No. _____

IN THE

Supreme Court of the United States

ROSA ELIDA CASTRO, *et al.*,

Petitioners,

—v.—

U.S. DEPARTMENT OF HOMELAND SECURITY, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Petitioners are mothers and children who fled persecution in Central America and challenged the denial of asylum on statutory, regulatory and constitutional grounds while detained in Pennsylvania. Because they are in "expedited removal" proceedings, the Third Circuit held that they were not entitled to judicial review of their claims, even by habeas corpus, and that, as recent unlawful entrants, they "cannot even invoke the Suspension Clause" to challenge their removal orders. The decision marks the first time in the country's history that individuals on U.S. soil would be left outside the "protections of the Suspension Clause" and, more particularly, the first time that noncitizens who had entered the country would be unable to challenge their removal, even on legal grounds. The questions presented are:

1. Whether the Third Circuit erred in holding that petitioners are not entitled to judicial review of their statutory, regulatory and constitutional claims, even by habeas corpus, and are "prohibited from invoking the protections of the Suspension Clause" to challenge their removal.

2. Whether the Third Circuit erred in concluding, contrary to every other circuit to address the issue, that persons who have entered the United States may be "assimilated" to the constitutional status of noncitizens arriving at our borders, and thereby denied constitutional rights.

PARTIES TO THE PROCEEDING

Petitioners are Rosa Elida Castro and A.A.G.C.[1]; Laura Lisseth Flores Pichinte and E.S.U.F.; Karen Margarita Zelaya Alberto and S.E.A.Z.; Kelly Gutierrez Rubio and G.J.S.G.; Wendy Amparo Osorio Martinez and D.S.R.O.; Gladis Carrasco Gomez and B.J.R.C.; Cindy Gisela Lopez Funes and W.S.M.L.; Jeydi Erazo Anduray and D.A.L.E.; Dina Isabel Huezo de Chicas and L.J.C.H.; Carmen Leiva Menjivar, A.M.M.L., and E.A.M.L.; Lesly Griscelda Cruz Matamoros and C.N.V.C.; Dinora Lemus and A.R.M.L.; Jannys Mendez de Bonilla and A.B.B.M.; Marta Alicia Rodriguez Romero, W.A.M.R., and C.A.M.R.; Roxana Aguirre Lemus and C.A.A.; Celina Patricia Soriano Bran and J.A.A.S.; Guadalupe Flores Flores and W.J.B.F.; Maria Delmi Martinez Nolasco and J.E.L.M.; Carmen Aleyda Lobo Mejia and A.D.M.L.; Jethzabel Maritza Aguilar Mancia and V.G.R.A.; Julissa Clementina Hernandez Jimenez and A.H.V.H.; Elsa Milgros Rodriguez Garcia and J.M.V.R.; Heymi Lissania Arevalo Moterroza and R.N.F.A.; Elizabeth Benitez de Marquez and A.M.B.; Ingrid Maricela Elias Soriano and A.E.C.E.; Maribel Maria Escobar Ramirez, C.Y.L.E., Y.I.L.E., and R.J.L.E.; Ana Maricela Rodriguez Granados, J.A.B.R., and V.E.B.R.; and Zulma Portillo de Diaz and K.L.D.P.

Respondents, who were also respondents in the court of appeals and district court, are the United States Department of Homeland Security ("DHS"); United States Customs and Border Protection

1 The minor children are identified only by their initials, as they were in the district court and court of appeals.

("CBP"); United States Citizenship and Immigration Services ("USCIS"); United States Immigration and Customs Enforcement ("ICE"); the Secretary of DHS; the Attorney General of the United States; the Commissioner of CBP; the Director of USCIS; the Philadelphia Field Director of CBP; the Philadelphia Assistant Field Office Director of ICE; and the Director of Berks County Residential Center.

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JURISDICTION

The judgment of the court of appeals was entered on August 29, 2016. A petition for rehearing and rehearing *en banc* was denied on October 28, 2016. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Reprinted in an appendix to this petition (App. 282a-295a) are the Suspension Clause, and pertinent portions of 8 U.S.C. §§ 1252, 1225(b).

INTRODUCTION

The Third Circuit discarded two bright-line rules that have long formed the cornerstones of the law of habeas corpus and of immigration law: (1) the protections of the Suspension Clause may be denied to individuals within the United States *only* "in Cases of Rebellion or Invasion," U.S. Const. art. I, § 9, cl. 2, and (2) noncitizens are entitled to constitutional rights after they enter the country,

regardless of whether their presence is "temporary" or "unlawful." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

Since the country's founding, no individual within the United States has been deemed outside the "protections of the Suspension Clause" (App. 60a), absent a formally declared invasion or rebellion. The Third Circuit's unprecedented ruling that petitioners—individuals who entered the United States and sought asylum—cannot even invoke the Suspension Clause warrants this Court's review.

The Suspension Clause states: "The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it." U.S. Const. art. I, § 9, cl. 2. The court of appeals recognized that we are not "in a time of formal suspension," App. 27a, but nonetheless held that because petitioners—mothers and children fleeing violence and persecution—entered the country without inspection and were arrested shortly after entry, they are "prohibited from invoking the protections of the Suspension Clause" to challenge their removal. App. 60a.

The Third Circuit reached this conclusion without addressing the scope of judicial review to which petitioners would be entitled if the Suspension Clause were applicable. App. 52a-53a (finding it unnecessary to address that question). Instead, the court of appeals held, as a threshold matter, that petitioners fell outside the "protections of the Suspension Clause" altogether and for that reason alone were not constitutionally entitled to habeas review of their removal orders.

The court of appeals' ruling is unprecedented. In light of the "specific language in the Constitution," this Court has steadfastly refused to allow Congress to deprive individuals who have entered the country of the protections of the writ, stressing that the Suspension Clause is a critical "structural" check on the political branches. *See Boumediene v. Bush*, 553 U.S. 723, 740, 745 (2008). Indeed, the Court has rejected Congress' attempt to restrict the availability of the writ even for alleged enemy aliens held in territory *outside* the United States. *See id.* at 771.

In the immigration context as well, this Court has, without exception, exercised habeas review over orders to remove noncitizens from within the United States, despite repeated efforts by Congress to eliminate judicial review and make administrative immigration decisions "final." *INS v. St. Cyr*, 533 U.S. 289, 304, 306-08, 311-12 (2001); *id.* at 300 (reaffirming that "some judicial intervention in deportation cases is unquestionably required" by the Suspension Clause) (citation and internal quotation marks omitted).

The Third Circuit made no claim that this Court had ever held that individuals on U.S. soil could be denied the protections of the Suspension Clause, absent a declared invasion or rebellion. Rather, making a prediction about the direction in which this Court's opinions might evolve based on an entirely separate body of law, the Third Circuit believed that denying petitioners the "protections of the Suspension Clause" would be true to the "arc traced by the Supreme Court's *plenary power* cases in recent decades," and that, in its view, "the Court has continued to signal" its willingness to deny

constitutional rights to individuals who have entered the country. App. 48a, 60a (emphasis added).

The Third Circuit's prediction was based on its view that this Court is prepared to abandon the longstanding constitutional bright line between individuals arriving at the border and those who have entered the country, reasoning that unlawful entrants arrested soon after entering the country should be "assimilated" to the status of those who are denied admission at a port of entry and accordingly denied constitutional rights. App. 60a. For more than 60 years, however, this Court—and every circuit to address the issue—has uniformly adhered to that line and affirmed that individuals who have entered the country are entitled to constitutional rights whether or not their entry was recent and whether "their presence here was lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693.

More fundamentally, even if recent unlawful entrants were treated as noncitizens arriving at the border, the Third Circuit's ruling would still represent an extreme departure from this Court's cases. As this Court has made clear, noncitizens arriving at the border *are* entitled to habeas corpus. Unlike other constitutional rights, the privilege of habeas corpus has always been available to individuals at the border to challenge their exclusion from the country. *St. Cyr*, 533 U.S. at 306 (citing cases). In fact, in the very immigration cases on which the Third Circuit relied, *Mezei* and *Knauff*, this Court exercised habeas review. App. 45a-49a (discussing *Shaughnessy v. United States ex rel.*

Mezei, 345 U.S. 206 (1953), and *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537 (1950)).

For the mothers and children who are petitioners here, the Third Circuit's decision may have life and death consequences. Beyond petitioners, the implications of abandoning these two bright-line rules are far-reaching. The Third Circuit simply left it to "courts in the future" to determine under what additional circumstances the protections of the Suspension Clause may be unavailable to individuals arrested and detained in this country. App. 58a. That ad hoc approach is at odds with the animating purpose of the Suspension Clause and this Court's uniform precedents.

The petition should be granted. The issues are squarely presented and there is no impediment that would prevent this Court from reaching them. If individuals who have entered the country and are detained on U.S. soil are going to be denied the protections of the Suspension Clause for the first time in the country's history, it should not be without review by this Court.

STATEMENT OF THE CASE

Petitioners are 28 Central American mothers and their 33 children, ranging in age from 2 to 17. After fleeing persecution in El Salvador, Honduras and Guatemala, they entered the United States, were arrested near the border in Texas, and placed into "expedited removal" proceedings, where they sought, but were denied, asylum in highly truncated administrative proceedings.[2]

Unlike regular removal orders, which may be challenged by a petition for review in the court of appeals, expedited removal orders may be challenged only under special habeas procedures set out in the Immigration and Nationality Act ("INA"). Each of the 28 families filed individual habeas petitions under these procedures. They did not challenge the expedited removal system itself, but rather alleged that they did not receive even those substantive and procedural rights to which they were entitled in these summary proceedings, in violation of various statutes and regulations, as well as due process.

A. The Expedited Removal Process

1. Prior to 1996, noncitizens who entered the country without inspection were deemed deportable and placed into deportation proceedings, where they were subject to grounds of deportability.

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2 Petitioners were subsequently transferred from Texas to a detention center in Pennsylvania. Two of the 28 families (Mendez-Lopez and her 6 year old son, and Chicas-Huezo and her 6 year old son) agreed to removal due to dire personal circumstances after months in detention in Pennsylvania, but have remained part of the case and continue to seek asylum.

In contrast, noncitizens arriving at the border were deemed excludable and placed into exclusion proceedings, where they were subject to grounds of inadmissibility. *See Judulang v. Holder*, 132 S. Ct. 476, 479 (2011).

In 1996, Congress changed the nomenclature and created "removal proceedings" for all noncitizens, regardless of whether they had already entered the country or were stopped at a port of entry. *Id.* Congress retained the distinction, however, between grounds of deportability and inadmissibility, with one change relevant here. Under the current scheme, noncitizens who enter the country without inspection also are now subject to grounds of inadmissibility. *See* 8 U.S.C. §§ 1225(a)(1), 1229a(c)(2)(A). Thus, because petitioners entered the country without inspection, they are classified as inadmissible and deemed for statutory purposes under the INA to be seeking admission to the United States.

2. Congress in 1996 also created two basic types of removal proceedings. Regular removal proceedings consist of a full trial-type hearing before an immigration judge, administrative appellate review before the Board of Immigration Appeals ("BIA"), and judicial review in the court of appeals by petition for review. 8 U.S.C. §§ 1229a, 1252.

"Expedited removal" proceedings under 8 U.S.C. § 1225(b)(1), by contrast, offer only the most summary process. As a statutory matter, the INA authorizes the Attorney General to apply expedited removal to noncitizens who lack valid entry documents or have engaged in certain types of fraud, and who are either (1) arriving at a port of entry, or (2) entered the country without inspection and

cannot demonstrate that they have been continuously, physically present in the country for two years. 8 U.S.C. §§ 1225(b)(1)(A)(i), (iii).

Notwithstanding the breadth of this statutory authority, the Attorney General initially applied expedited removal only to inadmissible noncitizens arriving at ports of entry, and not to individuals who had entered the country. In 2002, the Attorney General invoked his authority to apply expedited removal to persons inside the country, and specifically to individuals who had arrived by sea, entered without inspection, and were apprehended anywhere in the country within two years of entry. *See* Notice Designating Aliens Subject to Expedited Removal Under Section 235(b)(1)(A)(iii) of the Immigration and Nationality Act, 67 Fed. Reg. 68924 (Nov. 13, 2002).

In 2004, the Attorney General further expanded the use of expedited removal and authorized its use for individuals who had entered without inspection by land, if they were apprehended within 100 miles of the border and were unable to demonstrate that they had been physically present in the United States for 14 days. *See* Designating Aliens for Expedited Removal, 69 Fed. Reg. 48877-01, 48879 (Aug. 11, 2004). Petitioners were apprehended within 14 days and 100 miles of the border.

To date, the Attorney General has not used the full statutory authority to apply expedited removal to individuals apprehended anywhere in the country within two years of entry.

3. The expedited removal process is truncated, even for those seeking asylum. Unlike

noncitizens in regular removal proceedings, asylum seekers in expedited removal proceedings do not receive full immigration hearings, BIA administrative appellate review, or judicial review in the courts of appeals. Instead, they receive an "interview" with an asylum officer to determine whether they have a "credible fear" of persecution or torture. *See* 8 U.S.C. § 1225(b)(1)(B)(ii); *see also* § 1225(b)(1)(A)(ii). If they pass the credible fear interview, the government places them into regular removal proceedings, where they can fully develop their asylum claims. If applicants are deemed by the asylum officer not to have satisfied the credible fear standard, they may then obtain a brief "review" of their case by an immigration judge. 8 U.S.C. § 1225(b)(1)(B)(iii)(III).

The expedited removal process for asylum seekers is fraught with procedural deficiencies: there is no review by the BIA; applicants often have significant difficulty understanding what is expected of them, particularly if—as is often the case—they do not speak English, are uneducated, or are traumatized from past persecution; applicants are rarely able to secure counsel for their asylum officer interviews, and even if they are able to find counsel, the lawyer may only appear in a "consultation" capacity (8 U.S.C. § 1225(b)(1)(B)(iv); 8 C.F.R. § 208.30(d)(4)); witnesses are rarely, if ever, called before either the asylum officer or the immigration judge; and applicants have virtually no time to gather evidence to support their claim. And having fled persecution and violence, applicants rarely have with them documentation of their claims.

Nonetheless, Congress did take care to provide asylum seekers in expedited removal proceedings with certain statutory protections, which have now been implemented through a series of detailed regulations. Respondents denied these procedural and substantive protections to petitioners, and that denial formed the basis of their habeas claims.

Procedurally, the asylum officer may not simply expect applicants to know what information is relevant to establishing their claim, but is required "to *elicit* all relevant and useful information bearing on whether the applicant has a credible fear of persecution or torture." 8 C.F.R. § 208.30(d) (emphasis added). The asylum officer must also "conduct the interview in a nonadversarial manner" to ensure that relevant information is disclosed. *Id.* Further, if the asylum officer issues a negative credible fear determination, the officer must provide a "written" record that "shall include . . . the officer's *analysis* of why, in light of [the] facts, the alien has not established a credible fear of persecution." 8 U.S.C. § 1225(b)(1)(B)(iii)(II) (emphasis added).

Congress also made clear that the substantive standard necessary to establish a "credible fear" in the asylum interview is far lower than the standard for obtaining asylum itself. To prevail ultimately on an asylum claim, applicants must establish that there is roughly a 10% chance that they will be persecuted on account of a protected ground. *See INS v. Cardoza-Fonseca*, 480 U.S. 421, 431-32 (1987). To prevail at the initial credible fear interview, however, applicants need only show "a significant possibility" that they could establish eligibility for asylum. 8 U.S.C. § 1225(b)(1)(B)(v). Thus, at the

expedited removal stage, applicants need only show a *significant possibility* that there is a *10% chance* of persecution if they are removed. If they make that showing, they are taken out of the expedited removal system and placed into regular removal proceedings, where their asylum claims can be fully developed. *See* 8 C.F.R. § 208.30(f); 8 U.S.C. § 1225(b)(1)(B)(ii); *see also* 8 C.F.R. § 1003.42(f).

B. Petitioners' Cases

1. Petitioners' home countries of El Salvador, Honduras, and Guatemala are now among the most violent in the world, places where the authorities cannot and do not protect them. Honduras, for example, "has one of the highest murder rates in the world" and the "majority of homicide cases in Honduras have no resolution."[3] In 2016, El Salvador's annual homicide rate was its "highest ever at 104 per 100,000 inhabitants, putting it in a position to take over the dubious title of the world's murder capital from neighboring Honduras."[4]

As women and children in these countries, petitioners are especially vulnerable to abuse and persecution, including from domestic partners.[5]

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3 *See* U.S. Dep't of State, Bureau of Consular Affairs, Honduras Travel Warning, https://travel.state.gov/content/passports/en/alertswarnings/honduras-travel-warning.html.

4 Marcos Aleman, *Homicides Up 70 Pct in El Salvador, Among Deadliest Nations,* Associated Press, Jan. 4, 2016, http://tinyurl.com/jtgnv7a.

5 *See generally* U.S. Dep't of State, Bureau of Democracy, Human Rights and Labor, 2013 Human Rights Report: El Salvador, at 15, http://tinyurl.com/jdzkzb4 (noting that domestic violence is a "widespread and serious problem," as are rape and

They are likewise at risk from the notoriously violent gangs who control much of El Salvador and Honduras and prey on minors and female-headed households. Petitioners have suffered gender-based violence, including sexual assault, by men from whom they could not escape, *see, e.g.*, Third Circuit Joint Appendix ("J.A.") 319-21, 441-43, and have been targeted by the gangs because they are single women residing without a male household member to protect them. *See, e.g.*, J.A. 404-06, 441-43. *See Matter of A-R-C-G-*, 26 I. & N. Dec. 388 (BIA 2014) (recognizing domestic violence as basis for asylum); *Hernandez-Avalos v. Lynch*, 784 F.3d 944, 950 (4th Cir. 2015) (recognizing persecution by Central American gangs as basis for asylum).

For example, petitioner Laura Flores-Pichinte survived a rape by her former partner, who beat her when she was pregnant, and who beat their infant daughter after the girl was born. J.A. 81-82. When petitioner Maria Martinez Nolasco refused a gang leader's advances, he sexually assaulted her and threatened that he would take her son. J.A. 319-20. Petitioner Lesly Griscelda Cruz Matamoros fled to protect her twelve-year-old daughter from sexual threats by members of the notorious MS-13 gang. J.A. 206-07.

2. After escaping their home countries and entering the United States, petitioners were apprehended near the border, deemed statutorily inadmissible because they lacked entry documents,

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other sexual crimes); *id.* (noting that laws against domestic violence are not enforced and cases are not effectively prosecuted).

and placed into expedited removal proceedings, where they unsuccessfully sought asylum.[6]

Each family filed a habeas petition in the Eastern District of Pennsylvania, alleging that the denial of asylum and other relief violated various statutes and regulations, as well as due process. Petitioners asserted, for example, that the asylum officer and immigration judge applied an erroneous legal standard in evaluating their asylum claims, and not the "significant possibility" standard mandated by the statute and regulations. *See, e.g.*, J.A. 103, 445-46.

Petitioners all additionally asserted that their hearings violated various procedural safeguards mandated by the statute, regulations, and due process. *See, e.g.*, J.A. 239-242, 374, 376. Petitioners alleged, for instance, that they never received a written analysis explaining the basis for the denial of their claims, even though the expedited removal statute expressly requires a "written" statement with the asylum officer's "analysis." 8 U.S.C. § 1225(b)(1)(B)(iii)(II). Instead, the asylum officer simply checked a box on a form stating that the applicant did not meet a particular legal requirement, without any explanation. *See, e.g.*, App. 108a-111a; J.A. 69, 87, 290-91, 513-14.

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6 In addition to asylum, petitioners were denied relief under the Convention Against Torture, 8 C.F.R. § 208.16(c), and Withholding of Removal (another form of persecution-related relief), 8 U.S.C. § 1231(b)(3).

C. Judicial Review of Expedited Removal

Individual expedited removal orders may be challenged only in district court habeas actions under procedures set forth in the INA. 8 U.S.C. § 1252(e)(2); *see also* § 1252(a).[7]

Section 1252(e)(2) provides review over three types of claims: "(A) whether the petitioner is an alien, (B) whether the petitioner was ordered removed under [the expedited removal statute], and (C) whether the petitioner . . . is an alien lawfully admitted for permanent residence [or was previously granted refugee or asylum status]." The scope of subsection (B), the provision at issue here, is addressed in § 1252(e)(5), which provides in full:

> **Scope of Inquiry**
>
> In determining whether an alien has been ordered removed under [the expedited removal statute], the court's inquiry shall be limited to whether such an order in fact was issued and whether

7 The one exception is for actions in the District of Columbia under § 1252(e)(3), which authorizes challenges to the "validity" of the statute, to its implementing regulations and to a "written policy directive, written policy guideline, or written procedure." 8 U.S.C. § 1252(e)(3)(A). Here, however, petitioners assert only errors in their individual cases. Additionally, the D.C. Circuit has held that systemic challenges under this section may be brought only within 60 days of "implementation" of the challenged provision. *See AILA v. Reno*, 18 F. Supp. 2d 38, 46-47 (D.D.C. 1998) (holding that "the 60-day requirement is jurisdictional"), *aff'd*, *AILA v. Reno*, 199 F.3d 1352, 1357 (D.C. Cir. 2000) (affirming for "substantially" the reasons stated by district court); *see also* App. 13a n.5 (stating that § 1252(e)(3) would not permit review of petitioners' claims).

> it relates to the petitioner. There shall be no review of whether the alien is actually inadmissible or entitled to any relief from removal.

The government took the position that the statute forecloses review of petitioners' claims, that subsection (B) is essentially limited to correcting errors of mistaken identity, and that its interpretation of subsection (B) is reinforced by the *first* sentence of § 1252(e)(5), providing that "the court's inquiry shall be limited to whether such an order in fact was issued and whether it relates to the petitioner."

Petitioners argued, in contrast, that subsection (B) provided review of their claims and that, at a minimum, the statute was sufficiently ambiguous to warrant application of the constitutional avoidance canon in light of the serious Suspension Clause problems that would be triggered by barring all review of their claims. Petitioners contended that if the government's reading of § 1252(e)(5) were correct, and the first sentence of that provision literally allows the court to review only whether they received an expedited removal order, then the second sentence would be rendered superfluous, because the first sentence would already have foreclosed "review of whether the alien is actually inadmissible or entitled to any relief from removal." Petitioners also maintained that Congress could not have intended to leave courts powerless to remedy all errors, including in egregious circumstances where, for instance, the government failed to provide asylum seekers with a translator or a hearing altogether. Finally, petitioners maintained that if the statute were read

to preclude all review of their legal claims, it would violate the Suspension Clause.

D. The Decisions Below

1. The district court dismissed all of the habeas petitions for lack of jurisdiction, App. 106a, and the Third Circuit affirmed, concluding that the statute barred review of petitioners' claims in any court by any means, including habeas, and that petitioners could not even invoke the Suspension Clause to challenge the preclusion of review. App. 51a-53a, 60a.[8]

(a) The Third Circuit agreed with the government that the statute unambiguously foreclosed review of petitioners' claims, holding that "review should only be for whether an immigration officer issued" an expedited removal order and "whether the Petitioner is the same person referred to in that order." App. 21a (citation and internal quotation marks omitted). It rejected petitioners' argument that the second sentence of § 1252(e)(5) was superfluous under the government's interpretation. The court reasoned that the second sentence simply "clarifies" the first sentence and the

8 The Third Circuit did not suggest that any other circuit has addressed the Suspension Clause issue presented here. The court cited a few decisions from other circuits, however, that it believed had addressed the same statutory question presented in this case. *See* App. 22-23a (citing *Shunaula v. Holder*, 732 F.3d 143, 145-47 (2d Cir. 2013); *Khan v. Holder*, 608 F.3d 325, 329-30 (7th Cir. 2010); *Brumme v. INS*, 275 F.3d 443, 448 (5th Cir. 2001); *Li v. Eddy*, 259 F.3d 1132, 1134-35 (9th Cir. 2001) (per curiam), *opinion vacated as moot*, 324 F.3d 1109 (9th Cir. 2003)). Those cases did not involve asylum seekers who had entered the United States.

limited review provided by the statute. *Id*. The Third Circuit acknowledged that its reading would result in virtually no oversight of the expedited removal process, but concluded that Congress had intended that drastic result. App. 26a-27a. Accordingly, finding that the statute was clear, the Third Circuit declined to apply the constitutional avoidance canon and addressed whether the preclusion of review was constitutional.

(b) The Third Circuit believed that "*Boumediene* contemplates a two-step inquiry," asking "whether a given habeas petitioner is prohibited from invoking the Suspension Clause" and, if not, whether the review provided by the statute is an adequate, effective substitute for the habeas review guaranteed by the Suspension Clause. App. 51a. The court of appeals found, however, that it "need not reach the second question" because petitioners failed at the initial stage: "Petitioners cannot even invoke the Suspension Clause to challenge issues related to their admission or removal from the country." App. 52a, 53a n.26.

The Third Circuit concluded that *Boumediene* offered little guidance on the first step of the inquiry, reasoning that it concerned only whether the Suspension Clause applied extraterritorially. App. 52a n.25. The court of appeals instead framed the case as one concerning "the relationship" between "the Suspension Clause" and "the political branches' plenary power over immigration," stating that its task was to reconcile "these seemingly disparate, and perhaps even competing, constitutional fields . . . ." App. 28a, 49a.

Turning first to this Court's immigration habeas cases, the Third Circuit concluded that none of the cases addressed the Suspension Clause question presented here—and doubted whether those cases involved the Suspension Clause at all. App. 53a-54a. The court of appeals also concluded that to the extent there was an historic body of immigration habeas law that had once been relevant, those cases "no longer represent the prevailing view of the plenary power doctrine, at least when it comes to aliens seeking initial admission." App. 60a. The court of appeals likewise dismissed *St. Cyr*, which relied on that same body of immigration habeas law, as factually distinguishable and irrelevant because it was a constitutional avoidance case. App. 53a-54a.

The Third Circuit's view that this Court's plenary power cases eliminated petitioners' right to habeas was based in large part on *Mezei*, 345 U.S. at 212. In *Mezei*, this Court held that a noncitizen seeking admission at a port of entry was not entitled to procedural due process to challenge his exclusion, but stated that one who *has* entered the country is entitled to additional rights. *Id.* The Third Circuit acknowledged that *Mezei* had drawn a distinction between those at the border and those who have entered the country, App. 47a, 55a-56a, but concluded that subsequent decisions from this Court "call into serious question the proposition" that any entrance into the United States "triggers constitutional protections that are otherwise unavailable to the alien outside its borders." App. 58a. The Third Circuit found support for that view in this Court's decision in *Landon v. Plasencia*, 459 U.S. 21 (1982), where the Court held that, notwithstanding *Mezei*, a lawful permanent resident

seeking readmission at the border *was* entitled to due process rights.

2. Judge Hardiman concurred, *dubitante*. App. 63a-64a. Although he joined the opinion in full, he noted that he likely would not have resolved the case on the ground that petitioners were prohibited from even invoking the Suspension Clause. App. 63a & n.1. In particular, he expressed "doubt" regarding the panel's reliance on the plenary power doctrine and *Plasencia*, noting that *Plasencia* did not involve an individual who had entered the country or even a "jurisdictional question." He concluded, however, that the court could have reached the same result on the alternative ground that the statute provided an adequate substitute for habeas review under the Suspension Clause. In support of that view, he stated only that petitioners' claims are distinguishable from those in *Boumediene* because petitioners here are challenging their removal orders. He did not discuss or cite *St. Cyr*, which addressed habeas review of removal orders and on which *Boumediene* relied.

3. The Third Circuit denied petitioners' request for rehearing and rehearing en banc, with Judges McKee, Greenaway, Vanaskie, and Restrepo voting to grant rehearing en banc. App. 67a. The panel subsequently granted petitioners' request for a stay of the mandate pending the filing and disposition of this petition.

REASONS FOR GRANTING THE WRIT

This Court has never held that individuals within U.S. sovereign territory can be denied the "protections of the Suspension Clause" absent formal suspension of the writ. Yet that is precisely what the Third Circuit did here.

The Third Circuit's decision abandoned two longstanding bright-line constitutional rules set forth in this Court's decisions. First, the Third Circuit held that Congress may bar access to the writ by individuals on U.S. soil, without engaging in a formal suspension. Second, the court of appeals held that, under this Court's plenary power decisions, individuals who have entered the country may be "assimilated" to the constitutional status of a noncitizen arriving at the border, and denied constitutional protection.

Both holdings conflict with a long line of uniform and unbroken authority. The very point of the Suspension Clause was to ensure that the protections of the writ could not be eliminated without a formal suspension, as this Court explained in *Boumediene*. No case supports the denial of the Suspension Clause's protections to a person on U.S. soil.

Moreover, even if the protections of the Suspension Clause could be eliminated without a formal suspension, the Third Circuit fundamentally misread and dramatically expanded the Court's plenary power cases, and in doing so, broke with the uniform view of the other circuits. The decisions of this Court and the other circuits are clear that individuals who have entered the country cannot be

treated as noncitizens arriving at the border and thereby denied constitutional rights, particularly habeas corpus rights.

The Court's review is necessary to protect two longstanding bright-line rules: (1) that on U.S. soil, the writ can be eliminated *only* by formal suspension; and (2) that individuals who have entered the country are protected by the Constitution and may not be treated for constitutional purposes as noncitizens arriving at the border (the bright-line rule that has existed for 60 years since this Court's decisions in *Mezei* and *Knauff*). The Third Circuit's rejection of these bright-line rules leaves the writ dangerously vulnerable to "cyclical abuses" by the political branches—precisely what the Framers sought to avoid. *Boumediene*, 553 U.S. at 745.

I. THE THIRD CIRCUIT'S DECISION CONFLICTS WITH THE TEXT OF THE SUSPENSION CLAUSE AND THIS COURT'S DECISIONS PROHIBITING CONGRESS FROM DENYING THE WRIT ABSENT A FORMAL SUSPENSION.

This Court's decisions interpreting the text and history of the Suspension Clause make clear that the Suspension Clause protects all individuals within U.S. legal territory; that the Clause applies to both citizens and noncitizens; and that Congress does not have the power to eliminate the writ absent a formal suspension.

1. In concluding that the Suspension Clause applied at Guantanamo, the Court in *Boumediene* surveyed the long history of habeas corpus indicating that the writ had always been

available—at a minimum—to those within the territory of England and the American colonies. *See* 553 U.S. at 743 (emphasizing that the Suspension Clause may be invoked by "persons" including "foreign nationals"); *id.* at 747 (observing that "at common law a petitioner's status as an alien" did not preclude habeas relief); *id.* at 746-52 (noting conflicting evidence only regarding the "issuance of the writ *outside* England") (emphasis added); *Rasul v. Bush*, 542 U.S. 466, 481 & n.11 (2004) (observing that English courts "exercised habeas jurisdiction over the claims of aliens detained within sovereign territory of the realm" and that "American courts followed a similar practice in the early years of the Republic"); *St. Cyr*, 533 U.S. at 301 ("In England prior to 1789, in the Colonies, and in this Nation during the formative years of our Government, the writ of habeas corpus was available to nonenemy aliens as well as to citizens.") (footnotes omitted).

The Third Circuit held, contrary to this unbroken historical line of authority, that petitioners fell outside the protection of the Suspension Clause because they were foreign nationals who had recently entered the country unlawfully. App. 52a-53a, 60a. Yet the petitioners in *Boumediene* were not only foreign nationals, but alleged enemy combatants who lacked any connection to the United States at all and who had never set foot in U.S. sovereign territory. That *Boumediene* enforced the Suspension Clause in an extraterritorial context does not render it *irrelevant* in this case, as the court of appeals believed; instead, the Clause's extraterritorial reach to alleged enemy combatants in Guantanamo forcefully underscores the universal protection of the

Clause within U.S. territory. Tellingly, the Third Circuit cited no historical support for its conclusion that the manner and timing of petitioners' entry denied them the protections of the Suspension Clause.

2. The text of the Suspension Clause also squarely forecloses the Third Circuit's analytical framework of attempting to reconcile the Clause with Congress' plenary power over immigration. As this Court explained in *Boumediene*, the *Framers themselves* reconciled the writ's availability with Congress' powers. Based on their experience with "cyclical abuses" in the form of suspensions of the common-law writ, the Framers correctly foresaw that the political branches would inevitably have the urge to limit habeas. *Boumediene*, 553 U.S. at 739-40. They thus sought to avoid a situation in which the writ's availability would depend upon the political branches' assessment at any given time of the relative importance of habeas. Toward that end, they enacted "specific language in the Constitution to secure the writ and ensure its place in our legal system." *Id.* at 740.

Because "the Framers deemed the writ to be an essential mechanism in the separation-of-powers scheme," they designed the Suspension Clause to provide an explicit "structural" check on efforts by the political branches to cut off access to the writ when it was politically expedient. *Id.* at 743, 745. The Clause thus "ensures that, except during periods of formal suspension, the Judiciary will have a time-tested device, the writ, to maintain 'the delicate balance of governance' that is itself the surest safeguard of liberty." *Id.* at 745 (citation omitted);

id. at 765-66 (stressing that the Suspension Clause "must not be subject to manipulation by those whose power it is designed to restrain").

The Court in *Boumediene* not only reaffirmed this structural protection in the strongest possible terms, but did so where Congress was acting at the height of its national security powers, against alleged enemy combatants in an authorized military conflict. *Boumediene*, 553 U.S. at 797-98. In so holding, the Court rejected the government's argument that the elimination of habeas review was justified by "the weighty and sensitive governmental interests in ensuring that those who have in fact fought with the enemy during a war do not return to battle." Brief for Respondent, *Boumediene v. Bush*, 553 U.S. 723 (2008) (Nos. 06-1195, 06-1196), 2007 WL 2972541, at *10-11 (citation and internal quotation marks omitted).

The Third Circuit's view that Congress' plenary power over immigration permits the writ's elimination is directly at odds with the animating purpose behind the Suspension Clause. Under the Third Circuit's ruling, the very danger envisioned by the Framers would come to pass: the political branches would have the power to grant or deny habeas corpus review, without going through the process of suspension. Significantly, the statute at issue here already permits the government to use expedited removal for individuals living in the *interior* of the country for up to *two years*. 8 U.S.C. §§ 1225(b)(1)(A)(i), (iii). The Third Circuit's approach will require a case-by-case, expedient assessment of the writ's comparative importance in light of other congressional goals. Indeed, the Third Circuit

candidly acknowledged that possibility: "we simply leave it to courts in the future to evaluate the Suspension Clause rights of an alien whose presence in the United States goes meaningfully beyond that of Petitioners here." App. 58a n.30.

3. Insofar as the Third Circuit believed there was something unique about Congress' plenary power over immigration that permitted it to eliminate the writ without a formal suspension, that view conflicts with a century of this Court's immigration habeas precedents. As shown by *St. Cyr*, and the entire body of common-law decisions and immigration habeas law on which *St. Cyr* relied, this Court has long recognized the constitutional entitlement to habeas review of deportation orders for those who have entered the country. This body of law, moreover, also shows that habeas review of exclusion orders for noncitizens arriving at the border is likewise constitutionally required. Thus, even if the Third Circuit could read this Court's plenary power cases to require that petitioners be "assimilated" to the constitutional status of a noncitizen arriving at the border, petitioners would *still* be entitled to Suspension Clause review to enforce their statutory and regulatory rights.

a. In *St. Cyr*, 533 U.S. 298, this Court reviewed a jurisdictional provision that restricted judicial review for lawful permanent residents subject to removal on the basis of a criminal conviction. After engaging in a lengthy survey of common-law decisions and immigration habeas law, the Court concluded that "some judicial intervention in deportation cases is unquestionably required" by the Suspension Clause. *Id.* at 300 (internal quotation

marks omitted); *see id.* at 301-03 (relying on common-law precedents involving noncitizens). In light of the "serious Suspension Clause issue" that would have been triggered by the elimination of review, the Court construed the statute to preserve habeas review. *Id.* at 305.[9]

St. Cyr's Suspension Clause analysis rested on the historical body of immigration habeas law known as the finality-era cases, beginning with the passage of the 1891 Immigration Act and concluding with cases decided under legislation preceding the passage of the 1952 Act. During this approximately 60-year period, Congress repeatedly enacted jurisdictional provisions that expressly made administrative immigration decisions "final"—hence the term "finality era." The only judicial review of removal orders available during the finality period was the minimum review "required by the Constitution." *St. Cyr*, 533 U.S. at 311 (explaining that "the finality provisions . . . 'preclud[ed] judicial review' to the maximum extent possible under the Constitution") (quoting *Heikkila v. Barber*, 345 U.S. 229, 235 (1953)). Yet, despite these statutory restrictions, *St. Cyr* found that this Court (and the lower courts) routinely reviewed removal orders—review in which

9 Notably, the government in *St. Cyr* argued that habeas must give way to Congress' plenary power, an argument that this Court's ruling necessarily rejected. *See* Brief of Respondent, *Calcano-Martinez v. I.N.S.*, 533 U.S. 348 (2001) (No. 00-1011) (companion case to *St. Cyr*), 2001 WL 327595, at *43 (arguing that there was no right to judicial review because "the power to exclude or expel aliens belonged to the political department of the Government") (internal quotation marks and citations omitted).

they could not have engaged had it not been "required by the Constitution." *St. Cyr*, 533 U.S. at 300-08 (internal quotation marks omitted).

Importantly, this Court exercised such jurisdiction in cases involving *unlawful* entrants. *See*, *e.g.*, *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954) (reversing the BIA's decision on the merits in habeas case involving unlawful entrant); *see also St. Cyr*, 533 U.S. at 307 (relying on *Accardi*); *Wong Yang Sung v. McGrath*, 339 U.S. 33 (1950) (granting habeas relief to petitioner in the country unlawfully).

During the finality period, moreover, this Court and the lower courts also routinely reviewed cases involving exclusion orders for noncitizens arriving at the border seeking admission. *See*, *e.g.*, *Gegiow v. Uhl*, 239 U.S. 3, 8-10 (1915) (finding statutory violation and granting habeas petition brought by "Russians seeking to enter the United States"); *Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892) (exercising jurisdiction over excluded noncitizen's habeas petition, and emphasizing that "[a]n alien immigrant, prevented from landing . . . is doubtless entitled to a writ of habeas corpus to ascertain whether the restraint is lawful"); *United States ex rel. Johnson*, 336 U.S. 806, 808, 815 (1949) (granting habeas relief to petitioner seeking admission at a port of entry); *Yee Won v. White*, 256 U.S. 399, 399-402 (1921) (reviewing habeas petition of noncitizens denied admission); *Zartarian v. Billings*, 204 U.S. 170 (1907) (same).

Thus, the Third Circuit's holding conflicts with a century of immigration habeas law showing that, notwithstanding Congress' plenary power, the

Suspension Clause requires that noncitizens be able to challenge the legality of their removal orders, even at a port of entry.

b. The Third Circuit dismissed *St. Cyr* on the ground that it involved a lawful permanent resident. App. 53a-55a. Yet nothing in the Court's Suspension Clause analysis hinged on that fact, and indeed, the Court's constitutional analysis rested heavily on cases involving noncitizens arriving at a port of entry who challenged their exclusion. *See St. Cyr*, 533 U.S. at 306-08 & n.28, 312 (citing, for example, *Nishimura Ekiu*, 142 U.S. 651, and *Gegiow*, 239 U.S. 3).

The Third Circuit also disregarded *St. Cyr* because the decision ultimately rested on statutory grounds. This Court's constitutional analysis, however, was lengthy, considered, and critical to the statutory holding, which turned on the canon of constitutional avoidance. 533 U.S. at 314. Indeed, *Boumediene* expressly relied on *St. Cyr*'s constitutional analysis for the proposition that, at a minimum, the Suspension Clause guarantees review of the proper "'application or interpretation' of relevant law." *Boumediene*, 553 U.S. at 779 (quoting *St. Cyr*, 533 U.S. at 302).

The Third Circuit distinguished the finality era cases because it believed these cases were not clearly based on the Suspension Clause, stating that "none of them even mentions the Suspension Clause." App. 54a. In support of that view, the court cited Justice Scalia's dissenting opinion in *St. Cyr*. But the *St. Cyr* majority relied heavily on those very cases in its interpretation of the Suspension Clause. *See St. Cyr*, at 300, 304-08; *see also United States ex*

rel. Turner v. Williams, 194 U.S. 279, 295 (1904) (Brewer, J., concurring) (citing the Suspension Clause in a finality-era deportation case and joining "the conclusions of the court" that "notwithstanding the legislation of Congress, the courts may and must, when properly called upon by petition in habeas corpus examine and determine the right of any individual restrained of his personal liberty to be discharged from such restraint").[10] The Court should grant review to correct the Third Circuit's unprecedented denial of habeas corpus rights to persons within the United States.

