UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

ROBIN LEIVA LEMUS,	)	CASE NO. 4:26-CV-203
	)	
Petitioner,	)	JUDGE SARA LIOI
	)	
v.	)	
	)	
ROBERT LYNCH, et al.,	)	**RETURN OF WRIT AND**
	)	**MOTION TO DISMISS**
Respondents.	)	

TABLE OF CONTENTS

PAGE

I. FACTUAL AND PROCEDURAL BACKGROUND 1

II. ARGUMENT 3

A. PETITIONER'S CLAIMS SHOULD BE DISMISSED FOR LACK OF JURISDICTION UNDER RULE 12(B)(1) 3

1. 8 U.S.C. § 1252(g) bars review of Petitioner's claims 3

2. 8 U.S.C. § 1252(b)(9) bars review of Petitioner's claims 3

B. PETITIONER FAILED TO EXHAUST ADMINISTRATIVE REMEDIES 7

C. PETITIONER IS PROPERLY DETAINED UNDER 8 U.S.C. §1225 8

1. Applicants for admission are subject to detention under 8 U.S.C. § 1225 8

2. Applicants for admission in 8 U.S.C. § 1229a removal proceedings are detained pursuant to 8 U.S.C.§ 1225(b)(2)(A) 10

3. Past practice does not override clear statutory language 17

4. Applicants for admission may only be released from detention on an 8 U.S.C. § 1182(d)(5) parole 18

5. Section 1226 does not impact the detention authority for applicants for admission 18

III. CONCLUSION 19

TABLE OF AUTHORITIES

Cases — Page(s)

Aguilar v. ICE, 510 F.3d 1 (1st Cir. 2007) 5

Ajlani v. Chertoff, 545 F.3d 229 (2d Cir. 2008) 5

Alvarez v. ICE, 818 F.3d 1194 (11th Cir. 2016) 4

Amaya-Velis v. Raycraft, __ F. Supp. 3d __, 2026 WL 100596 (N.D. Ohio Jan. 14, 2026) 6

Ardestani v. INS, 502 U.S. 129–36 (1991) 12

Armstrong v. Exceptional Child Ctr., Inc., 575 U.S. 320 (2015) 18

Att'y Gen. of United States v. Wynn, 104 F.4th 348 (D.C. Cir. 2024) 17

Ba v. Director of Detroit Field Office, U.S. Immigration and Customs Enforcement, et al., Case No. 4:25-cv-02208, 2025 WL 2977712 (N.D. Ohio Oct. 22, 2025) 8

Beharry v. Ashcroft, 329 F.3d 51 (2d Cir. 2003) 8

Cortez-Amador v. Att'y Gen., 66 F.4th 429 (3d Cir. 2023) 2

Delgado v. Quarantillo, 643 F.3d 52 (2d Cir. 2011) 7

Dep't of Homeland Sec. v. Thuraissigiam, 591 U.S. 103 (2020) 9

Henry Schein, Inc. v. Archer & White Sales, Inc., 586 U.S. 63 (2019) 18

Hernandez Torrealba v. U.S. Dep't of Homeland Sec., No. 1:25-cv-01621, 2025 WL 2444114 (N.D. Ohio Aug. 25, 2025) 8

J.E.F.M. v. Lynch, 837 F.3d 1026 (9th Cir. 2016) 5

Jennings v. Rodriguez, 583 U.S. 281 (2018) 7, 11, 12, 13, 14, 15, 19

Jimenez v. Quarterman, 555 U.S. 113 (2009) 9

Khalil v. President, United States, __ F.4th__, 2026 WL 111933 (3d Cir. Jan. 15, 2026) 5-6

Kleber v. CareFusion Corp., 914 F.3d 480 (7th Cir. 2019) 17

Laguna Espinoza v. Director of Detroit Field Office, U.S. Immigration and Customs

*Enforcement, et al., Case No. 4:*25-cv-02107, 2025 WL 2878173 (N.D. Ohio Oct. 9, 2025) . 8

Lamie v. U.S. Tr., 540 U.S. 526 (2004) 9

Loper Bright Enters.v. Raimondo, 603 U.S. 369 (2024) 18

Lopez-Campos v. Raycraft, 797 F.Supp.3d 771 (2025) 9

Lucero v. Field Office Dir. Of Enforcement and Removal Op., et al., Case No. 1:25-cv-823, 2025 WL 3718730 (S.D. Ohio Dec. 23, 2025) 15

Matter of A-W-, 25 I&N Dec. 45 (BIA 2009) 14

Matter of Lemus-Losa, 25 I & N. Dec. 734 (BIA 2012) 17

Matter of Velasquez-Cruz, 26 I&N Dec. 458 (BIA 2014) 9

Matter of Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025) 13

Mejia Olalde v. Noem, 2025 WL 3131942 (E.D. Mo. Nov. 10, 2025) 16, 18

Mendoza v. Raycraft, et al., No. 4:25cv2183, 2025 WL 3157796 (N.D. Ohio Nov. 12, 2025) 1

Monroy Villalta v. Greene, 794 F. Supp. 3d 528 (N.D. Ohio 2025) 8

Munoz Nataren v. Raycraft, No. 4:26cv212 (N.D. Ohio Jan. 28, 2026) 6

Murrillo-Chavez v. Bondi, 128 F.4th 1076 (9th Cir. 2025) 2

Pereira v. Sessions, 585 U.S. 198 (2018) 18

Phurtskhvanidze v. Field Off. Dir. of Enf't and Removal Operations, No. 1:25-cv-827, 2026 WL 160833 (S.D. Ohio Jan. 21, 2026) 16

