

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No.: 1:26-cv-20329-JB

GABRIEL JOSE CARRENO-MENDEZ,

Petitioner,

v.

KRISTI NOEM, DHS SECRETARY, *et al.*,

Respondents.

RETURN TO PETITION FOR WRIT OF HABEAS CORPUS

Respondents,¹ through the undersigned Assistant U.S. Attorney and pursuant to the Court's *Order to Show Cause* [DE 7], respond to the *Petition for Writ of Habeas Corpus* [DE 1] (the Petition). For the reasons below, the Court should deny the Petition in full.

OVERVIEW

Petitioner Gabriel Jose Carreno Mendez (Petitioner) does not argue that his detention is unlawful or unconstitutional—as one generally expects in a habeas petition—nor does Petitioner even request release from detention. *See generally* Petition. Instead, he asks the Court to (1) order Respondents to “cease expedited removal proceedings;” (2) grant an emergency stay of removal; and (3) order Respondents to place Petitioner into full removal proceedings under Section 240 of the Immigration and Nationality Act (INA). *Id.* at 4.

Petitioner contends that Respondents lacked authority to detain him pursuant to the expedited removal provisions of 8 U.S.C. § 1225 because he has been physically present in the United States for more than two years and is statutorily exempt from expedited removal

¹ As explained below, and only in the event the Court does not deny the Petition in full, several of the named respondents are not proper parties-defendant to this habeas action and should be dismissed.

as a parolee. Petitioner further characterizes the commencement of expedited removal proceedings as a violation of due process.

As shown below, this Court lacks jurisdiction to grant any of the relief Petitioner seeks by way of the Petition (which, again, does not include release from detention or a request for a bond hearing before an immigration judge). Moreover, Petitioner's argument that he is not subject to expedited removal—which underpins all the improper relief he requests via habeas—is legally incorrect. The Petition should be dismissed for lack of jurisdiction or, alternatively, denied.

FACTUAL & PROCEDURAL BACKGROUND

Petitioner is a native and citizen of Venezuela. See **Exhibit A**, Form I-213, Record of Deportable/Inadmissible Alien, dated December 30, 2025. Petitioner last entered the United States without inspection on June 27, 2022. *Id.* On the same day he illegally entered the United States, he was encountered by Customs and Border Protection (CBP) within 15 miles of Eagle Pass, Texas. See **Exhibit B**, Parole Document. On the same day, Petitioner was released on parole due to the detention capacity at the nearest detention center. *Id.*; see also **Exhibit C**, Declaration of Deportation Officer Crespo (the Declaration), at ¶ 11. Petitioner's parole expired on its own terms on August 26, 2022. Declaration at ¶ 12; see also Exhibit B.²

On March 10, 2023, Petitioner filed a benefits application³ with U.S. Citizenship and

² The Petition incorrectly states Petitioner was *paroled* on August 26, 2022 (and later, August 26, 2023, which appears to be a typo). Petition at ¶¶ 7, 15. But as is clear from Exhibit B to both the Petition and this Return, Petitioner was paroled on June 27, 2022 upon his initial encounter near the border, which parole then *expired* two months later on August 26, 2022. There was no subsequent parole in 2023 or thereafter. As explained below, upon the termination of his parole, Petitioner reverted to the status he previously held—an applicant for admission.

³ Respondents' internal policies regard the nature of this application to be sensitive and protected from disclosure. *But see* Petition, ¶¶ 9-11.

Immigration Services. Declaration at ¶ 13.

On December 30, 2025, ICE ERO encountered and apprehended Petitioner and took him into custody when he reported to the Alternative to Detention Unit in Miami. Declaration at ¶¶ 14-15; *see also* Exhibit A. On that same date, Petitioner was issued an expedited removal order. *See Exhibit D*, Form I-860, Notice and Order of Expedited Removal dated December 30, 2025.

Petitioner was detained in this district on the date the Petition was filed, but he is now⁴ in ICE custody at the Florence Service Processing Center in Florence, Arizona, pursuant to section 235(b)(1) of the INA [8 U.S.C. § 1225(b)(1)].⁵ *See Exhibit E*, Detention History; *see also* Declaration at ¶ 17.

