

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

ROSTISLAV MALIKOV,

Petitioner,

v.

Case No. 2:26-cv-172-SPC-NPM

A No. 

Russia

WARDEN, GLADES COUNTY
DETENTION CENTER, et al. (all
official capacity),¹

Respondents.

Response to Petition for Writ of Habeas Corpus

Petitioner Rostislav Malikov challenges his detention by U.S. Department of Homeland Security (“DHS”) and Immigration and Customs Enforcement (“ICE”). (Doc. 1).

It is unclear what Malikov exactly challenges in this case. If the Habeas Petition is limited solely to challenging denial of parole—which it appears to be—then the Court obviously lacks jurisdiction. Nor would habeas be the appropriate vehicle to challenge that sort of discretionary determination since it does not go to the nature of

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).

detention. That analysis is in Section A.

To the extent that Malikov challenges continued detention without a bond hearing, Respondents raise their standard § 1225 v. § 1226 arguments. While reserving all rights—including a right to appeal—the Federal Respondents submit this abbreviated brief in lieu of exhaustive, duplicative briefing on the § 1225(b)(2) v. § 1226 issue. This is an effort to preserve Respondents’ arguments and conserve scarce judicial resources. Should the Court prefer a fulsome discussion or entertain reconsidering its rulings on § 1226, Respondents request leave to submit additional briefing. That analysis is in Section B.

Background

Malikov is a citizen and national of Russia who entered the United States in November 2021. (Ex. 1 at 1-2). He was encountered by U.S. Customs and Border Protection (“CBP”) at the border—where Malikov applied for admission. (Ex. 1 at 2). CBP issued a Form I-862, Notice to Appear (“NTA”), and paroled Malikov into the United States for one year. (Ex. 1 at 2). That parole expired in November 2022. (Exs. 1 at 2; 2 at 1).

The type of parole CBP awarded Malikov was humanitarian parole under 8 U.S.C. § 1182(d)(5). (Ex. 2 at 1); (Doc. 1 at 10). His Form I-94 reflects a classification of “DT.” (Ex. 2 at 1). As courts recognize, this refers to humanitarian parole. *Hekmut v. Chestnut*, No. 1:25-cv-1674 DAD SCR, 2026 WL 74162, at *1 n.1 (E.D. Cal. Jan. 9, 2026).

ICE never filed the NTA with the immigration court. (Ex. 1 at 2). But in November 2022, Malikov filed an asylum petition with U.S. Citizenship and Immigration Services (“USCIS”). (Ex. 1 at 2). To date, that petition is still pending with USCIS.

In June 2025, Malikov was encountered by ICE while in state custody for felony driving with a suspended license. (Ex. 1 at 3). ICE issued a new NTA—charging lack of valid documentation (8 U.S.C. § 1182(a)(7)(A)(i)). (Ex. 3). That NTA was filed with the immigration court, and removal proceedings are ongoing. (Ex. 4).

Malikov is currently detained at Glades.

Certified Habeas Return

ICE is detaining Malikov under the mandatory detention provisions of 8 U.S.C. § 1225(b)(2). *See* 28 U.S.C. § 2243 (“The person to whom the writ or order is directed shall make a return certifying the true cause of the detention.”). Malikov 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).

Discussion

A. Challenge to Parole

Malikov purports to challenge the denial of reissued humanitarian parole under 8 U.S.C. § 1182(d)(5). This is facially improper and outside the Court’s jurisdiction. Malikov’s parole expired years ago. The Court lacks jurisdiction to review the discretionary decision or denial of reissued parole. What’s more, those matters are

outside a habeas case—which exists to challenge unlawful detention not to affirmatively secure some new immigration status.

Humanitarian parole may exist “for urgent humanitarian reasons or significant public benefit.” 8 U.S.C. § 1182(d)(5)(A). Such relief though is not admission to the United States. *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018). What’s more, humanitarian parole is only temporary; so “when the purpose of the parole has been served,” an alien returns to the position of an applicant for admission. *Id.*

The decision to grant such relief is within the complete discretion of DHS:

The Secretary of [DHS] may . . . in his discretion parole into the United States temporarily under such conditions as he may prescribe.

