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INTRODUCTION

Petitioner Samanpreet Singh is an alien¹ who illegally entered the United States and has no lawful immigration status in this country. Petitioner is being lawfully detained by the United States Department of Homeland Security - Immigration and Customs Enforcement (“ICE”) while the agency pursues administrative removal proceedings to deport him from the United States. Singh’s petition should fail because (1) this Court lacks jurisdiction; (2) Singh failed to exhaust administrative remedies; and (3) he is properly detained under 8 U.S.C. § 1225(b)(2). The Court should therefore deny his petition for habeas corpus.²

FACTUAL AND PROCEDURAL BACKGROUND

Petitioner is an Indian citizen who arrived in the United States in November 2018. (ECF No. 1, Pet. ¶ 17, PageID # 6.) He was encountered by a Border Patrol Agent at the El Centro Border Patrol Station on November 5, 2018, and admitted to illegally entering the United States. (Ex. 1 at 3.) At that time, he was served with a Notice to Appear and charged with being subject to removal pursuant to INA § 212(a)(6)(A)(i). (Ex. 2 at 1.) On April 24, 2019, Petitioner was ordered removed to India in absentia after failing to appear at a scheduled hearing. (Ex. 3 at 1.) Petitioner then filed a motion to reopen proceedings, which was granted by the immigration court on October 27, 2020. (Ex. 4 at 1-2.) On September 13, 2021, Petitioner submitted written pleadings in the immigration court where he again admitted that he entered the country illegally and concede the charge of removability under INA § 212(a)(6)(A)(i). (Ex. 5 at 2.) He also

¹ The term “alien” means any person who is not a U.S. citizen. 8 U.S.C. § 1101(a)(3).

² A writ of habeas corpus may only be issued by the person having custody of the detainee. In the ICE habeas context, that person is the Field Office Director for ICE. *Roman v. Ashcroft*, 340 F.3d 314, 320 (6th Cir. 2003). Therefore, the Seneca County Sheriff, the Acting Director of ICE, the Secretary of the Department of Homeland Security and the Attorney General are not proper Respondents. *Mendoza v. Raycraft, et al.*, No. 4:25cv2183, 2025 WL 3157796, *8 (N.D. Ohio Nov. 12, 2025).

applied for relief from removal under INA §§ 208 and 241(b)(3), as well as 8 C.F.R. § 1208.16(c). (*Id.*) Petitioner was arrested by ICE officers on December 15, 2025, and is being held at the Seneca County Jail in Tiffin, OH. (ECF No. 1 at ¶ 26, PageID # 7.) Petitioner was scheduled for a master hearing on his removal before the immigration court on January 27, 2026 (Ex. 6 at 1), but the hearing was postponed due to the weather.

LAW AND ARGUMENT

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

A. 8 U.S.C. § 1252(g) Bars Review Of Petitioner’s Claims

Section 1252(g) categorically bars jurisdiction over “*any* cause or claim by or on behalf of any alien *arising from* the decision or action by the [Secretary of Homeland Security] to *commence proceedings*, adjudicate cases, or execute removal orders against any alien.” 8 U.S.C. § 1252(g) (emphasis added). The Secretary of Homeland Security’s decision to *commence removal proceedings*, includes the decision to detain an alien pending such removal proceedings. *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); *Valencia-Mejia v. United States*, No. CV 08–2943 CAS (PJWx), 2008 WL 4286979, at *4 (C.D. Cal. Sept. 15, 2008); *Wang v. United States*, No. CV 10-0389 SVW (RCx), 2010 WL 11463156, at *6 (C.D. Cal. Aug. 18, 2010) (citing *Khorrami v. Rolince*, 493 F. Supp. 2d 1061 (N.D. Ill. 2007); *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)). Judicial review of Petitioner’s claim, therefore, is barred by § 1252(g).

B. 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); *Khalil v. President, United States*, --- F.4th ---, 2026 WL 111933, at *9 (3d Cir. 2026). The INA provides that “[j]udicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter shall be available only in judicial review of a final order under this section.” 8 U.S.C. §1252(b)(9). And Congress has prescribed a single path for judicial review of orders of removal: “a petition for review filed with an appropriate court of appeals.” 8 U.S.C. §1252(a)(5).

