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IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

SERGIO MEDRANO, Petitioner, v. U.S. ATTORNEY GENERAL BONDI, ET AL.,[1] Respondents.	CASE NO. 1:25-CV-00166-EPG MOTION TO DISMISS UNDER 28 U.S.C. § 2254, RULE 4, AND RESPONSE TO 28 U.S.C. § 2241 PETITION

On 2/10/2025, 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 2, 23-24 (so-called prolonged detention without a detention 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.*

I. BACKGROUND

Petitioner surreptitiously entered the United States, without application, entry documents, or permission. On 3/3/2015, Petitioner was detained by DHS and placed into detained removal proceedings. *See* Muro Declaration (Decl.) pp 3-5. *See also* ECF 1-1 at 70-83. Petitioner's country of

[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).

origin is Mexico. *See* Decl. p 3. *See also* ECF 1-1 at 5-8.

On 4/1/2015, although Petitioner conceded removability before an Immigration Judge, the Immigration Judge nevertheless through detention hearing granted Petitioner a bond. Decl. pp 3-4. On 6/27/2017, after Petitioner committed crimes while on bond,[2] DHS apprehended and detained him again (following his release from state custody). *Id.* *See also* ECF 1-1 at 70-83. For a second time, on 8/1/2017, despite Petitioner's criminal history, an Immigration Judge through detention hearing granted him a bond. Thereafter, Petitioner again continued to commit crimes while on bond. Most recently, on 6/22/2023, DHS detained Petitioner upon his release from state custody.[3] *Id.*

In detained removal proceedings before an Immigration Judge, Petitioner had several court hearings on his application for deferral of removal. *See* Decl. pp 3-4; ECF 1-1 at 70-83. On 1/22/2024, an Immigration Judge denied Petitioner's application and ordered him removed to Mexico. On 4/22/2024, through Petitioner's appeal to the Board of Immigration Appeals (BIA), his removal (denial of application for deferral relief) was affirmed. *Id.*

On 6/3/2024, Petitioner filed a Petition for Review (PFR) at the U.S. Court of Appeals for the Ninth Circuit, *Medrano v. Bondi,* No. 24-3474, along with a motion to stay removal (which upon filing automatically stayed his removal). Decl. pp 3-4. At the Ninth Circuit, Petitioner has sought and

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[2] Petitioner has a lifelong history of entrenched violent gang membership (multiple affiliations with violent gangs, including MS-13 (a transnational criminal organization), Sureños (an interstate criminal organization), and other California based gangs. Petitioner admits that in the United States, in furtherance of his gang memberships, "[h]e assaulted other gang members, committed vandalism, and attempted to kill other gang members." ECF 1-1 at 11-12, 33, 75-77. In the face of removal proceedings, Petitioner now claims he has withdrawn from violent gang activity.

[3] Petitioner is a serial criminal offender. Petitioner has repeatedly menaced communities in the United States. Petitioner has participated in gang violence, and — in contrast to his portrayal of himself in his petition — he has committed violent acts against family members. ECF 1-1 at 11-13, 33, 75-77. *See* ECF 7-1 at 7-21.

Significantly, on 5/17/2019, Petitioner was convicted of assault with a deadly weapon, a felony, pursuant to Cal. Penal Code § 245(A)(1). Decl. p 3. *See* ECF 1-1 at 33, 75-76. For this offense, he was ultimately sentenced to 7-years state prison, with enhancement for gang terrorism under Cal. Penal Code § 186.22(b)(1). *Id.*

Additionally, on 11/7/2013, Petitioner was convicted of possessing alcohol as a minor in public pursuant to section 25662(A) of the Cal. Business and Professions Code. *See* Decl. Exhs. 1–2. On 1/9/2014, Petitioner was convicted of disturbing the peace pursuant to Cal. Penal Code § 415(2). *Id.* On 2/9/2015, Petitioner was convicted of destruction of property, a felony, pursuant to Cal. Penal Code § 594(B)(2). *Id.* On 7/30/2021, Petitioner was convicted of carrying a concealed weapon, a felony in violation of Cal. Penal Code § 21310 and driving under the influence of alcohol, a misdemeanor in violation of Cal. Vehicle Code § 23152(B). *See* Decl. p 3.

obtained several extensions of time, including an unsuccessful motion to stay appellate proceedings altogether. *See id.* During his pending Ninth Circuit appeal, Petitioner, on 11/15/2024, filed a Motion to Reopen with the BIA, which motion, on 2/28/2025, was denied. *See* Decl. p 5.

