UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 25-25859-CIV-WILLIAMS

MANAURY OLIVAREZ GEORGE,

Petitioner,

v.

WARDEN OF KROME; TODD M. LYONS, Acting Director, Immigration And Customs Enforcement, *et al.*,

Respondents.
_____/

RESPONSE TO ORDER TO SHOW CAUSE

Respondents[1], by and through the undersigned Assistant United States Attorney, and in compliance with the Court's Order to Show Cause entered on December 15, 2025 [D.E. 7], provide this Response to Petitioner, Manaury Olivarez George's Amended Petition for Writ of Habeas Corpus ("Petition"), filed on December 15, 2025 [D.E. 5], and for the reasons set forth below, request the Court dismiss the Amended Petition.

FACTUAL BACKGROUND

The Petitioner, Manaury Olivarez George (Petitioner), is a native and citizen of the Dominican Republic. *See* Exh. A, Form I-213, Record of Deportable/Inadmissible Alien, (Form I-

[1] A writ of habeas corpus must "be directed to the person having custody of the person detained." *See* 28 U.S.C. § 2243. In cases involving present physical confinement, the Supreme Court reaffirmed in *Rumsfield v. Padilla*, 542 U.S. 426 (2004), that "the immediate custodian, not a supervisory official who exercises legal control, is the proper respondent." *Id.* at 439. As Petitioner is detained at Krome Detention Center ("Krome") at the time of filing the Petition, a detention facility in Miami-Dade County, Florida, his immediate custodian would be Assistant Field Office Director (AFOD) Charles Parra. Accordingly, the proper Respondent in the instant case is AFOD Parra, in his official capacity, and all other Respondents should be dismissed.

213) dated June 29, 2025. On or about September 12, 2019, Petitioner was accorded conditional permanent residence in the United States by the U.S. Citizenship and Immigration Service (USCIS). On August 16, 2021, Petitioner applied to have the conditions on his residence status removed by filing the Form I-751, Petition to Remove Conditions on Residence, with USCIS. The petition is still pending a decision by USCIS. *See* Exh. B, Declaration of Deportation Officer Carmelo Mastroeli (DO Mastroeli), ¶ 7.

On January 19, 2024, Petitioner was convicted at the Hall Superior Court in the State of Georgia, of the following offenses: (Count 1) simple battery, family violence in violation of Georgia Criminal Code § 16-5-23, (Count 2) simple battery, family violence in violation of Georgia Criminal Code § 16-5-23; (Count 3) simple battery, family violence in violation of Georgia Criminal Code § 16-5-23; (Count 4) criminal trespass in violation of Georgia Criminal Code § 16-7-21; and (Count 5) hindering an emergency telephone call in violation of Georgia Criminal Code § 16-10-24.3. Petitioner was sentenced to confinement of eight months on count one and twelve months of probation to run concurrently as to counts two through five. (*State of Georgia v. Manaury Olivarez-George*, Hall County, GA, Case No. 2022-CR-1283). *See* Exh. C, Georgia Criminal Record.

Petitioner traveled abroad and, on or about June 28, 2025, Petitioner presented to U.S. Customs and Border Protection (CBP) at a port of entry as a returning conditional permanent resident at the Luis Munoz Marin International Airport in San Juan, Puerto Rico. *See* Exh. A, Form I-213, June 29, 2025. CBP determined that Petitioner was an applicant for admission and inadmissible to the United States for having been convicted of a crime involving n.oral turpitude. *Id.* CBP issued a Form I-200, Warrant of Arrest, and Petitioner was taken into the custody of the U.S. Immigration and Customs Enforcement (ICE), Enforcement and Removal (ERO) on June 29,

2025, in San Juan, Puerto Rico. *See* Exh. D, Detention History, and Exh. E, Form I-200, Warrant of Arrest. On June 29, 2025, CBP initiated removal proceedings against Petitioner, pursuant to 8 U.S.C. § 1229a. *See* Exh. F, Notice to Appear (NTA), dated June 29, 2025. The NTA charged Petitioner with being removable under 8 U.S.C. § 1182(a)(2)(A)(i)(I), as an alien who has been convicted of, or who admits committing acts which constitute, the essential elements of a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime. *Id.* Petitioner was transferred to the Florida Soft-Sided Facility South located in Ochopee, Florida, on July 10, 2025. *See* Exh. D, Detention History.

