UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Abdirahmaan G.,

Petitioner,

v.

The Warden; AFOD; Attorney General; and ICE Director,

Respondents.

Case No. 26-cv-3649 (MJD/DJF)

REPORT AND RECOMMENDATION

This matter is before the Court on Petitioner Abdirahmaan G.'s petition for a writ of habeas corpus ("Petition") (ECF No. 1.) Petitioner has been in federal custody since December 2025 as immigration removal proceedings against him have been carried out. An immigration judge entered a removal order against Petitioner on April 8, 2026 (*see* ECF No. 1 at 4), but he appealed the order (*see id.* at 5). His appeal is currently pending, which means the removal order is not yet administratively final, *see* 8 C.F.R. § 1241.1. The Petition alleges Petitioner's ongoing detention "has been unconstitutionally prolonged and violates the Fifth Amendment of the Constitution." (ECF No. 1 at 6.) Petitioner seeks release from detention or, in the alternative, an order of the Court directing that immigration officials conduct a bond hearing.

The Petition is before the Court for review pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts.[1] Based on that review, the Court concludes the Petition should be denied without prejudice and this matter dismissed.

[1] Petitioner does not seek relief under 28 U.S.C. § 2254, but the Court nevertheless may apply the Rules Governing Section 2254 Cases to the Petition. *See* Rule 1(b).

In *Zadvydas v. Davis*, the Supreme Court held that an immigration detainee whose order of removal has become administratively final cannot be held in custody indefinitely as he awaits deportation from the United States. 533 U.S. 678, 693-701 (2001). Detention for six months following a final order of removal becoming administratively final is presumptively lawful, as is any detention during which there is a significant likelihood of removal in the reasonably foreseeable future. After six months have passed, however, and if removal is no longer foreseeable, the detainee's continued detention is no longer permissible. *See id.* at 698-701.

The rules regarding immigration detainees who are not yet subject to a final order of removal are different. Some detainees are statutorily entitled to a bond hearing, *see* 8 U.S.C. § 1226(a), but others, including the Petitioner in this case, are subject to statutory provisions that unambiguously require detention for the duration of the removal proceedings, *see* 8 U.S.C. § 1225(b); *Jennings v. Rodriguez*, 583 U.S. 281, 301 (2018) (finding section 1225(b) cannot "reasonably be read to limit detention to six months"); *Abdirahmaan G. v. Noem*, No. 26-cv-0034 (PAM/SGE) (ECF No. 7) (D. Minn. Jan. 14, 2026) (concluding Petitioner is subject to mandatory detention under section 1225(b)); *cf. Avila v. Bondi*, 170 F.4th 1128 (8th Cir. 2026). In *Demore v. Kim*, the Supreme Court concluded that indefinite detention of the kind contemplated by section 1225(b)[2] did not present constitutional concerns: "Congress … may require that persons … be detained for the brief period necessary for their removal proceedings." 538 U.S. 510, 513 (2003).

Petitioner argues the "period necessary" for his removal proceedings to be conducted can no longer reasonably be described as "brief". For many years, courts of this District and elsewhere

[2] The provision at issue in *Demore* was 8 U.S.C. § 1226(c), which applies to immigration detainees convicted of or charged with having committed particular criminal offenses. Section 1226(c), like section 1225(b), mandates detention during the pendency of removal proceedings.

have concluded that "as detention drags on beyond the time frame contemplated in *Demore* and begins to resemble the indefinite detention addressed in *Zadvydas*, the constitutional issues that concerned the Supreme Court in *Zadvydas* become more salient." *Muse v. Sessions*, 409 F. Supp. 3d 707, 714-15 (D. Minn. 2018). According to those cases, detainees like Petitioner, whose detention while awaiting the conclusion of their removal proceedings threatened to become prolonged would become, at some point during that detention, constitutionally entitled to a bond hearing to determine whether they should be conditionally released. *Id.* at 712, 718.

