

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

**E.O.P. v. Tonya Andrews, Facility Administrator of Golden State
Annex, et al.**

E.O.P. v. Andrews · No. 1:25-cv-00721-KES-SKO (HC) · Decided September 11, 2025

OPINION

Andrews

PER CURIAM.

1 2 3 4 5 6

7 UNITED STATES DISTRICT COURT

8 EASTERN DISTRICT OF CALIFORNIA

9 10 11 E.O.P.,) Case No.: 1:25-cv-00721-KES-SKO (HC)) 12 Petitioner,) FINDINGS AND
RECOMMENDATION TO

) GRANT RESPONDENTS' MOTION TO DISMISS

13) (Doc. 9), AND DENY PETITION FOR WRIT OF

) HABEAS CORPUS

14 v.)

15) [21-DAY OBJECTION DEADLINE]

)

16 TONYA ANDREWS, FACILITY)

ADMINISTRATOR OF GOLDEN STATE)

17 ANNEX, et al.,)) 18 Respondents.) 19 20 21 22 Petitioner is an immigration detainee
proceeding with counsel with a petition for writ of habeas 23 corpus pursuant to 28 U.S.C. § 2241.
He is represented in this action by Mariel Villarreal, Esq., of the 24 California Collaborative for
Immigrant Justice. 25 Petitioner filed the instant petition on June 12, 2025. (Doc. 1.) On July 24,
2025, Respondent 26 filed a motion to dismiss the petition. (Doc. 9.) On August 21, 2025,
Petitioner filed an opposition. 27 (Doc. 12.) Respondent did not file a reply. 28 1 Petitioner
challenges his continued detention by the Bureau of Immigration and Customs 2 Enforcement
("ICE"). He claims his prolonged detention without a bond hearing violates his 3 procedural due
process rights under the Fifth Amendment. He claims he should be immediately 4 released, or
alternatively, provided a bond hearing before an immigration judge ("IJ") where the 5
Government must justify his continued detention by clear and convincing evidence. 6 For the
reasons discussed below, the Court will recommend Respondent's motion to dismiss be 7 granted,
and the petition be denied.

8 I. BACKGROUND

9 Petitioner is a native and citizen of Honduras. (Sealed Exhibit 2.) He entered the United States
10 without inspection on an unknown date. (Sealed Exhibit 2.) Records show Petitioner’s parents
have no 11 status in the United States. (Sealed Exhibit 2.) In 2012, Petitioner was convicted in the
Los Angeles 12 County Superior Court of voluntary manslaughter and sentenced to sixteen years
in prison. (Sealed
13 Exhibit 2.)

14 Upon release from prison on September 22, 2022, the Department of Homeland Security 15
 (“DHS”) issued a warrant for Petitioner’s arrest and a notice to appear for removal proceedings.
(Doc. 16 8-1 at 15.) Based on his criminal history, DHS charged him with removability under
Section 17 212(a)(6)(A)(i) of the Immigration and Nationality Act (“INA”). (Sealed Exhibit 2.)
On that date, 18 Petitioner was detained under the mandatory detention provisions in § 236 of the
INA and has been in 19 continuous custody since then. 20 On September 22, 2022, Petitioner filed
a request for a bond hearing before an Immigration 21 Judge. (Sealed Exhibit 3.) Petitioner then
withdrew his request. (Sealed Exhibit 3.) 22 On March 6, 2023, Petitioner sent a request for
release to ICE. (Sealed Exhibit 3.) On March 8, 23 2023, ICE reviewing officers denied the
request, finding Petitioner is subject to mandatory detention. 24 (Doc. 9-1 at 3.) 25 On January 23,
2023, an immigration judge denied Petitioner’s applications for relief and 26 ordered him
removed to Honduras. (Doc. 9-1 at 3; Sealed Exhibit 4.) On July 18, 2023, the Bureau of 27
Immigration Appeals (“BIA”) affirmed the decision. (Sealed Exhibit 5.) 28 1 On October 13,
2023, Petitioner filed a request to reopen removal proceedings with the BIA. 2 (Sealed Exhibit 6.)
On January 25, 2024, the BIA denied the motion. (Sealed Exhibit 6.) On February 3 23, 2024,
Petitioner petitioned for review of the BIA’s denial in the Ninth Circuit Court of Appeals 4 along
with a motion for stay of removal. See O.P. v. Bondi, Case No. 24-980. Pursuant to Ninth 5
Circuit General Order 6.4(c)(1), removal proceedings were stayed pending judicial review.

