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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

GENSEL ALBERTO CRUZ MENDEZ Petitioner, v. PAMELA BONDI, U.S. Attorney General KRISTI NOEM, U.S. Secretary of Homeland Security ("DHS"), TODD LYONS, Acting Director U.S. Immigration and Customs Enforcement, JUAN AGUDELO, Acting Miami Field Office Director, DAVID HARDIN, Sheriff and Warden of Glades County Detention Center IN THEIR OFFICIAL CAPACITIES Respondents.	Case No.: 0:25-cv-60139-EA PETITIONER'S RESPONSE TO ORDER TO SHOW CAUSE

PETITIONER'S RESPONSE ON ORDER TO SHOW CAUSE

On January 22nd, 2026, the Court instructed Petitioner to show cause as to why Petitioner's petition for Writ of Habeas Corpus should not be dismissed for lack of subject matter jurisdiction. Because Petitioner challenges the Attorney General holding him without a valid bond hearing in violation of the Immigration and Nationality (INA) and his continued detention without a hearing

violates his due process and administrative procedure act, the Court does have subject matter jurisdiction over the Petitioner's habeas petition.

I. THE COURT DOES HAVE SUBJECT MATTER JURISDICTION AS PETITIONER IS NOT CHALLENGING THE ATTORNEY GENERAL'S DECISION TO "COMMENCE REMOVAL PROCEEDINGS AGAINST HIM, THE DECISION TO ARREST AND DETAIN HIM, OR THE METHODS USED BY WHICH HE IS DETAINED."

The Court does have subject matter jurisdiction over the Petitioner's habeas claim. District Courts and the Eleventh Circuit have held that section 1252(g) bars review of or challenges to final administrative orders of removal, however, it does not apply to the facts of the Petitioner's case as he is not challenging his removal proceedings. Section 1252(g) states "the provision applies only to three discrete actions that the Attorney General may take: her decision or action to commence proceedings, adjudicate cases, or execute removal orders". *Cetino v. Hardin*, 2025 U.S., 3 Dist. Lexis 257174. Courts have interpreted this provision narrowly, applying only as to those three specific actions; "when asking if a claim is barred by § 1252(g), Courts must focus on the action being challenged." *Id. See*, *Madu v. United States*, 2006 U.S. Dist.LEXIS 52516; *Madu v. United States AG*, 470 F.3d 1362 (11th Circ. 2006); *Patel v. Hardin*, 2025 U.S. Dist.LEXIS 233409; *Cetino v. Hardin*, 2025 Dist.LEXIS 257174.

Petitioner was arrested for driving without a valid driver's license on September 1, 2025, and subsequently detained by ICE and placed in an ICE detention facility. *See*, ECF No. 1 at p. 6. Petitioner is not challenging the Department of Homeland Security's and thus the Attorney General's decision to commence removal proceedings against the Respondent. Rather, the Petitioner is challenging the Attorney General's treatment of the Petitioner as an "alien seeking

admission," and thus finding him subject to mandatory detention pursuant to 8 U.S.C. § 1225(a) *See*, ECF No. 1 at Exhibit F (Immigration Judge's Bond Order.)

Petitioner is challenging the Immigration Judge's decision, agreeing with DHS's of mandatory detention and denying the Respondent's bond for lack of jurisdiction. The Petitioner is therefore asking the Court to answer a question of law.

Petitioner is not asking this Court to override the Respondent's decision to commence removal proceedings against him. *Id* at 3. Therefore, section 1252(g) does not bar this Court from this action and the Court does have subject matter jurisdiction over the Petitioner's claim. *Id.* Petitioner does not allege or challenge ICE's authority to take him into custody and detain him during his removal proceedings. Petitioner however challenges DHS's and the Court's interpretation under 8 U.S.C. § 1225(a) regarding "applications for admissions and seeking admission."

II. THE "ZIPPER" CLAUSE DOES NOT APPLY TO THE PETITIONER AS HE IS NOT CHALLENGING THE DECISION TO DETAIN HIM OR TO SEEK TO REMOVE HIM.

