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

ERIKA MARTINEZ GINEZ, Petitioner, v. KEVIN RAYCRAFT, Field Director of Detroit Field Office, United States Immigration and Customs Enforcement, *et al.*, Respondents.	Case No. 1:26-cv-00057 District Judge Jeffery P. Hopkins Magistrate Judge Kimberly A. Jolson

RETURN OF WRIT

INTRODUCTION

Petitioner Erika Martinez Ginez ("Petitioner") seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2241, challenging the lawfulness of her detention by Immigration and Customs Enforcement ("ICE") under the Immigration and Nationality Act ("INA") claiming entitlement to the discretionary terms of detention, including bond or parole, via 8 U.S.C. § 1226(a), instead of being subject to the mandatory detention, pursuant to pending final order of removal under 8 U.S.C. § 1225(b)(2), and that her detention is violative of her rights pursuant to the Due Process Clause of the Fifth Amendment to the U.S. Constitution. (Petition, ECF 1, PageID 5-9, 11-13.)

The Court must deny the Petition as Petitioner has failed to exhaust administrative remedies. Petitioner has not availed herself of the appeal of the Immigration Judge ("IJ") of the U.S. Department of Justice ("DOJ"), Executive Office for Immigration Review, ("EOIR"), Immigration Court's denial of a bond hearing she expressly reserved to the Board of Immigration Appeals

("BIA"), or, in the alternative, if she did file appeal to the BIA, ruling by the BIA is pending, not issued and thus not exhausted in fact.

Additionally, Petitioner is currently and properly detained under 8 U.S.C. § 1225(b)(2)(A). Pursuant to that statute, she must be detained and is ineligible for release under 8 U.S.C. § 1226(a). Petitioner should not be permitted to secure a custody redetermination hearing to which she is not entitled under the applicable statute. 8 U.S.C. § 1225(b)(2) sets a clear endpoint for detention – the conclusion of removal proceedings – and thus the mandatory detention, without a bond hearing is not violative of Petitioner's rights under the Fifth Amendment's Due Process Clause.

FACTUAL AND PROCEDURAL BACKGROUND

Petitioner is a native and citizen of Mexico, who entered the United States at an unknown location, at an unknown date, without admission or parole and is subject to removal from the United States pursuant to the following provisions of law:

1) 212(a)(6)(A)(i) of the Immigration and Nationality Act, as amended, in that you are an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.

2) 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (Act), as amended, as an immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality as required under the regulations issued by the Attorney General under section 211(a) of the Act.

(Department of Homeland Security, ("DHS"), Notice to Appear, ("NTA"), dated December 19, 2025, attached hereto and hereinafter referred to as NTA, Form I-862, Exhibit A; "You are Ordered to appear before an immigration judge of the United States Department of Justice...Cleveland, Ohio...on January 20, 2026 at 1:00 pm to show why you should not be removed from the United States based on the charges set forth above."; *see also* Petition, ECF 1, PageID 2, ¶ 2; ECF 1-1, PageID 16-19.)

Petitioner's Petition asserts that she "has resided in the United States since 2011..." and cites therein "Ex. A, Petitioner's Mexican Consular Identification Card," which includes a "[d]ate of [i]ssue 30 Jun 2013," and "[d]ate of [e]xpiry 30 Jun 2018." (Petition ECF 1, PageID 10, ¶¶ 42, 45;

ECF 1-1, PageID 15.) Thus, Petitioner corroborates Respondents' articulated basis for Petitioner's removal pursuant to INA §§ 212(a)(6)(A)(i), 212(a) (7)(A)(i)(I), for the facts that:

1) She entered the United States vaguely in the calendar year 2011, without documentation, identification or authority, having claimed residence beginning 2011 but not possessing even a foreign Identification Card for another two years, "30 Jun 2013."

2) By the date of issuance of her NTA for removal proceedings, December 19, 2025, her only claimed documentation, identification or authority – "Mexican Consular Identification Card" – had expired eight years prior, or on "30 Jun 2018."

(NTA, Form I-862, Exhibit A; Petition ECF 1, PageID 10, ¶¶ 42, 45; ECF 1-1, PageID 15.)

On September 25, 2023, Petitioner was noticed by DHS United States Citizenship and Immigration Services ("USCIS") that on September 11, 2023, Respondents had taken receipt of her I-589, Application for Asylum and for Withholding of Removal. (Petition ECF 1, PageID 10, ¶ 45; ECF 1-6, PageID 26-28.)

Pursuant to the charges and basis of removal articulated in NTA, Form I-862, Respondents' Exhibit A, on December 19, 2025, Petitioner was arrested and detained by ICE and remains so to date at the Butler County Jail. (*see also* Petition ECF 1, PageID 10, ¶¶ 43, 44.)

On or about January 15, 2026, Petitioner's counsel in this habeas action filed a request for bond redetermination with the DOJ EOIR, Immigration Court. (DOJ EOIR, In the Matter of: Martinez Ginez, Erika, In removal proceedings, File No. A242-209-421, Request for Bond Redetermination, attached hereto and hereinafter referred to as DOJ EOIR, Bond/Custody Redetermination, Jan 15 2026, Exhibit B.)

