

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

**ANDRES DOMINGUEZ-MARTINEZ**

Plaintiff-Petitioner

V.

Case No. \_\_\_\_\_

Agency File 

**KRISTI NOEM**, Secretary of the  
United States Department of Homeland  
Security;

**FIELD OFFICE DIRECTOR**, Miami Field Office,  
U.S. Immigration and Customs Enforcement,;

**ASSISTANT FIELD OFFICE DIRECTOR**, Miami  
Field Office, U.S. Immigration and Customs Enforcement,

Defendants-Respondents

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**VERIFIED PETITION FOR WRIT OF HABEAS CORPUS  
AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

The petitioner, Andres Dominguez-Martinez, submits this Verified Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief, by and through undersigned counsel, and alleges as follows:

**INTRODUCTION**

1. The respondents have subjected the petitioner, Mr. Dominguez-Martinez, to civil confinement for close to two (2) years pending his removal proceedings. Petitioner is a citizen and native of the Dominican Republic, is currently being held by Immigration and Customs Enforcement ("ICE") detention at the Federal

Detention Center under the jurisdiction of the Krome Processing Center in Maimi, Florida. He has been held in custody with no clear end in sight because he is currently litigating in the 11<sup>th</sup> Circuit Court of Appeals to vacate an erroneously issued order of removal under Section 238(b) of the INA based on *Riley v. Bondi*, 606 U.S. \_\_\_, 2025 WL 1758502 .

2. The pending circuit appeal under the above-mentioned is based on an erroneously issued administrative order of removal, after the respondents proceeded with and then withdrew limited-relief withholding only proceedings on a first erroneously issued administrative order under 241(a)(5) of the Immigration and Nationality Act.
3. The petitioner has been saved from physical removal, as a matter of law, after he passed a reasonable fear interview, and was placed in withholding of removal-only proceedings based on a second erroneously-issued administrative order after a first erroneously-issued removal order was vacated as a matter of law. The first proceedings had been terminated in order to correct the procedural error of the fear interview being based on the erroneous first administrative order.
4. The petitioner was scheduled for another reasonable fear interview based on his expressed fear after receiving the second administrative order so that he could properly be put into removal proceedings and curing the procedural defect, however, that interview has been canceled as of October 9, 2025. To date, and after multiple emails and conversations, no new interview has been scheduled.
5. The respondents have referred the petitioner back to the immigration court despite knowledge that the petitioner is currently litigating the legality of the

order that places him in withholding-only proceedings rather than full 240 proceedings.

6. The petitioner's case pending in the 11<sup>th</sup> Circuit Court of Appeals will determine whether the respondents can proceed with the administrative order of removal and a limited relief withholding-only proceedings or if they must issue a new charging document placing him in full removal proceedings whereas he would be eligible to pursue additional applications for relief in the immigration court.
7. The petitioner is eligible for such other avenues of relief such as, asylum or a waiver of inadmissibility for a human trafficking victim visa which is currently pending on his behalf. Additionally, the petitioner could prevail in an application for adjustment of status that has been pending with USCIS to a lawful permanent resident, in conjunction with his I-212 Application for Permission to Re-enter the United States after Deportation based on his approved I-130 Petition for Alien Relative. The petitioner also has an I-360 pending based on being abused by a U.S.C. under the Violence Against Women Act (VAWA) The petitioner's potential relief also includes pre- or post- conclusion voluntary departure.
8. Petitioner's detention, already prolonged, has no foreseeable end due to the pending Petition for Review ("PFR") in the 11<sup>th</sup> Circuit Court of Appeals and the respondent's refusal to refer him to the immigration court for full proceedings despite the litigation regarding the administrative removal order.
9. He is seeking release through this habeas petition because his prolonged detention with no clear end in sight violates his due process rights under the 5<sup>th</sup>

Amendment and he requests an immediate hearing to review his case and grant relief.

### **JURISDICTION**

10. This action arises under the Constitution of the United States of America, 28 U. S. C. § 2241 et seq. (habeas corpus), the Immigration and Nationality Act (INA), 8 U. S. C. § 1101 et seq., Title 8 of the Code of Federal Regulations, and the Administrative Procedure Act (APA), 5 U. S. C. §§ 555(b), 701, et seq.
11. The Court has jurisdiction over this case under 28 U. S. C. § 2241 (habeas corpus), and § 1331 (federal question).
12. The Court may grant relief pursuant to the U.S. Const., art. I, § 9, cl. 2 (Suspension Clause), 28 U. S. C. § 1651 (All Writs Act), 28 U. S. C. §§ 2201–02 (declaratory relief), 28 U. S. C. § 2241 (habeas corpus), and 5 U. S. C. §§ 701 et seq. (Administrative Procedure Act).

### **VENUE**

13. Venue is proper in this district under 28 U. S. C. §§ 1391(e)(1) & 2241 because:  
(1) “a substantial part of the events or omissions giving rise to the claim occurred” in this district; and (2) this is the district where the “the custodian can be reached by service of process.” *Rasul v. Bush*, 542 U. S. 466, 478–79 (2004).

### **PARTIES**

14. Petitioner, **Andres Dominguez-Martinez**, is a citizen of the Dominican Republic. He is present in the United States as a result of entering the United States on February 20, 2023, on an advanced parole granted by the respondents

on September 20, 2022. He is being held in ICE custody at Federal Detention Center, in Miami, Florida under the jurisdiction of the respondents.

