UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

VALENTINA GALVIS CORTES, *et al.*,	)	
	)	
Petitioners,	)	
	)	
v.	)	No. 25 C 6293
	)	
SAM OLSON, in his official capacity as Chicago Field Office Director for U.S. Immigration and Customs Enforcement, *et al.*,	)	Judge Kennelly
	)	
Respondents.	)	

RESPONDENTS' MEMORANDUM IN OPPOSITION TO AMENDED PETITION FOR A WRIT OF HABEAS CORPUS

This case involves two petitioners: Valentina Galvis Cortes, a Colombian national, along with her U.S. citizen child, N-A-. *See* Dkt. 24 ("Am. Pet.") at ¶¶ 12–13. The former wishes for this court to, *inter alia*, declare that her past placement in expedited removal proceedings is unconstitutional and unlawful, and "to release [her] from electronic monitoring under the expedited removal statute." *See id.* at 11 (Prayer for Relief). Cortes also wishes for this court to "declar[e] that [she] is conclusively in normal removal proceedings." *Id.* But this case is now moot. Start with the latter petitioner: N-A-. He is not in any sort of government custody at all. And the amended petition never even claims as much. *See id.* at ¶ 13 (using the past tense). This is critical because "standing is not dispensed in gross," and simply lumping N-A- in with his mother's ongoing electronic monitoring is insufficient to claim that he is now in custody. *TransUnion v. Ramirez*, 594 U.S. 413, 431 (2021). This is because each plaintiff "'must demonstrate standing for each claim that they press' against each defendant, 'and for each form of relief that they seek.'" *Murthy v. Missouri*, 603 U.S. 43, 61 (2024) (quoting *TransUnion*, 594 U.S.

at 431).

Similarly, the relief requested by Cortes is moot since she is no longer in expedited removal proceedings—as she has since been placed into removal proceedings before an immigration judge ("IJ") under 8 U.S.C. § 1229a. Respondents' Exhibit 1. In other words, Cortes is no longer in expedited removal proceedings and even though she is still subject to electronic monitoring during the course of those proceedings, *see* Am. Pet. ¶ 2, that is entirely lawful under the Immigration and Nationality Act ("INA"), *see* 8 U.S.C. § 1226(a) (discussing how "an alien *may* be arrested and detained pending a decision on whether the alien is to be removed from the United States" (emphasis added)). Cortes completely ignores this discretion, as well as 8 U.S.C. § 1252(a)(2)(B)(ii), which bars claims alleging either inadequate process, *see Lukac v. Mayorkas*, No. 22 C 7156, 2023 WL 3918967, at *4–5 (N.D. Ill. June 9, 2023), or constitutional infirmities, *see Nobles v. Noem*, 24 C 9473, 2025 WL 860364, at *5–6 (N.D. Ill. Mar. 19, 2025). Similarly, 8 U.S.C. § 1252(g) precludes challenges to the government's determination to commence removal proceedings against a foreign national (including how).

Finally, Cortes's due process arguments, Am. Pet. ¶¶ 52–62, are wrong because she never effected a lawful entry, *see Kaplan v. Tod*, 267 U.S. 228, 230 (1925) (holding that, despite nine years of physical presence on parole, a foreign national "was still in theory of law at the boundary line and had gained no foothold in the United States"). Without any lawful entry, she has no more due process rights than what Congress chooses to provide her. *DHS v. Thuraissigiam*, 591 U.S. 103, 114, 139–40 (2020); *Landon v. Plasencia*, 459 U.S. 21, 32 (1982) ("This Court has long held that 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"); *cf. also Licea-Gomez v. Pilliod*, 193 F. Supp. 577, 580 (N.D. Ill. 1960)

("Nor does the fact that the excluded alien is paroled into the country . . . change [a foreign national's] status or enlarge his rights. He is still subject to the statutes governing exclusion and has no greater claim to due process than if he was held at the border."). Indeed, Congress was clear in the expedited-removal statute that foreign nationals who have not effected a lawful entry, and have been here for a limited period of time, may still be subjected to expedited removal and "*shall* be detained" until DHS makes a final determination of their admissibility. 8 U.S.C. § 1225(b)(1)(B)(iii)(IV) (emphasis added). That language means what it says and bars habeas relief here.

