**UNITED STATES DISTRICT COURT**
**MIDDLE DISTRICT OF LOUISIANA**

**GARDY GREGORY ALEXANDRE**

**CIVIL ACTION**

**VERUS**

**NO. 25-951-SDD-RLB**

**KEVIN JORDAN, et al.**

**RESPONSE TO PETITION AND AMENDED PETITION FOR WRIT OF HABEAS CORPUS BY FEDERAL RESPONDENTS**

Pursuant to the Court's order, Doc. 5, the Federal Respondents[1] provide this response to the petition and amended petition for writ of habeas corpus filed by the petitioner, Gardy Gregory Alexandre. In sum, Mr. Alexandre has not established any right to release from detention pending resolution of his appeal at the Board of Immigration Appeals (BIA). His detention is expressly authorized by statute, and it is mandatory. The purpose and duration of Petitioner's detention do not offend due process protections, and Petitioner has no right to a bond hearing or other form of conditional release. Further, the Court does not have jurisdiction to entertain Petitioner's other claims. Even if those claims had merit, they would not compel Petitioner's release from detention. Accordingly, the petition and amended petition should be denied in its entirety.

## I. BACKGROUND

### A. Factual Background

Mr. Alexandre is a native and citizen of Haiti. Doc. 2, p. 1; *see also* Doc. 6-1, Decl. of Lisa D. Fruge-Prudhome, ¶ 3. He was admitted to the United States on or about August 2, 1986, as a lawful permanent resident (LPR). *Id.* ¶ 3. However, the Petitioner was charged in a criminal

[1] The Respondents are Pamela Bondi, in her official capacity as Attorney General of the United States; Todd Lyons, in his official capacity as Acting Director and Senior Official Performing the Duties of the Director of U.S. Immigration and Customs Enforcement; Kristi Noem, in her official capacity as Secretary of the Department of Homeland Security; and any federal official sued in their official capacity. Undersigned does not represent Kevin Jordan, Warden, Louisiana ICE Processing Center, as Warden Jordan is not a federal employee. However, all arguments made on behalf of U.S. Immigration and Customs Enforcement apply with equal force to Warden Jordan as he is detaining the Petitioner at the request of the United States.

proceeding concerning misuse and misappropriation of Paycheck Protection Program (PPP) funds. *See United States v. Pierre, et al.*, criminal action no. 24-10007-MJJ-3 (D. Mass.). *Id.* ¶ 5. On May 28, 2024, Petitioner pleaded guilty to two counts: (1) Conspiracy to Commit Wire Fraud, 18 U.S.C. § 1349; and (2) Conspiracy to Engage in Unlawful Monetary Transactions, 18 U.S.C. § 1956(h).[2] Thereafter, Petitioner was sentenced to 15 months imprisonment, 3 years of supervised release, and restitution of $1,455,652.00 – the amount of loss directly attributable to Mr. Alexandre's activities. The Petitioner's convictions qualify as aggravated felonies under 8 U.S.C. § 1101(a)(43)(U) [INA § 101(a)(43)(U)]. *Id.* ¶ 6. The Petitioner is therefore subject to removal from the United States. 8 U.S.C. § 1227(a)(2)(A)(iii) [INA § 237(a)(2)(A)(iii)]. *Id.* Upon release from custody by the Bureau of Prisons, Petitioner was taken into custody by DHS on April 14, 2025. *Id.* ¶ 7. Therefore, he has been detained by DHS for ten (10) months as of this filing.

On May 5, 2025, Petitioner appeared in immigration court proceedings, where he was represented by counsel. Doc. 6-1, ¶ 8. Petitioner's request for voluntary departure was denied due to his criminal history. *Id.* When asked to designate a country for removal, the Petitioner identified Haiti. *Id.* The Petitioner sought no other relief during that hearing. *Id.* The Petitioner was thereafter ordered removed from the United States to Haiti (the "IJ order"). *Id.* Proceeding *pro se*, Petitioner appealed the IJ order to the Board of Immigration Appeals (BIA).

Several delays occurred in processing the Petitioner's appeal, all attributable to the Petitioner. Doc. 6-1, ¶ 9. On May 28, 2025, the Petitioner submitted his first appeal to the BIA. *Id.* By letter dated June 5, the BIA rejected the Petitioner's appeal because the Petitioner failed to pay the filing fee or otherwise to submit a Fee Waiver Request Form EOIR-26A. The Petitioner then submitted a fee waiver request, and the BIA acknowledged receipt of Petitioner's appeal on

[2] *United States v. Pierre, et al.*, criminal action no. 24-10007-MJJ-3 (D. Mass.), Docs. 68-70.

