UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

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| PIERRE YVES DESGAZONS,<br>Petitioner,<br><br>v.<br><br>MICHAEL NESSINGER, Donald W. Wyatt Detention Facility, PATRICIA HYDE, Field Director, MICHAEL KROL, HSI New England Special Agent in Charge, and TODD M. LYONS, Acting Director, U.S. Immigration And Customs Enforcement, and KRISTI NOEM, U.S. Secretary of Homeland Security<br>Respondents. | Civil Action No. 25-cv-000459-MRD-PAS |

**RESPONSE OF FEDERAL DEFENDANT'S IN OPPOSITION TO EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS AND MOTION TO DISMISS**

Pursuant to the Court's September 25, 2025 Text Order, PATRICIA HYDE, Field Director, MICHAEL KROL, HSI New England Special Agent in Charge, and TODD M. LYONS, Acting Director, U.S. Immigration And Customs Enforcement, and KRISTI NOEM, U.S. Secretary of Homeland Security respectfully submits this Opposition to Petitioner's Petition for Writ of Habeas Corpus, and Motion to Dismiss the Petition.[1]

[1] The U.S. Attorney's Office does not represent the Warden of Wyatt Detention Facility.

## I. INTRODUCTION

To warrant a grant of the writ of habeas corpus, Petitioner bears the burden of proving by a preponderance of the evidence that his custody violates the Constitution, laws, or treaties of the United States. 28 U.S.C. § 2241(c)(3); *see also Espinoza v. Sabol*, 558 F.3d 83, 89 (1st Cir. 2009); *Farrell v. Lanagan*, 166 F.2d 845, 847 (1st Cir. 1948). Petitioner cannot meet this burden, and the Court should dismiss the Emergency Petition For Writ Of Habeas Corpus (Petition).

In summary, the Department of Homeland Security (DHS) had the legal authority to grant the Petitioner parole in August 2023 and thereafter to revoke Petitioner's parole in June 2025. When Petitioner's parole was revoked, his immigration status reverted to the status that he held upon arrival his arrival at the border in August 2023: an arriving alien and applicant for admission to the United States. On September 11, 2025, when Petitioner was encountered in Saugus, Massachusetts, his parole had been terminated, and he did not have any valid entry document entitling him to be admitted to the United States. Therefore, ICE issued him a Notice to Appear (NTA) which charged him with being inadmissible under 8 U.S.C. § 1182(a)(7)(A)(i)(I) and placed him in full removal proceedings pursuant to 8 U.S.C. § 1225(b)(2), *not* expedited removal proceedings. Under 8 U.S.C. § 1225(b)(1), applicants for admission, like Petitioner, are subject to mandatory detention pending any removal proceedings. Petitioner's detention is therefore lawful, and the Court should decline to issue a writ of habeas corpus. Finally, to the extent that the Petitioner is challenging his placement in removal proceedings, this Court lacks

subject-matter jurisdiction to consider that challenge. *See* 8 U.S.C. § 1252(g). Petitioner's recourse to challenge the removal proceedings lies in immigration court where he can contest the basis for his removal, present an asylum claim, and appeal any adverse rulings to the Board of Immigration Appeal (BIA). [2]

## II. THE PETITION

On September 13, 2025, Petitioner filed an Emergency Petition for Writ of Habeas Corpus (Petition). ECF No. 1. In his Petition, among his prayers for relief, the Petitioner asks this Court to "[d]eclare that his detention violates the Due Process Clause of the Fifth Amendment" and "[i]ssue a Writ of Habeas Corpus ordering Respondents to Release Petitioner immediately." Petition, ECF No. 1, p. 5.