On July 10, 2025, the San Juan Immigration Court determined Petitioner's request for bond was moot since Petitioner was transferred to the jurisdiction of the Krome Immigration Court. *See* Exh. G, Order of the Immigration Judge, August 11, 2025. On July 22, 2025, a custody hearing was held at the Krome Immigration Court. On the same date, DHS uploaded the NTA electronically to the Krome Immigration Court. *See* Exh. F, NTA. At the custody hearing, Petitioner, through counsel, argued that Petitioner's Georgia conviction was not a crime involving moral turpitude. The immigration judge did not make a custody determination and instead issued a "no action" order on that bond request and ordered the parties to brief the issue. *See* Exh. H, Order of the Immigration Judge dated July 22, 2025.

On July 27, 2025, Petitioner, through counsel, filed a motion to terminate the removal proceedings,[2] again arguing that Petitioner's Georgia conviction was not a crime involving moral turpitude. On August 5, 2025, the immigration judge held a master calendar and custody hearing. *See* Exh. I, Notice of Hearing for August 5, 2025. The immigration judge issued a "no action" bond

---

[2] Custody and Bond proceedings are separate and apart from removal proceedings. *See* 8 C.F.R. § 1003.19(d).

order in order to resolve Petitioner's motion to terminate. *See* Exh. B, Declaration of DO Mastroeli at 17.

On August 29, 2025, DHS filed an opposition to Petitioner's motion to terminate. On September 29, 2025, the immigration judge granted Petitioner's motion to terminate, and removal proceedings were terminated. *See* Exh. J, Order of the Immigration Judge dated September 29, 2025. DHS timely appealed the termination order to the Board of Immigration Appeals (BIA) on October 29, 2025. *See* Exh K, Receipt Notice from the BIA. The appeal remains pending.

Petitioner remains in ICE ERO's custody at the Krome North Service Processing Center., pursuant to section 235(b)(2)(A) of the INA, as conditional permanent resident who is seeking admission to enter into the United States as defined under 101(a)(13)(C)(v) of the INA. *See* Exh. D, Detention History; Exh. B Declaration of DO Mastroeli, ¶ 22.

ARGUMENT

I. PETITIONER IS LAWFULLY DETAINED

A. Petitioner is lawfully detained as an Applicant for Admission Because He is a Returning Lawful Permanent Resident Convicted of Criminal Offenses under 8 U.S.C. § 1182(a)(2).

Petitioner was convicted of a crime involving moral turpitude and thus is categorized as an alien seeking admission under 8 U.S.C. § 101(a)(13)(C)(v) (providing that a lawful permanent resident shall not be regarding as seeking admission *unless* the alien "has committed an offense identified in section 1182 of this title unless the alien has been granted relief under section 1182(h) or 1229b(a)"). See 8 U.S.C. § 1182(a)(2)(A)(i) (providing that an alien convicted of, or who admits having committed, a crime involving moral turpitude is inadmissible); *see also Jallim v. U.S. Att'y Gen.*, 712 F. App'x 970, 972 (11th Cir. 2017) ("[L]awful permanent residents who commit certain

crimes before departing the United States, such as a crime involving moral turpitude, are regarded as seeking admission and can be charged with inadmissibility.").

Aliens like Petitioner, who are seeking admission into the United States at a port-of-entry and are inadmissible under § 1182(a)(2)(A)(i), are subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A) because they are applicants for admission into the United States. *Ferreras v. Ashcroft*, 160 F. Supp. 2d 617, 622–23 (S.D.N.Y. 2001) (denying habeas and confirming detention under § 1225(b) of a re-entering lawful permanent resident who was inadmissible under § 1182(a)(2)(A)); *see generally Jennings v. Rodriguez*, 583 U.S. 281, 287, 138 S. Ct. 830, 837, 200 L. Ed. 2d 122 (2018). In *Jennings*, the Supreme Court held that the mandatory detention under § 1225(b)(2) is not subject to an "implicit limit on time" as Petitioner suggests. *Id.* at 297-98. Rather, the Court held that "[t]he plain meaning… is that detention must continue until… removal proceedings have concluded." *Id.* at 298. Here, removal proceedings have not concluded, as the immigration judge's order is not final while an appeal to the BIA is pending. *See* 8 C.F.R. Section 1003.39. As Petitioner is still in removal proceedings, and there is a "set period of time" for that detention (conclusion of removal proceedings), Petitioner's detention is lawful, and his Amended Petition should be dismissed. *See Jennings*, 583 U.S. at 299 (2018).

