

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

LEANNY SORELBIH HERNANDEZ	)	CASE NO.: 1:25-CV-1621
TORREALBA,	)	
	)	JUDGE PAMELA A. BARKER
Petitioner,	)	
	)	
v.	)	
	)	
U.S. DEPARTMENT OF HOMELAND	)	<u>MOTION TO DISMISS AND RETURN</u>
SECURITY, et al.,	)	<u>OF WRIT</u>
	)	
Respondents.	)	

In her Petition for Writ of Habeas Corpus under 8 U.S.C. § 1252(e) and 28 U.S.C. § 2241, Petitioner Leanny Sorelbis Hernandez Torrealba (“Petitioner”) claims that she has been unlawfully detained by U.S. Immigration and Customs Enforcement (“ICE”), a component of U.S. Department of Homeland Security (“DHS”), because she cannot be subject to an expedited removal order and ICE has no authority to issue an expedited removal order. Petitioner asks the Court to order DHS to place her back in removal proceedings under 8 U.S.C. § 1229a and release her from detention. Congress created exclusive procedures for challenging orders of expedited removal, and Petitioner’s claims fail to meet the narrow confines of available habeas relief. Moreover, Petitioner’s detention is lawful because she is an alien who entered the United States without authorization, subjecting her to expedited removal and mandatory detention, both of

which the Supreme Court has upheld as consistent with due process. Accordingly, Respondents DHS, ICE, the Secretary of the U.S. Department of Homeland Security, and the Field Office Director of the ICE Detroit Field Office (collectively, “Federal Respondents”) move the Court to dismiss this Petition for lack of subject matter jurisdiction under Fed. R. Civ. P. 12(b)(1). In the alternative, the Court should dismiss for failure to exhaust administrative remedies. Neither an evidentiary hearing nor oral argument are warranted.

BACKGROUND

Petitioner is a native of Venezuela. (Doc. 1, PageID #4 ¶ 11.) Petitioner entered the United States on August 19, 2022 near Eagle Pass, Texas without being admitted or paroled. (*Id.*, PageID #9 ¶¶ 29-30.) Eagle Pass, Texas is within 100 miles of the border. *E.g.*, *United States v. Cardona*, 955 F.2d 976, 980 n.10 (5th Cir. 1992). Petitioner was arrested and detained by DHS the same day. (*Id.*) On August 21, 2022, DHS issued a Notice to Appear that stated Petitioner was inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i). (*Id.*) Section 1182(a)(6)(A)(i) states that an “alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General, is inadmissible.” 8 U.S.C. § 1182(a)(6)(A)(i). Petitioner was placed in removal proceedings under 8 U.S.C. § 1229a. (*Id.*; *see also* Doc. 1-3.) In May 2025, Petitioner’s § 1229a removal proceedings were dismissed, and she was placed in expedited removal proceedings under 8 U.S.C. § 1225. (Doc. 1, PageID #9-10 ¶¶ 32-35.) Detention is mandatory for aliens in expedited removal proceedings, and Petitioner was taken into custody on May 27, 2025. (*Id.*, PageID #9 ¶¶ 32-33.) 8 U.S.C. § 1225(b)(1)(B)(iii)(IV). On June 25, 2025, Petitioner appealed the Immigration Judge’s decision to dismiss her removal proceedings to the Board of Immigration Appeals. (*Id.*, PageID #10 ¶ 38.) That appeal remains pending. (*Id.*, PageID #12

¶ 52.) In June 2025, Petitioner also received a credible fear interview. (*Id.*, PageID #10 ¶ 39.)

She has requested review of that decision by an immigration judge. (*Id.*, PageID #10 ¶ 40.)

LEGAL AND STATUTORY BACKGROUND

“The Immigration and Nationality Act (INA) establishes procedures for removing aliens living unlawfully in the United States.” *Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021).

An alien may be subject to removal through removal procedures under 8 U.S.C. § 1229a or expedited removal procedures under 8 U.S.C. § 1225(b). Expedited removal proceedings are available 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.” *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 109 (2020); *see also* 8 U.S.C. § 1225(b)(1)(A)(i), (iii).

