UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 25-cv-22451-DAMIAN

SERGIO MONTELIER CHAVIANO,

Petitioner,

v.

PAMELA BONDI, U.S. Attorney General, et al.,

Respondents.

_____________________________________/

PLAINTIFF'S EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION STAYING CREDIBLE FEAR PROCEEDINGS

Petitioner Sergio Montelier Chaviano, by and through the undersigned, moves the Court to stay the ongoing credible fear process under 8 U.S.C. § 1225(b)(1)(B) in order to preserve the status quo, the integrity of these proceedings, and Petitioner's Constitutional right to petition the Court for a writ of habeas corpus. For the same reasons why the expedited removal order, expedited removal process, and the Petitioner's expedited removal-based detention under § 1225(b)(1) are unlawful and not authorized by law, the ongoing credible fear process proceedings are unlawful and not authorized by law as well.

Should the Court deny this motion, Petitioner requests an administrative stay of the ongoing credible fear process under 8 U.S.C. § 1225(b)(1)(B) for one week to allow Petitioner the ability to request an emergency stay from the Court of Appeals. *See United States v. Texas*, 144 S. Ct. 797, 798 (2024) ("Administrative stays do not typically reflect the court's consideration of the merits of the stay application. Rather, they 'freeze legal proceedings until the court can rule on a party's request for expedited relief.' ") (citation omitted).

CERTIFICATION OF EMERGENCY

Pursuant to Local Rule 7.1(d)(1), the undersigned certify as follows:

> After reviewing the facts and researching applicable legal principles, we certify that this motion in fact presents a true emergency (as opposed to a matter that may need only expedited treatment) and requires an immediate ruling because the Court would not be able to provide meaningful relief to a critical, non-routine issue after the expiration of seven days. We understand that an unwarranted certification may lead to sanctions.

As explained below, the undersigned believe that Respondents are proceeding with credible fear proceedings against Petitioner not only unlawfully, but with the intent to moot out these proceedings, evade judicial review of their recent unlawful practices of using expedited removal proceedings to facilitate mass deportation without the actual process required by law, and to effectuate a *de facto* suspension of the writ. See [ECF No. 13 at 2–3] (granting in part Petitioner's prior motion [ECF No. 12], but not denying it in any part, including Petitioner's request for a stay of removal).

Petitioner's counsel before the immigration agencies, Ms. Michelle Acebo, has provided the attached declaration under penalty of perjury explaining how Respondents have been trying to rocket through credible fear proceedings without barely any notice and in a manner to impede Petitioner's right to the assistance of counsel. **Exh. A** (sworn declaration of Attorney Acebo and copies of email communications with DHS). Although Petitioner's position is that the expedited removal proceedings, as well as the credible fear proceedings, pending against him are both illegal, he had to request a credible fear interview to avoid immediate summary deportation without any further process. *See* 8 U.S.C. § 1225(b)(1)(A)(i) ("the officer shall order the alien removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum under section 1158 of this title or a fear of persecution").

CERTIFICATE OF CONFERRAL

Although a pre-filing conference is not required for motions for injunctive relief under Local Rule 7.1(a)(3), Petitioner wishes to inform the Court of the following as it emphasizes the emergency nature of the circumstances faced by Petitioner.

On Friday, June 6, 2025, at 4:12 p.m. (see Notice of Electronic Filing for D.E. 15), Respondents filed a motion for extension of time to submit their return to Petitioner's petition for writ of habeas corpus. In that motion, Respondents stated that they transferred Petitioner to El Paso, Texas on June 3, 2025 (the same day the Court issued its Order to Show Cause [D.E. 13]), that they thereafter returned Petitioner to this district, and that "ERO referred Petitioner's matter to U.S. Citizenship and Immigration Services for an interview as a next step." [D.E. 15 at 1–2, ¶¶ 4–5 & 10.]

The interview with USCIS is a credible fear interview as contemplated by 8 U.S.C. § 1225(b)(1)(B). Processing through the credible fear interview process is a step that precedes expedited removal from the United States should Petitioner fail the interview. § 1225(b)(1)(B)(iii). Counsel for Petitioner and Respondents did confer about this topic prior to Respondents' filing of their motion for an extension of time, and the scheduling of the credible fear was discussed during that conferral.

That same day, Friday, June 6, 2025, at 5:41 p.m., Petitioner's counsel emailed Respondent's counsel asking:

> Can you please let us know your clients' position on a motion to stay the expedited removal and/or credible fear proceedings, regardless of what part of the process the cases are in, while the habeas petitions are being litigated? We would be seeking relief under the AWA to preserve the integrity of the habeas proceedings, and under Rule 65 in the alternative.

Later that day, at 9:04 p.m., Petitioner's counsel sent a second email to Respondents' counsel asking:

> Please, if you can, let us know your position today or tomorrow. We plan to file a time sensitive motion before Monday.

To date, the undersigned have not received a response from Respondents' counsel, and they presume that this motion is opposed.

