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IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ABUBAKAR ABDUL-SAMED, Petitioner, v. U.S. ATTORNEY GENERAL, ET AL.,[1] Respondents.	CASE NO. 1:25-CV-00098-SAB MOTION TO DISMISS UNDER 28 U.S.C. § 2254, RULE 4, AND RESPONSE TO 28 U.S.C. § 2241 PETITION

On 1/22/2025, Petitioner filed for relief under 28 U.S.C. § 2241. ECF 1. In his single ground, Petitioner — a non-citizen alien — claimed his detention pending removal from the United States violated the U.S. Constitution's Fifth Amendment. *Id.* at 3, 9-10 (so-called prolonged detention without a hearing). For relief, Petitioner demanded that this Eastern District of California (EDCA) court-of-custody simply order another jurist (Immigration Judge) to conduct a detention (bond) hearing or *ab initio* order his release under § 2241. *Id.* at 18-19.

[1] Respondent moves to strike and to dismiss all unlawfully named officials under § 2241. A petitioner seeking habeas corpus relief is limited to name only the officer having custody of him as the respondent to the petition. *Riego v. Current or Acting Field Office Director,* Slip Op., 2024 WL 4384220, (E.D. Cal. Oct. 3, 2024) (ordering § 2241 petitioner, a non-citizen alien, to file a motion to amend his petition to "name a proper respondent" and setting forth that "[f]ailure to amend the petition and state a proper respondent will result in dismissal of the petition for lack of jurisdiction"). *See also* 28 U.S.C. § 2242; *Rumsfeld v. Padilla,* 542 U.S. 426, 430 (2004); *Ortiz-Sandoval v. Gomez*, 81 F3rd 891, 894 (9th Cir. 1996). *Doe v. Garland,* 109 F.4th 1188, 1197 (9th Cir. 2024).

I. BACKGROUND

Petitioner's country of origin is Ghana. *See* Munoz Declaration (Decl.) p 3. *See also* Decl. Exh. 1; ECF 1 at 7-8.

On 3/13/2024, Petitioner, in violation of federal law, entered the United States without permission, application, or valid entry documents. Decl. p 3. *See also* Decl., Exhs. 2-3. *See generally* 8 U.S.C. § 1225(b); INA § 235(b). Petitioner's conduct in entry to the United States was further unlawful because Petitioner employed identity theft to deceive customs officials, to wit: he gained entry through an international flight by knowingly false and fraudulent presentation of a passport belonging to another. *Id.*

When DHS encountered Petitioner (at the U.S. port of entry), Petitioner claimed he had no travel documents, and he thereafter consented to an interview. *See* Decl., Exhs. 2-3. Then, after confessing to identity theft in his fraudulent presentation of another's travel document to gain surreptitious entry to the United States, Petitioner confessed to further criminal activity through his destruction of evidence (destroying his true passport and destroying the passport he used to board by false pretenses an international flight). *Id.* Accordingly, DHS personnel detained Petitioner. Decl. p 3, Exh. 1. Petitioner thereafter elected to prolong his detention by claiming fear of returning to his country of origin. *Id.* To date, Petitioner has been in civil detention pending removal proceedings (for nearly 13-months). *See* Decl. pp 3-6. *Accord* ECF 1 at 6.

As a matter of law, Petitioner is subject to mandatory detention. Decl. p 3. Specifically, Petitioner, as an arriving alien without an entry document, is subject to mandatory detention under 8 U.S.C. § 1225(b); INA § 235(b). *See Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019). *See also* 8 U.S.C. § 1225(b)(1)(B)(ii); INA § 235(b)(1)(B)(ii) (an alien placed in expedited removal claiming a credible fear "shall be detained for further consideration of the application for asylum"). As to mandatory detention, 8 C.F.R. § 1003.19(h)(2)(i)(B) provides that an Immigration Judge may not redetermine the conditions of custody imposed by DHS on "[a]rriving aliens in removal proceedings, including aliens paroled after arrival pursuant to section 212(d)(5) of the [Immigration and Nationality] Act".

