UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION

ABDOUL KARIMOU DIALLO	)	**CIVIL ACTION NO: 25-cv-2012**
	)	
VERSUS	)	**JUDGE EDWARDS**
	)	
DONALD TRUMP, *ET AL.*	)	**MAGISTRATE JUDGE PEREZ-MONTES**
	)	

FEDERAL RESPONDENTS' RESPONSE TO PETITIONER'S MOTION FOR RELEASE PENDING ADJUDICATION OF PETITIONER'S HABEAS CORPUS PETITION

Federal Respondents respond to Petitioner's Motion for Release Pending Adjudication of Petitioner's Habeas Corpus Petition as follows:

I. INTRODUCTION

Petitioner filed a Petition for Writ of Habeas Corpus on December 12, 2025.[1] ECF No. 1. Petitioner seeks his release from detention during the pendency of his removal proceedings on the grounds that (1) his detention violates certain provisions of the Immigration and Nationality Act and related bond regulations, and (2) his detention violates the Due Process Clause of the Fourth and Fifth Amendments. Further, Petitioner seeks a declaratory judgment that the decision to detain him is unconstitutional. ECF No. 1 at 35. Petitioner then filed a Motion for Temporary Restraining Order and Preliminary Injunction, also seeking his release from detention. ECF No. 22.

The Court issued an electronic order denying Petitioner's Motion for TRO and Preliminary Injunction based upon the *Bautista* Judgment. *Bautista v. Noem*, No. 5:25-cv-01873, 2025 WL 3678485 (C.D. Cal. Dec. 18, 2025). The parties were ordered to submit a joint status report regarding compliance with *Bautista* and the dismissal of this action. ECF No. 23. However, due to Federal

[1] The U.S. Attorney's Office was not served with the habeas petition until December 29, 2025.

Respondents' position that *Bautista* should not be given preclusive effect, the Court issued a Show Cause Order for Federal Respondents to respond to the habeas petition. ECF No. 28.

In the interim, Petitioner has filed a third pleading, seeking his release, pending his habeas petition, which seeks his release. ECF No. 29. The Court ordered Federal Respondents to file a response to Petitioners' motion for release "focusing on *Calley v. Callaway*, 496 F.2d 701 (5th Cir. 1974), *Sanchez v. Winfrey*, No. CIV.A.SA04CA0293RFNN, 2004 WL 1118718 (W.D. Tex. Apr. 28, 2004), and *Mapp v. Reno*, 241 F.3d 221 (2d Cir.2001), and whether such "extraordinary circumstances" exist here. ECF No. 32.

Petitioner is not entitled to release pending adjudication of his habeas petition, as the Immigration and Nationality Act (INA) bars review of Petitioner's claims and any such release would subvert the statutory scheme created by Congress for the detention and removal of non-citizens. Even if the Court were to find that it has jurisdiction, Petitioner's mandatory detention is lawful under the INA. Further, the Fifth Circuit has not extended *Calley* to apply in the immigration habeas context, especially where the order of removal is not administratively final. Even if *Calley* were applicable, Petitioner is unable to establish his entitlement to release under Fifth Circuit precedent.

II. STATEMENT OF FACTS

Petitioner attached medical records to his petition that appear to cover medical treatment while detained from May 2025 to September 2025. ECF No. 1-5; 1-6. Specifically, the records indicate that Petitioner initially arrived at the LaSalle detention facility on May 31, 2025 and was medically assessed. ECF No. 1-6 at 49. Petitioner had a prior history of surgery for a rectal abscess in May 2024. *Id.* He was further assessed on June 2, 2025 and the provider made referrals and placed orders for his medical care. ECF No. 1-6 at 34. There is one note indicating a medical procedure refusal on July 23, 2025. ECF No. 1-5 at 20. The note suggests that Petitioner refused the procedure, because he "refused to wear orange jumpsuit". The only lab work that is provided is for May, June, and September 2025.