6 Approximately 17 months later, on June 24, 2025, the Ninth Circuit denied relief from removal.
(Doc.

7 9-1 at 3.) As a result, the stay of removal was lifted.

8 II. DISCUSSION

9 A. Motion to Dismiss 10 Habeas corpus petitions are subject to summary dismissal pursuant to
Rule 4 of the Rules 11 Governing Section 2254 Cases in the United States District Courts. The
provisions of Rule 4, which 12 are applicable to § 2241 petitions under Rule 1(b), provide in
pertinent part: “If it plainly appears from 13 the petition and any attached exhibits that the
petitioner is not entitled to relief in the district court, the 14 judge must dismiss the petition and
direct the clerk to notify the petitioner.” The Advisory Committee 15 Notes to Rule 8 indicate that
the Court may dismiss a petition for writ of habeas corpus, either on its 16 own motion under Rule
4, pursuant to the respondent’s motion to dismiss, or after an answer to the 17 petition has been
filed. 18 B. Jurisdiction 19 A district court may grant a writ of habeas corpus when the petitioner
“is in custody in 20 violation of the Constitution or laws or treaties of the United States.” 28

U.S.C. § 2241(c)(3). 21 “[D]istrict courts retain jurisdiction under 28 U.S.C. § 2241 to consider habeas challenges to 22 immigration detention that are sufficiently independent of the merits of [a] removal order.” *Lopez-Marroquin v. Barr*, 955 F.3d 759, 759 (9th Cir. 2020) (citing *Singh v. Holder*, 638 F.3d 1196, 1211–12 24 (9th Cir. 2011)). Pertinent here, the Supreme Court specifically directed that federal courts have 25 jurisdiction to review a constitutional challenge to a non-citizen's detention under § 1226(c). See 26 *Demore v. Kim*, 538 U.S. 510, 517 (2003). 27 // 28 // 1 C. Mandatory Detention under 8 U.S.C. § 1226(c) 2 Petitioner has been detained for approximately 3 years pursuant to 8 U.S.C. § 1226(c), which, 3 in relevant part, provides: 4 (c) Detention of criminal aliens 5 (1) Custody 6 The Attorney General shall take into custody any alien who-- 7 (A) is inadmissible by reason of having committed any offense covered in section 1182(a)(2) of this title, 8 (B) is deportable by reason of having committed any offense covered in section 9 1227(a)(2)(A)(ii), (A)(iii), (B), (C), or (D) of this title, 10 (C) is deportable under section 1227(a)(2)(A)(i) of this title on the basis of an offense for which the alien has been sentence¹ to a term of imprisonment of at least 1 year, 11 (D) is inadmissible under section 1182(a)(3)(B) of this title or deportable under section 12 1227(a)(4)(B) of this title, or 13 (E)(i) is inadmissible under paragraph (6)(A), (6)(C), or (7) of section 1182(a) of this title; and (ii) is charged with, is arrested for, is convicted of, admits having committed, 14 or admits committing acts which constitute the essential elements of any burglary, theft, larceny, shoplifting, or assault of a law enforcement officer offense, or any crime that 15 results in death or serious bodily injury to another person, 16 when the alien is released, without regard to whether the alien is released on parole, supervised release, or probation, and without regard to whether the alien may be 17 arrested or imprisoned again for the same offense. 18 19 (4) Release 20 The Attorney General may release an alien described in paragraph (1) only if the Attorney General decides pursuant to section 3521 of Title 18 that release of the alien 21 from custody is necessary to provide protection to a witness, a potential witness, a person cooperating with an investigation into major criminal activity, or an immediate 22 family member or close associate of a witness, potential witness, or person cooperating with such an investigation, and the alien satisfies the Attorney General that the alien 23 will not pose a danger to the safety of other persons or of property and is likely to appear for any scheduled proceeding. A decision relating to such release shall take 24 place in accordance with a procedure that considers the severity of the offense committed by the alien. 25 26 8 U.S.C.A. § 1226 (West).

