UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

MARIA ALEJANDRA MONTOYA SANCHEZ, individually and as Next Friend of M.A.G.M., a minor,	
Petitioners,	FEDERAL RESPONDENTS' RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS
v.	Case No. 5:25-cv-01410-FB
KRISTI NOEM, Secretary, U.S. Department of Homeland Security, et. al.[1]	
Respondents.	

I. INTRODUCTION

Petitioners filed a habeas petition with this Court on or about October 31, 2025. ECF Nos. 1, 3. Federal Respondents[2] provide the following timely response to Petitioner's habeas petition. Any allegations that are not specifically admitted herein are denied. The Court should dismiss the Petition for lack of jurisdiction. Further, Petitioners are not entitled to the relief they seek, and this Court should deny this habeas petition without the need for an evidentiary hearing.

The Court should dismiss for lack of jurisdiction Petitioners' claims alleging violations of the Flores Settlement Agreement (FSA) because, following the Supreme Court's decision in *Garland v. Aleman Gonzalez*, 596 U.S. 543 (2022), 8 U.S.C. § 1252(f)(1)

[1] Kristi Noem, U.S. Secretary of Homeland Security, and Pamela Bondi, U.S. Attorney General, are automatically substituted as successors to Alejandro Mayorkas and Merrick Garland, respectively, under Fed. R. Civ. P. 25(d).

[2] The Department of Justice represents only federal employees in this action, and not the Warden.

divests district courts of jurisdiction to restrain the operation of the mandatory-detention provisions in the INA. Further, there is no jurisdiction for this Court to review Petitioner's challenge to the Department of Homeland Security's (DHS) initial decision to detain Petitioners for adjudication of their removal proceedings, because their claims directly arise from the decision to commence and/or adjudicate removal proceedings against them, and they must instead raise that challenge in the court of appeals upon review of a final order of removal. In any event, Petitioners are lawfully detained pending removal proceedings before an immigration judge. Petitioners' detention is neither indefinite, nor prolonged, as it will end upon the completion of removal proceedings. Finally, Petitioners fail to allege colorable constitutional violations under the Fourth or Fifth Amendments that would require their release from detention.

I. BACKGROUND

Petitioners Maria Alejandra Montoya Sanchez (Montoya) and her nine-year-old daughter, M.A.G.M., natives and citizens of Colombia, seek habeas relief under 28 U.S.C. § 2241 challenging their continued civil immigration detention at the South Texas Family Residential Center in Dilley, Texas. According to the petition, both Petitioners have been detained since October 4, 2025, following M.A.G.M's, arrival at Miami International Airport two days earlier, where her B-2 tourist visa was cancelled and the mother was detained after presenting herself to retrieve M.A.G.M. from the airport. Petition for Writ of Habeas Corpus (Pet.) at 1–2; ECF No. 3, First Suppl. to Pet. at 3–4. Petitioners argue that M.A.G.M's visa—issued July 13, 2018, and valid until July 11, 2028—was valid on the date of travel. *Id.* at 2. They further assert that M.A.G.M. has a longstanding residence and

active school enrollment in Colombia, supported by school records reflecting ongoing tuition and attendance. *Id.*

Petitioners recount that Petitioner Montoya appeared for a bond hearing where an immigration judge (IJ) denied bond, followed by the filing of a motion for bond redetermination, which was likewise denied on the ground of "no new evidence." Pet. at 2. Petitioners also catalog applications for relief pending before United States Citizenship and Immigration Services (USCIS), including a Form I-130 immediate-relative petition, a concurrently filed Form I-485 application for adjustment of status, and completed biometrics, along with a pending "humanitarian" expedite request acknowledged by USCIS. *Id.* They contend these filings demonstrate their compliance with immigration procedures and undermine any suggestion of flight risk.

Petitioners state that they have now been detained "for over 25 days in a facility that is not licensed for long term child custody and is inconsistent with the requirements of the *Flores* Settlement." *Id.* at 3. They emphasize that M.A.G.M. "was not seeking asylum or refugee status" and "is neither a flight risk nor a danger to the community." *Id.* at 2. Evidence attached to the Petition includes a sworn statement from Petitioner Montoya describing M.A.G.M.'s prior travel history and intent to return to Colombia, and a swom declaration from Petitioner Montoya's U.S.-citizen spouse detailing the impact of the detention on the family and their small business, as well as his statement that Petitioner Montoya "has no criminal record" and "poses no danger to the community." Petition, Exh. 12. In "Supplements" to the Petition, Petitioner Montoya's spouse expounds upon the factual allegations in the Petition and further alleges that Petitioners' detention is a violation of Due Process and "arbitrary and capricious." *See* ECF Nos. 3 and 7.