Petitioner cites one claim for relief, specifically, a "Violation of Fifth Amendment Right to Due Process." He alleges, *inter alia*, that he was "arrested and [is being] detained without cause and in violation of his constitutional rights to due process of law;" that he was never served with a Notice to Appear to initiate any removal proceedings and has not been provided an opportunity for a bond hearing;

[2] The BIA is an appellate body within the Executive Office for Immigration Review ("EOIR"). *See* 8 C.F.R. § 1003.1(d)(1). Members of the BIA possess delegated authority from the Attorney General. 8 C.F.R. § 1003.1(a)(1). The BIA is "charged with the review of those administrative adjudications under the Immigration and Nationality Act (INA) that the Attorney General may by regulation assign to it," including Immigration Judge custody determinations. 8 C.F.R. §§ 1003.1(d)(1), 236.1; 1236.1. The BIA not only resolves particular disputes before it, but also "through precedent decisions, [it] shall provide clear and uniform guidance to [DHS], the immigration judges, and the general public on the proper interpretation and administration of the [INA] and its implementing regulations." *Id.* § 1003.1(d)(1). "The decision of the [BIA] shall be final except in those cases reviewed by the Attorney General." 8 C.F.R. § 1003.1(d)(7).

and that he is not eligible for expedited removal. Petition, ECF No. 1, p. 3, ¶ ¶ 1-3, p. 4, ¶ 7. He further alleges that his proceedings involve the expedited removal process, which he challenges. Petition, ECF No. 1, p. 4, ¶¶ 4-5.

As set forth herein, Petitioner's claims are neither factually, nor legally accurate.

## III. FACTUAL BACKGROUND

Petitioner is a native and citizen of Haiti. Declaration of Assistant Field Office Director Keith Chan (Decl.), attached hereto as Exhibit 1, ¶ 6. Petitioner arrived at a border of the United States, specifically, the Fort Lauderdale, Florida airport, on August 16, 2023, and presented himself to Customs and Border Protection (CBP) for inspection. Decl., ¶ 7.

That same day, he was paroled into the United States by CBP pursuant to the Haitian Humanitarian Parole Program. Decl., ¶ 7.

On June 12, 2025, DHS terminated the Petitioner's parole. Decl., ¶ 8

On September 11, 2025, Petitioner was encountered by ICE officers in Saugus, Massachusetts and did not have any documents that permitted him to remain legally in the United States. Decl., ¶ 9.

Also on September 11, 2025, the Petitioner was served with an NTA and was placed into full, not expedited, removal proceedings. The NTA charged Petitioner

with being an arriving alien, without a valid entry document, and removable from the United States pursuant to 8 U.S.C. 1182(a)(7)(A)(i)(I).[3] Decl., ¶ 10.

On September 12, 2025, Petitioner was transferred to the Wyatt Detention Center in Rhode Island, where he is in ICE custody. Decl., ¶ 11.

Removal proceedings for the Petitioner are pending in Immigration Court in Chelmsford, Massachusetts. Petitioner made an appearance before an Immigration Judge on September 25, 2025 for a bond hearing and initial removal hearing. At the bond hearing, the Petitioner was represented by counsel. The Immigration Judge found that Petitioner was not eligible for bond as he is an arriving alien. The Petitioner's removal proceedings have been continued to October 9, 2025. Decl., ¶ 13

## IV. ARGUMENT

### A. Petitioner Was Granted Parole and Thereafter, His Parole Was Lawfully Revoked.

When Petitioner presented himself for inspection on August 16, 2023, he was not in possession of any valid entry documents and was therefore inadmissible under 8 U.S.C. 1182(a)(7)(A)(i)(I). Hence, he was paroled into the United States by CBP

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[3] Title 8, United States Code, section 1182(a)(7)(A)(i)(I) provides that

> Except as otherwise specifically provided in this chapter, any immigrant at the time of application for admission—
>
> > who is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document required by this chapter, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality if such document is required under the regulations issued by the Attorney General under section 1181(a) of this title. . . is inadmissible.

pursuant to a Haitian Humanitarian Parole Program, in accordance with 8 U.S.C. § 1182(d)(5)(A), which, as stated therein, gives the Secretary of Homeland Security discretion to issue parole on a case-by-case basis.

> The Secretary of Homeland Security may . . . in his discretion parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States, *but such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the Secretary of Homeland Security, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.*

8 U.S.C. § 1182(d)(5)(A) (emphasis added). By its terms, humanitarian parole, by which the Petitioner was permitted to enter the United States, is temporary, and "shall not be regarded as an admission of the alien" to the United States. *Id.* Accordingly, although Petitioner was physically allowed to enter the United States, he was not "admitted" but instead was permitted to enter as a parolee. *See Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 108-09, 139-140 (2020) ("aliens who arrive at ports of entry—even those paroled elsewhere in the country for years pending removal—are treated for due process purposes as if stopped at the border") (citations and quotations omitted); *Jennings v. Rodriguez*, 583 U.S. 281, 287-88 (2018) ("applicants for admission may be temporarily released on parole 'for urgent humanitarian reasons or significant public benefit.' Such parole, however, 'shall not be regarded as an admission of the alien.'") (citing § 1182(d)(5)(A); *see also* 8 C.F.R §§ 212.5(b), 235.3).

