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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

B-R-F-,

Case No.: 3:25-cv-02154-AN

Petitioner,

v.

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

**LAURA HERMOSILLO; TODD
LYONS; U.S. IMMIGRATION AND
CUSTOMS ENFORCEMENT;
KRISTI NOEM; U.S. DEPARTMENT
OF HOMELAND SECURITY;
PAMELA BONDI,**

Respondents.

INTRODUCTION

Petitioner filed a Petition for Writ of Habeas Corpus on November 20, 2025, claiming Respondents unlawfully detained Petitioner “for an unknown reason.” (ECF 1). However, Petitioner entered the United States without inspection and does not have any lawful status in the United States. He was illegally present in the United

States when he was arrested. The facts are undisputed that his detention and arrest were lawful. To obtain habeas relief, Petitioner must prove that he is in custody and have a continuing detention that violates the Constitution, laws, or treaties of the United States. 28 U.S.C. § 2241.

FACTUAL BACKGROUND

On November 20, 2025, officers with the Enforcement and Removal Operations (“ERO”) were conducting targeted immigration enforcement operations in Portland, Oregon. Declaration of Anthony Jackson, ¶ 3. ERO officers encountered the Petitioner’s vehicle and checking the vehicle registration, learned the vehicle was registered to an alien who was out of status. Officers initiated a traffic stop. Petitioner was the driver of the vehicle. *Id.* at ¶ 4. The driver identified himself but refused to provide identification. *Id.* at ¶¶ 4-5. He admitted that he had illegally entered the United States and did not have documents that would allow him to be in the country legally. *Id.* at ¶ 4. The Acting Supervisory Detention and Deportation Officer (“ASDDO”) approved the issuance of an arrest warrant and Petitioner was placed under arrest. *Id.* at ¶ 6. The Oregon driver’s license in Petitioner’s possession confirmed his identity. *Id.* The ERO officers had personnel in the Field sub-Office review immigration databases to verify Petitioner’s status. It was confirmed that Petitioner did not have an existing alien registration number and therefore did not have legal status. *Id.* at ¶ 7.

ERO officers intended to transport Petitioner to the Northwest ICE Processing Center in Tacoma, Washington. However, given this Court’s Order preventing

Respondents from removing Petitioner from Oregon, Petitioner had to be released from custody. Given his criminal history, officers had public safety concerns and therefore released Petitioner with an ankle monitor. *Id.* at ¶¶ 8-9.

At the time of his detainment and arrest on November 20, 2025, Petitioner was a native and citizen of Guatemala. ECF 1 at ¶ 4. Petitioner has no legal status to be in (or remain in) the United States and has not filed any applications with DHS that would provide legal immigration status within the United States. *See* Jackson Decl. ¶¶ 3, 7.

On November 20, 2025, Petitioner was detained and charged as being inadmissible under Section 212(a)(6)(A)(i) of the Immigration and Nationality Act (“INA”). Under this statute, an “alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General, is inadmissible.”

Petitioner has now filed a petition for writ of habeas corpus challenging his detention under 28 U.S.C. § 2241. ECF 1. As indicated above, Petitioner has been released.

ARGUMENT

A. PETITIONER’S CLAIMS SHOULD BE DISMISSED FOR LACK OF SUBJECT MATTER JURISDICTION.

As confirmed by the Ninth Circuit, 8 U.S.C. § 1252(b)(9), the so-called “zipper clause” of the INA, “consolidates or zips judicial review of immigration proceedings

into one action in the court of appeals.” *Singh v. Gonzales*, 499 F.3d 969, 976 (9th Cir. 2007) (citation modified). That statute provides:

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 this subchapter 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.***

8 U.S.C. § 1252(b)(9) (emphasis added); *see also* 8 U.S.C. § 1252(a)(5) (“a petition for review...shall be the sole and exclusive means for judicial review of an order of removal”). “Taken together, § 1252(a)(5) and § 1252(b)(9) mean that any issue – whether legal or factual – arising from any removal-related activity can be reviewed only through the [petition for review] process.” *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016); *see also Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483, 485 (1999) (explaining that § 1252(b)(9) channels judicial review of all decisions and actions leading up to or consequent upon final orders of deportation, including non-final orders, into proceedings before a court of appeals).

Furthermore, Congress has specified that “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.” 8 U.S.C. § 1252(g). “By its plain terms,” § 1252(g) bars the Court “from questioning ICE’s discretionary decisions to commence removal” and “detain [Petitioner] during his removal proceedings.” *Alvarez v. U.S. Immigration & Customs*

Enft, 818 F.3d 1194, 1203 (11th Cir. 2016). *See also Sissoko v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007) (holding § 1252(g) precludes judicial review of unlawful detention or false arrest claims arising from decisions regarding the commencement of proceedings, adjudication of cases, or execution of removal orders”); *S.Q.D.C. v. Bondi*, No. 25-cv-3348 (PAM/DLM), 2025 WL 2617973, at *2 (D. Minn. Sept. 9, 2025) (finding § 1252(g) jurisdictionally bars review of petition challenging ongoing detention during removal proceedings); *Buriev v. Warden, GEO, Broward Transitional Ctr.*, No. 25-cv-60459, 2025 WL 2763202, at *3 (S.D. Fla. Sept. 26, 2025) (denying habeas petition for claim that immigration officials unlawfully arrested petitioner “without issuing a warrant”).

Petitioner has been placed in immigration proceedings. His detention and immigration status are therefore properly before the Immigration Court and the Court of Appeals.

