

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 25-cv-62395-BB

ELMER CARTAGENA BONILLA,

Petitioner,

vs.

KRISTI NOEM, et al.,

Respondents.

**PETITIONER’S REPLY IN SUPPORT OF PETITIONER’S EMERGENCY PETITION
FOR WRIT OF HABEAS CORPUS**

Petitioner, Elmer Cartagena Bonilla, by and through undersigned counsel, files this Reply in Support of Petitioner’s Emergency Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241, stating in support thereof as follows:

BACKGROUND

On September 15, 2025, Petitioner was the victim of a Constitutional Violation. (ECF No. 1 at 40-44). Despite being authorized by federal law to remain in the United States as being a noncitizen having a pending asylum claim with the U.S. Citizenship and Immigration Services as authorized by 8 U.S.C. § 1158, (ECF No. 1-3) having a valid Employment Authorization Document (EAD), (ECF No. 1 at 42), and having a valid Florida Driver’s License, (ECF No. 1-5), federal agents effectuated a stop unsupported by reasonable suspicion leading to an unlawful arrest. Ever since, Petitioner has been

detained under the custody of the Department of Homeland Security (DHS) at the Broward Transitional Center in Pompano Beach, Florida. (ECF No. 1 at 18). Without having any jurisdiction authorized by federal laws and regulations, Petitioner was served with Form I-862, Notice to Appear on October 10, 2025. (*Id.* at 17). On November 10, 2025, the Immigration Judge presiding over Petitioner's Master Hearing with the Executive Office of Immigration Review (EOIR), ignored Petitioner's pending application for affirmative asylum as a rider under his mother's case as established by 8 U.S.C. § 1159(b)(3)(B).¹

On November 24, 2025, Petitioner filed the instant action alleging that he is being detained unlawfully by the federal government. (ECF No. 1). Petitioner first argues that federal agents had no reasonable suspicion to effectuate the stop other than Petitioner's perceived race or ethnicity and therefore his arrest is unlawful as the fruit of a poisoned stop. (*Id.* at 19). Second, Petitioner argues that the DHS's and EOIR's acted without observance of procedure required by law, and/or arbitrarily, capriciously, and otherwise not in accordance with law in asserting jurisdiction over Petitioner's asylum case in disregard of USCIS's original jurisdiction as established by 8 CFR § 208.2(a). Finally, even assuming EOIR's jurisdiction for the sake of argument, Petitioner detention is being misclassified under 8 U.S.C. § 1225(b) as a noncitizen "seeking" admission, despite being

¹ "An unmarried alien who seeks to accompany, or follow to join, a parent granted asylum under this subsection, and who was under 21 years of age on the date on which such parent applied for asylum under this section, shall continue to be classified as a child for purposes of this paragraph and section 1159(b)(3) of this title, if the alien attained 21 years of age after such application was filed but while it was pending." 8 U.S.C. § 1159(b)(3)(B).

apprehender well within the interior of the United States and not at the border or any designated port-of-entry pursuant to the BIA's decision in *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025). As a result, he was denied of the opportunity to seek bond under 8 U.S.C. § 1226(a).

As a result of all the violations of law, Petitioner was left with no other option but to take an order of voluntary departure forcing him to be separated from his mother, who is yet to be summoned for an asylum interview by USCIS, and his stepfather, a lawful permanent resident of the United States. (ECF No. 1 at 17).

ARGUMENT

I. Petitioner's Fourth Amendment Violation Claims are Properly Brought in a Habeas Petition

The government incorrectly states that "Petitioner is not challenging his current detention but rather the alleged unlawful conditions surrounding his arrest." (ECF No. 6 at 2-3). Petitioner contests his present detention, arguing that it is the product of an unlawful arrest arising from an unlawful stop premised solely on discriminatory animus and devoid of reasonable suspicion. Immigration arrests and detentions are "seizures" within the meaning of the Fourth Amendment. *United States v. Brignoni-Ponce*, 422 U.S. 873, 884 (1975). Absent obtaining a warrant, the government was required to secure a prompt judicial probable cause determination to justify Petitioner's continued detention. *See County of Riverside v. McLaughlin*, 500 U.S. 44, 57 (1991); *Gerstein v. Pugh*, 420 U.S. 103, 107-08 (1975). Respondents obtained no probable cause determination in

this case. Nor does it appear that they could have, given there is no evidence indicating Respondents had reason to believe Petitioner had engaged in criminal conduct or was present unlawfully. Petitioner provided a legal employment authorization card issued pursuant to his pending asylum application with USCIS.

