UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

ANTONIO MOREIRA NETO Petitioner. v. E.L. TATUM, JR.,[1] et. al. Respondents.	)	Case No. 25-cv-00311-JL-TSM

RESPONDENTS' OBJECTION TO PETITION AND
REQUEST FOR PRELIMINARY INJUNCTION

Petitioner Antonio Moreira Neto has filed the above-captioned habeas petition asking this Court to declare that his immigration detention violates the Due Process Clause of the Fifth Amendment, order Respondents to release him immediately, and grant a preliminary injunction ordering the Chelmsford Immigration Court to take certain actions in Petitioner's removal proceedings. Pet. (ECF No. 1). This Court cannot grant the preliminary injunction that Petitioner seeks, because continued proceedings in the immigration court have rendered his request moot, and because such relief lies beyond this Court's habeas authority. Nor can this Court order Petitioner's release or declare that his detention is unlawful, because it complies with regulation, statute, and the Constitution. Therefore, his petition should be denied.

BACKGROUND

Petitioner, a native and citizen of Brazil, entered the United States apparently in 2004, at an unknown location, without being inspected, admitted, or paroled by an immigration officer,

[1] So named in the original caption. Respondents note that the current acting Warden of FCI Berlin is Andrew Ackley; *see* Fed. R. Civ. P. 25(d) ("[W]hen a public officer who is a party in an official capacity . . . resigns, or otherwise ceases to hold office while the action is pending[, t]he officer's successor is automatically substituted as a party.")

and lacking any valid entry document. Declaration of Keith Chan, ¶ 1-2 (attached as Ex. A); Pet., ¶ 2. He has lived in the United States ever since. Pet., ¶ 15.

On July 16, 2025, ICE encountered Petitioner, administratively arrested him for being in violation of United States immigration laws and detained him under 8 U.S.C. § 1225. *Id.*, ¶ 13. After being held briefly at the ICE field office in Burlington, Massachusetts, he was transferred to the Donald W. Wyatt Detention Facility, in Central Falls Rhode Island. *Id.*, ¶¶ 13-14.

On July 27, 2025, ICE issued Petitioner a Notice to Appear, alleging that he is a non-citizen present in the United States without admission or parole, pursuant to 8 U.S.C. § 1182(a)(6)(A)(i), and who, at the time of application for admission, did not possess a valid immigrant visa, reentry permit, border crossing card, or other valid entry document, pursuant to 8 U.S.C. § 1182(a)(7)(A)(i)(I). *Id.*, ¶ 15.

On July 28, 2025, Petitioner requested a custody redetermination hearing before the immigration judge. *Id.*, ¶ 16. On July 30, 2025, ICE filed the Notice to Appear with the immigration court and transferred Petitioner to the Federal Correctional Institution Berlin, in Berlin New Hampshire, where he remains. *Id.*, ¶¶ 17, 22.

On August 11, 2025, the immigration judge denied Petitioner's request for a custody redetermination hearing and held that Petitioner, as an applicant for admission, is statutorily ineligible for such a hearing. *Id.*, ¶ 18; Pet., ¶ 5 (ECF No. 1). Petitioner filed an appeal of this decision before the Board of Immigration Appeals ("Board") on the same day; no decision from the Board has yet issued. Chan Decl., ¶ 18.

On August 19, 2025, Petitioner filed this petition for a writ of habeas corpus. (ECF No. 1.)

On August 22, 2025, Petitioner, through his immigration counsel, admitted that he is inadmissible pursuant to 8 U.S.C. § 1182(a)(6)(A)(i) and 8 U.S.C. § 1182(a)(7)(A)(i)(I). Chan Decl., ¶ 20. On August 25, 2025, he filed an application for relief from removal, scheduled for adjudication by the immigration judge on October 21, 2025.[2] *Id.*, ¶ 21.

