UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

LUIS MANUEL RODRIGUEZ-RODRIGUEZ, Petitioner, v. KEVIN RAYCRAFT, *et al.*, Respondents.	CASE NO. 3:26-CV-667 JUDGE BENITA Y. PEARSON REPLY IN SUPPORT OF MOTION TO DISMISS

INTRODUCTION

In response to the Motion to Dismiss, Petitioner makes three primary arguments. First, he claims that exhaustion should not be required here. Second, he claims that Respondents have violated his constitutional rights. And third, he claims that Respondents have violated a statutory provision of the Immigration and Nationality Act. All three of these arguments are addressed in turn below, and all three of them fail. The Court should grant Respondents' Motion to Dismiss.

LAW AND ARGUMENT

I. THE COURT SHOULD REQUIRE EXHAUSTION AS A MATTER OF PRUDENCE.

Importantly, Petitioner says nothing in response to Respondents' arguments that the Court lacks jurisdiction pursuant to 8 U.S.C. § 1252(g) and 1252(b)(9). Petitioner solely takes issue with Respondents' claim that he should be required to exhaust his administrative remedies before filing the instant Petition in federal court.

Petitioner is correct that exhaustion is not mandated here; however, when Congress is silent on the exhaustion requirement, courts have discretion to decide whether exhaustion should be judicially imposed as a matter of prudence. *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992); *Perkovic v. I.N.S.*, 33 F.3d 615, 619 (6th Cir. 1994) (exhaustion requirements not written into the

text of a statute are prudential, not jurisdictional). Moreover, exhaustion remains the rule, not the exception. *See, e.g.*, *Hernandez Torrealba*, No. 1:25-CV-1621, 2025 WL 2444114, at *8 (N.D. Ohio Aug. 25, 2025) ("The general rule is that a party may not seek federal judicial review of an adverse administrative determination until the party has first sought all possible relief within the agency itself.") (quotations and citations omitted).

As first articulated by the Ninth Circuit in *Puga v. Chertoff*, exhaustion should be required as a matter of prudence when: (1) agency expertise makes agency consideration necessary to generate a proper record and reach a proper decision; (2) relaxation of the requirement would encourage the deliberate bypass of the administrative scheme; and (3) administrative review is likely to allow the agency to correct its own mistakes and to preclude the need for judicial review. 488 F.3d 812, 815 (9th Cir. 2007) (citations omitted) (hereinafter "the *Puga* factors"). In evaluating the *Puga* factors, a court should also consider the relief requested in the instant litigation, and the current procedural status of the petitioner's administrative proceedings. *Hernandez Torrealba*, 2025 WL 2444114, at *9.

Relief Requested and Procedural Status. In his prayer for relief, Petitioner asks the Court to declare that his detention without bond violates the Immigration and Nationality Act ("INA") and the Due Process Clause of the Fifth Amendment. (*See generally* ECF No. 1, Petition.) He asks the Court to release him immediately, or alternatively, to compel Respondents to provide him a bond hearing. (*Id.*) As noted in Respondents' opening brief, Petitioner has not pursued his claim administratively because he believes it would be a futile exercise. But if Petitioner were to pursue his claims administratively, he could obtain a bond hearing or a change in custody status—the exact remedies requested here. Hence, Petitioner should be required to pursue and exhaust his claims administratively before seeking federal judicial review.

All three of the *Puga* factors also weigh in favor of requiring Petitioner to exhaust his administrative remedies here.

Agency Expertise. As for the first factor, deciding whether Petitioner has been properly detained without bond involves interpreting and applying the immigration laws. Any review of such laws should proceed before the Board of Immigration Appeals to "apply its experience and expertise without judicial interference." *Khalili v. Holder*, 557 F.3d 429, 435 (6th Cir. 2009). As another Court in the Northern District recently held, "because of the expertise that the Board of Immigration Appeals and the immigration courts more generally have in the statutory and administrative regimes governing the admission and removal of foreigners, 'many of the purposes for requiring exhaustion' may be served by permitting agency review in the first instance." *Laguna Espinoza v. Director of Detroit Field Office, U.S. Imm. and Customs Enforcement, et. al.*, No. 4:25-CV-2107, 2025 WL 2878173, at *3 (quoting *Hernandez Torrealba v. U.S. Dep't of Homeland Sec.*, No. 1:25-CV-01621, 2025 WL 2444114, at *11 (N.D. Ohio Aug. 25, 2025)); *see also Beharry v. Ashcroft,* 329 F.3d 51, 62 (2d Cir. 2003) (discussing the benefits of limiting judicial interference in agency affairs in the immigration context).

