

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 26-cv-20817-WPD

Lorena Beatriz Hernandez Quinonez,

Petitioner,

v.

Warden of Broward Transitional Center, et. al.,

Respondents.

RESPONSE TO ORDER TO SHOW CAUSE

Respondents¹, by and through the undersigned counsel, submit this response in opposition to Petitioner's habeas corpus petition ("Petition"). As demonstrated below, the Court should deny the Petition because Petitioner is subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A) and, therefore, detained pursuant to a valid statutory authority and ineligible for bond.

I. INTRODUCTION

Petitioner challenges the legality of her mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A). Specifically, Petitioner contends that section 1225(b)(2)(A) does not apply to aliens who, like herself, are "already in [the United States]" and not "seeking admission". *See*

¹ A writ of habeas corpus must "be directed to the person having custody of the person detained." 28 USC § 2243. In cases involving present physical confinement, the Supreme Court reaffirmed in *Rumsfeld v. Padilla*, 542 U.S. 426 (2004), that "the immediate custodian, not a supervisory official who exercises legal control, is the proper respondent." *Rumsfeld v. Padilla*, 542 U.S. 426, 439 (2004). Petitioner is currently detained at the Broward Transitional Center *See* Petition at ¶ 11. Therefore, the proper respondent is Acting Assistant Field Office Director Carlos Nunez. All other respondents should be dismissed.

Petition at ¶ 97. Instead, Petitioner argues, such aliens are eligible for release on conditional parole or bond because their detention is governed by 8 U.S.C. § 1226(a). *Id.* Based on this assertion, Petitioner seeks habeas relief in this Court, claiming that her detention violates the Immigration and Nationality Act and due process. Petitioner also argues she should be granted a bond hearing and points to the class action in *Maldonado Bautista et.al v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, Dkt. 92, at 8-9 (C.D. Cal. Dec. 18, 2025). *Id.* at ¶ 20, 44-45, 56, 83, 96. For the reasons set forth below, the Petition should be denied.

II. BACKGROUND

The relevant facts are not in dispute. Petitioner is a Guatemalan citizen who, on October 28, 2014, entered the United States without inspection, admission or parole, was encountered the same day, briefly detained, placed in removal proceedings pursuant to 8 U.S.C. § 1229(a), and released into the custody of her mother². *Id.* at ¶ 1-4, 6, 51, 87, 93; *also see* Exh. A (Verification of Release), Exh. B (Notice to Appear). The Notice to Appear charges Petitioner with violating 8 U.S.C. § 1182(a)(6)(A), as an alien present in the United States without admission or parole. *See* Exh. B (Notice to Appear). Years later, both the U.S. Citizenship and Immigration Services (“USCIS”) and the Immigration Judge denied Petitioner’s application for asylum, and, on August 5, 2019, Petitioner became subject to a final order of removal. *Id.* at ¶ 8, 9. Thereafter, Petitioner was placed on an order of supervision requiring her to report with the Department of Homeland Security (“DHS”) on a

² At the time of the encounter, the Department of Homeland Security determined that Petitioner was an Unaccompanied Alien Child (“UAC”). *See* petition at ¶ 2; *also see* 6 U.S.C. § 279(g)(2), defining the term “unaccompanied alien child” as a child who – (A) has no lawful immigration status in the United States; (B) has not attained 18 years of age; and (C) with respect to whom – (i) there is no parent or legal guardian in the United States; or (ii) no parent or legal guardian in the United States is available to provide care and physical custody.

regular basis. *Id.* at ¶ 11. On November 17, 2025, DHS took Petitioner into custody for the purpose of effecting her removal from the United States. *Id.* On December 8, 2025, the Immigration Judge *sua sponte* granted Petitioner's motion to reopen removal proceedings³. *Id.* at ¶ 14; *also see* Exh. C (Order Reopening Proceedings). Thereafter, on January 16, 2026, the Immigration Judge found Petitioner subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A) and denied her bond redetermination request for lack of jurisdiction. *See* Exh.

³ Petitioner's motion to reopen was presumably based on a pending U nonimmigrant status (U visa) application she has filed with USCIS. *See* Petition at ¶ 10. The U visa is set aside for victims of certain crimes who have suffered mental or physical abuse and are helpful to law enforcement. *See* 8 U.S.C. § 1101(a)((15)(U). Petitioner claims that it may take USCIS up to ten years to adjudicate her U visa application and she cannot be removed from the United States during this time because her U visa application has been determined to be *bona fide*. *See* Petition at ¶ 23. Therefore, Petitioner argues, unless the Court grants her habeas petition, she is facing years in DHS detention. *Id.* Petitioner's argument misconstrues the notion of deferred action that comes with certain U visa applications and ignores certain facts.

