IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

OKECHUKWU DESMOND AMADI,	:	
	:	
Petitioner,	:	
	:	**Case No. 4:25-CV-172-CDL-AGH**
v.	:	**28 U.S.C. § 2241**
	:	
WARDEN, STEWART DETENTION CENTER,[1]	:	
	:	
Respondents.	:	

RESPONSE

On May 30, 2025, the Court received Petitioner's petition for a writ of habeas corpus ("Petition"). ECF No. 1. On June 5, 2025, the Court ordered Respondent to file a response within twenty-one days. ECF No. 3. As explained below, the Petition should be denied.

BACKGROUND

Petitioner is a native of Canada and dual citizen of Canada and Nigeria who has been detained pre-final order of removal pursuant to 8 U.S.C. § 1225(b) since May 2, 2025. Gonzalez Decl. ¶¶ 4, 8, 13. On August 26, 1997, Petitioner was admitted into the United States on a F1 non-immigrant student visa in Atlanta, Georgia. *Id.* He married a United States citizen on October 6, 2001 and adjusted his status to lawful permanent resident on October 20, 2004. *Id.*

[1] Petitioner names the United States Attorney General, United States Secretary of the Department of Homeland Security along with officials from United States Immigration and Customs Enforcement in his Petition. "[T]he default rule [for claims under 28 U.S.C. § 2241] is that the proper respondent is the warden of the facility where the prisoner is being held, not the Attorney General or some other remote supervisory official." *Rumsfeld v. Padilla*, 542 U.S. 426, 434-35 (2004) (citations omitted). Thus, Respondent has substituted the Warden of Steward Detention Center as the sole appropriately named respondent in this action.

On or about September 28, 2017, Petitioner arrived to the United States at JFK International Airport on a flight from Paris, France. *Id.* ¶ 5 & Ex. A; *see also* Pet. 3 (noting that Petitioner arrived in the United States from "abroad"). He was referred to secondary processing after Customs and Border Protection ("CBP") determined that he had an open arrest warrant for pending federal charges. *Id.* & Ex. A. He was paroled into the United States for criminal prosecution and subsequently arrested by federal authorities. *Id.* & Ex. A. Immigration and Customs Enforcement ("ICE"), Enforcement and Removal Operations ("ERO") issued a detainer. Gonzalez Decl. ¶ 5 & Ex. A.

On April 10, 2019, Petitioner was convicted of one count of conspiracy to commit money laundering in violation of 18 U.S.C. § 1956(h) and two counts of money laundering in violation of 18 U.S.C. § 1956(a)(1)(B)(i) in the United States District Court for the Middle District of Florida, and he was sentenced to 135 months in confinement and three years of supervised release. *Id.* ¶ 6 & Ex. C. Petitioner was also ordered to pay $1,358,500 in restitution. *Id.* & Ex. C.

On or about May 2, 2025, Petitioner entered ICE/ERO custody for the first time at Alamance County Detention Facility in Graham, North Carolina after being released from criminal custody. *Id.* ¶ 7. On May 2, 2025, Petitioner was personally served with a Notice to Appear ("NTA") charging him with removability pursuant to Immigration and Nationality Act ("INA") § 212(a)(2)(A)(i)(I), 8 U.S.C. § 1182(a)(2)(A)(i)(I), based on his conviction of a crime involving moral turpitude or an attempt or conspiracy to commit such a crime. *Id.* ¶ 8 & Ex. D.

On May 14, 2025, Petitioner filed a request for a bond hearing with the immigration judge ("IJ"). *Id.* ¶ 9 & Ex. E. On May 21, 2025, Petitioner virtually appeared for a bond hearing, and the IJ denied bond for lack of jurisdiction. Gonzalez Decl. ¶ 9 & Ex. E. On May 29, 2025, Petitioner filed a second request for a bond hearing. *Id.* ¶ 10 & Ex. F. Petitioner was scheduled to appear on

June 5, 2025, for both his bond hearing and his initial master hearing. *Id.* & Ex. F. However, Petitioner was not produced. *Id.* & Ex. F. On or about June 5, 2025, Petitioner was transferred from Stewart Detention Center in Lumpkin, Georgia to Imperial Regional Detention Facility in Calexico, California where he is currently detained. *Id.* & Ex. F. The IJ issued an order stating no action took place because Petitioner was transferred from Stewart Detention Center. *Id.* & Ex. F.