10 Concurring, Judge Hardiman expressed "uncertainty" about the majority's conclusion that petitioners could not even invoke the Suspension Clause, but indicated that, in his view, Congress could nonetheless deny review here because the scope of review protected by the Clause does not include challenges to removal orders. App. 64a (distinguishing *Boumediene* on the ground that petitioners there were seeking "release from indefinite detention"). But that suggestion—which the majority did not adopt—is contrary to this Court's decision in *St. Cyr*, as well as to the extensive history on which *St. Cyr* relied, both of which show that the scope of review available in habeas includes review of removal orders. Judge Hardiman failed even to cite *St. Cyr*, much less acknowledge that *Boumediene* specifically relied upon *St. Cyr* in its Suspension Clause analysis. *See Boumediene*, 553 U.S. at 779.

II. THE THIRD CIRCUIT'S DECISION CONFLICTS WITH THE LONGSTANDING CONSTITUTIONAL LINE DRAWN BY THIS COURT AND THE OTHER CIRCUITS BETWEEN INDIVIDUALS WHO HAVE ENTERED THE COUNTRY AND THOSE ARRIVING AT THE BORDER.

The Third Circuit starkly departed from this Court's plenary power cases in two distinct ways. First, it incorrectly held that individuals who have entered the country can be assimilated to the constitutional status of noncitizens arriving at the border. Second, it flatly contradicted this Court's cases by holding that noncitizens arriving at the border lack *habeas* rights. The holdings are contrary not only to the settled law of this Court, but also the rulings of the other circuits.

1. This Court's immigration cases have established a bright line between aliens seeking admission at a port of entry, and those who have already entered the country, even if unlawfully. *See Mezei*, 345 U.S. 206; *Knauff*, 338 U.S. 537. The other circuits have unanimously adhered to that same line. The Third Circuit, however, abandoned this line, denying constitutional rights to noncitizens who have entered the country by treating them as if they had not.

The Third Circuit described *Knauff* and *Mezei* as "sea-changing precedents" that "restored the political branches' plenary power over aliens at the border seeking initial admission." App. 47a-48a, 60a. Yet *Mezei* and *Knauff* denied rights only to noncitizens arriving at ports of entry, and not

individuals who have entered the country. Indeed, the decisions themselves made clear that they were *not* intended to apply to someone who had entered the United States: "aliens who have once passed through our gates, *even illegally*, may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law." *Mezei*, 345 U.S. at 212 (emphasis added).

This Court has consistently reaffirmed the line drawn in *Mezei*. *See*, *e.g.*, *Zadvydas*, 533 U.S. at 693 (limiting *Mezei* to individuals at a port of entry and stating that "once an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, *unlawful*, *temporary*, or permanent.") (citation omitted; emphasis added); *see also Mathews v. Diaz*, 426 U.S. 67, 77 (1976) (stressing that the Fifth Amendment applies even to those "whose presence in this country is unlawful, involuntary, or transitory") (internal citations omitted).

No other circuit, moreover, has ever adopted the position that *Mezei* and *Knauff* apply to noncitizens who have entered the country. To the contrary, the other circuits have recognized that the constitutional dividing line between those who have entered and those arriving at the border is a bedrock principle of immigration law. *See, e.g.*, *Bayo v. Napolitano*, 593 F.3d 495, 502 (7th Cir. 2010) (en banc) (noting "bright line" between those who have entered the country and those who have not, and explaining that, once the noncitizen "crossed the border," he "became entitled to certain constitutional rights, including the right to due process"); *Ali v.*

Mukasey, 529 F.3d 478, 490 (2d Cir. 2008) (similar); *Borrero v. Aljets*, 325 F.3d 1003, 1006-08 (8th Cir. 2003) (explaining the "critical difference" between "an alien within the country," who "is entitled to the protection of the Due Process Clause," and one who has not "effected an entry") (citations omitted), *abrogated on other grounds by Clark v. Martinez*, 543 U.S. 371, 378-81 (2005); *Jean v. Nelson*, 727 F.2d 957, 967 (11th Cir. 1984) (en banc), *aff'd on other grounds,* 472 U.S. 846 (1985).

That the courts of appeals have taken this view is not surprising given this Court's uniform adherence to the line. In fact, petitioners are not aware of the United States itself having ever taken the position—before being called upon to defend the controversial statute at issue here—that *Mezei* and *Knauff* should be extended to individuals who have entered the country. To the contrary, the United States has previously relied upon the bright line in immigration law between those seeking admission at a port of entry and those who have already entered, calling the line "fundamental" and of "long" duration. *See*, *e.g.*, Brief for the Petitioner, *Landon v. Plasencia*, 459 U.S. 21 (1982) (No. 81-129), 1982 U.S. S. Ct. Briefs LEXIS 1223, at *23 ("our immigration laws have long made a distinction between aliens who arrive at the border seeking admission and aliens who are within the United States after an entry, regardless of its legality"); Reply Brief for the Petitioners, *Clark v. Martinez*, 543 U.S. 371 (2005) (Nos. 03-878), 2004 WL 2006590, at *6 (recognizing "the fundamental distinction" . . . in the Constitution between aliens stopped at the border and those who have entered"); *id.* at 6-7 (emphasizing "the

continuing vitality of the distinction between aliens stopped at the border and those who have entered").

The Third Circuit tacitly recognized that this Court had never applied *Mezei* and *Knauff* to individuals who had entered the country. It speculated, however, that *Landon v. Plasencia*, 459 U.S. 21, seemed to "signal" the Court's willingness to deny constitutional rights to individuals who had entered the country depending upon the depth of their connections to the country. App 48a. Yet *Plasencia* did not involve noncitizens who had entered the country. Moreover, in *Plasencia* the Court *expanded* due process rights for an *arriving* noncitizen at a port of entry. There is no basis for reading *Plasencia* to restrict the due process rights of those who have entered the country, and indeed, this Court's post-*Plasencia* decisions retain the traditional distinction between those at a port of entry and those who entered the country. *See*, *e.g.*, *Zadvydas*, 533 U.S. at 693 (cabining *Mezei*).

The Third Circuit also suggested that this Court's cases do not *foreclose* its reading of *Mezei* and *Knauff* because none involved an individual apprehended so soon after entry. The other circuits have, however, routinely applied the bright line established by this Court's cases to noncitizens who had only recently entered the country. *See, e.g.*, *Zheng v. Mukasey*, 552 F.3d 277, 279, 286 (2d Cir. 2009) (finding denial of due process for individual apprehended *one week* after entry, noting that noncitizens who have "'passed through our gates, even illegally, may be expelled only after proceedings conforming to traditional standards of fairness'") (quoting *Mezei*, other citation omitted); *Hussain v.*

Gonzales, 424 F.3d 622, 626 (7th Cir. 2005) (due process applicable to noncitizen charged with removability *one day* after unlawful entry, *see* 2004 WL 3760865 at *7-8 (petitioner's brief)); *Flores-Chavez v. Ashcroft*, 362 F.3d 1150, 1153, 1160-62 (9th Cir. 2004) (due process for noncitizen apprehended *same day* as unlawful entry); *Calero v. INS*, 957 F.2d 50, 51-52 (2d Cir. 1992) (due process for noncitizen apprehended within *two weeks* after unlawful entry); *Maldonado-Perez v. INS*, 865 F.2d 328, 329-30, 332 (D.C. Cir. 1989) (due process for noncitizen apprehended *one day* after unlawful entry); *United States v. Campos-Asencio*, 822 F.2d 506, 507, 509 (5th Cir. 1987) (due process for noncitizen apprehended *same day* as unlawful re-entry).

The Third Circuit's opinion thus represents a radical departure from the otherwise universally observed bright line between arriving noncitizens and those who have entered the country.

2. The Third Circuit also departed dramatically from *Mezei* and *Knauff* in holding that those decisions eliminated Suspension Clause rights, when those cases involved only certain due process rights. App. 60a. In fact, both Knauff and Mezei themselves received habeas to enforce their statutory rights. *See Mezei*, 345 U.S. at 213-16 (holding that petitioner "may by habeas corpus test the validity of his exclusion"); *Knauff*, 338 U.S. at 540, 544-47 (same). Yet the Third Circuit held that *Mezei* and *Knauff* not only applied to petitioners, but also eliminated their habeas rights.[11]

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11 Perplexingly, the Third Circuit found that petitioners in this case were not entitled to habeas rights under *Mezei* and *Knauff*,

Critically, moreover, *Boumediene* made clear that habeas rights exist regardless of whether one has other constitutional rights, as a means to enforce non-constitutional statutory rights. *See* 553 U.S. at 739, 785 (reserving question whether detainees had due process rights, and emphasizing that "protection for the privilege of habeas corpus was one of the few safeguards of liberty specified in a Constitution that, at the outset, had no Bill of Rights").

In short, by applying this Court's plenary power cases to eliminate the *habeas* rights of individuals who have *entered* the country, the Third Circuit's decision squarely conflicts with the longstanding "bright line" in this Court's cases dividing those who have entered from those arriving at the border. *Bayo*, 593 F.3d at 502.

III. THE COURT SHOULD ALSO ADDRESS WHETHER THE STATUTE CAN BE CONSTRUED TO AVOID SUSPENSION CLAUSE PROBLEMS.

Finally, given the serious departures from this Court's constitutional decisions, and because it is "fairly possible" to read the statute to provide review of petitioners' claims, the Third Circuit should have done so. *St. Cyr*, 533 U.S. at 299-300 (internal quotation marks and citations omitted); *Clark v. Martinez*, 543 U.S. 371, 380-81 (2005) (where possible, courts should interpret statutes, to avoid "constitutional problems"). *See supra* Statement,

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while simultaneously reserving whether petitioners had due process rights—even though those cases concerned due process, not habeas rights. App. 53a n.26.

Section C (discussing ambiguity in statute). The Court's review in this case should therefore encompass the question of constitutional avoidance.

* * *

The Third Circuit ruled that the district court could review only "whether an immigration officer issued" an expedited removal order and "whether the Petitioner is the same person referred to in that order." App. 21a. That means that the women and children in this case will have their life and death asylum claims decided solely by an Executive Branch official, without any right to judicial review of those claims or even a regular immigration hearing. It also means that the entire asylum expedited removal process will be shielded from meaningful judicial scrutiny, even to correct blatant legal errors. Moreover, because the statute already authorizes the use of expedited removal in the interior of the country, the Attorney General might at any time dramatically expand this process, reaching individuals residing anywhere in the United States for up to two years.

Insulating the immigration process from judicial scrutiny is dangerous, unprecedented and inconsistent with the separation-of-powers principles of our constitutional system. Insulating the asylum process is especially dangerous.

Our country has never before denied the protections of the Suspension Clause to any group of individuals on U.S. soil. If that is to happen now, after nearly two and a half centuries, this Court should be the one to decide whether to take that historic step.

CONCLUSION

For the foregoing reasons, petitioners respectfully request that the Court grant their petition for a writ of certiorari.

Respectfully Submitted,

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Date: December 22, 2016

APPENDIX A

PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 16-1339

ROSA ELIDA CASTRO; A.A.G.C.;

LAURA LISSETH FLORES-PICHINTE; E.S.U.F.; KAREN MARGARITA ZELAYA ALBERTO; S.E.A.Z; KELLY GUTIERREZ RUBIO; G.J.S.G.; GLADIS CARRASCO GOMEZ; B.J.R.C.; WENDY AMPARO OSORIO MARTINEZ; D.S.R.O.; CARMEN LEIVA-MENJIVAR; E.A.M.L.; A.M.M.L.; DINA ISABEL HUEZO DE CHICAS; L.J.C.H.; CINDY GISELA LOPEZ FUNEZ; W.S.M.L.; LESLY GRIZELDA CRUZ MATAMOROS; C.N.V.C.; JEYDI ERAZO ANDURAY; D.A.L.E.; DINORA LEMUS; A.R.M.L.; JENNYS MENDEZ DEBONILLA; A.B.B.M.; MARTA ALICIA RODRIGUEZ ROMERO; W.A.M.R.; C.A.M.R.; ROXANA AGUIRRE-LEMUS; C.A.A.; CELIA PATRICIA SORIANO BRAN; J.A.A.S.; MARIA DELMI MARTINEZ NOLASCO; J.E.L.M.; GUADALUPE FLORES FLORES; W.J.B.F.; CARMEN ALEYDA LOBO MEJIA; A.D.M.L.L.; JULISSA CLEMENTINA HERNANDEZ JIMINEZ; A.H.V.H.; * MARIA ERLINDA MEJIA MELGAR; *E.N.C.M.; *D.G.C.M.; JETHZABEL MARTIZA AGUILAR MANICA; V.G.R.A.; HEYMI LISSAMANCIA AREVALO-MONTERROZA; R.N.F.A; ELSA MILAGROS RODRIGUEZ GARCIA; J.M.V.G.; ELIZABETH BENITEZ DE MARQUEZ;

A.M.B.; INGRID MARICELA ELIAS SORIANO; A.E.C.E.; MARIBEL MARIA ESCOBAR RAMIREZ; C.Y.L.E.; Y.I.L.E.; R.J.L.E.; ANA MARICEL RODRIGUEZ-GRANADOS; J.A.B.R.; V.E.B.R.; ZULMA LORENA PORTILLO DE DIAZ; K.L.D.P.,

Appellants

v.

UNITED STATES DEPARTMENT OF HOMELAND SECURITY;

UNITED STATES CUSTOMS AND BORDER PROTECTION;

UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES;

UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT
SECRETARY OF DHS; ATTORNEY GENERAL OF THE UNITED STATES;
COMMISSIONER OF CBP; DIRECTOR OF USCIS;
PHILADELPHIA FIELD DIRECTOR, CBP;
PHILADELPHIA ASSISTANT FIELD OFFICE

DIRECTOR, ICE; DIRECTOR, BERKS COUNTY RESIDENTIAL CENTER

* Dismissed Pursuant to Court's Order entered

May 13, 2016.

On Appeal from the United States District Court for the Eastern District of Pennsylvania

District Court Nos. 5-15-cv-06153, 5-15-cv-06403, 5-15-cv-06404, 5-15-cv-06406, 5-15-cv-06410,

5-15-cv-06411, 5-15-cv-06428, 5-15-cv-06429,

5-15-cv-06430, 5-15-cv-06431, 5-15-cv-06451,

5-15-cv-06472, 5-15-cv-06474, 5-15-cv-06475,
5-15-cv-06546, 5-15-cv-06547, 5-15-cv-06551,
5-15-cv-06553, 5-15-cv-06591, 5-15-cv-06592,
5-15-cv-06594, 5-15-cv-06595, 5-15-cv-06676,
5-15-cv-06677, 5-15-cv-06755, 5-15-cv-06788,
5-15-cv-06798, 5-15-cv-06863,5-16-cv-00069
District Judge: The Honorable Paul S. Diamond

Argued May 19, 2016
Before: SMITH, HARDIMAN, and SHWARTZ,
Circuit Judges
(Opinion Filed: August 29, 2016)

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OPINION

SMITH, *Circuit Judge*.

Petitioners are twenty-eight families – twenty-eight women and their minor children – who filed habeas petitions in the United States District Court for the Eastern District of Pennsylvania to prevent, or at least postpone, their expedited removal from this country. They were ordered expeditiously removed by the Department of Homeland Security (DHS) pursuant to its authority under § 235(b)(1) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1225(b)(1). Before DHS could effect their removal, however, each petitioning family indicated a fear of persecution if returned to their native country. Nevertheless, following interviews with an asylum officer and subsequent *de novo* review by an immigration judge (IJ), Petitioners' fear of persecution was found to be not credible, such that their expedited removal orders became administratively final. Each family then filed a habeas petition challenging various issues relating to their removal orders.

In this appeal we must determine, first, whether the District Court has jurisdiction to

adjudicate the merits of Petitioners' habeas petitions under § 242 of the INA, 8 U.S.C. § 1252.[1] Because we hold that the District Court does not have jurisdiction under the statute, we must also determine whether the statute violates the Suspension Clause of the United States Constitution. This is a very difficult question that neither this Court nor the Supreme Court has addressed. We hold that, at least as applied to Petitioners and other similarly situated aliens, § 1252 does not violate the Suspension Clause. Consequently, we will affirm the District Court's order dismissing Petitioners' habeas petitions for lack of subject matter jurisdiction.

I. STATUTORY FRAMEWORK

The statutory and regulatory provisions of the expedited removal regime are at the heart of this case. We will, therefore, provide an overview of the provisions which form the framework governing expedited removal before further introducing Petitioners and their specific claims. First, we will discuss 8 U.S.C. § 1225(b)(1) and its implementing regulations, which lay out the administrative side of the expedited removal regime. We will then turn to 8 U.S.C. § 1252, which specifies the scope of judicial review of all removal orders, including expedited removal orders.

A. Section 1225(b)(1)

Under 8 U.S.C. § 1225(b)(1) and its companion regulations, two classes of aliens are subject to expedited removal if an immigration officer

[1] From this point in this opinion, we will refer to provisions of the INA by their location in the United States Code.

determines they are inadmissible due to misrepresentation or lack of immigration papers: (1) aliens "arriving in the United States," and (2) aliens "encountered within 14 days of entry without inspection and within 100 air miles of any U.S. international land border."[2] *See* 8 U.S.C. §1225(b)(l)(A)(i) & (iii); Designating Aliens for Expedited Removal, 69 Fed Reg. 48877-01 (Aug. 11, 2004).[3] If an alien falls into one of these two classes, and she indicates to the immigration officer that she fears persecution or torture if returned to her country, the officer "shall refer the alien for an interview by an asylum officer" to determine if she "has a credible fear of persecution [or torture]." 8 U.S.C. § 1225(b)(l)(A)(ii) & (B)(ii); 8 C.F.R. § 208.30(d). The statute defines the term "credible fear of persecution" as "a significant possibility, taking into account the credibility of the statements

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[2] Any aliens otherwise falling within these two categories but who are inadmissible for reasons other than misrepresentation or missing immigration papers are referred for regular – i.e., non-expedited – removal proceedings conducted under 8 U.S.C. § 1229a. *See* 8 U.S.C. § 1225(b)(2)(A).

[3] The statute actually gives the Attorney General the unfettered authority to expand this second category of aliens to "any or all aliens" that cannot prove that they have been physically present in the United States for at least the two years immediately preceding the date their inadmissibility is determined, regardless of their proximity to the border. *See* 8 U.S.C. § 1225(b)(1)(A)(iii). Although DHS (on behalf of the Attorney General) has opted to apply the expedited removal regime only to the limited subset of aliens described above, it has expressly reserved its authority to exercise at a later time "the full nationwide enforcement authority of [§ 1225(b)(1)(A)(iii)(II)]." *See* Designating Aliens for Expedited Removal, 69 Fed Reg. 48877-01 (Aug. 11, 2004).

made by the alien in support of the alien's claim and such other facts as are known to the officer, that the alien could establish eligibility for asylum under section 1158 of this title." 8 U.S.C. § 1225(b)(l)(B)(v); *see also* 8 C.F.R. § 208.30(e)(3) ("An alien will be found to have a credible fear of torture if the alien shows that there is a significant possibility that he or she is eligible for withholding of removal or deferral of removal under the Convention Against Torture.").

Should the interviewing asylum officer determine that the alien lacks a credible fear of persecution (i.e., if the officer makes a "negative credible fear determination"), the officer orders the removal of the alien "without further hearing or review," except by an IJ as discussed below. 8 U.S.C. § 1225(b)(l)(B)(iii)(I). The officer is then required to "prepare a written record" that must include "a summary of the material facts as stated by the applicant, such additional facts (if any) relied upon by the officer, and the officer's analysis of why, in the light of such facts, the alien has not established a credible fear of persecution." *Id.* §1225(b)(l)(B)(iii)(II). Next, the asylum officer's supervisor reviews and approves the negative credible fear determination, after which the order of removal becomes "final." 8 C.F.R. § 235.3(b)(7); *id.* § 208.30(e)(7). Nevertheless, if the alien so requests, she is entitled to have an IJ conduct a *de novo* review of the officer's negative credible fear determination, and "to be heard and questioned by the [IJ]" as part of this review. 8 U.S.C. § 1225(b)(1)(B)(iii)(III); 8 C.F.R. § 1003.42(d). Assuming the IJ concurs in the asylum officer's negative credible fear determination, "[t]he [IJ]'s decision is final and may not be appealed," and

the alien is referred back to the asylum officer to effect her removal. 8 C.F.R. § 1208.30(g)(2)(iv)(A).[4]

B. Section 1252

Section 1252 of Title 8 defines the scope of judicial review for all orders of removal. This statute narrowly circumscribes judicial review for expedited removal orders issued pursuant to § 1225(b)(1). It provides that "no court shall have jurisdiction to review . . . the application of [§ 1225(b)(1)] to individual aliens, including the [credible fear] determination made under [§ 1225(b)(1)(B)]." 8 U.S.C. § 1252(a)(2)(A)(iii). Moreover, except as provided in § 1252(e), the statute strips courts of jurisdiction to review: (1) "any individual determination or to entertain any other cause or claim arising from or relating to the implementation or operation of an [expedited removal] order"; (2) "a decision by the Attorney General to invoke" the expedited removal regime; and (3) the "procedures and policies adopted by the Attorney General to implement the provisions of [§ 1225(b)(1)]." *Id.* § 1252(a)(2)(A)(i), (ii) & (iv). Thus, the statute makes abundantly clear that whatever jurisdiction courts have to review issues relating to expedited removal orders arises under § 1252(e).

[4] On the other hand, if the interviewing asylum officer, or the IJ upon *de novo* review, concludes that the alien possesses a credible fear of persecution or torture, the alien is referred for non-expedited removal proceedings under 8 U.S.C. § 1229a, "during which time the alien may file an application for asylum and withholding of removal." 8 C.F.R. § 1208.30(g)(2)(iv)(B).

Section 1252(e), for its part, preserves judicial review for only a small subset of issues relating to individual expedited removal orders:

> Judicial review of any determination made under [§ 1225(b)(1)] is available in habeas corpus proceedings, but shall be limited to determinations of—
>
> (A) whether the petitioner is an alien,
>
> (B) whether the petitioner was ordered removed under [§ 1225(b)(1)], and
>
> (C) whether the petitioner can prove . . . that the petitioner is [a lawful permanent resident], has been admitted as a refugee . . . or has been granted asylum . . . .

Id. § 1252(e)(2). In reviewing a determination under subpart (B) above – i.e., in deciding "whether the petitioner was ordered removed under [§ 1225(b)(1)]" – "the court's inquiry shall be limited to whether such an order in fact was issued and whether it relates to the petitioner. There shall be no review of whether the alien is actually admissible or entitled to any relief from removal." *Id.* § 1252(e)(5).

Section 1252(e) also provides jurisdiction to the district court for the District of Columbia to review "[c]hallenges [to the] validity of the [expedited removal] system." *Id.* § 1252(e)(3)(A). Such systemic challenges include challenges to the constitutionality of any provision of the expedited removal statute or its implementing regulations, as well as challenges claiming that a given regulation is inconsistent with

law. *See id.* § 1252(e)(3)(A)(i) & (ii). Nevertheless, systemic challenges must be brought within sixty days after implementation of the challenged statute or regulation. *Id.* § 1252(e)(3)(B); *see also Am. Immigration Lawyers Ass'n v. Reno*, 18 F. Supp. 2d 38, 47 (D.D.C. 1998), *aff'd*, 199 F.3d 1352 (D.C. Cir. 2000) (holding that "the 60-day requirement is jurisdictional rather than a traditional limitations period").[5]

II. FACTUAL AND PROCEDURAL BACKGROUND

Petitioners are natives and citizens of El Salvador, Honduras, and Guatemala who, over a period of several months in late 2015, entered the United States seeking refuge. While their reasons for fleeing their home countries vary somewhat, each petitioner claims to have been, or to fear becoming, the victim of violence at the hands of gangs or former domestic partners. United States Customs and Border Protection (CBP) agents encountered and apprehended each petitioner within close proximity to the border and shortly after their illegal crossing. In fact, the vast majority were apprehended within an hour or less of entering the country, and at distances of less than one mile from the border; in all events, no petitioner appears to have been present in

[5] In its brief, as it did during oral argument, the government repeatedly argues that many of Petitioners' claims are of a systemic nature and should have been brought in the district court for the District of Colombia under § 1252(e)(3). In making this argument, however, the government conveniently elides the fact that the sixty-day deadline would clearly prevent Petitioners from litigating their systemic claims in that forum, because that deadline passed years ago.

the country for more than about six hours, and none was apprehended more than four miles from the border.[6] And because none of the petitioners presented immigration papers upon their arrest, and none claimed to have been previously admitted to the country, they clearly fall within the class of aliens to whom the expedited removal statute applies. *See* Part I.A above.

After the CBP agents apprehended them and began the expedited removal process, Petitioners each expressed a fear of persecution or torture if returned to their native country. Accordingly, each was referred to an asylum officer for a credible fear interview. As part of the credible fear interview process, the asylum officers filled out and gave to Petitioners a number of forms, including a form memorializing the officers' questions and Petitioners' answers during the interview. Following the interviews – all of which resulted in negative credible fear determinations – Petitioners requested and were granted *de novo* review by an IJ. Because the IJs concurred in the asylum officers' conclusions, Petitioners were referred back to DHS for removal without recourse to any further administrative review. Each petitioning family then submitted a separate habeas petition to the District Court,[7] each

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[6] For reasons explained in detail below, we consider the facts regarding Petitioners' entry and practically- immediate arrest by immigration enforcement officials to be crucial in resolving Petitioners' Suspension Clause argument. Accordingly, we grant the government's motion for judicial notice as well as its motion to file under seal the documents subject to its motion for judicial notice.

[7] Petitioners filed their habeas petitions in the Eastern District of Pennsylvania because they are being detained pending their

claiming that the asylum officer and IJ conducting their credible fear interview and review violated their Fifth Amendment procedural due process rights, as well as their rights under the INA, the Foreign Affairs Reform and Restructuring Act of 1998, the United Nations Convention Against Torture, the Administrative Procedure Act, and the applicable implementing regulations.[8] All the petitions were reassigned to Judge Paul S. Diamond for the limited purpose of determining whether subject matter jurisdiction exists to adjudicate Petitioners' claims.

Petitioners argued before the District Court that § 1252 is ambiguous as to whether the Court could review their challenges to the substantive and procedural soundness of DHS's negative credible fear determinations. As such, they argued that the Court

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removal at the Berks County Residential Center in Leesport, Pennsylvania. While we are uncertain whether venue was proper in the Eastern District of Pennsylvania – § 1252 does not appear to indicate where habeas petitions under § 1252(e)(2) should be filed – none of the parties has argued that venue was improper. In that venue is non-jurisdictional, we need not resolve the issue. *See Bonhometre v. Gonzales*, 414 F.3d 442, 446 n.5 (3d Cir. 2005).

[8] Though Petitioners assert on appeal that they each raised "a variety" of claims in their habeas petitions, Pet'rs' Br. 33, they specifically point us to only two as being uniform across all Petitioners: first, they claim that the asylum officers conducting the credible fear interviews failed to "prepare a written record" of their negative credible fear determinations that included the officers' "analysis of why . . . the alien has not established a credible fear of persecution," 8 U.S.C. § 1225(b)(1)(B)(iii)(II); and second, they claim that the officers and the IJs applied a higher standard for evaluating the credibility of their fear of persecution than is called for in the statute.

should construe the statute to allow review of their claims in order to avoid "the serious constitutional concerns that would arise" otherwise. JA 19. The District Court roundly rejected this argument, concluding instead that § 1252 unambiguously forecloses judicial review of all of Petitioners' claims, and that to adopt Petitioners' proposed construction would require the Court "to do violence to the English language to create an 'ambiguity' that does not otherwise exist." JA 20.

Turning then to the Suspension Clause issue, the District Court separately analyzed what it termed as Petitioners' "substantive" challenges – those going to the ultimate correctness of the negative credible fear determinations – versus their challenges relating to the procedures DHS followed in making those determinations. Based on the Supreme Court's decision in *Boumediene v. Bush*, 553 U.S. 723 (2008), the Court derived four "factors in determining the scope of an alien's Suspension Clause rights": "(1) historical precedent; (2) separation-of-powers principles; (3) the gravity of the petitioner's challenged liberty deprivation; and (4) a balancing of the petitioner's interest in more rigorous administrative and habeas procedures against the Government's interest in expedited proceedings." JA 25 (citations omitted). Applying these factors, the Court determined that the Suspension Clause did not require that judicial review be available to address any of Petitioners' claims, and therefore that § 1252(e) does not violate the Suspension Clause. Thus, the Court dismissed with prejudice the consolidated petitions for lack of subject matter

jurisdiction. Petitioners then filed a timely notice of appeal with this Court.[9]

III. ANALYSIS

Petitioners challenge on appeal the District Court's holding that it lacked subject matter jurisdiction under § 1252(e) to review Petitioners' claims, as well as the Court's conclusion that § 1252(e) does not violate the Suspension Clause. We review *de novo* the District Court's determination that it lacked subject matter jurisdiction.[10] *Great W. Mining & Mineral Co. v. Fox Rothschild LLP*, 615 F.3d 159, 163 (3d Cir. 2010). Petitioners, as the side asserting jurisdiction, "bea[r] the burden of proving that jurisdiction exists." *Nuveen Mun. Trust ex rel. Nuveen High Yield Mun. Bond Fund v. WithumSmith Brown, P.C.*, 692 F.3d 283, 293 (3d Cir. 2012).

A. Statutory Jurisdiction under § 1252(e)

The government contends that § 1252 unambiguously forecloses judicial review of Petitioners' claims, and that nearly every court to

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[9] A motions panel of this Court granted Petitioners' motion for stay of removal pending the outcome of this appeal, as well as Petitioners' motion to expedite the appeal. The panel also granted the motions of various persons and entities for leave to file amicus briefs in support of Petitioners. The Court thanks *amici* for their valuable contributions in this appeal.

[10] Although the District Court concluded that it lacked subject matter jurisdiction and dismissed the petitions accordingly, we nonetheless have jurisdiction under 28 U.S.C. § 1291 "to determine [our] own jurisdiction." *White-Squire v. U.S. Postal Serv.*, 592 F.3d 453, 456 (3d Cir. 2010) (quoting *United States v. Ruiz*, 536 U.S. 622, 628 (2002)).

address this or similar issues has held that the statute precludes challenges related to the expedited removal regime. Petitioners, on the other hand, argue that the statute can plausibly be construed to provide jurisdiction over their claims, and that, per the doctrine of constitutional avoidance, the statute should therefore be so construed. They also point to precedent purportedly supporting their position.

We review pure legal questions of statutory interpretation *de novo*. *Ki Se Lee v. Ashcroft*, 368 F.3d 218, 221 (3d Cir. 2004). "The first step in interpreting a statute is to determine whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case." *Id.* at 222 (internal quotation marks and citations omitted). If the statute is unambiguous, we must go no further. *Roth v. Norfalco LLC*, 651 F.3d 367, 379 (3d Cir. 2011). The statute must be enforced according to its plain meaning, even if doing so may lead to harsh results. *See Lamie v. U.S. Tr.*, 540 U.S. 526, 534, 538 (2004) ("[W]hen the statute's language is plain, the sole function of the courts—at least where the disposition required by the text is not absurd—is to enforce it according to its terms. . . . Our unwillingness to soften the import of Congress' chosen words even if we believe the words lead to a harsh outcome is longstanding." (internal quotation marks and citations omitted)). Thus, we begin with the statute's plain meaning.

As discussed in our overview of the expedited removal regime, *see* Part I.B above, § 1252 makes abundantly clear that if jurisdiction exists to review any claim related to an expedited removal order, it exists only under subsection (e) of the statute. *See* 8

U.S.C. § 1252(a)(2)(A). And under subsection (e), unless the petitioner wishes to challenge the "validity of the system" as a whole rather than as applied to her, the district courts' jurisdiction is limited to three narrow issues. *See id.* § 1252(e)(2) & (3). Petitioners in this case concede that two of those three issues do not apply to them; that is, they concede they are aliens, *id.* § 1252(e)(2)(A), and that they have not previously been lawfully admitted to the country, *id.* § 1252(e)(2)(C). Nevertheless, they argue that their claims fall within the third category of issues that courts are authorized to entertain: "whether [they have been] ordered removed under [§ 1225(b)(1).]" *Id.* § 1252(e)(2)(B).

At first glance, it is hard to see how this latter grant of jurisdiction can be of any help to Petitioners, since they do not dispute that an expedited removal order is outstanding as to each. Indeed, their argument seems even more untenable in light of § 1252(e)(5), the first sentence of which clarifies that when a court must "determin[e] whether an alien has been ordered removed under [§ 1225(b)(1)], the court's inquiry shall be limited to whether such an order in fact was issued and whether it relates to the petitioner." *Id.* § 1252(e)(5). How could the government's alleged procedural deficiencies in ordering the Petitioners' expedited removal undermine the fact that expedited removal orders "in fact w[ere] issued" and that these orders "relat[e] to the petitioner[s]"? *Id.*

Nevertheless, Petitioners argue that the second sentence of § 1252(e)(5) creates a strong inference that courts have jurisdiction to review claims like theirs. This sentence states, "There shall

be no review of whether the alien is actually inadmissible or entitled to any relief from removal." *Id.* Petitioners argue that because this sentence explicitly prohibits review of only two narrow questions, we should read it to implicitly authorize review of other questions related to the expedited removal order, such as whether the removal order resulted from a procedurally erroneous credible fear proceeding. Furthermore, Petitioners argue that the government's proposed construction of § 1252(e)(2)(B) and (e)(5) would render the second sentence of § 1252(e)(5) superfluous since the first sentence – which – would essentially limit courts' review "only [to] whether the agency literally issued the alien a piece of paper marked 'expedited removal,'" Pet'rs' Br. 15 – would already prevent review of the questions foreclosed by the second sentence. Based on these arguments, Petitioners claim that the statute is at least ambiguous as to whether their claims are reviewable and that we should construe the statute in their favor in order to avoid the "serious constitutional problems" that may ensue if we read it to foreclose habeas review. *Sandoval v. Reno*, 166 F.3d 225, 237 (3d Cir. 1999).

Petitioners are attempting to create ambiguity where none exists.[11] Their reading of the second

[11] And because we conclude that the statute is unambiguous, we are unable to employ the canon of constitutional avoidance to reach Petitioners' desired result. *See Miller v. French*, 530 U.S. 327, 341 (2000) ("[T]he canon of constitutional doubt permits us to avoid [constitutional] questions only where the saving construction is not plainly contrary to the intent of Congress. We cannot press statutory construction to the point of disingenuous evasion even to avoid a constitutional question." (internal quotation marks and citations omitted)).

sentence in § 1252(e)(5) may be creative, but it completely ignores other provisions in the statute – including the sentence immediately preceding it — that clearly evince Congress' intent to narrowly circumscribe judicial review of issues relating to expedited removal orders. *See*, *e.g.*, 8 U.S.C. § 1252(a)(2)(A)(iii) ("[N]o court shall have jurisdiction to review . . . the application of [§ 1225(b)(1)] to individual aliens, including the [credible fear] determination made under [§ 1225(b)(1)(B)].").

As for their argument that the government's construction renders superfluous the second sentence of § 1252(e)(5), we think the better reading is that the second sentence simply clarifies the narrowness of the inquiry under the first sentence, i.e., that "review should only be for whether an immigration officer issued that piece of paper and whether the Petitioner is the same person referred to in that order." *M.S.P.C. v. U.S. Customs & Border Prot.*, 60 F. Supp. 3d 1156, 1163-64 (D.N.M. 2014), *vacated as moot*, No. 14-769, 2015 WL 7454248 (D.N.M. Sept. 23, 2015); *see also id.* ("Rather than being superfluous . . . the second sentence seems to clarify that Congress really did mean what it said in the first sentence."); *Diaz Rodriguez v. U.S. Customs & Border Prot.*, No. 6:14-CV-2716, 2014 WL 4675182, at *2 (W.D. La. Sept. 18, 2014), *vacated as moot sub nom Diaz-Rodriguez v. Holder*, No. 14-31103, 2014 WL 10965184 (5th Cir. Dec. 16, 2014) ("The second sentence of Section 1252(e)(5) . . . is most fairly interpreted as a clarification and attempt by

Congress to foreclose narrow interpretations of the first sentence of Section 1252(e)(5).").[12]

By reading the INA to foreclose Petitioners' claims, we join the majority of courts that have addressed the scope of judicial review under § 1252 in the expedited removal context. *See, e.g., Shunaula v. Holder*, 732 F.3d 143, 145-47 (2d Cir. 2013) (observing that § 1252 "provides for limited judicial review of expedited removal orders in habeas corpus proceedings" but otherwise deprives the courts of jurisdiction to hear claims related to the implementation or operation of a removal order, and holding that an alien's claims disputing that he sought to enter the country through fraud or misrepresentation and asserting that he was not advised that he was in an expedited removal proceeding or given the opportunity to consult with a lawyer "f[ell] within this jurisdictional bar"); *Brumme v. I.N.S.*, 275 F.3d 443, 448 (5th Cir. 2001) (characterizing argument that courts have jurisdiction under § 1252(e)(2)(B) to determine whether the expedited removal statute "was applicable in the first place" as an attempt to make "an end run around" the "clear" language of § 1252(e)(5)); *Li v. Eddy*, 259 F.3d 1132, 1134-35 (9th

[12] Furthermore, even if our reading of the statute means that the second sentence is superfluous, the canon against surplusage does not always control and generally should not be followed where doing so would render ambiguous a statute whose meaning is otherwise plain. *See Lamie*, 540 U.S. at 536 (explaining that "our preference for avoiding surplusage constructions is not absolute," and that "applying the rule against surplusage is, absent other indications, inappropriate" where applying the rule would make ambiguous an otherwise unambiguous statute).

Cir. 2001), *opinion vacated as moot*, 324 F.3d 1109 (9th Cir. 2003) ("With respect to review of expedited removal orders, . . . the statute could not be much clearer in its intent to restrict habeas review. Accordingly, only two issues were properly before the district court: whether the order removing the petitioner was in fact issued, and whether the order named [the petitioner]." (citation omitted)); *Khan v. Holder*, 608 F.3d 325, 329-30 (7th Cir. 2010) (accord); *Diaz Rodriguez*, 2014 WL 4675182, at *2 (rejecting proposed construction similar to Petitioners' argument in this case; "The expedited removal statutes are express and unambiguous. The clarity of the language forecloses acrobatic attempts at interpretation.").

Petitioners claim that the Ninth Circuit and two district courts in other circuits have construed § 1252 to allow judicial review of claims that the aliens in question had been ordered expeditiously removed in violation of the expedited removal statute. In *Smith v. U.S. Customs and Border Protection*, 741 F.3d 1016 (9th Cir. 2014), Smith, a Canadian national, was ordered removed under § 1225(b)(1) when, upon presenting himself for inspection at the United States-Canada border, the CBP agent concluded that he was an intending immigrant without proper work-authorization documents. Smith filed a habeas petition under § 1252(e)(2)(B), claiming that Canadians are exempt from the documentation requirements for admission, which meant that the CBP agent exceeded his authority in ordering Smith removed. Therefore (Smith's argument went), he was not "ordered removed under [§ 1225(b)(1)]." *Id.* at 1021. The Ninth Circuit "[a]ccept[ed] [Smith's] theory at face value" only to

then reject Smith's argument on the merits. *Id.* Although the Supreme Court has disapproved of the practice, *see Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 93-94 (1998), the court appears merely to have assumed *hypothetical* jurisdiction in order to dispose of the appeal on easier merits grounds. We therefore assign no weight to either *Smith's* outcome or its reasoning.

In *American-Arab Anti-Discrimination Commission v. Ashcroft*, 272 F. Supp. 2d 650 (E.D. Mich. 2003), several Lebanese aliens were ordered removed under § 1225(b)(1), years after entering the United States using fraudulent documentation. They filed habeas petitions challenging their expedited removal orders, and the district court concluded that it had jurisdiction "under the circumstances here . . . to determine whether the expedited removal statute was *lawfully applied* to petitioners in the first place." *Id.* at 663. To support this conclusion, the court latched onto the language in § 1252(e)(5) limiting the scope of habeas review under § 1252(e)(2)(B) to "whether [the expedited removal order] relates to the petitioner," reasoning that an order "relates to" a person only if it was lawfully applied to the person. *Id.* We find the court's construction of the statute to be not just unsupported, but also flatly contradicted by the plain language of the statute itself. *See* 8 U.S.C. § 1252(a)(2)(A)(iii) ("[N]o court shall have jurisdiction to review . .. the *application* of [§ 1225(b)(1)] to individual aliens." (emphasis added)). Accordingly, we decline to follow it.