8 U.S.C. § 1182(d)(5)(A). DHS does so “only on a case-by-case basis.” *Id.* “The language of the statute does not require [DHS] to parole any alien, nor does it mandate parole on any particular finding or findings or place any substantive restriction on the authority to deny parole.” *Gisbert v. U.S. Att’y Gen.*, 988 F.2d 1437, 1443 (5th Cir. 1993). Congress specifically eliminated federal court review over such discretionary decisions. 8 U.S.C. § 1252(a)(2)(B)(ii).

This prohibition on judicial review of DHS discretionary actions extends to all exercises of discretion “under this subchapter.” *Id.* That phrase refers to “statutory, but not to regulatory, specifications.” *Kucana v. Holder*, 558 U.S. 233, 237 (2010). Said different, it insulates DHS discretion from judicial review when that power is granted by statute. *Id.* at 247-48 (“Other decisions specified by statute to be in the discretion

of the Attorney General, and therefore shielded from court oversight by § 1252(a)(2)(B)(ii), are of a like kind.” (cleaned up)). The INA and its humanitarian parole provision are within the “subchapter” of this jurisdiction-stripping statute. *Id.* at 253 (Alito, J., concurring) (“The phrase ‘under this subchapter’ refers to Subchapter II of Chapter 12 of Title 8, 8 U.S.C. §§ 1151-1381.”).

As a result, individual decisions on humanitarian parole are obviously beyond the Court’s jurisdiction to review. *E.g.*, *Aracely, R. v. Nielsen*, 319 F. Supp. 3d 110, 134-35 (D.D.C. 2018) (holding “§ 1252(a)(2)(B)(ii) undoubtedly bars judicial review of individual parole decisions”); *Siddiqi v. Bondi*, No. 2:24-cv-10528-CBM-AJR, 2025 WL 2412152, at *2-3 (C.D. Cal. June 24, 2025); *Syed v. Mayorkas*, No. 3:23-cv-00083-IM, 2023 WL 6596330, at *3 (D. Or. Oct. 10, 2023); *Martinez Mayorga v. Meade*, No. 24-cv-22131-BLOOM/Elfenbein, 2024 WL 4298815, at *7-8 (S.D. Fla. Sept. 26, 2024). As the Ninth Circuit stated:

We have previously concluded that the jurisdiction-stripping provision of § 1252(a)(2)(B)(ii) applies to discretionary parole decisions under § 1182(d)(5).

Vazquez Romero v. Garland, 999 F.3d 656, 665 (9th Cir. 2021); *see also Hassan v. Chertoff*, 593 F.3d 785, 790 (9th Cir. 2010); *Samirah v. Holder*, 627 F.3d 652, 656-57 (7th Cir. 2010); *Islam v. Quarantillo*, 803 F. App’x 543, 545 (2d Cir. 2020). Nor can any past agency practice or even regulation provide jurisdiction over an otherwise unreviewable discretionary decision. *E.g.*, *Vega v. USCIS*, 65 F.4th 469, 472 (9th Cir. 2023).

Crucially, the Eleventh Circuit held courts have no jurisdiction to review decisions about humanitarian parole. *Alonso-Escobar v. USCIS*, 462 F. App'x 933, 935 (11th Cir. 2012). Put different, the Eleventh specifically rejected this exact case for lack of jurisdiction. *Id.*; *see also Pouza v. Swacina*, No. 12-20651-CIV-MORENO, 2012 WL 12895149, at *3 (S.D. Fla. May 31, 2012). And recently, Judge Dudek held district courts cannot review denials or decisions related to humanitarian parole. *Molina-Cantero v. DHS*, No. 2:25-cv-549-KCD-NPM, 2026 WL 83954, at *2-3 (M.D. Fla. Jan. 12, 2026) (The statute “says the Secretary may grant parole if he chooses. Because the statute explicitly commits this decision to the Secretary’s discretion, the INA forbids the Court from addressing it.”).

