IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

JOSE GUADALUPE ARIZMENDI MORA,	:	
Petitioner,	:	
v.	:	**Case No. 4:26-CV-00080-CDL-ALS** **28 U.S.C. § 2241**
WARDEN, STEWART DETENTION CENTER,[1]	:	
Respondent.	:	

MOTION TO DISMISS
AND RESPONSE TO ORDER TO SHOW CAUSE

On January 15, 2026, Petitioner filed a petition for a writ of habeas corpus that (1) raises a variety of claims that he is not subject to mandatory pre-final order of removal detention pursuant to 8 U.S.C. § 1225(b)(2)(A), and (2) even if he is, that statute is unconstitutional on its face because it violates due process. ECF No. 1. On January 16, 2026, the Court issued an Order for Respondents "to show cause within seven (7) days why Petitioner's application for habeas relief should not be granted." ECF No. 4. On January 17, 2026, Petitioner filed an Amended Petition ("Petitioner". ECF No. 5.

This case is distinguishable from the majority of cases in which the Court has entered a similar order for Respondent to show cause. To start, Respondent acknowledges this Court's prior rulings in *J.A.M. v. Streeval*, No. 4:25-cv-342-CDL-AGH (M.D. Ga. Nov. 1, 2025), and *P.R.S. v.*

[1] In addition to the Warden of Stewart Detention Center, Petitioner names officials with the Department of Justice, Department of Homeland Security, and Immigration and Customs Enforcement as Respondents. "[T]he default rule [28 U.S.C. § 2241 petitions] is that the proper respondent is the warden of the facility where the prisoner is being held, not the Attorney General or some other remote supervisory official." *Rumsfeld v. Padilla*, 542 U.S. 426, 434-35 (2004) (citations omitted). Thus, Respondent has substituted the Warden of Stewart Detention Center as the sole appropriately named respondent in this action.

Streeval, No. 4:25-cv-330-CDL, 2025 WL 3269947 (M.D. Ga. Nov. 24, 2025), concerning similar challenges to the detention authority at issue in this case, which would control the result in this case should the Court adhere to its legal reasoning in those prior decisions. Respondent reserves all rights, including the right to appeal, and reasserts the arguments raised in response to the petitions at issue in *J.A.M.* and *P.R.S.* by reference herein. Should the Court find that § 1225(b)(2)(A) does not govern Petitioner's detention, however, Petitioner is not entitled to a bond hearing because § 1226(c)—not § 1226(a)—is the proper detention authority in this case. As set forth below, because Petitioner is mandatorily detained under 8 U.S.C. § 1226(c), Petitioner is not entitled to a bond hearing and the Petition should be dismissed and, in the alternative, denied.

BACKGROUND

Petitioner is a native and citizen of Mexico who has been mandatorily detained pre-final order of removal pursuant to 8 U.S.C. § 1225(b)(2)(A), and alternatively, pursuant to 8 U.S.C. § 1226(c) at Stewart Detention Center in Lumpkin, Georgia since October 1, 2025. Gillikin Decl. ¶¶ 4, 6, 12–13.

Petitioner was first encountered after he was arrested by the Georgia State Patrol on July 19, 2011, for the offense of driving without a valid driver's license. Gillikin Decl. ¶ 5. On August 24, 2011, Petitioner entered Immigration and Customs Enforcement, Enforcement and Removal Operations ("ICE/ERO") custody. *Id.* On August 24, 2011, ICE/ERO, served Petitioner with Form I-862, Notice to Appear ("NTA"), charging him with inadmissibility pursuant to INA § 212(a)(6)(A)(i). *Id.* ¶ 6. On August 26, 2011, Petitioner was released from custody on an order of recognizance. *Id.* ¶ 7.

On August 20, 2015, the removal proceedings were administratively closed pursuant to a joint request from Petitioner and the Department of Homeland Security ("DHS"). Gillikin Decl. ¶ 8. On July 23, 2023, Petitioner was arrested by the Panama City Beach Police Department for

solicitation of a minor for sexual conduct, in violation of Fla. Stat. § 847.0135(4) and the unlawful use of a two-way communications device, in violation of Fla. Stat. § 934.215. *Id.* ¶ 9. On October 25, 2024, Petitioner pleaded guilty to possession of obscene material harmful to a minor, in violation of Fla. Stat. § 847.011 and unlawful use of a two-way communications device, in violation of Fla. Stat. § 934.215. *Id.* ¶ 10 & Ex. A.