The Petitioner is not challenging ICE's and DHS's decision to detain him or their effort to remove him from the United States or challenging any part of the process by which his removability will be determined. *Madu v. United States* AG, 470 F.3d 1362, (11th Cir. 2006). The *Madu* Court's decision is similarly situated to the Petitioner in this case because Petitioner challenges the Department's and Immigration Court's interpretation of law, specifically regarding mandatory detention under § 1225(a), not the Attorney General's decision to detain him and place him in removal proceedings in the first place. Here, the Court found that because the language of 8 U.S.C.S. § 1252(b)(9) unambiguously divests all courts of habeas jurisdiction over cases that fall

within its purview. Yet § 1252(b) is equally clear that § 1252(b)(9) applies only with respect to review of an order of removal. *Id* at2.

III. THE PETITIONER IS FURTHER CLAIMING DUE PROCESS VIOLATION UNDER THE FIFTH AMENDMENT'S DUE PROCESS CAUSE BY HOLDING THE PETITIONER WITHOUT A BOND HEARING.

Petitioner is challenging his detention without a bond hearing, as a violation of his due process rights. "Congress has acknowledged that "non-citizens present in the United States have more substantial due process rights than new arrivals and has constitutional liberty interest to remain in the U.S..." *Cetino v. Hardin* at 4 quoting H.R. Rep. 104-469.

The question of whether or not the Petitioner is detained under § 1225(a) or § 1226(a), is a question of law in which his Court has subject matter jurisdiction over. *Id.* The Government and the Immigration Court have held that the Petitioner is detained and subject to mandatory detention under § 1225(b)(2). However, the Petitioner was not "seeking admission" at the time he was detained by ICE and thus should be entitled to bond under the "default rule" applicable to aliens already present in the United States pursuant to § 1226(a). *Id* at 3. Congress enacted § 1225 for specific purposes, more specifically those categorized as arriving aliens and thus the broader provision § 1226 is intended for those aliens already in the United States and entitled to discretionary bond release. *Id* at 4.

The Supreme Court in *Jennings v. Rodriguez* further articulated and explained that § 1225 "generally begins at the Nation's borders and ports of entry, where the Government must determine whether an alien seeking to entry the country is admissible. *Jennings* 583 U.S. at 287. The Court described that § 1225 applies primarily to aliens seeking entry into the United States and by contrast § 1226 applies to aliens already present in the United States." *Id* at 297, 303. Thereby, creating a "default rule for those aliens by permitting—but not requiring—the Attorney General

to issue warrants for their arrest and detention pending removal proceedings." *Id.* As the *Cetino* District Court explained "the Government followed this dichotomy for the past three decades until DHS changed its policy issuing memos that DHS's position is that such aliens are subjection to detention under INA § 235(b) and may not be released from ICE custody except by INA § 212(d)(5) parole. *Cetino* at 3; ECF No. 1 at Exhibit A.

IV. *GUPTA* AND *ALVEREZ* PRESENT DIFFERENT LEGAL SCENARIOS THAN THOSE PRESENTED IN THE PRESENT CASE

As explained earlier, the Petitioner is not challenging the Department's decision to arrest and detain him and thus commence removal proceedings. What the Petitioner challenges is his detention without the entitlement of a bond proceeding to make determinations as to flight risk and danger to the community pursuant to *Matter of Guerra*. *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).

The factual and legal questions in *Gupta* and *Alverez* different from the factual and legal considerations in this case. Petitioner challenges the Court's determination that the Petitioner is an alien "seeking admission" who's detained under § 1225 (a)(2) rather than § 1226(a). Any argument by the Government or DHS that "ICE's decision to detain him in the first instance—is an action taken to remove alien, does not carry the day." *Cetino* at 3. The Supreme Court and the Eleventh Circuit precedent on this issue is clear: The zipper clause only applies to claims requesting review of a removal order; thus, the INA did not divest the district Court of jurisdiction over a § 2241 challenge to detention of the Petitioner's pending deportation. *Cetino* at 2 citing *Madu*, 470 at 1365.

CONCLUSION

Because the Petitioner challenges his detention and the fact that the Government and the IJ have decided that he is subject to mandatory detention pursuant to § 1225 and not entitled to bond and is not challenging the Government's initial decision to detain him and commence removal proceedings and is also not challenging a removal order, the Court does have subject matter jurisdiction over his § 2241 claim.

WHEREFORE, based on the foregoing, the Petitioner respectfully requests that the Court GRANT his petition of Writ of Habeas Corpus and order his immediate release or otherwise order the Immigration Judge to conduct a bond hearing immediately.

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