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IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JOHN DOE,

Petitioner,

v.

U.S. ATTORNEY GENERAL BONDI, ET AL.,

Respondents.

CASE NO. 1:25-CV-00333-JLT-HBK

SUPPLEMENTAL BRIEF UNDER ECF 16 IN SUPPORT OF OPPOSITION TO PETITION UNDER 28 U.S.C. § 2241

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 under 8 U.S.C. § 1225(b)(1)(B)(ii) pending removal from the United States violated the U.S. Constitution's Fifth Amendment. *Id.* at 2, 23-24. After initial briefing, via ECF 16, this EDCA court-of-custody ordered the parties to address "extend[ing]" constitutional due process rights "beyond" the legislative scheme for Petitioner, an applicant for admission to the United States, under § 1225(b)(1). *Id.* at 3.

DISCUSSION

First, as a threshold matter, Petitioner does not dispute, and nor does he challenge, that his detention pending resolution of his own claim for removal relief is fully authorized under the legislative scheme set forth in § 1225(b)(1), to wit: in removal proceedings pending a final determination of credible fear of persecution in his country of origin. *See generally* ECF 1; ECF 17.

Second, Petitioner's continued detention under the existing legislative due process safeguards provided by § 1226(b)(1) pending removal proceedings is *per se* lawful and foreseeably authorized. *See Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1195 (9th Cir. 2022) (the Ninth Circuit recognizing prohibition on judicial overreach (in extension "beyond" existing constitutional due process rights) and recognizing, as the Supreme Court found in *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018), that a court-of-custody must apply the restrictive canon of constitutional avoidance to immigration detention provisions, such as in § 1225(b), regarding, as in this case, claims of supposed unreasonably prolonged detention). Indeed, Petitioner concedes that the Supreme Court has long upheld the immigration legislative scheme (statutory foundation) under the U.S. Constitution, which legislation authorizes the executive branch plenary authority to decide which non-citizens to admit and authorizes concomitant power to set the procedures to be followed in determining whether the non-citizen should be admitted. *See* ECF 17 at 2, 3-4 citing *Nishimura Ekiu v. United States*, 142 U.S. 651, 659 (1892) and *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950).

Third, in *Rodriguez Diaz*, the Ninth Circuit further recognized that the Supreme Court in *Jennings* held the Ninth Circuit, and its lower court, previously "misapplied the canon of constitutional avoidance" because it's "interpretations of §§ 1225(b), 1226(a), and 1226(c) were not plausible, as the requirements of periodic bond hearings that [it] imposed lacked 'any arguable statutory foundation.'" 53 F.4th at 1199. Significantly, *Jennings* not only specifically reversed the Ninth Circuit judicially extending due process rights "beyond" the legislative scheme for § 1226(a), an immigration statute authorizing detention pending removal proceedings, as to §1225(b)(1), *Jennings* also bars judicial extension of due process rights beyond the legislative scheme. Thus, as regards the court-of-custody's ECF 16 inquiry, "nothing" in § 1225(b)'s text "remotely supports" that this court-of-custody "extend" due process rights "beyond" the § 1225(b) legislative scheme. *Jennings*, 583 U.S. at 287–88 (reversing *Rodriguez v. Robbins*, 804 F.3d 1060, 1065 (9th Cir. 2015) (*Rodriguez III*), wherein the Ninth Circuit and its lower court violated the cannon of constitutional avoidance in judicially extending due process rights beyond the § 1225(b)(1) legislative scheme).

Fourth, Petitioner further recognizes, ECF 17 at 3, that this court-of-custody is limited in extending due process rights for detention under § 1225(b) beyond the legislative text because "[t]he

Supreme Court has held that a non-citizen seeking admission 'has only those rights regarding admission that Congress has provided by statute.'" *Id.* (emphasis supplied) (citing *Department of Homeland Security v. Thuraissigiam,* 140 S. Ct. 1959, 1983 (2020)). As set forth, Respondents agree that the legislative text underlying § 1225(b) is fully sufficient to address due process concerns for prolonged detention. *See e.g.* 8 U.S.C. § 1182(d)(5)(A); 8 C.F.R §§ 212.5(b), 235.3 (2017).