Therefore, “[s]ection 1252(b)(9) works as a ‘zipper’ clause, channeling ‘most claims that even relate to removal’ into [petitions for review]” that is improper if brought before a district court. *Khalil*, --- F.4th ---, 2026 WL 111933, at *9 (quoting *E.O.H.C. v. DHS*, 950 F.3d 177, 184 (3d Cir. 2020); *see also Reno v. Am.-Arab Anti-Discrimination Committee*, 525 U.S. 471, 483 (1999) (labeling §1252(b)(9) an “unmistakable zipper clause,” and defining a zipper clause as “[a] clause that says ‘no judicial review in deportation cases unless this section provides judicial review.’”); *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (“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.”); *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).

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).

In evaluating the application of § 1252(b)(9), the Third Circuit recently found that “[t]he immigration laws enacted by Congress ordinarily require an alien to challenge his deportation in a PFR—unless he raises questions that a court of appeals could not meaningfully review in that context.” *Khalil*, --- F.4th ---, 2026 WL 111933 at *15. The court further noted that this “scheme ensures that petitioners get just one bite at the apple—not zero or two” while also acknowledging that some petitioners “will have to wait to seek relief for allegedly unlawful government conduct.” *Id.* Here, Petitioner’s claims undeniably request “[j]udicial review” of “questions of law and fact . . . arising from a[] . . . proceeding brought to remove [him].” 8 U.S.C. §1252(b)(9). Therefore, this Court should dismiss the Petitioner’s claims for lack of jurisdiction under § 1252(b)(9) and Petitioner should present his claims before the appropriate court of appeals.

II. PETITIONER FAILED TO FULLY EXHAUST HIS ADMINISTRATIVE REMEDIES

Respondents acknowledge that exhaustion is discretionary here and that this Court has waived exhaustion requirements in similar cases. *See Lopez v. Raycraft*, No. 4:25CV2449, 2025 WL 3280344, at *3-4 (N.D. Oh. Nov. 25, 2025); *see also Echavarria Morales v. Noem*, No. 3:25-cv-2691, 2026 WL 100583 (N.D. Ohio Jan. 14, 20226). When Congress has not imposed a statutory administrative exhaustion requirement, “judicial discretion governs whether or not exhaustion should be required.” *Shearson v. Holder*, 725 F.3d 588, 593 (6th Cir. 2013) (quotations omitted).

Petitioner has not alleged that he has appealed any decisions by an immigration judge to the BIA and argues that such an appeal would be futile. (ECF No. 1, Pet. ¶ 34, PageID # 10.) Nonetheless, Respondents maintain that the Court should require that Petitioner fully exhaust his appeal to the Board of Immigration Appeals (“BIA”) before pursuing the instant matter. As other courts in this district have recently held, neither Petitioner’s likelihood of success at the administrative level, nor the fact that Petitioner is detained, has any bearing on the exhaustion analysis. *See Amaya-Velis v. Raycraft*, --- F. Supp. 3d ---, 2026 WL 100596, at *4-5 (N.D. Ohio 2026). Both the Sixth and the Ninth Circuits have previously determined that filing a habeas petition in federal district court before exhausting administrative remedies was improper. *Id.* (citing *Rabi v. Sessions*, No. 18-3249, 2018 U.S. App. LEXIS 19661, at *1-2 (6th Cir. July 16, 2018); *Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011)); *see also Hernandez Torrealba v. U.S. Department of Homeland Security*, No. 1:25-CV-1621, 2025 WL 2444114 (N.D. Ohio Aug. 25, 2025) (requiring exhaustion despite the “high probability of denial of Petitioner’s appeal” and the purported “irreparable harm to Petitioner as she has already been

detained for more than 80 days”).

Petitioner argues that any appeal to the BIA would be futile, but, as the *Amaya-Velis* court noted, “his case might well prove to be one in which the agency changes or refines its policy announced in *Matter of Yajure Hurtado* through agency adjudication.” *Amaya-Velis*, --- F. Supp. 3d ---, 2026 WL 100596 at *4. “That prerogative belongs in the first instance to the agency, which also has the knowledge and ability to adopt policies that are more tailored to the statutory scheme it is tasked with implementing in a way that courts are not.” *Id.*

