

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

Leonardo Javier Nordelo Lezcano,

Petitioner,

Case No. 2:26-cv-766-KCD-DNF

v.

**Warden of Glades County Detention
Center, et al.,**

Respondents.

**RESPONDENTS' OPPOSITION TO
PETITION FOR WRIT OF HABEAS CORPUS**

Petitioner Leonardo Javier Nordelo Lezcano seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2241, challenging the lawfulness of his detention by U.S. Immigration and Customs Enforcement (ICE) and seeking his immediate release from custody. Nordelo Lezcano's petition should be denied, as he is as an applicant for admission—apprehended at the border—subject to mandatory detention under 8 U.S.C. § 1225(b)(2). Moreover, in a custody redetermination hearing, an immigration judge determined that Nordelo Lezcano failed to establish that he did not pose a risk of flight. ECF 1 at Exh. C.

FACTS

Leonardo Javier Nordelo Lezcano is a national and citizen of Cuba who last entered the United States on or about October 18, 2022, near Marathon, Florida, in a handmade boat. ECF 1 at ¶ 12; Exhibit 1 (I-213). He was apprehended the same day, processed as an “Expediated Removal with Credible Fear” (due to his persecution in Cuba) and released due to lack of bed space. Exhibit 1; ECF 1 at ¶ 11. Nordelo Lezcano had been arrested on various charges in 2023 and 2024. *See* Exhibit 1; ECF 1 at ¶ 15.

Leonardo Javier Nordelo Lezcano was placed in immigration custody in April 1, 2025, and served with a Notice to Appear, dated the same day, on April 17, 2025. ECF 1 at Exhibit A. On February 27, 2026, an ILJ conducted an “in custody redetermination” pursuant to 8 C.F.R. 1236, requested by Nordelo Lezcano, which was denied. ECF 1 at Exh. C.

Nordelo Lezcano was detained at Glades County Detention Center at the time of the filing of his petition but was recently transferred to Broward Transitional Center. *See* Exhibit 2 (detention history). He appears to have documented mental issues referenced in his competency referral. *See* ECF 1 at ¶ 20, Exhibit B (competency to participate in immigration proceedings).¹

¹ In the report, Nordelo Lezcano was found competent and certain accommodations were recommended due to “some impairments seen among individuals with severe mental illness” i.e., “depression, anxiety, PTSD and Unspecified Schizophrenia Spectrum and Other Psychotic Disorder.” *See* ECF 1 at Exh. B. Competency proceedings are important in

On March 17, 2026, Leonardo Javier Nordelo Lezcano filed a petition for writ of habeas corpus alleging his custody violates the Immigration and Nationality Act (INA), the Due Process Clause of the Fifth Amendment, and the Administrative Procedures Act (APA), requesting his release or a “constitutionally adequate individualized bond hearing applying the correct legal standards.” ECF 1 at pp. 9-15.

ARGUMENT

I. The Court lacks jurisdiction over Leonardo Javier Nordelo Lezcano’s claims.

Federal courts have limited jurisdiction and “possess only that power authorized by Constitution and statute.” *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). In this case, 8 U.S.C. § 1252(g) divests this Court’s jurisdiction to consider Leonardo Javier Nordelo Lezcano’s claims of unlawful detention. Further, he has failed to exhaust other remedies available to him before turning to the District Court for intervention.

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,

any type of court proceeding and may have required additional time to complete the competency proceedings.

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.*

This bar is subject to limitations and must be applied “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). Detaining an alien while a removal determination remains pending constitutes an action taken to commence proceedings. *Gupta*, 709 F.3d at 1065; *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. Att’y Gen.*, 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. Here, Leonardo Javier Nordelo Lezcano is being detained “while awaiting a removal determination.” *Gupta*, 709 F.3d at 1065. Under *Gupta*’s binding interpretation of Section 1252(g), the Court has no jurisdiction. *Id.* The Court must therefore dismiss this action for lack of subject matter jurisdiction.

II. Leonardo Javier Nordelo Lezcano is subject to mandatory detention under 8 U.S.C. § 1225(b)(2).

In *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 Section 1225, the INA's statutory scheme, Supreme Court and BIA precedent, the legislative history of the INA and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Pub L. No. 104-208, and DHS'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 petitioner, who are present in the United States without admission." 29 I&N Dec. at 225.² This Court should rule the same.

Leonardo Javier Nordelo Lezcano's apprehension at the border without being previously admitted qualifies him as an applicant for admission seeking admission under 8 U.S.C. § 1225(b)(2). As stated, Nordelo Lezcano was first detained at or near the border when he entered the United States. This Court consistently explains its reasoning. *Alfonso Parra v. DHS*, No. 2:25-cv-1116-KCD-DNF, 2026 WL 21243, at *2

² On February 18, 2026, U.S. District Court for the Central District of California issued an order stating the court "hereby VACATES *Matter of Yajure Hurtado* as contrary to law under the APA." See *Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2026 WL 468284, at *12 (C.D. Cal.). Respondents submit *Yajure Hurtado* remains persuasive authority in this Court regarding the proper interpretation of 8 U.S.C. § 1225(b)(2). The Court does not need to decide the issue of *Bautista*'s preclusive effect, as Nordelo Lezcano was apprehended at the border and is therefore not a member of its class. See *Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3713987, at *32 (C.D. Cal. Dec. 18, 2025) (excluding from the class all noncitizens in the United States without lawful status who "were not or will not be apprehended upon arrival").

(M.D. Fla. Jan. 5, 2026); *Aranda Garcia*, 2025 WL 3537592, at *1; *Duenas Garcia*, 2025 WL 3277163, at *2; *Pirto v. Warden*, No. 2:25-cv-966-KCD-DNF, Doc. 13 (M.D. Fla. Nov. 13, 2025). Likewise, the Court should deny Leonardo Javier Nordelo Lezcano's petition in this case.

