. Does this Court have subject matter jurisdiction under 8 U.S.C. §§ 1252(e)(2), (e)(3), (g), and (b)(9) to provide habeas relief under 28 U.S.C. § 2241 when Petitioner is currently detained under 8 U.S.C. § 1225(b)(1)(B)(ii) or, alternatively, § 1225(b)(2), both of which preclude such relief?
2. Are Petitioner's due process rights protected by the petition for review process of the Immigration and Nationality Act of 1952 (INA), 66 Stat. 163, as amended, 8 U.S.C. § 1101 et seq.?
3. Should Petitioner's failure to exhaust administrative remedies persuade the court that providing habeas relief at this juncture is premature?
4. Does Petitioner fail to state a claim for relief given that, as an applicant for admission under 8 U.S.C. § 1225, he is ineligible for bond under 8 U.S.C. § 1226?

### **SUMMARY OF ARGUMENT**

The Court must deny the Petition for lack of subject matter jurisdiction, failure to exhaust administrative remedies, and failure to state a claim. Regarding subject matter jurisdiction, Petitioner was initially processed under Expedited Removal, which corresponds to mandatory detention under 8 U.S.C. § 1225(b)(1)(B)(ii) and (b)(1)(B)(iii)(IV). Although Petitioner applied for asylum and was placed in standard removal procedures, § 1225(b)(1)(B)(ii) requires detention "for further consideration of the application for asylum." This Court only has a narrow window of jurisdiction under 8 U.S.C. § 1252(e)(2) to review a habeas claim involving Expedited Removal under 8 U.S.C. § 1225(b)(1), and it does not encompass Petitioner's requests for relief.

Alternatively, should the Court find that Petitioner is no longer subject to mandatory detention under § 1225(b)(1), Petitioner's detention is still mandatory under 8 U.S.C. § 1225(b)(2).

The decision to detain is part of the decision to commence removal proceedings, and this Court lacks jurisdiction to review habeas claims over questions of immigration removal.

Plaintiff has also failed to exhaust administrative remedies. Upon his detention on or about December 17, 2025, Petitioner could have sought a bond redetermination pursuant to 8 C.F.R. § 1003.19. A bond redetermination would allow for appeal, if necessary, to the Board of Immigration Appeals (BIA), and then for a petition for judicial review under 8 U.S.C. § 1252(b)(9). To date, however, the Government is unaware that Petitioner has sought bond redetermination. The petition for review process under the INA protects Petitioner's due process rights.

Further, Petitioner fails to state a claim under 8 U.S.C. § 1226(a), because he is legally detained under § 1225(b)(1)(B)(ii), or, alternatively, § 1225(b)(2). Expedited Removal is mandatory under § 1225(b)(1)(B)(ii) during consideration of requests for asylum. Petitioner has applied for asylum, and he has appealed the dismissal of his case. Alternatively, this Court should find Petitioner's detention mandatory under § 1225(b)(2), which applies to applicants for admission. Petitioner is considered an applicant for admission, having arrived and lived in the United States without permission. His "applicant for admission" status is bolstered by the fact that he has applied for removal relief by filing for asylum.

### **INTRODUCTION**

Petitioner seeks the grant of a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241, challenging the lawfulness of detention by Immigration and Customs Enforcement (“ICE”) and seeking immediate release from custody. (Doc. 1) Petitioner claims violations of the Immigration and Nationality Act of 1952 (INA), 66 Stat. 163, as amended, 8 U.S.C. § 1101 et seq., and the Due Process Clause of the Fifth Amendment. (Pet., Doc. 1, PageID # 22-23, ¶¶ 77, 82-83.) He asserts subject matter jurisdiction under 28 U.S.C. § 2241(c)(5), 28 U.S.C. § 1331 (federal question), and Art. I, § 9, cl. 2 of the Constitution (the “Suspension Clause”). (Pet., Doc. 1, PageID # 4, ¶ 10.)

### **FACTUAL AND PROCEDURAL BACKGROUND**

On October 7, 2019, Petitioner, a native and citizen of India, encountered an agent of the U.S. Customs and Border Patrol (“CBP”) in the El Centro Sector area of responsibility in California. (Record of Deportable/Inadmissible Alien, Form I-213 (“Form I-213”), Oct. 8, 2019, attached as Ex. A, at 1-2.) The CBP agent “determined the subject had unlawfully entered the United States from Mexico, at a time and place other than as designated by the Secretary of the Department of Homeland Security of the United States.” (Id. at 2.) Petitioner admitted that he did not have legal documentation to enter the United States and had “illegally crossed the international boundary without being inspected by an Immigration Officer at a designated Port of Entry.” (Id.)

On October 8, 2019, CBP issued Petitioner a Notice and Order of Expedited Removal (“Notice Expedited Removal”). (Notice Expedited Removal, Oct. 8, 2019, attached as Ex. B.)

This document indicated that:

Pursuant to section 235(b)(1) of the [INA] (8 U.S.C. § 1225(b)(1)), [DHS] has determined that you are inadmissible to the United States under section(s) [INA § 212(a)(7)(A)(i)(II) (8 U.S.C. § 1182(7)(A)(i)(II))] and therefore are subject to removal in that:

1. You are not a citizen or national of the United States.
2. You are a native of INDIA and a citizen of INDIA.
3. On or about 10/7/2019, you illegally entered the United States at or near Calexico, California, and you were not inspected by an Immigration Officer.
4. You are an immigrant not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the [INA]

(Ex. B.) DHS then arrested and transported Petitioner to the El Centro Sector Processing Center. (Form I-213, Ex. A, at 2.)

