

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

**FERNANDO LUIZ DA SILVA
RODRIGUES,**

Plaintiff,

v.

**ANTHONY E. LOWERY, Sheriff, Baldwin
County Detention Center; MELLISSA
HARPER, ICE New Orleans Field Office
Director; TODD LYONS, in his official
capacity as Acting Director of Immigration
and Customs Enforcement; KRISTI NOEM,
Secretary of Homeland Security, and
PAMELA BONDI, U.S. Attorney General,**

Defendants.

Case No. 1:26-cv-00020-KD-B

**RESPONSE TO SHOW CAUSE ORDER,
OPPOSITION TO MOTION FOR TEMPORARY RESTRAINING ORDER,
AND IN THE ALTERNATIVE, MOTION TO TRANSFER VENUE**

The United States of America, by and through the United States Attorney for the Southern District of Alabama, hereby submits Response to Show Cause Order, Opposition to Motion for Temporary Restraining Order (Docs. 1, 2),¹ and in the Alternative, Motion to Transfer Venue on behalf of the Federal Respondents list above.² The Petition for Writ of Habeas Corpus is due to be DENIED for the following reasons:

¹ The Court's Order dated January 29, 2026, directed that Respondents 1) show cause why the writ should not be granted, and 2) certify the true cause of detention, and respond to Petitioner's Motion for Temporary Restraining Order and/or Preliminary Injunction. (Doc. 11). Petitioner has also filed a Motion for Order to Show Cause and for Production of Evidence on an Emergency Basis. (Doc. 10). The motion filed at Doc. 10 is due to be denied for the reasons set forth herein and this Response is incorporated as a response to that motion.

² Petitioner objects to a transfer of venue.

I. Factual and Procedural Background

1. Petitioner Fernando Luiz Da Silva Rodrigues entered the United States on or about May 18, 2013, as a non-immigrant visitor with authorization to remain in the United States for a period of *six months*. [Doc. 13-1, PageID.176-178]. Petitioner admits in his Petition that since the expiration of his visa in November 2013, over a decade ago, he has remained continuously in the United States without inspection or authorization following the expiration of his visa. (Doc. 1 at 14, PageID.14).

2. Petitioner was stopped for a traffic violation by the Mobile County Sheriff's Office (MCSO) on January 22, 2026, near Theodore, Alabama. [Doc. 13-2, PageID.183]. According to records relating to the traffic stop, the MCSO Officer noted that Petitioner spoke broken English and provided the MCSO Officer with a Brazilian passport. (Id.) The MCSO Officer contacted the Mobile Border Patrol Station for assistance identifying Petitioner and conducting records checks. (Id.) A Border Patrol Agent responded to the MCSO Officer's call and checked database records utilizing information from Petitioner's foreign identification card. (Id.) Petitioner admitted to the Border Patrol Agent that he is a citizen of Brazil and that he did not possess any documents which would allow him to be in, remain in, or pass through the United States. (Id.) The Border Patrol Agent placed an I-247 Immigration Detainer on Petitioner and he was taken into custody by the Mobile County Sheriff's Office. (Id.) The next day, a different Border Patrol Agent took custody of Petitioner and placed him under arrest for being illegally present in the United States and transported him to the Border Patrol Station for processing. (Id.)

3. Petitioner does not dispute that he was in the United States illegally. His encounter with law enforcement for the traffic violation, followed by his admission that he was in the United States illegally, resulted in his arrest. (Id.)

4. On January 23, 2026, a Department of Homeland Security Notice to Appear (DHS Form I-862) was issued to Petitioner. [Doc. 13-2, PageID.185]. In relevant part, the Notice to Appear charges Petitioner with being an alien present in the United States who has not been admitted or paroled, and further alleges:

- 1. You are not a citizen or national of the United States;
- 2. You are a native of BRAZIL and a citizen of BRAZIL;
- 3. You arrived in the United States at or near CHARLOTTE, NC, on or about May 18, 2013;
- 4. You were not then admitted or paroled after inspection by an Immigration Officer;
- 5. You were admitted to the United States at Charlotte, NC on or about May 18, 2013 as a nonimmigrant visitor with authorization to remain in the United States for a temporary period not to exceed six months;
- 6. You remained in the United States beyond November 18, 2013 without authorization from the Immigration and Naturalization Service or its successor the Department of Homeland Security.

[Doc. 13-2, PageID.185].

