UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 25-cv-22451-DAMIAN

SERGIO MONTELIER CHAVIANO,

Petitioner,

v.

PAMELA BONDI, U.S. Attorney General, *et al.*,

Respondents.
_____/

RESPONDENTS' RETURN AND RESPONSE TO ORDER TO SHOW CAUSE AND MEMORANDUM OF LAW

Respondents, 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 Amended Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2241 [ECF No. 4] ("Petition").

Correspondingly, the Court should also deny Petitioner's emergency motion for temporary restraining order staying credible fear proceedings [ECF No. 17].

I. INTRODUCTION

The Petitioner, Sergio Danilo Montelier Chaviano (Petitioner) was detained by U.S. Immigration and Customs Enforcement (ICE) in accordance with the Immigration and Nationality Act (INA), its implementing regulations, and the Constitution. Petitioner contends that Respondents (1) lacked authority to arrest and detain him pursuant to the expedited removal provisions of 8 U.S.C. § 1225 because he has been physically present in the United States for more than two years and (2) Petitioner is statutorily exempt from expedited removal as a parolee. Petitioner further characterizes the commencement of expedited removal proceedings as a violation of due process.

Petitioner's arguments fail first and foremost because this Court lacks subject matter jurisdiction to review his claims under the provisions of 8 U.S.C. § 1252(a)(2)(A), (e)(1), and (e)(2), 8 U.S.C. § 1252(a)(2)(A), (e)(1) and (2). Additionally, Petitioner relies on an ICE Form I-220A, Order of Release on Recognizance (Form I-220A) to argue that he was paroled into the United States as a "matter of law" – yet the Board of Immigration Appeals (BIA) has rejected this very argument. Petitioner was not paroled into the United States and was properly placed in expedited removal proceedings. Petitioner's due process rights have not been violated because he was given the process he was due under Congress's existing framework. Any grant of release from custody would be unwarranted. Petitioner's Amended Petition for Writ of Habeas Corpus should be denied.

II. FACTUAL BACKGROUND

Petitioner is a native and citizen of Cuba. *See* Ex. A, Form I-213, Record of Deportable/Inadmissible Alien. On or about February 7, 2022, Petitioner was encountered by the U.S. Customs and Border Protection (CBP) near the United States/Mexico border. After admitting he unlawfully entered without valid travel documents, CBP determined Petitioner was inadmissible. *See* Ex. A.

On February 10, 2022, CBP initiated removal proceedings, pursuant to section 240 of the INA, by issuing a Notice to Appear (NTA), dated February 10, 2022, against Petitioner. *See* Ex. B, NTA, February 10, 2022. The NTA charged Petitioner with being removable under section 212(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 id.*

On April 22, 2022, ICE served Petitioner with an order of release on recognizance, Form

I-220A, and instructed him to report to any future hearing date before the Executive Office for Immigration Review (EOIR). *See* Ex. A; Ex. C, Form I-220A, Order of Release on Recognizance.

On April 14, 2023, Petitioner filed a motion to administratively close removal proceedings before the immigration judge in Miami, Florida, so he could pursue adjustment of status under the Cuban Adjustment Act. *See* Ex. D, Motion for Administrative Closure. On April 17, 2023, the immigration judge denied Petitioner's motion to administratively close his removal proceedings. *See* Ex. E, April Order of the Immigration Judge.

On May 22, 2025, Petitioner attended a master calendar hearing at the EOIR Miami Immigration Court. 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(a)(7). The immigration judge granted DHS's motion on the same date. *See* Ex. F, May Order of the Immigration Judge. Immediately thereafter, ICE, Enforcement and Removal Operations (ERO) encountered Petitioner and detained him pursuant to INA § 235, 8 U.S.C. § 1225(b). *See* Ex. G, Declaration of Supervisory Detention and Deportation Officer Valcourt (Declaration of SDDO Valcourt) ¶ 13. Also on May 22, 2025, ERO issued Petitioner an Expedited Removal Order, Form I-860, pursuant to INA § 235(b)(1), 8 U.S.C. § 1225(b)(1). *See* Ex. H, Notice and Order of Expedited Removal; Ex. I, Form I-867A/B, Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act.

