UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No. 26-22564-CIV-GAYLES

LUIS ALBERTO NUNEZ PORTELLES,

Petitioner,

v.

FACILITY ADMINISTRATOR, KROME NORTH SERVICE PROCESSING CENTER.,

Respondent.
_____/

RESPONSE TO ORDER IN HABEAS CASES SEEKING RELIEF PURSUANT TO 8 U.S.C. § 1226(a)

Respondent hereby responds to the Court's Order to Show Cause (ECF No.7) why Petitioner Luis Alberto Nunez Portelles's Amended Petition for Writ of Habeas Corpus (ECF No. 6) should not be granted.

INTRODUCTION

Petitioner claims that his detention in the custody of U.S. Immigration and Customs Enforcement has become unlawfully prolonged. *See* Am. Pet. at Ground One (ECF No. 6 at 9). Petitioner claims that his detention while he has applications for asylum and adjustment of status pending is unnecessary. *Id.* at Grounds Two and Three (ECF No. 6 at 10) . Finally, Petitioner asserts that his detention poses a hardship to his family. *Id.* at Ground Four (ECF No. 6 at 10).

As explained below, Petitioner is detained because he is subject to mandatory detention, as an arriving alien, under 8 U.S.C. §1225(b)(2).

FACTUAL AND PROCEDURAL HISTORY

Luis Alberto Nunez Portelles is a native and citizen of Cuba. *See* Ex. A, Form I-213, Record of Deportable/Inadmissible Alien (June 21, 2019). On June 21, 2019, U.S. Customs and Border Protection (CBP) encountered Petitioner at the Colombia Solidarity Port of Entry in Laredo, Texas. *Id.* At that time, Petitioner told CBP he did not have any documentation allowing him to legally enter or remain in the United States, but he expressed fear of returning to Cuba. *Id.* Petitioner was placed in Expedited Removal proceedings under INA §235(b)(1) and transferred to Immigration and Customs Enforcement (ICE) Enforcement and Removal Operations (ERO) custody while his credible fear interview was pending. *Id.*; *see also* Ex. B, Form I-860, Notice and Order of Expedited Removal (Jun. 21, 2019); *see also* Ex. C, Declaration.

On June 24, 2019, Petitioner was referred to U.S. Citizenship and Immigration Services (USCIS) for a credible fear interview after he expressed a fear of returning to Cuba. *See* Ex. C, Declaration. On August 20, 2019, Petitioner underwent a credible fear interview, which resulted in a positive credible fear finding. *Id.* On October 11, 2019, ICE ERO released Petitioner on humanitarian parole valid until October 11, 2020. *See* Ex. D, Form I-94 Arrival/Departure Record (Oct. 11, 2020); *see also* Ex. C, Declaration. [1]

---

[1] The Secretary of Homeland Security 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, but such parole of such alien shall not be regarded as an admission of the alien and when 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)(A).

On November 18, 2020, U.S. Department of Homeland Security (DHS) filed a Notice to Appear (NTA) with the Executive Office for Immigration Review (EOIR), charging Petitioner with inadmissibility under INA § 212(a)(7)(A)(i)(I) 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. *See* Ex. E, Notice to Appear (Aug. 23, 2019).

On September 9, 2022, Hillsborough County Sheriff's deputies arrested Petitioner for driving under the influence; Petitioner was later adjudicated guilty and sentenced to one year of probation. *See* Ex G, Form I-213, Record of Deportable/Inadmissible Alien (Aug. 30, 2025); *see also* Ex. C, Declaration. On June 6, 2025, Hillsborough County Sheriff's arrested Petitioner for violation of probation and failure to appear; the disposition in this case remains pending. *Id.*

On August 30, 2025, ICE ERO encountered Petitioner at the Hillsborough County Jail in Tampa, Florida, took him into custody and detained him at the Tampa Hold Room. *See* Ex. H, Form I-200 Warrant for Arrest of Alien (Aug. 30, 2025); *see also* Ex. I. Detention History; Ex. C, Declaration.

On September 9, 2025, Petitioner applied for benefits with USCIS under the Cuban Adjustment Act, and that application is still pending. *See* Ex. C, Declaration. On September 17, 2025, an immigration judge dismissed Petitioner's removal proceedings without prejudice. *See* Ex. F, Immigration Judge Order (September 17, 2025).