ECF No. 1-5 at 25-26; 1-6 at 2. Likewise, the medical declaration attached to the petition was based upon a review of medical records from May to September 2025 and presented medical opinions regarding possible complications from certain medical conditions. ECF No. 1-4 at 2-8.

III. ARGUMENT

A. Petitioner cannot demonstrate a high probability of success on his statutory and constitutional claims.

1. The Court lacks jurisdiction over Petitioner's claims.

As argued more fully in Federal Respondents' Motion to Dismiss, or Alternatively for Summary Judgment, multiple provisions of 8 U.S.C. § 1252 bar the Court's review of Petitioner's claims. Fed. Resp. Brief, pp. 11-18. Section 1252(e)(3) limits judicial review of "determinations under section 1225(b) of this title and its implementation" to only in the District Court for the District of Columbia. 8 U.S.C. § 1252(e)(3). Paragraph (e)(3) further confines this limited review to (1) whether § 1225(b) or an implementing regulation is constitutional or (2) whether a regulation or other written policy directive, guideline, or procedure implementing the section violates the law. *See* 8 U.S.C. § 1252(e)(3)(A)(i)-(ii); *see also M.M.V. v. Garland*, 1 F.4th 1100, 1109 (D.C. Cir. 2021).

Section 1252(g), as amended by the REAL ID Act, specifically deprives courts of jurisdiction, including habeas corpus jurisdiction, to review "any cause or claim by or on behalf of an alien arising from the decision or action by [the Secretary of Homeland Security] to [1] commence proceedings, [2] adjudicate cases, or [3] execute removal orders against any alien under this chapter." *Id.* Section 1252(g) eliminates jurisdiction "[e]xcept as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title."

Finally, sections 1252(a)(5) and 1252(b)(9), taken together "mean that any issue—whether legal or factual—arising from any removal-related activity can be reviewed only through the [petition-for-review] process." *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016); *see id.* at 1035 ("§§ 1252(a)(5)

and [(b)(9)] channel review of all claims, including policies-and-practices challenges . . . whenever they 'arise from' removal proceedings"); *accord Ruiz v. Mukasey*, 552 F.3d 269, 274 n.3 (2d Cir. 2009) (only when the action is "unrelated to any removal action or proceeding" is it within the district court's jurisdiction); *cf. Xiao Ji Chen v. U.S. Dep't of Justice*, 434 F.3d 144, 151 n.3 (2d Cir. 2006) (a "primary effect" of the REAL ID Act is to "limit all aliens to one bite of the apple" (internal quotation marks omitted)).

Thus, the District Court lacks jurisdiction to hear Petitioner's constitutional challenge to DHS's mandatory detention decision under 8 U.S.C. § 235. Nor does this Court have jurisdiction over claims which challenge DHS's decision to commence removal proceedings or adjudicate cases. Moreover, Petitioner's claims are an impermissible attack on the decisions to detain him and institute removal proceedings and must be channeled through his administrative and petition for review process.

2. Petitioner's detention under Section 235 of the Immigration and Nationality Act (8 U.S.C. § 1225) is lawful and does not violate his Due Process rights.

Even if this Court determines that Petitioner's claims survive a motion to dismiss for lack of subject matter jurisdiction, Petitioner is lawfully detention under INA § 235. Federal Respondents have fully briefed Petitioner's detention in their supporting memorandum in support of their dispositive motion. Fed. Resp. Brief, pp. 18-33. The plain text of § 1225(b)(2) unambiguously applies to Petitioner. Petitioner is a foreign national who arrived in the United States without any lawful entry documents. 8 U.S.C. § 1182(a)(7)(A)(i)(I). Thus, as an alien who is an "applicant for admission," the statute mandates that Petitioner "shall be detained for a proceeding under section 1229a". 8 U.S.C. §§ 1225(a)(1); 1225(b)(2). Further, Petitioner continues to avail himself of the processes codified with the removal proceedings.

3. Petitioner's arrest after a hearing scheduled by an immigration judge was lawful and did not violate Petitioner's Fourth Amendment rights.

