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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

JEFFERSON DOMINGUEZ-LARA; and
JOSE RAMIREZ,

Petitioners,

v.

DEPARTMENT OF HOMELAND
SECURITY (DHS); KRISTI NOEM,
Secretary, DHS; PAM BONDI, United
States Attorney General; TODD LYONS,
Director of United States Immigration and
Customs Enforcement (ICE); BRYAN
WILCOX, Field Office Director for
Detention and Removal, ICE; JOHN
MATTOS, Warden, Nevada Southern
Detention Center; EXECUTIVE OFFICE
FOR IMMIGRATION REVIEW (EOIR);
SIRCE OWEN, Acting Director, EOIR;
LAS VEGAS IMMIGRATION COURT,

Respondents.

Case No. 2:25-cv-01553-JAD-BNW

**Federal Respondents' Motion to
Dismiss**

The Federal Respondents hereby submit this Motion to Dismiss the Petition (ECF No. 1).

I. Introduction

Petitioners seek relief that the Court cannot grant. Numerous provisions of 8 U.S.C. § 1252 deprive the Court of jurisdiction to review the individual and proposed class claims and preclude the Court from granting the relief Petitioners seek. Congress has stripped federal courts of jurisdiction over challenges to the commencement of removal

proceedings, including detention pending removal proceedings. Congress further directed that *any* challenges arising from *any* removal-related activity—including detention pending removal proceedings—must be brought before the appropriate court of appeals, not a district court. And the Court cannot provide any relief that would restrain the operation of §§ 1225(b)(2) or 1226(a). But that is exactly what Petitioners request. The Court should thus dismiss the Petition on jurisdictional grounds.

Assuming jurisdiction, the Court should still dismiss the proposed Bond Stay Class (“BSC”)—comprised of individuals who are currently detained pending removal proceedings under 8 U.S.C. § 1225(b)(2) and therefore ineligible to post their bonds because of the stays exercised by ICE (“Bond Stay Claims”)—because they seek to circumvent the detention statute under which they are rightfully detained to secure release on bond that they are not entitled to. The members of the BSC fall precisely within the statutory definition of aliens subject to mandatory detention without bond found in § 1225(b)(2).

Second, the proposed Bond Appeal Class (“BAC”) alleges that they have or will be injured by the time it takes the Board of Immigration Appeals (“BIA”) to adjudicate their bond hearing appeals (“Bond Appeal Claims”). These claims should be dismissed under 8 U.S.C. § 1252(b)(9) and (g) because these challenges must be raised in a court of appeals. Further, the BAC claims under the Due Process Clause fail because the BAC is unable to demonstrate any violation of Due Process arising from the amount of time it takes the BIA to adjudicate appeals. The Court should therefore dismiss the Petition in its entirety under either Rule 12(b)(1), 12(b)(6), or both.

I. BACKGROUND

A. Statutory and Regulatory Background

1. **Detention under 8 U.S.C. § 1225**

Section 1225 applies to “applicants for admission,” who are defined as “alien[s] present in the United States who [have] not been admitted” or “who arrive[] in the United States.” 8 U.S.C. § 1225(a)(1). Applicants for admission “fall into one of two categories,

those covered by § 1225(b)(1) and those covered by § 1225(b)(2).” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

Section 1225(b)(1) applies to arriving aliens and “certain other” aliens “initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation.” *Id.*; 8 U.S.C. § 1225(b)(1)(A)(i), (iii). These aliens are generally subject to expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(A)(i). But if the alien “indicates an intention to apply for asylum . . . or a fear of persecution,” immigration officers will refer the alien for a credible fear interview. *Id.* § 1225(b)(1)(A)(ii). An alien “with a credible fear of persecution” is “detained for further consideration of the application for asylum.” *Id.* § 1225(b)(1)(B)(ii). If the alien does not indicate an intent to apply for asylum, express a fear of prosecution, or is “found not to have such a fear,” he is detained until removed. *Id.* § 1225(b)(1)(A)(i), (B)(iii)(IV).

Section 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*, 583 U.S. at 287. It “applies to all applicants for admission not covered by § 1225(b)(1).” *Id.* Under § 1225(b)(2), an alien “who is an applicant for admission” shall be detained for a removal proceeding “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); *see Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) (“for aliens arriving in and seeking admission into the United States who are placed directly in full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention ‘until removal proceedings have concluded.’”) (citing *Jennings v. Rodriguez*, 583 U.S. 281, 299 (2018)). Still, the Department of Homeland Security (“DHS”) has the sole discretionary 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.” *Id.* § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022).

2. Detention under 8 U.S.C. § 1226(a)

Section 1226 provides for arrest and detention “pending a decision on whether the alien is to be removed from the United States.” 8 U.S.C. § 1226(a). Under § 1226(a), the

1 government may detain an alien during his removal proceedings, release him on bond, or
 2 release him on conditional parole. By regulation, immigration officers can release aliens if
 3 the alien demonstrates that he “would not pose a danger to property or persons” and “is
 4 likely to appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8). An alien can also
 5 request a custody redetermination (i.e., a bond hearing) by an immigration judge (“IJ”) at
 6 any time before a final order of removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§
 7 236.1(d)(1), 1236.1(d)(1), 1003.19.

8 At a custody redetermination, the IJ may continue detention or release the alien on
 9 bond or conditional parole. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). IJs have broad
 10 discretion in deciding whether to release an alien on bond. *In re Guerra*, 24 I. & N. Dec. 37,
 11 39–40 (BIA 2006) (listing nine factors for IJs to consider). But regardless of the factors IJs
 12 consider, an alien “who presents a danger to persons or property should not be released
 13 during the pendency of removal proceedings.” *Id.* at 38.

14 **3. Review at the BIA**

15 The BIA is an appellate body within the Executive Office for Immigration Review
 16 (“EOIR”). *See* 8 C.F.R. § 1003.1(d)(1). Members of the BIA possess delegated authority
 17 from the Attorney General. 8 C.F.R. § 1003.1(a)(1). The BIA is “charged with the review
 18 of those administrative adjudications under the [INA] that the Attorney General may by
 19 regulation assign to it,” including IJ custody determinations. 8 C.F.R. §§ 1003.1(d)(1),
 20 236.1; 1236.1. The BIA not only resolves particular disputes before it, but also “through
 21 precedent decisions, [it] shall provide clear and uniform guidance to DHS, the immigration
 22 judges, and the general public on the proper interpretation and administration of the [INA]
 23 and its implementing regulations.” *Id.* § 1003.1(d)(1). “The decision of the [BIA] shall be
 24 final except in those cases reviewed by the Attorney General.” 8 C.F.R. § 1003.1(d)(7).