BACKGROUND

This case is before the Court on an amended petition for habeas corpus after Petitioner's unlawful arrest and detention (purportedly) pursuant to 8 U.S.C. § 1225(b)(1) at the Miami Immigration Court on May 23, 2025. [D.E. 4.] The Court issued an Order to Show Cause. [D.E. 13.] Respondents' counsel filed an Unopposed Motion for Extension of Time to Respond to Order to Show Cause on June 6, 2025, adding, however, that "[a]s of today's date, in the afternoon, the undersigned counsel has been informed that ERO referred Petitioner's matter to U.S. Citizenship and Immigration Services for an interview as a next step." [D.E. 15 at 2, ¶ 10.]

This unlawful "next step" reinforces and compounds the error of unlawfully applying the expedited removal scheme to Petitioner. *See* 8 U.S.C. § 1225(b)(1)(A)(ii) (credible fear process as part of expedited removal). He and other noncitizens who dared to attend their scheduled immigration court hearings throughout the country risked this fate because of "coordinated dragnet [operations] testing out new legal levers . . . to carry out mass arrests."[1]

As shown *infra*, Petitioner's immigration court case was dismissed upon the motion of counsel for Department of Homeland Security (DHS). However, his counsel in immigration court appealed the dismissal, **Exh. B**, meaning that he remains in ongoing removal proceedings before the Executive Office of Immigration Review (EOIR), the agency that encompasses the immigration courts and the Board of Immigration Appeals (BIA). 8 CFR § 1003.1. But Respondents are ignoring that fact, and the BIA has no authority at all to stay expedited removal proceedings—only this Court can. Respondents' "new legal levers" have forced Petitioner into a logically contradictory position: he remains in proceedings before EOIR (*see* 8 U.S.C. § 1229a; 8 CFR § 1003.1), while simultaneously being forced to assert his fear of return in a fast-track deportation process that currently forecloses any EOIR involvement. *See* § 1225(b)(1).

Petitioner is before this Court in habeas proceedings challenging his clearly improper designation as an "alien described" under the expedited removal statute. § 1225(b)(1)(A)(iii)(II). Petitioner has been present in the United States continuously for over three years and never received the inadmissibility determination required by the expedited removal statute within two years of arrival. He has also been paroled as a matter of law. These two facts, without more, place him outside the scope of expedited removal, *see id.*, a fast-track deportation process for recent arrivals at the border, at sea, and at ports-of-entry.

Petitioner seeks to preserve the status quo in the instant case and stay Respondent's referral for a credible fear screening and any subsequent steps in the expedited removal process. *See Mainsail Parent, LLC v. Jewell*, No. 24-22875-CIV, 2024 WL 4483325, at *1 (S.D. Fla. July 31, 2024), *set aside,* No. 24-22875-CIV, 2024 WL 3935946 (S.D. Fla. Aug. 26, 2024) (temporary restraining orders serve the " 'underlying purpose of preserving the status quo and preventing irreparable harm just so long as is necessary to hold a hearing, and no longer' ") (citation omitted).

[1] "ICE Agents Wait in Hallways of Immigration Court as Trump Seeks to Deliver on Mass Arrest Pledge." May 22, 2025. Associated Press News. https://apnews.com/article/immigration-courts-arrests-trump-ice-deportations-fa96435d4ec021cc8ff636b23d80d848

Petitioner seeks injunctive relief to stay agency action that clearly departs from statutory authority and that, without district court intervention, would otherwise evade review. *See Manges v. Camp*, 474 F.2d 97, 99 (5th Cir. 1973) (recognizing district courts' federal question jurisdiction to review clearly *ultra vires* agency action even if a withdrawal statute does not authorize review); *George Kabeller, Inc. v. Busey*, 999 F.2d 1417, 1419 (11th Cir. 1993) (same).

Petitioner therefore moves the Court to stay Respondents' *ultra vires* referral for a credible fear screening or any other steps related to expedited removal until further order of the Court. *See Nat'l Fed'n of Indep. Bus. v. Dep't of Lab., Occupational Safety & Health Admin.*, 142 S. Ct. 661, 665 (2022) (per curiam) ("Administrative agencies are creatures of statute" that "accordingly possess only the authority that Congress has provided."). Respondents have no authority in the Immigration and Nationality Act or its implementing regulations to perform a credible fear screening while Petitioner concurrently awaits review from the Board of Immigration Appeals of the disposition in his immigration court case—or even at all under the other facts of this case. Petitioner meets all of the criteria for a temporary restraining order or preliminary injunction staying the credible fear review process.

ARGUMENT

The petitioner brings this motion as a motion to preserve the integrity of these proceedings under the All Writs Act, and also as a motion for a stay under the traditional stay factors.

I. A stay of the ongoing credible fear proceeding for the purpose of preserving the integrity of these habeas proceedings is warranted under the All Writs Act.

