

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

LUIS BARRIOS, HECTOR,	:	
	:	
Petitioner,	:	
	:	Case No. 4:25-CV-210-CDL-AGH
v.	:	28 U.S.C. § 2241
	:	
WARDEN, STEWART DETENTION	:	
CENTER,¹	:	
	:	
Respondent.	:	

RESPONDENT’S RESPONSE

On July 1, 2025, Petitioner filed a petition for a writ of habeas corpus (“Petition”). ECF No. 1. Petitioner raises one claim: that his re-detention as an arriving alien under 8 U.S.C. § 1225(b) following his previous parole is unlawful. Pet. ¶¶ 16-19, ECF No. 1. Petitioner requests his immediate release from custody. *Id.* ¶ 3. For the reasons explained below, the Petition should be denied.

BACKGROUND

Petitioner is a native and citizen of Venezuela. Declaration of Deportation Officer David Graumenz (“Graumenz Decl.”) ¶ 4. On August 13, 2023, Petitioner applied for admission into the United States at the Brownsville, Texas Port of Entry without documents allowing lawful entry or admission. *Id.* ¶ 5 & Ex. A. On the same day, he was served by Customs and Border Protection

¹ In addition to Warden of Stewart Detention Center Terrence Dickerson, Petitioner also names Immigration and Customs Enforcement (“ICE”) Acting Director Todd Lyons, Former-ICE Atlanta Field Office Director George Sterling, and Secretary of Homeland Security Kristi Noem as Respondents 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 Stewart Detention Center as the sole appropriately named respondent in this action.

(“CBP”) with a Notice to Appear (“NTA”) charging him with inadmissibility pursuant to Immigration and Nationality Act (“INA”) § 212(a)(7)(A)(i)(I), 8 U.S.C. § 1182(a)(7)(A)(i)(I), based on his lack of a valid passport or other valid entry document at the time of his application for admission. *Id.* ¶ 6 & Exs. A & B. On the same day, Petitioner was paroled into the United States and advised of his initial hearing date before the New York Federal Plaza Immigration Court on February 29, 2024. *Id.* Petitioner later moved to Raleigh, North Carolina and venue was changed to the Charlotte Immigration Court. *Id.* ¶ 7.

On June 4, 2025, Petitioner was taken into ICE custody in Cary, North Carolina. *Id.* ¶ 8. On June 6, 2025, Petitioner was transferred to Stewart Detention Center, within the Columbus Division of the Middle District of Georgia. Graumenz Decl. ¶ 9. On July 18, 2025, Petitioner appeared for an initial master hearing before an immigration judge (“IJ”). *Id.* ¶ 10. Petitioner was given advisals and the allegations and charges in the NTA were sustained. *Id.* The IJ designated Venezuela as Petitioner’s country of removal. *Id.* Petitioner’s removal proceedings are ongoing, and his next master hearing is scheduled for August 26, 2025 at the Stewart Immigration Court. *Id.*

Venezuela is open for international travel. *Id.* ¶ 11. ICE/ERO is currently removing non-citizens to Venezuela. *Id.*

LEGAL FRAMEWORK

Petitioner is detained pre-final order of removal as an arriving alien. Title 8 United States Code Section 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.” Title 8 Code of Federal Regulations Sections 1.2 and 1001.1(q) define an “arriving alien”—a particular type of applicant for admission—as:

an applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry, or an alien interdicted in international or United States waters and brought into the United States by any means, whether or not to a designated port-of-entry, and regardless of the means of transport.

Detention of all arriving aliens is mandatory. If an immigration officer determines an arriving alien 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” 8 U.S.C. § 1225(b)(2)(A) (emphasis added). The only exception is that ICE/ERO may—in its discretion—release arriving aliens on parole. 8 U.S.C. § 1182(d)(5)(A); 8 C.F.R. §§ 212.5(b), 235.3(c).