5. The Notice to Appear states that Petitioner was ordered to appear before an immigration judge in Jena, Louisiana, on February 3, 2026, to show why he should not be deported from the United States. (Id.)

6. Baldwin County Sheriff's Office records show that Petitioner was then booked into Baldwin County Jail on January 23, 2026. [Doc. 13-3, PageID.187].

7. On January 26, 2026, Petitioner filed the pending Petition for Writ of Habeas Corpus (the Petition) pursuant to 28 U.S.C. § 2241. (Doc. 1). Petitioner also filed an Emergency Motion for Temporary Retraining Order. (Doc. 2).

8. Baldwin County Jail records indicate that Petitioner was moved out of housing in Baldwin County at 6:29 am on January 27, and that he was release[d] to immigration at 8:55 am that day. [Doc. 13-3, PageID.188-189]. Petitioner was then transferred from Baldwin County, Alabama, to the Central Louisiana ICE Processing Center where he remains in custody. (Doc. 9).

9. The Court issued multiple Summonses to the named defendants on January 27, 2026. (Doc. 3). Later that same day, Petitioner requested that the Court issue an additional Summons for the United States Attorney's Office, which the Court issued. (Docs. 4, 6). Petitioner's Affidavit of Service states that Petitioner's counsel, using a personal delivery service, served the United States Attorney for the Southern District of Alabama on January 27, 2026. (Doc. 8). Intake records from the United States Attorney's Office indicate that the process server delivered a copy of the Summons and Petition at 3:41 pm on January 27, 2026. [Doc. 13-4, PageID.192-194].

10. On January 29, 2026, the Court issued an Order directing the United States to file a response to the Petition, the Motion for Temporary Restraining Order and/or Preliminary Injunction, and Motion for Order to Show Cause by February 3, 2026. (Doc. 11). The Court provided a courtesy copy of the Order to the United States Attorney's Office via email at 11:44 am on January 29.

II. Summary of Petitioner's Arguments

11. Through counsel, Petitioner Fernando Luiz Da Silva Rodrigues, a detainee of United States Immigration and Customs Enforcement (ICE), filed the pending Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241, seeking, among other things, immediate release from custody or alternatively a bond hearing in accordance with 8 U.S.C. § 1226(a). (Doc. 1 at 50, PageID.50). Petitioner also seeks expansive injunctions and attorneys' fees and costs. (Doc. 1 at 51, PageID.51).

12. Petitioner asserts that he is entitled to habeas relief because he should be classified as an alien falling under 8 U.S.C. § 1226 rather than 8 U.S.C. § 1225, which if successful would make him potentially eligible for a bond hearing. Recent rulings from other courts expressly reject

Petitioner's position, holding that aliens in Petitioner's exact position fall squarely under section 1225 (and not section 1226), and are therefore ineligible for bond.

13. This Court should follow the clear text of the statute and deny the Petition.

III. Jurisdiction and Venue

A. The Court has Jurisdiction to Deny the Petition.

14. Pursuant to 28 U.S.C. § 2241, a writ of habeas corpus extends to those who are in custody in violation of the Constitution or laws or treaties of the United States. 28 U.S.C. § 2241(c)(3).

15. The plain text of 8 U.S.C. § 1252(g) strips federal courts of 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 [removal] proceedings, adjudicate cases, or execute removal orders. However, the Supreme Court and the Eleventh Circuit have articulated a narrow understanding of section 1252(g) that permits a federal court to consider claims that arise outside of the covered actions expressly stated in section 1252(g). *Camarena v. Dir. Immigr. & Customs Enft.*, 988 F.3d 1268, 1272 (11th Cir. 2021); *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999). Since Petitioner challenges his classification under Title 8, rather than an order of removal, courts have found that they have subject matter jurisdiction to consider such challenges. *See Jennings v. Rodriguez*, 583 U.S. 281, 294-95 (2018).

B. The Petition is due to be Denied because Petitioner is subject to Mandatory Detention.

16. The INA defines an "alien" as "any person not a citizen or national of the United States." 8 U.S.C. § 1101(a)(3). Under the INA, detention and removal proceedings depend on the type of alien involved. *Chen v. Almodovar*, 2026 WL 100761, at *1 (S.D.N.Y. Jan. 14, 2026).