Background

I. Statutory and Regulatory History

A. Expedited Removal

In 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"), replacing much of the INA with a new and "comprehensive scheme for determining the classification of . . . aliens," *Camins v. Gonzales*, 500 F.3d 872, 879 (9th Cir. 2007), including expedited removal. Prior to IIRIRA, federal law "'established two types of proceedings in which aliens can be denied the hospitality of the United States: deportation hearings and exclusion hearings.'" *Vartelas v. Holder*, 566 U.S. 257, 261 (2012) (quoting *Plasencia*, 459 U.S. at 25). Under this setup, "non-citizens who had entered without inspection could take advantage of the greater procedural and substantive rights afforded in deportation proceedings, while non-citizens who presented themselves at a port of entry for inspection were subjected to more summary exclusion proceedings." *Hing Sum v. Holder*, 602 F.3d 1092, 1100 (9th Cir. 2010). Congress passed "IIRIRA [to] address[] this anomaly by," eliminating the concept of "entry" and exclusion and deportation proceedings, while creating instead a uniform "removal" procedure. *Id.*; *see also Vartelas*, 566 U.S. at 261–62. Removability now turns on whether a foreign national is

admissible or has been "admitted" at a port of entry. Foreign nationals arriving in the United States or present in the United States without having been admitted are now "applicants for admission," *id.*, § 1225(a)(1), and those "seeking admission" who fail to "clearly and beyond a doubt" demonstrate an entitlement "to be admitted," are put into removal proceedings pursuant to 8 U.S.C. § 1229a (what the amended petition refers to as "normal removal proceedings," Am. Pet. ¶ 21).

Nevertheless, IIRIRA preserved some elements of the former distinction between exclusion and deportation, including through the statutory enactment of expedited removal proceedings, which ensures that the Executive Branch can both "expedite removal of aliens lacking a legal basis to remain in the United States," *Kucana v. Holder*, 558 U.S. 233, 249 (2010); *see also* S. Rep. No. 104-249 (1996), and deter individuals from exposing themselves to the dangers associated with illegal immigration, H.R. Rep. No. 104-469, pt. 1, at 117 (1996). "Hence, the pivotal factor in determining" what sort of proceeding a foreign national is entitled to "will be whether or not the alien has been lawfully admitted." *Id.* at 225. Congress thus conferred sizable authority to Executive Branch officers while limiting judicial review to "expedite the removal from the United States of aliens who indisputably have no authorization to be admitted to the United States, while providing an opportunity for such an alien who claims asylum to have the merits of his . . . claim promptly assessed[.]" H.R. Rep. No. 104-828, at 209–10 (1996).

The amended INA thus precludes judicial review over challenges to expedited removal orders issued pursuant to 8 U.S.C. § 1225(b)(1). *See* 8 U.S.C. § 1252(a)(2)(A). It provides, without exception, that "no court shall have jurisdiction to review . . . the application of [8 U.S.C. § 1225(b)(1)] to individual aliens, including the determination made under section 1225(b)(1)(B)

of this title." 8 U.S.C. § 1252(a)(2)(A)(iii).[1] And two groups of foreign nationals are subject to expedited removal: (1) those arriving in the United States, 8 U.S.C. § 1225(b)(1)(A)(i), and (2) those designated by the Secretary of Homeland Security within certain outer statutory limits, *id.* ("an alien . . . described in clause (iii)"). *See* 8 U.S.C. § 1225(b)(1)(A)(i), (iii). The statute limits designation of the latter group as follows:

> An alien . . . who has not been admitted or paroled into the United States, and who has not affirmatively shown, to the satisfaction of an immigration officer, that the alien 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.[2]

8 U.S.C. § 1225(b)(1)(A)(iii)(II). Thus, foreign nationals in either the first group (arriving aliens) or second group (designated aliens) can be removed through expedited removal if they are removable on either of two grounds of inadmissibility, namely, on the basis of fraud, 8 U.S.C. § 1182(a)(6)(C), or a lack of documents, 8 U.S.C § 1182(a)(7). 8 U.S.C. § 1225(b)(1)(A)(i).

