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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

CARLOS ALBERTO PEREZ SILVA, *Petitioner*, v. KRISTI NOEM, *et al.*, *Respondents*.	Hon. Jamel K. Semper, U.S.D.J. Civil Action No. 25-16577 (JKS)

ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241 AND RESPONSE TO MOTION FOR TEMPORARY RESTRAINING ORDER

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PRELIMINARY STATEMENT

Petitioner is detained under 8 U.S.C. § 1225(b), which requires detention of "arriving aliens" pending their removal proceedings. Petitioner brings this habeas action under 28 U.S.C. § 2241, alleging that his detention violates the Immigration and Nationality Act ("INA") and the Due Process Clause. The Court issued an Order directing U.S. Customs and Immigration Enforcement ("ICE") to respond to the petition and motion for temporary restraining order. ECF No. 3.

Petitioner's detention is lawful because § 1225(b)(1) requires it to detain Petitioner who is an "arriving alien." An arriving alien is, in this context, an inadmissible alien who encounters immigration officers upon arrival into the United States at a port of entry, such as at an airport (as was the case here). Unlike the many federal district courts, including this one, that have rejected ICE's interpretation of another portion of § 1225(b) concerning aliens detained after already entering the country, this case concerns the longstanding law that ICE must detain arriving aliens until their removal. Accordingly, ICE's detention of petitioner is required by the INA and comports with due process.

Lastly, to the extent Petitioner asserts a conditions of confinement claim, the Court lacks habeas jurisdiction in light of *Hope v. Warden York Cnty. Prison*, 972 F.3d 310, 324 (3d Cir. 2020).

BACKGROUND

I. Relevant Legal Background

A. Detention of "Arriving Aliens" under 8 U.S.C. § 1225(b)(1)

"The power to admit or exclude [non-citizens] is a sovereign prerogative." *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 139 (2020) (alteration omitted) (quoting *Landon v. Plasencia*, 459 U.S. 21, 32 (1982)). And "the Constitution gives 'the political department of the government' plenary authority to decide which [non-citizens] to admit." *Id.* (emphasis added) (quoting *Nishimura Ekiu v. United States*, 142 U.S. 651, 659 (1892)). "[A] concomitant of that power is the power to set the procedures to be followed in determining whether a[] [non-citizen] should be admitted." *Id.*; see *Jennings v. Rodriguez*, 583 U.S. 281, 286 (2018) ("To implement its immigration policy, the Government must be able to decide (1) who may enter the country and (2) who may stay here after entering.").

A noncitizen "who has not been admitted or who arrives in the United States" is considered an "applicant for admission" under the INA. 8 U.S.C. § 1225(a)(1). All "[a]pplicants for admission must 'be inspected by immigration officers' to ensure that they may be admitted into the country consistent with U.S. immigration law." *Jennings*, 583 U.S. at 287 (quoting 8 U.S.C. § 1225(a)(3)). "[A]pplicants for admission fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Id.* at 287.

Under § 1225(b)(1), which applies to Petitioner here, applicants for admission who are "arriving" are subject to expedited removal. An "arriving alien" is "an applicant for admission coming or attempting to come into the United States at a

port-of-entry[.]" 8 C.F.R. § 1.2. Put simply, an "arriving alien" is a noncitizen who just arrived to the country (e.g., at an airport off an inbound flight), or did so very recently (e.g., being apprehended a few miles into Texas from the Rio Grande). *See id.*; *see also* Designating Aliens for Expedited Removal, 69 Fed. Reg. 48877-01, 48879 (Aug. 11, 2004) (arriving aliens are mean "an applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry, or an alien interdicted in international waters and brought into the United States by any means whether or not to a designated port-of-entry").

An arriving alien is typically subject to expedited removal. That is, an immigration officer who finds the arriving alien inadmissible "shall order" removal without further hearing. *Id.* § 1225(b)(1)(A)(i). See also 8 C.F.R. § 1003.19(h)(2)(i)(B) (prohibiting bond hearings for arriving aliens in removal proceedings). But an arriving alien can instead be placed in full removal proceedings under 8 U.S.C. § 1229a. One way for that to occur is if the immigration officer, in his or her discretion, chooses to initiate full removal proceedings. *See Matter of E-R-M- & L-R-M-*, 25 I&N Dec. 520 (BIA 2011). Another way is when the "arriving alien" in expedited removal proceedings announces an intention to apply for asylum or expresses a fear of persecution (including torture under CAT). In that case, removal is postponed pending further proceedings on the application. *Id.* § 1225(b)(1) (A)(ii), (B). If the arriving alien is found to have a credible fear of persecution or torture, the alien is referred from expedited removal to full removal proceedings under 8 U.S.C. § 1229a.

