UNITED STATES DISCTRICT COURT
SOUTHER DISTRICT OF FLORIDA

CASE NO. 26-60257-CIV-SINGHAL

YANKIEL MARTINEZ ALFONSO

Petitioner,

v.

CURRENT WARDEN, Miramar ICE Field Office; **GARRETT J. RIPA**, Director of Miami Field Office, U.S. Immigration and Customs Enforcement; **TODD LYONS**, Acting Director of U.S. Immigration and Customs Enforcement, In his official capacity; **KRISTI NOEM**, Secretary of the U.S. Department of Homeland Security; and **PAM BONDI**, Attorney General of the United States, in their official capacities,

Respondents.
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RESPONSE TO ORDER TO SHOW CAUSE

Respondents, by and through the undersigned Assistant United States Attorney, submits this Response in Opposition to Petitioner's Petition for Habeas Corpus ("Petition"). As demonstrated below, the Court should deny the Petition because Petitioner is subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(1)(A) as he is in expedited removal proceedings and therefore detained pursuant to a valid statutory authority and ineligible for bond.

I. INTRODUCTION

Petitioner challenges the lawfulness of his continued detention by the Department of Homeland Security ("DHS") pursuant to the expedited removal provisions of 8 U.S.C. § 1225(b)(1). *See* Petition at ¶ 7. Specifically, Petitioner contends that DHS lacked statutory

authority to arrest and detain him because he has been physically present in the United States for more than two years. *Id.* at ¶ 48, 49. And finally, Petitioner further characterizes the commencement of expedited removal proceedings as a violation of due process and the APA. *Id.* at ¶ 112. Petitioner's arguments fail first and foremost because this Court lacks jurisdiction to review his claims under provisions of 8 U.S.C. §1252(a)(2)(A). Accordingly, Petitioner's due process rights have not been violated and granting him release is not authorized or warranted under applicable law. Therefore, for the reasons set forth below, the Petition should be denied.

II. FACTUAL AND PROCEDURAL BACKGROUND

The relevant facts are not in dispute. Petitioner is a Cuban citizen who, on March 1, 2022[1], entered the United States without inspection, admission or parole, was encountered the same day, detained, placed in removal proceedings and released on his own recognizance three weeks later[2]. *Id.* at Exh. 2, 3, 4; *also see* Exh. A (Form I-213). At a preliminary hearing on January 27, 2026, the removal proceedings were dismissed at DHS's request. *Id.* at ¶ 45. Petitioner did not oppose the motion. *See* Exh. B (Dismissal Order). Upon the dismissal of the removal proceedings, DHS took Petitioner into custody and placed him in expedited removal proceedings. *Id.* at ¶ 48.

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[1] The habeas mistakenly alleges Petitioner entered the United States on March 28, 2022. *See* Petition at ¶ 2, 38.

[2] Petitioner makes various conflicting statements regarding the manner of his release. First, he concedes he was "released under terms of supervision" but then appears to claim he was "parol[ed] into the United States. *See* Petition at ¶ 2, 43. However, Petitioner has submitted evidence that he was released on his own recognizance. *See* Exh. 4. Respondents also submitted evidence corroborating that the release was on recognizance. *See* Exh. A (Form I-213).

III. ARGUMENT

As a preliminary matter, Petitioner argues that DHS is detaining him pursuant to the mandatory detention provision in 8 U.S.C. § 1225(b)(2). *See* Petition at ¶ 76. Contrary to Petitioner's assertion, he is detained pursuant to the mandatory detention provision in section 1225(b)(1) because he is the subject of ongoing expedited removal proceedings. In the same vein, the "July 2025 guidance" and the BIA decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) has no relevance in this case.

Generally, an alien may be removed from the United States by expedited removal under section 1225(b)(1) or removal proceedings before an immigration judge under section 1229(a). *See* 8 U.S.C. § 1225(b)(1); 8 U.S.C. § 1229(a). DHS has discretion to place applicants for admission, such as Petitioner, in expedited removal or to initiate removal proceedings. *Matter of E-R-M- & L-R-M-*, 25 I&N Dec. 520, 524 (BIA 2011). Applicants for admission placed in expedited proceedings are subject to mandatory detention under section 1225(b)(1), while those placed in removal proceedings are subject to mandatory detention under section 1225(b)(2). 8 U.S.C. § 1225(b)(1); 8 U.S.C. § 1225(b)(2)(A). DHS may initiate expedited removal proceedings "at any time." *See* 8 C.F.R. § 235.3(b)(1)(ii). Here, DHS elected to seek dismissal of Petitioner's removal proceedings and place him in expedited removal proceedings.

A. Petitioner is Subject to Expedited Removal Proceedings and Lawfully Detained pursuant to 8 U.S.C. § 1225(b)(1)(A)

Petitioner is an applicant for admission, subject of ongoing expedited removal proceedings and remains subject to mandatory detention. Section 1225(a)(1) defines an "applicant for admission" as 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 . . .) . . . ."

8 U.S.C. § 1225(a)(1). Accordingly, by its very definition, the term "applicant for admission" includes two categories of aliens: (1) arriving aliens, and (2) aliens present without admission. *See Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (explaining that "an alien who tries to enter the country illegally is treated as an 'applicant for admission'" (citing 8 U.S.C. § 1225(a)(1)). An arriving alien is defined, in pertinent part, as "an applicant for admission coming or attempting to come into the United States at a port-of-entry [("POE")] . . .." 8 C.F.R. §§ 1.2, 1001.1(q). "An 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 [POE] . . . is subject to the provisions of [8 U.S.C. § 1182(a)] and to removal under [8 U.S.C. § 1225(b)] or [8 U.S.C. § 1229(a)]." 8 C.F.R. § 235.1(f)(2). Here, Petitioner did not present himself at a POE but instead entered the United States on March 1, 2022, between POEs and without having been admitted after inspection by an immigration officer. Petitioner is, therefore, an alien present without admission and, consequently, an applicant for admission.