On July 11, 2025, DHS filed a motion to recalendar removal proceedings. Gillikin Decl. ¶ 11. On January 21, 2026, the immigration judge ("IJ") granted the motion. *Id.* Petitioner entered ICE/ERO custody on October 1, 2025. *Id.* ¶ 12. Petitioner is currently detained at the Stewart Detention Center under authority of Immigration and Nationality Act ("INA") § 235(b)(2)(A). *Id* ¶ 13. Alternatively, he may also be subject to mandatory detention pursuant to INA § 236(c)(1)(A) based on his convictions for crimes involving moral turpitude. *Id.* If Petitioner becomes subject to a final order of removal, there is a significant likelihood of removal in the reasonably foreseeable future *Id.* ¶ 14. Mexico is open for international travel, and ICE/ERO is currently removing non-citizens to Mexico. *Id.*

LEGAL FRAMEWORK

I. Detention pursuant to 8 U.S.C. § 1225(b)(2)(A).

Congress enacted a multi-layered statutory scheme for the detention of aliens pending a final order of removal. *See generally* 8 U.S.C. §§ 1225, 1226, 1231. The interplay between these statutes is at issue here.

"To implement its immigration policy, the Government must be able to decide (1) who may enter the country and (2) who may stay here after entering." *Jennings v. Rodriguez*, 583 U.S. 281, 286 (2018). Section 1225 governs inspection, the initial step in this process, *id.*, stating that all alien "applicants for admission . . . shall be inspected by immigration officers." 8 U.S.C. § 1225(a)(3).

The statute defines "applicant for admission" to encompass ***both*** an alien "present in the United States who has not been admitted *or* [one] who arrives in the United States[.]" *Id.* § 1225(a)(1) (emphasis added).

Paragraph (b) of § 1225 dictates the procedures applicable to all applicants for admission. They "fall into one of two categories: those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings*, 583 U.S. at 287. Section 1225(b)(1) applies to those "arriving in the United States" and "certain other"[2] aliens "initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation." 8 U.S.C. § 1225(b)(1)(A)(i), (iii). Aliens falling under this subsection are generally subject to expedited removal proceedings "without further hearing or review." *See id.* § 1225(b)(1)(A)(i). But where the applicant "indicates an intention to apply for asylum . . . or a fear of persecution," immigration officers will refer him or her for a credible fear interview. *Id.* § 1225(b)(1)(A)(ii). An applicant "with a credible fear of persecution" is "detained for further consideration of the application for asylum." *Id.* § 1225(b)(1)(B)(ii). If the alien does not indicate intent to apply for asylum, express a fear of persecution, or is "found not to have such a fear," he is detained until removal from the United States. *Id.* § 1225(b)(1)(A)(i), (B)(iii)(IV).

Section 1225(b)(2) is "broader" than (b)(1), "serv[ing] as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1)." *Jennings*, 583 U.S. at 287. Subject to inapplicable exceptions, "if the examining immigration officer determines that the alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien *shall* be detained for

[2] These "certain other aliens" are addressed in § 1225(b)(1)(A)(iii), which gives the Attorney General sole discretion to apply (b)(1)'s expedited procedures to an alien who "has not been admitted or paroled into the United States, and who has not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility." The statute therefore explicitly confirms application of its inspection procedures to those already in the country, including for a period of years.

a removal proceeding." 8 U.S.C. § 1225(b)(2)(A) (emphasis added); *see also Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (B.I.A. 2025) ("[F]or aliens arriving in and seeking admission into the United States who are placed directly in full removal proceedings, . . . 8 U.S.C. § 1225(b)(2)(A), mandates detention 'until removal proceedings have concluded.'" (citing *Jennings*, 583 U.S. at 299)). DHS retains sole discretionary authority to temporarily release on parole "any alien applying for admission" on a "case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022).

