

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
WAYCROSS DIVISION

BRAYAN FERNEY LOPEZ LIZARAZO,)
)
Petitioner,)
)
v.) Civil Action No. 5:25-cv-105
)
WARDEN, FOLKSTON ICE)
PROCESSING CENTER, ET AL.,)
)
Respondents.)

MOTION TO DISMISS

I. Introduction

Petitioner Brayan Ferney Lopez Lizarazo (“Petitioner” or “Lizarazo”) filed a habeas corpus petition and an amended habeas corpus petition under 28 U.S.C. § 2241. Docs. 1; 11. Respondent moves to dismiss Lizarazo’s petition and amended petition on several grounds.¹ First, Congress has narrowly circumscribed district courts’ authority to adjudicate matters broadly related to removal proceedings, and Lizarazo’s claims falls squarely within the scope of challenges over which this Court lacks jurisdiction. Second, Lizarazo’s amended petition constitutes a prohibited shotgun pleading and should be dismissed on that basis. Third, Lizarazo’s

¹ The only proper respondent in this habeas corpus matter is the Warden of Folkston ICE Processing Center. See *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004) (“the proper respondent [in a habeas corpus petition] is the warden of the facility where the prisoner is being held”); *Grimes v. Geter*, No. 2:20-cv-42, 2020 WL 13917844, at *1 (S.D. Ga. Apr. 24, 2020) (Cheesbro, J.) (“The only proper respondent in a § 2241 case such as this is the inmate’s immediate custodian—the warden of the facility where the inmate is confined.”).

substantive claim is meritless. For all these reasons, this Court should dismiss this case with prejudice.

II. Factual Background

Lizarazo is a native and citizen of Columbia who, according to his own admission, unlawfully entered the United States in early April 2022. Docs. 1 at 2; 11 at 2; 7-1 at 2. Within a day or so of his entry, Lizarazo was detained briefly by Department of Homeland Security (“DHS”) and charged under 8 U.S.C. § 1182(a)(6)(A)(i) with having entered the United States without being admitted or paroled. Docs. 1 at 2; 11 at 2; 7-1 at 2. Following his detention for approximately two days, Lizarazo was released from custody on his own recognizance. Docs. 1 at 2; 11 at 2. Petitioner claims that “[h]e has no criminal history and no immigration violations since his release.” Doc. 1 at 3. He further asserts that “[h]e timely filed for asylum, appeared for all hearings,” and “complied with every requirement of his release.” *Id.*

On September 4, 2025, Immigration and Customs Enforcement (“ICE”) encountered Lizarazo during the execution of a criminal search warrant at the Hyundai Motor Group Metaplant in Ellabell, Georgia. Docs. 1 at 3; 11 at 3; 7-1 at 3. Although Lizarazo claims he was lawfully employed at the time, he was nonetheless one of many aliens taken into custody by ICE. Docs. 1 at 3; 11 at 3; 7-1 at 3. On October 22 and 23, 2025, ICE served Lizarazo with Notices of Revocation of Release stating that the decision to revoke his release was made “in the exercise of ICE’s discretion.” Docs. 7-1 at 3, 45, 47; 11 at 3. Petitioner has been held in ICE’s custody

since September 4, 2025, and is presently detained at the Folkston D. Ray ICE Processing Center in Folkston, Georgia. Docs. 1 at 3; 11 at 3; 7-1 at 2-3.

Lizarazo filed his habeas corpus petition and amended petition to challenge his detention. Although his claims share some similarity with those alleged by petitioners in the now-consolidated *Antonio Aguirre Villa v. Warden Tony Norman, et al.* case (S.D. Ga., 5:25-cv-00084), Lizarazo's claims are different. Specifically, Lizarazo claims that ICE's detention of him in September 2025 "without providing notice, a hearing, or an individualized determination justifying the revocation of his release" is unlawful. Doc. 1 at 3. According to Lizarazo, "ICE's failure to provide notice or an individualized custody review *prior to* revoking Petitioner's own-recognizance bond/release violates procedural due process" under Supreme Court decisional law. Doc. 11 at 5 (emphasis supplied). Lizarazo also contends that ICE's actions violate the Administrative Procedures Act ("APA"). *See* Doc. 11 at 5-6. He emphasizes that "[t]he statute under which [he] is currently detained" "is irrelevant" to his claims. *Id.* at 2; *see also* Doc. 8-1 at 13 ("The mechanism for Petitioner's initial release is irrelevant to his re-detention."). In the prayer for relief contained in his operative pleading, Petitioner requests an order "[d]eclar[ing] that Petitioner's re-detention without notice, a hearing, or individualized findings violates the Fifth Amendment and" the APA. *Id.* at 7.

