

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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BOLIVAR JOHAN PAULINO MARRERO,

Petitioner,

-against-

Case No.:

**VERIFIED PETITION FOR
WRIT OF HABEAS CORPUS**

RAUL MALDONADO, Warden, Brooklyn
Metropolitan Detention Center; KENNETH GENALO,
New York Field Office Director, United States
Immigration and Customs Enforcement; TODD LYONS,
Acting Director, United States Immigration and Customs
Enforcement; MARKWAYNE MULLIN, Secretary, U.S.
Department of Homeland Security; TODD BLANCHE,
United States Attorney General; and the U.S.
DEPARTMENT OF HOMELAND SECURITY,

Respondents.

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INTRODUCTION

1. This case concerns the unlawful detention of an individual who is not removable as charged in his Notice to Appear, and has a pending motion with the Board of Immigration Appeals seeking termination of proceedings. Petitioner Bolivar Johan Paulino Marrero (“Petitioner”) is a native and citizen of the Dominican Republic, and on February 20, 2025, Petitioner, a lawful permanent resident, was detained by the Department of Homeland Security at John F. Kennedy International Airport in New York, New York after returning from a brief trip to the Dominican Republic.

2. DHS officers ascertained that the Petitioner was previously arrested and convicted of retail theft in violation of 18 Pennsylvania Cons.Stat. § 3929(a)(1), on two different occasions.

DHS placed Petitioner in custody at the Orange County Jail in Goshen, New York on February 21, 2025.

3. On March 18, 2025, DHS served the Petitioner with a Notice to Appear placing him in removal proceedings and designating him as an arriving alien. Additionally, the NTA charged Petitioner as inadmissible under INA § 212(a)(2)(A)(i)(I) as an individual who has been convicted of, or who admits having committed, or admits committing acts which constitute the essential elements of a crime involving moral turpitude.

4. Petitioner was ordered removed to the Dominican Republic on May 2, 2025. Petitioner timely appealed that decision to the Board of Immigration Appeals, and on November 12, 2025, filed a motion to terminate arguing that in light of recent case law, his retail theft offense is not a crime involving moral turpitude.

5. While that motion was pending with the Board, Petitioner requested a custody redetermination hearing. In an order dated April 13, 2026, Immigration Judge Dara Reid, sitting at the Varick Immigration Court in New York, New York, issued an order finding that the Court lacked jurisdiction to redetermine custody because the Petitioner is an arriving alien.

6. Now, Petitioner asserts that he is not detained as an arriving alien nor an applicant for admission to the United States because one of the exceptions at INA § 101(a)(13)(C) does not apply. Specifically, Petitioner has not committed a crime involving moral turpitude. Accordingly, Petitioner's detention is unlawful under INA § 235(b). Petitioner has been detained by DHS-ICE for roughly fifteen months.

JURISDICTION

7. Petitioner is in the physical custody of Respondents. Petitioner is detained at Brooklyn Metropolitan Detention Center in Brooklyn, New York.

8. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

9. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., and the All Writs Act, 28 U.S.C. § 1651.

VENUE

10. Venue lies in the United States District Court for the Eastern District of New York, the judicial district in which the Petitioner is currently detained.

PARTIES

11. Petitioner is alleged to be a citizen of the Dominican Republic who is in the custody of the Respondents.

12. Respondent Raul Maldonado is named in his official capacity as Warden of the Brooklyn Metropolitan Detention Center in Brooklyn, New York where Petitioner is currently detained.

13. Respondent Kenneth Genalo is named in his official capacity as the Field Office Director of the New York Field Office for ICE within the United States Department of Homeland Security. As such, he is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity.

14. Respondent Markwayne Mullin is the Secretary of the Department of the Homeland Security. He is responsible for the implementation and enforcement of the

Immigration and Nationality Act and oversees ICE, which is responsible for the Petitioner's detention. Mr. Mullin has ultimate custodial authority and is being named in his official capacity.

15. Respondent Todd Lyons is the Acting Director, United States Immigration and Customs Enforcement. As such, he is Petitioner's custodian and is responsible for his detention and removal. He is named in his official capacity.

16. Respondent Todd Blanche is the Acting Attorney General of the United States. He is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. He is sued in his official capacity.

17. Respondent Department of Homeland Security (DHS) is the federal agency responsible for enforcing Petitioner's continued detention.

