United States District Court
Western District of Texas
San Antonio Division

Jorge Luis Torres Villasana,
Petitioner,

v.

Kristi Noem, *et al.*,
Respondents.

No. 5:25-CV-1579-OLG

Federal Respondents'[1] Response to the Petition

Petitioner is not entitled to the relief he seeks through this habeas petition. Petitioner is a native and citizen of Mexico, and lawful permanent resident who has been convicted of an aggravated felony. Following his release from criminal custody, he was taken into immigration custody to continue removal proceedings. The Department of Homeland Security ("DHS"), U.S. Immigration and Customs Enforcement ("ICE") released him on an order of recognizance until recently detaining him pending resolution of removal proceedings.

As a convicted aggravated felon, ICE is detaining Petitioner under the mandatory detention statute found within the Immigration and Nationality Act ("INA") at 8 U.S.C. § 1226(c). Petitioner's immigration removal proceedings remain pending, and his detention is lawful. Therefore, this habeas petition should be denied.

As Petitioner does not believe he needs to exhaust his administrative remedies, it's clear Petitioner has not exercised procedural safeguards for potential release in immigration court through a motion for bond redetermination or a request for a *Joseph* hearing to contest his charge

[1] The warden is not a federal employee and is employed, instead, by the GEO Group, Inc. *See* https://www.geogroup.com/FacilityDetail/FacilityID/44 (last accessed Dec. 19, 2025). Although the warden is named as a respondent here, the detention decisions in this case were made by Federal Respondents.

of removability rendering him subject to § 1226(c).[2] *See* ECF No. 1 at 4–5; *Matter of Joseph*, 22 I&N Dec. 799 (BIA 1999). Instead, he seeks habeas relief directly with this Court to contest his immigration detention. His removal proceedings remain pending, and the INA mandates that he remain detained during the pendency of these proceedings. 8 U.S.C. § 1226(c); *see also* 8 C.F.R. § 1003.39 (an immigration judge's decision is not final if it is timely appealed to the Board).

Petitioner has not established a cognizable due process claim under *Demore v. Kim*, 538 U.S. 510 (2003), as the length of pre-removal-order detention alone does not constitute a due process violation, he remains detained pending his ongoing removal proceedings, and he has not demonstrated that detention no longer serves the immigration purpose under which § 1226(c) was enacted into law. Therefore, Respondents respectfully request that the Court dismiss for failure to state a claim, or in the alternative, deny the petition on the merits.

Statement of Facts

Petitioner is a citizen of Mexico and lawful permanent resident. ECF No 1 at 5–6. He became an aggravated felon after his conviction for conspiracy to transport illegal aliens, under 8 U.S.C. § 1324. *See* ECF Nos. 1 at 6, 1-2 at 34; 8 U.S.C. § 1227(a)(2)(A)(iii); 8 U.S.C. 1101(a)(43)(N). He was arrested by ICE and detained until ICE released him on an order of recognizance in 2012. ECF Nos. 1 at 6; 1-2 at 21. As an aggravated felon, he is in removal

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[2] Although exhaustion is not statutorily required in the context of challenges to immigration detention, the Fifth Circuit has established that a "person seeking habeas relief must first exhaust available administrative remedies … prior to seeking relief in the federal courts," unless Petitioner shows that such efforts are either unavailable, inappropriate, or futile. *Alexis v. Sessions*, No. H-18-1923, 2018 WL 5921017 at *5 (S.D. Tex. Nov. 13, 2018) (citing *Hinojosa v. Horn*, 896 F.3d 305, 314 (5th Cir. 2018)); *see also Burke v. Fagan*, No. H-23-0993, 2023 WL 3571962 *1 (S.D. Tex. Apr. 17, 2023) (habeas dismissed for failure to exhaust administrative remedies where habeas petitioner failed to present his claim in a procedurally correct manner to the highest court of jurisdiction prior to seeking habeas relief in federal court). Petitioner argues he does not need to ask for a bond hearing from the immigration judge. ECF No. 1 at 4–12.

proceedings with his next hearing scheduled on the nondetained docket in October 2026. *See* ECF No. 1 at 6; Automated Case Information System (last accessed Dec. 19, 2025). On October 22, 2025, ICE detained Petitioner. ICE has submitted notice to the immigration court of Petitioner's detention to move the case to the immigration court's detained docket.

Argument

Petitioner is currently detained under § 1226(c), which mandates that the Attorney General detain aliens who are inadmissible or removable based on having committed certain offenses. 8 U.S.C. § 1226(c). Any alien detained under § 1226(c) may be released only if the alien's release is necessary for witness protection purposes, and the Attorney General is satisfied that the alien does not pose a danger to persons or property and is likely to appear for scheduled hearings. *Wekesa v. U.S. Att'y*, No. 22-10260, 2022 WL 17175818, *1 (5th Cir. Nov. 22, 2022) (citing 8 U.S.C. § 1226(c)(1)–(2)). The language of the statute reinforces the conclusion that aliens detained under its authority are not entitled to be released under any circumstances other than those expressly recognized by statute. *Jennings v. Rodriguez*, 138 S. Ct. 830, 846 (2018). Section 1226(c) mandates detention of "any alien falling within its scope…" and such "detention may end prior to the conclusion of removal proceedings 'only if' the alien is released for witness-protection purposes." *Id.* at 847; *see also Nielsen v. Preap*, 139 S. Ct. 954, 972 (2019) (recognizing and confirming the plain language of § 1226(c)). As such, Petitioner's detention is mandated by statute.