25 **B. Factual Background**

26 Petitioner Jefferson Dominguez-Lara is currently detained at the Nevada Southern
 27 Detention Center (NSDC). ECF No. 1, ¶ 17. On July 21, 2025, an immigration judge
 28

1 granted him a \$5,000 bond on July 21, 2025, which the Department of Homeland Security
 2 stayed when it filed a Notice of Intent to Appeal. *Id.*

3 Petitioner Jose Ramirez is also currently detained at the Nevada Southern
 4 Detention Center (NSDC). *Id.* ¶ 18. On July 16, 2025, an immigration judge granted him a
 5 \$3,000 bond, which the Department of Homeland Security immediately stayed when it
 6 filed a Notice of Intent to Appeal. *Id.*

7 **C. Proposed Classes for Certification**

8 Petitioners seek to certify two impermissibly broad classes:

9 (A) a proposed Bond Stay Class, which is comprised of “[a]ll noncitizens detained
 10 at Northwest ICE Processing Center” who (1) have or will enter the United States without
 11 inspection, (2) are not apprehended upon arrival into the United States, and (3) are not or
 12 will not be subject to detention under 8 U.S.C. §1226(c), § 1225(b)(1), or § 1231 at the time
 13 the noncitizen is scheduled for or requests a bond hearing and has been or will be granted a
 14 bond by an immigration judge in the Las Vegas Immigration Court that has been
 15 statutorily stayed, and

16 (B) a proposed Bond Appeal Class of detained noncitizens that have a pending
 17 appeal, will file an appeal of, or will respond to an appeal filed by ICE of an immigration
 18 judge’s bond hearing ruling before the Board of Immigration Appeals (“BIA”). *See* Mot. for
 19 Class Certification, ECF No. 4, at 3; Pet., ECF No. 1, ¶¶ 11–12.

20 **II. STANDARD OF REVIEW**

21 **A. Dismissal Pursuant to Fed. R. Civ. P. 12(b)(1)**

22 “Federal courts are courts of limited jurisdiction, possessing only that power
 23 authorized by Constitution and statute.” *Gunn v. Minton*, 568 U.S. 251, 256 (2013) (internal
 24 quotations omitted). “Subject matter jurisdiction is fundamental . . . and the court is under
 25 a continuing duty to dismiss an action whenever it appears that the court lacks
 26 jurisdiction.” *Billingsley v. Comm’r*, 868 F.2d 1081, 1085 (9th Cir. 1989) (citing *Augustine v.*
 27 *United States*, 704 F.2d 1074, 1077 (9th Cir. 1983)). The plaintiff bears the burden of
 28 establishing that the court has subject matter jurisdiction over their petition. *See Kokkonen v.*

1 *Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). A Rule 12(b)(1) motion may be
 2 either facial, when the inquiry is confined to the petition's allegations, or factual, when the
 3 court may look beyond the petition to extrinsic evidence. *See Wolfe v. Strankman*, 392 F.3d
 4 358, 362 (9th Cir. 2004).

5 **B. Dismissal Pursuant to Fed. R. Civ. P. 12(b)(6)**

6 Dismissal under Rule 12(b)(6) is warranted when a petition fails to state a claim
 7 upon which relief may be granted that is "plausible on its face." *Bell Atl. Corp. v. Twombly*,
 8 550 U.S. 544, 570 (2007). Courts accept as true all well-pleaded factual allegations but need
 9 not credit a "legal conclusion couched as a factual allegation." *Bell Atl. Corp.*, 550 U.S. at
 10 555. "Threadbare recitals of the elements of a cause of action, supported by mere
 11 conclusory statements, do not suffice." *Ashcroft v. Iqbal*, 556 U.S. 662, 663 (2009).

12 **III. ARGUMENT**

13 **A. The Bond Stay Claims Should Be Dismissed**

14 **1. The Bond Stay Claims Fail and Should Be Dismissed for Lack of** 15 **Jurisdiction Under Rule 12(b)(1).**

16 ***a) Multiple provisions of 8 U.S.C. § 1252 preclude the Court's review of the Bond*** ***Stay Claims.***

17 **(1) 8 U.S.C. § 1252(g) bars review of the Bond Stay Claims.**

18 Section 1252(g) specifically deprives courts of jurisdiction, including habeas corpus
 19 jurisdiction, to review "any cause or claim by or on behalf of an alien arising from the
 20 decision or action by the Attorney General to [1] *commence proceedings*, [2] *adjudicate cases*,
 21 or [3] *execute removal orders against any alien under this chapter.*"¹ 8 U.S.C. § 1252(g)
 22 (emphasis added). Section 1252(g) eliminates jurisdiction "[e]xcept as provided in this
 23 section and notwithstanding any other provision of law (statutory or nonstatutory),
 24 including section 2241 of title 28, United States Code, or any other habeas corpus provision,

27 ¹ Much of the Attorney General's authority has been transferred to the Secretary of
 28 Homeland Security and many references to the Attorney General are understood to refer to
 the Secretary. *See Clark v. Martinez*, 543 U.S. 371, 374 n.1 (2005).

1 and sections 1361 and 1651 of such title.”² Except as provided in § 1252, courts “cannot
 2 entertain challenges to the enumerated executive branch decisions or actions.” *E.F.L. v.*
 3 *Prim*, 986 F.3d 959, 964–65 (7th Cir. 2021).

4 Section 1252(g) also bars district courts from hearing challenges to the *method* by
 5 which the Secretary of Homeland Security chooses to commence removal proceedings,
 6 including the decision to detain an alien pending removal. *See Alvarez v. ICE*, 818 F.3d 1194,
 7 1203 (11th Cir. 2016) (“By its plain terms, [§ 1252(g)] bars us from questioning ICE’s
 8 discretionary decisions to commence removal” and also to review “ICE’s decision to take
 9 [plaintiff] into custody and to detain him during removal proceedings”).

10 The BSC’s Bond Stay Claims stem from their detention during removal proceedings.
 11 *See Pet.*, ECF No. 1, ¶¶ 2, 11. That detention arises from the decision to commence such
 12 proceedings against them. *See, e.g., Valencia-Mejia v. United States*, No. CV 08–2943 CAS
 13 (PJWx), 2008 WL 4286979, at *4 (C.D. Cal. Sept. 15, 2008) (“The decision to detain
 14 plaintiff until his hearing before the Immigration Judge arose from this decision to
 15 commence proceedings[.]”); *Wang v. United States*, No. CV 10-0389 SVW (RCx), 2010 WL
 16 11463156, at *6 (C.D. Cal. Aug. 18, 2010); *Tazu v. Att’y Gen. U.S.*, 975 F.3d 292, 298–99 (3d
 17 Cir. 2020) (holding that 8 U.S.C. § 1252(g) and (b)(9) deprive district court of jurisdiction to
 18 review action to execute removal order).

