

**UNITED STATES DISTRICT COURT**  
**IN AND FOR THE WESTERN DISTRICT OF WASHINGTON**

Name : Md Mobarak Hossain

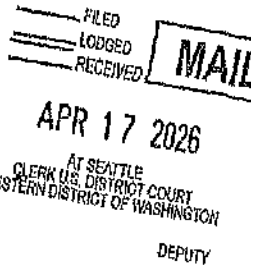
Petitioner

vs.

Pamela Bondi et. al.,

Respondent

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



**Reply Brief**

The Government correctly points out that Petitioner is detained under Section 1226(c).

Title 8 U.S.C. § 1226 provides the framework for the arrest, detention, and release of non-citizens who are in removal proceedings. 8 U.S.C. § 1226; see also *Demore v. Kim*, 538 U.S. 510, 530, 123 S. Ct. 1708, 155 L. Ed. 2d 724 (2003) ("Detention during removal proceedings is a constitutionally permissible part of that process."); *Avilez v. Garland*, 69 F.4th 525, 529-530 (9th Cir. 2023). Section 1226(a) grants DHS the discretionary authority to determine whether a non-citizen should be detained, released on bond, or released on conditional parole pending the completion of removal proceedings, unless the non-citizen falls within one of the categories of criminals described in § 1226(c), for whom detention is mandatory until removal proceedings have concluded. 8 U.S.C. § 1226; *Jennings v. Rodriguez*, 583 U.S. 281, 303-06, 138 S. Ct. 830, 200 L. Ed. 2d 122 (2018).

"Subsection C applies throughout the administrative and judicial phases of removal proceedings ...." *Avilez*, 69 F.4th at 535. This means that individuals who are detained under Section 1226(c) "are not statutorily eligible for release on bond during the judicial phase of the proceedings, except under the narrow circumstances defined by § 1226(c)(2) [where DHS determines release is necessary for

witness-protection purposes and the noncitizen will not pose a danger or flight risk.]" *Id.* At 535-36; 8 U.S.C. § 1226(c). Section 1226(c) includes any non-citizen who "is deportable by reason of having committed any offense covered in section 1227(a)(2)(A)(ii), (A)(iii), (B), (C), or (D) of this title." 8 U.S.C. § 1226(c)(1)(B). In this case, petitioner was determined to be removable for having committed an offense covered in 8 U.S.C. § 1227(a)(2)(A)(iii). Title 8 U.S.C. § 1227(a)(2)(A)(iii) provides that "[a]ny [noncitizen] who is convicted of an aggravated felony at any time after admission is deportable."

#### **A. Due Process**

Even if petitioner's continued detention is statutorily permitted under 8 U.S.C. § 1226(c), it must also comport with due process. Petitioner argues that his ongoing detention has become prolonged and unreasonable and violates his due process rights. He contends he is therefore entitled to a bond hearing where the burden is on the Government "to show clear and convincing evidence that [petitioner] is a flight risk and danger, and that no alternatives to continuing detention can mitigate such risks."

In *Demore*, the Supreme Court rejected a due process challenge to § 1226(c), explained that Congress drafted § 1226(c) to respond to the high rates of crime and flight by removable non-citizens convicted of certain crimes, and held that "the Government may constitutionally detain deportable [non-citizens] during the limited period necessary for their removal proceedings." 538 U.S. at 518-21, 526. The Supreme Court emphasized the relatively "brief" nature of the mandatory detention under § 1226(c), which has "a definite termination point" that, in most cases, resulted in detention of less than about five months. *Id.* at 529-30. Justice Kennedy's concurring opinion, which created the majority, reasoned that under the Due Process Clause, a non-citizen could be entitled to "an individualized determination as to his risk of flight and dangerousness if the continued detention became unreasonable or unjustified." *Id.* at 532.