III. Procedural History

Lizarazo filed his habeas corpus petition on September 25, 2025. Doc. 1. Pursuant to the Court's October 16, 2025 Order, Respondent filed an Answer on

October 23, 2025. Docs. 6; 7. Four days later, Lizarazo filed a motion for interim relief. Doc. 8. Lizarazo's motion prayed for "an order granting him immediate release and preventing Respondents from transferring him outside the Court's jurisdiction." Doc. 8 at 1.

The Court conducted an informal telephone conference with the parties on October 28, 2025, which the Court memorialized in its October 30, 2025 Order. *See* Doc. 9. In short, the Court ordered Lizarazo to file an amended § 2241 petition to clarify his claims and instructed Respondent to respond to Lizarazo's amended habeas corpus petition and his pending motion for interim relief within fourteen days of the amended petition's filing. Doc. 9 at 1. Pursuant to the Court's directive, Respondent now submits this motion to dismiss Lizarazo's petition and amended petition.

IV. Argument²

A. Petitioner's Habeas Corpus Claims Are Barred by Statute, and the Court Lacks Jurisdiction to Adjudicate Them.

The plain language of 8 U.S.C. § 1252(g) and the Eleventh Circuit's consistent interpretation of this provision independently foreclose Petitioner's habeas corpus

² Respondent reasserts arguments here that this Court rejected in *Villa*, including specifically: (1) a jurisdictional argument based on 8 U.S.C. § 1252(g); (2) a shotgun-pleading argument; and (3) a statutory-interpretation argument concerning the Immigration and Nationality Act ("INA"). *See Villa v. Normand, et al.*, 5:25-cv-00-84 (S.D. Ga.), Docs. 46 (R&R) at 4-23; 84 (Adoption Order) at 11-21. There are two principal reasons for this: (1) as explained in the preceding text, Respondent contends that Lizarazo's claims are distinguishable from those at issue in *Villa*; and (2) regardless of whether Lizarazo's claims are distinguishable from those alleged by petitioners in the consolidated *Villa* case, Respondent must reassert all arguments to preserve them for any subsequent proceeding.

claims. Congress stripped federal district courts of jurisdiction over § 2241 challenges to an alien's detention in 8 U.S.C. § 1252(g). That provision reads:

Except as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.

8 U.S.C. § 1252(g).

Calling § 1252(g) “unambiguous,” the Eleventh Circuit held that this statute “bars federal courts’ subject-matter jurisdiction over any claim for which the ‘decision or action’ of the Attorney General (usually acting through subordinates) to commence proceedings, adjudicate cases, or execute removal orders is the basis of the claim.” *Gupta v. McGahey*, 709 F.3d 1062, 1065 (11th Cir. 2013). The Court of Appeals interpreted the scope of “commenc[ing] proceedings” to include “[s]ecuring an alien while awaiting a removal determination.” *Id.*

A subsequent panel made *Gupta*’s holding more plainly applicable to the facts of Petitioner’s habeas corpus petition, finding that “ICE’s decision to take [a noncitizen] into custody and to detain him during his removal proceedings . . . w[as] closely connected to the decision to commence proceedings, and thus w[as] immune from our review.” *Alvarez v. U.S. Immigr. & Customs Enft.*, 818 F.3d 1194, 1203 (11th Cir. 2016). The Eleventh Circuit found that § 1252(g) barred Alvarez’s claim, even though he alleged his detention violated the Fourth and Fifth Amendments because government officials made knowing misrepresentations to detain him. *Id.* at

1203–04; *see also Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 488 (1999) (“[A]n alien unlawfully in this country has no constitutional right to assert selective enforcement as a defense against his deportation.”). “When asking if a claim is barred by § 1252(g), courts must focus on the action being challenged.” *Canal A Media Holding, LLC v. United States Citizenship & Immigr. Servs.*, 964 F.3d 1250, 1257–58 (11th Cir. 2020). Efforts to challenge the refusal of immigration officials to exercise favorable discretion also fall under § 1252(g)’s jurisdictional provision. *Alvarez*, 818 F.3d at 1205.