Petitioner asserts that his arrest and detention resulted from an illegal ruse. However, detaining Petitioner following an in-person hearing does not qualify as a ruse because Petitioner was summoned to court by the immigration judge. The decision to have Petitioner appear in-person was carried out by the court, and not by ICE officials. However, even if the Court were to construe Petitioner's allegations to constitute a ruse, which is denied, Federal Respondents aver that use of a ruse still would not illegitimize Petitioner's arrest. The Fifth Circuit has sanctioned the use of "ruses" and other deception by law enforcement when necessary. *United States v. Allibhai*, 939 F.2d 244, 251 (5th Cir. 1991)(quoting *United States v. Fera*, 616 F.2d 590, 596 (5th Cir.1980)); *see also Westley v. Harper*, Civil No. 25-229, 2025 WL 592788 *23 (E.D. La. Feb. 24, 2025).

B. The Fifth Circuit has not extended *Calley* to the immigration habeas context and this Court should decline to do so, where Petitioner's removal order is not administratively final.

Addressing the Court's concerns, we begin with *Calley*. Calley was a military prisoner, found guilty of multiple murders and sentenced to hard labor for twenty years. *Calley v. Callaway*, 496 F.2d 701 (5th Cir. 1974). Calley appealed his conviction and sought a new trial. *Id.* He exhausted his military appeals and the Army's action became final following review by the President and a determination that no further action would be taken. *Id.* at 702. Calley filed a petition for writ of habeas corpus to restrain the Army from moving him from house arrest to disciplinary barracks. *Id.* The district court granted bail and the Army appealed. The Fifth Circuit held:

> Bail should be granted to a military prisoner pending postconviction habeas corpus review only when the petitioner has raised substantial constitutional claims upon which he has a high probability of success, and also when extraordinary or exceptional circumstances exist which make the grant of bail necessary to make the habeas remedy effective.

Id. The reviewing court found that the district court failed to apply the proper two-fold standard and reversed the grant of bail because the circumstances did not justify a grant of bail pending determination of the merits of the petition. *Id.* at 703.

Similarly, the alien detainee in the *Mapp*[2] case was a criminal alien subject to deportation due to his crimes. § 241(a)(2(A)(ii). *Mapp v. Reno*, 241 F.3d 221, 223 (2nd Cir. 2020). Mapp was also under a final order of removal and detained pursuant to § 1231; therefore, he was no longer subject to mandatory detention. *Id.* at 228. The Seventh Circuit recognized the import of the finality of the administrative proceedings noting that *Mapp*, "took a bold further step, and ruled that district courts have authority to release on bail, *pending appeal from the denial of habeas corpus relief*, aliens detained pending removal." *Bolante v. Keisler*, 506 F.3d 618, 620 (7th Cir. 2007) (emphasis added). Thus, the *Mapp* court was not called upon to answer the question of whether the district court's inherent authority to grant bail where a Petitioner is subject to mandatory detention and where the Petitioner's order of removal is not final. The *Sanchez* case was also decided before the REAL ID Act amendments to § 1252. *Sanchez v. Winfrey*, No. CIV.A.SA04CA0293RFNN, 2004 WL 1118718 (W.D. Tex. Apr. 28, 2004). Sanchez was also under a final order of removal and not subject to mandatory detention. *Id.* at *1. In addition, Sanchez applied *Mapp* and *Bover*[3] without discussing their applicability in the immigration habeas context.

---

[2] Federal Respondents note that *Mapp* was decided before Congress enacted the REAL ID Act of 2005, Pub. L. No. 109- 13, 119 Stat. 231 (2005), which amended the INA to eliminate statutory and non-statutory habeas jurisdiction over final orders of removal, deportation and exclusion, and made a petition for review filed with an appropriate court of appeals the sole and exclusive means for judicial review of such orders. incorporating the jurisdiction stripping and channeling provisions within § 1292. *See* REAL ID Act § 106(a) (amending 8 U.S.C. § 1252).

[3] *Bover v. City of Orlando*, 402 F.2d 966 (5th Cir. 1968).