The most recent designation of foreign nationals under 8 U.S.C. § 1225(b)(1)(A)(iii) occurred on January 24, 2025, following Executive Order 14159, *Protecting the American People from Invasion*, 90 Fed. Reg. 8,443 (Jan. 20, 2025). The Acting Secretary of Homeland Security published a *Federal Register* notice restoring the scope of expedited removal to "the fullest extent

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[1] In three other numbered paragraphs, the INA provides for no judicial review, "except as provided in subsection (e)." 8 U.S.C. §§ 1252(a)(2)(A)(i), (ii), (iv). The statute then provides—"in subsection (e)"—for review in habeas corpus of three discrete questions. 8 U.S.C. § 1252(e)(2). Specifically, such review is available, "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" that they have been lawfully admitted as a lawful permanent resident, asylee, or refugee. 8 U.S.C. § 1252(e)(2).

[2] The statute explicitly excludes foreign nationals "described in subparagraph (F)," which is someone "who is a native or citizen of a country in the Western Hemisphere with whose government the United States does not have full diplomatic relations and who arrives by aircraft at a port of entry." 8 U.S.C. § 1225(b)(1)(A)(iii)(II), (F). But the United States has diplomatic relations with Colombia and Cortes does not claim to have arrived by aircraft at any port of entry.

authorized by Congress." *Designating Aliens for Expedited Removal*, 90 Fed. Reg. 8,139 (Jan. 24, 2025). The notice enabled DHS "to place in expedited removal, with limited exceptions, aliens determined to be inadmissible under [8 U.S.C. § 1182(a)(6)(C) or (a)(7)] who have not been admitted or paroled into the United States and who have not affirmatively shown, to the satisfaction of an immigration officer, that they have been physically present in the United States continuously for the two-year period immediately preceding the date of the determination of inadmissibility," who were not covered by previous designations. *Id.* at 8,139–40. The notice explained that this action aimed to "enhance national security and public safety—while reducing government costs—by facilitating prompt immigration determinations" and would "enable DHS to address more effectively and efficiently the large volume of aliens who are present in the United States unlawfully . . . and ensure the prompt removal from the United States of those not entitled to enter, remain, or be provided relief or protection from removal." *Id.* at 8,139.

B. The Credible Fear Process

If a foreign national subject to expedited removal expresses a fear of persecution or torture, she is referred for an interview before an asylum officer ("AO") with U.S. Citizenship and Immigration Services ("USCIS"). The AO interviews them, reviews relevant facts, and determines initially whether the foreign national has a credible fear. *See* 8 U.S.C. § 1225(b)(1)(B); 8 C.F.R. § 208.30. Credible fear exists where there is a "significant possibility," taking into account the credibility of the statements made by the foreign national in support of her claim and other facts known to the officer, that the foreign national could establish eligibility for asylum under 8 U.S.C. § 1108, withholding of removal under 8 U.S.C. § 1231(b)(3), see 8 U.S.C. § 1225(b)(1)(B)(v); 8 C.F.R. § 208.30(e)(2), or withholding or deferral of removal under the Convention Against Torture ("CAT"). 8 C.F.R. § 208.30(e)(3). The AO creates "a written record of his or her determination,

including a summary of the material facts as stated by the applicant, any additional facts relied on by the officer, and the officer's determination of whether, in light of such facts, the alien has established a credible fear of persecution or torture." *Id.* § 208.30(e)(1); *see also* 8 U.S.C. § 1225(b)(1)(B)(iii)(II). If the AO concludes the facts do not satisfy that standard, a supervisory asylum officer must also review the determination before USCIS issues its screening determination. *See* 8 C.F.R. §§ 208.30(e)(7), 235.3(b)(2), (b)(7).

