

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

CASE NO. 26-cv-60559-LEIBOWITZ

Elias Gacita Chelala,

Petitioner,

v.

Pamela Bondi, U.S. Att’y General, *et al.*,

Respondents.

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**RESPONDENTS’ RESPONSE TO WRIT OF HABEAS CORPUS**

Pamela Bondi, U.S. Att’y General, *et al.*,<sup>1</sup> (“Respondents”), through the undersigned counsel, hereby respond to the Court’s Order to Show Cause [ECF No. 6]. Respondents maintain that Elias Gacita Chelala’s (“Petitioner”) Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 (“Petition”) [ECF No. 1] should be denied.

**I. BACKGROUND**

Petitioner is a native and citizen of Cuba. *See* Petitioner’s Exhibit B, at 1. On November 22, 2023, Petitioner arrived for their Customs Border Patrol (“CBP”) One appointment to apply for admission into the United States from Mexico via the San Ysidro, California. *See* Exhibit B, Deportation Officer Declaration, at 2; Exhibit A, I-213, at 2. CBP determined that Petitioner was

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<sup>1</sup> 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 Broward Transition Center. *See* Petition at ¶ 24. Therefore, the Proper Respondent and immediate custodian at the Broward Transitional Center is acting Assistant Field Office Director (AFOD) Carlos Nunez. *See Rumsfeld v. Padilla*. Accordingly, all other Respondents should be dismissed as improper parties.

not in possession of valid documents to enter the United States and issued a Notice to Appear (NTA) charging Petitioner as an arriving alien and as inadmissible under § 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 Immigration and Nationality Act (INA), 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* Exhibit B, at 2.

On March 20, 2024, Petitioner was paroled under 8 U.S.C § 1182(d)(5)(A); INA § 212(d)(5) into the United States. *Id.* Petitioner's parole authorized him to remain in the United States for a temporary period not to exceed November 20, 2025. *See* Petitioner's Exhibit G, Notice and Order of Expedited Removal.

On September 30, 2025, an Immigration Judge granted Petitioner's Motion to Terminate removal proceedings. *See* Petitioner's Exhibit E. On January 28, 2026, Petitioner was encountered by Immigration and Customs Enforcement ("ICE"), Enforcement and Removal Operations ("ERO"). Petitioner was taken into ICE custody after ICE ERO determined that Petitioner was a citizen and national of Cuba with no legal status in the United States. *See* Exhibit B, at 3. On the same day, Petitioner was provided with a Notice and Order of Expedited Removal, charging him with inadmissibility under 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 Immigration and Nationality Act (INA), 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* Petitioner's Exhibit G, at 1.

Petitioner claimed fear of returning to Cuba and on February 9, 2026, was given a credible fear determination interview by a U.S. Citizenship and Immigration Services (USCIS) asylum officer. *See* Petition at ¶ 47. The USCIS asylum officer determined Petitioner did not have a credible fear of persecution or torture. *Id.* On February 27, 2026, an Immigration Judge vacated USCIS's negative credible fear determination. *See* Exhibit C, Immigration Judge Decision, at 1.

To date, Petitioner has not filed a custody redetermination request. *See* Exhibit B, Deportation Officer Declaration, at 3. Petitioner remains in ICE custody at the Broward Transitional Center and is detained pursuant to INA § 235(b)(1); 8 U.S.C. 1225(b)(1). *Id.*

## II. ARGUMENT

### A. Petitioner is an Arriving Alien Subject to Mandatory Detention under 8 U.S.C. § 1225(b)(1).

#### (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).

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

The definition of an arriving alien includes "an applicant for admission coming or attempting to come into the United States at a port-of-entry." 8 C.F.R. §§ 1.2, 1001.1(q). "An arriving alien remains an arriving alien even if paroled pursuant to section 212(d)(5) of the Act [8 U.S.C. § 1182(d)(5)], and even after any such parole is terminated or revoked." 8 C.F.R. § 1.2. Moreover, when the purposes of such parole shall, in the opinion of the Secretary of Homeland Security, have been served "the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States." 8 U.S.C. § 1182(d)(5)(A); 8 C.F.R. § 212.5(e)(2)(i) (providing that when parole ends the alien "shall be restored to the status he or she

had at the time of parole”). Arriving aliens in expedited removal proceedings are subject to mandatory detention, pending a credible fear determination, and if no credible fear, until removed. 8 U.S.C. § 1225(b)(1)(B)(i)(IV).

Here, Petitioner’s release on parole did not change his status as an arriving alien. *See Duran Orosco v. Pam Bondi, et al.*, Case No. 26-CV-20553-LEIBOWITZ (entered February 4, 2026) (finding that Petitioner’s initial release on parole “shall not be regarded as an admission of the alien,” and did not change his status as an “arriving alien.”) 8 U.S.C. § 1225(b)(1) required detention of alien seeking asylum). Since Petitioner is an arriving alien in expedited removal proceedings, he is properly detained under 8 U.S.C. § 1225(b)(1) – not § 1226(a)<sup>2</sup> and is therefore subject to mandatory detention. Accordingly, Petitioner is ineligible 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).

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

The Department of Homeland Security (“DHS”) has the 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). Further, the governing regulations do not limit the DHS’s authority to choose between expedited removal and removal proceedings to the time of the initial encounter but rather authorize

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<sup>2</sup> Even if, *arguendo*, Petitioner was detained pursuant to 8 U.S.C. § 1226, the immigration judge is divested of jurisdiction to grant him bond pursuant to regulation. *See* 8 C.F.R. § 1003.19(h)(2)(i)(B). If an arriving alien is subject to mandatory detention under Section 1225(b), “an immigration judge ‘may not’ conduct a bond hearing to determine whether [the] arriving alien should be released into the United States during removal proceedings.” *Id.* (quoting 8 C.F.R. § 1003.19(h)(2)(i)(B)).

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).

DHS may place an alien in expedited removal under § 1225(b)(1) 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, DHS placed Petitioner in expedited removal proceedings 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)).

The Court also lacks jurisdiction over Petitioner’s challenge to his detention because it 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 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 Monteliev 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, including this court, 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 (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 Petitioner’s claims do not fall within the limited categories of 8 U.S.C. § 1252(e) for which judicial review is available.

**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. 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).

**D. Petitioner’s Detention Does Not violate the Due Process Clause of the Fifth Amendment.**

Petitioner’s constitutional claim fails as a matter of law. As argued above, 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 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).

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.

**E. Petitioner failed to Exhaust his Administrative Remedies**

This Court can dismiss on the alternative grounds that Petitioner failed to exhaust his 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.).

Here, Petitioner, has not requested a custody redetermination hearing before an Immigration Judge and therefore not availed himself of the administrative remedies available to him. *Id.* For this alternative reason, the Petition should be dismissed for failure to exhaust his administrative remedies.

### III. CONCLUSION

For the reasons provided above, Petition should be dismissed or denied.

**Respectfully submitted,**

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### **CERTIFICATE OF SERVICE**

I hereby certify that on March 3, 2026, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the Service List via CM/ECF.

By: s/ Brittany Brock  
Brittany Brock  
Special Assistant U.S. Attorney