UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO: 25-cv-25271-JB

ISIDRO ACANDA CEBALLO,

Petitioner,

v.

CHARLES PARRA, in his official capacity as Assistant Field Office Director, Krome North Service Processing Center, et al.,

Respondents.

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RESPONDENT'S RETURN AND MEMORANDUM OF LAW

Respondents[1], by and through the undersigned Assistant U.S. Attorney, hereby respond to the Court's Order to Show Cause [ECF No. 6]. As set forth fully below, as the Petitioner is properly detained pursuant to INA § 235(b)(1), 8 U.S.C. § 1225(b)(1), the Court should deny the Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241 [ECF No. 1] ("Petition").

I. BACKGROUND

The petitioner, Isidro Acanda Ceballo ("Petitioner"), is a native and citizen of Cuba. See Exhibit A, I-213. On or about December 23, 2022, Petitioner entered the United States without being inspected or admitted at or near Marquesas, Florida, which is about 21 miles west of Key West, Florida. *See id.* On or about December 26, 2022, the United States Coast Guard ("USCG")

[1] A writ of habeas corpus must "be directed to the person having custody of the person detained." 28 USC § 2243. In cases involving present physical confinement, the Supreme Court reaffirmed in *Rumsfeld v. Padilla*, 542 U.S. 426 (2004), that "the immediate custodian, not a supervisory official who exercises legal control, is the proper respondent." *Rumsfeld v. Padilla*, 542 U.S. 426, 439 (2004). Petitioner is currently detained at the Krome Detention Center, an ICE detention facility in Miami, Florida. His immediate custodian is Charles Parra, Assistant Field Office Director. The proper Respondent in the instant case is Mr. Parra in his official capacity.

encountered Petitioner and others, who arrived on a wooden vessel, and determined that Petitioner was not in possession of a valid entry document to enter or reside in the United States. *Id.*

On or about December 26, 2022, Customs and Border Patrol ("CBP") placed Petitioner in expedited removal proceedings through the issuance of a Form I-860, Notice and Order of Expedited Removal charging him with removability under INA § 212(a)(7)(A)(i)(I), 8 U.S.C. § 1182(a)(7)(A)(i)(I), as amended, as an immigrant whom, at any time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act. *See*, Exhibit D, Declaration. Petitioner asserted a fear of returning to Cuba and was referred to U.S. Citizenship and Immigration Services ("USCIS") pursuant to INA § 235(b)(1)(A)(ii). *See* Exhibit D, Declaration. On April 3, 2023, Petitioner filed an affirmative Form I-589, Application for Asylum and Withholding of Removal with USCIS. *See* Exhibit D, Declaration.

On October 24, 2025, Petitioner was scheduled for a credible fear interview at the Miami USCIS Asylum Office, as a result of the fear he asserted when he was placed in expedited removal proceedings by CBP. *See* Exhibit D, Declaration. On that same date, USCIS Asylum Pre-screening Officer ("APSO") determined that Petitioner did not show a credible fear of persecution or torture in Cuba. *See id.* USCIS served Petitioner with the negative credible fear determination on October 24, 2025, and he requested a review before the Executive Office for Immigration Review (EOIR), pursuant to 8 C.F.R. § 1003.42. [2] *See id.* Petitioner was encountered by ICE ERO and transferred

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2 As proceedings before the immigration judge for credible fear review were so recently initiated, no records of the proceedings are currently available from the Executive Office of Immigration Review. As discussed in the government's motion requesting an extension concerning the production of documents concerning removal proceedings, the government is attaching all records currently available to this return and will supplement the record with additional documents when they are available.

to Florida Soft Sided-Facility on October 25, 2025.[3] *See id.* On October 25, 2025, ICE ERO issued a Form I-286, Notice of Custody Redetermination, which was subsequently canceled as inadvertently issued on November 17, 2025. *See* Exhibit C, Cancelation of Form I-286.[4] On or about November 9, 2025, Petitioner was transferred to Krome. *See* Exhibit D, Declaration. To date, Petitioner remains in ICE custody at Krome under INA § 235(b)(1). *Id.*

II. ARGUMENT

Petitioner is held in custody pursuant to 8 U.S.C. § 1225(b)(1), is currently in expedited removal proceedings, and accordingly is not entitled to any procedures beyond those prescribed by the expedited removal statute, which have been followed.

Under the expedited removal statute, in the event that an immigration officer determines that an alien is inadmissible, the officer shall order the alien removed from the United States "without further hearing or review," stripping the court of jurisdiction over the writ of habeas corpus. *See* 8 U.S.C. § 1225(b)(1)(A)(i). Petitioner's due process rights have not been violated and granting him release is not authorized or warranted under applicable law.

