IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
El Paso Division

Enzzo Enmanuel de Jesus Lopez-Arevelo, Petitioner, v. GARRETT RIPA, Miami Field Office Director, Immigration and Customs Enforcement and Removal Operations ("ICE/ERO"); TODD LYONS, Acting Director of Immigration Customs and Enforcement ("ICE"); U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; KRISTI NOEM, Secretary of the Department of Homeland Security ("DHS"); U.S. DEPARTMENT OF HOMELAND SECURITY; and PAMELA BONDI, Attorney General of the United States, in their official capacities, Respondents.	Case No. 3:25-cv-337-KC

PETITIONER'S REPLY IN SUPPORT OF THE HABEAS PETITION

Respondents' sole proffered basis for detaining Petitioner is in reliance on the expedited removal procedures codified at 8 U.S.C. § 1225(b). Several courts have made clear that for noncitizens like Petitioner (who have been continuously present in the United States for the two years prior to detention), the use of expedited removal is completely unauthorized under the statutory framework, and is thus illegal in this case. *See, e.g., El Gamal v. Noem*, SA-25-CV-00664-OLG, --- F. Supp. 3d ---, 2025 WL 1857593, at *2 (W.D. Tex. July 2, 2025) ("As Respondents have admitted in their briefing, the INA does not permit the use of expedited removal proceedings in Petitioners' case.... In this case, the second necessary element for expedited removal cannot be satisfied, as Petitioners have been physically present in the United States

continuously since August 27, 2022."); *Castillo Lachapel v. Joyce*, 1:25-CV-4693 (JHR), 2025 WL 1685576, at *1–2 (S.D.N.Y. June 16, 2025) (noting ICE's acknowledgment that expedited removal provisions do not apply to non-citizens who have "'been physically present in the United States continuously for the 2-year period immediately prior to' being detained"); *Make the Road New York v. Noem*, 25-cv-190 (JMC), 2025 WL 2494908, at *1 (D.D.C. Aug. 29, 2025) (explaining that noncitizens who have been living continuously in the country for longer than two years are "render[ed] [] ineligible for expedited removal"); *Chafla v. Scott*, 2:25-cv-00437-SDN, 2025 WL 2531027, at *2 (D. Maine Sep. 2, 2025) (granting temporary injunction and finding likelihood of success on merits where, "under the plain text of the expedited removal statute," because of the petitioner's continuous residence in the United States for more than two years, the Government "would be precluded from seeking expedited removal" against him"). Indeed, in at least two of those cases (*El Gamal* and *Castillo Lachapel*), ***the Government explicitly admitted*** to the Court that expedited removal is unauthorized as to such individuals. Even the Government knows that its detention of the Petitioner in this case is illegal.

In their Response to the Petition (ECF No. 14), Respondents concede that ICE voluntarily dismissed the ordinary removal proceedings that ICE had previously initiated against Petitioner under Section 240 of the Immigration and Nationality Act (INA), abandoning those proceedings without obtaining a court order of removal. Immediately after the pending removal case was dismissed, ICE arrested Petitioner in the courthouse and has detained him ever since. It is now clear beyond any doubt that the reason the Government dismissed the pending removal case was to circumvent the protections that apply in those proceedings in favor of the expedited removal process—a process that it knows is wholly unauthorized under the statute in Petitioner's case.

Incident to a bond review hearing on September 4, 2025 (two days after Respondents filed their September 2, 2025 Response with this Court), the Government disclosed a "Notice and Order of Expedited Removal" dated August 21, 2025. *See* Exhibit 5, Notice and Order of Expedited Removal (dated August 21, 2025) (hereinafter "Ex. 5"). In this document, the Government states that Petitioner entered the country more than three years ago on August 8, 2022. Ex. 5 at 3. But as the cases cited above held, the Government cannot rely on its expedited removal authority to detain (and ultimately remove) Petitioner because expedited removal is expressly limited under the statute, and is available only in the case of an alien who "is arriving" in the United States, or who 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 under this subparagraph." 8 U.S.C. § 1225(b)(1)(A)(i), (iii). Accordingly, ICE lacks any valid legal authorization to detain him because it cannot pursue expedited removal and has abandoned the only other removal proceeding against the Petitioner.

