

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
Case 26-21015-CIV-SINGHAL

YASIEL ACOSTA-SILVA,  
Petitioner,

v.

WARDEN, KROME NORTH SERVICE  
PROCESSING CENTER, *et al.*  
Respondents.

---

**RESPONSE TO ORDER TO SHOW CAUSE**

Respondents<sup>1</sup> hereby respond to the Court's Order to show cause why the Petition for Writ of Habeas Corpus should not be granted.

**INTRODUCTION**

Petitioner claims that his detention in the custody of Immigration and Customs Enforcement without bond since September of 2025 is unlawful. Petitioner argues that his detention is governed by 8 U.S.C. § 1226(a) rather than 8 U.S.C. § 1225(b) because he is not an arriving alien (Count I); that his detention without bond violates his procedural and substantive due process rights (Counts II and III); and that he is entitled to immediate relief pursuant to this Court's authority under the All-Writs Act (Count IV). As demonstrated below, Petitioner is

---

<sup>1</sup> 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 Krome North Service Processing Center. See Petition at ¶ 3. The only appropriate respondent named is Warden, Krome North Processing Center. All other respondents should be dismissed.

subject to mandatory detention under 8 U.S.C. § 1225(b)(2) and his Petition should be denied accordingly.

### **FACTUAL BACKGROUND**

Petitioner, Yasiel Acosta-Silva, is a native and citizen of Cuba by birth. *See* Exh. A, Form I-213, Record of Deportable/Inadmissible Alien, (Form I-213), dated July 4, 2019. Petitioner entered the United States without inspection at or near San Luis, Arizona on or about July 4, 2019. *Id.* After entry, Petitioner was apprehended by Customs and Border Protection (CBP). *Id.* On July 07, 2019, Petitioner was transferred into the custody of Immigration and Customs Enforcement (“ICE”), Enforcement and Removal Operations (“ERO”). *See* Exh. B, Detention History.

On July 23, 2019, the Department of Homeland Security (DHS) issued Petitioner a Notice to Appear (NTA) charging him with inadmissibility pursuant to INA §§ 212(a)(7)(A)(i)(I), in that he is 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; and 212(a)(6)(A)(i) in that he is 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. *See* Exh. C, Notice to Appear, dated July 23, 2019.

Petitioner requested a bond redetermination hearing from the immigration court. *See* Exh. D, Declaration of Deportation Officer Herrero. On August 29, 2019, Petitioner was released from ICE ERO custody on a bond of \$15,000 issued by the immigration court. *See* Exh. E, Immigration Judge order granting release on bond dated August 22, 2019.

On June 10, 2024, Department of Homeland Security (DHS) filed an Unopposed Motion to Dismiss Removal Proceedings Without Prejudice. *See* Exh. D, Declaration of Deportation Officer Ricardo J. Herrero. The Immigration Judge granted the motion to dismiss on June 21, 2024. *See* Exh. F, Immigration Judge Order on Motion to Dismiss dated June 21, 2024. On or about June 27, 2024, ICE cancelled the bond that was paid for Petitioner's release from detention. *See* Exh. G, Form I-391, Notice-Immigration Bond Cancelled dated June 27, 2024.

On September 9, 2025, Florida Highway Patrol and Monroe County Sheriffs with support of U.S. Border Patrol agents, encountered Petitioner during a traffic stop for local traffic violations. *See* Exh. H, Form I-213, dated September 10, 2025. Border Patrol Agents determined Petitioner had entered illegally in the United States and had no documents that would allow him to remain in the United States and detained him. *Id.* On September 11, 2025, Petitioner was transferred to the custody of ICE ERO. *See* Exh B, Detention History.

On November 2, 2025, DHS filed the Notice to Appear (NTA), with Executive Office for Immigration Review (EOIR), charging Petitioner with inadmissibility under INA §§ 212(a)(6)(A)(i) in that he is 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, and 212(a)(7)(A)(i)(I) in that he is 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. *See* Exh. I, Notice to Appear, dated September 10, 2025.

On January 30, 2026, Petitioner filed a Bond Redetermination Request. *See* Exh. D. Declaration of Deportation Officer Ricardo J. Herrero. On February 5, 2026, the Immigration Judge denied the motion, finding the court does not have jurisdiction over the bond proceedings based on *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). *See* Exh. J, Immigration Judge Order, dated February 05, 2026.

Petitioner's next hearing is before the Krome Immigration Court on March 09, 2026. *See* Exh. K, Notice of Hearing dated February 23, 2026. Petitioner is currently detained at the Krome North Service Processing Center (Krome). *See* Exh. B, Detention History.