15. Defendant, **Kristi Noem**, is sued in her official capacity as the Secretary of the Department of Homeland Security (DHS). Because ICE is a subagency for the DHS, Secretary Noem was a legal custodian of the Petitioner, and is responsible for the prolonged detention of the Petitioner.

16. Defendant, **Field Office Director**, Miami Field Office, U.S. Immigration and Customs Enforcement is sued in his or her official capacity. In this capacity, the Field Office Director has jurisdiction over the detention facility in which the petitioner is held, is authorized to release the petitioner, and is a legal custodian of the petitioner

17. Defendant, **Assistant Field Office Director**, Krome Service Processing Center, U.S. Immigration and Customs Enforcement is sued in his or her official capacity. In this capacity, the Assistant Field Office Director has jurisdiction over the detention facility in which the petitioner is held, is authorized to release the petitioner, and is a legal custodian of the petitioner.

#### **EXHAUSTION OF REMEDIES**

18. No exhaustion is required for the petitioner's habeas claim because "Section 2241 itself does not impose an exhaustion requirement," *Santiago-Lugo v. Warden*, 785 F. 3d 467, 474 (CA11 2015)," and because "a petitioner need not exhaust his administrative remedies 'where the administrative remedy will not provide relief commensurate with the claim,' " *Boz v. United States*, 248 F. 3d

1299, 1300 (CA11 2001), abrogated on other grounds recognized by *Santiago-Lugo*, 785 F. 3d, at 474–75 n. 5 (citation omitted).

19. No statute, regulation, or other legal source with binding authority exists to provide the remedy that the petitioner’s habeas claims seek to remedy.
20. Further, “[b]ecause the BIA does not have the power to decide constitutional claims—like the validity of a federal statute— . . . certain due process claims need not be administratively exhausted.” *Warsame v. U. S. Att’y Gen.*, 796 Fed. Appx. 993, 1006 (CA11 2020); accord *Haitian Refugee Ctr., Inc. v. Nelson*, 872 F. 2d 1555, 1561 (CA11 1989), aff’d sub nom. *McNary v. Haitian Refugee Ctr., Inc.*, 498 U. S. 479 (1991) (exhaustion had “no bearing” where petitioner sought to make a constitutional challenge to procedures adopted by the INS).
21. The petitioner urgently seeks and is entitled to habeas relief because he has no meaningful opportunity to challenge the constitutionality of his detention through any available administrative process. See *Boumediene v. Bush*, 553 U. S. 723, 783 (2008).
22. And with respect to the petitioner’s APA claim, an agency’s failure to take action is reviewable agency action, *Norton v. S. Utah Wilderness Alliance*, 542 U. S. 55, 61–62 (2004), and there are no administrative remedies available that the petitioner is required to exhaust under *Darby v. Cisneros*, 509 U. S. 137 (1993).

**REQUIREMENTS OF 28 U.S.C. § 2243**

23. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Respondents must file a return “within

three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*

24. Habeas corpus is “perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). “The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application.” *Yong v. I.N.S.*, 208 F. 3d 1116, 1120 (CA 9 2000)(citation omitted); *See also, Johnson v. Rogers*, 917 F.2d 1283, 1284 (10th Cir. 1990).

#### FACTUAL ALLEGATIONS

25. Andres Dominguez-Martinez is a native and citizen of Dominican Republic born 
26. Mr. Dominguez-Martinez initially entered the U.S. on or about 11/05/2002 on a Visitor Visa and overstayed.
27. On or about March 31, 2011, in White Plains City Court in New York, he was convicted of Criminal Possession of a Controlled Substance pursuant to New York Penal Code PL 220.16.
28. Mr. Dominguez was placed in removal proceedings after being issued a Notice to Appear (“NTA”) on 06/17/2011. The NTA was by lacking notification of time/date/place of the hearing.
29. The petitioner was ordered removed from Batavia, New York Immigration Court on January 30, 2012. He appealed his case to the Board of Immigration Appeals

("BIA") by prior counsel William A. Garcia Esq. solely based on the issue of the Court's denial of a continuance.

30. The BIA denied the Petitioner's appeal on May 22, 2012, on his administrative case appeal.
31. The Petitioner filed a Petition for Review in the 2nd Circuit Court of Appeals. His petition was denied on September 24, 2012.
32. The Petitioner was physically removed after his removal order was final on November 1, 2012.
33. Mr. Dominguez-Martinez then married a United States Citizen, Ms. Daphne Elizabeth Garcia in the Dominican Republic on August 13, 2019 and then illegally re-entered the United States on February 24, 2020 in Puerto Rico.
34. He was screened for reinstatement and arrested and federally charged and convicted with illegal entry after deportation.
35. The petitioner, however, was released based on the Covid-19 global pandemic.
36. After being the parent of a U.S.C. who was subjected to extreme cruelty and abuse by his child, the petitioner self-petitioned under the Violence Against Women Act (VAWA)(Form I-360).
37. With the application, the petitioner filed an application for an advance parole (Form I-131). He also filed an application for adjustment of status (I-485), and an application for permission to re-enter the United States after a deportation (I-212) that are still pending.

