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

AFEEZ OLAIDE ADENIRAN,	:	
	:	
Petitioner,	:	
	:	**Case No. 4:25-CV-93-CDL-AGH**
v.	:	**28 U.S.C. § 2241**
	:	
WARDEN, STEWART DETENTION CENTER,	:	
	:	
	:	
Respondent.	:	

RESPONSE

On March 14, 2025, Petitioner filed a petition for a writ of habeas corpus ("Petition") asserting his mandatory pre-final order of removal detention pursuant to 8 U.S.C. § 1226(c) violates due process. Pet. ¶¶ 34-40, ECF No. 1. On March 17, 2025, the Court ordered Respondent to file a response. ECF No. 2. On March 20, 2025, the Court amended its Order for a response and directed the parties "to address the appropriate test that should be used to determine when the length and nature of the detention under 8 U.S.C. § 1226(c) rises to the level of a constitutional violation."[1] Am. Order 1, ECF No. 4. As explained below, the Petition should be denied.

BACKGROUND

Petitioner is a native and citizen of Nigeria who is mandatorily detained pre-final order of removal pursuant to 8 U.S.C. § 1226(c). Stephens Decl. ¶¶ 3, 32 & Ex. A. On September 1, 2017, Petitioner was admitted into the United States pursuant to a B2 visitor visa with authorization to remain in the United States until February 28, 2018. *Id.* ¶ 4 & Ex. A. On April 19, 2018, Petitioner

[1] The Court granted (ECF No. 6) Respondent's Motion for Leave to File Excess Pages (ECF No. 7). In that Motion, Respondent erroneously noted that the Response was due on Monday, April 7, 2025. Mot. for Leave to File 1, ECF No. 6. Per the Court's Amended Order, the response is due on Thursday, April 10, 2025—21 days from the date the Amended Order was issued. Am. Order 1, ECF No. 4.

was identified as the beneficiary of an I-130 Petition for Alien Relative filed with United States Citizenship and Immigration Services ("USCIS"). *Id.* ¶ 5 & Ex. B. On October 6, 2022, Petitioner was convicted of money laundering conspiracy in violation of 18 U.S.C. § 1956(h) in the U.S. District Court for the Northern District of Georgia. *Id.* ¶ 6 & Ex. C. He was sentenced to time served and three years supervised release and ordered to pay $352,830.52 in restitution. *Id.* ¶ 6 & Ex. C.

On December 13, 2022, Petitioner entered Immigration and Customs Enforcement ("ICE"), Enforcement and Removal Operations ("ERO") custody. *Id.* ¶ 7. On the same day, ICE/ERO issued and served Petitioner with a Form I-862 Notice to Appear ("NTA") charging him with removability pursuant to (1) 8 U.S.C. § 1227(a)(1)(B) based on his unlawful presence in the United States, (2) 8 U.S.C. § 1227(a)(2)(A)(iii) based on his conviction of an aggravated felony, and (3) 8 U.S.C. § 1227(a)(2)(A)(i) based on his conviction of a crime involving moral turpitude. Stephens Decl. ¶ 8 & Ex. D.

On January 4, 2023, Petitioner appeared before an immigration judge ("IJ"), was advised of his rights in removal proceedings, and requested a continuance to obtain counsel. *Id.* ¶ 9. The IJ continued the case to February 7, 2023, to allow Petitioner to obtain counsel. *Id.* ¶ 9 & Ex. E. On February 7, 2023, Petitioner appeared with counsel and admitted his charge of removability for unlawful presence. *Id.* ¶ 10. However, Petitioner denied the other two charges in the NTA, and the IJ continued the case to March 14, 2023 to permit briefing on the issues. *Id.* ¶ 10 & Ex. F.

On March 14, 2023, Petitioner appeared for a master hearing, and the IJ sustained the remaining two charges of removability lodged in the NTA. *Id.* ¶ 11. Petitioner requested a continuance to allow USCIS to adjudicate his pending I-130 and represented that he intended to pursue relief from removal through adjustment of status under 8 U.S.C. § 1255 and waiver of his

inadmissibility under 8 U.S.C. § 1182(h). Stephens Decl. ¶ 11. The IJ continued the case to April 19, 2023. *Id.* ¶ 11 & Ex. G. To date, Petitioner has not filed an application for either form of relief. *Id.* ¶ 11. At the April 19, 2023 master hearing, the IJ continued the hearing at Petitioner's request to allow for adjudication of his I-130, and the subsequent June 7, 2023 hearing was again continued to July 26, 2023 based on Petitioner's identical request. *Id.* ¶¶ 12-13 & Exs. H, I. But on July 26, 2023, Petitioner's counsel failed to appear for the master hearing, so the IJ continued the hearing to August 2, 2023 to ensure counsel's appearance. *Id.* ¶ 14 & Ex. J.

Thereafter, the IJ—all at Petitioner's request—continued the master hearing three times pending adjudication of Petitioner's I-130: from August 2 to September 20, 2023; from September 20 to November 8, 2023; and from November 8, 2023 to January 17, 2024. *Id.* ¶¶ 15-17 & Exs. K, L, M. On January 17, 2024, the IJ continued the case to March 5, 2024 due to a court closure. Stephens Decl. ¶ 18 & Ex. N. At Petitioner's request, the master hearing was again continued twice pending USCIS's adjudication of Petitioner's I-130—from March 5 to May 7, 2024, and from May 7 to July 10, 2024. *Id.* ¶¶ 19-20 & Exs. O, P. At the hearing on the latter date, the Department of Homeland Security ("DHS") objected to a continuance. *Id.* ¶ 20. Petitioner's counsel again failed to appear for the July 10, 2024 master hearing, and the IJ continued the hearing to July 17, 2024. *Id.* ¶ 21 & Ex. Q. At the July 17, 2024 master hearing, Petitioner requested another continuance to allow for adjudication of his I-130. *Id.* ¶ 22. DHS again objected to the continuance, but the IJ continued the case to September 17, 2024. *Id.* ¶ 22 & Ex. R.

