District Judge John H. Chun
Chief Magistrate Judge Theresa L. Fricke

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DANIEL LOPEZ DEJESUS,

Petitioner,

v.

DREW BOSTOCK, Seattle Field Office Director,

BRUCE SCOTT, Warden of Northwest Immigration Detention Center,

Respondents.

Case No. 2:25-cv-01427-JHC-TLF

FEDERAL RESPONDENT'S[1] RETURN MEMORANDUM

Noted for Consideration:
November 3, 2025

I. INTRODUCTION

This Court should deny Petitioner Daniel Lopez DeJesus's request for either release or a court-ordered bond hearing relating to his mandatory immigration detention. United States Immigration and Customs Enforcement ("ICE") lawfully detains DeJesus pursuant to Section 236(c) of the Immigration and Nationality Act ("INA"), codified at 8 U.S.C. § 1226(c), pending his administrative removal proceedings. He is subject to mandatory detention because of his

[1] Respondent Bruce Scott is not a Federal Respondent and is not represented by the U.S. Attorney's Office.

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criminal convictions for forgery, amphetamine (possession and sale), first degree robbery, delivery of methamphetamine, possession of controlled substance methamphetamine, and failure to appear. Contrary to DeJesus's assertions in the petition, pardon by a state governor does not eliminate the immigration consequences of a controlled substance charge. Thus, his allegations that his continued detention violates his Fifth Amendment due process rights are incorrect.

The Immigration Judge ("IJ") sustained a criminal charge of removability that mandates detention pursuant to Section 1226(c). *See* 8 U.S.C. § 1226(c); *see also Jennings v. Rodriguez*, 138 S. Ct. 830, 846 (2018) ("§ 1226(c) makes clear that detention of [noncitizens] within its scope must continue 'pending a decision on whether the [noncitizen] is to be removed from the United States'" (quoting 8 U.S.C § 1226(c)) (emphasis in original)). The Board of Immigration Appeals ("BIA") denied his appeal. And his removal proceedings remain ongoing as his Petition for Review with the Ninth Circuit remains pending. His detention has not become unreasonable nor does it violate due process.

Accordingly, the Federal Respondent (the "Government") respectfully requests that the Court deny the Petition. This motion is supported by the pleadings on file in this case, the Declaration of ICE Deportation Officer Christopher Hubbard ("Hubbard Decl."), and the Declaration of Alixandria K. Morris ("Morris Decl.") with exhibits attached thereto. The Government does not believe that an evidentiary hearing is necessary.

II. FACTUAL BACKGROUND

Petitioner is a native and citizen of Mexico and entered the United States on an unknown date. Hubbard Decl., ¶ 3; Morris Decl., Ex. A, Form I-213. Between 2006 and 2010, Petitioner was convicted of various crimes in Oregon, including forgery, possession of weapon, weapon offense, and sale and possession of methamphetamine. Morris Decl., Ex. A. On January 12, 2007, Petitioner was convicted in Oregon of the crimes of forgery in the second degree and unlawful

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possession of a firearm. Morris Decl., Ex. B. On April 13, 2007, later that same year, Petitioner was convicted of possession of methamphetamine. *Id.* On June 7, 2010, Petitioner was convicted of robbery in the first degree, delivery of methamphetamine, possession of controlled substance methamphetamine, and failure to appear. *Id.* Lopez was sentenced to 90 months. *Id.*, pg. 2. On December 2, 2020, Oregon Governor Kate Brown pardoned Petitioner for the June 2010 conviction. *Id.*

On December 30, 2020, ICE issued a Notice to Appear charging Petitioner as removable under the Immigration and Nationality Act ("INA") Section 212(a)(6)(A)(i), 8 U.S.C. § 1182(a)(6)(A)(i)—alien present without admission or parole. Hubbard Decl., ¶ 4; Morris Decl., Exs. A, C. On January 12, 2021, a form I-261 was filed with the Tacoma immigration court that added a charge under INA § 212(a)(2)(A)(i)(II), 8 U.S.C. § 1182(a)(2)(A)(i), as an alien who has been convicted of, or who admits having committed, or admits committing acts which constitute the essential elements of Section 102 of the Controlled Substances Act, 21 U.S.C. 802. Hubbard Decl., ¶ 6. On April 5, 2021, Oregon Governor Kate Brown issued an amended pardon for Petitioner for his remaining offenses, stating that Petitioner may be subject to deportation for these offenses. Morris Decl., Ex. B.

An immigration judge ordered Petitioner removed to Mexico on August 19, 2021. Hubbard Decl., ¶ 10.