June 20. *Id.* By letter dated July 10, the BIA rejected the Petitioner's appeal because his signature was missing on the conclusion page. *Id.* The Petitioner re-submitted his appeal untimely, but it was nonetheless accepted by BIA on July 16. *Id.* The Petitioner filed supplemental briefs on or about July 29 and August 11. *Id.* The Government has not filed a brief on appeal, and the deadline for doing so has now passed. *Id.* ¶ 10. The Petitioner's appeal is pending at the BIA as of this filing.[3]

Mr. Alexandre now seeks habeas relief from this Court. Citing *Zadvydas v. Davis* and *Jennings v. Rodriguez*, Petitioner insists that his removal from the United States is not "imminent" and that his present detention is under "punitive, prison-like conditions." Doc. 1-2, p. 3; Doc. 3, pp. 2, 5-6. Petitioner claims detention is only permissible "to facilitate reasonably foreseeable removal." Doc. 3, p. 3 (citing *Demore v. Kim,* 538 U.S. 510 (2003)).[4] Petitioner concedes there is "no final order" of removal and insists his detention is "ultra vires and unconstitutional." *Id.* Without explanation of any kind, Petitioner insists his detention serves no "legitimate regulatory purpose" and is therefore "punitive and unconstitutional." *Id.* p. 5. Finally, Petitioner raises various other grievances concerning his conditions of confinement at the Louisiana ICE Processing Center (LIPC).

On November 24, 2025, the Court issued an order directing the Respondents to answer the Petitioner's original Petition for Writ of Habeas Corpus, Doc. 1; Motion for Temporary Restraining Order, Doc. 2; and Amended Petition for Writ of Habeas Corpus, Doc. 3. *See* Doc. 5. Since that time, Petitioner has also filed a Second Motion for Temporary Restraining Order, Doc. 8. The Court has not issued any briefing deadlines for that second TRO, which is largely redundant and

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[3] The status of Petitioner's BIA proceedings is publicly available through the EOIR Automated Case Information system, available at: https://acis.eoir.justice.gov/en/ (last accessed December 15, 2025).

[4] As explained below, that is not the holding in *Demore*.

repetitive of the Petitioner's other filings. At this stage, Respondents presume a response to that filing is due December 17, 2025, and will file an appropriate pleading at that time. *Cf.* L.R. 7(f).[5] The Respondents have already filed an opposition to Doc. 2, which is currently pending. *See* Doc. 6.

**B. Statutory Background**

The Petitioner has an active appeal pending before the BIA. Therefore, he has not yet received a final order of removal from the United States. *Cf.* 8 C.F.R. § 1241.1(a). Indeed, Petitioner concedes this point. Doc. 3, p. 5 ("stayed removal order"). The Petitioner's detention is therefore governed by 8 U.S.C. § 1226 [INA § 236].

"On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). The Government has discretion to continue detaining the alien or to release him on bond or conditional parole unless the individual is classified as a "criminal alien." 8 U.S.C. § 1226(c).

As relevant here, a "criminal alien" includes "any alien who is deportable by reason of having committed any offense covered in section 1227(a)(2)(A)(iii) . . . ." 8 U.S.C. § 1226(c)(1)(B). The Petitioner fits this definition based on his prior criminal convictions. Therefore, his detention pending resolution of his BIA appeal is mandatory.

**II. LAW**

In assessing claims made through a writ of habeas corpus under 28 U.S.C. § 2241, the Fifth Circuit has adopted a "bright-line rule" that "if a favorable determination of the prisoner's claim would not automatically entitle him to accelerated release, then the proper vehicle is a civil rights

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[5] The second TRO is *dated* November 26, but it was not entered onto the docket until December 3, after Respondents had already filed their opposition to the first TRO. *See* Docs. 2, 4, and 6.

suit," not a petition for a writ of habeas corpus. *Melot v. Bergami*, 970 F.3d 596, 599 (5th Cir. 2020); *see also Rice v. Gonzalez*, 985 F.3d 1069, 1070 (5th Cir. 2021). Instead, "a civil rights suit pursuant to 42 U.S.C. § 1983 for a state prisoner or under *Bivens* for a federal prisoner is 'the proper vehicle to attack unconstitutional conditions of confinement and prison procedures.'" *Id.* (quoting *Carson v. Johnson*, 112 F.3d 818, 820 (5th Cir. 1997)); *cf. also Maxwell v. Thomas*, 133 F.4th 453, 454 (5th Cir. 2025) (holding that the relief of "transfer to a halfway house or home confinement" is unavailable in habeas).

This rule applies for immigration detention. *See Tahtiyork v. DHS*, No. 20-1196, 2021 WL 389092, at *3 (W.D. La. Jan. 12, 2021), *report and recommendation adopted*, 2021 WL 372573 (W.D. La. Feb. 3, 2021); *Roman v. Garcia*, No. 6:24-CV-01006, 2025 WL 1441101, at *4-5 (W.D. La. Jan. 29, 2025), *report and recommendation adopted sub nom. Lobaton v. Garcia*, 2025 WL 1440056 (W.D. La. May 16, 2025). "Unconstitutional conditions of confinement—even conditions that create a risk of serious physical injury, illness, or death—do not warrant release." *Burk v. Rios*, No. EP-25-CV-199-LS, 2025 WL 2524138, at *3 (W.D. Tex. Sept. 3, 2025). "Even allegations of mistreatment that amount to cruel and unusual punishment do not nullify an otherwise lawful incarceration or detention." *Id.* "Accordingly, district courts dismiss § 2241 petitions challenging conditions of confinement for lack of subject matter jurisdiction." *Id.*

## III. ARGUMENT

Mr. Alexandre seeks release from detention at LIPC and enrollment in the Alternatives to Detention program. Doc. 1, p. 7, § V(2); Doc. 3, p. 6, § VIII(4). Petitioner insists that detention at LIPC is "punitive and unconstitutional," Doc. 3, p. 6, § VIII(2), and that his release is required because of "medical vulnerability." *Id.* p. 5. Petitioner also demands various other forms of relief, including an injunction from "retaliation," compliance with an ICE directive, ensuring "continuous

VA-equivalent medical care," and production of a "legal file." Doc. 1, p. 6; Doc. 1-2, p. 7; Doc. 3, pp. 5-6. Paradoxically, despite the alleged untenable conditions at LIPC, Petitioner also seeks an order compelling Respondents *not* to transfer him from this district. Doc. 1-2, p. 7.