Fifth, against this background, following 8 U.S.C. § 1252(a)(2)(A)(i), this court-of-custody has no jurisdiction to judicially legislate or invent extended due process rights "beyond" § 1225(b) under § 2241 at least because Petitioner's civil detention is non-punitive. His detention arises only from, and is related only to, his own request for executive branch determination of whether he is eligible for asylum relief from removal. *See* 8 U.S.C. §§ 1252(a) and (e). In fact, except as to 'characterization' of processing time (through the constitutional legislative scheme) as unreasonably prolonged for his own immigration relief claim, which -- as the Supreme Court has well-recognized -- is appropriate executive branch deliberative and judicial delay, Petitioner cites no fact that his detention is punitive. The civil detention here is only for executive branch processing and consideration of Petitioner's own immigration relief claim (through the legislative scheme that the Supreme Court has upheld as constitutional), and resolution proceedings have properly advanced despite Petitioner's own repeated demands for continuances in proceedings. *See* ECF 10; ECF 10-1. It would be error for this court-of-custody to extend due process rights under § 1225(b)(1) due to Petitioner's false characterizations and manipulation of due process in the legislative scheme to create a strategic basis to complain about due process.

As set forth in *Montelier-Chaviano v. Bondi*, slip op., 2025 WL 1744349 (June 23, 2025), § 1252(a)(2)(A)(i) provides that, "[n]otwithstanding any other provision of law (statutory or non-statutory), including section 2241 of Title 28, or any other habeas corpus provision...no court shall have jurisdiction to review...any individual determination or to entertain any other cause or claim arising from or relating to the implementation or operation of an order of removal pursuant to section 1225(b)(1) of this title[.]" 8 U.S.C. § 1252(a)(2)(A)(i). Clearly, as in *Montelier-Chaviano,* here the detention determination – under this existing statutory foundation -- during Petitioner's removal proceedings arises from and relates to "the implementation or operation of an order of removal." *Id.*

> As discussed herein and on the record at the hearing before this Court, Petitioner does not deny that he is presently here illegally and that he has been afforded hearings before the Immigration Court as well as at least two credible fear interviews thus far. Petitioner has not provided any authority that demonstrates that his detention for the last month, approximately, pursuant to Section 1225(b)(1)(B)(iii)(IV), violates due process. To the contrary, there is ample authority for the principle that detention, even for far longer periods, pending immigration proceedings does not violate due process rights. *See, e.g., O.D. v. Warden, Stewart Det. Ctr.*, No. 4:20-CV-222-CDL-MSH, 2021 WL 5413968, at *5 (M.D. Ga. Jan. 14, 2021), *report and recommendation adopted*, 2021 WL 5413966 (M.D. Ga. Apr. 1, 2021) (denying due process challenge to nineteen months in immigration custody, nothing, "a significant factor weighing against a finding that Petitioner's detention has become unreasonably prolonged is the fact that he has been provided with a bond hearing, a custody re-determination, and BIA *de novo* review of the [Immigration Judge]'s custody decision"); *Sigal v. Searls*, No. 1:18-CV-00389, 2018 WL 5831326, at *5, 9 (W.D.N.Y. Nov. 7, 2018) (denying habeas relief to petitioner detained for seventeen months after "tak[ing] into account all of the factual circumstances"); *see also Hylton v. Shanahan*, No. 15-CV-1243-LTS, 2015 WL 3604328, at *6 (S.D.N.Y. June 9, 2015) (detention without bail for roughly two years did not violate due process); *Luna-Aponte v. Holder*, 743 F. Supp. 2d 189, 197 (W.D.N.Y. 2010) (three years).
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> As Respondents point out, Petitioner has not submitted evidence that he has been detained for any other purpose than resolution of his removal proceedings. *See* Resp. at 17– 18.
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> Taking into consideration all of the circumstances presented here, this Court finds Petitioner has not shown a basis for finding that his due process rights have been violated as the result of his detention.