The last case Petitioners point us to is *Dugdale v. U.S. Customs and Border Protection*, 88 F. Supp. 3d 1 (D.D.C. 2015). Dugdale was an alien

who had lived for extended periods in the United States but who was ordered removed pursuant to § 1225(b)(1) after trying to return to the country following a visit to Canada. He filed a habeas petition to challenge his removal order under § 1252(e)(2). In his petition he claimed, *inter alia*, that because his removal order was not signed by the supervisor of the issuing immigration officer, he was not actually "ordered removed" under § 1225(b)(1). *See id.* at 6. Addressing this argument, the court recognized that the "[c]ase law on this question is scarce." *Id.* Nevertheless, the court ultimately concluded "that a determination of whether a removal order 'in fact was issued' fairly encompasses a claim that the order was not lawfully issued due to some procedural defect." *Id.* (quoting 8 U.S.C. § 1252(e)(5)). Because the claim that the supervisor failed to sign the removal order "f[ell] within that category of claims," *id.*, the court exercised its jurisdiction, and ordered further briefing to determine if the CBP had complied with its own regulations in issuing his removal order.

Even if we were to agree with *Dugdale* that § 1252(e)(2)(B) encompasses claims alleging "some procedural defect" in the expedited removal order, we would nonetheless find Petitioners' claims easily distinguishable. The procedural defect that Dugdale alleged was at least *arguably* related to the question whether a removal order "in fact was issued." Petitioners' claims here, on the other hand, have nothing to do with the issuance of the actual removal orders; instead, they go to the adequacy of the credible fear proceedings. Furthermore, to treat Petitioners' claims regarding the procedural shortcomings of the credible fear determination

process as though they were "claim[s] that the order was not lawfully issued due to some procedural defect" would likely eviscerate the clear jurisdiction-limiting provisions of § 1252, for it would allow an alien to challenge in court practically any perceived shortcoming in the procedures prescribed by Congress or employed by the Executive — a result clearly at odds with Congress' intent.

In a final effort to dissuade us from adopting the government's proposed reading of the statute, Petitioners suggest a variety of presumably undesirable outcomes that could stem from it. For instance, they argue that under the government's reading, a court would lack jurisdiction to review claims that, in ordering the expedited removal of an alien, "the government refused to provide a credible fear interview, manifestly applied the wrong legal standard, outright denied the applicant an interpreter, or even refused to permit the applicant to testify." Pet'rs' Br. 18; *see also* Brief for National Immigrant Justice Center as *Amicus Curiae* 5-21 (suggesting several other factual scenarios in which courts would lack jurisdiction to correct serious government violations of expedited removal statute). To this, we can only respond as the Seventh Circuit did in *Khan* when acknowledging some of the possible implications of the jurisdiction-stripping provisions of § 1252: "To say that this [expedited removal] procedure is fraught with risk of arbitrary, mistaken, or discriminatory behavior . . . is not, however, to say that courts are free to disregard

jurisdictional limitations. They are not . . . ." 608 F.3d at 329.[13]

For these reasons we agree with the District Court's conclusion that it lacked jurisdiction under § 1252 to review Petitioners' claims, and turn now to the constitutionality of the statute under the Suspension Clause.

B. Suspension Clause Challenge

The Suspension Clause of the United States Constitution states: "The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it." U.S. Const. art. I, § 9, cl. 2. The government does not contend that we are in a time of formal suspension. Thus, the question is whether § 1252 operates as an unconstitutional suspension of the writ by stripping courts of habeas jurisdiction

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[13] Of course, even though our construction of § 1252 means that courts in the future will almost certainly lack statutory jurisdiction to review claims that the government has committed even more egregious violations of the expedited removal statute than those alleged by Petitioners, this does not necessarily mean that all aliens wishing to raise such claims will be without a remedy. For instance, consider the case of an alien who has been living continuously for several years in the United States before being ordered removed under § 1225(b)(1). Even though the statute would prevent him from seeking judicial review of a claim, say, that he was never granted a credible fear interview, under our analysis of the Suspension Clause below, the statute could very well be unconstitutional as applied to him (though we by no means undertake to so hold in this opinion). Suffice it to say, at least some of the arguably troubling implications of our reading of § 1252 may be tempered by the Constitution's requirement that habeas review be available in some circumstances and for some people.

over all but a few narrow questions. As the party challenging the constitutionality of a presumptively constitutional statute, Petitioners bear the burden of proof. *Marshall v. Lauriault*, 372 F.3d 175, 185 (3d Cir. 2004).

Petitioners argue that the answer to the ultimate question presented on appeal – whether § 1252 violates the Suspension Clause – can be found without too much effort in the Supreme Court's Suspension Clause jurisprudence, especially in *I.N.S. v. St. Cyr*, 533 U.S. 289 (2001), and *Boumediene v. Bush*, 553 U.S. 723 (2008), as well as in a series of cases from what has been termed the "finality era." The government, on the other hand, largely views these cases as inapposite, and instead focuses our attention on what has been called the "plenary power doctrine" and on the Supreme Court cases that elucidate it. The challenge we face is to discern the manner in which these seemingly disparate, and perhaps even competing, constitutional fields interact. Ultimately, and for the reasons we will explain below, we conclude that Congress may, consonant with the Constitution, deny habeas review in federal court of claims relating to an alien's application for admission to the country, at least as to aliens who have been denied initial entry or who, like Petitioners, were apprehended very near the border and, essentially, immediately after surreptitious entry into the country.

We will begin our discussion with a detailed overview of the Supreme Court's relevant Suspension Clause precedents, followed by a summary of the Court's plenary power cases. We will then explain how we think these two areas coalesce in the context

of Petitioners' challenges to their expedited removal orders.

1. Suspension Clause Jurisprudence

The Supreme Court has held that a statute modifying the scope of habeas review is constitutional under the Suspension Clause so long as the modified scope of review – that is, the habeas substitute – "is neither inadequate nor ineffective to test the legality of a person's detention." *Swain v. Pressley*, 430 U.S. 372, 381 (1977) (citing *United States v. Hayman*, 342 U.S. 205, 223 (1952)). The Court has weighed the adequacy and effectiveness of habeas substitutes on only a few occasions, and only once, in *Boumediene*, has it found a substitute wanting. *See Boumediene*, 553 U.S. at 795 (holding that "the [Detainee Treatment Act] review procedures are an inadequate substitute for habeas corpus," and therefore striking down under the Suspension Clause § 7 of the Military Commissions Act, which stripped federal courts of habeas jurisdiction over Guantanamo Bay detainees). Thus, *Boumediene* represents our only "sum certain" when it comes to evaluating the adequacy of a given habeas substitute such as § 1252, and even then the decision "leaves open as many questions as it settles about the operation of the [Suspension] Clause." Gerald L. Neuman, *The Habeas Corpus Suspension Clause After* Boumediene v. Bush, 110 Colum. L. Rev. 537, 578 (2010).

Before we delve into *Boumediene*, however, we must examine the Supreme Court's decision in *St. Cyr*, another case on which Petitioners heavily rely. Although the Court in *St. Cyr* ultimately dodged the Suspension Clause question by construing the

jurisdiction-stripping statute at issue to leave intact courts' habeas jurisdiction under 28 U.S.C. § 2241, the opinion offers insight into "what the Suspension Clause might possibly protect." Neuman, *supra*, at 539 & n.8.

St. Cyr was a lawful permanent resident alien who, in early 1996, pleaded guilty to a crime that qualified him for deportation. *St. Cyr*, 533 U.S. at 293. Under the immigration laws prevailing at the time of his conviction, he was eligible for a waiver of deportation at the Attorney General's discretion. *Id.* Nevertheless, by the time he was ordered removed in 1997, Congress had enacted the Anti-Terrorism and Effective Death Penalty Act of 1996 ("AEDPA"), 110 Stat. 1214, and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), 110 Stat. 3009-546. Among the myriad other revisions to our immigration laws that these enactments effected, AEDPA and IIRIRA stripped the Attorney General of his discretionary power to waive deportation, and replaced it with the authority to "cancel removal" for a narrow class of aliens that did not include aliens who, like St. Cyr, had been previously "convicted of any aggravated felony." 8 U.S.C. § 1229b(a)(3). When St. Cyr applied to the Attorney General for waiver of deportation, the Attorney General concluded that AEDPA and IIRIRA stripped him of his waiver authority even as to aliens who pleaded guilty to the deportable offense prior to the statutes' enactment. 533 U.S. at 297. St. Cyr filed a habeas petition in federal district court under § 2241, claiming that the provisions of AEDPA and IIRIRA eliminating the Attorney General's waiver authority did not apply to aliens who pleaded guilty to a deportable offense before their enactment. *Id.* at 293.

The government contended that AEDPA and IIRIRA stripped the courts of habeas jurisdiction to review the Attorney General's determination that he no longer had the power to waive St. Cyr's deportation. *Id.* at 297-98. The Court ultimately disagreed with the government, construing the judicial review statutes to permit habeas review under § 2241. To support this construction, the Court relied heavily on the doctrine of constitutional avoidance, under which courts are "obligated to construe the statute to avoid [serious constitutional] problems" if such a saving construction is "fairly possible."[14] *Id.* at 299-300 (internal quotation marks and citations omitted). In the Court's review, the government's proposed construction of the jurisdiction-stripping provisions would have presented "a serious Suspension Clause issue." *Id.* at 305.

To explain why the Suspension Clause could possibly have been violated by a statute stripping the courts of habeas jurisdiction under § 2241, the Court began with the foundational principle that, "at the absolute minimum, the Suspension Clause protects the writ 'as it existed in 1789.'" *Id.* at 301 (quoting *Felker v. Turpin*, 518 U.S. 651, 663-64 (1996)). Looking to the Founding era, the Court found evidence that "the writ of habeas corpus was available to nonenemy aliens as well as to citizens" as a means to challenge the "legality of Executive detention." *Id.* at 301-02. In such cases, habeas review was available to challenge "detentions based

[14] The Court also relied on "the longstanding rule requiring a clear statement of congressional intent to repeal habeas jurisdiction." 533 U.S. at 298.

on errors of law, including the erroneous application or interpretation of statutes." *Id.* at 302.

Even while discussing the Founding-era evidence, however, the Court in *St. Cyr* was "careful not to foreclose the possibility that the protections of the Suspension Clause have expanded along with post-1789 developments that define the present scope of the writ." *Boumediene*, 553 U.S. at 746. Indeed, the Court discussed at some length the "historical practice in immigration law," *St. Cyr*, 533 U.S. at 305, with special focus on cases from what may be termed the "finality era." *See id.* at 306-07. In order to understand the role that these finality-era cases appear to play in *St. Cyr's* Suspension Clause analysis, and because Petitioners place significant weight on them in their argument that § 1252 violates the Suspension Clause, we will describe them in some depth.

The finality-era cases came about during an approximately sixty-year period when federal immigration law rendered final (hence, the "finality" era) the Executive's decisions to admit, exclude, or deport aliens. This period began with the passage of the Immigration Act of 1891, ch. 551, 26 Stat. 1084,[15] and concluded when Congress enacted the Immigration and Nationality Act of 1952, Pub. L. No. 82-414, 66 Stat. 163, which permitted judicial review

[15] Section 8 of the Act contained the finality provision: "All decisions made by the inspection officers or their assistants touching the right of any alien to land, when adverse to such right, shall be final unless appeal be taken to the superintendent of immigration, whose action shall be subject to review by the Secretary of the Treasury." Immigration Act of 1891, § 8, 26 Stat. 1084, 1085.

of deportation orders through declaratory judgment actions in federal district courts. See *Shaughnessy v. Pedreiro*, 349 U.S. 48, 51-52 (1955).[16] During this period, and despite the statutes' finality provisions appearing to strip courts of all jurisdiction to review the Executive's immigration-related determinations, the Supreme Court consistently recognized the ability of immigrants to challenge the legality of their exclusion or deportation through habeas corpus. Based on this, Petitioners contend that the finality-era cases "establishe[d] a constitutional floor for judicial review," Pet'rs' Br. 26, and that the Suspension Clause was the source of this floor. In making this argument, Petitioners rely especially on *Heikkila v. Barber*, 345 U.S. 229 (1953), in which the Court derived from its finality-era precedents the principle that the statutes' finality provisions "had the effect of precluding judicial intervention in deportation cases *except insofar as it was required by the Constitution*." *Id.* at 234-35 (emphasis added); *see also id.* at 234 ("During these years, the cases continued to recognize that Congress had intended to make these administrative decisions nonreviewable

[16] Between the 1891 and 1952 Acts, Congress revised the immigration laws on several occasions, each time maintaining a similar finality provision. *See, e.g.*, Immigration Act of 1907, § 25, 34 Stat. 898, 907 ("[I]n every case where an alien is excluded from admission into the United States, under any law or treaty now existing or hereafter made, the decision of the appropriate immigration officers, if adverse to the admission of such alien, shall be final, unless reversed on appeal to the Secretary of Commerce and Labor."); Immigration Act of 1917, § 19, 39 Stat. 874, 890 ("In every case where any person is ordered deported from the United States under the provisions of this Act, or of any law or treaty, the decision of the Secretary of Labor shall be final.").

to the fullest extent possible under the Constitution." (emphasis added; citing *Fong Yue Ting v. United States*, 149 U.S. 698, 713 (1893) ("The power to exclude or to expel aliens . . . is vested in the political departments of the government, and is to be regulated by treaty or by act of congress, and to be executed by the executive authority according to the regulations so established, except so far the judicial department . . . *is required by the paramount law of the constitution, to intervene*." (emphasis added))).

Indeed, the *Heikkila* decision brings us back to *St. Cyr* and helps us understand the significance that the Court apparently assigned to the finality-era cases in its Suspension Clause discussion. First, the Court in *St. Cyr* noted that the government's proposed construction of the AEDPA and IIRIRA jurisdiction-stripping provisions "would entirely preclude review of a pure question of law by any court." 533 U.S. at 300. Such a result was problematic because, under "[the Suspension] Clause, some 'judicial intervention in deportation cases' is unquestionably 'required by the Constitution.'" *Id.* (quoting *Heikkila*, 345 U.S. at 235). In short, the Court found in the finality-era cases evidence that, as a matter of historical practice, aliens facing removal could challenge "the Executive's legal determinations,"[17] including

[17] As support for this proposition, the Court also cited *Gegiow v. Uhl*, 239 U.S. 3 (1915). *See St. Cyr*, 533 U.S. at 306 & n.28. *Gegiow* involved Russian immigrants whom immigration officers had ordered deported after concluding that the aliens were "likely to become public charges." 239 U.S. at 8 (internal quotation marks omitted). The immigrants sought and obtained habeas review of the Executive's determination. According to the Supreme Court, the only reason the Executive provided to

"Executive interpretations of the immigration laws." *Id.* at 306-07.

We turn now to *Boumediene*. In *Boumediene* the Court addressed two main, sequential questions. First, the Court considered whether detainees at the United States Naval Station at Guantanamo Bay, Cuba, "are barred from seeking the writ or invoking the protections of the Suspension Clause either because of their status . . . as enemy combatants, or their physical location . . . at Guantanamo Bay." 553 U.S. at 739. Then, after determining that the detainees were entitled to the protections of the Suspension Clause, the Court addressed the question "whether the statute stripping jurisdiction to issue the writ avoids the Suspension Clause mandate because Congress has provided adequate substitute procedures for habeas corpus." *Id.* at 771.

In answering the first question regarding the detainees' entitlement *vel non* to the protections of the Suspension Clause, the Court primarily looked to

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support its conclusion that the aliens were deportable was that they were not likely to find work in the city of their ultimate destination (Portland, Oregon) due to the poor conditions of the city's labor market. *Id.* at 8-9. In order to avoid the force of earlier Supreme Court precedent holding that "[t]he conclusiveness of the decisions of immigration officers under [the prevailing immigration statute's finality provision] is conclusiveness upon matters of fact," *id.* at 9 (citing *Nishimura Ekiu v. United States*, 142 U.S. 651 (1892)), the Court presented the question on review as one of law, rather than one of fact: "whether an alien can be declared likely to become a public charge on the ground that the labor market in the city of his immediate destination is overstocked." *Id.* at 9-10. And because the Court ultimately concluded that such a consideration was not an appropriate grounds for ordering the aliens deported, it reversed the order. *Id.* at 10.

its "extraterritoriality" jurisprudence, i.e., its cases addressing where and under what circumstances the Constitution applies outside the United States. From these precedents the Court developed a multi-factor test to determine whether the Guantanamo detainees were covered by the Suspension Clause:

> [A]t least three factors are relevant in determining the reach of the Suspension Clause: (1) the citizenship and status of the detainee and the adequacy of the process through which that status determination was made; (2) the nature of the sites where apprehension and then detention took place; and (3) the practical obstacles inherent in resolving the prisoner's entitlement to the writ.

Id. at 766. Based on these factors, the Court concluded that the Suspension Clause "has full effect at Guantanamo Bay."[18] *Id.* at 771.

The Court next considered the adequacy of the habeas substitute provided to the detainees by Congress. The Detainee Treatment Act (DTA) granted jurisdiction to the Court of Appeals for the D.C. Circuit "only to assess whether the CSRT [Combat Status Review Tribunal[19]] complied with

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[18] While the Court obviously analyzed how these factors apply to the Guantanamo detainees in much greater depth than our brief summary might suggest, we refrain from expositing its analysis further. That is because, as we explain in greater detail below, we think this multi-factor test provides little guidance in addressing Petitioners' entitlement to the protections of the Suspension Clause in this case.

[19] CSRTs are the military tribunals established by the Department of Defense to determine if the Guantanamo

the 'standards and procedures specified by the Secretary of Defense' and whether those standards and procedures are lawful." *Id.* at 777 (quoting DTA § 1005(e)(2)(C), 119 Stat. 2742). Under the DTA, the D.C. Circuit lacked jurisdiction "to inquire into the legality of the detention generally." *Id.*

In assessing the adequacy of the DTA as a habeas substitute, the Court acknowledged the lack of case law addressing "standards defining suspension of the writ or [the] circumstances under which suspension has occurred." *Id.* at 773. It also made clear that it was not "offer[ing] a comprehensive summary of the requisites for an adequate substitute for habeas corpus." *Id.* at 779. Having pronounced these caveats, the Court then began its discussion of what features the habeas substitute needed to include to avoid violating the Suspension Clause. To begin, the Court recognized what it considered to be two "easily identified attributes of any constitutionally adequate habeas corpus proceeding," *id.*: first, the Court "consider[ed] it 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," *id.* (quoting *St. Cyr*, 533 U.S. at 302); and second, "the habeas court must have the power to order the conditional release of an individual unlawfully detained," *id.*

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detainees are "enemy combatants" who are therefore subject to indefinite detention without trial pending the duration of the war in Afghanistan. *See* 553 U.S. at 733-34.

In addition to these two seemingly irreducible attributes of a constitutionally adequate habeas substitute, the Court identified a few others that, "depending on the circumstances, [ ] *may* be required." *Id.* (emphasis added). These additional features include: the ability of the prisoner to "controvert facts in the jailer's return," see *id.* at 780; "some authority to assess the sufficiency of the Government's evidence against the detainee," *id.* at 786; and the ability "to introduce exculpatory evidence that was either unknown or previously unavailable to the prisoner," *id.* at 780; *see also id.* at 786. To determine whether the circumstances in a given case are such that the habeas substitute must also encompass these additional features, the Court discussed a number of considerations, all of which related to the "rigor of any earlier proceedings." *Id.* at 781. In short, the Court established a sort of sliding scale whose focus was "the sum total of procedural protections afforded to the detainee at all stages, direct and collateral." *Id.* at 783.

Applying these principles, the Court ultimately concluded that the DTA did not provide the detainees an adequate habeas substitute. The Court believed the DTA could be construed to provide *most* of the attributes necessary to make it a "constitutionally adequate substitute" for habeas – including the detainees' ability to challenge the CSRT's legal and factual determinations, as well as authority for the court to order the release of the detainees if it concluded that detention was not justified. *Id.* at 787-89. Nevertheless, the DTA did not afford detainees "an opportunity . . . to present relevant exculpatory evidence that was not made part of the record in the earlier proceedings." *Id.* at

789. This latter deficiency doomed the DTA as a habeas substitute. Because of this, the Court held that the Military Commissions Act, which stripped federal courts of their § 2241 habeas jurisdiction with respect to the CSRT enemy combatant determinations, "effects an unconstitutional suspension of the writ." *Id.* at 792.

2. Plenary Power Jurisprudence

Against the backdrop of the Court's most relevant Suspension Clause precedents, we direct our attention to the plenary power doctrine. Because the course of this doctrine's development in the Supreme Court sheds useful light on the current state of the law, a brief historical overview is first in order.

The Supreme Court has "long recognized [that] the power to expel or exclude aliens [i]s a fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control." *Fiallo v. Bell*, 430 U.S. 787, 792 (1977) (internal quotation marks and citation omitted). "[T]he Court's general reaffirmations of this principle have been legion." *Kleindienst v. Mandel*, 408 U.S. 753, 765-766 & n.6 (1972) (collecting cases). The doctrine first emerged in the late nineteenth century in the context of the Chinese Exclusion Act, one of the first federal statutes to regulate immigration.

The case that first recognized the political branches' plenary authority to exclude aliens, *Chae Chan Ping v. United States*, 130 U.S. 581 (1889), involved a Chinese lawful permanent resident who, prior to departing the United States for a trip abroad, had obtained a certificate entitling him to

reenter the country upon his return. *Id.* at 581-82. While he was away, however, Congress passed an amendment to the Chinese Exclusion Act that rendered such certificates null and void. *Id.* at 582. Thus, after immigration authorities refused him entrance upon his return, the alien brought a habeas petition to challenge the lawfulness of his exclusion, arguing that the amendment nullifying his reentry certificate was invalid. *Id.* The Court upheld the validity of the amendment, reasoning that "[t]he power of exclusion of foreigners [is] an incident of sovereignty belonging to the government of the United States as a part of those sovereign powers delegated by the constitution," and therefore that "the right to its exercise at any time when, in the judgment of the government, the interests of the country require it, cannot be granted away or restrained on behalf of any one." *Id.* at 609; *see also id.* (concluding that questions regarding the political soundness of the amendment "are not questions for judicial determination").

In subsequent decisions from the same period, the Court upheld and even extended its reasoning in *Chae Chan Ping*. For instance, in *Nishimura Ekiu v. United States*, 142 U.S. 651 (1892), another exclusion (as opposed to deportation) case, a Japanese immigrant was denied entry to the United States because immigration authorities determined that she was "likely to become a public charge." *Id.* at 662 (internal quotation marks and citation omitted). The Court concluded that the statute authorizing exclusion on such grounds was valid under the sovereign authority of Congress and the Executive to control immigration. *Id.* at 659 (stating that the power over admission and exclusion "belongs to the

political department[s] of the government"). In a statement that perfectly encapsulates the meaning of the plenary power doctrine, the Court declared:

> It is not within the province of the judiciary to order that foreigners who have never been naturalized, nor acquired any domicile or residence within the United States, nor even been admitted into the country pursuant to law, shall be permitted to enter, in opposition to the constitutional and lawful measures of the legislative and executive branches of the national government. As to such persons, the decisions of executive or administrative officers, acting within powers expressly conferred by congress, are due process of law.

Id. at 660.[20]

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[20] While the Court recognized Nishimura Ekiu's "entitle[ment] to a writ of *habeas corpus* to ascertain whether the restraint [of her liberty] is lawful," *id.* at 660, the scope of the Court's habeas review was limited to inquiring whether the immigration officer ordering the exclusion "was duly appointed" under the statute and whether the officer's decision to exclude her "was within the authority conferred upon him by [the Immigration Act of 1891]." *Id.* at 664. Thus, *Nishimura Ekiu* cannot help Petitioners because, as we noted above, they have conceded that they fall within the class of aliens for whom Congress has authorized expedited removal, and that the immigration officials ordering their removal are duly appointed to do so. *See* 8 U.S.C. § 1225(b)(1)(A)(iii). That said, it would be a different matter were the Executive to attempt to expeditiously remove an alien that Congress has *not* authorized for expeditious removal – for example, an alien who claims to have been continuously present in the United States for over two years

The following year, in *Fong Yue Ting v. United States*, 149 U.S. 698 (1893), the Court extended the plenary power doctrine to deportation cases as well. *Fong Yue Ting* involved several Chinese immigrants who were ordered deported pursuant to the Chinese Exclusion Act because they lacked certificates of residence and could not show by the testimony of "at least one credible white witness" that they were lawful residents. *Id.* at 702-04. The aliens sought to challenge their deportation orders, claiming, *inter alia*, that the Exclusion Act violated the equal protection clause of the Fourteenth Amendment. *See id.* at 724-25 (citing *Yick Wo v. Hopkins*, 118 U.S. 356 (1886)). As it had done *Chae Chan Ping* and *Nishimura Ekiu*, the Court declined to intervene or review the validity of the immigration legislation:

> The question whether, and upon what conditions, these aliens shall be permitted to remain within the United States being one to be determined by the political departments of the government, the judicial department cannot properly express an opinion upon the wisdom, the policy, or the justice of the measures enacted by congress in the exercise of the powers confided to it by the constitution over this subject.

Id. at 731; *see also id.* at 707 ("The right of a nation to expel or deport foreigners who have not been

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prior to her detention. Such a situation might very well implicate the Suspension Clause in a way that Petitioners' expedited removal does not.

naturalized, or taken any steps towards becoming citizens of the country, rests upon the same grounds, and is as absolute and unqualified, as the right to prohibit and prevent their entrance into the country.").

Thus, the Court's earliest plenary power decisions established a rule leaving essentially no room for judicial intervention in immigration matters, a rule that applied equally in exclusion as well as deportation cases.

Yet not long after these initial decisions, the Court began to walk back the plenary power doctrine in significant ways. In *Yamataya v. Fisher*, 189 U.S. 86 (1903), a Japanese immigrant was initially allowed to enter the country after presenting herself for inspection at a port of entry. *Id.* at 87. Nevertheless, just a few days later, an immigration officer sought her deportation because he had concluded, after some investigation, that she "was a pauper and a person likely to become a public charge." *Id.* About a week later, the Secretary of the Treasury ordered her deported without notice or hearing. *Id.* Yamataya then filed a habeas petition in federal district court to challenge her deportation, claiming that the failure to provide her notice and a hearing violated due process. *Id.* The Court acknowledged its plenary power precedents, including *Nishimura Ekiu* and *Fong Yue Ting*, *see id.* at 97-99, but clarified that these precedents did not recognize the authority of immigration officials to "disregard the fundamental principles that inhere in 'due process of law' as understood at the time of the adoption of the Constitution." *Id.* at 100. According to

these "fundamental principles," the Court held, no immigration official has the power

> arbitrarily 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.

Id. at 101.[21]

Thus, Yamataya proved to be a "turning point" in the Court's plenary power jurisprudence. Henry M. Hart, Jr., *The Power of Congress to Limit the Jurisdiction of Federal Courts: An Exercise in Dialectic*, 66 Harv. L. Rev. 1362, 1390 n.85 (1953). Indeed, as Professor Hart explains, it was at this point that the Court "began to see that the premise [of the plenary power doctrine] needed to be qualified – that a power to lay down general rules, even if it were plenary, did not necessarily include a power to be arbitrary or to authorize administrative officials to be arbitrary." *Id.* at 1390; *see also* Charles D. Weisselberg, *The Exclusion and Detention of Aliens: Lessons from the Lives of Ellen Knauff and Ignatz*

[21] Although the Court recognized the due process rights of recent entrants to the country – even entrants who are subsequently determined "to be illegally here" – it explicitly declined to address whether very recent *clandestine* entrants like Petitioners enjoy such rights. *See Yamataya*, 189 U.S. at 100. For obvious reasons, and as we explain below, we consider this carve-out in the Court's holding to be of particular importance in resolving this appeal.

Mezei, 143 U. Pa. L. Rev. 933, 947-48 & n.62 (1995) (discussing *Yamataya's* significance to the development of the plenary power doctrine). *Yamataya*, then, essentially gave way to the finality-era cases upon which Petitioners and *amici* place such considerable weight. Hart, *supra*, at 1391 & n.86 (noting the "[t]housands" of habeas cases challenging exclusion and deportation orders "whose presence in the courts cannot be explained on any other basis" than on the reasoning of *Yamataya*).

Nevertheless, *Yamataya* did not mark the only "turning point" in the development of the plenary power doctrine. Nearly fifty years after *Yamataya*, the Court issued two opinions – *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537 (1950) and *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206 (1953) – that essentially undid the effects of *Yamataya*, at least for aliens "on the threshold of initial entry," as well as for those "assimilated to that status for constitutional purposes." *Mezei*, 345 U.S. at 212, 214 (internal quotation marks and alterations omitted); *see also* Hart, *supra*, at 1391-92 (explaining the significance of *Knauff* and *Mezei* for the Court's plenary power jurisprudence, noting specifically that by these decisions the Court "either ignores or renders obsolete every habeas corpus case in the books involving an exclusion proceeding").

In *Knauff*, the German wife of a United States citizen sought admission to the country pursuant to the War Brides Act. 338 U.S. at 539 (citing Act of Dec. 28, 1945, ch. 591, 59 Stat. 659 (1946)). She was detained immediately upon her arrival at Ellis Island, and the Attorney General eventually ordered her excluded, without a hearing, because "her

admission would be prejudicial to the interests of the United States." *Id.* at 539-40. The Court upheld the Attorney General's decision largely on the basis of pre-*Yamataya* plenary power principles and precedents:

> [T]he decision to admit or to exclude an alien may be lawfully placed with the President, who may in turn delegate the carrying out of this function to a responsible executive officer of the sovereign, such as the Attorney General. The action of the executive officer under such authority is final and conclusive. Whatever the rule may be concerning deportation of persons who have gained entry into the United States, it is not within the province of any court, unless expressly authorized by law, to review the determination of the political branch of the Government to exclude a given alien. . . . Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned.

Id. at 543-44 (citing, *inter alia*, *Nishimura Ekiu*, 142 U.S. at 659-60 and *Fong Yue Ting*, 149 U.S. at 713-14). Thus, with its holding in Knauff, the Court effectively "reinvigorated the judicial deference prong of the plenary power doctrine." Weisselberg, *supra*, at 956.

Similar to *Knauff*, *Mezei* involved an alien detained on Ellis Island who was denied entry for undisclosed national security reasons. Unlike Knauff, however, Mezei had previously lived in the United

States for many years before leaving the country for a period of approximately nineteen months, "apparently to visit his dying mother in Rumania [*sic*]." 345 U.S. at 208. And unlike Knauff, Mezei had no choice but to remain in custody indefinitely on Ellis Island, as no other country would admit him either. *Id.* at 208-09. In these conditions, Mezei brought a habeas petition to challenge his exclusion (and attendant indefinite detention). *Id.* at 209. Nevertheless, the Court again upheld the Executive's decision, essentially for the same reasons articulated in *Knauff*. "It is true," the Court explained, "that aliens who have once passed through our gates, even illegally, may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law." *Id.* at 212 (citing, *inter alia, Yamataya*, 189 U.S. at 100-01). In contrast, aliens "on the threshold of initial entry stan[d] on different footing: 'Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned.'"[22] *Id.* (quoting *Knauff*, 338 U.S. at 544).

Thus, *Knauff* and *Mezei* essentially restored the political branches' plenary power over aliens at

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[22] Although Mezei (like Knauff) was indisputably on United States soil when he was ordered excluded and when he filed his habeas petition, the Court "assimilated" Mezei's status "for constitutional purposes" to that of an alien stopped at the border. See *id.* at 214 (internal quotation marks and citation omitted). This analytical maneuver is often referred to as the "entry fiction" or the "entry doctrine." *See, e.g.*, *Jean v. Nelson*, 727 F.2d 957, 969 (11th Cir. 1984) (en banc), *aff'd*, 472 U.S. 846 (1985). As explained below, the entry fiction plays an important, albeit indirect, role in our analysis of Petitioners' Suspension Clause challenge.

the border seeking initial admission. And since these decisions, the Court has continued to signal its commitment to the full breadth of the plenary power doctrine, at least as to aliens at the border seeking initial admission to the country.[23] *See Fiallo*, 430 U.S. at 792 ("This Court has repeatedly emphasized that over no conceivable subject is the legislative power of Congress more complete than it is over the admission of aliens. Our cases have long recognized the power to expel or exclude aliens as a fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control." (internal quotation marks and citations omitted)); *Landon v. Plasencia*, 459 U.S. 21, 32 (1982) ("This Court has long held that an alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application, for the power to admit or exclude aliens is a sovereign prerogative." (citing

[23] The Court has departed from its reasoning in *Knauff* and *Mezei* in other respects, including for lawful permanent residents seeking reentry at the border, *see Landon v. Plasencia*, 459 U.S. 21, 32-33 (1982) (holding that such aliens are entitled to protections of Due Process Clause in exclusion proceedings), as well as for resident aliens facing indefinite detention incident to an order of deportation following conviction of a deportable offense, *compare Zadvydas v. Davis*, 533 U.S. 678, 692-95 (2001) (concluding that resident aliens ordered deported have liberty interest under Fifth Amendment in avoiding indefinite detention incident to deportation, and distinguishing *Mezei* on grounds that petitioners had already entered U.S. before ordered deported), *with id.* at 702-05 (Scalia, J., dissenting) (arguing that Mezei controlled question whether aliens ordered deported had liberty interest to remain in United States such that they are entitled to due process in decision to hold them indefinitely, and stating that such aliens have no right to release into the United States).

Knauff, 338 U.S. at 542; *Nishimura Ekiu*, 142 U.S. at 659-60)).

3. Application to Petitioners and the Expedited Removal Regime

Having introduced the prevailing understandings of the Suspension Clause and of the political branches' plenary power over immigration, we now consider the relationship between these two areas of legal doctrine and how they apply to Petitioners' claim that the jurisdiction-stripping provisions of § 1252 violate the Suspension Clause.

Petitioners argue that under the Supreme Court's Suspension Clause jurisprudence – especially *St. Cyr* and the finality-era cases – courts must, at a minimum, be able to review the legal conclusions underlying the Executive's negative credible fear determinations, including the Executive's interpretation and application of a statute to undisputed facts.[24] And because § 1252(e)(2) does not

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[24] Petitioners at times claim that they should also be entitled to raise *factual* challenges due to the "truncated" nature of the credible fear determination process. Notwithstanding *Boumediene's* holding that habeas review of factual findings may be required in some circumstances, we think Petitioners' argument is readily disposed of based solely on some of the very cases they cite to argue that § 1252 violates the Suspension Clause. *See*, *e.g.*, *St. Cyr*, 533 U.S. at 306 (noting that in finality-era habeas challenges to deportation orders "the courts generally did not review factual determinations made by the Executive"); *Heikkila*, 345 U.S. at 236 (noting that "the scope of inquiry on habeas corpus" "has always been limited to the enforcement of due process requirements," and not to reviewing the record to determine "whether there is substantial evidence to support administrative findings of fact"); *Gegiow*, 239 U.S. at 9 ("The conclusiveness of the decisions of immigration officers

provide for at least this level of review, Petitioners claim that it constitutes an inadequate substitute for habeas, in violation of the Suspension Clause.

The government, on the other hand, claims that the plenary power doctrine operates to foreclose Petitioners' Suspension Clause challenge. In the government's view, Petitioners should be treated no differently from aliens "on the threshold of initial entry" who clearly lack constitutional due process protections concerning their application for admission. *Mezei*, 345 U.S. at 212. And because Petitioners "have no underlying procedural due process rights to vindicate in habeas," Respondents' Br. 49, the government argues that "the scope of habeas review is [ ] irrelevant." *Id.*

Petitioners raise three principal arguments in response to the government's contentions above. First, they claim that to deny them due process rights despite their having indisputably entered the country prior to being apprehended would run contrary to numerous Supreme Court precedents recognizing the constitutional rights of all "persons" within the territorial jurisdiction of the United States. *See*, *e.g.*, *Mathews v. Diaz*, 426 U.S. 67, 77 (1976) (explaining that the Fifth Amendment applies to all aliens "within the jurisdiction of the United States," including those "whose presence in this country is unlawful, involuntary, or transitory"). Second, they argue that even if the Constitution does not impose any independent procedural minimums that the Executive must satisfy before removing

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under [the finality provision of the Immigration Act of 1907] is conclusiveness upon matters of fact.").

Petitioners, the Executive must at least fairly administer those procedures that Congress has actually prescribed in the expedited removal statute. *Cf. Dia v. Ashcroft*, 353 F.3d 228, 238- 39 (3d Cir. 2003) (en banc) (holding that Fifth Amendment entitles aliens to due process in deportation proceedings, and explaining that these rights "ste[m] from those statutory rights granted by Congress and the principle that '[m]inimum due process rights attach to statutory rights.'" (quoting *Marincas v. Lewis*, 92 F.3d 195, 203 (3d Cir. 1996))). Third, Petitioners claim that, regardless of the extent of their constitutional or statutory due process rights, habeas corpus stands as a constitutional check against illegal detention by the Executive that is separate and apart from the protections afforded by the Due Process Clause.

We agree with the government that Petitioners' Suspension Clause challenge to § 1252 must fail, though we do so for reasons that are somewhat different than those urged by the government. As explained in Part III.B.l above, *Boumediene* contemplates a two-step inquiry whereby courts must first determine whether a given habeas petitioner is prohibited from invoking the Suspension Clause due to some attribute of the petitioner or to the circumstances surrounding his arrest or detention. *Cf. Boumediene*, 553 U.S. at 739. Only after confirming that the petitioner is not so prohibited may courts then turn to the question whether the substitute for habeas is adequate and effective to test the legality of the petitioner's detention (or removal). As we explain below, we conclude that Petitioners cannot clear *Boumediene's*

first hurdle – that of proving their entitlement *vel non* to the protections of the Suspension Clause.[25]

The reason Petitioners' Suspension Clause claim falls at step one is because the Supreme Court has unequivocally concluded that "an alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application." *Landon*, 459 U.S. at 32. Petitioners were each apprehended within hours of surreptitiously entering the United States, so we think it appropriate to treat them as "alien[s] seeking initial admission to the United States." *Id.* And since the issues that Petitioners seek to challenge all stem from the Executive's decision to remove them from the country, they cannot invoke the Constitution, including the Suspension Clause, in an effort to force judicial review beyond what Congress has already granted them. As such, we need not reach the second question under the Boumediene framework, i.e., whether the limited scope of review of expedited removal orders under

[25] In evaluating Petitioners' rights under the Suspension Clause, we find *Boumediene*'s multi-factor test, referenced earlier in this opinion, to provide little guidance. As we explain above, the Court derived the factors from its extraterritoriality jurisprudence in order to assess the reach of the Suspension Clause to a territory where the United States is not sovereign. *See* 553 U.S. at 766. In our case, of course, there is no question that Petitioners were apprehended within the sovereign territory of the United States; thus, the *Boumediene* factors are of limited utility in determining Petitioners' entitlement to the protections of the Suspension Clause.

§1252 is an adequate substitute for traditional habeas review.[26]

Petitioners claim that *St. Cyr* and the finality-era cases firmly establish their right to invoke the Suspension Clause to challenge their removal orders.[27] For two main reasons we think Petitioners' reliance on these cases is flawed. First, *St. Cyr* involved a lawful permanent resident, a category of aliens (unlike recent clandestine entrants) whose entitlement to broad constitutional protections is undisputed. *Cf. Landon*, 459 U.S. at 32. Second, as stated earlier, *St. Cyr* discussed the Suspension Clause (and therefore the finality-era cases) only to explain what the Clause "might possibly protect," Neuman, *supra*, at 539 & n.8, not what the Clause most certainly protects – and even in this hypothetical posture the opinion was non-committal when discussing the significance of the finality-era cases to the Suspension Clause analysis. *See* 533 U.S. at 304 ("St. Cyr's constitutional position finds *some* support in our prior immigration cases . . . . [T]he ambiguities in the scope of the exercise of the writ at common law . . . , and the *suggestions* in this Court's prior decisions as to the extent to which habeas review could be limited consistent with the

[26] And because we hold that Petitioners cannot even invoke the Suspension Clause to challenge issues related to their admission or removal from the country, we have no occasion to consider what constitutional or statutory due process rights, if any, Petitioners may have.