Here, Lizarazo’s petition challenges a specific action—securing him during removal proceedings—that the Eleventh Circuit has ruled falls within the scope of “commenc[ing] proceedings” referenced in § 1252(g). *See Gupta*, 709 F.3d at 1065. Consequently, Petitioner’s habeas corpus claims are barred by statute.

B. Petitioner Has Failed to Exhaust His Administrative Remedies.

Exhaustion of administrative remedies prior to seeking relief under habeas corpus is not jurisdictional, but it is required. *Santiago-Lugo v. Warden*, 785 F.3d 467, 475 (11th Cir. 2015). These procedures prevent a petitioner “bypass[ing] the administrative process in hopes that he will find a more sympathetic forum in [federal] Court.” *Sequeira-Balmaceda v. Reno*, 79 F. Supp. 2d 1378, 1382 (N.D. Ga. 2000). This Court has often noted that exhaustion of administrative remedies is required before pursuing relief under 28 U.S.C. § 2241. *See, e.g., Dupont v. Swaney*, No. 2:24-cv-41, 2024 WL 4558503, at *1 (S.D. Ga. Sept. 9, 2024) (Cheesbro, J.) *Report and Recommendation adopted*, 2024 WL 4555397 (S.D. Ga. Oct. 23, 2024).

Exhaustion allows the agency responsible for detention to develop a factual record, as well as to discover and correct any errors it may have committed. *Id.*; see also *Jean v. Nelson*, 711 F.2d 1455, 1505-06 (11th Cir. 1983) (exhaustion should be required where it may (1) permit an agency to develop a more complete factual record, (2) allow the agency to apply its discretion and expertise, (3) prevent disregard of established agency procedures, and (4) allowing the agency an opportunity to correct errors and thereby enhance judicial efficiency). At least one district court has ruled that a habeas petitioner must exhaust BIA appeals prior to challenging § 1225(b)(2) detention in district court. *Espinoza v. Director of Detroit Field Office*, No. 4:25-cv-2107, 2025 WL 2878173, at *3 (N.D. Ohio Oct. 9, 2025) (finding petitioner had failed to exhaust).

Here, Petitioner seemingly alleges claims under the Fifth Amendment Due Process Clause and APA claims challenging his detention because he was not provided a pre-custody hearing. Doc. 11 at 3-7. He makes no assertion that he requested a bond hearing, and there is no evidence that he made such a request following his encounter with ICE in September 2025. Nor does he provide any explanation for his failure to request a bond hearing (or otherwise exhaust his administrative remedies). Because this avenue of administrative exhaustion remains open to him, he has not properly exhausted all available administrative remedies. Therefore, Lizarazo's § 2241 petition and amended petition should be dismissed.

C. Petitioner Has Filed a Shotgun Pleading Prohibited by the Federal Rules of Civil Procedure and Eleventh Circuit Precedent.

A shotgun pleading is one that violates either Rule 8(a)(2) or Rule 10(b) of the Federal Rules of Civil Procedure. *See Weiland v. Palm Beach Cnty. Sheriff's Office*, 792 F.3d 1313, 1320 (11th Cir. 2015). Rule 8(a)(2) requires “a short and plain statement of the claim,” while Rule 10(b) requires that paragraphs be numbered and limited “to a single set of circumstances.” Fed. R. Civ. P. 8(a)(2), 10(b). There are four general categories. *See Weiland*, 792 F.3d at 1321. “The most common type—by a long shot—is a complaint containing multiple counts where each count adopts the allegations of all preceding counts, causing each successive count to carry all that came before and the last count to be a combination of the entire complaint.” *Id.* “The unifying characteristic of all types of shotgun pleadings is that they fail to one degree or another, and in one way or another, to give the defendants adequate notice of the claims against them and the grounds upon which each claim rests.” *Id.* at 1323.

