IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

AFEEZ OLAIDE ADENIRAN,	:	
	:	
Petitioner,	:	
	:	**Case No. 4:25-CV-93-CDL-AGH**
v.	:	**28 U.S.C. § 2241**
	:	
WARDEN, STEWART DETENTION CENTER,	:	
	:	
	:	
Respondent.	:	

RESPONDENT'S SUPPLEMENTAL BRIEF

On March 14, 2025, Petitioner filed a petition for a writ of habeas corpus ("Petition") asserting that his mandatory pre-final order of removal detention without a bond hearing pursuant to 8 U.S.C. § 1226(c) has become prolonged and violates due process. Pet. ¶¶ 34-40, ECF No. 1. On March 20, 2025, the Court directed the parties "to address the appropriate test that should be used to determine when the length and nature of the detention under 8 U.S.C. § 1226(c) rises to the level of a constitutional violation." Am. Order 1, ECF No. 4.

On April 10, 2025, Respondent filed a Response, arguing that the Supreme Court's decision in *Demore v. Kim*, 538 U.S. 510 (2003), governs Petitioner's claim. Resp. 6-20, ECF No. 8. On May 8, 2025, Petitioner filed a Reply, asserting that the Court should apply either the multi-factor balancing test set forth in *Sopo v. U.S. Attorney General*, 825 F.3d 1199 (11th Cir. 2016), *vacated sub nom.*, 890 F.3d 952 (11th Cir. 2018), or the three-factor balancing test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976). Reply 10-26, ECF No. 13.

On May 29, 2025, the parties appeared for oral argument on the Petition. ECF No. 14. During the hearing, the Court stated that *Demore* does not resolve Petitioner's claim and that the

Court intends to apply a balancing test in evaluating Petitioner's claim. The Court also called into question continued reliance on some of the factors set forth in *Sopo*. The Court directed that by June 27, 2025, the parties may file supplemental briefs addressing the factors the Court should consider and particularizing those factors to the facts of this case. *See* ECF No. 14. Respondent now files this Supplemental Brief in compliance with the Court's instructions.

FACTUAL UPDATE

On April 10, 2025, Petitioner appeared for a master hearing before the immigration judge ("IJ"). 2d Stephens Decl. ¶ 3 & Ex. A. However, the immigration court experienced an internet outage, and the IJ continued the case to May 8, 2025. *Id.* ¶ 3 & Exs. A, B. On May 8, 2025, Petitioner appeared for his rescheduled master hearing, but his counsel requested yet another continuance to file an application for relief from removal. *Id.* ¶ 4. The Department of Homeland Security ("DHS") objected to this request, but the IJ continued the case to June 5, 2025. *Id.* ¶ 4 & Ex. C. On June 5, 2025, Petitioner appeared at the master hearing and filed an application for relief from removal. *Id.* ¶ 5. Petitioner's application for relief is unrelated to any I-130 petition for alien relative. *Id.* The IJ has set a merits hearing on the application for August 27, 2025. 2d Stephens Decl. ¶ 5 & Ex. D.

ARGUMENT

Respondent respectfully contends that pursuant to *Demore*, the Court should find that Petitioner's mandatory detention complies with due process until the conclusion of his removal proceedings for the reasons set forth in the Response and during oral argument. *See* Resp. 6-20. Respondent expressly preserves the argument that the Petition should be denied on this basis alone.

To the extent the Court declines to find that *Demore* governs Petitioner's claim, the Court may look to the balancing test set forth in *Mathews* in assessing whether facially constitutional

detention under section 1226(c) has become unconstitutional as applied to Petitioner. The *Mathews* test has three prongs:

> First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

424 U.S. at 35. Petitioner similarly argues—to the extent *Sopo* does not apply—that the Court should look to *Mathews*. Reply 21-26.

However, in applying *Mathews*, Petitioner discusses his liberty interest and the Government's interest generally. *Id.* at 23-26. Reevaluation of the relevant interests in the static manner Petitioner suggests is appropriate only in the context of a facial due process challenge. But as explained in the Response, the Supreme Court has upheld the facial constitutionality of mandatory detention without a bond hearing under section 1226(c). Resp. 9-11. In doing so, the Court held that the Government's dual interests of ensuring a non-citizen's presence at removal proceedings and preventing further crimes outweigh any liberty interest that would otherwise necessitate a bond hearing. *Demore*, 538 U.S. at 518-29.[1] Accordingly, mandatory detention under section 1226(c) must be presumed constitutional in the as-applied context based on the Supreme Court's holding in *Demore*. Any adverse presumption directly contradicts *Demore*.