See 8 U.S.C. § 1225(b)(1)(B)(ii); 8 C.F.R. § 208.30(f). Such full removal proceedings under § 1229a provide more robust procedures and due process than expedited removal, *compare* 8 U.S.C. § 1229a *with id.* § 1225(b)(1), including a right to appeal to the Board of Immigration Appeals ("BIA") and petition for review by a federal appellate court. *Id.* § 1252(a)(1). However, the arriving alien "shall be detained" throughout this process. *Id.* § 1225(b)(1)(B)(ii), (b)(1)(B)(iii)(IV).

Although detention under § 1225(b) is mandatory, it is not indefinite. On the contrary, "§§ 1225(b)(1) and (b)(2) . . . provide for detention for a specified period of time." *Jennings*, 583 U.S. at 299. Specifically, "detention must continue until immigration officers have finished 'consider[ing]' the application for asylum or until removal proceedings have concluded." *Id.* (internal citation omitted). "Once those proceedings end, detention under § 1225(b) must end as well." *Id.* at 297.

Although section 1225(b) does not provide for bond hearings, *see id.* at 297–303, it does contain "a specific provision authorizing release from . . . detention": The Secretary of Homeland Security "may 'for urgent humanitarian reasons or significant public benefit' temporarily parole [non-citizens] detained under §§ 1225(b)(1) and (b)(2)." *Id.* at 300 (quoting 8 U.S.C. § 1182(d)(5)(A)). Federal courts lack jurisdiction "to review the . . . exercise of discretion in decisions to grant or deny parole." *Ashish v. Att'y Gen. of U.S.*, 490 F. App'x 486, 487 (3d Cir. 2013); *see* 8 U.S.C. § 1252(a)(2)(B)(ii).

B. Detention under 8 U.S.C. § 1226(a)

Section 1226 provides for arrest and detention on a warrant "pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). Under § 1226(a), immigration officials may detain an alien during his removal proceedings, release him on bond, or release him on conditional parole.[1] By regulation, immigration officers can release an alien if the alien demonstrates that he "would not pose a danger to property or persons" and "is likely to appear for any future proceeding." 8 C.F.R. § 236.1(c)(8). An alien can also request a custody redetermination (i.e., a bond hearing) by an immigration judge ("IJ") at any time before a final order of removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1), 1003.19.

At a custody redetermination, the IJ may continue detention, release the alien on bond, or release the alien on conditional parole. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). IJs have broad discretion in deciding whether to release an alien on bond. *Matter of Guerra*, 24 I. & N. Dec. 37, 39–40 (BIA 2006) (listing nine factors for IJs to consider). But regardless of the factors IJs consider, an alien "who presents a danger to persons or property should not be released during the pendency of removal proceedings." *Id.* at 38.

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[1] Being "conditionally paroled under the authority of § 1226(a)" is distinct from being "paroled into the United States under the authority of § 1182(d)(5)(A)." *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1116 (9th Cir. 2007) (holding that because release on "conditional parole" under § 1226(a) is not a parole, the alien was not eligible for adjustment of status under § 1255(a)); *Matter of Cabrera-Fernandez*, 28 I. & N. Dec. 747, 749 (BIA 2023).

C. Detention of Aliens with Finals Orders of Removal under 8 U.S.C. § 1231(a)

When an alien is subject to a final order of removal, there is a 90-day "removal period," during which the government "shall" remove the alien. 8 U.S.C. § 1231(a)(1). Detention during this period is mandatory. *See* 8 U.S.C. § 1231(a)(2). There are at least three potential outcomes in the event the government does not remove an alien during the 90-day mandatory removal period. First, the government may release the alien subject to conditions of supervised release. *See* 8 U.S.C. § 1231(a)(3). Second, the government may extend the removal period if the alien "fails or refuses to make timely application in good faith for travel or other documents necessary to the alien's departure or conspires or acts to prevent the alien's removal subject to an order of removal." 8 U.S.C. § 1231(a)(1)(C). And finally, the government may further detain certain categories of aliens, including those "inadmissible" under 8 U.S.C. § 1182. *See* 8 U.S.C. § 1231(a)(6). Continued detention under this latter category is often referred to as the "post-removal-period." *Johnson v. Guzman Chavez*, 594 U.S. 523, 529 (2021).

