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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

HONORIO LATYR PEREIRA BARRETO,
Petitioner

v.

STATE OF ALASKA, Department of Corrections;
ARNALDO HERNANDEZ,
Superintendent of the Anchorage Correctional
Complex, in his official capacity, et al.

Respondents.

Case No. 3:26-cv-00235-SLG

MOTION FOR RECONSIDERATION

Federal Respondents, through counsel, respectfully move the Court to reconsider its prior ruling requiring a *Singh* compliant bond hearing as Petitioner is detained pursuant to a different statute and the reasoning underpinning *Singh* has been called into question by the Ninth Circuit and the Supreme Court. The Government makes this request pursuant to

Local Civil Rule 7.3(h)(1)(A).

ARGUMENT

The Court's order requiring a bond hearing compliant with *Singh* was error in light of the Ninth Circuit's holding in *Rodriguez Diaz v. Garland*, 53 F.4th 1189 (9th Cir. 2022). There, the Ninth Circuit declined to shift the burden to the Government and to heighten the burden applicable in § 1226(a) bond hearings. Thus, the Government respectfully submits that the remedy granted by the Court is in error on that point.

I. SECTION 1226(a) HAS ROBUST PROCEDURAL SAFEGUARDS.

Because Petitioner's removal proceedings are ongoing, he is lawfully detained pursuant to 8 U.S.C. § 1226(a). Dkt 26 at 10. The Ninth Circuit has found that Section 1226(a) and its implementing regulations satisfy due process. *Rodriguez Diaz*, 53 F.4th at 1213. Section 1226(a) "authorizes the Attorney General to arrest and detain an alien 'pending a decision on whether the alien is to be removed from the United States.'" *Jennings v. Rodriguez*, 583 U.S. 281, 306 (2018) (quoting 8 U.S.C. § 1226(a)). The Supreme Court has recognized that "there is little question that the civil detention of aliens during removal proceedings can serve a legitimate government purpose, which is 'preventing deportable . . . aliens from fleeing prior to or during their removal proceedings, thus increasing the chance that, if ordered removed, the aliens will be successfully removed.'" See *Prieto-Romero v. Clark*, 534 F.3d 1053, 1065 (9th Cir. 2008) (citing *Demore v. Kim*, 538 U.S. 510, 528 (2003)).

Every alien apprehended under Section 1226(a) is individually considered for release on bond. 8 U.S.C. § 1226(a); 8 C.F.R. § 236.1(c)(8). “Federal regulations provide that aliens detained under § 1226(a) receive bond hearings at the outset of detention.” *Jennings v. Rodriguez*, 583 U.S. 281, 306 (2018) (citing 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1)). An ICE officer initially assesses whether the noncitizen has “demonstrate[d]” that “release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8). If the ICE officer denies bond, the noncitizen may ask an immigration judge for a redetermination of the custody decision. 8 C.F.R. § 236.1(d)(1). Thus, the initial bond hearing for an alien detained under Section 1226(a) is also called a “redetermination hearing.” At this hearing, the *alien bears the burden of establishing* “that he or she does not present a danger to persons or property, is not a threat to the national security, and does not pose a risk of flight.” *Matter of Guerra*, 24 I. & N. Dec. 37, 38 (BIA 2006). Bond hearings are separate and apart from, and form no part of, a noncitizen’s removal hearings. 8 C.F.R. § 1003.19(d).

The alien may appeal the immigration judge’s custody redetermination to the Board of Immigration Appeals (“BIA”). 8 C.F.R. §§ 236.1(d)(3)(i), 1236.1(d)(3)(i); *Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011). If the alien remains dissatisfied with the BIA’s decision, he may file a petition for writ of habeas corpus in federal district court. *See id.* Further, an alien who remains detained under Section 1226(a) after the initial bond hearing may request that the immigration judge conduct another custody redetermination

whenever “circumstances have changed materially since the prior bond redetermination.”
8 C.F.R. § 1003.19(e).

II. RODRIGUEZ DIAZ AFFIRMED THE PROCEDURAL SAFEGUARDS WITHIN SECTION 1226(a).

The Court granted the petition, in part, and ordered Petitioner to be provided a *Singh* compliant bond hearing. Dkt. 26. *Singh*, however, has been largely abdicated by the Supreme Court’s reasoning in *Jennings* and noted by the Ninth Circuit in *Rodriguez Diaz*. In addition, in *Rodriguez Diaz*, the Ninth Circuit has specifically rejected the need for any additional procedural safeguards (e.g. changing the burden and level of proof required in § 1226(a) bond hearings) absent as-applied, yet to be decided, matters.

