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

WUANERGE ALBERTO-ALVARENGA,	)	CASE NO.: 3:25CV2644
	)	
Petitioner,	)	JUDGE JAMES R. KNEPP II
	)	
v.	)	MAG. JUDGE GREENBERG
	)	
RICHARD A. AUMILLE, et al.,	)	RESPONDENTS' REPLY TO TRAVERSE
	)	
Respondents.	)	

While Petitioner's Traverse[1] now states he is not challenging his pending removal order, rather "only current physical custody and seeks release or, alternatively, a constitutionally adequate bond hearing;" the fact remains that he is lawfully detained and cannot prove a constitutional violation. (Trav., ECF No. 10, PageID#163.) Petitioner changes his argument to avoid the plain language of the statutes governing his detention and Congress' intent to strip the district court of habeas jurisdiction by providing an alternative process for challenging removal orders. *Hamama v. Adducci*, 912 F.3d 869, 876-77 (6th Cir. 2018); *see also Osiris Yolany Munoz*

[1] The case captions on all of Petitioner's filings contain an incorrect A# for Petitioner. Although this error does not affect the filing here in district court, for counsel's information, the correct number is A#209290577, as listed on the immigration court filings submitted as exhibits with the Return of Writ. (Return of Writ, ECF No. 6, PageID## 122-46.)

Nataren v. Raycraft, Case No. 4:26-cv-212, 2026 WL 214368 at *1-2 (N.D. Ohio Jan. 28, 2026)(finding judicial review available in two instances: first, under § 1252(b)(2) and (9), a final order of removal is reviewable by a court of appeals *not* district court; and second, § 1252(a)(2)(D) "preserves the ability to petition for a writ of habeas corpus to raise a constitutional issue" in limited cases.)

As the Sixth Circuit explained in *Hamama v. Adducci*:

> When Congress stripped the courts of jurisdiction to grant habeas relief in § 1252(g), it provided aliens with an alternative method to challenge the legality of removal orders: a motion to reopen followed by a petition for review filed in a court of appeals. *See* 8 U.S.C. § 1252(a)(5), 2(D). Because this process provides an alien with the same scope of relief as habeas, the REAL ID Act does not violate the Suspension Clause.

Hamama, 912 F.3d at 876. (citations omitted). Even if Petitioner is now only seeking release or a bond hearing, his claims of constitutional violation fail because determinations of bond and detention are discretionary, and under the Immigration and Nationality Act ("INA") this Court lacks jurisdiction to interpret or apply § § 1225 or 1226. *Munoz Nataren v. Raycraft*, Case No. 4:26-cv-212, 2026 WL 214368 at *2 (N.D. Ohio Jan. 28, 2026).

Petitioner is Not Entitled to Release and is Lawfully Detained

First, considering Petitioner's asylum application, he is currently detained under § 1225(b)(1)(B)(iii)(IV), which states: "Any alien subject to the procedures under this clause shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed." *Id.* This section authorizes Petitioner's "mandatory detention," from the date of the Immigration Judge's finding of no credible fear of persecution, December 29, 2025, until his removal. (Return of Writ, ECF No. 6-1, PageID# 126 (order finding no credible fear); PageID# 144 (denial of motion to reconsider dated January 9, 2026).) Next, even considering Petitioner's original claims of illegal detention related to his arrest by local authorities for domestic

violence, a decision to arrest, detain, and/or release made under § 1226 is not subject to review. 8 U.S.C. § 1226(e)("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."); *but see, e.g., Demore v. Kim*, 538 U.S. 510, 517 (2003)(§ 1226(e) does not preclude habeas review of constitutional challenge of statute authorizing detention without bail); *Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020) (finding that 8 U.S.C. § 1226(e) did not bar review in that case because the petitioner did not challenge "his initial detention").

