UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No.: 0:25-cv-62148-MD

LILIAN VALLEJO,

Petitioner,

v.

DIRECTOR, DHS ICE ERO
Miami Field Office, *et al.*,

Respondents.
_____/

RETURN TO VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

Respondents,[1] through the undersigned Assistant U.S. Attorney and pursuant to the Court's *Order to Show Cause* [DE 9], respond to the *Verified Petition for Writ of Habeas Corpus* [DE 1] (the Petition). For the reasons below, the Court should deny the Petition in full.

OVERVIEW

Petitioner Lilian Rozana Vallejo (Petitioner) asks the Court to order her release from immigration detention at the Broward Transitional Center (BTC) on two grounds: (1) that Respondents failed to provide Petitioner with notice of any parole revocation or bond breach before detaining her; and (2) that Petitioner's 4-month detention (as of the time the Petition was filed) is unconstitutionally prolonged under *Zadvydas v. Davis*, 533 U.S. 678 (2001) and the Fifth Amendment. Petition at ¶¶ 22, 94, 98.

As shown below, Petitioner's arguments on both grounds fail and the Petition—including its improperly embedded APA claim—should be dismissed.

[1] As explained below, and only in the event the Court does not deny the Petition in full, several of the named respondents are not proper parties-defendant to this habeas action and should be dismissed.

FACTUAL & PROCEDURAL BACKGROUND

The petitioner, Lilian Roxana Vallejo (Petitioner), is a native and citizen of Honduras. *See* **Exhibit A**, Form I-213, Record of Deportable/Inadmissible Alien (Form I-213). On May 11, 2008, Petitioner was apprehended by U.S. Customs and Border Patrol (CBP) after admitting to illegally entering the United States by crossing the Rio Grande River in a small raft near Hidalgo, Texas port of entry. *Id.* CBP determined that Petitioner was inadmissible to the United States pursuant to INA § 212(a)(7)(A)(i)(I) and amenable to removal. *Id.*

On May 13, 2008, CBP issued Petitioner a Form I-860, Notice and Order of Expedited Removal. *See* **Exhibit C**, Form I-860, Notice and Order of Expedited Removal. Petitioner was taken into the custody of the U.S. Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations (ERO), on May 14, 2008. *See* **Exhibit E**, Detention History. Petitioner was referred to the U.S. Citizenship and Immigration Service's (USCIS) Asylum Pre Screening Officer (APSO) for a credible fear interview.[2] *See* **Exhibit O**, Declaration of Deportation Officer Jeanette McLaughlin (the Declaration) at ¶ 10. On May 28, 2008, APSO determined that Petitioner had a credible fear of return to Honduras. *See* Declaration at ¶ 11. Petitioner was released from ICE ERO's custody on or about June 20, 2008, after Petitioner posted an ICE bond.[3] *See* **Exhibit D**, Form I-352, Immigration Bond;

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[2] 8 C.F.R. § 208.30 provides a credible fear process for any alien subject to an expedited removal order under 8 U.S.C. § 1225(b)(1) and who expresses fear of returning to the country of removal. USCIS has exclusive jurisdiction over making the credible fear determination. 8 C.F.R. § 208.30. If USCIS finds that the alien has not proven credible fear, the Immigration Judge has exclusive jurisdiction to review that determination. *Id.* If USCIS determines that the alien has a credible fear of returning to the country of removal, USCIS issues a Notice to Appear, placing the alien in 8 U.S.C. § 1229a removal proceedings. 8 C.F.R. § 208.30(f).

[3] In 2008, when Petitioner was detained by ICE, the governing law was *Matter of X-K-*, 23 I&N Dec. 731 (BIA 2005). In *Matter of X-K-*, the Board of Immigration Appeals determined that notwithstanding the alien's initial screening under 8 U.S.C. § 1225(b)(1) for expedited removal, which would limit the release authority exclusively by way of parole, an alien who had passed a credible fear and was placed

see also Exhibit E; Declaration at ¶ 12. At no point was Petitioner ever paroled into the country. Declaration at ¶ 23.

On July 18, 2008, USCIS placed Petitioner in removal proceedings by filing a Notice to Appear (NTA) with EOIR, charging Petitioner as removable pursuant to INA §212(a)(7)(A)(i)(I) as an alien who at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card or other valid entry document. *See* **Exhibit F**, NTA. On March 3, 2010, Petitioner was ordered removed by the immigration judge at the Miami Immigration Court for failure to appear at her removal hearing. *See* **Exhibit G**, Removal Order. On April 9, 2010, the immigration judge reopened Petitioner's removal proceedings. *See* **Exhibit H**, Order Reopening Proceedings. On October 10, 2019, the immigration judge ordered Petitioner's removal from the United States but granted Withholding of Removal to Honduras. *See* **Exhibit I**, Order of Removal.

