

JCG:MJB:cmv

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

ALEX AGYEMANG,	:	No. 3:25-cv-01417
Petitioner,	:	
	:	
v.	:	(Mehalchick, J.)
	:	
WARDEN OF CLINTON	:	
COUNTY CORRECTIONAL	:	
FACILITY,	:	
Respondent.	:	Filed Electronically

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

Respondent Warden of Clinton County, Correctional Facility hereby files this brief in response to Petitioner Alex Agyemang petition for writ of habeas corpus.

I. Procedural History

Mr. Agyeman, an immigration detainee in the custody of the United States Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE), at the Clinton County Correctional Facility in McElhattan, Pennsylvania, filed the instant petition. See Pet. (Doc. No. 1) at 1. Mr. Agyemang requests that the Court direct Respondent to release him or provide him with a “constitutionally adequate” bond hearing before an Immigration Judge. Id. at 2. This Court entered an order directing Respondent to respond to the Petition. See Order (Doc. No. 4.) This Response is filed in accordance with that Order.

II. Factual Background

On or about June 4, 2006, Mr. Agyemang, a native and citizen of Ghana, *see* Pet. (Doc. No. 1); DHS Record of Deportable at 1 (Ex. 1); Notice to Appear at 1 (Ex. 2), was admitted to the United States at Baltimore, Maryland, as a Nonimmigrant (B2 – Temporary Visitor for Pleasure) and could stay in the country until November 4, 2006. *Id.* He overstayed. *Id.*

On April 16, 2019, ICE served Mr. Agyemang, while at the Elizabeth Contract Detention Center, with a Notice to Appear. Notice to Appear (Ex. 2) at 1. The Notice to Appear charged Mr. Agyemang as removable based upon Section 237(2)(1)(B) of the Immigration and Nationality Act (INA). *Id.* First, the Notice to Appear alleged that Mr. Agyemang was removable pursuant to Section 237(1)(B), in that after admission as a nonimmigrant under Section 101(a)(15) of the Act, Mr. Agyemang remained in the United States for a time longer than permitted, in violation of this Act or any other law of the United States. *Id.*

On May 20, 2019, Immigration Judge Mirlande Tadal, in Elizabeth, NJ granted Agyemang bond in the amount of \$12,000. Order of the Immigration Judge with Respect to Custody (Ex. 6.)

On May 21, 2019, Mr. Agyemang posted bond, and ICE released him from custody. Notice to EOIR: Alien Address (Ex. 7.) This was Mr. Agyemang's first time in ICE custody, and he spent 35 days in custody. Exs. 2, 6, 7.

On October 7, 2019, Agyemang filed another I-485, Application to Register Permanent Residence or Adjust Status. Benefits History (Ex. 8) at 2. On July 9, 2024, the application was administratively closed. *Id.*

On April 20, 2023, the United State filed an information against Mr. Agyemang in the United States District Court for the District of New Jersey. *See* Information (Ex. 3). Specifically, the information charged Mr. Agyemang with one count of conspiracy to sell, receive, or possess stolen property, in violation of 18 U.S.C. § 2315, and one count of sale, receipt, or possession of stolen goods, in violation of 18 U.S.C. § 2315. *Id.* at 1-4. Mr. Agyemang pleaded guilty to Count I and Count II of the Information on April 20, 2023. Plea Agreement (Ex. 4). On May 3, 2024, the court sentenced Mr. Agyemang to a 12-months plus 1 day term of imprisonment to be served concurrently. Criminal Judgement (Ex. 5) at 2.¹

Mr. Agyemang re-entered ICE custody on March 19, 2025, after his release from BOP custody and has been there since. *Id.*

On June 14, 2024, Mr. Agyemang filed a Form I-130, Petition for Alien Relative, with the United States Citizenship and Immigration Service, seeking to classify the beneficiary as the spouse of a United States citizen. Notice of Decision (Ex. 9) at 2. On April 24, 2025, the Immigration Judge denied the petition. *Id.*

¹ Exhibits 3, 4, and 5 were extracted from DHS evidence submitted to the Immigration Court.

On July 1, 2025, the Immigration Judge denied Bond for Agyemang’s custody redetermination request because Agyemang failed to show “that the issues on appeal render him eligible for bond.” Order of the Immigration Judge (Ex. 10) at 1. Counsel for Agyemang indicated at that time his intent to file an appeal. (*Id.* at 2.)

