

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 0:25-cv-03198-PJS-DTS

ROOSEVELT BARTU, JR.,

Petitioner,

v.

KRISTI NOEM, *et al.*,

Respondents.

**FEDERAL RESPONDENTS’
RESPONSE TO
PETITIONER’S
OBJECTIONS TO REPORT
AND RECOMMENDATION**

Federal Respondents¹ respectfully submit this response to Petitioner Roosevelt Bartu, Jr.’s objections, ECF No. 17, to the Report & Recommendation (“R&R”), ECF No. 15. Federal Respondents objected to the portion of the R&R, *id.* at 6–9, concluding that 8 U.S.C. § 1231 governs Petitioner’s present detention, *see* Resps.’ Obj., ECF No. 18. For the reasons they articulated, Petitioner remains pre-final order detention under 8 U.S.C. § 1226(c) during his removal proceedings, *see id.*, thus his first objection, which concerns the likelihood of his removal in post-final order detention, is wholly unfounded. *See* ECF No. 17 at 3-9. Were the Court reach that objection, it should adopt the R&R’s conclusion that Petitioner has not met his initial burden of showing no significant likelihood of removal in the reasonably foreseeable future, R&R at 9–10, and that even had he done so, Federal Respondents rebutted that showing, *id.* at 10–11.

Petitioner’s second and third objections are no more meritorious. As the R&R noted, Petitioner sought to challenge “the conditions of his confinement at Sherburne County Jail,” arguing his detention there had become unconstitutionally punitive. R&R at 11. But

¹ Federal Respondents are Pam Bondi, Lisa Monaco, Kristi Noem, and Peter Berg.

as the R&R correctly found, such claims fall outside the proper scope of habeas review. *See id.* Petitioner’s objections on this issue, which misapprehend relevant Eighth Circuit precedent, are meritless.

Thus, the Court should adopt the R&R’s recommendations subject to Federal Respondents’ objections, overrule Petitioner’s objections, and deny the habeas petition.

I. Petitioner’s objections regarding the R&R’s SLRRFF determinations should be overruled.

As discussed in Federal Respondents’ objections, Petitioner is currently in pre-final-order detention under 8 U.S.C. § 1226(c), and his removal order did not become administratively final on October 11, 2024, as the R&R concluded. *See* ECF No. 18. The applicable statute and regulations confirm as much. *See id.* at 2-6; 8 U.S.C. § 1231(a)(1)(B) (requiring an “order of removal” to be “administratively final” to trigger the removal period); 8 C.F.R. § 1241.1(a) (removal order becomes final upon dismissal of an appeal by the Board of Immigration Appeals).

8 C.F.R. § 1003.1(d)(7)(i) makes clear that, “[t]he Board [of Immigration Appeals] may return a case to . . . an immigration judge for such further action as may be appropriate without entering a final decision on the merits of a case.” That is precisely what occurred here: the BIA did not issue a decision on the merits of Petitioner’s case in October of 2024 but instead remanded the record for further proceedings by the immigration judge. *See* ECF No. 11-7 at 1 (reflecting the appeal to the BIA, the later filing of a motion to remand, and BIA’s remand order); *id.* at 6 (lacking any dismissal order, remanding and expressing “no opinion as to the outcome of” proceedings on remand”). Case law in this district and

elsewhere confirms this longstanding view of administrative finality, ECF No. 18 at 5-6 (citing cases), and the record makes clear that Petitioner's removal proceedings are on appeal before the BIA. *See* ECF No. 11-1 at 6 (remanding the case for further proceedings).

Accordingly, Petitioner's first objection, which is predicated on the mistaken assertion that he is in post-final order detention and concerns a burden shifting framework applicable in that separate context, is meritless. In fact, it serves to illustrate the absurdity inherent in Petitioner's novel interpretation of administrative finality. Petitioner characterizes his appeal as causing an "indefinite automatic stay of removal" while "post-order-proceedings remain before the BIA or immigration court" ECF. No. 17 at 3-4. But his appeal is in his "Removal Proceedings," 8 U.S.C. § 1229a—not post-order proceedings, like he claims—and the determinations he is appealing are part of the immigration court's final decision on the merits in removal proceedings. *See* 8 U.S.C. § 1229a(c)(4)(IJ's determination on applications for relief from removal are a part of an IJ's decision in removal proceedings); *id.* at (c)(1) (a decision on removability comes only "at the conclusion of the proceeding"). Nor, as a matter of law, is the stay of removal during his BIA appeal "indefinite" as Petitioner argues, rather the Eighth Circuit has held that "detention pending deportation 'ha[s] a definite termination point'—deporting or releasing" him. *Banyee v. Garland*, 115 F.4th 928, 932 (8th Cir. 2024) (citation omitted).

