UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

VRAJ DILIPBHAI PATEL — PETITIONER

v. — CIVIL ACTION NO. 3:25-cv-00373-RGJ (*e-filed*)

JAILER JEFF TINDELL
SAMUEL OLSON, ACTING DIRECTOR
KRISTI NOEM, SECRETARY
PAM BONDI, ATTORNEY GENERAL — DEFENDANTS

**MOTION TO DISMISS**

Petitioner Patel is an Indian national who entered the United States without authorization. Aliens who enter without authorization are subject to expedited orders of removal. Patel was initially placed into removal proceedings pursuant to 8 U.S.C. § 1229a. The Department of Homeland Security then issued Patel an expedited order of removal. Aliens issued an expedited order of removal must be detained, and Patel is detained. The immigration judge in Patel's § 1229a proceeding then denied him bond, and dismissed his § 1229a proceeding. § 1229a proceedings are discretionary and § 1229a dismissals and bond decisions are not subject to judicial review. Patel's expedited order of removal requires his detention until his credible fear claim receives a determination. The Supreme Court has held that the expedited removal process and its mandatory detention comport with due process, as do the statutes that preclude judicial review of either.

A habeas petition such as Patel's may only challenge detention, not immigration processes or determinations. Patel's detention is lawful, because he is an alien who entered the United States without authorization, subjecting him to expedited removal and mandatory detention, both of which the Supreme Court has upheld as consistent with due process. The Court should dismiss Patel's petition under Fed. R. Civ. Pr. 12(b)(6) for failure to state a claim upon which relief can be

granted, as the facts he has submitted are consistent with statutes the Supreme Court has said afford due process. Patel's petition is also subject to dismissal under Fed. R. Civ. Pr. 12(b)(1) because he attempts to raise issues for which judicial review is statutorily precluded, resulting in the absence of subject matter jurisdiction.

**Facts and procedural posture**

Petitioner Patel is a citizen and native of India. (Doc. 1, PageID.1, 4, 5, ¶¶ 2, 17, 23, 24; Exh. 1, Record of Deportable/Inadmissible Alien at 1, 2.). Patel entered the United States in March, 2024 without being admitted, inspected, or paroled. (*Id.*). Specifically, Department of Homeland Security (DHS) records recite that on March 4, 2024, Patel unlawfully entered the United States in California, from Mexico, at a time and place other than as designated. (*Id.* at 2.). On entry, Patel was detained, and then released on his own recognizance with a notice to appear, due to a lack of space. (*Id.*). Patel was placed in removal proceedings in immigration court under 8 U.S.C. § 1229a, and he filed an application for asylum and withholding of removal. (8 U.S.C. § 1229a; Doc. 1, PageID.2, 5, ¶¶ 3, 24, 25.). On June 9, 2025, Patel was issued a notice and order of expedited removal under 8 U.S.C. § 1225. (Doc. 1, PageID.2, 5, 6, ¶¶ 4-5, 22, 27; Exh. 2, Notice and Order of Expedited Removal at 1, 2.). Detention is mandatory for aliens in expedited removal proceedings. 8 U.S.C. § 1225(b)(1)(B)(iii)(IV). Patel was taken into custody on June 9, 2025. (Doc. 1, PageID.2, 5, 6, ¶¶ 4-5, 22, 27; Exh. 1, Record of Deportable/Inadmissible Alien at 2.). Patel's § 1229a proceedings were dismissed and he was subjected to expedited removal proceedings under 8 U.S.C. § 1225. (Doc. 1, PageID.2, 5, 6, ¶¶ 5-6, 22, 30.). On dismissal of Patel's § 1229a proceedings, the immigration judge denied him bond, finding that he "was a flight risk as he had no relief before the Immigration Court." (Doc. 1, PageID.2, 6, ¶¶ 6, 31.). Patel now alleges that he is detained, subject to immediate removal.

(Doc. 1, PageID.2, 4, 5, 6, ¶¶ 7, 17, 22, 27.). However, he is detained subject to an expedited order of removal, and awaits processing of his claim of credible fear of persecution or torture. (Exh. 1, Record of Deportable/Inadmissible Alien at 2; 8 U.S.C. §§ 1225(b)(1)(A)(i)-(iii); 8 C.F.R. §§ 208.30(e)(2)-(3), (f).).

