FILED
U.S. District Court
District of Kansas
04/10/2026
Clerk, U.S. District Court
By: SND Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

MAXIM TKACHENKO,

Petitioner,

v.

Case No. 26-3083-JWL

MISTY MACKEY, Warden,
Midwest Regional Reception Center;
TODD M. LYONS, Senior Official
Performing the Duties of the Director,
U.S. Immigration and Customs Enforcement; and
PAMELA BONDI, Attorney General
of the United States,

Respondents.

MEMORANDUM IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

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Petitioner Maxim Tkachenko, proceeding *pro se*, respectfully submits this memorandum in support of his petition for a writ of habeas corpus under 28 U.S.C. § 2241.

I. NATURE OF THE CLAIM AND RELIEF REQUESTED

This habeas action challenges only the constitutionality of Petitioner's continued detention under 8 U.S.C. § 1226(c) without any individualized bond hearing. Petitioner does not ask this Court to review the merits of his removal case, decide his appeal before the Board of Immigration Appeals ("BIA"), or order immediate release in the first instance.

Petitioner seeks narrow relief only: an individualized bond hearing, on the same terms as if he were detained under 8 U.S.C. § 1226(a), within 14 days of the Court's order, and notice to this Court after the hearing is held.

II. JURISDICTION AND VENUE

This Court has jurisdiction under 28 U.S.C. § 2241(c)(3) because Petitioner is in custody in violation of the Constitution of the United States. Federal courts retain habeas jurisdiction to consider constitutional challenges to immigration detention. *Demore v. Kim,* 538 U.S. 510, 516-17 (2003). Venue is proper in the District of Kansas because Petitioner is currently detained at the Midwest Regional Reception Center, 100 Highway Terrace, Leavenworth, Kansas 66048.

III. FACTUAL BACKGROUND

Petitioner is a 41-year-old national of Ukraine. He came to the United States in 1994, when he was nine years old, and has been a lawful permanent resident since September 2009. Ex. 1 ¶¶ 1-4. He has deep family ties in the United States. His mother, father, sister, and two nephews are all here, and are United States citizens. *Id.* ¶¶ 3, 12-19.

Petitioner completed his federal criminal sentence in January 2025 and was taken directly into ICE custody on January 10, 2025. *Id.* ¶ 20. He has remained continually detained by ICE since that date. *Id.* ¶¶ 20-21, 54. During that time he has been transferred among four facilities: Moshannon Valley Processing Center in Pennsylvania, Miami Correctional Facility in Indiana, USP Leavenworth in Kansas, and the Midwest Regional Reception Center in Kansas. *Id.* ¶ 54.

Petitioner has never received a bond hearing, a Joseph hearing, or any other individualized custody hearing while in ICE custody.

In the removal proceedings, Petitioner timely pursued relief, including cancellation of removal and CAT protection. *See* Ex. 1 ¶¶ 24-33. His merits hearing was held over three dates in June and early July 2025. *Id.* ¶ 33. Petitioner did not seek continuances to delay his case, and his understanding is that the hearing had to be spread across multiple dates because of the Immigration Judge's schedule, not because of delay by him. *Id.* ¶¶ 34-35. Counsel also contacted DHS before the hearing in an effort to

narrow the issues through stipulation. *Id.* ¶ 36.

Those stipulations were significant. DHS stipulated that Petitioner has been a lawful permanent resident for at least five years, had accrued at least seven years of continuous residence, and had not been convicted of an aggravated felony. Ex. 2. DHS also stipulated to the expertise of Dr. Jacqueline Bashkoff in forensic psychology and recidivism, and further stipulated that she would testify credibly that Petitioner's likelihood of reoffending was de minimis, that he rehabilitated in prison, and that his one violent offense was an aberration rather than an indication of future behavior. *Id.*

Dr. Bashkoff's written report concluded that petitioner presented a low risk of reoffending and low risk to society. Ex 4. Her report identified strong protective factors, including family support, employability, genuine remorse, extensive rehabilitation, education achievement, and the absence of a significant prior violent history. *Id.*

Petitioner has also presented substantial evidence of rehabilitation and positive equities. During incarceration he completed dozens of educational and rehabilitative programs, earned an associate's degree in electronics, worked as a tutor, and used time to improve himself and prepare for lawful employment after release. Ex. 1 ¶¶ 8-11; Ex. 4.

