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

LUIS GUSTAVO GUTIERREZ NUNEZ, Petitioner, v. FIELD OFFICE DIRECTOR OF ENFORCMENT AND REMOVAL OPERATIONS, DETROIT FIELD OFFICE, IMMIGRATION AND CUSTOMS ENFORCEMENT, et al., Respondents.	)	CASE NO.: 3:26-cv-785 JUDGE JOHN R. ADAMS **RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS AND MOTION TO DISMISS**

Petitioner Luis Gustavo Gutierrez Nunez ("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"). (ECF No. 1 Petition.) The Petition should be denied because the Court does not have jurisdiction, Petitioner failed to exhaust administrative remedies, Petitioner is properly detained under 8 U.S.C. § 1225, and his due process rights have not been violated.[1]

I. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner is a citizen of Mexico and entered the United States in 2022 without admission or inspection. (ECF No. 1 Petition PageID # 12.) On November 2, 2025, Petitioner was arrested for driving without a license and subsequently taken into ICE custody. (*Id.*) The Department of Homeland Security ("DHS") filed a Notice to Appear and placed Petitioner in removal proceedings. (*Id*; ECF No. 1-5 Notice to Appear PageID # 65-68.) ICE charged Petitioner with being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) and 8 U.S.C. § 1182(a)(7)(A)(i). (*Id.*)

On January 13, 2026, Petitioner filed an I-589 Application for Asylum and Withholding Removal. The government moved to pretermit the application on the basis that Petitioner's allegations did not establish prima facie eligibility for relief. On March 12, 2026, Petitioner submitted a bond request to the Cleveland Immigration Court. (*Id.* at PageID # 13.) The Immigration Judge ("IJ") denied the bond request. (*Id*; ECF No. 1-3 Order of IJ PageID # 60.) Petitioner waived appeal of the bond decision. The individual merit hearing was held on April 17,

[1] A writ of habeas corpus may only be issued "to the person having custody of the person detained." 28 U.S.C. § 2243. In the ICE habeas context, that person is the ICE Field Office Director. *Roman v. Ashcroft*, 340 F.3d 314, 320 (6th Cir. 2003). Therefore, Todd Lyons, Acting Director of ICE, Markwayne Mullin, U.S. Department of Homeland Security Secretary, U.S. Department of Homeland Security, Acting Attorney General Todd Blanche (substituted under Fed. Civ. R. 25(d)), Executive Office for Immigration Review, and Dennis Sullivan, Executive Director, Northeast Ohio Correctional Center are not proper Respondents and must be dismissed.

2026. The IJ granted DHS' motion to pretermit, and Petitioner was ordered removed. He may appeal the decision to remove by May 18, 2026.

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.

8 U.S.C. § 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). DHS' 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").

Here, Petitioner is currently in removal proceedings. Since the main issue in this case centers on DHS' decision to commence removal proceedings, which includes detaining Petitioner without bond, § 1252(g) bars judicial review, and the Petition should be dismissed.

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 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.* § 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" (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*, 164 F.4th 259 (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. *Id.* at 275. To avoid getting channeled to 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.* at 274-275 (citing *Tazu v. Attorney General,* 975 F.3d 292, 299 (3rd Cir. 2020)). 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 "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 276.

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.

As another Judge in this District 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)); *see also Munoz Nataren v. Raycraft*, No. 4:26cv212, 2026 WL 214368 (N.D. Ohio Jan. 28, 2026) (dismissing the petition for lack of jurisdiction). Similarly, in evaluating the reach of subsections (a)(5) and (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 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[.]").

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.*, *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 the Petitioner is challenging the basis upon which he 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 the Petitioner's claims for lack of jurisdiction under § 1252(b)(9). The Petitioner must present his claims before the appropriate court of appeals because he challenges the government's decision or action to detain him, which must be raised before a court of appeals, not this Court. *See* 8 U.S.C. § 1252(b)(9).

B. PETITIONER FAILED TO EXHAUST ADMINISTRATIVE REMEDIES.

A habeas petitioner must exhaust administrative remedies before seeking federal court intervention. Here, Petitioner should have appealed the order denying him bond to the Board of

Immigration Appeals ("BIA"). "[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." *Howell v. INS*, 72 F.3d 288, 291 (2nd Cir. 1995) (quoting *Guitard v. United States Sec'y of Navy*, 967 F.2d 737, 740 (2nd Cir. 1992)) (internal quotation marks omitted).

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).

When Congress has not imposed a statutory exhaustion requirement, "judicial discretion governs whether or not exhaustion should be required." *Shearson v. Holder*, 725 F.3d 588, 593 (6th Cir. 2013) (quotations omitted). However, the doctrine of administrative exhaustion serves several important purposes: It allows agencies to "apply [their] special expertise in interpreting relevant statutes and promotes judicial efficiency." *Id.* (quotation omitted).

The Ninth Circuit Court of Appeals has created a persuasive three-prong test that holds prudential exhaustion is required 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.

Puga v. Chertoff, 488 F.3d 812, 815 (9th Cir. 2007) (citations omitted).

