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IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

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| E.O.P.,<br>Petitioner,<br>v.<br>U.S. ATTORNEY GENERAL BONDI, ET AL.,[1]<br>Respondents. | CASE NO. 1:25-CV-0721-SKO<br>MOTION TO DISMISS UNDER 28 U.S.C. § 2254, RULE 4, AND RESPONSE TO 28 U.S.C. § 2241 PETITION |

On 6/12/2025, Petitioner filed for relief under 28 U.S.C. § 2241. ECF 1. In his single ground, Petitioner — a non-citizen alien — claimed his prolonged detention pending removal from the United States violated the U.S. Constitution (Fifth Amendment due process). *Id.* at 2, 33-39, 40-43. For relief, Petitioner demanded that this Eastern District of California (EDCA) court-of-custody order another jurist (Immigration Judge) to conduct detention (bond) hearing or *ab initio* order his immediate release under § 2241. *See id.*

[1] Respondent moves 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. 28 U.S.C. § 2242; *Rumsfeld v. Padilla,* 542 U.S. 426, 430 (2004); *Doe v. Garland,* 109 F.4th 1188, 1197 (9th Cir. 2024).

## I. BACKGROUND[2]

Petitioner – a non-citizen whose country of origin is Honduras – confesses that he is a Los Angeles gang member who, while residing in the United States, has committed numerous criminal offenses. *See* ECF 1 at 11-12. Significantly, in 2005, Petitioner was arrested by California state law enforcement for *inter alia* his involvement in a gang conspiracy to commit murder. *See* Decl. p 2; Decl. Exh. 1. *See also* ECF 1 at 13. At length, Petitioner pled guilty to voluntary manslaughter and received a sentence of about 212-months. *Id.* *See* ECF 1-3 at 11-13. Accordingly, as a matter of law, Petitioner for immigration removal proceedings is subject to mandatory detention under 8 U.S.C. § 1226(c). *See* Decl. p 3. Specifically, in immigration removal proceedings his mandatory detention is compelled because he has suffered conviction of an aggravated felony. *Id.* *See also* ECF 1 at 5 (Petitioner conceding his civil detention pending removal proceedings is mandatory under § 1226(c)).

Petitioner, after completion of his 212-month state imprisonment term, was on 9/22/2022 detained by DHS. He was then placed into removal proceedings. Decl. p 3. From onset of civil detention (9/22/2022) to date (approx. 34-months), Petitioner himself -- through his demands for continuances and his motions and appeals -- delayed his immigration court proceedings and prolonged his detention. *Id.* Nevertheless, Petitioner's removal proceedings have advanced in a deliberative fashion through the legislative branch's scheme for immigration processing. In fact, shortly after his 9/22/2022 civil detention, Petitioner on 1/23/2023 (within 4-months) was ordered removed. *Id.* *See also* Decl. Exh. 4. Then, promptly after the Immigration Judge's 1/23/2023 order of removal (and denial of relief from removal), Petitioner failed, on several BIA appeals, including his own motions for reconsideration and to reopen removal proceedings. *See id.*

On 2/23/2024, as further prescribed by the legislative branch's scheme for immigration processing, Petitioner filed a Ninth Circuit petition for review (of the order of removal and denial of relief), along with a motion for a stay of removal (which automatically stayed his removal). *See Oropeza-Paz v. Bondi,* et al, CA No. 24-980. *See also* Ninth Cir. General Order 6.4(c)(1) (explaining that the filing of a stay motion automatically stays removal until further order of the court). Thus, since

[2] Respondent provides, filed herewith, pertinent background information through the Declaration (Decl.) of A. Sanchez and related exhibits.

initiating on 2/23/2024 his Ninth Circuit appeal, for about 17-months, Petitioner has been in civil detention pending Ninth Circuit (appellate) judicial review of his final order of removal and denial of relief from removal. Significantly, very recently on 6/24/2025, the Ninth Circuit denied Petitioner's petition for review. Decl. p 3. While Petitioner may further prolong his detention, *e.g.* by filing motions for rehearing and review *en banc*, in the regular course this court-of-custody may properly conclude Petitioner's civil detention will soon end with issuance of the Ninth Circuit's mandate (and lifting of the stay of removal).

