

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
COLUMBUS DIVISION

NORMAN DOUGLAS,	:	
	:	
Petitioner,	:	
	:	Case No. 4:25-CV-62-CDL-AGH
v.	:	28 U.S.C. § 2241
	:	
WARDEN, STEWART DETENTION	:	
CENTER, <sup>1</sup>	:	
	:	
Respondent.	:	

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**MOTION TO DISMISS**

On February 19, 2025, Petitioner filed a petition for a writ of habeas corpus (“Petition”). ECF No. 1. On February 21, 2025, the Court ordered him to recast. ECF No. 3. On March 18, 2025, Petitioner filed his First Recast Petition. ECF No. 4. On March 20, 2025, the Court ordered Respondent to file a response to the First Recast Petition. ECF No. 5. On March 21, 2025, however, Petitioner filed his Second Recast Petition. ECF No. 6. Petitioner claims his continued detention violates due process because he has been denied a custody review and requests an order for his release from custody. 1st Recast Pet. 2, ECF No. 4; 2d Recast Pet. 5-6, ECF No. 6. As explained below, the First and Second Recast Petitions should be dismissed.

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<sup>1</sup> In addition to Warden of Stewart Detention Center, Petitioner also names current and former officials with the Department of Justice, Department of Homeland Security, and Immigration and Customs Enforcement as respondents. “[T]he default rule [for claims under 28 U.S.C. § 2241] is that the proper respondent is the warden of the facility where the prisoner is being held, not the Attorney General or some other remote supervisory official.” *Rumsfeld v. Padilla*, 542 U.S. 426, 434-35 (2004) (citations omitted). Thus, Respondent has substituted the Warden of Stewart Detention Center as the sole appropriately named respondent in this action.

## BACKGROUND

Petitioner is a native and citizen of Jamaica who has been mandatorily detained pre-final order of removal pursuant to 8 U.S.C. § 1226(c) since December 17, 2024. *See* Hayes Decl. ¶¶ 3-4 & Ex. A. On or about October 8, 1991, Petitioner was admitted into the United States in Baltimore, Maryland as a lawful permanent resident. *Id.* ¶ 5 & Ex. B. On or about October 22, 1996, Petitioner was charged with, *inter alia*, possession of paraphernalia in Montgomery County, Maryland. *Id.* ¶ 6 & Ex. C. He was sentenced to probation before judgment, and the remaining charge was dismissed. *Id.* ¶ 6 & Ex. C. On March 2, 1998, Petitioner was convicted of second-degree assault in Prince George's County Maryland and sentenced to 3 years probation. *Id.* ¶ 7 & Ex. D.

On September 1, 1999, Immigration and Customs Enforcement (“ICE”), Enforcement and Removal Operations (“ERO”) served Petitioner with his first Notice to Appear (“NTA”) charging him with removability pursuant to 8 U.S.C. § 1227(a)(2)(C). *Id.* ¶ 8 & Ex. E. On October 14, 1999, an immigration judge (“IJ”) granted Petitioner voluntary departure. Hayes Decl. ¶ 9 & Ex. F. The IJ granted Petitioner's motion to reopen removal proceedings on July 21, 2000, and the IJ terminated the removal proceedings on September 19, 2000. *Id.* ¶ 10 & Exs. G, H.

On July 1, 2000, Petitioner was convicted of possession of marijuana in Prince George's County, Maryland and was sentenced to 30 days imprisonment. *Id.* ¶ 11 & Ex. I. On March 3, 2004, Petitioner was convicted of forgery of public records in Hanover County, Virginia and was sentenced to 2 years imprisonment. *Id.* ¶ 12 & Ex. J. On June 1, 2005, Petitioner was convicted of possession with intent to distribute cocaine in Washington, D.C., and was sentenced to 30 months imprisonment and 5 years supervised release. *Id.* ¶ 13 & Ex. K.

On July 2, 2007, Petitioner entered ICE/ERO custody for the first time. *Id.* ¶ 14. On the same day, ICE/ERO served him with his second NTA charging him with removability pursuant to: (1) 8 U.S.C. § 1227(a)(2)(A)(iii) based on his conviction of an aggravated felony; and (2) 8 U.S.C. § 1227(a)(2)(B)(i) based on his conviction of a controlled substance offense. Hayes Decl. ¶ 14 & Ex. L. On July 25, 2007, Petitioner exited ICE/ERO custody and was extradited to Nash County, North Carolina for criminal prosecution on a charge of first-degree murder. *Id.* ¶ 15 & Ex. M. On July 31, 2009, Petitioner was convicted of voluntary manslaughter in Nash County, North Carolina and was sentenced to a minimum of 103 months imprisonment and a maximum of 133 months imprisonment. *Id.* ¶ 16 & Ex. N.

