

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
AT LOUISVILLE

EZEQUIEL MORENO CRUZ

PLAINTIFF

v.

CIVIL ACTION NO. 3:25-cv-00345-DJH (*e-filed*)

JAILER JEFF TINDELL  
TODD M. LYONS, ACTING DIRECTOR  
KRISTI NOEM, SECRETARY  
PAM BONDI, ATTORNEY GENERAL

DEFENDANTS

**MOTION TO DISMISS**

Petitioner Cruz is a Mexican national who agents caught hiding in a ditch after he crossed the United States' northern border without authorization. He was initially released on his recognizance and placed in removal proceedings under 8 U.S.C. § 1229a. He was later placed into expedited removal proceedings under 8 U.S.C. § 1225, served with an order of removal, and consented to dismissal of his § 1229a proceedings. He "instructed counsel to take all necessary steps to expedite his return to Mexico". Forty-one days after being served with his notice of removal, Cruz filed this habeas petition complaining that "[d]espite the existence of Expedited Orders of Removal, ICE has not effectuated the removal of Petitioner and his wife and has taken no concrete steps to coordinate their return to Mexico." Cruz was removed to Mexico on the forty-third day after being served with his notice of removal. Cruz was afforded all due process accorded to aliens who enter the United States illegally. His complaint raises no issues subject to judicial review, pleads no facts inconsistent with due process, and is moot due to his removal to Mexico, which ended his detention and any basis for habeas relief.

**Facts and Procedural Posture**

Petitioner Cruz is a citizen and national of Mexico. (Doc. 1, PageID.1, 4, ¶¶ 1, 15.). Cruz entered the United States from Canada on March 12, 2024. (Doc. 1, PageID.1, 4, ¶¶ 2, 16; Exh. 1, Record of Deportable/Inadmissible Alien at 1, 2, 3.). Cruz entered the United States illegally, without authorization. (Exh. 1, Record of Deportable/Inadmissible Alien, at 1, 2, 3.). Department of Homeland Security (DHS) records recite additional facts about Cruz's apprehension: Cruz was one of four subjects caught making an illegal entry in the middle of the night. (Exh. 1, Record of Deportable/Inadmissible Alien at 3.). Responding agents found Cruz and three other illegal entrants from Mexico hiding in a ditch. (*Id.*). When agents found Cruz hiding, other agents also found a vehicle parked a half mile south of Cruz's location. (*Id.*). The driver's vehicle was a Mexican national who had been lawfully admitted, and the passenger was the driver's brother, a Mexican national who was illegally in the country and had been previously removed. (*Id.*).

Cruz was detained, then released on an Order of Release on Recognizance. (Doc. 1, PageID.5, ¶ 16.). Specifically, Cruz expressed no credible fear of return to Mexico, and was released after a denial of bed space for detention. (Exh. 1, Record of Deportable/Inadmissible Alien at 3.). In July 2024, DHS initiated removal proceedings against Cruz under 8 U.S.C. § 1229a (section 250 of the Immigration and Nationality Act, or INA). (Doc. 1, PageID.4, ¶ 17.). DHS charged Cruz with being removable, and served him with a Notice to Appear (NTA). (Doc. 1, PageID.1, 4, ¶ 2, 17.). On December 19, 2024, Cruz filed an application for Asylum and Withholding of Removal, listing his wife Rubi Chavez Alarcon as a derivative applicant. (Doc. 1, PageID.4, ¶ 18.). By May 1, 2025, ICE put Cruz into expedited removal

proceedings under 8 U.S.C. § 1225. (Doc. 1, PageID.5, ¶ 21-22.).

“An alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for purposes of this chapter [8] an applicant for admission.” 8 U.S.C. § 1225(a)(1). 8 U.S.C. § 1182(a)(7)(A)(i)(I), section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (INA), states that “Except as otherwise specifically provided in this chapter, any immigrant at the time of application for admission -- who is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document required by this chapter, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality if such document is required under the regulations issued by the Attorney General under section 1181(a) of this title ... is inadmissible.” 8 U.S.C. § 1182(a)(7)(A)(i)(I). DHS records recite that upon apprehension at the northern border, Cruz admitted and confirmed each of those circumstances relating to inadmissibility: that he was a Mexican national and citizen, and he had no legal documentation allowing him to be in, pass through, or remain in the United States legally. (Exh. 1, Record of Deportable/Inadmissible Alien at 3.).

