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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JOHN DOE,

Petitioner,
vs.
TONYA ANDREWS, Facility Administrator of Mesa Verde ICE Processing Center;

ORESTES CRUZ, Director for the San Francisco ICE Field Office;

KRISTI NOEM, Secretary of The Department of Homeland Security;

TODD LYONS, Acting Director for U.S. Immigration and Customs Enforcement; and

PAMELA BONDI, Attorney General of the United States,

Respondents, acting in their official capacity. [1]

CASE NO. 1:25-CV-0680-SKO

PETITIONER'S OPPOSITION TO RESPONDENTS' MOTION TO DISMISS AND TRAVERSE

Immigration Habeas Case

[1] Respondents' brief includes reference to a motion to strike and dismiss "unlawfully named officials." This motion was never properly noticed or filed. *Compare* ECF 10 at 1, n.1 *with Phan, v. Becerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1808702, at *2 (E.D. Cal. June 30, 2025) ("Should Respondents seek to dismiss the remainder of the Respondents from this action, they should do so pursuant to a properly noticed motion.").

INTRODUCTION

Mr. John Doe ("Doe") has been detained for over two years with no bond hearing in violation of his due process rights. Respondents assert that because his detention occurred pursuant to 8 USC § 1226(c), the constitutional limit on the length of time that Doe may be detained does not apply. However, Respondents' arguments have been rejected repeatedly in challenges to prolonged detention since the Supreme Court's ruling in *Jennings v. Rodriguez*, 583 US 281 (2018). This Court should uphold Doe's constitutional right to due process, apply the *Mathews* balancing test, and grant him the narrow remedy of a bond hearing wherein Respondents must justify Doe's continued detention with clear and convincing evidence.

ARGUMENT

I. DUE PROCESS REQUIRES THE NARROW REMEDY OF A BOND HEARING FOR DOE.

A. The Statutory Designation For Doe's Confinement Does Not Negate His Due Process Rights.

Respondents allege that because Doe is detained pursuant to 8 USC § 1226(c), his prolonged detention amounting to over two years is constitutional. *See* ECF 10 at 3. First, Respondents' interpretation of *Demore v. Kim*, 538 US 510, 523 (2003), conflates a facial challenge to the statute that requires mandatory detention (at issue in *Demore*) with an as-applied challenge—like the challenge brought here by Doe—which argues that as-applied to him, the statute deprives Doe of due process. *Demore* considered a facial challenge to mandatory detention under § 1226(c), challenging this statutory provision's constitutionality. 538 US at 514. The Supreme Court rejected this challenge, finding that it was constitutional for the government to subject noncitizens to mandatory detention for "the brief period necessary for

their removal proceedings." *Id.* at 513. The context of the length of removal proceedings at this time is important to consider. At its lengthiest, the "brief period" contemplated by the Court was "about five months" when the noncitizen appeals. *Id.* at 529. Respondents assert that in the present day, Doe's removal proceedings have advanced in a "deliberative fashion," despite the fact that he has been detained for over two years. ECF 10 at 2. This is approximately five times the outer limit considered by the Court in *Demore*. District courts have found that comparable and even shorter detentions than Doe's have violated due process. *See, e.g.*, *Eliazar G.C. v. Wofford*, No. 1:24-CV-01032-EPG-HC, 2025 WL 711190, at *7 (E.D. Cal. Mar. 5, 2025) (considering 32 months since petitioner's initial bond); *Diep v. Wofford*, No. 1:24-CV-01238-SKO (HC), 2025 WL 604744, at *4 (E.D. Cal. Feb. 25, 2025) (finding 13 months to constitute prolonged detention); *Martinez Leiva v. Becerra*, No. 23-CV-02027-CRB, 2023 WL 3688097, at *7 (N.D. Cal. May 26, 2023) (considering 20 months of detention).