On September 17, 2024, Petitioner appeared for a master hearing and requested administrative closure of his removal proceedings. Stephens Decl. ¶ 23. The IJ continued the hearing to October 23, 2024 to allow the parties to brief the issue. *Id.* ¶ 23 & Ex. S. Petitioner filed his written motion for administrative closure on September 24, 2024, and DHS filed its opposition

on October 15, 2024. *Id.* ¶ 24 & Exs. T, U. In its opposition, DHS argued that even if USCIS approved Petitioner's I-130, he would not be entitled to relief from removal because he was ineligible for adjustment of status or waiver of inadmissibility due to his conviction of an aggravated felony. Ex. U at 3-4.

On October 23, 2024, the IJ continued the master hearing to November 6, 2024 to issue a written order on Petitioner's motion. Stephens Decl. ¶ 25 & Ex. V. On October 25, 2024, the IJ issued a written order denying Petitioner's motion for administrative closure. *Id.* ¶ 26 & Ex. W. In relevant part, the IJ held that even assuming USCIS approved Petitioner's I-130 and Petitioner applied for adjustment of status and waiver of inadmissibility, he was ineligible for either form of relief due to this conviction of an aggravated felony. Ex. W at 3-4.

On November 6, 2024, Petitioner appeared for the master hearing and represented to the IJ that he intended to file a new application for relief from removal. Stephens Decl. ¶ 27. Accordingly, the IJ continued the master hearing to December 17, 2024 to allow Petitioner to submit his application for relief. *Id.* ¶ 27 & Ex. X. But when Petitioner appeared for the master hearing on December 17, 2024, his counsel moved to withdraw because Petitioner no longer desired his representation. *Id.* ¶ 28. The IJ granted the withdrawal and—at Petitioner's request—continued the hearing to January 29, 2025 to allow Petitioner to retain new counsel. *Id.* ¶ 28 & Exs. Y, Z.

On January 28, 2025, Petitioner's new counsel entered an appearance on his behalf. *Id.* ¶ 29 & Ex. AA. At the January 29, 2025 master hearing, Petitioner's new counsel requested a continuance to prepare, and the IJ granted a continuance to March 4, 2025. Stephens Decl. ¶ 30 & Ex. BB. At the March 4, 2025 master hearing, Petitioner's new counsel again requested a

continuance to prepare. *Id.* ¶ 31. DHS objected to the continuance, but the IJ granted Petitioner's request and continued the hearing to April 16, 2025. *Id.* ¶ 31 & Ex. CC.

In total, between March 14, 2023 and the present, Petitioner's removal proceedings have been continued 14 times due to due to either Petitioner or his counsel's requests or Petitioner's counsel's failure to appear. *Id.* ¶¶ 11-17, 19-22, 28, 30-31. DHS has requested no continuances of Petitioner's removal proceedings and has objected to at least 3 of Petitioner's requests for continuances. *Id.* ¶¶ 20, 22, 31. To date, Petitioner has filed no applications for relief from removal.

To the extent Petitioner becomes subject to a final order of removal, there is a significant likelihood of his removal in the reasonably foreseeable future. ICE/ERO maintains positive diplomatic and working relationships with Nigeria. *Id.* ¶ 32. Nigeria is currently issuing travel documents to facilitate removals, and ICE/ERO is currently removing non-citizens to Nigeria. Stephens Decl. ¶ 32. ICE/ERO is able to arrange removals to Nigeria through both commercial and charter flights. *Id.* Thus far in fiscal year 2025, ICE/ERO has conducted 44 removals to Nigeria. *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

Petitioner asserts that his mandatory detention violates due process because he has not received a bond hearing. Pet. ¶¶ 15-32, 34-40. Specifically, Petitioner argues he is entitled to a bond hearing or release from custody under the multi-factor 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). *Id.* ¶¶ 23-32. Petitioner also asserts—without enumerating a separate claim—that to the extent the Court orders a bond hearing, DHS must bear the burden of proof at the hearing. *Id.* ¶¶ 33, 40.

The Petition should be denied 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. This is the only test applicable to Petitioner's claim, and the Court should not look to *Sopo* or another multi-factor reasonableness tests. ***Second***, even if the Court applies a multi-factor test like *Sopo*, Petitioner is not entitled to relief. ***Third***, assuming the Court determines Petitioner is entitled to a bond hearing—which it should not—he is not entitled to a bond hearing using the procedures he specifies.

I. Petitioner fails to establish a due process violation because his removal proceedings remain ongoing.

The Supreme Court has longed recognized that Congress and the Executive have wide deference in crafting immigration policy. Detention during removal proceedings is an integral part of that process. For this reason, in *Demore*, the Supreme Court concluded that mandatory detention under 8 U.S.C. § 1226(c) poses no constitutional problem on its face. The Court's reasoning in reaching this conclusion also shows that the length of that detention does not change the outcome. This is because detention during removal proceedings is inherently limited and does not raise the due process concerns posed by potentially indefinite detention. Rather, so long as removal proceedings remain ongoing—as Petitioner's are here—mandatory detention under section 1226(c) complies with due process. This Court should reach this conclusion in reliance on longstanding precedent without resorting to a balancing test that departs from the very purpose of the statute.

A. Detention during removal proceedings is a constitutional part of that process.

The Supreme Court has recognized that the removal of non-citizens and the promulgation of policies and regulations concomitant thereto are among the plenary powers of Congress and the Executive. Non-citizens in removal proceedings are entitled to due process, but their rights are limited. As to detention specifically, the Supreme Court has repeatedly affirmed that detention during removal proceedings is a necessary and constitutionally valid part of that process.

