

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 25-CV-62285-DSL

**CESAR AUGUSTO MARTINEZ MONCADA,**

Petitioner,

v.

**KRISTI NOEM, Secretary, U.S. Department  
of Homeland Security, et al.,<sup>1</sup>**

Respondents.

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**RESPONDENTS' RETURN IN OPPOSITION  
TO THE PETITION FOR WRIT OF HABEAS CORPUS**

Respondents, by and through the undersigned Assistant United States Attorney, consistent with this Court's Order requiring a Return by December 29, 2025 (ECF No. 12) respectfully submit the following Return in opposition to Petitioner Cesar Augusto Martinez Moncada's First Amended Petition for Writ of Habeas Corpus (ECF No. 9) (Amended Petition). This Court should dismiss the Amended Petition in which Petitioner Cesar Augusto Martinez Moncada asks this Court to prevent the execution of an expedited removal order (ECF No. 9 at 25-26) because this Court lacks jurisdiction under the provisions of 8 U.S.C. § 1252(a)(2)(A), (e)(1), and (e)(2).

**FACTUAL BACKGROUND**

Petitioner Cesar Augusto Martinez Moncada (Petitioner) is a native and citizen of Nicaragua (Exh. A, Form I-213, Record of Deportable/Inadmissible Alien, (Form I-213), November 7, 2021). On or about November 7, 2021, Petitioner was encountered at or near

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<sup>1</sup> Because Petitioner is currently detained at the Broward Transitional Center, the proper respondent is Juan F. Gonzalez, the Assistant Field Office Director, in his official capacity. See *Buriv v. Warden et al.*, Case No. 25-CV-60459-RKA (ECF No. 22 at 3) (quoting *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004)). The Government respectfully requests that all remaining Respondents be dismissed.

Hidalgo, Texas, by U.S. Customs and Border Patrol (CBP) (*id.*). CBP determined that Petitioner was inadmissible to the United States after having unlawfully entered the United States from Mexico without inspection or admission by an immigration officer or the necessary legal documents to remain in the United States (*id.*). CBP further determined that Petitioner was amenable to an expedited removal order pursuant to INA § 235(b)(1) after being encountered in the United States within fourteen days of last entry to the United States and within 100 air miles from the United States/Mexico international border (*id.*).

On November 7, 2021, CBP issued a Form I-860, Notice and Order of Expedited Removal, pursuant to INA § 235(b)(1) (Exh. B, Form I-860, Notice and Order of Expedited Removal). At that time, Petitioner did not express fear of return to Nicaragua (Exh. A; Exh. B, Form I-867A/B, Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act).

Petitioner was transferred to the custody of the U.S. Immigration and Customs Enforcement (ICE), Enforcement and Removal Operation (ERO) at the Central Louisiana Processing Center on November 14, 2021 (Exh. C, Detention History). On or about November 20, 2021, ERO released Petitioner on an ICE Form I-220B, Order of Supervision (OSUP) (Exh. C; Exh. D, Form I-220B, OSUP). Pursuant to the Order of Supervision, Petitioner was required to report to ERO Miami on February 17, 2022 (*id.*). Petitioner failed to report to ERO as ordered (Exh. E, Declaration of Deportation Officer Jason J. Clarke (DO Clarke Declaration)).

On or about June 17, 2025, ICE ERO Miami detained Petitioner at his residence (*see* Exh. C, Exh. F, Form I-213, June 17, 2025, Exh. G, Form I-200, Warrant of Arrest of Alien).

He was transferred to the Broward Transitional Center (BTC) located in Pompano Beach, Florida, where he remains today (Exh. C).

On or about July 28, 2025, Petitioner claimed fear of return to Nicaragua and ERO referred Petitioner's fear claim to the United States Citizenship and Immigration Services' (USCIS) Asylum Pre Screening Officer (APSO) for a credible fear interview pursuant to INA § 235(b)(1)(A)(ii) (Exh. E, DO Clarke's Declaration). APSO conducted Petitioner's credible fear interview on August 7, 2025, and determined that Petitioner established a credible fear of return to Nicaragua and issued a Notice to Appear (NTA) that was filed with EOIR on August 22, 2025, placing Petitioner in INA § 240 removal proceedings (*id.*; Exh. I, NTA).

