Federal District Court:

Case: *Padilla v. ICE*, C18-928 MJP

Judge: **Date:** July 3, 2019

Tags: Immigration, asylum, bond hearings, detention, ICE, credible fear, expedited removal, EWI

Facts: Back-and-forth between Gov't and Bond Hearing Class Plaintiffs re. Due Process.

Gravamen/Question(s) at issue: Has the government deprived EWI asylum applicants of Due Process rights?

Holdings: "It is unconstitutional to deny these class members a bond hearing while they await a final determination of their asylum request." (3)

Injunction: EOIR is required to:

1. Conduct bond hearings w/in 7 days of request (or release applicant if past that time)
2. Burden on DHS as to why applicant should not be released
3. Record hearing for appeal
4. Written decision with particularized determinations
5. INA § 235(b)(1)(B)(ii) is unconstitutional (prohibits release on bond persons with credible fear)

Rationale:

- Constitutional due process
- Right of persons detained for non-criminal reasons to be released upon posting bond (3)

History of Case:

- **Bond Hearing Class certified by this court:** March 16, 2019
- **Injunction by this court:** April 5, 2019
- ***Matter of M-S-* (AG 2019):** April 16, 2019; asylum applicants MUST be detained, with only a few rare parole exceptions
- **Government moved to vacate previous injunction**
- **Plaintiffs moved to modify it** per the *Matter of M-S-* decision.

Attorneys' Arguments:

- **Gov't:**
    - Now that we have *Matter of M-S-*, we don't need to proceed with this case, because its interpretation of the statute rules the day (*contra Matter of X-K*'s interpretation).
        - **Answer**: Plaintiffs weren't arguing from *X-K-* but from Constitution.

- The named plaintiffs in the case are not currently being detained, so they don't have standing as a member of the Bond Hearing Class.
  - **Answer**: We don't trust you any further than we can throw you. You granted them bond "at this time," but you can just as easily revoke it.
  - **Also**, "the claims of the bond hearing class continue to be 'inherently transitory' and thus the named Plaintiffs are permitted to represent the interests of class members whose claims may both come ripe and/or expire during the course of the litigation." (6-7)
- Now that we have settled the interpretation of the statute via *Matter of M-S-*, the court no longer has jurisdiction under 8 U.S.C. § 1252 (because its jurisdiction came from its reliance on *Matter of X-K-* which has now been overruled).
  - **Answer**: Classwide relief is permitted because district court has jurisdiction over each individual member of the class. Also, *habeas* jurisdiction. And we are not bound by the Sixth Circuit.
- Re. jurisdiction: This systemic, constitutional challenge to the INA should have been brought to DC's DC, per 8 U.S.C. § 1252(e)(3).
  - **Answer**: this section of the INA is concerned with the removal process, not detention. Constitutional issues are permitted to be dealt with in this court.
- Because of *Matter of M-S-*, we now have a mandatory detention order!
  - **Answer**: Yeah, but your interpretation means that statute is unconstitutional. (11) We are preserving the status quo of 50 years of interpretation re. these EWI asylees.
- Jurisprudential maxim: presume that acts of Congress are constitutional.
  - **Answer**: Yeah, but "[g]iving that maxim its due does not abrogate the Court's authority under the habeas statute to determine if these Plaintiffs are 'in custody in violation of the Constitution.'" (12)
- These plaintiffs are "'excludable aliens,' entitled only to the rights Congress sees fit to grant them." (13)
  - **Answer:** "Plaintiffs are 'non-arriving aliens' who, having been apprehended within the territorial boundaries of this country, are entitled to due process protections.

Appeals to Statute & Precedent:

- ***Matter of M-S-*, 27 I & N Dec. 509 (A.G. 2019):** overruled *Matter of X-K* re. granting bond hearings to asylum applicants originally placed in expedited removal; detention without bond mandatory for EWI asylum applicants.
- ***Matter of X-K*, 23 I & N Dec. 731 (BIA 2005):** asylum applicants who did not enter with inspection, if placed in expedited removal but found to have credible fear of persecution, could request bond hearing.
- **INA § 235(b)(1)(B)(ii):** asylum applicants cannot be released on bond.
- **8 U.S.C. § 1226(b):** Gov't may revoke bond order at any time on the basis of "changed circumstances."
- **8 U.S.C. § 1252(f)(1):** no court has jurisdiction to enjoin or restrain the operations of the INA, except with respect to how INA impacts individuals.