On January 20, 2026, pursuant to DOJ EOIR, "Custody Redetermination Proceedings," IJ Jennifer Riedthaler-Williams denied bond, or "a change in custody status" because "[t]he Court does not have the authority to redetermine bond in this case." Petitioner reserved appeal to this denial of bond with the "[a]ppeal due: 02/19/2026." (Petition ECF 1, PageID 2, 4, ¶¶ 5, 16; ECF 1-11, PageID 41-42.) To date, 02/20/2026, it is unknown if Petitioner has met the foregoing

02/19/2026 appeal due date, however, even if she did meet the appeal due date, ruling by the BIA is pending and thus exhaustion of Petitioner's demand for a bond hearing is not exhausted in fact.

By Order of IJ Jennifer Riedthaler-Williams, dated January 28, 2026, Petitioner conceded removal pursuant to § 212(a)(6)(A)(i), specifically the factual allegations 1, 2, 4, 5 and 6, and an amended factual allegation 3 of the NTA, Form I-862, Exhibit A. Within this same Order the IJ sustained removability upon the additional charge under § 212(a)(7)(A)(i)(I), designating Mexico as Petitioner's country of removal. Petitioner was slated for "2/4/26 at 8 AM for master calendar." Petitioner reserved the right to appeal this order sustaining removability, with the appeal due date being February 27, 2026. (DOJ EOIR, Martinez, Erika, In Removal Proceedings, Date: 01/28/2026, "Order of the Immigration Judge," attached hereto and hereinafter referred to as Order Sustaining Removability, Jan 28 2026, Exhibit C.)

In a "Notice of Internet-Based Hearing," from DOJ EOIR, dated February 4, 2026, Petitioner was granted an individual merit hearing to take place on February 26, 2026, 10:00 A.M. ET, pursuant to Petitioner's application for "Non-Lawful Permanent Resident Cancellation of Removal" under INA § 240A(b)(1). If granted by the IJ Petitioner's deportation process is canceled, and she is granted immediate Lawful Permanent Resident status. (DOJ EOIR, Martinez, Erika, In Removal Proceedings, Date: Feb 4, 2026, "Notice of Internet-Based Hearing," attached hereto and hereinafter referred to as Notice of Hearing, Feb 26 2026, Exhibit D; *see also* Petition ECF 1, PageID 10, ¶ 45 (Petitioner "...is eligible for relief from removal through an application for cancellation of removal as a non-legal permanent residency...")).

The Court must deny the Petition as Petitioner is properly detained under 8 U.S.C. § 1225(b)(2)(A).

ARGUMENT

I. PETITIONER'S CLAIMS SHOULD BE DISMISSED PURSUANT TO THIS COURT'S OPINIONS AND ORDERS IN *CORONADO, LUCERO & PHURTSKHVANDIZE*,[1] AND THE ONLY CIRCUIT COURT OF APPEALS OPINION ON THIS ISSUE; *BUENROSTRO-MENDEZ*

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

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

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

In this Court's words, "...applicants for admission as a textual matter fall within § 1225(b)(2)," (*Coronado*, 2025 WL 3628229, at *12), wherein "an applicant for admission includes any 'alien present in the United States who has not been admitted.' And to be clear, 'admission' specifically means *lawful* entry..." If the burden were raised to establish that even after many years of physical presence in the United States an alien may still be an applicant for *lawful* entry, seeking legal 'admission,'" the simple fact that the alien has applied for asylum, albeit pending appeal, "[t]hat

[1] *See also, Alcan v. Sec'y, Dep't of Homeland Sec.*, No. 1:25-cv-961, 2026 WL 472333 (S.D. Ohio Feb. 19, 2026)

application seeks to allow the alien to remain in this country – i.e., to be admitted." Also, no "examining immigration officer" has decided that the alien "is not clearly and beyond a doubt entitled to be admitted," citing 8 U.S.C. § 1225(b)(2)(A). (*Coronado*, 2025 WL 3628229, at *6-8.) Simply said, by this Court; "...if ICE detains an alien who entered without permission, mandatory detention under § 1225(b)(2) is appropriate." (*Id.*, at *10.)

This Court reached the same conclusion in *Lucero v. Field Off. Dir. of Enf't and Removal Operations*, No. 1:25-cv-823, 2025 WL 3718730 (S.D. Ohio Dec. 23, 2025), another 1225 vs. 1226 challenge:

> Start with a quick recap of *Coronado*. Recall that the issue here (and there) is whether a noncitizen like Masis Lucero falls within the scope of § 1225(b)(2)(A). 2025 WL 3628229, at *1. That statutory section applies to an "applicant for admission," other than those who fall within § 1225(b)(1) (and subject to certain other exceptions not relevant here, *see* 8 U.S.C. § 1225(b)(2)(B)). Section 1225(b)(2)(A) then goes on provide that, as to any such "applicant for admission," "if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title." In *Coronado*, the Court concluded: (1) that noncitizens, like Masis Lucero, who are present in the country without having been "admitted" (which refers to lawful entry after inspection and authorization by an immigration officer, *see* 8 U.S.C. § 1101(a)(13)(A)), are "deemed" to be "applicant[s] for admission," *see id.* § 1225(a)(1) (defining the term "applicant for admission"); (2) the phrase "alien seeking admission" in § 1225(b)(2)(A) is merely another way to refer to "applicant[s] for admission," and thus the same "deeming" that makes someone an applicant for admission also makes them an "alien seeking admission," whether that is so as a matter of fact or not; and (3) an examining officer had not determined that Coronado was clearly entitled to be admitted. *Coronado*, 2025 WL 3628229, at *7–9. Thus, Coronado fell within § 1225(b)(2)(A) and "shall be detained for a proceeding under section 1229a." *See id.* at *12. The Court then found further support for this interpretation in *Jennings*, which the Court understands as distinguishing between those noncitizens who entered unlawfully (who are subject to § 1225) and those who entered lawfully (who are subject to § 1226). *Id.* at *9–10.

