UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
WAYCROSS DIVISION

RUSLAN ALEKHIN,	)	
	)	
Petitioner,	)	
	)	
v.	)	Civil Action No.: 5:25-cv-58
	)	
WARDEN, FOLKSTON ICE PROCESSING CENTER,[1]	)	
	)	
Respondent.	)	

MOTION TO DISMISS

Petitioner Ruslan Alekhin ("Petitioner") filed this habeas corpus petition pursuant to 28 U.S.C. § 2241 to challenge his detention by Immigrations and Customs Enforcement ("ICE"). Because his detention is lawful and does not violate the Constitution, Respondent, the Warden at Folkston ICE Processing Center, moves to dismiss the Petition, Doc. 1, pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim, and further asks this Court to dismiss or deny the Petition.

FACTUAL BACKGROUND

Petitioner is a native and citizen [redacted]. Exhibit 1, Declaration of Terrance Pittman ("Pittman Dec."), ¶ 4. He was detained while attempting to enter the United States on January 10, 2024. *Id.* He was initially processed for expedited removal, and he is currently detained pursuant to section 235(b)(1) of the Immigration and Nationality Act ("INA"), which is codified at 8 U.S.C. § 1225(b)(1). *Id.*, ¶¶ 5-6.

[1] The Petition lists other individuals as respondents. However, this Court has already noted that the "only proper Respondent" is Petitioner's current custodian and has updated the caption to include only the Warden at Folkston. Doc. 5. Therefore, Respondent does the same.

On January 10, 2024, Petitioner was served with a Notice and Order of Expedited Removal. Pittman Dec., Attachment B. He also asserted in a sworn statement that he had a fear of being returned to [redacted]. *Id.* at 7.

On February 21, 2024, Petitioner was served with a Notice to Appear, which charged him with inadmissibility under two provisions of INA: (1) because he did not possess documents valid for entry into the United States, and (2) because he had arrived in the United States at a time or place other than that authorized by the Attorney General. Pittman Dec., ¶ 7. The Department of Homeland Security ("DHS") elected later to proceed only on the first charge. *Id.*, ¶ 11.

On July 25, 2024, after requesting and receiving additional time to do so, Petitioner filed an application for relief seeking asylum. Pittman Dec., ¶¶ 12-13; Petition, ¶ 67. [redacted]. After a hearing on the issue on October 31, 2024, the immigration judge granted Petitioner's application. Pittman Dec., ¶¶ 15, 16; Petition, ¶ 68. DHS timely appealed the immigration judge's decision, and that appeal remains pending. *Id.*, ¶¶ 17-18.

During his immigration detention, Petitioner has made two requests for custody redetermination and two requests for parole. Pittman Dec., ¶¶ 8, 12, 14, 20. All requests were denied upon review. *Id.*

PETITIONER'S ALLEGATIONS

Petitioner argues that his detention has become unconstitutionally prolonged. Petition, ¶ 1. He largely relies on the Eleventh Circuit's decision in *Sopo v. U.S. Attorney General*, 890 F.3d 952 (2018), arguing that its reasoning should be applied here to warrant either his release or a bond hearing. *Id.*, ¶¶ 60–102.

ARGUMENT

The writ of habeas corpus shall not be extended to any prison unless, *inter alia*, he is in custody in violation of the Constitution or the laws or treaties of the United States. 28 U.S.C. § 2241(c)(4). "The burden of establishing a right to federal habeas relief and of proving all facts necessary to show a constitutional violation lies with the petitioner." *Whitfield v. United States Sec'y of State*, 853 F. App'x 327, 329 (11th Cir. 2021) (citing *Romine v. Head*, 253 F.3d 1349, 1357 (11th Cir. 2001)).

I. Petitioner's detention complies with applicable law.

An inadmissible alien arriving in the United States at a port of entry is defined as an "arriving alien." 8 C.F.R. § 1.2. Arriving aliens shall be ordered removed immediately without further hearing or review, unless they indicate an intention to apply for asylum or a fear of persecution. 8 U.S.C. § 1225(b)(1)(A)(i). When an arriving alien indicates such an intention, he or she shall be detained by the Attorney General pending review of that application. *Id.*, § 1225(b)(1)(B)(ii), (iii)(IV). As the Supreme Court stated more succinctly: "§§ 1225(b)(1) and (b)(2) mandate detention of aliens throughout the completion of applicable proceedings and not just until the moment those proceedings begin." *Jennings v. Rodriguez*, 583 U.S. 281, 302 (2018). Under the

"clear language" of these statutes, such detention "must continue" until the review of the application is complete. *Id.* at 297, 299; *see also Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 111 (2020) ("Applicants who are found to have a credible fear may also be detained pending further consideration of their asylum applications.") (citing § 1225(b)(1)). Parole is at the discretion of DHS, 8 U.S.C. § 1182(d)(5)(A), and is unreviewable by federal district courts, *id.*, § 1226(e).

