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9 UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF CALIFORNIA

11 THIerno KANOUTE,
12 Petitioner,
13 v.
14 WARDEN, GOLDEN STATE ANNEX, *et al*,
15 Respondents.

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

TRAVERSE TO RESPONDENTS'
MOTION TO DISMISS AND
RESPONSE

16 I. INTRODUCTION

17 Petitioner has now been detained for over six months without ever receiving an
18 individualized bond determination. Respondents rely exclusively on categorical mandatory
19 detention under 8 U.S.C. § 1226(c) and *Demore v. Kim*. But *Demore* contemplated brief
20 detention. Petitioner's continued confinement without procedural safeguards has become
21 constitutionally unreasonable.

22 Because the Government has failed to provide constitutionally adequate process during
23 this prolonged detention, the appropriate remedy is release.

24 II. DETENTION UNDER § 1226(C) HAS BECOME UNCONSTITUTIONALLY
25 PROLONGED

26 Petitioner was taken into ICE custody on August 13, 2025. As of this filing, detention
27 exceeds six months.
28

1 In *Demore*, the Supreme Court upheld § 1226(c) detention based on representations that
2 detention typically lasted around 90 days. 538 U.S. at 529.

3 This case is fundamentally different.

4 Petitioner's detention has far exceeded the "brief" period described in *Demore*. Removal
5 proceedings remain pending, and there is no foreseeable conclusion date.

6 The constitutional permissibility of mandatory detention cannot be divorced from its
7 duration.

8 **III. PETITIONER HAS RECEIVED NO INDIVIDUALIZED PROCESS**

9 Petitioner has never received a bond hearing before an Immigration Judge.

10 There has been:

- 11 • No individualized dangerousness finding.
- 12 • No flight risk determination.
- 13 • No opportunity to present evidence.
- 14 • No adversarial hearing of any kind.

15 Respondents' position is categorical: § 1226(c) permits detention without bond for the
16 entire duration of removal proceedings, regardless of length.

17 That interpretation transforms temporary detention into potentially indefinite
18 incarceration.

19 Due process does not permit such unchecked executive confinement.

20 **IV. RESPONDENTS' RELIANCE ON DEMORE AND ZADVYDAS IS** 21 **MISPLACED**

22 *Demore* did not authorize prolonged detention without process. It relied on short
23 detention periods and did not address detention of this length.

24 Respondents also invoke *Zadvydas*, which governs post-final order detention
25 under § 1231. Petitioner is detained under § 1226(c) and removal proceedings remain
26 pending. *Zadvydas* therefore does not apply.

27 **V. RELEASE IS THE APPROPRIATE REMEDY**

28 Where the government detains an individual in violation of due process, habeas relief

1 must be meaningful.

2 Petitioner has already endured over six months of detention without the procedural
3 safeguards the Constitution requires.

4 Under these circumstances, release—not merely a prospective bond hearing—is
5 warranted.

6 In the alternative, if the Court declines to order immediate release, Petitioner requests that
7 the Court order a bond hearing within seven days at which the Government bears the burden of
8 proving by clear and convincing evidence that continued detention is necessary.

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10 Respectfully submitted,

11 /s/ Roger H. Ponce
12 ROGER H. PONCE
13 Attorney for Petitioner
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