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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JAVIER ISAIS CHAVEZ,
Petitioner,

v.

ADMINISTRATOR, MESA VERDE
DETENTION CENTER,

Respondent.

CASE NO. 1:25-CV-00198-HBK

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

On 2/13/2025, Petitioner filed for relief under 28 U.S.C. § 2241. ECF 1. In his single ground, Petitioner — a non-citizen alien — claimed his so-called “prolonged detention” pending removal from the United States violated the U.S. Constitution (Fifth and Eighth Amendments). *Id.* at 2, 8, 13-15, 18-21. 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. BACKGROUND¹

In 2016, Petitioner, whose country of origin is Mexico, was *inter alia* convicted of assault with a deadly weapon, in violation of California Penal Code (CPC) § 245(a)(1), and corporal injury to spouse/cohabitant/former cohabitant/child’s parent, in violation of CPC § 273.5(a). *See* ECF 6-1 at 3, 15-30. Accordingly, as a matter of law, Petitioner was thereafter subject to mandatory detention under 8 U.S.C. § 1226(c). Specifically, mandatory detention is compelled because he has suffered conviction of an aggravated felony as defined in 8 U.S.C. § 1101(a)(43)(F). *Id.*

¹ Respondent provides, filed herewith, updated background information through the 4/22/2025 Declaration of Jessica Harrold. *See also* ECF 6-1 at 80-83 (Harrold Declaration dated 3/20/2025).

On 4/27/2023, Petitioner, after completion of his multiple terms of state imprisonment,² was detained by DHS, and he was placed into removal proceedings. *See* ECF 6-1 at 3. Via Immigration Court proceedings, Petitioner, after conceding removability, elected to prolong his detention by making applications for: (1) adjustment of status, in conjunction with a waiver of inadmissibility under 8 U.S.C. 1182(h); (2) asylum; (3) withholding of removal; and (4) protection under the Convention Against Torture. *See* ECF 6-1 at 2-4, 72-79. On 10/21/2024, an Immigration Judge denied Petitioner's applications for relief and protection from removal and ordered him removed from the United States to his country of origin. *See id.* After Petitioner appealed the Immigration Judge's removal decision to the Board of Immigration Appeals, on 4/17/2025, the BIA affirmed the order of removal and dismissed the appeal. Harrold Decl. p 4. On 4/22/2025, Petitioner filed a petition for review at the Ninth Circuit, along with a motion for a stay of removal, thereby automatically staying his removal. *See Isais Chavez v. Bondi*, CA No. 25-2594; *see also* Ninth Circuit General Order 6.4(c)(1) (explaining that the filing of a stay motion automatically stays removal until further order of the court).

Between 4/27/2023 (onset of civil detention) and 4/17/2025 (resolution of Petitioner's applications for relief and protection from removal), Petitioner himself, the non-citizen alien, delayed his own civil detention (approx. 24-months) via numerous requested and received extensions.

DATE	REASON
05/25/2023	Petitioner's demand for additional time to prepare / continuance
06/27/2023	Petitioner's demand for additional time to prepare / continuance
07/27/2023	Petitioner's demand for additional time to prepare/continuance
08/30/2023	Petitioner's continuance granted for Petitioner's change of counsel
10/12/2023	Petitioner's demand for additional time to prepare / continuance
11/16/2023	Petitioner's demand for additional time to prepare / continuance
12/13/2023	Petitioner's demand for additional time to prepare / continuance
03/07/2024	Petitioner's demand for additional time to prepare / continuance
03/14/2024	Petitioner's demand for additional time to prepare / continuance
04/15/2024	Petitioner's demand for additional time to prepare / continuance
06/24/2024	Petitioner's demand for additional time to prepare / continuance

² In 2018, Petitioner suffered additional felony conviction for assault with force likely to inflict great bodily injury in violation of CPC § 245(a)(4). ECF 6-1 at 3, 15-30. And, in 2023, Petitioner was convicted of felony possession of illicit drugs in a jail facility in violation of CPC § 4573.8. *Id.* at 33-57.

ECF 6-1 at 80-83. Petitioner, after all such strategic delay to compound his claim of so-called prolonged detention, waited (after the final order of removal was entered by the Immigration Judge) the maximum time to file BIA appeal of the final order of removal. Specifically, he filed on 11/19/2024 (as his appeal was due 11/20/2024). *See* ECF 6-1 at 80-83; Harrold Decl. at 4 (additionally stating BIA affirmed the final order of removal on 4/17/2025).

At the outset of his civil detention, Petitioner enjoyed detention review by DHS's Enforcement and Removal Operations (ERO). ECF 6-1 at 4. Also, while Petitioner filed for detention (bond) review on 7/15/24 under *Rodriguez v. Robbins*, 715 F.3d 1127 (9th Cir. 2013), his motion was denied by an Immigration Judge (on 7/18/2024) because he was detained in the EDCA's Golden State Annex (and not in CDCA), and, therefore, was not a member of the *Rodriguez* class. *Id.* Although Petitioner may seek further detention (parole and bond) review, Petitioner has not sought such detention review, appeal, or other exhaustion of this administrative remedy. *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).

