IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA

JAVIER ISAIS CHAVEZ,
Alien #[redacted]

Petitioner,

v.

PAM BONDI, in her official capacity as Attorney General

KRISTI NOEM, in her official capacity as Secretary of the Department of Homeland Security,

RON MURRAY, in his official capacity as Warden of Mesa Verde Detention Center,

POLLY KAISER, in her official capacity as ICE Field Office Director,

Respondents

Case No. 1:25-cv-00198-HBK

PETITIONER'S OPPOSITION TO MOTION TO DISMISS

I. INTRODUCTION

Javier Isais Chavez (Petitioner), through counsel, submits the instant opposition to Respondent's motion to dismiss. Petitioner maintains that detention – even mandatory detention under 8 U.S.C. § 1226(c) – is unconstitutional when it exceeds six months. *See Demore v. Kim*, 538 U.S. 510, 529-30 (2003) (upholding only "brief" detentions under Section 1226(c), which last "roughly a month and a half in the vast majority of cases in which it is invoked, and about five months in the minority of cases in which the alien chooses to appeal"); *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001) ("Congress previously doubted the constitutionality of detention for more than six months"). As such, Petitioner respectfully requests that this Court issue an order requiring Respondents to immediately release him from detention.

II. ARGUMENT

Even under 8 U.S.C. § 1226(c), prolonged detention is unconstitutional. Section 1226(c) of title 8 gives the Attorney General the discretion to arrest and detain a noncitizen "pending a decision on whether the [noncitizen] is to be removed from the United States." 8 U.S.C. § 1226(c). This section applies to noncitizens who have been convicted of certain enumerated offenses. 8 U.S.C. § 1226(c)(1). In *Jennings v. Rodriguez*, 138 S. Ct. 830, 847 (2018), the Supreme Court held that § 1226(c) "mandates detention of any [noncitizen] falling within its

scope and that detention may end prior to the conclusion of removal proceedings only if the [noncitizen] is released for witness-protection purposes."

However, the Supreme Court in *Jennings* did not reach the issue of whether prolonged detention without a bond hearing violates a noncitizen's right to due process, and the case was remanded to the Ninth Circuit to make such a determination. *Id.* at 851. The Ninth Circuit subsequently remanded the case to the district court to determine the "minimum requirements of due process" and in doing so, expressed "grave doubts that any statute that allows for arbitrary prolonged detention without any process is constitutional or that those who founded our democracy precisely to protect against the government's arbitrary deprivation of liberty would have thought so." *Rodriguez v. Marin*, 909 F.3d 252, 255-256 (9th Cir. 2018).

The Due Process Clause provides that no person "shall be deprived life, liberty, or property, without due process of law." U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" that the Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *see also id.* at 718 (Kennedy, J., dissenting) ("Liberty under the Due Process Clause includes protection against unlawful or arbitrary personal restraint or detention."). The Fifth Amendment's protections extend to "every person within the nation's borders," regardless

immigration status. *Lopez-Valenzuela v. Arpaio*, 770 F.3d 772, 781 (9th Cir. 2014); *Id.* ("Even one whose presence in this country is unlawful, involuntary, or transitory is entitled to that constitutional protection" (quoting *Mathews v. Diaz*, 426 U.S. 67, 77 (1976)).

Due process therefore requires "adequate procedural protections" to ensure that the government's asserted justification for physical confinement "outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690 (internal quotation marks omitted). In the immigration context, the Supreme Court has recognized only two valid purposes for civil detention—to mitigate the risks of danger to the community and to prevent flight. *Id.*; *Demore*, 538 U.S. at 528. Following *Zadvydas* and *Demore*, every circuit court of appeals to confront the issue has found either the immigration statutes or due process require a hearing for noncitizens subject to unreasonably prolonged detention pending removal proceedings. *See Sopo v. U.S. Attorney Gen.*, 825 F.3d 1199 (11th Cir. 2016) (detention under 8 U.S.C. § 1226(c)); *Reid v. Donelan*, 819 F.3d 486 (1st Cir. 2016) (8 U.S.C. § 1226(c)); *Lora v. Shanahan*, 804 F.3d 601 (2d Cir. 2015) (8 U.S.C. § 1226(c)); *Rodriguez v. Robbins (Rodriguez III)*, 804 F.3d 1060 (9th Cir. 2015) (8 U.S.C. § 1226(c) and 8 U.S.C. § 1225(b)); *Diop v. ICE/Homeland Sec.*, 656 F.3d 221 (3d Cir. 2011) (8 U.S.C. § 1226(c)); *Diouf v. Holder (Diouf II)*, 634 F.3d 1081 (8 U.S.C. § 1231(a)); *Ly v. Hansen*, 351 F.3d 263

(6th Cir. 2003) (8 U.S.C. § 1226(c)) (requiring release when mandatory detention exceeds a reasonable period of time).

While the Supreme Court upheld the mandatory detention of a noncitizen under Section 1226(c) in *Demore*, it did so based on the petitioner's concession of deportability and the Court's understanding that detentions under Section 1226(c) are typically "brief." *Demore*, 538 U.S. at 522 n.6, 528. Where a noncitizen has been detained for a prolonged period or is pursuing a substantial defense to removal or claim to relief, due process requires an individualized determination that such a significant deprivation of liberty is warranted. *Id.* at 532 (Kennedy, J., concurring) ("individualized determination as to his risk of flight and dangerousness" may be warranted "if the continued detention became unreasonable or unjustified"). *See also Jackson v. Indiana*, 406 U.S. 715, 733 (1972) (detention beyond the "initial commitment" requires additional safeguards); *McNeil v. Dir., Patuxent Inst.*, 407 U.S. 245, 249-50 (1972) ("lesser safeguards may be appropriate" for "shortterm confinement"); *Hutto v. Finney*, 437 U.S. 678, 685-86 (1978) (in Eighth Amendment context, "the length of confinement cannot be ignored in deciding whether [a] confinement meets constitutional standards").