The Secretary of DHS¹ has the “sole and unreviewable discretion” to extend expedited removal procedures to any “individuals who have not been admitted or paroled into the United States and who cannot demonstrate that they have been continuously present in the United States for two years.” *Make the Road New York v. Wolf*, 962 F.3d 612, 632 (D.C. Cir. 2020); *see also* 8 U.S.C. § 1225(b)(1)(A)(iii). In 2004, the Secretary extended expedited removal proceedings to aliens who illegally entered the United States and were detained within 14 days of entry when that detention occurred within 100 air miles of the U.S. international land border. Designating Aliens for Expedited Removal, 69 Fed. Reg. 48,877-01, 48,880-81 (Aug. 11, 2004) (the “2004

¹ The statute confers authority on the Attorney General, but that power has been delegated to the Secretary of DHS. *See* 8 U.S.C. § 1103(a); *see also* 6 U.S.C. § 251.

Designation”). The 2004 Designation establishes no temporal restriction on when expedited removal proceedings must begin. *See generally id.* Generally, and subject to limited exceptions, any alien placed in expedited removal proceedings under this designation will be detained pursuant to 8 U.S.C. § 1225(b). *See id.* at 48,880.

LAW AND ARGUMENT

Despite framing this matter as a habeas petition, Petitioner primarily seeks to avoid expedited removal proceedings. Indeed, Petitioner not only asks the Court to find that no expedited removal order exists and that ICE lacked authority to issue an expedited removal order, but also to order the government to provide Petitioner a § 1229a hearing. However, Petitioner’s ability to challenge an order of expedited removal is extremely limited, and she may not challenge immigration proceedings or determinations. Moreover, the detention of Petitioner is lawful, because she is an alien who entered the United States without authorization, subjecting her to expedited removal and mandatory detention, which the Supreme Court has upheld as consistent with due process. A petition for habeas corpus is not the proper vehicle to raise discontent with immigration determinations. *E.g., Thuraissigiam*, 591 U.S. at 117–20.

I. STANDARD OF REVIEW

A court will grant a motion to dismiss if it lacks subject matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1). Federal courts are courts with limited jurisdiction and may only hear cases that are “authorized by Constitution and statute.” *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). If the court determines that it lacks subject matter jurisdiction, that court must dismiss the action in front of them. *Mich. Emp. Sec. Comm’n v. Wolverine Radio Co.*, 930 F.2d 1132, 1137-38 (6th Cir. 1991). A motion under Fed. R. Civ. P. 12(b)(1) can raise facial or factual attacks. *W6 Rest. Grp., Ltd v. Loeffler*, 140 F.4th 344, 349 (6th Cir. 2025).

Regardless of which attack is used, the petitioner bears the burden of persuading the court that subject matter jurisdiction exists. *E.g., Dismas Charities, Inc. v. U.S. Dep't of Just.*, 401 F.3d 666, 671 (6th Cir. 2005).

II. THE COURT LACKS SUBJECT MATTER JURISDICTION OVER PETITIONER'S CLAIMS.

Generally, 28 U.S.C. § 2441 permits for judicial review of a petition for habeas corpus where a person is being held in custody in violation of federal law or the Constitution. However, Congress sharply limited “the review that an alien in expedited removal may obtain via a petition for a writ of habeas corpus”—even if jurisdiction would otherwise be proper. *See Thuraissigiam*, 591 U.S. at 111; *Shunaula v. Holder*, 732 F.3d 143, 146 (2d Cir. 2013). Section 1252(a)(2)(A) “strips courts of jurisdiction to review claims relating to the expedited removal statute except as provided in § 1252(e),” *Rodrigues v. McAleenan*, 435 F. Supp. 3d 731, 736 (N.D. Tex. 2020), depriving “this court of jurisdiction to hear challenges relating to the Attorney General’s decision to invoke expedited removal, his choice of whom to remove in this manner, ... and the ‘implementation or operation’ of a removal order,” *Shunaula*, 732 F.3d at 146. Thus, “[n]otwithstanding any other provision of law (statutory or nonstatutory),” the APA, INA, and 28 U.S.C. § 1331 (the federal question jurisdiction statute) cannot be an alternative basis for jurisdiction.” *Rodrigues*, 435 F. Supp. 3d at 736; *see also I.M. v. U.S. Customs & Border Prot.*, 20-cv-3576, 2022 WL 266703, at *4 (D.D.C. Jan. 28, 2022). By its terms, this statutory limitation also applies to relief which would typically provide jurisdiction over cases where an alien is held in violation of the Constitution or the laws of the United States. *E.g., Zadvydas v. Davis*, 533 U.S. 678, 687 (2001) (considering 28 U.S.C. § 2241).