Petitioner is presently held, pending removal proceedings (and Ninth Circuit consideration of his petition for review), 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 and Eighth Amendments) compels a detention hearing, bond, and his release. ECF 1 at 2, 8, 18-21.

As to the Fifth Amendment,³ Petitioner falsely claimed that procedural due process required a detention hearing after 6-months elapsed in detained civil removal proceedings and further, that beyond

³ This EDCA court-of-custody must summarily dismiss Petitioner's claim of Eighth Amendment violation. *See* ECF 18-21. Specifically, Petitioner's claim that his detention violates the Eighth Amendment's Excessive Bail Clause is belied by federal caselaw recognizing Immigration Court detention is civil and not criminal. *Lopez v. Garland*, 631 F. Supp. 3d 870, 883 (E.D. Cal. 2022) (rejecting claim that a non-citizen's civil immigration detention violates the Eighth Amendment). *See Carlson v. Landon*, 342 U.S. 524, 545 (1952) (holding that the Excessive Bail Clause does not "accord a right to bail in all cases, but merely [provides] that bail shall not be excessive in those cases where it is proper to grant bail."). *See generally I.N.S. v. Lopez-Mendoza*, 468 U.S. 1032, 1038 (1984) ("Consistent with the civil nature of the proceeding, various protections that apply in the context of a criminal trial do not apply in a deportation hearing."); *Agyeman v. INS*, 296 F.3d 871, 886 (9th Cir. 2002) ("It is well established that deportation proceedings are civil, rather than criminal, in nature.").

1 6-months, continued detention is unconstitutionally prolonged. *See* ECF 1 at 12-14. Specifically,
2 Petitioner falsely stated “[d]etention without a bond hearing is unconstitutional when it exceeds six
3 months” with erroneous attribution to *Demore v. Kim*, 538 U.S. 510 (2003). ECF 1 at 11-12.

4 In *Demore v. Kim*, 538 U.S. at 510, the Supreme Court rejected a facial challenge to mandatory
5 civil detention pending removal proceedings. In *Demore*, the Supreme Court found even prolonged
6 mandatory detention during civil removal proceedings did not violate the U.S. Constitution’s due
7 process safeguards. 538 U.S. at 530-31. In recognizing “mandatory” detention pending removal
8 proceedings may be prolonged, the Supreme Court in *Demore* flatly rejected compelled detention
9 hearing within a fixed time.⁴ *Id.* In other words, the U.S. Constitution does not require the United
10 States to release a non-citizen during the pendency of removal proceedings when the non-citizen, as in
11 this case, has committed a qualifying crime. Indeed, in this case, Petitioner was convicted of assault
12 with a deadly weapon, in violation of CPC § 245(a)(1), and infliction of corporal injury, in violation of
13 CPC § 273.5(a). *See* ECF 6-1 at 3, 15-30. As in *Demore*, both constitutionally and as a matter of law,
14 Petitioner’s continued mandatory civil detention is mandated and warranted.

15 Here, *a fortiori*, Petitioner’s Immigration Court removal proceedings have reasonably moved
16 forward. *See* ECF 6-1 at 2-4, 72-79. To the extent there has been underlying delay in Immigration
17 Court proceedings, such delay is due to Petitioner, the non-citizen himself, who elected to delay
18 proceedings via applications for relief and protection from removal and he otherwise sought continuance
19 for briefing and scheduled hearings. *See supra*. *See also Navarrete-Leiva v. U.S. Attorney General, et*
20 *al.*, 2024 WL 5111780 (E.D. Cal. Dec. 13, 2024) (denying § 2241 Petitioner’s claim that the U.S.
21 Constitution requires a bond hearing for continued detention during removal proceedings beyond 6-
22 months). *Accord Aguayo v. Martinez*, 2020 WL 2395638, at *3 (D. Colo. May 12, 2020) (civil
23 detention is not unconstitutional where petitioner requested multiple continuances and, thus, “like the
24 detainee in *Demore*, [his] prolonged detention is largely of his own making”); *Crooks v. Lowe*, 2018 WL
25

26 ⁴ In *Demore*, while the Supreme Court recognized that mandatory detention — such as under 8
27 U.S.C. § 1226(c) — normally lasts for a “limited period” of time, the Supreme Court also held that
28 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.

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 v. Rodriguez*, 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 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 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 24-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

1 inferior courts may voice their criticisms but follow it they must.”).

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

5 [T]his Court finds the threshold question in considering Petitioner's claims of unreasonably
6 prolonged detention under § 1226(c) without a bond hearing is whether Petitioner's continued
7 detention serves the purported immigration purpose and has a definite termination point, as
8 opposed to any “balancing test” to determine whether procedural due process is due based
9 largely on the length of Petitioner's detention without a bond hearing. *See Perez-Cortez v.*
10 *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.”).

