UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

LUIS A. VASQUEZ CARCAMO,

Petitioner,

v.

Case No. 2:25-cv-922-SPC-NPM

KRISTI NOEM, Secretary, U.S. Department of Homeland Security ("DHS"); TODD M. LYONS, Acting Director, U.S. Immigration and Customs Enforcement ("ICE"), et al., (all official capacity),

Respondents.
_____/

Response to Habeas Petition

Respondent Federal Defendants respond to Petitioner Luis Vasquez Carcamo's Emergency Petition for Writ of Habeas Corpus (Doc. 1). *See* (Doc. 4). The Court lacks jurisdiction. Apart from that, Carcamo's detention is lawful. So the Court should deny the writ and dismiss this action.

Background

Carcamo is a native of Honduras who allegedly entered the United States unlawfully around June 2021. (Doc. 1 at 19). He was not admitted to this country; nor has he attempted to interact with immigration authorities. (Doc. 1 at 19).

In October 2025, ICE detained Carcamo in Miami. (Ex. 1 at 8). He was determined to be inadmissible as (1) present without admission or parole (8 U.S.C.

§ 1182(a)(6)(A)(i)) and (2) an applicant for admission not in possession of valid documentation (*id.* § 1182(a)(7)(A)(i). (Ex. 1 at 8-9). That same day, ICE served him with a Form I-862, Notice to Appear ("NTA"), (Ex. 1 at 1-4), Form I-200, Warrant of Arrest, (Ex. 1 at 6), and I-286, Notice of Custody Determination, (Ex. 1 at 5).

The parties agree that ICE is detaining Carcamo under 8 U.S.C. § 1225. (Doc. 1 at 2). Currently, Carcamo is detained in Broward County. (Ex. 1 at 10).

Legal Standard

Federal courts may grant writs of habeas corpus for a petitioner "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3). Petitioner bears the burden to prove his custody violates federal law. *Whitfield v. U.S. Sec'y of State*, 853 F. App'x 327, 329 (11th Cir. 2021); *Martin v. Beto*, 397 F.2d 741, 749 (5th Cir. 1968).

Discussion

As explained, the Court lacks jurisdiction. Even if it disagrees, however, Carcamo's claims fail on the merits.

A. Jurisdiction

There is no need to get into the nuances between 1225 and 1226 since the Court lacks subject-matter jurisdiction over Carcamo's claims. There are three reasons why.

1. Jurisdiction Stripping

Federal courts have limited jurisdiction. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). They "possess only that power authorized by Constitution

and statute." *Id.* (citations omitted).

In immigration habeas cases related to removal proceedings—as here—the Immigration and Nationality Act ("INA") divests this Court's jurisdiction to consider Carcamo's claims challenging his detention pending a removal determination. 8 U.S.C. § 1252(g). "APA review does not apply when '(1) statutes preclude judicial review; or (2) agency action is committed to agency discretion by law.'" *Kanapuram v. USCIS*, 131 F.4th 1302, 1306 (11th Cir. 2025) (quoting 5 U.S.C. § 701(a)).

There is no jurisdiction to review "any cause or claim . . . arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders." 8 U.S.C. § 1252(g); *Gupta v. McGahey*, 709 F.3d 1062, 1065 (11th Cir. 2013). This provision bars habeas review in federal courts when the claim arises from "discrete acts of commencing proceedings, adjudicating cases, and executing removal orders." *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471, 483 (1999) (cleaned up). These activities "represent the initiation or prosecution of various stages in the deportation process" that Congress had "good reason" to withhold from judicial review. *Id.*

When construing § 1252(g), one must limit the application "to just those three specific actions" listed. *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018). In doing so, "courts must focus on the action being challenged." *Canal A Media Holding, LLC v. USCIS*, 964 F.3d 1250, 1258 (11th Cir. 2020). At bottom, § 1252(g) bars review if the conduct "to commence proceedings, adjudicate cases, or execute removal orders is the basis of the claim." *Gupta*, 709 F.3d at 1065.

The law is clear:

> Securing an alien while awaiting a removal determination constitutes an action taken to commence proceedings.