ARGUMENT

Petitioner asserts that his detention is unlawful and seeks release from custody. However, Petitioner offers no basis for the Court to find his detention is unlawful. Petitioner merely states that he has a pending I-589 Application for Asylum and Withholding of Removal, that he was residing in the United States prior to his detention, and that he was detained on June 4, 2025. Pet. ¶ 15. Presumably, Petitioner believes that his parole into the United States entitled him to some additional right not to be detained during the pendency of his removal proceedings. Petitioner’s claim should be denied for four reasons: (1) he is mandatorily detained as an arriving alien; (2) his parole was at the discretion of the Secretary of Homeland Security and the decision to revoke that parole is not reviewable by the Court; (3) his re-detention following his earlier parole does not change his immigration status or confer any additional rights; and (4) the circumstances of Petitioner’s re-detention are not cognizable in habeas and Petitioner is not entitled to release from custody as a remedy.

I. The Petition should be denied because Petitioner is mandatorily detained as an arriving alien.

Petitioner claims that his detention is unlawful but does not detail the basis for this contention. Pet. ¶ 3. This failure notwithstanding, Petitioner's detention is, in fact, lawful, as he is mandatorily detained as an arriving alien.

As described above, Petitioner is an arriving alien as he is an applicant for admission pursuant to 8 U.S.C. § 1225(a)(1), who "attempted to come into the United States at a port-of-entry," 8 C.F.R. §§ 1.2 and 1001.1(q). Detention of all arriving aliens is mandatory under 8 U.S.C. § 1225(b). The Supreme 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." *Landon v. Plasencia*, 459 U.S. 21, 32 (1982) (citations omitted). Congress and the Executive have plenary power over the admission of arriving aliens 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 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). "[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 recognition of the political branches' power to set such procedures, the Court has consistently held that arriving aliens' due process rights are limited to only the relief and procedures provided by statute. *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."); *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 543 (1950) ("Whatever the rule may be concerning deportation of persons who have gained entry into the United States, it is not within the province of any court, unless expressly authorized by law, to review the determination of the political branch of the Government to exclude a given alien."); *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.").

Similarly, the Eleventh Circuit has long recognized that "[e]xcludable aliens have fewer rights than do deportable aliens, and those seeking initial admission to this country have the fewest of all." *Garcia-Mir v. Smith*, 766 F.2d 1478, 1484 (11th Cir. 1985) (citing *Landon*, 459 U.S. at 32). Arriving aliens are a class of excludable aliens who "seek admission but have not been granted entry into the United States. Even if physically present in this country, they are legally considered detained at the border." *Id.* at 1483-84. "[N]either parole nor detention has . . . any effect on their status." *Id.* (citing *Leng May Ma v. Barber*, 357 U.S. 185, 188 (1958)). Rather, "[a]liens 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." *Jean v. Nelson*, 727 F.2d 957, 968 (11th Cir. 1984).

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.”).

This Court has applied these principles and addressed the precise issue presented here. 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 arriving alien 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 arriving alien’s 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).²

Courts throughout the country have reached the same conclusion as this Court: arriving aliens’ due process rights 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);

² Note also that Petitioner has not claimed he requested a bond hearing from the Immigration Court, nor does he request one in his Petition.

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); *Moore v. Nielsen*, 4:18-cv-01722-LSC-HNJ, 2019 WL 2152582, at *3 (N.D. Ala. May 3, 2019).

Thus, because Petitioner is an arriving alien, his detention is mandatory under 8 U.S.C. § 1225(b), which Courts have repeatedly found lawful. The only exception to mandatory detention of an arriving alien is ICE/ERO's exclusive discretion to parole an arriving alien into the United States. As discussed below, this discretion is not reviewable by this Court and the fact that ICE/ERO exercised that discretion but later exercised its discretion to re-detain Petitioner does not change his mandatory detention status.

II. To the extent Petitioner challenges ICE/ERO's revocation of his parole, the Court lacks jurisdiction to review this decision.

Petitioner's contention that his detention is unlawful implicitly argues that ICE/ERO revoked his parole and that such revocation was unlawful. To the extent Petitioner is making this argument, the Court lacks jurisdiction to review ICE/ERO's parole decisions.

"Federal 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). In the immigration context, the federal courts' jurisdiction to review discretionary determinations made by ICE/ERO is limited as follows:

[n]otwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision . . . no court shall have jurisdiction to review . . . any other decision or action of the Attorney General or the Secretary of Homeland Security the authority for which is specified under this subchapter to be in the discretion of the Attorney General or the Secretary of Homeland Security[.]

