United States District Court
Western District of Texas
Austin Division

Angel Limus Linares,
Petitioner,

v.

Charlotte Collins, Warden, T.Don Hutto Vincent Marmolejo, Assistant Field Office Director, San Antonio Field Office, U.S. Immigration and Customs Enforcement; Miguel Vergara, Field Office Director, San Antonio Field Office, U.S. Immigration and Customs Enforcement; Todd M. Lyons, in his official capacity as Acting Director, U.S. Immigration and Customs Enforcement; Kristi Noem, in her official capacity as Secretary, U.S. Department of Homeland Security; and Pamela Jo Bondi, in her official capacity as Attorney General of the United States,

Respondents.

No. 1:25-CV-00584-RP-DH

Federal Respondents' Response to Show Cause Order

Federal Respondents[1] timely submit this response per this Court's Order to Show Cause. *See* ECF No. 6.[2] Petitioner Angel Limus Linares is detained in the custody of U.S. Immigration and Customs Enforcement ("ICE") under 8 U.S.C. § 1231(a)(6), because he has a reinstated[3] final order of removal and poses a flight risk and danger[4] to the community. *See* 8 U.S.C. § 1231(a)(5); ECF No. 1 ¶¶ 1; 41–42; *Johnson v. Guzman Chavez*, 594 U.S. 523, 526, 534–535 (2021). Petitioner brings an as-applied due process challenge here, claiming that his 18-months of post-removal-order detention while pursuing relief from removal in withholding-only proceedings is unduly prolonged. *See* ECF No. 1 ¶ 47. This habeas should be denied because Petitioner's detention is

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[1] The warden is not a federal employee but is employed privately by Core Civic. *See* https://www.corecivic.com/facilities/t-don-hutto-detention-center (last accessed June 6, 2025). Although the warden is named as a respondent here, the detention decisions in this case were made by Federal Respondents.

[2] The Court ordered a response within 30 days of service by certified mail on the U.S. Attorney's Office in Austin, but the U.S. Attorney's Office in San Antonio is designated as the certified mail service address for the Western District of Texas. *See* https://www.txwd.uscourts.gov/wp-content/uploads/2023/07/Amended-Designation-of-Agents-for-Service-of-Process-1.pdf (last accessed June 6, 2025). The Austin office received a copy of the Order on May 7, 2025, by mail and routed a copy by email to the San Antonio office. Federal Respondents submit this response within 30 days of receipt at the Austin office but note for the record that proper service on the U.S. Attorney's office has not yet been completed. *See* Fed. R. Civ. P. 4(i). As such, Federal Respondents respectfully request an opportunity to supplement this response with additional evidence should the Court determine additional evidence is necessary.

[3] *See* 8 U.S.C. § 1231(a)(2) ("During the removal period, the Attorney General shall detain the alien."). Section 1231(a)(5) states that an alien who illegally reenters the United States after having been removed, shall be removed by reinstating the removal order from its original date. *See* 8 U.S.C. § 1231(a)(5); *see also* 8 C.F.R. § 241.8(a).

[4] Petitioner concedes that he was sentenced to eight years in prison in El Salvador for robbery, of which he served six years. ECF No. 1 ¶ 23. He was released from prison in 2022 and reentered the United States without inspection in October 2023. *Id.* ¶ 24. He was immediately detained, and DHS reinstated his removal order. *Id.* He claimed fear of persecution in El Salvador and was permitted to apply for withholding of removal and CAT protection in a two-day hearing before an Immigration Judge in April 2024. *Id.* ¶¶ 27–29. The judge denied his applications in a written opinion issued on July 5, 2024, which he timely appealed to the BIA. *Id.* ¶¶ 29–30.

both statutorily and constitutionally permissible, and his continued detention without a bond hearing does not violate due process.

I. Detention and Removal Status

When an alien subject to an executed final order of removal reenters the United States without inspection, the alien is ineligible for all forms of relief from removal except for withholding of removal under the INA and withholding or deferral of removal under the Convention Against Torture "CAT"). *See, e.g., Fernandez-Vargas v. Gonzalez*, 548 U.S. 30, 35 n.4 (2006); ECF No. 1 ¶ 42. Although reinstated removal orders cannot be reviewed, those subject to them can apply for limited relief if they are able to establish to an asylum officer that they have a "reasonable fear of persecution" in a specific country or that they merit CAT protections. *See Roman v. Garcia*, No. 6:24–CV–01006, 2025 WL 1441101 at *3, n.1 (W.D. La. Jan. 29, 2025); *see also* ECF No. 1 ¶ 1. Notably, this type of relief does not necessarily provide an avenue for the alien to remain in the United States, because the relief does not preclude ICE from deporting the alien to a third country.[5] *See* 8 C.F.R. §§ 208.16(f); 1208.16(f); *see also Guzman Chavez*, 594 U.S. at 531.