On December 17, 2024, Petitioner re-entered ICE/ERO custody. *Id.* ¶ 18. On the same day, ICE/ERO served him with his third NTA charging him with removability pursuant to: (1) 8 U.S.C. §§ 1227(a)(2)(A)(iii) and 1101(a)(43)(F) based on his conviction of an aggravated felony for a crime of violence; (2) 8 U.S.C. §§ 1227(a)(2)(A)(iii) and 1101(a)(43)(R) based on his conviction of an aggravated felony for an offense relating to bribery, counterfeiting, or forgery; (3) 8 U.S.C. § 1227(a)(2)(A)(ii) based on his conviction of two or more crimes involving moral turpitude; and (4) 8 U.S.C. § 1227(a)(2)(B)(i) based on his conviction of a controlled substance offense. *Id.* ¶ 17 & Ex. O. On December 18, 2024, ICE/ERO transferred Petitioner to Stewart Detention Center. *Id.* ¶ 18. On February 14, 2024, the Department of Homeland Security (“DHS”) filed a Form I-261 Additional Charges of Inadmissibility/Deportability with the immigration judge (“IJ”) removing the fourth charge of removability based on the conviction of a controlled substance offense. Hayes Decl. ¶ 19 & Ex. P.

On February 27, 2025, Petitioner appeared before the IJ for his initial master hearing and requested a continuance to find counsel. *Id.* ¶ 20 & Ex. Q. The IJ granted Petitioner’s request and

continued the hearing to April 3, 2025. *Id.* ¶ 20 & Ex. R. On April 3, 2025, Petitioner appeared before the IJ and again requested a continuance to retain counsel. *Id.* ¶ 21. The IJ again granted Petitioner's request and continued the hearing to May 27, 2025. *Id.* ¶ 21 & Ex. S. Petitioner requested a bond re-determination, and the IJ set a bond hearing for April 8, 2025. *Id.* ¶ 22 & Ex. T. Petitioner appeared for the bond hearing on that date and requested a continuance to find an attorney. Hayes Decl. ¶ 22. The IJ granted Petitioner's request and issued an order taking no action on Petitioner's bond request. *Id.* ¶ 22 & Ex. U.

To the extent Petitioner is ordered removed to Jamaica, there is a significant likelihood of removal in the reasonably foreseeable future. *Id.* ¶ 23. Jamaica is accepting citizens and nationals of Jamaica for removals and is issuing travel documents to facilitate removals. *Id.* ICE/ERO regularly removes non-citizens to Jamaica and schedules regular charter flights to Jamaica for removals. *Id.*

### LEGAL FRAMEWORK

Petitioner is mandatorily detained pre-final order of removal pursuant to 8 U.S.C. § 1226(c). Under 8 U.S.C. § 1226(a), ICE/ERO may arrest and detain an inadmissible non-citizen "pending a decision on whether the [non-citizen] is to be removed from the United States." Whereas pre-final order of removal detention is generally discretionary, in 8 U.S.C. § 1226(c)(1), Congress mandated the detention of non-citizens who have committed certain criminal or terrorist offenses until removal proceedings are completed. The statute states unambiguously that the "Attorney General *shall* take into custody any alien" who is inadmissible or removable for having committed an offense in one of four listed categories. 8 U.S.C. § 1226(c)(1) (emphasis added).

The statute does not provide for bond or parole for non-citizens detained under § 1226(c). Rather, they may be released only if (1) release is necessary for witness protection purposes, and

(2) ICE/ERO determines that the non-citizen “will not pose a danger to the safety of other persons or of property and is likely to appear for any scheduled proceeding.” 8 U.S.C. § 1226(c)(2). The Supreme Court has recognized that § 1226(c) mandates detention apart from the narrow exception described in § 1226(c)(2). *Jennings v. Rodriguez*, 583 U.S. 281, 303 (2018) (“§ 1226(c) makes clear that detention of aliens within its scope must continue pending a decision on whether the alien is to be removed from the United States.” (internal quotations and citation omitted)).