LEGAL STANDARD

Section 2241 of Title 28 of the United States Code provides district courts with jurisdiction to hear federal habeas petitions. It is Petitioner's burden to establish entitlement to a writ of habeas corpus by proving that his custody violates the Constitution, laws, or treatises of the United States. See 28 U.S.C. § 2241(c)(3); Espinoza v. Sabol, 558 F.3d 83, 89 (1st Cir. 2009) ("The burden of proof of showing deprivation of rights leading to an unlawful detention is on the petitioner.").

ARGUMENT

I. Petitioner's request for injunctive relief should be denied.

Petitioner asks this Court to issue a preliminary injunction "ordering the Chelmsford Immigration Court to vacate the Master Calendar Hearing of August 25, 2025 . . . and to place the case on 'status docket' for the duration of these proceedings . . . in order to maintain *status quo*."[3] Pet., ¶ 10 (ECF No. 1). Mindful of the First Circuit's warning that "[a] preliminary

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[2] Undersigned counsel acknowledges that the attached Declaration of Keith Chan states that Petitioner applied for relief on *April* 25, rather than August 25. Ex. A, ¶ 21. Despite review of a draft declaration by undersigned counsel, agency counsel, and the declarant, this scrivener's error was not caught until finalizing this objection for filing. The correct date is August 25, 2025; as the petition makes clear, Petitioner was not in ICE custody on April 25, 2025, and had a Master Calendar Hearing in immigration court scheduled for August 25, 2025. Pet., ¶¶ 2-3, 28. Respondents regret the error.

[3] Petitioner also asks the Court to "issue a restraining order to prevent Petitioner from being transferred from the state of New Hampshire for the duration of these proceedings." Pet., ¶ 10 (ECF No. 1). Because this Court has already ordered that the United States "file notice in this court 72 hours or more prior to any move of the petitioner out of the District of New

injunction is an extraordinary remedy never awarded as of right," *Maine Forest Prod. Council v. Cormier*, 51 F.4th 1, 5 (1st Cir. 2022) (cleaned up), the Court should deny Petitioner's request for two reasons: first, subsequent proceedings in immigration court have rendered this request moot; and second, Petitioner has not shown how this request falls within the Court's habeas authority.

Article III of the United States Constitution limits federal court jurisdiction "to those claims that involve actual 'cases' or 'controversies.'" *Redfern v. Napolitano*, 727 F.3d 77, 83 (1st Cir. 2013) (quoting U.S. Const. art. III, § 2, cl. 1). But "a claim for injunctive relief is moot if the court cannot grant any effectual relief by ordering the injunction . . . ." *Calvary Chapel of Bangor v. Mills*, 542 F. Supp. 3d 24, 34 (D. Me. 2021), *aff'd*, 52 F.4th 40 (1st Cir. 2022) (cleaned up) (citing *N.H. Motor Transp. Ass'n v. Rowe*, 448 F.3d 66, 73 (1st Cir. 2006)). Here, the hearing set for August 25, 2025, has passed, and Petitioner has already submitted an application for relief from removal, scheduled to be addressed in October. Chan Decl., ¶ 21. This Court cannot vacate a hearing that has already occurred, nor place Petitioner's case on "status docket" to preserve the *status quo* after Petitioner has already decided on a strategy in his removal proceedings and applied for relief.

Further, the Supreme Court repeatedly emphasized that "[h]abeas is at its core a remedy for unlawful executive detention" and that claims for relief beyond "simple release" are unlikely to fall within its ambit. *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 119 (2020) (rejecting petitions by immigrants seeking to remain lawfully in the United States as "so far outside the 'core' of habeas" that they "may not be pursued through habeas"); *Preiser v.*

Hampshire," Endorsed Order (Aug. 21, 2025), Respondents do not address this element of the Petition further.

Rodriguez, 411 U.S. 475, 484 (1973) ("It is clear . . . from the common-law history of the writ . . . that the essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and that the traditional function of the writ is to secure release from illegal custody"). Petitioner's request that this Court order the immigration court to vacate a hearing and place his proceedings in a particular docket status are fully beyond the scope of habeas, and thus outside this Court's authority.

II. Petitioner has failed to exhaust his administrative remedies.

Moving from Petitioner's request for injunctive relief to his request for release, this Coud should decline to release Petitioner before the BIA has been able to address the appeal of his custody redetermination hearing, under the general principle that a petitioner must exhaust administrative remedies before seeking relief in habeas.