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

20 Third, focusing on Petitioner’s demand for an order directing a compulsory bond hearing or
21 immediate release based on his length of detention in civil removal proceedings, Petitioner again is
22 wrong. *See* ECF 1 at 12-13. The length of detention in civil removal proceedings is not a dispositive
23 factor in assessing merits for compulsory detention hearing or compelled release. *Keo*, 2025 WL
24 1029392 (following the Eighth Circuit’s *Banyee* holding that “nothing suggests that length determines
25 legality”). Indeed, in *Keo*, this court-of-custody found “[t]o the contrary, what matters is that detention
26 pending deportation has a definite termination point — deporting or releasing the alien — making it
27 materially different from the potentially permanent confinement authorized by other statutes.” *Id.*
28 (cleaned up) citing *Banyee*, 115 F.4th at 932, and *Zadvydas v. Davis*, 533 U.S. 678, 697 (2001).

1 Additionally, in *Keo*, 2025 WL 1029392, this court-of-custody expressly followed *Martinez v. Clark*,
2 2019 WL 5962685, at *1 (W.D. Wash. 2019), which held “[d]ue process doesn’t require bond hearings
3 for criminal aliens mandatorily detained under § 1226(c)—even for prolonged periods.”

4 And fourth, as with the petitioner in *Keo*, through a steady progression of Immigration Court and
5 Ninth Circuit proceedings, here Petitioner is properly detained in furtherance of his own goal to
6 challenge his removal. In fact, in this case, Petitioner’s Immigration Court proceedings leading to his
7 removal have been stayed at his request, pending Ninth Circuit review of his challenge to an
8 Immigration Judge order that requires his removal. By contrast, there is no evidence his detention
9 during his civil removal proceedings is motivated for punitive reasons or that his detention otherwise
10 fails to serve immigration purposes. *See Demore*, 538 U.S. at 533. Against this background,
11 Petitioner’s mandatory detention continues to serve legitimate congressionally mandated goals with a
12 definite end in sight. *See infra*.

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

15 Petitioner has been detained under § 1226(c) in consideration of his violent felony crimes. *See*
16 ECF 6-1 at 3, 15-30. Under *Mathews* so-called multi-factor balancing, this court-of-custody must give
17 weight to this criminal background, in addition to the process Petitioner received during his detention.
18 In *Demore*, the Supreme Court recognized government interests justifiably concerned that deportable
19 aliens who are not detained may engage in crime and fail to appear for their removal hearings. The
20 Supreme Court explained that such persons under mandatory detention may be detained for the period
21 necessary for their removal proceedings. 538 U.S. at 513. The Ninth Circuit has similarly recognized
22 safeguarding the community as the legitimate purpose of detention pending removal proceedings. *See*
23 *Prieto-Romero v. Clark*, 534 F.3d 1053, 1062-65 (9th Cir. 2008). Further, this court-of-custody must
24 give weight to Petitioner’s own delaying tactics and Immigration Court demands (*e.g.*, himself
25 prolonging resolution of his applications for relief and protection from removal) which extended his
26 detention. *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206-07 (9th Cir. 2022). Thus, even if this court
27 was to overreach and was to invent a balance of interests in the immigration context, Petitioner’s liberty
28 constraint (detention) has not been extraordinarily long while the United States’ interests remain strong,

1 including as considered under § 1226(c).

2 Petitioner falsely claims that his private interests are heightened in part due to supposed family
3 concerns and alleged conditions of his confinement. *See generally* ECF 1. However, the conditions that
4 he deems unsatisfactory do not automatically invalidate or vitiate the “immigration purpose” that is
5 served when a noncitizen is detained under § 1226(c). *See Demore*, 538 U.S. at 527 (stating that
6 mandatory detention is constitutional so long as it “serve[s] its purported immigration purpose”); *Lopez*
7 *v. Garland*, 2022 WL 4586413, at *6 (E.D. Cal. 2022) (ruling that conditions of a noncitizen’s
8 immigration detention “are not particularly suited to assisting the Court in determining whether
9 detention has become unreasonable and due process requires a bond hearing”).

10 In any event, even assuming, without conceding, that any single confinement condition was
11 somehow less than fully meeting Petitioner’s high standards and expectations, “[t]he appropriate remedy
12 for such constitutional violations, if proven, would be a judicially mandated change in conditions and/or
13 an award of damages, but not release from confinement.” *Crawford v. Bell*, 599 F.2d 890, 892 (9th Cir.
14 1979). Such conditions of confinement claims cannot be raised in a habeas petition, and instead must
15 brought, if at all, in a “civil rights action.” *Brown v. Blanckensee*, 857 F. App’x 289, 290 (9th Cir. 2021)
16 (claim that prison violated inmate’s First Amendment and property rights “lies in a civil rights action . . .
17 rather than a § 2241 petition”); *see also Badea v. Cox*, 931 F.2d 573, 574 (9th Cir. 1991) (holding that a
18 habeas petition was not “the proper method of challenging ‘conditions of . . . confinement’”).

19 **III. CONCLUSION**

20 Petitioner’s mandatory detention continues to serve legitimate congressionally mandated goals,
21 and his detention has a finite end, now looming through Ninth Circuit review. Accordingly, it is not
22 punitive, it is not extraordinary, and it does not violate procedural due process

23
24 Dated: April 24, 2025

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25
26 By: /s/ Michelle Rodriguez
Michelle Rodriguez
27 Assistant United States Attorney
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