Petitioner admitted that “he illegally crossed the international boundary without being inspected by an Immigration Officer at a designated Port of Entry.” (Form I-213, Ex. A, at 2.) He did so on October 7, 2019, which was the same day he was taken into custody by CBP. (Id. at 2-3.) Petitioner told CBP that “he does fear persecution or torture if returned to his country of citizenship.” (Id. at 3.) CBP noted that it was processing Petitioner for Expedited Removal, stating that “[t]he subject was apprehended within 14 days of entering the United states and within 100 air miles of the United States/Mexico international boundary.” (Id.)

On October 9, 2019, DHS detained Petitioner at the Imperial Regional Adult Facility in Calexico, California. (Notice to EOIR: Alien Address, Form I-830 (“Form I-830”), June 18, 2020, attached as Ex. C.) On November 13, 2019, DHS issued Petitioner a Notice to Appear (“NTA”) for removal proceedings under 8 U.S.C. § 1229a (INA § 240). (NTA, Nov. 13, 2019, attached as Ex. D.) This indicated that Petitioner was “an alien present in the United States who has not been admitted or paroled”:

1. You are not a citizen or national of the United States.
2. You are a native of India and a citizen of India.
3. You arrived to the United States at or near Calexico, California, on or about October 14, 2019;
4. You were not then admitted or paroled after inspection by an Immigration Officer.

(Id.) It charged that Petitioner was removeable under the INA § 212(a)(6)(A)(i) (8 U.S.C. § 1182(a)(6)(A)(i)) as “an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.” (Id.) It also stated that “[t]his notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.” (Id.) According to an Immigration Judge Decision and Order on DHS Motion to Dismiss (“IJ Decision”), dated 21 December 2023, attached to the Petition, “[t]he respondent [Petitioner] applied for removal relief with the court on 18 May 2020 in the forms of asylum, withholding of removal and protection under the convention against torture.” (IJ Decision, Dec. 21, 2023, Doc. 1-1, PageID #: 26, ¶ I.3.)

On December 20, 2023, DHS filed a motion to dismiss Petitioner’s removal proceeding without prejudice in Immigration Court based on prosecutorial discretion. (IJ Decision, Doc. 1-1, PageID #: 26, ¶ I.4.) DHS asserted that “the circumstances of this case have changed after the NTA was issued to such an extent that continuation is no longer in the best interest of the government.” (Id. at PageID #: 27, ¶ II.3) Petitioner opposed this motion, arguing that “the circumstances have not changed, that the respondent should be permitted to pursue his I-589 application [Application for Asylum and for Withholding of Removal] with the court and the motion was untimely.” (Id.) Petitioner argued that he has “a meritorious asylum claim.” (Id. at ¶ II.6.) Nevertheless, the Immigration Court granted DHS’s motion. (Id. at PageID #: 28.) On January 17, 2023, as shown on the attached Notice of Appeal from a Decision of an Immigration Judge (“Notice of Appeal”), Petitioner appealed the Immigration Court’s decision to the Board of Immigration Appeals (BIA). (Notice of Appeal, Jan. 17, 2023, attached as Ex. E.) Absent any decision by the BIA, Petitioner remains in removal proceedings under 8 U.S.C. § 1182(a)(6)(A)(i).

### **ARGUMENT**



**I. THE ONLY PROPER RESPONDENT IS KEVIN RAYCRAFT IN HIS OFFICIAL CAPACITY**

Under 28 U.S.C. § 2243, a writ of habeas corpus may be issued by "the person having custody of the person detained." According to the Sixth Circuit, "a detained alien generally must designate his immediate custodian — the INS District Director for the district where he is being detained—as the respondent to his habeas corpus petition." *Roman v. Ashcroft*, 340 F.3d 314, 320 (6th Cir. 2003). Accordingly, Respondents Frederick Stevens, Todd Lyons, Kristi Noem, and Pamela Bondi should be dismissed.

**II. PETITIONER'S CLAIMS SHOULD BE DISMISSED FOR LACK OF SUBJECT MATTER JURISDICTION**

**A. The Federal Question Statute Does Not Provide an Independent Basis for Jurisdiction**

Plaintiff relies on the Federal Question Statute, 28 U.S.C. § 1331, as a ground for subject matter jurisdiction. (Pet., Doc. 1, PageID # 4, ¶ 10.) However, this does not provide an independent jurisdictional basis. *Wei Shen v. Chertoff*, 494 F. Supp. 2d 592, 594 (E.D. Mich. 2007). Instead, it is simply a "procedural vehicle[]" used to confer subject-matter jurisdiction." *Id.* Accordingly, Petitioner must establish jurisdiction elsewhere.

**B. Should the Court Find That Petitioner is Subject to Mandatory Detention under 8 U.S.C. § 1225(b)(1), § 1252(e)(2) Provides Limited Judicial Review**

Review of Petitioner's detention should be limited to 8 U.S.C. § 1252(e)(2), which provides for judicial review regarding "any determination under section 235(b)(1) [8 U.S.C. § 1225(b)(1)]." Petitioner asserts that he "was placed in removal proceedings in 2019, when he was charged with entering the United States without inspection pursuant to 8 U.S.C. § 1182(a)(6)(A)(i)." (Pet., Doc. 1, PageID #: 3, ¶ 3.) Petitioner, however, omits the fact that he was first placed in removal proceedings and detained in 2019 pursuant to expedited removal in

accordance with 8 U.S.C. § 1225(b)(1). (*See* Notice Expedited Removal, Ex. B.) Under § 1225(b)(1)(A)(i), expedited removal applies to an alien “who is arriving in the United States or is described in clause (iii) [as] inadmissible under section 212(a)(6)(C) or 212(a)(7) [8 USCS § 1182(a)(6)(C) or 1182(a)(7)].” Further, an alien in expedited removal procedures “shall be detained pending a final determination of credible fear of persecution.” § 1252(b)(1)(B)(IV). Petitioner’s Notice of Expedited Removal indicates that DHS determined that Petitioner was “inadmissible to the United States under section[] . . . 1182(a)(7)(i)(II) . . . in that [he was] an immigrant not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the [INA].” (Notice Expedited Removal, Ex. B.) Upon this finding, consistent with the mandatory detention provision of § 1252(b)(1)(B)(IV), Petitioner “was arrested and transported to the El Centro Sector Processing Center for further processing.” (I-213, Ex. A.)