Respondents rely heavily on two nonbinding decisions to argue that Petitioner's mandatory detention is *per se* constitutional. ECF 10 at 5-6 (citing *Banyee v. Garland*, 115 F.4th 928, 933 (8th Cir. 2024) and *Keo v. Warden*, No. 1:24-CV-00919-HBK (HC), 2025 WL 1029392 (E.D. Cal. Apr. 7, 2025)). Both decisions rely on *Demore* to find that prolonged mandatory detention is not unconstitutional. *See Banyee*, 115 F.4th at 931; *Keo*, 2025 WL 1029392, at *6. Courts, including this court, have consistently rejected the argument that *Demore* forecloses habeas relief in an as-applied challenge. *See Black v. Decker*, 103 F.4th 133 (2d Cir. 2024); *see also Eliazar G.C.*, 2025 WL 711190, at *5 (finding that *Demore* did not preclude habeas relief); *Sho v. Current or Acting Field Off. Dir.*, No. 1:21-CV-01812 TLN AC, 2023 WL 4014649, at *3 (E.D. Cal. June 15, 2023), *report and recommendation adopted*, No. 1:21-CV-1812-TLN-

AC, 2023 WL 4109421 (E.D. Cal. June 21, 2023) ("...the Court has specifically left open the possibility of as-applied challenges by detainees.") (citation omitted). This rejection is sound because "[e]ven if that is what Congress intended—to indefinitely detain certain categories of immigrants with no opportunity to challenge custody—our system of government has never allowed Congress to legislate away Constitutional rights." *Romero Romero v. Wolf*, No. 20-CV-08031-TSH, 2021 WL 254435, at *4 (N.D. Cal. Jan. 26, 2021) (emphasis in original); *c.f. Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018) (stating that "[the court has] grave doubts that any statute that allows for arbitrary prolonged detention without any process is constitutional..."). In fact, since *Demore*, the Supreme Court has twice declined to decide whether detention under § 1226(c) is constitutional in as-applied challenges. *See Jennings*, 583 US at 312; *Nielsen v. Preap*, 586 US 392, 420 (2019) ("Our decision today on the meaning of [§ 1226(c)] does not foreclose as applied challenges"). Rather, as this court observed "if *Demore* had, in fact, foreclosed the due process challenge now before us, the *Jennings* Court would have had no reason to remand to the Ninth Circuit to consider in the first instance the detainees' argument that absent a bond-hearing requirement section 1226(c) would violate the Due Process Clause of the Fifth Amendment." *Eliazar G.C.*, 2025 WL 711190, at *5 (quoting *Black v. Decker*, 103 F.4th 133, 149 (2d Cir. 2024)).

Respondents further misconstrue the holding in *Jennings*, 583 US at 297, stating that it held that due process does not require the United States (U.S.) to release a noncitizen when subject to mandatory detention. Rather, the Court declined to adopt a bright-line rule requiring periodic bond hearings every six months for noncitizens held under § 1226(c). Unlike here, *Jennings* involved a question of statutory interpretation. *Id.* at 296-304. Again, Doe is requesting

one bond hearing as a matter of procedural due process, not as a statutory matter or under a bright-line theory. While Doe agrees that § 1226(c) requires his mandatory detention, he argues that as applied to him, this violates his due process rights given that he had been detained for twenty-six (26) months at the time of filing his petition without a bond hearing that assessed his dangerousness or flight risk;[2] he has undergone extensive rehabilitation in the twenty (20) years since his convictions; and where he will continue to be detained for months, if not longer, without a neutral review of whether his detention is necessary.

B. The *Mathews* Balancing Test Has Been Utilized Repeatedly To Determine Whether A Noncitizen Merits A Custody Review By A Neutral Adjudicator.

All persons in the U.S. are afforded due process, "including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). Detention violates due process absent "adequate procedural protections" or "special justification[s]" sufficient to outweigh the "constitutionally protected interest in avoiding

