

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
WHEELING DIVISION

BEKA BAKURADZE;

Petitioner,

v.

MARY ADAMS, et al.,

Respondents.

5:26-cv-00018-JPB-JPM

Honorable James P. Mazzone

OPPOSITION TO RESPONDENT MICHAEL T. ROSE'S MOTION TO DISMISS

Petitioner, by and through his undersigned counsel, hereby opposes Respondent Michael T. Rose's Motion to Dismiss. ECF # 6. Judge Thomas E. Johnston of the Southern District of West Virginia examined this same legal issue (alleged mandatory detention for noncitizens who have been served with an expedited removal order but not removed from the U.S., but instead referred to the U.S. immigration court system), rejected the federal respondents' arguments, and ordered a habeas petitioner's immediate release. *See Gerson Anibal Umana Villatoro v. Warden*, 2:26-cv-00078, Order and Amended Order, copies of which are attached hereto as Exhibits A and B. For clarity, Mr. Villatoro's Reply Brief is also attached hereto as Exhibit C. Judge Johnston heard oral argument on February 9, 2026, denied the motion to dismiss, and ordered Mr. Villatoro to be immediately released from ICE custody. *See Exhibits A and B*. For the same legal reasons set forth in the *Villatoro* case (involving the failure by ICE to act on the expedited removal order and his referral to a U.S. immigration court for formal removal proceedings, which appear to be a waiver of the expedited removal order), Petitioner Beka Bakuradze requests that Respondent

Michael T. Rose's motion to dismiss be denied and that his immediate release from ICE custody be ordered.

Petitioner further states the following in support of his Petition and request for immediate release:

I. **Respondents' Service of an August 2023 Notice to Appear before a U.S. Immigration Judge Supersedes the June 2023 Order of Expedited Removal Which Respondents Did Not Effectuate**

A. **Factual Background**

While Respondents may argue that Petitioner is subject to mandatory detention due to the fact that he was issued an expedited removal order on June 19, 2023 by a U.S. Border Patrol agent, they cannot ignore the fact that the U.S. government granted him parole into the United States on August 8, 2023 and served upon him a Notice to Appear ("NTA") in the New York City Immigration Court (at 26 Federal Plaza, 12th Floor, Room 1237, New York, NY 10278) for a hearing before a U.S. Immigration Judge on August 7, 2024 at 9:30am. *Compare* ECF # 6, page 1 and 6-1, Page 1 with Exhibit D, page 4 (NTA). This NTA was issued to Petitioner by a U.S. Citizenship and Immigration Acting Supervisory Asylum Officer and that action removed the danger of Petitioner being deported from the U.S. pursuant to his June 19, 2023, expedited removal order.

For context, most expedited removal orders are issued to people at the U.S. border (at a U.S. international airport, seaport, international "land bridge" or land crossing). Individuals subjected to expedited removal are held in U.S. Customs and Border Protection ("CBP") custody until such time as they are put on a flight out of the U.S., taken back aboard a sea vessel, or released back into Mexico or Canada. The expedited removal procedure does not contemplate noncitizens being paroled into the U.S., released into the U.S. on their own recognizance, or released on an

order of supervision, only to be “expeditiously removed” at a later time. Expedited removal is just that – *summary* deportation from the U.S. border by a U.S. immigration agent or officer, not a formal hearing process before a U.S. immigration judge in an immigration court. See Exhibit E, “A Primer on Expedited Removal.” As the American Immigration Council observed, “Expedited removal is a process by which low-level immigration officers can *summarily* remove certain noncitizens from the United States without a hearing before an immigration judge.” Exhibit E, page 2 (emphasis added).

B. Argument

The facts are beyond dispute that the U.S. Department of Homeland Security (“DHS”), through its sub-agency U.S. Citizenship and Immigration Services (“USCIS”) issued an NTA to Petitioner on July 25, 2023. This NTA was issued by a USCIS Acting Supervisory Asylum Officer, presumably after he or she interviewed Petitioner and found that he has a credible fear of being returned to his home country. See Exhibit D, page 4. Two weeks later, DHS through its sub-agency Immigration and Customs Enforcement (“ICE”), chose to release Petitioner into the U.S. on parole under its authority under 8 U.S.C. § 1182(d)(5)(A) (and that his parole document was the equivalent of a “Form I-94 Arrival-Departure Record”) on August 8, 2023. See Exhibit D, page 1. These superseding actions show that DHS, USCIS, and especially ICE had no intentions of actually removing Petitioner based on his expedited removal order. To allow ICE to now hold him without eligibility for bond, based on its actions and the actions of DHS and USCIS, would thwart the intention of Congress as expressed in the Immigration and Nationality Act, specifically the bond provisions found in 8 U.S.C. § 1226(a).

