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

RUSLAN ALEKHIN,
Petitioner,

v.

WARDEN OF FOLKSTON ICE PROCESSING CENTER, *in their official capacity*; KRISTEN SULLIVAN, *in her official capacity as Field Office Director of Immigration and Customs Enforcement, Enforcement and Removal Operations Atlanta Field Office*; KRISTI NOEM, *in her official capacity as Secretary of Homeland Security*; PAMELA J. BONDI, *in her official capacity as Attorney General of the United States, Respondents.*

Civil Action No.: 5:25-cv-58

PETITONER'S REPLY TO RESPONDENTS' RETURN TO HABEAS PETITION[1] AND RESPONSE TO RESPONDENTS' MOTION TO DISMISS

Despite having no criminal history and having been granted asylum by an Immigration Judge (IJ), Mr. Alekhin, a twenty-three-year-old man from Russia, has now been detained for over eighteen months without a bond hearing. Absent this Court's intervention, he is likely to remain separated from his wife and U.S. citizen family members, as well as remain needlessly detained for months to come, at great cost to both himself and the Government. Despite Respondents' arguments to the contrary, this Court can and should deny the Respondents' motion to dismiss,

[1] The procedural rules governing habeas petitions are found at 28 U.S.C. §§ 2241-2256. The federal habeas statute, 28 U.S.C. § 2243, does not contemplate the filing of a motion to dismiss in response to a writ of habeas corpus. Rather, it contemplates a "return" that may be better characterized as a response. *See Browder v. Director, Dep't of Corrections*, 434 U.S. 257, 269 n.14 (1978) ("Respondent's conception… seems to have been that a Rule 12(b)(6) motion is an appropriate motion in a habeas corpus proceeding… This view is erroneous… The custodian's response to a habeas corpus petition is not like a motion to dismiss."). Accordingly, Respondents' motion to dismiss should be treated as a "return," and this court should deny their motion to dismiss and grant the habeas petition, as it did in *Dorley v. Normand*. No. 5:22-cv-62, 2023 U.S. Dist. LEXIS 93091, at *1 (S.D. Ga. Apr. 3, 2023).

which is more appropriately characterized as a return pursuant to 28 U.S.C. § 2243, grant Mr. Alekhin's Petition, and order a constitutionally adequate bond hearing.

ARGUMENT

Respondents contend that the jurisdictional bars at 8 U.S.C. § 1252(a)(2)(A) and § 1252(e)(2) prevent this court from exercising jurisdiction over Mr. Alekhin's claims. *See* Mot. to Dismiss 7-9. This argument fails to appreciate that the Supreme Court in *Jennings v. Rodriguez* already exercised jurisdiction over claims similar to the ones here, and that the statutory language at 8 U.S.C. § 1252 cannot reasonably be read to exclude claims about unconstitutionally prolonged detention. Respondents further challenge the applicability of the *Sopo* factors to § 1225(b) detention. Although Respondents do not contest that Mr. Alekhin's liberty interest in freedom from prolonged detention has been violated under the *Mathews v. Eldridge* balancing test, counsel addresses why the *Sopo* test should nonetheless apply here.

I. The Jurisdictional Bars at 8 U.S.C. § 1252(a)(2)(A) and § 1252(e)(2) Are Inapposite.

This habeas petition is a challenge to Mr. Alekhin's prolonged detention without a bond hearing and contains no arguments regarding the substantive or procedural adequacy of his underlying expedited removal order. Yet Respondents erroneously argue that 8 U.S.C. § 1252(a)(2)(A) and § 1252(e)(2), which limit review of expedited removal orders, bar the constitutional claims here. Mot. to Dismiss 7-9. This is a novel claim that, to counsel's knowledge, has not been accepted by any other court that has considered a constitutional prolonged detention claim for a petitioner detained under 8 U.S.C. § 1225(b).[2] A closer reading of the statutes and Supreme Court precedent indicates why these bars are inapposite.