Montelier-Chaviano, 2025 WL 1744349. *See also Demore v. Kim*, 538 U.S. 510 (2003) (the Supreme Court rejecting any *per se* time-limit challenge to mandatory civil detention pending removal proceedings).

Sixth, as Petitioner further concedes, ECF 17 at 10-11, under § 1225(b)(1), an applicant for removal relief (asylum), such as Petitioner, has due process protections built into the legislative (statutory) scheme to provide detention review (parole) upon showing qualification.[1] In fact, applicants for admission may be temporarily released on parole "for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A); 8 C.F.R §§ 212.5(b), 235.3 (2017).

While Petitioner complains that executive branch parole decisions under § 1182 are not made under constitutional criminal matter due process standards, *e.g.*, adversarial proceedings before a jurist, the *existing* legislative scheme, *i.e.*, statutory foundation, is what the legislative branch empowered the

[1] Petitioner, in fact, has been provided detention (parole) hearing review from ERO ICE. *See* ECF 10-1 (Decl. pp 3-4). Petitioner's further claim for compelled adversarial detention hearing review is unwarranted by law and the statutory foundation; Indeed, it would only be possible via judicial creation of a due process right in violation of the canon of constitutional avoidance. *See Jennings v. Rodriguez*, 138 S. Ct. 830.

executive branch to implement. *See Jennings*, 138 S. Ct. 830 (whereby the Supreme Court reversed numerous Ninth Circuit decisions for judicial overreach in creating supposed constitutional standards despite the existing legislative branch's statutory scheme). As previously set forth, in *Jennings*, the Supreme Court held that the Ninth Circuit (in *Rodriguez III*) misapplied the canon of constitutional avoidance because its interpretations *inter alia*, of § 1225(b), lacked statutory foundation. *Id.* at 842–44. In this light, as regards the inquiry via ECF 16, the legislature already entered the field of due process relief for a § 1225(b) applicant. *See e.g.* 8 U.S.C. § 1182(d)(5)(A). Plainly, the legislature determined it shall not provide civil-detained immigration relief applicants, such as Petitioner under § 1225(b)(1), criminal-detained, or variant, due process rights. Via ECF 17, Petitioner thus erroneously demands this court-of-custody create -- by extension beyond the "statutory foundation" -- additional due process rights for §1225(b) applicants. *See Jennings*, 583 U.S. at 287–88.

And finally, Respondents submit this court-of-custody should not judicially legislate supposed § 1225(b)(1) constitutional safeguards by simply applying Bail Reform Act or Speedy Trial Act criminal matter standards. *Jennings*, 583 U.S. at 287–88.

For example, reliance on *United States v. Salerno*, 481 U.S. 739, 755 (1987), and criminal cases analyzing substantive due process under the Bail Reform Act, is literally unworkable. The Supreme Court's decision in *Salerno* is distinct from the immigration court context. The Supreme Court in *Salerno* focused on whether criminal pretrial detention may at length become government punishment. However, as the Supreme Court recognized in *Salerno* "the mere fact that a person is detained does not inexorably lead to the conclusion that the government has imposed punishment." *Salerno*, 481 U.S. at 746 (citing *Bell v. Wolfish*, 441 U.S. 520, 537 (1979)). Also, *Salerno* involved pretrial detention under the Bail Reform Act in a criminal matter proceeding in federal district court and, by contrast, such a criminal matter and decision has no application to civil detention in executive branch immigration court removal proceedings (which stem from an applicant's status as a non-citizen and his own demands for admission). *See Mathews v. Diaz*, 426 U.S. 67, 80 (1976) (recognizing it is well established that detention is a constitutionally valid aspect of the deportation process and that in the exercise of its broad power over naturalization and immigration, Congress regularly makes rules that would be unacceptable if applied to citizens). *See also Fiallo v. Bell*, 430 U.S. 787, 792 (1977). If the U.S. legislative branch

desired Bail Reform Act application in immigration matters, then the existing legislative scheme could easily have incorporated such due process safeguards.

