UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO: 25-60242-CV-MIDDLEBROOKS

HURIYAT MAMAJONOVA,

Petitioner,

v.

GARRETT RIPA, et al.,

Respondents.

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RESPONDENT'S RETURN AND MEMORANDUM OF LAW

Respondents[1], by and through the undersigned Assistant U.S. Attorney, hereby respond to the Court's Order to Show Cause [ECF No. 6]. As set forth fully below, the Court should deny the Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241 [ECF No. 1] ("Petition").

I. BACKGROUND

The petitioner, Huryiat Mamajonova (Petitioner), is a native and citizen of Uzbekistan. *See* Exhibit A, Record of Deportable/Inadmissible Alien (I-213). She entered the United States without inspection, admission, or parole at or near Charlotte Amalie, U.S. Virgin Islands (USVI) on or about November 12, 2024. *See* Exhibit A, I-213. On November 16, 2024, Petitioner was encountered by immigration officials at the Edward Wilmoth Blyden Marine Terminal on St.

1 A writ of habeas corpus must "be directed to the person having custody of the person detained." 28 USC § 2243. In cases involving present physical confinement, the Supreme Court reaffirmed in *Rumsfeld v. Padilla*, 542 U.S. 426 (2004), that "the immediate custodian, not a supervisory official who exercises legal control, is the proper respondent." *Rumsfeld v. Padilla*, 542 U.S. 426, 439 (2004). Petitioner is currently detained at the Broward Transitional Center, an ICE detention facility in Pompano Beach, Florida. Her immediate custodian is Juan F. Gonzalez, Assistant Field Office Director. The proper Respondent in the instant case is Mr. Gonzalez in his official capacity

Thomas. *See* Exhibit A, I-213[2]. Petitioner conceded that she arrived in the USVI by boat on November 12, 2024. *See* Exhibit A, I-213. Petitioner appeared at the St. John, VI, at the United States Customs and Border Protection ("CBP") Office on November 13, 2024. *See* Exhibit G, CBP Declaration. The Petitioner did not present any documents issued by the United States, and due to operational constraints, including lack of detention capability, detainee necessities, and the ability to transport detainees from St. John, VI, United States Immigration and Customs Enforcement – Enforcement and Removal Operations ("ICE ERO") was contacted. *See* Exhibit G, CBP Declaration. ICE ERO recommended that Petitioner appear at the United States Citizenship and Immigration Services ("USCIS") office on St. Thomas the next morning to be processed. *See* Exhibit G, CBP Declaration. The Petitioner was advised that she was not admitted or paroled at the St. John, VI CBP Office on November 13, 2025. *See* Exhibit G, CBP Declaration. Petitioner conceded that she entered the United States without inspection and did not possess a valid visa. *See* Exhibit A, I-213. Petitioner also stated that she sought to live and reside in the United States. *See* Exhibit A, I-213.

Petitioner was processed for expedited removal under section 235(b)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1225(b)(1) on November 16, 2024. *See* Exhibit A, I-213; Exhibit B, Notice and Order of Expedited Removal. She was detained by ICE on November 18, 2024. *See* Exhibit A, I-213; *see also* Exhibit C, Enforce Alien Removal Module (EARM) Detention History.

Because Petitioner expressed a fear of returning to Uzbekistan, she was referred to an asylum officer for a credible fear interview. *See* Exhibit D, Declaration; *see also* Exhibit E, Notice

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2 The Form I-213, Record of Deportable/Inadmissible Alien states in the "Narrative" that this encounter occurred on Saturday, December 16, 2024. This appears to be an error, as the document is otherwise dated November 16, 2024, and November 17, 2024. December 16, 2024, was a Monday. November 16, 2024, was a Saturday. *See* Exhibit D, Declaration at 2.

to Appear dated 1/2/2025. The asylum officer determined that Petitioner had established a credible fear of persecution. *See* Exhibit D, Declaration; *see also* Exhibit E, Notice to Appear dated 1/2/2025. Petitioner was placed in removal proceedings via the issuance of a Notice to Appear dated January 2, 2025. *See* Exhibit E, Notice to Appear dated 1/2/25. A superseding Notice to Appear was issued February 6, 2025. *See* Exhibit F, Superseding Notice to Appear dated 2/6/25. On March 4, 2025, the Immigration Judge issued an order finding that Petitioner was subject to mandatory detention and not eligible for bond.3 *See* Exhibit G, Bond Order. Proceedings are currently pending before the Immigration Court at BTC. *See* Exhibit D, Declaration. A hearing is currently scheduled for March 28, 2025. *See* Exhibit D, Declaration.

