

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

DIANA CAROLINA LORA-OSORIO,

Petitioner,

v.

Case No.: 3:26-cv-1020-MMH-PDB

FACILITY ADMINISTRATOR, Flagler
County Jail; **GARRETT J. RIPA**, Field
Office Director, ICE Jacksonville Field
Office; **TODD LYONS**, Director of U.S.
Immigration and Customs Enforcement;
MARKWAYNE MULLIN, Secretary of
the U.S. Department of Homeland
Security; and **TODD BLANCHE**, Acting
Attorney General of the United States,

Respondents.

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Diana Carolina Lora-Osorio challenges her detention by U.S. Immigration and Customs Enforcement (“ICE”), arguing she is entitled to either immediate release or an individualized bond hearing under 8 U.S.C. § 1226(a). Doc. 1 at 2. However, Lora-Osorio is being detained pursuant to 8 U.S.C. §1225(b)(1), not § 1225(b)(2). As a result, the Court should deny the Petition.

I. FACTUAL BACKGROUND

Lora-Osorio is a native and citizen of Colombia. Doc. 1-1 at 6 (Notice to Appear). On March 5, 2024, Petitioner entered the United States at or near Eagle Pass, Texas and was encountered by a Customs and Border Patrol (CBP) agent. *See*

Doc. 1-1 at 6. Lora-Osorio was arrested for illegal entry into the United States. Exhibit 1 (I-213 dated Feb. 1, 2026) at 2. On March 6, 2024, CBP issued a Notice and Order of Expedited Removal to Petitioner. Exhibit 2. She was processed for expedited removal but asserted a credible fear claim. Exhibit 1 at 2.

After demonstrating a credible fear of persecution or torture, Lora-Osorio was issued a Notice to Appear on March 14, 2024, placing her in removal proceedings pursuant to § 240 of the INA and charging her with being present in the United States without being admitted or paroled after inspection by an immigration officer in violation of §212(a)(6)(A)(i) of the INA, as amended 8 U.S.C. § 1182(a)(6)(A)(i). Doc. 1-1 at 6. Petitioner was placed in the Alternative to Detention (ATD) program and released pending immigration proceedings. Exhibit 1 at 2. Lora-Osorio filed a Form I-589, Application for Asylum and Withholding of Removal, which remains pending. Doc. 1, p. 4 at ¶ 15.

On January 29, 2026, Petitioner was charged with battery in Manatee County, Florida. Doc. 1, p. 4 at ¶ 22; Exhibit 1 at 2. As of February 1, 2026, Lora-Osorio was transferred to ICE custody. Doc. 1, p. 5 at ¶ 21. On February 23, 2026, Petitioner was also charged with failing to possess valid documents at the time of entering the United States. Exhibit 3 (Form I-261, Additional Charges of Inadmissibility/Deportability).

At the time Lora-Osorio filed the instant Petition on April 23, 2026, she had been detained for 82 days. As of this filing, Petitioner has been detained for 100 days.

II. CERTIFIED HABEAS RETURN

ICE is detaining Lora-Osorio 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.”). 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). Lora-Osorio bears the burden to prove her custody violates federal law. *Whitfield v. U.S. Sec’y of State*, 853 F. App’x 327, 329 (11th Cir. 2021).

III. Discussion

A. 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 INA divests this Court’s jurisdiction to consider Petitioner’s claims challenging her 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 Lora-Osorio 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).

Here, Lora-Osorio has been 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 Lora-Osorio related to removal. Congress specifically stripped jurisdiction to review that decision; therefore, the Court lacks subject-matter jurisdiction over this case.

B. Lora-Osorio is properly detained under § 1225(b)(1).

Petitioner argues that she is not properly detained pursuant to § 1225(b)(2). *See generally* Doc. 1. Federal Respondents concur that Lora-Osorio is not subject to mandatory detention under § 1225(b)(2). Rather, she is subject to mandatory detention under § 1225(b)(1)(B)(ii). As a result, Petitioner is properly detained.

Section 1225(b)(1)(B)(ii) 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.” 8 U.S.C. § 1225(b)(1)(B)(ii). This section does not simply authorize Petitioner’s detention; it mandates that Lora-Osorio be detained while her asylum petition is pending. *Hernandez Alvarez v. Warden, FDC Miami*, __ F.4th ___, 2026 WL 1243395, at * 2 (11th Cir. May 6, 2026) (“Section 1225 requires the detention of certain classes of applicants for admission, depending on the applicant’s status. For instance, an alien ‘who is arriving in the United States’ without appropriate entry documents, or who is in possession of fraudulent entry documents, is to be ‘removed from the United States without further hearing or review’ unless the alien raises a claim for asylum or a credible fear of persecution, and is detained pending expedited removal.” (citations omitted)). *See also Jennings v. Rodriguez*, 583 U.S. 281, 302 (2018) (“§§ 1225(b)(1) and (b)(2) mandate detention of aliens throughout the completion of applicable proceedings and not just until the moment those proceedings begin.”)

An arriving alien is served with an expedited removal order under §1225(b)(1)(A)(i). If a credible fear of persecution or torture is raised, the arriving aliens is referred for a credible fear interview. 8 U.S.C. §§ 1225(b)(1)(A)(ii), 1225(b)(1)(B). The results of the interview determine the next steps under the statute: either expedited removal or detention during consideration of the asylum application.

If the officer determines that the alien does not have a credible fear, “the officer shall order the alien removed from the United States without further hearing or review.” 8 U.S.C. § 1225(b)(1)(B)(iii). But if the officer determines that the alien does have a credible fear of persecution or torture, “the alien shall be detained for further consideration of the application for asylum.” 8 U.S.C. § 1225(b)(1)(B)(ii).

As contemplated by § 1225(b)(1)(B)(ii), Lora-Osorio was referred to removal proceedings following an asylum officer’s determination that she demonstrated a credible fear of persecution or torture. 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.

This Court has addressed the scope of § 1225(b)(2), which provides for mandatory detention of applicants for admission who are not arriving aliens. *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), *Hector Gutierrez Ortiz v. Kristi Noem*, No. 3:25-cv-1386-MMH-MCR, 2025 WL 3653217 (M.D. Fla. Dec. 17, 2025). Unlike *Gomez-Pena*, 2026 WL 83980, and

Gutierrez Ortiz, 2025 WL 3653217, Lora-Osorio is an arriving alien, whose detention is governed by § 1225(b)(1). She is an “applicant for admission” and was encountered and detained upon arriving in the United States. *See* 8 U.S.C. § 1225(a). Accordingly, Petitioner “shall be detained for further consideration of the application for asylum.” 8 U.S.C. § 1225(b)(1)(B)(ii).

“Detention during removal proceedings is a constitutionally permissible part of” the removal process. *Demore v. Kim*, 538 U.S. 510, 531 (2004). Accordingly, both the fact and duration of Petitioner’s detention during her removal proceedings are legal and constitutional.

CONCLUSION

Based on the foregoing arguments and citations of authority, Lora-Osorio is properly detained under § 1225(b)(1)(B)(ii). Thus, her Petition should be denied.

Dated: May 11, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 11, 2026, I electronically filed the foregoing document with the Clerk of the Court by using the CM/ECF system, which will send notice of filing and a downloadable copy of the filed document to the following CM/ECF participant listed below:

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EXHIBITS

- 1 I-213 dated Feb. 1, 2026
- 2 Notice and Order of Expedited Removal
- 3 Form I-261, Additional Charges of Inadmissibility/Deportability