"Generally speaking, a plaintiff's failure to exhaust her administrative remedies precludes her from obtaining federal review of claims that would have properly been raised before the agency in the first instance." *Brito v. Garland*, 22 F.4th 240, 255 (1st Cir. 2021). While there is no statutory mandate to exhaust a claim for release in Immigration Court before presenting such claim to the district court, common-law exhaustion "allows an agency the first opportunity to apply its expertise and obviates the need for judicial review in cases in which the agency provides appropriate redress." *Id.* at 256 (cleaned up) (quoting *Anversa v. Partners Healthcare Sys., Inc.*, 835 F.3d 167, 175-76 (1st Cir. 2016)).

Here, circumstances weigh in favor of requiring exhaustion. The immigration judge has held that Petitioner is ineligible for a custody redetermination hearing. Chan Decl., ¶ 18. Petitioner has appealed that decision to the BIA. *Id.* Allowing that appeal to run its course allows the agency to apply its expertise to the issue and may moot this litigation without requiring

further judicial resources.

III. Petitioner is lawfully detained as an applicant for admission under 8 U.S.C. § 1225(b)(2)(A).

Petitioner, as a non-citizen "present in the United States who has not been admitted or who arrives in the United States," is an applicant for admission as defined by 8 U.S.C. § 1225(a)(1). An applicant for admission is subject to detention pursuant to 8 U.S.C. § 1225(b)(2)(A), which mandates that Petitioner be detained "until removal proceedings have concluded." *Jennings v. Rodriguez*, 583 U.S. 281, 299 (2018); *see also id.* at 297 (section 1225(b) "*mandate*[*s*] detention of applicants for admission until proceedings have concluded. (emphasis added)). In declining to find a statutory requirement to conduct bond hearings for applicants for admission, the Supreme Court explained that "nothing in the statutory text imposes any limit on the length of detention . . . and neither [statutory provision] says anything whatsoever about bond hearings." *Id.* ICE is therefore mandated by statute to detain Petitioner without access to a bond hearing while he is in full removal proceedings. *See Matter of Q. Li*, 29 I. & N. 66-69 (2025) (a non-citizen who entered with being inspected and admitted or paroled was an applicant for admission and was subject to detention under 8 U.S.C. § 1225(b), rather than 8 U.S.C. § 1226(a), and therefore ineligible to seek a bond hearing).

Because Petitioner's detention while he is in full removal proceedings before an IJ is mandated by 8 U.S.C. § 1225(b)(2)(A), and therefore, legal.

IV. Petitioner's detention is constitutional.

Petitioner's claim that his detention under 8 U.S.C. § 1225(b) violates the Fifth Amendment's Due Process Clause is without merit, because the Supreme Court has held that applicants for admission such as Petitioner are only entitled to the protections set forth by statute and that "the Due Process Clause provides nothing more." *Dep't of Homeland Sec. v.*

Thuraissigiam, 591 U.S. 103, 140 (2020). Petitioner does not allege any deprivation of any of the protections set forth by § 1225, and thus his due process claim fails.

The Supreme Court has long recognized that a non-citizen "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." *Landon v. Plasencia*, 459 U.S. 21, 32 (1982). Accordingly, "certain constitutional protections available to persons inside the United States are unavailable to aliens outside of our geographical borders." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). Applicants for admission lack any constitutional due process rights with respect to admission aside from the rights provided by statute: "[w]hatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned," *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) ("*Mezei*"), and "it is not within the province of any court, unless expressly authorized by law, to review [that] determination." *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 543 (1950). In *Mezei*, for example, the Supreme Court held that a returning lawful permanent resident's detention at the border without a hearing to effectuate his exclusion from the United States did not violate due process. *Mezei*, 345 U.S. at 206. The Supreme Court held that Mr. Mezei's detention did not "deprive[ ] him of any statutory or constitutional right." *Id.* at 215. Instead, the Court reiterated that "the power to expel or exclude aliens" is a "fundamental sovereign attribute exercised by the Government's political departments" that is "largely immune from judicial control." *Id.* at 210. The Court recognized that "once passed through our gates, even illegally," non-citizens "may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law." *Id.* at 212. But "an alien on the threshold of initial entry stands on a different footing" than a non-citizen who has effected an