Petitioner’s subsequent claim of credible fear, which DHS determined to be valid, did not cancel mandatory detention. Under § 1225(b)(1)(B)(ii), if a DHS officer “determines at the time of the interview that an alien has a credible fear of persecution (within the meaning of clause (v)), the alien shall be detained for further consideration of the application for asylum.” As held by the Supreme Court, “[s]ection 1225(b)(1) aliens are detained for “further consideration of the application for asylum.” *Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018). Upon the positive credible fear determination in Petitioner’s case, Petitioner was placed in standard removal proceedings under 8 U.S.C. § 1229a. (NTA, Ex. D.) Petitioner “filed a Form I-589 seeking asylum and withholding of removal” upon being placed in removal proceedings. (Pet., Doc. 1, PageID #: 3, ¶ 3.) However, the fact that DHS placed Petitioner in standard removal proceedings, allowing him to pursue his asylum application, does not negate the fact that

Petitioner was initially detained pursuant to expedited removal procedures. As held by one court, “[d]espite being placed in full section 240 removal proceedings, Petitioner remains subject to mandatory detention pursuant to § 1225(b)(1)(B)(ii) until the completion of his claim for asylum.” *Mursalin v. Dedos*, No. 1:25-cv-00681, 2025 U.S. Dist. LEXIS 221979, at \*14 (D.N.M. Nov. 10, 2025) (citing *Jennings*, 583 U.S. at 287, 299). Similarly, this Court should find that Petitioner is still subject to mandatory detention under § 1225(b)(1)(B)(ii).

A court’s review of detention under § 1225(b)(1) is limited to determining:

- (A) whether the petitioner is an alien,
- (B) whether the petitioner was ordered removed under such section, and
- (C) whether the petitioner can prove by a preponderance of the evidence that the petitioner is an alien lawfully admitted for permanent residence, has been admitted as a refugee under section 207 [8 USCS § 1157], or has been granted asylum under section 208 [8 USCS § 1158], such status not having been terminated, and is entitled to such further inquiry as prescribed by the Attorney General pursuant to section 235(b)(1)(C) [8 USCS § 1225(b)(1)(C)].

8 U.S.C.S. § 1252(e)(2). Petitioner does not appear to seek review of any of the circumstances listed in § 1252(e)(2). Moreover, there does not appear to be any dispute that he is “an alien.” Regarding, § 1252(e)(2)(B), the Notice of Expedited Removal shows that “he was ordered removed under [§ 1225(b)(1)].” (*See* Notice Expedited Removal, Ex. B.) Finally, Petitioner does not allege, under § 1252(e)(2)(C), that he “is an alien lawfully admitted for permanent residence, has been admitted as a refugee . . . or has been granted asylum.” Rather, Petitioner seeks review of his detention, requesting his immediate release unless Respondents provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a).” (Pet., Doc. 1, PageID #: 24, Prayer for Relief ¶ e.) Accordingly, the Court lacks jurisdiction to review Petitioner’s claims or order his release.

**C. Even Should the Court Consider Petitioner Subject to Removal Proceedings Under 8 U.S.C. § 1225(b)(2), This Court Lacks Jurisdiction.**

This Court lacks jurisdiction to review Petitioner's detention even should it determine that he is not subject to mandatory detention based on expedited removal pursuant to 8 U.S.C. § 1225(b)(1). If not in expedited removal, Petitioner should be found to be an applicant for admission under 8 U.S.C. § 1225(b)(2)(A), which requires that an "alien shall be detained for a proceeding under section 240 [8 U.S.C. § 1229a]." Section 1225(b)(2)(A) "serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1)." *Jennings*, 583 U.S. at 287; *see* 8 U.S.C. § 1225(b)(2)(A), (B). An alien is subject to 8 U.S.C. § 1252(b)(2) when the alien "is an 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."

In the instant case, Petitioner arrived at the border in 2019 seeking admission based on credible fear of persecution. (Form I-213, Ex. A, at 2-3.) Putting aside the fact that Petitioner was placed in expedited removal procedures, triggering application of § 1225(b)(1), his detention should alternatively be seen as consistent with 8 U.S.C. § 1225(b)(2). The court's review of Petitioner's claims, however, is restricted under this section.

**D. 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 her detention under § 1225(b). Section 1252(e)(3) limits judicial review of "determinations under section 1225(b) of this title and its implementation" to only 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). To the extent Petitioner seeks “his immediate release, or in the alternative, a bond hearing under § 1226(a),” (Pet., Doc. 1, PageID #: 4), he must seek such a review in the District Court for the District of Columbia.