First, while Petitioner has a pending U visa application that was deemed *bona fide*, the *bona fide* determination itself does not confer deferred action or any immigration benefit. Deferred action is the generic term DHS uses for a decision not to remove an inadmissible or deportable alien pursuant to its enforcement discretion. DHS regulations describe deferred action as "an act of administrative convenience to the government which gives some cases lower priority." *See* 8 C.F.R. § 274a.12(c)(14). Those with pending, *bona fide* U visa applications are only provided with deferred action if they have filed, and had approved, a Form I-765, Employment Authorization Application *related* to the U visa application. *See* 8 U.S.C. § 1184(p)(6); *also see* USCIS Policy Manual on Bona Fide Determinations, Vol. 3, Part C, Ch. 5 available at <https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5>. Consistent with this overall policy, Petitioner's U visa *bona fide* determination states as follows: *Your period of deferred action will begin on the date your employment authorization begins. You will receive separate correspondence regarding the adjudication of your Form I-765 once it is filed.* *See* Exh. E (U visa Bona Fide Determination). Petitioner does not claim, and the record contains no evidence that she has filed an application for employment authorization related to her U visa application. Therefore, her pending U visa application does not confer deferred action. And even if Petitioner obtains deferred action, it does not prevent DHS from removing her.

Second, Petitioner's removal proceedings are ongoing. She is no longer subject to a final order of removal because the Immigration Judge reopened the removal proceedings. Without a final order of removal, DHS cannot remove her from the United States. Therefore, if Petitioner becomes again subject to a final order of removal, DHS has discretion to effectuate the removal notwithstanding a grant of deferred action.

D (Bond Order). Petitioner remains detained at the Broward Transitional Center pending removal proceedings. *See* Petition at ¶ 11.

III. ARGUMENT

To the extent that Petitioner is relying on *Bautista*, that reliance is misplaced. The December 18, 2025, partial final judgment in *Bautista v. Noem*, No. 5:25-CV-1873 (C.D. Cal. Dec. 18, 2025), is neither binding nor applicable, and presents no basis for granting the petition. First, the *Bautista* declaratory judgment lacks legal effect on petitioners and custodians, such as the parties to this case, outside the Central District of California. Second, the Court should not give preclusive effect to the declaratory judgment because it is on appeal, creating a serious risk of inconsistent judgments and unfair results if the *Bautista* judgment is reversed or vacated on appeal. Finally, issue preclusion is inapplicable here, particularly as preclusion principles apply with less force both against the government and in habeas corpus proceedings.

A. Petitioner is an Applicant for Admission subject to Detention pursuant to 8 U.S.C. § 1225(b)(2)(A) and discretionary detention under § 1226(a) is Inapplicable as Clarified in the Board of Immigration Appeals' Decision in *Matter of Yajure Hurtado*.

As this Court has previously concluded in a similar case, aliens in removal proceedings, such as Petitioner, are subject to mandatory detention under 8 U.S.C. § 1225(b)(2) because they are present in the United States without being admitted or paroled, despite having entered illegally many years ago. *See Morales v. Noem*, 26-cv-60251-WPD (S.D. Fla. February 9, 2026) (adopting the analysis of the majority opinion in *Buenrostro-Mendez v. Bondi*, No. 25-20496, 25-40701, ___F. 4th ___, 2026 WL 323330 (5th Cir. Feb. 6, 2026)).

The Fifth Circuit in *Buenrostro-Mendez* recognized that “[s]ince DHS began to detain unadmitted aliens under section 1225(b)(2)(A), well over a thousand aliens have filed habeas

corpus petitions seeking bond hearings [] [and,] [i]n most of these cases, the district court found in favor of the petitioner.” *Id.* at 3. Nevertheless, the court concluded that presence without admission renders an individual like Petitioner to be both an “applicant for admission” and “seeking admission” under 8 U.S.C. § 1225(b)(2) and therefore subject to mandatory detention--regardless of how much time the individual has been present in the United States. *Buenrostro-Mendez*, at 4-9.

“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.”).

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’”); *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) (stating that “the broad category of applicants for admission . . . includes, *inter alia*, any alien present

in the United States who has not been admitted”). 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 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 also* 8 U.S.C. § 1229a(c)(2)(A) (explaining that an applicant for admission has the burden to establish that he or she is clearly and beyond doubt entitled to be admitted and is not inadmissible under 8 U.S.C. § 1182 in removal proceedings pursuant to § 1229a). “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).

Petitioner did not present herself at a POE but instead entered the United States without having been admitted or paroled after inspection by an immigration officer. *See* Petition at ¶ 51. Petitioner is, therefore, an alien present in the United States without admission or parole and, consequently, an applicant for admission. *See Buenrostro-Mendez*, at 4-5 (explaining that “an alien's status as an applicant for admission does not turn on where or

how the alien entered the United States” and that an “applicant for admission” is necessarily “seeking admission,” as contemplated in 8 U.S.C. § 1225(b)(2)).

