

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF OKLAHOMA

PABLO CESAR BANEGAS LOBO,)	
)	
Petitioner,)	
)	
v.)	<u>CV-26-40-G</u>
)	
WARDEN OF DIAMONDBACK)	
CORRECTIONAL FACILITY,)	
)	
Respondent.)	

**RESPONSE IN OPPOSITION TO
PETITION FOR WRIT OF HABEAS CORPUS**

Respondents,¹ pursuant to the Court’s Order (Doc. 7), respond to the Amended Petition for Writ of Habeas Corpus (Doc. 6), and respectfully request that the Court deny the Petition and enter an order of dismissal.

Brief in Response

I. Background

Petitioner Pablo Cesar Banegas Lobo is a native and citizen of Honduras who entered the United States without admission or parole at or near Eagle Pass, Texas, on or about December 1, 2023. *See* Exhibit 1, ¶ 5. (Declaration of Deportation Officer Keisa Gates-Jones). Mr. Banegas Lobo was released pursuant to “INA §236 [8 U.S.C. § 1226]”.

¹ Petitioner names “Warden of Diamondback Correctional Facility” as Respondent. *See* Amended Petition for Writ of Habeas Corpus (Doc. 6). Mr. Fred Figueroa, Warden of the Diamondback Correctional Facility, is not a federal official and this response is therefore not filed on his behalf. The Court has ordered a Response to be filed and directed the Clerk of Court to send the Amended Petition to the United States Attorney for the Western District of Oklahoma. Doc. 7. Accordingly, this Response in Opposition is respectfully submitted.

See Exhibit 2 (Order of Release on Recognizance). Mr. Banegas Lobo was placed into removal proceedings on February 2, 2024, via a Notice to Appear. Exhibit 3 (Notice to Appear). Mr. Banegas Lobo filed his Form I-589 “Application for Asylum” on December 2, 2024. Exhibit 4 (Form I-589). On January 6, 2026, “ERO encountered Petitioner in [the] Dallas Field Office” and “transferred him to their custody.” Ex. 1, ¶¶ 4,6. Mr. Banegas Lobo “requested a bond redetermination hearing on January 22, 2026, which was denied for lack of jurisdiction on February 5, 2026. *Id.* at ¶ 8; Exhibit 5 (Order on Bond Redetermination). According to information provided by ICE to undersigned counsel, DHS moved to Pretermite Petitioners I-589 on February 4, 2026, pursuant to an Asylum Cooperation Agreement with Ecuador. *See* Exhibit 6 (Motion to Pretermite and Attachments). On March 4, 2026, an Immigration Judge granted that motion. *See* Exhibit 7 (Order Granting Motion to Pretermite). This order will become final on April 4, 2026, unless petitioner files an appeal prior to that date. *See id.* ICE takes the position that Mr. Banegas is currently detained under “INA § 235 [8 U.S.C. § 1225]” pending his removal. *See* Ex. 1, ¶ 9. As of the date of this filing, no final order of removal has been entered, and Mr. Banegas Lobo has been in custody for approximately eighty-five (85) days.²

II. Argument

a. Detention is constitutionally permissible.

Mr. Banegas Lobos alleges that his detention violates the due process clause of the Fifth Amendment. To assess the merits of Petitioner’s constitutional claim, it is necessary

² The government acknowledges that Mr. Banegas Lobo’s Amended Petition states that he has been in custody since January 6, 2025, rather than 2026. Based on the information provided by ICE, and the date of the Order on Bond Redetermination, the government believes that Mr. Banegas Lobo’s stated year is likely a Scrivner’s error.

to first determine what due process rights Petitioner possesses. As noted above, Mr. Banegas Lobo is currently detained pursuant to 8 U.S.C. § 1225. 8 U.S.C. § 1225(b)(2)(A) provides that:

[I]n the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title.

Petitioner has not been admitted to the U.S., and for any noncitizen who has not been admitted into the country, the INA provides the process due under the Constitution. *United States v. Thuraissigiam*, 591 U.S. 103, 138-40 (2020). It is well established that the Fifth Amendment affords noncitizens due process in removal proceedings, but meanwhile the Supreme Court “has recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process.” *Demore v. Kim*, 538 U.S. 510, 523 (2003). It is the Supreme Court’s “longstanding view that the Government may constitutionally detain deportable aliens during the limited period necessary for their removal proceedings[.]” *Id.* at 526. “[W]hen the Government deals with deportable aliens, the Due Process Clause does not require it to employ the least burdensome means to accomplish its goal.” *Id.* at 528. “Detention during removal proceedings is a constitutionally permissible part of that process.” *Id.* at 531. And the Supreme Court has held, nowhere in the statutory rubric did Congress mention a bond hearing or state a maximum period of time within which an alien could be held in such mandatory detention without providing a bond hearing. *See Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018).

b. Petitioner does not state whether he alleges a violation of procedural due process, substantive due process, or both.

