

District Judge Thomas S. Zilly

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FRANCIS LARA,

Petitioner,

v.

IMMIGRATION AND CUSTOMS
ENFORCEMENT FIELD OFFICE
DIRECTOR,

Respondent.

Case No. 2:26-cv-00747-TSZ

FEDERAL RESPONDENTS' RETURN

Noted For Consideration:
April 8, 2026

I. INTRODUCTION

U.S. Immigration and Customs Enforcement ("ICE") detains Petitioner Francis Lara at the Northwest ICE Processing Center pursuant to 8 U.S.C. § 1226(c). Petitioner was previously granted asylum in the United States, but never became a lawful permanent resident. In 2019, she was convicted in federal court of a drug distribution offense. Department of Homeland Security ("DHS") detained Petitioner in October 2024 and moved to reopen her immigration proceedings. The proceedings were reopened in 2025, Petitioner's asylum was cancelled, and she was ordered

1 removed to Honduras. Petitioner appealed the decision, which is currently pending with the Board
2 of Immigration Appeals (“BIA”). Petitioner requests release or a bond hearing. Dkt. 5, pg. 2.

3 Petitioner is not entitled to release as she cannot demonstrate that her detention has become
4 unconstitutionally indefinite. Petitioner’s conviction makes her inadmissible and deportable. 8
5 U.S.C. §§ 1101(a)(43)(B), 1182(a)(2)(A)(i)(II), 1227(a)(2)(A)(iii), 1227(a)(2)(B)(i). This subjects
6 her to mandatory detention while a decision on her removal is made pursuant to 8 U.S.C. §
7 1226(c)(1)(A)-(B). Once her removal proceedings end, she will either be removed from the United
8 States or released. Either way, her detention has a definite endpoint. Furthermore, Petitioner’s
9 detention has not become unreasonably prolonged. Although she is subject to mandatory detention,
10 the immigration court held a bond hearing in December 2025, where the Government bore the
11 burden to justify Petitioner’s continued detention. Thus, Petitioner has received sufficient due
12 process and no court-ordered bond hearing should be required.

13 This Court should deny the relief sought here.

14 II. FACTUAL BACKGROUND

15 A. Petitioner Francis Lara

16 Petitioner is a citizen of Honduras that was previously in removal proceedings but was
17 granted asylum on June 3, 2003 by the Board of Immigration Appeals (“BIA”). Declaration of
18 Jordan Steveson (“Steveson Decl.”), Exh. A, Form I-213. Petitioner has not adjusted her status to
19 a lawful permanent resident. *Id.*

20 On February 13, 2019, Petitioner was convicted of 21 U.S.C. §§ 841(a)(1) and
21 841(b)(1)(C) for Distribution of Mixture or Substance Containing a Detectable Amount of Cocaine
22 Base. Steveson Decl., Exh. B, Criminal Judgment. In August of 2024, ICE determined that this
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1 conviction made Petitioner removable and that her asylee status was subject to termination.
2 Steveson Decl., Exh. A, Form I-213; *see also* 8 C.F.R. § 1208.24(f).

3 On October 24, 2024, Petitioner was detained on an administrative arrest warrant in
4 Anchorage, Alaska. Steveson Decl., Exh. C, Warrant for Arrest of Alien. ICE determined that
5 Petitioner should be detained for the immigration proceedings. Steveson Decl., Exh. D, Form I-
6 286. Petitioner did not request a bond hearing to contest ICE's determination at that time. *Id.*

7 On or about October 30, 2024, Department of Homeland Security ("DHS") mailed a
8 motion to reopen at the BIA due to Petitioner's federal drug distribution conviction. Declaration
9 of Supervisory Detention and Deportation Officer Christopher Sica ("Sica Decl."), ¶ 14. On June
10 13, 2025, the BIA reopened and remanded the immigration proceedings to an immigration judge.
11 Steveson Decl., Exh. E, BIA Remand.

12 On August 14, 2025, an immigration judge directed that medical records be filed with the
13 immigration court. Sica Decl., ¶ 17. At a hearing on September 8, 2025, an immigration judge
14 assessed Petitioner's medical records and found that Petitioner was competent to proceed. Sica
15 Decl., ¶ 19. The immigration judge granted Petitioner's request for a continuance to retain legal
16 counsel. *Id.* On October 29, 2025, an immigration judge denied all relief and ordered Petitioner
17 removed. Steveson Decl., Exh. F, IJ Order. Petitioner reserved appeal but did not successfully file
18 an appeal, but was unsuccessful. Sica Decl., ¶¶ 21, 24. However, on November 5, 2025,
19 Department of Homeland Security ("DHS") was diagnosed with a mental health condition that
20 triggered designation as a *Franco-Gonzalez* class member. Sica Decl., ¶ 22.

