**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF NEW MEXICO**

ZHENDI WANG (A# [redacted]

Petitioner,

v.

No. 25-CV-00138-JB-JFR

GEORGE DEDOS, in his official capacity As Warden of the Torrance County Detention Facility; MARY DE ANDA-YBARRA, in her official capacity as El Paso Field Office Director, Immigration and Customs Enforcement, Enforcement and Removal Operations; and KRISTI NOEM, in her official capacity as United States Secretary of Homeland Security;

Respondents.

**FEDERAL RESPONDENTS' MOTION TO DISMISS**
**FIRST AMENDED VERIFIED PETITION FOR WRIT OF HABEAS CORPUS**
**AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF (DOC. 19)**

Pursuant to this Court's "Order Granting Federal Respondents' Unopposed Motion for Extension to File Response to Petition" (Doc. 18), the United States files the instant motion[1] to dismiss in lieu of a response to Petitioner Zhendi Wang's "First Amended Verified Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief." Doc. 19. The United States respectfully requests the Court dismiss—pursuant to Fed. R. Civ. P. 12(b)(1)—the Petition and Complaint because (1) the immigration judge's grant of voluntary departure is stayed pending appeal to the Board of Immigration Appeals (BIA) and is not ripe for review by this Court; (2) the immigration judge's decision not to grant a bond is also pending appeal, and (3) Petitioner offers no law for the Court to decide what is reasonable medical care nor any

[1] Pursuant to Local Civil Rule 7.1(a), Federal Respondents sought Petitioner's position regarding this motion to dismiss and Petitioner opposes the motion. Counsel for Respondent George Dedos has not yet entered an appearance.

evidence that his September 15 appointment [redacted] is insufficient care.

## I. BACKGROUND

Upon information and belief, the United States believes the following relevant facts to be true. Petitioner is a native and citizen of China. On July 30, 2023, Petitioner was admitted to the United States on a B-2 visa, which is a nonimmigrant visa that allows foreign nationals to enter the United States temporarily for tourism, pleasure, or medical treatment. On August 2, 2023, however, Petitioner was arrested in San Francisco, CA, pursuant to an arrest warrant issued by the U.S. District Court for the District of Massachusetts. *United States v. Wang*, 24-CR-10034-ADB, Doc. 3 (D. Mass 2023). The arrest warrant was based on a criminal complaint that alleged Petitioner conspired to launder proceeds of illegal steroids sales in violation of 18 U.S.C. § 1956(h). *Id.* at Doc 1. Petitioner was transported to the District of Massachusetts where he was detained pending trial for being a "serious risk of flight." *Id.* at Doc. 31.

On November 14, 2024, Petitioner pleaded guilty to a one-count Superseding Information charging him with Operation of an Unlicensed Money Transmitting Business, in violation of 18 U.S.C. §§ 1960 and (b)(1)(A). *Id.* at Doc. 88. On December 16, 2024, Petitioner was sentenced to a term of imprisonment of 20 months, to a 1-year term of supervised release, and to a $100 special penalty assessment. *Id.* at Doc. 100. Petitioner also agreed to the forfeiture of $825,314.97, as well as a money judgment in that same amount, representing the illicit proceeds of his crime of conviction. *Id.*

Shortly thereafter, Petitioner was released from BOP custody into ICE custody. On January 27, 2025, and immigration judge in Chelmsford, MA, found Petitioner "removable," pursuant to INA § 237(a)(1)(B). The immigration judge also apparently denied Petitioner a bond for release as a danger to the community based on the facts underlying his criminal conviction.

