

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FT. MYERS DIVISION**

ARMANDO CLEMENTE ROSABAL
BLANCO,
Petitioner,

v.

PAMELA BONDI, ET AL.,
Respondents.

Case No. 2:26-cv-51-SPC-DNF

**RESPONDENTS' OPPOSITION TO PETITION FOR WRIT OF
HABEAS CORPUS UNDER 28 U.S.C. § 2241**

Petitioner Armando Clemente Rosabal Blanco ("Petitioner") seeks the grant of a petition for writ of habeas corpus ("Petition") pursuant to 28 U.S.C. § 2241, challenging the lawfulness of his detention by Immigration and Customs Enforcement ("ICE") and seeking his immediate release from custody. Petitioner also brings Due Process, regulatory, and Administrative Procedure Act ("APA") claims challenging his detention. His petition must be denied.

Petitioner is currently detained under 8 U.S.C. § 1225(b)(1) and is therefore ineligible for release under 8 U.S.C. § 1226(a). He seeks to circumvent the detention statute under which he is rightfully detained to secure a custody redetermination hearing that he is not entitled to. Petitioner argues that, contrary to the plain language of 8 U.S.C. § 1225(b)(1), the authority for his detention is better understood to arise

under 8 U.S.C. § 1226(a), a detention statute that allows for release on bond or conditional parole. That argument fails to square with the fact that he falls neatly and precisely within the statutory definition of aliens subject to detention pursuant to 8 U.S.C. § 1225(b)(1).¹

BACKGROUND

Petitioner is an alien “applicant for admission.” He is a native and citizen of Cuba who unlawfully entered the United States at or near the San Ysidro, California Port of Entry on or about August 17, 2022. Petition, ¶ 33; *see also* ECF No. 1-13; Form I-213, Record of Deportable/Inadmissible Alien at (attached as “Exhibit A”) at 2. At that time Petitioner was detained by U.S. immigration enforcement and issued Form I-862, Notice to Appear. ECF No. 1-13. Petitioner was then released from immigration custody. At Petitioner’s first master calendar hearing before the immigration court on October 8, 2025, the Department of Homeland Security moved to dismiss his immigration court proceedings. *See* ECF No. 1-10; Petition, ¶¶ 2-3, 39. Petitioner opposed dismissal however the Immigration Judge granted the Department’s motion. *Id.* Immediately thereafter Petitioner was taken into custody to be processed for expedited removal as it was determined that he is inadmissible as an applicant for

¹ The Warden is the only appropriate Respondent. 8 U.S.C. § 2243; *Rumsfeld v. Padilla*, 542 U.S. 426, 434-36 (2004); *Vandersnick v. Sec’y, Fla. Dep’t of Corr.*, No. 5:18-cv-603-SPC-PRL, 2021 WL 1020914, at *1 n.3 (M.D. Fla. Mar. 17, 2021). Any relief the Court awards should be fashioned to that within the power of the immediate custodian (i.e., the Warden) or ICE/DHS. *See, e.g., Mirando Bravo v. Noem*, No. 2:25-cv-1046-SPC-DNF, Doc. 8 at *3 (M.D. Fla. Dec. 5, 2025) (ordering ICE either to bring petitioner for a bond hearing or release by a specific date).

admission without valid immigration documents under 8 U.S.C. § 1182(a)(7)(a)(i)(I) who entered the United States. *See* Exhibit A at 2-3. Petitioner has filed an appeal with the Board of Immigration Appeals (“BIA”) challenging the dismissal of his immigration proceedings. *See* ECF No. 1-11. Respondents intend to remove Petitioner to Mexico but may not proceed with that plan until the pending appeal is resolved. *See* Notice of Removal (attached as “Exhibit B”).

On January 12, 2026, Petitioner filed the instant action in the U.S. District Court seeking habeas relief pursuant to the Immigration and Nationality Act (“INA”), Fifth Amendment Due Process Clause, APA, and bond regulations. *See* Petition. The following day, the Court issued an order instructing Respondents to respond to Petitioner’s habeas petition and show cause why it should not be granted. ECF No. 3. Respondents have until January 21, 2026 to comply. *Id.* In response to this Court’s order, ECF No. 3, and for the reasons set forth below, Respondents respectfully request that this Court dismiss Petitioner’s Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241.