On October 7, 2025, DHS filed a second Notice to Appear (NTA) with the Executive Office for Immigration Review (EOIR), charging the Petitioner, as an arriving alien, inadmissible under INA § 212(a)(7)(A)(i)(I). *See* Ex. J, Form I-862, Notice to Appear (Oct. 7, 2025).

Petitioner is currently detained at Krome pending completion of his removal proceedings. *See* Ex. H, Detention History; *see also* Ex. C, Declaration. Petitioner's next immigration court hearing is scheduled for May 22, 2026. *See* Ex. K. Notice of Hearing (Apr. 15, 2026).

ARGUMENT

I. Petitioner is an Arriving Alien Subject to Detention Under 8 U.S.C. § 1225(b)(2).

"Congress has established the requirements for admission of aliens that arrive at the border without authorization to enter." *Lopez v. Sessions*, No. 18 CIV. 4189 (RWS), 2018 WL 2932726, at *4 (S.D.N.Y. June 12, 2018) (citing 8 U.S.C. § 1225). Under § 1225(a), "aliens who arrive at the nation's borders" without authorization to enter this country "are deemed 'applicants for admission,' and must be inspected by an immigration official before being granted admission." *Id.* (citing 8 U.S.C. § 1225(a)(1), (3)). Under 8 U.S.C. § 1225(b), "if 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 section 1229(a) of this title [i.e., a removal proceeding]." *Id.* (quoting 8 U.S.C. § 1225(b)(2) (A)) (brackets in original). Thus, under § 1225(b), detention is mandatory for arriving aliens like Petitioner, who arrive at the border seeking admission but without authorization to enter.

If an arriving alien is subject to mandatory detention under Section 1225(b), "an immigration judge 'may not' conduct a bond hearing to determine whether [the] arriving alien should be released into the United States during removal proceedings." *Id.* (quoting 8 C.F.R. § 1003.19(h)(2)(i)(B)). Arriving aliens who are detained pursuant to § 1225(b)(2)(A), however,

may be released from custody pursuant to DHS's discretionary parole authority. *See* 8 U.S.C. § 1182(d)(5)(A). Under that section, DHS "may . . . in [its] discretion parole into the United States temporarily under such conditions as [it] 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[.]" *Id.* Importantly, however, DHS's discretionary parole of an alien "shall not be regarded as an admission of the alien and when the purposes of such parole shall . . .have been served the alien shall forthwith return or be returned to the custody from which he was paroled[.]" *Id.* "[T]hereafter[,]" a formerly paroled alien's "case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States." *Id.*

Here, Petitioner is an "arriving alien" subject to the removal and detention provisions in 8 U.S.C. § 1225(b)(2). Petitioner, arrived on or about August 15, 2023, without authorization to enter the country and was temporarily paroled into the United States at the Colombia Solidarity Port of Entry in Laredo, Texas. DHS's discretionary parole of Petitioner is "not be regarded as an admission of the alien" and his detention as an applicant for admission under 8 U.S.C. § 1225(b)(2) is mandatory.

II. Petitioner is Ineligible for Bond because he is Subject to Detention Under 8 U.S.C. § 1225(b)(2).

Mandatory detention under § 1225(b) has repeatedly been upheld as constitutionally permissible. *See Jennings v. Rodriguez*, 583 U.S. at 299–301. *See also Yvens v. Ripa*, Case No. 24-22693-CIV-MIDDLEBROOKS; ECF No. 13 (S.D. Fla. Dec. 2, 2024); *Lopez-Barillas v. Cruz*, Case No. 17-60466-CIV-DIMITROULEAS, ECF No. 14 (S.D. Fla. Apr. 14, 2017). In *Jennings*, the Supreme Court explained that 8 U.S.C. § 1225(b) applies to all applicants for admission, noting that the language of 8 U.S.C. § 1225(b)(2) is "quite clear" and "unequivocally

mandate[s]" detention. *Jennings*, 583 U.S. at 300, 303 (explaining that "the word 'shall' usually connotes a requirement" (quoting *Kingdomware Technologies, Inc. v. United States*, 579 U.S. 162, 171 (2016))).