19 As other courts have held, “[f]or the purposes of § 1252, the Attorney General
 20 commences proceedings against an alien when the alien is issued a Notice to Appear before
 21 an immigration court.” *Herrera-Correra v. United States*, No. CV 08-2941 DSF (JCx), 2008
 22 WL 11336833, at *3 (C.D. Cal. Sept. 11, 2008). “The Attorney General may arrest the alien
 23 against whom proceedings are commenced and detain that individual until the conclusion
 24 of those proceedings.” *Id.* at *3. “Thus, an alien’s detention throughout this process arises
 25

26 ² Congress initially passed § 1252(g) in the IIRIRA, Pub. L. 104-208, 110 Stat. 3009. In
 27 2005, Congress amended § 1252(g) by adding “(statutory or nonstatutory), including section
 28 2241 of title 28, United States Code, or any other habeas corpus provision, and sections
 1361 and 1651 of such title” after “notwithstanding any other provision of law.” REAL ID
 Act of 2005, Pub. L. 109-13, § 106(a), 119 Stat. 231, 311.

1 from the Attorney General’s decision to commence proceedings” and review of claims
 2 arising from such detention is barred under § 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509 F.3d
 3 947, 949 (9th Cir. 2007)); *Wang*, 2010 WL 11463156, at *6; 8 U.S.C. § 1252(g). As such,
 4 judicial review of the Bond Stay Claims is barred by § 1252(g). The Court should dismiss for
 5 lack of jurisdiction.

6 To the extent the individual Petitioners’ claims are representative of the Bond Stay
 7 Claims, as alleged, the pertinent claims of the individual Petitioners should also be
 8 dismissed for lack of jurisdiction.

9 (2) 8 U.S.C. § 1252(b)(9) bars review of the Bond Stay Claims.

10 Under § 1252(b)(9), “judicial review of all questions of law . . . including
 11 interpretation and application of statutory provisions . . . arising from any action taken . . .
 12 to remove an alien from the United States” is only proper before the appropriate court of
 13 appeals in the form of a petition for review of a final removal order. *See* 8 U.S.C. §
 14 1252(b)(9); *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999)
 15 (“*AADC*”). Section 1252(b)(9) is an “unmistakable ‘zipper’ clause” that “channels judicial
 16 review of all [claims arising from deportation proceedings]” to a court of appeals in the first
 17 instance. *Id.*; *see Lopez v. Barr*, No. CV 20-1330 (JRT/BRT), 2021 WL 195523, at *2 (D.
 18 Minn. Jan. 20, 2021) (citing *Nasrallah v. Barr*, 590 U.S. 573, 579–80 (2020)).

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

21 Notwithstanding any other provision of law (statutory or nonstatutory), . . . a
 22 petition for review filed with an appropriate court of appeals in accordance
 23 with this section shall be the sole and exclusive means for judicial review of
 24 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].

25 8 U.S.C. § 1252(a)(5). “Taken together, § 1252(a)(5) and § 1252(b)(9) mean that *any* issue—
 26 whether legal or factual—arising from *any* removal-related activity can be reviewed *only*
 27 through the [petition-for-review] process.” *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir.
 28 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, the Bond Stay Claims challenges the decision and action to detain them, which arises from DHS’s decision to commence removal proceedings, and is thus an “action taken . . . to remove [them] from the United States.” *See* 8 U.S.C. § 1252(b)(9); *see also, e.g., Jennings*, 583

1 U.S. at 294–95; *Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020) (finding that 8
 2 U.S.C. § 1226(e) did not bar review in that case because the petitioner did not challenge “his
 3 initial detention”); *Saadulloev v. Garland*, No. 3:23-CV-00106, 2024 WL 1076106, at *3
 4 (W.D. Pa. Mar. 12, 2024) (recognizing that there is no judicial review of the threshold
 5 detention decision, which flows from the government’s decision to “commence
 6 proceedings”). As such, the Court lacks jurisdiction over this action. The reasoning in
 7 *Jennings* outlines why the Bond Stay Claims cannot be reviewed by the Court.

8 While holding that it was unnecessary to comprehensively address the scope of §
 9 1252(b)(9), the Supreme Court in *Jennings* provided guidance on the types of challenges that
 10 may fall within the scope of § 1252(b)(9). *See Jennings*, 583 U.S. at 293–94. The Court found
 11 that “§1252(b)(9) [did] not present a jurisdictional bar” in situations where “respondents . . .
 12 [were] not challenging the decision to detain them in the first place.” *Id.* at 294–95. In this
 13 case, the BSC *does* challenge the government’s decision to detain them in the first place. *See*,
 14 *e.g.*, Pet., ECF No.1 ¶¶ 1–2 (“Plaintiffs are noncitizens detained at the Nevada Southern
 15 Detention Center (NSDC) who face prolonged detention Agency policies and practices
 16 further exacerbate Plaintiff’s plight—and prolong their detention and that of others”)
 17 Though the BSC frame their challenge relating to detention authority, rather than a
 18 challenge to DHS’s decision to detain them in the first instance, such creative framing does
 19 not evade the preclusive effect of § 1252(b)(9).

20 The fact that the BSC is challenge the United States’ decision, action, or basis upon
 21 which they are detained is enough to trigger § 1252(b)(9) because “detention *is* an ‘action
 22 taken . . . to remove’ an alien.” *See Jennings*, 583 U.S. 318, 319 (Thomas, J., concurring); 8
 23 U.S.C. § 1252(b)(9). The Court should dismiss the Bond Stay Claims for lack of jurisdiction
 24 under § 1252(b)(9). The BSC must present their claims before the appropriate court of
 25 appeals because they challenge the government’s decision or action to detain them, which
 26 must be raised before a court of appeals, not this Court. *See* 8 U.S.C. § 1252(b)(9). Similarly,
 27 to the extent the individual Petitioners’ claims are representative of the Bond Stay Claims,
 28 as alleged, the pertinent claims of the individual Petitioners should also be dismissed for

1 lack of jurisdiction; those claims of the individual Petitioners must be raised before a court
2 of appeals.

3 (3) 8 U.S.C. § 1252(f)(1) bars the Court's review of, and prevents it from
4 providing relief as to, the Bond Stay Claims.