On June 10, 2025, the Imperial Immigration Court issued notice for Petitioner to appear for a master hearing on June 18, 2025. Gonzalez Decl. ¶ 11 & Ex. G. On that date, Petitioner appeared virtually represented by counsel. *Id.* Petitioner, through counsel, refused to admit and concede to the allegations as charged on the NTA. *Id.* Specifically, Petitioner contested the allegations relating to his conviction based on his appeal and his designation as an application for admission. *Id.* The IJ requested evidence from both parties relating to the sustainability of the NTA and reset the hearing to July 30, 2025. *Id.*

To date, Petitioner has not submitted a request for parole to ICE/ERO. *Id.* ¶ 12. There is a significant likelihood of Petitioner's removal in the reasonably foreseeable future. Gonzalez Decl. ¶ 14. Canada and Nigeria are open for international travel, and ICE/ERO is currently removing non-citizens to both countries. *Id.*

LEGAL FRAMEWORK

Petitioner is mandatorily detained pre-final order of removal as an applicant for admission. 8 U.S.C. § 1225(a)(1) provides that "[a]n alien present in the United States who has not been admitted or who arrives in the United States . . . shall be deemed . . . an applicant for admission." Applicants for admission "fall into one of two categories: those covered by section 1225(b)(1) and those covered by section 1225(b)(2)." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

Here, Petitioner is an applicant for admission within the meaning of the INA. Although he was granted lawful permanent residency, Gonzalez Decl. ¶ 4, he is currently seeking admission into the United States following his return from France on September 28, 2017, *id.* ¶ 5 & Ex. A. In defining "admission," the INA clarifies that "[a]n alien lawfully admitted for permanent residence in the United States shall not be regarded as seeking an admission into the United States for purposes of the immigration laws *unless* the alien . . . has committed an offense listed in [8 U.S.C.] 1182(a)(2)[.]" 8 U.S.C. § 1101(a)(13)(C)(v) (emphasis added). Petitioner has been charged with committing an offense listed in that section—specifically, a conviction of a crime involving moral turpitude within the meaning of 8 U.S.C. § 1182(a)(2)(A)(i)(I). Gonzalez Decl. ¶ 8 & Ex. D.

Section 1225(b)(2) governs Petitioner's detention. Section 1225(b)(2) applies to an applicant for admission whom "the examining immigration officer determines . . . is not clearly and beyond a doubt entitled to be admitted[.]" 8 U.S.C. § 1225(b)(2)(A). Such applicants for admission are referred "for a [removal] proceeding under [8 U.S.C. §] 1229a[.]" *Id.*; *see also Jennings*, 583 U.S. at 287-88; *In re M.S.*, 27 I. & N. Dec. 509, 510 (A.G. 2019). Here, when Petitioner applied for admission into the United States on September 28, 2017, CBP determined that he had an outstanding federal warrant and paroled him into the United States solely for the purpose of criminal prosecution. Gonzalez Decl. ¶ 5 & Ex. A. The examining immigration officer could not determine that Petitioner was "beyond a doubt entitled to be admitted," 8 U.S.C. § 1225(b)(2)(A), based on his pending criminal charge. After his conviction, ICE/ERO then served Petitioner with the NTA, commencing removal proceedings pursuant to 8 U.S.C. § 1229a. Gonzalez Decl. ¶ 8 & Ex. D; *see* 8 U.S.C. § 1225(b)(2)(A). Thus, Petitioner is currently detained pursuant to section 1225(b)(2) pending a determination as to whether he may be admitted into the

United States or is inadmissible pursuant to 8 U.S.C. § 1182(a)(2)(A)(i)(I) through his ongoing removal proceedings.

