UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ALFREDO PARADA CALDERON,

Petitioner,

v.

DREW BOSTOCK, *et al.*,

Respondents.

CASE NO. 2:24-cv-01619-MJP-GJL

REPORT AND RECOMMENDATION

Noting Date: January 31, 2025

Petitioner Alfredo Parada Calderon is currently detained by U.S. Immigration and Customs Enforcement ("ICE") at Golden State Annex ("GSA") in McFarland, California. Proceeding with counsel, Petitioner brings this 28 U.S.C. § 2241 habeas action alleging his prolonged detention without a bond hearing violates the Due Process Clause of the Fifth Amendment to the United States Constitution. Dkt. 1. Presently before the Court for consideration is Respondents' combined Motion to Dismiss the Petition and Return. Dkt. 8.

Having considered the parties' submissions, the balance of the record, and the governing law, the undersigned recommends that the Motion to Dismiss (Dkt. 8) be **DENIED** and that the Petition (Dkt. 1) be **GRANTED** with respect to Petitioner's request for a bond hearing.

I. BACKGROUND

A. Immigration Status and Proceedings

Petitioner is a native and citizen of El Salvador who became a lawful permanent resident of the United States in 1990. Dkt. 9, ¶ 3 (Chavez[1] Dec.). On April 29, 1992, following a jury trial in the California Superior Court, County of Los Angeles, Petitioner was convicted of one count of murder and three counts of attempted murder. Dkt. 10-2, Ex. B (Lambert Dec.) (*People v. Parada*, Case No. BA024449 (Cal. Super. Ct.)). In December 1992, Petitioner was sentenced to a term of imprisonment of 34 years and 8 months to life. Dkt. 10-2 at 13, Ex. B.

On October 5, 2023, Petitioner was released on parole and transferred immediately to ICE custody and confined at GSA. Dkt. 9, ¶ 6. On that same day, the Department of Homeland Security ("DHS") issued a Notice to Appear ("NTA") charging Petitioner as removable under 8 U.S.C. § 1227(a)(2)(A)(iii) for his convictions of an aggravated felony and an attempted aggravated felony. Dkt. 9 ¶¶ 7, 8; Dkt. 10-5, Ex. E (NTA).

On November 1, 2023, an Immigration Judge ("IJ") sustained the charges of removability. Dkt. 9, ¶ 10. Thereafter, Petitioner filed for relief from removal with an IJ in Adelanto, California. *Id*., ¶¶ 11, 12. The IJ ordered Petitioner removed to El Salvador on February 7, 2024. *Id*., ¶ 13. On February 15, 2024, Petitioner appealed the removal order to the Board of Immigration Appeals ("BIA"). *Id*., ¶ 14. The briefing deadline established by the BIA for all parties was March 25, 2024. *Id*., ¶ 15. After Petitioner's counsel requested and received one extension, Petitioner filed a brief on April 15, 2024; DHS did not file a brief. *Id*., ¶¶ 16, 17. On June 20, 2024, the BIA issued a decision remanding the matter to the IJ to make additional

[1] Deportation Officer ("DO") George Chavez is a Department of DHS/ICE employee assigned to NWIPC, who is familiar with Petitioner's removal action and who testifies both from his personal knowledge and from a review of DHS files, databases, and officer notes. Dkt. 9, ¶¶ 1, 2.

findings of fact. *Id*., ¶ 18. On June 27, 2024, the IJ again ordered Petitioner removed to El Salvador. *Id*., ¶ 19. On July 10, 2024, Petitioner appealed the IJ's order to the BIA. Dkt. 2-6, Ex. F (Notice of Appeal). Thereafter, the BIA issued a briefing schedule with a deadline of August 29, 2024, for all parties. Dkt. 9, ¶ 22.

