UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

AZIZ ZAMIROV, Petitioner, v. SAM OLSON, in his official capacity as Chicago Field Office Director for U.S. Immigration and Customs Enforcement, *et al.*, Respondents.	)	No. 25 C 6540 Judge Bucklo

RESPONDENTS' OPPOSITION MEMORANDUM TO MOTION FOR A PRELIMINARY INJUNCTION

This case involves petitioner Aziz Zamirov, a Kyrgyzstani national who wishes for this court to order that he be placed once more into now-dismissed removal proceedings (brought under 8 U.S.C. § 1229a). *See generally* Dkt. 1 ("Pet."). Zamirov attempts to accomplish this by using a habeas petition to challenge his mandatory detention during the expedited-removal process already underway for him (under 8 U.S.C. § 1225(b)(1)(B)(iii)(IV); § 1225(b)(4)(IV)). Another court in this district construed his request as one for preliminary injunctive relief and set an expedited briefing schedule to that effect. *See* Dkt. 6.

After filing his memorandum, Dkt. 10 ("Petr.'s Br."), though, it is plain that Zamirov's petition should fail because it is not asking for relief available under the writ. *See, e.g.*, *E.F.L. v. Prim*, 986 F.3d 959, 965–66 (7th Cir. 2021) (citing *DHS v. Thuraissigiam*, 591 U.S. 103 (2020)). Instead of any sort of release from confinement, Zamirov asks that this court superintend his removal process by "declar[ing] 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." Petr.'s Br. at 10. But such relief was expressly disallowed in *Thuraissigiam*. *See* 591 U.S. at 112. In that case, the Supreme Court explained that by seeking vacatur of his expedited removal order and an opportunity to apply for asylum (along with other relief from removal), the habeas petitioner there was seeking something "far outside" and "entirely different" from what can be said to be habeas relief. *Id.* at 117–19. So too here.

Setting aside this mismatch, Zamirov's other arguments fail for multiple reasons. First, Zamirov's argument that his now-expired parole somehow exempts him from expedited removal under § 1225(b)(1) is wrong because foreign nationals paroled at the border still retain their status as an "arriving alien" under the Immigration and Nationality Act ("INA") once they lose their parole.[1] *See* 8 U.S.C. § 1182(d)(5)(A); *see also Morales-Ramirez v. Reno*, 209 F.3d 977, 978 (7th Cir. 2000) ("'Parole' into the United States allows an individual physically to enter the country, but it is not equivalent to legal entry into the United States."). This matters here because Zamirov's parole expired, *see* Petr.'s Br. at 2 ("Petitioner was granted one year of parole upon entry" in April 2023), and respondents are thus allowed to initiate expedited removal proceedings against him as an arriving alien now that his removal proceeding under § 1229a has admittedly been dismissed, *see* Pet. ¶ 6.

Second, this court lacks jurisdiction to second-guess the initiation of expedited removal against Zamirov because the INA commits to the Department of Homeland Security ("DHS") the "sole and unreviewable discretion" of whether to subject certain individuals present in the United States without documentation to expedited removal. 8 U.S.C. § 1225(b)(1)(A)(iii)(I). That phrase means what it says, and is within the jurisdictional scope of 8 U.S.C. § 1252(a)(2)(B)(ii), which

[1] This memorandum uses the term "foreign national" as equivalent to the INA's term of "alien."

bars claims alleging either inadequate process, *see Lukac v. Mayorkas*, 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). If anything, 8 U.S.C. § 1252(g) confirms this conclusion because that statute clearly precludes challenges to the government's determination to commence removal proceedings against a foreign national.

Finally, Zamirov's due process argument is wrong because his past parole was not an admission and, as such, he has not 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"). Thus, Zamirov has no more due process rights than what Congress chose to provide the petitioner in *Thuraissigiam*. *See* 591 U.S. at 114, 139–40; *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"); *see 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 that foreign nationals who have not effected a lawful entry and have been here for a limited period of time, may 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).

