

1 PHILLIP A. TALBERT
2 United States Attorney
3 MICHELLE RODRIGUEZ
4 Assistant United States Attorney
5 501 I Street, Suite 10-100
6 Sacramento, CA 95814
7 Telephone: (916) 554-2700

5
6 IN THE UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF CALIFORNIA

8 SOKHEON KEO, Petitioner,
9 v.
10 ACTING U.S. ATTORNEY GENERAL, ET AL.,¹
11 Respondents.

12 CASE NO. 1:24-CV-00919-HBK

13 MOTION TO DISMISS UNDER
14 28 U.S.C. § 2254, RULE 4, AND
15 RESPONSE TO 28 U.S.C. § 2241
16 PETITION

17 On 8/8/2024, Petitioner filed for relief under 28 U.S.C. § 2241. ECF 1. In his single ground,
18 Petitioner, a non-citizen alien, claimed his detention pending removal from the United States violates the
19 U.S. Constitution (due process under the Fifth Amendment). ECF 1 at 2, 17-19. For relief, Petitioner
20 demanded that this Eastern District of California (EDCA) court-of-custody disregard a congressional
21 mandate requiring detention of a non-citizen alien who suffered conviction for an aggravated crime of
22 violence, reverse a ICE detention review decision (on 12/13/2023), and simply order an immigration
23 judge to conduct a detention (bond) hearing or, alternatively, hold *ab initio* such a detention (bond)
24 hearing under § 2241. *Id.* at 3, 34-35.

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1 Respondent moves to strike and to dismiss all unlawfully named officials under § 2241. A
petitioner seeking habeas corpus relief must name the officer having custody of him as the respondent to
the petition. 28 U.S.C. § 2242; *Rumsfeld v. Padilla*, 542 U.S. 426, 430 (2004); *Ortiz-Sandoval v.*
Gomez, 81 F3rd 891, 894 (9th Cir. 1996). As explained by the Supreme Court in *Padilla*, the proper
respondent in habeas cases "is the warden of the facility where the prisoner is being held, not the
Attorney General or some other remote supervisory official." *Padilla*, 542 U.S. at 435. In the instant
case, Petitioner's custodian is the Facility Administrator at the Mesa Verde ICE Processing Facility,
McFarland, California.

Further, the petition should be dismissed as an impermissible fill in the blank narrative pleading.
Such a pleading is barred under local rule and precedent of this Court. See EDCA Local Rule 220. See
also Lacey v. Maricopa County, 693 F.3d. 896, 907 n.1 (9th Cir. 2012).

I. BACKGROUND

In 1999, Petitioner was convicted of conspiracy to commit home invasion robbery in violation of California Penal Code (CPC) § 182/212.5, attempted home invasion robbery in violation of CPC §§ 664, 211, and shooting a firearm at an occupied dwelling in violation of CPC §§ 245, 246, with firearm and gang activity enhancements under CPC § 12022.53(b), § 12022.53(c), CPC § 12022(a), CPC § 186.22(b)(i).

7 After completion of his state incarceration term, on 1/5/2023, DHS Immigration and Customs
8 Enforcement (ICE) took Petitioner into custody. Muro Declaration (Decl.) at 2-3. At that time,
9 Petitioner's custody status was reviewed. Since Petitioner's offense *inter alia* for home invasion with
10 firearm discharge (in an occupied dwelling) constituted conviction of an aggravated felony crime of
11 violence under 8 USC § 1101(a)(43)(F), he was subject to mandatory detention pending removal
12 proceedings. See 8 USC §§ 1226(c)(1), 1227(a)(2)(A)(iii). In other words, *inter alia*, due to risk of
13 danger to the community, Petitioner was denied conditional release. 8 U.S.C. § 1226(c)(1)(B). See
14 Decl. at 3. Also, at that time, Petitioner was charged with removability under § 237(a)(2)(A)(iii) of the
15 Immigration and Nationality Act ("INA"), for having committed an aggravated felony as defined in INA
16 § 101(a)(43)(F).