27 Section 1226(a) permits the Attorney General to release aliens on bond, “[e]xcept as provided 28 in subsection (c).” As noted above, Section 1226(c) states that the Attorney General “shall take into 1 custody any alien who” falls into one of the enumerated categories involving criminal offenses and 2 terrorist activities. 8 U.S.C. § 1226(c)(1). Section 1226(c)(2) then states that the Attorney General 3 may release an alien described in § 1226(c)(1) “‘only if the Attorney General decides’ both that doing 4 so is necessary for witness-protection purposes and that the alien will not pose a danger or flight risk.” 5 *Jennings v. Rodriguez*, 583 U.S. 281, 303 (2018) (citing 8

U.S.C. § 1226(c)(2)) (emphasis in original). 6 In *Jennings*, the Supreme Court held that “together with § 1226(a), § 1226(c) makes clear that 7 detention of aliens within its scope must continue ‘pending a decision on whether the alien is to be 8 removed from the United States.’” *Id.* (citing 8 U.S.C. § 1226(a)). The Supreme Court also noted that 9 “[b]y expressly stating that the covered aliens may be released ‘only if’ certain conditions are met, 8 10 U.S.C. § 1226(c)(2), the statute expressly and unequivocally imposes an affirmative prohibition on 11 releasing detained aliens under any other conditions.” *Id.* at 304 (emphasis in original). Thus, the 12 Supreme Court held that “§ 1226(c) mandates detention of any alien falling within its scope and that 13 detention may end prior to the conclusion of removal proceedings ‘only if’ the alien is released for 14 witness-protection purposes.” *Id.* Here, Petitioner does not meet the conditions for release. The 15 Attorney General has not decided that release is necessary for witness-protection, nor has the Attorney 16 General determined that Petitioner will not pose a danger or flight risk. Therefore, statutorily, § 17 1226(c) mandates detention. 18 Petitioner contends that, although the statute mandates detention, his detention without a bail 19 review hearing has become so unreasonably prolonged as to violate his Fifth Amendment procedural 20 due process rights. The Fifth Amendment’s Due Process Clause provides that “[n]o person shall be ... 21 deprived of life, liberty, or property, without due process of law.” “It is well established that the Fifth 22 Amendment entitles aliens to due process of law in deportation proceedings,” *Reno v. Flores*, 507 U.S. 23 292, 306 (1993), and “[a] statute permitting indefinite detention of an alien would raise a serious 24 constitutional problem,” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The Supreme Court has 25 recognized that “[d]etention during deportation proceedings is a constitutionally permissible part of 26 [the deportation] process.” *Demore v. Kim*, 538 U.S. 510, 531 (2003); see also *Carlson v. Landon*, 342 27 U.S. 524, 538 (1952) (“[d]etention is necessarily a part of this deportation procedure”). 28 1 It is undisputed that Petitioner’s detention is mandatory under § 1226(c), and he does not meet 2 any of the conditions for release pursuant to § 1226(c)(2). Petitioner nonetheless claims that his 3 detention has become so unreasonably prolonged that due process requires he be provided an 4 individualized bond hearing. The Supreme Court has not directly addressed the constitutionality of 5 prolonged detention in the context of an as-applied challenge to 8 U.S.C. § 1226(c); however, the 6 Supreme Court’s statutory decisions regarding mandatory detention provide guidance regarding 7 prolonged detention in an as-applied challenge under the Due Process Clause. 8 In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Court considered a due process challenge to 9 detention of aliens under 8 U.S.C. § 1231. Section 1231 governs detention following a final order of 10 removal. The *Zadvydas* Court read § 1231 to authorize continued detention of an alien following the 11 90-day removal period for only such time as is “reasonably necessary to secure [the alien’s] removal.”

