IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

Dambrosio, David

Petitioner,

vs.

Joseph D. McDonald, Jr., Sheriff
Plymouth County Sheriff's Office, MA;
Antone Moniz, Superintendent
Plymouth County Sheriff's Office, MA;
Kristi Noem, Secretary of the Department of Homeland Security;
Todd Lyons, Assistant Secretary of Immigration & Customs Enforcement;
Pamela Bondi, U.S. Attorney General;
Patricia Hyde, Boston Field Office Director for Detention and Removal, Immigration & Customs Enforcement;
Respondents.

CIVIL ACTION FILE NO.25-10782

Agency Case No.: A[redacted]

PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

COMES NOW Petitioner, David Dambrosio, and hereby petitions this Honorable Court for the issuance of a writ of habeas corpus as follows:

I. JURISDICTION

This action arises under the U.S. Constitution, the Immigration & Nationality Act of 1952, as amended (INA), 8 USC § 1101 *et seq.*, and the Administrative Procedure Act (APA), 5 USC § 701 *et seq.* This court has *habeas* jurisdiction under 28 U.S.C. § 2241; Art.1, § 9, Cl.2 of the United States Constitution (the "Suspension Clause"); and the common law. This court has subject matter jurisdiction in this case under Article III, Section 2 of the Constitution because Petitioner is raising the constitutional issues of whether the Department of Homeland Security ("DHS") is depriving him of his liberty without due process of law, and whether the Immigration and Customs Enforcement's ("ICE") expedited removal order violates full faith and credit. This court may also exercise jurisdiction pursuant to 28 USC § 1331 and may grant relief pursuant to the Declaratory Judgement Act, 28 USC § 2201 et seq., and the All Writs Act, 28 USC § 1651.

In I.N.S. v. St. Cyr, 121 S. Ct. 2271, 533 U.S. 289 (2001), the Supreme Court held that federal courts retain *habeas corpus* jurisdiction under 28 USC § 2241 despite restrictions on judicial review enacted under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA) and the Anti-Terrorism and Effective Death Penalty Act of 1996 (AEDPA). Consequently, § 2241 habeas review remains available to Petitioner.

Furthermore, Federal courts have jurisdiction over final orders of

removal issued by DHS under § 1252(a)(1) even for individuals who enter with a Visa Waiver. *See* Bingham v. Eric H. Holder Jr., 637 F.3d 1040 (9th Cir. 2011); Bayo v. Napolitano, 593 F.3d 495, 500 (7th Cir.2010) (en banc); entrant); Bradley v. U.S. Attorney General, 603 F.3d 235, 237 n. 1 (3d Cir.2010); McCarthy v. Mukasey, 555 F.3d 459 (5th Cir.2009).

II. VENUE

Venue is proper in the United States District Court for the District of Massachusetts, because Petitioner is currently detained at the Plymouth County Correctional Facility in Massachusetts in the custody of DHS.

III. PARTIES

Petitioner, a 32-year-old citizen of Italy who entered the United States in April 2016 through the Electronic System for Travel Authorization (ESTA) under the Visa Waiver Program (VWP) and overstayed, is unlawfully incarcerated by Respondent DHS at the Plymouth County Correctional Facility in Massachusetts.

Respondents Kristi Noem, the Secretary of the DHS, and Todd Lyons, the Assistant Secretary of ICE, are responsible for administration of ICE, the implementation and enforcement and removal operations of the INA, and have ultimate custodial authority over Petitioner. Respondent Kristi Noem is the highest official in charge of Petitioner's unlawful incarceration.

Respondent, Pamela Bondi, Attorney General of the United States, heads the Department of Justice, which includes the Executive Office for Immigration Review ("EOIR"). As Attorney General, Respondent Pamela Bondi is responsible, at least in part, for the legal control of the custody of Petitioner and is a proper party in all immigration challenges in the Federal Courts.

Respondent, Patricia Hyde, Boston Field Office Director for ICE Detention and Removal, exercises day-to-day control over Petitioner and is primarily responsible for Petitioner's unlawful detention at the Plymouth County Correctional Facility in Massachusetts. ICE has contracted with the Plymouth County jail to house immigration detainees such as Petitioner, and Petitioner remains under direct control of ICE and its agents.

