

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

CASE NO. 26-20521-cv-ALTONAGA

VICTOR MOREIRA MANTUANO,

Petitioner,

v.

CHARLES PARRA, ASSISTANT FIELD
OFFICE DIRECTOR, KROME NORTH
PROCESSING CENTER, *et al.*,

Respondents.

RESPONDENTS' RETURN TO WRIT OF HABEAS CORPUS

Charles Parra, in his official capacity as Assistant Field Office Director, Krome North Processing Center, Garret Ripa, in his official capacity as Miami Filed Office Director, Immigration and Customs Enforcement's Enforcement and Removal Operation; Todd Lyons, in his official capacity as Acting Director of Immigration and Customs Enforcement, Kristi Noem, in her official capacity as Secretary of the Department of Homeland Security, Pamala Bondi, in her official capacity as Attorney General and the Executive Office for Immigration Review ("EOIR") ("Respondents")¹, through the undersigned counsel, maintain that Victor Moreira Mantuano's ("Petitioner") Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 ("Petition")

¹ A writ of habeas corpus must "be directed to the person having custody of the person detained." 28 USC § 2243. In cases involving present physical confinement, the Supreme Court reaffirmed in *Rumsfeld v. Padilla*, 542 U.S. 426 (2004), 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). Petitioner is currently detained at Krome North Service Processing Center, an ICE detention facility in Miami, Florida. His immediate custodian is Charles Parra, Assistant Field Office Director. The proper Respondent in the instant case is Mr. Parra in his official capacity

(ECF No. 1) should be denied. The Petition should be denied because Petitioner is subject to mandatory detention under § 1225(b)(1)(B)(ii) as he is in expedited removal proceedings and therefore detained pursuant to a valid statutory authority and ineligible for bond.

I. BACKGROUND

The Petitioner is a native and citizen of Ecuador who last entered the United States without inspection on July 08, 2023, through El Paso, Texas. *See* Exh. A, Form I-213, Record of Deportable/Inadmissible Alien, (Form I-213) dated July 8, 2023; Exh. B, Form I-213 dated October 26, 2025.

On the same day that he illegally entered the United States, he was encountered by Customs and Border Protection (CBP) and he was processed under expedited removal proceedings, pursuant to INA § 235(b)(1). *See* Exh. A, Form I-213 dated July 08, 2023. On July 9, 2023, Petitioner was issued a Notice and Order of Expedited Removal. *See* Exh. C, Form I-860, Notice and Order of Expedited Removal. On July 10, 2023, Petitioner was served with Notice to Alien Ordered Removed/Departure Verification. *See* Exh. D, Form I-296, Notice to Alien Ordered Removed/Departure Verification. Petitioner thereafter claimed a fear of being persecuted or tortured in Ecuador. *See* Exh. E, Declaration of Deportation Officer Ordonez. On or about July 23, 2023, Petitioner was interviewed by an asylum officer and the officer found that Petitioner had demonstrated a credible fear of persecution or torture. *Id.*

On July 23, 2023, USCIS issued a Notice to Appear (NTA) charging Petitioner with inadmissibility under INA § 212(a)(6)(A)(i), as amended, 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, and INA § 212(a)(7)(A)(i)(I), as an immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa,

reentry permit, border crossing card, or other valid entry document required by the Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality as required under the regulations issued by the Attorney General under section 211(a) of the Act. *See* Exh. F, NTA dated July 23, 2023.

On August 1, 2023, DHS filed the NTA with the immigration court and initiated proceedings against Petitioner pursuant to INA § 240. *See* Exh. E, Declaration of Deportation Officer Ordonez. On August 7, 2023, ICE ERO paroled Petitioner into the United States. *See* Exh. G, Interim Notice Authorizing Parole; Exh. E, Declaration of Deportation Officer Ordonez. The parole expired on August 5, 2024, and was conditioned on Petitioner not violating any state or federal laws. *See* Exh. G, Interim Notice Authorizing Parole.

On October 23, 2023, Petitioner filed an application for relief from removal with the immigration court. *See*, Exh. E, Declaration of Deportation Officer Ordonez. On June 13, 2025, Petitioner attended a master calendar hearing at the Miami Immigration Court where he admitted the allegations in the NTA. *Id.* The immigration judge sustained both charges of removal. *Id.*

On October 26, 2025, Petitioner was encountered by ICE ERO following an arrest for reckless driving. *See* Exh. B, Form I-213 dated October 26, 2025. Petitioner was subsequently taken into ICE custody. *See* Exh. H, Form I-200, Warrant for Arrest of Alien dated October 26, 2025.

On November 18, 2025, Petitioner's removal proceedings were transferred to the Krome Immigration Court. *See* Exh. I, Notice of Hearing for master calendar hearing on December 1, 2025.