Id.; *see also Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016) ("Because [the alien] challenges the methods that ICE used to detain him prior to his removal hearing, these claims are foreclosed by § 1252(g) and our decision in *Gupta*."); *Johnson v. U.S. Attorney General*, 847 F. App'x 801, 802 (11th Cir. 2021). "By its plain terms, [§ 1252(g)] bars us from questioning ICE's discretionary decisions to commence removal—and thus necessarily prevents us from considering whether the agency should have used a different statutory procedure to initiate the removal process." *Alvarez*, 818 F.3d at 1203. So § 1252(g) strips the Court's jurisdiction over habeas petitions challenging detention pending removal proceedings.

ICE detained Carcamo "while awaiting a removal determination." *Gupta*, 709 F.3d at 1065. Under *Gupta*'s binding interpretation of § 1252(g), the Court plainly has no jurisdiction. *Id.* ICE decided to commence proceedings against Carcamo to seek removal. And Congress specifically stripped the Court's jurisdiction to review that discretionary decision.

ICE recognizes Judge Steele declined to apply *Gupta* where petitioner's NTA was served after petitioner was detained. *Brito Matom v. ICE*, No. 2:25-cv-648-JES-NPM, 2025 WL 2577424, at *2 (M.D. Fla. Sept. 5, 2025). The sole justification of *Brito Matom* was reliance on one easily distinguished Southern District case—where no NTA was ever served. *Gonzales v. FedEx Ground Package Sys., Inc.*, No. 12-CV-80125-

RYSKAMP/HOPKINS, 2013 WL 12080223, at *9 (S.D. Fla. Aug. 1, 2013).

ICE respectfully disagrees with this conclusion. Nowhere in *Gupta* did the Eleventh Circuit rely on the time of serving or filing an NTA. Rather, what mattered was whether the challenged conduct arose from decisions or actions to commence removal proceedings. *Gupta*, 709 F.3d at 1065 ("Each of these claims, then, challenges the actions the agents took to commence removal proceedings—exactly the claims that § 1252(g) bars from the subject-matter jurisdiction of federal courts."). The Eleventh expressly reaffirmed this in several other decisions (both published and unpublished):

> Because [plaintiff] challenges the methods that ICE used to detain him prior to his removal hearing, these claims are foreclosed by § 1252(g) and our decision in *Gupta*.

Alvarez, 818 F.3d at 1204; *see also Johnson*, 847 F. App'x at 802.

Here, ICE served Carcamo with an NTA, (Ex. 1 at 1-4), and warrant of arrest, (Ex. 1 at 6), on the day of his initial detention. These were decisions and actions arising from the commencement of removal proceedings. The NTA set a hearing on removal proceedings for November 7 in Miami. (Ex. 1 at 1). It is indisputable that these are ICE's decisions and actions to commence removal proceedings—which are being actively pursued. The INA strips jurisdiction.

What's more, "the sole function of habeas corpus is to provide relief from Unlawful imprisonment or custody, and it cannot be used for any other purpose." *Cook v. Hanberry*, 592 F.2d 248, 249 (5th Cir. 1979). So the only relief a habeas petitioner may receive is release. *DHS v. Thuraissigiam*, 591 U.S. 103, 119 (2020). Carcamo decided to pursue habeas seeking only declarations and orders related to his release

from confinement. (Doc. 1 at 30-31). Put different, this case is only about whether ICE can detain Carcamo pending removal proceedings. *Gupta* and progeny hold the Court has no jurisdiction over such actions.

The Court also lacks jurisdiction on separate grounds.