"Even once inside the United States, aliens do not have an absolute right to remain here. For example, an alien present in the country may still be removed if he or she falls 'within one or more . . . classes of deportable aliens.' §1227(a)." *Jennings*, 583 U.S. at 288 (citing 8 U.S.C. § 1227(a), which outlines "classes of deportable aliens" among those already "in *and admitted* to the United States") (emphasis added)). "Section 1226 generally governs the process of arresting and detaining that group of aliens pending their removal." *Id.* For aliens arrested under §1226(a), the Attorney General and DHS have broad discretionary authority to detain an alien during removal proceedings. *See* 8 U.S.C. § 1226(a)(1) (DHS "may continue to detain the arrested" alien during the pendency of removal proceedings).

Following apprehension under § 1226(a), a DHS officer makes an initial discretionary determination concerning release. *See* 8 C.F.R. § 236.1(c)(8). DHS "may continue to detain the alien." 8 U.S.C. § 1226(a)(1). "To secure release, the alien must show that he does not pose a danger to the community and that he is likely to appear for future proceedings." *Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021) (citing 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8); *Matter of Adeniji*, 22 I. & N. Dec. 1102, 1113 (B.I.A. 1999)). If DHS decides to release, it may set a bond or condition the release. *See* 8 U.S.C. § 1226(a)(2); 8 C.F.R. § 236.1(c)(8).

If DHS determines that an alien detained under § 1226(a) should remain detained during removal proceedings, the alien may request a bond hearing before an IJ. *See* 8 C.F.R. §§ 236.1(d)(1), 1003.19, 1236.1(d). The IJ decides whether release is warranted based on a variety of factors, including ties to the United States and risks of flight or danger to the community. *See Matter of Guerra*, 24 I. & N. Dec. 37, 40 (B.I.A. 2006); 8 C.F.R. § 1003.19(d) ("The determination . . . as to custody status or bond may be based upon any information that is available to the Immigration Judge or that is presented to him or her by the alien or [DHS].").

Section 1226(a) does not grant "any *right* to release on bond." *Matter of D-J-*, 23 I. & N. Dec. at 575 (citing *Carlson v. Landon*, 342 U.S. 524, 534 (1952)). Nor does it address the applicable burden of proof or particular factors that must be considered. *See generally* 8 U.S.C. § 1226(a). Rather, it grants DHS and the Attorney General broad discretionary authority to determine, after arrest, whether to detain or release an alien during his removal proceedings. *See id.* If, after the bond hearing, either party disagrees with the decision of the immigration judge, that party may appeal that decision to the BIA. *See* 8 C.F.R. §§ 236.1(d)(3), 1003.19(f), 1003.38, 1236.1(d)(3).

In *In the Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216 (B.I.A. 2025), the Board of Immigration Appeals ("BIA") recently held that non-citizens unlawfully present in the United States without prior inspection and admission are applicants for admission within the meaning of § 1225(a)(1) and subject to mandatory pre-final order of removal detention pursuant to § 1225(b)(2)(A) under the plain meaning and legislative history of that provision. 29 I. & N. Dec. at 220-28. Accordingly, those non-citizens are not entitled to bond hearings before IJs pursuant to § 1226(a) its implementing regulations. *Id.*

II. Detention pursuant to 8 U.S.C. § 1226(c).

Petitioner is also mandatorily detained pre-final order of removal pursuant to 8 U.S.C. § 1226(c). Under 8 U.S.C. § 1226(a), ICE/ERO may arrest and detain an inadmissible non-citizen

"pending a decision on whether the [non-citizen] is to be removed from the United States." Whereas pre-final order of removal detention is generally discretionary, in 8 U.S.C. § 1226(c)(1), Congress mandated the detention of non-citizens who have committed certain criminal or terrorist offenses until removal proceedings are completed. The statute states unambiguously that the "Attorney General *shall* take into custody any alien" who is inadmissible or removable for having committed an offense in one of four listed categories. 8 U.S.C. § 1226(c)(1) (emphasis added).