[27] Petitioners also rely on this Court's decision in *Sandoval v. Reno*, 166 F.3d 225 (3d Cir. 1999), which is factually and analytically very similar to *St. Cyr*. Because *St. Cyr* essentially subsumes *Sandoval*, however, our reasons for rejecting *St. Cyr*'s significance in our case apply equally to *Sandoval*.

Constitution, convince us that the Suspension Clause questions that would be presented by the INS' reading of the immigration statutes before us are difficult and significant." (emphases added; citing *Heikkila*, 345 U.S. at 234-35)). Indeed, the Court had good reason to tread carefully when it came to the meaning of the finality-era cases; after all, none of them even mentions the Suspension Clause, let alone identifies it as the constitutional provision establishing the minimum measure of judicial review required in removal cases.[28]

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[28] It was largely for this reason that the District Court below declined to assign much weight to the finality-era cases in its analysis of Petitioners' Suspension Clause argument. Petitioners and *amici* contend that the Suspension Clause was the only "logical" constitutional provision that the Court in *Heikkila* could have relied upon when explaining that "the Constitution" required a certain level of judicial review of immigration decisions. *See* Brief for Scholars of Habeas Corpus Law, Federal Courts, and Constitutional Law as *Amicus Curiae* 12. Given the tentative and hypothetical nature of the Court's Suspension Clause analysis in *St. Cyr*, we too are hesitant to extract too much Suspension Clause-related guidance from a series of cases whose precise relationship (if any) to the Suspension Clause is far from clear. This is especially so in light of Justice Scalia's dissent in *St. Cyr* in which he forcefully critiqued the majority's reliance on the finality-era cases generally and Heikkila specifically:

> The Court cites many cases which it says establish that it is a "serious and difficult constitutional issue" whether the Suspension Clause prohibits the elimination of habeas jurisdiction effected by IIRIRA. Every one of those cases, however, pertains not to the meaning of the Suspension Clause, but to the content of the habeas corpus provision of the United States Code, which is quite a different matter. The closest the Court can come is a

We therefore conclude that *St. Cyr* and the finality-era cases are not controlling here.

Another potential criticism of our position – and particularly of our decision to treat Petitioners as "alien[s] seeking initial admission to the United States" who are prohibited from invoking the Suspension Clause – is that it appears to ignore the Supreme Court's precedents suggesting that an alien's physical presence in the country alone flips the switch on constitutional protections that are otherwise dormant as to aliens outside our borders. *See Mathews*, 426 U.S. at 77 ("Even one whose

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> statement in one of those cases to the effect that the Immigration Act of 1917 "had the effect of precluding judicial intervention in deportation cases except insofar as it was required by the Constitution," *Heikkila*, 345 U.S., at 234-35. That statement (1) was pure dictum, since the Court went on to hold that the judicial review of petitioner's deportation order was unavailable; (2) does not specify to what extent judicial review was "required by the Constitution," which could (as far as the Court's holding was concerned) be zero; and, most important of all, (3) does not refer to the Suspension Clause, so could well have had in mind the due process limitations upon the procedures for determining deportability that our later cases establish.

533 U.S. at 339 (Scalia, J., dissenting) (some citations omitted).

Nevertheless, we need not resolve this issue in our case, for even if *St. Cyr* definitively established the import of the finality-era cases to the Suspension Clause, we still think the distinction between a lawful permanent resident and a very recent surreptitious entrant makes all the difference in this case. More on this below.

presence in this country is unlawful, involuntary, or transitory is entitled to th[e] constitutional protection [of the Due Process Clause]."); *Zadvydas*, 533 U.S. at 693 ("It is well established that certain constitutional protections available to persons inside the United States are unavailable to aliens outside of our geographic borders. But once an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." (citations omitted)); *see also Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886); *Yamataya*, 189 U.S. at 100-01; *Mezei*, 345 U.S. at 212; *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958); *Plyler v. Doe*, 457 U.S. 202, 210 (1982). Again, this criticism is misplaced for two principal reasons.

First, and perhaps most fundamentally, most of the cases cited above did not involve aliens who were seeking initial entry to the country or who were apprehended immediately after entry. *See*, *e.g.*, *Yick Wo*, 118 U.S. at 358 (long-time resident alien); *Mathews*, 426 U.S. at 69 (lawfully admitted resident aliens); *Plyler*, 457 U.S. at 206 (undocumented resident aliens); *Zadvydas*, 533 U.S. at 684-85 (long-time resident aliens). And as for the cases that *did* involve arriving aliens, the Court rejected the aliens' efforts to invoke additional protections based merely on their presence in the territorial jurisdiction of the United States.[29] *See Mezei*, 345 U.S. at 207 (former

[29] Petitioners make much of the fact that the Court extended constitutional due process protections to the alien in *Yamataya* despite her short stint in the United States. *See* 189 U.S. at 87, 100-01. Petitioners' reliance on this case ignores other language in the opinion clearly distinguishing Yamataya – an alien who

resident alien held on Ellis Island seeking readmission after extended absence); *Leng May Ma*, 357 U.S. at 186 (arriving alien allowed into the country on parole pending admission determination). Thus, Petitioners can draw little support from these latter cases.

Second, the Supreme Court has suggested in several other opinions that recent clandestine entrants like Petitioners do not qualify for constitutional protections based merely on their physical presence alone. *See Yamataya*, 189 U.S. at 100-01 (withholding judgment on question "whether an alien can rightfully invoke the due process clause of the Constitution who has entered the country clandestinely, and who has been here for too brief a period to have become, in any real sense, a part of our population, before his right to remain is disputed"); *Wong Yang Sung v. McGrath*, 339 U.S. 33, 49-50 (1950) ("It was under compulsion of the Constitution that this Court long ago held [in *Yamataya*] that an antecedent deportation statute must provide a hearing *at least for aliens who had not entered clandestinely and who had been here some time even if illegally*." (emphasis added)); *Kwong Hai Chew v. Colding*, 344 U.S. 590, 596 n.5 (1953) ("The Bill of Rights is a futile authority for the alien seeking admission for the first time to these

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was initially admitted to the country and who "ha[d] become ... a part of its population" before being ordered deported, *id.* at 101 – from very recent clandestine entrants like Petitioners, see *id.* at 100. Thus, while *Yamataya* might apply in some future case where the alien ordered removed has been in the country for a period of time sufficient "to have become, in [some] real sense, a part of our population," *id.*, that simply is not this case.

shores. But once an alien *lawfully enters and resides in this country* he becomes invested with the rights guaranteed by the Constitution to all people within our borders." (emphasis added)); *Landon*, 459 U.S. at 32 (1982) ("[O]nce an alien gains admission to our country *and begins to develop the ties that go with permanent residence* his constitutional status changes accordingly." (emphasis added)); *United States v. Verdugo-Urquidez*, 494 U.S. 259, 271 (1990) (stating in dicta that "aliens receive constitutional protections when they have come within the territory of the United States *and developed substantial connections with this country*" (emphasis added)). At a minimum, we conclude that all of these cases call into serious question the proposition that even the slightest entrance into this country triggers constitutional protections that are otherwise unavailable to the alien outside its borders. Such a proposition is further weakened by the Court's adoption of the "entry fiction" to deny due process rights to aliens even though they are unquestionably within the territorial jurisdiction of the United States. In other words, if entitlement to constitutional protections turned entirely on an alien's position relative to such a rigid conception as a line on a map, then the Court's entry- fiction cases such as *Mezei* would run just as contrary to this principle as our holding in this case does.[30]

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[30] This is not to say that an alien's location relative to the border is *irrelevant* to a determination of his rights under the Constitution. Indeed, we think physical presence is a factor courts should consider; we simply leave it to courts in the future to evaluate the Suspension Clause rights of an alien whose presence in the United States goes meaningfully beyond that of Petitioners here.

We thus conclude that, as recent surreptitious entrants deemed to be "alien[s] seeking initial admission to the United States," Petitioners are unable to invoke the Suspension Clause, despite their having effected a brief entrance into the country prior to being apprehended for removal.[31]

* * *

[31] In addition to the above, it is worth noting that when the Court in *Landon* stated that certain aliens lack constitutional rights regarding their application for admission, it did not categorize aliens based on whether they have *entered* the country or not; rather, the Court focused (as IIRIRA and the expedited removal regime focus) on whether the aliens are "seeking initial *admission* to the United States." *Landon*, 459 U.S. at 32 (emphasis added); *see also*, *e.g.*, 8 U.S.C. § 1225(b)(1) (conditioning aliens' eligibility for expedited removal, in part, on inadmissibility, even if aliens are physically present in the United States). Arguably, this suggests that, at least in some circumstances, an alien's mere physical presence in the country is of little constitutional significance unless that alien has previously applied for and been granted admission. *See* David A. Martin, *Two Cheers for Expedited Removal in the New Immigration Laws*, 40 Va. J. Int'l L. 673, 689 n.55 (2000) (arguing that "by emphasizing admission over entry, [*Landon*] may give more weight to" the constitutional significance of IIRIRA's focus on aliens' admissibility rather than physical location). Then again, *Landon* relied on *Knauff* to support its statement that "an alien seeking initial admission . . . has no constitutional rights regarding his application." *See Landon*, 459 U.S. at 32 (citing, *inter alia, Knauff* 338 U.S. at 542). And since *Knauff* focused on whether the alien had "entered" the country, "initial admission" in *Landon* may simply be synonymous with "initial entry." At all events, our opinion should not be read to place tremendous weight on this possible distinction.

Our holding rejecting Petitioners' Suspension Clause claims is true to the arc traced by the Supreme Court's plenary power cases in recent decades. It is also consistent with the Court's analytical framework for evaluating Suspension Clause challenges. Even if Petitioners would be entitled to constitutional habeas under the finality-era cases, those cases, as explained above, no longer represent the prevailing view of the plenary power doctrine, at least when it comes to aliens seeking initial admission. Instead, we must look to *Knauff*, *Mezei*, and other cases reaffirming those sea-changing precedents, all of which point to the conclusion that aliens seeking initial admission to the country – as well as those rightfully assimilated to that status on account of their very recent surreptitious entry – are prohibited from invoking the protections of the Suspension Clause in order to challenge issues relating to their application for admission.[32]

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[32] Of course, as we recognized above, this is not to say that the political branches' power over immigration is limitless in all respects. We doubt, for example, that Congress could authorize, or that the Executive could engage in, the indefinite, hearingless detention of an alien simply because the alien was apprehended shortly after clandestine entrance. *Cf. Zadvydas*, 533 U.S. at 695 (noting that the question before the Court – "whether aliens that the Government finds itself unable to remove are to be condemned to an indefinite term of imprisonment within the United States" – does not implicate questions regarding "the political branches' authority to control entry into the United States"). And we are certain that this "plenary power" does not mean Congress or the Executive can subject recent clandestine entrants or other arriving aliens to inhumane treatment. *Cf. Wong Wing v. United States*, 163 U.S. 228, 237 (1896) (noting that "[n]o limits can be put by the courts upon the power of congress to protect, by summary methods,

IV. CONCLUSION

We are sympathetic to the plight of Petitioners and other aliens who have come to this country seeking protection and repose from dangers that they sincerely believe their own governments are unable or unwilling to address. Nevertheless, Congress has unambiguously limited the scope of judicial review, and in so doing has foreclosed review of Petitioners' claims. And in light of the undisputed facts surrounding Petitioners' surreptitious entry into this country, and considering Congress' and the Executive's plenary power over decisions regarding the admission or exclusion of aliens, we cannot say that this limited scope of review is unconstitutional under the Suspension Clause, at least as to Petitioners and other aliens similarly situated. We will therefore affirm the District Court's order

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the country from the advent of aliens whose race or habits render them undesirable as citizens, or to expel such if they have already found their way into our land, and unlawfully remain therein," but distinguishing such valid exercises of power from a law allowing the Executive to subject deportable aliens to hard labor without a jury trial); *Zadvydas*, 533 U.S. at 704 (Scalia, J., dissenting) (noting the difference between the rights of aliens not to be tortured or "subjected to the punishment of hard labor without a judicial trial" and the right to remain in the country after being deemed deportable); *Lynch v. Cannatella*, 810 F.2d 1363, 1373 (5th Cir. 1987) ("The 'entry fiction' that excludable aliens are to be treated as if detained at the border despite their physical presence in the United States determines the aliens' rights with regard to immigration and deportation proceedings. It does not limit the right of excludable aliens detained within United States territory to humane treatment." (footnote omitted)). But to say that the political branches' power over immigration is subject to important limits in some contexts by no means requires that the exercise of that power must be subject to judicial review in all contexts.

dismissing Petitioners' habeas petitions for lack of subject matter jurisdiction.

Rosa Elida Castro et al. v. U.S. Department of Homeland Security, No. 16-1339

HARDIMAN, *Circuit Judge*, concurring *dubitante*.

I join Judge Smith's excellent opinion in full, but I write separately to express my doubt that the expression of the plenary power doctrine in *Landon v. Plasencia* completely resolves step one of the Suspension Clause analysis under *Boumediene*. Although *Landon* appears to preclude "alien[s] seeking initial admission to the United States" from invoking any constitutional protections "regarding [their] application[s]," the question of what constitutional rights such aliens are afforded was not squarely before the Supreme Court in that case because the petitioner was a returning permanent resident. 459 U.S. 21, 23, 32 (1982). Nor did the Court in *Landon* purport to resolve a jurisdictional question raising the possibility of an unconstitutional suspension of the writ of habeas corpus.[1]

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[1] *Landon* may also be at odds with the proposition that "the Suspension Clause protects the writ 'as it existed in 1789.'" *INS v. St. Cyr*, 533 U.S. 289, 301 (2001) (quoting *Felker v. Turpin*, 518 U.S. 651, 663-64 (1996)); *see also Boumediene v. Bush*, 553 U.S. 723, 746 (2008). *See generally* Paul D. Halliday & G. Edward White, *The Suspension Clause: English Text, Imperial Context, and American Implications*, 94 Va. L. Rev. 575, 675-76 (2008) ("A sample of newspapers from the 1780s provides four instances of the use of the writ by slaves in Connecticut, New Jersey, Pennsylvania, and Maryland. These suggest that the use of the writ was not confined to native-born British-American citizens of European ancestry, and that American usage was paralleling that in England and its colonies. Indeed, it is difficult to imagine that Americans were not aware of reports of the decision in Somerset's Case of 1772, in which Chief Justice Mansfield ruled that a slave in England could not be held in custody.").

Despite my uncertainty about *Landon's* dispositive application here, I am convinced that we would reach the same result under step two of *Boumediene's* framework. Unlike the petitioners in *Boumediene*—who sought their release in the face of indefinite detention—Petitioners here seek to alter their status in the United States in the hope of *avoiding* release to their homelands. That prayer for relief, in my view, dooms the merits of their Suspension Clause argument that 8 U.S.C. § 1252(e) provides an "inadequate or ineffective" habeas substitute. *United States v. Hayman*, 342 U.S. 205, 223 (1952).

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 16-1339

ROSA ELIDA CASTRO; A.A.G.C.;

LAURA LISSETH FLORES-PICHINTE; E.S.U.F.; KAREN MARGARITA ZELAYA ALBERTO; S.E.A.Z; KELLY GUTIERREZ RUBIO; G.J.S.G.; GLADIS CARRASCO GOMEZ; B.J.R.C.; WENDY AMPARO OSORIO MARTINEZ; D.S.R.O.; CARMEN LEIVA-MENJIVAR; E.A.M.L.; A.M.M.L.; DINA ISABEL HUEZO DE CHICAS; L.J.C.H.; CINDY GISELA LOPEZ FUNEZ; W.S.M.L.; LESLY GRIZELDA CRUZ MATAMOROS; C.N.V.C.; JEYDI ERAZO ANDURAY; D.A.L.E.;
DINORA LEMUS; A.R.M.L.; JENNYS MENDEZ DEBONILLA; A.B.B.M.; MARTA ALICIA RODRIGUEZ ROMERO; W.A.M.R.; C.A.M.R.; ROXANA AGUIRRE-LEMUS; C.A.A.; CELIA PATRICIA SORIANO BRAN; J.A.A.S.; MARIA DELMI MARTINEZ NOLASCO; J.E.L.M.; GUADALUPE FLORES FLORES; W.J.B.F.; CARMEN ALEYDA LOBO MEJIA; A.D.M.L.L.; JULISSA CLEMENTINA HERNANDEZ JIMINEZ; A.H.V.H.; * MARIA ERLINDA MEJIA MELGAR; *E.N.C.M.; *D.G.C.M.; JETHZABEL MARTIZA AGUILAR MANICA; V.G.R.A.; HEYMI LISSAMANCIA AREVALO-MONTERROZA; R.N.F.A; ELSA MILAGROS RODRIGUEZ GARCIA; J.M.V.G.; ELIZABETH BENITEZ DE MARQUEZ; A.M.B.; INGRID MARICELA ELIAS SORIANO;

A.E.C.E.; MARIBEL MARIA ESCOBAR RAMIREZ; C.Y.L.E.; Y.I.L.E.; R.J.L.E.; ANA MARICEL RODRIGUEZ-GRANADOS; J.A.B.R.; V.E.B.R.; ZULMA LORENA PORTILLO DE DIAZ; K.L.D.P.,

Appellants

v.

UNITED STATES DEPARTMENT OF HOMELAND SECURITY;

UNITED STATES CUSTOMS AND BORDER PROTECTION;

UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES;

UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT
SECRETARY OF DHS; ATTORNEY GENERAL OF THE UNITED STATES;
COMMISSIONER OF CBP; DIRECTOR OF USCIS;
PHILADELPHIA FIELD DIRECTOR, CBP;
PHILADELPHIA ASSISTANT FIELD OFFICE

DIRECTOR, ICE; DIRECTOR, BERKS COUNTY RESIDENTIAL CENTER

* Dismissed Pursuant to Court's Order entered May 13, 2016.

(D.C. Civ./Crim. No. 5-15-cv-06153)

SUR PETITION FOR REHEARING

Present: SMITH, Chief Judge, McKEE, AMBRO, FISHER, CHAGARES, JORDAN, HARDIMAN, GREENWAY, JR., VANASKIE, SHWARTZ, KRAUSE, and RESTREPO, Circuit Judges

The petition for rehearing filed by appellants in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc is denied. Judges McKee, Greenaway, Vanaskie and Restrepo would grant rehearing by the court en banc.

BY THE COURT,

s/ D. Brooks Smith
Chief Circuit Judge

Dated: October 28,

PDB/TMM/cc: All Counsel of Record

APPENDIX C

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ROSA ELIDA CASTRO, et al.,	**:**	
Petitioners,	**:**	
v.	**:**	**Civ. No. 15-6153**
	:	**(Lead Case)**
	:	**and all related**
	:	**cases**
U.S. DEPARTMENT OF	**:**	
HOMELAND SECURITY, et al.,	**:**	
Respondents.	**:**	

Diamond, J.,
February 16, 2016

MEMORANDUM

Petitioners—twenty-nine Central American women and their thirty-five minor children— were seized by the Department of Homeland Security within minutes of their illegal entry into the United States. Acting pursuant to the Immigration and Naturalization Act, DHS ordered their "expedited removal" after finding that none had a "credible fear" of torture or persecution upon return to Central America. See 8 U.S.C. § 1225(b)(1). Seeking habeas

relief, Petitioners argue that the Act's credible fear evaluation process is inadequate, resulting in erroneous negative credible fear determinations. The Government responds that the INA restricts judicial review of expedited removal orders, and outright bars the review Petitioners seek. Petitioners counter that such a reading of the Act would unconstitutionally suspend the writ of habeas corpus. U.S. Const, art. I, § 9, cl. 2.

Petitioners' contentions have been rejected by almost every court to address them. I agree with those uniform rulings. The INA affords Petitioners extensive Executive Branch process, including an interview by a DHS asylum officer, followed by supervisory review and a hearing before an immigration court judge. The Act's restriction on Judicial Branch review of those Executive Branch determinations is constitutional.

BACKGROUND

On November 16, 2015, Lead Petitioner, Rosa Elida Castro, filed a counseled Habeas Petition on behalf of herself and her minor child, A.A.G.C., challenging the validity of her expedited removal from this country. (Doc. No. 1.) She filed an Emergency Motion for Stay of Removal on November 19, 2015. (Doc. Nos. 2, 3.) That same day, with the Government's consent, I temporarily stayed Ms. Castro's removal while I determined whether this Court has subject matter jurisdiction over her Petition, Complaint, and Emergency Motion for Temporary Stay of Removal. (Doc. No. 5); Arbaugh v. Y&H Corp., 546 U.S. 500, 514 (2006) (Federal courts have "an independent obligation to determine

whether subject-matter jurisdiction exists, even in the absence of a challenge from any party."); United States v. Ruiz, 536 U.S. 622, 628 (2002) ("[A] federal court always has jurisdiction to determine its own jurisdiction."). I ordered supplemental briefing on the jurisdictional issues. (Doc. Nos. 5, 13, 20, 31.)

In the weeks that followed, thirty-four additional habeas challenges to the credible fear and expedited removal processes were filed in this District (six of which have since been voluntarily dismissed). The matters were reassigned to me to determine whether this Court has subject matter jurisdiction. (Doc. Nos. 16, 21, 24, 29, 42, 48, 50, 52.) I have stayed the expedited removal of sixteen Petitioners. (Doc. Nos. 5, 25, 36, 38, 41, 45, 51.) Apparently, the Government has taken no further action to remove the remaining Petitioners.

I. The Challenged Removal Process

All fifty-four Petitioners illegally crossed the southern border of the United States. (Aaron A. Hull Decl., Doc. No. 20, Ex. 3; Carl McClafferty Decl., Doc. No. 30, Ex. 1.) Some entered by raft; others on foot. (Doc. No. 20 at 11 n.6.) The twenty-nine adult Petitioners allege that they fled domestic abuse and gang violence in their native countries. (See, e.g., Doc. Nos. 1, 3.) All but two of the Petitioners were apprehended by DHS less than a mile from the border, less than an hour after crossing; two were apprehended three miles from the border, three hours after crossing. (McClafferty Decl.; Hull Decl.; Doc. No. 20 at 11 n.6; Doc. No. 35 at 13 n.9.)

When the adult Petitioners indicated during their initial screening an intention to apply for

asylum based on a fear of persecution or torture upon removal, they became subject to the Act's "expedited removal" process. See 8 U.S.C. § 1225(b)(1). Petitioners are now detained pending removal at Berks County Residential Center in Leesport, Pennsylvania. (See, e.g., Doc. No. 1 at ¶ 2.)

II. The Instant Litigation

Petitioners all challenge the expedited removal procedures and seek the same relief: that I reject as erroneous DHS's negative credible fear determinations, vacate their expedited removal orders, and order DHS to restart the removal process. (See, e.g., Doc. No. 1 at ¶¶ 16-17; Doc. No. 13 at 7.) I have received extensive submissions from Petitioners, the Government, and a group of law professors as Amici Curiae. (Doc. Nos. 1, 3, 13, 19, 20, 31, 35.)

Unfortunately, some of Petitioners' submissions generate more heat than light. For instance, Petitioners confuse expedited removal and deportation. See, e.g., Doc. No. 13 at 5 ("If the Government's jurisdictional position were now to prevail, it would be the first time in U.S. history that noncitizens facing deportation were denied access to the Great Writ to challenge the legal validity of their removal orders."). As courts have repeatedly explained, however, expedited removal relates only to the Government's decision to exclude (or not to admit) an arriving alien; deportation relates to the expulsion of an alien who resides here. See Landon v. Plasencia, 459 U.S. 21, 25 (1982); Galindo-Romero v. Holder, 640 F.3d 873, 875 n.l (9th Cir. 2011). The law governing each is distinct: deportees have greater rights than those who are excluded. Zadvvdas v.

Davis, 533 U.S. 678, 693, 721 (2001); Plasencia, 459 U.S. at 25-26.

Nor have all the Government's submissions been entirely helpful. The Government has taken contradictory positions as to whether undocumented aliens seeking admission to the United States have any habeas rights. Compare Doc. No. 10 in 15-cv-6279 ("Thus, non-admitted aliens lack Suspension Clause rights in relation to their admission."), and Doc. No. 20 at 5 ("[E]xpedited removal cases involving non-admitted aliens, including aliens apprehended almost immediately after an unlawful entry do not implicate [Suspension Clause] issues."), with Doc. No. 35 in 15-6153 ("Contrary to amici's framing of the argument . . ., the Government does not maintain that there is no Suspension Clause violation here merely because Petitioners are not lawfully admitted aliens."); see also Doc. No. 31 at 6 (during oral argument in Clark v. Martinez, 543 U.S. 371 (2005) Government acknowledges before the Supreme Court that illegal aliens have due process rights).

EXPEDITED REMOVAL

The issues I must address are best evaluated with an understanding of how the challenged removal procedures came to be and how they operate. The Government has submitted affidavits from the Chief of DHS's Asylum Division and other officials detailing Petitioners' apprehension and the expedited removal process. (John L. Lafferty Decl., Doc. No. 20, Ex. 2; Brett Endres Decl., Doc. No. 20, Ex. 4; Hull Decl.; McClafferty Decl.) Petitioners offer no evidence to contradict the Government's submissions, which I may consider in determining whether I have

jurisdiction. See Constitution Party of Pennsylvania v. Aichele, 757 F.3d 347, 358 (3d Cir. 2014) (When faced with a "factual attack" on jurisdiction—"an argument that there is no subject matter jurisdiction because the facts of the case"—"the District Court may look beyond the pleadings to ascertain the facts" relevant to the jurisdictional inquiry.). Petitioners offer only the affidavit of Lead Petitioner, who describes her reasons for seeking asylum. (Rosa Elida Castro Decl., Doc. No. 3, Ex. 1.) I will consider this affidavit as well.

I. Enactment

The Immigration and Naturalization Act, as adopted in 1952, included no expedited removal procedures. See generally Immigration and Nationality Act, Pub. L. No. 82-414, 66 Stat. 163 (1952) (codified as amended in sections of 8 U.S.C.). During the 1980s, expedited removal (known then as "summary exclusion") was first proposed in response to the flood of illegal immigrants into Southern Florida during the "Mariel boatlift." See Alison Siskin & Ruth Ellen Wasem, Cong. Research Serv., RL33109, Immigration Policy on Expedited Removal of Aliens 3 (2006). Congress sought to "stymie unauthorized migration by restricting the hearing, review, and appeal process for aliens arriving without proper documents at ports of entry." Id. That legislation was never enacted. In 1993, the Clinton Administration proposed similar legislation "to target the perceived abuses of the asylum process by restricting the hearing, review, and appeal process for aliens at the port of entry." Id. Again, the proposed legislation failed.

With the 1996 passage of the Illegal Immigration Reform and Immigrant Responsibility Act, Congress amended the INA, codifying two procedures then known as "exclusion" (governing the removal of arriving aliens) and "deportation" (governing the removal of aliens residing in the United States). Vartelas v. Holder, 132 S. Ct. 1479, 1484 (2012); see Pub. L. No. 104-208, 110 Stat. 3009 (1996). In thus enacting an "expedited removal" regime, Congress promulgated accelerated administrative procedures respecting the exclusion of certain inadmissible "arriving aliens." 8 U.S.C. § 1225(b)(1) (expedited removal procedures); see id. § 1252(e) (judicial review of expedited removal orders); see also Kucana v. Holder, 558 U.S. 233, 249 (2010) ("Congress amended the INA aggressively to expedite removal of aliens lacking a legal basis to remain in the United States.").

Such expedition would be accomplished by conferring considerable authority to Executive Branch officers while restricting judicial review. See Bakhtriger v. Elwood, 360 F.3d 414, 418 (3d Cir. 2004) ("In 1996, Congress enacted AEDPA and IIRIRA to reorder and curtail court review of deportation and exclusion decisions."), superseded by statute on other grounds, REAL ID Act of 2005, Pub. L. No. 109-13, § 106, 119 Stat. 231, 310-11(2005); see also U.S. ex rel. Knauff v. Shaughnessv, 338 U.S. 537, 543 (1950) ("[T]he decision to admit or to exclude an alien may be lawfully placed with the President, who may in turn delegate the carrying out of this function to a responsible executive officer of the sovereign, such as the Attorney General.").

These new procedures, codified in 8 U.S.C § 1225(b)(1), would "expedite the removal from the United States of aliens who indisputably have no authorization to be admitted to the United States, while providing an opportunity for such an alien who claims asylum to have the merits of his or her claim promptly assessed by officers." H.R. Rep. No. 104-828, at 209-10 (1996) (Conf. Rep.).

II. Overview

Under the INA as amended, aliens not admitted or paroled following an initial inspection by an immigration officer may be designated for "expedited removal." 8 U.S.C. § 1225(b)(1). If so, they are referred to an immigration officer for "screening." Id. § 1225(b)(1)(A). Should the officer determine that the alien is inadmissible—either because she lacks requisite documentation or seeks to gain entry through fraud or willful misrepresentation—she may be ordered "removed from the United States without further hearings or review." Id. § 1225(b)(l)(A)(i). If the alien intends to apply for asylum, however, "the officer shall refer the alien for an interview by an asylum officer." Id. § 1225(b)(1)(A)(ii); see id. § 1158 (governing asylum). "The Asylum Program has a long-standing policy of allowing a minimum of 48 hours to transpire between the arrival of an alien at a detention site and any credible fear interview." Lafferty Decl. at ¶ 15. This interval permits the "alien an opportunity to rest, collect his or her thoughts, and contact a relative, representative, attorney, or friend to be present at the interview, as appropriate." Id.

At the Leesport facility (where all Petitioners are being held) "an Asylum Officer generally

conducts a credible fear or reasonable fear interview within four to five days of the referral to [United States Citizenship and Immigration Services]." Id. at ¶ 18. During this interview, the officer seeks "to elicit all relevant and useful information bearing on whether the applicant has a credible fear of persecution or torture." 8 C.F.R. § 208.30. The officer must determine that the alien has an "understanding of the credible fear determination process." Id. § 208.30(d)(2). A parent's credible fear determination may include an evaluation of her dependent child, or, upon request, the child may be separately evaluated. Id. § 208.30(b).

An alien has a "credible fear of persecution" if there exists "a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien's claim and such other facts as are known to the officer, that the alien could establish eligibility for asylum." 8 U.S.C. § 1225(b)(l)(B)(v); 8 C.F.R. § 208.30(e)(2). The alien has a "credible fear of torture" if "there is a significant possibility that he or she is eligible for withholding of removal or deferral of removal under the Convention Against Torture." 8 C.F.R. § 208.30(e)(3); see INS v. Cardoza- Fonseca, 480 U.S. 421, 440 (1987).

Any alien who makes out a credible fear is withdrawn from the expedited removal process for more extended consideration of her asylum application. 8 U.S.C. § 1225(b)(l)(B)(ii). If, however, the asylum officer determines the alien does not have a credible fear of persecution or torture, the officer shall order the alien removed "without further hearing or review." Id. § 1225(b)(l)(B)(iii)(I). The

officer must provide a written record of the determination, including a summary of material facts and a rationale for the decision. Id. § 1225(b)(l)(B)(iii)(II).

The negative fear determination is not deemed "final" until it is approved by a "supervisory asylum officer." 8 C.F.R. § 208.30(e)(7). The supervisory review process "is generally completed within 24 hours." Lafferty Decl. at ¶ 12 ("A random sample of cases is also forwarded to Asylum Headquarters . . . for quality assurance purposes."). If the negative credible fear determination is upheld, the alien may request a hearing before an immigration judge who must conduct a de novo review of that determination. 8 U.S.C. § 1225(b)(l)(B)(iii)(III); 8 C.F.R. §§ 1003.42(d), 1208.30(g)(2). The alien is entitled to consult with a person of her choosing before the hearing, providing the consultation is "at no expense to the Government" and does not "unreasonably delay the process." 8 U.S.C. § 1225(b)(l)(B)(iv). The immigration judge's review "shall include an opportunity for the alien to be heard and questioned by the immigration judge .... [and] shall be concluded as expeditiously as possible." Id. § 1225(b)(l)(B)(iii)(III).

If the immigration judge upholds the negative fear determination, the "decision is final and may not be appealed." 8 C.F.R. § 1208.30(g)(2)(iv)(A). "The [Immigration and Naturalization] Service, however, may reconsider a negative credible fear finding that has been concurred upon by an immigration judge after providing notice of its reconsideration to the immigration judge." Id.

Aliens subject to expedited removal are detained by DHS throughout the administrative-review process and, if removed, are barred from reentry for five years. 8 U.S.C. §§ 1182(a)(9)(A)(i), 1225(b)(l)(B)(iii)(IV).

The Government offers evidence that from Fiscal Year 2006 to FY 2009, approximately 5,250 aliens a year expressed a fear of return to their native lands. (Lafferty Decl. at ¶ 8.) That number increased to 8,959 in FY 2010; 11,217 in FY 2011; 13,880 in FY 2012; 36,035 in FY 2013; and 51,001 in FY 2014. (Id.) In July 2015, 86.9% of individuals in DHS family residential centers (the only facilities authorized to house Petitioners) received a positive credible fear determination. (Id. at ¶¶ 8, 14); see generally Flores v. Lynch, No. CV 85-04544 DMG (Ex), 2015 WL 9915880 (C.D. Cal. Aug. 21,2015). Moreover, in FY 2014 and FY 2015, immigration judges overturned approximately one in six negative credible fear determinations. (Brett Endres Decl. at ¶¶ 3-4, Doc. No. 20, Ex. 4.)

Once again, Petitioners have offered no contradictory evidence, although they disparage the evidence submitted by the Government. Doc. No. 31 at 13, 43 n.14 ("[T]he government's statistics are misleading . . . .").

III. Expansion

From April 1997 to November 2002, only aliens arriving at ports of entry were subject to expedited removal. See Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures; Final Rule, 62 Fed. Reg. 10312- 01 (Mar. 6. 1997); see also

Siskin & Wasem, supra, at 2. In 2002, the INS "clarified" that all arriving aliens could be subject to expedited removal. See Notice Designating Aliens Subject to Expedited Removal Under Section 235(b)(l)(A)(iii) of the Immigration and Nationality Act, 67 Fed. Reg. 68924-01 (Nov. 13, 2002) ("A surge in illegal migration by sea threatens national security by diverting valuable United States Coast Guard and other resources from counterterrorism and homeland security responsibilities."); Siskin & Wasem, supra, at 2, 6.

In 2004, DHS further expanded its use of expedited removal procedures to all undocumented aliens who were: (1) apprehended within one hundred miles of the border, and (2) could not show that they have been present in the United States continuously for the fourteen days immediately before their seizure. Designating Aliens for Expedited Removal, 69 Fed. Reg. 48877- 01 (Aug. 11,2004); Siskin & Wasem, supra, at 2-3, 6-7; see M.S.P.C. v. U.S. Customs and Border Prot., 60 F. Supp. 3d 1156, 1161-62 (D.N.M. 2014), vacated as moot, 2015 WL 745248 (D.N.M. Sept. 23,2015). DHS stated that this expansion would "enhance national security and public safety by facilitating prompt immigration determinations, enabling DHS to deal more effectively with the large volume of persons seeking illegal entry, and ensure removal from the country of those not granted relief." Designating Aliens for Expedited Removal, 69 Fed. Reg. 48877-01 (Aug. 11, 2004).

IV. Judicial Review

The Courts of Appeal have exclusive jurisdiction to review general removal orders. See REAL ID Act

of 2005, Pub. L. No. 109-13, § 106, 119 Stat. 231, 310-11 (2005) (amending 8 U.S.C. § 1252). The District Courts have jurisdiction to conduct limited habeas review of expedited removal orders. 8 U.S.C. § 1252(e)(2); see, e.g., Kamara v. Att'y Gen., 420 F.3d 202, 209 n.4 (3d Cir. 2005) (habeas review of expedited removal orders is "very limited"). The INA thus prohibits courts from "enter[ing] declaratory, injunctive, or otherwise equitable relief in any action pertaining to an [expedited removal] order," except in such cases where relief is explicitly authorized. 8 U.S.C. § 1252(e)(1)(A). That authorization is found in § 1252(e)(2), which states:

> Judicial review of any determination made under section 1225(b)(1) of this title [setting out expedited removal procedures] is available in habeas corpus proceedings, but shall be limited to determinations of—
>
> (A) whether the petitioner is an alien,
> (B) whether the petitioner was ordered removed under such section, and
> (C) whether the petitioner can prove by a preponderance of the evidence that the petitioner is an alien lawfully admitted for permanent residence, has been admitted as a refugee under section 1157 of this title, or has been granted asylum under section 1158 of this title . . . .

Id. § 1252(e)(2)(A)-(C); see also id. § 1252(e)(5).

Section 1252(e)(5) clarifies (and limits) the "[s]cope of inquiry" for courts exercising jurisdiction pursuant to § 1252(e)(2)(B):

> In determining whether an alien has been ordered removed under section 1225(b)(1) of this title, the court's inquiry shall be limited to whether such an order in fact was issued and whether it relates to the petitioner. There shall be no review of whether the alien is actually inadmissible or entitled to any relief from removal.

Id. § 1252(e)(5); see H.R. Rep. No. 104-828, at 220 (1996) (Conf. Rep.) ("The habeas corpus proceeding shall not address whether the alien is actually admissible or entitled to any relief from removal.").

Except as provided in § 1252(e), no court has jurisdiction to review: (1) "any individual determination or to entertain any other cause or claim arising from or relating to implementation of an [expedited removal] order"; (2) "a decision by the Attorney General" to invoke the expedited removal proceeding; and (3) the "procedures and policies adopted by the Attorney General to implement the [expedited removal] provisions." 8 U.S.C. § 1252(a)(2)(A)(i), (ii), (iv). Moreover, "no court shall have jurisdiction to review... the application of [section 1225(b)(1)] to individual aliens, including the [credible fear] determination made under section 1225(b)(1)(B)." Id. § 1252(a)(2)(A)(iii).

Finally, systemic challenges to the legality and constitutionality of the expedited removal regime may be brought only in the United States District Court for the District of Columbia within sixty days of the implementation of the challenged regulation or provision. Id. §1252(e)(3)(A)-(B); see Am. Immigration Lawyers Ass'n v. Reno, 18 F. Supp. 2d

38, 52-62 (D.D.C. 1998) (upholding expedited removal against various systemic and as-applied constitutional challenges), aff'd, 199 F.3d 1352 (D.C. Cir. 2000); H.R. Rep. No. 104-828, at 220 (1996) (Conf. Rep.) ("This limited provision for judicial review does not extend to determinations of credible fear and removability in the case of individual aliens, which are not reviewable.").

DISCUSSION

I. Standards

A. Emergency Stay of Removal

"A preliminary injunction is an extraordinary and drastic remedy." Munaf v. Geren, 553 U.S. 674, 689-90 (2008) (internal quotation marks omitted); see Nken v. Holder, 556 U.S. 418, 433 (2009) ("'A stay is not a matter of right, even if irreparable injury might otherwise result.'" (quoting Virginian Ry. Co. v. United States, 272 U.S. 658, 672 (1926))). Before granting a stay of removal, I must consider the traditional four-factor test governing preliminary injunctions:

> (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, 556 U.S. at 425-26 (quoting Hilton v. Braunskill, 481 U.S. 770, 776 (1987)). "The party

requesting a stay bears the burden of showing that the circumstances justify an exercise of that discretion." Nken, 556 U.S. at 433-34.

B. Jurisdiction

"Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause." Ex parte McCardle, 74 U.S. 506, 514 (1868); Arbaugh, 546 U.S. at 514 ("[W]hen a federal court concludes that it lacks subject-matter jurisdiction, the court must dismiss the complaint in its entirety."); Fed. R. Civ. P. 12(h)(3) (same).

The jurisdiction of the lower federal courts is presumptively limited. Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375, 377 (1994); see Sheldon v. Sill 49 U.S. 441, 448 (1850) ("Congress, having the power to establish the courts, must define their respective jurisdictions."). They "possess only that power authorized by Constitution and statute, which is not to be expanded by judicial decree." Kokkonen, 511 U.S. at 377 (internal citations omitted); Sheldon, 49 U.S. at 449 ("Courts created by statute can have no jurisdiction but such as the statute confers."). The party bringing an action in federal court thus must establish jurisdiction. See Kokkonen, 511 U.S. at 377.

