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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

GABRIELA CAJAVILCA SALAS,

Petitioner,

v.

LUIS SOTO, *et al.*,

Respondents.

HON. SUSAN D. WIGENTON

Civil Action No. 25-15713 (SDW)

**ANSWER TO HABEAS CORPUS PETITION AND MOTION FOR
TEMPORARY RESTRAINING ORDER**

On the Brief:

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PRELIMINARY STATEMENT

Petitioner Gabriela Cajavilcal Salas is a native and citizen of Peru who entered the United States unlawfully at an unknown time and place. On August 27, 2025, Petitioner appeared for an asylum-based credible fear interview, and an asylum officer determined the Petitioner did not have a credible fear of return to Peru. U.S. Immigration and Customs Enforcement (“ICE”) detained Petitioner and transferred her to Delaney Hall. Thereafter, an Immigration Judge affirmed the negative credible fear determination. Petitioner claims that her detention is unlawful. The Court should dismiss the habeas petition. First, this Court lacks jurisdiction over Petitioner’s claim under 8 U.S.C. § 1252(g) and 8 U.S.C. § 1252(a)(2)(A). Second, Petitioner’s detention and removal proceedings are appropriate under 8 U.S.C. § 1225(b)(1)(A)(1) because she is an “arriving alien” who has no credible fear of returning to Peru.

STATUTORY BACKGROUND

“The power to admit or exclude [non-citizens] is a sovereign prerogative.” *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 139 (2020) (alteration omitted) (quoting *Landon v. Plasencia*, 459 U.S. 21, 32 (1982)). And “the Constitution gives ‘the political department of the government’ plenary authority to decide which [non-citizens] to admit.” *Id.* (quoting *Nishimura Ekiu v. United States*, 142 U.S. 651, 659 (1892)). “[A] concomitant of that power is the power to set the procedures to be followed in determining whether a[] [non-citizen] should be admitted.” *Id.*; see *Jennings v. Rodriguez*, 583 U.S. 281, 286 (2018) (“To implement its immigration

policy, the Government must be able to decide (1) who may enter the country and (2) who may stay here after entering.”).

A noncitizen “who has not been admitted or who arrives in the United States” is considered an “applicant for admission” under the INA. 8 U.S.C. § 1225(a)(1). All “[a]pplicants for admission must ‘be inspected by immigration officers’ to ensure that they may be admitted into the country consistent with U.S. immigration law.” *Jennings*, 583 U.S. at 287 (quoting 8 U.S.C. § 1225(a)(3)). “[A]pplicants for admission fall into one of two categories, those covered by § 1225(b)(1) and those covered by §1225(b)(2).” *Id.* at 287.

Under § 1225(b)(1), which applies to Petitioner here, applicants for admission who are “arriving” are subject to expedited removal. An “arriving alien” is “an applicant for admission coming or attempting to come into the United States at a port-of-entry[.]” 8 C.F.R. § 1.2.¹ In general, an immigration officer who finds the applicant inadmissible “shall order” removal without further hearing—i.e., expedited removal. *Id.* § 1225(b)(1)(A)(i).

Expedited removal also applies to another group of aliens described in § 1225(b)(1)—namely, “certain other aliens” who are inadmissible, unlawfully present,

¹ The designation applicable at the time included not just aliens apprehended at the border but also those “encountered within 14 days of entry without inspection and within 100 air miles of any U.S. international land border.” Designating Aliens for Expedited Removal, 69 Fed. Reg. 48877-01, 48879 (Aug. 11, 2004). This describes Petitioner here because on March 20, 2022, she was not an arriving alien because she did not seek admission at a port of entry. *See* ECF 2-1, Exhibit F, Page ID 143, Notice and Order of Expedited Removal. Instead, Petitioner fell under the “certain other aliens” category, as designated by the Secretary of DHS in his/her sole and unreviewable discretion. *See* INA § 235(b)(1)(A)(iii)(I).

and who 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.” 8 U.S.C. § 1225(b)(1)(A)(iii). Those aliens are also subject to expedited removal, and the designation that an alien falls into this group “shall be in the sole and unreviewable discretion of the [Secretary] and may be modified at any time.” 8 U.S.C. § 1225(b)(1)(A)(iii).