Detention of all applicants for admission is mandatory. 8 U.S.C. § 1225(b)(2)(A) ("[I]f 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 [8 U.S.C. §] 1229a . . . ." (emphasis added)); *Jennings*, 583 U.S. at 302 ("§§ 1225(b)(1) and (b)(2) mandate detention of aliens throughout the completion of applicable proceedings . . . ."). The only exception is that ICE/ERO may—in its discretion—release applicants for admission on parole. 8 U.S.C. § 1182(d)(5)(A); 8 C.F.R. §§ 212.5(b), 235.3(c); *see also Jennings*, 583 U.S. 298-302.

ARGUMENT

Petitioner enumerates the six claims for relief: (1) his continued detention violates his due process rights; (2) his May 2, 2025 arrest violated the Fourth Amendment; (3) his charge of removability should not be sustained in immigration proceedings because his conviction does not constitute a crime involving moral turpitude; (4) his charge of removability should not be sustained because his conviction does not place him in the category of people considered to be a danger to society; (5) his charge of removability should not be sustained because he has a pending appeal of his criminal conviction; and (6) he should be released because he is not a flight risk. Pet. 8-13, ECF No. 1.

The Petition should be denied for four reasons. ***First***, the Court lacks subject matter jurisdiction over Petitioner's Fourth Amendment claim—his second claim for relief in the Petition. ***Second***, Petitioner's third, fourth, and fifth claims should be denied because the Court lacks subject matter jurisdiction to judicially review legal and factual determinations in removal proceedings. ***Third***, Petitioner's sixth claim should be denied to the extent he requests release or parole from his pre-final order of removal detention because he failed to exhaust his administrative remedies before seeking habeas relief. ***Fourth***, Petitioner's first claim should be denied because his detention complies with due process. As an applicant for admission, he is entitled to only the relief provided by the INA. Because the INA mandates detention of applicants for admission and does not permit their release on bond, Petitioner cannot establish any violation of due process.

I. The Court lacks jurisdiction over Petitioner's Fourth Amendment Claim.

In his second claim, Petitioner asserts that ICE/ERO officials violated his Fourth Amendment rights in arresting him and taking him into immigration custody without sufficient probable cause. Pet. 8-9. Petitioner's Fourth Amendment claim should be denied because the claim is not cognizable in habeas, the Court lacks jurisdiction over the claim, and the claim otherwise lacks merit Eleventh Circuit has declined to recognize a Fourth Amendment cause of action in this context under *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971).

First, Petitioner's Fourth Amendment claim is not cognizable in habeas because it attempts to raise a civil claim concerning the nature of his arrest—not a challenge to his ongoing detention. At most, this claim would amount to a *Bivens* claim against the officials who arrested him. *See Alvarez v. U.S. Immigr. & Customs Enf't*, 818 F.3d 1194, 1205-1213 (11th Cir. 2016). Petitioner, however, may not raise a *Bivens* claim in this habeas action. *See Corbin v. Dep't of Veteran Affairs*, No. 2:15-cv-1174, 2015 WL 10384134, at *2 (N.D. Ala. Dec. 11, 2015). "Although the scope of the writ of habeas corpus has been extended beyond that which the most literal reading of the statute might require, the Court has never considered it a generally available federal remedy for every violation of federal rights." *Lehman v. Lycoming Cty. Children's Servs. Agency*, 458 U.S. 502, 510, (1982). "[W]hatever the expanded scope of our jurisdiction may be, the remedy that habeas corpus provides remains tied to some form of relief from the petitioner's custody." *Arnaiz* *v. Federal Satellite Low*, 594 F.3d 1326, 1329 (11th Cir. 2010) (per curiam). Given that Petitioner's Fourth Amendment claim challenges only the nature of his arrest and not his ongoing detention, the claim is not cognizable in habeas and should be denied.

Second, even if Petitioner's claim is generally cognizable in habeas, the Court lacks subject-matter jurisdiction over the claim. A claim may proceed in federal court only if federal subject matter jurisdiction exists. *Lifestar Ambulance Serv., Inc. v. United States*, 365 F.3d 1293, 1295 (11th Cir. 2004). This is because "[f]ederal courts are not courts of general jurisdiction; they have only the power that is authorized by Article III of the Constitution and the statutes enacted by Congress pursuant thereto." *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 541 (1986) (citation omitted). "The limits upon federal jurisdiction, whether imposed by the Constitution or by Congress, must be neither disregarded nor evaded." *Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 374 (1978).

