

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case. No. 25-22428-CIV-ALTONAGA

RAUL ALIAGA QUINTERO,

Petitioner,

v.

**FIELD OFFICE DIRECTOR OF
MIAMI ICE FIELD OFFICE, *et al.*,**

Respondents.

**RESPONDENTS' RESPONSE IN OPPOSITION TO PETITIONER'S AMENDED
PETITION FOR WRIT OF HABEAS CORPUS WITH INCORPORATED
MEMORANDUM OF LAW [ECF No. 4]**

Respondents, by and through the undersigned Assistant United States Attorney, hereby submits this Response in Opposition to Petitioner's Amended Petition for Writ of Habeas Corpus with Incorporated Memorandum of Law [ECF No. 4] pursuant to this Court's Orders [ECF No. 13, 21] and state as follows:

I. INTRODUCTION

The Petitioner, Raul Aliaga Quintero's (hereinafter referred to as "Petitioner") detention by the United States Immigration and Customs Enforcement is fully supported by the Immigration and Nationality Act (INA), its implementing regulations, and the Constitution. Petitioner contends that Respondents (1) lacked authority to arrest and detain Petitioner pursuant to the expedited removal provisions of 8 U.S.C. § 1225 because he has been physically present in the United States for three years and (2) Petitioner is statutorily exempt from expedited removal as a parolee. [ECF No. 4, ¶ 68]. Petitioner further characterizes the commencement of expedited removal proceedings

as a violation of due process and form of *ultra vires*. [ECF No. 4, ¶¶ 76, 84, 91-92]. Petitioner's arguments fail as an Expedited Removal Order was properly entered in this matter and the Court lacks jurisdiction to review such orders except under the limited provisions of 8 U.S.C. § 1252(a)(2)(A), (e)(1), and (e)(2), INA § 242(a)(2)(A), 242(e)(1) and (2). Additionally, parole is a factual determination for which Petitioner sets forth no availing documentation in support thereof. Petitioner's reliance on a (Form I-220A) Release of Recognizance dated April 5, 2022 [ECF No. 4, ¶ 69] falls short of providing evidence of same. Accordingly, Petitioner's due process rights have not been violated and any grant of release from custody would be unwarranted. Petitioner's Amended Petition for Writ of Habeas Corpus should be denied.

II. FACTUAL BACKGROUND

The Petitioner is a native and citizen of Cuba. *See* Exhibit A, Form I-213, Record of Deportable/Inadmissible Alien, dated April 5, 2022. On or about March 30, 2022, Petitioner was encountered by the U.S. Customs and Border Patrol (CBP) at Eagle Pass, Texas at the United States/Mexico border. *See* Ex. A. After admitting he unlawfully entered the United States and did not have valid documents, CBP determined Petitioner was inadmissible. *See* Ex. A.

On April 5, 2022, CBP initiated INA § 240 removal proceedings against Petitioner by the issuance of a Notice to Appear (NTA), dated April 5, 2022, charging him as removable under section 212(a)(6)(A)(i), 8 U.S.C, § 1182(a)(6)(A)(i) of the INA, as an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General. *See* Exhibit B, NTA dated April 5, 2022. On April 5, 2022, CBP served Petitioner with an order of release on recognizance, Form I-220A, and instructed him to report to any future hearing date before the U.S. Executive Office for Immigration Review (EOIR). *See* Ex. A; Exhibit C, Form I-220A, Order of Release on

Recognizance, served April 5, 2022, and Exhibit D, Notice of Custody Determination, served April 5, 2022.

On April 19, 2023, Petitioner, through counsel, filed a motion to terminate removal proceedings before the immigration judge in Miami, FL. *See* Exhibit E, Motion to Terminate, dated April 19, 2025. On April 20, 2025, the immigration judge denied Petitioner's motion to terminate. *See* Exhibit F, Order of the Immigration Judge, dated April 20, 2025. On May 27, 2025, Petitioner attended a master calendar hearing at EOIR's Miami, Florida office. At that hearing, the U.S. Department of Homeland Security (DHS) made an *ore tenus* motion to dismiss the INA § 240 removal proceedings pursuant to 8 C.F.R. § 239.2(7). *See* Exhibit G, Declaration of Supervisory Detention and Deportation Officer Ruiz (Declaration of SDDO Ruiz), ¶ 10. The immigration judge granted DHS's motion on the same date. *See* Exhibit H, Order of the Immigration Judge, dated May 27, 2025. Immediately thereafter, the U.S. Department of Immigration and Customs Enforcement (ICE), Enforcement and Removal operations (ERO) encountered Petitioner and detained him for expedited removal pursuant to INA § 235. *See* Ex. G, Declaration of SDDO Ruiz, ¶ 11.