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, generally speaking, foreign nationals "seeking admission" who fail to "clearly and beyond a doubt" demonstrate an entitlement "to be admitted," are placed into removal proceedings pursuant to 8 U.S.C. § 1229a (what Zamirov's memorandum refers to as "regular removal proceedings," Petr.'s Br. at 5).

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).[2] 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:

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[2] 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 ("LPR"), asylee, or refugee. 8 U.S.C. § 1252(e)(2).

> 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.[3]

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 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

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[3] The statute explicitly excludes foreign nationals "described in subparagraph (F)," i.e., one "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). Kyrgyzstan is not in the western hemisphere.

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. Parole

Congress has long provided authority to immigration officials to use parole to release foreign nationals into the interior of the United States, emphasizing that parole is not an "admission" within the meaning of the INA. 8 U.S.C. §§ 1101(a)(13)(B), 1182(d)(5)(A). After IIRIRA, the Secretary of Homeland Security "may . . . in [her] discretion parole" an "alien applying for admission," and specifies that such a parole is done "temporarily under such conditions as [the Secretary] may prescribe [and] only on a case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A). The statute further states that parole may be terminated "when the purposes of such parole shall, in the opinion of the Secretary of Homeland Security, have been served." *Id.* Thus, both the grant of parole and its termination are committed to the broad discretion of the Secretary.

Again, parole is not an admission to the United States. *Id.*; *see id.* § 1101(a)(13)(B). "[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.'" *Thuraissigiam*, 591 U.S. at 139 (quoting *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 215 (1953)); *see also Leng May Ma v. Barber*, 357 U.S. 185, 188–90 (1958). There are multiple ways in which parole can expire or be terminated; among other possibilities, service of a document charging the foreign national with being removable terminates parole. *See* 8 C.F.R. § 212.5(e)(2). And when parole ends, that person "shall be restored to the status that he or she had at the time of parole." *Id.* As Congress put it, "when the purposes of such parole shall, in the opinion of the

Secretary of Homeland Security, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case *shall continue to be dealt with in the same manner as that of any other applicant for admission* to the United States." 8 U.S.C. § 1182(d)(5)(A) (emphasis added).

II. Factual and Procedural History

According to the petition and Zamirov's memorandum, he is a Kyrgyzstani athlete who fled from his home country in 2023. Petr.'s Br. at 1–2. He "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." *Id.* at 2. He was then "paroled into the country" and "granted one year of parole[.]" *Id.* "At the same time, DHS issued Petitioner a Notice to Appear (NTA) initiating removal proceedings against him. . . . [U]nder 8 U.S.C. § 1229a." *Id.* Zamirov also "applied for asylum . . . within one year of his arrival[.]" *Id.* Earlier this month,[4] however, "DHS's counsel moved to dismiss the removal proceedings . . . at his first appearance before the Immigration Court" at his Master Calendar Hearing. Pet. ¶ 6. Zamirov's counsel "submitted a written response opposing DHS's motion," but "[n]otwithstanding [Zamirov's] written and oral objections, the Immigration Judge . . . granted the motion." *Id.* After Zamirov exited from the courtroom, *see id.*, "DHS . . . 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)," Petr.'s Br. at 3.

Zamirov's counsel filed his habeas petition that same day. *See* Dkt. 1. The emergency court issued an order later that day prohibiting the petitioner from being removed from this country (indeed, prohibiting Zamirov from being moved outside of the Illinois) before 5 p.m.

[4] Although the petition lists the date of his initial hearing as June 12, 2025, Pet. ¶ 6, Zamirov's memorandum lists it as June 10, 2025, Petr.'s Br. at 2–3.