Petitioner is presently detained at the Broward Transitional Center ("BTC") in Pompano Beach, Florida, *See* Exhibit C, EARM Detention History. She is detained under 8 U.S.C. § 1225(b)(1)(B)(ii). Petitioner has filed a habeas petition in the District Court for the Southern District of Florida, challenging ICE custody. For the reasons stated below, Petitioner's custody is lawful, and the petition should be denied.

II. ARGUMENT

Petitioner is an "applicant for admission" under § 1225(a)(1), and as such is not entitled to any procedures beyond those prescribed by the expedited removal statute, which have been followed.

Under the expedited removal statute, in the event that an immigration officer determines that an alien is inadmissible, the officer shall order the alien removed from the United States without further hearing or review, stripping the court of jurisdiction over the writ of habeas corpus.

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3 To date, Petitioner has not appealed the decision of the immigration judge to the Board of Immigration Appeals, the appellate administrative body having jurisdiction to review the decision. *See 8* C.F.R. § 1003.19.

See 8 U.S.C. § 1225(b)(1)(A)(i). Petitioner's due process rights have not been violated, and granting her release is not authorized or warranted under applicable law. Finally, in addition to demanding a release from custody, the Petitioner asks for several forms of relief well beyond the scope of a Habeas Proceeding, including that the Court punish those responsible for the Petitioner's detention, for certification that she is a victim of false imprisonment, for compensation regarding injuries sustained, and for declaratory relief. Petition at 9. The Court should deny the Petition.B; *see also* 8 C.F.R. § 235.1(f)(2) (providing that "[a]n 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 port-of-entry, except as otherwise permitted in this section, is subject to the provisions of [INA § 212(a)] and to removal under [INA §§ 235(b) or 240]").

Expedited removal orders issued pursuant to 8 U.S.C. §1225(b)(1) are not subject to judicial review except in very limited circumstances. *See* 8 U.S.C. §1252(a)(2)(A), (e). These circumstances are: 1) whether the petitioner is an alien; 2) whether the petitioner was ordered removed; and 3) whether the respondent is a lawful permanent resident or refugee. 8 U.S.C. §1252(a)(2)(e); *see also Garcia de Rincon v. Dep't of Homeland Sec.*, 539 F.3d 1133, 1140 (9th Cir. 2008) (acknowledging the Court's limited habeas jurisdiction to the three enumerated circumstances); *Shunaula v. Holder*, 732 F.3d 143, 145–47 (2d Cir. 2013) (§ 1252(a)(2)(A) and (e) bar judicial review of expedited removal order); *Khan v. Holder*, 608 F.3d 325, 329–30 (7th Cir. 2010) (acknowledging the "limited exceptions to the jurisdictional bar" of §1252(e)). Here, Petitioner fails to establish that she is not subject to the expedited removal process, where she is a national of Uzbekistan, who was ordered removed under the expedited removal statute, and who is now detained pending adjudication of an asylum application.

A. Petitioner is Lawfully Detained as an Applicant for Admission who was not Admitted or Paroled after Inspection by an Immigration Officer Under 8 U.S.C. § 1225(b)(1)(B)(ii).

Applicants for admission who were intercepted at entry can be subject to an expeditious process to remove them from the United States under 8 U.S.C. § 1225(b)(1). Under this process—known as expedited removal—applicants for admission arriving in the United States (as designated by the Secretary of Homeland Security) who entered illegally and lack valid entry documentation or make material misrepresentations shall be "order[ed] . . . removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum under [8 U.S.C. § 1158] or a fear of persecution." 8 U.S.C. § 1225(b)(1)(A)(i).

