UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

MENDERES DEMIR, by and through Next Friend NILUFER ADAK, Petitioner, v. KRISTI NOEM, Secretary of Homeland Security; PAMELA BONDI, Attorney General; UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT FIELD OFFICE DIRECTOR, Respondents.	Civil Action No. 4:25-cv-40060-MRG

RESPONDENTS' RESPONSE TO HABEAS PETITION

Respondents, by their attorney, Leah B. Foley, United States Attorney for the District of Massachusetts, submit this Response to Menderes Demir's Petition for Habeas Relief ("Petition") that was filed by his sister, Nilufer Adak. Doc. No. 1.

This Court lacks jurisdiction over the Petition because Mr. Demir was never in the custody of U.S. Immigration and Customs Enforcement ("ICE") in the District of Massachusetts and ICE removed Petitioner from the United States pursuant to an Expedited Removal order on April 24, 2025. *See* Declaration of Supervisory Detention and Deportation Officer, Charles G. Ward, attached as Exhibit A. As such, at the time Ms. Adak filed this Petition with this Court on April 29, 2025, Petitioner was no longer in ICE custody and had been released to his home country of Türkiye. This Court therefore lacked jurisdiction to extend the writ of habeas corpus to Petitioner because he was not "in custody" as required by 28 U.S.C. § 2241(c).

Prior to Mr. Demir's removal from the United States, he was lawfully detained by ICE

under 8 U.S.C. § 1225(b)(1)(B)(iii)(IV) while he sought protection from removal after he was issued an Expedited Order of removal from the United States. ("Any alien subject to the procedures under this clause *shall be detained* pending a final determination of a credible fear of persecution and, if found not to have such a fear, until removal.") (emphasis added); *Jennings v. Rodriguez*, 583 U.S. 281, 302 (2018) ("[Section] 1225(b)(1) . . . mandate[s] detention of aliens *throughout the completion of applicable proceedings* and not just until the moment those proceedings begin.") (emphasis added).

Finally, even if Mr. Demir was in ICE custody in the District of Massachusetts, and even if Mr. Demir filed this Petition instead of his Ms. Adak, this Court would still lack jurisdiction to review the Expedited Removal order pursuant to the Immigration and Nationality Act. *See Arandi v. Morgan*, No. CV 19-12351-RGS, 2020 WL 1891949, at *1 (D. Mass. Apr. 16, 2020). For these reasons, this Petition must be dismissed.

BACKGROUND

A. Legal Background for Aliens Seeking Admission to the United States.

In exercising its plenary power over immigration, Congress delegated to the Secretary of Homeland Security the responsibility for "[s]ecuring the borders," enforcing the immigration laws, and "control[ling] and guard[ing] the boundaries and borders of the United States against the illegal entry of aliens." 6 U.S.C. §§ 202(2) & (3); 8 U.S.C. § 1103(a)(5).

Relevant here, aliens seeking admission to the United States at ports of entry are subject to inspection by a U.S. Customs and Border Protection ("CBP") officer and carry the burden of demonstrating their admissibility into the United States. *See* 8 U.S.C. § 1225(a)(3); 8 C.F.R. § 235.1(f). After arriving at a port of entry, CBP officers inspect each alien requesting admission under 8 U.S.C. § 1225. The officer will determine if an inadmissibility ground under 8 U.S.C. §

1182 is applicable. The term "admission" is defined by the INA to mean "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A); *see also* 8 C.F.R. § 1235.1 (setting forth inspection procedures). An alien who is seeking admission is known as "an applicant for admission." 8 U.S.C. § 1225(a)(1).

In the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104208, Tit. III, § 302(a), 110 Stat. 3009-579, Congress amended Section 1225(b) to add "expedited removal" procedures to "streamline[] rules and procedures . . . to make it easier to deny admission to inadmissible aliens," while ensuring that there is "no danger that an alien with a genuine asylum claim will be returned to persecution." H.R. Rep. No. 469, 104th Cong., 2d Sess. Pt. 1, at 157–58 (1996) (House Report). 8 U.S.C. § 1225 provides that, if an immigration officer determines that an alien "who is arriving in the United States" lacks valid documents or is inadmissible due to fraud, the officer "shall order the alien removed from the United States without further hearing ...." 8 U.S.C. § 1225(b)(1)(A)(i).

