FILED
U.S. District Court
District of Kansas
03/13/2026
Clerk, U.S. District Court
By: SND Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS

NELSON JOSE ALEXANDRE FILHO,

Petitioner,

v.

CRYSTAL CARTER, in her official capacity as the Warden of FCI Leavenworth; **TODD LYONS**, in his official capacity as Acting Director of U.S. Customs and Immigration Enforcement; **KRISTI NOEM**, in her official capacity as Secretary of the Department of Homeland Security; and **PAMELA BONDI**, in her official capacity as Attorney General of the United States,

Respondents.

Case No. 26-3050-JWL

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

INTRODUCTION

1. Nelson Jose Alexandre Filho (hereinafter referred to as "Nelson," "Mr. Alexandre Filho," or "Petitioner") is a Brazilian citizen who entered the United States on May 24, 2018, with a B-2 visa. On September 9, 2025, Petitioner was detained by Immigration and Customs Enforcement. He has been detained since then without an opportunity for a bond hearing or a reassessment of his custody status.

2. Mr. Alexandre Filho is married to a U.S. citizen, Emilly Costa Santos ("Mrs. Costa Santos"), and he currently has an I-130 Petition for Alien Relative pending before United States Citizenship and Immigration Services ("USCIS").

3. Petitioner has a removal order *in absentia* from the Boston Immigration Court dated September 22, 2022. He filed a motion to reopen before the Immigration Court on October 3, 2025.

The Motion was denied on October 10, 2025. However, Petitioner filed an appeal with the Board of Immigration Appeals ("BIA") on December 1, 2025, which remains pending.

4. Petitioner has been detained for over 180 (one hundred and eighty) days without having an opportunity to have a bond hearing, nor any indication of whether he will be removed from the country or be released. He is not subject to any mandatory detention for criminal reasons.

5. Petitioner's detention violates federal law, as well as the Fifth Amendment of the United States Constitution.

6. Accordingly, to vindicate Petitioner's statutory and constitutional rights, this Court should grant the instant petition for a writ of habeas corpus. Mr. Alexandre Filho requests that this Court immediately release him from detention and enjoin the Respondents from re-detaining him unless there are changes in circumstances that would justify detention. Alternatively, Petitioner asks this Court to order the Immigration Court to conduct a bond hearing at which the government must prove by clear and convincing evidence that he poses a danger to the community or a flight risk.

7. Furthermore, Petitioner also requests this Court to issue a restraining order to prevent Petitioner from being transferred from the District of Kansas for the duration of these proceedings, except if he were to be transferred to Massachusetts, where he was residing prior to his detention, which would allow him to be close to his family members and legal counsel.

JURISDICTION

8. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq*.

9. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus) and 28 U.S.C. § 1331 (federal question).

10. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

VENUE

11. Venue is proper in this District because Respondents are officers, employees, or agencies of the United States, and the Petitioner is currently detained within the jurisdiction of this District. 28 U.S.C. § 2241.

PARTIES

12. Mr. Alexandre Filho is a Brazilian citizen who entered the United States on May 24, 2018, with a B-2 visa. He is detained at the FCI-Leavenworth Correctional Institution in Leavenworth, KS, located at 1300 Metropolitan Avenue, Leavenworth, KS, 66048, and is in the custody and under the direct control of the Respondents and their agents.

13. Respondent Crystal Carter is sued in her official capacity as the Warden of FCI-Leavenworth. Petitioner is detained at this detention center. Respondent Carter is a direct legal custodian of Petitioner.

14. Respondent Todd Lyons is sued in his official capacity as the Acting Director of U.S. Immigration and Customs Enforcement. He is responsible for the overall administration, supervision, and enforcement of immigration detention and removal operations nationwide, including policies governing the custody and release of noncitizens. Respondent Lyons is therefore a legal custodian of Petitioner.

15. Respondent Kristi Noem is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security ("DHS"). In that capacity, Respondent Noem is responsible for the implementation and enforcement of the Immigration and Nationality Act, and oversees U.S.

Immigration and Customs Enforcement, the component agency responsible for Petitioner's detention. Respondent Noem is a legal custodian of Petitioner.