As explained, the Court cannot review the issues raised in this action or order the relief sought. *E.g., Kiyemba v. Obama*, 555 F.3d 1022, 1029 n.14 (D.C. Cir. 2009) (Humanitarian parole is “a remedy that can be granted only to an applicant for admission and only in the exclusive discretion of” DHS). It must take an Occam’s razor approach and dismiss for lack of subject-matter jurisdiction without continuing to parse the nuanced INA distinctions at issue.

If the Court liberally construes argument on a bond hearing, Respondents’ position is below.

B. Sections 1225 v. 1226

In re Matter of Yajure Hurtado, 29 I&N Dec. 216 (B.I.A. 2025), the Board of Immigration Appeals (“BIA”) examined the plain language of § 1225, the

Immigration and Nationality Act's ("INA") statutory scheme, Supreme Court and BIA precedent, the legislative history of the INA and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, and ICE's prior practices. After doing so, the BIA held that "under a plain language reading of section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), immigration judges lack authority to hear bond requests or to grant bond to aliens, like the respondent, who are present in the United States without admission." 29 I&N Dec. at 225. This Court should rule the same.

Respondents acknowledge that questions of law in this case substantially overlap with *Vasquez Carcamo v. Noem*, No. 2:25-cv-922-SPC-NPM, 2025 WL 3119263 (M.D. Fla. Nov. 7, 2025). Courts have struggled with the interpretive question of applying § 1225(b)(2) or § 1226(a) in these instances. Even courts disagreeing with Respondents note this "statutory-interpretation issue is difficult and close." *Ahmed v. Bondi*, No. 25-cv-4711 (ECT/SGE), 2026 WL 25627, at *1 (D. Minn. Jan. 5, 2026).

It should be noted, however, growing numbers of courts recently ruled in Respondents' favor on this issue. *Iraheta Morales v. Noem*, No. 25-62598-CIV-SINGHAL, 2026 WL 236307, at *3-9 (S.D. Fla. Jan. 29, 2029); *Diaz Lopez v. ICE*, No. 3:25-cv-1313-JEP-SJH (M.D. Fla. Jan. 26, 2026).² Significantly, the Fifth Circuit

² E.g., *Perez Ramirez v. Holt*, No. 2:25-cv-00156-SCM, 2026 WL 226964, at *2-7 (E.D. Ky. Jan. 28, 2026); *Vidal Alvacora v. Olson*, No. 0:26-cv-00675-DMT-SGE, 2026 WL 220417, at *1-3 (D. Minn. Jan. 28, 2026); *Qiwei Weng v. Genalo*, No. 25 Civ. 09595 (JHR), 2026 WL 194248, at *3-6 (S.D.N.Y. Jan. 25, 2026); *Hernandez v. Olson*, No. 25-cv-1670-bhl, 2026 WL 161509, at *3-7 (E.D. Wis. Jan. 21, 2026); *Singh v. Albarran*, No. 1:26-cv-00244-WBS-CSK,

ruled that aliens who have not been admitted to the United States are subject to mandatory detention under 8 U.S.C. § 1225(b)(2) regardless of whether the alien is already present in the United States. *Buenrostro-Mendez v. Bondi*, No. 25-20496, 2026 WL 323330 (5th Cir. Feb. 6, 2026). Some decisions have even started recognizing that there is no jurisdiction over this question to begin with:

For this reason, the Court finds that Congress has not conferred jurisdiction on federal district courts to interpret or apply Section 1225 or Section 1226 of the INA. Divesting federal district courts of

