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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BYRON MIGUEL MENDEZ TZOC,

Petitioner,

v.

Christopher LaROSE, Warden, Otay Mesa Detention Center, *et al.*,

Case No.: **26-cv-3965-GPC-VET**

PETITIONER'S TRAVERSE TO RESPONDENTS' RESPONSE TO ORDER TO SHOW CAUSE

I. Introduction

Petitioner challenges the constitutionality of his continued immigration detention following Respondents' decision to revoke the liberty they themselves affirmatively recognized and maintained through years of administering Petitioner's pending asylum application. The question presented is straightforward: whether the government may require a noncitizen to identify himself, disclose his residence, submit biometrics and fingerprints, undergo security vetting, obtain government-issued employment authorization, and openly remain in the community for years, only to abruptly invoke mandatory inspection-stage detention without prior notice, without any individualized determination, and without constitutionally adequate process. It may not.

Petitioner did not evade federal immigration authorities. To the contrary, Petitioner affirmatively sought protection under the immigration laws by filing an Application for Asylum and for Withholding of Removal. In connection with that application, USCIS required Petitioner to appear for biometrics, collected his fingerprints, conducted security vetting, approved his application for employment authorization, and issued him an Employment Authorization Document valid through December 12, 2029. Throughout that process, Petitioner openly disclosed his identity, residence, and continued presence in the United States, complied with every governmental requirement imposed upon him, and continued living openly in the community while his application remained pending.

Respondents' Opposition does not establish that constitutionally adequate process preceded Petitioner's detention. Respondents do not contend that Petitioner received prior notice that his liberty would be revoked, that he was afforded a meaningful opportunity to be heard before a neutral decisionmaker, or that they made any individualized determination explaining why detention suddenly became necessary after years of permitting Petitioner to remain openly in the community while participating in the federal immigration system. Instead, Respondents principally rely upon their contention that detention is authorized under INA § 235(b). That argument does not resolve either the statutory question presented by the Petition or the independent constitutional question whether the government may revoke Petitioner's longstanding liberty in this manner.

The Petition presents both claims. First, it challenges Respondents' invocation of INA § 235(b) to detain a noncitizen who has lived openly in the United States for approximately sixteen years, affirmatively participated in the asylum process, and was apprehended during an interior enforcement action rather than the inspection process governed by that statute. Second, it challenges the government's decision to deprive Petitioner of his liberty without constitutionally adequate procedures after years of affirmative governmental conduct recognizing and regulating his continued presence in the United States. Because Respondents fail to establish that either their statutory detention authority or the manner in which they detained Petitioner complies with

federal law and the Fifth Amendment, the Petition should be granted and Petitioner immediately released.

II. Respondents Fail to Rebut Petitioner's Statutory and Constitutional Claims

Respondents' Opposition does not meaningfully rebut either claim presented by the Petition. Rather than addressing the combined effect of Petitioner's prolonged participation in the federal immigration system, Respondents treat this case as though it involved nothing more than the detention of an applicant for admission under INA § 235(b). That characterization overlooks both the statutory question presented and the independent constitutional limitations governing the government's revocation of liberty.

The Petition does not challenge the initiation of removal proceedings or Respondents' authority to adjudicate Petitioner's immigration status. Nor does Petitioner contend that participation in the asylum process, standing alone, immunizes him from immigration detention. Instead, the Petition challenges Respondents' decision to invoke inspection-stage detention under INA § 235(b) after affirmatively requiring Petitioner to identify himself, disclose his residence, submit biometrics and fingerprints, undergo security vetting, obtain government-issued employment authorization, and openly remain in the community for years while his asylum application remained pending.

Respondents likewise fail to answer Petitioner's constitutional claim. The Petition alleges that, after years of affirmative governmental conduct recognizing and regulating Petitioner's continued presence in the United States, Respondents abruptly deprived him of his physical liberty without prior notice, without any individualized determination, without identifying any changed circumstances, and without providing any meaningful opportunity to be heard before a neutral decisionmaker. Respondents do not contend that any of those procedural protections were afforded. Nor do they identify any individualized determination concluding that Petitioner presented a danger to the community or a risk of flight before taking him into custody.

Respondents' assertion that INA § 235(b) authorizes Petitioner's detention does not answer the central question presented by this case. Respondents never explain why Petitioner was not detained when they first learned he lacked lawful status, when they required him to submit biometrics, when they completed security vetting, when they approved his application for employment authorization, when they issued him an Employment Authorization Document valid through December 12, 2029, or at any point during the years they actively administered his pending asylum application. Nor do Respondents identify any changed circumstances that suddenly made detention necessary years later. Their Opposition therefore fails to explain the government's abrupt reversal or identify any individualized basis justifying that reversal.

Because Respondents fail to establish that INA § 235(b) lawfully governs Petitioner's detention under these circumstances, and because they fail to demonstrate that Petitioner's liberty was revoked through constitutionally adequate procedures, the Opposition provides no basis for denying the Petition.

