

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO: 1:25-cv-23792 BLOOM / ELFENBEIN

PIERRE REGINALD BOULOS,

Petitioner,

vs.

DIRECTOR, U.S. Department of Homeland
Security Immigration and Customs Enforcement
Enforcement and Removal Operations
Miami Field Office; ACTING DIRECTOR,
U.S. DHS ICE; SECRETARY, DHS; U.S.
ATTORNEY GENERAL; ACTING DIRECTOR,
U.S. Department of Justice Executive Office
for Immigration Review; and U.S. SECRETARY
OF STATE,

Respondents.

**RESPONDENTS' RETURN TO PETITION FOR WRIT OF HABEAS CORPUS
AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Respondents, by and through their undersigned counsel, respond as follows to Petitioner PIERRE REGINALD BOULOS ("Boulos")'s Verified Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 and Complaint for Declaratory and Injunctive Relief [ECF 1].

INTRODUCTION

The Court should deny Petitioner Boulos's petition for a writ of habeas corpus. First, Boulos's voluntary renunciation of his U.S. citizenship became effective February 14, 2008. Therefore, the United States has authority to presently detain him pursuant 8 U.S.C. § 1226 of the Immigration and Nationality Act ("INA"). Boulos seeks (1) to challenge Secretary of State Rubio's determination as to his immigration status and (2) immediate release from immigration custody. Boulos's claims suffer from multiple jurisdictional defects: (1) the INA prohibits district courts from

entertaining challenges to removability, including the decision to commence removal proceedings; (2) district courts lack jurisdiction to reverse the decision to detain Boulos; and (3) district courts lack jurisdiction to adjudicate claims of nationality in habeas proceedings if the petitioner has not exhausted the claim before the immigration authorities. The Court should reject Boulos's misuse of habeas and deny the petition.

BACKGROUND

I. Legal Framework for Detention

In the Immigration and Nationality Act ("INA"), Congress enacted a multi-layered statutory scheme for civil detention pending a decision on removal, during the administrative and judicial review of removal orders, and in preparation for removal. *See generally* 8 U.S.C. §§ 1225, 1226, 1231. The time and circumstances of entry, as well as the stage of the removal process, determine where a detainee falls within this scheme and whether detention is discretionary or mandatory. For individuals like Boulos, § 1226 "generally governs the process of arresting and detaining . . . aliens pending their removal." *Jennings v. Rodriguez*, 138 S. Ct. 830, 837 (2018). Within § 1226, subsection (a) provides that "an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a).

Section 1226(a) detainees may be detained for the duration of the removal proceedings or be released "on bond of at least \$1,500," or conditional parole. *See* 8 U.S.C. § 1226(a)(1)-(2). When an individual is taken into custody under § 1226(a), an Immigration and Customs Enforcement ("ICE") official makes an initial custody determination, including the setting of a bond. *See* 8 C.F.R. §§ 236.1(c)(8), 236.1(d). The ICE officer may "in [his] discretion, release an alien" provided that the officer is satisfied that "the alien is likely to appear for any future proceeding." 8 C.F.R. § 236.1(c)(8). If ICE determines that detention during the pendency of removal proceedings is necessary, the detainee may request a custody redetermination hearing before an immigration judge ("IJ"). *See* 8 C.F.R. §§ 236.1(d), 1003.19,

1236.1(d). Generally, IJs have broad discretion in deciding whether to release someone on bond. *Matter of Guerra*, 24 I. & N. Dec. 37, 39 (BIA 2006).

These same regulations limit an IJ's discretion. IJs cannot review ICE's custody determinations for someone like Boulos, who is charged with removability under Section 1227(a)(4). 8 C.F.R. § 1003.19(h)(2)(i)(C). Although Boulos cannot challenge ICE's custody determination specifically, he can request that an IJ determine whether he is properly subject to removal under Section 1227(a)(4). 8 C.F.R. § 1003.19(h)(2)(ii); *see also Hussain v. Gonzales*, 492 F. Supp. 2d 1024, 1033 (E.D. Wisc. 2007), *aff'd sub nom. Hussain v. Mukasey*, 510 F.3d 739 (7th Cir. 2007). He can submit evidence and legal authority as to whether he is properly included within the removability charge to allow the IJ to make the determination in the first place. *Hussain*, 492 F. Supp. 2d at 1033. If Boulos disagrees with the IJ's determination, he can seek review before the Board of Immigration Appeals ("BIA"). 8 C.F.R. § 1003.19(f); *see also Hussain*, 492 F. Supp. 2d at 1033 (discussing the BIA's decision determining proper detention authority and custody review process).

II. Boulos's Immigration Status

Pierre Reginald Boulos is a citizen of Haiti. *See Exhibit 1*, Record of Deportable/Inadmissible Alien (I-213). Petitioner was born in the State of New York but formally renounced his United States nationality on February 14, 2008 by taking the Oath of Renunciation. *See* Declaration of Matthew Pierce and exhibits attached thereto as Exhibit 2.