The Fifth Amendment's due process guarantee has both procedural and substantive components. Mr. Banegas Lobos does not specify the type of due process violation he alleges.

Under procedural due process, the Government is required to provide individuals with certain procedural rights before it may deprive them of life, liberty, or property. To bring a procedural due process claim, a petitioner "must establish (1) the deprivation of (2) a constitutionally cognizable liberty or property interest, (3) without adequate due process procedures." *Abdi v. Wray*, 942 F.3d 1019, 1031 (10th Cir. 2019).

A substantive due process violation occurs when government action (1) infringes on a fundamental right without a compelling government interest, or (2) deprives a person of life, liberty, or property in a way that shocks the conscience. *Maehr v. United States Dep't of State*, 5 F.4th 1100, 1117 (10th Cir. 2021). The Tenth Circuit Court of Appeals applies the fundamental-rights approach when a plaintiff or petitioner challenges legislative action, and it applies the shocks-the-conscience approach when the challenge is to executive action. *Id.*; *Abdi*, 942 F.3d at 1027.

For purposes of both procedural and substantive due process, immigration detention serves legitimate nonpunitive governmental purposes. As a matter of law, the power to admit or exclude aliens is a sovereign prerogative. *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 139 (2020). Detention while removal proceedings are pending serves the legitimate governmental purpose of preventing deportable aliens from

fleeing prior to or during their removal proceedings, thus increasing the chance that, if an order of removal is entered, the alien will be removed successfully. *Demore*, 538 U.S. at 528. Detention is rationally related to a legitimate nonpunitive purpose, assuring “the alien’s presence at the moment of removal.” *Zadvydas v. Davis*, 533 U.S. 678, 699 (2001).

c. Petitioner does not plausibly allege a substantive due process claim.

For there to be a substantive due process claim against the Attorney General and the Secretary of Homeland Security, Petitioner must allege and prove action that shocks the judicial conscience. *Maehr*, 5 F.4th at 1117; *Abdi*, 942 F.3d at 1027.

Ordinary negligence does not satisfy the shocks-the-conscience standard, and even allowing unreasonable risks to continue is not necessarily conscience shocking. *Ruiz v. McDonnell*, 299 F.3d 1173, 1184 (10th Cir. 2002) (citing cases). To satisfy the shocks-the-conscience standard, Petitioner must do more than show that the Government intentionally or recklessly caused him harm by abusing or misusing its power. Instead, he “must demonstrate a degree of outrageousness and a magnitude of potential or actual harm that is truly conscience shocking.” *Uhlrig v. Harder*, 64 F.3d 567, 574 (10th Cir. 1995). This standard demands a “high level of outrageousness.” *Id.*; *Klen v. City of Loveland, Colo.*, 661 F.3d 498, 513 (10th Cir. 2011).

Acts that shock the conscience are those that are “bound to offend even hardened sensibilities” or that “brutalize the temper of a society.” *Rochin v. California*, 342 U.S. 165, 172, 174 (1952). “[M]alicious and sadistic abuses of government power that are intended only to oppress or to cause injury and serve no legitimate government purpose” meet the standard for a substantive due process claim. *Johnson v. Newburgh Enlarged*

Sch. Dist., 239 F.3d 246, 252 (2d Cir. 2001). Negligently inflicted harm is categorically beneath the constitutional due process threshold, “while conduct deliberately intended to injure in some way unjustifiable by any government interest is the sort of official action most likely to rise to the conscience-shocking level.” *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 834 (1998).

Petitioner presents no facts that rise to that level; meanwhile, it bears repeating that immigration detention serves legitimate governmental purposes. It assures an alien’s presence at the moment of removal. *Zadvydas*, 533 U.S. at 699. It prevents removable aliens from fleeing during their removal proceedings, thereby increasing the chance that, if an alien is ordered removed, the removal will be effected. *Demore*, 538 U.S. at 528.

d. Petitioner’s assertion fails under procedural due process analysis.

In evaluating detention that implicates the protection against deprivation of liberty without due process of law, “the proper inquiry is whether those conditions amount to punishment of the detainee.” *Bell v. Wolfish*, 441 U.S. 520, 535 (1979). “In the absence of an expressed intent to punish,” immigration detainees can prevail on a Fifth Amendment Due Process claim “by showing that the conditions are not ‘rationally related to a legitimate nonpunitive governmental purpose’ or that the conditions ‘appear excessive in relation to that purpose.’” *Betancourt Barco v. Price*, 457 F. Supp. 3d 1088, 1098 (D.N.M.), *order clarified*, 478 F. Supp. 3d 1153 (D.N.M. 2020) (quoting *Kingsley v. Hendrickson*, 576 U.S. 389, 398 (2015) (quoting *Bell*, 441 U.S. at 561)).

CONCLUSION

The Respondents respectfully request that the Court deny the Petition and dismiss the case.

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Respectfully submitted,

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