The decision issued by the Board of Immigration Appeals (“BIA”) in *Matter of Yajure Hurtado* is instructive here. See *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). In *Matter of Yajure Hurtado*, 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.’” 29 I&N Dec. 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 is consistent not only with the plain language of § 1225(b)(2), but also with the Supreme Court’s decision in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), and subsequent caselaw post *Jennings*. Specifically, in *Jennings*, the Supreme Court explained that § 1225(b) applies to all applicants for admission, noting that the language of § 1225(b)(2) is “quite clear” and “unequivocally mandate[s]” detention. 583 U.S. at 300, 303.

Similarly, relying on *Jennings* and the plain language of §§ 1225 and 1226(a), the Attorney General, in *Matter of M-S*, 27 I&N Dec. 509 (A.G. 2019), recognized that §§ 1225 and 1226(a) do not overlap but describe “different classes of aliens.” 27 I&N Dec. at 516. The Attorney General also held—in an analogous context—that aliens present without admission or parole who are placed into expedited removal proceedings are detained under § 1225 even if later placed in § 1229a removal proceedings after establishing a credible fear of persecution or torture. *Id.* at 518-19; see also 8 U.S.C. 1225(b)(1)(B)(ii) (providing that if an alien subject to expedited removal demonstrates a credible fear of persecution or torture, the alien “shall

be detained” for further consideration of an asylum application in § 1229a removal proceedings).

Additionally, in *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), the BIA held that an alien who unlawfully entered the United States between POEs, was arrested and detained without a warrant while arriving, and was previously released from DHS custody pursuant to an 8 U.S.C. § 1182(d)(5)(A) parole is detained under § 1225(b) upon re-detention. 29 I&N Dec. at 70-71. This ongoing evolution of the law makes clear that all applicants for admission in various procedural postures are subject to detention under § 1225(b). *Cf. Niz-Chavez v. Garland*, 593 U.S. 155, 171 (2021) (stating that “no amount of policy-talk can overcome a plain statutory command”); *see generally Florida v. United States*, 660 F. Supp. 3d 1239, 1275 (N.D. Fla. 2023) (explaining that “the 1996 expansion of § 1225(b) to include illegal border crossers would make little sense if DHS retained discretion to apply § 1226(a) and release illegal border crossers whenever the agency saw fit”). *Florida’s* conclusion “that § 1225(b)’s ‘shall be detained’ means what it says and . . . is a mandatory requirement . . . flows directly from *Jennings*.” *Florida*, 660 F. Supp. 3d at 1273.

A. Petitioner is an Applicant for Admission in 8 U.S.C. § 1229a Removal Proceedings and as such her Detention Pursuant to 8 U.S.C. § 1225(b)(2)(A) is Proper.

Both arriving aliens and aliens present without admission or parole, as applicants for admission, may be removed from the United States by, *inter alia*, expedited removal procedures under § 1225(b)(1) or removal proceedings before an Immigration Judge under § 1229a. §§ 1225(b)(1), (b)(2)(A). *See Jennings*, 583 U.S. at 287 (describing how “applicants for admission fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)”). For aliens subject to expedited removal, immigration officers have discretion to apply expedited removal under § 1225(b)(1) or to initiate removal proceedings before an

Immigration Judge under § 1229a. *See also Matter of Q. Li*, 29 I&N Dec. 66, 68 (BIA 2025) (“DHS may place aliens arriving in the United States in either expedited removal proceedings under [8 U.S.C. § 1225(b)(1)], or full removal proceedings under [8 U.S.C. § 1229a]” (citations omitted)).

Petitioner is currently in § 1229a removal proceedings (*see* Petition at ¶ 6; *also see* Exh. B (Notice to Appear)) and is subject to detention under § 1225(b)(2)(A). Hence, under § 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 § 1229a removal proceedings in lieu of expedited removal proceedings under 8 U.S.C. § 1225 “shall be detained” pursuant to § 1225(b)(2)). As the Supreme Court observed in *Jennings*, nothing in § 1225(b)(2)(A) “says anything whatsoever about bond hearings.” 583 U.S. at 297. Further, there is no textual basis for arguing that § 1225(b)(2)(A) applies only to arriving aliens as no provision therein refers to “arriving aliens,” or limits that paragraph to arriving aliens. 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.*, 8 U.S.C. §§ 1182(a)(9)(A)(i), 1225(c)(1).

B. Section 1226 does Not Impact the Detention Authority that Governs with respect to Applicants for Admission in removal proceedings.

Petitioner urges the Court to find that his detention is authorized only by 8 U.S.C. § 1226(a), but that is incorrect. Section 1226(a) is the applicable detention authority for aliens who have been admitted and are subject to removal proceedings under § 1229a and this does not impact the directive in § 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].” 8 U.S.C. § 1225(b)(2)(A).

