

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

MERWIN MARCANO MONTIEL,	:	
	:	
Petitioner,	:	
	:	Case No. 4:25-CV-268-CDL-AGH
v.	:	28 U.S.C. § 2241
	:	
WARDEN, STEWART DETENTION CENTER,¹	:	
	:	
Respondent.	:	

RESPONDENT’S RESPONSE

On August 26, 2025, Petitioner filed an application for a writ of habeas corpus (“the Petition”). ECF No. 1. On the same day, the Court ordered Respondent to file a comprehensive response within twenty-one days from the date of filing. ECF No. 3. On September 15, 2025, Respondent requested an extension of time to file his response. ECF No. 4. The following day, the Court granted Respondent an additional seven days to respond. ECF No. 5. Petitioner seeks release from what he describes as “unlawful detention” and argues that he should be protected by his “previously granted temporary protected status (TPS).” Pet. 1. For the reasons explained below, the Petition should be denied.

¹ Petitioner named “Terrace [sic] Dickerson, U.S. ICE field office director for the Atlanta field office, and warden of immigration Stewart Detention Center in Lumpkin, GA” 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.

BACKGROUND

Petitioner is a native and citizen of Venezuela. Declaration of Deportation Officer Lia Chambliss (“Chambliss Decl.”) ¶ 3. Petitioner entered the United States without admission or inspection on an unknown date and at an unknown time. *Id.* ¶ 4. Petitioner applied for Temporary Protected Status (“TPS”) on June 30, 2024. *Id.* ¶ 5. Petitioner’s application was approved on January 4, 2025, and his TPS was valid until April 2, 2025. *Id.* On April 9, 2025, Petitioner filed an application to re-register for TPS. *Id.* Petitioner’s application has not been adjudicated by U.S. Citizenship and Immigration Services (“USCIS”), in part because the Secretary of Homeland Security terminated Venezuela’s designation as a TPS country. *Id.*; *see also*, Termination of the October 3, 2023 Designation of Venezuela for Temporary Protected Status, 90 F.R. 9040 (Feb. 5, 2025).² Further, on September 16, 2025, the Department of Homeland Security filed for termination of Petitioner’s TPS status. Chambliss Decl. ¶ 12. That termination request remains pending with USCIS. *Id.*

On February 20, 2025, the Secretary of State designated the transnational organization Tren de Aragua (“TdA”) a foreign terrorist organization (“FTO”). *Id.* ¶ 6. On March 20, 2025, Petitioner was arrested by Homeland Security Investigations (“HSI”) pursuant to 50 U.S.C. § 21, the Alien Enemies Act. *Id.* ¶¶ 7-8. Petitioner was targeted for arrest for being a known member of TdA. *Id.*

² The Secretary’s termination order was stayed by order of the U.S. District Court for the Northern District of California on March 31, 2025. *Nat’l TPS All. v. Noem*, 773 F. Supp. 3d 807 (N.D. Cal. Mar. 31, 2025). The District Court’s injunction was stayed by order of the Supreme Court of the United States on May 19, 2025, allowing the termination to go into effect. *Noem v. Nat’l TPS All.*, 145 S. Ct. 2728 (Mem. Op. 2025). The District Court issued a summary judgment order on the merits of the challenge to the Secretary’s termination order under the Administrative Procedures Act on September 5, 2025, finding that the termination should be set aside. *Nat’l TPS All. v. Noem*, No. 25-cv-01766-EMC, 2025 WL 2578045 (N.D. Cal. Sept. 5, 2025). The District Court’s order reinstated the TPS designation of Venezuela, which is valid until October 2, 2026. *Id.* That order is on appeal to the Ninth Circuit, which has denied an application to stay the District Court’s judgment until after appeal. *Nat’l TPS All. v. Noem*, --F. 4th--, 2025 WL 2661556 (9th Cir. 2025).

¶ 7. Further, Petitioner was also a target of an HSI criminal investigation into cocaine distribution and sex trafficking. *Id.* Specifically, Petitioner is believed to have created and managed sex advertisements for TdA trafficking victims by photographing the victims and uploading their images onto various websites. Chambliss Decl. ¶ 7. Petitioner additionally is believed to have transported trafficking victims to local hotels and residences. *Id.*

On March 20, 2025, Petitioner was ordered removed pursuant to 50 U.S.C. § 21. *Id.* ¶ 9. On May 13, 2025, Petitioner sought a custody re-determination before an Immigration Judge (“IJ”), but the IJ held that she lacked jurisdiction over Petitioner’s request because he was not held pursuant to removal proceedings under INA § 240. *Id.* ¶ 10 & Ex. A, Bond Order. On May 22, 2025, Petitioner appealed the IJ’s decision, which appeal remains pending with the Board of Immigration Appeals (“BIA”). *Id.* ¶ 11 & Ex. B, Briefing Schedule.