Finally, § 1252(g) bars judicial review of "any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings," which includes the decision to detain Petitioner. 8 U.S.C. § 1252(g); *see also Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016) ("By its plain terms, [§ 1252(g)] bars us from questioning ICE's discretionary decisions to commence removal" and also to review "ICE's decision to take [plaintiff] into custody and to detain him during removal proceedings"); *Tazu v. Att'y Gen. U.S.*, 975 F.3d 292, 298 (3d Cir. 2020); *Valencia-Mejia v. United States*, No. CV 08–2943 CAS (PJWx), 2008 WL 4286979, at *4 (C.D. Cal. Sept. 15, 2008); *Wang v. United States*, No. CV 10-0389 SVW (RCx), 2010 WL 11463156, at *6 (C.D. Cal. Aug. 18, 2010) (citing *Khorrami v. Rolince*, 493 F. Supp. 2d 1061 (N.D. Ill. 2007); *Herrera-Correra v. United States*, No. CV 08-2941 DSF (JCx), 2008 WL 11336833, at *3 (C.D. Cal. Sept. 11, 2008) (citing *Sissoko v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007)). Therefore, the district court does not have jurisdiction to release Petitioner nor review the decision to detain, pursuant to § 1252(g). 8 U.S.C. § 1252(g).

In evaluating the reach of § 1252 subsections (a)(5)("Exclusive means of review") and (b)(9)("Consolidation of questions for judicial review"), the Second Circuit explained that jurisdiction turns on the substance of the relief sought. *Delgado v. Quarantillo*, 643 F.3d 52, 55

(2d Cir. 2011). Those provisions divest district courts of jurisdiction to review both direct and indirect challenges to removal orders, including decisions to detain for purposes of removal or for proceedings. *See Jennings v. Rodriguez*, 583 U.S. 281, 294–95 (2018) (section 1252(b)(9) includes challenges to the "decision to detain [an alien] in the first place or to seek removal[.]"). Here, if the Petition is viewed as an indirect challenge to the removal order, Petitioner's claims of unlawful detention and constitutional violation flow from the decision to detain and commence removal proceedings. Thus, these are "action[s] taken . . . to remove him from the United States" and are not subject to judicial review. 8 U.S.C. § 1252(b)(9). Perhaps this is why Petitioner's Traverse now claims to only challenge physical custody as a constitutional violation of due process, however, even that claim fails because he was provided an opportunity for bond hearing but later withdrew his request for bond. (See Return of Writ, ECF No. 6, PageID#145-46.)

Regarding Petitioner's removal, despite this Court's lack of jurisdiction, Petitioner has an avenue for due process through the court of appeals, because "[§] 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." 8 U.S.C. § 1252(a)(2)(D); *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 a proper forum for claims arising from immigration proceedings so petitioners "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."). Since Congress has provided an alternative method of review before the court of appeals, this Court lacks subject-matter jurisdiction over Petitioner's claims of unlawful detention and due process, and they should be dismissed.

Petitioner is Not Entitled to a Bond Hearing Due to No Prolonged Detention

Recently, this District held that district court review of a habeas petition should be limited to constitutional issues, such as challenges related to the conditions of confinement or indefinite detention. *Munoz Nataren v. Raycraft*, Case No. 4:26-cv-212, 2026 WL 214368 at *3 (N.D. Ohio Jan. 28, 2026)(citing *Zadvydas v. Davis*, 533 U.S. 678, 682 (2001)"(recognizing the serious constitutional concerns of indefinite detention following a final order of removal); *but see Jennings*, 583 U.S. at 297(finding no statutory right to periodic bond hearings for aliens detained during the pendency of removal proceedings)."). Even if this Court were to reach the merits of Petitioner's constitutional claims, the cases cited in the Traverse are distinguishable from the facts at hand. (Trav., ECF No. 10, PageID#163.) In *Zadvydas v. Davis*, the Supreme Court concluded that prolonged detention under § 1231(a)(6), could be challenged through a habeas petition, post-removal order. *Zadvydas*, 533 U.S. at 701. The *Zadvydas* Court found detention lasting more than six months after a final order of removal could create a rebuttable presumption of unreasonableness, upon a showing of no likelihood of removal in the "reasonably foreseeable future." *Id.* Here, Petitioner's order of removal, which arguably is not yet final, was issued on January 2, 2026, and only about one month has passed; therefore, his detention is not prolonged nor unreasonable under *Zadvydas*. *Zadvydas*, 533 U.S. at 701, ("This 6-month presumption, of course, does not mean that every alien not removed must be released after six months.")

