UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case NO. 26-20334-CIV-BLOOM

ALEJANDRO MOREJON VIDAL
Petitioner,
v.
FIELD OFFICE DIRECTOR, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT,
Respondent
_____/

RESPONSE TO ORDER TO SHOW CAUSE

Respondent Field Office Director, U.S. Immigration and Customs Enforcement, hereby responds to the Court's Order to Show Cause (ECF No. 3).

INTRODUCTION

According to his Petition, Petitioner Alejandro Morejon Vidal is Cuban national who was arrested upon his arrival in the United States in March of 2022, placed in removal proceedings under § 240 of the Immigration and Nationality Act (8 U.S.C. § 1229a) and released on recognizance. *See* Petition at Tab B. On October 17, 2025, upon motion of the Department of Homeland Security (DHS), the Immigration Judge dismissed Petitioner's § 240 removal proceedings. Immigration and Customs Enforcement then initiated expedited removal under 8 U.S.C. § 1225(b)(1) and took Petitioner into custody. Petition at ¶ 5.

Petitioner moved for a bond hearing on December 4, 2025, but the Immigration Judge denied the motion on the grounds that the immigration court lacked jurisdiction to conduct a bond hearing. Petition at ¶ 6. Petitioner presents five arguments in support of his Petition for a Writ of Habeas Corpus. The arguments, however, depend on the incorrect assertion that

Petitioner is detained under the authority provided in 8 U.S.C. § 1226, rather than under § 1225(b)(1). The Court lacks jurisdiction to review the dismissal of Plaintiff's original removal proceedings under INA § 240 (8 U.S.C. § 1229a) and over the decision to initiate expedited removal under INA § 235 (8 U.S.C. § 1225(b)(1)). Each of Petitioner's arguments is addressed in turn below.

PROCEDURAL HISTORY

Petitioner, Alejandro Morejon Vidal, is a native and citizen of Cuba who entered the United States without inspection at an unknown date and time. Exh. A, Form I-213, Record of Deportable/Inadmissible Alien dated October 18, 2025 (I-213). On or about March 22, 2022, he was encountered by agents of Customs and Border Protection (CBP), who determined that he had entered the United States illegally. Exh. B, Declaration.[1] Petitioner was released on his own recognizance on or about March 29, 2022. Exh. C, Detention History.

On September 15, 2025, Petitioner was placed in removal proceedings via the issuance of a Notice to Appear (NTA) charging him with inadmissibility under 8 U.S.C. § 1182(a)(6)(A)(i), as an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General. Exh. D, NTA. On October 17, 2025, Petitioner appeared for a hearing before an immigration judge, who sustained the charge in the NTA. Exh. D, NTA; Exh. B, Declaration. On the same date, the immigration judge granted the Department of Homeland Security's (DHS) motion to dismiss proceedings. Exh. E, Order on Motion to Dismiss. Petitioner has not appealed this order. Exh. B, Declaration.

---

[1] Please note that, due to a typographical error, the Declaration reflects an incorrect Case number.

Upon the dismissal of the removal proceedings, ICE ERO took Petitioner into ICE custody pursuant to INA § 235, 8 U.S.C. § 1225, issuing a Notice and Order of Expedited Removal. Exh. C, Detention History; Exh. F, I-860. On or about December 3, 2025, ERO referred Petitioner to the U.S. Citizenship and Immigration Services' (USCIS), Asylum Pre-Screening Officer (APSO) for a credible fear interview after Petitioner claimed fear of return to Cuba. Exh. B.

On December 8, 2025, the immigration judge denied Petitioner's request for custody redetermination for lack of jurisdiction under *Matter of Yajure Hurtado,* 29 I&N Dec. 216 (BIA 2025). Exh. G, Order of the Immigration Judge. Petitioner has not appealed this order. Exh. B, Declaration.

On December 9, 2025, APSO determined that Petitioner had not established a credible fear of torture or persecution. Exh. H, Form I-863. Petitioner requested a review of this determination, and on December 11, 2025, the matter was referred to an immigration judge.[2] *Id.* A review of this determination is currently scheduled for January 26, 2026. Exh. B, Declaration.