On August 6, 2025, the Immigration Judge granted Mr. Agyemang’s application for withholding of removal and relief under the Convention Against Torture (CAT) was granted but denied his application for Asylum. See Order of the Immigration Judge (Ex. 11) at 1. Ultimately, the Immigration Judge ordered Mr. Agymang removed to Ghana.

III. Questions Presented

Whether Mr. Agyemang’s pre-final order of removal, mandatory detention provides due process under the Fifth Amendment because the detention has not been prolonged or arbitrary?

Suggested Answers: Affirmative.

IV. Argument

Mr. Agyemang’s pre-final order of removal, mandatory detention does not violate the due process clause of the Fifth Amendment because it has not been prolonged or arbitrary. The Supreme Court’s decision in *Jennings v. Rodriguez*, 583 U.S. ---, 138 S. Ct. 830 (2018), overruled the United States Court of Appeals for the Third Circuit’s statutorily based decisions in *Diop v. ICE/Homeland Sec.*, 656 F.3d 221 (3d Cir. 2011), and *Chavez-Alvarez v. Warden York County Prison*, 783 F.3d 469, 478 (3d Cir. 2015), that Section 1226(c) contained a fixed point in an noncitizen’s detention necessitating

a bond hearing because those decisions fundamentally relied on the doctrine of constitutional avoidance. Instead, the Supreme Court held that the canon could not be applied to 8 U.S.C. § 1226(c), the statute that governs Mr. Agyemang's detention. To the extent Mr. Agyemang has mounted a constitutional challenge to his detention, that claim fails.

In discussing the effect of *Jennings* on mandatory detention, the Third Circuit confirmed the well-settled principle within this district that the statutory holding and explicit timeframes set forth in both *Diop* and *Chavez* have been abrogated; however, a petitioner may still raise an as-applied challenge to the constitutionality of his detention. *See German Santos v. Warden of Pike County Correctional Facility*, 965 F.3d 203, 208 (3d Cir. 2020) (holding an as-applied constitutional challenge to mandatory detention is allowable even though *Jennings* abrogated the construction of the statute as implicitly limiting detention without a bond hearing, because it left the framework for as-applied constitutional challenges intact). Specifically, where a petitioner challenges the constitutionality of Section 1226(c) as applied to him, the Court must apply the constitutional reasoning underlying *Diop* and *Chavez* and, in order for petitioner to show he is entitled to a bond hearing, he must show that the ongoing detention is so unreasonable or arbitrary that it has actually violated his rights under the Due Process Clause. *Id.* at 210.

In *Jennings*, the Supreme Court specifically held open the question of whether 8 U.S.C. §§ 1225(b), 1226(a), and 1226(c) are constitutional. 138 S. Ct. at 851. With

respect to Section 1226(c), however, the Supreme Court has already determined that this statute is constitutional on its face. *Demore v. Kim*, 538 U.S. 510, 531 (2003). In *Demore*, the Supreme Court affirmed the mandatory detention pending removal proceedings of a criminal alien.

Similarly, Mr. Agyemang's detention pursuant to Section 1226(c) is lawful. Courts have held that "detention during deportation proceedings [i]s a constitutionally valid aspect of the deportation process." *Id.* at 523. In every case in which detention incident to removal proceedings has arisen, the Supreme Court has concluded that it is constitutional. *Id.* See also *Reno v. Flores*, 507 U.S. 292, 306 (1993) ("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) (holding "[d]etention 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."). And in *Demore*, the Court squarely rejected a constitutional challenge to Section 1226(c), which mandates detention of certain criminal and terrorist aliens pending removal proceedings, without the opportunity for release on bond. The Court affirmed Congress's categorical judgment, holding that "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 LPR in that case] be detained for the brief period necessary for their removal proceedings.” *Demore*, 538 U.S. at 513.

Mr. Agyemang’s mandatory detention serves an immigration purpose. Mandatory detention of a criminal noncitizen² under Section 1226(c) during removal proceedings is constitutional where it continues to “serve its purported immigration purpose.” *Demore*, 538 U.S. at 527 (citing *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001)). See also *Flores*, 507 U.S. at 306; *Carlson*, 342 U.S. at 540; *Wong Wing*, 163 U.S. at 235-36; *Demore*, 538 U.S. at 532 (Kennedy, J., concurring). As *Demore* itself illustrates, that detention mandate does not cease to be justified whenever the removal proceedings to which the detention is tied, exceeds a finite period.

