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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON**

Lorne SCOTT,

Petitioner,

v.

Camilla WAMSLEY, et al.,

Respondents.

Case No. 2:25-cv-1819-TMC

**PETITIONER'S MOTION TO
RECONSIDER ORDER DENYING
HABEAS PETITION IN PART**

1 **INTRODUCTION**

2 Petitioner Lorne Scott respectfully moves for reconsideration of Section IV.B. of the
3 Court’s order denying in part his petition for writ of habeas corpus. In that section, the Court
4 found that he is unable to challenge his detention based on the agency’s clearly erroneous finding
5 that he is subject to removal. Pursuant to Local Rule 7(h)(1), Mr. Scott submits that this portion
6 of the order is based on a manifest error, as it relies on the Ninth Circuit’s decision in *Martinez v.*
7 *Napolitano*, 704 F.3d 620 (9th Cir. 2012), rather than the Supreme Court’s analysis in *Jennings*
8 *v. Rodriguez*, 583 U.S. 281 (2018). *Martinez* did not address a challenge to custody, but instead
9 involved a challenge to a denied asylum application after the Court of Appeals had already
10 denied the person’s petition for review (PFR). In contrast, Mr. Scott challenges his detention
11 during removal proceedings, including while his PFR remains pending before the court of
12 appeals. Critically, the Supreme Court’s decision in *Jennings*, has already clarified that the
13 jurisdiction channeling provisions of 8 U.S.C. 1252 should not be expansively read to prohibit
14 challenges to detention during the course of removal proceedings, “depriving that detainee of any
15 meaningful chance for judicial review” of the custody determination. *Id.* at 293. The Court’s
16 ruling in Section IV.B. effectively forces Mr. Scott to remain detained for the next year or longer
17 pending the final adjudication of the PFR, regardless of how unlawful his current detention is.¹

18 This Court also relied in part on the absence of any other court decisions providing
19 habeas relief addressing these rare circumstances. Notably, however, just days before this Court
20 issued its decision, another district court in a remarkably parallel posture granted a habeas
21 petition. *See Rodriguez Nunez v. Arteta*, No. 25-CV-9225 (AS), 2025 WL 3458587 (S.D.N.Y.

22
23 ¹ Pursuant to this Court’s order, Respondents provided Mr. Scott a bond hearing on December
24 16, 2025, but the immigration judge denied bond based on a determination that Mr. Scott
presents a danger to the community and flight risk. *See Ex. B (Bond Order, December 16, 2025).*

1 Dec. 2, 2025)). For these reasons, Petitioner respectfully requests that the Court reconsider its
2 prior order denying his request for immediate release.

3 **ARGUMENT**

4 **I. Standard of Review**

5 While motions to reconsider are generally disfavored, *see* L. Civ. R. 7(h)(1), they are
6 appropriate where a party shows a “manifest error of law.” *Chung v. Washington Interscholastic*
7 *Activities Ass’n*, 550 F. Supp. 3d 920, 924 (W.D. Wash. 2021). A motion to reconsider may also
8 be based on “a showing of new facts or legal authority which could not have been brought to its
9 attention earlier with reasonable diligence.” L. Civ. R. 7(h)(1).

10 **II. The Court’s Decision Stands at Odds with the Supreme Court’s Analysis in**
11 ***Jennings* and Relies on a Ninth Circuit Decision that Does Not Address Challenges**
to Detention.

12 Mr. Scott respectfully submits that the Court committed clear error in finding “Scott’s
13 arguments against his mandatory detention are not based on a constitutional or statutory
14 interpretation challenge to the framework of § 1226.” Dkt. 19 at 11. In his petition, Mr. Scott
15 argued that his continued detention under § 1226(c) violates both the Immigration and
16 Nationality Act (INA) and his substantive constitutional right to avoid deprivation of liberty
17 without due process of law, because he is no longer removable, let alone removable for an
18 enumerated offense under 1226(c). As such, Respondents have no legitimate basis to continue
19 detaining him.

20 In *Demore v. Kim*, the Supreme Court relied on the availability of a *Matter of Joseph*
21 hearing² to reject a facial challenge to mandatory detention under § 1226(c), noting that a *Joseph*

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23 ² In *Matter of Joseph*, the BIA held that the respondent is not properly detained under
24 § 1226(c) if the government is “substantially unlikely to establish the charge of deportability.”
22 I. & N. Dec. 799, 806 (BIA 1999).

1 hearing provides a critical safeguard against wrongful mandatory detention *pending a merits*
2 *decision*. See 538 U.S. 510, 514 n.3 (2003). Section 1226(c) is therefore unconstitutional as
3 applied to Mr. Scott precisely because the agency has eviscerated this critical safeguard in his
4 case.