2. Zipper Clause

The INA precludes review of "all questions of law and fact . . . arising from any action taken or proceeding brought to remove an alien from the United States" except judicial review of a final order of removal. 8 U.S.C. § 1252(b)(9). This is known as the "zipper clause" and applies where a petitioner seeks "review of an order of removal [or] the decision to seek removal." *Canal A*, 964 F.3d at 1257; *DHS v. Regents of Univ. of Cal.*, 591 U.S. 1, 19 (2020). In reading this subsection alongside 8 U.S.C. § 1252(a)(5)—which limits review—courts conclude petitioners must funnel all aspects of challenges to removal proceedings through the avenue set out in § 1252(a)(5). *Nasrallah v. Barr*, 590 U.S. 573, 580 (2020) ("The REAL ID Act clarified that final orders of removal may not be reviewed in district courts, even via habeas corpus, and may be reviewed only in the courts of appeals."); *see also Bonhometre v. Gonzales*, 414 F.3d 442, 446 (3d Cir. 2005) (There is "clear intent to have all challenges to removal orders heard in a single forum (the courts of appeals).").

The zipper clause restrictions are broad but not unlimited. *Canal A*, 964 F.3d at 1257. Still, a claim arising from actions or proceedings brought to remove an alien clearly falls within the clause. *See Regents of Cal.*, 591 U.S. at 19.

Here, Carcamo challenges ICE's detention determination. This was an action

arising from ICE's choice to carry out proceedings to remove him from the United States. The zipper clause is in full force; judicial review by this Court is inappropriate and contrary to the INA. 8 U.S.C. § 1252(b)(9).

There is one final jurisdictional issue.

3. Failure to Exhaust

Despite all his briefing, Carcamo fails to address a simple fact: he never requested a bond hearing.

DHS makes initial decisions about custody and bond—which an IJ may review. 8 C.F.R. § 1003.19(a). But to get a bond hearing, the alien (or his lawyer) must make an application to the IJ for bond redetermination. *Id.* § 1003.19(b)-(c). The IJ's bond redetermination is "separate and apart from" the removal proceedings. *Id.* § 1003.19(d). If the alien disagrees with the IJ's decision, he may appeal to the Board of Immigration Appeals ("BIA"). *Id.* § 1003.1(b)(7).

Carcamo sues ICE for failing to provide a bond hearing. But in a thirty-page Petition, Carcamo fails to allege a single fact suggesting he pursued bond administratively. Instead, he asks the Court to order ICE to provide a bond hearing despite never making a request—as required by regulation. Likewise, Carcamo makes no indication of a BIA appeal to review any unalleged bond denial.

To the extent that Carcamo implies futility in seeking a bond hearing or appealing, he is mistaken. *See McGee v. Warden, FDC Miami*, 487 F. App'x 516, 518 (11th Cir. 2012) (finding no jurisdiction on habeas petition where petitioner failed to exhaust remedies despite argument doing so would be futile). Futility is not a blank

check to relieve petitioner's duty to exhaust his remedies. Under exceptional circumstances, courts may excuse an exhaustion requirement. *See Sanchez v. Warden, FCC Coleman - Low*, No. 5:23-CV-79-WFJ-PRL, 2023 WL 4489472, at *2 (M.D. Fla. July 12, 2023); *Faison v. Warden, FCC Coleman,* No. 5:23-CV-67-WFJ-PRL, 2023 WL 4489471 (M.D. Fla. July 12, 2023); *Vasquez v. Warden, FCC Coleman Low*, No. 5:22-CV-517-WFJ-PRL, 2023 WL 4157364, at *2 (M.D. Fla. June 23, 2023). Yet there are no facts alleged to support that relief in this case.

4. Conclusion

As explained, the Court lacks jurisdiction over this habeas action. Yet even if it disagrees, detention is still lawful.

B. Merits

At bottom, Carcamo alleges ICE's decision to detain him under § 1225 rather than § 1226 was inappropriate, deprived his due process, and withheld a bond hearing. These claims fail as a matter of law because he is lawfully detained.

To interpret the relevant parts of the INA, courts first turn to the "plain meaning of the statute." *Esquivel-Quintana v. Sessions*, 581 U.S. 385, 391 (2017). If the statutory text is clear, the analysis ends. *Bostock v. Clayton County, Ga.*, 590 U.S. 644, 674 (2020).