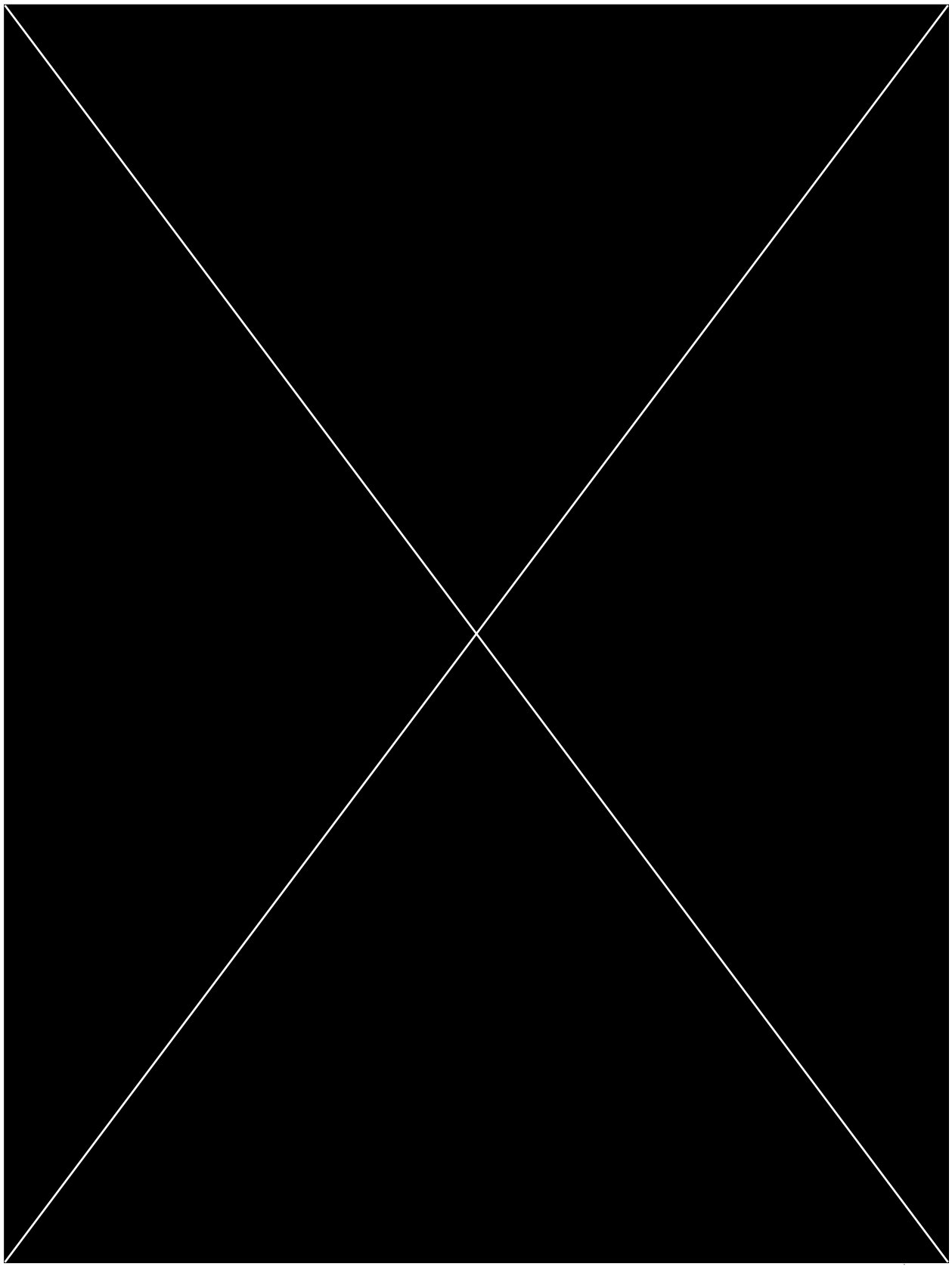
The immigration judge, however, granted Petitioner' application for "pre-conclusion voluntary departure" under INA § 240B(a). On February 21, 2025, DHS filed a timely appeal to the Board of Immigration Appeals (BIA) of the immigration judge's grant of voluntary departure. DHS and Petitioner completed briefing on April 9, 2025. The appeal is currently pending a decision by BIA.