Boths groups of aliens—i.e., “arriving aliens” and “certain other aliens”—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 or a fear of persecution.” *Id.* § 1225(b)(1)(A)(i); *see also id.* § 1182(a)(6)(C), (a)(7); *accord Thuraissigiam*, 140 S. Ct. at 1964-67 (discussing expedited removal).

If the alien facing expedited removal claims asylum or fear of persecution if returned to his or her native country, the alien is referred to an asylum officer for an interview to assess whether the alien has a “credible fear of persecution,” *id.* § 1225(b)(1)(A)(ii), (v), and/or a credible fear of torture. *See* 8 C.F.R. § 208.30(e)(2), 235.3. The alien “shall be detained” pending the credible fear interview. 8 C.F.R. § 235.3(b)(4)(ii). If the alien is found to have a credible fear of persecution or torture, the alien is referred to full removal proceedings under 8 U.S.C. § 1229a. *See* 8 U.S.C. § 1225(b)(1)(B)(ii); 8 C.F.R. § 208.30(f). Such § 1229a removal proceedings provide more robust procedures than expedited removal, *compare* 8 U.S.C. § 1229a *with id.* § 1225(b)(1), including a right to appeal to the Board of Immigration Appeals (“BIA”) and petition for review by a federal appellate court. *Id.* § 1252(a)(1).

If, however, the asylum officer determines that the alien lacks a credible fear, the alien may seek *de novo* review of that credible-fear finding before an immigration judge. 8 U.S.C. § 1225(b)(1)(B)(iii)(I), (III). If the immigration judge concludes that the alien has established a credible fear, the asylum officer's decision is vacated, and the alien is placed in § 1229a removal proceedings. 8 C.F.R. § 1003.42(f). But if the immigration judge finds that the alien lacks a credible fear, the alien is "removed from the United States without further hearing or review." 8 U.S.C. § 1225(b)(1)(B)(iii)(I); 8 C.F.R. § 1208.30(g)(2)(iv)(A). When that expedited removal process restarts, the alien "shall be detained ... until removed." 8 U.S.C. § 1225(b)(1)(B)(iii)(IV). The INA precludes further view by the BIA or any court of the credible-fear determination. 8 U.S.C. §§ 1225(b)(1)(C), 1252(a)(2)(A)(iii), 1252(e)(2); 8 C.F.R. § 1003.42(f).

Although detention pursuant to section 1225(b) is mandatory, it is not indefinite. On the contrary, "§§ 1225(b)(1) and (b)(2) . . . provide for detention for a specified period of time." *Jennings*, 583 U.S. at 299. Specifically, "detention must continue until immigration officers have finished 'consider[ing]' the application for asylum or until removal proceedings have concluded." *Id.* (internal citation omitted). But "[o]nce those proceedings end, detention under § 1225(b) must end as well." *Id.* at 297. Further, while section 1225(b) does not provide for bond hearings, *see id.* at 297-303; *Matter of Q. Li.*, 29 I. & N. Dec. 66 (BIA 2025); *see also Matter of M-S-*, 27 I. & N. Dec. 509, 519 (A.G. 2019) ("all aliens transferred from expedited to full [removal] proceedings after establishing a credible fear are ineligible for bond"), it does contain

“a specific provision authorizing release from . . . detention”: The Secretary “may ‘for urgent humanitarian reasons or significant public benefit’ temporarily parole aliens detained under §§ 1225(b)(1) and (b)(2),” *id.* at 300 (quoting 8 U.S.C. § 1182(d)(5)(A)); *see* 8 C.F.R. §§ 212.5 (implementing regulations), 235.1(h)(2). The Secretary has delegated this authority to grant parole to designees within DHS. *See* 8 C.F.R. § 212.5(a) (“The Secretary or his designees may invoke, in the exercise of discretion, that authority under section 212(d)(5)(A) [(8 U.S.C. § 1182(d)(5)(A))] of the [INA].”) (emphasis added).

