

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

Juan Esteban Lopez Lozano,

Petitioner,

No. 2:25-cv-01066-KCD-NPM

v.

Garrett J. Ripa, Field Office Director,
ICE-ERO Miami Field Office,

Respondent.

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Juan Esteban Lopez Lozano challenges his detention by U.S. Immigration and Customs Enforcement (ICE), arguing he is being unlawfully detained at Florida Soft Side South.¹ Lozano claims his initial detention, which “originates in illegality[,]” cannot become lawful upon transfer to ICE custody. Because 8 U.S.C. § 1252(g), strips this Court of jurisdiction to hear cases challenging

¹ The only appropriate respondent to a habeas case is the official with physical custody of Rodriguez. 28 U.S.C. § 2243 (“The writ, or order to show cause shall be directed to the person having custody of the person detained.”); *Rumsfeld v. Padilla*, 542 U.S. 426, 434-36 (2004) (“[T]he 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.”). Accordingly, the only proper respondent in this case is the Warden of Florida Soft-Sided Facility South in his official capacity. See e.g., *Vandersnick v. Sec’y, Fla. Dep’t of Corr.*, No. 5:18-cv-603-SPC-PRL, 2021 WL 1020914, at *1 n.3 (M.D. Fla. Mar. 17, 2021).

a decision to commence immigration proceedings, Lozano's petition should be dismissed.

FACTS

The Lozano is a national and citizen of Colombia. (Composite Exhibit, Ex. A at 1.) He last entered the United States on October 28, 2021, as an alien present in the United States who has not been admitted or paroled. *Id.* at 1-3. On November 4, 2023, he was served with a Notice to Appear. *Id.* at 9.

On November 7, 2025, Border Patrol Agent Marcus van der Lee was engaged in a joint operation with the Orlando Police Department and other local, state and federal agencies at the Electric Daisy Carnival. (Lee Decl., Ex. B ¶ 1.) At approximately 5:00 p.m., Lee along with two other Border Patrol Agents encountered Lozano. *Id.* ¶ 2. Lee asked Lozano in which country he was born to which Lozano stated, "Columbia." *Id.* Lee identified himself as a Border Patrol Agent and asked Lozano if he had any documentation proving legal presence in the United States. *Id.* Lozano presented a United States Employment Authorization card, which Lee sent to another Border Patrol Agent to run Lozano's record. *Id.*

Record checks showed that Lozano had previously entered the United States illegally and was apprehended on October 28, 2021. *Id.* ¶ 3. Further checks showed that Lozano did have a valid Employment Authorization card but did not have legal immigration status in the United States. *Id.* Lee concluded his immigration

inspection and informed Lozano that he was being placed under arrest for being illegally present in the United States. *Id.*

After processing, Lozano was transported to the Orlando Police Station. *Id.* ¶ 5. He was then transported to the Orange County Jail on November 8, 2025. *Id.* The Orange County Jail is an approved U.S. Department of Homeland Security detention facility. *Id.* On November 9, 2025, Lozano was issued a Notice to Appear. *Id.* ¶ 6; Composite Exhibit, Ex. A at 5-7.

Lozano is currently in removal proceedings and is scheduled for Custody Redetermination Hearing on December 12, 2025. (Composite Exhibit, Ex. A at 12.)

ARGUMENT

I. This Court lacks subject-matter jurisdiction to review Lozano’s petition.

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 the context of immigration habeas cases related to removal proceedings—like here—the Immigration and Nationality Act (“INA”) divests this Court’s jurisdiction. Title 8 U.S.C. § 1252(g) provides, “[N]o court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter..” 8 U.S.C. § 1252(g). 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 (AADAC)*, 525 U.S. 471, 483 (1999) (cleaned up). These activities “represent the initiation or prosecution of various stages in the deportation process” that Congress had “good reason” to withhold from judicial review. *Id.*

When construing § 1252(g), one must limit the application “to just those three specific actions” listed. *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018). In doing so, “courts must focus on the action being challenged.” *Canal A Media Holding, LLC v. USCIS*, 964 F.3d 1250, 1258 (11th Cir. 2020). At bottom, § 1252(g) bars review if the conduct “to commence proceedings, adjudicate cases, or execute removal orders is the basis of the claim.” *Gupta v. McGahey*, 709 F.3d 1062, 1065 (11th Cir. 2013).

Securing an alien while awaiting a removal determination constitutes an action taken to commence proceedings. *Gupta v. McGahey*, 709 F.3d 1062, 1065 (11th Cir. 2013); *see also Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016) (“Because [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.

Lozano was detained “while awaiting a removal determination.” *Gupta*, 709 F.3d at 1065. Under *Gupta*’s binding interpretation of § 1252(g), this Court has no jurisdiction. *Id.* Immigration authorities decided to commence proceedings against Lozano related to removal. Congress specifically stripped jurisdiction to review that discretionary decision; therefore, the Court lacks subject-matter jurisdiction over this case.

II. Lozano’s continued detention does not violate the U.S. Constitution

Under the Fifth Amendment’s Due Process Clause, “a detainee may not be punished prior to an adjudication of guilt in accordance with due process of law.” *Bell v. Wolfish*, 441 U.S. 520, 535 (1979). For confinement to constitute “punishment,” a petitioner must show either “an expressed intent to punish on the part of detention facility officials,” or an implied intent to punish through a condition or restriction that a “is not reasonably related to a legitimate goal—if it is arbitrary or purposeless[.]” *Id.* at 538-39. “Thus, if a particular condition or restriction of pretrial detention is reasonably related to a legitimate governmental objective, it does not, without more, amount to ‘punishment.’” *Id.* at 539.

Lozano fails to show that detention is not proportionately related to the government’s non-punitive responsibilities and administrative purposes. While civil detainees retain greater liberty protections than individuals convicted of crimes, *see, e.g., Youngberg v. Romeo*, 457 U.S. 307, 321-22 (1982), continued immigration detention

pending removal cannot be described as punitive or excessive in relation to the legitimate government purpose of protecting the public and ensuring their removal. *See, e.g., Demore v. Kim*, 538 U.S. 510, 523 (2003) (“[T]his Court has recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process.”). “[I]t is a fallacy to think that Respondents do not have a legitimate government purpose in ‘preventing detained aliens from absconding and ensuring that they appear for removal.’” *Matos v. Lopez Vega*, No. 20-CIV-60784-RAR, 2020 WL 2298775, at *10 (S.D. Fla. May 6, 2020).

CONCLUSION

Lozano’s Petition for Writ of Habeas Corpus should be denied.

DATED this 11th day of December, 2025.

Respectfully submitted,

GREGORY W. KEHOE
United States Attorney

By: /s/ Chad C. Spraker
CHAD C. SPRAKER
Assistant United States Attorney
USA No. 198
2110 First Street, Ste. 3-137
Fort Myers, Florida 33901
Telephone: 239-461-2200
Email: chad.spraker@usdoj.gov
Lead Counsel for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 11, 2025, I sent the foregoing
document via U.S. mail to:

Juan Esteban Lopez Lozano



Florida Soft Side South
54575 Tamiami TRL E
Ochopee, FL 34141

/s/ Chad C. Spraker
Assistant United States Attorney