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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JOHN DOE,

Petitioner,

v.

TONYA ANDREWS, et al.

Respondents.

Case No. 1:25-CV-00755-CDB (HC)

RESPONDENTS' MOTION TO DISMISS AND RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

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I. INTRODUCTION

John Doe's petition for a writ of habeas corpus should be dismissed because he has been constitutionally detained since October 2022 in connection with his ongoing removal proceedings. U.S. Immigration and Customs Enforcement (ICE) first initiated removal proceedings against Doe in 2004, but because of two lengthy prison sentences he did not come into ICE custody until 2022. Since then, he has made numerous applications for relief, including a prior habeas petition after which a bond hearing was ordered. After that hearing, release on bond was denied. He is now pending his final avenue of relief, which will be his second petition before the Ninth Circuit on this case. His detention under these circumstances is constitutional, and his habeas petition should be dismissed.

II. BACKGROUND

A. Doe's criminal history and removal proceedings

John Doe, a native and citizen of El Salvador, adjusted status to become a Lawful Permanent Resident in 1989. *See* Declaration of Alfonso Sanchez (Sanchez Decl.), ¶ 1. In 1997, he was convicted in Los Angeles of two counts of Attempted Murder and two counts of Assault with a Firearm, including firearms enhancements, all felonies, and was sentenced to 24 years and 8 months in prison. *Id.* at ¶ 2. That case arose when petitioner was attending a soccer game; when fans displayed a flag of the opposing team, petitioner produced a pistol and shot one rival fan in the stomach and then chased another down, continuing to shoot at him. Attachments to Sanchez Declaration (Sanchez Attachments), Exh. 3. While serving that prison sentence, he was convicted of Assault by a Prisoner, a felony, and sentenced to eight additional years in prison. Sanchez Decl, ¶ 5. That case arose from an assault with a deadly weapon committed in concert with another individual, where the two defendants inflicted great bodily injury upon the victim. Sanchez Attachments, Exh. 4.

ICE initiated removal proceedings against Doe in 2004 because of his 1997 convictions for aggravated felonies. Sanchez Decl., ¶ 4. Because of his multiple lengthy prison sentences, he did not return before an Immigration Judge on these proceedings until January 20, 2023, at which point his applications for relief were denied and he was ordered removed. *Id.* at ¶ 6. Doe then began a lengthy series of appeals.

First, Doe applied to reopen removal proceedings before the Immigration Judge on January 30,

2023, which was denied the next day. *Id.* at ¶ 7. Then he filed an appeal to the Board of Immigration Appeals (BIA) on February 27, 2023, which the BIA denied on July 20, 2023. *Id.* at ¶ 8. While the BIA appeal was pending, he filed a habeas petition on July 19, 2023 in the Northen District of California, which was granted in part on February 21, 2024. *Id.* at ¶ 9. After the denial of his BIA appeal, Doe filed his first petition for review to the Ninth Circuit on August 4, 2023. *Id.* at ¶ 10. During the pendency of that Ninth Circuit petition, Doe moved for extensions of time multiple times for over a year, including on October 19, 2023, May 15, 2024, June 12, 2024, and October 1, 2024, before finally moving to dismiss without ever filing an opening brief on October 30, 2024. Sanchez Attachments, Exh. 9. The case was dismissed on November 4, 2024. Sanchez Decl. at ¶ 10.

While this Ninth Circuit litigation was ongoing, Doe received a bond hearing pursuant to his habeas petition on April 8, 2024, where his request for a bond was denied as he was both a flight risk and a danger to community. *Id.* at ¶ 11; Sanchez Attachments, Exh. 10. Defendant appealed the bond to BIA on April 11, 2024, and the bond decision was affirmed on July 12, 2024. Sanchez Decl. at ¶ 12.

On July 10, 2024, Doe filed a motion to reopen his case at BIA. BIA granted the motion on October 16, 2024. *Id.* at ¶ 13. On April 1, 2025, the immigration court denied his application for relief again. *Id.* at ¶ 14. On April 2, 2025, Doe appealed to the BIA, which dismissed the appeal on August 4, 2025. *Id.* at ¶ 15. On August 7, 2025, Doe filed a petition for relief in front of the Ninth Circuit, where the matter is pending now. *Id.* at ¶ 16.

Doe must file his opening brief by October 27, 2025, and the case will be fully briefed no later than December 16, 2025. Sanchez Attachments, Exh. 15[1].

B. Doe filed a habeas petition in which he claims his detention has become prolonged. He demands outright release.

Doe filed his habeas petition on June 19, 2025, after being detained for about thirty-two months. ECF 1. He claims he has been subjected prolonged detention and seeks an order from this Court to order his immediate release. ECF 1 at 6, ¶ 4. On July 9, 2025, the Court directed Respondents to file a response to the petition. ECF 5.

