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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

THIERNO KANOUTE,

Petitioner,

v.

TONYA ANDREWS, *et al.*,

Respondents.

No. 1:25-CV-1694-TLN-DMC

**MOTION TO DISMISS PETITION FOR WRIT
OF HABEAS CORPUS UNDER 28 U.S.C.
§ 2241 AND RULE 4; RESPONSE TO
PETITION FOR WRIT OF HABEAS CORPUS**

Petitioner's request for a writ of habeas corpus should be dismissed, and his request for injunctive relief should be denied. Petitioner is subject to mandatory detention under 8 U.S.C. § 1226(c) due to his prior conviction for aggravated assault upon a police officer, as well as his pending murder charges.

Moreover, the majority of the argument in Petitioner's *pro se* filing is directed at the question of third-country removal. However, the available documents suggest that third-country removal is not at issue in this case: Petitioner is a native and citizen of Mali, and while he indicates that he may file an asylum claim, he has not yet done so. Accordingly, Petitioner is not entitled to release, and this Court should deny his habeas petition.

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FACTUAL BACKGROUND

Petitioner is a native and citizen of Mali who first entered the United States in 2013 on a B2 visa. *See I-213*, Ex. 1, at 2. In 2017, U.S. Citizenship and Immigration Service (USCIS) approved Petitioner's application for a Special Immigrant visa. *Id.*

On May 21, 2022, Petitioner was convicted of Aggravated Assault on a Law Enforcement Officer and Resisting/Eluding/Threatening Force Against a Law Enforcement Officer in a New Jersey court. *Id.* Petitioner was sentenced to 90 days in jail and three years of probation as a result of this conviction. *Id.* at 4. On July 22, 2022, the same court convicted Petitioner of Second Degree Hindering and Hiding Evidence, for which Petitioner was again sentenced to 90 days in jail.

On March 4, 2025, Customs and Border Patrol (CBP) encountered Petitioner while he was entering the United States at JFK International Airport in New York City. Petitioner was detained due to an active arrest warrant out of New York and turned over to the NYPD. *Id.* at 2. The same day, Petitioner was charged with Murder, Second Degree Criminal Possession of a Weapon: Loaded Firearm, and Fourth Degree Criminal Possession of a Weapon: Firearm/Weapon. *Id.* at 3. These charges are still pending. *Id.*

A Notice to Appear (NTA) was issued for Petitioner on August 13, 2025. *See* Ex. 4, at 3. Petitioner was taken into immigration custody from Bergen County Jail, in Hackensack, New Jersey, on August 13, 2025. *Id.* at 2. Petitioner has been in immigration custody for just over six months.

Petitioner filed his habeas petition on December 1, 2025. *Habeas Pet.*, Dkt. No. 1. He claims that he is "subject to ICE's current procedures regarding removal of persons to third countries." *Id.* at 14. He also seeks injunctive relief in the form of an immediate release from custody, and orders prohibiting third-country removal. *Id.* at 19.

ARGUMENT

A. Petitioner Is Not Subject to Third-Country Removal.

A majority of the argument in Petitioner's *pro se* brief is directed at the question of third-country removal. These arguments are factually inapplicable to this case, for the simple reason that Petitioner is not currently a candidate for third-country removal. Petitioner is a native and citizen of Mali, and the record does not contain an indication that Petitioner is likely to be removed to any country other than

1 Mali. It is possible that future developments, such as a claim by Petitioner that he has a fear of unjust
2 persecution or torture if he is returned to Mexico, will bring third-country removal into the picture. But
3 as of the time of filing, there is nothing in the record which suggests that Petitioner will be “subject to
4 ICE’s current procedures regarding removal of persons to third countries.” Accordingly, his Second and
5 Third grounds for relief are factually unsupported.

6 **B. Petitioner Is Subject to Mandatory Detention.**

7 Petitioner is currently detained pursuant to 8 U.S.C. § 1226(c) while his removal proceedings are
8 pending. Petitioner is subject to mandatory detention under § 1226(c) for two separate reasons. First,
9 Petitioner has a 2022 conviction for aggravated assault on a police officer. This makes Petitioner
10 subject to mandatory detention under § 1226(c)(1)(E). This subsection states that “[t]he Attorney
11 General shall take into custody any alien who... (i) is inadmissible under paragraph (6)(A)... of section
12 1182(a) of this title; and (ii) is charged with, is arrested for, is convicted of, admits having committed, or
13 admits committing acts which constitute the essential elements of any burglary, theft, larceny,
14 shoplifting, or assault of a law enforcement officer offense, or any crime that results in death or serious
15 bodily injury to another person.” 8 U.S.C. § 1226(c)(1)(E)(i)–(ii).

