

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
WAYCROSS DIVISION

NAREK GRIGORIAN,	)	
	)	
Petitioner,	)	
	)	
v.	)	Civil Action No. 5:26-cv-218
	)	
WARDEN, FOLKSTON ICE	)	
PROCESSING FACILITY, et al.,	)	
	)	
Respondents.	)	

RESPONDENT'S ANSWER

Warden-Respondent¹ respectfully submits that Petitioner Narek Grigorian (A ) is a native and citizen of Russia who is lawfully detained by Immigration and Customs Enforcement, Enforcement Removal Operations ("ICE/ERO") at the Folkston D Ray James ICE Processing Facility under the authority of 8 U.S.C. § 1225(b)(1). *See* Exhibit 1, Declaration of Jose Cruz-Rodriguez ("Cruz Decl.") at ¶ 4.

Hearing Transcripts/Recordings

Neither the Warden of the Folkston ICE Processing Facility nor the Department of Homeland Security possesses or has access to transcripts or recordings of the underlying immigration proceedings. Immigration hearings are recorded

¹ The only proper respondent in this habeas corpus matter is the Warden of Folkston ICE Processing Center. *See Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004) ("the proper respondent [in a habeas corpus petition] is the warden of the facility where the prisoner is being held"); *Grimes v. Geter*, No. 2:20-cv-42, 2020 WL 13917844, at *1 (S.D. Ga. Apr. 24, 2020) (Cheesbro, J.) ("The only proper respondent in a § 2241 case such as this is the inmate's immediate custodian—the warden of the facility where the inmate is confined.").

electronically by the Immigration Judge (“IJ”) and are transcribed if an IJ’s decision is appealed to the Board of Immigration Appeals (“BIA”). OCIJ Immigration Court Practice Manual § 3.9(a), (b).² Master calendar and merits hearing are recorded as a matter of course. Arguments made in support of motions or applications, such as a motion for redetermination of bond status, however, are not required to be recorded, although IJs may record them at their discretion. *See* 8 C.F.R. § 1240.9; OCIJ Immigration Court Practice Manual § 8.3(e)(3).³ Undersigned counsel has contacted the Executive Office of Immigration Review regarding whether any recordings or transcripts exist of hearings in the underlying immigration proceedings and was informed the following recordings are available:

- January 15, 2025, Detained Master
- February 5, 2025, Master Reset
- April 3, 2025, Master Reset
- April 14, 2025, Master Reset
- May 12, 2025, Custody Hearing
- July 7, 2025, Individual Hearing
- July 22, 2025, Individual Hearing

² *See* OCIJ Immigration Court Practice Manual, Chapter 3, § 3.9 - Record, <https://www.justice.gov/eoir/policy-manual-eoir/part-II/icpm/chapter-3-9> (accessed February 24, 2026).

³ *See* OCIJ Immigration Court Practice Manual, Chapter 8, § 8.3 – Bond Proceedings, <https://www.justice.gov/eoir/policy-manual-eoir/part-II/icpm/chapter-8-3> (accessed February 24, 2026).

No Evidentiary Hearing Is Necessary

Respondent submits there is no need for the Court to hold an evidentiary hearing. This § 2241 Petition presents a legal dispute concerning a question of statutory interpretation that can and should be resolved absent an evidentiary hearing.

Petitioner's Detention is Lawful

Petitioner is lawfully detained. Petitioner is a native and citizen of Russia. Cruz Decl., ¶ 5. He was encountered within 100 miles of the United States border by United States Border Patrol on or about November 14, 2024, at which time it was established that he had crossed the border the same day. *Id.* At that time, United States Border Patrol determined that Petitioner was inadmissible pursuant to 8 U.S.C. § 1182(a)(7)(A)(i)(I), and he was placed into expedited removal proceedings pursuant to 8 U.S.C. § 1225(b)(1). *Id.* Petitioner was mandatorily detained at that time. *Id.* at ¶ 4.

