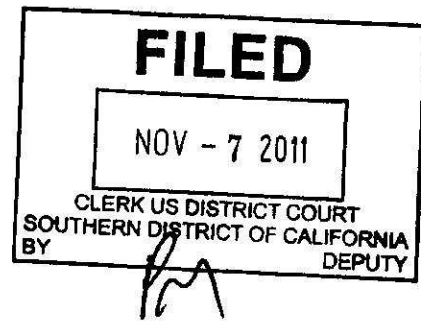


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

<p>DATTA REBATI MOHAN,</p> <p align="right">Petitioner,</p> <p align="center">vs.</p> <p>ERIC HOLDER, Attorney General,</p> <p align="right">Respondent.</p>	
--------------------------------------------------------------------------------------------------------------------------------------------------------------	--

CASE NO. 11-CV-956 BEN (MDD)
**ORDER DENYING PETITION
FOR WRIT OF HABEAS CORPUS
UNDER 28 U.S.C. § 2241**

Presently before the Court is Petitioner’s Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241. For the reasons set forth below, the Petition is **DENIED**.

BACKGROUND

Petitioner Datta Rebat Mohan is a native and citizen of Bangladesh. (Return, Exh. A.) On August 27, 2010, Border Patrol agents detained Petitioner near Calexico, California. (*Id.*) On September 29, 2010, U.S. Citizenship and Immigration Services issued a Notice to Appear alleging that Petitioner entered the United States at or near the Calexico Port of Entry without a valid entry document and was removable pursuant to 8 U.S.C. § 1182(a)(7)(A)(i)(I). (*Id.*, Exh. B.) The Notice to Appear was subsequently amended to allege that Petitioner entered the United States at a time and place other than a designated port of entry, and charged him with removability under 8 U.S.C. § 1182(a)(6)(A)(i). (*Id.*, Exh. C.)

On January 24, 2011, Petitioner had a bond hearing at which the Immigration Judge (“IJ”) set

1 bond at \$15,000. (*Id.*, Exh. D.) Petitioner appealed the bond order to the Board of Immigration
2 Appeals (“BIA”), which affirmed the order on April 8, 2011. (*Id.*, Exh. E.) On February 4 and
3 February 18, 2011, Immigration and Customs Enforcement (“ICE”) denied two requests by Petitioner
4 to release him and lower his bond. (*Id.*, Exh. F.)

5 During this time, Petitioner had an individual hearing before an IJ on March 30, 2011 to
6 adjudicate his applications for relief from removal. (*Id.*, Exh. G.) The IJ denied his applications for
7 relief, and ordered him removed to Bangladesh. (*Id.*, Exh. H.) On April 12, 2011, Petitioner filed an
8 administrative appeal of the IJ’s removal order, which is pending at the BIA. (*Id.*, Exh. I.)

9 Petitioner brought the present petition for habeas corpus on May 2, 2011. (Docket No. 1.) On
10 June 17, 2011, Respondent filed a Return in opposition to the Petition. (Docket No. 8.) Petitioner did
11 not properly file a traverse.¹

12 DISCUSSION

13 Petitioner alleges that he is being detained “indefinitely” in violation of the Due Process Clause
14 of the Fifth Amendment and *Zadvydas v. Davis*, 533 U.S. 678, 690-91 (2001). He alleges that this
15 detention violates 8 U.S.C. § 1231, as he has been detained for over six months since his final removal
16 order and there is not a significant likelihood that his removal will occur in the reasonably foreseeable
17 future.

18 Petitioner is not being detained pursuant to 8 U.S.C. § 1231, as someone who is subject to a
19 final order of removal and is awaiting repatriation. Petitioner is not subject to a final order of removal
20 because his administrative appeal of the IJ’s order of removal is pending at the BIA. See 8 U.S.C.
21 § 1101(a)(47)(B)(i) (an IJ’s order of removal becomes “final” upon “a determination by the Board of
22 Immigration Appeals affirming such order”). Rather, Petitioner is being discretionarily detained
23 pursuant to 8 U.S.C. § 1226(a), as someone who is awaiting a decision on his removal and has been
24 granted a \$15,000 bond.

25 In addition, this action does not implicate the due process concerns addressed in *Zadvydas*.
26 In that case, *Zadvydas* was stateless and both countries to which he could have been deported refused

27 _____
28 ¹ Petitioner prematurely attempted to file a traverse on June 15, 2011, before Respondent had
filed a return. (See Docket No. 7.) This document was rejected by the Court. Petitioner did not
attempt to file another traverse after Respondent had filed the Return.

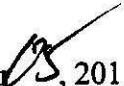
1 to accept him because he was not a citizen. *Zadvyas*, 533 U.S. at 684. The deportation of the other
2 petitioner in that case, Ma, was prevented because there was no repatriation agreement between the
3 United States and Cambodia. *Id.* at 686. The Supreme Court found that 8 U.S.C. § 1231(a)(6) “limits
4 an alien’s post-removal-period detention to a period reasonably necessary to bring about that alien’s
5 removal from the United States” and “does not permit indefinite detention.” *Id.* at 689. *Zadvyas* is
6 inapplicable to the present action, as Petitioner is not subject to a final order of removal and is not
7 indefinitely detained due to a lack of a repatriation agreement with Bangladesh.


8 In addition, Petitioner has been afforded due process. If ICE provides a petitioner with an IJ
9 bond hearing, or otherwise provides a petitioner with the relief requested in a pending habeas petition,
10 the petition may be dismissed because the petitioner has been awarded the process to which he is
11 entitled. *See Flores-Torres v. Mukasey*, 548 F.3d 708, 710 & n.3 (9th Cir. 2008) (dismissing as moot
12 a portion of a habeas petition which challenged detention without bond upon the granting of a bond
13 hearing); *Singh v. Chertoff*, No. CV-07-0380-FVS, 2009 WL 211894, at *4 (E.D. Wash. Jan. 13, 2009)
14 (finding that because the petitioner received a bond hearing by an IJ, his petition was moot even
15 though he was not released). Here, Petitioner received a bond hearing before an IJ, and has been
16 granted a \$15,000 bond. He is not entitled to further relief.

17 **CONCLUSION**

18 For the reasons set forth above, the Petition is **DENIED**. The Clerk is directed to close the file
19 in this case.

20
21 **IT IS SO ORDERED.**

22
23 DATED: November , 2011


24 HON. ROGER T. BENITEZ
United States District Court Judge