

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

Maksim Shapashnikau,

Petitioner,

v.

Pam Bondi, *et al.*,

Respondents.

Civil Action No. 3:26-cv-00429-DCG

RESPONSE TO PETITION

Federal Respondents¹ provide the following response to Petitioner's habeas petition. Any allegations that are not specifically admitted herein are denied. Petitioner is not entitled to the relief sought. Note that the issues raised by this petition do not involve either *Buenrostro-Mendez*, 166 F.4th 494 (5th Cir. Feb. 6, 2026), or *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

BACKGROUND

Petitioner is a native of Lithuania and a citizen of Belarus. Exhibit (Exh.) A (Notice to Appear). On or about March 18, 2014, Petitioner was admitted to the United States as a nonimmigrant Visitor for Pleasure, with authorization to remain in the United States for a temporary period not to exceed September 17, 2014. *Id.* Petitioner remained in the United States beyond September 17, 2014, without authorization from the Immigration and Naturalization Service or its successor, the Department of Homeland Security. *Id.* On or about May 10, 2025, Petitioner was detained by U.S. Immigration and Customs Enforcement (ICE). ECF No. 1, ¶ 6.

¹ The Department of Justice represents only federal employees in this action.

On September 30, 2025, Petitioner was ordered removed to Lithuania. *Id.* pg. 16. On November 12, 2025, the immigration judge (IJ) issued an amended order, removing Petitioner to Lithuania, or in the alternative to Belarus. *Id.* pg. 20. On December 1, 2025, Petitioner timely appealed the removal order. *Id.* pgs. 23-24. Petitioner's appeal of his removal decision is currently pending. Exh. B (Executive Office of Immigration Review Automated Case Information System (<https://acis.eoir.justice.gov/en/caseInformation>) (last accessed March 3, 2026). Petitioner is currently detained at the El Paso Processing Center in El Paso, Texas. ECF No. 1, ¶ 2. There is no record of Petitioner ever having requested a bond hearing.

In accordance with the Court's Order to Show Cause (ECF 6), Respondents dispute the following allegations in the petition:

- The Petitioner states, "About November 15, 2025 I received another Order of Removal from an ICE officer stating that I am now to be removed to Belarus and not to Lithuania." *Id.* ¶ 31. However, as noted *supra*, the November 15, 2025, amended order provides, "Respondent was ordered removed to Lithuania," and "In the alternative, Respondent was ordered removed to Belarus." *Id.*, p. 20. Thus, Petitioner was ordered primarily removed to Lithuania, and only in the alternative was he ordered removed to Belarus.
- The Petitioner states, "In the duration of my detention of 9 months I never been given an opportunity for a bond hearing. . . ." *Id.* ¶ 36. *See also* ¶¶ 53-54. As indicated *supra*, there is no record of Petitioner ever requesting a bond hearing. As discussed *infra*, Respondents do not dispute that Petitioner is entitled to a bond hearing.

- The Petitioner states, “The Respondents are detaining Petitioner without bond because they have deemed him detained under 8 U.S.C. § 1225, but the Petitioner should be deemed detained under 8 U.S.C. § 1226.” *Id.* ¶ 37. Respondents are not aware that Petitioner has allegedly been deemed detained under § 1225, and acknowledge Petitioner properly falls under § 1226.

ARGUMENT

Whether Petitioner merits release on bond under 8 U.S.C. § 1226(a), or should be detained pending further proceedings, is a mixed factual and legal question that is not ripe for review. As noted *supra*, Petitioner has never requested a bond hearing. If the immigration judge would deny bond, Petitioner could seek review of the immigration judge’s decision from the Board of Immigration Appeals.

Petitioner must exhaust administrative remedies prior to raising this issue in district court. *Hinojosa v. Horn*, 896 F.3d 305, 314 (5th Cir. 2018). First, the IJ may grant him a bond or release him. Second, if the IJ denies release, appealing to the Board is not futile in this case, because the issue on appeal would be whether, as a factual matter, Petitioner poses a danger to persons or property, poses a risk of failure to appear that cannot be mitigated under 8 U.S.C. § 1226, or he falls within the mandatory detention provisions found in 8 U.S.C. § 1226(c). If the Board grants any appeal, Petitioner would be released. In other words, the Board can provide Petitioner the remedy he seeks, such that exhaustion of remedies is not futile in this case. See *Petgrave v. Aleman*, 529 F.Supp.3d 665, 672 n. 14 (S.D. Tex. 2021) (finding futility where the Board could not remedy the constitutional claim and where the detention had already become prolonged). This habeas petition is premature and must be denied.

While “the Fifth Amendment entitles aliens to due process of law in deportation proceedings, ... this Court has recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process.” *Demore v. Kim*, 538 U.S. 510, 523 (2003). While as-applied constitutional challenges to immigration detention may be brought under certain circumstances, there is no colorable claim articulated in this habeas petition that Petitioner’s detention is unconstitutional. *See, e.g., Jennings v. Rodriguez*, 583 U.S. 281, 312 (2018).

The few months Petitioner has been detained since he appealed his final order of removal is not prolonged. Petitioner has not shown that his claim for release is properly before this Court. Respondents agree Petitioner can seek a bond hearing, but he has not asked the IJ for such a hearing.

CONCLUSION

Petitioner is lawfully detained pending removal proceedings. Accordingly, the Court should deny this petition for failure to exhaust administrative remedies, lack of jurisdiction, and ripeness. In the alternate, the Court could stay these proceedings to allow Petitioner to seek a bond hearing before the IJ and then seek to amend his pleadings as appropriate. The Respondents respectfully request the Court deny this petition.

Dated: March 3, 2026

Respectfully submitted,

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