12 *Id.* at 699. The detention at issue in *Zadvydas*, however, is materially different from the present case.

13 In *Zadvydas*, the aliens challenging their detention following final orders of deportation were

those for 14 whom removal was “no longer practically attainable.” *Id.* at 690. The civil confinement was not 15 limited, “but potentially permanent.” *Id.* at 691. *Zadvydas* distinguished § 1231 from § 1226 on these 16 very grounds, noting that “post-removal-period detention, unlike detention pending a determination of 17 removability, has no obvious termination point.” *Id.* at 697. Here, on the other hand, removal is 18 practically attainable. As the Supreme Court noted in *Jennings*, “detention under § 1226(c) has a 19 definite termination point: the conclusion of removal proceedings.” *Jennings*, 583 U.S. at 304. 20 In *Demore v. Kim*, a lawful permanent resident alien challenged the no-bail provision of the 21 Immigration and Nationality Act (“INA”), contending that his six-month detention violated due 22 process because he had not been provided an individualized bond hearing. 538 U.S. 510. The Supreme 23 Court rejected this claim, observing first that Congress, in its “broad power over naturalization and 24 immigration proceedings,” “regularly makes rules that would be unacceptable if applied to United 25 States citizens.” *Id.* at 521 (quoting *Mathews v. Diaz*, 426 U.S. 67, 79-80 (1976)). Additionally, 26 detention pending removal necessarily serves the purpose of preventing aliens from fleeing prior to or 27 during removal proceedings. *Id.* at 527-28. The Court also noted that detention under § 1226(c) has a 28 definite termination point. *Id.* at 529. Although the Supreme Court did not specify an outer limit as to 1 what constitutes a permissible detention period, it acknowledged that “the detention at stake under § 2 1226(c) lasts roughly a month and a half in the vast majority of cases ... and about five months in the 3 minority of cases in which the alien chooses to appeal.” *Id.* at 530. The majority, however, held that 4 six months did not run afoul of the due process clause in part because the delayed proceedings were 5 the result of the alien’s own requests. *Id.* at 530–31. 6 In analyzing whether prolonged detention violates due process, many courts have looked to 7 Justice Kennedy’s concurrence in *Demore*, which noted that, “since the Due Process Clause prohibits 8 arbitrary deprivations of liberty, a lawful permanent resident alien such as respondent could be entitled 9 to an individualized determination as to his risk of flight and dangerousness if the continued detention 10 became unreasonable or unjustified.” *Id.* at 532 (Kennedy, J., concurring).

11 In 2015, the Ninth Circuit applied the canon of constitutional avoidance in holding that for 12 noncitizens detained under 8 U.S.C. §§ 1225(b), 1226(a), and 1226(c), “the government must provide 13 periodic bond hearings every six months so that noncitizens may challenge their continued detention.” 14 *Rodriguez v. Robbins*, 804 F.3d 1060 (9th Cir.2015). Petitioner contends he is entitled to a bond 15 hearing under this six-month bright line rule. In *Jennings v. Rodriguez*, the Supreme Court rejected 16 the six-month bright line rule. The Supreme Court determined that the Ninth Circuit had misapplied 17 the doctrine of constitutional avoidance and the “implicit 6-month time limit on the length of 18 mandatory detention” under § 1226(c) fell “far short of a ‘plausible statutory construction.’” 583 U.S. 19 281, 296, 303-04. The *Jennings* Court interpreted § 1226(c) as having a “definite termination point” to 20 the length of detention – the “conclusion of removal proceedings” – and remanded the case to the 21 Ninth Circuit to consider the