Patel filed this habeas petition, claiming that his asylum claim not being heard in his § 1229a removal proceedings, his placement in expedited removal proceedings under § 1225, and his resultant detention violate the Fifth Amendment's Due Process Clause and 8 U.S.C. §§ 1225(b)(1) and 1229a. (Doc. 1, PageID.6, 8-10, ¶¶ 32-33, 35, 43, 47-50, D.). Those arguments are contrary to applicable statutes and authority upholding them, and they raise issues for which Congress has precluded judicial review. Dismissals of § 1229a proceedings are not subject to judicial review. 8 U.S.C. §§ 1252(a)(2)(B)(ii), (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). Expedited removal proceedings under 8 U.S.C. § 1225 are for any alien who "(1) is inadmissible because he or she lacks a valid entry document; (2) has not 'been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility'; and (3) is among those whom the Secretary of Homeland Security has designated for expedited removal." 8 U.S.C. §§ 1225(b)(1)(A)(i), (iii)(I)–(II). Congress committed the initiation of expedited removal proceedings to the "sole and unreviewable" discretion of DHS. 8 U.S.C. § 1225(b)(1)(A)(iii)(I). The executive branch's decision to place Patel into expedited removal is not subject to judicial review, including claims of inadequate process or constitutional infirmity, because judicial review exists only for a final order of removal, and only then in the Court of Appeals. 8 U.S.C. §§ 1252(a)(2)(B)(ii), (D); *Lukac v. Mayorkas*, 22 C 7156, 2023 WL 3918967, at *4–5 (N.D. Ill. June 9, 2023) ("every

circuit court to have considered this statutory provision has reached the same conclusion. The statute means what it says: the exercise of discretion is unreviewable, and the ban on judicial review covers the process, too", listing cases); *Nobles v. Noem*, 24 C 9473, 2025 WL 860364, at *5–6 (N.D. Ill. Mar. 19, 2025) ("Sections 1252(a)(2)(B) and (D), taken together, 'provide for judicial review only of legal and constitutional claims *and only if those claims are brought in a petition for review from a final order of removal.*'", quoting *Britkovyy v. Mayorkas*, 60 F.4th 1024, 1028 (7th Cir. 2023) (emphasis in original). At this point, Patel will receive due process for any credible fear claim. 8 U.S.C. § § 1225(b)(1)(A)(i)-(ii); 8 C.F.R. §§ 208.30(e)(2)-(3), (f).[1] Any eventual determination regarding Patel's credible fear claim(s) is not subject to judicial review. 8 U.S.C. § 1252 (a)(2)(A)(i); *Raghav v. Wolf*, 522 F. Supp. 3d 534, 540 (D. Ariz. 2021) ("Crucially, the INA precludes federal court review of credible-fear determinations."), citing 8 U.S.C. §§ 1225 (b)(1)(C); 1252(a)(2)(A)(iii); 1252(e)(2).

**Application of Law to Facts**

**I. Patel bears the burden to establish that his custody is in violation of the Constitution or laws or treaties of the United States, and habeas relief is limited to custody.**

Patel's action before this Court is a habeas petition that cites 28 U.S.C. § 2241 as a jurisdictional basis. (Doc. 1, PageID.2, ¶ 6.). To obtain habeas relief, Patel 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

[1] Credible fear procedures may also lead to mandatory detention under 8 U.S.C. § 1225 (b)(1)(B)(ii) or (iii)(IV).

States'", quoting 28 U.S.C. § 2254(a).). "[I]n a habeas proceeding the petitioner 'has the burden of establishing his right to federal habeas relief and of proving all facts necessary to show a constitutional violation.'" *Caver v. Straub*, 349 F.3d 340, 351 (6th Cir. 2003), quoting *Romine v. Head*, 253 F.3d 1349, 1357 (11th Cir. 2001). Habeas relief is limited to "simple release", and habeas is not a vehicle through which an alien can challenge other aspects of their immigration proceedings or determinations. *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 117–20 (2020).

## II. The expedited removal statute subjects Patel to mandatory detention, and the Supreme Court has held that this comports with due process.

Patel's complaint flows from the fact that he was issued a notice and order of expedited removal under 8 U.S.C. § 1225, and taken into detention pursuant to his removal order while he awaits processing of his claim of credible fear of persecution or torture. (Doc. 1, PageID.2, 5, 6, ¶¶ 4-5, 22, 27; Exh. 2, Notice and Order of Expedited Removal at 1, 2; 8 U.S.C. § 1225 (b)(1)(B)(iii)(IV).). An explanation of the expedited removal process puts Patel's situation and complaint in perspective. *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. (2020) offers such an explanation, in a case in which the Supreme Court upheld the expedited removal statutes, including their mandated detention of aliens and preclusion of judicial review.