Petitioners assert three interrelated theories as to their purported unlawful detention. *First*, Petitioners allege that M.A.G.M.'s prolonged detention violates the FSA because "ICE's continued detention of a minor child for more than 'prompt' release without unnecessary delay, especially in an unlicensed facility breaches the *Flores* Settlement and ICE's obligation under it." Pet. at 3. *Second*, Petitioners contend that the government's continued detention of both mother and child constitutes an arbitrary deprivation of liberty under the Fifth Amendment, asserting that "civil detention of a minor and her accompanying parent, without individualized justification and without meaningful review (especially after bond was denied and redetermination refused), constitutes an arbitrary deprivation of liberty and violates Petitioners' due process rights." *Id. Finally*, Petitioners argue that their detention is "arbitrary and capricious" considering their ongoing immigration proceedings, noting that their "continued detention while USCIS is actively reviewing a humanitarian request and a pending family-based adjustment petition (I-130/I-485) is arbitrary and capricious. ICE's refusal to release Petitioners pending that review violates their right to due process and exceeds the government's lawful authority." *Id.*

Petitioners ask this court to issue a Writ of Habeas Corpus directing Respondents to immediately release the mother and child, and in the alternative, to order Respondents to release Petitioners under parole, recognizance, or conditional supervision. *Id.* at 3. Finally, Petitioners ask this court to award "any additional relief the Court deems just and proper." *Id.*

II. LEGAL BACKGROUND

A. The *Flores* Settlement Agreement

The original complaint in the *Flores* litigation was filed in 1985, by four unaccompanied children in immigration custody. *See* Compl., *Flores v. Meese*, No. 2:85-cv-04544-

DMG-AGR (C.D. Cal.). At the heart of the *Flores* litigation were the practices of the legacy Immigration and Naturalization Service (INS) regarding unaccompanied minors in the INS's Western Region who were subject to deportation and eligible for discretionary release from detention, but who could not be released because there was no immediately available custodian. *See Reno v. Flores*, 507 U.S. 292, 294–95 (1993). To address this problem, the INS's Western Regional Office "adopted a policy of limiting the release of detained minors to a parent or lawful guardian, except in unusual and extraordinary cases ..." *Id.* at 295–96 (quoting *Flores v. Meese*, 934 F.2d 991, 994 (9th Cir. 1990), vacated, 942 F.2d 1352 (9th Cir. 1991) (en banc)) (internal quotations omitted).

The *Flores* Plaintiffs challenged this policy to compel the release of unaccompanied minors to non-parental guardians or private custodians and challenged detention conditions for unaccompanied minors not released. *Id.* at 296, 302. That court certified a nationwide class of minors "who have been, are, or will be denied release from INS custody because a parent or legal guardian failed to personally appear to take custody of them." Order Re Class Certification, Aug. 12, 1986; *see also Reno*, 507 U.S. at 296. In 1993, the Supreme Court rejected Plaintiffs' facial challenge to the constitutionality of INS's regulation concerning care of juvenile aliens. *Id.* at 305.

In 1997, the *Flores* court approved the FSA, in which the parties agreed to procedures to govern the INS's discretionary decisions to release or detain unaccompanied minors. *See* FSA ¶¶ 14–18. The parties agreed that minors who must remain in the custody of the INS be placed in a licensed facility. *See* FSA ¶¶ 19–24, Exhibit 1.

The FSA provides that minors in immigration proceedings must be provided a bond hearing unless waived and may further challenge the INS's determination in the appropriate

U.S. District Court.[3] FSA ¶ ¶ 24A and 24B.2[4] However, the bond provisions in ¶ 24 only apply to those in "deportation proceedings." FSA ¶ 24.A. At the time the FSA was adopted, aliens who arrived at ports of entry were placed in exclusion proceedings, not deportation proceedings. *See Torres v. Barr*, 976 F.3d 918, 927–28 (9th Cir. 2020) (en banc). Thus, by its own terms, ¶ 24.A has never applied to those aliens who arrive at ports of entry.[5]

In 2015, the *Flores* court expanded the FSA to accompanied children, *see Flores v. Lynch*, 828 F.3d 898, 906, 909 (9th Cir. 2016), even though it is obvious from the FSA's terms that the parties did not contemplate their inclusion. More recently, the government asked the *Flores* court to terminate the FSA in its entirety. The government's appeal from the *Flores* court's denial of the government's motion to terminate is being briefed in the Ninth Circuit. *See Flores v. Bondi*, No. 25-6308 (9th Cir.).