On September 22, 2025, ICE/ERO cancelled Petitioner’s order of removal pursuant to 50 U.S.C. § 21 and served Petitioner with a Notice to Appear (“NTA”), charging him with inadmissibility pursuant to INA § 212(a)(2)(D)(ii) (8 U.S.C. § 1182(a)(2)(D)(ii)), related to engaging in prostitution, INA § 212(a)(2)(H)(i) (8 U.S.C. § 1182(a)(2)(H)(i)), related to aiding or abetting human trafficking offenses in the United States, and INA §§ 212(a)(6)(A)(i) and (a)(7)(A)(i)(I) (8 U.S.C. §§ 1182(a)(6)(A)(i) and (a)(7)(A)(i)(I)) for entering without inspection and being an applicant for admission without proper entry documents. Chambliss Decl. ¶ 13 & Ex. C, Notice to Appear. Petitioner remains detained at Stewart Detention Center pursuant to INA § 235(b)(2) (8 U.S.C. § 1225(b)(2)). *Id.* ¶ 14. Petitioner is scheduled for a hearing on the NTA before the IJ on October 3, 2025. *Id.* ¶ 14.

LEGAL FRAMEWORK

I. Detention under 8 U.S.C. § 1225

Petitioner is 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.” If an immigration officer determines an applicant for admission is inadmissible, the officer “shall order the [non-citizen] removed from the United States without further hearing or review.” 8 U.S.C. § 1225(b)(1)(A)(i). If the applicant for admission “indicates either an intention to apply for asylum . . . or a fear of persecution,” 8 U.S.C. § 1225(b)(1)(A)(i), the “officer shall refer the alien for an interview by an asylum officer,” 8 U.S.C. § 1225(b)(1)(A)(ii). “If the officer determines at the time of the interview that an alien has a credible fear of persecution[,] . . . the alien shall be detained for further consideration of the application for asylum.” 8 U.S.C. § 1225(b)(1)(B)(ii).

Detention of all applicants for admission is mandatory. 8 U.S.C. § 1225(b)(1)(B)(ii) (“If the officer determines at the time of the interview that an alien has a credible fear of persecution[,] . . . the alien *shall be detained* for further consideration of the application for asylum.” (emphasis added)); 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)). 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).

The BIA has recently affirmed that any non-citizen who entered the United States without admission or inspection is properly considered an “applicant for admission” and subject to the mandatory detention provision of 8 U.S.C. § 1225(b), regardless of how long they have resided in

the United States. *In the Matter of Yajure Hurtado*, 29 I&N Dec. 216, 218-19 (BIA 2025). Although Congress determined that an inadmissible non-citizen who can establish that he or she has been present in the United States for over two years is not subject to the expedited removal process set forth in § 1225(b), such a non-citizen is still subject to mandatory detention under § 1225(b)(2)(A). *Hurtado*, 29 I&N Dec. at 219-20.

II. Temporary Protected Status

The Immigration and Nationality Act (“INA”) establishes a limited, temporary status, called Temporary Protected Status, for noncitizens who are nationals of designated countries that the Secretary of Homeland Security determines (i) are in the midst of an armed conflict; (ii) have experienced a natural disaster and the foreign state requests such designation; or (iii) present “extraordinary and temporary conditions . . . that prevent[] aliens who are nationals of the state from returning to the state in safety.” 8 U.S.C. § 1254a(b)(1)(A)-(C).³ A TPS recipient “shall be considered as being in, and maintaining, lawful status as a nonimmigrant,” but only for purposes of adjustment or change of immigration status. *Id.* § 1254a(f)(4). The statute also provides limited protection against detention, in that a TPS recipient “shall not be detained *on the basis of the alien’s immigration status* in the United States.” *Id.* § 1254a(d)(3) (emphasis added).