On September 10, 2021, Petitioner filed a Notice of Appeal with the BIA. *Id.*, ¶ 12. On January 30, 2025, the BIA issued an opinion dismissing the Petitioner's appeal. *Id.*, ¶ 13. On February 1, 2025, Petitioner was taken into ICE custody in Eugene, Oregon, and transferred to the NWIPC the same day. *Id.*, ¶ 14.

On February 5, 2025, Petitioner filed a Petitioner for Review with the Ninth Circuit Court of Appeals. *Id.*, ¶ 15; *Lopez v. Bondi*, 25-747, 9th Cir. (Feb. 5, 2025).

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III. LEGAL STANDARD

It is axiomatic that "[t]he district courts of the United States . . . are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute." *Exxon Mobil Corp. v. Allopath Servs., Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted). "[T]he scope of habeas has been tightly regulated by statute, from the Judiciary Act of 1789 to the present day." *Dep't of Homeland Sec. v. Thuraissigiam*, 140 S. Ct. 1959, 1974 n. 20 (2020). Title 28 U.S.C. § 2241 provides district courts with jurisdiction to hear federal habeas petitions.

To warrant a grant of habeas corpus, the burden is on the petitioner to prove that his or her custody is in violation of the Constitution, laws, or treaties of the United States. *See Lambert v. Blodgett*, 393 F.3d 943, 969 n.16 (9th Cir. 2004).

IV. ARGUMENT

DeJesus's detention is statutorily mandated and comports with due process. He is entitled to neither release nor a court-ordered bond hearing. Accordingly, this Court should dismiss the Petition.

A. ICE lawfully detains DeJesus pursuant to 8 U.S.C. § 1226(c).

DeJesus's detention is constitutional and statutorily mandated pursuant to 8 U.S.C. §1226(c). *Demore v. Kim*, 538 U.S. 510, 530 (2003) ("Detention during removal proceedings is a constitutionally permissible part of that process."). Section 1226 provides the framework for the arrest, detention, and release of noncitizens in removal proceedings. *See* 8 U.S.C. § 1226. Section 1226(a) grants DHS the discretionary authority to determine whether a noncitizen should be detained, released on bond, or released on conditional parole pending the completion of removal proceedings. In contrast, detention pursuant to Section 1226(c) is mandatory for noncitizens that commit certain criminal offenses. This detention may end prior to the conclusion of removal

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proceedings "only if the [noncitizen] is released for witness-protection purposes." *Jennings*, 138 S. Ct. at 847 (internal quotation marks and citations omitted). Section 1226(c) includes any non-citizen who "is deportable by reason of having committed any offense covered in section 1227(a)(2)(A)(ii), (A)(iii), (B), (C), or (D) of this title." 8 U.S.C. § 1226(c)(1)(B).

Here, DeJesus is charged as being removable pursuant to 8 U.S.C. § 1182(a)(6)(A)(i)—alien present without admission or parole—and 8 U.S.C. § 1182(a)(2)(A)(i)—as an alien who has been convicted of, or who admits having committed, or admits committing acts which constitute the essential elements of Section 102 of the Controlled Substances Act, 21 U.S.C. 802. Hubbard Decl., ¶¶ 4, 6; Morris Decl., Ex. A. Because DeJesus has been convicted of a felony after his admission to the United States and convicted of an offense involving Section 102 of the Controlled Substances Act, his detention is statutorily mandated by Section 1226(c) until his removal proceedings have concluded.

B. DeJesus has not met his burden of establishing that his mandatory detention violates his rights under the Fifth Amendment's Due Process Clause.

In addition to being statutorily mandated, DeJesus's continued detention pursuant to Section 1226(c) does not violate his due process rights. The Supreme Court "has firmly and repeatedly endorsed the proposition that Congress may make rules as to [noncitizens] that would be unacceptable if applied to citizens." *See Demore*, 538 U.S. at 522 (citations omitted). Detention is a constitutionally permissible aspect of the Government's enforcement of the immigration laws and fulfills the legitimate purpose of ensuring that individuals appear for their removal proceedings. *See Jennings*, 138 S. Ct. at 836; *Demore*, 538 U.S. at 523; *Zadvydas v. Davis,* 533 U.S. 678, 690-91 (2001). Consistent with the requirements of due process, DeJesus's confinement is thus "reasonably related" to a legitimate government interest. *Bell v. Wolfish*, 441 U.S. 535, 538-39 (1979).