To qualify for expedited removal, an alien must either lack entry documentation or seek admission through fraud or misrepresentation. INA § 235(b)(1)(A)(i), 8 U.S.C. § 1225(b)(1)(A)(i) (referring to § 212(a)(6)(C), (a)(7), 8 U.S.C. § 1182(a)(6)(C), (a)(7). In addition, the alien must either be "arriving in the United States" or within a class that the Secretary of Homeland Security ("Secretary") has designated for expedited removal. The Secretary may designate "any or all aliens" who have "not been admitted or paroled into the United States" and also have not "been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility." Id. § 235(b)(1)(A)(iii), 8 U.S.C. § 1225(b)(1)(A)(iii). At the relevant time, the Secretary (and previously the Attorney General) have designated only subsets of that class. See Notice Designating Aliens Subject to Expedited Removal Under Section 235(b)(1)(A)(iii) of the Immigration and Nationality Act, 67 Fed. Reg. 68,924 (Nov. 13, 2002); Designating Aliens for Expedited Removal, 69 Fed. Reg. 48,877 (Aug. 11, 2004) ("2004 Designation"). Here, Petitioner is within the designated group of aliens who (i) "are physically

present in the U.S. without having been admitted or paroled," (ii) "are encountered by an immigration officer within 100 air miles of any U.S. international land border," and (iii) cannot establish "that they have been physically present in the U.S. continuously for the 14-day period immediately prior to the date of encounter." 2004 Designation, 69 Fed. Reg. at 48,880.For an alien originally placed in expedited proceedings, the removal process varies depending upon whether the alien indicates either "an intention to apply for asylum" or "a fear of persecution or torture." 8 C.F.R. §§ 235.3(b)(4), 1235.3(b)(4)(1); *see* INA § 235(b)(1)(A)(ii). If the alien does not so indicate, the inspecting officer "shall order the alien removed from the United States without further hearing or review." INA § 235(b)(1)(A)(i). If the alien does so indicate, however, the officer "shall refer the alien for an interview by an asylum officer." *Id.* § 235(b)(1)(A)(ii). That officer assesses whether the alien has a "credible fear of persecution or torture," 8 C.F.R. § 208.30(d)—in other words, whether there is a "significant possibility" that the alien is eligible for "asylum under section 208 of the Act," "withholding of removal under section 241(b)(3) of the Act," or withholding or deferral of removal under the Convention Against Torture ("CAT"), 8 C.F.R. § 208.30(e)(2)–(3). If the alien does not establish a credible fear, the asylum officer "shall order the alien removed from the United States without further hearing or review." INA § 235(b)(1)(B)(iii)(I). But if the alien does establish such a fear, he is entitled to "further consideration of the application for asylum." *Id.* § 235(b)(1)(B)(ii). By regulation, that "further consideration" takes the form of full removal proceedings under section 240 of the Act. 8 C.F.R. §§ 208.30(f), 1208.30(g)(2)(iv)(B). Thus, if an alien originally placed in expedited removal establishes a credible fear, he receives a full hearing before an immigration judge.

Section 235 of the Act expressly provides for the detention of aliens originally placed in expedited removal. Such aliens "shall be detained pending a final determination of credible fear."

INA § 235(b)(1)(B)(iii)(IV). Aliens found not to have a credible fear "shall be detained . . . until removed." *Id.* Aliens found to have such a fear, however, "shall be detained for further consideration of the application for asylum." *Id.* § 235(b)(1)(B)(ii). Like all aliens applying for admission, however, aliens detained for further consideration of an asylum claim may generally be "parole[d] into the United States . . . for urgent humanitarian reasons or significant public benefit." *Id.* § 212(d)(5)(A). Accordingly, the Act's implementing regulations note that while aliens in expedited proceedings will be detained, if an alien establishes a credible fear, "[p]arole . . . may be considered . . . in accordance with section 212(d)(5) of the Act and [8 C.F.R.] § 212.5." 8 C.F.R. § 208.30(f).

The Supreme Court in *Jennings v. Rodriguez,* 138 S.Ct. 830 (2018) reviewed the expedited removal statute in 2018 following arguments by aliens detained under the Immigration and Nationality Act – including aliens, such as Petitioner, transferred from expedited to full proceedings after establishing a credible fear—that the statute did not permit their "prolonged detention in the absence of . . . individualized bond hearing[s]." 138 S. Ct. at 839 (internal quotation marks omitted). In reviewing the detention authority, the *Jennings* court noted that an alien who "arrives in the United States," or "is present" in the country, but who "has not been admitted" is treated as "an applicant for admission." *See Jennings v. Rodriquez*, 138 S. Ct. 830, 836 (2018) (quoting 8 U.S.C. § 1225The *Jennings* court rejected Petitioner's argument that once applicants for admission under the expedited removal statute are issued Notices to Appear, Section 236(a), 8 U.S.C. § 1226(a) of the INA applies, and aliens would be eligible for bond hearings. The Court rejected that argument as "incompatible with the rest of the statute." *Id.* If the class were right about when sections 1225 and 1226 apply, "then the Government could detain an alien without a warrant at the border, but once removal proceedings began, the [Secretary] would have

