IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

VALENTINA GALVIS CORTES, and N-A- (a minor), **Petitioners,** **v.** **Sam Olson, IMMIGRATION CUSTOMS ENFORCEMENT AND REMOVAL OPERATIONS CHICAGO FIELD OFFICE DIRECTOR; Sandra Salazar, IMMIGRATION CUSTOMS ENFORCEMENT AND REMOVAL OPERATIONS CHICAGO FIELD OFFICE DIRECTOR; Marcos Charles, ACTING EXECUTIVE ASSOCIATE DIRECTOR, ENFORCEMENT AND REMOVAL OPERATIONS; Todd M. Lyons, ACTING DIRECTOR, IMMIGRATION CUSTOMS ENFORCEMENT, Madison Sheahan, DEPUTY DIRECTOR, IMMIGRATION CUSTOMS ENFORCEMENT; Kristi Noem, SECRETARY OF THE DEPARTMENT OF HOMELAND SECURITY; Pam Bondi, ATTORNEY GENERAL OF THE UNITED STATES; Donald J. Trump, PRESIDENT OF THE UNITED STATES** **Respondents.**	**Case No. 1:25-cv-06293** **Honorable Matthew F. Kennelly** **Civil Action**

MEMORANDUM IN SUPPORT OF PETITIONER'S EMERGENCY MOTION FOR RELIEF FROM UNLAWFUL EXPEDITED REMOVAL

INTRODUCTION

This case is before the Court on a petition for habeas corpus after Petitioner's unlawful arrest and detention (purportedly) pursuant to 8 U.S.C. § 1225(b)(1) at the Chicago Immigration Court on June 5, 2025. Petitioner submits this memorandum in support of her request for relief

under 28 U.S.C. § 2241. Petitioner asks this Court to declare that the Department of Homeland Security (DHS) 's attempt to remove her through expedited removal proceedings under 8 U.S.C. § 1225(b) is unlawful given that she was previously placed in standard removal proceedings under 8 U.S.C. § 1229a, because the Immigration Judge's order dismissing her standard removal proceedings is not administratively final, and because she has timely appealed that order dismissing her standard removal proceedings to the Board of Immigration Appeals (BIA). Federal courts retain jurisdiction to review whether DHS has lawfully designated a noncitizen for expedited removal and to prevent the unlawful circumvention of statutory removal procedures.

BACKGROUND

A. Factual Background

Petitioner Valentina Galvis Cortes (Petitioner) is a Colombian national who fled her country after suffering violent persecution at the hands of the Águilas Negras. This paramilitary successor group has long operated with near-total impunity in Colombia. The group is widely known for targeting individuals who speak out against their control or participate in political and social resistance movements.

Petitioner's spouse, Cesar Camilo Arias Ariza (Petitioner's Spouse), was a truck driver in Colombia whose work exposed him to firsthand experiences of extortion, abuse, and repression, ultimately motivating him to become politically active. In 2021, Petitioner's Spouse joined the nationwide anti-government protests that erupted across Colombia in response to inequality, government corruption, and police violence. Petitioner's Spouse's involvement in these protests led to him being identified and targeted by the Águilas Negras. The group issued direct threats against him and warned Petitioner to stay away from him.

The threats culminated in a brutal attack in which Petitioner's Spouse was severely beaten and nearly killed, while Petitioner was sexually assaulted during the same incident. This traumatic experience underscored the immediacy and severity of the danger she faced in Colombia. Despite the gravity of the attack, they did not report it to the authorities because it was well known that the government authorities would not provide assistance and were infiltrated by the group. Therefore, reporting the incident would only result in greater danger for Petitioner, her spouse, and their family, consistent with the Colombian state's well-documented inability or unwillingness to prosecute the Águilas Negras and similar groups.

Fearing for her life and with no viable internal protection or relocation options, Petitioner and Petitioner's Spouse fled Colombia together. They entered the United States near San Luis, Arizona, on February 2, 2022. U.S. immigration authorities processed her and placed her in standard removal proceedings under 8 U.S.C. § 1229a. These proceedings afford her essential procedural protections, including notice, the right to counsel, the right to seek asylum, and the right to a full hearing before an immigration judge. Petitioner timely filed an application for asylum based on the persecution she suffered, and the continuing threats posed by the Águilas Negras. As Petitioner waited for her case to be processed, she gave birth to her child, N-A-, on [redacted] 2024, who is a United States citizen.