FACTUAL BACKGROUND

Petitioner is a native and citizen of Peru who entered the United States without inspection in March 2022 at or near the Eagle Pass International Bridge in Texas. *See* Ans. Ex. A, I-213. DHS encountered Petitioner upon entering the United States, Petition ¶ 21, and, on March 20, 2022, DHS issued Petitioner an expedited removal order pursuant to 8 U.S.C. § 1225(b)(1) because she was inadmissible under § 1182(a)(7)(A)(i)(I). *See* ECF 2-1, Exhibit F, Page ID 143, Notice and Order of Expedited Removal. According to the Order of Expedited Removal, DHS determined that Petitioner was:

an immigrant not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the [INA]; [and was] apprehended within 100 air miles of the international boundary of the United States of America and Mexico within 14 days of having illegally entered the U.S. by crossing the Rio Grande River in the Southern District of Texas. You illegally entered with the intent to reside and seek employment in the United States. You were not inspected or admitted by an Immigration Officer at a port of entry designated by the Secretary of Homeland Security.

Id.

Petitioner was released from immigration custody on April 20, 2022. *See* Ex. A, I-213; *see also* Petition ¶ 21. Petitioner alleges that she entered the United States with her father, and that she and her father were both detained and then released by DHS following that entry. *See* Petition ¶ 21. On February 13, 2023, Petitioner's father filed a I-589 asylum application based on alleged fear of return to Peru and added Petitioner as an accompanying derivative applicant. *Id.* at ¶¶ 24-25. According to Petitioner, on June 13, 2025, USCIS dismissed the I-589 application, indicating Petitioner and her father had been previously apprehended, placed in expedited removal, and issued a Form I-860 notice and order of expedited removal. *Id.* at ¶ 26.

On August 27, 2025, when Petitioner was 21 years old, she appeared for her own credible fear interview. *Id.* at ¶ 28; *see also* I-213. At the interview, an asylum officer found the Petitioner did not have a credible fear of return to Peru. *See id.* ICE detained Petitioner and transferred her to Delaney Hall. *Id.* ¶ 29. Petitioner requested review of the negative credible fear determination by an Immigration Judge, who affirmed the decision. *See* Ex. A, I-213, at 2; *see also* Petition ¶ 30.

Petitioner requests this Court issue a writ to preventing ICE from transferring or removing the Petitioner, and ordering her immediate release. *See* ECF 1, Prayer for Relief. Petitioner also filed a motion for a temporary restraining order preventing ICE from removal while the Court considers the merits of Petitioner's petition for habeas relief. *See* ECF 2. On October 6, 2025, the Court ordered the Respondents to file an answer to the petition and petitioner's motion. *See* ECF 5.

LEGAL ARGUMENT

I. This Court Should Dismiss the Petition Because it Lacks Jurisdiction

As a threshold matter, to the extent Petitioner is challenging her expedited removal order and underlying proceedings, the Court should dismiss the Petition because it lacks jurisdiction over those claims. *See* 8 U.S.C. § 1252(a)(2)(A)(iv) and 8 U.S.C. §1252(g).

A. Dismissal is Appropriate Under 8 U.S.C. § 1252(a)(2)(A)(iv)

This Court also lacks jurisdiction under 8 U.S.C. § 1252(a)(2)(A)(iv). This jurisdiction-stripping provision states,

Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, *no court shall have jurisdiction* to review . . . (iv) procedures and policies adopted by the Attorney General to *implement* the provisions of section 1225(b)(1) of this title.