This case is brought relying upon the Suspension Clause of the United States Constitution, Article 1, Section 9, Clause 2 for the invocation of this Court's constitutional jurisdiction. It is "uncontroversial . . . that the privilege of habeas corpus entitles the prisoner to a meaningful opportunity to demonstrate that he is being held pursuant to 'the erroneous application or interpretation' of relevant law." *Boumediene v. Bush*, 553 U.S. 723, 779 (2008) (*quoting INS v. St. Cyr*, 533 U.S. 289, 302 (2001)). "The habeas court **must** have sufficient authority to conduct a meaningful review of both the cause for detention and the Executive's power to detain." *Id.* at 783 (emphasis added). And the Supreme Court recently made clear to the Government that the Courts have the power "to issue injunctive relief to prevent irreparable harm and to preserve [their] jurisdiction over the matter." *A.A.R.P. v. Trump*, 145 S. Ct. 1364, 1369 (2025) (*citing* 28 U.S.C. § 1651(a)); *see also Klay v. United Healthgroup, Inc.*, 376 F.3d 1092, 1102 (11th Cir. 2004) ("Regarding pending proceedings, a court may enjoin almost any conduct 'which, left unchecked, would have . . . the practical effect of diminishing the court's power to bring the litigation to a natural conclusion.' ") (citation omitted) (ellipsis in original). In fact, courts have "the **constitutional obligation** to protect their jurisdiction from conduct which impairs their ability to carry out Article III functions." *Klay*, 376 F.3d at 1097 (*quoting Procup v. Strickland*, 792 F.2d 1069, 1074 (11th Cir. 1986) (en banc)) (emphasis added).

The All Writs Act permits courts to "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a). Further, the Supreme Court recognizes "a limited judicial power to preserve the court's jurisdiction or maintain the status quo by injunction pending review of an agency's action through the prescribed statutory channels." *F.T.C. v. Dean Foods Co.*, 384 U.S. 597, 604 (1966) (citing cases).

An All Writs Act injunction is warranted here because it is necessary to ensure that the Court can bring Petitioner's claim for a writ of habeas corpus to a natural conclusion. "There are at least three different types of injunctions a federal court may issue." *Klay*, 376 F. 3d at 1097. "The first is a 'traditional' injunction, which may be issued as either an interim or permanent remedy for certain breaches of common law, statutory, or constitutional rights." *Id.* (footnote omitted). "The requirements for a traditional injunction are well-known," being the normal four-factor test that courts apply, and it also requires that "any motion or suit for a traditional injunction must be predicated upon a cause of action." *Id.* But that is not true of all the different types of injunctions that a federal court may issue. For example, some injunctions are "not a traditional injunction, and could not be justified as such, [where] the plaintiffs had no cause of action against the defendants upon which the injunction was based." *Id.* at 1098.

As the Eleventh Circuit has explained:

> The final type of injunction is an injunction under 28 U.S.C. § 1651(a), the All Writs Act, which states, "The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." The Act does not create any substantive federal jurisdiction. *See Brittingham v. Comm'r,* 451 F.2d

> 315, 317 (5th Cir.1971) ("It is settled that . . . the All Writs Act, by itself, creates no jurisdiction in the district courts. It empowers them only to issue writs in aid of jurisdiction previously acquired on some other independent ground."). Instead, it is a codification of the federal courts' traditional, inherent power to protect the jurisdiction they already have, derived from some other source. *See Procup v. Strickland,* 792 F.2d 1069, 1074 (11th Cir.1986) (en banc) ("Federal courts have both the inherent power and the **constitutional obligation** to protect their jurisdiction from conduct which impairs their ability to carry out Article III functions.").

Klay, 376 F.3d at 1099 (emphasis added). "In allowing courts to protect their 'respective jurisdictions,' the Act allows them to safeguard not only ongoing proceedings, but potential future proceedings, as well as already-issued orders and judgments." *Id.* at 1099–1100 (footnotes omitted). " 'In addition, courts hold that despite its express language referring to "aid . . . of jurisdiction," the All–Writs Act empowers federal courts to issue injunctions **to protect or effectuate** their judgments.' " *Id.* (*quoting Wesch v. Folsom,* 6 F.3d 1465, 1470 (11th Cir.1993)) (emphasis added) (ellipsis in original).

"A court may grant a writ under this act whenever it is calculated in the court's sound judgment to achieve the ends of justice entrusted to it, and not only when it is necessary in the sense that the court could not otherwise physically discharge its duties." *Id.* at 1100 (cleaned up). "Such writs may be directed to not only the immediate parties to a proceeding, but to persons who, though not parties to the original action or engaged in wrongdoing, are in a position to frustrate the implementation of a court order or the proper administration of justice, and even those who have not taken any affirmative action to hinder justice." *Id.* (cleaned up).

"Whereas traditional injunctions are predicated upon some cause of action, an All Writs Act injunction is predicated upon some other matter upon which a district court has jurisdiction." *Id.* "Thus, while a party must 'state a claim' to obtain a 'traditional' injunction, there is no such requirement to obtain an All Writs Act injunction—it must simply point to some ongoing proceeding, or some past order or judgment, the integrity of which is being threatened by someone else's action or behavior." *Id.* "The requirements for a traditional injunction do not apply to injunctions under the All Writs Act because a court's traditional power to protect its jurisdiction, codified by the Act, is grounded in entirely separate concerns." *Id.* (citations and footnote omitted).