Section § 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; *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). As the Fifth Circuit observed in *Buenrostro-Mendez*, § 1226(a) “does work independent from § 1225(b)(2)(A) because only § 1226(a) applies to admitted aliens who overstay their visas, become deportable on many different grounds, or were admitted erroneously due to fraud or some other error.” *Buenrostro-Mendez*, at *7. 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 be released on bond; rather, both DHS and immigration judges 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).

To interpret § 1225(b)(2)(A) as not applying to all applicants for admission would render it meaningless. As explained above, Congress expanded § 1225(b) in 1996 to apply to a broader category of aliens, including those aliens who crossed the border illegally. There would have been no need for Congress to make such a change if § 1226(a) was meant to apply to aliens present without admission.

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

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 § 1182(d)(5) is the specific provision that authorizes temporary release from detention under § 1225(b). 583 U.S. at 300. 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 immigration judges have authority to parole an alien into the United States under § 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”).

Lastly, 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 Immigration Judge 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. Petitioner failed to Exhaust his Administrative Remedies

Lastly, the Court should dismiss the petition for writ of habeas corpus for failure 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.).

Here, Petitioner has not perfected an appeal with the Board of Immigration Appeals challenging the Immigration Judge’s decision to deny her bond for lack of jurisdiction. Petitioner argues that she is not required to avail herself of the administrative remedies available to her (*see* Petition at ¶¶ 91-92) and, instead, seeks an order requiring a bond hearing in the first instance from this Court. By regulation, the BIA has authority to review custody determinations made by immigration judges. *See* 8 C.F.R. §§ 1003.1(b)(7), 1003.19(f), 1003.38, 1236.1(d)(3). An Immigration Judge’s denial is a decision appealable to the BIA who “plainly has jurisdiction to determine whether an Immigration Judge properly denied an alien detainee’s motion for bond redetermination.” *J.G. v. Warden, Irwin Cnty. Det. Ctr.*, 501 F. Supp. 3d 1331, 1349 (M.D. Ga. 2020) (holding that habeas petitioner failed to exhaust his administrative remedies in appealing an Immigration Judge’s denial of bond redetermination to the BIA). As set forth in the EOIR Policy Memo 25-45 the BIA and Immigration Judges can consider constitutional challenges to the INA – such could include a Fifth Amendment challenge to the BIA’s interpretation of 235(b)(2) in *Yajure Hurtado*. *See* <https://www.justice>

.gov/eoir/eoir-policy-manual/memoranda-pm-list.

Here, Petitioner's removal proceedings are pending, thus she has not availed herself of the administrative process and remedies available to her before proceeding to this Court in hopes of shopping for a more favorable forum. Accordingly, the Petition should be dismissed for failure to exhaust administrative remedies.

E. 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*, including the decision to detain an alien pending such removal proceedings, squarely falls within this jurisdictional bar. In other words, detention clearly “aris[es] from” the decision to commence removal proceedings against an alien. *See Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016) (“By its plain terms, [§ 1252(g)] bars us from questioning ICE's discretionary decisions to commence removal” and also to review “ICE's decision to take [plaintiff] into custody and to detain him during removal proceedings”); *Tazu v. Att'y Gen. U.S.*, 975 F.3d 292, 298 (3d Cir. 2020) (“The text of § 1252(g)... strips us of jurisdiction to review... [T]o perform or complete a removal, the [Secretary of Homeland Security] must exercise [her] discretionary power to detain an alien for a few days. That detention does not fall within some other part of the deportation process.”) (cleaned up) (internal quotations and citations omitted); *Valencia-Mejia v. United States*, No. 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); *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) (“[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 v. Am.-Arab Anti-Discrimination Comm.* (“*AADC*”), 525 U.S. 471, 485 n.9 (1999) (“§ 1252(g) covers” a “specification of the decision to ‘commence proceedings’”).

As such, judicial review of the Petitioner’s claims 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 petition for review is the exclusive means for judicial review of immigration proceedings. Notwithstanding any other provision of law (statutory or non-statutory), . . . 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*, 583 U.S. at 294–95 (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 her, which arises from DHS’s decision to commence removal proceedings, and is thus an “action taken . . . to remove her 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 her in the first place. Though the Petitioner frames her challenge as relating to detention authority, rather than a challenge to DHS’s decision to detain her in the first instance, such creative framing does not evade the preclusive effect of § 1252(b)(9).

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); 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).

G. CONCLUSION

Based upon the foregoing, the Petition should be dismissed because detention is lawful under § 8 U.S.C. § 1225(b)(2)(A) and Petitioner has failed to exhaust her administrative remedies before seeking relief from the Court. Additionally, given that Respondents are not Petitioner’s immediate custodians, they must be dropped/dismissed as parties.

Respectfully submitted,

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