Also on May 22, 2025, ERO detained Petitioner at the Broward Transitional Center (BTC). *See* Ex. J, Detention History; Ex. G, Declaration ¶ 15. On May 30, 2025, ERO referred Petitioner's case to the U.S. Citizenship and Immigration Services (USCIS) for an interview[1]. *See* Exh. G ¶

[1] 8 C.F.R. § 208.30 provides a review process for U.S. Citizenship and Immigration Services (USCIS) to determine whether an alien subject to expedited removal under 8 U.S.C. § 1225(b)(1) has a credible fear of persecution or torture. USCIS has exclusive jurisdiction over making the credible fear determination described in 8 C.F.R. § 208.30(a). If

14. On June 3, 2025, Petitioner was transferred to the El Paso Facility due to limited bed space at BTC. *See* Ex. G ¶ 15. Petitioner was then returned to BTC; booked in on June 6, 2025. *See* Ex. J.

On June 3, 2025, Petitioner filed an appeal of the immigration judge's May 22, 2025, dismissal order with the BIA. *See* Ex. K, BIA Receipt Notice. Petitioner's appeal of the immigration judge's dismissal order remains pending.

To date, Petitioner remains in ICE custody at BTC, located in Pompano Beach, Florida. *See* Ex. J, Detention History; Exh. G, Declaration ¶ 16. A decision from USCIS as it relates to the May 30, 2025, interview remains pending. *See* Ex. G ¶ 14.

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.

III. ARGUMENT

A. Introduction

As a preliminary matter, a foreign national (referred to as an "alien" in U.S. immigration law) who is illegally present in the United States may be removed 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), 8 U.S.C. § 1225(b)(1); INA § 240, 8 U.S.C. § 1229a. 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).

USCIS finds that the alien has not established a credible fear, the case may be referred to an Immigration Judge to review that determination. *Id.* § 208.30(g). Generally, if USCIS determines that the alien has established a credible fear of returning to the country of removal, USCIS may issue an NTA, placing the alien in 8 U.S.C. § 1229a removal proceedings. 8 C.F.R. § 208.30(f).

Here, 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").[2] 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* as long as an alien fits within specified criteria. 8 C.F.R. § 235.3(b)(1)(ii) (emphasis added).

B. The Court Lacks Subject Matter Jurisdiction Because Congress Has Precluded Judicial Review of Expedited Removal Procedures Except in Very Limited Circumstances.

A party filing a complaint in federal court must demonstrate that it possesses Article III standing to raise its claims and that the court has subject matter jurisdiction over those claims. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). The party asserting federal-court jurisdiction has the burden of proving that such jurisdiction exists. *Nuveen Mun. Trust ex rel. Nuveen High Yield Mun. Bond Fund v. WithumSmith Brown, P.C.*, 692 F.3d 283, 293 (3d Cir. 2012). The presumption is that a federal court lacks jurisdiction without affirmative evidence that it exists, and a district court may "weigh the evidence and satisfy itself as to the existence of its power to hear the case." *Id.*

Petitioner challenges his detention on the basis that his physical presence in the United

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

States for over two years and a release on recognizance by the Department of Homeland Security on February 10, 2022, make any removal pursuant to 8 U.S.C. § 1225 unlawful. [Amended Petition, ECF No. 4, ¶¶ 69-78].[3]

The Court lacks subject matter jurisdiction to review Petitioner's claims. Congress has "significantly limited the power of federal courts to review [8 U.S.C.] § 1225(b)(1) expedited-removal orders." *United States v. Herrera-Orozco*, No. C-11-542, 2011 WL 3739160, at *1 (S.D. Tex. Aug. 23, 2011) (citing *Brumme v. INS*, 275 F.3d 443, 447 (5th Cir. 2001)). Through his habeas petition, Petitioner challenges his detention, which arose precisely from the expedited removal process. Based on the plain language of Congress's amendments to the Immigration and Nationality Act ("INA") in 1996, federal courts lack subject matter jurisdiction to hear any claims "arising from" or "relating to" the expedited removal process established by Congress under 8 U.S.C. § 1225(b)(1). *See* 8 U.S.C. § 1252(a)(2)(A)(i). Because Petitioner's detention was a necessary part of the expedited removal process, it "arises from" and is "related to" that process, such that Congress's plain language in 8 U.S.C. § 1252(a)(2)(A)(i) precludes federal court review of Petitioner's habeas claim.