The statutory scheme in § 1225(a) provides: "An alien present in the United States who has not been admitted . . . shall be deemed for purposes of this chapter an applicant for admission." 8 U.S.C. § 1225(a); *Thuraissigiam*, 591 U.S. at 140. Applicants for admission under this section fall into one of two categories. First, those initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid

documentation fall under § 1225(b)(1). Second, everyone else not encompassed by § 1225(b)(1) fall under the § 1225(b)(2) catchall. *Jennings*, 583 U.S. at 287.

Under § 1225(b)(1), aliens are detained for the purpose of expedited removal. Under § 1225(b)(2), the "alien shall be detained for a proceeding under section 1229a"—i.e., full removal proceedings—after "the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). Read plainly, these subsections "mandate detention of applicants for admission until certain proceedings have concluded." *Jennings*, 583 U.S. at 297.

Given its statutory obligation, ICE detained Carcamo under § 1225(b). The parties do not dispute he entered the United States illegally and without any authorization. Carcamo's detention pending his removal proceedings is not unlawful; rather, it is statutorily required. 8 U.S.C. §§ 1225(b)(1)(B)(ii), (iii)(IV); 1225(b)(2)(A); *see Chaviano v. Bondi*, 2025 WL 1744349, at *6-8 (S.D. Fla. June 23, 2025).

Carcamo argues § 1225(b)(2) does not apply to aliens not detained near the border or who resided in the United States for more than two years. But nothing in the statutory language supports this conclusion. He seeks contends an "applicant for admission" means an "arriving alien." (Doc. 1 at 17). Yet that only addresses half of the aliens expressly contemplated by § 1225(a)(1)—defining applicants as a present alien "who has not been admitted or who arrives in the United States." Where the statutory text is otherwise clear, courts cannot add words or make up exceptions. *King v. Burwell*, 576 U.S. 473, 486 (2015).

Section 1225(b) is unambiguous. There are no geographic qualifiers; nor are any time limitations imposed. 8 U.S.C. § 1225(b)(2). Notably, Congress included such time limitations in other parts of the same statute. For instance, 8 U.S.C. § 1225(b)(1)(A)(iii)(II)—enacted contemporaneously with § 1225(b)(2)—applies a two-year continuous physical presence requirement. When Congress includes language in one part of a statue but omits it in another, it does so intentionally. *E.g.*, *Shotz v. City of Plantation, Fla.*, 344 F.3d 1161, 1168 (11th Cir. 2003). Under these principles, the Court cannot read an additional "place of detention" or "period of residence" requirement into § 1225(b)(2) when it simply isn't there. Short of legislating, the Court cannot impose limitations on § 1225(b)(2) that Congress did not include. *See Germain v. U.S. Att'y Gen.*, 9 F.4th 1319, 1325 (11th Cir. 2021).

As discussed, an alien's place of detention or period of residence is irrelevant under the plain language. What is relevant, however, is an alien's manner of entry. 8 U.S.C. § 1225(a)-(b). Congress members said as much when amending the INA. *See Sturgeon v. Frost*, 587 U.S. 28, 54 (2019) ("The legislative history (for those who consider it) confirms, with unusual clarity, all we have said so far."). The statutory scheme that § 1225 and § 1226 replaced was structured so aliens who entered the United States undetected retained certain benefits—such as the availability of bond—where those who presented themselves at the border did not:

> This subsection is intended to replace certain aspects of the current "entry doctrine," under which illegal aliens who have entered the United States without inspection gain equities and privileges in immigration proceedings that are not available to aliens who present themselves for inspection at a port of entry. Hence, the pivotal factor in determining an

alien's status will be whether or not the alien has been lawfully admitted.

H.R. Rep. No. 104-469, pt. 1, at 225 (1996). Recognizing that such a scheme incentivized evasion over presenting oneself at a port of entry, Congress set out to restructure the law to distinguish between deportability—applicable to admitted aliens—and inadmissibility—applicable to those present without admission. *Id.* at 226. So aliens who enter surreptitiously "will not be considered to have been admitted." *Id.* Carcamo's reading seeks to retroactively nullify this legislative fix and once again restore incentives to circumvent rather than comply with the INA.

