

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

CARLOS AGUSTIN OTERO NOVOA,

Petitioner,

v.

SECRETARY, U.S. DEPARTMENT
OF HOMELAND SECURITY
("DHS"), et al., (all official capacity),

Respondents.

Case No. 2:26-cv-753-SPC-NPM
A No. 
Cuba

Response to Habeas Petition

The Federal Respondents respond to Petitioner Carlos Agustin Otero Novoa's Petition for Writ of Habeas Corpus (Doc. 1). The Court lacks jurisdiction. Apart from that, Otero Novoa's detention is lawful. So the Court should deny the writ and dismiss this action.

To be clear and expedite matters, this case presents legal issues on which the Court just ruled against ICE. *Otero Novoa v. Warden*, No. 2:26-cv-987-SPC-DNF (M.D. Fla. Apr. 16, 2026). For preservation purposes, the Federal Respondent make the same argument here.

Background

Otero Novoa is a citizen of Cuba who unlawfully entered the United States in July 2022. (Ex. 1 at 36-37). U.S. Border Patrol ("USBP") encountered and arrested him near the border as he illegally entered. (Ex. 1 at 37). USBP took Otero Novoa into

detention—serving him with a Form I-862, Notice to Appear (“NTA”). (Ex. 1 at 5, 7). The original NTA charged as inadmissible for unlawful presence without admission or parole under 8 U.S.C. § 1182(a)(6)(A)(i). (Ex. 1 at 37, 42-44). Pending the immigration proceedings, DHS released Otero Novoa on a Form I-220A, Order of Release on Recognizance (“OREC”). (Ex. 1 at 40, 45).

On January 26, 2026, Otero Novoa had a master calendar hearing in immigration proceedings. (Ex. 1 at 20). At that hearing, DHS moved to dismiss the removal proceedings. (Ex. 1 at 20-21). The immigration judge (“IJ”) considered the motion and provided Otero Novoa a chance to respond. (Ex. 1 at 20-21). Otero Novoa opposed the motion. (Ex. 1 at 20-21). Over that objection, the IJ granted DHS’s motion and dismissed the § 1229a proceedings. (Ex. 1 at 20-21). Otero Novoa later appealed the IJ’s decision to the Board of Immigration appeals (“BIA”)—which remains pending. (Doc. 1-2 at 14).

After this hearing, ICE took Otero Novoa into detention for expedited removal proceedings under 8 U.S.C. § 1225(b)(1). (Ex. 1 at 38). ICE determined Otero Novoa was inadmissible as an applicant for admission without valid immigration documents under 8 U.S.C. § 1182(a)(7)(a)(i)(I). (Ex. 1 at 1-2). As a result, ICE entered an expedited order of removal under 8 U.S.C. § 1225(b)(1). (Ex. 1 at 1-2). This Form I-860, Notice and Order of Expedited Removal, was a final order of removal. (Ex. 1 at 1-2).

Otero Novoa was improperly removed with his BIA appeal and credible fear claim pending. After return, he is currently detained at Alligator Alcatraz.

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). Petitioner 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

As explained, the Court lacks jurisdiction. Even if it disagrees, however, Otero Novoa’s claims fail on the merits. Before getting to those matters, ICE must clarify its basis of detention. 28 U.S.C. § 2243.

A. Habeas Return on Detention

In a habeas case, the respondent “shall make a return certifying the true cause of the detention.” *Id.* That offered basis of detention is conclusive unless petitioner proves, or the Court finds, it is not true. *Id.* § 2248.

ICE is detaining Otero Novoa under the mandatory detention provisions of 8 U.S.C. § 1225(b)(1). Otero Novoa is free to contend his detention under § 1225 is unlawful. But § 1225(b)(1)—not §§ 1225(b)(2) or 1226(a)—is the certified basis on which ICE is detaining Otero Novoa. No evidence suggests otherwise; in fact, the undisputed evidence establishes ICE’s basis.¹

B. Jurisdiction

There is no need to get into the nuances of § 1225 and § 1226 since the Court

¹ Since the basis of detention is not § 1225(b)(2), this is not a dispute over the bond hearing—as alleged in the Petition. So this Response will not address those matters.

lacks subject-matter jurisdiction over Otero Novoa's claims. There are four reasons why.