5 Section 1252(f)(1) not only prohibits class-wide injunctive relief relating to specified
6 provisions of the INA, it also precludes coercive class-wide relief that would enjoin or
7 restrain the government's operation of the specified portions of the INA—including §§
8 1225(b)(2) and 1226(a). *See* 8 U.S.C. § 1252(f)(1). But even if standalone declaratory relief
9 were not barred, such relief would not meet the requirements of Rule 23(b)(2) because any
10 such relief would not affect the behavior of the government and would therefore constitute
11 an improper advisory opinion. The Court therefore cannot grant the BSC the relief they
12 seek. And thus, the BSC's injuries are not redressable. The Court should dismiss their claim
13 under Rule 12(b)(1) because they lack standing.

14 (i) *Class-wide declaratory relief runs afoul of § 1252(f)(1) because it would*
15 *impermissibly restrain the operation of § 1255(b)(2).*

16 Section 1252(f)(1) provides:

17 Regardless of the nature of the action or claim or of the identity of the party
18 or parties bringing the action, no court (other than the Supreme Court) shall
19 have jurisdiction or authority to enjoin or restrain the operation of provisions
20 of part IV of this subchapter, as amended by the Illegal Immigration Reform
21 and Immigrant Responsibility Act of 1996, other than with respect to the
22 application of such provisions to an individual alien against whom
23 proceedings under such part have been initiated.

24 8 U.S.C. § 1252(f)(1). This provision consists of two parts: (1) a general rule that courts lack
25 jurisdiction “to enjoin or restrain the operation” of the specified provisions “[r]egardless of
26 the nature of the action or claim,” and (2) an exception for “the application of such
27 provisions to an individual alien.” *Id.*

28 The BSC's request for declaratory relief does not comply with § 1252(f)(1). Section
1252(f)(1) is not limited to injunctions. It prohibits court orders that “enjoin or *restrain*” the
Executive Branch's operation of the covered provisions. *Id.* (emphasis added). The common
denominator of those terms is that they involve coercion. *See* Black's Law Dictionary 529
(6th ed. 1990) (“[e]njoin” means to “require,” “command,” or “positively direct” (emphasis

omitted)); *id.* at 1314 (“[r]estrain” means to “limit” or “put compulsion upon” (emphasis omitted)). Though declining to determine whether § 1252(f)(1) prohibits class-wide declaratory relief because only injunctive relief was at issue, the Supreme Court in *Aleman Gonzalez* indicated that a court may not impose coercive relief that “interfere[s] with the government’s efforts to operate” the covered provisions in a particular way. 596 U.S. at 551. If the relief sought would require the government to implement or refuse to implement procedures under § 1225(b)(2) or § 1226(a), that relief would be barred by § 1252(f)(1). *See Hamama v. Adducci*, 912 F.3d 869, 880 n.8 (6th Cir. 2018) (While “declaratory relief will not always be the functional equivalent of injunctive relief . . . in this case it is the functional equivalent.”). Indeed, the Supreme Court left open the question of whether declaratory relief is coercive such that it is barred by § 1252(f)(1). *Texas*, 597 U.S. at 839 (Barrett, J., dissenting).

Here, the “declaratory” relief sought by the BSC is impermissibly coercive and violates § 1252(f)(1). In arguing that “the plain text of the statutory provision demonstrates that § 1226(a), not § 1225(b), applies to people similarly situated to the Plaintiffs” and asking this Court for “a declaratory judgment finding Defendant’s policy and practice of staying bonds under 8 C.F.R. §1003.19 violate the INA, Due Process Clause and the APA” to the extent those arguments are advanced on the basis that and the proposed class’s detention is governed by § 1226(a) as opposed to § 1225(b)(2), the BSC really asks the Court to (1) restrain the government’s application of § 1225(b)(2), and (2) require that the government apply § 1226(a) instead. *See* Pet., ECF No. 1, at 22; *see also id.* ¶¶ 26–41 (arguing that “mandatory detention provision of § 1225(b)(2) does not apply to people such as the Plaintiffs and other putative class members”). The effect of the requested “declaratory” judgment is the equivalent of telling IJs they are precluded from determining that members of the BSC are detained under § 1225(b)(2). It essentially requires IJs to find that members of the BSC are really detained under § 1226(a). Such a result violates § 1252(f)(1) by “restrain[ing] the operation of” § 1225(b)(2). This also deprives the BIA of an opportunity to rule on the application of § 1225(b)(2) and § 1226(a) in a published decision. And the Class

1 Certification Motion reveals that the BSC seeks injunctive relief, or at least, relief that would
 2 restrain the operation of § 1225(b)(2). Class Certification Mot. at 21–22.

3 In arguing that numerosity is met, the Class Certification Motion states that
 4 “[b]ecause plaintiffs seek *injunctive* and declaratory relief, the numerosity requirement is
 5 relaxed.” *See id.* at 14 (emphasis added). This admission reveals the true nature of the relief
 6 sought here: an injunction, or at least the functional equivalent of an injunction that would
 7 restrain the operation of § 1225(b)(2) and coercively “interfere with the government’s efforts
 8 to operate” § 1225(b)(2) in a particular way. *See Aleman Gonzalez*, 596 U.S. at 551.

9 Section 1252(f)(1) therefore prevents the Court from reviewing the Bond Stay Claims
 10 and granting the coercive declaratory relief the BSC requests. Accordingly, an analysis
 11 under § 1252(f)(1) further indicates that Rule 23(b)(2)’s requirement “that final injunctive
 12 relief or *corresponding* declaratory relief is appropriate respecting the class as a whole” cannot
 13 be met. Fed. R. Civ. P. 23(b)(2) (emphasis added).

14 (ii) *Even if declaratory relief were available, it would not satisfy Rule*
 15 *23(b)(2)’s requirement that “corresponding declaratory relief is*
appropriate respecting the class as a whole.”