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[2] Respondents state that Doe was afforded a bond hearing during the pendency of his removal proceedings, and the Immigration Judge found him not to be "eligible for bond." ECF 10 at 3. This statement misconstrues the reality of the protections Doe was afforded. Doe was offered a hearing where the court's jurisdiction to even consider bond was at issue—not whether Doe, considering his convictions, rehabilitation, and community ties, warranted release under bond—and the Immigration Judge found that he lacked the ability to grant bond, not that Doe was ineligible. ECF 10-1 at 3 (stating that the Immigration Judge found Doe subject to mandatory detention; *see also* ECF 10-1 at Exh. 7. It is well-established that § 1226(c) lacks any individualized analysis of danger or flight risk for those who fall under its umbrella. *See e.g.*, *Eliazar G.C.*, 2025 WL 711190, at *7 ("[detention] under § 1226(c) [...], does not have a statutory right to a bond hearing or the right to seek additional bond hearings."). Therefore, Respondents' assertion that Doe was given the opportunity to a bond hearing is severely misleading. *C.f. Martinez Leiva*, 2023 WL 3688097, at *7 ("Some portions of the government's brief actually refer to Martinez Leiva as having had a 'bond hearing.' ...Rather, they were instances in which an IJ concluded that Martinez Leiva was statutorily *ineligible* for bond. *Martinez Leiva has never had a bond hearing at which a neutral decision maker determined whether he is a risk of flight or a danger*.") (emphasis in original) (citations omitted).

physical restraint." *Id.* at 690 (quoting *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)). No bright-line rule has been established to determine when detention without a bond hearing becomes unconstitutional. In the absence of such a rule, courts have routinely applied the framework established by *Mathews v. Eldridge*, 424 U.S. 319 (1976).

Respondents' assertions that Doe's request for the *Mathews* test "misleads" the court and requests an "invention," is detached from legal precedent and prior district court decisions. ECF 10 at 4. Respondents allege that this Court should follow its prior "precedent" in *Keo*, 2025 WL 1029392, but this decision is not binding, and this Court has applied *Mathews* in many other matters. ECF 10 at 5; *See, e.g.*, *Diep*, 2025 WL 604744, at *4 (applying the Mathews test and granting bond hearing for individual held in prolonged detention under § 1226(c)); *M.R. v. Warden, Mesa Verde Detention Center*, No. 1:24-CV-00998-EPG-HC, 2025 WL 1158841, at *7 (E.D. Cal. Apr. 21, 2025) (same); *Riego v. Warden Scott*, No. 1:24-CV-01162-SKO (HC), 2025 WL 660535, at *3 (E.D. Cal. Feb. 28, 2025) (same); *Eliazar G.C.*, 2025 WL 711190, at *6 (same); *Sho*, 2023 WL 4014649, at *3-5 (same). In fact, the Ninth Circuit has stated that "*Mathews* remains a flexible test that can and must account for the heightened governmental interest in the immigration detention context." *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206-07 (9th Cir. 2022). District courts throughout the region have also repeatedly applied the *Mathews* test in similar instances. *See, e.g.*, *Lopez Reyes v. Bonnar*, 362 F. Supp. 3d 762 (N.D. Cal. 2019) (applying the *Mathews* test); *Jimenez v. Wolf*, No. 19-CV-07996-NC, 2020 WL 510347 (N.D. Cal. Jan. 30, 2020) (applying the Mathews test and granting bond hearing for individual held in prolonged detention under § 1226(c)); *Jensen v. Garland*, No. 5:21-CV-01195-CAS (AFM), 2023 WL 3246522 (C.D. Cal. May 3, 2023) (same).