5 As this Court noted in its order, Dkt. 19 at 10, Respondents offer no defense of the
6 agency decisions failing to provide full faith and credit to the state order vacating Mr. Scott's
7 conviction. The agency's orders flatly violate controlling precedent, which unequivocally
8 demonstrates Mr. Scott cannot be removed. See *Bent v. Garland*, 115 F.4th 934 (9th Cir. 2024).
9 As someone who cannot be removed, Mr. Scott's ongoing detention violates substantive due
10 process as it is no longer reasonably tied to any lawful purpose. Nonetheless, the IJ and Board of
11 Immigration Appeals (BIA) both issued orders (albeit with contradictory analysis),³ refusing to
12 recognize that he is no longer removable, plainly demonstrating the punitive nature of his
13 continued detention. See *Bell v. Wolfish*, 441 U.S. 520, 539 (1979) (“[I]f a restriction or
14 condition is not reasonably related to a legitimate goal—if it is arbitrary or purposeless—a court
15 permissibly may infer that the purpose of the governmental action is punishment that may not
16 constitutionally be inflicted upon detainees *qua* detainees.”).

17 While this Court ordered that Mr. Scott's prolonged detention now requires a bond
18 hearing, this decision fails to account for the punitive nature of the agency's custody
19 determinations. The removal “proceedings at issue here are civil, not criminal, and . . . [thus] are
20 nonpunitive in purpose and effect.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). But that
21 assumption dissipates when “detention's goal is no longer practically attainable, [as then]
22 detention no longer bears a reasonable relation to the purpose for which the individual was
23

24 ³ The contradicting analysis merely underscores that the agency lacks any coherent rationale for detaining Mr. Scott.

1 committed.” *Id.* (citation modified). That is exactly the case here, because there is no question
2 Mr. Scott is no longer removable. Indeed, Respondents offered no defense of his removal order.
3 Accordingly, forcing Mr. Scott to remain detained for the next year or more, while the Ninth
4 Circuit rules on his petition for review, constitutes punitive detention that violates his substantive
5 due process rights, given the blatantly unlawful basis for the agency’s removal decision that
6 contravenes controlling precedent.

7 Nonetheless, this Court found that “the posture of Scott’s removal proceedings limits this
8 Court’s ability to review whether his detention under § 1226(c) violates the INA.” Dkt. 19 at 11.
9 The Court relied on the Ninth Circuit’s holding in *Martinez v. Napolitano*, finding that, “[t]he
10 Ninth Circuit has instructed district courts that when a claim by a noncitizen, ‘however it is
11 framed, challenges the procedure and substance of an agency determination that is inextricably
12 linked to the order of removal, it is prohibited by section 1252(a)(5)’ of the INA.” *Id.* (citing
13 *Martinez*, 704 F.3d at 623).

14 The Court committed manifest error in relying on *Martinez*. That decision is readily
15 distinguished, as it did not involve a challenge to detention while in immigration proceedings.
16 *Martinez*, 704 F.3d at 621 (listing three claims). Instead, it concerned a challenge to the result of
17 the removal proceedings. Critically, the Court of Appeals had already denied his PFR
18 challenging the denial of his asylum application and order of removal. He nonetheless filed a
19 habeas petition seeking yet again to challenge the same denied asylum application.
20 Unsurprisingly, the Court of Appeals found that 8 U.S.C. § 1252(a)(5) and (b)(9) limit an
21 individual to “one bite of the apple with regard to challenging an order of removal,” therefore
22 barring the second challenge to the asylum application via a habeas petition. *Martinez*, 704 F.3d
23 at 622. Notably, the habeas petition in *Martinez* did not even involve a direct challenge to the
24 petitioner’s custody—instead, it was simply a challenge to the same removal order that the Ninth

1 Circuit has already upheld. As the court explained, “the distinction between an independent
2 claim and indirect challenge [to a removal order] will turn on the substance of the relief that a
3 plaintiff is seeking.” *Id.* (citation modified). And in *Martinez*, the noncitizen “challenge[ed] the
4 procedure and substance of the BIA’s determination that he was ineligible for asylum,
5 withholding of removal, and relief under the CAT,” i.e., “the basis of [the] removal order.” *Id.* at
6 623. Here, the “substance of the relief” sought is not an order vacating the removal order or
7 granting relief from removal, like in *Martinez*. Instead Petitioner here seeks to challenge his
8 *detention* while his challenge to the removal order remains pending before the Court of Appeals.
9 Certainly, the success of his challenge relies on a determination of the probability of success on
10 the pending PFR. However, the actual relief sought is release from detention, and any
11 preliminary detention determination regarding the agency’s basis for that detention is collateral
12 to the ultimate finding of removability by the court of appeals on the PFR.

13 This Court’s decision stands in direct tension with the Supreme Court’s holding in
14 *Jennings*. As the Supreme Court made clear, § 1252(b)(9) should not be read expansively to
15 encompass such a habeas challenge to detention pending the final resolution of removal
16 proceedings. Any such reading would effectively bar the opportunity to challenge unlawful
17 detention—in this case punitive civil detention pending resolution of the PFR. *See, Jennings*, 583
18 U.S. at 293 (“Interpreting ‘arising from’ in this extreme way would also make claims of
19 prolonged detention effectively unreviewable. By the time a final order of removal was
20 eventually entered, the allegedly excessive detention would have already taken place.”). Even
21 though the Court acknowledged that custody during the detention process may be thought of as
22 “arising from” the removal proceedings, it held that the terms of the jurisdiction channeling
23 provisions must be narrowly understood so as not to bar such collateral claims. *Id.* at 293-94
24 (“[W]hen confronted with capacious phrases like ‘arising from,’ we have eschewed uncritical

1 literalism leading to results that no sensible person could have intended.”) *Id.* at 294 (citation
2 modified).