II. Petitioner's Immigration History

Petitioner is a citizen of Colombia. Ans. Ex. A (Form I-213) at 1.[2] He arrived at Miami International Airport from on February 11, 2001, and requested asylum. *Id.* at 2. He had arrived at the airport from Columbia while in transit to Spain. *Id.* He was classified as an "arriving alien" under 8 U.S.C. § 1225(b)(1); found to be

[2] Respondents are attaching Petitioner's relevant immigration records as exhibits to this Answer under Federal Rule of Civil Procedure 10(c), which is incorporated by Rule 12 of the Rules Governing Section 2254 Cases in the United States District Courts (which is applicable to this § 2241 petition through Rule 1(b)).

inadmissible under 8 U.S.C. § 1182(a)(6)(C)(i) as an alien who, by fraud or willful misrepresentation, sought to procure admission into the United States, and under 8 U.S.C. § 1182(a)(7)(A)(i)(I), as an immigrant without valid documents; received a notice of expedited removal; and entered immigration custody. *Id.*; *see also* Ans. Ex. C (Notice and Order of Expedited Removal). But, because an asylum officer found that Petitioner demonstrated a credible fear of persecution or torture if returned to Colombia, on February 20, 2001, immigration officials issued a Notice to Appear ("NTA"), the initiating document for removal proceedings, formally charging him as an "arriving alien" and placing him in full removal proceedings under § 1229a. Ans. Ex. B (NTA). The NTA charged Petitioner with removability under INA § 212(a)(6)(C)(i), 8 U.S.C. § 1182(a)(6)(C)(i), for fraud and willful misrepresentations, and INA § 212(a)(7)(A)(i)(I), 8 U.S.C. § 1182(a)(7)(A)(i)(I), for being an immigrant without valid documents. *Id.*

On August 3, 2001, after being released on parole from ICE custody, the immigration court ordered Petitioner removed in absentia because he failed to appear at his removal proceedings, but he remained in the United States for 24 years. Ans. Ex. A, Form I-213 at 2.

On May 8, 2025, Petitioner filed with U.S. Citizenship and Immigration Services ("USCIS") an I-485, Application to Register Permanent Residence or to Adjust Status. Am. Pet. ¶ 29; Am. Pet. Ex. C at 1, Notice of Decision at 1.

On September 5, 2025, ICE encountered Petitioner in Cranbury, New Jersey and detained him under 8 U.S.C. § 1231(a) because he was subject to a final order of removal. Ans. Ex. A, I-213 at 2.

On September 10, 2025, USCIS denied Petitioner's I-485 application for adjustment of status to that of a lawful permanent resident because of the 2001 in-absentia order of removal. Am. Pet. Ex. C at PageID 143-44. Around the same time, Petitioner also obtained a stay of removal from the immigration court while he pursued a motion to reopen removal proceedings. *Id.* at PageID 173. On September 19, 2025, the immigration court rescinded the final order of removal and reopened his removal proceeding with the original charges of removability in the 2001 Notice to Appear—i.e., fraud and willful misrepresentations and lack of valid documentation. ECF No. 6, Order of Immigration Judge at 1. On September 24, 2025, Petitioner filed an appeal of USCIS's denial of his I-485, asserting, among other things, that USCIS's denial was no longer sound after the immigration court rescinded the 2001 order of removal. *Id.* at PageID 153-56.[3]

Petitioner was accordingly detained by ICE on September 5, 2025 under § 1231(a) because he was subject to a final order of removal, and then, when the

[3] Because the immigration court rescinded the 2001 order of removal, Petitioner's removal proceedings will reopen until concluded either by a new order of removal or some type of relief from removal. To that end, Petitioner's 2001 NTA charged him with fraud and misrepresentation under 8 U.S.C. § 212(a)(6)(C), which renders him ineligible to adjust his status through a Form I-485. *See Saliba v. U.S. Attorney General*, 828 F.3d 182, 192-95 (3d Cir. 2016) (explaining that fraud under § 212(a)(6)(C) renders alien ineligible for a green card or naturalization). He would need to obtain a waiver of the fraud charge. *Id.* According to ICE, Petitioner filed a waiver application earlier this year, but it remains pending with USCIS.

immigration court rescinded the order of removal and reopened proceedings, ICE's detention authority reverted back to § 1225(b)(1).

Petitioner was detained at the Delaney Hall Detention Facility in Newark, New Jersey, when this action was filed. *Id.* ¶ 6.

III. Procedural History

Petitioner filed this habeas petition on October 10, 2025. ECF No. 1. On October 15, he filed an Amended Petition and Motion for Temporary Restraining Order. ECF No. 2. In Counts One and Two, he asserts that ICE unlawfully detained him without a bond hearing in violation of the INA and the Due Process Clause of the Fifth Amendment. In Count Three, he asserts a conditions of confinement claim based on the alleged conditions at Delaney Hall Detention Facility. Petitioner seeks immediate release or a bond hearing under § 1226(a). *Id.*, Prayer for Relief ¶¶ 2-3. On October 16, 2025, the Court issued a Text Order directing (1) Petitioner to serve the Amended Petition and TRO, and (2) Respondents to answer the Amended Petition and respond to the TRO within seven days of being served. ECF No. 3. This Office was served on October 22, 2025.