38. The petitioner's I-131 Advance Travel Document/ Parole was approved and he exited the U.S. and re-entered with his parole legally on February 20, 2023 at New York, New York.
39. On March 12, 2024, the respondents issued an administrative order under INA § 241(a)(5) and 8 C.F.R. § 241.8, that was meant to reinstate the petitioner's previous removal order. He was not legally subject to that statute as his most recent entry was a legal entry.
40. The petitioner expressed fear of return to his country and was given a reasonable fear interview pursuant to 8 C.F.R. § 1241.8 (e) and when he passed the interview, he was referred to the immigration court to be subjected to withholding-only proceedings.
41. On May 8, 2025, the petitioner was subjected to an individual hearing in the immigration court based upon a referral from passing the reasonable fear interview pursuant to the first administrative reinstated order of removal. Petitioner also argued that he had been improperly placed in withholding-only proceedings because the reinstatement of removal was based on a legal error, since his last entry had been a legal entry where the respondents had inspected and paroled him into the United States and he was not subject to reinstatement of removal.
42. The petitioner's hearing was continued in order to allow the respondents to correct their error and to issue a Notice to Appear (NTA) to place the petitioner into full removal proceedings, and not withholding-only proceedings.

43. At a June 10, 2025 hearing, the respondents stated that they would not issue an NTA but would be issuing a final administrative order of removal now based on the arguably erroneous premise that he was an aggravated felon. The respondents did indeed issue an administrative order of removal based on aggravated felony on July 17, 2025.
44. At that point in time, the immigration court gave the petitioner the option of either waiving the defect and proceeding with withholding-only proceedings under the erroneous administrative order (that was later withdrawn by the respondents) or withdrawing his application for relief so his case can be referred back to the Asylum Prescreening Officer (APSO) for the issuance of a new fear interview and corrected referral to the Immigration Court under the new order. The respondents said that they would ensure that his case be forwarded back to APSO if application was withdrawn until the petitioner passes another reasonable fear interview and receives a new referral.
45. On August 16, 2025, the petitioner filed a Petition for Review of the Administrative Order in the 11<sup>th</sup> Circuit Court of Appeals which is currently pending, he is arguing against his previous 2011 conviction being an aggravated felony.
46. On September 25, 2025, the petitioner withdrew his application for relief making sure that the record was clear that he was only withdrawing in order to allow the procedural defect to be corrected and that a second fear interview would be conducted on the second administrative order of removal.

47. The respondents have referred the petitioner back to the immigration court in order to allow him to present a case of fear of return.

48. The petitioner's position is that since his last arrival was pursuant to an advance parole, the sole means for the respondents to remove him is via full removal proceedings pursuant to the filing of a Notice to Appear (NTA).

49. Because of the ongoing litigation in the 11<sup>th</sup> circuit and the ongoing withholding only removal proceedings that slows an appeal process, the petitioner is not foreseeably removable at any time soon.

### **LEGAL FRAMEWORK**

#### **Removal Proceedings Generally under 8 U.S.C. § 1229(a)**

50. An alien is normally placed in removal proceedings by the filing of a Notice to Appear (NTA) in the immigration court.

51. The government has the burden to prove removability, however once proven, the burden shifts to the alien to establish whether he is eligible for any of the **many** forms of relief available to him.

52. Most aliens are placed into these "regular" proceedings, however there are exceptions, such as the removal of someone who has re-entered illegally after a prior removal or whether the alien has been convicted of an aggravated felony. Although not limited to these two exceptions, these two exceptions are relevant to this complaint and are explained in detail below.

#### **Administrative Orders of Removal Under 8 C.F.R. § 1241.8, Reinstatement of Removal**

53. 8 C.F.R. § 1241.8 states that “an alien who *illegally* enters the United States after having been removed...shall be removed from the United States by reinstating the prior order.” (emphasis added).
54. “If an alien whose prior order of removal has been reinstated...expresses a fear of returning to the country designated in that order, the alien shall be immediately referred to an asylum officer for an interview to determine whether the alien has a reasonable fear of persecution or torture...”. 8 C.F.R. § 1241.8 (e).
55. “If an asylum officer determines that a non-citizen [whose order was re-instated] in this section has a reasonable fear of persecution or torture, the officer shall so inform the non-citizen and issue a Form I-863, Notice of Referral to the immigration judge, for full consideration of the request for withholding of removal *only*. 8 C.F.R. § 1208.31(e)(emphasis added).
56. The petitioner was issued an administrative order under this section in 2024, however it was withdrawn as an error because his last entry was a legal entry and he could not be legally removed under this section.

**Administrative Orders of Removal Under 8 U.S.C. § 1228  
Conviction of “Aggravated Felony”**

57. The law in this section allows that a Service officer shall cause to be served upon an alien a Form I-851, Notice of Intent to Issue a Final Administrative Deportation Order (Notice of Intent), if the officer is satisfied that there is sufficient evidence, based upon questioning of the alien by an immigration officer and upon any other evidence obtained, to support a finding that the individual:

(i) Is an alien;

(ii) Has not been lawfully admitted for permanent residence, or has conditional permanent resident status under section 216 of the Act;  
(iii) Has been convicted (as defined in section 101(a)(48) of the Act and as demonstrated by any of the documents or records listed in § 1003.41 of this chapter) of an aggravated felony and such conviction has become final; and  
49(iv) Is deportable under section 237(a)(2)(A)(iii) of the Act, including an alien who has neither been admitted nor paroled, but who is conclusively presumed deportable under section 237(a)(2)(A)(iii) by operation of section 238(c) of the Act (“Presumption of Deportability”). 8 C.F.R. § 238(b)(1).