16. Respondent Pamela Bondi is the Attorney General of the United States and is sued in her official capacity.

STATEMENT OF FACTS

17. Mr. Alexandre Filho is a Brazilian citizen who entered the United States with a non-immigrant B-2 visa on May 24, 2018. He is married to a U.S. citizen and has an I-130 Petition for Alien Relative pending with United States Citizenship and Immigration Services ("USCIS").

18. Petitioner has a removal order *in absentia* from the Immigration Court dated September 22, 2022. Based on the extraordinary circumstances in his case and his eligibility for relief as the immediate relative of a U.S. citizen, he filed a motion to reopen before the Immigration Court on October 3, 2025.

19. The motion to reopen was denied on October 10, 2025, but Petitioner filed a timely appeal with the Board of Immigration Appeals ("BIA") on December 1, 2025, which remains pending.

20. Petitioner is also a class member of the *Calderon v. Sessions*, No. 5:18-cv-00569-JLS-KSC (C.D. Cal.), Settlement Agreement (Oct. 2019). Under the settlement, class members are all who are married to a U.S. citizen, have a pending or approved I-130 petition, lived or are detained in New England, and are over 17 years old. According to this settlement, the Department of Homeland Security ("DHS") has agreed to join motions to reopen for class members. Petitioner made this request to DHS, but they denied it.

21. If Petitioner's case were to be reopened at the Immigration Court, he would become immediately eligible to adjust status to lawful permanent resident, as an immediate relative of a

U.S. citizen. Since he entered with a visa, the only impediment to his adjustment of status is the removal order.

22. Petitioner has been detained for over 180 days, without an opportunity for a bond hearing, and with no expectation for him to be removed from the country, since he is still trying to reopen his case. There is also no expectation for his release. Because of the removal order, Immigration Courts deny jurisdiction to hear Petitioner's bond, leaving him with no alternative other than to seek relief before a federal court.

23. Petitioner's detention violates the Fifth and Fourth Amendments of the United States Constitution and federal law. Petitioner has been detained for over 180 days without even an opportunity for a bond hearing.

LEGAL FRAMEWORK

24. Pursuant to 28 U.S.C. § 2243, the Court either must grant the instant petition for writ of habeas corpus or issue an order to show cause to Respondents, unless Petitioner is not entitled to relief. If the Court issues an order to show cause, Respondents must file a response "within *three days* unless for good cause additional time, *not exceeding twenty days*, is allowed." 28 U.S.C. § 2243 (emphasis added).

25. 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). "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).

26. This constitutional protection applies to all noncitizens, including those subject to final orders of removal. *Id.* at 690; see also *Clark v. Martinez*, 543 U.S. 371, 380 (2005).

27. Under 8 U.S.C. § 1231(a)(1), the Government is authorized to detain a noncitizen during a 90-day "removal period." After that period, § 1231(a)(6) permits continued detention only for the purpose of effectuating removal.

28. In *Zadvydas*, the Supreme Court held that § 1231(a)(6), read in light of the Constitution, authorizes detention only for a period reasonably necessary to effect removal. 533 U.S. at 689. "Once removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute." *Id.* at 699. The Supreme Court recognized six months as a presumptively reasonable period of post-removal-order detention. *Id.* at 701. After that time, if the noncitizen provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must rebut that showing with sufficient evidence.

29. In evaluating foreseeability, courts examine whether the Government has secured travel documents, scheduled removal, or demonstrated concrete steps toward effectuating removal. Conclusory assertions of future removal are insufficient under *Zadvydas*.

30. The purposes of civil immigration detention are limited to ensuring appearance at removal proceedings and preventing danger to the community. *Zadvydas*, 533 U.S. at 690; *Demore*, 538 U.S. at 528. When detention no longer reasonably relates to effectuating removal, it becomes constitutionally excessive.

31. Additionally, due process requires adequate procedural safeguards to ensure that continued detention remains justified. *Zadvydas*, 533 U.S. at 690–91. Prolonged civil detention without an individualized custody determination before a neutral decisionmaker raises serious constitutional concerns.