17 On 12/13/2023, a custody review occurred. *See Decl. p 3.* At the conclusion of the review, ICE,
18 in accord with INA § 212(d)(5) and 8 CFR § 212.5, denied Petitioner conditional release finding that
19 Petitioner is subject to mandatory detention pursuant to INA § 236(c). Decl. at 3-4. *See also* 8 USC §§
20 1226(c)(1), 1227(a)(2)(A)(iii).

21 On 6/12/2024, Petitioner appeared before an immigration judge for hearing on his (asylum)
22 applications for relief from removal. *See* Decl. at 4. After the hearing, the immigration judge issued a
23 decision denying Petitioner's applications for relief from removal and the immigration judge ordered
24 Petitioner removed from the United States to Cambodia, his native country. *See* Decl., Exh. 5. On
25 7/10/2024, Petitioner appealed the immigration judge's decision on his applications for relief from
26 removal to the Board of Immigration Appeals. Decl. p 4. On 10/11/2024, the Board of Immigration
27 Appeals affirmed the denial of asylum and affirmed the order of removal. *Id.* Petitioner thereafter, on
28 10/21/2024, filed a motion to reconsider, which motion is pending before the Board of Immigration

1 Appeals. Petitioner is presently held, pending removal proceedings on his applications for relief from
2 removal.

3 **II. ARGUMENT**

4 First, Petitioner falsely claimed that his detention pending removal proceedings violates the
5 Constitution (Fifth Amendment due process), thus warranting his immediate release. *See generally* ECF
6 at 2, 17-19.

7 The Constitution does not require the United States to release a non-citizen alien during the
8 pendency of removal proceedings when the alien, as in this case, has committed aggravated felony
9 criminal offenses, has been ordered removed from the United States, and himself has voluntarily decided
10 to contest removal through (asylum) relief from removal appeals that remain pending. *See generally*
11 Decl. at 3-4; Decl. Exh. 5. Both constitutionally, and as a matter of law under § 1226(c), Petitioner is
12 properly detained as an aggravated crime of violence felony offender. *Demore v. Kim*, 538 U.S. 510,
13 513 (2003) (finding detention during removal proceedings did not violate the Constitution). His
14 detention is mandated because, in addition to flight risk concerns, he committed violent home invasion
15 and firearm discharge crimes, and thus he is a danger to the community. *See* Decl. at 3-4. *See also* 8
16 U.S.C. § 1226(c). The Supreme Court has repeatedly upheld detention pending removal proceedings, as
17 in this case, under § 1226(c). *Demore v. Kim*, 538 U.S. at 513 (citing *Wong Wing v. United States*, 163
18 U.S. 228, 235 (1896); *Carlson v. Landon*, 342 U.S. 524 (1952); *Reno v. Flores*, 507 U.S. 292 (1993)).

19 Petitioner, *a fortiori*, is not in custody without benefit of detention review. About 11-months
20 after ICE detention, on 12/13/2024, Petitioner moved for conditional release through detention review
21 with designated ICE Enforcement Removal Operations (ERO) officers. 8 C.F.R. § 212.5(a); Decl. at 3.
22 Against this background, Petitioner to date has been in custody pending removal proceedings for about
23 22-months. However, progress has been made. Petitioner's motion to reconsider (to the Board of
24 Immigration Appeals (on denial of his (asylum) applications for relief from removal) is pending.
25 Accordingly, this is not a case where detention is indefinite. Rather, detention for flight risk, detention
26 for danger to the community, and his mandatory "detention under § 1226(c), has a definite termination
27 point: the conclusion of removal proceedings." *Jennings v. Rodriguez*, 138 S. Ct. 830, 846 (2018).

