UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 25-23577-CIV-MARTINEZ

DANIEL FERNANDO HENAO NIÑO,

Petitioner,

v.

WARDEN, FEDERAL DETENTION CENTER MIAMI (FDC),

Respondent.
_____/

RESPONDENT'S RETURN TO PETITIONER'S
PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

Respondent, by and through the undersigned Assistant United States Attorney, hereby submits this Return to Petitioner's Petition for Writ of Habeas Corpus Under 8 U.S.C. § 2241 [D.E. 1] pursuant to this Court's Order to Show Cause [D.E. 3] and states as follows:

INTRODUCTION

The Petitioner, Daniel Fernando Henao Niño's ("Petitioner") detention by the United States Immigration and Customs Enforcement ("ICE") is fully supported by the Immigration and Nationality Act ("INA"), its implementing regulations, and the Constitution. Petitioner contends that the Respondent is "unlawfully detaining him after case dismissal" in violation of his constitutional rights, in addition to several claims about the conditions of his confinement. [D.E. 1 at pp. 6-7]. Petitioner's arguments fail as an Expedited Removal Order was properly entered in this matter and the Court lacks jurisdiction to review such orders except under the limited provisions of 8 U.S.C. § 1252(a)(2)(A), (e)(1), and (e)(2), INA § 242(a)(2)(A), 242(e)(1) and (2).

Petitioner's due process rights have not been violated and any grant of release from custody would be unwarranted. Petitioner's Petition should be denied.

FACTUAL BACKGROUND

The Petitioner, Daniel Fernando Henao Nino (Petitioner), is a native and citizen of Colombia. *See* Ex. A, Form I-213, Record of Deportable/Inadmissible Alien, (Form I-213) dated June 7, 2025. On or about September 15, 2023, Petitioner was encountered at or near San Diego, California, by the U.S. Customs and Border Protection, Border Patrol (CBP). See Ex. L, Declaration of DO Porrata Rodriguez, ¶ 7. CBP determined that Petitioner had unlawfully entered the United States from Mexico without valid travel documents and that Petitioner was inadmissible. *See* Ex. A, Form I-213 dated June 7, 2025.

On September 16, 2023, CBP initiated removal proceedings against Petitioner, pursuant to section 240 of the Immigration and Nationality Act (INA), by issuance of a Notice to Appear (NTA), dated September 16, 2023. *See* Ex. B, NTA, dated September 16, 2023. The NTA charged Petitioner with being removable under section 212(a)(6)(A)(i) of the INA, as an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General. *See id.* On the same date, CBP served Petitioner with an order of release on recognizance. *See* Ex. C, Form I-220A; Ex. L, Declaration of DO Porrata Rodriguez, ¶ 10.

On March 7, 2025, Petitioner was encountered at the Duval County's Pre-Trial Detention Facility in Jacksonville, Florida after having been arrested by Florida Highway Patrol for a felony offense of counterfeit license plate, validation sticker, or mobile home sticker and a misdemeanor offense of operating a motor vehicle without a valid license (*State of Florida vs. Daniel Fernando Henao Nino*, Case No. 16-2025-CT-004396-AXXX-MA). *See* Composite Ex. D, Criminal Record.

On April 16, 2025, Petitioner was convicted in the Duval County, Florida for the misdemeanor offense of improper temporary tag under Fla. Stat. § 320.131; a second conviction for no valid driver's license under Fla. Stat. 322.03(1); and no motor vehicle registration under Florida Statute § 320.02(1). Petitioner was sentenced to 39 days in county jail for all counts. *See* Composite Ex. D, Criminal Record.

Petitioner's criminal history in the United States also includes a January 24, 2024, arrest in Clinton County, Florida for the crime of criminal trespass. *See* Ex. A, Form I-213 dated June 7, 2025; Ex. L, Declaration of Deportation Officer Porrata Rodriguez. On May 22, 2024, Petitioner was arrested in Duval County, Florida for aggravated assault with a deadly weapon, in which the State of Florida announced a no action. (*State of Florida vs. Daniel Fernando Henao Nino*, Case No. 16-2024-CF-005296A). *See* Composite Ex. D, Criminal Record.

