IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

MANAURY OLIVAREZ GEORGE Petitioner, v. **WARDEN OF KROME; TODD M. LYONS**, Acting Director, Immigration and Customs Enforcement; **GARRETT J. RIPA** Miami Field Office Director, Immigration and Customs Enforcement; **KRISTI NOEM,** Secretary, Department of Homeland Security; **PAMELA BONDI,** United States Attorney General; Respondents.	PETITION FOR WRIT OF HABEAS CORPUS AND EMERGENCY MOTION FOR TEMPORARY Case No. 1:25-cv-25847

INTRODUCTION

1. This case challenges Respondents' authority to indefinitely detain a noncitizen without any finding of dangerousness or flight risk. Petitioner asks this Court to grant his release from prolonged immigration detention or a bond hearing before a neutral arbiter.

2. Petitioner is a lawful permanent resident ("LPR") who was placed in removal proceedings upon arrival from a short trip abroad and charged as inadmissible under 8 U.S.C. § 1182(a)(2)(A)(i)(I); *see also* 8 U.S.C. § 1101(a)(13)(C)(v).

3. As of the date of this petition, Petitioner has been detained by Immigration and Customs Enforcement ("ICE") for nearly six (6) months, with no end to his detention in the reasonably foreseeable future. Petitioner was originally detained by ICE on June 28, 2025.

4. ICE claims authority to indefinitely detain Petitioner without a bond hearing under 8 U.S.C. § 1225(b). That statute provides for the detention of applicants for admission whom an

immigration official believes are not "clearly and beyond a doubt entitled to admission . . . ." 8 U.S.C. § 1225(b)(2)(A).

5. An applicant for admission is a noncitizen "present in the United States who has not been admitted or who arrives in the United States, whether or not at a designated port of arrival." 8 U.S.C. § 1225(a)(1).

6. Generally, an LPR is not to be treated as seeking admission unless they fall within one of the statutory exceptions listed in 8 U.S.C. § 1101(a)(13)(C). *Matter of Pena*, 26 I&N Dec. 613, 616 (BIA 2015). Those exceptions include a noncitizen who has committed an offense identified in 8 U.S.C. § 1182(a)(2). 8 U.S.C. § 1101(a)(13)(C)(v).

7. The government interprets § 1225(b) to require mandatory detention without a bond hearing of all applicants for admission, for the indefinite length of time necessary to complete removal proceedings, even if that time becomes unreasonably prolonged.

8. Petitioner's prolonged, indefinite detention pending removal proceedings violates the U.S. Constitution's Fifth Amendment because it deprives Petitioner of liberty without due process of law.

9. Petitioner therefore respectfully requests that this Court issue a writ of habeas corpus and order Petitioner's release from custody, with appropriate conditions of supervision if necessary. In the alternative, Petitioner requests that this Court conduct or order an immigration judge to conduct a bond hearing at which (1) the government bears the burden of proving flight risk and dangerousness by clear and convincing evidence and (2) the reviewing court considers alternatives to detention that could mitigate risk of flight.

PARTIES

10. Petitioner is an LPR who is presently detained at the direction of Respondents at the Krome North Service Processing Center in Miami, Florida.

11. Respondent WARDEN OF KROME is named in his official capacity as the warden of the facility where Petitioner is held. In this capacity, he is a legal custodian of petitioner.

12. Respondent TODD M. LYONS is Acting Director of ICE. He is responsible for ICE's policies, practices, and procedures, including those relating to the detention of immigrants. Respondent LYONS is considered Petitioner's legal custodian. This action is brought against him in his official capacity.

13. Respondent GARRETT J. RIPA is the Field Office Director for ICE, Enforcement and Removal Operations' ("ERO") Miami Field Office. Respondent RIPA is considered Petitioner's legal custodian. This action is brought against him in his official capacity.

14. Respondent KRISTI NOEM is the Secretary of the Department of Homeland Security ("DHS"). She is generally charged with the administration and enforcement of the Immigration and Nationality Act (INA) and has control, direction, and supervision of all employees and of all the files and records of ICE. She is authorized to delegate such powers and authority to subordinate employees of the DHS. 8 U.S.C. § 1103(a). This action is brought against her in her official capacity.

