UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

CHONG DA WU,

Petitioner,

v. Case No. 3:25-cv-1254-MMH-MCR

WARDEN, Florida Baker Corrections Institute; GARRETT J. RIPA, Miami Field Office Director, U.S. Immigration and Customs Enforcement; KRISTI NOEM, Secretary of the U.S. Department of Homeland Security; and PAMELA BONDI, Attorney General of the United States, in their official capacities.

Respondents.
_____/

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

The Federal Respondents, and Warden of the North Florida Detention Facility ("NFDC"),[1] (collectively, the "Respondents"), hereby respond to Plaintiff's Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2241. Doc. 1. As set forth below, the Court should deny habeas relief and dismiss the Petition because Petitioner has not met his requisite burden; namely, to demonstrate that there is good reason to believe that there is no significant likelihood of his removal from the United States in the

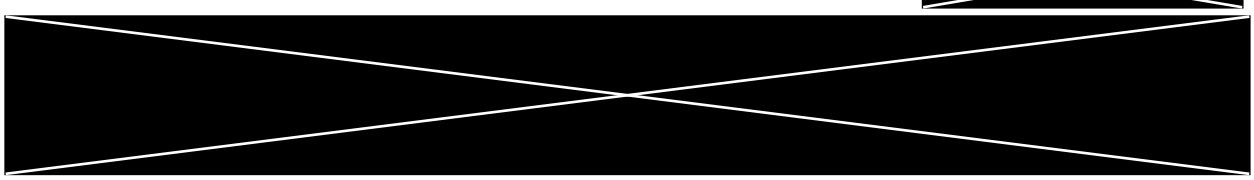
[1] NFDC is operated out of the now closed Baker Correctional Institute in Sanderson, Florida. The facility now has a new name although it is the same place. Ronnie Woodall was the Warden at the Baker Correctional Institute when it was operated by the State of Florida as a men's prison, *see* www.fdle.state.fl.us, but at the time of this filing, there is not a named person as the facility administrator of the NFDC.

foreseeable future. As discussed below, U.S. Department of Homeland Security ("DHS") officials have been working diligently to effectuate Petitioner's removal and expect that he will be removed in the reasonably foreseeable future. Further, Petitioner's APA claim lacks standing and this Court lacks jurisdiction to hear his habeas claim. Even if it did have jurisdiction, Petitioner's detention is lawful. As such, the Petition should be dismissed. In support thereof, Respondents state the following:

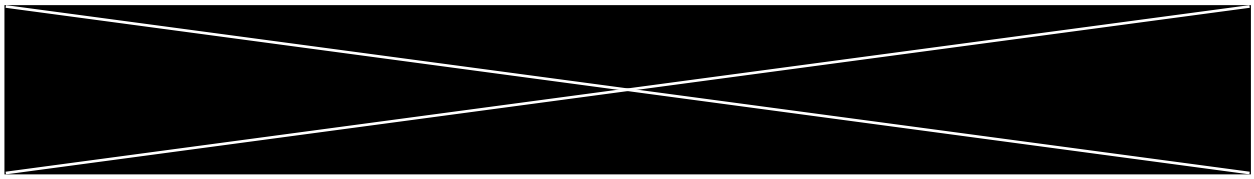
I. BACKGROUND

1. Petitioner, Chong Da Wu, is a 40-year-old male native and citizen of the People's Republic of China. *See* **Exhibit A** (Declaration of Deporting Officer Luke Tine dated December 18, 2025) at ¶ 3. Petitioner has an expired passport from the People's Republic of China, which was issued on January 13, 1993. *Id.* at ¶ 38. Petitioner claims his mother and father are both citizens and nationals of the People's Republic of China by virtue of their birth in China. *See* **Exhibit B** (Petitioner's I-213) at 3. Petitioner has made no claim to U.S. citizenship and there is no indication that he has derive or acquired U.S. citizenship. *Id.*

2. On July 6, 2006, Petitioner arrived at Luis Munoz Marin International Airport (in Puerto Rico) from the Dominican Republic. Petitioner was paroled until July 5, 2007, and his parole was extended until October 5, 2007,



3. On November 15, 2007, upon completion of parole and not being under the U.S. District Court jurisdiction, Petitioner was arrested in San Lorenzo, Puerto Rico. *See* **Exhibit B** (Petitioner's I-213) at 2. Petitioner was returned to a port of entry for processing. *See* **Exhibit A** at ¶ 5. He was processed for expedited removal. *Id.*