As a matter of law, Petitioner is subject to mandatory detention.[4] Decl. p 5. Petitioner concedes his detention is mandatory. ECF 1 at 7-8. Specifically, Petitioner is subject to mandatory custody for his conviction pursuant to Cal. Penal Code § 245(A)(1), *i.e.,* a crime of moral turpitude. *See generally* INA Section 236(c), codified at 8 U.S.C. § 1226(c), which *inter alia* governs mandatory detention of non-citizens who are removable because of a qualifying conviction (serious and aggravated criminal offenses). As relevant here, § 1226(c) mandates that the U.S. Attorney General "shall take into custody any alien who" has committed an enumerated crime or act of terrorism "without regard to whether the alien is released on parole, supervised release, or probation...." The Supreme Court has explained that detention of a non-citizen pursuant to § 1226(c) "must continue pending a decision on whether [he] is to be removed from the United States." *Jennings v. Rodriguez,* 138 S.Ct. 830, 846 (2018) (quoting 8 U.S.C. § 1226(a)) (underscore supplied).

Petitioner is presently held, pending removal proceedings, at the Mesa Verde ICE Processing Center located in Bakersfield, California.

II. ARGUMENT

In his § 2241 sole petition ground, Petitioner falsely claimed that the U.S. Constitution (Fifth Amendment procedural due process) required a detention hearing after 6-months elapsed in detained civil removal proceedings and further, that beyond 6-months, continued detention is unconstitutionally prolonged. *See* ECF 1 at 15-18. Specifically, Petitioner falsely stated "[d]etention without a bond hearing is unconstitutional when it exceeds six months" with erroneous attribution to *Demore v. Kim,* 538 U.S. 510 (2003). ECF 1 at 18.

[4] Petitioner has not attempted to obtain detention review during his removal proceedings. In other words, while agency and Immigration Court detention remedies exist, he has not exhausted administrative remedies to obtain detention review or hearing. Specifically, Petitioner has failed to request an Immigration Judge bond review hearing, and he has failed to move for parole review under 8 U.S.C. §§ 1182(d)(5), 1236, INA § 212(d)(5), which provides that DHS may, in its discretion, parole an alien, such as Petitioner, into the United States for urgent humanitarian reasons or a significant public benefit. Against the availability of lawful remedies for continued detention (bond and parole), Petitioner's claim of futility (to exhaust administrative remedies) is absurd. *See* ECF 1 at 7.

In *Demore v. Kim,* 538 U.S. at 510, the Supreme Court rejected a facial challenge to mandatory civil detention pending removal proceedings. 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.[5] *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 committed a qualifying crime. Indeed, in this case, Petitioner was convicted of assault with a deadly weapon and received a gang terrorism enhancement. As in *Demore,* both constitutionally and as a matter of law, Petitioner's continued mandatory civil detention is mandated and warranted.

Here, *a fortiori,* Petitioner's Ninth Circuit and Immigration Court removal proceedings have reasonably moved forward. Decl. pp 3-5. To the extent there has been underlying delay in Immigration Court proceedings, such delay is due to Petitioner, the non-citizen himself, who elected to delay proceedings via application for deferral relief (asylum) and he otherwise sought continuance for briefing and scheduled hearings. *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) (civil detention is 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 is not unconstitutional where "there is no indication in the record that the government has improperly or unreasonably delayed the proceedings").

Further, in *Jennings*, 583 U.S. 281, 297 (2018), the Supreme Court rejected the Ninth Circuit's interpretation that 8 U.S.C. § 1226(c), a statute compelling mandatory detention, included "an implicit

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[5] In *Demore,* while the Supreme Court recognized that mandatory detention — such as under 8 U.S.C. § 1226(c) — 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.

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.

Against this background, this EDCA court-of-custody should follow its own precedent rejecting the demand, as Petitioner herein demands, that civil detention beyond 6-months (under § 1226(c)) in removal proceedings (without a bond hearing) is unconstitutional on its face. *Keo v. Warden-Mesa Verde ICE Processing Center,* 2025 WL 1029392 (E.D. Cal., 2022 Apr. 7, 2025) (stating "the Supreme Court soundly rejected this facial challenge in *Jennings*, 583 U.S. at 304"), citing *Riego v. Scott,* 2025 WL 660535, at *2 (E.D. Cal. Feb. 28, 2025).

Moreover, Petitioner misleads[6] this EDCA 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)), for supposed prolonged detention as-applied under the Fifth Amendment due process clause.

First, multi-factor balancing to analyze Petitioner's § 1226(c) statutorily compelled detention — a period, to date, of about 19-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.*

[6] In his TRO reply brief, Petitioner (as relevant to this brief on the merits) also misleads this court-of-custody by falsely claiming, among other things, that Respondent — in its TRO opposition brief — conceded that Petitioner's detention was prolonged, conceded applicability of so-called *Mathews* multi-factor balancing, and conceded that Respondent shall bear proof burdens at a supposed bond hearing. *See* ECF 8 at 5-6. In fact, Respondent's TRO opposition brief properly was narrowly tailored to address the inadequacy of Petitioner's TRO demand under applicable law and thus did not address the inadequate merits and false premises of Petitioner's underlying petition. Hereby, to the extent this court-of-custody concludes a bond hearing in Immigration Court is compelled, Respondent requests leave of court to file supplemental briefing as to burdens.

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.").