II. This Court Is Without Jurisdiction to Hear Petitioners' Claims

Petitioners' challenge to the expedited removal process is not easily explained. In Petitioners' view, if the INA precludes this Court's review of their negative credible fear determinations, the statute violates the Suspension Clause. U.S. Const. art. I,

§ 9, cl. 2. Petitioners urge me to avoid the constitutional issue. See Doc. No. 13 at 4 ("The expedited removal statute does not preclude review of [Petitioners' claims], and in light of the serious constitutional concerns that would arise if it did, it must be read to permit review."). In support, Petitioners invoke a well-settled principle of statutory construction:

> [I]f an otherwise acceptable construction of a statute would raise serious constitutional problems, and where an alternative interpretation of the statute is "fairly possible," [courts] are obligated to construe the statute to avoid such problems.

INS v. St. Cyr, 533 U.S. 289, 299-300 (2001) (internal citation omitted). The Third Circuit has applied this principle in construing statutory limitations on judicial review of alien detentions:

> St. Cyr held that, absent a crystal clear repeal of jurisdiction to consider habeas claims by aliens, the provisions of AEDPA and IIRIRA that preclude judicial review would not be interpreted to repeal section 2241 jurisdiction. At least part of the reasoning behind this ruling was the desire to avoid the thorny constitutional question posed if Congress had entirely pre-empted review of an alien's claims.

Bakhtriger, 360 F.3d at 420; see, e.g., Kolkevich v. Att'y Gen., 501 F.3d 323, 332-36 (3d Cir. 2007);

Sandoval v. Reno, 166 F.3d 225, 236-38 (3d Cir. 1999).

To avoid the Suspension Clause issue, Petitioners urge that the interplay between §§ 1252(e)(2)(B) and 1252(e)(5) creates an ambiguity respecting the Act's otherwise plain bar of judicial review. The loophole that Petitioners urge would allow federal courts to review negative credible fear findings in select circumstances. Petitioners urge that this limited habeas review would comport with the Suspension Clause.

Unfortunately for Petitioners, the Act's jurisdictional restrictions are manifest; there is no ambiguity at all. To find otherwise would require me to do violence to the English language to create an "ambiguity" that does not otherwise exist. This, I may not do. See Kucana, 558 U.S. at 252 ("A statute affecting federal jurisdiction 'must be construed both with precision and with fidelity to the terms by which Congress has expressed its wishes.'" (quoting Cheng Fan Kwok v. INS, 392 U.S. 206, 212 (2010))); see Estate of Cowart v. Nicklos Drilling Co., 505 U.S. 469, 476 (1992) ("[C]ourts must give effect to the clear meaning of statutes as written.").

Petitioners argue that I have jurisdiction under § 1252(e)(2)(B), which allows me to review only "whether the petitioner was ordered removed" under the Act's expedited removal procedures. They base that argument on §1252(e)(5), which, as I have discussed, provides as follows:

> Scope of Inquiry
>
> In determining whether an alien has been ordered removed under [the Act's

> expedited removal provisions], the court's inquiry shall be limited to whether such an order in fact was issued and whether it relates to the petitioner. There shall be no review of whether the alien is actually inadmissible or entitled to any relief from removal.

Petitioners believe that the only limitation this provision imposes on judicial review is included in its second sentence. Petitioners thus contend that, in determining (under § 1252(e)(2)(B)) "whether the petitioner was ordered removed," the courts are precluded (by § 1252(e)(5)'s second sentence) only from determining "whether the alien is actually inadmissible or entitled to any relief from removal." Petitioners urge that because they ask me to review the correctness of their negative credible fear determinations and the adequacy of the safeguards in the expedited removal process—and not to review whether each Petitioner is admissible to the United States—the Act imposes no bar to that limited review.

Surely to state Petitioners' argument is to refute it. They ask me to read § 1252(e)(5)'s second sentence not only in isolation from the first sentence, but also in isolation from the Act itself. See 8 U.S.C. § 1252(a)(2)(A)(iii), (e)(2). As I have discussed, the Act's restriction on judicial review is plain:

> Judicial Review of [expedited removal orders] is available in habeas corpus proceedings, *but shall be limited to determinations of*—(A) whether the petitioner is an alien; (B) *whether the petitioner was ordered removed under such a section*; and (C) whether the

> petitioner can prove by a preponderance of the evidence that the petitioner is an alien lawfully admitted for permanent residence, has been admitted as a refugee . . . , or has been granted asylum.

Id. § 1252(e)(2) (emphasis added). Once again, Congress employed language that eliminates any doubt as to the Act's meaning: "[N]o court shall have jurisdiction to review . . . the application of [expedited removal proceedings] to individual aliens, including the [credible fear] determination made under section 1225(b)(1)(B)." Id. § 1252(a)(2)(A)(iii); see also H.R. Rep. No. 104-828, at 220 (1996) (Conf. Rep.) ("[Determinations of credible fear and removability in the case of individual aliens . . . are not reviewable.").

Congress could not have been clearer: Under the Act, "no court"—including this Court—has jurisdiction to review the merits of a DHS credible fear determination. Petitioners ask me simply to ignore these provisions, read § 1252(e)(5)'s second sentence in isolation, and so confound the primary purpose of the 1996 INA Amendments. See Smith v. United States, 508 U.S. 223, 233 (1993) ("Just as a single word cannot be read in isolation, nor can a single provision of a statute."); United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs., Ltd., 484 U.S. 365, 371 (1988) ("Statutory construction, however, is a holistic endeavor. A provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme . . . .").

Petitioners argue that if I reject their reading of the Act, the second sentence of § 1252(e)(5)

becomes "wholly superfluous," thus violating another canon of construction. See Corley v. United States, 556 U.S. 303, 314 (2009) ("'[A] statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant.'" (quoting Hibbs v. Winn, 542 U.S. 88, 101 (2004))). I disagree.

The two sentences of § 1252(e)(5) serve different functions. The first sentence limits only the scope of the habeas court's § 1252(e)(2)(B) inquiry. Compare 8 U.S.C. § 1252(e)(2)(B) (Judicial review of expedited removal orders shall be limited to determinations of, *inter alia*, "(B) *whether the petitioner was ordered removed*.") (emphasis added), with id. § 1252(e)(5) ("In determining *whether an alien has been ordered removed* . . . , the court's inquiry shall be limited to whether such an order in fact was issued and whether it relates to the petitioner.") (emphasis added). The second sentence—providing that "[t]here shall be no review of whether the alien is actually inadmissible or entitled to any relief from removal"—applies whenever a court is exercising jurisdiction under any of the three permissible § 1252(e)(2) inquiries or reviewing a systemic challenge under § 1252(e)(3). See H.R. Rep. No. 104-828, at 220 (1996) (Conf. Rep.) ("The habeas corpus proceeding shall not address whether the alien is actually admissible or entitled to any relief from removal.").

My reading of the Act is consistent with that of nearly every court to have addressed the Act's jurisdictional restrictions. See, e.g., Shunaula v. Holder, 732 F.3d 143, 147 (2d Cir. 2013) ("We conclude that 8 U.S.C. § 1252(a)(2)(A) deprives this

court of jurisdiction to hear [Petitioner's] collateral attack on his order of expedited removal."); Khan v. Holder, 608 F.3d 325, 329-30 (7th Cir. 2010) (same); Vaupel v. Ortiz, 244 F. App'x 892, 895 (10th Cir. 2007) (same); Avendano-Ramirez v. Ashcroft, 365 F.3d 813, 819 (9th Cir. 2004) (same); Li v. Eddy, 259 F.3d 1132, 1134-35 (9th Cir. 2001) (same), opinion vacated as moot on reh'g, 324 F.3d 1109 (9th Cir. 2003); Brumme v. INS, 275 F.3d 443, 448 (5th Cir. 2001) (same); M.S.P.C., 60 F. Supp. 3d. at 1164 (same); Diaz Rodriguez v. U.S. Customs and Border Prot., No. 14-CV-2716, 2014 WL 4675182, at *3 (W.D. La. Sept. 18, 2014) (same), vacated as moot sub nom. Diaz-Rodriguez v. Holder, No. 14-31103, 2014 WL 10965184 (5th Cir. Dec. 16, 2014); Torre-Flores v. Napolitano, No. 11-CV-2698-IEG (WVG), 2012 WL 3060923, at *2 (S.D. Cal. July 25, 2012) (same), aff'd, 567 F. App'x 523 (9th Cir. 2014); A1 Khedri v. Sedlock, No. 09 C 6483, 2009 WL 3380681, at *2 (N.D. 111. Oct. 20, 2009) (same). But see Dugdale v. U.S. Customs and Border Prot., 88 F. Supp. 3d 1, 6 (D.D.C. 2015); Am.-Arab Anti-Discrimination Comm, v. Ashcroft, 272 F. Supp. 2d 650, 665-68 (E.D. Mich. 2003).

I recognize that absent judicial review, the chance of mistake and unfairness increases. See. e.g., Jennie B. Benson, Making Paper Dolls: How Restrictions on Judicial Review and the Administrative Process Increase Immigration Cases in the Federal Courts, 51 N.Y.L. Sch. L. Rev. 37, 60-61 (2006) (Agency decision making is often "non-responsive" and "prone to error."). I may not, however, simply ignore the Act's jurisdictional restrictions. See, e.g., Khan, 608 F.3d at 329 ("To say that this [expedited removal] procedure is fraught

with risk of arbitrary, mistaken, or discriminatory behavior . . . is not, however, to say that courts are free to disregard jurisdictional limitations."). Rather, I must construe the statute "with fidelity to the terms by which Congress has expressed its wishes.'" Kucana, 558 U.S. at 252 (quoting Cheng Fan Kwok, 392 U.S. at 212); see Estate of Cowart, 505 U.S. at 476.

In sum, Petitioners have not made out a jurisdictional basis for this Court to hear their consolidated Petitions. I will not rewrite the Act to create jurisdiction where none exists simply to avoid Petitioners' constitutional challenge. Boumediene v. Bush, 553 U.S. 723, 787 (2008) (Courts "cannot ignore the text and purpose of a statute in order to save it.").

III. The Act's Limitation on Judicial Review Is Constitutional

Petitioners argue that if § 1252 bars them from collaterally attacking the merits of their negative credible fear determinations and the determination process itself on due process grounds, the Act violates the Constitution's Suspension Clause. U.S. Const, art. I, § 9, cl. 2 ("The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion that public Safety may require it."). Although I agree that Petitioners have habeas rights, I do not believe the Act violates those rights. See 8 U.S.C. § 1252.

The Boumediene Court held that the Suspension Clause "has full effect at Guantanamo Bay." 553 U.S. at 771. If foreign nationals seized and detained outside the United States have habeas

rights, Petitioners—foreign nationals seized and detained on American soil—necessarily have habeas rights. St. Cyr, 533 U.S. at 301-02 ("In England prior to 1789 ... the writ of habeas corpus was available to nonenemy aliens as well as to citizens."); see Rasul v. Bush, 542 U.S. 466, 480 (2004) ("Whatever traction the presumption against extraterritoriality might have in other contexts, it certainly has no application to the operation of the habeas statute with respect to persons detained within 'the territorial jurisdiction' of the United States." (quoting Foley Bros., Inc, v. Filardo, 336 U.S. 281, 285 (1949))); see also Sandoval, 166 F.3d at 238 ("[T]he Supreme Court has repeatedly recognized that aliens may press statutory claims in habeas proceedings . . . .").

I must thus determine the scope of Petitioners' habeas rights. This is not an easy task. The habeas rights of the alien prisoners in Boumediene—who sought to challenge their indefinite imprisonment—are likely broader than those of Petitioners here, who seek to challenge their expedited removal. Boumediene, 553 U.S. at 785 ("[Given] that the consequence of error *may be detention of persons for the duration of hostilities that may last a generation or more*, [the risk of error] is a risk too significant to ignore.") (emphasis added); see id. at 779 ("[Habeas corpus'] precise application and scope change[s] depending upon the circumstances."); see generally Gerald L. Neuman, The Habeas Corpus Suspension Clause After *Boumediene v. Bush*, 110 Colum. L. Rev. 537, 578 (2010) ("[Boumediene] leaves open as many questions as it settles about the operation of the [Suspension] Clause . . . .").

The Boumediene Court emphasized the following factors in determining the scope of an alien's Suspension Clause rights: (1) historical precedent, id. at 745-52; (2) separation-of-powers principles, id. at 741-46; (3) the gravity of the petitioner's challenged liberty deprivation, id. at 739-44; and (4) a balancing of the petitioner's interest in more rigorous administrative and habeas procedures against the Government's interest in expedited proceedings, id. at 766, 779-86, 793-98. See Boumediene, 553 U.S. at 733 ("[C]ase law does not contain extensive discussion of standards defining suspension of the writ or of circumstances under which suspension has occurred."); cf. Plasencia, 459 U.S. at 34 ("The constitutional sufficiency of procedures provided in any situation, of course, varies with the circumstances."); Neuman, supra, at 537 ("The constitutionally necessary scope of review is determined partly by historical inquiry, and partly by an instrumental balancing test.").

These factors establish that Petitioners have only limited habeas rights to challenge the procedural and substantive soundness of their negative credible fear determinations and expedited removal orders. The Act's restriction on judicial review does not offend those rights.

A. Substantive Challenge

Whether the Act's habeas restrictions are permissible turns on a determination of which Executive Branch decisions must, under the Suspension Clause, be subject to habeas review. This is an extremely complex question that itself turns, in part, on the underlying Executive action. See St. Cyr, 533 U.S. at 301 ("At its historical core, the writ of

habeas corpus has served as a means of reviewing the legality of Executive detention.") (emphasis added); Zadvydas, 533 U.S. at 694 (The nature of constitutional protections afforded to an alien "may vary depending upon status and circumstance."); Plasencia, 459 U.S. at 34 (same).

The first Boumediene factor—historic precedent respecting the Writ's scope—suggests strongly that the Suspension Clause does not require judicial review of purely factual determinations or mixed fact and law determinations made in the context of alien exclusion. St. Cyr, 533 at 301, 304-09 ("[A]t the absolute minimum, the Suspension Clause protects the writ 'as it existed in 1789.'" (quoting Felker v. Turpin, 518 U.S. 651, 663-64 (1996)); M.S.P.C., 60 F. Supp. 3d at 1170 ("Although St. Cyr stated that 'some judicial intervention in deportation cases is unquestionably required by the Constitution,' it did not define the scope of review in exclusion cases.") (internal citations omitted); see generally Neuman, supra, at 546 n.55 ("It is also unclear to what extent the Court's reference to erroneous 'application' of law requires review of so-called mixed questions of law and fact.").

After St. Cyr, the Third Circuit reviewed the Writ's historic application and interpreted its statutory habeas jurisdiction over "questions of law" in (non-expedited) removal cases to "include issues of application of law to fact, *where the facts are undisputed and not the subject of challenge*." Bakhtriger, 360 F.3d at 420 (emphasis added); Kamara, 420 F.3d at 211 (same); Francois v. Gonzales, 448 F.3d 645, 648 (3d Cir. 2006) (same); cf. St. Cyr, 533 U.S. at 301 (An immigration statute that

"entirely preclude [s] review of a *pure question of law* by any court would give rise to substantial constitutional questions.") (emphasis added). In so holding, the Court nevertheless concluded that constitutionally adequate habeas proceedings in the immigration context need not "embrace review of the exercise of discretion, *or the sufficiency of the evidence*." Bakhtriger, 360 F.3d at 420, 423 ("[T]he actual reasoning in the St. Cyr decision compels the conclusion that under section 2241 . . . the broader species of review for substantial evidence and abuse of discretion typical of [Administrative Procedures Act] challenges must be wholly out of bounds.") (emphasis added); Gotowicz v. Att'y Gen., 171 F. App'x 948, 949-50 (3d Cir. 2006) ("[0]ur jurisdiction does not extend to a review of discretionary decisions, the sufficiency of evidence, or factual issues in the proceedings below."); see Khozhavnova v. Holder, 641 F.3d 187, 192 (6th Cir. 2011); Viracacha v. Mukasey, 518 F.3d 511,515 (7th Cir. 2008).

Although Petitioners frame their arguments creatively, their challenge to the merits of their negative credible fear determinations is a mixed question of law and disputed fact. Bakhtriger, 360 F.3d at 425 ("The fact that there are legal principles that govern these matters, however, does not convert every question of fact or discretion into a question of law."); cf. Interfaith Cmty. Org. v. Honeywell Int'l. Inc., 399 F.3d 248,269 (3d Cir. 2005) (Ambro, J., concurring) ("A question of law can be answered solely by determining what relevant law means . . . . A mixed question of fact and law can only be answered by both determining the facts of a case and determining what the relevant law means."); Negrete v. Holder, 567 F.3d 419, 422 (9th Cir. 2009)

("'[P]etitioner may not create the jurisdiction that Congress chose to remove simply by cloaking an abuse of discretion argument in constitutional garb.'" (quoting Torres-Aguilar v. INS, 246 F.3d 1267, 1271 (9th Cir. 2001))).

As their submissions well demonstrate, Petitioners challenge *the evidentiary sufficiency* underlying their negative credible fear determinations. Although unsupported by any evidence, Ms. Castro's Petition is replete with factual allegations that her negative credible fear determination was incorrect. See, e.g., Doc. No. 1 at ¶ 50 ("Rosa was sick, disoriented, and traumatized when she was brought in her asylum interview."). Yet, Petitioners urge that their challenge is purely legal because "the asylum officer and immigration judge applied an erroneously high substantive standard." Doc. No. 13 at 3. Regardless of how Petitioners clothe their challenge, however, the Act does not permit me to reweigh the evidence presented to DHS. See 8 U.S.C. §1252(a)(2)(A)(iii), (e)(2), (e)(5); cf. Rais v. Holder, 768 F.3d 453, 462 n.17 (6th Cir. 2014) ("[A] petitioner cannot create jurisdiction by alleging nothing more than a challenge to the [administrative agency's] discretionary and fact-finding exercises cloaked as a question of law.") (internal quotation marks omitted). That restriction does not run afoul of the Suspension Clause. Bakhtriger, 360 F.3d at 420; Viracacha, 518 F.3d at 515; Puri v. Gonzales, 464 F.3d 1038, 1042 (9th Cir. 2006); M.S.P.C., 60 F. Supp. 3d at 1170; see Shaughnessv v. United States ex rel. Mezei, 345 U.S. 206, 212 (1953) ("[T]he Attorney General cannot be compelled to disclose the evidence underlying his determinations in an exclusion case . . . . [C]ourts

cannot retry the determination of the Attorney General."); Knauff, 338 U.S. at 543 ("[I]t is not within the province of any court, unless expressly authorized by law, to review the determination of the political branch of the Government to exclude a given alien."); Nishimura Ekiu v. United States, 142 U.S. 651,660 (1892) (same).

Petitioners rely heavily on decisions from the so-called "finality era." (Doc. No. 13 at 15- 20.) They place special emphasis on the Supreme Court's statement in 1953 that the immigration statute in force from 1891 until 1952 (when the INA was enacted) "had the effect of precluding judicial intervention *in deportation cases* except insofar as it was required by the Constitution." Heikkila v. Barber, 345 U.S. 229, 234-35 (1953) (emphasis added); St. Cyr, 533 U.S. at 304; see also Sandoval, 166 F.3d at 233-34 (discussing the finality era in dicta). Petitioners thus urge that the scope of constitutionally required habeas jurisdiction is defined in immigration decisions rendered between 1891 and 1952. See Doc. No. 13 at 16 ("[D]uring this long 60-year stretch (referred to as the 'finality' era), a court asked to review an immigration order could do so only if review was mandated by the Suspension Clause.").

This argument is flawed in several respects. Petitioners implausibly assume that the meaning of a seldom-interpreted constitutional provision (i.e., the Suspension Clause), is defined by implication through a series of decisions that do not even address the Clause itself. See, e.g., United States ex rel. Accardi v. Shaughnessy, 347 U.S. 260 (1954); Wong Yang Sung v. McGrath, 339 U.S. 33 (1950); Gegiow

v.Uhl, 239 U.S. 3 (1915); Ekiu, 142 U.S. at 651. On the contrary, in Zakonaite v. Wolf (a finality era case), the Court summarily rejected a constitutional argument similar to that Petitioners raise here—i.e., that the immigration statute "violates the constitutional guaranty" of habeas corpus—noting that it was "without substance, and require[s] no discussion." 226 U.S. 272, 275 (1912).

As I have discussed, Petitioners also argue mistakenly that *expedited* removal proceedings are akin to the deportation proceedings discussed in Heikkila. Once again, procedures governing *exclusion* and those governing *deportation* are subject to different constitutional requirements. See, e.g., Plasencia, 459 U.S. at 26 ("[T]he alien who loses his right to reside in the United States in a deportation hearing has a number of substantive rights not available to the alien who is denied admission in an exclusion proceeding."); M.S.P.C., 60 F. Supp. 3d at 1168.

Moreover, throughout the finality era, the Supreme Court reaffirmed Congress's power to vest Executive officers with *exclusive* fact-finding authority respecting the admission of aliens. As the Ekiu Court held, when Congress makes "final" the Executive Branch's admission and exclusion factual findings, the Judicial Branch is not "at liberty to re-examine or controvert the sufficiency of the evidence on which [those officers] acted." Ekiu, 142 U.S. at 660; Mezei, 345 U.S. at 212, 215 (same); Fok Young Yo v. United States, 185 U.S. 296, 305 (1902) (same); Lem Moon Sing v. United States, 158 U.S. 538, 545 (1895) (same); Fong Yue Ting v. United States, 149 U.S. 698, 714 (1893) (same); see Heikkila, 345 U.S. at

233-34 ("Relying on the peculiarly political nature of the legislative power over aliens, the [Ekiu] Court was clear on the power of Congress to entrust the final determination of the facts in [exclusion] cases to executive officers.").

Plainly, historical precedent weighs heavily against Petitioners' habeas challenge to their negative credible fear determinations. Because my analysis of the three remaining Boumediene factors is the same for both Petitioners' substantive and procedural claims, I discuss them below.

B. Procedural Challenge

Petitioners contend that, by precluding them from collaterally attacking their expedited removal orders on due process grounds, § 1252(e)(2) effects an unconstitutional suspension of the Writ. I do not agree.

First enacted in 1996, expedited removal is a recent innovation; U.S. asylum policy is similarly novel, first devised after World War II. See Ruth Ellen Wasem, Cong. Research Serv., RL32621, U.S. Immigration Policy on Asylum Seekers 3-7 (2005) (tracing the history of asylum). Historical precedent (the first Boumediene factor) thus does not neatly resolve whether Petitioners must be afforded habeas review of the procedural soundness of their negative credible fear determinations—even though Petitioners lack habeas rights to challenge the merits of those determinations. See Demore v. Kim, 538 U.S. 510, 537-39 (2003) (O'Connor, J., concurring in the judgment) (discussing the dearth of founding-era immigration habeas case law).

Broadly speaking, history—especially post-Boumediene history—suggests that the Act's foreclosure of Petitioners' procedural challenge is permissible. Khan, 608 F.3d at 327 (joining other circuits holding "that constitutional and statutory claims arising in expedited removal proceedings are not reviewable"); Shunaula, 732 F.3d at 145-46 (same); Garcia de Rincon, 539 F.3d at 1140-41 (same); M.S.P.C., 60 F.3d at 1176 (same); Diaz Rodriguez, 2014 WL 4675182, at *4 (same); see Vaupel, 244 F. App'x at 895 (same); Lorenzo v. Mukasev, 508 F.3d 1278, 1281 (10th Cir. 2007) (same); see also Knauff, 338 U.S. at 542-44 ("Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned."); Mezei, 345 U.S. at 212 (same); Ekiu, 142 U.S. at 660 (same); Am. Immigration Lawyers Ass'n, 18 F. Supp. 2d at 53-57; see generally David A. Martin, Two Cheers for Expedited Removal in the New Immigration Laws, 40 Va. J. Int'l L. 673, 688-92 (2000).

The remaining Boumediene factors also weigh against Petitioners' Suspension Clause arguments. Separation-of-powers principles "must inform the reach and purpose of the Suspension Clause." Boumediene, 553 U.S. at 746. In conducting this analysis, I am mindful of the Supreme Court's repeated admonition: "'[O]ver no conceivable subject is the legislative power of Congress more complete than it is over' the admission of aliens." E.g., Fiallo v. Bell, 430 U.S. 787, 792 (1977) (quoting Oceanic Navigation Co. v. Stranahan, 214 U.S. 320, 339 (1909)); see id. ("[I]n the exercise of its broad power over immigration and naturalization, 'Congress regularly makes rules that would be unacceptable if

applied to citizens.'" (quoting Mathews v. Diaz, 426 U.S. 67, 80 (1976))); Kleindienst v. Mandel, 408 U.S. 753, 766 (1972) ("The Court without exception has sustained Congress' 'plenary power to make rules for the admission of aliens and to exclude those who possess those characteristics which Congress has forbidden.'" (quoting Boutilier v. INS, 387 U.S. 118, 123 (1967))); see also Hiroshi Motomura, Immigration Law After a Century of Plenary Power: Phantom Constitutional Norms and Statutory Interpretation, 100 Yale L.J. 545,547 (1990).

The Supreme Court and the Circuits have cautioned similarly respecting Executive Branch authority to implement congressional measures respecting alien exclusion. See INS v. Aguirre-Aguirre, 526 U.S. 415,425 (1999) ("[W]e have recognized that judicial deference to the Executive Branch is especially appropriate in the immigration context where officials 'exercise especially sensitive political functions that implicate questions of foreign relations.'" (quoting INS v. Abudu. 485 U.S. 94, 110 (1988))); Plasencia, 459 U.S. at 32; Mezei, 345 U.S. at 210; Jean v. Nelson, 727 F.2d 957, 964 (11th Cir. 1984) (en banc), aff d, 472 U.S. 846 (1985); see generally Adam B. Cox & Cristina M. Rodriguez, The President and Immigration Law, 119 Yale L.J. 458,483-85 (2009).

The course Petitioners urge would force the courts into an area traditionally reserved for Congress and the Executive. Separation-of-powers principles thus weigh heavily against Petitioners.

The next Boumediene factor (the gravity of the petitioner's challenged liberty deprivation) also weighs against Petitioners. "[A]n alien seeking initial

admission to the United States requests a privilege and has no constitutional rights regarding his application." Plasencia, 459 U.S. at 32; Knauff, 338 U.S. at 542 (same). Furthermore, Petitioners' detention is only a secondary, temporary, and constitutionally permissible aspect of the expedited removal process. Demore, 538 U.S. at 531 ("[Detention during [deportation] proceedings is a constitutionally valid aspect of the process . . . ."); see Wong Wing v. United States, 163 U.S. 228, 235 (1896). Because the challenged removal procedures are expedited, the concomitant detention is necessarily brief. 8 U.S.C. § 1225(b)(1)(B)(iii)(III) (Immigration Judge review of credible fear determinations "shall be concluded as expeditiously as possible, to the maximum extent practicable within 24 hours, but in no case later than 7 days after" the determination.); Lafferty Decl. at ¶ 22 ("For credible fear cases screened from October 2014 through June 2015, the Asylum Division has completed more than 90% of the cases in 14 calendar days or less.").

As Petitioners apparently acknowledge, they have lesser liberty interests to vindicate through habeas than did the prisoners in Boumediene. Doc. No. 13 at 11 ("[A] challenge to detention is different than a challenge to a removal order."); see Boumediene, 553 U.S. at 783 ("The intended duration of the detention and the reasons for it bear upon the precise scope of the [habeas] inquiry."); M.S.P.C., 60 F. Supp. 3d at 1171 ("For aliens that Congress wants to refuse admission into the country, and to detain only for as long as necessary to carry out the exclusion, the liberty interests are far different [than in Boumediene] and thus, the

adequacy of the substitute procedures for habeas corpus will likewise be very different."); accord Zadvvdas, 533 U.S. at 690; United States v. Salerno, 481 U.S. 739, 750-51 (1987).

The final Boumediene factor (the balancing of Petitioners' interests against those of the Government) presents a closer question. See Boumediene, 553 U.S. at 781 ("The idea that the necessary scope of habeas review in part depends upon the rigor of any earlier proceedings accords with our test for procedural adequacy in the due process context."). Aliens who enter this country illegally—especially those fleeing persecution or torture—have a substantial interest in the rigor and fairness of the process by which it is determined whether or not they will be excluded. See, e.g., Neuman, supra, at 576-77; E. Lea Johnston, An Administrative "Death Sentence" for Asylum Seekers: Deprivation of Due Process Under 8 U.S.C. § 1158(d)(6)'s Frivolousness Standard, 82 Wash. L. Rev. 831, 861-71 (2007); Dulce Foster, Judge, Jury and Executioner: INS Summary-Exclusion Power Under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. 82 Minn. L. Rev. 209, 233-35 (1997).

Balanced against Petitioners' interest is the Executive's need for expedition and finality. The procedures Petitioners urge—necessitating pleadings, formal court proceedings, evidentiary review, and the like—would make expedited removal of arriving aliens impossible. The Government urges, however, that expedited removal is essential to address the profusion of illegal immigration. In FY 2013, for instance, 193,032 aliens were subject to

expedited removal (36,035 of whom expressed a fear of return to their native lands). (Doc. No. 20 at 7-8; Lafferty Decl. at ¶ 8.) The Government seeks to employ its resources effectively by accelerating the removal of those who, because of their brief presence here—in Petitioners' case, from mere minutes to three hours—have the fewest ties and enforceable rights. Plasencia, 459 U.S. at 32 ("[O]nce an alien gains admission to our country *and begins to develop the ties that go with permanent residence* his constitutional status changes accordingly.") (emphasis added); see United States v. Verdugo-Urquidez, 494 U.S. 259, 271 (1990) (same).

Through expedited removal, the Executive also seeks to discourage foreign nationals from exposing themselves to the dangers associated with illegal immigration. Designating Aliens for Expedited Removal, 69 Fed. Reg. 48877-01 (Aug. 11, 2004) ("There is an urgent need to enhance DHS's ability to improve the safety and security of the nation's land borders, *as well as the need to deter foreign nationals from undertaking dangerous border crossings*, and thereby prevent the needless deaths and crimes associated with human trafficking and alien smuggling operations.") (emphasis added); H.R. Rep. No. 104-469, pt. 1, at 117 (1996) ("The threat of expedited exclusion, which has been considered by Congress since 1993, may also have had a deterrent effect."); see generally Guillermo Alonso Meneses, Human Rights and Undocumented Migration Along the Mexican-U.S. Border, 51 UCLA L. Rev. 267 (2003).

Given that admission decisions are uniquely the Executive's, its interests here are considerable.

See, e.g., Plasencia, 459 U.S. at 34 ("The government's interest in efficient administration of the immigration laws at the border also is weighty. Further, it must weigh heavily in the balance that control over matters of immigration is a sovereign prerogative, largely within the control of the executive and the legislature."); Fiallo, 430 U.S. at 792; Kleindienst, 408 U.S. at 766; cf. United States v. Flores-Montano, 541 U.S. 149, 152 (2004); United States v. Montoya de Hernandez, 473 U.S. 531, 544 (1985).

In these circumstances, I am compelled to conclude that although Petitioners have a considerable interest in rigorous administrative procedures, the Government's need for expedition and finality is greater still.

In sum, all four Boumediene factors counsel against expanding the scope of Petitioners' habeas rights to require judicial review of Petitioners' substantive and procedural challenges. Accordingly, I conclude that § 1252(e)(2) does not violate the Suspension Clause.

CONCLUSION

Because we are a nation of immigrants, it is vital, especially for those of us who are the children of immigrants, to ensure integrity and fairness in the immigration process. All the goodwill in the world, however, cannot alter the Judiciary's necessarily limited role in the admissions process. Congress has determined that expedited removal decisions—particularly the evaluation of credible fear claims—are best left to the Executive, not the courts. Evidence submitted by the Government suggests

that the great majority of those decisions favor aliens seeking admission. That some are unfavorable does not create jurisdiction where none exists.

Because the Act provides no basis for exercising jurisdiction over the consolidated Petitions, and because that jurisdictional restriction is constitutional, I must dismiss the Petitions for want of subject matter jurisdiction. Arbaugh, 546 U.S. at 514. I am also compelled to conclude that Petitioners' have no likelihood of success on the merits to support their Emergency Motions for Stay of Removal. Cf. Munaf, 553 U.S. at 690; M.S.P.C., 60 F. Supp. 3d at 1176. Accordingly, I must deny those Motions and lift the temporary stays that were previously granted.

An appropriate Order follows.

/s/ Paul S. Diamond

February 16, 2016 Paul S. Diamond, J.

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ROSA ELIDA CASTRO, et al.,	**:**	
Petitioners,	**:**	
v.	**:**	**Civ. No. 15-6153**
	:	**(Lead Case)**
	:	**and all related**
	:	**cases**
U.S. DEPARTMENT OF	**:**	
HOMELAND SECURITY, et al.,	**:**	
Respondents.	**:**	

ORDER

AND NOW, this 16th day of February, 2016, upon consideration of Petitioners' and the Government's Briefs on Jurisdiction (Doc. Nos. 13, 20), Petitioners' Reply to the Government's Brief (Doc. No. 31), Amici Curiae's Brief (Doc. No. 19), the Government's Response to Amici Curiae's Brief (Doc. No 35), and all other related submissions, it is hereby **ORDERED** as follows:

1. The consolidated Petitions are **DISMISSED with prejudice** for lack of subject matter jurisdiction. 8 U.S.C. § 1252(e)(2).
2. The Temporary Stays of Removal are VACATED (Doc. Nos. 5, 25, 36, 38, 41, 45, 51).

3. This Order is **STAYED** for fourteen days so that Petitioners may seek an emergency stay pending their appeal to the Third Circuit Court of Appeals.
4. The Clerk of Court shall mark these cases as closed for statistical purposes.

AND IT IS SO ORDERED.

/s/ Paul S. Diamond

February 16, 2016 Paul S. Diamond, J.

APPENDIX D

Rosa Elida Castro

* * * *

[Form I-870]

SECTION IV: CREDIBLE FEAR FINDINGS

A. Credible Fear Determination:

Credibility

4.1 [X] There is a significant possibility that the assertions underlying the applicant's claim could be found credible in a full asylum or withholding of removal hearing.

4.2 [ ] Applicant found **not** credible because (check boxes 4.3-4.5, which apply):

4.3 [ ] Testimony was internally inconsistent on material issues.

4.4 [ ] Testimony lacked sufficient detail on material issues.

4.5 [ ] Testimony was not consistent with country conditions on material issues.

Nexus

4.6 [ ] Race 4.7 [ ] Religion 4.8 [ ] Nationality

4.9 [ ] Membership in a Particular Social Group

(Define the social group):_____

4.10 [ ] Political Opinion 4.11 [ ] Coercive Family Planning (CPP) 4.12 [X] No Nexus

Credible Fear Finding

4.13 [ ] Credible fear of **persecution** established.

OR

4.14 [ ] Credible fear of **torture** established.

OR

4.15 [X] Credible fear of persecution NOT established and there is not a significant possibility that the applicant could establish eligibility for withholding of removal or deferral of removal under the Convention against Torture.

B. Possible Bars:

4.16 Applicant could be subject to a bar(s) to asylum or withholding of removal (check the box(es) that applies and explain on the continuation sheet):

4.17 [ ] Particularly Serious Crime 4.18 [ ] Security Risk

4.19 [ ] Aggravated Felon

4.20 [ ] Persecutor 4.21 [ ] Terrorist

4.22 [ ] Firmly Resettled

4.23 [ ] Serious Non-Political Crime Outside the United States

4.24 [X] Applicant does **not** appear to be subject to a bar(s) to asylum or withholding of removal.

C. Identity:

4.25 [X] Applicant's identity was determined with a reasonable degree of certainty (check the box(es) that applies):

4.26 [X] Applicant's own credible statements. (If testimony is credible overall, this will suffice to establish the applicant's identity with a reasonable degree of certainty).

4.27 [ ] Passport which appears to be authentic.

4.28 [ ] Other evidence presented by applicant or in applicant's file (List): _____

4.29 [ ] Applicant's identity was not determined with a reasonable degree of certainty. (Explain on the continuation sheet.)

SECTION V: ASYLUM OFFICER / SUPERVISOR NAMES AND SIGNATURES

5.1 Garland Hook ZHN245

Asylum officer name and ID CODE (print)

5.2 /s/ Garland Hook

Asylum Officer's Signature

5.3 10/19/2015

Decision Date

5.4 Kirk Wills Supervisory Asylum Officer

Supervisory asylum officer name

5.5 /s/ Kirk Wills

Supervisor's Signature

5.6 19 OCT 2015

Date Supervisor Approved decision

* * * *

IMMIGRATION COURT
800 DOLOROSA STREET, SUITE 300
SAN ANTONIO, TX 78207

In the Matter of: Case No: [redacted]

CASTRO, ROSA ELIDA

Respondent

IN: CREDIBLE FEAR REVIEW PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

On Oct 27, 2015 at 2:30 P.M. a review of the DHS Credible Fear Determination was held in the matter noted above. Testimony [X] was [ ] was not taken regarding the background of the Applicant and the Applicant's fear of returning to his/her country of origin or last habitual residence.

After consideration of the evidence, the Court finds that the Applicant [ ] has [X] has not established a significant possibility that he/she would be persecuted on the basis of his/her race, religion, nationality, membership in a particular social group, or because of his/her political opinion.

ORDER: It is hereby ordered that the decision of the immigration officer is:

[X] Affirmed, and the case is returned to the DHS for removal of the alien.

[ ] Vacated.

This is a final order. There is no appeal available.

DONE and ORDERED this 27th day of Oct, 2015

/S/ Anibal D. Martinez
ANIBAL D. MARTINEZ
Immigration Judge

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P)

TO: [ ] ALIEN [ ] ALIEN c/o Custodial Officer [ ] ALIEN's ATT/REP [P] DHS

DATE: 10/27/2015 BY: COURT STAFF ADM

Attachments: [ ] EOIR-33 [ ] EOIR-28 [ ] Legal Services List [ ] Other

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U2

Laura Lisseth Flores-Pichinte

* * * *

[Form I-870]

SECTION IV: CREDIBLE FEAR FINDINGS

A. Credible Fear Determination:

Credibility

4.1 [X] There is a significant possibility that the assertions underlying the applicant's claim could be found credible in a full asylum or withholding of removal hearing.

4.2 [ ] Applicant found **not** credible because (check boxes 4.3-4.5, which apply):

4.3 [ ] Testimony was internally inconsistent on material issues.

4.4 [ ] Testimony lacked sufficient detail on material issues.

4.5 [ ] Testimony was not consistent with country conditions on material issues.

Nexus

4.6 [ ] Race 4.7 [ ] Religion 4.8 [ ] Nationality

4.9 [ ] Membership in a Particular Social Group

(Define the social group):_____

4.10 [ ] Political Opinion 4.11 [ ] Coercive Family Planning (CPP) 4.12 [X] No Nexus

Credible Fear Finding

4.13 [ ] Credible fear of **persecution** established.

OR

4.14 [ ] Credible fear of **torture** established.

OR

4.15 [X] Credible fear of persecution NOT established and there is not a significant possibility that the applicant could establish eligibility for withholding of removal or deferral of removal under the Convention against Torture.

B. Possible Bars:

4.16 Applicant could be subject to a bar(s) to asylum or withholding of removal (check the box(es) that applies and explain on the continuation sheet):

4.17 [ ] Particularly Serious Crime 4.18 [ ] Security Risk

4.19 [ ] Aggravated Felon

4.20 [ ] Persecutor 4.21 [ ] Terrorist 4.22 [ ] Firmly Resettled

4.23 [ ] Serious Non-Political Crime Outside the United States

4.24 [X] Applicant does **not** appear to be subject to a bar(s) to asylum or withholding of removal.

C. Identity:

4.25 [X] Applicant's identity was determined with a reasonable degree of certainty (check the box(es) that applies):

4.26 [X] Applicant's own credible statements. (If testimony is credible overall, this will suffice to establish the applicant's identity with a reasonable degree of certainty).

4.27 [ ] Passport which appears to be authentic.

4.28 [ ] Other evidence presented by applicant or in applicant's file (List): _____

4.29 [ ] Applicant's identity was not determined with a reasonable degree of certainty. (Explain on the continuation sheet.)