ARGUMENT

I. Improper parties-defendant must be dismissed

As a threshold matter, Petitioner has named several improper parties to this suit. Petition at 1. But a writ of habeas corpus should “be directed to the person having custody of the person detained.” 28 U.S.C. § 2243. In cases involving physical confinement, Supreme

⁴ The Petition was filed on Saturday, January 17, 2026—a holiday weekend. Respondents (and the U.S. Attorney’s Office) were not aware of the existence of the petition until Tuesday, January 20, upon the reopening of the U.S. Attorney’s Office and the review and assignment of nearly 100 defensive immigration cases that had been filed between the previous Friday and Monday. On Wednesday, January 21, the Court entered its order to show cause [DE 7], which included a provision directing Respondents “to refrain from transferring Petitioner out” of the jurisdiction of the Court during the pendency of this proceeding. As reflected in the Detention History (Exhibit E), Petitioner had already been transferred to Arizona by that time, prior to Respondents becoming aware the Petition had been filed and prior to the Court’s order issuing. As noted above, Petitioner was detained within the district on the day the Petition was filed.

⁵ As described below, Petitioner is legally and constitutionally detained under Section 1225(b)(1). This case therefore does not involve the BIA decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) or any decisions by this Court that have rejected the BIA’s interpretation of Section 1225(b)(2). *See e.g. Quintero v. Ripa*, No. 25-cv-25746, DE 14 (S.D. Fla. Jan. 5, 2026) (Becerra, J.).

Court precedent confirms 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).

At the time the Petition was filed, Petitioner was detained at Krome, a detention facility in Miami-Dade County, Florida. His immediate custodian was Assistant Field Office Director Charles Parra. Accordingly, the only proper respondent to this case is AFOD Parra, in his official capacity. He should be substituted as the sole respondent to this action and all other named respondents should be dismissed. *See id.* at 435 (“[I]n habeas challenges to present physical confinement—‘core challenges’—the default rule is that the proper respondent is the warden of the facility where the prisoner is being held, not the Attorney General or some other remote supervisory official.”); *see also Masingene v. Martin*, 424 F. Supp. 3d 1298, 1300 (S.D. Fla. 2020) (Williams, J.) (citing *Padilla* for the proposition that the sole proper respondent to a habeas petition is the official who has custody over the petitioner); *Mayorga v. Meade*, No. 24-cv-22131, 2024 WL 4298815, at *3 (S.D. Fla. Sept. 26, 2024) (Bloom, J.) (substituting as respondent the Assistant Field Director of facility where petitioner was detained because denial of a habeas petition for failure to name proper respondent would give an unreasonably narrow reading to habeas corpus statute).

II. The Court lacks subject matter jurisdiction

A. Congress has precluded judicial review of expedited removal procedures except in very limited circumstances

As a preliminary matter, an alien may be removed from the United States by, *inter alia*, expedited removal under INA § 235(b)(1) or removal proceedings before an immigration judge under INA § 240. DHS has discretion to place aliens in expedited removal under INA § 235(b)(1) 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, upon encountering the

Petitioner on December 30, 2025, DHS elected to place the Petitioner in expedited removal proceedings pursuant to INA § 235(b)(1). *Cf. 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 proceedings only to the time of the initial encounter, but rather authorize DHS to initiate expedited removal proceedings at any time for an alien who fits within specified criteria. *See* 8 C.F.R. § 235.3(b)(1).

Petitioner here challenges not his detention, but rather his legal amenability to expedited removal on the basis that his physical presence in the United States for over two years and an initial release on parole by the Department of Homeland Security on June 27, 2022, make any removal pursuant to 8 U.S.C. § 1225 unlawful. Petition at ¶¶ 7; 14-16.

But the Court lacks subject matter jurisdiction to review Petitioner’s claims. 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)). To the extent Petitioner challenges his detention at all via his Petition, that detention arises solely from the issuance of the expedited removal order. Based on the plain language of Congress’s amendments to the 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). Petitioner’s challenge to his amenability to the expedited removal process is plainly encompassed by this jurisdiction-stripping provision. And the extent Petitioner is challenging his detention via the Petition, because that detention is 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 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).⁶

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.)

⁶ 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 below, none of these enumerated exceptions apply in this case.

(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 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 after crossing the border, this Court lacks subject matter jurisdiction. The Petitioner’s detention falls within Congress’s stated limitations on judicial review, and Petitioner has not met his burden of establishing otherwise (and thus, the Court’s subject matter jurisdiction).

B. Petitioner’s claims do not fall within 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).

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).