Here, Petitioner’s amended habeas corpus petition is a shotgun pleading. In the first numbered paragraph of his amended petition, Lizarazo purports to “restate[] the entirety of his Petition for Writ of Habeas Corpus . . . as if fully stated therein.” Doc. 11 at 1. But this is problematic for at least two reasons. First, if followed literally, this leads to duplicative numbering in Lizarazo’s amended petition and further confuses his claims—in direct contravention of why the Court ordered him to file an amended petition. Second, this Court has long held that “an amended complaint supersedes an original complaint and renders the original complaint without legal effect.” *Villa v. Normand*, No. 5:25-cv-89, 2025 WL 3113200, at *2 (S.D.

Ga. Oct. 16, 2025), *Report and Recommendation adopted*, 2025 WL 3113509 (S.D. Ga. Nov. 6, 2025) (quoting *Renal Treatment Ctrs.-Mid-Atl., Inc. v. Franklin Chevrolet-Cadillac-Pontiac-GMC*, No. CV 608-087, 2009 WL 995564, at *1 (S.D. Ga. Apr. 13, 2009)); *see also Fritz v. Standard Sec. Life Ins. Co.*, 676 F.2d 1356, 1358 (11th Cir. 1982) (“Under the Federal Rules, an amended complaint supersedes the original complaint.”). *But see Varnes v. Local 91, Glass Bottle Blowers Ass’n of U.S. and Canada*, 674 F.2d 1365, 1370 n.6 (11th Cir. 1982) (“As a general rule, an amended complaint supersedes and replaces the original complaint unless the amendment specifically refers to or adopts the earlier pleading.”). Because Lizarazo’s amended petition fails to comply with the pleading requirements of the Federal Rules of Civil Procedure, it should be dismissed.

D. Regardless of Whether Petitioner Was Entitled to Notice and a Pre-Deprivation Hearing, Habeas Relief Is Unavailable Because Petitioner’s Detention Is Lawful.

Lizarazo’s claim that the statute under which he is presently being detained is “irrelevant” to the Court’s analysis is plainly wrong; even if Petitioner had been entitled to notice and a pre-deprivation hearing (he was not), the fact that his present detention is lawful precludes the Court from granting Lizarazo the relief he seeks.

1. The habeas corpus writ may issue only if Petitioner’s present detention is unlawful.

“Habeas corpus is fundamentally ‘a remedy for unlawful executive detention.’” *Villa v. Normand*, No. 5:25-cv-89, 2025 WL 3095969, at *12 (S.D. Ga. Nov. 4, 2025), *Report and Recommendation adopted*, 2025 WL 3188406 (S.D. Ga. Nov. 14, 2025) (quoting *Munaf v. Green*, 553 U.S. 674, 693 (2008)). A writ may issue only if a

petitioner “demonstrates that he *is being held in custody* in violation of the Constitution or federal law.” *Id.* (citing 28 U.S.C. § 2241(c)(3)) (emphasis supplied). Prior unlawful conduct that is independent of a petitioner’s present detention provides no basis for habeas relief. *See id.* Here, Lizarazo’s present detention is lawful—rendering habeas relief unavailable, regardless of whether his notice-and-pre-deprivation argument accurately characterizes federal law (again, it doesn’t, *see infra*).

2. Petitioner’s detention is lawful under 8 U.S.C. § 1225(b)(2)(A).

The INA contains two complementary provisions, 8 U.S.C. §§ 1225 and 1226, governing an alien’s detention prior to issuance of an order of removal. Section 1225 applies to “applicants for admission,” who are defined as “alien[s] present in the United States who [have] not been admitted” or “who arrive[] in the United States.” 8 U.S.C. § 1225(a)(1). Applicants for admission “fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2).” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

Section 1225(b)(1) applies to arriving aliens and “certain other” aliens “initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation.” *Id.*; 8 U.S.C. § 1225(b)(1)(A)(i), (iii). These aliens are generally subject to expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(A)(i). But if the alien “indicates an intention to apply for asylum . . . or a fear of persecution,” immigration officers will refer the alien for a credible fear interview. *Id.* § 1225(b)(1)(A)(ii). An alien “with a credible fear of persecution” is “detained for

further consideration of the application for asylum.” *Id.* § 1225(b)(1)(B)(ii). If the alien does not indicate an intent to apply for asylum, express a fear of prosecution, or is “found not to have such a fear,” he is detained until removed. *Id.* § 1225(b)(1)(A)(i), (B)(iii)(IV).