An alien who is removable under § 1182(a)(7)(A)(i)(I) may also be subject to removal through expedited removal procedures under 8 U.S.C. § 1225(b). On May 1, 2025, Immigration and Customs Enforcement (ICE) issued a notice and order of expedited removal, reciting a determination that Cruz was inadmissible under 8 U.S.C. § 1182(a)(7)(A)(i)(I). (Exh. 2, Notice and Order of Expedited Removal at 1.). 8 U.S.C. § 1225(b)(1)(A)(i), (iii) grants authority for

such expedited removals. ICE determined that Cruz was not a United States citizen or national; was a native and citizen of Mexico; entered the United States on or about March 12, 2024; and was an immigrant not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Immigration and Nationality Act. (Exh. 2, Notice and Order of Expedited Removal at 1.). Each of those determinations are conceded or not disputed in Cruz's petition before this Court. (Doc. 1, PageID.1-6; ¶¶ 1, 2, 10, 15-16, 27.). On May 1, 2025, Cruz appeared for an ICE check in, and was given an expedited order of removal and detained. (Doc. 1, PageID.1-2, 3, 4-5, ¶¶ 2, 10, 20-21; Exh. 1, Record of Deportable/Inadmissible Alien at 2.). ICE notified Cruz that his notice to appear would be cancelled and reprocessing for expedited removal had been authorized. (Doc. 1, PageID.5, ¶ 22.). Aliens subject to expedited removal orders must be detained until removed. 8 U.S.C. § 1225(b)(1)(B)(iii)(IV).

On May 2, 2025, DHS moved to dismiss Cruz's 8 U.S.C. § 1229a proceedings because he was subject to expedited removal. (Exh. 3, Motion to Dismiss at 1-2.). That motion explained that 8 C.F.R. § 1239.2 allows for dismissal of § 1229a proceedings for grounds recited in 8 C.F.R. § 239.2(a), which include that circumstances of the case have changed after the notice to appear was issued to such an extent that continuation is no longer in the best interest of the government. Cruz's counsel filed an opposition to that dismissal motion and requested a bond hearing. (Doc. 1, PageID.5, ¶¶ 24-25.). On May 7, 2025, Cruz received a bond hearing, and the immigration judge denied bond, finding that Cruz's relief was speculative and that he posed a flight risk. (Doc. 1, PageID.5, ¶ 26.). Cruz then instructed his counsel "to take all necessary steps to expedite his return to Mexico", and withdrew his opposition to the motion to

dismiss. (Doc. 1, PageID.6, ¶ 27.). On May 9, 2025, Cruz filed a motion to rescind his opposition to that dismissal. (Exh. 4, Motion to Rescind Previously Filed Opposition and Enter Notice of Non-Opposition to DHS's Motion to Dismiss at 1-2.). On May 9, 2025, the immigration judge dismissed Cruz's § 1229a proceeding. (Exh. 5, Order on Motion to Dismiss.). That dismissal is not subject to judicial review. 8 U.S.C. § 1252(b)(9); *Galindo-Romero v. Holder*, 640 F.3d 873, 877 (9th Cir. 2011); *Aguilar-Aguilar v. Napolitano*, 700 F.3d 1238, 1243 (10th Cir. 2012).

Cruz's petition asserts that as of the date of filing, his immigration proceedings were still pending within the Executive Office of Immigration Review (EOIR). (Doc. 1, PageID.2, ¶ 3.). However, Cruz was subjected instead to expedited removal proceedings under 8 U.S.C. § 1225, which is a separate process from his prior, dismissed 8 U.S.C. § 1229a proceedings. (Exh. 1, Record of Deportable/Inadmissible Alien at 2; 8 U.S.C. §§ 1225, 1229a.). Cruz was given an order of removal on May 1, 2025. (Doc. 1, PageID.1-2, 3, 4-5, ¶¶ 2, 10, 20-21; Exh. 1, Record of Deportable/Inadmissible Alien at 2.). With Cruz's filed concurrence, his 8 U.S.C. § 1229a proceedings were dismissed on May 9, 2025. (Doc. 1, PageID.6, ¶ 27; Exh. 4, Motion to Rescind Previously Filed Opposition and Enter Notice of Non-Opposition to DHS's Motion to Dismiss at 1-2; Exh. 5, Order on Motion to Dismiss.).

On May 30, 2025, Cruz requested dissolution of his credible fear process, stating that he had decided to stop pursuing protection from removal through the credible fear process, and to leave the United States as soon as travel arrangements could be made. (Exh. 6, Request for Dissolution of Credible Fear Process at 1.).