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).

ARGUMENT

The Court lacks jurisdiction over this Petition. Even should the Court disagree Petitioner's claims fail on the merits. Before turning to the substantive arguments, Respondents must clarify the basis on which Petitioner is being detained.

I. Habeas Return on Detention

In a habeas case, the Respondent "shall make a return certifying the true cause of the detention." *Id.* The basis of detention offered is conclusive unless Petitioner proves, or the Court finds, it is not true. *Id.* § 2248. Respondent ICE is detaining Petitioner under the mandatory detention provisions of 8 U.S.C. § 1225(b)(1). While Petitioner is free to contend his detention under Section 1225 is unlawful, Section 1225(b)(1)—not Sections 1225(b)(2) or 1226(a)—is the certified basis on which ICE is detaining him. No evidence suggests otherwise.

II. Jurisdiction and Standing

A. *The Jurisdictional Bar at 8 U.S.C. § 1252(e)(3)*

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 INA divests this Court's jurisdiction to consider Petitioner's claims challenging the dismissal of his removal proceedings and decision to seek expedited removal under Section 1225(b)(1). 8 U.S.C. § 1252(a)(2)(A). This is

a specific type of jurisdiction-stripping applicable only to expedited removal.

Section 1252(e)(3) further limits judicial review of “determinations under section 1225(b) of this title and its implementation” to only in the District Court for the District of Columbia. 8 U.S.C. § 1252(e)(3). Paragraph (e)(3) further confines this limited review to (1) whether Section 1225(b) or an implementing regulation is constitutional or (2) whether a regulation or other written policy directive, guideline, or procedure implementing the section violates the law. *See* 8 U.S.C. § 1252(e)(3)(A)(i)-(ii); *see also M.M.V. v. Garland*, 1 F.4th 1100, 1109 (D.C. Cir. 2021). Unlike other provisions within Section 1252(e), Section 1252(e)(3) applies broadly to judicial review of Section 1225(b), not only determinations under section 1225(b)(1). Compare 8 U.S.C. § 1252(e)(1)(A), (e)(2), with 8 U.S.C. § 1252(e)(3)(A). *See Russello v. United States*, 464 U.S. 16, 23 (1983) (quoting *United States v. Wong Kim Bo*, 472 F.2d 720, 722 (5th Cir. 1972)) (“‘[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.’ . . . We refrain from concluding here that the differing language in the two subsections has the same meaning in each. We would not presume to ascribe this difference to a simple mistake in draftsmanship.”).

Put simply, courts cannot review the wisdom of these ICE determinations. For example, “In determining whether an alien has been ordered removed under section

1225(b)(1) of this title, the court's inquiry shall be limited to whether such an order in fact was issued and whether it relates to the petitioner." 8 U.S.C. § 1252(e)(5).

Congress continued:

There shall be no review of whether the alien is actually inadmissible or entitled to any relief from removal.

Id. Here, ICE has demonstrated its intent to process Petitioner for expedited removal.² Even if the Court could determine that he was entitled to relief from removal—which he isn't—it still lacks jurisdiction to do so. 8 U.S.C. § 1252(e)(5).

The Eleventh Circuit recognizes and enforces the jurisdictional limitations set out by this plain statutory language. *Javier Gonzalez v. U.S. Att'y General*, 844 F. App'x 129, 133 & n.2-3 (11th Cir. 2021). If an "argument attacks the validity of the underlying . . . expedited order of removal, we lack jurisdiction to consider it." *Id.* at 133. That is exactly the case here. There is no way to issue any relief here without reviewing the validity of expedited removal in Petitioner's case.

