

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION

RAFAEL LUCAS HERNANDEZ,

Petitioner,

v.

Case No.: 3:26-cv-668-MMH-MCR

TODD BLANCHE<sup>1</sup>, in his official capacity as Acting Attorney General of the United States; MARKWAYNE MULLIN<sup>2</sup>, in his official capacity as the Secretary of the Department of Homeland Security; TODD LYONS, in his official capacity as Acting Director of Immigration and Customs Enforcement; GARRETT RIPA, in his official capacity as Field Office Director of Immigration and Customs Enforcement and Removal Operations Miami Field Office; and, RONNIE WOODALL<sup>3</sup>, in his official capacity as Warden of Florida Baker Correctional Institute,

Respondents.

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**RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS**

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<sup>1</sup> Pursuant to Fed. R. Civ. P. 25(d), Acting Attorney General Todd Blanche is substituted for Respondent Bondi.

<sup>2</sup> Pursuant to Fed. R. Civ. P. 25(d), Markwayne Mullin, Secretary of Homeland Security, is substituted for Respondent Noem.

<sup>3</sup> Ronnie Woodall was the warden at the Baker Correctional Institution when it was operated by the State of Florida as a men's prison in Sanderson, FL. See [www.fdle.state.fl.us](http://www.fdle.state.fl.us). Ronnie Woodall was not and is not the warden or facility administrator at the North Florida Detention Center (NFDC) operated in the now shuttered Baker Correctional Institution in Sanderson, FL. Based on information and belief, the Facility Administrator of the NFDC is Eric Hall. Thus, Petitioner is in the custody of Eric Hall, not Ronnie Woodall.

Petitioner Rafael Lucas Hernandez challenges his detention by U.S. Immigration and Customs Enforcement (“ICE”) arguing he is entitled to either immediate release or an individualized bond hearing under 8 U.S.C. § 1226(a). Federal Respondents acknowledge that this Court has previously addressed whether 8 U.S.C. § 1225(b)(2)(A) or 8 U.S.C. § 1226(a) applies to persons such as Petitioner who are present in the United States without having been admitted or paroled after inspection by an immigration officer and rejected the Government’s argument that such individuals are subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). *See, e.g., Juan Miguel Gomez-Pena v. Secretary, DHS*, No. 3:25-cv-1287-MMH-MCR, 2026 WL 83980 (M.D. Fla. Jan. 12, 2026) and *Hector Gutierrez Ortiz v. Kristi Noem*, No. 3:25-cv-1386-MMH-MCR, 2025 WL 3653217 (M.D. Fla. Dec. 17, 2025).

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(a) issue. This is an effort to preserve the Federal Respondents’ arguments and conserve judicial resources. Should the Court prefer a fulsome discussion or entertain reconsidering its rulings on § 1225, the Federal Respondents request leave to submit additional briefing.

## FACTS

Petitioner is a native and citizen of Mexico who last entered the United States without inspection and at a time and location other than what has been designated by the Secretary of the U.S. Department of Homeland Security (“DHS”) in 1999. Doc. 1 at ¶¶ 26, 60. On March 17, 2026, Petitioner was arrested by the Polk County Sheriff’s Office for driving with a suspended license. Id. at ¶ 60; Exhibit 1: *Form I-213* at pg. 2. Thereafter, Petitioner was transferred into ICE custody and issued a Notice to Appear charging him as removable pursuant to INA § 212(a)(7)(A)(i)(I), as codified, 8 U.S.C. § 212(a)(7)(A)(i)(I). *Form I-213* at pg. 3. Petitioner is currently being held without bond at the Florida Baker Correctional Institute in the custody of ICE. Doc. 1-1 at pg. 2.

## CERTIFIED HABEAS RETURN

ICE is detaining Petitioner under the mandatory detention provisions of 8 U.S.C. § 1225(b)(2)(A). *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.”). 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).

## ARGUMENT

### I. The Court lacks jurisdiction over the 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 immigration habeas cases related to removal proceedings—as here—the Immigration and Nationality Act (“INA”) divests this Court of jurisdiction to consider Petitioner’s claim 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. U.S. Immigr. & Customs Enft*, 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. Section 1252(g) strips the Court’s jurisdiction over habeas petitions challenging detention pending removal proceedings.

