

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

CASE NO. 0:26-cv-60462-JB

FRANCIS MARTIN BESTARD MATOS,

Petitioner,

vs.

FACILITY DIRECTOR, BROWARD TRANSITION CENTER,

Respondents.

**RESPONDENTS' RETURN/RESPONSE TO PETITION FOR WRIT OF HABEAS
CORPUS AND MEMORANDUM OF FACT AND LAW IN SUPPORT OF SAME**

Respondents¹ file this Return to Petitioner's Petition for Writ of Habeas Corpus [DE 1] (hereinafter the "Petition") and respond to Petitioner's Emergency Motion for Temporary Restraining Order and Stay of Removal, [DE 4], Petitioner's Emergency Notice and Request for Order Prohibiting Removal or Transfer [DE 5], and this Court's Order to Show Cause [DE 7]. This action should be dismissed as Petitioner was properly detained pursuant to 8 U.S.C. § 1225(b)(1).

I. FACTUAL BACKGROUND

Petitioner, Francis Bestard Matos (Petitioner), is a native and citizen of Cuba. **Exhibit A:** Form I-213 dated February 19, 2022. On or about February 19, 2022, Petitioner was encountered by the U.S. Customs and Border Patrol (CBP) near the United States/Mexico border. After admitting he unlawfully entered without valid travel documents, CBP determined the alien was

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 the Broward Transitional Center. D.E. 1 at ¶ 15. The Proper Respondent and immediate custodian at the Broward Transitional Center is Carlos Nunez.

inadmissible. *Id.* CBP initiated removal proceedings, pursuant to section 240 of the Immigration and Nationality Act (INA), by issuing a Notice to Appear (NTA), dated February 23, 2022, against Petitioner. **Exhibit B:** NTA dated February 23, 2022. The NTA charged him with being removable under section 212(a)(6)(A)(i) of the INA, 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. *Id.*

On February 23, 2022, CBP served Petitioner with an order of release on recognizance, Form I-220A, and instructed him to report to any future hearing date before the U.S. Executive Office for Immigration Review (EOIR). Ex A. On August 20, 2025, Petitioner attended a master calendar hearing at the EOIR Miami Immigration Court. At that hearing, the U.S. Department of Homeland Security (DHS) made an ore tenus motion to dismiss the INA § 240 removal proceedings pursuant to 8 C.F.R. § 239.2(a)(7). The immigration judge granted DHS's motion on the same date. **Exhibit C:** Order of the Immigration Judge, dated August 20, 2025. Immediately thereafter, the U.S. Department of Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations (ERO) encountered Petitioner and detained him pursuant to INA § 235. On the same date, ERO issued Petitioner an Expedited Removal Order, Form I-860, pursuant to INA § 235(b)(1). **Exhibit D:** Notice and Order of Expedited Removal and Form I-867A/B, Record of Sworn Statement in Proceedings under Section 235(b)(1).

On August 20, 2025, ERO booked Petitioner at the Florida South Side Facility South (FSSFS). **Exhibit E:** Detention History. On September 20, 2025, Petitioner was transferred to the Glades County Detention Facility. On October 15, 2025, Petitioner was thereafter transferred to Krome Service Processing Center (Krome). As of October 15, 2025, Petitioner is currently detained at the Broward Transitional Center (BTC) in Pompano Beach, Florida.

On September 5, 2025, Petitioner filed an appeal of the immigration judge's August 20, 2025, dismissal order with the Board of Immigration Appeals (BIA). **Exhibit F:** BIA Receipt Notice. Petitioner's appeal of the immigration judge's dismissal order remains pending. To date, Petitioner remains in ICE custody at BTC, located in Pompano Beach, Florida. Ex E.

II. ARGUMENT

A. 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. § 1225 (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). Respondents have 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 the Department of Homeland Security'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).

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, 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 does not make such a showing may be placed in expedited removal under 8 U.S.C. § 1225(b)(1).

Here, the Department of Homeland Security placed Petitioner in expedited removal pursuant to 8 U.S.C. § 1225(b)(1). Ex D pg. 3. Insofar as Petitioner challenges DHS’s decision to place him in expedited removal, the Court also 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)).

Petitioner challenges his detention, which arose 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 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 alleged. Moreover, 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). Petitioner does not raise any of these questions.

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 indicates 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 Chaviano v. Bondi.*, Case 1:25-cv-22451-MD, 2025 WL 1744349, *4 (S.D. Fla. June 23, 2025) ("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., 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 1342 (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. Given that this Court lacks jurisdiction to review any challenge to removal, Plaintiff cannot show a likelihood of success on the merits and his requests to enjoin his removal and transfer [DE 4 and 5] must also be denied.

