UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 25-cv-61845 SMITH

MARIO RODRIGUEZ IZQUIERDO,

Petitioner,

v.

GARRETT RIPA, in his official capacity as Field Office Director of the Immigration and Customs Enforcement, Enforcement and Removal Operations Miami Field Office, et al.,

Respondents.
_____/

RESPONDENTS' RETURN
OPPOSING PETITION FOR WRIT OF HABEAS CORPUS

Respondents, by and through the undersigned Assistant U.S. Attorney, hereby respond to the Court's Order to Show Cause [ECF No. 7]. As set forth fully below, the Court should, pursuant to Rule 12(b)(1) dismiss as moot Petitioner's Mario Rodriguez Izquierdo's Amended Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2241 [ECF No. 5] ("Petition"). Correspondingly, the Court should also deny Petitioner's expedited motion to show cause and stay removal [ECF No. 6].

Petitioner is a Cuban national who entered the United States illegally in 2022. Under governing immigration laws, Petitioner has never been admitted or paroled into the United States and is subject to removal. Moreover, as an applicant for admission, those same laws mandate Petitioner's detention during his removal proceedings. Since June 5, 2025, Petitioner has been lawfully held in immigration detention under 8 U.S.C. § 1225.

The central claim of Petitioner's instant habeas petition is that his continued detention is unconstitutional and "ultra vires." On July 18, 2025, an immigration

judge ("IJ") ordered Petitioner's release on $10,000 bond. However, on July 21, 2025, ICE filed a Form EOIR-43, Automatic Stay Invocation with the immigration court to continue holding Petitioner in detention without bond, thus automatically staying the IJ's prior order during ICE's appeal.

On September 24, 2025, the BIA ruled on the government's appeal, reversing the IJ's bond decision and correctly holding that Petitioner was subject to detention without bond pursuant to 8 U.S.C. § 1225(b)(2)(A) based on *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Therefore, as Petitioner's petition challenges only the government's application of the automatic stay invocation to deny Petitioner bond, this action is now moot.

I. Factual and Legal Background

A. The Petitioner

Petitioner is a native and citizen of Cuba. *See* Exhibit 1, Form I-213, Record of Deportable/Inadmissible Alien, dated March 18, 2022. On or about March 18, 2022, Petitioner was encountered by the U.S. Customs and Border Patrol ("CBP") at or near San Luis, AZ, near the United States/Mexico border. *Id.* Petitioner admitted he unlawfully entered the United States without valid travel documents and without inspection by an immigration officer. *Id.* CBP determined Petitioner was inadmissible. *Id.*

CBP initiated removal proceedings pursuant to section 240 of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1229a, by issuing a Notice to Appear (NTA), dated March 18, 2022. *See* Exhibit 2, NTA. The NTA charged Petitioner with removability under section 212(a)(6)(A)(i) of the INA, 8 U.S.C. § 1182(a)(6)(A)(i), as an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General. *See* Exhibit 2, NTA. On March 19, 2022, U.S. Immigration and Customs Enforcement (ICE) issued an order releasing Petitioner on his own recognizance. *See* Exhibit 3, Order of Release on Recognizance.

On June 5, 2025, upon motion of DHS, the Immigration Judge dismissed the Petitioner's removal proceedings under INA§ 240, 8 U.S.C. § 1229a, pursuant to 8

C.F.R. § 239.2(a)(7). *See* Exhibit 4, Order on Motion to Dismiss, dated June 5, 2025. Immediately thereafter, ICE Enforcement and Removal Operations ("ERO") officers encountered Petitioner and detained him pursuant to INA § 235, 8 U.S.C. § 1225, to pursue expedited removal proceedings. *See* Exhibit 5, Declaration of Deportation Officer Baksh, ¶ 11. On June 5, 2025, DHS took a Record of Sworn Statement, Form I-867A, from the Petitioner. *See* Exhibit 6, Form I867A, dated June 5, 2025. On June 18, 2025, Petitioner was referred to U.S. Citizenship and Immigration Services (USCIS) for an interview. *See* Exhibit 5, Baksh Declaration ¶ 14. On June 24, 2025, ERO served Petitioner with an Expedited Removal Order, Form I-860. *See* Exhibit 7, Notice and Order of Expedited Removal, dated June 24, 2025; Exhibit 5, Baksh Declaration ¶ 16. On July 15, 2025, USCIS administratively closed the credible fear claim. *See* Exhibit 5, Baksh Declaration ¶ 17.