On May 3, 2025, ICE issued a Form, I-340, Notice to Obligor to Deliver Alien, directing the obligor to deliver Petitioner to ICE ERO on June 26, 2025. *See* **Exhibit Q**; *see also* **Exhibit B**, Form I-213. On June 26, 2025, Petitioner reported to ERO in Miramar, Florida. *See* Exhibit B. On the same day, ERO detained Petitioner. *See* **Exhibit K**, Form I-200, Warrant of Arrest; *see also* Exhibit B; Exhibit E. ICE then issued a Form I-391, Notice-Immigration Bond Cancelled, on June 27, 2025. *See* **Exhibit J**.

On June 27, 2025, Petitioner, through counsel, filed a Motion to Reopen, to reopen the October 10, 2019 removal order and grant of withholding of removal. *See* **Exhibit L**,

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in full 8 U.S.C. §1229a removal proceedings could request bond redetermination before the immigration judge. *Matter of X-K-* was overruled by *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019), which states that an alien processed under 8 U.S.C. § 1225(b)(1) for expedited removal with credible fear shall not be released by any other mechanism other than an 8 U.S.C. §1182(d)(5) parole.

Petitioner's Motion to Reopen Removal Proceedings. On June 28, 2025, the immigration judge granted Petitioner's motion and reopened removal proceedings, setting aside the grant of withholding of removal. *See* **Exhibit M**, Order Reopening Removal Proceedings. On September 16, 2025, venue for the removal proceedings was changed to the detained BTC Immigration Court. *See* **Exhibit R**, Order Changing Venue.

On September 12, 2025, a custody hearing was held at the BTC Immigration Court. At that hearing, the immigration judge denied Petitioner's request for bond, citing to *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019), which held that an alien who is transferred from expedited removal proceedings to full removal proceedings after establishing a credible fear is ineligible for release on bond, overruling *Matter of X-K-*. *See* **Exhibit N**, Order Denying Bond. Petitioner did not appeal the order to the Board of Immigration Appeals. *See* Declaration at ¶ 22.

Petitioner remains in ICE custody at BTC in Pompano Beach, Florida, since June 26, 2025, for the pendency of her INA § 240 removal proceedings pursuant to 8 C.F.R. § 235(b)(1)(B)(ii). *See* Exhibit E. Petitioner's next removal hearing is scheduled for January 21, 2026. Declaration at ¶ 24; *see also* **Exhibit P**, Notice of Hearing.

ARGUMENT

The Petition should be denied because Petitioner's detention is constitutional and lawful. The Petition raises two primary questions: (1) whether Respondents were legally authorized to cancel Petitioner's previously issued bond and re-detain her pending resolution of her asylum claim; and (2) whether Petitioner is subject to mandatory detention pursuant to INA Section 235(b)(1) [8 U.S.C. § 1225(b)(1)][4] and whether that detention is constitutional.

[4] As described below, Petitioner is legally and constitutionally detained under Section 1225(b)(1). This

The answer to both questions is "yes." And because Petitioner is in expedited removal proceedings but has established a credible fear of return to Honduras, she is not eligible for bond. *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019).

I. Improper parties-defendant must be dismissed

As a threshold matter, Petitioner has named several improper parties to this suit. Petition, ¶¶ 10-14. But a writ of habeas corpus should "be directed to the person having custody of the person detained." 28 U.S.C. § 2243. In cases involving physical confinement, Supreme Court precedent confirms that "the immediate custodian, not a supervisory official who exercises legal control, is the proper respondent." *Rumsfeld v. Padilla*, 542 U.S. 426, 439 (2004).

Petitioner is detained at BTC, a detention facility in Broward County, Florida. Her immediate custodian is ICE Assistant Field Office Director Juan Gonzalez. Accordingly, the only proper respondent to this case is Mr. Gonzalez, in his official capacity. He should be substituted as the sole respondent to this action and all other named respondents should be dismissed. *See id.* at 435 ("[I]n habeas challenges to present physical confinement—'core challenges'—the default rule is that the proper respondent is the warden of the facility where the prisoner is being held, not the Attorney General or some other remote supervisory official."); *see also Masingene v. Martin*, 424 F. Supp. 3d 1298, 1300 (S.D. Fla. 2020) (Williams, J.) (citing *Padilla* for the proposition that the sole proper respondent to a habeas petition is the official who has custody over the petitioner).