Following Petitioner's conviction in Duval County, Florida, Petitioner was taken into the custody of the U.S. Immigration and Customs Enforcement (ICE), Enforcement and Removal Operation (ERO) at the Jacksonville sub-office on April 17, 2025. *See* Ex. E, Detention History. On April 18, 2025, he was booked into the Krome North Service Processing Center (Krome) located in Miami, Florida. *See id.* On April 23, 2025, the venue of his removal proceedings was changed from the Orlando Immigration Court to the Krome Immigration Court. *See* Ex. F, Order of the Immigration Judge (IJO).

On June 4, 2025, Petitioner requested a bond redetermination hearing before the immigration judge at the Krome Immigration Court. On June 10, 2025, the immigration judge denied Petitioner's bond, finding that Petitioner was a danger to the community and a flight risk. *See* Ex. G, IJO denying bond. Petitioner did not appeal the immigration judge's decision denying bond.

On June 7, 2025, ERO served Petitioner with a Notice and Order of Expedited Removal pursuant to INA § 235. *See* Ex. H, Form I-860, Notice and Order of Expedited Removal, dated June 7, 2025. On June 10, 2025, U.S. Department of Homeland Security (DHS) filed a motion to dismiss Petitioner's removal proceedings as improvidently issued. On June 18, 2025, the immigration judge granted DHS's motion to dismiss removal proceedings. *See* Ex. I, IJO granting dismissal. Petitioner did not appeal the immigration judge's order dismissing his removal proceedings. The immigration judge's order became final on July 19, 2025, pursuant to 8 CFR §1003.39. On July 3, 2025, Petitioner once again requested a bond redetermination hearing before the immigration judge. On July 15, 2025, the immigration judge ordered no action on his request. *See* Ex. J, IJO dated July 15, 2025.

On July 7, 2025, Petitioner claimed fear of return to Colombia. *See* Ex. K, Form I-867A/B, Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act. On the same day, ERO referred Petitioner's case to the U.S. Citizenship and Immigration Services (USCIS), asylum Pre-screening Officer (APSO) for a credible fear interview[1]. *See* Ex. L, Declaration of DO Porrata Rodriguez ¶ 23.

On April 21, 2025, Petitioner was transferred to Miami Federal Detention Center (FDC). *See* Ex. E, Detention History; Ex L. Declaration of DO Porrata Rodriguez, ¶ 24. On August 20, 2025, Petitioner was transferred to Krome. To date, Petitioner remains in ICE custody at Krome. *See* Ex. E, Detention History; Ex. L, Declaration of DO Porrata Rodriguez, ¶. On August 29, 2025, USCIS issued its decision regarding Petitioner's credible fear. *See* Ex. M; Ex. L, Declaration of DO Porrata Rodriguez, ¶ 27. Petitioner has requested a hearing to review that decision before an immigration judge, which will be scheduled by the Executive Office for Immigration Review. *Id.*

ARGUMENT

A. Expedited Removal Orders are Subject to Review only in Extremely Limited Circumstances.

As a preliminary matter, an alien may be removed from the United States by, *inter alia*, expedited removal under INA § 235(b)(1) or removal proceedings before an immigration judge under INA § 240. *See* INA §§ 235(b)(1), 240. The DHS has discretion to place aliens in expedited removal under INA § 235 or to initiate removal proceedings before an immigration judge under INA § 240. *Matter of E-R-M- & L-R-M-*, 25 I&N Dec. 520, 524 (BIA 2011). Here, the DHS elected to seek dismissal of the removal proceedings and place the Petitioner in expedited removal proceedings pursuant to INA § 235. *See* 8 C.F.R. § 235.1(f)(2) (providing that "[a]n alien present in the United States who has not been admitted or paroled or an alien who seeks entry at other than an open, designated port-of-entry, except as otherwise permitted in this section, is subject to the provisions of [INA § 212(a)] and to removal under [INA §§ 235(b) or 240]"); *Matter of W-C-B-*, 24 I&N Dec. 118, 122 (BIA 2007) (affirming the dismissal of proceedings when "removal proceedings [under INA § 240] [a]re not necessary to remove the respondent from the United States").[1] The regulations do not limit DHS's authority to choose between expedited removal and removal proceedings to the time of the initial encounter, but rather authorize DHS to initiate expedited removal at any time for an alien who fits within specified criteria. 8 C.F.R. § 235.3(b)(1)(ii).

