

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION

Guilherme Cavalcante Mol
Plaintiff

Case No. 1:25-CV-02023 SEC

JUDGE TERRY
A. DOUGHTY

MAGISTRATE
JUDGE PEREZ-
MONTES

VS.

Eleazar Garcia and Kristi Noem
Defendants

**EMERGENCY MOTION TO EXPEDITE HABEAS PROCEEDINGS AND REQUEST
FOR ORDER TO SHOW CAUSE PURSUANT TO 28 U.S.C. § 2243**

NOW INTO COURT, through undersigned counsel, comes Petitioner, GUILHERME CAVALCANTE MOL, who respectfully moves this Honorable Court to expedite consideration of his Petition for Writ of Habeas Corpus and to issue an Order directing Respondents to file a Return pursuant to 28 U.S.C. § 2243. In support, Petitioner states as follows:

I. PROCEDURAL POSTURE

Petitioner is currently detained at Winn Correctional Center in Winnfield, Louisiana, and has remained in immigration detention since August 30, 2025.

This habeas action challenges the legality of his continued detention following the Immigration Judge's refusal to exercise custody jurisdiction, based on the government's classification of Petitioner's detention. Although Petitioner entered the United States lawfully with

a visa, the Immigration Judge declined jurisdiction over bond, thereby foreclosing any custody redetermination hearing.

Petitioner has appealed the underlying removal order to the Board of Immigration Appeals. As this Court previously recognized in granting a stay of removal, the appeal remains pending, and removal is automatically stayed pursuant to 8 C.F.R. § 1003.6(a). Accordingly, removal is not imminent, yet detention continues without bond review.

Respondents have appeared in this action and have responded to prior emergency filings. However, no Order has issued directing Respondents to file a formal Return to the Petition pursuant to 28 U.S.C. § 2243.

Petitioner therefore remains detained without bond review while his administrative appeal is pending and while this habeas petition awaits adjudication.

II. THRESHOLD ISSUE: RESPONDENTS MUST IDENTIFY THE STATUTORY BASIS FOR DETENTION

As a threshold matter, Respondents bear the burden of identifying the statutory authority under which Petitioner is detained. See *Jennings v. Rodriguez*, 583 U.S. 281 (2018) (detention authority must be analyzed under the specific statutory provision invoked by the government). The legality of detention turns entirely on whether the government is proceeding under INA § 235 or INA § 236. That determination is a question of law squarely within this Court's habeas jurisdiction.

The record does not clearly establish that Petitioner is detained pursuant to INA § 235(b), nor does it reflect invocation of any mandatory detention provision. Petitioner entered the United States lawfully with a visa and was placed into removal proceedings under INA § 240. Once

removal proceedings under § 240 commence, detention is generally governed by INA § 236 unless Congress has expressly mandated detention under another provision.

If detention is pursuant to § 236(a), then bond review before an Immigration Judge is statutorily authorized. The regulatory bar applicable to certain “arriving aliens” cannot override statutory detention authority. An agency may not insulate its detention classification from judicial review by mere labeling.

Absent a clear statutory mandate under § 235(b), detention defaults to § 236(a), which provides for individualized custody review.

Because detention authority remains ambiguous, this Court must require Respondents to certify the precise statutory basis for detention in a formal Return under 28 U.S.C. § 2243.

III. HABEAS CORPUS REQUIRES PROMPT JUDICIAL REVIEW

The writ of habeas corpus is designed to provide swift judicial review of executive detention. Congress expressly mandated expedited procedures:

“The court shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted... The person to whom the writ or order is directed shall make a return certifying the true cause of the detention within three days unless for good cause additional time is allowed.”
28 U.S.C. § 2243.

Petitioner has now been detained for more than six months. His liberty interest remains at stake. The statutory framework governing habeas corpus contemplates prompt adjudication, not indefinite delay.

Although Respondents have appeared, the statutory return process under § 2243 has not yet been triggered. Activation of that process is now necessary to ensure compliance with the habeas statute and to prevent continued constitutional injury.

IV. CONTINUED DETENTION WITHOUT BOND REVIEW CAUSES ONGOING CONSTITUTIONAL HARM

Civil immigration detention is regulatory, not punitive. It must bear a reasonable relation to its legitimate purposes: ensuring appearance at proceedings and effectuating removal. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). See also *Demore v. Kim*, 538 U.S. 510 (2003) (recognizing the constitutional limits of civil immigration detention).

Here, removal is automatically stayed pursuant to 8 C.F.R. § 1003.6(a) due to the pending BIA appeal. Removal is not imminent. Petitioner entered lawfully. There has been no individualized custody determination before a neutral decision-maker.

Where detention becomes prolonged and no meaningful bond hearing is available, serious due process concerns arise. See *Jennings v. Rodriguez*, 583 U.S. 281 (2018) (recognizing constitutional limitations on prolonged detention). Even where detention is statutorily authorized, constitutional due process requires adequate procedural safeguards.

Each additional day of unlawful civil detention constitutes irreparable harm. Loss of liberty, even for minimal periods of time, unquestionably constitutes irreparable injury.

V. EXPEDITED RELIEF IS WARRANTED

Expedited relief is warranted in this matter. Petitioner has remained in immigration detention since August 30, 2025. His appeal before the Board of Immigration Appeals is still

pending, and his removal is stayed pursuant to governing regulations. Despite the ongoing administrative proceedings and the automatic stay of removal, Petitioner has not been afforded a bond hearing. Respondents have already appeared in this action and are fully aware of the claims and legal issues presented in the Petition.

Under these circumstances, prompt judicial review is consistent with the purpose and mandate of 28 U.S.C. § 2243. Continued delay prolongs the deprivation of Petitioner's liberty without meaningful custody review.

Accordingly, Petitioner respectfully requests that this Court issue an Order to Show Cause pursuant to 28 U.S.C. § 2243, direct Respondents to file a Return within seven (7) days, and set an expedited briefing schedule for resolution of the Petition.

VI. ALTERNATIVE REQUEST FOR RELEASE PENDING ADJUDICATION

Should the Court determine that additional briefing is necessary, Petitioner respectfully requests release under reasonable conditions pending adjudication of this habeas petition.

Federal courts possess inherent authority to grant release in habeas proceedings particularly where the petition raises substantial questions regarding the statutory authority for detention and where removal is not imminent. Continued detention without bond review, in the absence of imminent removal and without clear statutory authority, presents precisely such circumstances.

Release under reasonable supervision would preserve the status quo while safeguarding Petitioner's fundamental liberty interest.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court expedite these habeas proceedings and issue an Order directing Respondents to file a Return pursuant to 28 U.S.C. § 2243 within a shortened time frame.

Respectfully submitted,

/s/ Luana M. Biagini
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CERTIFICATE OF SERVICE

I hereby certify that on this 27 day of February 2026, a true and correct copy of the foregoing Emergency Motion to Expedite Habeas Proceedings and Request for Order to Show Cause was filed electronically with the Clerk of Court using the CM/ECF system, which will send notice of electronic filing to all counsel of record.

Respectfully submitted,

/s/ Luana M. Biagini