First, the Government’s interest in effectuating removal of a criminal noncitizen, if he is ordered removed at the end of the proceedings, does not dissipate at any particular fixed point. It cannot be conclusively established until the end of removal proceedings whether a noncitizen will be ordered removed, because those proceedings are the “sole and exclusive” means for making that determination. 8 U.S.C. § 1229a(a)(3). The prospect of removal, and the Government’s interest in effectuating it, thus remains concrete throughout.

² The INA employs the term “alien,” defined as “any person not a citizen or national of the United States.” 8 U.S.C. § 1101(a)(3). Herein, “noncitizen” means any person as defined in 8 U.S.C. § 1101(a)(3).

Second, the risk that a criminal noncitizen will commit further crimes or otherwise present a danger to the community if released will ordinarily remain constant until removal proceedings are completed. Moreover, the Government's interest in keeping the noncitizen in custody (and the noncitizen's incentive to abscond) will typically increase over time as removal proceedings progress towards their completion. *See Coello-Udiel v. Doll*, No. 17-1414, 2018 WL 2198720, *4 (M.D. Pa. May 14, 2018) (recognizing that a noncitizen "who has already been ordered removed has less to lose by fleeing while released on bond"). A criminal noncitizen on the cusp of removal has a greater incentive to abscond than one who is at the beginning of his proceedings. Here, there is the potential for ongoing hearings before the Immigration Judge for the limited purpose of opposing the issuance of an oral decision to deny asylum relief and order of removable status. IJ Order (Ex. 11) at 4.

Third, Section 1226(c) does not cease to be justified when a criminal noncitizen makes choices during the proceedings that necessarily add time to the resolution of his case—and therefore to the detention that Congress found to be a necessary aspect of those proceedings. For example, in *Demore*, the Court noted that, if a criminal noncitizen decided to appeal to the BIA, that typically added about four months to removal proceedings—and thus to the accompanying detention under Section 1226(c). *See id.* at 529. But the Court similarly treated the added detention time reasonably consumed in disposing of the appeal as fully justified. "As we have explained before," the Court stated, "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.* at 530 n. 14 (quoting *McGautha v. California*, 402 U.S. 183, 213 (1971)). *See also Chaffin v. Strychcombe*, 412 U.S. 17, 30-31 (1973); *Coello-Udiel*, 2018 WL 2198720 at *4. Mr. Agyemang's removal period demonstrates the Immigration Court made every effort to adjudicate his application for relief from removal as quickly as possible to avoid any need of his further detention under § 1226(c), and the proceedings have proceeded without undue delay.

At the current stage in his removal proceedings, Mr. Agyemang has chosen not to accept Judge Finston's August 6, 2025, Order as an administratively final removal order, so the additional detention time he must endure to challenge that decision is justified.

Mr. Agyemang's detention does not violate due process rights. When a noncitizen is detained incident to removal proceedings under 8 U.S.C. § 1226(c), as Agyemang has been, those proceedings themselves supply extensive safeguards against the arbitrary deprivation of liberty. As of this filing, Mr. Agyemang has been detained for approximately 6 months. During the course of his detention, Mr. Agyemang has availed himself of those procedural safeguards. Since he was taken into custody, Mr. Agyemang has chosen to seek relief from removal, and he is currently challenging the Immigration Judge's order denying asylum relief and ordering him removable. (Ex. 11.)