The violations presented in this case exemplify the very circumstances for which federal habeas review under 28 U.S.C. § 2241 remains available. *See Lorusso v. Warden, N. Fla. Evaluation & Treatment Ctr.*, No. 1:25cv277/AW/ZCB, 2025 LX 476386, at *6 (N.D. Fla. Sep. 17, 2025) ("The sole function of habeas corpus 'is to provide relief from unlawful imprisonment or custody, and it cannot be used for any other purpose'" (quoting *Cook v. Hanberry*, 592 F.2d 248, 249 (5th Cir. 1979))). Section 2241, "authorizes a district court to grant a writ of habeas corpus whenever a petitioner is 'in custody in violation of the Constitution or laws or treaties of the United States.'" *Cadet v. Bulger*, 377 F.3d 1173, 1181-82 (11th Cir. 2004) (quoting 28 U.S.C § 2241(c)(3)). This provision allows persons to challenge the legality of their "immigration-related detention, including challenges to the validity of a deportation order[.]" *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001); *see also Cadet*, 377 F.3d at 1182 ("[T]he jurisdiction-stripping provisions of AEDPA and IIRIRA did not deprive federal courts jurisdiction to consider aliens' challenges to their removal orders raised in § 2241 habeas petitions." (citing *I.N.S. v. St. Cyr*, 533 U.S. 289, 314 (2001))).

Petitioner not only challenges the unlawfulness of its arrest as stemming from a stop supported by mere discriminatory intent and no probable cause, but it also challenges that DHS's continued is illegal because Petitioner was lawfully in the United States

awaiting a decision on his affirmative asylum case with USCIS. The violation of the Fourth Amendment does not only occur at the onset when he is stopped without legal grounds, but it continues after Petitioner established beyond a reasonable doubt that he had an application pending adjudication with USCIS.

The statutory and regulatory scheme further supports Petitioner position as the INA anticipates that many asylum applicants will pursue their claims while living and working in the community, not from detention. Congress authorized employment authorization for asylum applicants under 8 C.F.R. § 208.7, demonstrating that the statutory framework presumes applicants remain at liberty during adjudication. Were asylum meant to be pursued only from detention, employment authorization provisions would be rendered meaningless – an interpretation the Supreme Court forbids. *See TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) (statutory provisions must be interpreted so that none are rendered superfluous). Moreover, the INA expressly provides that asylum applicants are not deemed unlawfully present during the pendency of a bona fide asylum application. *See* 8 U.S.C. § 1182(a)(9)(B)(i)(I)-(II). Because Petitioner has maintained a pending asylum application since filing with USCIS, he has not accrued unlawful presence, and he remains in the United States with the authorization provided by Congress on Section 1158, DHS's continued detention of Petitioner is unreasonable in violation of the Fourth Amendment.

II. Jurisdiction Exists Because Determining the Extent of DHS's Authority to Detain the Individual is the Jurisdictional Inquiry

Respondents claims that 8 U.S.C. §§ 1252(e)(3), 1252(g), and 1252(b)(9) are irrelevant concerning the Constitutional violations brought by Petitioner.

a. Section 1252(e)(3) Does Not Apply Because Petitioner Challenges an Unlawful Arrest, Not the Validity of Expedited Removal Procedures or Nationwide Practices

Section 1252(e)(3) pertains to the sole jurisdiction given to the U.S. District Court for the District of Columbia to review determinations under 8 U.S.C. § 1225(b). 8 U.S.C. § 1252(e)(3). Section 1252(b) concerns the inspection, detention, and removal of certain aliens. *See Jennings v. Rodriguez*, 583 U.S. 281, 287-88 (2018). Aliens covered by §1225(b)(1) are normally ordered removed “without further hearing or review” pursuant to an expedited removal process. §1225(b)(1)(A)(i). *Id.* at 287. Aliens who are instead covered by §1225(b)(2) are detained pursuant to a different process. Those aliens “shall be detained for a [removal] proceeding” if an immigration officer “determines that [they are] not clearly and beyond a doubt entitled to be admitted” into the country. §1225(b)(2)(A). *Id.* at 288.