Id. § 1252(a)(2)(A) (emphasis added). Section 1252(a)(2)(A) thus removes from federal courts jurisdiction to review issues “relating to section 1225(b)(1),” such as expedited removal proceedings or credible fear determinations, other than as explicitly permitted by section 1252(e). *I.M. v. U.S. CBP*, No. 20-CV-3576, 2022 WL 266703, at *4 (D.D.C. Jan. 28, 2022), *aff’d sub nom.*, 67 F.4th 436 (D.C. Cir. 2023). Here, that is precisely what Petitioner challenges: ICE’s credible-fear determination rendered in the expedited removal context. That claim is barred under § 1252(a)(2)(A)(iv).

At the core of her habeas challenge, Petitioner claims that she “should never have been placed in expedited removal proceedings to begin with since her father (the

lead applicant) was paroled into the United States ... and [she] has been present in the United States for more than two years.” Petition ¶ 45. Petitioner is mistaken. As discussed above, § 1252(a)(2)(A) does not permit judicial review of such a claim. And although § 1252(e) carves out narrow exceptions to allow for judicial review of certain aspects of an expedited removal order, none of those exceptions applies here. In particular, expedited removal orders issued under § 1225(b)(1) are not subject to judicial review in habeas proceedings *except* for the limited determinations of (1) whether the petitioner is an alien, (2) whether the petitioner was ordered removed, and (3) whether the petitioner is a lawful permanent resident or refugee. 8 U.S.C. § 1252(a)(2), (e)(2); *see also* *Castro v. Dep’t of Homeland Sec.*, 835 F.3d 422, 430-33 (3d Cir. 2016); *Garcia de Rincon v. Dep’t of Homeland Sec.*, 539 F.3d 1133, 1140 (9th Cir. 2008) (acknowledging the Court’s limited habeas jurisdiction to the three enumerated circumstances); *Shunaula v. Holder*, 732 F.3d 143, 145-47 (2d Cir. 2013) (noting § 1252(a)(2)(A) and (e) bar judicial review of expedited removal order); *Khan v. Holder*, 608 F.3d 325, 329-30 (7th Cir. 2010) (acknowledging the “limited exceptions to the jurisdictional bar” of § 1252(e)). Here, Petitioner does not contest that she is an alien. Nor does Petitioner contest that she is not a lawful permanent resident or refugee. And Petitioner does not challenge that she has been ordered removed. Section 1252(a)(2)(A) forecloses review of her expedited removal order, and none of the limited exceptions allowing for review under 1252(e) apply.

Any claim to the contrary runs against the Third Circuit’s decision in *Castro*. There, the Circuit Court held that 8 U.S.C. §§ 1252(a)(2)(A) and (e) stripped a district

court of jurisdiction to review an expedited removal order outside of a narrow set of circumstances not present here. *See* 835 F.3d at 429-33. The petitioners in *Castro* were stopped shortly after illegally crossing the United States’ border and filed habeas petitions to challenge portions of their expedited removal orders. *Id.* at 425. The Circuit Court first recognized that 8 U.S.C. § 1252(e) “preserv[ed] judicial review for only a small subset of issues relating to individual expedited removal orders.” *Id.* at 427. And after finding none of the petitioners’ claims fit within the narrow exceptions in 8 U.S.C. 1252(e), the Court affirmed the District Court’s holding that it lacked jurisdiction. *Id.* at 429-34. The same is true here. Therefore, this Court lacks jurisdiction over the Petition, and the Court should accordingly dismiss the Petition.²

B. Dismissal is also Appropriate Under 8 U.S.C. §1252(g)

8 U.S.C. § 1252(g) separately bars district court habeas review of any decision to place Petitioner in expedited removal proceedings. 8 U.S.C. § 1252(g) states,

Except as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, 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