entry into the United States. *Id.*

The Supreme Court reaffirmed "[its] century-old rule regarding the due process rights of an alien seeking initial entry" in *Thuraissigiam*, explaining that an individual who illegally crosses the border – like Petitioner – is an applicant for admission and "has only those rights regarding admission that Congress has provided by statute." 591 U.S. at 139-40. The *Thuraissigiam* Court explained that "the Court held long ago that Congress is entitled to set the conditions for an alien's lawful entry into this country and that, as a result, an alien at the threshold of initial entry cannot claim any greater rights under the Due Process Clause." *Id.* at 107.

As explained by the Court, "[w]hen an alien arrives at a port of entry – for example, an international airport – the alien is on U.S. soil, but the alien is not considered to have entered the country …". *Id.* at 139. The Court held that this same "threshold" rule applies to individuals, like Petitioner, who are apprehended after trying "to enter the country illegally" since by statute, such individuals are also defined as applicants for admission. *Id.* at 139-40. Treating such an individual in a more favorable manner than an individual arriving at a port of entry would "create a perverse incentive to enter at an unlawful rather than a lawful location." *Id.* at 140.

The First Circuit also held that detention of a non-citizen seeking admission to the United States does not violate due process in *Amanullah v. Nelson*, 811 F.2d 1, 9 (1st Cir. 1987). In that case, the Court explained that "the detention of the appellants is entirely incident to their attempted entry into the United States and their apparent failure to meet the criteria for admission – and so, entirely within the powers expressly conferred by Congress." *Id.* Where the appellants were detained under 8 U.S.C. § 1225(b), the Court found no due process violation in the denial of their parole applications "pending the ultimate (seasonable) resolution of the exclusion/asylum

proceedings" as there was "no suggestion of unwarranted governmental footdragging in these cases" and because "prompt attention appears to have been paid to the administrative aspects of exclusion and asylum." *Id.*

Here, section 1225(b) makes plain that if a Notice to Appear is issued to place an applicant for admission into removal proceedings, such individual "shall be detained" during such proceedings. 8 U.S.C. § 1225(b)(2)(A). As such, Petitioner is not entitled to release because a non-citizen in his position "has only those rights regarding admission that Congress has provided by statute." *Thuraissigiam*, 591 U.S. at 140.

Other courts have found no violation of due process for the detention of individuals subject to 8 U.S.C. § 1225(b). For example, in *Poonjani v. Shanahan*, the court held that *Mezei* "is directly on point and controls this case" and that "because the immigration statues at issue here do not authorize a bond hearing, *Mezei* dictates that due process does not require one here." 319 F. Supp. 3d 644, 647-49 (S.D.N.Y. 2018) (citing *Mezei*, 345 U.S. at 212); *see, e.g.*, *Aracely, R., et al. v. Nielsen*, 319 F. Supp. 3d 110, 145 (D.D.C. 2018) (explaining that *Mezei* remains "good law, and it dictates that for an alien who has not effected an entry into the United States" the statutory scheme is "due process as far as an alien denied entry is concerned."); *Mendez Ramirez v. Decker*, 612 F. Supp. 3d 200, 219 (S.D.N.Y. 2020) (finding itself bound to apply *Mezei* in holding that alien's "detention does not violate due process because Congress has authorized mandatory detention for immigrants in [his] circumstances and that is sufficient to satisfy due process."); *Gonzalez Aguilar v. Wolf*, 448 F. Supp. 3d 1202, 1212 (D. N.M. 2020) ("*Mezei* and its progeny do not hold that [p]etitioner has no due-process rights; rather, the applicable statutory process shapes her procedural due process rights. Because [p]etitioner has no statutory right to release or a bond hearing . . . she has no due-process right to the relief