A Judge in this District applied the *Puga* test to the administrative exhaustion requirement in immigration habeas cases and found that the *Puga* factors weigh in favor of requiring administrative exhaustion. *See Mendoza v. Raycraft*, No. 4:25cv2183, 2025 WL 3157796 at *9-11 (N.D. Ohio Nov. 12, 2025) and *Hernandez v. U.S. Dep't of Homeland Sec.*, No. 1:25cv01621, 2025 WL

2444114 at *9-10 (N.D. Ohio Aug. 25, 2025.)[2]

This Court should apply that rationale here. The first prong weighs in favor of requiring exhaustion because the BIA's expertise makes agency consideration necessary to generate a proper record and reach a proper decision. *Mendoza*, 2025 WL 3157796 at * 9. Petitioner's argument is based on statutory interpretation of immigration statutes. *Id.* The BIA has an expertise in immigration law and is in the best position to determine these complex issues. *Id.* As to the second prong, relaxing the exhaustion requirement would encourage petitioners to bypass the administrative process in favor of their preferred strategy of filing habeas petitions. *Id.* at *10. Consequently, this prong also weighs in favor of exhaustion. Finally, the third prong weighs in favor of requiring exhaustion because if the BIA were to agree with Petitioner on any of the issues he has raised in this case, Petitioner would be granted a bond hearing. *Id.* at *10.

"Requiring exhaustion under these circumstances therefore promotes the main purposes of exhaustion, i.e., it protects the BIA's authority by allowing it the opportunity to correct its own mistakes and, further, promotes judicial efficiency by resolving potential issues and potentially obviating the need for judicial review." *Id.* citing *Beharry*, 329 F.3d at 62. 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*, 2025 WL 2444114 at *11.

Congress provided a robust administrative hearing and appeal process for aliens in removal proceedings. *See* 8 U.S.C. § 1229a; 8 C.F.R. § 236.1(d)(3). Petitioner should have taken advantage of that process by appealing his denial of bond to the BIA. Instead, he waived any appeal. Thus, the

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[2] Another Judge in the District has also dismissed similar habeas petitions for failure to exhaust. *See, e.g., Amaya-Velis v. Raycraft*, __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).

petition should be denied for failure to exhaust administrative remedies.

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

1. Petitioner is an "applicant for admission."

Even if the Court were to decide this case on the merits, the Petition should be dismissed as Petitioner is lawfully detained as an "applicant for admission." 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.

Petitioner claims he is not subject to the mandatory detention provision of § 1225(b)(2)(A) because he had already entered the United States and was residing here for years when he was detained. The way an alien enters the United States determines his or her status, regardless of the amount of time they spend in the United States. He also argues that the government is estopped from denying him a bond hearing based on the position it took in *Jennings v. Rodriguez,* 583 U.S. 281 (2018). That argument, discussed below, is without merit.

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

Here, Petitioner did not present himself at a POE but instead entered the United States without having been admitted after inspection by an immigration officer. Petitioner is, therefore, an alien present without admission and, consequently, an "applicant for admission." *Id.* As another court in this circuit stated:

> Under the plain language of the statute, Petitioner is an "applicant for admission" as defined in § 1225(a)(1). He is "an alien" and is "present in the United States." And, he "has not been admitted" because he did not lawfully enter the United States "after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A) ("The terms 'admission' and 'admitted' mean, with respect to an alien, the lawful entry of the alien into the United States after inspection and authorization by an immigration officer.").

Gonzalez v. Ladwig, Case No. 2:26-CV-02017-MSN-ATC, 2026 WL 413602, at *5 (W.D. Tenn. Feb. 13, 2026). An "applicant for admission" is also "seeking admission." *Id.* Legislative history supports the contention that noncitizens like Petitioner remain "applicants for admission" even when they have been present in the United States for years. *Id. at* *7.

Petitioner cited district court cases which support his position. However, two circuit courts have decided this issue, and both have held that individuals like Petitioner are applicants seeking admission and are subject to the mandatory detention under § 1225(b)(2)(A).[3] The Fifth Circuit Court of Appeals held:

> Just as an applicant to a college seeks admission, an applicant for admission to the United States is "seeking admission" to the same, regardless whether the person actively engages in further affirmative acts to gain admission. The everyday meaning of the statute's terms confirms that being an "applicant for admission" is not a condition independent from "seeking admission."

[3] The Seventh Circuit, discussing the issue in the preliminary injunction context, has rejected the interpretation of the terms "applicant for admission" and "seeking admission" as equivalent on the grounds that it "would render ... the phrase 'seeking admission' superfluous." *Castañon-Nava v. U.S. Dep't of Homeland Sec.*, 161 F.4th 1048, 1061 (7th Cir. 2025). Yet, this case dealt with an order enjoining DHS from making warrantless arrests of aliens which is not the issue here.