"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). "[O]ver 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). Rather, "[i]n the exercise of its broad power over naturalization and immigration, Congress regularly makes rules that would be unacceptable if applied to citizens." *Id.* at 522 (citations omitted).

Based on these fundamental principles, 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.").

B. Mandatory detention without a bond hearing under section 1226(c) is facially constitutional.

In *Demore*, the Supreme Court made clear that mandatory detention without a bond hearing under section 1226(c) does not violate due process. But the Court's rationale in reaching this conclusion is important. Namely, the purpose of detention under section 1226(c) is to ensure a non-citizen's presence during removal proceedings and does not implicate due process concerns.

In *Demore*, the Supreme Court affirmed the constitutionality of § 1226(c)'s mandatory detention provisions. 538 U.S. at 523. The Court first 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). 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. Thus, the dual purposes of mandatory detention under section 1226(c) are ensuring criminal non-citizens' presence "pending a determination of their removability" and preventing the further criminal activity. *Id.* at 521.

Turning to the claim that mandatory detention violated due process absent a bond hearing, 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." *Demore*, 538 U.S. at 522 (citations omitted). The Supreme Court upheld the facial constitutionality of detaining

criminal noncitizens "for the brief period necessary for their removal proceedings." *Id.* In doing so, the Court reiterated its longstanding holdings 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). As the Court found, mandatory detention, "for the limited period of his removal proceedings, is governed by these" holdings. *Id.*

In reaching its conclusion, the Court also distinguished the case before it 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, detention of criminal non-citizens "*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). 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. *Id.* 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" from the considerations for 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).

C. Petitioner's mandatory detention complies with due process until the conclusion of removal proceedings.

Demore remains the sole analysis necessary to resolve the constitutional question presented here. Petitioner claims that his removal proceedings have become prolonged, but he acknowledges that those proceedings are ongoing with another hearing set for April 16, 2025—less than a week from today. Pet. ¶ 14. As this Court has recognized, mandatory detention complies with due process so long as it "reasonably facilitate[s]" removal. *S.C. v. Warden, Stewart Det. Ctr.*, No. 4:23-cv-64-CDL-MSH, at *1 (M.D. Ga. Dec. 15, 2023). But the entire point of removal proceedings is to facilitate review of a non-citizen's charges of removability and any applications for relief to determine removability. "What is important is that, notwithstanding the delay, deportation remains a possibility." *Banyee v. Garland*, 115 F.4th 928, 933 (8th Cir. 2024) (citations omitted). As the Supreme Court held in *Demore*, so long as Petitioner's removal proceedings remain ongoing, his continued detention "*necessarily* serves the purpose of preventing [him] from fleeing prior to or during his removal proceedings." 538 U.S. at 527-28 (emphasis added).

There is no basis to temporally limit mandatory detention. As the Supreme Court has held, there are no concerns of indefinite detention which have motivated temporal limitations in *Zadvydas*. *Demore*, 538 U.S. at 527-28. By definition, pre-final order of removal "detention is not indefinite; there is a definite termination point at the conclusion of [a non-citizen's] ongoing legal challenges." *Keo v. Warden, Mesa Verde ICE Processing Ctr.*, No. 1:24-cv-919, 2025 WL 1029392, at *8 (E.D. Cal. Apr. 27, 2025) (internal quotations and citations omitted). Indeed, for these reasons, in every case it has heard involving detention during removal proceedings, the

Supreme Court has concluded that such detention is constitutional. *Demore*, 538 U.S. at 513; *Flores*, 507 U.S. at 306; *Carlson*, 342 U.S. at 538; *Wong Wing*, 163 U.S. at 235. The Court has *never* held that detention during removal proceedings violates due process, whether that detention is pursuant to section 1226(c) or another statute.

Further, alleged protraction of removal proceedings does not offer a separate reason to limit applicability of section 1226(c). "[N]othing suggests that length determines legality." *Banyee*, 115 F.4th at 932. In *Demore* itself, the Supreme Court acknowledged the likelihood that non-citizens' appeals of their removal orders could protract detention under section 1226(c). 538 U.S. at 530 n.14. But as the Court recognized, "the legal system is replete with situations requiring the making of difficult judgments as to which course to follow, and, even in the criminal context, there is no constitutional prohibition against requiring parties to make such choices." *Id.* (internal quotations, alterations, and citation omitted). Additionally, the Court noted that the non-citizen in *Demore* had been "detained for somewhat longer than the average," but this did not warrant any additional inquiry because "the [non-citizen] himself had requested a continuance of his removal hearing." *Id.* at 531. That is the exact reason Petitioner's detention continues here: he has requested 12 continuances. Stephens Decl. ¶¶ 11-13, 15-17, 19-20, 22, 28, 30-31.

Yet, Petitioner's removal proceedings have progressed, and his next hearing is scheduled in less than a week. Stephens Decl. ¶ 31 & Ex. CC. This plainly indicates that his continued detention serves the purpose of section 1226(c): ensuring his presence to determine whether he is removable. Petitioner's removal proceedings here have been protracted as a result of his litigation tactics. But there is no evidence—or even allegation—that his detention is for any purpose other than evaluating his removability. From a due process standpoint, as the Supreme Court recognized in *Demore*, "[t]he *why*, in other words, is more important than *how long*." *Banyee*, 115 F.4th at

932 (emphasis in original). To hold otherwise and temporally limit detention under section 1226(c) would undermine the very purposes of the statute which the Court upheld in *Demore*: ensuring a criminal non-citizen's presence at removal proceedings and preventing further criminal activity. 538 U.S. at 521. "Those purposes . . . are present throughout removal proceedings and do not abate over time while those proceedings are still pending." *Keo*, 2025 WL 1029392, at *8 (internal quotations and citations omitted).