Section 1252(a)(2)(A)(i) and (iii) state in pertinent part: "[n]otwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to review . . . any individual determination or to entertain any other cause or claim arising from or relating to the implementation or operation of an order of removal pursuant to section 1225(b)(1) [i.e., an order of expedited removal]," or "the application of [§ 1225(b)(1)] to individual aliens,

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[3] The Petition [ECF No. 4], at paragraph 69, states that Petitioner was released from DHS custody on April 5, 2022, but this appears to be a typo. [*See* ECF No. 4 ¶ 69].

including the [credible-fear] determination made under section 1225(b)(1)(B)," except as provided in section 1252(e). 8 U.S.C. § 1252(a)(2)(A)(i), (iii).[4]

Congress established the expedited removal system through the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), which amended the INA, in order to aggressively expedite removal of aliens lacking a legal basis to remain in the United States. *Kucana v. Holder*, 558 U.S. 233, 249 (2010). The expedited removal system was adopted in large part to address the growing number of smuggled aliens who arrived in the United States with no entry documents, declared asylum immediately upon arrival, and then overcrowded immigration court dockets and detention centers, in some cases only to be released into the general population. H.R. Rep. No. 104-469, at 107, 117-18 (Conf. Rep.) (1996). Under the expedited removal system, in accordance with 8 U.S.C. § 1225(b)(1) and 8 U.S.C. § 1252(a)(2)(A)(i), aliens like Petitioner who illegally cross the border without valid entry documents or a visa may be placed in expedited removal proceedings, and DHS's decisions in implementing and executing the expedited removal proceedings are, with the limited exceptions noted below, not subject to judicial review.

Petitioner's detention "arises from" and "relates to" the operation and implementation of his expedited removal order, because but for his final order of expedited removal, he would not be subject to mandatory detention under section 1225(b)(1)(B)(iii)(IV). Indeed, as a district court has explained, Petitioner's detention is a "secondary, temporary, and constitutionally permissible aspect of the expedited removal process" itself. *Castro v. Department of Homeland Security*, 163

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[4] Subsection 1252(e) permits habeas review of expedited removal determinations in only three limited areas: "(A) whether the petitioner is an alien, (B) whether the petitioner was ordered removed under such section, and (C) whether the petitioner can prove by a preponderance of the evidence that the petitioner is an alien lawfully admitted for permanent residence" or has been admitted as a refugee or been granted asylum. Subsection 1252(e) also contemplates generalized challenges to the legality or constitutionality of section 1225(b), or regulations implementing section 1225(b). 8 U.S.C. § 1252(e)(3)(A)-(B). As discussed further below, none of these enumerated exceptions allowing judicial review are present in this case.

F. Supp. 3d 157, 173 (E.D. Pa. 2016), *aff'd*, 835 F.3d 422 (3d Cir. 2016); *see also*, *Carlson v. Landon*, 342 U.S. 524, 538 (1952) (explaining that "[d]etention is necessarily part of [the] deportation procedure" because otherwise aliens arrested for deportation could hurt the United States while awaiting deportation proceedings); *Wong Wing v. United States*, 163 U.S. 228, 235 (1896) (explaining that "[p]roceedings to exclude or expel would be vain if those accused could not be held in custody pending the inquiry into their true character, and while arrangements were being made for their deportation"). Since Petitioner's detention is necessarily related to the operation and implementation of his expedited removal order, the propriety of his continued detention cannot be reviewed by this Court based on subsection 1252(a)(2)(A)(i).