5. On October 10, 2008, an Immigration Judge ("IJ") entered an Order of Removal against Petitioner. *Id.* at ¶ 6. Petitioner's Determination of Inadmissibility provides that Petitioner is an immigrant "not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Immigration and Nationality ("INA")." *See* **Exhibit C** (Petitioner's Determination of Inadmissibility). Further, Petitioner is "not in possession of a valid passport, or other suitable travel document, or document of identity and nationality." *Id.* Moreover, Petitioner stated, under oath, that he "lived, and worked in the United States without permission from the Citizenship and Immigration Services." *Id.* The Determination specified that Petitioner is inadmissible pursuant to Section 235(b)(1) of the INA (8 U.S.C. 1225(b)(1)), under (7)(A)(i)(II). *Id.* Petitioner's Notice indicated that he is prohibited from entering, attempting to enter, or being in the United States "for a period of 5 years from the date of [his] departure from the United States as a

result of [his] being found inadmissible as an arriving alien. *See* **Exhibit D** (Notice to Alien Ordered Removed/Departure Verification).

6. That same month, Petitioner filed a custody redetermination motion in immigration court, but the IJ denied bond due to lack of subject matter jurisdiction, finding that Petitioner is an "arriving alien." *See* **Exhibit A** at ¶ 7; *see also*, **Exhibit E** (Order of the Immigration Judge dated October 14, 2008).

7. On November 24, 2008, the ICE Enforcement and Removal Operations ("ERO") requested travel documents from the Chinese Consulate for Petitioner. *See* **Exhibit A** at ¶ 8. Throughout the course of several months, ERO continued to follow up with the Chinese Consulate regarding travel documents for Petitioner, including as it relates to the Chinese Consulate's instruction that an interview of Petitioner was necessary. *Id.* at ¶¶ 9-14.

8. On April 23, 2009, Petitioner filed a Writ of Habeas Corpus in the U.S. District Court San Juan. *Id.* at ¶ 17. Throughout the course of the next several months, the ERO made efforts to expedite the pending travel document requests, conducted a post-order custody review ("POCR"), and issued a decision to serve a Form I-229(a) and Instruction Sheet to Petitioner about Petitioner's obligations to cooperate with immigration authorities. *Id.* at ¶¶ 18-25.

9. On July 13, 2009, following the ERO's note that the Chinese Consulate was unable to verify Petitioner's identity and secure travel documentations for him,

Petitioner was released on Order of Supervision ("OSUP") and was instructed to continue reporting to ERO. *Id.* at ¶¶ 26-27.

10. Between December 2011 and April 2025, Petitioner was directed to bring documentations of his efforts to obtain a new passport from the Chinese Consulate and Petitioner would report back at future check-ins with evidence of travel document requests to the Chinese Embassy. *Id.* at ¶¶ 28-35. During 2020, it was unclear whether Petitioner received a response from the Chinese Consulate or presented evidence to the ERO. *See* **Exhibit A** at ¶ 34.

11. On June 2, 2025, Petitioner was scheduled for a report date. However, Petitioner missed that scheduled appointment, which was rescheduled for July 9, 2025. *Id.* at ¶ 36. On that later date, Petitioner was detained for removal. *Id.* at ¶ 37.

12. On June 16, ERO obtained a copy of Petitioner's Chinese Passport, which was issued on January 13, 1993. *Id.* at ¶ 38.

13. On June 29, 2025, ERO initiated another travel document request packet for Petitioner. *Id.* at ¶ 39. Over the course of the next several months, ERO followed up on the pending travel document request and continued to make updates and corrections to the request. *Id.* at ¶¶ 40-44.

14. By September 12, 2025, Petitioner's travel request documents were finally approved and mailed to the Chinese Embassy. *See* **Exhibit A** at ¶ 45.

15. On December 1, 2025, upon information and belief, Petitioner was nominated for a charter flight on December 15, 2025; however, Petitioner did not depart from the United States on December 15, 2025. Rather, Headquarters Removal and International Operations were required to submit additional supporting documentation to the National Immigrant Administration ("NIA") to continue verification efforts for Petitioner's travel documents. *Id.* at ¶ 48. Based upon the foregoing ERO efforts and continued engagement, there is a significant likelihood that Petitioner will be removed in the reasonably foreseeable future. *Id.* at ¶ 49.