With his case still pending, in August 2024, Petitioner and multiple other detainees participated in a hunger strike at GSA. *Id*., ¶ 21. On August 20, 2024, Petitioner was transferred to the Northwest ICE Processing Center ("NWIPC") in Tacoma, Washington, a facility with appropriate medical facilities to treat a detainee on a hunger strike. *Id*., ¶ 23. Petitioner's counsel proceeded with his case during this time and requested a briefing extension with the BIA. *Id*., ¶ 25. The BIA granted the request and set a new deadline of September 19, 2024. *Id*., ¶ 25. Petitioner's counsel submitted a brief on September 19, 2024; DHS did not file a brief. *Id*., ¶ 27.

On November 7, 2024, the Office of Enforcement and Removal Operations ("ERO") received a request from Petitioner's counsel to have him transferred back to GSA. *Id*., ¶ 28. ERO approved the transfer on November 8, 2024, and Petitioner left NWIPC on November 12, 2024, and was booked into GSA on November 19, 2024. *Id*., ¶¶ 29, 30.

On November 22, 2024, the BIA dismissed Petitioner's appeal. *Id*., ¶ 31. On that same day, Petitioner filed a Petition for Review ("PFR") with the Ninth Circuit Court of Appeals. *Id*., ¶ 31 (*Calderon v. Garland*, No. 24-7072 (9th Cir. Nov. 22, 2024)).

B. Federal Habeas Petition

Petitioner initiated this action for writ of habeas corpus on October 7, 2024. Dkt. 1. On October 28, 2024, the Court entered an Order directing Respondents to show cause why the Court should not grant habeas relief. Dkt. 7. In response, Respondents filed a combined Motion to Dismiss the Petition and Return. Dkt. 8. Petitioner responded in opposition to the Motion to

Dismiss, Dkt. 11, and Respondents filed a Reply in support, Dkt. 13. This matter is now fully briefed and ripe for consideration.

II. DISCUSSION

A. Motion to Dismiss

In their Motion to Dismiss, Respondents argue this action should be dismissed for lack of jurisdiction or, alternatively, transferred to a more appropriate federal forum. Dkt. 8. Both requests are premised on Petitioner's transfer out of the Western District of Washington during the very early stages of this case. *Id*. at 5–9.

1. The Court does not lack jurisdiction in this action.

Respondents first contend that, because of Petitioner's requested transfer out of NWIPC to GSA, which is located in the Eastern District of California, this Court no longer has jurisdiction to grant the habeas relief Petitioner has requested. *Id*. at 5–8. In response, Petitioner asserts that Respondents' position ignores the well-established, commonsense rule that jurisdiction is vested at the time of filing a habeas petition, even if the petitioner is later transferred out of district. Dkt. 11 at 4–9. Under such precedent, Petitioner argues, the Court maintains jurisdiction over this matter regardless of where Petitioner is currently located. *Id*. Upon review, the Court agrees with Petitioner.

A § 2241 petition for writ of habeas corpus must "be addressed to the district court which has jurisdiction over [the petitioner] or his custodian." *Brown v. United States*, 610 F.2d 672, 677 (9th Cir. 1980) (citing *Braden v. 30th Judicial Circuit Court of Kentucky,* 410 U.S. 484 (1973)); *see also United States v. Giddings*, 740 F.2d 770, 772 (9th Cir. 1984). "All told, the plain language of the habeas statute thus confirms the general rule that, for core habeas petitions

challenging present physical confinement, jurisdiction lies in only one district: the district of confinement." *Doe v. Garland*, 109 F.4th 1188, 1198 (9th Cir. 2024).

Though present confinement and habeas jurisdiction go hand in hand, the Ninth Circuit has also explained that "jurisdiction attaches on the initial filing for habeas corpus relief, [so] it is not destroyed by a transfer of the petitioner and the accompanying custodial change." *Francis v. Rison*, 894 F.2d 353, 354 (9th Cir. 1989); *Johnson v. Gill*, 883 F.3d 756, 761 (9th Cir. 2018) ("[A habeas petitioner's] subsequent transfer does not destroy the jurisdiction established at the time of filing.").

Here, the record is clear that, at the time this case was initiated with the filing of the habeas Petition, Petitioner was confined at NWIPC, a facility within the Western District of Washington. *See* Dkt. 1; Dkt. 8. Thus, this Court has jurisdiction over this matter.