Once granted, TPS status remains in effect until the termination of the designation, *id.* § 1254a(b)(3)(B), or the temporary status provided to the particular non-citizen is withdrawn, *id.* § 1254a(c)(3). TPS status may be withdrawn from a particular non-citizen if the Secretary of Homeland Security determines, among other potential grounds, that “the alien was not in fact

³ Although the statutory text refers to the Attorney General, the authority pertaining to TPS designations, as well as detention and removal of noncitizens from the United States, has been transferred to the Department of Homeland Security. 6 U.S.C. § 251(2); *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 109 n.3 (2020).

eligible for such status under this section.” *Id.* § 1254a(c)(3)(A). In turn, a noncitizen is ineligible for such status if she or he “has been convicted of a felony or 2 or more misdemeanors committed in the United States, or the alien is described in section 1158(b)(2)(A) of this title.” *Id.* § 1254a(c)(2)(B)(i)-(ii).⁴ And if ineligible, the Secretary may initiate removal proceedings based on that ineligibility. 8 C.F.R. §§ 244.18, 1244.18. Should those removal proceedings result in a final order of removal, the noncitizen “may be removed from the United States.” *Id.* §§ 244.18(d), 1244.18(d).

ARGUMENT

Petitioner seeks release from immigration detention on the basis that his detention is unlawful and indefinite. Pet. 1-2. He notes that he was granted TPS status, which was valid through April 2, 2025. Pet. 1. Petitioner also makes passing reference to his arrest without a warrant. Pet. 2. Respondent construes the Petition as asserting (1) that Petitioner’s detention is unlawful because of his TPS status, (2) that his continued detention violates his due process rights, and (3) that his arrest was unlawful. Each of these claims should be denied: (1) Petitioner’s TPS status does not prevent his detention on a basis other than his immigration status; (2) Petitioner’s pre-final order detention under 8 U.S.C. § 1225(b) is lawful and does not violate his due process rights as an applicant for admission; and (3) the Court is without jurisdiction to review Petitioner’s arrest as a discretionary action taken to commence removal proceedings.

I. Petitioner’s Detention Complies with the INA.

Respondent construes Petitioner’s arguments regarding his TPS status as asserting essentially the following theory: Petitioner is a TPS recipient; the applicable statute prohibits detention of TPS recipients; he is detained; *ergo*, his detention violates the TPS statute. But

⁴ Relevant here, 8 U.S.C. § 1158(b)(2)(A)(iv) renders a noncitizen ineligible for TPS if “there are reasonable grounds for regarding the alien as a danger to the security of the United States.”

Petitioner has overread the relevant statutory language: The statute does not say that federal immigration authorities may *never* detain a non-citizen with TPS status. What the statute actually provides is that a TPS recipient “shall not be detained . . . *on the basis of the alien’s immigration status* in the United States.” 8 U.S.C. § 1254a(d)(4) (emphasis added). As explained below, Petitioner is not being detained on the basis of his immigration status. Accordingly, his detention does not offend the statute.

As mentioned, ICE has issued Petitioner an NTA charging him as inadmissible under two sections of the INA and therefore removable from the United States. Chamblis Decl. ¶ 13 & Ex. C. By statute, Petitioner is mandatorily detained pending the outcome of his removal proceedings in immigration court pursuant to 8 U.S.C. § 1225(b)(2). Thus, unless Petitioner falls within an applicable exception to this default rule, his present detention is lawful.

The sole exception Petitioner could invoke is the TPS statute. The plain language of that statute prohibits detention only when “the basis of” that detention is the noncitizen’s “immigration status.” 8 U.S.C. § 1254a(d)(4). The INA does not define “immigration status” as such, but it does provide for how noncitizens may *adjust* status. *See, e.g., id.* § 1159(b) (setting out requirements for a refugee/asylee to adjust status to legal permanent resident). Other recognized statuses include nonimmigrant, *see* 8 U.S.C. § 1255(j) (providing for adjustment of status from nonimmigrant to permanent resident), and immigrant, *see id.* § 1101(a)(15) (defining “immigrant”).⁵ In short, “immigration status” refers to the legal category into which a noncitizen’s presence in this country falls. Thus understood, the TPS statute’s prohibition of detention “on the basis of . . . immigration

⁵ Courts have also suggested that “immigration status” may include whether the noncitizen is subject to certain immigration orders such as parole or removal from the country. *See, e.g., Duarte v. Mayorkas*, 27 F.4th 1044, 1049, 1053-54 (5th Cir. 2022); *Laroque v. Sec’y, Dep’t of Homeland Sec.*, 2021 WL 7084102, at *5 (M.D. Fla. Oct. 22, 2021), *R. & R. adopted*, 2021 WL 7084106 (M.D. Fla. Dec. 2, 2021).

status,” *id.* § 1254a(d)(4), means only that a noncitizen TPS recipient may not be detained simply because of the legal categorization of his or her presence in the country.