### ARGUMENT

In both the First and Second Recast Petitions, Petitioner claims his continued detention violates his due process rights because he has been denied the opportunity to demonstrate why he should not be detained.<sup>2</sup> 1st Recast Pet. 2; 2d Recast Pet. 5. Because Petitioner is detained pre-final order of removal, Respondent liberally construes Petitioner’s claims as challenging his mandatory detention without a bond hearing.

The Petition should be dismissed for three reasons. *First*, under *Demore v. Kim*, 538 U.S. 510 (2003), Petitioner’s detention complies with due process because his removal proceedings remain ongoing, and this is the only test applicable to his claim. *Second*, even if the Court applies the Eleventh Circuit’s vacated multi-factor reasonableness test set forth in *Sopo v. U.S. Attorney General*, 825 F.3d 1199 (11th Cir. 2016), *vacated sub nom.*, 890 F.3d 952 (11th Cir. 2018),

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<sup>2</sup> Petitioner asserts that he should be afforded the opportunity to show why there is no significant likelihood of removal in the reasonably foreseeable future. 1st Recast Pet. 2; 2d Recast Pet. 5. But this standard applies only when a non-citizen is detained post-final order of removal. *See Zadvydas v. Davis*, 533 U.S. 678, 701 (2001); 8 C.F.R. § 241.3. To the extent Petitioner attempts to raise a claim under *Zadvydas*, that claim should be denied as premature because his removal proceedings are ongoing. Respondent has liberally construed Petitioner’s assertions as raising a due process challenge to his mandatory pre-final order of removal detention based on the lack of a bond hearing. To the extent the Court construes Petitioner’s filings as raising a different claim for relief, Respondent respectfully requests the opportunity to amend the Response.

Petitioner cannot show that he is entitled to relief. *Third*, even if Petitioner establishes a procedural due process violation, he is not entitled to release from custody.

**I. Mandatory pre-final order of removal detention under section 1226(c) does not violate procedural due process.**

Petitioner appears to claim that his continued pre-final order of removal detention violates his procedural due process rights and that he is entitled to release. 1st Recast Pet. 2; 2d Recast Pet. 5. Mandatory detention under 8 U.S.C. § 1226(c) does not violate his procedural due process rights. Therefore, he is not entitled to release or a bond hearing, and the Petition should be denied.

“For reasons long recognized as valid, the responsibility for regulating the relationship between the United States and our alien visitors has been committed to the political branches of the Federal Government.” *Mathews v. Diaz*, 426 U.S. 67, 81 (1976). “[A]ny policy toward aliens is vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations, the war power, and the maintenance of a republican form of government.” *Harisiades v. Shaughnessy*, 342 U.S. 580, 589 (1952). Indeed, “over no conceivable subject is the legislative power of Congress more complete[.]” *Fiallo v. Bell*, 430 U.S. 787, 792 (1977) (internal quotations and citation omitted). For these reasons, the Supreme Court has “long recognized the power to expel or exclude aliens as a fundamental sovereign attribute exercised by the Government’s political departments largely immune from judicial control.” *Id.* (collecting cases).

“[T]he Fifth Amendment entitles non-citizens to due process of law in [removal] proceedings.” *Reno v. Flores*, 507 U.S. 292, 306 (1993) (citation omitted). “But when the Government deals with deportable aliens, the Due Process Clause does not require it to employ the least burdensome means to accomplish its goal.” *Demore v. Kim*, 538 U.S. 510, 528 (2003). For over a century, the Supreme Court has held that pre-final order of removal detention complies with due process even in the absence of a bond hearing. *Id.* at 511 (“[D]etention during [removal]

proceedings is a constitutionally valid aspect of the process.”); *Flores*, 507 U.S. at 306 (“Congress has the authority to detain aliens suspected of entering the country illegally pending their deportation hearings.”); *Carlson v. Landon*, 342 U.S. 524, 538 (1952) (“Detention is necessarily a part of this deportation procedure.”); *Wong Wing v. United States*, 163 U.S. 228, 235 (1896) (“We think it clear that detention, or temporary confinement, as part of the means necessary to give effect to the provisions for the exclusion or expulsion of aliens would be valid.”).