Since the Supreme Court's decision in *Demore*, the Ninth Circuit has expressed "grave doubts that any statute that allows for arbitrary prolonged detention without any process is constitutional or that those who founded our democracy precisely to protect against the government's arbitrary deprivation of liberty would have thought so." *Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018). While it is an open question in the Ninth Circuit whether due process requires a bond hearing for noncitizens detained under 8 U.S.C. § 1226(c), many district courts that have considered the constitutionality of prolonged mandatory detention-including judges in this District-"agree that prolonged mandatory detention pending removal proceedings, without a bond hearing, 'will-at some point-violate the right to due process.'" *Martinez v. Clark*, 2019 U.S. Dist. LEXIS 197895, 2019 WL 5968089, at \*6 (W.D. Wash. May 23, 2019), *report and recommendation adopted*, 2019 U.S. Dist. LEXIS 196836, 2019 WL 5962685 (W.D. Wash. Nov. 13, 2019) (quoting *Sajous v. Decker*, 2018 U.S. Dist. LEXIS 86921, 2018 WL 2357266, at \*8 (S.D.N.Y. May 23, 2018), and collecting cases)); see also *Djelassi v. Ice Field Office Dir.*, 434 F. Supp. 3d 917, 923-24 (W.D. Wash. Jan. 17, 2020) (granting habeas corpus petition and ordering bond hearing for non-citizen whose mandatory detention had become unreasonably prolonged).

In cases involving § 1226(c), where the noncitizen has not previously received a bond hearing, judges in this District have adopted and applied a "multi-factor analysis that many other courts have relied upon to determine whether § 1226(c) detention has become unreasonable." *Martinez*, 2019 U.S. Dist. LEXIS 197895, 2019 WL 5968089, at \*6-7. Under this analysis, referred to as "the *Martinez* test", the Court considers the following factors:

(1) the total length of detention to date; (2) the likely duration of future detention; (3) whether the detention will exceed the time the petitioner spent in prison for the crime that made him [or her] removable; (4) the nature of the crimes the petitioner committed; (5) the conditions of detention; (6) delays in the removal proceedings caused by the petitioner; (7) delays in the removal proceedings caused by the government; and (8) the likelihood that the removal proceedings will result in a final order of removal. *Id.* at \*9.

Accordingly, the Court will apply these factors to evaluate whether petitioner's detention has become unreasonable and therefore violates due process.

**1. Length of Detention to Date**

The first factor, the length of detention to date, is considered the most important factor in the analysis. See, e.g., *Martinez*, 2019 U.S. Dist. LEXIS 197895, 2019 WL 5968089, at \*9; *Sajous*, 2018 U.S. Dist. LEXIS 86921, 2018 WL 2357266, at \*10. Under this factor, the longer mandatory detention continues under 8 U.S.C. § 1226(c) beyond the "brief" period authorized in *Demore*, the harder it becomes to justify without conducting an individualized bond hearing. See, e.g., *Martinez*, 2019 U.S. Dist. LEXIS 197895, 2019 WL 5968089, at \*9 (finding nearly 13-month detention weighed in favor of granting a bond hearing); *Liban M.J. v. Sec'y of Dep't of Homeland Sec.*, 367 F. Supp. 3d 959, 963-64 (D. Minn. 2019) ("Although there is no bright-line rule for what constitutes a reasonable length of detention, Petitioner's [approximately 12-month] detention has lasted beyond the 'brief' period assumed in *Demore*."); *Sajous*, 2018 U.S. Dist. LEXIS 86921, 2018 WL 2357266, at \*10 ("[D]etention that has lasted longer than six months is more likely to be 'unreasonable', and thus contrary to due process, than detention of less than six months."); *Juarez v. Wolf*, No. C20-1660-RJB-MLP, 2021 U.S. Dist. LEXIS 107524, 2021 WL 2323436 (W.D. Wash. May 5, 2021) (finding detention of 14 months weighed in favor of granting a bond hearing).

Here, when petitioner filed his petition, he had been detained for eight months and, at this point, his detention has lasted over 9 months. Because petitioner's detention has extended significantly beyond the "brief" period presumed reasonable in *Demore*, the Court will find this factor weighs in petitioner's favor.