STATEMENT OF RELEVANT FACTS

18. The Petitioner, a native of the Dominican Republic, was granted LPR status on February 21, 2019.

19. In December 2021, the Petitioner was convicted in Pennsylvania of retail theft in violation of 18 Pennsylvania Cons.Stat. § 3929(a)(1), a summary offense. In March 2024, he was convicted in Pennsylvania of a second retail theft offense, under the same statute. Retail theft, where the value of the merchandise is less than \$150, for first time offenders is classified as a "summary offense," punishable by no more than 90 days in jail. *See* § 3929(b)(1)(i). The Petitioner's actual sentence was a small fine with no jail time.

20. In February 2025, the Petitioner traveled to the Dominican Republic. Upon his return to the United States, he was treated as an arriving alien seeking admission pursuant to INA § 101(a)(13)(C)(v) on account of his criminal record. DHS served the Petitioner with an NTA on

March 5, 2022 charging him with inadmissibility pursuant to INA § 212(a)(2)(A)(i)(I) for the commission of a crime involving moral turpitude.

21. In a decision dated May 2, 2025, Immigration Judge Charles Ouslander denied the Petitioner's applications for asylum, withholding of removal under the INA, and protection under the regulations implementing the Convention Against Torture ("CAT") and ordered him removed to the Dominican Republic based on the charge in the NTA.

22. On May 12, 2025, Petitioner, through criminal counsel, filed a Petition for Leave to File a Summary Appeal Nunc Pro Tunc, wherein he alleged that a "breakdown in operation of the court occurred," when he was not advised of the immigration consequences resulting from his March 28, 2024 guilty plea. In an order dated September 10, 2025, the Pennsylvania Court of Common Pleas of Luzerne County vacated the 2024 retail theft conviction and the Petitioner pled guilty to a non-criminal summary offense, to wit, disorderly conduct in violation of 18 Pa. Cons. Stat. § 5503(a)(4).

23. The Petitioner requested a custody redetermination on April 6, 2026, and a hearing was scheduled for April 14, 2026. On April 13, 2026, prior to the hearing, IJ Reid issued an order stating that the Petitioner was ineligible for bond as an arriving alien.

24. Pending with the Board of Immigration Appeals is a motion to remand, arguing that the Petitioner is not removable as charged because his retail theft conviction is not a crime involving moral turpitude, or, more specifically, is subject to the petty offense exception.

LEGAL FRAMEWORK

I. Crimes Involving Moral Turpitude

25. A returning LPR is not an applicant for admission unless one of the exceptions at INA § 101(a)(13)(C) applies. One such exception is found at subsection (v), and encompasses noncitizens who have committed an offense under INA § 212(a)(2). That provision reads that, subject to the exception at § 212(a)(2)(A)(ii), “any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of a crime involving moral turpitude . . .”

26. A person is guilty of retail theft under 18 Pa. Cons. Stat. § 3929(a)(1) in the Commonwealth of Pennsylvania when he or she

takes possession of, carries away, transfers or causes to be carried away or transferred, any merchandise displayed, held, stored or offered for sale by any store or other retail mercantile establishment with the intention of depriving the merchant of the possession, use or benefit of such merchandise without paying the full retail value thereof.

27. In *Matter of Diaz-Lizarraga*, the Board of Immigration Appeals recognized that “[f]rom the Board’s earliest days we ha[d] held that a theft offense categorically involves moral turpitude if—and only if—it is committed with the intent to *permanently* deprive an owner of property.” 26 I&N Dec. 847, 849 (BIA 2016). The Board also acknowledged elsewhere that a retail theft offense involves a permanent taking was “potentially incompatible” with the categorical approach as refined by the Supreme Court in *Mathis v. United States*, 579 US 500 (2016) and *Descamps v. United States*, 570 US 254 (2013). *Matter of Diaz-Lizarraga*, 26 I&N Dec. 847, 849 n.11 (BIA 2016).

28. In *Matter of Thakker*, the Board addressed the retail theft statute at issue for the Petitioner herein. The Commonwealth of Pennsylvania adopted the Model Penal Code’s definition of the term “deprive,” which “does not require the accused to intend

a *literally* permanent taking.” See 18 Pa. Cons. Stat. Ann. § 3901. Pennsylvania has defined “deprive” as:

- (1) To withhold property of another permanently or for so extended a period as to appropriate a major portion of its economic value, or with intent to restore only upon payment of reward or other compensation; or
- (2) to dispose of the property so as to make it unlikely that the owner will recover it.

29. The definition of “deprive” in section 3901 is worded in the alternative, covering acts in which the accused intended to permanently withhold the victim's property, and other acts in which the accused intended something less than a permanent taking. See *id.* Because retail theft under section 3929(a)(1) criminalizes less than permanent takings, the statute is overbroad and does not categorically qualify as a crime involving moral turpitude. See *generally Mathis*, 579 U.S. at 504. Accordingly, retail theft under § 3929(a)(1) is not categorically a crime involving moral turpitude.