SECTION V: ASYLUM OFFICER / SUPERVISOR NAMES AND SIGNATURES

5.1 Melodee Baines ZHN 408

Asylum officer name and ID CODE (print)

5.2 /s/ Melodee Baines

Asylum Officer's Signature

5.3 10/21/2015

Decision Date

5.4 Jessica Lee Parent, Supervisory Asylum Officer

Supervisory asylum officer name

5.5 /s/ Jessica Lee Parent

Supervisor's Signature

5.6 OCT 22 2015

Date Supervisor Approved decision

* * * *

IMMIGRATION COURT

333 SOUTH MIAMI AVE., STE. 700

MIAMI, FL 33130

In the Matter of: Case No: [redacted]

FLORES-PICHINTE, LAURA LISSETH

Respondent

IN: CREDIBLE FEAR REVIEW PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

On Oct 28, 2015 at 8:00 A.M. a review of the DHS Credible Fear Determination was held in the matter noted above. Testimony [X] was [ ] was not taken regarding the background of the Applicant and the Applicant's fear of returning to his/her country of origin or last habitual residence.

After consideration of the evidence, the Court finds that the Applicant [ ] has [X] has not established a significant possibility that he/she would be persecuted on the basis of his/her race, religion, nationality, membership in a particular social group, or because of his/her political opinion.

ORDER: It is hereby ordered that the decision of the immigration officer is:

[X] Affirmed, and the case is returned to the DHS for removal of the alien.

[ ] Vacated.

This is a final order. There is no appeal available.

DONE and ORDERED this 28 day of October, 2015

/S/ J. Daniel Dowell
J. DANIEL DOWELL
Immigration Judge

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P) FAX (F)

TO: [F] ALIEN [ ] ALIEN c/o Custodial Officer [ ] ALIEN's ATT/REP [M] DHS

DATE: 10/28/2015 BY: COURT STAFF /s/

Attachments: [ ] EOIR-33 [ ] EOIR-28 [ ] Legal Services List [ ] Other

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U2

Karen Margarita Zelaya-Alberto

* * * *

[Form I-870]

SECTION IV: CREDIBLE FEAR FINDINGS

A. Credible Fear Determination:

Credibility

4.1 [X] There is a significant possibility that the assertions underlying the applicant's claim could be found credible in a full asylum or withholding of removal hearing.

4.2 [ ] Applicant found **not** credible because (check boxes 4.3-4.5, which apply):

4.3 [ ] Testimony was internally inconsistent on material issues.

4.4 [ ] Testimony lacked sufficient detail on material issues.

4.5 [ ] Testimony was not consistent with country conditions on material issues.

Nexus

4.6 [ ] Race 4.7 [ ] Religion 4.8 [ ] Nationality

4.9 [ ] Membership in a Particular Social Group

(Define the social group):_____

4.10 [ ] Political Opinion 4.11 [ ] Coercive Family Planning (CPP) 4.12 [X] No Nexus

Credible Fear Finding

4.13 [ ] Credible fear of **persecution** established.

OR

4.14 [ ] Credible fear of **torture** established.

OR

4.15 [X] Credible fear of persecution NOT established and there is not a significant possibility that the applicant could establish eligibility for withholding of removal or deferral of removal under the Convention against Torture.

B. Possible Bars:

4.16 Applicant could be subject to a bar(s) to asylum or withholding of removal (check the box(es) that applies and explain on the continuation sheet):

4.17 [ ] Particularly Serious Crime 4.18 [ ] Security Risk

4.19 [ ] Aggravated Felon

4.20 [ ] Persecutor 4.21 [ ] Terrorist

4.22 [ ] Firmly Resettled

4.23 [ ] Serious Non-Political Crime Outside the United States

4.24 [X] Applicant does **not** appear to be subject to a bar(s) to asylum or withholding of removal.

C. Identity:

4.25 [X] Applicant's identity was determined with a reasonable degree of certainty (check the box(es) that applies):

4.26 [X] Applicant's own credible statements. (If testimony is credible overall, this will suffice to establish the applicant's identity with a reasonable degree of certainty).

4.27 [ ] Passport which appears to be authentic.

4.28 [ ] Other evidence presented by applicant or in applicant's file (List): _____

4.29 [ ] Applicant's identity was not determined with a reasonable degree of certainty. (Explain on the continuation sheet.)

SECTION V: ASYLUM OFFICER / SUPERVISOR NAMES AND SIGNATURES

5.1 Nathan Jackson, ZHN 382

Asylum officer name and ID CODE (print)

5.2 /s/ Nathan Jackson

Asylum Officer's Signature

5.3 09/16/2015

Decision Date

5.4 Ebbed Joseph ZHN 156

Supervisory asylum officer name

5.5 /s/ Ebbed Joseph

Supervisor's Signature

5.6 9/18/2015

Date Supervisor Approved Decision

* * * *

IMMIGRATION COURT
333 SOUTH MIAMI AVE., STE.700
MIAMI, FL 33130

In the Matter of: Case No: [redacted]

ZELAYA-ALBERTO, KAREN MARGARITA

Respondent

IN: CREDIBLE FEAR REVIEW PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

On Sep 23, 2015 at 8:30 A.M. a review of the DHS Credible Fear Determination was held in the matter noted above. Testimony [X] was [ ] was not taken regarding the background of the Applicant and the Applicant's fear of returning to his/her country of origin or last habitual residence.

After consideration of the evidence, the Court finds that the Applicant [ ] has [X] has not established a significant possibility that he/she would be persecuted on the basis of his/her race, religion, nationality, membership in a particular social group, or because of his/her political opinion.

ORDER: It is hereby ordered that the decision of the immigration officer is:

[X] Affirmed, and the case is returned to the DHS for removal of the alien.

[ ] Vacated.

This is a final order. There is no appeal available.

DONE and ORDERED this 23rd day of September, 2015

/S/ J. Daniel Dowell
J. DANIEL DOWELL
Immigration Judge

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P) FAX (F)

TO: [F] ALIEN [ ] ALIEN c/o Custodial Officer [ ] ALIEN's ATT/REP [M] DHS

DATE: 9/23/2015 BY: COURT STAFF /s/

Attachments: [ ] EOIR-33 [ ] EOIR-28 [ ] Legal Services List [ ] Other

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U2

Kelly Saday Gutierrez-Rubio

* * * *

[Form I-870]

SECTION IV: CREDIBLE FEAR FINDINGS

A. Credible Fear Determination:

Credibility

4.1 [X] There is a significant possibility that the assertions underlying the applicant's claim could be found credible in a full asylum or withholding of removal hearing.

4.2 [ ] Applicant found **not** credible because (check boxes 4.3-4.5, which apply):

4.3 [ ] Testimony was internally inconsistent on material issues.

4.4 [ ] Testimony lacked sufficient detail on material issues.

4.5 [ ] Testimony was not consistent with country conditions on material issues.

Nexus

4.6 [ ] Race 4.7 [ ] Religion 4.8 [ ] Nationality 4.9 [ ] Membership in a Particular Social Group

(Define the social group):_____

4.10 [ ] Political Opinion 4.11 [ ] Coercive Family Planning (CPP) 4.12 [X] No Nexus

Credible Fear Finding

4.13 [ ] Credible fear of **persecution** established.

OR

4.14 [ ] Credible fear of **torture** established.

OR

4.15 [X] Credible fear of persecution NOT established and there is not a significant possibility that the applicant could establish eligibility for withholding of removal or deferral of removal under the Convention against Torture.

B. Possible Bars:

4.16 Applicant could be subject to a bar(s) to asylum or withholding of removal (check the box(es) that applies and explain on the continuation sheet):

4.17 [ ] Particularly Serious Crime 4.18 [ ] Security Risk

4.19 [ ] Aggravated Felon

4.20 [ ] Persecutor 4.21 [ ] Terrorist 4.22 [ ] Firmly Resettled

4.23 [ ] Serious Non-Political Crime Outside the United States

4.24 [X] Applicant does **not** appear to be subject to a bar(s) to asylum or withholding of removal.

C. Identity:

4.25 [X] Applicant's identity was determined with a reasonable degree of certainty (check the box(es) that applies):

4.26 [X] Applicant's own credible statements. (If testimony is credible overall, this will suffice to establish the applicant's identity with a reasonable degree of certainty).

4.27 [ ] Passport which appears to be authentic.

4.28 [ ] Other evidence presented by applicant or in applicant's file (List): _____

4.29 [ ] Applicant's identity was not determined with a reasonable degree of certainty. (Explain on the continuation sheet.)

SECTION V: ASYLUM OFFICER / SUPERVISOR NAMES AND SIGNATURES

5.1 William Holton ZHN 148

Asylum officer name and ID CODE (print)

5.2 /s/ William Holton

Asylum Officer's Signature

5.3 9/15/2015

Decision Date

5.4 K. Trinh ZHN 436

Supervisory asylum officer name

5.5 /s/ K. Trinh

Supervisor's Signature

5.6 9/16 2015

Date Supervisor Approved decision

* * * *

IMMIGRATION COURT
800 DOLOROSA STREET, SUITE 300
SAN ANTONIO, TX 78207

In the Matter of: Case No: [redacted]

GUTIERREZ-RUBIO, KELLY SADAY

Respondent

IN: CREDIBLE FEAR REVIEW PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

On October 1, 2015 at 1:30 P.M. a review of the DHS Credible Fear Determination was held in the matter noted above. Testimony [X] was [ ] was not taken regarding the background of the Applicant and the Applicant's fear of returning to his/**her** country of origin or last habitual residence.

After consideration of the evidence, the Court finds that the Applicant [ ] has [X] has not established a significant possibility that he/**she** would be persecuted on the basis of his/**her** race, religion, nationality, membership in a particular social group, or because of his/**her** political opinion.

ORDER: It is hereby ordered that the decision of the immigration officer is:

[X] Affirmed, and the case is returned to the DHS for removal of the alien.

[ ] Vacated.

This is a final order. There is no appeal available.

DONE and ORDERED this 1 day of October, 2015

/S/ Craig A. Harlow
CRAIG A. HARLOW
Immigration Judge

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P)

TO: [ ] ALIEN [M] ALIEN c/o Custodial Officer [ ] ALIEN's ATT/REP [P] DHS

DATE: 10/5/2015 BY: COURT STAFF /s/

Attachments: [ ] EOIR-33 [ ] EOIR-28 [ ] Legal Services List [ ] Other

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U2

Gladis Carrasco Gomez

* * * *

[Form I-870]

SECTION IV: CREDIBLE FEAR FINDINGS

A. Credible Fear Determination:

Credibility

4.1 [ ] There is a significant possibility that the assertions underlying the applicant's claim could be found credible in a full asylum or withholding of removal hearing.

4.2 [X] Applicant found **not** credible because (check boxes 4.3-4.5, which apply):

4.3 [ ] Testimony was internally inconsistent on material issues.

4.4 [X] Testimony lacked sufficient detail on material issues.

4.5 [ ] Testimony was not consistent with country conditions on material issues.

Nexus

4.6 [ ] Race 4.7 [ ] Religion 4.8 [ ] Nationality

4.9 [ ] Membership in a Particular Social Group

(Define the social group):_____

4.10 [ ] Political Opinion 4.11 [ ] Coercive Family Planning (CPP) 4.12 [X] No Nexus

Credible Fear Finding

4.13 [ ] Credible fear of **persecution** established.

OR

4.14 [ ] Credible fear of **torture** established.

OR

4.15 [X] Credible fear of persecution NOT established and there is not a significant possibility that the applicant could establish eligibility for withholding of removal or deferral of removal under the Convention against Torture.

B. Possible Bars:

4.16 Applicant could be subject to a bar(s) to asylum or withholding of removal (check the box(es) that applies and explain on the continuation sheet):

4.17 [ ] Particularly Serious Crime 4.18 [ ] Security Risk

4.19 [ ] Aggravated Felon

4.20 [ ] Persecutor 4.21 [ ] Terrorist

4.22 [ ] Firmly Resettled

4.23 [ ] Serious Non-Political Crime Outside the United States

4.24 [X] Applicant does **not** appear to be subject to a bar(s) to asylum or withholding of removal.

C. Identity:

4.25 [X] Applicant's identity was determined with a reasonable degree of certainty (check the box(es) that applies):

4.26 [X] Applicant's own credible statements. (If testimony is credible overall, this will suffice to establish the applicant's identity with a reasonable degree of certainty).

4.27 [ ] Passport which appears to be authentic.

4.28 [ ] Other evidence presented by applicant or in applicant's file (List): _____

4.29 [ ] Applicant's identity was not determined with a reasonable degree of certainty. (Explain on the continuation sheet.)

SECTION V: ASYLUM OFFICER / SUPERVISOR NAMES AND SIGNATURES

5.1 Kathleen Jones ZHN 375

Asylum officer name and ID CODE (print)

5.2 /s/ Kathleen Jones

Asylum Officer's Signature

5.3 9/21/2015

Decision Date

5.4 A. McDermitt ZHN 99

Supervisory asylum officer name

5.5 /s/ A. McDermitt

Supervisor's Signature

5.6 SEP 28 2015

Date Supervisor Approved decision

* * * *

IMMIGRATION COURT

333 SOUTH MIAMI AVE., STE. 700

MIAMI, FL 33130

In the Matter of: Case No: [redacted]

CARRASCO GOMEZ, GLADIS

Respondent

IN: CREDIBLE FEAR REVIEW PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

On Oct 7, 2015 at 11:00 A.M. a review of the DHS Credible Fear Determination was held in the matter noted above. Testimony [X] was [ ] was not taken regarding the background of the Applicant and the Applicant's fear of returning to his/her country of origin or last habitual residence.

After consideration of the evidence, the Court finds that the Applicant [ ] has [X] has not established a significant possibility that ~~he~~/**she** would be persecuted on the basis of his/her race, religion, nationality, membership in a particular social group, or because of ~~his~~/**her** political opinion.

ORDER: It is hereby ordered that the decision of the immigration officer is:

[X] Affirmed, and the case is returned to the DHS for removal of the alien.

[ ] Vacated.

This is a final order. There is no appeal available.

DONE and ORDERED this 7th day of October, 2015

/S/ J. Daniel Dowell
J. DANIEL DOWELL
Immigration Judge

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P) FAX (F)

TO: [F] ALIEN [ ] ALIEN c/o Custodial Officer [ ] ALIEN's ATT/REP [M] DHS

DATE: 10/7/2015 BY: COURT STAFF /s/

Attachments: [ ] EOIR-33 [ ] EOIR-28 [ ] Legal Services List [ ] Other

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U2

Wendy Amparo Osorio Martinez

* * * *

[Form I-870]

SECTION IV: CREDIBLE FEAR FINDINGS

A. Credible Fear Determination:

Credibility

4.1 [X] There is a significant possibility that the assertions underlying the applicant's claim could be found credible in a full asylum or withholding of removal hearing.

4.2 [ ] Applicant found **not** credible because (check boxes 4.3-4.5, which apply):

4.3 [ ] Testimony was internally inconsistent on material issues.

4.4 [ ] Testimony lacked sufficient detail on material issues.

4.5 [ ] Testimony was not consistent with country conditions on material issues.

Nexus

4.6 [ ] Race 4.7 [ ] Religion 4.8 [ ] Nationality

4.9 [ ] Membership in a Particular Social Group

(Define the social group):_____

4.10 [ ] Political Opinion 4.11 [ ] Coercive Family Planning (CPP) 4.12 [X] No Nexus

Credible Fear Finding

4.13 [ ] Credible fear of **persecution** established.

OR

4.14 [ ] Credible fear of **torture** established.

OR

4.15 [X] Credible fear of persecution NOT established and there is not a significant possibility that the applicant could establish eligibility for withholding of removal or deferral of removal under the Convention against Torture.

B. Possible Bars:

4.16 Applicant could be subject to a bar(s) to asylum or withholding of removal (check the box(es) that applies and explain on the continuation sheet):

4.17 [ ] Particularly Serious Crime 4.18 [ ] Security Risk

4.19 [ ] Aggravated Felon

4.20 [ ] Persecutor 4.21 [ ] Terrorist 4.22 [ ] Firmly Resettled

4.23 [ ] Serious Non-Political Crime Outside the United States

4.24 [X] Applicant does **not** appear to be subject to a bar(s) to asylum or withholding of removal.

C. Identity:

4.25 [X] Applicant's identity was determined with a reasonable degree of certainty (check the box(es) that applies):

4.26 [X] Applicant's own credible statements. (If testimony is credible overall, this will suffice to establish the applicant's identity with a reasonable degree of certainty).

4.27 [ ] Passport which appears to be authentic.

4.28 [ ] Other evidence presented by applicant or in applicant's file (List): _____

4.29 [ ] Applicant's identity was not determined with a reasonable degree of certainty. (Explain on the continuation sheet.)

SECTION V: ASYLUM OFFICER / SUPERVISOR NAMES AND SIGNATURES

5.1 Ja Nette Orendach ZHN244

Asylum officer name and ID CODE (print)

5.2 /s/ Ja Nette Orendach

Asylum Officer's Signature

5.3 10/28/2015

Decision Date

5.4 Kirk Wills

Supervisory asylum officer name

5.5 /s/ Kirk Wills

Supervisor's Signature

5.6 29 OCT 2015

Date Supervisor Approved decision

* * * *

IMMIGRATION COURT
800 DOLOROSA STREET, SUITE 300
SAN ANTONIO, TX 78207

In the Matter of: Case No: [redacted]

OSORIO-MARTINEZ, WENDY AMPARO

Respondent

IN: CREDIBLE FEAR REVIEW PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

On Nov 5, 2015 at 2:00 P.M. a review of the DHS Credible Fear Determination was held in the matter noted above. Testimony [X] was [ ] was not taken regarding the background of the Applicant and the Applicant's fear of returning to his/her country of origin or last habitual residence.

After consideration of the evidence, the Court finds that the Applicant [ ] has [X] has not established a significant possibility that he/she would be persecuted on the basis of his/her race, religion, nationality, membership in a particular social group, or because of his/her political opinion.

ORDER: It is hereby ordered that the decision of the immigration officer is:

[X] Affirmed, and the case is returned to the DHS for removal of the alien.

[ ] Vacated.

This is a final order. There is no appeal available.

DONE and ORDERED this 5th day of November, 2015

/S/ Glenn P. McPhaul

GLENN P. MCPHAUL

Immigration Judge

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P)

TO: [ ] ALIEN [ ] ALIEN c/o Custodial Officer [P] ALIEN's ATT/REP [P] DHS

DATE:11/6/2015 BY: COURT STAFF /s/

Attachments: [ ] EOIR-33 [ ] EOIR-28 [ ] Legal Services List [ ] Other

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U2

Carmen Maria Leiva-Menjivar

* * * *

[Form I-870]

SECTION IV: CREDIBLE FEAR FINDINGS

A. Credible Fear Determination:

Credibility

4.1 [X] There is a significant possibility that the assertions underlying the applicant's claim could be found credible in a full asylum or withholding of removal hearing.

4.2 [ ] Applicant found **not** credible because (check boxes 4.3-4.5, which apply):

4.3 [ ] Testimony was internally inconsistent on material issues.

4.4 [ ] Testimony lacked sufficient detail on material issues.

4.5 [ ] Testimony was not consistent with country conditions on material issues.

Nexus

4.6 [ ] Race 4.7 [ ] Religion 4.8 [ ] Nationality

4.9 [X] Membership in a Particular Social Group

(Define the social group): Family Members of Edwin Harold MENDEZ ANTONIO

4.10 [ ] Political Opinion 4.11 [ ] Coercive Family Planning (CPP) 4.12 [ ] No Nexus

Credible Fear Finding

4.13 [ ] Credible fear of **persecution** established.

OR

4.14 [ ] Credible fear of **torture** established.

OR

4.15 [X] Credible fear of persecution NOT established and there is not a significant possibility that the applicant could establish eligibility for withholding of removal or deferral of removal under the Convention against Torture.

B. Possible Bars:

4.16 Applicant could be subject to a bar(s) to asylum or withholding of removal (check the box(es) that applies and explain on the continuation sheet):

4.17 [ ] Particularly Serious Crime 4.18 [ ] Security Risk

4.19 [ ] Aggravated Felon

4.20 [ ] Persecutor 4.21 [ ] Terrorist

4.22 [ ] Firmly Resettled

4.23 [ ] Serious Non-Political Crime Outside the United States

4.24 [X] Applicant does **not** appear to be subject to a bar(s) to asylum or withholding of removal.

C. Identity:

4.25 [X] Applicant's identity was determined with a reasonable degree of certainty (check the box(es) that applies):

4.26 [X] Applicant's own credible statements. (If testimony is credible overall, this will suffice to

establish the applicant's identity with a reasonable degree of certainty).

4.27 [ ] Passport which appears to be authentic.

4.28 [ ] Other evidence presented by applicant or in applicant's file (List): _____

4.29 [ ] Applicant's identity was not determined with a reasonable degree of certainty. (Explain on the continuation sheet.)

SECTION V: ASYLUM OFFICER / SUPERVISOR NAMES AND SIGNATURES

5.1 Morgan Plumer ZHN 360

Asylum officer name and ID CODE (print)

5.2 /s/ Morgan Plumer

Asylum Officer's Signature

5.3 09/21/2015

Decision Date

5.4 John Manlona ZHN267

Supervisory asylum officer name

5.5 /s/ John Manlona

Supervisor's Signature

5.6 9/23/15

Date Supervisor Approved decision

* * * *

IMMIGRATION COURT

333 SOUTH MIAMI AVE., STE 700

MIAMI, FL 33130

In the Matter of: Case No: [redacted]

LEIVA-MENJIVAR, CARMEN MARIA

Respondent

IN: CREDIBLE FEAR REVIEW PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

On Oct 5, 2015 at 11:00 A.M. a review of the DHS Credible Fear Determination was held in the matter noted above. Testimony [X] was [ ] was not taken regarding the background of the Applicant and the Applicant's fear of returning to ~~his~~ /her country of origin or last habitual residence.

After consideration of the evidence, the Court finds that the Applicant [ ] has [X] has not established a significant possibility that he/she would be persecuted on the basis of ~~his~~/her race, religion, nationality, membership in a particular social group, or because of his/her political opinion.

ORDER: It is hereby ordered that the decision of the immigration officer is:

[X] Affirmed, and the case is returned to the DHS for removal of the alien.

[ ] Vacated.

This is a final order. There is no appeal available.

DONE and ORDERED this 5th day of October, 2015

/S/ J. Daniel Dowell
J. DANIEL DOWELL
Immigration Judge

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P) FAX **(F)**

TO: [F] ALIEN [ ] ALIEN c/o Custodial Officer [ ] ALIEN's ATT/REP [M] DHS

DATE: 10/5/2015 BY: COURT STAFF /s/

Attachments: [ ] EOIR-33 [ ] EOIR-28 [ ] Legal Services List [ ] Other

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U2

Dina Isabel Huezo de Chicas

* * * *

[Form I-870]

SECTION IV: CREDIBLE FEAR FINDINGS

A. Credible Fear Determination:

Credibility

4.1 [X] There is a significant possibility that the assertions underlying the applicant's claim could be found credible in a full asylum or withholding of removal hearing.

4.2 [ ] Applicant found **not** credible because (check boxes 4.3-4.5, which apply):

4.3 [ ] Testimony was internally inconsistent on material issues.

4.4 [ ] Testimony lacked sufficient detail on material issues.

4.5 [ ] Testimony was not consistent with country conditions on material issues.

Nexus

4.6 [ ] Race 4.7 [ ] Religion 4.8 [ ] Nationality

4.9 [ ] Membership in a Particular Social Group

(Define the social group):_____

4.10 [ ] Political Opinion 4.11 [ ] Coercive Family Planning (CPP) 4.12 [X] No Nexus

Credible Fear Finding

4.13 [ ] Credible fear of **persecution** established.

OR

4.14 [ ] Credible fear of **torture** established.

OR

4.15 [X] Credible fear of persecution NOT established and there is not a significant possibility that the applicant could establish eligibility for withholding of removal or deferral of removal under the Convention against Torture.

B. Possible Bars:

4.16 Applicant could be subject to a bar(s) to asylum or withholding of removal (check the box(es) that applies and explain on the continuation sheet):

4.17 [ ] Particularly Serious Crime 4.18 [ ] Security Risk

4.19 [ ] Aggravated Felon

4.20 [ ] Persecutor 4.21 [ ] Terrorist

4.22 [ ] Firmly Resettled

4.23 [ ] Serious Non-Political Crime Outside the United States

4.24 [X] Applicant does **not** appear to be subject to a bar(s) to asylum or withholding of removal.

C. Identity:

4.25 [X] Applicant's identity was determined with a reasonable degree of certainty (check the box(es) that applies):

4.26 [X] Applicant's own credible statements. (If testimony is credible overall, this will suffice to establish the applicant's identity with a reasonable degree of certainty).

4.27 [ ] Passport which appears to be authentic.

4.28 [ ] Other evidence presented by applicant or in applicant's file (List): _____

4.29 [ ] Applicant's identity was not determined with a reasonable degree of certainty. (Explain on the continuation sheet.)

SECTION V: ASYLUM OFFICER / SUPERVISOR NAMES AND SIGNATURES

5.1 Jennifer Plaskow ZHN 451

Asylum officer name and ID CODE (print)

5.2 /s/ Jennifer Plaskow

Asylum Officer's Signature

5.3 10/16/2015

Decision Date

5.4 Lee Telfer Supervisory Asylum Officer

Supervisory asylum officer name

5.5 /s/ Lee Telfer

Supervisor's Signature

5.6 OCT 17 2015

Date Supervisor Approved decision

* * * *

IMMIGRATION COURT

333 SOUTH MIAMI AVE., STE.700

MIAMI, FL 33130

In the Matter of: Case No: [redacted]

HUEZO-DE CHICAS, DINA ISABEL

Respondent

IN: CREDIBLE FEAR REVIEW PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

On Oct 22, 2015 at 11:00 A.M. a review of the DHS Credible Fear Determination was held in the matter noted above. Testimony [X] was [ ] was not taken regarding the background of the Applicant and the Applicant's fear of returning to his/her country of origin or last habitual residence.

After consideration of the evidence, the Court finds that the Applicant [ ] has [X] has not established a significant possibility that ~~he~~/she would be persecuted on the basis of his/her race, religion, nationality, membership in a particular social group, or because of his/her political opinion.

ORDER: It is hereby ordered that the decision of the immigration officer is:

[X] Affirmed, and the case is returned to the DHS for removal of the alien.

[ ] Vacated.

This is a final order. There is no appeal available.

DONE and ORDERED this 22 day of October, 2015

/S/ J. Daniel Dowell
J. DANIEL DOWELL
Immigration Judge

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P) FAX (F)

TO: [F] ALIEN [ ] ALIEN c/o Custodial Officer [ ] ALIEN's ATT/REP [M] DHS

DATE: 10/22/2015 BY: COURT STAFF /s/

Attachments: [ ] EOIR-33 [ ] EOIR-28 [ ] Legal Services List [ ] Other

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U2

Cindy Gisela Lopez-Funez

* * * *

[Form I-870]

SECTION IV: CREDIBLE FEAR FINDINGS

A. Credible Fear Determination:

Credibility

4.1 [X] There is a significant possibility that the assertions underlying the applicant's claim could be found credible in a full asylum or withholding of removal hearing.

4.2 [ ] Applicant found **not** credible because (check boxes 4.3-4.5, which apply):

4.3 [ ] Testimony was internally inconsistent on material issues.

4.4 [ ] Testimony lacked sufficient detail on material issues.

4.5 [ ] Testimony was not consistent with country conditions on material issues.

Nexus

4.6 [ ] Race 4.7 [ ] Religion 4.8 [ ] Nationality

4.9 [ ] Membership in a Particular Social Group

(Define the social group):_____

4.10 [ ] Political Opinion 4.11 [ ] Coercive Family Planning (CPP) 4.12 [X] No Nexus

Credible Fear Finding

4.13 [ ] Credible fear of **persecution** established.

OR

4.14 [ ] Credible fear of **torture** established.

OR

4.15 [X] Credible fear of persecution NOT established and there is not a significant possibility that the applicant could establish eligibility for withholding of removal or deferral of removal under the Convention against Torture.

B. Possible Bars:

4.16 Applicant could be subject to a bar(s) to asylum or withholding of removal (check the box(es) that applies and explain on the continuation sheet):

4.17 [ ] Particularly Serious Crime 4.18 [ ] Security Risk

4.19 [ ] Aggravated Felon

4.20 [ ] Persecutor 4.21 [ ] Terrorist

4.22 [ ] Firmly Resettled

4.23 [ ] Serious Non-Political Crime Outside the United States

4.24 [X] Applicant does **not** appear to be subject to a bar(s) to asylum or withholding of removal.

C. Identity:

4.25 [X] Applicant's identity was determined with a reasonable degree of certainty (check the box(es) that applies):

4.26 [X] Applicant's own credible statements. (If testimony is credible overall, this will suffice to establish the applicant's identity with a reasonable degree of certainty).

4.27 [ ] Passport which appears to be authentic.

4.28 [ ] Other evidence presented by applicant or in applicant's file (List): _____

4.29 [ ] Applicant's identity was not determined with a reasonable degree of certainty. (Explain on the continuation sheet.)

SECTION V: ASYLUM OFFICER / SUPERVISOR NAMES AND SIGNATURES

5.1 Derek Tripp ZHN 419

Asylum officer name and ID CODE (print)

5.2 /s/ Derek Tripp

Asylum Officer's Signature

5.3 10/7/2015

Decision Date

5.4 Daniel A. Phillips Supervisory Asylum Officer

Supervisory asylum officer name

5.5 /s/ Daniel A. Phillips

Supervisor's Signature

5.6 OCT 08 2015

Date Supervisor Approved decision

* * * *

IMMIGRATION COURT

333 SOUTH MIAMI AVE., STE. 700

MIAMI, FL 33130

In the Matter of: Case No: [redacted]

LOPEZ-FUNEZ, CINDY GISELA

Respondent

IN: CREDIBLE FEAR REVIEW PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

On Oct 13, 2015 at 11:00 P.M. a review of the DHS Credible Fear Determination was held in the matter noted above. Testimony [X] was [ ] was not taken regarding the background of the Applicant and the Applicant's fear of returning to his/her country of origin or last habitual residence.

After consideration of the evidence, the Court finds that the Applicant [ ] has [X] has not established a significant possibility that he/**she** would be persecuted on the basis of his/**her** race, religion, nationality, membership in a particular social group, or because of his/**her** political opinion.

ORDER: It is hereby ordered that the decision of the immigration officer is:

[X] Affirmed, and the case is returned to the DHS for removal of the alien.

[ ] Vacated.

This is a final order. There is no appeal available.

DONE and ORDERED this 13th day of October, 2015

/S/ Denise M. Lane
DENISE M. LANE
Immigration Judge

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P)

TO: [P] ALIEN [ ] ALIEN c/o Custodial Officer [ ] ALIEN's ATT/REP [P] DHS

DATE: 10/13/2015 BY: COURT STAFF /s/

Attachments: [ ] EOIR-33 [ ] EOIR-28 [ ] Legal Services List [ ] Other

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U2

Lesly Griscelda Cruz-Matamoros

* * * *

[Form I-870]

SECTION IV: CREDIBLE FEAR FINDINGS

A. Credible Fear Determination:

Credibility

4.1 [X] There is a significant possibility that the assertions underlying the applicant's claim could be found credible in a full asylum or withholding of removal hearing.

4.2 [ ] Applicant found **not** credible because (check boxes 4.3-4.5, which apply):

4.3 [ ] Testimony was internally inconsistent on material issues.

4.4 [ ] Testimony lacked sufficient detail on material issues.

4.5 [ ] Testimony was not consistent with country conditions on material issues.

Nexus

4.6 [ ] Race 4.7 [ ] Religion 4.8 [ ] Nationality

4.9 [ ] Membership in a Particular Social Group

(Define the social group):_____

4.10 [ ] Political Opinion 4.11 [ ] Coercive Family Planning (CPP) 4.12 [X] No Nexus

Credible Fear Finding

4.13 [ ] Credible fear of **persecution** established.

OR

4.14 [ ] Credible fear of **torture** established.

OR

4.15 [X] Credible fear of persecution NOT established and there is not a significant possibility that the applicant could establish eligibility for withholding of removal or deferral of removal under the Convention against Torture.

B. Possible Bars:

4.16 Applicant could be subject to a bar(s) to asylum or withholding of removal (check the box(es) that applies and explain on the continuation sheet):

4.17 [ ] Particularly Serious Crime 4.18 [ ] Security Risk

4.19 [ ] Aggravated Felon

4.20 [ ] Persecutor 4.21 [ ] Terrorist

4.22 [ ] Firmly Resettled

4.23 [ ] Serious Non-Political Crime Outside the United States

4.24 [X] Applicant does **not** appear to be subject to a bar(s) to asylum or withholding of removal.

C. Identity:

4.25 [X] Applicant's identity was determined with a reasonable degree of certainty (check the box(es) that applies):

4.26 [X] Applicant's own credible statements. (If testimony is credible overall, this will suffice to establish the applicant's identity with a reasonable degree of certainty).

4.27 [ ] Passport which appears to be authentic.

4.28 [ ] Other evidence presented by applicant or in applicant's file (List): _____

4.29 [ ] Applicant's identity was not determined with a reasonable degree of certainty. (Explain on the continuation sheet.)

SECTION V: ASYLUM OFFICER / SUPERVISOR NAMES AND SIGNATURES

5.1 FAGAN, JAMES ZHN 474

Asylum officer name and ID CODE (print)

5.2 /s/ James Fagan

Asylum Officer's Signature

5.3 11/10/2015

Decision Date

5.4 PUESCHEL, TRACY

Supervisory asylum officer name

5.5 /s/ Tracy Pueschel

Supervisor's Signature

5.6 11/12/15

Date Supervisor Approved decision

* * * *

IMMIGRATION COURT
333 SOUTH MIAMI AVE., STE. 700
MIAMI, FL 33130

In the Matter of: Case No: [redacted]

CRUZ-MATAMOROS, LESLY GRISCELDA

Respondent

IN: CREDIBLE FEAR REVIEW PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

On Nov 17, 2015 at 8:00 A.M. a review of the DHS Credible Fear Determination was held in the matter noted above. Testimony [X] was [ ] was not taken regarding the background of the Applicant and the Applicant's fear of returning to his/her country of origin or last habitual residence.

After consideration of the evidence, the Court finds that the Applicant [ ] has [X] has not established a significant possibility that he/she would be persecuted on the basis of his/her race, religion, nationality, membership in a particular social group, or because of his/her political opinion.

ORDER: It is hereby ordered that the decision of the immigration officer is:

[X] Affirmed, and the case is returned to the DHS for removal of the alien.

[ ] Vacated.

This is a final order. There is no appeal available.

DONE and ORDERED this 17th day of Nov., 2015

/S/ J. Daniel Dowell
J. DANIEL DOWELL
Immigration Judge

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P) FAX (F)

TO: [F] ALIEN [ ] ALIEN c/o Custodial Officer [ ] ALIEN's ATT/REP [M] DHS

DATE: NOV 17 2015 BY: COURT STAFF /s/

Attachments: [ ] EOIR-33 [ ] EOIR-28 [ ] Legal Services List [ ] Other

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U2

Jeydi Gimena Erazo-Anduray

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[Form I-870]

SECTION IV: CREDIBLE FEAR FINDINGS

A. Credible Fear Determination:

Credibility

4.1 [X] There is a significant possibility that the assertions underlying the applicant's claim could be found credible in a full asylum or withholding of removal hearing.

4.2 [ ] Applicant found **not** credible because (check boxes 4.3-4.5, which apply):

4.3 [ ] Testimony was internally inconsistent on material issues.

4.4 [ ] Testimony lacked sufficient detail on material issues.

4.5 [ ] Testimony was not consistent with country conditions on material issues.

Nexus

4.6 [ ] Race 4.7 [ ] Religion 4.8 [ ] Nationality

4.9 [ ] Membership in a Particular Social Group

(Define the social group):_____

4.10 [ ] Political Opinion 4.11 [ ] Coercive Family Planning (CPP) 4.12 [X] No Nexus

Credible Fear Finding

4.13 [ ] Credible fear of **persecution** established.

OR

4.14 [ ] Credible fear of **torture** established.

OR

4.15 [X] Credible fear of persecution NOT established and there is not a significant possibility that the applicant could establish eligibility for withholding of removal or deferral of removal under the Convention against Torture.

B. Possible Bars:

4.16 Applicant could be subject to a bar(s) to asylum or withholding of removal (check the box(es) that applies and explain on the continuation sheet):

4.17 [ ] Particularly Serious Crime 4.18 [ ] Security Risk

4.19 [ ] Aggravated Felon

4.20 [ ] Persecutor 4.21 [ ] Terrorist

4.22 [ ] Firmly Resettled

4.23 [ ] Serious Non-Political Crime Outside the United States

4.24 [X] Applicant does **not** appear to be subject to a bar(s) to asylum or withholding of removal.

C. Identity:

4.25 [X] Applicant's identity was determined with a reasonable degree of certainty (check the box(es) that applies):

4.26 [X] Applicant's own credible statements. (If testimony is credible overall, this will suffice to establish the applicant's identity with a reasonable degree of certainty).

4.27 [ ] Passport which appears to be authentic.

4.28 [ ] Other evidence presented by applicant or in applicant's file (List): _____

4.29 [ ] Applicant's identity was not determined with a reasonable degree of certainty. (Explain on the continuation sheet.)

SECTION V: ASYLUM OFFICER / SUPERVISOR NAMES AND SIGNATURES

5.1 Nevin Nilanont ZHN399

Asylum officer name and ID CODE (print)

5.2 /s/ Nevin Nilanont

Asylum Officer's Signature

5.3 10/8/2015

Decision Date

5.4 Kirk Wills Supervisory Asylum Officer

Supervisory asylum officer name

5.5 /s/ Kirk Wills

Supervisor's Signature

5.6 10 OCT 2015

Date Supervisor Approved decision

* * * *

IMMIGRATION COURT
800 DOLOROSA STREET, SUITE 300
SAN ANTONIO, TX 78207

In the Matter of: Case No: [redacted]

ERAZO-ANDURAY, JEYDI GIMENA

Respondent

IN: CREDIBLE FEAR REVIEW PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

On 10-21-2015 at 3:00 P.M. a review of the DHS Credible Fear Determination was held in the matter noted above. Testimony [X] was [ ] was not taken regarding the background of the Applicant and the Applicant's fear of returning to his/**her** country of origin or last habitual residence.

After consideration of the evidence, the Court finds that the Applicant [ ] has [X] has not established a significant possibility that he/**she** would be persecuted on the basis of his/**her** race, religion, nationality, membership in a particular social group, or because of his/**her** political opinion.

ORDER: It is hereby ordered that the decision of the immigration officer is:

[X] Affirmed, and the case is returned to the DHS for removal of the alien.

[ ] Vacated.

This is a final order. There is no appeal available.

DONE and ORDERED this 21 day of October, 2015

/S/ Craig A. Harlow
CRAIG A. HARLOW
Immigration Judge

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P)

TO: [ ] ALIEN [M] ALIEN c/o Custodial Officer [ ] ALIEN's ATT/REP [P] DHS

DATE: 10/22/2015 BY: COURT STAFF /s/

Attachments: [ ] EOIR-33 [ ] EOIR-28 [ ] Legal Services List [ ] Other

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Dinora Lemus

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[Form I-870]

SECTION IV: CREDIBLE FEAR FINDINGS

A. Credible Fear Determination:

Credibility

4.1 [X] There is a significant possibility that the assertions underlying the applicant's claim could be found credible in a full asylum or withholding of removal hearing.

4.2 [ ] Applicant found **not** credible because (check boxes 4.3-4.5, which apply):

4.3 [ ] Testimony was internally inconsistent on material issues.

4.4 [ ] Testimony lacked sufficient detail on material issues.

4.5 [ ] Testimony was not consistent with country conditions on material issues.

Nexus

4.6 [ ] Race 4.7 [ ] Religion 4.8 [ ] Nationality

4.9 [ ] Membership in a Particular Social Group

(Define the social group):_____

4.10 [ ] Political Opinion 4.11 [ ] Coercive Family Planning (CPP) 4.12 [X] No Nexus

Credible Fear Finding

4.13 [ ] Credible fear of **persecution** established.

OR

4.14 [ ] Credible fear of **torture** established.

OR

4.15 [X] Credible fear of persecution NOT established and there is not a significant possibility that the applicant could establish eligibility for withholding of removal or deferral of removal under the Convention against Torture.

B. Possible Bars:

4.16 Applicant could be subject to a bar(s) to asylum or withholding of removal (check the box(es) that applies and explain on the continuation sheet):

4.17 [ ] Particularly Serious Crime 4.18 [ ] Security Risk

4.19 [ ] Aggravated Felon

4.20 [ ] Persecutor 4.21 [ ] Terrorist

4.22 [ ] Firmly Resettled

4.23 [ ] Serious Non-Political Crime Outside the United States

4.24 [X] Applicant does **not** appear to be subject to a bar(s) to asylum or withholding of removal.