1. *Jurisdiction Stripping Under § 1252(a)*

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 immigration habeas cases related to removal proceedings—as here—the Immigration and Nationality Act (“INA”) divests this Court’s jurisdiction to consider Otero Novoa’s claims challenging the dismissal of his removal proceedings and decision to seek expedited removal under § 1225(b)(1). 8 U.S.C. § 1252(a)(2)(A). This is a specific type of jurisdiction-stripping (applicable only to expedited removal).

The INA specifically stripped the Court’s jurisdiction (via habeas or otherwise) to review:

- (i) . . . any individual determination or to entertain any other cause or claim arising from or relating to the implementation or operation of an order of removal pursuant to section 1225(b)(1) . . . ,
- (ii) . . . a decision by the Attorney General to invoke the provisions of such section,
- (iii) the application of such section to individual aliens, including the determination made under section 1225(b)(1)(B) . . . , or
- (iv) . . . procedures and policies adopted by the Attorney General to implement the provisions of section 1225(b)(1).

8 U.S.C. § 1252(a)(2)(A). No amount of wordplay could characterize this case as anything other than a direct challenge on the implementation, invocation, application,

and/or policies regarding § 1225(b)(1) as applied to Otero Novoa. 8 U.S.C. § 1252(a)(2)(A)(i)-(iv). So the Court lacks jurisdiction.

These jurisdiction-stripping provisions are all subject to limited exceptions for review set out in § 1252(e). Specifically, habeas cases involving “any determination made under section 1225(b)(1) . . . shall be limited to determinations of—”

(A) whether the petitioner is an alien,

(B) whether the petitioner was ordered removed under such section, and

(C) whether the petitioner can prove by a preponderance of the evidence that the petitioner is an alien lawfully admitted for permanent residence, has been admitted as a refugee under section 1157 of this title, or has been granted asylum under section 1158 of this title, such status not having been terminated, and is entitled to such further inquiry as prescribed by the Attorney General pursuant to section 1225(b)(1)(C) of this title.

8 U.S.C. § 1252(e)(2). None of these circumscribed exceptions apply to Otero Novoa.

It is undisputed he is an alien,; before this lawsuit, he was ordered removed under § 1225(b)(1); and he cannot prove any lawful admission, grant of asylum, or any other statutory ground for the Court’s review. In short, there is nothing within the Court’s limited power to review here. Congress broadly stripped jurisdiction over this exact case.

Crucially, courts cannot review the wisdom of these ICE determinations. For example, “In determining whether an alien has been ordered removed under section 1225(b)(1) of this title, the court’s inquiry shall be limited to whether such an order in fact was issued and whether it relates to the petitioner.” *Id.* § 1252(e)(5). Congress continued:

There shall be no review of whether the alien is actually inadmissible or entitled to any relief from removal.

Id. Again, here, it is undisputed the expedited removal order was issued and related to Otero Novoa. So even if the Court could determine Otero Novoa was entitled to relief from removal—which he isn’t—it still lacks jurisdiction to do so. 8 U.S.C. § 1252(e)(5).

The Eleventh Circuit recognizes and enforces the jurisdictional limitations set out by this plain statutory language. *Javier Gonzalez v. U.S. Att’y General*, 844 F. App’x 129, 133 & n.2-3 (11th Cir. 2021). If an “argument attacks the validity of the underlying . . . expedited order of removal, we lack jurisdiction to consider it.” *Id.* at 133. That’s this case. There is no way to issue any relief here without reviewing the validity of the underlying expedited order of removal and deciding if Otero Novoa qualifies for expedited removal.