to issue an arrest warrant in order to continue detaining the alien." *Id.* But "that makes little sense." In evaluating whether transferred aliens are eligible for bond, the Court considered section 212(d)(5)(A)'s parole exception, noting that it is a mechanism for release from detention under the expedited removal statute. The Court held that the Act renders aliens transferred from expedited to full proceedings after establishing a credible fear ineligible for bond.

Petitioner's arrival in the U.S. Virgin Islands without inspection by private boat classifies her as an applicant for admission. Petitioner is detained as an applicant for admission under 8 U.S.C. §1225(b)(1)(B)(ii) because she is not a citizen of the United States, is a native and citizen of Uzbekistan, and sought entry without valid entry documents. *See* 8 U.S.C. §§ 1182(a)(7)(A)(i)(I); (a)(6)(A)(i). She is subject to the expedited removal statute under8 U.S.C. § 235.3(b)(1)(ii) (referring to aliens who arrive in, attempt to enter, or have entered the United States without having been admitted or paroled following inspection by an immigration officer that they have been physically present in the United States for the 2-year period immediately prior to the date of determination of inadmissibility). Petitioner is within the designated group of aliens who (i) "are physically present in the U.S. without having been admitted or paroled," (ii) "are encountered by an immigration officer within 100 air miles of any U.S. international land border," and (iii) cannot establish "that they have been physically present in the U.S. continuously for the 14-day period immediately prior to the date of encounter." 2004 Designation, 69 Fed. Reg. at 48,880.. *see also Matter of M-S-*, 271 I. & N. Dec. 509, 511 (BIA 2019). Notably, while an applicant for admission subject to the expedited removal statute is subject to detention, she may be eligible for parole "for urgent humanitarian reasons or significant public benefit;" her detention is otherwise mandatory, and the alien cannot be released on bond. *Matter of M-S-*, 271 I. & N. Dec at 512, 517-18.

B. Due Process Does Not Require Petitioner's Release

Petitioner claims that her detention violates due process and therefore she should be released. (D.E. 1 at 8). However, as set forth above, detention of an alien subject to the expedited removal statute while her asylum application is being adjudicated, is statutorily mandated, even if an asylum officer determines the alien has a credible fear of persecution. *See* 8 U.S.C. § 1225(b)(1)(B)(ii); *Jennings*, 138 S.Ct. at 842 (finding the "clear language" of section 1225(b)(1) mandates detention of aliens claiming a credible fear of persecution); *D.A.V.V. v. Warden, Irwin Cnty. Detention Ctr.*, 2020 WL 13240240, at *4 (M.D. Ga. Dec. 7, 2020) (Order and Report and Recommendation) (same). In *Jennings,* 138 S Ct. at 842, the Supreme Court held that 8 U.S.C. § 1225(b) unambiguously mandates detention through the pendency and conclusion of removal proceedings, regardless of their duration, and that the statute authorizes release only through ICE's discretionary parole authority. *Id.* at 843-45. The plain language of 8 U.S.C. § 1225(b) imposes detention without a bond hearing—during the whole of removal proceedings—for *all* applicants of admission. *Id.* at 844. *See* 8 U.S.C. §§ 1225(b)(1)(B)(ii), (b)(1)(B)(iii)(IV)(establishing separate mandatory detention provision for arriving aliens applying for asylum); *see also* 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 section 1229a of this title.").

In reaching its decision in *Jennings*, the Supreme Court rejected the Ninth Circuit's application of the canon of constitutional avoidance to construe an implicit 6-month time limit on detention under 8 U.S.C. §§ 1225 and 1226. *Id.* The Supreme Court noted that "[t]he canon of constitutional avoidance 'comes into play only when, after the application of ordinary textual

analysis, the statute is found to be susceptible of more than one construction.'" *Id.* at 842 (citation omitted). The Court further held that

> [r]ead most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants for admission until certain proceedings have concluded. Section 1225(b)(1) aliens are detained for "further consideration of the application for asylum," and § 1225(b)(2) aliens are in turn detained for "[removal] proceeding[s]." Once those proceedings end, detention under § 1225(b) must end as well. Until that point, however, nothing in the statutory text imposes any limit on the length of detention. And neither § 1225(b)(1) nor § 1225(b)(2) says anything whatsoever about bond hearings.