On 10/16/2024, via Immigration Court proceedings, Petitioner, in conceding removability, elected to prolong his detention even further by making applications for: (1) asylum, (2) withholding of

removal under INA § 241(b)(3), and (3) he demanded protection under the Convention Against Torture. *See* Decl. p 4.

Since 3/13/2024 (onset of civil detention), Petitioner himself, the non-citizen alien, prolonged his own civil detention via numerous requested and received extensions.

DATE	REASON
05/07/2024	Petitioner's demand for additional time and continuance
06/05/2024	Petitioner's demand for additional time and continuance
07/17/2024	Petitioner's demand for additional time and continuance
09/05/2024	Petitioner's demand for additional time and continuance
10/16/2024	Petitioner's demand for additional time and continuance
02/19/2025	Petitioner's demand for additional time and continuance
03/19/2025	Petitioner's demand for additional time and continuance

Decl. pp 3-5. *See also* Decl., Exhs. 1-8. Most recently, on 3/19/2025, the latest date of Petitioner's hearing to adjudicate his removal status, asylum claims, and withholding from removal applications, Petitioner demanded additional time to prepare and moved for continuance. *Id.* In other words, echoing his prior demands for time to prepare and collect documents, Petitioner again sought and obtained a continuance *inter alia* to prepare and to obtain supporting documents. Petitioner's next hearing is scheduled for 4/9/2025. Thus, through Petitioner's repeated demands for continuance and time to prepare, his removal status and applications remain pending. *See id.*

During the nearly 13-month detention period, Petitioner has enjoyed Immigration Court detention redetermination hearing and DHS Enforcement and Removal Operations (ERO) detention review.[2] Decl. pp 3-5. In other words, on multiple occasions, Petitioner has been provided due process detention redetermination review by an Immigration Judge and by ERO. *See, e.g.*, 8 U.S.C. §§ 1182(d)(5), 1236; INA § 212(d)(5) (providing that DHS may, in its discretion, parole some aliens into the United States for urgent humanitarian reasons or a significant public benefit). *See* also Decl. pp 4-5 (ERO ICE parole request denied on 7/30/2024, Immigration Judge custody redetermination denied on 8/22/2024, Immigration Judge custody

[2] Specifically, such review (bond and parole) has both occurred and, on occasion, such review has been continued by Petitioner himself, through — as with resolution of his removal status and applications — Petitioner's repeated demands for detention review continuance and for time to prepare. Decl. pp 3-5. In other words, Petitioner has made detention review demand and then, himself, strategically retreated from adjudication by demanding a continuance and time to prepare. *See id.*

redetermination denied on 12/3/2024, ERO ICE parole request denied on 12/17/2024, Immigration Judge custody redetermination denied on 2/7/2025, and ERO ICE parole request denied on 3/18/2025). Through his numerous custody redetermination hearings, as Petitioner himself concedes, he has been afforded due process in resolution of his demand for custody bond redetermination and ERO parole consideration. ECF 1 at 6. Although Petitioner may appeal the denial of bond or parole to the BIA, Petitioner has not sought such appeal or such exhaustion of this administrative remedy. *See id.*

On 1/22/2025, amidst his numerous requests for continuance to delay removal adjudication (and thereby strategically increase his time in civil detention to position himself as a victim of so-called prolonged detention), Petitioner filed the instant underlying § 2241 petition. Petitioner is presently in custody at the Golden States Annex located in McFarland, California.

II. ARGUMENT

In his § 2241 petition ground, Petitioner incorrectly claimed that the U.S. Constitution (Fifth Amendment procedural due process) required additional bond and parole reviews and hearings. *See* ECF 1.