To make matters worse, granting relief requires the Court to make findings and conclusions on disputed issues regarding eligibility. For instance, expedited removal may be applied to an alien “who has not been admitted or paroled into the United States, and who has not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately prior.” 8 U.S.C. § 1225(b)(1)(A)(iii)(II). So the Court would need to decide if Otero Novoa satisfied the immigration officer’s subjective belief that he was present for at least two years. It also needs to determine the unclear factual and legal question whether Otero Novoa “has not been admitted or paroled.”

Id. Not only is that phrase unclear. *Doe v. Noem*, 152 F.4th 272 (1st Cir. 2025) (holding statute has diverging “plausible” readings). The legal term of art “paroled” generally does not include conditional parole under an OREC—like the one Otero Novoa had. *E.g.*, *Rodriguez-Acurio v. Almodovar*, No. 2:25-cv-6065 (NJC), 2025 WL 3314420, at *16 (E.D.N.Y. Nov. 28, 2025); *Cruz-Miguel v. Holder*, 650 F.3d 189, 198 (2d Cir. 2011) (clarifying conditional parole under OREC is not “parole into the United States”). Leaving aside the many factual and legal questions the Court must resolve, the INA specifically strips jurisdiction to make such calls.

What’s more, “review of determinations under section 1225(b) of this title and its implementation is available in an action instituted in the United States District Court for the District of Columbia.” 8 U.S.C. § 1252(e)(3)(A). Put different, one cannot challenge the general implementation of expedited removal under § 1225(b)(1) in the Middle District. Any broad policy or practices challenge to application of expedited removal can only be pursued in Washington. 8 U.S.C. § 1252(e)(3)(A); *e.g.*, *Las Americas Immigrant Advocacy Ctr. v. Wolf*, 507 F. Supp. 3d 1, 19 (D.D.C. 2020).

Several decisions address similar jurisdictional questions. *Noori v. Larose*, No. 25-cv-1824-GPC-MSB, 2025 WL 2800149, at *7-8 (S.D. Cal. Oct. 1, 2025); *Mata Velasquez v. Kurzdorfer*, No. 25-CV-493-LJV, 2025 WL 1953796, at *6-7 (W.D.N.Y. July 16, 2025). Those cases, however, concerned dissimilar aliens on humanitarian parole or in full removal proceedings. Further, those petitioners did not challenge the unreviewable discretionary decision to pursue expedited removal. Here, Otero Novoa challenges custody under § 1225(b)(2), but that is not the basis of his detention.

Breezing past that issue, he seemingly asks the Court to rule that ICE could not pursue expedited removal, undo his removal order, and release him into the United States with no legal status. The Court has no jurisdiction to do any of these things.

ICE recognizes the Court's rulings in *Otero Novoa*, No. 2:26-cv-987; *Hernandez Giron v. DHS*, No. 2:25-cv-1201-SPC-NPM, 2026 WL 60351 (M.D. Fla. Jan. 8, 2026); *Gonzalez Carmona v. Warden*, No. 2:25-cv-1128-SPC-DNF, 2025 WL 3649577 (M.D. Fla. Dec. 17, 2025), and *Alfonso Perez v. Warden*, No. 2:25-cv-947-SPC-DNF, 2025 WL 3466956 (M.D. Fla. Dec. 3, 2025). Crucially, however, the Court just clarified that *Hernandez Giron* does not prevent ICE from moving forward with removal on an expedited removal order in these instances. No. 2:25-cv-1201, Doc. 16 at 1-2.

Apart from that, ICE respectfully disagrees and believes appeal in *Hernandez Giron* will be successful if not mooted beforehand with removal. The Supreme Court addressed—and rejected—a Suspension Clause challenge to the jurisdiction stripping provisions of §§ 1252(a)(2), (e)(2). *DHS v. Thuraissigiam*, 591 U.S. 103, 119 (2020). That is the only theory possibly allowing review of an expedited removal order.