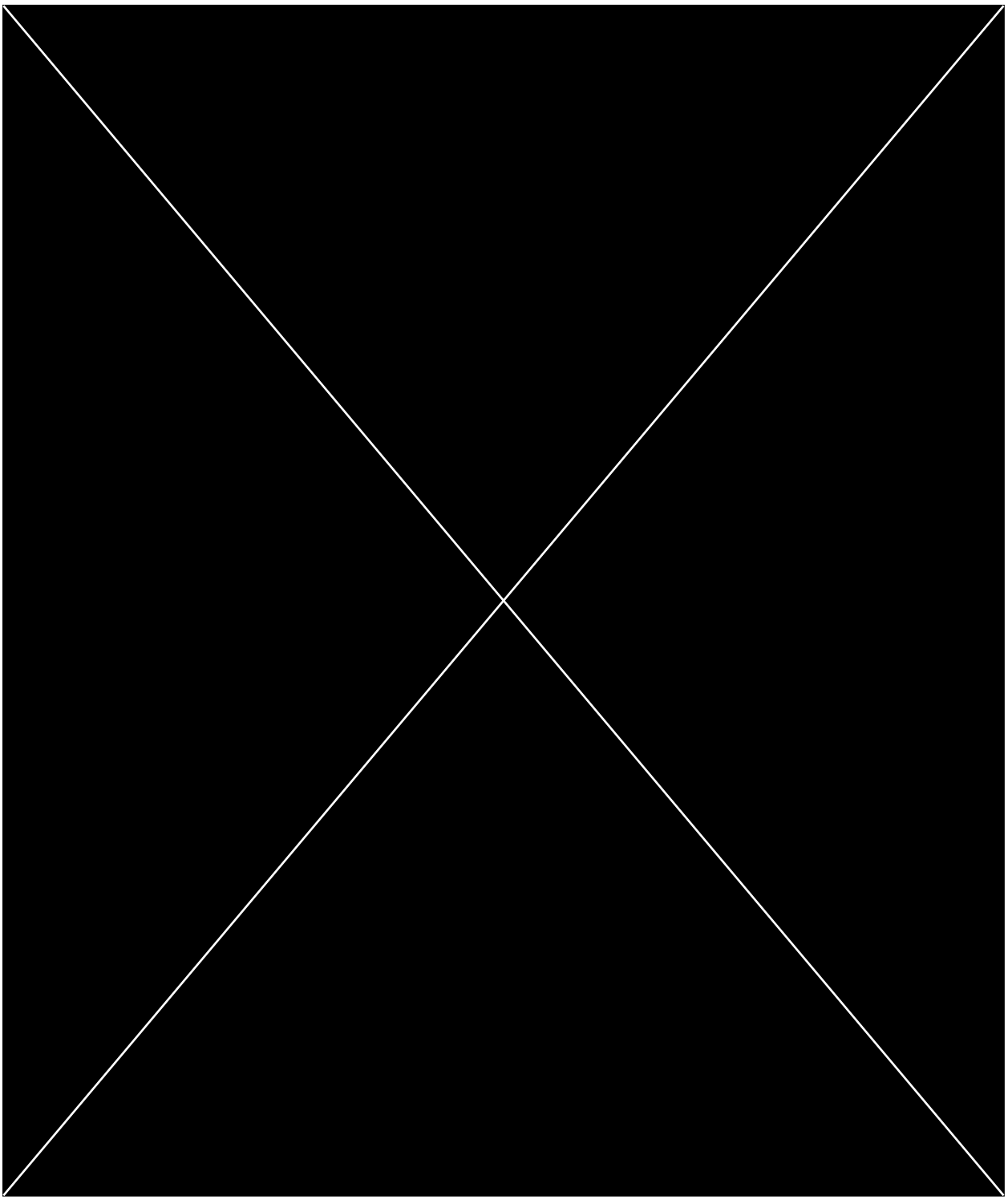
On February 25, 2025, Petitioner filed an appeal of his bond denial to the BIA. On March 17, 2025, the immigration judge issued a memorandum explaining her bond denial. On May 2, 2025, Petitioner filed his brief regarding the bond determination with the BIA. DHS opted not to file a brief supporting the immigration judge's decision. The appeal remains pending with BIA.

Petitioner has alleged that he has not been provided the medication, [redacted] since being transferred to Torrance County Detention Facility (TCDF) on or about February 2, 2025. He claims that he received this medication while in BOP custody. He claims that Respondents have "refused to provide Petitioner with the same medication," "with adequate care for his [redacted] [that] seriously endangers [his] health," and that "Respondents have displayed deliberate indifference to Petitioner's serious medical needs."

Contrary to Petitioner's claims, information undersigned counsel received from ICE suggests continuous and thorough medical care. According to ICE, when a person comes into ICE custody from BOP, ICE receives a summary of the BOP medical records and then ICE Medical Providers engage in their own medical evaluation of the person. On February 6, 2025, Petitioner was interviewed and examined for intake into the facility via telehealth with a Registered Nurse (RN) present in the room.