B. Applicants for Admission May Only Be Released from Detention on an 8 U.S.C. § 1182(d)(5) Parole.

Applicants for admission may only be released from detention if DHS invokes its discretionary parole authority under 8 U.S.C. § 1182(d)(5). DHS has the exclusive authority to temporarily release on parole "any alien applying for admission to the United States" on a "case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5); *see* 8 C.F.R. § 212.5(b). In *Jennings*, the Supreme Court placed significance on the fact that 8 U.S.C. § 1182(d)(5) is the specific provision that authorizes release from detention under 8 U.S.C.

§ 1225(b), at DHS's discretion. *Jennings*, 583 U.S. at 300. Specifically, the Supreme Court emphasized that "[r]egardless of which of those two sections authorizes . . . detention, [8 U.S.C. § 1225(b)(1) or (b)(2)(A)], applicants for admission may be temporarily released on parole . . . ." *Id.* at 288.

Parole, like an admission, is a factual occurrence. *See Hing Sum*, 602 F.3d at 1098; *Matter of Roque-Izada*, 29 I&N Dec. 106 (BIA 2025) (treating whether an alien was paroled as a question of fact). The parole authority under 8 U.S.C. § 1182(d)(5) is "delegated solely to the Secretary of Homeland Security." *Matter of Castillo-Padilla*, 25 I&N Dec. 257, 261 (BIA 2010); *see* 8 C.F.R. § 212.5(a). Thus, neither the BIA nor immigration judges have authority to parole an alien into the United States under 8 U.S.C. § 1182(d)(5). *Castillo-Padilla*, 25 I&N Dec. at 261; *see also Matter of Arrabally and Yerrabelly*, 25 I&N Dec. 771, 777 n.5 (BIA 2002) (indicating that "parole authority [under 8 U.S.C. § 1182(d)(5)] is now exercised exclusively by the DHS" and "reference to the Attorney General in [8 U.S.C. § 1182(d)(5)] is thus deemed to refer to the Secretary of Homeland Security"); *Matter of Singh*, 21 I&N Dec. 427, 434 (BIA 1996) (providing that "neither the [IJ] nor th[e] Board has jurisdiction to exercise parole power").

II. PETITIONER FAILED TO EXHAUST ADMINISTRATIVE REMEDIES

The Court should dismiss the petition for writ of habeas corpus for lack of jurisdiction as Petitioner has failed to exhaust administrative remedies. A habeas petitioner must normally exhaust administrative remedies before seeking federal court intervention. The exhaustion requirement "aims to provide the agency with a chance to correct its own errors, 'protect[] the authority of administrative agencies,' and otherwise conserve judicial resources by 'limiting interference in agency affairs, developing the factual record to make judicial review more efficient, and resolving

issues to render judicial review unnecessary." *Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003) (Sotomayor, J.).

Here, Petitioner has not availed himself of the administrative remedies available to him. Immigration Judges do not have the authority in bond proceedings to determine whether an alien is properly included in a class of applicants for admission. "It is well established . . . that the Immigration Judges only have the authority to consider matters that are delegated to them by the Attorney General and the [INA]." *Matter of A-W-*, 25 I&N Dec. 45, 46 (BIA 2009). "In the context of custody proceedings, an Immigration Judge's authority to redetermine conditions of custody is set forth in 8 C.F.R. § 1236.1(d) . . . ." *Id.* at 46. The regulation clearly states that "the [I]mmigration [J]udge is authorized to exercise the authority in section 236 of the [INA]." 8 C.F.R. § 1236.1(d); *see id.* § 1003.19(a) (authorizing Immigration Judges to review "[c]ustody and bond determinations made by [DHS] pursuant to 8 C.F.R. part 1236"). However,

> an [I]mmigration [J]udge may not redetermine conditions of custody imposed by [DHS] with respect to the following classes of aliens: (A) Aliens in exclusion proceedings; (B) ***Arriving aliens in removal proceedings***, including aliens paroled after arrival pursuant to [INA § 212(d)(5)]; (C) Aliens described in [INA § 237(a)(4)]; (D) Aliens in removal proceedings subject to [INA § 236(c)(1)]; (E) Aliens in deportation proceedings subject to [former INA § 242(a)(2)].