58. The respondents, after withdrawing the first administrative order of removal under 8 C.F.R. § 1241.8, Reinstatement of Removal, then issued a second, different type of administrative order of removal under 8 C.F.R. § 238(b)(1) citing the petitioner’s criminal possession of a controlled substance conviction as an “aggravated felony” under “section 101(a)(43)(b) of the Immigration and Nationality Act (INA) or 8 U.S.C. 1101(a)(43)(b).
59. The petitioner timely filed a petition for review with the 11<sup>th</sup> Circuit Court of Appeals to appeal that his conviction was not an aggravated felony pursuant to Circuit law pursuant to *U.S. v. Minter*, No. 21-3102 (2d Cir. 2023).
60. Despite the pending Circuit appeal, the respondents moved forward with the proceedings based on the first administrative order that was withdrawn and when the court terminated those proceedings, insists to proceed with a second withholding-only proceeding despite the petitioner’s ongoing litigation.
61. In this withholding-only proceeding, the petitioner will not be able to bring forth his more viable forms of relief that could lead to legal permanent residency but will only be able to receive a removal order and merely an order not be removed to his country.

#### **Detention**

62. Mandatory detention during removal proceedings is subject to due process constraints. *Demore v. Kim*, 538 U. S. 510, 518 (2003) (identifying mandatory detention pending removal proceedings as justifiable for a “brief period,” lasting “roughly a month and a half in the vast majority of cases in which it is invoked, and about five months in the minority of cases in which the alien chooses to appeal”)
63. Federal district courts within the Eleventh Circuit employ a reasonableness test as the standard to determine whether a habeas petitioner’s detention has become unconstitutionally prolonged. See *Sopo v. U. S. Att’y Gen.*, 825 F. 3d 1199, 1218 (CA11 2016), vacated on other grounds as moot, 890 F. 3d 952 (CA11 2018); see also *Moore v. Nielsen*, No. 418CV01722LSCHNJ, 2019 WL 2152582, at \*9 (N.D. Ala. May 3, 2019); *Msezane v. Gartland*, No. 5:19-CV-51, 2020 WL 1042293, at \*7 (S.D. Ga. Jan. 29, 2020).
64. The Eleventh Circuit held that detention “under § 1226(c) is constitutional for a reasonable period of time to complete the removal proceedings, but as a matter of constitutional avoidance, at some point such detained [noncitizens] become entitled to an individualized bond hearing.” *Sopo*, 825 F. 3d, at 1202.
65. In reaching this decision, the Court highlighted that, “[u]nder the Due Process Clause, civil detention is permissible only where there is a ‘special justification’ that ‘outweighs the individual’s constitutionally protected interest in avoiding physical restraint.’ ” *Id.*, at 1210 (emphasis in original).
66. Looking to Justice Kennedy’s concurring opinion in *Demore*, the Eleventh Circuit reiterated the constitutional issues that may result from “unreasonable and

unjustified” detention, emphasizing that *Demore* included “a strong constitutional caveat about due process concerns as to continued mandatory detention where the duration of the removal proceedings is unreasonably long or delayed.” *Id.*, at 1212.

67. To avoid the outcome that “§ 1226(c) may become unconstitutionally applied if a criminal [noncitizen]’s detention without even a bond hearing is unreasonably prolonged,” the *Sopo* Court joined five other Circuit Courts of Appeals in finding an “implicit reasonable time limitation.” *Id.*, at 1213. The Court thus concluded that detention “under § 1226(c) is constitutional for a reasonable period of time to complete the removal proceedings, but as a matter of constitutional avoidance, at some point such detained [noncitizens] become entitled to an individualized bond hearing.” *Id.*, at 1202.

68. *Sopo* employed a case-by-case approach to the question of when detention becomes unreasonable, beginning with the “core principle” from *Zadvydas* and *Demore* that “the reasonableness of any given detention pursuant to §1226(c) is a function of whether it is necessary to fulfill the purpose of the statute.” *Sopo*, 825 F. 3d, at 1217.

69. The *Sopo* court identified five non-exhaustive factors to “guide a district court in determining whether a particular [noncitizen]’s continued detention, as required by § 1226(c), is necessary to fulfilling Congress’ aims of removing [noncitizens with relevant criminal histories] while preventing flight and recidivism.” *Id.* The court emphasized the importance of individual circumstances in every case. *Id.*, at 1218.

70. First, the “critical” factor is “the amount of time that the [noncitizen] has been in detention without a bond hearing.” *Id.*, at 1217. The court suggested that “there is little chance that a [noncitizen]’s detention is unreasonable until at least the six-month mark” and that “detention without a bond hearing may often become unreasonable by the one-year mark.” *Id.* (emphasis added). Sometime in that window, “[t]he need for a bond inquiry is likely to arise” where the court should “determine whether the purposes of the statute – preventing flight and criminal acts – are being fulfilled.” *Id.*
71. Second, courts should evaluate “why the removal proceedings have become protracted.” *Id.*, at 1218. The court should consider whether the noncitizen “failed to participate actively in the removal proceedings or sought continuances and filing extensions.” *Id.* The Eleventh Circuit specifically noted that it is “not saying that [noncitizens] should be punished for pursuing avenues of relief and appeals.” *Id.* The inquiry is, rather, whether the proceedings involved “repeated or unnecessary continuances.” *Id.*
72. After listing the first two critical factors (length of detention and reasons for delay), the Sopo court approvingly listed two slightly different sets of non-exhaustive factors, used in other circuits, to evaluate the constitutionality of continued detention under 8 U. S. C. § 1226(c). First, the court identified other factors considered by the Third and Sixth Circuits, observing that:

Courts conducting this reasonableness analysis have considered three more factors, including (3) whether it will be possible to remove the criminal alien after there is a final order of removal; (4) whether the alien’s civil immigration detention exceeds the time the alien spent in prison for the crime that rendered him removable; and (5) whether the facility for the civil immigration detention is

meaningfully different from a penal institution for criminal detention.