17. Under INA Section 1225, [a]n alien present in the United States who has not been admitted or who arrives in the United States shall be deemed for purposes of this chapter an applicant for admission. Id. § 1225(a)(1). As an alien who was present in the United States for a number of years unlawfully, Petitioner is properly considered an applicant for admission.

18. Applicants for admission are divided into three categories:

- a. 8 U.S.C. § 1225(b)(1)(A)(i): Aliens arriving in the United States that are determined to be inadmissible due to fraudulent or willful misrepresentations about material facts. These aliens are subject to expedited removal proceedings and mandatory detention pending removal or final determination of an asylum claim. Section 1225(b)(1)(B)(iii)(IV).
- b. 8 U.S.C. § 1225(b)(1)(A)(iii)(II): Aliens who have been present in the United States for less than two years and who lack valid documentation (to show admission or parole into the U.S.). These aliens are subject to expedited removal and mandatory detention.³
- c. 8 U.S.C. § 1225(b)(2)(A): Aliens who are applicants for admission and the examining immigration officer determines they are not clearly and beyond a doubt entitled to be admitted. These aliens are entitled to *full* removal proceedings and are subject to mandatory detention pending removal. They are not entitled to a bond hearing. See 8 U.S.C. § 1229a (establishing full removal proceedings); *Diaz Lopez v. Dir. of Enf't and Removal Op., Miami Field Office*,

³ Pursuant to authority set out in *Designating Aliens for Expedited Removal*, 90 Fed. Reg. 8139 (Jan. 24, 2025), the Acting Secretary of the Department of Homeland Security, exercising authority delegated by the Attorney General, fully extended the relevant designation authorized by statute. See *Chen*, 2026 WL 100761, at *2.

U.S. Citizenship and Immigr. Servs., et al, No. 25-CR-01313-JEP-SJH (Doc. 9), at 3 (M.D. Fla. Jan. 26, 2026) (*quoting Chen*, 2026 WL 100761, at *2).

19. Petitioner falls squarely in the third category of aliens — those who without lawful authority to be present in the United States and who have nonetheless been living in the United States for an extended period of time. 8 U.S.C. § 1225(b)(2)(A).

20. All classes of aliens who, like Petitioner, are — applicants for admission — are subject to mandatory detention under section 1225(b) and therefore are not eligible for bond hearings. *Id.* at 5. On the other hand, aliens who are classified under section 1226 — either because they (a) were arrested on a warrant issued by the Attorney General (section 1226(a)) or (b) because they have a disqualifying criminal history (section 1226(c)) — have the potential for bond or witness protection release. This is logical given the implication of Constitutional rights when dealing with criminal charges. However, neither of the section 1226 provisions applies to Petitioner. Petitioner's attempt to shoehorn himself into being an alien under section 1226, simply because he has been illegally present in the United States for a — long — time, fails on its face.

21. The Middle District of Florida recently analyzed an almost identical set of facts in *Diaz Lopez*, No. 25-CR-01313-JEP-SJH (Doc. 9) (M.D. Fla. Jan. 26, 2026).⁴ In that case, Diaz Lopez, a Mexican citizen, entered the United States without inspection or authorization and took up residence in Florida on an unspecified date in 2021 or 2022. ICE detained Diaz Lopez and held him in Baker Correctional Institution, which was in the Middle District of Florida. He received a notice to appear for removal proceedings, he was not given an opportunity to post bond, and he was not released on other conditions. Like Petitioner, Diaz Lopez sought a writ of habeas corpus to challenge his detention, arguing that he should be classified as an alien under section 1226 and

⁴ A courtesy copy of the opinion in *Diaz Lopez* is attached as Exhibit 5. [Doc. 13-5, PageID.195-218].

therefore entitled to a bond hearing. The court engaged in a lengthy and detailed analysis of the applicable statutory framework and held that Diaz Lopez, who was *identically* situated to Petitioner, fell under the confines of 8 U.S.C. § 1225(b)(2)(A), resulting in a denial and dismissal of his habeas petition.

22. On the face of the applicable statutory scheme, Petitioner properly falls under section 1225(b)(2)(4). His detention is lawful. His Petition is due to be DENIED and this matter is due to be dismissed.

IV. If Not Dismissed, This Case Should be Transferred.

23. While the Petition should be denied outright, in the event the Court declines to dismiss on the grounds set forth above, the Petition should be transferred to the Western District of Louisiana.