As *Thuraissigiam* explained, the Suspension Clause has only been assumed to protect a highly circumscribed and limited right to habeas corpus—i.e., “the writ as it existed in 1789, when the Constitution was adopted.” *Id.* at 116 (cleaned up). But habeas was not “understood at the time of the adoption of the Constitution to permit a petitioner to claim the right to enter or remain in a country or to obtain administrative review potentially leading to that result.” *Id.* at 117. “The writ simply provided a

means of contesting the lawfulness of restraint and securing release.” *Id.*

Otero Novoa seeks to void ICE’s expedited removal order and enjoin it from pursuing expedited removal against him. Put different, he wants the Court to violate the jurisdiction-stripping provisions. 8 U.S.C. §§ 1252(a)(2), (e)(2). Likewise, Otero Novoa requests the Court ignore the Supremes and vacate a removal order even though “that relief falls outside the scope of the common-law habeas writ.” *Thuraissigiam*, 591 U.S. at 118.

Reliance on *Boumediene v. Bush* does not change the outcome. 553 U.S. 723 (2008). As the *Thuraissigiam* explained, that case “is not about immigration at all.” 591 U.S. at 136. *Boumediene* merely “held that suspected foreign terrorists could challenge their detention at the naval base in Guantanamo Bay.” *Id.* In short, “They sought only to be released from Guantanamo, not to enter this country.” *Id.* at 136-37. “And nothing in the Court’s discussion of the Suspension Clause suggested that they could have used habeas as a means of gaining entry.” *Id.* at 137.

To be clear, the Court’s Suspension Clause holdings in *Gonzalez Carmona* and *Alfonso Perez* are extremely broad. Each voided a final order of expedited removal—which is statutorily prohibited. In doing so, the decisions render, impliedly if not expressly, the jurisdiction-stripping provisions unconstitutional considering the Suspension Clause to the extent that they do not permit review of whether § 1225(b)(1) was properly applied to a habeas petitioner. The Supreme Court has never rendered such a far-reaching decision in the context of the Suspension Clause.

The Court cannot ignore congressional limitations on its jurisdiction or

Supreme Court rulings on those matters. ICE is trying to remove Otero Novoa from the United States, which he is trying to stop. While understandable that Otero Novoa wants to remain here, that affirmative immigration relief has never been the proper remedy in a habeas action.

It should be noted that Judge Damian recently agreed with ICE on this exact issue. *Chaviano v. Bondi*, No. 25-22451-CIV-DAMIAN, 2025 WL 1744349 (S.D. Fla. June 23, 2025). Analyzing this issue at length, *Chaviano* hit the nail on the head:

In other words, although the suspension of the right to seek habeas review of the legality of detention may implicate the Suspension Clause, that is not what Petitioner seeks review of by way of his habeas Petition. He seeks review of the Respondents' determination that he qualifies for expedited removal because, if he does, he is being legally detained. But, based on the Court's opinion in *Thuraissigiam*, the suspension of the ability to seek habeas review of the Respondents' determination does not violate the Suspension Clause. Therefore, as applied to Petitioner's circumstances and the issues he raises in his habeas Petition, Section 1252(e) does not violate the Suspension Clause.

2025 WL 1744349, at *7. As *Chaviano* explains, Congress did not suspend habeas corpus through these INA jurisdiction-stripping provisions. Rather, it withheld judicial over certain discretionary decisions—consistent with the overwhelming deference the INA affords the Executive in the context of immigration enforcement.

Nor is *Chaviano* alone in applying the INA's jurisdictional limitations as written. *Zamirov v. Olson*, No. 25 CV 6540, 2025 WL 2618030, at *2-4 (N.D. Ill. Aug. 29, 2025) (rejecting challenge to expedited removal designation after DHS dismissed full removal proceedings because § 1252(a) and (e) plainly strip jurisdiction). For instance, *S.W. v. Noem* concluded federal courts have no jurisdiction to review claims where—

as here—the claim requires review of whether petitioner was eligible for expedited removal due to factors like previous parole. No. 25-cv-9264 (PKC), 2025 WL 3754067, at *5-8 (S.D.N.Y. Dec. 29, 2025).