Id.

After *Jennings*, the Supreme Court addressed aliens' due process rights in the context of the expedited removal statute in *Thuraissigiam v. U.S. Dep't of Homeland Sec.*, 591 U.S. 103, 140 S. Ct. 1959 (2020). Thuraissigiam entered the United States without permission and immigration authorities apprehended him twenty-five yards from the border. *Id.* at 1967. He was placed in expedited removal proceedings and he claimed asylum. *Id.* An asylum officer found that Thuraissigiam failed to demonstrate a credible fear of persecution and an immigration judge affirmed. *Id.* at 1968. Following a hearing, he was subject to expedited removal. *Id.* Thereafter, Thuraissigiam filed a habeas petition asserting a fear of persecution and requesting a second opportunity to apply for asylum, which could result in his placement in a formal removal proceeding. *Id.* The district court dismissed for lack of jurisdiction under 8 U.S.C. §§ 1252(a)(2) and (e)(2). *Id.* The Ninth Circuit reversed, holding that such an application of these statutes violated the Suspension Clause. *Id.*; *Thuraissigiam v. U.S. Dep't of Homeland Sec.*, 917 F.3d 1097, 1113-1119 (9th Cir. 2019). In a footnote, however, the Ninth Circuit also "disagree[d] with the government's contention ... that a person like [petitioner] lacks all procedural due process rights." *Id.* at 1111 n.15 (citations omitted).

The Supreme Court reversed the Ninth Circuit, holding the application of §§ 1252(a)(2) and (e)(2) to foreclose jurisdiction did not violate the Suspension Clause. *Thuraissigiam,* 140 S. Ct. at 1968-81. While *Thuraissigiam* did not principally feature prolonged detention claims, the majority opinion, relying on years of Supreme Court precedent, reiterated the boundaries of due process claims available to arriving aliens and applicants for admission. *Id.* at 1981-1983. Specifically, the Supreme Court stated that the Ninth Circuit's

> holding [as to due process] is contrary to more than a century of precedent ... that as to "foreigners who have never been naturalized, nor acquired any domicile or residence within the United States, nor even been admitted into the country pursuant to law," "the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law."

Id. at 1982 (quoting *Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892)). The Court explained that extending due process rights to "an alien who tries to enter the country illegally" would "undermine the 'sovereign prerogative' of governing admission to this country and create a perverse incentive to enter at an unlawful rather than a lawful location." *Id.* at 1982-1983 (citation omitted). Accordingly, the Court declined to extend due process rights to arriving aliens beyond those provided for by statute. *Id.* at 1983.

Here, Petitioner, like Thuraissigiam, is an applicant for admission who has not been admitted or paroled after inspection by an immigration officer. Therefore, for purposes of this analysis, she is not considered to have been admitted into the country. Accordingly, in line with Supreme Court precedent, Petitioner is only entitled to due process as set forth in the Immigration and Nationality Act (NA). The INA provides for relief from detention under the parole procedure set forth in 8 U.S.C. § 1182(d)(5)(A). *See* 8 U.S.C. § 1182(d)(5)(A); *see also* 8 C.F.R. §§ 212.5(b); 235.3. Specifically, the applicable regulation states that parole for applicants for admission with pending asylum applications, such as Petitioner, "would generally be justified only

on a case-by-case basis for urgent humanitarian reasons or significant public benefit, providing the aliens present neither a security risk not a risk for absconding:

> (1) Aliens who have serious medical conditions in which continued detention would not be appropriate;
> (2) Women who have been medically certified as pregnant;
> (3) Aliens who are defined as minors in § 236.3(b) of this chapter and are in DHS custody. The Executive Assistant Director, Enforcement and Removal Operations; directors of field operations; field office directors, deputy field office directors; or chief patrol agents shall follow the guidelines set forth in § 236.3(j) of this chapter and paragraphs (b)(3)(i) through (ii) of this section in determining under what conditions a minor should be paroled from detention:
> (i) Minors may be released to a parent, legal guardian, or adult relative (brother, sister, aunt, uncle,
> or grandparent) not in detention.
> (ii) Minors may be released with an accompanying parent or legal guardian who is in detention.
> (iii) If the Service cannot locate a relative in or out of detention to sponsor the minor, but the minorhas identified a non-relative in detention who accompanied him or her on arrival, the question ofreleasing the minor and the accompanying non-relative adult shall be addressed on a case-by-case basis;
> (4) Aliens who will be witnesses in proceedings being, or to be, conducted by judicial, administrative, or legislative bodies in the United States; or
> (5) Aliens whose continued detention is not in the public interest as determined by those officials identified in paragraph (a) of this section.

