District Judge Tiffany M. Cartwright

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

Jesus Bento CARDOZO, Relson FERNANDES, Yassine BELHAJ, Marouane BOULHJAR, Mouloud Ben KHADAJ,

Petitioners,

v.

Drew BOSTOCK, Field Office Director of Enforcement and Removal Operations, Seattle Field Office, Immigration and Customs Enforcement; Kristi NOEM, Secretary, U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; Pamela Bondi, U.S. Attorney General; Bruce SCOTT, Warden of Northwest ICE Processing Center,

Respondents.

Case No. 2:25-cv-00871-TMC

PETITIONER'S OBJECTIONS TO THE REPORT AND RECOMMENDATION

Note on Motion Calendar: August 26, 2025

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INTRODUCTION

Petitioner Mouloud Ben Khadaj agrees with the Report and Recommendation (R&R) in all respects apart from three points. First, the R&R concludes that the delay factor does not weigh against the government, despite the nearly nine-month delay it took to provide a hearing in Mr. Khadaj's language. Second, the R&R recommends 8 U.S.C. § 1225(b)(2) not be declared unconstitutional as applied in this case. However, ordering relief in this case requires the Court to make that determination. Finally, the Court should order a bond hearing within fourteen days given the liberty interest at issue, consistent with many other cases.

ARGUMENT

I. The Court should weigh the delay factor against Respondents.

The R&R concludes that Respondents' failure to identify an interpreter for Mr. Khadaj does not weigh against Respondents because they "attempted to address" the interpretation issue. Dkt. 25 at 11. But the record shows that Respondents' efforts to "address" the issue amounted to calling an interpreter line at each hearing and hoping that an interpreter might be available. *See, e.g.*, Dkt. 12 ¶¶ 4–6, 10–14, 17–20, 23–30. Notably, only after the filing of this petition—when finally faced with oversight—did Respondents make the necessary efforts to locate interpreters for all the initial Petitioners. *See id.* ¶¶ 8, 15, 21; Dkt. 16 ¶¶ 4–5. Moreover, with respect to the Petitioners as a whole,[1] Respondents often obtained an interpreter in the wrong language, or no interpreter at all, even *after* Petitioners specified their language and dialect, underscoring that

[1] Although only Mr. Khadaj continues to seek relief, the Respondents' practices as to all Petitioners inform how the Court should assess this factor. Each Petitioner experienced a similar pattern of delay due to Respondents' failure to provide an interpreter.

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Respondents' efforts were haphazard and needlessly delayed proceedings for months. *See* Dkt. 12 ¶¶ 12–14, 18–20, 24–30.[2]

This Court has held that similar delays in obtaining adequate interpretation constitute delay "attributable to the Government, not petitioner." *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1120 (W.D. Wash. 2019) (holding this factor favored the petitioner where the government failed to provide an appropriate interpreter for over a year). The R&R does not—and cannot—distinguish *Banda*. There, as here, the government repeatedly called interpreter lines at the petitioner's hearings, and no interpreter was available, resulting in months of delay. *Id.* at 1110. The Court held such delay was properly attributable to the government, and it should do the same here.

II. The Court should declare 8 U.S.C. § 1225(b)(2) unconstitutional as applied.

The R&R recommends denying Mr. Khadaj's request that § 1225(b) be declared unconstitutional as applied on the ground that he "present[s] no convincing authority" to that effect. Dkt. 25 at 12. However, as the R&R itself acknowledges, § 1225(b)(2) *mandates* detention without a hearing. *Id.* at 7. For the Court to order a bond hearing, it must determine that, in the particular circumstances of this case, mandatory detention violates the Due Process Clause and that a bond hearing is the appropriate remedy; otherwise, there is no source of authority to order the bond hearing.

Supreme Court and Ninth Circuit caselaw on writs of habeas corpus demonstrate this

[2] Respondents' declaration at Dkt. 12 also paints a misleading picture. It recounts efforts to find an interpreter since February 25, 2025, while Mr. Khadaj has been detained at the Northwest ICE Processing Center. But Mr. Khadaj was previously detained for months in Nevada and had five hearings there without interpretation in his language. Dkt. 6 ¶ 6. Respondents do not dispute these facts, which underscore that their "attempt[s] to address" the interpretation issue amounted to calling a language line service every few weeks (at each hearing) and hoping an appropriate interpreter would be available. Dkt. 25 at 11.

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point. In "modern [habeas] practice," including in many, if not most, immigration detention habeas cases, "courts employ a conditional order of release . . . , which orders the [detaining authority] to release the petitioner unless the [detaining authority] takes some remedial action." *Harvest v. Castro*, 531 F.3d 737, 741 (9th Cir. 2008). Such a "conditional writ of habeas corpus declares that a petitioner is being held in custody in violation of his constitutional (or other federal) rights." *Rose v. Guyer*, 961 F.3d 1238, 1246 (9th Cir. 2020) (citation modified). It also "provide[s] the [detaining authority] an opportunity to correct the constitutional violation found by the court." *Hilton v. Braunskill*, 481 U.S. 770, 775 (1987). These conditional writs are "often appropriate to allow the executive to cure defects in a detention." *DHS v. Thuraissigiam*, 591 U.S. 103, 137 (2020) (citation modified).