On or about February 27, 2020, Petitioner applied for a B/B2 Nonimmigrant Visa ("NIV"). *See Exhibit 1*, I-213. Petitioner's application was approved on or about May 13, 2020. *Id.* Petitioner entered the U.S. on June 22, 2021. *Id.* On or about March 26, 2024, United States Citizenship and Immigration Services ("USCIS") granted Petitioner's application to adjust his status to a lawful permanent resident of the United States. *Id.* In February 2025, Petitioner was admitted to the United States at Miami International Airport as a Lawful Permanent Resident. *Id.*

Under INA § 237(a)(4)(C), an alien is deportable from the United States if the Secretary of State has reasonable grounds to believe the alien's presence or activities

in the United States would have potentially serious adverse foreign policy consequences for the United States. INA § 237(a)(4)(C). In June 2025, U.S. Secretary of State Marco Rubio determined that Petitioner is a deportable alien under INA § 237(a)(4)(C) (8 U.S.C. 1227(a)(4)(C)). *See Exhibit 1*, I-213; *see also Exhibit 3*, Memorandum for the Secretary of Homeland Security from Secretary of State Marco Rubio (“Rubio Memorandum”). Secretary Rubio further stated that Petitioner has engaged in a campaign of violence, gang support, and trafficking weapons and drugs that has contributed to the destabilization of Haiti. *See Exhibit 3*, Rubio Memorandum. Secretary Rubio concluded that allowing Petitioner to remain in the United States undermines U.S. foreign policy interest in stabilizing Haiti and the region, as it condones his continued actions contrary to that objective. *See Exhibit 3*, Rubio Memorandum. *See also Exhibit 1*, I-213.

III. Boulos’s Immigration Proceedings

On July 17, 2025, HSI Miami and ERO Miami arrested Petitioner to initiate removal proceedings. *See Exhibit 4*, I-200, Warrant for Arrest of Alien. On July 18, 2025, Petitioner was placed in removal proceedings via the issuance of a Notice to Appear (“NTA”). *See Exhibit 5*, NTA. The NTA charges Petitioner with removability under INA sections 237(a)(4)(C)(i) and 237(a)(1)(a). *Id.*

On July 31, 2025, an Immigration Judge denied Petitioner’s request for custody redetermination hearing, finding that Petitioner is subject to mandatory detention under 8 C.F.R. § 1003.19(h)(2)(i)(C). *See Exhibit 6*, Bond Order. On August 26, 2025, the Immigration Judge conducted a master calendar hearing to address contested removal charges. Petitioner’s removal proceedings before the Immigration Court remain pending; a hearing is scheduled for September 22, 2025. *See Exhibit 7*, Automated Case Information.

Petitioner is currently detained at the Krome North Service Processing Center. *See Exhibit 8*, EARM Detention History.

IV. Boulos’s Habeas Petition

On August 22, 2025, Petitioner filed the instant habeas petition and complaint for declaratory and injunctive relief, and emergency motion for preliminary

injunction and/or temporary restraining order in the District Court for the Southern District of Florida,¹ challenging ICE custody. Stopping just short of alleging that he *is* a U.S. citizen, Boulous alleges that he has a “colorable claim” to being a U.S. citizen. *See* ECF 1 at ¶¶ 1, 13, 135 (petition). Boulous goes on to allege that DHS’s arrest and detention of him was a “retaliatory action” by the Respondents “for engaging in protected speech.” *Id.* at ¶ 137-38.

Boulos brings a claim under the Non-Detention Act (Count One), alleging that because he has a “colorable claim to U.S. citizenship, . . . Respondents have no authority under the INA to detain [him].” *Id.* at ¶ 135. Boulous also brings claims under the Due Process Clause of the Fifth Amendment (Count Two) and the First Amendment (Count Three). Finally, Boulous brings a claim under the Administrative Procedure Act (“APA”) (Count Four), alleging that the Secretary of States’s determination of deportability under 8 U.S.C. § 1227(a)(4)(C) exceeds agency authority, lacks substantial evidence, and is arbitrary and capricious. *Id.* at ¶ 151.

Boulos requests that this Court assume jurisdiction over this matter, order his immediate release, and declare that Respondents’ actions to arrest and detain him violated the First Amendment and Due Process Clause of the Fifth Amendment. *Id.* at 28-29 ¶¶ 1-11.

On August 22, 2025, Boulous filed his motion for a preliminary injunction. *See* ECF 5. In seeking the injunction, Boulous limits his requested relief to enjoining Respondents from transferring him out of this district. *See generally id.*

¹ The Petition names DHS ICE ERO Miami Field Office Director, DHS ICE Acting Director, and DHS Secretary as Petitioner’s legal custodians. A writ of habeas corpus must “be directed to the person having custody of the person detained.” 28 U.S.C. § 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). His immediate custodian is Charles Parra, Assistant Field Office Director. Accordingly, the proper Respondent in the instant case is Mr. Parra, in his official capacity, and all other respondents should be dismissed.

LEGAL STANDARD

A district court may grant a writ of habeas corpus to any person who demonstrates he is in custody in violation of the Constitution or laws of the United States. 28 U.S.C. § 2241(c)(3). The right to challenge the legality of a person's confinement through a petition for a writ of habeas corpus extends to those persons challenging the lawfulness of immigration-related detention. *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001); and *Demore v. Kim*, 538 U.S. 510, 517 (2003).