Respondent, Joseph D. McDonald, Jr., is the Sheriff of Plymouth County with supervisory authority of the Jail where Petitioner is currently detained and has nominal control over Petitioner's custody.

Respondent, Antone Moniz, is the Superintendent of Plymouth County with supervisory authority of the Jail where Petitioner is currently detained and has nominal control over Petitioner's custody.

IV. EXHAUSTION OF REMEDIES

Petitioner has exhausted his administrative remedies to the extent

required by law, and his only remedy is by way of this judicial action. Petitioner is considered an "arriving alien" who waived his rights to have his removal contested by an Immigration Judge based on the VWP. Therefore, neither an Immigration Judge nor EOIR has jurisdiction to review his eligibility for bond or his adjustment of status application (USCIS Form I-485, Application to Register Permanent Residence or Adjust Status ["Form I-485"]). Petitioner properly filed his Form I-485 with the U.S. Citizenship and Immigration Services ("USCIS"), the DHS agency with sole jurisdiction to adjudicate his Form I-485. ***See*** **Exhibit 1** proof of filing with USCIS.

Petitioner's attorney contacted the Boston ICE ERO office on March 12, 2025 to secure Petitioner's release from ICE detention, but the Boston ICE refused Petitioner's release. ***See*** **Exhibit 2**. Petitioner's attorney contacted the Boston ICE OPLA's office on March 17, 2025, and the Boston ICE OPLA office deferred to ICE ERO's custody decision and refused Petitioner's release from ICE Custody. ***See*** **Exhibit 3**. Petitioner has exhausted all remedies for his release prior to the filing of this writ for petition of habeas corpus, as immigration judges are divested of jurisdiction.

This case involves substantial constitutional questions as to whether the DHS is depriving Petitioner of his liberty without due process of law. The Board of Immigration Appeals ("BIA") has long held that it lacks jurisdiction

over constitutional issues. *See, e.g.*, In re Salazar, 23 I&N Dec. 223 (BIA 2002); Matter of Rodriguez-Carrillo, 22 I&N Dec. 1031 (BIA 1999); Matter of C-, 20 I&N Dec. 529 (BIA 1992); Matter of Cenatice, 16 I&N Dec.162 (BIA 1977).

Moreover, Petitioner is not required to exhaust administrative remedies where doing so would result in irreparable harm to Petitioner. McCarthy v. Madigan, 503 U.S. 140 (1992); Iddir v. INS, 301 F. 3d 492, 498 (7th Cir. 2002). Petitioner is currently detained by ICE, but the immigration courts are devoid of jurisdiction. USCIS has sole jurisdiction to adjudicate Petitioner's pending I-485 application to obtain permanent residency, and Petitioner's continued detention during the pendency of USCIS's adjudication of his applications will result in irreparable harm to Petitioner because the USCIS currently takes over three years to process these and similar applications. This unlawful detention is especially harmful to Petitioner, as he suffers from several medical problems including hypertension, thyroid dysfunction, and post-traumatic stress disorder (PTSD). Petitioner has been unable to receive required heart medication while in ICE custody, further exacerbating his suffering. Moreover, Petitioner has no criminal history, yet he is being detained in facilities that have general population prisoners including hardened criminals. Petitioner is being bullied and attacked by other prisoners

at the facility. Respondents have other less restrictive methods to track Petitioner, including but not limited to ICE's common use of ankle bracelets.

V. STATEMENT OF FACTS & PROCEDURE

Petitioner is a 32-year-old citizen of Italy who was admitted into the United States after inspection in April 2016 and has not departed the United States since his April 2016 entry. Petitioner married a U.S. citizen ("USC") in August 2019. During the course of his marriage, Petitioner's USC spouse subjected him to physical, emotional, and psychological abuse. Petitioner hired the Mesa Law Firm in 2024 to prepare and file a VAWA (Violence Against Women's Act) based self-petition (USCIS Form I-360) based on the extreme cruelty that he endured by his USC spouse, and the Mesa Law Firm began preparing his VAWA petition and obtained a psychologist evaluation report in support of his VAWA petition.