(*Lucero*, 2025 WL 3718730, at *1, internal/docket citations omitted.)

And just 24 hours after Petitioner in this case filed the present Petition in habeas, this Court reached the same conclusion yet again in *Phurtskhvanidze v. Field Off. Dir. of Enf't and Removal Operations*, No. 1:25-cv-827, 2026 WL 160833 (S.D. Ohio Jan. 21, 2026), in which the Court noted:

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

(*Phurtskhvanidze*, 2026 WL 160833, at *1, internal/docket citations omitted.)

This issue (as to whether § 1225 or § 1226 applies to Petitioner's detention) is currently on appeal in at least three circuit courts, including the Sixth Circuit in *Reyes v. Raycraft*, Case No. 25-12546. But one Court of Appeals, the Fifth Circuit, has already reached the issue, holding that § 1225 mandatory detention applies in cases such as this.

The Fifth Circuit's decision in *Buenrostro-Mendez v. Bondi*, No. 25-20496, --- F.4th ---, 2026 WL 323330 (5th Cir. Feb. 6, 2026), holds that undocumented aliens like Petitioner are "applicants for admission" and subject to mandatory detention under the plain language of § 1225. Specifically, the Fifth Circuit held that undocumented aliens, regardless of how long they have resided in the United States, are subject to mandatory detention under the plain language of § 1225 because they are "applicants for admission." *Id.* at *3. First, the Court held that "seeking admission" is equivalent to being an "applicants for admission." *Id.* at *4-5. The Court rejected the *Buenrostro-Mendez* petitioners' statutory interpretation arguments and held that "petitioners are deemed, by statute, to be applicants for admission pending the resolution of removal proceedings." *Id.* at *5. The opinion next rejects the argument that the government's interpretation of § 1225 renders portions of § 1226, including the Laken Riley Act, superfluous. *Id.* at *7. Finally, the Fifth Circuit considers, and rejects, the argument that the prior practice and decisions of previous

Administrations preclude the current application of § 1225. *Id.* at *8. The *Buenrostro-Mendez* opinion concludes by noting that "the government's interpretation better honors [the] predominant goal in the enactment of IIRIA. . . It seems strange to suggest that Congress would have preserved bond hearings exclusively for unlawful entrants." *Id.* at *9 (citing H.R. Rep. No. 104-469, pt. 1, at 225).

The present action in habeas does not present novel theories adverse to the foregoing statutory interpretation. In *Lucero*, 2025 WL 3718730, and *Phurtskhvanidze*, 2026 WL 160833, amidst preliminary telephonic status conference, this Court invited, received and dispensed with any challenge or nuance to the statutory interpretation spelled out in *Coronado*, 2025 WL 3628229.

This Petitioner does not make separate motion for declaratory relief as occurred in *Coronado*, 2025 WL 3628229, at *2, and *Phurtskhvanidze*, 2026 WL 160833, at *1. The undisputed facts at issue here, including Petitioner's unlawful entry into the United States, her administrative process, including pending application for asylum and withholding from removal, her claim of residing in the United States for "over ten years," and the circumstances of Petitioner's detention demonstrate that Petitioner is an "...applicant[] for admission as a textual matter fall[ing] within § 1225(b)(2)," (*Coronado*, 2025 WL 3628229 *12.)

Specifically, Petitioner, is a native and citizen of Mexico, who entered the United States at an unknown location, at an unknown date, without admission or parole and is subject to removal from the United States pursuant to the following provisions of law:

1) 212(a)(6)(A)(i) of the Immigration and Nationality Act, as amended, in that you are an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.

2) 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (Act), as amended, as an immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act, and a valid unexpired passport, or other

> suitable travel document, or document of identity and nationality as required under the regulations issued by the Attorney General under section 211(a) of the Act.

(NTA, Form I-862, Exhibit A; *see also* Petition, ECF 1, PageID 2, ¶ 2; ECF 1-1, PageID 16-19.)