As relevant here, 8 U.S.C. § 1252(g) is a jurisdiction-stripping provision in the INA, which provides that

> [e]xcept as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), . . . no 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.

"When asking if a claim is barred by § 1252(g), courts must focus on the action being challenged." *Canal A Media Holding, LLC v. U.S. Citizenship & Imm. Servs.*, 964 F.3d 1250, 1257-58 (11th Cir. 2020). Section 1252(g) applies "to three discrete actions that the Attorney General may take: [the] 'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders.'" *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (emphasis in original).

The Eleventh Circuit's opinion in *Gupta v. McGahey*, 709 F.3d 1062 (11th Cir. 2013), makes clear that the Court lacks jurisdiction over Petitioner's claim concerning the circumstances of his arrest. There, a non-citizen raised Fourth Amendment claims under *Bivens*, alleging, *inter alia*, that ICE/ERO officers "wrongfully procur[ed] a warrant for his arrest" and "arrest[ed] him unlawfully." *Gupta*, 709 F.3d at 1064. The district court dismissed the non-citizen's complaint, finding that 8 U.S.C. § 1252(g) deprived it of subject-matter jurisdiction. *Id.* On appeal, the Eleventh Circuit affirmed, finding that "securing a[] [non-citizen] while awaiting a removal determination constitutes an action taken to commence proceedings" within the purview of section 1252(g). *Id.* at 1065; *see also id.* (holding that the non-citizen's "claims that [the ICE/ERO agents] illegally procured an arrest warrant, that the agents illegally arrested him, and that the agents illegally detained him each arise from an action taken to commence removal proceedings.").

Here, like the non-citizen in *Gupta*, Petitioner challenges ICE/ERO's actions in arresting him, alleging that the arrest was unlawful. Pet. 8-9. Petitioner's alleged arrest "constitutes an action taken to commence proceedings" within the meaning of section 1252(g). *Gupta*, 709 F.3d at 1065. As this Court has previously held, district courts lack jurisdiction over such claims. *See Cho v. United States*, No. 5:13-cv-153-MTT, 2016 WL 1611476, at *7 (M.D. Ga. Apr. 21, 2016) ("Plaintiff's claims that she was falsely arrested when she was transferred into ICE custody . . . 'challenge[] the actions the agents took to commence removal proceedings—exactly the claims that § 1252(g) bars from the subject-matter jurisdiction of federal courts.'" (quoting *Gupta*, 709 F.3d at 1065 (alterations in original))). Petitioner's Fourth Amendment claim should therefore be denied.

Third, even if Petitioner's Fourth Amendment claim is cognizable in habeas and the Court has jurisdiction, the claim lacks merit. Any Fourth Amendment claim against the ICE/ERO officials who allegedly arrested Petitioner may be raised only through *Bivens*. However, the Eleventh Circuit has declined to recognize a *Bivens* cause of action arising from a non-citizen's arrest and detention by immigration officials. *Alvarez*, 818 F.3d at 1205-1213. Accordingly, even ignoring that Petitioner's Fourth Amendment claim is not cognizable in habeas and that the Court lacks jurisdiction over the claim, Petitioner's claim otherwise lacks merit.

II. The Court lacks jurisdiction to judicially review legal determinations in removal proceedings.

In his third, fourth, and fifth claims, Petitioner appears to challenge three legal or factual determinations to be made by the IJ in his removal proceedings: (1) his conviction does not constitute a crime involving moral turpitude; (2) his conviction does not place him in a category of people considered to be a danger to society; and (3) his criminal conviction is not final. Pet. 9-12. Petitioner's claims should be denied because the Court lacks subject matter jurisdiction to judicially review removal proceedings.

Petitioner's third, fourth, and fifth claims all seek judicial review of legal or factual determinations to be made in his removal proceedings. The Court lacks subject matter jurisdiction over these claims pursuant to 8 U.S.C. § 1252(b)(9). Section 1252(b)(9) provides in full:

> Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under [subchapter II of chapter 12 (8 U.S.C. §§ 1151-1378)] shall be available only in judicial review of a final order under this section. Except as otherwise provided in this section, no court shall have jurisdiction, by habeas corpus under section 2241 of title 28 or any other habeas corpus provision, by section 1361 or 1651 of such title, or by any other provision of law (statutory or nonstatutory), to review such an order or such questions of law or fact.