Petitioner claimed relief from removal. *Id.* at ¶ 6. His claim was referred to United States Citizenship and Immigration Services ("USCIS"), who made a positive initial determination. *Id.* On December 31, 2024, Petitioner was served with a Notice to Appear ("NTA") alleging inadmissibility under 8 U.S.C. §§ 1182(a)(6)(A)(i) and (a)(7)(A)(i)(I). *Id.*

On or about January 15, 2025, Petitioner appeared, with counsel, before the immigration court and requested a continuance of the matter, which was granted. *Id.* at ¶ 7. The case was reset for a master calendar hearing on February 5, 2025. *Id.* On

February 5, 2025, Petitioner appeared before the immigration court with counsel, admitted to the factual allegations in the NTA, and conceded the charges of inadmissibility. *Id.* at ¶ 8. Petitioner sought and obtained another continuance, and the matter was reset for another master calendar hearing on March 12, 2025. *Id.*

On or about March 11, 2025, Petitioner filed an application for relief from removal and written pleadings further admitting to the factual allegations and charges of inadmissibility. *Id.* at ¶ 9. On or about April 14, 2025, the Immigration Court scheduled a merits hearing for July 7, 2025. *Id.* at ¶ 10.

Petitioner filed a custody redetermination request with the Immigration Court, which was heard and denied on May 12, 2025. *Id.* at ¶ 11. The Immigration Judge noted that Petitioner was subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(1)(B)(ii) as established in *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019). *Id.*

Petitioner filed a Motion for Continuance on June 25, 2025, requesting a continuance of the hearing set for July 7, 2025. *Id.* at ¶ 12. Petitioner's request for a continuance was granted at the July 7th hearing, and the matter was rescheduled to July 22, 2025. *Id.*

At the merits hearing on July 22, 2025, the Immigration Court received testimony and other evidence, and it ultimately denied Petitioner's application for relief and ordered Petitioner removed to Russia. *Id.* at ¶ 13. Petitioner filed a Notice of Appeal with the Board of Immigration Appeals on August 6, 2025. *Id.* at ¶ 14. That appeal remains pending. *Id.*

On January 22, 2026, Petitioner filed another custody redetermination request with the Immigration Court. *Id.* at ¶ 15. The Immigration Judge heard the motion on February 23, 2026. *Id.* The Immigration Judge noted that Petitioner had failed to show good cause why the May 12, 2025, bond order should be modified, and thus the Immigration Judge denied the request. *Id.*

Petitioner is currently detained by ICE/ERO at the Folkston D Ray James ICE Processing Facility under the authority of 8 U.S.C. § 1225(b)(1). *Id.* at ¶ 4. If Petitioner's appeal is dismissed and the order of removal to Russia becomes final, ICE/ERO will be able to effectuate Petitioner's removal to Russia within the reasonably foreseeable future. *Id.* at ¶ 16. ICE/ERO is currently removing aliens to Russia. *Id.*

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Pub. L. No. 104-208, 110 Stat. 3009, codified Congress's decision to make lawful "admission," rather than physical entry, the touchstone. See 8 U.S.C. § 1225. Among the interlocking provisions accomplishing such end is 8 U.S.C. § 1225(a)(1), which states that an alien "present in the United States who has not been admitted or who arrives in the United States" "shall be deemed ... an applicant for admission":

An alien 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 and including an alien who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for purposes of this chapter an applicant for admission.

8 U.S.C. § 1225(a)(1). "All aliens (including alien crewmen) who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States shall be inspected by immigration officers." *Id.* § 1225(a)(3). The

inspection by the immigration officer is designed to determine whether the alien may be lawfully “admitted” to the country or, instead, must be referred to removal proceedings.

IIRIRA also provided for a bifurcated type of removal: expedited removal and non-expedited, “Section 240” proceedings. *Compare* 8 U.S.C. § 1225(b)(1), *with* 8 U.S.C. § 1229a. Section 1225(b)(1) provides for so-called “expedited removal proceedings,” *DHS v. Thuraissigiam*, 591 U.S. 103, 109-113 (2020), which may be applied to a subset of aliens—those inadmissible on certain grounds who (1) are “arriving in the United States,” or (2) have “not been admitted or paroled into the United States” and have “not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility.” 8 U.S.C. § 1225(b)(1)(A)(i)-(iii).