If the foreign national receives a negative credible fear determination from USCIS, she may request *de novo* review of the finding by an IJ, who is an administrative hearing officer of the United States Department of Justice, Executive Office for Immigration Review. 8 U.S.C. § 1225(b)(1)(B)(iii)(III); 8 C.F.R. § 1003.42(d). The review includes an opportunity for the foreign national to be heard and questioned by the IJ, who also may take into evidence any relevant oral or written statement. *Id.*; 8 C.F.R. § 1003.42(c). The foreign national may consult with a person of her own choosing prior to the review, provided the consultation is "at no expense to the Government" and does not "unreasonably delay the process." 8 U.S.C. § 1225(b)(1)(B)(iv); *see also* 8 C.F.R. §§ 1003.42(a), (b), (c). The IJ, in their discretion, may also allow the "consulted" person to be present during the review. If either the AO or the IJ find the foreign national possesses a credible fear, expedited removal proceedings are terminated and the foreign national is referred for removal proceedings under 8 U.S.C. § 1229a. *See* 8 C.F.R. §§ 208.30(f), 1208.30(g)(2)(iv)(B), 1003.42(f).

II. Factual and Procedural History

Cortes is a Colombian national "who arrived in the United States on foot near San Luis, Arizona, on February 2, 2022." Am. Pet. ¶ 20. After she was encountered by U.S. Customs and Border Protection ("CBP"), she was "issued . . . an I-862, Notice to Appear (NTA) in normal removal proceedings[.]" *Id.* at ¶ 21. Correspondingly, Cortes also applied for asylum in January

2023. Am. Pet. ¶ 23. On June 5, 2025, however, the United States Department of Homeland Security ("DHS"), "through counsel, made an oral motion to terminate Petitioner Valentina's removal proceedings." Am. Pet. ¶ 27. "The Immigration Judge (IJ) granted that motion, immediately signed an order terminating removal proceedings, and concluded the hearing." *Id.* at ¶ 28. After Cortes exited the courtroom, DHS issued an expedited removal order and took both her and N-A- into custody. *See id.* ¶¶ 29–31, 34.

Cortes filed her initial habeas petition the next day. *See* Dkt. 1. After some initial orders were entered by the emergency court, *see* Dkt. 4 & 20, Cortes was "released . . . with strict electronic monitoring for Petitioner Valentina on June 10, 2025," Am. Pet. ¶ 32; *see also* Respondents' Exhibit 2. Petitioners thereafter filed their amended petition on June 18, 2025. Dkt. 24. The amended petition brings four claims: (1) an assertion that Cortes is being unlawfully detained "under the expedited removal statute at 8 U.S.C. § 1225(b)" because "she is still in normal removal proceedings under 8 U.S.C. § 1229a" based on her having appealed the IJ's dismissal of DHS's prosecution against her in immigration court, Am. Pet. ¶¶ 35–42; (2) a similar challenge to her order of expedited removal "because she is still in normal removal proceedings" and those "are the 'sole and exclusive' procedure for DHS to remove her from the United States," *id.* at ¶¶ 43–51 (quoting 8 U.S.C. § 1229a(a)(3), but omitting how that very same provision applies "Unless otherwise specified"); (3) a claim of "Due Process Violations"—arguing that "DHS using the expedited removal statute to detain and remove her is a serious violation of due process," and asking that this court make a credible-fear determination for her, *id.* at ¶¶ 52–62; and (4) a claim under the Equal Access to Justice Act, *id.* at ¶ 63. Petitioners also submitted a brief in support of their amended petition arguing why they believe they should not be detained pursuant to the INA's expedited-removal provisions. Dkt. 29 ("Pet. Br.") at 8–11.