[redacted]





From his arrival at TCDF on February 2, 2025, to June 24, 2025, Petitioner has been evaluated by ICE Medical Providers approximately 18 times. He has had three sets of labs taken

and analyzed [redacted]. And although ICE Medical Providers do not believe his [redacted] require treatment, they have nonetheless requested and scheduled a specialty consult for Petitioner, which is scheduled to take place in two months.

## II. APPLICABLE LAW

The Court only has subject matter jurisdiction over cases that raise issues that are ripe for review. *See Coal. for Sustainable Res., Inc. v. U.S. Forest Serv.*, 259 F.3d 1244, 1249 (10th Cir. 2001). "The plaintiff bears the burden of providing evidence to establish that the issues are ripe." *Id.* Ripeness is a justiciability doctrine "drawn both from Article III limitations on judicial power and from prudential reasons for refusing to exercise jurisdiction." *Reno v. Catholic Soc. Servs., Inc.*, 509 U.S. 43, 57 n.18 (1993). The ripeness inquiry "focuses not on whether the plaintiff was in fact harmed, but rather whether the harm asserted has matured sufficiently to warrant judicial intervention." *Morgan v. McCotter*, 365 F.3d 882, 890 (10th Cir. 2004).

"[D]eterminations of ripeness are guided by a two-factor test, requiring us to evaluate both the fitness of the issue for judicial resolution and the hardship to the parties of withholding judicial consideration." *New Mexicans for Bill Richardson v. Gonzales*, 64 F.3d 1495, 1499 (10th Cir. 1995) (internal quotations and citations omitted). "The central focus is on whether the case involves uncertain or contingent future events that may not occur as anticipated, or indeed may not occur at all." *Id.* Like other challenges to a court's subject matter jurisdiction, the question of ripeness is treated as a motion under Rule 12(b)(1). *Id.*

There are certain circumstances when an immigration judge's order is automatically stayed pending further action on appeal. For example, apart from bond or custody, credible fear, claimed status review, or reasonable fear determinations, "the decision in any proceeding under this chapter from which an appeal to the Board may be taken shall not be executed during the

time allowed for the filing of an appeal . . . , nor shall such decision be executed while an appeal is pending . . . ." 8 C.F.R. § 1003.6(a). The grant or denial by an immigration judge of an application for voluntary departure is governed by 8 C.F.R. § 1240.26; those decisions may be appealed by either party to BIA. *See* 8 C.F.R. § 1240.26(k)(2) and (3).

The United States Supreme Court "recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process." *Demore v. Kim*, 538 U.S. 510, 523 (2003) ("As we said more than a century ago, deportation proceedings 'would be vain if those accused could not be held in custody pending the inquiry into their true character.'") (citing *Wong Wing v. United States*, 163 U.S. 228, 235 (1896)); *see also*, *Carlson v. Landon*, 342 U.S. 524 (1952) and *Reno v. Flores*, 507 U.S. 292 (1993). In *Demore*, the Supreme Court rejected an argument that the mandatory detention provisions of § 1226(c) violate the Due Process Clause of the Fifth Amendment. 538 U.S. at 529-30. The Court distinguished *Zadvydas v. Davis*, 533 U.S. 678 (2001) for two reasons. First, because in *Zadvydas*, "the aliens challenging their detention following final orders of deportation were ones for whom removal was 'no longer practically attainable.'" *Demore*, 538 U.S. at 527 (citation omitted). And second because "the period of detention at issue in *Zadvydas* was 'indefinite' and 'potentially permanent.'" *Demore*, 538 U.S. at 528. Ultimately, the Court held that the five-month period Kim was held in custody pending his removal proceedings was constitutionally permissible under *Wong Wing*, *Carlson*, and *Flores*. *Demore*, 538 U.S. at 531. The United States Supreme Court later rejected "an implicit 6-month time limit on the length of mandatory detention." *Jennings v. Rodriguez*, 583 U.S. 281, 304 (2018) (an interpretation of § 1226(c) containing an implicit six-month time limit "falls far short of a 'plausible statutory construction.'"). "We hold that § 1226(c) mandates detention of any alien falling within its scope and that detention may end prior to the conclusion of removal

proceedings 'only if' the alien is released for witness-protection purposes." *Id.* at 305-06.