Aliens subject to expedited removal subsequently fall into a number of additional categories, each of which is subject to mandatory detention. *See* 8 U.S.C. §§ 1225(b)(1)(B)(ii) and (b)(1)(B)(iii)(IV). As relevant here, “[i]f an officer determines ... an alien has a credible fear of persecution ... the alien shall be detained for further consideration of the application for asylum.” 8 U.S.C. § 1225(b)(1)(B)(ii); *see* 8 C.F.R. § 235.3(b)(1)(ii). Thus, while an NTA is typically issued in these cases, the alien still remains subject to mandatory detention. *Id.*; *see also Thuraissigiam*, 591 U.S. at 112-15; *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019).

Here, Petitioner was placed into expedited removal proceedings under 8 U.S.C.

§ 1225(b)(1) upon his entry into the United States. Cruz Decl., ¶ 5. As discussed above, the statutory scheme enacted by Congress provides that an arriving alien placed into expedited removal proceedings pursuant to 8 U.S.C. § 1225(b)(1) is subject to mandatory detention. *See Thurrisigiam*, 591 U.S. at 112-15. Should the applicant for admission seek withholding of removal, the applicant may remain in mandatory detention until final adjudication of the application. 8 U.S.C. § 1225(b)(1)(B)(ii); *see* 8 C.F.R. § 235.3(b)(1)(ii). The only exception to mandatory detention for an alien subject to expedited removal is temporary parole, which is discretionary and can only be granted by the executive branch.

The United States Supreme Court has held that arriving aliens have only those rights regarding admission that Congress has provided by statute, and thus the applicant for admission has no right to bond or a bond hearing. *See id.* at 140 (holding an arriving alien “has only those rights regarding admission that Congress has provided by statute.”); *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) (“Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned.”). Where, as here, Congress has mandated detention through the final adjudication of Petitioner’s application for relief, Petitioner’s civil detention is lawful, and he is not entitled to release or another bond hearing.

Additionally, Petitioner’s claims are substantive, not procedural, due process claims, and must be analyzed as such. The Supreme Court has recognized two types of due-process claims. *See Department of State v. Muñoz*, 602 U.S. 899, 910 (2024). A

procedural due process claim takes as given the substantive determinations that would justify a deprivation of life, liberty, or property, but challenges the “adequacy of the[] procedures” for making those determinations. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). In contrast, a *substantive*-due-process claim challenges the substance of the determinations themselves, arguing that they are inadequate to justify the deprivation “*at all.*” *Reno v. Flores*, 507 U.S. 292, 302 (1993).

Section 1225(b)(1) mandates detention for aliens placed into expedited removal proceedings. *See* 8 U.S.C. §§ 1225(b)(1)(B)(ii) and (b)(1)(B)(iii)(IV). Petitioner does not challenge the adequacy of procedures for determining whether an alien may be placed into expedited removal proceedings. *See generally* Doc. 1. He does not contest his placement into expedited removal proceedings. *See id.* Instead, he contends that a determination that he was placed into expedited removal proceedings is inadequate to justify the deprivation at issue – his purportedly “unreasonable period of detention” under 8 U.S.C. § 1225(b)(1). *Id.* at ¶ 25. In his view, his detention can be justified only by a determination different from the one that Congress specified, instead requiring a determination that he poses a flight risk or danger to the community. *Id.* at ¶ 27.

Petitioner’s claims are thus substantive, not procedural, due-process claims. To be sure, Petitioner contends that due process requires additional *procedures* in the form of a bond hearing. *Id.* at ¶¶ 26-30. But a bond hearing is merely a vehicle for making the *substantive* determination about flight risk or dangerousness that Petitioner believes is necessary to justify his “prolonged detention.” *Id.* at ¶ 33. And because § 1225(b)(1) does not require such a determination, Petitioner’s claim is a

substantive due-process challenge, not a procedural one.