16 Even if standalone declaratory relief is not barred by § 1252(f)(1), the declaratory
 17 relief sought here is inappropriate because Rule 23 requires that any non-injunctive relief
 18 granted must be “corresponding declaratory relief.” *Id.* The Advisory Committee defines
 19 “corresponding declaratory relief” as any remedy that “as a practical matter . . . affords
 20 injunctive relief or serves as a basis for later injunctive relief.” Fed. R. Civ. P. 23(b)(2)
 21 Advisory Committee Note to 1996 Amendment; *see also* 7AA Fed. Prac. & Proc. Civ. § 1775
 22 (3d ed.). The purpose of the Rule 23(b)(2) class was to enjoin certain action or inaction on a
 23 class-wide basis, and that any anticipated declaratory relief issued under this provision
 24 should be equivalent to an injunction to satisfy the requirements of class certification. *See id.*
 25 *see also Coca-Cola Bottling Co. of Elizabethtown, Inc. v. Coca-Cola Co.*, 98 F.R.D. 254, 271 (D.
 26 Del. 1983) (refusing to certify a Rule 23(b)(2) class where “[d]etermination of the [] issues
 27 would not result in corresponding declaratory relief that would have the effect of enjoining
 28 the defendant from acting in the future”); *Sibley v. Diversified Collection Servs., Inc.*, No. 396-

1 cv-0816, 1998 WL 355492, *4 (N.D. Tex. June 30, 1998) (under Rule 23(b)(2), “the
2 declaratory judgment should be the equivalent of an injunction”) (internal citations
3 omitted). Because Rule 23(b)(2) allows only declaratory relief that has the same practical
4 effect as an injunction, and because § 1252(f)(1) prevents the BSC from obtaining any relief
5 that has the same effect as an injunction, the Court is unable to grant the class-wide relief
6 the BSC requested. For this reason, the BSC—again—lacks standing because redressability
7 cannot be met. Dismissal is warranted.

8 The Supreme Court in *Jennings* echoed this point when it suggested that if 8 U.S.C. §
9 1252(f)(1) prohibits class-wide injunctive relief, then it may equally prohibits corresponding
10 declaratory relief. *See Jennings*, 583 U.S. at 313 (“[I]f the Court of Appeals concludes that it
11 may issue only declaratory relief, then the Court of Appeals should decide whether that
12 remedy can sustain the class on its own” in light of Rule 23(b)(2)’s language concerning
13 “*corresponding*” relief (emphasis in original)). Any declaratory judgment here would be
14 limited to stand-alone declaratory relief, which is not contemplated by Rule 23(b)(2).

15 This conclusion is reinforced by *Onosamba-Ohindo v. Searls*, 678 F. Supp. 3d 364
16 (W.D.N.Y. 2023), which addressed whether class certification remained appropriate in light
17 of the unavailability of injunctive relief. The district court had certified a class defined as:
18 “All individuals currently detained at the Buffalo Federal Detention Facility under § 1226(a)
19 who will have a custody hearing before the Batavia or Buffalo Immigration Courts.” *Id.*
20 Following *Aleman Gonzalez*, the government moved to decertify because: (1) the court
21 certified the class only for purposes of injunctive relief, and injunctive relief is no longer
22 available; (2) because there could be no class-wide injunctive relief, there can be no
23 corresponding declaratory relief; and (3) post-*Aleman Gonzalez*, the Court cannot issue a
24 declaratory order that would provide relief to each member of the class. *Id.* at 371. The court
25 concluded that, in light of *Aleman Gonzalez*, it was not able to issue an indivisible injunctive
26 or declaratory remedy and decertified the class. *Id.*

27 The court’s order is instructive. It concluded that although *Aleman Gonzalez* forbids
28 an injunctive remedy, it was not forbidden from issuing a declaratory remedy under the

1 terms of 8 U.S.C. § 1252(f)(1). *Id.* at 369.³ Thus, the court proceeded to determine whether
 2 certification was still appropriate. *Id.* at 370. The court began with clarifying the question
 3 before it, explaining that for purposes of determining whether certification was still
 4 appropriate, “the relevant question is whether the Court could, in this case, issue an
 5 indivisible declaratory judgment that would satisfy these requirements.” *Id.* at 371. The
 6 court found that the answer to this question was no, because “[a]s Class Petitioner
 7 concedes,” the “Court’s issuance of the proposed declaration would not compel the
 8 government to operate the relevant statute in any particular way.” *Id.* at 372. The court
 9 noted that “the government would not be required—as it was by the Court’s preliminary
 10 injunction—to provide bond hearings that complied with the procedures outlined by the
 11 Court.” *Id.* Instead, armed with the declaration that could be issued in the case, “individual
 12 class members would still need to bring individual habeas corpus petitions, but could in
 13 those petitions invoke prior class-wide declaratory relief as one element in establishing their
 14 entitlement to *individual* injunctive relief.” *Id.* (cleaned up, emphasis in original).

15 The court explained the problems with this procedure: the declaration would
 16 constitute an improper advisory opinion, because it would not “*affect the behavior of the*
 17 *defendant towards the plaintiff.*” *Id.* (quoting *Hewitt v. Helms*, 482 U.S. 755, 761 (1987)
 18 (emphasis in original)). Rather, the “requested declaration would instead be relied upon by
 19 individual class members in hypothetical future litigation, in which those individual class
 20 members would be asking different courts to compel the government to conduct bond
 21 hearings in a particular manner based on issue preclusion.” *Id.* And, as another judge
 22 observed, “it would be silly to allow class-wide injunctions as long as plaintiffs use two
 23 steps—a class action for declaratory relief followed by individual injunction actions—
 24 instead of one.” *Alli v. Decker*, 650 F.3d 1007, 1020 (3d Cir. 2011) (Fuentes J., dissenting).

25
 26
 27 ³ While Defendants disagree with the *Onosamba-Ohindo* court’s determination that it was not
 28 forbidden from issuing declaratory relief, *see supra* IV.A.1.a.(3)(i), this case demonstrates
 that regardless of whether standalone declaratory relief is proper under these circumstances,
 such relief would still fail to pass muster under Rule 23(b)(2).

Thus, even if the Court were to find declaratory relief appropriate here, granting such relief would not satisfy Rule 23(b)(2).

If a declaratory judgment in this case is the functional equivalent of an injunction, then it is barred by § 1252(f)(1). If it is not the functional equivalent of an injunction, then granting standalone declaratory relief would provide no more than an impermissible advisory opinion and fail to meet Rule 23(b)(2)'s "corresponding declaratory relief" requirement. Either way, the BSC's request for declaratory relief is impermissible under § 1252(f)(1), and the Court lacks jurisdiction to grant it.

(iii) *BSC members' injuries are not redressable, and they lack Article III standing because the Court is precluded from granting declaratory relief under § 1252(f)(1).*

"[I]f the court is unable to grant the relief that relates to the harm, the plaintiff lacks standing" because the redressability element cannot be satisfied. *Gonzales v. Gorsuch*, 688 F.2d 1263, 1267 (9th Cir. 1982); *Rangel v. Boehner*, 20 F. Supp. 3d 148, 164, 175–76 (D.D.C. 2013), *aff'd*, 785 F.3d 19 (D.C. Cir. 2015) (finding plaintiff was not able to show redressability where the court could not grant the requested relief because it involved a political question). And a lack of standing requires dismissal. *See* Fed. R. Civ. P. 12(h)(3); *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 109 (1998). Because the Court is unable to provide the coercive class-wide relief that the BSC requests, their alleged injuries are not redressable, and they lack Article III standing. The Court should dismiss the Bond Stay Claims for lack of jurisdiction under Rule 12(b)(1).