On May 27, 2025, ERO booked Petitioner at the Krome North Service Processing Center (Krome) and transferred him to the Broward Transitional Center (BTC) on May 28, 2025. *See* Exhibit I, Detention History. On June 2, 2025, due to lack of bed space, Petitioner was transferred to a detention facility in El Paso. *See* Ex. I.

On June 5, 2025, Petitioner filed an appeal of the immigration judge's May 27, 2025, dismissal order with the Board of Immigration Appeals (BIA). *See* Exhibit J, BIA Receipt Notice. On June 9, 2025, ERO issued Petitioner an Expedited Removal Order, Form I-860, pursuant to INA § 235(b)(1). *See* Exhibit K, Notice and Order of Expedited Removal, served June 9, 2025;

Exhibit L, Form I-867A/B, Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act. Currently, Petitioner is detained at the BTC, located in Pompano Beach, Florida. *See* Ex. I, Detention History.

III. ARGUMENT

A. Expedited Removal Orders are Subject to Review only in Extremely Limited Circumstances.

Petitioner challenges detention authority on the basis that his physical presence in the United States for over two years and a release of recognizance by CBP on April 5, 2022, makes any removal pursuant to 8 U.S.C. § 1225 unlawful. [ECF No. 4, ¶ 68]. As a preliminary matter, an alien may be removed from the United States by, *inter alia*, expedited removal under INA § 235(b)(1) or removal proceedings before an immigration judge under INA § 240. *See* INA §§ 235(b)(1), 240. The DHS has discretion to place aliens in expedited removal under INA § 235 or to initiate removal proceedings before an immigration judge under INA § 240. *Matter of E-R-M- & L-R-M-*, 25 I&N Dec. 520, 524 (BIA 2011). Here, the DHS elected to seek dismissal of the removal proceedings and place the Petitioner in expedited removal proceedings pursuant to INA § 235. *See* 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]”); *Matter of W-C-B-*, 24 I&N Dec. 118, 122 (BIA 2007) (affirming the dismissal of proceedings when “removal proceedings [under INA § 240] [a]re not necessary to remove the respondent from the United States”).¹ The regulations do not limit DHS’s authority to choose between expedited removal and removal proceedings to the time of the initial encounter, but rather authorize DHS to initiate expedited removal at any time

¹ While *W-C-B-* involved dismissal for DHS to reinstate the prior order, the underlying principle remains the same.

for an alien who fits within specified criteria. 8 C.F.R. § 235.3(b)(1)(ii).

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)). Petitioner does not contest he is an alien, has been ordered removed, or is a lawful permanent resident or refugee, which are the three limitations under which the court would have jurisdiction.

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

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). The Secretary has designated additional categories of aliens pursuant to § 235(b)(1)(A)(iii). *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 falls within the 2004 designation, which applies to 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. On March 30, 2002, DHS encountered the Petitioner, who has not been admitted or paroled, two miles from the southern border on the same day that he illegally entered the United States. Accordingly, Petitioner cannot show continuous presence in the United States during the fourteen days prior to the encounter. While DHS did not process the Petitioner for expedited removal at that time, it now has done so, and as stated DHS may do so at any time. *See* 8 C.F.R. § 235.3(b)(1)(ii).

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 1225, or 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).

The Supreme Court in *Jennings v. Rodriguez*, 583 U.S. 281 (2018) also reviewed the expedited removal statute in 2018 following arguments by aliens detained under the Immigration and Nationality Act. *Id.* at 290-91. 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.” *Id.* at 287 (quoting 8 U.S.C. § 1225). Petitioner’s arrival in the United States without inspection in March of 2022 near San Luis, Arizona classifies him as an applicant for admission. [ECF No. 4, ¶ 1]. On May 27, 2025, DHS took the Petitioner into custody, and consistent with his status as an applicant for status, DHS is detaining him as an applicant for admission under 235(b)(1)(A)(iii)(I) because he is not a citizen of the United States, is a Cuban National, and sought entry without valid entry documents. *See* 8 U.S.C. § 1182(a)(7)(A)(i)(I).

As an applicant for admission who is inadmissible under § 1182(a)(7), Petitioner is subject to expedited removal under 8 U.S.C. § 1225(b)(1)(A)(i) & (iii) and 8 C.F.R. § 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). Furthermore, section 235(b)(1)(B)(ii) mandates detention (i) for the purpose of ensuring additional review of an asylum claim, and (ii) for so long as that review is ongoing, until removal proceedings conclude, unless DHS exercises its discretion to parole the alien. *Matter of M-S-*, 27 I&N Dec. at 517.