Here, Petitioner is detained pursuant to 8 U.S.C. § 1225(b). Pittman Dec., ¶ 5; *see also* Petition, ¶¶ 44, 55. He was detained upon his arrival at the border of the United States. Pittman Dec., ¶ 4. Had he not stated a fear of persecution, he would have been "removed without further hearing or review." 8 U.S.C. § 1225(b)(1)(A)(i). However, his claim that he feared persecution from [redacted] triggered further review under § 1225(b). Pittman Dec., Attachments A, B. Thus, his detention since January 2024 has been due to the statutory requirement resulting from Petitioner's request to have his claim of persecution reviewed. Reviewing his request has taken time, particularly since the parties in the immigration proceedings have made arguments both to the immigration judge and to the Board of Immigration Appeals ("BIA"). *See* Pittman Dec., ¶¶ 10, 12, 15, 17–18. Petitioner also concedes that the "entirely discretionary and reviewable" decision to grant parole remains with ICE. Petition, ¶ 31.

Therefore, since Petitioner has presented no evidence or argument to the contrary, this Court should conclude that his detention complies with applicable law and deny his Petition.

II. Petitioner has failed to show his detention violates Due Process.

Petitioner argues that his prolonged detention violates his constitutional right to Due Process and that he should therefore be released. Petition, ¶¶ 60–102. Specifically, he invites this Court to extend the Eleventh Circuit's *Sopo* decision to a new statute not at issue in *Sopo*. *Id.*, ¶ 60. Because Petitioner's arguments are not supported by the applicable law, the Court should decline this invitation.

In the first place, the Eleventh Circuit's *Sopo* opinion did not even cite 8 U.S.C. § 1225(b). Instead, the petitioner in *Sopo* was detained pursuant to § 1226(c), "which mandates civil detention for certain criminal aliens during their removal proceedings." *Sopo*, 825 F.3d at 1202. The *Sopo* petitioner had been convicted of bank fraud. *Id.* at 1204. He also had already been granted asylum and thus had legal status in the United States prior to being convicted of bank fraud. *Id.* at 1203–04.

Here, Petitioner repeatedly asserts that he has no criminal record, anywhere in the world. Petition, ¶¶ 1, 17, 19, 78, 95. His detention began upon his arrival at a port-of-entry; it did not begin after he was sentenced to incarceration for committing bank fraud. *See* 8 U.S.C. § 1226(c) (discussing mandatory detention after commission of certain crimes). Petitioner also has no current legal status in the United States: Although the immigration judge granted his application for asylum, that decision remains on appeal. Pittman Dec., ¶¶ 16, 18; Petition, ¶ 21. The *Sopo* decision involved an individual who had legal status already, an entirely different situation. For these reasons alone, *Sopo* is so factually distinguishable that it simply does not apply.

Petitioner cites no cases that apply *Sopo* to § 1225(b) detention. But even if this Court were inclined to break new ground and apply *Sopo* to § 1225(b) detention, such an analysis would prove difficult if not impossible. As interpreted by this Court, *Sopo* involved the consideration of six factors (rather than the five identified by Petitioner):

> (1) The amount of time the alien has been in detention without a bond hearing; (2) the cause of the protracted removal proceedings (*i.e.*, whether the petitioner or the government has improperly delayed the proceedings); (3) whether it will be possible to remove the alien upon the issuance of a final order of removal; (4) whether the period of civil immigration detention exceeds the time the alien spent in prison for the crime that rendered the alien removable; (5) whether the facility at which the alien is civilly detained is meaningfully different from a penal institution, and (6) the likelihood the removal proceedings will conclude in the near future.

Dorley v. Normand, No. 5:22-cv-62, 2023 WL 3620760, at *3 (S.D. Ga. April 3, 2023) (Cheesbro, J.) (citing *Sopo*, 825 F.3d at 1217–18), *recommendation adopted*, 2023 WL 3174227 (May 1, 2023). But *Sopo* is "of limited utility" in the context of § 1225(b) detention. *D. A. F. v. Warden, Stewart Det. Ctr.*, No. 4:20-cv-79, 2020 WL 9460467, at *9 (M.D. Ga. May 8, 2020) (noting some *Sopo* factors do not apply to § 1225(b) detainees), *report and recommendation adopted in part,* No. 4:20-cv-79, 2020 WL 9460341 (M.D. Ga. July 24, 2020).