2. Transfer would not be in the interest of justice.

While maintaining that Petitioner's claim is ultimately nonviable, Respondent explains that this Court would be unable to issue a writ of habeas corpus aimed at his current custodian, who—like Petitioner—is located outside the Court's territorial District. Dkt. 8 at 4–9. For this reason, Respondent states the Court may choose to transfer this action to the United States District Court for the Eastern District of California if it finds that transfer, rather than dismissal, would be in the interest of justice. *Id.* at 9.

When a habeas petitioner files in the wrong jurisdiction (or when some other defect arises), the court of filing may transfer the action to a more appropriate federal forum if it is "in the interest of justice." 28 U.S.C. § 1404(a); 28 U.S.C. § 1631. Transfer may be in the interest of justice if it "aid[s] litigants who were confused about the proper forum for review" and avoids the "time-consuming and justice-defeating" dismissal of an action that may readily be heard

elsewhere. *See Miller v. Hambrick*, 905 F.2d 259, 262 (9th Cir. 1990) (citations and quotations omitted).

Here, the Court concludes transfer of this action would frustrate rather than further the interest of justice. Habeas proceedings in this Court began in early October 2024 with the filing of Petitioner's habeas Petition while he was confined at NWIPC, a facility located in the Western District of Washington. *See* Dkt. 1. As discussed above, this Court's jurisdiction was established at that time. The habeas Petition is now ripe for consideration. Further, as indicated by the parties, the BIA dismissed Petitioner's appeal regarding the IJ's order of removal on November 22, 2024, and Petitioner is now seeking review in the Ninth Circuit. *See* Dkt. 9, ¶ 31. In the Court's view, to restart these habeas proceedings properly brought in this Court in an entirely new court would simply delay justice in this case. Thus, transfer of Petitioner's habeas Petition in its current procedural posture would not be in the interest of justice. Respondents' request for transfer should therefore be denied.

Having found that this Court retains jurisdiction to consider this habeas Petition and that transfer would not be in the interest of justice, the undersigned recommends Respondents' Motion to Dismiss (Dkt. 8) be **DENIED**.

B. Federal Habeas Petition and Return

The sole ground for habeas relief raised in the Petition is that Petitioner's continued detention at an ICE facility without an individualized bond hearing arguably violates constitutional guarantees of due process. Dkt. 1 at 21. As relief, Petitioner requests that this Court order his release from custody unless he be provided an individualized bond hearing before an IJ within 14 days. *Id*. In the alternative, Petitioner requests that this Court hold a hearing to determine whether his prolonged detention violates due process. *Id*. at 22.

Respondents, however, maintain that Petitioner is not entitled to either form of relief, arguing that Petitioner's detention comports with due process. Dkt. 8 at 10–15. Respondents argue further that, even if the Court were to conclude a bond hearing is necessary, it should depart from prior decisions in this District and require that Petitioner carry the burden of proof at any such hearing. *Id*. at 15–16.

The Court disagrees with Respondents on both accounts and finds Petitioner's length of detention absent a hearing has become unreasonable such that due process requires Respondents to promptly provide Petitioner a bond hearing at which the Government bears the burden of supporting continued detention without bond.

1. Petitioner's Continued Detention Without a Bond Hearing is Unreasonable

This case involves mandatory detention under 8 U.S.C. § 1226(c) as Petitioner has been deemed removable for committing an aggravated felony covered by 8 U.S.C. § 1227(a)(2)(A)(iii) and as defined in §§ 1101(a)(43)(A) & (U). Dkt. 10-6, Ex. F (Removal Order). It is undisputed that Petitioner's mandatory detention pending removal and without an individualized bond decision complies with the applicable statutory scheme. Dkt. 8 at 10; *see also Avilez v. Garland,* 69 F.4th 525, 529–530 (9th Cir. 2023). As such, the relevant inquiry before the Court is solely whether Petitioner's term of mandatory pre-removal detention has exceeded constitutional reasonableness such that a bond hearing is required by due process.