Critical to issuing such a conditional writ is a finding that there *is* a "defect[] in [the] detention," *id.*—i.e., a "constitutional violation," *Hilton*, 481 U.S. at 775. That is precisely what the R&R ultimately finds here. This means § 1225(b) cannot be constitutionally applied here. *Cf. Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018) ("We have grave doubts that any statute that allows for arbitrary prolonged detention without any process is constitutional or that those who founded our democracy precisely to protect against the government's arbitrary deprivation of liberty would have thought so. Arbitrary civil detention is not a feature of our American government.").

III. The Court should order a bond hearing within fourteen days.

Finally, the Court should order that Respondents provide the required bond hearing within fourteen days, not thirty-five. The R&R recommends thirty-five days to guarantee that Mr. Khadaj's detention will have lasted at least a year. Dkt. 25 at 11–12.

The R&R's recommendation correctly notes that there is no bright line as to when civil

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immigration detention becomes unlawfully prolonged, including after six months of detention. Dkt. 25 at 9. It further recognizes that "there may be instances in which a bond hearing should be ordered even when the detainee has been held for fewer than 12 months," Dkt. 25 at 12, but ultimately recommends a bond hearing be ordered within thirty-five days of the district court order adopting the R&R to ensure that Petitioner is detained for at least twelve months, *id.* at 11–12. However, as Petitioner explained in his briefing, even though there is no bright-line rule that six months of detention requires a bond hearing, Supreme Court caselaw demonstrates that detention of six months or longer weighs strongly in favor of concluding a hearing is appropriate. Dkt. 5 at 4–5. In addition, Petitioner cited numerous cases finding that a bond hearing is warranted for detention under a year, including after detention of seven months, eight months, nine months, and similar lengths. *Id.* at 5–6. Nevertheless, the R&R effectively suggests establishing twelve months as the presumptive period requiring a bond hearing. It does so by and recommending that Mr. Khadaj's detention be extended until that point by only requiring a bond hearing within thirty-five days of the district court's future order. Dkt. 25 at 12. The voluminous caselaw referenced above is at odds with that conclusion.

Second, the R&R's recommended thirty-five day timeline conflicts with the timeframes that other courts typically set after concluding a bond hearing is warranted. Indeed, while this habeas petition requested a hearing with fourteen days, other courts have required hearings on even shorter timelines. *See, e.g.*, Order Granting Pet'rs' Mot. for a Temporary Restraining Order, *Maldonado Bautista v. Noem*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. July 28, 2025), Dkt. 14 at 13 (ordering bond hearings within seven days); *Cabral v. Decker*, 331 F. Supp. 3d 255, 257 (S.D.N.Y. 2018) (ordering a bond hearing within seven days); *Rosciszewski v. Adducci*, 983 F. Supp. 2d 910, 917 (E.D. Mich. 2013) (ordering a bond hearing within ten days); *Castañeda v.*

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Souza, 952 F. Supp. 2d 307, 309–10 (D. Mass. 2013) (ordering a bond hearing within nine days), *aff'd by equally divided court*, 810 F.3d 15 (1st Cir. 2015) (en banc); *Pujalt-Leon v. Holder*, 934 F. Supp. 2d 759, 761 (M.D. Pa. 2013) (ordering a bond hearing within ten days), *abrogated on other grounds by Sylvain v. Att'y Gen.*, 714 F.3d 150 (3d Cir. 2013). More importantly, many courts in this district and in the Ninth Circuit regularly require a hearing within fourteen days. *See, e.g.*, *Rodriguez Vazquez v. Bostock*, --- F. Supp. 3d ---, No. 3:25-CV-05240-TMC, 2025 WL 1193850, at *17 (W.D. Wash. Apr. 24, 2025); *Alvarado v. Clark*, No. C14-1322-JCC, 2014 WL 6901766, at *1 (W.D. Wash. Dec. 5, 2014); *Giron-Castro v. Asher*, No. C14-0867JLR, 2014 WL 8397147, at *1 (W.D. Wash. Oct. 2, 2014); *Pastor-Camarena v. Smith*, 977 F. Supp. 1415, 1418 (W.D. Wash. 1997); *J.P. v. Garland*, 685 F. Supp. 3d 943, 950 (N.D. Cal. 2023); *Doe v. Becerra*, 697 F. Supp. 3d 937, 948 (N.D. Cal. 2023); *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 774 (S.D. Cal. 2020). Mr. Khadaj's request for a hearing within fourteen days is thus well-grounded in caselaw.

Finally, a hearing within fourteen days accords with the purpose of the writ of habeas corpus. As the Supreme Court has explained, the writ of habeas corpus is designed to provide "a swift and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963). The statute Congress drafted reflects this purpose, as it requires an expeditious government response and prompt hearing on the legality of detention. *See* 28 U.S.C. § 2243 (requiring a return to a petition within three days, and a hearing within five days of the return). This statutory design supports requiring a hearing within fourteen days, rather than thirty-five.

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CONCLUSION

For the reasons stated above, Petitioner Khadaj respectfully requests that the Court modify the R&R as outlined above, otherwise adopt the R&R, and order that he receive a bond hearing within fourteen days where the Department of Homeland Security must bear the burden of proof to demonstrate that continued detention is justified.

Dated this 12th day of August, 2025.

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WORD COUNT CERTIFICATION

Pursuant to Local Civil Rule 7, I certify that the foregoing response has 1,647 words and complies with the word limit requirements of Local Civil Rule 7(e).

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