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Here, DeJesus seemingly contends that his prolonged detention without an individualized bond hearing viola tes the due process of the 5th Amendment. Pet., at 3-4 (In his pro se petition, Petitioner states his detention violates his "constitutional rights"). In *Demore*, the Supreme Court rejected a due process challenge to Section 1226(c) explaining that Congress drafted Section 1226(c) to respond to the high rates of crime and flight by removable noncitizens convicted of certain crimes. The Court held that "the Government may constitutionally detain deportable [noncitizens] during the limited period necessary for their removal proceedings." 538 U.S at 518-21, 526.

In addition, the Supreme Court did not embrace any bright-line rule for when a noncitizen under Section 1226(c) *may* suffer a due process violation. In fact, the Court upheld the constitutionality of the noncitizen's detention even though it had surpassed six months and was likely to extend longer. *Id.*; *see Reid v. Donelan*, 17 F.4th 1, 7 (1st Cir. 2021) ("It requires no reading of tea leaves to see that *Demore* is fatal to the claim here that every single person detained for six months must be entitled to a bond hearing.").

In sum, this Court should rule that DeJesus has not established a violation of his due process rights as he is a criminal noncitizen in pending removal proceedings, his detention serves the immigration purpose for which 8 U.S.C. § 1226(c) was enacted into law, and he has not demonstrated that his detention is unreasonable or unjustified under Supreme Court caselaw for noncitizens in civil immigration pending removal proceedings. *See Demore*, 538 U.S. at 527-28, 530-33.

C. DeJesus's continued detention without a bond hearing does not violate his due process rights under the *Martinez* test.

DeJesus's detention meets due process requirements under the multi-factor test previously employed in this District (the "*Martinez* test") to determine whether Section 1226(c) detention has

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become unreasonable. *Martinez v. Clark*, 18-cv-1669, 2019 WL 5968089 (W.D. Wash. May 23, 2019) (Report and Recommendation) (applying multi-factor due process analysis), *adopted by*, 2019 WL 5962685 (W.D. Wash. Nov. 13, 2019), *but see Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1214 (9th Cir. 2022) (CJ Bumatay, concurring) ("[T]he [Supreme] Court has recently backed away from multifactorial 'grand unified theor[ies]' for resolving legal issues") (citation omitted); *id.* ("I think this case is better decided through the text, structure, and history of the Constitution, rather than through interest balancing.").

In *Martinez*, the district court analyzed

> (1) the total length of detention to date; (2) the likely duration of future detention; (3) whether the detention will exceed the time petitioner spent in prison for the crime that made him removable; (4) the nature of the crimes that petitioner committed; (5) the conditions of detention; (6) delays in the removal proceedings caused by petitioner; (7) delays in the removal proceedings caused by the government; and (8) the likelihood that the removal proceedings will result in a final order of removal.

2019 WL 5968089, at *9. These factors favor the Government's position that DeJesus's continued immigration detention without a bond hearing is not unreasonable.

The first factor, the length of Petitioner's detention, has been approximately eight months. Although Petitioner asserts in his Petition that he has been confined for an "ongoing period" of 24 months, it is undisputed that Petitioner has been confined at NWIPC since February 2025, following the Board of Immigration Appeals' ("BIA") denial of his appeal. Pet., at 1-3. Since then, Petitioner has filed a Petition for Review with the Ninth Circuit. Pet., at 3. Petitioner seemingly states that he has been confined for 24 months of detention by combining his period of detention from 2020 - 2021 with his current period of detention since February 2025. Pet., at 1-2.

This Court should note that the current length of his detention has not reached the length of what many courts have found to be unreasonable. *See Hong v. Mayorkas*, No. 2:20-cv-1784, 2021 WL 8016749, at *5 (W.D. Wash. June 8, 2021), *report and recommendation adopted*, 2022

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WL 1078627 (W.D. Wash. Apr. 11, 2022) (collecting cases finding prolonged detention from 13 months to 32 months without a court-ordered bond hearing to have become unreasonable); *see also* Pet., ¶ 97 (listing cases involving longer periods of detention). Further, the only reason for Petitioner's continued detention is his election for Ninth Circuit review. Therefore, at worst, this factor should be neutral.

Second, the length of future detention for Petitioner cannot be assessed at this time. The sole determiner of future detention is based on the amount of time necessary for the Ninth Circuit to assess Petitioner's Petition for Review. Therefore, any assessment of the length of future detention for this Petitioner would be speculative at best.