Deliberate Bypass. The second factor also favors exhaustion, since relaxing the exhaustion requirement would encourage bypassing the administrative regime Congress enacted for immigration. *Laguna Espionza*, 2025 WL 2878173. "Indeed, the number of proliferating district court decisions shows that this danger is already at hand." *Laguna Espinoza v. Director of Detroit Field Office, et. al.*, N.D. Ohio No. 4:25-CV-2420, at ECF No. 2. "[R]elaxing the exhaustion requirement would encourage the deliberate bypass of the administrative scheme in favor of what may be perceived as a potentially more favorable and/or timely reviewing body, i.e., federal court." *Hernandez Torrealba*, 2025 WL 2444114, at *10.

To this end, habeas petitioners—like Mr. Rodriguez here—are making the argument that fully pursuing their administrative remedies would be futile because the BIA is unlikely to find in their favor. But futility is a misguided argument, since courts in this district have held, "even where there is a 'high probability of denial' of a petitioner's appeal of an Immigration Judge's bond decision, such a probability 'does not weigh in favor of waiving exhaustion.'" *Laguna Espinoza*, 2025 WL 2878173, at *3 (citing *Hernandez Torrealba*, 2025 WL 2444114, at *11).

Nor would exhaustion be futile here due to the inclusion of a due process claim. "[A]ny constitutional challenge to detention pending removal turns on the question whether the petitioner received the process that Congress decided was due—which involves interpretation and application of the statute, a matter that falls to the agency in the first instance and one over which Congress gave district courts no jurisdiction." *Laguna Espinoza*, No. 4:25-CV-2420, at ECF No. 2. Despite bringing a Fifth Amendment claim, Petitioner's case requires interpretation of the governing removal regime. *Laguna Espinoza*, 2025 2878173, at *2. "Exhaustion concerns apply with particular force when the action under review involves exercise of the agency's discretionary power or when the agency proceedings in question allow the agency to apply its special expertise." *Id.* (citing *McCarthy,* 503 U.S. at 145 and *McKart v. United States,* 395 U.S. 185, 194 (1969)). Thus, the second *Puga* factor also weighs in favor of requiring exhaustion.

Judicial Efficiency. Finally, as for the third factor, allowing the BIA to evaluate Petitioner's claims would permit the agency to correct its own mistakes, if any, and preclude the need for judicial review if Petitioner is successful at the administrative level. Again, as this Court recently held: "Administrative review will allow the Board of Immigration Appeals to address the question of detention pending removal in the first instance, correct its mistakes (if it has made any), and foreclose the need for judicial review. In any event, the congressional scheme

favors judicial review at the Circuit level following agency adjudication—not by district courts." *Laguna Espinoza v. Director of Detroit Field Office, U.S. Imm. and Customs Enforcement, et. al.*, N.D. Ohio No. 4:25-CV-2420, at ECF No. 2.

In short, all three *Puga* factors counsel in favor of exhaustion, and for these reasons, Respondents respectfully request that the Court grant its Motion to Dismiss.

II. RESPONDENTS DID NOT VIOLATE THE CONSTITUTION.

In his opposition brief, Petitioner spends little time addressing constitutional issues. Instead, he directs the court to *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001), and makes the bare statement that his Fifth Amendment due process rights were violated. But *Zadvydas* is distinguishable from the instant case for several reasons.

First, the aliens challenging their detention in *Zadvydas* were aliens who had already been issued a final order of removal and for whom removal was "no longer practically attainable." *Id.* at 690. Under those circumstances, "the detention . . . did not serve its purported immigration purpose." *Id.* at 690. By contrast, § 1225(b)(2)(A) applies while removal proceedings are pending, and so it "necessarily serves the purpose of preventing" those aliens "from fleeing prior to or during their removal proceedings, thus increasing the chance that, if ordered removed, the aliens will be successfully removed." *Demore v. Kim*, 538 U.S. 510, 528 (2003). As *Demore* noted, Congress had evidence "that permitting discretionary release of aliens pending their removal hearings" would result in "large numbers" of aliens "skipping their hearings and remaining at large in the United States unlawfully." *Id.* at 528.

Second, and in the same vein, "the period of detention at issue in *Zadvydas* was 'indefinite' and 'potentially permanent,'" whereas detention under § 1225(b)(2)(A) pending removal proceedings "is of a much shorter duration" and "ha[s] a definite termination point." *Id.*

at 530; *see also D.M.R.D. v. Andrews*, 2026 WL 353405, at *6 (E.D. Ca. Feb. 9, 2026); *Zhuang v. Bondi, et. al.*, 2026 WL 352872, at *5 (E.D. Mo. Feb. 9, 2026); *Garibay-Robledo v. Noem*, 2026 WL 81679, *9 (N.D. Tex. Jan. 9, 2026); *Morales v. Noem*, 2026 WL 236307, at *9 (S.D. Fla. Jan. 29, 2026) ("Petitioner's detention is part of the deportation process and therefore does not—absent some further showing—amount to a deprivation of due process.").