Permissible judicial review of expedited orders of removal under § 1225(b)(1) is set forth in 8 U.S.C. § 1252(e)(2): “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.” *Thuraissigiam*, 591 U.S. at 111 (quoting 8 U.S.C. § 1252(e)(2)(A)-(C)). The inquiry into whether a petitioner “was ordered removed” is further limited to “whether such an order in fact was issued and whether it relates to the petitioner.” 8 U.S.C. § 1252(e)(5).

A. The Court could only maintain jurisdiction under 8 U.S.C. § 1252(e).

Petitioner asserts that this Court has jurisdiction over this matter under the Constitution and multiple federal statutes, including 28 U.S.C. § 2241 and 28 U.S.C. § 1331. (Doc. 1, PageID #2-3 ¶¶ 4-6.) However, because Congress created exclusive procedures for challenging orders of expedited removal, the Court’s review is limited by the confines of § 1252(e). The Petition must be dismissed for lack of subject matter jurisdiction on all other grounds.

B. Petitioner fails to present a basis for judicial review under 8 U.S.C. § 1252(e).

In seeking habeas relief, Petitioner asks the Court to determine whether she was “ordered removed.” (Doc. 1, PageID #2 ¶ 4, PageID #7 ¶ 26.) Petitioner appears to provide three bases for this argument: (1) DHS cannot issue an expedited removal order to an alien who has been present in the United States for two years prior to the date of the determination of inadmissibility; (2) DHS lacked authority to issue an expedited removal order subsequent to the initiation of § 1229a proceedings; and (3) the expedited removal order was not signed. All of these allegations speak to the execution of her removal proceedings; they do not concern whether a removal order was in fact issued. Because Congress has sharply limited judicial review of expedited removal, and Plaintiff has failed to provide the Court a basis to determine “whether such an order in fact was issued and whether it relates to the petitioner,” 8 U.S.C. § 1252(e)(5), the Petition should be dismissed for lack of subject matter jurisdiction.

1. Petitioner is lawfully subject to expedited removal proceedings.

Petitioner appears to argue that she was not “ordered removed” because DHS cannot issue an expedited removal order to an alien who has been present in the United States for two years prior to the date of the determination of inadmissibility. But judicial review of expedited removal orders has been sharply curtailed by Congress and such review would neither determine “whether such an order in fact was issued,” nor “whether it relates to the petitioner.” 8 U.S.C. § 1252(e)(5). Petitioner “attempts an end run around this language; but the language is clear, and the matter ends there.” *Brumme v. Immigr. & Naturalization Srv.*, 275 F.3d 443, 447-48 (5th Cir. 2001) (rejecting petitioner’s claim that § 1252(e) permits habeas review of whether § 1225(b)(1) was applicable to petitioner). Therefore, the Court lacks subject matter jurisdiction.

Moreover, Petitioner concedes the facts that subject her to expedited removal proceedings pursuant to the 2004 Designation. The 2004 Designation extends expedited removal proceedings to aliens who illegally entered the United States and were detained within 14 days of entry when that detention occurred within 100 air miles of the United States international land border. 2004 Designation at 48,880-81. Petitioner was detained by DHS less than 24 hours after crossing the border near Eagle Pass, Texas. Eagle Pass, Texas is less than 100 miles from the United States border. Within two days, DHS determined that Petitioner was an inadmissible alien without valid immigration documents. Therefore, Petitioner is subject to expedited removal proceedings pursuant to the 2004 Designation. *See, e.g., United States v. Sanchez-Cervantes*, SA-12-CR-4(1)-XR, 2012 WL 1313315, at *5-6 (W.D. Tex. Apr. 17, 2012) (finding an alien subject to expedited

removal under the 2004 Designation when “he was encountered within 14 days of illegally crossing the border and within 100 miles of the border”).

Petitioner appears to rely on 8 U.S.C. § 1225(b)(1)(A)(iii)(II) to assert that because she has been in the country for more than two years before DHS initiated expedited removal proceedings, she is no longer subject to expedited removal proceedings. But that section does not impose a time limit for DHS to initiate expedited removal proceedings. On the contrary, § 1225(b)(1)(A)(iii)(I) provides the secretary of DHS the “sole and unreviewable discretion” to extend expedited removal procedures. “There could hardly be a more definitive expression of congressional intent to leave the decision about the scope of expedited removal, within statutory bounds, to the Secretary’s independent judgment.” *Wolf*, 962 F.3d at 632. With that Congressional authorization, the 2004 Designation establishes that DHS “may place in expedited removal proceedings any or all” aliens who illegally entered the United States and were detained within 14 days of entry when that detention occurred within 100 air miles of the United States international land border. 2004 Designation at 48,880. The Secretary did not establish a temporal limitation on the initiation of expedited removal proceedings, and the statute does not require one. In keeping with the discretion afforded by § 1225(b)(1)(A)(iii)(I), DHS originally placed Petitioner in removal proceedings under § 1229a. It then appropriately dismissed the proceedings and placed Petitioner in § 1225 expedited removal proceedings.

