

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO: 26-60436-CIV-WPD**

JOSE MIGUEL REYES BENITEZ

Petitioner,

v.

**WARDEN, BROWARD TRANSITIONAL
CENTER, GARRETT RIPA, FIELD OFFICE
DIRECTOR, MIAMI ERO, ICE.**

Respondents.

RESPONSE TO ORDER TO SHOW CAUSE

Respondents by and through the undersigned Assistant United States Attorney file this Response to Order to Show Cause [DE 6] requesting that the Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 [DE 1] ("Petition) be denied and state in support thereof as follows:

I. INTRODUCTION

Petitioner, Jose Miguel Reyes Benitez ("Petitioner") is presently in expedited removal proceedings, thus making his detention proper under 8 U.S.C. § 1225(b)(1). Further, Petitioner's habeas claim is precluded by the jurisdiction stripping provision of 8 U.S.C. §1252(a)(2)(A)(i). Accordingly, the Petition should be denied.

II. PROCEDURAL HISTORY/BACKGROUND

The Petitioner, Jose Miguel REYES BENITEZ (Petitioner), is a native and citizen of Honduras who last entered the United States without inspection on May 13, 2013 through Hidalgo, TX. *See* Exh. A, Form I-213, Record of Deportable/Inadmissible Alien, (Form I-213)

dated January 10, 2026; *see also* Exh. B, Form I-862, Notice to Appear (NTA) dated June 28, 2013.

On the same day that he illegally entered the United States, he was encountered by Border Patrol (BP) and he was processed under expedited removal proceedings, pursuant to INA § 235(b)(1). *See* Exh. C, Declaration of Deportation Officer Jason J. Clarke. Petitioner thereafter claimed a fear of being persecuted or tortured in Honduras. *Id.* On or about June 18, 2013, Petitioner was interviewed by an asylum officer and the officer found that Petitioner had demonstrated a credible fear of persecution or torture. *Id.* Exh. B, Form I-862, NTA dated June 28, 2013

On June 28, 2013, U.S. Citizenship and Immigration Services issued a NTA charging Petitioner with inadmissibility under 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. *Id.*

On July 10, 2013, Petitioner was released from custody on his own recognizance. *See* Exh. D, Detention History.

On January 15, 2014, DHS filed the NTA with the immigration court and initiated removal proceedings against Petitioner pursuant to INA § 240. *See* Exh. C, Declaration of Deportation Officer Jason J. Clarke.

On August 24, 2020, Petitioner filed an application for relief from removal with the immigration court. *See*, Exh. C, Declaration of Deportation Officer Jason J. Clarke.

On August 20, 2021, Petitioner filed written pleadings with the immigration court admitting the allegations in the NTA and conceding the sole charge of removability. *See* Exh. E, Written Pleadings dated August 19, 2021.

On February 08, 2023, Petitioner attended a master calendar hearing at the Miami Immigration Court where the immigration judge took pleadings and sustained the charge of removal. *Id.*

On May 10, 2024, Petitioner attended an individual hearing. *Id.* At that hearing, Petitioner and the Department of Homeland Security (DHS), made an oral motion to administratively close proceedings. *Id.* On May 10, 2024, the immigration judge granted the motion, and the proceedings were administratively closed thereby removing the case from the Immigration Court's active docket. *Id.*

On June 18, 2025, DHS filed a motion to recalendar removal proceedings in order to place the case back on the Immigration Court's active docket. *Id.*

On January 08, 2026, Petitioner was encountered by ICE ERO in Sarasota County Jail after being arrested on a traffic offense. Exh. A, Form I-213 dated January 10, 2026; *see also* Exh. F, I-200, Warrant for Arrest of Alien dated January 08, 2026.

ICE took custody of Petitioner and he is currently being held at the Broward Transitional Center (BTC) in Pompano Beach, FL. *See* Exh. D, Detention History.

On February 03, 2026, Petitioner's removal proceedings were transferred from the non-detained docket at the Miami Immigration Court to the immigration court at BTC. *See* Exh. G, Notice of Hearing dated February 03, 2026.