To properly balance the relevant interests under the first and third prongs of *Mathews* in assessing whether a bond hearing is necessary, the Court should instead consider three factors relevant to claims of prolonged detention: (1) the length of detention relative to the stage of removal proceedings, (2) the party responsible for any delay of removal proceedings, and (3)

[1] Indeed, the Supreme Court reversed the lower court's conclusion that the Government "had not provided a justification for no-bail civil detention sufficient to overcome a lawful permanent resident alien's liberty interest." *Demore*, 538 U.S. at 515 (internal quotations and citation omitted).

whether the IJ has issued a removal order or order granting relief.[2] Application of those factors to this case shows that Petitioner's mandatory detention under section 1226(c) complies with due process.

I. Length of Detention Relative to Stage of Removal Proceedings

The Court may first assess the length of a non-citizen's detention pursuant to section 1226(c). Indeed, the Eleventh Circuit previously considered this factor as part of its test in *Sopo*. 825 F.3d at 1217. However, in doing so, the Court should properly contextualize the evaluation of the length of detention by considering the underlying framework of removal proceedings. Removal proceedings are divided into three distinct stages: (1) a determination of removability based on the specific charges, (2) filing and resolution of applications for relief from removal, and (3) appeals to the Board of Immigration Appeals ("BIA") and circuit court of appeals. The Government and non-citizen's interests may differ depending on the length of detention during each stage.

The first stage of removal proceedings commences when DHS serves and files a Notice to Appear ("NTA") charging the non-citizen with grounds of removability—specifically, either charges of inadmissibility pursuant to 8 U.S.C. § 1182(a) or charges of deportability pursuant to 8 U.S.C. § 1227(a). 8 U.S.C. § 1229a(3); 8 C.F.R. § 1003.15. DHS retains the burden to prove many charges of removability that trigger mandatory detention under section 1226(c). 8 C.F.R. § 1240.8(a). To resolve the charges of removability, the IJ holds a hearing where the non-citizen may either admit or deny the charges and underlying facts. 8 C.F.R. §§ 1003.25(b), 1240.10(c). If the non-citizen contests the charges, the IJ may hold an evidentiary hearing and briefing to determine whether to sustain or deny the charges. 8 C.F.R. § 1240.10(d).

[2] The second *Mathews* prong is static. There is no dispute that section 1226(c) prohibits bond hearings for criminal non-citizens like Petitioner, and the only relevant question here is whether the balancing of the relevant interests shows that Petitioner is entitled to one specific additional procedure: a bond hearing.

A finding at the conclusion of this first stage of removal proceedings that a non-citizen is removable on a ground listed in section 1226(c) is significant. Congress mandated detention of "a subset of deportable criminal aliens *pending a determination of their removability*," *Demore*, 538 U.S. at 521 (emphasis added), specifically based on its concerns of flight and further commission of crimes, *id.* at 518-21. An IJ's finding that DHS has established a non-citizen falls within this subset shows that continued detention likely satisfies these purposes of the statute. Indeed, the Supreme Court specifically noted that the non-citizen in *Demore* had conceded his removability in upholding his continued detention. *Id.* at 511, 531. To account for this significance, the Court should consider what portion of detention was spent in the first stage of proceedings and the ultimate outcome of that stage.

During the second stage of removal proceedings, the non-citizen may apply for relief from removal. 8 C.F.R. § 1240.11. Potential applications for relief from removal include applications for adjustment of status, waiver of inadmissibility, asylum, withholding of removal, and relief under the Convention Against Torture. *See id.* The non-citizen has "the burden of establishing that he or she is eligible for any requested benefit or privilege and that it should be granted in the exercise of discretion." 8 C.F.R. § 1240.8(d). Importantly, once an IJ has determined that a non-citizen is removable, only the non-citizen controls when the applications for relief are filed and what grounds are raised. For instance, in *Demore*, the Supreme Court found it significant that the non-citizen's removal proceedings had been prolonged based in part on his pursuit of an application for relief from removal at the second stage. 538 U.S. at 531 n.15.