Under Petitioner's interpretation, by merely conceding removability, filing applications for relief from removal, and appealing any negative decisions, a detainee could run out the removal period and the six-month clock under *Zadvydas v. Davis*, 533 U.S. 678 (2001), while removal proceedings continue. Petitioner points to no cases endorsing that

novel proposition, and the few cases he cites as “similar circumstances” *see* ECF No. 17 at 4, are distinguishable, either because they explicitly rejecting an argument that post-final order detention applied, *see Martinez v. Gonzales*, 504 F. Supp. 2d 887 at 897 (C.D. Cal. 2007) (“petitioner's detention is governed not by section 1231 but by section 1226. Because the removal period has not yet begun, petitioner's direct appeals and issuance of a stay of removal cannot have suspended or tolled that period under section 1231(a)(1)(C)”), or because both parties agreed that the petitioner was held pursuant to 8 U.S.C. § 1231, not 1226(c), as a removal order had become final nearly a decade earlier. *D’Alessandro v. Mukasey*, 628 F. Supp. 2d 368 at 374, 378 (the removal period had “come and gone”). Thus, the Court should overrule Petitioner’s first objection, which is inapplicable to Petitioner’s present pre-final order detention.

Were the Court to nonetheless consider the first objection, it should determine, as the R&R correctly found, that Petitioner did satisfy his burden under *Zadvydas*. *Zadvydas* sets out a framework for analyzing the lawfulness of a noncitizen’s detention after his removal order, holding the post-removal-order detention is presumptively lawful for up to six months, after which time a noncitizen must make an initial showing that there is “no significant likelihood of removal in the reasonably foreseeable future”—no “SLRRFF”—which the government may then rebut. R&R at 5 (quoting *Zadvydas*, 533 U.S. 678). The R&R rightly concluded that “prolonged detention” alone does not satisfy Petitioner’s initial burden, and even if it did, the government’s travel document rebuts any no-SLRRFF showing. Petitioner objects, contending there is no SLRRFF and characterizing his BIA

appeal as an indefinite stay of execution of his removal order. ECF No. 17 at 3–9 (referring, presumably, to 8 C.F.R. § 1003.6). That argument is without merit for at least three reasons.

First, Petitioner mistakes the nature and effect of the stay in this case. A stay of removal is a shield that preserves “the status quo—the state of affairs before the removal order was entered”—pending review. *Nken v. Holder*, 556 U.S. 418 428–29 (2009) (discussing a court of appeals’ stay of removal pending a petition for review under 8 U.S.C. § 1252(b)(3)(B)). Here, the status quo prior to Petitioner’s second BIA appeal is mandatory detention under 8 U.S.C. § 1226(c), which the Eighth Circuit recently held was constitutionally permissible while removal proceedings are ongoing. *Banyee*, 115 F.4th at 933–34. The stay during Petitioner’s BIA appeal merely preserves that status quo—it does not transform a constitutionally adequate detention into unconstitutional detention.

Second, Petitioner ignores that the stay resulted from his own decision to appeal his immigration proceedings to the BIA and seeks to use it as both a sword and a shield. Like the detainee in *Banyee*, Petitioner “‘has the keys in his pocket’ and can ‘end[] his detention immediately’ by ‘withdraw[ing] his defense . . . and return[ing] to his native land.’” 115 F.4th at 933 (quoting *Parra v. Perryman*, 172 F.3d 954, 958 (7th Cir. 1999), with alterations and omissions supplied by *Banyee*). Although preserving the status quo benefits Petitioner during his appeal, he seeks in this case to avoid its corresponding burdens—mandatory detention, which again, Congress required, and the Eighth Circuit says is constitutional. The Court should not alter the status quo now by placing Petitioner in a *better* position than he was in before the 2025 removal order.