16. As recently as December 15, 2025, ICE successfully conducted a charter removal to the Peoples Republic of China with the assistance of the Embassy of People's Republic of China in Washington, D.C., and the NIA. *See* **Exhibit F** (Declaration of Detention and Deporting Officer Kevin Brown dated December 18, 2025) at ¶ 10. The charter included the nationals that required additional identification verification prior to travel documents being issued. *Id.* Both ICE and the NIA maintain ongoing communications in effort to effectuate removal of Chinese nationals pending additional identity verification. *Id.* at ¶ 8.

17. On December 17, 2025, ICE presented to the ICE attaché, for submission to the NIA, additional identity documentation related to Petitioner to assist with the ongoing identify verification efforts. *Id.* at ¶ 11. At this time, no official from the

People's Republic of China government has expressly stated that they are questioning Petitioner's citizenship while he remains in ICE custody. *Id.* at ¶ 12.

18. As of today's date, December 22, 2025, Petitioner remains detained at the NFDC (formerly, Baker Correctional Institute) and Petitioner been in custody for approximately 196 days since his detention on June 9, 2025. *See* **Exhibit A** at ¶ 36.

II. LEGAL STANDARDS

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).

Federal Rule of Civil Procedure 12(b)(1) requires dismissal of claims where the Court "lack[s] jurisdiction over the subject matter." Fed. R. Civ. P. 12(b)(1). A motion to dismiss may be brought pursuant to Fed. R. Civ. P. 12(b)(1) through a facial challenge or a factual challenge. *Kennedy v. Floridian Hotel, Inc.*, 998 F.3d 1221, 1230 (11th Cir. 2021). "A facial attack challenges whether a plaintiff "has sufficiently alleged a basis of subject matter jurisdiction, and the allegations in his complaint are taken as true for the purposes of the motion." *Id.* By contrast, a factual attack "challenges the existence of subject matter jurisdiction irrespective of the pleadings, and extrinsic evidence may be considered." *Id.*

Federal Rule of Civil Procedure 12(b)(6) tests the legal sufficiency of the complaint. To survive a motion to dismiss under this Rule, a complaint must contain sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

III. MEMORANDUM

Generally, this Court has jurisdiction to consider a challenge to a petitioner's continued detention in habeas corpus proceedings. S*ee Zadvydas v. Davis*, 533 U.S. 678, 121 S. Ct. 2491 (2001). While the Court has jurisdiction to consider Petitioner's challenge to his continued detention, the Petition should be dismissed because Petitioner has failed to establish that his ICE detention is unlawful.

The relevant detention provisions governing Petitioner's detention is § 241(a) of the INA, as amended 8 U.S.C. § 1231(a), which covers detention following entry of a final removal order. This provision generally affords the Attorney General a 90-day period to accomplish removal. *See* 8 U.S.C. § 1231(a)(1)(A). The statute provides that, in certain circumstances, the Attorney General may continue to detain an alien after expiration of the 90-day removal period when the alien is:

> An alien ordered removed who is inadmissible under 1182 of this title, removable under section 1227(a)(1)(C), 1227(a)(2), or 1227(a)(4) of this title or who has been determined by the Attorney General to be a risk to the community or unlikely to comply with the order of removal, may be detained beyond the removal period and, if released, shall be subject to the terms of supervision in paragraph (3).

8 U.S.C. § 1231(a)(6). Hence, Petitioner's continued detention has a basis in law in that he is removable as charged under the INA. *See generally* **Exhibit A** (Declaration).

The statute defines when the removal period begins. Pursuant to § 1231(a)(1)(B), the "removal period begins on the latest of the following:

(i) The date the order of removal becomes administratively final.

(ii) If the removal order is judicially reviewed and if the court orders a stay of removal of the alien, the date of the court's final order.

(iii) If the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement."

8 U.S.C. § 1231(a)(1)(B).

In *Zadvydas,* the Supreme Court held that 8 U.S.C. § 1231(a) permits the government to detain an alien during the 90-day removal period in § 1231(a)(1), and an additional 90 days to effectuate the alien's removal from the United States. 553 U.S. at 701; *see also Clark v. Martinez*, 543 U.S. 371, 386 (2005). Stated differently, the Supreme Court "confirmed that six months is a presumptively reasonable period to detain a removable alien awaiting deportation under such circumstances." *Akinwale v. Ashcroft,* 287 F.3d 1050, 1051-1052 (11th Cir. 2002) (*citing Zadvydas,* 533 U.S. at 701).