**E. 8 U.S.C. § 1252(g) Bars Review of Petitioner’s Claims**

Additionally, 8 U.S.C. § 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.” § 1252(g) (emphasis added). The Secretary of Homeland Security’s decision to detain an alien pending removal proceedings “aris[es] from” the decision to commence removal proceedings against an alien. *See, e.g., 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) (deciding that § 1252(g) strips courts of jurisdiction to review an alien’s re-detention for removal); *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); *but cf. Bartolon v. Bondi*, No. 1:25-cv-747, 2025 U.S. Dist. Lexis 261729, \*13 (N.D. Ohio Dec. 18, 2025) (detention-based claims “sound in core habeas relief and do not fall within the scope of § 1252(g)); *E.V. v. Raycraft*, No. 4:25-cv-2069, 2025 U.S. Dist. Lexis 220483, \*\*11-12 (N.D. Ohio Nov. 7, 2025) (holding that “Section 1252(g) also does not bar the Court’s jurisdiction to

consider Petitioners' claims concerning their continued detention without a bond hearing"). As such, judicial review of the Petitioner's claim[s] is barred by § 1252(g).

**F. 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 v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999) ("*AADC*"). Section 1252(b)(9) is an "unmistakable 'zipper' clause" that "channels judicial review of all [claims arising from deportation proceedings]" to a court of appeals in the first instance. *Id.*; *see Lopez v. Barr*, No. CV 20-1330 (JRT/BRT), 2021 WL 195523, at \*2 (D. Minn. Jan. 20, 2021) (citing *Nasrallah v. Barr*, 590 U.S. 573, 579–80 (2020)).

Moreover, § 1252(a)(5) provides that a court of appeals petition for review is the exclusive means for judicial review of immigration proceedings. "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).

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." 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 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 PFR;” “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.

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 [him/her], which arises from the decision of the Department of Homeland Security (“DHS”) to commence removal proceedings, and is thus an “action taken . . . to remove [him/her] from the United States.” *See* 8 U.S.C. § 1252(b)(9); *see also, 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”); *Nataren v. Raycraft*, No. 4:26-cv-212, 2026 U.S. Dist. LEXIS 15396, at \*4 (N.D. Ohio Jan. 28, 2026) (reviewing § 1252(b)(9) and other statutes in concluding that “determinations of bond or detention are discretionary” and “[f]or this reason . . . Congress has not conferred jurisdiction on federal district courts to interpret or apply Section 1225 or Section 1226 of the INA.”) 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.

The fact that the Petitioner is challenging the basis upon which he is detained is enough to trigger § 1252(b)(9) because “detention *is* an ‘action taken . . . to remove’ an alien.” *See Jennings*, 583 U.S. at 319 (Thomas, J., concurring); 8 U.S.C. § 1252(b)(9). The Court should dismiss the Petitioner’s claims for lack of jurisdiction under § 1252(b)(9). The Petitioner must present his claims before the appropriate court of appeals because she 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).

**G. The Suspension Clause Does Not Override Limitations on Habeas Relief Under Immigration Law**

Petitioner's reliance on the Suspension Clause is misplaced. Petitioner's demand for review of his detention is inextricably linked to questions surrounding her removal. While "habeas has traditionally been a means to secure release from unlawful detention," Petitioner seeks a review of her removal status "ultimately to obtain authorization to stay in this country." *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 107 (2020). In a case involving the government's denial of immediate voluntary departure, "the decision to detain plaintiff until his hearing before the Immigration Judge arose from this decision to commence proceedings." *Valencia-Mejia v. United States*, No. CV 08-2943 CAS (PJWx), 2008 U.S. Dist. LEXIS 110436, at \*9 (C.D. Cal. Sep. 15, 2008). As such, "under § 1252(g), the Court lacks subject matter jurisdiction over plaintiff's claim." *Id.*

In *Thuraissigiam*, the Court considered the case of a detained asylum seeker from Sri Lanka who was placed in expedited removal proceedings. *Id.* at 117-118. The alien alleged that he was deprived of "a meaningful opportunity to establish his claims." *Id.* at 114 (quoting the petitioner). The Court noted that "[while respondent does not claim an entitlement to release, the Government is happy to release him—provided the release occurs in the cabin of a plane bound for Sri Lanka." *Id.* at 119.

The Court compared his case with that of American citizens held in Iraq who "filed habeas petitions in an effort to block their transfer to Iraqi authorities for criminal prosecution." *Id.* (citing *Munaf v. Geren*, 553 U.S. 674, 697 (2008)). In that case, the Court observed that "[h]abeas is at its core a remedy for unlawful executive detention and that what these individuals wanted was not 'simple release' but an order requiring them to be brought to this country." *Id.* (internal quotations and citation omitted). Similarly, in the instant case, as in *Valencia-Mejia*,

Petitioner's detention "arose from" the decision to commence removal proceedings." *Valencia-Mejia*, 2008 U.S. Dist. LEXIS 110436, at \*9. Petitioner does not want a "simple release," resulting in a return to India. Rather, what Petitioner seeks is a review of his case in removal proceedings that may allow him to remain in the United States legally.

### **III. PETITIONER FAILED TO EXHAUST ADMINISTRATIVE REMEDIES**

The Court should dismiss the petition for writ of habeas corpus for lack of jurisdiction as Petitioner has failed to exhaust administrative remedies. A habeas petitioner must normally exhaust administrative remedies before seeking federal court intervention. The exhaustion requirement "aims to provide the agency with a chance to correct its own errors, 'protect[] the authority of administrative agencies,' and otherwise conserve judicial resources by 'limiting interference in agency affairs, developing the factual record to make judicial review more efficient, and resolving issues to render judicial review unnecessary.'" *Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003) (Sotomayor, J.).

In similar habeas petitions filed in this district, other judges have dismissed for failure to exhaust administrative remedies. *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).

Here, Petitioner has not completely availed himself of the administrative remedies available to him. Although aliens who have been detained may apply for a bond redetermination

pursuant to 8 C.F.R. § 1003.19(b), Petitioner has not done so. A bond redetermination decision by an IJ is reviewable by the BIA. *See* § 1003.1(b)(7), § 1003.19(f), § 1003.38, § 1236.1(d)(3). However, Petitioner has skipped the administrative process to make his claim through a habeas petition.