The Suspension Clause simply does not apply in these circumstances. Again, a contrary holding would render unconstitutional the entire INA scheme related to judicial review expedited removal issues. Outside a few decisions over the last few months of furious immigration litigation nationwide, there is no controlling (or even persuasive) law suggesting that result.

As explained, there is no jurisdiction given the INA’s limitations set out in § 1252(a)(2)(A), (e).

2. *Jurisdiction Stripping Under § 1252(g)*

In immigration habeas cases related to removal proceedings—as here—the Immigration and Nationality Act (“INA”) divests this Court’s jurisdiction to consider Otero Novoa’s claims challenging his detention pending a removal determination. 8 U.S.C. § 1252(g).

There is no jurisdiction to review “any cause or claim . . . arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders.” 8 U.S.C. § 1252(g); *Gupta v. McGahey*, 709 F.3d 1062, 1065 (11th Cir. 2013). 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*, 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*, 709 F.3d at 1065.

The law is clear:

Securing an alien while awaiting a removal determination constitutes an action taken to commence proceedings.

Id.; see also *Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016) (“Because [the 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. So § 1252(g) strips the Court’s jurisdiction over habeas petitions challenging detention pending removal proceedings.

It is undisputed that ICE detained Otero Novoa to execute expedited removal. It entered an order of removal. So now, ICE is detaining Otero Novoa to execute a

removal order. *Gupta*, 709 F.3d at 1065. Under *Gupta*'s binding interpretation of § 1252(g), the Court plainly has no jurisdiction. *Id.* Otero Novoa's entire case is based on whether ICE used the correct statute to pursue removal proceedings (i.e., § 1225(b)(1)). Congress stripped the Court's jurisdiction to review those discretionary decisions. In *Alvarez*, the Eleventh specifically held as much. 818 F.3d at 1203 (Jurisdiction stripped for "considering whether the agency should have used a different statutory procedure to initiate the removal process.").

As the Eleventh Circuit made clear, what matters is whether the challenged conduct arose from decisions or actions to commence removal proceedings or execute removal orders. *Gupta*, 709 F.3d at 1065 ("Each of these claims, then, challenges the actions the agents took to commence removal proceedings—exactly the claims that § 1252(g) bars from the subject-matter jurisdiction of federal courts."). The Eleventh expressly reaffirmed this in several other decisions (both published and unpublished):

Because [plaintiff] 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*.

Alvarez, 818 F.3d at 1204; *see also Johnson*, 847 F. App'x at 802. The decisions and actions to detain Otero Novoa (under either § 1225 or § 1226) arise from the commencement and execution of removal proceedings. The INA strips jurisdiction over that review. *Gupta*, 709 F.3d at 1065; 8 U.S.C. § 1252(g).

What's more, "the sole function of habeas corpus is to provide relief from Unlawful imprisonment or custody, and it cannot be used for any other purpose." *Cook v. Hanberry*, 592 F.2d 248, 249 (5th Cir. 1979). So the only relief a habeas petitioner

may receive is release. *Thuraissigiam*, 591 U.S. at 119. Otero Novoa decided to pursue habeas seeking review of agency action. Put different, this case is only about whether ICE decision to apply § 1225(b)(1) was appropriate. *Gupta* and its progeny hold the Court has no jurisdiction over such actions. Regardless of that broad jurisdictional bar, the Court has no habeas jurisdiction to prohibit transfer or institute a different type of removal proceedings. *See* 8 U.S.C. § 1231(g)(1); *Rathod v. Barr*, No. 1:20-CV-161-P, 2020 WL 1492790, at *2 (W.D. La. Mar. 5, 2020), *R&R adopted*, 2020 WL 1501891 (Mar. 25, 2020).

The Court also lacks jurisdiction on separate grounds.