In this case, Petitioner's humanitarian parole was lawfully terminated on June 12, 2025. As set forth in the statute, when a term of parole ends, the parolee "shall forthwith return or be returned to the custody from which he was paroled." 8 U.S.C. § 1182(d)(5)(A). After that, "his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States." *Id.* Accordingly, when Petitioner's parole was terminated on June 12, 2025, Petitioner once again became an "applicant for admission" to the United States with no entitlement to be admitted or present in the United States. *Id.*

To the extent that Petitioner challenges the right of DHS to terminate parole, the Court should reject any such claim. In *Doe v. Noem*, the First Circuit recently considered the authority of DHS to terminate a parole program and recognized that

> [P]arole allows the Secretary, in her discretion, to allow non-citizens to be physically present in the United States without being legally "admitted" to the United States. Its purpose "is to permit a non-citizen to enter the United States temporarily while investigation of eligibility for admission takes place.

*Doe v. Noem*, No. 25-1384, 2025 WL 2630395, at *2 (1st Cir. September 12, 2025) (citation and quotation omitted). In vacating the District Court's stay of the termination, the First Circuit recognized that DHS had authority to terminate a parole program. *Id.* at *8-9.

**B. <u>When Encountered by ICE, Petitioner Lacked Any Valid Entry Documents and Was Lawfully Placed in Removal Proceedings.</u>**

Petitioner was not detained without cause, as alleged in the Petition. On September 11, 2025, Petitioner's status was that of an applicant for admission to the

United States. If an applicant for admission

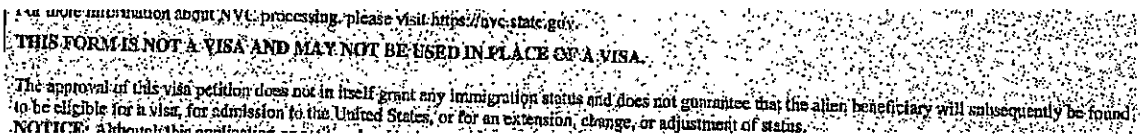
> is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document . . . and a valid unexpired passport, or other suitable travel document, or document of identity and nationality if such document is required under the regulations issued by the Attorney General under section 1181 . . .

that person is "inadmissible." 8 U.S.C. § 1182(a)(7)(A)(i)(I). When Petitioner was encountered by officers in Saugus, Massachusetts on September 11, 2025, his parole had terminated, and he did not have any valid entry documents that authorized him to remain in the United States. Therefore, he was found to be "inadmissible" and was served with an NTA which charged him with being inadmissible under 8 U.S.C. § 1182(a)(7)(A)(i)(I). As an "arriving alien" without any valid entry documents, Petitioner was then subject to expedited removal proceedings under 8 U.S.C. 1225(b)(1)(A)(i) (if immigration officer finds applicant inadmissible under section 1182(a)(7), "the officer shall order the alien removed from the United States without further hearing or review . . . ."); *see generally Thuraissigiam*, 591 U.S. at 108-09 (explaining the expedited removal process). However, in this case, DHS exercised its discretion, served him with an NTA, and commenced full removal proceedings under 8 U.S.C. § 1229a.[4] *See* 8 U.S.C. § 1229a(a)(2) ("An alien placed in proceedings

[4] In the Petition, Petitioner repeatedly expresses concern and speculates that he is in "expedited removal proceedings." He is not. He is in full removal proceedings. Insofar as the allegations regarding expedited removal are moot, the Plaintiff has not responded to those allegations in this Response.

under this section may be charged with any applicable ground of inadmissibility under section 1182(a) . . . .").

