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.
_______________________________________/

PETITIONER'S TRAVERSE

PETITIONER'S TRAVERSE

The Court should grant the petitioner a writ of habeas corpus ordering his immediate release from detention under 8 U. S. C. § 1225(b)(1),[1] and extinguishing the expedited removal order [ECF No. 23-11], and expedited removal process pending against him. See *Boumediene* v. *Bush*, 553 U. S. 723, 779 (2008) ("release need not be the exclusive remedy") (citing, *inter alia*, *Ex parte Bollman,* 4 Cranch 75, 136 (1807)); *Trump* v. *J.G.G.*, 145 S. Ct. 1003, 1005 (2025) ("And 'immediate physical release [is not] the only remedy under the federal writ of habeas corpus.' ") (quoting *Peyton* v. *Rowe*, 391 U. S. 54, 67 (1968)) (other citations omitted) (alteration in original).

Further, the petitioner's release should be immediate upon the granting of the writ. It is the respondents' burden to demonstrate otherwise. Fed. R. App. P. 23(c).

Argument

I. The Court has Constitutional jurisdiction under the Suspension Clause.

The petitioner agrees with the respondents that, as a matter of statute, there is no alternative available judicial remedy that is either adequate or effective to bring the challenge he makes before this Court.[2] [ECF No. 23 at 2 ("this Court lacks subject matter jurisdiction to review his claims under the provisions of 8 U.S.C. § 1252(a)(2)(A), (e)(1), and (e)(2)").] That is exactly why the Suspension Clause must provide for that jurisdiction. The case law supports this proposition. In fact, prior to the REAL ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 231 (May 11, 2005), habeas review of immigration removal orders was a regular occurrence. Compare *Alexandre* v. *U. S. Att'y Gen.*, 452 F. 3d 1204, 1205–06 (CA11 2006) (finding no

---

[1] Detention is authorized throughout expedited removal proceedings "pending a final determination of credible fear of persecution and, if found not have such a fear, until removed," § 1225(b)(1)(B)(iii)(IV), and after a positive finding of credible fear "for further consideration of the application for asylum," § 1225(b)(1)(B)(ii). Accord 8 CFR § 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.").

[2] The respondents cursorily seem to suggest that the petitioner can bring a "systemic challenge" to his detention and expedited removal process in the District Court for the District of Columbia. But the petitioner is making no such challenge at, and is only making an as-applied challenge to his specific custody. See *Agarwal* v. *Lynch*, 610 F. Supp. 3d 990, 1005–06 (E.D. Mich. 2022) ("The Court disagrees with Respondents' characterization of Agarwal's Appointments Clause claim as a 'systemic challenge.' Agarwal is not challenging the statutory and/or regulatory system for expedited removals *writ large*."); see also *McNary* v. *Haitian Refugee Ctr., Inc.*, 498 U. S. 479, 492 (1991) (for jurisdictional purposes, distinguishing between the "review 'of *a determination* respecting *an application*' for SAW status" as "a single act" and review of "a group of decisions or a practice or procedure employed in making decisions") (emphasis in original).

habeas review after REAL ID Act); with *Cadet* v. *Bulger*, 377 F. 3d 1173, 1183–85 (CA11 2004) (addressing scope of habeas review prior to REAL ID Act).

a. Habeas review, or an adequate and effective substitute, must always be available to challenge unlawful detention.

1. "The writ of habeas corpus is the fundamental instrument for safeguarding individual freedom against arbitrary and lawless state action." *Harris* v. *Nelson*, 394 U. S. 286, 290–91 (1969). 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).

The Immigration and Nationality Act (INA) bars Courts of Appeals from reviewing expedited removal orders upon petition for review. 8 U. S. C. §§ 1252(a)(2)(A), (e); *see also* *Shunaula* v. *Holder*, 732 F. 3d 143 (CA2 2013); *Khan* v. *Holder*, 608 F. 3d 325 (CA7 2010); *Brumme* v. *INS*, 275 F. 3d 443 (CA5 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 the respondents' application of expedited removal to individual persons 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 relief from " 'detention by executive authorities without judicial trial,' " and "was not limited to challenges to the jurisdiction of the custodian, but encompassed detentions based on errors of law, including the erroneous application or interpretation of statutes." *INS* v. *St. Cyr*, 533 U. S. 289, 302 (2001) (citations and footnote omitted); *Boumediene*, 553 U.S., at 779; see also *id.*, at 732 (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.").

