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

CRISTIAN MANUEL RODRIGUEZ ALVAREZ, Petitioner, v. MARKWAYNE MULLIN, Secretary, United States Department of Homeland Security, *et al.*, Respondents.	CASE NO.: 3:26-CV-00575 JUDGE JAMES R. KNEPP, II UNITED STATES DISTRICT JUDGE MAGISTRATE JUDGE CARMEN E. HENDERSON RESPONSE IN OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Cristian Manuel Rodriguez Alvarez ("Petitioner") is subject to the mandatory detention provisions of § 1225 of the Immigration and Nationality Act ("INA") and is not entitled to be released nor to a bond hearing during his removal proceedings. *See* 8 U.S.C. § 1225. Respondents[1] hereby oppose the Petition and state it should be denied and this case dismissed for lack of subject-matter jurisdiction, and/or failure to state a claim. *See* Fed. R. Civ. P. 12(b)(1), (6).

[1] This Opposition is filed on behalf of Respondent Markwayne Mullin, recently confirmed Secretary of the Department of Homeland Security ("DHS"), who is automatically substituted for his predecessor Kristi Noem, pursuant to Rule 25(d). *See* Fed. R. Civ. P. 25(d). The Office of the U.S. Attorney may appear in court to attend to the United States' interests, pursuant to 28 U.S.C. § 517, therefore, this filing attends to those interests to the extent that the Petition names John H. Wissel, "Deportation Officer," U.S. Immigration and Customs Enforcement ("ICE"), Columbus Field Sub-Office, as a Respondent. Under Sixth Circuit law, the only proper respondent in a

First, this Court lacks subject-matter jurisdiction to review the Immigration Judge's ("IJ") decisions made during Petitioner's removal proceedings, including the IJ's alleged "erroneous ruling" and denial of bond. (Pet., ECF No. 2, PageID#19, 23.) Congress has consolidated judicial review of all questions of law and fact into one review, related to final orders of removal, through a petition for review "filed with the court of appeals for the judicial circuit in which the [IJ] completed the proceedings," here, the Sixth Circuit.[2] *See* 8 U.S.C. §§ 1252(b)(2), (9). Since the INA bars district court review of the IJ's decisions on detention and bond, neither the Administrative Procedure Act ("APA"), the "Suspension Clause" of the U.S. Constitution, the Declaratory Judgment Act, nor the All Writs Act, provide this court with jurisdiction or authority to grant the Petition. (Pet., ECF No. 2, PageID# 20-21.)

Next, the California district court's decision in *Bautista* has no impact in the Northern District of Ohio; on March 6, 2026, the Ninth Circuit temporarily stayed that district court's orders,

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habeas petition filed by a non-citizen is the Director of the ICE field office in the district where the detention facility is located. *Roman v. Ashcroft*, 340 F.3d 314, 320 (6th Cir. 2003). Petitioner failed to name the proper Respondent, here Director Kevin Raycraft, ICE Detroit Field Office, who has authority over the states of Michigan and Ohio. Therefore, all Respondents named by Petitioner should be dismissed.

The failure to name the proper respondent may also deny this Court personal jurisdiction over Director Raycraft, who was never named on the Petition nor was his predecessor. *See* Fed. R. Civ. P. 12(b)(2); *Khalil v. President, U.S., et al.*, 164 F.4th 259, 272-73 (3rd Cir. 2026)(holding a federal court may transfer a habeas matter to the jurisdiction of confinement, under 28 U.S.C. § 1631, however, habeas immediate custodian rules implicate personal jurisdiction and the requirement to file in the district of confinement concerns venue)(quoting in parenthetical *Dufur v. U.S. Parole Comm'n*, 34 F.4th 1090, 1096-97 (D.C. Cir. 2022)); *see also Purley v. Toledo Federal Court*, Case No. 3:24-CV-01211, 2025 WL 240737, *5 (N.D. Ohio Jan. 17, 2025).