2. The Bond Stay Claims Fail Under Rule 12(b)(6) and Should Be Dismissed.

a) *The Court should dismiss the Bond Stay Claims under Rule 12(b)(6) because applicants for admission must be detained under 8 U.S.C. § 1225 and Jennings v. Rodriguez.*

Under the INA, "admitted" means "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A). In contrast, "inadmissibility" is a "status" that can arise long after being

1 admitted by an immigration officer.⁴ *See, e.g., Barton v. Barr*, 590 U.S. 222, 236 (2020).
 2 “Lawful status and admission . . . are distinct concepts in immigration law: Establishing one
 3 does not necessarily establish the other.” *Sanchez v. Mayorkas*, 593 U.S. 409, 415 (2021). The
 4 “grounds for inadmissibility are assessed not only when a person is physically entering the
 5 country, but at multiple points in the immigration process.” *New York v. DHS*, 969 F.3d 42,
 6 51 (2d Cir. 2020).

7 Under 8 U.S.C. § 1225(a), an “applicant for admission” is defined as an “alien
 8 present in the United States who has not been admitted or who arrives in the United
 9 States.” Applicants for admission “fall into one of two categories, those covered by §
 10 1225(b)(1) and those covered by § 1225(b)(2).” *Jennings*, 583 U.S. at 287. Section
 11 1225(b)(2)—the one relevant here—is the “broader” of the two. *Id.* It “serves as a catchall
 12 provision that applies to all applicants for admission not covered by § 1225(b)(1) (with
 13 specific exceptions not relevant here).” *Id.* And § 1225(b)(2) mandates detention. *See* 8
 14 U.S.C. § 1225(b)(2). Indeed, the Board recently held “that an applicant for admission who is
 15 arrested and detained without a warrant while arriving in the United States, whether or not
 16 at a port of entry, and subsequently placed in removal proceedings is detained under section
 17 235(b) of the INA, 8 U.S.C. § 1225(b), and is ineligible for any subsequent release on bond
 18 under section 236(a) of the INA, 8 U.S.C. § 1226(a).” *Matter of Q. Li*, 29 I. & N. Dec. 66, 69
 19 (BIA 2025); *see also Matter of Fransico-Martin*, (BIA May 22, 2025) (unpublished) (“All other
 20 aliens arriving in and seeking admission to the United States who are placed directly in full
 21 removal proceedings after failing to establish their admissibility pursuant to section
 22 235(b)(2) of the INA, 8 U.S.C. § 1225(b)(2)(A), are likewise subject to detention ‘until
 23 removal proceedings have concluded.’”).

24 The Court should reject the BSC’s argument that the phrase “alien seeking
 25 admission” limits the scope of § 1225(b)(2)(A). *See* PI Motion, ECF No. 3, at 10. Statutory

27 ⁴ There are many grounds for inadmissibility under the INA. *See* 8 U.S.C. § 1182(a)(1)–(10).
 28 Only one of those is specifically limited to aliens “present without being admitted or
 paroled.” 8 U.S.C. § 1182(a)(6)(A).

language “is known by the company it keeps.” *Marquez-Reyes v. Garland*, 36 F.4th 1195, 1202 (9th Cir. 2022) (quoting *McDonnell v. United States*, 579 U.S. 550, 569 (2016)). The phrase “seeking admission” in § 1225(b)(2)(A) should be read in the context of the definition of “applicant for admission” in § 1225(a)(1). Applicants for admission are both those individuals present without admission and those who arrive in the United States. *See* 8 U.S.C. § 1225(a)(1). Both are understood to be “seeking admission” under § 1225(a)(1). *See Matter of Q. Li*, 29 I. & N. 66, 68 n.3 (BIA 2025) (quoting *Matter of Lemus*, 25 I. & N. 734, 743 (BIA 2021) (“Applicants for admission ‘who are not *actually* requesting permission to enter the United States in the ordinary sense are nevertheless deemed to be “seeking admission” under the immigration laws.”)). Congress made that clear in § 1225(a)(3), which requires all aliens “who are applicants for admission or otherwise seeking admission” to be inspected by immigration officers. 8 U.S.C. § 1225(a)(3). The word “or” here “introduce[s] an appositive—a word or phrase that is synonymous with what precedes it (‘Vienna or Wien,’ ‘Batman or the Caped Crusader’).” *United States v. Woods*, 571 U.S. 31, 45 (2013).).

The BSC’s interpretation also reads “applicant for admission” out of § 1225(b)(2)(A). But “one of the most basic interpretative canons” instructs that a “statute should be construed so that effect is given to all its provisions.” *Corley v. United States*, 556 U.S. 303, 314 (2009) (cleaned up)). The BSC’s interpretation fails that test. *See id.* It renders the phrase “applicant for admission” in § 1225(b)(2)(A) “inoperative or superfluous, void or insignificant.” *See id.* (quoting *Corley*, 556 U.S. at 314). If Congress did not want § 1225(b)(2)(A) to apply to “applicants for admission,” then it would not have included that phrase in the subsection. *See* 8 U.S.C. § 1225(b)(2)(A); *see also Corley*, 556 U.S. at 314.

Keep in mind that Congress passed IIRIRA to correct “an anomaly whereby immigrants who were attempting to lawfully enter the United States were in a worse position than persons who had crossed the border unlawfully.” *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc). Legislative history reveals that Congress “intended to replace certain aspects of the [then] current ‘entry doctrine,’ under which illegal aliens who have entered the United States without inspection gain equities and privileges in immigration

proceedings that are not available to aliens who present themselves for inspection at a port of entry.” *Id.* (quoting H.R. Rep. 104-469, pt. 1, at 225). The Court should reject the BSC’s interpretation because it would put individuals who “crossed the border unlawfully” in a better position than those “who present themselves for inspection at a port of entry.” *Id.* Individuals who presented at port of entry would be subject to mandatory detention under § 1225, but those who crossed illegally would be eligible for a bond under § 1226(a). The asserted “longstanding” agency practice does not change the analysis. *See* PI Motion, ECF No. 3, at 12–14; Pet., ECF No. 1, at ¶¶ 30–34. The weight given to agency interpretations “must always ‘depend upon their thoroughness, the validity of their reasoning, the consistency with earlier and later pronouncements, and all those factors which give them power to persuade.’” *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 432–33 (2024) (quoting *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944) (cleaned up)). And here, the agency has provided little, if any, analysis to support its reasoning. *See* 62 Fed. Reg. at 10323; *Maldonado v. Bostock*, No. 2:23-cv-00760-LK-BAT, 2023 WL 5804021, at *3, 4 (W.D. Wash. Aug. 8, 2023) (noting the agency provided “no authority” to support its reading of the statute). The agency’s practice therefore carries little weight. *See Loper Bright*, 603 U.S. at 432–33.