On June 17, 2025, Petitioner appealed the Immigration Judge's June 5, 2025, order dismissing removal proceedings to the Board of Immigration Appeals ("BIA"). The appeal is currently pending. *See* Exhibit 8, EOIR Automated Case Information.

On June 18, 2025, Petitioner filed a habeas petition, claiming he was improperly placed in expedited removal proceedings and unlawfully detained, which the district court dismissed on June 30, 2025. *See Rodriguez Izquierdo v. Bondi, et. al.*, No. 25-cv-61231-Leibowitz (S.D. Fla.). Petitioner has appealed the district court's decision to the Eleventh Circuit Court of Appeals. *See Rodriguez Izquierdo v Broward Transitional Warden.*, No. 25-12275 (11th Cir.). This appeal is currently pending. *Id.*

On July 18, 2025, an Immigration Judge granted a bond to Petitioner. On July 21, 2025, ICE filed a Form EOIR-43, Notice of ICE Intent to Appeal Custody Determination, with the BIA, which was served on the Petitioner on the same date. The notice invoked the automatic stay of the custody redetermination order pending DHS filing of a Notice to Appeal with the BIA. On July 30, 2025, DHS filed a notice of appeal from the Immigration Judge's order granting custody redetermination in the case, because Petitioner is subject to expedited removal. On September 24, 2025, the Board sustained DHS' appeal, vacated the Immigration Judge's bond order, and

ordered the respondent held in DHS' custody without bond. *See* Exhibit 9, M-M-R-I, Axxx-xxx-292 (BIA Sept. 24, 2025).[1]

Petitioner is currently detained at the Broward Transitional Center (BTC) in Pompano Beach, Florida. *See* Exhibit 10, EARM Detention History; Exhibit 5, Baksh Declaration ¶ 19.

II. Argument

A. Because the BIA Vacated the IJ's Bond Order and Ordered Petitioner to be Held in DHS Custody Without Bond, This Action Is Moot, and Therefore This Court Must Dismiss It For Lack of Subject Matter Jurisdiction

The Court should dismiss this action for lack of subject matter jurisdiction. Federal courts have limited jurisdiction; they possess "only that power authorized by Constitution and statute." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). The party bringing the claim must establish that the court has subject matter jurisdiction. *See Sweet Pea Marine, Ltd. v. APJ Marine, Inc.*, 411 F.3d 1242, 1247 (11th Cir. 2005). Without subject matter jurisdiction, the court has no power to move forward with the case. *See Univ. of S. Ala. v. Am. Tobacco Co.*, 168 F.3d 405, 410 (11th Cir. 1999); *see also Belleri v. United States*, 712 F.3d 543, 547 (11th Cir. 2013) (explaining that, in federal court, jurisdiction takes precedence over the case merits). "If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action." Fed. R. Civ. P. 12(h)(3). "Dismissal of a moot case is required because mootness is jurisdictional." *BankWest, Inc. v. Baker*, 446 F.3d 1358, 1363 (11th Cir. 2006)

Article III of the United States Constitution provides that "[t]he judicial Power shall extend to all Cases in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority" and "to Controversies to which the United States shall be a Party." U.S. Const. art. III, § 2, cl. 1.

> It is a basic principle of Article III [of the United States Constitution] that a justiciable case or controversy must remain "extant at all stages

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[1] On September 29, 2025, DHS filed a motion to clarify the record with the Board.

> of review, not merely at the time the complaint is filed." "[T]hroughout the litigation," the party seeking relief "'must have suffered, or be threatened with, an actual injury traceable to the defendant and likely to be redressed by a favorable judicial decision.'"

United States v. Juvenile Male, 564 U.S. 932, 936 (2011) (internal citations omitted). "A case that becomes moot at any point during the proceedings is 'no longer a 'Case' or 'Controversy' for purposes of Article III,' and is outside the jurisdiction of the federal courts." *United States v. Sanchez-Gomez*, 584 U.S. 381, 381 (2018). An exception to mootness exists "for disputes that are 'capable of repetition, yet evading review,'" and the party claiming the exception must show that: (1) "the challenged action [is] in its duration too short to be fully litigated prior to cessation or expiration"; and (2) "there [is] a reasonable expectation that the same complaining party [will] be subject to the same action again." *Juvenile Male*, 564 U.S. at 938 (citation omitted).