28 Second, Petitioner falsely claimed his detention is unreasonably prolonged. *See* ECF 1 at 8-11.

1 To the contrary, as the Supreme Court explained in *Demore*, detention pending removal proceedings is
2 constitutionally permissible because the United States has significant interests. “Congress, justifiably
3 concerned that deportable criminal aliens who are not detained continue to engage in crime and fail to
4 appear for their removal hearings in large numbers, may require that persons such as [the lawful
5 permanent resident at issue in that case] be detained for the brief period necessary for their removal
6 proceedings.” 538 U.S. at 513.

7 Significantly, in *Demore*, the Supreme Court held that detention pending removal proceedings is
8 lawful and constitutional even in the absence of any showing that an individual detainee posed a flight
9 risk or a danger to the community. *See id.* at 523-27. By contrast, here, Petitioner is specifically
10 detained, *inter alia*, for posing a threat of danger to the community as congressionally mandated under §
11 1226(c) for his aggravated felony crimes of violence. Against this background, the period of detention
12 is finite, pending further removal proceedings that Petitioner himself demanded. Further, the Ninth
13 Circuit similarly recognized the legitimate purpose of detention pending removal proceedings. *See*
14 *Prieto-Romero v. Clark*, 534 F.3d 1053, 1062-65 (9th Cir. 2008) (detention of aliens during removal
15 proceedings serves a legitimate government purpose, including preventing deportable aliens from
16 fleeing prior to or during their removal proceedings, thus increasing the chance that, if ordered removed,
17 the aliens will be successfully removed).

18 Third, while Petitioner complains about the length of his detention (solely stemming from
19 adjudication of Petitioner’s voluntary applications for review and related appeal seeking relief from
20 removal),² *see generally* ECF 1 at 2, 17-19, the United States’ legitimate interest in the mandatory
21 detention of criminal non-citizens does not wane with the passage of time. *Demore*, 538 U.S. 518.
22 Accordingly, Petitioner falsely claims his ongoing detention serves no valid civil purpose beyond 6-

23 _____
24 ² Petitioner’s voluntary decision to delay his removal through (asylum) applications for relief
25 from removal and appeals directly resulted in his so-called prolonged detention. Petitioner himself
26 caused the delay through requests to delay timely (asylum) application filing. After being taken into
27 custody (on 1/5/2023) for removal, on 6/12/2024, an immigration judge denied Petitioner’s applications
28 (delayed in filing due to Petitioner’s extension of time requests) for relief and ordered him removed.
Decl. at 3-4. In sum, while Petitioner has been in ICE custody since 1/5/2023, the length of his
detention is due to his own voluntary requests for continuances, (asylum) applications, and appeal. In
electing to pursue the numerous legal steps to prevent removal, Petitioner reasonably chose to accept the
routine and regular delay in the legal deliberative process. Petitioner’s projection of any delay
attributable to the government is flatly false.

1 months. ECF 1 at 2, 16-17. Detention of a violent criminal non-citizen alien, as in this case, during
2 removal proceedings remains constitutional so long as it continues to “serve its purported immigration
3 purpose.” *See id.* at 527. Those purposes—ensuring a non-citizen alien’s appearance for removal
4 proceedings and preventing the non-citizen from committing further offenses—are present throughout
5 removal proceedings and do not abate over time while those proceedings are still pending. *Id.* Again,
6 the Ninth Circuit, following *Demore*, set forth that the United States’ interests grow stronger—in
7 protecting the public from, as in this case, dangerous violent felony offenders—and not weaker as time
8 passes. *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1208 (9th Cir. 2022).