The instant action focuses on the lack of circumstances present to justify an immigration stop. As established by the Supreme Court, federal agents must consider within an array of factors that give rise to reasonable suspicion. *See United States v. Brignoni-Ponce*, 422 U. S. at 873, 884-885 (1975); *Noem v. Perdomo*, 222 L.Ed.2d 1213, 1216 (U.S. 2025). Petitioner references to nationwide practices, *see* (ECF No. 1 at 6-10), as evidence of the racial animated policies of immigration agents during the administration

of President Trump lead by the Secretary of DHS Kristi Noem as they apply to Petitioner's specific instance. The instant action is not focused on the review of nationwide practices, but rather of the specific constitutional violation suffered by the Petitioner.

b. Section 1252(g) Does Not Bar Review Because Petitioner Challenges Ultra Vires Conduct, Not Discretionary Removal Decisions

Petitioner's claim is not barred from review by 8 U.S.C. § 1252(g) as Petitioner does not challenge the Respondent's decision to commence removal proceedings against him, adjudicate cases, or execute removal order. "While [Section 1252(g)] bars courts from reviewing certain exercises of discretion by the attorney general, it does not proscribe substantive review of the underlying legal bases for those discretionary decisions and actions." *Madu v. U.S. Atty. Gen.*, 470 F.3d 1362, 1368 (11th Cir. 2006). The instant matter does not challenge the order of removal, or in this case, the order of voluntary departure. Petitioner challenges through a petition of habeas corpus the Constitutional violations committed by the federal agency when they stopped him without any reasonable suspicion and whether they had probable cause to detain him after the unreasonable stop.

Accordingly, because Petitioner does not seek to challenge any discretionary decision identified in § 1252(g) but instead challenges the legal authority underlying his arrest and continued detention, this Court retains jurisdiction. The Supreme Court has repeatedly emphasized that § 1252(g) is narrow and does not bar review of constitutional claims that arise before or independent of the discretionary decision to initiate or execute removal

proceedings. *See Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999); *see also Madu*, 470 F.3d at 1368. Here, Petitioner's claims do not require the Court to second-guess DHS's prosecutorial discretion or EOIR's docketing choices. Rather, he asks the Court to determine whether the Government acted outside the scope of its lawful authority when it (1) conducted an unreasonable seizure in violation of the Fourth Amendment, and (2) detained an individual who was not subject to § 1225(b) and who remained lawfully present pursuant to a pending asylum application within USCIS's jurisdiction. These threshold constitutional and statutory questions fall squarely within the Court's habeas authority under 28 U.S.C. § 2241. Because the Court must first determine whether the Government acted *ultra vires* in arresting and detaining Petitioner at all, § 1252(g) poses no bar to review.

c. Section 1252(b)(9) ("The Zipper Clause") Is Inapplicable Because Petitioner's Fourth Amendment and Detention Claims Are Independent of Any Removal Proceeding

Similarly, this Court is not stripped of jurisdiction by the "zipper clause" of the INA, *see* 8 U.S.C. § 1252(b)(9), because Petitioner is "not asking for review of an order of removal;" he is not "challenging the decision to detain [him] in the first place or to seek removal;" and he is "not even challenging any part of the process by which [his] removability will be determined." *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018); *see also Madu*, 470 F.3d at 1365 (holding the INA did not divest the district court of jurisdiction over a § 2241 challenge to detention of the petitioner pending deportation).

Section 1252(b)(9) therefore poses no barrier to this Court’s jurisdiction because Petitioner’s claims fall squarely outside the scope of matters that Congress intended to channel into a petition for review. As the Supreme Court has made clear, § 1252(b)(9) does not bar claims that are independent of, or wholly collateral to, the removal process. *Jennings*, 583 U.S. at 294. Petitioner’s challenge is precisely that: he contests the legality of the initial stop and arrest, as well as the Government’s authority to detain him despite his lawful presence in the United States pursuant to a pending affirmative asylum application. These claims do not require the Court to examine the merits of any removal charge, the procedures governing removal, or the validity of any future removal order. Instead, Petitioner asserts a standalone constitutional and statutory challenge to the Government’s conduct prior to and separate from any removal proceedings. Such claims fall within the heartland of habeas jurisdiction under 28 U.S.C. § 2241 and are not “questions of law or fact arising from actions taken to remove an alien” within the meaning of § 1252(b)(9). *See Madu*, 470 F.3d at 1365–68. Because Petitioner seeks review only of the Government’s unlawful seizure and unlawful detention – not the removal process itself – § 1252(b)(9) does not divest this Court of jurisdiction.

d. No Review Is Barred Under §§ 1252(b)(9) or 1252(g) Because, as a Matter of Law, There Is No Valid Removal Action to “Zipper” or Shield – USCIS Possesses Exclusive Jurisdiction Over Petitioner’s Asylum Claim

Even assuming *arguendo* that §§ 1252(b)(9) or 1252(g) could apply to certain challenges arising during removal proceedings, those provisions have no application

here for a more fundamental reason: there is no lawful removal proceeding to which Petitioner's claims could attach. Under the Respondents' own regulations, exclusive initial jurisdiction over Petitioner's affirmative asylum application lies with the U.S. Citizenship and Immigration Services. *See* 8 C.F.R. § 208.2(a) (providing that USCIS shall have initial jurisdiction over any asylum application filed affirmatively, including derivative applicants); *see also* 8 U.S.C. § 1158 (establishing the framework for affirmative asylum adjudication).