III. PETITIONER IS PROPERLY DETAINED UNDER 8 U.S.C. § 1225

Respondents acknowledges that this Court previously held that “non-citizens . . . who have spent years in the United States before being detained are subject to § 1226 (a)’s discretionary bond provision . . .” and not to § 1225’s mandatory detention. *Lopez v. Raycraft*, No. 4:25CV2449, 2025 WL 3280344 (N.D. Ohio Nov. 25, 2025) (Mem. Op. and Order, ECF No. 6, PageID # 96); *see also Echavarria Morales v. Noem*, No. 3:25-cv-2691, 2026 WL 100583 (N.D. Ohio Jan. 14, 20226). At the time this Court issued such opinions, however, the Government had appealed this very issue to the Sixth Circuit in another case. *See Lopez-Campos v. Raycraft*, No. 25-1965 (6th Cir. Oct. 27, 2025). The Government maintains its position that § 1225 – not § 1226 – applies in cases like this one and compels the detention of aliens such as Singh.

A. Petitioner Is An Applicant For Admission Subject To Detention Under § 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). 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) (“an alien who tries to enter the country illegally is treated as an ‘applicant for admission’” (citing 8 U.S.C. § 1225(a)(1)); *Matter of Lemus*, 25 I&N Dec. 734, 743 (BIA 2012) (“Congress has defined the concept of an ‘applicant for admission’ in an unconventional sense, to include not just those who are expressly seeking permission to enter, but also those who are present in this country without having formally requested or received such permission”); *Matter of E-R-M- & L-R-M-*, 25 I&N Dec. 520, 523 (BIA 2011).

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). 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 did not present himself at a POE, but illegally entered the United States in November 2018 before being detained by a Border Patrol Agent. (Ex. 1 at 3.) He is, therefore, an alien present without admission and, consequently, by definition, an applicant for admission. As an applicant for admission, he may be removed by, inter alia, removal proceedings before an IJ under 8 U.S.C. § 1229a. 8 U.S.C. §§ 1225(b)(1), (b)(2)(A), 1229a; *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) (describing how “applicants for admission fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)”).

B. Applicants For Admission In Removal Proceedings Under 8 U.S.C. § 1229a Are Detained Pursuant To § 1225(b)(2)(A)

Applicants for admission, such as Petitioner, whom DHS places in § 1229a removal proceedings are subject to detention and ineligible for a custody redetermination hearing before an IJ. Specifically, aliens present without admission placed in 8 U.S.C. § 1229a removal proceedings are both applicants for admission as defined in 8 U.S.C. § 1225(a)(1) and aliens “seeking admission,” as contemplated in 8 U.S.C. § 1225(b)(2)(A). Such aliens are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and thus ineligible for a bond redetermination hearing.

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). 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); 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. The distinction the Attorney General drew in the 1997 Interim Rule (addressed in detail below) between “arriving aliens,” see 8 C.F.R. §§ 1.2, 1001.1(q), and “aliens who are present without being admitted or paroled,” Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10,312, 10,323 (Mar. 6, 1997), finds no purchase in the statutory text. No provision within 8 U.S.C. § 1225(b)(2) refers to “arriving aliens,” or limits that paragraph to arriving aliens, as Congress

intended for it to apply generally “in the case of an alien who is an applicant for admission.” 8 U.S.C. § 1225(b)(2)(A). Where Congress means for a rule to apply only to “arriving aliens,” it uses that specific term of art or similar phrasing. *See, e.g., id.* §§ 1182(a)(9)(A)(i), 1225(c)(1).

The applicable detention authority for all applicants for admission is 8 U.S.C. § 1225, regardless of whether the alien was initially processed for expedited removal proceedings under 8 U.S.C. § 1225(b)(1) or placed directly into removal proceedings under 8 U.S.C. § 1229a. “Both [8 U.S.C. § 1225(b)(1) and (b)(2)] mandate detention . . . throughout the completion of applicable proceedings,” *Jennings*, 583 U.S. at 301–03; IJs do not have authority to redetermine the custody status of an alien present without admission.