Petitioner's Petition asserts that she "has resided in the United States since 2011…" and cites therein "Ex. A, Petitioner's Mexican Consular Identification Card," which includes a "[d]ate of [i]ssue 30 Jun 2013," and "[d]ate of [e]xpiry 30 Jun 2018." (Petition ECF 1, PageID 10, ¶¶ 42, 45; ECF 1-1, PageID 15.) Thus, Petitioner corroborates Respondents' articulated basis for Petitioner's removal pursuant to INA §§ 212(a)(6)(A)(i), 212(a)(7)(A)(i)(I), for the facts that:

1) She entered the United States vaguely in the calendar year 2011, without documentation, identification or authority, having claimed residence beginning 2011 but not possessing even a foreign Identification Card for another two years, "30 Jun 2013."
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By Order of the IJ dated January 28, 2026, Petitioner conceded removal pursuant to § 212(a)(6)(A)(i), specifically the factual allegations 1, 2, 4, 5 and 6, and an amended factual allegation 3, of the NTA, Form I-862, Exhibit A. Within this same Order the IJ sustained removability upon the additional charge under § 212(a)(7)(A)(i)(I), designating Mexico as Petitioner's country of removal. Petitioner reserved the right to appeal this order sustaining removability, with the appeal due date being February 27, 2026. (Order Sustaining Removability, Jan 28 2026, Exhibit C.)

Pursuant to the charges and basis of removal articulated in NTA, Form I-862, Respondents' Exhibit A, on December 19, 2025, Petitioner was arrested and detained by ICE and remains so detained to date at the Butler County Jail. (*see also* Petition ECF 1, PageID 10, ¶¶ 43, 44.)

Based on the foregoing facts and case precedent, ICE properly determined that § 1225(b)(2) applies to Petitioner and so he must be detained pending removal. (*quoting Coronado*, 2025 WL 3628229, at *10, "...if ICE detains an alien who entered without permission, mandatory detention under § 1225(b)(2) is appropriate.") Respondents request that the Court follow its prior precedents and the decision of the only Circuit Court of Appeal to have addressed this issue as a basis to deny the Petition.

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

A. 8 U.S.C. § 1252(e)(3) bars review of Petitioner's claims.

Section 1252(e)(3) deprives this court of jurisdiction, including habeas corpus jurisdiction, over Petitioner's challenge to his detention under § 1225(b)(2)(A). Section 1252(e)(3) limits judicial review of "determinations under section 1225(b) of this title and its implementation" to only in the District Court for the District of Columbia. 8 U.S.C. § 1252(e)(3). Paragraph (e)(3) further confines this limited review to (1) whether § 1225(b) or an implementing regulation is constitutional or (2) whether a regulation or other written policy directive, guideline, or procedure implementing the section violates the law. *See* 8 U.S.C. § 1252(e)(3)(A)(i)-(ii); *see also M.M.V. v. Garland*, 1 F.4th 1100, 1109 (D.C. Cir. 2021). Unlike other provisions within 1252(e), section 1252(e)(3) applies broadly to judicial review of section 1225(b), not just determinations under section 1225(b)(1). *Compare* 8 U.S.C. § 1252(e)(1)(A), (e)(2), *with* 8 U.S.C. § 1252(e)(3)(A). *See Russello v. United States*, 464 U.S. 16, 23 (1983) (quoting *United States v. Wong Kim Bo*, 472 F.2d 720, 722 (5th Cir. 1972)) ("'[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.' ... We refrain from concluding here that the differing language in the two subsections has the same meaning in each. We would not presume to ascribe this difference to a simple mistake in draftsmanship.").

B. 8 U.S.C. § 1252(g) bars review of Petitioner's claims.

Section 1252(g) categorically bars jurisdiction over "*any* cause or claim by or on behalf of any alien *arising from* the decision or action by the [Secretary of Homeland Security] to *commence proceedings*, adjudicate cases, or execute removal orders against any alien." 8 U.S.C. § 1252(g) (emphasis added); *see also Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) ("*AADC*"). The Sixth Circuit distinguishes detention-based challenges from removal-based challenges. *Hamama v. Adducci*, 912 F.3d 869, 877-80 (6th Cir. 2018) (district court jurisdiction over detention-based claims independent of jurisdiction over removal-based claims).

The Secretary of Homeland Security's decision to *commence removal proceedings*, including the decision to detain an alien pending such removal proceedings, falls squarely within this jurisdictional bar. In other words, detention clearly "aris[es] from" the decision to commence removal proceedings against an alien. *See Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016) ("By its plain terms, [§ 1252(g)] bars us from questioning ICE's discretionary decisions to commence removal" and also to review "ICE's decision to take [plaintiff] into custody and to detain him during removal proceedings"); *Tazu v. Att'y Gen. U.S.*, 975 F.3d 292, 298 (3d Cir. 2020) ("The text of § 1252(g)... strips us of jurisdiction to review... [T]o perform or complete a removal, the [Secretary of Homeland Security] must exercise [her] discretionary power to detain an alien for a few days. That detention does not fall within some other part of the deportation process.") (cleaned up) (internal quotations and citations omitted); *Valencia-Mejia v. United States*, No. 08-cv-2943, 2008 WL 4286979, at *4 (C.D. Cal. Sept. 15, 2008) ("The decision to detain plaintiff until his hearing before the Immigration Judge *arose from* this decision to commence proceedings[.]") (emphasis added); *Wang v. United States*, No. 10-cv-0389, 2010 WL 11463156, at *6 (C.D. Cal. Aug. 18, 2010) (citing *Khorrami v. Rolince*, 493 F. Supp. 2d 1061 (N.D. Ill. 2007)) ("[Plaintiff's] detention necessarily *arises from* the decision to initiate removal proceedings against him.") (emphasis added); *Herrera-Correra v. United States*, No. CV 08-2941 DSF (JCx), 2008 WL 11336833, at *3 (C.D. Cal. Sept. 11, 2008) (citing *Sissoko v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007)) ("The [Secretary] may arrest the alien against whom proceedings are commenced and detain that individual until the conclusion of those proceedings. . . . .Thus, an alien's detention throughout this process *arises from* the [Secretary]'s decision to commence proceedings[]" and review of claims arising from such detention is barred under § 1252(g)) (emphasis added). Put in the Supreme Court's words, detention pending removal is a "specification" of the decision to commence proceedings. *See Reno*, 525 U.S. at 485 n.9 ("§ 1252(g) covers" a "specification of the decision to 'commence proceedings'").