B. Detention Under the INA

The INA sets forth a multi-layered statutory scheme for the civil detention of aliens pending a decision on removal. *See generally* 8 U.S.C. §§ 1225, 1226, 1231. The time and circumstances of entering the United States, as well as the stage of the removal process, determines where an alien falls within this scheme and whether detention of the alien is

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[3] In 2002, Congress created the U.S. Department of Homeland Security (DHS), transferring most immigration functions formerly performed by INS to the newly formed DHS. *See* Homeland Security Act, 2002 Pub. L. No. 107-296, 116 Stat. 2135; *see also* Department of Homeland Security Reorganization Plan Modification of January 30, 2003, H.R. Doc. No. 108-32 (2003) (also set forth as a note to 6 U.S.C. § 542).

[4] The Agreement was originally set to expire within five years, but on December 7, 2001, the Parties agreed to a termination date of "45 days following defendants' publication of final regulations implementing this Agreement." Stip., Dec. 7, 2001. To date, no such regulations have been published with respect to DHS.

[5] In 2017, the *Flores* court interpreted the FSA to require DHS to make and record continuous efforts to release accompanied minors who are in expedited-removal proceedings—even though such minors are subject to mandatory detention under 8 U.S.C. § 1225(b)(1)(B)(ii) or (iii)(IV). *Flores v. Sessions*, 394 F. Supp. 3d 1041, 1063-67 (C.D. Cal. 2017).

discretionary or mandatory. The INA authorizes civil detention of aliens during removal proceedings, and "[d]etention is necessarily part of this deportation procedure." *Carlson v. Landon*, 342 U.S. 524, 538 (1952); *see also* 8 U.S.C. § 1225(b), 1226(a), and 1231(a). "Where an alien falls within this statutory scheme can affect whether his detention is mandatory or discretionary, as well as the kind of review process available to him if he wishes to contest the necessity of his detention." *Prieto-Romero v. Clark*, 534 F.3d 1053, 1057 (9th Cir. 2008).

i. Detention Under Section 1225

The INA mandates the detention of applicants for admission. *See* 8 U.S.C. §§ 1225(b)(1)–(2); *see also Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) (explaining that applicants for admission "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)."). An applicant for admission is defined as "an alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters)." 8 U.S.C. § 1225(a)(1).

Section 1225(b)(2) is "broader" and "serves as a catchall provision that applies to all applicants for admission not covered by [subsection (b)(1)]." *Jennings*, 583 U.S. at 287. It requires that those aliens be detained pending Section 240 removal proceedings:

> [I]n the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien *shall be detained* for a proceeding under section 1229a of this title [Section 240].

8 U.S.C. § 1225(b)(2)(A) (emphasis added); *see* 8 C.F.R. § 235.3(b)(1)(ii) (mirroring Section 1225(b)(2)'s detention mandate); *Jennings*, 583 U.S. at 302 (holding that Section

1225(b)(2) "mandate[s] detention of aliens throughout the completion of applicable proceedings and not just until the moment those proceedings begin"). While section 1225 does not provide for aliens to be released on bond, DHS has the sole discretionary to release any applicant for admission on a "case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022).

ii. Detention under Section 1226

The INA creates a separate authority addressing the arrest, detention, and release of aliens generally (versus applicants for admission specifically). *See* 8 U.S.C. § 1226. Section 1226 provides that aliens who were admitted to the country but later become removable—like Petitioner Montoya, who was admitted and overstayed her B2 visitor visa—"may be arrested and detained pending a decision on whether the alien is to be removed." 8 U.S.C. § 1226(a). Under § 1226(a), the government may detain an alien during her removal proceedings, release her on bond, or release her on conditional parole.[6] By regulation, immigration officers can release an alien if the alien demonstrates that she "would not pose a danger to property or persons" and "is likely to appear for any future proceeding." 8 C.F.R. § 236.1(c)(8).

When an alien is taken into ICE custody under § 1226(a), an ICE official makes an initial custody determination, including the setting of a bond. *See* 8 C.F.R. §§ 236.1(c)(8), 236.1(d)(1). An ICE officer may "in the officer's discretion, release an alien" provided that the alien demonstrates to the satisfaction of the officer that "such release would not pose a

[6] Being "conditionally paroled under the authority of § 1226(a)" is distinct from being "paroled into the United States under the authority of § 1182(d)(5)(A)." *See Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1116 (9th Cir. 2007).

danger to property or persons, and that the alien is likely to appear for any future proceeding." 8 C.F.R. § 236.1(c)(8). If ICE determines that an alien should remain detained during the pendency of their removal proceedings, the alien may request a custody redetermination hearing (colloquially called a "bond hearing") before an immigration judge. *See* 8 C.F.R. §§ 236.1(d), 1003.19, 1236.1(d).