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[2] *See, e.g., D.A.V.V. v. Warden, Irwin County Detention Center*, No. 7:20-cv-159, 2020 WL 13240240 (M.D. Ga. Dec. 7, 2020); *D.A.F. v. Warden, Stewart Detention Center*, No. 4:20-cv-79, 2020 WL 9460341 (M.D. Ga. July 24,

First, 8 U.S.C. § 1252 concerns only "judicial review of orders of removal," and numerous courts, including the Supreme Court and the Eleventh Circuit, distinguish between review of a removal order and review of one's detention. Courts retain jurisdiction over the latter, detention-related claims. *See Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018) (stating that respondents, who claimed that their detention under § 1225(b) had become unconstitutional, "are not asking for review of an order of removal; they are not challenging the decision to detain them in the first place or to seek removal; and they are not even challenging any part of the process by which their removability will be determined"); *Linares v. Dep't of Homeland Sec.*, 529 Fed. Appx. 983, 984-85 (11th Cir. 2013) ("Linares's challenge to his continued detention is similarly distinct from a challenge to his removal order... the Real ID Act would not apply, and his claim can still be brought under § 2241."); *Ivantchouk v. U.S. Att'y Gen.*, 417 Fed. Appx. 918, 921 (11th Cir. 2011) ("Habeas corpus relief in the district court is precluded insofar as the [noncitizen] seeks review of a removal order... Habeas corpus jurisdiction exists over a petition challenging the legality of [a noncitizen's] detention."); *Madu v. U.S. Att'y Gen.*, 470 F.3d 1362, 1365-68 (11th Cir. 2006) (narrowly interpreting "review of an order of removal" to not extend to a claim by the petitioner that he was held in violation of his constitutional rights of substantive and procedural due process); *Baez v. Bureau of Immigr. & Customs Enf't*, 150 Fed. Appx. 311, 312 (5th Cir. 2005) (stating that while the REAL ID Act "divested the district courts of jurisdiction of § 2241 petitions attacking

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2020); *Leke v. Hott*, 521 F. Supp. 3d 597 (E.D. Va. Feb 23, 2021); *Mbalivoto v. Holt*, 527 F. Supp. 3d 838 (E.D. Va. Aug. 11, 2020); *Radez-Suarez v. Doll*, No. 1:19-cv-1946, 2020 WL 362696 (M.D. Pa. Jan. 22, 2020); *Pierre v. Doll*, 350 F. Supp. 3d 327 (M.D. Pa., Oct. 26, 2018); *Singh v. Sabol*, No. 1:16-cv-2246, 2017 WL 1659029 (M.D. Pa. Apr. 6, 2017); *Mendez Ramirez v. Decker*, 612 F. Supp. 3d 200 (S.D.N.Y. 2020); *Lett v. Decker*, 346 F. Supp. 3d 379 (S.D.N.Y., Oct. 10, 2018); *Perez v. Decker*, No. 18-cv-5279, 2018 WL 3991497 (S.D.N.Y. Aug. 20, 2018); *Singh v. Barr*, No. 1:19-cv-1096, 2020 WL 1064848 (W.D.N.Y. Mar. 2, 2020); *Tahtiyork v. U.S. Dept. of Homeland Security*, No. 20-cv-1196, 2021 WL 389092 (W.D. La. Jan. 12, 2021); *Ford v. Ducote*, No. 3:20-cv-1170, 2020 WL 8642257 (W.D. La. Nov. 2, 2020); *da Silva v. Nielsen*, No. 5:18-cv-932, 2019 WL 13218461 (S.D. Tex. Mar. 29, 2019); *Jamal A. v. Whitaker*, 358 F. Supp.3d 853 (D. Minn. Jan. 22, 2019).

removal orders… it does not, however, preclude habeas review of challenges to detention that are independent of challenges to removal orders.") (citing H.R. Rep. No. 109-72, at 300 (2005)).