Mr. Alexandre acknowledges that he is not subject to a final order of removal, but he nonetheless insists that his detention serves no purpose and is therefore "punitive" and "retaliatory." Doc. 3, p. 2. According to Mr. Alexandre release is required because his removal from the United States is not foreseeable. Doc. 3, p. 3, § III. This is wrong on all counts.

Petitioner's detention is expressly authorized by statute and serves a vital purpose in the context of immigration enforcement – a purpose the Supreme Court has acknowledged multiple times. Nor has Petitioner been detained for any period that would warrant constitutional scrutiny. Numerous courts, including the Fifth Circuit, have affirmed mandatory detention of aliens for far longer than Mr. Alexandre has been detained as of this filing.

What remains of Petitioner's various claims are explicit demands for declaratory and injunctive relief. But the Fifth Circuit has repeatedly emphasized that habeas is a narrow remedy. To whatever extent those claims have merit, the Court does not have jurisdiction to entertain them.

**A. Petitioner is Lawfully Detained pursuant to 28 U.S.C. § 1226(c)**

Mr. Alexandre's detention pending the resolution of his immigration court proceedings is expressly authorized by statute. 8 U.S.C. § 1226(a). Because of his criminal convictions, Mr. Alexandre is not entitled to a bond hearing or conditional release pending the resolution of his appeal at the BIA. 8 U.S.C. § 1226(c). Nor does Mr. Alexandre's detention offend constitutional due process considerations.

The Supreme Court analyzed the constitutionality of 8 U.S.C. § 1226(c) in *Demore v. Kim*, 538 U.S. 510 (2003). Because § 1226(c) was adopted "against a backdrop of wholesale failure by

the INS to deal with increasing rates of criminal activity by aliens," and "one of the major causes of the INS' failure to remove deportable criminal aliens was the agency's failure to detain those aliens during their deportation proceedings," the Supreme Court concluded that mandatory detention was permissible "even without individualized screening" because releasing criminal aliens on bond resulted in "an unacceptable rate of flight." *Demore*, 538 U.S. at 518-520. In short, mandatory detention "serves the purpose of preventing deportable criminal aliens from fleeing prior to or during their removal proceedings." *Id.* at 528.

Of note, the Supreme Court distinguished its holding in *Demore* from its earlier holding in *Zadvydas v. Davis*, 533 U.S. 678 (2001). Where *Demore* analyzed detention of aliens prior to a final order of removal, *Zadvydas* analyzed detention of aliens under 8 U.S.C. § 1231, or those for whom a final order of removal had been issued. Such detention post-final order risked becoming "indefinite" where the Government failed to demonstrate progress in removal over a prolonged period. But detention under § 1226(c) has a "definite termination point," namely resolution of the alien's immigration proceedings. *Demore*, 538 U.S. at 528-29. Therefore, the considerations in *Zadvydas* were not present in *Demore*.

The Supreme Court again analyzed the constitutionality of 8 U.S.C. § 1226(c) in *Jennings v. Rodriguez*, 583 U.S. 281 (2018). In *Jennings*, the Supreme Court declined to read any "implicit" time limit into the statutory text of 8 U.S.C. § 1226(c), rejecting a contrary approach adopted by the Ninth Circuit that adopted a six-month time limit. The Court also rejected the argument that *Zadvydas* rendered "prolonged detention" impermissible under § 1226(c) because the statute was otherwise "silent" as to the length of detention. "But § 1226(c) is not 'silent' as to the length of detention. It mandates detention 'pending a decision on whether the alien is to be removed from the United States,' § 1226(a), and it expressly prohibits release from that detention except for

narrow, witness-protection purposes." *Id.* at 304. "Even if courts were permitted to fashion 6-month time limits out of statutory silence, they certainly may not transmute existing statutory language into its polar opposite. This constitutional-avoidance canon does not countenance such textual alchemy." *Id.* "In *Demore v. Kim*, 538 U.S., at 529, 123 S.Ct. 1708 we distinguished § 1226(c) from the statutory provision in *Zadvydas* by pointing out that detention under § 1226(c) has 'a definite termination point': the conclusion of removal proceedings." *Id.* In short, "[w]e hold that § 1226(c) mandates detention of any alien falling within its scope and that detention may end prior to the conclusion of removal proceedings 'only if' the alien is released for witness-protection purposes." *Id.* at 305-06.

