UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
Columbus Division

A.O.A.

Petitioner,

v.

TERRENCE DICKERSON, Warden, Stewart Detention Center, *in his official capacity*;

Respondent.

No. 4:25-CV-93-CDL-AGH

PETITIONER'S SUPPLEMENTAL BRIEF
IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

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INTRODUCTION

This Court heard Oral Argument in the above-captioned case on May 29, 2025, on which date the Court directed the parties to submit supplemental briefing on the "appropriate test that should be used to determine when the length and nature of the detention under 8 U.S.C. § 1226(c) rises to the level of a constitutional violation." Am. Order, Doc. 4. This Court should continue applying the multi-factor test set forth in *Sopo v. U.S. Attorney General*, 825 F.3d 1199, 1217-19 (11th Cir. 2016), *vacated as moot*, 890 F.3d 952 (11th Cir. 2018), with modifications to the third factor described herein.

Additionally, the Court directed Petitioner to provide a factual update on his underlying immigration proceedings. Petitioner respectfully submits this brief addressing the Court's questions in further support of his Petition for Writ of Habeas Corpus.

FACTS

On or about February 8, 2018, Petitioner's U.S. citizen wife submitted Form I-130, Immigrant Petition for Alien Relative, on behalf of her beneficiary spouse, Petitioner A.O.A. Petitioner concurrently filed Form I-485, Application to Adjust Status to Permanent Resident; Form I-765, Application for Work Authorization; and Form I-131, Application for Travel Authorization. U.S. Citizenship and Immigration Services ("USCIS") issued a receipt notice related to his I-130, I-485, I-765, and I-131 on April 19, 2018, acknowledging receipt and processing of his immigration applications. *See* Ex. A (I-130 Receipt Notice); Ex. B (I-485 Receipt Notice); Ex. C (I-765 Receipt Notice); Ex. D (I-131 Receipt Notice). USCIS issued a Request for Applicant to Appear for Initial Interview for his I-485 on February 4, 2019, for an interview at the Atlanta CIS office on March 14, 2019. *See* Ex. E (Request for Applicant to Appear for Initial Interview).

On March 14, 2019, Petitioner attended his adjustment of status interview and received a Notice of Interview Results continuing his case, indicating that his case was "being held for additional review" and required no further action from Petitioner before rendering a final decision on his application. *See* Ex. F (I-485 Notice of Interview Results). Undersigned counsel is unaware of the reason for Petitioner's case continuance and has no information regarding any subsequent action from USCIS regarding those applications. To date, USCIS has not issued a final decision on Petitioner's immigration applications. As of June 18, 2025, USCIS's website indicates Petitioner's Form I-485 case status as "Interview Was Scheduled."[1] Similarly, his I-130 remains pending with USCIS—more than seven years after filing.[2] Petitioner's I-131 and initial I-765 were approved on October 16, 2018, based on his pending I-485. *See* Ex. G (I-765 and Advance Parole Approval Notice dated Oct. 16, 2018) . Petitioner later received approval for a renewed employment authorization document ("EAD") on November 30, 2020. *See* Ex. H (I-765 Approval Notice dated Nov. 30, 2020).

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[1] *See* U.S. Citizenship & Immigr. Servs., *Case Status Online*, https://egov.uscis.gov/ (enter Receipt Number MSC1890945239) (last accessed June 18, 2025). The status message reads:

> **Interview Was Scheduled**
>
> On February 4, 2019, we scheduled an interview for your Form I-485, Application to Register Permanent Residence or Adjust Status, Receipt Number MSC1890945239. We will mail you an interview notice. Please follow any instructions in the notice. If you move, go to www.uscis.gov/addresschange to give us your new mailing address.

[2] *See id.* (enter Receipt Number MSC1890945240) (last accessed June 18, 2025). The status message reads:

> **Case Was Received**
>
> On April 12, 2018, we received your Form I-130, Petition for Alien Relative, Receipt Number MSC1890945240, and sent you the receipt notice that describes how we will process your case. Please follow the instructions in the notice. If you have any questions, visit the USCIS Contact Center webpage at www.uscis.gov/contactcenter. If you move, go to www.uscis.gov/addresschange to give us your new mailing address.

On October 6, 2022, Petitioner was convicted of Money Laundering Conspiracy under 18 U.S.C. § 1956(h) and sentenced to time served, or 30 months. Immigration and Customs Enforcement ("ICE") detained Petitioner on or about December 13, 2022, and the Department of Homeland Security ("DHS") initiated removal proceedings. Since then, Petitioner's removal proceedings have remained ongoing while he has pursued immigration relief and awaited processing of his underlying immigration applications. Throughout this process, Petitioner has retained several different immigration attorneys in an attempt to obtain immigration relief.

Most recently, on June 5, 2025, Petitioner filed Form I-589, Application for Asylum and for Withholding of Removal, based on his fear of persecution and torture arising out of testimony he provided during his criminal proceedings against individuals who could harm him in Nigeria. *See* Ex. I (I-589 Application). Petitioner has an individual hearing scheduled for August 27, 2025.