Petitioner's pending applications with United States Citizenship and Immigration Services (USCIS), which he references in his Petition and for which he has attached Notices,[5] *see* Petition, ¶ 1 and 1-1, do not confer any immigration benefit or otherwise change his present status as an inadmissible alien. In fact, each of the attached Notices clearly state that the pending applications do not confer any immigration benefit or status. For example, the Form I-797 includes the following statements that advise the Petitioner that his applications to not provide immigration status or benefits:


For more information about NYC processing, please visit https://nyc.state.gov.

THIS FORM IS NOT A VISA AND MAY NOT BE USED IN PLACE OF A VISA.

The approval of this visa petition does not in itself grant any immigration status and does not guarantee that the alien beneficiary will subsequently be found to be eligible for a visa, for admission to the United States, or for an extension, change, or adjustment of status.

NOTICE: Although this petition

and

> Please save this Form I-797, Notice of Action (approval notice) for your records. Please note that simply filing an application, petition or request, or having an approved petition does not give the person it was filed for (also known as the beneficiary) permission to legally enter the United States. It also does not grant any legal immigration status.

[5] The Petition includes notices that purport to show that two applications have been submitted on Petitioner's behalf a Form I-797, Notice of Action, showing that he was listed as the beneficiary of an I-130, Petition for an Alien Relative and a Form I-797C, showing a Fee Waiver for an I-821, an Application for Temporary Protected Status. *See* ECF No. 1-1, pp. 1-2 (Form I-797) and 3-4 (Form I-797C).

*See* ECF No. 1-1, pp. 1-2 (Form I-797). Similarly, the I-797C attached to the Petition states as follows:

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**THIS NOTICE DOES NOT GRANT ANY IMMIGRATION STATUS OR BENEFIT.**

*See* ECF No. 1-1, pp. 3-4 (Form I-797C). Accordingly, Petitioner cannot claim that he has any immigration status or valid entry document because of these pending applications.

Petitioner also cites to two recent decisions in which courts have stayed orders terminating the Temporary Protected Status (TPS) designation for certain Haitian aliens.[6] *See* Petition, n. 1. However, these out-of-district, non-binding, cases address claims of person who have been *granted* TPS status, not Petitioner, who has not been granted TPS status, but rather has *applied for* TPS status. *See generally National TPS Alliance v. Noem, et al.*, Case No. 25-cv-01766-EMC, 2025 WL 2578045 (N.D.C.A. September 5, 2025) and *Haitian Evangelical Clergy Association v.* Trump, et al. No. 25-

[6] Haiti's TPS . . . is a humanitarian program, codified at 8 U.S.C. § 1254a, that provides temporary relief from removal and work authorization to certain aliens "after consultation with appropriate agencies of the Government," finds that "there is an ongoing armed conflict within the state" that "would pose a serious threat to [the] personal safety" of returning aliens; "there has been an earthquake, flood, drought, epidemic, or other environmental disaster in the state" and "the foreign state is unable, temporarily, to handle adequately the return to the state of aliens who are nationals of the state;" or there are "extraordinary and temporary conditions in the foreign state that prevent aliens who are nationals of the state from returning to the state in safety, unless the [Secretary] finds that permitting the aliens to remain temporarily in the United States is contrary to the national interest of the United States." 8 U.S.C. § 1254a(b)(1).

cv-1464 (BMC), 2025 WL 1808743 (E.D.N.Y. July 1, 2025). These cases are inapplicable to this case.

### C. Petitioner is Subject to Detention During the Pendency of His Removal Proceedings.

Because Petitioner is an arriving alien and applicant for admission with ongoing removal proceedings under section 1229a, his detention for the duration of those proceedings is mandatory. 8 U.S.C. § 1225(b)(2)(A) (requiring that an applicant for admission "shall be detained for a [removal] proceeding under section 1229a . . . ."). As set forth below, both sections 1225(b)(1) and 1225(b)(2) both provide for detention "until removal proceedings conclude." *Rodriguez v. Bondi*, No. 25-cv-791, 2025 WL 2490670, at *2 (E.D. Va. June 24, 2025); *see also Jennings*, 583 U.S. at 299 (2018) ("The plain meaning of those phrases is that detention must continue until immigration officers have finished 'considering' the application for asylum, § 1225(b)(1)(B)(ii), or until removal proceedings have concluded, § 1225(b)(2)(A).") (cleaned up).