Here, if the Petitioner believes his detention no longer serves its statutory purpose, he does not explain how or why. Rather, he merely asserts in conclusory fashion that his detention "contravenes *Zadvydas*," Doc. 1, p. 6, and that his detention has become "prolonged" "with no imminent removal." Doc. 1-2, p. 3. But "[b]ecause there is no final order of removal, § 1231 and *Zadvydas* are inapplicable." *Doyduk v. Mayorkas*, No. 1:24-CV-00150, 2024 WL 2758725, at *1 (W.D. La. May 6, 2024), *report and recommendation adopted*, No. 24-CV-150, 2024 WL 2750032 (W.D. La. May 29, 2024).

Mr. Alexandre has an active appeal at the BIA and will not be subject to removal until that appeal is resolved. As the Supreme Court has explained, *Zadvydas* concerned aliens "for whom removal was 'no longer practically attainable,'" and, as a result, ongoing detention of the alien "did not serve its purported immigration purpose." *Demore*, 538 U.S. at 510, 527. But Section 1226(c) concerns the "detention of deportable criminal aliens pending their removal proceedings," which "serves the purpose of preventing deportable criminal aliens from fleeing prior to or during their removal proceedings." *Id.* at 527–28.

Mr. Alexandre is a convicted, aggravated felon. He squarely fits the definition under Section 1226(c) and makes no argument otherwise.

And if Petitioner believes his detention is unconstitutionally prolonged, he again does not offer any explanation why. "There is a long tradition of holding immigrant aliens in detention when public policy urges it, and government officials such as the Attorney General have wide discretion to hold immigrant aliens in detention if necessary." *Meme v. Immigr. & Customs Enf't*, No. EP-23-CV-00233-DB, 2023 WL 6319298, at *2 (W.D. Tex. Sept. 27, 2023) (citing *Carlson v. Landon*, 342 U.S. 524, 540 (1952)). "That is not to say that their power is without limits, but Congress intended 'to make the Attorney General's exercise of discretion presumptively correct and unassailable except for abuse.'" *Id.* (citing *Carlson*, 342 U.S. at 540).

Since *Jennings*, the Fifth Circuit has affirmed the constitutionality of detention under § 1226 for much longer than at issue here. *See Wekesa v. United States Attorney*, 22-10260, 2022 WL 17175818, at *1 (5th Cir. 2022) (2.5 years). Other courts have done the same. *See, e.g., A.R.L. v. Garland*, 6:23-CV-00852, 2023 WL 9316859, at *5 (W.D. La. 2023), *report and recommendation adopted*, 2024 WL 203971 (W.D. La. 2024) (21 months); *Asonfac v. Wolf*, 6:20-CV-01218, 2021 WL 1016245, at *2 (W.D. La. Mar. 1, 2021), *report and recommendation adopted*, 2021 WL 1011077 (15 months); *Garcia v. Lacy*, 2013 WL 3805730, *5 (S.D. Tex. 2013) (27 months); *Massaquoi v. Immigr. & Customs Enf't*, No. 1:25-CV-00120 SEC P, 2025 WL 2115440, at *1 (W.D. La. July 9, 2025), *report and recommendation adopted sub nom. Massaquoi v. US Immigr. & Customs Enf't*, No. 1:25-CV-00120, 2025 WL 2111090 (W.D. La. July 28, 2025) (2 years at time of opinion).

If there has been any delay in processing the Petitioner's appeal, it has been entirely of his own making. "Where removal proceedings are delayed solely by a party's good faith exercise of

its procedural remedies – whether by the petitioner or the government – continued detention is unlikely to trigger due process concerns in most cases because continued detention until completion of the removal proceedings still serves the purpose of the statute." *Doyduk,* 2024 WL 2758725, at *2 (quoting *Misquitta v. Warden Pine Prairie ICE Processing Ctr.,* 353 F.Supp.3d 518, 527 (W.D. La. 2018)).

Finally, the Court, through its order, specifically requested the Respondents address "any administrative decisions relating to Petitioner's request for bond." Doc. 5, p. 2. The Supreme Court has held that § 1226(c) does not give aliens "the right to periodic bond hearings during the course of their detention." *Jennings*, 583 U.S. at 282. "Section 1226(c) eliminates the availability of release on bond except when necessary to provide protection to a witness." *Doyduk*, 2024 WL 2758725, at *1.

**B. Conditions of Confinement are not Actionable under Habeas Corpus**

Through his filings, Petitioner makes various allegations concerning the conditions of his confinement at LIPC. He vaguely characterizes the conditions as "punitive," specifically identifying cells locked at night, meals "below nutrition standards," flooded toilets, a lack of soap and towels, "irregular" distribution of antifungal cream, and some hostile comments from the warden. Doc. 1, p. 6; Doc. 3, pp. 2-4. Petitioner wrongly alleges he follows the "same regime...as the criminal population" at Louisiana State Penitentiary.[6] Petitioner also asks the Court to "restore and produce his confiscated legal file" and to "direct continuity of VA-prescribed medical and mental-health care." Doc. 2, p. 2.

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[6] LIPC is a facility located on the grounds of Louisiana State Penitentiary (LSP) but separated from the prison population in a different building. Like every ICE facility across the country, it follows guidelines established by ICE for alien detention. It is operated by a contractor on behalf of ICE, and not by the Louisiana Department of Corrections.