**IV. PETITIONER FAILS TO STATE A CLAIM FOR HABEAS RELIEF UNDER 8 U.S.C. § 1226, BECAUSE HE IS PROPERLY DETAINED UNDER 8 U.S.C. § 1225.**

**A. Applicants for Admission Are Subject to Detention Under 8 U.S.C. § 1225**

“As with any question of statutory interpretation, [the] analysis begins with the plain language of the statute.” *Jimenez v. Quarterman*, 555 U.S. 113, 118 (2009) (citing *Lamie v. U.S. Tr.*, 540 U.S. 526, 534 (2004)). Section 1225(a)(1) defines an “applicant for admission” as an “alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival . . . ) . . . .” 8 U.S.C. § 1225(a)(1); *see Matter of Velasquez-Cruz*, 26 I&N Dec. 458, 463 n.5 (BIA 2014) (“[R]egardless of whether an alien who illegally enters the United States is caught at the border or inside the country, he or she will still be required to prove eligibility for admission.”). Accordingly, by its very definition, the term “applicant for admission” includes two categories of aliens: (1) arriving aliens, and (2) aliens present without admission. *See Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (explaining that “an alien who tries to enter the country illegally is treated as an ‘applicant for admission’”) (citing 8 U.S.C. § 1225(a)(1)). An arriving alien is defined, in pertinent part, as “an applicant for admission coming or attempting to come into the United States at a port-of-entry [(“POE”)].” 8 C.F.R. §§ 1.2,.1001.1(q)

All aliens who are applicants for admission “shall be inspected by immigration officers.” 8 U.S.C. § 1225(a)(3); *see also* 8 C.F.R. § 235.1(a) (“Application to lawfully enter the United

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

Here, Petitioner entered the United States on or about October 7, 2019, without having been admitted after inspection by an immigration officer. (Form I-213, Ex. A.) Both arriving aliens and aliens present without admission, as applicants for admission, may be removed from the United States by expedited removal procedures under 8 U.S.C. § 1225(b)(1) or by an IJ in non-expedited removal procedures under 8 U.S.C. §§ 1225(b)(2) and 1229a. Upon his entry into the United States, Petitioner was immediately placed in expedited removal under § 1182(7)(A)(i)(I) as “an immigrant not in possession of a [valid entry document]” and subject to 8 U.S.C. § 1225(b)(1). As such, he was subject to mandatory detention under § 1225(b)(1)(B)(iii)(IV) pending a “final determination of credible fear of prosecution.” (Form I-830, Ex. C) (documenting Petitioner’s detention upon arrival.) Upon determination that Petitioner had a credible fear, as explained, *supra*, he became subject to mandatory detention under § 1225(b)(1)(B)(ii). Petitioner remains subject to mandatory detention under this provision.

**B. Even under 8 U.S.C. § 1225(b)(2)(A), Petitioner is Subject to Mandatory Detention**

Even should the Court determine that Petitioner is no longer subject to mandatory detention under § 1225(b)(1)(B)(ii), however, Petitioner would still be an alien present without admission under § 1225(b)(2)(A) and subject to mandatory detention. Petitioner was placed in standard removal proceedings after determination of a credible fear. (NTA, Ex. D.) Applicants for admission whom DHS places in 8 U.S.C. § 1229a removal proceedings, like Petitioner, are still subject to detention under 8 U.S.C. § 1225(b)(2)(A) and ineligible for a custody redetermination hearing before an IJ. Under 8 U.S.C. § 1225(b)(2)(A), “an alien who is an applicant for admission” “*shall be detained* for a proceeding under [8 U.S.C. § 1229a]” “if the examining immigration 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); 8 C.F.R. § 235.3(b)(3) (providing that an alien placed into 8 U.S.C. § 1229a removal proceedings in lieu of expedited removal proceedings under 8 U.S.C. § 1225 “shall be detained” pursuant to 8 U.S.C. § 1225(b)(2)); 8 C.F.R. § 235.3(c) (providing that “any arriving alien . . . placed in removal proceedings pursuant to [8 U.S.C. § 1229a] shall be detained in accordance with [8 U.S.C. § 1225(b)]” unless paroled pursuant to 8 U.S.C. § 1182(d)(5)).

Thus, according to the plain language of 8 U.S.C. § 1225(b)(2)(A), applicants for admission in 8 U.S.C. § 1229a removal proceedings “*shall be detained.*” 8 U.S.C. § 1225(b)(2)(A) (emphasis added). “The ‘strong presumption’ that the plain language of the statute expresses congressional intent is rebutted only in ‘rare and exceptional circumstances.’” *Ardestani v. INS*, 502 U.S. 129, 135–36 (1991) (quoting *Rubin v. United States*, 449 U.S. 424, 430 (1981)); see *Lamie*, 540 U.S. at 534 (“It is well established that when the statute’s language is plain, the sole function of the courts—at least where the disposition required by the text is not absurd—is to

enforce it according to its terms.” (quotation marks omitted)). As the Supreme Court observed in *Jennings*, nothing in 8 U.S.C. § 1225(b)(2)(A) “says anything whatsoever about bond hearings.” 583 U.S. at 297. Further, there is no textual basis for arguing that 8 U.S.C. § 1225(b)(2)(A) applies only to arriving aliens.

On September 5, 2025, the BIA issued a published decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). In its decision, the BIA affirmed “the Immigration Judge’s determination that he did not have authority over [a] bond request because aliens who are present in the United States without admission are applicants for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings.” *Yajure Hurtado*, 29 I&N Dec. at 220.