On November 26, 2025, ERO revoked Petitioner's OSUP and conducted an informal interview, explaining the reasons the OSUP was revoked, and provided him an opportunity to respond (Exh. H, OSUP Revocation; Exh. E, DO Clarke's Declaration). On December 11, 2025, the Department of Homeland Security's (DHS) counsel filed a motion to pretermitt Petitioner's application for relief (Exh. X, DHS's Motion to Pretermitt).<sup>2</sup> On the morning of

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<sup>2</sup> Petitioner attended a master calendar hearing before the BTC Immigration Court on August 28, 2025 (NTA, Exh. E, DO Clarke's Declaration). At that hearing, the immigration judge scheduled the next hearing for October 2, 2025 (Exh. K, Notice of Hearing (NOH) for October 2, 2025). On September 3, 2025, EOIR advanced the October 2, 2025, hearing to September 19, 2025 (Exh. L, Notice of Hearing for September 19, 2025).

Between September 2025 and December 2025, Petitioner, through counsel filed five requests to postpone his immigration hearings, four of which were granted by the immigration judge. On September 17, 2025, Petitioner, through counsel, filed a motion to continue the September 19, 2025, hearing and the immigration judge granted the motion, setting the new hearing to October 15, 2025 (Exh. M, Order of the Immigration Judge (IJO) granting the Motion to Continue on September 19, 2025; Exh. N, NOH for October 15, 2025). On October 7, 2025, Petitioner, through counsel, filed a motion to continue the October 15, 2025, hearing and the immigration judge granted the motion, setting the new hearing to October 23, 2025 (Exh. O, IJO granting the Motion to Continue on October 8, 2025; Exh. P, NOH for October 23, 2025). On October 21, 2025, Petitioner, through counsel, filed another motion to continue and the immigration judge granted the motion, setting the new hearing to November 20, 2025 (Exh. R, IJO granting the Motion to Continue on October 22, 2025; Exh.

December 17, 2025, Petitioner appeared at his scheduled hearing with his counsel (Exh. E, DO Clarke's Declaration). At that hearing, the Immigration Judge granted DHS's motion to pretermite and ordered Petitioner removed to Ecuador (Exh. Q, IJO Removal Order, December 17, 2025). Petitioner reserved appeal of the Immigration Judge's removal order. Id.<sup>3</sup>

To date, Petitioner has not filed an appeal with the Board of Immigration Appeals (BIA) (Exh. E, DO Clarke's Declaration). Petitioner is within the appeal period to file an appeal, which runs thirty days from the immigration judge's order pursuant to 8 C.F.R. § 1003.38(b). Petitioner is detained pursuant to Section 235(b)(1)(B)(ii); 8 C.F.R. § 235.3(b)(2)(iii).

## ARGUMENT

### I. This Court Lacks Jurisdiction to Hear the Amended Petition.

#### A. Legal Background

##### 1. Removal Proceedings

A foreign national (referred to as an "alien" in U.S. immigration law) who is illegally present in the United States may be removed by, *inter alia*, expedited removal under INA §

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S, NOH for November 20, 2025). On November 17, 2025, Petitioner, through counsel, filed yet another motion to continue and the immigration judge granted the motion, setting the new hearing to December 17, 2025 (Exh. T, IJO granting the Motion to Continue on November 19, 2025; Exh. X, NOH for December 17, 2025). On December 15, 2025, Petitioner, through counsel, filed another motion to continue. The immigration judge denied Petitioner's motion on December 16, 2025, emphasizing that Petitioner had been granted four previous motions to continue (Exh U., IJO dated December 16, 2025).

<sup>3</sup> At 4:50pm, on December 17, 2025, Respondents were provided notice of this Court order that "Petitioner's removal proceedings shall be **ADMINISTRATIVELY STAYED** pending the expedited resolution of the Amended Petition." (ECF No. 11).

235(b)(1), or removal proceedings before an immigration judge under INA § 240. *See* INA § 235(b)(1), 8 U.S.C. § 1225(b)(1); INA § 240, 8 U.S.C. § 1229a. DHS has discretion to place aliens in expedited removal under INA § 235 or to initiate removal proceedings before an immigration judge under INA § 240. *Matter of E-R-M- & L-R-M-*, 25 I&N Dec. 520, 524 (BIA 2011). Here, DHS elected to place the Petitioner in expedited removal proceedings pursuant to INA § 235. *See* 8 C.F.R. § 235.1(f)(2) (providing that “[a]n alien present in the United States who has not been admitted or paroled or an alien who seeks entry at other than an open, designated port-of-entry, except as otherwise permitted in this section, is subject to the provisions of [INA § 212(a)] and to removal under [INA §§ 235(b) or 240]”); *Matter of W-C-B-*, 24 I&N Dec. 118, 122 (BIA 2007) (affirming the dismissal of proceedings when “removal proceedings [under INA § 240] [a]re not necessary to remove the respondent from the United States”). The regulations do not limit DHS’s authority to choose between expedited removal and removal proceedings to the time of the initial encounter but rather authorize DHS to initiate expedited removal *at any time* as long as an alien fits within specified criteria. 8 C.F.R. § 235.3(b)(1)(ii). (emphasis added).