The Supreme Court has described section 1252(b)(9) as an "unmistakable zipper clause" that streamlines litigation by consolidating and channeling claims first to the agency and then to the circuit courts through petitions for review. *AADC*, 525 U.S. at 483. In *AADC*, the Court elaborated on the breadth of section 1252(b)(9), explaining that it serves as a "general jurisdictional limitation" on challenges to actions arising from removal operations and proceedings. *Id.* at 482. District courts are barred from reviewing removal proceedings regardless of how the non-citizen characterizes his claim. *Mata v. Sec'y of Dep't of Homeland Sec.*, 426 F. App'x 698, 700 (11th Cir. 2011) (per curiam). Those claims may only be raised through a petition for review to the appropriate court of appeals. 8 U.S.C. § 1252(a)(5); *Alexandre v. U.S. Att'y Gen.*, 452 F.3d 1204, 1206 (11th Cir. 2006).

Here, in this third, fourth, and fifth claims, Petitioner asserts that he cannot be found removable as charged under 8 U.S.C. § 1182(a)(2)(A)(i)(I). Pet. 9-12. In essence, these claims assert that DHS will be unable to satisfy various elements of the charge and seek a judicial finding from this Court that Petitioner is not removable. But removal proceedings before an IJ are the "sole and exclusive procedure for determining whether [a non-citizen] may be . . . removed from the United States." 8 U.S.C. § 1229a(a)(3). Thus, Petitioner's three claims challenging his removability as charged plainly seek judicial review of "questions of law and fact. . . arising from any action taken or proceeding brought to remove an alien from the United States" within the meaning of section 1252(b)(9). Indeed, the Eleventh Circuit has recognized as much, holding that section 1252(b)(9) deprives a district court of jurisdiction over a non-citizen's claim that his criminal conviction was insufficient to sustain his charge of removability. *Themeus v. U.S. Dep't of Justice*, 643 F. App'x 830, 831-32 (11th Cir. 2016) (per curiam). Petitioner's third, fourth, and fifth claims here are no different, and the Court should deny those claims for lack of subject matter jurisdiction.

III. To the extent he seeks parole or release, Petitioner failed to exhaust administrative remedies.

In his sixth claim for relief, Petitioner states that he "is not a flight risk" and appears to claim that he is entitled to release from custody accordingly. Pet. 12-13. To the extent Petitioner requests release from his pre-final order of removal detention, the Petition should be denied because Petitioner failed to exhaust administrative remedies before seeking habeas relief. As an applicant for admission who is mandatorily detained under section 1225(b), Petitioner may secure release on parole pursuant to the procedures set forth in 8 U.S.C. § 1182(d)(5)(A) and the applicable regulations. Because he has failed to do so, the Court should deny his sixth claim.

"[T]he general rule [is] that parties exhaust prescribed administrative remedies before seeking relief from the federal courts." *McCarthy v. Madigan*, 503 U.S. 140, 144-45 (1992), *superseded by statute on other grounds as recognized in Woodford v. Ngo*, 548 U.S. 81, 88-89 (2006). Although it is not jurisdictional in nature, "[t]he exhaustion requirement is still a requirement" for petitioners seeking relief under 28 U.S.C. § 2241. *Santiago-Lugo v. Warden*, 785 F.3d 467, 474-75 (11th Cir. 2015). "[C]ases . . . are ripe for dismissal unless administrative remedies [have] been exhausted before the cases [are] brought to the district court." *Perez-Perez v. Hanberry*, 781 F.2d 1477, 1481 (11th Cir. 1986) (citing *Garcia-Mir v. Smith*, 766 F.2d 1478, 1483 n.6, 1486 n.8, 1489, 1492 (11th Cir. 1985)).