When analyzed in terms of substantive due process, Petitioner's claims fail. Petitioner's detention during the pendency of his removal proceedings does not implicate any fundamental rights. *See Demore v. Kim*, 538 U.S. 510, 523 n.7 (2003) ("prior to 1907 there was no provision permitting bail for *any* aliens during the pendency of their deportation proceedings"). Accordingly, rational-basis review is the appropriate standard for analyzing respondents' substantive-due-process claims. *Washington v. Glucksberg*, 521 U.S. 702, 728 (1997). Under that standard, detention under § 1225(b)(1) is constitutionally permissible as long as it is "rationally related to legitimate government interests." *Ibid.* Because § 1225(b)(1) governs detention of aliens "*pending their removal proceedings*, the detention necessarily serves the purpose of preventing the aliens from fleeing prior to or during such proceedings." *Demore*, 538 U.S. at 512. Petitioner's removal proceedings remain pending, and his removal remains a practically attainable goal, and thus Petitioner's detention under the authority of 8 U.S.C. § 1225(b)(1) is constitutional.

Further, even if the Court were to apply some sort of "reasonableness test" as Petitioner requests – which it should not in light of the statutory detention mandate and Supreme Court precedent – Petitioner would not be entitled to release or a third bond hearing. The factors included in Petitioner's proposed test, based largely on Third Circuit precedent, are: 1) whether the noncitizen has raised a good faith challenge to removal; 2) length of detention; and 3) the likelihood that detention will continue pending future proceedings. Doc. 1 at ¶ 25. Regarding the first factor,

Petitioner's claims for relief have been denied by the Immigration Court, and he has not shown that he has a good faith challenge to removal. This factor thus weighs in favor of Respondent. As to the second factor, Petitioner has been mandatorily detained since his arrival to the United States in November 2024, and the length of his detention has been largely dictated by his numerous requests for continuances and, presently, his appeal that is pending before the BIA. *See Sopo v. U.S. Att'y Gen.*, 825 F.3d 1199, 1218 (11th Cir. 2016), *vacated sub nom.*, 890 F.3d 952 (11th Cir. 2018) (In the case of aliens detained pursuant to 8 U.S.C. § 1226(c), "[c]ourts should consider whether the government or the criminal alien have failed to participate actively in the removal proceedings or sought continuances and filing extensions that delayed the case's progress."). Accordingly, this factor also weighs in Respondent's favor. Regarding the third factor proposed by Petitioner, he will likely be removed, and thus no longer detained, in the reasonably foreseeable future if his removal order to Russia becomes final upon issuance of the BIA's decision. *See Cruz Decl.*, ¶ 16; *see also Sopo*, 825 F.3d at 1218 ("Courts conducting this reasonableness analysis have considered . . . whether it will be possible to remove the criminal alien after there is a final order of removal"). Thus, the third proposed factor also weighs in favor of continued detention as mandated by 8 U.S.C. § 1225(b)(1).

Lastly, even if Petitioner were to be provided another bond hearing - which should not occur for the reasons discussed above - he is not entitled to the procedures he requests. *See Doc. 1* at ¶ 26. Any bond hearing that occurs should apply the procedures set forth in 8 U.S.C. § 1226(a), 8 C.F.R. § 1236.1, and 8 C.F.R. § 1003.19,

and Petitioner would have the burden. *See Aham v. Gartland*, No. 5:19-cv-46, 2020 WL 806929, at *3 n.3 (S.D. Ga. Jan. 29, 2020) (Cheesbro, J.), *report and recommendation adopted*, 2020 WL 821005 (S.D. Ga. Feb. 18, 2020) (“To the extent [the petitioner] argues the burden should shift to the government to demonstrate that his continued detention is necessary, that argument fails. Even where prolonged detention would warrant an individualized bond hearing, such as in the § 1226(c) context, the burden typically remains with the detainee, as all that is required is an individualized bond hearing in accordance with 8 C.F.R. § 1236.1(c).”).

Conclusion

Petitioner’s mandatory detention pursuant to 8 U.S.C. § 1225(b)(1) is lawful. Respondent reserves all available defenses in this matter to be asserted in a forthcoming motion to dismiss.

Respectfully submitted,

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