

~~NOT FOR PUBLICATION~~

~~UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY~~

~~EMON BARUA~~

~~Petitioner,~~

~~v.~~

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~~v.~~

~~Civil Action~~ ~~Civil Action (No. 15-3768 (ES))~~

~~OPINION~~ ~~OPINION~~

immigration judge ("IJ") on November 26, 2014. Petitioner filed an appeal of the removal order to the Board of Immigration Appeals ("BIA") on December 29, 2014, and on May 13, 2015, the BIA affirmed the decision of the IJ. On July 18, 2015, Petitioner filed a Motion for a Stay of Removal with the Second Circuit Court of Appeals, which remains pending.

In his Petition, Petitioner argues that his Motion for a Stay of Removal effectively reopened his case, thereby making him a pre-removal order detainee subject to § 1226 as opposed to § 1231. Thus, he contends, because it has been nine months since his case was reopened, he is due a bond

Certain criminal aliens, however, are subject to mandatory detention pending the outcome of removal proceedings, pursuant to § 1226(c)(1), which provides in relevant part:

The Attorney General shall take into custody any alien who—

(A) is inadmissible by reason of having committed any offense covered in section 1182(a)(2) of this title,

(B) is deportable by reason of having committed any offense covered in Section 1227(a)(2)(A)(i)-(iii), (B), (C), or (D) of this title

the United States. 533 U.S. at 689. To guide habeas courts, the Supreme Court recognized six

months as a presumptively reasonable period of post-removal-order detention. *Id.* at 701. The

Supreme Court held that, to state a claim under § 5241, the alien must provide good reason to

believe that there is no significant likelihood of removal in the reasonably foreseeable future. *Id.*

Specifically, the Supreme Court determined that,

[a]fter this 6-month period, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing. And for detention to remain reasonable in the world of alien rights, not removal confinement

Zadvydas); 8 U.S.C. § 1231(a)(1)(C) (“The removal period shall be extended . . . if the alien . . . acts to prevent the alien’s removal subject to an order of removal.”).

Here, Petitioner argues that he was converted from a post-removal-order detainee to a pre-removal-order detainee after he appealed the BIA’s decision to the Second Circuit and filed his motion for a stay (D.E. No. 1-2 (D.H.-14)). Under this argument, his argument is governed by § 1226 and, because he has been in detention for nine months, is now due a bond hearing before an

II. (*Id.*) The Court disagrees.

Brodyak, 2015 WL 1197535, at *3; *Phrance v. Johnson*, No. 14-7693, 2015 WL 8361780, at *2 (D.N.J. Dec. 8, 2015); *Concepcion v. Aviles*, No. 15-2053, 2015 WL 3794776, at *4 (D.N.J. Jun. 17, 2015). As of the date of this Opinion, Petitioner's request for a stay is still pending, meaning his six-month period of reasonable detention under *Zadvydas* has not yet run.


Hence, Petitioner's request for habeas relief is premature, and the Petition is denied. This denial is without prejudice to Petitioner filing a petition in a new case should his post-removal-order detention exceed six months once the Second Circuit rules on his motion, assuming Petitioner can establish that there is no significant likelihood of removal in the reasonably foreseeable future.

IV. CONCLUSION

For the reasons set forth above, the Petition will be denied without prejudice. An appropriate order follows.

Dated:

August 4, 2016



Esther Salas, U.S.D.J.