The passage of time in any ongoing proceeding reflects Mr. Agyemang's litigation decisions in seeking relief from his removal. When considering the constitutionality of mandatory detention for aliens detained under 8 U.S.C. § 1226(c), courts have upheld periods of detention similar to Mr. Agyemang's detention. *Coello-Udiel*, 2018 WL 2198720 at *3 (holding 15 months of detention did not violate due process where the case had proceeded at a reasonable pace with no evidence the government had willfully delayed the case and “[w]hile Coello-Udiel 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”); *Vukosavljevic v. Lowe*, Civil No. 18-1235, 2018 WL 6706691 (M.D. Pa. December 20, 2018) (Munley, J.) (holding prolonged mandatory detention will amount to unconstitutional application of 1226(c) only when “so unreasonable that it amounts to an arbitrary deprivation of liberty which cannot comport” with Due Process; however, alien's mandatory detention for 15 months where the case has progressed at a reasonable pace with no indication the government had improperly or unreasonably delayed the case was not arbitrary application of statute); *Obaimbirgin v. Lowe*, Civil No. 18-1934, 2018 WL 6650270 (M.D. Pa. Dec. 19, 2018) (Jones, J.) (holding alien's mandatory detention for 9 months where most of delays are attributable to alien's counsel was not arbitrary application of statute); *Crooks v. Lowe*, Civil No. 18-0047, 2018 WL 6649945 (M.D. Pa. Dec. 18, 2018) (Jones, J.) (18 months mandatory detention not arbitrary); *Rosales v. Lowe*, Civil No. 18-1302, 2018 WL

6650304 (M.D. Pa. Dec. 18, 2018) (Jones, J.) (15 months mandatory detention not arbitrary).

Here, Mr. Agyemang's case is not of the type of extraordinary that warrants a constitutional remedy. Mr. Agyemang's detention continues to fulfill the purpose of facilitating removal and protecting against flight or dangerousness. DHS has lawfully detained him for removal proceedings because his criminal record places him within the ambit of Section 1226(c). *Jennings*, 138 S. Ct. at 847.

In *German Santos*, the Third Circuit set forth a "non-exhaustive" list of four factors for a court to consider in assessing the constitutionality of continued mandatory detention. *See German Santos*, 965 F.3d at 211. Those factors include the duration of detention, the likelihood of continued detention, reasons for the delay in the administrative proceedings, and the conditions of confinement. *Id.* at 211-212.

To the extent that Mr. Agyemang makes a direct challenge to the constitutionality of his detention, his claims are unavailing. Of the four *German Santos* factors, three favor the Government: the total length of detention to date, the likelihood of continued detention, and attributable delays in the removal proceedings. One of the *German Santos* factors favors granting a bond hearing: conditions of confinement. On balance of these factors, Agyemang's detention does not violate due process, and his petition should therefore be denied with leave to renew.

1. The total length of detention to date.

Mr. Agyemang has been detained for approximately 6 months. Mr. Agyemang has received a considerable amount of process as to the merits of his claims, including numerous hearings to permit him to present his claim for CAT relief. He has received detailed and thorough consideration of his challenges to his removal by an Immigration Judge. During his detention, the issues of Agyemang's request for CAT relief removal have been presented to and reviewed by Immigration Judge Finston wherein Agyemang's request for asylum was denied, request for withholding under INA § 241(b)(3) was granted, request for relief from CAT was granted, and Agyemang was ordered removable. (Ex. 11.)

As the Supreme Court stated in *Demore*, when considering the added detention time incident to the detainee's appeal, "[t]he 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." 538 U.S. at 530 n.14 (alteration in original). Indeed, "[a]lthough this litigation strategy is perfectly permissible," courts have held an alien "may not rely on the extra time resulting therefrom to claim that his prolonged detention violates substantive due process." *Doherty v. Thornburgh*, 943 F.2d 204, 211 (2d Cir. 1991). Accordingly, the Court should consider the reasons for the length of detention, rather than simply totaling the months that Agyemang has been detained.

Several courts have found that a petitioner with longer detention periods than Mr. Agyemang (6 months) are not entitled to an individualized bond hearing. *See Appiah v. Lowe*, No. 3:24-cv-2222, 2025 WL 510974 (M.D. Pa. Feb. 14, 2025) (Mariani, J.) (holding that 18 months' detention did not violate due process); *White v. Lowe*, No. 1:23-CV-1045, 2023 WL 6305790 (M.D. Pa. September 27, 2023) (Conner, J.), (finding that petitioner's continued detention for approximately 15 months did not require an individualized bond hearing), *abrogated by White v. Warden Pike County Correctional Facility*, No. 23-2872, 2024 WL 4164269 (3d Cir. Sept. 12, 2024) (finding White's detainment, which had reached 25 months at the time of his appeal, violated due process); *McDougall v. Warden, Pike County Correctional Facility*, No. 3:23-cv-00759, 2023 WL 6161038 (M.D. Pa. September 21, 2023) (Mariani, J.) (finding petitioner's detention for a little over 13 months did not weigh in favor of relief); *Flores-Lopez v. Lowe*, No. 1:21-CV-1839, 2021 WL 6134453, at *2 (M.D. Pa. December 29, 2021) (Conner, J.) (denying habeas corpus relief where petitioner had been detained for approximately 19 months after his first bond hearing); *Gabriel v. Barr*, No. 1-20-CV-1054, 2021 WL 268996 (M.D. Pa. January 27, 2021) (Jones III, J.) (finding that petitioner was not entitled to an individualized bond hearing after 18 months in custody); *Crooks*, 2018 WL 6649945 at *2 (denying a bond hearing to a petitioner who had been detained for 18 months). *Compare Elyardo v. Lechleitner*, No. 1:23-cv-01089, 2023 WL 8259252 (M.D. Pa. November 29, 2023) (Kane, J.) (finding petitioner was entitled to individualized bond hearing after being detained for approximately 19 months); *Smith v. Ogle*, No. 3-21-cv-1129, 2023 WL 3362597 (M.D.

