United States District Court
Western District of Texas
El Paso Division

Vladimir Tsellermaer, Petitioner, v. U.S. Immigration and Customs Enforcement, Respondent.	No. 3:25-CV-00105–DCG

Response in Opposition to Petition for Writ of Habeas Corpus and Motion to Dismiss as Moot

ICE successfully removed Mr. Tsellermaer ("Petitioner") from the United States on April 8, 2025, and his claim is now moot. *See* Exhibit A (Declaration of Deportation Officer Damian Olivas). In his petition for writ of habeas corpus under 28 U.S.C. § 2241, Petitioner challenges his continued detention by the Department of Homeland Security ("DHS"), Immigration and Customs Enforcement ("ICE") under an expedited removal order. ECF No. 1 at 6 (acknowledging credible fear screening). Specifically, Petitioner claims that an asylum officer erred in deciding that his fear claim, although credible, did not contain the necessary nexus to allow him to apply for asylum in the United States. *Id.* Petitioner further claims that the immigration judge subsequently erred in affirming that determination. *Id.* at 2. Similarly, Petitioner challenges the denial of his request that the Department of Homeland Security, in its discretion, issue him a Notice to Appear ("NTA") in immigration court, so that he can seek asylum under the broader scope of due process afforded to aliens who are not in expedited removal proceedings. *Id.* at 6. Finally, he seeks release from civil immigration detention, claiming that his detention has been unlawfully prolonged beyond the presumptive 180 days. *Id.* Because ICE executed his removal order on April 8, 2025, by removing him from the United States, there is no longer any case or controversy for the Court to decide, and this case should be dismissed for lack of jurisdiction.

Even if the issues in this case had not become moot, the Court's decision here is squarely

controlled by the U.S. Supreme Court's 2020 decision in *Dep't. of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140-41 (2020), which held that aliens detained shortly after unlawful entry lack any due process rights beyond what Congress permitted in the Immigration and Nationality Act ("INA"). Petitioner here has a (now executed) final order of expedited removal from April 5, 2024, which mandates his detention under 8 U.S.C. § 1225(b)(1) pending his physical removal from the United States. He is not entitled to any additional process outside of the what the statute already provides him. *Thuraissigiam*, 591 U.S. at 140-41. The *Zadvydas* decision's six-month presumptively reasonable period of post-removal-order detention is inapplicable here, because *Zadvydas* interpreted the detention authority under a different statute, 8 U.S.C. § 1231, not the statute under which Petitioner is detained, § 1225. *See Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). For these reasons, and because Petitioner has now been removed, this Court should deny this habeas petition or dismiss it as moot.

I. Facts and Procedural History

Petitioner is a native and citizen of Russia. ECF No. 1 at 7–8. When he illegally entered the United States at or near El Paso, Texas, on April 5, 2024, Petitioner was subject to an expedited removal order, but he claimed fear of returning to Russia. *See* ECF No. 1 at 6. An asylum officer interviewed Petitioner regarding his fear claim, but the officer ultimately decided Petitioner did not qualify for asylum. *Id.* Petitioner requested review of this decision by an Immigration Judge, which he received, and during which process he was represented by counsel. *Id.* The IJ affirmed the asylum officer's finding on April 26, 2024, and returned the case to DHS to execute the removal order. *Id.* at 2. In September 2024, Petitioner, through counsel, requested that DHS, in its discretion, issue him an NTA to allow him to apply for asylum in removal proceedings, as opposed to expedited removal. *Id.* at 6. DHS declined to grant a favorable exercise of discretion. *Id.*

On April 1, 2025, this Court ordered ICE to respond to Petitioner's habeas petition by April 15, 2025, and ordered the clerk's office to serve[1] the U.S. Attorney's Office. ECF No. 2. ICE removed Petitioner from the United States on April 8, 2025. Ex. A (Olivas Declaration). In opposition to this habeas petition, Respondents timely file this Response and Motion to Dismiss in accordance with the Court's order.