"Petitioner 'bears the burden of proving that he is being held contrary to law; and because the habeas proceeding is civil in nature, he must satisfy his burden of proof by a preponderance of the evidence.'" *Freeman v. Pullen*, 658 F. Supp. 3d 53, 58 (D. Conn. 2023) (quoting *McDonald v. Feeley*, 535 F. Supp. 3d 128, 135 (W.D.N.Y. 2021)); *Bradin v. United States Prob. and Pretrial Servs.*, No. 22-cv-3032, 2022 U.S. Dist. LEXIS 72062, 2022 WL 1154622, at *3 (D. Kan. Apr. 19, 2022) (citing cases discussing burden of proof in a habeas case under § 2241).

LEGAL ARGUMENT

I. This Court Lacks Jurisdiction Under the INA and REAL ID Act

Through a habeas petition, Boulos first challenges the determination by the U.S. Department of State that Boulos validly renounced his citizenship. Second, he challenges the determination by the Department of State through Secretary Rubio's memorandum (and by DHS and EOIR through the issuance of an NTA), that his presence or activities in the United States poses serious adverse foreign policy consequences for the United States. Petition ¶ 6. In both cases, this Court lacks the authority to hear those claims. By way of the INA and then the REAL ID Act, Congress divested federal district courts from hearing claims related to removal. 8 U.S.C. § 1252(b)(9). So too any claim related to the decision to commence removal proceedings. *Id.* § 1252(g). But that is precisely what Boulos challenges here. Such claims are barred. Congress requires channeling this sort of suit through the petition-for-review process; there is no present role for the federal district courts to play.

In seeking release, Boulos seeks to reverse the Government's decision to detain him pending removal proceedings. Congress, however, left that decision to the

Secretary of Homeland Security and made that decision unreviewable. Congress thus insulated such discretionary decisions from judicial review.

Boulos's APA claim does not vest the Court with jurisdiction, for two reasons. First, the APA carves out "statutes [that] preclude judicial review" as an exception to judicial review of agency actions. 5 U.S.C. § 701(a)(1). As noted above, Section 1252(g) is such a statute. And second, the APA bars the Court from reviewing "agency action that is committed to agency discretion by law." 5 U.S.C. § 701(a)(2). The Secretary of State has wide latitude to deport noncitizens if he has "reasonable grounds to believe" that their presence or activities "would have potentially serious adverse foreign policy consequences for the United States." *See* 8 U.S.C. § 1227(a)(4)(C)(i). The Secretary of State's foreign policy determination is vested to his discretion by law. *Id.* The APA thus precludes judicial review over Boulos's claim.

i. Section 1252(b)(9) bars relief and review

The Eleventh Circuit has unequivocally stated that "since the passage of the REAL ID Act in 2005, a petition for review filed with the appropriate court is now a non-citizen's exclusive means of review of a removal order." *Fagan v. United States*, No. 21-13524, 2023 U.S. App. LEXIS 7329, at *4 (11th Cir. Mar. 28, 2023) (cleaned up) (citing *Alexandre v. U.S. Att'y Gen.*, 452 F.3d 1204, 1206 (11th Cir. 2006 and 8 U.S.C. § 1252(a)(5)). Through the REAL ID Act, Congress expanded the jurisdiction of courts of appeals "to review all legal and constitutional errors in a removal order," but it precluded "habeas corpus relief" in the district courts under § 2241. *See Alexandre*, 452 F.3d at 1206. Despite this directive, Boulos presses forward in a habeas action that his removability charge is a result of alleged First Amendment discrimination and that his detention violates due process. He must bring those challenges through a petition for review. This Court lacks jurisdiction over the matter (ignoring the fact that the petition does not contain any allegations of protected speech).

In passing the REAL ID Act, Congress prescribed a single path for judicial review of orders of removal: "a petition for review filed with an appropriate court of appeals." 8 U.S.C. § 1252(a)(5). The REAL ID Act further provides that, "[j]udicial

review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, *arising from any action taken or proceeding brought to remove an alien from the United States* under this subchapter shall be available only in judicial review of a final order under this section.” 8 U.S.C. § 1252(b)(9) (emphasis added). Read in conjunction with section 1252(b)(9), section 1252(a)(5) expresses Congress’s intent to channel and consolidate judicial review of every aspect of removal proceedings into the petition-for-review process in the courts of appeals. H.R. Conf. Rep. No. 109-72, at 174–75; *see also Bonhometre v. Gonzales*, 414 F.3d 442, 446 (3d Cir. 2005) (highlighting Congress’s “clear intent to have all challenges to removal orders heard in a single forum (the courts of appeals)” as part of a petition for review).