As the Eleventh Circuit made clear, what matters is whether the challenged conduct arose from decisions or actions to commence removal proceedings. See, e.g., *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.”); *Alvarez*, 818 F.3d at 1204 (“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*.”); *see also Johnson*, 847 F. App’x at 802. The decisions and actions to detain Petitioner (under either § 1225 or § 1226) arise from the commencement of removal proceedings. The INA strips jurisdiction over that review. *Gupta*, 709 F.3d at 1065; 8 U.S.C. § 1252(g).

Further, 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; *Dep’t of Homeland Sec. v. Regents of the 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 Bonhomie 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, Petitioner challenges ICE’s detention determination. This was an action arising from ICE’s choice to carry out proceedings to remove Petitioner 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).

## **II. Petitioner has not exhausted his administrative remedies**

Petitioner has not exhausted his administrative remedies. DHS makes initial decisions about custody and bond—which an immigration judge may review. 8 C.F.R. § 1003.19(a). But to get a bond hearing, the alien must make an application to the immigration judge for bond redetermination. *Id.* § 1003.19(b)-(c). The immigration judge’s bond redetermination is “separate and apart from” the removal proceedings. *Id.* § 1003.19(d). If the alien disagrees with the immigration judge’s decision, he may appeal to the Board of Immigration Appeals (“BIA”). *Id.* § 1003.1(b)(7).

The Petition does not address whether Petitioner has availed himself of the administrative process, and does not disclose whether Petitioner has

requested a bond hearing before an immigration judge, been denied bond; and if so, whether he has appealed that denial to the BIA. The Petition merely alleges that exhaustion is not statutorily required. Doc. 1 at ¶¶ 19-20. Even if the Court decides that it has jurisdiction over Petitioner's claim, it must still deny this Petition because Petitioner has failed to exhaust his administrative remedies. Individuals "seeking habeas relief, including relief pursuant to § 2241, are subject to administrative exhaustion requirements." *Santiago-Lugo v. Warden*, 785 F.3d 467, 475 (11th Cir. 2015) (internal citations omitted). While administrative exhaustion is not a jurisdictional requirement, it is still one that must be met. *Id.* The Eleventh Circuit explained that "courts may [not] disregard a failure to exhaust and grant relief on the merits if the respondent properly asserts the defense." *Id.* Here, Federal Respondents assert that Petitioner has failed to exhaust his administrative remedies.

### **III. Petitioner is properly detained under 8 U.S.C. § 1225(b)(2)(A)**

Before 1996, the federal immigration laws required the detention of aliens who presented at a port of entry but allowed aliens who were already unlawfully present in the United States to obtain release pending removal proceedings. In 1996, Congress passed the Illegal Immigration Reform and Immigration Responsibility Act ("IIRIRA") specifically to stop conferring greater privileges

and benefits on aliens who enter the United States unlawfully as compared to those who lawfully present themselves for inspection at a port of entry.

As relevant here, Congress enacted what is now 8 U.S.C. § 1225, which requires the detention of any alien “who is an applicant for admission” and defines that term to encompass any “alien present in the United States who has not been admitted” following inspection by immigration authorities. 8 U.S.C. § 1225(a), (b)(2)(A). The statute makes no exception for how far into the country the alien traveled or how long the alien managed to evade detection. Unless the Secretary exercises his narrow and discretionary parole authority, mandatory detention is the rule for aliens who have never been lawfully admitted. *See* 8 U.S.C. § 1225(b)(2)(A) (“Subject to subparagraphs (B) and (C), in the case of an alien who is an applicant for admission, 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 1229a of this title [Section 240].” (emphasis added)); 8 C.F.R. § 235.3(b)(1)(ii) (mirroring section 1225(b)(2)’s detention mandate); *Jennings v. Rodriguez*, 583 U.S. 281, 302 (2018) (holding that section 1225(b)(2) “mandate[s] detention of aliens throughout the completion of applicable proceedings and not just at the moment those proceedings begin”).

