UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 26-cv-20553-DSL

DURAN OROZCO, Silvio,

Petitioner,

v.

U.S. Attorney General, *et al*

Respondents.

_____/

RESPONDENTS' RETURN TO WRIT OF HABEAS CORPUS

Respondents,[1] through the undersigned Assistant United States Attorney, consistent with this Court's Order, respectfully submit this Response to petitioner Silvio Duran Orozco (Petitioner)'s Pro Se Petition for Writ of Habeas Corpus (ECF No. 1) (Petition) under 28 U.S.C. § 2241. Petition should be denied. First, Petitioner's alleged civil rights violations are not proper in a habeas petition under § 2241. Second, Petitioner is correctly detained under 8 U.S.C. § 1225(b). Third, Petition should be dismissed for failure to exhaust administrative remedies.

I. BACKGROUND

Petitioner is a native and citizen of Nicaragua. **Exhibit A**, Notice to Appear (NTA). He was paroled into the United States under the Nicaraguan Humanitarian Parole program at or near San Francisco, California on or about September 2, 2023. *Id.*

[1] Because Petitioner is presently detained at Krome, the proper respondent is Charles Parra, in his official capacity as the assistant field office director in charge of the Krome Detention Center. *See* 28 U.S.C. § 2243; *Rumsfeld v. Padilla*, 542 U.S. 426, 438 (2004). This Court should dismiss the Complaint as to the remaining Respondents.

On November 5, 2025, Petitioner was involved in a 'verbal altercation" with his wife "after victim confronted [Petitioner] over him having an affair." **Exhibit E**, Complaint/Arrest Affidavit. According to the arrest affidavit, the "verbal altercation escalated" and victim "motioned that [Petitioner] reached over to her left side of the neck causing visible neck scratches." *Id.* Petitioner was arrested and charged in Miami-Dade County for the offense of Domestic Battery. **Exhibit E**; **Exhibit B**, Form I-213, Record of Deportable/Inadmissible Alien, November 7, 2025 (Form I-213). Petitioner's wife then refused to provide detailed information about what happened to police officers. **Exhibit E**. On December 2, 2025, the Office of the State Attorney dismissed the criminal charge against Petitioner. *Id.*

On November 7, 2025, Immigration and Customs Enforcement (ICE) Enforcement and Removal Operations (ERO) encountered Petitioner at the Turner Guilford Knight Correctional Center. **Exhibit B**. Petitioner had been arrested for the offense of Domestic Battery. **Exhibit E**. ICE ERO determined Petitioner was not a citizen or national of the United States and he was taken into ICE custody and transferred to Miami Miramar Hold Room. **Exhibit B**; **Exhibit C**, Form I-200, Warrant for Arrest of Alien; **Exhibit D**, Detention History. Also on November 7, 2025, ERO issued an NTA charging Petitioner with inadmissibility in violation of INA § 212(a)(7)(i)(I) as amended, as an alien who, at the time of application for admission, is not in possession of an unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act, and a valid unexpired passport. **Exhibit A**.

On November 9, 2025, Petitioner was transferred to the Florida Soft-Sided Facility – South and on November 25, 2025, Petitioner was transferred to Krome Service Processing Center (Krome). **Exhibit D**; **Exhibit H**, Declaration. To date, Petitioner remains in ICE custody at Krome. **Exhibit H**; **Exhibit D**. Petitioner is detained pursuant to section 235(b)(2) of the INA.

On November 28, 2025, Petitioner requested a bond redetermination hearing before the immigration judge. **Exhibit H**. On December 10, 2025, Petitioner had a bond hearing in front of Immigration Christine Martyak at Krome and, at the request of Petitioner's counsel to withdraw the request for bond, Immigration Judge Christine Martyak entered an order of "no action in the case. **Exhibit H**; **Exhibit F**, Immigration Judge Order dated December 10, 2025. Petitioner has not requested another bond redetermination hearing.

On January 28, 2026, Petitioner filed the instant Pro Se Petition, alleging that his continued detention without a meaningful individualized custody determination violates the Due Process Clause of the Fifth Amendment. (ECF No. 1 at 5).