The Respondents' insistence on rocketing Petitioner through credible fear proceedings while this habeas proceeding is ongoing is a tactic to moot or otherwise undermine the Court's ability to review these habeas proceedings. At a minimum, continuation of the (unlawful) credible fear proceedings would serve to add another layer (or perhaps several other layers) of complexity upon the issues already at stake in the case, thus complicating the litigation and burdening the Court unnecessarily. Thus, not only would a stay help to conserve judicial resources, a stay is needed to obviate the serious risk that Respondents can moot this case by proceeding with unlawfully applied expedited removal proceedings through completion, and then removal.

If deported, Petitioner's cause of action challenging his illegal arrest and detention in South Florida may make the *status quo ex ante* impossible to restore, and would also deprive Petitioner of his currently available habeas remedy. *See Trump v. J. G. G.*, 145 S. Ct. 1003, 1005–06 (2025) ("For 'core habeas petitions,' 'jurisdiction lies in only one district: the district of confinement.' ") (*citing Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004)). Thus, the respondents could in effect obtain "a *de facto* suspension," *Boumediene*, 553 U.S. at 771 (citation omitted), of the writ without the Court's granting of a stay.

II. Additionally, the grant of this motion is also warranted under the traditional stay standards.

a. Legal standards for granting a stay under the traditional standards.

Petitioner invokes Federal Rule of Procedure 65's process to request a traditional stay of the ongoing credible fear process against him. *See Lane v. United States*, No. CV 617-082, 2018 WL 11441015, at *2–*3 (S.D. Ga. Feb. 27, 2018) (collecting cases and using Rule 65 to consider and grant a stay pursuant to 5 U.S.C. § 705). The purpose of such relief is to "protect against irreparable injury and preserve the status quo until the district court renders a meaningful decision on the merits." *Schiavo ex rel. Schindler v. Schiavo*, 403 F.3d 1223, 1231 (11th Cir. 2005) (*citing Canal Auth. of State of Fla. v. Callaway*, 489 F.2d 567, 572 (5th Cir 1974)). Temporary restraining orders have historically been available to prevent violations of due process in immigration proceedings. *See, e.g., Louis v. Meissner*, 530 F. Supp. 924 (S.D. Fla. 1981) (ordering class-wide TRO on behalf of hundreds of Haitian refugees where legacy-INS sought to remove Haitians en masse by employing tactics to deny access to counsel, and failed to provide proper notice through inadequate translations).

Here, Petitioner seeks a stay of the ongoing credible fear process, rather than a full-fledged injunction. In considering a request for a stay, "a court considers four factors: '(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.' " *Nken v. Holder*, 556 U.S. 418, 425–26 (2009) (citation omitted). Although "[a] stay . . . certainly has some functional overlap with an injunction," in that "[b]oth can have the practical effect of preventing some action before the legality of that action has been conclusively determined," a stay is a less intrusive remedy because "[a] stay 'simply suspend[s] . . . alteration of the status quo,' while injunctive relief "grants judicial intervention that has been withheld by lower [authorities].' " *Id.* at 428–29 (citation omitted).

"Once an applicant satisfies the first two factors, the traditional stay inquiry calls for assessing the harm to the opposing party and weighing the public interest." *Id.* at 435. "These factors merge when the Government is the opposing party." *Id.* Additionally, "the movant may also have his motion granted upon a lesser showing of a substantial case on the merits when the balance of the equities identified in factors 2, 3, and 4 weighs heavily in favor of granting the stay." *Garcia-Mir v. Meese*, 781 F.2d 1450, 1453 (11th Cir. 1986) (citation and punctuation omitted)); *accord League of Women Voters of Fla., Inc. v. Fla. Sec'y of State*, 32 F.4th 1363, 1370 (11th Cir. 2022) (same).

In addition to Petitioner's reliance upon the Constitution's suspension clause, there is no statutory limitation to the relief requested here.[2] The Supreme Court has held that 8 U.S.C. § 1252(f)(2)'s restrictions do not apply when the requested relief has the effect of a stay of removal pending judicial review. *Nken*, 556 U.S. at 429–32; *id.* at 429–30 ("Although such a stay acts to bar Executive Branch officials from removing the applicant from the country, it does so by returning to the status quo—the state of affairs before the removal order was entered. That kind of stay, relating only to the conduct or progress of litigation before the court, ordinarily is not considered an injunction.") (cleaned up). The same logic applies here. Petitioner seeks equitable relief to prevent an irrevocable alteration of the status quo, not issuance of a permanent injunction. *See*

[2] Section 1252(g), U.S. Code Title 8, applies to pleadings in complaints, not independent motions for equitable relief. *United States v. Hovsepian*, 359 F.3d 1144, 1155 (9th Cir. 2004) (en banc) ("That provision does not bar the injunction proceeding here, however, because the gravamen of Hovsepian's claim does not arise from the Attorney General's decision or action to commence proceedings, adjudicate cases, or execute removal orders."). No Eleventh Circuit known to the undersigned says otherwise.