B. THE COURT SHOULD DISMISS THE PETITION FOR WRIT OF HABEAS CORPUS AS PETITIONER IS PROPERLY DETAINED UNDER 8 U.S.C. § 1225.

Petitioner was properly detained under authority provided in 8 U.S.C. § 1225. Petitioner was present in the United States without legal status. Although he was released on an Order of Release on Recognizance, referencing INA § 236 (8 U.S.C. § 1226) that was solely due to the release Ordered by this Court and EROs decision to release with an Alternative to Detention (ADT) via GPS, and does not indicate that the original detention was pursuant to Sec. 1226.

1. Applicants for admission are subject to detention under 8 U.S.C. § 1225.

“As with any question of statutory interpretation, [the] analysis begins with the plain language of the statute.” *Jimenez v. Quarterman*, 555 U.S. 113, 118 (2009) (citing *Lamie v. U.S. Tr.*, 540 U.S. 526, 534 (2004)). Section 1225(a)(1) defines an “applicant for admission” as an “alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival . . .)” 8 U.S.C. § 1225(a)(1); see *Matter of Velasquez-Cruz*, 26 I&N Dec. 458, 463 n.5 (BIA 2014) (“[R]egardless of whether an alien who illegally enters the United States is caught at the border or inside the country, he or she will still be required to prove eligibility for admission.”). Accordingly, by its very definition, the term “applicant for admission” includes two categories of aliens: (1) arriving aliens, and (2) aliens present without admission. See *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (explaining that “an alien who tries to enter the country illegally is treated as an ‘applicant for admission’” (citing 8 U.S.C. § 1225(a)(1)); *Matter of Lemus*, 25 I&N Dec. 734, 743 (BIA 2012) (“Congress has defined the concept of an ‘applicant for admission’ in an unconventional sense, to include not just those who are expressly seeking permission to enter, but also those who are present in this country without having formally requested or received such permission”); *Matter of E-R-M- & L-R-M-*, 25 I&N Dec. 520, 523 (BIA 2011) (stating that “the broad category of applicants for admission . . . includes, *inter alia*, any alien present in the United States who has not been admitted” (citing 8 U.S.C. § 1225(a)(1))). An arriving alien is defined, in pertinent part, as “an applicant for

admission coming or attempting to come into the United States at a port-of-entry [(“POE”)]” 8 C.F.R. §§ 1.2, 1001.1(q).

All aliens who are applicants for admission “shall be inspected by immigration officers.” 8 U.S.C. § 1225(a)(3); *see also* 8 C.F.R. § 235.1(a) (“Application to lawfully enter the United States shall be made in person to an immigration officer at a U.S. [POE] when the port is open for inspection”). An applicant for admission seeking admission at a United States POE “must present whatever documents are required and must establish to the satisfaction of the inspecting officer that the alien is not subject to removal . . . and is entitled, under all of the applicable provisions of the immigration laws . . . to enter the United States.” 8 C.F.R. § 235.1(f)(1); *see* 8 U.S.C. § 1229a(c)(2)(A) (describing the related burden of an applicant for admission in removal proceedings). “An alien present in the United States who has not been admitted or paroled or an alien who seeks entry at other than an open, designated [POE] . . . is subject to the provisions of [8 U.S.C. § 1182(a)] and to removal under [8 U.S.C. § 1225(b)] or [8 U.S.C. § 1229a].” 8 C.F.R. § 235.1(f)(2).

Here, Petitioner did not present himself at a POE but instead entered the United States on some unknown date and without having been admitted after inspection by an immigration officer. Petitioner is, therefore, an alien present without immigration status and, consequently, an applicant for admission. Based on the plain language of 8 U.S.C. § 1225(b) detention is mandatory.

C. PETITIONER'S PROVISIONAL UNLAWFUL PRESENCE WAIVER DOES NOT PRECLUDE DETENTION.

As indicated by Petitioner, he has been granted an Approved Provisional Unlawful Presence Waiver. However, the I-601A is a provincial waiver that waives his illegal presence in the United States in advance so he can seek consular processing. Given the length of time Petitioner has been illegally in this country, he would be inadmissible under INA 212(a)(9)(B)(i)(II) for a period of 10 years. The I-601A operates to waive this ground of inadmissibility. No other grounds of inadmissibility were waived with the I-601A waiver. As the Petitioner has an approved I-130, and combined with the I-601A waiver, he can potentially obtain an immigrant visa and return to the United States as a lawful permanent resident.

As plainly indicated on I-601A Approval Notice (ECF 1, Ex. B., the approval of the Provisional Unlawful Presence Waiver does not: “change the requirement that you must depart the United States to obtain an immigrant visa at a U.S. Embassy or consulate abroad... Give you any legal immigration status or allow you to obtain a legal status in the United States.... Protect you from removal proceedings or stay in the execution of a final order of removal... Guarantee your admission to the United States by U.S. Customs and Border Protection (CBP).” Indeed, “the approval does not take effect until “[Petitioner] has left the United States; **AND** [Petitioner] has appeared at a U.S. Embassy or Consulate for an interview in connection with your application for an immigrant visa; **AND** [a] U.S. consular officer has determined, in

light of the approval of your provisional unlawful presence waiver, that you are otherwise eligible for an immigrant visa.” *Id.*

In summary, while Petitioner has a provisional waiver of his unlawful presence, he entered and remains within the United States illegally and therefore detention was appropriate.

CONCLUSION

For all the foregoing reasons, this Court should deny the Petition.

Respectfully submitted this 26th day of November, 2025.

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/s/ Susanne Luse
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