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

CLAUDY DORNEVIL,	)	CASE NO.: 4:25CV1809
	)	
Petitioner,	)	JUDGE BENITA Y. PEARSON
	)	
v.	)	
	)	
KRISTI NOEM, ET AL.,	)	MOTION TO DISMISS AND RETURN
	)	OF WRIT
Respondents.	)	

INTRODUCTION

Petitioner Claudy Dornevil, a Haitian citizen, filed the instant petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241. Petitioner asserts that Respondents violated both the Administrative Procedure Act ("APA") and his Fifth Amendment Right to Due Process by terminating his asylum proceedings, placing him on expedited removal without notification, and revoking his release and detaining him without any "changes to his facts and circumstances" to justify the detention (ECF No. 1, Petition).

Petitioner has failed to exhaust his administrative remedies before filing the instant Petition. He did not appeal the Immigration Judge's decision to dismiss his removal proceedings to the Board of Immigration Appeals ("BIA"). Furthermore, his detention pending removal is lawful, and his complaint raises no issues subject to judicial review. Thus, pursuant to Fed. R.

Civ. P. 12(b)(6), Respondents Kristi Noem, Secretary of the United States Department of Homeland Security ("DHS"); Robert Lynch, Acting Director of ICE's Detroit Field Office; Todd Lyons, Director of DHS; and Pamela Bondi, the Attorney General of the United States, respectfully request that the Court dismiss the Petition in its entirety.[1]

BACKGROUND

On July 24, 2024, Petitioner crossed the border into the United States in Brownville, Texas. (ECF No. 1, Petition, at PageID #13). DHS granted him Humanitarian Parole with an expiration date of July 23, 2026. (*Id.*). He was permitted to reside with family and granted a work permit while he applied for asylum. (*Id.* at PageID 13-14). DHS provided Petitioner with a notice to appear in front of an immigration judge on July 7, 2025, to begin removal proceedings. (*Id.*). Although Petitioner was granted Humanitarian Parole, the issuance of a charging document, i.e., a notice to appear, terminated that parole. *See* 8 C.F.R. 212.5(e)(2)(i). Humanitarian Parole does not constitute legal status and does not shield a person from being subjected to removal proceedings or expedited removal.

On July 7, 2025, upon motion by DHS, the Immigration Judge dismissed Petitioner's removal proceedings. (Ex. 1, 7/7/25 IJ Order). Petitioner did not oppose DHS's motion to dismiss. (*Id.*). DHS arrested petitioner when he left the courtroom. (ECF No. 1, Petition, at PageID #13-14). Pursuant to 8 U.S.C. § 1225(b)(1), DHS issued Petitioner a signed Notice and

[1] This response to Petitioner's habeas petition is filed on behalf of Respondents Kristi Noem, Robert Lynch, Todd Lyons, and Pam Bondi. 28 U.S.C. § 517 allows the Office of the United States Attorney to make appearances in court to attend to the United States' interests, and consistent with that statute, this filing attends to the United States' interests to the extent that the petition names the warden at Northeast Ohio Correctional Center, as a respondent. The petition also incorrectly names Douglas Fender as the warden at the Northeast Ohio Correctional Center, but the current acting warden is Ed Voorhies.

Order of Expedited Removal. (*Id.*). Petitioner claimed fear of returning to his native country and had a fear credibility interview on September 10, 2025.

On August 29, 2025, Petitioner filed his petition for writ of habeas corpus challenging the dismissal of his removal proceedings, his expedited removal, and his current detention pending removal.

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 DHS 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).[2]

LAW AND ARGUMENT

[2] 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.

I. STANDARD OF REVIEW.

A Rule 12(b)(6) motion to dismiss should be granted if, from the face of the pleadings, it "appears beyond a doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief." *Strbac v. Sniezek*, No. 4:06-CV-2321, 2007 U.S. Dist. LEXIS 103720, at *2 (N.D. Ohio Jan. 8, 2007); see also *Cargill v. Healy*, No. 4:23-CV-1755, 2024 WL 1683600 (N.D. Ohio Mar. 1, 2024) (dismissing § 2241 petition for failure to exhaust).