(CDT) on June 13, 2025, and set an in-person status hearing for the following day. *See* Dkt. 2. At that hearing, the court kept its prior order in effect until June 25, 2025, but modified the order to allow Zamirov to be housed not only within Illinois, but also either Indiana or Wisconsin. Dkt. 6. Of course, the court also set a briefing schedule regarding Zamirov's petition. *See id.* To that end, Zamirov's memorandum was filed on June 16, 2025, Dkt. 10,[5] and respondents now oppose.

Legal Standard

Under Federal Rule of Civil Procedure 65, a district court may issue preliminary injunctive relief. Preliminary injunctive relief is "never awarded as of right," *Munaf v. Geren*, 553 U.S. 674, 690 (2008), and "is an extraordinary and drastic remedy, one that should not be granted unless the movant, *by a clear showing*, carries the burden of persuasion," *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (emphasis added) (cleaned up). More specifically, a plaintiff "must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

Argument

I. Plaintiff Has No Likelihood of Success On The Merits.[6]

A. Foreign Nationals Paroled At the Border May Still Be Subjected to Expedited Removal Because They Retain Their Status As "Arriving Aliens" Under the INA.

Zamirov's memorandum first argues that he is no longer "an applicant for admission" because he was paroled in April 2023 and, therefore, "is not subject to expedited removal." Petr.'s

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[5] On this point, respondents presume that Zamirov's last-in-time memorandum is the one he meant to file on that day. *Compare* Dkt. 8, *with* Dkt. 10 (including more argument).

[6] Because Zamirov's memorandum only addresses the merits, respondents do not address the other three *Winter* factors. Still, it is unclear how Zamirov could possibly meet his burden of making a clear showing regarding the other three *Winter* factors where, as here, he has never even mentions them.

Br. at 7. More specifically, Zamirov argues that "expedited removal is available only where the individual 'has not been admitted or paroled into the United States.'" *Id.* at 8 (quoting § 1225(b)(l)(A)(iii)(II)). The problem with this argument is that it ignores how Zamirov's parole expired, *see id.* at 2 ("one year of parole"), and that, in such circumstances, a foreign national reverts to the status he possessed *prior* to the grant of parole. This means that persons paroled at a port of entry, as Zamirov contends that he was, *see* Petr.'s Br. at 2, are once again applicants for admission standing at the threshold of entry, *see* 8 U.S.C. § 1182(d)(5)(A).

As Congress explained, parole "shall not be regarded as an admission of the alien and when the purposes of such parole shall . . . have been served the alien shall forthwith return . . . to the custody from which he was paroled and thereafter his case shall continue to be dealt with *in the same manner as that of any other applicant for admission to the United States*." *Id.* (emphasis added); *see also Ibragimov v. Gonzales*, 476 F.3d 125, 137 (2d Cir. 2007) ("[U]pon denial of his adjustment of status application, [the petitioner's] status reverted to that which he held at the time he was paroled into the United States in July 1998 — namely, that of an 'arriving alien' seeking admission at our borders."). Zamirov's argument to the contrary ignores this statutory limit on parole because he is arguing that he should *not* "be dealt with in the same manner as that of any other applicant for admission to the United States," § 1182(d)(5)(A).[7]

With this backdrop in mind, foreign nationals who were (as a historical matter) paroled into the United States at a port of entry can be designated for expedited removal in the future because parole can expire or be terminated. *See* § 1225(b)(1)(A)(iii)(II); *see also* 8 C.F.R.

[7] The regulations likewise define "arriving aliens" to include "an applicant for admission coming or attempting to come into the United States at a port-of-entry." 8 C.F.R. §§ 1.2, 1001.1(q). "An arriving alien remains an arriving alien even if paroled . . . and even after any such parole is terminated or revoked." 8 C.F.R. § 1.2. And notably, the definition of "arriving alien" does not include any temporal limit to those who could be subject to expedited removal. See id.