3. *Zipper Clause*

The INA precludes review of “all questions of law and fact . . . arising from any action taken or proceeding brought to remove an alien from the United States” except judicial review of a final order of removal. 8 U.S.C. § 1252(b)(9). This is known as the “zipper clause” and applies where a petitioner seeks “review of an order of removal [or] the decision to seek removal.” *Canal A*, 964 F.3d at 1257; *DHS v. Regents of Univ. of Cal.*, 591 U.S. 1, 19 (2020). In reading this subsection alongside 8 U.S.C. § 1252(a)(5)—which limits review—courts conclude petitioners must funnel all aspects of challenges to removal proceedings through the avenue set out in § 1252(a)(5). *Nasrallah v. Barr*, 590 U.S. 573, 580 (2020) (“The REAL ID Act clarified that final orders of removal may not be reviewed in district courts, even via habeas corpus, and may be reviewed only in the courts of appeals.”); *see also Bonhometre v. Gonzales*, 414 F.3d 442, 446 (3d Cir. 2005) (There is “clear intent to have all challenges to removal

orders heard in a single forum (the courts of appeals).”).

The zipper clause restrictions are broad but not unlimited. *Canal A*, 964 F.3d at 1257. Still, a claim arising from actions or proceedings brought to remove an alien clearly falls within the clause. *See Regents of Cal.*, 591 U.S. at 19.

Here, Otero Novoa challenges a final order of removal. (Ex. 1 at 1-2). This was an action arising from ICE’s choice to carry out proceedings to remove him from the United States. The zipper clause is in full force; judicial review by this Court is inappropriate and contrary to the INA. 8 U.S.C. § 1252(b)(9).

There is one final jurisdictional issue.

4. *Failure to Exhaust*

Otero Novoa has yet to exhaust his administrative remedies. In fact, he is currently pursuing a BIA appeal. The Court should not engage in concurrent appellate review on an IJ determination on dismissal of removal proceedings. *See Mata Velasquez*, 2025 WL 1953796, at *7 (“The government is correct that this Court does not have jurisdiction to decide the question—currently pending before the BIA—of whether the IJ properly granted the government’s motion to dismiss the section 240 proceedings.”).

5. *Conclusion*

As explained, the Court lacks jurisdiction over this habeas action. Yet even if it disagrees, detention is still lawful.

C. **Merits**

Alternatively, the Petition fails for three reasons: (1) § 1225(b) was properly applied; (2) Otero Novoa does not identify a violation of law supporting his release;

and (3) detention under § 1225(b)(1) is appropriate to the extent that the Court can review it.

1. *Detained at Border and Subject to § 1225(b)*

From his initial unlawful entry into America, Otero Novoa was detained and subject to § 1225(b). In many Orders, Judge Dudek consistently explained this result. *Aranda Garcia v. Warden*, No. 2:25-cv-1053-KCD-DNF, 2025 WL 3537592, at *1 (M.D. Fla. Dec. 10, 2025); *Duenas Garcia v. ICE*, No. 2:25-cv-1004-KCD-NPM, 2025 WL 3277163, at *2 (M.D. Fla. Nov. 25, 2025); *Pirto v. Warden*, No. 2:25-cv-966-KCD-DNF, Doc. 13 (M.D. Fla. Nov. 13, 2025). As he explained:

[Petitioner] was apprehended at the border. That puts him squarely under § 1225. The fact that [Petitioner] spent time in the United States after being released on an order of recognizance—and was eventually apprehended in the country—does not change his classification.

Aranda Garcia, 2025 WL 3537592, at *1.

This case is indistinguishable. Otero Novoa was detained at the border. At that point, he could have been expedited removal under § 1225(b)(1). So he is subject to § 1225.