The Eleventh Circuit has made clear that applicants for admission must exhaust administrative remedies by pursuing the 8 U.S.C. § 1182(d)(5)(A) parole procedures before seeking release through habeas. In *Perez-Perez v. Hanberry*, 781 F.2d 1477 (11th Cir. 1986), non-citizens detained pre-final order of removal filed habeas petitions seeking release from immigration custody. 781 F.2d at 1478-79. The district court found that the non-citizens could challenge ICE/ERO's refusal to release the non-citizens on parole and certified an interlocutory appeal. *Id.* at 1479.

The Eleventh Circuit reversed on appeal, *inter alia*, "because the district court lacked jurisdiction due to the [non-citizens'] failure to exhaust their administrative remedies." *Id.* at 1481. The Court noted that "[p]arole determinations are made pursuant to the statutory and regulatory procedures set out in . . . 8 U.S.C. § 1182(d)(5)(A), and in 8 C.F.R. § 212.5." *Id.* The Eleventh Circuit emphasized that it was "clear . . . that cases such as those before us here are ripe for dismissal unless administrative remedies had been exhausted before the cases were brought to the district court." *Id.* Because it was undisputed that the non-citizens had not exhausted their administrative remedies under the parole procedures, "[t]he district court . . . should have dismissed [the habeas petitions] for failure to exhaust administrative remedies." *Id.*

Here, like the non-citizens in *Perez-Perez*, Petitioner has not exhausted his administrative remedies by pursuing the section 1182(d)(5)(A) parole procedures. Specifically, he failed to submit a request for parole to ERO. Gonzalez Decl. ¶ 12. Although the Eleventh Circuit has determined that exhaustion is no longer a jurisdictional requirement since issuing its decision in *Perez-Perez*, it remains a requirement for seeking habeas relief under section 2241. *Santiago-Lugo*, 785 F.3d at 474-75. By failing to pursue the § 1182(d)(5)(A) parole procedures, Petitioner has deprived ICE/ERO of the opportunity to evaluate his claim for release under the administrative scheme set forth by Congress. "Preventing petitioners from doing that is what the exhaustion requirement is all about." *Sundar v. I.N.S.*, 328 F.3d 1320, 1325 (11th Cir. 2003) (citations omitted). Accordingly, the Court should deny the Petition for failure to exhaust those administrative remedies. *Perez-Perez*, 781 F.2d at 1481.

IV. Petitioner's mandatory detention as an applicant for admission complies with due process.

Petitioner asserts that his continued detention violates his due process rights because "Respondents have failed to justify [his] continued detention[.]"[2] Pet. 8. Liberally construing Petitioner's assertions, he may claim that he is entitled to a bond hearing to contest his continued detention. Petitioner fails to establish a due process violation on this basis, and his claim should be denied. As an applicant for admission, Petitioner's due process rights are limited to the procedures and relief provided by statute. Because his immigration proceedings remain ongoing, Petitioner's detention is mandated by statute, and he has no right to release from custody or bond other than discretionary parole. Accordingly, his due process claim should be denied.

A. As an applicant for admission, Petitioner's due process rights are limited to those provided by statute.

The Supreme Court has long held that the due process rights of applicants for admission are limited to the procedures provided by statute, and the Court's decisions define those due process rights broadly based on fundamental principles which apply in all contexts.

As a starting point, Congress and the Executive have plenary power over the admission of individuals like Petitioner. "For reasons long recognized as valid, the responsibility for regulating the relationship between the United States and our alien visitors has been committed to the political branches of the Federal Government." *Mathews v. Diaz*, 426 U.S. 67, 81 (1976). Indeed, "over no

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[2] Petitioner appears to cite the Supreme Court's standard for post-final order of removal detention set forth in *Zadvydas v. Davis*, 533 U.S. 678 (2001), by arguing that his detention violates due process because he is "is unlikely to be removed in the reasonably foreseeable future." Pet. 8. Respondent has liberally construed Petitioner's due process claim in the context of his pre-final order of removal detention pursuant to section 1225(b)(2). To the extent Petitioner seeks relief solely under *Zadvydas*, his claim should be denied. *Zadvydas* applies only to post-final order of removal detention, as the Supreme Court created the standard based solely on its statutory interpretation of 8 U.S.C. § 1231(a)(6). 533 U.S. at 700. Further, Petitioner cannot satisfy the first element of a *Zadvydas* claim because he cannot show any period of post-final order of removal detention, let alone the six months required to state a claim. *Akinwale v. Ashcroft*, 287 F.3d 1050, 152 (11th Cir. 2002).