STANDARD OF REVIEW

28 U.S.C. § 2241(c)(3) authorizes a court to grant a writ of habeas corpus where a prisoner "is in custody in violation of the Constitution or laws or treaties of the United States." Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts, which is applicable to § 2241 petitions through Rule 1(b), provides this Court with the authority to dismiss a habeas petition if it "plainly

appears from the petition and any attached exhibits that the petitioner is not entitled to relief." *See also Moncrieffe v. Yost*, 367 F. App'x 286, 288 n.2 (3d Cir. 2010) (noting summary dismissal of a § 2241 habeas petition is appropriate pursuant to Rule 4 of the Rules Governing Section 2254 Cases). "Federal courts are authorized to dismiss summarily any habeas petition that appears legally insufficient on its face." *McFarland v. Scott*, 512 U.S. 849, 856 (1994) (citing 28 U.S.C. § 2254, Rule 4).

ARGUMENT
THE COURT SHOULD DISMISS THE HABEAS PETITION

I. Petitioner is an "Arriving Alien" Subject to Mandatory Detention under § 1225(b)(1).

Petitioner's mandatory detention is lawful under of § 1225(b)(1). On September 5, 2025, an immigration officer encountered Petitioner in Cranbury, New Jersey, determined that he was unlawfully present without admission or parole and subject to a final removal order, and arrested Petitioner. Ans. Ex. A, Form I-213 at 2. Since removal proceedings have been reopened, Petitioner is no longer subject to a final order of removal, but he is still an "arriving alien" as defined by 8 U.S.C. § 1225(b)(1) because he encountered immigration officials at the Miami International Airport—a port of entry—and requested asylum. *Id.*; Ans Ex. B, NTA. Because he received a finding of credible fear of persecution, he was not removed expeditiously but was placed into full removal proceedings under § 1229a. Ans Ex. B, NTA. That Petitioner was paroled and later re-detained does not change his status as an arriving alien. *See Pipa-Aquise v. Bondi*, No. 25-1094, 2025 WL 2490657, at *1 (E.D. Va. Aug. 5, 2025) (collecting cases). His detention is mandatory pending his removal proceedings as per

§ 1225(b)(1)(B)(ii), which states that, with a positive credible fear determination, the alien "shall be detained" throughout the removal proceedings. *See Matter of M-S-,* 27 I&N Dec. 509, 512 (2019) (stating § 1225(b)(1) "mandates detention throughout the completion of removal proceedings unless the alien is paroled") (internal quotation marks and alterations omitted) (quoting *Jennings*, 138 S. Ct. at 844-45). *See also Mendez Ramirez v. Decker*, 612 F. Supp. 3d 200, 219 (S.D.N.Y. 2020) ("Like all arriving aliens who are not 'clearly and beyond a doubt entitled to be admitted' to this country, Mr. Mendez Ramirez is subject to mandatory detention. As discussed above, an immigration judge 'may not' conduct a bond hearing to determine whether such an arriving alien should be released into the United States during removal proceedings, 8 C.F.R. § 1003.19(h)(2)(i)(B), but DHS may exercise its discretion to release detained aliens in limited circumstances.").

If, however, the Court holds that § 1226(a) applies to Petitioner, the appropriate remedy is a bond hearing at which Petitioner bears the burden, not immediate release. *See Valeriano v. Bondi*, No. 25-cv-16100 (MAS), ECF No. 4 (D.N.J. Oct. 1, 2025), at 2. ("As Petitioner acknowledges, even under his reading of the relevant immigration statutes, he is still subject to detention under 8 U.S.C. § 1226(a), albeit with an entitlement to seek bond from an immigration judge. Should Petitioner prevail in this matter, the proper relief would constitute an order directing the Government to provide Petitioner with the bond hearing to which he contends he is entitled under § 1226(a)."); *cf. Borbot v. Warden Hudson Cnty. Corr. Facility,* 906 F.3d 274, 278–79 (3d Cir. 2018) (holding that Due Process does not require the

government to bear the burden of proof in bond hearings under 8 U.S.C. § 1226(a)); *but see, e.g.*, *Rivera Zumba*, 2025 WL 2753496, at *10–11 (ordering petitioner's release and "temporarily enjoin[ing] respondents from re-arresting petitioner under . . . 8 U.S.C. § 1226(a) for 14 days after her release"); *Bethancourt Soto v. Soto*, No. 25-16200 (D.N.J. Oct. 22, 2025), ECF No. 9 (Order).

II. Due Process Permits Mandatory Detention Pending Removal Proceedings

The Court should also reject Petitioner's argument that he has not been afforded sufficient process. As a general matter, "applicants for admission are entitled only to those rights and protections Congress set forth by statute," and "the due process clause requires 'nothing more.'" *Pena*, 2025 WL 2108913, at *2 (citing *Thuraissigiam*, 591 U.S. at 140). That is because "the Constitution gives the political department of the government plenary authority to decide which aliens to admit, and a concomitant of that power is the power to set the procedures to be followed in determining whether an alien should be admitted." *Thuraissigiam*, 591 U.S. at 139 (citation omitted) (cleaned up); *see also id.* ("[A]liens who arrive at ports of entry—even those paroled elsewhere in the country for years pending removal—are treated for due process purposes as if stopped at the border."). Here, once ICE determined that Petitioner entered the United States without admission (a fact that Petitioner does not dispute), it follows that Petitioner is an "arriving alien" and subject to mandatory detention.