It is a bedrock principle of the law that the Government may only detain a person pursuant some valid exercise of the Government's lawful authority; the writ of habeas corpus exists precisely to allow a petitioner to advance a claim that he or she is being held in violation of the Constitution or laws of the United States. "'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.'" *Salazar v. Kaiser*, Case No. 1:25-CV-01017-JLT-SAB, 2025 WL 2456232, at *7 (quoting *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973)).

At the time Petitioner's habeas petition was filed, counsel had been unable to contact or otherwise communicate with Petitioner except through limited non-attorney proxy. Counsel for Petitioner had been suspicious of, but not certain that, at the time of filing that Respondents had

detained Petitioner for the purpose of expedited removal proceedings. Because of this, the habeas petition had been a limited request for emergency relief based on the secondhand information that Petitioner had been forced to sign documents relating to deportation. Now, counsel has finally been granted limited contact with Petitioner. Further, Respondents admit in their response that they are, in fact, seeking expedited removal of Petitioner despite Petitioner being an improper candidate for expedited removal and despite Petitioner's recent award of Continued Presence, which is a law enforcement tool to protect witnesses assisting prosecution from deportation. Despite these facts, Respondents have presented a partially signed notice and order of expedited removal in connection with a September 4 bond hearing that was denied for lack of jurisdiction. Exhibit 6, Denial of Bond at 1 (dated Sept. 4, 2025) (hereinafter "Ex. 6"). These updates emphasize why Petitioner's writ for habeas corpus should be granted. The immigration court has declined jurisdiction over Petitioner's detention, so this habeas proceeding is the only procedure keeping Respondents from arbitrarily deporting Petitioner without review. Respondents' only ground for detaining Petitioner is on the basis of expedited removal proceedings, but under the statute and case law, Petitioner cannot be a candidate for expedited removal proceedings. For these reasons, Petitioner's writ for habeas corpus should be granted.

UPDATED FACTUAL BACKGROUND

Since the habeas petition was filed, there have been some developments in the facts of this case.

I. Petitioner's Location

At the time the petition was filed, counsel was unable to verify which detention facility Petitioner was being held at. The online detainee locator stated that Petitioner was held at the El Paso Enhanced Hardened Facility. Counsel had also been previously informed, on August 22,

2025, that Petitioner was detained at a "soft-sided" facility in El Paso, but there was no publicly available information on any such facility and thus could not be verified. The petition therefore stated that Petitioner was at El Paso Services Processing Center in El Paso, Texas. Now that counsel has open communication with ICE and the ability to contact Petitioner, counsel can state that after being moved between several detention facilities in and around El Paso, Petitioner is now at Camp East Montana at Fort Bliss in El Paso, Texas.

II. DHS Center for Countering Human Trafficking (CCHT) Has Granted Continued Presence for Petitioner to Enable Him to Aid the Active Criminal Investigation of His Traffickers

A federal court has adjudicated that Petitioner is a human trafficking victim. *See Richard Lopez, et al., v. Janus International Group, Inc., et al.*, No. 1:23-CV-01671, 2024 WL 4294638 (E.D. Va. Sep. 26, 2024); Exhibit 8, Memorandum Opinion and Order in *Lopez v. Janus Int'l Grp., Inc.*, at 6–8, 9 (hereinafter "Ex. 8"). Petitioner is one of the named plaintiffs in the case, in which the Court awarded him $49,000 in compensatory and punitive damages for the labor trafficking he suffered. *See* Ex. 8 at 9–10. Petitioner has also filed an application for a T nonimmigration visa (T-visa) with the United States Citizenship and Immigration Services (DHS USCIS) demonstrating that he is a victim of a severe form of human trafficking under the Victims of Trafficking and Violence Protection Act of 2000. *See generally* Exhibit 1, Lopez Filed T-Visa Application (dated August 6, 2025) (hereinafter "Ex. 1"); Exhibit 7, FedEx Delivery Confirmation of T-Visa Application (dated August 7, 2025) (hereinafter "Ex. 7").