In *Demore v. Kim*, the Supreme Court rejected a due process challenge to mandatory detention under § 1226(c), holding that "the Government may constitutionally detain deportable [noncitizens] during the limited period necessary for their removal proceedings." 538 U.S at 518–21, 526 (2003). Justice Kennedy's concurring opinion, which created the majority, reasoned that, beyond this limited period, due process may require "an individualized determination as to

[a noncitizen's] risk of flight and dangerousness if the continued detention *became unreasonable or unjustified*." *Id.* at 532 (emphasis added).

Since *Demore*, the Ninth Circuit has expressed "grave doubts that any statute that allows for arbitrary prolonged detention without any process is constitutional or that those who founded our democracy precisely to protect against the government's arbitrary deprivation of liberty would have thought so." *Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018). Although the due process analysis for prolonged detention under § 1226(c) remains an open question in the Ninth Circuit,[2] this Court and "essentially all district courts that have considered the issue agree that prolonged mandatory detention pending removal proceedings, without a bond hearing, 'will—at some point—violate the right to due process.'" *Martinez v. Clark*, No. 2:18-cv-1669-RAJ-MAT, 2019 WL 5968089, at *6 (W.D. Wash. May 23, 2019), *report and recommendation adopted*, 2019 WL 5962685 (W.D. Wash. Nov. 13, 2019) (quoting *Sajous v. Decker*, No. 18-cv-2447-AJN, 2018 WL 2357266, at *8 (S.D.N.Y. May 23, 2018)) (collecting cases); *Djelassi v. ICE Field Office Director*, 434 F. Supp. 3d 917, 923–24 (W.D. Wash. 2020) (granting habeas petition and ordering bond hearing for noncitizen whose mandatory detention had become unreasonably prolonged); *see also Ashemuke v. ICE Field Office Director*, No. 2:23-cv-1592-RSL-MLP, 2024 WL 1683797, at *6 (W.D. Wash. Feb. 29, 2024), *report and recommendation adopted*, 2024 WL 1676681 (W.D. Wash. Apr. 18, 2024) (denying bond hearing where mandatory detention was not yet unreasonable).

[2] *See Avilez*, 69 F.4th at 538 (declining to rule on whether due process required a bond hearing for a noncitizen detained under § 1226(c) and remanding to the district court for consideration of that claim); *Martinez v. Clark*, 36 F.4th 1219, 1223 (9th Cir. 2022), *judgment vacated on other grounds*, 144 S. Ct. 1339 (2024) ("Whether due process requires a bond hearing for [noncitizens] detained under § 1226(c) is not before us today. And we take no position on that question.").

Where a § 1226(c) detainee has not received a prior bond hearing, this Court applies the "multi-factor analysis that many other courts have relied upon to determine whether § 1226(c) detention has become unreasonable." *Martinez*, 2019 WL 5968089, at *6–7. This analysis, which is referred to as the *Martinez* test, involves the following factors:

> (1) the total length of detention to date; (2) the likely duration of future detention; (3) whether the detention will exceed the time the petitioner spent in prison for the crime that made him [or her] removable; (4) the nature of the crimes the petitioner committed; (5) the conditions of detention; (6) delays in the removal proceedings caused by the petitioner; (7) delays in the removal proceedings caused by the government; and (8) the likelihood that the removal proceedings will result in a final order of removal.

Id. at *7.

As Petitioner has not received a prior bond hearing, the Court will now apply the *Martinez* test to assess whether his ongoing detention has become unreasonable.

a. *Length of Petitioner's Detention to Date*

The current length of Petitioner's detention is the first and most important factor of the analysis. *See*, *e.g.*, *Martinez*, 2019 WL 5968089, at *9; *Sajous*, 2018 WL 2357266, at *10. The longer a noncitizen's mandatory detention continues beyond a "brief" period of detention, the harder such detention is to justify without an individual bond determination. *See Sajous*, 2018 WL 2357266, at *10 ("[D]etention that has lasted longer than six months is more likely to be 'unreasonable,' and thus contrary to due process, than detention of less than six months."); *Ashemuke*, 2024 WL 1683797, at *4 (concluding the petitioner's ongoing detention of eleven months—and seven months at the time his petition was filed—extended beyond a presumptively valid brief period of detention); *Martinez*, 2019 WL 5968089, at *9 (finding nearly thirteen-month detention weighed in favor of granting a bond hearing); *Juarez v. Wolf*, No. 20-cv-1660-RJB-MLP, 2021 WL 2323436, at *5 (W.D. Wash. May 5, 2021), *report and recommendation adopted*, 2021 WL 2322823 (W.D. Wash. June 7, 2021) (weighing petitioner's fourteen-month