Detention without a bond hearing is unconstitutional when it exceeds six months. *See Demore*, 538 U.S. at 529-30 (upholding only "brief" detentions under Section 1226(c), which last "roughly a month and a half in the vast majority of cases

in which it is invoked, and about five months in the minority of cases in which the alien chooses to appeal"); *Zadvydas*, 533 U.S. at 701 ("Congress previously doubted the constitutionality of detention for more than six months").

The recognition that six months is a substantial period of confinement—and is the time after which additional process is required to support continued incarceration—is deeply rooted in our legal tradition. With few exceptions, "in the late 18th century in America crimes triable without a jury were for the most part punishable by no more than a six-month prison term…" *Duncan v. State of La.*, 391 U.S. 145, 161 & n.34 (1968). Consistent with this tradition, the Supreme Court has found six months to be the limit of confinement for a criminal offense that a federal court may impose without the protection afforded by jury trial. *Cheff v. Schnackenberg*, 384 U.S. 373, 380 (1966) (plurality opinion). The Court has also looked to six months as a benchmark in other contexts involving civil detention. *See McNeil v. Dir., Patuxent Inst.*, 407 U.S. 245, 249, 250-52 (1972) (recognizing six months as an outer limit for confinement without individualized inquiry for civil commitment). The Court has likewise recognized the need for bright line constitutional rules in other areas of law. *See Maryland v. Shatzer*, 559 U.S. 98, 110 (2010) (14 days for re-interrogation following invocation of Miranda rights); *Cty. of Riverside v. McLaughlin*, 500 U.S. 44, 55-56 (1991) (48 hours for probable cause hearing).

Even if a bond hearing is not required after six months in every case, at a minimum, due process requires a bond hearing after detention has become unreasonably prolonged. *See Diop*, 656 F.3d at 234. Courts that apply a reasonableness test have considered three main factors in determining whether detention is reasonable. First, courts have evaluated whether the noncitizen has raised a "good faith" challenge to removal—that is, the challenge is "legitimately raised" and presents "real issues." *Chavez-Alvarez v. Warden York Cty. Prison*, 783 F.3d 469, 476 (3d Cir. 2015). Second, reasonableness is a "function of the length of the detention," with detention presumptively unreasonable if it lasts six months to a year. *Id.* at 477-78; *accord Sopo*, 825 F.3d at 1217-18. Third, courts have considered the likelihood that detention will continue pending future proceedings. *Chavez-Alvarez*, 783 F.3d at 478 (finding detention unreasonable after nine months of detention, when the parties could "have reasonably predicted that Chavez–Alvarez's appeal would take a substantial amount of time, making his already lengthy detention considerably longer"); *Sopo*, 825 F.3d at 128; *Reid*, 819 F.3d at 500.

In the present case, Petitioner's detention has become unreasonably prolonged. First, Petitioner has raised a good faith challenge to his removal. Petitioner is pursuing a petition for review before the Ninth Circuit Court of Appeals. Second, Petitioner has been in custody since April 27, 2023 – for approximately 24

months. The length of his detention thus far is already presumptively unreasonable. Third, Petitioner has already been fighting his removal case for nearly two years (the entire time he has been detained). *See* Exh. A. Although he has been ordered removed, he continues to fight his case on appeal. *See* Exhs. D-E. Therefore, it is highly likely that his detention will continue into the future. It is true that Petitioner was recently afforded a bond hearing in May 2025 after 24 months of detention. At such bond hearing, the Immigration Judge did not hold the Department of Homeland Security to their burden of proof. Petitioner maintains that he is being subjected to prolonged detention and merits release or a subsequent bond hearing.

In their motion to dismiss, Respondents contend that Petitioner's proceedings were extended because of his own strategy to extend his proceedings. Petitioner continued his proceedings not as a strategy to prolong his case as long as possible, but to allow time for the adjudication of his Form I-130 and to gather evidence and supporting documents in preparation for his individual calendar hearing. Moreover, "aliens should [not] be punished for pursuing avenues of relief and appeals." *Sopo*, 825 F.3d at 1218 (citing *Ly*, 351 F.3d at 272). Courts should not count a continuance against the noncitizen when he obtained it in good faith to prepare his removal case. *Id.*; *see also Chavez–Alvarez*, 783 F.3d at 476; *Ly*, 351 F.3d at 272

Petitioner maintains that he has been subjected to prolonged detention. Due process requires that Petitioner be immediately released because Respondents have

detained him for significantly longer that what the Court has found to be constitutionally permissible without a bond hearing. In the alternative, due process requires that Petitioner be afforded a bond hearing before an Immigration Judge in which the government bears the burden of proving that Petitioner's continued detention is justified. *See Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011).

III. CONCLUSION

For the foregoing reasons, Petitioner opposes Respondents' Motion to Dismiss. Petitioner requests that his petition for habeas corpus be granted.

RESPECTFULLY SUBMITTED this 15th day of May, 2025

/s/ Mackenzie Mackins
Mackenzie Mackins, CA Bar # 266528
Mackins & Mackins, PC
14144 Ventura Blvd., Suite 305
Sherman Oaks, CA 91423
(O) (818) 461-9462
(E) mwm@mackinslaw.com

ATTORNEY FOR PETITIONER