In fact, “most claims that even relate to removal” are improper if brought before the district court. *E.O.H.C. v. Sec. United States Dep’t of Homeland Sec.* 950 F.3d 177, 184 (3d Cir. 2020). Pursuant to 8 U.S.C. §§ 1252(b)(9) and 1252(a)(5), “Congress has stripped the District Courts of jurisdiction to decide all legal and factual questions related to an alien’s eligibility for removal.” *Guzman v. Barr*, No. 19-cv-07163, 2021 U.S. Dist. LEXIS 7555, 2021 WL 135909, at *3 (S.D.N.Y. Jan. 14, 2021) (citing *Reno v. Am. Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483, (1999) (“AADC”) (describing 8 U.S.C. § 1252 as a “zipper clause” which prohibits “non-final-order” judicial review of removal questions)); *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (“Taken together, § 1252(a)(5) and § 1252(b)(9) mean that any issue – whether legal or factual – arising from any removal-related activity can be reviewed only through the [petition-for-review] process.”).

That should resolve this case. Boulos can challenge his removal in front of an IJ, who will determine whether Boulos is removable. 8 U.S.C. §§ 1229a(a), (c). The government must show by clear and convincing evidence that Boulos is removable. 8 U.S.C. § 1229a(c)(3). This includes resolving Boulos’s “colorable claim to being a United States citizen.” Pet. at ¶ 1. *See Fagan*, 2023 U.S. App. LEXIS 7329, at *5 (holding that “district court correctly found that it lacked jurisdiction over Fagan’s § 2241 habeas corpus petition, which rested on his claim to U.S. citizenship.”); *Asemani*

v. Att’y Gen. of U. S., 140 F. App’x 368, 373 n. 2 (3d Cir. July 22, 2005)(holding that petitioner seeking judicial review of his nationality status prior to a final removal order being entered, “cannot even bring such a petition under today’s law.”); *but see Flores-Torres v. Mukasey*, 548 F.3d 708, 711-12 (9th Cir. 2008) (district court has habeas jurisdiction over claim of petitioner that he is unlawfully in immigration custody because he is a U.S. citizen, and petitioner does not have to exhaust administrative remedies because he claims he is not an alien). Boulos then has a right to appeal an adverse order from the IJ to the BIA. 8 U.S.C. § 1229a(c)(5). If he is unsuccessful with his administrative appeal, he can obtain Article III judicial review by filing a petition for review with the appropriate court of appeals. 8 U.S.C. § 1252(a)(5). As important, during immigration proceedings, and then later before the court of appeals, Boulos will have the ability to press his constitutional claims, along with any other bases he wishes to raise to contest his detention and/or removal. *See* 8 U.S.C. § 1252(b)(9) (preserving judicial review of “interpretation and application of constitutional and statutory provisions” for courts of appeals but stripping all other courts of jurisdiction, including under habeas, to review such questions of law and fact). Boulos’s claim regarding nationality and citizenship would be reviewable through a petition for review; the appropriate court of appeals may either: (1) decide the claim if there is no genuine issue of material fact; or (2) transfer the matter to the district court where the petitioner resides if there is a genuine issue of material fact. 8 U.S.C. § 1252(b)(5)(A),(B).

The decision to detain Boulos and his removability are inextricably intertwined and confirms the importance of Boulos pursuing this challenge before an IJ first. Boulos is permitted to challenge his detention and ask an IJ whether he is properly subject to the foreign policy removability charge. 8 C.F.R. § 1003.19(h)(2)(ii). Should a district court second-guess that decision in the habeas context, it would necessarily vacate the removability charge. This challenge sufficiently “relate[s] to removal.” *E.O.H.C.*, 950 F.3d at 184. And this is exactly the sort of piecemeal litigation the INA meant to avoid.

Congress specifically preserved judicial review of “constitutional claims or questions of law raised upon a petition for review filed with an appropriate court of appeals[.]” 8 U.S.C. § 1252(a)(2)(D). The Supreme Court recognized that § 1252(a)(2)(D) was intended to preserve the kind of review traditionally available in a habeas proceeding, including review of the “erroneous application or interpretation of statutes.” *Guerrero-Lasprilla v. Barr*, 589 U.S. 221, 232 (2020). Boulos can obtain meaningful Article III review of his removability through a petition for review. In *Massieu v. Reno*, for instance, a petitioner had challenged the predecessor to Boulos’s deportability ground,² arguing that it violated the Due Process Clause because it was impermissibly vague. 91 F.3d 416, 417 (3d Cir. 1996) (*Alito, J.*). In reversing the district court’s order declaring the provision unconstitutional and enjoining deportation proceedings, the Third Circuit held that a petitioner must first exhaust his administrative remedies before the immigration court and a petition for review. *Id.* The *Massieu* court specifically noted that for “an alien attempting to prevent an exclusion or deportation proceeding from taking place in the first instance,” he must avail himself of the administrative procedures. *Id.* at 421.