§ 212.5(e)(2) (termination by service of charging document). The use of the present perfect tense ("has not been . . . paroled") here reflects a "state that continues into the present." *See Turner v. U.S. Att'y Gen.*, 130 F.4th 1254, 1261–62 (11th Cir. 2025) (construing former 8 U.S.C. § 1432 and explaining that the present perfect tense can "refer to a . . . state that continues into the present"). Far from the one-way-ratchet approach that Zamirov insists upon, the simpler explanation for the "or paroled" language is Congress's recognition that a person should not be subjected to expedited removal pursuant to 8 U.S.C. § 1225(b)(1)(A)(iii)(II) during the period for which they were paroled into the United States.[8]

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[8] The two cases Zamirov relies on for a contrary approach (*Doe v. Noem*, No. 25-cv-10495, 2025 WL 1099602 (D. Mass. Apr. 14 2025), *appeal pending*, No. 25-1384 (1st Cir. Filed Apr. 18, 2025), and *Al Otro Lado, Inc. v. McAleenan*, 394 F. Supp. 3d 1168 (S.D. Cal. 2019)), do not truly support his interpretation. This is because *Al Otro Lado* never discusses parole. As for *Doe*, Zamirov conveniently ignores how the Supreme Court recently granted the government's application to stay the district court's order pending appeal to the First Circuit. *Noem v. Doe*, 605 U.S. —, 2025 WL 1534782 (May 30, 2025). And to the extent there are statements in *Doe* suggesting there is no authority under any statutory provision allowing DHS to apply expedited removal to foreign nationals paroled at ports of entry, *see Doe*, 2025 WL 1099602, at *16, those statements are simply wrong. The Supreme Court's grant of a stay implicitly supports that view. Further, there is no provision in any statute or regulation providing that someone "authorized to enter the United States" is not eligible for expedited removal. *See id.* On the contrary, with respect to the definition of "arriving alien" discussed above, a foreign national paroled at a port of entry is authorized to physically enter the United States. That is, after all, what parole does. *See* § 1182(d)(5)(A) ("parole into the United States"). But such a person remains in the position of an applicant for admission, *id.* ("thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission"), and in the position of an "arriving alien" subject to expedited removal, 8 C.F.R. §§ 1.2, 1001.1(q) ("An arriving alien remains an arriving alien even if paroled pursuant to section 212(d)(5) of the Act, and even after any such parole is terminated or revoked."). Indeed, the *Doe* court's statement that expedited removal does not apply to those "authorized to enter the United States" is squarely at odds with Congress's enactment of statutory provisions that anticipate that even a foreign national who was initially "admitted for permanent residence" or "as a refugee," may be placed in expedited removal if "such status" has "been terminated." 8 U.S.C. § 1252(e)(2); *see also* 8 C.F.R. § 212.5(e)(2)(i) (providing that after parole is terminated, "further inspection or hearing shall be conducted under section 235 or 240 of the Act," with section 235 of the INA covering expedited removals). *Doe* never addressed these statutory or regulatory provisions. Its analysis is therefore of little value to the instant case.

This interpretation comports with both the statutory and historical context: when parole is revoked, a foreign national reverts to the status he possessed prior to the grant of parole which, in the case of all those paroled at a port of entry, is that of an applicant for admission standing at the threshold of entry. *See* § 1182(d)(5)(A); *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018) (citing the statute); *Leng May Ma*, 357 U.S. at 188–90; *Ibragimov*, 476 F.3d at 137. Thus, the import of the language—"who has not been admitted or paroled"—is best understood as encompassing foreign nationals who are no longer paroled. So long as a foreign national retains parole status, he cannot be numbered among those designated for expedited removal under § 1225(b)(1)(A)(iii). But once parole is terminated or expired, the person reverts back to an "arriving alien" and, assuming other definitional requirements are met, there is no obstacle to his being designated for expedited removal under § 1225(b)(1)(A)(iii)(II).

B. This Court Lacks Jurisdiction To Review DHS's Discretionary Determination Of Whether To Initiate Expedited Removal Proceedings Against Zamirov.