### ARGUMENT<sup>2</sup>

---

<sup>2</sup> The government submits the following arguments in good faith, supported by the Fifth Circuit Court of Appeals' decision in *See Buenrostro-Mendez v. Bondi*, No. 25-20496, 25-40701, \_\_\_ F. 4th \_\_\_, 2026 WL 323330 (5th Cir. Feb. 6 2026) and decisions rendered in this District. *See, e.g., Iraheta Morales v. Noem*, et al., Case No. 25-62598-CIV-SINGHAL, ECF No. 10 (S.D. Fla. Jan. 29, 2026) (concluding that habeas petitioner who entered the United States without inspection in 2004 is an "applicant for admission" governed by 8 U.S.C. § 1225(b) and rejecting petitioner's argument the government must grant a bond hearing under 8 U.S.C. § 1226)); *Perez Morales v. Noem*, et al., No.26-60251-CIV DIMITROULEAS, ECF No. 15 (S.D. Fla. Feb. 9, 2026)(same, adopting the analysis of the Fifth Circuit majority opinion in *Buenrostro-Medina*); and *Mokanu v. Warden, Federal Detention Center Miami*, No. 25-24121-ARTAU, ECF No. 19 (S.D.Fla. Feb. 19, 2026) (holding that 8 USC 1252(g) prohibits the Court in a habeas proceeding from reviewing the denial of bond to a person present without admission or parole who is detained pursuant to 8 U.S.C. § 1225, and, on the merits, finding that petitioner who had been present in the country for years on humanitarian parole was an applicant for admission and subject to detention under 8 USC 1225(b)(2)).

Nevertheless, the government acknowledges that Judges in this District have reached the opposite conclusion on the legal issues presented. *See, e.g., Aguilar Merino v. Ripa*, No. 25-23845-CIV-MARTINEZ, 2025 WL 2941609, at \*3, 8 (S.D. Fla. Oct. 15, 2025) ("§ 1226(a), not § 1225(b)(2), governs Petitioner's detention"); *Gil-Paulino v. Sec'y of the U.S. Dep't of Homeland Sec.*, 25-24292-CIV-WILLIAMS, ECF No. 41, (S.D. Fla. Oct. 10, 2025) ("§ 1226 governs Petitioner's detention"); *Alvarez Puga v. Assistant Field Office Director Krome*, et al., No. 25-24535-CIV-ALTONAGA (S.D. Fla. Oct. 15, 2025) (concluding that "prudential exhaustion requirements are excused for futility" and finding that "section 1226(a) and its implementing regulations govern Petitioner's detention, not section 1225(b)(2)(A)"); *Zamora Policarpo v. Parra*, Case No. 25-25236-CIV-COHN, ECF No. 8 (S.D. Fla. Dec. 22, 2025)

**A. Petitioner is an Applicant for Admission subject to Detention pursuant to 8 U.S.C. § 1225(b)(2)(A) and 8 U.S.C. § 1226(a) is Inapplicable.**

Petitioner is properly detained as an applicant for admission subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A). *See Buenrostro-Mendez v. Bondi*, No. 25-20496, 25-40701, \_\_\_ F. 4th \_\_\_, 2026 WL 323330 (5th Cir. Feb. 6 2026) (holding that noncitizen petitioners in removal proceedings were subject to mandatory detention under 28 U.S.C. § 1225(b)(2) because they were present in the United States without being admitted or paroled, despite having entered illegally many years ago; *Iraheta Morales v. Noem*, et al., Case No. 25-62598-CIV-SINGHAL, ECF No. 10 (S.D. Fla. Jan. 29, 2026) (concluding that habeas petitioner who entered the United States without inspection in 2004 is an “applicant for admission” governed by 8 U.S.C. § 1225(b) and rejecting petitioner’s argument the government must grant a bond hearing under 8 U.S.C. § 1226); *Perez Morales v. Noem*, et al., No.26-60251-CIV DIMITROULEAS, ECF No. 15 (S.D. Fla. Feb. 9, 2026)(same, adopting the analysis of the Fifth

