

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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YVENS JEFF CENESCA,

Petitioner,

DECISION AND ORDER

21-CV-6390DGL

v.

THOMAS BROPHY, et al.,

Respondents.

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**INTRODUCTION**

Petitioner Yvensi Jeff Cenesca (“Petitioner”) originally brought the instant petition for a writ of habeas corpus on May 19, 2021. (Dkt. #1). Petitioner contends, *inter alia*, that his ongoing detention without a bond hearing violates his Fifth Amendment right to due process.

Familiarity with the underlying facts and procedural history of this matter is presumed. In brief, Petitioner has now been detained for over three years without an individualized bond hearing. The Board of Immigration Appeals dismissed his final appeal on April 21, 2022, and Petitioner promptly filed a petition for review challenging his removal proceedings, which remains pending before the Second Circuit Court of Appeals. In the interim, Respondents moved to dismiss the petition. (Dkt. #10).

**DISCUSSION**

It appears clear that an alien’s due process rights, however limited, include the right to challenge prolonged detention, and that absent proof of some delay attributable to the alien’s abuse of the appeals process, an alien’s detention for an extended period of time without a bond hearing

may raise Constitutional concerns. *Accord Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (lengthy periods of detention raise Constitutional concerns, since “the Due Process Clause applies to all ‘persons’ within the United States, including aliens”). *See also Denmore v. Kim*, 538 U.S. 510, 528 (2003) (detention under 8 U.S.C. §1226(c) should be “brief”); *Dutt v. Nielsen*, 2019 U.S. Dist. LEXIS 77108 (W.D.N.Y. 2019) (detention under 8 U.S.C. §1226(c) for over twelve months raises Constitutional concerns).

As such, in matters factually similar to this one, district courts have found it appropriate to order the government to conduct an individualized bond hearing. *See Garcia v. Decker*, 2023 U.S. Dist. LEXIS 97661 (S.D.N.Y. 2023) (ordering an individualized bond hearing to be held within fourteen days, where petitioner had been detained for seventeen months); *Dutt*, 2019 U.S. Dist. LEXIS 77108 (ordering an individualized bond hearing for a Petitioner detained for over fifteen months, where the delay was attributable to the “normal administrative and appeals process” and not to any abuse of that process by the alien); *Fremont v. Barr*, 2019 U.S. Dist. LEXIS 57296 (W.D.N.Y. 2019) (ordering immediate release of alien detained twelve months, unless an individualized bond hearing is held within fourteen days); *Lett v. Decker*, 346 F. Supp. 2d 379 (S.D.N.Y. 2018) (alien detained for over twelve months is entitled to an individualized bond hearing); *Joseph v. Decker*, 2018 U.S. Dist. LEXIS 198781 (S.D.N.Y. 2018) (ordering an individualized bond hearing for an alien detained over fourteen months).

Petitioner has now been detained since June 15, 2020, and has exhausted all remedies available to him to seek a bond hearing. To supplement the initial briefings on Respondents’ motion to dismiss (Dkt. #10), the Court previously requested updated position statements from the parties, in order to permit them to restate their arguments in light of Petitioner’s Second Circuit appeal. (Dkt. #21). In their responsive Supplemental Memorandum of Law, Respondents, relying

on *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018), argue that Petitioner, as an alien detained pursuant to 8 USC §1226(c), is “not entitled to be released under any circumstances other than those expressly recognized by the statute,” and thus, is not entitled to a bond hearing regardless of the length or reasonableness of his detention. *Id.*, 138 S. Ct. 830 at 846 (invalidating prior precedent in the Second Circuit and elsewhere that a detention of over 6 months is presumptively unreasonable and raises Constitutional concerns, by holding that 8 U.S.C. §1226(c) does not include any such explicit or implicit time limit). (Dkt. #23).

The Court is not convinced. While the *Jennings* Court determined that there was no particular length of detention that magically triggered due process concerns, it “expressly ‘d[id] not reach’ the [threshold] constitutional question of whether . . . the Due Process Clause prohibits the prolonged detention of an alien,” *Vallejo v. Decker*, 2018 U.S. Dist. LEXIS 132366 at \*7-\*8 (S.D.N.Y. 2018), and thus “left open the question of what the Constitutional requires for aliens detained pursuant to §1226(c).” *Cabral v. Decker*, 331 F. Supp. 3d 255, 262 n.6 (S.D.N.Y. 2018).