Under the plain language of 8 U.S.C. § 1225(b), all "applicants for admission" who are found "not clearly and beyond a doubt entitled to be admitted" are subject to detention under 8 U.S.C. § 1225(b)—regardless of how long they have been present in the United States. *Cf. Niz-Chavez v. Garland*, 593 U.S. 155, 171 (2021) (providing that "no amount of policy-talk can overcome a plain statutory command"); *see generally Florida v. United States*, 660 F. Supp. 3d 1239, 1275 (N.D. Fla. 2023) (explaining that "the 1996 expansion of § 1225(b) to include illegal border crossers would make little sense if DHS retained discretion to apply § 1226(a) and release illegal border crossers whenever the agency saw fit"). The conclusion that "§ 1225(b)'s 'shall be detained' means what it says and . . . is a mandatory requirement . . . flows directly from *Jennings*." *Florida*, 660 F. Supp. 3d at 1273.

Given that 8 U.S.C. § 1225 is the applicable detention authority for all applicants for admission—both arriving aliens and aliens present without admission alike, regardless of whether the alien was initially processed for expedited removal proceedings under 8 U.S.C. § 1225(b)(1) or placed directly into removal proceedings under 8 U.S.C. § 1229a —and "[b]oth [8 U.S.C. § 1225(b)(1) and (b)(2)] mandate detention … throughout the completion of applicable proceedings," *Jennings*, 583 U.S. at 301–03, Immigration Judges do not have authority to redetermine the custody status of an alien present without admission.

"It is well established . . . that the Immigration Judges only have the authority to consider matters that are delegated to them by the Attorney General and the [INA]." *Matter of A-W-*, 25 I&N Dec. 45, 46 (BIA 2009). "In the context of custody proceedings, an Immigration Judge's

authority to redetermine conditions of custody is set forth in 8 C.F.R. § 1236.1(d) . . . ." *Id.* at 46. The regulation clearly states that "the Immigration Judge is authorized to exercise the authority in [8 U.S.C. § 1226]." 8 C.F.R. § 1236.1(d); *see id.* § 1003.19(a) (authorizing IJs to review "[c]ustody and bond determinations made by [DHS] pursuant to 8 C.F.R. part 1236"); *see id.* § 1003.19(h)(2)(i)(B) ("[A]n IJ may not redetermine conditions of custody imposed by [DHS] with respect to . . . [a]rriving aliens in removal proceedings, including aliens paroled after arrival pursuant to [8 U.S.C. §1182(d)(5).]"). "An immigration judge is without authority to disregard the regulations, which have the force and effect of law." *Matter of L-M-P-*, 27 I&N Dec. 265, 267 (BIA 2018).

Petitioner is not entitled to a bond hearing pursuant to 8 U.S.C. § 1226(a). Relying on *Jennings* and the plain language of 8 U.S.C. §§ 1225 and 1226(a), the Attorney General, in *Matter of M-S-*, unequivocally recognized that 8 U.S.C. §§ 1225 and 1226(a) do not overlap but describe "different classes of aliens." 27 I&N Dec. at 516. The Attorney General observed that section 236(a) (8 U.S.C. § 1226) provides an independent ground for detention upon the issuance of a warrant but does not limit DHS's separate authority to detain aliens under 8 U.S.C. § 1225, whether pending expedited removal or full removal proceedings. *Id.* Because Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2), he is ineligible for bond, and this Court should deny relief.

I. The Court Lacks Jurisdiction to Review Petitioner's Humanitarian Parole

Insofar as Petitioner challenges the termination of his humanitarian parole, which expired on October 11, 2020, the Court lacks subject matter jurisdiction. "Federal courts are 'courts of limited jurisdiction,' " which " 'possess only that power authorized by Constitution and statute.' " *Camarena v. Dir., Immigr. & Customs Enf't*, 988 F.3d 1268, 1271 (11th Cir. 2021) (quoting

Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375, 377 (1994)). Section 1252(g) of Title 8, 8 United States Code, provides 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 against any alien under this chapter." 8 U.S.C. § 1252(g). This statute expressly includes claims raised in § 2241 habeas corpus actions. *Id.* The Eleventh Circuit Court of Appeals has indicated that "[s]ecuring an alien while awaiting a removal determination constitutes an action taken to commence proceedings" as contemplated by § 1252(g). *Gupta v. McGahey*, 709 F.3d 1062, 1065 (11th Cir. 2013).