Expedited removal orders issued pursuant to 8 U.S.C. § 1225(b)(1) are not subject to judicial review except in very limited circumstances. *See* 8 U.S.C. §1252(a)(2)(A), (e). These circumstances are: 1) whether the petitioner is an alien; 2) whether the petitioner was ordered

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[1] While *W-C-B-* involved dismissal for DHS to reinstate the prior order, the underlying principle remains the same.

removed; and 3) whether the respondent is a lawful permanent resident or refugee. 8 U.S.C. §1252(a)(2)(e); *see also Garcia de Rincon v. Dep't of Homeland Sec.*, 539 F.3d 1133, 1140 (9th Cir. 2008) (acknowledging the Court's limited habeas jurisdiction to the three enumerated circumstances); *Shunaula v. Holder*, 732 F.3d 143, 145–47 (2d Cir. 2013) (§ 1252(a)(2)(A) and (e) bar judicial review of expedited removal order); *Khan v. Holder*, 608 F.3d 325, 329–30 (7th Cir. 2010) (acknowledging the "limited exceptions to the jurisdictional bar" of § 1252(e)). Petitioner does not contest he is an alien, or is a lawful permanent resident or refuge, which are two of the three limitations under which the court would have jurisdiction. Petitioner seemingly does challenge that he has been ordered removed, but Respondents have attached the Removal Order to this Return, which clearly shows Petitioner has been ordered removed.

B. Petitioner is Lawfully Detained under 8 U.S.C. § 1225(b)(1) as an Applicant for Admission who was not Admitted or Paroled after Inspection by an Immigration Officer.

Applicants for admission who were intercepted at entry can be subject to an expeditious process to remove them from the United States under 8 U.S.C. § 1225(b)(1). Under this process—known as expedited removal—applicants for admission arriving in the United States (as designated by the Secretary of Homeland Security) who entered illegally and lack valid entry documentation or make material misrepresentations shall be "order[ed] . . . removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum under [8 U.S.C. § 1158] or a fear of persecution." 8 U.S.C. § 1225(b)(1)(A)(i).

To qualify for expedited removal, an alien must either lack entry documentation or seek admission through fraud or misrepresentation. INA § 235(b)(1)(A)(i), 8 U.S.C. § 1225(b)(1)(A)(i) (referring to § 212(a)(6)(C), (a)(7), 8 U.S.C. § 1182(a)(6)(C), (a)(7)). In addition, the alien must either be "arriving in the United States" or within a class that the Secretary of Homeland Security

("Secretary") has designated for expedited removal. The Secretary may designate "any or all aliens" who have "not been admitted or paroled into the United States" and also have not "been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility." *Id.* § 235(b)(1)(A)(iii), 8 U.S.C. § 1225(b)(1)(A)(iii). The Secretary has designated additional categories of aliens pursuant to § 235(b)(1)(A)(iii). *See* Notice Designating Aliens Subject to Expedited Removal Under Section 235(b)(1)(A)(iii) of the Immigration and Nationality Act, 67 Fed. Reg. 68,924 (Nov. 13, 2002) ("2002 Designation"); Designating Aliens for Expedited Removal, 69 Fed. Reg. 48,877 (Aug. 11, 2004) ("2004 Designation").

Here, Petitioner falls within the 2004 designation, which applies to aliens who (i) "are physically present in the U.S. without having been admitted or paroled," (ii) "are encountered by an immigration officer within 100 air miles of any U.S. international land border," and (iii) cannot establish "that they have been physically present in the U.S. continuously for the 14-day period immediately prior to the date of encounter." 2004 Designation, 69 Fed. Reg. at 48,880. On September 15, 2023, DHS encountered the Petitioner, who has not been admitted or paroled, in San Diego, California, mere miles from the southern border on the same day that he illegally entered the United States. Accordingly, Petitioner cannot show continuous presence in the United States during the fourteen days prior to the encounter. While DHS did not process the Petitioner for expedited removal at that time, it now has done so, and as stated DHS may do so at any time. *See* 8 C.F.R. § 235.3(b)(1)(ii).