III. Nordelo Lezcano received an in custody redetermination hearing.

As part of the relief requested by Nordelo Lezcano, he seeks a “constitutionally adequate individualized bond hearing applying the correct legal standards.” Yet, in a custody redetermination hearing held on February 27, 2026, the ILJ denied release and his detention was continued because Nordelo Lezcanao “failed to establish that he does not pose a risk of flight. He presently has no relief available to him in his removal proceeding.” ECF 1 at Exh. C. Nordelo Lezcano complains that the latter part of the finding “is not a recognized bond factor.” ECF 1 at ¶ 34. Thus, disagreeing with the ILJ's determination, he sought relief from the Court in a habeas petition, however, such relief is not available from this Court through an appeal to the Board of Immigration Appeals (BIA).

Section 1226(e) plainly states that the Attorney General's discretionary judgment “shall not be subject to review,” and “[n]o court may set aside any action or decision” regarding the “detention of any alien or the revocation or denial of bond or parole.” 8 U.S.C. § 1226(e). See *Velasquez Mendez v Warden*, 2:25-cv-1121-KCD-DNF, ECF 15 (M.D. Fla. April 1, 2026) (“this court has absolutely no power to second guess [or act as] a court of appeals for immigration judges.”); see also *Jennings v.*

Rodriguez, 583 U.S. 281, 295 (2018) (stripping federal courts of authority to review a discretionary judgment by the Attorney General or a decision that the Attorney General has made regarding [an alien’s] detention or release.”); *Mayorga v. Meade*, No. 24-CV-22131, 2024 WL 4298815, at *8 (S.D. Fla. Sept. 26, 2024) (“[T]his Court does not have jurisdiction to review the decision of the immigration judge to deny Petitioner bond[.]”). If an alien disagrees with a bond decision, they have the right to appeal it to the BIA. 8 C.F.R. § 1003.19(f). As Judge Chappell just recognized, “the proper way to challenge the [bond] result is appeal to the Board of Immigration Appeals.” *Lopez Galicia v. ICE*, No. 2:26-cv-255-SPC-DNF, ECF 12 at 2 (M.D. Fla. Mar. 5, 2026); *see also Escalante Salazar v. Noem*, No. 2:26-cv-433-SPC-NPM (M.D. Fla. Mar. 5, 2026). Thus, in addition to a lack of jurisdiction, his petition should also be denied for failure to exhaust administrative remedies.

IV. Nordelo Lezcano’s Limited Due Process Rights are not Violated by his Detention.

Nordelo Lezcano has been detained for more than one year. *See* Exhibit 2. Much like in *Pedro v Warden*, 2:26-cv-524-KCD-DNF, 2026 WL 900129 (M.D. Fla. April 2, 2026), Nordelo Lezcano’s frustration is understandable at being detained waiting for his removal case and appeals to move forward (especially in light of the his mental issues described in the competency report, ECF 1 at Exh. B). This Court explained the interplay between *Jennings* and *Thuraissigiam* and what process is due: “An arriving alien’s constitutional rights are coextensive

with his statutory rights. And because Congress unequivocally mandated detention for arriving aliens in § 1225 without providing for a bond hearing, the Due Process Clause does not step in to supply one.” *Id.* at 4-5. As further noted in *Pedro*, “this Court cannot use judicial fiat to conjure a due process claim just to ease the wait,” further explaining that his current custody has “a clear statutory endpoint: it lasts only “until removal proceedings have concluded.”” *Pedro* at 12, citing *Jennings*, 583 U.S. at 299. This Court further noted that once Nordelo Lezcano receives a final order of removal, he could seek relief from any detention exceeding 180 days under *Zadvydas*. *Id.*

V. Nordelo Lezcano Lacks Standing for APA Claim in Habeas Petition.

Nordelo Lezcano argues that his detention violates the APA. Petitioner does not have standing to bring an APA claim. By the APA’s terms, it is available only for final agency action “for which there is no other adequate remedy in court.” 5 U.S.C. § 704. Thus, the APA claim Petitioner seeks to bring is independently barred by this limitation in 5 U.S.C. § 704.

In *Trump v. J.G.G.*, the Supreme Court held that where the claims for relief, as here, “necessarily imply the invalidity of their confinement” those claims “must be brought in habeas.” 604 U.S. 670, 672 (2025) (cleaned up) (internal quotation marks and citation omitted). As noted by Justice Kavanaugh in his concurrence in *J.G.G.*, “given 5 U.S.C. § 704, which states that claims under the APA are not available when

there is another adequate remedy in court, I agree with the Court that habeas corpus, not the APA, is the proper vehicle here.” *Id.* at 674 (Kavanaugh, J. concurring). Here, as in *J.G.G.*, habeas is an “adequate remedy” through which Petitioner can challenge his detention. Even if the APA claim had merit, which it does not, the result would be the same as that in habeas—release from detention. The Supreme Court’s holding is consistent with well-established law that habeas is generally the only possible district court vehicle for challenges brought pursuant to the immigration statutes. *Id.* at 672 (citing *Heikkila v. Barber*, 345 U.S. 229, 234- 35 (1953)); see also *Tran v. Warden*, No. 2:25-cv-1224-KCD-NPM (M.D. Fla. Mar. 10, 2026), ECF 16 at pp. 16-17.

CONCLUSION

The federal Respondents respectfully request that Leonardo Javier Nordelo Lezcano’s petition be denied based on the arguments set forth herein.

DATED this 7th day of April, 2026.

Respectfully submitted,

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