[1] Respondent's brief is due November 25, 2025, and any reply within 21 days. 21 days from November 25, 2025 is December 16, 2025.

III. ARGUMENT

Doe has been constitutionally detained, following a recent bond hearing where he was found to be a flight and a danger. Under these circumstances, the Constitution does not require Doe's release from custody. The Court should therefore dismiss Doe's habeas petition.

A. The Supreme Court has upheld the constitutionality of mandatory detention for certain aliens while their removal proceedings are pending.

Doe is currently detained pursuant to 8 U.S.C. § 1226(c) while his removal proceedings are pending. This is not a case where detention is indefinite. Rather, "detention under § 1226(c) has a definite termination point: the conclusion of removal proceedings." *Jennings*, 138 S. Ct. at 846 (quotation marks omitted).

The Supreme Court has upheld mandatory detention under § 1226(c) as facially constitutional. *Demore v. Kim*, 538 U.S. 510, 531 (2003) (citing *Wong Wing v. United States*, 163 U.S. 228, 235 (1896); *Carlson v. Landon*, 342 U.S. 524 (1952); *Reno v. Flores*, 507 U.S. 292 (1993)). The Supreme Court observed that Congress enacted § 1226(c) to curb the risk of flight by deportable criminal noncitizens:

> Congress, 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, may require that persons such as [the lawful permanent resident at issue in *Demore*] be detained for the brief period necessary for their removal proceedings. . . . Congress also had before it evidence that one of the major causes of the INS' failure to remove deportable criminal aliens was the agency's failure to detain those aliens during their deportation proceedings. . . . Once released, more than 20% of deportable criminal aliens failed to appear for their removal hearings. . . . Some studies presented to Congress suggested that detention of criminal aliens during their removal proceedings might be the best way to ensure their successful removal from this country. *See, e.g.*, 1989 House Hearing 75; Inspection Report, App. 46; S. Rep. 104-48, at 32 ("Congress should consider requiring that all aggravated felons be detained pending deportation. Such a step may be necessary because of the high rate of no-shows for those criminal aliens released on bond"). It was following those Reports that Congress enacted 8 U.S.C. § 1226, requiring the Attorney General to detain a subset of deportable criminal aliens pending a determination of their removability.

Id. at 513, 519–21. The Supreme Court held that "[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 521. The Supreme Court has recognized "detention during deportation proceedings as a constitutionally valid aspect of the deportation process" and noted that "deportation proceedings would

be vain if those accused could not be held in custody pending the inquiry into their true character." *Id.* at 523 (quotation marks omitted). The Supreme Court further reaffirmed that immigration detention can be constitutional even in the absence of any showing that an individual detainee posed a flight risk or a danger to the community. *See id.* at 523–27 (discussing *Carlson*, 342 U.S. 524, and concluding that detention was constitutional "even without any finding of flight risk" or "individualized finding of likely future dangerousness"). In short, "the Supreme Court recognized [that] there is little question that the civil detention of aliens during removal proceedings can serve a legitimate government purpose, which is 'preventing deportable . . . aliens from fleeing prior to or during their removal proceedings, thus increasing the chance that, if ordered removed, the aliens will be successfully removed.'" *See Prieto-Romero v. Clark*, 534 F.3d 1053, 1062–65 (9th Cir. 2008) (quoting *Demore*, 538 U.S. at 528).

Detention during removal proceedings remains constitutional so long as it continues to "serve its purported immigration purpose." *See id.* at 527. Those purposes—ensuring an alien's appearance for removal proceedings and preventing him from committing further offenses—are present throughout removal proceedings and do not abate over time while those proceedings are still pending.[2] *Id.* Further, "[t]he government has an obvious interest in 'protecting the public from dangerous criminal aliens.'" *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1208 (9th Cir. 2022) (quoting *Demore*, 538 U.S. at 515). Thus, as the Ninth Circuit recognized, "[t]hese are interests of the highest order that only increase with the passage of time." *Id.* "The longer detention lasts and the longer the challenges to an IJ's order of removal take, the more resources the government devotes to securing an alien's ultimate removal" and, correspondingly, "[t]he risk of a detainee absconding also inevitably escalates as the time for removal becomes more imminent." *Id.*

This precedent has led at least one court in this district to hold that "[d]ue process doesn't require bond hearings for criminal aliens mandatorily detained under § 1226(c)—even for prolonged periods." *Keo v. Warden of the Mesa Verde ICE Processing Center*, 1:24-cv-00919-HBK (HC), 2025 WL

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[2] In upholding mandatory detention under § 1226(c), the Supreme Court relied on an understanding that in the majority of cases, detention lasts for less than 90 days. *Demore*, 538 U.S. at 529; *but see Jennings*, 138 S. Ct. at 869 (Breyer, J., dissenting) (noting that those statistics were wrong and that detention normally lasts twice that long). The Supreme Court noted that in 15% of cases, detention lasted longer where the noncitizen appealed to the BIA, and that such appeals took an average of an additional four months. *Demore*, 538 U.S. at 529.