On November 25, 2025, Petitioner requested a custody redetermination hearing before the immigration court. *See* Exh. E, Declaration of Deportation Officer Ordonez. On December 8, 2025, the Immigration Judge denied the request, stating that the Petitioner entered the United States

without inspection and is ineligible for bond. *See* Exh. J, Immigration Judge Order dated December 8, 2025.

Petitioner is scheduled for an individual hearing before the immigration court at the Krome North Service Processing Center on March 18, 2026. *See* Exh. K, Notice of Hearing for master calendar hearing on March 18, 2026. To date, Petitioner remains in ICE custody at the Krome North Service Processing Center in Miami, Florida. *See* Exh. L, Detention History.

II. ARGUMENT

A. Petitioner is subject to mandatory detention under § 1225(b)(1)(B)(ii) because he was placed in expedited removal proceedings.

(i) *The expedited removal process*

8 U.S.C. § 1225(b)(1) is the statutory scheme that governs the expedited removal process and consequent detention. The Supreme Court has explained:

An “alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival . . .)” is deemed “an applicant for admission.” §1225(a)(1). An applicant is subject to expedited removal if, as relevant here, the applicant (1) is inadmissible because he or she lacks a valid entry document; (2) has not “been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility”; and (3) is among those whom the Secretary of Homeland Security has designated for expedited removal. §§ 1225(b)(1)(A)(i), (iii)(I)-(II). Once “an immigration officer determines” that a designated applicant “is inadmissible,” “the officer [must] order the alien removed from the United States without further hearing or review.” §1225(b)(1)(A)(i).

Applicants can avoid expedited removal by claiming asylum. If an applicant “indicates either an intention to apply for asylum” or “a fear of persecution,” the immigration officer “shall refer the alien for an interview by an asylum officer.” §§1225(b)(1)(A)(i)-(ii). The point of this screening interview is to determine whether the applicant has a “credible fear of persecution.” §1225(b)(1)(B)(v).

If the asylum officer finds an applicant’s asserted fear to be credible, the applicant will receive “full consideration” of his asylum claim in a standard removal hearing. 8 CFR § 208.30(f); *see* 8 U. S. C. § 1225(b)(1)(B)(ii). If the asylum officer finds that the applicant does not have a credible fear, a supervisor will review the asylum officer’s determination. 8 CFR § 208.30(e)(8). If the supervisor agrees with it, the

applicant may appeal to an immigration judge, who can take further evidence and “shall make a de novo determination.” §§ 1003.42(c), (d)(1); see 8 U. S. C. §1225(b)(1)(B)(iii)(III).

Dep’t of Homeland Sec. v. Thuraissigiam, 591 U.S. 103, 109-110 (2020) (citations in original). The immigration judge, then, may concur with the asylum officer’s determination, and return the case to DHS for removal; or may disagree with the determination, find the alien possesses a credible fear, vacate the order of the asylum officer on the Form I-860, and return the case to the agency for issuance of a Notice to Appear. See 8 C.F.R. § 208.30(g)(2), 1208.30(g)(2)(iv)(A), (B). At all relevant times, however, the alien, who is in removal proceedings “for further consideration of the application for asylum” is subject to mandatory detention. See INA § 235(b)(1)(B)(ii); see also 8 C.F.R. § 1208.30(g)(2)(iv)(B).

Section 235 of the INA expressly provides for the detention of aliens originally placed in expedited removal. Such aliens “shall be detained pending a final determination of credible fear.” INA § 235(b)(1)(B)(iii)(IV), 8 U.S.C. § 1225(b)(1)(B)(iii)(IV). Aliens found not to have a credible fear “shall be detained . . . until removed.” *Id.* Aliens found to have such a fear, however, “shall be detained for further consideration of the application for asylum.” *Id.* § 235(b)(1)(B)(ii), 8 U.S.C. § 1225(b)(1)(B)(ii). Like all aliens applying for admission, however, aliens detained for further consideration of an asylum claim may generally be “parole[d] into the United States . . . for urgent humanitarian reasons or significant public benefit.” *Id.* § 212(d)(5)(A). Accordingly, the INA’s implementing regulations note that while aliens in expedited proceedings will be detained, if an alien establishes a credible fear, “[p]arole . . . may be considered . . . in accordance with section 212(d)(5) of the INA [(8 U.S.C. § 1182(d)(5))]and [8 C.F.R.] § 212.5.” 8 C.F.R. § 208.30(f).

(ii) *The Petitioner is subject to mandatory detention under § 1225(b)(1)(B)(ii) and is ineligible for bond*

Petitioner argues that detention authority is governed by 8 U.S.C § 1226(a), which requires access to a bond determination consistent with due process. *See* (ECF No. 1 ¶¶ 36-38). Petitioner requests a bond hearing or, in the alternative, his outright release. 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 § 1226(a).