[2] This would include questions related to whether Petitioner had a meaningful bond hearing, interpretation, and application of constitutional and statutory provisions. *See* § 1252(b)(9); *see also Arellano Trujillo v. U.S. Attorney*, 2026 WL 668297, at *2 (N.D. Ohio Mar. 9, 2026). Decisions of IJ's are first appealed to the Board of Immigration Appeals ("BIA"). *See* 8 C.F.R. § 1003.38.

pending appeal. *Bautista v. Santacruz, et al*, -- F.Supp.3d--, Case No. 5:25-cv-01873, 2025 WL 3713982 (C.D. Cal. Dec. 18, 2025); *Bautista, et al, v. United States Dept. of Homeland Security, et al*, Case No. 26-1044, (9th Cir. March 6, 2026). The Fifth and Eighth Circuits recently ruled there is no difference between an "applicant for admission" and those "seeking admission," therefore, the mandatory detention provisions of § 1225 apply to noncitizens being detained during removal proceedings; the Ninth Circuit held oral argument on the issue on March 4, 2026, in *Rodriguez Vazquez v. Bostock*, Case No. 25-6842, (9th Cir.). S*ee also Buenrostro-Mendez v. Bondi, et al.*, 166 F. 4th 494 (5th Cir. 2026); *Herrera Avila v. Bondi, et al.*, Case No. 25-3248, (8th Cir. March 25, 2026).[3]

Finally, the Petition should be dismissed for failure to state a claim because Petitioner failed to exhaust his administrative remedies, on bond and removal, before the BIA and there is no constitutional violation under the Fifth nor the Eighth Amendment. Petitioner's detention during "removal proceedings is a constitutionally permissible part of that process," has not been unreasonably prolonged nor indefinite, and does not violate the Constitution pursuant to Supreme Court and Sixth Circuit law. *See Demore v. Kim*, 538 U.S. 510, 531 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *Martinez v. Larose*, 968 F.3d 555, 564-66, n. 7 (6th Cir. 2020).

I. BACKGROUND

A. PETITIONER'S HISTORY BEFORE THE IC

Petitioner's entry into the United States and first encounter with Border Patrol is documented on DHS Forms I-213 and I-831, "Record of Deportable/Inadmissible Alien." *See*

[3] Circuit Courts of Appeals have this issue pending across the country. The Sixth Circuit heard oral arguments in *Lopez-Campos v. Raycraft*, Case No. 25-1965, D.C. Case No. 2:25-cv-12486, E.D. MI, on March 18, 2026.

Govt. Ex. A. Petitioner, a native and citizen of Venezuela, "unlawfully entered the United States from Mexico by crossing the international boundary." *Id.*, p. 3; (Pet., ECF No. 2, PageID# 19.) Petitioner was not inspected or admitted at a port of entry and conceded that he had no legal right to be in or remain in the United States. *See* Govt. Ex. A, p. 3. He was then arrested and transported for further processing and later released due to "lack of detention space." *Id.*

Before being released, Petitioner was served with a Notice to Appear ("NTA"), dated December 14, 2023, which placed him in removal proceedings and ordered his appearance before an IJ in Cleveland, Ohio. *See* Govt. Ex. B, NTA. The NTA listed DHS' allegations as follows:

1. You are not a citizen or national of the United States;
2. You are a native of VENEZUELA and a citizen of VENEZUELA;
3. You entered the United States at or near BROWNSVILLE, TX, on or about December 10, 2023;
4. You were not then admitted or paroled after inspection by an Immigration Officer.

Id. Petitioner signed the NTA, acknowledging notice provided to him in the Spanish language, and was provided a list of attorneys with free legal services. *Id.*

On August 20, 2024, Petitioner filed written pleadings, through counsel, conceding all allegations in the NTA including his removability under the INA. Govt. Ex. C, Written Pleadings. Petitioner's written pleadings further stated that he planned to file an asylum application requesting relief from removal. *Id.* On August 22, 2024, an IJ issued a written order finding Petitioner removable as charged and directing Venezuela as the country of removal. Govt. Ex. D, Order on Removability.[4] Petitioner then had sixty days to file his asylum application, which he filed on

[4] *See* 8 U.S.C. § 1229a, for information on removal proceedings. *See also Martinez*, 968 F.3d at 560 (citing *Nasrallah v. Barr*, 140 S. Ct. 1683, 1690 (2020), quoting 8 U.S.C. § 1101(a)(47)(A)("In the deportation context, a final 'order of removal' is a final order 'concluding that the alien is deportable or ordering deportation.'")).

