

United States District Court
Western District of Texas
Austin Division

Fernando Gonzalez Guerrero,
Petitioner,

v.

Kristi Noem, Secretary of United States
Department of Homeland Security et. al.,
Respondents.

No. 1:25-CV-01334-RP-ML

**Response in Opposition to
Petitioner's Motion for Preliminary Injunctive Relief**

Petitioner, through counsel, filed a habeas petition and an amended habeas petition with this Court on or about August 21, 2025. ECF No. 1, 4. The Court ordered service on Respondents and a response within 30 days of that service. ECF No. 6. On October 1, 2025, Petitioner filed a second amended petition and a motion for preliminary injunction ("PI motion"). ECF Nos. 12–13. On October 2, 2025, Federal Respondents filed an unopposed motion for extension of time to answer and an unopposed motion to set a briefing schedule for the PI motion. ECF No. 14–15. On October 3, 2025, this Court granted both motions via text order, permitting Federal Respondents to file their response to the PI motion by today, October 8, 2025, and allowing Petitioner to file any reply by October 15, 2025.¹

Petitioner's PI Motion requests, *inter alia*, that the Court order his immediate release from custody pursuant to a \$5,000 bond granted to him by an Immigration Judge, and an order vacating the Board of Immigration Appeals (BIA) decision denying bond. ECF No. 13 at 6. Petitioner challenges the lawfulness of his pre-removal-order detention but concedes that he (1) entered the

¹ The Court granted Federal Respondents' motion to file their response to Petitioner's Second Amended Petition by October 29, 2025, with Petitioner's reply, if any, due November 5, 2025.

United States without being admitted or paroled; (2) is currently without lawful status and in removal proceedings; and (3) has been detained in pre-removal-order ICE custody since July 17, 2025. *Id.* at 1, 2-3

While the parties disagree on the governing detention statute in this case, which is a mixed question of law and fact that should be decided only by the circuit court of appeals upon review of a final order of removal, this Court need not resolve that issue to dispose of this TRO motion or even the underlying habeas petition. *See* 8 U.S.C. §§ 1252(b)(9); 1225(b). Regardless of which statute controls here, Petitioner is not entitled to release. *See id.* Petitioner's detention is not in violation of the Constitution as applied to him, because the statute under which ICE is detaining him does not even provide him with a bond hearing. Nonetheless, he was given ample procedural due process protections through a bond hearing and a bond appeal. The statute does entitle him to full removal proceedings, where he is already represented by counsel and will be afforded access to judicial review through the BIA and the circuit court of any adverse decision. *See* 8 U.S.C. § 1225(b)(2). His detention is also not in violation of substantive due process, because he makes no showing that he has any lawful status entitling him to release, nor has he shown his pre-removal-order detention is unreasonably prolonged or indefinite. As such, Petitioner is not likely to succeed on the merits of these claims, and this TRO should be denied.

Specifically, Petitioner is not likely to succeed for several reasons: (1) his pre-removal detention is authorized by statute, whether mandatory under § 1225(b) or in the exercise of ICE's discretion under § 1226(a); (2) while this Court may review an as-applied constitutional challenge in certain circumstances, Petitioner cannot show that his continued detention violates procedural due process where the statute does not even provide for a bond hearing in his circumstances; even still, Petitioner was given a bond hearing followed by a full administrative review; (3) Petitioner

is currently pursuing relief from removal in “full” removal proceedings, including the right to counsel and the right to judicial review; (4) his detention is not unconstitutionally prolonged (or indefinite) in violation of his substantive due process rights, because he has been detained less than 90 days in pre-removal-order detention, and those proceedings will eventually conclude. This TRO should be denied, and habeas petition should be denied in its entirety.²

I. Relevant Background

Petitioner is a native and citizen of Mexico. ECF No. 12 at ¶ 3. Despite characterizing himself as a “long-term resident,” Petitioner has never had lawful status in the United States, because he evaded the immigration authorities for over twenty years after unlawfully entering the country. *Id.* ¶¶ 1, 3. He is currently detained in ICE custody pending his removal proceedings. *Id.* ¶ 2. Petitioner concedes that he was placed into removal proceedings after being released to ICE after a criminal arrest in Travis County, Texas. *Id.* ¶ 3. During those removal proceedings, Petitioner was granted bond by an immigration judge, but the immigration judge’s order was subsequently vacated by the BIA prior to his release from custody. *Id.* ¶ 4. Petitioner is currently scheduled for a final individual hearing regarding relief from removal before the immigration judge on December 11, 2025.³ He is represented by counsel before the immigration court.

II. Legal Standards

A preliminary injunction is an “extraordinary and drastic remedy.” *Canal Auth. v. Callaway*, 489 F.2d 567, 573 (5th Cir. 1974). As such, it is “not to be granted routinely, but only when the movant, by a clear showing, carries [the] burden of persuasion.” *Black Fire Fighters*

² While this Court could *sua sponte* deny this habeas petition with further input from the government, Federal Respondents do intend to respond to the habeas petition in full by October 29, 2025, as contemplated by the text Court’s Order.

³ See Automated Case Information (last accessed Oct. 8, 2025).