15. Respondent PAMELA BONDI is the Attorney General of the United States of America. The Attorney General is responsible for the administration and enforcement of the Immigration and Nationality Act ("INA") pursuant to 8 U.S.C. § 1103(a). This action is brought against her in her official capacity.

JURISDICTION AND VENUE

16. Petitioner is detained in the custody of Respondents at the Krome North Service Processing Center in 18201 SW 12th St, Miami, FL 33194.

17. This Court has subject matter jurisdiction over this Petition under 28 U.S.C. § 2241 (power to grant habeas corpus) and 28 U.S.C. § 1331 (federal question jurisdiction); the All Writs Act, 28 U.S.C. § 1651; and the Administrative Procedure Act, 5 U.S.C. § 701.

18. Federal district courts have jurisdiction to hear habeas corpus claims by noncitizens challenging the lawfulness or constitutionality of their detention by ICE. *Demore v. Kim*, 538 U.S. 510, 516-17 (2003).

19. Under 28 U.S.C. § 2241(d), venue properly lies in the Southern District of Florida because Petitioner is physically present and in the custody of Respondents within the district.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

20. "It is no longer the law of this circuit that exhaustion of administrative remedies is a jurisdictional requirement in a § 2241 proceeding." *Santiago-Lugo v. Warden*, 785 F.3d 467, 474–75, n.5 (11th Cir. 2015) (abrogating *Boz v. United States*, 248 F.3d 1299, 1300 (11th Cir. 2001)).

21. Further, there is no statutory exhaustion of administrative remedies where a noncitizen challenges the lawfulness of his detention. *Cf.* 8 U.S.C. § 1252(d)(1) (requiring exhaustion of administrative remedies only where requesting review of a final order of removal).

22. "'[W]here Congress has not clearly required exhaustion, sound judicial discretion governs." *Jones v. Zenk*, 495 F. Supp. 2d 1289, 1297 (N.D. Ga. 2007) (citing *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992)). As a matter of discretion, exhaustion of administrative remedies should therefore be waived "(1) where prejudice to the prisoner's subsequent court action

'may result, for example, from an unreasonable or indefinite timeframe for administrative action'; (2) where the administrative agency may not have the authority 'to grant effective relief'; or (3) 'where the administrative body is shown to be biased or has otherwise predetermined the issue before it.'" *Jones*, 495 F. Supp. 2d at 1297 (citing *McCarthy*, 503 U.S. at 146-48). *See also Woodford v. Ngo*, 548 U.S. 81, 103 (2006) (Breyer, J. concurring) (noting "well-established exceptions to exhaustion" that include constitutional claims, futility, hardship to the petitioner, and where administrative remedies are inadequate or unavailable) (citations omitted)).

23. Administrative exhaustion would be futile. Exhaustion is futile where the agency has "predetermined the issue before it." *McCarthy*, 503 U.S. at 148. The BIA has predetermined the issue here: whether an individual detained under § 1225(b) is eligible for a bond hearing. The BIA interprets § 1225(b) to mandate detention of arriving aliens pending removal proceedings, without exception. Because exhaustion of Petitioner's claims would be futile, the Court should waive its requirement as a matter of discretion.

STATEMENT OF FACTS

24. Petitioner is a thirty-eight-year-old native and citizen of the Dominican Republic. *See* **Exhibit A**, Petitioner's Form I-551, LPR Card.

25. He is married to a U.S. citizen and has resided in the United States for over six (6) years.

26. On September 12, 2019, Petitioner adjusted his status to that of an LPR. *See* **Exhibit A.**

27. On Janaury 19, 2024, Petitioner was convicted at the Hall County Superior Court in the State of Georgia of three counts of simple battery on January 19, 2024.

28. On June 28, 2025, Petitioner returned from a trip abroad and was deemed an applicant for admission. Petitioner was issued an Notice to Appear, alleging that he was an inadmissible arriving alien because he had been convicted of a CIMT. *See* **Exhibit B,** Notice to Appear, dated June 29, 2025.