C. Identity:

4.25 [X] Applicant's identity was determined with a reasonable degree of certainty (check the box(es) that applies):

4.26 [X] Applicant's own credible statements. (If testimony is credible overall, this will suffice to establish the applicant's identity with a reasonable degree of certainty).

4.27 [ ] Passport which appears to be authentic.

4.28 [ ] Other evidence presented by applicant or in applicant's file (List): _____

4.29 [ ] Applicant's identity was not determined with a reasonable degree of certainty. (Explain on the continuation sheet.)

SECTION V: ASYLUM OFFICER / SUPERVISOR NAMES AND SIGNATURES

5.1 Rebecca Blatt ZHN223

Asylum officer name and ID CODE (print)

5.2 /s/ Rebecca Blatt

Asylum Officer's Signature

5.3 10/13/2015

Decision Date

5.4 John Manlona ZHN 267

Supervisory asylum officer name

5.5 /s/ John Manlona

Supervisor's Signature

5.6 10/13/15

Date Supervisor Approved decision

* * * *

IMMIGRATION COURT

333 SOUTH MIAMI AVE., STE. 700

MIAMI, FL 33130

In the Matter of: Case No: [redacted]

LEMUS, DINORA

Respondent

IN: CREDIBLE FEAR REVIEW PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

On Oct 20, 2015 at 8:00 A.M. a review of the DHS Credible Fear Determination was held in the matter noted above. Testimony [X] was [ ] was not taken regarding the background of the Applicant and the Applicant's fear of returning to his/her country of origin or last habitual residence.

After consideration of the evidence, the Court finds that the Applicant [ ] has [X] has not established a significant possibility that ~~he~~/she would be persecuted on the basis of ~~his~~/her race, religion, nationality, membership in a particular social group, or because of ~~his~~/her political opinion.

ORDER: It is hereby ordered that the decision of the immigration officer is:

[X] Affirmed, and the case is returned to the DHS for removal of the alien.

[ ] Vacated.

This is a final order. There is no appeal available.

DONE and ORDERED this 20 day of OCTOBER, 2015

/S/ J. Daniel Dowell

J. DANIEL DOWELL

Immigration Judge

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P) FAX (F)

TO: [F] ALIEN [ ] ALIEN c/o Custodial Officer [ ] ALIEN's ATT/REP [M] DHS

DATE: 10/20/2015 BY: COURT STAFF /s/

Attachments: [ ] EOIR-33 [ ] EOIR-28 [ ] Legal Services List [ ] Other

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U2

Jennys Lisseth Mendez de Bonilla

* * * *

[Form I-870]

SECTION IV: CREDIBLE FEAR FINDINGS

A. Credible Fear Determination:

Credibility

4.1 [X] There is a significant possibility that the assertions underlying the applicant's claim could be found credible in a full asylum or withholding of removal hearing.

4.2 [ ] Applicant found **not** credible because (check boxes 4.3-4.5, which apply):

4.3 [ ] Testimony was internally inconsistent on material issues.

4.4 [ ] Testimony lacked sufficient detail on material issues.

4.5 [ ] Testimony was not consistent with country conditions on material issues.

Nexus

4.6 [ ] Race 4.7 [ ] Religion 4.8 [ ] Nationality

4.9 [ ] Membership in a Particular Social Group

(Define the social group):_____

4.10 [ ] Political Opinion 4.11 [ ] Coercive Family Planning (CPP) 4.12 [X] No Nexus

Credible Fear Finding

4.13 [ ] Credible fear of **persecution** established.

OR

4.14 [ ] Credible fear of **torture** established.

OR

4.15 [X] Credible fear of persecution NOT established and there is not a significant possibility that the applicant could establish eligibility for withholding of removal or deferral of removal under the Convention against Torture.

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4.16 Applicant could be subject to a bar(s) to asylum or withholding of removal (check the box(es) that applies and explain on the continuation sheet):

4.17 [ ] Particularly Serious Crime 4.18 [ ] Security Risk

4.19 [ ] Aggravated Felon

4.20 [ ] Persecutor 4.21 [ ] Terrorist

4.22 [ ] Firmly Resettled

4.23 [ ] Serious Non-Political Crime Outside the United States

4.24 [X] Applicant does **not** appear to be subject to a bar(s) to asylum or withholding of removal.

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4.25 [X] Applicant's identity was determined with a reasonable degree of certainty (check the box(es) that applies):

4.26 [X] Applicant's own credible statements. (If testimony is credible overall, this will suffice to establish the applicant's identity with a reasonable degree of certainty).

4.27 [ ] Passport which appears to be authentic.

4.28 [ ] Other evidence presented by applicant or in applicant's file (List): _____

4.29 [ ] Applicant's identity was not determined with a reasonable degree of certainty. (Explain on the continuation sheet.)

SECTION V: ASYLUM OFFICER / SUPERVISOR NAMES AND SIGNATURES

5.1 Rebecca Blatt ZHN223

Asylum officer name and ID CODE (print)

5.2 /s/ Rebecca Blatt

Asylum Officer's Signature

5.3 10/19/2015

Decision Date

5.4 Jessica Lee Parent, Supervisory Asylum Officer

Supervisory asylum officer name

5.5 /s/ Jessica Lee Parent

Supervisor's Signature

5.6 OCT 19 2015

Date Supervisor Approved decision

* * * *

IMMIGRATION COURT

333 SOUTH MIAMI AVE., STE. 700

MIAMI, FL 33130

In the Matter of: Case No: [redacted]

MENDEZ-DE BONILLA, JENNYS LISSETH

Respondent

IN: CREDIBLE FEAR REVIEW PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

On Oct 28, 2015 at 8:00 A.M. a review of the DHS Credible Fear Determination was held in the matter noted above. Testimony [X] was [ ] was not taken regarding the background of the Applicant and the Applicant's fear of returning to his/her country of origin or last habitual residence.

After consideration of the evidence, the Court finds that the Applicant [ ] has [X] has not established a significant possibility that ~~he~~/she would be persecuted on the basis of his/her race, religion, nationality, membership in a particular social group, or because of his/her political opinion.

ORDER: It is hereby ordered that the decision of the immigration officer is:

[X] Affirmed, and the case is returned to the DHS for removal of the alien.

[ ] Vacated.

This is a final order. There is no appeal available.

DONE and ORDERED this 28 day of October, 2015

/S/ J. Daniel Dowell
J. DANIEL DOWELL
Immigration Judge

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P) FAX (F)

TO: [F] ALIEN [ ] ALIEN c/o Custodial Officer [ ] ALIEN's ATT/REP [M] DHS

DATE: OCT 28 2015 BY: COURT STAFF JM

Attachments: [ ] EOIR-33 [ ] EOIR-28 [ ] Legal Services List [ ] Other

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U2

Marta Alicia del Carmen Rodriguez-Romero

* * * *

[Form I-870]

SECTION IV: CREDIBLE FEAR FINDINGS

A. Credible Fear Determination:

Credibility

4.1 [X] There is a significant possibility that the assertions underlying the applicant's claim could be found credible in a full asylum or withholding of removal hearing.

4.2 [ ] Applicant found **not** credible because (check boxes 4.3-4.5, which apply):

4.3 [ ] Testimony was internally inconsistent on material issues.

4.4 [ ] Testimony lacked sufficient detail on material issues.

4.5 [ ] Testimony was not consistent with country conditions on material issues.

Nexus

4.6 [ ] Race 4.7 [ ] Religion 4.8 [ ] Nationality

4.9 [ ] Membership in a Particular Social Group

(Define the social group):_____

4.10 [ ] Political Opinion 4.11 [ ] Coercive Family Planning (CPP) 4.12 [X] No Nexus

Credible Fear Finding

4.13 [ ] Credible fear of **persecution** established.

OR

4.14 [ ] Credible fear of **torture** established.

OR

4.15 [X] Credible fear of persecution NOT established and there is not a significant possibility that the applicant could establish eligibility for withholding of removal or deferral of removal under the Convention against Torture.

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4.16 Applicant could be subject to a bar(s) to asylum or withholding of removal (check the box(es) that applies and explain on the continuation sheet):

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4.19 [ ] Aggravated Felon

4.20 [ ] Persecutor 4.21 [ ] Terrorist

4.22 [ ] Firmly Resettled

4.23 [ ] Serious Non-Political Crime Outside the United States

4.24 [X] Applicant does **not** appear to be subject to a bar(s) to asylum or withholding of removal.

C. Identity:

4.25 [X] Applicant's identity was determined with a reasonable degree of certainty (check the box(es) that applies):

4.26 [X] Applicant's own credible statements. (If testimony is credible overall, this will suffice to establish the applicant's identity with a reasonable degree of certainty).

4.27 [ ] Passport which appears to be authentic.

4.28 [ ] Other evidence presented by applicant or in applicant's file (List): _____

4.29 [ ] Applicant's identity was not determined with a reasonable degree of certainty. (Explain on the continuation sheet.)

SECTION V: ASYLUM OFFICER / SUPERVISOR NAMES AND SIGNATURES

5.1 BARNES, E ZHN 48-

Asylum officer name and ID CODE (print)

5.2 /s/ E BARNES

Asylum Officer's Signature

5.3 11/17/15

Decision Date

5.4 Supervisory Asylum Officer

Supervisory asylum officer name

5.5 /s/ Supervisory Asylum Officer

Supervisor's Signature

5.6 NOV 20 2015

Date Supervisor Approved decision

* * * *

IMMIGRATION COURT

333 SOUTH MIAMI AVE., STE. 700

MIAMI, FL 33130

In the Matter of: Case No: [redacted]

RODRIGUEZ-ROMERO, MARTA ALICIA DEL CARMEN

Respondent

IN: CREDIBLE FEAR REVIEW PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

On Nov 24, 2015 at 8:00 A.M. a review of the DHS Credible Fear Determination was held in the matter noted above. Testimony [X] was [ ] was not taken regarding the background of the Applicant and the Applicant's fear of returning to his/her country of origin or last habitual residence.

After consideration of the evidence, the Court finds that the Applicant [ ] has [X] has not established a significant possibility that ~~he~~/she would be persecuted on the basis of ~~his~~/her race, religion, nationality, membership in a particular social group, or because of his/her political opinion.

ORDER: It is hereby ordered that the decision of the immigration officer is:

[X] Affirmed, and the case is returned to the DHS for removal of the alien.

[ ] Vacated.

This is a final order. There is no appeal available.

DONE and ORDERED this 24 day of NOV., 2015

/S/ J. Daniel Dowell
J. DANIEL DOWELL
Immigration Judge

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P) FAX (F)

TO: [F] ALIEN [ ] ALIEN c/o Custodial Officer [ ] ALIEN's ATT/REP [M] DHS

DATE: NOV 24 2015 BY: COURT STAFF /s/

Attachments: [ ] EOIR-33 [ ] EOIR-28 [ ] Legal Services List [ ] Other

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U2

Roxana Lisseth Aguirre-Lemus

* * * *

[Form I-870]

SECTION IV: CREDIBLE FEAR FINDINGS

A. Credible Fear Determination:

Credibility

4.1 [X] There is a significant possibility that the assertions underlying the applicant's claim could be found credible in a full asylum or withholding of removal hearing.

4.2 [ ] Applicant found **not** credible because (check boxes 4.3-4.5, which apply):

4.3 [ ] Testimony was internally inconsistent on material issues.

4.4 [ ] Testimony lacked sufficient detail on material issues.

4.5 [ ] Testimony was not consistent with country conditions on material issues.

Nexus

4.6 [ ] Race 4.7 [ ] Religion 4.8 [ ] Nationality

4.9 [ ] Membership in a Particular Social Group

(Define the social group):_____

4.10 [ ] Political Opinion 4.11 [ ] Coercive Family Planning (CPP) 4.12 [X] No Nexus

Credible Fear Finding

4.13 [ ] Credible fear of **persecution** established.

OR

4.14 [ ] Credible fear of **torture** established.

OR

4.15 [X] Credible fear of persecution NOT established and there is not a significant possibility that the applicant could establish eligibility for withholding of removal or deferral of removal under the Convention against Torture.

B. Possible Bars:

4.16 Applicant could be subject to a bar(s) to asylum or withholding of removal (check the box(es) that applies and explain on the continuation sheet):

4.17 [ ] Particularly Serious Crime 4.18 [ ] Security Risk

4.19 [ ] Aggravated Felon

4.20 [ ] Persecutor 4.21 [ ] Terrorist

4.22 [ ] Firmly Resettled

4.23 [ ] Serious Non-Political Crime Outside the United States

4.24 [X] Applicant does **not** appear to be subject to a bar(s) to asylum or withholding of removal.

C. Identity:

4.25 [X] Applicant's identity was determined with a reasonable degree of certainty (check the box(es) that applies):

4.26 [X] Applicant's own credible statements. (If testimony is credible overall, this will suffice to establish the applicant's identity with a reasonable degree of certainty).

4.27 [ ] Passport which appears to be authentic.

4.28 [ ] Other evidence presented by applicant or in applicant's file (List): _____

4.29 [ ] Applicant's identity was not determined with a reasonable degree of certainty. (Explain on the continuation sheet.)

SECTION V: ASYLUM OFFICER / SUPERVISOR NAMES AND SIGNATURES

5.1 Suemy Kay-Cho ZHN232

Asylum officer name and ID CODE (print)

5.2 /s/ Suemy Kay-Cho

Asylum Officer's Signature

5.3 10/20/2015

Decision Date

5.4 Supervisory Asylum Officer ZHN 462

Supervisory asylum officer name

5.5 /s/ Supervisory Asylum Officer

Supervisor's Signature

5.6 10/20/15

Date Supervisor Approved decision

* * * *

IMMIGRATION COURT

333 SOUTH MIAMI AVE., STE. 700

MIAMI, FL 33130

In the Matter of: Case No: [redacted]

AGUIRRE-LEMUS, ROXANA LISSETH

Respondent

IN: CREDIBLE FEAR REVIEW PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

On Oct 23, 2015 at 8:30 A.M. a review of the DHS Credible Fear Determination was held in the matter noted above. Testimony [X] was [ ] was not taken regarding the background of the Applicant and the Applicant's fear of returning to his/her country of origin or last habitual residence.

After consideration of the evidence, the Court finds that the Applicant [ ] has [X] has not established a significant possibility that he/she would be persecuted on the basis of his/her race, religion, nationality, membership in a particular social group, or because of his/her political opinion.

ORDER: It is hereby ordered that the decision of the immigration officer is:

[X] Affirmed, and the case is returned to the DHS for removal of the alien.

[ ] Vacated.

This is a final order. There is no appeal available.

DONE and ORDERED this 23 day of October, 2015

/S/ Javier E. Balasquide
JAVIER E. BALASQUIDE
Immigration Judge

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P)

TO: [ ] ALIEN [ ] ALIEN c/o Custodial Officer [P] ALIEN's ATT/REP [P] DHS

DATE: 10/23/2015 BY: COURT STAFF /s/

Attachments: [ ] EOIR-33 [ ] EOIR-28 [ ] Legal Services List [ ] Other

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U2

Celina Patricia Soriano-Bran

* * * *

[Form I-870]

SECTION IV: CREDIBLE FEAR FINDINGS

A. Credible Fear Determination:

Credibility

4.1 [X] There is a significant possibility that the assertions underlying the applicant's claim could be found credible in a full asylum or withholding of removal hearing.

4.2 [ ] Applicant found **not** credible because (check boxes 4.3-4.5, which apply):

4.3 [ ] Testimony was internally inconsistent on material issues.

4.4 [ ] Testimony lacked sufficient detail on material issues.

4.5 [ ] Testimony was not consistent with country conditions on material issues.

Nexus

4.6 [ ] Race 4.7 [ ] Religion 4.8 [ ] Nationality

4.9 [X] Membership in a Particular Social Group

(Define the social group): Family members of Jeffrey [Unknown last name]

4.10 [ ] Political Opinion 4.11 [ ] Coercive Family Planning (CPP) 4.12 [ ] No Nexus

Credible Fear Finding

4.13 [ ] Credible fear of **persecution** established.

OR

4.14 [ ] Credible fear of **torture** established.

OR

4.15 [X] Credible fear of persecution NOT established and there is not a significant possibility that the applicant could establish eligibility for withholding of removal or deferral of removal under the Convention against Torture.

B. Possible Bars:

4.16 Applicant could be subject to a bar(s) to asylum or withholding of removal (check the box(es) that applies and explain on the continuation sheet):

4.17 [ ] Particularly Serious Crime 4.18 [ ] Security Risk

4.19 [ ] Aggravated Felon

4.20 [ ] Persecutor 4.21 [ ] Terrorist

4.22 [ ] Firmly Resettled

4.23 [ ] Serious Non-Political Crime Outside the United States

4.24 [X] Applicant does **not** appear to be subject to a bar(s) to asylum or withholding of removal.

C. Identity:

4.25 [X] Applicant's identity was determined with a reasonable degree of certainty (check the box(es) that applies):

4.26 [X] Applicant's own credible statements. (If testimony is credible overall, this will suffice to

establish the applicant's identity with a reasonable degree of certainty).

4.27 [ ] Passport which appears to be authentic.

4.28 [ ] Other evidence presented by applicant or in applicant's file (List): _____

4.29 [ ] Applicant's identity was not determined with a reasonable degree of certainty. (Explain on the continuation sheet.)

SECTION V: ASYLUM OFFICER / SUPERVISOR NAMES AND SIGNATURES

5.1 Benjamin Marte ZHN 440

Asylum officer name and ID CODE (print)

5.2 /s/ Benjamin Marte

Asylum Officer's Signature

5.3 11/23/2015

Decision Date

5.4 Farrah Trinker

Supervisory asylum officer name

5.5 /s/ F. Trinker

Supervisor's Signature

5.6 11/24/15

Date Supervisor Approved decision

* * * *

IMMIGRATION COURT

333 SOUTH MIAMI AVE., STE. 700

MIAMI, FL 33130

In the Matter of: Case No: [redacted]

SORIANO-BRAN, CELINA PATRICIA

Respondent

IN: CREDIBLE FEAR REVIEW PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

On Nov 27, 2015 at 8:00 A.M. a review of the DHS Credible Fear Determination was held in the matter noted above. Testimony [X] was [ ] was not taken regarding the background of the Applicant and the Applicant's fear of returning to his/her country of origin or last habitual residence.

After consideration of the evidence, the Court finds that the Applicant [ ] has [X] has not established a significant possibility that he/she would be persecuted on the basis of his/her race, religion, nationality, membership in a particular social group, or because of his/her political opinion. [Handwritten:] *Respondent indicated no harm or threats ever came to her—no objectively reasonable fear of returning; no significant possibility of establishing WRF. Respondent was [indecipherable].*

ORDER: It is hereby ordered that the decision of the immigration officer is:

[X] Affirmed, and the case is returned to the DHS for removal of the alien.

[ ] Vacated.

This is a final order. There is no appeal available.

DONE and ORDERED this 27th day of November, 2015

/S/ Madeline Garcia
MADELINE GARCIA
Immigration Judge

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P)

TO: [M] ALIEN [ ] ALIEN c/o Custodial Officer [ ] ALIEN's ATT/REP [P] DHS

DATE: 11/27/2015 BY: COURT STAFF /s/

Attachments: [ ] EOIR-33 [ ] EOIR-28 [ ] Legal Services List [ ] Other

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U2

Maria Delmi Martinez-Nolasco

* * * *

[Form I-870]

SECTION IV: CREDIBLE FEAR FINDINGS

A. Credible Fear Determination:

Credibility

4.1 [X] There is a significant possibility that the assertions underlying the applicant's claim could be found credible in a full asylum or withholding of removal hearing.

4.2 [ ] Applicant found **not** credible because (check boxes 4.3-4.5, which apply):

4.3 [ ] Testimony was internally inconsistent on material issues.

4.4 [ ] Testimony lacked sufficient detail on material issues.

4.5 [ ] Testimony was not consistent with country conditions on material issues.

Nexus

4.6 [ ] Race 4.7 [ ] Religion 4.8 [ ] Nationality

4.9 [ ] Membership in a Particular Social Group

(Define the social group):_____

4.10 [ ] Political Opinion 4.11 [ ] Coercive Family Planning (CPP) 4.12 [X] No Nexus

Credible Fear Finding

4.13 [ ] Credible fear of **persecution** established.

OR

4.14 [ ] Credible fear of **torture** established.

OR

4.15 [X] Credible fear of persecution NOT established and there is not a significant possibility that the applicant could establish eligibility for withholding of removal or deferral of removal under the Convention against Torture.

B. Possible Bars:

4.16 Applicant could be subject to a bar(s) to asylum or withholding of removal (check the box(es) that applies and explain on the continuation sheet):

4.17 [ ] Particularly Serious Crime 4.18 [ ] Security Risk

4.19 [ ] Aggravated Felon

4.20 [ ] Persecutor 4.21 [ ] Terrorist

4.22 [ ] Firmly Resettled

4.23 [ ] Serious Non-Political Crime Outside the United States

4.24 [X] Applicant does **not** appear to be subject to a bar(s) to asylum or withholding of removal.

C. Identity:

4.25 [X] Applicant's identity was determined with a reasonable degree of certainty (check the box(es) that applies):

4.26 [X] Applicant's own credible statements. (If testimony is credible overall, this will suffice to establish the applicant's identity with a reasonable degree of certainty).

4.27 [ ] Passport which appears to be authentic.

4.28 [ ] Other evidence presented by applicant or in applicant's file (List): _____

4.29 [ ] Applicant's identity was not determined with a reasonable degree of certainty. (Explain on the continuation sheet.)

SECTION V: ASYLUM OFFICER / SUPERVISOR NAMES AND SIGNATURES

5.1 Jason Kingsley ZHN442

Asylum officer name and ID CODE (print)

5.2 /s/ Jason Kingsley

Asylum Officer's Signature

5.3 09/22/2015

Decision Date

5.4 John Manlona ZHN267

Supervisory asylum officer name

5.5 /s/ John Manlona

Supervisor's Signature

5.6 9/24/15

Date Supervisor Approved decision

* * * *

IMMIGRATION COURT

333 SOUTH MIAMI AVE., STE. 700

MIAMI, FL 33130

In the Matter of: Case No: [redacted]

MARTINEZ-NOLASCO, MARIA DELMI

Respondent

IN: CREDIBLE FEAR REVIEW PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

On Oct 27, 2015 at 8:00 A.M. a review of the DHS Credible Fear Determination was held in the matter noted above. Testimony [X] was [ ] was not taken regarding the background of the Applicant and the Applicant's fear of returning to ~~his~~ /her country of origin or last habitual residence.

After consideration of the evidence, the Court finds that the Applicant [ ] has [X] has not established a significant possibility that ~~he~~/she would be persecuted on the basis of ~~his~~/her race, religion, nationality, membership in a particular social group, or because of his/her political opinion.

ORDER: It is hereby ordered that the decision of the immigration officer is:

[X] Affirmed, and the case is returned to the DHS for removal of the alien.

[ ] Vacated.

This is a final order. There is no appeal available.

DONE and ORDERED this 27th day of October, 2015

/S/ J. Daniel Dowell
J. DANIEL DOWELL
Immigration Judge

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P) FAX (F)

TO: [F] ALIEN [ ] ALIEN c/o Custodial Officer [ ] ALIEN's ATT/REP [M] DHS

DATE: 10/27/2015 BY: COURT STAFF /s/

Attachments: [ ] EOIR-33 [ ] EOIR-28 [ ] Legal Services List [ ] Other

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U2

Guadalupe Flores-Flores

* * * *

[Form I-870]

SECTION IV: CREDIBLE FEAR FINDINGS

A. Credible Fear Determination:

Credibility

4.1 [X] There is a significant possibility that the assertions underlying the applicant's claim could be found credible in a full asylum or withholding of removal hearing.

4.2 [ ] Applicant found **not** credible because (check boxes 4.3-4.5, which apply):

4.3 [ ] Testimony was internally inconsistent on material issues.

4.4 [ ] Testimony lacked sufficient detail on material issues.

4.5 [ ] Testimony was not consistent with country conditions on material issues.

Nexus

4.6 [ ] Race 4.7 [ ] Religion 4.8 [ ] Nationality

4.9 [ ] Membership in a Particular Social Group

(Define the social group):_____

4.10 [ ] Political Opinion 4.11 [ ] Coercive Family Planning (CPP) 4.12 [X] No Nexus

Credible Fear Finding

4.13 [ ] Credible fear of **persecution** established.

OR

4.14 [ ] Credible fear of **torture** established.

OR

4.15 [X] Credible fear of persecution NOT established and there is not a significant possibility that the applicant could establish eligibility for withholding of removal or deferral of removal under the Convention against Torture.

B. Possible Bars:

4.16 Applicant could be subject to a bar(s) to asylum or withholding of removal (check the box(es) that applies and explain on the continuation sheet):

4.17 [ ] Particularly Serious Crime 4.18 [ ] Security Risk

4.19 [ ] Aggravated Felon

4.20 [ ] Persecutor 4.21 [ ] Terrorist

4.22 [ ] Firmly Resettled

4.23 [ ] Serious Non-Political Crime Outside the United States

4.24 [X] Applicant does **not** appear to be subject to a bar(s) to asylum or withholding of removal.

C. Identity:

4.25 [X] Applicant's identity was determined with a reasonable degree of certainty (check the box(es) that applies):

4.26 [X] Applicant's own credible statements. (If testimony is credible overall, this will suffice to establish the applicant's identity with a reasonable degree of certainty).

4.27 [ ] Passport which appears to be authentic.

4.28 [ ] Other evidence presented by applicant or in applicant's file (List): _____

4.29 [ ] Applicant's identity was not determined with a reasonable degree of certainty. (Explain on the continuation sheet.)

SECTION V: ASYLUM OFFICER / SUPERVISOR NAMES AND SIGNATURES

5.1 Rebecca Blatt ZHN223

Asylum officer name and ID CODE (print)

5.2 /s/ Rebecca Blatt

Asylum Officer's Signature

5.3 10/12/2015

Decision Date

5.4 W. Poshcki ZHN 416

Supervisory asylum officer name

5.5 /s/ W. Poshcki

Supervisor's Signature

5.6 OCT 13 2015

Date Supervisor Approved decision

* * * *

IMMIGRATION COURT

333 SOUTH MIAMI AVE., STE. 700

MIAMI, FL 33130

In the Matter of: Case No: [redacted]

FLORES-FLORES, GUADALUPE

Respondent

IN: CREDIBLE FEAR REVIEW PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

On Oct 20, 2015 at 8:00 A.M. a review of the DHS Credible Fear Determination was held in the matter noted above. Testimony [X] was [ ] was not taken regarding the background of the Applicant and the Applicant's fear of returning to ~~his~~/her country of origin or last habitual residence.

After consideration of the evidence, the Court finds that the Applicant [ ] has [X] has not established a significant possibility that he/she would be persecuted on the basis of ~~his~~/her race, religion, nationality, membership in a particular social group, or because of ~~his~~/her political opinion.

ORDER: It is hereby ordered that the decision of the immigration officer is:

[X] Affirmed, and the case is returned to the DHS for removal of the alien.

[ ] Vacated.

This is a final order. There is no appeal available.

DONE and ORDERED this 20 day of October, 2015

/S/ J. Daniel Dowell
J. DANIEL DOWELL
Immigration Judge

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P) FAX (F)

TO: [F] ALIEN [ ] ALIEN c/o Custodial Officer [ ] ALIEN's ATT/REP [M] DHS

DATE: _____ BY: COURT STAFF /s/

Attachments: [ ] EOIR-33 [ ] EOIR-28 [ ] Legal Services List [ ] Other

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U2

Carmen Aleyda Lobo-Mejia

* * * *

[Form I-870]

SECTION IV: CREDIBLE FEAR FINDINGS

A. Credible Fear Determination:

Credibility

4.1 [X] There is a significant possibility that the assertions underlying the applicant's claim could be found credible in a full asylum or withholding of removal hearing.

4.2 [ ] Applicant found **not** credible because (check boxes 4.3-4.5, which apply):

4.3 [ ] Testimony was internally inconsistent on material issues.

4.4 [ ] Testimony lacked sufficient detail on material issues.

4.5 [ ] Testimony was not consistent with country conditions on material issues.

Nexus

4.6 [ ] Race 4.7 [ ] Religion 4.8 [ ] Nationality

4.9 [ ] Membership in a Particular Social Group

(Define the social group):_____

4.10 [ ] Political Opinion 4.11 [ ] Coercive Family Planning (CPP) 4.12 [X] No Nexus

Credible Fear Finding

4.13 [ ] Credible fear of **persecution** established.

OR

4.14 [ ] Credible fear of **torture** established.

OR

4.15 [X] Credible fear of persecution NOT established and there is not a significant possibility that the applicant could establish eligibility for withholding of removal or deferral of removal under the Convention against Torture.

B. Possible Bars:

4.16 Applicant could be subject to a bar(s) to asylum or withholding of removal (check the box(es) that applies and explain on the continuation sheet):

4.17 [ ] Particularly Serious Crime 4.18 [ ] Security Risk

4.19 [ ] Aggravated Felon

4.20 [ ] Persecutor 4.21 [ ] Terrorist

4.22 [ ] Firmly Resettled

4.23 [ ] Serious Non-Political Crime Outside the United States

4.24 [X] Applicant does **not** appear to be subject to a bar(s) to asylum or withholding of removal.

C. Identity:

4.25 [X] Applicant's identity was determined with a reasonable degree of certainty (check the box(es) that applies):

4.26 [X] Applicant's own credible statements. (If testimony is credible overall, this will suffice to establish the applicant's identity with a reasonable degree of certainty).

4.27 [ ] Passport which appears to be authentic.

4.28 [ ] Other evidence presented by applicant or in applicant's file (List): _____

4.29 [ ] Applicant's identity was not determined with a reasonable degree of certainty. (Explain on the continuation sheet.)

SECTION V: ASYLUM OFFICER / SUPERVISOR NAMES AND SIGNATURES

5.1 Ameli Davila ZHN386

Asylum officer name and ID CODE (print)

5.2 /s/ Ameli Davila

Asylum Officer's Signature

5.3 11/2/2015

Decision Date

5.4 Bibiana L. Arbelsez

Supervisory asylum officer name

5.5 /s/ Bibiana L. Arbelsez

Supervisor's Signature

5.6 NOV 03 2015

Date Supervisor Approved decision

* * * *

IMMIGRATION COURT
800 DOLOROSA STREET, SUITE 300
SAN ANTONIO, TX 78207

In the Matter of: Case No: [redacted]

LOBO-MEJIA, CARMEN ALEYDA

Respondent

IN: CREDIBLE FEAR REVIEW PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

On 11-13, 2015 at 9:00 A.M. a review of the DHS Credible Fear Determination was held in the matter noted above. Testimony [X] was [ ] was not taken regarding the background of the Applicant and the Applicant's fear of returning to his/her country of origin or last habitual residence.

After consideration of the evidence, the Court finds that the Applicant [ ] has [X] has not established a significant possibility that he/she would be persecuted on the basis of his/her race, religion, nationality, membership in a particular social group, or because of his/her political opinion.

ORDER: It is hereby ordered that the decision of the immigration officer is:

[X] Affirmed, and the case is returned to the DHS for removal of the alien.

[ ] Vacated.

This is a final order. There is no appeal available.

DONE and ORDERED this 13 day of NOVEMBER, 2015

/S/ Craig A. Harmon
CRAIG A. HARMON
Immigration Judge

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P)

TO: [ ] ALIEN [ ] ALIEN c/o Custodial Officer [P] ALIEN's ATT/REP [M] DHS

DATE: 11-13-2015 BY: COURT STAFF CAH

Attachments: [ ] EOIR-33 [ ] EOIR-28 [ ] Legal Services List [ ] Other

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U2

Julissa Clementina Hernandez-Jimenez

* * * *

[Form I-870]

SECTION IV: CREDIBLE FEAR FINDINGS

A. Credible Fear Determination:

Credibility

4.1 [X] There is a significant possibility that the assertions underlying the applicant's claim could be found credible in a full asylum or withholding of removal hearing.

4.2 [ ] Applicant found **not** credible because (check boxes 4.3-4.5, which apply):

4.3 [ ] Testimony was internally inconsistent on material issues.

4.4 [ ] Testimony lacked sufficient detail on material issues.

4.5 [ ] Testimony was not consistent with country conditions on material issues.

Nexus

4.6 [ ] Race 4.7 [ ] Religion 4.8 [ ] Nationality

4.9 [ ] Membership in a Particular Social Group

(Define the social group):_____

4.10 [ ] Political Opinion 4.11 [ ] Coercive Family Planning (CPP) 4.12 [X] No Nexus

Credible Fear Finding

4.13 [ ] Credible fear of **persecution** established.

OR

4.14 [ ] Credible fear of **torture** established.

OR

4.15 [X] Credible fear of persecution NOT established and there is not a significant possibility that the applicant could establish eligibility for withholding of removal or deferral of removal under the Convention against Torture.

B. Possible Bars:

4.16 Applicant could be subject to a bar(s) to asylum or withholding of removal (check the box(es) that applies and explain on the continuation sheet):

4.17 [ ] Particularly Serious Crime 4.18 [ ] Security Risk

4.19 [ ] Aggravated Felon

4.20 [ ] Persecutor 4.21 [ ] Terrorist

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4.23 [ ] Serious Non-Political Crime Outside the United States

4.24 [X] Applicant does **not** appear to be subject to a bar(s) to asylum or withholding of removal.

C. Identity:

4.25 [X] Applicant's identity was determined with a reasonable degree of certainty (check the box(es) that applies):

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4.27 [ ] Passport which appears to be authentic.

4.28 [ ] Other evidence presented by applicant or in applicant's file (List): _____

4.29 [ ] Applicant's identity was not determined with a reasonable degree of certainty. (Explain on the continuation sheet.)

SECTION V: ASYLUM OFFICER / SUPERVISOR NAMES AND SIGNATURES

5.1 Kevin Buras ZHN099

Asylum officer name and ID CODE (print)

5.2 /s/ Kevin Buras

Asylum Officer's Signature

5.3 10/09/2015

Decision Date

5.4 Kirk Wills Supervisory Asylum Officer

Supervisory asylum officer name

5.5 /s/ Kirk Willis

Supervisor's Signature

5.6 09 OCT 2015

Date Supervisor Approved decision

* * * *

IMMIGRATION COURT
800 DOLOROSA STREET, SUITE 300
SAN ANTONIO, TX 78207

In the Matter of: Case No: [redacted]

HERNANDEZ-JIMENEZ, JULISSA CLEMENTINA

Respondent

IN: CREDIBLE FEAR REVIEW PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

On 10-22, 2015 at 2:30 P.M. a review of the DHS Credible Fear Determination was held in the matter noted above. Testimony [X] was [ ] was not taken regarding the background of the Applicant and the Applicant's fear of returning to his/her country of origin or last habitual residence.

After consideration of the evidence, the Court finds that the Applicant [ ] has [X] has not established a significant possibility that he/she would be persecuted on the basis of his/her race, religion, nationality, membership in a particular social group, or because of his/her political opinion.

ORDER: It is hereby ordered that the decision of the immigration officer is:

[X] Affirmed, and the case is returned to the DHS for removal of the alien.

[ ] Vacated.

This is a final order. There is no appeal available.

DONE and ORDERED this 22 day of OCTOBER, 2015

/S/ Craig A. Harlow
CRAIG A. HARLOW
Immigration Judge

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P)

TO: [ ] ALIEN [M] ALIEN c/o Custodial Officer [ ] ALIEN's ATT/REP [P] DHS

DATE: 10/22/2015 BY: COURT STAFF PLO

Attachments: [ ] EOIR-33 [ ] EOIR-28 [ ] Legal Services List [ ] Other

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U2

Maria Erlinda Mejia-Melgar

* * * *

[Form I-870]

SECTION IV: CREDIBLE FEAR FINDINGS

A. Credible Fear Determination:

Credibility

4.1 [X] There is a significant possibility that the assertions underlying the applicant's claim could be found credible in a full asylum or withholding of removal hearing.

4.2 [ ] Applicant found **not** credible because (check boxes 4.3-4.5, which apply):

4.3 [ ] Testimony was internally inconsistent on material issues.

4.4 [ ] Testimony lacked sufficient detail on material issues.

4.5 [ ] Testimony was not consistent with country conditions on material issues.

Nexus

4.6 [ ] Race 4.7 [ ] Religion 4.8 [ ] Nationality

4.9 [ ] Membership in a Particular Social Group

(Define the social group):_____

4.10 [ ] Political Opinion 4.11 [ ] Coercive Family Planning (CPP) 4.12 [X] No Nexus

Credible Fear Finding

4.13 [ ] Credible fear of **persecution** established.

OR

4.14 [ ] Credible fear of **torture** established.

OR

4.15 [X] Credible fear of persecution NOT established and there is not a significant possibility that the applicant could establish eligibility for withholding of removal or deferral of removal under the Convention against Torture.

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4.16 Applicant could be subject to a bar(s) to asylum or withholding of removal (check the box(es) that applies and explain on the continuation sheet):

4.17 [ ] Particularly Serious Crime 4.18 [ ] Security Risk

4.19 [ ] Aggravated Felon

4.20 [ ] Persecutor 4.21 [ ] Terrorist

4.22 [ ] Firmly Resettled

4.23 [ ] Serious Non-Political Crime Outside the United States

4.24 [X] Applicant does **not** appear to be subject to a bar(s) to asylum or withholding of removal.

C. Identity:

4.25 [X] Applicant's identity was determined with a reasonable degree of certainty (check the box(es) that applies):

4.26 [X] Applicant's own credible statements. (If testimony is credible overall, this will suffice to establish the applicant's identity with a reasonable degree of certainty).

4.27 [ ] Passport which appears to be authentic.

4.28 [ ] Other evidence presented by applicant or in applicant's file (List): _____

4.29 [ ] Applicant's identity was not determined with a reasonable degree of certainty. (Explain on the continuation sheet.)

SECTION V: ASYLUM OFFICER / SUPERVISOR NAMES AND SIGNATURES

5.1 David Hattendorf ZHN465

Asylum officer name and ID CODE (print)

5.2 /s/ David Hattendorf

Asylum Officer's Signature

5.3 10/28/2015

Decision Date

5.4 Bibiana L. Arbelsez

Supervisory asylum officer name

5.5 /s/ Bibiana L. Arbelsez

Supervisor's Signature

5.6 OCT 31 2015

Date Supervisor Approved decision

* * * *

IMMIGRATION COURT
800 DOLOROSA STREET, SUITE 300
SAN ANTONIO, TX 78207

In the Matter of: Case No: [redacted]

MEJIA-MELGAR, MARIA ERLINDA

Respondent

IN: CREDIBLE FEAR REVIEW PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

On Nov 9, 2015 at 1:00 P.M. a review of the DHS Credible Fear Determination was held in the matter noted above. Testimony [X] was [ ] was not taken regarding the background of the Applicant and the Applicant's fear of returning to his/her country of origin or last habitual residence.

After consideration of the evidence, the Court finds that the Applicant [ ] has [X] has not established a significant possibility that he/she would be persecuted on the basis of his/her race, religion, nationality, membership in a particular social group, or because of his/her political opinion.

ORDER: It is hereby ordered that the decision of the immigration officer is:

[X] Affirmed, and the case is returned to the DHS for removal of the alien.

[ ] Vacated.

This is a final order. There is no appeal available.

DONE and ORDERED this 9 day of November, 2015

/S/ Craig A. Harlow
CRAIG A. HARLOW
Immigration Judge

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P)

TO: [ ] ALIEN [M] ALIEN c/o Custodial Officer [ ] ALIEN's ATT/REP [P] DHS

DATE: 11/10/2015 BY: COURT STAFF /s/

Attachments: [ ] EOIR-33 [ ] EOIR-28 [ ] Legal Services List [ ] Other

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U2

Jethzabel Maritza Aguilar-Mancia

* * * *

[Form I-870]

SECTION IV: CREDIBLE FEAR FINDINGS

A. Credible Fear Determination:

Credibility

4.1 [X] There is a significant possibility that the assertions underlying the applicant's claim could be found credible in a full asylum or withholding of removal hearing.

4.2 [ ] Applicant found **not** credible because (check boxes 4.3-4.5, which apply):

4.3 [ ] Testimony was internally inconsistent on material issues.

4.4 [ ] Testimony lacked sufficient detail on material issues.