Petitioner's initial Master Calendar Hearing was held on June 5, 2025, before the Chicago Immigration Court. Despite her diligence and compliance with all immigration procedures, at the hearing, DHS unexpectedly moved to dismiss the proceedings orally under 8 C.F.R. § 1239.2(c) so that she could be placed into expedited removal proceedings under 8 U.S.C. § 1225(b). DHS did not make this motion in advance, present any written arguments, or provide Petitioner an advance opportunity to respond. Despite the Petitioner's opposition, without hearing any testimony

or argument, the Immigration Judge granted the motion without prejudice, thereby preserving her eligibility to pursue protection. Importantly, no final removal order was entered, and Petitioner reserved her right to appeal the dismissal to the BIA.

Immediately after the Immigration Judge dismissed the standard proceedings, DHS—on information and belief—issued an expedited removal order and took Petitioner and her United States citizen child into custody, purportedly under the detention authority outlined in 8 U.S.C. § 1225(b)(2)(A). The emergency petition for habeas corpus relief followed.

Petitioner and her child were detained for five days and then partially released with an electronic monitoring device, which she continues to wear. Petitioner has fully complied with all conditions of release and has a timely appeal pending with the BIA, which remains pending as of today.

Despite the appeal and the absence of any final order of removal, DHS continues to assert that she is subject to expedited removal under 8 U.S.C. § 1225(b) as if she were a newly encountered applicant without prior proceedings. This classification is both factually and legally flawed and deprives Petitioner of the statutory and constitutional protections to which she is entitled.

B. Overview of Relevant Removal and Detention Provisions

Petitioner has been removed from the standard removal process under 8 U.S.C. § 1229a and placed into expedited removal under 8 U.S.C. § 1225(b) after being allowed entry into the United States, establishing eligibility for standard proceedings, and filing for asylum. Respondents claim that Petitioner is detained under 8 U.S.C. § 1225 and not under 8 U.S.C. § 1226, which is the standard detention authority. Because this case turns on an interpretation of these provisions, a brief overview of their operation is appropriate.

Expedited Removal Proceedings (8 U.S.C. § 1225(b)): In 1996, Congress established expedited removal to "substantially shorten and speed up the removal process" for certain noncitizens arriving without immigration documents. *Make the Rd. N.Y. v. Wolf*, 962 F.3d 612, 618 (D.C. Cir. 2020); *see* 8 U.S.C. § 1225(b)(1). Expedited removal may be applied to certain noncitizens who arrive at the United States border and enter without inspection or those who lack valid travel documents. 8 U.S.C. § 1225(b)(1)(A)(i). Absent further proceedings to assess any fear claims, noncitizens subjected to expedited removal are ordered removed by an immigration officer "without further hearing or review." *Id.*

The applicability of expedited removal is subject to important caveats. A noncitizen is amenable to expedited removal if she "has not been admitted or paroled into the United States, and [she] has not affirmatively shown, to the satisfaction of an immigration officer, that [she] has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility under this subparagraph." 8 U.S.C. § 1225(b)(1)(A)(iii)(II). In other words, noncitizens who are allowed entry into the United States and have been present in the United States for more than two years prior to a "determination of inadmissibility" cannot be subjected to expedited removal.

Nevertheless, a person subject to expedited removal may, however, still apply for asylum, withholding of removal, and relief under the Convention Against Torture. That is because Congress's interest in "efficient removal" was balanced against "a second, equally important goal: ensuring that individuals with valid asylum claims are not returned to countries where they could face persecution." *Grace v. Barr*, 965 F.3d 883, 902 (D.C. Cir. 2020).

A person seeking asylum via the expedited removal process must first express a fear of persecution or torture, or an intention to apply for asylum. That person is then entitled to a "credible

fear" screening interview (CFI). 8 U.S.C. § 1225(b)(1)(B). Because the CFI is only a threshold screening device, a noncitizen "need not show that he or she *is in fact eligible* for asylum." *Grace*, 965 F.3d at 888 (internal quotation marks omitted, emphasis in original). Instead, they need only show a "credible fear," defined by the statute as a "significant possibility" that the individual "could establish eligibility for asylum" in removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(B)(v); 8 C.F.R. §§ 208.30 (e)(2)-(3).