That this court has jurisdiction over Mr. Alekhin's claims is supported by the fact that 8 U.S.C. § 1252 concerns only "orders of removal," and by operation of law, someone detained under § 1225(b) does not even have an order of removal in the first place. That is because when an individual originally in expedited removal then enters immigration court proceedings, the expedited removal order is vacated and thus inoperant. Specifically, an asylum seeker is referred for a credible fear interview (CFI), and then either USCIS or the Department of Homeland Security (DHS) issues a Notice to Appear (NTA) and enters them into removal proceedings before an immigration judge who has exclusive jurisdiction over their asylum application. *See* 8 C.F.R. § 208.30(f) (stating that a noncitizen who passes a CFI may be issued an NTA for "full consideration" of their asylum application in immigration court); § 208.30(b) (referencing USCIS's authority to enter someone into immigration court proceedings without a CFI); § 1208.2(b) (stating that immigration judges have "exclusive jurisdiction" over asylum applications from noncitizens issued an NTA); 8 U.S.C. § 1229a(c)(5) (referencing the IJ's authority to issue a removal order). As a result, DHS's expedited removal order must be vacated. *See* 8 C.F.R. § 1208.30(g)(2)(iv)(B) (stating that when an IJ finds that a noncitizen established a credible fear, they "shall vacate the Notice and Order of Expedited Removal and refer the case back to DHS for further proceedings"); Respondents' Ex. D, Notice to Appear (containing boxes showing that pursuant to 8 C.F.R. 208.30, the procedures governing CFIs, DHS will vacate the expedited removal, or 235(b)(1) order). Because any expedited removal order against Mr. Alekhin is vacated and inoperant, a claim about his detention cannot reasonably be said to be challenging that order.

And even if § 1252 were somehow found to be applicable to someone like Mr. Alekhin who previously had an expedited removal order, the jurisdictional bars at § 1252(a)(2)(A) and § 1252(e)(2) have their own internal limitations that prevent them from applying here. Each bar is addressed in turn.

Broadly, § 1252(a)(2)(A) has been interpreted as only concerning review of the expedited removal order itself, given its placement within § 1252 that only concerns review of removal orders. *See Gonzalez v. U.S. Att'y Gen.*, 844 Fed. Appx. 129, 131 (11th Cir. 2021) (describing § 1252(a)(2)(A) as barring review of "the underlying expedited order of removal"); *cf. Lucas v. U.S. Att'y Gen.*, 652 Fed. Appx. 854, 858 (11th Cir. 2016) (describing § 1252(a)(2)(A) as concerning review of expedited removal orders). The same distinction between review of a removal order and review of detention, as discussed in *Jennings*, applies here. Because a noncitizen challenging his unconstitutional prolonged detention under § 1225(b) is not challenging the underlying expedited removal order, the jurisdictional bars at § 1252(a)(2)(A) are inapplicable. *See supra.*

Looking at § 1252(a)(2)(A) more closely, it contains four jurisdictional 'sub' bars, and the one seemingly most applicable to § 1225(b)(1) detention states that courts cannot review "any individual determination or [] 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)." § 1252(a)(2)(A)(i). At first glance, this provision appears to apply to someone who receives an expedited removal order pursuant to § 1225(b)(1), since their detention may appear to "arise from or relate to" the "implementation or operation" of that order.

However, precedent dictates that the "arising from or relating to" and "implementation or operation" language at § 1252(a)(2)(A)(i) must be interpreted narrowly to exclude detention-related claims. The Supreme Court already assessed the phrase "arising from" at § 1252(b)(9) in

Jennings v. Rodriguez. In that case, the respondents challenged their detention under § 1225(b), and the government argued that their claims were precluded by § 1252(b)(9). That provision prohibits federal court review "of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove [a noncitizen]," except via judicial review of a final order of removal. The Supreme Court squarely rejected an understanding of "arising from" that encompassed detention-related claims, stating that it would lead to "staggering results." *Jennings*, 583 U.S. at 293. Said the Court, "Interpreting 'arising from' in this extreme way would [] make claims of prolonged detention effectively unreviewable. By the time a final order of removal was eventually entered, the allegedly excessive detention would have already taken place." *Id. Cf. Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (appearing to narrowly interpret the phrase "arising from" at § 1252(g)). *Jennings* further indicated that the phrase "relating to" should similarly be interpreted narrowly. *Jennings*, 583 U.S. at 294 (citing *Gobeille v. Liberty Mut. Ins. Co.*, 577 U.S. 312, 319 (2016) (interpreting the phrase "relate to" in the Employee Retirement Income Security Act's pre-emption provision to avoid potential "limitless application"); *Dan's City Used Cars, Inc. v. Pelkey*, 569 U.S. 251, 260-61 (2013) (cautioning, "the breadth of the words 'related to' does not mean the sky is the limit")).