Three Courts of Appeals have conclusively reached the merits of the issue of whether § 1225(b)(2)(A) or § 1226(a) governs detention of aliens who are present without admission or inspection.<sup>4</sup> In *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026), and *Avila v. Bondi*, 170 F.4th 1128 (8th Cir. 2026), the Fifth and Eighth Circuits held that such aliens are subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). However, in *Da Cunha v. Freden*, No. 25-3141-pr, — F.4th —, 2026 WL 1146044, at \*1 (2d Cir. Apr. 28, 2026), the Second Circuit rejected the Government's position and found that aliens present in the United States after entering the country without inspection and admission, and who were not apprehended at or near the border at the time of entry are subject to detention under 8 U.S.C. § 1226(a). The Government believes that the Fifth and Eighth Circuit decisions reflect the correct interpretation of the law.

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<sup>4</sup> Appeals are also pending in the First, Third, Fourth, Sixth, Seventh, Ninth, Tenth, and Eleventh Circuits. See *Guerrero-Orellana v. Moniz*, No. 25-2152 (1st Cir.) (oral argument set for May 4, 2026); *Lopes de Andrade v. Dir., Philadelphia Field Off. Immig.*, No. 26-1454 (3rd Cir.) (oral argument set for May 11, 2026); *Lopez Garcia v. Guadian*, No. 25-7044 (4th Cir.) (oral argument set for May 5, 2026); *Pizzaro Reyes v. Raycraft*, No. 25-1982 (6th Cir.) (argued Mar. 18, 2026); *Castañon-Nava v. U.S. Dep't of Homeland Sec.*, No. 25-3050 (7th Cir.) (argued Feb. 3, 2026); *Cirrus Rojas v. Olson*, No. 25-3127 (7th Cir.) (fully briefed; no argument scheduled); *Rodriguez Vazquez v. Bostock*, No. 25-6842 (9th Cir.) (argued Mar. 4, 2026); *Mendoza Gutierrez v. Baltasar*, No. 25-1460 (10th Cir.) (briefing in progress); *Cerro Perez v. Assist. Dir., Krome North Serv. Processing Ctr.*, No. 25-14075 (11th Cir.) (argued Mar. 26, 2026).

In *Buenrostro-Mendez*, the Fifth Circuit held that unadmitted applicants for admission apprehended within the United States are seeking admission and are subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). 166 F.4th at 498. The Fifth Circuit concluded that “[f]ollowing the passage of IIRIRA, then, an alien’s status as an applicant for admission does not turn on where or how the alien entered the United States[.]” *id.* at 499, and that “an applicant for admission to the United States is ‘seeking admission’ to the same, regardless whether the person actively engages in further affirmative acts to gain admission[.]” *Id.* at 502.

The Eighth Circuit determined that “just as an alien is an ‘applicant for admission’ even though no literal ‘application’ is filed, so too is an alien ‘seeking admission’ even when the alien does not literally ‘request’ or ‘ask for’ admission into the country.” *Avila*, 170 F.4th at 1135. The Eighth Circuit also found that the statutory purpose of 8 U.S.C. § 1225 was to ensure that all immigrants who have not been lawfully admitted, regardless of their physical presence in the country, are placed “on equal footing” in removal proceedings. *Id.* at \*1135-36 (quoting *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020)).

Federal Respondents acknowledge the split within the appellate courts and within district courts across the country regarding whether § 1225(b)(2)(A) or § 1226(a) applies to aliens present in the United States without admission or

inspection, but note that an increasing number of district courts have agreed with the Government's position. *See, e.g., Diaz Lopez v. Dir. of Enft and Removal Operations*, --- F. Supp. 3d ----, No. 3:25-CV-1313-JEP-SJH, 2026 WL 261938, at \*1 (M.D. Fla. Jan. 26, 2026); *Lourival Dos Santos Lopes v. Sec'y, Dep't of Homeland Sec.*, No. 3:25-cv-1522-WWB-LLL, 2026 WL 776158 (M.D. Fla. Mar 19, 2026); *Iraheta Morales v. Noem*, --- F. Supp. 3d ----, No. 25-62598-CIV-SINGHAL, 2026 WL 236307 (S.D. Fla. Jan. 29, 2026); *but see, e.g., Ordonez Cinto v. Warden, Fla. Soft Sided Facility S.*, No. 2:26-cv-00459-SPC-NPM, 2026 WL 657091, at \*1 n.1 (M.D. Fla. Mar. 9, 2026) (rejecting the reasoning of *Buenrostro-Mendez*); *Garcia v. Warden, Fla. Soft Side S. Det. Facility*, No. 2:26-cv-636-JES-DNF, 2026 WL 828923, at \*2 (M.D. Fla. Mar. 26, 2026) (rejecting the analyses of the Fifth and Eighth Circuits); *Barco Mercado v. Francis*, 811 F. Supp. 3d 487, 506 (S.D.N.Y. 2025) (listing 350 decisions rejecting the Government's position regarding the applicability of 8 U.S.C. § 1225(b)(2)(A) to aliens present in the United States without inspection or admission).