And *third*, Petitioner's BIA appeal and the resulting regulatory stay of execution of his removal order do not overcome SLRRFF. As the Eighth Circuit held in *Banyee*, the wait time for a BIA decision is not dispositive—"[t]he *why*, in other words, is more important than *how long*." *Id.* at 932. "What is important is that, notwithstanding the delay, deportation remains a possibility." *Id.* at 933. The court observed that Banyee, like Petitioner, was "appealing an order that *requires* his removal," and the court noted that BIA prioritizes adjudicating cases involving noncitizens who are detained pending their appeals. *Id.* at 933 n.4 (citing Sirce E. Owen, Exec. Off. for Immigr. Rev., Case Management and Docketing Practices 2 (2020), available at <https://www.justice.gov/eoir/reference-materials/OOD2007/dl>). The court also found "no indication that the ongoing proceedings are a ruse 'to incarcerate [him] for other reasons.'" *Id.* at 934 (quoting *Demore v. Kim*, 538 U.S. 510, 533 (2003)). Because Banyee was "waiting for a decision on *his* appeal," the court emphasized, the delay did not result in an unconstitutional detention. The same is true here, especially where there is no dispute that the government has obtained a travel document for Petitioner, *see* R&R at 3, and he offers only speculation that it could expire at some point in the future. *See* ECF No. 17.

II. As petitioner's conditions of confinement claims fall outside habeas review, petitioner's second and third objections should be overruled.

Petitioner's second and third objections should also be overruled. The R&R correctly concluded that Petitioner's challenges to his conditions of confinement at Sherburne County Jail as unconstitutionally punitive fall outside the scope of habeas review under 28 U.S.C. § 2241. R&R at 11. Petitioner's objections to that conclusion

and his related assertion that he is now entitled to an evidentiary hearing, *see* ECF No. 17 at 9-13, should be overruled, as they ignore that Eighth Circuit precedent which forecloses conditions of confinement claims in habeas proceedings and misreads the relevant in-circuit authorities.

First, as Federal Respondents noted in their response to the Petition, “Conditions of confinement claims . . . are not cognizable in a habeas Petition, which much challenge the fact or duration of confinement, not its conditions.” ECF No. 8 at 23-24. This conclusion is dictated by Eighth Circuit precedent. *See Spencer v. Haynes*, 774 F.3d 467, 470 (8th Cir. 2014) (“Spencer’s constitutional claim relates to the conditions of his confinement. . . . Consequently, a habeas petition is not the proper claim to remedy his alleged injury.”; *Kruger v. Erickson*, 77 F.3d 1071, 1073 (8th Cir. 1996) (noting “fundamental differences between a civil rights action . . . where a prisoner might seek money damages or injunctive relief from unlawful treatment, and a habeas action”).

Citing cases in the D.C. and Ninth Circuits, Petitioner claims that “[o]ther courts have recognized habeas jurisdiction in precisely these circumstances,” ECF No. 17 at 10. Even were Petitioner’s characterization of those cases accurate (and it is not),² he ignores that, as the Eighth Circuit panel noted in *Spencer*, there is a circuit split on the issue and

² Far from “precisely these circumstances,” ECF No. 17 at 10, *Aamer v. Obama*, 408 U.S. App. D.C. 291, 742 F.3d 1023 (2014) concerned the challenged force-feeding of enemy combatant detainees at a military base in Guantanamo Bay, Cuba, while in *Hernandez v. Sessions*, 872 F.3d 976, 982 (9th Cir. 2017), plaintiffs sought injunctive relief in district court against a government policy of failing to require immigration officials to consider financial circumstances and alternative conditions of release at bond hearings.

that panel (like all courts in this circuit) is “bound by [its] precedent” in *Kruger. Spencer*, 774 F.3d at 470 (citations omitted).

Petitioner next argues that “[u]nlike conditions challenges brought by convicted prisoners under the Eighth Amendment, Petitioner’s claim arises under the Fifth Amendment Due Process Clause,” attempting to distinguish *Spencer* as arising in a criminal detention context. ECF No. 17 at 9. But *Spencer* did involve a Fifth Amendment due process claim for binding Spencer in four-point restraints without a hearing, *see Spencer*, 774 F.3d at 469, one that only later morphed into an Eighth Amendment focused argument on appeal. *See id.* at 469 n.5.