21 DHS also requested a *Franco-Gonzalez* bond hearing. Steveson Decl., Exh. G. On or about
22 December 2, 2025, a *Franco-Gonzalez* bond hearing was held. Sica Decl., ¶ 25. Under the *Franco*
23 settlement, class members, are entitled to a bond hearing after being detained for 180 days. At a
24 *Franco* bond hearing, the government must establish by clear and convincing evidence that

ongoing detention is justified, and that the detainee is a danger to the community or a flight risk.

Franco-Gonzales v. Holder, No. 10-cv-2211, 2013 WL 3674492 (C.D. Cal. Apr. 23, 2013).

The immigration judge found Petitioner to be a flight risk and danger, bond was denied. Sica Decl., ¶ 25. Petitioner has not filed an appeal of that bond order. *Id.*

On December 10, 2025, an immigration judge started a judicial competency inquiry and ordered a forensic competency evaluation of Petitioner and requested additional medical records. Sica Decl., ¶ 26. On January 22, 2026, an immigration judge concluded a judicial competency inquiry, finding Petitioner competent, and allowed Petitioner additional time to gather evidence and retain counsel. *Id.*, ¶ 28. The immigration judge allowed Petitioner to continue the case again on February 12, 2026, to retain counsel. *Id.*, ¶ 29. Petitioner's merits hearing on her applications for relief started on March 25, 2026. *Id.* ¶ 31. Testimony has been started but the immigration hearing was continued to April 21, 2026 for completion. *Id.*

III. LEGAL STANDARD

It is axiomatic that "[t]he district courts of the United States . . . are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute." *Exxon Mobil Corp. v. Allopah Servs., Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted). "[T]he scope of habeas has been tightly regulated by statute, from the Judiciary Act of 1789 to the present day." *Dep't of Homeland Sec. v. Thuraissigiam*, 140 S. Ct. 1959, 1974 n. 20 (2020). Title 28 U.S.C. § 2241 provides district courts with jurisdiction to hear federal habeas petitions.

To warrant a grant of habeas corpus, the burden is on the petitioner to prove that his or her custody is in violation of the Constitution, laws, or treaties of the United States. *See* 28 U.S.C. § 2241(c)(3); *Lambert v. Blodgett*, 393 F.3d 943, 969 n.16 (9th Cir. 2004).

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4 **IV. ARGUMENT**

5 Petitioner's detention is statutorily mandated and comports with due process. She has
6 already received a bond hearing. Accordingly, this Court should dismiss her habeas petition.

7 **A. ICE lawfully detains Petitioner pursuant to 8 U.S.C. § 1226(c).**

8 Detention pursuant to 8 U.S.C. § 1226(c) is mandatory for noncitizens who commit or are
9 charged with certain criminal offenses. This detention may end prior to the conclusion of removal
10 proceedings "only if the [noncitizen] is released for witness-protection purposes." *Jennings v.*
11 *Rodriguez*, 583 U.S. 281, 305 (2018) (internal quotation marks and citations omitted). If a
12 noncitizen commits certain criminal offenses, then she is subject to mandatory detention during
13 immigration proceedings. 8 U.S.C. §§ 1226(c)(1)(A)-(B).

14 One type of conviction that triggers mandatory detention are drug related offenses. 8 U.S.C.
15 §§ 1182(a)(2)(A)(i)(I), 1227(a)(2)(B).

16 Petitioner has been convicted of 21 U.S.C. § 841, a controlled substance offense. Petitioner
17 is lawfully detained pursuant to 8 U.S.C. § 1226(c) due to her criminal activity in the United States.

18 **B. Petitioner has not met her burden establishing that her mandatory detention**
19 **violates her rights under the Fifth Amendment's Due Process Clause.**

20 Petitioner's detention pursuant to Section 1226(c) does not violate her due process rights.
21 The Supreme Court "has firmly and repeatedly endorsed the proposition that Congress may make
22 rules as to [noncitizens] that would be unacceptable if applied to citizens." *See Demore v. Kim*,
23 538 U.S. 510, 522 (2003) (citations omitted). Detention is a constitutionally permissible aspect of
24 the Government's enforcement of the immigration laws and fulfills the legitimate purpose of
ensuring that individuals appear for their removal proceedings. *See Jennings*, 583 U.S. at 285-86;
Demore, 538 U.S. at 523; *Zadvydas v. Davis*, 533 U.S. 678, 690-91 (2001). Consistent with the

1 requirements of due process, Petitioner's confinement is thus "reasonably related" to a legitimate
2 government interest. *Bell v. Wolfish*, 441 U.S. 535, 538-39 (1979).