"Every year, hundreds of thousands of aliens are apprehended at or near the border attempting to enter this country illegally." *Thuraissigiam*, 591 U.S. at 106. "Many ask for asylum, claiming that they would be persecuted if returned to their home countries." *Id.* "Most asylum claims, however, ultimately fail, and some are fraudulent." *Id.* "In 1996, when Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), 110 Stat. 3009–546, it crafted a system for weeding out patently meritless claims and expeditiously removing the aliens making such claims from the country." *Id.* "It was Congress's judgment

that detaining all asylum seekers until the full-blown removal process is completed would place an unacceptable burden on our immigration system and that releasing them would present an undue risk that they would fail to appear for removal proceedings." *Id.* "Among other things, IIRIRA placed restrictions on the ability of asylum seekers to obtain review under the federal habeas statute". *Id.*

"[S]everal classes of aliens are 'inadmissible' and therefore 'removable.'" *Thuraissigiam*, 591 U.S. at 108, citing 8 U.S.C. §§ 1182, 1229a(e)(2)(A). "These include aliens who lack a valid entry document 'at the time of application for admission.'" *Id.*, citing § 1182 (a)(7)(A)(i)(I). "An alien who arrives at a 'port of entry,' i.e., a place where an alien may lawfully enter, must apply for admission. An alien … who is caught trying to enter at some other spot is treated the same way." *Id.*, citing 8 U.S.C. §§ 1225(a)(1), (3).

"If an alien is inadmissible, the alien may be removed. The usual removal process involves an evidentiary hearing before an immigration judge, and at that hearing an alien may attempt to show that he or she should not be removed." *Thuraissigiam*, 591 U.S. at 108. "As of the first quarter of this fiscal year [2020], there were 1,066,563 pending removal proceedings." *Id.*, citing Executive Office for Immigration Review (EOIR), Adjudication Statistics: Pending Cases (Jan. 2020). "The average civil appeal takes approximately one year." *Id.*, citing Administrative Office of the U. S. Courts, Federal Judicial Caseload Statistics, U. S. Courts of Appeals—Median Time Intervals in Months for Civil and Criminal Appeals Terminated on the Merits (2019) (Table B–4A). "During the time when removal is being litigated, the alien will either be detained, at considerable expense, or allowed to reside in this country, with the attendant risk that he or she may not later be found." *Id.*, citing 8 U.S.C. § 1226(a).

"Congress addressed these problems by providing more expedited procedures for certain 'applicants for admission.'" *Thuraissigiam*, 591 U.S. at 108. "For these purposes, '[a]n 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 ...)' is deemed 'an applicant for admission.'" *Id.* at 109, citing 8 U.S.C. § 1225(a)(1). "An applicant is subject to expedited removal if, as relevant here, the applicant (1) is inadmissible because he or she lacks a valid entry document; (2) has not 'been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility'; and (3) is among those whom the Secretary of Homeland Security has designated for expedited removal." *Id*, quoting 8 U.S.C. §§ 1225(b)(1)(A)(i), (iii)(I)–(II). "Once 'an immigration officer determines' that a designated applicant 'is inadmissible,' 'the officer [must] order the alien removed from the United States without further hearing or review.' *Id.*, quoting 8 U.S.C. § 1225(b)(1)(A)(i).

"Applicants can avoid expedited removal by claiming asylum." *Thuraissigiam*, 591 U.S. at 109. "If an applicant 'indicates either an intention to apply for asylum' or 'a fear of persecution,' the immigration officer 'shall refer the alien for an interview by an asylum officer.'" *Id.*, quoting 8 U.S.C. §§ 1225(b)(1)(A)(i)–(ii). "The point of this screening interview is to determine whether the applicant has a 'credible fear of persecution.'" *Id.*, citing 8 U.S.C. § 1225(b)(1)(B)(v). "The applicant need not show that he or she is in fact eligible for asylum—a 'credible fear' equates to only a 'significant possibility' that the alien would be eligible." *Id.* "Thus, while eligibility ultimately requires a 'well-founded fear of persecution on account of,' among other things, 'race' or 'political opinion,' all that an alien must show to avoid expedited removal is a 'credible fear.'" *Id.* at 109-110, citing 8 U.S.C. §§ 1101(a)(42)(A), 1158(b)(1)(A).

