NOT FOR PUBLICATION

FILED

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MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ELLOUISSAINT JUNIOR HERBY LAMARE, Petitioner, v. MERRICK B. GARLAND, Attorney General, Respondent.	No. 20-71358 Agency No. A203-606-509 MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted December 12, 2023**
Pasadena, California

Before: MURGUIA, Chief Judge, and GRABER and BEA, Circuit Judges.
Concurrence by Chief Judge MURGUIA.

Ellouissaint Junior Herby Lamare, a citizen of Haiti, petitions this court to review the expedited order of removal issued against him as a result of his placement in expedited removal proceedings. In response to the court's order requesting

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

supplemental briefing on the effect of our decision in *Mendoza-Linares v. Garland*, 51 F.4th 1146 (9th Cir. 2022), *petition for cert. filed*, No. 23-606 (U.S. Dec. 1, 2023), Lamare made clear that he "does not challenge the government's right to order him removed under the expedited removal statute" or "the legal or factual bases of his removal order." He challenges only the purported denial of his right to access the asylum process under the Immigration and Nationality Act—issues that go to the merits litigated in his expedited removal proceedings. Pursuant to § 242(a)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1252(a)(2)(A), Congress has stripped us of subject matter jurisdiction to review expedited removal proceedings that involve aliens who, like Lamare, have not yet effected entry into the United States. *Mendoza-Linares*, 51 F.4th at 1149.

PETITION DISMISSED.

Lamare v. Garland, 20-71358

MURGUIA, Chief Circuit Judge, joined by GRABER, Circuit Judge, concurring:

I concur in the memorandum disposition. I write separately to note that I continue to believe that *Mendoza-Linares* was wrongly decided for the reasons articulated in the statement respecting the denial of rehearing en banc in that case. *Linares v. Garland*, 71 F.4th 1201, 1203–06 (9th Cir. 2023).