Mainsail Parent, LLC v. Jewell, No. 24-22875-CIV, 2024 WL 4483325, at *1 (S.D. Fla. July 31, 2024), *set aside,* No. 24-22875-CIV, 2024 WL 3935946 (S.D. Fla. Aug. 26, 2024).

b. Petitioner makes a strong showing that he is likely to succeed on the merits of his petition for a writ of habeas corpus.

Petitioner is a Cuban asylum seeker who entered the United States without inspection on February 7, 2022, near Eagle Pass, Texas. [ECF No. 4-1.] Immigration officials apprehended him and placed him in civil detention. DHS issued a Notice to Appear (NTA) on February 10, 2025. [*Id.*] He was later released on an I-220A Order of Release on Recognizance on the same day. [ECF No. 4-2.] For three years, Respondents made no attempts to place Petitioner in expedited removal proceedings during or after his apprehension by immigration authorities at the border. [ECF No. 4-3.] Petitioner has faithfully appeared for all of his immigration court hearings and timely filed an application for asylum with the immigration court.

On May 22, 2025, more than two weeks ago, Petitioner appeared for a hearing at the Miami Immigration Court. During the hearing, counsel for DHS moved to dismiss the pending removal proceedings under 8 U.S.C. §1229(a) which include the maximum procedural protections available by law. The presiding immigration judge (IJ) then granted the motion for dismissal. [ECF No. 4-3.] After leaving the courtroom, Petitioner encountered ICE agents who arrested him and notified him that he was being subjected to expedited removal from the United States. Petitioner has since been in the custody of Respondents, first at an ICE field office in Miramar, Florida, and ultimately at the Broward Transitional Center (BTC) detention facility in Pompano Beach, Florida. He was then shuttled to a detention facility in South Texas. After issuance of this Court's order to show cause [ECF No. 13], Petitioner was returned to BTC and is closer to his family in South Florida, [ECF No. 15].

Petitioner has appealed the dismissal of his full removal proceedings, with all its attendant due process protections, under 8 U.S.C. § 1229a to the Board of Immigration Appeals (BIA). **Exh. B**. Respondents have acted in bad faith by ignoring the pendency of Petitioner's proceedings before the BIA, and improperly classifying a long-term inhabitant of the United States as if he just arrived at the border—something which only this Court has the authority to remedy.

i. The Court has Constitutional jurisdiction to hear this case, and to grant the relief requested in this motion.

The Immigration and Nationality Act (INA) bars courts of appeals from reviewing expedited removal orders on petitions for review to the Circuit Courts of Appeal. 8 U.S.C. §§ 1252(a)(2)(A), (e); *see also Shunaula v. Holder*, 732 F.3d 143 (2d Cir. 2013); *Khan v. Holder*, 608 F.3d 325 (7th Cir. 2010); *Brumme v. INS*, 275 F.3d 443 (5th Cir. 2001). Instead, the INA expressly provides for judicial review of expedited removal orders in the federal district courts, but limits the scope of review to the following factual determinations: (1) whether the petitioner is a U.S. citizen; (2) whether the petitioner was in fact ordered removed under § 1225(b)(1); and (3) whether the petitioner can prove that he is a lawful permanent resident, admitted as a refugee, or has been granted asylum. §§ 1252(e)(2)(A)–(C) & (e)(5). What is more, the only available remedy under an §1252(e) "habeas" petition is the issuance of an notice to appear in immigration court for full removal proceedings, not release from detention. § 1252(e)(2)(C). Outside of this limited procedure, the INA bars judicial review of Respondents' invocation of the expedited removal statute as applied to individual aliens and matters "arising from" expedited removal proceedings. § 1252(a)(2)(A).

The INA therefore solely addresses federal judicial review for the purposes of either: (a) extremely narrow factually-based "habeas corpus" challenges to expedited removal orders under § 1252(e)(2); and (b) challenges to written directives or the entire expedited removal statutory scheme in the district court for the District of Columbia under § 1252(e)(3). The INA does not set forth any other independent statutory basis to seek judicial recourse when an individual does not meet the legal requirements for expedited removal in the first place.

While a challenge to an expedited removal order under 8 USC §1252(e)(2) is labeled a "habeas corpus" action, it does not provide jurisdiction for traditional habeas review (as codified under 28 U.S.C. § 2241) as the scope of review is limited to narrow factual questions about alienage, identity, and whether a noncitizen has obtained a select few immigration statuses. Traditional habeas review by contrast entitles a petitioner to seek redress regarding questions of law implicating detention, to adduce evidence if a fuller factual record is required and—perhaps most critically—to request release from unlawful arrest and detention. *See INS v. St. Cyr*, 533 U.S. 289, 301 (2001) (habeas review entails review of pure questions of law); *Boumediene v. Bush*, 553

U.S. 723, 732 (2008) (holding that "[f]ederal habeas petitioners long have had the means to supplement the record on review"); *DHS v. Thuraissigiam*, 591 U.S. 103, 103–104 ("Habeas has traditionally provided a means to seek release from unlawful detention.")