#### 1. Legal Framework for Detention During Removal Proceedings

The Immigration and Nationality Act (INA) provides a statutory scheme for the civil detention of aliens pending a decision during removal proceedings as well as once a final order of removal has been entered. *See generally* 8 U.S.C. §§ 1225, 1226, 1231. The time and circumstances of entry, as well as the stage of the removal process, determines where an alien falls within this scheme and whether detention of the alien is discretionary or mandatory. As explained by the First Circuit, "[t]he text of the INA

confers broad authority" for civil arrests.[7] *Ryan v. U.S. Immigr. & Customs Enf't*, 974 F.3d 9, 19 (1st Cir. 2020).

**2. Mandatory Detention Under 8 U.S.C. § 1225 Applies to Petitioner.**

Section 1225 applies to persons like Petitioner, "who arrive[] in the United States." 8 U.S.C. § 1225(a)(1). Applicants for admission "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings*, 583 U.S. at 287. Section 1225(b)(1) applies to arriving aliens and "certain other" aliens "initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation." *Id.* at 287; 8 U.S.C. § 1225(b)(1)(A)(i), (iii). These aliens are generally subject to expedited removal proceedings, the result feared by the Petitioner. *See* 8 U.S.C. § 1225(b)(1)(A)(i). However, as discussed herein, expedited removal does not apply in this case. Further, although not relevant here, as Petitioner has not made a yet indicated an intent to seek asylum, under § 1225(b)(1), if an alien "indicates an intention to apply for asylum . . . or a fear of persecution," immigration officers will refer the alien for a credible fear interview. *Id.* § 1225(b)(1)(A)(ii). An alien "with a credible fear of persecution" is then "detained for further consideration of

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7 Per 8 U.S.C. § 1357(a)(2), an alien may be arrested without an administrative warrant, where there is "reason to believe that the alien so arrested is in the United States in violation of any such law or regulation and is likely to escape before a warrant can be obtained for his arrest. . . ." Further, pursuant to regulation, where an individual is arrested without a warrant, such individual must be "examined" after the arrest to determine if there is prima facie evidence that the individual is present in the United States in violation of immigration laws and the case must be referred to an IJ for removal proceedings and the alien provided notice of the reasons for arrest and the right to be represented in removal proceedings. *See* 8 C.F.R. § 287.3.

the application for asylum." *Id.* § 1225(b)(1)(B)(ii). If an alien does not indicate an intent to apply for asylum, express a fear of persecution, or is "found not to have such a fear," he is detained until removed.[8] *Id.* §§ 1225(b)(1)(A)(i), (B)(iii)(IV).

In this case, while Petitioner is an arriving alien pursuant to §1225(b)(1), § 1225(b)(2) controls his detention. Section 1225(b)(2) requires that Petitioner "shall be detained for a proceeding under section 1229a of [Title 8]." Petitioner's § 1225(b)(2) detention, by its terms, thus makes 8 U.S.C. § 1229a applicable to their removal proceedings. Section 1225(b)(2) is "broader" and "serves as a catchall provision," and "applies to all applicants for admission not covered by § 1225(b)(1)." *Jennings*, 583 U.S. at 287. Under § 1225(b)(2), detention is mandated. An alien "who is an applicant for admission" shall be detained for a removal proceeding "if the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A); *see Matter of Q. Li*, 29 I. & N. Dec. 66, 68-69 (BIA 2025) ("for aliens arriving in and seeking admission into the United States who are placed directly in full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention 'until removal proceedings have concluded.'") (citing *Jennings*, 583 U.S. at 299).

[8] Still, DHS has the sole discretionary authority to temporarily release on parole "any alien applying for admission to the United States" on a "case-by-case basis for urgent humanitarian reasons or significant public benefit." *Id.* § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022).

**3. Discretionary Detention Under 8 U.S.C. § 1226 Does Not Apply to Petitioner.**

To the extent that Petitioner argues, in Reply, that he has been detained pursuant to 8 U.S.C. § 1226, and is therefore he is entitled to seek his release before this Court, that argument also fails.