To make matters worse, granting relief requires the Court to make findings and conclusions on disputed issues regarding eligibility. For instance, expedited removal may be applied to an alien "who has not been admitted or paroled into the United

² Petitioner seemingly contends that ICE's failure to place him in expedited removal proceedings to date is improper. *See* Petition, ¶ 5. But ICE cannot initiate expedited removal proceedings until Petitioner's appeal of the dismissal of immigration proceedings is resolved. *See* ECF No. 1-11; *see also* 8 U.S.C. § 1229a(a)(3). As Respondent has indicated, Petitioner is properly subject to expedited removal proceedings and the government intends to process him as such as soon as the appellate barrier to doing so is lifted. *See* Exhibit B.

States, and who has not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of determination of inadmissibility.” 8 U.S.C. § 1225(b)(1)(A)(iii)(II); 8 C.F.R. §235.3(b)(ii). The Court would need to decide if Petitioner satisfied the immigration officer’s subjective belief that he was present for at least two years, action is it prohibited from taking. It would also need to determine the unclear factual and legal question whether Petitioner “has not been admitted or paroled.” *Id.* Not only is that phrase unclear—see *Doe v. Noem*, 152 F.4th 272 (1st Cir. 2025) (holding statute has diverging “plausible” readings)—the legal term of art “paroled” generally does not include conditional parole under an order of release like the one Petitioner previously had here. *E.g.*, *Rodriguez-Acurio v. Almodovar*, No. 2:25-cv-6065 (NJC), 2025 WL 3314420, at *16 (E.D.N.Y. Nov. 28, 2025); *Cruz-Miguel v. Holder*, 650 F.3d 189, 198 (2d Cir. 2011) (clarifying conditional parole under OREC is not “parole into the United States”). Leaving aside the many factual and legal questions the Court must resolve the INA specifically strips jurisdiction to make such calls.

B. The Jurisdictional Bar at 8 U.S.C. § 1252(g)

In immigration habeas cases related to removal proceedings—as here—the INA divests this Court’s jurisdiction to consider Petitioner’s claims challenging his detention pending removal. 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.*

Application of Section 1252(g) is limited “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, Section 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.

It is undisputed that ICE detained Petitioner to commence expedited removal proceedings. Petition, ¶¶ 2-3, 39; *see also* Ex. A at 3. And as soon as dismissal Petitioner challenges is upheld, ICE will proceed with expedited removal to Mexico. Ex. A; Ex. B. ICE is detaining Petitioner for the purpose of executing an expedited removal order. *Gupta*, 709 F.3d at 1065. Under *Gupta*’s binding interpretation of § 1252(g), the Court

plainly has no jurisdiction. *Id.* As the Eleventh Circuit made clear, what matters is whether the challenged conduct arose from decisions or actions to commence removal proceedings or execute removal orders. *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.”).

This jurisdiction has been considered in similar cases but reached a different outcome. *See e.g., Hernandez Lopez v. Hardin*, No. 2:25-cv-830-KCD-DNF, 2025 WL 3022245 (M.D. Fla. Oct. 29, 2025). However there, the core issue was petitioner’s detention under Section 1225(b)(2) while in full removal proceedings. Here, Petitioner is being detained pursuant to Section 1225(b)(1) and is not in ongoing removal proceedings.

C. Standing

Petitioner also lacks standing to bring his APA claim. By the APA’s terms, it is available only for final agency action “for which there is no other adequate remedy in court.” 5 U.S.C. § 704. Thus, Petitioner’s APA claim is independently barred by this limitation in 5 U.S.C. § 704.

In *Trump v. J.G.G.*, the Supreme Court held that where the claims for relief, as here, “necessarily imply the invalidity of their confinement” those claims “must be brought in habeas.” 145 S. Ct. 1003, 1005 (2025) (cleaned up) (internal quotation

marks and citation omitted). As noted by Justice Kavanaugh in his concurrence in *J.G.G.*, “given 5 U.S.C. § 704, which states that claims under the APA are not available when there is another adequate remedy in court, I agree with the Court that habeas corpus, not the APA, is the proper vehicle here.” *Id.* at 1007 (Kavanaugh, J. concurring). Here, as in *J.G.G.*, habeas is an “adequate remedy” through which Petitioner can challenge his detention. Even if Petitioner’s APA claim had merit, which it does not, the result would be the same as that in habeas—release from detention. The Supreme Court’s holding is consistent with well-established law that habeas is generally the only possible district court vehicle for challenges brought pursuant to the immigration statutes. *Id.* (citing *Heikkila v. Barber*, 345 U.S. 229, 234-35 (1953)).