**2. Likely Duration of Future Detention**

The second factor the Court considers is "how long the detention is likely to continue absent judicial

intervention; in other words, the anticipated duration of all removal proceedings including administrative and judicial appeals." *Martinez*, 2019 U.S. Dist. LEXIS 197895, 2019 WL 5968089, at \*9. Here, the record shows petitioner filed an appeal of the IJ's removal order with the BIA. If Petitioner receives a rubber-stamp dismissal from the BIA he plans on filing a petition in the United States Court of Appeals for the Ninth Circuit. According to the Ninth Circuit's public website, it takes approximately 6 to 12 months from the date of the notice of appeal to oral argument and, following argument, most cases take three months to a year for the Court of Appeals to decide the case. See U.S. Court of Appeals for the Ninth Circuit, Frequently Asked Questions, [www.ca9.uscourts.gov/content/faq.php](http://www.ca9.uscourts.gov/content/faq.php) (last accessed March 24, 2024). Thus, while the Court cannot definitively determine the duration of petitioner's future detention, based upon the current record, and given his expressed intention to exhaust all his possible remedies with respect to the removal order, it appears likely petitioner will face many more months and potentially years in detention. See *Barraza v. ICE Field Office Dir.*, No. C23-1271-BHS-MLP, 2023 U.S. Dist. LEXIS 235170, 2023 WL 9600946, at \*6 (W.D. Wash. Dec. 8, 2023) (citing the Ninth Circuit website's timeline for appeals and noting that under this timeline a petitioner who filed his petition for review with the Ninth Circuit a few months prior could be facing two years or more of additional time in custody). The Court should find this factor weighs in favor of petitioner.

### **3. Criminal History**

Under the third and fourth factors, the Court reviews the length of detention compared to the time petitioner spent in prison for the crime that made him removable and the nature of his crime. *Martinez*, 2019 U.S. Dist. LEXIS 197895, 2019 WL 5968089, at \*9; *Cabral v. Decker*, 331 F. Supp. 3d 255, 262 (S.D.N.Y. 2018). These factors are considered because they are relevant to whether the detainee is a danger to the community or a risk of flight such that a bond hearing would be futile. See *Cabral*, 331 F. Supp. 3d at 262. At this point, the length of petitioner's detention has not exceeded the length of his

original sentence. Although somewhat speculative, given the status of his ongoing appeal of his removal order, it appears likely his detention will exceed his original sentence. The Court should find this third factor weighs slightly in petitioner's favor. See, e.g., *Sarr v. Scott*, No. 2:24-CV-01293-RAJ-BAT, 765 F. Supp. 3d 1091, 2025 U.S. Dist. LEXIS 19827, 2025 WL 388652, at \*8 (W.D. Wash. Feb. 4, 2025) (finding this factor weighed in petitioner's favor where petitioner had been detained for longer than he had spent in prison and, although his detention had not yet exceeded the original criminal sentence, given the status of his appeal in the Ninth Circuit, it appeared very likely that it would.)

#### **4. Nature of the Crime**

Petitioner's criminal history is serious, not to be dismissed lightly, and should be punished in the criminal justice system. Whether it is such that under no circumstances should he be allowed to be free during the pendency of his removal proceedings, when he was previously released from prison into the community and since his conviction for a sexual offense more than a decade ago he has not been arrested or interviewed for any incidents involving any sexual offenses is a different story. His conviction while serious does not forever place him beyond redemption. Special care must be exercised so that the confinement does not continue beyond the time when the original justifications for custody are no longer tenable.

#### **5. Conditions of Detention**

Under the fifth factor, the Court considers the conditions of petitioner's detention at the facility where he is detained. *Martinez*, 2019 U.S. Dist. LEXIS 197895, 2019 WL 5968089, at \*9. "The more that the conditions under which the [non-citizen] is being held resemble penal confinement, the stronger [the] argument that he is entitled to a bond hearing." *Jamal A. v. Whitaker*, 358 F. Supp. 3d 853, 860 (D. Minn. 2019) (citation and internal quotations omitted); *Juarez*, 2021 U.S. Dist. LEXIS 107524, 2021 WL 2323436, at \*6.