In *Demore*, the Supreme Court affirmed the constitutionality of § 1226(c)’s mandatory detention provisions. 538 U.S. at 523. The Court discussed the legislative history of the statute, noting that Congress enacted § 1226(c) in light of the “near-total inability to remove deportable criminal aliens” and reports showing a recidivism rate for criminal aliens approaching 80 percent. *Id.* at 518. “Congress also had before it evidence that one of the major causes of the . . . failure to remove deportable criminal aliens was the agency’s failure to detain those aliens during their deportation proceedings.” *Id.* at 519 (citations omitted). In particular, Congress considered multiple reports showing that “deportable criminal aliens failed to appear for their removal hearings.” *Id.* (citations omitted). Thus, in mandating detention under section 1226(c), Congress was “justifiably concerned that deportable criminal aliens who are not detained continue to engage in crime and fail to appear for their removal hearings in large numbers.” *Id.* at 513.

The Supreme Court upheld the facial constitutionality of detaining criminal noncitizens “for the brief period necessary for their removal proceedings,” *id.*, emphasizing that such detention “*pending their removal proceedings* . . . necessarily serves the purpose of preventing [such] aliens from fleeing prior to or during their removal proceedings,” *Demore*, 538 U.S. at 527-28 (emphasis in original). In reaching this conclusion, the Court began by noting that it “has firmly and

repeatedly endorsed the proposition that Congress may make rules as to aliens that would be unacceptable if applied to citizens.” *Id.* at 521 (citations omitted).

The Court then distinguished the case in two key respects from its earlier decision in *Zadvydas v. Davis*, 533 U.S. 678 (2001), where the Court applied the canon of constitutional avoidance to read into the post-order detention statute an implicit temporal limitation. *Id.* at 527. First, the Court emphasized that for the non-citizens challenging their detention in *Zadvydas*, removal was “no longer practically attainable” and therefore detention “did not serve its purported immigration purpose.” *Id.* (citing *Zadvydas*, 533 U.S. at 690) (internal quotations omitted). Conversely, “*pending their removal proceedings . . . necessarily serves the purpose of preventing [such] aliens from fleeing prior to or during their removal proceedings.*” *Id.* at 527-28 (emphasis in original). Second, the Court emphasized that the post-final order of removal detention in *Zadvydas* was “indefinite” and “potentially permanent” while pre-final order of removal detention is for “the limited period necessary for [non-citizens’] removal proceedings.” *Id.* at 527-28. For this reason, detention under section 1226(c) has “a definite termination point”—the conclusion of removal proceedings. *Demore*, 538 U.S. at 528-29.

Thus, the considerations that justified the imposition of a temporal limit on post-final order of removal immigration detention in *Zadvydas* were “materially different” than the considerations for the mandatory pre-final order of removal detention in *Demore*, and the Court declined to impose additional, constitutional limits on the operation of section 1226(c). *Id.* at 527. Rather, the Court concluded by reiterating its century-old rule that “[d]etention during removal proceedings is a constitutionally permissible part of that process.” *Id.* at 531 (citing *Wong Wing*, 163 U.S. at 235; *Carlson*, 342 U.S. at 538; *Flores*, 507 U.S. at 306).

After *Demore*, the Eleventh Circuit decided *Sopo v. U.S. Attorney General (Sopo I)*, 825 F.3d 1199 (11th Cir. 2016), which applied the canon of constitutional avoidance and read into § 1226(c) an implicit temporal limitation on mandatory detention to avoid perceived procedural due process issues. 825 F.3d at 1212-13. Specifically, the Eleventh Circuit created a multi-factor test to determine whether continued detention under § 1226(c) was reasonable. *Id.* at 1217-19. If application of the factors demonstrated that the detention was unreasonable, the Court held that the non-citizen would be entitled to a bond hearing using the procedures described in 8 U.S.C. § 1226(a). *Id.* at 1220.

