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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

ISHAN WAHL,

Petitioner,

v.

YOLANDA PITTMAN, *et al.*,

Respondents.

HON. MICHAEL A. SHIPP

Civil Action No. 3:25-cv-2207(MAS)

**OPPOSITION BRIEF IN RESPONSE TO PETITION FOR
WRIT OF HABEAS CORPUS**

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PRELIMINARY STATEMENT

Respondents respectfully submit this opposition to the Petition for a Writ of Habeas Corpus (“Petition”). Petitioner was detained by U.S. Immigration and Customs Enforcement (“ICE”) on September 27, 2024, and has been detained since then under the Immigration and Nationality Act (“INA”) mandatory detention provision of 8 U.S.C. § 1226(c). Petitioner is currently in removal proceedings, and his next individual hearing is scheduled for July 22, 2025.¹

Petitioner brings forth an action that largely mirrors one that this Court recently dismissed. Indeed, in *Wahi v. Yolanda Pittman, et al.*, No. 24-10314(MAS), this Court *sua sponte* dismissed Petitioner’s habeas petition. *Id.* at ECF 5. Thereafter, this Court denied Petitioner’s Rule 59(e) reconsideration motion. *Id.* at 18. A mere 15 days after his motion to reconsider was denied, Petitioner filed this Petition that once again should be dismissed.

Petitioner remains statutorily ineligible for a bond hearing because the Supreme Court in *Jennings v. Rodriguez*, 138 S.Ct. 830, 846 (2018), held that detention is statutorily mandated for detainees under 8 U.S.C. § 1226(c) during the pendency of their removal proceedings. The Third Circuit recognized the holding in *Jennings* finding that detention is statutorily mandatory for individuals detained under 8 U.S.C. § 1226(c) while their removal proceedings remain pending. *See Gayle v. Warden Monmouth County Correctional Institution*, 12 F. 4th 321, 330 (3d Cir.

¹ The Petition notes that an individual hearing is scheduled for July 18, 2025. *See* ECF 1, Exhibit A. However, since the filing of the Petition, the individual hearing has been rescheduled to July 22, 2025.

2021)(“[T]he Supreme Court observed...that § 1226(c) requires the Government to detain an alien until a decision on whether the alien is to be removed is made, and that it mandates that such noncitizens be detained without a bond hearing until the question of their removal is resolved.”) (internal quotation marks and citations omitted).

The Third Circuit in *German Santos v. Warden Pike Cty. Corr. Facility*, 965 F.3d 203, 208 (3d Cir. 2020), recognized that an alien can bring an as-applied constitutional challenge to 8 U.S.C. § 1226(c) detention. However, the Court noted that there is no bright-line threshold for when detention becomes unduly prolonged. *Id.* at 211. *German Santos* held that courts should consider the following factors: length of detention; whether detention is likely to continue; the reasons for delay; and whether the conditions of confinement are meaningfully different from criminal punishment. *Id.*

Here, as the Court previously recognized, Petitioner has been in immigration custody since September 27, 2024. *See* ECF 18, p. 2. Petitioner’s detention remains lawfully permissible as applied to him, the length of Petitioner’s detention remains reasonable, and the Respondents are presenting no delay in processing Petitioner’s removal. Respondents acknowledge that Petitioner has updated his Petition in alleging issues concerning his confinement conditions, but these new allegations are not properly made in a habeas petition. *See Rizza Jane G.A. v. Orlando Rodriguez, et al*, No. 20-5922(ES).

For the reasons more fully delineated below, this Court should dismiss the

Petition for Writ of Habeas Corpus.

FACTUAL AND PROCEDURAL BACKGROUND

The Respondents respectfully refer this Court to its factual and procedural background section submitted on January 16, 2025. *See* ECF 7.