Thus, Federal Respondents assert that *Calley*, *Mapp*, and *Sanchez* are inapposite because Petitioner in this case is subject to mandatory detention under INA § 235 and Petitioner has appealed her removal order to the BIA; therefore, her removal order is not administratively final.

C. Regardless, Petitioner cannot satisfy the Fifth Circuit test for demonstrating extraordinary circumstances warranting release pending adjudication of his Petition for Writ of Habeas Corpus.

Should the Court extend *Calley* to the facts of this case, Petitioner has failed to establish either prong of the Fifth Circuit test for granting bail. To grant release pending adjudication of the action, courts must determine whether the petitioner raises substantial constitutional claims with a high probability of success, **and** whether there are extraordinary circumstances which make the grant of bail necessary to make the habeas remedy effective. *Calley*, 496 F.2d at 702. Respondents have already established that Petitioner in the instant case fails to satisfy the first prong of the test.

With regard to the extraordinary circumstances element, the Fifth Circuit articulated that extraordinary circumstances exist, for example, where there has been a "serious deterioration of the petitioner's health while incarcerated"; where a short sentence for a relatively minor crime is "so near completion that extraordinary action is essential to make collateral review truly effective"; and possibly where there has been an "extraordinary delay in processing a habeas corpus petition." *Nelson v. Davis*, 739 Fed. Appx at 255 (*Citing Calley v. Callaway*, 496 F.2d at 702 n.1). Neither *Nelson* nor *Callaway* culminated in the prisoner's release. (The *Nelson* case specifically did not find extraordinary or exceptional circumstances warranting release).

Although Petitioner alleges worsening health issues, the record[4] before the Court does not evidence same.[5] Allegations that a petitioner may face health issues in the future do not suffice. *Singh*

[4] Should the Court require updated medical records, Federal Respondents would respectfully request 48 hours to obtain same.

[5] Nor does the record establish deliberate indifference to Petitioner's medical needs. To be tantamount to the infliction of cruel and unusual punishment, prison conditions must pose "an

v. Gillis, No. 5:20-CV-96-DCB-MTP, 2020 WL 4745745, at *3 (S.D. Miss. June 4, 2020); *see also, Sacal-Micha* v. *Longoria*, 449 F.Supp.3d 656, 665 (S.D. Tex. 2020) ("accepting [petitioner's] reasoning would logically require the release of all individuals currently detained who are elderly or suffer from certain underlying medical conditions. The law does not require such a generalized result"). Therefore, Respondents aver that this Honorable Court should also deny the Petitioner release in the instant case since he fails to establish deteriorating health issues, or any other extraordinary circumstances as defined by the Fifth Circuit test.

IV. CONCLUSION

For the foregoing reasons, Petitioner's motion for release pending the adjudication of habeas petition should be denied.

Respectfully submitted,

ZACHARY A. KELLER
United States Attorney

BY: *s/ Karen J. King*
KAREN J. KING (#23508)
Assistant United States Attorney
Western District of Louisiana
800 Lafayette Street, Suite 2200
Lafayette, Louisiana 70501
Telephone:(337) 262-6618
Facsimile: (337) 262-6693
Email: karen.king@usdoj.gov

---

unreasonable risk of serious damage" to a prisoner's health—an objective test—and prison officials must have acted with deliberate indifference to the risk posed—a subjective test. *Helling v. McKinney*, 509 U.S. 25, 33–35, (1993) (holding exposure to an 'unreasonable risk of damage to [a plaintiff's] health" actionable under the Eighth Amendment). "The second requirement follows from the principle that only the unnecessary and wanton infliction of pain implicates the Eighth Amendment." *Farmer v.Brennan*, 511 U.S. 825, 834 (internal quotation marks and citations omitted) (emphasis added). "Deliberate indifference cannot be inferred merely from a negligent or even a grossly negligent response to a substantial risk of serious harm." *Williams v. Banks*, 956 F.3d 808, 811 (5th Cir. 2020) (brackets omitted).