## 2. *Standing*

A party filing a complaint in federal court must demonstrate that it possesses Article III standing to raise its claims and that the court has subject matter jurisdiction over those claims. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). The party asserting federal court jurisdiction has the burden of proving that such jurisdiction exists. *Nuveen Mun. Trust ex rel. Nuveen High Yield Mun. Bond Fund v. WithumSmith Brown, P.C.*, 692 F.3d 283, 293 (3d Cir. 2012). The presumption is that a federal court lacks jurisdiction without affirmative evidence

that it exists, and a district court may “weigh the evidence and satisfy itself as to the existence of its power to hear the case.” *Id.*

### **B. Congress Removed This Court’s Jurisdiction.**

Congress has “significantly limited the power of federal courts to review [8 U.S.C.] § 1225(b)(1) expedited removal orders.” *United States v. Herrera-Orozco*, No. C-11-542, 2011 WL 3739160, at \*1 (S.D. Tex. Aug. 23, 2011) (citing *Brumme v. INS*, 275 F.3d 443, 447 (5th Cir. 2001)). Through his habeas petition, Petitioner challenges his detention, which arose precisely from the expedited removal process. Based on the plain language of Congress’s amendments to the Immigration and Nationality Act (INA) in 1996, federal courts lack subject matter jurisdiction to hear any claims “arising from” or “relating to” the expedited removal process established by Congress under 8 U.S.C. § 1225(b)(1). *See* 8 U.S.C. § 1252(a)(2)(A)(i). Because Petitioner’s detention was a necessary part of the expedited removal process, it “arises from” and is “related to” that process, such that Congress’s plain language in 8 U.S.C. § 1252(a)(2)(A)(i) precludes federal court review of Petitioner’s habeas claim.

Section 1252(a)(2)(A)(i) and (iii) state in pertinent part: “[n]otwithstanding 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 . . . any individual determination or to entertain any other cause or claim arising from or relating to the implementation or operation of an order of removal pursuant to section 1225(b)(1) [i.e., an order of expedited removal],” or “the application of [§ 1225(b)(1)] to individual aliens, including the [credible-fear] determination made under section 1225(b)(1)(B),” except as provided in section 1252(e). 8 U.S.C. § 1252(a)(2)(A)(i),

(iii).<sup>4</sup> Congress established the expedited removal system through the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), which amended the INA, to aggressively expedite removal of aliens lacking a legal basis to remain in the United States. *Kucana v. Holder*, 558 U.S. 233, 249 (2010). The expedited removal system was adopted in large part to address the growing number of smuggled aliens who arrived in the United States with no entry documents, declared asylum immediately upon arrival, and then overcrowded immigration court dockets and detention centers, in some cases only to be released into the general population. H.R. Rep. No. 104-469, at 107, 117-18 (Conf. Rep.) (1996). Under the expedited removal system, in accordance with 8 U.S.C. § 1225(b)(1) and 8 U.S.C. § 1252(a)(2)(A)(i), aliens like Petitioner who illegally cross the border without valid entry documents or a visa may be placed in expedited removal proceedings, and DHS's decisions in implementing and executing the expedited removal proceedings are, with the limited exceptions noted below, not subject to judicial review.

Petitioner's detention "arises from" and "relates to" the operation and implementation of his removal order. Indeed, as a district court has explained, Petitioner's detention is a "secondary, temporary, and constitutionally permissible aspect of the expedited removal process" itself. *Castro v. Department of Homeland Security*, 163 F. Supp. 3d 157, 173 (E.D. Pa. 2016), *aff'd*, 835 F.3d 422 (3d Cir. 2016); *see also, Carlson v. Landon*, 342 U.S. 524, 538 (1952)

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<sup>4</sup> Subsection 1252(e) permits habeas review of expedited removal determinations in only three limited areas: "(A) whether the petitioner is an alien, (B) whether the petitioner was ordered removed under such section, and (C) whether the petitioner can prove by a preponderance of the evidence that the petitioner is an alien lawfully admitted for permanent residence" or has been admitted as a refugee or been granted asylum. Subsection 1252(e) also contemplates generalized challenges to the legality or constitutionality of section 1225(b), or regulations implementing section 1225(b). 8 U.S.C. § 1252(e)(3)(A)-(B). As discussed further below, none of these enumerated exceptions allowing judicial review are present in this case.

