

UNITED STATES DISTRICT COURT
For the Middle District of Georgia

Francis Mwati	)	
Petitioner,	)	
v.	)	
	)	
Todd Lyons, Field Office Director	)	
of the U.S. Immigration and Customs	)	
Enforcement & Removal Operations,	)	Case No. _____
Atlanta Field Office, Immigration and	)	
Customs Enforcement; Markwayne Mullin)	)	PETITION FOR WRIT OF
Secretary, U.S. Department of	)	HABEAS CORPUS
Homeland Security: Todd Blanche,	)	
U.S. Attorney General of the United	)	
States; Executive Office For	)	
Immigration Review; Jason	)	
Steeval, Warden, Stewart	)	
Detention Ctr.	)	
Respondents.	)	
_____	)	

PETITIONER'S BRIEF IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS (28 U.S.C. SECTION 2241) AND MOTION FOR IMMEDIATE RELEASE OR, IN THE ALTERNATIVE, INDIVIDUALIZED BOND HEARING

INTRODUCTION

Petitioner Francis Mwati, a native and citizen of Kenya, petitions this Court for a writ of habeas corpus under 28 U.S.C. § 2241 challenging his continued civil immigration detention at the Stewart Detention Center in Lumpkin, Georgia. Petitioner seeks immediate release because he has been detained since November 17, 2025 and the government intends to continue to detain him through the pendency of its administrative appeal of the Immigration Judge's grant of lawful permanent resident (LPR) cancellation of removal. Petitioner argues that his detention has become unreasonably prolonged and lacks the constitutionally required safeguards of an individualized, meaningful custody determination.

Petitioner asks this Court to order immediate release on appropriate conditions. At minimum, the Court should order an individualized custody hearing at which the Government bears the burden to justify continued detention.

JURISDICTION

Petitioner is in the physical custody of Respondents at the Stewart Detention Center in Lumpkin, Georgia, since November 17, 2025. Petitioner was granted Cancellation of Removal by the Immigration Judge, but DHS has appealed said grant to the Board of Immigration Appeals (BIA). DHS continues to hold Petitioner in its custody during DHS's appeal to the BIA.

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

This Court may review the legality of Petitioner's ongoing civil detention and to order his release, 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. The petition presents a core habeas challenge to present physical custody.

VENUE

Pursuant to *Branden v. 30th Judicial Circuit Court of Kentucky*, 410, U.S. 484, 493-500 (1973), venue lies in the United States District Court for the Middle District of Georgia, the judicial district in which Petitioner currently is detained.

Venue is also proper in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the Middle District of Georgia.

Venue and jurisdiction lie in the district of confinement.

REQUIREMENTS OF 28 U.S.C. § 2241

The Court shall grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith", unless the petitioner is not entitled to relief, 28 U.S.C. § 2243. If an order to show cause is issued, Respondents are required to file a return "within three days unless for good cause additional time, not exceeding twenty days is allowed." *Id.*

Habeas corpus is "perhaps the most important writ known to the constitutional law... affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) emphasis added). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him/her within the

four corners of the applications." *Yong v. INS*, 208 F. 3d 1116, 1120 (9th Cir. 2000) (citation omitted).

PARTIES

Petitioner: Francis Mwati, A# [REDACTED], is a native and a citizen of Kenya. He has been detained at Stewart Detention Center, Lumpkin, since November 17, 2025 to the present. the Immigration Judge approved his application for Cancellation of Removal on March 4, 2026, and DHS appealed said decision. Petitioner is still being detained at Steward Detention Center.

Respondent, Todd Lyons is the Field Office Director of the U.S. Immigration and Customs Enforcement's (ICE) Atlanta Field Office of ICE's Enforcement and Removal Operations division. As such, Todd Lyons is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity.

Respondent Markwayne Mullin is the Secretary of the Department of Homeland Security. He is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Mr. Mullin has ultimate custodian authority over Petitioner and is sued in his official capacity.

Respondent Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

Respondent Todd Blanche is the Attorney General of the United States. He oversees the Department of Justice, which includes the Executive Office for

Immigration Review and its associated immigration court system as a component agency. He is sued in her official capacity.

Respondent Executive office for Immigration Review (EOIR) is the federal agency that is responsible for implementing and enforcing the INA in removal proceedings, including custody redeterminations in bond hearings.

