UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 25-CV-25367-BB

DEIVI SAMUEL LOZANO-ANAYA,

Petitioner,

v.

GARRET J. RIPA, FIELD OFFICE DIRECTOR, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, MIAMI FIELD OFFICE

Respondents.

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RESPONDENT'S RETURN TO WRIT OF HABEAS CORPUS

Garrett J. Ripa, Field Office Director, U.S. Customs and Immigration Enforcement ("ICE"), Miami Field Office ("Respondent"), through the undersigned counsel, maintains that Deivi Samuel Lozano-Anaya ("Petitioner") Emergency Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 ("Petition") (ECF No. 1) should be denied. First, the Court lacks jurisdiction because the Petition was not filed in the district of confinement. Petitioner is detained in the Florida Soft-Sided Facility-South ("FSSFS"), which is in the Middle District of Florida. Second, Petitioner's alleged civil rights violations are not proper in a habeas petition under § 2241. Lastly, Petitioner's Notice to Appear ("NTA") was properly cancelled in lieu of voluntary departure under § 240.25(a)-(b).

I. BACKGROUND

Petitioner is a native and citizen of Colombia. *See* (Exhibit A, NTA at 1). He was encountered by U.S. Customs and Border Protection in 2021 at or near Yuma, Arizona and charged

with inadmissibility pursuant to Immigration and Nationality Act § 212(a)(6)(A)(i), 8 U.S.C. § 1182(a)(6)(A)(i) as an alien present without admission or parole. (*Id.* at 4).

Petitioner is an applicant for admission as described under 8 U.S.C. § 1225(a)(1). Section 1225(a)(1) states that "an alien present in the United States who has not been admitted . . . shall be deemed for purposes of this chapter an applicant for admission." Section 1225(a)(1). Petitioner was not admitted to the United States but instead entered without authorization. *See* (Exhibit A at 4). "Applicants for admission fall into one of two categories, those covered by §1225(b)(1) and those covered by §1225(b)(2)." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). "8 U.S.C.S. § 1225(b)(1) and (b)(2) mandate detention of applicants for admission until certain proceedings have concluded." *Jennings*, 583 at 285. Relevant here, Petitioner is detained under 8 U.S.C. § 1225(b)(2)(A). "Section 1225(b)(2) is broader. It serves as a catchall provision that applies to all applicants for admission not covered by §1225(b)(1)." *Jennings*, 583 at 287. Relevant here, Petitioner is detained under 8 U.S.C. § 1225(b)(2)(A).[1]

On November 7, 2025, a Border Patrol Agent arrested Petitioner during a joint operation with the Orlando Police Department at the Electric Daisy Carnival. *See* (Exhibit B, Declaration of Border Patrol Agent Van Der Lee, at 1-2). Thereafter, he was detained at the Orange County Jail and given an NTA, which he refused to sign. (*Id.* at 2); (Exhibit A, NTA at 1).

On November 14, 2025, he was transferred to ICE custody at FLSSFS where he is still currently detained. *See* (Exhibit C, Declaration of Acting Supervisory Detention and Deportation Officer Moreno, at ¶ 11).

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[1] Section 1225(b)(1), which is inapplicable to Petitioner, applies to "aliens initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation." *Jennings*, 583 U.S. at 287. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216, 217-19 (explaining what aliens are subject to mandatory detention under § 1225).

On November 15, 2025, the Department of Homeland Security granted Petitioner voluntary departure at government expense permitting Petitioner to leave on or before December 15, 2025. *See* (Exhibit B at ¶ 12). The Form I-210 was signed by Petitioner on November 16, 2025. *See* (Exhibit D, Voluntary Departure and Verification of Departure). In light of Petitioner's decision to depart the United States at the expense of DHS, his notice of removal was cancelled. *See* (Exhibit A at 1).

On November 18, 2025, Petitioner filed the Petition wherein he alleges several civil rights violations, such as that his arrest was the result violated equal protection because it was a result of racial profiling. *See* (ECF No. 1 at 4). He also claims he is detained without an NTA, and there are no pending removal proceedings. (*Id.* at 4).

Subsequently, the Court issued an Order to Show Cause preventing Petitioner's removal from the United States or the Southern District of Florida. *See* (ECF No. 4 at 2). As such, ICE has been unable to transfer Petitioner to permit him to voluntarily depart the United States, pending a decision from the Court. *See* (Exhibit C at ¶¶ 17-19).

I. ARGUMENT

A. The Petition should be denied for lack of jurisdiction, or in the alternative, transferred to the Middle District of Florida where Petitioner is detained.

Petitioner is detained at FSSFS, which is in Ochopee, Florida. *See* (ECF No. 1 at 2-3). Section 2441 allows "the [U.S.] Supreme Court, any justice thereof, the district courts and any circuit judge" to grant writs of habeas corpus "within their respective jurisdictions." 28 U.S.C. § 2441(a). The Supreme Court has interpreted the "within their respective jurisdiction language to mean that a Section 2441 petitioner challenging his present physical custody must file a petition for writ of habeas corpus in the district of confinement." *Rumsfeld v. Padilla*, 542 U.S. 426, 446-47 (2004); *Trump v. J.G.G.*, 145 S. Ct. 1003, 1006 (2025) (finding that that even for habeas

petitions filed by immigration detainees, "jurisdiction lies in only one district: the district of confinement.").