The statute does not provide for bond or parole for non-citizens detained under § 1226(c). Rather, they may be released only if (1) release is necessary for witness protection purposes as described in 18 U.S.C. § 3521, and (2) ICE/ERO determines that the non-citizen "will not pose a danger to the safety of other persons or of property and is likely to appear for any scheduled proceeding." 8 U.S.C. § 1226(c)(2). The Supreme Court has recognized that § 1226(c) mandates detention apart from the narrow exception described in § 1226(c)(2). *Jennings v. Rodriguez*, 538 U.S. 281, 283 (2018) ("§ 1226(c) makes clear that detention of aliens within its scope must continue pending a decision on whether the alien is to be removed from the United States." (internal quotations and citation omitted)).

ARGUMENT

Petitioner asserts four claims in his Petition that may be divided into two primary categories. The first category argues that he is not subject to mandatory detention pursuant to § 1225(b)(2)(A) because he was arrested after entering and remaining present in the United States. Amend. Pet. 25–29. Rather, Petitioner asserts that § 1226(a) governs his detention and that he is entitled to a bond hearing before an IJ pursuant to that section and its accompanying regulations. *Id.* The second category argues that to the extent § 1225(b)(2)(A) governs his detention, it is facially unconstitutional under the Fifth Amendment Due Process Clause because it does not permit bond hearings for applicants for admission like him. Amend. Pet. 29–32. Petitioner requests release

from custody and, in the alternative, a bond hearing before an IJ pursuant to § 1226(a) and its regulations. Amend. Pet. 35 (Prayer for Relief).

I. Respondent preserves all arguments in light of *J.A.M. v. Streeval.*

Respondent contends that the Petition should be denied for three reasons. ***First***, pursuant to 8 U.S.C. § 1252(e)(3), the Court lacks subject matter jurisdiction over Petitioner's first category of claims because 8 U.S.C. § 1252(e)(3) vests jurisdiction over claims challenging implementation of § 1225(b)(2) only in the U.S. District Court for the District of Columbia. ***Second***, in the alternative, a proper interpretation of the relevant statutes establishes that § 1225(b)(2)(A) governs Petitioner's detention because he is an applicant for admission who is present in the United States without admission. As a result, he is subject to mandatory pre-final order of removal detention, and neither § 1226(a) nor its concomitant bond procedures apply. ***Third***, Petitioner's second category of claims should be denied because mandatory detention pursuant to § 1225(b)(2)(A) is facially constitutional and complies with due process.

Respondent previously raised these same arguments in *J.A.M. See J.A.M. v. Streeval*, No. 4:25-cv-342-CDL-AGH, Resp. (M.D. Ga. Oct. 31, 2025), ECF No. 11. In *J.A.M.*, however, the Court held that (1) it retains subject matter jurisdiction, and (2) non-citizens who are present in the United States without admission are not subject to detention under § 1225(b)(2)(A) because they are not "seeking admission" within the meaning of that provision. *west*, No. 4:25-cv-342-CDL-AGH, Order 3-15 (M.D. Ga. Oct. 31, 2025), ECF No. 12. The Court determined that § 1226(a) governs those non-citizens' pre-final order of removal detention and ordered that they be provided bond hearings pursuant to § 1226(a) and 8 C.F.R. §§ 236.1 and 1236.1. *Id.* at 15.

Respondent acknowledges that questions of law in this case substantially overlap with those at issue in *J.A.M.* Accordingly, while preserving all rights, Respondent incorporates by reference the legal arguments it presented in that case. *See J.A.M. v. Streeval*, No. 4:25-cv-342-CDL-AGH,

Resp. (M.D. Ga. Oct. 31, 2025), ECF No. 11. Should the Court apply the same reasoning it did in *J.A.M.* to this one, the legal principles espoused in *J.A.M.* would likely warrant the same conclusion here. Because of this, Respondent submits that further briefing and oral argument on the legal issues addressed in *J.A.M.* would not be a good use of resources by the parties or the Court. In its current posture, the Court may decide this matter without delay. If, however, the Court prefers to receive a formal and exhaustive responsive brief in this matter, Respondent will provide such a brief upon the Court's request. Further, to the extent the Court reconsiders its prior ruling or intends to address the due process issue based on a finding that § 1225(b)(2)(A) applies, Respondent respectfully requests the opportunity to address those matters.