3 In *Demore*, the Supreme Court addressed the constitutionality of 8 U.S.C. § 1226(c) and
4 therein considered a noncitizen's claim of a due process violation based on the length of his
5 detention. 538 U.S. at 510-33. In addition to upholding the constitutionality of 8 U.S.C. § 1226(c)
6 and finding that the noncitizen's due process claim must fail, the Supreme Court did not embrace
7 any bright-line rule for when a noncitizen under 8 U.S.C. § 1226(c) *may* suffer a due process
8 violation. In fact, the Court upheld the constitutionality of the noncitizen's detention even though
9 it had surpassed six months and was likely to extend longer. *Id.*; see *Reid v. Donelan*, 17 F.4th 1,
10 7 (1st Cir. 2021) ("It requires no reading of tea leaves to see that *Demore* is fatal to the claim here
11 that every single person detained for six months must be entitled to a bond hearing."). After
12 *Jennings*, the Ninth Circuit has repeatedly declined in published decisions to state whether
13 noncitizens detained under Section 1226(c) should be afforded bond hearings *at any time*. See,
14 e.g., *Avilez v. Garland*, 69 F.4th 525, 538 (9th Cir. 2023) (ruling "we make no determination
15 regarding the issue" as to whether the noncitizen detained under 8 U.S.C. § 1226(c) has suffered a
16 due process violation based on length of detention).

17 Petitioner's detention meets due process requirements. Courts in this District generally
18 apply the three-factor test in *Mathews v. Eldridge*, 424 U.S. 319 (1976), where the petitioner has
19 already received a bond hearing. See *Ortuno-Perez v. ICE Field Off. Dir.*, No. 2:23-cv-344, 2023
20 WL 5807305, at *4 (W.D. Wash. Aug. 1, 2023), *report and recommendation adopted*, 2023 WL
21 5802516 (W.D. Wash. Sept. 7, 2023). "Due process is flexible and calls for such procedural
22 protections as the particular situation demands." *Mathews*, 424 U.S. at 334. Under *Mathews*,
23 "[t]he fundamental requirement of due process is the opportunity to be heard at a meaningful time
24 and in a meaningful manner." *Id.*, at 333 (internal quotation marks omitted). This calls for an

1 analysis of (1) “the private interest that will be affected by the official action,” (2) “the risk of an
2 erroneous deprivation of such interest through the procedures used, and probable value, if any, of
3 additional or substitute procedural safeguards,” and (3) the Government’s interest. *Id.*, at 334-35.

4 The *Mathews* test does not demonstrate that Petitioner’s detention violates her
5 constitutional due process rights. With respect to the first factor – the private interest at stake –
6 while it is true as a general matter that freedom from physical restraint “lies at the heart of the
7 liberty that [the Due Process] Clause protects,” *Zadvydas*, 533 U.S. at 690 (internal quotation
8 marks omitted), “Congress regularly makes rules that would be unacceptable if applied to
9 citizens.” *Demore*, 538 U.S. at 522. Accordingly, while the “Fifth Amendment entitles
10 [noncitizens] to due process of law in deportation proceedings, detention during deportation
11 proceedings [is] a constitutionally valid aspect of the deportation process.” *Id.*, at 523. Any
12 assessment of the private interests at stake must therefore account for the fact that the Supreme
13 Court has never held that noncitizens have a constitutional right to be released from custody during
14 the pendency of removal proceedings and has in fact held precisely the opposite. *Id.*, at 530;
15 *Carlson v. Landon*, 342 U.S. 524, 538 (1952).

16 As for the second factor, Petitioner has had substantial procedural safeguards available to
17 her whether she has chosen to utilize them or not. Since her detention commenced, Petitioner has
18 received a *Franco-Gonzalez* bond hearing, been issued an order of removal by the immigration
19 judge but now is in the process of receiving a second hearing on her applications for removal.
20 Most relevant here, an immigration judge determined that the government had established by clear
21 and convincing evidence that Petitioner is a danger to the community and a flight risk in December
22 2025. Once Petitioner receives a final order of removal, her mandatory detention status under
23 Section 1226 will cease. *Jennings*, 583 U.S. at 303 (“§ 1226(c) makes clear that detention of
24 [noncitizens] within its scope *must* continue pending a ‘decision on removal’”). Thus, Petitioner’s

detention is not indefinite or excessive. Moreover, this Court should not solely count the months of Petitioner's detention. Courts "must also consider the process [the detainee] received during this time, the further process that was available to [her], and the fact that [her] detention was prolonged due to [her] decision to challenge [her] removal order." *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1208 (9th Cir. 2022).