The Maryland Office of the Attorney General has identified Petitioner as an important witness in an active, ongoing criminal human (labor) trafficking investigation. *See* Exhibit 2, Continued Presence Confirmation (dated Sept. 4, 2025) (hereinafter "Ex. 2"). Because of the Maryland Office of the Attorney General's belief that Petitioner's "assistance and testimony will

be important" to its investigation and prosecution, it applied for Petitioner to receive "Continued Presence." *Id.* Continued Presence (CP) is "a temporary immigration designation provided to individuals identified by law enforcement as victims of a severe form of trafficking in persons who may be potential witnesses. CP allows human trafficking victims to lawfully remain and work in the United States temporarily during the investigation into the human trafficking-related crimes committed against them."[1] If granted, CP allows trafficking victims to remain lawfully in the United States for two years and may be renewed thereafter.[2] CP is only granted after the intended recipient passes appropriate checks "to rule out national security and public safety threats."[3]

Since the habeas petition was filed, the Maryland Office of the Attorney General has informed Petitioner's counsel that the DHS CCHT has granted Petitioner Continued Presence, reflecting his important to an ongoing criminal human trafficking investigation. *See* Ex. 2. The Maryland Office of the Attorney General is also seeking Petitioner's immediate release to aid its criminal investigation and prosecution. *Id.*

III. Status of Parole

Respondents assert that Petitioner was not paroled into the United States. ECF No. 14 at 4 n.2; ECF No. 14-1 at 1. However, on August 10, 2022, Petitioner received the attached Call-In Letter that specifically states: "You have been paroled in the United States[.]" *See* Exhibit 3, Call-In Letter at 1 (dated Aug. 10, 2022) (hereinafter "Ex. 3"). Therefore, there seems to be conflicting documentation on whether Petitioner was paroled when he was released on his own recognizance on August 10, 2022.

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[1] Center for Countering Human Trafficking, Continued Presence Resource Guide, Department of Homeland Security (Sept. 2023), available at https://www.dhs.gov/sites/default/files/2025-03/25_0321_ccht_Continued-Presence-Resource-Guide-update-Feb-2025_v2_508.pdf.
[2] *Id.*
[3] *Id.*

IV. Employment Authorization Granted

On August 24, 2025, Petitioner was awarded an Employment Authorization Document ("EAD") that does not expire until 2030. *See* Exhibit 4, Grant of Employment Authorization (dated August 24, 2025) (hereinafter "Ex. 4").

V. Signed Documents[4]

Since the petition was filed, counsel has now spoken with Petitioner over the phone and has verified that Petitioner was forced to sign documents (written only in English) related to deportation and was contemporaneously told that he would be deported to Mexico anyway if he did not sign. Petitioner signed two documents: one seemed to relate to deportation generally, and the other seemed to relate to deportation to Mexico. DHS contractors demanded that Petitioner sign both documents. The documents were in English, not Spanish, and he was not allowed to read them prior to signing. The approximate date that Petitioner signed these documents were early in the week of August 18. At least for the document relating to deportation to Mexico, Petitioner was told that he would be deported whether he signed or not. Initially, for that document, he refused to sign and asked to speak with his legal counsel. He was not granted the opportunity to contact his legal counsel. Two days later, an ICE official showed up and reiterated the demand that Petitioner sign the document, which he did. He felt he had no choice.

On September 4, 2025, Respondents uploaded Exhibit 5 to the Immigration Court docket as an exhibit for Petitioner's bond hearing, which occurred at 1 pm ET on September 4. *See* Ex.

[4] For the following facts, because counsel for Petitioner has only been able to communicate with Petitioner over the phone, counsel was unable to prepare and have Petitioner sign a declaration related to the facts in this section. However, counsel has informed Petitioner that if Respondents produce Petitioner at the September 8, 2025 hearing, as ordered in the Court's September 3 Order, ECF No. 16 at 2, Petitioner may be called to testify as to these and other facts related to his detention.