While six months is a presumptively reasonable detention period, the *Zadvydas* Court also made clear that the six-month presumption did not mean that every alien not removed within this timeframe must be released after six months. *Zadvydas* at 701. The Court explained, "[t]o the contrary, an alien may be held in confinement

until it had been determined that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* (emphasis added).

In *Akinwale*, the Eleventh Circuit concluded that "to state a claim under *Zadvydas* the alien **not only** must show post-removal order detention in excess of six months **but also** must provide evidence of a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." 287 F.3d at 1052 (emphasis added). Thus, the burden is on Petitioner to demonstrate: (1) post removal order detention for a period exceeding six months; **and** (2) that there is good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future. *Id.*

A. Petitioner Failed to Cooperate in Removal Efforts; Thus, at the Time of Filing the Habeas, Petitioner's Post-Removal Order Detention Had Not Exceeded Six-Months.

Petitioner is required to assist in efforts to remove him pursuant to INA § 243(a), as amended 8 U.S.C. § 1253(a). Specifically, the statute provides that any alien with a final order who:

> [W]illfully fails or refuses to make timely application in good faith for travel or other documents necessary to the alien's departure, or who connives or conspires, or takes any other action, designed to prevent or hamper or with the purpose of preventing or hampering the alien's departure pursuant to such, may be fined under Title 18 or imprisoned for not more than four years or both.

8 U.S.C. § 1253(a)(1)(B), (C). Thus, repatriation is a shared responsibility of the alien,

his sovereign, and the U.S. government.

Here, Petitioner contributed to delays in this case. Between the time period after Petitioner was released on an order of supervision and the date that Petitioner was detained upon failure to appear at his scheduled check-in meeting with ERO—approximately 15 years and 10 months—Petitioner was unable to make significant progress toward obtaining travel documents from the Chinese Consulate. *See* **Exhibit A** at ¶¶ 27-37. While Petitioner did bring copies of his applications to report dates, it remained unclear—particularly in 2020, whether Petitioner had actually received a response from the Chinese Consulate or presented any evidence to the ERO. *Id.* at ¶ 34. Further, Petitioner failed to appear to his scheduled report date of June 2, 2025, which resulted in his detention on June 9, 2025, whereby he was detained for removal. *Id.* at ¶¶ 36-37. These events led to a cumulative delay in the time necessary for ICE to obtain additional travel documents for Petitioner from the Chinese Consulate.

In applying the rational set forth in *Akinwale* to the present case, Petitioner's removal period, pursuant to 8 U.S.C. §§ 1231(a)(1)(A) and 1231(a)(1)(B)(iii) of the Act, began, the date Petitioner entered immigration custody on June 9, 2025. *See* **Exhibit A** at ¶ 37. Accordingly, Petitioner's "presumptively reasonable" six month/ 180-day period, as set forth in *Zadvydas* and *Akinwale*, expired this month (calculated as either 180 days from June 9, 2025, at December 6, 2025, or six calendar months from June 9, 2025 to December 9, 2025). However, Petitioner's own refusal to

cooperate with ICE led to a prolongation—and effectively the tolling—of his post-removal detention period. "[F]or like the orphan who sought sympathy after murdering his parents, petitioner cannot claim that his pre-removal detention is unreasonably long when he is the cause of the delay in his removal." *Olajide v. BICE*, 402 F. Supp.2d 688, 689 (E.D. Va. 2005).

The Fifth Circuit has held that "if it is shown that petitioner by his conduct has intentionally prevented the INS from effectuating his deportation, the six-month period should be equitably tolled until petitioner begins to cooperate with the INS in effectuating his deportation or his obstruction no longer prevents the INS from bringing that about." *Balogun v. I.N.S.*, 9 F.3d 347, 351 (5th Cir. 1993) ("The alien should not be allowed to profit from his own wrong and *contra non valentem agere nulla currit praescriptio.*"). Other circuit and district courts have found the same. *See Lema v. INS*, 341 F.3d 853, 856-57 (9th Cir. 2003) (stating "the risk of indefinite detention that motivated the Supreme Court's statutory interpretation in *Zadvydas* does not exist when the alien "has the keys [to freedom] in his pocket and could likely effectuate his removal by providing the information requested by the INS") (alteration in original); *Riley v. Greene*, 149 F.Supp.2d 1256, 1262 (D. Colo. 2001) (tolling the detention period when an alien intentionally causes a delay); *Sango–Dema v. District Director,* 122 F.Supp.2d 213, 221 (D.Mass.2000) (alien cannot trigger right to freedom from indefinite detention "with his outright refusal to cooperate with INS officials").