Expedited removal orders issued pursuant to 8 U.S.C. §1225(b)(1) are not subject to judicial review except in very limited circumstances. *See* 8 U.S.C. §1252(a)(2)(A), (e). These circumstances are: 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); *see also Garcia de Rincon v. Dep't of Homeland Sec.*, 539 F.3d 1133, 1140 (9th

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3 Although the Form I-213, Record of Deportable/Inadmissible Alien, indicates the Petitioner was encountered on September 30, 2025, this is a clerical error as Petitioner was encountered on October 25, 2025. *See* Exhibit D, Declaration.

4 The Form I-286 prior to cancellation and I-200 Warrant for Arrest of Alien are also incorporated into this Exhibit C.

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) (§ 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 fails to establish that he is not subject to the expedited removal process, where he is a national of Cuba, who was ordered to be removed under the expedited removal statute, and who is now detained pending adjudication of an appeal of a negative credible fear determination. The Court should deny the Petition.

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

Applicants for admission who were intercepted at entry can be subject to an expeditious process to remove them from the United States under 8 U.S.C. § 1225(b)(1). Under this process—known as expedited removal—aliens arriving in the United States or aliens, as designated by the Secretary of Homeland Security, who entered illegally and 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).

Congress established the expedited removal system through the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), which amended the INA, in order 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.

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). At the relevant time, the Secretary (and previously the Attorney General) have designated only subsets of that class. *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 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.

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* INA § 235(b)(1)(A)(ii), 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." INA § 235(b)(1)(A)(i), 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." *Id.* § 235(b)(1)(A)(ii), 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 [INA," "withholding of removal under section 241(b)(3) of the [INA]," 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." INA § 235(b)(1)(B)(iii)(I), 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." *Id.* § 235(b)(1)(B)(ii), 8 U.S.C. § 1225(b)(1)(B)(ii). By regulation, that "further consideration" takes the form of full removal proceedings under section 240 of the INA. 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 235 of the INA provides that an alien may seek review before an immigration judge upon a finding of no credible fear. INA § 235(b)(1)(B)(iii)(III). If the immigration judge concurs with the finding, the immigration judge's decision is final and may not be appealed. 8 CFR § 1208.30(g)(2)(i).

Section 235 of the INA expressly provides for the detention of aliens originally placed in

expedited removal. Such aliens "shall be detained pending a final determination of credible fear." INA § 235(b)(1)(B)(iii)(IV), 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." *Id.* § 235(b)(1)(B)(ii), 8 U.S.C. § 1225(b)(1)(B)(ii). Like all aliens applying for admission, however, aliens detained for further consideration of an asylum claim may generally be "parole[d] into the United States . . . for urgent humanitarian reasons or significant public benefit." *Id.* § 212(d)(5)(A). Accordingly, the INA's implementing regulations note that while aliens in expedited proceedings will be detained, if an alien establishes a credible fear, "[p]arole . . . may be considered . . . in accordance with section 212(d)(5) of the INA [(8 U.S.C. § 1182(d)(5))]and [8 C.F.R.] § 212.5." 8 C.F.R. § 208.30(f).

Petitioner arrived at Marquesas, Florida, uninhabited islands 21 miles west of Key West, on a wooden vessel on or about December 23, 2022. On December 24, 2022, after the Petitioner was encountered by Customs and Border Patrol ("CBP"), it was ordered by issuance of a Form I-860, Notice and Order of Expedited Removal, that he be removed. This arrival without inspection classified him as an applicant for admission. Petitioner was and is detained as an applicant for admission under 8 U.S.C. §1225(b)(1)(B)(ii) because he is not a citizen of the United States, is a native and citizen of Cuba, and sought entry without valid entry documents. *See* 8 U.S.C. §§ 1182(a)(7)(A)(i)(I); (a)(6)(A)(i). He is subject to the expedited removal statute under 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). 8 U.S.C. § 1225(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-*, *supra*, at 517. Thus, while an applicant for admission subject to the expedited removal statute is subject to detention, he may be eligible for parole "for urgent humanitarian reasons or significant public benefit" his detention is otherwise mandatory, and the alien cannot be released on bond. *Matter of M-S-*, 271 I. & N. Dec at 512, 517-18.

Petitioner's detention "arises from" and "relates to" the operation and implementation of his expedited removal order, because but for his final order of expedited removal, he would not be subject to mandatory detention under section 1225(b)(1)(B)(iii)(IV). 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) (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.