To be sure, “when the best reading of the statute is that it delegates discretionary authority to an agency,” the Court must “independently interpret the statute and effectuate the will of Congress.” *Loper Bright*, 603 U.S. at 395 (cleaned up). But “read most naturally, §§ 1225(b)(1) and (b)(2), mandate detention for applicants for admission until certain proceedings have concluded.” *Jennings*, 583 U.S. at 297 (cleaned up). The Bond Stay Claims should therefore be dismissed under Rule 12(b)(6).

B. The Remaining Bond Appeal Claim Should Be Dismissed

1 **1. The Court Lacks Jurisdiction to Review the Bond Appeal Claims and**
 2 **Should Dismiss under Rule 12(b)(1).**

3 ***a) 8 U.S.C. § 1252 precludes review of the Bond Appeal Claims.***

4 As stated above, § 1252(g) deprives courts of jurisdiction to review “any cause or
 5 claim by or on behalf of an alien arising from the decision or action by the Attorney General
 6 to [1] commence proceedings, [2] *adjudicate cases*, or [3] execute removal orders against any
 7 alien under this chapter.” 8 U.S.C. § 1252(g) (emphasis added). The Bond Appeal Claims
 8 trigger § 1252(g)’s bar on review of causes or claims arising from the Attorney General’s
 9 decision or action to adjudicate cases—here, the BIA’s adjudication of appeals.
 10 Members of the BIA possess delegated authority from the Attorney General. *See* 8 C.F.R. §
 11 1003.1(a)(1). The BIA exercises this delegated authority by adjudicating cases on appeal
 12 from an IJ, including a custody redetermination. *See* 8 C.F.R. §§ 1003.1(b); 236.1; 1236.1.
 13 Thus, appeals from members of the BAC to the BIA implicate action by the Attorney
 14 General to “adjudicate cases.” *Id.*; 8 U.S.C. § 1252(g); 85 Fed. Reg. 81588 (Dec. 16, 2020)
 15 (to be codified at 8 C.F.R. pts. 1003, 1240) (“In turn, ‘the term case means any proceeding
 16 arising under any immigration or naturalization law.’” (quoting 8 C.F.R. § 1001.1(g)). The
 17 Court therefore lacks jurisdiction to review the Bond Appeal Claims because they arise from
 18 the action by the Attorney General to adjudicate cases.

19 Section 1252(b)(9) similarly precludes review. As previously discussed, *supra*, §
 20 1252(b)(9) is an “unmistakable ‘zipper’ clause” that “channels judicial review of all [claims
 21 arising from deportation proceedings]” to a court of appeals in the first instance. *AADC*, 525
 22 U.S. at 483. The Bond Appeal Claims arise from action taken by DHS to remove them,
 23 which forms the basis of their subsequent appeals to the BIA. Thus, the Bond Appeal
 24 Claims necessarily constitute claims “arising from *any* action taken . . . to remove an alien
 25 from the United States” and are barred from review under § 1252(b)(9). 8 U.S.C. §
 26 1252(b)(9) (emphasis added). The BAC must present their Bond Appeal Claims to the
 27 appropriate court of appeals, not this Court. The Court should dismiss for lack of
 28 jurisdiction.

To the extent the individual Petitioners' claims are representative of the Bond Appeal Claims, as alleged, the pertinent claims of the individual Petitioners should also be dismissed for lack of jurisdiction.

2. The Court Should Dismiss the Bond Appeal Claims under Rule 12(b)(6).

a) The Petition fails to state a claim for relief under the Due Process Clause to challenge the alleged delay of bond appeals.

The Petition fails to plead a protected interest in the pace of adjudication of immigration bond appeals and cannot identify a constitutionally mandated timeframe for bond appeals or that the current process is deficient. A court may dismiss a petition for failure to state a claim under Fed. R. Civ. P. 12(b)(6) if "it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984). To state a claim, a petition must contain "sufficient facts alleged under a cognizable legal theory." *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

The Petition claims that "[b]y not adjudicating appeals within thirty days of the filing of a notice of appeal, the BIA does not provide timely appellate review of detention decisions," thereby violating the Due Process Clause of the Fifth Amendment. Pet., ECF No. 1, ¶¶ 79–80. However, in order to survive a motion to dismiss, Plaintiff must offer more than mere conclusory statements. *Bell Atl. Corp.*, 550 U.S. at 555. "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Iqbal*, 556 U.S. at 663. To articulate a sufficient due process claim, the BAC must plead: (1) what liberty or property interest is implicated; (2) the process due; and (3) whether the administrative process provided meet or exceed this threshold. See *Ky. Dep't of Corrections v. Thompson*, 490 U.S. 454, 460 (1989).

(1) The BAC fails to identify a protected interest in the pace of immigration bond appeals.

The Petition fails to identify a protected liberty or property interest to which the BAC has a legitimate claim of entitlement, which due process requires. *Ky. Dep't of Corrections*, 490 U.S. at 460. The BAC avers that "the Due Process Clause guarantees persons in civil

detention timely appellate review of the decision to detain.” Pet., ECF No., at 21, ¶ 108⁵. But clearly identifying the interest at stake is a threshold requirement for any due process claim. “Once a petitioner has identified a liberty or property interest protected by the Constitution, the Court must determine whether constitutionally sufficient procedural protections have been provided.” *Fatty v. Nielsen*, 2018 WL 2244713, *17 (W.D. Wash. April 5, 2018) (citing *Flores-Chavez v. Ashcroft*, 362 F.3d 1150, 1161 (9th Cir. 2004)). And while the Petition references liberty in its introduction, the BAC fails to identify either interest or so much as outline its legal basis in the barest terms. Pet., ECF No. 1, ¶¶ 8, 78-80. The BAC’s failure to do so is material as a liberty interest and a property interest rely upon distinct legal theories. The Petition is defective and fails to articulate a cognizable legal theory required to survive a motion to dismiss. *Balistreri*, 901 F.2d at 699. As such, the BAC fails to identify a liberty or property interest in the pace of adjudications of bond appeals to give rise to a due process claim. The claim should be dismissed.