8 U.S.C. § 1252(a)(2)(B).

Here, although not explicitly argued, Petitioner's claim that his detention is unlawful implicitly attacks ICE/ERO's revocation of his parole. Title 8 United States Code § 1182(d)(5)(A) permits ICE/ERO to parole a non-citizen into the United States, but commits this decision to ICE/ERO's discretion: "[t]he Attorney General may . . . *in his discretion* parole into the United States . . . any alien applying for admission[.]" (emphasis added). In accordance with the plain text of the statute, the Eleventh Circuit has held that "[t]he decision whether to parole an alien into the United States rests within the discretion of the Secretary [of DHS], . . . and that discretionary decision is shielded from judicial review, 8 U.S.C. § 1252(a)(2)(B)." *Pouzo v. U.S. Citizenship & Immigr. Servs.*, 516 F. App'x 731, 731 (11th Cir. 2013) (per curiam); *see also Perez-Perez v. Hanberry*, 781 F.2d 1477, 1479 (11th Cir. 1986) ("Parole decisions are deemed an integral part of the admissions process, and excludable aliens consequently cannot challenge parole decisions as a matter of constitutional right." (citations omitted)).

District courts in the Eleventh Circuit have recognized the same. *Goddard v. Nielsen*, No. 8:18-cv-1134, 2018 WL 11447437, at *2-3 (M.D. Fla. Dec. 6, 2018); *Jeanty v. Bulger*, 204 F. Supp. 2d 1366, 1382-83 (S.D. Fla. 2002), *aff'd mem.*, 321 F.3d 1336 (11th Cir. 2003).

Although not explicitly addressed in the preceding cases, pursuant to Section 1182(d)(5) the Secretary also has the discretion to end the parole of an applicant for admission: "[W]hen the purposes of such parole shall, in the opinion of the Secretary of Homeland Security, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and

thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.” 8 U.S.C. § 1182(d)(5). The above conclusion that the Secretary’s initial decision is “shielded from judicial review,” *Pouzo*, 516 F. App’x at 731, follows to the decision, granted in the same statutory sentence, to end the parole, return the applicant to custody, and continue his case as any other applicant. The Court should find that it lacks jurisdiction to review ICE/ERO’s parole determination pursuant to 8 U.S.C. § 1252(a)(2)(B).

III. Petitioner’s temporary release on parole and subsequent re-detention did not alter his immigration status, and he remains an arriving alien.

Title 8 United States Code Section 1182(d)(5)(A) provides that “[t]he Attorney General may . . . in his discretion parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States[.]” However, § 1182(d)(5)(A) also makes clear that “such parole of such alien shall not be regarded as an admission of the alien[.]” *See also Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018). Based on this language, the Eleventh Circuit has recognized that “[p]arole is not admission.” *Sookhoo v. U.S. Attorney Gen.*, 596 F. App’x 771, 772-73 (11th Cir. 2015) (per curiam) (citing 8 U.S.C. § 1101(a)(13)(B); 8 U.S.C. § 1182(d)(5)(A); *Leng May Ma v. Barber*, 357 U.S. 185, 190 (1958) (“The parole of aliens seeking admission is simply a device through which needless confinement is avoided while administrative proceedings are conducted. It was never intended to affect an alien’s status”)).

Rather, once the parole period expires or is revoked at the discretion of ICE, an arriving alien is again subject to mandatory detention, and his “case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.” 8 U.S.C. § 1182(d)(5)(A); *see also Jennings*, 583 U.S. at 288. “Since an alien’s legal status is not altered by detention or parole[,], it seems clear that [paroled aliens] can claim no greater rights or privileges

under our laws than any other group of aliens who have been stopped at the border. *Jean v. Nelson*, 727 F.2d 957, 969 (11th Cir. 1984). Therefore, the fact that Petitioner was previously paroled into the United States does not affect his status as an arriving alien or his concomitant due process rights.

IV. The circumstances of Petitioner's re-detention are not cognizable in habeas and Petitioner is not entitled to release from custody as a remedy.

Petitioner asserts that agents did not present him with a warrant at the time of his re-detention. Pet. ¶ 16. This contention does not challenge the legality of his detention. Instead, it challenges the means by which he was taken into custody. Such a claim is not cognizable in habeas. Further, release from custody is not an appropriate remedy for a challenge to the legality of an arrest. Therefore, the claim should be denied.