II. THE PETITION SHOULD BE DISMISSED FOR FAILURE TO EXHAUST.

When a petitioner fails to exhaust his administrative remedies, a district court should dismiss the petition without prejudice or stay the proceedings until the petitioner has exhausted his remedies. *Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011) (citations omitted). The purpose of the exhaustion requirement is two-fold. First, it protects administrative agency authority: "Exhaustion gives an agency an opportunity to correct its own mistakes with respect to the programs it administers before it is haled into federal court." *Woodford v. Ngo*, 548 U.S. 81, 89 (2006). Second, it promotes efficiency: "Claims generally can be resolved much more quickly and economically in proceedings before an agency than in litigation in federal court." *Id.*

The case of *Leonardo* is instructive. There, the petitioner pursued habeas review of an Immigration Court's adverse bond determination before appealing to the BIA. *Leonardo*, 646 F.3d at 1160. The Ninth Circuit determined that filing a habeas petition in district court was "improper" because the petitioner "should have exhausted administrative remedies by appealing to the BIA before asking the federal district court to review the IJ's decision." *Id.* (*citing Rojas-Garcia v. Ashcroft*, 339 F.3d 814, 819 (9th Cir. 2003)). The Sixth Circuit has endorsed the same procedure. *Rabi v. Sessions*, No. 19-3249, 2018 U.S. App. LEXIS 19661, at *1-2 (6th Cir. July 16, 2018) (*citing Leonardo*, 646 F.3d at 1160). Other courts in this district have also followed

Ninth Circuit precedent in deciding to dismiss habeas petitions. *See Mario R. Monroy Villalta v. Jerry Greene,* Case No. 4:25CV01594, ECF No. 3 (citing *Leonardo* and finding that "Petitioner should pursue this matter before the Board of Immigration Appeals); *see also Leanny Sorelbis Hernandez Torrealba v. U.S. Department of Homeland Security, et al.,* Case No. 1:25CV01621, ECF No. 8 (citing *Leonardo* and finding that "Petitioner must exhaust her administrative remedies before obtaining federal district court review of the claims set forth in her Petition.").

Here, the Immigration Judge's decision to dismiss removal proceedings on July 7, 2025, indicated that Petitioner was provided with information regarding appeal. (Ex. 1, 7/7/25 IJ Order). As in *Leonardo*, principles of exhaustion require that Petitioner pursue this remedy with the BIA before filing suit in federal district court. Petitioner will also have an opportunity to challenge the result of his credible fear interview on September 10th to an immigration judge should it be found that he does not have credible fear.

Because Petitioner did not pursue an appeal before the BIA and therefore did not exhaust his claims at an administrative level, his Petition should be dismissed.

III. PETITIONER'S DETENTION IS LAWFUL IN ANY EVENT.

Even if Petitioner had exhausted his claims, DHS has not violated any federal laws in detaining Petitioner pending his removal.

In *Thuraissigiam*, the Supreme Court upheld the constitutionality of mandatory, statutory detention of any alien in expedited removal proceedings, including '[m]andatory detention' during his credible-fear review". *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 118-119 (2020), citing 8 U.S.C. §§ 1225(b)(1)(B)(ii), (iii)(IV). 8 U.S.C. §§ 1225 governs the expedited removal of inadmissible arriving aliens and provides that "[a]ny alien subject to the procedures under this clause shall be detained pending a final determination of credible fear of

persecution and, if found not to have such a fear, until removed." 8 U.S.C. § 1225(b)(1)(B)(iii)(IV). Here, DHS provided Petitioner with a signed notice and order of expedited removal on July 7, 2025. His credible fear interview was scheduled for September 10, 2025. He has been lawfully detained pending this review.

To the extent Petitioner is challenging the removal decision, this Court lacks jurisdiction.

IV. 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. (ECF No. 1, Petition, at PageID #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).

The allegations in Petitioner's complaint speak to the execution of his removal proceedings rather than whether he is an alien, was ordered removed, and whether he had been granted entry as a lawful permanent resident, refugee, or asylee.

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. DHS then issued Petitioner a Notice and Order of Expedited Removal. Neither of these are subject to judicial review. Therefore, the Petition should be dismissed for lack of subject matter jurisdiction.

C. This Court lacks jurisdiction over constitutional claims.

Petitioner argues that his Fifth Amendment Right to Due Process was violated because DHS did not advise Petitioner that they sought to terminate his removal proceedings and placed him on expedited removal, detaining him without an individualized determination after releasing

him at the border. (ECF No. 1, Petition, at PageID #18, 22-23). There is no exception in § 1252(e) "providing [district courts] authority to review constitutional claims related to the application of § 1225(b)(1)." *Vaupel v. Ortiz,* 244 F. App'x 892, 895 (10th Cir. 2007). Therefore, this Court does not have jurisdiction to review Petitioner's allegations of Fifth Amendment Due Process violations, and the Petition should be dismissed for lack of subject matter jurisdiction.

CONCLUSION

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

Respectfully submitted,

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