"A grant of asylum enables an alien to enter the country, but even if an applicant qualifies, an actual grant of asylum is discretionary." *Id.*, n. 4, citing 8 U.S.C. § 1158(b)(1)(A).

"If the asylum officer finds an applicant's asserted fear to be credible, the applicant will receive 'full consideration' of his asylum claim in a standard removal hearing." *Thuraissigiam*, 591 U.S. at 110, citing 8 C.F.R. § 208.30(f) and 8 U.S.C. § 1225(b)(1)(B)(ii). "The asylum officer also considers an alien's potential eligibility for withholding of removal under § 1231(b)(3) or relief under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)." *Id.*, n. 5, citing 8 C.F.R. §§ 208.30(e)(2)–(3). "If the asylum officer finds that the applicant does not have a credible fear, a supervisor will review the asylum officer's determination." *Id.*, citing 8 C.F.R. § 208.30(e)(8). "If the supervisor agrees with it, the applicant may appeal to an immigration judge, who can take further evidence and 'shall make a de novo determination.'" *Id.*, citing 8 C.F.R. §§ 1003.42(c), (d)(1), and 8 U.S.C. § 1225(b)(1)(B)(iii)(III). "An alien subject to expedited removal thus has an opportunity at three levels to obtain an asylum hearing, and the applicant will obtain one unless the asylum officer, a supervisor, and an immigration judge all find that the applicant has not asserted a credible fear." *Id.*

"Over the last five years [2015-2010], nearly 77% of screenings have resulted in a finding of credible fear." *Thuraissigiam*, 591 U.S. at 111, citing GAO, Immigration: Actions Needed To Strengthen USCIS's Oversight and Data Quality of Credible and Reasonable Fear Screenings 13–15, and fig. 2 (GAO–20–250, Feb. 2020). "And nearly half the remainder (11% of the total number of screenings) were closed for administrative reasons, including the alien's withdrawal of the claim." *Id.*, citing *id.*, at 16, n. b. "As a practical matter, then, the great majority of asylum seekers who fall within the category subject to expedited removal do not

receive expedited removal and are instead afforded the same procedural rights as other aliens." *Id.* "Whether an applicant who raises an asylum claim receives full or only expedited review, the applicant is not entitled to immediate release." *Id.* "Applicants 'shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed.'" *Id.*, quoting 8 U.S.C. § 1225(b)(1)(B)(iii)(IV). "Applicants who are found to have a credible fear may also be detained pending further consideration of their asylum applications." *Id.*, citing 8 U.S.C. § 1225(b)(1)(B)(ii) and *Jennings v. Rodriguez*, 138 S.Ct. 830, 836–837 (2018).

"[8 U.S.C.] § 1252(e)(2), limits the review that an alien in expedited removal may obtain via a petition for a writ of habeas corpus." *Thuraissigiam*, 591 U.S. at 112. "That provision allows habeas review of three matters: first, 'whether the petitioner is an alien'; second, 'whether the petitioner was ordered removed'; and third, whether the petitioner has already been granted entry as a lawful permanent resident, refugee, or asylee." *Id.*, quoting 8 U.S.C. §§ 1252 (e)(2)(A)–(C). "A major objective of IIRIRA was to 'protec[t] the Executive's discretion' from undue interference by the courts; indeed, 'that can fairly be said to be the theme of the legislation.'" *Id.*, quoting *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 486 (1999). "In accordance with that aim, § 1252(e)(5) provides that '[t]here shall be no review of whether the alien is actually inadmissible or entitled to any relief from removal.'" *Id.* "And '[n]otwithstanding' any other 'habeas corpus provision'—including 28 U.S.C. § 2241— 'no court shall have jurisdiction to review' any other 'individual determination' or 'claim arising from or relating to the implementation or operation of an order of [expedited] removal.'" *Id.*, citing 8 U.S.C. § 1252(a)(2)(A)(i). "In particular, courts may not review 'the determination' that

an alien lacks a credible fear of persecution." *Id.*, quoting 8 U.S.C. § 1252(a)(2)(A)(iii) and citing 8 U.S.C. §§ 1252(a)(2)(A)(ii), (iv).

