

United States District Court
Western District of Texas
El Paso Division

XIAOLANG ZHANG,
Petitioner,

v.

PAMELA BONDI, *et al.*,
Respondents.

No. EP-26-CV-252-KC

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 China, and lawful permanent resident who has been convicted of an aggravated felony. Following his release from criminal custody, he was taken into immigration custody for removal proceedings. The Department of Homeland Security (“DHS”), U.S. Immigration and Customs Enforcement (“ICE”) detained Petitioner on September 19, 2024, pending Petitioner’s 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 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). Therefore, this habeas petition should be denied.

Petitioner has not established a cognizable due process claim under *Demore v. Kim*, 538

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.

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 China and lawful permanent resident. ECF No. 1 at ¶¶ 16, 20. He became an aggravated felon after his conviction for theft of trade secrets in violation of 18 U.S.C. § 1832(a)(1). *See* ECF Nos. 1 at ¶ 25, 29; 8 U.S.C. § 1227(a)(2)(A)(iii); 8 U.S.C. 1101(a)(43)(M). Petitioner admits that while working for Apple, Inc., (Apple) remotely downloaded Apple's trade secrets and went to restricted Apple laboratories to take Apple-owned electronic devices. *See* ECF No. 1-2 at **40-41. Petitioner further admits that he had taken at least 40 GB of data containing propriety trade secrets while Petitioner was preparing to leave Apple to join a rival Chinese start-up company. *Id.* at **41-42. Petitioner initially tried to deny his actions to Apple but later admitted once presented with evidence. *Id.* at *42. Petitioner admits that he took the proprietary information knowing that he did not have authorization and that it would disadvantage Apple, but did so anyway in order to economically benefit himself. *Id.* at **42-43 As an aggravated felon, he is in removal proceedings and was ordered removed by an immigration judge on January 30, 2026. *See Automated Case Information System* (last accessed Feb. 20, 2026). If Petitioner wishes to appeal the immigration judges order, the appeal is due on March 2, 2026. *Id.* During his removal proceedings, Petitioner has had two bond hearing before an immigration judge and two appeals to the Board of Immigration Appeals (BIA) which had the end result of the BIA affirming the immigration judge's bond decision that Petitioner was subject to mandatory detention under 8

U.S.C. § 1226(c). ECF No. 1 at ¶¶ 44-47; *see also* ECF No. 1-2 34-35 (BIA’s decision affirming the immigration judge’s finding that the conviction constitutes an aggravated felony).

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).

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 ¶¶ 75-114; *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 September 19, 2024. However, Petitioner has not demonstrated that his detention under § 1226(c) is at odds with the purpose under which Congress enacted § 1226(c) as Petitioner admits that he has had regular immigration proceedings while he has been detained. *Id.* ¶ 30-47. The fact that proceedings have taken longer than average and have required multiple individual hearings does not alter the purpose for detention to make it unrelated to immigration enforcement.

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 cites one instance in which the immigration court cancelled a hearing which resulted in an 11-day delay. ECF No. 1 at ¶ 37, 38. Petitioner admits that his individual hearing had to be continued across several days as the immigration court was still hearing evidence on the case. *Id.* at ¶ 34, 38, 39, 41-42. Petitioner has presented no evidence that Petitioner’s detention under § 1226(c) was for any reason other than to facilitate deportation if ordered removed. Petitioner has been in ongoing removal proceedings during his entire time in detention and the government has continuously sought removal. The fact that Petitioner has been ordered removed illustrates that Respondents have acted to pursue and complete deportation proceedings. ECF No. 1 at ¶¶ 42-43. Accordingly, Petitioner has not met his burden of demonstrating a due process violation under *Demore*, and the Court should deny the Petition.

Conclusion

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

Respectfully submitted,

Justin R. Simmons
United States Attorney

By: /s/ Nathan Ripley
Nathan Ripley
Special Assistant United States Attorney
Illinois Bar No. 304097
700 E. San Antonio Ave., Suite 200
El Paso, Texas 79901
(915) 534-6884 (phone)
Nathan.Ripley@usdoj.gov

Attorneys for Federal Respondents