II. Petitioner is also mandatorily detained pursuant to 8 U.S.C. § 1226(c).

In the event the Court determines that Petitioner's detention authority falls under § 1226, he is subject to mandatory detention under subsection 1226(c) rather than § 1226(a). Accordingly, the Petition should be dismissed for the following reasons. ***First***, Petitioner is mandatorily detained under 8 U.S.C. § 1226(c). ***Second***, Petitioner's mandatory detention under 8 U.S.C. § 1226(c) complies with due process.

A. Petitioner is mandatorily detained under 8 U.S.C. § 1226(c).

This statute provides that "[t]he Attorney General shall take into custody any alien who. . . is inadmissible by reason of having committed any offense covered in section 1182(a)(2) of this title. . . ." 8 U.S.C. § 1226(c)(1)(A). Section 1182(a)(2) provides that "[e]xcept as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of . . . a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . ." 8 U.S.C. § 1182(a)(2)(A)(i). A crime involving moral turpitude has not been defined by statute but the Eleventh Circuit has stated that it involves "[a]n act of baseness, vileness, or depravity in the private

and social duties which a man owes to his fellow man, or to society in general, contrary to the accepted and customary rule of right and duty between man and man." *Cano v. U.S. Atty. Gen.*, 709 F.3d 1052, 1053 (11th Cir. 2013). Additionally, "[w]hether a crime involves the depravity or fraud necessary to be one of moral turpitude depends upon the inherent nature of the offense, as defined in the relevant statute, rather than the circumstances surrounding a defendant's particular conduct." *Id.* In situations such as this, the Eleventh Circuit applies the categorical approach. *Id.*

Florida Statute § 847.011(c) states "[a] person who commits a violation of paragraph (a) or subsection (2) which is based on materials that depict a minor engaged in any act or conduct that is harmful to minors commits a felony of the third degree. . . ." Fla. Stat. § 847.011(c). Paragraph (a) of the same statute states

> Except as provided in paragraph (c), any person who knowingly sells, lends, gives away, distributes, transmits, shows, or transmutes, or offers to sell, lend, give away, distribute, transmit, show, or transmute, or has in his or her possession, custody, or control with intent to sell, lend, give away, distribute, transmit, show, transmute, or advertise in any manner, any obscene book, magazine, periodical, pamphlet, newspaper, comic book, story paper, written or printed story or article, writing, paper, card, picture, drawing, photograph, motion picture film, figure, image, phonograph record, or wire or tape or other recording, or any written, printed, or recorded matter of any such character which may or may not require mechanical or other means to be transmuted into auditory, visual, or sensory representations of such character, or any article or instrument for obscene use, or purporting to be for obscene use or purpose; or who knowingly designs, copies, draws, photographs, poses for, writes, prints, publishes, or in any manner whatsoever manufactures or prepares any such material, matter, article, or thing of any such character; or who knowingly writes, prints, publishes, or utters, or causes to be written, printed, published, or uttered, any advertisement or notice of any kind, giving information, directly or indirectly, stating, or purporting to state, where, how, of whom, or by what means any, or what purports to be any, such material, matter, article, or thing of any such character can be purchased, obtained, or had; or who in any manner knowingly hires, employs, uses, or permits any person knowingly to do or assist in doing any act or thing mentioned above, commits a misdemeanor of the first degree. . .

Fla. Stat. § 847.011(a).

