UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

Carlos Luis GONZALEZ CARMONA Petitioner, v. FIELD OFFICE DIRECTOR GARRETT J. RIPA, et al., Respondents.	Case No. 2:25-cv-01128-SPC-DNF **PETITIONER'S REPLY TO RESPONDENTS' RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS**

Petitioner replies to Respondents' Response to Habeas Petition (Doc. 15). First, the Court has jurisdiction over Petitioner's petition. Second, Petitioner has no available administrative remedies to exhaust. Third, Respondents' decision to place Petitioner in expedited removal proceedings and re-arrest and re-detention him without reasonable notice or an opportunity to be heard violates the Immigration and Nationality Act (INA) and Petitioner's Fifth and Fourth Amendment rights.

ARGUMENT

A. Jurisdiction

The Court has jurisdiction over Petitioner's claims under the Suspension Clause of the U.S. Constitution. The expedited removal statute largely "precludes judicial review," and therefore challenges to "confinement and

removal" under that statute fall within the "core" of the writ of habeas corpus. *See Trump v. J.G.G.*, 145 S. Ct. 1003, 1006-07 (2025). Thus, to the extent 8 U.S.C. § 1252(e)(2) purports to preclude habeas review of whether Petitioner is ineligible for detention and removal via expedited removal due to the length of his presence in the United States, that limitation violates the Suspension Clause and is void and without effect.

The Suspension Clause states, "[t]he Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it." U.S. Const. Art. I Sec. 9, cl. 2. In *Boumediene v. Bush*, the Supreme Court recognized three factors "relevant in determining the reach of the Suspension Clause: (1) the citizenship and status of the detainee and the adequacy of the process through which that status determination was made; (2) the nature of the sites where apprehension and then detention took place; and (3) the practical obstacles inherent in resolving the prisoner's entitlement to the writ." *Boumediene v. Bush*, 553 U.S. 723, 766 (2008).

Here, Petitioner is a noncitizen who Respondents released into the United States in October 2021 upon an individualized finding that he was not a danger to the community or a flight risk. Respondents abruptly revoked Petitioner's prior release without notice and detained him under expedited removal with no meaningful process. Without access to judicial review, he

would have no other avenue to challenge the basis for his current detention. Further, Petitioner was arrested and detained in the courthouse in Miami, Florida, while exiting the courtroom where he attended his required immigration hearing. Lastly, there are no practical obstacles to resolving Petitioner's entitlement to a writ of habeas corpus.

Additionally, if there was no judicial review whatsoever of the immigration agencies' arrest and detention determinations, then immigration agencies would be free to find that essentially any arrested noncitizen without status is subject to expedited removal, in direct violation of the procedures and safeguards required for removal proceedings by the laws and Constitution of the United States. Thus, the Suspension Clause prevents all the INA provisions cited by Respondents from stripping the Court of jurisdiction over his habeas petition. *See Alfonso Perez v. Matthew Mordant et al.*, No. 2:25-CV-00947-SPC-DNF, 2025 WL 3466956, at *5-7 (M.D. Fla. Dec. 3, 2025).

B. Exhaustion of Administrative Remedies

Respondents argue that Petitioner has yet to exhaust his administrative remedies. They argue that Petitioner "agreed to dismiss removal proceedings" and never sought a BIA appeal (Doc. 15 at 13). First, Petitioner appeared *pro se* in Immigration Court on November 4, 2025, and was not provided any notice of Respondents' Motion to Dismiss prior to his court hearing. Further, on information and belief, Respondents did not advise Petitioner that they sought

to terminate his case in order to place him in expedited removal proceedings. Still, Petitioner's habeas petition does not challenge the Court's decision to dismiss his case, but rather his placement into expedited removal and the legality of his courthouse arrest and re-detention. The INA does not provide administrative review of those decisions. *See* 8 U.S.C. § 1225(b)(1)(A)(i) ("the officer shall order the alien removed from the United States without further hearing or review"). Additionally, Petitioner cannot challenge his expedited removal order in the Eleventh Circuit. *See Dubey v. Dep't of Homeland Sec.*, 154 F.4th 534, 537 (7th Cir. 2025) ("neither the court of appeals nor a district court can review an expedited removal order[.]").