Massieu is on all fours with this case, and confirms that Boulos can and must raise his First and Fifth Amendment challenges to removability through the process created by Congress, starting with removal proceedings before the immigration court and culminating in a petition for review before the appropriate court of appeals. *See id.* at 422 (recognizing that the court of appeals could review the final removal order and “all matters on which the validity of the final order is contingent.”) (quoting *INS v. Chadha*, 462 U.S. 919, 937–39 (1983)); *id.* at 423 (reaffirming that district court review is not appropriate and review of removal is not meaningfully precluded when “the challenge by the aliens is neither procedural nor collateral to the merits”). Boulos may present his as-applied constitutional arguments before an IJ who could rule on the issue. *See Yoc-Us v. Att’y Gen.*, 932 F.3d 98, 102 (3d Cir. 2019) (noting that an IJ had denied a motion to terminate proceedings where the petitioners argued that

² Previously found at 8 U.S.C. § 1251(a)(4)(C)(i).

evidence had been gathered in violation of their Fourth Amendment rights). To the extent that an IJ may not be able to decide an issue, he can develop the record for further review. Although the immigration court may not be able to address Boulos's potential broader constitutional challenges immediately, it can review whether the Secretary of State made the requisite finding before Boulos was charged with the specific ground of removability. *See id.* at 424, 426 (noting that an immigration judge is not authorized to consider the constitutionality of the statute but could consider whether a petitioner is deportable).

Here, Boulos's challenge to the basis for commencing his removal proceedings—which he argues is the Secretary of State's determination pursuant 8 U.S.C. § 1227(a)(4)(C)(i)—is “part of the process by which . . . removability will be determined,” and Boulos's claims therefore “arise from” the removal proceedings. *P.L. v. U.S. Immigr. & Customs Enft.*, No. 19-cv-01336, 2019 U.S. Dist. LEXIS 104478, 2019 WL 2568648, at *3 (S.D.N.Y. June 21, 2019) (“In other words, because Plaintiffs are challenging, by seeking to enjoin, a ‘part of the process by which . . . removability will be determined,’ this court does not have jurisdiction.”) (citation omitted). *See also Tazu v. AG United States*, 975 F.3d 292, 299 (3d Cir. 2020) (finding that § 1252(b)(9) bars review to questions that “are bound up with (and thus ‘arise from’) an ‘action taken’ to remove [an alien].”).

Boulos's charge of removability clearly falls within that category. Boulos challenges *whether* he can be detained, and *whether* he can be removed. That goes to the heart—and is certainly “part of”—Boulos's removal. *Tazu*, 975 F.3d at 299. It is different in kind than the sort of collateral claims that might otherwise escape review—such as a claim that is “tangential” to his “pending removal proceedings.” *Canal A Media Holdings v. USCIS*, 964 F.3d 1250, 1257 (11th Cir. 2020). But here, Boulos is specifically challenging “the process of deciding removability [and] the Government's decision to detain” him, and thus his challenge falls within the ambit of § 1252(b)(9). *E.O.H.C.*, 950 F.3d at 185 (citing *Jennings*, 138 S. Ct. at 841).

If Boulos ultimately receives a removal order from an IJ, then he can raise any challenge that he sees fit with the board of immigration appeals and then the

appropriate court of appeals. That path remains available, and therefore, § 1252(b)(9) bars this Court's review.

ii. Boulos's Petition Runs Afoul of § 1252(g)

Boulos's claims and request for relief also run headlong into the independent jurisdictional bar contained in § 1252(g). He challenges the Government's decisions to charge him with removability and then detain him, which arise "from the decision [and] action" to "commence proceedings." 8 U.S.C. § 1252(g). Regardless of his framing, this Court does not have jurisdiction to entertain such a challenge, and Boulos must do so through a petition for review.

Section 1252(g), as amended by the REAL ID Act, specifically deprives courts of jurisdiction, including habeas corpus jurisdiction, to review "any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to [1] commence proceedings, [2] adjudicate cases, or [3] execute removal orders against any alien under this chapter." 8 U.S.C. § 1252(g). Section 1252(g) eliminates jurisdiction "[e]xcept as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory)."³ *Id.* Though this section "does not sweep broadly," *Tazu*, 975 F.3d at 296, its "narrow sweep is firm," *E.F.L. v. Prim*, 986 F.3d 959, 964–65 (7th Cir. 2021). Except as provided by § 1252, courts "cannot entertain challenges to the enumerated executive branch decisions or actions." *Id.*

Section 1252(g) was "directed against a particular evil: attempts to impose judicial constraints upon prosecutorial discretion," to protect "no deferred action"

³ Congress initially passed § 1252(g) in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104-208, 110 Stat. 3009. In 2005, Congress amended § 1252(g) by adding "(statutory or nonstatutory), including section 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. After Congress enacted the Homeland Security Act of 2002, § 1252(g)'s reference to the "Attorney General" includes the Secretary of Homeland Security. 6 U.S.C. § 202(3); *see also Enriquez-Perdomo v. Newman*, 54 F.4th 855, 863 & nn.3–4 (6th Cir. 2022) (explaining the historical development of § 1252(g)).

decisions and similar discretionary decisions.” *Tazu*, 975 F.3d at 297 (quoting *AADC*, 525 U.S. at 485). This limitation exists for “good reason,” so “[a]t each stage the Executive has discretion to abandon the endeavor.” *AADC*, 525 U.S. at 483–84. In addition, through § 1252(g) and other provisions of the INA, Congress “aimed to prevent removal proceedings from becoming ‘fragment[ed], and hence prolong[ed].’” *Tazu*, 975 F.3d at 296 (alterations in original) (quoting *AADC*, 525 U.S. at 487); see *Rauda v. Jennings*, 55 F.4th 773, 777–78 (9th Cir. 2022) (“Limiting federal jurisdiction in this way is understandable because Congress wanted to streamline immigration proceedings by limiting judicial review to final orders, litigated in the context of petitions for review.”).