As for the "implementation or operation" language, Supreme Court and Eleventh Circuit case law is clear that a challenge to one's detention as a result of a removal order is distinct from a challenge to the execution, "implementation or operation" of the removal order itself. *See Reno*, 525 U.S. at 483-84 (narrowly interpreting "executing removal orders" to only cover the government's discrete decision to exercise or not exercise prosecutorial discretion over removal); *Madu*, 470 F.3d at 1367-1368 (analyzing the term "execute" at 8 U.S.C. § 1252(g), which prohibits

federal courts from hearing "any cause or claim…arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders," and finding that it did not extend to a constitutional challenge to detention) (quoting *Kwai Fun Wong v. United States*, 373 F.3d 952, 964 (9th Cir. 2004) ("[W]e have held that the reference to 'executing removal orders' appearing in § 1252(g) should be interpreted narrowly…")); *Camarena v. Dir., Immigr. & Customs Enf't*, 988 F.3d 1268, 1273 (11th Cir. 2021). The narrow interpretation of "executing" in these cases is analogous to, and therefore should inform, a similarly limited interpretation of the phrase "implementation or operation" as referring to the actual acts taken to remove someone. *Cf. Mercado v. City of Orlando*, 407 F.3d 1152, 1162 (11th Cir. 2005) (reading the phrase "implementation or operation" of a training program narrowly to exclude challenges to the "content" of the program or the policy underlying it).

There are two other potentially relevant jurisdictional bars at § 1252(a)(2)(A), which limit review of a "decision by the Attorney General to invoke" § 1225(b)(1) as well as "the application of such section to individual" noncitizens, respectively. *See* § 1252(a)(2)(A)(ii); (iii). An individual's detention under § 1225(b) is not the result of a "decision by the Attorney General" because the Attorney General never "decides" to detain someone under § 1225(b). Rather, detention under that provision is mandatory, at least according to the Attorney General's current interpretation of § 1225(b) as laid out in *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019), which is not challenged here. That detention becomes supposedly mandatory only after the government makes the decision to place a noncitizen in expedited removal and then that noncitizen claims fear of return to their home country, or after a noncitizen arrives at a port-of-entry seeking admission. *See Matter of M-S-*, 27 I&N at 513-15; 8 U.S.C. § 1225(b)(1)(B)(iii)(IV); § 1225(b)(1)(B)(ii); 8 U.S.C. § 1225(b)(2)(A) (stating that the noncitizen "shall" be detained). The decision to place

someone in expedited removal is distinct from their subsequent detention. Even if someone's detention under § 1225(b) were a "decision," the Supreme Court has likewise differentiated between the decision to detain someone and a claim that their prolonged detention is unconstitutional. *See Demore v. Kim*, 538 U.S. 510, 516-17 (2003) (finding that while § 1226(e) precludes a challenge to a "decision" by the Attorney General regarding detention or release, it does not preclude "challenges [to] the statutory framework that permits [the noncitizen's] detention without bail"). Meanwhile, a noncitizen who challenges their prolonged detention under § 1225(b) is not challenging "the application of" the expedited removal procedures to themselves, just as they do not challenge the "implementation of" their expedited removal order. *See Jennings*, 583 U.S. at 294 (stating regarding the respondents there, "they are not challenging the decision to detain them in the first place or to seek removal; and they are not even challenging any part of the process by which their removability will be determined").

Turning to the jurisdictional bar at § 1252(e)(2), it is also inapposite. It exclusively covers "judicial review of orders under section 1225(b)(1)," and the Supreme Court and Eleventh Circuit have already differentiated between review of removal orders and review of claims that detention has become unconstitutionally prolonged. *See supra*. The habeas corpus provision in particular only concerns "review of any determination under section 1225(b)(1)," and one's detention under § 1225(b) cannot properly be said to be a "determination" because no one decides to detain someone under that provision. Rather, that detention is currently considered mandatory. *See supra*. Furthermore, § 1252(e)(2) references the term "determination," which is used throughout § 1225(b) but never in reference to detention. *See* 8 U.S.C. § 1225(b)(1)(A)(iii)(II) (determination of inadmissibility); § 1225(b)(1)(B)(iii)(II)-(IV) (determination in credible fear interviews).