Petitioner is presently detained at the Krome North Service Processing Center in Miami, Florida. Exh. B, Declaration. He is detained under 8 U.S.C. § 1225(b)(1).

ARGUMENT

I. The Court Cannot Review the Dismissal of Petitioner's Original Removal Proceedings

[2] 8 C.F.R. § 208.30 provides a credible fear process for any alien subject to an expedited removal order under 8 U.S.C. § 1225(b)(1) and who expresses fear of returning to the country of removal. USCIS has exclusive jurisdiction over making the credible fear determination. 8 C.F.R. § 208.30. If USCIS finds that the alien has not proven credible fear, the Immigration Judge has exclusive jurisdiction to review that determination. *Id.* If USCIS determines that the alien has a credible fear of returning to the country of removal, USCIS issues a Notice to Appear, placing the alien in 8 U.S.C. § 1229a removal proceedings. 8 C.F.R. § 208.30(f).

Petitioner first argues that he is entitled to a writ of habeas corpus "because the Immigration Judge improperly dismissed his [initial removal proceedings under INA § 240] on October 17, 2025; even through said motion to dismiss was made in violation of notice and timeliness requirements in the Immigration Court's Practice Manual." Petition at 3. Petitioner, however, failed to exhaust his administrative remedies with regard to the dismissal of his original removal proceedings, thus foreclosing habeas relief (to the extent that this Court would have jurisdiction to grant any). *See, e.g., Sequeira-Balmaceda v. Reno*, 79 F.2d 1378 (N.D. Ga. 2000) ("Even if this Court did possess jurisdiction over the subject matter of this case, the Court still would not issue the writ of habeas corpus because Petitioner has failed to exhaust his administrative remedies").

A habeas petitioner must normally exhaust administrative remedies before seeking federal court intervention. The exhaustion requirement "aims to provide the agency with a chance to correct its own errors, 'protect[] the authority of administrative agencies,' and otherwise conserve judicial resources by 'limiting interference in agency affairs, developing the factual record to make judicial review more efficient, and resolving issues to render judicial review unnecessary." *Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003) (Sotomayor, J.). Petitioner here was thus required to appeal the dismissal of his removal proceeding to the Board of Immigration Appeals within 30 days of the Immigration Judge's order, as provided in 8 C.F.R. § 1003.1 and 8 C.F.R. § 1240.15. Petitioner, however, did not do so and the dismissal became final and no longer subject to review. *See* 8 C.F.R. § 1003.39.

But even setting aside Petitioner's failure to exhaust his claim related to the dismissal of the original § 240 removal proceedings, this Court would lack jurisdiction to hear the claim because habeas petitions brought under 28 U.S.C. § 2241 are only appropriate for challenging detention itself. Plaintiff's detention was not a result of the dismissal of his INA § 240

proceedings but of his subsequent placement in expedited removal proceedings under 8 U.S.C. § 1225(b).

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* 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).

Insofar as Plaintiff's challenge concerns DHS's discretionary decision to place him in expedited removal, the Court lacks jurisdiction to hear it. 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).[3] 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

[3] 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). None of these enumerated exceptions allowing judicial review are present in this case.

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) (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. Petitioner's detention falls within Congress's stated limitations on judicial review, and 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.").

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 Detained Under the Authority Provided in INA § 235(b)(1), Which Requires Mandatory Detention Without Bond.

Second, Petitioner claims "he is entitled to a bond hearing under INA § 236(a) [(8 U.S.C. § 1226(a))] because he is detained pending a decision on his removal status, not under a valid final order. Petition at 4. Petitioner, however, is not eligible for a bond hearing because he is in expedited removal and detained under the authority provided in 8 U.S.C. § 1225(b)(1) – *not* INA § 236(a). Under INA § 235, "[i]f immigration officials determine that [an] alien is inadmissible because of certain misrepresentations or lack of proper documentation, the alien is to be removed without further hearing or review unless the alien indicates an intention to apply for asylum or a fear of persecution." *Florida v. United States*, 2022 WL 2431414, at *2 (N.D. Fla. May 4, 2022) (Wetherell, J.) (cleaned up). In such cases, an alien who enters the country intending to apply for asylum is referred "for an interview by an asylum officer." 8 U.S.C. § 1225(b)(1)(A)(ii). "If the officer determines at the time of the interview that [the] alien has a credible fear of persecution[,] the alien shall be detained for further consideration of the application for asylum." *Id.* § 1225(b)(1)(B)(ii) (emphasis added). This detention is mandatory. *See id.* § 1225(b)(1)(B)(iii)(IV) ("Any alien subject to the procedures under this clause shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed." (emphasis added)). Accordingly, Petitioner is not eligible for bond. *See* Order at ECF No. 22 in *Buriev v. Warden, Broward Transitional Center*, Case No. 25-60459-CIV-ALTMAN (entered September 26, 2025) (finding that 8 U.S.C. § 1225(b)(1) required detention of alien seeking asylum).

