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IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JOHN DOE, Petitioner, v. PAM BONDI, ATTORNEY GENERAL OF THE UNITED STATES, ET AL.,[1] Respondent.	CASE NO. 1:25-CV-00506-SAB MOTION TO DISMISS UNDER 28 U.S.C. § 2254, RULE 4, AND RESPONSE TO 28 U.S.C. § 2241 PETITION

On 4/29/2025, Petitioner filed for relief under 28 U.S.C. § 2241. ECF 1. In his single ground, Petitioner — a non-citizen alien — claimed his so-called "prolonged detention" pending removal from the United States violated the U.S. Constitution (Fifth Amendment). *Id.* at 3, 17-21, 27-28. 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[2]

In 1998, Petitioner, whose country of origin is Mexico, was convicted of a firearms offense in violation of California state law. *See* California Penal Code § 12020. In 2011, in the Southern District

[1] Respondents' motion to strike and to dismiss unlawfully named officials under § 2241 remains pending before this EDCA court-of-custody. ECF 13. *See* ECF 11 (citing *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) (holding that the warden of the private detention facility at which a non-citizen alien was held was only lawful § 2241 respondent)).

[2] Respondents provide, filed herewith, a Declaration of DHS ICE Deportation Officer Michael Bowen, with supporting exhibits (exhibits filed under seal).

of Texas, Petitioner additionally was convicted of possession with intent to distribute 5.68 kilograms of methamphetamine in violation of 21 U.S.C. §§ 84l(a) (1) and 84l(b) (1) (A).[3] *See* SDTX 11-cr-522, ECF 15, 27. Accordingly, as a matter of law in civil removal proceedings, Petitioner was thereafter subject to mandatory detention under 8 U.S.C. § 1226(c). Specifically, as Petitioner has agreed, mandatory detention is compelled because he has suffered conviction of an aggravated felony as defined in 8 U.S.C. § 1101(a)(43)(F). *Id.* *See* ECF 1 at 3.

On 4/16/2024, Petitioner, after completion of his term of federal imprisonment for his illicit drug trafficking offense, was detained by DHS ICE, and he was placed into removal proceedings. *See* Decl. p 2. Via Immigration Court proceedings, on 7/12/2024, an Immigration Judge sustained removability against Petitioner. *Id.* Then, through about 6-months, Petitioner elected to prolong his detention via demand for deferral from removal (protection under the Convention Against Torture). *See* id.; *See also* Decl., Exh. 6. On 2/11/2025, an Immigration Judge granted Petitioner's demand for deferral from removal to his country of origin. *See id.* The Immigration Judge's grant of deferral is presently pending the government's appeal to the Board of Immigration Appeals (BIA). *Id.* Between the entire detention period, 4/16/2024 (onset of detention) to date (about 15-months), Petitioner chose not to seek detention (bond) hearing or ERO custody review. ECF 1-2 at 5. *See* Decl. at 2-3; ECF 1 at 3, 7-8. *See, e.g.,* 8 U.S.C. §§ 1182(d)(5), 1236. Petitioner is presently held at the Golden State Annex, located in McFarland, California.

II. ARGUMENT

Despite delay for preparation on both sides, Petitioner appears to agree that his Immigration Court removal proceedings have procedurally advanced in a lawful manner. *See generally* ECF 1. In his § 2241 sole petition ground, Petitioner falsely claims that substantive due process violation, upon 15-months civil detention, compels a detention hearing, bond, and his release.[4] ECF 1 at 3, 27-28.

First, Petitioner's detention is now, and foreseeably through BIA proceedings, constitutional

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[3] Petitioner has used several false names and personal identification information to conceal his identity and evade law enforcement efforts. *See* Decl., Exh. 3.

[4] As to Petitioner's complaints regarding civil confinement, there is no § 2241 jurisdiction. *See* ECF 14-18. *See e.g., Lopez v. Garland,* 631 F. Supp. 3d 870, 883 (E.D. Cal. 2022) (rejecting claim that a non-citizen's civil immigration detention violates the Eighth Amendment).

because it continues to serve legitimate congressionally mandated goals with a definite end in sight. Indeed, Petitioner is only detained in furtherance of his own goal to challenge his deportation via continued pursuit of his deferral application. *Banyee v. Garland,* 115 F. 4th 928, 933 (8th Cir. 2024), quoting *Demore,* 538 U.S. at 527. By contrast, there is no evidence his detention during his 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, it is wrong to conclude such orderly proceedings – with an end in sight -- are unreasonably prolonged as a substantive due process (constitutional) violation. *Cf.* ECF 18-20.

Second, the length of detention in civil removal proceedings is not a dispositive factor in assessing merits for compulsory detention hearing or compelled release. *Keo v. Warden-Mesa Verde ICE Processing Center,* 2025 WL 1029392 (E.D. Cal., 2022 Apr. 7, 2025) (following *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 third, Petitioner misleads this 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.

On the one hand, multi-factor balancing to analyze Petitioner's § 1226(c) statutorily compelled detention is unsupported by Supreme Court authority. More specifically, 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.").

On the other hand, this 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 for a § 1226(c) habeas petitioner.

> [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*, 115 F. 4th at 933, 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. Following *Banyee* and *Keo*, since deportation proceedings are ongoing, Petitioner's detention is *per se* constitutional, and the instant underlying § 2241 petition must be denied. *See id.*

Arguendo, even if this court-of-custody were to apply multi-factor balancing, Petitioner's claim of as-applied due process violation fails. As an initial matter, Petitioner has been detained under § 1226(c) in consideration of *inter alia* his aggravated felony illicit drug trafficking offense. Under *Mathews* so-called multi-factor balancing, this court-of-custody must give weight to this criminal background. 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).

Also, this court-of-custody must give weight to Petitioner's own delay processing his deferral of removal demand (about 7/2024 through 12/2024). *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 § 1226(c).

Petitioner falsely claims that his private interests are heightened in part due to supposed family concerns and alleged conditions of his confinement. *See generally* ECF 1. However, Petitioner has family in his country of origin (unlike any family in the United States) that he visits regularly. Petitioner's Declaration at 1. Significantly, at the time of detention, the only family in any proximity to Petitioner was an adult son who was in fact living apart from Petitioner. *Id.* Also, the detention center conditions that Petitioner deems unsatisfactory do not invalidate or vitiate the "immigration purpose" that is served when a noncitizen is detained under § 1226(c). *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, now looming through BIA review. Accordingly, it is not punitive, it is not extraordinary, and it does not violate procedural due process

Dated: June 30, 2025

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By: */s/ Michelle Rodriguez*
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