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). Even after *Sopo* was vacated, the Court returned to this same principle—interpreting *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 a non-citizen's removal proceedings. *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, at *4-8 (E.D. Cal. Apr. 27, 2025); *Rimtobaye v. Castro*, No. SA-23-CV-1529, 2024 WL 5375786, at *2-3 (W.D. Tex. Oct. 29, 2024); *Gach v. Charles*, No. 24-cv-583, 2024 WL 4774175, at *2-3 (D. Minn. Oct. 23, 2024); *A.R.L. v. Garland*, No. 6:23-cv-00852, 2023 WL 9316859, at *2-5 (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, at *2-4 (W.D. Tex. Sept. 27, 2023).

This Court should similarly return to its prior reliance on *Demore*. Even if pre-final order of removal detention becomes lengthy, it is not indefinite. It will plainly terminate once Petitioner's removal proceedings conclude. For these reasons, *Demore* compels a finding that Petitioner's mandatory detention under section 1226(c) is constitutional.

D. The Court should not apply *Sopo* or another multi-factor reasonableness test.

Petitioner acknowledges the Supreme Court's holding that mandatory detention under section 1226(c) complies with due process. Pet. ¶ 17. But he nevertheless argues that due process requires a bond hearing because his detention has become "prolonged," Pet. ¶ 35, and is no longer "reasonably related to any government purpose," *id.* ¶ 40. According to Petitioner, the Court must evaluate the details of his detention using multiple factors, *id.* ¶¶ 23-32, and find that a bond hearing is necessary because his detention could be indefinite, *id.* ¶¶ 14, 17, 28. To do so, Petitioner asks the Court to apply *Sopo*. In *Sopo*, 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, then the non-citizen would be entitled to a bond hearing using the procedures described in 8 U.S.C. § 1226(a). *Id.* at 1220.

This Court has previously adopted this argument. *See, e.g., S.C. v. Warden, Stewart Det. Ctr*, No. 4:23-cv-64-CDL-MSH, 2024 WL 796541, at *3-6 (M.D. Ga. Jan. 5, 2024), *recommendation adopted*, 2024 WL 790377 (M.D. Ga. Feb. 26, 2024). But the Court should reconsider its prior analysis because—as explained above—unlike detention under other statutes, section 1226(c) detention is not indefinite and does not trigger due process concerns that might warrant temporal limitations. Rather, as the Supreme Court recognized in *Demore*, mandatory detention for this finite period serves the statutory purpose of section 1226(c) until the conclusion of removal proceedings. For three reasons, the Court should therefore conclude that mandatory detention under section 1226(c) satisfies due process without resorting to *Sopo* or another multi-factor reasonableness test.

First, the Eleventh Circuit has vacated *Sopo*, and it did not serve as a due process analysis in the first instance. In *Sopo*, the Eleventh Circuit 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.

However, shortly after the Eleventh Circuit issued its opinion in *Sopo*, the Supreme Court decided *Jennings v. Rodriguez*, 583 U.S. 281 (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*, 583 U.S. at 303 (internal quotations and citation omitted) (emphasis in original); *id.* ("[A]liens detained under [section 1226(c)] detainees are not entitled to be released under any circumstances other than those expressly recognized by the statute."); *id.* at 304 ("[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 as "textual alchemy." *Id.* Rather, the "definite termination point" of § 1226(c) detention is "the conclusion of removal proceedings" and not "some arbitrary time limit devised by courts[.]" *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 are no longer good law, and the case has no utility in resolving Petitioner's claim here.

Moreover, by its own terms, *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*, 825 F.3d at 1212-1219. But as explained above, in *Jennings*, the Supreme Court reversed the Ninth Circuit's similar interpretation of section 1226(c). Just as the Court held in *Demore*, the statute is clear and mandates detention until the conclusion of removal proceedings. *Jennings*, 583 U.S. at 303-04.

Second, the underlying premise of *Sopo* and other multi-factor reasonableness tests is flawed because detention under section 1226(c) is not indefinite, and the temporal length of removal proceedings does not dictate the constitutionality of the detention. The Eleventh Circuit's overarching concern in *Sopo* was avoiding a reading of section 1226(c) that would allow ICE/ERO "to indefinitely detain criminal aliens." *Sopo*, 825 F.3d at 1213 (citations omitted). For this reason, the Eleventh reasoned that "§ 1226(c) must contain an implicit reasonable time limitation," *id.* at

1213, and crafted its multi-factor test to "discern[] the trigger point at which . . . mandatory detention become[s] unreasonably prolonged," *id.* at 1214. Petitioner echoes this in advocating continued application of *Sopo*. Pet. ¶¶ 17, 21.

However, as explained above, the Supreme Court has rejected this very reasoning in declining to impose the temporal limitations that underlay its opinion in *Zadvydas*. This is because detention under section 1226(c) has "a definite termination point"—the conclusion of removal proceedings. *Id.* at 528-29; *see also Jennings*, 583 U.S. at 304. The potential for indefinite detention is the only basis for which the Court has temporally limited any form of immigration detention under the modern INA. *Zadvydas*, 533 U.S. at 690. In *Zadvydas*, it was possible for a non-citizen to remain detained forever with no prospect of removal to end that detention. But that possibility is not present at all with section 1226(c) detention because removal proceedings will necessarily terminate through either a removal order or a grant of relief.

In searching for a basis to temporally limit his detention, Petitioner also relies in part on Justice Kennedy's oft-cited concurring opinion in *Demore*. Pet. ¶¶ 21-22. This Court has done the same in continuing to apply *Sopo*. *S.C.*, 2024 WL 796541, at *5. In that concurring opinion, Justice Kennedy comments 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."[2] 538 U.S. at 532-33.

