

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION

MIGUEL ZAMBRANO,

Petitioner,

v.

Case No.: 3:25-cv-1464-JEP-LLL

PAMELA JO BONDI, in her official capacity as Attorney General of the United States; KRISTI NOEM, in her official capacity as the Secretary of the Department of Homeland Security; GARRETT RIPA, in his official capacity as Acting Field Office Director, U.S. Immigration and Customs Enforcement, Miami Field Office,

Respondents.

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**RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS**

Respondents, Pamela Bondi, in her official capacity as Attorney General of the United States, Kristi Noem, in her official capacity as Secretary of Department of Homeland Security, and Garrett Ripa, in his official capacity as Acting Field Director, U.S. Immigration and Customs Enforcement (ICE), Miami Field Office (“Federal Respondents”), respond to Miguel Zambrano’s Petition for Writ of Habeas Corpus (Doc. 1). The Court lacks jurisdiction. Apart from that, Zambrano’s detention is lawful. So, the Court should deny the writ and dismiss this action.

**Background**

Zambrano is a 40-year-old native and citizen of Ecuador. Doc. 1, ¶ 4, at p 2. He last entered the United States at an unknown location on an unknown date.

On January 27, 2020, an immigration officer served him with a notice to appear (NTA) based on his presence in the United States without having been admitted or paroled. Exhibit 1 (Notice to Appear). Petitioner requested administrative closure of the removal proceedings, which DHS opposed, to pursue an I-601A waiver (Provisional Unlawful Presence Waiver) with USCIS. *See* Exhibit 2 (IJ Order re Administrative Closure). By order dated November 30, 2021, the immigration judge granted Petitioner's request and administratively closed the removal proceedings. Exhibit 2.

USCIS denied the I-601A waiver in February 2025. On June 27, 2025, DHS filed a motion to re-calendar the removal proceedings. Petitioner was detained on September 26, 2025. Exhibit 3 (I-830). On October 6, 2025, the IJ granted DHS motion to calendar the removal proceedings. On November 5, 2025, the immigration judge set a hearing for December 23, 2025. Exhibit 4 (Notice of Hearing dated Nov 5, 2025). Petitioner filed a Petition for Writ of Habeas Corpus on November 26, 2025. Doc. 1.

On December 3, 2025, an IJ conducted a custody redetermination hearing for Petitioner. Exhibit 5 (IJ Bond Order, Dec 3, 2025). The IJ denied the Petitioner's request for release under 8 U.S.C. §1226(a), concluding he had no authority to order release because Petitioner is an "applicant for admission" under 8 U.S.C. § 1225(a)(1) and, thus, is subject to detention under 8 U.S.C. § 1225(b)(2)(A). *Id.*

Petitioner reserved his right to file an appeal of that decision with the Board of Immigration Appeals (BIA) and has until January 2, 2026, to file such appeal.

At the hearing on December 23, 2025, the IJ granted the Petitioner's motion to continue, over DHS' opposition, to allow Petitioner more time to prepare and gather evidence for his hearing. Exhibit 6 (IJ Order re Motion to Continue). The individual hearing was reset for February 3, 2026. Exhibit 7 (Notice of Hearing dated Dec 23, 2025).

### **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). 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**

As explained, the Court lacks jurisdiction. Even if it disagrees, however, Zambrano's claims fail on the merits. Before getting to those matters, ICE must clarify its basis of detention. 28 U.S.C. § 2243.

#### **A. Habeas Return on Detention**

In a habeas case, the respondent "shall make a return certifying the true cause of the detention." *Id.* ICE is detaining Zambrano under the mandatory detention

provisions of 8 U.S.C. § 1225(b)(2). Zambrano 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 Zambrano.

## **B. Jurisdiction**

There is no need to get into the nuances of § 1225 and § 1226 since the Court lacks subject-matter jurisdiction over Zambrano’s claims. There are three reasons why.

### *1. Jurisdiction Stripping*

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

There is no jurisdiction to review “any cause or claim . . . arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders.” 8 U.S.C. § 1252(g); *Gupta v. McGahey*, 709 F.3d 1062, 1065 (11th Cir. 2013). 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). 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*, 709 F.3d at 1065.

The law is clear:

Securing an alien while awaiting a removal determination constitutes an action taken to commence proceedings.

*Id.*; 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. So, § 1252(g) strips the Court’s jurisdiction over habeas petitions challenging detention pending removal proceedings.

ICE is detaining Zambrano “while awaiting a removal determination.” *Gupta*, 709 F.3d at 1065. Under *Gupta*’s binding interpretation of § 1252(g), the Court plainly has no jurisdiction. *Id.* ICE decided to detain Petitioner as it pursues removal proceedings against Zambrano. And Congress specifically stripped the Court’s jurisdiction to review those discretionary decisions.

ICE recognizes the Court’s previous ruling not to apply *Gupta* where a petitioner’s NTA was served after petitioner was detained. *Brito Matom v. ICE*, No. 2:25-cv-648-JES-NPM, 2025 WL 2577424, at \*2 (M.D. Fla. Sept. 5, 2025). This case is different.