"At its historical core, the writ of habeas corpus has served as a means of reviewing the legality of Executive detention, and it is in that context that its protections have been strongest." *St. Cyr*, 533 U.S, at 301 (footnote and citations omitted); accord *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."). Further, "[t]he scope and flexibility of the writ—its capacity to reach all manner of illegal detention—its ability to cut through barriers of form and procedural mazes—have always been emphasized and jealously guarded by courts and lawmakers." *Harris*, 394 U.S., at 291.

> Indeed, common-law habeas corpus was, above all, an adaptable remedy. Its precise application and scope changed depending upon the circumstances. See 3 Blackstone *131 (describing habeas as "the great and efficacious writ, in all manner of illegal confinement"); see also *Schlup v. Delo,* 513 U.S. 298, 319, 115 S.Ct. 851, 130 L.Ed.2d 808 (1995) (Habeas "is, at its core, an equitable remedy"); *Jones v. Cunningham,* 371 U.S. 236, 243, 83 S.Ct. 373, 9 L.Ed.2d 285 (1963) (Habeas is not "a static, narrow, formalistic remedy; its scope has grown to achieve its grand purpose"). It appears the common-law habeas court's role was most extensive in cases of pretrial and noncriminal detention, where there had been little or no previous judicial review of the cause for detention.

Boumediene, 553 U.S. at 779–80. "Habeas corpus is a collateral process that exists, in Justice Holmes' words, to 'cu[t] through all forms and g[o] to the very tissue of the structure. It comes in from the outside, not in subordination to the proceedings, and although every form may have been preserved opens the inquiry whether they have been more than an empty shell.' " *Id.*, at 785 (citation omitted) (alteration in original).

2. A finding that traditional habeas review is unavailable here to decide questions of law runs afoul of the Suspension Clause. U.S. Const. art. I, § 9, cl. 2; *St. Cyr*, 533 U. S., at 300 ("A construction of the amendments at issue that would entirely preclude review of a pure question of law by any court would give rise to substantial constitutional questions. . . . Because of th[e] [Suspension] Clause, some 'judicial intervention in deportation cases' is unquestionably 'required by the Constitution.' ") (quoting *Heikkila* v. *Barber,* 345 U. S. 229, 235 (1953)).

The Suspension Clause provides a legal basis to challenge detention, even if a statute is construed to deprive jurisdiction. In fact, a Court of Appeals has already found that the Suspension Clause provides for review of expedite removal orders in circumstances like those present here.[3] *Osorio-Martinez* v. *Att'y Gen.*, 893 F. 3d 153, 166–79 (CA3 2018) (holding that even if the INA precludes 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); *id.*, at *6 ("While the motion to reopen process is facially adequate, it does not provide an adequate and effective remedy for the exceptional circumstances of this case."); *Agarwal v. Lynch*, 610 F. Supp. 3d 990, 1003 (E.D. Mich. 2022) ("the Suspension Clause of the United States Constitution precludes Section 1252(a) from stripping this Court of jurisdiction to address a petition presenting [an Appointments Clause] that claim."); *id.*, at 1003–05 (applying *Osorio-Martinez*).

a. In *Osorio-Martinez*, the Third Circuit applied the Supreme Court's two-step test from *Boumediene*. Although the respondents do not assert in any way that the petitioner is prohibited from asserting rights under the Suspension Clause here, it is important to address the first step of the analysis regardless. In *Osorio-Martinez*, the Court of Appeals found that the petitioners there were "readily distinguished from aliens ' "on the threshold of entry" who clearly

[3] The respondents point to the earlier Third Circuit case of *Castro* v. *USDHS*, 835 F. 3d 422 (CA3 2016), in their return. [ECF No. 23, at 8.] But the same Third Circuit, in the later case of *Osorio-Martinez*, held that *Castro* was distinguishable for the reasons discussed above. 893 F. 3d, at 158 ("Petitioners here, unlike the petitioners in *Castro*, meet that standard and therefore may enforce their rights under the Suspension Clause").

lack constitutional due process protections concerning their application for admission.' " 893 F. 3d, at 168 (citations omitted). Reviewing several Supreme Court precedents regarding the "*develop[ment] [of] ties*" and "*substantial connections with this country*," *id.* (emphasis in original), the Court of Appeals found that such ties arose from the approval of a Special Immigrant Juvenile (SIJ) petition which is simply one step towards an application for permanent residence, *id.*, at 168–77. And more recently in the expedited removal context, the Supreme Court took a more expansive approach, reaffirming that "the Court had held long before that the writ could be invoked by aliens **already in the country** who were held in custody pending deportation," *Thuraissigiam*, 591 U. S., at 137—as long as the requested remedy is release from custody. See *Agarwal*, 610 F. Supp. 3d, at 1007 ("Unlike the petition in *Thuraissigiam*, Agarwal's petition *did* seek 'simple release.' In fact, that was the very first type of relief that Agarwal requested.") (citations omitted).