*Id.* (citations omitted). Next, the court observed that:

the First Circuit has listed these as factors a court might examine, *inter alia*: “the total length of the detention; the foreseeability of proceedings concluding in the near future (or the likely duration of future detention); the period of the detention compared to the criminal sentence; the promptness (or delay) of the immigration authorities or the detainee; and the likelihood that the proceedings will culminate in a final removal order.

*Id.* (citation omitted).

73. The *Sopo* court then explained that “[t]here may be other factors that bear on the reasonableness of categorical detention” and that “the factors that should be considered will vary depending on the individual circumstances present in each case.” *Id.*

74. The Court may address each of these factors separately if it prefers to do so, but the core underlying inquiry is the likelihood that the constitutional problem—prolonged detention without individualized justification—will persist. *See, e.g., Gjergji v. Johnson*, No. 3:15-cv-1217-J-34MCR, 2016 WL 3552718, at \*8 (M.D. Fla. June 30, 2016) (applying *Sopo* and concluding the fact that detention “is not likely to conclude in the near future” due to a pending BIA appeal and the parties’ plans to “appeal an adverse decision by the BIA” weighed in the petitioner’s favor, without separately considering whether removal would be possible if a removal order became final).

#### **Removal is Not Imminently Possible**

75. The 11<sup>th</sup> Circuit Appeal is currently pending based on the second administrative order of removal erroneously accusing the petitioner of having committed an

aggravated felony despite circuit case law confirming that the petitioner's conviction is not an aggravated felony

76. This 11<sup>th</sup> Circuit decision, when it is decided will determine whether the petitioner is eligible to apply solely for withholding-only relief or whether the petitioner will be able to apply for the other forms of relief for which he is eligible.
77. Withholding of removal is a removal order that cannot be executed to the designated country and cannot lead to legal status.
78. The other relief for which the petitioner is eligible can lead to legal permanent residency status.
79. Thus, until the 11<sup>th</sup> Circuit Court of Appeals rules on the petitioner's petition in that court, the petitioner's removal case cannot be fairly completed.
80. The respondents have begun to subject the petitioner to proceed in a full withholding-only proceeding in the immigration court.
81. If the petitioner does not prevail in the proceeding, despite his objections to the proceeding being properly brought, he would be subjected to immediate deportation by the respondents in executing the arguable administrative order.
82. If the petitioner does not prevail in those proceedings, which will take approximately three months, he will be appealing to the Board of Immigration Appeals (BIA) as is his right.
83. The BIA appeal process for detained persons usually is completed in three months to one year.

84. Then if the 11<sup>th</sup> Circuit rules in his favor, he will be remanded to full 240 proceedings with new applications for relief to adjudicate.

85. The petitioner is not trying to delay or obfuscate but is diligently pursuing his case because he believes he can legitimately obtain legal status in the full proceedings to which he is entitled.

86. Again a detained case will take approximately three months and any appeal, if necessary, will most likely complete in three months to a year.

#### **Final Order of Removal Not Likely**

87. The petitioner has various applications that are currently pending with USCIS including the concurrent filing of I-360/ I-485 which is a green card application with an underlying visa based on a pending I-360 VAWA filed on 06/10/2022, Receipt Number EAC2224350446, Receipt Number EAC3324350464.

88. The petitioner also has a pending I-212 Application, which is an application for permission to re-enter the United States after a deportation, Receipt Number EAC2224350457, filed on 06/10/2022.

89. The petitioner has a pending I-601, application for a waiver of inadmissibility, Receipt Number EAC2224350451, filed 06/10/2022.

90. I-131 Application for a travel document also filed on 06/10/2022 and it was approved, valid from 09/20/2022 to 09/19/2023 Receipt Number EAC2224350476, which he last came in with. He also has a Granted I-765 employment authorization under category c09 valid from 05/02/2023 to 05/01/2025. USCIS based on lack of response to an RFE, denies previously filed T nonimmigrant visa and I-192 Application (filed prior application with prior

counsel), denied July 1, 2022. The petitioner's current T (human trafficking) nonimmigrant visa is pending; no receipt notice issued yet but his attorneys have been in contact with the United States Department of Labor regarding the visa.