But because Justice Kennedy joined the *Demore* 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.

[2] Notably, Justice Kennedy focused only on "unreasonable delay" by the government as a basis to even potentially limit detention under section 1226(c). 538 U.S. at 532-33. He did not mention anything close to the remaining *Sopo* factors. And applying Justice Kennedy's rationale here, the government has requested *no* continuances of Petitioner's removal proceedings and even objected to several of Petitioner's requests.

188, 193 (1977) (articulating rule that applies when no rationale obtains "the assent of five Justices"). Notwithstanding, 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.

Third, the other *Sopo* factors are also inconsistent with *Demore* and the purpose of detention under section 1226(c).[3] The first two factors analyze the length of detention and the reason removal proceedings have been protracted. *Sopo*, 825 F.3d at 1217-18. But as explained above, "nothing suggests that length determines legality." *Banyee*, 115 F.4th at 932. In *Demore*, the Supreme Court specifically considered the potential for removal proceedings to be lengthened beyond any expected timeline, but it concluded that the length of detention did not affect the constitutionality of the section 1226(c). 538 U.S. at 530 n.14, 531.

[3] This Court should similarly decline to consider other factors enumerated by courts outside the Eleventh Circuit. For example, some courts have considered whether the non-citizen's removal proceedings will result in a final order of removal. *See, e.g., Alphonse v. Moniz*, 635 F. Supp. 3d 28, 38 (D. Mass. 2022). But this requires a district court to review removal proceedings to evaluate the merits of charges of removability and applications for relief. 8 U.S.C. § 1252(a)(5) and (b)(9) specifically prohibit such review. Other courts have evaluated the likely duration of *future* detention. *Sarr v. Scott*, No. 2:24-cv-01293, 2025 WL 388652, at *6-7 (W.D. Wash. Feb. 4, 2025). Not only does this inherently require speculation, it also conflicts with the Supreme Court's reasoning in *Demore* that mandatory detention necessarily satisfies the purpose of the state so long as proceedings remain ongoing. 538 U.S. at 527-28, 531.

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 considers whether a non-citizen could state a claim that post-final order of removal detention violates due process under *Zadvydas* because there is no significant likelihood of removal in the reasonably foreseeable future. *Zadvydas*, 533 U.S. at 701. 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. Additionally, the purpose of section 1226(c) detention is to determine *whether* a non-citizen is removable at all—not *when* or *if* he will be removed. And once a non-citizen becomes subject to a final order of removal at the conclusion of removal proceedings, section 1226(c) no longer governs his detention. Rather, the non-citizen will be discretionarily detained under 8 U.S.C. § 1231(a) with the entirely separate due process protections of *Zadvydas*. Thus, consideration of this *Sopo* factor separates section 1226(c) from its purpose and conflates *Demore* with the *Zadvydas* standard that the Supreme Court found does not apply in this context.

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." 825 F.3d at 1218. But this directly calls into question the judgment of Congress in specifying which offenses qualify for mandatory detention under section 1226(c) regardless of length of sentence for those offenses. In the judgment of Congress, the nature of the offense—not the length of the sentence—warranted mandatory detention. And in *Demore*, the Court went to great lengths to explain Congress's purpose in enacting section 1226(c), 538 U.S. at 518-21, and emphasized that such determinations are firmly committed to Congressional discretion, *Id.* at 521-24. To limit the length of mandatory detention based on the criminal sentence undermines the judgment of Congress. *See Mathews*, 426

U.S. at 81 ("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."). The Supreme Court has long held that Congress's judgments in this regard—including the specification of *offenses* subject to mandatory detention as opposed to *sentences*—is "largely immune from judicial control." *Fiallo*, 430 U.S.at 792.

The fifth *Sopo* factor is "whether the facility for the civil immigration detention is meaningfully different from a penal institution for criminal detention." 825 F.3d at 1218. But the Supreme Court has never considered the conditions of confinement when analyzing constitutional or statutory challenges to immigration detention. *See Banyee*, 115 F.4th at 934 ("Nor is it a problem that the jail the government used also housed criminals. It takes more to turn otherwise legal detention into unconstitutional punishment." (citation omitted)). In fact, conditions-of-confinement claims are not even cognizable in habeas. *Nelson v. Campbell*, 541 U.S. 637, 643 (2004); *Vaz v. Skinner*, 634 F. App'x 778, 781 (11th Cir. 2015) (per curiam).

In sum, the Court should not rely on *Sopo* or another balancing test as persuasive authority because the underlying rationale of *Sopo* and the factors the case considered either conflict with the Supreme Court's reasoning in *Demore* and *Jennings* or find no support in those precedents. Rather, "*Zadvydas* and *Demore* have already done whatever balancing is necessary." *Banyee*, 115 F.4th at 933 (citations omitted). Consistent with Supreme Court precedent, the Court should hold that mandatory detention without a bond hearing under section 1226(c) complies with due process so long as removal proceedings are ongoing. Here, because Petitioner remains in removal proceedings, the Court should deny the Petition.

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 first factor, the Eleventh Circuit focused 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 has been detained under section 1226(c) for more than one year. However, as explained below, Petitioner's efforts to protract his removal proceedings are the reason his detention has extended beyond one year.

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 three factors favor Respondent.

A. 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. 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; *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, Petitioner has done precisely that, and he is responsible for over 24 months of delay in his removal proceedings—much of which was ultimately shown to be futile.