Finally, the government has a compelling interest in detaining Petitioner pending her removal. That compelling interest is rooted in ensuring that the criminal and terrorist noncitizens that Congress deemed most dangerous and most likely to abscond complete their removal proceedings. *Demore*, 538 U.S. at 520. Petitioner was convicted of a serious drug offense. Although Petitioner's liberty interest is impacted by Section 1226(c), Congress reviewed evidence and concluded that, "even with individualized screening, releasing deportable criminal [noncitizens] on bond would lead to an unacceptable risk of flight." *Demore*, 538 U.S. at 520.

Accordingly, all *Mathews* factors favor the government.

In sum, this Court should rule that Petitioner has not established a violation of her due process rights. She is a criminal noncitizen, in removal proceedings that are not yet final. Her detention serves the immigration purpose for which 8 U.S.C. § 1226(c) was enacted into law. Petitioner has already received a *Franco-Gonzales* bond hearing. Finally, Petitioner has not demonstrated that her detention is unreasonable or unjustified under Supreme Court caselaw for noncitizens in pending civil immigration removal proceedings. *See Demore*, 538 U.S. at 527-28, 530-33.

C. Petitioner has failed to exhaust her administrative remedies.

This Court should require Petitioner to avail herself of the substantial procedural protections of provided to her by her *Franco-Gonzalez* bond hearing, which she has not appealed. Petitioner had due process available to her prior to seeking this Court's intervention.

1 Although exhaustion of administrative remedies is not a jurisdictional prerequisite for
2 habeas petitions, courts generally “require, as a prudential matter, that habeas petitioners exhaust
3 available judicial and administrative remedies before seeking [such] relief.” *Castro-Cortez v. INS*,
4 239 F.3d 1037, 1047 (9th Cir. 2001) (abrogated on other grounds by *Fernandez-Vargas v.*
5 *Gonzales*, 548 U.S. 30 (2006)). The exhaustion requirement is subject to waiver because it is not
6 a “‘jurisdictional’ prerequisite.” *Id.*

7 Courts may require prudential exhaustion where: “(1) agency expertise makes agency
8 consideration necessary to generate a proper record and reach a proper decision; (2) relaxation of
9 the requirement would encourage the deliberate bypass of the administrative scheme; and (3)
10 administrative review is likely to allow the agency to correct its own mistakes and to preclude the
11 need for judicial review.” *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007).

12 The Court should not allow Petitioner to move forward with this litigation without first
13 exhausting her administrative remedies. Similar to circumstances here, a court in this district
14 dismissed a noncitizen’s habeas petition because the petitioner had failed to seek a bond
15 redetermination hearing at the administrative level. *Cristobal v. Asher*, 20-cv-1493-RSM-BAT,
16 2020 WL 8678097, at * 3 (W.D. Wash. Dec. 14, 2020), *Rep. & Rec. adopted by* 2021 WL796597
17 (W.D. Wash. Mar. 2, 2021). In *Cristobal*, the petitioner had been detained for 15 months and was
18 denied bond at an initial bond redetermination hearing, but he never sought a second bond
19 redetermination hearing based on changed circumstances before filing a habeas petition. In
20 comparison, Petitioner has had a bond hearing but has not appealed the immigration judge’s
21 decision to the BIA. This Court should also dismiss this Petition.

22 The BIA “has a special expertise in reviewing the question of whether the bond record as
23 a whole makes it substantially unlikely that the Department w[ill] prevail on [the petitioner’s]
24 challenge to removability.” *Francisco Cortez v. Nielsen*, No. 19-CV-00754-PJH, 2019 WL

1 1508458, at *3 (N.D. Cal. Apr. 5, 2019) (internal quotation marks omitted). Also, allowing a
2 “relaxation of the exhaustion requirement” would promote the avoidance of seeking a bond
3 redetermination by the IJ or an appeal of similar IJ orders to the BIA. Finally, the outcome of a
4 BIA appeal may provide Petitioner with the relief sought here – release on bond.

5 Accordingly, the Petition should be dismissed because Petitioner has failed to exhaust her
6 administrative remedies.

7 **V. CONCLUSION**

8 For the foregoing reasons, Federal Respondents respectfully request that this Court deny
9 the Petition.

10 DATED this 3rd day of April, 2026.

11
12 Respectfully submitted,

13 s/ Jordan C. Steveson

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17 *Attorney for Respondent*

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19 *I certify that this memorandum contains 2,688*
20 *words, in compliance with the Local Civil Rules.*