III. The Central District of California's Judgment in *Bautista* Does Not Apply to Petitioner.

Third, Petitioner claims membership in the plaintiff class in *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, pending before the Central District of California, in which the court entered declaratory judgment that class members are detained under 8 U.S.C. § 1226(a); are not "arriving aliens" subject to mandatory detention under § 1225(b)(2); and are entitled to consideration for release on bond by immigration officers and, if not released, a custody redetermination hearing before an immigration judge. Petitioner's claimed membership in the *Maldonado Bautista* class has no effect on these proceedings for several reasons. "First, only the named petitioners sought habeas relief in *Maldonado Bautista*. Second, the named petitioners did not seek nationwide habeas relief. Third, in granting declaratory relief, the California District Court correctly noted that habeas relief could only be afforded to class members who were located within the boundaries of the Central District of California." *A.B.E. v. Warden, Irwin County Detention Ctr.*, 2026 WL 36693, fn. 1 (M.D. Ga. Jan. 6, 2026).

IV. Petitioner's Estoppel Claim Fails for the Same Reason as does His Challenge to the Immigration Judge's Dismissal of his original Removal Proceedings.

Fourth, Petitioner claims the government is equitably estopped from detaining him as an "arriving alien." Petitioner argues that having initially placed him in standard removal proceedings under INA § 240, the government is estopped from "reclassifying" him as an applicant for admission. Petitioner argues that the government is estopped from dismissing those § 240 removal proceedings and placing him in INA § 235(b)(1) expedited removal. *See* Petition at 6. But this is essentially the same as Petitioner's first argument, asserting that the Immigration Judge's dismissal of the § 240 removal proceedings as improper and challenging ICE's

discretionary decision to pace him in expedited removal. As explained above, the Court lacks jurisdiction under 28 U.S.C § 2241 to hear these claims.

V. Petitioner's Release on Recognizance was Revoked Upon his Arrest and Placement in Expedited Removal Proceedings Under INA § 235

Fifth, and finally, Petitioner argues that the Form I-220A Order of Release on Recognizance issued to him following his arrival in March of 2022 was issued pursuant to INA § 236 (8 U.S.C§. § 1226), and Petitioner is therefore eligible for a custody redetermination under INA § 236. Petition at 7. Petitioner argues that by releasing him on recognizance following his arrest and placement in INA § 240 removal proceedings in March of 2022, "DHS implicitly made a custody determination under [INA] § 236, opting for conditional release rather than mandatory detention." But Petitioner's release on his own recognizance in March of 2022 allowed him to be out of custody for the pendency of INA § 240 removal proceedings that have since been dismissed. Petitioner did not appeal that dismissal order and it became final and no longer subject to review. Petitioner was then placed in expedited removal proceedings under INA § 235(b) (8 U.S.C. § 1225(b)(1)). As explained above, an alien in expedited removal proceedings under INA § 235(b)(1) is subject to mandatory detention.

CONCLUSION

Petitioner is properly detained under 8 U.S.C. § 1225(b). Accordingly, the Court should deny Petitioner's habeas petition.

JASON REDING QUINONES
UNITED STATES ATTORNEY

By: */s/ Carlos Raurell*
Assistant U.S. Attorney
Florida Bar No. 529893
United States Attorney's Office

Southern District of Florida
99 NE 4th Street, Florida 33132
Telephone: (305) 961-9243
E-mail: carlos.raurell@usdoj.gov
Counsel for Respondents