Although the Second Circuit “has not addressed...the standard to be utilized by courts in addressing procedural due process claims for aliens detained pursuant to §1226(c) in the immigrant habeas context” since *Jennings*, district courts in this Circuit have delineated and applied several factors in determining of whether a petitioner’s detention has become unreasonable or unjustified. *Ranchinskiy v. Barr*, 422 F. Supp. 3d 789, 796-97 (W.D.N.Y. 2019).

These include: (1) the length of the detention; (2) the party responsible for the delay; (3) whether the petitioner has asserted defenses to removal; (4) whether the detention will exceed the time the petitioner was incarcerated for the crime that occasioned the removal; (5) whether the detention facility is meaningfully different from the criminal detention facility; (6) the nature of the crimes committed by the petitioner; and (7) whether the petitioner’s detention is near

conclusion. *See Castro-Almonte v. Searls*, 2023 U.S. Dist. LEXIS 23070 at \*13 (W.D.N.Y. 2023) (citing *Ranchinskiy*, 422 F. Supp. 3d 789 at 797). This “case-by-case approach is an ‘as applied, fact-based analysis...derived from the Supreme Court’s decisions in *Zadvydas* and *Denmore*,” and has been applied in the “overwhelming majority” of cases since *Jennings*. *Constant v. Barr*, 409 F. Supp. 3d 159, 167 (W.D.N.Y. 2019) (quoting *Sajous v. Decker*, 2018 U.S. Dist. LEXIS 89621 at \*32 (S.D.N.Y. 2018)).

Under the circumstances, the Court concludes that the bulk of these factors weigh in Petitioner’s favor, and that Petitioner’s prolonged, thirty-seven-month detention, the length of which now exceeds the three-year period to which he was sentenced upon his criminal conviction, has been occasioned by the administrative delays inherent in Petitioner’s use of the procedures provided to him and the onerous circumstances of his detention, including repeated placement in solitary confinement, and is thus unreasonable and unconstitutional. *See Frederick v. Feeley*, 2019 U.S. Dist. LEXIS 74266 (W.D.N.Y. 2019); *Dutt*, 2019 U.S. Dist. LEXIS 77108 (W.D.N.Y. 2019). *See generally Brissett v. Decker*, 324 F. Supp. 3d 444, 453 (S.D.N.Y. 2018) (“pursuit of relief from removal does not, in itself, undermine a claim that detention is unreasonably prolonged”).

I accordingly find that Petitioner’s unreasonably lengthy detention without a bond hearing violates his right to due process, which “requires that the Government demonstrate dangerousness or risk of flight by a clear and convincing standard” in order to justify the Petitioner’s continued detention. *See Aparicio-Larin v. Barr*, 2019 U.S. Dist. LEXIS 121125 at \*14-\*18 (W.D.N.Y. 2019); *Dutt*, 2019 U.S. Dist. LEXIS 77108 at \*7-\*8; *Joseph v. Decker*, 2018 U.S. Dist. LEXIS 198781 at \*44 (S.D.N.Y. 2018).

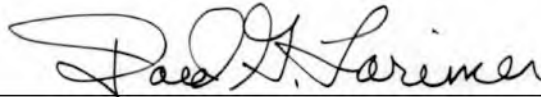
### CONCLUSION

For the forgoing reasons, the Court grants the Petitioner's petition for relief (Dkt. #1), and denies the Respondents' motion to dismiss the Petition (Dkt. #10). Respondents are directed to hold a bond hearing for Petitioner before an immigration judge, who will determine whether Petitioner's continued detention is justified. This hearing must be held within twenty-five (25) days of entry of this Decision and Order.

Respondents are further directed to file with the Court, within thirty (30) days of entry of this Decision and Order, a certification stating either that a bond hearing has been held in conformance therewith, or that some factual or procedural development has rendered such a hearing moot or unnecessary.

The Clerk is directed to enter judgment and close this case.

IT IS SO ORDERED.

A handwritten signature in black ink, reading "David G. Larimer", is written over a horizontal line.

DAVID G. LARIMER  
United States District Judge

Dated: Rochester, New York  
July 11, 2023.