Petitioner's current detention also comports with due process. Although the due process clause prohibits unduly prolonged detention, *Zadvydas v. Davis*, 533 U.S.

678, 690 (2001), some amount of detention is generally permissible, *Demore v. Kim*, 538 U.S. 510, 511 (2003). The Third Circuit's decision in *German Santos v. Warden Pike County Correctional Facility*, 965 F.3d 203 (3d Cir. 2020), is instructive on this point. There, the court held that when ICE detains a noncitizen pending removal proceedings under 8 U.S.C. § 1226(c) (which, like § 1225(b), requires mandatory detention), the Due Process Clause demands a bond hearing only once detention has become "unreasonably prolonged." *Id.* at 210–11. This is a "highly fact-specific inquiry" without a bright line. *Id.* But courts in this District have held that detentions under § 1225(b) considerably longer than Petitioner's were not unreasonable. *See Adel G. v. Warden, Essex Cnty. Jail*, No. 19-13512 (KM), 2020 WL 1243993, at *2 (D.N.J. Mar. 13, 2020) (collecting cases holding that "detention for fifteen months or less is insufficient to support an as-applied challenge to detention under § 1225(b)"). *See also Rodriguez v. Bondi*, No. 25-791, 2025 WL 2490670, at *3 (E.D. Va. June 24, 2025) (same; collecting cases).

Here, Petitioner has been in custody since September 5, 2025, less than two months. Am. Pet. ¶ 12. Further, Petitioner has received due process while detained, including petitioning successfully the immigration court to reopen his removal proceedings and applying for relief from removal because that court. Therefore, it is ICE's position that his detention is presumptively reasonable. *See, e.g.*, *Pipa-Aquise*, 2025 WL 2490657, at *1 (holding that "Petitioner's two-month detention" under § 1225(b) did not violate due process); *Mendez Ramirez v. Decker*, 612 F. Supp. 3d 200, 222 (S.D.N.Y. 2020) ("Here, Mr. Mendez Ramirez has been detained for

approximately ten months. That is far less time than other courts in this District have held to comport with due process."); *Traore v. Decker*, No. 19-4612, 2019 WL 3890227, at *4-6 (S.D.N.Y. Aug. 19, 2019) (rejecting due process challenge to 20.5-month mandatory detention of arriving alien).

Finally, even where mandatory detention becomes "unreasonable" under the Due Process Clause, the appropriate remedy is a bond hearing, rather than immediate release. *See, e.g.*, *Akhmadjanov v. Oddo*, No. 25-35, 2025 WL 660663, at *5 (W.D. Pa. Feb. 28, 2025); *Rodriguez v. Bondi*, No. 25-791, 2025 WL 2490670, at *3 (E.D. Va. June 24, 2025). ICE respectfully submits that if the Court finds that Petitioner's detention is unreasonable, it should order a bond hearing instead of release.

III. The Court Lacks Jurisdiction over the Conditions of Confinement Claim

In Count Three, Petitioner asserts a conditions of confinement claim related to alleged sleeping conditions, facility capacity, meal quality, and sanitary and hygiene issues. Am. Pet. ¶ 11 of Count Three. The Court lacks habeas jurisdiction over this claim.

28 U.S.C. § 2241 grants federal courts jurisdiction over allegations that a petitioner (including an immigration detainee) "is in custody in violation of the Constitution or laws or treaties of the United States." § 2241(c)(3); *see Hope v. Warden York Cnty. Prison*, 972 F.3d 310, 324 (3d Cir. 2020). Federal habeas relief, however, is generally limited to an alleged deprivation of rights that "necessarily impacts the fact or length of detention." *Leamer v. Fauver*, 288 F. 3d 532, 540 (3d Cir. 2002);

accord Bonadonna v. United States, 446 Fed. Appx. 407, 409 (3d Cir. 2011). As a result, a claim challenging conditions of confinement is generally not cognizable through habeas, because the claim neither attacks the duration nor the fact of the detention itself (*i.e.*, whether the terms of detention conflict with the statute or judgment). *See Nelson v. Campbell*, 541 U.S. 637, 643 (2004) (claim for injunctive relief challenging fact of conviction or duration of sentence "fall[s] within the core of federal habeas corpus," whereas "constitutional claims that merely challenge the conditions of a [detainee]'s confinement . . . fall outside of that core" habeas jurisdiction).