II. ARGUMENT

A. Petitioner is an Arriving Alien Subject to Detention Under 8 U.S.C. § 1225(b)(2).

"Congress has established the requirements for admission of aliens that arrive at the border without authorization to enter." *Lopez v. Sessions*, No. 18 CIV. 4189 (RWS), 2018 WL 2932726, at *4 (S.D.N.Y. June 12, 2018) (citing 8 U.S.C. § 1225). Under § 1225(a), "aliens who arrive at the nation's borders" without authorization to enter this country "are deemed 'applicants for admission,' and must be inspected by an immigration official before being granted admission." *Id.* (citing 8 U.S.C. § 1225(a)(1), (3)). Under 8 U.S.C. § 1225(b), "if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229(a) of this title [i.e., a removal proceeding]." *Id.* (quoting 8 U.S.C. § 1225(b)(2) (A)) (brackets in original). Thus, detention is mandatory for arriving aliens subject to Section 1225(b).

If an arriving alien is subject to mandatory detention under Section 1225(b), "an immigration judge 'may not' conduct a bond hearing to determine whether [the] arriving alien

should be released into the United States during removal proceedings." *Id.* (quoting 8 C.F.R. § 1003.19(h)(2)(i)(B)). Arriving aliens who are detained pursuant to § 1225(b)(2)(A), however, may be released from custody pursuant to DHS's discretionary parole authority. *See* 8 U.S.C. § 1182(d)(5)(A).

Under Section 1182(d)(5)(A), DHS "may ... in [its] discretion parole into the United States temporarily under such conditions as [it] may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States[.]" *Id.* Importantly, however, DHS's discretionary parole of an alien "shall not be regarded as an admission of the alien and when the purposes of such parole shall . . .have been served the alien shall forthwith return or be returned to the custody from which he was paroled[.]" *Id.* "[T]hereafter[,]" a formerly paroled alien's "case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States." *Id.*

Here, Petitioner is an "arriving alien" subject to the removal and detention provisions in 8 U.S.C. § 1225(b)(2). Petitioner, arrived on or about September 2, 2023, and was paroled into the United States under the Nicaraguan Humanitarian Parole program at or near San Francisco, California. **Exhibit B**. Petitioner does not contest the fact he is an arriving alien. To the contrary, Petitioner, through counsel, conceded he is an arriving alien, at a master calendar hearing in front of an Immigration Judge. **Exhibit H**. Because Petitioner is an arriving alien and because DHS's discretionary parole of an alien "shall not be regarded as an admission of the alien", his detention is lawful under 8 U.S.C. § 1225(b)(2).

B. Petitioner is Ineligible for Bond because he is Subject to Detention Under 8 U.S.C. § 1225(b)(2).

Mandatory detention under § 1225(b) has repeatedly been upheld as constitutionally permissible. *See Jennings v. Rodriguez*, 583 U.S. at 299–301. In *Jennings*, the Supreme Court

explained that 8 U.S.C. § 1225(b) applies to all applicants for admission, noting that the language of 8 U.S.C. § 1225(b)(2) is "quite clear" and "unequivocally mandate[s]" detention. *Jennings*, 583 U.S. at 300, 303 (explaining that "the word 'shall' usually connotes a requirement" (quoting *Kingdomware Technologies, Inc. v. United States*, 579 U.S. 162, 171 (2016))).

Under the plain language of 8 U.S.C. § 1225(b), all "applicants for admission" who are found "not clearly and beyond a doubt entitled to be admitted" are subject to detention under 8 U.S.C. § 1225(b)—regardless of how long they have been present in the United States. *Cf. Niz-Chavez v. Garland*, 593 U.S. 155, 171 (2021) (providing that "no amount of policy-talk can overcome a plain statutory command"); *see generally Florida v. United States*, 660 F. Supp. 3d 1239, 1275 (N.D. Fla. 2023) (explaining that "the 1996 expansion of § 1225(b) to include illegal border crossers would make little sense if DHS retained discretion to apply § 1226(a) and release illegal border crossers whenever the agency saw fit"). The conclusion that "§ 1225(b)'s 'shall be detained' means what it says and . . . is a mandatory requirement . . . flows directly from *Jennings*." *Florida*, 660 F. Supp. 3d at 1273.

