

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

DIDIE ESPINOSA FONT

Petitioner,

v.

KRISTI NOEM, Secretary of the US
Department of Homeland Security

PAMELA BONDI, Attorney General of the
United States

TODD M. LYONS, Acting Director of
Immigration and Customs
Enforcement

CYNTHIA SWAIN, Warden of Broward
Transitional Center

GARRET J. RIPA, Field Office Director of
Enforcement and Removal Operations, US
Department of Homeland Security;

In their official capacities.

Civil Case No. 26-cv-60431

PETITION FOR WRIT OF HABEAS
CORPUS

UNDER 28 U.S.C. § 2241

PETITIONER'S REPLY MEMORANDUM

Petitioner, DIDIE ESPINOSA FONT, ("Petitioner"), by and through undersigned counsel, hereby replies to Respondent's response to this Court's Order to Show Cause (D.E. 3) ("Response").

I. INTRODUCTION

Petitioner has now been detained for over eight months without an individualized bond hearing. On February 13, 2026, the Immigration Judge denied bond solely because he concluded

Petitioner was categorically ineligible under *Matter of M-S-*. No findings were made regarding flight risk or danger. The Government acknowledges that Justice Kennedy's concurrence in *Demore v. Kim*, 538 U.S. 510, (2003) left open a due process challenge where detention becomes unreasonably prolonged. It further acknowledges that Supreme Court precedent suggests a constitutional limit to pre-removal detention. This case presents that limit. Petitioner seeks only an individualized bond hearing.

II. THE IJ EXERCISED NO DISCRETION

The Immigration Judge's order states that "Respondent is ineligible for release on bond pursuant to *Matter of M-S-*, ID #3950." *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019) holds that an alien transferred from expedited removal after a credible fear finding remains detained under §235(b)(1)(B)(ii) and is not eligible for bond. Importantly, the Attorney General expressly declined to decide whether prolonged detention raises constitutional concerns. Thus, no neutral adjudicator has assessed whether continued detention is necessary.

III. THE STATUTORY ISSUE REMAINS OPEN IN THIS CIRCUIT

Respondents rely on §1225 and out-of-circuit authority. Specifically, Respondents argue that § 1225(b)(1)(B)(ii) mandates detention and forecloses bond eligibility. That interpretation is not settled in the Eleventh Circuit. The Fifth Circuit's *Buenrostro-Mendez v. Bondi*, No. 25-20496, 25-40701, __ 4th __, 2026 WL 32330 (5th Cir. Feb. 6, 2026), decision is not binding here. The Eleventh Circuit has acknowledged the division among courts regarding detention authority under §§1225 and 1226. However, the Court need not resolve the statutory question to grant relief.

IV. EVEN UNDER RESPONDENTS' AUTHORITIES, THIS CASE PRESENTS THE TYPE OF UNREASONABLE DELAY THAT TRIGGERS DUE PROCESS PROTECTION

Respondents acknowledge in their Response that Justice Kennedy's concurrence in *Demore v. Kim*, "left the door open to a due process challenge where there is an unreasonable delay in removal proceedings." D.E. 3 at 12. Respondents further concede that "although these decisions suggest that there is a constitutional limit to pre-removal detention, neither found a constitutional violation nor gave guidance as to what an unreasonable delay would look like." *Id.* at 13. Petitioner agrees with Respondents on this point, namely, the Supreme Court has recognized that there is a constitutional outer limit to pre-removal detention. The question, therefore, is whether this case presents that outer limit. It does.

A. Justice Kennedy's Concurrence Expressly Recognizes a Due Process Backstop

In *Demore*, the Supreme Court upheld mandatory detention in the context of *criminal* detention during removal proceedings, emphasizing the *typically brief*¹ duration of those proceedings. However, Justice Kennedy's controlling concurrence made clear that detention could become unconstitutional if removal proceedings were unreasonably prolonged. *Id.* at 531-533. He explained that that due process would require individualized review where detention becomes excessive in relation to its purpose. *Id.* Respondents are correct that the Supreme Court has not defined precisely what constitutes "unreasonable delay." D.E. 3 at 13. But the absence of a bright-line rule does not eliminate the constitutional limit. It simply requires a fact-specific inquiry.