While he was initially detained at the border, ICE chose to release him under an OREC. The eventual discretionary revocation of that OREC and dismissal of full removal proceedings did not eliminate the possibility of expedited removal. Quite the opposite, this resulted in ICE “returning [Otero Novoa] to his previous status under § 1225 pending expedited removal.” *Valera-Marin v. Lyons*, No. 2:25-cv-00914-KG-GBW, 2025 WL 3687978, at *3 (D.N.M. Dec. 19, 2025). Longstanding regulations

explain that upon termination of parole, an alien “shall be restored to the status that he or she had at the time of parole.” 8 C.F.R. § 212.5(e)(2)(i).

Put simply, Otero Novoa remains subject to § 1225(b)—including the expedited removal provisions ICE invoked before entering a final order of removal against him. (Ex. 1 at 1-2).

2. *No Identified Unlawful Action*

The Supreme “Court has recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process.” *Demore v. Kim*, 538 U.S. 510, 523 (2003). So “Congress has the authority to detain aliens suspected of entering the country illegally pending their deportation hearings.” *Reno v. Flores*, 507 U.S. 292, 306 (1993). What’s more, discretion over immigration detention decisions may be delegated to the Attorney General. *Id.*

ICE exercised its delegated discretion to pursue expedited removal proceedings. That decision is without a doubt unreviewable for the reasons above. As a result of that discretionary choice, Otero Novoa is subject to mandatory detention. 8 U.S.C. § 1225(b)(1)(B)(iii)(IV).

Understanding he cannot challenge the above, Otero Novoa recasts theories to indirectly challenge unreviewable actions. In doing so, he must identify deprivation of a liberty interest. Several of his alleged grounds are facially invalid since he has no liberty interest in such matters. Specifically, Perez has no liberty interest in a particular adjudication of his Form I-589. *Kanyan v. USCIS*, No. 24-CV-8564 (RPK), 2025 WL 1489807, at *4 (E.D.N.Y. May 22, 2025) (noting no liberty interest in manner of

adjudicating Form I-589). Nor does he have a liberty interest in the type of removal proceedings applied. *Matter of Ferreira*, 28 I&N Dec. 765, 768 n.2 (BIA 2023).

To be clear, aliens have a liberty interest to be free of unreasonable civil detention; yet that interest does not eliminate the Government's power to detain by law—e.g., under § 1225(b)(1)'s mandatory detention provisions. So Otero Novoa must show the law was (mis)applied to him in such a way that ICE deprived him of a cognizable liberty interest.

The only recognized interest that Otero Novoa may have had here was revocation of his OREC. In 2022, ICE released Otero Novoa under an OREC. This was conditional parole under § 1226(a)(2)(B). *E.g.*, *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099, at *7 (D. Ariz. Aug. 11, 2025). In January, ICE necessarily revoked parole when it dismissed the full removal proceedings before pursuing expedited removal under § 1225(b)(1) and detaining Otero Novoa. It did so after a hearing before the IJ to determine whether it could dismiss the proceedings to pursue expedited removal. Otero Novoa had a chance to respond in front of a neutral IJ.

Under § 1226, ICE has complete discretion to revoke conditional parole.² 8 U.S.C. § 1226(b). ICE can revoke parole “at any time” then “the alien may be taken into physical custody and detained.” 8 C.F.R. § 236.1(c)(9); *see also Ortega v. Bonnar*, 415 F. Supp. 3d 963, 968 (N.D. Cal. 2019). At most, the due process protections owed

² The Attorney General's discretion on these matters has long been delegated to individual ICE officers. *R.I.L.-R v. Johnson*, 80 F. Supp. 3d 164, 171 (D.D.C. 2015).

here would be notice and an opportunity to be heard. *See S.D.B.B. v. Johnson*, No. 1:25-cv-882, 2025 WL 2845170, at *6-10 (M.D.N.C. Oct. 7, 2025).

Otero Novoa received notice and opportunity to be heard at a hearing before the IJ before being taken into custody. Disagreement with the IJ's decision is a matter for appeal to the BIA; likewise, any dispute with his order of expedited removal can only be reviewed (if at all) by the Eleventh Circuit.