9 Fourth, Petitioner falsely claimed his detention is extraordinary and thus compels a finding of
10 Constitutional violation. *See* ECF 1 at 19. In *Demore*, while the Supreme Court’s recognized that
11 detention under § 1226(c) normally lasts for a “limited period” of time, the Supreme Court also held that
12 detention under § 1226(c) could run for a much longer period while still being constitutional—for
13 instance, where, as in this case, the non-citizen himself took actions to continue and lengthen his
14 removal proceedings. 538 U.S. at 531. *See also* Fn. 2, *supra*. Petitioner was, and continues to be,
15 lawfully detained *inter alia* under § 1226(c). Significantly, Petitioner’s limited period detention is not
16 only compelled under § 1226(c) and *Demore*, but—since 12/13/2023—it is additionally sanctioned
17 through detention review with ICE deportation officers. Decl. at 3. Petitioner, himself, in electing to
18 pursue his numerous applications and appeals reasonably chose to accept the routine and regular delay
19 in the legal deliberative process. *Demore*, 538 U.S. at 530, Fn.14, (holding that a Petitioner may extend
20 the constitutional authority to detain by making legal decisions, such as applications, appeals, and
21 petitions to review, and recognizing that even in the criminal context, there is no constitutional
22 prohibition against requiring parties to make such choices). *See also Rodriguez Diaz*, 53 F.4th at 1207-
23 08 (holding detention constitutional where, among other things, most of the period of petitioner’s
24 detention arose from the fact that he chose to challenge before the BIA and later this Court the IJ’s
25 denial of immigration relief).

26 And finally, Petitioner falsely demanded finding Constitutional violation based on the absolute
27 value of time (number of months) in civil commitment. On the one hand, on 12/13/2023, Petitioner had
28 timely detention review with ICE deportation officers. Accordingly, there has been no violation of

1 procedural due process. On the other hand, Petitioner's reliance on *Mathews v. Eldridge*, 424 U.S. 319
2 (1976), is misplaced. Also, even if this court were to consider *Mathews* in the immigration context,
3 Petitioner's liberty constraint (detention) has not been extraordinarily long while the United States
4 interests remain strong, including consideration — as congressionally mandated under § 1226(c) —
5 afforded his aggravated felony crimes of violence. In this regard, Petitioner's reliance on *Demore* is
6 misplaced. As previously set forth, in *Demore*, the Supreme Court recognized that a detention period
7 may be constitutionally lengthened, as in this case, by a Petitioner's choices to pursue time consuming
8 applications, appeals, and review. *Demore*, 538 U.S. at 531. See also Fn. 2, *supra*.

III. CONCLUSION

Petitioner's detention continues to serve legitimate congressionally mandated goals with a definite end in sight. Accordingly, it is not punitive, it is not extraordinary, and it does not violate due process. Indeed, the Ninth Circuit has made clear that “[t]he duration of [a petitioner's] detention, by itself, d[oes] not create a due process violation.” *Rodriguez Diaz*, 53 F.4th at 1212. *See also Prieto-Romero*, 534 F.3d at 1063. For the foregoing reasons, it is respectfully requested that this Court dismiss the underlying 28 U.S.C. § 2241 petition.

Dated: October 28, 2024

PHILLIP A. TALBERT
United States Attorney

By: /s/ MICHELLE RODRIGUEZ
MICHELLE RODRIGUEZ
Assistant United States Attorney

1 PHILLIP A. TALBERT
United States Attorney
2 MICHELLE RODRIGUEZ
Assistant United States Attorney
3 501 I Street, Suite 10-100
Sacramento, CA 94814
4 Telephone: (916) 554-2700
5 Facsimile: (916) 554-2900
6 E-mail:Michelle.Rodriguez@usdoj.gov
7 Attorneys for the Respondents

8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA

10
11 SOKHEON KEO,) CASE NO. 1:24-CV-00919-HBK
12 Petitioner,)
13 v.) DECLARATION OF
14 WARDEN OF THE MESA VERDE ICE) DEPORTATION OFFICER
15 PROCESSING CENTER, et al.,) RIGOBERTO MURO
16 Respondents.)
17

18 I, Rigoberto Muro, make the following statements under oath and subject to the penalty of
19 perjury:

20 1. I am a Deportation Officer (“DO”) with the U.S. Department of Homeland Security
21 (“DHS”), U.S. Immigration and Customs Enforcement (“ICE”), Enforcement and Removal Operations
22 (“ERO”), in the Bakersfield sub-office of the San Francisco Field Office. I have been employed with
23 ICE since October 2011. I currently serve as a DO and am assigned to the Intake Unit, overseeing non-
24 citizens detained at the Mesa Verde ICE Processing Facility (“MVIPC”), which is a detention facility
25 located in Bakersfield, California, which is managed by the GEO Group, Inc. (“GEO”).