On July 7, 2025, the Immigration Judge denied Petitioner's applications for cancellation or removal and CAT protections. Ex. 1 ¶ 42; Ex. 3. Petitioner timely appealed to the BIA on August 5, 2025. Ex. 1 ¶ 43; Ex. 3. The BIA acknowledged receipt of the appeal and filing *See*. Ex. 3. The Notice of appeal raises multiple claimed legal and factual errors in the Immigration Judge's decision, including errors concerning LPR cancellation, discretionary balancing, fact-finding, and CAT analysis. *Id.*

As of the filling of this petition, however, the BIA still has not issued the hearing transcripts or a briefing schedule. Ex. 1 ¶¶ 51-53. Petitioner therefore has no meaningful information about when the BIA will act, and his detention has no clear end point.

Petitioner has not attempted to obstruct proceedings or frustrate removal. After the Immigration

Judge denied relief, he even tried to identify a safe third-country option by contacting embassies and consulates. Ex. 1 ¶¶ 44-50; Ex. 5.

Petitioner's detention conditions have been prison-like and punitive across all four facilities. At Moshannon Valley Processing Center, detainees were often confines to their housing pods for approximately 20 to 22 hours per day; about 70 people shared only three communal toilets; Petitioner was housed with detainees with serious criminal histories, including violent gang members; legal access was restricted; medical and dental care were difficult to obtain; visits were non-contact; and lockdowns and disruptive searches were frequent. Ex. 1 ¶¶ 57-74.

At Miami Correctional Facility, Petitioner was housed inside a maximum-security state penitentiary and was routinely exposed to criminal inmates serving long or life sentences. *Id.* ¶¶ 75-81. Food was inadequate; kosher meals were repeatedly and unpredictably denied; detainees had to walk outside in winter weather and rain wearing only open-back Crocs; meaningful law-library access was denied; medical care was delayed; commissary access was dysfunctional; and Petitioner filed grievances regarding these conditions. *Id.* ¶¶ 82-111; Ex. 6

At USP Leavenworth, Petitioner was strip-searched, ordered to squat and cough, subjected to frequent lockdowns, given very limited access to phones and a computer, denied adequate legal-copying access, subjected to legal-mail problems, and housed under highly restrictive prison conditions with outdated law-library material and broken equipment. Ex. 1 ¶¶ 112-134.

At the Midwest Regional Reception Center, Petitioner again experienced strip-search procedures, color-coded classification uniforms, approximately 23-hour confinement, repeated daily count lock-ins, little or no educational or reading material, inadequate food, expensive commissary, outdated law-library materials, and non-contact visitation. *Id.* ¶¶ 135-154.

Petitioner stated that the conditions of his ICE detention across these four institutions have not been meaningfully different from criminal incarceration and have been punitive in practice and effect.

Id. ¶¶ 155-159.

IV. LEGAL STANDARD

The Supreme Court has held that 8 U.S.C. § 1226(c) does not itself create an automatic time-based right to bond hearing. *Jennings v. Rodriguez*, 583 U.S. 281, 296-312 (2018). The Supreme Court has also held that mandatory detention under § 1226(c) is facially constitutional for the "brief period necessary" to complete removal proceedings. *Demore*, 538 U.S. at 513, 529-31.

But *Demore* did not hold that such detention may continue without constitutional limit. Justice Kennedy expressly explained that a lawful permanent resident could be entitled to an individualized determination of flight risk and dangerousness if continued detention became unreasonable or unjustified. *Id.* at 531-33 (Kennedy, J., concurring).

