

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

REYNOL MARTINEZ DE LUNA,

Petitioner,

v.

Civil Action No. 3:25-CV-01570-K-BW

THOMAS BERGAMI, Warden of the
Prairieland Detention Center, et al.,

Respondent.

RESPONSE IN OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS

Petitioner, Reynol Martinez De Luna, filed a writ of habeas corpus under 28 U.S.C. § 2241 seeking pre-final order release from custody alleging that he has been in immigration detention beyond the time limit allowed by the Supreme Court and, thus, in violation of his due process rights. But as explained herein, Petitioner is subject to mandatory detention while in removal proceedings based on his prior conviction of a crime that constitutes an aggravated felony under the immigration laws. The Court should dismiss the petition, because Petitioner is not entitled to any relief from this Court.

I. Facts

Petitioner is a native and citizen of Mexico. App. pp. 26-29. On or about March 1, 1993, he was admitted to the United States as a conditional resident. App. p. 26. Two years later on February 16, 1995, his status was adjusted to a lawful permanent resident.

Id.

On October 4, 2005, Petitioner pled guilty to theft of mail under 18 U.S.C. § 1708 in the United States District Court for the Western District of Texas and the court sentenced him to 5 years' probation and ordered that he pay \$3,000 in restitution. App. pp. 4-5.

On September 9, 2019, Petitioner pled guilty to conspiracy to transport illegal aliens in violation of 8 U.S.C. § 1324(a)(1)(A)(v)(I) & (B)(i) in the United States District Court for the Western District of Texas. App. p. 19. The court sentenced him to eighteen months in prison and three years' supervised release. App. p. 20. Thereafter on November 11, 2022, DHS placed Petitioner into immigration proceedings with the issuance of a Notice to Appear. App. p. 26. DHS filed a superseding NTA on November 28, 2022, with the Immigration Court. The superseding NTA charged that Petitioner was removable because his conviction for alien smuggling was an aggravated felony under INA § 101(a)(43)(N) and (U). App. p. 29.

At a hearing on January 23, 2023, Petitioner argued the NTA was noncompliant because it listed the time of his hearing as 12:00 a.m. He also argued he was not removable. App. p. 32. On February 17, 2023, Petitioner filed an application for relief from removal and a waiver for his alien smuggling conviction. App. p. 33. On March 2, 2023, the IJ found that DHS met its burden to show that Martinez was removable. App. p. 34. The IJ also determined that Petitioner was statutorily ineligible for the adjustment of status relief he was seeking and therefore pretermitted and denied Petitioner's application and ordered him removed to Mexico. *Id.*

Petitioner appealed to the BIA. On October 3, 2023, the BIA requested supplemental briefing regarding whether an NTA that lists a time or date that falls outside of the Immigration Court hours of operation is a compliant NTA. In response, DHS filed a motion to remand in lieu of supplemental briefing so that DHS could cure the NTA under the BIA's decision in *Matter of Fernandes*, 28 I&N Dec. 605 App. pp. 31-36. On November 30, 2023, the BIA remanded the case. App. pp. 38-47.

On remand, DHS submitted an amended NTA that contained the date and time of the next hearing. DHS and Petitioner also filed briefs. On March 28, 2024, the IJ entered his order finding that DHS's amended NTA properly remedied the noncompliant NTA. App. pp. 49-67. The IJ again found that DHS met its burden to establish that Petitioner was removable and denied Petitioner's motion to terminate removal, sustained the charges on the NTA, pretermitted the application for relief, and ordered Petitioner removed to Mexico. App. p. 66.

Petitioner again appealed to the BIA. On March 6, 2025, the BIA sustained the appeal in part and remanded. App. p. 71. The BIA noted that the proper remedy for a noncompliant NTA had been an evolving area of law. App. p. 73. After the IJ's decision finding that DHS's amended NTA cured the non-compliance, the BIA issued its decision in *Matter of R-T-P*, 28 I&N Dec. 828 (BIA 2024), finding that DHS could not cure the NTA by writing in the time and date of the next hearing. Instead, *Matter of R-T-P* held that DHS could file a motion asking the IJ to cure the NTA by writing in the time and date of the next hearing. *Id.* The BIA therefore remanded the case for the parties to address the *Matter of R-T-P* decision. The BIA also stated Petitioner should be allowed to

present evidence and argument that he is eligible for adjustment of status relief and a waiver for his conviction. *Id.* The BIA also determined that Petitioner conceded his conviction was an aggravated felony under the INA, therefore the IJ's ruling that Petitioner was removable was now final. *Id.*

On June 5, 2025, the IJ set deadlines for the parties to submit evidence and briefs on the remanded issues. DHS timely filed a motion for the IJ to amend the NTA with the date and time of the next hearing pursuant to *Matter of R-T-P* and filed its brief arguing Petitioner is statutorily ineligible for the relief he seeks. On June 25, 2025, Petitioner timely filed his brief and his opposition to DHS's motion for the IJ to amend the NTA. He argues *Matter of R-T-P* was wrongly decided, and that he is eligible for adjustment of status with a waiver for his conviction. The matter is currently pending.

In his habeas petition, Petitioner admits that due to his aggravated felony conviction his detention is mandatory. ECF. No. 1, p. 2, at ¶ 5; *see* INA § 236(c)(1). However, he seeks release or an order for an individualized bond hearing. He claims his continued detention violates the INA and his due process rights.