III. Petitioner’s Claims are Without Merit.

In his Petition, Petitioner argues that his detention should be governed by 8 U.S.C. § 1226 and that he is being unlawfully detained in violation of the Fifth Amendment to the United States Constitution and the APA. *See generally* Petition. Respondents contend that Petitioner’s detention is governed by 8 U.S.C. § 1225, because he is an alien who entered without inspection or parole, was—and remains—an applicant for admission, and is treated, for constitutional purposes, as if stopped at the border. As such, he is subject to mandatory detention and not entitled to a bond hearing. *See* 8 U.S.C. § 1225(b)(1)(B)(ii).

A. Petitioner is Being Lawfully Detained Under 8 U.S.C. § 1225(b).

When Petitioner unlawfully entered the United States he was properly detained subject to Section 1225(b). Several recent decisions support this conclusion. *See e.g., Aranda Garcia v. Warden*, No. 2:25-cv-1053-KCD-DNF, 2025 WL 3537592, at *1 (M.D. Fla. Dec. 10, 2025); *Duenas Garcia v. ICE*, No. 2:25-cv-1004-KCD-NPM, 2025 WL 3277163, at *2 (M.D. Fla. Nov. 25, 2025); *Pirto v. Warden*, No. 2:25-cv-966-KCD-DNF, Doc. 13 (M.D. Fla. Nov. 13, 2025). As Judge Dudek explained:

[Petitioner] was apprehended at the border. That puts him squarely under § 1225. The fact that [Petitioner] spent time in the United States after being released on an order of recognizance—and was eventually apprehended in the country—does not change his classification.

Aranda Garcia, 2025 WL 3537592, at *1.

The facts here are indistinguishable. Petitioner was detained at the border. *See* Petition, ¶ 34; *see also* ECF No. 1-13 (reflecting entry on August 17, 2022 and issuance of NTA on August 18, 2022); Ex. A at 2 (Petitioner was apprehended two miles west of the San Ysidro Port of Entry). ICE’s choice to release him under an order of supervision at that time did not eliminate the possibility of expedited removal. Quite the opposite, it resulted in his return “to his previous status under § 1225 pending expedited removal.” *Valera-Marin v. Lyons*, No. 2:25-cv-00914-KG-GBW, 2025 WL 3687978, *3 (D.N.M. Dec. 19, 2029). And as the regulations provide, upon termination of parole an alien “shall be restored to the status that he or she had at the time of parole.” 8 C.F.R. § 212.5(e)(2)(i).

The Supreme “Court has recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process.” *Demore v. Kim*, 538 U.S. 510, 523 (2003). So “Congress has the authority to detain aliens suspected of entering the country illegally pending their deportation hearings.” *Reno v. Flores*, 507 U.S. 292, 306 (1993). What’s more, discretion over immigration detention decisions may be delegated to the Attorney General. *Id.* ICE exercised its delegated discretion to pursue expedited removal proceedings. That decision is without a doubt unreviewable for the reasons discussed above. As a result of that discretionary choice, Petitioner is subject to mandatory detention. 8 U.S.C. § 1225(b)(1)(B)(iii)(IV).

Understanding he cannot challenge the above, Petitioner recasts his case to indirectly challenge unreviewable actions. In doing so, he identifies a purported interest in freedom from detention. Petition, ¶ 78. Aliens indeed have a liberty interest to be free of unreasonable civil detention but that interest does not eliminate the government’s power to detain by law—here, under Section 1225(b)(1)’s mandatory detention provisions. To prevail, Petitioner must show the law was applied in such a way as to deprive him of his liberty interest.

Petitioner was previously released on recognizance. Petition, ¶ 34. This was conditional parole under § 1226(a)(2)(B). *E.g.*, *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099, at *7 (D. Ariz. Aug. 11, 2025). Under Section 1226, ICE has complete discretion to revoke conditional parole. 8 U.S.C. § 1226(b).