---

(finding good cause to excuse Petitioner’s failure to exhaust administrative remedies where it is evident the BIA will reject Petitioner’s request for a bond hearing or release and that Petitioner is subject to detention under § 1226(a) and entitled to a bond hearing before an immigration judge); *Penagos Quintero v. Ripa*, et al., Case No. 25-25746-CIV-BECERRA, ECF NO.14 (Jan. 5, 2026) (concluding that jurisdiction is not barred by 8 U.S.C. § 1252, exhaustion was not required, and that the petitioner’s detention is governed by 8 U.S.C. § 1226(a), not 8 U.S.C. § 1225(b)(2)); *Martinez v. Field Off. Dir.*, No. 25-26026-CIV-LEIBOWITZ, ECF No. 7 (S.D. Fla. Jan. 14, 2026) (“Pending the Eleventh Circuit’s resolution of this issue, the Court continues to side with the clear weight of existing authority in finding that Petitioner here is entitled to a prompt, individualized bond hearing under 8 U.S.C. § 1226(a)”); *Espinal Encarnacion v. ICE Field Office Director*, et al., No. 25-61898-CIV-DAMIAN, ECF No. 29 (Dec. 23, 2025) (“this Court finds that 8 U.S.C. § 1226(a) and its implementing regulations govern Petitioner’s detention, and not Section 1225(b)”); *Ocegueda Gonzalez v. Noem*, et al., No. 25-62261-CIV-MIDDLEBROOKS/AGUSTIN-BIRCH, ECF No. 25 (Dec. 23, 2025) (“Having concluded that Petitioner’s detention is governed by 8 U.S.C. § 1226(a), Petitioner is entitled to an individualized bond hearing before an immigration judge.”); and *Fuentes Granados v. Secretary of Homeland Security*, Case No. 26-60020-CIV-SMITH, ECF No. 7 (S.D. Fla. Jan. 27, 2026) (“Petitioner is being unlawfully detained due to his improper classification as “an alien who is an applicant for admission” pursuant to 8 U.S.C. § 1225(b)(2)(A)[;] . . . Petitioner’s proper classification is a detainee pursuant to 8 U.S.C. § 1226(a)”).

Circuit majority opinion in *Buenrostro-Medina*); and *Mokanu v. Warden, Federal Detention Center Miami*, No. 25-24121-ARTAU, ECF No. 19 (S.D.Fla. Feb. 19, 2026) (same; and holding that 8 USC 1252(g) prohibits the Court in a habeas proceeding from reviewing the denial of bond to a person detained pursuant to 8 U.S.C. § 1225).

The Fifth Circuit in *Buenrostro-Mendez* recognized that “[s]ince DHS began to detain unadmitted aliens under § 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 *Buenrostro-Mendez*, at 2 (“an alien’s status as an applicant for admission does not turn on where or how the alien entered the United States”); *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 entered the United States in 2019 without inspection and was detained by immigration authorities in Arizona. See Petition at ¶¶ 24-26. Petitioner is, therefore, an alien present in the United States without admission or parole and, consequently, an applicant for admission--regardless of how long he has been in the United States. See *Buenrostro-Mendez*, at \*2, 4-5. An alien's status as an applicant for admission does not turn on where or how the alien entered the United States; an alien present without inspection or admission is necessarily an "applicant for admission" and "seeking admission," as contemplated in 8 U.S.C. § 1225(b)(2).

The Fifth Circuit's decision in *Buenrostro-Mendez* 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.

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.

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

Both arriving aliens and aliens present without admission or parole are applicants for admission and may be removed from the United States by expedited removal procedures under 8 U.S.C. § 1225(b)(1) or removal proceedings before an immigration judge under 8 U.S.C. § 1229a. See 8 U.S.C §§ 1225(b)(1), (b)(2)(A); *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)”).

As explained above, Petitioner is currently in § 1229a removal proceedings and is subject to mandatory detention under § 1225(b)(2)(A). Under 8 U.S.C. § 1225(b)(2)(A), “an alien who is an applicant for admission” “*shall be detained* for a proceeding under [8 U.S.C. § 1229a]” “if the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A) (emphasis added); 8 C.F.R. § 235.3(b)(3) (providing that an alien placed into § 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).

**C. 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 (and eligibility for release on bond) is governed 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 § 1229, and it 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.

**D. 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).

**E. Petitioner failed to Exhaust his Administrative Remedies**

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

Petitioner has not availed himself of the administrative remedies available to him, and instead seeks an order requiring a bond hearing in the first instance from this Court. By regulation, the BIA has authority to review IJ custody determinations. *See* 8 C.F.R. §§ 1003.1(b)(7), 1003.19(f), 1003.38, 1236.1(d)(3). As set forth in the EOIR Policy Memo 25-45 the BIA and IJs can consider constitutional challenges to the INA. *See* <https://www.justice.gov/eoir/eoir-policy-manual/memoranda-pm-list>. Here, Petitioner’s removal proceedings are pending, thus he has not availed himself of the administrative process and remedies available to him and instead sought relief from this Court. Accordingly, the Petition should be dismissed for failure to exhaust administrative remedies.