24. As a writ of habeas corpus acts upon the custodian, and not on the prisoner seeking relief, the court issuing such a writ must have jurisdiction over the custodian. *Braden v. 30th Judicial Circuit Court*, 410 U.S. 484, 495 (1973). As Petitioner notes, habeas petitions are generally filed in the district court with jurisdiction over the filer's place of custody. (Doc. 1 at 11, PageID.11). While the district of confinement was originally the Southern District of Alabama, that is no longer the case. As Petitioner is now located in Jena, Louisiana, the Western District of Louisiana is the district where this action could properly be brought and is the most appropriate venue for this matter.

25. A district court has the authority to transfer a case in the interests of justice to another district or division in which the action might have been brought. 28 U.S.C. §§1404, 1406. The Court can consider factors such as the convenience of the parties and witnesses, the desire to avoid multiplicity of litigation, whether an additional party may need to be added, and the interests

of judicial economy. As the Supreme Court noted in dicta in *Continental Grain Co. v. The FBL-585*, 364 U.S. 19, 26 (1960): "To permit a situation in which two cases involving precisely the same issues are simultaneously pending in different District Courts leads to the wastefulness of time, energy and money that s 1404(a) was designed to prevent."

26. According to CM-ECF records, the present matter is the only open alien detainee habeas petition in the Southern District of Alabama.⁵ Western Louisiana, on the other hand, has 357 (three-hundred and fifty-seven) open alien detainee habeas petitions pending.⁶ A substantial number of those cases involve the exact same arguments raised in the present matter. While this Court is perfectly adept to dispose of the current matter (preferably with denial of the Petition), transfer to the Western District of Louisiana would avoid the predicament noted by the Supreme Court in *Continental Grain*: where cases involve the exact same issues, and where two venues are appropriate, transfer avoids wastefulness of time, energy, and money. Going one step further, transfer also avoids the possibility of inconsistent results for similarly situated individuals.

27. To the extent Petitioner implies in his Notice of Filing (Doc. 9) that the transfer to Louisiana was for an improper purpose or to avoid this Court's exercise of jurisdiction, no evidence supports that conclusion. On the contrary, the procedural background of this case indicates that it is highly unlikely that any of the Federal Respondents or the employees responsible for detainee transport even knew of the Petition prior to the transfer. Baldwin County records indicate that Petitioner was fully processed out of their custody at 8:55 am on the morning of January 27. [Doc. 13-3, PageID.188-189]. The only docket activity relating to service on the Respondents is the Petitioner's Affidavit of Service which indicates the U.S. Attorney's Office was

⁵ CM-ECF query for "Nature of Suit" 463 Habeas Corpus Alien Detainee, search last run Feb. 3, 2026.

⁶ CM-ECF query for "Nature of Suit" 463 Habeas Corpus Alien Detainee; search limited only to "Open" cases, last run Feb. 3, 2026.

served on January 27.⁷ (Doc. 8). Further, the Service Copy of the Petition indicates that it was received by the U.S. Attorney's Office at 3:41 pm on January 27, over six hours after custody in Baldwin County had concluded. [Doc. 13-4, PageID.192-194]. The Respondents could not have improperly transferred Petitioner to avoid jurisdiction in this Court when they did not know of the habeas petition.

28. Petitioner, an alien unlawfully present in the United States, claims residence in Concord, North Carolina, and has not alleged any ties to the Southern District of Alabama. (Doc. 1 at 14, PageID.14). To the extent that Petitioner may wish to become a witness in these proceedings, the best venue is where he is located — the Western District of Louisiana. Further, Petitioner may deem it appropriate to add the duly appointed representative of the Central Louisiana ICE Processing Center as a respondent to his Petition, which is best done in the Western District of Louisiana.

29. Overall, the totality of the factors that the Court may consider weigh heavily in favor of transfer.

V. Conclusion

30. Petitioner's detention is governed by 8 U.S.C. § 1225(b)(2)(A), and his habeas claims fail. The Petition for Writ of Habeas Corpus is due to be DENIED, and in the alternative, the case should be transferred to the Western District of Louisiana for further proceedings.

⁷ At the time of submission of the present pleading, the docket report did not contain any other notices of service.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 3, 2026, the foregoing was electronically filed with the Clerk of Court using the CM/ECF system, which will send notification of such to all counsel of record.

/s/ Kasee Heisterhagen
Kasee Heisterhagen
Assistant U.S. Attorney