period of detention in his favor); *Liban M.J. v. Sec'y of Dep't of Homeland Sec.*, 367 F. Supp. 3d 959, 963–64 (D. Minn. 2019) ("Although there is no bright-line rule for what constitutes a reasonable length of detention, Petitioner's [twelve-month] detention has lasted beyond the 'brief' period assumed in *Demore*."); *see also Demore*, 538 U.S at 531 (upholding ongoing detention of six months).

Here, Petitioner was detained for twelve months at the time he filed his Petition, and his detention has now extended to almost fifteen months. Because Petitioner's current period of detention is more than double the presumptively reasonable six-month period discussed in *Demore*, this first factor strongly weighs in favor of granting a bond hearing.

b. *Likely Duration of Future Detention*

The Court next "considers how long the detention is likely to continue absent judicial intervention; in other words, the anticipated duration of all removal proceedings including administrative and judicial appeals." *Martinez*, 2019 WL 5968089, at *9.

At this juncture, any estimate as to how long Petitioner's detention will continue requires a certain degree of speculation. Even so, the fact Petitioner only recently filed a Petition for Review with the Ninth Circuit provides some context. The Ninth Circuit could issue an unfavorable removal decision or remand the case. In either outcome, because of this judicial review, Petitioner's detention is likely to continue for at least another twelve months. *See* U.S. Court of Appeals for the Ninth Circuit, FREQUENTLY ASKED QUESTIONS, www.ca9.uscourts.gov/content/faq.php (last accessed Jan. 15, 2025; addressing anticipated timelines for civil appeal from notice of appeal until final decision).

Given the degree of speculation involved in this estimation, however, the second factor weighs only slightly in favor of granting a bond hearing. *See Ashemuke*, 2024 WL 1683797, at

*4 (concluding uncertainty inherent to removal proceedings weighed neutrally upon relief); *Barraza v. ICE Field Office Director*, No. 2:23-cv-1271-BHS-MLP, 2023 WL 9600946, at *6 (W.D. Wash. Dec. 8, 2023), *report and recommendation adopted*., 2024 WL 518945 (W.D. Wash. Feb. 9, 2024) (acute possibility of continued detention pending active appeal weighs in favor of granting a bond hearing).

c. *Criminal History*

Under the third and fourth factors, the Court assesses the current length of detention against the length of the detainee's criminal sentence and the nature of his crime. *Martinez*, 2019 WL 5968089, at *9; *Cabral v. Decker*, 331 F. Supp. 3d 255, 262 (S.D.N.Y, 2018). These factors are indicative of whether the detainee would be a danger to the community or a risk of flight such that a bond hearing would be futile. *See Cabral*, 331 F. Supp. 3d at 262; *Ashemuke*, 2024 WL 1683797, at *5.

Here, Petitioner's criminal conviction resulted in a nearly 35-year sentence, Dkt. 10-2 at 13, Ex. B. As such, his time in immigration detention has certainly not yet exceeded his criminal sentence. As for the nature of his crime, Petitioner was convicted of murder and related charges. *See id*. Given the length of time Petitioner spent in state prison and the nature of his crime, Petitioner concedes that the third and fourth factors likely favor Respondents. *See* Dkt. 11 at 20. Indeed, considering the length of Petitioner's sentence and the nature of his crime, the Court finds the third and fourth factors weigh in favor of the Respondents.

d. *Conditions of Detention*

Under the fifth factor, the Court considers the conditions of Petitioner's current detention. *Martinez*, 2019 WL 5968089, at *9. "The more that the conditions under which the [noncitizen] is being held resemble penal confinement, the stronger [the] argument that he is entitled to a

bond hearing." *Jamal A. v. Whitaker*, 358 F. Supp. 3d 853, 860 (D. Minn. 2019) (citation and internal quotations omitted).