Pursuant to 8 U.S.C. § 1226(a), immigration authorities can arrest an alien with an administrative warrant and then either continue detention for removal proceedings or release the alien on "bond . . . or conditional parole." *Id.* § 1226(a)(1)-(2). Section 1226 more "generally governs the process of arresting and detaining . . . [noncitizens] pending their removal." *Jennings*, 583 U.S. at 288 (2018). Once arrested under § 1226(a), alien may be detained "pending a decision on whether [he] is to be removed from the United States." 8 U.S.C. § 1226(a). Release can occur "provided that the alien must demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding." 8 C.F.R. § 236.1(c)(8). That proceeding, however, occurs in Immigration Court. Further, if the immigration officer opts for continued detention, the alien can seek review of that decision at a bond hearing before an IJ. 8 C.F.R. § 236.1(d)(1). An IJ's decision to continue detaining an alien may be appealed to the BIA. 8 C.F.R. § 236.1(d)(3).

ICE submits that, in this case, the detention authority for Petitioner instead resides under 8 U.S.C. § 1225. See *Matter of Q. Li*, 29 I & N. Dec. at 69 ("[A]n 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)."). Because Petitioner is present in the United States without being admitted, Section 1225(b) therefore applies, making detention mandatory and the Immigration Judge lacks the authority to review bond for arriving aliens. 8 C.F.R. 1003.19(h)(1)(i)(B).

**D. Petitioner Has Been and Is Being Afforded Due Process and His Arrest and Detention Comports with the Due Process Clause of the Fifth Amendment.**

The Petitioner is entitled to, has been afforded, and will continue to be afforded, Due Process of law in his deportation proceedings. *See Demore v. Kim*, 538 U.S. 510, 523 (2003). However, Due Process does not mean that Petitioner cannot be detained during the pendency of his removal proceeding. The Supreme Court has long recognized, "detention during deportation proceedings as a constitutionally valid aspect of the deportation process. As [the Supreme Court] said more than a century ago, deportation proceedings "would be vain if those accused could not be held in custody pending the inquiry into their true character." *Id.* (citing *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.")

**1. The Petitioner Has Been Afforded Due Process in the Administrative Removal Process.**

Contrary to the claims in the Petition, Petitioner does have an active case in immigration court, and he is not in expedited removal proceedings. His removal case is proceeding through the statutory-established removal process and affords him

Due Process. Congress has created a statutorily authorized procedure for removal proceedings, in which aliens may file applications for relief from detention and removal in immigration courts and then seek review of such decisions before the BIA, subject to judicial review by courts of appeals.

Removal proceedings, such as those in which Petitioner has been placed, are initiated with the issuance of an NTA with the Immigration Court that has jurisdiction over the location of the individual. *See* 8 U.S.C. § 1229; 8 C.F.R. §§ 239.1, 8 C.F.R. § 1003.14(a) ("Jurisdiction vests, and proceedings before an Immigration Judge commence, when a charging document is filed with the Immigration Court" by ICE.). Once an NTA is filed with the Immigration Court, the Immigration Judge (IJ) "shall conduct proceedings for deciding the inadmissibility or deportability of an alien." 8 U.S.C. § 1229a(a)(1). Such proceeding "shall be the sole and exclusive procedure for determining whether an alien may be . . . removed from the United States." *Id.* § 1229a(a)(3).

During the removal proceedings, an alien can apply for any form of relief from removal for which he is eligible. *Id.* § 1229a(c)(4). If the IJ grants relief from removal and the Government does not appeal to the BIA or is unsuccessful in such appeal, then the individual obtains lawful status and is not subject to removal from the United States. If, however, the IJ orders an alien removed, such alien can appeal to the BIA and is not subject to removal until the BIA issues a decision on the appeal. *Id.* § 1229a(c)(5); 8 C.F.R. § 1241.1(a). If the BIA affirms the IJ's denial of an application for relief from removal, an alien can file a petition for review ("PFR") with the circuit

court and seek a stay of removal. 8 U.S.C. § 1252(a)(5) ("[A] petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision of this chapter . . . ."). The statute provides that review of all questions "of law and fact ... arising from any action taken or proceeding brought to remove an alien" shall be available only through a PFR in the appropriate court of appeals. *Id.* § 1252(b)(9). An alien also has other administrative avenues for review and to challenge detention and removal orders— including motions to reopen, motions to reconsider. *See generally* 8 U.S.C. § 1229a(c)(6)-(7); 8 C.F.R. §§ 1003.2, 1003.23.

