UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case NO. 26-20767-CIV-GAYLES

JORGE ZUNIGA ORTIZ,
Petitioner,
v.
WARDEN, FEDERAL DETENTION CENTER MIAMI, *et al.*
Respondents.
_____/

RESPONSE TO ORDER TO SHOW CAUSE

Respondents, Warden of Federal Detention Center Miami, *et al.*,[1] hereby respond to the Court's Order file a return "certifying the true cause of the [Petitioner's] detention," 28 U.S.C. § 2243. ECF No. 5.

INTRODUCTION

Petitioner is a Honduran national. Petition at ¶ 14. He alleges that he has resided in the United States since June 28, 2013. *Id.* at ¶ 41. Petitioner alleges that he was arrested following a traffic stop on January 7, 2026 and placed in removal proceedings pursuant to 8 U.S.C. § 1229a, for being inadmissible under 8 U.S.C. §1182(a)(6)(A)(i), as someone who entered the United States without inspection. *Id.* at ¶ 47, 48. Petitioner, however, is not in removal proceedings under 8 U.S.C. § 1229a, but rather in expedited removal under 8 U.S.C.§ 1225(b)(1) and subject to mandatory detention under that statute.

[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). The only appropriate respondent named is the Warden of FDC Miami, E.K. Carlton. All other respondents should be dismissed.

Incorrectly alleging that he is detained pursuant to 8 U.S.C. § 1225(b)(2) while in removal proceedings under 8 U.S.C. § 1229a, Petitioner argues that § 1225(b)(2) "does not apply to those who previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings." (Petition at ¶ 52); that that his detention is instead governed by 8 U.S.C. § 1226(a), which allows consideration of release on bond (*id.* at ¶ 55); and that his detention without bond is a violation of his Constitutional due process rights (*id.* at ¶ 62). Petitioner demands his release from custody or a bond hearing pursuant to 8 U.S.C. § 1226(a). *Id.* at "Prayer for Relief."

As explained below, Petitioner is in expedited removal under 8 U.S.C. § 1225(b)(1) – not standard removal proceedings under 8 U.S.C. § 1229a – and subject to mandatory detention without eligibility for release on bond.

FACTUAL AND PROCEDURAL BACKGROUND

Jorge Zuniga is a native and citizen of Honduras. *See* Exh. A, Form I-213, Record of Deportable/Inadmissible Alien, (Form I-213), dated June 3, 2013. On or about June 3, 2013, Customs and Border Protection (CBP) encountered Petitioner in Eagle Pass, Texas. *See* Exh. A, Form I-213, dated June 3, 2013. CBP determined that Petitioner unlawfully entered the United States and took him into custody. *See* Exh. A, Form I-213, dated June 3, 2013; *see also* Exh. B, Declaration. On June 4, 2013, CBP determined that the Petitioner was inadmissible, and placed him in expedited removal proceedings pursuant to INA § 235(b)(1). *See* Ex. C, Form I-860, Notice and Order of Expedited Removal, dated June 4, 2013; *see also* Exh. D, Form I-296, Notice to Alien Ordered Removed, dated June 4, 2013.

On June 12, 2013, Petitioner was transferred to Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations (ERO) custody. *See* Exh. E, Detention History. Petitioner claimed fear or returning to Honduras and was afforded an interview with U.S. Citizenship and Immigration Services (USCIS). *See* Exh. B, Declaration. On July 19, 2013, Petitioner had credible fear interview which resulted in a positive credible fear finding. *See* Exh. B, Declaration.

On July 20, 2013, Petitioner was issued a Notice to Appear (NTA), charging him with inadmissibility under INA § 212(a)(7)(A)(i)(I). *See* Exh. F, Form I-862, Notice to Appear, dated July 20, 2013. The NTA was filed with the Executive Office for Immigration Review (EOIR) on September 11, 2013. *See* Exh. F, Form I-862, Notice to Appear, dated July 20, 2013.