Courts have previously dismissed or transferred habeas petitions for lack of jurisdiction filed by immigration detainees located outside the Southern District of Florida. *See Lopez Lozano v. Ripa*, 25-cv-25366-ALTONAGA (S.D. Fla. Nov. 19, 2021) (Order). *See* (Exhibit E, Lopez Lozano Order) (transferring habeas petition to the Middle District of Florida where petitioner was arrested at a music festival and is now detained at FSSFS); *Zhang v. United States*, 21-cv-81382-ALTMAN, 2021 U.S. Dist. LEXIS 162725, at *2-3 (S.D. Fla. Aug. 25, 2021) (dismissing habeas petition for lack of jurisdiction where detainee was detained in Glades County Jail, in Glades County, Florida, because jurisdiction lies in the district of confinement); *Dolme v. Barr*, 20-cv-24106-ALTMAN, 2020 U.S. Dist. LEXIS 197596, at *2-3 (S.D. Fla. Oct. 21, 2020) (dismissing habeas petition for lack of jurisdiction where detainee was detained in Wakulla County Jail, in Wakulla County, in the Northern District of Florida, because jurisdiction lies in the district of confinement).

In this case, jurisdiction lies in the Middle District, which is the district of confinement. Ochopee, Florida, is served by Collier County, which lies in the Middle District of Florida. *See* 28 U.S.C. § 89(b).

B. Petitioner's alleged civil rights violations are not proper in a habeas petition under § 2241.

With respect to his arrest, Petitioner alleges several civil rights violations in his Petition, including, that he was improperly arrested under the Fourth Amendment, deprived of procedural and substantive due process under the Fifth Amendment, and that he was racially profiled. *See* (ECF No. 1 at 3-4).

These allegations are not properly brought forth in a habeas petition. The purpose of habeas relief "is not to redress civil injury, but to release the applicant from unlawful physical confinement." *Allen v. McCurry*, 449 U.S. 90, 104 (1980). In the above claims, Petitioner is not challenging his detention by ICE but rather the alleged unlawful conditions surrounding his arrest. Thus, those claims should be brought in a civil-rights action instead of a habeas petition. "Claims so far outside the "core" of habeas may not be pursued through habeas." *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 119 (2020); *See France v. Ripa*, Case No. 24-cv-24333-ALTMAN, 2025 WL 895168, 2025 U.S. Dist. LEXIS 82572, at *2 (S.D. Fla. Jan. 15. 2025) (finding that a civil-rights action, instead of a habeas petition, was the proper avenue for relief when petitioner alleged that his Eight Amendment rights were violated when ICE used excessive force.); *King v. Carlton*, Case No. 21-cv-21634-BLOOM, 2021 WL 2012371, 2021 U.S. Dist. LEXIS 95563, at *3 (S.D. Fla. May 19, 2021) (finding when a "Plaintiff alleges civil rights violations and seeks to challenge the conditions of his confinement, he should file a civil rights complaint pursuant to 42 U.S.C. § 1983" instead of a habeas petition under § 2241.). Therefore, those claims should be denied as they were improperly alleged in a habeas petition under § 2241.

C. Petitioner's NTA was properly cancelled in lieu of voluntary departure under § 240.25(a)-(b).

Petitioner is mistaken when he argues in the petition that he has been detained without notice, inasmuch as he was served with an NTA by CBP. *See* (ECF No. 1 at 4). While there is currently no active Notice to Appear filed with the Immigration Court, that is because Petitioner's Notice to Appear was properly cancelled on November 15, 2025, in exchange for his agreement to voluntarily depart the United States. Under § 1229c, DHS "may permit an alien voluntarily to depart the United States at the alien's own expense under this subsection, in lieu of being subject to proceedings." Section 1229c; § 240.25(a) ("The authority contained in section 240B(a) of the

Act to permit aliens to depart voluntarily from the United States may be exercised in lieu of being subject to proceedings.").

Further, § 240.25(b) gives discretion to Respondent on what conditions can be imposed in conjunction to the grant of voluntary departure, including "continued detention pending departure" and "removal under safeguards." Section 240.25(b). Analogously, 8 C.F.R. § 1240.26(b)(3)(i) authorizes an immigration judge who grants voluntary departure at the conclusion of a removal proceeding to "impose such conditions as he or she deems necessary to ensure the alien's timely departure." Section 1240.26(b)(3)(i). Therefore, Respondent properly exercised its discretion to detain Petitioner[2] pending his voluntary departure from the United States.

Based on the foregoing, Respondent requests the Court vacate the stay of removal and deny the Petition for lack of jurisdiction. In the alternative, the Court should vacate the stay of removal and transfer the Petition to the district of confinement, which is the Middle District of Florida.

Respectfully submitted,

JASON A. REDING QUIÑONES
UNITED STATES ATTORNEY

Natalie Diaz
NATALIE DIAZ
ASSISTANT U.S. ATTORNEY
Florida Bar No. 85834
E-mail: Natalie.Diaz@usdoj.gov
99 N.E. 4th Street, Suite 300
Miami, Florida 33132

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[2] Importantly, as explained above, his detention is lawful because Petitioner is subject to mandatory detention under § 1225(b)(2)(A). *See Matter of Yajure Hurtado*, 29 I&N Dec. at 217-19 (BIA 2025) (clarifying that aliens who entered the United States without inspection, such as Plaintiff, are considered applicants for admission, and when they are not subject to mandatory detention under 8 U.S.C. § 1225(b)(1)(A), they fall under the "catchall" mandatory detention provision of 8 U.S.C. § 1225(b)(2)(A)).

Telephone: (305) 961-9306

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the Respondents' Return to Habeas Corpus was mailed to Petitioner at the address listed below on November 24, 2025.

Deivi Samuel Lozano-Anaya
[redacted]
Florida Soft Side South
54575 TAMIAMI TRL E
Ochopee, FL 34141

Natalie Diaz
NATALIE DIAZ
Assistant U.S. Attorney