The Supreme Court has never authorized a conditions-of-confinement claim under 28 U.S.C. § 2241.[4] Indeed, the Third Circuit routinely rejects habeas claims based on allegedly unconstitutional conditions of confinement or inadequate medical care as not cognizable under § 2241. *See Folk v. Warden Schuylkill FCI*, No. 23-1935, 2023 WL 5426740, at *2 (3d Cir. 2023) (per curiam) (finding "conditions-of-confinement claim related to the conditions of the facilities or the lack of adequate

[4] The Supreme Court has left open the possibility that a detainee or prisoner might be able to bring a habeas petition to challenge the conditions of his confinement under extraordinary circumstances not present here. *See Preiser v. Rodriguez*, 411 U.S. 475, 499 (1973) (when "a prisoner is put under additional and unconstitutional restraints during his lawful custody, it is arguable that habeas corpus will lie to remove the restraints making the custody illegal"); *Bell v. Wolfish*, 441 U.S. 520, 526 n.6 (1979) ("we leave to another day the question of the propriety of using a writ of habeas corpus to obtain review of the conditions of confinement"); *Ziglar v. Abbasi*, 137 S. Ct. 1843, 1862–63 (2017) (leaving open "the question whether [detainees] might be able to challenge their confinement conditions" through a habeas attack in extreme cases). But the Supreme Court has not yet authorized such a cause of action. *See Muhammad v. Close*, 540 U.S. 749, 751 n.1 (2004) (observing that the Court has never followed the dicta in *Preiser* described above).

medical care . . . non-cognizable" under § 2241); *Johnson v. Warden Canaan USP*, 699 Fed. Appx. 125, 126 (3d Cir. 2017) (affirming District Court's reasoning that habeas corpus was "not an available remedy" because "Johnson was challenging the conditions of his confinement rather than the execution of his sentence"); *Leslie v. Att'y Gen. of U.S.*, 363 Fed. Appx. 955, 958 (3d Cir. 2010) (same).

In *Hope*, the Third Circuit concluded that, under the extraordinary circumstances of the COVID-19 pandemic that existed in March 2020, civil immigration detainees could challenge the conditions of their confinement under 28 U.S.C. § 2241 where "the only relief sought—*the only adequate relief for the constitutional claims*—[was] release" from custody. 972 F.3d at 323–35 (emphasis added). But the Third Circuit expressly cabined its holding to the extraordinary circumstances present during the early days of the COVID-19 pandemic, emphasizing that it was "not creating a garden variety cause of action," and questioning "whether a § 2241 claim may be asserted in less serious circumstances." *Id.* at 324, 325 n.5.[5] And absent extreme circumstances, a detainee has other means to pursue adequate relief for allegedly unconstitutional conditions of confinement; for example, through a suit for injunctive relief seeking to modify the conditions at issue. *See, e.g.*, *Davis v. Pa. Dep't of Corr.*, No. 15-587, 2015 WL 5918909, at *4 (W.D. Pa. Oct. 7, 2015) ("[T]he appropriate remedy for such constitutional violations, if proven, would be a

[5] Notably, the Third Circuit in *Hope* went on to hold that even under those circumstances, the petitioners failed to demonstrate a likelihood of success on their claims that immigration officials were deliberately indifferent to their medical needs. *Hope*, 972 F.3d at 329–31.

judicially mandated change in conditions and/or an award of damages, but not release from confinement." (quoting *Crawford v. Bell,* 599 F.2d 890, 891–92 (9th Cir. 1979))).

Post-*Hope*, the Third Circuit has not recognized a "garden variety" conditions-of-confinement claim under § 2241. Rather, Courts have interpreted *Hope* as allowing for a conditions-of-confinement claim for immigration detainees "'*only in extreme cases*,'" such as those existing during the height of the pandemic. *Cf. Folk*, 2023 WL 5426740, at *1 (emphasis added) (quoting *Hope*, 972 F.3d at 324); *accord Goodchild v. Ortiz*, No. 21-790 (RMB), 2021 WL 3914300, at *15 (D.N.J. Sept. 1, 2021) (noting in the prisoner habeas context that "habeas jurisdiction over a conditions of confinement claim" are limited to "'extreme cases'" or "'extraordinary circumstances'"). And courts have rejected claims, like Petitioner's here, which seek to expand habeas jurisdiction absent plausible allegations that the conditions present "extreme cases" of "special urgency," such as the situation at issue in *Hope*. *See Folk*, 2023 WL 5426740, at *2 (dismissing § 2241 petition brought by inmate alleging denial of medical care as "non-cognizable," post-*Hope*); *see also Khan v. Aviles*, No. 23-698 (MCA), 2024 WL 3276773, at *2 (D.N.J. June 10, 2024) (dismissing habeas claims challenging conditions of confinement and alleging denial of adequate medical care as "insufficient to establish the type of extraordinary circumstances warranting habeas relief"); *Kayian v. Thompson*, No. 23-21623 (KMW), 2024 WL 64777, at *1 (D.N.J. Jan. 5, 2024) (holding that allegations of "inadequate medical care" are "generally not cognizable in a habeas proceeding" and dismissing habeas petition for lack of jurisdiction (citations omitted)); *Jones v. Merendino*, No. 23-89 (KMW), 2023