II. Prolonged Detention Framework

30. “It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings.” *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty” that the Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

31. This fundamental due process protection applies to all noncitizens, including both removable and inadmissible noncitizens. See *id.* at 721 (Kennedy, J., dissenting) (“[B]oth removable and inadmissible [noncitizens] are entitled to be free from detention that is arbitrary or capricious”). It also protects noncitizens who have been ordered removed from the United

States and who face continuing detention, *Diouf v. Napolitano*, 634 F.3d 1081, 1086-87 (9th Cir. 2011), as well as those noncitizens deemed “arriving” under the INA, *Jennings*, 138 S. Ct. at 862 (Breyer, J., dissenting) (internal quotations and citations omitted).

32. Due process therefore requires that the government provide bond hearings to noncitizens facing prolonged detention. Indeed, “[t]he Due Process Clause foresees eligibility for bail as part of due process” because “[b]ail is basic to our system of law.” *Jennings*, 138 S. Ct. at 862 (Breyer, J., dissenting) (internal quotations and citations omitted).

33. The INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under § 1225(b)(2).

34. Section 1225(b)(2)(A) applies to a narrower subset of applicants for admission. It provides that, “if the examining officer determines that a[] [noncitizen] seeking admission is not clearly and beyond a doubt entitled to be admitted, the [noncitizen] shall be detained for a proceeding under section 1229a of this title.” 8 U.S.C. § 1225(b)(2)(A).

35. Under the “plain meaning” of Section 1225(b)(1) and (b)(2), detention under Section 1225(b)(1) “must continue until immigration officers have finished ‘consider[ing]’ the application for asylum,” while detention under Section 1225(b)(2) must continue “until removal proceedings have concluded.” *Jennings*, 583 U.S. at 299 (citing 8 U.S.C. § 1225(b)(1)(B)(ii), (b)(2)(A)). With the exception of temporary parole under Section 1182(d)(5)(A), “there are no other circumstances under which aliens detained under [Section] 1225(b) may be released.” *Jennings*, 583 U.S. at 300, 138 S.Ct. 830. Accordingly, “[b]oth provisions mandate detention until a certain point and authorize release prior to that point only under limited circumstances.” *Id.* at 301, 138 S.Ct. 830.

CLAIMS FOR RELIEF

COUNT I

Violation of the Due Process Clause of the Fifth Amendment

36. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

37. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

38. Petitioner has a fundamental interest in liberty and being free from official restraint. Petitioner also has a fundamental interest in due process protections, including the right to seek bond.

39. Petitioner’s detention is not authorized, serves no legitimate purpose, and amounts to punitive detention.

Count II

Violation of the INA

40. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

41. Petitioner’s retail theft offense is not a crime involving moral turpitude, and the Petitioner is therefore not inadmissible.

42. Because he is not inadmissible, he is unlawfully detained under § 235(b). The Petitioner is wrongly designated as an arriving alien, and should instead be detained under § 1226(a).

43. As such, immediate release is appropriate as the Petitioner is no longer removable as charged. At a minimum, he is entitled to a bond hearing. Thus, because the offense is not a CIMT, the Respondent does not fall under INA § 101(a)(13)(C)(v) and he cannot be an arriving alien.

PRAYER FOR RELIEF

WHEREFORE, Petitioners pray that this Court grant the following relief:

1. Assume jurisdiction over this matter;
2. Order that Petitioner shall not be transferred outside the Eastern District of New York while this petition is pending;
3. Order Respondents to show cause why the writ should not be granted within three days;
4. Declare that Petitioner's detention violates the Immigration and Nationality Act;
5. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment;
6. Grant a writ of habeas corpus ordering Respondents to immediately release Petitioner from custody under conditions no more restrictive than those in place before the detention at issue in this case; or, in the alternative;
7. Order a bond hearing wherein the government bears the burden of establishing that the Petitioner is a flight risk and a danger; and
8. Grant any other and further relief that this Court deems just and proper.

Dated: April 27, 2026

Respectfully Submitted,

/s/ Craig Relles
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VERIFICATION

I am submitting this verification on behalf of the Petitioner because I am one of the Petitioner's attorneys. I have discussed with the Petitioner the events described in this Petition. On the basis of those discussions, I hereby verify that the statements made in this Petition are true and correct to the best of my knowledge.

/s/ Craig Relles
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