Federal Respondents respectfully disagree with this Court's decisions in *Gomez-Pena*, 2026 WL 83980, and *Gutierrez Ortiz*, 2025 WL 3653217, and maintain that Petitioner, having not been admitted after inspection, is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) during the pendency of his removal proceedings.

#### **IV. Petitioner's Due Process Rights have not been violated**

Petitioner asserts that his detention has violated his Fifth Amendment due process rights. Doc. 1 at ¶¶ 72-79. To the extent this claim is independent of Petitioner's statutory claim, it also fails. "Detention during removal proceedings is a constitutionally permissible part of" the deportation process. *Demore v. Kim*, 538 U.S. 510, 531 (2003). *See also Zadvydas v. Davis*, 533 U.S. 678, 711 (2001) (Kennedy, J., dissenting) ("Congress' power to detain aliens in connection with removal or exclusion . . . is part of the Legislature's considerable authority over immigration matters.").

The Supreme Court has held that 8 U.S.C. § 1225(b)(2) "mandate[s] detention of aliens throughout the completion of applicable proceedings [for removal] and not just until the moment those proceedings begin." *Jennings*, 583 U.S. at 302. Once "those proceedings end, detention under § 1225(b) must end as well." *Id.* at 297. Until "that point, however, nothing in the statutory text imposes any limit on the length of detention." *Id.* And, in section 1225(b)(2), Congress did not say "anything whatsoever about bond hearings." *Id.* *See also Nieto v. Ceja*, No. 1:24-CV-02821-DDD-NRN, 2025 WL 4087626, at \*7 (D. Colo. June 12, 2025) ("[P]rocedural due process does not afford inadmissible arriving aliens subject to prolonged detention a right to release or a bond hearing prior to the conclusion of removal proceedings. . . . The statutory procedures

authorized by Congress here dictate that [the petitioner] be detained unless she is admitted or paroled . . . and the parole statute commits the decision of whether to parole an inadmissible arriving alien to the discretion of the Secretary of Homeland Security”) (internal citations omitted)); *Rivera Castillo v. Rhoney*, No. 25-CV-1065 (JLS), 2026 WL 775995, at \*7-16 (W.D.N.Y. Mar. 19, 2026) (rejecting due process claim by § 1225(b)(2)(A) detainee).

Because Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A), which does not require release nor a bond hearing, Petitioner’s due process claim fails.

#### **V. The Administrative Procedures Act has not been violated**

Petitioner argues that his detention constitutes a final agency action in violation of the Administrative Procedures Act (“APA”). Doc. 1 at ¶ 93. However, Petitioner does not have standing to bring an APA claim. The APA 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, Florida Soft Side South*, No. 2:25-cv-1224-KCD-NPM (M.D. Fla. Mar. 10, 2026), Dkt. 16 at pp. 16-17.

### CONCLUSION

For the reasons set forth above, the Petition for Writ of Habeas Corpus should be denied. However, should the Court determine Petitioner is detained pursuant to 8 U.S.C. § 1226, the appropriate remedy is to order Federal Respondents to provide Petitioner with a bond hearing before an immigration judge who can determine whether Petitioner is a flight risk or danger to the community—not an order directing Federal Respondents to release Petitioner.

*See, e.g., Vasquez Carcamo v. Noem*, No. 2:25-cv-922-SPC-NPM, 2025 WL 3119263, at \*5-6 (M.D. Fla. Nov. 7, 2025).

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Respectfully submitted,

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