The third and fourth factors clearly favor the Government. These factors involve a review of the length of detention compared to the noncitizen's criminal sentence and nature of his crime. *Martinez*, 2019 WL 5968089, at *9. DeJesus's criminal conviction resulted in a ninety-month sentence – a much longer period than his current eight-month detention (or even his 24-month detention if the Court calculates DeJesus's detention combining his previous detention period). Morris Decl., Ex. A. Furthermore, DeJesus admitted to serious criminal activity, including delivery of methamphetamine, first degree robbery, and failure to appear. *Id.* DeJesus's admissions to serious criminal activity and demonstrated failure to comply with a Court order of appearance clearly favors the Government.

As for the fifth factor – conditions of detention, Petitioner is detained at the NWIPC. Petitioner does not allege that his conditions of confinement tip this factor in his favor, and he submits no declaration. *See generally* Dkt. 1. Without any such allegation, the fifth factor should be neutral.

The sixth and seventh factors assess delays caused by the petitioner and the government. The Government has not deliberately delayed his removal proceedings. While in immigration

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detention, DeJesus's proceedings have not been delayed. He has been ordered removed, the BIA denied his appeal, and his Ninth Circuit Petition for Review is pending. Accordingly, this Court should find that the sixth and seventh factors favor the Government.

The last factor – the likelihood that the removal proceedings will result in a final order of removal – favors the Government. The IJ has denied DeJesus's applications for relief of removal and has ordered him removed to Nigeria. The BIA dismissed his appeal. His only route to relief from removal is now with the Ninth Circuit.

The totality of the *Martinez* factors favors the Government. Therefore, DeJesus's continued immigration detention without a bond hearing is not unreasonable and this Court should deny DeJesus's Petition.

D. If this Court finds that his continued detention without a bond hearing has become unreasonable, this Court should order a bond hearing before an IJ with DeJesus bearing the burden of proof to justify release.

If the Court were to find that DeJesus's continued immigration detention without a bond hearing is unreasonable, the appropriate relief is not immediate release, but instead a bond hearing before an IJ. *See e.g., Demore*, 538 U.S. at 532 (Kennedy, J., concurring). This is aptly supported by Ninth Circuit precedent, which has stated that "compelled release of detainees is surely a remedy of last resort." *Fraihat v. United States Immigration & Customs Enf't*, 16 F.4th 613, 642 (9th Cir. 2021). Moreover, cases within the Ninth Circuit (post-*Jennings*), including this Court, have repeatedly rejected the claim that release via the grant of a Petition for Writ of Habeas Corpus is the appropriate remedy for a criminal noncitizen in civil immigration during pending removal proceedings. *See Juarez v. Wolf*, No. 20-cv-1660-RJB-MLP, 2021 WL 2323436, *8 (W.D. Wash. May 5, 2021) ("There is no authority supporting Petitioner's claim that he is entitled to an order of release.").

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Next, if this Court were to issue an order requiring a bond hearing before an IJ, the burden of proof should properly be placed on DeJesus to justify that his release is warranted. Pursuant to the text of 8 U.S.C. § 1226(c), in the sole instance where release is permitted, Congress mandated that the burden of proof be on the *on the noncitizen, not the government* to justify release. *See* 8 U.S.C. § 1226(c)(2) (emphasis added). The Supreme Court affirmed that the statute is clear on this point in *Jennings*, 138 S. Ct. at 836, 846-47.

Supreme Court caselaw also supports the position that the burden of proof be placed on DeJesus if a court-ordered bond hearing is granted. Simply put, the Supreme Court has *always* affirmed the constitutionality of civil immigration detention pending removal proceedings, notwithstanding that the Government has *never* borne the burden to justify such detention by clear and convincing evidence. *See, e.g.*, *Demore*, 538 U.S. at 522, 531; *Rodriguez Diaz*, 53 F.4th at 1211 ("We are aware of no Supreme Court case placing the burden on the government to justify the continued detention of [a noncitizen], much less through an elevated 'clear and convincing' showing."). In fact, even when considering a noncitizen subjected to potentially indefinite detention after the conclusion of removal proceedings, the Supreme Court has placed the burden *on the noncitizen, as opposed to the Government*, to justify release. *See Zadvydas*, 533 U.S. at 701.

Ultimately, based on the facts and the law, this Court should deny DeJesus's Petition.

V. CONCLUSION

For the foregoing reasons, this Court should dismiss DeJesus's Petition in its entirety.

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DATED this 6th day of October, 2025.

Respectfully submitted,

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I certify that this memorandum contains 2,842 words, in compliance with the Local Civil Rules.