ADAM GORDON
United States Attorney
HUNTER V. NORTON
Assistant U.S. Attorney
Washington D.C. Bar No. 1780736
Office of the U.S. Attorney
880 Front Street, Room 6293
San Diego, CA 92101-8893
Telephone: (619) 546-8592
Facsimile: (619) 546-7751
Email: Hunter.Norton2@usdoj.gov

Attorneys for Respondents

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

ALEJANDRO NAVARRO-GUTIERREZ, Petitioner, v. PATRICK DIVVER, *Field Office Director of Enforcement and Removal Operations, San Diego Field Office, Immigration and Customs Enforcement, et al.*, Respondents.	Case No.: 26-cv-01905-AGS-AHG **RETURN TO PETITION FOR WRIT OF HABEAS CORPUS**

I. INTRODUCTION

Petitioner, through counsel, filed a petition for writ of habeas corpus, asserting that Respondents have violated the APA and Petitioner's due process rights by re-detaining him pursuant to 8 U.S.C. § 1225(b) without first providing an individualized custody determination or a meaningful opportunity to contest his detention. However, Petitioner is subject to mandatory detention under 8 U.S.C. § 1226(c) and the Laken Riley Act. Accordingly, Petitioner fails to explain how detention under these authorities violates his rights or why he has failed to pursue a motion for custody redetermination with the Immigration Court to challenge the Department of Homeland Security's (DHS) initial custody determination that § 1226(c) mandates his detention. Because Petitioner has failed

to exhaust his administrative remedies before seeking relief from this Court, and there is no evidence that § 1226(c) violates Petitioner's due process rights under the Fifth Amendment, the Court should deny relief.

II. FACTUAL BACKGROUND

Petitioner is a native and citizen of Mexico, who first entered the United States without inspection or admission at an unknown place and date. *See* Exhibit 1 at 2. At the age of 15, Petitioner was arrested by Border Patrol agents and allowed to voluntarily return to Mexico three times. *Id.* On June 1, 2017, USCIS denied Petitioner's application for relief under the Deferred Action for Childhood Arrivals (DACA) policy. *Id.* On November 21, 2023, Petitioner was convicted of committing a violent offense in the presence of a child in violation of Utah Code § 76-3-203.10(2). *Id.* at 3; *see also* Exhibit 2 (Criminal Arrest Reports). On January 30, 2024, Petitioner was convicted of criminal mischief with intentional damage to property in violation of Utah Code § 76-6-106(2)(C). Exhibit 1 at 2; Exhibit 2 at 24-25. On February 4, 2026, Petitioner was taken into immigration custody at the Salt Lake County Metro Jail. [1] Due to Petitioner's criminal record, he is subject to mandatory detention under 8 U.S.C. § 1226(c)(1)(E) pending his removal proceedings.

III. ARGUMENT

The Court should dismiss Petitioner's habeas petition because he has failed to exhaust his administrative remedies. Alternatively, the Court should deny the petition because Petitioner has not met his burden of demonstrating that his detention is unlawful under the INA or the Fifth Amendment's Due Process Clause.

A. Petitioner's Habeas Petition Should be Dismissed for Failure to Exhaust Available Administrative Remedies.

While 28 U.S.C. § 2241 "does not specifically require petitioners to exhaust direct appeals before filing petitions for habeas corpus," the Ninth Circuit "require[s], as a prudential matter, that habeas petitioners exhaust available judicial and administrative

[1] The undersigned was unable to obtain records regarding Petitioner's most recent state arrest in Utah that resulted in his transfer to ICE custody on February 4, 2026.

remedies before seeking relief under § 2241." *Castro-Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001), *abrogated on other grounds by Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006). Like jurisdictional limits and limits on venue, prudential limits are "ordinarily not optional." *Id.*

Courts have required prudential exhaustion where "(1) agency expertise makes agency consideration necessary to generate a proper record and reach a proper decision; (2) relaxation of the requirement would encourage the deliberate bypass of the administrative scheme; and (3) administrative review is likely to allow the agency to correct its own mistakes and to preclude the need for judicial review." *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007) (simplified). "When a petitioner does not exhaust administrative remedies, a district court ordinarily should either dismiss the petition without prejudice or stay the proceedings until the petitioner has exhausted remedies, unless exhaustion is excused." *Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011).

Here, all three prudential concerns weigh in favor of requiring agency exhaustion. First, Petitioner seeks from this Court an order finding his detention unlawful under the INA and the Constitution. Such claims necessarily implicate whether DHS has properly concluded that Petitioner's criminal record subjects him to mandatory detention under § 1226(c)(1)(E). Given the immigration statutes involved, agency expertise is "necessary to generate a proper record and reach a proper decision." *Puga*, 488 F.3d at 815. Thus, the Immigration Court (and later, the BIA) is the appropriate body to first pass on DHS's determination that Petitioner must be detained pending his removal proceedings pursuant to § 1226(c).