### **Petitioner's Detention is Unlawful**

#### **A. Petitioner's Length of Detention**

96. The length of the petitioner's detention is presumptively unreasonable. The petitioner satisfies the single most important criterion because he has completed almost two (2) years in immigrant detention with no end in sight. The petitioner has been detained since on or about February 20, 2023, under 8 U.S.C. § 1226(c), without a bond hearing. Most likely his detention will, if left to the respondents, last well over a year — especially in light of the fact that petitioner is currently in litigation in the 11<sup>th</sup> Circuit which will determine whether he is properly placed in withholding-only proceedings or whether he is entitled to a full removal proceeding with eligibility to further applications for relief.
97. Therefore, his detention now well exceeds two (2) years. The court in *Reid v. Donelan*, 390 F. Supp. 3d 201, 215 (D. Mass. 2019), like in *Sopo*, identified one year of detention as a critical length, stating “such detention is likely to be unreasonable if it lasts for more than one year during removal proceedings before the agency, excluding any delays due to the [noncitizen]’s dilatory tactics.”
98. Other courts have similarly keyed in on the one-year mark as an indication that detention has become unreasonably prolonged. See, e.g., *J.N.C.G. v. Warden*, No. 4:20-CV-62-MSH, 2020 WL 5046870, at \*6 (M.D. Ga. Aug. 26, 2020)

(reiterating *Sopo*'s determination that detention becomes unreasonable after one year); *Muse v. Sessions*, No. 18-CV-0054, 2018 WL 4466052, at \*4 (D. Minn. Sept. 18, 2018) (“As detention continues past a year, courts become extremely wary of permitting continued custody absent a bond hearing.”); *Carlos L. C. v. Green*, Civ. No. 18-8670, 2019 WL 1110388, at \*4 (D.N.J. Mar.11, 2019) (ordering a bond hearing where the petitioner had been detained without a review of detention “in excess of the presumptive 12 months”); *Liban M.J. v. Sec’y of DHS.*, No. 18-cv-1843, 2018 WL 8495827, at \*6 (D. Minn. Dec. 10, 2018) (“12-month detention is ‘considerably longer than the ‘brief’ period assumed in *Demore.*’”).

99. The petitioner has been in detention for more than one year that the *Sopo* court identified as presumptively unreasonable. *Sopo*, 825 F.3d at 1217. He has been held in mandatory detention under 8 U.S.C. § 1226(c) throughout the course of his detention without the opportunity for a review of his custody. His length of detention thus far surpasses the ‘presumptively reasonable’ period. The first *Sopo* factor heavily weighs in favor of Petitioner’s claim for habeas relief.

#### **B. The Reason for Protracted Proceedings**

100. The Eleventh Circuit stated in *Sopo* that “[noncitizen]s should [not] be punished for pursuing avenues of relief and appeals.” 825 F. 3d, at 1218. Instead, only “unnecessary continuances, or frivolous claims and appeals” should count against the petitioner. *Id.*

101. District Courts around the country have similarly held that good-faith litigation of claims for relief from removal are not the sort of protraction that

would excuse prolonged detention without a bond hearing. See, e.g., *Alexis v. Sessions*, Civ. No. H-18-1923, 2018 WL 5921017, at \*8 (S.D. Tex. Nov. 13, 2018) (concluding that despite an appeal to the BIA and a petition for review to the Fifth Circuit, “there is no evidence that Alexis has caused delay that would weigh against relief”); *Oscar C. L. v. Green*, No. CV 18-9330 (KM), 2019 WL 1056032, at \*3 (D.N.J. Mar. 6, 2019) (“While the government lists various continuances that were granted at Petitioner’s re-request, there is no allegation (or indication) that Petitioner has been request-ing continuances in bad faith or for the purposes of delay. Furthermore, the Third Circuit has cautioned against denying relief when to do so would “effectively punish [the petitioner] for pursuing applicable legal remedies.”).

102. Removal proceedings have become protracted because of government processing delays, procedural errors and because of the petitioner’s legitimate pursuit of relief from removal. Significant delay resulting from the immigration court’s indecision on what to do with the petitioner’s removal case following the withdrawal of the first administrative order, the issuance of a second administrative order, the fact that proceedings were started based on the first administrative order and not the second and the only remedy to correct the procedural error was to withdraw the application for relief or waiver the error which would have cost the petitioner his rights. As a matter of law, the pursuit of this process cannot prejudice his request for habeas relief.

### **C. The Additional *Sopo* Factors**

103. The additional *Sopo* factors, viewed together, weigh in Petitioner’s favor.

104. Three of the factors the Sopo court identified as having been considered by the other circuit courts address the likelihood that mandatory detention will continue to stretch on into the future with an indeterminate end date. Those three factors include: “whether it will be possible to remove the [noncitizen] after there is a final order of removal;” “the foreseeability of proceedings concluding in the near future (or the likely duration of future detention);” and “the likelihood that the proceedings will culminate in a final removal order.” Sopo, 825 F.3d at 1218.
105. Courts should evaluate “whether it will be possible to remove the [noncitizen] after there is a final order of removal.” *Id.* The Eleventh Circuit likened the First Circuit’s factor of the “foreseeability of proceedings concluding in the near future (or likely duration of the future detention)” to the third factor articulated in *Sopo*. *Id.* (citation omitted).
106. It is unlikely that the petitioner will be ultimately subject to removal because a change in the law renders his conviction as clearly out of the orbit of aggravated felonies, that he has multiple applications for relief pending especially ones with generous waivers such as VAWA and human trafficking visas.
107. Further, it is unlikely that the petitioner will have a final removal order at all given the strength of his claims for protection under the Convention Against Torture, which is a form of relief related to asylum.
108. Given the already extended delay in the petitioner’s case and the respondents’ refusal to proceed with full 240 proceedings, it could be months more until the immigration judge rules and the decision of any appeal to the Board of

Immigration Appeals on his case should the Immigration Judge rule against him, protracting his detention even longer.