III. Respondents' Affirmative Conduct Created a Protected Liberty Interest That Could Not Be Revoked Without Constitutionally Adequate Process

For years, Respondents affirmatively administered Petitioner's pending asylum application through the ordinary processes established by federal immigration law. Petitioner did not conceal his identity or avoid contact with immigration authorities. To the contrary, Petitioner voluntarily sought protection under the immigration laws by filing an Application for Asylum and for Withholding of Removal. In connection with that application, USCIS required Petitioner to appear for biometrics and fingerprinting, conducted security vetting, approved his application for employment authorization, and issued him an Employment Authorization Document valid through December 12, 2029. Throughout that process, Petitioner openly disclosed his identity, residence, fingerprints, and continued presence in the United States while complying with every governmental requirement imposed upon him.

These were not passive acts of governmental acquiescence. They were affirmative governmental decisions undertaken by the very agencies now seeking to justify Petitioner's

detention. By directing Petitioner to appear for biometrics, collecting his fingerprints, conducting security vetting, approving employment authorization, and issuing an Employment Authorization Document, Respondents knowingly permitted Petitioner to reside openly and work in the United States while his asylum application remained pending. During that period, Respondents alleged no danger to the community, asserted no unacceptable risk of flight, and took no action to revoke the liberty they had affirmatively recognized.

By issuing Petitioner an Employment Authorization Document valid through December 12, 2029, Respondents did more than acknowledge Petitioner's presence in the United States. They affirmatively authorized him to engage in lawful employment while his asylum application remained pending. Respondents never explain how that affirmative governmental authorization is consistent with their present contention that Petitioner's detention was mandatory throughout that same period. If Respondents believed Petitioner was subject to mandatory detention under INA § 235(b), they offer no explanation why they simultaneously authorized him to live and work openly in the community rather than detaining him.

This was not a period of governmental inaction. Respondents repeatedly exercised their authority over Petitioner's immigration case. They required him to appear for biometrics, verified his identity through fingerprinting, completed security vetting, approved his employment authorization, issued him an Employment Authorization Document valid through December 12, 2029, and continued administering his pending asylum application. Having repeatedly exercised their authority in a manner that permitted Petitioner to remain openly in the community, Respondents cannot now simply assert that detention was mandatory all along without explaining why those same facts did not warrant detention years earlier.

Respondents identify no intervening event that altered Petitioner's circumstances. They identify no newly discovered information, no violation of any reporting obligation, no criminal conduct, no danger to the community, no increased risk of flight, and no change in Petitioner's immigration status. In short, Respondents identify nothing that explains why detention suddenly

became necessary after years during which they knowingly permitted Petitioner to remain at liberty while actively administering his immigration case.

The liberty interest asserted here therefore arises not merely from Petitioner's lengthy physical presence in the United States. Rather, it arises from Respondents' own affirmative governmental conduct over an extended period of time. Having required Petitioner's participation in the federal immigration system, verified his identity, completed security vetting, authorized him to work, and knowingly permitted him to remain at liberty in the community, Respondents could not abruptly deprive him of that liberty without constitutionally adequate procedures.

Respondents identify no such procedures. They do not contend that Petitioner received advance notice that Respondents intended to revoke the liberty they had long permitted him to enjoy. They do not contend that Petitioner was afforded a meaningful opportunity to contest that deprivation before a neutral decisionmaker. Nor do they identify any individualized determination explaining why detention suddenly became necessary after years during which Respondents themselves administered Petitioner's immigration case while permitting him to remain openly in the community.

Instead, Respondents rely exclusively upon the proposition that detention is authorized under INA § 235(b). But statutory detention authority, even if applicable, does not eliminate the independent requirements imposed by the Due Process Clause. Once the government affirmatively established the legal relationship reflected in this record—requiring biometrics, completing security vetting, issuing employment authorization, and knowingly permitting Petitioner's continued liberty—it was required to provide constitutionally adequate procedures before abruptly depriving Petitioner of his physical freedom. Because Respondents identify no such procedures, and no individualized findings justifying their abrupt departure from years of affirmative governmental administration of Petitioner's case, Petitioner's continued detention violates the Fifth Amendment.

IV. Respondents' Abrupt Reversal Violates the Fifth Amendment

Respondents' position rests upon the premise that Petitioner was always subject to mandatory detention under INA § 235(b). Yet Respondents never reconcile that position with their own years of affirmative conduct. They knew Petitioner's identity, knew where he resided, knew he lacked lawful immigration status, required him to submit biometrics and fingerprints, completed security vetting, approved his application for employment authorization, and issued him an Employment Authorization Document valid through December 12, 2029. Despite possessing all of that information, Respondents did not detain Petitioner. Instead, they continued administering his pending asylum application while permitting him to live and work openly in the community.

The Opposition never answers the most fundamental question presented by this case: What changed? Respondents identify no newly discovered facts, no change in Petitioner's immigration status, no violation of any reporting obligation, no criminal conduct, no individualized determination that Petitioner presented a danger to the community or a risk of flight, and no other intervening circumstance explaining why detention suddenly became necessary years after Respondents knowingly permitted Petitioner to remain at liberty. Their unexplained reversal cannot be reconciled with the procedural protections guaranteed by the Fifth Amendment.