Similarly, in *Demore v. Kim*, the Supreme Court considered detention of criminals under § 1226(e) and distinguished the *Zadvydas* facts from *Demore's* circumstances. *Demore*, 538 U.S.

at 528-31. While *Zadvydas* involved a period of post-removal detention that was "indefinite" and "potentially permanent," the Supreme Court held that *Demore* was subject to detention under § 1226(c), pending a determination of removability, which has a definite ending point. *Id.* at 529. The *Demore* Court recognized detention in that case could possibly involve a shorter period but still found a six-month detention is reasonable. *Demore*, 538 U.S. at 528-29 (quoting *Zadvydas*, 533 U.S. at 690-91, 697.) Even if this Court finds *Demore* applicable to Petitioner's detention, Petitioner has only been detained since his arrest on November 4, 2025, approximately three months. (Pet., ECF No. 1, PageID# 3.) This also fails to qualify as unlawful prolonged detention. *Demore*, 538 U.S. at 531 (holding six-month detention during removal proceedings a constitutionally permissible part of that process.)

Finally, Petitioner's reliance on *Ly v. Hansen* is misplaced. *Ly v. Hansen*, 351 F.3d 263 (6th Cir. 2003). The Sixth Circuit's later decisions, in *Martinez v. Larose*, and *Hamama v. Adducci*, recognize *Ly's* abrogation by the Supreme Court's decision in *Jennings v. Rodriguez*. *Jennings*, 583 U.S. 281. The *Martinez* Court examined 8 U.S.C. § 1231, "[d]etention and removal of aliens ordered removed," and the 90-day removal period after a final order of removal and found no due process requirement for a bond hearing if removal is reasonably foreseeable. *See Ly v. Hansen*, 351 F.3d 263 (6th Cir. 2003); abrogation recognized by *Martinez v. Larose*, 968 F.3d 555, 564-66, n. 7 (6th Cir. 2020); and *Hamama v. Adducci*, 946 F.3d 875, 879 (6th Cir. 2020). Based on *Zadvydas, Demore*, and *Martinez*, Petitioner's detention is a constitutionally permissible part of his removal proceedings; his detention is not prolonged nor unreasonable and he is not entitled to a bond hearing; therefore, the Petition should be denied. *Zadvydas*, 533 U.S. at 690-91, 697; *Demore*, 538 U.S. at 531; *Martinez*, 968 F.3d at 564-66; *see also Hamama*, 946 F.3d at 879 (discussing *Jennings*, mandatory detention laws, and pre- and post-removal orders of detention.)

Petitioner Is Not Entitled to a Bond Hearing Due to Failure to Exhaust

Furthermore, although exhaustion is prudential, the Court should not excuse exhaustion here because Petitioner withdrew his bond request, and fails to show administrative review would be futile, as contradicted by his own actions in filing an "Intervening BIA Emergency Appeal," to pursue administrative review concurrent to this habeas action. (Trav., ECF No. 10, PageID# 165.) As recently held in this District, neither Petitioner's likelihood of success at the administrative level, nor the fact that Petitioner is detained, has any bearing on the exhaustion analysis. *Hernandez Torrealba v. U.S. Department of Homeland Security*, No. 1:25-CV-1621, 2025 WL 2444114 (N.D. Ohio Aug. 25, 2025) (requiring exhaustion despite the "high probability of denial of Petitioner's appeal" and the purported "irreparable harm to Petitioner as she has already been detained for more than 80 days"). "[T]he alleged probability that a petitioner's argument in administrative proceedings may fail is 'not tantamount to stating that it would be futile to raise it.'" *Id.* (citing *Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003)). Also, the risk of irreparable harm due to continued detention does not outweigh the importance of administrative exhaustion. *Id.*