Second, allowing Petitioner to present his detention claim for the first time before the district court would permit him to bypass the administrative scheme in place to deal with such claims. Ninth Circuit precedent has required petitioners in these circumstances to have exhausted administrative remedies by filing a bond motion with the IJ and then "appealing to the BIA before asking the federal district court to review the IJ's decision." *Leonardo*, 646 F.3d at 1160 (explaining that pursuing habeas review before appealing to the BIA was

an "improper" shortcut); *see Liu v. Waters*, 55 F.3d 421, 424 (9th Cir. 1995) ("The exhaustion requirement avoids premature interference with the agency's processes and helps to compile a full judicial record.") (simplified).

Third, the IJ can afford Petitioner the same relief he seeks here—that is, a finding that he is not subject to mandatory detention, and instead, entitled to release on bond under § 1226(a). Because the IJ has the authority to determine whether DHS has properly included him in a mandatory detention category based on his criminal record, administrative review would allow the agency "to correct its own mistakes and to preclude the need for judicial review." *Puga*, 488 F.3d at 815. As all three prudential factors favor requiring administrative exhaustion, the Court must impose the requirement here. *See Laing v. Ashcroft*, 370 F.3d 994, 998 (9th Cir. 2004) ("[A] litigant's failure to seek timely administrative relief did not constitute exhaustion of administrative remedies and accordingly the court lacked jurisdiction.") (citation omitted).

There is no dispute that Petitioner has failed to exhaust his administrative remedies. *See* ECF No. 1. And there is no reason to excuse Petitioner's failure to exhaust here. He makes no showing why it would be futile to ask the IJ to review whether DHS properly included him in a mandatory detention category based on his criminal record. "Had he prevailed in such a proceeding, the Immigration Judge then would have had to determine if he 'could be considered . . . for release under the general bond provisions" of § 1226(a)." *Demore v. Kim*, 538 U.S. 510, 532 (2003) (Kennedy, J. concurring).

For the foregoing reasons, Respondents request the Court to dismiss the habeas petition for failure to exhaust administrative remedies. *See e.g.*, *Laing*, 370 F.3d at1000 (reversing a district court's waiver of a petitioner's exhaustion requirement, noting that such waiver "would permit aliens to bypass the deadlines and pathways of judicial review prescribed by the INA"); *Mukhamadiev v. U.S. Dep't of Homeland Security*, No. 25-cv-1017-DMS-MSB, 2025 WL 1208913, at *3 (S.D. Cal. Apr. 25, 2025) (dismissing habeas petition after finding petitioner should be required to exhaust administrative review scheme).

B. Petitioner's Statutory and Constitutional Claims Fail on the Merits.

Even if the Court waived the exhaustion requirement, Petitioner's claims that his detention violates the INA and his right to due process under the Fifth Amendment to the Constitution fail on the merits.

"To determine whether Congress has authorized [a petitioner's] detention, we must first identify the statutory provision that purports to confer such authority on the Attorney General." *Prieto-Romero v. Clark*, 534 F.3d 1053, 1057 (9th Cir. 2008). Here, Petitioner alleges that DHS erroneously determined him to be subject to mandatory detention under § 1225(b)(2)(A). *See* ECF No. 1 at 3–7. As previously discussed, Petitioner is mistaken. DHS has determined him to be subject to mandatory detention under § 1226(c)(1)(E) due to his criminal record, and he has not availed himself of the administrative remedies for challenging that determination or shown that doing so would be futile. There being no challenge to Petitioner's mandatory detention under § 1226(c), the Court cannot find that he has met his burden to show that his detention violates the INA.

As to whether mandatory detention under § 1226(c) violates due process, the Supreme Court in *Demore v. Kim* held no. *See* 538 U.S. 510, 513 (2003). In so holding, the *Demore* court recognized that for over a hundred years, the Supreme Court "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 522 (collecting cases). Consequently, the Supreme Court has, time and time again, "recognized [that] detention during deportation proceedings [is] a constitutionally valid aspect of the deportation process." *Id.* at 523; *see Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1217 (9th Cir. 2022) (Bumatay, concurring) ("For over a century, whenever Congress has granted the Executive authority to detain aliens pending removal proceedings, the Supreme Court has repeatedly upheld such detention as consistent with the Constitution.").