Respondent Jason Steval is employed as Warden at Stewart Detention Center that is operated by Core Civic where Petitioner is being detained. Mr. Steeval has immediate physical custody of Petitioner. He is sued in his official capacity.

LEGAL FRAMEWORK

Immigration detention during removal proceedings generally proceeds under one of two statutory frameworks: detention “pending a decision on whether the alien is to be removed” under 8 U.S.C. Section 1226, or detention during and after a “removal ‘period’” following a final order of removal under 8 U.S.C. Section 1231. The Supreme Court has repeatedly recognized that detention authority—especially prolonged civil detention – must be interpreted and applied in a manner consistent with due process.

For post-final-order detention, the Supreme Court construed Section 1231(a)(6) to contain an implicitly reasonableness limitation: detention is permissible only for a period reasonably necessary to accomplish removal, and not indefinitely. *Zadvydas* hold that once removal is no longer reasonably foreseeable, continued detention becomes unlawful. *Zadvydas v. Davis*, 533 U.S. 678 (2001). That same construction applies across categories of noncitizens covered by the statute. *Clark v. Martinez*, 543 U.S. 371 (2005).

For pre-final-order detention, the Supreme Court has upheld mandatory detention for certain criminal noncitizens during removal proceedings only in the context of detention that was understood to be for a limited duration, *Demore v. Kim*, 538 U.S. 510 (2003). And where courts have rejected attempts to read periodic bond-hearing requirements into the statute as a matter of pure statutory interpretation, the Supreme Court has nonetheless preserved constitutional challenges to prolonged detention. *Jennings v. Rodriguez*, 583 U.S. 281 (2018).

The United States Supreme Court has repeatedly recognized that prolonged civil detention – must be interpreted and applied in a manner consistent with due process.

Finally, in fashioning relief, district courts must tailor orders to the individual petitioner; classwide injunctions face jurisdictional limits. *Garland v. Aleman Gonzalez*, 596 U.S. 543 (2022); see also 8 U.S.C. Section 1252.

Petitioner may challenge his present physical custody under 28 U.S.C. § 2241, and this Court may order his release.

FACTS

Petitioner, Francis Mwati, is a native and a citizen of Kenya. He became a lawful permanent resident of the United States on November 30, 2003 under the Diversity Visa category. He has lived in the United States continuously for approximately twenty-five years. He is married to a United States Citizen and has one United States Citizen child.

Petitioner and his wife traveled to Kenya and upon their return to the United States on or about November 17, 2025, Petitioner was taken into custody by ICE.

Petitioner has a history of arrests and offenses. In his removal proceedings, he sought LPR Cancellation of Removal under 8 USC section 1229b(a). Petitioner

argued that he was never convicted of any aggravated felonies under 8 USC section 1101(a)(43). Among other points, he argued that his marijuana conviction did not involve trafficking and thus was not a drug-trafficking aggravated felony. His false imprisonment offense did not meet the "crime of violence" definition under 18 USC section 16 with a sentence of at least one year. His 2014 theft charge was dismissed and therefore did not constitute a "conviction" under 8 USC section 1101(a)(48)(A).

The IJ agreed and granted cancellation of removal on or about March 4, 2026. DHS appealed the IJ's decision on March 5, 2026.

Petitioner has been detained since November 17, 2025, at Steward Detention Center and remains detained during the government's appeal.

COUNT I

PETITIONER'S CONTINUED CIVIL DETENTION HAS BECOME UNREASONABLY PROLONGED AND VIOLATES DUE PROCESS ABSENT A MEANINGFUL INDIVIDUALIZED CUSTODY DETERMINATION.

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

The Due Process Clause does not permit the Government to subject a long-term LPR with deep ties to the United States to prolonged civil incarceration without robust, individualized justification. Even though Congress authorizes immigration detention of certain immigrants to ensure attendance, and to protect the community, detention must remain reasonably related to those purposes and must be accompanied by adequate procedural protections.