The local cases cited by the respondents are readily distinguishable. In *Diaz del Cid* v. *Barr*, the petitioner there "entered the United States near Hidalgo, Texas without authorization, and, **approximately one hour after**, was apprehended by Border Patrol," and "was ordered expeditiously removed. 394 F. Supp. 3d 1342, 1344 (S.D. Fla. 2019) (emphasis added); see also *id.*, at 1347 (distinguishing *Osorio-Martinez*). In contrast, the petitioner entered, was released from custody, and **three years** later was detained and processed for expedited removal proceedings, **after** his previously commenced full-blown removal proceedings were dismissed upon government motion. Further, the petitioner in *Diaz del Cid* was arguing that "the order for expedited removal should be vacated and he be granted a new, meaningful opportunity to apply for asylum," *id.*, at 1345, rather than challenging his subjection to such proceedings (and related custody) at all. In fact, the petitioner in *Diaz del Cid* appears to not even have sought an order releasing him from government custody.

Torrez v. *Swacina* is distinguishable too. In what was really a challenge to a USCIS denial of a permanent residence application, the Court distinguished the case from *Thuraissigiam* as being more far afield from a valid habeas claim. No. 20-20650-CIV, 2020 WL 13551822, at *4 (S.D. Fla. Apr. 17, 2020) ("Instead, Petitioner initially claimed he was not ordered removed at all (*see generally* Pet.), and, following receipt of documents from Respondents conclusively showing he was removed, now points to two "inconsistencies" in the record (*see* Resp. 13–16)."). The Court also distinguished *Osorio-Martinez* on the facts. *Id.*, at *4, n. 6.

b. As for the second step of the *Boumediene* test, the Third Circuit easily determined that the INA failed to provide an adequate and effective alternative for habeas review. *Osorio-Martinez*, 893 F. 3d, at 177–78; *id.*, at 177, n. 22 ("Given the starkness of the jurisdiction-stripping statute's deficiency, we need not engage in an extended inquiry here."). Reviewing the Supreme Court cases discussed above, the Court of Appeals held:

> [T]he INA's jurisdiction-stripping provisions do not provide even this "uncontroversial" baseline of review. Instead, § 1252(e)(2) permits habeas review of expedited removal orders as to only three exceptionally narrow issues: whether the petitioner (1) is an alien, (2) was "ordered removed" (which we have interpreted to mean only "whether an immigration officer issued that piece of paper [the removal order] and whether the Petitioner is the same person referred to in that order," *Castro*, 835 F.3d at 431 (internal citation omitted)), and (3) can prove his or her lawful status in the country. 8 U.S.C. § 1252(e)(2). It also explicitly precludes review of "whether the alien is actually inadmissible or entitled to any relief from removal," *id.* § 1252(e)(5), and of "any other cause or claim arising from or relating to the implementation or operation of" the removal order, *id.* § 1252(a)(2)(A)(i). Together, these provisions prevent us from considering "whether the expedited removal statute was *lawfully applied* to petitioners," *Castro*, 835 F.3d at 432 (quoting *Am.-Arab*, 272 F.Supp.2d at 663), and thus preclude review of "the erroneous application or interpretation of relevant law," *Boumediene*, 553 U.S. at 779, 128 S.Ct. 2229 (quoting *St. Cyr*, 533 U.S. at 302, 121 S.Ct. 2271). That, however, is the "uncontroversial" minimum demanded by the Great Writ. *Id.*

Id., at 177 (footnote omitted). The respondents here do not dispute this point.

b. Even though irrelevant, the petitioner does have due process rights.

To begin with, in *Boumediene*, the Supreme Court was clear that Suspension Clause rights exist independently of, and without regard to, due process rights or violations thereof:

> Even if we were to assume that the CSRTs satisfy due process standards, it would not end our inquiry. Habeas corpus is a collateral process that exists, in Justice Holmes' words, to "cu[t] through all forms and g[o] to the very tissue of the structure. It comes in from the outside, not in subordination to the proceedings, and although every form may have been preserved opens the inquiry whether they have been more than an empty shell." *Frank v. Mangum,* 237 U.S. 309, 346, 35 S.Ct. 582, 59 L.Ed. 969 (1915) (dissenting opinion). **Even when the procedures authorizing detention are structurally sound, the Suspension Clause remains applicable and the writ relevant.** See 2 Chambers, Course of Lectures on English Law 1767–1773, at 6 ("Liberty may be violated either by arbitrary *imprisonment* without law or the appearance of law, or by a lawful magistrate for an unlawful reason"). This is so, as *Hayman* and *Swain* make

> clear, even where the prisoner is detained after a criminal trial conducted in full accordance with the protections of the Bill of Rights. Were this not the case, there would have been no reason for the Court to inquire into the adequacy of substitute habeas procedures in *Hayman* and *Swain*. That the prisoners were detained pursuant to the most rigorous proceedings imaginable, a full criminal trial, would have been enough to render any habeas substitute acceptable *per se*.