A finding that traditional habeas review is unavailable to decide questions of law runs afoul of the Suspension Clause. U.S. Const. art. I, § 9, cl. 2; *INS v. St. Cyr*, 533 U.S. 289, 292 (holding that habeas review under 28 U.S.C. § 2241 was necessarily available in part because to entirely preclude review raised substantial constitutional questions under the Suspension Clause.) The Suspension Clause provides a legal basis to challenge detention, even if a statute is construed to deprive jurisdiction. *See Osorio-Martinez v. Att'y Gen.*, 893 F.3d 153, 166–79 (3d Cir. 2018) (holding that even if the Immigration and Nationality Act does not grant jurisdiction, the Suspension Clause allows judicial review of detention for those with sufficient ties to the United States.); *see also Ibrahim v. Acosta*, No. 17-cv-24574-GAYLES, 2018 WL 582520, at *5–*6 (S.D. Fla. Jan. 26, 2018).

The Suspension Clause is a constitutional basis for jurisdiction when existing administrative and judicial procedures are an inadequate or ineffective substitute for habeas. Courts must determine whether a statute stripping jurisdiction has provided adequate and effective substitute procedures for habeas corpus. *See Boumediene*, 553 U.S. at 732 (holding that the administrative process for challenging enemy combatant status was inadequate to replace traditional habeas review). After a year of physical presence in the United States, a noncitizen has sufficient ties to avail himself of a habeas court's jurisdiction to vindicate his due process rights. *See Yamataya v. Fisher*, 189 86, 94 (1903); *A.A.R.P. v. Trump*, 605 U.S. ___ (2025) (same).

"The habeas court **must** have sufficient authority to conduct a meaningful review of both the cause for detention and the Executive's power to detain." *Boumediene*, 553 U.S. at 783 (emphasis added). Habeas courts have jurisdiction to award habeas relief on account of the erroneous application of relevant law. *St. Cyr*, 533 U.S. at 302; *Boumediene*, 553 U.S. at 779. "Indeed, common-law habeas corpus was, above all, an adaptable remedy. Its precise application and scope changed depending upon the circumstances. *Schlup v. Delo*, 513 U.S. 298, 319 (1995) (Habeas 'is, at its core, an equitable remedy'); *Jones v. Cunningham*, 371 U.S. 236, 243 (1963) (Habeas is not 'a static, narrow, formalistic remedy; its scope has grown to achieve its grand purpose.')." *Boumediene*, 553 U.S. at 779–80.

"[T]he common-law habeas court's role was most extensive in cases of pretrial and non-criminal detention, where there had been little or no previous judicial review of the cause for detention." *Id.* at 780. The Suspension Clause's protections are strongest in the context of executive detention. *St. Cyr*, 533 U.S. 289, 301 (2001); *see also Munaf v. Geren*, 553 U.S. 674, 679 (2008) ("Habeas is at its core a remedy for unlawful executive detention."); *Boumediene*, 553 U.S. at 783 ("Where a person is detained by executive order, rather than, say, after being tried and convicted in a court, the need for collateral review is most pressing."). In *Thuraissigiam* the Supreme Court reaffirmed that the Suspension Clause "at a minimum, protects the writ as it existed in 1789," whereby it "could be invoked by aliens already in the country who were held in custody pending deportation" to "challenge [their] detention." 591 U.S. at 116, 137 (internal quotation marks omitted).

Here, there are no available alternatives for Petitioner to seek redress that are adequate and effective—in fact, none exist at all. Thus, under the Constitution's Suspension Clause, this Court must have jurisdiction over this case.

ii. **Respondents are violating the Immigration and Nationality Act.**

Respondents lacked the authority to arrest and detain Petitioner pursuant to the expedited removal provisions of 8 U.S.C. § 1225 because he has been present in the United States for more than two years. No statutory or regulatory authority exists for respondents to apprehend a noncitizen, release him for proceedings under 8 U.S.C. § 1229a, dismiss proceedings, and then relegate him to his former position at the threshold of entry three years earlier. In fact, such a reverse procedure is only allowed against persons convicted of aggravated felonies to effectuate administrative removal under 8 U.S.C. § 1228, *see* 8 CFR 238.1(e) ("[i]f it appears that the respondent alien is subject to removal pursuant to section 238 of the Act, the immigration judge may, upon the Service's request, terminate the case and, upon such termination, the Service may commence administrative proceedings under section 238 of the Act."), but no such procedure exists for expedited removal under 8 U.S.C. § 1225(b)(1).