² ICE’s initial custody determination allows ICE to decide whether to arrest an alien or release an alien without charging him or placing him in expedited removal. *See* 8 C.F.R. § 236.1(c)(8) (“Any officer authorized to issue a warrant of arrest *may*, in the officer’s discretion, *release* an alien not described in section 236(c)(1) [8 U.S.C. § 1226(c)(1)] of the [INA]”) (emphasis added). Since Petitioner is an alien not described in 8 U.S.C. § 1226(c)(1) and is detained pursuant to 8 U.S.C. § 1225(b)(1), ICE’s initial custody determination—a procedure used to implement section 1225(b)(1)—is barred from judicial review. *See* 8 U.S.C. § 1252(a)(2)(A)(iv).

any alien under this chapter. 8 U.S.C. § 1252(g) (emphasis added).

In other words, § 1252(g) removes district court jurisdiction—including habeas corpus jurisdiction—over “three discrete actions that the [government] may take: [the] ‘decision or action’ to ‘commence proceedings, adjudicate cases, or execute removal orders.’” *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (“AADC”). If the challenged conduct falls within one of those discrete areas, § 1252(g) bars the claim. *See id.* Here, Petitioner seeks relief from the “decision or action” to “commence” expedited removal proceedings or “execute” the expedited removal order, and so § 1252(g) plainly bars those claims.

This conclusion is confirmed by the Third Circuit’s decision in *Tazu v. AG United States*, 975 F.3d 292 (3d Cir. 2020). There, Tazu filed a habeas corpus petition challenging his removal order and the timing of when that order was executed. *Id.* at 295–96. The Circuit Court rejected Tazu’s habeas petition on jurisdictional grounds under § 1252(g), finding that the proper way to challenge a removal order in the Court of Appeals was through a petition for review. *Id.* at 296-300. That is because in passing the REAL ID Act, Congress prescribed a single path for judicial review of orders of removal: “a petition for review filed with an appropriate court of appeals.” 8 U.S.C. § 1252(a)(5); *see also Verde-Rodriguez v. Att’y Gen. U.S.*, 734 F.3d 198, 201 (3d Cir. 2013). The REAL ID Act further provides that, “Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, *arising from any action taken or proceeding brought to remove an alien from the United States* under this subchapter shall be available only in

judicial review of a final order under this section.” 8 U.S.C. § 1252(b)(9) (emphasis added).³ Here, Petitioner appears to be attacking the validity of an administratively final expedited removal order. Thus, any further review must come from a petition for review, not habeas corpus.

Read in conjunction with § 1252(b)(9), § 1252(a)(5) expresses Congress’s intent to channel and consolidate judicial review of every aspect of removal proceedings into the petition-for-review process in the courts of appeals. H.R. Conf. Rep. No. 109-72, at 174-75; *see also Bonhometre v. Gonzales*, 414 F.3d 442, 446 (3d Cir. 2005) (highlighting Congress’s “clear intent to have all challenges to removal orders heard in a single forum (the courts of appeals)” as part of a petition for review); *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999) (“AADC”) (labeling section 1252(b)(9) an “unmistakable zipper clause,” and defining a zipper clause as “[a] clause that says ‘no judicial review in deportation cases unless this section provides judicial review.’”); *Vasquez v. Aviles*, 639 F. App’x 898, 900-01 (3d Cir. 2016); *accord Jennings v. Rodriguez*, 583 U.S. 281, 316–17 (2018) (suggesting that when an alien “challeng[es] the decision ... to seek removal,” section 1252(b)(9) presents a jurisdictional bar). This paradigm is confirmed by section 1252(e)(2), which outlines the narrow issues the Court may review when a litigant lodges a *habeas petition*, as

³ In *Linarez v. Garland*, No. 24-488, 2024 WL 4652824, at *2 (M.D. Pa. Sept. 24, 2024), the court similarly held that it lacked jurisdiction to address a petition claiming that an “expedited removal order [was] procedurally defective and thus invalid.” As the Court recognized, § 1252(g) applied to bar that claim because it concerned the decision to commence expedited removal proceedings, which, under *Tazu*, is precisely the type of action that the INA shields from habeas review. *See id.* at *6.