If, however, the alien indicates an intention to apply for asylum or expresses a fear of persecution or torture, the expedited removal order is held in abeyance and an asylum officer from U.S. Citizenship and Immigration Services ("USCIS") must determine whether the alien has a credible fear of return. *See* 8 U.S.C. §§ 1225(b)(1)(A)(ii) & (B); 8 C.F.R. §§ 208.30, 235.3(b)(4). If an asylum officer makes a positive finding of credible fear, the individual is placed into removal proceedings in Immigration Court to pursue asylum under 8 U.S.C. § 1229a. If the asylum officer makes a negative fear determination, the applicant has an opportunity to have such determination reviewed by an immigration judge ("IJ"). 8 U.S.C. 1225(b)(1)(B)(iii)(III); 8 C.F.R. § 1003.42. If the IJ reverses and makes a positive credible fear determination, the IJ must vacate the expedited removal order. *See* 8 C.F.R. §

1208.30(g)(2)(iv)(B). At that point, removal proceedings in Immigration Court commence. *Id.*

If the IJ affirms the asylum officer's negative fear determination, the case is remanded to ICE for execution of the expedited removal order, and there is no right to appeal the IJ's decision to the Board of Immigration Appeals ("BIA"). 8 C.F.R. § 1208.30(g)(2)(iv)(A). Courts of appeals also lack jurisdiction to directly review expedited removal orders and credible fear determinations. 8 U.S.C. § 1252(a)(2)(A). The alien "shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removal." 8 U.S.C. 1225(b)(1)(B)(iii)(IV).

As explained by the Supreme Court, "[a]n alien subject to expedited removal thus has an opportunity at three levels to obtain an asylum hearing, and the applicant will obtain one unless the asylum officer, a supervisor, and an immigration judge all find that the applicant has not asserted a credible fear." *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 110 (2020). Such individual, however, "is not entitled to immediate release" regardless of whether their asylum claim is reviewed fully or in an expedited manner. *Id.* at 111. The Supreme Court has confirmed that this statutory mandate for detention extends for the entirety of proceedings. *Jennings*, 583 U.S. at 302 ("[Section] 1225(b)(1) . . . mandate[s] detention of aliens *throughout the completion of applicable proceedings* and not just until the moment those proceedings begin.") (emphasis added).

B. Mr. Demir's Immigration History.

Mr. Demir is a native and citizen of Türkiye who unlawfully entered the United States on December 1, 2024 near Nogales, Arizona. Exh. A, ¶ 4. CBP determined Mr. Demir was inadmissible to the United States and therefore issued an Expedited Removal order pursuant to Section 1225(b)(1) and then transferred Mr. Demir to ICE's custody in Eloy, Arizona on December 3, 2024. *Id.* On December 10, 2024, ICE transferred Mr. Demir to the Adams

County Detention Center in Natchez, Mississippi. *Id.* On December 17, 2024, ICE referred Petitioner's case to USCIS after Mr. Demir indicated he intended to apply for asylum based upon a fear of return to Türkiye. *Id.* On February 3, 2025, USCIS issued Mr. Demir a negative credible fear finding. *Id.* On February 21, 2025, an Immigration Judge in Jena, Louisiana affirmed USCIS's negative credible fear finding. *Id.* On April 24, 2025, ICE removed Petitioner to Türkiye. *Id.*

C. Procedural History.

Ms. Adak, on behalf of her brother, Mr. Demir, filed this Petition on April 29, 2025 asking this Court to stay ICE's effectuation of Mr. Demir's removal order and asserting that such order was obtained on account of "serious due process violations" and "ineffective assistance of counsel." Doc. No. 1 at 2. Ms. Adak claimed that this Court had jurisdiction over the Petition and that venue was proper in the District of Massachusetts because Ms. Adak resides in Worcester County, Massachusetts and "urgent circumstances prevent Menderes Demir from filing directly." *Id.*

ARGUMENT

This Petition must be dismissed as this Court lacked jurisdiction to review Mr. Demir's detention when the Petition was filed on April 29, 2025 because Petitioner was not in ICE custody in the District of Massachusetts or even in the United States as Petitioner had been released from detention and removed to Türkiye on April 24, 2025.

Even if Petitioner was in custody in the District of Massachusetts when the Petition was filed, this Court still would lack jurisdiction to hear his challenge to the Expedited Removal order issued against him under the Immigration and Nationality act.

A. Petitioner was Lawfully Detained Pursuant to 8 U.S.C. § 1225(b).

Petitioner was an applicant for admission to the United States and ICE was mandated by statute to detain him without access to a bond hearing until his removal from the United States pursuant to his Expedited Removal order. Applicants for admission who are inadmissible to the United States "shall" be ordered removed "without further hearing" unless a claim of fear of persecution is made, in which case he "shall be detained pending a final determination of credible fear;" "if found not to have such a fear, until removed;" and if found to have a credible fear, he "shall be detained for further consideration of the application for asylum." 8 U.S.C. §§ 1225(b)(1)(A)(i), (B)(ii), and (iii)(IV). But, regardless of the level of review of the asylum claim, "the applicant is not entitled to immediate release." *Thuraissigiam*, 591 U.S. at 111.