As per § 1225(b)(1)'s own terms, Respondents lacked the authority to arrest and detain Petitioner pursuant to the expedited removal provisions because he has been present in the United States for three years, and the expedited removal statute only applies to persons present for less than two years before issuance of a statutorily valid determination of inadmissibility. Petitioner is also statutorily exempt from expedited removal as a parolee.

1. Petitioner was released from DHS custody on or around February 10, 2022 and has been continuously present in the United States since his release. [ECF No. 4-2.] Congress restricted the applicability of expedited removal to those who have been physically present in the United States for less than two years. § 1225(b)(1)(A)(iii)(II). A noncitizen is allowed to make an affirmative showing that he has been present for two years continuously "prior to the date of the determination of inadmissibility under this subparagraph." *Id.*

Federal regulations prescribe a detailed procedure to perform a determination of inadmissibility for purposes of subparagraph 1225(b)(1)(A). In order for the determination to issue, the noncitizen is placed under oath and the examining immigration officer takes a sworn statement. The examining officer then serves the noncitizen with a determination of inadmissibility which serves to also notify him that he is subject to expedited removal.

As part of the inadmissibility determination process, "in every case" immigration officials are required to take a sworn statement and create a factual record on prescribed forms. 8 CFR § 235.3(b)(2)(i). Only after the sworn statement and record are created on Form I-867A are immigration officials authorized to issue a determination of inadmissibility on Form I-860 for purposes of expedited removal. *Id.* Federal regulations require that the noncitizen be provided notice of the determination of inadmissibility. *Id.*

In the instant case, Petitioner was not issued a determination of inadmissibility on Form I-860 at any time within his first two years in the United States, as required by statute and federal regulation. His placement in expedited removal proceedings is therefore unlawful due to the passage of three years and the absence of a timely issued notice of inadmissibility determination. 8 U.S.C. § 1225(b)(1)(A)(iii) (the definition of an "alien described" in the expedited removal statute excludes those who affirmatively show that they have been present for more than two years after entering the United States.)

Additionally, the expedited removal statute limits the substantive determinations of inadmissibility to just two grounds under § 1182(a)(6)(C) (fraud or false claim to citizenship) and § 1182(a)(7) (lacking proper immigration documentation). *See* § 1225(1)(A)(i). Petitioner was never determined or charged as subject to the grounds of inadmissibility referenced in the expedited removal statute, and his notice to appear for full removal proceedings under § 1229a indicates an entirely separate ground of inadmissibility: § 1182(a)(6)(A)(i). [ECF No. 4-1.]

2. Federal regulations governing expedited removal generally allow a noncitizen an opportunity to establish his admission or parole into the United States before immigration officials, but, upon information, knowledge, and belief, Petitioner has not been afforded this opportunity. 8 CFR § 235.3(a)(6). Petitioner entered the United States as an applicant for admission who was, at the time, present in the United States without being admitted or paroled. *See* 8 U.S.C. §§1182(a)(6)(A)(i) (setting forth inadmissibility of aliens present without admission), §1225(a)(1) (deeming said noncitizens as applicants for admission).

The Supreme Court has clearly identified parole as *the* legal mechanism available for applicants for admission to gain release from ICE custody. *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018) ("Regardless of which of those two sections authorizes their [otherwise mandatory] detention, applicants for admission may be temporarily released on parole."). What is more, according to the government's own binding precedent, Petitioner was undoubtedly subject to mandatory detention, and thus could only have been paroled out of custody into the United States on April 5, 2022, when he was released from custody. *See Matter of Q. Li*, 29 I I&N Dec. 66 (BIA 2025) ("The only exception permitting the release of aliens [applicants for admission] . . . is the parole authority provided by . . . 8 U.S.C. § 1182(d)(5)(A).")

Because Supreme Court precedent and a binding precedential Board decision inexorably lead to the conclusion that Petitioner is a parolee as a matter of law, expedited removal proceedings cannot be applied. § 1225(b)(1)(iii)(II) (defining an alien subject to expedited removal as a person "who has not been admitted or paroled into the United States"); *accord Doe v. Noem*, — F. Supp. 3d —, No. 1:25-CV-10495-IT, 2025 WL 1099602, at *16–*17 (D. Mass. Apr. 14, 2025); *Al Otro Lado, Inc. v. McAleenan*, 394 F. Supp. 3d 1168, 1200 (S.D. Cal. 2019).

The Board's decisions are "binding on all officers and employees of the Department of Homeland Security" in "the administration of the immigration laws." 8 CFR § 1003.1(g). DHS' agents' failure to recognize Petitioner as a parolee who is not subject to expedited removal violates the federal government's responsibility to abide by its own directives and regulations and is thus unlawful. Further, the imposition of expedited removal violates the long-standing principle that federal agencies are bound to follow their own rules and regulations. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 347(1954).

Petitioner cannot be legally subjected to expedited removal as a parolee as a corollary of the Supreme Court's holding in *Jennings*: namely, absent the availability of parole, applicants for admission are otherwise subject to mandatory detention. *Jennings*, 138 S. Ct. 830, 842 (2018). Therefore, it follows that Petitioner was paroled and does not fall within the ambit of the expedited removal statute.

iii. Petitioner will suffer irreparable harm without injunctive relief.