Reno v. American-Arab Anti-Discrimination Comm., 525 U.S. 471 (1999) 4

Roman v. Ashcroft, 340 F.3d 314 (6th Cir. 2003) 1

Rosario v. Holder, 627 F.3d 58 (2d Cir. 2010) 5

Ruiz v. Mukasey, 552 F.3d 269 (2d Cir. 2009) 5

Saadulloev v. Garland, No. 3:23-CV-00106, 2024 WL 1076106 (W.D. Pa. Mar. 12, 2024) 7

Saul Morales Chavez v. Director of Detroit Field Office, Case No. 4:25CV2061,

2026 WL 124062 (Jan. 16, 2026) 9
Tazu v. Att'y Gen. U.S., 975 F.3d 292 (3d Cir. 2020) 4, 6

Tecum Pastor v. Director of Detroit Field Office, U.S. Immigration and Customs Enforcement, __F. Supp.3d __(N.D. Ohio 2025), 2025 WL 3746495 (N.D. Ohio Dec. 24, 2025); 8

Texas Dep't of Hous. & Cmty. Affs. v. Inclusive Communities Project, Inc., 576 U.S. 519 (2015) 16

Valencia-Mejia v. United States, No. CV 08–2943 CAS (PJWx), 2008 WL 4286979 (C.D. Cal. Sept. 15, 2008) 4

Velasco Lopez v. Decker, 978 F.3d 842 (2d Cir. 2020) 7

Villarreal v. R.J. Reynolds Tobacco Co., 839 F.3d 958 (11th Cir. 2016) (en banc) 17

Wang v. United States, No. CV 10-0389 SVW (RCx), 2010 WL 11463156 (C.D. Cal. Aug. 18, 2010)(g) 4

Xiao Ji Chen v. U.S. Dep't of Justice, 434 F.3d 144 (2d Cir. 2006) 5

STATUTES

8 U.S.C. § 1101(a)(13)(A) 16

8 U.S.C. § 1153(b)(4) 2

8 U.S.C. § 1182(a) 10

8 U.S.C. § 1182(a)(9)(A)(i) 13

8 U.S.C. § 1182(d)(5) 15, 19

8 U.S.C. § 1182(d)(5)(A) 20

8 U.S.C. § 1182(a)(9)(B)(i)(I)-(II) 17

8 U.S.C. § 1225 ..... 1, 9, 10, 11, 14, 16

8 U.S.C. § 1225(a)(1) 9, 10, 11, 16

8 U.S.C. § 1225(a)(3) 10, 16

8 U.S.C. § 1225(b) 6, 10, 12, 13, 15, 19, 20

8 U.S.C. § 1225(b)(1) 11, 14, 15, 19

8 U.S.C. § 1225(b)(2) 11, 12, 13, 15, 16. 17

8 U.S.C. § 1225(b)(2)(A) 11, 13, 14, 15, 16, 17, 18, 19

8 U.S.C. § 1225(c)(1) 13

8 U.S.C. § 1226 ..... 14, 16, 19, 20

8 U.S.C. § 1229a 10, 11, 12, 14, 19

8 U.S.C. § 1229a(c)(2)(A) 10

8 U.S.C. § 1252(a)(2)(D) 5

8 U.S.C. § 1252(a)(5) 4, 5, 7

8 U.S.C. § 1252(g) 3, 4

8 U.S.C. § 1252(b)(9) 4, 5, 6, 7

8 U.S.C. § 1255(a) 2

28 U.S.C. § 2241 1

REGULATIONS

8 C.F.R. § 1.2. ..... 10, 12

8 C.F.R. § 212.5(b) 19

8 C.F.R. § 235.1(a) 10

8 C.F.R. § 235.1(f)(1) 10

8 C.F.R. § 235.1(f)(2) 10

8 C.F.R. § 235.3(b)(3) 11

8 C.F.R. § 235.3(b)(1)(ii) 18

8 C.F.R. § 235.3(c) 12

8 C.F.R. 245.1(a) 2

8 C.F.R. 1245.1(a) 2

8 C.F.R. § 1001.1(q) 10, 12

8 C.F.R. § 1003.1(b)(7) 8

8 C.F.R. § 1003.19(f) 8

8 C.F.R. § 1003.38 9

8 C.F.R. § 1236.1(d) 14

8 C.F.R. § 1236.1(d)(3) 9

Petitioner Robin Leiva Lemus ("Petitioner") seeks the grant of a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241, challenging the lawfulness of his detention by Immigration and Customs Enforcement ("ICE") and seeking his immediate release from custody or an Order directing the Immigration Court to hold a bond hearing. Because this Court lacks jurisdiction, Petitioner failed to exhaust administrative remedies, and Petitioner is properly detained under 8 U.S.C. § 1225, his petition must be denied.[1]

I. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner, a native and citizen of Honduras, entered the United States on February 22, 2018. (Pet., Dkt. No. 1, PageID# 9, ¶ 20; Notice to Appear, Dkt. 1-4, PageID # 29.) Petitioner was not admitted or paroled into the United States at that time. *Id.* On October 24, 2024, Petitioner was ordered removed in absentia because he failed to appear at a hearing. (Ex. A, 10/24/24 Order of Immigration Judge.) On November 22, 2024, the Immigration Judge granted Petitioner's motion to reopen those proceedings. (Ex. B, 11/22/24 Order of the Immigration Judge.)

