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

AZIZ ZAMIROV, **Petitioner,** **v.** **SAM OLSEN, MARCOS CHARLES, TODD M. LYONS, MADISON SHEAHAN, KRISTI NOEM, PAM BONDI, and DONALD J. TRUMP,** **Respondents.**	**No. 25-cv-06540** **Judge Franklin U. Valderrama** **(Emergency Judge)**

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 10, 2025. Petitioner submits this memorandum in support of his request for emergency relief under 28 U.S.C. § 2241. Petitioner asks this Court to declare that the Department of Homeland Security (DHS)'s attempt to remove him through expedited removal procedures under 8 U.S.C. § 1225(b) is unlawful given that he was paroled into the United States under 8 U.S.C. § 1182(d)(5) and then placed in standard removal proceedings under 8 U.S.C. § 1229a. 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 is a Kyrgyz athlete who fled Kyrgyzstan due to persecution tied to his peaceful opposition to the ruling government, particularly as the government exploited athletes to advance the government's political agenda. Before he fled, Petitioner was physically assaulted after

refusing to participate in political events supporting the ruling regime. Despite requiring surgery for his injuries, he did not report the attack due to fears of retaliation. Later, Petitioner helped organize a peaceful protest against the government's exploitation of athletes, and as a result, he was interrogated and threatened with imprisonment. As these threats escalated, he learned that a criminal case was being prepared against him. As a result, Petitioner fled Kyrgyzstan in 2023.

Petitioner entered the United States from Mexico at the Brownsville, Texas, port of entry using a smartphone application known as CBP One on April 28, 2023. At that time, entry into the United States was generally suspended under a program known as Title 42, 42 U.S.C. § 265, which restricted most entries to the United States due to COVID-19. Title 42 notwithstanding, some individuals were able to enter the United States using CBP One and were paroled into the country to complete their immigration process under 8 U.S.C. § 1182(d)(5).

Like others who entered the United States under these processes during this time, Petitioner was granted one year of parole upon entry. At the same time, DHS issued Petitioner a Notice to Appear (NTA) initiating removal proceedings against him. The NTA alleged that Petitioner was inadmissible because he did not possess a valid entry document required by the Immigration and Nationality Act (INA). *See* 8 U.S.C. § 1182(a)(7)(A)(I)(i). DHS concurrently filed the NTA with the immigration court, which commenced formal removal proceedings under 8 U.S.C. § 1229a.

Petitioner applied for asylum by filing Form I-589 within one year of his arrival as required. Petitioner then retained counsel, and he has complied with all legal obligations, including his appearance at the master calendar hearing and timely submission of pleadings. On June 10, 2025, Respondent also submitted a pre-hearing statement in preparation for the individual hearing on his asylum claim.

Despite this diligence and compliance with all immigration procedures, during his master calendar hearing on June 10, 2025, DHS orally moved to terminate Petitioner's removal

proceedings so that he 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. Petitioner's counsel objected, but the judge granted DHS's motion. Petitioner, through counsel, reserved his right to appeal the dismissal to the Board of Immigration Appeals.

Immediately after the judge dismissed regular proceedings, DHS—on information and belief—issued an expedited removal order and took Petitioner into custody, purportedly under the detention authority outlined in 8 U.S.C. § 1225(b)(2)(A).

This emergency petition followed.

B. Overview of Relevant Removal, Parole, and Detention Provisions

Petitioner has been taken from the ordinary removal process under 8 U.S.C. § 1229a and placed into expedited removal under 8 U.S.C. § 1225(b) after having been paroled into the United States pursuant to 8 U.S.C. § 1182(d)(5). Respondents claim that Petitioner is detained under 8 U.S.C. § 1225 and not under 8 U.S.C. § 1226, 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 border or enter without inspection, typically 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 he "has not been admitted or paroled into the United States, and [he] has not affirmatively shown, to the satisfaction of an immigration officer, that [he] 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 paroled into the United States cannot be subjected to expedited removal, and people who have been present in the United States for more than two years prior to a "determination of inadmissibility" are likewise exempt.

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. 8 U.S.C. § 1225(b)(1)(B). Because the credible fear interview 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 a credible fear, the individual is taken out of the expedited removal process for processing in regular removal proceedings, 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, from 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).

Regular 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 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 regular removal proceedings, noncitizens have the right to counsel, to present evidence, to cross-examine witnesses, and to appeal, if necessary, to the Board of Immigration Appeals 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 regular 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.

Parole (8 U.S.C. § 1182(d)(5)): Under this provision, DHS has discretion to grant parole "on a case-by-case basis for urgent humanitarian reasons." *Id.* In 2020, DHS launched a smartphone app called CBP One to provide travelers with access to certain immigration related functions prior to their arrival in the United States. Under the prior administration, CBP One

became the primary mechanism for people seeking to enter the United States to seek asylum, to receive an appointment to enter the United States, and be considered for protection. When a person entered the United States using CBP One, they were often released into the United States on parole, pursuant to 8 U.S.C. § 1182(d)(5) with a document instructing them to appear in removal proceedings initiated under 8 U.S.C. § 1229a. According to the Board of Immigration Appeals, parole under this provision provides the "only exception" that would permit someone in Petitioner's posture to be released into the United States following entry using CBP One. *See Matter of Q. Li*, 29 I. & N. Dec. 66 (BIA 2025).