3 The Supreme Court also explained that the substance of the relief sought is critical to
4 determining whether judicial review remains available outside of the PFR. As it explained, “it is
5 enough to note that respondents are not asking for review of an order of removal; they are not
6 challenging the decision to detain them in the first place or to seek removal; and they are not
7 even challenging any part of the process by which their removability will be determined.” *Id.*
8 Here, Mr. Scott is not challenging the initial decision to detain him or place him in removal
9 proceedings. And critically, like the respondents in *Jennings*, Mr. Scott is “not asking for review
10 of an order of removal.” *Id.* at 294. He is only seeking a determination that his *detention* is
11 unlawful because Respondents are “substantially unlikely to establish the charge of
12 deportability” that is currently before the court of appeals on the PFR. *Matter of Joseph*, 22 I. &
13 N. Dec. at 806. Even though the challenge to his current detention requires analyzing the legality
14 of the removal order, it is only for purposes of rendering a determination regarding his custody
15 while waiting for the Ninth Circuit to ultimately resolve the separate challenge to his
16 removability. A ruling concluding detention is unlawful on this basis does not in any way
17 interfere with the PFR process, as the Court of Appeals will remain solely responsible for
18 determining whether the removal order is lawful.

19 The district court’s decision in *Cancino-Castellar v. Nielsen* is instructive here. 338 F.
20 Supp. 3d 1107 (S.D. Cal. 2018). That case involved a putative class challenging, *inter alia*, the
21 alleged unlawful detention caused by immigration authorities’ policies delaying the presentment
22 of detained persons in removal proceedings. The district court initially dismissed the claims for
23 lack of jurisdiction, relying in part on the *Martinez* decision. But shortly thereafter, the Supreme
24 Court decided *Jennings*. The district court, on a motion to reconsider, correspondingly modified

1 its decision to permit Plaintiffs to move forward with their Fifth Amendment challenges to the
2 unlawful detention. In doing so, the district court explained that while “pre-*Jennings* Ninth
3 Circuit precedent broadly held that [s]ections 1252(a)(5) and 1252(b)(9) mean that any issue . . .
4 arising from any removal-related activity can be reviewed only through the PFR process,” *id.* at
5 1112 (citation modified and omitted), post-*Jennings* “a court must ask whether the claims
6 otherwise challenge issues that are cognizable in the PFR process,” *id.* at 1114; *see also Nielsen*
7 *v. Preap*, 586 U.S. 392, 402 (2019) (§ 1252(b)(9) did not bar challenge to detention under §
8 1226(c) where plaintiffs alleged the statute required detention upon release from criminal
9 custody). Here, it is clear is that the custody determination is not “cognizable in the PFR
10 process.” 338 F. Supp. 3d at 1112. Even when Mr. Scott ultimately prevails on his PFR, the
11 Court will have no opportunity to address or remedy his unlawful immigration detention pending
12 the resolution of the PFR. Similar to the Court’s explanation in *Jennings*, “[b]y the time a final
13 order of removal was eventually entered, the allegedly excessive detention would have already
14 taken place.” *Jennings*, 583 U.S. at 293.

15 Finally, in denying the habeas petition on this issue, this Court relied in part on the fact
16 that Mr. Scott could point to no other cases providing habeas relief in the very unusual
17 circumstances present here. Dkt. 19 at 11 (“Scott does not cite, and this Court has been unable to
18 find, any precedent for granting habeas relief in analogous circumstances.”). However, just days
19 before this Court issued its order, another district court addressed a remarkably similar case,
20 where the agency similarly refused to give effect to a state court order vacating a conviction that
21 served as the basis of removability in ongoing removal proceedings. *See Rodriguez Nunez v.*
22 *Arteta*, 2025 WL 3458587, at *2–3. There (just as in *Martinez*), the court recognized that “the
23 substance of the relief that a plaintiff is seeking” is what matters for purposes of determining if a
24 claim is barred by § 1252. *Id.* at *2. But unlike here, the court recognized that “the relief that [the

1 petitioner] seeks on his habeas petition—release from confinement during his removal
2 proceedings—is distinct from the relief he seeks in his removal case—not being removed from
3 the country.” *Id.* The court therefore proceeded to adjudicate the merits of the habeas petition
4 and ordered the petitioner’s immediate release. *See* Appendix A (Order, *Rodriguez Nunez v.*
5 *Arteta*, No. 1:25-CV-9225-AS, Dkt. 15 (S.D.N.Y. Nov. 20, 2025), instructing the government to
6 release petitioner from custody “no later than 5 p.m. tomorrow”).

7
8 **CONCLUSION**

9 For the foregoing reasons, the Court should grant the motion to reconsider and order Mr.
10 Scott’s release.

11 Respectfully submitted this 18th of December, 2025.

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WORD COUNT CERTIFICATION

I certify that this memorandum contains 2,436 words.

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