The scope of the Court's habeas jurisdiction is limited to reviewing the legality of detention and cannot be used as a mechanism to review collateral issues. "[T]he scope of habeas has been tightly regulated by statute, from the Judiciary Act of 1789 to the present day." *Thuraissigiam*, 591 U.S. at 125 n.20. "Habeas is at its core a remedy for unlawful executive detention." *Munaf v. Geren*, 553 U.S. 674, 693 (2008). "[T]he essence of habeas corpus is an attack by a person in custody upon the legality of that custody[.]" *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). "Simply stated, habeas is not available to review questions unrelated to the cause of detention. Its sole function is to grant relief from unlawful imprisonment or custody and it cannot be used properly for any other purpose." *Pierre v. United States*, 525 F.2d 933, 935-36 (5th Cir. 1976).³ Habeas "cannot be utilized as a base for the review of a refusal to grant collateral administrative

³ In *Bonner v. City of Prichard, Alabama*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), the Eleventh Circuit adopted as binding precedent all decisions of the former Fifth Circuit handed down prior to the close of business on September 30, 1981.

relief or as a springboard to adjudicate matters foreign to the question of the legality of custody.” *Id.* at 936.

The available relief in habeas is also limited. “[T]he traditional function of the writ is to secure release from illegal custody.” *Preiser*, 411 U.S. at 484. For this reason, in a habeas proceeding, a “federal court has the power to release” a detainee who is unlawfully confined. *Fay v. Noia*, 372 U.S. 391, 431 (1963), *overruled on other grounds by Wainwright v. Sykes*, 433 U.S. 72 (1977). But a federal court “has no other power” in habeas, and “it can act only on the body of the petitioner.” *Fay*, 372 U.S. at 431 (citation omitted). Thus, as the Supreme Court recently recognized, relief other than “simple release” is not available in a habeas action. *See Thuraissigiam*, 591 U.S. at 119.

Here, Petitioner’s claim regarding the circumstance of his re-detention is not cognizable in habeas for two reasons. First, the claim seeks only review of procedures ICE employed in taking him into custody. Pet. ¶¶ 16. Specifically, Petitioner claims he was not presented with a warrant or other document authorizing his re-detention at the time of his arrest. A claim of warrantless arrest or seizure sounds in the Fourth Amendment, but such a claim is not cognizable in habeas. Therefore, the Court lacks jurisdiction over the claim, and the 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).

Again, 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 Petitioner. *See Alvarez v. U.S. Immigr. & Customs Enf’t*, 818 F.3d 1194, 1205-1213 (11th Cir. 2016). Petitioner, however, may not raise habeas claims and a *Bivens* claim in the same 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 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. Title 8 United States Code Section 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.

8 U.S.C. § 1252(g). “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 actions in arresting him, alleging that the arrest was unlawful. Petitioner’s 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 challenge to his arrest should be denied.

Lastly, 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 officials who arrested Petitioner may only be raised under *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.

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 23rd day of July, 2025.

WILLIAM R. KEYES
UNITED STATES ATTORNEY

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

L.B,

Petitioner,

v.

Warden, STEWART DETENTION CENTER,
et al.,

Respondent.

Case No. 4:25-CV-210-CDL-AGH
28 U.S.C. § 2241

DECLARATION OF DEPORTATION OFFICER (DO) DAVID GRAUMENZ

1. I, David Graumenz, have been employed with the U.S. Department of Homeland Security (DHS), Immigration and Customs Enforcement, Enforcement and Removal Operations (ICE/ERO) since July 28, 2024. I currently serve as a Deportation Officer working at Stewart County Detention Center in Lumpkin, Georgia.
2. In my capacity as a Detention & Deportation Officer, I am the officer assigned to the case involving Hector Luis Barrios (the Petitioner), whose alien registration number is 
 I have reviewed the relevant documents from the Petitioner's alien files and other official government records related to the Petitioner's removal proceedings and, unless otherwise stated, this declaration is based on that review. I am aware that the Petitioner has filed a Petition for Habeas Corpus in the U.S. District Court for the Middle District of Georgia, case number 4:25-cv-50.
3. I provide this declaration based on my personal knowledge, belief, reasonable inquiry, and information obtained from various records, systems, databases, other DHS employees, employees of DHS contract facilities, and information portals maintained and relied upon by DHS in the regular course of business.
4. Petitioner is a 29-year-old native and citizen of Venezuela who is detained pursuant to 235(b) of the Immigration and Nationality Act (INA).
5. On or about August 13, 2023, Petitioner was encountered by immigration authorities when he applied for admission into the United States at the Brownsville, Texas Port of Entry. Petitioner was not in possession of any documents that would allow him to

lawfully enter or remain in the United States. *See Exhibit A, Form I-213: Record of Deportable/Inadmissible Alien.*