In so concluding, the BIA rejected the alien’s argument that “because he has been residing in the interior of the United States for almost 3 years . . . he cannot be considered as ‘seeking admission.’” *Id.* at 221. The BIA determined that this argument “is not supported by the plain language of the INA” and creates a “legal conundrum.” *Id.* If the alien “is not admitted to the United States (as he admits) but he is not ‘seeking admission’ (as he contends), then what is his legal status?” *Id.* (parentheticals in original). The BIA’s decision in *Matter of Yajure Hurtado* is consistent not only with the plain language of 8 U.S.C. § 1225(b)(2), but also with the Supreme Court’s 2018 decision in *Jennings* and other caselaw issued subsequent to *Jennings*. Specifically, in *Jennings*, the Supreme Court explained that 8 U.S.C. § 1225(b) applies to all applicants for admission, noting that the language of 8 U.S.C. § 1225(b)(2) is “quite clear” and “unequivocally mandate[s]” detention. 583 U.S. at 300, 303 (explaining that “the word ‘shall’ usually connotes a requirement” (quoting *Kingdomware Technologies, Inc. v. United States*, 579 U.S. 162, 171 (2016))).

Here, Petitioner is an applicant for admission (specifically, an alien present without admission), placed directly into expedited removal under § 1225(b)(1) and subsequently standard removal proceedings under 8 U.S.C. § 1229a. Even absent the applicability of § 1225(b)(1)(B)(ii), he is therefore still subject to detention pursuant to 8 U.S.C. § 1225(b)(2)(A). Aliens present without admission in 8 U.S.C. § 1229a removal proceedings, like Petitioner, are both applicants for admission under 8 U.S.C. § 1225(a)(1) and aliens seeking admission under 8 U.S.C. § 1225(b)(2)(A). As discussed above, such aliens placed in removal proceedings under 8 U.S.C. § 1229a are applicants for admission as defined in 8 U.S.C. § 1225(a)(1), subject to detention under 8 U.S.C. § 1225(b)(2)(A), and thus ineligible for a bond redetermination hearing before the IJ. Such aliens are also considered “seeking admission,” as contemplated in 8 U.S.C. § 1225(b)(2)(A). To be sure, “many 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.” *Lemus*, 25 I&N Dec. at 743; *see Yajure Hurtado*, 29 I&N Dec. at 221; *Q. Li*, 29 I&N Dec. at 68 n.3; *see also Matter of Valenzuela-Felix*, 26 I&N Dec. 53, 56 (BIA 2012) (explaining that “an application for admission [i]s a continuing one”).

In analyzing 8 U.S.C. § 1225(b)(2)(A), the Supreme Court in *Jennings* equated “applicants for admission” with aliens “seeking admission.” *See Jennings*, 583 U.S. at 289. As noted above, the Supreme Court stated that 8 U.S.C. § 1225(b)(2) “serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1).” *Id.* at 287. In doing so, it specifically cited 8 U.S.C. § 1225(b)(2)(A)—and thus did not appear to consider aliens “seeking admission” to be a subcategory of applicants for admission. *Id.* The Supreme Court also stated that “[a]liens who are instead covered by § 1225(b)(2) are detained pursuant to a different process . . . [and] ‘shall be detained for a [removal] proceeding’” *Id.* at 288 (quoting 8 U.S.C. § 1225(b)(2)(A)). The

Supreme Court considered all aliens covered by 8 U.S.C. § 1225(b)(2) to be subject to detention under subparagraph (A)—not just a subset of such aliens.

Indeed, the Supreme Court explicitly stated that aliens seeking admission are subject to 8 U.S.C. § 1225(b) detention: “In sum, U.S. immigration law authorizes the Government to detain certain aliens seeking admission into the country under §§ 1225(b)(1) and (b)(2).” *Id.* at 289. This was recently reiterated by the BIA in *Matter of Q. Li*, which held that for aliens “seeking admission into the United States who are placed directly in full removal proceedings, [8 U.S.C. § 1225(b)(2)(A)] . . . mandates detention ‘until removal proceedings have concluded.’” 29 I&N Dec. At 68 (quoting *Jennings*, 583 U.S. at 299).

In the instant case, Petitioner is clearly an applicant “seeking admission.” Upon entry, Petitioner sought a credible fear determination. (Form I-213, Ex. A, at 3.) He thereafter applied for “asylum, withholding of removal and protection under the convention against torture.” (IJ Decision, Doc. 1-1, PageID #: 26, ¶ I.3.) Accordingly, Petitioner, as an alien present without admission in 8 U.S.C. § 1229a removal proceedings, is an applicant for admission and an alien seeking admission. He is therefore subject to detention under 8 U.S.C. § 1225(b)(2)(A) and ineligible for a bond redetermination hearing before an IJ.

**C. Applicants for Admission May Only Be Released from Detention on an 8 U.S.C. § 1182(d)(5) Parole**

Importantly, applicants for admission may only be released from detention if DHS invokes its discretionary parole authority under 8 U.S.C. § 1182(d)(5). DHS has the exclusive authority to temporarily release on parole “any alien applying for admission to the United States” on a “case-by-case basis for urgent humanitarian reasons or significant public benefit.” 8 U.S.C. § 1182(d)(5); *see* 8 C.F.R. § 212.5(b). In *Jennings*, the Supreme Court placed significance on the fact that 8

U.S.C. § 1182(d)(5) is the specific provision that authorizes release from detention under 8 U.S.C. § 1225(b), at DHS’s discretion. *Jennings*, 583 U.S. at 300. Specifically, the Supreme Court emphasized that “[r]egardless of which of those two sections authorizes . . . detention, [8 U.S.C. § 1225(b)(1) or (b)(2)(A)], applicants for admission may be temporarily released on parole . . . .” *Id.* at 288.