26 2. My responsibilities include, but are not limited to, tracking the progression of detained
27 cases through removal proceedings, tracking detained cases with final removal orders, obtaining travel
28

1 documents for non-citizens ordered removed, and effectuating the removal of non-citizens to their home
2 countries. I am the DO assigned to the case of Petitioner.

3 3. I am familiar with ICE policies and procedures governing the detention and removal of
4 non-citizens who come into ICE's custody. ICE is charged with removing non-citizens who lack lawful
5 immigration status in the United States. ICE further detains non-citizens to secure their presence both for
6 immigration proceedings and their removal, with a special focus on those who represent a risk to public
7 safety, or for whom detention is mandatory by law.

8 4. The facts in this declaration are based on my personal knowledge, consultation with other
9 DHS and ICE personnel, and review of official documents and records maintained by the agency and
10 DHS and other relevant sources during the regular course of my duties. I provide this declaration based
11 on the best of my knowledge, information, belief, and reasonable inquiry for the above-captioned case.

12 5. I have obtained and attached to my declaration true and correct copies of the following
13 documents from the above-named Petitioner's case file and records maintained by DHS, which will be
14 referenced as Exhibits ("Exh.") as follows:

15 Exhibit 1: Form I-181, Memorandum of Creation of Record of Lawful Permanent
16 Residence;
17 Exhibit 2: Rap Sheet with Conviction Records;
18 Exhibit 3: Form I-862, Notice to Appear, Form I-200, Warrant for Arrest of Alien, Form I-
19 286, Notice of Custody Determination, Form I-826, Notice of Rights and Request
20 for Disposition, and Form I-213 (2023), Record of Deportable/Inadmissible
21 Alien;
22 Exhibit 4: Immigration Judge's Removal Decision and Removal Order; and
23 Exhibit 5: Briefing schedule with the Board of Immigration Appeals ("BIA")

24 6. On or about October 17, 1984, Petitioner was admitted to the United States as a refugee.

25 7. Thereafter, on or about May 22, 1986, the former Immigration and Naturalization Service
26 ("INS") granted Petitioner lawful permanent resident ("LPR") status. Exh. 1.

27 8. On or about January 4, 1999, the Superior Court of California, County of Stanislaus,
28 convicted Petitioner of participation in a street gang, in violation of California Penal Code
("CPC") § 186.22(a), and sentenced him to two years on that count. Exh. 2.

29 9. On or about January 8, 1999, the Superior Court of California, County of Stanislaus,
30 convicted Petitioner of one count of conspiracy to commit home invasion robbery in concert, in

1 violation of CPC § 182/212.5, one count of attempted home invasion robbery, in violation of
2 CPC § 664/211, one count of burglary, in violation of CPC § 459, one count of assault with a firearm, in
3 violation of CPC § 245(a)(2), one count of shooting at an occupied dwelling, in violation of CPC § 246
4 along with an enhancement under CPC § 12022.53(b) for use of a firearm, an enhancement under CPC §
5 12022.53(c) for intentionally discharging a firearm, and enhancement under CPC § 12022(a) for being
6 armed with a firearm during the commission of a felony, an enhancement under CPC § 186.22(b)(i) for
7 committing a felony in association with a criminal street gang and subsequently sentenced him to a total
8 of thirty-one years and eight months in prison on those counts and the enhancements. Exh. 2.