Accordingly, all delay in this case has been for the benefit of Petitioner to proceed through the legislative scheme for immigration processing, to wit: Petitioner demanding time to prepare and obtain counsel, Petitioner demanding relief from removal, Petitioner demanding judicial review of his final order of removal (and denial of relief), and otherwise for the judicial deliberative process to render decision. *See generally* Decl. pp 2-3.

Against this background, during his civil detention pending removal proceedings, Petitioner, after demanding a detention (bond) hearing before an Immigration Judge, later withdrew his own request for such administrative remedy detention review. Decl. at 3. Additionally, Petitioner has enjoyed DHS custody status review. *Id.* At the conclusion of the custody review, on 3/8/2023 ERO ICE, in accord with § 1231(a)(6), denied Petitioner release on an order of supervision, finding that Petitioner is a danger to the community and a flight risk. Decl. 2-3. *See* 8 U.S.C. § 1231(a)(6) ("An alien ordered removed who is inadmissible under section 1182 of this title, removable under section 1227(a)(1)(C), 1227(a)(2), or 1227(a)(4) of this title or who has been determined by the Attorney General to be a risk to the community or unlikely to comply with the order of removal, may be detained beyond the removal period").

Petitioner is currently detained under INA § 236(c), 8 USC § 1226(c), at the Golden State Annex in McFarland, California. Decl. pp 1-2.

## II. ARGUMENT

In his § 2241 sole petition ground, Petitioner falsely claimed that the U.S. Constitution (Fifth Amendment procedural and substantive due process) compels a detention hearing, bond, and his immediate release. *See* ECF 1 at at 2, 33-39, 40-43.

First, Petitioner is flatly wrong in claiming *Demore v. Kim,* 538 U.S. 510, 523 (2003), supports his procedural due process claim (bright line rule of 6-months maximum civil detention). ECF 1 at 27, 33. In other words, neither *Demore*, the Ninth Circuit, nor this court-of-custody, compels a bright line due process violation for the length of civil detention pending removal proceedings. *See id.* To the contrary, 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.[3] 538 U.S. at 530-31. In recognizing "mandatory" detention pending removal proceedings may be prolonged, the Supreme Court in *Demore* flatly rejected a rule of compelled detention hearing within a fixed time. *Id.* Accordingly, the U.S. Constitution, including Fifth Amendment due process, does not require the United States to release a non-citizen during the pendency of removal proceedings when the non-citizen, as in this case, has committed a qualifying crime mandating detention. *See Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018) (Supreme Court rejecting the Ninth Circuit's interpretation that 8 U.S.C. § 1226(c) included an implicit time limit on the length of mandatory detention).

Second, Petitioner's reliance on *Zadvydas v. Davis,* 533 U.S. 678, 697 (2001), is wrong. ECF 1 at 34. In *Zadvydas,* the Supreme Court addressed a challenge to prolonged detention under 8 USC § 1231(a) by non-citizens who had been ordered removed by the government and all administrative and judicial review was exhausted, but their removal could not be effectuated because their designated countries either refused to accept them or the United States lacked a repatriation treaty with the receiving country. In *Zadvydas,* the Supreme Court narrowly explained that § 1231(a) does not authorize indefinite detention and § 1231(a) "limits an alien's post-removal-period detention to a period reasonably necessary to bring about that alien's removal from the United States." *Zadvydas,* 533 U.S. at 689. Further, following *Zadvydas, i.e.,* the Supreme Court's holding of 6-months as presumptively reasonable in the narrow context of § 1231(a) detention, a non-citizen – again proceeding under § 1231(a) -- is still not entitled to release unless "there is no significant likelihood of removal in the

[3] In *Demore,* while the Supreme Court recognized that mandatory detention — such as under 8 U.S.C. § 1226(c) — 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.

reasonably foreseeable future." *Id.* at 701. By contrast, in this case, Petitioner is not held under § 1231(a) and, for Petitioner, at least based on the pending Ninth Circuit mandate (since Petitioner failed in his petition for review) with corresponding lifting of a stay of removal, there is great likelihood of removal in the foreseeable future. *See* Decl. p 3.