Such limitations on judicial review fall within Congress's plenary power over the admission of aliens. *See Kleindienst v. Mandel*, 408 U.S. 753, 766 (1972) (quoting *Boutilier v. INS*, 387 U.S. 118, 123 (1967)). For inadmissible aliens who unlawfully enter the United States, "'[w]hatever the procedure authorized by Congress is, it is due process.'" *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) (internal citations omitted). Thus, where Congress has indicated its intent to preclude judicial review of a determination made by one of the political branches with respect to an alien deemed inadmissible just after crossing the border, this Court lacks subject matter jurisdiction. The Petitioner's detention falls within Congress's stated limitations on judicial review, and the Petitioner has not met his burden of establishing subject matter jurisdiction.

C. Petitioner's Claims Do Not Fall Under Any of the Limited Exceptions Permitting Judicial Review of Expedited Removal Proceedings Under Section 1252(e)

Section 1252(e)(1) provides that "no court may . . . enter declaratory, injunctive, or other equitable relief" pertaining to an order of expedited removal except as "specifically authorized in

a subsequent paragraph of this subsection." Section 1252(e)(2), in turn, is the subsequent paragraph within subsection (e) that supplies the sole means of review of an order of expedited removal, stating in its entirety:

> (2) Habeas corpus proceedings
>
> Judicial review of any determination made under section 1225(b)(1) of this title is available *in habeas corpus proceedings*, but shall be limited to determinations of--
>
> (A) whether the petitioner is an alien,
>
> (B) whether the petitioner was ordered removed under such section, and
>
> (C) whether the petitioner can prove by a preponderance of the evidence that the petitioner is an alien lawfully admitted for permanent residence, has been admitted as a refugee under section 1157 of this title, or has been granted asylum under section 1158 of this title, such status not having been terminated, and is entitled to such further inquiry as prescribed by the Attorney General pursuant to section 1225(b)(1)(C) of this title.

8 U.S.C. § 1252(e)(2) (emphasis added). As specified in section 1252(e)(5), "[t]here shall be no review of whether the alien is actually inadmissible or entitled to any relief from removal." And section 1252(e)(4) provides that, in the event that section 1252(e)(2) is satisfied, the sole available relief is that the alien "be provided a hearing in accordance with section 1229a of this title" (i.e., a removal proceeding to decide "the inadmissibility or deportability of the alien"). *See also* 8 U.S.C. § 1229a(a)(1).

Here, Petitioner does not fall under any of the three categories in section 1252(e)(2) that would provide for jurisdiction in federal court. It is undisputed that Petitioner is a foreign national (Petitioner is not claiming he was erroneously deemed to be a foreign national). Petitioner also does not raise a question as to whether he was ordered removed under the expedited removal statute. Nor does Petitioner claim that he can prove by a preponderance of the evidence any of the conditions in subsection (e)(2)(C).

Instead, Petitioner argues that he is not subject to expedited removal more than two years after his entry. *See* Amended Petition, ECF No. 4 ¶¶ 69-78. He also argues that he is exempt from expedited removal because he has been paroled as "a matter of law." ECF No. 4 ¶¶ 79-86. He argues he is entitled to habeas review under the Suspension Clause. ECF No. 4 ¶¶ 87-90. And he claims his credible fear interview and proceedings are unlawful because they arose from the allegedly unlawful expedited removal. *See* Emergency Motion, ECF No. 17 at 1-3. But the plain language of 8 U.S.C. § 1252 strips district courts of jurisdiction to review collateral attacks on expedited removal orders, including challenges to the application of the statutory procedures in a particular case. *See* 8 U.S.C. § 1252(a)(2)(A), (e). For instance, "courts may not review 'the determination' that an alien lacks a credible fear of persecution" in connection with expedited removal. *Thuraissigiam v. U.S. Dep't of Homeland Sec.*, 591 U.S. 103 at 112, 140 S. Ct. 1959 (2020) (citing 8 U.S.C. § 1252(a)(2)(A)(iii)). Thus, the Court lacks jurisdiction to review Petitioner's habeas claim as well as Petitioner's motion seeking a stay of credible fear proceedings, as those proceedings are a necessary consequence of Petitioner's assertion of fear during the expedited removal proceedings.