Section 1252(g) prohibits district courts from hearing challenges to decisions and actions about *whether* and *when* to commence removal proceedings. See *Jimenez-Angeles v. Ashcroft*, 291 F.3d 594, 599 (9th Cir. 2002) (“We construe § 1252(g) . . . to include not only a decision in an individual case *whether* to commence, but also *when* to commence, a proceeding.”). Under the plain text of § 1252(g), the provision must apply equally to decisions and actions to *commence* proceedings that ultimately may end in the execution of a final removal order. See *Jimenez-Angeles*, 291 F.3d at 599; see also *Sissoko v. Rocha*, 509 F.3d 947, 950–51 (9th Cir. 2007) (holding that § 1252(g) barred review of a Fourth Amendment false-arrest claim that “directly challenge[d] [the] decision to commence expedited removal proceedings”); *Humphries v. Various Fed. USINS Emps.*, 164 F.3d 936, 945 (5th Cir. 1999) (determining that § 1252(g) prohibited review of an alien’s First Amendment retaliation claim based on the Attorney General’s decision to put him into exclusion proceedings).

The scope of § 1252(g) also bars district courts from hearing challenges to the *method* by which the Secretary of Homeland Security chooses to commence removal proceedings. See *Alvarez v. U.S. Immigr. & Customs Enft*, 818 F.3d 1194, 1203 (11th Cir. 2016) (“By its plain terms, [§ 1252(g)] bars us from questioning ICE’s discretionary decisions to commence removal—and thus necessarily prevents us from considering whether the agency should have used a different statutory procedure to

initiate the removal process.”); *Saadulloev v. Garland*, No. 23-cv-00106, 2024 WL 1076106, at *3 (W.D. Pa. Mar. 12, 2024) (“The Government’s decision to arrest Saadulloev on April 4, 2023, clearly is a decision to ‘commence proceedings’ that squarely falls within the jurisdictional bar of § 1252(g).”). Arresting Boulos to commence removal proceedings is an “action . . . to commence proceedings” that this Court lacks jurisdiction to review. *See Tazu*, 975 F.3d at 298–99 (“Tazu also challenges the Government’s re-detaining him for prompt removal. . . . While this claim does not challenge the Attorney General’s *decision* to execute his removal order, it does attack the *action* taken to execute that order. So under § 1252(g) and (b)(9), the District Court lacked jurisdiction to review it.”).

In *Tazu*, the Third Circuit carefully analyzed the plain text of the statute and determined that the word “decision” means “the act of settling or terminating (as a contest or controversy) by giving judgment.” 975 F.3d at 297 (citing *Decision*, Webster’s Third New International Dictionary (1966)). Applying this definition, the Court there held that “to settle or terminate the execution of a removal order, the Attorney General must choose a date for that removal.” *Id.* Section 1252(g) expressly refers to the decision to commence proceedings, which includes whether and when to commence them. The decision whether to initiate a removal proceeding against an alien is the exact type of prosecutorial discretion Congress had in mind in enacting this provision and is consistent with the type of discretion the Third Circuit addressed in *Tazu*. The act of detaining Boulos is part and parcel of the initiation of the removal proceeding and therefore also barred by § 1252(g). *Id.* at 298–99.

That Boulos raises First and Fifth Amendment claims does not change the analysis. *See Tazu*, 975 F.3d at 296–98 (holding that any constitutional claims must be brought in a petition for review, not a separate district court action); *Elgharib v. Napolitano*, 600 F.3d 597, 602–04 (6th Cir. 2010) (noting that “a natural reading of ‘any other provision of law (statutory or nonstatutory)’ includes the U.S. Constitution” and finding additional support for the court’s interpretation from the remainder of the statute). Indeed, the Supreme Court held that a prior version of § 1252(g) barred claims similar to those brought here. *See AADC*, 525 U.S. at 487–92.

In *AADC*, the respondents had alleged that the “INS was selectively enforcing immigration laws against them in violation of their First and Fifth Amendment rights.” *Id.* at 473–74. The Supreme Court noted “an admission by the Government that the alleged First Amendment activity was the basis for selecting the individuals for adverse action.” *Id.* at 488 n.10. The respondents argued to the Supreme Court that a lack of immediate review would have a “chilling effect” on their First Amendment rights. *Id.* at 488. Nonetheless, the Supreme Court held that the “challenge to the Attorney General’s decision to ‘commence proceedings’ against them falls squarely within § 1252(g).” *Id.* at 487. Further, the Court found that “[a]s a general matter—and assuredly in the context of claims such as those put forward in the present case—an alien unlawfully in this country has no constitutional right to assert selective enforcement as a defense against his deportation.” *Id.* at 488; *see also Cooper Butt ex rel Q.T.R. v. Barr*, 954 F.3d 901, 908–09 (6th Cir. 2020) (holding that the district court did not have jurisdiction to review a claim that the plaintiffs’ father “was removed ‘based upon ethnic, religious and racial bias’ in violation of the Equal Protection Clause of the Fifth Amendment”).