For an alien originally placed in expedited proceedings, the removal process varies depending upon whether the alien indicates either "an intention to apply for asylum" or "a fear of persecution or torture." 8 C.F.R. §§ 235.3(b)(4), 1235.3(b)(4)(1); *see* INA § 235(b)(1)(A)(ii). If

the alien does not so indicate, the inspecting officer "shall order the alien removed from the United States without further hearing or review." INA § 235(b)(1)(A)(i). If the alien does so indicate, however, the officer "shall refer the alien for an interview by an asylum officer." *Id.* § 235(b)(1)(A)(ii). That officer assesses whether the alien has a "credible fear of persecution or torture," 8 C.F.R. § 208.30(d)—in other words, whether there is a "significant possibility" that the alien is eligible for "asylum under section 208 of the Act," "withholding of removal under section 241(b)(3) of the Act," or withholding or deferral of removal under the Convention Against Torture ("CAT"), 8 C.F.R. § 208.30(e)(2)–(3).

If the alien does not establish a credible fear, the asylum officer "shall order the alien removed from the United States without further hearing or review." INA § 235(b)(1)(B)(iii)(I). But if the alien does establish such a fear, he is entitled to "further consideration of the application for asylum." *Id.* § 235(b)(1)(B)(ii). By regulation, that "further consideration" takes the form of full removal proceedings under section 240 of the Act. 8 C.F.R. §§ 208.30(f), 1208.30(g)(2)(iv)(B). Thus, if an alien originally placed in expedited removal establishes a credible fear, he receives a full hearing before an immigration judge. Section 1225, or 235 of the Act expressly provides for the detention of aliens originally placed in expedited removal. Such aliens "shall be detained pending a final determination of credible fear." INA § 235(b)(1)(B)(iii)(IV). Aliens found not to have a credible fear "shall be detained . . . until removed." *Id.* Aliens found to have such a fear, however, "shall be detained for further consideration of the application for asylum." *Id.* § 235(b)(1)(B)(ii).

The Supreme Court in *Jennings v. Rodriguez*, 583 U.S. 281 (2018) also reviewed the expedited removal statute in 2018 following arguments by aliens detained under the Immigration and Nationality Act. *Id.* at 290-91. In reviewing the detention authority, the *Jennings* court noted

that an alien who "arrives in the United States," or "is present" in the country, but who "has not been admitted" is treated as "an applicant for admission." *Id.* at 287 (quoting 8 U.S.C. § 1225). Petitioner's arrival in the United States without inspection in September of 2023 classifies him as an applicant for admission. On April 17, 2025, DHS took the Petitioner into custody, and consistent with his status as an applicant for admission, DHS is detaining him as an applicant for admission under 235(b)(1)(A)(iii)(l) because he is not a citizen of the United States, is a Colombian national, and sought entry without valid entry documents. *See* 8 U.S.C. § 1182(a)(7)(A)(i)(I).

As an applicant for admission who is inadmissible under § 1182(a)(7), Petitioner is subject to expedited removal under 8 U.S.C. § 1225(b)(1)(A)(i) & (iii) and 8 C.F.R. § 235.3(b)(1)(ii) (referring to aliens who arrive in, attempt to enter, or have entered the United States without having been admitted or paroled following inspection by an immigration officer that they have been physically present in the United States for the 2-year period immediately prior to the date of determination of inadmissibility). Petitioner is within the designated group of aliens who (i) "are physically present in the U.S. without having been admitted or paroled," (ii) "are encountered by an immigration officer within 100 air miles of any U.S. international land border," and (iii) cannot establish "that they have been physically present in the U.S. continuously for the 14-day period immediately prior to the date of encounter." 2004 Designation, 69 Fed. Reg. at 48,880. *see also Matter of M-S-*, 271 I. & N. Dec. 509, 511 (BIA 2019). Furthermore, section 235(b)(1)(B)(ii) mandates detention (i) for the purpose of ensuring additional review of an asylum claim, and (ii) for so long as that review is ongoing, until removal proceedings conclude, unless DHS exercises its discretion to parole the alien. *Matter of M-S-*, 27 I&N Dec. at 517.