However, the Supreme Court then decided *Jennings v. Rodriguez*, 583 U.S. --, 138 S. Ct. 830 (2018), which reversed the Ninth Circuit's analogous application of the canon of constitutional avoidance to section 1226(c). The Supreme Court stated that "§ 1226(c) 'makes clear that detention of aliens within its scope must continue pending a decision on whether the alien is to be removed from the United States' and 'expressly prohibits release from that detention except for narrow, witness-protection purposes.'" *Jennings*, 138 S. Ct. at 846; *see also id.* (recognizing that section 1226(c) detainees "are not entitled to be released under any circumstances other than those expressly recognized by the statute."); *id.* at 847 ("[T]he statute expressly and unequivocally imposes an affirmative prohibition on releasing detained aliens under any other conditions."). The Court found that the statute contained no limitation on the length of § 1226(c) detention, describing the Ninth Circuit's attempt to interpret any such limitation under the canon of constitutional avoidance as "textual alchemy." *Id.* at 846. Rather, the "definite termination point" of § 1226(c) detention is "the conclusion of removal proceedings." *Id.*

Following *Jennings*, the Eleventh Circuit vacated its opinion in *Sopo*. *Sopo v. U.S. Attorney Gen. (Sopo II)*, 890 F.3d 952, 953-54 (11th Cir. 2018). Its conclusion as to the application of the

canon of constitutional avoidance and use of the multi-factor test to impose a temporal limit on § 1226(c) detention is no longer good law, and the case has no utility in resolving Petitioner's claim here. Moreover, *Sopo* did not define the constitutional limits of pre-final order of removal detention in the first instance. The Court created its multi-factor test based on its statutory interpretation of section 1226(c)—namely, its finding that the statute contained implicit temporal limitations. *Sopo I*, 825 F.3d at 1212-1219. The Supreme Court reversed the Ninth Circuit's similar interpretation of section 1226(c). *Jennings*, 138 S. Ct. at 846-47.

Despite the Eleventh Circuit's vacatur of *Sopo*, this Court has looked to *Sopo* as a persuasive authority and continued to apply the multi-factor test when analyzing as-applied due process challenges to the length of section 1226(c) detention. *See S.C. v. Warden, Stewart Det. Ctr.*, No. 4:23-cv-64, 2024 WL 796541, at \*2-5 (M.D. Ga. Jan. 5, 2024), *recommendation adopted*, 2024 WL 790377 (M.D. Ga. Feb. 26, 2024). In particular, the Court has focused on Justice Kennedy's concurring opinion in *Demore*, wherein he notes that “[w]ere there to be an unreasonable delay by [DHS] in pursuing and completing deportation proceedings, it could become necessary then to inquire whether the detention is not to facilitate deportation, or to protect against risk of flight or dangerousness, but to incarcerate for other reasons.” 538 U.S. at 532-33; *see S.C.*, 2024 WL 796541, at \*5.

As an initial matter, Justice Kennedy concluded this same opinion by noting that inquiry into the purpose of detention “*is not a proper inference, however, either from the statutory scheme itself or from the circumstances of this case.*” *Id.* (emphasis added). In other words, neither the section 1226(c) “statutory scheme” itself nor the length of the non-citizen's detention warranted analysis of whether the continued detention was “unreasonable or unjustified.” Justice Kennedy recognized that “[t]he Court's careful opinion [was] consistent with [his] premises, and [he]

join[ed] it in full.” *Id.* at 533. That opinion concluded that the mandatory detention of a non-citizen without a bond hearing until the conclusion of removal proceedings complied with due process. *Id.* at 530-31. Because Justice Kennedy joined the majority opinion in full, his concurrence cannot be read as limiting or qualifying the Court’s rationale. *See Marks v. United States*, 430 U.S. 188, 193 (1977) (articulating rule that applies when no rationale obtains “the assent of five Justices”).

Moreover, even assuming Justice Kennedy’s comment warrants consideration in the context of an as-applied challenge to the length of section 1226(c) detention, the inquiry would look only to the purpose of the detention—not the multiple unrelated factors employed by *Sopo*.<sup>3</sup> *See Demore*, 538 U.S. at 532-33. In fact, the *Sopo* factors are largely inconsistent with the Supreme Court’s analysis in *Demore*. For instance, the third *Sopo* factor is “whether it will be possible to remove the criminal alien after there is a final order of removal[.]” 825 F.3d at 1218. In essence, this factor considers whether a non-citizen would be able to establish a *Zadvydas* claim once removal proceedings are complete. But in *Demore*, the Court recognized that section 1226(c) detention is “materially different” from section 1231(a) detention at issue in *Zadvydas* and rejected a *Zadvydas*-type analysis focused on the length of detention. 538 U.S. at 527-29. The fourth *Sopo* factor is “whether the alien’s civil immigration detention exceeds the time the alien spent in prison for the crime that rendered him removable,” and the fifth is “whether the facility for the civil immigration detention is meaningfully different from a penal institution for criminal detention.”