Applicants for admission who are intercepted at entry can be subject to an expeditious process to remove them from the United States under section 1225(b)(1). 8 U.S.C. § 1225(b)(1). Under this process—known as expedited removal—aliens arriving in the United States or aliens, as designated by the Secretary of Homeland Security, who entered illegally and 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).

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.) (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 enter without inspection may be placed in expedited removal proceedings, and Respondents' decisions in implementing and executing the expedited removal proceedings are not subject to judicial review.

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 ("Secretary") 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 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). As relevant to this case, the Secretary (and previously the Attorney General) have designated only subsets of that class in the 2004 Designation. *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"); Designating Aliens for Expedited Removal, 90 Fed. Reg. 8139 (Jan. 24, 2025).

Here, 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." 2004 Designation, 69 Fed. Reg. at 48,880. Specifically, DHS encountered Petitioner within 100 air miles of the Unites States-Mexico border, on the same day he entered the United States, determined he was inadmissible, and did not admit or parole him. Therefore, Petitioner is detained pursuant to section 1225(b)(1) as a result of the ongoing expedited removal proceedings.

B. This Court does Not Have Jurisdiction

Since Petitioner is detained pursuant to section 1225(b)(1) as a result of the ongoing expedited removal proceedings, 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)(A) 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). 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. The Petitioner's detention falls within Congress's stated limitations on judicial review, and the Petitioner has not met his burden of establishing subject matter jurisdiction.

C. Due Process Does Not Require Petitioner's Release

Petitioner claims that his detention violates due process and therefore he should be released. However, the plain language of 8 U.S.C. § 1225(b)(1)(A) imposes detention without a bond hearing for applicants for admission such as Petitioner. *See* 8 U.S.C. §§ 1225(b)(1)(B)(ii), (b)(1)(B)(iii)(IV).

In *Jennings v. Rodriguez*, 138 S. Ct. 830, 842 (2018), the Supreme Court held that 8 U.S.C. § 1225(b) unambiguously mandates detention through the pendency and conclusion

of proceedings, regardless of duration, and that the statute authorizes release only through DHS's discretionary parole authority. *Jennings*, 138 S. Ct. 830, 843-45 (2018). After *Jennings*, the Supreme Court addressed aliens' due process rights in the context of the expedited removal statute in *Thuraissigiam v. U.S. Dep't of Homeland Sec.*, 591 U.S. 103, 140 S. Ct. 1959 (2020). The Court explained that extending due process rights to "an alien who tries to enter the country illegally" would "undermine the 'sovereign prerogative' of governing admission to this country and create a perverse incentive to enter at an unlawful rather than a lawful location." *Id.* at 1982-1983 (citation omitted). Accordingly, the Court declined to extend due process rights to arriving aliens and applicants for admission beyond those provided for by statute. *Id.* at 1982-3.

In line with Supreme Court precedent, Petitioner is only entitled to due process as set forth in the Immigration and Nationality Act ("INA"). The INA provides for relief from detention under the parole procedure set forth in U.S.C. § 1182(d)(5)(A). *See* 8 U.S.C. § 1182(d)(5)(A); *see also* 8 C.F.R. §§ 212.5(b) (2016). Parole decisions are an integral part of the admissions process and inadmissible aliens cannot challenge such decisions as a matter of constitutional right. *See Fernandez-Roque v. Smith*, 734 F.2d 576, 582 (11th Cir. 1984); *Jean v. Nelson*, 727 F.2d 957, 966, 972 (11th Cir. 1984), *aff'd*, 472 U.S. 846 (1985); *Alvarez-Mendez v. Stock*, 941 F.2d 956, 963 (9th Cir. 1991).

D. Petitioner Does Not Have Standing to Bring His Claim Under the Administrative Procedure Act ("APA")

Petitioner also does not have standing to bring his APA claim. By the APA's terms, it is available only for final agency action "for which there is no other adequate remedy in court." 5 U.S.C. § 704. Thus, Petitioner's APA claim is independently barred by this limitation in 5 U.S.C. § 704. In *Trump v. J.G.G.*, the Supreme Court held that where the claims

for relief, as here, "necessarily imply the invalidity of their confinement" those claims "must be brought in habeas." *Trump v. J.G.G.*, 145 S. Ct. 1003, 1005 (2025). As noted by Justice Kavanaugh in his concurrence in *J.G.G.*, "given 5 U.S.C. § 704, which states that claims under the APA are not available when there is another adequate remedy in court, I agree with the Court that habeas corpus, not the APA, is the proper vehicle here." Id. at 1007 (Kavanaugh, J. concurring). Here, as in *J.G.G.*, habeas is an "adequate remedy" through which Petitioner can challenge his detention. Even if Petitioner's APA claim had merit, which it does not, the result would be the same as that in habeas – release from detention. The Supreme Court's holding is consistent with well-established law that habeas is generally the only possible district court vehicle for challenges brought pursuant to the immigration statutes. Id. (citing *Heikkila v. Barber*, 345 U.S. 229, 234-35 (1953)).

Accordingly, in view of the above, the Petition should be denied.

Respectfully submitted,

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