October 4, 2024, and it remained pending as of January 30, 2026, the date Petitioner was taken into ICE custody following a traffic stop. (Pet., ECF No. 2, PageID# 19.) *See also* Govt. Ex. E, Petr. Req. for Bond Redetermination. Petitioner filed a Request for Bond Redetermination and Motion for Custody Redetermination Hearing. *See* Govt. Ex. E. Petitioner states he: "had a bond hearing, but the [IJ] refused to grant an immigration bond," and "erroneously ruled that he lacked jurisdiction to consider releasing Petitioner on bond." (Pet. ECF No. 2, PageID# 19.) The IJ denied the request, finding no jurisdiction and Petitioner reserved appeal, with an appeal due date of March 26, 2026. *See* Govt. Ex. F, IJ Order dated Feb. 24, 2026. Rather than pursuing that administrative appeal, Petitioner filed the instant habeas petition on March 9, 2026.

The IC held Petitioner's merit hearing on March 20, 2026, at which his asylum application was denied, and Petitioner was ordered removed to Venezuela, or in the alternative Columbia. *See* Govt. Ex. G, Order of IJ dated March 20, 2026. An appeal of the order of removal is due to the BIA within thirty days of the order, April 20, 2026.[5]

II. LAW AND ARGUMENT

A. PETITIONER'S CLAIMS SHOULD BE DISMISSED FOR LACK OF SUBJECT-MATTER JURISDICTION UNDER RULE 12(b)(1)

"[D]elineating the jurisdiction of Article III Courts is soundly within the powers of Congress." *Hamama v. Adducci*, 912 F.3d 869, 879 (6th Cir. 2018)("*Hamama I*").[6] The INA

[5] The IJ's order denying the asylum application and ordering removal indicates Petitioner reserved appeal rights, however it lists the appeal due date as March 20, 2026, the same date as the order of removal; apparently a typo. *See* Govt. Ex. G. The INA sets an appeal deadline of thirty days for appeals related to asylum applications. 8 U.S.C. § 1003.38(b)(2).

[6] The Sixth Circuit twice reviewed district court decisions in *Hamama v. Adducci*, first in 2018: 912 F.3d 869 (6th Cir. 2018), and again in 2020: 946 F.3d 875 (6th Cir. 2020). For clarity, this brief shall refer to the 2018 opinion as "*Hamama I*" and the 2020 opinion as "*Hamama II*." Although both opinions found that jurisdiction over removal-based claims is an independent consideration and not tied to jurisdiction over detention-based claims, neither opinion held that a

limits jurisdiction as it relates to claims arising from the execution of removal orders, which includes detention during removal proceedings, even if federal question jurisdiction would otherwise be proper. 8 U.S.C. § 1252(g); *see Elgharib v. Napolitano,* 600 F.3d 597, 607 (6th Cir. 2010). As the INA controls here, the APA does not create jurisdiction over Petitioner's claims. 5 U.S.C. § 701, *et seq*. By its terms, the INA's statutory limitation on jurisdiction also applies to habeas relief under 28 U.S.C. § 2241, which would typically provide jurisdiction over cases involving allegations of detention in violation of the Constitution or the laws of the United States. *Zadvydas v. Davis,* 533 U.S. 678, 687 (2001). Thus, to obtain habeas relief, Petitioner must not merely show she is "in custody," but rather that she is "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3). Petitioner cannot meet this burden.

1. 8 U.S.C. § 1225 Requires Petitioner's Mandatory Detention Without Bond.

Petitioner is lawfully detained under the mandatory detention provisions of § 1225 of the INA. *See* 8 U.S.C. § 1225(b)(2)(A). Section 1225 governs "applicants for admission" and states that a person who has not been admitted to the United States "shall be deemed for purposes of this chapter an applicant for admission." 8 U.S.C. § 1225(a)(1). Petitioner's detention without bond is lawful under § 1225(b)(2). As an "applicant for admission," Petitioner is subject to the terms of § 1225(b)(2)(A), rather than § 1226(a), which is consistent with the plain language of the statute and Supreme Court precedent. *See Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018)("Section 1225(b)(2) … serves as a catchall provision that applies to all applicants for admission not covered

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district court has jurisdiction to create "a requirement for bond hearings that does not exist in the statute." *Hamama I*, 912 F.3d at 879-80.

by § 1225(b)(1)…".) 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). 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)).