Petitioner asserts that the conditions where he is detained at NWIPC are similar and actually worse than he experienced at penal institutions. In support of his argument, petitioner cites to a decision from this district from 2020, *Katlong v. Barr*, *Id.* (citing *Katlong v. Barr*, No. C20-0846-RSL-MAT, 2020 U.S. Dist. LEXIS 224820, 2020 WL 7048530, at \*4 (W.D. Wash. Oct. 30, 2020), *report and recommendation adopted*, No. C20-0846-RSL-MAT, 2020 U.S. Dist. LEXIS 224365, 2020 WL 7043580 (W.D. Wash. Dec. 1, 2020)). In *Katlong* the Court, in evaluating the conditions of confinement factor under the *Martinez* test, determined that:

The evidence establishes at least the following. The NWIPC is a private detention facility run by The GEO Group, Inc. ("GEO"), an independent contractor with ICE that provides the facility, management, personnel, and services for 24-hour supervision of the detainees in ICE custody at the NWIPC. The NWIPC has the capacity to house 1,575 detainees and historically often operates near capacity. There are 21 housing units, one of which includes an Administrative Segregation Unit and a Disciplinary Management Unit. Detainees are housed according to classification level, and detainees of different classification levels may not ordinarily be housed together in the same housing unit. Male and female detainees are housed in separate units. Most movement within the facility is unit-specific, and detainees are allowed access to a small outdoor area for one hour a day. deportation campaign and the facility often operates severely understaffed and supplies running low. These conditions are "similar ... to those in many prisons and jails." *Jennings*, 138 S. Ct. at 861 (Breyer, J., dissenting) (determining that immigration detainees were held in circumstances similar to many penal institutions); see also *Guerrero-Sanchez v. Warden York Cnty. Prison*, 905 F.3d 208, 220 n.9 (3d Cir. 2018) ("[T]he reality [is] that merely calling a confinement 'civil detention' does not, of itself, meaningfully differentiate it from penal measures.") (quoted source omitted). Accordingly, this factor weighs in Petitioner's favor. *Katlong*, 2020 U.S. Dist. LEXIS 224820, 2020 WL 7048530, at\*4.

The conditions at the NWIPC has since deteriorated. The Government has been aggressive in its mass deportation campaign and the facility has been running severely understaffed and under-stocked on supplies. Petitioner also cites to *Ashemuke v. ICE Field Off. Dir.*, No. C23-1592-RSL, 2024 U.S. Dist. LEXIS 71164, 2024 WL 1676681, at \*1 (W.D. Wash. Apr. 18, 2024) where the Court also found the conditions of confinement at NWIPC weighed in favor of petitioner under the *Martinez* test.

Petitioner contends that conditions at NWIPC have deteriorated since the decision in *Ashemuke* and that, in fact, he has been detained with Mr. Ashemuke in the same unit at NWIPC since petitioner's arrival at the facility. *Id.*

Petitioner also asserts that there are no contact visits at NWIPC unless specifically approved in emergency situations or for detainees being removed. *Id.* He asserts visits only last for on hour, movement is restricted in the facility, detainees are only allowed one hour of daily outdoor recreation and are subject to "frequent and unannounced searches... [and]... GEO staff utilize a "pat down" search as you move from a unit to other areas of the facility and back." *Id.* at 12-14 (citing NWIPC detainee Handbook, at 25), and 36.

Based on the current record, the Court should find this factor weighs in petitioner's favor. See *Juarez*, 2021 U.S. Dist. LEXIS 107524, 2021 WL 2323436, at \*6 (concluding fifth factor favored the petitioner given allegations regarding "restrictions on privacy and autonomy" and "a focus on punitive discipline" at NWIPC); *Anyanwu v. United States Immigr. & Customs Enft Field Off. Dir.*, No. 2:24-CV-00964-LK-GJL, 2024 U.S. Dist. LEXIS 198560, 2024 WL 4627343, at \*7-8 (W.D. Wash. Sept. 17, 2024), report and recommendation adopted sub nom. *Anyanwu v. ICE Field Off. Dir.*, No. C24-0964 TSZ, 2024 U.S. Dist. LEXIS 197402, 2024 WL 4626381 (W.D. Wash. Oct. 30, 2024) (finding petitioner's evidence that "restrictions placed on his movements and conduct at NWIPC are similar to those restrictions imposed in penal institutions" sufficient for this factor to weigh in petitioner's favor under *Martinez* test).