On July 22, 2013, ICE ERO issued Petitioner a $7,500 bond. *See* Exh. G, Form I-286, Notice of Custody Determination, dated July 22, 2013. Petitioner then requested a custody redetermination hearing, and the Immigration Judge granted Petitioner a $1,500 bond. *See* Exh. H, Immigration Judge Order, dated October 3, 2013.

On September 13, 2023, Petitioner failed to appear to his hearing before Miami Immigration Court and was ordered removed in absentia. *See* Exh. I, Immigration Judge Order, dated September 13, 2023. Petition subsequently filed a motion to reopen, and the Immigration Judge reopened the case. *See* Exh. J, Immigration Judge Order, dated October 18, 2023.

On January 7, 2026, Florida Highway Patrol and ICE ERO conducted a vehicle stop and encountered Petitioner. *See* Exh. K, Form I-213, dated January 7, 2026. On that same day, Petitioner was issued a warrant for his arrest and taken into ICE ERO custody. *See* Exh. L, Form I-200, Warrant for Arrest of Alien, dated January 7, 2026; *see also* Exh. E, Detention History.

Petitioner's next hearing is scheduled for March 19, 2026, before the Krome Immigration Court. *See* Exh. M, Notice of Hearing, dated February 19, 2026.

To date petitioner has not requested a custody hearing since being detained on January 7, 2026. *See* Exh. B, Declaration. Petitioner is currently detained at Miami Federal Detention Center. *See* Exh. E, Detention History.

I. The Court Lacks Jurisdiction to Review DHS's Decision to Place Petitioner in Expedited Removal Pursuant to 8 U.S.C. § 1225(b)(1).

An alien present in the United States without admission or parole may be removed from the United States by expedited removal under 8 U.S.C. § 235(b)(1) or removal proceedings before an immigration judge under 8 U.S.C. § 1229a. *See* 8 U.S.C. § 1225(b)(1); 8 U.S.C. § 1229(a). The department of Homeland Security has discretion to place aliens in expedited removal under 8 U.S.C. § 1225(b)(1) or to initiate removal proceedings before an immigration judge under 8 U.S.C. § 1229a. *Matter of E-R-M- & L-R-M-*, 25 I&N Dec. 520, 524 (BIA 2011).

The governing regulations do not limit DHS's authority to choose between expedited removal and § 1229a 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).

Section 1225(b)(1) allows DHS to place an alien in in expedited removal if the alien "has not been admitted or paroled into the United States" and if, upon screening, the alien "has not affirmatively shown, to the satisfaction of an immigration officer, that the alien has 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)(II). The "burden of proof rests with the alien to affirmatively show that he or she has the required continuous physical presence

in the United States." 8 C.F.R. § 235.3(b)(ii). An alien who was not inspected and admitted or paroled into the United States, but who satisfies an immigration officer that he or she has been continuously physically present in the United States for the 2-year period immediately prior to the date of determination of inadmissibility, is not placed in expedited removal under 8 U.S.C. § 1225(b)(1), but "shall be detained in accordance with section [8 U.S.C. § 1225(b)(2)] for a proceeding under [8 U.S.C. § 1229a]." 8 C.F.R. § 235.3(b)(ii). An alien who was not inspected and admitted or paroled into the United States and who fails to demonstrate to the requisite presence to the immigration officer may be placed in expedited removal under 8 U.S.C. § 1225(b)(1).

Here, DHS placed Petitioner in expedited removal pursuant to 8 U.S.C. § 1225(b)(1). Insofar as Petitioner challenges DHS's decision to place him in expedited removal, the Court lacks jurisdiction to review the decision. 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 from his placement in expedited removal. 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 under 8 U.S.C. § 1225(b)(1). *See* 8 U.S.C. § 1252(a)(2)(A)(i). Because each 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 either 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).

Subsection 1252(e) permits habeas review of expedited removal determinations but limits review to three particular questions: (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. None of these enumerated exceptions allowing judicial review are present in this case. And the Court's ability to determine whether a habeas petitioner is, in fact, an "alien," as permitted by § 1252(e)(2)(A), is limited to determining whether the petitioner is "not a citizen or national of the United States." *See* 8 U.S.C. § 1101(a)(3) (defining "alien" as used in this chapter).