The petitioner will suffer irreparable harm if forced to undergo a credible fear screening in furtherance of his expedited removal. Respondents could in effect obtain "a de facto suspension," *Boumediene*, 553 U.S. at 771 (citation omitted), of the writ if Petitioner is rushed through the expedited removal process, submitted to a credible fear screening, and either summarily deported or detained for a period of indefinite duration for renewed removal proceedings. Preserving the ability "to 'actually seek habeas relief,' " *A. A. R. P. v. Trump*, 145 S. Ct. 1364, 1368 (2025), is the type of harm that equitable relief is properly invoked to protect.

Additionally, Petitioner was previously able to make a claim for asylum from Cuba before the immigration court, as well as a claim for lawful permanent resident status under Section 1 of the Cuban Refugee Adjustment Act of 1966 (CAA), Pub. L. No. 89-732, 80 Stat. 1161, as amended. If deported pursuant to the unlawful expedited removal process being applied against him, Petitioner will lose his right to apply for these forms of relief from removal. *INS v. St. Cyr*, 533 U.S. 289, 307–08 (2001) ("Eligibility that was 'governed by specific statutory standards' provided 'a right to a ruling on an applicant's eligibility,' even though the actual granting of relief was 'not a matter of right under any circumstances, but rather is in all cases a matter of grace.' ") (*quoting Jay v. Boyd,* 351 U.S. 345, 353–354 (1956)). The deprivation of these rights to apply for relief by the act of removal would leave Petitioner without any future pathway for administrative recourse. *See* 8 U.S.C. § 1182(a)(9)(A) (making a person inadmissible for several years after being removed); § 1158(a)(1) (requiring "physical presen[ce]" to apply for asylum); 8 CFR § 245.1(a) (requiring "physical presen[ce] in the United States" to apply for adjustment before USCIS), § 1245.1(a) (same requirement before the immigration court).

iv. The balance of equities and public interest weigh in favor of a temporary restraining order.

The equities and public interest weigh in favor of Petitioner. "Once an applicant satisfies the first two factors, the traditional stay inquiry calls for assessing the harm to the opposing party and weighing the public interest." *Nken v. Holder*, 556 U.S. 418, 435 (2009). "These factors merge when the Government is the opposing party." *Id.* Additionally, "the movant may also have his motion granted upon a lesser showing of a substantial case on the merits when the balance of the equities identified in factors 2, 3, and 4 weighs heavily in favor of granting the stay." *Garcia-Mir v. Meese*, 781 F.2d 1450, 1453 (11th Cir. 1986) (citation and punctuation omitted)); *accord League of Women Voters of Fla., Inc. v. Fla. Sec'y of State*, 32 F.4th 1363, 1370 (11th Cir. 2022) (same).

Where, as here, the challenged governmental conduct deprives Petitioner of his rights and is contrary to the rule of law, both factors weigh in Plaintiffs' favor. The public, and thus the government, has an interest in protecting the rights of people in detention and ensuring the rule of law. *Nken*, 556 U.S. at 436 (describing the "public interest in preventing aliens from being wrongfully removed, particularly to countries where they are likely to face substantial harm"); *League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016) ("There is generally no public interest in the perpetuation of unlawful agency action.") (citations omitted); *United States v. Alabama*, 691 F.3d 1269, 1301 (11th Cir. 2012) ("[F]rustration of federal statutes and prerogatives are not in the public interest . . . ."); *Simms v. District of Columbia*, 872 F. Supp. 2d 90, 105 (D.D.C. 2012) ("It is always in the public interest to prevent the violation of a party's constitutional rights.") (cleaned up).

"Administrative agencies are creatures of statute" that "accordingly possess only the authority that Congress has provided." *Nat'l Fed'n of Indep. Bus. v. Dep't of Lab., Occupational Safety & Health Admin.*, 142 S. Ct. 661, 665 (2022) (per curiam). "[A]n order of [an agency] made in excess of its delegated powers" is an action not "made within its jurisdiction." *Leedom v. Kyne*, 358 U.S. 184, 188 (1958). Such an action is "ultra vires agency action." *Fed. Express Corp. v. U. S. Dep't of Com.*, 39 F.4th 756, 763–64 (DC Cir. 2022) (*citing Leedom*, 358 U.S. at 188). And as has long been understood, an act without jurisdiction is void. *Harris v. Hardeman*, 55 U.S. 334, 339 & 342 (1852).

Respondents cannot claim any public interest in proceeding with agency action that exceeds their statutory authority. Therefore, the equities and public interest lie in favor of injunctive relief in this case.

CONCLUSION

The Court should stay the ongoing credible fear process under 8 U.S.C. § 1225(b)(1)(B) in order to preserve the status quo, the integrity of these proceedings, and Petitioner's Constitutional right to petition the Court for a writ of habeas corpus.

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