The Petitioner has not been denied Due Process; rather, this statutorily-authorized removal process provides the Petitioner with Due Process.

2. **Petitioner's Mandatory Detention Pursuant to 8 U.S.C. § 1225 Pending the Outcome of His Removal Proceeding is Not a Violation of Due Process.**

The fact that Petitioner is subject to mandatory detention during the pendency of his removal process is not a violation of Due Process. As discussed above, within the statutory framework of the removal process, § 1225, is the specific detention authority applicable to Petitioner who is an arriving alien. And § 1225(b)(2) mandates detention. *See Jennings*, 583 U.S. 281. at 297; *see also* 8 U.S.C. § 1225(b)(2); *Matter of Q. Li*, 29 I & N. Dec. at 69 ("[A]n 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).").

3. **The Length of Petitioner's Detention Does Not Support the Requested Relief.**

To the extent that Petitioner argues, in Reply, that his detention is unconstitutional due to its length, that argument should also be rejected. There is no dispute that Petitioner's detention will be finite; it will end upon the conclusion of the removal proceedings. The Petitioner's nearly three-week detention during the pendency of his removal proceeding, does not come close to being impermissibly prolonged, such that he could present a constitutional violation. *See generally Demore v. Kim*, 538 U.S. 510, 531 (2003); *Reid v. Donelan*, 17 F.4th 1, 12 (1st Cir. 2021); *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").

**E. Petitioner Cannot Meet His Burden for the Court to Grant a Writ of Habeas Corpus.**

To warrant a grant of writ of habeas corpus, the burden is on the petitioner to prove that his custody is in violation of 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."); *Farrell v. Lanagan*, 166 F.2d 845, 847 (1st Cir. 1948) ("The burden of proof is on the petitioner to establish denial of his constitutional rights. The court must be convinced by a preponderance of evidence."). The petitioner bears the burden to show

that his detention is unlawful, including the lawfulness of immigration-related detention, by a preponderance of the evidence. *See Aditya W.H. v. Trump*, No. 25-cv-1976 (KMM/JFD), 2025 WL 1420131, at *7 (D. Minn. May 14, 2025) (collecting authority).

The Petitioner's sole claim for relief is an alleged violation of the Petitioner's Fifth Amendment Right to Due Process, in which he claims that he "is currently being arrested and detained by federal agents without cause and in violation of his constitutional rights to due process of law." Petition, p. 3, ¶ 1. As set forth above, the Petition relies on an error of law and fact, specifically that Petitioner was arrested without cause and that no immigration proceedings were pending against him. As set forth above, Petitioner was arrested and served a Notice to Appear (NTA), advising him that he had been charged him with being inadmissible under 8 U.S.C. § 1182(a)(7)(A)(i)(I) and was placed him in full removal proceedings pursuant to 8 U.S.C. § 1225(b)(2). The remainder of the Petition relates to Petitioner's incorrect belief that ICE was proceeding with expedited removal proceedings. *See* Petition, p. 3, ¶ ¶ 2-6.

Here, for the reasons stated above, Petitioner's detention is plainly lawful and he is being afforded Due Process, so he cannot meet his burden to establish constitutional violations.

**F. <u>The Petitioner Seeks Relief That is Outside the Scope of a Habeas Petition.</u>**

In asking this Court to "assume jurisdiction over this matter," *see* Petition, p. 5, to the extent that the Petitioner is challenging the decision of DHS to place him in removal proceedings, the Petitioner has impermissibly asked this Court for relief

beyond the scope of a habeas petition and for relief over which this Court lacks subject-matter jurisdiction. *See* 8 U.S.C. § 1252(g).[9]

"Habeas is at its core a remedy for unlawful executive detention." *Munaf v. Geren*, 553 U.S. 674, 693 (2008). As the Supreme Court has held, relief other than "simple release" is not available in a habeas action. *Thuraissigiam*, 591 U.S. at 117-119 ("Claims so far outside the core of habeas may not be pursued through habeas."), (internal quotations and citations omitted). *See also Moore v. Wall*, No. 10-049 ML-LDA, 2010 WL 668286, at *2 (D.R.I. Feb. 24, 2010) ("[A] writ of habeas corpus is only properly available to prisoners who are challenging the constitutional validity of their confinement in prison and requesting immediate or future release from confinement.").