For these reasons, the Respondents’ claims that Petitioner should be mandatorily detained until such time as he is deported from the U.S. without a hearing before a U.S. immigration judge

(when he has already been provided with the right to be heard by an immigration judge and to oppose his removal from the U.S. and to seek asylum, withholding of removal, and protection under the Convention Against Torture), flies in the face of reality.

DHS through a USCIS Acting Supervisory Asylum Officer served Petitioner with a Notice to Appear before a U.S. immigration judge and charged him with being a noncitizen present without admission or parole. By doing so, Petitioner's detention is now governed by § 1226(a). Respondents cannot release Petitioner into the U.S. after processing him for expedited removal and **now take a *post hoc* litigation position** that Petitioner must be detained as an arriving alien under § 1225. See *Mostafa Said v. Kristi Noem*, 3:25-cv-938-MOC, 2026 WL 295651, *3 (W.D. N.C. Feb. 4, 2026). A copy of which is attached hereto as Exhibit F.

In another very similar case, the U.S. District Court for the Eastern District of Virginia noted that the habeas petitioner was initially detained and processed for expedited removal pursuant to 8 U.S.C. § 1225(b)(1) in May 2013. But just two months later, he was placed into standard removal proceedings pursuant to 8 U.S.C. § 1229a after a U.S. asylum officer determined that he had a credible fear of returning to Honduras. See *Portillo-Argueta v. Simon*, 1:25-cv-2285 (AJT-WEF), 2026 WL 184194, *4 (E.D. Va. Jan. 23, 2026). A copy of this decision is attached to this Reply Brief as Exhibit G. The U.S. District Court in *Portillo-Argueta* noted that other courts have recognized that §1225(b)(1) only mandates detention of noncitizens arriving in the United States during the pendency of their expedited removal proceedings and the credible fear interview and review process." *Id.*, citing to *Jimenez v. FCI Berlin, Warden*, 799 F. Supp. 3d 59, 69 n.7 (D.N.H. 2025)

The facts in the record of this case clearly show what decision the DHS, USCIS, and ICE officers made in relation to Petitioner. They chose to issue an NTA to him so that he could persue

an asylum claim and to parole him into the U.S. They did not have to do that, but considering their choice to do so, they should not be permitted to use the mere fact that there is an abandoned expedited removal order from the very first day of Petitioner's more than two and a half (2.5) years in the U.S. as an excuse to avoid their Congressionally-mandated obligation to provide him with a bond hearing.

The U.S. District Court for the Eastern District of Virginia observed that:

Respondents' expansive interpretation of § 1225(b)(1), under which Petitioner was required to be mandatorily detained after demonstrating credible fear of returning to Honduras and having been released on bond, all based on an asylum application filed years after his release on bond, and after the government initiated non-expedited removal proceedings, is difficult to reconcile with the plain language of 8 U.S.C. § 1225(b)(1)(B)(ii)'s mandatory detention provision.

Id. at *4 (emphasis added).

There are no disputes to the facts set forth above. These facts come from the Respondents' own filings and from documents that Respondents or their officers or agents served on the Petitioner. *See* ECF 6-1 to 9-5 and Exhibit D. The only dispute is to the reasoning behind the Respondents' efforts to detain Petitioner without a bond hearing, in violation of statute, regulation, and his Constitutional due process rights, as minimal as they are as for a noncitizen.

WHEREFORE, Petitioner respectfully requests that this Court enter an order denying Respondent Michael T. Rose's motion to dismiss (ECF # 6) and requiring his immediate release from custody, with any opinion to follow.

Further, Petitioner respectfully requests that this Court consider including the following provisions in any order of release:

- That Respondents immediately return or facilitate the return of any and all of his property seized or taken from him incident to his wrongful detention; and
- That Respondents take all reasonable measures to ensure that all subordinate agencies and officers are on notice of this Court's order to ensure that agents of Respondents do not negligently violate the order.

Dated: February 19, 2026

**Respectfully submitted,
COUNSEL FOR PETITIONER**

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