ARGUMENT

I. The Petition Should Be Dismissed Because Petitioner Is Still Mandatorily Detained Pursuant to 8 U.S.C. § 1226(c) and Not Entitled to a Bond Hearing

Petitioner's detention is governed by the mandatory detention provisions of 8 U.S.C. § 1226(c). Congress specifically defined certain categories of aliens for whom detention is mandatory. *See* 8 U.S.C. § 1226(c)(1) (“[t]he Attorney General shall take into custody any alien” who is inadmissible or deportable on the basis of enumerated categories of crimes and terrorist activities). In fact, release of an alien is permitted only if the Attorney General decides that it is necessary for witness-protection purposes. *See* 8 U.S.C. § 1226(c)(2). The Supreme Court has held that aliens detained pursuant section 1226(c) are not entitled to release while their proceedings remain open except for this exception. *See Jennings v. Rodriguez*, 138 S.Ct. 830, 846 (2018), (“... § 1226(c) reinforces the conclusion that aliens detained under its authority are not entitled to be released under any circumstances other than those expressly recognized by the statute.”); *see also Borbot v. Warden Hudson Cty. Corr. Facility*, 906 F.3d 274, 277 (3d Cir. 2018) (“[b]y its terms, § 1226(c) does not entitle detainees to a bond hearing.”).

Petitioner is not entitled to a bond hearing because section 1226(c) mandates

that detention must continue until the completion of proceedings. *See Jennings*, 138 S.Ct. at 846 (“...1226(c) makes clear that detention of aliens within its scope must continue ‘pending a decision on whether the alien is to be removed from the United States.’”) (internal citation omitted); *see also Jean L. v. Ortiz*, No. 18-11520 (SDW), 2018 WL 3425736, at *3 (D.N.J. July 16, 2018) (“...the Supreme Court’s recent decision in *Jennings* makes it clear that detention under § 1226(c) is intended to mandate detention until a final decision on removability is made . . .”).

Jennings abrogated those portions of the Third Circuit decisions in *Chavez-Alvarez v. Warden York Cty. Prison*, 783 F.3d 469 (3d Cir. 2015), and *Diop v. ICE/Homeland Sec.*, 656 F.3d 221 (3d Cir. 2011), that construed an implicit limitation of reasonableness on the length of detention under section 1226(c). The Third Circuit in *Borbot* noted that the “[t]he Supreme Court recently overruled *Diop*’s interpretation” of section 1226(c) and “rejected our conclusion that § 1226(c) contains an implicit reasonableness limitation.” *Borbot*, 906 F.3d at 278; *see also Guerrero-Sanchez v. Warden York Cty. Prison*, 905 F.3d 208, 222 fn. 11 (3d Cir. 2018) (finding that *Diop*’s construction of section 1226(c) to contain an implicit reasonable time limit on the period of detention without a bond hearing “has been abrogated by *Jennings*.”). For these reasons, Petitioner is not entitled to a bond hearing.

II. Petitioner’s Continued Detention Is Still Not So Prolonged and Unreasonable That It Amounts to An Arbitrary Application of Section 1226(c) and a Violation of the Due Process Clause

Although the Supreme Court in *Jennings* found that section 1226(c) did not include an implicit requirement for a bond hearing, it did not eliminate as-applied

challenges to prolonged detention. *See German Santos v. Warden Pike Cty. Corr. Facility*, 965 F.3d 203, 208 (3d Cir. 2020) (finding that “[t]hough *Jennings* abrogated our construction of the statute as implicitly limiting detention without a bond hearing, it left our framework for as-applied constitutional challenges intact.”). With respect to prolonged detention under section 1226(c), the Third Circuit held that the inquiry as to whether detention has become unduly prolonged as-applied is based on reasonableness, and “[r]easonableness is a ‘highly fact-specific’ inquiry.” *Id.* (citing *Chavez-Alvarez*, 783 F.3d at 474). The “most important factor is the duration of detention.” *Id.* The Third Circuit has “explicitly declined to adopt a presumption of reasonableness or unreasonableness of any duration,” and it has noted that there is no bright-line threshold. *Id.* at 211. Instead, courts are to evaluate duration along with other factors that include: whether detention is likely to continue; the reasons for any delays; and whether the alien’s conditions of confinement are meaningfully different from criminal punishment. *See id.* at 211-12.

