

District Judge Lauren King

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

MD MOBARAK HOSSAIN,

Petitioner,

v.

BRUCE SCOTT, *et al.*,¹

Respondents.

Case No. 2:26-cv-00923-LK

FEDERAL RESPONDENTS'² RETURN

Noted For Consideration
April 6, 2026

I. INTRODUCTION

This Court should deny Petitioner MD Mobarak Hossain's habeas petition (Dkt. No. 4), which seeks unidentified habeas relief relating to his mandatory immigration detention. United States Immigration and Customs Enforcement ("ICE") lawfully detains Petitioner pursuant to Section 236(c) of the Immigration and Nationality Act ("INA"), codified at 8 U.S.C. § 1226(c), pending his administrative removal proceedings. He is subject to mandatory detention because of his criminal conviction for sexual contact with a person under 11 years old. This conviction

¹ Pursuant to Federal Rule of Civil Procedure 25(d), Federal Respondents substitute Julio Hernandez for Laura Hermosillo.

² Respondent Bruce Scott is not a federal official and is not represented by undersigned counsel.

1 mandated Petitioner to register as a sex offender and qualifies as an aggravated felony under the
2 INA. Petitioner alleges that his continued detention violates his Fifth Amendment due process
3 rights. Pet., at 3-4

4 Petitioner's constitutional claim lacks merit. The immigration judge has sustained a
5 criminal charge of removability that mandates detention pursuant to Section 1226(c). *See* 8
6 U.S.C. § 1226(c); *see also Jennings v. Rodriguez*, 583 U.S. 281, 303 (2018) ("§ 1226(c) makes
7 clear that detention of [noncitizens] within its scope *must* continue 'pending a decision on whether
8 the [noncitizen] is to be removed from the United States'" (quoting 8 U.S.C § 1226(c)) (emphasis
9 in original)). His removal proceedings remain ongoing as Petitioner has appealed the immigration
10 judge's order of removal to the Board of Immigration Appeals ("BIA"). Furthermore, his
11 approximate 8-month detention does not violate due process.

12 II. FACTUAL BACKGROUND

13 Petitioner is a native and citizen of Bangladesh. Melendez Decl., ¶ 3. He entered the
14 United States in 2010 as a lawful permanent resident. Melendez Decl., ¶ 3. In 2016, the Queens
15 County Supreme Court in Queens, New York convicted Petitioner of Endangering the Welfare of
16 a Child in violation of N.Y. Penal Law § 260.10 (a misdemeanor) and Sexual Abuse First Degree
17 in violation of N.Y. Penal Law § 130.65(3) (a felony). Melendez Decl., ¶ 4; Lambert Decl., Ex.
18 A, Certificate of Disposition Indictment. Petitioner was sentenced to a total of three years'
19 incarceration with five years of post-release parole supervision. Melendez Decl., ¶ 4; Lambert
20 Decl., Ex. A. He was also required to register as a sex offender. Melendez Decl., ¶ 4. Petitioner
21 was released from incarceration on or about January 2, 2019. Melendez Decl., ¶ 4.

22 In 2024, U.S. Citizenship and Immigration Services denied Petitioner's application for
23 naturalization due to his aggravated felony conviction. Melendez Decl., ¶ 5; Lambert Decl., Ex.
24 B, Decision.

1 On June 27, 2025, the New York City Police Department arrested Petitioner for Assault
2 in the Third Degree (N.Y. Pen. Law § 120.00(01) and Harassment in the Second Degree (N.Y.
3 Pen. Law § 240.26(01). Melendez Decl., ¶ 6. The disposition of these charges is unknown.

4 On August 7, 2025, ICE took Petitioner into custody. Melendez Decl., ¶ 7; Lambert Decl.,
5 Ex. B, Form I-213; Ex. C, Warrant for Arrest; Ex. D, Notice of Custody Determination. ICE
6 served Petitioner with a notice to appear that charged him as removable pursuant to 8 U.S.C.
7 §§ 1227(a)(2)(A)(iii) and (a)(2)(E)(i), which placed him in removal proceedings. Melendez
8 Decl., ¶ 7; Lambert Decl., Ex. E, Notice to Appear. He was transferred to the Northwest ICE
9 Processing Center a few days later. Melendez Decl., ¶ 7.