Petitioner is scheduled for a master calendar hearing before the immigration court at BTC on March 10, 2026. *See* Exh. H, Notice of Hearing for master calendar hearing on March 10,

2026. To date, Petitioner has not requested a custody redetermination hearing. *See* Exh. C, Declaration of Deportation Officer Jason J. Clarke.

III. ARGUMENT

A. The Court lacks Jurisdiction to Hear Petitioner's Habeas Claim.

1. Removal Proceedings

A foreign national (referred to as an “alien” in U.S. immigration law) who is illegally present in the United States may be removed by, *inter alia*, expedited removal under INA § 235(b)(1), or removal proceedings before an immigration judge under INA § 240. *See* INA § 235(b)(1), 8 U.S.C. § 1225(b)(1); INA § 240, 8 U.S.C. § 1229a. DHS has discretion to place aliens in expedited removal under INA § 235 or to initiate removal proceedings before an immigration judge under INA § 240. *Matter of E-R-M- & L-R-M-*, 25 I&N Dec. 520, 524 (BIA 2011). Here, DHS elected to place the Petitioner in expedited removal proceedings pursuant to INA § 235. *See* 8 C.F.R. § 235.1(f)(2) (providing that “[a]n 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 port-of-entry, except as otherwise permitted in this section, is subject to the provisions of [INA § 212(a)] and to removal under [INA §§ 235(b) or 240]”); *Matter of W-C-B-*, 24 I&N Dec. 118, 122 (BIA 2007) (affirming the dismissal of proceedings when “removal proceedings [under INA § 240] [a]re not necessary to remove the respondent from the United States”). The regulations do not limit DHS’s authority to choose between expedited removal and 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).

2. Standing

A party filing a complaint in federal court must demonstrate that it possesses Article standing to raise its claims and that the court has subject matter jurisdiction over those claims. *See*

Lujan v. Defenders of Wildlife, 504 U.S. 555, 561 (1992). The party asserting federal-court jurisdiction has the burden of proving that such jurisdiction exists. *Nuveen Mun. Trust ex rel. Nuveen High Yield Mun. Bond Fund v. WithumSmith Brown, P.C.*, 692 F.3d 283, 293 (3d Cir. 2012). The presumption is that a federal court lacks jurisdiction without affirmative evidence that it exists, and a district court may “weigh the evidence and satisfy itself as to the existence of its power to hear the case.” *Id.*

3. Congress has Limited this Court's Jurisdiction

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 precisely from the expedited removal process. 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 by Congress under 8 U.S.C. § 1225(b)(1). *See* 8 U.S.C. § 1252(a)(2)(A)(i). Because 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 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).

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). 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 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, with limited exceptions, not subject to judicial review.

Likewise, Petitioner’s claims do not fall under any of the exceptions permitting judicial review of expedited removal proceedings under § 1252(e). Section 1252(e)(1) provides that “no court ... enter declaratory, injunctive, or other equitable relief” pertaining to an order of expedited removal except as “specifically authorized in a subsequent paragraph of this subsection.” Section 1252(e)(2), in turn, is the only means of reviewing an order of expedited removal, stating in its entirety:

(2) Habeas corpus proceedings

Judicial review of any determination made under section 1225(b)(1) of this title is available in habeas corpus proceedings, but shall be limited to determinations of—

(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, has been admitted as a refugee under section 1157 of this title, or has been granted asylum under section 1158 of this title,

such status not having been terminated, and is entitled to such further inquiry as prescribed by the Attorney General pursuant to section 1225(b)(1)(C) of this title.

8 U.S.C. § 1252(e)(2)(emphasis added). As specified in § 1252(e)(5), “[t]here shall be no review of whether the alien is actually inadmissible or entitled to any relief from removal.” And § 1252(e)(4) provides that, in the event that § 1252(e)(2) is satisfied, the sole available relief is that the alien “be provided a hearing in accordance with section 1229a of this title” (i.e. a removal proceeding to decide the “inadmissibility or deportability of the alien”). *See also* 8 U.S.C. § 1229a(a)(1). None of these enumerated exceptions are applicable in this case.