In addition to explaining the statutory framework for expedited removal, and upholding it against a due process challenge, the Supreme Court in *Thuraissigiam* explained some of the reasons for the expedited removal process: "Even without the added step of judicial review, the credible-fear process and abuses of it can increase the burdens currently 'overwhelming our immigration system.'" *Thuraissigiam*, 591 U.S. at 112, citing 84 Fed. Reg. 33841 (2019), and noting "the Department's view that credible-fear claims can be asserted 'in the hope of a lengthy asylum process that will enable [the claimants] to remain in the United States for years ... despite their statutory ineligibility for relief' and that an influx of meritless claims can delay the adjudication of meritorious ones; strain detention capacity and degrade detention conditions; cause the release of many inadmissible aliens into States and localities that must shoulder the resulting costs; divert Department resources from protecting the border; and aggravate 'the humanitarian crisis created by human smugglers'", and a "legislative finding of 'a drain on limited resources resulting from the high cost of processing frivolous asylum claims'", *Id.*, n. 9. "The past decade [2008-2018] has seen a 1,883% increase in credible-fear claims, and in 2018 alone, there were 99,035 claims." *Id.* at 112-113, citing 84 Fed. Reg. 33838. "The majority have proved to be meritless. Many applicants found to have a credible fear—about 50% over the same 10-year period—did not pursue asylum." *Id.* at 113, citing EOIR, Adjudication Statistics: Rates of Asylum Filings in Cases Originating With a Credible Fear Claim (Nov. 2018) and 84 Fed. Reg. 33841. "In 2019, a grant of asylum followed a finding of credible fear just 15% of the time." *Id.*, citing EOIR, Asylum Decision Rates in Cases Originating With a Credible Fear Claim (Oct. 2019). "Fraudulent asylum claims can also be difficult to detect, especially in a

screening process that is designed to be expedited and that is currently handling almost 100,000 claims per year." *Id.* (citations omitted).

**III. Patel's detention is lawful because he is an alien who entered without authorization and is in expedited removal proceedings, which afford due process and which at this point are judicially unreviewable, particularly in a habeas proceeding.**

In *Thuraissigiam*, the Supreme Court upheld the constitutionality of mandatory, statutory detention of any alien in expedited removal proceedings – aliens like Patel who were "apprehended in the very act of attempting to enter this country" and "inadmissible because he lacks an entry document", thus "qualif[ying] for the expedited review process, including '[m]andatory detention' during his credible-fear review". *Thuraissigiam*, 591 U.S. at 118-119, citing 8 U.S.C. §§ 1225(b)(1)(B)(ii), (iii)(IV). "[A]n alien who tries to enter the country illegally ... has only those rights regarding admission that Congress has provided by statute ... Congress provided the right to a 'determin[ation]' whether he had 'a significant possibility' of 'establish[ing] eligibility for asylum'". *Id.* at 140, citing 8 U.S.C. §§ 1225 (b)(1)(B)(ii), (v). See also *Zadvydas v. Davis*, 533 U.S. 678, 703 (2001) (Scalia, J., concurring) (release of an alien who entered without authorization "is at bottom a claimed right of release into this country by an individual who *concededly* has no legal right to be here. There is no such constitutional right.... an inadmissible alien at the border has no right to be in the United States.") (emphasis in original; see Doc. 1, PageID.1, 4, 5, ¶¶ 2, 17, 24 "[Patel] entered the United States ... without being admitted, inspected, or paroled.").

Patel asserts that this "action is brought to compel the Respondents, officers of the United States, to accord Petitioner the due process of law to which he is entitled under the Fourth, Fifth, and Fourteenth Amendments of the United States Constitution." (Doc. 1, PageID.3, ¶ 10, 13.). He asserts "due process stripping tactics Respondents employed to detain Petitioner". (*Id.* at 3,

6, 8, 10, ¶¶ 13, 35, 43, 50.). Patel appears to assert that proceeding with expedited removal subsequent to initiation of a § 1229a proceeding violates due process. *Id.* But both the dismissal of his § 1229a proceeding and the initiation of his § 1225 expedited removal were consistent with applicable statutes, within DHS's discretion, and not subject to judicial review.

8 U.S.C. § 1252(b)(9) precludes judicial review of the immigration judge's dismissal of his § 1229a proceeding and denial of bond: "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). Appellate courts have applied 8 U.S.C. § 1252(b)(9) to mean that federal courts lack jurisdiction to review any immigration court action other than an order of removal. See *Galindo-Romero*, 640 F.3d at 877 ("'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*, 700 F.3d at 1243 ("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."). The immigration judge's dismissal, and detention, were both proper, because Patel was subjected to an expedited order of removal, which made his detention mandatory. 8 U.S.C. § 1225(b)(1)(B)(iii)(IV) ("Any alien

subject to the procedures under this clause shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed.").