By converse view, the consequential factors (including for assessment of risk of dangerousness and flight) are also different between civil detention and criminal pre-trial detention (bond) hearings. In this regard, release considerations (and thus the detention legislative schemes) are purposely and appropriately distinct. For example, by contrast to the typical case of a U.S. citizen defendant being assessed for pre-trial release with a pending criminal matter, an Immigration Court weighing detention or release in the immigration context faces numerous critical and significant unknowns, at least, including because the non-citizen before the Immigration Court presents incomplete, non-verifiable, or false background (with supposed country of origin) and data. Indeed, even if background and other data exists (such as a red notice), country of origin information is often incomplete and sometimes protected for the country of origin's interest in use (judicial proceedings). Also, DHS, and associated agencies, may be unable to assess purpose and motive for the non-citizen's entry and desire for liberty in the United States. Accordingly, risk to the community and of flight within the United States is thus heightened. In further contrast to a U.S. citizen under the Bail Reform Act, while at large under supervision, a non-citizen is nevertheless subject to removal from the United States upon final order of removal. In such a grave personal individual state of future uncertainty (far surpassing that of a typical criminal case), while removal proceedings advance, continued liberty status is not guided by mere compliance with supervision rules. In other words, for the non-citizen, even perfect supervision compliance may and will result in physical removal from the United States. Thus, a non-citizen is less constrained by supervision rules. In fact, the effect of restraint (adherence) under supervision rules diminishes as a non-citizen proceeds though the immigration process.

Additionally, in recognition that the legislature itself sanctioned that the executive branch have significant latitude in detaining non-citizens, the Supreme Court has consistently affirmed the constitutionality of detaining non-citizens for removal proceedings. *See, e.g., Demore*, 538 U.S. at 523; *Carlson v. Landon,* 342 U.S. 524, 538 (1952). Accordingly, this court-of-custody should not break new ground extending due process rights beyond the statutory foundation (legislative scheme). *See also Jennings,* 960 F.2d at 1491 ("The judiciary does not have a license to intrude into the authority, powers

and functions of the executive branch, for judges are not executive officers, vested with discretion over law enforcement policy and decisions.").

Moreover, any reliance on *Morrissey v. Brewer*, 408 U.S. 471, 482, (1972), and cases involving probationer and parolee rights, is similarly flatly misplaced. The Supreme Court's decision in *Morrissey* is distinct from the immigration court context. Indeed, the Supreme Court in *Morrissey* and progeny, focused *inter alia* on the extent criminal post-conviction supervision is guided by constitutional due process. In other words, *Morrissey* involved post-conviction and post-incarceration supervision under applicable federal criminal statutes, and, by contrast, such criminal post-conviction and or post-criminal incarceration decision has no application to potential release from civil detention pending removal proceedings. *See Mathews v. Diaz*, 426 U.S. at 80.

Against this background, this court-of-custody should not be misled by Petitioner's exaggeration of his length of his detention (for *his own asylum* claim) and – his hyperbolic rhetoric – extrapolating it to, in effect, a contribution to an executive branch scheme to "incarcerate tens of thousands of people without criminal records for months or even years without any neutral review of whether that deprivation of liberty is justified." ECF 17 at 12. *Arguendo*, if such exaggeration were true (which it is not), such a civil custodial state for tens of thousands, for years on end, is a matter -- under the United States' system of checks and balances – for the legislature as the responsible governing authority (as opposed to judicial activism contrary to *Jennings* and the canon of constitutional avoidance). 583 U.S. at 287–88.

Dated: July 8, 2025

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