Judge Lungstrum recently applied that exact principle in *Nguyen v. Carter*, No. 26-3008-JWL, slip op. at 4-7 (D. Kan. Feb. 25, 2026), and ordered a bond hearing where detention under §1226(c) had become unreasonably prolonged. In *Nguyen*, the Court applied the six-factor framework it had identified in *Moreno-Bastidas v. Barr*, No. 20-3137-JWL, 2020 WL 3639774, at *8-10 (D. Kan. July 6, 2020). Those factors are:

(1) the total length of detention to date;

(2) the likely duration of future detention;

(3) the conditions of detention;

(4) delays in the removal proceedings caused by the detainee;

(5) delays in the removal proceedings caused by the government; and

(6) the likelihood that the removal proceedings will result in a final order of removal.

V. ARGUMENT

1. The length of detention strongly favors relief.

Petitioner has been detained continuously since January 10, 2025. As of the filing of this

petition, that is more than fourteen months of ICE detention without any bond hearing.

That is not the "brief period necessary" assumed in *Demore*. It is also far longer than the detention at issue in *Moreno-Bastidas*, where Judge Lungstrum denied relief after a little over five months of detention. *Moreno-Bastidas*, 2020 WL 3639774, at *10. Although Petitioner's detention is shorter than the nearly twenty-one months at issue in *Nguyen*, it is still prolonged and substantial.

This factor weighs strongly in Petitioner's favor.

2. The likely duration of future detention favors relief.

There is no meaningful end date for Petitioner's detention. His BIA appeal has been pending since August 5, 2025, yet as of the filing of this petition the BIA still not issued the hearing transcripts or a brief schedule. Ex. 1 ¶¶ 51-53; Ex. 3.

That means the appellate process has barely advanced. If the BIA remands, further proceedings would follow. Even if the BIA affirms, the timing remains unknown. From any practical standpoint, Petitioner's continued detention is indefinite.

This factor weighs in Petitioner's favor.

3. The conditions of detention strongly favor relief.

Petitioner's detention conditions have been unusually prison-like and punitive across four separate facilities. He has been housed in prisons or prison-like institutions, strip-searched, subject to repeated lockdowns, confined for 20 to 23 hours per day, exposed to criminal inmates, denied meaningful legal access, subjected to legal-mail problems, and denied timely medical care. Ex. 1 ¶¶ 57-159; Ex. 6.

These facts materially distinguish this case from *Nguyen*, where the Court treated the conditions factor as neutral because the petitioner had not showed atypical or particularly harsh conditions. Here, Petitioner has made that showing in detail.

This factor weighs strongly in Petitioner's favor.

4. Petitioner did not cause material delay.

Petitioner did not seek continuances to delay his case. His applications and supporting materials were filed in a timely way, counsel stipulations narrow the issues, and the merits hearing was spread over multiple dates because of court scheduling rather than delay by Petitioner. Ex. 1 ¶¶ 24-36.

It is true that Petitioner appealed the Immigration Judge's denial of relief. But taking a lawful appeal does not automatically render prolonged mandatory detention reasonable. In *Martinez Armendariz v. Garland*, No. 24-3106-JWL, slip op. at 1-2 (D. Kan. June 28, 2024), Judge Lungstrum recognized that a petitioner whose appeal from a removal order was still pending had nonetheless stated a justiciable habeas claim that due process required a bond hearing.

Petitioner's appeal is a lawful effort to challenge a removal decision, not evidence of bad-faith delay. This factor is at least neutral and does not weigh materially against him.

5. Executive-branch delay favors relief.

Even if Respondents argue that Petitioner's appeal is the reason proceedings remain pending, the present stagnation in the BIA process is not attributable to Petitioner. The BIA, which is part of the Executive Branch, still has not issued transcripts or a briefing schedule.