Petitioner was convicted of Possession of Obscene Material Harmful to a Minor—Fla. Stat. § 847.011(c)—a felony in the third degree in the state of Florida. *See* Ex. A. Conduct under this

statute is likely sufficiently reprehensible to qualify as a crime of moral turpitude, as it requires harm to minors. *See, e.g.*, *Gelin v. U.S. Att'y Gen.*, 837 F.3d 1236, 1243 (11th Cir. 2016) (abuse of elderly or disabled adult is a crime involving moral turpitude because of "(1) the culpable state of mind required by the statute, and (2) the particularly vulnerable nature of the victims"); *Matter of Jimenez Cedillo*, 27 I&N Dec. 782, 784 (BIA 2020) ("Sexual offenses against minors have long been considered pernicious crimes . . . ."); *Matter of Olquin*, 23 I&N Dec. 896, 897 (BIA 2006) ("Sexual exploitation of children is a particularly pernicious evil."); *see also Pierre v. U.S. Att'y Gen.*, 879 F.3d 1241, 1252 (11th Cir. 2018) (stating battery on a child by throwing, tossing, projecting, or expelling blood, seminal fluid, urine, or feces is a crime involving moral turpitude). Petitioner's mandatory detention under 8 U.S.C. § 1226(c)(1)(A) is therefore lawful and the Petition should be dismissed.

B. Petitioner's mandatory detention under 8 U.S.C. § 1226(c) complies with due process.

Petitioner's mandatory detention under 8 U.S.C. § 1226(c) does not violate his procedural due process rights; therefore, he is not entitled to immediate release. "For reasons long recognized as valid, the responsibility for regulating the relationship between the United States and our alien visitors has been committed to the political branches of the Federal Government." *Mathews v. Diaz*, 426 U.S. 67, 81 (1976). Indeed, "over no conceivable subject is the legislative power of Congress more complete than it is over the admission of aliens." *Fiallo v. Bell*, 430 U.S. 787, 792 (1977) (internal quotations and citations omitted). For this reason, the Supreme Court has "long recognized the power to expel or exclude aliens as a fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control." *Fiallo*, 430 U.S. at 792 (collecting cases)). For over a century, the Supreme Court has definitively and consistently affirmed that detention pending removal is constitutional. *Reno v. Flores*, 507 U.S. 292, 306 (1993)

("Congress has the authority to detain aliens suspected of entering the country illegally pending their deportation hearings . . . ." (citations omitted)); *Carlson v. Landers*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of this deportation procedure."); *Wong Wing v. United States*, 163 U.S. 228, 235 (1896) ("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.").

In *Demore v. Kim*, 538 U.S. 510, 523 (2003), the Supreme Court affirmed the constitutionality of § 1226(c)'s mandatory detention provisions. The Court discussed the legislative history of the statute, noting that Congress enacted § 1226(c) in light of the "near-total inability to remove deportable criminal aliens" and reports showing a recidivism rate for criminal aliens approaching 80 percent. *Demore*, 538 U.S. at 518. "Congress also had before it evidence that one of the major causes of the . . . failure to remove deportable criminal aliens was the agency's failure to detain those aliens during their deportation proceedings." *Id.* at 519 (citations omitted). In particular, Congress considered multiple reports showing that "deportable criminal aliens failed to appear for their removal hearings." *Id.* (citations omitted).

The Court proceeded to discuss the due process rights at issue, beginning by noting that it "has firmly and repeatedly endorsed the proposition that Congress may make rules as to aliens that would be unacceptable if applied to citizens." *Id.* at 521 (citations omitted). The Court then distinguished the case in two key respects from its earlier decision in *Zadvydas v. Davis*, 533 U.S. 678 (2001), where the Court applied the canon of constitutional avoidance to read into the post-order detention statute an implicit temporal limitation. *Id.* at 527. First, the Court emphasized that for the non-citizens challenging their detention in *Zadvydas*, removal was "no longer practically attainable" and therefore detention "did not serve its purported immigration purpose." *Id.* (citing *Zadvydas*, 533 U.S. at 690) (internal quotations omitted). Conversely, mandatory detention pending

removal proceedings "serves the purpose of preventing deportable criminal aliens from fleeing prior to or during their removal proceedings." *Demore*, 538 U.S. at 528. Second, the Court emphasized that the post-order detention in *Zadvydas* was "indefinite" and "potentially permanent" while pre-order detention has an "obvious termination point"—the conclusion of removal proceedings. *Id.* at 528-29.