6. On August 13, 2023, Petitioner was personally served with a Notice to Appear (NTA) charging him with inadmissibility pursuant to INA § 212(a)(7)(A)(i)(I) and advising him of his initial hearing date before the New York Federal Plaza Immigration Court on February 29, 2024. *See Exhibit B, NTA, dated August 13, 2023.* He was paroled into the United States on the same day. *See Exhibit A, Form I-213: Record of Deportable/Inadmissible Alien.*
7. Petitioner later moved to Raleigh, North Carolina. On February 29, 2024, venue was changed to the Charlotte Immigration Court.
8. On June 6, 2025, Petitioner was taken into ICE/ERO custody and transferred to Stewart Detention Center.
9. On July 18, 2025, Petitioner appeared for his initial master hearing. At this time, he was given advisals and the charges and allegations in the NTA were sustained. Venezuela was designated as his country of removal. Petitioner is still in removal proceedings and his next master hearing is scheduled for August 26, 2025 at the Lumpkin Immigration Court.
10. In the event Petitioner becomes subject to a final order of removal, there is a significant likelihood of his removal in the reasonably foreseeable future. ICE is currently effectuating removals of Venezuelan nationals to Venezuela.

Pursuant to Title 28, U.S. Code Section 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, this the 22nd of July 2025.



David Graumenz
Deportation Officer
Enforcement and Removal Operations
Stewart Detention Center
Lumpkin, Georgia

Alien's Name BARRIOS, HECTOR LUIS	File Number  SIGMA Event:  Event No: 	Date August 13, 2023
TECS Neg NCIC Neg CIS Neg CCD Neg IAFIS Neg SECTION CODES ----- Sec212(a)(7)(A)(i)(I) 8 USC 1182-ALIEN INADMISSIBILITY UNDER SEC 212(a) Narrative: ----- On Sunday, August 13, 2023, subject arrived at the Brownsville, Texas Port of Entry without documents sufficient for lawful entry into the United States. The subjects were referred to secondary after verifying they were not in possession of valid documents to enter or reside in the United States. Immigration Violation(s): None. Criminal History/IDENT/IAFIS: Negative. Consular Notification: Subject was afforded the opportunity to make a consular notification but declined. Health: Subject appeared to be in good health and did not identify any medical concerns during the interview. Subject arrived with a scheduled CBP One appointment. Disposition: Subject was processed for an NTA and paroled into the U.S. pending a 240 hearing.		
Signature  CHAVEZ, Alfredo	Title CBP OFFICER	

Digitally Acquired Signature

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Exhibit B
DEPARTMENT OF HOMELAND SECURITY
NOTICE TO APPEAR

In removal proceedings under section 240 of the Immigration and Nationality Act:

Event No: [REDACTED]

Subject ID : [REDACTED] FIN #: [REDACTED]

SIGMA Event: [REDACTED] DOB: [REDACTED] 1995

File No: [REDACTED]

In the Matter of: BARRIOS, HECTOR LUIS

Respondent: BARRIOS, Hector Luis

currently residing at:

[REDACTED] NEW YORK, NEW YORK 11237, UNITED STATES OF AMERICA

(Number, street, city, state and ZIP code)

[REDACTED]
(Area code and phone number)

- ☒ You are an arriving alien.
- ☐ You are an alien present in the United States who has not been admitted or paroled.
- ☐ You have been admitted to the United States, but are removable for the reasons stated below.

The Department of Homeland Security alleges that you:

1. You are not a citizen or national of the United States;
2. You are a native of VENEZUELA and a citizen of VENEZUELA;
3. On or about August 13, 2023, you applied for admission to the United States at the Brownsville, Texas Port of Entry;
4. You are an immigrant not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Immigration and Nationality Act.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

See Continuation Page Made a Part Hereof

- ☐ This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.
- ☐ Section 235(b)(1) order was vacated pursuant to: ☐ 8CFR 208.30 ☐ 8CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:

26 FEDERAL PLZ 12TH FL RM 1237,
NEW YORK, NY, US 10278

(Complete Address of Immigration Court, including Room Number, if any)

on February 29, 2024 at 08:30 AM to show why you should not be removed from the United States based on the
(Date) (Time) CHAVEZ, Alfredo

charge(s) set forth above.