Petitioner takes the Supreme Court's holdings in *Jennings v. Rodriguez* out of context. *Jennings v. Rodriguez*, 583 U.S. 281 (2018). The plain language and context of § 1225 does not distinguish an "applicant for admission" from a person "seeking admission," as recently recognized by the Fifth Circuit in *Buenrostro-Mendez v. Bondi*, and by the Eighth Circuit in *Herrera Avila v. Bondi. See Buenrostro-Mendez v. Bondi, et al.*, 166 F. 4th 494, 502-04 (5th Cir. 2026)(quoting the *Jennings* Court "explained that '§ 1225(b) applies to aliens seeking entry into the United States ("applicants for admission" in the language of the statute).' *Jennings*, 583 U.S. at 297."); *Herrera Avila v. Bondi, et al.*, Case No. 25-3248, pp. 5, 9 (8th Cir. March 25, 2026)(rejecting argument that the *Jennings* Court interpreted § 1225 to apply only to aliens detained at the border and § 1226 to aliens detained in the interior; "But this characterization was offered only as general background information, as the Court there was not confronted with the interpretive issue now before us.")

"While *Jennings* states that § 1226 generally authorizes the Government to detain 'certain aliens already in the country,' this does not preclude other statutory provisions – such as § 1225(b)(2)(A) – from also applying to such aliens." *Herrera Avila,* Case No. 25-3248, pp. 9-10 (8th Cir. March 25, 2026) (first quoting *Jennings*, 583 U.S. at 289; next citing *Buenrostro-Mendez*,

166 F.4th at 505; and 8 U.S.C. § 1225(a)(1)("defining 'applicant for admission' to include 'alien[s] present in the United States.'") "Section 1226(a) undeniably does work independent from § 1225(b)(2)(A) because only § 1226(a) applies to admitted aliens who overstay their visas, become deportable on many different grounds, or were admitted erroneously due to fraud or some other error." *Buenrostro-Mendez,* 166 F.4th at 504-05. Here, Petitioner conceded the facts of the NTA; that he was not lawfully admitted or paroled prior to entering the United States. *See* Govt. Ex. B. He now claims he is no longer "seeking admission" simply to avoid being subject to the mandatory detention provisions of § 1225, however, Petitioner's asylum application is further confirmation that § 1225 applies, since § 1225(b)(1) governs applicants for admission seeking asylum. 8 U.S.C. § 1225(b)(1)(A)(ii).

Although the DHS previously detained those who entered without admission under Section 1226(a), past practice does not justify disregard of clear statutory language. *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 329 (2015). The Court should interpret the statute "as written." *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. 63, 68 (2019); *see also Hererra Avila*, Case No. 25-3248, p. 11 (8th Cir., March 25, 2026)(finding that even if prior administrations did not exercise their full authority under § 1225, such authority does not "'evaporate through lack of administrative exercise,'")(quoting *Bankamerica Corp. v. U.S.*, 462 U.S. 122, 131 (1983)). Therefore, Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(1)(B) and (b)(2)(A) and thus ineligible for bond. *Jennings*, 583 U.S. at 297.

Petitioner, through filings before the IC, conceded he entered the United States without lawful authority, was not then admitted or paroled after inspection, is subject to removal, and filed an asylum application requesting relief from removal. All this supports the conclusion Petitioner is an applicant for admission, seeking admission, under §1225(a)(1), and subject to mandatory

detention without bond under § 1225(b)(2). *See* Govt. Exs. C, E. Since Petitioner is currently in removal proceedings, his detention is also authorized under § 1229a, which makes him ineligible for bond. 8 U.S.C. § 1229a. Specifically, once placed in removal proceedings Petitioner is viewed as both an "applicant for admission" as defined in 8 U.S.C. § 1225(a)(1), and "seeking admission," as contemplated in 8 U.S.C. § 1225(b)(2)(A). Therefore, Petitioner is lawfully detained without bond, and the Petition should be denied and this case dismissed.