C. Petitioner's Constitutional Rights Have Not Been Violated.

Petitioner's claims that his detention violates his Constitutional rights. [D.E. 1 at p. 6]. However, the Supreme Court held that 8 U.S.C. § 1225(b) unambiguously mandates detention through the pendency and conclusion of removal proceedings, regardless of their duration, and that the statute authorizes release only through ICE's discretionary parole authority. *Id.* at 843-45. After *Jennings*, the Supreme Court addressed aliens' due process rights in the context of the expedited removal statute in *Thuraissigiam v. U.S. Dep't of Homeland Sec.*, 591 U.S. 103, 140 S. Ct. 1959 (2020). Thuraissigiam entered the United States without permission and immigration authorities apprehended him twenty-five yards from the border. *Id.* at 1967. He was placed in expedited removal proceedings and claimed asylum. *Id.*

Petitioner, like Thuraissigiam, is an applicant for admission who has not been admitted or paroled after inspection by an immigration officer. Both in general, and for the specific purpose of this analysis, Petitioner is not considered to have been admitted into the country. Consistent with Supreme Court precedent, Petitioner is only entitled to due process as set forth in the Immigration and Nationality Act. The INA provides for relief from detention under the parole procedure set forth in 8 U.S.C. § 1182(d)(5)(A). *See* 8 U.S.C. § 1182(d)(5)(A); *see also* 8 C.F.R. §§ 212.5(b); 235.3.

Petitioner also cannot establish that his detention violates the Constitution as Petitioner has been detained since April of 2025. *See* Exhibit E.[2] *See, e.g. O.D. v. Warden, Stewart Detention Ctr.*, 2021 WL 5413968 at *4-5 (M.D. Ga. Jan. 14, 2021) (Report and Recommendation), *adopted by*, 2021 WL 5413966 (M.D. Ga. Apr. 1, 2021) (denying habeas relief to petitioner who had been

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[2] Petitioner claims in his Petition that he has been detained since March of 2025. Even if this were true, the argument remains the same.

detained for nineteen months); *Sigal v. Searls*, 2018 WL 5831326 at *5, 9 (W.D.N.Y. Nov. 7, 2018) (denying habeas relief to petitioner detained for seventeen months after "tak[ing] into account all of the factual circumstances"); *see also Hylton v. Shanahan*, No., 2015 WL 3604328, at *6 (S.D.N.Y. June 9, 2015) (detention without bail for roughly two years did not violate due process); *Luna-Aponte v. Holder*, 143 F. Supp. 2d 189, 197 (W.D.N.Y. 2010) (three years). Petitioner has not submitted evidence that ICE detained him for any purpose other than resolution of these proceedings.

D. Challenging Conditions of Confinement is Not Proper under Habeas

Petitioner uses several counts of his Habeas Petition to challenge the conditions of his confinement. [D.E. 1 at pp. 6-7]. However, "claims challenging the conditions of confinement fall outside of habeas corpus law." *Vaz v. Skinner*, 634 F. App'x 778, 780 (11th Cir. 2015) (citing *Nelson v. Campbell*, 541 U.S. 637, 644, 124 S.Ct. 2117, 158 L.Ed.2d 924 (2004)); *see also A.S.M. v. Donahue*, No. 20-cv-62, 2020 WL 1847158, at *1 (M.D. Ga. Apr. 10, 2020) (finding that a writ of habeas corpus was not the appropriate jurisdictional vehicle for releasing detainees due to COVID-19). Judge Ruiz in the Southern District of Florida recently addressed this issue and found that Petitioners seeking to contest the conditions of their confinement "cannot avail themselves of a petition for writ of habeas corpus." *Matos v. Lopez Vega*, 614 F.Supp.3d 1158 (S.D.Fla. 2020). *See A.S.M.*, 2020 WL 1847158, at *1 (citing *Vaz*, 634 F. App'x at 781) ("Although the Eleventh Circuit has not addressed the issue in a published opinion, an unpublished opinion in this Circuit has concluded that a petition for writ of habeas corpus is not the appropriate mechanism for contesting a prisoner's conditions of confinement.").

Further, even if this Court considered Petitioner's conditions, it would not provide

Petitioner the relief he seeks. *See Gomez v. United States*, 899 F.2d 1124, 1126 (11th Cir. 1990) (violations of conditions of confinement do not result in release but an order to provide constitutionally adequate case). As pointed out in DO Porrata Rodriguez's Declaration, Petitioner has been seen by medical staff at Krome, and there has been no showing that the medical staff are acting with deliberate indifference to any serious medical needs. *See* Exhibit L.

As the Eleventh Circuit and the Southern District of Florida have already addressed this issue, this Court should dismiss the Habeas Petition to the extent it seeks to challenge Petitioner's conditions of confinement.

CONCLUSION

Based upon the foregoing reasons, Petitioner's Petition for Writ of Habeas Corpus should be denied in its entirety.

Respectfully submitted,

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