The entire thrust of the instant Petition is directed towards the constitutionality of the automatic stay regulation, 8 C.F.R. § 1003.19(i)(2), which Petitioner claims is both a "violation of his due process rights" and "ultra vires insofar as it is plainly inconsistent with the statutory scheme." *See* Petition, ¶¶ 32-33, 39. But this issue was mooted in its entirety by the BIA's decision in bond proceedings, reversing the IJ's bond determination. Specifically, the BIA vacated the IJ's July 18, 2025 order granting the Petitioner's release on payment of bond of $10,000, and ordered Petitioner held in DHS's custody without bond. *See* Exhibit 9, p. 4.

A case may be rendered moot as a result of a change in circumstances. *Coral Springs St. Sys., Inc. v. City of Sunrise*, 371 F.3d 1320, 1327 (11th Cir. 2004). "If a lawsuit is mooted by subsequent developments, any decision a federal court might render on the merits of [the] case would constitute an [impermissible] advisory opinion." *Nat'l Adver. Co. v. City of Miami*, 402 F.3d 1329, 1332 (11th Cir. 2005). Such is the case here, mandating dismissal.

B. Petitioner's Continued Detention is Proper Under Immigration Statutes and the Constitution

Section 1225 applies to "applicants for admission," who are defined as "alien[s] present in the United States who [have] not been admitted" or "who arrive[] in the United States." 8 U.S.C. § 1225(a)(1). Applicants for admission may be subject to expedited removal under 8 U.S.C. § 1225(b)(1) or removal proceedings under 8 U.S.C. § 1229a. Under the expedited removal process, applicants for admission arriving in the United States, or as designated by the Secretary of Homeland Security pursuant to 8 U.S.C. § 1225(b)(1)(A)(iii), and who lack valid entry documentation or make material misrepresentations shall be "order[ed] . . . removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum under [8 U.S.C. § 1158] or a fear of persecution." 8 U.S.C. § 1225(b)(1)(A)(i). 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.*; 8 U.S.C. § 1225(b)(1)(A)(i), (iii). These aliens are generally subject to expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(A)(i).

Section 1225(b)(2) is "broader" and "serves as a catchall provision." *Jennings*, 583 U.S. at 287. Applicants for admission whom DHS places in 8 U.S.C. § 1229a removal proceedings are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and ineligible for a custody redetermination hearing before an immigration judge. The BIA recently held that Petitioner is currently subject to detention under 8 U.S.C. § 1225(b)(2)(A) and Immigration Judge does not have jurisdiction to grant bond to aliens detained under that subsection. The BIA presumably relied on the fact that Petitioner's 8 U.S.C. § 1229a removal proceedings are considered pending while his appeal of the Immigration Judge's order granting dismissal is resolved to determine that the Petitioner is subject to 8 U.S.C. § 1225(b)(2). *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Should the BIA dismiss petitioner's appeal of the dismissal of the removal proceedings, he would then be subject to detention pursuant to 8 U.S.C. § 1225(b)(1) as an alien in expedited removal proceedings. Should the appeal be sustained, he would remain subject to 8 U.S.C. § 1225(b)(2) through the completion of 8 U.S.C. § 1229a proceedings. Thus, the outcome of the pending appeal cannot impact this habeas action because, under either outcome, the Petitioner

remains subject to 8 U.S.C. § 1225(b).

As the Petitioner has been served with an Expedited Removal order already, should the BIA dismiss his pending appeal, his detention will be pursuant to 8 U.S.C. § 1225(b)(1). To qualify for expedited removal, an alien must either lack entry documentation or seek admission through fraud or misrepresentation. INA § 235(b)(1)(A)(i), 8 U.S.C. § 1225(b)(1)(A)(i) (referring to § 212(a)(6)(C), (a)(7), 8 U.S.C. § 1182(a)(6)(C), (a)(7)). In addition, the alien must either be "arriving in the United States" or within a class that the Secretary of Homeland Security ("Secretary") has designated for expedited removal. The Secretary may designate "any or all aliens" who have "not been admitted or paroled into the United States" and also have not "been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility." *Id.* § 235(b)(1)(A)(iii), 8 U.S.C. § 1225(b)(1)(A)(iii). The Secretary has designated additional categories of aliens pursuant to § 235(b)(1)(A)(iii). *See* Notice Designating Aliens Subject to Expedited Removal Under Section 235(b)(1)(A)(iii) of the Immigration and Nationality Act, 67 Fed. Reg. 68,924 (Nov. 13, 2002); Designating Aliens for Expedited Removal, 69 Fed. Reg. 48,877 (Aug. 11, 2004) ("2004 Designation").