iii. Section 1226(e) bars review of the decision to detain Boulos

Section 1226(e) serves as yet another jurisdictional bar that precludes district court review of Boulos’s claim of “retaliatory action for engaging in protected speech.” Petition ¶ 137. The decision to detain Boulos is governed by 8 U.S.C. § 1226(a), which is the discretionary detention statute that authorizes detention pending a final decision in removal proceedings. *See* 8 U.S.C. § 1226(a) (authorizing ICE to arrest and detain an alien “pending a decision on whether the alien is to be removed from the United States”). The INA explicitly bars judicial review of the discretionary decision over whether to detain someone placed in removal proceedings. Section 1226(e) provides that: “The Attorney General’s discretionary judgment regarding the application of this section shall not be subject to review. No court may set aside any action or decision by the Attorney General under this section regarding the detention of any alien or the revocation or denial of bond or parole.” 8 U.S.C. § 1226(e).

Section 1226(e) covers the initial decision to detain Boulos. *See Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020) (finding that § 1226(e) did not bar review because the petitioner did not challenge “his initial detention”); *see also Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019) (not applying § 1226(e) because the petitioner did not challenge the “*initial detention* or bond decision”) (emphasis added); *Mayorga v. Meade*, No. 24-cv-22131, 2024 WL 4298815, at *7 (S.D. Fla. Sept. 26, 2024) (applying § 1226(e) to hold that a § 1226(a) detainee “failed to establish that his detention is subject to review”); *Saadulloev*, 2024 WL 1076106, at *3 (recognizing that there is no judicial review of the threshold detention decision).⁴

II. Boulos Cannot Circumvent the Administrative Process Through Habeas

Boulos filed a habeas petition, which in part challenges actions that relate to but are not necessarily about his detention. In his preliminary injunction motion, he requests this Court to enjoin the Secretary of State’s foreign policy determination and enjoin the Government from enforcing an undefined policy that targets for detention and removal individuals who engaged in constitutionally protected activity. But these forms of relief are simply an attempt to circumvent the administrative process created by Congress.

⁴ That does not mean Boulos is unable to challenge his custody determination. Boulos may seek review as to whether he is properly subject to his removal provision. 8 C.F.R. § 1003.19(h)(2)(ii). If adverse, Boulos may seek appeal of that determination. 8 C.F.R. § 1003.19(f). But Boulos does not allege to have done so, and that poses a separate jurisdiction hurdle that this Court could use to justify dismissal of his habeas claim. *See Jean-Claude W. v. Anderson*, No. 19-cv-16282, 2021 WL 82250, at *2 (D.N.J. Jan. 11, 2021) (“To have jurisdiction to consider whether [petitioner] was denied due process, ... I must confirm that [petitioner] has exhausted all available administrative remedies; if he has not, then I cannot review the merits of his claim.” (citing *Yi v. Maugans*, 24 F.3d 500, 503–04 (3d Cir. 1994); *Okonkwo v. INS*, 69 F. App’x 57, 59–60 (3d Cir. 2003))). “Because the exhaustion requirement is jurisdictional, the failure of a habeas petitioner to present his [or her] claims first to the immigration courts is ‘fatal to the District Court’s jurisdiction over [the petitioner’s] habeas petition.’” *Jelani B. v. Anderson*, No. 20-cv-6459, 2020 WL 5560161, at *2 (D.N.J. Sept. 17, 2020) (quoting *Duvall v. Elwood*, 336 F.3d 228, 233–34 (3d Cir. 2003)).

“Habeas is at its core a remedy for unlawful executive detention.” *Munaf v. Geren*, 553 U.S. 674, 693 (2008). The writ of habeas corpus and its protections are “strongest” when reviewing “the legality of Executive detention.” *INS v. St. Cyr.*, 533 U.S. 289, 301 (2001). Therefore, the traditional function of the writ is to seek one’s release from unlawful detention. *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 117 (2020) (citing *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973)). Boulos may seek “simple release”. See *Thuraissigiam*, 591 U.S. at 119 (“Claims so far outside the core of habeas may not be pursued through habeas.”) (internal quotations and citations omitted). The Third Circuit carefully considered the habeas implications in *Tazu* and reaffirmed that a petitioner does not have a constitutional right to anything more than the petition-for-review process. 975 F.3d at 300. That process is “an adequate substitute for a petitioner’s historic right to habeas corpus.” *Id.* Hence, the right to habeas for detained aliens likely guarantees only release in the form of removal from the country, *Tazu*, 375 F.3d at 300 (citing *Thuraissigiam*, 591 U.S. at 119).

Boulos seeks more than just release; Boulos challenges the Secretary of State’s determination that his presence in the United States will have adverse foreign policy consequences. Petition, ¶ 6. That is simply a misapplication of the Great Writ; it is both an attempt to work around his administrative proceedings, and impermissibly seeks relief other than release from custody. Boulos can obtain review of his bond eligibility from the IJ and then the BIA. Separately, he may challenge the DHS allegation and charge that he is (1) not a United States citizen, and (2) removable pursuant to INA 237(a)(4)(C) before the IJ, then appeal to the BIA if adverse, and then file a petition for review with the Eleventh Circuit if similarly adverse. At bottom, these claims are not reviewable here; Boulos must pursue them in the proper forum.