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<sup>3</sup> Indeed, in *S.C.*, the Court appears to have recognized as much, stating that a section 1226(c) detainee must establish “that his prolonged detention without a bond hearing was not done in order to reasonably facilitate deportation” in order to succeed on a procedural due process challenge. *S.C. v. Warden, Stewart Det. Ctr.*, No. 4:23-cv-64-CDL-MSH, Order 3 (M.D. Ga. Dec. 15, 2023), ECF No. 26. At most, this standard could warrant analysis of the second *Sopo* factor: the reason removal proceedings have become protracted. 825 F.3d at 1218. But Respondent respectfully contends that by necessity, detention under section 1226(c) “reasonably facilitate[s] deportation” by ensuring that a detainee is present for removal proceedings. *See Demore*, 538 U.S. at 518-19 (noting that Congress mandated detention under section 1226(c) to ensure that non-citizens were present for removal proceedings). As such, *Demore* remains the sole precedent applicable to an as-applied procedural due process challenge to section 1226(c) detention.

825 F.3d at 1218. Neither factor finds any support in *Demore*, including in Justice Kennedy's concurring opinion.

This reading of *Demore* is far from novel. Rather, this Court has adopted it before. Prior to *Sopo*, the Court relied on *Demore* in repeatedly holding that section 1226(c) detainees "failed to state a cognizable claim for habeas corpus relief" arising from their purportedly prolonged detention. *Gittens v. Holder*, No. 4:12-cv-173-CDL, 2013 WL 3965462, at \*2 (M.D. Ga. Aug. 1, 2013); *Isaacs v. Dep't of Homeland Sec.*, No. 7:12-cv-33-HL-MSH, 2012 WL 6026506, at \*2 (M.D. Ga. Oct. 31, 2012), *recommendation adopted*, 2012 WL 6027080 (M.D. Ga. Dec. 4, 2012); *Berry v. United States*, No. 4:12-cv-25-CDL-MSH, 2012 WL 5879789, at \*2 (M.D. Ga. Oct. 23, 2012), *recommendation adopted*, 2012 WL 5879787 (M.D. Ga. Nov. 21, 2012). And after *Sopo* was vacated, the Court returned to its interpretation of *Demore* as "upholding the validity of mandatory detention of [non-citizens] during removal proceedings under [section] 1226(c)[.]" *Dixit v. Warden, Irwin Cnty. Det. Ctr.*, No. 7:18-cv-157-HL-MSH, 2019 WL 1387697, at \*3 (M.D. Ga. Mar. 27, 2019), *recommendation adopted in relevant part*, 2019 WL 12267340 (M.D. Ga. Sept. 17, 2019).

Three Courts of Appeals have similarly held that *Demore* establishes that mandatory detention complies with due process until the conclusion of the non-citizen's removal proceedings conclude. *Banyee v. Garland*, 115 F.4th 928, 931-34 (8th Cir. 2024); *Wekeska v. U.S. Att'y*, No. 22-10260, 2022 WL 17175818, at \*1 (5th Cir. Nov. 22, 2022); *Parra v. Perryman*, 172 F.3d 954, 958 (7th Cir. 1999). And multiple district courts have done the same. *Keo v. Warden, Mesa Verde ICE Processing Ctr.*, No. 1:24-cv-919, 2025 WL 1029392 (E.D. Cal. Apr. 27, 2025); *A.R.L. v. Garland*, No. 6:23-cv-00852, 2023 WL 9316859 (W.D. La. Dec. 20, 2023), *recommendation adopted*, 2024 WL 203971 (W.D. La. Jan. 18, 2024); *Meme v. Immigr. & Customs Enf't*, No. EP-

23-CV-00233, 2023 WL 6319298 (W.D. Tex. Sept. 27, 2023). This Court should similarly return to its prior reliance on *Demore*.

Here, Petitioner does not dispute that he is detained pursuant to § 1226(c) based on his criminal history. His detention continues to “serve its purported immigration purpose”—ensuring his appearance at his removal proceedings and protecting the community from non-citizens who have committed crimes which Congress concluded warranted mandatory detention. *Demore*, 538 U.S. at 518-19, 527. The risks that a non-citizen will commit further crimes or fail to appear for removal proceedings if released do not dissipate after any arbitrary amount of time passes. Further, unlike the non-citizens in *Zadvydas*, Petitioner’s detention is not potentially indefinite. It will plainly terminate once his removal proceedings conclude. For these reasons, *Demore* compels a finding that Petitioner’s mandatory detention under § 1226(c) is constitutional.