It is worth noting that 8 U.S.C. § 1252(e)(3) allows for what are called "systemic" challenges to regulations or written policies implementing the expedited removal system; however, such suits must be filed exclusively in the District Court for the District of Columbia within 60 days of the date the challenged regulation or policy is first implemented. *See* 8 U.S.C. § 1252(e)(3)(A), (B). Should Petitioner choose to file such a claim, this Court would not be the proper forum.

Consistent with the provisions of 8 U.S.C. § 1252, courts in this district have agreed that no jurisdiction exists in district court for challenges, like Petitioner's, to an order of expedited

removal. *See, e.g., Torrez v. Swacina*, 2020 U.S. Dist. LEXIS 68977, at *6-10; 2020 WL 13551822, No. 20-20650-CV-Altonaga/Goodman (S.D. Fla. Apr. 17, 2020) (dismissing habeas petition and finding the court lacked jurisdiction to hear the petitioner's challenge related to expedited removal); *Del Cid v. Barr*, 394 F.Supp.3d (S.D. Fla. 2019) (finding jurisdiction-stripping provisions of INA foreclose review of expedited removal order, provision did not violate Suspension Clause, and alien not entitled to emergency stay of removal).

Congress has made clear in 8 U.S.C. § 1252 that it created no avenue for judicial review of a challenge to the expedited removal process—including the conduct of the credible fear interview and determination—and Petitioner's claims do not fall within the limited categories of 8 U.S.C. § 1252(e) for which judicial review is available.

D. 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, which include "alien[s] present in the United States who ha[ve] not been admitted or who arrive[] in the United States (whether or not at a designated port of arrival . . .)," 8 U.S.C. § 1225(a)(1), can be subject to expedited removal under 8 U.S.C. § 1225(b)(1). Under this process, applicants for admission arriving in the United States, or as designated by the Secretary of Homeland Security pursuant to 8 U.S.C. § 1225(b)(1)(iii), and who 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 February 7, 2022, DHS encountered the Petitioner, who has not been admitted or paroled, within 100 miles from the southern border when 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 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* 8 U.S.C. § 1225(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." 8 U.S.C. § 1225(b)(1)(A)(i). If the alien does so indicate, however, the officer "shall refer the alien for an interview by an asylum officer." 8 U.S.C. § 1225(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." 8 U.S.C. § 1225(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." 8 U.S.C. § 1225(b)(1)(B)(ii). By regulation, that "further consideration" takes the form of 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." 8 U.S.C. § 1225(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." 8 U.S.C. § 1225(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) (emphasis added). Petitioner's arrival in the United States without inspection in February of 2022 near the southern border classifies him as an applicant for admission. On May 22, 2025, DHS took the Petitioner into custody, and consistent with his status as an applicant for admission, DHS is detaining him as an applicant for admission under 235(b)(1)(A)(iii)(l) 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.

E. Petitioner's Release Under an Order of Recognizance Does Not Constitute Parole, and He Could Not Be Paroled "As a Matter of Law"

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 under 8 U.S.C. § 1226(a). *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 on his own recognizance by ICE ERO by way of 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 "as a matter of law." [ECF No. 4 at 8-9].

The BIA explicitly and unequivocally rejected the very argument the Petitioner lodges—that his release on own recognizance via Form I-220A represents a parole under 8 U.S.C. § 1182(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* compelled a different result). In *Cabrera-Fernandez*, 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 his own recognizance instead of parole—has not been paroled into the United States pursuant to 8 U.S.C. § 1182(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 8 U.S.C. § 1182(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*.[5] 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 8 U.S.C § 1182(d)(5)(A)—and the Petitioner is appropriately subject to the expedited removal statute.

F. 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. 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

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5 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 ICE 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).

release only through DHS'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*, 591 U.S. 103, 140 S. Ct. 1959 (2020). The petitioner in *Thuraissigiam* entered the United States without inspection, 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 only since May 22, 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 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 [ECF No. 4] should be denied in its entirety. Correspondingly, Petitioner's motion to stay the credible fear proceedings [ECF No. 17] should also be denied.

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Respectfully submitted,

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