The record before the Court contains evidence regarding the conditions of Petitioner's detention at NWIPC, the facility where Petitioner was located at the time of initiating this action. Attached to the Petition is a Declaration of Petitioner, signed under penalty of perjury, which includes descriptions of penal-like conditions at NWIPC based on Petitioner's personal knowledge. Dkt. 3 (A. Parada Calderon Dec.). Further, in his Traverse, Petitioner attaches a Declaration of an attorney familiar with the conditions of Petitioner's current place of detention, GSA. Dkt. 12 (P. Patel Dec.). It describes GSA as a former prison, reopened as an ICE detention facility, with current conditions similar to that of a state prison. *Id*., ¶ 4. It also outlines concerns raised by detainees related to "healthcare, mental healthcare, overuse of solitary confinement, quality and safety of food, air quality, presence of mold, lack of access to climate-appropriate clothing, and other serious issues." *Id*., ¶ 7; *see also id*., ¶¶ 6–13; 18–24. However, while this Declaration attests to the conditions generally at GSA, it does not include any descriptions of GSA based on Petitioner's personal knowledge.

Because the conditions of NWIPC are no longer relevant in Petitioner's case, and the record before the Court contains no firsthand account from Petitioner as to the conditions of his present place of detention, GSA, the Court assesses this fifth factor as weighing neutrally on relief.

e. *Delays in Removal Proceedings*

Under the sixth and seventh factors, the Court considers "the nature and extent of any delays in the removal proceedings caused by petitioner and the government, respectively." *Martinez*, 2019 WL 5968089, at *10. A noncitizen is entitled to raise legitimate defenses to his

removal, "and such challenges to his removal cannot undermine his claim that detention has become unreasonable." *Liban M.J.*, 367 F. Supp. 3d at 965 (citing *Hernandez v. Decker*, 2018 WL 3579108, at *9 (S.D.N.Y. July 25, 2018)). Thus, this factor only weighs against a petitioner when he "has 'substantially prolonged his stay by abusing the processes provided.'" but not when he "simply made use of the statutorily permitted appeals process." *Hechavarria v. Sessions*, 891 F.3d 49, 56 n.6 (2d Cir. 2018) (quoting *Nken v. Holder*, 556 U.S. 418, 436 (2009)). On the other hand, unreasonable delays caused by immigration courts or government officials weigh against a respondent. *Sajous*, 2018 WL 2357266, at *11.

Here, there is no evidence of dilatory or bad faith conduct causing an undue delay in Petitioner's ongoing removal proceedings. The parties agree with this assessment. Dkt. 1, ¶ 86; Dkt. 8 at 14. Therefore, the Court assesses the sixth and seventh factors as weighing neutrally on relief.

f. *Likelihood Removal Proceedings Will Result in a Final Order of Removal*

Finally, the Court considers "the likelihood that the removal proceedings will result in a final order of removal." *Liban M.J.*, 367 F. Supp. 3d at 965. "In other words, the Court considers whether the noncitizen has asserted any defenses to removal." *Martinez*, 2019 WL 5968089, at *10 (citing *Sajous*, 2018 WL 2357266, at *11). "Where a noncitizen has not asserted any grounds for relief from removal, presumably the noncitizen will be removed from the United States, and continued detention will at least marginally serve the purpose of detention, namely assuring the noncitizen is removed as ordered." *Id.* at *10. "But where a noncitizen has asserted a good faith challenge to removal, the categorical nature of the detention will become increasingly unreasonable." *Id*. (quotations omitted).

Given the current posture of Petitioner's removal proceedings, there is simply not enough information available to predict whether Petitioner's removal proceedings will result in a final order of removal. In the absence of sufficient information to assess the likely success of any challenge to Petitioner's removal, the Court finds this final factor is neutral.

g. *Weighing the Factors*

As discussed above, two factors weigh in favor of Petitioner, including the first and most important factor. Next, two of the eight factors weigh in favor of Respondents, and the remaining four factors are neutral. All considered, the undersigned finds that the factors in Petitioner's favor (*i.e.*, the current and future length of his detention) outweigh those favoring Respondents (*i.e.*, factors relating to the underlying criminal conviction and sentence).