(explaining that “[d]etention is necessarily part of [the] deportation procedure” because otherwise aliens arrested for deportation could hurt the United States while awaiting deportation proceedings); *Wong Wing v. United States*, 163 U.S. 228, 235 (1896) (explaining that “[p]roceedings to exclude or expel would be vain if those accused could not be held in custody pending the inquiry into their true character, and while arrangements were being made for their deportation”). Since Petitioner’s detention is necessarily related to the operation and implementation of his expedited removal order, the propriety of his continued detention cannot be reviewed by this Court based on subsection 1252(a)(2)(A)(i).

Such limitations on judicial review fall within Congress’s plenary power over the admission of aliens. *See Kleindienst v. Mandel*, 408 U.S. 753, 766 (1972) (quoting *Boutilier v. INS*, 387 U.S. 118, 123 (1967)). For inadmissible aliens who unlawfully enter the United States, “[w]hatever the procedure authorized by Congress is, it is due process.” *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) (internal citations omitted). Thus, where Congress has indicated its intent to preclude judicial review of a determination made by one of the political branches with respect to an alien deemed inadmissible just after crossing the border, this Court lacks subject matter jurisdiction. The Petitioner’s detention falls within Congress’s stated limitations on judicial review, and the Petitioner has not met his burden of establishing subject matter jurisdiction. *See Montelier Chaviano v. Bondi et al.*, Case No. 25-CV-22451-MD (ECF No. 32 at 9) (“This Court agrees with Respondents that the jurisdiction-stripping provisions of Sections 1252(a) and (e)(2) apply to bar Petitioner’s habeas petition.”).

**C. Petitioner’s Claims Do Not Fall Under Any of the Limited Exceptions Permitting Judicial Review of Expedited Removal Proceedings Under Section 1252(e).**

Section 1252(e)(1) provides that “no court may . . . enter declaratory, injunctive, or other equitable relief” pertaining to an order of expedited removal except as “specifically authorized in a subsequent paragraph of this subsection.” Section 1252(e)(2), in turn, is the subsequent paragraph within subsection (e) that supplies the sole means of review of an order of expedited removal, stating in its entirety:

(2) Habeas corpus proceedings

Judicial review of any determination made under section 1225(b)(1) of this title is available *in habeas corpus proceedings*, but shall be limited to determinations of—

(A) whether the petitioner is an alien,

(B) whether the petitioner was ordered removed under such section, and

(C) whether the petitioner can prove by a preponderance of the evidence that the petitioner is an alien lawfully admitted for permanent residence, has been admitted as a refugee under section 1157 of this title, or has been granted asylum under section 1158 of this title, such status not having been terminated, and is entitled to such further inquiry as prescribed by the Attorney General pursuant to section 1225(b)(1)(C) of this title.

8 U.S.C. § 1252(e)(2) (emphasis added). As specified in section 1252(e)(5), “[t]here shall be no review of whether the alien is actually inadmissible or entitled to any relief from removal.” And section 1252(e)(4) provides that, in the event that section 1252(e)(2) is satisfied, the sole available relief is that the alien “be provided a hearing in accordance with section 1229a of this title” (*i.e.*, a removal proceeding to decide “the inadmissibility or deportability of the alien”). *See also* 8 U.S.C. § 1229a(a)(1).

Here, Petitioner does not fall under any of the three categories in section 1252(e)(2) that would provide for jurisdiction in federal court. It is undisputed that Petitioner is a foreign

national (Petitioner is not claiming he was erroneously deemed to be a foreign national). Petitioner also does not raise a question as to whether he was ordered removed under the expedited removal statute. Nor does Petitioner claim that he can prove by a preponderance of the evidence any of the conditions in subsection (e)(2)(C).

Consistent with the provisions of 8 U.S.C. § 1252, courts in this district have agreed that no jurisdiction exists in district court for challenges, like Petitioner's, to an order of expedited removal. *See, e.g., Torrez v. Swacina*, 2020 U.S. Dist. LEXIS 68977, at \*6-10; 2020 WL 13551822, No. 20-20650-CV-Altonaga/Goodman (S.D. Fla. Apr. 17, 2020) (dismissing habeas petition and finding the court lacked jurisdiction to hear the petitioner's challenge related to expedited removal); *Del Cid v. Barr*, 394 F.Supp.3d (S.D. Fla. 2019) (finding jurisdiction-stripping provisions of the INA foreclose review of expedited removal order, provision did not violate Suspension Clause, and alien not entitled to emergency stay of removal). Congress has made clear in 8 U.S.C. § 1252 that it created no avenue for judicial review of a challenge to the expedited removal process—including the conduct of the credible fear interview and determination—and Petitioner's claims do not fall within the limited categories of 8 U.S.C. § 1252(e) for which judicial review is available.