If the officer finds credible fear, the individual is removed from the expedited removal process for processing in standard removal proceedings, as discussed below. 8 U.S.C. § 1225(b)(1)(B)(v). If the officer finds no credible fear, the noncitizen is entitled only to review before an immigration judge, who will assess whether the applicant has a credible fear of persecution. 8 C.F.R. § 1208.30. If the judge finds a credible fear, the noncitizen is placed in full removal proceedings. *Id.* If, however, the judge affirms the asylum officer's adverse finding, the applicant is subject to removal "without further hearing or review." 8 U.S.C. §§ 1225(b)(1)(B)(i), (iii); *see* 8 U.S.C. §§ 1252(a)(2)(A), (e). The CFI generally occurs quickly, following detention. And while a person is entitled to a "consultation period" before a CFI, that process does not convey a right to counsel, and it "shall not unreasonably delay the process." *Id.* § 1225(b)(1(B)(iv); *see Las Americas Immigrant Advocacy Center v. Wolf,* 507 F. Supp. 3d 1. 14 (D.D.C. 2020).

Standard Removal Proceedings (8 U.S.C. § 1229a): The alternative to the expedited removal process, which is the normal process for most noncitizens in the United States, occurs under 8 U.S.C. § 1229a. The Immigration and Nationality Act (INA) provides that unless otherwise specified, these proceedings are "the sole and exclusive procedure for determining whether [a noncitizen] may be admitted to the United States or, if the [noncitizen] has been so admitted, removed from the United States." *Id.* § 1229a(a)(3).

In these standard removal proceedings, noncitizens have the right to counsel, to present evidence, to cross-examine witnesses, and to appeal, if necessary, to the BIA and a federal court of appeals. 8 U.S.C. §§ 1229, 1229a, 1252(a), (b); 8 C.F.R. §§ 1003.12-1003.47. They also have substantially more time to gather evidence, consult with counsel, develop arguments, and otherwise prepare. A noncitizen in standard removal proceedings may submit a "defensive" asylum application to the immigration judge as a form of relief from removal. 8 C.F.R. § 208.2(b), and the applicant can likewise seek other forms of relief from removal.

Detention Authority (8 U.S.C. §§ 1226(a) and 1225(b)): The INA contains multiple different sources for detention authority, as relevant here are 8 U.S.C. § 1226(a) and 8 U.S.C. § 1225(b)(1)(B)(ii), (iii)(IV). Section 1226(a) provides that a noncitizen "may be arrested and detained pending a decision on whether the [noncitizen] is to be removed from the United States" unless the person is subject to mandatory detention as described later in that section. Individuals detained under this authority can be released on bond, and some courts have held that the government bears the burden of proving that a person in such a situation poses a flight risk and is a danger to the community. *See Hulke v. Schmidt,* 572 F. Supp. 3d 593, 602-03 (E.D. Wisc. 2021) (holding that habeas petitioner was "entitled to a bond redetermination hearing at which the Government must prove by clear and convincing evidence that [Petitioner] poses a danger to the community or (2) prove by a preponderance of the evidence that [she] poses a flight risk").

Detention under the expedited removal scheme is much more restrictive. That statute provides that a person shall be detained for the duration of the credible fear process and for subsequent removal proceedings for a person who is found to have a credible fear of persecution. 8 U.S.C. § 1225(b)(1)(B)(ii), (iii)(IV). As mentioned above, the "only" exception to this is that DHS may grant parole to allow someone in this context to be released.

LEGAL STANDARD AND JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 2241 to review whether DHS is lawfully detaining or attempting to remove a noncitizen, especially where fundamental statutory or constitutional protections are at stake. The Supreme Court has repeatedly confirmed that habeas corpus remains available to test the legality of executive detention and removal. In *INS v. St. Cyr*, 533 U.S. 289, 314 (2001), the Court held that noncitizens may seek habeas review of purely legal and constitutional claims when no other adequate remedy exists. While 8 U.S.C. § 1252(e)(2) restricts certain individual challenges to final expedited removal orders, it does not eliminate this Court's jurisdiction to decide whether DHS has lawfully invoked expedited removal at all.

ARGUMENT

For this Court to adjudicate Petitioner's habeas petition, the starting point is to identify the source of detention authority that Respondent relies upon. As mentioned above, there are two possible options here: 8 U.S.C. § 1226(a) and 8 U.S.C. § 1225(b). Respondents contend that Petitioner is detained under 8 U.S.C. § 1225(b), which relates to the detention of applicants for admission to the United States who are subject to expedited removal, but there are several problems with that position.