Instead, Petitioner alleges that he is not subject to expedited removal at all, rendering the issuance of his expedited removal order was *ultra vires*. Petition at ¶¶ 14-16. This is a direct attack of the expedited removal order itself. The plain language of 8 U.S.C. § 1252 strips district courts of jurisdiction to review attacks on expedited removal orders, including collateral challenges to the application of the statutory procedures in a particular case. *See* 8 U.S.C. § 1252(a)(2)(A), (e);⁷ *see also Thuraissigiam v. U.S. Dep’t of Homeland Sec.*, 591 U.S. 103, 112 (2020) (interpreting Section 1252(a)(2) as precluding review of collateral matters such as “‘the determination’ that an alien lacks a credible fear of persecution” in connection with

⁷ It is worth noting that 8 U.S.C. § 1252(e)(3) allows for what are called “systemic” challenges to regulations or written policies implementing the expedited removal system; however, such suits must be filed exclusively in the District Court for the District of Columbia within 60 days of the date the challenged regulation or policy is first implemented. *See* 8 U.S.C. § 1252(e)(3)(A), (B). Should Petitioner choose to file such a claim, this district would not be the proper forum.

expedited removal proceedings).

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. Chaviano v. Bondi*, No. 25-cv-22451, 2025 WL 1744349, at *4 (S.D. Fla. June 23, 2025) (finding a lack of subject matter jurisdiction to review petitioner's expedited removal order); *Quintero v. Field Off. Dir. of Miami ICE Field Off.*, No. 25-cv-22428-CMA, D.E. No. 25 (S.D. Fla. June 23, 2025); *Torrez v. Swacina*, 2020 WL 13551822, No. 20-cv-20650 (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 INA foreclose review of expedited removal order, provision did not violate Suspension Clause, and alien not entitled to emergency stay of removal).

Here, Petitioner has not offered anything about his circumstance that distinguishes him from cases in which courts consistently find a lack of subject matter jurisdiction to review determinations by immigration authorities in expedited removal proceedings.

C. 8 U.S.C. § 1252(g) also strips this Court's jurisdiction, as it precludes review of the decision to commence expedited removal proceedings

To the extent that Petitioner is challenging Respondents' ability to "commence proceedings" against him (whether expedited or regular removal proceedings), such a challenge is foreclosed by 8 U.S.C. § 1252(g). Section 1252(g) provides that "notwithstanding any other provision of law (statutory or nonstatutory) ... 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 [1] commence proceedings, [2] adjudicate cases, or [3] execute removal orders against any alien," except through a petition for review from a final order of removal

filed in a court of appeals. (Emphasis added). Though this section “does not sweep broadly,” *Tazu v. Att’y Gen. U.S.*, 975 F.3d 292, 296 (3d Cir. 2020), its “narrow sweep is firm,” *E.F.L. v. Prim*, 986 F.3d 959, 964-65 (7th Cir. 2021). Courts “cannot entertain challenges to the enumerated executive branch decisions or actions” outside a petition for review. *E.F.L.*, 986 F.3d at 964. The Supreme Court has explained that 8 U.S.C. § 1252(g) is “directed against a particular evil: attempts to impose judicial constraints upon prosecutorial discretion.” *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 485 & n.9 (1999) (“AADC”) (“Section 1252(g) seems clearly designed to give some measure of protection to ... discretionary determinations.”).

Petitioner seeks an order from this Court that would plainly “impose judicial constraints” on the government’s “prosecutorial” decision to “commence” expedited removal proceedings. That is precisely one of the actions that Section 1252(g) bars. Accordingly, this Court also lacks jurisdiction under Section 1252(g).

D. Petitioner is lawfully detained under 8 U.S.C § 1225(b)(1) as an applicant for admission

1) Petitioner’s parole expired years ago; he is now an applicant for admission subject to expedited removal

An alien (like Petitioner) who arrives at a port of entry and is paroled into the United States, and whose grant of parole either expires or is subsequently terminated, is subject to expedited removal because he retains his status as an “applicant for admission” under the INA. The statute provides that aliens arriving in the United States who meet the other requirements (i.e. inadmissibility on fraud or lack-of-documents grounds) may be subject to expedited removal. 8 U.S.C. § 1225(b)(1)(A)(i); 8 C.F.R. § 235.3(b)(1). An alien reverts to the status he possessed prior to the grant of parole, which in this case (and all those paroled at a

port of entry), is that of an applicant for admission. See 8 U.S.C. § 1182(d)(5)(A). As explained by Congress, parole “shall not be regarded as an admission of the alien and when the purposes of such parole shall ... have been served[,] the alien shall forthwith return ... to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.” *Id.*; see *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018).