Significantly, Petitioner is not without a remedy. As the Sixth Circuit explained in *Hamama v. Adducci*, "[w]hen Congress stripped the courts of jurisdiction to grant habeas relief in § 1252(g), it provided an alien with an alternative method to challenge the legality an alien's detention . . . ." 912 F.3d at 876. Moreover, the Suspension Clause is not violated when courts are stripped of "habeas jurisdiction so long as it provides a substitute that is adequate and effective to test the legality of a person's detention." *Id.* As such, judicial review of the Petitioner's claims is barred by § 1252(g).

C. 8 U.S.C. § 1252(b)(9) bars review of Petitioner's claims.

Under § 1252(b)(9), "judicial review of all questions of law . . . including interpretation and application of statutory provisions . . . arising from any action taken . . . to remove an alien from the United States" is only proper before the appropriate court of appeals in the form of a petition for review of a final removal order. *See* 8 U.S.C. § 1252(b)(9); *Reno*, 525 U.S. at 483. Section 1252(b)(9) is an "unmistakable 'zipper' clause" that "channels judicial review of all [claims arising from deportation proceedings]" to a court of appeals in the first instance. *Id.*; *see Lopez v. Barr*, No. CV 20-1330 (JRT/BRT), 2021 WL 195523, at *2 (D. Minn. Jan. 20, 2021) (citing *Nasrallah v. Barr*, 590 U.S. 573, 579–80 (2020)).

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

> Notwithstanding any other provision of law (statutory or nonstatutory), . . . a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision of this chapter, except as provided in subsection (e) [concerning aliens not admitted to the United States].

8 U.S.C. § 1252(a)(5). "Taken together, § 1252(a)(5) and § 1252(b)(9) mean that *any* issue—whether legal or factual—arising from *any* removal-related activity can be reviewed *only* through the [petition-for-review] process." *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016)

(emphasis in original); *see id.* at 1035 ("§§ 1252(a)(5) and [(b)(9)] channel review of all claims, including policies-and-practices challenges . . . whenever they 'arise from' removal proceedings"); *accord Ruiz v. Mukasey*, 552 F.3d 269, 274 n.3 (2d Cir. 2009) (only when the action is "unrelated to any removal action or proceeding" is it within the district court's jurisdiction); *cf. Xiao Ji Chen v. U.S. Dep't of Justice*, 434 F.3d 144, 151 n.3 (2d Cir. 2006) (a "primary effect" of the REAL ID Act is to "limit all aliens to one bite of the apple" (internal quotation marks omitted)).

Critically, "[§] 1252(b)(9) is a judicial channeling provision, not a claim-barring one." *Aguilar v. ICE*, 510 F.3d 1, 11 (1st Cir. 2007). Indeed, 8 U.S.C. § 1252(a)(2)(D) provides that "[n]othing . . . in any other provision of this chapter . . . shall be construed as precluding review of constitutional claims or questions of law raised upon a petition for review filed with an appropriate court of appeals in accordance with this section." *See also Ajlani v. Chertoff*, 545 F.3d 229, 235 (2d Cir. 2008) ("[J]urisdiction to review such claims is vested exclusively in the courts of appeals[.]"). The petition-for-review process before the court of appeals ensures that aliens have a proper forum for claims arising from their immigration proceedings and "receive their day in court." *J.E.F.M.*, 837 F.3d at 1031–32 (internal quotations omitted); *see also Rosario v. Holder*, 627 F.3d 58, 61 (2d Cir. 2010) ("The REAL ID Act of 2005 amended the [INA] to obviate . . . Suspension Clause concerns" by permitting judicial review of "nondiscretionary" BIA determinations and "all constitutional claims or questions of law.").

In evaluating the reach of subsections (a)(5) and (b)(9), the Second Circuit explained that jurisdiction turns on the substance of the relief sought. *Delgado v. Quarantillo*, 643 F.3d 52, 55 (2d Cir. 2011). Those provisions divest district courts of jurisdiction to review both direct and indirect challenges to removal orders, including decisions to detain for purposes of removal or for proceedings. *See Jennings v. Rodriguez*, 583 U.S. 281, 294–95 (2018) (section 1252(b)(9) includes challenges to the "decision to detain [an alien] in the first place or to seek removal[.]"). Here, Petitioner challenges the decision and action to detain for purposes of removal or for proceedings and is thus an "action taken . . . to remove his from the United States." *See* 8 U.S.C. § 1252(b)(9); *see also, e.g.*, *Jennings*, 583 U.S. at 294–95; *Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020) (finding that 8 U.S.C. § 1226(e) did not bar review in that case because the petitioner did not challenge "his initial detention"); *Saadulloev v. Garland*, No. 3:23-CV-00106, 2024 WL 1076106, at *3 (W.D. Pa. Mar. 12, 2024) (recognizing that there is no judicial review of the threshold detention decision, which flows from the government's decision to "commence proceedings"). As such, the Court lacks jurisdiction over this action. The reasoning in *Jennings* outlines why the Petitioner's claims cannot be reviewed by the Court.