10 The Tacoma Immigration Court presided over Petitioner's removal proceedings.
11 Petitioner sought multiple continuances of his hearing deadlines. Melendez Decl., ¶ 9. On
12 February 17, 2026, an immigration judge denied Petitioner's applications for relief from removal
13 and ordered him removed to Bangladesh. Melendez Decl., ¶ 10. Petitioner has a pending appeal
14 of this order before the BIA. Melendez Decl., ¶ 11; Pet., at 2.

15 Although Petitioner is not currently subject to a final order of removal while his
16 administrative appeal is ongoing, ICE has proactively begun the process of obtaining a travel
17 document for his removal if a final order of removal is ultimately in place. Melendez Decl., ¶ 12.

18 III. LEGAL STANDARD

19 It is axiomatic that "[t]he district courts of the United States . . . are courts of limited
20 jurisdiction. They possess only that power authorized by Constitution and statute." *EMelendezon*
21 *Mobil Corp. v. Allopath Servs., Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted).
22 "[T]he scope of habeas has been tightly regulated by statute, from the Judiciary Act of 1789 to
23 the present day." *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 125 n.20 (2020). Title
24 28 U.S.C. § 2241 provides district courts with jurisdiction to hear federal habeas petitions.

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

4 IV. ARGUMENT

5 Petitioner's detention is statutorily mandated and comports with due process. He is
6 entitled to neither release nor a court-ordered bond hearing. Accordingly, this Court should deny
7 the Petition.

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

9 Petitioner's detention is statutorily mandated pursuant to 8 U.S.C. § 1226(c). *Demore v.*
10 *Kim*, 538 U.S. 510, 530 (2003) ("Detention during removal proceedings is a constitutionally
11 permissible part of that process."). Section 1226 provides the framework for the arrest, detention,
12 and release of noncitizens in removal proceedings. *See* 8 U.S.C. § 1226. Section 1226(a) grants
13 U.S. Department of Homeland Security ("DHS") the discretionary authority to determine whether
14 a noncitizen should be detained, released on bond, or released on conditional parole pending the
15 completion of removal proceedings. In contrast, detention pursuant to Section 1226(c) is
16 mandatory for noncitizens that commit certain criminal offenses. This detention may end prior
17 to the conclusion of removal proceedings "only if the alien is released for witness-protection
18 purposes." *Jennings*, 583 U.S. at 306 (internal quotation marks omitted). Section 1226(c)
19 includes any non-citizen who "is deportable by reason of having committed any offense covered
20 in section 1227(a)(2)(A)(ii), (A)(iii), (B), (C), or (D) of this title." 8 U.S.C. § 1226(c)(1)(B).

21 Here, Petitioner is charged as being removable pursuant to 8 U.S.C. § 1227(a)(2)(A)(iii)
22 due to his sexual abuse conviction. *Lambert Decl.*, Ex. F. Section 1227(a)(2)(A)(iii) states that
23 any noncitizen "who is convicted of an aggravated felony at any time after admission is
24 deportable." 8 U.S.C. § 1227(a)(2)(A)(iii). Because Petitioner has been convicted of an

1 aggravated felony after his admission to the United States, his detention is statutorily mandated
2 by Section 1226(c) until his removal proceedings have concluded. *See Avilez v. Garland*, 69
3 F.4th 525, 529-30 (9th Cir. 2023).