Thus, the considerations that justified the imposition of a temporal limit on post-order immigration detention in *Zadvydas* were absent for the mandatory pre-final detention in *Demore*, and the Court declined to impose additional, constitutional limits on the operation of § 1226(c). Rather, the Court concluded by reiterating its century-old rule that "[d]etention during removal proceedings is a constitutionally permissible part of that process. *Id.* at 531 (citing *Wong Wing*, 163 U.S. at 235; *Carlson*, 342 U.S. at 538; *Flores*, 507 U.S. at 306).

After *Demore*, the Eleventh Circuit decided *Sopo v. U.S. Attorney General* (*Sopo I*), 825 F.3d 1199 (11th Cir. 2016), which applied the canon of constitutional avoidance and read into § 1226(c) an implicit temporal limitation on mandatory detention to avoid perceived procedural due process issues. 825 F.3d at 1212-13. Specifically, the Eleventh Circuit created a multi-factor test to determine whether continued detention under § 1226(c) was reasonable. *Id.* at 1217-19. If application of the factors demonstrated that the detention was unreasonable, the Court held that the non-citizen would be entitled to a bond hearing using the procedures described in 8 U.S.C. § 1226(a). *Id.* at 1220.

However, the Supreme Court then decided *Jennings v. Rodriguez*, 583 U.S. 281 (2018), which reversed the Ninth Circuit's analogous application of the canon of constitutional avoidance to § 1226(c). The Supreme Court stated that "§ 1226(c) makes clear that detention of aliens within its scope must continue 'pending a decision on whether the alien is to be removed from the United States'" and "expressly prohibits release from that detention except for narrow, witness-protection

purposes." *Jennings*, 583 U.S. at 283; *see also id.* at 304 ("[T]he statute expressly and unequivocally imposes an affirmative prohibition on releasing detained aliens under any other conditions."). The Court found that the statute contained no limitation on the length of § 1226(c) detention, describing the Ninth Circuit's attempt to interpret any such limitation under the canon of constitutional avoidance as "textual alchemy." *Id.* at 304. Rather, the "definite termination point" of § 1226(c) detention is "the conclusion of removal proceedings."

Following *Jennings*, the Eleventh Circuit vacated its opinion in *Sopo I*. *Sopo v. U.S. Attorney Gen.* (*Sopo II*), 890 F.3d 952, 953-54 (11th Cir. 2018). Its conclusion as to the application of the canon of constitutional avoidance and use of the multi-factor test to impose a temporal limit on § 1226(c) detention is no longer good law, and it has no utility in resolving Petitioner's claim here. Moreover, *Sopo I* did not define the constitutional limits of pre-final order of removal detention in the first instance. The Court created its multi-factor test based on its statutory interpretation of § 1226(c)—namely, its finding that the statute contained implicit temporal limitations. *Sopo I*, 825 F.3d at 1212-1219. The Supreme Court has rejected this interpretation. *Jennings*, 583 U.S. at 303–304.

Rather, *Demore* remains the sole analysis necessary to resolve the constitutional question presented here. Petitioner contends that he is detained pursuant to § 1225(b)(2) alone. Amend. Pet. 13 ¶ 39. Petitioner claims that his offense is not subject to detention under § 1226(c), but does not disclose the details of that conviction which is relevant to his detention authority. *Id.* Petitioner's detention continues to "serve its purported immigration purpose"—ensuring his appearance at his removal proceedings and protecting the community from non-citizens who have committed crimes which Congress concluded warranted mandatory detention. *Demore*, 538 U.S. at 518–19, 527. The risks that a non-citizen will commit further crimes or fail to appear for removal proceedings if released do not dissipate after any arbitrary amount of time passes. Further, unlike the non-citizens

in *Zadvydas*, Petitioner's detention is not potentially indefinite. It will plainly terminate once his removal proceedings conclude. For these reasons, *Demore* compels a finding that Petitioner's mandatory detention under § 1226(c) is constitutional.

CONCLUSION

The record is complete in this matter and the case is ripe for adjudication on the merits. For the reasons stated herein, Respondent respectfully requests that the Court dismiss the Petition.

Respectfully submitted this 23rd day of January, 2026.

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