

**UNITED STATES DISTRICT COURT
IN AND FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

ALONSO ALFREDO TAPIA RIVEROS

(A# )

Petitioner,

v.

PAMELA BONDI, U.S. Attorney General;
KRISTI NOEM, Secretary of the U.S.
Department of Homeland Security;
TODD M. LYONS, in his official capacity as
Acting Director of U.S. Immigration and
Customs Enforcement;
GARRETT J. RIPA, in his official capacity as
Field Officer Director, Miami Field Office;

Respondents.

Case No.: 8:26-cv-206-SDM-CPT

**PETITIONER'S REPLY IN SUPPORT OF PETITION FOR WRIT OF HABEAS
CORPUS**

Petitioner Alonso Alfredo Tapia Riveros ("Petitioner"), by and through undersigned counsel, respectfully submits this Reply in Support of his Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241. Respondents' Opposition rests on an overbroad reading of jurisdiction-stripping provisions, an erroneous interpretation of 8 U.S.C. § 1225(b)(2), and a mischaracterization of both the statutory framework and the constitutional limitations governing civil immigration detention. Respondents fail to justify Petitioner's continued detention without access to a bond hearing or individualized custody determination. The Petition should therefore be granted.

I. THIS COURT HAS JURISDICTION UNDER 28 U.S.C. § 2241 TO REVIEW THE LEGALITY OF PETITIONER'S DETENTION

Respondents argue that this Court lacks jurisdiction under 8 U.S.C. §§ 1252(g) and 1252(b)(9), asserting that Petitioner's detention challenge is inseparable from removal proceedings. This argument mischaracterizes the nature of Petitioner's claims and is inconsistent with binding precedent. Petitioner does not challenge any removal order, nor does he seek review of the Government's decision to commence removal proceedings. Rather, Petitioner challenges the statutory and constitutional legality of his present detention without access to a bond hearing or individualized custody determination. This distinction is dispositive.

The Supreme Court has repeatedly confirmed that federal district courts retain jurisdiction under 28 U.S.C. § 2241 to review challenges to immigration detention. See *Demore v. Kim*, 538 U.S. 510, 517 (2003) (recognizing habeas jurisdiction to review detention under the INA); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001) (holding that § 2241 confers jurisdiction to review the legality of immigration detention); *Jennings v. Rodriguez*, 583 U.S. 281, 305 (2018) (recognizing detainees may seek release through habeas corpus proceedings). The Eleventh Circuit has likewise recognized that habeas jurisdiction remains available to review immigration detention. See *Madu v. U.S. Att'y Gen.*, 470 F.3d 1362, 1366–67 (11th Cir. 2006) (holding that district courts retain habeas jurisdiction under § 2241 to determine whether detention is authorized by statute).

Section 1252(g) is narrowly limited to three discrete actions: the decision to commence proceedings, adjudicate cases, or execute removal orders. *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999). The Eleventh Circuit has emphasized the

limited scope of this provision, explaining that it applies only to those specific discretionary actions and does not strip jurisdiction over all detention challenges. See *Canal A Media Holding, LLC v. U.S. Citizenship & Immigration Servs.*, 964 F.3d 1250, 1256–57 (11th Cir. 2020).

Petitioner’s challenge concerns the statutory basis and constitutionality of his detention, not the decision to initiate removal proceedings.

Similarly, § 1252(b)(9) does not preclude jurisdiction because Petitioner’s claims are independent of the merits of removal proceedings. The Supreme Court has made clear that § 1252(b)(9) does not bar claims that challenge detention itself rather than removal. *Jennings*, 583 U.S. at 293. The Eleventh Circuit has likewise recognized that habeas review remains available where the petitioner challenges detention rather than removal. See *Madu*, 470 F.3d at 1366–67.

Because Petitioner challenges the statutory and constitutional legality of his detention, this Court retains jurisdiction under 28 U.S.C. § 2241.