2. 8 U.S.C. § 1252 Bars Review of the IJ's Decision to Detain Petitioner.

The plain language of § 1252 denies this Court subject-matter jurisdiction to review the IJs decision regarding Petitioner's detention. The Supreme Court in *Jennings* recognized § 1252's jurisdictional bar for claims challenging orders of removal and decisions to detain or seek removal, because respondents in that case were "not challenging the decision to detain them in the first place." *Jennings*, 583 U.S. at 294-95. Here, Petitioner is doing exactly that: challenging the IJ's ruling to detain him without considering bond. (Pet., ECF No. 2, PageID#19.) Contrary to *Jennings*, Petitioner is not merely challenging prolonged detention, he seeks relief from "the decision to detain him in the first place." *See Jennings*, 583 U.S. at 294. Based on *Jennings*, the Court lacks subject-matter jurisdiction over all questions of law and fact arising from the threshold detention decision, because those are discretionary and reviewable only through a petition to the court of appeals. § 1252(b)(9). *See* 8 U.S.C. §§ 1225(b).

Further, the subsections of §1252(a)(5), (b)(9), and (g) demonstrate Congress' clear intention to limit this Court's jurisdiction in matters related to the INA. Subsection (a)(5) provides the courts of appeals exclusive jurisdiction over petitions reviewing an order of removal under the INA. 8 U.S.C. § 1252(a)(5). Subsection (b)(9), limits that review further, stating: "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 and *no other court shall have jurisdiction, by habeas or otherwise*, to review questions of law or fact. *See* 8 U.S.C. § 1252(b)(9); *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999). This includes the IJ's decision to detain Petitioner without bond and any other interpretation of immigration law.

Furthermore, "[t]aken together, § 1252(a)(5) and § 1252(b)(9) mean that any legal or factual issue 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" (internal quotation marks omitted)). Claims challenging detention pending removal—even when styled as constitutional or habeas claims— "quickly implicate and often become entwined with interpretation and implementation of the statutory framework," including whether detention is authorized under 8 U.S.C. §§ 1225 or 1226. *See Munoz Nataren v. Raycraft*, Case No. 4:26-cv-212, 2026 WL 214368, at *3 (N.D. Ohio Jan. 28, 2026) and *Amaya-Velis v. Raycraft,* --F.Supp3d --, Case No. 4:26-cv-73, 2026 WL 100596, at *3 (N.D. Ohio Jan. 14, 2026). Congress has not conferred jurisdiction on federal district courts to interpret or apply those provisions, therefore, this Court lacks jurisdiction over the claims in the Petition and it should be dismissed. *Munoz Nataren*, 2026 WL 214368, at *3; *Amaya-Velis*, 2026 WL 100596, at *3.

Likewise, Section 1252(g) of the INA 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 decision to *commence removal proceedings* includes the decision to detain pending such removal proceedings. *See, e.g., 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). Here, Petitioner seeks district court review of the IJ's alleged "error" denying consideration for release on bond. (Pet., ECF No. 2, PageID# 23.) Such a decision falls squarely within § 1252's various subsections denying this Court subject-matter jurisdiction to review questions of law and fact, therefore the Petition should be denied and this case dismissed.

3. The *Bautista* Declaratory Judgment Has No Impact Here.

The *Bautista* decision, issued by a district court in the Central District of California, has no preclusive effect here and should not be considered as a basis to grant the Petition. First, a district court in California has no jurisdiction over custodians located in other districts. *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004). Second, a habeas petitioner must name the petitioner's *immediate* custodian—*i.e.*, the custodian who has actual custody over the petitioner and can produce the "corpus." *Id.* at 435. Given that a challenge to the legality of detention is a core habeas claim, class-wide declaratory relief is inappropriate in the habeas context. *Calderon v. Ashmus*, 523 U.S. 740, 747 (1998). Also, the Ninth Circuit recently stayed the application of the district court's decisions, pending appeal. *Bautista, et al, v. United States Dept. of Homeland Security, et al, Case No. 26-1044, (9th Cir. March 6, 2026).* Rather than pursuing the administrative remedies that remain available to him, Petitioner filed the instant habeas petition and now seeks to bypass that process entirely before the administrative record is complete. At the very least, before considering the application of *Bautista*, this Court should apply the principles of prudential exhaustion and allow the IC and BIA to consider the issues first.