B. Court Lacks Jurisdiction to Stay Transfer Because it Lacks Jurisdiction to Review Decisions of Where to Detain Alien to Facilitate Removal.

8 U.S.C. § 1252(a)(2)(B)(ii) deprives courts of jurisdiction over "any decision or action of the Attorney General...the authority for which is specified under this subchapter to be in the

discretion of the Attorney General....” 8 U.S.C. § 1252(a)(2)(B). In turn, section 1231(g)(1), which falls under the same subchapter, provides that “[t]he Attorney General shall arrange for appropriate places of detention for aliens detained pending removal or a decision on removal.” 8 U.S.C. § 1231(g)(1).

“Courts have interpreted these statutes to mean that a district court lacks jurisdiction to enjoin the government from transferring immigration detainees to other districts, as those decisions fall within the discretion of the Attorney General.” *Barrios v. Ripa*, No. 1:25-CV-22644, 2025 WL 2280485, at *5 (S.D. Fla. Aug. 8, 2025) (holding that Court lacks jurisdiction to enjoin transfer of alien detainee) citing *Calla-Collado v. Att’y Gen. of the U.S.*, 663 F.3d 680, 685 (3d Cir. 2011) (stating that Congress vested DHS and as a “part of DHS, ICE” “with [the] authority to enforce the nation’s immigration laws” and “the authority to determine the location of detention of an alien in deportation proceedings...and therefore, to transfer aliens from one detention center to another”); *Van Dinh v. Reno*, 197 F.3d 427, 433 (10th Cir. 1999) (finding that “[t]he Attorney General is mandated to ‘arrange for appropriate places of detention for aliens detained pending removal.’ ” (citing 8 U.S.C. § 1231(g)(1)). Consequently, this Court may not enjoin a transfer. Accordingly, Petitioner’s motions/notices seeking to enjoin his transfer [DE 4 and 5] must be denied as the Court lacks jurisdiction over the same.

C. 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. DE pg. 2. 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 Buriev v. Warden, Broward Transitional Center*, Case No. 25-60459-CIV-ALTMAN, 2025 WL 2763202 (S.D. Fla. September 26, 2025) (finding that 8 U.S.C. § 1225(b)(1) required detention of alien seeking asylum).

D. Petitioners' Detention Does Not violate the Due Process Clause of the Fifth Amendment.

As for Petitioner's due process claim, Petitioners' detention pending determination of his request for asylum does not violate the due process clause of the Fifth Amendment – even where the length of detention is lengthy:

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).

As Respondents point out, Petitioner has not submitted evidence that he has been detained for any other purpose than resolution of his removal proceedings. *See Resp.* at 17–18.

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 v. Bondi., Case 1:25-cv-22451-MD, 2025 WL 1744349, *8 (S.D. Fla. June 23, 2025).

E. Petitioner failed to Exhaust his Administrative Remedies

Lastly, the Court should dismiss the petition for writ of habeas corpus for failure to exhaust administrative remedies. A habeas petitioner must normally exhaust administrative remedies before seeking federal court intervention. The exhaustion requirement “aims to provide the agency with a chance to correct its own errors, ‘protect[] the authority of administrative agencies,’ and

otherwise conserve judicial resources by ‘limiting interference in agency affairs, developing the factual record to make judicial review more efficient, and resolving issues to render judicial review unnecessary.’ *Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003) (Sotomayor, J.).

The Petition does not address why Petitioner failed to avail himself of the administrative remedies available to him, and makes no argument to the Court why this requirement should be obviated in this instance. By regulation, the BIA has authority to review IJ custody determinations. *See* 8 C.F.R. §§ 1003.1(b)(7), 1003.38. Here, Petitioner’s removal proceedings are pending, thus he has not availed himself of the administrative process and remedies available to him before proceeding to this Court in hopes of shopping for a more favorable forum. Accordingly, the Petition should be dismissed for failure to exhaust administrative remedies.

III. CONCLUSION

As mentioned above, the Petition should be dismissed because detention is lawful a under § 1225 (b)(1) and because Petitioner has failed to exhaust his administrative remedies before seeking relief from the Court. Additionally, Petitioner’s motions/notices seeking to enjoin his transfer [DE 4 and 5] must be denied as the Court lacks jurisdiction over the same.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 25, 2026, I electronically filed the foregoing with the Clerk of Court using CM/ECF.

Respectfully submitted,

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UNITED STATES ATTORNEY

By: /s/ Francisco Armada
Assistant United States Attorney