1029392, at *7 (E.D. Cal. Apr. 7, 2025), *appeal filed* no. 25-3546 (9th Cir. filed June 6, 2025). *But see Walter A.T. v. Facility Administrator, Golden State Annex*, no. 1:24-cv-01513-EPG-HC, 2025 WL 1744133, at *4 (E.D. Cal. June 24, 2025) (recognizing that "'district courts throughout this circuit have ordered immigration courts to conduct bond hearings for noncitizens held for prolonged periods under § 1226(c)' based on due process" (quoting *Martinez v. Clark*, 36 F. 4th 1219, 1223 (9th Cir. 2022), vacated on other grounds, 144 S.Ct. 1339 (2024))).

B. Doe's detention is constitutional.

In *Demore*, the Supreme Court rejected a facial challenge to the mandatory detention scheme enacted by Congress and held that noncitizens (like John Doe, here) with certain criminal convictions may be lawfully detained for removal proceedings without a bond hearing. 538 U.S. at 523-31. In enacting this statutory detention structure—under which petitioner's detention is mandatory—Congress was "justifiably concerned that deportable criminal aliens who are not detained continue to engage in crime." *Id.* at 513. And Doe, with his criminal history, presents a case that falls squarely within the core of Congress' concern. But even alternatively construed as an as-applied challenge, the circumstances of his detention are constitutional.

There is a general dearth of guidance on the appropriate test or standard to apply to an as-applied challenge to prolonged detention claims. Some courts have applied bright line rules. *See, e.g., Rodriguez v. Nielsen*, No. 18-cv-04187-TSH, 2019 WL 7491555, at *6 (N.D. Cal. Jan. 7, 2019). Others have applied the three-part test set forth in *Mathews v. Eldridge*, 414 U.S. 319 (1976). *See, e.g., Henriquez v. Garland*, no. 22-cv-869-EJD, 2022 WL 2132919 (N.D. Cal. June 14, 2022). And many others have fashioned their own "myriad of overlapping balancing tests." *Keo*, 2025 WL 1029392, at *5 (collecting cases).

There are, however, criticisms for each approach. Bright line rules are plainly deficient, as they fail to acknowledge any individual circumstances of a case. *See Gonzalez v. Bonnar*, no. 18-cv-05321-JSC, 2019 WL 330906, at *2 (N.D. Cal. Jan. 25, 2019) ("[T]he Supreme Court's decision in *Jennings* establishes there is no . . . bright-line rule. . . . [T]he decision depends on the individual circumstances of each case."). And "while the *Mathews* factors may be well-suited to determining whether due process requires a second bond hearing, they are not particularly dispositive of whether prolonged mandatory

detention has become unreasonable in a particular case." *Sanchez-Rivera v. Matuszewski*, no. 22-cv-1357-MMA (JLB), 2023 WL 139801, at *5 (S.D. Cal. Jan. 9, 2023) (internal quotation omitted). Similarly, many of the elements in various balancing tests are unhelpful to whether detention has become unreasonably prolonged. *See Lopez v. Garland*, 631 F. Supp. 3d 870, 879 (E.D. Cal. Sept. 29, 2022) ("the conditions of detention, the likelihood that the removal proceedings will result in a final order of removal, whether the detention will exceed the time the petitioner spent in prison for the crime that made him removable, and the nature of the crimes the petitioner committed are not particularly suited to assisting the Court . . . .").

Doe's detention passes constitutional muster. While he has been detained since October 2022, this length is due overwhelmingly to his decision to challenge his removal order and apply for relief from removal. *Accord Rodriguez Diaz*, 53 F.4th at 1208 ("[W]e cannot simply count his months of detention and leave it at that. We must also consider the process he received during this time, the further process that was available to him, and the fact that his detention was prolonged due to his decision to challenge his removal order."); *see also Rivas Avalos v. Sessions*, no. 18-cv-02342-HSG, 2018 WL 11402701, at *2 (N.D. Cal. May 25, 2018) ("delay caused by petitioner's litigation strategy does not ripen his detention into a constitutional claim") (internal quotation omitted)). Moreover, petitioner's detention has "a definite and evidently impending termination point" when his removal proceedings conclude. *Soberanes v. Comfort*, 388 F.3d 1305, 1311 (10th Cir. 2004) ("[F]or now, his detention is clearly neither indefinite nor potentially permanent . . . it is, rather, directly associated with a judicial review process that has a definite and evidently impending termination point."); *see also Prieto-Romero*, 534 F.3d at 1065 (holding that an alien's detention was not unconstitutionally indefinite when it was prolonged by a challenge to his removal order and distinguishing a case in which the government made an "unusual move" that delayed resolution).