Since his unlawful entry in 2024, Petitioner has been detained in post-removal-order custody while pursuing limited relief from removal before the Immigration Court and subsequently the Board of Immigration Appeals ("BIA"). *See* ECF No. 1 ¶ 1; *see also Guzman-Chavez*, 594 U.S. at 528. His BIA appeal remains pending, and his detention is mandatory. *Id.*; *see also* 8 C.F.R. §§ 208.31(e); 1208.31(e) (an immigration judge's final decision as to withholding can be appealed

[5] Petitioner claims that he has no government-issued identification from El Salvador. ECF No. 1 ¶ 19. It is uncontested, however, that the United States has already lawfully removed him to El Salvador once, despite his claim that he lacks proper identification. *Id.* ¶¶ 21–22. Indeed, even if Petitioner were granted withholding of removal or protection under CAT, the United States could still seek to remove him to any other country willing to accept him.

to the BIA); 1003.39 (an immigration judge's decision is not final if it is timely appealed). The INA does not require a bond hearing in this circumstance, nor does it hold the Government to a clear and convincing standard of proof. *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 580–81 (2022); *Roman*, 2025 WL 1441101 at *3; *see also* ECF No. 1 ¶ 17.

Section 1231(a)(1)(A) provides that the alien shall be removed from the United States within 90 days of being ordered removed, and detention during that time frame is mandatory. *See* ECF No.1 ¶ 43. The 90-day removal period may be extended where ICE determines an inadmissible alien, like Petitioner, is unlikely to comply with the removal order. *Id.*; *see also Guzman Chavez*, 594 U.S. at 528–29, 544; 8 8.U.S.C. § 1231(a)(6); 8 C.F.R. § 241.4. Continued detention under this provision is the "post-removal-period." *Guzman-Chavez*, 594 U.S. at 529. The statute does not specify a time limit on this post-removal period, but the Supreme Court has read an implicit limitation into the statute and held that the alien may be detained only for a period reasonably necessary to remove the alien from the United States. *Id.*; 8 C.F.R. § 241.13. Section 1231(a) expressly authorizes DHS to either release under supervision or continue the detention of aliens if removal cannot be effectuated within 90 days. 8 U.S.C. § 1231(a)(3), (6).

Once the 90-day removal period concluded in this case, ICE fulfilled its regulatory duty under 8 C.F.R. § 241.4 to perform a post-order custody review ("POCR") to determine whether Petitioner should remain detained or whether he should be released in the exercise of discretion under an Order of Supervision. *See* ECF No. 1 ¶ 32. Following the 90-day POCR, ICE completed

two additional POCRs in compliance with the regulations.[6] *Id.* On each occasion, ICE decided in its discretion that Petitioner would not be released from custody and provided Petitioner with a list of various bases on which that decision was made. *Id.* Additionally, Petitioner also submitted requests for release through counsel on multiple occasions from March 2024 to November 2024. *Id.* ¶ 33. ICE reviewed and denied each request. *Id.*

II. Petitioner's Post-Order Detention under § 1231(a)(6) Without A Bond Hearing Comports with Due Process.

Petitioner has not established a cognizable due process claim or otherwise demonstrated that his detention is at odds with the purpose under which Congress enacted § 1231(a)(6). *See Guzman-Chavez,* 594 U.S. at 544 (recognizing Congress's judgment in distinguishing the detention of different groups of aliens who posed different risks of flight: those detained before having been ordered removed and those detained after already having been ordered removed). Aliens who reentered the United States illegally after being removed have demonstrated a willingness to violate the terms of a removal order, which means they may be less likely to comply with the reinstated order. *Id.*

Petitioner's detention is not indefinite. He remains in withholding-only proceedings until the BIA issues a decision on his appeal, but if the BIA affirms the lower court's decision, Petitioner fails to allege that the government would be unable to swiftly remove him from the United States. *See MP v. Joyce*, No. 1:22–CV–06123, 2023 WL 5521155 at *4 (W.D. La. Aug. 10, 2023).