First, Petitioner is not subject to expedited removal because she is not an applicant for admission. When DHS allowed her to enter the United States and issued her a Form I-862, Notice to Appear (NTA), they were choosing to place her in standard removal proceedings under § 1229a. When DHS placed her in the standard removal proceedings, they triggered her statutory and constitutional rights to notice, counsel, and a hearing. 8 U.S.C. § 1229a(b)(4).

Respondents' argument that Petitioner is subject to expedited removal fails for a second reason. That is because she remains in full removal proceedings under 8 U.S.C. § 1229a.

Longstanding BIA precedent and DHS's own arguments illustrate that Respondents are "not required to process [noncitizens] described in section 235(b)(1)(A)(i) of the Act in section 235(b) expedited removal proceedings and that it has the discretion to place these [noncitizens] directly into section 240 removal proceedings." *Matter of E-R-M- & L-R-M-*, 25 I. & N. Dec. 520 (BIA 2011). And once a person is placed into standard removal proceedings, the BIA has made clear in *Matter of G-N-C-*, 22 I. & N. Dec. 281 (BIA 1998), that an Immigration Judge has jurisdiction to determine whether proceedings have been properly initiated and whether a case has been lawfully dismissed. Here, those proceedings are not yet administratively final because Petitioner opposed the dismissal and preserved her right to appeal. 8 U.S.C. 1101(a)(47)(B); 8 C.F.R. § 1003.39 ("[T]he decision of the Immigration Judge becomes final upon waiver of appeal or upon expiration of the time to appeal if no appeal is taken, whichever occurs first."). Accordingly, DHS has chosen to place Petitioner in proceedings under Section § 1229a, and it cannot later bypass that choice and reclassify the individual as subject to expedited removal absent a proper dismissal and recharging process.

Third, Respondents' use of expedited removal in a case like this also presents serious due process violations. The logical extension of Respondents' apparent position is that *any* noncitizen DHS has *ever* encountered on the border without a visa (or some other entry document) can *always* be placed into expedited removal. Thus, someone like Petitioner could have completed a hearing on the merits before an Immigration Judge, appealed to the BIA, and won remand, only to have their case dismissed for placement in expedited removal, even after years of legal process and a successful remand. This scenario illustrates why a person like the Petitioner cannot be processed in the same manner as a true applicant for admission at the threshold of entry into the United States. For the latter category, the Supreme Court has held that noncitizens "seeking *initial* admission to

the United States" have limited access to constitutional protections. *Landon v. Plasencia*, 459 U.S. 21, 32 (1982) (emphasis added). That conclusion is extended beyond its breaking point, though, in a situation like this one, where the individual has been permitted entry into the United States, afforded a legal process to seek asylum, and is in the middle of complying with that process.

Because Petitioner is not subject to expedited removal, she cannot be detained under 8 U.S.C. § 1225. Instead, her detention would need to comply with the requirements of 8 U.S.C. § 1226(a). And under that provision, Petitioner should—at minimum—be eligible for a bond hearing where the government bears the burden of proving that she is a flight risk or a danger to the community. *See Hulke*, 572 F. Supp. 3d at 602-03. Respondents have not attempted to meet that burden. Still, they could not do so in this case, given that Petitioner has voluntarily complied with all legal requirements of the immigration process, was prepared to proceed with the merits of her asylum application, and has no criminal record in the United States.

CONCLUSION

Petitioner was lawfully placed into standard removal proceedings under 8 U.S.C. § 1229a and never received a final order of removal. DHS cannot lawfully reclassify her as an individual newly subject to expedited removal under 8 U.S.C. § 1225(b). This Court has jurisdiction under 28 U.S.C. § 2241 to review whether DHS's actions comply with statutory and constitutional requirements. Petitioner respectfully requests that this Court declare that expedited removal does not lawfully apply to her and order DHS to reinstate her prior removal proceedings so she may pursue her protection claims fully and fairly under the law.

Respectfully Submitted,

Attorney for Petitioners
/s/William Gaston McLean
William Gaston McLean
Law Office of William G. McLean III, P.C.
4225 Gage Ave.
Lyons, IL 60534
Ph.: (312) 714-5603
F: (312) 268-7427
Email: mcleanlaw.chicago@gmail.com