Petitioner’s attempts to characterize his detention as punitive also fall flat. Despite his reliance *Banyee*, it provides no support for his claims. ECF No. 17 at 10-11. Purporting to cite *Banyee*³ Petitioner argues that in it “the Eighth Circuit acknowledged that while ‘ordinary’ conditions claims may not proceed in habeas, the writ remains available where ‘something more’ is shown,” *id.* at 10-11, asserting that “something more” exists here. However, *Banyee* did not consider conditions of confinement claims, nor did it contain the particular phrases Petitioner quotes. It did, however, hold that mandatory detention while deportation proceedings are still pending is constitutionally permissible. *Banyee*, 115 F.4th at 933 (“What is important is that . . . deportation remains a possibility.”); *see id.* at 932 “the *why*, in other words, is more important than *how long*.”) (emphasis in original). That holding *is* clearly applicable here, where just as in

³ Petitioner’s citation to *Banyee* also incorrectly points to a citation to *Felts v. Green*, 91 F.4th 938 (8th Cir. 2024).

Banyee, Petitioner's removal proceedings remain pending owing to his own BIA appeal and deportation remains a possibility.

Nor does the *Banyee* panel's observation that it is not "a problem that the jail the government used also housed criminals" because "[i]t takes more to turn otherwise legal detention into unconstitutional punishment," undermine that holding. *Id.* at 934. The observation is entirely consistent with the R&R's recommendation that conditions of confinement fall outside the scope of this proceeding and with the Spencer Court's holding that challenges to conditions of confinement do not fall within the scope of habeas review. R&R at 11 (citing cases). The *Banyee* panel also observed that there was no indication that ongoing proceedings were a ruse to incarcerate him for other reasons, and as Federal Respondents argued, the same is true here where there is no evidence that Petitioner is detained for an improper purpose. ECF No. 8 at 22 (noting "no evidence that local or national ICE personnel are singling out Petitioner for punishment through detention, no evidence that any Federal Respondent has demonstrated individualized animus against him, not even an accusation that he participated in any protected speech for which he might have been punished"); *id.* at 24 (noting that Petitioner's detention continues to serve its immigration purposes). As noted in Federal Respondents' response, *id.* at 22, that fact renders this case readily distinguishable from those Petitioner cites involving detention that was alleged to be based upon free speech, *see e.g.*, ECF 17 at 10 (citing *Mohammed H. v. Trump*, No. 25-1576 (JWB/DTS), --- F. Supp. 3d ----, 2025 WL 1692739 (D. Minn. June 17, 2025) and *Aditya W. H. v. Trump*, No. 25-CV-1976 (KMM/JFD), 782 F. Supp. 3d 691 (D. Minn. May 14, 2025)).

Finally, Federal Respondents note that Petitioner's own objections reflect that he is no longer detained at Sherburne County Jail but was transferred to a different facility in Louisiana. ECF No. 17 at 2. Petitioner does not articulate why purportedly punitive conditions at a *prior* facility would impact the constitutionality of his *present* detention, much less in a proceeding under 28 U.S.C. 2241(c)(3), where the writ "shall not extend to a prisoner" unless he is "in custody in violation of the Constitution or laws or treaties of the United States," and where the only issue before the Court is the legality of his current detention, and the only relief he could obtain would be release. *See* ECF No. 8 at 24 (discussing the limited scope of habeas proceedings); R&R at 11 (same). By the same token, Petitioner's assertion that "[a]n evidentiary hearing appears to be especially important with respect to the punitive detention claims, especially to the extent that Respondents have transferred Petitioner," ECF 17 at 12, appears nonsensical where the Petition's allegations regarding conditions of confinement at the Sherburne County Jail do not concern the facility where he is currently detained and fall "outside the proper scope of habeas review under 28 U.S.C. § 2241." R&R at 11 (citations omitted). These represent additional reasons Petitioner's second and third objections should be overruled.

CONCLUSION

For all these reasons, Petitioner's objections should be overruled, and the Petition and TRO Motion should be denied.

Signature Page to Follow

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Respectfully submitted,

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