UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

RUBI CHAVEZ ALARCON — PETITIONER

v. — CIVIL ACTION NO. 3:25-cv-00348-DJH (*e-filed*)

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

MOTION TO DISMISS

Petitioner Alarcon is a Mexican national who agents caught hiding in a ditch after she crossed the United States' northern border without authorization. (Doc. 1, PageID.1, ¶¶ 1, 2; PageID.4, ¶¶ 1, 2; Exh. 1, Record of Deportable/Inadmissible Alien at 1, 3.). She was initially released on her recognizance and placed in removal proceedings under 8 U.S.C. § 1229a. (Doc. 1, PageID.1, 3, 4, ¶¶ 2, 9, 2, 3.). She was later placed into expedited removal proceedings under 8 U.S.C. § 1225, served with an order of removal, and consented to dismissal of her § 1229a proceedings. (Doc. 1, PageID.5-6, ¶¶ 7-9, 13; Exh. 1 at 2.). She "instructed counsel to take all necessary steps to expedite her return to Mexico". (Doc. 1, PageID.5, ¶ 13.). Forty-one days after being served with her notice of removal, Alarcon filed this habeas petition complaining that "ICE has not properly effectuated the expedited removal process of Petitioner and her husband and has taken no concrete steps to coordinate their return to Mexico." (Doc. 1, PageID.6, ¶ 14.). As Petitioner's counsel has previously been advised, Alarcon's removal to Mexico is underway and will be effectuated by the time of the Court's scheduled hearing on this matter. Alarcon was afforded all due process accorded to aliens who enter the United States illegally as she did. Her complaint raises no issues subject to judicial review, pleads no facts inconsistent with due process, and will very shortly be moot due to her removal to Mexico.

Facts and Procedural Posture

Petitioner Alarcon is a citizen and national of Mexico. (Doc. 1, PageID.1, ¶¶ 1, 2; PageID.4, ¶¶ 1, 2; Exh. 1, Record of Deportable/Inadmissible Alien at 1.). Alarcon entered the United States from Canada on March 12, 2024, illegally and without authorization. (Doc. 1, PageID.1, 4, ¶¶ 2, 16; Exh. 1, Record of Deportable/Inadmissible Alien at 1, 3.). Department of Homeland Security (DHS) records recite that Alarcon was one of six Mexican nationals caught making an illegal entry across the Canadian border in the middle of the night. (Exh. 1, Record of Deportable/ Inadmissible Alien at 3.).

At the time of her apprehension, Alarcon expressed no credible fear, and was released on a notice to appear after local bed space was denied. (Doc. 1, PageID.4, ¶ 2; Exh. 1, PageID.3.). In April, 2024, DHS initiated removal proceedings against Alarcon under 8 U.S.C. § 1229a (section 240 of the Immigration and Nationality Act, or INA). (Doc. 1, PageID.4, ¶ 3.). On December 19, 2024, Alarcon's husband filed an application for Asylum and Withholding of Removal in immigration court, listing his wife as a derivative applicant. (Doc. 1, PageID.4, ¶ 4.). By May 1, 2025, ICE put Alarcon into expedited removal proceedings under 8 U.S.C. § 1225. (Doc. 1, PageID.4-5, ¶ 5-7; Exh. 1 at 2.).

"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, Alarcon admitted and confirmed that she was a Mexican national and citizen, and she had no legal documentation allowing her to be in, pass through, or remain in the United States legally. (Exh. 1, Record of Deportable/ Inadmissible Alien at 3.).

On May 1, 2025, Immigration and Customs Enforcement (ICE) issued Alarcon a notice and order of expedited removal, reciting a determination that she was inadmissible under 8 U.S.C. § 1182(a)(7)(A)(i)(I). (Doc. 1, PageID.5, ¶ 7; Exh. 1, Record of Deportable/Inadmissible Alien at 2; Exh. 2, Notice and Order of Expedited Removal at 1-2.). 8 U.S.C. § 1225(b)(1)(A)(i), (iii) grants authority for such expedited removals. ICE determined that Alarcon 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 Alarcon's petition before this Court. (Doc. 1, PageID.1-6; ¶¶ 1, 2, 9, 1-2.). On May 1, 2025, Alarcon appeared for an ICE check in, and was given her expedited order of removal and detained. (Doc. 1, PageID5, ¶ 7; Exh. 1, Record of Deportable/Inadmissible Alien at 2.). ICE notified Alarcon that her notice

to appear would be cancelled and reprocessing for expedited removal had been authorized. (Doc. 1, PageID.5, ¶ 7-8; Exh. 1 at 2.). 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 Alarcon's 8 U.S.C. § 1229a proceedings because she was subject to expedited removal. (Doc. 1, PageID.5, ¶ 10; 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. Alarcon's counsel filed an opposition to that dismissal motion and requested a bond hearing. (Doc. 1, PageID.5, ¶¶ 10-11.). On May 7, 2025, Alarcon received a bond hearing, and the immigration judge denied bond, finding that Alarcon's relief was speculative and that he posed a flight risk. (Doc. 1, PageID.5, ¶ 12.). Alarcon then instructed her counsel "to take all necessary steps to expedite her return to Mexico", and withdrew her opposition to the motion to dismiss. (Doc. 1, PageID.5, ¶ 13.). On May 9, 2025, Alarcon filed a motion to rescind her 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 Alarcon'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).