On June 27, 2025, Petitioner's application for a Special Immigrant Juvenile ("SIJ") visa was approved. (Pet. Dkt. 1-3, Form I-797C, Not. of Action.) Therefore, Petitioner may apply for adjustment of status to lawful permanent residence in the United States, but only when an immigrant visa is immediately available. 8 U.S.C. § 1255(a); 8 C.F.R. 245.1(a), 1245.1(a). Visa availability is governed by 8 U.S.C. § 1153(b)(4), which sets aside 7.1 percent of the worldwide

[1] A writ of habeas corpus may be issued only to the person having custody of the detainee. In the ICE habeas context, that person is the Field Office Director for ICE, Kevin Raycraft. *Roman v. Ashcroft*, 340 F.3d 314, 320 (6th Cir. 2003). Therefore, Secretary Noem and Attorney General Bondi are not proper respondents. *Mendoza v. Raycraft, et al.*, No. 4:25cv2183, 2025 WL 3157796, *8 (N.D. Ohio Nov. 12, 2025).

allotment of immigrant visas annually for a group including SIJ visa holders. Petitioner filed his SIJ application on June 27, 2025. (Dkt. 1-3, Form I-797C, Not. of Action). The State Department's February 2026 Visa Bulletin indicates that SIJ visas, which are listed as employment-based fourth preference visas, are currently available for applicants who filed their petitions on or before January 1, 2021. *See* https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2026/visa-bulletin-for-february-2026.html. Therefore, an immigrant visa is not immediately available to Petitioner and he cannot apply for adjustment of status at this time. In addition, the approved visa application itself does not confer any legal status upon Petitioner and does not affect his removability. *Murrillo-Chavez v. Bondi*, 128 F.4th 1076, 1085-86 (9th Cir. 2025) (SIJ classification does not constitute an "admission" under the INA); *Cortez-Amador v. Att'y Gen.*, 66 F.4th 429, 433 (3d Cir. 2023) (alien is removable despite his SIJ classification).

Petitioner came into ICE's custody on or about September 25, 2025, and remains detained at the Northeast Ohio Correctional Center. (Pet., Dkt. No. 1, PageID# 2; Ex. C, Not. to EOIR: Alien Address, I-830.) On October 29, 2025, ICE lodged an additional charge of inadmissibility to the charges in the Notice to Appear, pursuant to 8 U.S.C. § 1182(a)(6)(A)(i). (Ex. D, Add'l Charges, I-261.) The additional charge alleged that Petitioner was "[a]n alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General . . . ." (*Id.*)

Petitioner filed a motion for custody redetermination on October 21, 2025. (Ex. E, Request for Custody Redetermination Hearing.) On October 30, 2025, the motion was withdrawn. (Ex. F, 10/30/2025 Order of Immigration Judge.) On January 8, 2026, Petitioner filed a second motion for custody redetermination. (Ex. G 1/8/26 Request for Custody Redetermination Hearing.) On January 22, 2026, the Immigration Judge denied the motion, and,

on January 26, 2026, Petitioner appealed that decision to the Board of Immigration Appeals ("BIA"). (Bond Denial, Dkt. 1-5 PageID #31; Ex. H, Not. of Appeal from Dec. of IJ.) That same date, Petitioner filed this Petition for Writ of Habeas Corpus. (Dkt. No. 1: Petition.)

II. ARGUMENT

A. PETITIONER'S CLAIMS SHOULD BE DISMISSED FOR LACK OF JURISDICTION UNDER RULE 12(B)(1)

1. 8 U.S.C. § 1252(g) bars review of Petitioner's claims.

Section 1252(g) categorically bars jurisdiction over "*any* cause or claim by or on behalf of any alien *arising from* the decision or action by the [Secretary of Homeland Security] to *commence proceedings*, adjudicate cases, or execute removal orders against any alien." 8 U.S.C. § 1252(g) (emphasis added). The Secretary of Homeland Security's decision to *commence removal proceedings* includes the decision to detain an alien pending such removal proceedings. *See Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016) ("By its plain terms, [§ 1252(g)] bars us from questioning ICE's discretionary decisions to commence removal" and also to review "ICE's decision to take [plaintiff] into custody and to detain him during removal proceedings"); *Tazu v. Att'y Gen. U.S.*, 975 F.3d 292, 298 (3d Cir. 2020); *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)). Judicial review of the Petitioner's claim, therefore, is barred by § 1252(g).

2. 8 U.S.C. § 1252(b)(9) bars review of Petitioner's claims.

Under § 1252(b)(9), "judicial review of all questions of law . . . including interpretation and application of statutory provisions . . . arising from any action taken . . . to remove an alien from the United States" is only proper before the appropriate court of appeals in the form of a petition for review ("PFR") of a final removal order. *See* 8 U.S.C. § 1252(b)(9); *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999) ("AADC"). Section 1252(b)(9) is an "unmistakable 'zipper' clause" that "channels judicial review of all [claims arising from deportation proceedings]" to a court of appeals in the first instance. *Id.* Moreover, § 1252(a)(5) provides that a petition for review is the exclusive means for judicial review of immigration proceedings.