Zambrano received his NTA in 2020 (well before the current detention). Removal proceedings were administratively closed in November 2021 to allow Zambrano to pursue an I-601A waiver, or provisional forgiveness for being unlawfully present in the country, with USCIS. However, this waiver was denied in February 2025. In June 2025, DHS moved to re-calendar the removal proceedings before Zambrano was detained on September 26, 2025. Further, at Petitioner’s request, his hearing has been continued to February 3, 2026.

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.”). The Eleventh expressly reaffirmed this in several other decisions (both published and unpublished):

Because [plaintiff] 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*.

*Alvarez*, 818 F.3d at 1204; *see also Johnson*, 847 F. App’x at 802. The decisions and actions to detain Zambrano (under either § 1225 or § 1226) arise from the commencement of removal proceedings. The INA strips jurisdiction over that review. *Gupta*, 709 F.3d at 1065; 8 U.S.C. § 1252(g).

What’s more, “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). So, the only relief a habeas petitioner may receive is release. *DHS v. Thuraissigiam*, 591 U.S. 103, 119 (2020). Thus, this case is only about whether ICE can detain Zambrano pending removal proceedings. *Gupta* and its progeny hold the Court has no jurisdiction over such actions.

The Court also lacks jurisdiction on separate grounds.

2. *Zipper Clause*

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, Zambrano 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).

There is one final jurisdictional issue.

3. *Failure to Exhaust*

Zambrano has yet to exhaust his administrative remedies. In fact, he has until January 2, 2026, to pursue his claim before the BIA. The Court should not engage in concurrent appellate review on an IJ bond determination.

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 BIA. *Id.* § 1003.1(b)(7).

Zambrano sought a bond hearing—which the IJ held. This mooted Zambrano’s assertions related to receiving a bond hearing. *See Juarez Alfredo v. Warden, Glades Cnty. Detention Ctr.*, No. 2:25-cv-00610-SPC-KCD (Doc. 5) (M.D. Fla. Oct. 17, 2025). While the IJ ruled against him, Zambrano can appeal to the BIA. As shown, administrative remedies are still potentially available and under consideration.

To the extent that Zambrano implies futility in seeking review with the BIA, he is mistaken. *See McGee v. Warden, FDC Miami*, 487 F. App'x 516, 518 (11th Cir. 2012) (finding no jurisdiction on habeas petition where petitioner failed to exhaust remedies despite argument doing so would be futile). Futility is not a blank check to relieve a petitioner's duty to exhaust his remedies. Under exceptional circumstances, courts may excuse an exhaustion requirement. *See Sanchez v. Warden, FCC Coleman - Low*, No. 5:23-CV-79-WFJ-PRL, 2023 WL 4489472, at \*2 (M.D. Fla. July 12, 2023); *Faison v. Warden, FCC Coleman*, No. 5:23-CV-67-WFJ-PRL, 2023 WL 4489471 (M.D. Fla. July 12, 2023); *Vasquez v. Warden, FCC Coleman Low*, No. 5:22-CV-517-WFJ-PRL, 2023 WL 4157364, at \*2 (M.D. Fla. June 23, 2023). Yet there are no facts alleged to support that relief in this case.

#### 4. *Conclusion*

As explained, the Court lacks jurisdiction over this habeas action. Yet even if it disagrees, detention is still lawful.

#### **C. Merits**

At bottom, Zambrano alleges ICE's decision to detain him under § 1225 rather than § 1226 was inappropriate, deprived him of due process, and withheld a meaningful bond hearing. These claims fail as a matter of law because he is lawfully detained.

To interpret the relevant parts of the INA, courts first turn to the “plain meaning of the statute.” *Esquivel-Quintana v. Sessions*, 581 U.S. 385, 391 (2017). If the statutory text is clear, the analysis ends. *Bostock v. Clayton County, Ga.*, 590 U.S. 644, 674 (2020).

The statutory scheme 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). Second, 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 Zambrano under § 1225(b)(2). The Parties do not dispute Petitioner entered the United States illegally and without any authorization. Zambrano’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).

Zambrano argues § 1225(b)(2) does not apply to aliens not detained near the border or who resided in the United States for an extended period of time. But nothing in the statutory language supports this conclusion. He contends an “applicant for admission” means an “arriving alien.” (Doc. 1 at 6-9). 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 statute 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. § 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.* Zambrano’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.

Zambrano contends his detention under § 1225 is improper and his detention should be under § 1226. But Zambrano 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 Zambrano demonstrate he is an applicant for admission under § 1225(b)(2).

Zambrano illegally entered the United States an unknown date and location. He admittedly has no permission or status to remain in this country. So, it's undisputed Zambrano has not been admitted to the United States.

Due to Zambrano's unlawful immigration status, ICE now pursues removal proceedings. Zambrano has not stipulated that he is removable; nor has he indicated he will not contest removal. At any point, Zambrano 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. Everything suggests Zambrano will not agree to leave.

Yet he has no status and was never admitted to the United States. Put different, Zambrano must be an applicant for admission if he wants to stay here. *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 Zambrano 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)). Zambrano 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 narrowly as Zambrano argues, then there would be no need to pass the Laken Riley Act. 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 Zambrano. ICE is pursuing full removal proceedings under § 1229a—not § 1225 or § 1226. Hence, when ICE detained Zambrano 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 Zambrano under § 1225(b)(2).

As explained, Zambrano'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: January 3, 2026

Respectfully submitted,

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