II. Section § 1225(b), Expedited Removal

Under 8 U.S.C. § 1225(b)(1)(A)(ii), when an alien entering the United States indicates an intent to apply for asylum or a fear of persecution, the alien is referred for a credible fear screening interview with an asylum officer. If the officer determines that an alien does not have a credible fear of a persecution, the officer shall order him removed from the United States without further hearing or review. 8 U.S.C. § 1225(b)(1)(B)(iii)(III). The alien is subject to mandatory detention pending a final determination of credible fear and, if found not to have such a fear, until removed. 8 U.S.C. § 1225(b)(1)(B)(iii)(IV). Congress constructed the expedited removal scheme in the 1996 immigration reform provisions to weed out meritless asylum claims and expeditiously remove aliens making such claims from the country. *See Thuraissigiam*, 591 U.S. 140-41. The "system is comprehensive, complex, and national in scope. It provides multiple procedural channels to determine whether a noncitizen should be removed and establishes a detailed process for reviewing those determinations." *United States v. Texas*, 97 F.4th 268, 285 (5th Cir. 2024).

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[1] As of the date of filing, it does not appear the government has been properly served with the petition as required by the Federal Rules of Civil Procedure.

III. Argument

A. An Executed Removal Order Moots This Habeas Petition.

Petitioner's removal rendered his habeas claim moot. Federal courts may adjudicate only "actual, ongoing controversies between litigants." *Deakins v. Monaghan*, 484 U.S. 193, 199 (1988). An "actual controversy must be at all stages of review, not merely at the time of the complaint is filed." *Arizonans for Off. English v. Arizona*, 520 U.S. 43, 67 (1997) (citations omitted). "If a dispute has been resolved or if it has evanesced because of changed circumstances . . . it is considered moot." *Am. Med. Ass'n v. Bowen*, 857 F.2d 267, 270 (5th Cir. 1988). And if a controversy is moot, the trial court lacks subject-matter jurisdiction over it. *Carr v. Saucier*, 582 F.2d 14, 15-16 (5th Cir. 1978). In the context of habeas corpus where the relief sought is release from custody, there is no longer a live controversy if the habeas petitioner is no longer detained. *See Bacilio-Sabastian v. Barr,* 980 F.3d 480, 483 (5th Cir. 2020). Where the habeas petition challenges prolonged detention of an alien in immigration detention, the government's physical removal of that alien from the United States moots the habeas. *See Ortez v. Chandler,* 845F.2d 573, 575 (5th Cir. 1988); *Virani v. Huron, No. SA-19-CV-00499-ESC, 2020 WL 7405655, at *3 (W.D. Tex. Dec. 17, 2020); Chay v. Holder*, 470 F. App'x 406, 407 (5th Cir. 2012).

B. Even If Not Moot, No Court Has Jurisdiction to Review an Expedited Removal Order or a Related Negative Credible Fear Finding.

Congress specifically prohibits judicial review of expedited removal orders, including any determination regarding the alien's fear of returning to his country of origin. 8 U.S.C. § 1252(a)(2)(A). Similarly, Congress prohibits judicial review of the Attorney General or the DHS Secretary's discretionary decisions. 8 U.S.C. § 1252(a)(2)(B)(ii). The action of an executive officer to admit or exclude an alien is final and conclusive. *United States v. Munoz*, 602 U.S. 899, 908 (2024). Indeed, even if the alien qualifies for relief under the asylum statutes, a grant of asylum

is discretionary. *See Thuraissigiam,* 591 U.S. at 110 n.4; *Vazquez-Guerra v. Garland*, 7 4th 265, 268–69 (5th Cir. 2021); *Chen v. Gonzales*, 470 F.3d 1131, 1135 (5th Cir. 2006); *Derick v. Jaddou*, No. 23–CV–00857, 2024 WL 3035626 at *3 (W.D. Tex. June 17, 2024) (citing 8 U.S.C. § 1158(b)(1)(A); 8 CFR § 208.14).