Under § 1225, “[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 Petitioner's reliance upon authority discussing Matter of Yajure Hurtado is Misplaced.*

The Petitioner's reference to authorities rejecting *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), are inapt, as the Petitioner was placed in expedited removal proceedings. *See* (ECF No. 1 at 8-9). The Respondents recognize that this Court has previously held under different circumstances that § 1226(a), not § 1225(b)(2), applies to noncitizens who are not apprehended upon arrival to the United States.² However, as detailed above, the Petitioner in this case was immediately apprehended upon arrival to the United States, and was immediately placed in expedited removal proceedings. *See* Exh. C, Form I-860, Notice and Order of Expedited Removal.

In August of 2023, the Petitioner was granted humanitarian parole pursuant to 8 U.S.C. § (d)(5)(A), but parole under that section grants no status, as humanitarian parole “shall not be regarded as an admission of the alien” and thereafter “shall continue to be dealt with in the same manner as that of any other application for admission to the United States.” Accordingly, as an applicant for admission in expedited removal proceedings, the Petitioner is subject to mandatory detention.

B. Petitioner's Due Process Claim fails because he is detained pursuant to a valid statutory authority.

Petitioner's constitutional claim fails as a matter of law. Mandatory detention under § 1225(b) has repeatedly been upheld as constitutionally permissible. *See Jennings v. Rodriguez*, 583 U.S. at 299–301. The Fifth Amendment does not require bond hearings for aliens detained pursuant to valid statutory authority, nor does Petitioner possess a protected liberty interest in release on

² *See Alvarez Puga v. Assistant Field Office Director Krome, et al.*, No. 25-24535-CIV-ALTONAGA (S.D. Fla. Oct. 15, 2025) (concluding that “prudential exhaustion requirements are excused for futility” and finding that “section 1226(a) and its implementing regulations govern Petitioner's detention, not section 1225(b)(2)(A)”). The government is appealing the judgment that 8 U.S.C. § 1226(a), rather than 8 U.S.C. § 1225(b), governs detention under the facts presented in the cases above appealing to the Eleventh Circuit in *Hernandez Alvarez v. Warden, Federal Detention Center Miami, et al.*, No. 25-14065 (11th Cir.) and *Cerro Perez v. Assistant Field Office Director, et al.*, No. 25-14075 (11th Cir.). The circumstances in this case are materially different.

bond where Congress has mandated detention. The Due Process Clause does not prohibit Congress from imposing categorical detention rules in the immigration context. *See Demore v. Kim*, 538 U.S. 510, 528 (2003). In addition, the Eleventh Circuit has held that “the expedited removal process does not violate an alien’s due process rights.” *Francis v. U.S. Att’y Gen.*, 603 F. App’x 908, 912-13 (11th Cir. 2015).

Petitioner’s reliance on *Zadvydas v. Davis* is misplaced. To the extent that Petitioner argues that his detention violates his Due Process rights, as interpreted by the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678 (2001) (ECF No. 1 at ¶¶ 28-33), this Court should reject that claim because *Zadvydas* governs post-removal-order detention under § 1231, not pre-removal detention under § 1225.

C. The Court lacks jurisdiction to prohibit transfer of the Petitioner.

In addition to seeking an order requiring a bond hearing or directing the release of the Petitioner, he seeks an order prohibiting his transfer from the Southern District of Florida. *See* (ECF No. 1) at 14. Such relief is explicitly beyond the jurisdiction of this Court pursuant to 8 U.S.C. § 1252(g), which states as follows:

(g) Exclusive jurisdiction

Except as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), **including section 2241 of title 28, United States Code, or any other habeas corpus provision**, and sections 1361 and 1651 of such title, 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 commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter. (emphasis added)

The Eleventh Circuit has recognized that § 1252(g) forecloses a challenge to “the methods ICE used to detain [a Petitioner] prior to his removal hearing.” *Alvarez v. U.S. Immigration and Customs Enforcement*, 818 F.3d 1194, 1204 (11th Cir. 2016) (citing *Gupta v. McGahey*, 709 F.3d

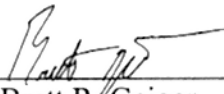
1062 (11th Cir. 2013)). As “securing an alien while awaiting [his removal hearing] constitutes an action taken to commence proceedings” any claims concerning the method of his detention “are foreclosed by § 1252(g)” and left solely to the discretion of the Attorney General. *See Alvarez*, 818 F.3d at 1203-04. Accordingly, the Court lacks jurisdiction to direct Respondents to detain the Petitioner at any particular location, and the Court should deny the request to prohibit any transfer of the Petitioner.

III. CONCLUSION

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

Respectfully submitted,

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