While holding that it was unnecessary to comprehensively address the scope of § 1252(b)(9), the Supreme Court in *Jennings* provided guidance on the types of challenges that may fall within the scope of § 1252(b)(9). *See Jennings*, 583 U.S. at 293–94. The Court found that "§1252(b)(9) [did] not present a jurisdictional bar" in situations where "respondents . . . [were] not challenging the decision to detain them in the first place." *Id.* at 294–95. In this case, the Petitioner *does* challenge the government's decision to detain for purposes of removal or for proceedings. (*See, e.g.*, Petition, ECF 1, PageID 5, 11-13, ¶¶ 26, 51, 56, 60, "Prayer for Relief," PageID 13, ¶ e. "Declare the Petitioner's detention is unlawful.")

The fact that the Petitioner is challenging the basis upon which she is detained is enough to trigger § 1252(b)(9) because "detention *is* an 'action taken . . . to remove' an alien." *See Jennings*, 583 U.S. at 319 (Thomas, J., concurring) (emphasis in original); 8 U.S.C. § 1252(b)(9). The Court should dismiss the Petitioner's claims for lack of jurisdiction under § 1252(b)(9). The Petitioner must present her claims before the appropriate court of appeals because she challenges the government's decision or action to detain her, which must be raised before a court of appeals, not this Court. *See* 8 U.S.C. § 1252(b)(9).

III. PETITIONER FAILED TO EXHAUST ADMINISTRATIVE REMEDIES.

A. Petitioner has not exhausted the appellate phase of the administrative process to seek bond.

The Court should dismiss the petition for writ of habeas corpus for lack of jurisdiction as Petitioner has failed to exhaust administrative remedies. A habeas petitioner must normally exhaust administrative remedies before seeking federal court intervention. The exhaustion requirement "aims to provide the agency with a chance to correct its own errors, 'protect[] the authority of administrative agencies,' and otherwise conserve judicial resources by 'limiting interference in agency affairs, developing the factual record to make judicial review more efficient, and resolving issues to render judicial review unnecessary.'" *Guzman v. Joyce*, 786 F.Supp.3d 865, 869 (S.D.N.Y. June 17, 2025) (quoting, *Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003) (Sotomayor, J.)).

"When a petitioner does not exhaust administrative remedies, a district court ordinarily should either dismiss the [habeas] petition without prejudice or stay the proceedings until the petitioner has exhausted remedies, unless exhaustion is excused." *Ba v. Director, Detroit Field Office of ICE*, Case No. 4:25-cv-2208, 2025 WL 2977712, at *2 (N.D. Ohio Oct. 22, 2025) (citing *Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011)) (requiring exhausting administrative remedies by appealing IJ decision to BIA before filing in district court); *see also Rojas-Garcia v. Ashcroft*, 339 F.3d 814, 819 (9th Cir. 2003).

Courts within the Sixth Circuit have applied the Ninth Circuit's test for requiring prudential exhaustion. *See, e.g., Mendoza v. Raycraft*, Case No. 4:25-cv-2183, 2025 WL 3157796, at *9 (N.D. Ohio Nov. 12, 2025); *Espinoza v. Dir. of Detroit Field Off, U.S. Immigr. & Customs Enft*, No. 4:25-CV-2107, 2025 WL 2878173, at *2 (N.D. Ohio Oct. 9, 2025); *Hernandez Torrealba v. U.S. Dep't of*

Homeland Sec., Case No. 1:25-cv-1621, 2025 WL 2444114, at *8-9 (N.D. Ohio Aug. 25, 2025); *Monroy Villalta v. Greene*, 794 F. Supp. 3d 528, 530 (N.D. Ohio 2025); *Lopez-Campos v. Raycraft*, Case No. 2:25-cv-12486, 2025 WL 2496379, at *4 (E.D. Mich. Aug. 29, 2025) (citing *Shweika v. DHS*, Case No. 1:06-cv-11781, 2015 WL 6541689, at *12 (E.D. Mich. Oct. 29, 2015)). That is, courts will require prudential exhaustion when:

(1) Agency expertise makes agency consideration necessary to generate a proper record and reach a proper decision;

(2) Relaxation of the requirement would encourage the deliberate bypass of the administrative scheme; and

(3) Administrative review is likely to allow the agency to correct its own mistakes and to preclude the need for judicial review.

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

In an Opinion and Order dated December 18, 2025, Judge McFarland of this Court adopted the foregoing rationale and jurisprudence from both the Sixth Circuit and District Court decisions and dismissed petitioner's petition for writ of habeas for his failure to abide by the prudential exhaustion requirement. *Ronaldo Velasquez Bartolon v. Pam Bondi, et al.*, No. 1:25-cv-747, 2025 WL 3674604 (S.D. Ohio Dec. 18, 2025).