5 at 1–2. This document appears to be one of the documents that Petitioner was forced to sign. *See* Ex. 5 at 3 (highlighted signature and date). Despite Petitioner's signature purporting to accept service of the document, Petitioner was not allowed to read it (and it was not provided in Petitioner's native language of Spanish), was not allowed to consult legal representation about it, was not able to receive a copy of the document, and was told he had no option but to sign it.

Exhibit 5 is a Notice and Order of Expedited Removal dated August 21, 2025. The mere existence of this document contradicts much of Respondents' posturing that "Petitioner is not subject to a final order of removal." ECF No. 14 at 6. As of the date of Respondents' filing, this document was already signed and prepared, *see* Ex. 5, yet Respondents failed to disclose this document to the Court. *See generally* ECF No. 14. Further, Respondents continue to refuse to provide copies of this or the other signed document to Petitioner in detention. Counsel for Petitioner only received this document incidentally to the bond hearing.

Counsel for Petitioner has been unable at the time of this filing to obtain copies of the other document, the one related to deportation to Mexico, that Petitioner was coerced into signing. If Petitioner continues to be prevented from obtaining copies of that document, Petitioner will request expedited, limited discovery related only to that document to determine whether injunctive relief related to the imminent deportation threat of that document is necessary.

VI. September 4, 2025 Bond Hearing

On September 4, Petitioner and his counsel attended a bond hearing in immigration court to discuss his detention. The immigration judge held that the immigration court had no jurisdiction on two grounds: (1) Petitioner is detained under 8 U.S.C. 1225(b) and is undergoing expedited removal proceedings, over which the immigration court does not have jurisdiction; and (2) there was no warrant issued related to the pending appeal before the Board of Immigration Appeals, *see*

Matter of Q. Li, 29 I. & N. Dec. 66, 67 (BIA 2025) ("[W]e hold that an applicant for admission who is arrested and detained without a warrant while arriving in the United States, whether or not at a port of entry, and subsequently placed in removal proceedings is detained under section 235(b) of the INA, 8 U.S.C. § 1225(b), and is ineligible for any subsequent release on bond under section 236(a) of the INA, 8 U.S.C. § 1226(a)."). *See* Ex. 6. Since the immigration judge determined there was no jurisdiction, he could not grant Petitioner bond. *Id.*

DISCUSSION

I. Petitioner's Detention is Unlawful

Petitioner's detention is unlawful. Habeas extends to cases where a person is "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3).

Respondents readily admit that ICE dismissed the removal proceedings against Petitioner in order to begin expedited removal proceedings against him. *See* ECF No. 14 at 7 ("ICE's decision to dismiss "full" removal proceedings against Petitioner and arrest him pending an appeal of that decision is intertwined with the *decision to commence (expedited) removal proceedings against* [Petitioner]" (emphasis added)); *id.* at 5 ("Petitioner claims that ICE's decision to dismiss his removal proceedings *in favor of pursuing an expedited removal order* deprives [Petitioner] of this protected due process right" (emphasis added)). Incidentally to the bond proceeding, Respondents have also produced a signed Notice and Order of Expedited Removal dated August 21. *See* Ex. 5. For multiple reasons, this is Respondents expressly admitting to violating statute.

First, expedited removal applies narrowly to only those non-citizens who are admissible to the United States because they engaged in fraud or misrepresentation to procure admission or other immigration benefits, 8 U.S.C. § 1182(a)(6)(C), or who are applicants for admission without required documentation, 8 U.S.C. § 1182 (a)(7). No other person may be subjected to expedited

removal. 8 C.F.R. § 253.3(b)(1), (b)(3). Petitioner fits neither of these categories, and Respondents fail to allege that the expedited removal proceedings now pending against Petitioner are justified on either of those grounds. Thus, Respondents are violating statute by pursuing expedited removal against Petitioner.