As explained by the Supreme Court in *Jennings*, these statutory provisions "mandate detention of applicants for admission until proceedings have concluded." 538 U.S. at 297. In declining to find a statutory requirement to conduct bond hearings for such applicants for admission, the Supreme Court explained that "nothing in the statutory text imposes any limit on the length of detention … and neither [statutory provision] says anything whatsoever about bond hearings." *Id. See also Amanullah v. Nelson*, 811 F.2d 1, 9 (1st Cir. 1987) (Explaining that "the detention of the appellants is entirely incident to their attempted entry into the United States and therefore apparent failure to meet the criteria for admission—and so, entirely within the powers conferred by Congress. The petitioners were lawfully detained pursuant to 8 U.S.C. § 1225(b) in the first instance and lawfully held thereafter."). As such, Petitioner's detention was lawful pursuant to the plain language of the statute and Supreme Court and First Circuit precedent.

B. This Court lacks Jurisdiction over the Petition.

This Petition is also subject to dismissal because Petitioner's sister filed the Petition

after Petitioner had been released from in ICE custody.[1] Further, this Petition did not name the proper respondent and was not filed in the district of (prior) confinement, and as such, it should be dismissed on that additional basis. The Supreme Court has explained that when considering "challenges to present physical confinement … the immediate custodian, not a supervisory official who exercises legal control, is the proper respondent." *Rumsfeld v. Padilla*, 542 U.S. 426, 339 (2004). Petitioner's immediate custodian was not named in his Petition despite being held in ICE custody at the Adams County Detention Center in Natchez, MS since December 10, 2024.

The First Circuit and this Court routinely dismiss habeas petitions that are not filed in the district of confinement or that name an improper supervisory respondent. *See Vasquez v. Reno*, 233 F.3d 688, 690 (1st Cir. 2000) (Explaining that "an alien who seeks a writ of habeas corpus contesting the legality of his detention by the [ICE] normally must name as the respondent his immediate custodian, that is, the individual having day-to-day control over the facility in which he is being detained."); *Tham v. Adducci*, 319 F. Supp. 3d 574, 577 (D. Mass. 2018) (Holding that "jurisdiction lies in only one district: the district of confinement."); *Kantengwa v. Brackett*, No. 19-CV-12566-NMG, 2020 WL 93955, at *1 (D. Mass. Jan. 7, 2020) (same). As such, this Court never had jurisdiction over this Petition because Petitioner was never in ICE custody in the District and the Petition named an improper respondent over whom the Court lacked jurisdiction as well.

[1] Petitioner's sister has not responded to the Court's Order to Show cause why the Petition should not be dismissed on account of it being inappropriately filed as a Next of Friend petition. Doc. No. 9. This Court, of course, can dismiss the Petition on the basis set forth in the Court's Order to Show Cause.

Additionally, Petitioner was no longer in ICE custody at the time the Petition was filed and therefore this Court (and any district court) lacked jurisdiction over the challenge to his detention and removal. By statute, an individual must be "in custody" at the time he files a habeas petition for a district court to have jurisdiction over such petition. *See* 28 U.S.C. § 2241(c)(3). As such, this Court was without jurisdiction over the matter when it was filed because Petitioner was not in ICE custody at that time.

Even if he had been in custody at the time the Petition was filed, his removal from the United States thereafter renders his Petition moot. *See Gicharu v. Moniz,* No. CV 23-11672-MJJ, 2023 WL 5833115, at *1 (D. Mass. Sept. 8, 2023), *aff'd*, No. 23-1818, 2024 WL 4493395 (1st Cir. May 8, 2024), *cert. denied,* 145 S. Ct. 988, 220 L. Ed. 2d 364 (2024), *reh'g denied,* 145 S. Ct. 1156, 220 L. Ed. 2d 444 (2025) (Petitioner's "removal to Kenya moots petition for release from ICE custody because the Court can no longer provide the requested relief."); *Njuguna v. Smith*, No. 16-CV-12075-ADB, 2016 WL 6986208, at *1 (D. Mass. Nov. 28, 2016) (Dismissing habeas petition as moot after petitioner's removal from the United States.); *Omondiagbe v. McDonald,* No. CIV.A. 13-11182-MBB, 2014 WL 1413560, at *1 (D. Mass. Apr. 10, 2014) (where petitioner was released from custody and removed from the United States after filing his petition, petition was moot).

C. District Courts Generally Lack Jurisdiction to Review Expedited Removal Orders.

Even if Petitioner was in ICE custody in the District at the time the Petition was filed, this Court still would lack jurisdiction to consider the challenges raised to his Expedited Removal order as the Immigration and Nationality Act prohibits judicial review aside from narrow areas that are not at issue in this proceeding.