Upon a custody redetermination, the immigration judge may continue detention of the alien or release her on bond or conditional parole. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). However, the alien does not have any *right* to release on bond. *Matter of D-J-*, 23 I&N Dec. 572, 575 (AG 2003); *Matter of Guerra*, 24 I. & N. Dec. 37, 39 (BIA 2006). Immigration judges have broad discretion in deciding whether to release an alien on bond. *Guerra*, 24 I. & N. Dec. at 39. Immigration judges consider multiple discretionary factors, including any information that the judge may deem to be relevant. *Id.* at 40. These factors are nonexclusive, and the IJ has "broad discretion in deciding the factors . . . ." Further, *Guerra* establishes that the INA in no way "limit[s] the discretionary factors that may be considered" in bond determinations. 24 I. & N. Dec. at 39; *see also* 8 C.F.R. § 1003.19(d) ("[t]he determination of the Immigration Judge as to custody status or bond may be based upon any information that is available to the Immigration Judge or that is presented to him or her by the alien or [ICE].").

An alien may request a second bond redetermination hearing before the immigration judge, but the hearing will only be granted based on a showing that the alien's circumstances have materially changed since the first bond redetermination hearing. *See* 8 C.F.R. § 1003.19(e). Further, even if an alien does not request a second bond redetermination hearing, the alien may seek further administrative review of a bond redetermination before

the Board of Immigration Appeals (BIA) at any time before a final order of removal. 8 C.F.R. §§ 1003.1(b)(7), 1003.38, 1236.1(d)(3).

III. ARGUMENT

A. Plaintiffs' claim alleging violations of the FSA fails for lack of jurisdiction under 8 U.S.C. § 1252(f) following the Supreme Court's decision in *Aleman Gonzalez*.

Dismissal is appropriate under Rule 12(b)(1) when the court lacks subject matter jurisdiction over the claim. *See Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994); Fed. R. Civ. P. 12(b)(1). "Subject matter jurisdiction is a threshold issue which goes to the power of the court to hear the case." *Kokkonen*, 511 U.S. at 377. "A motion to dismiss for lack of subject matter jurisdiction should be granted only if it appears certain that the plaintiff cannot prove any set of facts in support of his claim that would entitle plaintiff to relief." *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001).

Aleman Gonzalez, 596 U.S. 543, makes plain that if the U.S. District Court for the Central District of California lacks jurisdiction to continue enforcement of the FSA. It follows, *a fortiori*, that this Court too lacks jurisdiction to enforce the FSA, and cannot apply it to an individual alien. Under *Aleman Gonzalez*'s construction of § 1252(f)(1), this Court must dismiss Petitioner's claim for relief under the FSA.

Here, Petitioners contend that "continued detention of a minor child for more than 'prompt' release without unnecessary delay, especially in an unlicensed facility[,] breaches the Flores Settlement and ICE's obligation under it." Petition, 3. Petitioners' argument lacks merit because the continued enforcement of the FSA fails for want of jurisdiction under 8 U.S.C. § 1252(f)(1). Section 1252(f)(1) divests lower federal courts of authority to enjoin or restrain the operation of the detention provisions of the INA, including those under which the government detains class members. Specifically, section 1252(f)(1) states

that "no court (other than the Supreme Court) shall have jurisdiction or authority to enjoin or restrain the operation" of certain provisions of the INA, "other than with respect to the application of such provisions to an individual alien."

Section 1252(f)(1) codifies section 242(f)(1) of the INA, which refers to "the provisions of chapter 4 of title II" of the INA, *i.e.*, sections 231 through 244 of the INA, 8 U.S.C. §§ 1221–1231 and 1252–1254a. *Galvez v. Jaddou*, 52 F.4th 821, 830 (9th Cir. 2022) (discussing same). These sections include the sources of ICE's authority to detain, which are in §§ 1225(b)(1)(B)(ii), 1225(b)(1)(B)(iii)(IV), 1225(b)(2)(A), 1226, and 1231(a). The applicable detention authority depends upon the procedural posture of the alien's immigration proceedings. Specifically, inadmissible applicants for admission "shall be detained for a proceeding under section 1229a." 8 U.S.C. § 1225(b)(2)(A). The government has discretionary authority to detain or release the alien on bond pending a decision on whether he or she is to be removed, 8 U.S.C. § 1226(a), unless detention is mandatory under 8 U.S.C. § 1226(c).