Id. § 1003.19(h)(2)(i)(A)-(E) (emphasis added). While the classes of aliens referred to in paragraphs (C), (D), and (E) of 8 C.F.R. § 1003.19(h)(2)(i) fall outside the Immigration Judge's custody authority, the regulation confers upon Immigration Judges the authority to consider whether the alien is "properly included" in any of these classes. *Id.* § 1003.19(h)(2)(ii); *see generally, Matter of Joseph*, 22 I&N Dec. 660 (BIA 1999). Notably absent from the classes of aliens who are eligible for this limited determination are aliens described in paragraphs (A) and (B)—aliens in exclusion proceedings and arriving aliens in removal proceedings. 8 C.F.R. §

1003.19(h)(2)(ii) (providing that "*with respect to paragraphs (h)(2)(i)(C), (D), and (E) of this section*, nothing in this paragraph shall be construed as prohibiting an alien from seeking a determination by an Immigration Judge that the alien is not properly included within any of those paragraphs" (emphasis added)).

That is not to say that an alien is left without recourse. Bond proceedings are simply not the appropriate forum to determine whether an alien is properly included in a class of applicants for admission. Rather, that determination is left for consideration in removal proceedings. *See* INA § 240(c)(2)(A)-(B) (providing it is the alien's burden of establishing "if the alien is an applicant for admission, that the alien is clearly and beyond doubt entitled to be admitted and is not inadmissible under section 212" or "by clear and convincing evidence, that the alien is lawfully present in the United States pursuant to a prior admission")." As mentioned previously, the removal proceedings in this case are still ongoing due to the pending BIA appeal, there is no final order of removal. As such, the question of Petitioner's status is not ripe for review and this Court lacks jurisdiction to review the same. As such, the Amended Petition should be denied.

III. § 1252(g) PRECLUDES THIS COURT'S REVIEW OF PETITIONER'S DETENTION

In *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471 (1999), the Supreme Court observed § 1252(g) applies to "three discrete actions that the Attorney General may take: her 'decision or action' to **commence** proceedings, **adjudicate** cases, or **execute** removal orders." *Id.* at 482 (emphasis in original). As to its purpose, the Court found that § 1252(g) "performs the function of categorically excluding from non-final order judicial review ... certain specified decision and actions of the INS." *Id.* at 483. In other words, Petitioner can only obtain judicial review through a petition for review filed with the Court of Appeals with jurisdiction over the state in which his removal proceeding was conducted.

This Court lacks subject matter jurisdiction to review Petitioner's claims as the relevant court of appeals has exclusive jurisdiction over such matters on a petition for review from the BIA. *See* 8 U.S.C. § 1252(a)(5); 8 U.S.C. § 1252(b)(9). "Without subject matter jurisdiction, a court has no power but to decide anything except that it lacks jurisdiction." *United States v. Salmona*, 810 F.3d 806, 810 (11th Cir. 2016).

Further, this case is clearly a "cause or claim" on behalf of an alien "arising from the decision or action by the [DHS] to commence proceedings [and] adjudicate cases," in that detention is a necessary part of commencing proceedings and adjudicating cases. *See Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016) ("By its plain terms, [§ 1252(g)] bars us from questioning ICE's discretionary decisions to commence removal" and also to review "ICE's decision to take [plaintiff] into custody and to detain him during removal proceedings"). As such, this Court lacks jurisdiction and the Amended Petition should be denied.

Respectfully Submitted,

JASON A. READING QUIÑONES
UNITED STATES ATTORNEY

By: */s/ Kelsi R. Romero*
KELSI R. ROMERO
Assistant U.S. Attorney
United States Attorney's Office
Southern District of Florida
Special Bar No. A5502758
500 East Broward Blvd, Suite 700
Fort Lauderdale, FL 33394
kelsi.romero@usdoj.gov