109. Moreover, if the BIA were to affirm a removal order against the petitioner, he would seek another judicial review with the Eleventh Circuit Court of Appeals and seek a stay of deportation, extending a final decision into the indefinite future.
110. The petitioner's removal proceedings are not likely to conclude in the reasonably foreseeable future, thus the third *Sopo* factor favors habeas relief.
111. *Sopo* noted that courts should also evaluate "whether the [noncitizen]'s civil immigration detention exceeds the time the [noncitizen] spent in prison for the crime that rendered him removable." 825 F. 3d, at 1218.
112. Here, the petitioner was sentenced to 2 years of incarceration for the drug possession charge to which he was only required to serve 8 months and then sentenced to 15 months for his illegal reentry after a deportation but only served several before being released.
113. The Petitioner's confinement in civil immigration detention has been substantially longer than the time he actually spent in criminal incarceration, so this factor also supports issuance of the writ. *Hanna v. Lynch*, No. 4:16-CV-375-CDL-MSH, 2018 WL 547232 (M.D. Ga. Jan. 24, 2018), amended, No. 4:16-CV-375-CDL-MSH, 2018 WL 4850106 (M.D. Ga. Feb. 23, 2018) (bond hearing ordered despite Petitioner's shorter length of detention in civil detention – 29 months – compared to 60 months of criminal incarceration) (petition later dismissed as moot because Petitioner was released from ICE custody).

114. The court should also determine “whether the facility for the civil immigration detention is meaningfully different from a penal institution for criminal detention.” *Sopo*, 825 F.3d at 1218.
115. Other courts have found civil immigration detention is not meaningfully different from criminal detention. *J.N.C.G.*, 2020 WL 5046870, at \*7 (finding conditions at an ICE contract facility to be essentially equivalent to criminal incarceration); *Sopo*, 825 F. 3d, at 1221 (describing the facility as “prison-like”).
116. Here, Petitioner has been held in detention at Federal Detention Center which is an actual penal facility, and he is treated as a penal prisoner as well in all relevant respects.
117. The fifth *Sopo* factor therefore weighs decisively in favor of Petitioner’s habeas claim.

#### **D. Other Equities Favor Habeas Relief**

118. Finally, the Eleventh Circuit made clear that the factors it articulated were “not exhaustive,” echoing the First Circuit in stating that “there may be other factors that bear on the reasonableness of categorical detention” such that it “need not strain to develop an exhaustive taxonomy.” *Sopo*, 825 F.3d at 1218.
119. Other factors, including Petitioner’s strong claim for relief, the inhumane and dangerous conditions he has faced in prison facilities, and the needs of his US citizen family, militate in favor of the petitioner’s release.
120. As the first and second *Sopo* factors strongly favor the petitioner, and the additional factors and equities also support his claim, the Court should

immediately release him or, in the alternative, grant him an individualized bond hearing.

121. The Eleventh Circuit found that “[i]f the balance tips in the [noncitizen]’s favor, the district court must grant the § 2241 habeas petition and order the government to afford the [noncitizen subject to § 1236(c)] an individualized bond inquiry.” *Sopo*, 825 F. 3d, at 1219.
122. The court in *Sopo* also found the petitioner should be afforded a bond hearing with only three factors in his favor: the length of his detention, the reason for protracted proceedings, and detention conditions similar to prison. *Id.*, at 1220–21.
123. The petitioner has the majority of the *Sopo* factors in his favor, surpassing the number of factors the *Sopo* court found to necessitate a bond hearing. See *J.N.C.G.*, 2020 WL 5046870, at \*7 (ordering a bond hearing where four *Sopo* factors weighed in the petitioner’s favor).
124. The totality of the circumstances demonstrates that Petitioner’s continued detention is unreasonable without an individualized bond hearing.

**The Government Must Bear the Burden of Proving  
Flight Risk and Dangerousness by Clear and Convincing Evidence**

125. Due process also requires that if the government attempts to justify prolonged immigration detention that, at a minimum, it must bear the burden of proof at a bond hearing, by clear and convincing evidence, that the noncitizen is dangerous or a flight risk. See, e.g., *J.G. v. Warden, Irwin Cty. Det. Ctr.*, 501 F. Supp. 3d 1331, 1335 (M.D. Ga. 2020), appeal dismissed sub nom. *Jinxu Gao v. Paulk*, No. 21-10158-JJ, 2021 WL 3089259 (CA11 2021) (recognizing that the

“overwhelming majority of district courts,” along with the Second and Ninth Circuits, hold that the government must justify a noncitizen’s detention under § 1226(a) by clear and convincing evidence); *German Santos v. Warden Pike Cty Corr. Facility*, 965 F.3d 203, 213 (3d Cir. 2020) (a “clear and convincing” standard of proof with the burden on the government in a § 1226(c) bond hearing is required based on balancing the noncitizen’s “liberty interest, the risk of error to him, and the Government’s interest in detaining [those subject to §1226(c)] until the end of their removal proceedings”); *Perera v. Jennings*, No. 21-cv-04136-BLF, 2021 WL 2400981, at \*6 (N.D. Cal. June 11, 2021) (ordering a §1226(c) bond hearing where the government bears the burden by clear and convincing evidence); *Xiong v. Garland*, No. CV 20-2678 (NEB/BRT), 2021 WL 2482309, at \*4 (D. Minn. May 12, 2021) (same).