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case therefore does not involve the BIA issued the decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) or any decisions by this Court that have rejected the BIA's interpretation of Section 1225(b)(2). *See e.g. Encarnacion v. Field Office Director*, No. 25-cv-61898, DE 29 (S.D. Fla. Dec. 23, 2025) (Damian, J.).

II. The Petition incorrectly frames this case as one involving a parole revocation or bond breach, neither of which occurred here

Petitioner incorrectly characterizes her situation as one of parole revocation and/or a declared breach of the terms of her bond.[5] Petition, ¶¶ 51-54; 94; 98. From that factually incorrect premise, Petitioner argues that DHS failed to provide her with the requisite notice of its intent to revoke her parole or how she had breached the conditions of her bond. But the regulations Petitioner relies on for this assertion are inapposite. As to parole termination, the applicable regulation states:

> In cases not covered by [automatic termination provisions], upon accomplishment of the purpose for which parole was authorized or when in the opinion of one of [the officials with regulatory parole authority], neither humanitarian reasons nor public benefit warrants the continued presence of the alien in the United States, parole shall be terminated upon written notice to the alien and he or she shall be restored to the status that he or she had at the time of parole.

8 C.F.R. § 212.5(e)(2)(i); *see also* Petition at ¶¶ 44-46. And as to a bond breach, the applicable regulation states:

> A bond is breached when there has been a substantial violation of the stipulated conditions. A final determination that a bond has been breached creates a claim in favor of the United States which may not be released or discharged by a Service officer. The district director having custody of the file containing the immigration bond executed on Form I–352 shall determine whether the bond shall be declared breached or cancelled, and shall notify the obligor on Form I–323 or Form I–391 of the decision, and, if declared breached, of the reasons therefor, and of the right to appeal in accordance with the provisions of this part.

8 C.F.R § 103.6(e); *see also* Petition at ¶¶ 49-54.

But as described above and averred via the Declaration, Petitioner was never paroled into the country. Declaration at ¶ 23. Accordingly, 8 C.F.R. § 212.5(e) has no application at

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[5] Petitioner never clarifies which of these two events she believes to have occurred.

all. Further, Petitioner did not *breach* the conditions of her bond; rather, her bond was *cancelled*. Petitioner was issued a Form I-391—a bond cancellation notice, as opposed to a Form I-323, which DHS issues for bond breaches. *See* Exhibit J. And Section 1226(b)[6] allows DHS to revoke a bond *at any time and for any reason*; there are no pre-notice requirements to doing so. To be sure, Section 103.6(e) states that if a bond is *declared breached*, notice of the reasons therefor must be provided. But since Petitioner's bond was cancelled—not breached—Section 103.6(e) notice was unnecessary and the alleged lack thereof cannot form the basis of Petitioner's due process (or APA) claims.

While bond cancellation does not require notice of reasons under the applicable statute and regulations, Petitioner was nonetheless provided the notice she claims to be lacking because ERO issued the Form I-340, Notice to Obligor to Deliver Alien, on May 3, 2025. The obligor was instructed to deliver Petitioner on June 26, 2025. That is when Petitioner was detained after appearing at the ERO office, pursuant to a notice of bond cancellation that had been issued nearly 8 weeks prior.

III. Petitioner's detention is lawful and does not violate due process

Setting aside the procedural false premise described above (which permeates the entire Petition), Petitioner's mandatory detention under Section 1225(b)(1), post bond cancellation, does not violate her constitutional rights.

A. Petitioner is lawfully detained under 8 U.S.C § 1225(b)(1) as an applicant for admission who was not admitted or paroled after inspection by an immigration officer

[6] The reference here to Section 1226 should not be taken as an indication that Petitioner is currently detained pursuant to that provision. Rather, as explained below, she is detained under Section 1225(b)(1). But Section 1226 applies in this limited context because that is the statutory basis upon which ICE released Petitioner on bond in 2008, so DHS must continue to apply Section 1226 as the relevant statutory authority for its subsequent *revocation* of that bond.

