

DETAINED

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

MICHAEL OBASOLUYI (A# )

Petitioner,

4:25-CV-0169-CDL-ALS

28 U.S.C. § 2241

v.

WARDEN, STEWART DETENTION CENTER

Respondent,

RESPONSE TO MOTION TO DISMISS 28 U.S.C §2241

Comes now, Petitioner, Michael Obasoluyi, Pro Se, responding to the respondent's motion to dismiss his pending 28 U.S.C. §2241 currently pending before this court.

A summary of the respondent's motion is "given that Petitioner was never entitled to bond due to is mandatory detention under section 1226(c), *Jennings*, 583 U.S. at 304, he cannot establish a liberty interest to release on bond." *Id.* However, this court has jurisdiction to consider Petitioner's constitutional challenge to his detention because petitioner has been detained for over 17 months, which is by far a longer period contemplated by the Supreme Court in *Demore v. Kim*. Additionally, at this point in time, the Respondent has not demonstrated a reasonable justification for the continued detention because the Immigration Judge (IJ) has found that the Petitioner is not removable as charged under section 237(a)(2)(A)(i).

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However, respondent makes several assertions to back up their claim and some of which are both conflicting and contradicting. Respondent states that "Petitioner's claim is moot because he has already received a bond hearing at which an IJ applied the bond procedures set forth in section 1226(a) and 8 C.F.R. § 236(d)(1) despite not being entitled to that relief." This statement is both conflicting and contradictory because if the bond Petitioner received rendered his case moot, how is he not entitled to it, and if the Petitioner is entitled to the bond, why would the respondent file the automatic stay because the respondent believes he does not qualify for bond. The respondent's action nullifies the whole process because they are of the opinion that petitioner should be held mandatorily without bond. For no-bail civil detention sufficient to overcome a Lawful permanent resident alien's liberty interest, see, *Kim v. Ziglar* 276 F.3d 523 at 535 (9th Cir.2002).

In a majority opinion in *Demore*, as evidenced by Justice Kennedy's concurrence-which joined in full with the 5-4 majority opinion-wherein he noted that if the Government unreasonably delayed "pursuing and completing deportation proceedings, it could become necessary then to inquire whether the detention is not to facilitate deportation, or to protect against risk of flight or dangerousness, but to incarcerate for other reasons." *Demore*, 538 U.S. at 532-33. Petitioner has now been held in custody for over 17 months which is over the bright-line mark of 6 months for both pre-final order remover and post-final order removal. It is clear the Court must review the progress of the underlying removal proceedings themselves to determine whether the detention has served to reasonably facilitate deportation as opposed to some other purpose, such as, for example, to punish a criminal alien who has already completed his sentence or to discourage detainees from challenging their removal. However in this instant case, the Petitioner's case has been dismissed and later on granted bond but is still detained.

In analyzing whether detention has been for the purposes of reasonably facilitating deportation, an obvious threshold consideration is the length of detention. An alien who has been detained for only a few months is highly unlikely to be able to demonstrate that his detention is for an impermissible purpose. However, if the record demonstrates a lengthy period of detention, then a district court must look at why the removal proceedings have been prolonged. See, *Castro-Almonte v. Searls*, No. 22-CV-861 (JLS), 2023 U.S. Dist. LEXIS 23070, 2023 WL 1931853, at *8 (W.D.N.Y. Feb. 9, 2023) ("*Demore* allows the Court to examine the reason for any delay in [the criminal alien's] removal." (citing *Demore*, 538 U.S. at 530-31 n.14-15)). Courts have distinguished *Zadvydas* on the second ground that, while the

period of detention in *Zadvydas* was indefinite and potentially permanent, the detention under 1226(c) was of a much short duration – “not only does detention have definite termination point, in the majority of cases it lasts for less than 90 days which is presumptively valid in *Zadvydas*.” *Id.* at 529.

The Due Process clause requires interpretation of 8 U.S.C 1226(c) to implicitly authorize detention for a reasonable period of time, after which an individualized inquiry also known as a *Joseph Hearing* (*Matter of Joseph*, 22 I. & N. Dec 799 (BIA 1999)), is required to further determine if detention remained necessary. Here, the petitioner hasn't been afforded that due process clause because the Petitioner is being held solely for the purpose of mandatory detention. Despite when an IJ sided with the Petitioner, dismissed his removal case and granted bond, DHS filed an automatic stay because they believe petitioner should be held mandatorily even without a charge. Even if Petitioner is to be held mandatorily, Petitioner should have been had and is entitled to a *Joseph hearing*.

Considering the *Sopo* factors, all the factors weigh in favor of the Petitioner due to the reasons stated below.

Length of detention without a bond hearing: The respondent asserts that petitioner has had several bond hearings, while it also asserts that petitioner was not entitled to a bond hearing. Respondent also agrees that the Petitioner's bond was denied because petitioner was not entitled to a bond. Having a bond hearing denied because “Petitioner has no statutory right to a bond hearing while section 1226(c) applies.” *Id.* And a Joseph-hearing would be one that mandatory detention is not considered. But that has not happened. This factor weighs in favor of the Petitioner.

Reason removal proceedings have become protracted: Key factors to consider here are (1) Unnecessary Continuances (2) Filed frivolous claims and appeals. Petitioner has been held in a terrible facility and would not want to spend an extra second here, so he did not and would not file any frivolous claims and appeal. On the contrary, the Respondent has been doing the appeals and automatic stays thereby stringing on the proceedings. This factor weighs in favor of the Petitioner.

Likelihood of Removal: There is no likelihood of removal because petitioner has won his case on the merits and sided by the IJ. This is a factual statement and at this point in time, there is clear

evidence and the record shows that Petitioner is not subject to removal and a judge has found that he is not within the no-bond, no-review class of aliens described in section 237(a)(2)(A)(i). And it is obvious that if the respondent suffers a loss at the BIA, they would be heading to Circuit level court. So removal is not likely anytime, however, what is likely is continued detention. This factor weighs in favor of the Petitioner.

Ration Between Criminal and Civil Detention: Petitioner entered ICE custody on January 23, 2024 and has remained in custody till present—which is over 17 months. However, petitioner spent 1 month for the criminal conviction—which was a split weekend sentence. Right now, Petitioner has spent over 17 times over or 1700 percent of the time spent incarcerated for his criminal conviction. This factor weighs in favor of the Petitioner.

Whether the Civil Detention facility is “meaningfully different” from a criminal penal institution: Petitioner was housed Mecklenburg County Jail, in North Carolina on weekend only, which was 2 days only once a month. But here at Stewart Detention Center, Petitioner has been held without seeing his family of over 17 months and the conditions are by far worse at Stewart Detention Center. This factor weighs in favor of the Petitioner.

PRAYER FOR RELIEF

WHEREFORE, petitioner prays that this honorable court to grant the following relief:

1. Grant a Writ of Habeas Corpus setting petitioner free from detention;
2. Grant any other relief that the Court may deem appropriate.

I declare under oath, penalty of perjury under the laws of the United States that the forgoing is true.

Respectfully,

s/ Michael Obasoluyi

Michael Obasoluyi

Stewart Detention Center

P.O Box 248,
Lumpkin, GA 31815

CERTIFICATE OF SERVICE

I certify that on July 17 2025, a copy of this Respondent's motion to dismiss his pending 28 U.S.C. §2241 habeas corpus petition was sent to the Respondent by placing it in the outgoing mailbox and addressed to:

Warden
Stewart Detention Center
P.O Box 248,
Lumpkin, GA 31815

s/ Michael Obasoluyi
Michael Obasoluyi
Stewart Detention Center
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