Additionally, § 1252(e)(1) provides that the Court may not grant injunctive relief "in any action pertaining to an order to exclude an alien in accordance with section 1225(b)(1)." The only exception relevant here is found in § 1252(e)(2), which provides limited judicial review of expedited removal orders in habeas corpus proceedings. Such review is restricted to the following: whether the petitioner (1) is an alien, (2) was ordered removed under § 1225(b), and (3) can prove by a preponderance of the evidence that he is an alien lawfully admitted for permanent residence or as a refugee or asylee. *Id.* § 1252(e)(2)(A)-(C).

Here, Petitioner lodges a continued detention challenge, but the crux of his habeas petition is challenging DHS's discretionary authority to place him in expedited removal proceedings and decline to allow him to apply for asylum or other relief in removal proceedings under 8 U.S.C. § 1129a. In other words, Petitioner challenges the asylum officer's adverse decision and the immigration judge's decision affirming it (*i.e.*, none of the enumerated bases listed above), which led to his continued detention under § 1225(b) until ICE was able to execute his removal order. The Court has no jurisdiction to review ICE's decision to pursue expedited removal proceedings against Petitioner or the decisions related to the credibility of his fear claim. *See, e.g., Zuniga v. Bondi*, No. 24-60368, 2025 WL 958259 at *1 (5th Cir. Mar. 31, 2025) (citing *Thuraissigiam*). In other words, these claims are not cognizable under habeas, and the Court lacks jurisdiction to grant Petitioner the relief he seeks. *See Thuraissigiam*, 591 U.S. 140-41.

C. Petitioner Is Not Entitled to Process Beyond What § 1225(b) Provides.

Zadvydas does not afford any additional protection to Petitioner beyond the protections Congress built into the expedited removal process. In *Zadvydas*, the U.S. Supreme Court reviewed the government's detention authority under 8 U.S.C. § 1231(a)(6). 533 U.S. at 689. Section 1231(a)(6) governs post-removal-period detention, and the Supreme Court designated six months as a presumptively reasonable period of post-order detention. *Id.* at 701. Petitioner here is not detained under § 1231, so *Zadvydas* does not apply.

Where the alien is detained pursuant to an order of expedited removal under § 1225(b), the Court treats the alien as an individual "on the threshold of entry" into the United States, because the alien's apprehension and detention occurs contemporaneously with the unlawful entry. *Petgrave v. Aleman*, 529 F.Supp.3d 665, 678 (S.D. Tex. 2021). In other words, even though Petitioner is detained within the interior of the United States, he "is not considered to have entered the country" for the purposes of constitutional due process. *Id.* (citing *Thuraissigiam*). Even *Zadvydas* instructs that aliens apprehended during an illegal entry lack certain constitutional protections because they remain, as a legal matter, "outside of our geographic borders." *Zadvydas*, 533 U.S. at 693. As such, it is not within the authority of the judicial branch to provide aliens similarly situated to Petitioner procedural recourse beyond that identified in the applicable statutes. *Petgrave,* 529 F.Supp.3d at 679. Petitioner does not allege that ICE acted contrary to the expedited removal statute.

IV. CONCLUSION

As an arriving alien with an expedited removal order, Petitioner's detention was mandated by statute under 8 U.S.C. § 1225(b) until his removal order was executed. He was not entitled to any additional protections beyond what that statute affords. ICE executed his removal order on

April 8, 2025. Accordingly, the case is moot, and the Court should dismiss or otherwise deny this petition.

Respectfully submitted,

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Attorneys for Respondents

Certificate of Service

Because Petitioner, who is *pro se*, is no longer detained in ICE custody, I certify that it would be futile to serve him by mail with a copy of this filing, as he is no longer at the service address on file with this Court.

/s/Lacy L. McAndrew
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