B. Petitioner is an Applicant for Admission who Entered without Valid Travel Documents or Inspection and is Subject to not only Expedited Removal Proceedings but also is Properly Detained Pursuant to 8 U.S.C. § 1225(b)(1).

The Supreme Court in *Jennings v. Rodriguez*, 583 U.S. 281 (2018) reviewed the expedited removal statute. In reviewing the detention authority, the *Jennings* court noted that an alien who “arrived in the United States,” or is “present” in the country, but who “has not” been admitted is treated as “an applicant for admission”. *Id.* at 287 (quoting 8 U.S.C. § 1225) (emphasis added). Therefore, both arriving aliens and aliens present without admission, as applicants for admission, may be removed from the United States by, *inter alia*, expedited removal procedures under 8 U.S.C. § 1225(b)(1) or removal proceedings before an Immigration Judge under 8 U.S.C. § 1229a. 8 U.S.C. §§ 1225(b)(1), (b)(2)(A), 1229a; *Jennings*, 583 U.S. at 287 (describing how “applicants for admission fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)”). Immigration officers have discretion to apply 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. *E-R-M- & L-R-M-*, 25 I&N Dec. at 524; *see also Matter of Q. Li*, 29 I&N Dec. 66, 68 (BIA 2025) (“DHS may place aliens arriving in the United States in either expedited removal proceedings

under [8 U.S.C. § 1225(b)(1)], or full removal proceedings under [8 U.S.C. § 1229a]” (citations omitted)).

Applicants for admission whom DHS places into expedited removal under 8 U.S.C. § 1225(b)(1) are subject to detention under 8 U.S.C. § 1225(b)(1); such aliens (including those referred for 8 U.S.C. § 1229a removal proceedings after establishing a credible fear of persecution or torture) are ineligible for a custody redetermination hearing before an Immigration Judge. 8 U.S.C. § 1225(b)(1)(B)(ii) (providing for detention of any alien who is found to have established a credible fear of persecution in expedited removal proceedings for further consideration of their asylum application), (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.”); *see also* 8 C.F.R. § 235.3(b)(2)(iii) (“An alien whose inadmissibility is being considered under this section or who has been ordered removed pursuant to this section shall be detained pending determination and removal.”), (b)(4)(ii) (“Pending the credible fear determination by an asylum officer and any review of that determination by an [IJ], the alien shall be detained.”); *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019) (holding that aliens present without admission, placed in expedited removal, and transferred to 8 U.S.C. § 1229a removal proceedings after establishing a credible fear of persecution or torture are subject to detention under 8 U.S.C. § 1225(b)(1) and are ineligible for release under 8 U.S.C. § 1226).

C. Petitioner’s Due Process Rights have Not been Violated.

Petitioner claims Respondents have violated his due process rights. [DE 1 at pg. 7(13)]. But the Supreme Court held that 8 U.S.C. § 1225(b) unambiguously mandates detention through the pendency and conclusion of removal proceedings, regardless of their duration. *Jennings*, 583 U.S. at 298-300. Consistent with Supreme Court precedent, Petitioner is only entitled to due

process as set forth in the INA. The INA provides for relief from detention under the parole procedure set forth in 8 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); 235.3.

Petitioner also cannot establish that his detention violates the Constitution. *See e.g. O.D. v. Warden, Stewart Detention Ctr.*, 2021 WL 5413968, at *4-5 (M.D. Ga. Jan. 14, 2021) (Report and Recommendation), *adopted* 2021 WL 5413966 (M.D. Ga. Apr. 1, 2021) (denying habeas relief to petitioner who had been detained for nineteen months); *Sigal v. Searls*, 2018 WL 5831326 at *5, 9 (W.D.N.Y. Nov. 7, 2018) (denying habeas relief to petitioner detained for seventeen months); *see also Hylton v. Shanahan*, 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*, 143 F. Supp. 2d 189, 197 (W.D.N.Y. 2010) (same, after three years).

Because Petitioner has not submitted evidence that Respondents detained him for any purpose other than resolution of his expedited removal proceedings, his due process rights have not been violated.

III. CONCLUSION

Based upon the foregoing reasons, the Amended Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 should be denied.

Dated: February 25, 2026

Respectfully submitted,

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