But the Eighth Circuit directly foreclosed that approach in *Banyee v. Garland*, 115 F.4th 928 (8th Cir. 2024). *Banyee* concluded, citing *Demore*, that "[t]he rule has been clear for decades: detention during deportation proceedings is constitutionally valid." *Id.* at 931 (cleaned up). *Banyee* stated that the courts finding detainees in Petitioner's position were entitled to a bond hearing after prolonged detention were wrongly focused on the *length* of the detention, rather than its indefiniteness. *Id.* at 932. When a detainee subject to a final order of removal remains in detention awaiting a deportation that is unlikely to occur in the reasonably foreseeable future, there is a risk that the detention may be indefinite. But detention justified by the pendency of removal proceedings, such as detention pursuant to section 1225(b), has a definite end point—the conclusion of the removal proceedings with an administratively final order of removal. "The *why*, in other words, is more important than *how long*." *Banyee*, 115 F.4th at 932. *Banyee* thus concluded that, because there is a final termination point to detention carried out during the pendency of removal proceedings, a detainee subject to mandatory detention during removal proceedings cannot challenge his detention on the ground that it is taking too long. *Banyee* is binding precedent in this Circuit, and therefore, the Court is obligated to follow it.

Petitioner's claim is predicated on the contention that his "detention has become unconstitutionally prolonged and violates the Fifth Amendment of the Constitution" (ECF No. 1 at 6). That is precisely the claim now foreclosed by *Banyee*. Petitioner's order of removal has not yet become administratively final because he continues to prosecute his appeal from that order in the Board of Immigration Appeals. Petitioner is subject to mandatory detention under section 1225(b) until his removal proceedings reach their conclusion. And pursuant to *Banyee*, the length of that detention is not a viable ground on which to challenge it.

The Court recommends the Petition be denied for these reasons. However, any such denial should be without prejudice to any other claim Petitioner may have now, or might have in the future, with respect to the lawfulness of his detention.[3] Because the Court recommends that the habeas Petition be denied, it further recommends that Petitioner's application to proceed *in forma pauperis* (ECF No. 4) also be denied. *See Kruger v. Erickson*, 77 F.3d 1071, 1074 n.3 (8th Cir. 1996) (per curiam). Finally, because the lone claim raised in the Petition is squarely foreclosed by binding Eighth Circuit caselaw, the Court additionally recommends that Petitioner's motion to appoint counsel (ECF No. 3) be denied.

RECOMMENDATION

Based on the foregoing, and on all the files, records, and proceedings herein, **IT IS HEREBY RECOMMENDED THAT**:

[3] In an addendum to the Petition, Petitioner presents allegations regarding the medical care he has received while in detention. (*See* ECF No. 1-1.) He presents these allegations as grounds justifying his release, not as independent claims of entitlement to medical care. To the extent Petitioner intends to prosecute claims related to the medical care he has received, he can do so only through a non-habeas civil proceeding. *See Spencer v. Haynes*, 774 F.3d 467, 469 (8th Cir. 2014). Denying the Petition without prejudice would not foreclose Petitioner from presenting any claims challenging deficient medical care through a different civil lawsuit based on a more appropriate pleading.

1. Petitioner Abdirahmaan G.'s Petition for a writ of habeas corpus of (ECF No. 1) be **DENIED WITHOUT PREJUDICE**.

2. Petitioner's motion to appoint counsel (ECF No. 3) be **DENIED**.

3. Petitioner's application to proceed *in forma pauperis* (ECF No. 4) be **DENIED**.

4. This matter be **DISMISSED**.

Dated: August 24, 2026

s/ Dulce J. Foster
Dulce J. Foster
United States Magistrate Judge

NOTICE

Filing Objections: This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), "a party may file and serve specific written objections to a magistrate judge's proposed finding and recommendations within 14 days after being served a copy" of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. *See* Local Rule 72.2(b)(2). All objections and responses must comply with the word or line limits set forth in Local Rule 72.2(c).