To be fair, there are many recent decisions adverse to ICE's § 1225 position here. *E.g.*, *Guerrero Orellana v. Moniz*, No. 25-cv-12664, 2025 WL 2809996, at *6 (D. Mass. Oct. 3, 2025). There are, however, decisions in support of ICE's text-based argument. *Vargas Lopez v. Trump* thoroughly addressed this issue and agreed with ICE's reasoning. No. 8:25CV526, 2025 WL 2780351, at *7-10 (D. Neb. Sept. 30, 2025). At least one other court came to the same conclusion. *Chavez v. Noem*, No. 3:25-cv-02325-CAB-SBC, 2025 WL 2730228, at *4-5 (S.D. Cal. Sept. 24, 2025).

Carcamo contends his detention under § 1225 is improper and his detention should be under § 1226. But Carcamo did not meet his burden to establish detention under § 1226 should apply to him. Section 1226 is far broader than § 1225. Specifically, § 1226 applies to any "alien." 8 U.S.C. § 1226(a). An "alien" is "any person not a citizen or national of the United States." *Id.* § 1101(a)(3). Meanwhile, the phrase "applicant for admission" in § 1225(b)(2) has distinct meaning, and not every single alien entering without inspection falls under this provision. Rather, the facts and

circumstances concerning Carcamo demonstrate he is an applicant for admission under § 1225(b)(2).

Carcamo alleges he illegally entered the United States in June 2021. (Doc. 1 at 19). He admittedly made no effort to seek permission or status to remain in this country. (Doc. 1 at 19-20). So it's undisputed Carcamo has not been admitted to the United States.

Due to Carcamo's unlawful immigration status, Respondents now pursue removal proceedings. To their knowledge, Carcamo has not stipulated that he is removable; nor has he indicated he will not contest removal. In fact, Carcamo can seek release from detention to depart the United States voluntarily. 8 U.S.C. § 1229c(a). But again, there is no indication he has any intention of doing so. In short, everything suggests Carcamo will not agree to leave. Yet he has no status and was never admitted to the United States. Put different, Carcamo must be an applicant for admission if he wants to stay here. *Vargas Lopez*, 2025 WL 2780351, at *9 (Petitioner "wishes to stay in this country. This makes [him] an 'applicant for admission,' consistent with the conclusion of the BIA in *Hurtado* and *Jennings*."). The alternative would be seeking an Order to somehow remain unlawfully in the United States. *Id.* (That petitioner "illegally remained in this country for years does not mean that he is suddenly not an 'applicant for admission' under § 1225(b)(2).").

The recent enactment of the Laken Riley Act bolsters this conclusion. *See* Pub. L. No. 119-1, 139 Stat. 3 (2025). There, the categories of individuals subject to mandatory detention expanded to include those who entered the United States and

were charged as inadmissible under § 1182(a)(6)(A)(i) or (a)(7) and have committed—or been charged or convicted of—certain specified crimes. *See* 8 U.S.C. § 1226(c)(1)(E). Were "applicant for admission" under § 1225 interpreted as narrow as Carcamo argues, then there would be no need to pass Laken Riley. Those aliens now covered by § 1226(c)(1)(E) would have already been subject to mandatory detention. Even if there are redundancies, those "are common in statutory drafting" and provide no "license to rewrite or eviscerate another portion of the statute contrary to its text." *Barton v. Barr*, 590 U.S. 222, 229 (2020) ("The Court has often recognized: Sometimes the better overall reading of the statute contains some redundancy." (cleaned up)).

Finally, the fact that longstanding practice may have differed is not dispositive. The Constitution empowers the Judiciary to exercise judgment regarding the interpretation of laws independent from the political branches. U.S. Const. art. 3, § 2, cl. 1; *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 385 (2024). The question for this Court is not ICE's historical practice; instead, the inquiry is the correct statutory interpretation. As discussed, the best reading of the INA is what its words say—confirming ICE may detain Carcamo under § 1225(b)(2).

As explained, Carcamo's detention under § 1225(b)(2) is lawful. The INA mandates his detention.

Conclusion

For those reasons, the Court must deny the Petition and dismiss this action.

Date: October 21, 2025

Respectfully submitted,

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