4 **B. Petitioner has not met his burden of establishing that his mandatory detention**
5 **violates his rights under the Fifth Amendment's Due Process Clause.**

6 In addition to being statutorily mandated, Petitioner's continued detention pursuant to
7 § 1226(c) does not violate his due process rights. The Supreme Court "has firmly and repeatedly
8 endorsed the proposition that Congress may make rules as to [noncitizens] that would be
9 unacceptable if applied to citizens." *See Demore*, 538 U.S. at 522 (citations omitted). Detention
10 is a constitutionally permissible aspect of the Government's enforcement of the immigration laws
11 and fulfills the legitimate purpose of ensuring that individuals appear for their removal
12 proceedings. *See Jennings*, 583 U.S. at 286; *Demore*, 538 U.S. at 523; *Zadvydas v. Davis*, 533
13 U.S. 678, 690-91 (2001). Consistent with the requirements of due process, Petitioner's
14 confinement is thus "reasonably related" to a legitimate government interest. *Bell v. Wolfish*, 441
15 U.S. 535, 538-39 (1979).

16 Here, Anyanwu contends that his "prolonged detention without an individualized bond
17 violates the due process of the 5th Amendment." Pet., at 2. In *Demore*, the Supreme Court
18 rejected a due process challenge to Section 1226(c) explaining that Congress drafted Section
19 1226(c) to respond to the high rates of crime and flight by removable noncitizens convicted of
20 certain crimes. The Court held that "the Government may constitutionally detain deportable
21 [noncitizens] during the limited period necessary for their removal proceedings." 538 U.S. at 518-
22 21, 526.

23 In addition, the Supreme Court did not embrace any bright-line rule for when a noncitizen
24 under Section 1226(c) *may* suffer a due process violation. In fact, the Court upheld the

1 constitutionality of the noncitizen's detention even though it had surpassed six months and was
 2 likely to extend longer. *Id.*; see *Reid v. Donelan*, 17 F.4th 1, 7 (1st Cir. 2021) ("It requires no
 3 reading of tea leaves to see that *Demore* is fatal to the claim here that every single person detained
 4 for six months must be entitled to a bond hearing.").

5 In sum, this Court should rule that Petitioner has not established a violation of his due
 6 process rights as he is a criminal noncitizen in pending removal proceedings, his detention serves
 7 the immigration purpose for which 8 U.S.C. § 1226(c) was enacted into law, and he has not
 8 demonstrated that his detention is unreasonable or unjustified under Supreme Court caselaw for
 9 noncitizens in civil immigration pending removal proceedings. See *Demore*, 538 U.S. at 527-28,
 10 530-33.

11 **C. Petitioner's continued detention without a bond hearing does not violate his due**
 12 **process rights under the *Martinez* tests.**

13 Anyanwu's detention meets due process requirements under the multi-factor test
 14 previously employed in this District (the "*Martinez* test") to determine whether Section 1226(c)
 15 detention has become unreasonable. *Martinez v. Clark*, 18-cv-1669, 2019 WL 5968089 (W.D.
 16 Wash. May 23, 2019) (Report and Recommendation) (applying multi-factor due process
 17 analysis), *adopted by*, 2019 WL 5962685 (W.D. Wash. Nov. 13, 2019), *but see Rodriguez Diaz*
 18 *v. Garland*, 53 F.4th 1189, 1214 (9th Cir. 2022) (CJ Bumatay, concurring) ("[T]he [Supreme]
 19 Court has recently backed away from multifactorial 'grand unified theor[ies]' for resolving legal
 20 issues") (citation omitted); *id.* ("I think this case is better decided through the text, structure, and
 21 history of the Constitution, rather than through interest balancing.").

22 In *Martinez*, the district court analyzed

- 23 (1) the total length of detention to date; (2) the likely duration of future detention;
 24 (3) whether the detention will exceed the time petitioner spent in prison for the
 crime that made him removable; (4) the nature of the crimes that petitioner

1 committed; (5) the conditions of detention; (6) delays in the removal proceedings
2 caused by petitioner; (7) delays in the removal proceedings caused by the
3 government; and (8) the likelihood that the removal proceedings will result in a
4 final order of removal.

5 2019 WL 5968089, at *9. These factors favor the Government's position that Petitioner's
6 continued immigration detention without a bond hearing is not unreasonable.