Notably, while an applicant for admission subject to the expedited removal statute is

subject to detention, he may be eligible for parole “for urgent humanitarian reasons or significant public benefit.” 8 U.S.C. § 1182(d)(5). Otherwise, his detention is mandatory, and the alien cannot be released on bond. *Matter of M-S-*, 27 I&N Dec at 517-18. Here, Petitioner contends that he has been paroled “by operation of law” when he was released by U.S. Customs and Border Protection by way of an Order of Release on Recognizance (Form I-220A). “Parole” as used in 8 U.S.C. § 1182(d)(5) is a transitive verb. DHS may in its discretion “parole in the United States,” an applicant for admission “only” for “urgent humanitarian reasons or significant public benefit.” 8 U.S.C. § 1182(d)(5). Like any past event the act of parole is a factual occurrence. *See Hing Sum v. Holder*, 602 F.3d 1092, 1098 (9th Cir. 2010) (citing *Matter of Ayala-Arevalo*, 22 I&N Dec. 398, 401 (BIA 1998)). The Petitioner has provided no record evidence that he ever received a parole document. Rather, Petitioner attempts to categorize his release by an Order of Release on Recognizance as a “parole by operation of law.” [ECF No. 4, ¶ 82].

The Board of Immigration Appeals (“Board”) explicitly and unequivocally rejected the very argument the Petitioner lodges—that his release on own recognizance via Form I-220A represents a parole under INA § 212(d)(5)(A) as a matter of law—in *Matter of Cabrera-Fernandez*. 28 I&N Dec. at 749-50; *see also id.* at 749 & n.2 (rejecting argument that *Jennings v. Rodriguez* compelled a different result). In that case, Cuban nationals such as Petitioner argued that their release pursuant to an order of recognizance was a “parole as a matter of law” such that they could establish eligibility for adjustment under Section 1 of the Cuban Adjustment Act. Pub. L. 89-732. The Petitioner does not even mention, let alone attempt to distinguish, *Matter of Cabrera-Fernandez* in his petition.

Nothing in the recent decision in *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), alters the central conclusion in *Cabrera-Fernandez*. *Q. Li*, which arose in the bond context as a challenge to

the applicable detention authority and not a determination on manner of entry or release, *see* 29 I&N Dec. at 66, in no way modifies, undermines, or overrules *Cabrera-Fernandez*'s holding that an alien such as Petitioner—who was released from DHS custody on own recognizance instead of parole—has not been paroled into the United States pursuant to INA § 212(d)(5)(A). 28 I&N Dec. at 750. The Petitioner does not present any evidence that he was paroled into the United States, merely relying on *Q. Li*. But, by contrast, the alien in *Q. Li* had what this Petitioner does not: a parole under INA § 212(d)(5)(A). 29 I&N Dec. at 67, 70. The Board therefore had no occasion to revisit its holding in *Cabrera-Fernandez*, as evidenced by its complete lack of citation to that decision in *Q. Li*.² This Court should adhere to the holding in *Cabrera-Fernandez* and find that the Petitioner's release on own recognizance was not a parole under INA § 212(d)(5)(A)—and therefore, the Petitioner is appropriately subject to the expedited removal statute.

C. Petitioner's Due Process Rights have not been Violated.

Petitioner claims that his detention or *ultra vires* arrest violates the federal government's own directives and regulations, hence circumventing due process. [ECF No. 4, ¶¶ 84, 98-99]. However, 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. 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.

² Petitioner concludes that *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), holds that Petitioner was undoubtedly subject to mandatory detention, and thus paroled into the United States on April 5, 2022, when he was released from custody by CBP by way of a release on recognizance. [ECF No. 4, ¶ 82]. But that conclusory statement, in addition to contradicting his argument that DHS does not have authority to re-detain him, lacks a foundation. The Board in *Q. Li* determined: "An alien detained under section 235(b) of the INA, 8 U.S.C. § 1225(b), who is released from detention pursuant to a grant of parole under section 212(d)(5)(A) of the INA, 8 U.S.C. § 1182(d)(5)(A) (2018), and whose grant of parole is subsequently terminated, is returned to custody under section 235(b) pending the completion of removal proceedings." That headnote cannot plausibly be read as a holding that an alien detained under section 235(b) and then released from custody "is necessarily" paroled under section 212(d)(5)(A).

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 claimed asylum. *Id.*

Petitioner, like Thuraissigiam, is an applicant for admission who has not been admitted or paroled after inspection by an immigration officer. Both in general, and for the specific purpose of this analysis, Petitioner is not considered to have been admitted into the country. Consistent with Supreme Court precedent, Petitioner is only entitled to due process as set forth in the Immigration and Nationality Act. 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.

Petitioner also cannot establish that his detention violates the Constitution as Petitioner has been detained since May 27, 2025. [ECF No. 4, ¶ 6]. *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 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). Petitioner has not submitted evidence that ICE detained him for any purpose other than resolution of these proceedings.

IV. CONCLUSION

Based upon the foregoing reasons, Petitioner's Amended Petition for Writ of Habeas Corpus should be denied in its entirety.

Dated: June 9, 2025

Respectfully submitted,

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