¹ In his Concurrence, Justice O'Connor used the following terms to describe the nature of the detention at issue—"limited duration," "temporary detention," and "temporarily detain." *Demore*, 538 U.S. at 531-33

B. This Case Exemplifies the Unreasonable Delay Contemplated in Demore

Petitioner has been detained since June 16, 2025. His removal order is currently on appeal before the Board of Immigration Appeals. Because that appeal is pending the removal order is not administratively final, the § 1231 removal period has not begun; removal is not imminent; and the duration of detention is indeterminate. Detention now exceeds eight months and continues without any individualized bond hearing. Unlike *Demore*, Petitioner has no criminal history; was released and compliant under supervision for approximately three years; was detained only after appearing for his scheduled immigration hearing; and has exercised lawful appellate rights authorized by Congress. This is not brief detention tied to streamlined removal proceedings. This is prolonged, indeterminate detention pending appellate review.

C. Jennings Does Not Foreclose This As-Applied Challenge

Respondents rely on *Jennings v. Rodriguez*, 583 U.S. ___ (2018) for the proposition that § 1225 mandates detention. But *Jennings* rejected only a statutory interpretation requiring periodic bond hearings. It expressly left open constitutional challenges to prolonged detention. Respondents themselves acknowledge that the Supreme Court has suggested constitutional limits to pre-removal detention. This case presents those limits.

D. The Government's Own Framing Confirms the Constitutional Question Is Now Squarely Presented

Respondents argue that prior cases did not “[find] a constitutional violation nor give guidance as to what an unreasonable delay would look like.” D.E. 3 at 13. The facts here provide that guidance. Detention has exceeded eight months. There has been no bond hearing. The Immigration Judge concluded he lacked jurisdiction under *Matter of M-S-* and therefore made no individualized findings. The removal order is not final. There is no scheduled removal. The

duration of detention depends entirely on the timeline of appellate review. If this does not qualify as prolonged and indeterminate pre-final detention, it is difficult to conceive what would.

E. The Relief Requested Is Narrow and Constitutionally Required

Petitioner does not seek release from this Court. He seeks only an individualized bond hearing before an Immigration Judge at which the Government bears the burden of justifying continued detention. That relief aligns precisely with the constitutional safeguard Justice Kennedy identified: individualized review when detention becomes unreasonable in duration.

Respondents acknowledge that the Supreme Court left open the possibility of a due process violation where removal proceedings become unreasonably prolonged. The facts of this case present that scenario. Petitioner has been detained for more than eight months without bond, pending non-final appellate proceedings, with no imminent removal. Under the Due Process Clause, he is entitled at minimum to an individualized bond hearing.

V. EXHAUSTION IS FUTILE

The IJ concluded he lacked jurisdiction under *Matter of M-S-*. The BIA is bound by that precedent. Administrative remedies cannot provide bond relief.

VI. RELIEF REQUESTED

Petitioner does not seek release from this Court. He seeks only an individualized bond hearing before an Immigration Judge at which the Government bears the burden of demonstrating necessity for continued detention.

VII. CONCLUSION

Petitioner has been detained for more than eight months without bond, pending non-final appellate proceedings, with no imminent removal. Respondents acknowledge a constitutional limit exists. This case reaches that limit. The Petition should be granted.

Respectfully submitted,

/s/ Jose-Carlos Villanueva. /
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CERTIFICATE OF SERVICE

Undersigned certifies that the foregoing was served electronically on all counsel of record using the CM/ECF filing system on this 2nd day of March, 2026.

/s/ Jose-Carlos Villanueva /
JOSE-CARLOS VILLANUEVA