29. Petitioner's initial master calendar hearing was not scheduled until July 28, 2025, thirty days after he was taken into ICE custody. *See* **Exhibit C,** Notice of Hearing, dated July 22, 2025.

30. Petitioner filed a Motion to Terminate with the Krome Immigration Court on July 27, 2025. *See* **Exhibit D,** Motion to Terminate, dated July 27, 2025 ("Petitioner's Motion").

31. The immigration judge set time limits for the DHS to file a response to Petitioner's Motion.

32. DHS did not issue a response to Petitioner's Motion within the time limit set by the immigration judge. Nonethless, the immigration judge provided DHS additional time to respond to Petitioner's Motion. *See* **Exhibit E,** IJ Order, dated August 20, 2025.

33. On August 27, 2025, thirty days after Petitioner filed his Motion, DHS filed its Opposition to Motion to Terminate. *See* **Exhibit F,** DHS' Opposition to Motion to Terminate, dated August 27, 2025.

34. On August 29, 2025, Petitioner filed a Reply to DHS' Opposition to the motion to Terminate. *See* **Exhibit G,** Reply to DHS' Opposition to Motion to Terminate, dated August 29, 2025.

35. After a thorough review of the record, the immigration judge granted Petitioner's Motion to Terminate, finding Petitioner was not removable as charged on September 29, 2025. *See* **Exhibit H,** IJ Order, dated September 29, 2025.

36. DHS reserved appeal.

37. On October 29, 2025, DHS filed Form EOIR-26, Notice of Appeal electronically with the Board of Immigration Appeals (BIA) via the EOIR Courts and Appeals System (ECAS). 8 C.F.R. § 1003.38(b). In the EOIR-26, DHS indicated their intention to file a separate written brief or statement. *See* **Exhibit I**, Form EOIR-26.

38. When a Notice of Appeal is filed, a receipt is issued to acknowledge receipt of the appeal. A briefing schedule is subsequently issued in which the parties are notified of the deadlines for filing a brief.

39. The appellant is given twenty- one (21) days to file the brief. Then, the appellee is given twenty-one (21) days after that to respond in writing. Either party may request an extension of the briefing deadline.

40. After the BIA receives all the briefs, they review the record and issue a decision.

41. As of the date of this filing, the BIA has not issued the briefing schedule.

42. Petitioner has been detained for almost six months and the end to his detention is for an indefinite term.

43. He has to wait at least another forty-two (42) days for the briefing to be completed. Afterwards, he must wait an indefinite amount of time for the BIA to issue a decision on his case.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE U.S. CONSTITUTION

44. Petitioner re-alleges and incorporates by reference the paragraphs above.

45. Petitioner's prolonged detention under § 1225(b) without any individualized assessment of the need for detention deprives petitioner of due process of law. The Court should therefore order release from unconstitutional detention.

46. The Due Process Clause of the Fifth Amendment forbids the government from depriving any "person" of liberty "without due process of law." U.S. Const. amend. V.

47. "[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). For this reason, even "removable and inadmissible aliens are entitled to be free from detention that is arbitrary and capricious." *Id.* at 721 (Kennedy, J., dissenting).

48. "A statute permitting indefinite detention of an alien would raise a serious constitutional problem" under the Fifth Amendment's Due Process Clause. *Id.* at 690.

49. That serious constitutional problem is raised by the government's reading of § 1225(b). It interprets the statute to permit the indefinite detention of a noncitizen whom the government has not found to be removable or inadmissible, but instead granted the right to remain in the United States pending removal proceedings.

50. Moreover, LPRs are entitled to due process in prolonged detention because "once an alien gains admission to our country and begins to develop the ties that go with permanent residence his constitutional status changes accordingly." *Landon v. Plasencia*, 459 U.S. 21, 32 (1982).

51. In *Plasencia*, the Supreme Court ruled that an LPR seeking readmission after a trip abroad and charged as "excludable" (the former term of art for "inadmissible" under then-current immigration laws), could nonetheless "invoke the Due Process Clause on returning to this country . . . ." *Id.* Because an LPR's due process right is constitutional in nature, it may not be stripped by

mere statutory designation as an "arriving alien." *See Kwong Hai Chew v. Colding*, 344 U.S. 590, 600 (1953) (in the case of a returning LPR, holding that "[f]rom a constitutional point of view, he is entitled to due process without regard to whether or not, for immigration purposes, he is to be treated as an entrant alien").