What is more, the Supreme Court's decision in *Aleman Gonzalez*, 596 U.S. 543, has resolved any doubt that § 1252(f)(1) divested the U.S. District Court for the Central District of California of jurisdiction to restrain the operation of the mandatory-detention provisions in the INA. Petitioners' claim must therefore be denied for lack of jurisdiction. In its 2022 decision, the *Aleman* Court held that "§ 1252(f)(1) generally prohibits lower courts from entering injunctions that order federal officials to take or to refrain from taking actions to enforce, implement, or otherwise carry out the specified statutory provisions." *Aleman Gonzalez*, 596 U.S. at 550. The Supreme Court went on, holding that "injunctive relief on behalf of an entire class of aliens is not allowed because it is not limited to

remedying the unlawful 'application' of the relevant statutes to 'an individual alien.'" *Id.* at 550–51 (holding that a class-wide injunction requiring the Government to provide bond hearings for class members detained under 8 U.S.C. § 1231(a)(6) were "barred" because they "interfere with the Government's efforts to operate § 1231(a)(6)[.]"). That holding clarifies that the FSA was an inappropriate exercise of jurisdiction.

The FSA, which Petitioners rely upon in Count 1, is precisely the type of class-wide order that § 1252(f)(1) and *Aleman Gonzalez* forbids. It is a class-wide order that "re-strain[s] the operation" of the INA—specifically, the provisions relating to the inspection and processing of aliens (8 U.S.C. § 1225) and immigration detention (8 U.S.C. §§ 1225(b), 1226, and 1231)—all parts of the INA to which § 1252(f)(1) applies. *See Galvez v. Jaddou*, 52 F.4th 821, 830 (9th Cir. 2022) (explaining that the covered provisions include 8 U.S.C. §§ 1221–1231 and 1252–1254a).

Because the detention of Petitioners by ICE is pursuant to provisions governed by § 1252(f)(1), *Aleman Gonzalez* makes plain no lower court has jurisdiction to enforce the FSA. Accordingly, Petitioners' challenges to the FSA in Count 1 must be dismissed for lack of jurisdiction.

B. This Court lacks jurisdiction to review Petitioners' challenge to detention.

"Federal courts are courts of limited jurisdiction, possessing only that power authorized by Constitution and statute." *Gunn v. Minton*, 568 U.S. 251, 256 (2013); *see Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994); *see also* Fed. R. Civ. P. 12(h)(3).

The Court lacks jurisdiction over Petitioners' challenge to the decision to detain them because federal law limits—and in this case, forecloses—district court review of the Executive Branch's decisions and actions taken regarding the removal of aliens. *See, e.g.*,

8 U.S.C. § 1252(b)(9), (f)(1). Congress channeled judicial review of all immigration decisions into the petition-for-review process, 8 U.S.C. § 1252(a)(5), and "[j]udicial review of all questions of law and fact, including interpretation and application of constitutional... provisions, arising from any action taken or proceeding brought to remove an alien . . ." is only proper before the appropriate court of appeals in the form of a petition for review of a final removal order. *See* 8 U.S.C. § 1252(b)(9); *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999). Section 1252(b)(9) is an "unmistakable 'zipper' clause" that "channels judicial review of all [claims arising from deportation proceedings]" to a court of appeals in the first instance. *Id.*; *see Lopez v. Barr*, No. CV 20-1330 (JRT/BRT), 2021 WL 195523, at *2 (D. Minn. Jan. 20, 2021) (citing *Nasrallah v. Barr*, 590 U.S. 573, 579–80 (2020)).

"Taken together, § 1252(a)(5) and § 1252(b)(9) mean that *any* issue—whether legal or factual—arising from *any* removal-related activity can be reviewed *only* through the [petition-for-review] process." *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (emphasis in original); *see id.* at 1035 ("§§ 1252(a)(5) and [(b)(9)] channel review of all claims, including policies-and-practices challenges . . . whenever they 'arise from' removal proceedings."); *accord Ruiz v. Mukasey*, 552 F.3d 269, 274 n.3 (2d Cir. 2009) (only when the action is "unrelated to any removal action or proceeding" is it within the district court's jurisdiction).