B. *Matter of Yajure Hurtado* is Not Relevant to the Instant Case.

The Petitioner dedicates significant time in the Petition discussing *Matter of Yajure Hurtado,* a Board of Immigration Appeals decision that has been scrutinized and rejected by some district courts. *See* Petition at 6-10. However, the legal issue in dispute in the *Hurtado* case does not impact the basis of detention in this case. *Hurtado*, as acknowledged by the Petitioner, discussed whether "noncitizens who are not apprehended upon arrival to the United States," are subject to mandatory detention under § 1225(b)(2), or entitled to a bond hearing under § 1226(a). *See* Petition at 8. Petitioner argues that his detention should be found to be pursuant to § 1226(a), and that he should be granted a bond hearing. However, unlike the respondent in *Yajure-Hurtado,* who was placed directly in removal proceedings pursuant to section 1229a, the Petitioner here was placed directly in expedited removal proceedings. Unlike in *Yajure Hurtado*, where section

1225(b)(2) governed detention, here, section 1225(b)(1) is at issue as Petitioner was ordered to be removed on an expedited basis pursuant to § 1225(b)(1). Under these circumstances, the Petitioner may only be released if paroled, a determination left to the sole discretion of DHS.

C. Due Process Does Not Require Petitioner's Release

Petitioner claims that his detention violates due process and therefore he should be released. However, as set forth above, detention of an alien subject to the expedited removal statute while his negative credible fear determination is being adjudicated is statutorily mandated. *See* 8 U.S.C. § 1225(b)(1)(B)(ii); *Jennings v. Rodriguez*, 138 S. Ct. 830, 842 (2018) (finding the "clear language" of section 1225(b)(1) mandates detention of aliens claiming a credible fear of persecution); *D.A.V.V. v. Warden, Irwin Cnty. Detention Ctr.*, 2020 WL 13240240, at *4 (M.D. Ga. Dec. 7, 2020) (Order and Report and Recommendation)[5] (same). In *Jennings,* 138 S. Ct. at 842, the Supreme Court held that 8 U.S.C. § 1225(b) unambiguously mandates detention through the pendency and conclusion of removal proceedings, regardless of duration, and that the statute authorizes release only through ICE's discretionary parole authority. *Id.* at 843-45. The plain language of 8 U.S.C. § 1225(b) imposes detention without a bond hearing—during the whole of removal proceedings—for *all* applicants for admission. *Id.* at 844. *See* 8 U.S.C. §§ 1225(b)(1)(B)(ii), (b)(1)(B)(iii)(IV) (establishing separate mandatory detention provision for arriving aliens applying for asylum); *see also* 8 U.S.C. § 1225(b)(2)(A) ("[I]f the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this

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5 Based on a review of the *D.A.V.V.* docket, the parties filed a Stipulation of Dismissal before the Court had an opportunity to enter an order on the Report and Recommendation (R&R) concerning denial of the habeas petition. Accordingly, only the R&R is cited above.

title.").

In reaching its decision in *Jennings*, the Supreme Court rejected the Ninth Circuit's application of the canon of constitutional avoidance to construe an implicit 6-month time limit on detention under 8 U.S.C. §§ 1225 and 1226. *Id.* The Supreme Court noted that "[t]he canon of constitutional avoidance 'comes into play only when, after the application of ordinary textual analysis, the statute is found to be susceptible of more than one construction.'" *Id.* at 842 (citation omitted). The Court further held that

> [r]ead most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants for admission until certain proceedings have concluded. Section 1225(b)(1) aliens are detained for "further consideration of the application for asylum," and § 1225(b)(2) aliens are in turn detained for "[removal] proceeding[s]." Once those proceedings end, detention under § 1225(b) must end as well. Until that point, however, nothing in the statutory text imposes any limit on the length of detention. And neither § 1225(b)(1) nor § 1225(b)(2) says anything whatsoever about bond hearings.

Id.

After *Jennings*, the Supreme Court addressed aliens' due process rights in the context of the expedited removal statute in *Thuraissigiam v. U.S. Dep't of Homeland Sec.*, 591 U.S. 103, 140 S. Ct. 1959 (2020). Thuraissigiam entered the United States without permission and immigration authorities apprehended him twenty-five yards from the border. *Id.* at 1967. He was placed in expedited removal proceedings and he claimed a fear of return to his country. *Id.* An asylum officer found that Thuraissigiam failed to demonstrate a credible fear of persecution. *Id.* at 1968. Following a hearing, an immigration judge affirmed the asylum officer's finding, and Thuraissigiam was subject to expedited removal. *Id.* Thereafter, Thuraissigiam filed a habeas petition asserting a fear of persecution and requesting a second opportunity to apply for asylum, which could result in his placement in a formal removal proceeding. *Id.* The district court