Here, Petitioner is an applicant for admission (specifically, an alien present without admission), placed directly into removal proceedings under 8 U.S.C. § 1229a. (*See generally* Ex. 1-6.) He is therefore subject to detention pursuant to 8 U.S.C. § 1225(b)(2)(A) and ineligible for a custody redetermination hearing before an IJ. “It is well established . . . that the Immigration Judges only have the authority to consider matters that are delegated to them by the Attorney General and the [INA].” *Matter of A-W-*, 25 I&N Dec. 45, 46 (BIA 2009); *see also* 8 C.F.R. § 1236.1(d) . . .” *Id.* at 46. The regulation clearly states that “the [IJ] is authorized to exercise the authority in [8 U.S.C. § 1226].” 8 C.F.R. § 1236.1(d); *see id.* § 1003.19(a) (authorizing IJs to review “[c]ustody and bond determinations made by [DHS] pursuant to 8 C.F.R. part 1236”); *see id.* § 1003.19(h)(2)(i)(B) (“[A]n IJ may not redetermine conditions of custody imposed by [DHS] with respect to . . . [a]rriving aliens in removal proceedings, including aliens paroled after arrival pursuant to [8 U.S.C. § 1182(d)(5)].”). “An [IJ] is without authority to disregard the regulations, which have the force and effect of law.” *Matter of L-M-P-*, 27 I&N Dec. 265, 267 (BIA 2018).

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). 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. Moreover, *Jennings* found that 8 U.S.C. § 1225(b) “applies primarily to aliens seeking entry into the United States (‘applicants for admission’ in the language of the statute).” *Id.* at 297 (emphases added). The Court therefore considered aliens seeking admission and applicants for admission to be virtually indistinguishable; it did not consider them to be merely a subcategory of applicants for admission.

Accordingly, for the reasons discussed above, 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 and 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 Parole Pursuant To 8 U.S.C. § 1182(d)(5)

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.

Parole, like an admission, is a factual occurrence. *See Hing Sum*, 602 F.3d at 1098; *Matter of Roque-Izada*, 29 I&N Dec. 106 (BIA 2025) (treating whether an alien was paroled as a question of fact). The parole authority under 8 U.S.C. § 1182(d)(5) is “delegated solely to the Secretary of Homeland Security.” *Matter of Castillo-Padilla*, 25 I&N Dec. 257, 261 (BIA 2010); *see* 8 C.F.R. § 212.5(a). Thus, neither the BIA nor IJs have authority to parole an alien into the United States under 8 U.S.C. § 1182(d)(5). *Castillo-Padilla*, 25 I&N Dec. at 261; *see also Matter of Arrabally and Yerrabelly*, 25 I&N Dec. 771, 777 n.5 (BIA 2002) (indicating that “parole authority [under 8 U.S.C. § 1182(d)(5)] is now exercised exclusively by the DHS” and

“reference to the Attorney General in [8 U.S.C. § 1182(d)(5)] is thus deemed to refer to the Secretary of Homeland Security”); *Matter of Singh*, 21 I&N Dec. 427, 434 (BIA 1996) (providing that “neither the [IJ] nor th[e] Board has jurisdiction to exercise parole power”). Further, because DHS has exclusive jurisdiction to parole an alien into the United States, the manner in which DHS exercises its parole authority may not be reviewed by an IJ or the BIA. *Castillo-Padilla*, 25 I&N Dec. at 261; see *Matter of Castellon*, 17 I&N Dec. 616, 620 (BIA 1981) (noting that the BIA does not have authority to review the way DHS exercises its parole authority).

D. 8 U.S.C. § 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 and are deportable who 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; *Coronado v. Sec., Dep’t of Homeland Sec.*, No. 1:25cv831, 2025 WL 3628229, *9 (S.D. Ohio December 15, 2025) (1226 is inapplicable because petitioner was not arrested on a warrant and is an applicant for admission); *Q. Li*, 29 I&N Dec. at 70; see also *M-S-*, 27 I&N Dec. at 516 (describing 8 U.S.C. § 1226(a) as a

“permissive” detention authority separate from the “mandatory” detention authority under 8 U.S.C. § 1225).

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 as long as 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); *see also id.* § 1003.19(h)(2)(i)(D). Release of such aliens is permitted only in very specific circumstances. *See* 8 U.S.C. § 1226(c)(2).

Notably, 8 U.S.C. § 1226(c) references certain grounds of inadmissibility, 8 U.S.C. § 1226(c)(1)(A), (D)-(E), and the Supreme Court in *Barton v. Barr*—after issuing its decision in *Jennings*—recognized the possibility that aliens charged with certain grounds of inadmissibility could be detained pursuant to 8 U.S.C. § 1226. 590 U.S. 222, 235 (2020). However, in interpreting provisions of the INA, the Board does not view the language of statutory provisions in isolation but instead “interpret[s] the statute as a symmetrical and coherent regulatory scheme and fit[s], if possible, all parts into an harmonious whole.” *Matter of C-T-L-*, 25 I&N Dec. 341, 345 (BIA 2010) (internal quotation marks omitted) (quoting *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000)). As the Supreme Court in *Barton* also noted, “redundancies are common in statutory drafting—sometimes in a congressional effort to be

doubly sure, sometimes because of congressional inadvertence or lack of foresight, or sometimes simply because of the shortcomings of human communication.” *Barton*, 590 U.S. at 239.

