US Supreme Court

Case: *Jennings v. Rodriguez*, 138 S.Ct. 830 (2018)
Date: Feb. 27, 2018
Votes: Various, depending on section. J. Kagan did not participate. In favor of Jennings (Gov't) all around.
Opinion: Alito (with Roberts & Kennedy on whole opinion; with Thomas & Gorsuch on Pts. 1 & 3)
Concurrences: Thomas (concurring in part and concurring in the judgment); joined in part by Gorsuch
Dissent: Breyer (with Ginsburg and Sotomayor)

Tags: Immigration, detention, removal, inadmissibility, bond hearings, Due Process, asylum, habeas review,

Question(s) Presented:

1. After 6 months, are noncitizens in detention entitled to bond hearings?
2. Is the burden on the government to prove danger to community & flight risk?
3. Should new bond hearings occur every six months?

Holdings: Nothing in statute implies a 6-month time limit on detention or periodic re-hearings on bond.

Rationale: 9th Circuit's constitutional avoidance move rewrote the statute: there isn't anything in there about periodic rehearings.

Facts: Class action brought by LPR plaintiff protesting the detention of aliens during immigration proceedings for more than six months without a bond hearing.

Legal History, Prior Appeals & Trial Court Input:

- **Ninth Circuit:** doctrine of constitutional avoidance: said periodic bond hearings were the way to avoid due process violations, even though statute didn't specifically mention these.

Appeals to Statute & Precedent:

- **8 U.S.C. § 1225:** applicants for admission, inspection
- **8 U.S.C. § 1225(b)(1):** applies to aliens initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation. Normally ordered removed (expedited removal). Detention of certain aliens authorized, if they indicate intention to apply for asylum or fear of persecution.
- **8 U.S.C. § 1225(b)(2):** applies to all applicants for admission besides the above. Detention of certain aliens authorized for a removal proceeding (esp. terrorist activities and criminal offenses).
- ***Zadvydas v. Davis*, 533 U.S. 678, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001):** Detention of aliens already ordered removed. Must happen within 90 days, after which aliens *may* be detained further (presenting ambiguity about how long). If no removal is in sight and the Gov't can't rebut that charge, alien should be released.

- ***Demore v. Kim*, 538 U.S. 510, 123 S.Ct. 1708, 155 L.Ed.2d 724 (2003):** detention has a definite termination point, the termination of removal proceedings.

Dicta/Discussion:

- "Under the constitutional-avoidance canon, when statutory language is susceptible of multiple interpretations, a court may shun an interpretation that raises serious constitutional doubts and instead adopt an alternative that avoids those problems. But a court relying on that canon still must *interpret* the statute, not rewrite it. Because the Court of Appeals in this case adopted implausible constructions of the three immigration provisions at issue, we reverse its judgment and remand for further proceedings." (837)
- No ambiguous "may" in this part of the statute (as per *Zadvydas*).
- "Even if courts were permitted to fashion 6-month time limits out of statutory silence, they certainly may not transmute existing statutory language into its polar opposite. The constitutional-avoidance canon does not countenance such textual alchemy." (846)
- "For these reasons, the meaning of the relevant statutory provisions is clear—and clearly contrary to the decision of the Court of Appeals. But the dissent is undeterred. It begins by ignoring the statutory language for as long as possible, devoting the first two-thirds of its opinion to a disquisition on the Constitution. Only after a 19-page prologue does the dissent acknowledge the relevant statutory provisions." (848)
- "The dissent frames the question of interpretation as follows: Can §§ 1225(b), 1226(c), and 1226(a) be read to require bond hearings every six months 'without doing violence to the statutory language,' *post*, at 869 – 870 (opinion of BREYER, J.)? According to the dissent, the answer is 'yes,' but the dissent evidently has a strong stomach when it comes to inflicting linguistic trauma." (848)

Concurrence: Thomas

- Doesn't think they had jurisdiction in the first place, but oh well. Writing to say all kinds of random things about habeas.

Dissent: Breyer (with Ginsburg and Sotomayor)

- Lots on immigration context (possibly arguing why these people are likely not a threat or a flight risk) and a long intro on Due Process. Flexible definition of "detain."

Legal Writing Notes:

Multiple Dictionaries w/ editions:

- "The dictionary cited by the dissent, the Oxford English Dictionary (OED), defines 'detain' as follows: '[t]o keep in confinement or under restraint; *to keep prisoner*." 4 OED 543 (2d ed. 1989) (emphasis added); see also OED (3d ed. 2012), http://www.oed.com/view/Entry/51176 (same). Other general-purpose dictionaries provide similar definition. See, *e.g.*, Webster's Third New International Dictionary 616 (1961) ('to hold or keep in or as if in custody {*ed* by the police for questioning}'); Webster's New International Dictionary 710 (2d ed. 1934) ('[t]o hold or keep as in custody'); American Heritage Dictionary 508 (def.2) (3d ed. 1992) ("To keep in custody or temporary confinement"); Webster's New World College Dictionary 375 (3d ed. 1997) ('to keep in custody; confine'). And legal dictionaries define 'detain' the same way. See, *e.g.*, Ballentine's Law Dictionary 343 (3d ed. 1969) ('To hold; to keep in custody; to keep'); Black's Law Dictionary 459 (7th ed. 1999) ('The act or fact of holding a person in custody; confinement or compulsory delay')." (848)