Section 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*, 583 U.S. at 287. It “applies to all applicants for admission not covered by § 1225(b)(1).” *Id.* Under § 1225(b)(2), an alien “who is an applicant for admission” shall be detained for a removal proceeding “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); see *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 220 (BIA 2025) (“[A]liens 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.”) (citing *Jennings*, 583 U.S. at 300); *Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) (“[F]or aliens arriving in and seeking admission into the United States who are placed directly in full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention ‘until removal proceedings have concluded.’”) (internal citation omitted; quoting *Jennings*, 583 U.S. at 299)). Still, the DHS possesses sole discretionary 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.” *Id.* § 1182(d)(5)(A); see *Biden v. Texas*, 597 U.S. 785, 806 (2022).

Section 1226, in turn, provides for arrest and detention “pending a decision on whether the alien is to be removed from the United States.” 8 U.S.C. § 1226(a). This section provides authority to detain aliens who do not fall under § 1225(b)(2) because they were previously admitted, but who are placed in removal proceedings under § 1229a for various reasons, including by violating their status, overstaying their visas, or being convicted of certain crimes. *See* 8 U.S.C. § 1227(a). Under § 1226(a), the government may detain an alien during his removal proceedings, release him on bond, or release him on conditional parole. By regulation, immigration officers can release an alien detained under §1226(a) if the alien demonstrates that he “would not pose a danger to property or persons” and “is likely to appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8).

In the present case, Petitioner is an “applicant for admission” to the United States because he entered the country illegally and he has not demonstrated to an examining immigration officer that he is “clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A): *see also DHS v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (alien “who tries to enter the country illegally is treated as an ‘applicant for admission’”). Petitioner cannot demonstrate that he is “clearly and beyond a doubt entitled to be admitted” because, as he is present in the United States without being admitted or paroled, he is inadmissible under 8 U.S.C. §§ 1182(a)(6) & (a)(7). *See Matter of Yajure Hurtado*, 29 I. & N. Dec. at 221-23; Doc. 20-1 at 2-3. Accordingly, Petitioner is detained pursuant to 8 U.S.C. § 1225(b)(2)(A), which mandates that he “shall be” detained. *See Sandoval v. Acuna*, No. 6:25-cv-01467, 2025 WL 3048926, at

*3-5 (W.D. La. Oct. 31, 2024); *Chavez v. Noem*, No. 3:25-cv-02325, --- F. Supp. 3d ---, 2025 WL 2730228, at *4 (S.D. Cal. Sept. 24, 2025) (“Petitioners do not contest that they are aliens present in the United States who have not been admitted. By the plain language of § 1225(a)(1), then, Petitioners are ‘applicants for admission’ and thus subject to the mandatory detention provisions of ‘applicants for admission’ under § 1225(b)(2)(A).” (cleaned up)); *Pena v. Hyde*, No. 25-11983, 2025 WL 2108913, at *2 (D. Mass. July 28, 2025) (“Because petitioner [a Brazilian national who entered the country illegally in 2005] remains an applicant for admission, his detention is authorized so long as he is ‘not clearly and beyond doubt entitled to be admitted’ to the United States.”) (quoting 8 U.S.C. § 1225(b)(2)(A)).