CBP OFFICER

Alfredo Chavez
(Signature and Title of Issuing Officer) (Sign in ink) Digitally Acquired Signature

Date: August 13, 2023

Brownsville, TEXAS

(City and State)

Notice to Respondent

Warning: Any statement you make may be used against you in removal proceedings.

Alien Registration: This copy of the Notice to Appear served upon you is evidence of your alien registration while you are in removal proceedings. You are required to carry it with you at all times.

Representation: If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review, pursuant to 8 CFR 1003.16. Unless you so request, no hearing will be scheduled earlier than ten days from the date of this notice, to allow you sufficient time to secure counsel. A list of qualified attorneys and organizations who may be available to represent you at no cost will be provided with this notice.

Conduct of the hearing: At the time of your hearing, you should bring with you any affidavits or other documents that you desire to have considered in connection with your case. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing. At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Notice to Appear, including that you are inadmissible or removable. You will have an opportunity to present evidence on your own behalf, to examine any evidence presented by the Government, to object, on proper legal grounds, to the receipt of evidence and to cross examine any witnesses presented by the Government. At the conclusion of your hearing, you have a right to appeal an adverse decision by the immigration judge. You will be advised by the immigration judge before whom you appear of any relief from removal for which you may appear eligible including the privilege of voluntary departure. You will be given a reasonable opportunity to make any such application to the immigration judge.

One-Year Asylum Application Deadline: If you believe you may be eligible for asylum, you must file a Form 1-589, Application for Asylum and for Withholding of Removal. The Form 1-589, Instructions, and information on where to file the Form can be found at www.uscis.gov/i-589. Failure to file the Form 1-589 within one year of arrival may bar you from eligibility to apply for asylum pursuant to section 208(a)(2)(B) of the Immigration and Nationality Act.

Failure to appear: You are required to provide the Department of Homeland Security (DHS), in writing, with your full mailing address and telephone number. You must notify the Immigration Court and the DHS immediately by using Form EOIR-33 whenever you change your address or telephone number during the course of this proceeding. You will be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the immigration judge in your absence, and you may be arrested and detained by the DHS.

Mandatory Duty to Surrender for Removal: If you become subject to a final order of removal, you must surrender for removal to your local DHS office, listed on the internet at <http://www.ice.gov/contact/ero>, as directed by the DHS and required by statute and regulation. Immigration regulations at 8 CFR 1241.1 define when the removal order becomes administratively final. If you are granted voluntary departure and fail to depart the United States as required, fail to post a bond in connection with voluntary departure, or fail to comply with any other condition or term in connection with voluntary departure, you must surrender for removal on the next business day thereafter. If you do not surrender for removal as required, you will be ineligible for all forms of discretionary relief for as long as you remain in the United States and for ten years after your departure or removal. This means you will be ineligible for asylum, cancellation of removal, voluntary departure, adjustment of status, change of nonimmigrant status, registry, and related waivers for this period. If you do not surrender for removal as required, you may also be criminally prosecuted under section 243 of the Immigration and Nationality Act.

U.S. Citizenship Claims: If you believe you are a United States citizen, please advise the DHS by calling the ICE Law Enforcement Support Center toll free at (855) 448-6903.

Sensitive locations: To the extent that an enforcement action leading to a removal proceeding was taken against Respondent at a location described in 8 U.S.C. § 1229(e)(1), such action complied with 8 U.S.C. § 1367.

Request for Prompt Hearing

To expedite a determination in my case, I request this Notice to Appear be filed with the Executive Office for Immigration Review as soon as possible. I waive my right to a 10-day period prior to appearing before an Immigration judge and request my hearing be scheduled.

Before:

(Signature of Respondent) (Sign in ink)

Date: _____

(Signature and Title of Immigration Officer) (Sign in ink)

Certificate of Service

This Notice To Appear was served on the respondent by me on August 13, 2023, in the following manner and in compliance with section 239(a)(1) of the Act.