Petitioner entered ICE/ERO custody on December 13, 2022. Stephens Decl. ¶ 7 & Ex. A. Petitioner exercised his right to challenge two of his charges of removability, *id.* ¶ 10, and the IJ swiftly resolved these challenges and held that Petitioner was removable on March 14, 2023—just

three months after Petitioner entered custody, *id.* ¶ 11. But at that point, Petitioner assured the IJ he would pursue relief from removal. *Id.* Over 24 months later, Petitioner still has not filed an application for relief from removal. In that time, he has requested 12 continuances of his removal proceedings. *Id.* ¶¶ 11-13, 15-17, 19-20, 22, 28, 30-31. And the IJ was forced to continue two other hearings when Petitioner's counsel failed to appear. *Id.* ¶¶ 14, 21. Over the past two years, there are only two periods which may not be attributable to Petitioner: (1) when the IJ continued the case from January 17 to March 5, 2023 due to a court closure, and (2) when the IJ continued the case from October 23, 2024 to November 6, 2024 to prepare a written order on Petitioner's motion for administrative closure. Stephens Decl. ¶¶ 18, 25. With these two exceptions—which collectively account for merely two months—Petitioner is entirely responsible for his prolonged removal proceedings.

By contrast, ICE/ERO and DHS are not responsible for any delays in Petitioner's removal proceedings. DHS has not requested any continuances and has even objected to at least three of Petitioner's requests for continuances. Stephens Decl. ¶¶ 20, 22, 31. Despite this, Petitioner asserts that his "removal proceedings have been protracted because of the government's failure to timely adjudicate his pending I-130 petition." Pet. ¶ 27. This assertion misses the mark.

As an initial matter, any delay related to Petitioner's I-130 is not attributable to ICE/ERO. Rather, only USCIS has the authority to adjudicate Petitioner's I-130. There is no basis for the Court to fault ICE/ERO for a delay potentially attributable to an entirely different agency with no involvement in removal proceedings. In *Sopo*, the Eleventh Circuit plainly focused on whether either party "failed to participate actively *in the removal proceedings*." 825 F.3d at 1218 (emphasis added). The Court did not—as Petitioner would have the Court do—instruct courts to consider all conceivable delays that could remotely be placed on the government. But even setting this aside,

Petitioner *requested* the continuances of his removal proceedings to adjudicate his I-130. While Petitioner has the right to pursue an avenue for relief, the Court should not fault ICE/ERO for delays resulting from Petitioner's own litigation strategy.

Notwithstanding Petitioner's misattribution of the delays, his repeated continuances were futile from the outset because even assuming USCIS granted Petitioner's I-130, he would not be entitled to relief from removal. Petitioner's stated goal in seeking approval of the I-130 was to then file applications for adjustment of status and waiver of inadmissibility to avoid removal. *See* Stephens Decl. ¶ 11. But even assuming USCIS approved the I-130, Petitioner's conviction of an aggravated felony—which again, was established over two years ago on March 14, 2023—renders him ineligible for either a waiver of inadmissibility or adjustment of status. 8 U.S.C. § 1255(a) (permitting adjustment of status only if a non-citizen is "admissible"); 8 U.S.C. § 1182(h) ("No waiver [of inadmissibility] shall be granted under this subsection in the case of an alien who . . . has been convicted of an aggravated felony . . . ."). The IJ denied Petitioner's motion for administrative closure on this exact basis. *See* Ex. W at 3-4.

And while Petitioner focuses on his his I-130, there is no dispute that Petitioner is entirely responsible for the delay since the IJ denied his motion for administrative closure on October 25, 2024 and made clear that the I-130 would not—and could not—yield an avenue for relief. Stephens Decl. ¶ 26 & Ex. W. At the very next mater hearing on November 6, 2024, Petitioner represented to the IJ that he would file an application for relief from removal. Stephens Decl. ¶ 27. But in the five months since that hearing, Petitioner still has not filed any application for relief despite requesting three continuances to do so. *See id.* ¶¶ 27, 30-31. Petitioner claims that "he has not yet had the opportunity to present the merits of his case," Pet. ¶ 13, and that "he has no individual merits hearing in sight," *id.* ¶ 28. But the *reason* is that he has failed to file any application for

relief from removal in the two years since his charges of removability were sustained on March 14, 2023, Stephens Decl. ¶ 11. Put differently, there is no merits hearing for the IJ to schedule because despite Petitioner's insistence that he will seek relief, he has failed to do so.

In sum, Petitioner has been detained pursuant to section 1226(c) for 27 months, but his own litigation strategy and incessant requests for continuances make him responsible for the last 24 months of this period. The sheer degree of his delaying efforts should outweigh all other potential factors. As to the first *Sopo* factor, Petitioner's delays are the *reason* his detention has extended beyond one year. The IJ expeditiously found him removable just 3 months after he entered custody. Since that time, his failure to file any application for relief from removal and requests for continuances are the sole causes of his protracted removal proceedings. And relatedly, as to the fourth *Sopo* factor, his delays are the *reason* the length of his immigration detention is even close to his length of criminal detention. As another district court has recognized, "[w]hile Petitioner certainly has the right to pursue all available avenues to combat his removal, post-*Jennings*, he does not have the right to parlay the resulting delay into a bond hearing." *Keo*, 2025 WL 1029392, at *8 (internal quotations, alterations, and citation omitted). The Court should give great weight to this factor and find that it favors Respondent.

B. Third Factor: Likelihood of Removal

As to the third *Sopo* factor, Petitioner will likely be removed to Nigeria once his removal order becomes final. *See Sopo*, 825 F.3d at 1218. ICE/ERO maintains positive diplomatic and working relationships with Nigeria, and Nigeria is currently issuing travel documents for removals. Stephens Decl. ¶ 32. Additionally, ICE/ERO is currently removing non-citizens to Nigeria and is able to do so through both commercial and charter flights. *Id.* Thus far in fiscal year 2025, ICE/ERO has already conducted 44 removals to Nigeria. Hayes Decl. ¶ 32.