II. PETITIONER IS NOT PROPERLY DETAINED UNDER 8 U.S.C. § 1225(b)(2)

Respondents contend that Petitioner is properly detained under 8 U.S.C. § 1225(b)(2) because he entered without inspection and is therefore deemed an “applicant for admission.” This interpretation improperly expands the scope of § 1225 beyond its intended statutory function and conflicts with both statutory structure and constitutional principles.

Section 1225 governs inspection and detention of individuals seeking admission at or near the time of entry. By contrast, § 1226 governs detention of individuals apprehended within the interior of the United States pending removal proceedings. See 8 U.S.C. § 1226(a); *Jennings*, 583 U.S. at 288. Petitioner entered the United States approximately twenty-four years ago and has

lived continuously in the country since that time. His detention arose from an arrest within the interior of the United States, not at a port of entry or in connection with recent arrival. Section 1226 provides the appropriate statutory framework under these circumstances.

The Eleventh Circuit has emphasized that immigration detention must be authorized by statute and subject to judicial review. See *Madu*, 470 F.3d at 1366. Where detention is not authorized by statute, habeas relief is appropriate. *Id.* Respondents' interpretation would permit indefinite mandatory detention without bond based solely on manner of entry, regardless of the length of time an individual has lived in the United States. Such an interpretation would raise grave constitutional concerns.

III. RESPONDENTS' INTERPRETATION VIOLATES THE FIFTH AMENDMENT

Civil immigration detention is subject to constitutional limitations. The Supreme Court has repeatedly held that freedom from physical restraint lies at the core of the liberty protected by the Due Process Clause. *Zadvydas*, 533 U.S. at 690. Civil detention must bear a reasonable relation to its purpose and must include adequate procedural safeguards. *Id.* at 690–91.

The Eleventh Circuit has likewise recognized that due process applies to immigration detention. See *Sopo v. U.S. Att'y Gen.*, 825 F.3d 1199, 1214 (11th Cir. 2016), vacated on other grounds, recognizing that immigration detention raises serious constitutional concerns and is subject to judicial review.

Procedural due process requires an individualized determination that detention is necessary to prevent flight or danger to the community. See *Demore*, 538 U.S. at 528; *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). Respondents' interpretation denies Petitioner any opportunity to obtain such review. This results in arbitrary detention in violation of the Fifth Amendment.

IV. EXHAUSTION IS NOT REQUIRED AND WOULD BE FUTILE

Respondents argue that Petitioner failed to exhaust administrative remedies. This argument fails because exhaustion is not required where it would be futile or where constitutional claims are raised. See *McCarthy v. Madigan*, 503 U.S. 140, 147–48 (1992). The Eleventh Circuit has likewise recognized that exhaustion is not required where administrative remedies are inadequate. See *Sundar v. INS*, 328 F.3d 1320, 1325–26 (11th Cir. 2003).

Respondents themselves assert that Petitioner is categorically ineligible for bond under § 1225. Because Respondents' position forecloses access to bond proceedings, exhaustion would be futile.

V. RESPONDENTS' TRANSFER OF PETITIONER DOES NOT DEFEAT JURISDICTION

Respondents note that Petitioner has been transferred to Arizona. This transfer does not defeat jurisdiction. Jurisdiction attaches at the time the habeas petition is filed. *Ex parte Endo*, 323 U.S. 283, 306 (1944). The Eleventh Circuit has similarly recognized that jurisdiction is determined at the time of filing. See *Fernandez v. United States*, 941 F.2d 1488, 1495 (11th Cir. 1991).

Petitioner was detained within this District at the time the Petition was filed. Jurisdiction remains proper.

VI. HABEAS RELIEF IS WARRANTED

Habeas corpus exists to prevent unlawful executive detention. *Zadvydas*, 533 U.S. at 687. Petitioner is presently detained without access to a bond hearing or individualized custody determination. Respondents have failed to demonstrate that such detention is lawful.