553 U. S., at 785 (emphasis added). Regardless, the petitioner does have due process rights.

In a separate discussion about due process, independent from its habeas and Suspension Clause discussion, the Supreme Court noted in *Thuraissigiam* that, "as to 'foreigners who have never been naturalized, **nor acquired any domicil or residence within the United States**, nor even been admitted into the country pursuant to law,' 'the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law.' " 591 U. S., at 138 (emphasis added) (citations omitted). This was explained in the context of a case where the petitioner "crossed the southern border without inspection or an entry document at around 11 p.m. one night in January 2017," and where "[a] Border Patrol agent stopped him within 25 yards of the border, and the Department detained him for expedited removal" since then. *Id.*, at 114.

That is completely inapposite to the circumstances of the petitioner here who: (1) was released **for years** after being stopped at the border; (2) given access to the fullest and most complete removal proceeding process available under 8 U. S. C. § 1229a **for years**; and (3) was thereafter **allowed** to live at liberty and establish a domicile in the United States, *id.*, at 138, and "develo[p] substantial connections with this country," *Osorio-Martinez*, 893 F. 3d, at 168 (punctuation omitted). For over 100 years, even as to a statute allowing deportation of an "alien immigrant . . . at any time within **the year** after his illegally coming into the United States," the Supreme Court held that "it is not competent for . . . any executive officer . . . to cause an alien who has entered the country, and has become subject in all respects to its jurisdiction, and a part of its population, although alleged to be illegally here, to be taken into custody and deported without giving him all opportunity to be heard upon the questions involving his right to be and remain in the United States." *Yamataya* v. *Fisher*, 189 U. S. 86, 101 (1903) (emphasis added). This principle of due process was just recently affirmed without qualification. *A.A.R.P.* v. *Trump*, 145 S. Ct. 1364, 1367 (2025) (quoting *Yamataya*, 189 U. S., at 101).

Thus, the respondents' assertion that the petitioner is "like Thuraissigiam" because he "is not considered to have been **admitted** into the country" [ECF No. 23, at 17 (emphasis added)] is a distraction—especially when understood in light of the specific use of the word "admission" against its very specific statutory definition at 8 U. S. C. § 1101(a)(13)(A). The term "admission" means "the **lawful entry** of the alien into the United States after inspection and authorization by an immigration officer." *Id.* (emphasis added). The specification that only "lawful entr[ies]" suffice for one to have been "admitted" presupposes that it is possible to enter unlawfully—such as when someone is "present without admission" and is "deemed," but not defined, to be "an applicant for admission," § 1225(a)(1), like the petitioner. Thus, after unlawfully entering, and then being **allowed** at liberty for several years, the petitioner's position is akin to that of Yamataya, not Thuraissigiam.

II. The respondents do not address the statutory limitations in § 1225(b)(1)(A).

The respondents lacked the authority to arrest and detain the 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. As per § 1225(b)(1)'s own terms, the respondents lacked the authority to arrest and detain the petitioner pursuant to the expedited removal provisions because he has been present in the United States for over two 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 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. 23-3.] 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.*

Here, the 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. 23-2.]

The respondents' answer to this is to cite a federal register notice relying on the concept of an "encounter" during the previously designated 14-day period for the applicability of expedited removal. [ECF No. 23, at 12 (citing Designating Aliens for Expedited Removal, 69 Fed. Reg. 48877, 48880 (Aug. 11, 2004) ("2004 Designation")).] But the statute speaks of "determination[s] of inadmissibility under this subparagraph," 8 U. S. C. § 1225(b)(1)(A)(iii)(II), not "encounters." When it comes to interpreting statutes, the " 'inquiry begins with the statutory text, and ends there as well if the text is unambiguous.' " *Bellitto* v. *Snipes*, 935 F. 3d 1192, 1200 (CA11 2019) (citation omitted). Ultimately, an agency interpretation that does not comply with a statute's text is simply impermissible because it "makes no sense to speak of a 'permissible' interpretation that is not the one the court, after applying all relevant interpretive tools, concludes is best." *Loper Bright Enters.* v. *Raimondo*, 603 U. S. 369, 373 (2024).