Moreover, Petitioner's detention is constitutional. *See Meme v. Immig. & Customs Enforc.*, EP-23-CV-00233-DB, 2023 WL 6319298 at *2–4 (W.D. Tex. Sept. 27, 2023) (granting the government's motion to dismiss by finding that ICE's mandatory, pre-removal-order detention of alien under § 1226(c) for 14 months was not unlawful and did not necessitate a bond hearing); *A.R.L. v. Garland*, No. 6:23-CV-00852, 2023 WL 9316859 at *4–5 (W.D. La. Dec. 20, 2023)

(same, but 21 months). Petitioner remains in removal proceedings where he is eligible to seek relief from removal from an immigration judge. 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).

A. Mandatory Detention under § 1226(c) Is Facially Constitutional During Removal Proceedings.

Petitioner's claims of a constitutional violation here should be denied. ECF No. 1 at 7–8; *see, e.g., Meme,* EP-23-CV-00233-DB, 2023 WL 6319298 at *2–4; *Obaretin v. Barr*, No. 3:20-CV-2805-E-BN, 2021 WL 1069297 *3 (N.D. Tex. Mar. 3, 2021), *R & R adopted by* 2021 WL 1060233 (N. D. Tex. Mar. 19, 2021). The Supreme Court has upheld mandatory detention under § 1226(c) as facially constitutional. *Demore*, 538 U.S. at 531 (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)). In doing so, the Supreme Court reiterated its long-standing principle 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 stated and held that, as a result, "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 therein 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").

An alien's detention under § 1226(c) pending their removal proceedings is constitutional

so long as it continues to "serve its immigration purposes" underlying the statute's enactment. *Id.* at 527. In upholding the alien's detention in *Demore*, the Supreme Court found that "detention necessarily serves the purpose of preventing deportable criminal aliens from fleeing prior to or during their removal proceedings, thus increasing the chance that, if ordered removed, the aliens will be successfully removed." *Id.* at 528.

Justice Kennedy's concurring opinion, which created the majority in *Demore*, provided additional guidance on what circumstances *may* arise for such a due process violation warranting relief for an alien detained under § 1226(c). *Id.* at 532–33 (Kennedy, J., concurring). After noting that a due process violation *may* occur "if the continued detention became unreasonable or unjustified," Justice Kennedy set forth what circumstances may meet this standard: "[w]ere there to be an unreasonable delay by the [government] in pursuing and completing deportation proceedings, it could become necessary then to inquire whether the detention is not to facilitate deportation, or to protect against risk of flight or dangerousness, but to incarcerate for other reasons." *Id.*

Pursuant to *Demore*, the Court should deny Petitioner's due process challenge in this case. Petitioner has been detained since October 22, 2025. Petitioner has not demonstrated that his detention under § 1226(c) is at odds with the purpose under which Congress enacted § 1226(c) as Petitioner has been detained since only October and removal proceedings remain ongoing. *Id.* at 528.

Moreover, this case does not fall within the circumstances under which Justice Kennedy held in *Demore* might rise to the level of a due process violation. *Demore*, 538 U.S. at 532–33. Petitioner has not demonstrated that Petitioner's length of time in detention has not been a result of any delay by the government. *See* ECF No. 1. While Petitioner may elect to exercise his legal

rights to contest his removability or seek relief from removal as he sees fit, he cannot in turn rely on circumstances solely of his own doing to allege a due process violation by the government. *See Demore*, 538 U.S. at 530 n.14 (stating "there is no constitutional prohibition against requiring parties" to "mak[e] ... difficult judgments," such as whether to risk a lengthier detention by deciding to appeal). Petitioner's case law is distinguishable from his present circumstances. *See* ECF No. 1 at 10. Petitioner wasn't initially arrested by ICE years after his conviction. Petitioner was sentenced in the Southern District of Texas on January 11, 2012, to 4 months imprisonment for Conspiracy to Transport Illegal Aliens. *Compare* Exh. A (judgment) *with* ECF Nos. 1 at 6,1-2 at 2, 21, 34. He was detained by ICE before ICE released on an order of recognizance on or about September 5, 2012. ECF No. 1-2 at 21. Accordingly, Petitioner has not met his burden of demonstrating a due process violation under *Demore*, and the Court should deny the Petition.

B. Any Procedural Due Process Violation Does Not Mean Petitioner Should be Released from Custody.

Petitioner argues revoking his order of supervision without a 'hearing' violates the Due Process Clause of the Fifth Amendment and therefore he should be released from custody on his own recognizance or be provided a bond hearing. *See* ECF No. 1 at 7–8; 11.

However, the Fifth Circuit finds no procedural due process violation where the constitutional minima of due process is otherwise met. *Murphy v. Collins*, 26 F.3d 541, 543 (5th Cir. 1994). Even if the Court were to find a procedural due process violation here, the remedy is substitute process. *Mohammad v. Lynch*, No. EP-16-CV-28-PRM, 2016 WL 8674354, at *6 n.6 (W.D. Tex. May 24, 2016) (finding no merit to petitioner's procedural due process claim where the evidence demonstrated that the review had already occurred, thereby redressing any delay in the provision of the 90-day and 180-day custody reviews). Even in the criminal context, failure to

comply with statutory or regulatory time limits does not mandate release of a person who should otherwise be detained. *U.S. v. Montalvo-Murillo*, 495 U.S. 711, 722 (1990).

Even if the Court determined ICE violated Petitioner's procedural due process rights, which it shouldn't, the relief is not release. For similar reasons, Petitioner's motion should be denied.

Conclusion

For the foregoing reasons, Federal Respondents respectfully submit that the Court should dismiss or deny this habeas petition.

Respectfully submitted,

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