> Notwithstanding any other provision of law (statutory or nonstatutory), . . . a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision of this chapter, except as provided in subsection (e) [concerning aliens not admitted to the United States].

8 U.S.C. § 1252(a)(5). "Taken together, § 1252(a)(5) and § 1252(b)(9) mean that any issue—whether legal or factual—arising from any removal-related activity can be reviewed only through the [petition-for-review] process." *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (emphasis in original); *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," which is a PFR. (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.").

Recently, the Third Circuit in *Khalil v. President, United States*, __ F.4th__, 2026 WL 111933 (3d Cir. Jan. 15, 2026), citing *AADC* and circuit precedent, held that Section 1252(b)(9) bars subject matter jurisdiction over habeas claims arising from actions to remove an alien, including those where the injury cannot be remedied after the fact – such as alleged illegal detention claims. 2026 WL 111933, at *9. To avoid getting channeled to a petition for review, "A now-or-never claim must raise legal or factual *questions* that a court of appeals will not later be able to review meaningfully on a PFR;" "a claim must raise now-or-never *questions*, not now-or-never harms." *Id.* (citing *Tazu,* 975 F.3d at 299). Addressing the dissent's argument that the petition for review court cannot later redress harms, the majority stated that delay does not foreclose meaningful review; acknowledging that "Congress has the power to balance concerns about the orderly adjudication of claims with concerns about remedying harms from illegal detentions[,]" and "[t]he balance that Congress struck in § 1252(b)(9) requires bringing legal questions later if they can be answered later." *Id.*, at *10. Applying *Khalil*, the court lacks subject

matter jurisdiction pursuant to § 1252(b)(9) in the within case because Petitioner's claim does not raise a now-or-never question, but a now-or-never harm. Therefore, claims channeling to the petition of review prohibits this court from entertaining the habeas petition for illegal detention in this context. And as another Judge in this Court held:

> [A] constitutional challenge to detention pending removal and entitlement to a bond hearing collapse into analysis of the statutory and regulatory regime—whether, for example, Section 1226(a) entitles an alien to bond pending removal or whether Section 1225(b) authorizes the government to detain an alien. Congress has made clear that district courts lack the jurisdiction to make such determinations, even on a habeas petition under Section 2241.

Amaya-Velis v. Raycraft, __ F. Supp. 3d __, 2026 WL 100596, at *3 (N.D. Ohio Jan. 14, 2026) (citing 8 U.S.C. § 1252(b)(9)) (Calabrese, J.); *see also Munoz Nataren v. Raycraft*, No. 4:26cv212 (N.D. Ohio Jan. 28, 2026) (dismissing the petition for lack of jurisdiction).

Similarly, in evaluating the reach of subsections 1252(a)(5) and 1252(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 proceedings or removal itself. *See Jennings*, 583 U.S. at 294–95 (section 1252(b)(9) includes challenges to the "decision to detain [an alien] in the first place or to seek removal[.]"). Here, Petitioner challenges the decision and action to detain him, which arises from DHS's decision to commence removal proceedings, and is thus an "action taken . . . to remove [him] from the United States." *See* 8 U.S.C. § 1252(b)(9); *see also, e.g.*, *Jennings*, 583 U.S. at 294–95; *Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020); *Saadulloev v. Garland*, No. 3:23-CV-00106, 2024 WL 1076106, at *3 (W.D. Pa. Mar. 12, 2024). As such, the Court lacks jurisdiction over this action.

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

B. PETITIONER FAILED TO EXHAUST ADMINISTRATIVE REMEDIES

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

In similar habeas petitions filed in this district, other judges have dismissed for failure to exhaust administrative remedies. *Amaya-Velis,* __F.Supp.3d __, 2026 WL100596 (N.D. Ohio Jan. 14, 2026); *Tecum Pastor v. Director of Detroit Field Office, U.S. Immigration and Customs Enforcement,* __F. Supp.3d __, 2025 WL 3746495 (N.D. Ohio Dec. 24, 2025); *Monroy Villalta v. Greene*, 794 F. Supp. 3d 528 (N.D. Ohio 2025); *Mendoza v. Raycraft, et al.*, No. 4:25cv2183, 2025 WL 3157796 (N.D. Ohio Nov. 12, 2025); *Ba v. Director of Detroit Field Office, U.S. Immigration and Customs Enforcement, et al.*, Case No. 4:25-cv-02208, 2025 WL 2977712

(N.D. Ohio Oct. 22, 2025); *Laguna Espinoza v. Director of Detroit Field Office, U.S. Immigration and Customs Enforcement, et al.*, Case No. 4:25-cv-02107, 2025 WL 2878173 (N.D. Ohio Oct. 9, 2025); *Hernandez Torrealba v. U.S. Dep't of Homeland Sec.*, No. 1:25-cv-01621, 2025 WL 2444114 (N.D. Ohio Aug. 25, 2025).

Here, Petitioner has not exhausted the administrative remedies available to him. An IJ entered an order denying release on January 22, 2026. Pet., Dkt. No. 1-5: Order. On January 26, 2026, Petitioner has appealed that decision with the BIA. (Ex. H.) By regulation, the BIA has authority to review IJ custody determinations. *See* 8 C.F.R. §§ 1003.1(b)(7), 1003.19(f), 1003.38, 1236.1(d)(3). The BIA has not yet determined Petitioner's appeal. Therefore, Petitioner has failed to exhaust his administrative remedies.