Critically, "[§] 1252(b)(9) is a judicial channeling provision, not a claim-barring one." *Aguilar v. ICE*, 510 F.3d 1, 11 (1st Cir. 2007). Indeed, 8 U.S.C. § 1252(a)(2)(D) provides that "[n]othing . . . in any other provision of this chapter . . . shall be construed as precluding review of constitutional claims or questions of law raised upon a petition for review filed with an appropriate court of appeals." *See also Ajlani v. Chertoff*, 545 F.3d 229, 235 (2d Cir. 2008). The petition-for-review process before the courts of appeals

ensures that aliens have a forum for claims arising from their immigration proceedings and "receive their day in court." *J.E.F.M.*, 837 F.3d at 1031–32 (internal quotations omitted); *see also Rosario v. Holder*, 627 F.3d 58, 61 (2d Cir. 2010) ("The REAL ID Act of 2005 amended the [INA] to obviate . . . Suspension Clause concerns" by permitting judicial review of "nondiscretionary" BIA determinations and "all constitutional claims or questions of law.").

Sections (a)(5) and (b)(9) divest district courts of jurisdiction to review both direct and indirect challenges to removal orders, including decisions to detain for purposes of removal or for proceedings. *See Jennings*, 583 U.S. at 294–95 (section 1252(b)(9) includes challenges to the "decision to detain [an alien] in the first place or to seek removal[.]"). Here, the Petition challenges the decision and action to detain Petitioners, which arises from DHS's decision to commence removal proceedings, and is thus an "action . . . to remove [them] from the United States." *See* 8 U.S.C. § 1252(b)(9); *see also, e.g., Jennings*, 583 U.S. at 294–95; *Saadulloev v. Garland*, No. 3:23-CV-00106, 2024 WL 1076106, at *3 (W.D. Pa. Mar. 12, 2024) (recognizing that there is no judicial review of the threshold detention decision). As such, the Court lacks jurisdiction over this action. Petitioners must present their claims in a petition for review before the appropriate court of appeals because they challenge the government's decision or action to detain them. *See* 8 U.S.C. § 1252(b)(9).

C. Petitioners are lawfully detained, and their alleged violations of Due Process and the Fourth Amendment fail.

Even assuming this Court assured itself of jurisdiction, Petitioners are lawfully detained. The INA, 8 U.S.C. § 1101 et seq., entrusts the Executive branch to remove inadmissible and deportable aliens and to ensure that aliens who are removable are in fact

removed from the United States. "[D]etention necessarily serves the purpose of preventing deportable [] aliens from fleeing prior to or during their removal proceedings, thus increasing the chance that if ordered removed, the aliens will be successfully removed." *Demore v. Kim*, 538 U.S. 510, 528 (2003). The Supreme Court has long held that deportation proceedings "would be in vain if those accused could not be held in custody pending the inquiry" of their immigration status. *Wong Wing v. United States*, 163 U.S. 228, 235 (1896).

i. Petitioner M.A.G.M. is mandatorily detained under 8 U.S.C. § 1225(b)(2).

Petitioner M.A.G.M. is undoubtedly an arriving alien. She originally entered the United States on December 2, 2020, on a nonimmigrant visitor visa with authorization to remain for only six months, though she remained in the United States for an additional three years and seven months without authorization. Ex. 3 at 2–3; Ex. 4 at 1. On October 2, 2025, Petitioner M.A.G.M. returned to the United States and applied for admission at Miami International Airport with the same nonimmigrant visa, but upon inspection, a CBP official discovered that M.A.G.M. had previously overstayed the time authorized by the visa and therefore cancelled the visa. Ex. 3 at 2–3. Thus, when she applied for admission, Petitioner M.A.G.M. did not have a valid entry document and she was accordingly served with an NTA charging her as inadmissible (initiating removal proceedings) and taken into DHS custody. Ex. 4 at 1. Petitioner M.A.G.M. is properly detained under § 1225(b)(2) because she is an applicant for admission, and she notably does not dispute her detention under such authority. *See Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216, 220 (BIA 2025); 8 C.F.R. § 235.3(c)(1).

As the Supreme Court indicated in *Jennings*, "[r]ead most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants of admission until certain proceedings have

concluded." *Jennings*, 583 U.S. at 297. Congress intended for all applicants for admission to be detained during their removal proceedings. *See Jennings*, 583 U.S. at 299 (interpreting the "plain meaning" of sections 1225(b)(1) and (2) to mean that applicants for admission be mandatorily detained for the duration of their immigration proceedings); *see also Matter of Li*, 29 I. & N. Dec. 66, 69 (BIA 2025) ("[A]n applicant for admission . . . whether or not at a port of entry, and subsequently placed in removal proceedings is detained under . . . 8 U.S.C. § 1225(b), and is ineligible for any subsequent release on bond.").

ii. Petitioner Montoya is lawfully detained under 8 U.S.C. § 1226(a)

Petitioner Montoya was similarly encountered at Miami International Airport when she appeared to receive her daughter, M.A.G.M. Ex. 1 at 2–3. After processing her daughter for inspection, CBP officials discovered that Petitioner Montoya previously entered the United States in September 2018 as a nonimmigrant visitor, with authorization to remain for only six months, and she remained without authorization for over 6 years. *Id.*; Pet. at 3. CBP officials accordingly served Petitioner Montoya with an NTA charging her as removable and took her into DHS custody. Ex. 2.