To whatever extent these claims have merit, none are actionable in this proceeding. The Petitioner has sought habeas relief, and the only remedy available to him would be release from unlawful detention. Supreme Court and Fifth Circuit precedent make clear that any other claim for equitable relief must be asserted through a civil rights lawsuit, not a habeas petition.

"Federal law provides two distinct avenues to relief for complaints related to confinement: the petition for writ of habeas corpus and the civil-rights action for equitable or monetary relief." *Barbosa v. Barr*, 502 F. Supp. 3d 1115, 1120 (N.D. Tex. 2020) (citing *Muhammad v. Close*, 540 U.S. 749, 750 (2004)). "Habeas is reserved for 'challenges to the validity of any confinement or to particulars affecting its duration,' while civil-rights actions are typically used to attack conditions of confinement." *Id.* (citing *Muhammad*, 540 U.S. at 750; *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973)).

"Which statutory vehicle to use depends on the nature of the claim and the type of relief requested." *Poree v. Collins*, 866 F.3d 235, 243 (5th Cir. 2017). The "core issue" is "whether the prisoner challenges the 'fact or duration' of his confinement or merely the rules, customs, and procedures affecting 'conditions' of confinement." *Cook v. Tex. Dep't of Crim. Justice Transitional Planning Dep't*, 37 F.3d 166, 168 (5th Cir. 1994).

The Fifth Circuit has directed courts to take "a narrow view of habeas relief in the immigration context." *Bacilio-Sebastian v. Barr,* 980 F.3d 480, 483 (5th Cir. 2020). "Simply stated, habeas is not available to review questions unrelated to the cause of detention." *Pierre v. United States*, 525 F.2d 933, 935-36 (5th Cir. 1976). It exists solely to "grant relief from unlawful imprisonment or custody and it cannot be used properly for any other purpose." *Id.* "The Fifth Circuit follows a bright-line rule: 'If a favorable determination ... would not automatically entitle [the detainee] to accelerated release, ... the proper vehicle is a [civil rights] suit.'" *Sacal-Micha v.*

*Longoria*, 449 F. Supp. 3d 656, 662 (S.D. Tex. 2020) (citing *Carson v. Johnson*, 112 F.3d 818, 820-21 (5th Cir. 1997)).

Conversely, civil rights actions provide the appropriate vehicle to challenge conditions of confinement.[7] "As the Supreme Court explained in *Preiser v. Rodriguez*, § 1983 claims are the appropriate actions for state prisoners levying 'constitutional challenges to the conditions of ... prison life.' However, should a petitioner seek to pierce the veil of the authority sanctioning [his] confinement, habeas enables [him] to do so by challenging 'its fact or length.'" *Ndudzi v. Perez*, 490 F. Supp. 3d 1176, 1180 (S.D. Tex. 2020) (citing *Preiser*, 411 U.S. at 499). "These cases make plain that habeas actions are available to litigants who challenge the legal basis of their confinement and seek release from detention, whereas civil rights actions challenge the legality of a certain condition to confinement and do not – indeed, cannot – seek release from detention." *Id.* at 1181 (citing *Poree*, 866 F.3d at 243).

"The appropriate remedy in the event a petitioner successfully established a violation of his Fifth Amendment due process rights based on his conditions of confinement would be to order 'the discontinuance of a practice or to require the correction of an unconstitutional condition,' not accelerated release." *Shah v. Wolf*, No. 3:20-CV-994-C-BH, 2020 WL 4456530, at *6 (N.D. Tex. July 13, 2020), *report and recommendation adopted*, No. 3:20-CV-994-C-BH, 2020 WL 4437484 (N.D. Tex. Aug. 3, 2020) (citing *Lineberry v. United States*, 380 F. App'x 452, 453 (5th Cir. 2010) (per curiam); *Umarbaev v. Moore*, No. 3:20-cv-1279-B, 2020 WL 3051448, at *4 (N.D. Tex., June 6, 2020)).[8] "Fifth Circuit precedent provides that unconstitutional conditions of confinement –

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[7] *See, e.g. Ziglar v. Abbasi*, 582 U.S. 120, 121-22 (2017) (a *Bivens* case concerning conditions of confinement related to immigrant detention); *Youngberg v. Romero*, 457 U.S. 307, 324 (1982) (civilly committed detainees enjoy a constitutional interest in "reasonably nonrestrictive confinement conditions" under § 1983 actions).

[8] Judge Ramirez, then a magistrate judge, also noted that "federal courts generally, and the Fifth Circuit specifically, [are hesitant] 'to find causes of action arising directly from the Constitution,' particularly given the availability of alternative remedies for Petitioner to challenge his conditions of confinement." *Shah*, 2020 WL 4456530, at *6 n. 3

even conditions that create a risk of serious physical injury, illness, or death – do not warrant release." *Barbosa,* 502 F.Supp.3d at 1120 (citing *Spencer v. Bragg,* 310 F. App'x 678, 679 (5th Cir. 2009) (citing *Carson,* 112 F.3d at 820-21)). "Even allegations of mistreatment that amount to cruel and unusual punishment do not nullify an otherwise lawful incarceration or detention." *Ojuma v. Barr*, 501 F.Supp.3d 400, 404 (N.D. Tex. 2020) (citing *Cook v. Hanberry*, 596 F.2d 658, 660 (5th Cir. 1979)).