Since the filing of the amended petition, though, Cortes was provided a credible-fear interview. *See* Respondents' Exhibit 3. And more importantly, the AO concluded that Cortes had shown a credible fear and therefore placed her into removal proceedings under 8 U.S.C. § 1229a. *See id.*; *see also* Exhibit 1 (showing that she is scheduled to appear before an IJ in early January 2026). This development means that Cortes is no longer being detained pursuant to expedited removal at all. However, she is still subject to the discretionary forms of detention permitted by the INA under 8 U.S.C. § 1226(a).

Legal Standard

Section 2241 confers jurisdiction on this court to order the release of any person who is held in the custody of the United States in violation of the "laws . . . of the United States" or the United States Constitution. 28 U.S.C. § 2241(c). The burden rests on the person in custody to prove their detention is unlawful. *See, e.g.*, *Walker v. Johnston*, 312 U.S. 275, 286 (1941).

Argument

I. This Case Is Now Moot Because Neither Petitioner Is In Custody Under The Expedited Removal Statute.

As a threshold matter, this case is entirely moot regarding N-A-. This is because N-A- is a U.S. citizen and is not being subjected to any control or monitoring whatsoever—even according to the amended petition. Am. Pet. at 2 (noting how N-A- was "detain*ed* with" Cortes before she was released on her order of supervision (emphasis added), *see* Exhibit 2). In other words, their "release moots his federal claims[.]" *Peshek v. Johnson*, 111 F.4th 799, 802 (7th Cir. 2024) (citing *DeFunis v. Odegaard*, 416 U.S. 312, 319–20 (1974) (per curiam)). And this makes perfect sense in the habeas context because without any government custody or detention over N-A-, the child lacks the requisite injury in fact to continue pursuing a habeas claim. *See, e.g.*, *I.M. v. CBP*, 67 F.4th 436, 437 (D.C. Cir. 2023) (discussing how "habeas proceedings are available only when a

petitioner is in government custody").

Turning to Cortes, the amended petition attacks her electronic monitoring as a form of custody placed upon her to effectuate her expedited removal. *See* Am. Pet. at 11. But a case can become moot where the plaintiff receives the requested relief before the litigation of the claim is complete. *See DeFunis*, 416 U.S. at 319–20. This principle applies here because the claims Cortes brings against her detention focus on her detention vis-à-vis *expedited removal* and how it was purportedly unlawful that she was ever placed into such proceedings. *See id.* at ¶¶ 35–51. As mentioned above, though, Cortes is no longer in expedited removal proceedings—she is being electronically monitored to ensure that she does not abscond during her "normal removal proceedings" under § 1229a.[3] Am. Pet. ¶ 21.

The changed circumstances justifying her electronic monitoring therefore render this case moot. *Cf. Jackson v. Clements*, 796 F.3d 841, 842–43 (7th Cir. 2015) (per curiam) (case was moot where habeas petitioner "challeng[ed] his extradition from Illinois to Wisconsin" because he "was no longer a pre-trial detainee when the district court ruled on the merits of his petition"). And such detention is explicitly in the agency's discretion during those removal proceedings under § 1226(a): "an alien *may* be arrested *and detained* pending a decision on whether the alien is to be removed from the United States[.]" The amended petition says nothing about this form of detention (that is, electronic monitoring of Cortes during "normal removal proceedings"), as it is entirely lawful, discretionary, and regularly applied to persons across the country while their removal proceedings before IJs are litigated. *See, e.g.*, *Corpeno-Argueta v. United States*, 341 F.

[3] To the extent Cortes would prefer to not be subject to electronic monitoring while she is in "normal removal proceedings," 8 C.F.R. § 1236.1(d)(1) provides her with a mechanism for "[a]ppeals from custody decisions." She may also request such an alteration before an IJ during her removal proceedings.