WL 8295274, at *3 n.1 (D.N.J. Dec. 1, 2023) ("Outside of certain very limited exceptions wherein emergency conditions might require the release of an incarcerated individual, such as a non-criminal immigration detainee held during a pandemic subjected to high risk of infection, courts in this circuit have been hesitant to recognize a cognizable habeas claim based on a prisoner's conditions of confinement."); *Vendetti v. Ortiz*, No. 21-5193 (NLH), 2022 WL 102250, at *2 (D.N.J. Jan. 11, 2022) (finding no jurisdiction when "the petition has not alleged the extraordinary circumstances necessary to invoke this Court's habeas jurisdiction.").

Here, the Court should dismiss Petitioner's conditions-of-confinement claim because it would expand habeas jurisdiction beyond *Hope*'s limited scope in a manner unsupported by Supreme Court and Third Circuit law. His claims challenge the conditions of his confinement and, as a result, "fall outside of [] core" habeas jurisdiction. *Nelson*, 541 U.S. at 643.

Petitioner also does not plausibly allege a habeas claim under *Hope*, as his cursory allegations about facility conditions do not constitute the type of "exceptional circumstances" for which release is the only appropriate remedy. *See* 972 F.3d at 324–25 (emphasizing that the limited remedy recognized in *Hope* should not be read as "creating a garden variety cause of action" for conditions-of-confinement claims under § 2241). Courts in this District routinely find claims like Petitioner's to be non-cognizable under § 2241 post-*Hope*. *See e.g. Ramos v. Thompson*, No. 24-6645 (RMB), 2024 WL 3518125, at *2 (D.N.J. July 24, 2024) (dismissing § 2241 petition for lack of jurisdiction when prisoner alleged failure to diagnose or treat medical conditions over

eleven-month period); *Kayian*, 2024 WL 64777, at *1-2 (same as to prisoner claims alleging denial of walker and medical equipment that petitioner allegedly "need[ed] to properly breathe"); *Ricketts v. Ortiz*, No. 20-7430 (RBK), 2023 WL 2859743, at *5-6 (D.N.J. Apr. 10, 2023) (same as to allegations that prisoner had not been issued shoes, and had not been allowed to review legal mail or receive personal hygiene); *Perri v. Warden, FCI-Fort Dix*, No. 20-13711 (RBK), 2023 WL 314312, at *7-9 (D.N.J. Jan. 19, 2023) (same as to allegations that prisoner was housed in unsafe conditions in light of COVID-19 pandemic, and that facility lacked adequate cleaning supplies and protective gear, and did not allow for social distance).

Ultimately, Petitioner cannot show that release is "the only adequate relief" for the alleged deficiencies in his medical care.[6]

IV. The Court Should Deny the TRO

Even if the Court does not dismiss the petition, the Court should still deny the request for a TRO because Petitioner cannot satisfy the factors to obtain relief. Rule

[6] For similar reasons, even if the Court were to conclude that jurisdiction is proper to address the conditions-of-confinement claim under §2241 and Petitioner could establish that he is entitled to relief, the proper remedy for any constitutional violations would not be release from detention, but rather injunctive relief to remedy the allegedly deficient conditions. *See Hoptowit v. Ray*, 682 F.2d 1237, 1246 (9th Cir. 1982) ("The function of a court is limited to determining whether a constitutional violation has occurred, and to fashioning a remedy that does no more and no less than correct that particular constitutional violation." (citing *Rhodes v. Chapman*, 452 U.S. 337, 352 (1981) and *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 16 (1971))); *see also Newman v. Ala.*, 503 F.2d 1320, 1332-33 (5th Cir. 1974) ("it is axiomatic that the remedial power of a district court is coterminous with the scope of the constitutional violation found to exist"). Here, where Petitioner seeks release, rather than a change in specific conditions that he claims are unconstitutional, the relief requested is impermissibly broad. Granting that relief will not remedy the allegedly deficient conditions; it would grant Petitioner an opportunity to seek release from detention, to which he is not lawfully entitled.

65 of the Federal Rules of Civil Procedure governs the issuance of TROs and preliminary injunctions—either of which is an "extraordinary remedy, which should be granted only in limited circumstances." *Novartis Consumer Health, Inc. v. & Johnson–Merck Consumer Pharm. Co.*, 290 F.3d 578, 586 (3d Cir. 2002). To obtain this extraordinary remedy, Petitioner must demonstrate: (1) a likelihood of success on the merits; (2) that he or she will suffer irreparable harm by denial of the relief; (3) that granting preliminary relief will not result in even greater harm to the nonmoving party; and (4) that the public interest favors such relief. *Kos Pharm., Inc. v. Andrx Corp.*, 369 F.3d 700, 708 (3d Cir. 2004).