Accordingly, Petitioner's period of detention should be tolled for the delay ICE encountered resulting from Petitioner's non-compliance with his own removal. Thus, Petitioner's post-order detention period—approximately 196 days on today's date—had not exceeded six months at the time he filed his Petition (Doc. 1), and it must be dismissed. *Akinwale*, 287 F.3d at 1052 ("in order to state a claim under *Zadvydas* the alien [. . .] must show post-removal order detention in excess of six months."). Indeed, on October 20, 2025, when Petitioner filed his Petition for Habeas Corpus (Doc. 1), only 133 days had elapsed. Accordingly, Petitioner's detention is lawful.

B. Petitioner Has Failed to Establish Good Reason to Believe That There Is No Significant Likelihood of Removal In the Reasonably Foreseeable Future.

Although the burden shifts to the Respondents only once a petitioner satisfies his burden under *Zadvydas*, Respondents have nonetheless provided evidence to establish that Petitioner's removal is likely to occur in the reasonably foreseeable future. *See* **Exhibits A & F**. Moreover, Plaintiff fails to present any evidence to establish that there is no significant likelihood of his removal to the Republic of China in the reasonably foreseeable future. Indeed, ERO has on multiple occasions—with the latest as recent as December 18, 2025, as provided in the declaration—deemed there to be a significant likelihood that Petitioner will be removed in the reasonably foreseeable future and has presented—as recently as December 17, 2025—additional identity documents related to Petitioner to the ICE attache for submission to the NIA

to assist with the ongoing identity verification efforts. *See generally,* **Exhibit A** & **Exhibit F** at ¶ 11. Notably, there is no evidence to suggest that the People's Republic of China would deny Petitioner's removal to China. *See* **Exhibit F** at ¶¶ 7 & 12. Because there are no travel bans, once Petitioner's travel documents are obtained, his removal can be accomplished as soon as practicable. Accordingly, Petitioner's arguments are not supported by the facts in this case and must fail. *See Fahim v. Ashcroft*, 227 F. Supp. 2d 1359, 1365 (N.D. Ga. 2002) (stating "Petitioner's bare allegations are insufficient to demonstrate a significant unlikelihood of his removal in the reasonably foreseeable future.").

Therefore, Petitioner cannot meet the burden-shifting prerequisite in *Zadvydas* that "the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. *See Akinwale*, 287 F.3d at 1052 (stating "in order to state a claim under *Zadvydas* the alien must not only show post-removal order detention in excess of six months but also must provide evidence of a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future") Petitioner's continued detention, therefore, is lawful under § 1231.

C. Petitioner Does Not Have Standing to Bring His Administrative Procedures Act Claim.

Petitioner also does not have standing to bring his Administrative Procedures Act ("APA") claim. Doc. 1 at ¶¶ 29-36. By the APA's terms, it is available only for

final agency action "for which there is no other adequate remedy in court." 5 U.S.C. § 704. Thus, Petitioner's APA claim is independently barred by this limitation in 5 U.S.C. § 704.

In *Trump v. J.G.G.*, the Supreme Court held that where the claims for relief, as here, "necessarily imply the invalidity of their confinement" those claims "must be brought in habeas." 145 S. Ct. 1003, 1005 (2025) (cleaned up) (internal quotation marks and citation omitted). As noted by Justice Kavanaugh in his concurrence in *J.G.G.*, "given 5 U.S.C. § 704, which states that claims under the APA are not available when there is another adequate remedy in court, I agree with the Court that habeas corpus, not the APA, is the proper vehicle here." *Id.* at 1007 (Kavanaugh, J. concurring).

Here, as in *J.G.G.*, habeas is an "adequate remedy" through which Petitioner can challenge his detention. Even if Petitioner's APA claim had merit, which it does not, the result would be the same as that in habeas – release from detention. The Supreme Court's holding is consistent with well-established law that habeas is generally the only possible district court vehicle for challenges brought pursuant to the immigration statutes. *Id.* (citing *Heikkila v. Barber*, 345 U.S. 229, 234-35 (1953)).