Second, expedited removal proceedings can only be initiated against non-citizens who have been in the United States for less than two years. 8 U.S.C. § 1225(b)(1)(A)(i), (iii) (citing 8 U.S.C. § 1182(a)(6)(C), (a)(7)). Placing a non-citizen into expedited removal proceedings violates 8 U.S.C. § 1225(b)(1) because there was never a "determination" of inadmissibility during Petitioner's first two years of presence in the United States. Neither an arrest nor a charge constitutes a "determination" of inadmissibility—the former is not an adjudication of in admissibility, and the latter is an allegation, not a conclusion. By Respondents' own attachment to their response, they recognize that Petitioner has been in over three years. *See* ECF No. 14-1 at 1; *see also* Ex. 5 at 3. Thus, Respondents are violating statute by pursuing expedited removal against Petitioner.

Third, even if Petitioner met the statutory requirements for expedited removal—which Petitioner does not—expedited removal without further hearing and review is improper against an individual who "indicates either an intention to apply for asylum . . . or a fear of persecution." 8 U.S.C. § 1225(b)(1)(A)(i). Petitioner is a previous asylum applicant who has expressed a fear of persecution if deported back to Venezuela. Thus, expedited removal is improper as to Petitioner.

Fourth, the application of expedited removal in the interior of the United States, rather than at the border, violates case law that states that non-citizens who enter the United States without inspection do not "remain[] in a perpetual state of applying for admission." *United States v. Gambino-Ruiz*, 91 F.4th 981, 989 (9th Cir. 2024) (citing *Torres v. Barr*, 976 F.3d 918 (9th Cir.

2020) (en banc)). The INA sets forth an "inspection" scheme that can lead to expedited removal based on the results of the inspection—where DHS opted not to place a person in expedited removal at the time of inspection, the statute does not authorize DHS to substitute a new processing decision like expedited removal years later. This is consistent with the legislative history of expedited removal; in creating the expedited removal scheme, Congress was explicitly targeting the "thousands of [non-citizens who] arrive in the U.S. at airports each year without valid documents and attempt to illegally enter the U.S.," not individuals who have already been physically present in the country—with no issue—for an extended period of time. H.R. Rep. No. 104-469, pt. 1, at 157–58 (1996). On August 29, a federal district court issued an order blocking Respondents' efforts to "expand[] the scope of expedited removal to noncitizens apprehended anywhere in the United States." *See Make the Road New York*, 2025 WL 2494908, at *1.

Petitioner is not an applicant for admission under statute. In Exhibit 5, Respondents assert that Petitioner is inadmissible under 8 U.S.C. § 1225(b)(1), but Petitioner cannot have been "in a perpetual state of applying for admission." *Gambino-Ruiz*, 91 F.4th at 989 (9th Cir. 2024) (citing *Torres*, 976 F.3d 918 (9th Cir. 2020) (en banc)). Respondents have attempted to initiate expedited removal proceedings after Petitioner has been present in the country for over three years with no issue and no criminal record, which is not only a statutory violation of the INA, *see* 8 U.S.C. § 1225(b)(1)(A)(i), (iii) (citing 8 U.S.C. § 1182(a)(6)(C), (a)(7)), but also a violation of due process under the Fifth Amendment, *see Make the Road New York*, 2025 WL 2494908, at *2 ("[Resident noncitizens] have a weighty liberty interest in remaining here and therefore must be afforded due process under the Fifth Amendment").

Respondents' only justification for detaining Petitioner is because of the expedited removal proceedings. However, the expedited removal proceedings against Petitioner violate statute and recent case law. Thus, his detention is unlawful, and this writ should be granted.

II. This Court has Jurisdiction

Respondents attempt to use the expedited removal statute as both a sword and shield. Respondents are invoking expedited removal against Petitioner to justify his detention and removal despite statutory language excepting Petitioner from expedited removal proceedings, yet Respondents are also using expedited removal to attempt to strip this Court of jurisdiction over this case. ECF No. 14 at 7.