At the third stage of removal proceedings, a non-citizen and DHS have 30 days to appeal the IJ's rulings on removability or an application for relief from removal to the BIA. 8 C.F.R. §§ 1003.38(a), (b), 1240.15. If the parties waive appeal or the time to appeal expires, the removal

order becomes final. 8 C.F.R. §§ 1003.39, 1241.1(b), (c). If either party appeals, the removal order becomes final when the BIA dismisses the appeal. 8 C.F.R. § 1241.1(a). Lengthening of removal proceedings at this third stage is somewhat inevitable for the simple reason that appeals take additional time. *See Demore*, 538 U.S. at 530 n.14 ("[T]he 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." (internal quotations, alterations and citations omitted)).

Applying this analysis here, the IJ concluded the first stage of Petitioner's removal proceedings by sustaining the charges of removability on March 14, 2023—just three months after Petitioner entered custody on December 13, 2022—after briefing and a hearing on the matter. Stephens Decl. ¶¶ 7, 11. This timing tracks with the 90-day estimation the Supreme Court considered in upholding mandatory detention in *Demore*. 538 U.S. at 529. But the second stage of proceedings commenced on that date because Petitioner claimed he intended to file an application for relief from removal. Stephens Decl. ¶ 11. Petitioner, however, failed to file an application for relief from removal until June 5, 2025—over two years later. 2d Stephens Decl. ¶ 5.

II. Party Responsible for Any Delay of Proceedings

The Court may also consider whether DHS or the non-citizen is responsible for delays in the removal proceedings. If a non-citizen is responsible for delays in proceedings through repeated requests for continuances, the non-citizen should not be able to use resulting prolongation of proceedings to manufacture a due process violation and secure a bond hearing prohibited by section 1226(c). This is especially relevant at the second stage of removal proceedings where the non-citizen largely controls the timing of any applications for relief once the IJ has determined removability. *Keo v. Warden, Mesa Verde ICE Processing Ctr.*, No. 1:24-cv-919, 2025 WL

1029392, at *8 (E.D. Cal. Apr. 27, 2025) ("While Petitioner certainly has the right to pursue all available avenues to combat his removal, post-*Jennings*, he does not have the right to parlay the resulting delay into a bond hearing." (internal quotations, alterations, and citation omitted)). The Eleventh Circuit acknowledged as much in setting forth the second *Sopo* factor. 825 F.3d at 1216 ("[A] criminal alien could deliberately cause months of delays in the removal proceedings to obtain a bond hearing . . . ."); *see also id.* at 1218 ("Courts should consider whether the . . . the criminal alien [has] failed to participate actively in the removal proceedings or sought continuances and filing extensions that delayed the case's progress.").

As to the second factor, Petitioner is entirely responsible for the delay of the second stage of his removal proceedings, and this factor therefore weighs in Respondent's favor. To date, Petitioner has requested 14 continuances of his removal proceedings since the IJ sustained the charges of removability on March 14, 2023, and the IJ has continued two other hearings due to Petitioner's counsel's failure to appear. *See* Stephens Decl. ¶¶ 11-17, 19-22, 27-28, 30-31, ECF No. 8-1; 2d Stephens Decl. ¶ 4. Further, Petitioner requested 5 of these continuances after the IJ denied his motion to administratively close removal proceedings on October 25, 2024—over eight months ago—based on a finding that Petitioner would not be entitled to relief even if Petitioner's I-130 was approved. Stephens Decl. ¶¶ 26-28, 30-31; Stephens Decl. Ex. W, ECF No. 8-24; 2d Stephens Decl. ¶ 4. DHS has requested no continuances of Petitioner's removal proceedings and has objected to at least four of Petitioner's requests for continuances. Stephens Decl. ¶¶ 20, 22, 31; 2d Stephens Decl. ¶ 4.

The sheer degree of Petitioner's delay should outweigh the other factors. Petitioner has been removable since March 14, 2023. Yet, Petitioner filed no application for relief from removal until June 5, 2025. 2d Stephens Decl. ¶ 5. His repeated continuances, failure to file an application

for relief, and his counsel's failure to appear are the sole reasons for that 27-month delay. But for Petitioner's delays, his mandatory detention pursuant to section 1226(c) likely would have ended months—if not years—ago. Under these facts, a finding that Petitioner's detention violates due process effectively invites other section 1226(c) to indefinitely delay proceedings to—either intentionally or otherwise—secure a bond hearing by filing a Petition identical to the one here. To avoid countenancing such tactics, the Court should find that this factor favors Respondent and far outweighs any other relevant factors.