In the alternative, it may be argued that 8 U.S.C. § 1252(a)(2)(A) and § 1252(e)(2) have nothing to do with Mr. Alekhin's habeas petition because they do not concern his particular form of detention. These two provisions solely concern § 1225(b)(1), since they are entitled "[r]eview relating to section 1225(b)(1)" and "[j]udicial review of orders under section 1225(b)(1)," respectively. However, Mr. Alekhin is not detained pursuant to that provision. § 1225(b)(1) contemplates only two types of detention: pending the outcome of a CFI, and after having passed a credible fear interview and being placed in removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(B)(iii)(IV) (stating that a noncitizen "shall be detained pending a final determination of credible fear of persecution…"); § 1225(b)(1)(B)(ii) (stating that "[i]f the officer determines at the time of the interview that [a noncitizen] has a credible fear of persecution … the [noncitizen] shall be detained for further consideration of the application for asylum").

Mr. Alekhin does not fall within either of the detention categories at § 1225(b)(1) because he never had a CFI. Instead, an asylum officer issued a discretionary Notice to Appear, thereby placing him into removal proceedings without having to first pass a CFI. Respondents' Ex. C, Issuance of Discretionary NTA; 8 C.F.R. § 208.30(b) (stating that USCIS "may refer the [noncitizen] for proceedings under section 240 of the Act without making a credible fear determination"). Mr. Alekhin is instead detained under § 1225(b)(2), which applies to applicants for admission who are actively seeking admission, including those who are "coming or attempting to come into the United States at a port-of-entry." 8 C.F.R. §§ 1.2, 1001.1(q). ICE designated, and the IJ sustained, the charge that Mr. Alekhin is an "arriving" noncitizen who "applied for admission… at the DeConcini port of entry in Nogales, Arizona." Respondents' Ex. E, Charges of Inadmissibility/Deportability.

The jurisdictional bars at 8 U.S.C. § 1252(a)(2)(A) and § 1252(e)(2) are thus irrelevant to Mr. Alekhin's challenge to his prolonged detention without a bond hearing. Respondents' invocation of these bars is curious given that the Supreme Court in *Jennings* found it had jurisdiction over the precise kinds of claims here: constitutional claims regarding prolonged detention under § 1225(b). Said one court addressing exactly such claims post-*Jennings*, "[*Jennings v.*] *Rodriguez* plainly forecloses Respondents' jurisdictional objections. In fact, [its] jurisdictional holding was so clear that, in its wake, it appears Government respondents in analogous cases have abandoned jurisdictional arguments altogether." *da Silva v. Nielsen*, No. 5:18-cv-932, 2019 U.S. Dist. LEXIS 227513, at *12 (S.D. Tex. Mar. 29, 2019) (citing *Perez v. Decker*, 2018 U.S. Dist. LEXIS 141768, 2018 WL 3991497, at *3 (S.D.N.Y. Aug. 20, 2018)); *Otis V. v. Green*, 2018 U.S. Dist. LEXIS 111788, 2018 WL 3302997, at *2 (D.N.J. July 5, 2018)). Thus, this court has jurisdiction over this case and may consider the merits of Mr. Alekhin's claims.

II. Whether *Sopo* Is Appropriate to Apply Is Distinct from Whether Mr. Alekhin's Due Process Rights Are Violated, and Regardless, *Sopo* is Applicable Here.

Respondents seem to suggest that it is inappropriate to apply *Sopo* to § 1225(b) detention, and for that reason, Mr. Alekhin has failed to state a claim. This claim does not hold water. Whether it is appropriate to apply the *Sopo* test to Mr. Alekhin's circumstances is a separate question from whether or not Mr. Alekhin's due process rights have been violated, because there are multiple ways to conduct due process balancing. *See Sopo v. U.S. Att'y Gen.*, 825 F.3d 1199, 1214-15 (11th Cir. 2016) (discussing various approaches across circuits and stating that the *Sopo* test is "a fact-dependent inquiry requiring an assessment of all of the circumstances of any given case") (citing *Diop v. ICE/Homeland Sec.*, 656 F.3d 221, 232 (3rd Cir. 2011)). Respondents do not contest that Mr. Alekhin has a liberty interest in freedom from prolonged detention, nor do they contest that

under the *Mathews v. Eldridge* balancing test, Mr. Alekhin's due process rights have been violated. Accordingly, this court should find that Mr. Alekhin's due process rights have been violated under *Mathews* and order as a remedy a bond hearing with the burden on the government to justify continued detention by clear and convincing evidence.

Regardless, Mr. Alekhin provides more detail for why the *Sopo* factors are appropriate here by addressing each of the Respondents' objections.