requested."); *Aslanturk v. Hott*, 459 F. Supp. 3d 681, 694 (E.D. Va. 2020) (declining to "ignore binding, Supreme Court precedent" to award an applicant for admission a bond hearing since § 1225(b) does not provide for such hearing); *Petgrave v. Aleman*, 529 F. Supp. 3d 665, 676 (S.D. Tex. 2021) ("When a noncitizen attempts to unlawfully cross the border as [p]etitioner did, his constitutional right to due process does not extend beyond the rights provided by statute."); *St. Charles v. Barr*, 514 F. Supp. 3d 570, 579 (W.D.N.Y. 2021) (denying habeas petition for release or a bond hearing because petition "does not have a constitutional right to any additional procedure.").

Thus, this Court should apply the "century-old rule" reaffirmed in *Thuraissigiam* and conclude that Petitioner's due process rights are coextensive with the rights provided him under statute.

Further, regardless of the level of due process Petitioner is entitled to as an applicant for admission to the United States, his due process challenge to his brief detention fails, as the Supreme Court has held that detention during removal proceedings, even without access to a bond hearing, is constitutional. In *Demore v. Kim*, 538 U.S. 510, 522 (2003), the Supreme Court upheld the constitutionality of a statutory provision that requires mandatory detention during removal proceedings without access to bond hearings, even for lawful permanent residents. The Court "recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process." *Id.* at 523; *Wong Wing v. U.S.*, 163 U.S. 288, 235 (1896) (holding deportation proceedings "would be vain if those accused could not be held in custody pending the inquiry into their true character."). The Court therefore re-affirmed its "longstanding view that the Government may constitutionally detain deportable aliens during the limited period necessary for their removal proceedings." *Id.* at 526. The Court explained that "when the

Government deals with deportable aliens, the Due Process Clause does not require it to employ the least burdensome means to accomplish its goal." *Id.* The Court recognized as to due process concerns that it "has firmly and repeatedly endorsed the proposition that Congress may make rules as to aliens that would be unacceptable if applied to citizens." *Id.* at 522 (citations omitted).

The *Demore* Court distinguished this case from *Zadvydas*, 533 U.S. 678, where the Court confronted a due process challenge to detention of aliens under 8 U.S.C. § 1231, which governs detention following a final order of removal. *Id.* at 527. The Court explained that unlike potentially indefinite detention at issue in *Zadvydas*, detention during removal proceedings has "a definite termination point" and therefore did not implicate due process concerns. *Id.* at 529. The Court concluded its decision by explaining, once more, that "[d]etention during removal proceedings is a constitutionally permissible part of that process." *Id.* at 531.; *Wong Wing*, 163 U.S. at 235 ("We think it clear that detention, or temporary confinement, as part of the means necessary to give effect to the provisions for the exclusion or expulsion of aliens would be valid"). As another court in this Circuit recently recognized, a brief period of detention for the purpose of removal proceedings or to effectuate removal does not violate the constitution. *See Dambrosio v. McDonald, Jr.*, No. 25-CV-10782-FDS, 2025 WL 1070058, at *2 (D. Mass. Apr. 9, 2025) (Recognizing that detention "for a period of less than three months' time … does not amount to an unconstitutional duration."). Here, Petitioner was only recently detained, and his detention is authorized by 8 U.S.C. § 1225(b) and does not violate the Constitution. Petitioner points to no statute, regulation, or case law that renders his arrest and detention unlawful under the INA or any other statute. Although he alleges that he "is not a danger to the community,

since he has no criminal records,[4] and he is not or flight risk," Pet., ¶ 22 (ECF No. 1), the Supreme Court rejected that such claims entitle an immigrant in the United States without lawful status to be released from detention on due process grounds. *See Demore*, 538 U.S. at 523-24 (citing *Carlson v. London*, 342 U.S. 524, 543 (1952).

CONCLUSION

For the above reasons, the petition, including its request for a preliminary injunction, should be denied.

Respectfully submitted,

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[4] Respondents note that although Petitioner's criminal history is minor, it is not non-existent. *See* Chan Decl., ¶¶ 8-12.