**D. Section 1226 Does Not Impact the Detention Authority for Applicants for Admission**

Section 1226(a) is the applicable detention authority for aliens who have been admitted, are deportable, and are subject to removal proceedings under 8 U.S.C. § 1229a, 8 U.S.C. §§ 1226, 1227(a), and 1229a, and does not impact the directive in 8 U.S.C. § 1225(b)(2)(A) that “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 proceedings under [8 U.S.C. § 1229a],” *Id.* § 1225(b)(2)(A). As the Supreme Court explained, 8 U.S.C. § 1226(a) “applies to aliens already present in the United States” and “creates a default rule for those aliens by permitting—but not requiring—the [Secretary] to issue warrants for their arrest and detention pending removal proceedings.” *Jennings*, 583 U.S. at 289, 303.

Generally, such aliens may be released on bond or their own recognizance, also known as “conditional parole.” 8 U.S.C. § 1226(a); *Jennings*, 583 U.S. at 303, 306. Section 1226(a) does not, however, confer the *right* to release on bond; rather, both DHS and IJs have broad discretion in determining whether to release an alien on bond if the alien establishes that he or she is not a flight risk or a danger to the community. *See* 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8); *Matter of Guerra*, 24 I&N Dec. 37, 39 (BIA 2006).; *Matter of Adeniji*, 22 I&N Dec. 1102 (BIA 1999). Further, ICE must detain certain aliens due to their criminal history or national security concerns

under 8 U.S.C. § 1226(c). *See* 8 U.S.C. § 1226(c)(1), (c)(2); 8 C.F.R. §§ 236.1(c)(1)(i), 1236.1(c)(1)(i).

Whereas 8 U.S.C. § 1226 applies to already admitted aliens, § 1225(b) applies to aliens who are “applicants for admission,” like Petitioner. To interpret 8 U.S.C. § 1225(b)(2)(A) as not applying to all applicants for admission would render it meaningless. Congress expanded 8 U.S.C. § 1225(b) through the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”), Publ. L. No. 104-208, 110 Stat. 3009-546 (1996), to apply to a broader category of aliens, including those aliens who crossed the border illegally. IIRIRA § 302. There would have been no need for Congress to make such a change if 8 U.S.C. § 1226 was meant to apply to aliens present without admission. Thus, 8 U.S.C. § 1226 does not have any controlling impact on the directive in 8 U.S.C. § 1225(b)(2)(A) that “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 [8 U.S.C. § 1229a].” 8 U.S.C. § 1225(b)(2)(A).

#### **V. PETITIONER FAILS TO DEMONSTRATE ANY VIOLATION OF HIS DUE PROCESS RIGHTS**

Petitioner fails to show that his due process rights under the Fifth Amendment have been violated. As held by the Supreme Court, “[w]hile aliens who have established connections in this country have due process rights in deportation proceedings, the Court long ago held that Congress is entitled to set the conditions for an alien’s lawful entry into this country and that, as a result, an alien at the threshold of initial entry cannot claim any greater rights under the Due Process Clause. *Thuraissigiam*, 591 U.S. 103, at 107. “In the immigration context, Congress has broad discretion to determine what process is due.” *Pastor v. Dir. of Det. Field Office*, No. 4:25-cv-02761, 2025 U.S. Dist. LEXIS 267860, at \*6 (N.D. Ohio Dec. 24, 2025). An alien “has no entitlement to procedural rights other than those afforded by statute.” *Thuraissigiam*, 591 U.S.

103, at 107. In the instant case, Petitioner's due process rights are protected by the immigration statutes Congress enacted. He has not demonstrated that statutory legal protections are insufficient.

**VI. THE BAUTISTA DECLARATORY JUDGMENT HAS NO IMPACT ON THIS CASE**

Petitioner references a case, *Maldonado Bautista v. Noem*, Case No. 5:25-cv-01873 (C.D. Ca. Dec. 18, 2025), that declared certain aliens are unlawfully detained under 8 U.S.C. § 1225(b)(2) rather than § 1226(a). (Pet, Doc. 1, PageID #: 8, ¶ 30.) For three reasons, this judgment does not have preclusive effect and should not be considered as a basis to grant the Petition. First, the judgment cannot have effect outside the district and over custodians located outside the district. Second, the judgment is on appeal. Third, even if issue preclusion is appropriate in habeas, which is doubtful, the government is not situated like a private party which counsels against applying issue preclusion.

The Supreme Court has imposed two fundamental limits on federal court jurisdiction over core habeas claims. *First*, “jurisdiction lies in only one district: the district of confinement.” *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004); *see also J.G.G.*, 604 U.S. at 672. *Second*, a habeas petitioner must name the petitioner's *immediate* custodian—*i.e.*, the custodian who has actual custody over the petitioner and can produce the “corpus.” *Padilla*, 542 U.S. at 435. “Failure to name the petitioner's custodian as a respondent deprives federal courts of personal jurisdiction” needed to issue relief. *Stanley v. Cal. Supreme Court*, 21 F.3d 359, 360 (9th Cir. 1994); *Padilla*, 542 U.S. at 444. Given that a challenge to the legality of detention is a core habeas claim, class-wide declaratory relief is inappropriate in the habeas context. *Calderon v. Ashmus*, 523 U.S. 740, 747 (1998) (declaratory judgment action not appropriate to address “validity of a defense the State may, or may not, raise in a habeas proceeding” in part because