An alien who is illegally present in the United States may be removed by, *inter alia*, expedited removal under INA § 235(b)(1), or removal proceedings before an immigration judge under INA § 240. *See* 8 U.S.C. § 1225(b)(1); 8 U.S.C. § 1229a. DHS has discretion to elect expedited removal or to initiate removal proceedings before an immigration judge. *Matter of E-R-M- & L-R-M-*, 25 I&N Dec. 520, 524 (BIA 2011). Here, DHS elected to place the Petitioner in expedited removal proceedings pursuant to INA § 235(b)(1). *See* 8 C.F.R. § 235.1(f)(2) (providing that "[a]n alien present in the United States who has not been admitted or paroled or an alien who seeks entry at other than an open, designated port-of-entry, except as otherwise permitted in this section, is subject to the provisions of [INA § 212(a)] and to removal under [INA §§ 235(b) or 240]"); *Matter of W-C-B-*, 24 I&N Dec. 118, 122 (BIA 2007) (affirming the dismissal of proceedings when "removal proceedings [under INA § 240] [a]re not necessary to remove the respondent from the United States").

Applicants for admission, which include "alien[s] present in the United States who ha[ve] not been admitted or who arrive[] in the United States (whether or not at a designated port of arrival…)," 8 U.S.C. § 1225(a)(1), can be subject to expedited removal under 8 U.S.C. § 1225(b)(1). Under this process, applicants for admission arriving in the United States, or as designated by the Secretary of Homeland Security pursuant to 8 U.S.C. § 1225(b)(1)(iii), and who lack valid entry documentation or make material misrepresentations shall be "order[ed] … removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum under [8 U.S.C. § 1158] or a fear of persecution." 8 U.S.C. § 1225(b)(1)(A)(i).

To qualify for expedited removal, an alien must either lack entry documentation or seek admission through fraud or misrepresentation. 8 U.S.C. § 1225(b)(1)(A)(i) (referring to §

212(a)(6)(C), (a)(7), 8 U.S.C. § 1182(a)(6)(C), (a)(7)). In addition, the alien must either be "arriving in the United States" or within a class that the Secretary of Homeland Security has designated for expedited removal. The Secretary may designate "any or all aliens" who have "not been admitted or paroled into the United States" and who also have not "been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility." 8 U.S.C. § 1225(b)(1)(A)(iii).

For an alien originally placed in expedited proceedings, the removal process varies depending upon whether the alien indicates either "an intention to apply for asylum" or "a fear of persecution or torture." 8 C.F.R. §§ 235.3(b)(4), 1235.3(b)(4)(1); *see also* 8 U.S.C. § 1225(b)(1)(A)(ii). If the alien does not so indicate, the inspecting officer "shall order the alien removed from the United States without further hearing or review." 8 U.S.C. § 1225(b)(1)(A)(i). If the alien does so indicate, however, the officer "shall refer the alien for an interview by an asylum officer." 8 U.S.C. § 1225(b)(1)(A)(ii). That officer assesses whether the alien has a "credible fear of persecution or torture," 8 C.F.R. § 208.30(d)—in other words, whether there is a "significant possibility" that the alien is eligible for "asylum under section 208 of the Act," "withholding of removal under section 241(b)(3) of the Act," or withholding or deferral of removal under the Convention Against Torture. 8 C.F.R. § 208.30(e)(2)–(3).

If the alien does not establish a credible fear, the asylum officer "shall order the alien removed from the United States without further hearing or review." 8 U.S.C. § 1225(b)(1)(B)(iii)(I). But if the alien does establish such a fear, he is entitled to "further consideration of the application for asylum." 8 U.S.C. § 1225(b)(1)(B)(ii). By regulation, that "further consideration" takes the form of removal proceedings under section 240 of the Act. 8 C.F.R. §§ 208.30(f), 1208.30(g)(2)(iv)(B). Thus, if an alien originally placed in expedited

removal establishes a credible fear, he receives a full hearing before an immigration judge. Section 1225 expressly provides for the detention of aliens originally placed in expedited removal.

The Supreme Court in *Jennings v. Rodriguez*, 583 U.S. 281 (2018) reviewed the expedited removal statute. In reviewing the detention authority, the *Jennings* court noted that an alien who "arrives in the United States," or "is present" in the country, but who "*has not been admitted*" is treated as "an applicant for admission." *Id.* at 287 (quoting 8 U.S.C. § 1225) (emphasis added). Petitioner's arrival in the United States without inspection classifies her as an applicant for admission. DHS took the Petitioner into custody, and consistent with her status as an applicant for admission, DHS is detaining her as an applicant for admission under 235(b)(1)(A)(iii)(l) because she is not a citizen of the United States, is a Honduran national, and sought entry without valid entry documents. *See* 8 U.S.C. § 1182(a)(7)(A)(i)(I). Detention is required under section 235(b)(1)(B)(ii), which provides for detention "for further consideration of the application for asylum."