conceivable subject is the legislative power of Congress more complete than it is over the admission of aliens." *Fiallo v. Bell*, 430 U.S. 787, 792 (1977) (internal quotations and citations omitted). For this reason, the Supreme Court has "long recognized the power to expel or exclude aliens as a fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control." *Id.* (collecting cases).

"[A] concomitant of that power [over the admission of aliens] is the power to set the procedures to be followed in determining whether an alien should be admitted." *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 139 (2020). "[T]hat the formulation of these policies is entrusted exclusively to Congress has become about as firmly embedded in the legislative and judicial tissues of our body politic as any aspect of our government." *Kleindienst v. Mandel*, 408 U.S. 753, 767 (1972).

In assessing due process protections arising from the application of these procedures, the Supreme Court has recognized that while all non-citizens are entitled to due process protections, this "does not lead . . . to the conclusion that all aliens must be placed in a single homogeneous legal classification." *Mathews v. Diaz*, 426 U.S. at 77-78. Rather, "[t]he distinction between an alien who has effected an entry into the United States and one who has never entered runs throughout immigration law." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (citations omitted); *see also Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958) ("[O]ur immigration laws have long made a distinction between those aliens who have come to our shores seeking admission . . . and those who are within the United States after an entry, irrespective of its legality.").

In recognition of these plenary powers to determine the procedures for admission, over the course of more than a century, the Supreme Court has consistently held in multiple contexts that the due process rights of non-citizens seeking admission into the United States—like Petitioner here—are limited to only the procedures provided by statute. *Thuraissigiam*, 591 U.S. at 138-40 ("[A]n alien [who is an applicant for admission] has only those rights regarding admission that Congress has provided by statute."); *Landon v. Plasencia*, 459 U.S. 21, 32 (1982) ("This Court has long held that an alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application, for the power to admit or exclude aliens is a sovereign prerogative." (citations omitted)); *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) ("Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned." (internal quotations and citation omitted)); *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950) (same); *Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892) ("[T]he decisions of executive or administrative officers, acting within powers expressly conferred by congress, are due process of law."). The Eleventh Circuit has reached this same conclusion. *Jean v. Nelson*, 727 F.2d 957, 968 (11th Cir. 1984) ("Aliens seeking admission to the United States . . . have no constitutional rights with regard to their applications and must be content to accept whatever statutory rights and privileges they are granted by Congress.").

B. Petitioner fails to establish a due process violation because the INA mandates detention until the completion of applicable proceedings, and Petitioner's proceedings remain ongoing.

Because binding Supreme Court precedent makes clear that the scope of Petitioner's due process rights is limited to the procedures provided by statute, the question is whether section 1225(b) permits bond hearings for applicants of admission. But the Supreme Court has answered this question as well. Specifically, the Court has held that section 1225(b)—which governs Petitioner's detention—"unequivocally mandate[s] that aliens falling within [its] scope shall be detained." *Jennings*, 583 U.S. at 300 (internal quotations omitted). As the Court recognized, "neither [section] 1225(b)(1) nor [section] 1225(b)(2) says anything whatsoever about bond hearings." *Id.* at 297. Rather, "the plain meaning" of the statute "is that detention must continue until . . . removal proceedings have concluded[.]" *Id.* at 299 (citing 8 U.S.C. § 1225(b)(2)(A)). Because "'[d]etained' does not mean 'released on bond,'" the Court concluded that the statute does not permit bond hearings for applicants for admission. *Id.* at 312. "In sum, [sections] 1225(b)(1) and (b)(2) mandate detention of aliens throughout the completion of applicable proceedings[.]" *Id.* at 302.