32. The Court's ruling in *Zadvydas* is rooted in due process's requirement that there be "adequate procedural protections" to ensure that the government's asserted justification for a

noncitizen's physical confinement "outweighs the 'individual's constitutionally protected interest in avoiding physical restraint.'" *Id.* at 690 (quoting *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)). In the immigration context, the Supreme Court only recognizes two purposes for civil detention: preventing flight and mitigating the risks of danger to the community. *Zadvydas*, 533 U.S. at 690; *Demore*, 538 U.S. at 528. The government may not detain a noncitizen based on any other justification.

33. Immigration officers' arrest authority within the interior is also statutorily limited. Under 8 U.S.C. § 1357(a)(2), a warrantless arrest is authorized only where the officer has reason to believe the individual is removable and is likely to escape before a warrant can be obtained. Any seizure must comply with the Fourth Amendment's requirement of reasonable suspicion or probable cause. *United States v. Brignoni-Ponce*, 422 U.S. 873, 881–82 (1975).

CLAIMS FOR RELIEF

COUNT ONE
Violation of Fifth Amendment Right to Due Process

34. Petitioner re-alleges and incorporates by reference the paragraphs above as though fully set forth herein.

35. The Due Process Clause of the Fifth Amendment forbids the government from depriving any "person" of liberty "without due process of law." U.S. Const. amend. V.

36. Petitioner has been detained since September 8, 2025. His removal order became final on September 22, 2022. The statutory removal period expired on December 22, 2022, nearly three years before his present detention.

37. For approximately three years after his removal order became final, the Department of Homeland Security did not execute the order. This prolonged period of inaction demonstrates that removal is neither imminent nor inevitable.

38. Petitioner has filed a Motion to Reopen his removal proceedings. Although initially denied by the Immigration Judge, that decision has been appealed and remains pending before the Board of Immigration Appeals. The pending appeal may materially alter Petitioner's removability and eligibility for relief.

39. Where administrative proceedings remain pending that may affect removability, removal cannot be considered significantly likely in the reasonably foreseeable future within the meaning of *Zadvydas*.

40. Here, Petitioner is eligible for adjustment of status based on his marriage to a U.S. citizen. As an immediate relative of a U.S. citizen who entered with a visa, was inspected and admitted, he would not be barred from adjusting status within the United States, nor is he required to file a waiver with USCIS. *See* INA §§ 245(c)(2), 245(c)(8); *see also* INA § 245(c)(2). Although Petitioner has periods of unauthorized employment and unlawful presence, he is an immediate relative of a U.S. citizen under INA § 201(b). The only thing preventing Petitioner from adjusting his status and becoming a permanent lawful resident is the removal order.

41. Upon information and belief, the Government has not demonstrated that travel documents have been issued, that removal has been scheduled, or that concrete arrangements for deportation are imminent. Absent such evidence, continued detention rests on speculation rather than a significant likelihood of removal.

42. More than six months have elapsed since Petitioner was detained. This creates a presumption that his detention is unreasonable, but the circumstances here, including the fact that Petitioner's removal order has been final for over three years without his removal, confirm this. The Constitution does not require detention to become presumptively unreasonable before relief may be granted.

43. Moreover, Petitioner has not received an individualized custody hearing before a neutral decisionmaker to determine whether his continued detention is justified by flight risk or danger to the community. Prolonged civil detention without such procedural safeguards violates the Due Process Clause.

44. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Zadvydas*, 533 U.S. at 690. "[W]hile [DHS] might want to enforce this country's immigration laws efficiently, it cannot do that at the expense of fairness and due process." *Ceesay v. Kurzdorfer*, No. 25-CV-267, 2025 WL 1284720 (W.D.N.Y. 2025), at *1.

45. Civil immigration detention is constitutionally permissible only insofar as it serves a legitimate, nonpunitive regulatory purpose—namely, ensuring appearance at proceedings or effectuating removal. *See Zadvydas v. Davis*. The Supreme Court made clear that once detention no longer bears a reasonable relation to its stated purpose, it becomes constitutionally suspect. *Id.* at 690 (civil detention must be limited to what is reasonably necessary to accomplish removal).

46. Civil detention may not be used as a mechanism to coerce individuals into abandoning or foregoing their statutory and constitutional rights. The Due Process Clause does not permit the government to impose or prolong detention in order to pressure a noncitizen to relinquish available legal remedies, such as pursuing a motion to reopen or appeal before the Board of Immigration Appeals. When detention effectively penalizes the exercise of lawful procedural rights, it ceases to function as a neutral regulatory measure and instead becomes impermissibly coercive.