## III. ARGUMENT

### *A. Petitioner's Request for the Execution of the Immigration Judge's Grant of Voluntary Departure is Not Ripe*

Petitioner is correct that the immigration judge assigned to his case granted his application for voluntary departure. *See* Doc 19-1 (Order of the Immigration Judge). But that decision was timely appealed by DHS, as Petitioner acknowledges. See Doc. 19 at 12-13 ("30-day period in which DHS was allowed to file an appeal of the Voluntary Departure Order," which was filed on January 27, 2025. And noting that on "February 21, 2025, DHS filed a Form EOIR-26 Notice of Appeal to the BIA regarding the Voluntary Departure Order."). Accordingly, pursuant to 8 C.F.R. § 1003.6(a), the grant of voluntary departure was automatically stayed ("shall not be executed") pending decision by BIA. By law, the immigration judge's grant of voluntary departure is not final. And thus, Petitioner's request for a writ of habeas corpus, declaratory judgment, and injunctive relief to enforce a preliminary grant of voluntary departure is not ripe for this Court's review. On that basis, the United States respectfully requests this Court dismiss the Petition and Complaint for lack of subject matter jurisdiction insofar as the First and Second Claims for Relief are Concerned. See Doc. 19 at 16-18.

### *B. Petitioner's Claim of Deprivation of Liberty Without Due Process Is Similarly Premature.*

The immigration judge assigned to Petitioner's case gave Petitioner an audience at a bond hearing held on January 27, 2025, and considered his arguments for release. The immigration judge found, however, that Petitioner was a danger to the community, given his federal felony conviction for a violation of 18 U.S.C. § 1960, which earned him a custodial sentence of 20

months, and which involved the receipt of proceeds from the sale of illicit drugs. As a result, the immigration judge denied Petitioner a discretionary bond pursuant to her authority under 8 U.S.C. § 1226(a).

The immigration judge's decision was well founded. But even if it was error, Petitioner has exercised his right to appeal that decision, which is currently pending before BIA. Thus, Petitioner's claim that he was denied due process is patently false. He received process at the immigration judge level and has now been afforded additional process in that he is awaiting an appellate decision. Accordingly, the United States requests that the Court dismiss for lacking subject matter jurisdiction Petitioner's claim to have been deprived of liberty without due process as premature and not ripe for review by this Court.

Furthermore, Petitioner's reliance on *Zadvydas* and *Demore* is wholly misplaced. *Zadvydas* concerned the detention of aliens who were subject to final orders or removal but who could not be removed for the foreseeable future. 533 U.S. 678. The Court declined to read the statute as permitting "indefinite, perhaps permanent, detention." *Id.* at 698. Accordingly, the Court established a 6-month presumption within which an alien subject to a final order of removal should be removed. *Id.* at 701. Here, Petitioner is not subject to a final order or removal or a final grant of voluntary departure. Petitioner is still proceeding through the process to determine whether he should be granted voluntary departure or whether he should be ordered removed. Thus, Petitioner is not subject to an indefinite detention. Rather, he is awaiting a decision from BIA.

In *Demore*, on the other hand, the Court held that the mandatory detention provision at 8 U.S.C. § 1226(a) *during removal proceedings* was constitutional. 538 U.S. 510. Here, Petitioner is not held pursuant to the mandatory detention provisions. Nonetheless, *Demore*'s reasoning

applies by analogy. For both Demore and Petitioner, their detentions are not indefinite in nature; they are simply proceeding through discrete removal proceedings. *Demore* held that six months of detention pending his removal hearing was not unconstitutional. *Id.* at 530-31; *see also Grijalva-Garcia v. Terry*, No. 10-CV-00275-JB-WDS, Doc. 20 (D.N.M. March 31, 2011) (Browning, J.) ("The Court need not decide whether there is some form of time or reasonableness limitation under 8 U.S.C. § 1226(c) that governs custodial detentions. Section 1226(c) is constitutional, *see* [*Demore*] *v. Kim*, 538 U.S. 510 (2003), and no court has attempted . . . to quantify a presumptively reasonable period of time for § 1226(c) detention that would mirror the Supreme Court's six-month rule in *Zadvydas v. Davis*."). This Court has dismissed habeas petitions challenging far longer detentions. *See Bokole v. McAleenan*, No. 18-CV-00583-JB-LF, 2019 WL 2024922, at *5 (D.N.M. May 8, 2019) (dismissing petition for writ of habeas based on 23 months of custody pending removal proceedings).