Here, Petitioner's removal proceedings commenced less than two months ago and remain ongoing, so he cannot establish that his mandatory detention violates due process. Petitioner's latest hearing was on June 18, 2025 where an IJ requested evidence from both parties relating to the sustainability of the NTA and rest the hearing to July 30, 2025. Gonzalez Decl. ¶ 11. Petitioner will remain detained as an arriving alien until his removal proceedings conclude. *See* 8 U.S.C. § 1231(a)(1)(B); 8 C.F.R. § 1241.1. Thus, Petitioner remains mandatorily detained pending "the completion of applicable proceedings." *Jennings*, 583 U.S. at 302. Because Petitioner is detained while awaiting the conclusion of proceedings and because the INA does not permit bond hearings or release, Petitioner has no independent due process right to a bond hearing or release. *Thuraissigiam*, 591 U.S. at 107, 140.

This Court has addressed the precise issue presented here and, in light of these longstanding principles, held that an applicant for admission has no due process right to a bond hearing or release from custody while removal proceedings remain ongoing. In *D.A.V.V. v. Warden, Irwin Cty. Det. Ctr.*, No. 7:20-cv-159-CDL-MSH, 2020 WL 13240240 (M.D. Ga. Dec. 7, 2020), an applicant for admission filed a habeas petition, claiming, *inter alia*, that her mandatory detention under 8 U.S.C. § 1225(b) without a bond hearing violated due process. *D.A.V.V.*, 2020 WL 13240240, at *1-2.

The Court denied the claim because "longstanding Supreme Court precedent" makes clear that "arriving aliens' procedural due process rights entitle them only to the relief provided by the INA." *Id.* at *6 (citing *Thuraissigiam*, 591 U.S. at 140; *Landon*, 459 U.S. at 32; *Mezei*, 345 U.S. at 212; *Nishimura Ekiu*, 142 U.S. at 660). "[B]ecause the INA does not provide arriving aliens the right to bond, Petitioner has no independent procedural due process right to a bond hearing." *Id.* (citations omitted).

Courts throughout the country have reached the same conclusion as this Court: the due process rights of applicants for admission are limited to the procedures provided by statute, and they do not have a due process right to a bond hearing. *See Mendoza-Linares v. Garland*, No. 21-cv-1169, 2024 WL 3316306, at *2 (S.D. Cal. June 10, 2024); *Petgrave v. Aleman*, 529 F. Supp. 3d 665, 676-79 (S.D. Tex. 2021); *Gonzales Garcia v. Rosen*, 513 F. Supp. 3d 329, 332-336 (W.D.N.Y. 2021); *Ford v. Ducote*, No. 20-1170, 2020 WL 8642257, at *2 (W.D. La. Nov. 2, 2020); *Bataineh v. Lundgren*, No. 20-3132-JWL, 2020 WL 3572597, at *8-9 (D. Kan. July 1, 2020); *Mendez-Ramirez v. Decker*, 612 F. Supp. 3d 200, 220-21 (S.D.N.Y. 2020); *Gonzalez Aguilar v. McAleenan*, 448 F. Supp. 3d 1202, 1208-12 (D.N.M. 2019).

The Court should apply the same reasoning here. The INA mandates the detention of applicants for admission until the completion of proceedings and does not allow for bond hearings or release. *Jennings*, 583 U.S. at 302. Because the due process rights of applicants for admission are limited to those provided by the INA, *Thuraissigiam*, 591 U.S. at 139-40, Petitioner is not entitled to a bond hearing or release, *D.A.V.V.*, 2020 WL 13240240, at *4-6. Petitioner's claim should be denied.

CONCLUSION

The record is complete in this matter and the case is ripe for adjudication on the merits. For the reasons stated herein, Respondent respectfully requests that the Court deny the Petition.

Respectfully submitted this 26th day of June, 2025.

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CERTIFICATE OF SERVICE

This is to certify that I have this date filed the Response with the Clerk of the United States District Court using the CM/ECF system, which will send notification of such filing to the following:

N/A

I further certify that I have this date mailed by United States Postal Service the document and a copy of the Notice of Electronic Filing to the following non-CM/ECF participants:

Okechukwu Desmond Amadi
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Imperial Regional Detention Facility
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This 26th day of June, 2025.

BY: *s/ Roger C. Grantham, Jr.*
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