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9 **UNITED STATES DISTRICT COURT**  
10 **SOUTHERN DISTRICT OF CALIFORNIA**  
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12 WILFREDO RODRIGUEZ  
HERNANDEZ,  
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14 Petitioner,  
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16 v.  
CHRISTOPHER J. LAROSE, et al.,  
17 Respondents.  
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Case No.: 26-cv-2222-RSH-MMP  
**RESPONSE TO PETITION**

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**I. INTRODUCTION**

Petitioner has filed a habeas petition under 28 U.S.C. § 2241, requesting that the Court order he be provided an individualized bond hearing. However, Petitioner is subject to mandatory civil immigration detention under 8 U.S.C. § 1226(c). As Petitioner has only been detained since January, there is no due process violation. Therefore, this Court should deny relief.

**II. FACTUAL BACKGROUND**

Petitioner is a native and citizen of Mexico, who entered the United States without inspection or admission at an unknown place and date. *See* Exh. 1 at 2 (I-213).<sup>1</sup> Immigration and Customs Enforcement (ICE) apprehended Petitioner on January 22, 2026 at the Salt Lake County Metro Jail. *Id.* On January 24, 2026, ICE served Petitioner with a Notice to Appear (NTA), charging him with inadmissibility under removability under section 212(a)(6)(A)(i) of the Immigration and Nationality Act (INA) and filed it with the Immigration Court. *See* Exh. 2 (Notice to Appear).

Petitioner has criminal convictions for impaired driving and assault. Exh. 1 at 2. Petitioner was arrested on October 16, 2025 for Assault and Domestic Violence Presence of Child – Strangulation/Choking. Exh. 3 (excerpt from RAP sheet). The case remains pending. *Id.*

**III. ARGUMENT**

The Court should deny Petitioner’s habeas petition because he has not met his burden of demonstrating that his detention under 8 U.S.C. § 1226(c) is unlawful under the Fifth Amendment’s Due Process Clause. Section 1226(c) provides for the mandatory detention of specific categories of aliens, including, as applicable here, “any alien who . . . is charged with, is arrested for, is convicted of, admits having committed, or admits

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<sup>1</sup> The attached exhibits are true copies, with few redactions of private information, of documents obtained from ICE counsel.

1 committing acts which constitute the essential elements of . . . any crime that results in  
2 death or serious bodily injury to another person.”

3 According to Petitioner’s criminal history, Petitioner was arrested for a violation of  
4 Utah Criminal Code Section 76-5-114(2)(c), which states that “[a]n actor commits  
5 domestic violence in the presence of a child if the actor . . . intentionally or knowingly  
6 impedes the breathing or the circulation of blood of another individual by the actor’s use  
7 of unlawful force or violence by applying pressure to the neck or throat of an individual or  
8 obstructing the nose, mouth, or airway of an individual in the presence of a child . . . .”  
9 Because Petitioner was arrested for a crime with which one of the essential elements  
10 (strangulation) results in death or serious bodily injury, Petitioner is subject to mandatory  
11 detention under § 1226(c).

12 The Supreme Court has held that mandatory detention under § 1226(c) does not  
13 violate due process. *See Demore v. Kim*, 538 U.S. 510, 513 (2003). In so holding, it  
14 recognized that for over a hundred years, the Supreme Court “has firmly and repeatedly  
15 endorsed the proposition that Congress may make rules as to aliens that would be  
16 unacceptable if applied to citizens.” *Id.* at 522 (collecting cases). Consequently, the  
17 Supreme Court has, time and time again, “recognized [that] detention during deportation  
18 proceedings [is] a constitutionally valid aspect of the deportation process.” *Id.* at 523; *see*  
19 *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1217 (9th Cir. 2022) (Bumatay, concurring)  
20 (“For over a century, whenever Congress has granted the Executive authority to detain  
21 aliens pending removal proceedings, the Supreme Court has repeatedly upheld such  
22 detention as consistent with the Constitution.”).

23 In addressing the constitutionality of § 1226(c), the *Demore* court deemed it  
24 critically important to address the immigration purpose underlying Congress’s enactment  
25 of the statute. *See* 538 U.S. at 527–31. In its analysis, the Supreme Court observed that  
26 Congress “adopted [§ 1226(c)] against a backdrop of wholesale failure by the [government]  
27 to deal with increasing rates of criminal activity by aliens.” *Id.* at 518. It noted that when  
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1 enacting § 1226(c), Congress had before it a multitude of evidence to support its  
2 determination to mandate detention of criminal noncitizens, including: that (1) “criminal  
3 aliens who were deported swiftly [had] reentered the country illegally in great numbers”;  
4 (2) “[the] near-total inability to remove deportable criminal aliens imposed more than a  
5 monetary cost on the Nation”; (3) “deportable criminal aliens who remained in the United  
6 States often committed more crimes before being removed”; (4) “one of the major causes  
7 of the [the government’s] failure to remove deportable criminal aliens was the agency’s  
8 failure to detain those aliens during their deportation proceedings”; (5) “even with  
9 individualized screening, releasing deportable criminal aliens on bond would lead to an  
10 unacceptable rate of flight”; and (6) “evidence suggest[ed] that permitting discretionary  
11 release of aliens pending their removal hearings would lead to large numbers of deportable  
12 criminal aliens skipping their hearings and remaining at large in the United States  
13 unlawfully.” *Id.* at 518–33.