Buenrostro-Mendez v. Bondi, 166 F.4th 494, 502 (5th Cir. 2026). Indeed, "petitioners are deemed, by statute, to be applicants for admission pending the resolution of removal proceedings." *Id.* Redundancy of the terms in the text "does not give this court a 'license to rewrite ... another portion of the statute contrary to its text.'" *Id.* at 503 quoting *Barton v. Barr*, 590 U.S. 222, 239 (2020). If Congress had intended for "seeking admission" to mean "arriving alien," it would have said that it in the statute. *Id.* at 504.

The Eighth Circuit Court agreed stating: "If Congress wanted to make clear that 'seeking admission' was an independent requirement in the statute, it could have easily done so.'" *Avila v. Bondi*, No. 25-3248, 2026 WL 819258, at *3 (8th Cir. Mar. 25, 2026). "[T]he text does not place such emphasis on 'seeking admission,' and since the phrase means virtually the same thing as 'applicant for admission,' in the context of the statute the two phrases are synonymous." *Id.* "[T]he text here is clear that an 'applicant for admission' is also an alien who is 'seeking admission.'" *Id.* at *5.

This court should adopt the reasoning of the Circuit Courts of Appeal and hold that Petitioner is an applicant for admission seeking admission and thus subject to the mandatory detention provision under 8 U.S.C. § 1225.

2. Respondents are not judicially estopped from arguing Petitioner is an "applicant for admission."

Petitioner is incorrect that Respondents are judicially estopped from denying him a bond hearing pursuant to *Jennings v. Rodriguez*, 583 U.S. 281 (2018). Petitioner claims that during the 2016 oral argument in *Jennings*, the then Solicitor General "acknowledged that individuals who have already entered the United States and are not apprehended within 100 miles of the border or within 14 days of entry are subject to discretionary detention under 8 U.S.C. § 1226(a), not mandatory detention under § 1225(b)." (ECF No. 1 Petition PageID # 7-8.) Petitioner did not attach

the transcript of the oral argument to the Petition, but even the alleged quote contained in the Petition states that the Solicitor General compared a noncitizen's classification between 8 U.S.C. § 1226(a) and § 1226(c). (*Id.* at PageID # 8.) He did not address applicants for admission under 8 U.S.C. § 1225(b).

The classification of applicants for admission was not before the Supreme Court in *Jennings*. *Jennings* dealt with the length of detention, not the characterization of noncitizens. *See Avila*, 2026 WL 819258 at *5 (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." *Id.* at *5 (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.'")

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 Avila*, 2026 WL 819258 at * 5 (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, Respondents are not estopped from holding the position that individuals such as Petitioner are applicants for admission and subject to detention under 8 U.S.C. § 1225. Petitioner's argument to the contrary is without merit.

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

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). "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).

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. 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).

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 statute unambiguously provides for mandatory detention." *See Buenrostro-Mendez*, 166 F.4th at 502 citing 8 U.S.C. § 1225(b)(2)(A) (providing that aliens "*shall* be detained") (emphasis in original). 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.

Here, Petitioner is an applicant for admission (specifically, an alien present without admission), placed 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).

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). 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 is generally 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).[4]

D. PETITIONER RECEIVED ALL DUE PROCESS AVAILABLE UNDER ADMINISTRATIVE IMMIGRATION PROCEEDINGS.

To succeed on a due process claim, a plaintiff must show that they "have a property interest that entitles them to due process protection," and if so, then the "court must then determine 'what process is due.'" *Leary v. Daeschner*, 228 F.3d 729, 741 (6th Cir. 2000). In the immigration context, the process due under the constitution is coextensive with the removal procedures provided by Congress. *See, e.g.*, *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 138-140 (2020). Statutory provisions denying bond during administrative removal proceedings do not violate the due process clause because those proceedings have a definite end point. *Demore v. Kim*, 538 U.S. 510, 531 (2003) ("Detention during removal proceedings is a constitutionally permissible part of that process."). And even after an alien is ordered removed and detention may have an indefinite end point, detention up to six months is presumptively valid under the due process clause. *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001).

Here, Petitioner does not present a plausible due process claim because he received all due process available to him under administrative immigration proceedings. He was given notice of the charges against him, he has counsel, he has attended hearings with an immigration judge, he has requested bond, and he had a merit hearing before the immigration court. (*See generally* ECF No. 1, Petition.)

The fact that Petitioner does not like the Immigration Court's decision does not make those

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

procedures constitutionally deficient. *See Thuraissigiam*, 591 U.S. at 138-140. Instead, Petitioner's only plausible challenge to his detention is that he is detained under the wrong statute, which, even if true, would make his detention unlawful—not unconstitutional. *Id.*; *see also Al-Shabee v. Gonzales*, 188 F. App'x 333, 339 (6th Cir. 2006) ("Shabee's disagreement with the Immigration Judge's order, however, does not constitute a violation of the Due Process Clause."). Therefore, the Court should reject Petitioner's due process claim.

III. CONCLUSION

This Court does not have jurisdiction. In addition, the Petitioner has not exhausted his administrative remedies, he is properly detained under 8 U.S.C. § 1225, and his detention does not violate due process. Accordingly, the Court should deny Petitioner's habeas petition.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH RULE 7.1(f)

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

/s/ Rema A. Ina
Rema A. Ina (0082549)