**II. Even if the Court applies *Sopo*, Petitioner fails to show he is entitled to relief.**

Even assuming the Court continues to apply the *Sopo* factors—which it should not—Petitioner fails to establish that he is entitled to relief. The five *Sopo* factors are: (1) the amount of time a criminal noncitizen has been detained without a bond hearing, (2) the reason why the removal proceedings have become protracted, (3) whether the noncitizen will likely be removed after the removal order becomes final, (4) the ratio between the criminal detention and the civil detention, and (5) whether the civil detention facility is “meaningfully different” from a criminal penal institution. 825 F.3d at 1217-19.

As to the fifth factor, the Eleventh Circuit has held that Stewart Detention Center is not meaningfully different from a prison. *See id.* at 1221 (referring to Stewart Detention Center as a “prisonlike” facility). The remaining four factors heavily favor Respondent.

**A. First Factor: Length of Detention Without a Bond Hearing**

The first *Sopo* factor focuses on “the amount of time that the criminal alien has been in detention without a bond hearing.” *Id.* at 1217 (emphasis added). “[T]here is little chance that a criminal alien’s detention is unreasonable until at least the six-month mark.” *Id.* “[D]etention without a bond hearing may often become unreasonable by the one-year mark, depending on the facts of the case.” *Id.*

Here, Petitioner entered ICE/ERO custody on December 17, 2024. Hayes Decl. ¶ 18. The Court received his original Petition on February 19, 2025 (ECF No. 1), his First Recast Petition on March 18, 2025 (ECF No. 4), and his Second Recast Petition on March 21, 2025 (ECF No. 6). Even using the lattermost date, Petitioner had been detained under section 1226(c) for a mere three months—less than half the minimal period identified in *Sopo*. 825 F.3d at 1217. Accordingly, as the Eleventh Circuit recognized, “there is little chance that” Petitioner can establish a due process violation based on the length of his detention. This factor heavily favors Respondent.

**B. Second Factor: Reason Removal Proceedings Have Become Protracted**

The second factor “consider[s] whether the government or the criminal alien have failed to participate actively in the removal proceedings or sought continuances and filing extensions that delayed the case’s progress.” *Sopo*, 825 F.3d at 1218 (citations omitted). The Court may assess whether the non-citizen either (1) “sought repeated or unnecessary continuances, or (2) “filed frivolous claims and appeals.” *Id.*

This Court has held that in evaluating the second *Sopo* factor, it must analyze “whether the detention has served to reasonably facilitate deportation as opposed to some other purpose, such as, for example, to punish a criminal alien who has already completed his sentence or to discourage detainees from challenging their removal.” *S.C.*, 2024 WL 796541, at \*5. According to the Court,

this is because the “underlying purpose of detention [during removal proceedings] is to reasonably facilitate deportation.” *Id.* at \*6. Accordingly, the Court evaluates the record to determine if there were “lengthy periods of detention without any apparent effort by the Government—including immigration courts—to move proceedings along[.]” *Id.* at \*5.

In *Sopo* itself, the Eleventh Circuit specifically warned that “a criminal alien could deliberately cause months of delays in the removal proceedings to obtain a bond hearing[.]” 825 F.3d at 1216; *see also id.* (“[T]he conduct of the criminal alien can equally affect the duration of that alien’s removal proceedings . . . . Some ask for multiple continuances . . . .”); *id.* at 1218 (“Courts should consider whether the . . . the criminal alien [has] failed to participate actively in the removal proceedings or sought continuances and filing extensions that delayed the case’s progress.”); *id.* (“Evidence that the alien . . . sought to deliberately slow the proceedings in hopes of obtaining release cuts against the alien.”).

Here, in the first instance, this factor favors Respondent because Petitioner’s removal proceedings have not become protracted in the first instance. His next hearing before the IJ is currently set for May 27, 2025—just over five months after he entered custody. Again, this is less than the six-month threshold the Eleventh Circuit identified in *Sopo*. 825 F.3d at 1217.