III. Boulos’s Challenge the Secretary’s Determination Invokes an Unreviewable Political Question

Even if this Court determined that the jurisdiction-stripping provisions on the INA did not apply and that Boulos could seek an injunction in this habeas action,

which it should not, the Secretary's foreign policy determination under INA section 237(a)(4)(C) is an unreviewable political question and is thus barred by the political question doctrine.⁵

As noted by the Supreme Court, the gravamen of any political question is "essentially a function of the separation of powers." *Baker v. Carr*, 369 U.S. 186, 217 (1962). To guide courts in determining when such a question is raised, the Supreme Court identified six "formulations" that indicate a question has been committed to the political branches:

Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question.

Id.; accord *Gross v. German Foundation Indus. Initiative*, 456 F.3d 363, 377 (3d Cir. 2006). "A finding of any one of the six factors indicates the presence of a political question." *Gross*, 456 F.3d at 377. Boulos's request to second-guess the Secretary of State's determination and the Executive's foreign policy considerations implicates factors three, four, five, and six of the *Baker* test.

Necessarily, Boulos's requested injunction sits at the intersection of two issues textually committed to the political branches of the government: (1) foreign affairs, *see State of California v. United States*, 104 F.3d 1086, 1091 (9th Cir. 1997) ("the issue of protection of the States from invasion implicates foreign policy concerns which have been constitutionally committed to the political branches."); *see also El-Shifa Pharmaceutical Industries Co. v. United States*, 607 F.3d 836, 842 (D.C. Cir.

⁵ This Court cannot review this question under the doctrine. On a petition for review, the appropriate court of appeals would consider whether its precedent allows for any review and if so, the extent of that review.

2010) (“The political question doctrine bars our review of claims that, regardless of how they are styled, call into question the prudence of the political branches in matters of foreign policy or national security constitutionally committed to their discretion.”); and (2) immigration policy, *see Mathews v. Diaz*, 426 U.S. 67, 81 (1976) (“the responsibility for regulating the relationship between the United States and our alien visitors has been committed to the political branches of the Federal Government.”). As observed by the Supreme Court, “any policy towards aliens is vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations, the war power, and the maintenance of a republican form of government. Such matters are so exclusively entrusted to the political branches of government as to be largely immune from judicial inquiry or interference.” *Harisiades v. Shaughnessy*, 342 U.S. 580, 588-89 (1952).

Additionally, there is simply no manageable standard on what constitutes “potentially serious adverse foreign policy consequences.” 8 U.S.C. § 1227(a)(4)(C)(i). The Third Circuit has recognized that not all foreign policy concerns pose a political question but done so as long “as it involves normal principles of interpretation of the constitutional provisions at issue, normal principles of statutory construction, or normal principles of treat or executive agreement construction.” *Gross*, 465 F.3d at 388 (cleaned up). Although Boulos is likely to argue that settled First Amendment principles provide the standard to address the constitutional question, *see Hanlon*, 99 F.4th at 153, this case does not manifest to a manageable standard that would not interfere with the Executive’s recognized power to “expel or exclude aliens.” *State of New Jersey v. United States*, 91 F.3d 463, 469-70 (3d Cir. 1996) (finding this power as implicating the second *Baker* factor). For this Court to determine what constitutes a serious or compelling foreign policy consequence, it would have to inescapably obtain information on what the Executive considered in making the determination and how much weight it gave various factors while sifting through numerous documents and materials, all of which counsel against accepting Boulos’s invitation into this sensitive area. *See Iwanowa v. Ford Motor Co.*, 67 F. Supp. 2d 424, 489 (D.N.J. 1999).

Essentially, Boulos is asking this Court to “displac[e] the Executive in its foreign policy making role” and to reverse a political decision that has already been made. *Gross*, 456 F.3d at 389-90. He is in effect asking “the Court to second guess foreign policy decisions that the Constitution has expressly committed to the political branches.” *Nguyen v. United States*, No. 23-cv-06047, 2024 WL 1382470, at *5 (N.D. Cal. Apr. 1, 2024), *aff’d*, No. 24-2221, 2025 WL 880141 (9th Cir. Mar. 21, 2025); *see also Mobarez v. Kerry*, 187 F. Supp. 3d 85, 92 (D.D.C. 2016) (*Ketanji Brown Jackson, J.*) (“[I]f the court is being called upon to serve as a forum for reconsidering the wisdom of discretionary decisions made by the political branches in the realm of foreign policy or national security, then the political-question doctrine is implicated, and the court cannot proceed.”). Second-guessing of this sort of discretion is exactly what the political question doctrine was meant to insulate from judicial review. *See Gross*, 456 F.3d at 390 (noting that factors four, five, and six “is relevant only if judicial resolution of a question would contradict prior decisions taken by a political branch in those limited context where such contradiction would seriously interfere with important governmental interest”) (quotations omitted).

CONCLUSION

WHEREFORE, the Court should deny Petitioner Boulos’s petition for a writ of habeas corpus.

Respectfully submitted,

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