Similarly, DHS's decision to place Patel into expedited removal is not subject to judicial review. 8 U.S.C. § 1252(a)(2)(B)(ii) ("Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision, and [inapplicable exceptions] and regardless of whether the judgment, decision, or action is made in removal proceedings, 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, other than the granting of relief under section 1158(a) of this title."). It was also a justified decision. See *Thuraissigiam*, 591 U.S. at 108, quoting 8 U.S.C. §§ 1225 (b)(1)(A)(i), (iii)(I)–(II) ("An applicant is subject to expedited removal if, as relevant here, the applicant (1) is inadmissible because he or she lacks a valid entry document; (2) has not 'been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility'; and (3) is among those whom the Secretary of Homeland Security has designated for expedited removal.").

**IV. Patel's petition fails to state a claim upon which relief can be granted.**

As outlined above, Patel's complaint alleges facts that 1) are consistent with the United States' statutory authority to process and remove aliens who enter illegally, 2) comport with what the Supreme Court has said constitutes due process for aliens who enter illegally, and 3) are not subject to judicial review, or present any jurisdictional basis for judicial review. Accordingly, the Court should dismiss Patel's petition under Fed. R. Civ. Pr. 12(b)(6) for failure to state a claim upon which relief can be granted.

## V. Patel's petition is rife with misstatements of the law.

### A. Patel bears the burden to establish subject matter jurisdiction, which is absent for his claims.

"Federal courts are courts of limited subject-matter jurisdiction." *Nobles*, 2025 WL 860364 at *2, citing *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). "They may only hear cases if granted the power to do so by the Constitution and statutes." *Id.* "Congress has sharply limited judicial review in the immigration context." *Britkovyy*, 60 F.4th at 1027. "The party asserting jurisdiction bears the burden of showing jurisdiction." *Kokkonen*, 511 U.S. at 377.

Patel alleges that "[n]othing in federal immigration law strips this Court of its jurisdiction over Petitioner's claims", citing 8 U.S.C. § 1252. (Doc. 1, PageID.3, ¶ 13.). But dismissal of Patel's § 1229a proceeding is not subject to judicial review. See 8 U.S.C. § 1252(b)(9) ("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."; *Galindo-Romero*, 640 F.3d at 877 ("'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*, 563 F.3d at 1013; "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*, 700 F.3d at 1243 ("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, 8 U.S.C. § 1252(g) establishes that "notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code [28 USCS § 2241], or any other habeas corpus provision ... 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 commence proceedings, adjudicate cases, or execute removal orders against any alien under this Act." "[8 U.S.C.] § 1252(e)(2), limits the review that an alien in expedited removal may obtain via a petition for a writ of habeas corpus." *Thuraissigiam*, 591 U.S. at 112. "That provision allows habeas review of three matters: first, 'whether the petitioner is an alien'; second, 'whether the petitioner was ordered removed'; and third, whether the petitioner has already been granted entry as a lawful permanent resident, refugee, or asylee." *Id.*, quoting 8 U.S.C. §§ 1252(e)(2)(A)–(C). "And '[n]otwithstanding' any other 'habeas corpus provision'—including 28 U.S.C. § 2241— 'no court shall have jurisdiction to review' any other 'individual determination' or 'claim arising from or relating to the implementation or operation of an order of [expedited] removal.'" *Id.* at 112, citing 8 U.S.C. § 1252(a)(2)(A)(i).

**B. Aliens have limited due process rights in removal proceedings.**

Patel alleges that [i]t is well-settled that the rights contained in the Due Process Clause of the Fifth Amendment extend to 'all persons' present in the United States." (Doc. 1, PageID.6, ¶ 35.). But "all persons" do not have the same due process rights, and aliens like Patel have lesser due process rights than citizens. "[I]n the exercise of its broad power over naturalization and immigration, 'Congress regularly makes rules that would be unacceptable if applied to citizens.'" *Fiallo v. Bell*, 430 U.S. 787, 792 (1977), quoting *Mathews v. Diaz*, 426 U.S. 67, 79–

80 (1976). "The exclusion of aliens and the reservation of the power to deport have no permissible counterpart in the Federal Government's power to regulate the conduct of its own citizenry." *Mathews*, 426 U.S. at 80; see also *Demore v. Kim*, 538 U.S. 510, n. 9 (Souter, J., concurring) (same; "through the exercise of the deportation and exclusion power, Congress exposes aliens to a treatment (expulsion) that cannot be imposed on citizens", listing cases). "[A]n alien who tries to enter the country illegally ... has only those rights regarding admission that Congress has provided by statute". *Thuraissigiam*, 591 U.S. at 140.