As already set forth, Mr. Alexandre has not made a credible argument that he is entitled to release. His arguments are conclusory and irrelevant, being almost entirely premised on detention under § 1231. And his remaining claims, even if credible, would not result in Mr. Alexandre's *release*. So, the claims are not properly brought through a habeas corpus proceeding.

The deficiency is no less fatal merely because Mr. Alexandre prays for release from detention. "[A]llegations that challenge rules, customs, and procedures affecting conditions of confinement are properly brought in civil rights actions." *Schipke v. Van Buren*, 239 F. App'x 85, 85-86 (5th Cir. 2007) (citing *Spina v. Aaron*, 821 F.2d 1126, 1127-28 (5th Cir. 1987)).[9] Merely seeking release does not transform a civil rights claim into a viable habeas action. *Springer v. Underwood*, No. 3:19-CV-1433, 2019 WL 3307220, at *2 (N.D. Tex., Jun. 28, 2019) *rec. accepted*, 2019 WL 3306130 (N.D. Tex., Jul. 22, 2019); *Sanchez*, 2020 WL 2615931, at *12. "Rather, the proper remedy for unconstitutional conditions of confinement should be equitable – to enjoin the unlawful practices that make the conditions intolerable." *Ojuma*, 501 F. Supp. 3d at 404 (citing *Cook*, 596 F.2d at 660).

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(citing *Hearth, Inc. v. Dep't of Pub. Welfare*, 617 F.2d 381, 382 (5th Cir. 1980)).

[9] The constitutional rights of alien detainees equate to those of pretrial detainees and stem from due process protections of the Fifth and Fourteenth Amendments. *See Edwards v. Johnson*, 209 F.3d 772, 778 (5th Cir. 2000).

Courts in this circuit have denied petitions that do not challenge the *fact* of detention but rather the *conditions* of it, including cases like this one where the petitioner claimed "medical vulnerability" or inferior housing. *See, e.g.*, *Ndudzi*, 490 F. Supp. 3d at 1178 (denying release of petitioner with chronic medical issues who was detained at facility that was not mitigating COVID-19 with personal protective equipment, cleaning supplies, social distancing, or regular testing); *Barbosa,* 502 F. Supp. 3d at 1122-23 (Petitioner's "chronic medical conditions" and concerns regarding COVID-19 "do not entitle him to release); *Umarbaev,* 2020 WL 3051448, at *2-4 (same); *Rosa v. McAleenan*, 583 F. Supp. 3d 850, 877-78 (S.D. Tex. Oct. 15, 2019) (claims of "standing-room-only holding cells for many days, deficient meals, the lack of basic hygienic products and access to showers, and limited medical care" were not actionable in habeas because "[p]roviding relief on this issue would not require Petitioners' release, but would require only improving the conditions of confinement."); *Sarres Mendoza v. Barr*, No. CV H-18-3012, 2019 WL 1227494, at *2 (S.D. Tex. Mar. 15, 2019) (denying Honduran detainee's motion for leave to amend because the proposed claims on "conditions of confinement may not be brought in a habeas corpus proceeding, and are actionable, if at all, in a civil rights action"); *Morales-Corbala v. United States*, No. P-11-CV-00025-RAJ, 2011 WL 13185995, at *3 (W.D. Tex. July 19, 2011), *aff'd*, 498 F. App'x 467 (5th Cir. 2012) (habeas petition was improper as the plaintiff was not challenging the "constitutionality of his detention and [did] not ask the Court to release him from [the defendant's] custody").

And Petitioner's heavy reliance on *Bell v. Wolfish*, 441 U.S. 520 (1979), and *Fraihat v. U.S. Immigr. & Customs Enf't*, 445 F. Supp. 3d 709 (C.D. Cal. 2020), are not persuasive.

First, "the Supreme Court in *Bell* noted that the defendants did not challenge plaintiffs' 'use of a writ of habeas corpus to challenge the conditions of their confinement, and petitioners [did]

not raise that question in this Court." *Rosa*, 583 F. Supp. 3d at 878 (citing *Bell*, 441 U.S. at 527 n.6). So, *Bell* does not undermine the binding Fifth Circuit authority that plainly distinguishes true habeas claims from those concerning conditions of confinement.

Likewise, the Petitioner asks the Court to adhere to the so-called "*Fraihat* framework" and order him released because of his "medical needs" and "vulnerability." Doc. 3, p. 5. But that case, which concerned bed capacity during the COVID-19 pandemic, was explicitly overruled. *See Fraihat v. U.S. Immigr. & Customs Enf't*, 16 F.4th 613, 618 (9th Cir. 2021) (reversing injunction which, due to COVID-19 concerns, imposed, *inter alia*, "procedures expressly designed to result in the release of substantial numbers of detainees from ICE custody").

In sum, a habeas petition cannot be the vehicle to seek injunctive relief for conditions of confinement, even denial of medical care or the imposition of arbitrary disciplinary sanctions, that are unrelated to the cause of detention. *Rourke v. Thompson*, 11 F.3d 47, 48-49 (5th Cir. 1993).