This is not a case involving an individual first encountered during inspection or detained shortly after an unlawful entry. Nor is it a case in which Respondents were unaware of Petitioner's identity, whereabouts, or immigration circumstances. To the contrary, Respondents affirmatively administered Petitioner's immigration case for years. They required him to submit biometrics, verified his identity through fingerprinting, completed security vetting, approved his employment authorization, issued him an Employment Authorization Document valid through December 12, 2029, and permitted him to remain openly in the community while his asylum application remained pending. Having repeatedly exercised their authority in that manner,

Respondents cannot now simply invoke INA § 235(b) without explaining why those same facts, which did not warrant detention for years, suddenly required Petitioner's incarceration.

Due process requires more than a conclusory assertion that detention is authorized under a particular statutory provision. At a minimum, it requires a reasoned explanation for the government's dramatic change in position and procedures adequate to protect the liberty interest that Respondents themselves helped create through years of affirmative governmental action. The Fifth Amendment does not permit the government to abruptly abandon its own longstanding treatment of Petitioner's case without articulating a rational, individualized basis for doing so. Respondents identify neither. The Constitution requires Respondents to explain not only why detention is authorized today, but also what changed to justify abandoning their own longstanding treatment of Petitioner's case. Because Petitioner's detention rests upon an unexplained and unsupported reversal of the government's longstanding treatment of his case, it violates the Due Process Clause of the Fifth Amendment.

V. Immediate Release Is the Appropriate Remedy

Where detention violates the Constitution or the Immigration and Nationality Act, the traditional function of habeas corpus is to secure release from unlawful custody. Immediate release is therefore the appropriate remedy. Nothing in Respondents' Opposition identifies a lawful basis upon which Petitioner's present incarceration can continue.

Respondents have failed to establish that Petitioner's continued detention complies with either the statutory framework established by Congress or the procedural protections required by the Fifth Amendment. As discussed above, Respondents have not shown that INA § 235(b) lawfully governs Petitioner's detention under these circumstances, nor have they identified any constitutionally adequate procedures preceding Petitioner's arrest. Instead, after years of requiring Petitioner to participate openly in the federal immigration system—including submitting biometrics, completing security vetting, obtaining government-issued employment authorization, and remaining at liberty while his asylum application was pending—Respondents

abruptly deprived him of his physical liberty without identifying any changed circumstances or individualized justification for doing so.

The absence of any identified changed circumstances confirms that Petitioner's detention rests solely upon Respondents' unexplained reversal of their own longstanding course of conduct. For years, Respondents required Petitioner to submit biometrics, completed security vetting, approved his employment authorization, issued an Employment Authorization Document valid through December 12, 2029, and continued administering his pending asylum application while knowingly permitting him to remain openly in the community. Respondents identify no intervening event that justified abandoning that course and incarcerating Petitioner. Habeas corpus exists precisely to remedy such unlawful restraints on liberty.

The constitutional violation was complete when Respondents deprived Petitioner of his liberty without constitutionally adequate process. That violation cannot be cured by post hoc reliance upon a statutory detention theory or by proposing that Petitioner receive additional procedures only after he has already been deprived of his freedom. Habeas corpus exists to remedy unlawful present detention, not to authorize its continuation while the government attempts to justify it retrospectively.

Nor have Respondents identified any individualized basis demonstrating that Petitioner's continued detention is necessary. They identify no individualized finding that Petitioner presents a danger to the community, no individualized finding that he presents an unacceptable risk of flight, and no determination that less restrictive alternatives would be insufficient. Instead, Respondents rely exclusively upon generalized assertions regarding mandatory detention while failing to explain why continued incarceration is necessary in Petitioner's particular circumstances.

Accordingly, because Respondents have failed to establish either a lawful statutory basis for Petitioner's detention or compliance with the procedural protections required by the Fifth Amendment, the Court should grant the Petition and order Petitioner's immediate release.

In the alternative, should the Court decline to order immediate release, Petitioner respectfully requests that the Court order Respondents to provide a prompt constitutionally adequate custody hearing before a neutral decisionmaker at which Respondents bear the burden of establishing, by clear and convincing evidence, that Petitioner's continued detention is necessary because he presents a danger to the community or a risk of flight, and at which less restrictive alternatives to detention are considered.

VI. Conclusion

For the foregoing reasons, Petitioner respectfully requests that the Court grant the Petition for Writ of Habeas Corpus and order Petitioner's immediate release from Respondents' custody.

In the alternative, and only if the Court declines to order immediate release, Petitioner respectfully requests that the Court order Respondents to provide a prompt constitutionally adequate custody hearing before a neutral decisionmaker at which Respondents bear the burden of establishing, by clear and convincing evidence, that Petitioner's continued detention is necessary because he presents a danger to the community or a risk of flight, and at which less restrictive alternatives to detention are considered.

Petitioner further requests such other and further relief as the Court deems just and proper.

Respectfully submitted,

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