Petitioner has done here. Thus, the Circuit Court has since affirmed that habeas petitions challenging removal orders will be dismissed for lack of jurisdiction. *Hector G.M. v. Warden Elizabeth Detention Center*, 2021 WL 5320854, at *1 (3d Cir. 2021) (“Congress has jurisdictionally excluded habeas petitions as a means of challenging the execution of removal orders, so we will affirm the judgment of the District Court dismissing this case on jurisdictional grounds.”).

Accordingly, the Court should reject Petitioner’s efforts to seek relief via a habeas petition. “In law, as in life, the path often matters as much as the destination. For an alien challenging his removal, that path begins with a petition for review of his removal order, not a habeas petition.” *Tazu*, 975 F.3d at 294. Importantly, any challenge to a removal order must be brought either under the narrow claims permitted by § 1252(e) or for a non-expedited removal order, through a Petition for Review with the Court of Appeals under § 1252(a)(5), neither of which Petitioner has raised, or could raise, before this Court. *Id.*

II. Even if this Court were to Find Jurisdiction, Petitioner’s Detention is Appropriate Under 8 U.S.C. § 1225(b)(1)

The Court should also dismiss Petitioner’s claim that her continued detention violates the Due Process Clause because Petitioner is lawfully detained under § 1225(b)(1). As discussed above, the INA mandates detention of “arriving aliens” pending expedited removal proceedings or, once the expedited removal order is final, until removal. 8 U.S.C. § 1225(b)(1)(B)(ii) (“If the officer determines at the time of the interview that an alien has a credible fear of persecution . . . the alien *shall be detained for further consideration of the application for asylum.*”) (emphasis added).

More still, the Act expressly provides for the detention of aliens originally placed in expedited removal, like Petitioner here. Such aliens “shall be detained pending a final determination of credible fear.” *Id.* at § 1225 (b)(1)(B)(iii)(IV). Aliens found not to have a credible fear, like Petitioner, “shall be detained . . . until removed.” *Id.* In addition, aliens found to have such a fear “shall be detained for further consideration of the application for asylum.” *Id.* § 1225(b)(1)(B)(ii). And “[w]hile aliens who have established connections in this country have due process rights in deportation proceedings, the [Supreme] Court long ago held that Congress is entitled to set the conditions for an alien’s lawful entry into this country and that, as a result, an alien at the threshold of initial entry cannot claim any greater rights under the Due Process Clause.” *Thuraissigiam*, 591 U.S. at 107. For those, like Petitioner, who “attempted to enter the country illegally and [were] apprehended . . . yards from the border,” there is “no entitlement to procedural rights other than those afforded by statute.” *Id.*

Here, no due process violation occurred because Petitioner received all the process that Congress provided under § 1225(b)(1). Petitioner’s contention that she was improperly interviewed without her father also fails. *See* Petition ¶¶ 38-42. While Petitioner cites to 8 C.F.R. § 208.30, that regulation explicitly notes, “For purposes of family units in credible fear determinations, the category of ‘child’ means an unmarried person under 21 years of age.” Here, at the time Petitioner participated in her credible fear interview, she was 21 years old. For these reasons, Petitioner cannot show that there was any violation of 8 C.F.R. § 208.30. *See* Petition at 13-14 (Counts Two and Three).

Moreover, after USCIS denied her father's asylum application, Petitioner had sufficient opportunity to express her alleged fear of returning to Peru to an asylum officer and to an immigration judge. Thus, even assuming the Court were to find jurisdiction over this petition, the Court should deny the petition on the merits.

CONCLUSION

For the foregoing reasons, the Court should deny the Petition.

Respectfully submitted,

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