First, in *Demore v. Kim,* 538 U.S. 510 (2003), the Supreme Court rejected a facial challenge to mandatory civil detention pending removal proceedings. Like the petitioner in *Demore,* Petitioner's detention is mandatory (under 8 U.S.C. § 1225(b) because he entered the United States without entry documents). As in *Demore,* both constitutionally and as a matter of law, Petitioner's continued mandatory civil detention is warranted. In *Demore,* the Supreme Court found even prolonged mandatory detention during civil removal proceedings did not violate the U.S. Constitution's due process safeguards. 538 U.S. at 530-31. In recognizing "mandatory" detention pending removal proceedings may be prolonged, the Supreme Court in *Demore* flatly rejected compelled detention hearing within a fixed time.[3] *Id.* In other words, the U.S. Constitution does not require the United States to release a non-citizen during the pendency of removal proceedings when the non-citizen, as in

[3] In *Demore,* while the Supreme Court recognized that mandatory detention — such as under 8 U.S.C. § 1225(b) — normally lasts for a "limited period" of time, the Supreme Court also held that mandatory detention could run for a much longer period while still being constitutional—for instance, where, as in this case, the non-citizen himself took actions to continue and lengthen his removal proceedings. 538 U.S. at 531.

this case, has entered the United States unlawfully, has employed fraud and false pretenses (identity theft) to unlawfully enter, has entered without permission or application, and thereafter demanded asylum or other excuse to remain. 8 U.S.C. § 1225(b).

Here, *a fortiori,* Petitioner's civil proceedings have (despite Petitioner's strategic continuance delays) moved forward without any delay on the part of Respondent. Decl. pp 3-5. In fact, in this case, all underlying delay is due to Petitioner, the non-citizen himself, who has voluntarily sought continuances and delayed proceedings. *See id. See also Navarrete-Leiva v. U.S. Attorney General, et al.,* 2024 WL 5111780 (E.D. Cal. Dec. 13, 2024) (denying § 2241 Petitioner's claim that the U.S. Constitution requires a bond hearing for continued detention during removal proceedings beyond 6-months). *Accord Aguayo v. Martinez,* 2020 WL 2395638, at *3 (D. Colo. May 12, 2020) (detention not unconstitutional where petitioner requested multiple continuances and, thus, "like the detainee in *Demore,* [his] prolonged detention is largely of his own making"); *Crooks v. Lowe,* 2018 WL 6649945, at *2 (M.D. Pa. Dec. 19, 2018) (detention not unconstitutional where "there is no indication in the record that the government has improperly or unreasonably delayed the proceedings").

Further, in *Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018), the Supreme Court rejected the Ninth Circuit's interpretation that 8 USC § 1226(c) — a statute also compelling mandatory detention (as in this case under 8 U.S.C. § 1225(b)) — included "an implicit 6–month time limit on the length of mandatory detention." 138 S. Ct. at 842, 846, 847–48. In doing so, the Supreme Court held that the Ninth Circuit misapplied the constitutional avoidance canon to find a statutory right to "periodic bond hearings every six months in which the Attorney General must prove by clear and convincing evidence that the alien's continued detention is necessary." 138 S. Ct. at 842, 846, 847–48.

Second, Petitioner in fact has been provided repeated detention hearing review from ERO ICE and an Immigration Judge. *See* Decl. pp 3-5. Accordingly, Petitioner's claim (for compelled detention hearing review by an Immigration Judge) is moot. Petitioner has fully achieved his § 2241 demand. Following Fed. Rule of Civ. P. 12(h)(3), dismissal is mandatory because there is nothing for this EDCA court-of-custody to remedy. *Kittel v. Thomas,* 620 F.3d 949, 951 (9th Cir. 2010). *See Ellis v. Tribune Television,* 443 F.3d 71, 80 (2d Cir. 2006). *Accord Allen v. Wright,* 468 U.S. 737, 750 (1984). Also, the jurisdiction of federal courts is limited to "actual, ongoing cases or controversies." *Lewis v. Continental*

Bank Corp., 494 U.S. 472, 477 (1990); *Deakins v. Monaghan,* 484 U.S. 193, 199 (1988). "This case-or controversy requirement subsists through all stages of federal judicial proceedings," which "means that, throughout the litigation, the plaintiff 'must have suffered, or be threatened with, an actual injury traceable to the defendant and likely to be redressed by a favorable judicial decision.'" *Spencer v. Kemna,* 523 U.S. 1, 7 (1998) (quoting *Lewis*, 494 U.S. at 477). Thus, Petitioner's claim that there has been no individualized review of his custody is belied by the record. These bond and parole reviews considered whether Petitioner posed a risk to public safety and whether he was subject to mandatory detention under § 1225(b).