B. PETITIONER'S CLAIMS SHOULD BE DIMISSED FOR FAILURE TO STATE A CLAIM UNDER RULE 12(b)(6)

1. Petitioner Failed to Exhaust His Remedies Before the Immigration Court.

Even if this Court were to assume jurisdiction over the Petition, dismissal is proper because Petitioner has not exhausted administrative remedies through the BIA nor the IC. As this District recently recognized in *Amaya-Velis v. Raycraft,* "prudential principles of exhaustion counsel that Petitioner pursue his administrative remedies to a final judgment from the [BIA] before seeking a writ of habeas corpus." *Amaya-Velis,* 2026 WL 100596, at *4; *see also Munoz Nataren*, 2026 WL 214368, at *4. Immigration courts possess the expertise to interpret and apply the statutory and regulatory regime governing detention and removal, therefore judicial intervention before fully utilizing administrative remedies would be premature. *Munoz Nataren*, 2026 WL 214368, at *4. As the Sixth Circuit has observed, exhaustion "protects administrative agency authority, promotes judicial efficiency, and may produce a useful record for judicial review." *Wheeler v. Williams*, No. 20-4037, 2021 WL 6071501, at *3 (6th Cir. Dec. 20, 2021) (internal quotations and citation omitted).

Responding to questions of statutory interpretation, such as whether to apply 8 U.S.C. § 1225(b) or § 1226(a) to a habeas petition, benefits from agency review. Determinations "regarding detention here turn on interpretation and application of the governing removal regime." *Villalta v. Greene*, 794 F. Supp. 3d 528, 531 (N.D. Ohio 2025); *see also Hernandez Torrealba*, No. 1:25cv01621, 2025 WL 2444114, at *11 (N.D. Ohio Aug. 25, 2025). Accordingly, "such review should proceed before the [BIA] to apply its experience and expertise without judicial interference." *Id.* Even where there is a "high probability of denial" of a petitioner's appeal of an IJ's decision, that probability "does not weigh in favor of waiving exhaustion." *Amaya-Velis*, 2026 WL 100596, at *4 (citing *Hernandez Torrealba*, 2025 WL 2444114, at *11). The fact that the BIA

has a clear position does not transform an incomplete administrative record into a futile one; it simply means that review may ultimately rest with the Sixth Circuit through a petition for review, which is precisely how Congress intended the system to work. Petitioner's record of filings before the IC and reserved appeals which have not yet been filed support requiring exhaustion; therefore, the Petition should be dismissed for failure to state a claim due to Petitioner's failure to exhaust.

2. Petitioner Fails to State Constitutional Violations of Due Process and Excessive Bail under the Fifth and Eighth Amendments.

As argued above, this Court lacks subject-matter jurisdiction to review the IJ's decisionon detention, however, should the Court accept the Petition as claiming constitutional violations, it should be dismissed for failure to state such claims. First, the Due Process Clause provides no relief to Petitioner because mandatory detention under § 1225(b) is constitutionally permissible, particularly when Petitioner has been detained for a relatively short period of time, since January 30, 2026, and resolution is forthcoming. (Pet., ECF No. 2, PageID# 19.) In *Demore v. Kim*, the Supreme Court "recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process," and reaffirmed its "longstanding view that the Government may constitutionally detain deportable aliens during the limited period necessary for their removal proceedings." *Demore v. Kim*, 538 U.S. 510, 522-23, 526 (2003). The *Demore* Court further explained that "when the Government deals with deportable aliens, the Due Process Clause does not require it to employ the least burdensome means to accomplish its goal." *Id.* at 528. With respect to substantive due process concerns, the Court recognized that it "has firmly and repeatedly endorsed the proposition that Congress may make rules as to aliens that would be unacceptable if applied to citizens." *Id.* at 522.