This limited reading is consistent with what TPS is: “[A] ‘temporary refuge’ that ceases to shield an applicant from removal once it is withdrawn.” *Duarte v. Mayorkas*, 27 F.4th 1044, 1053 (4th Cir. 2022) (citation omitted). In other words, TPS simply “freezes a[] [noncitizen]’s position within the immigration system”—“it does not erase the effects of a[] [noncitizen]’s previous unlawful entry or presence in the country.” *Id.*; see *Sanchez v. Mayorkas*, 593 U.S. 409, 414 (2021) (“[T]he conferral of TPS does not make an unlawful entrant . . . eligible . . . for adjustment to LPR status.”). A removable noncitizen with TPS therefore remains removable; indeed, a TPS recipient “may even be ordered removed,” but as a consequence of the “freeze[]” caused by TPS, “the order remains inexecutable so long as the [noncitizen] remains a TPS beneficiary.” *Duarte*, 27 F.4th at 1053-54; see also, *In re Sosa*, 25 I. & N. Dec. 391, 393 (“[T]he respondent is protected from execution of a removal order during the time her TPS status is valid, but she remains removable based on the charge of inadmissibility.”). Indeed, because TPS insulates a removable noncitizen recipient from removal, detention based on the noncitizen’s immigration status alone would conceivably last for the duration of the TPS designation itself—perhaps even indefinitely, something that the Supreme Court has indicated may raise constitutional difficulties. *Cf. Zadvydas v. Davis*, 533 U.S. 678, 682 (2001).

That concern is not implicated when, as here, the noncitizen’s “immigration status” is not the “basis” of detention. 8 U.S.C. § 1254a(d)(4). To be sure, Petitioner is inadmissible and therefore removable. But his alleged lack of lawful immigration status is not why he has been placed *in removal proceedings*, and that status is not why he is being *detained* pending the outcome of those proceedings. Rather, Petitioner is being detained because the government has determined

that he is removable for reasons unrelated to his lack of lawful immigration status: his charges in the NTA that he is removable pursuant to INA § 212(a)(2)(D)(ii) (8 U.S.C. § 1182(a)(2)(D)(ii)), for engaging in prostitution related activities, and INA § 212(a)(2)(H)(i) (8 U.S.C. § 1182(a)(2)(H)(i)), for aiding or abetting human trafficking offenses in the United States. Chambliss Decl. ¶ 13 & Ex. C. These charges of removability are grounds for detention wholly independent of Petitioner's "immigration status" and are therefore not subject to the TPS statute's detention restriction.⁶ Additionally, Petitioner is a known member of TdA, providing additional reasonable grounds for regarding him as a danger to the security of the United States. *Id.* ¶ 7; 8 U.S.C. § 1158(b)(2)(A)(iv). Accordingly, section 1225(b) controls here, and because that statute requires ICE to detain Petitioner pending the outcome of his removal proceedings, his present detention complies with applicable statutory authority.

II. Petitioner's Mandatory Detention under 8 U.S.C. § 1225(b) Complies with Due Process.

"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). For this reason, the Supreme Court has "long recognized the power to expel or exclude aliens as a fundamental

⁶ ICE's regulations confirm this, as a noncitizen who is determined to be "deportable or inadmissible upon grounds which would have rendered the alien ineligible for [TPS] status as provided in . . . 8 CFR [§] 244.4 may be detained . . . pending removal proceedings." 8 C.F.R. § 244.18(d). Section 244.4, meanwhile, provides that a noncitizen "is ineligible for Temporary Protected Status" if he or she is "described in section 208(b)(2)(A) of the Act," *i.e.*, 8 U.S.C. § 1158(b)(2)(A). 8 C.F.R. § 244.4(b). And that statutory provision includes noncitizens as to whom "there are reasonable grounds for regarding . . . as a danger to the security of the United States." 8 U.S.C. § 1158(b)(2)(A)(iv). In brief, applicable regulations expressly provide that a TPS recipient determined to be a security risk may be detained on that ground during removal proceedings.

sovereign attribute exercised by the Government's political departments largely immune from judicial control." *Fiallo*, 430 U.S. at 792 (collecting cases); *see also Jennings*, 583 U.S. at 286 ("To implement its immigration policy, the Government must be able to decide (1) who may enter the country and (2) who may stay here after entering.").

"[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." *Thuraissigiam*, 591 U.S. at 139; *Kleindienst v. Mandel*, 408 U.S. 753, 767 (1972) ("[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."). "In the exercise of its broad power over naturalization and immigration, Congress regularly makes rules that would be unacceptable if applied to citizens." *Mathews*, 426 U.S. at 79-80.