Under § 1226(a), DHS "may" arrest and detain an alien "pending a decision on whether the alien is to be removed from the United States," and "may release the alien on bond ... or conditional parole."The alien may then request a bond redetermination hearing where the IJ reconsiders the custody determination. 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1); 8 C.F.R. § 1003.19(a). Put differently, § 1226(a) allows DHS to arrest and detain an alien during removal proceedings and release them on bond, but it does not mandate that all aliens found within the interior of the United States be processed in this manner. 8 U.S.C. § 1226(a)); *Vargas v. Lopez*, No. 25-CV-526, 2025 WL 2780351 at *4–9 (D. Neb. Sept. 30,

2025); *Chavez v. Noem*, No. 25-CV-23250CAB-SBC, 2025 WL 2730228 at *4–5 (S.D. Cal. Sept. 24, 2025). Nothing in § 1226(a) *entitles* an applicant for admission to a bond hearing, much less release. *See Matter of D-J-*, 23 I&N Dec. at 572; *Matter of Guerra*, 24 I. & N. Dec at 37. Petitioner Montoya is properly detained under § 1226(a), and she does not contest her detention under this statute, nor DHS's authority to discretionarily detain under § 1226(a), generally.

iii. Petitioners fail to state a colorable constitutional claim, and their detention is not "arbitrary and capricious."

Rather than contest the statutory bases for their detention, Petitioners declare their detention "arbitrary and capricious" and vaguely allege broad violations of the Fourth and Fifth Amendments that fail to pass muster Pet. at 4; ECF No. 3 at 5–6. Petitioners claim that their detention is "without individualized justification and … meaningful review," and thus amounts to a violation of due process. Pet. at 3. However, Petitioner Montoya admits that she received a bond redetermination hearing before an IJ, that her request was denied in October 2025 for failure to meet the standard required by 8 C.F.R. § 1236.1(d), and that she later sought a second bond redetermination hearing, but her request for a second hearing was denied because her circumstances had not materially changed. Pet at 3; *see* Exs. 5 and 6.

Petitioners' detention during the pendency of their removal proceedings does not violate due process because constitutional protections inhere in those proceedings where Congress has chosen to provide aliens facing removal with the due process of full removal proceedings. *See* 8 U.S.C. § 1229a(a)(4). Petitioners were each served with a charging document (NTA) on October 3, 2025, (one day after their encounter) outlining the factual allegations and the charge(s) of deportability/inadmissibility against them. *Id.*

§ 1229a(a)(2).[7] Petitioners can dispute the charges before an immigration judge and can obtain representation by counsel of their choosing at no expense to the government. *Id.* § 1229a(b)(1), (b)(4)(A). Petitioners can seek reasonable continuances to prepare any applications for relief from removal, or they can waive that right and seek immediate removal or voluntary departure. *Id.* § 1229a(b)(4)(B), (c)(4). Should Petitioners receive any adverse decision, they may seek judicial review of the complete record and that decision not only administratively, but also in the circuit court of appeals. *Id.* § 1229a(b)(4)(C), (c)(5). Moreover, relief applications are heard more expeditiously on the detained docket than the non-detained docket. *See* Section 9.1(e), Executive Office for Immigration Review | 9.1 - Detention | United States Department of Justice (last accessed Jan. 6, 2026).

For aliens, like Petitioners, who are detained during removal proceedings, what Congress provided to them by statute satisfies due process. *Thuraissigiam*, 591 U.S. at 140. Indeed, the Supreme Court has long held that "the due process rights of an alien seeking initial entry" are no greater than "[w]hatever the procedures authorized by Congress." *Thuraissigiam*, 591 U.S. at 139 (citation omitted). Thus, for unadmitted aliens, like M.A.G.M., "the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law." *Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892); *accord Thuraissigiam*, 591 U.S. at 138–140. And while an as-applied constitutional challenge, such as a prolonged detention claim, may be brought before the district court in certain circumstances, Petitioners cannot raise such a claim where they have been detained for only a brief period pending their removal proceedings. *See*

[7] Generally, an NTA is not required to be filed before an alien can be detained or request a bond hearing, and an IJ can conduct a bond hearing without an NTA having been filed. *See* 8 C.F.R. § 1003.14(a).