- ***Califano v. Yamasaki*, 442 U.S. 682 (1979):** classwide relief is available when district court has jurisdiction over each individual member of the class.
- ***Arroyo v. U.S. Dept. of Homeland Security*, No. 8:19-cv-00815-JGB-SHK at *10 (C.D. Cal. June 20, 2019):** 8 U.S.C. § 1252 says nothing about class actions when it could have.
- ***INS v. St. Cyr*, 533 U.S. 289, 310-14 (2001):** "federal courts will not read a statute to restrict their power to grant habeas relief unless Congress specifically and explicitly revokes the authority granted under the federal habeas statute (28 U.S.C. § 2241) by name." (9)
- ***Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018):** 8 U.S.C. § 1252 says nothing about repealing habeas jurisdiction of courts.
- ***Jennings v. Rodriguez*, 130 S.Ct. 830 (2018):** rejected bond hearing after 6 months detention.
- ***Hamama v. Homan*, 912 F.3d 869, 879 (6th Cir. 2018):** class can seek traditional habeas rather than injunctive relief (but we're 9th circuit, so we're not bound by this!)
- ***Zadvydas v. Davis*, 533 U.S. 678, 690 (2001):** immigrants are constitutionally free from unnecessary incarceration.
- ***United States v. Raya-Vaca*, 771 F.3d 1995, 1202 (9th Cir. 2014):** due process protections to immigrants apprehended within country.
- ***Demore v. Hyung Joon Kim*, 538 U.S. 510 (2003):** six-month detention periods reasonable; detention policy specifically wrt noncitizens who had committed one of a list of crimes
- ***Hernandez v. Sessions*, 872 F.3d 976, 993 (9th Cir. 2017):** re. non-criminal detention of immigrants & Due Process Clause. "The government has no legitimate interest in detaining individuals who have been determined not to be a danger to the community and whose appearance at future immigration proceedings can be reasonably ensured . . ." (*Id.* at 990) Also, if you deprive someone of constitutional rights, that is *prima facie* "irreparable injury."

Dicta/Discussion:

- Bond Hearing Class = EWI immigrants who requested asylum and were found to have credible fear of persecution.

- "The Court is not persuaded that the conditional 'at this time' language divests Plaintiffs of standing—the Government's unwillingness to unconditionally assert that Plaintiffs will not be re-detained means that the specter of re-detention looms and these Plaintiffs and many members of their class face the real and imminent threat of bondless and indefinite detention absent the relief they seek." (6)

- "There is nothing in *St. Cyr* and nothing in applicable Ninth Circuit jurisprudence to indicate that, absent a specific restriction, this Court is not authorized to exercise the full panoply of its habeas powers, including its equitable powers to enjoin conduct found unconstitutional." (9)

- **"The Court finds that Plaintiffs have established a constitutionally-protected interest in their liberty, a right to due process which includes a hearing before a neutral decisionmaker to assess the necessity of their detention, and a likelihood of success on the merits of that issue."** (14)

- "The purposes of immigration detention are simple and straightforward: to facilitate removal (if removal is deemed justified), and to prevent flight and harm to the community. . . . Detention that does not serve those legitimate ends violates due process; bond hearings are the most efficacious mean of insuring those purposes are being served." (16)

- **Re. "irreparable injury":** "All the harms attendant upon their prolonged detention cited in the original ruling on Plaintiffs' request for injunctive relief remain applicable here—substandard physical conditions, low standards of medical care, lack of access to attorneys and evidence as Plaintiffs prepare their cases, separation from their families, and re-traumatization of a population already found to have legitimate circumstances of victimization." (17)

- **Quoting from original PI Order (at 17):** "Finally, there is the incalculable harm to those class members who, facing an uncertain length of time in custody and an arduous and obstacle-strewn road to establishing . . . []their right to asylum[], simply abandon their claim and accept deportation back to countries where, as it has already been established to the Government's satisfaction, they face persecution, torture, and possibly death." (17)

- "Plaintiffs Orantes and Vasquez represent a class of persons who are currently in custody and for whom detention without bond is not a theoretical concept." (18)

- **Competing interests:**
    - **Plaintiffs:** deprivation of constitutional rights, stresses of indefinite detention, negative impact on families and preparation of cases
    - **Government:** It would be much more efficient if we could just detain them all.
    - "Faced with such a conflict between financial concerns and preventable human suffering, we have little difficulty concluding that the balance of hardship tips decidedly in plaintiffs' favor." *Hernandez*, 872 F.3d at 996 (quoting *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983)).

Commentary:

- **Injunctive relief is dependent on *Mathews* balancing test** (from *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976):
    - **Private interests** affected by gov't action;
    - **Risk of erroneous deprivation of rights;**
    - **Government's interest**