126. The government bearing the burden by clear and convincing evidence is also consistent with the *Mathews* balancing test for procedural due process claims. *Mathews v. Eldridge*, 424 U. S. 319, 335 (1976).
127. First, prolonged incarceration deprives noncitizens of a “profound” liberty interest. *Diouf v. Napolitano*, 634 F. 3d 1081, 1091–92 (CA9 2011).
128. Second, the risk of error is great where detained noncitizens are often unrepresented and the government is represented by trained attorneys. *Santosky v. Kramer*, 455 U. S. 745, 763 (1982) (requiring clear and convincing evidence at parental termination proceedings because “numerous factors combine to magnify the risk of erroneous factfinding” including that “parents subject to termination proceedings are often poor, uneducated, or members of minority

groups” and “[t]he State’s attorney usually will be expert on the issues contested”).

129. Third, placing the burden on the government imposes minimal cost or inconvenience, as the government has access to the noncitizen’s immigration records and other information that it can use to make its case for continued detention.

130. Where the Supreme Court has permitted prolonged civil detention in other contexts, it has relied on the fact that the government bore the burden of proof at least by clear and convincing evidence. *United States v. Salerno*, 481 U. S. 739, 750 & 752 (1987) (upholding pre-trial detention where a “full-blown adversary hearing,” requiring “clear and convincing evidence” and “neutral decisionmaker”); see also *Foucha v. Louisiana*, 504 U.S. 71, 81-83 (1992) (striking down civil detention scheme that placed burden on the detainee); *Zadvydas*, 533 U.S. at 692 (finding post-final-order custody review procedures deficient because, *inter alia*, they placed burden on detainee).

131. Placing the burden on the government safeguards the Petitioner’s constitutional rights and is also efficient for all parties, as the government has access to the Petitioner’s immigration records and other information that it can use to make its case.

## **CLAIMS FOR RELIEF**

### **COUNT I:**

#### **Unlawful Detention in Violation of Due Process**

132. The allegations in paragraphs 1-131 are realleged and incorporated herein.

133. The petitioner's continued civil immigration detention, without an individualized determination by a neutral decisionmaker as to whether that detention should continue, has become prolonged is in violation of constitutional due process.

134. Therefore, the petitioner is entitled to a writ of habeas corpus granting him a bond hearing conducted either by the Court, or by the Immigration Judge, with the burden of proof upon the government to demonstrate by clear and convincing evidence that the petitioner is a danger or a flight risk.

#### **PRAYER FOR RELIEF**

**WHEREFORE**, the petitioner prays that the Court grant the following relief:

- (a) Assume jurisdiction over this matter;
- (b) Set this matter for expedited consideration pursuant to 28 U.S.C. § 1657;
- (c) Order the respondents to show cause why the writ should not be granted within three days, and allowing the petitioner three days to file a traverse, and, if necessary, set a hearing on this petition within five days of the submission of the return, pursuant to 28 U. S. C. § 2243;
- (d) Order the respondents to refrain from transferring the petitioner out of the jurisdiction of this Court during the pendency of this proceeding and while the petitioner remains in the respondents' custody;
- (e) Grant the petitioner a writ of habeas corpus ordering his immediate release from the respondents' custody because that custody has become unconstitutionally prolonged and punitive;

(f) Alternatively, grant the petitioner a writ of habeas corpus ordering that the petitioner be afforded bond hearing conducted either by the Court, or by the Immigration Judge, with the burden of proof upon the government to demonstrate by clear and convincing evidence that the petitioner is a danger or a flight risk;

(g) Award Petitioner attorneys' fees and costs under the Equal Access to Justice Act (EAJA), as amended, 5 U.S.C. § 2412, and on any other basis justified under law; and

(h) Grant any other and further relief that the Court deems just and proper.

Dated November 12, 2025

**/s/Bonnie Smerdon**

Bonnie Smerdon

Florida Bar #123933

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**VERIFICATION BY SOMEONE ACTING ON THE PETITIONER'S BEHALF  
PURSUANT TO 28 U.S.C. § 2242**

I, Bonnie Smerdon, am submitting this verification on behalf of the petitioner because I am the petitioner's federal attorney. I am acting on behalf of the petitioner, Andres Dominuez-Martinez, based on discussions with him and the attorney handling his administrative case. On the basis of these discussions, I hereby verify that the statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: November 12, 2025

**/s/Bonnie Smerdon**

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

**ANDRES DOMINGUEZ-MARTINEZ**

Petitioner

V.

Case No. \_\_\_\_\_

Agency File 

**KRISTI NOEM, et. al.**

Respondents

**EXHIBIT LIST**

- |           |  |
|-----------|--|
| Exhibit 1 | Most Recent Referral to the Immigration Court                            |
| Exhibit 2 | Administrative Order under 8 C.F.R. § 241.8                              |
| Exhibit 3 | Administrative Order under 8 U.S.C. § 1101(a)(43)(B)                     |
| Exhibit 4 | Petitioner's Parole Document and Parole into the US                      |
| Exhibit 5 | Petitioner's Petition for Review in the U.S. 11 <sup>th</sup> Cir. Court |
| Exhibit 6 | Petitioner's Criminal Conviction Being Contested                         |
| Exhibit 7 | Copy of <i>U.S. v. Minter</i> , No. 21-3102 (2d Cir. 2023)               |
| Exhibit 8 | Evidence of Petitioner's Immigration Applications                        |