On Tuesday, June 10, 2025, Cruz's attorney filed a petition in this Court for a writ of

habeas corpus. (Doc. 1, PageID.1.). On Thursday, June 12, 2025, Cruz's order of removal was executed and he was removed to Mexico.<sup>1</sup> On Friday, June 13, 2025, Cruz's petition was served on the Office of the United States Attorney for the Western District of Kentucky. On June 16, 2025, the Court ordered the respondents by June 20, 2025 to show cause why Cruz's petition should not be granted. (Doc. 4, PageID.11.). This motion is filed on behalf of Respondents Todd M. Lyons, Kristi Noem, and Pam Bondi; 28 U.S.C. § 517 allows the Office of the United States Attorney to make appearances in court to attend to the United States' interests, and consistent with that statute, this filing, and the content of the Motion to Dismiss, attends to the United States' interests to the extent the petition names Jeff Tindell, the Oldham County Jailer, as a respondent.

#### **Application of Law to Facts**

#### **I. Cruz bears the burden to establish that his custody is in violation of the Constitution or laws or treaties of the United States.**

Cruz's petition cites 28 U.S.C. § 2241 as a jurisdictional basis. (Doc. 1, PageID.2, ¶ 6.). To obtain habeas relief, Cruz must not merely show that he is "in custody", but rather that he is "in custody in violation of the Constitution or laws or treaties of the United States". 28 U.S.C. § 2241(c)(3); see also *Dickerson v. United States*, 530 U.S. 428, 439, n. 3 (2000) ("Habeas corpus proceedings are available only for claims that a person 'is in custody in violation of the Constitution or laws or treaties of the United States'", quoting 28 U.S.C. § 2254(a).).

---

<sup>1</sup> Two days prior to this filing, when first aware and able to do so, undersigned counsel alerted Petitioner's counsel that Cruz had been removed on that date. Of note, Cruz's petition states that he "instructed counsel to take all necessary steps to expedite his return to Mexico", and requested both dissolution of his credible fear process and to leave the United States as soon as travel arrangements could be made. (Doc. 1, PageID.6, ¶ 27; Exh. 6 at 1.).

**II. Cruz was afforded all due process; his detention and removal were lawful, and there is no subject matter jurisdiction for this Court to review either.**

“[A]n alien who tries to enter the country illegally is treated as an ‘applicant for admission’”. *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020), citing 8 U.S.C. § 1225(a)(1). An applicant for admission “has only those rights regarding admission that Congress has provided by statute.” *Id.* For applicants for admission, “Congress provided the right to a ‘determin[ation]’ whether he had ‘a significant possibility’ of ‘establish[ing] eligibility for asylum’”. *Id.*, citing 8 U.S.C. §§ 1225(b)(1)(B)(ii), (v). “Because the Due Process Clause provides nothing more, it does not require review of that determination or how it was made.” *Id.* The Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) provides for the expedited removal of certain applicants seeking admission into the United States, whether at a designated port of entry or elsewhere. 8 U.S.C. § 1225(a)(1). An applicant may avoid expedited removal by demonstrating to an asylum officer a “credible fear of persecution,” defined as “a significant possibility ... that the alien could establish eligibility for asylum.” 8 U.S.C. § 1225(b)(1)(B)(v). An applicant who makes this showing is entitled to full consideration of an asylum claim in a standard removal hearing. 8 C.F.R. § 208.30(f). An asylum officer’s rejection of a credible-fear claim is reviewed by a supervisor and may then be appealed to an immigration judge. 8 C.F.R. §§ 208.30(e)(8), 1003.42(c), (d)(1). But IIRIRA limits the review that a federal court may conduct on a petition for a writ of habeas corpus. 8 U.S.C. § 1252(e)(2). In particular, courts may not review “the determination” that an applicant lacks a credible fear of persecution. 8 U.S.C. § 1252(a)(2)(A)(iii).

8 U.S.C. § 1225 provides an expedited removal process, without further hearing or review, for inadmissible aliens. 8 U.S.C. § 1225(b)(1)(A)(i), (iii). This expedited removal

process applies to aliens at any time within two years of their determination of inadmissibility. 8 U.S.C. § 1225(b)(1)(A)(i)(III). If the alien at issue is determined to have no credible fear of persecution, a removal order is mandatory, with no further hearing or review. 8 U.S.C. § 1225(b)(1)(A)(iii)(I). Any such alien must be detained until removal. 8 U.S.C. § 1225(b)(1)(A)(iii)(IV). Due process requires nothing more. *Thuraissigiam*, 591 U.S. at 140, citing 8 U.S.C. §§ 1225(b)(1)(B)(ii), (v) (“Congress provided the right to a ‘determin[ation]’ whether he had ‘a significant possibility’ of ‘establish[ing] eligibility for asylum,’ and he was given that right. Because the Due Process Clause provides nothing more, it does not require review of that determination or how it was made. As applied here, therefore, § 1252(e)(2) does not violate due process.”).

