UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

RAUL ALBINO ARELLANO,

Petitioner,

v.

Case No. 3:25-cv-01333-WWB-PDB

RONNIE WOODALL, Warden of Baker County Detention Center; GARRETT RIPA, Field Office Director U.S. Immigration and Customs Enforcement Miami Field Office; KRISTI NOEM Secretary of the U.S. Department of Homeland Security; and PAMELA BONDI, Attorney General of the United States (all official capacity), et al.

Respondents.
_____/

AMENDED RESPONSE TO HABEAS PETITION

Respondents, GARRETT RIPA, PAMELA BONDI, and KRISTI NOEM, through counsel, the U.S. Attorney for the Middle District of Florida, hereby respond to Petitioner's, RAUL ALBINO ARELLANO's, Petition for Writ of Habeas Corpus (Doc. 6-1). The Court should deny the Writ and dismiss this action pursuant to Rule 12(b)(1), Fed. R. Civ. P. because it lacks jurisdiction pursuant to 8 U.S.C. § 1252(g). Or in the alternative, the Court must deny Petitioner's claim because he has failed to state a claim upon which relief can be granted, pursuant to Rule 12(b)(6), Fed. R. Civ. P. In support thereof, Respondents state as follows.

Background

Petitioner, Raul Albino Arellano, is a 55-year-old male, who is a native and citizen of Mexico. Exhibit 1: Record of Deportable Alien, at pg. 1. Petitioner entered the United

States of America without inspection at an unknown location at an unknown time. *Id.* On or about October 5, 2025, Petitioner was discovered through a joint effort with the Orange County Jail and Miami Enforcement and Removal Operations ("ERO") after he was arrested by the Florida Highway Patrol. *Id.* at pg. 2. Petitioner was charged under INA §§ 212(a)(6)(A)(i) and 212 (a)(7)(A)(i)(I), as amended, 8 U.S.C. §§ 1182(a)(6)(A)(i) and 1182(a)(7)(A)(i)(I), respectively. *Id.* Petitioner was retrieved from Orange County Jail and transported to the U.S. Immigration and Customs Enforcement's ("ICE") ERO Detention Facility on or about October 7, 2025, and is currently awaiting immigration proceedings. *Id.* at pg. 3.

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). However, in such cases, 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

The Court should dismiss Petitioner's Habeas Petition because the Court lacks subject matter jurisdiction pursuant to 8 U.S.C. § 1252(g). However, even if the Court were to find that it did have jurisdiction over this matter, it must still be denied because ICE's detention of Petitioner is lawful, and his claims fail on the merits.

A. Habeas Return on Detention

As an initial matter, in a habeas case, the respondent "shall make a return certifying the true cause of the detention." 28 U.S.C. § 2243. ICE is detaining Petitioner under the

mandatory detention provisions of 8 U.S.C. § 1225(b)(2). Petitioner is free to contend his detention under § 1225 is unlawful or argue he should instead be detained under § 1226. But § 1225(b)(2)—not § 1226—is the certified basis on which ICE is detaining Petitioner.

B. Jurisdiction

1. **8 U.S.C. § 1252(g) bars review of Petitioner's claims**

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 Petitioner's claims challenging his detention pending a removal determination. 8 U.S.C. § 1252(g).

The Eleventh Circuit has stated that challenges to the actions of agents to detain an alien to commence removal proceedings is "exactly the claim[] that §1252(g) bars from the subject-matter jurisdiction of federal courts." *Gupta v. McGahey*, 709 F.3d 1062, 1065 (11th Cir. 2013). "Section 1252(g) is unambiguous and bars federal courts' jurisdiction over any claim for which the 'decision or action' of the Attorney General [. . .] to commence proceedings, adjudicate cases, or execute removal orders is the basis of the claim." *Id.* 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). Accordingly, 8 § 1252(g) strips the Court's jurisdiction over habeas petitions challenging detention pending removal proceedings. *Gupta*, 709 F.3d at 1065; *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.

ICE detained Petitioner to "commence proceedings" against Petitioner and is currently detaining him "while awaiting a removal determination." *Gupta*, 709 F.3d at 1065 ("securing an alien while awaiting a removal determination constitutes an action taken to commence proceedings."). Under *Gupta*'s binding interpretation of § 1252(g), the Court has no jurisdiction over this action. *Id.*

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."). Following this Eleventh Circuit precedent,

other courts in this District have held that it lacks subject matter jurisdiction over cases in which a petitioner challenges their detention while awaiting a removal determination. Marcelo v. United States, Case No.: 8:24-cv-757-TPB-NHA, 2024 WL 1417394, *1 (M.D. Fla. Apr. 2, 2024) ("Because a detainer has been lodged to secure Plaintiff while awaiting a removal determination, the Court is without jurisdiction."); Terraza v. DHS, Case No.: 8:24-cv-584-TPB-AEP, 2024 WL 1095947, *1 (M.D. Fla. Mar. 13, 2024) (same); Bey v. Pereira, Case No.: , (M.D. Fla. Jul. 13, 2020) ("Because Plaintiff's challenge concerns the Attorney General's decision to commence proceedings against him, the Court is without subject-mater jurisdiction over this action pursuant to Section 1252(g).").