Pa. May 10, 2023) (Rambo, J.) (holding over four years of detention required individualized bond hearing); *Rad v. Lowe*, No. 1-21-cv-00171, 2021 WL 1392067 (M.D. Pa. April 13, 2021) (Kane, J.) (37 months in custody required individualized bond hearing); *Maledo v. Lowe*, No. 1-22-cv-01031, 2022 WL 3084304 (M.D. Pa. August 3, 2022) (Schwab, M.J.) (finding 18 months detention required an individualized bond hearing). Given that Agyemang's case has "proceeded through the removal process at a reasonable pace and there [was] no indication on the record that the government ha[d] improperly or unreasonably delayed the proceedings," this factor should weigh in favor of denying Agyemang's habeas petition. *Crooks*, 2018 WL 6649945 at *2.

2. The likely duration of future detention.

Although considered by this Court in almost every habeas petition challenging 1226(c) detention post *Jennings*, this factor relies on unhelpful hypothesizing of future events and improperly requires litigants to argue to this Court the merits of their position at the administrative level. Nevertheless, in Agyemang's case, the future procedural process is clear. The Immigration Judge issued his decision on the Petitioner's Asylum, withholding and CAT relief, and he was ordered removed. (Ex. 11.) While Agyemang may appeal that decision to the BIA or the Third Circuit, that decision remains with the Petitioner. As a result, this factor should weigh in favor of denying Agyemang's petition.

3. Delays in the removal proceedings caused by the detainee or the government.

The government has not intentionally delayed or unreasonably prolonged Mr. Agyemang's proceedings. Conversely, Mr. Agyemang's proceedings have moved forward at the normal rate for noncitizens who contest removability and apply for relief. Agyemang's initial ICE proceedings occurred while he was traversing through the federal criminal process for his crimes. Ex. 2. Mr. Agyemang entered ICE custody on March 4, 2025. Mr. Agyemang testified and introduced evidence in support of his withholding and CAT relief claims within five months of entering ICE custody and received the written decision of the Immigration Judge on August 6, 2025. Ex. 11.

4. Conditions of Confinement.

Agyemang has only spent six (6) months detained.

In *German Santos*, the Third Circuit found that a weighing of the factors required grant of a bond hearing for a petitioner who had been detained for over two and a half years without an end in sight. 965 F.3d at 212-13. In this matter, Mr. Agyemang's administrative hearings have progressed in a timely manner.

Accordingly, this Court should deny the petition.

V. Conclusion

The Court should deny Agyemang's petition because he is lawfully detained under 8 U.S.C. § 1226(c).

Respectfully submitted,

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Date: September 25, 2025

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee of the Office of the United States Attorney for the Middle District of Pennsylvania and is a person of such age and discretion as to be competent to serve papers. That on September 25, 2025, she served a copy of the attached

RESPONSE TO THE
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by placing said copy in a postpaid envelope addressed to the person hereinafter named, at the place and address stated below, which is the last known address, and by depositing said envelope and its contents in the United States Mail at Williamsport, Pennsylvania.

Addressee:

Alex Agyemang
A# 
Clinton County Correctional Facility
58 Pine Mountain Road
P.O. Box 419
McElhattan, PA 17748

/s/ Cynthia Roman
Cynthia Roman
Supv. Paralegal Specialist