In fact, Eleventh Circuit precedent emphasizes the point. The inadmissibility charge under § 1182(a)(7)(A)(i)(I)—which the respondents rely upon here [ECF No. 23-8]—is inapplicable once someone has already physically entered the United States. *Ortiz-Bouchet* v. *U.S. Atty. Gen.*, 714 F. 3d 1353, 1356 (CA11 2013) ("In this case, Ortiz and Malpica **were not outside the United States seeking entry, but rather already in the United States** and seeking an adjustment of status permitting them to remain.") (emphasis added); *id.* ("Ortiz and Malpica were not applicants for admission **within the meaning of** § 1182(a)(7)(A)(i)(I)') (emphasis added). And looking to the expedited removal order, dated "May 22, **2025**," which explicitly tells the petitioner that the respondents "ha[ve] determined that you are inadmissible to the United States under section(s) [1182](a) . . . (7)(A)(i)(I)," again, on "May 22, **2025**," [ECF No. 23-8 (emphasis added)], makes it plain as day that the respondents have exceeded the scope of their authority under § 1225(b)(1)(A)(iii)(II).

Last, the respondents put all their eggs in the basket of the words "any time" from 8 CFR § 235.2(b)(1)(ii). [ECF No. 23, at 12.] But the error is that they view those words in isolation, outside of the overall context of the governing statute and the regulation itself. *Roberts* v. *Sea-Land Servs., Inc.*, 566 U. S. 93, 101 (2012) (" 'It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.' ") (citation omitted). Read along with the preceding sentence in the regulation, what the regulation says is that the respondents may apply expedited removal, "at any time, to any class of aliens described in this section," which are described as persons "who have not established to the satisfaction of the immigration officer that they have been physically present in the United States continuously for the 2–year period immediately prior to the date of determination of inadmissibility." 8 CFR § 235.2(b)(1)(ii). This is the very language of the statute referenced by the petitioners, and is not a rebuttal to the petitioner's argument at all.

III. Yes, the petitioner was paroled as a matter of law, but the Court need not address it here.

The petitioner's secondary argument is that he has been paroled, and is thus not subject to expedited removal because he is not someone "who has not been admitted or paroled" as required by 8 U. S. C. § 1225(b)(1)(A)(iii)(II). Should the Court agree with the petitioner's preceding argument, it should exercise restraint from reaching this secondary argument because that issue is already being litigated before the Eleventh Circuit in two fully briefed consolidated cases. *Labrada-Hechavaria* v. *U. S. Att'y Gen.*, No. 23-13664 (CA11); *Castillo-Casanova* v. *U. S. Att'y Gen.*, No. 24-10645 (CA11).

But to the extent the Court does reach the issue here, the respondents do not dispute the petitioner's interpretation of § 1225(b)(2)(A), nor that it should have applied to him with the understanding that the only way release can occur in that situation is via parole under § 1182(d)(5)(A). Their only response is that "parole is a factual occurrence" [ECF No. 23, at 9] and thus the background law is irrelevant. However, to the contrary, courts have long understood that the existence or non-existence of a parole document does not resolve the question of whether a person was paroled as a matter of law. *Vitale* v. *INS*, 463 F. 2d 579, 580–82 (CA7 1972) (placing entrant in custody of airline for further inspection was parole, not an entry, though done without parole paperwork); *Medina Fernandez* v. *Hartman*, 260 F. 2d 569, 570–73 (CA9 1958) (holding parole paperwork was a sham where Spanish sailors were involuntarily brought from Mexico into the United States on allegations of desertion). The Board of Immigration Appeals has long understood this too. *Matter of O-*, 16 I. & N. Dec. 344 (BIA 1977) (holding that 126 persons evacuated from Vietnam were paroled as a matter of law).

Last, *Matter of Cabrera-Fernandez*, 28 I. & N. Dec. 747 (BIA 2023), never even addresses § 1225(b)(2)(A), and is thus irrelevant. In fact, the government does not even treat that case as dispositive before the Eleventh Circuit in the pending cases noted above.

Dated: June 11, 2025

Respectfully submitted,

s/ Felix A. Montanez
Fla. Bar No. 102763
Preferential Option Law Offices, LLC
PO Box 60208
Savannah, GA 31420
Dir.: (912) 604-5801
felix.montanez@preferentialoption.com

s/Mark Andrew Prada
Fla. Bar No. 91997
Prada Dominguez, PLLC
12940 SW 128 Street, Suite 203
Miami, FL 33186
c. 786.238.2222
mprada@pradadominguez.com

Counsel for Petitioner