Much of Judge McFarland's exhaustion analysis in *Bartolon* is applicable here:

> In his Reply, Petitioner argues that even if he appealed to the BIA and won, it would be a largely pyrrhic victory as the process can take over a year and he would remain detained until then. But, the Court finds this argument unpersuasive. At this point, it is "speculative to make any assumptions regarding when the BIA will resolve" a potential bond appeal by

Petitioner, as "[t]here is insufficient information before the Court at this time to demonstrate that exhaustion of Petitioner['s] administrative remedies will be unduly prolonged." *Mendoza*, 2025 WL 3157796, at *13. Further, even if the BIA appeals process were to create additional delay, the Court has insufficient evidence before it to conclude that "the risk of irreparable harm to Petitioner[] outweighs the importance of requiring exhaustion under the circumstances presented." Id.

Petitioner's apparent failure to timely file a notice of appeal with the BIA regarding his first bond denial is also insufficient to deem exhaustion futile, as "exhaustion may not be achieved through a litigant's procedural default of his or her available remedies." *Laing v. Ashcroft*, 370 F.3d 994, 998 (9th Cir. 2004). Moreover, waiver is inappropriate here because, if the exhaustion requirement were waived in every case where a party failed to timely file for an administrative appeal, then "any party could obtain judicial review of initial agency actions simply by waiting for the administrative appeal period to run and then filing an action in district court." *Stock W. Corp. v. Lujan*, 982 F.2d 1389, 1394 (9th Cir. 1993).

Importantly, though, Petitioner has now received a second bond determination. And, notably, Petitioner reserved his right to appeal that determination. Thus, requiring Petitioner to exhaust his administrative remedies by appealing his second bond determination is not futile, as he is well within the time to lodge that appeal in the BIA.

Petitioner further argues that exhaustion would be futile given the BIA's decision in *Matter of Hurtado.* Such futility must be "clear and positive," as a petitioner "must show that it is certain that his claim will be denied on appeal, not merely that he doubts that an appeal will result in a different decision." *Fallick v. Nationwide Mut. Ins. Co.,* 162 F.3d 410, 419 (6th Cir. 1998) (quotation omitted). The Court would note that a flurry of litigation has ensued since *Matter of Hurtado*, including-as the immigration judge observed in the bond redetermination hearing-a class action ruling in *Bautista v. Santacruz,* No. 5:25-CV-1873, 2025 WL 3288403 (C.D. Cal. Nov. 25, 2025). And, "even where there is a high probability of denial of a petitioner's appeal of an Immigration Judge's bond decision, such a probability does not weigh in favor of waiving exhaustion." *Espinoza,* 2025 WL 2878173, at *3 (quotation omitted); *see also Beharry,* 329 F.3d at 62 (explaining that merely because an "argument would likely have failed is not tantamount to stating that it would have been futile to raise it").

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

Id., at *8-9 (citations to record omitted).

On January 20, 2026, pursuant to DOJ EOIR, "Custody Redetermination Proceedings," the IJ denied bond, or "a change in custody status" because "[t]he Court does not have the authority to redetermine bond in this case." Petitioner reserved appeal to this denial of bond with the "[a]ppeal due: 02/19/2026." (Petition ECF 1, PageID 2, 4, ¶¶ 5, 16; ECF 1-11, PageID 41-42.) To date, 02/20/2026, it is unknown if Petitioner has met the foregoing 02/19/2026 appeal due date, however, even if she did meet the appeal due date, ruling by the BIA is pending and thus exhaustion of Petitioner's demand for a bond hearing is not exhausted in fact.

An appeal to the BIA will allow the agency's expertise to generate a proper record and reach a proper decision, in the first instance. *See, e.g., Espinoza*, 2025 WL 2878173, at *2 (petition dismissed for review of "interpretation and application of the governing removal regime" by the BIA "in the first instance").

In fact, not requiring the Petitioner to afford the deference to the BIA pursuant to an appeal of the IJ encourages the deliberate bypass of the administrative scheme, which Petitioner did here. 8 CFR 1003.19(b).

Petitioner has not alleged that she met her obligations pursuant to IJ order by making appeal to the BIA as instructed; "[a]ppeal due: 02/19/2026." For this reason, the Petition should be denied.

IV. PETITIONER'S DETENTION DOES NOT RUN AFOUL OF THE DUE PROCESS CLAUSE.

Petitioner claims that her detention violates the Due Process Clause of the United States Constitution are without merit. (Petition, ECF 1, PageID 13.) She is claiming that "on January 20, 2026, the IJ denied Petitioner's bond redetermination request finding that the Immigration Court does not [have] authority to determine bond in Petitioner's case," based on the administration's new guidance issued on July 8, 2025, and the BIA's decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). (Petition, ECF 1, PageID 2-3, 6-7, 11, 13, ¶¶ 2-5, 30-32, 48, 57-60.)