Castaneda v. Perry, 95 F.4th 750, 757–58 (4th Cir. 2024) ("The absence of a date certain—imminent or not—for the conclusion of those proceedings is of no moment. What matters, the Supreme Court teaches, is that Vasquez Castaneda's detention has 'a definite termination point': the conclusion of [pending] proceedings.") (*citing Jennings*, 583 U.S. at 304); *see also Prieto-Romero v. Clark*, 534 F.3d 1053, 1062 (9th Cir. 2008) (determining that, where a petitioner had been detained for more than three years, detention was not "indefinite" because "the government [could] repatriate [the petitioner] to Mexico if his pending bid for judicial relief from his administratively final removal order prove[d] unsuccessful.").

Petitioners further allege that CBP officials arrested and detained them at Miami International Airport without a warrant, in violation of the Fourth Amendment. *See* Pet. This allegation is meritless. An immigration officer must have reasonable suspicion of an immigration violation before performing a detentive stop without an arrest. 8 C.F.R. § 287.8(b)(2). Immigration officers may conduct warrantless arrests of aliens if there is "*reason to believe* that the alien [is] in violation of [United States] law or regulation and is likely to escape before a warrant can be obtained for his arrest[.]" 8 U.S.C. § 1357(a)(2) (emphasis added); 8 C.F.R. § 287.8(c)(2)(i)–(ii). Thus, "[p]robable cause [for a warrantless arrest] is established by facts and circumstances within the officer's knowledge that are sufficient to warrant a prudent person, or one of reasonable caution, in believing, in the circumstances shown, that the suspect has committed, is committing, or is about to commit an offense." *Arizmendi v. Gabbert*, 919 F.3d 891, 897 (5th Cir. 2019) (internal quotations and citation omitted). Here, CBP officials encountered M.A.G.M. when she presented for inspection at Miami International Airport, at which time officials discovered that she and

Petitioner Montoya had both violated the conditions of their visas. *See* Exs. 1 and 3. CBP officers thus had reason to believe that Petitioners committed an immigration violation and would escape before a warrant could issue. Petitioners' arrests without warrants were justified by probable cause and do not amount to a Fourth Amendment violation.

Nor does the fact of Petitioner Montoya's pending applications with USCIS prevent her detention, much less render it "arbitrary and capricious." Petitioner Montoya is detained under § 1226(a), which provides that "[a]n alien *may* be arrested and detained pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a) (emphasis added). Detention under § 1226(a) is discretionary—the Attorney General "may" either "continue to detain the arrested alien" or release the alien on bond or conditional parole. *Id.* § 1226(a)(1)–(2).[8] But as addressed above, Petitioner Montoya's pending applications before USCIS do not entitle her to release. *See Matter of D-J-*, 23 I&N Dec. at 572; *Matter of Guerra*, 24 I. & N. Dec at 37.

Finally, in supplemental filing, Petitioners raise various challenges and complaints regarding the conditions of their confinement. *See generally*, ECF No. 7 (Second Suppl. to Pet.). However, the Court should decline to entertain these arguments because challenges to the conditions of confinement are improper in a § 2241 habeas action, which is reserved for "[c]hallenges to the validity of any confinement or to particulars affecting its duration." *Muhammad v. Close*, 540 U.S. 749 (2004) (citing *Preiser v. Rodriguez*, 411 U.S. 475, 485 (1973)). Nor have Petitioners articulated a *Bivens* claim or an Eighth Amendment violation. *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971).

[8] Conditional parole under Section 1226(a) is distinct from parole under Section 1182(d)(5)(A). *See Ortega-Cervantes v. Gonzalez*, 501 F.3d 1111, 1116 (9th Cir. 2007).

Thus, the Court should decline to address Petitioners' challenges to the conditions of their confinement in a § 2241 habeas action. *Pierre v. United States,* 525 F.2d 933, 935–36 (5th Cir. 1976) (holding that habeas exists to "grant relief from unlawful imprisonment or custody and it cannot be used properly for any other purpose.").

IV. CONCLUSION

For the forgoing reasons, this Court should dismiss the petition for lack of jurisdiction and deny any additional forms of relief.

January 7, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 7, 2026, I electronically filed the foregoing Response to Petition for Writ of Habeas Corpus with the United States District Court for the Western District of Texas. I further certify that pro se Petitioners, who are not registered CM/ECF users, will instead be served by U.S. Mail at the following address listed on the Court's docket:

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