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

11  
12 GERARDO REYES BENITEZ,  
13 Petitioner,

14 v.

15 CHRISTOPHER J. LAROSE, et al.,  
16 Respondents.  
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Case No.: 26-cv-2389-JLS-MMP

**RESPONSE TO PETITION**

1 **I. INTRODUCTION**

2 Petitioner has filed a habeas petition under 28 U.S.C. § 2241, claiming to be a  
3 member of the bond denial class under *Maldonado Bautista v. Santacruz*, No. 5:25-CV-  
4 01873-SSS-BFM (C.D. Cal.). However, Petitioner is subject to mandatory civil  
5 immigration detention under 8 U.S.C. § 1226(c). As Petitioner has only been detained since  
6 March, there is no due process violation. Therefore, this Court should deny relief.

7 **II. FACTUAL BACKGROUND**

8 Petitioner is a native and citizen of Mexico, who entered the United States without  
9 inspection or admission on December 1, 2006. *See* Exh. 1 at 3 (Form I-213).<sup>1</sup> Immigration  
10 and Customs Enforcement (ICE) apprehended Petitioner on March 20, 2026 in Escondido,  
11 CA. *Id.* at 2. On the same day, ICE served Petitioner with a Notice to Appear (NTA),  
12 charging him with inadmissibility under removability under section 212(a)(6)(A)(i) of the  
13 Immigration and Nationality Act (INA) and filed it with the Immigration Court.<sup>2</sup> *See* Exh.  
14 2 (Notice to Appear).

15 Petitioner has a conviction for felony aggravated assault under California Penal Code  
16 Section 243(d). Exh. 3 (conviction documents). The underlying case involved a child  
17 victim. *Id.* at 6.<sup>3</sup>

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

22 <sup>2</sup> Petitioner has pending applications to adjust status (Exh. 1 at 3). However, “[a] pending  
23 adjustment application does not put an applicant in a lawful immigration status.” *See*  
24 United States Citizenship and Immigration Services Policy Manual, Vol. 7 – Adjustment  
of Status, Part B – 245(a) Adjustment, Chapter 3 – Unlawful Immigration Status at Time  
25 of Filing (INA 245(c)(2)), available at: <https://www.uscis.gov/policy-manual/volume-7-part-b-chapter-3#S-E> (last accessed April 22, 2026).

26 <sup>3</sup> By Petitioner’s own admission, the victim was Petitioner’s minor child, although  
27 Petitioner claims that the conduct underlying his felony conviction for aggravated assault  
28 involving serious bodily injury was a slap. ECF No. 1 at ¶ 39.

1 **III. ARGUMENT**

2 The Court should deny Petitioner’s habeas petition because he has not met his  
3 burden of demonstrating that his detention under 8 U.S.C. § 1226(c) is unlawful under the  
4 Fifth Amendment’s Due Process Clause. Section 1226(c) provides for the mandatory  
5 detention of specific categories of aliens, including, as applicable here, “any alien who . . .  
6 is charged with, is arrested for, is convicted of, admits having committed, or admits  
7 committing acts which constitute the essential elements of . . . any crime that results in  
8 death or serious bodily injury to another person.”

9 According to Petitioner’s criminal history, Petitioner was convicted of California  
10 Penal Code Section 243(d), which states that “when a battery is committed against any  
11 person and serious bodily injury is inflicted on the person, the battery is punishable by  
12 imprisonment in a county jail not exceeding one year or imprisonment . . . for two, three,  
13 or four years.” Although a conviction under § 243 can be either a misdemeanor or felony,  
14 according to Petitioner’s conviction documents, Petitioner was convicted of the felony, as  
15 Petitioner acknowledged a maximum sentence of four years. *See* Exh. 3 at 3. Further, in  
16 the factual basis for Petitioner’s guilty plea, Petitioner admitted that he “committed a  
17 battery against a person and serious bodily injury was inflicted.” Exh. 3 at 4. Because  
18 Petitioner was convicted of a crime with which one of the essential elements serious bodily  
19 injury, Petitioner is subject to mandatory detention under § 1226(c).

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

1 (“For over a century, whenever Congress has granted the Executive authority to detain  
2 aliens pending removal proceedings, the Supreme Court has repeatedly upheld such  
3 detention as consistent with the Constitution.”).

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

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

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

21 Justice Kennedy’s concurring opinion provided further guidance on when a  
22 noncitizen mandatorily detained under § 1226(c) may suffer a due process violation. See  
23 *id.* at 532–33. He stated that “since the Due Process Clause prohibits arbitrary deprivations  
24 of liberty, a lawful permanent resident alien [] could be entitled to an individualized  
25 determination as to his risk of flight and dangerousness if the continued detention became  
26 unreasonable or unjustified.”<sup>4</sup> *Id.* at 532. He then explained what circumstances may meet

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28 <sup>4</sup> Notably, Petitioner is not a lawful permanent resident and is thus arguably not entitled to

1 the unreasonable or unjustified standard: “Were there to be an unreasonable delay by  
2 [DHS] in pursuing and completing deportation proceedings, it could become necessary  
3 then to inquire whether the detention is not to facilitate deportation, or to protect against  
4 risk of flight or dangerousness, but to incarcerate for other reasons.” *Id.* at 532–33.

5 Here, Petitioner has only been detained since March 20, a detention period of less  
6 than two months. Therefore, this Court should find that at this time, Petitioner’s mandatory  
7 detention does not violate the Due Process Clause.

8 **IV. CONCLUSION**

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

11  
12 DATED: April 22, 2026

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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.