9 10. Following Petitioner's release from prison, ERO San Francisco, on or about January 6,
10 2023, arrested him and issued and served a Notice to Appear ("NTA"), Form I-862, charging him as
11 removable pursuant to § 237(a)(2)(A)(iii) of the Immigration and Nationality Act ("INA"), as amended,
12 in that, at any time after admission, he had been convicted of an aggravated felony as defined in
13 § 101(a)(43)(F) of the INA. On the same date, ERO San Francisco reviewed Petitioner's custody status,
14 determined that he is subject to mandatory detention, and detained him at the Golden State Annex
15 ("GSA") located in McFarland, California. On or about January 25, 2023, ERO transferred Petitioner to
16 the Mesa Verde ICE Processing Facility where he is mandatorily detained pursuant to § 236(c) of the
17 INA. Exh. 3.

18 11. On three occasions, Petitioner requested that an immigration judge review his custody
19 status but withdrew the first request on January 19, 2023, the second request on March 23, 2023, and the
20 third request on September 13, 2023.

21 12. On or about December 13, 2023, Petitioner submitted a release request.

22 13. On or about December 13, 2023, ICE denied the release request as Petitioner is subject to
23 mandatory detention pursuant to § 236(c) of the INA.

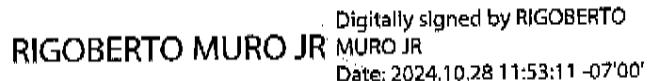
24 14. As to removal proceedings, after Petitioner received numerous continuances to seek an
25 attorney and prepare applications for relief from removal, an immigration judge, on or about June 12,
26 2024, denied Petitioner's applications for relief from removal and ordered him removed to Cambodia.
27 Exh. 4.

1 15. On or about July 10, 2024, Petitioner appealed the immigration judge's decision to the
2 BIA. Exh. 5.

3 16. On October 11, 2024, Petitioner's appeal was dismissed by the BIA. Petitioner filed a
4 motion to reconsider with the BIA on October 21, 2024, which is still pending.

5 I declare, under penalty of perjury, under 28 U.S.C. § 1746, that the foregoing is true and correct
6 to best of my knowledge, information, belief, and reasonable inquiry.

7 Dated: October 28, 2024

8 
RIGOBERTO MURO JR
Digitally signed by RIGOBERTO
MURO JR
Date: 2024.10.28 11:53:11 -07'00'

9 Rigoberto Muro
10 Deportation Officer
11 Enforcement and Removal Operations
12 U.S. Immigration and Customs Enforcement
13 U.S. Department of Homeland Security

1 PHILLIP A. TALBERT
United States Attorney
2 MICHELLE RODRIGUEZ
Assistant United States Attorney
3 501 I Street, Suite 10-100
Sacramento, CA 95814
4

5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF CALIFORNIA
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8 SOKHEAN KEO,
9 Petitioner,
10 v.
11 WARDEN OF THE MESA VERDE ICE
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12 Respondents.
13

CASE NO. 1:24-CV-009919-HBK
CERTIFICATE OF SERVICE BY MAIL

14
15 The undersigned hereby certifies that he/she is an employee in the Office of the United States
16 Attorney for the Eastern District of California and is a person of such age and discretion to be competent
17 to serve papers. That on October 28, 2024, a copy of the RESPONDENT'S MOTION TO DISMISS
18 was served by placing said copy in a postpaid envelope addressed to the person(s) hereinafter named, at
19 the place(s) and address(es) stated below, which is/are the last known address(es), and by depositing
20 said envelope and contents in the United States Mail at Sacramento, California. Addressee(s): **Sokhean**
21 **Keo #A-027351321 Mesa Verde ICE Processing Center 425 Golden State Ave. Bakersfield, CA**
22 **93301.**

23 /s/ *C. Buxbaum*
24 C. BUXBAUM
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