See 8 C.F.R. §§ 212.5(b). Parole decisions are an integral part of the admissions process and inadmissible aliens cannot challenge such decisions as a matter of constitutional right. *See Fernandez-Roque v. Smith*, 734 F.2d 576, 582 (11th Cir. 1984); *Jean v. Nelson*, 727 F.2d 957, 966, 972 (11th Cir. 1984), *aff'd*, 472 U.S. 846 (1985); *Alvarez-Mendez v. Stock*, 941 F.2d 956, 963 (9th Cir. 1991). Parole, as noted by the First Circuit, was conceived of by Congress as

> an indulgence to be granted only occasionally, in the case of rare and exigent circumstances, and only when it would plainly serve the public interest. The historical record admits of no doubt on this score. One can argue the wisdom of such a tight-fisted choice, or whether it comports with accepted notions of the American ideal. But, in what is demonstrably something less than the best of all possible worlds, it cannot reasonably be argued but that the Congress has sown the

> seeds of the parole authority in such a scanty way as to plant a decidedly austere garden.

Amanullah v. Nelson, 811 F.2d 1, 6 (1st Cir. 1987). In fact, parole determinations normally take account of the possibility that an inadmissible alien may abscond to avoid being returned to his or her home country." *Jeanty,* 204 F.Supp.2d at 1382 (*citing Garcia-Mir*, 776 F.2d at 1485; *Bertrand v. Sava*, 684 F.2d 204, 214 – 218 (2nd Cir. 1982)). Accordingly, for these reasons, Petitioner's Due Process claim fails. *See, e.g. D.A.V.V.*, 2020 WL 13240240, at *4-*6 (recommending denial of Petitioner's due process claims because arriving aliens have no procedural due process rights beyond the parole procedure set forth in the INA) (citing *Thuraissigiam*, 140 S. Ct. at 1982-83) (additional citations omitted))[4]; *Petgrave v. Aleman*, 529 F.Supp.3d 665, 676 (S.D. Tex. Mar. 29, 2021) (discussing *Thuraissigiam* and denying habeas claims of arriving alien challenging continued detention without a bond hearing because "when a noncitizen attempts to unlawfully cross the borders as Petitioner did, his constitutional right to due process does not extend beyond the rights provided by statute"); *Gonzalez Garcia v. Rosen*, 513 F.Supp.3d 329, 331 332-336 (W.D.N.Y. Jan. 13, 2021) (denying habeas claims challenging detention without a bond hearing of arriving alien who was found to have a credible fear of persecution and was detained for further immigration proceedings) (citing *Thuraissigiam*, 140 S. Ct. at 1982-83) (additional citations omitted)).

Even if the Court concludes that Petitioner, as an applicant for admission, can invoke the Due Process Clause, she cannot establish that her detention violates the Constitution. Petitioner

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4 Based on a review of the *D.A.V.V.* docket, the parties filed a Stipulation of Dismissal before the Court had an opportunity to enter an order on the Report and Recommendation (R&R) concerning denial of the habeas petition. Accordingly, only the R&R is cited above.

has been detained for approximately four (4) months, pending the completion of the removal proceedings, and the next hearing is to take place March 28, 2025. *See, e.g. O.D. v. Warden, Stewart Detention Ctr.*, 2021 WL 5413968 at *4-5 (M.D. Ga. Jan. 14, 2021) (Report and Recommendation), *adopted by*, 2021 WL 5413966 (M.D. Ga. Apr. 1, 2021) (denying habeas relief to § 1226(c) petitioner who had been detained for nineteen months); *Sigal v. Searls*, 2018 WL 5831326 at *5, 9 (W.D.N.Y. Nov. 7, 2018) (denying habeas relief to petitioner detained for seventeen months after "tak[ing] into account all of the factual circumstances"); *see also Hylton v. Shanahan*, No., 2015 WL 3604328, at *6 (S.D.N.Y. June 9, 2015) (detention without bail for roughly two years did not violate due process); *Luna-Aponte v. Holder*, 143 F. Supp. 2d 189, 197 (W.D.N.Y. 2010) (three years); *See* Exhibit D, Declaration at 2.