C. Merits of Petitioner's Claims

1. Petitioner's Detention is an Unlawful Application of § 1225(b)(1)

Respondents state that § 1225(b) was properly applied and thus, Petitioner's detention is "statutorily required." (Doc. 15 at 13-14, 17-18). However, this is not case because Respondents plainly exceeded their statutory authority when they revoked their previous custody determination and re-detained Petitioner under expedited removal. *Alfonso Perez*, No. 2:25-CV-00947-SPC-DNF, 2025 WL 3466956, at *10. Section 1225(b)(1)(A)(iii) can only apply to someone "who has not affirmatively shown" that they "ha[ve] been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility under"

Section 1225(b)(1)(A). Section 1225(b)(1) only applies when "an immigration officer determines that" someone is "inadmissible under" 8 U.S.C. Section 1182(a)(6)(C) or 1182(a)(7).

Even with Respondents' expansion of expedited removal to its full statutory extent, Petitioner cannot be detained under 8 U.S.C. § 1225(b)(1). First, Petitioner has been physically present in the United States for more than two years before his current detention. Specifically, Petitioner entered the United States in October 2021 and has not left since. Second, Petitioner was not found to be inadmissible under 8 U.S.C. § 1182(a)(6)(C) or § 1182(a)(7) when he first entered or any time before his first two years of physical presence in the United States. Petitioner was only found to be removable because he entered without inspection, 8 U.S.C. § 1182(a)(6)(A)(i). This is further corroborated by the NTA issued to Petitioner which includes a single charge of inadmissibility under Section 1182(a)(6)(A)(i). Thus, Respondents cannot contend that Section 1225(b)(1)(A) applied to Petitioner when they did not even rely on a ground of inadmissibility that renders that subsection applicable.

Additionally, Petitioner's initial apprehension in 2021 was not under Section 1225(b)(1). Petitioner's "Order of Release on Recognizance," dated October 13, 2021, states that he has been "placed in removal proceedings" and, in accordance with Section 1226, is being released on his own recognizance. Respondents cannot retroactively transform what was clearly action taken

under Section 1226 into detention under Section 1225(b)(1). *See Acea-Martinez v. Noem et al.,* 5:25-cv-01390-XR (filed Oct. 28, 2025).

2. Petitioner's Detention Violates his Due Process Protections

Noncitizens are entitled to due process protections under the Fifth Amendment, regardless of their immigration status. *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993); *Zadvydas*, 533 U.S. at 693. To determine whether civil detention violates a noncitizen's Fifth Amendment due process rights, courts apply the three-part test in *Mathews v. Eldridge*, 424 U.S. 319 (1976).

Detention, even civil immigration confinement, infringes on a fundamental protected liberty interest. *Hamdi v. Rumsfeld*, 542 U.S. 507, 529, 531 (2004). Respondents agree that noncitizens have a "liberty interest to be free of unreasonable civil detention," and that Petitioner was owed "notice and an opportunity to be heard" (Doc 15 at 15-16). Respondents then claim that he "received notice and opportunity to be heard at a hearing before the IJ before being taken into custody" (Doc. 15 at 15). However, the procedure referenced by Respondents did not give Petitioner an opportunity to challenge the legal basis for his detention under expedited removal. The Immigration Judge merely considered Respondents' authority to dismiss Petitioner's removal proceedings. Moreover, the Notice and Order of Expedited Removal was issued on November 4, 2025, the same day of his courthouse arrest, so he did not

receive notice of Respondents' intentions to designate Petitioner for expedited removal after dismissing his proceedings.

Once placed in expedited removal, a low-level DHS officer can order the removal of an individual who has been living in the United States with virtually no administrative process—just completion of cursory paperwork. The procedure used by Respondents did not give Petitioner an opportunity to challenge the legal basis for his detention or its necessity. *See Make the Road New York v. Noem*, --- F. Supp. 3d ---, ---, 2025 WL 2494908, at *17 (D.D.C. 2025) ("In short, the expedited removal process hardly affords 12 individuals any opportunity, let alone a 'meaningful' one, to demonstrate that they have been present in the United States for two years.").

Additionally, there are reasonable alternatives available for Respondents to pursue. Section 1226(a) applies to noncitizens facing charges of inadmissibility, including noncitizens, like Petitioner, who entered without inspection and were later detained while residing inside the country. As such, proper application of the INA's detention scheme allows for the possibility of detaining Petitioner under Section 1226(a) but first requires a bond hearing to make an individualized determination of his risk of flight or dangerousness. Such a hearing has not happened. Importantly, in Petitioner's case, Respondents already released him in October 2021 based on the individualized facts of his case and nothing has changed that would provoke re-detention.

D. Conclusion

For the foregoing reasons, Petitioner respectfully requests that this Court grant a writ of habeas corpus requiring that Respondents immediately release Petitioner without restraints on his liberty or, in the alternative, provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a).

Respectfully submitted December 15, 2025.

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