

District Judge James L. Robart
Magistrate Judge Mary Alice Theiler

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

VINCENT FREDRICS BANDA

Petitioner,

v.

KIRSTJEN NIELSEN, *et al.*,

Respondents.

CASE NO. C18-1841 JLR-MAT

RESPONDENTS' REPLY
MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS

**Noted for consideration:
February 22, 2019**

I. INTRODUCTION

Respondents, by and through their undersigned counsel of record, Brian T. Moran, United States Attorney for the Western District of Washington, and Priscilla T. Chan, Assistant United States Attorney for said District, respectfully submit this Reply Memorandum in support of their Motion to Dismiss. Respondents do not dispute that the Supreme Court in *Jennings v. Rodriguez*, 138 S.Ct. 830 (2018), did not consider the merits of constitutional arguments for aliens detained under Section 235 of the Immigration and Naturalization Act (“INA”) while in removal proceedings on a claim of asylum. However, Petitioner, in his Response, attempts to dismiss outright the constitutional effects of *Jennings*. For the reasons already stated in their Motion (Dkt. No. 6) and explained below, Petitioner’s detention is not unconstitutionally prolonged based on the particular facts of this case.

//
//
//

II. ANALYSIS

The Particular Facts of Petitioner’s Case Do Not Violate Due Process.

1 Respondents are mindful that Petitioner’s detention has been lengthy. However, as
 2 previously stated in its motion, *Jennings* expressly held that Immigration and Customs
 3 Enforcement (“ICE”) must detain arriving aliens under Section 235(b)(1) for further consideration
 4 of their asylum claims, that “nothing in the statutory text imposes any limit on the length of
 5 detention,” and that nothing in that provision said “anything whatsoever about bond hearing.”
 6 *Jennings*, 138 S.Ct. at 842 and 844. Thus, the only issue for this Court to consider is whether
 7 Petitioner’s detention is unconstitutionally prolonged. Although Petitioner has cited several cases
 8 from other jurisdictions finding detention prolonged under the facts of those cases, no case is
 9 identical and several others exist for which habeas relief was denied, post-*Jennings*. See, e.g., *Soto*
 10 *v. Sessions*, 2018 WL 3619727 at *3-4 (N.D. Cal. Jul. 30, 2018); *Fatule-Roque v. Lowe*, 2018 WL
 11 3584696 (M.D. Penn. Jul. 26, 2018); *Theophile v. Doll*, No. 1:17-cv-2404 (M.D. Pa. May 13,
 12 2018); *Otis V. v. Green*, 2018 WL 3302997 (D.N.J. Jul. 5, 2018).

13 As the Supreme Court in *Mathews v. Eldridge*, held and this Court acknowledged in
 14 *Viramontes-Gomez*, ““Due process is flexible and calls for such procedural protections as the
 15 particular situation demands.” *Viramontes-Gomez v. Nielsen*, 2018 WL 6111015, at *4 (Oct. 18,
 16 2018), quoting *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976). In *Viramontes-Gomez*, the
 17 petitioner had been detained for almost two years. *Id.* at *1. In applying the *Mathews* test, this
 18 Court concluded that the petitioner’s continued detention in the nine months since his pre-*Jennings*
 19 bond hearing balanced with the other *Mathews* factors, did not violate due process.

20 Here, the length of Petitioner’s detention is attributable to the difficulty in securing
 21 Chichewa/Nyanja interpreter services. Although Petitioner blames the Government as a whole for
 22 not obtaining a Chichewa/Nyanja interpreter at every stage of his proceedings, the Government
 23 has made good faith efforts to secure those services. See Motion at 2-7. Furthermore, as previously
 24 stated, the Executive Office of Immigration Review (“EOIR”), the agency presiding over the
 25 immigration courts, has confirmed that a Chichewa/Nyanja interpreter will be flown in for
 26 Petitioner’s merits hearing on February 27, 2019.¹ Declaration of Geraldo Garranza, at ¶ 22, Dkt.

27
 28
 29 ¹ If Petitioner is granted asylum relief, most likely he will be released from immigration custody that same day. Furthermore, should his hearing be postponed due to a lack of interpreting services, that will be a significant factor in ICE’s determination of whether to grant parole from detention.

No. 7. A status report will be provided thereafter to update the Court as to the outcome of the merits hearing.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

III. CONCLUSION

Based on the foregoing, Respondents respectfully requests that the Court deny Petitioner's habeas petition and grant their motion to dismiss.

DATED this 22nd day of February, 2019.

Respectfully submitted,

BRIAN T. MORAN
United States Attorney

s/ Priscilla T. Chan
PRISCILLA T. CHAN, WSBA No. 28533
Assistant United States Attorney
United States Attorney's Office
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
Phone: 206-553-7970
Fax: 206-553-4067
Email: Priscilla.Chan@usdoj.gov

Attorneys for Respondents

CERTIFICATE OF SERVICE

1 I hereby certify that I am an employee in the Office of the United States Attorney for the
2 Western District of Washington and am a person of such age and discretion as to be competent to
3 serve papers;

4 I hereby certify that on this date, I electronically filed the foregoing with the Clerk of Court
5 using the CM/ECF system, which will send notification of such filing to the following CM/ECF
6 participant(s):

7 Matt Adams matt@nwirp.org
8 Leila Kang leila@nwirp.org
9 Aaron Korthuis aaron@nwirp.org

10 I hereby certify that on this date, I mailed the foregoing to the following non-CM/ECF
11 participants via USPS mail, postage pre-paid:

12 -0-

13
14 Dated this 22nd day of February, 2019.

15
16 s/ Caitlin Froelich
17 CAITLIN FROELICH, Legal Assistant
18 United States Attorney's Office
19 700 Stewart Street, Suite 5220
20 Seattle, Washington 98101-1271
21 Phone: (206) 553-7970
22 Fax: (206) 553-4067
23 E-mail: caitlin.froelich@usdoj.gov
24
25
26
27
28
29