And third, Petitioner misleads this court-of-custody in his demand for invention of a slippery slope of multi-factor balancing under *Mathews v. Edridge,* 424 U.S. 319 (1976)).

On the one hand, multi-factor balancing to analyze Petitioner's § 1225(b) statutorily compelled detention (a period, to date, of about 13-months) — is unsupported by Supreme Court authority. Indeed, the Supreme Court has not adopted a multi-factor balancing test (*e.g., Mathews*) for constitutional challenge to civil detention in removal proceedings. *See Dusenbery v. United States,* 534 U.S. 161, 168 (2002) ("(W]e have never viewed Mathews as announcing an all-embracing test for deciding due process claims."). *Accord Demore,* 538 U.S. at 513; *Jennings,* 138 S. Ct. at 842, 846, 847–48. *See Rodriguez Diaz v. Garland,* 53 F.4th 1189, 1214 (9th Cir. 2022) (stating "the [Supreme] Court has recently backed away from multi-factorial "grand unified theor[ies]" for resolving legal issues"). *See also Hart v. Massanari,* 266 F.3d 1155, 1171 (9th Cir. 2001) ("A decision of the Supreme Court will control that corner of the law unless and until the Supreme Court itself overrules or modifies it. Judges of the inferior courts may voice their criticisms but follow it they must."). Moreover, multi-factor balancing is barred where, as here, Petitioner enjoyed repeated detention (parole and bond) review. *See Navarrete-Leiva,* 2024 WL 5111780 (E.D. Cal. Dec. 13, 2024).

On the other hand, *arguendo,* Petitioner has been detained under § 1225(b) in consideration of his entry into the United States without valid entry documents. Decl. pp 3-5.

Under the first prong of *Mathews* so-called multi-factor balancing, this court-of-custody must give weight to the process Petitioner received during his detention and must give weight to Petitioner's own delaying tactics which prolonged his detention. *Rodriguez Diaz v. Garland,* 53 F.4th 1189, 1206-

07 (9th Cir. 2022). In this case, Petitioner has enjoyed repeated detention review and hearings by ERO ICE and an Immigration Judge. In fact, within the first 6-months of detention, Petitioner had custody redetermination review by an Immigration Judge and parole review by ERO ICE. Decl. pp 3-4. Also, to the extent Petitioner's demand for continuances is not indicative of a strategic plan (a conclusion which defies common sense), the Supreme Court has recognizing that while decisions to prolong one's own detention may be difficult, "the legal system . . . is replete with situations requiring the making of difficult judgments as to which course to follow," and, "even in the criminal context, there is no constitutional prohibition against requiring parties to make such choices." *Demore,* 538 U.S. at 530 n. 14 (quoting *McGautha v. California,* 402 U. S. 183, 213 (1971)); *see also Rodriguez Diaz*, 53 F. 4th at 1207-08.

Further, such delay attributable to Petitioner is weighed in the next so-called balancing prong under *Mathews*. Again, during the nearly 13-month detention period to date, Petitioner has proceeded through numerous immigration court hearings in which he, the non-citizen himself, prolonged his own detention by demanding continuances. By contrast, through Respondent's steadfast actions, all possible hearings and proceedings were timely advanced to limit delay. *Prieto-Romero v. Clark,* 534 F.3d 1053, 1063-65 & n.9 (9th Cir. 2008) (civil detention was not unconstitutionally indefinite when prolonged by Petitioner's challenge to his removal). *Accord DHS v. Thuraissigiam,* 591 U.S. 103, 1197 (2020). *See also Rodriguez Diaz*, 53 F.4th at 1207-1208 (explaining that a Petitioner's choices to remain in custody to challenge removal invoke no constitutional burden on due process rights and operate to diminish claims of prolonged detention under *Mathews*).