Notably, as opposed to the facts present in this case, *Singh* involved a § 1226(c)—requiring the alien’s mandatory detention—and *Singh* was detained for a lengthy period of time. *See Singh v. Holder*, 638 F.3d 1196 (9th Cir 2011); *Rodriguez Diaz v. Garland*, 53 F.4th at 1199. *Singh*, along with a series of other matters considered by the Ninth Circuit were decided upon grounds later rejected by the Supreme Court. *See id.* at 1196-1200. In considering § 1226(a), the Ninth Circuit remarked, “[w]e have never held that *Singh* provided the constitutional baseline for persons like Rodriguez Diaz, who were never mandatorily detained and who have been subject to § 1226(a) and its implementing regulations throughout their detention. And § 1226(a) provides substantially different procedures than the provisions we have examined in the past. We therefore cannot accept Rodriguez Diaz’s suggestion that *Casas* and *Singh* mandate the same procedural relief in this case.” *Id.* at 1203. The Ninth Circuit rejected the *Singh* burden-shifting standard *Barreto v. Hernandez et al.*

applied by this Court, remarking, “Unencumbered by binding circuit precedent, we now address head-on the question presented in this case: does the Due Process Clause entitle Rodriguez Diaz to a second bond hearing at which the government bears the burden of proof by clear and convincing evidence? We hold that the Due Process Clause does not so require.” The Ninth Circuit declined to order any procedures in addition to § 1226. *Id.* at 1213. And it noted, “...that even when there are deficiencies in individual § 1226(a) proceedings, they may be redressable through means short of major changes to the burden of proof.” *Id.* at 1214.

Here, the Court changed not only the burden of proof but ordered a heightened standard. The Government submits that it was error in light of *Rodriguez Diaz* and the Court should respectfully reconsider its order. Additionally, the Government respectfully requests that since Petitioner’s detention is lawful, and pending a bond hearing request, the Court lift the injunctive relief preventing Petitioner’s transfer or removal from the District of Alaska.

RESPECTFULLY SUBMITTED this June 30, 2026, in Anchorage, Alaska.

MICHAEL J. HEYMAN
United States Attorney

/s/ Joshua A. Traini
Assistant U.S. Attorney
United States of America

CERTIFICATE OF SERVICE

I hereby certify that on June 30, 2026,
a true and correct copy of the foregoing
was served electronically on the following:

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[PROPOSED] ORDER GRANTING MOTION FOR RECONSIDERATION

This matter comes before the Court on Federal Respondents' Motion for Reconsideration pursuant to Local Civil Rule 7.3(h)(1)(A). Having reviewed the motion, the record, and being fully advised, the Court finds as follows:

The Court previously ordered that Petitioner be provided a bond hearing compliant with *Singh v. Holder*, 638 F.3d 1196 (9th Cir. 2011). Federal Respondents now argue that the Court's reliance on *Singh* was in error because Petitioner is detained pursuant to 8 U.S.C. § 1226(a), and the Ninth Circuit's decision in *Rodriguez Diaz v. Garland*, 53 F.4th 1189 (9th Cir. 2022), clarifies that *Singh*'s burden-shifting framework does not apply to § 1226(a) custody proceedings.

The Court finds that *Rodriguez Diaz* governs here and that § 1226(a) provides the applicable procedural framework. In *Rodriguez Diaz*, the Ninth Circuit held that the Due Process Clause does not require a second bond hearing at which the Government bears the

burden of proof by clear and convincing evidence, and it declined to impose procedural requirements beyond those already provided in § 1226(a) and its implementing regulations.

Accordingly, the Court concludes that its prior order directing a *Singh*-compliant bond hearing was issued in error and warrants reconsideration.

IT IS HEREBY ORDERED:

1. Federal Respondents' Motion for Reconsideration is GRANTED.
2. The portion of the Court's prior order requiring a Singh-compliant bond hearing is VACATED.
3. Any bond hearing sought or conducted for Petitioner shall proceed under the procedures applicable to 8 U.S.C. § 1226(a), consistent with *Rodriguez Diaz v. Garland*, 53 F.4th 1189 (9th Cir. 2022).
4. Because Petitioner's detention is lawful under § 1226(a), the injunctive relief previously issued preventing Petitioner's transfer or removal from the District of Alaska is LIFTED.

IT IS SO ORDERED.

DATED _____

Honorable Sharon L. Gleason
Senior U.S. District Judge