Petitioner concedes that "removals to [his] home country of Nigeria do occur." Pet. ¶ 29. He nevertheless appears to claim that this factor weighs in his favor, but his reasons amount to mere speculation. Specifically, Petitioner claims that unnamed other "[d]etained individuals report that removals routinely do not take place for upwards of nine or more months following a final order of removal." *Id.* Setting aside that this is pure hearsay, the third *Sopo* factor asks only "whether it will be *possible* to remove the criminal alien[.]" 825 F.3d at 1218 (emphasis added). Petitioner does not claim that it is impossible for ICE/ERO to remove a Nigerian national.

Again resorting to hearsay, Petitioner also claims that other "[d]etained individuals [have] reported" that at some unspecified point in 2024, Nigerian nationals were returned to Stewart Detention Center when an ICE/ERO charter removal flight was unable to land. Pet. ¶ 29. But as this Court has recognized in the *Zadvydas* context—which concerns a far higher standard than the mere "possibility" of removal at issue under the fourth *Sopo* factor—"[t]he Court's focus is on *today* and whether Petitioner will likely be removed in the reasonably foreseeable future based on the facts available to the Court *today*." *Meskini v. Atty. Gen. of U.S.*, No. 4:14-CV-42, 2018 WL 1321576, at *3 (M.D. Ga. Mar. 14, 2018) (emphasis in original). Notwithstanding Petitioner's speculations about the purported outcome of a single flight last year, today, ICE/ERO is able to secure travel documents from Nigeria and remove non-citizens to Nigeria through both commercial and charter flights. Stephens Decl. ¶ 32. It has already done so 44 times this fiscal year. *Id.* This evidence would satisfy the *Zadvydas* standard, let alone the far lower standard of a mere "possibility of removal." *Sopo*, 825 F.3d at 1218. This factor weighs in Respondent's favor.

C. Fourth Factor: Ratio Between Criminal and Civil Detention

As to the fourth factor, the ratio between Petitioner's criminal detention and civil detention weighs in Respondent's favor. In his underlying criminal case, Petitioner was arrested on April 16,

2020. *United States v. Okang, et al.*, No. 1:20-cr-114, Arrest Warrant Returned Executed (N.D. Ga. Apr. 21, 2020), ECF No. 239. On May 18, 2020, he was ordered detained pending trial. *Okang*, 1:20-cr-114, Order (N.D. Ga. May 18, 2020), ECF No. 250. On October 6, 2022, Petitioner was convicted and sentenced to time served. Stephens Decl. ¶ 6 & Ex. C. Thus, he spent almost 30 months in criminal detention. By contrast, as explained above, Petitioner had spent 27 months in civil immigration detention at the time he filed the Petition. Accordingly, this factor weighs in Respondent's favor.

Petitioner admits that his time spent in criminal detention exceeds his time spent in civil immigration detention. Pet. ¶ 30. Yet, he contends his "one criminal conviction is non-violent, indicating that he poses no danger to the community if released." *Id.* Petitioner cites no authority for the Court to consider the nature of his underlying criminal offense. The Eleventh Circuit did not even list this as a consideration in *Sopo*. Rather, Petitioner's length of criminal detention is plainly longer than the length of his civil immigration detention. And as explained above, Petitioner's repeated requests for continuances are the only reason the relevant ratio is even close. The Court should find that this factor favors Respondent.

Consideration of these factors demonstrate that Petitioner is detained for the sole purpose of facilitating deportation, *S.C.*, 2024 WL 796541, at *5, and the record is devoid of any evidence suggesting that Respondent delayed removal proceedings to punish Petitioner or for some other purpose. Securing a final order of removal is necessary for ICE/ERO to remove Petitioner from the United States. Petitioner's immigration proceedings show that this has been the singular purpose of his detention. This process has been prolonged solely as the result of Petitioner's repeated continuances to seek a futile form of relief and his failure to submit any application for relief for removal. But the Court should not fault Respondent for Petitioner's own tactics. Rather,

the Court should heed the Eleventh Circuit's warning that "a criminal alien could deliberately cause months of delays in the removal proceedings to obtain a bond hearing[.]" *Sopo*, 825 F.3d at 1216. For these reasons, to the extent the Court continues to apply *Sopo*—which it should not—the relevant factors weigh in Respondent's favor, and Petitioner's claim should be denied.

III. Assuming the Court finds that Petitioner's detention violates due process, he is not entitled to a bond hearing employing the procedures he requests.

If the Court finds and remedies any due process violation by ordering a bond hearing before an IJ—which it should not for the reasons explained above—the bond hearing should apply the procedures set forth in 8 U.S.C. § 1226(a), 8 C.F.R. § 236.1(d), and 8 C.F.R. § 1003.19.[4]

A non-citizen detained pre-final order of removal under 8 U.S.C. § 1226(a) may apply for a bond hearing before an IJ conducted under procedures set forth in 8 C.F.R. § 1003.19. 8 C.F.R. § 236.1(d)(1). The non-citizen has the burden to establish by a preponderance of the evidence that he or she is not "a threat to national security, a danger to the community at large, likely to abscond, or otherwise a poor bail risk." *In re Guerra*, 24 I. & N. Dec. 37, 40 (B.I.A. 2006). IJs have broad discretion in deciding whether to release a non-citizen on bond. *Guerra*, 24 I. & N. Dec. at 39. They can consider multiple discretionary factors, including any information that the IJ may deem to be relevant, and "may choose to give greater weight to one factor over others, as long as the decision is reasonable." *Id.* at 40. Further, the INA in no way "limit[s] the discretionary factors that may be considered" in bond determinations. *Id.*; *see also* 8 C.F.R. § 1003.19(d) ("The

[4] Petitioner also claims he is entitled to release from custody. Pet. ¶¶ 32, 35, 40. But as this Court has held, this is not the appropriate remedy for a due process violation arising from purportedly prolonged detention under section 1226(c). *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))). Indeed, even in *Sopo*, the Eleventh Circuit held that if a non-citizen establishes a due process violation, "[t]he government is not required to free automatically a criminal alien[.]" *Sopo*, 825 F.3d at 1218. Rather, the only appropriate remedy is an order for a bond hearing applying the section 1226(a) bond procedures. *Id.* at 1220.

determination of the Immigration Judge as to custody status or bond may be based upon any information that is available to the Immigration Judge or that is presented to him or her by the [non-citizen] or [ICE].").