C. PETITIONER IS PROPERLY DETAINED UNDER 8 U.S.C. § 1225

Federal immigration law classifies all aliens. Aliens who enter the United States, and who have not been admitted, are applicants for admission and are aliens seeking admission pursuant to statute and Supreme Court precedent. Therefore, they are subject to detention under 8 U.S.C. § 1225.[2] To be an applicant for admission who is seeking admission does not require the alien to take any additional affirmative steps. The manner in which aliens enter the United States determines his or her status, regardless of the amount of time he or she spends in the United States.

1. Applicants for admission are subject to detention under 8 U.S.C. § 1225

"As with any question of statutory interpretation, [the] analysis begins with the plain

[2] Respondents recognize this Court's contrary ruling in *Saul Morales Chavez v. Director of Detroit Field Office*, Case No. 4:25CV2061, 2026 WL 124062 (Jan. 16, 2026). However, a case on which this Court relied in that opinion, *Lopez-Campos v. Raycraft*, 797 F.Supp.3d 771 (2025), currently is on appeal in the Sixth Circuit.

language of the statute." *Jimenez v. Quarterman*, 555 U.S. 113, 118 (2009) (citing *Lamie v. U.S. Tr.*, 540 U.S. 526, 534 (2004)). Section 1225(a)(1) defines an "applicant for admission" as an "alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival . . .) . . . ." 8 U.S.C. § 1225(a)(1); *see Matter of Velasquez-Cruz*, 26 I&N Dec. 458, 463 n.5 (BIA 2014) Accordingly, by its very definition, the term "applicant for admission" includes two categories of aliens: (1) arriving aliens, and (2) aliens present without admission. *See Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020) ("an alien who tries to enter the country illegally is treated as an 'applicant for admission'" (citing 8 U.S.C. § 1225(a)(1)); *Matter of Lemus*, 25 I&N Dec. 734, 743 (BIA 2012) ("Congress has defined the concept of an 'applicant for admission' in an unconventional sense, to include not just those who are expressly seeking permission to enter, but also those who are present in this country without having formally requested or received such permission . . . ."); *Matter of E-R-M- & L-R-M-*, 25 I&N Dec. 520, 523 (BIA 2011). An arriving alien is defined, in pertinent part, as "an applicant for admission coming or attempting to come into the United States at a port-of-entry [("POE")] . . . ." 8 C.F.R. §§ 1.2, 1001.1(q).

All aliens who are applicants for admission "shall be inspected by immigration officers." 8 U.S.C. § 1225(a)(3); *see also* 8 C.F.R. § 235.1(a). An applicant for admission seeking admission at a United States POE "must present whatever documents are required and must establish to the satisfaction of the inspecting officer that the alien is not subject to removal . . . and is entitled, under all of the applicable provisions of the immigration laws . . . to enter the United States." 8 C.F.R. § 235.1(f)(1); *see* 8 U.S.C. § 1229a(c)(2)(A) (describing the related burden of an applicant for admission in removal proceedings). "An alien present in the United States who has not been admitted or paroled or an alien who seeks entry at other than an open,

designated [POE] . . . is subject to the provisions of [8 U.S.C. § 1182(a)] and to removal under [8 U.S.C. § 1225(b)] or [8 U.S.C. § 1229a]." 8 C.F.R. § 235.1(f)(2).

Here, Petitioner did not present himself at a POE but instead entered the United States 2018 without having been admitted after inspection by an immigration officer. *See* Exhibit A: Notice to Appear. Petitioner is, therefore, an alien present without admission and, consequently, an applicant for admission. *Id.*

Both arriving aliens and aliens present without admission, as applicants for admission, may be removed from the United States by, inter alia, expedited removal procedures under 8 U.S.C. § 1225(b)(1) or removal proceedings before an IJ under 8 U.S.C. § 1229a. 8 U.S.C. §§ 1225(b)(1), (b)(2)(A), 1229a; *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) (describing how "applicants for admission fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)").

2. Applicants for admission in 8 U.S.C. § 1229a removal proceedings are detained pursuant to 8 U.S.C. § 1225(b)(2)(A).

Applicants for admission, such as Petitioner, whom DHS places in § 1229a removal proceedings are subject to detention and ineligible for a custody redetermination hearing before an IJ. Specifically, aliens present without admission placed in 8 U.S.C. § 1229a removal proceedings are both applicants for admission as defined in 8 U.S.C. § 1225(a)(1) and aliens "seeking admission," as contemplated in 8 U.S.C. § 1225(b)(2)(A). Such aliens are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and thus ineligible for a bond redetermination hearing.

Section 1225(b)(2)(A) "serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1)." *Jennings*, 583 U.S. at 287; *see* 8 U.S.C.

§ 1225(b)(2)(A), (B). Under 8 U.S.C. § 1225(b)(2)(A), "an alien who is an applicant for admission" "shall be detained for a proceeding under [8 U.S.C. § 1229a]" "if the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A) (emphasis added); 8 C.F.R. § 235.3(b)(3) (providing that an alien placed into 8 U.S.C. § 1229a removal proceedings in lieu of expedited removal proceedings under 8 U.S.C. § 1225 "shall be detained" pursuant to 8 U.S.C. § 1225(b)(2)); 8 C.F.R. § 235.3(c) (providing that "any arriving alien . . . placed in removal proceedings pursuant to [8 U.S.C. § 1229a] shall be detained in accordance with [8 U.S.C. § 1225(b)]" unless paroled pursuant to 8 U.S.C. § 1182(d)(5)).