Supp. 3d 856, 867 n.6 (N.D. Ill. 2018) (citing cases).

II. Alternatively, This Court Lacks Jurisdiction to Review DHS's Past Discretionary Determination of Whether to Initiate Expedited Removal Proceedings Against Cortes.

As alluded to above, this court also lacks jurisdiction to review Cortes's challenges both to her now defunct-order of expedited removal, *see* Respondents' Exhibit 1, *and* the choice to initiate expedited removal, because such decisionmaking is explicitly discretionary, *see* § 1225(b)(1)(A)(iii)(I). This matters because of 8 U.S.C. § 1252(a)(2)(B)(ii), which provides that "no court shall have jurisdiction to review . . . any other decision or action of the Attorney General or the Secretary of Homeland Security the authority for which is specified under this subchapter to be in the discretion of the Attorney General or the Secretary of Homeland Security." *See also Ronakkumar Patel v. Noem*, — F. Supp. 3d —, 2025 WL 1766104, at *1–3 (N.D. Ill. June 26, 2025) (applying this same jurisdictional bar). "Put differently, to trigger § 1252(a)(2)(B)(ii)'s jurisdictional bar, there must be: (1) a decision or action by the Attorney General or the Secretary of Homeland Security and (2) statutorily specified discretion to make that decision or take that action under Subchapter II of Chapter 12 of Title 8 (8 U.S.C. §§ 1151–1381)." *Lobatos v. Noem*, No. 25 C 1223, 2025 WL 1651220, at *3 (N.D. Ill. June 11, 2025).

That range includes § 1225(b)(1)(A)(iii)(I), which commits to the "sole and unreviewable discretion" of the Secretary of Homeland Security the decision whether to subject certain individuals present in the United States without documentation to "expedited removal." The language "sole and unreviewable discretion" means what it says and is covered by the jurisdictional scope of 8 U.S.C. § 1252(a)(2)(B)(ii). *Cf. Lukac*, 2023 WL 3918967, at *5 ("The statutory text is tight, without a lot of wiggle room. . . . Th[e] decision is an exercise of discretion. And that discretion is 'sole' and 'unreviewable.' Opportunities for judicial review don't exactly leap off the page." (cleaned up)). Simply put, Congress wanted DHS to have unreviewable

discretion as to how aggressively to pursue and apply expedited removal.

The same range also includes the discretionary judgment to keep Cortes on electronic monitoring while her removal proceedings are continuing to play out under § 1226(a)'s explicitly discretionary language: "an alien *may* be arrested and detained pending a decision on whether the alien is to be removed from the United States." The use of the word "may" triggers § 1252(a)(2)(B)(ii)'s denial of jurisdiction. *See, e.g.*, *Bouarfa v. Mayorkas*, 604 U.S. 6, 13–14 (2024) ("As '[t]his Court has repeatedly observed,' 'the word "may" *clearly* connotes discretion.'" (emphasis in original) (quoting *Biden v. Texas*, 597 U.S. 785, 802 (2022)) (additional citations and internal quotation marks omitted)). That bar on jurisdiction extends not only to the substantive decisionmaking, but also to "'any . . . action' leading to [that] decision[ ] as well[.]" *Garcia v. USCIS*, 760 F. Supp. 3d 671, 673 (N.D. Ill. 2024) (quoting 8 U.S.C. § 1252(a)(2)(B)(ii)); *see also Vasant Patel v. Noem*, No. 24 C 12143, 2025 WL 1489204, at *2 (N.D. Ill. May 23, 2025).