While Doe claims that his detention is "indeterminate," ECF 1 at 2:1, it is not: petitioner has been to the immigration judge twice, the BIA twice, and the Ninth Circuit twice on the merits of his application for relief. At one point, Doe continued litigation for over a year, moving to dismiss his Ninth Circuit appeal at the end of those delays so he could return back to the BIA and start the process again. His pending petition before the Ninth Circuit is the end of his extended litigation strategy and will

be fully briefed before the end of the year, giving the case a near-future "termination point" of the sort envisioned by *Jennings*.

Doe also received adequate process and procedural protections. The immigration judge held a bond hearing in his case at petitioner's request. During the hearing, the court considered and denied his request for a custody redetermination after finding that he is properly subject to mandatory detention and that, by clear and convincing evidence, he is both a flight risk and a danger. Petitioner then appealed that bond hearing to the BIA, which affirmed the immigration judge's decision.

The government's interest here is also strong. "The government has an obvious interest in 'protecting the public from dangerous criminal aliens.'" *Rodriguez Diaz*, 53 F.4th at 1208 (quoting *Demore*, 538 U.S. at 515). Here, the defendant is unquestionably dangerous; he committed extremely violent acts over a soccer rivalry, and then while incarcerated for that offense attacked another inmate with a deadly weapon that caused serious injury.

In sum, the circumstances of this case demonstrate that Doe's detention is constitutional. The Court should deny the petition.

C. Even if the court finds that Doe's detention has been unreasonably prolonged, the appropriate remedy is a new bond hearing, not release, at which the defendant bears the burden.

Petitioner requests as his only remedy immediate release on conditions, in effect asking this Court to sit over a bond hearing disguised as a habeas petition.

"[C]ompelled release of detainees is surely a remedy of last resort." *Fraihat*, 16 F.4th at 642. In the event that the petition is granted, the only appropriate relief is a bond hearing, not release from detention. *See, e.g.*, *Demore*, 538 U.S. at 532 (Kennedy, J., concurring) (explaining that "an individualized determination as to his risk of flight and dangerousness" is the proper remedy "if the continued detention became unreasonable or unjustified"); *Prieto-Romero*, 534 F.3d at 1065–66 (discussing how detainee "had an opportunity to contest the necessity of his detention before a neutral decisionmaker and an opportunity to appeal that determination to the BIA"); *Mansoor v. Figueroa*, No. 3:17-cv-01695-GPC (NLS), 2018 WL 840253, at *4 (S.D. Cal. Feb. 13, 2018) (IJs are well suited to assess eligibility for release, while a district court "lacks the factual support to make a determination about Petitioner's risk of flight or dangerousness to the community").

Should the Court order a bond hearing, Doe bears the burden of showing that his detention is unjustified. The Constitution does not require the government to bear the burden of establishing that the noncitizen will be a flight risk or danger—much less that the government be subject to a clear-and-convincing-evidence standard—to justify temporary detention pending removal proceedings. The Supreme Court has consistently affirmed the constitutionality of detention pending removal proceedings, notwithstanding that the government has never borne the burden to justify that detention by clear and convincing evidence. *See Demore*, 538 U.S. at 531; *Flores*, 507 U.S. at 306; *Carlson*, 342 U.S. at 538; *Zadvydas*, 533 U.S. at 701. In fact, the Supreme Court has repeatedly upheld detention pending removal proceedings on the basis of a categorical, rather than individualized, assessment that a valid immigration purpose warranted interim custody. *See Demore*, 538 U.S. at 531; *Flores*, 507 U.S. at 306; *Carlson*, 342 U.S. at 538. And in *Zadvydas*, the Court placed the burden on the noncitizen, not the government, to show that his detention was unjustified. *Zadvydas*, 533 U.S. at 701 (noncitizen must first "provide good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future," only after which "the Government must respond with evidence sufficient to rebut that showing").

Indeed, the Ninth Circuit questioned (in the § 1226(a) context) burden-shifting to the government during immigration bond hearings:

> Nothing in this record suggests that placing the burden of proof on the government was constitutionally necessary to minimize the risk of error, much less that such burden-shifting would be constitutionally necessary in all, most, or many cases. There is no reason to believe that, as a general proposition, the government will invariably have more evidence than the alien on most issues bearing on alleged lack of future dangerousness or flight risk.

Rodriguez Diaz, 53 F.4th at 1211 (9th Cir. 2022). Accordingly, if the Court decides that Doe's continued detention requires a bond hearing, the burden at any such hearing is properly placed on him.

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IV. CONCLUSION

Petitioner John Doe has exercised his rights to fully litigate his removal before the immigration court. Petitioner's detention is constitutional and has not become unduly prolonged. The Court should dismiss his habeas petition.

DATED: August 22, 2025

Respectfully submitted,

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