Thus, the Court concludes Petitioner's detention has become unreasonable such that an individualized bond hearing is required to comport with due process.

2. Respondent Should Bear the Burden of Supporting Continued Detention

Having concluded that Petitioner is entitled to a bond hearing, the Court must next consider who shall bear the burden of proof at that hearing.

When a § 1226(c) detainee is subject to unreasonably prolonged detention, this Court has previously required that a bond hearing be conducted in accordance with the Ninth Circuit's decision in *Singh v. Holder*, 638 F.3d 1196 (9th Cir. 2011). *See, e.g., Juarez v. Wolf*, No. 20-cv-1660-RJB-MLP, 2021 WL 2322823 (W.D. Wash. June 7, 2021); *Pasillas v. ICE Field Off. Dir.*, No. 21-cv-681-RAJ-MLP, 2022 WL 1127715 (W.D. Wash. Apr. 15, 2022).

In *Singh*, the Ninth Circuit held that § 1226(c) detainees subject to prolonged detention are entitled to a bond hearing before an IJ wherein the government bears the burden of proving the detainee is a danger or flight risk by clear and convincing evidence. 638 F.3d at 1203–04.

This heightened burden reflects the significant liberty interest at stake when a person is detained for an extended period without a bond hearing. *Id.* (citing *Addington v. Texas*, 441 U.S. 418, 427 (1979)).[3]

In *Jennings v. Rodriguez*, the Supreme Court reversed *Singh* and other Circuit decisions that interpreted § 1226(c) and similar statutory provisions to include implicit procedural protections. 583 U.S. 281 (2018). Following *Jennings*, however, this Court and other district courts continue to apply the reasoning in *Singh* to conclude that § 1226(c) detainees are entitled to bond hearings as a matter of constitutional due process rather than implicit statutory guarantees. *See Juarez*, 2021 WL 2323436, at * 8 (W.D. Wash. May 5, 2021) (collecting cases); *Gonzalez v. Bonnar*, No. 18-CV-05321-JSC, 2019 WL 330906, at *7 (N.D. Cal. Jan. 25, 2019) ("[N]early all the courts that have granted habeas petitions in 1226(c) cases post-*Jennings* have held that the government bears the burden of proof by clear and convincing evidence.") (citation omitted).

Relying on *Jennings* and the Ninth Circuit's decision in *Rodriguez Diaz*, Respondent argues that Petitioner should bear the burden of proof at any court-ordered bond hearing. Dkt. 8 at 15–16 (citing *Jennings,* 583 U.S. 281 and *Rodriguez Diaz*, 53 F.4th 1189). The Court does not agree.

Decided post-*Jennings, Rodriquez Diaz* concerned what additional procedural protections may be owed to individuals detained under § 1226(a) as a matter of constitutional law. 53 F.4th at 1202. As discussed above, *Rodriguez Diaz* found that "existing agency procedures" provided sufficient protections for § 1226(a) detainees; as a result, the Ninth Circuit declined to extend the

[3] It is important to note that the text of § 1226(c) does not explicitly require a bond hearing for those subject to mandatory detention. Thus, in assessing the rights of § 1226(c) detainees subject to prolonged detention, the Ninth Circuit interpreted the statute to avoid what it considered a significant constitutional issue. *See Casas-Castrillon v. Dep't of Homeland Sec*., 535 F.3d 942 (9th Cir. 2008).

procedural protections addressed in *Singh* to § 1226(a) cases. *Id.* at 1202, 1209–10. Nevertheless, it reached no decision on *Singh*'s continued applicability to § 1226(c) detainees as a matter of constitutional law. *Id.*