First, Respondents state that *Sopo* is inapposite because it concerns § 1226(c) rather than § 1225(b) detention. Mot. to Dismiss 5. They further reference the fact that Mr. Alekhin has not cited to any cases applying *Sopo* to § 1225(b) detention. *Id.* at 6. For one, the lack of such cases appears more reflective of the few claims regarding prolonged detention under § 1225(b) that ultimately proceeded to the merits, rather than due to courts' rejection of *Sopo* in the § 1225(b) context. *See, e.g.*, *Barillas v. Field Office Dir.*, 697 Fed. Appx. 624, 624-25 (11th Cir. 2017) (vacating and remanding to the district court to determine if the case is moot, since ICE ultimately decided to release the petitioner on parole); *Moore v. McAleenan*, No.: 4:18-cv-01722-LSC-HNJ, 2019 U.S. Dist. LEXIS 228575, at *1-2 (ND Ala. Oct. 10, 2019) (noting that respondents filed a motion for reconsideration after the BIA's entry of a decision in the underlying removal case).

Nor is the mere fact that § 1226(c) and § 1225(b) are different statutory provisions enough to completely write off the application of *Sopo* to this context. Simply put, the claims in *Sopo* and Mr. Alekhin's claims here both concern prolonged detention without bond in ongoing removal proceedings, even if Mr. Alekhin is detained under a different statutory provision. *Sopo*, 825 F.3d at 1202-03. And as discussed in the Petition, both the government and the respondents' interests are highly similar between detention under § 1226(c) versus § 1225(b), justifying the application

of similar factors when conducting due process balancing. *See* Petition ¶¶ 55-59.[3] Even in *D.A.F.*, the case cited by Respondents' for the proposition that *Sopo* is of limited utility, the court nonetheless applied reasoning from *Sopo* to the § 1225(b) detention at issue there. *D.A.F. v. Stewart Det. Cent.*, No. 4:20-cv-79, 2020 U.S. Dist. LEXIS 254055, at *28-30 (M.D. Ga 2020). *See also Jamal*, 358 F. Supp. 3d at 858 ("[I]n deciding whether [a noncitizen's] continued detention would violate the Due Process Clause, most courts seem to apply pretty much the same factors…").

Second, Respondents contest the applicability of two of the six *Sopo* factors to the § 1225(b) context. Mot. to Dismiss 6. Namely, Respondents say that whether it will be possible to remove the noncitizen upon the issuance of a final order of removal is irrelevant because Mr. Alekhin is not "awaiting a final order of removal" and instead "awaits a decision on his application for asylum." *Id.* This statement demonstrates a fundamental misunderstanding about immigration law, because in removal proceedings, asylum is a defense to removal. Regardless, whether or not Mr. Alekhin is "awaiting a final removal order" is irrelevant to whether or not it will be possible to remove him upon the issuance of a final order of removal. The *Sopo* court cited to the Sixth Circuit case *Ly v. Hansen* to support adding this factor to the overall due process balancing. *Sopo*, 825 F.3d at 1218. In that case, the Sixth Circuit stated that this factor is relevant because "[t]he goal of pre-removal incarceration must be to ensure the ability of the government to make a final

[3] At least six other district courts have likewise applied guidelines or multi-factor due process tests originally developed in the context of detention under § 1226(c) to noncitizen habeas petitioners detained under different statutory provisions, including § 1225(b). *See, e.g.*, *Mbalivoto*, 527 F. Supp. 3d at 850 (applying a five-factor balancing test originally developed in the § 1226(c) context to a Petitioner detained under § 1225(b)); *Jamal*, 358 F. Supp. 3d at 858 (noting that courts analyzing § 1225(b) detention "seem to apply pretty much the same factors" as those analyzing § 1226(c) detention); *Pierre*, 350 F. Supp. 3d at 331-33 (relying on case law from the § 1226(c) context in ultimately holding that Petitioner's prolonged detention without a bond hearing under § 1225(b) was unconstitutional); *Lett*, 346 F. Supp. 3d at 386 (stating that when "it comes to prolonged detention, the Court sees no logical reason to treat individuals at the threshold of entry seeking asylum under § 1225(b), like Petitioner, differently than other classes of detained [non-citizens]"); *Singh v. Barr*, 2020 U.S. Dist. LEXIS 38652, at *19 (applying a multi-factorial test developed in the § 1226(c) context to a Petitioner detained under § 1225(b)); *da Silva*, 2019 U.S. Dist. LEXIS 227513, at *29 (same).