Likewise, under 8 U.S.C. § 1252(a)(2)(B)(ii), the Court lacks 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, other than the granting of relief under section 1158(a) of this title." Thus, district courts are precluded from considering "challenges to actual discretionary decisions to detain an alien or to seek removal of the alien or to any discretionary judgment, action, or decision...." *Dorley v. Normand*, No. 5:22-CV-62, 2023 WL 3620760, at *2 (S.D. Ga. Apr. 3, 2023), *report and recommendation adopted*, No. 5:22-CV-62, 2023 WL 3174227 (S.D. Ga. May 1, 2023).

As relevant here, the Secretary of the Department of Homeland Security has discretion to:

> 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, but... when 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)(A). "The discretionary decision to deny or revoke parole 'is precisely the kind of discretionary decision that § 1252(a)(2)(B) precludes' a district court from reviewing." *Rezaee v. President of the United States*, Case No. 6:25-CV-1140-CEM-DCI, 2025 WL 4051609, *3 (M.D. Fla. July 29, 2025) (quoting *Clifton M. v. Decker*, No. CV 18-15760 (KM), 2019 WL 13298586, at *4 (D.N.J. Mar. 19, 2019)). *See also Doe v. Rodriguez*, Civ. A. No. 17-1709 (JLL), 2018 WL 620898, at *8 (D.N.J. Jan. 29, 2018) ("The effect of [8 U.S.C. § 1252(a)(2)(B)(ii)] on habeas claims challenging discretionary parole denials is clear—the Government 'can and often does release ... alien[s] on parole, but [the] decision to do so is not judicially reviewable.'") (quoting *Bolante v. Keisler*, 506 F.3d 618, 621 (7th Cir. 2007)).

Section 1252(a)(2)(B)(ii)'s bar "applies equally to an initial denial of a request for discretionary parole or a decision to terminate discretionary parole." *Clifton M.*, 2019 WL 13298586, at *3 n.5. Accordingly, the Court lacks jurisdiction to hear a challenge to the lawfulness of the revocation of humanitarian parole.

III. Petitioner's Due Process Claims fail because he is detained pursuant to a valid statutory authority

As argued above, mandatory detention under § 1225(b) has repeatedly been upheld as constitutionally permissible. *See Jennings v. Rodriguez*, 583 U.S. at 299–301. The Fifth Amendment does not require bond hearings for aliens detained pursuant to valid statutory authority, nor does Petitioner possess a protected liberty interest in release on bond where Congress has mandated detention. The Due Process Clause does not prohibit Congress from imposing categorical detention rules in the immigration context. *See Demore v. Kim*, 538 U.S. 510, 528 (2003).

IV. Petitioner failed to Exhaust his Administrative Remedies

The Court should dismiss the petition for writ of habeas corpus because Petitioner has failed to exhaust his administrative remedies. A habeas petitioner must normally exhaust administrative remedies before seeking federal court intervention. The exhaustion requirement "aims to provide the agency with a chance to correct its own errors, 'protect[] the authority of administrative agencies,' and otherwise conserve judicial resources by 'limiting interference in agency affairs, developing the factual record to make judicial review more efficient, and resolving issues to render judicial review unnecessary." *Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003) (Sotomayor, J.).

By regulation, the BIA has authority to review IJ custody determinations. *See* 8 C.F.R. §§ 1003.1(b)(7), 1003.38. As set forth in the EOIR Policy Memo 25-45 the BIA and IJs can consider constitutional challenges to the INA. *See* https://www.justice.gov/eoir/eoir-policy-manual/memoranda-pm-list. Petitioner has not availed himself of the administrative remedies available as he has decided to bypass the pending removal proceedings in favor of filing his Petition in this action.

CONCLUSION

The Petition should be denied because detention is lawful under 8 U.S.C. § 1225(b)(2) and Petitioner has failed to exhaust his administrative remedies before seeking relief from the Court.

Respectfully submitted,

JASON REDING QUINONES
UNITED STATES ATTORNEY

By: /s/ *Carlos Raurell*

Assistant U.S. Attorney
Florida Bar No. 529893
United States Attorney's Office
Southern District of Florida
99 NE 4th Street, Florida 33132
Telephone: (305) 961-9243
E-mail: carlos.raurell@usdoj.gov
Counsel for Respondents