For these reasons, *Zadvydas* does not apply, and Petitioner has failed to show a violation of his constitutional rights.

III. RESPONDENTS DID NOT VIOLATE ANY STATUTORY PROVISIONS.

Petitioner claims that § 1225(b)(2)(A) does not apply to him because he is not (1) an applicant for admission, (2) who is seeking admission, (3) before an immigration office. However, it is the government's position that Petitioner is subject to mandatory detention under § 1225(b)(2)(A) because he was present in the United States without being admitted or paroled. *Avila v. Bondi, et al.*, 170 F. 4th 1128 (8th Cir. 2026); *Buenrostro-Mendez v. Bondi, et al.*, 166 F.4th 494, (5th Cir. 2026).

Applicants for admission like 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 who are 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.

No additional step is necessary for an applicant for admission to be seeking admission. As the Southern District of Ohio recently explained, "the phrase 'alien seeking admission' in § 1225(b)(2)(A) is merely another way to refer to 'applicant[s] for admission,' and thus the same

'deeming' that makes someone an applicant for admission also makes them an 'alien seeking admission,' whether that is so as a matter of fact or not." *Lucero*, 2025 WL 3718730, at *1. Likewise, as the Western District of Oklahoma noted: if not seeking admission, then what would the legal status be? *Gutierrez Sosa*, 2026 WL 36344, *4. And to have aliens who have been present in the United States for an extended period of time would "create[] a regime that *rewards* those aliens who evade deportation for long enough by making them no longer subject to automatic detention when caught." *Id.*; *Higareda-Cano v. Noem*, No. 1:25-CV0225-H, 2026 WL 274495, *1 (N.D. Tex. Jan. 30, 2026) ("The INA, unsurprisingly, does not bestow heightened procedural protections to illegal aliens based on their stealth and impenitence.").

Given the fact 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 the alien was initially processed for expedited removal proceedings under 8 U.S.C. § 1225(b)(1) or placed directly into removal proceedings under 8 U.S.C. § 1229a—and "[b]oth [8 U.S.C. § 1225(b)(1) and (b)(2)] mandate detention . . . throughout the completion of applicable proceedings," *Jennings v. Rodriguez*, 583 U.S. 281, 301–03 (2018), IJs do not have authority to redetermine the custody status of an alien present without admission.

However, the government acknowledges that this Court recently reached the opposite conclusion in *Gonzalez Lopez v. Dir. of Detroit Field Office*, No. 4:25-CV-2449.[1] On the legal

[1] Undersigned counsel also acknowledges that other district courts in the Northern District of Ohio have resolved the overarching question at issue here against the government. *See, e.g., Kaur v. Raycraft, et al.*, No. 4:25-CV-2679, 2026 WL 709728 (N.D. Ohio Mar. 13, 2026); *Gu v. Noem, et al.*, No. 3:26-CV-36, 2026 WL 621356 (N.D. Ohio Mar. 5, 2026); *Rodriguez v. Greene, et al.*, No. 4:26-CV-333, 2026 WL 574961 (N.D. Ohio Mar. 2, 2026); *Lemus v. Lynch, et al.*, No. 4:26-CV-203, 2026 WL 496731 (N.D. Ohio Feb. 23, 2026); *Lopez v. Noem, et al.*, No. 3:26-CV-128, 2026 WL 395202 (N.D. Ohio Feb. 12, 2026); *Gonzalez Lopez v, Raycraft, et al.*, No. 4:25-CV-2449, 2025 WL 3280344 (N.D. Ohio Nov. 25, 2025).

issue of which statute governs Petitioner's detention here—whether it is 8 U.S.C. § 1226(a), or 8 U.S.C. § 1225(b)—the government acknowledges that this Court's decision in *Gonzalez-Lopez* would control the result here if the Court adheres to that decision, since the facts are not materially distinguishable for purposes of the Court's decision on the legal issue of which statutory provision authorizes Petitioner's detention.

Thus, while the government does not consent to issuance of the writ and reserves all rights, including the right to appeal, and to conserve judicial and party resources while expediting the Court's consideration of this case, the government submits this abbreviated response setting forth its position that the Petitioner is lawfully detained.

CONCLUSION

For all of these reasons, as well as the reasons articulated in Respondents' Motion to Dismiss, the Court should dismiss the Petition pursuant to Rule 12(b)(1) and/or Rule 12(b)(6).

Respectfully Submitted,

DAVID M. TOEPFER
United States Attorney

/s/ Karen E. Swanson Haan
Karen E. Swanson Haan (Ohio No. 0082518)
Assistant United States Attorney
United States Courthouse
801 West Superior Avenue, Suite 400
Cleveland, Ohio 44113
Telephone: 216.622.3851
Email: Karen.Swanson.Haan@usdoj.gov

Attorney for Respondents