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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

UNITED STATES' CONDITIONAL
APPLICATION FOR STAY OF ANTICIPATED
ORDER GRANTING RESPONDENT'S
REQUESTED RELIEF

I. INTRODUCTION

On August 13, 2025, the Court indicated from the bench that it would grant Carballo's request for immediate release. Although the Court has yet to issue its written order granting the Petitioner's motion, the United States respectfully moves to stay the order pending appeal pursuant to Federal Rule of Civil Procedure 62 and Federal Rule of Appellate Procedure 8(a).

As grounds for relief, the United States argues that Carballo, a convicted murderer, is ineligible for *any* release under 8 U.S.C. § 1226(c)(1)(A) and (B)—twin provisions that demand mandatory detention for noncitizens convicted of crimes involving aggravated felonies and moral turpitude. A murder conviction dually qualifies this Petitioner for detention, the only release valve being witness-protection. *See, e.g., Jennings v. Rodriguez*, 583 U.S. 281, 305-06, 138 S. Ct. 830, 847 (2018).

Even more, the Court appeared to overlook *Jennings* and misconstrue due process standards in the immigration detention context, indicating Petitioner had an overriding liberty interest after being

1 released through a COVID-19 settlement. On the contrary, Carballo's murder conviction removes any
2 potential for a liberty interest—and surely not one with the momentum to override Congress' clear
3 statutory intent. *Demore v. Hyung Joon Kim*, 538 U.S. 510, 531 (2003).

4 Congress wrote a statute to prevent convicted murderers from being released pending removal—
5 but the district court indicated it would not apply those commands as intended. Accordingly, the United
6 States requests the Court stay its ruling while the U.S. Attorney's Office obtains the necessary appellate
7 authority to seek review of the Court's intended order. Alternatively, the United States seeks a fourteen-
8 day stay to obtain necessary approvals and will file a status report at the conclusion of the brief stay.

9 **II. LEGAL STANDARD**

10 A stay pending appeal is warranted because the government can show a strong likelihood of
11 success on the merits, and because the balance of harms and public interest favor a stay. *Nken v.*
12 *Holder*, 556 U.S. 418, 426 (2009). In this case, the Court's injunction plainly fails because Carballo is
13 subject to mandatory detention because he is a convicted murderer. For the same reason, any liberty
14 interest—if he has one—is slight as Carballo is subject to the mandatory detention commands of §
15 1226(c). Thus, the Court's conclusions are incorrect, and Carballo must remain detained under §
16 1226(c). Further, any order to release a convicted murderer threatens public safety and creates
17 untenable consequences for immigration enforcement on the ground.

18 **III. ARGUMENT**

19 In considering a stay of the injunction, the first and most important factor is the movant's likely
20 success on the merits. Here, the government will very likely prevail on appeal, because this Respondent
21 is subject to mandatory detention as a convicted murderer and therefore cannot be released from custody
22 pending his deportation proceedings—let alone immediately. Further, this same congressional
23 command for detention results in no liberty interest, surely not strong enough to override congressional
24 intent.

25 Carballo cannot be released from custody because his detention is mandatory. *See* 8 U.S.C. §
26 1226(c)(1)(A) and (B). Section 1226(c) mandates the detention of noncitizens who have committed
27 certain offenses, including noncitizens like Carballo who have been convicted of First-Degree Murder.
28 Carballo's detention is therefore mandatory under INA § 236(c)(1)(A) of the Act, for at a minimum,

1 having committed an aggravated felony under 8 USC § 1227(a)(2)(A)(iii) as well as a crime involving
2 moral turpitude in violation of Section 1182(a)(2)(A)(i)(I) of the Act.

3 The Supreme Court has upheld mandatory detention under § 1226(c), finding that Congress
4 enacted § 1226(c) to curb the risk of flight by deportable criminal noncitizens constitutional:

5 Congress, justifiably concerned that deportable criminal aliens who are not
6 detained continue to engage in crime and fail to appear for their removal
7 hearings in large numbers, may require that persons such as [the lawful
8 permanent resident at issue in *Demore*] be detained for the brief period
9 necessary for their removal proceedings. . . . Congress also had before it
10 evidence that one of the major causes of the INS' failure to remove
11 deportable criminal aliens was the agency's failure to detain those aliens
12 during their deportation proceedings. . . . Once released, more than 20% of
13 deportable criminal aliens failed to appear for their removal hearings. . . .
14 Some studies presented to Congress suggested that detention of criminal
15 aliens during their removal proceedings might be the best way to
16 ensure their successful removal from this country. *See, e.g.*, 1989 House
17 Hearing 75; Inspection Report, App. 46; S. Rep. 104-48, at 32 ("Congress
18 should consider requiring that all aggravated felons be detained pending
19 deportation. Such a step may be necessary because of the high rate of no-
20 shows for those criminal aliens released on bond"). It was following those
21 Reports that Congress enacted 8 U.S.C. § 1226, requiring the Attorney
22 General to detain a subset of deportable criminal aliens pending a
23 determination of their removability.

24 *Demore v. Kim*, 538 U.S. 510, 531 (2003) (cleaned up).

25 The Supreme Court held that "[i]n the exercise of its broad power over naturalization and
26 immigration, Congress regularly makes rules that would be unacceptable if applied to citizens." *Id.* at
27 521. The Supreme Court has recognized "detention during deportation proceedings as a constitutionally
28 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-*

1 *Romero v. Clark*, 534 F.3d 1053, 1062–65 (9th Cir. 2008) (quoting *Demore*, 538 U.S. at 528).

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

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

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1 **IV. CONCLUSION**

2 For these reasons, the Court should stay any Order granting a Preliminary Injunction. The
3 United States requests the Court enter a stay pending appeal to allow the U.S. Attorney's Office to
4 obtain authority to appeal the Court's indicated ruling to the Ninth Circuit Court of Appeals.
5 Alternatively, the United States requests a minimum administrative stay pursuant to Federal Rule of
6 Appellate Procedure 8(a), at which time the United States will file a status report updating the Court.

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8 Dated: August 14, 2025

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