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[6] *See* 8 C.F.R. § 241.13. Courts have found that these regulatory deadlines are not firm, so long as the review itself has occurred. *See Mohammad v. Lynch*, No. EP-16-CV-28-PRM, 2016 WL 8674354 at *6 n. 6 (W.D. Tex. May 24, 2016). The habeas petition does not allege that ICE has failed to comply with the POCR regulations. Even if Petitioner had alleged such a violation, the remedy is not immediate release from custody, but an opportunity for the government to provide substitute process. *Virani v. Huron*, No. SA–19–CV–00499-ESC, 2020 WL 1333172 at *12 (W.D. Tex. Mar. 23, 2020).

Moreover, Petitioner's length of time in detention has not been a result of any delay by the government. While Petitioner may elect to exercise his legal rights to contest his removability or seek relief from removal as he sees fit, he cannot in turn rely on circumstances solely of his own doing to allege a due process violation by the government. *See Demore v. Kim*, 538 U.S. 510, at 530 n.14 (2003) (stating "there is no constitutional prohibition against requiring parties" to "mak[e] ... difficult judgments," such as whether to risk a lengthier detention by deciding to appeal).

Petitioner nonetheless argues that the length of his detention at the time of filing (18 months) constitutes a substantive due process violation and compels his release. *See* ECF No. 1, ¶ 90. Petitioner urges the Court to analyze an as-applied challenge in this context, like the analysis used by certain courts for pre-removal aliens detained under 8 U.S.C. § 1226(a). *Id.* ¶ 48. But the Ninth, Fourth, and Third Circuits have found that even under § 1226(a), due process does not require that a detainee be provided an additional bond hearing, despite the length of pre-removal detention. *Id.* (citing cases in the footnote). The "duration of [a petitioner's] detention, by itself, d[oes] not create a due process violation." *Rodriguez Diaz*, 53 F.4th 1189, 1212 (9th Cir. 2022). The Ninth Circuit has upheld immigration detention that has lasted for over three years, "because the lack of a 'certain end date' alone 'does not render [a petitioner's] detention *indefinite* in the sense the Supreme Court found constitutionally problematic in *Zadvydas* [*v. Davis*, 533 U.S. 678 (2001)]." *Id.*, 53 F.4th at 1212 (emphasis in original) (quoting *Prieto-Romero v. Clark*, 534 F.3d 1053, 1063 (9th Cir. 2008)).

Courts across the country have applied different approaches to determine the constitutionality of continued detention under various immigration statutes. *See, e.g., Rimtobaye v. Castro*, No. SA-23-CV-1529-FB (HJB), 2024 WL 5375786, at *2–3 (W.D. Tex. Oct. 29, 2024),

report and recommendation adopted, No. SA-23-CV-1529-FB, 2025 WL 377722 (W.D. Tex. Jan. 31, 2025) (collecting cases and comparing approaches). Some courts, but not all, utilize the three-factor balancing test Petitioner urges here, which is set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976), a case involving the termination of a citizen's social security benefits. *Id.*; *see also* ECF No. 1 ¶ 50 (citing *Ayobi*). The Supreme Court, however, "when confronted with constitutional challenges to immigration detention has not resolved them through express application of *Mathews*," *Rodriguez Diaz*, 53 F.4th at 1206–07, and the Government does not concede that *Mathews* applies here.

But even if the Court were to find that *Mathews* applies, the conclusion would nevertheless be the same—Petitioner's detention is not unconstitutional even under *Mathews*. *See id.* at 1207–10; *see also Rimtobaye*, 2024 WL 5375786, at *3, n.2 (finding that even if the court used a multi-factor balancing test to determine a prolonged detention claim without a bond hearing, the claim should still be denied where the alien has been actively litigating his immigration rights before multiple courts, causing, at least in part, the delay in removal); *Keo v. Warden*, No. 1:24–CV–00919–HBK (HC), 2025 WL 1029392 at *8 (E.D. Cal. Apr. 7, 2025) (same); *MJ v. Joyce*, at *4 (same – collecting cases). In evaluating Petitioner's interest, "[courts] cannot simply count his months of detention and leave it at that." *Rodriguez Diaz*, 53 F.4th at 1208. "[Courts] cannot overlook that most of the period of [Petitioner]'s detention arose from the fact that he chose to challenge before the BIA … the IJ's denial of immigration relief." *Id.* at 1207 (citing *Demore*, 538 U.S. at 531 n.14).

