

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

FABIAN FERNANDEZ PIZO,

Petitioner,

Case No. 2:26-cv-610-JES-DNF

v.

WARDEN FLORIDA SOFT SIDE
SOUTH (ALLIGATOR ALCATRAZ),
et al.,

Respondents.

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

Fabrian Fernandez Pizo petitions for a writ of habeas corpus pursuant to 28 U.S.C. § 2241, challenging the lawfulness of his detention by Immigration and Customs Enforcement. His petition should be denied. Fernandez Pizo is currently detained under 8 U.S.C. § 1225(b)(1)(B)(ii) after an asylum officer determined he expressed a credible fear of persecution or torture after being processed for expedited removal. Fernandez Pizo is therefore ineligible for release.

BACKGROUND

Fernandez Pizo is a citizen of Colombia who arrived at the Miami International Airport on November 18, 2018, after traveling on a flight from Cali Columbia. (Composite Exhibit, Ex. 1 at 5.) Following an encounter with U.S. Border Patrol, he was processed for expedited removal. *See id.*; Petition, Doc. 2-3 at

2 (recognizing Fernandez Pizo was previously processed for expedited removal under INA 235(b)(1), 8 U.S.C. § 1225(b)(1)). During the expedited removal process, an asylum officer determined that Fernandez Pizo demonstrated a credible fear of persecution or torture. (Petition, Doc. 2-3 at 2.) The expedited removal order was therefore vacated, and Fernandez Pizo was placed in removal proceedings. *Id.*

Fernandez Pizo remained in custody until he was released on bond on March 7, 2019. (Composite Exhibit, Ex. 1 at 9.) He was placed in immigration custody on or about February 15, 2026, after being arrested for trespassing. *Id.* at 1, 9.

On March 4, 2026, Fernandez Pizo filed a petition for writ of habeas corpus arguing his detention violates the Immigration and Nationality Act and the Due Process Clause of the Fifth Amendment. (Doc. 2.)

CERTIFIED HABEAS RETURN

ICE is detaining Fernandez Pizo under the mandatory detention provision of 1225(b)(1)(B)(ii). *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.”).

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). Fernandez Pizo 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

I. This Court lacks jurisdiction to review Fernandez Pizo’s petition.

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 the context of immigration habeas cases related to removal proceedings—like here—the Immigration and Nationality Act (“INA”) divests this Court’s jurisdiction. Title 8 U.S.C. § 1252(g) provides, “[N]o court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter..” 8 U.S.C. § 1252(g). 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 (AADC)*, 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.*

When construing § 1252(g), one must limit the application “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, § 1252(g) bars review if the

conduct “to commence proceedings, adjudicate cases, or execute removal orders is the basis of the claim.” *Gupta v. McGahey*, 709 F.3d 1062, 1065 (11th Cir. 2013).

Securing an alien while awaiting a removal determination constitutes an action taken to commence proceedings. *Gupta v. McGahey*, 709 F.3d 1062, 1065 (11th Cir. 2013); *see also Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016) (“Because [alien] challenges the methods that ICE used to detain him prior to his removal hearing, these claims are foreclosed by § 1252(g) and our decision in *Gupta*.”); *Johnson v. U.S. Attorney General*, 847 F. App’x 801, 802 (11th Cir. 2021). “By its plain terms, [§ 1252(g)] bars us from questioning ICE’s discretionary decisions to commence removal—and thus necessarily prevents us from considering whether the agency should have used a different statutory procedure to initiate the removal process.” *Alvarez*, 818 F.3d at 1203.

Fernandez Pizo was detained “while awaiting a removal determination.” *Gupta*, 709 F.3d at 1065. Under *Gupta*’s binding interpretation of § 1252(g), this Court has no jurisdiction. *Id.* Immigration authorities decided to commence proceedings against Fernandez Pizo related to removal. Congress specifically stripped jurisdiction to review that decision; therefore, the Court lacks subject-matter jurisdiction over this case.

II. Fernandez Pizo’s detention does not violate the Immigration and Nationality Act or the Fifth Amendment’s Due Process Clause.

Fernandez Pizo is subject to mandatory detention under 8 U.S.C. §

1225(b)(1)(B)(ii). The subsection provides, “If [an asylum officer] determines at the time of [a credible fear of persecution] interview that an alien has a credible fear of persecution (within the meaning of clause (v)), the alien shall be detained for further consideration of the application for asylum.” As contemplated by § 1225(b)(1)(B)(ii), Fernandez Pizo was referred to removal proceedings following an asylum officer’s determination that he demonstrated a credible fear of persecution or torture. (Petition, Doc. 2-3 at 2.)

In *Matter of M-S-*, 27 I. & N. Dec. 509 (2019), the Office of the Attorney General concluded that “[a]n alien who is transferred from expedited removal proceedings to full removal proceedings after establishing a credible fear of persecution or torture is ineligible for release on bond. Such an alien must be detained until his removal proceedings conclude, unless he is granted parole.” *Id.* at 509. The Attorney General explained, “I read section 235(b)(1)(B)(ii) to mandate detention (i) for the purpose of ensuring additional review of an asylum claim, and (ii) for so long as that review is ongoing. In other words, section 235(b)(1)(B)(ii) requires detention until removal proceedings conclude.” *Id.* at 516. Here, Fernandez Pizo falls squarely within *Matter of M-S-*. See also *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 111 (2020) (“Applicants who are found to have a credible fear may also be detained pending further consideration of their asylum

applications.”).¹

Fernandez Pizo’s contention that ICE has incorrectly classified him as an “arriving alien” misapprehends the basis for his detention. Fernandez was previously processed for expedited removal before being placed in removal proceedings after an asylum officer determined he expressed a credible fear of persecution or torture. (Petition, Doc. 2-3 at 2.) Presently, Fernandez Pizo is charged as an applicant for admission not in possession of valid entry documents under INA 212(a)(7)(A)(i)(I), 8 U.S.C. § 1182(a)(7)(A)(i)(I). He is in ongoing removal proceedings to consider that claim. Title 8 U.S.C. § 1225(b)(1)(B)(ii) therefore mandates his detention.

CONCLUSION

Fernandez Pizo’s Petition for Writ of Habeas Corpus should be denied.

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¹ But see *Silva Toruno v. Ripa*, No. 2:26-CV-199-SPC-DNF, 2026 WL 503333 (M.D. Fla. Feb. 24, 2026) (granting petition under the Due Process Clause of the Fifth Amendment when a petitioner was subject to detention under 8 U.S.C. § 1225(b)(1)(B)(ii)). Here, *Silva Toruno* is distinguishable because, unlike the petitioner in *Silva-Toruno*, Fernandez Pizo was processed for expedited removal after presenting himself for admission, not years later as in *Silva-Toruno*.

DATED this 16th day of March, 2026.

Respectfully submitted,

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