Turning to jurisdiction, Zamirov argues that this court has jurisdiction to entertain his habeas petition because "[w]hile 8 U.S.C. § 1252(e)(2) restricts certain . . . 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." Petr.'s Br. at 7. That argument is wrong, because the decision of whether to apply expedited removal is itself discretionary. 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." "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 apply expedited removal.

In another attempt to get around the INA's jurisdictional bars, Zamirov's memorandum argues that he "remains in full removal proceedings under 8 U.S.C. § 1229a," Petr.'s Br. at 8, even though he admits that an immigration judge has dismissed those proceedings because, he maintains, they "are not yet administratively final," *id.* at 9. Again, though, there is another jurisdictional problem because to the extent Zamirov argues that he cannot be placed into expedited removal proceedings, that claim falls directly within 8 U.S.C. § 1252(g)'s preclusion of review for actions seeking to challenge DHS's commencement of removal 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, Zamirov expressly requests that this court "impose judicial constraints" on DHS's "prosecutorial" decision to "commence" expedited removal proceedings against him. *Id.* After *AADC*'s interpretation of § 1252(g)'s plain language, though, that prosecutorial decision is one that § 1252(g) bars. *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.

C. Zamirov's Due Process Argument Likewise Fails.

Finally, Zamirov suggests that the "use of expedited removal in a case like this presents serious due process violations." Petr.'s Br. at 9; *see also* Pet. ¶ 13 (alleging his detention violates due process). From there, he makes a slippery-slope argument that "any person who was once an applicant for removal [sic] can always be placed into expedited removal" and that "someone . . . could completed [sic] removal proceedings . . . only to have his case dismissed for placement in expedited removal, even after years of legal process." Petr.'s Br. at 9. But this case comes nowhere close to these situations—as Zamirov admits that the removal proceedings against him before an immigration judge were dismissed at his *first* appearance and after his parole expired. *Id.* at 2; *see also* Pet. ¶ 6. Moreover, the reversion-to-an-arriving-alien process as Congress intended only applies to former parolees—not to every applicant for admission imaginable.

The distinction between arriving aliens and other foreign nationals in this country with

questionable status is critical because applicants for admission are considered to be "on the threshold" and have only those procedural rights that Congress has provided them by statute. *Thuraissigiam*, 591 U.S. at 140. Applied here, this means that Zamirov is only entitled to the processes set forth in the expedited removal statute and regulations, *see* 8 U.S.C. § 1225(b)(1); 8 C.F.R. § 235.3(b),[9] which is sufficient to satisfy due process, *see United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950) ("Whatever the procedure authorized by Congress is, it is due process[.]"); *see also Mezei*, 345 U.S. at 215 ("[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)).

Conclusion

For the foregoing reasons, the court should deny Zamirov's motion and dismiss his petition.

Respectfully submitted,

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[9] This includes the opportunity to express a fear of persecution or torture and to apply for asylum, withholding of removal, and protection under CAT if the foreign national can establish a "credible fear" of persecution or torture before a USCIS officer or an Immigration Judge. 8 U.S.C. § 1225(b)(1)(B)(i); 8 C.F.R. § 235.3(b)(4). Under these procedures, the inspecting officer provides the foreign national with a Form M-444, "Information About Credible Fear Interview." *See* 8 C.F.R. § 235.3(b)(4)(i). The Form M-444 discusses, among other things, the foreign national's statutory rights to consultation and to Immigration Judge review—as well as the consequences of failure to establish a credible fear of persecution or torture. *See* 8 C.F.R. § 235.3(b)(4)(i). A foreign national referred for a credible-fear interview is also given a list of pro bono representatives whom he or she might contact, along with access to a telephone. *See Inspection and Expedited Removal of Aliens*, 62 Fed. Reg. 10,312, 10,320 (Mar. 6, 1997).