2026 WL 124881, at *1-2 (E.D. Cal. Jan. 16, 2026); *J.E.P.M. v. Wofford*, No. 1:26-cv-00316-WBS-CKD, 2026 WL 125270, at *1 (E.D. Cal. Jan. 16, 2026); *Martinez v. Villegas*, No. 1:25-CV-256-H, 2026 WL 114418, at *3-8 (N.D. Tex. Jan. 15, 2026); *Sargsyan v. Bondi*, No. 1:26-cv-00259-WBS-CKD, 2026 WL 114665, at *1-2 (E.D. Cal. Jan. 15, 2026); *Cutiopala v. Noem*, No. 1:25-cv-00211-MAL, 2026 WL 113567, at *2-5 (E.D. Mo. Jan. 15, 2026); *Chen v. Almodovar*, No. 25 Civ. 9670 (JPC), 2026 WL 100761, at *7-14 (S.D.N.Y. Jan. 14, 2026); *Choudhary v. Albarran*, No. 1:26-cv-00119-WBS-CKD, 2026 WL 102708, at *2 (E.D. Cal. Jan. 14, 2026); *Singh v. Noem*, No. 1:26-cv-00224 WBS CSK, 2026 WL 91787, at *2 (E.D. Cal. Jan. 13, 2026); *Singh v. Noem*, No. 2:25-cv-00157-SCM, 2026 WL 74558, at *3-7 (E.D. Ky. Jan. 9, 2026); *Garibay-Robledo v. Noem*, No. 1:25-cv-00177-H, 2026 WL 81679, at *3-9 (N.D. Tex. Jan. 9, 2026); *Rodriguez v. Olson*, No. 1:25-cv-12961, 2026 WL 63613, at *5-8 (N.D. Ill. Jan. 8, 2026); *Gutierrez Sosa v. Holt*, No. CIV-25-1257-PRW, 2026 WL 36344, at *3-5 (W.D. Okla. Jan. 6, 2026); *Gomez Hernandez v. Lyons*, No. 1:25-CV-216-H, 2026 WL 31775, at *2-8 (N.D. Tex. Jan. 6, 2026); *Ugarte-Arenas v. Olson*, No. 25-C-1721, 2025 WL 3514451, at *1-4 (E.D. Wis. Dec. 8, 2025); *Suarez v. Noem*, No. 1:25-cv-00202-JMD, 2025 WL 3312168, at *2-3 (E.D. Mo. Nov. 28, 2025); *Manzo Valencia v. Chestnut*, No. 1:25-cv-01550 WBS JDP, 2025 WL 3205133, at *1-4 (E.D. Cal. Nov. 17, 2025); *Cortes Alonzo v. Noem*, No. 1:25-cv-01519 WBS SCR, 2025 WL 3208284, at *1-5 (E.D. Cal. Nov. 17, 2025); *Altamirano Ramos v. Lyons*, No. 2:25-cv-09785-SVW-AJR, 2025 WL 3199872, at *4-9 (C.D. Cal. Nov. 12, 2025); *Montoya Cabanas v. Bondi*, No. 4:25-cv-04830, 2025 WL 3171331, at *3-7 (S.D. Tex. Nov. 13, 2025); *Olalde v. Noem*, No. 1:25-CV-00168-JMD, 2025 WL 3131942, at *2-5 (E.D. Mo. Nov. 10, 2025); *Oliveira v. Patterson*, No. 6:25-cv-01463-DCJ-DJA, 2025 WL 3095972, at *2-6 (W.D. La. Nov. 4, 2025); *Sandoval v. Acuna*, No. 6:25-cv-01467, 2025 WL 3048926, *2-6 (W.D. La. Oct. 31, 2025); *Rojas v. Olson*, No. 25-cv-1437-bhl, 2025 WL 3033967, at *2-10 (E.D. Wis. Oct. 30, 2025); *Kum v. Ross*, No. 6:25-cv-00451-DCJ-CBW, 2025 WL 3113646, at *1-2 (W.D. La. Oct. 22, 2025); *Vargas v. Lopez*, No. 25-CV-526, 2025 WL 2780351, at *4-9 (D. Neb. Sept. 30, 2025); *Chavez v. Noem*, No. 25-CV-23250-CAB-SBC, 2025 WL 2730228 at *4-5 (S.D. Cal. Sept. 24, 2025); *Pipa-Aquise v. Bondi*, No. 1:25-cv-01094-MSN-WBP, 2025 WL 2490657, at *1-2 (E.D. Va. Aug. 5, 2025).

jurisdiction over such determinations makes sense. After all, Congress created an administrative process intended to act quickly (though in practice its actions have been anything but) in a field requiring specialized knowledge generally outside the experience of the inferior federal courts.