Patel further alleges that "noncitizens in removal proceedings are afforded due process rights." (Doc. 1, PageID.8, ¶ 41.). The Supreme Court has established the degree of due process to which aliens who entered the country illegally, like Patel, are entitled: "[A]n alien in respondent's position ["an alien who tries to enter the country illegally"] has only those rights regarding admission that Congress has provided by statute." *Thuraissigiam*, 591 U.S. 103, 140. "In respondent's case, Congress provided the right to a 'determin[ation]' whether he had 'a significant possibility' of 'establish[ing] eligibility for asylum'". *Id.*, quoting 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.* "As applied here, therefore, § 1252(e)(2) does not violate due process." *Id.* In turn, as recited above, "[8 U.S.C.] § 1252(e)(2), limits the review that an alien in expedited removal may obtain via a petition for a writ of habeas corpus." *Id.* at 112. "That provision allows habeas review of three matters: first, 'whether the petitioner is an alien'; second, 'whether the petitioner was ordered removed'; and third, whether the petitioner has already been granted entry as a lawful permanent resident, refugee, or asylee." *Id.*, quoting 8 U.S.C. §§ 1252(e)(2)(A)–(C). Patel raises none of those three matters reviewable in habeas; he concedes the first and second, and he does not raise the third. (Doc. 1, PageID.1, 2, 4, 5, ¶¶ 2, 5,

17, 22-24; see also Exh. 2, Notice and Order of Expedited Removal at 1, 2.). "A major objective of IIRIRA was to 'protec[t] the Executive's discretion' from undue interference by the courts; indeed, 'that can fairly be said to be the theme of the legislation.'" *Id.*, quoting *Reno*, 525 U.S. at 486. "In accordance with that aim, § 1252(e)(5) provides that '[t]here shall be no review of whether the alien is actually inadmissible or entitled to any relief from removal.'" *Id.* "And '[n]otwithstanding' any other 'habeas corpus provision'—including 28 U.S.C. § 2241— 'no court shall have jurisdiction to review' any other 'individual determination' or 'claim arising from or relating to the implementation or operation of an order of [expedited] removal.'" *Id.*, citing 8 U.S.C. § 1252(a)(2)(A)(i).

**C. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) addressed circumstances absent in this case.**

Patel notes that in *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001), the Supreme Court found the two aliens in that particular case presented "weak or inconsistent" interests in ensuring their appearance at future proceedings. (Doc. 1, PageID.7, ¶ 38.). The factual holdings in *Zadyvdas* have no application to Patel's petition. Kestutis Zadvydas was a career criminal born of Lithuanian parents in a German displaced persons camp in the aftermath of World War II, and neither of those two countries would accept him, on the basis that he was not their citizen. *Zadvydas*, 533 U.S. at 684. The other party to that action, Kim Ho Ma, was a convicted killer born in Cambodia, which had no repatriation agreement with the United States. *Id.* at 685-686. Zadvydas and Ma had been held in immigration detention for seven and two years, respectively. *Id.* at 684-686. The Court's holding in *Zadvydas* specifically addressed situations "where removal seems a remote possibility at best" and "where detention's goal is no longer practically attainable". *Id.* at 690. Patel's petition gives the Court no reason to analogize his situation to those in *Zadvydas*. And *Zadvydas* itself held that "for the sake of uniform administration in the

federal courts", if an alien is "in detention for more than six months", "once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing." *Id.* at 701. "This 6–month presumption, of course, does not mean that every alien not removed must be released after six months. To the contrary, an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* By contrast, Patel alleges he has been in custody for thirteen days, far short of six months, and unlike Zadvydas and Ma, he gives the Court no reason at all to infer that "there is no significant likelihood of removal in the reasonably foreseeable future" to his native India.