- A. *Demore* does not authorize prolonged, unexamined detention pending lengthy proceedings and appeals. In this case, the Government will likely rely on the proposition that certain categories of noncitizens may be detained during proceedings. However, *Demore* upheld mandatory detention in a context the Court characterized as brief. *Demore v. Kim*, 538 U.S. 510 (2003). Petitioner's detention, already spanning seven months and continuing during DHS's appeal even after he prevailed before the Immigration Judge, does not resemble the limited detention described in *Demore*.
- B. The Court in *Jennings* preserved constitutional challenges to prolonged detention. While *Jennings* rejected a statutory reading that would mandate periodic bond hearing as a matter of statutory interpretation, it remanded for consideration of constitutional claims. *Jennings v. Rodriguez*, 583 U.S. 281 (2018). Petitioner's habeas petition raises that precise constitutional question: whether, as applied, his prolonged detention without adequate process is lawful.
- C. Persuasive authority recognizes that prolonged detention during ongoing proceedings requires an individualized inquiry.
- Courts have recognized that when detention becomes unreasonably long during the pendency of immigration proceedings, due process requires an individualized determination whether detention remains necessary to ensure appearance or protect the community. *Leslie v. Attorney General*, (678) F. 3d 265(3d Cir. 2012). Although not binding in this Circuit, *Leslie* provides a well-reasoned framework supporting the core constitutional

point that prolonged civil detention demands heightened procedural safeguards.

D. Petitioner's posture makes continued detention especially unjustified. He has the following case-specific equities that support habeas relief:

- He has substantial equities: 25 years of continuous residency, and LPR status since 2003, U.S. citizen spouse, and U.S. citizen child.
- The Immigration Judge granted cancellation, which shows that IJ concluded that Petitioner merited relief and could lawfully remain in the United States.
- Continued detention during DHS's appeal is not detention "to effect removal"; it is detention while the Government seeks to overturn a grant of relief.

These features substantially mitigate flight risk and underscore the need for a meaningful custody review rather than continued incarceration by inertia.

COUNT II

DHS'S AGGRAVATED-FELONY THEORY IS, AT MINIMUM, INSUFFICIENT TO JUSTIFY PETITIONER'S PROLONGED DETENTION WITHOUT A SEARCHING CUSTODY DETERMINATION; THE IMMIGRATION JUDGE'S GRANT OF CANCELLATION OF REMOVAL FURTHER UNDERMINES ANY CLAIM THAT DETENTION IS MANDATORY OR CATEGORICALLY REQUIRED

Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

The Government's decision to hold a noncitizen without bond is legally strongest when the individual has no legal pathway to remain in the United States and is subject to formal deportation and when the individual meets the specific

criteria set by the INA that require detention without the possibility of bond. Here, however, the Immigration Judge granted LPR cancellation after concluding Petitioner was not barred by an aggravated felony.

- A. Marijuana offenses lacking trafficking elements are not automatically aggravated felony “drug trafficking crimes.” Where the record of conviction does not establish remuneration or more than a small amount (or otherwise establish conduct punishable as a federal felony), the offense is not categorically an aggravated felony drug-trafficking offense. *Moncrieffe v. Holder*, 569 U.S. 184 (2013); *Lopez v. Gonzales*, 549 U.S. 47 (2006). Likewise, absent recidivist findings embedded in the conviction itself, simple possession does not become an aggravated felony by hypothesis. *Carachuri-Rosendo v. Holder*, 560 U.S. 563 (2010).
- B. Crime of Violence aggravated felony theories are constrained by *Leocal v. Ashcroft*, 543 U.S. 1 (2004) and *Sessions v. Dimaya*, 584 U.S. 148 (2018). In *Leocal*, the Supreme Court unanimously ruled that a state DUI conviction, even one causing serious bodily injury, is not a “crime of violence” under federal immigration law, meaning it is not an aggravated felony that triggers mandatory deportation for lawful permanent residents. The definition of “crime of violence” in 18 U.S. C. section 16 is not a free-ranging label. *Leocal* construes section 16 to require a higher level of intent than negligent or accidental conduct, supporting a narrow understanding of “use of force.” *Leocal v. Ashcroft* 543 U.S. 1 (2004); and section 16(b)’s residual clause is void for vagueness. *Sessions v. Dimaya* 584 U.S. 148 (2018). Accordingly, DHS’s attempt to characterize Petitioner’s false imprisonment as an aggravated-felony crime of violence faces significant legal constraints.