Munoz Nataren v. Raycraft, No. 4:26-cv-212, 2026 WL 214368, at *2 (N.D. Ohio Jan. 28, 2026); *Amaya-Velis v. Raycraft*, No. 4:26-cv-73, 2026 WL 100596, at *2-3 (N.D. Ohio Jan. 14, 2026).

As the battle of the string cites builds, there is clearly a countrywide district split on applying § 1225 or § 1226 in these instances. And at least four circuits—including the Eleventh—have active appeals on the matter. *Martinez v. Hyde*, No. 25-1902 (1st Cir.); *Pizzaro Reyes v. ERO*, No. 25-1982 (6th Cir.); *Cortes Alonzo v. Noem*, No. 25-7348 (9th Cir.); *Hernandez Alvarez v. Warden*, No. 25-14065 (11th Cir.).³ Soon, there will be more appellate clarity one way or the other on this question. Until that time, courts nationwide will continue struggling with this interpretive issue.

Respondents respectfully disagree with the Court's decision in *Vasquez Carcamo* and believe appeals on this legal question will be in their favor. That said, in the interest of judicial economy and to expedite the Court's consideration of this matter, Respondents make the following arguments for preservation purposes:

1. 8 U.S.C. § 1252(g) bars review of the Malikov's claims. *Vasquez*

³ *Martinez v. Hyde*, 792 F. Supp. 3d 211 (D. Mass. 2025); *Cortes Alonzo*, 2025 WL 3208284; *Pizzaro Reyes v. ERO*, No. 25-cv-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025) *Alvarez v. Morris*, No. 0:25-cv-24806, Doc. 6 (S.D. Fla. Oct. 27, 2024).

Carcamo, No. 2:25-cv-922-SPC-NPM (Doc. 5 at 2-6) (M.D. Fla.).⁴

2. 8 U.S.C. § 1252(b)(9) bars review of these claims. *Id.* at 6-7.
3. Malikov failed to exhaust administrative remedies. *Id.* at 7-8.
4. Malikov is properly detained under 8 U.S.C. § 1225. *Id.* at 8-13.

Should the Court determine Malikov's detention is subject to § 1226, the only appropriate remedy is to begin the process for a bond hearing—not outright release—during which an IJ can determine whether Malikov is a flight risk or danger to the community. *See, e.g., Vasquez Carcamo*, 2025 WL 3119263, at *5-6. Again, only EOIR can provide a bond hearing. That said, if ordered, ICE would do what is in its power to facilitate a hearing. *See Mirando Bravo*, No. 2:25-cv-1046, Doc. 8 at *3.

Conclusion

Malikov's Petition for Writ of Habeas Corpus should be denied. Even if the Court grants relief under § 1226, the only appropriate relief would be a bond determination by ICE and submission to an actual IJ bond hearing as set by EOIR.

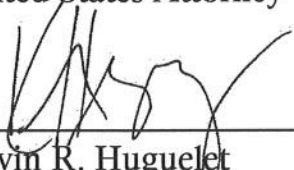
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⁴ Respondents acknowledge Local Rule 3.01(h) prohibits incorporation by reference of any other motion, legal memorandum, or brief. To achieve the purpose of efficiency, Respondents respectfully request the Court to suspend application of the rule in this instance. *See* M.D. Fla. Local R. 1.01(a)-(b); Fed. R. Civ. P. 1.

Date: February 9, 2026

Respectfully submitted,

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