UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

LUIS ADRIAN ALVAREZ PILAY,
ICE FACILITY: FLORIDA SOFT
SIDE SOUTH. BY AND THROUGH
HIS NEXT FRIEND ANTONIA
PILAY,

Petitioner,

Case No. 2:25-cv-01120-KCD-NPM

v.

UNITED STATES IMMIGRATION
AND CUSTOMS ENFORCEMENT,

Respondents.
_____/

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Antonia Pilay purports to bring a petition for writ of habeas corpus as a next friend on behalf of her adult son Luis Pilay. Antonia challenges Luis's detention and conditions of confinement under the Fifth Amendment of the U.S. Constitution. The petition should be denied for several reasons. First, this Court lacks jurisdiction to review ICE's decision to detain Luis while he is awaiting a removal determination. Second, Antonia cannot bring this case as a next friend to Luis, as he is not a minor. Third, Antonia is unrepresented and cannot bring a pro se action on behalf of a third party. Fourth, Luis's detention is lawful. Fifth, release is not a remedy for a petition challenging conditions of confinement

FACTS

Luis Pilay is a citizen of Ecuador who entered the United States without inspection on March 31, 2024. (Composite Exhibit, Ex. A at 1.) He was apprehended by a Border Patrol Agent in the Rio Grande Valley, Texas Border Patrol Sector and processed for expedited removal. (Composite Exhibit, Ex. A at 2.) Luis was detained by ICE after being encountered again on November 7, 2025. *Id.* at 5.

On November 24, 2025, Luis Pilay's mother Antonia Pilay filed a petition for writ of habeas corpus as a next friend of Luis arguing his detention violates the Fifth Amendment of the U.S. Constitution. (Petition, Doc. 1.) On December 1, 2024, Southern District of Florida U.S. District Judge Melissa Damian transferred the case to this Court due to Luis's detention at Florida Soft Side South in the Middle District of Florida. (Doc. 3.)

On December 12, 2025, Luis was interviewed by an USCIS Asylum Officer who determined Luis does not have a credible fear of persecution. (Composite Exhibit, Ex. A at 7.) An Immigration Judge affirmed that determination on December 19, 2025. *Id.* at 47. Luis is currently located at the South Texas Detention Facility. (Detainee Locator, Ex. B.)

ARGUMENT

I. This Court lacks subject-matter jurisdiction to review the 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 (AADC)*, 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.

Luis Pilay 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 Pilay related to removal. Congress specifically stripped jurisdiction to review that discretionary decision; therefore, the Court lacks subject-matter jurisdiction over this case.

II. Antonia Pilay cannot bring a case on behalf of her adult son.

Federal Rule of Civil Procedure 17(c)(2) provides that "[a] minor or an incompetent person who does not have a duly appointed representative may sue by a next friend or by a guardian ad litem." Here, Antonia fails to meet the requirements of Rule 17(c)(2), as Luis is not a minor. Indeed, Antonia candidly purports to "file this Petition for Writ of Habeas Corpus on behalf of *my adult son*, Luis Adrian . . . ."

(Petition, Doc. 1 at 1) (emphasis added). Because the Federal Rules of Civil Procedure do not authorize Antonia to bring this case on behalf of her adult child, her petition must be dismissed.

III. Antonia Pilay cannot bring a pro se action on behalf of a third party.

Even if Antonia were permitted to file a petition on behalf of her son as a next friend, she cannot do so pro se. In *Devine v. Indian River Cnty. Sch. Bd.*, the Eleventh Circuit held that "parents who are not attorneys may not bring a pro se action on their child's behalf . . . ." 121 F.3d 576, 582 (11th Cir. 1997), *overruled on other grounds by Winkelman v. Parma City Sch. Dist.*, 550 U.S. 516 (2007). Following *Devine*, the Eleventh Circuit has recognized under its prior-panel-precedent rule that the court is "bound by our holding in *Devine*: a parent cannot represent a child *pro se*." *Warner v. Sch. Bd. of Hillsborough Cnty., Fla.*, No. 23-12408, 2024 WL 2053698, at *2 (11th Cir. May 8, 2024). Antonia therefore cannot bring this action as unrepresented litigant. *See also Marcia Turner v. Neptune Towing & Recovery, Inc.*, No. 8:09-CV-I071-T-27AEP, 2011 WL 2981786, at *2 (M.D. Fla. July 22, 2011) ("Under Rule 17(c), a representative does not have the right to appear on behalf of a minor or an incompetent person unless that representative is represented by counsel.").

IV. Luis Pilay'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.

The petition 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).

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V. Release from custody is not available in an action alleging unconstitutional conditions of confinement.

"[R]elease from imprisonment is not an available remedy for a conditions-of-confinement claim." *Vaz v. Skinner*, 634 F. App'x 778, 781 (11th Cir. 2015 (per curiam). Indeed, in *Gomez v. United States*, the Eleventh Circuit stated that if conditions of confinement violate a prisoner's constitutional rights, "[t]he appropriate Eleventh Circuit relief . . . is to require the discontinuance of any improper practices, or to require correction of any condition causing cruel and unusual punishment." *Gomez v. United States*, 899 F.2d 1124, 1126-27 (11th Cir. 1990).

The Eleventh Circuit has further indicated that its holding from *Gomez* applies to civil detainees in ICE custody. *See Vaz*, 634 F. App'x at 781-82 (noting that a detained alien could not obtain release based on his conditions of confinement claim). This district has further refused to permit any exception for civil detainees in ICE custody. As stated in *St. Louis v. Martin*, "[R]elease under § 2241 unavailing when the alleged constitutional violation is predicated upon the conditions of a petitioner's confinement." No. 220CV349FTM60NPM, 2020 WL 3490179, at *7 (M.D. Fla. June 26, 2020). Because Eleventh Circuit precedent precludes the Court from ordering release from custody, the petition should be denied.

CONCLUSION

Antonia Pilay's Petition for Writ of Habeas Corpus should be denied.

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DATED this 23rd day of December, 2025.

Respectfully submitted,

GREGORY W. KEHOE
United States Attorney

By: */s/Chad C. Spraker*

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 23, 2025, I sent the foregoing document via U.S. mail to:

Antonia Alexandra Pilay Macias
[redacted]

/s/ Chad C. Spraker
Assistant United States Attorney