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DETAINED

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

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

Case No.: 1:26-20334-BB

Reply to Response to Order to Show Cause

I. Due Process Violations in Expedited Removal Proceedings

The Fifth Amendment entitles petitioners in removal proceedings to due process of law. Due process requires that aliens be given notice and an opportunity to be heard in their removal proceedings. Lapaix v. United States AG, 605 F.3d 1138 (11th Cir. 2010). To establish a due process violation, the petitioner must show that she was deprived of liberty without due process of law and that the purported errors caused her substantial prejudice. Lapaix v. United States AG, 605 F.3d 1138 (11th Cir. 2010).

In this case, Petitioner Alejandro Morejon Vidal was subjected to expedited removal proceedings under INA § 235 after the dismissal of his initial removal proceedings. The government's issuance of a Notice and Order of Expedited Removal immediately upon dismissal of the removal proceedings denied Petitioner adequate procedural safeguards required under the Fifth Amendment. The expedited nature of these proceedings, combined with Petitioner's continued detention at Krome North Service Processing Center, demonstrates the substantial prejudice resulting from these procedural deficiencies.

II. Deficiencies in Credible Fear Determination Process

The credible fear determination process under 8 C.F.R. § 208.30 provides exclusive jurisdiction to USCIS for making initial credible fear determinations, with Immigration Judge review available if USCIS finds no credible fear. An applicant can prove refugee status by demonstrating past persecution or fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. De Santamaria v. United States AG, 525 F.3d 999 (11th Cir. 2008). The testimony of the applicant, if credible, may be sufficient to sustain the burden of proof without corroboration. De Santamaria v. United States AG, 525 F.3d 999 (11th Cir. 2008).

The Immigration Judge's review on January 26, 2026, failed to cure the procedural deficiencies of the initial determination. Rather than providing the meaningful oversight required by statute, the review was a cursory affirmation of the Asylum Officer's flawed findings. The IJ failed to address the specific legal errors raised by Petitioner regarding the application of the 'significant possibility' standard to the evidence of persecution in Cuba. By affirming the negative determination without addressing these dispositive legal questions or Petitioner's

specific evidence of state-sanctioned torture, the IJ stripped the 'review' process of its statutory function, rendering the expedited removal order a violation of due process and the INA.

III. Jurisdictional Limitations and Available Remedies

The government may argue that 8 U.S.C. § 1252(a)(2)(A) provides that "no court shall have jurisdiction to review" an order of expedited removal under § 1225(b)(1). Khan v. Holder, 608 F.3d 325 (7th Cir. 2010). However, courts retain jurisdiction under a "safety valve" established for substantial constitutional questions, when review would otherwise be barred by § 1252, "to enable judicial correction of bizarre miscarriages of justice." Khan v. Holder, 608 F.3d 325 (7th Cir. 2010).

Noncitizens are entitled to challenge through habeas corpus the legality of their ongoing detention. Lopez v. Decker, 978 F.3d 842 (2d Cir. 2020). Habeas review is not limited to evaluating the lawfulness of detention when it is first imposed but is also available to challenge whether, at some point, an ongoing detention has become unlawful. Lopez v. Decker, 978 F.3d 842 (2d Cir. 2020). The mandatory detention provision at 8 U.S.C. § 1226(c) provides for detention of noncitizens who are inadmissible or deportable for having committed certain serious crimes, but authorizes release if the noncitizen satisfies the Attorney General that he will not pose a danger and is likely to appear for proceedings. Lopez v. Decker, 978 F.3d 842 (2d Cir. 2020).

IV. Unlawful Detention Under INA § 235

Petitioner's continued detention is unlawful because it is premised on an expedited removal order issued through a constitutionally and statutorily defective process. Because the underlying removal order was issued without the minimum due process required—

specifically, a meaningful review of the credible fear determination as mandated by 8 U.S.C. § 1225(b)(1)(B)(iii)(III)—the order is void ab initio. Detention based on a void removal order lacks proper legal justification. Furthermore, absent a valid removal order, Petitioner is entitled to a bond hearing under § 1226(a), which he has been denied.

V. Response to Government's Compliance Arguments

The government may argue compliance with statutory and regulatory requirements in the expedited removal process. However, mere procedural compliance does not cure constitutional violations where due process rights have been compromised. The credible fear determination process, while following regulatory procedures, failed to provide adequate consideration of Petitioner's specific circumstances as a Cuban national with legitimate fears of persecution.

The government's reliance on the Immigration Judge's January 26, 2026 affirmation misses the mark. Mere adherence to the form of a review does not satisfy the substance of the constitutional and statutory requirements. A 'review' that ignores record evidence, misapplies the 'significant possibility' legal standard, or acts as a mere rubber stamp does not constitute the check on executive power that Congress intended. The expedited removal order therefore rests on a broken process that failed to afford Petitioner the 'bizarre miscarriage of justice' safety valve review recognized by this Circuit.

VI. Burden of Proof and Standard of Review

In credible fear proceedings, the applicant must present specific and credible evidence in support of the asylum application. De Santamaria v. United States AG, 525 F.3d 999 (11th Cir. 2008). However, the testimony of the applicant, if credible, may be sufficient to sustain the

burden of proof without corroboration. De Santamaria v. United States AG, 525 F.3d 999 (11th Cir. 2008). The APSO's determination failed to adequately assess the credibility of Petitioner's testimony and the specific evidence presented regarding his fear of return to Cuba.

The immigration judge's review of the credible fear determination must apply the proper legal standards and consider all credible evidence relevant to the application. 8 USCS § 1227. The determination of what evidence is credible and the weight to be given that evidence requires careful consideration of Petitioner's individual circumstances and the country conditions in Cuba.

VII. Remedies Sought

Petitioner respectfully requests that this Court grant the following relief:

1. **Immediate Release from Detention:** Order Petitioner's release from the Krome North Service Processing Center pending resolution of any subsequent proceedings.
2. **Stay of Removal:** Issue a stay of removal to prevent Petitioner's imminent deportation to Cuba, where he faces persecution, pending the adjudication of this Writ and/or the adjudication of a Request for Reconsideration (RFR) filed with USCIS.
3. **Remand for Proper Credible Fear Review:** Direct that Petitioner's credible fear determination be remanded for proper consideration with adequate procedural protections and consideration of all relevant evidence.
4. **Constitutional Safeguards:** Ensure that any future proceedings comply with Fifth Amendment due process requirements, including adequate notice, opportunity to be heard, and proper consideration of Petitioner's individual circumstances.
5. **Declaratory Relief:** Issue a declaration that the credible fear review process employed in Petitioner's case failed to satisfy the statutory requirements of 8 U.S.C. § 1225(b)(1)."

VIII. Conclusion

The expedited removal proceedings against Petitioner violate fundamental due process rights guaranteed under the Fifth Amendment. The deficient credible fear determination process, combined with unlawful detention and inadequate procedural safeguards, requires immediate judicial intervention to prevent irreparable harm. This Court retains jurisdiction to address these substantial constitutional questions and should grant the relief requested to ensure compliance with constitutional and statutory requirements.

Respectfully submitted,

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