What's more, Otero Novoa has other avenues for review available that satisfy any due process requirements regarding an asylum claim. He asserts a violation of due process because he will not be able to pursue his asylum claim within full removal proceedings. Yet review of an asylum claim by an IJ is available even to those aliens in expedited removal. *Thuraissigiam*, 591 U.S. at 109-10 (explaining process including that "the applicant may appeal to an immigration judge, who can take further evidence and shall make a de novo determination" (cleaned up)). In short, this is an imagined deprivation even if it were cognizable.

Otero Novoa's failure to identify an unlawful action dooms his Petition.

3. *Dispute Over § 1225(b)(1) Designation Unreviewable Here*

At bottom, Otero Novoa alleges ICE's decision to detain him under § 1225(b)(1) was inappropriate, deprived his due process, and withheld his preferred asylum adjudication. These claims fail because he cannot challenge that designation.

To interpret the relevant parts of the INA, courts first turn to the "plain meaning of the statute." *Esquivel-Quintana v. Sessions*, 581 U.S. 385, 391 (2017). If the statutory text is clear, the analysis ends. *Bostock v. Clayton County, Ga.*, 590 U.S. 644, 674 (2020).

The statutory scheme in § 1225(a) provides: “An alien present in the United States who has not been admitted . . . shall be deemed for purposes of this chapter an applicant for admission.” 8 U.S.C. § 1225(a); *Thuraissigiam*, 591 U.S. at 140. Applicants for admission under this section fall into one of two categories. First, those initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation fall under § 1225(b)(1). Second, everyone else not encompassed by § 1225(b)(1) fall under the § 1225(b)(2) catchall. *Jennings*, 583 U.S. at 287.

Under § 1225(b)(1), aliens are detained for the purpose of expedited removal. Under § 1225(b)(2), the “alien shall be detained for a proceeding under section 1229a”—i.e., full removal proceedings—after “the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A). Read plainly, these subsections “mandate detention of applicants for admission until certain proceedings have concluded.” *Jennings*, 583 U.S. at 297.

Given its statutory obligation, ICE detained Otero Novoa under § 1225(b)(1). The parties do not dispute he entered the United States illegally and without authorization. Otero Novoa’s detention pending his removal proceedings is not unlawful; rather, it is statutorily required. 8 U.S.C. § 1225(b)(1)(B)(IV); *see Chaviano*, 2025 WL 1744349, at *6-8.

Otero Novoa argues § 1225(b)(1) does not apply to aliens previously paroled and placed in full removal proceedings. To be sure, there are some recent, nonbinding cases standing for that proposition. ICE disagrees with that reasoning, yet it need not

respond here as the Court lacks jurisdiction to review that dispute.

Again, Congress expressly stripped this Court's jurisdiction over "implementation," "decision," and "application" of § 1225(b)(1) to Otero Novoa. 8 U.S.C. § 1252(a)(2)(A)(i)-(iii). The only merits issues on § 1225(b)(1) within the Court's possible habeas jurisdiction are set out in § 1252(e)(2). On those § 1225(b)(1) questions, there is no dispute Otero Novoa qualifies for the designation. Specifically, he is an alien (§ 1252(e)(2)(A)) who was ordered removed under § 1225(b)(1) (§ 1252(e)(2)(B)) and has not been granted asylum (§ 1252(e)(2)(C)). To answer any other question here would simply an extra-jurisdictional advisory opinion on interesting questions of INA interpretation.

As explained, Otero Novoa's detention under § 1225(b)(1) is lawful to the limited possible extent on this Court's review. So the INA mandates his detention.

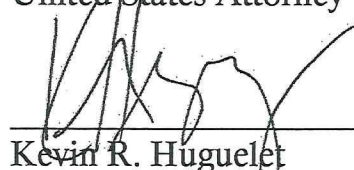
Conclusion

For those reasons, the Court must deny the Petition and dismiss this action.

Date: April 17, 2025

Respectfully submitted,

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