In support of their claim that this Court lacks subject-matter jurisdiction over the Petition, Respondents rely chiefly on 8 U.S.C. § 1252(e)(2), which states that "judicial review *of any determination* made under section 1225(b)(1) of this title [the expedited removal statute] is available in habeas corpus proceedings, but shall be limited" to three fairly narrow issues, which Respondents contend are inapplicable here. This argument misconstrues the statute. Here, Petitioner's habeas challenge is not predicated on a challenge to "any *determination made*" under the expedited removal statute; rather, it is a challenge to his *detention* by ICE so that the Government may commence expedited removal proceedings. The detention itself is distinct from any determinations made in the course of expedited removal proceedings. *See Rodrigues de Oliveira v. Joyce*, No. 2:25-cv-00291-LEW, 2025 WL 1826118, at *3 (D. Maine July 2, 2025). While different courts considering the issue of subject matter jurisdiction in recent habeas challenges to expedited removals have reached different conclusions, multiple courts have recognized that the limitations provided for in Section 1252(e)(2) do not defeat the federal courts' jurisdiction over habeas challenges to detention in cases such as Petitioner's. *See Tupul v. Noem*,

2025 WL 2426787, No. CV-25-02748-PHX-DJH (JZB), at *2 n.4 (D. Ariz. Aug. 4, 2025) (rejecting claim that the court lacked jurisdiction over the habeas petition and holding that "[w]hether an individual physically present in the United States for more than two years is eligible to be placed in expedited removal proceedings is not a matter of discretion. Judicial review of such decision, therefore, is not barred by Section 1252(a)(2)(A)"); *Chafla v. Scott*, 2025 WL 2531027, at *1 n.1 ("[A]lthough 8 U.S.C. § 1252(b)(9) limits judicial review in immigration proceedings, it 'does not present a jurisdictional bar where those bringing suit are not asking for review of an order of removal, the decision to seek removal, or the process by which removability will be determined'").

The Court's decision in *El Gamal v. Noem*, No. SA-25-cv-00664-OLG, 2025 WL 1857593 (W.D. Tex. July 2, 2025), is also instructive. While the Court in that case ultimately held that the petitioner's detention pending ongoing removal proceedings was not judicially reviewable, that was only after the Court had first established that the Government *was not* pursuing the unlawful expedited removal of the petitioner there, who, like Petitioner in this case, was continuously present in the United States for more than two years. There, the Government was pursuing ordinary removal, and the Court found that the Government's continuing detention of the petitioner was a matter of discretion, *id.* at *4, and thus insulated from review. But the Court never expressed any question as to its basic subject matter jurisdiction to determine, first and foremost, whether the Government was detaining the petitioner pursuant to an exercise of expedited removal power that was blatantly unlawful. That is a fundamentally different posture than this case, where the Government is continuing to detain Petitioner to pursue an unlawful *expedited* removal.

The Supreme Court has emphasized "a familiar principle of statutory construction: the presumption favoring judicial review of administrative action." *Kucana v. Holder*, 558 U.S. 233,

251 (2010). This presumption of reviewability has been "consistently applied" to immigration statutes and is only overcome by "clear and convincing evidence of congressional intent to preclude judicial review." *Guerrero-Lasprilla v. Barr*, 589 U.S. 221, 229 (2020). There are narrow rules for judicial review under expedited removal, including related to habeas challenges, *see* 8 U.S.C. § 1252(e)(2), but this Court's jurisdiction is not constrained by those narrow review provisions when someone has been detained in violation of the statute; this is expressly the jurisdiction afforded under 28 U.S.C. § 2241(c)(3). Further, Respondents state several times that Petitioner is not subject to final removal order; that fact takes this case out of 8 U.S.C. § 1252(a)(5) review, which precludes judicial review "of an order of removal entered or issued[.]" 8 U.S.C. § 1252(a)(5). Thus, to refuse to exercise jurisdiction over this case would allow Respondents to subject someone to expedited removal without any cause and then evade any judicial challenge to the baselessness of the expedited removal.

Respondents also argue that the agency decision to detain Petitioner was committed to agency discretion by law and therefore not reviewable by this Court. This is not the case. Agency action is not "specified . . . to be in the discretion" of the official where the action "was not performed in accordance with" mandatory statutory requirements. *See Sharkey v. Quarantillo*, 541 F.3d 75, 86 (2d Cir. 2008) (internal quotations omitted). When not performed in accordance with mandatory statutory requirements, the action is not "lawfully authorized, and the Court retains jurisdiction to review the claim." *Y-Z-L-H v. Bostock*, Case No. 3:25-cv-965-SI, 2025 WL 1898025, at *7 (D. Ore. July 9, 2025).