- C. A dismissed charge is not a “conviction” under the INA. The INA’s definition of conviction turns on the existence of a formal judgment of guilt or a plea/admission plus the imposition of punishment, penalty, or restraint. 8 U.S.C. section 1101 (a)(48)(A). Where a charge was dismissed, the basic statutory “conviction” requirement is not met. See generally *Griffiths v. INS*, 243 F. d 45 (1st Cir. (2001) (discussing the statutory definition in the deferred-adjudication context).
- D. The Immigration Judge’s grant of cancellation confirms eligibility and substantially shifts the equities. The immigration Judge granted relief under 8 USC section 1229b(a). Whatever DHS argues on appeal, Petitioner presently stands as a prevailing party before the Immigration Court. Continued civil incarceration during the Government’s administrative challenge – without an individualized showing that he is a present danger or serious flight risk – fails to comport with due process.

COUNT III

THIS COURT HAS AUTHORITY TO ORDER INDIVIDUALIZED HABEAS RELIEF – RELEASE, OR AT LEAST A PROMPT BOND HEARING -- AND SUCH RELIEF IS CONSISTENT WITH LIMITS ON CLASSWIDE INJUNCTIONS.

Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

Petitioner seeks individualized relief only. This court therefore need not, and should not, enter any classwide injunction “enjoining or restraining the operation” of the detention statutes. Individual habeas relief remains available notwithstanding jurisdictional constraints on classwide remedies. *Garland v. Aleman Gonzalez*, 596 U.S. 543 (2022); see also 8 U.S. C. section 152.

If the Court determines that immediate release is not warranted on the present record, the appropriate alternative remedy is a prompt individualized custody hearing before a neutral decisionmaker that meaningfully evaluates necessity of continued detention.

COUNT IV

TO THE EXTENT THE GOVERNMENT CHARACTERIZES PETITIONER AS DETAINED UNDER SECTION 1231, CONTINUED DETENTION IS STILL LIMITED BY REASONABLENESS PRINCIPLES AND CANNOT BE INDEFINITE OR DIVORCED FROM A REALISTIC REMOVAL PROSPECT

Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

The Government in its appeal, may attempt to reframe Petitioner's custody as post-order detention governed by 8 U.S.C. Section 1231, but when detention is under Section 1231(a)(6), it is statutorily limited to the period reasonably necessary to bring about removal. *Zadvydas v. Davis*, 533 U.S. 678 (2001); *Clark v. Martinez*, 543 U.S. 371 (2005).

In the Eleventh Circuit, a petitioner pursuing an indefinite-detention claim generally must show detention exceeding six months and adduce facts suggesting that removal is not significantly likely in the foreseeable future. *Akinwale v. Ashcroft*, 287 F. 3d 1050 (11th Cir. 2002) (per curiam). Here, Petitioner is not a straightforward removal case, he has been granted cancellation of removal by the IJ, and DHS is seeking to reverse that decision. The continued detention thus resembles prolonged civil incarceration pending administrative litigation rather than a good-faith, time-limited effort to execute removal.

Further, the Supreme Court has rejected the view that Section 1231(a)(6) itself compels a bond-hearing regime after six months.

In the case before us, Petitioner was granted cancellation by the Immigration Judge on March 4, 2026. On March 5, 2026, DHs filed a notice of appeal with the Board of Immigration Appeals to reverse that decision. As of today, DHS has not filed its brief with the Board, which is an indication that the appeal still has a long way to go, while Petitioner continues to unjustly languish in immigration detention. Petitioner's continued detention thus resembles prolonged civil incarceration pending administrative litigation rather than a good-faith, time limited effort to execute removal.

Petitioner's relief properly rests on constitutional principles and the habeas remedy. *Johnson v. Arteaga-Martinez*, 596 U.S. 573 (2022).

Petitioner's seven months of continued detention has become unreasonably prolonged without an individualized determination of necessity and without consideration of less restrictive alternatives

Requested Relief

Petitioner respectfully requests that the Court:

1. Grant the Petition for Writ of Habeas Corpus under 28 U.S. section 2241;
2. Order Petitioner's immediate release from ICE custody on reasonable conditions (eg. GPS monitoring if deemed necessary, reporting, surrender of travel documents); because continued detention is unreasonably prolonged and unconstitutional as applied.
3. In the alternative, order Respondents to provide a prompt, individualized bond/custody hearing before a neutral adjudicator at which:
 - The Government bears the burden to justify continued detention; and

- The adjudicator must consider less restrictive alternatives sufficient to mitigate flight risk or danger;
4. Award attorneys' fees and costs as permitted by law and any other relief the Court deems just and proper.

Respectfully Submitted,

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