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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ISIDRO BENAVIDES CARBALLO,

Petitioner,

v.

TONYA ANDREWS, ET AL.,

Respondents.

CASE NO. 1:25-CV-00978-KES-EPG

RESPONDENTS' OPPOSITION TO
PETITIONER'S MOTION FOR TEMPORARY
RESTRAINING ORDER

I. INTRODUCTION

Petitioner Isidro Benavides Carballo's motion for a temporary restraining order ("TRO") should be denied. Carballo is mandatorily detained during his removal proceedings under 8 U.S.C. § 1226(c). His detention is mandatory because he has been convicted of First-Degree Murder, for which he was sentenced to over 27 years in prison. This conviction is, at a minimum, a crime involving moral turpitude and an aggravated felony, each of which alone requires his detention under 8 U.S.C. § 1226(c)(1)(A) and (B).

II. BACKGROUND

A. Carballo's relevant criminal history and removal proceedings.

Carballo is a native and citizen of El Salvador. *See* Declaration of Alfonso V. Sanchez (Sanchez Decl.) at ¶ 5. Carballo illegally entered the United States at an unknown date. *Id.*

1 On July 18, 1989, Carballo was convicted of violating California Penal Code Section 246.3 –
2 Willful Discharge of Firearm in Negligent Manner. He was sentenced to 364 days in jail and 36 months
3 of probation. Sanchez Decl. at ¶ 17. On December 20, 1990, Carballo was convicted by jury trial in the
4 Superior Court of California, County of Fresno, of violating California Penal Code Section 187 – First
5 Degree Murder. Petitioner was sentenced to “25 years to life with parole.” Sanchez Decl. at ¶ 18. The
6 court also found that he had used a firearm in the commission of this offense, in violation of California
7 Penal Code Section 12022.5(a), and therefore sentenced him to an additional two-year sentence, to run
8 concurrently from his First Degree Murder conviction. *Id.* at ¶ 19.

9 Carballo did not enter the United States lawfully. *Id.* at ¶ 6. ICE initiated removal proceedings
10 against Carballo in 2020. *Id.* Given his unlawful entry and his conviction for first-degree murder, ICE
11 initiated removal proceedings against Carballo under Section 240 of the Immigration and Nationality
12 Act, charging him with two independent charges: (1) under Section 212(a)(6)(A)(i) of the Act, in that
13 he is an alien present in the United States without being admitted or paroled, or who arrived in the
14 United States at any time or place other than as designated by the Attorney General; and (2) under
15 Section 212(a)(2)(A)(i)(I) of the Act, in that he is an alien who has been convicted of, or who admits
16 having committed, or who admits committing acts which constitute the essential elements of a crime
17 involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit
18 such a crime. *Id.* at ¶ 6.

19 Carballo was initially taken into ICE custody and detained at Mesa Verde ICE Processing
20 Facility in Bakersfield, California, on July 13, 2020. Sanchez Decl. ¶ 7. On August 5, 2020, United
21 States District Judge Vince Chhabria granted Carballo’s request for bail pursuant to *Zepeda Rivas v.*
22 *Jennings*, Case No. 20-cv-02731-VC (N.D. Cal. April 20, 2020). *Id.* at ¶ 8.

23 On March 19, 2024, Immigration Judge Shadee Star issued a written order in which she
24 sustained the charges of inadmissibility under Section 212(a)(6)(A)(i) and Section 212(a)(2)(A)(i)(I) of
25 the Act respectively and directed El Salvador as the country of removal. *Id.* at ¶ 10.

26 On May 14, 2024, Carballo filed an application for immigration relief with the Immigration
27 Court. *Id.* at ¶ 11. Carballo’s immigration proceedings are currently set for an individual merits hearing
28 on April 9, 2026, in the Immigration Court in Concord, California. *Id.* at ¶ 13.