Further, judicial review is only limited "with respect to the executive's exercise of discretion. It does not limit habeas jurisdiction over questions of law." *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017) (quotation marks omitted); *cf. United States v. Hovsepian*, 359 F.3d

1144, 1155 (9th Cir. 2004) (stating in the context of 8 U.S.C. § 1252(g) that a "district court may consider a purely legal question that does not challenge the Attorney General's discretionary authority, even if the answer to that legal question—a description of the relevant law—forms the backdrop against which the Attorney General later will exercise discretionary authority").

Expedited removal applies narrowly to only those non-citizens who are admissible to the United States because they engaged in fraud or misrepresentation to procure admission or other immigration benefits, 8 U.S.C. § 1182(a)(6)(C), or who are applicants for admission without required documentation, 8 U.S.C. § 1182 (a)(7). No other person may be subjected to expedited removal. 8 C.F.R. § 253.3(b)(1), (b)(3). Non-citizens subjected to expedited removal are ordered removed by an immigration officer "without further hearing or review." 8 U.S.C. § 1225(b)(1)(A)(i). That officer must determine whether the individual has been continuously present in the United States for less than two years; is a non-citizen; and is inadmissible because he or she has engaged in certain kinds of fraud or lacks valid entry documents "at the time of . . . application for admission." *See* 8 U.S.C. § 1225(b)(1)(A)(i), (iii) (citing 8 U.S.C. § 1182(a)(6)(C), (a)(7)).

Petitioner challenges his detention based on the expedited removal proceedings, which have statutory requirements with which the Attorney General must comply to "commence proceedings." 8 U.S.C. § 1252(g). This is a question of law—whether Petitioner meets the above requirements for expedited removal; thus, this Court has jurisdiction to decide that question. Further, if this Court determines that Petitioner does not meet the above criteria for expedited removal, then the Attorney General and all Respondents are acting unlawfully and without authorization, establishing this Court's jurisdiction.

III. Failure to Exhaust Administrative Remedies is Inapposite

Respondent claims that Petitioner's petition is premature because Petitioner has not exhausted administrative remedies. ECF No. 14 at 6-7. This is inapposite—Petitioner did not file this petition to challenge the immigration court's dismissal of the removal proceedings on August 8. The BIA appeal relates solely to the dismissal of Petitioner's asylum application and is a distinct and different challenge from the relief sought in this petition. Further, the immigration court determined that it did not have jurisdiction over Petitioner's detainment at the September 4 bond hearing. Thus, to the extent that Petitioner is required to exhaust certain remedies, Petitioner has done so with the September 4 bond hearing. Since this petition is challenging Petitioner's unlawful detention during improper expedited removal proceedings, there are no other administrative remedies to exhaust.

Respondents' exhaustion argument is also inapposite in the context of Petitioner's detention to further the Government's unlawful exercise of expedited removal authority, as compared to the ordinary removal process (which the Government has abandoned here) that might otherwise afford some administrative remedies for a detained person. In *Castillo Lachapel v. Joyce*, 25 Civ. 4693 (JHR), 2025 WL 1685576, at *3 (S.D.N.Y. June 16, 2025), while the court in that case ultimately held that exhaustion was required, it did so only after ICE had abandoned the unlawful expedited removal proceedings and re-initiated ordinary removal procedures. *See id.*

And as the Court recognized in *Castillo Lachapel* recognized, any requirement of exhaustion of remedies in this context is a prudential matter, subject to exceptions where, among other things, irreparable injury may occur without immediate judicial relief. That concern is particularly prominent here, where there is reason to believe that Respondents coerced Petitioner to sign voluntary deportation paperwork that allows his deportation without further administrative review or process. Since Petitioner was not allowed to read this paperwork or consult with his

legal counsel prior to signing, and counsel has been unable to obtain copies of all of this paperwork, it is unclear what Petitioner was forced to sign and whether Respondents could use the paperwork signed under duress to deport Petitioner without further administrative process.