16 Petitioner fits these criteria. Petitioner does not dispute that he is charged with inadmissibility
17 under § 1182(a)(6)(A), which satisfies the requirement of subsection (i). And Petitioner’s 2022
18 conviction for aggravated assault on a police officer is one of the offenses explicitly named under
19 subsection (ii). Petitioner is also subject to detention under (E)(ii) due to the murder charges that were
20 brought against him in March 2025.

21 The Supreme Court has upheld mandatory detention under Section 1226(c) as facially
22 constitutional. *Demore v. Kim*, 538 U.S. 510, 531 (2003) (“Detention during removal proceedings is a
23 constitutionally permissible part of that process.”) The Supreme Court stated that “Congress, justifiably
24 concerned that deportable criminal aliens who are not detained continue to engage in crime and fail to
25 appear for their removal hearings in large numbers, may require that persons such as [the lawful
26 permanent resident at issue in *Demore*] be detained for the brief period necessary for their removal
27 proceedings.” *Id.* at 513. It observed that Congress enacted Section 1226(c) to curb the risk of flight by
28 deportable criminal noncitizens:

1 Congress also had before it evidence that one of the major causes of the
 2 INS' failure to remove deportable criminal aliens was the agency's failure
 3 to detain those aliens during their deportation proceedings. . . . Once
 4 released, more than 20% of deportable criminal aliens failed to appear for
 5 their removal hearings. . . . Some studies presented to Congress suggested
 6 that detention of criminal aliens during their removal proceedings might be
 7 the best way to ensure their successful removal from this country. *See, e.g.*,
 8 1989 House Hearing 75; Inspection Report, App. 46; S. Rep. 104-48, at 32
 9 ("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.

10 *Id.* at 519–21. The Supreme Court held that "[i]n the exercise of its broad power over naturalization and
 11 immigration, Congress regularly makes rules that would be unacceptable if applied to citizens." *Id.* at
 12 521 (citation omitted). It reaffirmed that immigration detention can be constitutional even in the absence
 13 of any showing that an individual detainee posed a flight risk or a danger to the community. *See id.* at
 14 523–27 (discussing *Carlson v. Landon*, 342 U.S. 524 (1952), and concluding that detention was
 15 constitutional "even without any finding of flight risk" or "individualized finding of likely future
 16 dangerousness"). In short, "the Supreme Court recognized [that] there is little question that the civil
 17 detention of aliens during removal proceedings can serve a legitimate government purpose, which is
 18 'preventing deportable . . . aliens from fleeing prior to or during their removal proceedings, thus
 19 increasing the chance that, if ordered removed, the aliens will be successfully removed.'" *See Prieto-*
 20 *Romero v. Clark*, 534 F.3d 1053, 1065 (9th Cir. 2008) (quoting *Demore*, 538 U.S. at 528).

21 Detention during removal proceedings remains constitutional so long as it continues to "serve its
 22 purported immigration purpose." *Demore*, 538 U.S. at 527. Those purposes—ensuring an alien's
 23 appearance for removal proceedings and preventing him from committing further offenses—are present
 24 throughout removal proceedings and do not abate over time while those proceedings are still pending.¹

25
 26 ¹ In upholding mandatory detention under § 1226(c), the Supreme Court relied on an understanding that
 27 in the majority of cases, detention lasts for less than 90 days. *Demore*, 538 U.S. at 529; *but see Jennings*,
 28 138 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.

1 *Id.* Further, “[t]he government has an obvious interest in ‘protecting the public from dangerous criminal
2 aliens.’” *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1208 (9th Cir. 2022) (quoting *Demore*, 538 U.S. at
3 515). “These are interests of the highest order that only increase with the passage of time.” *Id.* “The
4 longer detention lasts and the longer the challenges to an IJ’s order of removal take, the more resources
5 the government devotes to securing an alien’s ultimate removal” and, correspondingly, “[t]he risk of a
6 detainee absconding also inevitably escalates as the time for removal becomes more imminent.” *Id.* This
7 precedent has led at least one court in this district to hold that “[d]ue process doesn’t require bond
8 hearings for criminal aliens mandatorily detained under § 1226(c)—even for prolonged periods.” *Keo v.*
9 *Warden of the Mesa Verde ICE Processing Center*, 1:24-cv-00919-HBK (HC), 2025 WL 1029392, at *7
10 (E.D. Cal. Apr. 7, 2025).

11 Moreover, under the *Zadvydas* framework, Petitioner bears the burden of providing “good reason
12 to believe that there is no significant likelihood of removal in the reasonably foreseeable future.”
13 *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). The only argument Petitioner makes to suggest that he
14 will not be removed in the foreseeable future is premised on the notion that he is subject to third-country
15 removal. Given the lack of factual support for that contention, Petitioner cannot carry his burden to
16 warrant relief.

17 CONCLUSION

18 In light of the individual facts in this case, Petitioner’s detention is constitutional, and this Court
19 should deny the petition.

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21 Dated: February 18, 2026

Respectfully submitted,

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24 By: /s/ Charles Campbell
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