D. This Court Lacks Subject Matter Jurisdiction.

As explained below, this Court lacks jurisdiction. Even if it disagrees, however, for the reasons described below, Petitioner's claims fail on the merits.

i. Habeas Return on Detention

In a habeas case, the respondent "shall make a return certifying the true cause of the detention." *Id.* Here, ICE is detaining Petitioner under the mandatory detention provisions of 8 U.S.C. § 1225(b)(1). *See* **Exhibit C**. Petitioner is free to contend his detention under § 1225 is unlawful or argue he should instead be detained under § 1226. But § 1225(b)(1)—not § 1226—is the certified basis on which ICE is detaining Petitioner. *See id.* & **Exhibit A** at ¶ 5 (upon his arrest in Puerto Rico, Petitioner was processed for expedited removal). Indeed, even Petitioner concedes that Petitioner was processed for expedited removal of an inadmissible arriving alien. Doc. 1 at ¶ 3.

ii. Jurisdiction

This Court lacks jurisdiction over Petitioner's claims for three reasons.

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 INA divests this Court's jurisdiction to consider Petitioner'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. Thus, § 1252(g) strips the Court's jurisdiction over habeas petitions challenging detention pending removal proceedings.

Here, Petitioner is being detained pending the commencement of expedited removal proceedings. Petitioner's detention is a decision or action related to the decision and actions by the Secretary to begin and pursue Petitioner's removal proceedings. *See Gupta*, 709 F.3d at 1065 (citing § 1252(g) and stating "[f]ederal courts lack subject-matter jurisdiction over '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.'") Under *Gupta*'s binding interpretation of § 1252(g), the Court plainly has no jurisdiction. *Id. But see Garcia v. Noem et al.*, Case No. 2:25-cv-879-SPC-NPM, 2025 WL 3041895, at *2 (M.D. Fla. Oct 31, 2025) (concluding § 1252(g) jurisdiction exists

to determine whether petitioner is subject to mandatory or discretionary detention under 8 U.S.C. § 1225 or § 1226, respectively).

In *Gupta*, the petitioner was initially detained pursuant to DHS decision to process him as an expedited removal pursuant to § 235(b)(1), as amended, 8 U.S.C. § 1225(b)(1), and the district court dismissed for lack of subject matter jurisdiction. On appeal, the Eleventh Circuit affirmed, reasoning that petitioner's claims were subject to dismissal because "[s]ecuring an alien while awaiting a removal determination constitutes an action taken to commence proceedings." 709 F.3d at 1065. Gupta was initially detained pursuant to DHS decision to process him as an expedited removal pursuant to §235(b)(1). Here, like in *Gupta*, Petitioner's claims arise from a decision or action to begin proceedings (removal proceedings, albeit not expedited removal proceedings).

As the Eleventh Circuit made clear, what matters is 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. The decisions and actions to detain Petitioner (under either § 1225 or § 1226) arise from the commencement of removal proceedings. The INA strips jurisdiction over that review. *Gupta*, 709 F.3d at 1065; 8 U.S.C. § 1252(g).

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). Thus, the only relief a habeas petitioner may receive is release. *DHS v. Thuraissigiam*, 591 U.S. 103, 119 (2020). In addition to seeking release, Petitioner decided to pursue habeas seeking declarations and orders related to his release from confinement. Doc. 1 at 24-25. Put different, this case is only about whether ICE can detain Petitioner pending removal proceedings. *Gupta* and its 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, Petitioner 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

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).

Here, Petitioner has yet to exhaust his administrative remedies. At the time of this writing, there is no evidence that Petitioner or his attorney has filed a motion for bond. However, Petitioner could file a motion and, if denied, pursue arguments before the BIA. As such, administrative remedies are still potentially available to Petitioner.

To the extent that Petitioner implies any futility in pursuing a bond hearing and BIA appeal, 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.

iii. Merits

Petitioner alleges that ICE's detention of him is inappropriately delayed and unlawful, depriving him of his due process and withholding from him a bond hearing. Doc. 1, *generally*. These claims fail as a matter of law because he is lawfully detained under 8 U.S.C. § 1225(b)(1).