Thus, according to the plain language of 8 U.S.C. § 1225(b)(2)(A), applicants for admission in 8 U.S.C. § 1229a removal proceedings "shall be detained." 8 U.S.C. § 1225(b)(2)(A) (emphasis added). "The 'strong presumption' that the plain language of the statute expresses congressional intent is rebutted only in 'rare and exceptional circumstances,' . . . ." *Ardestani v. INS*, 502 U.S. 129, 135–36 (1991) (quoting *Rubin v. United States*, 449 U.S. 424, 430 (1981)); *see Lamie*, 540 U.S. at 534 ("It is well established that when the statute's language is plain, the sole function of the courts—at least where the disposition required by the text is not absurd—is to enforce it according to its terms." (quotation marks omitted)). As the Supreme Court observed in *Jennings*, nothing in 8 U.S.C. § 1225(b)(2)(A) "says anything whatsoever about bond hearings." 583 U.S. at 297. Further, there is no textual basis for arguing that 8 U.S.C. § 1225(b)(2)(A) applies only to arriving aliens. The distinction the Attorney General drew in the 1997 Interim Rule (addressed in detail below) between "arriving aliens," *see* 8 C.F.R. §§ 1.2, 1001.1(q), and "aliens who are present without being admitted or paroled," Inspection and Expedited Removal of Aliens; Detention and Removal of

Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10,312, 10,323 (Mar. 6, 1997), finds no purchase in the statutory text. No provision within 8 U.S.C. § 1225(b)(2) refers to "arriving aliens," or limits that paragraph to arriving aliens, as Congress intended for it to apply generally "in the case of an alien who is an applicant for admission." 8 U.S.C. § 1225(b)(2)(A). Where Congress means for a rule to apply only to "arriving aliens," it uses that specific term of art or similar phrasing. *See, e.g.*, *id.* §§ 1182(a)(9)(A)(i), 1225(c)(1).

On September 5, 2025, the BIA issued a published decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). In its decision, the BIA affirmed "the Immigration Judge's determination that he did not have authority over [a] bond request because aliens who are present in the United States without admission are applicants for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings." *Yajure Hurtado*, 29 I&N Dec. at 220.

The BIA concluded that aliens "who surreptitiously cross into the United States remain applicants for admission until and unless they are lawfully inspected and admitted by an immigration officer. Remaining in the United States for a lengthy period of time following entry without inspection, by itself, does not constitute an 'admission.'" *Id.* at 228. To hold otherwise would lead to an "incongruous result" that rewards aliens who unlawfully enter the United States without inspection and subsequently evade apprehension for number of years. *Id.*

In so concluding, the BIA rejected the alien's argument that "because he has been residing in the interior of the United States for almost 3 years . . . he cannot be considered as 'seeking admission.'" *Id.* at 221. The BIA determined that this argument "is not supported by the plain language of the INA" and creates a "legal conundrum." *Id.* If the alien "is not admitted to the

United States (as he admits) but he is not 'seeking admission' (as he contends), then what is his legal status?" *Id.* (parentheticals in original). The BIA's decision in *Matter of Yajure Hurtado* is consistent with the plain language of 8 U.S.C. § 1225(b)(2), and with the Supreme Court's 2018 decision in *Jennings* and other caselaw issued subsequent to *Jennings*. Specifically, in *Jennings*, the Supreme Court explained that 8 U.S.C. § 1225(b) applies to all applicants for admission, noting that the language of 8 U.S.C. § 1225(b)(2) is "quite clear" and "unequivocally mandate[s]" detention. 583 U.S. at 300, 303 (explaining that "the word 'shall' usually connotes a requirement" (quoting *Kingdomware Technologies, Inc. v. United States*, 579 U.S. 162, 171 (2016))).

Given that 8 U.S.C. § 1225 is the applicable detention authority for all applicants for admission, both arriving aliens and aliens present without admission alike, regardless of whether they were initially placed in expedited removal proceedings under 8 U.S.C. § 1225(b)(1) or into removal proceedings under 8 U.S.C. § 1229a, and that "[b]oth [8 U.S.C. § 1225(b)(1) and (b)(2)] mandate detention . . . throughout the completion of applicable proceedings," *Jennings*, 583 U.S. at 301–03, IJs do not have authority to redetermine the custody status of an alien present without admission.

Here, Petitioner is an applicant for admission (specifically, an alien present without admission), placed directly into removal proceedings under 8 U.S.C. § 1229a. He is therefore subject to detention pursuant to 8 U.S.C. § 1225(b)(2)(A) and ineligible for a custody redetermination hearing before an IJ. "It is well established . . . that the Immigration Judges only have the authority to consider matters that are delegated to them by the Attorney General and the [INA]." *Matter of A-W-*, 25 I&N Dec. 45, 46 (BIA 2009). "In the context of custody proceedings, an Immigration Judge's authority to redetermine conditions of custody is set forth

in 8 C.F.R. § 1236.1(d) . . . ." *Id.* at 46. The regulation clearly states that "the [IJ] is authorized to exercise the authority in [8 U.S.C. § 1226]." 8 C.F.R. § 1236.1(d); *see id.* § 1003.19(a) (authorizing IJs to review "[c]ustody and bond determinations made by [DHS] pursuant to 8 C.F.R. part 1236"); *see id.* § 1003.19(h)(2)(i)(B) ("[A]n IJ may not redetermine conditions of custody imposed by [DHS] with respect to . . . [a]rriving aliens in removal proceedings, including aliens paroled after arrival pursuant to [8 U.S.C. §1182(d)(5).]").