**C. ICE Directive 10039.3 Compels No Additional Relief**

Petitioner is a veteran. He asserts that, pursuant to an ICE directive, his history of service "requires favorable discretion," "favorable custody," "warrant release under Alternatives to Detention (ATD) or parole," and renders his present detention "arbitrary and capricious." Doc. 1, p. 6; Doc. 1-2, p. 5; Doc. 3, p. 5. The argument is difficult to follow. As an initial matter, Petitioner repeatedly cites ICE Directive 10036.2. That directive is wholly irrelevant to this proceeding because it concerns a separate provision of the INA applicable to victims of crimes.[10]

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[10] *See* ICE Directive 10036.2, *Implementation of Section 1367 Protections for Noncitizen Victims of Crime*, Mar. 16, 2022, available at: https://www.ice.gov/doclib/foia/policy/10036.2_ImpSection1367_ProtectionsNoncitVictims.pdf (last accessed December 15, 2025).

Presumably Petitioner is referring to ICE Directive 10039.3, *Consideration of U.S. Military Service During Civil Immigration Enforcement Actions*,[11] filed into the record of this proceeding as Doc. 6-2. If so, that guidance does not afford the Petitioner any relief, either.

First, nowhere does the memo compel release. Rather, it provides more general guidance concerning how ICE personnel should approach certain aliens with a history of military service. For example, it notes that ICE will "generally" not pursue removal against an alien "who is currently serving on active duty in the U.S. military, absent significant aggravating factors." Doc. 6-2, p. 2, fifth bullet. But Petitioner does not allege he was active duty when detained.

The directive also notes that ICE must investigate a veteran alien's "naturalization eligibility" under INA §§ 328 or 329. *Id.* second bullet; p. 4. But records reviewed by the Respondents confirm Petitioner's application for naturalization was rejected. Doc. 6-1, ¶ 4. Respondents previously filed into the record a redacted copy of Petitioner's DD-214, confirming his service occurred from April 7, 1998, to June 26, 2000.[12] *See* Doc. 6-3. INA § 328 would only apply if Mr. Alexandre had separated from the service within the last six months. 8 U.S.C. § 1439(a). He does not allege doing so. INA § 329 only applies to veterans who served during "designated periods of hostilities," which Mr. Alexandre did not. 8 U.S.C. § 1440(a); 8 C.F.R. § 329.2.[13]

Mr. Alexandre has not explained how he benefits from the guidance in this directive, or why ICE's purported failure to follow it renders his detention "arbitrary and capricious." But even if Mr. Alexandre could establish that ICE has failed to adhere to this directive, the Fifth Circuit has

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[11] Available at: https://www.ice.gov/doclib/foia/policy/10039-3.pdf (last accessed December 15, 2025).

[12] As a courtesy, undersigned counsel mailed an unredacted copy of the same to Petitioner for his records. This document should also be included in the Petitioner's BIA filings.

[13] *See also* U.S. Citizenship and Immigration Services Policy Manual, Ch. 3, pt. E, "Designated Periods of Hostilities," available at: https://www.uscis.gov/policy-manual/volume-12-part-i-chapter-3 (last accessed December 15, 2025).

recognized that "the proper vehicle for such claims is the Due Process Clause." *Ayala Chapa v. Bondi*, 132 F.4th 796, 799 n.3 (5th Cir. 2025) (citations omitted). And that claim requires a showing of substantial prejudice. *Id.* (citing *Molina v. Sewell*, 983 F.2d 676, 678 (5th Cir. 1993)). Further, "in this circuit, '[t]he failure of an agency to follow its own regulations is not . . . a per se denial of due process unless the regulation is required by the constitution or a statute.'" *Retana Leyva v. Barr*, 838 F. App'x 13, 19 (5th Cir. 2020) (quoting *Arzanipour v. INS*, 866 F.2d 743, 746 (5th Cir. 1989)) (alteration in original).

Mr. Alexandre neither shows that ICE's purported adherence to the referenced directive would have resulted in his release, as necessary to show prejudice, nor makes any argument that those policies are required by the constitution or statute.

**D. Petitioner's Remaining Claims**

Finally, Respondents will briefly address two remaining claims out of an abundance of caution, though neither is appropriate to raise through a habeas proceeding. First, Mr. Alexandre's claim that he is being denied "access" to the courts. Second, his claim that he is being subjected to "double jeopardy."

Petitioner claims he is being denied "access to courts" because there are limits on his ability to use the law library at LIPC. Doc. 3, p. 4. "[T]here is no 'abstract, freestanding right to a law library or legal assistance." *Gonzalez v. Gillis*, No. 21-60634, 2023 WL 3197061, at *4 (5th Cir. May 2, 2023) (citing *Lewis v. Casey*, 518 U.S. 343, 351 (1996)). Rather, to succeed on a forward-looking "access to courts" claim, Petitioner must identify a "nonfrivolous underlying claim" and the specific official acts that are frustrating his litigation *Id.* at *3 (citing *Christopher*, 536 U.S. at 415; *Broudy v. Mather*, 460 F.3d 106, 120-21 (D.C. Cir. 2006)). Here, Petitioner has done neither. Nor could he, as his briefs to the BIA were submitted well before his legal files were allegedly

"confiscated."[14] Mr. Alexandre does not explain how his appeals are imperiled, nor does he explain how his limited access to the library has impacted a nonfrivolous claim.