Title 8, section 1252(a)(2)(A), titled "Matters not subject to judicial review," provides that, for "[r]eview relating to section 1225(b)(1)"—including any order of expedited removal or credible fear determination issued under section 1225(b)(1)—"[n]otwithstanding any other provision of law ... no court shall have jurisdiction to review ... except as provided in subsection (e) [i.e., section 1252(e)]," "any ... cause or claim arising from or relating to the implementation or operation of an order of removal pursuant to section 1225(b)(1)," "a decision ... to invoke the provisions of such section," or "procedures and policies adopted ... to implement the provisions of section 1225(b)(1)." 8 U.S.C. § 1252(a)(2)(A)(i), (ii), (iv) (emphasis added).

Section 1252(a)(2)(A)(iii) further eliminates jurisdiction—without any exception under subsection (e)—to review "the application of [section 1225(b)(1)] to individual aliens, including the determination made under section 1225(b)(1)(B)." Section 1252(a)(2)(A) thus squarely removes from federal courts any jurisdiction to review issues "relating to section 1225(b)(1)," except as "provided in subsection (e)." *Make the Road New York v. Wolf*, 962 F.3d 612, 626 (D.C. Cir. 2020); *see also Avendano-Ramirez v. Ashcroft*, 365 F.3d 813, 818 (9th Cir. 2004) (Section 1252(a)(2)(A) bars jurisdiction unless § 1252(e) restores it where the underlying claim "ask[s] to nullify the continuing effects of that order").

Section 1252(e) permits two limited types of judicial review related to orders of expedited removal. First, Section 1252(e)(2) provides for jurisdiction in habeas to review expedited removal orders, limited to three discrete issues: (1) whether the petitioner is an alien; (2) whether the petitioner was ordered removed under an expedited removal order; and (3) whether the petitioner can prove that he or she has lawful status in the United States as an asylee, refugee, or permanent resident. It is only these three issues that can be raised in a habeas corpus proceeding, but these three issues are not areas of dispute as it concerns Mr. Demir.

Mr. Demir is an alien, he is not a United States citizen. Mr. Demir is subject to an expedited removal order. And Mr. Demir is not an asylee, refugee, or a permanent resident. Accordingly, the Court's review any other aspect of the expedited removal order is foreclosed by 8 U.S.C. 1252(e)(1) which definitively states that "[w]ithout regard to the nature of the action or claim … no court may enter declaratory, injunctive, or other equitable relief in any action pertaining to an order to exclude an alien in accordance with section 1225(b)(1) of this title except as specifically authorized in [Section 1252(e)(2)."

Courts within this district and around the country recognize the narrow judicial review available in habeas for expedited removal orders and routinely dismiss petitions similar to the one before the Court. *See also Arandi v. Morgan,* No. 19-cv-12351-RGS, 2020 WL 1891949, at * 1 (D. Mass. Apr. 16, 2020) (under 8 U.S.C. § 1252(a)(2)(A) and Section 1252(e), court lacked jurisdiction to review expedited removal order by CBP); *Viana Santos v. McAleenan*, 392 F. Supp. 3d 192, 194 (D. Mass. 2019) (Insofar as petitioners challenge the validity of the expedited removal scheme, their challenge fails because an alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application, for the power to admit or exclude aliens is a sovereign prerogative.); *Khelghatdoost v. Murdock*, No. 3:23-CV-0079-B, 2023 WL 172033, at *2 (N.D. Tex. Jan. 11, 2023) (Finding no jurisdiction over claim from F-1 visa holder who argued his expedited removal was improper because such claim "does not fall within the limited jurisdiction afforded the Court on habeas corpus petitions.") *Banci v. Nielson,* 312 F. Supp. 3d 729, 736 (W.D. Tex. 2018) (court has no jurisdiction to review expedited removal order under 8 U.S.C. § 1252(e)).

Judicial review is barred regarding the merits of the determinations underlying expedited removal orders as well. This is because Section 1252(a)(2)(A) divests a district court of the

power to review "any determination ... arising from or relating to the implementation or operation of an order of removal pursuant to section 1225(b)(1). Section 1252(a)(2)(A) sweeps even wider, also barring judicial review of "any other cause or claim *arising from or relating to* the implementation or operation of an order pursuant to section 1225(b)(1)." (Emphasis added).

For these reasons, judicial review of Mr. Demir's expedited removal order is prohibited and this Court lacked jurisdiction to conduct such review.

CONCLUSION

For the reasons set forth above, the Petition must be denied.

Respectfully submitted,

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Dated: May 13, 2025

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CERTIFICATE OF SERVICE

I, Mark Sauter, Assistant United States Attorney, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants.

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