B. Carballo's Current Motion for a Temporary Restraining Order.

Carballo filed the instant Motion for a Temporary Restraining Order on August 5, 2025. ECF No. 2 ("Mot."). Carballo claims that, on July 23, 2025, he "received a call from ICE asking him to come to the office on August 5, 2025 at 7am", and that when he did so, he was detained. Mot. at 21.¹ He seeks a temporary restraining order and a preliminary injunction to compel his immediate release. Mot. at 2. A hearing on this motion is currently set for August 7, 2025. ECF No. 4.

III. LEGAL STANDARDS

A. Mandatory Detention of Noncitizens Under 8 U.S.C. § 1226(c).

In general, the detention of a noncitizen² pending removal proceedings is governed by 8 U.S.C. § 1226. *See Diaz v. Garland*, 53 F.4th 1189, 1196 (9th Cir. 2022) (citing, e.g., *Jennings v. Rodriguez*, 583 U.S. 281 (2018)). "Section 1226(a) sets out the default rule: The Attorney General may issue a warrant for the arrest and detention of an alien 'pending a decision on whether the alien is to be removed from the United States.'" *Jennings*, 583 U.S. at 288 (quoting 8 U.S.C. § 1226(a)). "'Except as provided in [§ 1226(c)]' the Attorney General 'may release' an alien detained under § 1226(a) 'on . . . bond' or 'conditional parole.'" *Id.* When it comes to subsection § 1226(c), however, detention is mandatory. The Supreme Court has upheld the mandatory nature of § 1226(c)(1):

Detention during removal proceedings is a constitutionally permissible part of that process. *See, e.g., Wong Wing*, 163 U.S., at 235, 16 S.Ct. 977 ("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"); *Carlson v. Landon*, 342 U.S. 524, 72 S.Ct. 525, 96 L.Ed. 547 (1952); *Reno v. Flores*, 507 U.S. 292, 113 S.Ct. 1439, 123 L.Ed.2d 1 (1993).

Demore v. Hyung Joon Kim, 538 U.S. 510, 531 (2003).

B. Preliminary Injunctions.

"A preliminary injunction is an extraordinary and drastic remedy." *Lopez v. Brewer*, 680 F.3d

¹ Citations are to the docketed page numbers.

² This brief uses the term "noncitizen" as equivalent to the statutory term "alien." *See Barton v. Barr*, 140 S. Ct. 1442, 1446 n.2 (2020) (quoting 8 U.S.C. § 1101(a)(3)).

1 1068, 1072 (9th Cir. 2012) (internal quotation marks and citation omitted). “The Supreme Court has
 2 emphasized that preliminary injunctions are an ‘extraordinary remedy never awarded as of right.’”
 3 *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (citation omitted). To prove entitlement to a
 4 preliminary injunction, a petitioner must establish that: (1) he is likely to succeed on the merits, (2) he is
 5 likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in
 6 his favor, and (4) an injunction is in the public interest. *See Winter v. Nat. Res. Def. Council, Inc.*, 555
 7 U.S. 7, 20 (2008). The Ninth Circuit recognizes a sliding scale test, under which a preliminary
 8 injunction may issue if the petitioner demonstrates “‘serious questions going to the merits’ and a
 9 hardship balance that tips sharply toward the plaintiff . . . assuming the other two elements of the *Winter*
 10 test are also met.” *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1132 (9th Cir. 2011). The
 11 petitioner must adduce “substantial proof” and make a “‘clear showing” that preliminary equitable
 12 relief is warranted. *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (emphasis in original).

13 IV. ARGUMENT

14 A. **Petitioner’s Due Process Claims Fail on The Merits.**

15 Carballo claims he is likely to succeed on his argument that the Due Process Clause prevents the
 16 Government “from re-arresting him without first providing a pre-deprivation hearing before a neutral
 17 adjudicator where the government justifies the necessity of his re-detention by clear and convincing
 18 evidence. *Mot.* at 23-24.

