MICHELE BECKWITH
Acting United States Attorney
Michelle Rodriguez
Assistant United States Attorney
501 I Street, Suite 10-100
Sacramento, CA 95814

IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JOHN DOE,[1] Petitioner, v. U.S. ATTORNEY GENERAL BONDI, ET AL.,[2] Respondents.	CASE NO. 1:25-CV-00333-JLT-HBK MOTION TO DISMISS UNDER 28 U.S.C. § 2254, RULE 4, AND RESPONSE TO 28 U.S.C. § 2241 PETITION

On 3/19/2025, 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's country of origin is Belize. *See* Zizumbo Declaration (Decl.) p 2. On 7/1/2024, Petitioner, in violation of federal law, entered the United States without permission, application, or valid

[1] Respondent renews its objection to use of a pseudonym to hide proceedings from the public in violation of federal law. *See* Fed. R. Civ. P. 10(a). *See also Does I thru XXIII v. Advanced Textile Corp.*, 214 F.3d 1058, 1067 (9th Cir. 2000). *Accord Sealed Plaintiff v. Sealed Defendant*, 537 F.3d 185, 188–89 (2d Cir. 2008).

[2] Respondent also renews its motion 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).

entry documents. *See* Decl. p 3. *See generally* 8 U.S.C. § 1225(b); INA §§ 235(b), 212(a)(7)(A)(i)(I) (alien without valid entry documents). Petitioner's conduct in entry to the United States was further unlawful because Petitioner attempted to gain entry without inspection, *i.e.*, sneaking into the United States through avoidance of all ports of entry. *See id. See also* INA § 212(a)(6)(A)(i) (alien entry without inspection).

On 7/1/2024, when DHS encountered Petitioner (between U.S. ports of entry), Petitioner claimed he had no travel or identification documents. *See* Decl. Exh.1. After DHS took Petitioner into custody for expedited removal proceedings under § 1225(b)(1)(B)(ii), DHS determined there was a Red Notice from his country of origin. Since his border detention for expedited removal proceedings, Petitioner has admitted he was fleeing his crimes in his country of origin. *See* ECF 1 at 8. In Immigration Court proceedings, Petitioner has 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 about 9-months). *See* Decl. pp 3-4. *Accord* ECF 1 at 2, 6-8.

As a matter of law, Petitioner is subject to mandatory detention. Decl. pp 3-4. Specifically, Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(1)(B)(ii); 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").

Since 7/1/2024 (onset of civil detention), Petitioner himself, the non-citizen alien, prolonged his own civil detention via numerous requested and received extensions.

DATE	REASON
08/26/2024	Petitioner's demand for additional time and continuance
10/16/2024	Petitioner's demand for additional time and continuance
12/11/2024	Petitioner's demand for additional time and continuance
01/22/2025	Petitioner's demand for additional time and continuance

Decl. pp 3-4. At his most recent Immigration Court appearance, on 2/26/2025, the Immigration Judge set the matter for a merit hearing on his application for relief from removal. Thus, through Petitioner's repeated demands for continuance and time to prepare, his removal status and application remain pending. *See id.*

Within 6-months of his detention, Petitioner enjoyed DHS Enforcement and Removal Operations (ERO) detention review. Decl. pp 3-4. In other words, Petitioner has been provided due process detention redetermination (parole) review by the applicable administrative agency. *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 id.* (ERO ICE parole request denied on 12/19/2024). Petitioner has not sought appeal of this administrative remedy. *See id.*

Petitioner is presently held, pending removal proceedings, at the Golden State Annex ICE Processing Facility located in McFarland, California. Decl. p 4.

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 14-15, 17-18. Specifically, Petitioner falsely stated "Petitioner's Detention Beyond Six Months Without a Hearing Offends Due Process", with erroneous Supreme Court attribution to *Jennings v. Rodriguez,* 583 U.S. 281, 312 (2018), as if the Supreme Court in *Jennings* "left open the question of whether the Fifth Amendment countenances immigration detention that lasts more than six months without a bond hearing." ECF 1 at 14.

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.[3] In recognizing "mandatory" detention pending removal proceedings may be prolonged, the Supreme Court in *Demore* flatly rejected compelled detention hearing within a fixed time. *Id.* In other words, the U.S. Constitution does not require the United States

[3] In *Demore,* while the Supreme Court recognized that mandatory detention — such as here 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.

to release a non-citizen during the pendency of removal proceedings when the non-citizen, as in this case, has committed a qualifying offense in entering the United States unlawfully. As in *Demore*, both constitutionally and as a matter of law, Petitioner's continued mandatory civil detention is warranted.

Here, *a fortiori*, Petitioner's Immigration Court removal proceedings have moved forward. Decl. pp 3-4. To the extent there has been underlying delay in Immigration Court proceedings, such delay is due entirely to Petitioner, the non-citizen himself, who elected to delay proceedings via application for relief from removal 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. at 297, the Supreme Court rejected the Ninth Circuit's interpretation that 8 U.S.C. § 1226(c), a statute like § 1225(b) 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 § 1225(b)) 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 § 1225(b) statutorily compelled detention — a period, to date, of about 9-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.").

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 18, 25-26. 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,* here Petitioner is properly detained in furtherance of his own goal to seek relief from 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 failure.

Petitioner has been detained under § 1225(b) in consideration of his unlawful surreptitious entry into the United States. Decl. pp 3-4. Under *Mathews* so-called multi-factor balancing, this court-of-custody must give weight to this criminal conduct. 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 relief from removal) 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 § 1225(b).

Petitioner falsely claims that his private interests are heightened in part due to supposed family concerns (which family Petitioner abandoned in his country of origin) 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 § 1225(b). *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. Accordingly, it is not punitive, it is not extraordinary, and it does not violate procedural due process.

Dated: April 16, 2025

MICHELE BECKWITH
Acting United States Attorney

By: */s/ Michelle Rodriguez*
Michelle Rodriguez
Assistant United States Attorney