deportation... The actual removability of a criminal alien therefore has bearing on the reasonableness of his detention prior to removal proceedings." *Ly v. Hansen*, 351 F.3d 263, 271-272 (6th Cir. 2003). In that case, the petitioner was from Vietnam, and removal there was "not...foreseeable due to the lack of a repatriation treaty between the United States and Vietnam." *Id.* at 266. *See also Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (stating that the flight risk interest "is weak or nonexistent where removal seems a remote possibility at best"). Because the government's concern about flight risk underlies both § 1226(c) and § 1225(b), that factor is equally applicable to Mr. Alekhin as compared to someone detained under § 1226(c). *See* Petition ¶ 57. As discussed in the habeas petition, Mr. Alekhin is from Russia, which is recalcitrant in accepting its deportees from the U.S. *Id.* ¶ 75.

Respondents also argue that the comparison of the length of detention to the time in prison is not applicable to Mr. Alekhin, since § 1225(b) does not concern the detention of those with a criminal history. Mot. to Dismiss 6. They further reference the fact that the petitioner in *Sopo* had a conviction for bank fraud while Mr. Alekhin has no criminal history whatsoever. *Id.* at 5. But, if anything, the fact that Mr. Alekhin has no criminal history should warrant relief rather than weigh against it. Further, Respondents notably do not contest placing particular weight on punitive conditions in detention. As discussed in the habeas petition, whether the immigration detention resembles criminal incarceration should weigh particularly heavily, in light of Congress's intent to limit the placement of asylum seekers in a punitive environment. *See* Petition ¶¶ 58-59.

Respondents also seek to factually distinguish the petitioner in *Sopo* from Mr. Alekhin to justify not applying the *Sopo* factors. Respondents' perspective is somewhat self-contradictory, since at one point they emphasize the tentativeness of Mr. Alekhin's asylum grant, *see* Mot. to Dismiss at 5 (stating that Mr. Alekhin's asylum grant is not final while Mr. Sopo did, at one point,

have asylum), then they later highlight the protection it provides from removal, *see id.* at 6 (stating that Mr. Alekhin is not "awaiting a final removal order," presumably in contrast to Mr. Sopo).

But the petitioner in *Sopo* and Mr. Alekhin seem to have, if anything, an equal interest in remaining in the country, and regardless, habeas petitions are not about an interest in obtaining immigration status but instead about freedom from unlawful restraint. While the petitioner in *Sopo* originally had asylee status, by the time of the *Sopo* decision, it had been terminated and Convention Against Torture relief was denied due to adverse credibility issues underlying the original claim for humanitarian relief. *See Sopo*, 825 F.3d 1206. Meanwhile, Mr. Alekhin has just been granted asylum. Petitioner's Ex. 5, Printout of ECAS. Furthermore, the claims at issue here are not about Mr. Alekhin's interest in remaining in the U.S. permanently, or his fear of return to Russia. They are, in large part, about the fundamental liberty interest in being free from arbitrary or unjustified detention. This is an interest that was recognized even before the United States was born. *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004) ("[T]he most elemental of liberty interests [is] the interest in being free from physical detention..."); *Boumediene v. Bush*, 553 U.S. 723, 739 (2003) ("The Framers viewed freedom from unlawful restraint as a fundamental precept of liberty, and they understood the writ of habeas corpus as a vital instrument to secure that freedom."). Mr. Alekhin's liberty interest should likewise be recognized here.

CONCLUSION

Mr. Alekhin has been in ICE custody for over eighteen months with no individualized review of his detention through a bond hearing. Despite having been granted asylum by an IJ, he remains in custody while the Government needlessly appeals his case. Accordingly, this Court

should order a bond hearing with the burden on the government to justify continued detention by clear and convincing evidence.[4]

Dated: July 23, 2025

Respectfully submitted,

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[4] At no point do Respondents contest, as a remedy, ordering a bond hearing with the burden on the government by clear and convincing evidence. *See generally* Mot. to Dismiss.

CERTIFICATE OF SERVICE

I hereby certify that on this date, I uploaded the foregoing Petitioner's Reply to Respondents' Return, which will send a Notice of Electronic Filing to all counsel of record.

Dated: July 23, 2025

Respectfully submitted,

/s/ Felix Montanez
Attorney for the Petitioner