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IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

A.E.,

Petitioner,

v.

U.S. ATTORNEY GENERAL, ET AL.,[1]

Respondents.

CASE NO. 1:25-CV-00107-KES-SKO

MOTION TO DISMISS UNDER 28 U.S.C. § 2254, RULE 4, AND RESPONSE TO 28 U.S.C. § 2241 PETITION

On 1/24/2025, 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. ECF 1 at 7, 19, 26-27 (claiming 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. *Id.* at 26-27.

[1]Respondent moves to strike and to dismiss all unlawfully named officials under § 2241. A petitioner seeking habeas corpus relief must name the officer having custody of him as the respondent to the petition. 28 U.S.C. § 2242; *Rumsfeld v. Padilla,* 542 U.S. 426, 430 (2004). The proper respondent in habeas cases "is the warden of the facility where the prisoner is being held, not the Attorney General or some other remote supervisory official." *Padilla,* 542 U.S. at 435. *See also Doe v. Garland,* 109 F.4th 1188 (9th Cir. 2024) (holding that the warden of the private detention facility at which a non-citizen alien was held was the proper § 2241 respondent). At the time of filing, Petitioner's custodian was the facility administrator at the Golden State Annex located in McFarland, California.

I. BACKGROUND

Petitioner is a non-citizen alien; his country of origin is Russia. *See* Martinez Declaration (Decl.) p 3; *see also* Decl. Exhs. 1-2. On 10/19/2022, Petitioner attempted to enter the United States without an entry document, *e.g.,* without a visa, without an expired visa, and without having applied for admission. *Id.* At that time, DHS ICE personnel detained Petitioner, placed him in "arriving alien" removal proceedings, and thereafter began administratively processing Petitioner for his removal. *Id.* Also, apparently due to resource constraints (including from the number of aliens then unlawfully entering) and prior executive branch policy, Petitioner — although charged as an "arriving alien" subject to removal under INA § 212(a)(7)(A)(i)(I) — was nevertheless paroled into the United States. Decl. p 3; *see also* Decl., Exh. 3. On 9/22/2023, DHS ICE detained Petitioner pending his removal proceedings. To date, Petitioner has been in civil detention pending removal proceedings (for about 18-months). *Accord* ECF 1 at 18.

As a matter of law, Petitioner is subject to mandatory detention. 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). 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".

Via Immigration Judge proceedings, Petitioner, after conceding removability, elected to prolong his detention by making an application for asylum. Recently, on 11/14/2024, an Immigration Judge denied Petitioner's applications for relief from removal and ordered him removed from the United States to Russia. Decl. p 4; *see also* Decl., Exh. 21. On 12/11/2024, Petitioner filed with the Board of Immigration Appeals (BIA) to challenge his removal order. Through Petitioner's request for continuance of briefing his BIA appeal, his BIA appeal remains pending. *See id.*

During the 18-month detention period, Petitioner has enjoyed detention (parole) review and, on multiple occasions, bond review by an Immigration Judge and or DHS's Enforcement and Removal Operations (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* Decl. pp 3-4 (bond review scheduled but terminated at Petitioner's request on 10/19/2023 and again on 12/14/2023). *See also* Decl., Exhs. 13, 17, 19 (bond denied after review on 1/23/2024 and again on 3/19/2024 and again on 3/27/2024). In other words, Petitioner — having requested due process review of his detention — enjoyed Immigration Judge custody redetermination hearings. *Id.* Although Petitioner may appeal the denial of parole and or bond to the BIA, Petitioner has not sought such appeal or such exhaustion of this administrative remedy.

II. ARGUMENT

In his primary § 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 at 18-20.

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.[2] *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 this case, has entered the United States without entry documents and thereafter demanded asylum. 8 U.S.C. § 1225(b). Here, *a fortiori,* Petitioner's civil proceedings have (despite Petitioner's continuance delays) swiftly moved forward; he already has been found subject to removal by the United States and his asylum application has been denied. Decl. p 4; *see also* Exh 21. In fact, in this case, all underlying

[2] 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.

delay is due to Petitioner, the non-citizen himself, who has voluntarily sought continuances and decided to contest removal (prolong detention) through pending BIA appeal of denial of relief from removal. *See* Decl. pp 3-5. *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). 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 an Immigration Judge. *See* Decl. pp 3-5. Thus, 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).

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 18-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. p 3. 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.[3] *Rodriguez Diaz v. Garland,* 53 F.4th 1189, 1206-07 (9th Cir. 2022). In this case, Petitioner has enjoyed repeated detention review hearings by an Immigration Judge, which at times were delayed by Petitioner's own volition. Nevertheless, within the first six-months of detention, Petitioner had bond review by an Immigration Judge. Decl. pp 3-5. As to the next prong, during the 18-month detention period to date, Petitioner has proceeded through numerous immigration court hearings, adjudications, and (BIA) appeals. Some hearings concerned Petitioner's demand for release on bond and other hearings concerned his asylum applications. However, through Respondent's actions, all hearings and proceedings brought by Petitioner (in challenge to detention and removal) were timely

[3] Petitioner's reliance on *Morrissey v. Brewer,* 408 U.S. 471 (1972) is misplaced. *Morrissey* involved revocation of post-release parole for alleged violation of parole conditions, not executive branch review of the original decision to parole a non-citizen alien. Here, by contrast in a case involving a non-citizen alien, under 8 U.S.C. § 1226(b) the DHS has authority to revoke the non-citizen alien's bond or parole "at any time," even if that individual has previously been released. Accordingly, from the onset of parole, Petitioner was aware that his conditional release was subject to review and revocation. Moreover, this court-of-custody has no jurisdiction to review discretionary decisions by the DHS.

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 *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). Following *Demore*, the Ninth Circuit went further and set forth that the United States' interests grow stronger — in protecting the public from repeat 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).

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 18, 2025

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