C. Pursuing Valid Defenses To Removal Does Not Negate Or Diminish Doe's Liberty Interests.

Respondents suggest that this court must "give weight to Petitioner's own delaying tactics and immigration court demands." ECF 10 at 6. However, Doe cannot be punished for his litigation choices to pursue valid defenses to removal. *See German Santos v. Warden Pike Cnty. Corr. Facility*, 965 F.3d 203, 211 (3d Cir. 2020) (declining to "hold a [noncitizen's] good-faith challenges to his removal against him, even if his appeals or applications for relief have drawn out the proceedings."); *Diaz v. Becerra*, No. 22-CV-09126-DMR, 2023 WL 3237421, at *6 (N.D. Cal. May 2, 2023) ("[T]here is no evidence before the court [that petitioner] purposefully delayed the proceedings."); *Hernandez Gomez v. Becerra*, No. 23-CV-01330-WHO, 2023 WL 2802230, at *4 (N.D. Cal. Apr. 4, 2023) ("The period of those [extension] requests and their admitted purpose do not demonstrate any purposeful intent to delay by [Petitioner.]"). Here, Doe did not engage in "delaying tactics," as Respondents contend, but rather valid, good-faith litigation choices—including defenses to removal, continuances for good cause (as an extension is only granted "good cause" under agency regulations, *see* 8 C.F.R. § 1003.29), delays due to ineffective assistance of his prior counsel (including failing to appear at a hearing and failing to file a brief, *see, e.g.*, ECF 1-2 at Exhibit E ¶ 14), and appeals grounded in violations of law and violations of his due process rights—all of which should not be held against Doe. *See, e.g.*, *Jimenez*, 2020 WL 510347, at *3 ("[Petitioner] cannot be faulted, however, for his decision to accept the assistance of counsel, [or] his decision to appeal…"); *Jensen*, 2023 WL 3246522, at *5 ("…even the actions which petitioner did control, such as requesting continuances or seeking appeals of decisions by the IJ and BIA, do not significantly diminish her liberty interests… pursuing relief and requesting continuances does not deprive petitioner of a constitutional right

to due process."); *Martinez Leiva*, 2023 WL 3688097, at *8 (stating that where petitioner requested "numerous continuances before the IJ, a briefing extension before the BIA, and seeking successive appeals of the agency's decisions,... [t]he duration and frequency of these requests do not diminish his significant liberty interest...") (citations omitted).

Moreover, Doe is applying for mandatory protection under the Convention Against Torture, and it "ill suits the United States to suggest that [he] could shorten his detention by giving up" his right to pursue life-or-death defenses to removal. *See Masood v. Barr*, No. 19-cv-7623-JD, 2020 WL 95633, at *3 (N.D. Cal. Jan. 8, 2022); *accord Henriquez v. Garland*, No. 5:22-cv-00869-EJD, 2022 WL 2132919, at *5 (N.D. Cal. June 14, 2022) ("[T]he fact that Petitioner chose to pursue [an application for relief] and requested continuances to further that application does not deprive him of a constitutional right to due process."), *appeal dismissed*.

D. The Risk Of Erroneous Deprivation Of Liberty Is High.

Respondents assert that the risk of erroneous deprivation of liberty is minimal because Doe has "no basis for liberty in the [U.S.]" and that he will be removed from the U.S. in the foreseeable future. ECF 10 at 7. Contrary to Respondents' arguments, Doe's convictions do not strip him of his basis for liberty in the United States. Doe "served his sentence for that crime. To now hold him in indefinite detention with no due process rights is, in a sense, a second sentence for the same crime, this one more severe, as Petitioner no doubt was given due process in his criminal case." *Romero Romero*, 2021 WL 254435, at *5, n.3.

Moreover, Respondents' assertion that removal will be effectuated upon the resolution of the petition for review is similarly misguided. Challenges to a final order of review are often based on violations of due process and legal error, which can prolong a noncitizen's detention,

and result in remand to the agency, not removal. *See, e.g.*, *Sho*, 2023 WL 4014649, at *4 ("[...] it is apparent that the current prolongation of petitioner's detention during the judicial review and remand process is attributable to the IJ's violation of petitioner's due process rights.") (ordering a bond hearing where the Ninth Circuit ordered remand to the Board of Immigration Appeals). Here, Doe is appealing his final order due to due process violations because of ineffective assistance of his prior counsel, as well as legal errors committed by the Agency. *See generally* ECF 1-2 at Exh. D.