For example, the Court cannot compare the length of Petitioner's civil detention to the time "spent in prison for the crime that rendered the alien removable" (Factor 4), because no such crime exists. *See* Petition, ¶¶ 1, 17, 19. Petitioner is also not awaiting a final order of removal (Factor 3).[2] Instead, he awaits a decision on his application for asylum. *See* Pittman Dec., ¶¶ 16–17. Until a decision arrives from the

[2] Petitioner does not address Factor 3 in his Petition; he appears to conflate Factors 3 and 6.

BIA, it is difficult for either party to do more than speculate about what removal proceedings may take place. Even if the remaining factors were applicable, there is thus no way to apply at least two of the six factors, making impossible the robust analysis this Court ordinarily engages in with the *Sopo* factors.

The plain language of the *Sopo* decision does not apply to arriving aliens detained under § 1225(b). The circumstances of that case are also factually distinguishable from the facts present here and would be difficult—if not impossible—to apply to Petitioner. Therefore, this Court should decline Petitioner's invite to apply the *Sopo* analysis here.

III. The Court lacks jurisdiction over Petitioner's other claims.

Petitioner's primary complaint is that his detention is constitutionally prolonged. This claim should be dismissed or denied. To the extent that Petitioner challenges other aspects of his detention, however, this Court lacks jurisdiction to hear it.

The INA limits the jurisdiction of district courts to review expedited removal of individuals subject to such removal orders. *Javier Gonzalez v. U.S. Att'y Gen.*, 844 F. App'x 129, 131 (11th Cir. 2021); *Pineda v. Customs & Border Prot.*, 544 F. App'x 925, 926 (11th Cir. 2013); *Chaviano v. Bondi*, No. 25-22451-CIV, 2025 WL 1744349, at *4 (S.D. Fla. June 23, 2025). The judicial review of district courts to review habeas corpus petition is limited 8 U.S.C. § 1252(e). Specifically, district courts may review only (A) whether the petitioner is an alien, (B) whether he was ordered removed, 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.

Id., § 1252(e)(2). Absent one of these exceptions, language of 8 U.S.C. § 1252 strips district courts of jurisdiction to review collateral attacks on expedited removal orders, including challenges to the application of the statutory procedures in a particular case. *Id.*, § 1252(a)(2)(A) (specifically including claims under 28 U.S.C. § 2241). Thus, when it comes to arriving aliens who are subject to an expedited removal order, judicial review is sharply limited. *See, e.g., H.C. v. Warden, Stewart Det. Ctr.*, No. 4:22-cv-148, 2023 WL 2745176, at *3 (M.D. Ga. Mar. 31, 2023), *report and recommendation adopted sub nom. H.C. v. Washburn*, No. 4:22-cv-148, 2023 WL 3365166 (M.D. Ga. May 10, 2023).

Here, Petitioner argues primarily that his detention violates the Due Process clause of the Constitution. *See* Petition, ¶¶ 60–107. Respondent argued above that this claim should be denied. Yet Petitioner also raises a claim under the Suspension Clause. *Id.*, ¶¶ 109–107. This amounts to a challenge to his status in expedited review and the parole decisions of DHS, which is not one of the available exceptions in 8 U.S.C. § 1252(e). Habeas relief pursuant to 28 U.S.C. § 2241 is specifically foreclosed by 8 U.S.C. § 1252(a)(2)(A).

Second, as argued above, Petitioner's current detention is legal, and Petitioner does not challenge the legality of § 1225(b). The traditional function of habeas relief is to secure release from illegal custody. *Thuraissigiam*, 591 U.S. at 117, 119. It is not

to obtain entry into the United States. *Id.* at 119 (holding that claims seeking entry into a country may not be pursued under habeas corpus). Since Petitioner does not contest the legality of his detention, he has failed to establish any entitlement to habeas relief. *See Chaviano*, 2025 WL 1744349, at *7 (concluding that § 1225(b)'s suspension of habeas review did not violate the Suspension Clause).

CONCLUSION

For the above reasons, the Petition should be dismissed.

Respectfully submitted, this 9th day of July, 2025,

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