Second, this EDCA court-of-custody again should follow its own precedent rejecting utilization of a multi-factor balancing (*Mathews*) test to assess so-called as-applied due process violation claims. Specifically, in *Keo,* this court-of-custody, as follows, rejected such multi-factor balancing.

> [T]his Court finds the threshold question in considering Petitioner's claims of unreasonably prolonged detention under § 1226(c) without a bond hearing is whether Petitioner's continued detention serves the purported immigration purpose and has a definite termination point, as opposed to any "balancing test" to determine whether procedural due process is due based largely on the length of Petitioner's detention without a bond hearing. *See Perez-Cortez v. Mayorkas*, 2022 WL 1431833, at *3 (D. Nev. May 4, 2022) (denying petition because detention under § 1226(c) "is mandatory, and [petitioner] is not being detained indefinitely," rather, petitioner remains detained because he is still litigating his order of removal); *Banyee,* 115 F.4th at 933-34 ("What is important is that, notwithstanding a delay, deportation remains a possibility.").

Keo, 2025 WL 1029392. In rejecting multi-factor balancing, this court-of-custody followed *Banyee v. Garland,* 115 F. 4th 928, 933 (8th Cir. 2024), quoting *Demore,* 538 U.S. at 527. In *Banyee*, the Eighth Circuit refused to conduct multi-factor balancing under *Mathews* and held that no bond hearing is required because "the government can detain an alien for as long as deportation proceedings are still pending." *Banyee,* 115 F. 4th at 933. Thus, following this court-of-custody's own precedent, this court-of-custody is not permitted, in ruling on a § 2241 petition, to evaluate the proceedings in the Immigration Court. *Keo,* 2025 WL 1029392. Rather, this court-of-custody is permitted to ask only one question: are deportation proceedings ongoing? If the answer is affirmative, as in this case, then petitioner's detention is *per se* constitutional, and the § 2241 petition must be denied. *See id.*

Third, focusing on Petitioner's demand for an order directing a compulsory bond hearing or immediate release based on his length of detention in civil removal proceedings, Petitioner again is wrong. *See generally* ECF 1 at 14-18. The length of detention in civil removal proceedings is not a dispositive factor in assessing merits for compulsory detention hearing or compelled release. *Keo,* 2025 WL 1029392 (following the Eighth Circuit's *Banyee* holding that "nothing suggests that length determines legality"). Indeed, in *Keo,* this court-of-custody found "[t]o the contrary, what matters is that detention pending deportation has a definite termination point — deporting or releasing the alien —

making it materially different from the potentially permanent confinement authorized by other statutes." *Id.* (cleaned up) citing *Banyee,* 115 F.4th at 932, and *Zadvydas v. Davis,* 533 U.S. 678, 697 (2001). Additionally, in *Keo,* 2025 WL 1029392, this court-of-custody expressly followed *Martinez v. Clark,* 2019 WL 5962685, at *1 (W.D. Wash. 2019), which held "[d]ue process doesn't require bond hearings for criminal aliens mandatorily detained under § 1226(c)—even for prolonged periods."

And fourth, as with the petitioner in *Keo,* through a steady progression of Ninth Circuit and Immigration Court proceedings, here Petitioner is properly detained in furtherance of his own goal to challenge his removal. In fact, in this case, Petitioner presently is in briefing and thereafter awaiting a decision on his Ninth Circuit appeal regarding his challenge to an order that requires his removal. By contrast, in this case, there is no evidence his detention during civil removal proceedings is motivated for punitive reasons or that his detention otherwise fails to serve immigration purposes. *See Demore,* 538 U.S. at 533. Against this background, Petitioner's mandatory detention continues to serve legitimate congressionally mandated goals with a definite end in sight. *See infra.*

Moreover, even if this court-of-custody were to apply multi-factor balancing, *arguendo,* Petitioner's claim again is a colossal failure.

Petitioner has been detained under § 1226(c) in consideration of (gang terrorism enhanced) conviction pursuant to Cal. Penal Code § 245(A)(1), *i.e.,* a crime of moral turpitude. Decl. p 5. Under *Mathews* so-called multi-factor balancing, this court-of-custody must give weight to this criminal background, in addition to the process Petitioner received during his detention. 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). Further, this court-of-custody must give weight to Petitioner's own delaying tactics and Immigration Court demands (*e.g.,* application for deferral relief (asylum)) which prolonged his detention. *Rodriguez Diaz v. Garland,* 53 F.4th 1189, 1206-07 (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 § 1226(c).

Petitioner falsely claims that his private interests are heightened in part due to supposed family concerns and alleged conditions of his confinement. *See generally* 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 § 1226(c). *See Demore,* 538 U.S. at 527 (stating that mandatory detention 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 high standards and expectations, "[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, and his detention has a finite end (especially as the matter is before the Ninth Circuit). Accordingly, it is not punitive, it is not extraordinary, and it does not violate procedural due process.

Dated: April 14, 2025

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