The Fifth Circuit has rejected such claims where the petitioner provides "no factual details" and alleges no "nonfrivolous and arguable" claim that he would pursue but for the purported violation. *Gonzalez*, 2023 WL 3197061, at *4. And *Gonzalez* is instructive in another regard: it is not a habeas corpus proceeding but a civil rights action, raising claims under 42 U.S.C. § 1983, 42 U.S.C. § 1985, and *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971). So again, even if Mr. Alexandre credibly alleged a claim concerning access to courts, habeas is not the vehicle to raise it with this Court.

Turning to double jeopardy, Mr. Alexandre only makes vague, amorphous allusions to a "hallmark of punishment" at LIPC and at Louisiana State Penitentiary more generally. He cites "steel-bar cells, lockdowns, strip searches, disciplinary segregation, shackling, and restricted movement." Doc. 3, p. 3.

"[T]he double jeopardy clause protects only against the imposition of multiple criminal punishments for the same offense." *Diakhate v. Casey*, No. 6:23-CV-06736 EAW, 2024 WL 4882264, at *5 (W.D.N.Y. Nov. 25, 2024) (citation and internal quotation marks omitted). Because "[i]mmigration detention is not a criminal punishment, . . . the double jeopardy clause simply has no application here." *Id.*; *see also de la Teja v. United States*, 321 F.3d 1357, 1364-65 (11th Cir. 2003) ("[D]eportation proceedings (because they are inherently civil in nature) cannot form the basis for a double jeopardy claim."); *Arevalo v. Ashcroft*, 344 F.3d 1, 10 n.6 (1st Cir. 2003) ("Despite its grave consequences, however, deportation constitutes a matter of civil rather than criminal procedure. Thus, neither the Double Jeopardy Clause nor the Ex Post Facto Clause are

[14] Petitioner's BIA briefs were already submitted in June, July, and August before they were purportedly "confiscated" in September. *Cf.* Doc. 2, p. 1.

relevant to deportation proceedings." (citations omitted)); *Patrick v. Whitaker*, No. H-18-2068, 2019 WL 588465, at *4 n.30 (S.D. Tex. Feb. 13, 2019) ("[I]mmigration proceedings are civil in nature[,] and the Double Jeopardy Clause does not apply outside the context of a successive criminal prosecution."); *Jefferally v. Barr*, No. H-19-1244, 2019 WL 3935977, at *2 (S.D. Tex. Aug. 20, 2019) (rejecting the plaintiff's double jeopardy challenge "because his immigration proceeding is a civil, not a successive criminal prosecution").

Mr. Alexandre's grievances – steel bars, lockdowns, restricted movement, etc. – are "not arbitrary or purposeless, but are reasonably related to the governmental interests of maintaining institutional security and preserving internal order and discipline." *Vetcher v. Immigr. & Customs Enf't*, No. 1:16-CV-0164-C, 2018 WL 11174809, at *8-9 (N.D. Tex. Nov. 29, 2018) (citing *Bell,* 441 U.S. at 546-47). "Not all discomforts associated with detention amount to punishment in the constitutional sense, even restrictions that the detainee would not experience if he were released." *Id.* at *8 (citing *Bell*, 441 U.S. at 540). "Courts should not underestimate the difficulties of operating a detention center." *Id.* (citing *Florence v. Bd. of Chosen Freeholders of Cty. of Burlington*, 566 U.S. 318, 326, 132 S.Ct. 1510, 182 L.Ed.2d 566 (2012) (citing *Turner v. Safley*, 482 U.S. 78, 84–85 (1987)).

And regardless, to whatever extent Mr. Alexandre's pleas of double jeopardy are merely complaints concerning the conditions of his confinement, such claims are inappropriate for resolution in habeas. *See Melot*, 970 F.3d at 599 (reiterating the court's "bright-line rule" "that if a favorable determination of the prisoner's claim would not automatically entitle him to accelerated release, then the proper vehicle is a civil rights suit"); *Maxwell*, 133 F.4th at 454 (denying habeas relief where the "requested relief [was] transfer to a halfway house or home confinement"); *Acha*

*v. Wolf*, No. 20-1696, 2021 WL 537101, at *2-3 (W.D. La. Jan. 28, 2021) (same with regard to a challenge to conditions of confinement in immigration detention).

## IV. CONCLUSION

Mr. Alexandre is subject to mandatory detention. He has not articulated any reason for the Court to conclude that his detention is unnecessarily prolonged or that it no longer serves a legitimate purpose. Instead, he has merely obfuscated 28 U.S.C. § 1226 with § 1231, and the Supreme Court's holding in *Zadvydas* with its holdings in *Demore* and *Jennings*. Likewise, the Petitioner's grievances with the operations at LIPC are not properly brought through a habeas corpus action. Even if he were entitled to relief, that relief would be equitable and would not result in release from detention. So, the Petitioner's habeas action should be dismissed in its entirety.

Respectfully submitted,

UNITED STATES OF AMERICA, by

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## CERTIFICATE OF SERVICE

I certify that on December 15, 2025, a copy of the foregoing *Response to Petition and Amended Petition for Writ of Habeas Corpus by Federal Respondents* was served by U.S. mail, first class postage prepaid, at the following address:

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