(2) The BAC fails to plausibly state a claim to a specific timeframe for bond appeals.

Even assuming a liberty or property interest here, the BAC cannot plausibly state a claim that the Due Process Clause requires the adjudication of bond appeals within 30 days. Pet. ¶¶ 12, 79–80; *see also id.* at 23. As an initial matter, immigration detention, including pre-order detention, has survived Due Process review and detention periods of 180 days or longer have been upheld as constitutional. *Jennings*, U.S. at 323 (“This Court has never held that detention during removal proceedings is unconstitutional. To the contrary, this Court has repeatedly recognized the constitutionality of that practice. *See Demore*, 538 U. S. at 523 (explaining that detention is ‘a constitutionally valid aspect of the deportation process’); *accord, Reno v. Flores*, 507 U. S. 292, 305-306, (1993); *Shaughnessy v. United States ex rel. Mezei*, 345 U. S. 206, 215, (1953); *Carlson*, 342 U. S., at 538, 542. And unlike the criminal context, where speedy trial statutes flow from constitutional due process guarantees, there is no such requirement in the context of immigration detention. The BAC would need to show

⁵ The Petition appears to include a typo since paragraph 108 was included between paragraphs 78 and 79 of the Petition.

1 something more, but fails, to plausibly state a claim that any specific timeframe for a bond
 2 appeal is constitutionally required, let alone an adjudication within 30 days or less. *Ky. Dep't*
 3 *of Corrections v. Thompson*, 490 U.S. at 460.

4 Next, the INA sets forth no deadline for deciding an appeal; rather it's laid out by
 5 regulation. *See* 8 C.F.R. §§ 1003.38(b), 1003.1(e)(8)(i). And there is no reason to conclude
 6 that Congress intended to restrict the Board's pace of adjudication or that the length of time
 7 at issue here is inconsistent with the statute. *Cf. Johnson v. Arteaga*, 596 U.S. 573, 580–81
 8 (2022) (reversing decision by court of appeals to impose six-month deadline for bond
 9 hearings where text of INA did not “address or even hint” at such a requirement (cleaned
 10 up)). Specifically, EOIR's regulation aspires to adjudicate Board appeals within 180 days.
 11 *See* 8 C.F.R. § 1003.1(e)(8)(i). EOIR's regulation reserves that “time limits for the
 12 adjudication of appeals reflect an internal management directive . . . and shall not be
 13 interpreted to, create any substantive or procedural rights enforceable before any [IJ] or the
 14 Board, or in any court of law or equity.” 8 C.F.R. § 1003.1(e)(8)(vi); *Smriko v. Ashcroft*, 387
 15 F.3d 279, 295 (3d Cir. 2004) (“Thus, [8 C.F.R. § 1003.1(e)(8)(vi)] contemplate[s] that the
 16 Board's compliance with provisions establishing time limits for the adjudication of appeals
 17 will not be subject to judicial review.”).

18 While the BAC points a right to a “timely adjudication” in the criminal context, it
 19 does not even attempt to define what that timeframe would be or how it applies in the civil
 20 immigration context. Pet., ECF No.1, ¶ 53. The Petition concedes that its line of speedy
 21 trial cases address criminal pre-trial protections while the BAC has folded in *all* bond
 22 appeals, which necessarily includes those pre- and post-final-removal-order bond requests.
 23 Pet., ECF No. ¶ 52–53. Moreover, each of speedy trial cases first rely upon the federal
 24 statutes which guarantee pre-conviction protections are inapplicable to the instant case. *See,*
 25 *e.g., Stack v. Boyle*, 342 U.S. 1, 4 (1951) (Judiciary Act of 1789, 1 Stat. 73, 91 and Fed. R. Cr.
 26 P. 46 (a)(1)); *United States v. Salerno*, 481 U.S. 739, 747 (1987) (Speedy Trial Act, 8 U.S.C. §
 27 3161 *et seq.*); *United States v. Fernandez-Alfonso*, 813 F.2d 1571, 1572 (1987) (18 U.S.C. §
 28 3145(b)). None of these speedy trial statutes apply to in the context of immigration

1 detention, and their standards for what constitutes “timely review” are unpersuasive here.
2 Without any further support, the Petition baldly implies that Due Process requires 30 days
3 for an adjudication of a bond appeal. Pet., ECF No. ¶ 79–80. The BAC fails to provide
4 more than mere conclusory statements. *Iqbal*, 556 U.S. at 663.

5 Finally, the BAC failed to raise a cognizable claim not only that the current
6 regulatory guidelines in § 1003.1(e)(8)(i) are constitutionally insufficient, but also that the
7 Board is failing to comply with them. Generally, the Board strives to decide appeals within
8 180 days. *Id.* The BAC relies on EOIR average bond appeal processing times as represented
9 in the Petition, which references, but fails to attach, the full data set as provided by EOIR.
10 Pet., ECF No. 1, ¶ 46; Exhibit A, Declaration of Aaron Korthuis (“Korthuis Decl.”) ¶¶ 5–8.
11 ECF No. 7 in Case No. 3:25-cv-05240, Eastern District Court of Washington (March 20,
12 2025). In particular, the declaration highlights that the average bond appeal processing time
13 for 2024 was 204 days. *Id.* at ¶ 6. But this data point, without context, is unpersuasive
14 because it necessarily includes the processing times for those individuals who have been
15 released from detention while their bond appeals are still pending and are therefore
16 excluded from the BAC. *See* Exhibit B, Declaration of Christopher Stanislawski
17 (“Stanislawski Decl.”) ¶ 5.d., 5.h., 5.i.–5.k., ECF No. 5 in Case No. 3:25-cv-05240, Eastern
18 District Court of Washington (March 20, 2025). Accordingly, the BAC cannot show that
19 the agency is failing to comply with its obligations.

20 Because the BAC has failed to state a cognizable claim that the current immigration
21 appeal procedures are constitutionally insufficient, the Court must dismiss the claims. To
22 the extent the individual Petitioners’ claims are representative of the Bond Appeal Claims,
23 as alleged, the pertinent claims of the individual Petitioners should also be dismissed
24 because the individual Petitioners failed to state a cognizable claim that the current
25 immigration appeal procedures are constitutionally insufficient.

26 IV. CONCLUSION

27 For the foregoing reasons, the Court should dismiss the Petition under Rule
28 12(b)(1), 12(b)(6), or both.

1 Respectfully submitted this 27th day of September 2025.

2 SIGAL CHATTAH
3 Acting United States Attorney

4 /s/ Christian R. Ruiz
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6 Assistant United States Attorney
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