“Redundancy in one portion of a statute is not a license to rewrite or eviscerate another portion of the statute contrary to its text” *Id.*; *see also Matter of Yajure Hurtado*, 29 I&N Dec. at 222 (“Interpreting the provisions of section [1226(c)] as rendering null and void the provisions of section [1225](b)(2)(A) (or even the provisions of section... 1225(b)(1)), would be in contravention of the ‘cardinal principle of statutory construction,’ which is that courts are to give effect, if possible, to every clause and word of a statute, rather than to emasculate an entire section.”) (quoting *United States v. Menasche*, 348 U.S. 528, 538–39 (1955)). The statutory language of 8 U.S.C. § 1226(c)—including the most recent amendment pursuant to the Laken Riley Act, *see* 8 U.S.C. § 1226(c)(1)(E), merely reflects a “congressional effort to be doubly sure” that certain aliens are detained. *Barton*, 590 U.S. at 239.

IV. PETITIONER’S DUE PROCESS RIGHTS HAVE NOT BEEN VIOLATED

Petitioner argues that his detention violates his due process rights, citing the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976). (ECF No. 1, Pet. ¶ 75, PageID # 22.) But statutory provisions denying bond during administrative removal proceedings do not violate the due process clause because those proceedings have a definite end point. *Demore v. Kim*, 538 U.S. 510, 531 (2003) (“Detention during removal proceedings is a constitutionally permissible part of that process.”). And even after an alien is ordered removed and detention may have an indefinite end point, detention up to six months is presumptively valid under the due process clause. *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001).

Here, Petitioner does not present a plausible due process claim because he has received

all due process available to him under administrative immigration proceedings. Petitioner, who has been detained for just over six weeks, has been given notice of the charges against him, has access to counsel, and was scheduled for a hearing with an immigration judge that was only postponed due to inclement weather. The fact that Petitioner does not want to wait for this process to play out does not make the process constitutionally deficient. *See Thuraissigiam*, 591 U.S. at 138-140. Instead, Petitioner's only plausible challenge to his detention is that he is detained under the wrong statute, which, even if true, would make his detention unlawful—not unconstitutional. *Id.*; *see also Al-Shabee v. Gonzales*, 188 F. App'x 333, 339 (6th Cir. 2006) (“Shabee’s disagreement with the Immigration Judge’s order, however, does not constitute a violation of the Due Process Clause.”). Therefore, the Court should reject Petitioner’s due process claim.

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

Petitioner only briefly mentions the final judgment entered in *Maldonado Bautista v. Santacruz*, that a nationwide class of members, such as Petitioner, were unlawfully detained under 8 U.S.C. § 1225(b)(2) rather than § 1226(a). (ECF No. 1, Pet. ¶ 8, PageID # 4 (citing *Maldonado Bautista v. Santacruz*, No. 5:25-CV1873 (C.D. Cal. Dec. 18, 2025).) But to the extent that Petitioner argues the judgment in *Bautista* should impact this case, this Court should not consider *Bautista* as a basis to grant this Petition for three reasons.

First, the judgment cannot have effect outside the district and over custodians located outside the district. The Supreme Court has imposed two fundamental limits on federal court jurisdiction over core habeas claims. One is that “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. The other is that 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”).

Second, 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).

Third, 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 Co., Inc. v. Shore*, 439 U.S. 322, 330-31 (1979) (citing the existence of prior inconsistent judgments as indicium of unfairness of applying issue preclusion)

CONCLUSION

For the foregoing reasons, Respondents respectfully request that the Court deny the petition for habeas corpus.

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE WITH RULE 7.1(f)

I certify that this Response to Petition for Writ of Habeas Corpus comports with the page limitations identified in Local Rule 7.1(f). This case is unassigned, and the Response is under twenty pages in length.

/s/ Brendan F. Barker
Brendan F. Barker