As the Ninth Circuit has held, Petitioner's interests are diminished by "the fact that he is subject to an order of removal from the United States" and "that his detention was prolonged due to his decision to challenge his removal order." *Id.* at 1208; *see Demore*, 538 U.S. at 530 n.14;

accord, e.g., *Doherty v. Thornburgh*, 943 F.2d 204, 211 (2d Cir. 1991) (eight-year detention not unconstitutional where "[petitioner] has exercised skillfully his rights under the deportation statute, delaying and perhaps preventing the outcome sought by the government. . . . Although this litigation strategy is perfectly permissible, we hold that [petitioner] may not rely on the extra time resulting therefrom to claim that his prolonged detention violates substantive due process."); *Rivas Avalos v. Sessions*, No. 18-cv-02342-HSG, 2018 WL 11402701, at *2 (N.D. Cal. May 25, 2018) ("delay caused by petitioner's litigation strategy 'does not ripen his detention into a constitutional claim'") (quoting *Manley v. Delmonte*, No. 17-CV-953, 2018 WL 2155890, at *2–3 (W.D.N.Y. May 10, 2018)); *Garcia Gonzalez v. Bonnar*, No. 18-cv-05321-JSC, 2018 WL 4849684, at *5 (N.D. Cal. Oct. 4, 2018); *Dryden v. Green*, 321 F. Supp. 3d 496, 502–03 (D.N.J. 2018); *Aguayo v. Martinez*, No. 1:20-cv-00825-DDD-KMT, 2020 WL 2395638, at *3 (D. Colo. May 12, 2020) (detention not unconstitutional where "[his] prolonged detention is largely of his own making"); *Crooks v. Lowe*, No. 1:18-cv-0047, 2018 WL 6649945, at *2 (M.D. Pa. Dec. 19, 2018) (detention not unconstitutional where "there is no indication in the record that the government has improperly or unreasonably delayed the proceedings").

Moreover, Petitioner concedes facts to show that he is both a flight risk and potentially even a danger to society. He was previously removed from the United States, subsequently served six years of an eight-year prison sentence for robbery in El Salvador, and upon release from that prison, unlawfully reentered the United States. ECF No. 1 ¶¶ 21, 23. He further concedes that the immigration judge denied his applications for relief from removal, despite initially having found that he had established a reasonable fear of persecution in El Salvador. *Id.* ¶ 29. Those removal proceedings remain pending, and there are no allegations that the government has purposefully (or negligently) delayed those proceedings in any way.

In contrast to Petitioner's diminished interest, the Government's interests here are strong and compelling. As the Ninth Circuit has held, "the government clearly has a strong interest in preventing aliens from 'remaining in the United States in violation of our law.'" *Rodriguez Diaz*, 53 F.4th at 1208. (brackets omitted) (quoting *Demore*, 538 U.S. at 518). The Government's interests grow stronger (not weaker) as time goes on—a precept particularly true here, where Petitioner approaches the end of his removal proceedings. *Id.* As the Ninth Circuit held:

> These are interests of the highest order that only increase with the passage of time. The longer detention lasts and the longer the challenges to an IJ's order of removal take, the more resources the government devotes to securing an alien's ultimate removal. The risk of a detainee absconding also inevitably escalates as the time for removal becomes more imminent. Indeed, the Supreme Court has specifically recognized Congress's determination that the government has been unable to remove deportable criminal aliens because of its initial failure to detain them. For all these reasons, the government's interests in this case are significant.

Id. at 1208-09 (citing *Johnson v. Guzman Chavez*, 141 S. Ct. 2271, 2290 (2021); *Demore*, 538 U.S. at 519); *accord, e.g.*, *Jennings*, 138 S. Ct. at 836 ("Congress has authorized immigration officials to detain some classes of aliens during the course of certain immigration proceedings. Detention during those proceedings gives immigration officials time to determine an alien's status without running the risk of the alien's [*sic*] either absconding or engaging in criminal activity before a final decision can be made."); *Fraihat v. U.S. Immigration and Customs Enforcement*, 16 F.4th 613, 647 (9th Cir. 2021) ("The government has an understandable interest in detaining such persons to ensure attendance at immigration proceedings, improve public safety, and promote compliance with the immigration laws."); *Prieto-Romero*, 534 F.3d at 1065 ("[Petitioner] foreseeably remains *capable* of being removed—even if it has not yet finally been determined that he *should be* removed—and so the government retains an interest in 'assuring [his] presence at removal.'") (emphasis in original); *Ofosu v. McElroy*, 98 F.3d 694, 702 (2d Cir. 1996) ("And, of course, [a removable noncitizen] may not be so easy to find once his litigation options are

exhausted."). Petitioner's continued post-order detention is constitutional and does not violate due process, even under the *Mathews* test. Petitioner is lawfully detained, and this Court should deny the habeas petition.

Respectfully submitted,

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