III. Whether the IJ has issued a removal order or an order granting relief

Finally, the Court may consider whether the IJ has issued a removal order or an order granting a non-citizen relief from removal to assess the likely outcome of proceedings. As to this factor, the Court should not review or prejudge charges or claims raised in removal proceedings. Doing so circumvents statutory prohibitions on judicially reviewing factual and legal determinations made in removal proceedings. *See* 8 U.S.C. § 1252(a)(5), (b)(9), (g). Rather, the Court should look to objective indicators of potential success or lack thereof: whether DHS or the non-citizen has prevailed at any stage of the removal proceedings before the IJ.

Applying this third factor here, the IJ has found that Petitioner is removable and has not granted Petitioner any form of relief from removal. DHS prevailed during the first stage of removal proceedings when the IJ sustained the charges of removability on March 14, 2023—over two years ago. Stephens Decl. ¶ 11. Since that time, Petitioner has purported to seek two forms of relief from removal.

First, beginning on March 14, 2023, Petitioner requested nine continuances of his removal proceedings for the stated purpose of allowing USCIS to adjudicate his I-130. Stephens Decl. ¶¶ 11-13, 15-17, 19-20, 22. Ultimately, he moved to administratively close removal proceedings for

the same reason, arguing that if the I-130 was approved, he would seek waiver of his grounds of inadmissibility and adjustment of status. *Id.* ¶ 24; Stephens Decl. Ex. T, ECF No. 8-21. But on October 25, 2024, the IJ ultimately denied Petitioner's motion, finding that even if USCIS approved the I-130, he was ineligible for waiver or adjustment of status based on the charges of removability that were sustained on March 14, 2023. Stephens Decl. ¶ 26; Stephens Decl. Ex. W. This conclusion is evident from the relevant statutes. A non-citizen may adjust status only if he is "admissible." 8 U.S.C. § 1255(a). But here, the IJ found that Petitioner was removable, *inter alia*, based on his commission of an aggravated felony within the meaning of 8 U.S.C. § 1227(a)(2)(A)(iii). Stephens Decl. ¶ 8; Stephens Decl. Ex. D, ECF No. 8-5. Petitioner is not entitled to waiver of this ground of inadmissibility even if his I-130 were approved. 8 U.S.C. § 1182(h) ("No waiver [of inadmissibility] shall be granted under this subsection in the case of an alien who . . . has been convicted of an aggravated felony . . . .").

Further, as more thoroughly explained below, since November 6, 2024, Petitioner has represented that he would pursue a different form of relief from removal. *See* Stephens Decl. ¶ 27. He just recently filed that application, and the form of relief he seeks is unrelated to the I-130. 2d Stephens Decl. ¶ 5. Thus, Petitioner's first attempt to seek relief was futile from the outset, and Petitioner has not pursued it in removal proceedings for nearly eight months.

Second, beginning on November 6, 2024, Petitioner began asserting that he would instead pursue a different form of relief from removal. Stephens Decl. ¶ 27. But Petitioner then requested 5 continuances of his proceedings for the stated purpose of filing that application and failed to file it until June 5, 2025—over two years after the second stage of removal proceedings commenced and nearly eight months after Petitioner claimed he would file the application. Stephens Decl. ¶¶ 27-28, 30-31; 2d Stephens Decl. ¶¶ 4-5. The IJ has set a hearing on the application for August 27,

2025. Given this recent filing, the IJ has not issued an order granting Petitioner relief from removal, and nothing in the record of proceedings otherwise indicates that Petitioner is likely to succeed on his application.

Considering these factors as a whole, the Court should find that Petitioner's delay tactics and the lack of any indicia of likely success in the removal proceedings far outweigh any perceived prolongation of his removal proceedings. DHS expeditiously established that Petitioner was removable just three months after he entered custody. Petitioner's litigation strategies were futile and unnecessarily extended the proceedings. But for those decisions, Petitioner likely would no longer be subject to mandatory detention pursuant to section 1226(c). For these reasons, Petitioner fails to establish an as-applied due process violation, and the Court should deny the Petition.

CONCLUSION

For the reasons stated herein and in the Response to the Petition (ECF No. 8), Respondent respectfully requests that the Court deny the Petition.

Respectfully submitted, this 27th day of June, 2025.

WILLIAM R. KEYES
UNITED STATES ATTORNEY

BY: *s/ Roger C. Grantham, Jr.*
ROGER C. GRANTHAM, JR.
Assistant United States Attorney
Georgia Bar No. 860338
United States Attorney's Office
Middle District of Georgia
P. O. Box 2568
Columbus, Georgia 31902
Phone: (706) 649-7728
roger.grantham@usdoj.gov