Because Petitioner's detention violates the INA and the Constitution, habeas relief is warranted.

VII. RESPONDENTS ERR IN ASSERTING THAT APA REVIEW IS UNAVAILABLE

Respondents incorrectly assert that Petitioner lacks standing to pursue relief under the Administrative Procedure Act (“APA”), arguing that habeas corpus constitutes an “adequate alternative remedy” within the meaning of 5 U.S.C. § 704. This argument misstates the governing legal standard and ignores controlling precedent recognizing that APA review remains available where a petitioner challenges unlawful agency action and statutory authority.

The APA provides for judicial review of final agency action except where (1) statutes preclude judicial review, or (2) agency action is committed to agency discretion by law. 5 U.S.C. § 701(a). Importantly, the existence of habeas jurisdiction does not categorically foreclose APA review. Rather, APA review is barred only where another remedy provides relief that is fully adequate and equivalent in scope. *Bowen v. Massachusetts*, 487 U.S. 879, 903 (1988). Where habeas corpus does not provide complete relief—such as where a petitioner challenges the statutory authority or legal basis for detention—APA review remains available.

The Eleventh Circuit has repeatedly confirmed that federal courts retain authority to review whether immigration detention is authorized by statute. See *Madu v. U.S. Att’y Gen.*, 470 F.3d 1362, 1366–67 (11th Cir. 2006) (holding that district courts retain jurisdiction to determine whether detention is statutorily authorized); *Canal A Media Holding, LLC v. U.S. Citizenship & Immigration Servs.*, 964 F.3d 1250, 1256–57 (11th Cir. 2020) (recognizing availability of judicial review under the APA unless expressly precluded by statute). Where an agency acts outside its statutory authority, federal courts possess jurisdiction to review and correct that action.

Petitioner's claims fall squarely within the scope of APA review. Petitioner challenges Respondents' legal determination that his detention is governed by 8 U.S.C. § 1225 rather than § 1226. This is a question of statutory interpretation and agency authority—not merely a challenge to the fact or duration of detention. Courts have consistently recognized that such claims are reviewable because they concern whether the agency has acted in excess of its statutory authority. See *Zadvydas v. Davis*, 533 U.S. 678, 687–88 (2001) (recognizing judicial authority to review statutory basis for immigration detention); *Heikkila v. Barber*, 345 U.S. 229, 234–35 (1953) (recognizing availability of judicial review to determine whether detention complies with statutory authority).

Respondents' reliance on 5 U.S.C. § 704 is misplaced because habeas corpus does not provide an equivalent or fully adequate remedy in this context. Habeas corpus addresses unlawful physical custody, whereas the APA provides broader relief, including declaratory relief and judicial correction of unlawful agency interpretations of federal statutes. Where a petitioner challenges the agency's statutory authority itself, rather than merely seeking release from custody, APA review remains proper. See *Bowen*, 487 U.S. at 903.

Moreover, courts have consistently recognized that agency action exceeding statutory authority is reviewable under the APA. *Canal A Media Holding*, 964 F.3d at 1256–57. Respondents' interpretation of § 1225, if incorrect, constitutes precisely the type of ultra vires agency action subject to judicial review.

Because Petitioner challenges the legal authority and statutory basis for his detention—not merely its duration—the APA provides an independent and proper basis for judicial review.

Respondents' assertion that APA review is categorically barred is contrary to binding precedent and must be rejected.

VIII. CONCLUSION

Respondents have failed to justify Petitioner's continued detention without access to a bond hearing. This Court possesses jurisdiction under 28 U.S.C. § 2241 to review the legality of Petitioner's detention, and Respondents' interpretation of § 1225 is inconsistent with statutory structure and constitutional requirements. Petitioner respectfully requests that this Court grant the Petition and order his immediate release, or in the alternative, order Respondents to provide a prompt bond hearing before an immigration judge.

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