2. DHS has authority to issue an expedited removal order.

Petitioner also appears to ask the Court to find that she was not “ordered removed” because ICE lacked authority to issue an expedited removal order after the initiation of § 1229a proceedings. This allegation again speaks to the execution and validity of her removal proceedings; it does not concern whether a removal order was in fact issued or whether it relates

to the Petitioner. *See Vaupel v. Ortiz*, 244 F. App'x 892, 895 (10th Cir. 2007) (rejecting the argument that “in ascertaining whether an order of removal ‘relates to’ the alien under § 1252(e)(5), a court may determine whether the expedited removal statute was lawfully applied to the alien”). Therefore, the Court lacks subject matter jurisdiction.

In addition, DHS’s decision to place Petitioner into expedited removal is not subject to judicial review. 8 U.S.C. § 1252(a)(2)(A)(ii); *Shunaula*, 732 F.3d at 146. The Secretary has discretion to determine under which removal procedure a removal order should be issued. *E.g.*, *Flores-Ledezma v. Gonzales*, 415 F.3d 375, 378-79 (5th Cir. 2005) (upholding the Attorney General’s statutory discretion to choose between expedited removal proceedings and general removal proceedings). It also was a decision consistent with applicable statutes. *Thuraissigiam*, 591 U.S. at 108 (quoting § 1225 and explaining when an applicant is subject to expedited removal); *Sanchez-Cervantes*, 2012 WL 1313315, at *2, 7-10 (rejecting defendant’s argument that his indictment should be dismissed because “the expedited removal was fundamentally unfair because he should not have been placed in expedited removal proceedings instead of removal proceedings under § 1229a”).

8 U.S.C. § 1252(b)(9) similarly precludes judicial review of the Immigration Judge’s dismissal of Petitioner’s § 1229a proceeding. Courts have interpreted § 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 v. Holder*, 640 F.3d 873, 877 (9th Cir. 2011) (“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.”). Here, DHS sought to dismiss the § 1229a removal proceedings and the Immigration Judge granted the request. While Petitioner has appealed the Immigration Judge’s dismissal of her removal proceedings to the Board of

Immigration Appeals, there is no order of removal from the Immigration Judge or Board of Immigration Appeals that this Court has jurisdiction to review.

3. The expedited removal order was lawfully issued.

Finally, Petitioner argues that the “purported expedited removal order issued by ICE ... is not signed at all, let alone by a senior supervisory officer.” (Doc. 1, PageID #11 ¶ 49.) Therefore, she concludes, no expedited removal order exists. However, challenging the validity of her “expedited removal order does not fall within any of the categories of reviewable issues” in a habeas petition, depriving the Court of jurisdiction. *Alvarado-Herrera v. Garland*, 993 F.3d 1187, 1191-92 (9th Cir. 2021) (dismissing petitioner’s claim that an expedited removal order was invalid because it did not contain the supervisor’s signature and petitioner did not acknowledge receipt). Moreover, the regulation at issue merely provides that “supervisory concurrence” must be obtained, *not* that a supervisor must sign the expedited removal order. 8 C.F.R. § 235.3(b)(2)(i), (b)(7). Petitioner does not assert otherwise. (Doc. 1, PageID #5-6, ¶ 18.) Thus, the Court lacks subject matter jurisdiction.

C. **This Court lacks jurisdiction over constitutional claims.**

Petitioner argues that her right to due process was violated, apparently through DHS detaining her pursuant to expedited removal proceedings after initiating a § 1229a proceeding. There is no exception in § 1252(e) “providing [district courts] authority to review constitutional claims related to the application of § 1225(b)(1).” *Vaupel*, 244 F. App’x at 895. As Petitioner alleges her due process was violated through her detention in her expedited removal proceeding, the Court lacks subject matter jurisdiction. *See Shunaula*, 732 F.3d at 146-47. To the extent Petitioner sought to bring a systemic challenge to the expedited removal process, such a challenge

could only be brought in the United States District Court for the District of Columbia. 8 U.S.C. § 1252(e)(3)(A)(i).