Here, Petitioner’s detention remains constitutionally permissible. Importantly, a specific period of time is not the standard by which as-applied challenges to detention are evaluated. In fact, the Third Circuit in *German Santos* made it clear that the analysis is fact-specific. *See German Santos*, 965 F.3d at 208. Furthermore, Courts in this District before and after *German Santos* have generally held that detention of less than a year under section 1226(c) is not unduly prolonged. *See, e.g., Romeo S.K. v. Tsoukaris*, No. 20-5512 (JMV), 2020 WL 4364297, at *12 (D.N.J. July 29, 2020); *Wilmer M. R.-R. v. Tsoukaris*, No. 20-6773 (SDW), 2020 WL

4727276, at *5 (D.N.J. Aug. 14, 2020) (noting that “interests [for mandatory detention under § 1226(c)] are so compelling that this Court has recognized that the statute will even support continued detention without so much as a bond hearing for well over a year absent other circumstances compelling such a hearing); *see also German Santos*, 965 F.3d at 211 (rejecting a bright line rule requiring a bond hearing after any set period of time, even one over a year, and instead requiring duration of detention to be only one factor to be considered). Petitioner was in Bureau of Prisons criminal custody and came into ICE custody on September 27, 2024, less than nine months ago. Serving a criminal sentence is not custody pursuant to the INA, which is the statute that gives ICE authority to detain Petitioner here. *See Henry v. Chertoff*, 317 Fed. Appx. 178 (3d Cir. 2009) (immigration detainer is not custody when petitioner is serving a criminal sentence).

Moreover, there has been no delay in Petitioner’s removal proceedings, and Petitioner is receiving due process in immigration court. Since being detained, ICE permitted Petitioner to be married on January 14, 2025, Petitioner had several hearings before the immigration judge that were continued for Petitioner to pursue an application for relief from removal, the Department of Homeland Security expedited the adjudication of an I-130 petition filed by Petitioner’s wife so that Petitioner could adjust his status based upon his marriage to a U.S. citizen, Petitioner filed his application for relief from removal, and now Petitioner has an individual hearing scheduled for July 22, 2025 on his application for relief from removal. As this Court recognized on March 17, 2025 in denying Petitioner’s motion to reconsider,

“Petitioner’s immigration proceedings appear to be proceeding apace.” *See* ECF 18 at 2. This Court also found that Petitioner has been in detention an “extremely short amount of time.” *Id.* at 3.

III. Petitioner’s Allegations Concerning Confinement Issues Are Improper for a Habeas Petition

Petitioner attempts to bolster his previously dismissed claims by asserting alleged issues surrounding his confinement. Specifically, Petitioner alleges that he is confined to a dorm for 22 hours a day, that toilets are frequently broken, and he is not receiving medical care. *See* ECF 1 at 5-6. However, a habeas petition is not the proper forum for raising these types of allegations and should not deter this Court from once again dismissing this Petition.

Courts in the Third Circuit have found on many occasions that habeas petitions should only present challenges concerning the fact, duration, or execution of a petitioner’s confinement. *See Velazquez v. Superintendent Fayette SCI*, 937 F. 3d 151, 158 (3d Cir. 2019) and *Leslie v. Att’y Gen. of U.S.*, 363 F. App’x 955, 958 (3d Cir. 2010). Moreover, this District Court recently held that the Court lacks habeas jurisdiction to consider petitioner’s challenges related to conditions of confinement. *See Rizza* at 9. Given this, the Respondents respectfully request the Court to disregard Petitioner’s allegations concerning his confinement as they are simply inappropriate in a habeas action.

CONCLUSION

For the foregoing reasons, this Court should dismiss the Petition for Writ of Habeas Corpus.

DATED: June 4, 2025
Newark, New Jersey

Respectfully submitted,

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