Further, Congress stripped district courts of "jurisdiction to hear any cause or claim by or on be-half of any alien arising from the decision or action by the [Secretary] to commence proceedings, adjudicate cases, or execute removal orders against any alien[.]" 8 U.S.C. § 1252(g). Courts across the country, including the First Circuit and this District, have recognized this limitation on district-court jurisdiction. *See, e.g., Carranza v. I.N.S*, 277 F.3d 65, 72 (1st Cir. 2002) ("[i]ndeed, the [Supreme]

[9] 8 U.S.C. § 1252(g) states, in pertinent part:

> Except as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory) ... no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.

Court has made it plain that no general constitutional right exists for an alien in the petitioner's circumstances to review prosecutorial deliberations in order to forfend removal"); *Estrada-Canales v. Attorney General of the U.S.*, No. Civ. A. 97–114T, 1999 WL 33650134, at *3 (D.R.I. September 16, 1999) (citing *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999); *Ali v. Mukasey*, 524 F.3d 145, 450 (2d Cir. 2008); *Tazu v. Att'y Gen.*, 975 F.3d 292, 296, 298 (3d Cir. 2020) (holding that § 1252(g) bars statutory and constitutional challenges to the commencement, adjudication, and execution of removal proceedings in district court); *Guo Xing Song v. U.S. Att'y Gen.*, 516 F. App'x 894, 897 (11th Cir. 2013) ("To the extent that Song challenges DHS's decision to commence expedited removal proceedings against him, we lack jurisdiction to review this claim.").

Accordingly, if Petitioner contends that there was no basis on which to initiate removal proceedings, that claim is barred by section 1252(g) and the petition should be dismissed for lack of subject-matter jurisdiction. Further, all other challenges Petitioner may wish to bring to his removability, must be litigated in immigration court, before the BIA, and then in a petition for review in the appropriate court of appeals after a final order of removal issues. *See* 8 U.S.C. §§ 1252(b)(9), 1252(a)(2)(D).

**G. <u>The Petition Should Be Dismissed Under Rule 12(b)(6), or Summary Judgement Should Enter Under Rule 56.</u>**

In deciding a motion to dismiss under Rule 12(b)(6), the court may consider the challenged pleading, together with any documents incorporated by reference in that pleading and matters subject to judicial notice. This category of documents may

be considered without converting the motion to one for summary judgment, and includes documents annexed to the complaint, as well as documents referenced in, or integral to, the pleading. *Trans-Spec Truck Service, Inc. v. Caterpillar, Inc.*, 524 F.3d 315, 321 (1st Cir. 2008) (internal citations omitted).

Federal Rule of Civil Procedure 12(b)(6) provides for dismissal where the complaint fails to state a claim upon which relief can be granted. To withstand a motion to dismiss under Federal Rule 12(b)(6), "the complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Cunningham v. Nat'l City Bank*, 588 F.3d 49, 52 (1st Cir. 2009) (internal quotation marks omitted) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007). The Court, however, need not credit or accept mere conclusory statements or conclusions of law. *See Iqbal*, 556 U.S. at 678.

Alternatively, Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Mulvihill v. Top-Flite Golf Co.*, 335 F.3d 15, 19 (1st Cir. 2003) (quoting Fed. R. Civ. P. 56(c)).[10]

[10] The government frames this motion under Rule 56 in the alternative, given the submission of extrinsic evidence regarding Petitioner's status.

## V. CONCLUSION

For all the following reasons, the Petition should be denied, and the matter dismissed in its entirety.

Respectfully submitted,
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**CERTIFICATION OF SERVICE**

I hereby certify that, on October 1, 2025, I caused the foregoing document to be filed by means of this Court's Electronic Case Filing (ECF) system, thereby serving it upon all registered users in accordance with Fed. R. Civ. P. 5(b)(2)(E) and Local Rules Gen 304.

Denise M. Barton

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