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 (suggesting that INA § 235(b) applies to all applicants for admission, noting the broad application of INA § 235(b)(2) as a "a catchall provision" representing DHS's detention authority over applicants for admission not subject to INA § 235(b)(1)(A)(i). *See* 8 U.S.C. § 1225(b)(2)(A), (B). *See also Matter of M-S*, 27 I&N Dec. 509 (A.G. 2019) (Attorney General holding that aliens who are present in the United States without admission or

parole (PWAP) and placed into expedited removal (ER) proceedings are detained under INA § 235 even if later placed into removal proceedings); Matter of Q. Li, 29 I&N Dec. 66 (BIA 2025) (BIA holding that an alien PWAP and apprehended without a warrant while arriving is detained under INA § 235(b).

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.

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

Sections 1225(a)(1) and (b)(2) are 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. Thus, aliens who enter surreptitiously "will not be considered to have been admitted." *Id.* Petitioner'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). And the BIA specifically explained this rationale in *Hurtado*, 29 I&N Dec. 216.

Petitioner contends his detention under § 1225 is improper, which suggests that Petitioner believes his detention should be under § 1226. *See* Doc. 1, *generally*. But Petitioner 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 Petitioner demonstrate he is subject to expedited removal under § 1225(b)(1).

Petitioner illegally entered the United States in 2006. *See* **Exhibit A** at ¶ 4. In his Notice and Order of Expedited Removal, it indicates that Petitioner admitted under oath that Petitioner lived and worked in the United States without permission from the Citizenship and Immigration Services, and, thus, has no permission or status to remain in this country. *See* **Exhibit C** (Determination of Inadmissibility). Thus, it is undisputed Petitioner has not been admitted to the United States.

Due to Petitioner's unlawful immigration status, ICE pursues removal proceedings. Petitioner has not stipulated that he is removable; nor has he indicated he will not contest removal. At any point, Petitioner can seek release from detention to depart the United States voluntarily. 8 U.S.C. § 1229c(a). However, there is no indication Petitioner has any intention of doing so.

Petitioner admittedly has no status and was never admitted to the United States. Put different, Petitioner 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)."); *Hurtado*, 29 I&N at 221 ("If he is not admitted to the United States (as he admits) but he is not "seeking admission" (as he contends), then what is his legal status?"). At bottom, unless Petitioner wants to leave, he is either an applicant for admission or seeking to remain here illegally.

To be clear, any alien intending to stay in the United States on any permanent basis must be admitted even if that's twenty years after arriving. In the context of immigration law, "admission" is not like sneaking into a second showing at the movie theater where entry is de facto admission. Rather, this is a legal term of art. *Matter of Lemus Losa*, 25 I. & N. Dec. 734, 743 n.6 (BIA 2012) (noting "seeks admission" used by Congress "as a term of art"). The terms "admission" or "admitted" here mean "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A).

Congress knows how to use a term of art. *E.g.*, *FAA v. Cooper*, 566 U.S. 284, 292 (2012) ("[I]t is a cardinal rule of statutory construction that, when Congress employs a term of art, it presumably knows and adopts the cluster of ideas that were attached to each borrowed word in the body of learning from which it was taken." (cleaned up)). Petitioner may have been living in the United States illegally for years; but he was never admitted—which is what makes his presence unlawful in the first

instance. 8 U.S.C. § 1182(a)(6)(A)(i) (inadmissibility for presence "without being admitted"). The INA treats aliens as seeking admission even if they entered illegally and never formally applied. 8 U.S.C. § 1225(a)(1); *Lemus Losa*, 25 I. & N. Dec. at 743 n.6 (Unlawful entrants "deemed *constructive* applicants for admission by operation of" § 1225(a)(1).). Legislative word choices—especially terms of art—must have meaning. Congress chose to define "applicants for admission" as "[a]n alien present in the United States who has not been admitted." 8 U.S.C. § 1225(a)(1).

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 Petitioner 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 Petitioner under § 1225(b)(1).

CONCLUSION

Based on the foregoing, the Petition (Doc. 1) must be dismissed. Petitioner's detention is lawful and there is good reason to believe that he expected to be removed in the reasonably foreseeable future. Further, Petitioner's APA claim lacks standing and this Court lacks jurisdiction to hear Petitioner's habeas claim. Even if it did have jurisdiction, Petitioner's detention is lawful. Consequently, as Petitioner's detention is legal, this action should be dismissed.

Dated: December 22, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 22, 2025, I electronically filed the foregoing document with the Clerk of the Court by using the CM/ECF system, which will send an electronic copy to the registered participants.

/s/ Mai Tran
MAI TRAN
Assistant United States Attorney