Cruz was initially placed into proceedings under 8 U.S.C. § 1229a (section 240 of the INA). (Doc. 1, PageID.4, ¶ 17.). Enforcement and Removal Operations (ERO) then elected to place Cruz into proceedings under 8 U.S.C. § 1225, (section 235 of the INA). (Exh. 1, Record of Deportable/Inadmissible Alien at 2; (Exh. 3, Motion to Dismiss at 1-2.). Dismissal of § 1229a proceedings are not subject to judicial review. “Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter shall be available only in judicial review of a final order under this section. Except as otherwise provided in this section, no court shall have jurisdiction, by habeas corpus under section 2241 of Title 28 or any other habeas corpus provision, by section 1361 or 1651 of such title, or by any other provision of law (statutory or nonstatutory), to review such an order or such questions of law or fact.” 8 U.S.C. § 1252(b)(9). See also *Galindo-Romero v. Holder*, 640 F.3d 873, 877 (9th Cir.



2011) (“The carefully crafted congressional scheme governing review of decisions of the BIA limits this court’s jurisdiction to the review of final orders of removal”, quoting *Alcala v. Holder*, 563 F.3d 1009, 1013 (9th Cir. 2009); “We lack jurisdiction to review the agency’s termination of Galindo’s formal removal proceedings because the decisions of the BIA and IJ resulted in no order of removal at all”, *id.*; *Aguilar-Aguilar v. Napolitano*, 700 F.3d 1238, 1243 (10th Cir. 2012) (“because the IJ’s decision did not result in a final order of removal, that decision was not and is not subject to judicial review.”). Additionally, Alarcon herself withdrew her opposition to dismissal of her § 1229a proceedings. (Exh. 4, Motion to Rescind Previously Filed Opposition and Enter Notice of Non-Opposition to DHS’s Motion to Dismiss at 1-2.).

Cruz’s petition claims that “the Petitioner’s immigration proceedings are still pending” (Doc. 1, PageID.2, ¶ 3), but subsequent to the last factual recitation in the petition and consistent with the petition’s assertion that “Petitioner instructed counsel to take all necessary steps to expedite his return to Mexico” and “withdrew his opposition to the Motion to Dismiss” (Doc. 1, PageID.6, ¶ 27), with Cruz’s concurrence, the immigration judge entered an order of dismissal on May 9, 2025, ending Cruz’s 8 U.S.C. § 1229a immigration proceedings. (Doc. 1, PageID.6, ¶ 27; Exh. 4, Motion to Rescind Previously Filed Opposition and Enter Notice of Non-Opposition to DHS’s Motion to Dismiss at 1-2; Exh. 5, Order on Motion to Dismiss.). Cruz’s 8 U.S.C. § 1225 proceedings have also concluded, with an order of removal and his removal to Mexico. (Exh. 2, Notice and Order of Expedited Removal at 1; Exh. 6, Request for Dissolution of Credible Fear Process at 1.).<sup>2</sup>

---

<sup>2</sup> Undersigned counsel cannot yet tender documentation of Cruz’s removal due to the compressed briefing schedule that coincided with a federal holiday and weekend. Counsel does not expect the Petitioner to contest the fact of his removal, but will provide documentation later if needed.

The Supreme Court “has recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process”, and noted that “deportation proceedings ‘would be vain if those accused could not be held in custody pending the inquiry into their true character.’” *Demore v. Kim*, 538 U.S. 510, 523 (2003), quoting *Wong Wing v. United States*, 163 U.S. 228, 235 (1896). Cruz’s petition offers no authority or articulated argument providing any basis to find that his placement in 8 U.S.C. § 1225 proceedings and resulting detention was in any way infirm or provided insufficient process. (Doc. 1, PageID.1-6.).

The Supreme Court has also long recognized that immigration-related decisions of executive branch officers as in Cruz’s case afford due process in the absence of judicial review. “[A]s to ‘foreigners who have never been naturalized, nor acquired any domicile or residence within the United States, nor even been admitted into the country pursuant to law,’ ‘the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law.’” *Thuraissigiam*, 591 U.S. at 138, quoting *Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892). “Since then, the [Supreme] Court has often reiterated this important rule.” *Id.*, citing *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950), *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 210 (1953), and *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”). “[T]he Constitution gives ‘the political department of the government’ plenary authority to decide which

---

That expectation stems from communication with Petitioner’s counsel indicating an agreement from Cruz to dismiss this action. Given the Court’s filing deadline, it was necessary for undersigned counsel to file this motion in the absence of further communication or a dismissal.

aliens to admit, and a concomitant of that power is the power to set the procedures to be followed in determining whether an alien should be admitted. *Id.*, citing *Nishimura Ekiu*, 142 U.S. at 659, and *Knauff*, 338 U.S. at 544.