constitutional arguments on their merits, and held that § 1226(c) on its face authorized detention without a bond hearing. *Id.* at 304. The Court did not, however, provide guidance on whether an alien could assert an as-applied challenge under the Fifth Amendment due process clause. Several courts including the Third, Sixth, and Ninth Circuit, as well as numerous district courts, have found that unreasonably long detention periods may violate the due process clause. See, e.g., *Rodriguez v. Marin* (“*Rodriguez IV*”), 909 F.3d 252, 256 (9th Cir. 2018) (the Ninth Circuit asserted “grave doubts that any statute that allows for arbitrary prolonged detention without any process is constitutional...”); *Diop v. ICE/Homeland Sec.*, 656 F.3d 221, 235 (3d Cir. 2011) (detention of an alien for a period of nearly three years without further inquiry into whether it was necessary to ensure his appearance at the removal proceedings or to prevent a risk of danger to the community, was unreasonable, and, therefore, a violation of the Due Process Clause”); *German Santos v. Warden Pike*, 596 F.3d 203 (3d Cir. 2020) (reversing and remanding to district court to order bond hearing while detained under § 1226(c)); *Diep v. Wofford*, 1:24-cv-01238-SKO, 2025 WL 604744 (E.D. Cal. Feb. 25, 2025) (ordering bond hearing for noncitizen detained under 8 U.S.C. § 1226(c) for 13 months); *A.E. v. Andrews*, 1:25-cv-00107-KES-SKO, 2025 WL 1424382 (E.D. Cal. May 16, 2025) (ordering bond hearing for noncitizen detained under 8 U.S.C. § 1225(b) for 20 months). The Ninth Circuit has also noted that many courts have applied the *Mathews* test in considering due process challenges in the immigration context. *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022). However, the Supreme Court, when confronted with constitutional challenges to immigration detention, has not resolved them through express application of *Mathews*. See, e.g., *Demore*, 538 U.S. at 523, 526–29; see also *Dusenbery v. United States*, 534 U.S. 161, 168, 151 S.Ct. 694, 151 L.Ed.2d 597 (2002) (“[W]e have never viewed *Mathews* as announcing an all-embracing test for deciding due process claims.”). Nevertheless, several district courts in the Ninth Circuit including this Court have employed the *Mathews* test in the context of evaluating whether due process entitles a petitioner to a bond hearing. See, e.g., *Jensen v. Garland*, 2023 WL 3246522, at *4 (C.D. Cal. 2023); *Galdillo v. U.S. Dep’t of Homeland Sec.*, 2021 WL 4839502, at *3 (C.D. Cal. 2021); *Jimenez v. Wolf*, 2020 WL 510347, at *3 (N.D. Cal. 2020); *Riego v. Scott*, 2025 WL 660535 (E.D. Cal. 2025).

The Ninth Circuit has also noted the common use of the *Mathews* test and has assumed (without deciding) that it applies to due process claims in the immigration detention context. *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206–07 (9th Cir. 2022). Thus, the Court finds application of the *Mathews* test in this case appropriate. Under the *Mathews* test, the “identification of the specific dictates of due process generally requires consideration of three distinct factors.” *Mathews*, 424 U.S. 1 at 334–35. “First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any,

