United States District Court
Western District of Texas
San Antonio Division

Johel Isaac Pereira-Verdi,
Petitioner,

v.

Todd M. Lyons, Acting Director of
U.S. Immigration and Customs Enforcement
et al,
Respondents.

No. 5:25-CV-01187-XR

Response in Opposition to
Petitioner's Motion for Temporary Restraining Order

Petitioner, through counsel, filed a habeas petition with this Court on or about September 22, 2025. ECF No. 1. The Court ordered service on Respondents and a response within 3 days of that service. ECF No. 2. Respondents were served on October 6, 2025, and intend to file a response to the petition as ordered by October 9, 2025.

On September 29, 2025, Petitioner filed a Motion for Temporary Restraining Order ("TRO Motion"), requests, *inter alia*, that the Court order his immediate release from custody, or in the alternative order the immigration court to hold a bond hearing in which DHS bears the burden of proving dangerousness or flight risk. ECF No. 7 at 1. Petitioner challenges the lawfulness of his pre-removal-order detention but concedes that he (1) entered the United States without being admitted or paroled; (2) is in removal proceedings without lawful status; and (3) has been detained in pre-removal-order ICE custody since September 2, 2025. ECF No. 1 at 4.

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 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 through a bond hearing. The statute does entitle him to the full removal proceedings ICE placed him in, 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 it is 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, as the statute does not even provide for a bond hearing in his circumstances; even still, he is currently receiving full administrative review; (3) Petitioner is currently pursuing relief from removal in full removal proceedings; (4) his detention is not unconstitutionally prolonged (or indefinite) in violation of his substantive due process rights, because he has been detained less than 60 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.[1]

[1] 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 by October 9, 2025.

I. Relevant Background

Petitioner is a native and citizen of Venezuela, currently detained in ICE custody pending his removal proceedings. ECF No. 1 at 4-5. Petitioner concedes that he was placed into removal proceedings after being apprehended by while entering without inspection on November 20, 2021. *Id.* ¶ 14. Petitioner was released from detention on December 1, 2021. ECF No. 1 at ¶ 16. On September 6, 2022, Petitioner filed an application for relief from removal. *Id* at ¶15. Petitioner is currently scheduled for his master calendar hearing on October 21, 2025.[2] At said hearing, the immigration court will calendar a hearing on Petitioner's pending application for relief.

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 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

[2] *See* Automated Case Information (last accessed Oct. 8, 2025).

A. Plaintiff 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 one month 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 master calendar hearing with the immigration judge

in his removal proceedings on October 21, 2025.[3] 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 custody as a matter of due process, because he has been detained in pre-removal-order custody just over a month, was provided a bond hearing and given an opportunity to 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. 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

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

(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. Additionally, Petitioner already has an application for relief that has been pending with the immigration court since 2022. ECF No. 1 ¶15. Remaining in detention expedites the adjudication of this relief application, and the three-year wait for adjudication will end. 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. Here, Petitioner applied for relief from removal before coming into custody and thus had the last three years to compile and prepare for his final hearing, a hearing Petitioner claims has been rescheduled by no request of the petitioner. *Id* ¶15. If he receives an adverse decision on his relief application, 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.

C. Case Citations

During the hearing on October 6, 2025, the Court requested that Respondents provide a list of any known cases that agree with the Respondent's interpretation. The following courts have held in favor of the Respondent's. *See Acxel S.Q.D.C. v Bondi*, No. 25-CV-3348-PAM-DLM, 2025 WL 2617973 (D. Minn. September 9, 2025); *Chavez v. Noem*, No. 3:25-CV-02325-CAB-SBC, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025); *Vargas Lopez v. Trump*, No. 8:25-cv-00526-BCB-RCC, 2025 WL 2780351 (D. Neb. Sept. 30, 2025).

IV. Conclusion

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

Respectfully submitted,

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