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 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. People who are detained under this authority can be released on bond, and some courts have held that the burden is on the government to establish that a person in such a situation is a flight risk and 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 [he] 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 also 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 a number of problems with that position.

First, Petitioner is not an applicant for admission, and he is not subject to expedited removal because he was lawfully paroled into the United States under 8 U.S.C. § 1182(d)(5)(A). The Board of Immigration Appeals recently issued a precedential decision expressly stating that all applicants for admission are subject to mandatory detention and that the *only* means for release from custody for someone in Petitioner's position was via parole. *See Matter of Q. Li*, 29 I. & N. Dec. 66 (BIA 2025). Accordingly, when DHS released Petitioner from immigration custody after his entry into the United States using CBP One, he was paroled into the country as a matter of law. The documents that he received at the time only underscore that conclusion. And applying the plain

language of the expedited removal statute, expedited removal is available only where the individual "*has not been admitted or paroled* into the United States." 8 U.S.C. § 1225(b)(1)(A)(iii)(II) (emphasis added). The verb tense used matters: the statute does not require that the person be presently in the United States subject to parole. Instead, it makes it clear that once DHS exercised its discretion to parole Petitioner, he ceased to be amendable to expedited removal. Courts have upheld this distinction. *See, e.g., Doe v. Noem*, No. 1:25-CV-10495-IT, 2025 WL 1099602, at *16–*17 (D. Mass. Apr. 14, 2025); *Al Otro Lado, Inc. v. McAleenan*, 394 F. Supp. 3d 1168, 1200 (S.D. Cal. 2019).

Respondents may argue that someone who is paroled into the United States has not been admitted. *See, e.g., Leng May Ma v. Barber*, 357 U.S. 185, 190 (1958) (stating that "[t]he parole of [noncitizens] seeking admission is simply a device through which needless confinement is avoided . . . was never intended to affect an [noncitizen's] status"). That is true but irrelevant. Expedited removal is available where a person has not been "admitted *or paroled*." The use of or and the listing of admission and parole in the disjunctive makes it abundantly clear that a person who has been paroled into the United States—as is Petitioner's case—is not subject to expedited removal.

Respondents' argument that Petitioner is subject to expedited removal fails for a second reason. That is because he 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 regular removal proceedings, the Board of Immigration Appeals 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 his 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 into proceedings under Section § 1229a proceedings, 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 presents serious due process violations. The logical extension of Respondents' apparent position is that any person who was once an applicant for removal can *always* be placed into expedited removal. Thus, someone like Petitioner could completed removal proceedings before an immigration judge, appealed to the Board of Immigration Appeals and won remand only to have his case dismissed for placement in expedited removal, even after years of legal process and a successful remand. This scenario illustrates why a person like Petitioner cannot be processed in the same way as a true applicant for admission on the threshold of entry into the United States. For the latter category, the Supreme Court has heled that noncitizens "seeking *initial* admission to the United States[,]" have limited access to constitutional protections. *Landon v. Plasencia*, 459 U.S. 21, 32 (1982). 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.

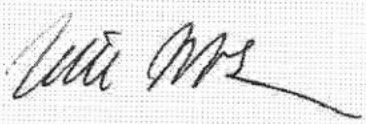
Because Petitioner is not subject to expedited removal, he cannot be detained under 8 U.S.C. § 1225. Instead, his detention would need to comport with the requirements of 8 U.S.C. § 1226(a). And under that provision, Petitioner should—at minimum—be eligible for a bond

hearing where the government bears the burden of proving that he is a flight risk or a danger to the community. *See Hulke*, 572 F. Supp. 3d at 602-03. Respondents have not tried to meet that burden, but they could not 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 his asylum application, and has no criminal record in the United States.

CONCLUSION

Petitioner was lawfully placed into full removal proceedings under 8 U.S.C. § 1229a and never received a final order of removal. DHS cannot lawfully reclassify him 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 him and order DHS to reinstate his prior removal proceedings so he may pursue his protection claims fully and fairly under the law.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I, the undersigned attorney, William Gaston McLean III, certify that I electronically filed the Plaintiffs' MEMORANDUM IN SUPPORT OF PETITIONER'S EMERGENCY MOTION FOR RELIEF FROM UNLAWFUL EXPEDITED REMOVAL with the Clerk of the Court using the CM/ECF system on June 16, 2025. Pursuant to FED. R. CIV. P. 5(b)(3) and the Northern District of Illinois L.R. 5.9, I have thereby electronically served all Filing Users with a copy of Plaintiffs' Motion to Vacate Briefing Schedule.

I, the undersigned attorney, William Gaston McLean III, certify that I have also served a copy of the Plaintiffs' MEMORANDUM IN SUPPORT OF PETITIONER'S EMERGENCY MOTION FOR RELIEF FROM UNLAWFUL EXPEDITED REMOVAL by email on Craig Oswald, Catherine Manahan, and Joshua Press, the attorneys for the Assistant United States Attorney's Office, at the following email addresses on June 16, 2025:

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