Petitioner, however, argues the Court should order a bond hearing applying different procedures. Relying on a single out-of-circuit case, he argues that DHS "should bear the burden of proving by clear and convincing evidence that [Petitioner's] continued detention is necessary." Pet. ¶ 33 (citing *German Santos v. Warden, Pike Cnty. Corr. Facility*, 965 F.3d 203, 213 (3d Cir. 2020); *see also id.* ¶ 39.

This Court has rejected Petitioner's argument that a bond hearing under *Sopo* requires ICE to bear the burden of proof.[5] *O.D. v. Warden, Stewart Det. Ctr.*, No. 4:20-cv-222-CDL-MSH, 2021 WL 5413968, at *5 (M.D. Ga. Jan. 14, 2021), *recommendation adopted*, 2021 WL 5413966 (M.D. Ga. Apr. 1, 2021). Other courts in the Eleventh Circuit have similarly declined to order bond hearings which place the burden of proof on the Government. *See Stephens v. Ripa*, No. 1:22-cv-20110, 2022 WL 1110104, at *8-9 (S.D. Fla. Feb. 18, 2022), *recommendation in part adopted by*

[5] Respondent acknowledges that in *J.G. v. Warden, Irwin County Detention Center*, 501 F. Supp. 3d 1331 (M.D. Ga. 2020), this Court held that a non-citizen detained under 8 U.S.C. § 1226(a) was entitled to a bond hearing where ICE bore the burden of proof. 501 F. Supp. 3d at 1336-41. But as explained above, this Court held that a non-citizen mandatorily detained pre-final order of removal under section 1226(c) is not entitled to this remedy. Further, Respondent respectfully contends that *J.G.* was wrongfully decided and that the bond procedures set forth by the INA and applicable regulations comply with due process under the *Mathews* test even when applied to non-citizens detained pre-final order of removal under 8 U.S.C. § 1226(a). Other courts—including district courts in the Eleventh Circuit—have reached this same conclusion. *See, e.g., Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1203-14 (9th Cir. 2022); *Miranda v. Garland*, 34 F.4th 338, 358-66 (4th Cir. 2022); *Borbot v. Warden Hudson Cnty. Det. Ctr.*, 906 F.3d 274, 276-80 (3d Cir. 2018); *Stephens v. Ripa*, No. 1:22-cv-20110, 2022 WL 1110104, at *8-9 (S.D. Fla. Feb. 18, 2022), *recommendation adopted in part*, 2022 WL 621596 (S.D. Fla. Mar. 3, 2022); *Aham v. Gartland*, No. 5:19-cv-46, 2020 WL 806929, at *3 n.3 (S.D. Ga. Jan. 29, 2020), *recommendation adopted*, 2020 WL 821005 (S.D. Ga. Feb. 18, 2020); *Khan v. Whiddon*, No. 2:13-cv-638, 2016 WL 4666513, at *7 (M.D. Fla. Sept. 7, 2016). However, given that this Court has found that a bond hearing applying the procedures set forth by the INA—not those set forth in *J.G.*—is the appropriate remedy for a due process violation under *Sopo*, the Court need not reach this issue. To the extent the Court reconsiders *J.G.* here, Respondent respectfully requests the opportunity to submit supplemental briefing on this issue.

2022 WL 621596 (S.D. Fla. Mar. 3, 2022); *Aham v. Gartland*, No. 5:19-cv-46, 2020 WL 806929, at *3 n.3 (S.D. Ga. Jan. 29, 2020), *recommendation adopted*, 2020 WL 821005 (S.D. Ga. Feb. 18, 2020); *Khan v. Whiddon*, No. 2:13-cv-638, 2016 WL 4666513, at *7 (M.D. Fla. Sept. 7, 2016).

In reaching this outcome, those courts noted that in *Sopo*, the Eleventh Circuit ordered that a non-citizen mandatorily detained under section 1226(c) be provided a bond hearing applying the section 1226(a) bond procedures. *Sopo*, 890 F.3d at 1220. In doing so, the Eleventh Circuit acknowledged that "[l]ike non-criminal aliens, the criminal alien carries the burden of proof and must show that he is not a flight risk or danger to others." *Id.* Although *Sopo* was later vacated, the fact that the Eleventh Circuit *remedied* a due process violation by ordering a bond hearing applying the section 1226(a) bond procedures shows that those procedures are, themselves, compliant with due process. Thus, to the extent the Court orders a bond hearing—which it should not—the Court should order a hearing under the procedures set forth in 8 U.S.C. § 1226(a).

CONCLUSION

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

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

C. SHANELLE BOOKER
ACTING UNITED STATES ATTORNEY

BY: *s/ Roger C. Grantham, Jr.*

ROGER C. GRANTHAM, JR.
Assistant United States Attorney
Georgia Bar No. 860338
United States Attorney's Office
Middle District of Georgia
P. O. Box 2568
Columbus, Georgia 31902
Phone: (706) 649-7728
roger.grantham@usdoj.gov