### **III. The Court should dismiss Cruz’s petition because it is moot.**

“[A] case is moot when the issues presented are no longer ‘live’ or the parties lack a legally cognizable interest in the outcome.” *Powell v. McCormack*, 395 U.S. 486, 496 (1969) (citation omitted). “Federal courts may not ‘decide questions that cannot affect the rights of litigants in the case before them’ or give ‘opinion[s] advising what the law would be upon a hypothetical state of facts.’” *Chafin v. Chafin*, 568 U.S. 165, 172 (2013), quoting *Lewis v. Continental Bank Corp.*, 494 U.S. 472, 477 (1990). “The ‘case-or-controversy requirement subsists through all stages of federal judicial proceedings, trial and appellate.’” *Id.*, quoting *Lewis*, 494 U.S. at 477. “[I]t is not enough that a dispute was very much alive when suit was filed”; the parties must ‘continue to have a “personal stake” in the ultimate disposition of the lawsuit.’” *Id.*, quoting *Lewis*, 494 U.S. at 477–478.

Cruz’s habeas petition is founded on 28 U.S.C. § 2241. (Doc. 1, PageID.2, ¶ 6.). That statute commands that “The writ of habeas corpus shall not extend to a prisoner unless -- He is in custody”. 28 U.S.C. § 2241(c). See also *Dickerson*, 530 U.S. at 439, n. 3 (“Habeas corpus proceedings are available only for claims that a person ‘is in custody in violation of the Constitution or laws or treaties of the United States.’”). Cruz cannot be granted habeas relief because he was removed to Mexico and is no longer in custody.

Cruz’s petition is also moot because he cannot be granted the relief he seeks. The specific relief Cruz seeks is an order that he not be transferred outside of the Western District of

Kentucky's jurisdiction, a declaration that his detention violates the Fifth Amendment; and a writ of habeas corpus ordering his immediate release. (Doc. 1, PageID.7, ¶¶ 1-7.). Cruz's petition is moot, because he has been removed from the United States to Mexico. Because Cruz is no longer in detention and is now in Mexico – a process he “instructed counsel to take all necessary steps to expedite” (Doc. 1, PageID.6, ¶ 27) - any order or writs that he not be transferred outside of the Western District of Kentucky or be released from custody would be a nullity. (*Id.*).

Cruz's claim for declaratory relief is moot for the same reason: “When considering whether a claim for declaratory relief is moot, ‘the question is whether the facts alleged, under all the circumstances, show that there is a substantial controversy ... of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.’” *Allen v. Collins*, 529 F. App'x 576, 579 (6th Cir. 2013), quoting *Campbell v. PMI Food Equipment Group, Inc.*, 509 F.3d 776, 781 (6th Cir. 2007). Additionally, Cruz's order of removal under 8 U.S.C. § 1225(b)(1) is subject to judicial review only as to whether he is an alien, whether he was ordered removed under that section, and whether he can prove that he was lawfully admitted, admitted as a refugee, or was granted asylum, none of which is alleged in this action. 8 U.S.C. § 1252(e)(2). Because Cruz's order of removal under 8 U.S.C. § 1252(b)(1) is not subject to judicial review in this action, there is no basis on which to review or disturb the detention mandated for such orders. 8 U.S.C. § 1252(a)(2)(A)(iii). Similarly, Cruz has provided the Court no facts allowing for judicial review of his removal pursuant to his order of removal, and any such review is precluded by 8 U.S.C. § 1252(f)(2), while 8 U.S.C. § 1252(g) forecloses any challenge to the execution of his removal order (“no court shall have jurisdiction to hear any cause or claim by . . . any alien arising from the decision or action by [ICE] to . . . execute removal orders against any alien.”).

**Conclusion**

The Court should dismiss Cruz's petition because it recites no facts consistent with any deprivation of due process, attempts to raise issues for which judicial review is precluded, and is moot.

Respectfully submitted,

KYLE G. BUMGARNER  
United States Attorney

/s/ Jason Snyder  
Jason Snyder  
Assistant United States Attorney  
717 W. Broadway  
Louisville, KY 40202  
jason.snyder@usdoj.gov  
*Counsel for the United States*

**CERTIFICATE OF SERVICE**

I hereby certify that on June 20, 2025, I electronically filed the foregoing with the clerk of the court by using the CM/ECF system, which will send a notice of electronic filing to counsel for the Plaintiff.

/s/ Jason Snyder  
Jason Snyder  
Assistant United States Attorney