

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

DENIS DAVIS MARINGO,

*Petitioner,*

vs.

ALBERTO GONZALES,  
Attorney General, *et al.*,

*Respondent.*

§  
§  
§  
§  
§  
§  
§  
§  
§  
§

CIVIL ACTION H-07-469

**MEMORANDUM AND RECOMMENDATION**

Denis Davis Maringo's habeas corpus petition under 28 U.S.C. § 2241 has been referred to this court for report and recommendation (Dkt. 4). The court recommends that Maringo's petition be dismissed.

**Background**

Maringo, a citizen of Tanzania, was admitted to the United States in June 2000 on a nonimmigrant B-2 visa. He was granted a change of status to that of an F-1 student in July 2001. In December 2004, the government issued a Notice to Appear, charging Maringo with removability under § 237(a)(1)(C)(i) of the Immigration and Nationality Act (INA). Maringo was taken into custody by the Department of Homeland Security on December 16, 2005.<sup>1</sup>

---

<sup>1</sup> On March 23, 2005, Maringo was indicted in the United States District Court for the Southern District of Texas on two counts of making false statements to enter the United States in violation of 18 U.S.C. § 1546(a). He pled guilty on December 15, 2005, and was sentenced to time-served. The district court remanded Maringo to the custody of the United States Marshals to be released into the custody of INS (now the Department of Homeland Security). *See United States v. Maringo*, Criminal No. H-05-129.

Maringo's request for bond was denied on May 19, 2006. The immigration judge found Maringo to be a danger to the community due to mental instability. On April 20, 2007, the Board of Immigration Appeals denied Maringo's appeal of the bond decision as untimely. The Fifth Circuit Court of Appeals dismissed Maringo's appeal of the bond decision for lack of jurisdiction on July 6, 2007.

In June 2006, Maringo admitted the charges in the December 2004 Notice to Appear and applied for asylum. On December 4, 2006, an immigration judge denied Maringo's application for asylum and ordered Maringo removed to Tanzania. On May 8, 2007, the Board of Immigration Appeals dismissed Maringo's appeal of the removal order. Maringo appealed. The Fifth Circuit Court of Appeals granted a stay of deportation on August 6, 2007. Maringo's petition for review is pending and the stay remains in effect.

Maringo contends in this habeas case that his nearly two-year detention during removal proceedings is in violation of his constitutional right to due process.

### **Analysis**

The INA provides for a bifurcated detention process. 8 U.S.C. § 1226(a) (INA § 236) governs detention "pending a decision on whether the alien is to be removed from the United States." Pursuant to 8 U.S.C. § 1226(c)(1), certain aliens convicted of crimes must be detained. Other aliens may be detained, released on an immigration bond, or released on immigration parole, at the discretion of the Secretary of Homeland Security. 8 U.S.C. § 1226(a). Detention during removal proceedings is a constitutionally valid aspect of the

deportation process. *Denmore v. Kim*, 538 U.S. 510, 523 (2003)

Detention following a final order of removal is governed by 8 U.S.C. § 1231 (INA § 241). Aliens shall be detained during the “removal period,” which is the 90-day period beginning on the later of when the removal order becomes final; when judicial review is completed (if the court ordered a stay of removal), or when the alien is released from serving a criminal sentence. 8 U.S.C. § 1231(a)(1)(B). An alien may be detained beyond the 90-day period if he is a criminal, an inadmissible alien, a flight risk, or a danger to the community. 8 U.S.C. § 1231(a)(6). The Supreme Court has held that an alien may not be detained beyond the 90-day removal period without special justification, such as dangerousness due to mental illness. *Zadvydas v. Davis*, 533 U.S. 678, 690-91 (2001).

The removal period of § 1231 has not expired in this case because the Court of Appeals stayed Maringo’s removal. Thus, Maringo’s petition is premature to the extent it is based on rights recognized in *Zadvydas* . However, this does not fully resolve the matter.

Maringo alleges that he is being detained without a valid “warrant issued by the Attorney General” as contemplated by § 1226(a).<sup>2</sup> His argument appears to be that he was granted a new removal hearing on May 8, 2006, and therefore the December 2004 warrant

---

<sup>2</sup> While 8 U.S.C. § 1226(e) divests this court of jurisdiction to review discretionary bond decisions of the Secretary, the court has jurisdiction to review the constitutionality of the detention in a habeas proceeding. *Denmore v. Kim*, 538 U.S. 510, 517 (2003); *Kambo v. Poppell*, Civil Action No. SA-07-CV-800-XR, 2007 WL 3051601 (W.D. Tex. Oct. 18, 2007). Indeed, the government argued in its July 6, 2007 motion to dismiss Maringo’s May 29, 2007 petition for review (Court of Appeals No. 07-60416), that Maringo’s challenge to his detention was properly filed as a habeas corpus proceeding in federal district court.

pursuant to which he was taken into custody in December 2005, is no longer valid.

Maringo's argument must be rejected. In the first place, the record does not support his assertion that removal proceedings were "reopened" in May 2006. Even if they had been, Maringo has not cited any legal authority supporting his novel claim. Maringo has had at least two opportunities to convince an immigration judge that he should be released on bond.<sup>3</sup> The immigration judge denied Maringo's requests based on findings that he is mentally unstable and a flight risk. As noted above, this court cannot review the correctness of such discretionary decisions. 8 U.S.C. § 1226(e). While the Supreme Court has recognized that "the Fifth Amendment entitles aliens to due process of law in deportation proceedings," *Denmore v. Kim*, 538 U.S. 510, 523 (2003), Maringo simply has not alleged facts that show a due process violation in this case.

### **Conclusion and recommendation**

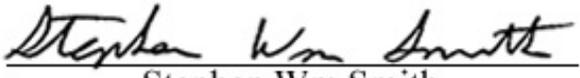
For the reasons discussed above, the court recommends that Maringo's petition be dismissed for failure to state a claim.

The parties have ten days from service of this Memorandum and Recommendation to file written objections. Failure to file timely objections will preclude appellate review of factual findings or legal conclusions, except for plain error. *See* Rule 8(b) of the Rules Governing Section 2254 Cases; 28 U.S.C. § 636(b)(1)(C); FED. R. CIV. P. 72.

---

<sup>3</sup> Based on records on file in Maringo's pending appeal, Court of Appeals No. 07-60431, the immigration judge considered a request for custody redetermination on February 28, 2007, again found him a danger to the community due to his mental instability, and further found that he is a high risk to abscond due to his fraud in securing entry to the United States.

Signed at Houston, Texas on December 7, 2007.

---

Stephen Wm Smith  
United States Magistrate Judge