On or about February 19, 2025, Petitioner made a wrong turn while driving in Vermont and mistakenly arrived to the Canadian border. Canadian officials promptly returned Petitioner back to the U.S. border as he did not have a passport or visa to enter Canada, where he was apprehended by DHS and detained. From there, he was transferred to the custody of ICE. The sole basis for Petitioner's current detention is that he overstayed his admission

period.

On or about March 2025, Petitioner hired the undersigned counsel to prepare and file for his permanent residency on an expedited basis. In March 2025, Petitioner concurrently filed a VAWA-based I-360 immigrant visa petition with concurrent filing of Form I-485 application for adjustment of status to U.S. permanent resident. The Form I-360 petition and Form I-485 applications are pending before USCIS. Current processing times for USCIS for these and similar VAWA-based applications are over 42 months, or three and a half years. ***See* Exhibit 4** USCIS processing times for VAWA cases.

Petitioner is a law-abiding individual with no criminal history. His only infraction is the overstay of his visa admission period, but his VAWA-based I-360 petition may waive his overstay, as the special immigrant petition includes a broad waiver of almost all grounds of inadmissibility—including an overstay and even illegal entry into the United States. Petitioner can obtain a lawful permanent resident status as long as USCIS adjudicates his application, which adjudication is currently backlogged by a significant period of time.

VI. ARGUMENT

A. Petitioner's Detention Violates the Due Process Clause.

Petitioner has a bona fide pending I-360 VAWA petition and an I-485 adjustment of status application pending with USCIS. The INA permits adjustment of status under VAWA, regardless of removability. *See* 8 USC § 1154(a)(1)(A).

Congress enacted VAWA to provide humanitarian protection to abused noncitizens and ensure access to immigration benefits without fear of detention or removal. VAWA allows eligible noncitizens to seek immigration relief affirmatively with USCIS and provides that such individuals may remain in the United States while their petitions and applications are adjudicated. These petitions waive the ground of inadmissibility caused by an overstay such as Petitioner's. ICE's detention of Petitioner, a VAWA applicant with a concurrent Form I-485 pending before USCIS, frustrates the statutory purpose of VAWA, which allows a petitioner to remain in the United States as a survivor of domestic violence while his application is adjudicated with USCIS.

ICE's detention of Petitioner violates Petitioner's right to due process under the Fifth Amendment, which guarantees all individuals in the United States— including noncitizens—the right to due process. Plyler v. Doe, 457 U.S. 202, 210, 102 S. Ct. 2382, 2391, 72 L. Ed. 2d 786 (1982) ("Aliens, even aliens whose presence in this country is unlawful, have long been recognized

as 'persons' guaranteed due process of law by the Fifth and Fourteenth Amendments."); Mathews v. Diaz, 426 U.S. 67, 77, 96 S. Ct. 1883, 1890, 48 L. Ed. 2d 478 (1976) (the Fifth Amendment protects aliens from unlawful discrimination by the Federal Government). Courts have long recognized that individuals with pending applications for relief, especially those rooted in humanitarian concerns, are entitled to due-process protection.

In S.N.C. v. Sessions, 18 Civ. 7680 (LGS), the petitioner, who had both a T-visa petition for victims of human trafficking and a VAWA petition pending before USCIS, filed a habeas corpus petition seeking a stay of removal and release from detention. The Court stated: "In considering a petitioner's fitness for bail, courts assess: (1) "whether the petition raises substantial claims" and (2) "whether extraordinary circumstances exist[] that make the grant of bail necessary to make the . . . remedy effective." The Court upheld Petitioner's allegation that executing her removal order before her T-visa and VAWA applications are adjudicated violates the Due Process Clause of the Fifth Amendment. The Court further recognized that her trauma history, PTSD, and separation from her nursing child were extraordinary circumstances that entitled her to release from ICE detention.

In the present case, Petitioner has presented a *prima facie* approvable VAWA petition and a valid application for adjustment of status without any

grounds of inadmissibility. He has a protected liberty interest in having his humanitarian relief applications adjudicated without interference and a due process right to have his applications adjudicated before removal. Furthermore, Petition has a trauma history and PTSD as a result of domestic violence, ***See*** **Exhibit 5**, which amounts to extraordinary circumstance that warrant his release from ICE detention. Moreover, ICE's failure to consider less restrictive alternatives to detention— such as bond, release on recognizance, or even an ankle bracelet— further compounds the constitutional violation. Petitioner's detention does not further any legitimate government interest in immigration enforcement, and instead only deters him from pursuing lawful relief. This arbitrary detention runs afoul of the Fifth Amendment's due process guarantees.