IV. Texas Custodian

Petitioner agrees with Respondents that at present, there is no custodian named related to Petitioner's detainment in Texas. *See* ECF No. 14 at 5–6. At the time the habeas petition was filed, counsel was unable to contact Petitioner directly, nor could counsel confirm which detention center Petitioner was held in. Further, counsel had difficulty determining who was the proper custodian to name in Texas based on a lack of public data. Because of this, Garrett Ripa, the custodian at the time Petitioner was initially detained in Miami, Florida, was named as a Respondent. Since the petition was filed, counsel has now been in direct contact with Petitioner over the phone and have confirmed his presence at Camp East Montana at Fort Bliss in El Paso, Texas. With this confirmation, Petitioner will be amending the Petition to substitute Mr. Ripa for Ms. Marisa A. Flores, who appears to be the Director of the El Paso Field Office for ICE/ERO. In any event, in analogous circumstances, courts have recognized that dismissal is not the proper remedy for the naming of an incorrect immediate custodian in an initial petition. *Cf. Khalil v. Joyce*, 771 F. Supp. 3d 268, 287–88 (S.D.N.Y. 2025) (noting that "immediate-custodian rules are 'not jurisdictional in the sense of a limitation on subject-matter jurisdiction'" and that transfer rather than dismissal was warranted in that case so that the petitioner is not " 'penalized by … time-consuming and justice-defeating technicalities'") (internal citations omitted).

V. Deportation is Improper Where Petitioner is Protected by CP

Since the time the habeas petition was filed, ICE has been made aware by the Maryland Office of the Attorney General that Petitioner has been granted CP. *See* Ex. 2. All Respondents are also now put on notice of that Petitioner now has legal protection from deportation.

VI. Preliminary Injunctive Relief Related to Deportation

Petitioner requests injunctive relief related to deportation because Petitioner was coerced into signing two documents without the ability to read and understand them and was contemporaneously told that he would "be deported to Mexico anyway" if he did not sign the documents. At the time the habeas petition was filed, counsel was unable to communicate with Petitioner and had to rely on a non-attorney proxy to share Petitioner's experiences in the various detention facilities in which he has been held for the last month. At this time, counsel has now verified with Petitioner himself that those events occurred. Respondents fail to substantively address Petitioner's assertion that agents or contractors of Respondents coerced Petitioner into signing documents he was made to believe related to deportation, nor does Respondent provide evidence that this event did not occur. Respondents only state: "Petitioner's 'information and belief' that he has signed 'deportation paperwork' is rebutted by the active BIA appeal of the order terminating his removal proceedings. Petitioner is not subject to a final order of removal." ECF No. 14 at 6. The existence of the BIA appeal does not rebut Petitioner's allegation that agents or contractors of Respondents coerced Petitioner into signing documents that he was not allowed to read, consult with an attorney about, or refuse to sign. Further, the active BIA appeal does not prevent Petitioner's deportation: "Filing a motion with the Board does not automatically stop the DHS from executing an order of removal. If the respondent/applicant is in DHS detention and is about to be removed, you may request the Board to stay the removal on an emergency basis." ECF No. 14-3 at 2. Since the immigration court has denied bond on jurisdictional grounds, there is no

other administrative or judicial body that can prevent Petitioner from being unlawfully deported in violation of the expedited removal statutory requirements.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the writ for habeas corpus be granted because Petitioner is being unlawfully detained while being unlawfully subjected to expedited removal proceedings. Petitioner also respectfully requests this Court enter an order preventing his deportation and ordering his release because he is at risk of being unlawfully deported and he has been granted Continued Presence as an important witness to a criminal human trafficking investigation.

Dated: September 4, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on the 5th of September, 2025, a true and correct copy of the foregoing motion was served on all counsel of record via the court's electronic service CM/ECF and courtesy copy through email.

/s/ Laura D. Niday
Laura D. Niday