But this factor also favors Respondent because Petitioner is entirely responsible for any minimal prolongation of his removal proceedings. Petitioner appeared for his first hearing before the IJ on February 27, 2025. Hayes Decl. ¶ 20 & Ex. Q. At that hearing, Petitioner requested a continuance to try to obtain counsel. *Id.* ¶ 20. The IJ granted this request and reset the hearing to April 3, 2025. *Id.* ¶ 20 & Ex. R. But at that hearing, Petitioner again requested a continuance to retain counsel, and the IJ again continued proceedings to May 27, 2025. *Id.* ¶ 21 & Ex. S. But for Petitioner’s continuances, the IJ could have addressed the charges of removability and any

potential relief from removal. This three-month delay from February 27 to May 27, 2025 is entirely attributable to Petitioner, and this factor favors Respondent.

**C. Third Factor: Likelihood of Removal**

As to the third *Sopo* factor, Petitioner will likely be removed to Jamaica once his removal order becomes final. *See* 825 F.3d at 1218. Jamaica accepts its citizens and nationals for removal and is currently issuing travel documents to ICE/ERO to facilitate removals. Hayes Decl. ¶ 23. ICE/ERO also schedules regular charter flights to remove non-citizen to Jamaica. *Id.* Accordingly, Petitioner will likely be removed once his removal order becomes final, and this factor, therefore, favors Respondent.

**D. Fourth Factor: Ratio Between Criminal and Civil Detention**

As to the fourth factor, the ratio between Petitioner's criminal detention and civil detention heavily weighs in Respondent's favor. *Sopo*, 825 F.3d at 1218. The charges of removability in Petitioner's I-261 arise from two of his criminal convictions: (1) his March 3, 2004 conviction for forgery for which he was sentenced to 2 years (or 24 months) imprisonment, and (2) his July 31, 2009 conviction for voluntary manslaughter for which he was sentenced to a range of 103 and 133 months imprisonment. Hayes Decl. ¶¶ 12, 16, 19 & Exs. J, N, P. In total, Petitioner was criminally detained for at least 127 months as a result of these convictions. By contrast, he has been civilly detained in immigration custody for less than four months—just 3 percent of this total. *See id.* ¶ 18. This factor also heavily favors Respondent.

In sum, four of the five *Sopo* factors weigh in Respondent's favor. And importantly, Petitioner has been detained pursuant to section 1226(c) for less than four months. He cannot establish that he is entitled to relief. *See Sopo*, 825 F.3d at 1217.

**III. Even assuming the Court finds that Petitioner’s detention violates due process, he is not entitled to release from custody as a remedy.**

Petitioner claims he is entitled to release from custody to remedy his allegedly prolonged detention. 1st Recast Pet. 2; 2d Recast Pet. 6. Even under *Sopo*, however, a bond hearing under section 1226(a) is the only available remedy for a due process violation arising from prolonged section 1226(c) detention. *See J.N.C.G. v. Warden, Stewart Det. Ctr.*, 2020 WL 5046870, at \*7 n.5 (M.D. Ga. Aug. 26, 2020) (citing *Maldonado v. Macias*, 150 F. Supp. 3d 788, 811-12 (W.D. Tex. 2015) (“The consensus is that ordering a bond hearing is the appropriate remedy when the length of detention has become unreasonable.” (collecting cases))). As the Eleventh Circuit explained, if a section 1226(c) detainee establishes a due process violation arising from the length of his mandatory detention, “[t]he government is not required to free automatically a criminal alien[.]” *Sopo*, 825 F.3d at 1218. Thus, even assuming Petitioner establishes a due process violation—which he has not—he is not entitled to release from custody as a remedy.

**CONCLUSION**

For the reasons stated herein, Respondent respectfully requests that the Court dismiss the Petition.

Respectfully submitted, this 10th day of April, 2025.

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**CERTIFICATE OF SERVICE**

This is to certify that I have this date filed the Respondent's Motion to Dismiss with the Clerk of the United States District Court using the CM/ECF system, which will send notification of such filing to the following:

N/A

I further certify that I have this date mailed by United States Postal Service the document and a copy of the Notice of Electronic Filing to the following non-CM/ECF participants:

Norman Douglas  
A#   
Stewart Detention Center  
P.O. Box 248  
Lumpkin, GA 31815

This 10th day of April, 2025.

BY: s/ Roger C. Grantham, Jr.  
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