B. Petitioner Is Not a Flight Risk or Danger to the Community.

Petitioner is not a flight risk. He has deep ties to the community, including close relationships with friends and support networks who are aware of his immigration proceedings and are willing to provide housing and supervision if he is released. Additionally, Petitioner has no criminal history whatsoever. He has never been arrested or charged with any offense and has always conducted himself in a law-abiding and respectful manner.

Importantly, Petitioner is actively pursuing immigration relief through a pending Form I-360 VAWA petition and Form I-485 adjustment of status application, which provide a pathway to lawful permanent residency. He has a viable opportunity to remain in the United States legally and continue rebuilding his life free from abuse.

In Xiu Qing You v. Nielsen, 18 Civ. 5392 (GBD) (SN), The court held that the petitioner's detention was unlawful under 8 USC § 1231(a)(6) because the government made no findings that he posed a flight risk or danger to the community. Here, there is no evidence that Petitioner poses any danger to the community or that he would fail to comply with conditions of release. Continued detention under these circumstances is unnecessary and unsupported by the individualized assessment that due process requires.

C. Petitioner's Waiver of Rights under 8 USC § 1187 (b) is Unconstitutional

Petitioner's waiver of rights under 8 USC § 1187 (b) (INA § 217) is unconstitutional as it pertains to Petitioner's case. Under 8 USC § 1187 (b), this section requires individuals who enter on a visa waiver program to have waived any right to review or appeal an immigration officer's determination as to their admissibility into a port of entry in the United States and to contest

any action for removal other than on the basis of an application for asylum. This waiver is often executed before the entrant fully understands the rights they are relinquishing, raising questions about the validity of such waivers.

Federal courts have scrutinized the waiver of rights under INA § 217, which pertains to the VWP, due to concerns about the constitutionality of requiring noncitizens to waive certain rights without fully understanding the implications. The primary issue is whether such waivers are made knowingly and voluntarily, given the complexity of immigration law and the potential consequences of waiving rights. A waiver is "an intentional relinquishment or abandonment of a known right or privilege." Johnson v. Zerbst, 304 U.S. 458, 464 (1938). A presumption against such an abandonment of rights exists in the civil as well as the criminal context. *See* Fuentes v. Shevin, 407 U.S. 67, 94 n.31 (1972).

It is well established that "[t]he government bears the burden of proving the waiver." United States v. Lopez-Vasquez, supra, at 754; *see also* Brewer v. Williams, 430 U.S. 387, 404 (1977) ("[I]t [is] incumbent upon the State to prove 'an intentional relinquishment or abandonment of a known right or privilege.'" (quoting Johnson v. Zerbst, supra, at 464)); Barker v. Wingo, 407 U.S. 514, 525-26 (1972) ("Courts should 'indulge every reasonable presumption against waiver,' and they should 'not presume

acquiescence in the loss of fundamental rights.'" (quoting Aetna Ins. Co. v. Kennedy, 301 U.S. 389, 393 (1937), and Ohio Bell Tel. Co. v. Public Utilities Comm., 301 U.S. 292, 307 (1937))).

Courts have raised concerns that the procedures used to obtain these waivers may not adequately inform entrants of their rights or the severe immigration consequences of waiving them. "The standard for waiver is whether the actor fully understands the right in question and voluntarily intends to relinquish it." Edwards v. Arizona, 451 U.S. 477, 489 (1981). This lack of informed consent can render the waivers constitutionally deficient, as seen in cases where the forms used did not sufficiently explain the rights being waived. Petitioner was not fully informed and aware of the rights he was waiving, and therefore, the waiver in his case is unconstitutional.

D. Detention Conditions and Alternative to Detention

Originally, Petitioner has been detained at NorthWest Correctional Facility in St. Albans, Vermont, under harsh conditions. Petitioner, a non-criminal, was detained with murder suspects and other convicted felons. He requested and was denied prescription heart and thyroid medication to treat his hypothyroidism and heart condition. Petitioner's inability to take required medication has caused Petitioner to suffer heart palpitations and worsened his

medical condition.