And third, Petitioner misleads this EDCA court-of-custody in his demand for invention of a slippery slope of multi-factor (substantive due process) balancing under *Mathews v. Eldridge,* 424 U.S. 319 (1976).

On the one hand, multi-factor balancing to analyze Petitioner's § 1226(c) statutorily compelled civil detention 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.").

On the other hand, this EDCA court-of-custody 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 non-citizen alien's detention is not punitive[4] and otherwise "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.[5] *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.*

*Arguendo,* even if this court-of-custody were to apply multi-factor balancing, Petitioner's claim is a failure.

Petitioner has been detained under § 1226(c) in consideration of his undisputed qualifying crime (voluntary manslaughter), against a criminal background steeped in gang violence. ECF 1 at 13; ECF 1-3 at 11-13. *See also* Decl. Exh. 1. Under *Mathews* so-called multi-factor balancing, this court-of-custody must give weight to this criminal background, in addition to the steadfast process Petitioner received during his civil detention.

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

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[4] Here, there is no evidence Petitioner's 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. By contrast, Petitioner's claim that detention facility conditions feel punitive to him, ECF 1 at 15-18, is unavailing. *Badea v. Cox*, 931 F.2d 573, 574 (9th Cir. 1991).

[5] 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."

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.*, himself prolonging resolution of his demands for relief from removal) which extended his detention. *Rodriguez Diaz v. Garland,* 53 F.4th 1189, 1206-07 (9th Cir. 2022). Thus, even if this court-of-custody was to overreach and was to invent a balance of interests in the immigration court context, Petitioner's liberty constraint (detention) has not been extraordinarily long while the United States' interests remain strong, including as considered for this violent gang member under § 1226(c).

Also, Petitioner falsely claims that his private interests overcome government interests regarding risk of flight and dangerousness risks he poses. In fact, Petitioner cites no family relation dependent, and otherwise no meaningful dependent as to anyone, or to any community in the United States. *See* ECF 1 at 34-36. His vague comments about blood relatives living in the United States do not establish mutual or reciprocal interests. He is not (and has never been) the provider for any such relative. To the contrary, his actual, demonstrated, interests prior to his voluntary manslaughter state incarceration and civil detention have been in his Los Angeles violent gang family. In other words, Petitioner since adulthood, has used his liberty to commit crimes in the United States and to assist fellow gang members in criminal activity. *See id.* Further, in the time before Petitioner engaged in his act of voluntary manslaughter in furtherance of gang activity, as Petitioner himself concedes, ECF 1 at 13; ECF 1-3 at 11-13, Decl. p 2. Petitioner's liberty was marked by additional nuisance activity and drug and alcohol abuse.

Moreover, in this case the risk of erroneous deprivation of liberty is minimal. The immigration proceedings – properly advancing through the authorized legislative scheme -- substantiate that Petitioner has no basis for liberty in the United States and, as immigration removal proceedings have progressed, all the indications are consistent that Petitioner will be removed from the United States in the foreseeable future. Indeed, Petitioner's mandatory detention continues to serve legitimate congressionally mandated goals with a definite end in sight: the conclusion of removal proceedings.

Lastly, the conditions of confinement that Petitioner deems unsatisfactory do not invalidate or

vitiate the "immigration purpose" that is served when a non-citizen, such as Petitioner, 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'").

Dated: July 24, 2025

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