Although Respondent is not aware of binding precedent directly on point,³ Respondent’s reasoning is supported by Supreme Court decisional law. As explained in *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018), applicants for admission fall into one of two categories: those covered by § 1225(b)(1), and those covered by § 1225(b)(2). Section 1225(b)(1) applies to aliens arriving in the United States who are initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation. 8 U.S.C. § 1225(b)(1)(A)(i). Section 1225(b)(2), on the other hand, is “broader” and “serves as a catchall provision that applies to *all* applicants for

³ Although not cited by Lizarazo, other petitioners challenging Respondent’s reading of 8 U.S.C. § 1225(b)(2) have cited *Ortiz-Bouchet v. U.S. Att’y Gen.*, 714 F.3d 1353 (11th Cir. 2013), in support of their claims. But *Ortiz-Bouchet* is readily distinguishable and thus provides Lizarazo no refuge. There, the Eleventh Circuit held that 8 U.S.C. § 1182(a)(7)(A)(i)(I) was inapplicable to immigrants seeking post-entry adjustment of status. See *Ortiz-Bouchet*, 714 F.3d at 1356. The issue here concerns the interplay of §§ 1225 and 1226, and *Ortiz-Bouchet* is thus of no moment.

admission not covered by § 1225(b)(1) (with specific exceptions not relevant here).” *Jennings*, 583 U.S. at 287 (emphasis added). Put another way, while § 1225(b)(1) applies to aliens “arriving” in the United States, § 1225(b)(2) applies to all “other” aliens who are applicants for admission—like Petitioner. Simply put, an alien does not lose his “applicant for admission” status as a matter of law simply because he failed to seek inspection and admission upon his immediate arrival in the United States. Moreover, the Supreme Court has confirmed that this statutory mandate for detention extends for the entirety of removal proceedings. *See Jennings*, 583 U.S. at 302 (“[Section] 1225(b)(2) ... mandates[s] detention of aliens throughout the completion of applicable proceedings and not just until the moment those proceedings begin.”).

Respondent’s position also aligns with the BIA’s recent decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025)—persuasive authority applicable on all fours. There, the alien challenging his detention had crossed the border into the U.S. without inspection. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. at 216. United States Citizenship and Immigration Services subsequently granted him temporary protected status. *See id.* at 216-17. After the expiration of that status, DHS issued him a NTA charging him as inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i), as an alien present in the U.S. without being admitted or paroled, or who arrived in the U.S. at any time or place other than as designated by the Attorney General. *See id.* at 217. After the IJ denied the alien’s request for bond, the alien appealed to the BIA. *See id.*

On these facts, the BIA painstakingly reviewed the statutory and regulatory framework—ultimately concluding that “the plain reading of the INA” rendered the alien an “applicant[] for admission” who “must be detained for the duration of [his] removal proceedings.” *Id.* at 220 (citing *Jennings*, 583 U.S. at 300). In a similar vein, Lizarazo’s status as an “applicant for admission” mandates that he be detained during the pendency of his removal proceedings.

E. Contrary to Lizarazo’s Understanding, No Law Requires ICE to Provide Aliens with Notice and Pre-Deprivation Hearings.

Even if the habeas statute could be construed to apply to Lizarazo’s notice-and-pre-deprivation claims, his understanding of federal law is mistaken. No provision—whether constitutional, statutory, or regulatory—requires ICE to provide aliens with notice and a pre-deprivation hearing as a requisite to detention. The Due Process Clause does not prohibit ICE from re-arresting aliens who previously received bond, just as there is no statutory or regulatory requirement entitling aliens to a “pre-arrest” hearing. *See generally* 8 U.S.C. § 1226; 8 C.F.R. § 236(c)(9). For this Court to read one into the immigration custody statute would be to create a process that is absent from the current statutory and regulatory scheme. *See, e.g., Jennings*, 138 S. Ct. at 850-51. Thus, Lizarazo can cite no liberty or property interest to which due process protections attach.

Lizarazo’s reliance on *Matthews v. Eldridge*, 424 U.S. 319 (1976), and its progeny is misplaced. *See* Doc. 11 at 5. *Matthews* concerned procedural protections due social security disability beneficiaries prior to termination of their benefits. *See Matthews*, 424 U.S. at 323-26. The case has nothing to do with immigration. This