ICE can revoke parole “at any time” then “the alien may be taken into physical custody and detained.” 8 C.F.R. § 236.1(c)(9); *see also Ortega v. Bonnar*, 415 F. Supp. 3d 963, 968 (N.D. Cal. 2019). At most, the due process protections owed here would be notice and an opportunity to be heard. *See S.D.B.B. v. Johnson*, No. 1:25-cv-882, 2025 WL 2845170, at *6-10 (M.D.N.C. Oct. 7, 2025). Here, ICE necessarily revoked parole after removal proceedings were dismissed before pursuing expedited removal under Section 1225(b)(1) and detaining Petitioner once more. *See* Ex. A at 2-3. It did so after a hearing where the Immigration Judge determined it was proper to do so. *See* ECF No. 1-10. Petitioner had an opportunity to challenge this action before a neutral Immigration Judge. Petitioner received notice and opportunity to be heard at a hearing before the Immigration Judge before being taken into custody. *Id.* Petitioner’s disagreement with the Immigration Judge decision is a matter for appeal to the Board of Immigration Appeals, as Petitioner recognizes. *See* ECF No. 1-11; likewise, any dispute with his order of expedited removal can only be reviewed (if at all) by the Eleventh Circuit. Giron’s failure to identify an unlawful action dooms his Petition.

Petitioner’s assertion that his rights to pursue humanitarian relief would be impeded—Petition, ¶ 79—are similarly unavailing. Though he alleges a due process violation in that he will not be able to pursue asylum-related claims, he fails to acknowledge that the expedited removal statute provides otherwise. 8 U.S.C.

§1231(b)(3). In fact, the statute provides a comprehensive mechanism through which individuals subject to expedited removal can have their fear-based claims screened considered if they indeed express a fear of return and but importantly, individuals remain detained throughout that process. *See* 8 U.S.C. § 1225(b)(1)(B)(ii) (providing for detention of any alien who is found to have established a credible fear of persecution in expedited removal proceedings for further consideration of their asylum application), (iii)(IV) (“Any alien subject to the procedures under this clause shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed.”); *see also* 8 C.F.R. § 235.3(b)(2)(iii) (“An alien whose inadmissibility is being considered under this section or who has been ordered removed pursuant to this section shall be detained pending determination and removal.”), (b)(4)(ii) (“Pending the credible fear determination by an asylum officer and any review of that determination by an [Immigration Judge], the alien shall be detained.”); *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019) (holding that aliens present without admission, placed in expedited removal, and transferred to 8 U.S.C. § 1229a removal proceedings after establishing a credible fear of persecution or torture are subject to detention under 8 U.S.C. § 1225(b)(1) and are ineligible for release under 8 U.S.C. § 1226). Furthermore, ICE has elected to proceed with third-country removal to Mexico, not Petitioner’s native Cuba. *See* Exhibit B.

B. Petitioner's Detention Under 8 U.S.C. § 1252(b)(1) is lawful.

The statutory scheme at Section 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. 103, 140 (2020). 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 Petitioner under § 1225(b)(1). The parties do not dispute he entered the United States illegally and without authorization nor do the parties dispute that his removal proceedings have been dismissed. As ICE has elected to process him for expedited removal, Petitioner's detention is not

unlawful but instead is statutorily required. 8 U.S.C. § 1225(b)(1)(B)(IV); *see Chaviano v. Bondi*, No. 25-22451-CIV-DAMIAN, 2025 WL 1744349, *6-8 (S.D. Fla. Jun. 23, 2025). Congress expressly stripped this Court's jurisdiction over ICE's "implementation," "decision," and "application" of Section 1225(b)(1) to Petitioner. 8 U.S.C. § 1252(a)(2)(A)(i)-(iii). The only merits issue concerning Section 1225(b)(1) that the Court could possibly entertain in this habeas proceeding is set out in Section 1252(e)(2).

Petitioner's detention under Section 1225(b)(1) and the INA mandates his detention.

CONCLUSION

For the foregoing reasons, the Court must deny the Petition and dismiss this action.

DATED: January 20, 2026

Respectfully submitted,

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