Based on the political branches' dual powers to admit non-citizens and determine the procedures for admission, 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). In recognition of the political branches' power to set such procedures, the Court has consistently held that the due process rights of applicants for admission 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). Applicants for admission 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 *Thuraissigiam*, the Supreme Court recently reaffirmed this “century-old rule regarding the due process rights of an alien seeking initial entry[]”—that for aliens not admitted to the United States, “the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law.” *Thuraissigiam*, 591 U.S. at 131 (internal quotations and citations omitted). Accordingly, applicants for admission are “on the threshold” and have “only those rights regarding admission that Congress has provided by statute.” *Id.* at 140.

Here, Petitioner is an applicant for admission who has not been admitted into the United States, and his detention is mandatory. 8 U.S.C. § 1225(b)(1)(B)(ii), (b)(2)(A). Further, under the INA, Petitioner has no right to be released on bond. 8 C.F.R. § 1003.19(h)(2)(i)(B) (“[A]n immigration judge may not redetermine conditions of custody imposed by [ICE/ERO] with respect

to . . . [a]rriving aliens in removal proceedings[.]”); *Jennings*, 583 U.S. at 298-303. Rather, he may only seek discretionary parole. 8 U.S.C. § 1182(d)(5)(A); *Jennings*, 583 U.S. at 299-301; *see also* 8 C.F.R. §§ 212.5(b), 235.3(c).

Because Petitioner has no statutory right to release or bond—aside from discretionary parole—he similarly has no procedural due process right to release or bond. District courts in the Eleventh Circuit—including this Court—have reached the same conclusion. *See D.A.V.V. v. Warden, Irwin Cty. Det. Ctr.*, No. 7:20-CV-159-CDL-MSH, 2020 WL 13240240, at *3-4 (M.D. Ga. Dec. 7, 2020); *Dini v. Warden, Etowah Det. Ctr.*, No. 4:19-cv-01065, 2019 WL 4888018, at *2 (N.D. Ala. Oct. 3, 2019). District courts in other jurisdictions have done the same. *See 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 (S.D.N.Y. 2021); *Bataineh v. Lundgren*, No. 20-3132-JWL, 2020 WL 3572597, at *8-9 (D. Kan. July 1, 2020); *Gonzalez Aguilar v. McAleenan*, 448 F. Supp. 3d 1202, 1208-12 (D.N.M. 2019). For these reasons, to the extent Petitioner seeks release from custody or a bond hearing, the Petition should be denied because Petitioner is mandatorily detained as an applicant for admission.

III. Petitioner’s Claims Regarding His Arrest Are Not Cognizable in Habeas.

Petitioner states that “On march 20,2025 [sic], ICE Agents Broke into the house where petitioner, was renting at the time, . . . and looking for an unknown person without showing a previous arrest warrant . . . proceeded to arrest him[.]” Pet 2. To the extent Petitioner challenges the legality of his arrest under the Fourth Amendment, such a claim should be denied because the claim is not cognizable in habeas, 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).

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 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 a Fourth Amendment claim, if brought, would challenge only the nature of Petitioner’s arrest and not his ongoing detention, the claim is not cognizable in habeas and should be denied.

Second, even if Petitioner is bringing such a claim, and the Court finds it is generally cognizable in habeas, the Court lacks subject-matter jurisdiction over the claim. 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.

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 HSI’s actions in arresting him, alleging that the arrest was unlawful. Pet. 2. 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 Fourth Amendment claim should be denied.

Third, even if Petitioner is raising a Fourth Amendment claim, and the Court finds it 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 such a claim is not cognizable in habeas and that the Court lacks jurisdiction over the claim, Petitioner’s claim otherwise lacks merit.

CONCLUSION

For the foregoing reasons, Respondent requests that the Petition be denied.

Respectfully submitted this 23rd day of September, 2025.

WILLIAM R. KEYES
UNITED STATES ATTORNEY

BY: /s/ Michael P. Morrill
MICHAEL P. MORRILL
Assistant United States Attorney
Georgia Bar No. 545410
United States Attorney’s Office
Middle District of Georgia
P. O. Box 2568
Columbus, Georgia 31902
Phone: (706) 649-7728
michael.morrill@usdoj.gov

CERTIFICATE OF SERVICE

This is to certify that I have this date filed the Respondent's 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:

Merwin Marcano Montiel
A 
Stewart Detention Center
P.O. Box 248
Lumpkin, GA 31815

This 23rd day of September, 2025.

BY: /s/ Michael P. Morrill
MICHAEL P. MORRILL
Assistant United States Attorney