On June 10, 2025, Alarcon's attorney filed a petition in this Court for a writ of habeas corpus. (Doc. 1, PageID.1.). On June 13, 2025, Alarcon'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 Alarcon's petition should not be granted. (Doc. 4, PageID.11.). On June 17, 2025, Alarcon requested dissolution of her credible fear process, stating that she 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.).

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. Alarcon bears the burden to establish that his custody is in violation of the Constitution or laws or treaties of the United States.

Alarcon's petition cites 28 U.S.C. § 2241 as a jurisdictional basis. (Doc. 1, PageID.2, ¶ 6.). To obtain habeas relief, Alarcon must not merely show that she is "in custody", but rather that she 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).).

II. Alarcon was afforded all due process, and there is no basis for the Court to disturb her lawful detention or forthcoming removal.

"[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 entering 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.").

Alarcon 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 Alarcon 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.). The immigration judge then dismissed Cruz's § 1229a proceeding. (Exh. 5, Order on Motion to Dismiss.). 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.).

Alarcon's 8 U.S.C. § 1225 proceedings have concluded, with an order of removal. (Exh. 2, Notice and Order of Expedited Removal at 1-2.). 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). Alarcon's detention is mandatory under 8 U.S.C. § 1231(a)(2)(A) ("During the removal period, the Attorney General shall detain the alien."). Alarcon's petition offers no authority or articulated argument providing any basis to find that her placement in 8 U.S.C. § 1225 proceedings, order of removal, and resulting detention were in any way infirm or provided insufficient process. (Doc. 1, PageID.1-6.). Specific to this habeas proceeding, she offers no facts or law to support a finding that her detention is unlawful. (*Id.*).

The Supreme Court has long recognized that immigration-related decisions of executive

branch officers as in Alarcon's case afford due process in the absence of judicial review. "[A]s to 'foreigners who have never been naturalized, nor acquired any domicil 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 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 Alarcon's petition for mootness.

"[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.

Alarcon'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.'"). Alarcon cannot be granted habeas relief if she has been removed to Mexico and is no longer in custody, consistent with her directions to counsel "to take all necessary steps to expedite her return to Mexico." (Doc. 1, PageID.5, ¶ 13.).

Alarcon's petition will also moot because she cannot be granted the relief she seeks. The specific relief Alarcon seeks is an order that she not be transferred outside of the Western District of Kentucky's jurisdiction, a declaration that her detention violates the Fifth Amendment; and a writ of habeas corpus ordering her immediate release. (Doc. 1, PageID.7, ¶¶ 1-7.). Alarcon's petition will be moot by the time of this Court's scheduled hearing on this matter, because she is scheduled to be removed from the United States to Mexico prior to that time, consistent with her order of removal, and consistent with her instructions to her counsel "to take all necessary steps to expedite her return to Mexico." (Doc. 1, PageID.5, ¶ 13.).[1] Counsel anticipates supplementing the record with evidence of Alarcon's removal once it is available. Once Alarcon is no longer in

[1] Two days prior to this filing, when first aware and able to do so, undersigned counsel alerted Petitioner's counsel that Alarcon was scheduled to be removed in that time frame.

detention and is in Mexico – a process she "instructed counsel to take all necessary steps to expedite" (Doc. 1, PageID.5, ¶ 13) - any order or writs that she not be transferred outside of the Western District of Kentucky or be released from custody would be a nullity. (*Id.*). Additionally, there would be no basis for a habeas petition at that point, since habeas proceedings are challenges to the legality of ongoing custody, and she would no longer be in custody. 28 U.S.C. § 2241(c)(3).

Alarcon'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, Alarcon's order of removal under 8 U.S.C. § 1225(b)(1) is subject to judicial review only as to whether she is an alien, whether she was ordered removed under that section, and whether she can prove that she 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 Alarcon's petition makes none of those narrow, allowed challenges, her order of removal under 8 U.S.C. § 1252(b)(1) is not subject to judicial review in this action, and 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, Alarcon has provided the Court no facts allowing for judicial review of her removal pursuant to her 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 her 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 Alarcon'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 by the time of this Court's hearing on the matter, will be moot.

Respectfully submitted,

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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