**D. Patel's detention is consistent with due process, and is not subject to judicial review.**

Patel argues that his detention statute "is not narrowly tailored to protect any interest that Respondents might assert", and "[i]t would violate Due Process to permit the Attorney General to exercise such unbridled power to unreasonably detain human beings." (Doc. 1, PageID.7, ¶ 39.). But the Supreme Court has upheld the mandatory, statutory detention of aliens subject to expedited removal orders. *Thuraissigiam*, 591 U.S. at 118-119, 140, citing 8 U.S.C. §§ 1225 (b)(1)(B)(ii), (iii)(IV). The Supreme Court also held that such detention is not subject to judicial review, at least not until an alien is "in detention for more than six months" and "provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future", without rebuttal. *Zadvydas*, 533 U.S. 701. See also 8 U.S.C. 1226(e) ("The Attorney General's discretionary judgment regarding the application of this section shall not be subject to review. No court may set aside any action or decision by the Attorney General under this section regarding the detention of any alien or the revocation or denial of bond or parole.").

Patel argues that the immigration judge's finding that Patel was a flight risk was a violation of due process. (Doc. 1, PageID.8, ¶ 42.). Patel offers the Court no factual basis on which to find fault with the immigration judge finding that Patel, an alien who entered the country without authorization and faces potential removal, was a flight risk. See *Thuraissigiam*, 591 U.S. at 106, citing 8 U.S.C. 1226(a) ("It was Congress's judgment that releasing [asylum seekers] would present an undue risk that they would fail to appear for removal proceedings"; "[d]uring the time when removal is being litigated, the alien will either be detained ... or allowed to reside in this country, with the attendant risk that he or she may not later be found."). In any event, because he is now subject to an expedited order of removal, Patel must be detained due to 8 U.S.C. §§ 1225 (b)(1)(B)(ii), (iii)(IV)], and the Supreme Court has held that mandatory detention of aliens in Patel's situation under that statute comports with due process. *Thuraissigiam*, 591 U.S. at 118-119, 140.

Patel argues that not being a threat to national security, a terrorist, or a spy means that he should not be detained without legal justification. (Doc. 1, PageID.7, ¶ 40.). The fact that Patel entered the United States illegally and without authorization and is subject to removal is legal justification for his detention, and that detention is consistent with due process and is not subject to judicial review. *Thuraissigiam*, 591 U.S. at 118-119, 140, citing 8 U.S.C. §§ 1225 (b)(1)(B)(ii), (iii)(IV).

**E. Dismissal of Patel's § 1229a proceeding is consistent with due process and not subject to judicial review.**

Patel argues that the immigration judge's grant of dismissal in his § 1229a proceeding, followed by a finding that he was a flight risk and a denial of bond, "was a violation of Petitioner's right to due process." (Doc. 1, PageID.8, ¶ 42.). But there is no judicial review of any action by an immigration judge, other than review of the issuance of an order of removal.

"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*, 640 F.3d at 877 ("'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*, 563 F.3d at 1013; "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*, 700 F.3d at 1243 ("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."). Though not judicially reviewable, the immigration judge's decision was correct on the merits: Patel must be detained because he is subject to an expedited removal order. 8 U.S.C. §§ 1225(b)(1)(B)(ii), (iii)(IV).

Patel argues that "there is no statutory authority for DHS to reverse that choice [whether removal should proceed under 8 U.S.C. §§ 1225(b)(1) or 1229a] after proceedings have already begun." (Doc. 1, PageID.9, ¶¶ 48, 49.). Patel cites no statutory authority for that assertion. (*Id.*). Patel argues that "*Jennings v. Rodriguez*, supports this reading of the statute. 583 U.S. 281 (2018)." But neither that case nor the language Patel cites from it indicates that initiation of § 1229a proceedings precludes expedited removal under § 1225. (*Id.*). Patel omits the text that follows his cited passage from *Jennings*: "In sum, U.S. immigration law authorizes the

Government to detain certain aliens seeking admission into the country under §§ 1225(b)(1) and (b)(2). It also authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings under §§ 1226(a) and (c)." *Jennings*, 583 U.S. at 289. And 8 U.S.C. § 1252(a)(2)(B)(ii) establishes that "[n]otwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, and except as provided in subparagraph (D), and regardless of whether the judgment, decision, or action is made in removal proceedings, 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, other than the granting of relief under section 1158(a) of this title."

Patel's invocation of "the power to promulgate retroactive rules" and "new legal consequences to events completed [prior to the expansion]" (Doc. 1, PageID.10, ¶ 49) has no applicability to Patel's situation, as the expedited removal process in 8 U.S.C. § 1225 was enacted in 1996, long before Patel's illegal entry into the United States.

**Conclusion**

Patel's petition recites no facts consistent with any deprivation of due process, and the Court should dismiss it because it fails to state a claim upon which relief can be granted and is premised upon claims for which the Court has no subject matter jurisdiction.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on July 3, 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*
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