In addressing the constitutionality of § 1226(c), the *Demore* court deemed it critically important to address the immigration purpose underlying Congress's enactment of the statute. *See* 538 U.S. at 527–31. In its analysis, the Supreme Court observed that Congress

"adopted [§ 1226(c)] against a backdrop of wholesale failure by the [government] to deal with increasing rates of criminal activity by aliens." *Id.* at 518. It noted that when enacting § 1226(c), Congress had before it a multitude of evidence to support its determination to mandate detention of criminal noncitizens, including: that (1) "criminal aliens who were deported swiftly [had] reentered the country illegally in great numbers"; (2) "[the] near-total inability to remove deportable criminal aliens imposed more than a monetary cost on the Nation"; (3) "deportable criminal aliens who remained in the United States often committed more crimes before being removed"; (4) "one of the major causes of the [the government's] failure to remove deportable criminal aliens was the agency's failure to detain those aliens during their deportation proceedings"; (5) "even with individualized screening, releasing deportable criminal aliens on bond would lead to an unacceptable rate of flight"; and (6) "evidence suggest[ed] that permitting discretionary release of aliens pending their removal hearings would lead to large numbers of deportable criminal aliens skipping their hearings and remaining at large in the United States unlawfully." *Id* at 518–33.

With the statute's purpose in mind, the Supreme Court upheld the constitutionality of § 1226(c), repeatedly noting, as it had several times before, that detention of a noncitizen during ongoing removal proceedings is constitutional. *See id.* at 513 ("We hold that Congress, justifiably concerned that deportable criminal aliens who are not detained continue to engage in crime and fail to appear for their removal hearings in large numbers, may require that [such] persons . . . be detained for the brief period necessary for their removal proceedings.").

The Supreme Court, however, did not foreclose the possibility that a noncitizen detained under § 1226(c) may establish a due process violation depending on the circumstances of their case. In addressing such "as-applied" due process claims, the Court must be principally guided by *Demore*. *See Hohn v. United States*, 524 U.S. 236, 252–53 (1998) ("Our decisions remain binding precedent until we see fit to reconsider them[.]"); *Hart v. Massanari*, 266 F.3d 1155, 1171 (9th Cir. 2001) ("A decision of the Supreme Court will control that corner of the law unless and until the Supreme Court itself overrules or

modifies it. Judges of the inferior courts may voice their criticisms, but follow it they must."); *see also Rodriguez Diaz v. Garland*, 53 F.4th at 1214 (Bumatay, concurring) (The Supreme Court "has recently backed away from multi-factorial grand unified theories for resolving legal issues.") (simplified, citing *Kennedy v Bremerton Sch. Dist.*, 597 U.S. 507, 533 (2022)). And *Demore* teaches that detention of noncitizens under § 1226(c) is constitutional so long as detention serves its purported immigration purpose. *See* 538 U.S. at 527–28 (stating that detention of such noncitizens "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" and that the evidence Congress had before it in enacting § 1226(c) "certainly support[ed] the approach it selected" in declining to afford such noncitizens bond hearings during removal proceedings).

Justice Kennedy's concurring opinion provided further guidance on when a noncitizen mandatorily detained under § 1226(c) may suffer a due process violation. *See id.* at 532–33. He stated that "since the Due Process Clause prohibits arbitrary deprivations of liberty, a lawful permanent resident alien [] could be entitled to an individualized determination as to his risk of flight and dangerousness if the continued detention became unreasonable or unjustified."[2] *Id.* at 532. He then explained what circumstances may meet the unreasonable or unjustified standard: "Were there to be an unreasonable delay by [DHS] 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* at 532–33.

Here, Petitioner does not challenge DHS's determination that he is subject to mandatory detention under § 1226(c) due to his criminal history. As Petitioner's criminal record brings him within § 1226(c)'s reach, his ongoing detention during the pendency of

[2] Notably, Petitioner is not a lawful permanent resident and is thus arguably not entitled to such a due process challenge. *See* Exhibit 1. Even assuming he was, he has not established a violation as more fully explained below.

his removal proceedings does not violate due process because it "necessarily serves the purpose of preventing deportable criminal aliens [like him] from fleeing prior to or during their removal proceedings, thus increasing the chance that, if ordered removed, [he] will be successfully removed." *Demore*, 538 U.S. at 528. Further, Petitioner has not demonstrated that his detention has become "unreasonable or unjustified" such that his due process rights have been violated. *See id.* at 532–33 (Kennedy, J. concurring). There is no evidence presented, nor even a claim raised by Petitioner, that the government has unreasonably delayed pursuing his removal proceedings, or that it is seeking to detain him for any reason other than seeking to protect the public and facilitate his removal. *See id* at 532–33. There being no showing of unreasonable, arbitrary, or unjustified detention, the Court cannot find that Petitioner has met his burden to show that his mandatory detention under § 1226(c) violates due process.

IV. CONCLUSION

For the reasons stated herein, Respondents respectfully request the Court to deny this habeas petition.

DATED: April 3, 2026

Respectfully submitted,

ADAM GORDON
United States Attorney

s/ Hunter V. Norton
HUNTER V. NORTON
Assistant United States Attorney
Attorney for Respondents