Petitioner is currently detained with general population prisoners in harsh conditions at the Plymouth, Massachusetts detention facility. At the Plymouth detention facility, Petitioner is one of five prisoners sharing the same bathroom. The prisoners must wake at 5:00 a.m. to enjoy a 10-minute breakfast that is denied to them should they miss their 5:00 a.m. breakfast window. Petitioner sleeps on bunk beds with a sponge-like mattresses, no pillow, and only one blanket in a very cold region of the United States. Simple necessities, like a toothbrush that he asked for, were not provided, as the officers said they do not have one. The communal showers are unsanitary and emit a terrible smell because prisoners defecate in the showers. Petitioner has celiac disease requiring a gluten-free special diet that is not provided. The only thing that Petitioner can eat is some meat and rice, beans, potato, and applesauce. Another prisoner at Plymouth threatened Petitioner he would break Petitioner's ankles, stepped hard on Petitioner's foot, hurt his ankle, and broke Petitioner's prison-provided shoes. Furthermore, Petitioner suffered bullying and unwanted physical contact, threats, coercion and attacks from other inmates in that facility. He is of short stature, small in overall size and unable to defend himself against these attacks.

E. As a VWP entrant, Petition is entitled to a bond hearing under USC § 1226

ICE has detained Petitioner pursuant to USC § 1226, not USC § 1887. Hence, Respondent has a right to a bond proceeding under the former provision. Section 1887(b) provides, in pertinent part, that an entrant through the VWP waives any right to contest, other than on the basis of an application for asylum, any action for removal of the noncitizen. It does not explicitly provide that a noncitizen through the VWP waives his or her right to a bond proceeding. The Board of Immigration Appeals (BIA) concluded in *Matter of A-W-* that a noncitizen admitted through the VWP and has not been serviced a Notice to Appear under 8 C.F.R. § 1240 is not entitled to a bond hearing before an immigration judge under 8 C.F.R. § 1236.1(d). 25 I&N Dec. 45, 48 (BIA 2009). However, the BIA's conclusion in *Matter of A-W-* is misguided because it was based on an incorrect premise that the VWP entrant was detained pursuant to 8 USC § 1187(c)(2)(E).

However, 8 USC § 1187(c)(2)(E) contains no language explicitly authorizing the detention of VWP entrants. Szentkiralyi v. Ahrendt, No. CV 17-1889 (SDW), at *6 (D.N.J. Aug. 14, 2017) (finding that a noncitizen who entered through the VWP was detained pursuant to 8 USC § 1226 and entitled to a bond hearing). Rather, it provides that:

> The government of the country accepts for repatriation any citizen, former citizen, or national of the country against whom a final executable order of removal is issued not later than three weeks after the issuance of the final order of removal. Nothing in this subparagraph creates any duty for the United States or any right for any alien with respect to removal or release. **Nothing in this subparagraph gives rise to any cause of action or claim under this paragraph or any other law against any official of the United States or of any State to compel the release, removal, or consideration for release or removal of any alien.**

Because 8 USC § 1187(c)(2)(E) gives no right to the government for release or removal of Petitioner, he is detained under 8 USC § 1226 and legally entitled to a bond hearing.

PRAYER FOR RELIEF

In conclusion, it is unconscionable that Petitioner continue to be detained by ICE under these conditions, while one agency within DHS (USCIS) is adjudicating his application for permanent residency and another agency of DHS (ICE) is trying to remove him. This tug-of-war between two arms of the same government body is unconstitutional and inappropriate in Petitioner's case.

WHEREFORE, Petitioner prays that this Honorable Court grant the following relief:

(1) Grant this writ of habeas corpus;

(2) Order Petitioner's immediate release from ICE custody.

(3) Grant Petitioner fees under EAJA.

VERIFICATION

Pursuant to 28 USC § 2242, the undersigned certifies under penalty of perjury that he has reviewed the foregoing petition and that the facts state therein concerning Petitioner are true and correct.

This 2nd day of April, 2025.

Respectfully Submitted,

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