52. Section 1225(b) would therefore "raise a serious constitutional problem," *Zadvydas*, 533 U.S. at 690, if read to deny a bond hearing to LPRs held as arriving aliens in prolonged detention.

53. Every Court of Appeals to consider prolonged detention under INA § 236(c), 8 U.S.C. § 1226(c)—a statute that, like § 1225(b) mandates detention of inadmissible noncitizens pending removal proceedings—holds it limited to a reasonable period by the Due Process Clause. *See Sopo v. U.S. Attorney Gen.*, 825 F.3d 1199 (11th Cir. 2016); *Reid v. Donelan*, 819 F.3d 486 (1st Cir. 2016); *Lora v. Shanahan*, 804 F.3d 601 (2d Cir. 2015); *Rodriguez v. Robbins*, 804 F.3d 1060 (9th Cir. 2015); *Diop v. ICE/Homeland Sec.*, 656 F.3d 221 (3d Cir.2011); *Ly v. Hansen*, 351 F.3d 263 (6th Cir. 2003). These decisions recognize that due process limits the period that any noncitizen may be held in prolonged mandatory detention pending removal proceedings.

54. In doing so, they follow *Demore v. Kim*, 538 U.S. 510, 518 (2003). *Demore* identified mandatory detention pending removal proceedings as 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." *Id.*

55. In the Eleventh Circuit, "[t]he need for a bond inquiry is likely to arise in the six-month to one-year window . . . ." *Sopo v. U.S. Attorney Gen.*, 825 F.3d 1199, 1217 (11th Cir. 2016). In determining that timeframe, *Sopo* cited the Third Circuit's similar decision in *Chavez-Alvarez v. Warden York Cty. Prison*, 783 F.3d 469 (3d Cir. 2015), which held that a reasonable period of detention pending removal proceedings ends sometime after six months, depending on the facts

and circumstances of the case, with nine months "straining any common-sense definition of a limited or brief civil detention." *Id.* at 477.

56. The only Court of Appeals to consider prolonged detention under § 1225(b) holds that "to avoid serious constitutional concerns, mandatory detention under § 1225(b) . . . must be construed as implicitly time-limited." *Rodriguez*, 804 F.3d 1060.

57. Following *Sopo* and other Courts of Appeals, numerous district courts have held that due process limits mandatory detention under § 1225(b) to a reasonable period. *See e.g., Marquez Diaz v. Moore*, 16-cv-23684-UU (S.D. Fla. March 6, 2017) (adopting report and recommendation of Mag. Otazo-Reyes); *Ahad v. Lowe*, 2017 WL 66829 (M.D. Pa. Jan. 6, 2017); *Ricketts v. Simonse*, 2016 WL 7335675 (S.D.N.Y. Dec. 16, 2016); *Gregorio-Chacon v. Lynch*, 2016 WL 6208264 (D.N.J. Oct. 24, 2016); *Damus v. Tsoukaris*, 2016 WL 4203816 (D.N.J. Aug. 8, 2016); *Saleem v. Shanahan*, 2016 WL 4435246 (S.D.N.Y. Aug. 22, 2016); *Arias v. Aviles*, 2016 WL 3906738 (S.D.N.Y. July 14, 2016); *Maldonado v. Macias*, 150 F.Supp.3d 788 (W.D. Tex. 2015); *Bautista v. Sabol*, 862 F. Supp. 2d 375, 377 (M.D. Pa. 2012).

58. Petitioner's prolonged, indefinite detention under § 1225(b) violates the Fifth Amendment by depriving petitioner of liberty without due process of law.

59. "[O]nce the duration of an alien's detention is determined to be unreasonable, the government must provide an opportunity for the alien to obtain release on bond . . . ." *Sopo*, 825 F.3d at 1223 (Pryor, J., concurring in part and dissenting in part).