**II. Petitioner is Lawfully Detained Under 8 U.S.C. § 1225(b)(1) as an Applicant for Admission who was not Admitted or Paroled after Inspection by an Immigration Officer.**

Applicants for admission, which include “alien[s] present in the United States who ha[ve] not been admitted or who arrive[] in the United States (whether or not at a designated port of arrival . . .),” 8 U.S.C. § 1225(a)(1), can be subject to expedited removal under 8 U.S.C. § 1225(b)(1). Under this 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)(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).

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 November 7, 2021, DHS encountered the Petitioner, who has not been admitted or paroled, within 100 miles from the southern border when he illegally entered the United States. Accordingly, Petitioner cannot show continuous presence in the United States during the fourteen days prior to the encounter. DHS processed the Petitioner for expedited removal at that time and may do so at any time. *See* 8 C.F.R. § 235.3(b)(1)(ii).

For an alien originally 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. Section 1225, or 235 of the Act, expressly provides for the detention of aliens originally placed in expedited removal.

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 Immigration and Nationality Act. *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 November 2021 near the southern border classifies him as an applicant for admission. 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 Nicaraguan 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.

### **III. Petitioner’s Due Process Rights Have Not Been Violated.**

Petitioner claims Respondents violated his Due Process rights. However, the Supreme Court held that 8 U.S.C. § 1225(b) unambiguously mandates detention through the pendency and conclusion of removal proceedings, regardless of their duration, and that the statute authorizes release only through DHS’s discretionary parole authority. *Id.* at 843-45. After *Jennings*, the Supreme Court addressed aliens’ due process rights in the context of the expedited removal statute in *DHS v. Thuraissigiam*, 591 U.S. 103, 140 S. Ct. 1959 (2020). The petitioner in *Thuraissigiam* entered the United States without inspection, and immigration authorities apprehended him twenty-five yards from the border. *Id.* at 1967. He was placed in expedited removal proceedings and claimed asylum. *Id.*

Petitioner, like Thuraissigiam, is an applicant for admission who has not been admitted or paroled after inspection by an immigration officer. Both in general, and for the specific purpose of this analysis, Petitioner is not considered to have been admitted into the country. Consistent with Supreme Court precedent, Petitioner is only entitled to due process as set forth in the INA. The INA provides for relief from detention under the parole procedure set forth in 8 U.S.C. § 1182(d)(5)(A). *See* 8 U.S.C. § 1182(d)(5)(A); *see also* 8 C.F.R. §§ 212.5(b); 235.3.

Petitioner also cannot establish that his detention violates the Constitution, as Petitioner has been detained only since June 17, 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 WL 3604328, 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).

Because Petitioner has not submitted evidence that ICE detained him for any purpose other than resolution of these proceedings, his Due Process rights have not been violated.

#### **IV. Petitioner’s Administrative Procedures Act Claim Lacks Merit.**

Finally, this Court should dismiss Petitioner’s Administrative Procedure Act, 5 U.S.C. § 706, claim (ECF No. 9 at 23-25), for lack of jurisdiction. In *Trump v. J.G.G.*, 145 S.Ct. 1003, 604 U.S. \_\_ (2005), the Supreme Court held that, where the claim for relief (as in Count IV in the Amended Petition), “necessarily impl[ies] the invalidity of [a petitioner’s] confinement,” those claims “must be brought in habeas.” *Id.* at 1005 (cleaned up). As noted by Justice Kavanaugh in his concurrence, “given 5 U.S.C. § 704, which states that claims under the APA are not available when there is another ‘adequate remedy in a court,’ I agree with the Court that habeas corpus, not the APA, is the proper vehicle here.” *Id.* at 1007 (Kavanaugh, J., concurring). Here, as in *J.G.G.*, habeas is an “adequate remedy.” Moreover, if this Court were to reach the merits of that claim, it should deny Count IV on the merits

because Petitioner did not claim fear at entry, and it was not until years later that he expressed a fear of returning to his native country.

### CONCLUSION

For the reasons set forth above, the Petition for Writ of Habeas Corpus should be dismissed for lack of jurisdiction.

Respectfully submitted,

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