Here, Petitioner falls within the 2004 designation, which applies to aliens who (i) "are physically present in the U.S. without having been admitted or paroled," (ii) "are encountered by an immigration officer within 100 air miles of any U.S. international land border," and (iii) cannot establish "that they have been physically present in the U.S. continuously for the 14-day period immediately prior to the date of encounter." 2004 Designation, 69 Fed. Reg. at 48,880.

On March 13, 2022, DHS encountered the Petitioner, who had not been admitted or paroled (as he had illegally entered the United States earlier that day), within 100 miles from the southern border. Accordingly, Petitioner cannot show continuous presence in the United States during the fourteen days prior to the encounter. DHS may process such an alien for expedited removal at any time. *See* 8 C.F.R. § 235.3(b)(1)(ii). It has now done so.

For an alien placed in expedited proceedings, the removal process varies depending upon whether the alien indicates either "an intention to apply for asylum" or "a fear of persecution or torture." 8 C.F.R. §§ 235.3(b)(4), 1235.3(b)(4)(1); *see* 8 U.S.C. § 1225(b)(1)(A)(ii). If the alien does not so indicate, the inspecting officer "shall order the alien removed from the United States without further hearing or review." 8 U.S.C. § 1225(b)(1)(A)(i). If the alien does so indicate, however, the officer "shall refer the alien for an interview by an asylum officer." 8 U.S.C. § 1225(b)(1)(A)(ii). That officer assesses whether the alien has a "credible fear of persecution or torture," 8 C.F.R. § 208.30(d)—in other words, whether there is a "significant possibility" that the alien is eligible for "asylum under section 208 of the Act," "withholding of removal under section 241(b)(3) of the Act," or withholding or deferral of removal under the Convention Against Torture ("CAT"), 8 C.F.R. § 208.30(e)(2)–(3).

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

The Supreme Court in *Jennings v. Rodriguez*, 583 U.S. 281 (2018) also reviewed the expedited removal statute in 2018 following arguments by aliens detained under the INA. *Id.* at 290-91. In reviewing the detention authority, the *Jennings* court noted that an alien who "arrives in the United States," or "is present" in the country, but who "*has not been admitted*" is treated as "an applicant for

admission." *Id.* at 287 (quoting 8 U.S.C. § 1225) (emphasis added). Petitioner's arrival in the United States without inspection in March of 2022 near the southern border classifies him as an applicant for admission. On June 5, 2025, DHS took the Petitioner into custody, and consistent with his status as an applicant for admission, DHS is detaining him as an applicant for admission under 235(b)(1)(A)(iii)(I), because he is not a citizen of the United States, is a Cuban national, and sought entry without valid entry documents. *See* 8 U.S.C. § 1182(a)(7)(A)(i)(I).

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

Petitioner also cannot establish that the length of his detention violates the Constitution, as Petitioner has been detained only since June 5, 2025. *See, e.g. O.D. v. Warden, Stewart Detention Ctr.*, 2021 WL 5413968, at *4-5 (M.D. Ga. Jan. 14, 2021) (Report and Recommendation), *adopted by* 2021 WL 5413966 (M.D. Ga. Apr. 1, 2021) (denying habeas relief to petitioner who had been detained for nineteen months); *Sigal v. Searls*, 2018 WL 5831326 at *5, 9 (W.D.N.Y. Nov. 7, 2018) (denying habeas relief to petitioner detained for seventeen months after "tak[ing] into account

all of the factual circumstances"); *see also Hylton v. Shanahan*, No., 2015 WL3604328, at *6 (S.D.N.Y. June 9, 2015) (detention without bail for roughly two years did not violate due process); *Luna-Aponte v. Holder*, 143 F. Supp. 2d 189, 197 (W.D.N.Y. 2010) (three years). Petitioner has not submitted evidence that his detention is for any purpose other than resolution of these proceedings.

III. Conclusion

Because of the changed circumstances, this action is now moot. The Court should dismiss the instant Petition pursuant to Rule 12(b)(1).

Respectfully submitted,

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