Notably, while in expedited removal proceedings, “Congress provided [Petitioner] the right to a ‘determin[ation]’ whether [s]he had ‘a significant possibility’ of ‘establish[ing] eligibility for asylum.’” *Thuraissigiam*, 591 U.S. at 140. As Petitioner received a credible fear interview, “[s]he was given that right. §§ 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.” *Thuraissigiam*, 591 U.S. at 140. Indeed, the Supreme Court has upheld the mandatory, statutory detention of aliens subject to expedited removal orders. *Id.* at 118-119, 140; *see also* 2004 Designation at 48,880 (“Any alien who is placed in expedited removal proceedings under this designation will be detained pursuant to section 235(b) of the Act, 8 U.S.C. 1225(b), with certain exceptions, until removed.”). Petitioner entered the United States illegally and without authorization and is subject to expedited removal proceedings. This provides legal justification for her detention, and that detention is consistent with due process.

D. Petitioner’s requested relief is unavailable through a petition for habeas corpus.

Although judicial review is limited under § 1252, habeas relief typically provides for “simple release” from detention. *Thuraissigiam*, 591 U.S. at 119; *see also* *Munaf v. Geren*, 553 U.S. 674, 693 (2008). Petitioner does not merely seek the “simple release” available through a habeas petition. Rather, Petitioner seeks a court order requiring the United States to reinstate removal proceedings under § 1229a and provide her a hearing. (Doc. 1, PageID #12-14.) “Claims so far outside the ‘core’ of habeas may not be pursued through habeas.” *Thuraissigiam*, 591 U.S. at 119. The Court should dismiss for lack of subject matter jurisdiction.

III. PETITIONER FAILED TO EXHAUST HER ADMINISTRATIVE REMEDIES.

“Although ‘[t]here is no statutory requirement of administrative exhaustion before immigration detention may be challenged in federal court by a writ of habeas corpus,’ courts generally do require such exhaustion ‘as a prudential matter.’” *Guzman v. Joyce*, 25-cv-4777, 2025 WL 1696891, at *2 (S.D.N.Y. June 17, 2025) (citation omitted). Thus, when “‘a petitioner does not exhaust administrative remedies, a district court ordinarily should either dismiss the [habeas] petition without prejudice or stay the proceedings until the petitioner has exhausted remedies, unless exhaustion is excused.’” Opinion and Order, *Villalta v. Greene*, 4:25-cv-01594 (N.D. Ohio Aug. 5, 2025) (Calabrese, J.) (citing *Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011) (citations omitted)).

Petitioner’s habeas petition rests on the dismissal of her § 1229a removal proceedings in favor of § 1225 expedited removal proceedings. Meanwhile, Petitioner has appealed the Immigration Judge’s dismissal of her § 1229a proceedings to the Board of Immigration Appeals such that “the removal proceedings under 8 U.S.C. § 1229a are not final.” (Doc. 1, PageID #12 ¶ 52.) Yet, she seeks a writ of habeas corpus in effect seeking the same remedy. “Petitioner provides no reason why the Board of Immigration Appeals could not address [her] arguments regarding ICE’s motion to dismiss.” *Guzman*, 2025 WL 1696891, at *2. Indeed, an administrative remedy is available to Petitioner that could provide her with the relief she seeks: a reversal of ICE’s motion to dismiss. “The fact that the [BIA’s] determination ... ‘could potentially moot [the] habeas petition counsels for the Court to stay its hand until the exhaustion of administrative review in the name of preserving scarce judicial resources and avoiding the possibility of duplicative or conflicting rulings.’” *Id.* at *2 (citations omitted). “In the first instance, such review should proceed before the Board of Immigration Appeals to ‘apply its

experience and expertise without judicial interference.”” *Monroy Villalta*, 4:25-cv-01594 (citing *Khalili v. Holder*, 557 F.3d 429, 435 (6th Cir. 2009) (abrogated on other grounds)).

CONCLUSION

For the reasons set forth herein, the Federal Respondents respectfully request this Court dismiss Petitioner’s Petition for Writ of Habeas Corpus for lack of subject matter jurisdiction or, in the alternative, failure to exhaust administrative remedies.

Respectfully submitted,

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