In analyzing 8 U.S.C. § 1225(b)(2)(A), the Supreme Court in *Jennings* equated "applicants for admission" with aliens "seeking admission." *See Jennings*, 583 U.S. at 289. As noted above, the Supreme Court stated that 8 U.S.C. § 1225(b)(2) "serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1)." *Id.* at 287. In doing so, it specifically cited 8 U.S.C. § 1225(b)(2)(A)—and thus did not appear to consider aliens "seeking admission" to be a subcategory of applicants for admission. *Id.* The Supreme Court also stated that "[a]liens who are instead covered by § 1225(b)(2) are detained pursuant to a different process . . . [and] 'shall be detained for a [removal] proceeding' . . . ." *Id.* at 288 (quoting 8 U.S.C. § 1225(b)(2)(A)). The Supreme Court considered all aliens covered by 8 U.S.C. § 1225(b)(2) to be subject to detention under subparagraph (A)—not just a subset of such aliens. Moreover, *Jennings* found that 8 U.S.C. § 1225(b) "applies primarily to aliens seeking entry into the United States ('applicants for admission' in the language of the statute)." *Id.* at 297. The Court therefore considered aliens seeking admission and applicants for admission to be virtually indistinguishable; it did not consider them to be merely a subcategory of applicants for admission. *See also Lucero v. Field Office Dir. Of Enforcement and Removal Op., et al.*, Case No. 1:25-cv-823, 2025 WL 3718730, at *4 (S.D. Ohio Dec. 23, 2025) (citing *Jennings*, 583 U.S. 281; *Coronado v. Sec., Dept. of Homeland Sec., et al.*, Case No. 1:25-cv-831, 2025 WL

3628229, at *8 (S.D. Ohio Dec. 15, 2025)) (the statutory phrase "alien[s] seeking admission" does not refer to a subset of "alien[s] who [are] applicants for admission," but rather is just another way to refer to that same group).

In *Coronado,* the court made a painstaking analysis of the distinctions between § 1225 and § 1226 with a pragmatic emphasis on the question of which class, or category, of aliens were subject to each code section. In the *Coronado* court's words, "...applicants for admission as a textual matter fall within § 1225(b)(2)," wherein "an applicant for admission includes any 'alien present in the United States who has not been admitted.'" 2025 WL 3628229, at *12, *7. And to be clear, 'admission' specifically means *lawful* entry...". An alien may still be an applicant for *lawful* entry, seeking legal 'admission,'" even after many years of physical presence in the United States." *Id.,* at *7. Also, no "examining immigration officer" has decided that the alien "is not clearly and beyond a doubt entitled to be admitted," citing 8 U.S.C. § 1225(b)(2)(A). *Id.*, at *8. Simply stated, "...if ICE detains an alien who entered without permission, mandatory detention under § 1225(b)(2) is appropriate." *Id.*, at *10; *see also, Lucero*, 2025 WL 3718730; *Phurtskhvanidze v. Field Off. Dir. of Enf't and Removal Operations*, No. 1:25-cv-827, 2026 WL 160833 (S.D. Ohio Jan. 21, 2026).

Furthermore, Section 1225(a) defines "applicant for admission" to encompass an alien who either "arrives in the United States" or who is "present in the United States who has not been admitted." 8 U.S.C. § 1225(a)(1). And "admission" under the INA means not physical entry, but lawful entry after inspection by immigration authorities. 8 U.S.C. § 1101(a)(13)(A); *Mejia Olalde v. Noem*, 2025 WL 3131942, at *3 (E.D. Mo. Nov. 10, 2025). Section 1225(a) provides that "[a]ll aliens . . . who are applicants for admission *or otherwise* seeking admission or readmission . . . shall be inspected." 8 U.S.C. § 1225(a)(3) (emphasis added). The word

"'[o]therwise' means 'in a different way or manner . . . .'" *Texas Dep't of Hous. & Cmty. Affs. v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 535 (2015) (quoting Webster's Third New International Dictionary 1598 (1971)); *see also Att'y Gen. of United States v. Wynn*, 104 F.4th 348, 354 (D.C. Cir. 2024) (same); *Villarreal v. R.J. Reynolds Tobacco Co.*, 839 F.3d 958, 963-64 (11th Cir. 2016) (en banc) ("or otherwise" means "the first action is a subset of the second action"); *Kleber v. CareFusion Corp.*, 914 F.3d 480, 482-83 (7th Cir. 2019). Being an "applicant for admission" is thus a particular "way or manner" of seeking admission, such that any alien who is an "applicant for admission" *is* "seeking admission" for purposes of Section 1225(b)(2)(A).