Petitioner has not submitted evidence that ICE detained her for any purpose other than resolution of her removal proceedings. In fact, Petitioner's removal proceedings have only been in process for four (4) months and are following the natural course of immigration proceedings.

In sum, Petitioner has been detained pending removal and the completion of proceedings to adjudicate her application for relief. The detention "necessarily serves" the legitimate immigration purposes of "preventing * * * aliens from fleeing prior to or during their removal proceedings" and of "increasing the chance that, if ordered removed, the aliens will be successfully removed." *Demore,* 538 U.S. at 528. And Petitioner's detention is limited, not indefinite or potentially permanent, because it will end when the removal proceedings conclude. *See id.* at 529. Petitioner's detention accordingly comports with the Constitution. *Id.* at 531.

C. The Damages and Declaratory Relief Petitioner Seeks is Not Available in a Habeas Proceeding.

The Petition seeks release, but also seeks damages, injunctive, and declaratory relief that

is not available in a habeas proceeding because it is not subject to the Suspension Clause, U.S. Const. Art. 1, § 9, cl. 2. Caselaw makes explicitly clear that "the Suspension Clause is not implicated where [a] [p]etitioner is seeking injunctive relief." *Bumu v. Barr*, 2020 U.S. Dist. LEXIS 205380, *6 (W.D.N.Y. Nov. 3, 2020). The Supreme Court reaffirmed this principle in *Thuraissigiam* when it held that the Suspension Clause does not apply when a non-core habeas petition seeks relief beyond "simple release." 140 S. Ct. 1959 (2020).

In *Thuraissigiam*, the respondent was seeking relief beyond release, the only relief contemplated by the common-law habeas writ. *Id.* Respondent in that case was seeking vacatur of his removal order and an order directing the agency to provide him with a new opportunity to apply for asylum and other relief from removal. *Id.* The Supreme Court held "habeas is at its core a remedy for unlawful executive detention" and that what this individual wanted was not "simple release" but an opportunity to remain lawfully in the United States. *Id.* (quoting *Munaf v. Geren*, 553 U.S. 674 (2008)). The court went on to note that "[c]laims so far outside the 'core' of habeas may not be pursued through habeas." *Id.* (internal citations omitted).

At least two courts of appeals have subsequently followed *Thuraissigiam* and found the Suspension Clause inapplicable where petitioner sought something other than "simple release." *See Gicharu v. Carr*, No. 19-1864, 2020 U.S. App. LEXIS 39536, at *5 (1st Cir. Dec. 16, 2020) ("the Suspension Clause is not implicated where, as here, the relief sought by the habeas petitioner is the opportunity to remain lawfully in the United States rather than the more traditional remedy of simple release from unlawful executive detention."); *Huerta-Jimenez v. Wolf*, No. 19-55420, 2020 U.S. App. LEXIS 38237, at *1 (9th Cir. Dec. 8, 2020) (holding petitioner's Suspension Clause argument failed under *Thuraissigiam* where "petitioner does not want simple release but, ultimately, the opportunity to remain lawfully in the United States" because such relief fell

"outside the scope of the writ.").

Here, Petitioner is clearly seeking relief beyond "simple release." She is asking the Court to punish those responsible for the Petitioner's detention, for certification that she is a victim of false imprisonment, for compensation regarding injuries sustained, and for declaratory relief regarding her arrest without a warrant. [ECF No. 1 at 8]. This relief falls well outside the parameters established in the *Thuraissigiam* decision, all requests beyond simple release to remain in the United States. The Supreme Court has clearly established that the Suspension Clause does not apply to such claims.

Accordingly, Plaintiff's claims related to punishing those responsible for the Petitioner's detention, for certification that she is a victim of false imprisonment, for compensation regarding injuries sustained, and for declaratory relief cannot be adjudicated in the habeas proceeding, and the Petition should be denied in its entirety.

Respectfully submitted,

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By: _____

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 14, 2025, I electronically filed the foregoing document with the Clerk of Court using CM/ECF, giving notice to all those registered to receive the same. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified.

BRETT R. GEIGER
ASSISTANT U.S. ATTORNEY

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