II. Petitioner is Subject to Mandatory Detention and is Not Entitled to Relief

Petitioner asserts that his continued detention violates his due process rights. He seeks immediate release from detention on bond. Petitioner, however, is subject to mandatory detention and is not entitled to the relief he seeks.

The Supreme Court has held that an alien does not have a constitutional right to be released from detention during the limited period in which removal proceedings are pending. *Demore v. Kim*, 538 U.S. 510, 531 (2003); *Carlson v. Zydok*, 342 U.S. 524,

545-46 (1952). The right to release, therefore, is a right granted and controlled by statute. *See generally Carlson v. Zydok*. Specifically, when and under what circumstances an alien may be released while removal proceedings are pending is governed by 8 U.S.C. § 1226(a). Section 1226(a) provides for release in the discretion of the Attorney General “*except as provided in subsection (c)*.” 8 U.S.C. § 1226(a) (emphasis added). “Subsection (c)” requires detention of an alien who has been convicted of an aggravated felony. 8 U.S.C. § 1226(c)(1)(B). The Supreme Court “hold[s] that § 1226(c) mandates detention of any alien falling within its scope and that detention may end prior to the conclusion of removal proceedings ‘only if’ the alien is released for witness-protection purposes.” *Jennings v. Rodriguez*, 138 S. Ct. 830, 847 (2018). Petitioner is subject to mandatory detention because alien smuggling is an aggravated felony crime under 8 U.S.C. § 1101(a)(43)(N), (U). *United States v. Gracia-Cantu*, 920 F.3d 252, 254 (5th Cir. 2019). And given that his removal proceedings have not concluded, he may be released “only if” he is released for witness-protection purposes. Petitioner does not fall within the “only if.” For this reason, Petitioner is not entitled to relief.

But even if Petitioner’s conviction did not require detention while removal proceedings are pending, this Court would not be able to order his release. Judicial review of custody decisions pending removal is precluded by statute. 8 U.S.C. § 1226(e). And to the extent Petitioner may be asking this Court to overrule the determination that he has been convicted of an aggravated felony, this Court does not have jurisdiction to do so. District courts do not have jurisdiction to review any matters related to removal. 8 U.S.C. § 1252.

Petitioner contends that he has been detained longer than is allowed and that it is due to no fault of his own. In *Demore*, 538 U.S. at 531, the Supreme Court found that mandatory detention “for the limited period of [the alien’s] removal proceedings” is constitutional. *Demore*, 538 U.S. at 531. Although district courts do not have statutory authority to order the release of detainees, some courts have held that the Supreme Court’s use of the language “for the limited period of [the alien’s] removal proceedings” implies that, at some point, the length of the detention can become unreasonable and unconstitutional.

Demore did not sanction any specific period at which point pre-order detention could become unconstitutional. The majority of courts interpreting *Demore* determine the reasonableness of the length of detention on a case-by-case basis. See *Ramirez v. Watkins*, No. CIV.A. B:10-126, 2010 WL 6269226, at *13 (S.D. Tex. Nov. 3, 2010). Petitioner’s detention is reasonable. Petitioner has been in custody since November 2022. During this entire time, his applications for relief have been litigated. In accordance with the relevant law, Petitioner has been detained during this time period, and his application for relief is still pending.

Moreover, to the extent Petitioner seeks release and asserts that he is entitled to a bond hearing, there is no merit to this argument. Petitioner is not entitled to a bond hearing. The plain text of section 1226(c) should control and Petitioner’s petition should be denied as he is subject to mandatory detention. There is no statutory provision allowing the immigration court to grant bond in this case, and no circuit court opinion instructing the court to conduct bond hearings every six months. Instead, the

immigration court can conduct a bond hearing once Petitioner files a motion for bond, which he has not done.

The Supreme Court in *Jennings v. Rodriguez* held that the language of § 1226(c) is clear; it does not “limit the length of the detention it authorizes” and provides the detainee may be released “only if” specified conditions are met. *Jennings*, 138 S. Ct. 830, 846 (2018). As the *Jennings* Court explained, section “1226(c) does not on its face limit the length of the detention it authorizes. In fact, by allowing aliens to be released ‘only if’ the Attorney General decides that certain conditions are met, § 1226(c) reinforces the conclusion that aliens detained under its authority are not entitled to be released under any circumstances other than those expressly recognized by the statute. And together with § 1226(a), § 1226(c) makes clear that detention of aliens within its scope *must* continue ‘pending a decision on whether the alien is to be removed from the United States.’” *Id.* (quoting 8 U.S.C. § 1226(a)). Petitioner is being detained pursuant to §1226(c), and because his removal proceedings are ongoing, detention is proper and he is not entitled to relief.

III. Conclusion

Petitioner is subject to mandatory detention and has not been detained for an unreasonable amount of time. He is not entitled to the relief he seeks. The petition should be dismissed.

Respectfully submitted,

NANCY E. LARSON
ACTING UNITED STATES ATTORNEY

/s/ Ann E. Cruce-Haag
ANN E. CRUCE-HAAG
Assistant United States Attorney
Texas Bar No. 24032102
1205 Texas Avenue, Suite 700
Lubbock, Texas 79401
Telephone: (806) 472-7351
Facsimile: (806) 472-7394
Email: ann.haag@usdoj.gov

Attorneys for Respondent

CERTIFICATE OF SERVICE

On August 14, 2025, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all parties electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Ann E. Cruce-Haag
ANN E. CRUCE-HAAG
Assistant United States Attorney