Given that 8 U.S.C. § 1225 is the applicable detention authority for all applicants for admission—both arriving aliens and aliens present without admission alike, regardless of whether the alien was initially processed for expedited removal proceedings under 8 U.S.C. § 1225(b)(1) or placed directly into removal proceedings under 8 U.S.C. § 1229a —and "[b]oth [8 U.S.C. § 1225(b)(1) and (b)(2)] mandate detention … throughout the completion of applicable proceedings," *Jennings*, 583 U.S. at 301–03, Immigration Judges do not have authority to redetermine the custody status of an alien present without 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 Immigration Judge is authorized to exercise the authority in [8 U.S.C. § 1226]." 8 C.F.R. § 1236.1(d); *see id.* § 1003.19(a) (authorizing IJs to review "[c]ustody and bond determinations made by [DHS] pursuant to 8 C.F.R. part 1236"); *see id.* § 1003.19(h)(2)(i)(B) ("[A]n IJ may not redetermine conditions of custody imposed by [DHS] with respect to . . . [a]rriving aliens in removal proceedings, including aliens paroled after arrival pursuant to [8 U.S.C. §1182(d)(5).]"). "An immigration judge is without authority to disregard the regulations, which have the force and effect of law." *Matter of L-M-P-*, 27 I&N Dec. 265, 267 (BIA 2018).

Petitioner is mistaken in arguing that he is due a bond hearing pursuant to 8 U.S.C. § 1226(a). Relying on *Jennings* and the plain language of 8 U.S.C. §§ 1225 and 1226(a), the Attorney General, in *Matter of M-S-*, unequivocally recognized that 8 U.S.C. §§ 1225 and 1226(a) do not overlap but describe "different classes of aliens." 27 I&N Dec. at 516. The Attorney General observed that section 236(a) (8 U.S.C. § 1226) provides an independent ground for detention upon the issuance of a warrant but does not limit DHS's separate authority to detain aliens under 8 U.S.C. § 1225, whether pending expedited removal or full removal proceedings. *Id.* Because Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2), he is ineligible for bond, and this Court should deny relief.

C. Petitioner's Due Process Claims fail because he is detained pursuant to a valid statutory authority

Petitioner's constitutional claim fails as a matter of law. As argued above, mandatory detention under § 1225(b) has repeatedly been upheld as constitutionally permissible. *See Jennings v. Rodriguez*, 583 U.S. at 299–301. The Fifth Amendment does not require bond hearings for aliens

detained pursuant to valid statutory authority, nor does Petitioner possess a protected liberty interest in release on bond where Congress has mandated detention. The Due Process Clause does not prohibit Congress from imposing categorical detention rules in the immigration context. *See Demore v. Kim*, 538 U.S. 510, 528 (2003); *Dieubon Marc Yvens v. Garrett Ripa, et al.*, Case No. 24-22693-CV-MIDDLEBROOKS (S.D. Fla. Nov. 26, 2024); *Lopez-Barillas v. Field Office Director*, et al., 17-60466-CV-DIMITROULEAS (S.D. Fla. Apr. 14, 2017).

D. Petitioner failed to Exhaust his Administrative Remedies

This Court can dismiss on the alternative grounds that Petitioner failed to exhaust his 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, through counsel, requested a bond redetermination hearing. Petitioner had a hearing on November 28, 2025. **Exhibit F; Exhibit H.** However, Petitioner, through counsel, requested the Immigration Judge withdraw the request for a bond hearing and enter a no action order on his bond determination. *Id.* Petitioner has not requested another bond redetermination hearing and has therefore not availed himself of the administrative remedies available to him in that he has not sought a bond redetermination hearing before an Immigration Judge. See, generally, supra n. 2. For this alternative reason, the Petition should be dismissed for failure to exhaust his administrative remedies.

III. CONCLUSION

Based upon the foregoing, the Petition should be dismissed because detention is lawful under 8 U.S.C. § 1225(b) and Petitioner has failed to exhaust his administrative remedies before seeking relief from the Court. Additionally, given that Respondents are not Petitioner's immediate custodians, they must be dropped/dismissed as parties.

Respectfully submitted,

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Counsel for Respondents

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the Respondents' Return to Habeas Corpus was mailed to Petitioner at the address listed below on January 30, 2026.

Silvio Duran Orozco
A[redacted]
Krome Service Processing Center
18201 S.W. 12th St.
Miami, FL 33194

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