Further, "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)[1]. Thus, the only relief a habeas petitioner may receive is release. *DHS v. Thuraissigiam*, 591 U.S. 103, 119 (2020). Petitioner is contesting ICE's ability to detain him by arguing that he should be detained pursuant to 8 U.S.C. § 1226(a), and thus should be paroled, rather than 8 U.S.C. § 1225(b)(2)(A). Put differently, 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. Moreover, the Zipper Clause would similarly preclude the Court from exercising jurisdiction over this matter.

[1] The decisions of the United States Court of Appeals for the Fifth Circuit, as that court existed on September 30, 1981, handed down by that court prior to the close of business on that date, shall be binding as precedent in the Eleventh Circuit, for this court, the district courts, and the bankruptcy courts in the Circuit. *Bonner v. Prichard,* 661 F.2d 1206, 1207 (11th Cir. 1981).

2. The Zipper Clause further illustrates the Court's lack of subject matter jurisdiction over this Petition.

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).

3. Petitioner has Failed to Exhaust his administrative remedies.

Even if the Court were to decide that it has jurisdiction over Petitioners claim, it must still deny this Habeas Petition because Petitioner has failed to exhaust his administrative remedies. Individuals "seeking habeas relief, including relief pursuant to § 2241, are subject to administrative exhaustion requirements." *Santiago-Lugo v. Warden*, 785 F.3d 467, 475 (11th Cir. 2015) (internal citations omitted). While administrative exhaustion is not a jurisdictional requirement, it is still one that must be met. *Id.* Which the court explained means that "courts may [not] disregard a failure to exhaust and grant relief on the merits if the respondent properly asserts the defense." *Id.*

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).

In this case, Petitioner has not even requested a bond hearing. He simply decided to file this Habeas Petition with the Court first. Doc. 6-1 at ¶ 29. To justify his deliberate failure to exhaust his administrative remedies, Petitioner stated that he chose to file this claim in the district court because he determined on his own that he "will categorically be denied bond;" thus, "Petitioner seeks a writ of habeas corpus." Doc. 6-1 at ¶ ¶ 8-9. Thus, Petitioner has not been denied a bond hearing that he now seeks the Court to order; he never requested one.

C. Even if the Court were to reach the merits of Petitioner's claim, it must still be denied.

Petitioner alleges ICE's decision to detain him under § 1225 is incorrect, and he should instead be held under § 1226. However, whether Petitioner's detention is classified pursuant to §1225 or §1226, ICE's decision to detain him during the pendency of his removal proceeding is lawful and his petition should be denied.

The plain language 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). 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 Petitioner under § 1225(b)(2). The parties do not dispute he 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)(2)(A); *see Chaviano v. Bondi*, 2025 WL 1744349, at *6-8 (S.D. Fla. June 23, 2025).

Petitioner 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. Petitioner contends that an "applicant for admission" means an "arriving alien." (Doc. 5-1 at ¶ 33). 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).

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. So 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 and his detention should be under § 1226. 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 an applicant for admission under § 1225(b)(2).

Petitioner illegally entered the United States at an unknown location on an unknown date, and notably, Petitioner himself does not provide this information within his petition as to when he allegedly entered the United States. *See generally*, Doc. 6-1. He admittedly has no permission or status to remain in this country. As such, it's undisputed Petitioner has not been admitted to the United States.

Due to Petitioner's unlawful immigration status, ICE now 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). But again, there is no indication he has any intention of doing so. Petitioner, for the first time within his Habeas Petition, seeks a credible fear determination review or a reasonable fear interview to remain with the United States despite alleging no facts that would entitle him to such relief.

However, he has no status and was never admitted to the United States. Put different, Petitioner must be an applicant for admission if he wants to remain in this country. *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)).

Likewise, ICE's position has been consistent since detaining Petitioner. ICE doesn't make that argument because full removal proceedings are under § 1229a—not § 1225 or § 1226. Rather, when ICE detained Petitioner this year, it did so under the narrower provision tailored to his circumstances (i.e., § 1225(b)(2)).

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)(2). Accordingly, Petitioner'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.

Dated: December 22, 2025

Respectfully submitted,

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