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 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 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 not subject to judicial review.

Petitioner's detention "arises from" and "relates to" the operation and implementation of his removal. Indeed, as another district court has explained, his 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 those made by Petitioner here, to expedited removal. *See, e.g., Mokanu v. Warden, Federal Detention Center Miami*, No. 25-24121-ARTAU, ECF No. 19 (S.D.Fla. Feb. 19, 2026) (holding that 8 USC 1252(g) prohibits the Court in a habeas proceeding from reviewing the denial of bond to a person detained pursuant to 8 U.S.C. § 1225); *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 Petitioners' 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 8 U.S.C. § 1225(b)(1), Which Requires Mandatory Detention Without Bond.

Petitioner suggests that he is entitled to a bond hearing under 8 U.S.C. § 1226(a), but that is incorrect. Petitioner 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* 8 U.S.C. § 1226(a).

This is true even if Petitioner is applying for asylum. Under 8 U.S.C. § 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)).

The Attorney General, in *Matter of M-S-*, unequivocally recognized that 8 U.S.C. §§ 1225, which requires detention, and 1226(a), which allows for consideration of release on bond, do not overlap but describe "different classes of aliens." 27 I&N Dec. at 516. The Attorney General also held that aliens present without admission and placed into expedited removal proceedings are detained under 8 U.S.C. § 1225 even if like Petitioners here, they are later placed in 8 U.S.C. § 1229(a) removal proceedings. 27 I&N Dec. at 518-19.

Accordingly, Petitioner is in expedited removal under 8 U.S.C. § 1225(b)(1) and ineligible for release on 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. Petitioners' Detention Does Not violate his Due Process Rights.

As for Petitioner's due process claim, Petitioners' detention does not violate the due process clause of the Fifth Amendment – even where the length of detention is lengthy. *See Chaviano v. Bondi*., Case 1:25-cv-22451-MD, DE 32 at 17-18 (S.D. Fla. June 23, 2025):

> To the contrary, there is ample authority for the principle that detention, even for far longer periods, pending immigration proceedings does not violate due process rights. *See, e.g.*, *O.D. v. Warden, Stewart Det. Ctr.*, No. 4:20-CV-222-CDL-MSH, 2021 WL 5413968, at *5 (M.D. Ga. Jan. 14, 2021), *report and recommendation adopted*, 2021 WL 5413966 (M.D. Ga. Apr. 1, 2021) (denying due process challenge to nineteen months in immigration custody, nothing, "a significant factor weighing against a finding that Petitioner's detention has become unreasonably prolonged is the fact that he has been provided with a bond hearing, a custody re-determination, and BIA *de novo* review of the [Immigration Judge]'s custody decision"); *Sigal v. Searls*, No. 1:18-CV-00389, 2018 WL 5831326, at *5, 9 (W.D.N.Y. Nov. 7, 2018) (denying habeas relief to petitioner detained for seventeen months after "tak[ing] into account all of the factual circumstances"); *see also Hylton v. Shanahan*, No. 15-CV-1243-LTS, 2015 WL 3604328, at *6 (S.D.N.Y. June 9, 2015) (detention without bail for roughly two years did not violate due process); *Luna-Aponte v. Holder*, 743 F. Supp. 2d 189, 197 (W.D.N.Y. 2010) (three years).
>
> . . . Petitioner has not submitted evidence that he has been detained for any other purpose than resolution of his removal proceedings. . . .. Taking into consideration all of the circumstances presented here, this Court finds Petitioner has not shown a basis for finding that his due process rights have been violated as the result of his detention.

Chaviano, Case 1:25-cv-22451-DAMIAN, DE 32 at 17-18.

Petitioner's due process claim here fares no better, and he has not submitted evidence that Respondents detained him for any purpose other than resolution of his expedited removal proceedings; thus, his due process rights have not been violated.

CONCLUSION

Based upon the foregoing, the Petition should be dismissed or denied.

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