#### **6. Delays in Removal Proceedings**

Under the sixth and seventh factors, the Court considers "the nature and extent of any delays in the removal proceedings caused by the petitioner and the government, respectively." *Martinez*, 2019 U.S. Dist. LEXIS 197895, 2019 WL 5968089, at \*10. "Petitioner is entitled to raise legitimate defenses to removal ... and such challenges to his removal cannot undermine his claim that detention has become unreasonable." *Liban M.J.*, 367 F. Supp. 3d at 965 (citing *Hernandez v. Decker*, 2018 U.S. Dist. LEXIS 124613, 2018 WL 3579108, at \*9 (S.D.N.Y. July 25, 2018) ("[T]he mere fact that a noncitizen

opposes his removal is insufficient to defeat a finding of unreasonably prolonged detention, especially where the Government fails to distinguish between *bona fide* and frivolous arguments in opposition.")). This factor only weighs against a petitioner when he "has 'substantially prolonged his stay by abusing the processes provided'" but not when he "simply made use of the statutorily permitted appeals process." *Hechavarria v. Sessions*, 891 F.3d 49, 56 n.6 (2d Cir. 2018) (quoting *Nken v. Holder*, 556 U.S. 418, 436, 129 S. Ct. 1749, 173 L. Ed. 2d 550 (2009)). As to the Government, "[i]f immigration officials have caused delay, it weighs in favor of finding continued detention unreasonable .... Continued detention will also appear more unreasonable when the delay in the proceedings was caused by the immigration court or other non-ICE government officials." *Sajous*, 2018 U.S. Dist. LEXIS 86921, 2018 WL 2357266, at \*11. Here, there is no allegation or evidence of undue delays caused by petitioner in ongoing removal proceedings. This factor should weigh slightly in favor of Petitioner.

#### **7. Likelihood Removal Proceedings Will Result in a Final Order of Removal**

Finally, under the eighth factor, the Court considers "the likelihood that the removal proceedings will result in a final order of removal." *Liban M.J.*, 367 F. Supp. 3d at 965. "In other words, the Court considers whether the noncitizen has asserted any defenses to removal." *Martinez*, 2019 U.S. Dist. LEXIS 197895, 2019 WL 5968089, at \*10; *Sajous*, 2018 U.S. Dist. LEXIS 86921, 2018 WL 2357266, at \*11. "Where a noncitizen has not asserted any grounds for relief from removal, presumably the noncitizen will be removed from the United States, and continued detention will at least marginally serve the purpose of detention, namely assuring the noncitizen is removed as ordered." *Id.* at \*10. "But where a noncitizen has asserted a good faith challenge to removal, 'the categorical nature of the detention will become increasingly unreasonable.'" *Id.* (quoting *Reid v. Donelan*, 819 F.3d 486, 495 (1<sup>st</sup> Cir. 2016)). The Court should decline to predict whether petitioner's removal proceedings will result in a final order of removal, because there is insufficient information. Although the IJ has rejected

petitioner's challenges to his removal, petitioner has an appeal pending with the BIA. See *Juarez*, 2021 U.S. Dist. LEXIS 107524, 2021 WL 2323436, at \*7 ("Petitioner does, however, have a petition for review pending before the Ninth Circuit and this Court is unwilling to conclude, based on the record before it, that the appeal is frivolous or that Petitioner will not ultimately prevail. The Court therefore finds this factor neutral."). Given the limited information currently available to the Court, the Court should find this factor neutral.

#### **8. Weighing the Factors**

As discussed above, seven of the eight factors weigh in petitioner's favor, and the remaining factors is neutral. On this record, the Court should conclude that the factors in petitioner's favor outweigh those favoring the Government. Accordingly, the Court should conclude that petitioner's prolonged mandatory detention under § 1226(c) has become unreasonable and should order an individualized bond hearing to comport with due process.