60. Petitioner's detention is unreasonably prolonged based on the facts and circumstances of Petitioner's case, including the amount of time spent in detention without a bond hearing, the reasonable foreseeability of continued, lengthy litigation, the unlikelihood that proceedings will culminate in a final removal order, whether it would be possible to remove petitioner after a

hypothetical order of removal, and the conditions of Petitioner's confinement. *Sopo*, 825 F.3d at 1217-19 (outlining factors that govern when mandatory detention becomes prolonged).

61. "The need for a bond inquiry is likely to arise in the six-month to one-year window . . . ." *Id.* at 1217.

62. Moreover, the causes of prolonged detention, including "[e]rrors by the immigration court or the BIA that cause unnecessary delay[,] are also relevant" when considering whether detention has become unreasonable. *Id.* at 1218

63. "Courts should consider whether the government or [habeas petitioner] have failed to participate actively in the removal proceedings or sought continuances and filing extensions that delayed the case's progress." *Id.* But a habeas petitioner "should [not] be punished for pursuing avenues of relief and appeals." *Id.* Instead, the question is whether the petitioner "sought repeated or unnecessary continuances, or filed frivolous claims and appeals." Id.

64. The "foreseeability of proceedings concluding in the near future (or the likely duration of future detention)[,]" as well as whether "it will be possible to remove the [habeas petitioner] after there is a final order of removal[,]" are also relevant to whether petitioner's current detention is constitutional. *Id.* at 1218.

65. Petitioner's prolonged detention raises all of these concerns. Petitioner pursued all avenues of relief timely and diligently. Delays in the resolution of Petitioner's Motion to Terminate were caused by DHS' incompliance with the deadlines set by the immigration judge and delays by the immigration court scheduling the hearings and issuing decisions. After Petitioner won his Motion to Terminate, the case was further delayed by the government's delay in filing the EOIR-26. Now, the case is stagnant as Petitioner waits for the BIA to set the briefing deadlines. It is unclear when Petitioner's detention will end.

66. Under either a bright-line rule or the facts and circumstances of this case, Petitioner's continued detention is unreasonably prolonged. This Court should therefore conduct a bond hearing at which (1) the government bears the burden of proving flight risk and dangerousness by clear and convincing evidence and (2) the Court considers alternatives to detention that could mitigate flight risk. *See Leslie v. Attorney Gen. of U.S.*, 678 F.3d 265, 271 (3d Cir. 2012) (stating that "Leslie's appeal will be remanded to the District Court with instructions to conduct an individualized bond hearing as required by *Diop*"); *Rodriguez*, 804 F.3d 1060, 1086-89 (outlining constitutionally adequate procedural protections at a prolonged detention bond hearing). In the alternative, the Court should order an immigration judge to conduct the bond hearing.

67. The burden to establish dangerousness and flight risk in a prolonged detention bond hearing should rest with the government, rather than Petitioner, because of the severe injury to Petitioner's liberty interest under the Fifth Amendment. *See Rodriguez v. Robbins*, 804 F.3d 1060, 1069 ("When detention crosses the six-month threshold and release or removal is not imminent, the private interests at stake are profound."). For the same reason, that hearing must consider alternatives to detention that could mitigate flight risk.

68. For these reasons, this Court should conduct a bond hearing at which the government bears the burden of proving flight risk and dangerousness by clear and convincing evidence and the Court considers alternatives to detention that could mitigate flight risk. In the alternative, the Court should order an immigration judge to conduct that hearing.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

1) Assume jurisdiction over this matter;

2) Issue a Writ of Habeas Corpus ordering Respondents to release petitioner immediately, on reasonable conditions of supervision if necessary;

3) In the alternative, conduct a bond hearing or remand to the immigration judge for a bond hearing at which (1) the government bears the burden of proving flight risk and dangerousness by clear and convincing evidence and (2) alternatives to detention that could mitigate flight risk are considered;

4) Award Petitioner costs and reasonable attorneys' fees in this action as provided for by the Equal Access to Justice Act, 28 U.S.C. § 2412, other statute; and

5) Grant such further relief as the Court deems just and proper.

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