of 3 additional or substitute procedural safeguards; and finally, the Government's interest, including the 4 function involved and the fiscal and administrative burdens that the additional or substitute procedural 5 requirement would entail.” Id. at 335. 6 In the first factor, the Court evaluates Petitioner’s private interest in being free from detention 7 against the government’s stated interests in protecting the public from a risk of danger and any risk of 8 flight to avoid removal. Petitioner has now been detained approximately 3 years. Compared to the six- 9 month presumptive period set forth in *Zadvydas* beyond which continued detention becomes 10 prolonged, Petitioner’s 3-year detention qualifies as prolonged. *Zadvydas*, 533 U.S. at 701. The Ninth 11 Circuit has also held that an individual's private interest in “freedom from prolonged detention” is 12 “unquestionably substantial.” *Singh v. Holder*, 638 F.3d 1196, 1208 (9th Cir. 2011). Thus, the factor 13 at first glance weighs in favor of Petitioner. In *Rodriguez Diaz v. Garland*, however, the Ninth Circuit 14 stated that “in evaluating the first prong of the *Mathews* analysis, we cannot simply count his months 15 of detention and leave it at that. We must also consider the process he received during this time, the 16 further process that was available to him, and the fact that his detention was prolonged due to his 17 decision to challenge his removal order.” 53 F.4th at 1208. The Ninth Circuit stated it was “important 18 not to overstate the strength of Petitioner’s showing under the first *Mathews* factor.” 53 F.4th at 1213. 19 According to the Ninth Circuit, detentions longer than six months were considered “prolonged” in the 20 context of detentions “for which no individualized bond hearings had taken place at all.” 21 In *Rodriguez Diaz*, the petitioner had received a bond hearing after he was detained. Id. at 22 1207. Here, unlike the petitioner in *Rodriguez Diaz*, Petitioner has not received the benefit of a bond 23 hearing. This lack of due process weighs in favor of Petitioner. The Court notes, however, that 24 Petitioner had requested a bond hearing before an IJ, but he inexplicably rescinded his request prior to 25 the scheduled hearing. The IJ honored Petitioner’s request and Petitioner remained in detention 26 without bond release review. Notwithstanding Petitioner’s request for rescission, his private interest 27 in being free from prolonged detention of 3 years continues to weigh in his favor. 28 1 The Court also considers whether the reason for the lengthy period of detention is due to 2 Petitioner’s own actions. *Rodriguez Diaz*, 53 F.4th at 1208; *Demore*, 538 U.S. at 530-31. Here, 3 Petitioner was detained for four months before an Immigration Judge ordered him removed. Arguably, 4 most of the detention period from February 17, 2023, to the present were due to Petitioner’s appeals 5 and motion to reopen. Petitioner’s appeal to the Ninth Circuit on February 23, 2024, stayed all efforts 6 at removal until the appeal was denied on June 24, 2025. This 17-month period comprised nearly half 7 of the detention period. On the other hand, during the 4-month period from January 23, 2023, to 8 February 17, 2023, and July 17, 2023, to October 13, 2023, nothing apparently prevented the 9 Government from removing Petitioner. Thus, while the Government bears some blame for the length 10 of detention, Petitioner’s own actions caused most of the detention period. Petitioner’s private interest 11 in being free from prolonged detention is therefore diminished by his own

actions. 12 When considering the length of detention, courts have looked not only at the overall period, 13 but also at “how long detention is likely to last.” *Gonzalez v. Bonnar*, 2019 WL 330906, at *5 (N.D.

14 Cal. 2019). In *German Santos v. Warden Pike Cnty. Corr. Facility*, 965 F.3d 203, 210-11 (3d Cir.

15 2020), the court inquired on the reasonableness of the length of detention. The Third Circuit stated that 16 “[t]he most important factor is the duration of detention”; but in evaluating the duration of detention, 17 the first factor to be considered is “whether the detention is likely to continue.” *Id.* at 211 (emphasis 18 added). Here, removal is imminent. The IJ ordered Petitioner’s removal, Petitioner’s appeals to the 19 BIA were denied, and significantly, the Ninth Circuit has recently decided the appeal against him. 20 Thus, all reasonably viable avenues of relief are now exhausted, and there are no apparent obstacles 21 standing in the way of Petitioner’s removal to Honduras and release from his current detention, once 22 the Ninth Circuit issues its mandate. Of course, Petitioner is free to file further actions as he deems fit, 23 but further detention would be due to Petitioner’s own actions. The proverbial keys to release are in 24 his own pocket. 25 Against Petitioner’s private interest in being free from detention, the Court must consider the 26 government’s stated interests in protecting the public from a risk of danger and risk of flight to avoid 27 removal. Petitioner has an extensive criminal history. He was a gang member from his youth and has a 28 history of violent crime including the use of firearms, culminating with a conviction for voluntary 1 manslaughter. (Doc. 1 at 11-13; Sealed Exhibit 1.) He admits he consistently engaged in criminal 2 activity since he was very young. (Doc. 1 at 11-13.) The Ninth Circuit has recognized safeguarding 3 the community as a legitimate purpose of detention pending removal proceedings. See *Prieto-Romero 4 v. Clark*, 534 F.3d 1053, 1062-65 (9th Cir. 2008). 5 In sum, as to the first *Mathews* factor, Petitioner’s lengthy detention is a significant 6 consideration weighing in his favor. However, this consideration is diminished by Petitioner’s own 7 actions in causing much of the prolonged detention period. Moreover, removal is now imminent. In 8 addition, Petitioner has an extensive criminal history. For these reasons, the Court finds the 9 government’s interest in protecting the public and in assuring Petitioner’s presence for removal 10 outweighs Petitioner’s interest in being free from continued detention. 11 As to the second factor, “the risk of an erroneous deprivation of [Petitioner’s] interest through 12 the procedures used, and the probable value, if any, of additional or substitute procedural safeguards,” 13 *Mathews*, 424 U.S. at 335, the Court finds this factor also weighs in favor of the government. The 14 “risk of an erroneous deprivation of [a petitioner’s] interest is high” where “[h]e has not received any 15 bond or custody redetermination hearing[.]” *Jimenez*, 2020 WL 510347, at *3. Here, Petitioner has 16 received due process in the form of appeals of his removal order and his petition for review before the 17 Ninth Circuit. Although he has not received a formal bond hearing before an IJ or judge, Petitioner 18 demanded a bond hearing before an IJ but later withdrew his own request. 19 DHS has also conducted a custody status review finding Petitioner to be a risk of danger to the 20