**F. 8 U.S.C. § 1252(g) bars review of Petitioner’s claims.**

Petitioner is essentially asking the Court to prohibit its commencement of removal proceedings, but the Court lacks jurisdiction to grant such relief. Section 1252(g) of Title 8, United

States Code, 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 Mokuu*, No. 25-24121-ARTAU, ECF No. 19 at 9 (S.D.Fla. Feb. 19, 2026) (“by seeking release from custody “pending removal proceedings,” the “basis of [the petitioner’s] claim” is a challenge to the decision to commence removal proceedings against him, which is plainly barred by § 1252(g); *Alvarez v. ICE*, 818 F.3d 1194, 1203 (11<sup>th</sup> 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’”).

**G. 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 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*, 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 him, which arises from DHS’s decision to commence removal proceedings, and is thus an “action taken . . . to remove [him/her] from the United States.” *See* 8 U.S.C. § 1252(b)(9); *see also, 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 him in the first place. Though the Petitioner frames his challenge as relating to detention authority, rather than a challenge to DHS’s decision

to detain him 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 he is detained is enough to trigger § 1252(b)(9) because “detention *is* an ‘action taken . . . to remove’ an alien.” *See Jennings*, 583 U.S. at 319 (Thomas, J., concurring); 8 U.S.C. § 1252(b)(9). The Court should dismiss the Petitioner’s claims for lack of jurisdiction under § 1252(b)(9). The Petitioner must present his claims before the appropriate court of appeals because he challenges the government’s decision or action to detain him, which must be raised before a court of appeals, not this Court. *See* 8 U.S.C. § 1252(b)(9).

**H. The Court cannot grant Petitioner’s request for immediate release under the All Writs Act.**

The All Writs Act provides courts the authority to “issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.” 28 U.S.C. § 1651(a). Congress granted this power to allow courts “to protect the jurisdiction they already have, derived from some other source.” *Klay v. United Healthgroup, Inc.*, 376 F.3d 1092, 1099 (11th Cir. 2004). The All Writs Act provides a “residual source of authority to issue writs that are not otherwise covered by statute” and is an “extraordinary remedy that . . . is essentially equitable and, as such, not generally available to provide alternatives to other, adequate remedies at law.” *Id.* at 1100 (internal quotes and citations omitted).

The Eleventh Circuit has observed that there are two kinds of situations in which a court may exercise its jurisdiction under the Act: (1) a court may use the Act to direct action by another court whose proceedings are subject to appellate review by the court issuing the order; and (2) to “directly protect the issuing court’s own proceedings and judgments.” *Rohe v. Wells Fargo Bank*,

*N.A.*, 988 F.3d 1256, 1264 (11th Cir. 2021). Plaintiffs here ask the Court to exercise its authority to grant relief because, in his view, “[e]xtraordinary circumstance, such as [Petitioner’s] re-detention without any active Order of Removal, exists making [his] release essential for the [habeas] remedy to be effective (Petition at ¶ 78)” As explained above, Respondents respectfully submit that the Court lacks jurisdiction over Plaintiff’s habeas claim. Regardless, if the Court finds that it does have jurisdiction, it need not release Plaintiff to effectively exercise its jurisdiction.

An All Writs Act injunction is predicated upon the existence of a “matter upon which a district court has jurisdiction . . . the integrity of which is being threatened.” *Id.* at 1265 (quoting *Klay v. United Healthgroup, Inc.*, 376 F.3d 1092, 1100 (11th Cir. 2004)). “It is a basic precondition to a court’s issuing such an order that there be some other matter over which the court has jurisdiction—some other proceeding in that court or some order or judgment previously made by that court—and that the All Writs Act order serve to protect that proceeding, order, or judgment from some threat to its integrity.” *Id.* at 1266. If the Court lacks jurisdiction over the claims in Petitioner’s habeas petition, there is nothing in need of protection and the All Writs Act provides no basis for relief.

But even if the Court finds that it has jurisdiction over Plaintiff’s habeas claims, Petitioner has failed to show how that jurisdiction is threatened in the absence of an All Writs Act injunction requiring his immediate release. It is not, in fact, threatened. If the Court finds that Petitioner is unlawfully detained without bond, it can grant appropriate relief through an exercise of its jurisdiction under 28 U.S.C. § 2241. The Court’s ability to do so is not threatened by Petitioner’s detention pending a decision. To the contrary, the Court’s habeas jurisdiction is premised upon Petitioner’s detention.

**I. CONCLUSION**

Based upon the foregoing, the Petition should be dismissed for lack of jurisdiction or denied on its merits.

**JASON REDING QUINONES  
UNITED STATES ATTORNEY**

By: /s/ Carlos Raurell  
Assistant U.S. Attorney  
Florida Bar No. 529893  
United States Attorney's Office  
Southern District of Florida  
99 NE 4<sup>th</sup> Street, Florida 33132  
Telephone: (305) 961-9243  
E-mail: carlos.raurell@usdoj.gov  
*Counsel for Respondents*