Because Petitioner's asylum application filed as a rider under his mother's case remained pending with USCIS at all relevant times, DHS lacked authority to issue a Notice to Appear, and EOIR lacked jurisdiction to adjudicate any part of his asylum claim. *See* 8 C.F.R. § 208.2(a)-(b) (delineating exclusive USCIS jurisdiction unless and until an asylum officer refers the case to EOIR, which did not occur here). Without a valid referral, any NTA served on Petitioner was *ultra vires* and without legal effect.

Thus, because no lawful removal proceeding existed, there is no action "to commence proceedings," "to adjudicate a case," or "arising from actions to remove an alien" for purposes of § 1252(g) or § 1252(b)(9). The jurisdiction-stripping provisions apply only where the government has acted within its statutorily authorized removal powers. They do not shield agency actions that are void ab initio for lack of jurisdiction. *See Madu*, 470 F.3d at 1368 (courts retain jurisdiction to determine "whether the petitioner is being detained pursuant to a valid order"); *see also Jennings*, 583 U.S. at 294 (limiting § 1252(b)(9) to claims tied to a valid removal process).

Accordingly, because Respondents acted in contravention of their own regulations and without lawful authority to place Petitioner in removal proceedings at all, there is no valid removal action for §§ 1252(b)(9) or 1252(g) to preclude from review. The only proper forum with jurisdiction over Petitioner's asylum claim is USCIS, and any contrary action by DHS or EOIR is invalid as a matter of law.

III. Even if Assuming that Petitioner Detention was lawful, His Continued Detention Without Bond is Unlawful because Section 1226 Governs Interior Arrests like Petitioner's

On the merits, 1226 governs. Petitioner was arrested in the interior well over two years years after entry and placed in § 1229a proceedings. For nearly three decades the government's own laws and practice recognized that such individuals are detained, if at all, under 1226(a) with bond eligibility. *See* 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) ("present without admission will be eligible for bond and bond redetermination"). The Attorney General's recent case, *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), cannot rewrite Congress's mutually exclusive detention scheme, and it is not entitled to deference. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024) (holding that the APA that "agency interpretations of statutes – like agency interpretations of the Constitution – are not entitled to deference" and it "remains the responsibility of the court to decide whether the law means what the agency says") (internal citations omitted).

Even if § 1225 applied, due process requires an individualized hearing. Prolonged civil detention without a bond hearing offends the 5th Amendment's

guarantee of liberty unless narrowly tailored to flight risk or danger. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *United States v. Salerno*, 481 U.S. 739, 755 (1987). At a minimum, the constitution warrants ordering a prompt bond hearing with the government bearing the clear-and-convincing burden. *See, e.g., Demore v. Kim*, 538 U.S. 510, 532–33 (2003) (Kennedy, J., concurring).

Respondents’ problem is their reading is excessive and explains “seeking admission” out of § 1225(b)(2)(A), placing the statute into “any non-admitted person anywhere, anytime,” which violates the rule against surplusage and undoes Congress’s stage-specific scheme. *See TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001).

Thus, because Petitioner was arrested in the interior years after entry, placed in § 1229a proceedings, and indisputably falls within the class of noncitizens historically and statutorily governed by § 1226(a), Respondents’ attempt to shoehorn him into § 1225(b) is unlawful and must be rejected. Their reading collapses Congress’s carefully delineated, mutually exclusive detention scheme, renders “seeking admission” meaningless, and expands § 1225 far beyond its textual limits. Even assuming *arguendo* that § 1225 could apply, due process would nonetheless require a prompt, individualized bond hearing with the government bearing the clear-and-convincing burden. Because Petitioner is being detained under the wrong statutory provision, without the bond eligibility Congress guaranteed and without the procedural protections the Constitution requires, his ongoing detention is unlawful, and this Court must grant habeas relief.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court grant the writ of habeas corpus under 28 U.S.C. § 2241; declare that his arrest and continued detention were unlawful; order his immediate release from DHS custody; and hold that the Government lacks statutory authority to detain him under 8 U.S.C. § 1225(b). In the alternative, should any detention authority be found to exist, Petitioner requests that the Court order a prompt, individualized bond hearing before a neutral adjudicator at which the Government bears the burden of proof by clear and convincing evidence. Petitioner further asks for any and all additional relief the Court deems just and proper to remedy the constitutional and statutory violations demonstrated herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on December 5, 2025, I electronically filed the forgoing document with the Clerk of Court using PACER. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties, either via transmission of Notices of Electronic Filing generated by PACER or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

Respectfully submitted,

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