dismissed the petition for lack of jurisdiction under 8 U.S.C. §§ 1252(a)(2) and (e)(2). *Id.* The Ninth Circuit reversed, holding that such an application of these statutes violated the Suspension Clause. *Id.*; *Thuraissigiam v. U.S. Dep't of Homeland Sec.*, 917 F.3d 1097, 1113-1119 (9th Cir. 2019). In a footnote, however, the Ninth Circuit also "disagree[d] with the government's contention ... that a person like [petitioner] lacks all procedural due process rights." *Id.* at 1111 n.15 (citations omitted).

The Supreme Court reversed the Ninth Circuit, holding the application of §§ 1252(a)(2) and (e)(2) to foreclose jurisdiction did not violate the Suspension Clause. *Thuraissigiam,* 140 S. Ct. at 1968-81. While *Thuraissigiam* did not principally feature prolonged detention claims, the majority opinion, relying on years of Supreme Court precedent, reiterated the boundaries of due process claims available to arriving aliens and applicants for admission. *Id.* at 1981-1983. Specifically, the Supreme Court stated that the Ninth Circuit's holding [as to due process] is contrary to more than a century of precedent ... that as to "foreigners who have never been naturalized, nor acquired any domicile or residence within the United States, nor even been admitted into the country pursuant to law," "the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law." *Id.* at 1982 (quoting *Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892)).

The Court explained that extending due process rights to "an alien who tries to enter the country illegally" would "undermine the 'sovereign prerogative' of governing admission to this country and create a perverse incentive to enter at an unlawful rather than a lawful location." *Id.* at 1982-1983 (citation omitted). Accordingly, the Court declined to extend due process rights to arriving aliens and applicants for admission beyond those provided for by statute. *Id.* at 1982-3.

In line 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) (2016); 235.3. Parole decisions are an integral part of the admissions process and inadmissible aliens cannot challenge such decisions as a matter of constitutional right. *See Fernandez-Roque v. Smith*, 734 F.2d 576, 582 (11th Cir. 1984); *Jean v. Nelson*, 727 F.2d 957, 966, 972 (11th Cir. 1984), *aff'd*, 472 U.S. 846 (1985); *Alvarez-Mendez v. Stock*, 941 F.2d 956, 963 (9th Cir. 1991).

In fact, parole determinations "normally take account of the possibility that an excludable alien may abscond to avoid being returned to his or her home country." *Jeanty v. Bulger,* 204 F. Supp. 2d 1366, 1382 (S.D. Fla. 2002) (*citing Garcia-Mir*, 776 F.2d at 1485; *Bertrand v. Sava*, 684 F.2d 204, 214 – 218 (2nd Cir. 1982)). Accordingly, for these reasons, Petitioner's Due Process claim fails. *See, e.g. D.A.V.V.*, 2020 WL 13240240, at *4-*6 (recommending denial of Petitioner's due process claims because arriving aliens have no procedural due process rights beyond the parole procedure set forth in the INA) (citing *Thuraissigiam*, 140 S. Ct. at 1982-83) (additional citations omitted)); *Petgrave v. Aleman*, 529 F.Supp.3d 665, 676 (S.D. Tex. Mar. 29, 2021) (discussing *Thuraissigiam* and denying habeas claims of arriving alien challenging continued detention without a bond hearing because "when a noncitizen attempts to unlawfully cross the borders as Petitioner did, his constitutional right to due process does not extend beyond the rights provided by statute"); *Gonzalez Garcia v. Rosen*, 513 F.Supp.3d 329, 331 332-336 (W.D.N.Y. Jan. 13, 2021) (denying habeas claims challenging detention without a bond hearing of arriving alien who was found to have a credible fear of persecution and was detained for further immigration proceedings) (citing *Thuraissigiam*, 140 S. Ct. at 1982-83) (additional citations omitted)).

Even if the Court concludes that Petitioner can invoke the Due Process Clause, he cannot establish that his detention violates the Constitution. Petitioner has been detained for less than a month, pending the completion of a review of the negative credible fear determination. *See* Exhibit D, Declaration; *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 § 1226(c) 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).

Petitioner has not submitted evidence that ICE detained him for any purpose other than resolution of his expedited removal proceedings.

III. CONCLUSION

Accordingly, as the Petitioner's detention is mandatory pending his expedited removal pursuant to 8 U.S.C. § 1225(b)(1), subject only to parole, the Petition should be denied.

Respectfully submitted,

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