As of the date of filing, Petitioner has been in detention for over 900 days; 30 months; or two-and-a-half years. Petitioner has yet to have the opportunity to present the merits of his prospective immigration relief before the Executive Office for Immigration Review ("EOIR"). Absent relief, Petitioner faces continued detention while USCIS and the Immigration Court adjudicate his applications for immigration relief.

ARGUMENT

To determine whether Petitioner's detention has become unreasonable under the Fifth Amendment Due Process Clause, this Court should apply the multi-factor reasonableness test outlined in *Sopo*, with the exception of the third factor the Eleventh Circuit considered in that case ("whether it will be possible to remove the criminal [noncitizen] after there is a final order of removal"), 825 F.3d at 1218, which the Court should not apply because it conflates pre-order

detention under 8 U.S.C. § 1226(c) with post-order detention under 8 U.S.C. § 1231. In its place, the Court should instead consider the likelihood of continued detention absent judicial relief. Petitioner otherwise preserves and reincorporates by reference the arguments raised in his Reply in Support of Petition for Writ of Habeas Corpus, Doc. 13, with respect to applying *Sopo* in cases involving detention under 8 U.S.C. § 1226(c) and its specific application to Petitioner's facts here.

In analyzing when the length and nature of detention under § 1226(c) rises to the level of a constitutional violation, this Court should thus consider (1) the length of detention without a bond hearing; (2) the reason removal proceedings are protracted; **(3) the likelihood of continued detention absent judicial relief**; (4) whether the period of civil detention exceeds the time spent incarcerated for the crime triggering immigration consequences; and (5) whether the facility where the petitioner is detained meaningfully differs from a penal institution. *Sopo*, 825 F.3d at 1217-18; *German Santos v. Warden*, 965 F.3d 203, 212 (3d Cir. 2020) (considering the "likelihood of continued detention"). Because "[t]he reasonableness inquiry is necessarily fact intensive, ... the factors that should be considered will vary depending on the individual circumstances present in each case." *Sopo*, 825 F.3d at 1218. Accordingly, the Court should consider additional factors as needed depending on an individual's circumstances. *Id.*

Replacing the third *Sopo* factor is more consistent with the purposes of pre-order detention under § 1226(c). In *Sopo*, the third factor the Eleventh Circuit considered was "whether it will be possible to remove the [noncitizen] after there is a final order of removal." *Sopo*, 825 F.3d at 1218. But tying relief under the pre-removal order detention statute to a post-removal order contingency misses the mark in terms of the purpose of habeas relief; regardless of the

ultimate outcome of immigration proceedings, detention can nonetheless become so prolonged as to become unconstitutional.

Considering the likelihood of continued detention absent judicial relief accords with approaches other courts have taken. *See German Santos*, 965 F.3d at 211-12. In *German Santos*, the Third Circuit adopted the likelihood of continued detention as a factor in its analysis of the unreasonableness of detention under § 1226(c). *Id.* "When the [noncitizen's] removal proceedings are unlikely to end soon, this suggests that continued detention without a bond hearing is unreasonable." *Id.* at 211. There, the petitioner reserved his right to appeal the denial of his application for cancellation of removal to the Board of Immigration Appeals ("BIA"). *Id.* at 212. Considering the possibility of an appeal in addition to a potential future petition for review, the court concluded that the appeals process "would add months more in prison," "strongly support[ing] a finding of unreasonableness." *Id.* Similarly, in *Clue v. Greenwalt*, the Southern District of Georgia considered the likelihood of detention concluding in the near future as its sixth factor in the *Sopo* analysis. No. 5:21-cv-80, 2022 WL 17490505, at *6 (S.D. Ga. Oct. 24, 2022). Because the petitioner's pending appeal of a BIA order "could take several months or over a year," the *Clue* court found that this factor weighed in the petitioner's favor. *Id.*

Here, Petitioner's detention likely will continue absent judicial relief. Petitioner's I-130 and I-485 have been pending with USCIS for seven years. He will not have a hearing before the Immigration Court on his I-589 for at least two months. Should Petitioner choose to appeal or otherwise challenge any adjudication by USCIS or the Immigration Court, his detention will necessarily continue for much longer during the appeals process. Petitioner's desire to continue pursuing immigration relief reflects his desire to remain in the United States and be a present father to his eight year old daughter, as well as a present husband and community member.

This third factor thus weighs in Petitioner's favor. Petitioner may remain detained indefinitely without an opportunity for release pending the ultimate resolution of his underlying immigration proceedings. As outlined in Petitioner's Reply, Doc. 13, the weight of the *Sopo* factors weigh in favor of ordering Petitioner a bond hearing.

CONCLUSION

For the aforementioned reasons, Petitioner respectfully requests that this Court grant the relief sought by the Petition in all respects and adopt *Sopo* as modified herein in its analysis of when the nature and length of detention under 8 U.S.C. § 1226(c) rises to the level of a constitutional violation.

Respectfully submitted,

Dated: June 20, 2025

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