19 Under these circumstances, the Constitution requires neither Carballo’s release from custody,
 20 nor the provision of a new bond hearing, in which the government bears the burden of proof. His
 21 detention is mandatory and he is not entitled to a bail hearing. Citing the *Zepeda Rivas v. Jennings* class
 22 action settlement, Carballo claims the government is enjoined from rearresting him, but he fails to
 23 confront the fact that the *Zepeda Rivas* injunction expired on June 9, 2025. *Mot.* at 27; see Order
 24 Granting Plaintiff’s Unopposed Motion for Final Approval, 3:20-cv-02731-VC, at ECF No. 1258
 25 (showing the effective date of the settlement was June 9, 2022) *and* Settlement Agreement, ECF No.
 26 1205-1 at 16 (“At the conclusion of the three-year period set forth in Subsection III.A, ICE’s rearrest
 27 and re-detention practices for Class Members will occur pursuant to generally applicable law and
 28 policy”).

Section 1226(c) mandates the detention of noncitizens who have committed certain offenses, including noncitizens like Carballo who have been convicted of First Degree Murder. Carballo's detention is therefore mandatory under INA § 236(c)(1)(A) of the Act, for at a minimum, having committed an aggravated felony under 8 USC § 1227(a)(2)(A)(iii) as well as a crime involving moral turpitude in violation of Section 1182(a)(2)(A)(i)(I) of the Act. The *Zepeda Rivas* settlement he attempts to rely on has expired and no longer enjoins ICE from re-detaining him.

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

Carballo 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.³ *Id.* Further, “[t]he government has an obvious interest in ‘protecting the public from dangerous criminal aliens.’” *Diaz v. Garland*, 53 F.4th at 1208 (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

³ 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.

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 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))).

C. Carballo’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 Carballo, 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 Carballo’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 Carballo, 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. Bonmar*, 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

1 of each case.”). And “while the *Mathews* factors may be well-suited to determining whether due process
2 requires a second bond hearing, they are not particularly dispositive of whether prolonged mandatory
3 detention has become unreasonable in a particular case.” *Sanchez-Rivera v. Matuszewski*, no. 22-cv-
4 1357-MMA (JLB), 2023 WL 139801, at *5 (S.D. Cal. Jan. 9, 2023) (internal quotation omitted).
5 Similarly, many of the elements in various balancing tests are unhelpful to whether detention has
6 become unreasonably prolonged. *See Lopez v. Garland*, 631 F. Supp. 3d 870, 879 (E.D. Cal. Sept. 29,
7 2022) (“the conditions of detention, the likelihood that the removal proceedings will result in a final
8 order of removal, whether the detention will exceed the time the petitioner spent in prison for the crime
9 that made him removable, and the nature of the crimes the petitioner committed are not particularly
10 suited to assisting the Court . . .”).

11 But under any test, however formulated, Carballo’s detention passes constitutional muster. He
12 has been detained since August 5, 2025. His case is currently scheduled for an individual merits hearing
13 on April 9, 2026. Sanchez Decl. at ¶ 13. His case is moving forward expeditiously, and his hearing will
14 likely be advanced now that he is in custody.

15 The government’s interest here is also strong. “The government has an obvious interest in
16 ‘protecting the public from dangerous criminal aliens.’” *Diaz*, 53 F.4th at 1208 (quoting *Demore*, 538
17 U.S. at 515). This is a particularly salient concern where, as here, Carballo has been convicted of First
18 Degree Murder and other serious offenses while unlawfully present in the United States. In sum, the
19 circumstances of this case demonstrate that Carballo’s detention is constitutional. The Court should
20 deny Carballo’s motion.

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V. CONCLUSION

Section 1226(c)(1) mandates Carballo's detention and the facts of this case present no due process concern, as it has not become unduly prolonged. Respondents respectfully request that the Court deny Petitioner's TRO motion and habeas petition.

Dated: August 11, 2025

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