14 With the statute’s purpose in mind, the Supreme Court upheld the constitutionality  
15 of § 1226(c), repeatedly noting, as it had several times before, that detention of a noncitizen  
16 during ongoing removal proceedings is constitutional. *See id.* at 513 (“We hold that  
17 Congress, justifiably concerned that deportable criminal aliens who are not detained  
18 continue to engage in crime and fail to appear for their removal hearings in large numbers,  
19 may require that [such] persons . . . be detained for the brief period necessary for their  
20 removal proceedings.”). The Supreme Court, however, did not foreclose the possibility that  
21 a noncitizen detained under § 1226(c) may establish a due process violation depending on  
22 the circumstances of their case.

23 In addressing such due process claims (as here), the Court must be principally guided  
24 by *Demore*. *See Hohn v. United States*, 524 U.S. 236, 252–53 (1998) (“Our decisions  
25 remain binding precedent until we see fit to reconsider them[.]”); *Hart v. Massanari*, 266  
26 F.3d 1155, 1171 (9th Cir. 2001) (“A decision of the Supreme Court will control that corner  
27 of the law unless and until the Supreme Court itself overrules or modifies it. Judges of the  
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1 inferior courts may voice their criticisms, but follow it they must.”); *see also Rodriguez*  
2 *Diaz v. Garland*, 53 F.4th at 1214 (Bumatay, concurring) (The Supreme Court “has  
3 recently backed away from multi-factorial grand unified theories for resolving legal  
4 issues.”) (simplified, citing *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 533 (2022)).  
5 And *Demore* teaches that detention of noncitizens under § 1226(c) is constitutional so long  
6 as detention serves its purported immigration purpose. *See* 538 U.S. at 527–28 (stating that  
7 detention of such noncitizens “necessarily serves the purpose of preventing deportable  
8 criminal aliens from fleeing prior to or during their removal proceedings, thus increasing  
9 the chance that, if ordered removed, the aliens will be successfully removed” and that the  
10 evidence Congress had before it in enacting § 1226(c) “certainly support[ed] the approach  
11 it selected” in declining to afford such noncitizens bond hearings during removal  
12 proceedings).

13 Justice Kennedy’s concurring opinion provided further guidance on when a  
14 noncitizen mandatorily detained under § 1226(c) may suffer a due process violation. *See*  
15 *id.* at 532–33. He stated that “since the Due Process Clause prohibits arbitrary deprivations  
16 of liberty, a lawful permanent resident alien [] could be entitled to an individualized  
17 determination as to his risk of flight and dangerousness if the continued detention became  
18 unreasonable or unjustified.”<sup>2</sup> *Id.* at 532. He then explained what circumstances may meet  
19 the unreasonable or unjustified standard: “Were there to be an unreasonable delay by  
20 [DHS] in pursuing and completing deportation proceedings, it could become necessary  
21 then to inquire whether the detention is not to facilitate deportation, or to protect against  
22 risk of flight or dangerousness, but to incarcerate for other reasons.” *Id.* at 532–33.

23 Here, Petitioner has only been detained since January 22, a detention period of less  
24 than four months. Therefore, this Court should find that at this time, Petitioner’s mandatory  
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27 <sup>2</sup> Notably, Petitioner is not a lawful permanent resident and is thus arguably not entitled to  
28 such a due process challenge. *See* Exh. 1. Even assuming he was, he has not established a  
violation as more fully explained below.

1 detention does not violate the Due Process Clause.

2 To the extent Petitioner asserts claims under the Fourth Amendment, he fails to  
3 explain why release is the remedy for such alleged violations. *United States v. Crews*,  
4 445 U.S. 463, 474 (1980) (noting, in the criminal context, that Fourth Amendment’s  
5 “exclusionary principle” “delimits what proof the Government may offer against the  
6 accused at trial, closing the courtroom door to evidence secured by official lawlessness,”  
7 but an individual “is not himself a suppressible ‘fruit’”); *Cruz v. Barr*, 926 F.3d 1128,  
8 1146 (9th Cir. 2019) (releasing petitioner on Fourth Amendment grounds because fruits  
9 of the regulatory violation were the only evidence of petitioner’s alienage).

10 Moreover, Fourth Amendment claims related to alienage “belong in front of an  
11 Immigration Judge, not a federal district court.” *See Marvan v. Slaughter*, No. CV 25-49-  
12 H-DLC, 2025 WL 1940043, at \*3 (D. Mont. July 15, 2025) (denying habeas petition  
13 challenging detention based on Fourth Amendment violations for lack of subject matter  
14 jurisdiction). Petitioner cannot simply “bypass the immigration courts and proceed  
15 directly to district court. Instead, [he] must exhaust the administrative process before [he]  
16 can access the federal courts.” *Id.* at \*4 (quoting *J.E.F.M.*, 837 F.3d at 1029). To the  
17 extent Petitioner desires to bring such claims, this district court does not have jurisdiction.  
18 Under 8 U.S.C. § 1252(b)(9), “[j]udicial review of all questions of law and fact . . . arising  
19 from any action taken or proceeding brought to remove an alien from the United States  
20 under this subchapter shall be available only in judicial review of a final order under this  
21 section.” Further, judicial review of a final order is available only through “a petition for  
22 review filed with an appropriate court of appeals.” 8 U.S.C. § 1252(a)(5).

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1 **IV. CONCLUSION**

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

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5 DATED: April 16, 2026

ADAM GORDON  
United States Attorney

7 *s/ Laura C. Sambataro*  
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Assistant United States Attorney

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