#### **B. Bond Hearing**

Where the Court has determined that a § 1226(c) detainee has been subjected to unreasonably prolonged detention in violation of due process, this Court has consistently found the proper remedy is a bond hearing; under *Singh v. Holder*, 638 F.3d 1196 (9th Cir. 2011) the government bears the burden of proving the detainee is a danger or flight risk by clear and convincing evidence. See, e.g., *Sarr v. Scott*, No. 2:24- CV-01293-RAJ-BAT, 765 F. Supp. 3d 1091, 2025 U.S. Dist. LEXIS 19827, 2025 WL 388652, at \*8 (W.D. Wash. Feb. 4, 2025); *Anyanwu*, 2024 U.S. Dist. LEXIS 198560, 2024 WL 4627343, at \*7-8; *Juarez*, 2021 WL 2322823; *Pasillas v. ICE Field Off. Dir.*, No. 21-cv-681-RAJ-MLP, 2022 U.S. Dist. LEXIS 70007, 2022 WL 1127715 (W.D. Wash. Apr. 15, 2022).

Finally, the Court cannot ignore that the circumstances surrounding these proceedings raise substantial concerns as to whether any non-citizen can receive the impartial hearing that due process requires. As

one court observed long ago, judges need not “shut our eyes to matters of public notoriety and general cognizance. When we take our seats on the ‘bench we are not struck with blindness, and forbidden to know as judges what we see” as ordinary members of society. *Ho Ah Kow v. Nunan*, 12 F. Cas. 252, 255 (C.C.D. Cal. 1879). Respondents have terminated nearly one hundred IJ’s in recent months.

See e.g., Anusha Mathur and Ximena Bustillo, *U.S. Has a Quarter Fewer Immigration Judges Than It Did a Year Ago. Here’s Why*, NPR (Feb. 23, 2026), <https://www.npr.org/2026/02/23/g-s1-110911/trump-immigration-judges-dismissals-numbers> (quoting one former IJ as saying: “You are telling every other judge that is left that they better not be following the law or their conscience; that they need to apply the law as you are interpreting it.”); E. Tammy Kim, *Inside Donald Trump’s Attack on Immigration Courts*, NEW YORKER (Oct. 23, 2025), <https://www.newyorker.com/inside-donald-trumps-attack-on-immigration-court>(quoting former official “What this Administration wants is a rubber stamp.”); Eric Katz, ‘*Climate of Fear*’: *Immigration Judges Say Functioning of Their Court System is in Jeopardy Due to Trump’s Firings*, GOV’T EXEC. Nov. 14, 2025), <https://www.gov.exec.com/management/2025/11/climate-fear-immigration-judges-say-functioning-the-court-system-jeopardy-due-trumps-firings/409544/>. This administration has turned the immigration bond hearings into shams. These developments among others, raise a serious question as to whether the constitutional guarantee of an impartial decisionmaker is being honored in any case before an IJ. Accordingly, Petitioner requests a constitutionally adequate bond hearing to be held in the District Court. The stakes are high, judging and perfunctory review is not enough to satisfy due process.

## CONCLUSION

For the reasons cited herein and based on the authorities cited herein, Petitioner respectfully requests a constitutionally adequate hearing before the district court.

**VERIFICATION**

I, Md Mobarak Hossain, do hereby aver that the words above are the truth and the entire truth, that I will testify to those facts under penalty of perjury and I provide this information based upon personal belief that they are the facts of this matter, except where stated on personal belief. Submitted under the penalty of perjury of the laws of the United States.

//

Dated this 10<sup>th</sup> day of April, 2026.

Md. Mobarak Hossain

**PROOF OF SERVICE**

**&**

**DECLARATION**

I, Md Mobarak Hossain AVER THAT I AM A PARTY TO THIS ACTION DO HEREBY AVER  
THAT I HAVE PROVIDED A COPY OF THIS REPLY BRIEF TO THE OPPOSING PARTY AT:

U.S. District Court  
Clerk's Office  
700 Stewart Street, Suite 2310  
Seattle, Washington 98101

U.S. Attorneys Office  
Seattle Main Office  
700 Stewart Street, Suite 5220  
Seattle, Washington, 98101

I WILL TESTIFY UNDER THE PENALTY OF PERJURY THAT THIS IS THE TRUTH.  
THE ITEMS WERE SUBMITTED TO BE HAND-DELIVERED VIA IN-HOUSE MAIL.

RESPECTFULLY SUBMITTED ON THIS 10<sup>th</sup> DAY OF APRIL 2026.

Signature: Md. Mobarak Hossain