- ☒ in person ☐ by certified mail, returned receipt # _____ requested ☐ by regular mail
☐ Attached is a credible fear worksheet.
☒ Attached is a list of organization and attorneys which provide free legal services.

The alien was provided oral notice in the SPANISH language of the time and place of his or her hearing and of the consequences of failure to appear as provided in section 240(b)(7) of the Act.

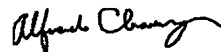


Digitally Acquired Signature

(Signature of Respondent if Personally Served) (Sign in ink)

CHAVEZ, Alfredo

CBP OFFICER



Digitally Acquired Signature

(Signature and Title of officer) (Sign in ink)

Privacy Act Statement

Authority:

The Department of Homeland Security through U.S. Immigration and Customs Enforcement (ICE), U.S. Customs and Border Protection (CBP), and U.S. Citizenship and Immigration Services (USCIS) are authorized to collect the information requested on this form pursuant to Sections 103, 237, 239, 240, and 290 of the Immigration and Nationality Act (INA), as amended (8 U.S.C. 1103, 1229, 1229a, and 1360), and the regulations issued pursuant thereto.

Purpose:

You are being asked to sign and date this Notice to Appear (NTA) as an acknowledgement of personal receipt of this notice. This notice, when filed with the U.S. Department of Justice's (DOJ) Executive Office for Immigration Review (EOIR), initiates removal proceedings. The NTA contains information regarding the nature of the proceedings against you, the legal authority under which proceedings are conducted, the acts or conduct alleged against you to be in violation of law, the charges against you, and the statutory provisions alleged to have been violated. The NTA also includes information about the conduct of the removal hearing, your right to representation at no expense to the government, the requirement to inform EOIR of any change in address, the consequences for failing to appear, and that generally, if you wish to apply for asylum, you must do so within one year of your arrival in the United States. If you choose to sign and date the NTA, that information will be used to confirm that you received it, and for recordkeeping.

Routine Uses:

For United States Citizens, Lawful Permanent Residents, or individuals whose records are covered by the Judicial Redress Act of 2015 (5 U.S.C. § 552a note), your information may be disclosed in accordance with the Privacy Act of 1974, 5 U.S.C. § 552a(b), including pursuant to the routine uses published in the following OHS systems of records notices (SORN): DHS/USCIS/ICE/CBP-001 Alien File, Index, and National File Tracking System of Records, DHS/USCIS-007 Benefit Information System, DHS/ICE-011 Criminal Arrest Records and Immigration Enforcement Records (CARIER), and DHS/ICE-003 General Counsel Electronic Management System (GEMS), and DHS/CBP-023 Border Patrol Enforcement Records (BPER). These SORNs can be viewed at <https://www.dhs.gov/system-records-notices-sorn>. When disclosed to the DOJ's EOIR for immigration proceedings, this information that is maintained and used by DOJ is covered by the following DOJ SORN: EOIR-001, Records and Management Information System, or any updated or successor SORN, which can be viewed at <https://www.justice.gov/opcl/doj-systems-records>. Further, your information may be disclosed pursuant to routine uses described in the abovementioned OHS SORNs or DOJ EOIR SORN to federal, state, local, tribal, territorial, and foreign law enforcement agencies for enforcement, investigatory, litigation, or other similar purposes.

For all others, as appropriate under United States law and OHS policy, the information you provide may be shared internally within OHS, as well as with federal, state, local, tribal, territorial, and foreign law enforcement; other government agencies; and other parties for enforcement, investigatory, litigation, or other similar purposes.

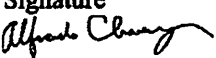
Disclosure:

Providing your signature and the date of your signature is voluntary. There are no effects on you for not providing your signature and date; however, removal proceedings may continue notwithstanding the failure or refusal to provide this information.

Alien's Name BARRIOS, HECTOR LUIS	File Number SIGMA Event: Event No:	Date August 13, 2023
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ON THE BASIS OF THE FOREGOING, IT IS CHARGED THAT YOU ARE SUBJECT TO REMOVAL FROM THE UNITED STATES PURSUANT TO THE FOLLOWING PROVISION(S) OF LAW:

212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (Act), as amended, as an immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality as required under the regulations issued by the Attorney General under section 211(a) of the Act.

Signature  CHAVEZ, Alfredo	Title CBP OFFICER
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Digitally Acquired Signature

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