47. Here, Petitioner's continued detention bears the hallmarks of such coercion. Petitioner remains confined while pursuing a Motion to Reopen—a statutory form of relief

expressly contemplated by the immigration laws. Conditioning Petitioner's liberty on the abandonment of that legal process would undermine the fundamental principle that individuals must be free to pursue lawful remedies without facing punitive consequences. Prolonged detention under these circumstances, therefore, resembles punishment without trial and violates the substantive due process protections recognized in *Zadvydas v. Davis*.

48. Because removal is not significantly likely in the reasonably foreseeable future, and because detention lacks adequate procedural safeguards, Petitioner's continued confinement violates the Fifth Amendment.

COUNT TWO
Violation of 8 U.S.C. § 1231(a)

49. Petitioner re-alleges and incorporates the preceding paragraphs.

50. The Immigration and Nationality Act at 8 U.S.C. § 1231(a) authorizes detention "beyond the removal period" only for the purpose of effectuating removal. 8 U.S.C. § 1231(a)(6); *see also Zadvydas*, 533 U.S. at 699 ("[O]nce removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute.").

51. Given the over three-year lapse since the removal order became final, the pending motion to reopen before the BIA, and the absence of evidence of imminent removal, detention no longer bears a reasonable relation to effectuating removal and exceeds the statutory authority granted by § 1231(a).

COUNT THREE
Violation of Fourth Amendment Right to Protection from Unreasonable Searches and Seizures by the Government

52. Petitioner re-alleges and incorporates the preceding paragraphs.

53. Petitioner was stopped while driving his vehicle and subsequently arrested without a warrant. Under *Brignoni-Ponce*, immigration officers may briefly stop an individual only upon

reasonable suspicion, and any further detention must be supported by probable cause. Additionally, under 8 U.S.C. § 1357(a)(2), a warrantless arrest is authorized only if the officer has reason to believe the person is removable and likely to escape before a warrant can be obtained.

54. Additionally, under 8 U.S.C. § 1357(a)(2), a warrantless arrest is authorized only if the officer has reason to believe the person is removable and likely to escape before a warrant can be obtained. Because the initial seizure violated both the Fourth Amendment and the statutory limits of § 1357(a)(2), Petitioner's resulting custody is unlawful.

55. Although the exclusionary rule does not generally apply in civil removal proceedings, this habeas action challenges the legality of Petitioner's physical custody itself. Continued detention flowing from an unconstitutional seizure violates the Fourth Amendment.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

(1) Assume jurisdiction over this matter.

(2) Issue an Order to Show Cause, pursuant to 28 U.S.C. § 2243, ordering Respondents to show cause why the Petition should not be granted within three days.

(3) Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment, the Fourth Amendment, and federal law.

(4) Issue a Restraining Order preventing Petitioner from being transferred out of the state of Kansas for the duration of these proceedings, except if he were to be transferred to Massachusetts, where he was residing prior to his detention, and would allow him to be close to his family members and legal counsel.

(5) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately; alternatively, order the Immigration Court to conduct a bond hearing in which the

government needs to prove by clear and convincing evidence that Petitioner poses a danger to the community or a flight risk.

(6) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and

(7) Grant any further relief this Court deems just and proper.

Date: March 13, 2026

Respectfully submitted,

/s/ James D. Jenkins
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VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF PURSUANT TO 28 U.S.C. § 2242

I am submitting this verification on behalf of the Petitioner pursuant to 28 U.S.C. § 2242 because I am the Petitioner's attorney and have reviewed and am familiar with the facts alleged in this Petition. I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: March 13, 2026

/s/ Vinicius Damasceno
Vinicius Damasceno

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was emailed to the Clerk of Court at ksd_clerks_topeka@ksd.uscourts.gov for filing via the Court's CM/ECF system this 13th day of March, 2026, and that a true copy of the foregoing was emailed to russell.keller@usdoj.gov and audrey.koehler@usdoj.gov. I further certify that paper copies will be sent to Respondents at the following addresses in accordance with Rule 4(i):

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