As an applicant for admission who is inadmissible under § 1182(a)(7), Petitioner is subject to expedited removal under 8 U.S.C. § 1225(b)(1)(A)(i) & (iii) and 8 C.F.R. § 235.3(b)(1)(ii) (referring to aliens who arrive in, attempt to enter, or have entered the United States without having been admitted or paroled following inspection by an immigration officer and cannot establish that they have been physically present in the United States for the continuous 2-year period immediately prior to the date of determination of inadmissibility). Petitioner is within the designated group of aliens who (i) "are physically present in the U.S. without having been admitted or paroled," (ii) "are encountered by an immigration officer within 100 air miles of any U.S. international land border," and (iii) cannot establish "that

they have been physically present in the U.S. continuously for the 14-day period immediately prior to the date of encounter." *See* Petition at ¶ 17; *see also Matter of M-S-*, 271 I. & N. Dec. 509, 511 (BIA 2019). Further, 8 U.S.C. § 1225(b)(1)(B)(ii) mandates detention for the purpose of ensuring review of an asylum claim for so long as that review is ongoing, until removal proceedings conclude, unless DHS exercises its discretion to parole the alien. *Jennings*, 583 U.S. at 301-03; *Matter of M-S-*, 27 I&N Dec. at 517.

B. Petitioner's due process rights have not been violated

Petitioner claims Respondents have violated her due process rights. But the Supreme Court held that 8 U.S.C. § 1225(b) unambiguously mandates detention through the pendency and conclusion of removal proceedings, regardless of their duration, and that the statute authorizes release only through DHS's discretionary parole authority. *Jennings*, 583 U.S. at 298-300.

After *Jennings*, the Supreme Court addressed aliens' due process rights in the context of the expedited removal statute—applicable here—in *DHS v. Thuraissigiam*, 591 U.S. 103 (2020). The petitioner in *Thuraissigiam* entered the United States without inspection, and immigration authorities apprehended him twenty-five yards from the border. *Id.* at 114. He was placed in expedited removal proceedings and claimed asylum. *Id.* Like Mr. Thuraissigiam, Petitioner here is an applicant for admission who has not been admitted or paroled after inspection by an immigration officer. Consistent with Supreme Court precedent, Petitioner is only entitled to due process as set forth in the INA. The INA provides for relief from detention under the parole procedure set forth in 8 U.S.C. § 1182(d)(5)(A). *See* 8 U.S.C. § 1182(d)(5)(A); *see also* 8 C.F.R. §§ 212.5(b); 235.3.

And, under persuasive authority, Petitioner also cannot establish that her detention violates the Constitution because Petitioner has been detained only since June 25, 2025—just four months as of the date the Petition was filed. *See e.g. O.D. v. Warden, Stewart Detention Ctr.*, 2021 WL 5413968, at *4-5 (M.D. Ga. Jan. 14, 2021) (Report and Recommendation), *adopted* 2021 WL 5413966 (M.D. Ga. Apr. 1, 2021) (denying habeas relief to petitioner who had been detained for nineteen months); *Sigal v. Searls*, 2018 WL 5831326 at *5, 9 (W.D.N.Y. Nov. 7, 2018) (denying habeas relief to petitioner detained for seventeen months after "tak[ing] into account all of the factual circumstances"); *see also Hylton v. Shanahan*, 2015 WL 3604328, at *6 (S.D.N.Y. June 9, 2015) (detention without bail for roughly two years did not violate due process); *Luna-Aponte v. Holder*, 143 F. Supp. 2d 189, 197 (W.D.N.Y. 2010) (same, after three years). Because Petitioner has not submitted evidence that Respondents detained her for any purpose other than resolution of her expedited removal proceedings, her due process rights have not been violated.