Ass'n v. City of Dallas, 905 F.2d 63, 65 (5th Cir. 1990) (quoting *Holland Am. Ins. Co. v. Succession of Roy*, 777 F.2d 992, 997 (5th Cir. 1985)). “The four prerequisites are as follows: (1) a substantial likelihood that plaintiff will prevail on the merits, (2) a substantial threat that plaintiff will suffer irreparable injury if the injunction is not granted, (3) that the threatened injury to plaintiff outweighs the threatened harm the injunction may do to defendant, and (4) that granting the preliminary injunction will not disserve the public interest.” *Canal Auth.*, 489 F.2d at 572. A preliminary injunction should be granted only if the movant has “clearly” carried the burden of persuasion on all four of these prerequisites. *Id.* at 573.

III. Argument

A. Petitioner Is Unlikely to Succeed on the Merits.

Petitioner is unlikely to succeed on the merits of his as-applied constitutional claims. To establish a due process violation, Petitioner must show that he was deprived of liberty without adequate safeguards. *See Mathews v. Eldridge*, 424 U.S. 319, 332 (1976); *Daniels v. Williams*, 474 U.S. 327, 331 (1986). The Fifth Circuit finds no due process violation where the constitutional minima of due process is otherwise met. *Murphy v. Collins*, 26 F.3d 541, 543 (5th Cir. 1994). Petitioner is receiving due process protections, both substantively and procedurally, and his detention is both statutorily permissible and constitutional as applied to him.

While as-applied constitutional challenges to immigration detention may be brought under certain circumstances, there is no colorable claim articulated here that Petitioner’s detention without bond is unconstitutional. *See, e.g., Jennings v. Rodriguez*, 583 U.S. 281, 312 (2018). This Court’s review is limited to whether ICE is providing due process of law to Petitioner within the scope of § 1225(b). *Id.*; *see also Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020). Indeed, Petitioner has been placed “full” removal proceedings, which entitles him to robust

due process protections, including representation by counsel of his choice at no expense to the government and appellate review of any adverse decision. Petitioner is not entitled to anything beyond what § 1225(b) provides him. *See Jennings*, 583 U.S. at 312; *see also Thuraissigiam*, 591 U.S. at 140.

Moreover, Petitioner's pre-removal custody is neither prolonged, nor indefinite. Petitioner has been detained for approximately four months while pending removal proceedings. Pre-removal-order detention "has a definite termination point: *the conclusion of removal proceedings*." *Castaneda v. Perry*, 95 F.4th 750 (4th Cir. 2024) (emphasis in original) (paraphrasing *Jennings*, 583 U.S. at 304). Petitioner is scheduled for a final individual removal hearing on all applications for relief from removal with the immigration judge on December 11, 2025.⁴ Petitioner's detention is not delayed beyond anything other than ordinary litigation processes. *See Linares v. Collins*, 1:25-CV-00584-RP-DH, ECF No. 14 at 15 (W.D. Tex. Aug. 12, 2025) (collecting cases and finding that aliens cannot assert viable due process claims when their detention is caused by their own plight, because delay due to litigation activity does not render detention indefinite).

Petitioner is not entitled to more process than what Congress provided him by statute, regardless of whether the applicable statute is § 1225(b) or § 1226(a). *See Jennings*, 583 U.S. at 297–303; *Thuraissigiam*, 591 U.S. at 140 (finding that applicants for admission are entitled only to the protections set forth by statute and that "the Due Process Clause provides nothing more"). An "expectation of receiving process is not, without more, a liberty interest protected by the Due Process Clause." *Olim v. Wakinekona*, 461 U.S. 238, 250 n. 12 (1983).

Petitioner is not entitled to a bond, even under the statute he claims applies to his detention. *See* 8 U.S.C. § 1226(a). He is not likely to succeed on his claim that he is entitled to release from

⁴ *See Automated Case Information* (last accessed Oct. 8, 2025).

custody as a matter of due process, because he has been detained in pre-removal-order custody only four months, was provided a bond hearing and given a bond, although the decision was ultimately reversed on appeal,, has been represented by counsel during his pending removal proceedings, and has filed applications for relief from removal with counsel that he will have an opportunity to present to an Immigration Judge in a full removal hearing in December. That he must pursue this robust process from detention is not the fault of the government; his detention is a direct result of his unlawful status as an alien who was found to be present within the United States without ever having been admitted or paroled. 8 U.S.C. § 1225(b)(2).

B. Remaining Factors Do Not Favor Relief.

With respect to the balancing of the equities and public interest, it cannot be disputed that (1) Petitioner is in removal proceedings, which entitles the government to detain him by statute, either on a mandatory basis, or at the very least, in the exercise of discretion; and (2) both the government and the public at large have a strong interest in the enforcement of the immigration laws.

Moreover, Petitioner has provided no basis for this Court to determine that his continued detention pending removal proceedings will cause him irreparable harm. Indeed, Petitioner is represented by counsel in this habeas and in removal proceedings before the immigration judge, and BIA. ECF No. 12 at 11–12. The built-in procedural safeguards in the ICE regulations further weaken his claim that he is likely to suffer irreparable harm without this Court’s intervention. Petitioner has applied for relief from removal while in custody, like thousands of other similarly situated individuals, and is currently set for a final hearing on said relief where he will be given a full opportunity to be heard through counsel. If he receives an adverse decision, he can seek judicial review through the BIA and the circuit court. The Court should therefore deny the TRO and

dismiss this case in its entirety.

IV. Conclusion

This motion should be denied, and the Court should deny the Petition.

Respectfully submitted,

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