community and a flight risk. Given Petitioner was a gang member who admittedly relapsed into criminal activity every time he was free, the Government's interest in protecting the public is high, and the risk of an erroneous deprivation of Petitioner's interest is low. For the same reason, the probable value of a bond hearing is low, especially when considering Petitioner's removal is imminent. Thus, the second factor weighs in favor of the government. In the third factor, the Court weighs the government's interest, "including the function involved and the fiscal and administrative burdens that the additional or substitute requirement would entail." Mathews, 424 U.S. at 335. As previously discussed, the government has a strong interest in effecting removal, Demore, 538 U.S. at 531, and in protecting the public from danger, Prieto-Clark, 1534 F.3d at 1062-65. Here, mandating a bond hearing would only lengthen Petitioner's detention as his removal is imminent. Furthermore, the government's asserted interest in protecting the public is strong based on Petitioner's extensive criminal history, and mandating a bond hearing at this juncture would undermine the government's asserted interest in effecting removal. Thus, the government's interest again outweighs Petitioner's interest. In sum, the three Mathews factors weigh in favor of the government's interest in further detention pending Petitioner's removal in the near future. The Court finds that Petitioner's continued detention without mandating a bond hearing before an IJ at this time does not violate his Fifth Amendment due process rights and will recommend denying the petition.

10 III. RECOMMENDATION

11 For the foregoing reasons, the Court RECOMMENDS the motion to dismiss be GRANTED 12 and the petition be DENIED. 13 This Findings and Recommendation is submitted to the United States District Court Judge 14 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304 of the Local 15 Rules of Practice for the United States District Court, Eastern District of California. Within twenty- 16 one (21) days after being served with a copy of this Findings and Recommendation, a party may file 17 written objections with the Court and serve a copy on all parties. Id. The document should be 18 captioned, "Objections to Magistrate Judge's Findings and Recommendation" and shall not exceed 19 fifteen (15) pages, except by leave of court with good cause shown. The Court will not consider 20 exhibits attached to the Objections. To the extent a party wishes to refer to any exhibit(s), the party 21 should reference the exhibit in the record by its CM/ECF document and page number, when possible, 22 or otherwise reference the exhibit with specificity. Any pages filed in excess of the fifteen (15) page 23 limitation may be disregarded by the District Judge when reviewing these Findings and 24 Recommendations pursuant to 28 U.S.C. § 636 (b)(1)(C). The parties are advised that failure to file 25 objections within the specified time may result in the waiver of rights on appeal. Wilkerson v. 26 Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014). This recommendation is not an order that is 27 immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Rule 28 1 4(a)(1), Federal Rules of Appellate Procedure, should not be filed until entry of the District Court's 2 judgment. 3 4 IT IS SO ORDERED. 5 Dated: September 10, 2025 /s/ Sheila K.

Oberto .

6 UNITED STATES MAGISTRATE JUDGE

7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28