As the United States Supreme Court has held, "the government can detain an alien for as long as deportation proceedings are still 'pending.'" *Banyee v. Garland*, 115 F.4th 928, 933 (8th Cir. 2024) (citing *Demore*, 538 U.S. at 527). Here, Petitioner's immigration proceedings are still pending; his appeal is fully briefed before BIA and he is awaiting a decision on whether he will be granted voluntary departure or ordered removed. Afterwards, DHS should move swiftly to ensure that he is allowed to voluntarily depart or that he is removed from the United States.

***C. Petitioner's Claim of Deprivation of Medical Care Should Also Be Dismissed.***

Petitioner fails to provide the Court with any legal citation that establishes a standard for constitutional medical care while in immigration custody pending removal proceedings. Petitioner generically concludes that he has been deprived of "proper medical care" in violation of the Fifth Amendment. Such a claim was dismissed in *Vaz v. Holder*, for lacking a "proper

basis for habeas relief." No. 4:12-CV-03959-JHH-JHE, 2014 WL 11353144, at *2 (N.D. Ala. Oct. 27, 2014), *report and recommendation adopted sub nom. Vaz v. Skinner*, No. 4:12-CV-03959-JHH-JHE, 2014 WL 11353143 (N.D. Ala. Dec. 3, 2014), *aff'd*, 634 F. App'x 778 (11th Cir. 2015) ("Petitioner's Fifth Amendment claim[—that ICE has not provided him proper medical care and his continued detention without appropriate medical treatment is unconstitutional—]does not challenge the fact or duration of his confinement nor any terms and conditions of the confinement itself, it is not a proper basis for habeas relief.) (citing *Muhammad v. Williams-Hubble*, 380 F. App'x 925, 926 (11th Cir. 2010) (citing *Heck v. Humphrey*, 512 U.S. 477 (1994) (defining the core of habeas corpus as challenges to the fact, duration, or nature of confinement))); *see also*, *Martin v. Overton*, 391 F.3d 710, 714 (6th Cir.2004).

Even if Petitioner's claim was cognizable as a petition for writ of habeas corpus, Petitioner has failed to allege the requisite facts to establish such a claim. Petitioner does not explain how waiting to see a specialist until September 2025 is detrimental to his health. Petitioner has not offered any medical opinion that he needs [redacted] at this time, and even if he did, that he needs it immediately. Most importantly, ICE Medical Providers are regularly evaluating and treating Petitioner and arranging for a specialist to consider any treatment needs Petitioner might have with respect to his [redacted].

**CONCLUSION**

For all the foregoing reasons, the United States respectfully requests the Court dismiss this "First Amended Verified Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief."[2]

[2] To the extent Petitioner intends to advance a claim under the Administrative Procedures Act ("APA"), 5 U.S.C. § 701, *et seq.* (Doc. 19 at 2), that claim should be dismissed for the reasons outlined above. In addition, any APA claims made by Petitioner should be dismissed for failure

Respectfully submitted,

RYAN ELLISON
United States Attorney

*/s/ Kristopher N. Houghton 7/14/25*
KRISTOPHER N. HOUGHTON
Assistant U.S. Attorney
201 3rd Street NW Suite 900
Albuquerque, New Mexico 87102
(505) 346-7274; Fax (505) 346-7205
kristopher.houghton@usdoj.gov

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on July 14, 2025, I filed the foregoing pleading electronically through the CM/ECF system, which caused all parties and counsel of record to be served, as more fully reflected on the Notice of Electronic Filing.

*/s/ Kristopher N. Houghton 7/14/25*
KRISTOPHER N. HOUGHTON
Assistant United States Attorney

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to identify an "agency action," let alone a "final agency action" required pursuant to 5 U.S.C. § 704. *See Bennett v. Spear*, 520 U.S. 154, 155 (1997).