The first two factors are "are the most critical." *Relly v. City of Harrisburg*, 858 F.3d 173, 179 (3d Cir. 2017) (quotations omitted). Moreover, where (as here), a petitioner seeks mandatory injunctive relief disrupting the status quo, such as immediate release from custody, the petitioner must satisfy a "particularly heavy burden" and show a "substantial"—not just reasonable—likelihood of success on the merits and an "indisputably clear" right to relief. *Hope*, 972 F.3d at 320 ; *see also Kim v. Hanlon*, 99 F.4th 140, 155 (3d Cir. 2024) ("[O]ver and above the showing required to maintain the status quo . . . a plaintiff must show a substantial likelihood of success on the merits and that [one's] right to relief is indisputably clear[.]" (quotation omitted)). Petitioner fails to make these showings.

A. Petitioner Is Not Substantially Likely to Succeed on the Merits

As set forth above, Petitioner cannot show a likelihood of success on the merits, much less a substantial likelihood. Counts One and Two fail because Petitioner's detention is lawful under § 1225(b)(1) and comports with due process while Count

Three faces threshold jurisdictional flaws. For these reasons, even if the Court does not dismiss the petition outright, the Court should nevertheless deny the TRO motion because Petitioner cannot show a "substantial likelihood of success on the merits" or right to relief which is "indisputably clear." *Kim*, 99 F.4th at 155.

B. Petitioner Cannot Establish Irreparable Harm

Petitioner also falls short of establishing that "irreparable injury is likely in the absence of" a TRO. *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). Petitioner asserts irreparable harm in the form of transfer to another facility, mental health challenges, and alleged loss of his business. Am. Pet. at page 2. But all these alleged harms are too speculative to merit the issuance of a TRO compelling immediate release. *See Moneyham v. Ebbert*, 723 F. App'x 89, 92 (3d Cir. 2018) (explaining irreparable harm must be "actual and imminent, not merely speculative").

Petitioner's request for preliminary injunctive relief in the form of immediate release is also improper because it requests relief that "is actually greater than the relief Petitioner" is entitled to under the law. *Valeriano*, No. 25-16100 (MAS), ECF No. 4, at 2. Petitioner has been charged as inadmissible and is in removal proceedings. He is either subject to detention under § 1225(b)(1), as Respondents argue, which is mandatory and generally does not allow for bond, or Petitioner is subject to detention under § 1226(a), which provides for the opportunity to have a bond hearing. Accordingly, should Petitioner prevail on the merits in this matter, "the proper relief would constitute an order directing the Government to provide

Petitioner with the bond hearing to which [s]he contends [s]he is entitled to under § 1226(a)." *Valeriano*, No. 25-16100 (MAS), ECF No. 4, at 2.

C. An Injunction Would be Contrary to Public Interest

Where, as here, the government is the responding party, the final two factors—balance of the equities and public interest—merge. *See Nken v. Holder*, 556 U.S. 418, 435 (2009). These factors weigh against granting a TRO here. There is a significant public interest in enforcement of the immigration laws. *Id.* Here, Petitioner's detention pending removal proceedings is a valid exercise of its authority under the INA. Issuing a TRO seeking immediate release—given the absence of a strong showing of success on the merits or immediate irreparable harm, and whether other alternative remedies are available (including a bond hearing as contemplated by § 1226(a))—would thwart the public interest in the enforcement of immigration laws. These interests weigh against granting a TRO.

D. The Court Should Require Bond

Rule 65(c) of the Federal Rules of Civil Procedure provides that a court may issue a TRO (or preliminary injunction) "only if the movant gives security" for "costs and damages sustained" by the non-moving party in the event the non-moving party is later found to "have been wrongfully enjoined." "'Although the amount of the bond is left to the discretion of the court, the posting requirement is much less discretionary.'" *Hoxworth v. Blinder, Robinson & Co., Inc.*, 903 F.2d 186, 210 (3d Cir. 1990) (quotations omitted). Earlier this year, the President issued a memo requiring federal agencies to seek security when confronted with suits seeking emergency preliminary injunctive relief. *See* White House Memo, Ensuring the Enforcement of

Federal Rule of Civil Procedure 65(c), https://www.whitehouse.gov/presidential-actions/2025/03/ensuring-the-enforcement-of-federal-rule-of-civil-procedure-65c/ (last visited Oct. 17, 2025). In accordance with that memo, to the extent that the Court grants preliminary injunctive relief here, Respondents respectfully request that the Court require Petitioner to provide adequate security.

CONCLUSION

For the foregoing reasons, the Court should dismiss the Petition and deny the TRO.

Respectfully submitted,

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