Considering whether to require bond hearings where aliens are subject to mandatory detention, the Sixth Circuit has already declined to require a bond hearing where it is not required under 8 U.S.C. § 1231. *Martinez v. Larose*, 968 F.3d 555, 565-66 (6th Cir. 2020) (citing *Padilla v. Immigration & Customs Enf't ("ICE")*, 953 F.3d 1134, 1143 (9th Cir. 2020) ("*Padilla I*")). In declining to follow the *Padilla I* decision, the Sixth Circuit recognized that, "a bond requirement would be out of place in a post-*Jennings* world." *Id.* at 566. This is because our Court of Appeals is "reluctant to graft a bond-hearing requirement onto a statute absent language supporting such a requirement." *Id.* (citing *Jennings*, 583 U.S. at 298 ("Spotting a constitutional issue does not give a court the authority to rewrite a statute as it pleases."); *Hamama*, 912 F.3d at 879 (criticizing the district court for "creat[ing] out of thin air a requirement for bond hearings that does not exist in the statute").

The primary issue in *Jennings* was the "proper interpretation of §§ 1225(b), 1226(a), and 1226(c)." *Jennings*, 583 U.S. at 289. The Ninth Circuit was reversed for erroneously finding periodic bond hearings under §§ 1225(b), 1226(c), and 1226(a) were required. *Id.* at 312. In reversing, the Supreme Court observed that, "§§ 1225(b)(1) and (b)(2) mandate detention of aliens throughout the completion of applicable proceedings and not just until the moment those proceedings begin." *Jennings*, 583 U.S at 302. As a result, bond hearings are not required. Petitioner's detention is of limited duration and will end at the conclusion of his immigration proceedings. As such, the due process clause is not violated.

Because this Petitioner is subject to mandatory detention during immigration proceedings, the proper test for whether his due process have been violated is pursuant to *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001), not *Mathews v. Eldridge*. As this Court explained in *Masis Lucero*, "If the resulting detention were to become unreasonably long, due process concerns may emerge." *Lucero*, 2025 WL 3718730, *6. Mr. Lucero was taken into ICE custody on October 20, 2025, and remains so to date, that is, four calendar months and counting. *Id.* Petitioner in this case was arrested and detained by ICE on December 19, 2025, two months from today's filing of Respondents' Return of Writ. (Petition ECF 1, PageID 10, ¶¶ 43, 44.) Thus, length of detention weighs in favor of the United States.

Finally, *Demore v. Kim*, 538 U.S. 510 (2003), held that "Detention during removal proceedings is a constitutionally permissible part of that process." *Id.* at 531. The *Demore* challenge involved mandatory detention during removal proceedings for those falling under § 1226(c), which was a "narrow" detention policy for "a limited period necessary to arrange removal . . ." and protect the public. *Padilla v. Immigration & Customs Enf't*, 704 F.Supp.3d 1163, 1172-73 (W.D. Wash. 2023) ("*Padilla II*"). *Padilla II* found that *Demore* did not apply because the length of detention for the plaintiffs and the Class faced a median time of six months to a year or longer. *Id.* at 1173.

In *Coronado*, 2025 WL 3628229, this Court invoked the forgoing ruling in *Demore*, 538 U.S. at 527-530 – that mandatory detention pending removal proceedings does not violate due process for so long as detention is not indefinite, but instead has a definitive end-point – noting the parallel tenant in § 1225(b)(2) that "sets a clear endpoint for detention – the conclusion of removal proceedings." *Coronado*, at *12-13. In this habeas action, this Petitioner has the very same end-point to detention pursuant to conclusion of her removal proceedings, but also the possibility of an abridgement of even that end-point. In a "Notice of Internet-Based Hearing," from DOJ EOIR, dated February 4, 2026, Petitioner was granted an individual merit hearing to take place on February 26, 2026, 10:00 A.M. ET, pursuant to Petitioner's application for "Non-Lawful Permanent Resident Cancellation of Removal" under INA § 240A(b)(1). If granted by the IJ Petitioner's deportation process is canceled, and she is granted immediate Lawful Permanent Resident status. (Notice of Hearing, Feb 26 2026, Exhibit D; *see also* Petition ECF 1, PageID 10,

¶ 45 (Petitioner "...is eligible for relief from removal through an application for cancellation of removal as a non-legal permanent residency...")).

Respondents agree that Petitioner has a liberty interest in remaining free from detention, but she entered the country unlawfully. (NTA, Form I-862, Exhibit A; Petition ECF 1, PageID 10, ¶¶ 42, 45; ECF 1-1, PageID 15.) Just like the petitioner in *Coronado*, this Petitioner alleges that she "is clearly not a flight risk or a danger to society." (Petition ECF 1, PageID 11, 13, ¶¶ 46, 60.) Yet, just like in *Coronado*, "immigration authorities can deny bond to detainees 'even without any finding of flight risk' or dangerousness." *Coronado*, at *13 (*quoting Demore*, 538 U.S. at 524-25, 531.) Also, the risk of erroneous deprivation of liberty is minimal because this Petitioner is subject to mandatory detention by law, § 1225(b)(2), and detention pending removal proceedings is constitutionally permissible. *Jennings*, 583 U.S. at 305-06. Further, the interest of the United States is significant because Petitioner's detention is required by law and there is a significant interest in encouraging legal immigration.

As a result, Petitioner's due process rights have not been violated.

CONCLUSION

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

Respectfully submitted,

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