Thus, the applicability of *Singh* to the constitutional rights of § 1226(c) detainees remains an open question in the Ninth Circuit. Even so, the Circuit Court has signaled that the clear and convincing evidence standard remains good law for immigration detainees subject to prolonged detention. In *Martinez v. Clark*, the Ninth Circuit held that the BIA applied the correct legal standard when it required the government to prove by clear and convincing evidence that a noncitizen detained under § 1226(c) was a danger to the community. ___ F.4th ___, 2024 WL 5231197, at *8–9 (9th Cir. Dec. 27, 2024). The *Martinez* Court also looked to its reasoning in *Singh* as establishing "the high-water mark of procedural protections required by due process." *Id.* at *9. Similarly, in *Aleman Gonzalez v. Barr*, the Ninth Circuit affirmed a district court decision requiring the government to bear a heightened burden of proof at bond hearing for a § 1231(a)(6) detainee as a matter of due process. 955 F.3d 762, 766 (9th Cir. 2020), *rev'd on other grounds sub nom. Garland v. Aleman Gonzalez*, 596 U.S. 543 (2022).

Finally, as noted above, this Court's prior application of *Singh* to § 1226(c) cases aligns with other district courts within the Ninth Circuit. *See, e.g., Salesh P. v. Kaiser*, No. 22-cv-01785-BLF, 2022 WL 17082375 (N.D. Cal. Nov. 17, 2022); *Singh v. Garland*, No. 1:23-cv-01043-EPG-HC, 2023 WL 5836048 (E.D. Cal. Sept. 8, 2023); *Durand v. Allen*, No. 3:23-cv-00279-RBM-BGS, 2024 WL 711607 (S.D. Cal. Feb. 21, 2024).

Therefore, the Court is persuaded that under the circumstances of this case, Petitioner is entitled to an initial bond hearing where the government must prove by clear and convincing

evidence that Petitioner is a flight risk or danger to the community. Respondents' arguments to the contrary are unavailing.

C. Proper Respondent in this Action

One final matter requires attention before the Court may grant relief: Respondents argue Petitioner has not named the proper respondent. At the time Petitioner filed his habeas Petition, he was located at NWIPC, and therefore Bruce Scott, NWIPC's Warden, was the proper respondent. *See* Dkt. 1. However, after the Court directed Respondents to file a Return (Dkt. 7), Petitioner was transferred to GSA (*see* Dkt. 9, ¶¶ 28–30).

The Ninth Circuit recently issued a decision making clear that the proper respondent for an immigration habeas petition is the individual directly in charge of the detention facility where the petitioner is housed, not a remote supervisory official like a field office director. *Doe v. Garland*, 109 F.4th 1188, 1194–97 (9th Cir. 2024) (reversing grant of habeas relief aimed at the field office director overseeing the petitioner's detention facility). Accordingly, because the individual who can effect Petitioner's release has changed, the undersigned recommends that Respondents be required to **SHOW CAUSE** why the Warden of Golden State Annex should not be **ADDED** as the proper respondent in this action.

III. CONCLUSION

As set forth above, the undersigned recommends that Respondents' Motion to Dismiss (Dkt. 8) be **DENIED** and that Petitioner's federal habeas Petition (Dkt. 1) be **GRANTED**. It is further recommended that Respondents be required to **SHOW CAUSE** why the Warden of the Golden State Annex in McFarland, California, should not be **ADDED** as a proper respondent in this action. Once the proper respondent is present in this action, Petitioner should be **GRANTED**

a bond hearing that comports with the procedural requirements outlined in *Singh* within 30 days of an Order on this Report and Recommendation.

Pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b), the parties shall have fourteen (14) days from service of this report to file written objections. *See also* Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those objections for purposes of *de novo* review by the district judge, *see* 28 U.S.C. § 636(b)(1)(C), and can result in a waiver of those objections for purposes of appeal. *See Thomas v. Arn*, 474 U.S. 140, 142 (1985); *Miranda v. Anchondo*, 684 F.3d 844, 848 (9th Cir. 2012) (citations omitted). Accommodating the time limit imposed by Rule 72(b), the Clerk is directed to set the matter for consideration on January 31, 2025, as noted in the caption.

Dated this 17th day of January, 2025.

Grady J. Leupold
United States Magistrate Judge