To the extent Petitioner relies on *Zadvydas v. Davis*, 533 U.S. 678, 682 (2001) to support her claim that her due process rights have been violated, that reliance is misplaced. *See* Petition at ¶¶ 58; 63. *Zadvydas* deals with *post-removal order* immigration detention under 8 U.S.C. § 1231. As noted above, Petitioner moved to reopen her removal proceedings, and the immigration judge granted that request. As a result, Petitioner is now in *pre-removal order* detention, taking her out of the *Zadvydas* paradigm. Moreover, even if the *Zadvydas* framework did apply to Petitioner, then her Petition would be premature as she was detained for less than the presumptively reasonable six-month removal period at the time her Petition was filed.[7]

[7] Petitioner cites one out-of-circuit decision for the proposition that "[c]ourts have applied the *Zadvydas* due process argument to... arriving aliens under 8 U.S.C. § 1225." Petition at ¶ 63 (citing *Leke v. Hott*, 521 F.Supp.3d 597, 603 (E.D. Va. 2021)). The *Leke* court, however, did not "apply *Zadvydas*" in the

Petition at ¶ 22; *Akinwale v. Ashcroft*, 387 F.3d 1050, 1051-52 (11th Cir. 2002) (holding the six-month presumptively reasonable removal period must have expired at the time a habeas petition is *filed* for a petitioner to state a claim under *Zadvydas*).

IV. Petitioner's APA Claim (Count II) must be dismissed

Separately, Petitioner's claim under the Administrative Procedure Act (APA) is not properly before the Court and should also be dismissed.

The APA authorizes a reviewing court to "compel agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. § 706(1). "Agency action" includes, in relevant part, "an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act." 5 U.S.C. § 551(13) (emphasis added). The APA addresses concerns about bureaucratic limbo by mandating that "[w]ith due regard for the convenience and necessity of the parties or their representatives and within a reasonable time, each agency shall proceed to conclude a matter presented to it." 5 U.S.C. § 555(b). However, the court's power to compel agency action under the APA is limited: the APA "empowers a court only to compel an agency 'to perform a ministerial or non-discretionary act,' or 'to take action upon a matter, without directing how it shall act.'" *Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 64 (2004) (emphasis in original) (quoting Attorney General's Manual on the Administrative Procedure Act 108 (1947)).

Section 1225 context. *Id.* at 602 ("[N]either the holding of *Jennings* nor the holding of *Zadvydas* is controlling here as both cases involved statutory interpretation and did not address the precise constitutional question presented here: namely, whether an arriving alien detained for 24 months and who may be detained indefinitely has a constitutional right to a bond hearing under the Fifth Amendment's Due Process Clause."). The court still answered that question posed in the affirmative, but not by extending the holding of *Zadvydas* to pre-order, Section 1225 detention. In any event, unlike Mr. Leke, Petitioner here has only been detained for four months and has not shown (or even alleged) that she is facing "indefinite" detention.

Because habeas actions and non-habeas actions have different filing fee requirements, different pleading standards, and different substantive standards, it is generally inappropriate to bring a hybrid action asserting both habeas and non-habeas claims in one case. *King v. Carlton*, No. 21-cv-21634, 2021 WL 1738766, at *2 (S.D. Fla. May 3, 2021) (Bloom, J.) (finding that petitioner could not circumvent filing fee requirements by filing a "joint or hybrid" habeas action); accord *Burnam v. Marberry*, 313 F. App'x 455, 456 n.2 (3d Cir. 2009) (noting that the district court should not have considered habeas claims and claims under the Privacy Act and Administrative Procedures Act in a single case); *Malcom v. Starr*, No. 20-cv-2503, 2021 WL 931213, at *2 (D. Minn. Mar. 11, 2021) ("As many other cases from this District have noted, habeas petitions and civil complaints have different and incompatible rules regarding service of process, discovery, and even filing fees."). Petitioner did not pay the required filing fee for any non-habeas claims. *See* DE 1 ($5.00 filing fee receipt). The statute governing filing fees in district court clearly states: "The clerk of each district court shall require the parties instituting any civil action, suit or proceeding in such court, whether by original process, removal or otherwise, to pay a filing fee of $350, except that on application for a writ of habeas corpus the filing fee shall be $5." 28 U.S.C. § 1914(a). "The payment of the $5 habeas filing fee relegates this action to habeas relief only. One cannot pay the minimal habeas fee and pursue non-habeas relief." *Ndudzi v. Castro*, No. 20-CV-0492, 2020 WL 3317107, at *2 (W.D. Tex. June 18, 2020).

Setting aside whether Petitioner may properly *bring* an APA claim via a habeas petition, the Court separately lacks subject-matter jurisdiction over the claim. By the APA's own terms, judicial review is available only for final agency action "for which there is no other

adequate remedy in court." 5 U.S.C. § 704. Thus, the Court lacks jurisdiction under the APA because Petitioner has an obvious alternate avenue for relief—a habeas writ.

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, "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.

CONCLUSION

Because Petitioner's detention is lawful, constitutional, and mandated by Section 1225(b)(1), Respondents request that the Court deny all relief sought in the Petition.

Respectfully submitted,

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