Additionally, Respondents attempt to mitigate the risk of erroneous deprivation to Doe by misstating the facts before this court. First, without proper justification, Respondents categorize Doe as being a "leader in a large-scale crack cocaine drug trafficking conspiracy," citing to only his conviction record without any further justification or evidence. ECF 10 at 2, 7. Second, Doe ultimately served 258 months of his sentence and was released early, contrary to Respondents' statement. ECF 10 at 2. Respondents continue to rely on and overstate these convictions from over twenty years ago, despite the fact that Doe has completed his sentence and engaged in rehabilitation—facts that have never been considered by a neutral fact finder in determining if Doe's continued prolonged detention is necessary. *See* ECF 1-2 at Exh. G; *C.f. Diaz*, 2023 WL 3237421, at *8 (finding that the risk of erroneous deprivation was high where evidence had "never been considered and weighed by a neutral decisionmaker evaluating the necessity of... ongoing detention"). Finally, Respondents contend that Doe has "no family concerns or ties to anyone or any community in the United States." ECF 10 at 7. To the contrary, Doe is eager to reunite with his U.S. citizen sister. ECF 1 at 15.

Respondents' state that the conditions of Doe's confinement do not "invalidate" the "immigration purpose" that is served by his detention. ECF 10 at 7. Not so. In fact, the conditions of Doe's confinement strengthen his liberty interest, as he is being held in conditions that are akin to criminal corrections. *See* generally ECF 1-2 at Exh. H. As the Third Circuit explained, "[r]emoval proceedings are civil, not criminal[,]" so if a "[noncitizen's] civil detention under § 1226(c) looks penal, that tilts the scales toward finding the detention unreasonable." *See German Santos,* 965 F.3d at 211. And, as "the length of detention grows, so does the weight that we give this factor." *Id.* (considering whether ICE's conditions of confinement are "meaningfully different" from criminal punishment).

E. No Government Interest Is Diminished By A Bond Hearing.

Respondents misconstrue their true interest at stake in this case. The interest is "the ability to detain [Doe] *without providing him a bond hearing,*" not, as Respondents assert, whether the government may continue to detain him in general, or their interest in detaining "deportable [noncitizens] who are not detained may engage in crime and fail to appear for their removal hearings." ECF 10 at 6; *see Lopez Reyes*, 362 F. Supp. 3d at 777; *Marroquin Ambriz v. Barr*, 420 F. Supp. 3d 953, 964 (N.D. Cal. 2019); *see also Diep*, 2025 WL 604744, at *5 (citation omitted); *Sho*, 2023 WL 4014649, at *4 ("Requiring the government to provide petitioner with a bond hearing does not meaningfully undermine the government's interest in detaining non-citizens who pose a danger to the community or are a flight risk."). Indeed, a bond hearing will afford Respondents an opportunity to present evidence to support their proposition that detention is required to protect their asserted interest. *See Jimenez*, 2020 WL 510347 at *3 ("Providing a bond hearing would not undercut the government's asserted interest in effecting removal. After

all, the purpose of a bond hearing is to inquire whether the alien represents a flight risk or danger to the community.") (citing *In re Guerra*, 24 I.&N. Dec. 37 (B.I.A. 2006)); *see also Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017) ("no legitimate interest in detaining individuals who have been determined not to be a danger and whose appearance at future immigration proceedings can be reasonably ensured[.]"); *Velasco-Lopez v. Decker*, 978 F.3d 842, 854 (2d Cir. 2020) ("[T]he Government has not articulated an interest in the prolonged detention of noncitizens who are neither dangerous nor a risk of flight.").

II. THE GOVERNMENT MUST BEAR THE BURDEN BY CLEAR AND CONVICING EVIDENCE TO JUSTIFY DOE'S PROLONGED DETENTION.

Due process requires that the government must bear the burden in a bond hearing before a neutral adjudicator to prove that Doe is a flight risk or a danger to the community by clear and convincing evidence. *See Singh v. Holder*, 638 F.3d 1196, 1204 (9th Cir. 2011). Respondents' motion failed to address arguments surrounding whether the government must bear the burden of proof at a bond hearing. Therefore, Respondents waive any arguments surrounding their burden and should be held to the standard set forth in *Singh*. For the reasons stated in the petition, the Court should order that these safeguards are necessary to protect Doe's constitutional rights. ECF 1 at ¶ 9-10.

CONCLUSION

For the aforementioned reasons, the Court should deny Respondents' Motion to Dismiss and find that Doe warrants habeas relief.

Dated: July 29, 2025

Respectfully Submitted,

/s/ Callard E. Cowdery

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