“the underlying claim must be adjudicated in a federal habeas proceeding”); *Fusco v. Grondolsky*, No. 17-1062, 2019 WL 13112044, at \*1 (1st Cir. June 18, 2019) (declaratory judgment action must be dismissed when habeas available). Indeed, a class-wide declaratory judgment imposed from outside the district of confinement cannot be squared with the district-of-confinement requirement of habeas, where the relief is an order of release, 28 U.S.C. § 2241(a), not a declaration of legal rights that can later be enforced. *See Calderon*, 523 U.S. at 747 (1998); *Fusco*, 2019 WL 13112044, at \*1; *LoBue v. Christopher*, 82 F.3d 1081, 1082 (D.C. Cir. 1996) (holding that the “availability of a habeas remedy in another district ousted us of jurisdiction over an alien’s effort to pose a constitutional attack . . . by means of a suit for declaratory judgment”); *Monk v. Sec. of Navy*, 793 F.2d 364, 366 (D.C. Cir. 1986) (“In adopting the federal habeas corpus statute, Congress determined that habeas corpus is the appropriate federal remedy for a prisoner who claims that he is ‘in custody in violation of the Constitution . . . of the United States,’ . . . . This specific determination must override the general terms of the declaratory judgment . . . statute.”). Here, the *Bautista* class members are meant to include individuals, such as Petitioner, who are confined *outside* of the Central District of California by immediate custodians, such as Respondent Raycraft, who are also *outside* the Central District of California and have not been named in the lawsuit. Indeed, another federal district court has already held that the *Bautista* declaratory judgment does not have preclusive effect. *Lopez v. Lyons*, No. 1:25-CV-226, 2025 U.S. Dist. LEXIS 265505, at \*36 (N.D. Tex. Dec. 19, 2025).

Even if the *Bautista* declaratory judgment could have preclusive effect outside the Central District of California, that judgment has been appealed to the Ninth Circuit, *Bautista, et al. v. United States Department of Homeland Security, et al.*, No. 25-7958 (9th Cir.), and this Court should not afford preclusive effect to that judgment or to any underlying legal issues in

deciding whether to grant habeas relief in this case. Courts should exercise significant caution before giving preclusive effect to declaratory judgments that are on appeal. *Collins v. D.R. Horton, Inc.*, 505 F.3d 874, 882–83 (9th Cir. 2007) (citing Wright & Miller § 4433). In the circumstances here—and particularly given the constraints of 8 U.S.C. § 1252(f)(1)—it would not be proper to impose res judicata effect on a class-wide basis while the declaratory judgment is pending on appeal. See E. H. Schopler, Annotation, *Judgment as Res Judicata Pending Appeal or Motion for a New Trial, or During the Time Allowed Therefor*, 9 A.L.R.2d 984, \*2 (updated 2024) (the “only one safe way of avoiding conflicting judgments on the same cause . . . [is for] the final decision on the merits of the second suit should be delayed until the decision on appeal has been rendered”).

Finally, even if issue preclusion is available in the habeas context, it should not be applied to the government. The Supreme Court has “long recognized that ‘the Government is not in a position identical to that of a private litigant,’ *INS v. Hibi*, 414 U.S. 5, 8 (1973) (per curiam), both because of the geographic breadth of government litigation and also, most importantly, because of the nature of the issues the government litigates.” *United States v. Mendoza*, 464 U.S. 154, 159 (1984). “Government litigation frequently involves legal questions of substantial public importance.” *Id.* at 160. Thus, although the Supreme Court has held the federal government “may be estopped . . . from relitigating a question when the parties to the lawsuits are the same,” *Id.* at 163, 164 (citations omitted), it is not so precluded in cases where the party seeking to offensively use preclusion was not a party to the initial litigation, see *Id.* at 162. This is because allowing “nonmutual collateral estoppel against the government . . . would substantially thwart the development of important questions of law by freezing the first final decision rendered on a particular legal issue.” *Id.* at 160. This Court should also decline to give

the *Bautista* declaratory judgment preclusive effect given the existence of several inconsistent judgments from district courts around the country, suggesting that reliance on the adverse judgment in *Bautista* would be unfair. *See Parklane Hosiery*, 439 U.S. at 330–31 (citing the existence of prior inconsistent judgments as indicium of unfairness of applying issue preclusion); *see, e.g., Altamirano Ramos v. Lyons*, – F. Supp. 3d –, 2025 WL 3199872, at \*4 (C.D. Cal. Nov. 12, 2025) *Mejia Olalde v. Noem*, No. 1:25-cv-168, 2025 WL 3131942, at \*2–3 (E.D. Mo. Nov. 10, 2025); *Rojas v. Olson*, No. 25-cv-1437, 2025 WL 3033967, at \*6 (E.D. Wis. Oct. 30, 2025); *Cabanas v. Bondi*, 4:25-cv-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025); *Sandoval v. Acuna*, No. 6:25-cv-01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025); *Topal v. Bondi*, No. 1:25-cv-01612, 2025 WL 3486894 (W.D. La. Dec. 3, 2025); *Xiaoquan Chen v. Almodovar*, No. 1:25-cv-8350, 2025 WL 3484855 (S.D.N.Y. Dec. 4, 2025); *Candido v. Bondi*, No. 25-cv-867, 2025 WL 3484932 (W.D.N.Y. Dec. 4, 2025).

### **CONCLUSION**

Accordingly, the Petition should be dismissed for lack of subject matter jurisdiction, failure to exhaust administrative remedies, and failure to state a claim. Petitioner is properly detained under 8 U.S.C. § 1225 (b), and the Court should deny Petitioner’s habeas petition.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 2nd day of February 2026, a copy of the foregoing document was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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