7 First, Petitioner's approximate eight-month detention should not favor granting him a
8 court-ordered bond hearing or release. The district court in *Martinez* stated that the longer
9 mandatory detention continues beyond the "brief" period authorized in *Demore*, the harder it is
10 to justify. *Martinez*, 2019 WL 5968089, at *9 (petitioner detained for nearly thirteen months).
11 While Federal Respondents acknowledge that Petitioner's detention has become prolonged, this
12 Court should note that the current length of his detention has not reached the length of what many
13 courts have found to be unreasonable. *See Hong v. Mayorkas*, No. 2:20-cv-1784, 2021 WL
14 8016749, at *5 (W.D. Wash. June 8, 2021), *report and recommendation adopted*, 2022 WL
15 1078627 (W.D. Wash. Apr. 11, 2022) (collecting cases finding prolonged detention from 13
16 months to 32 months without a court-ordered bond hearing to have become unreasonable).

17 The second factor analyzes how long detention is likely to continue absent judicial
18 intervention. This factor should be neutral at this time as any projection would be speculative. It
19 is unknown whether Petitioner's removal proceedings will ultimately end in his release or further
20 proceedings. He currently has an administrative appeal pending before the BIA.

21 The third and fourth factors clearly favor the Government. These factors involve a review
22 of the length of detention compared to the noncitizen's criminal sentence and nature of his crime.
23 *Martinez*, 2019 WL 5968089, at *9. Petitioner's criminal conviction resulted in a three-year
24 sentence – a much longer period than his current eight-month detention.

1 Section 1226(c) only applies to certain criminal noncitizens that Congress has inherently
2 deemed a danger to society or a flight risk. Congress enacted mandatory detention for certain
3 criminal noncitizens as the outcome of bond hearings “were too risky in some instances.” Nielsen
4 v. *Preap*, 586 U.S. 392, 396 (2019). Petitioner’s criminal conviction qualifies him for such
5 mandatory detention. Furthermore, Petitioner’s crime is an aggravated felony that permanently
6 bars him from establishing good moral character. Thus, his ineligibility for naturalization also
7 highlights the seriousness of his crime. Lambert Decl., Ex. B.

8 The fifth factor analyzes the conditions of detention. Petitioner is currently detained at
9 the NWIPC which is an immigration detention facility. Petitioner has the burden of
10 demonstrating that his detention is unlawful and he has provided no facts about the conditions of
11 his detention.

12 Under the sixth and seventh factors, the Court considers “the nature and extent of any
13 delays in the removal proceedings caused by the petitioner and the government, respectively.”
14 *Martinez*, 2019 WL 5968089, at *10. While Petitioner may pursue his legal remedies as he
15 chooses, Petitioner sought various continuances. See *Demore*, 538 U.S. at 531 (upholding a
16 noncitizen’s “longer than the average” period of detention while noting that it was the noncitizen
17 who had asked for a continuance in furtherance of his challenging his removability before the
18 agency). Even though most of these were denied, Petitioner clearly attempted to delay his
19 removal proceedings. On the other hand, there is no demonstration of delay on the Government’s
20 part. Since Petitioner’s detention began, he has been ordered removed and has a BIA appeal
21 pending. Accordingly, this Court should find that the sixth and seventh factors favor the
22 Government.

23 The last factor – the likelihood that the removal proceedings will result in a final order of
24 removal – is speculative at this time. The IJ has denied Petitioner’s applications for relief of

1 removal and has ordered him removed to Bangladesh. However, Petitioner's appeal is pending
2 before the BIA.

3 The totality of the *Martinez* factors favors the Government. Therefore, Petitioner's
4 continued immigration detention without a bond hearing is not unreasonable.

5 Ultimately, based on the facts and the law, this Court should deny the Petition.

6 **V. CONCLUSION**

7 For the foregoing reasons, this Court should deny the Petition.

8 DATED this 1st day of April, 2026.

9 Respectfully submitted,

10 s/ Michelle R. Lambert

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20 *I certify that this memorandum contains 2,319*
21 *words, in compliance with the Local Civil Rules.*

22 *Attorney for Federal Respondents*