The Government cannot continue mandatory detention indefinitely while its own appellate machinery remains stalled. Unlike *Moreno-Bastidas*, where the petitioner pointed to no government-caused delay, Petitioner here has identified substantial delay in the BIA process itself. *See Moreno-Bastidas*, 2020 WL 3639774, at *10.

This factor weighs in Petitioner's favor.

6. The record does not show that removal is so certain or imminent as to justify continued mandatory detention without a hearing.

Petitioner does not ask this Court to decide the merits of his BIA appeal. But factor six does not

weigh against him.

His appeal is substantial and nonfrivolous. The Notice of Appeal identifies multiple claims legal and factual errors in the Immigration Judge's decision. Ex. 3. DHS stipulated to major favorable factors before the merits hearing, including that Petitioner has not been convicted of an aggravated felony and that Dr. Bashkoff would testify credibly that Petitioner's likelihood of reoffending was de minimis and that his one violent offense was an aberration. Ex. 2. Dr. Bashkoff's report concluded that Petitioner presents a low risk of reoffending and a low risk to society. Ex. 4.

Petitioner candidly acknowledged that, unlike *Nguyen*, he is appealing from an IJ denial rather than defending a grant of relief. For that reason, factor six is not as favorable here as it was in *Nguyen*. But Respondents still cannot show that removal is so certain and imminent that continued mandatory detention without any individualized hearing remains reasonable.

At a minimum, this factor is neutral. On the present record, it modestly favors Petitioner.

7. Considering the factors together, due process now requires a bond hearing.

The balance of factors favors relief. Petitioner's detention has already lasted more than fourteen months. Its future duration is unknown. His detention conditions have been unusually punitive. He did not cause material delay. The executive Branch has allowed the BIA appeal to stagnate without transcripts or briefing schedule. And the current record does not show that removal is so certain and imminent as to justify continued mandatory detention without any individualized hearing.

That is enough to establish that continued detention under § 1226(c), without a bond hearing, has become unreasonable and unjustified as applied to Petitioner. A prompt bond hearing can test the Government's concerns about flight risk and dangerousness through the ordinary individualized process.

This narrow relief is exactly what Petitioner seeks.

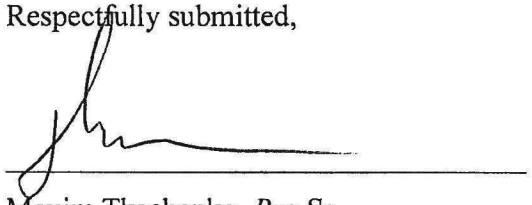
VI. RELIEF REQUESTED

WHEREFORE, Petitioner respectfully requests that this Court:

1. grants the petition in part;
2. order Respondents to ensure that Petitioner receives a prompt individualized bond hearing, on the same terms as if he were detained under 8 U.S.C. § 1226(a), within 14 days of the Court's order;
3. order Respondents to file notice with this Court within 3 days after that hearing is conducted; and
4. grant such other and further relief as the Court deems just and proper.

Dated: April 7, 2026.

Respectfully submitted,



Maxim Tkachenko, *Pro Se*
A# [redacted]
[redacted]
Midwest Regional Reception Center
100 Highway Terrace
Leavenworth, KS 66048

CERTIFICATE OF SERVICE

I, Maxim Tkachenko, certify that on April 7, 2026, I placed a true and correct copy of the following documents in the United States Mail, first-class postage prepaid:

1. Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241;
2. Memorandum in Support of Petition; and
3. Exhibits 1 through 6;

addressed to:

Clerk of the Court
United States District Courthouse
District of Kansas
500 State Avenue
Kansas City, KS 66101

I declare under penalty of perjury that the forgoing is true and correct.

Executed on April 7, 2026.

Maxim Tkachenko
[redacted]
Midwest Regional Reception Center
100 Highway Terrace
Leavenworth, KS 66048