4.5 [ ] Testimony was not consistent with country conditions on material issues.

Nexus

4.6 [ ] Race 4.7 [ ] Religion 4.8 [ ] Nationality

4.9 [ ] Membership in a Particular Social Group

(Define the social group):_____

4.10 [ ] Political Opinion 4.11 [ ] Coercive Family Planning (CPP) 4.12 [X] No Nexus

Credible Fear Finding

4.13 [ ] Credible fear of **persecution** established.

OR

4.14 [ ] Credible fear of **torture** established.

OR

4.15 [X] Credible fear of persecution NOT established and there is not a significant possibility that the applicant could establish eligibility for withholding of removal or deferral of removal under the Convention against Torture.

B. Possible Bars:

4.16 Applicant could be subject to a bar(s) to asylum or withholding of removal (check the box(es) that applies and explain on the continuation sheet):

4.17 [ ] Particularly Serious Crime 4.18 [ ] Security Risk

4.19 [ ] Aggravated Felon

4.20 [ ] Persecutor 4.21 [ ] Terrorist 4.22 [ ] Firmly Resettled

4.23 [ ] Serious Non-Political Crime Outside the United States

4.24 [X] Applicant does **not** appear to be subject to a bar(s) to asylum or withholding of removal.

C. Identity:

4.25 [X] Applicant's identity was determined with a reasonable degree of certainty (check the box(es) that applies):

4.26 [X] Applicant's own credible statements. (If testimony is credible overall, this will suffice to establish the applicant's identity with a reasonable degree of certainty).

4.27 [ ] Passport which appears to be authentic.

4.28 [ ] Other evidence presented by applicant or in applicant's file (List): _____

4.29 [ ] Applicant's identity was not determined with a reasonable degree of certainty. (Explain on the continuation sheet.)

SECTION V: ASYLUM OFFICER / SUPERVISOR NAMES AND SIGNATURES

5.1 Minfen Chang ZHN 105

Asylum officer name and ID CODE (print)

5.2 /s/ Minfen Chang

Asylum Officer's Signature

5.3 10/19/2015

Decision Date

5.4 Kirk Wills Supervisory Asylum Officer

Supervisory asylum officer name

5.5 /s/ Kirk Wills

Supervisor's Signature

5.6 21 OCT 2015

Date Supervisor Approved decision

* * * *

IMMIGRATION COURT
800 DOLOROSA STREET, SUITE 300
SAN ANTONIO, TX 78207

In the Matter of: Case No: [redacted]

AGUILAR-MANCIA, JETHZABEL MARITZA

Respondent

IN: CREDIBLE FEAR REVIEW PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

On Nov 3, 2015 at 11:00 A.M. a review of the DHS Credible Fear Determination was held in the matter noted above. Testimony [X] was [ ] was not taken regarding the background of the Applicant and the Applicant's fear of returning to his/her country of origin or last habitual residence.

After consideration of the evidence, the Court finds that the Applicant [ ] has [X] has not established a significant possibility that he/she would be persecuted on the basis of his/her race, religion, nationality, membership in a particular social group, or because of his/her political opinion.

ORDER: It is hereby ordered that the decision of the immigration officer is:

[X] Affirmed, and the case is returned to the DHS for removal of the alien.

[ ] Vacated.

This is a final order. There is no appeal available.

DONE and ORDERED this 5th day of November, 2015

/S/ Glenn P. McPhaul

GLENN P. MCPHAUL

Immigration Judge

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P)

TO: [ ] ALIEN [M] ALIEN c/o Custodial Officer [ ] ALIEN's ATT/REP [P] DHS

DATE: 11/6/2015 BY: COURT STAFF /s/

Attachments: [ ] EOIR-33 [ ] EOIR-28 [ ] Legal Services List [ ] Other

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U2

Heymi Lissania Arevalo-Monterroza

* * * *

[Form I-870]

SECTION IV: CREDIBLE FEAR FINDINGS

A. Credible Fear Determination:

Credibility

4.1 [X] There is a significant possibility that the assertions underlying the applicant's claim could be found credible in a full asylum or withholding of removal hearing.

4.2 [ ] Applicant found **not** credible because (check boxes 4.3-4.5, which apply):

4.3 [ ] Testimony was internally inconsistent on material issues.

4.4 [ ] Testimony lacked sufficient detail on material issues.

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Nexus

4.6 [ ] Race 4.7 [ ] Religion 4.8 [ ] Nationality

4.9 [ ] Membership in a Particular Social Group

(Define the social group):_____

4.10 [ ] Political Opinion 4.11 [ ] Coercive Family Planning (CPP) 4.12 [X] No Nexus

Credible Fear Finding

4.13 [ ] Credible fear of **persecution** established.

OR

4.14 [ ] Credible fear of **torture** established.

OR

4.15 [X] Credible fear of persecution NOT established and there is not a significant possibility that the applicant could establish eligibility for withholding of removal or deferral of removal under the Convention against Torture.

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4.19 [ ] Aggravated Felon

4.20 [ ] Persecutor 4.21 [ ] Terrorist 4.22 [ ] Firmly Resettled

4.23 [ ] Serious Non-Political Crime Outside the United States

4.24 [X] Applicant does **not** appear to be subject to a bar(s) to asylum or withholding of removal.

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4.25 [X] Applicant's identity was determined with a reasonable degree of certainty (check the box(es) that applies):

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4.28 [ ] Other evidence presented by applicant or in applicant's file (List): _____

4.29 [ ] Applicant's identity was not determined with a reasonable degree of certainty. (Explain on the continuation sheet.)

SECTION V: ASYLUM OFFICER / SUPERVISOR NAMES AND SIGNATURES

5.1 Ruth Grossman ZHN 487

Asylum officer name and ID CODE (print)

5.2 /s/ Ruth Grossman

Asylum Officer's Signature

5.3 11/28/2015

Decision Date

5.4 Lee Telfer Supervisory Asylum Officer

Supervisory asylum officer name

5.5 /s/ Lee Telfer

Supervisor's Signature

5.6 NOV 30 2015

Date Supervisor Approved decision

* * * *

IMMIGRATION COURT

333 SOUTH MIAMI AVE., STE. 700

MIAMI, FL 33130

In the Matter of: Case No: [redacted]

AREVALO-MONTERROZA, HEYMI LISSANIA

Respondent

IN: CREDIBLE FEAR REVIEW PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

On Dec 3, 2015 at 10:00 A.M. a review of the DHS Credible Fear Determination was held in the matter noted above. Testimony [X] was [ ] was not taken regarding the background of the Applicant and the Applicant's fear of returning to his/her country of origin or last habitual residence.

After consideration of the evidence, the Court finds that the Applicant [ ] has [X] has not established a significant possibility that he/she would be persecuted on the basis of his/her race, religion, nationality, membership in a particular social group, or because of his/her political opinion.

ORDER: It is hereby ordered that the decision of the immigration officer is:

[X] Affirmed, and the case is returned to the DHS for removal of the alien.

[ ] Vacated.

This is a final order. There is no appeal available.

DONE and ORDERED this 3rd day of December, 2015

/S/ J. Daniel Dowell

J. DANIEL DOWELL

Immigration Judge

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P) FAX (F)

TO: [F] ALIEN [ ] ALIEN c/o Custodial Officer [ ] ALIEN's ATT/REP [M] DHS

DATE: 12-3-15 BY: COURT STAFF /s/

Attachments: [ ] EOIR-33 [ ] EOIR-28 [ ] Legal Services List [ ] Other

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U2

Elsa Milagros Rodriguez-Garcia

* * * *

[Form I-870]

SECTION IV: CREDIBLE FEAR FINDINGS

A. Credible Fear Determination:

Credibility

4.1 [X] There is a significant possibility that the assertions underlying the applicant's claim could be found credible in a full asylum or withholding of removal hearing.

4.2 [ ] Applicant found **not** credible because (check boxes 4.3-4.5, which apply):

4.3 [ ] Testimony was internally inconsistent on material issues.

4.4 [ ] Testimony lacked sufficient detail on material issues.

4.5 [ ] Testimony was not consistent with country conditions on material issues.

Nexus

4.6 [ ] Race 4.7 [ ] Religion 4.8 [ ] Nationality

4.9 [ ] Membership in a Particular Social Group

(Define the social group):_____

4.10 [ ] Political Opinion 4.11 [ ] Coercive Family Planning (CPP) 4.12 [X] No Nexus

Credible Fear Finding

4.13 [ ] Credible fear of **persecution** established.

OR

4.14 [ ] Credible fear of **torture** established.

OR

4.15 [X] Credible fear of persecution NOT established and there is not a significant possibility that the applicant could establish eligibility for withholding of removal or deferral of removal under the Convention against Torture.

B. Possible Bars:

4.16 Applicant could be subject to a bar(s) to asylum or withholding of removal (check the box(es) that applies and explain on the continuation sheet):

4.17 [ ] Particularly Serious Crime 4.18 [ ] Security Risk

4.19 [ ] Aggravated Felon

4.20 [ ] Persecutor 4.21 [ ] Terrorist

4.22 [ ] Firmly Resettled

4.23 [ ] Serious Non-Political Crime Outside the United States

4.24 [X] Applicant does **not** appear to be subject to a bar(s) to asylum or withholding of removal.

C. Identity:

4.25 [X] Applicant's identity was determined with a reasonable degree of certainty (check the box(es) that applies):

4.26 [X] Applicant's own credible statements. (If testimony is credible overall, this will suffice to establish the applicant's identity with a reasonable degree of certainty).

4.27 [ ] Passport which appears to be authentic.

4.28 [ ] Other evidence presented by applicant or in applicant's file (List): _____

4.29 [ ] Applicant's identity was not determined with a reasonable degree of certainty. (Explain on the continuation sheet.)

SECTION V: ASYLUM OFFICER / SUPERVISOR NAMES AND SIGNATURES

5.1 Buras, Kevin ZHN 099

Asylum officer name and ID CODE (print)

5.2 /s/ Kevin Buras

Asylum Officer's Signature

5.3 11/27/2015

Decision Date

5.4 Daniel A. Phillips, Supervisory Asylum Officer

Supervisory asylum officer name

5.5 /s/ Daniel A. Phillips

Supervisor's Signature

5.6 NOV 27 2015

Date Supervisor Approved decision

* * * *

IMMIGRATION COURT

333 SOUTH MIAMI AVE., STE. 700

MIAMI, FL 33130

In the Matter of: Case No: [redacted]

RODRIGUEZ-GARCIA, ELSA MILAGROS

Respondent

IN: CREDIBLE FEAR REVIEW PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

On Dec 3, 2015 at 10:00 A.M. a review of the DHS Credible Fear Determination was held in the matter noted above. Testimony [X] was [ ] was not taken regarding the background of the Applicant and the Applicant's fear of returning to his/her country of origin or last habitual residence.

After consideration of the evidence, the Court finds that the Applicant [ ] has [X] has not established a significant possibility that ~~he~~/she would be persecuted on the basis of ~~his~~/her race, religion, nationality, membership in a particular social group, or because of his/her political opinion.

ORDER: It is hereby ordered that the decision of the immigration officer is:

[X] Affirmed, and the case is returned to the DHS for removal of the alien.

[ ] Vacated.

This is a final order. There is no appeal available.

DONE and ORDERED this 3rd day of December, 2015

/S/ J. Daniel Dowell

J. DANIEL DOWELL

Immigration Judge

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P) FAX (F)

TO: [F] ALIEN [ ] ALIEN c/o Custodial Officer [ ] ALIEN's ATT/REP [M] DHS

DATE: 12-3-2015 BY: COURT STAFF /s/

Attachments: [ ] EOIR-33 [ ] EOIR-28 [ ] Legal Services List [ ] Other

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U2

Elizabeth Benitez de Marquez

* * * *

[Form I-870]

SECTION IV: CREDIBLE FEAR FINDINGS

A. Credible Fear Determination:

Credibility

4.1 [X] There is a significant possibility that the assertions underlying the applicant's claim could be found credible in a full asylum or withholding of removal hearing.

4.2 [ ] Applicant found **not** credible because (check boxes 4.3-4.5, which apply):

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Nexus

4.6 [ ] Race 4.7 [ ] Religion 4.8 [ ] Nationality

4.9 [ ] Membership in a Particular Social Group

(Define the social group):_____

4.10 [ ] Political Opinion 4.11 [ ] Coercive Family Planning (CPP) 4.12 [X] No Nexus

Credible Fear Finding

4.13 [ ] Credible fear of **persecution** established.

OR

4.14 [ ] Credible fear of **torture** established.

OR

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B. Possible Bars:

4.16 Applicant could be subject to a bar(s) to asylum or withholding of removal (check the box(es) that applies and explain on the continuation sheet):

4.17 [ ] Particularly Serious Crime 4.18 [ ] Security Risk

4.19 [ ] Aggravated Felon

4.20 [ ] Persecutor 4.21 [ ] Terrorist

4.22 [ ] Firmly Resettled

4.23 [ ] Serious Non-Political Crime Outside the United States

4.24 [X] Applicant does **not** appear to be subject to a bar(s) to asylum or withholding of removal.

C. Identity:

4.25 [X] Applicant's identity was determined with a reasonable degree of certainty (check the box(es) that applies):

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4.27 [ ] Passport which appears to be authentic.

4.28 [ ] Other evidence presented by applicant or in applicant's file (List): _____

4.29 [ ] Applicant's identity was not determined with a reasonable degree of certainty. (Explain on the continuation sheet.)

SECTION V: ASYLUM OFFICER / SUPERVISOR NAMES AND SIGNATURES

5.1 Kevin Buras ZHN099

Asylum officer name and ID CODE (print)

5.2 /s/ Kevin Buras

Asylum Officer's Signature

5.3 10/09/2015

Decision Date

5.4 Kirk Wills Supervisory Asylum Officer

Supervisory asylum officer name

5.5 /s/ Kirk Willis

Supervisor's Signature

5.6 09 OCT 2015

Date Supervisor Approved decision

* * * *

IMMIGRATION COURT
800 DOLOROSA STREET, SUITE 300
SAN ANTONIO, TX 78207

In the Matter of: Case No: [redacted]

BENITEZ-DE MARQUEZ, ELIZABETH

Respondent

IN: CREDIBLE FEAR REVIEW PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

On Oct 20, 2015 at 9:00 A.M. a review of the DHS Credible Fear Determination was held in the matter noted above. Testimony [X] was [ ] was not taken regarding the background of the Applicant and the Applicant's fear of returning to his/her country of origin or last habitual residence.

After consideration of the evidence, the Court finds that the Applicant [ ] has [X] has not established a significant possibility that he/she would be persecuted on the basis of his/her race, religion, nationality, membership in a particular social group, or because of his/her political opinion.

ORDER: It is hereby ordered that the decision of the immigration officer is:

[X] Affirmed, and the case is returned to the DHS for removal of the alien.

[ ] Vacated.

This is a final order. There is no appeal available.

DONE and ORDERED this 20th day of October, 2015

/S/ Glenn P. McPhaul
GLENN P. MCPHAUL
Immigration Judge

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P)

TO: [ ] ALIEN [M] ALIEN c/o Custodial Officer [ ] ALIEN's ATT/REP [P] DHS

DATE: 10/20/2015 BY: COURT STAFF MA

Attachments: [ ] EOIR-33 [ ] EOIR-28 [ ] Legal Services List [ ] Other

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U2

Ingrid Maricela Elias-Soriano

* * * *

[Form I-870]

SECTION IV: CREDIBLE FEAR FINDINGS

A. Credible Fear Determination:

Credibility

4.1 [X] There is a significant possibility that the assertions underlying the applicant's claim could be found credible in a full asylum or withholding of removal hearing.

4.2 [ ] Applicant found **not** credible because (check boxes 4.3-4.5, which apply):

4.3 [ ] Testimony was internally inconsistent on material issues.

4.4 [ ] Testimony lacked sufficient detail on material issues.

4.5 [ ] Testimony was not consistent with country conditions on material issues.

Nexus

4.6 [ ] Race 4.7 [ ] Religion 4.8 [ ] Nationality

4.9 [ ] Membership in a Particular Social Group

(Define the social group):_____

4.10 [ ] Political Opinion 4.11 [ ] Coercive Family Planning (CPP) 4.12 [X] No Nexus

Credible Fear Finding

4.13 [ ] Credible fear of **persecution** established.

OR

4.14 [ ] Credible fear of **torture** established.

OR

4.15 [X] Credible fear of persecution NOT established and there is not a significant possibility that the applicant could establish eligibility for withholding of removal or deferral of removal under the Convention against Torture.

B. Possible Bars:

4.16 Applicant could be subject to a bar(s) to asylum or withholding of removal (check the box(es) that applies and explain on the continuation sheet):

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4.19 [ ] Aggravated Felon

4.20 [ ] Persecutor 4.21 [ ] Terrorist

4.22 [ ] Firmly Resettled

4.23 [ ] Serious Non-Political Crime Outside the United States

4.24 [X] Applicant does **not** appear to be subject to a bar(s) to asylum or withholding of removal.

C. Identity:

4.25 [X] Applicant's identity was determined with a reasonable degree of certainty (check the box(es) that applies):

4.26 [X] Applicant's own credible statements. (If testimony is credible overall, this will suffice to establish the applicant's identity with a reasonable degree of certainty).

4.27 [ ] Passport which appears to be authentic.

4.28 [ ] Other evidence presented by applicant or in applicant's file (List): _____

4.29 [ ] Applicant's identity was not determined with a reasonable degree of certainty. (Explain on the continuation sheet.)

SECTION V: ASYLUM OFFICER / SUPERVISOR NAMES AND SIGNATURES

5.1 Kathleen Jones ZHN 375

Asylum officer name and ID CODE (print)

5.2 /s/ Kathleen Jones

Asylum Officer's Signature

5.3 12/5/2015

Decision Date

5.4 Supervisory Asylum Officer

Supervisory asylum officer name

5.5 /s/ Supervisory Asylum Officer

Supervisor's Signature

5.6 DEC 05 2015

Date Supervisor Approved decision

* * * *

IMMIGRATION COURT

333 SOUTH MIAMI AVE., STE. 700

MIAMI, FL 33130

In the Matter of: Case No: [redacted]

ELIAS-SORIANO, INGRID MARICELA

Respondent

IN: CREDIBLE FEAR REVIEW PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

On Dec 8, 2015 at 8:00 A.M. a review of the DHS Credible Fear Determination was held in the matter noted above. Testimony [X] was [ ] was not taken regarding the background of the Applicant and the Applicant's fear of returning to his/her country of origin or last habitual residence.

After consideration of the evidence, the Court finds that the Applicant [ ] has [X] has not established a significant possibility that he/she would be persecuted on the basis of his/her race, religion, nationality, membership in a particular social group, or because of his/her political opinion.

ORDER: It is hereby ordered that the decision of the immigration officer is:

[X] Affirmed, and the case is returned to the DHS for removal of the alien.

[ ] Vacated.

This is a final order. There is no appeal available.

DONE and ORDERED this 8th day of December, 2015

/S/ J. Daniel Dowell

J. DANIEL DOWELL

Immigration Judge

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P) FAX (F)

TO: [F] ALIEN [ ] ALIEN c/o Custodial Officer [ ] ALIEN's ATT/REP [M] DHS

DATE: 12-8-15 BY: COURT STAFF /s/

Attachments: [ ] EOIR-33 [ ] EOIR-28 [ ] Legal Services List [ ] Other

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U2

Maribel Maria Escobar-Ramirez

* * * *

[Form I-870]

SECTION IV: CREDIBLE FEAR FINDINGS

A. Credible Fear Determination:

Credibility

4.1 [X] There is a significant possibility that the assertions underlying the applicant's claim could be found credible in a full asylum or withholding of removal hearing.

4.2 [ ] Applicant found **not** credible because (check boxes 4.3-4.5, which apply):

4.3 [ ] Testimony was internally inconsistent on material issues.

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Nexus

4.6 [ ] Race 4.7 [ ] Religion 4.8 [ ] Nationality 4.9 [ ] Membership in a Particular Social Group

(Define the social group):_____

4.10 [ ] Political Opinion 4.11 [ ] Coercive Family Planning (CPP) 4.12 [X] No Nexus

Credible Fear Finding

4.13 [ ] Credible fear of **persecution** established.

OR

4.14 [ ] Credible fear of **torture** established.

OR

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B. Possible Bars:

4.16 Applicant could be subject to a bar(s) to asylum or withholding of removal (check the box(es) that applies and explain on the continuation sheet):

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4.19 [ ] Aggravated Felon

4.20 [ ] Persecutor 4.21 [ ] Terrorist 4.22 [ ] Firmly Resettled

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4.27 [ ] Passport which appears to be authentic.

4.28 [ ] Other evidence presented by applicant or in applicant's file (List): _____

4.29 [ ] Applicant's identity was not determined with a reasonable degree of certainty. (Explain on the continuation sheet.)

SECTION V: ASYLUM OFFICER / SUPERVISOR NAMES AND SIGNATURES

5.1 Fritz TIMOTHEE, ZHN 368

Asylum officer name and ID CODE (print)

5.2 /s/ Fritz Timothee

Asylum Officer's Signature

5.3 12/09/2015

Decision Date

5.4 Christopher Vu, Supervisory Asylum Officer

Supervisory asylum officer name

5.5 /s/ Christopher Vu

Supervisor's Signature

5.6 DEC 10 2015

Date Supervisor Approved decision

* * * *

IMMIGRATION COURT

333 SOUTH MIAMI AVE., STE. 700

MIAMI, FL 33130

In the Matter of: Case No: [redacted]

ESCOBAR-RAMIREZ, MARIBEL MARIA

Respondent

IN: CREDIBLE FEAR REVIEW PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

On Dec 15, 2015 at 8:00 A.M. a review of the DHS Credible Fear Determination was held in the matter noted above. Testimony [X] was [ ] was not taken regarding the background of the Applicant and the Applicant's fear of returning to his/her country of origin or last habitual residence.

After consideration of the evidence, the Court finds that the Applicant [ ] has [X] has not established a significant possibility that he/she would be persecuted on the basis of his/her race, religion, nationality, membership in a particular social group, or because of his/her political opinion.

ORDER: It is hereby ordered that the decision of the immigration officer is:

[X] Affirmed, and the case is returned to the DHS for removal of the alien.

[ ] Vacated.

This is a final order. There is no appeal available.

DONE and ORDERED this 15th day of Dec., 2015

/S/ Lourdes Rodriguez de Jongh

LOURDES RODRIGUEZ DE JONGH

Immigration Judge

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P)

TO: [M] ALIEN [ ] ALIEN c/o Custodial Officer [ ] ALIEN's ATT/REP [M] DHS

DATE: 12/15/2015 BY: COURT STAFF LRJ

Attachments: [ ] EOIR-33 [ ] EOIR-28 [ ] Legal Services List [ ] Other

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U2

Ana Maricela Rodriguez-Granados

* * * *

[Form I-870]

SECTION IV: CREDIBLE FEAR FINDINGS

A. Credible Fear Determination:

Credibility

4.1 [X] There is a significant possibility that the assertions underlying the applicant's claim could be found credible in a full asylum or withholding of removal hearing.

4.2 [ ] Applicant found **not** credible because (check boxes 4.3-4.5, which apply):

4.3 [ ] Testimony was internally inconsistent on material issues.

4.4 [ ] Testimony lacked sufficient detail on material issues.

4.5 [ ] Testimony was not consistent with country conditions on material issues.

Nexus

4.6 [ ] Race 4.7 [ ] Religion 4.8 [ ] Nationality

4.9 [ ] Membership in a Particular Social Group

(Define the social group):_____

4.10 [ ] Political Opinion 4.11 [ ] Coercive Family Planning (CPP) 4.12 [X] No Nexus

Credible Fear Finding

4.13 [ ] Credible fear of **persecution** established.

OR

4.14 [ ] Credible fear of **torture** established.

OR

4.15 [X] Credible fear of persecution NOT established and there is not a significant possibility that the applicant could establish eligibility for withholding of removal or deferral of removal under the Convention against Torture.

B. Possible Bars:

4.16 Applicant could be subject to a bar(s) to asylum or withholding of removal (check the box(es) that applies and explain on the continuation sheet):

4.17 [ ] Particularly Serious Crime 4.18 [ ] Security Risk

4.19 [ ] Aggravated Felon

4.20 [ ] Persecutor 4.21 [ ] Terrorist

4.22 [ ] Firmly Resettled

4.23 [ ] Serious Non-Political Crime Outside the United States

4.24 [X] Applicant does **not** appear to be subject to a bar(s) to asylum or withholding of removal.

C. Identity:

4.25 [X] Applicant's identity was determined with a reasonable degree of certainty (check the box(es) that applies):

4.26 [X] Applicant's own credible statements. (If testimony is credible overall, this will suffice to establish the applicant's identity with a reasonable degree of certainty).

4.27 [ ] Passport which appears to be authentic.

4.28 [ ] Other evidence presented by applicant or in applicant's file (List): _____

4.29 [ ] Applicant's identity was not determined with a reasonable degree of certainty. (Explain on the continuation sheet.)

SECTION V: ASYLUM OFFICER / SUPERVISOR NAMES AND SIGNATURES

5.1 Ameli Davila ZHN386

Asylum officer name and ID CODE (print)

5.2 /s/ Ameli Davila

Asylum Officer's Signature

5.3 11/27/2015

Decision Date

5.4 Daniel A. Phillips, Supervisory Asylum Officer

Supervisory asylum officer name

5.5 /s/ Daniel A. Phillips

Supervisor's Signature

5.6 NOV 27 2015

Date Supervisor Approved decision

* * * *

IMMIGRATION COURT

333 SOUTH MIAMI AVE., STE. 700

MIAMI, FL 33130

In the Matter of: Case No: [redacted]

RODRIGUEZ-GRANADOS, ANA MARICELA

Respondent

IN: CREDIBLE FEAR REVIEW PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

On Dec 4, 2015 at 8:00 A.M. a review of the DHS Credible Fear Determination was held in the matter noted above. Testimony [X] was [ ] was not taken regarding the background of the Applicant and the Applicant's fear of returning to his/her country of origin or last habitual residence.

After consideration of the evidence, the Court finds that the Applicant [ ] has [X] has not established a significant possibility that he/she would be persecuted on the basis of his/her race, religion, nationality, membership in a particular social group, or because of his/her political opinion.

ORDER: It is hereby ordered that the decision of the immigration officer is:

[X] Affirmed, and the case is returned to the DHS for removal of the alien.

[ ] Vacated.

This is a final order. There is no appeal available.

DONE and ORDERED this 4th day of December, 2015

/S/ J. Daniel Dowell

J. DANIEL DOWELL

Immigration Judge

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P) FAX (F)

TO: [F] ALIEN [ ] ALIEN c/o Custodial Officer [ ] ALIEN's ATT/REP [M] DHS

DATE: 12/4/2015 BY: COURT STAFF /s/

Attachments: [ ] EOIR-33 [ ] EOIR-28 [ ] Legal Services List [ ] Other

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U2

Zulma Lorena Portillo de Diaz

* * * *

[Form I-870]

SECTION IV: CREDIBLE FEAR FINDINGS

A. Credible Fear Determination:

Credibility

4.1 [X] There is a significant possibility that the assertions underlying the applicant's claim could be found credible in a full asylum or withholding of removal hearing.

4.2 [ ] Applicant found **not** credible because (check boxes 4.3-4.5, which apply):

4.3 [ ] Testimony was internally inconsistent on material issues.

4.4 [ ] Testimony lacked sufficient detail on material issues.

4.5 [ ] Testimony was not consistent with country conditions on material issues.

Nexus

4.6 [ ] Race 4.7 [ ] Religion 4.8 [ ] Nationality
4.9 [ ] Membership in a Particular Social Group

(Define the social group):_____

4.10 [ ] Political Opinion 4.11 [ ] Coercive Family Planning (CPP) 4.12 [X] No Nexus

Credible Fear Finding

4.13 [ ] Credible fear of **persecution** established.

OR

4.14 [ ] Credible fear of **torture** established.

OR

4.15 [X] Credible fear of persecution NOT established and there is not a significant possibility that the applicant could establish eligibility for withholding of removal or deferral of removal under the Convention against Torture.

B. Possible Bars:

4.16 Applicant could be subject to a bar(s) to asylum or withholding of removal (check the box(es) that applies and explain on the continuation sheet):

4.17 [ ] Particularly Serious Crime 4.18 [ ] Security Risk

4.19 [ ] Aggravated Felon

4.20 [ ] Persecutor 4.21 [ ] Terrorist

4.22 [ ] Firmly Resettled

4.23 [ ] Serious Non-Political Crime Outside the United States

4.24 [X] Applicant does **not** appear to be subject to a bar(s) to asylum or withholding of removal.

C. Identity:

4.25 [X] Applicant's identity was determined with a reasonable degree of certainty (check the box(es) that applies):

4.26 [X] Applicant's own credible statements. (If testimony is credible overall, this will suffice to establish the applicant's identity with a reasonable degree of certainty).

4.27 [ ] Passport which appears to be authentic.

4.28 [ ] Other evidence presented by applicant or in applicant's file (List): _____

4.29 [ ] Applicant's identity was not determined with a reasonable degree of certainty. (Explain on the continuation sheet.)

SECTION V: ASYLUM OFFICER / SUPERVISOR NAMES AND SIGNATURES

5.1 Kathleen Jones ZHN 375

Asylum officer name and ID CODE (print)

5.2 /s/ Kathleen Jones

Asylum Officer's Signature

5.3 12/4/2015

Decision Date

5.4 Lee Telfer, Supervisory Asylum Officer

Supervisory asylum officer name

5.5 /s/ Lee Telfer

Supervisor's Signature

5.6 DEC 04 2015

Date Supervisor Approved decision

* * * *

IMMIGRATION COURT

333 SOUTH MIAMI AVE., STE. 700

MIAMI, FL 33130

In the Matter of:

LEAD FILE: [redacted]

RE: [redacted] PORTILLO DE DIAZ, ZULMA LORENA

[redacted]

Respondent

IN: CREDIBLE FEAR REVIEW PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

On Dec 8, 2015 at 8:00 A.M. a review of the DHS Credible Fear Determination was held in the matter noted above. Testimony [X] was [ ] was not taken regarding the background of the Applicant and the Applicant's fear of returning to his/her country of origin or last habitual residence.

After consideration of the evidence, the Court finds that the Applicant [ ] has [X] has not established a significant possibility that he/she would be persecuted on the basis of his/her race, religion, nationality, membership in a particular social group, or because of his/her political opinion.

ORDER: It is hereby ordered that the decision of the immigration officer is:

[X] Affirmed, and the case is returned to the DHS for removal of the alien.

[ ] Vacated.

This is a final order. There is no appeal available.

DONE and ORDERED this 8th day of Dec., 2015

/S/ Scott G. Alexander
SCOTT G. ALEXANDER
Immigration Judge

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P)

TO: [P] ALIEN [ ] ALIEN c/o Custodial Officer [ ] ALIEN's ATT/REP [P] DHS

DATE: 12/8/2015 BY: COURT STAFF SGA

Attachments: [ ] EOIR-33 [ ] EOIR-28 [ ] Legal Services List [ ] Other

U2

APPENDIX E

Constitutional & Statutory Provisions Involved

* * * *

Suspension Clause of the Constitution, Art. I, § 9, Cl. 2

The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

* * * *

8 U.S.C. § 1252(a)

(a) Applicable provisions

(1) General orders of removal

Judicial review of a final order of removal (other than an order of removal without a hearing pursuant to section 1225(b)(1) of this title) is governed only by chapter 158 of Title 28, except as provided in subsection (b) of this section and except that the court may not order the taking of additional evidence under section 2347(c) of such title.

(2) Matters not subject to judicial review

(A) Review relating to section 1225(b)(1) of this title

Notwithstanding 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-

(i) except as provided in subsection (e) of this section, 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) of this title,

(ii) except as provided in subsection (e) of this section, a decision by the Attorney General to invoke the provisions of such section,

(iii) the application of such section to individual aliens, including the determination made under section 1225(b)(1)(B) of this title, or

(iv) except as provided in the subsection (e) of this section, procedures and policies adopted by the Attorney General to implement the provisions of section 1225(b)(1) of this title.

* * * *

8 U.S.C. § 1252(e)

(e) Judicial review of orders under section 1225(b)(1)

(1) Limitations on relief

Without regard to the nature of the action or claim and without regard to the identity of the party or parties bringing the action, no court may

(A) enter declaratory, injunctive, or other equitable relief in any action pertaining to an order to exclude an alien in accordance with section 1225(b)(1) of this title except as specifically authorized in a subsequent paragraph of this subsection, or

(B) certify a class under Rule 23 of the Federal Rules of Civil Procedure in any action for which judicial review is authorized under a subsequent paragraph of this subsection.

(2) Habeas corpus proceedings

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

(A) whether the petitioner is an alien,

(B) whether the petitioner was ordered removed under such section, and

(C) whether the petitioner can prove by a preponderance of the evidence that the petitioner is an alien lawfully admitted for permanent residence, has been admitted as a refugee under section 1157 of this title, or has been granted asylum under section 1158 of this title, such status not having

been terminated, and is entitled to such further inquiry as prescribed by the Attorney General pursuant to section 1225(b)(1)(C) of this title.

(3) Challenges on validity of the system

(A) In general

Judicial review of determinations under section 1225(b) of this title and its implementation is available in an action instituted in the United States District Court for the District of Columbia, but shall be limited to determinations of--

(i) whether such section, or any regulation issued to implement such section, is constitutional; or

(ii) whether such a regulation, or a written policy directive, written policy guideline, or written procedure issued by or under the authority of the Attorney General to implement such section, is not consistent with applicable provisions of this subchapter or is otherwise in violation of law.

(B) Deadlines for bringing actions

Any action instituted under this paragraph must be filed no later than 60 days after the

date the challenged section, regulation, directive, guideline, or procedure described in clause (i) or (ii) of subparagraph (A) is first implemented.

(C) Notice of appeal

A notice of appeal of an order issued by the District Court under this paragraph may be filed not later than 30 days after the date of issuance of such order.

(D) Expeditious consideration of cases

It shall be the duty of the District Court, the Court of Appeals, and the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of any case considered under this paragraph.

(4) Decision

In any case where the court determines that the petitioner--

(A) is an alien who was not ordered removed under section 1225(b)(1) of this title, or

(B) has demonstrated by a preponderance of the evidence that the alien is an alien lawfully admitted for permanent residence, has been admitted as a refugee under section 1157 of this title, or has been

granted asylum under section 1158 of this title, the court may order no remedy or relief other than to require that the petitioner be provided a hearing in accordance with section 1229a of this title. Any alien who is provided a hearing under section 1229a of this title pursuant to this paragraph may thereafter obtain judicial review of any resulting final order of removal pursuant to subsection (a)(1) of this section.

(5) Scope of inquiry

In determining whether an alien has been ordered removed under section 1225(b)(1) of this title, the court's inquiry shall be limited to whether such an order in fact was issued and whether it relates to the petitioner. There shall be no review of whether the alien is actually inadmissible or entitled to any relief from removal.

* * * *

8 U.S.C. § 1225(b)

(b) Inspection of applicants for admission

(1) Inspection of aliens arriving in the United States and certain other aliens who have not been admitted or paroled

(A) Screening

(i) In general

If an immigration officer determines that an alien (other than an alien described in subparagraph (F)) who is arriving in the United States or is described in clause (iii) is inadmissible under section
1182(a)(6)(C) or 1182(a)(7) of this title, 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.

(ii) Claims for asylum

If an immigration officer determines that an alien (other than an alien described in subparagraph (F)) who is arriving in the United States or is described in clause (iii) is inadmissible under section
1182(a)(6)(C) or 1182(a)(7) of this title and the alien indicates either an intention to apply for asylum under section 1158 of this title or a fear of persecution, the officer shall refer the alien for an interview by an asylum officer under subparagraph (B).

(iii) Application to certain other aliens

(I) In general

The Attorney General may apply clauses (i) and (ii) of this subparagraph to any or all aliens described in subclause (II) as

designated by the Attorney General. Such designation shall be in the sole and unreviewable discretion of the Attorney General and may be modified at any time.

(II) Aliens described

An alien described in this clause is an alien who is not described in subparagraph (F), who has not been admitted or paroled into the United States, and who 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 under this subparagraph.

(B) Asylum interviews

(i) Conduct by asylum officers

An asylum officer shall conduct interviews of aliens referred under subparagraph (A)(ii), either at a port of entry or at such other place designated by the Attorney General.

(ii) Referral of certain aliens

If the officer determines at the time of the interview that an alien has a credible fear of persecution (within the meaning of clause (v)), the alien shall

be detained for further consideration of the application for asylum.

(iii) Removal without further review if no credible fear of persecution

(I) In general

Subject to subclause (III), if the officer determines that an alien does not have a credible fear of persecution, the officer shall order the alien removed from the United States without further hearing or review.

(II) Record of determination

The officer shall prepare a written record of a determination under subclause (I). Such record shall include a summary of the material facts as stated by the applicant, such additional facts (if any) relied upon by the officer, and the officer's analysis of why, in the light of such facts, the alien has not established a credible fear of persecution. A copy of the officer's interview notes shall be attached to the written summary.

(III) Review of determination

The Attorney General shall provide by regulation and upon the alien's request for prompt review by an immigration judge of a determination under subclause (I)

that the alien does not have a credible fear of persecution. Such review shall include an opportunity for the alien to be heard and questioned by the immigration judge, either in person or by telephonic or video connection. Review shall be concluded as expeditiously as possible, to the maximum extent practicable within 24 hours, but in no case later than 7 days after the date of the determination under subclause (I).

(IV) Mandatory detention

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.

(iv) Information about interviews

The Attorney General shall provide information concerning the asylum interview described in this subparagraph to aliens who may be eligible. An alien who is eligible for such interview may consult with a person or persons of the alien's choosing prior to the interview or any review thereof, according to regulations prescribed by the Attorney General. Such

consultation shall be at no expense to the Government and shall not unreasonably delay the process.

(v) "Credible fear of persecution" defined

For purposes of this subparagraph, the term "credible fear of persecution" means that there is a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien's claim and such other facts as are known to the officer, that the alien could establish eligibility for asylum under section 1158 of this title.

(C) Limitation on administrative review

Except as provided in subparagraph (B)(iii)(III), a removal order entered in accordance with subparagraph (A)(i) or (B)(iii)(I) is not subject to administrative appeal, except that the Attorney General shall provide by regulation for prompt review of such an order under subparagraph (A)(i) against an alien who claims under oath, or as permitted under penalty of perjury under section 1746 of Title 28, after having been warned of the penalties for falsely

making such claim under such conditions, to have been lawfully admitted for permanent residence, to have been admitted as a refugee under section 1157 of this title, or to have been granted asylum under section 1158 of this title.

(D) Limit on collateral attacks

In any action brought against an alien under section 1325(a) of this title or section 1326 of this title, the court shall not have jurisdiction to hear any claim attacking the validity of an order of removal entered under subparagraph (A)(i) or (B)(iii).

(E) "Asylum officer" defined

As used in this paragraph, the term "asylum officer" means an immigration officer who--

(i) has had professional training in country conditions, asylum law, and interview techniques comparable to that provided to full-time adjudicators of applications under section 1158 of this title, and

(ii) is supervised by an officer who meets the condition described in clause (i) and has had substantial experience adjudicating asylum applications.

(F) Exception

Subparagraph (A) shall not apply to an alien who is a native or citizen of a

country in the Western Hemisphere with whose government the United States does not have full diplomatic relations and who arrives by aircraft at a port of entry.

(G) Commonwealth of the Northern Mariana Islands

Nothing in this subsection shall be construed to authorize or require any person described in section 1158(e) of this title to be permitted to apply for asylum under section 1158 of this title at any time before January 1, 2014.

(2) Inspection of other aliens

(A) In general

Subject to subparagraphs (B) and (C), in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title.

(B) Exception

Subparagraph (A) shall not apply to an alien--

(i) who is a crewman,

(ii) to whom paragraph (1) applies, or

(iii) who is a stowaway.

(C) Treatment of aliens arriving from contiguous territory

In the case of an alien described in subparagraph (A) who is arriving on land (whether or not at a designated port of arrival) from a foreign territory contiguous to the United States, the Attorney General may return the alien to that territory pending a proceeding under section 1229a of this title.

(3) Challenge of decision

The decision of the examining immigration officer, if favorable to the admission of any alien, shall be subject to challenge by any other immigration officer and such challenge shall operate to take the alien whose privilege to be admitted is so challenged, before an immigration judge for a proceeding under section 1229a of this title.