Attempting to get around the INA's jurisdictional bars, Cortes's claims vis-à-vis expedited removal depend upon her insistence that her prior "normal removal proceedings" are ongoing and that she has appealed the past dismissal to the Board of Immigration Appeals. But the argument that Cortes could not have been placed into expedited removal proceedings fall directly within 8 U.S.C. § 1252(g)'s preclusion of review for actions seeking to challenge DHS's commencement of proceedings. Section 1252(g) provides that "notwithstanding any other provision of law (statutory or nonstatutory) . . . no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to [1] commence proceedings, [2] adjudicate cases, or [3] execute removal orders against any alien," except through a petition for review filed in a court of appeals. (Emphasis added). Though § 1252(g) "does not

sweep broadly," *Tazu v. Att'y Gen. of U.S.*, 975 F.3d 292, 296 (3d Cir. 2020), its "narrow sweep is firm," *E.F.L.*, 986 F.3d at 964–65.

As the Supreme Court has explained, § 1252(g) is "directed against a particular evil: attempts to impose judicial constraints upon prosecutorial discretion." *Reno v. Am.-Arab Anti-Discrimination Comm.* ("*AADC*"), 525 U.S. 471, 485 n.9 (1999). Here, Cortes expressly requests that this court superintend DHS's past prosecutorial decisionmaking to drop her "normal removal proceedings" and instead to "commence" expedited removal proceedings against her. After *AADC*'s interpretation of § 1252(g)'s plain language, however, that prosecutorial choice is decisionmaking that § 1252(g) bars this court from interfering with. *See id.* at 487 (explaining that the foreign nationals' challenge to the decision to "'commence proceedings' against them falls squarely within § 1252(g)—indeed, as we have discussed, the language seems to have been crafted with such a challenge precisely in mind—and nothing elsewhere in § 1252 provides for jurisdiction"). There is no reason the same logic should not apply here.

III. Cortes's Due Process Claim Likewise Fails.

Finally, Cortes's generic and slippery slope claim about "Due Process Violations" is equally off-base. Am. Pet. ¶¶ 52–62; *see also* Pet. Br. at 9–10. To start, Cortes has not submitted any evidence that she is detained for any purpose beyond the resolution of her removal proceedings (whether that would have been her past expedited removal proceedings, or her current removal proceedings before an IJ). *See Chaviano v. Bondi*, No. 25-cv-22451, 2025 WL 1744349, at *8 (S.D. Fla. June 23, 2025) (denying habeas petition making similar due process arguments). Moreover, the amended petition admits that her past removal proceedings before an IJ were dismissed before they had truly progressed. *See* Am. Pet. ¶¶ 27–28. Thus, her argument about due process for *others* (who could be in very different circumstances from herself and N-A-), *see* Pet. Br. at 9, are not even before this court. Similarly, any argument that she "entered the United

States," *id.* at 3, is incorrect under the Supreme Court's decision that foreign nationals intercepted shortly after crossing the border are still considered to be "on the threshold" and have *only* the procedural rights that Congress has provided them by statute. *Thuraissigiam*, 591 U.S. at 140.

Aware of this issue of "limited access to constitutional protections" for arriving aliens, Am. Pet. ¶ 61, Cortes ignores *Thuraissigiam*, arguing instead that this background rule should not apply because "DHS permit[ted] her entry . . . [and] afford[ed] her an opportunity in normal removal proceedings to seek asylum," Am. Pet. ¶ 62. But the background rule here means that Cortes is *only* entitled to the processes set forth in the statutes and regulations, *see* 8 U.S.C. § 1225(b)(1); 8 C.F.R. § 235.3(b), which are sufficient to satisfy arriving aliens' due process rights, *see Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 215 (1953) ("[A]liens who arrive at ports of entry—even those paroled elsewhere in the country for years pending removal—are treated for due process purposes as if stopped at the border." (cleaned up)); *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950) ("Whatever the procedure authorized by Congress is, it is due process[.]"). This is why similar due process claims in habeas cases from persons recently placed in expedited removal proceedings have been denied. *See Vasquez v. Moniz*, —F. Supp. 3d —, 2025 WL 1737216, at *1–3 (D. Mass. June 23, 2025) (dismissing the petitioner's procedural and substantive due process arguments).

Conclusion

For the foregoing reasons, the court should deny the amended petition.

Respectfully submitted,

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