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8 **UNITED STATES DISTRICT COURT**
9
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 BERMAN JOSE SOBALVARRO
SOMBARRIBA,

12
13 Petitioner,

14 v.

15 WARDEN, IMPERIAL REGIONAL
DETENTION FACILITY, et al.,

16
17 Respondents.
18
19

Case No.: 26-cv-02238-RBM-DDL

**AMENDED RESPONSE TO
PETITION**

20 **I. INTRODUCTION**

21 Petitioner filed a habeas Petition (ECF No. 1) on April 6, 2026 and Respondents filed
22 a timely Response (ECF No. 6) on April 14, 2026. Since that time, additional information
23 has come to light and Respondents respectfully submit this Amended Response to Petition
24 to assert that Petitioner is subject to mandatory detention under 8 U.S.C. § 1226(c) and is
25 therefore not entitled to a bond hearing. As Petitioner has only been detained since on or
26 about October 1, 2025, his mandatory detention has not become unconstitutionally
27 prolonged, and his Petition should be denied accordingly.
28

1 **II. FACTUAL BACKGROUND**

2 Petitioner is a native and citizen of Nicaragua who entered the United States without
3 inspection near Eagle Pass, Texas on or about October 1, 2022. *See* Form I-213, attached as
4 *Exhibit 1*. Shortly thereafter, he encountered United States Border Patrol personnel and was
5 paroled into the United States due to lack of space at the detention facility. *Id.* On January
6 4, 2023, he was issued a Notice to Appear and was ordered removed from the United States
7 on July 26, 2023. His appeal of that Order, which he filed in August 2023, remains pending.

8 On July 19, 2024, Petitioner was arrested by the Round Valley, Arizona Police
9 Department and charged with disorderly conduct –fighting¹ (a misdemeanor) in connection
10 with a domestic violence incident, and he pleaded guilty as charged on November 19, 2024.
11 Then, on September 26, 2025, he was arrested by the Round Valley, Arizona Police
12 Department and charged with aggravated assault² –serious physical injury (a felony) and
13 disorderly conduct –fighting³ (a misdemeanor) in connection with another domestic
14 violence incident. To Respondents’ knowledge, these charges remain pending. Petitioner
15 was most recently taken into immigration custody on or about October 1, 2025.

16 **III. ARGUMENT**

17 The Court should deny this Petition because Petitioner is subject to mandatory
18 detention under 8 U.S.C. § 1226(c) and his mandatory detention of approximately seven
19 months has not become unconstitutionally prolonged.

20 **a. Petitioner is Subject to Mandatory Detention Under 8 U.S.C. § 1226(c)**

21 Section 1226(c) provides for mandatory detention of specific categories of aliens,
22 including “any alien who . . . is charged with, is arrested for, is convicted of, admits having
23 committed, or admits committing acts which constitute the essential elements of . . . any
24 crime that results in death or serious bodily injury to another person”

25 _____
26 ¹ In violation of AZ § 13-2904A1

27 ² In violation of AZ § 13-1204A1

28 ³ In violation of AZ § 13-2904A1

1 Here, Petitioner was charged with aggravated assault –serious bodily injury in
2 violation of AZ § 13-1204A1, which provides:

3
4 A. Until January 1, 2033, a person commits aggravated assault if the person
5 commits assault as prescribed by section 13-1203 under any of the following
6 circumstances:

7
8 1. If the person **causes serious physical injury** to another.

9
10 (emphasis added).

11 As such, Petitioner was arrested for a crime that is contemplated by Section 1226(c),
12 and he is therefore subject to mandatory detention under that Section.

13 **b. Petitioner’s Mandatory Detention Does Not Violate Due Process**

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

25 In addressing the constitutionality of § 1226(c), the *Demore* court deemed it critically
26 important to address the immigration purpose underlying Congress’s enactment of the
27 statute. *See* 538 U.S. at 527–31. In its analysis, the Supreme Court observed that Congress
28 “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

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

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

22 In addressing such due process claims (as here), the Court must be principally guided
23 by *Demore*. *See Hohn v. United States*, 524 U.S. 236, 252–53 (1998) (“Our decisions remain
24 binding precedent until we see fit to reconsider them[.]”); *Hart v. Massanari*, 266 F.3d 1155,
25 1171 (9th Cir. 2001) (“A decision of the Supreme Court will control that corner of the law
26 unless and until the Supreme Court itself overrules or modifies it. Judges of the inferior
27 courts may voice their criticisms, but follow it they must.”); *see also Rodriguez Diaz v.*

1 *Garland*, 53 F.4th at 1214 (Bumatay, concurring) (The Supreme Court “has recently backed
2 away from multi-factorial grand unified theories for resolving legal issues.”) (simplified,
3 citing *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 533 (2022)). And *Demore* teaches
4 that detention of noncitizens under § 1226(c) is constitutional so long as detention serves its
5 purported immigration purpose. *See* 538 U.S. at 527–28 (stating that detention of such
6 noncitizens “necessarily serves the purpose of preventing deportable criminal aliens from
7 fleeing prior to or during their removal proceedings, thus increasing the chance that, if
8 ordered removed, the aliens will be successfully removed” and that the evidence Congress
9 had before it in enacting § 1226(c) “certainly support[ed] the approach it selected” in
10 declining to afford such noncitizens bond hearings during removal proceedings).

11 Justice Kennedy’s concurring opinion provides further guidance on when a
12 noncitizen mandatorily detained under § 1226(c) may suffer a due process violation. *See id.*
13 at 532–33. He stated, “since the Due Process Clause prohibits arbitrary deprivations of
14 liberty, a lawful permanent resident alien [] could be entitled to an individualized
15 determination as to his risk of flight and dangerousness if the continued detention became
16 unreasonable or unjustified.”⁴ *Id.* at 532. He then explained what circumstances may meet
17 the unreasonable or unjustified standard: “Were there to be an unreasonable delay by [DHS]
18 in pursuing and completing deportation proceedings, it could become necessary then to
19 inquire whether the detention is not to facilitate deportation, or to protect against risk of
20 flight or dangerousness, but to incarcerate for other reasons.” *Id.* at 532–33.

21 Here, Petitioner has only been detained since October 2025. Therefore, this Court
22 should find that at this time, Petitioner’s mandatory detention does not violate the Due
23 Process Clause.

24 To the extent Petitioner asserts claims under the Fourth Amendment, he fails to
25

26 ⁴ Notably, Petitioner is not a lawful permanent resident and is thus arguably not entitled to
27 such a due process challenge. *See* Exh. 1. Even assuming he was, he has not established a
28 violation as more fully explained below.

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

8 Moreover, Fourth Amendment claims related to alienage “belong in front of an
9 Immigration Judge, not a federal district court.” *See Marvan v. Slaughter*, No. CV 25-49-
10 H-DLC, 2025 WL 1940043, at *3 (D. Mont. July 15, 2025) (denying habeas petition
11 challenging detention based on Fourth Amendment violations for lack of subject matter
12 jurisdiction). Petitioner cannot simply “bypass the immigration courts and proceed directly
13 to district court. Instead, [he] must exhaust the administrative process before [he] can access
14 the federal courts.” *Id.* at *4 (quoting *J.E.F.M.*, 837 F.3d at 1029).

15 **IV. CONCLUSION**

16 For the reasons stated herein, Respondents respectfully request that the Court deny
17 this habeas Petition

18 DATED: April 28, 2026

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