Contrary to the confusion created by the Petition, Petitioner *is not currently paroled in the United States* and he is therefore subject to expedited removal. See *Pitaluga v. Ripa*, No. 25-cv-61814, DE 21 at 10-12 (S.D. Fla. Oct. 10, 2025) (Smith, J.) (denying habeas petition on substantially similar facts, finding “Petitioners are not currently paroled in the United States and are subject to expedited removal.”).

Finally, Petitioner’s argument that he’s *now* remained physically present in the United States in excess of two years misses the mark. As the expedited removal statute makes clear, it applies to aliens who have “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)(II) (emphasis added). Here, CBP encountered Petitioner within hours of his entry into the United States and determined he was inadmissible. Since Petitioner had been physically present in the United States for less than two years prior to the date of determination of his inadmissibility, he was properly placed in expedited removal.

2) *Expedited removal and Section 1225(b)(1) detention, generally*

Having shown that Petitioner’s initial grant of parole (due to lack of detention facility space) terminated by its own terms in 2022 and that he reverted to the status he had at the time parole was granted—an applicant for admission, which status he still holds—the

remainder of the Section 1225(b)(1) analysis remains unaffected.

An alien who is illegally present in the United States may be removed by, *inter alia*, expedited removal under INA § 235(b)(1), or removal proceedings before an immigration judge under INA § 240. *See* 8 U.S.C. § 1225(b)(1); 8 U.S.C. § 1229a. DHS has discretion to elect expedited removal or to initiate removal proceedings before an immigration judge. *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(b)(1). *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* so long as the alien fits within specified criteria. 8 C.F.R. § 235.3(b)(1)(ii) (emphasis added).

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. 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 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 who 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.” 8 U.S.C. § 1225(b)(1)(A)(iii).

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 also* 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. 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 expressly provides for the detention of aliens originally placed in expedited removal.

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 and cannot establish that they have been physically present in the United States for the continuous 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.” *See Matter of M-S-*, 271 I. & N. Dec. 509, 511 (BIA 2019).⁸

⁸ The Secretary has designated additional categories of aliens pursuant to 8 U.S.C. § 1225(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

Further, 8 U.S.C. § 1225(b)(1)(B)(ii) mandates detention for the purpose of ensuring review of an asylum claim for so long as that review is ongoing, until removal proceedings conclude, unless DHS exercises its discretion to parole the alien. *Jennings*, 583 U.S. at 301-03; *Matter of M-S-*, 27 I&N Dec. at 517.

E. Petitioner's due process rights have not been violated

Petitioner claims Respondents have violated her due process rights. But 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. *Jennings*, 583 U.S. at 298-300.

After *Jennings*, the Supreme Court addressed aliens' due process rights in the context of the expedited removal statute—applicable here—in *DHS v. Thuraissigiam*, 591 U.S. 103 (2020).⁹ The petitioner in *Thuraissigiam* entered the United States without inspection, and immigration authorities apprehended him twenty-five yards from the border. *Id.* at 114. He was placed in expedited removal proceedings and claimed asylum. *Id.* Like Mr. Thuraissigiam, Petitioner here is an applicant for admission who has not been admitted or paroled after inspection by an immigration officer. 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.

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.

⁹ This decision also speaks to the impropriety of the relief Petitioner requests by way of his Petition, noting that release from detention is the only appropriate remedy a habeas petitioner may obtain. *E.g. id.* at 117-18.

§ 1182(d)(5)(A); *see also* 8 C.F.R. §§ 212.5(b); 235.3.

Further, under persuasive authority, Petitioner also cannot establish that his detention violates the Constitution because Petitioner has been detained for less than one month as of the date the Petition was filed. *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* 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*, 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) (same, after three years). Because Petitioner has not submitted evidence that Respondents detained him for any purpose other than resolution of her expedited removal proceedings, his due process rights have not been violated.

CONCLUSION

Because the Court lacks subject matter jurisdiction over Petitioner’s claims, the Petition should be dismissed. Alternatively, because Petitioner is subject to expedited removal and his detention is lawful, constitutional, and mandated by Section 1225(b)(1), Respondents request that the Court deny the Petition.

Respectfully submitted,

JASON A. REDING QUIÑONES
UNITED STATES ATTORNEY

By: Zakarij N. Laux
ASSISTANT U.S. ATTORNEY
Florida Bar No. 93784
United States Attorney's Office
99 N.E. 4th Street, Suite 500
Miami, Florida 33132
(305) 961-9053
Zakarij.Laux@usdoj.gov

Counsel for Respondents