Additionally, as to the final prong in *Mathews* so-called balancing, in *Demore,* the Supreme Court recognized government interests justifiably concerned that deportable aliens who are not detained may engage in crime and fail to appear for their removal hearings. The Supreme Court explained that such persons under mandatory detention may be detained for the period necessary for their removal proceedings. 538 U.S. at 513. The Ninth Circuit has similarly recognized safeguarding the community as the legitimate purpose of detention pending removal proceedings. *See Prieto-Romero v. Clark*, 534 F.3d 1053, 1062-65 (9th Cir. 2008). Here, looking to the factual record, Petitioner's undisputed criminal conduct in entering the United States indicated that he is a flight risk and danger to the community. *See*

supra (Petitioner's conduct (use of another's identity) in unlawful entry demonstrated he is skilled in deceitful use of identity information and in subsequent strategic destruction of evidence). Clearly, persons skilled in identity theft, such as Petitioner, pose an elevated risk of flight and danger. Moreover, following *Demore*, the Ninth Circuit went further and set forth that the United States' interests grow stronger — in protecting the public from law breakers — and not weaker as time passes. *Rodriguez Diaz v. Garland,* 53 F.4th 1189, 1208 (9th Cir. 2022). Thus, even if this court was to overreach and was to invent a balance of interests in the immigration context, Petitioner's liberty constraint (detention) has not been extraordinarily long while the United States interests remain strong, including as considered under § 1225(b).

Petitioner falsely claims that his private interests are heightened in part due to the alleged conditions of his confinement. ECF 1. However, the conditions that he deems unsatisfactory do not automatically invalidate or vitiate the "immigration purpose" that is served when a noncitizen is detained under § 1225(b). *See Demore,* 538 U.S. at 527 (stating that mandatory detention (as under § 1225(b)) is constitutional so long as it "serve[s] its purported immigration purpose"); *Lopez v. Garland,* 2022 WL 4586413, at *6 (E.D. Cal. 2022) (ruling that conditions of a noncitizen's immigration detention "are not particularly suited to assisting the Court in determining whether detention has become unreasonable and due process requires a bond hearing").

In any event, even assuming, without conceding, that any single confinement condition was somehow less than fully meeting Petitioner's standard and expectation, "[t]he appropriate remedy for such constitutional violations, if proven, would be a judicially mandated change in conditions and/or an award of damages, but not release from confinement." *Crawford v. Bell,* 599 F.2d 890, 892 (9th Cir. 1979). Such conditions of confinement claims cannot be raised in a habeas petition, and instead must brought, if at all, in a "civil rights action." *Brown v. Blanckensee,* 857 F. App'x 289, 290 (9th Cir. 2021) (claim that prison violated inmate's First Amendment and property rights "lies in a civil rights action . . . rather than a § 2241 petition"); *see also Badea v. Cox,* 931 F.2d 573, 574 (9th Cir. 1991) (holding that a habeas petition was not "the proper method of challenging 'conditions of . . . confinement'").

III. CONCLUSION

Petitioner's mandatory detention continues to serve legitimate congressionally mandated goals with a definite end in sight. Accordingly, it is not punitive, it is not extraordinary, and it does not violate procedural due process.

Dated: March 25, 2025

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ABUBAKAR ABDUL-SAMED, Petitioner, v. U.S. ATTORNEY GENERAL, ET AL., Respondents.	CASE NO. 1:25-CV-00098-SAB CERTIFICATE OF SERVICE BY MAIL

The undersigned hereby certifies that he/she is an employee in the Office of the United States Attorney for the Eastern District of California and is a person of such age and discretion to be competent to serve papers. That on March 28, 2025, a copy of the RESPONDENT'S MOTION TO DISMISS was served by placing said copy in a postpaid envelope addressed to the person(s) hereinafter named, at the place(s) and address(es) stated below, which is/are the last known address(es), and by depositing said envelope and contents in the United States Mail at Sacramento, California. Addressee(s): **Abubakar Abdul-Samed #A-240-170-023 Golden State Annex 611 Frontage Rd., McFarland, CA 93250.**

/s/ *C. Buxbaum*
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