Further, although Petitioner has a fundamental liberty interest, "[i]n immigration cases . . . federal courts apply a much more deferential standard of review to substantive due process

challenges even where the immigration law interferes with a plaintiff's fundamental rights." *Bangura v. Hansen*, 434 F.3d 487, 494-95 (6th Cir. 2006) (citing *Fiallo v. Bell*, 430 U.S. 787, 798-99 (1977)). Thus, the Sixth Circuit "upholds immigration statutes so long as they are 'conceivably related to the achievement of a federal interest.'" *Bangura*, 434 F.3d at 495, (internal citation omitted.) Since the Supreme Court has "long recognized the power to expel or exclude aliens as a fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control" detention during removal proceedings, as provided for under the INA, is related to achieving that federal interest and does not violate substantive due process. *Id.*

Furthermore, the Supreme Court and Sixth Circuit have rejected a set time frame limiting mandatory detention during removal proceedings under the INA. For example, the Court in *Jennings* rejected the Ninth Circuit's six-month limit on detention, concluding that during removal proceedings a person subject to deportation may be detained and such detention does not violate the Due Process Clause. *Jennings*, 583 U.S. at 301-05. In *Hamama I*, the Sixth Circuit recognized that *Jennings* created a distinction on pre-removal and post-removal detention time limits and rejected the notion that periodic bond hearings should be required. *Hamama I*, 912 F.3d at 879-80; citing *Jennings*, 583 U.S. at 284, 310. In *Hamama II,* the Sixth Circuit found that § 1225(b) mandates pre-removal detention, which is a specific period of time (not indefinite), therefore, detention during removal proceedings does not violate due process. *Hamama II*, 946 F.3d at 880, quoting *Jennings*, 583 U.S. at 299 ("Section 1225(b)(1) mandates detention 'for further consideration of the application for asylum,' § 1225(b)(1)(B)(ii), and § 1225(b)(2) requires detention 'for a [removal] proceeding.'" quoting § 1225(b)(2)(A).)

Finally, Petitioner's reliance on *Carlson v. Landon* is misplaced; there the Supreme Court recognized that the language of the Eighth Amendment fails to require bail in all instances, and it

does not prevent "Congress from defining the classes of cases in which bail shall be allowed in this country." *Carlson*, 542 U.S. at 537. As stated by the *Carlson* Court, "[d]etention is necessarily a part of this deportation procedure," therefore, statutes like the INA § 1225, which require detention without bond, show Congress' intention regarding bail because as noted in *Jennings*, nothing in 8 U.S.C. § 1225(b)(2)(A) "says anything whatsoever about bond hearings." *See Carlson*, 542 U.S. at 538; *Jennings*, 583 U.S. at 297. Therefore, Petitioner fails to state an Eighth Amendment violation.

Petitioner is detained for the limited purpose of removal proceedings. Accordingly, his procedural due process claims fail because Congress has not created any procedural rights to a bond hearing for applicants for admission and he is being legally detained during his removal proceedings. *See Jennings*, 583 U.S. at 297. Also, his substantive due process claims fail because he has been detained for less than two months during his removal proceedings, and, based on the above, this does not qualify as unreasonably prolonged detention. *See Hamama II*, 946 F.3d at 880. Thus, Petitioner fails to state constitutional violations under the Fifth and Eighth Amendments, therefore, the Petition should be denied and this case dismissed.

III. CONCLUSION

For the foregoing reasons, the Petition for Writ of Habeas Corpus should be denied in its entirety, and this case dismissed.

Respectfully submitted,

DAVID M. TOEPFER
United States Attorney

By: */s/ Angelita Cruz Bridges*
Angelita Cruz Bridges (OH: 0072688)
Assistant United States Attorney
Four Seagate, Suite 308
Toledo, OH 43604
(419) 241-0715

(419) 259-6360 (facsimile)
Angelita.Bridges@usdoj.gov

CERTIFICATE OF COMPLIANCE WITH RULE 7.1(f)

I certify that the foregoing Response in Opposition is under twenty pages in length and adheres to the page limitations, set forth in Local Rule 7.1(f), for standard and unassigned cases.

/s/ Angelita Cruz Bridges
Angelita Cruz Bridges
Assistant U.S. Attorney