distinction is important, because the Supreme Court has long held that “Congress regularly makes rules” regarding immigration “that would be unacceptable if applied to citizens.” *Matthews v. Diaz*, 426 U.S. 67, 79-80 (1976); see *Reno v. Flores*, 507 U.S. 292, 306 (1993) (“Congress has the authority to detain aliens suspected of entering the country illegally pending their deportation proceedings.”). This point is hardly surprising, as the Court has recognized that “due process is flexible and calls for such procedural protections as the particular situation demands.” *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972). Lizarazo cites no case that holds due process requires aliens be provided notice and a pre-deprivation hearing prior to detention. Lizarazo’s omission should again come as no surprise; the Constitution authorizes the arrest of even citizens absent notice and a pre-deprivation hearing. See, e.g., *Virginia v. Moore*, 553 U.S. 164, 176 (2008); see also *S.D.D.B. v. Johnson*, No. 1:25-cv-882, 2025 WL 2845170, at *9-10 (M.D.N.C. Oct. 7, 2025) (rejecting alien’s habeas claim that due process required “a pre-detention determination of changed circumstances” before ICE could revoke his order of release on recognizance).

Nor does there exist any statutory or regulatory provision that mandates notice and a pre-deprivation hearing prior to ICE’s detention of an alien. See *S.D.D.B.*, 2025 WL 2845170, at *8 (“Petitioner has been unable to identify any requirement in the governing statutes or regulations indicating advance notice was required prior to his detention under § 1226.”); *S.D.D.B. v. Johnson*, No. 1:25-cv-882, 2025 WL 2962669, at *6 (M.D.N.C. Oct. 17, 2025) (“Petitioner has failed to point to any statute or regulation requiring Respondents to provide Petitioner with a pre-detention hearing

before revoking his release on recognizance.”). In this regard, § 1226(a) states that the Attorney General “may release” an alien on bond or parole, 8 U.S.C. § 1226(a)(2), and further provides that “[t]he Attorney General at any time may revoke a bond or parole . . . , rearrest the alien under the original warrant, and detain the alien.” 8 U.S.C. § 1226(b). Congress could not have been clearer in giving the AG *discretion* over the decision to release or detain aliens arrested pursuant to § 1226, pending completion of their removal proceedings.

Significantly, “[n]othing under the governing regulations suggests that an alien previously released on recognizance must be deemed a flight risk or danger to the community prior to detention.” *S.D.D.B.*, 2025 WL 2845170, at *8 (citing 8 C.F.R. § 236.1). Section 236.1 states that an alien’s release may be appropriate, “provided that the alien must demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceedings.” “It does not necessarily follow, however, that re-apprehension after release is only permitted under these regulations where a change in circumstances has occurred such that the alien is now considered a danger to the community or flight risk.” *S.D.D.B.*, 2025 WL 2845170, at *8. Rather, the regulations indicate “that release after detention is a highly discretionary act[.]” *Id.* (citing 8 C.F.R. § 236.1(c)(9)). Lizarazo cites no authority that required a change-in-circumstances determination prior to ICE’s revocation of his release, and Respondent respectfully submits that no such authority exists. Consequently, Lizarazo’s constitutional due process claim fails on the merits.

F. Petitioner's APA Claim Fails.

Lizarazo's APA claim can be quickly dispatched. Because Petitioner's claim seeks his ultimate release from detention, it falls "within the 'core' of the writ of habeas corpus and thus must be brought in habeas." *Trump v. J.G.G.*, 604 U.S. 670, 672 (2025) (per curiam). And even if the APA did apply in this context (it does not), Lizarazo's detention is authorized pursuant to constitutional, statutory, and regulatory authorities. Lizarazo points to no provision that required ICE to provide him notice and a pre-deprivation hearing before revoking his release. ICE acted consistent with the discretionary authority delegated to it, and Lizarazo's claim that ICE acted arbitrarily and capriciously rings hollow. Lizarazo's assertion that his release is somehow required by the APA is meritless.

G. If the Court Adjudicates Petitioner's Claim(s) Adversely to Respondent, the Court Should Order that Petitioner Receive an Individualized Bond Hearing Pursuant to § 1226(a) within a Reasonable Period.

In the even the Court decides one or more of Petitioner's claims adversely to Respondent, Petitioner should receive an individualized bond hearing before an immigration judge under 8 U.S.C. § 1226(a). Respondent respectfully submits that he should be provided a reasonable period of one week to schedule any such hearing.

V. Conclusion

For the reasons stated above, this Court should dismiss Lizarazo's 28 U.S.C. § 2241 petition and amended petition.

Respectfully submitted, this 19th day of November, 2025.

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