Here, Petitioner's claims, for due process and bond determination, are tied to his failure to exhaust and are not plausible because he withdrew his bond request and is receiving all due process available to him under the administrative immigration proceedings. There was no denial of bond by an Immigration Judge let alone an appeal of the denial of bond to the BIA. The Traverse does not dispute Respondent's evidence that Petitioner withdrew his bond request, nor does it allege Petitioner ever requested a bond hearing in any immigration forum (i.e., IJ, BIA, etc.)(*See* Return of Writ, ECF No. 6-6, PageID #145-46.) Petitioner offers the *illusion* that he has requested an opportunity for a bond hearing without offering evidence of when that request and/or hearing occurred. (Pet., ECF No. 1, PageID 72, "Petitioner is Entitled to a Bond Hearing at Which DHS Must Prove Danger or Flight Risk by Clear and Convincing Evidence.") Once the immigration

court's order of removal is final, Petitioner will not be entitled to a bond hearing during the subsequent period of detention. *Martinez*, 968 F.3d at 566 ("...[Petitioner] conceded that a bond requirement would be out of place in a post-*Jennings* world. We agree and are reluctant to graft a bond-hearing requirement onto a statute absent language supporting such a requirement.")

Bond hearings are triggered at the very least on Petitioner's request. Pursuant to controlling regulations an "[a]pplication for an initial bond redetermination by a respondent, or his or her attorney or representative, may be made orally, in writing, or, at the discretion of the Immigration Judge, by telephone." 8 CFR 1003.19(b). Without alleging an attempt or effort to request a bond hearing before the immigration court, or an appeal to the BIA of an adverse ruling denying the hearing, or denying bond upon hearing, Petitioner fails to show that he has "diligently pursued his administrative remedies." *See Alonso-Portillo v. Bondi*, Case No. 1-25-cv-306, 2025 WL 2483393, at *6 (S.D. Ohio August 28, 2025). Likewise, a withdrawal of bond request cannot constitute exhaustion. *See Laing v. Ashcroft*, 370 F.3d 994, 998 (9th Cir. 2004)("exhaustion may not be achieved through a litigant's procedural default of his or her available remedies.")

Instead of making a proper request for bond before the immigration court, Petitioner filed in district court asserting that he is entitled to a "constitutionally adequate bond hearing" and arguing "[w]ithdrawal of bond does not waive the right to challenge continued detention on constitutional grounds." (Pet., ECF No. 1, PageID # 72; Trav., ECF No. 10, PageID# 165.) However, Petitioner's failure to request a bond hearing before the immigration court counsels against excusing exhaustion. In fact, not requiring Petitioner to afford deference to the forum that is statutorily obliged to independently consider and adjudge bond, looking over what might then be an appeal to the BIA, encourages the deliberate bypass of the entire administrative scheme, as Petitioner did here. 8 CFR 1003.19(b). An appeal to the BIA on bond would allow the agency to

apply its expertise, generate a proper record, and reach a proper decision in the first instance. *See e.g., Laguna Espinoza v. Dir. Of Detroit Field Off., U.S. Immigr. & customs Enf't, No. 4:25-CV-02107,* 2025 WL 2878173, at *2 (N.D. Ohio Oct. 9, 2025)(petition dismissed for review of "interpretation and application of the governing removal regime" by the BIA "in the first instance").

Finally, Petitioner's argument on post-filing transfer misses the point. Since a writ of habeas corpus acts on the person who holds the petitioner in custody, a court lacks jurisdiction to order a writ if it does not have personal jurisdiction over Petitioner's custodian, here, Director Raycraft. Civil Rule 25(d) applies to public officials and is not applicable in this instance. Petitioner failed to name anyone who was formerly over the ICE Detroit Field Office, instead he named the non-existent "Sean G. Smith, Ohio Field Office Director." (Pet., ECF No. 1.) Therefore, personal jurisdiction does not exist, and the Petition may be dismissed pursuant to Fed. R. Civ. P. 12(b)(2).

For all these reasons, and those argued in the Return of Writ, Respondents respectfully request the Court dismiss the Petition for lack of subject-matter jurisdiction, lack of personal jurisdiction, and failure to state a claim, pursuant to Rules 12(b)(1), (2), and (6).

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH RULE 7.1(f)

I certify that this Reply to Traverse comports with the page limitations identified in Local Rule 7.1(f). This case is unassigned, and the Reply is under twenty pages in length.

/s/ Angelita Cruz Bridges
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