"Seeking admission" is thus "a term of art" that includes not only aliens who "entered the United States with visas or other entry documents before their presence became lawful" but also aliens who "entered unlawfully or [were] paroled into the United States but were deemed constructive applicants for admission by operation of [INA §] 235(a)(1) . . . ." *Matter of Lemus-Losa*, 25 I & N. Dec. 734, 743 n.6 (BIA 2012) (emphases omitted). As a result, "many people 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." *Id.* at 743. For example, an alien who previously unlawfully entered the United States and never is admitted, departs, and subsequently submits a literal application for admission to the United States—*e.g.*, obtaining the appropriate travel documents, such as a visa, and presenting at a port of entry for inspection—is deemed to be "*again* seek[ing] admission" to the United States. *Id.* at 743-44 & n.6 (emphasis added) (quoting and discussing 8 U.S.C. § 1182(a)(9)(B)(i)(I)-(II)). Mere presence without admission *is* seeking admission "by operation of law." *Id.*

Petitioner has not been lawfully admitted into the United States; nor has an examining

immigration officer determined that he is clearly and beyond a doubt entitled to be admitted. Furthermore, like the petitioner in *Coronado*, he is seeking potential asylum. *See* Dkt. No. 1, Pet., Attach. 1, PageID# 12. Thus, he is indeed an applicant for admission and is properly detained pursuant to 1225(b)(2)(A).

3. Past practice does not override clear statutory language.

The Government previously operated under a different understanding of Section 1225(b)(2)(A), under which aliens present in the United States who had entered without admission instead were detained under Section 1226(a). *But see* 8 C.F.R. § 235.3(b)(1)(ii) (requiring detention of applicants for admission pending removal proceedings "in accordance with [INA §] 235(b)(2)"). However, past practice does not justify disregard of clear statutory language. *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 329 (2015). Indeed, the Supreme Court has rejected longstanding government interpretations that it has deemed incompatible with the INA specifically. *See Pereira v. Sessions*, 585 U.S. 198, 204-05, 208-09 (2018). Therefore, a court always must interpret the statute "as written." *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. 63, 68 (2019); *see Mejia Olalde*, No. 25-cv-168, 2025 WL 3131942, at *5 (rejecting the prior interpretation of Section 1225(b)(2) as "nontextual" and unsupported by any "thorough, reasoned analysis"); *Rojas*, 2025 WL 3033967, at *9 ("Prior administrations' generous interpretation of these laws . . . do not and cannot rewrite it."). As stated in *Coronado*:

> [E]ven "a 'long-established practice' does not justify a rule that denied statutory text its fairest reading." *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 329 (2015). Nor, regardless of the duration of the practice, need a court defer to an agency's *former* (and now-discarded) interpretation. *See Loper Bright Enters.*, 603 U.S. at 412. Indeed, if deference were warranted, one could argue that courts should defer to the DOJ's *current* interpretive guidance.

2025 WL 3628229, at *12. Accordingly, for the reasons discussed above, Petitioner, as an alien present without admission in 8 U.S.C. § 1229a removal proceedings, is an applicant for admission and an alien seeking admission, and therefore is subject to detention under 8 U.S.C. § 1225(b)(2)(A) and ineligible for a bond redetermination hearing before an IJ.

4. Applicants for admission may only be released from detention on an 8 U.S.C. § 1182(d)(5) parole.

Importantly, applicants for admission may only be released from detention if DHS invokes its discretionary parole authority under 8 U.S.C. § 1182(d)(5). DHS has the exclusive authority to temporarily release on parole "any alien applying for admission to the United States" on a "case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5); *see* 8 C.F.R. § 212.5(b). In *Jennings*, the Supreme Court placed significance on the fact that 8 U.S.C. § 1182(d)(5) is the specific provision that authorizes release from detention under 8 U.S.C. § 1225(b), at DHS's discretion. *Jennings*, 583 U.S. at 300. Specifically, the Supreme Court emphasized that "[r]egardless of which of those two sections authorizes . . . detention, [8 U.S.C. § 1225(b)(1) or (b)(2)(A)], applicants for admission may be temporarily released on parole . . . ." *Id.* at 288. Parole is not a bond hearing, and the two should not be conflated.

5. Section 1226 does not impact the detention authority for applicants for admission.

Section 1226 creates a separate authority addressing the arrest, detention, and release of aliens generally (versus applicants for admission specifically). *See* 8 U.S.C. § 1226. This is the only provision that governs the detention of aliens who, for example, lawfully enter the country but overstay or otherwise violate the terms of their visas or are later determined to have been

improperly admitted. The statute provides that "[o]n a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States." *Id.* § 1226(a). Detention under this provision generally is discretionary: The Attorney General "may" either "continue to detain the arrested alien" or release the alien on bond or conditional parole. *Id.* § 1226(a)(1)-(2).[3]

III. CONCLUSION

This Court does not have subject matter jurisdiction over Petitioner's claims because of the claims channeling provision of the INA. Further, this Court should decline to exercise jurisdiction because Petitioner has failed to exhaust administrative remedies. Last, Petitioner is properly detained pursuant to 8 U.S.C. § 1225(b). Accordingly, the Court should deny Petitioner's habeas petition.

Respectfully submitted,

DAVID M. TOEPFER
United States Attorney

By: /s/ Lisa Hammond Johnson
LISA HAMMOND JOHNSON (#0061681)
Assistant United States Attorney
United States Court House
801 West Superior Ave., Suite 400
Cleveland, OH 44113
(216) 622-3679 – Johnson
(216) 522-4982 (Fax)
Lisa.Hammond.Johnson@usdoj.gov

Counsel for Respondents

[3] Conditional parole under Section 1226(a) is broader than parole under Section 1182(d)(5)(A).