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

10 MARCOS ORTIZ, CONTRERAS,

11 Petitioner,

12 v.

13 CHRISTOPHER J. LaROSE, Senior Warden
14 of Otay Mesa Detention Facility, et al.,

15 Respondent.

Case No.: 26-cv-02413-AGS-BLM

**RETURN TO PETITION FOR
WRIT OF HABEAS CORPUS**

17 **I. INTRODUCTION**

18 Petitioner, through counsel, filed a verified petition for writ of habeas corpus,
19 requesting that the Court order his immediate release from custody or, alternatively, that
20 he be provided an individualized bond hearing. ECF No. 1 at 35 (“Prayer for Relief”).
21 In support of his requested relief, Petitioner argues that he is improperly subject to
22 mandatory detention under 8 U.S.C. § 1225(b) when he should be entitled to bond under
23 8 U.S.C. § 1226(a). *Id.* at 26-30. Additionally, Petitioner argues his detention under 8
24 U.S.C § 1225(b), without a bond hearing, has violated his right to due process under the
25 Fifth Amendment and *Mathews v. Eldridge*. *Id.* at 30-35; 424 U.S. 319 (1976).
26 However, Petitioner is subject to mandatory detention under § 1226(c), having been
27 previously convicted for a Crime Involving Moral Turpitude (CIMT).¹ *See* Exhibit 3,8

28 ¹ Petitioner’s RAP Sheet is attached at Exhibit 3.

1 U.S.C. § 1182(a)(2). Accordingly, Respondents respectfully request that the Court deny
2 these requests for relief.

3 **II. FACTUAL BACKGROUND²**

4 Petitioner is a native and citizen of Mexico, who entered the United States
5 unlawfully in 2021 and has resided here since. On March 12, 2026, Petitioner was
6 encountered and apprehended after attempting to avoid a Border Patrol Checkpoint.
7 Exhibit 1 at 2-3. He was placed in removal proceedings and charged with
8 inadmissibility under 8 U.S.C. § 1182(a)(6)(A)(i) for being present in the United States
9 without having been paroled. *See* Exhibit 2.

10 **III. ARGUMENT**

11 Petitioner has failed to plead sufficient information or establish how mandatory
12 detention under 8 U.S.C. § 1226(c) violates his right to due process. “Absent a real and
13 immediate threat of future injury there can be no case or controversy, and thus no Article
14 III standing for a party seeking injunctive relief.” *Wilson v. Brown*, No. 05-cv-1774-
15 BAS-MDD, 2015 WL 8515412, at *3 (S.D. Cal. Dec. 11, 2015) (citing *Friends of the*
16 *Earth, Inc. v. Laidlaw Env'tl. Servs. (TOC), Inc.*, 528 U.S. 167, 190 (2000) (“[I]n a
17 lawsuit brought to force compliance, it is the plaintiff’s burden to establish standing by
18 demonstrating that, if unchecked by the litigation, the defendant’s allegedly wrongful
19 behavior will likely occur or continue, and that the threatened injury is certainly
20 impending.”) (simplified)). At the “irreducible constitutional minimum,” standing
21 requires that a petitioner demonstrate the following: (1) an injury in fact (2) that is fairly
22 traceable to the challenged action of the United States and (3) likely to be redressed by
23 a favorable decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992).

24 Moreover, the Supreme Court has held that “[h]abeas Corpus Rule 2(c) is more
25 demanding [than Federal Rule of Civil Procedure 8(a)]. It provides that the petition
26 must ‘specify all the grounds for relief available to the petitioner’ and ‘state the facts
27

28 ² The attached exhibits are true copies, with few redactions of private information, of documents obtained from ICE counsel.

1 supporting each ground.” *Mayle v. Felix*, 545 U.S. 644, 655 (2005) (citing Rules
2 Governing Section 2254 Cases in the United States District Court (“Federal Habeas
3 Rules”); *see also James v. Borg*, 24 F.3d 20, 26 (9th Cir. 1994) (“Conclusory allegations
4 which are not supported by a statement of specific facts do not warrant habeas relief.”).
5 As stated by the Advisory Committee’s Note on Habeas Corpus Rule 4, 28 U.S.C., p.
6 471, “notice pleading is not sufficient, for the petition is expected to state facts that point
7 to a real possibility of constitutional error.”) (internal quotation marks omitted).

8 Here, Petitioner bears the burden of establishing that his detention is unlawful.
9 However, given his prior criminal history, Petitioner has failed to explain why
10 mandatory detention under 8 U.S.C. § 1226(c) is statutorily improper, or otherwise a
11 violation of his rights under the Fifth Amendment. Because the habeas petition fails to
12 supply sufficient information for the Court to adjudicate his claims, the Court should
13 deny the petition. *See Alonso Velasquez v. LaRose*, No. 25-cv-3216-JES-AHG, 2025
14 WL 3473773 (S.D. Cal. Dec. 3, 2025) (dismissing without prejudice habeas petition
15 that failed to allege sufficient factual information).

16 “To determine whether Congress has authorized [a petitioner’s] detention, we
17 must first identify the statutory provision that purports to confer such authority on the
18 Attorney General.” *Prieto-Romero v. Clark*, 534 F.3d 1053, 1057 (9th Cir. 2008). Here,
19 Petitioner alleges that DHS erroneously determined him to be subject to mandatory
20 detention under § 1225(b)(2)(A). *See* ECF No. 1 at 26-35. As previously discussed,
21 Petitioner is mistaken. DHS has determined him to be subject to mandatory detention
22 under § 1226(c) due to his criminal record, and he has not availed himself of the
23 administrative remedies for challenging that determination or shown that doing so
24 would be futile as Petitioner has only been in custody since March 12, 2026. There
25 being no challenge to Petitioner’s mandatory detention under § 1226(c), the Court
26 cannot find that he has met his burden to show that his detention violates the INA.

27 As to whether mandatory detention under § 1226(c) violates due process, the
28 Supreme Court in *Demore v. Kim* held no. *See* 538 U.S. 510, 513 (2003). In so holding,

1 the *Demore* court recognized that for over a hundred years, the Supreme Court “has
2 firmly and repeatedly endorsed the proposition that Congress may make rules as to
3 aliens that would be unacceptable if applied to citizens.” *Id.* at 522 (collecting cases).
4 Consequently, the Supreme Court has, time and time again, “recognized [that] detention
5 during deportation proceedings [is] a constitutionally valid aspect of the deportation
6 process.” *Id.* at 523; see *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1217 (9th Cir. 2022)
7 (Bumatay, concurring) (“For over a century, whenever Congress has granted the
8 Executive authority to detain aliens pending removal proceedings, the Supreme Court
9 has repeatedly upheld such detention as consistent with the Constitution.”).

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

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

8 The Supreme Court, however, did not foreclose the possibility that a noncitizen
9 detained under § 1226(c) may establish a due process violation depending on the
10 circumstances of their case. In addressing such “as-applied” due process claims, the
11 Court must be principally guided by *Demore*. *See Hohn v. United States*, 524 U.S. 236,
12 252–53 (1998) (“Our decisions remain binding precedent until we see fit to reconsider
13 them[.]”); *Hart v. Massanari*, 266 F.3d 1155, 1171 (9th Cir. 2001) (“A decision of the
14 Supreme Court will control that corner of the law unless and until the Supreme Court
15 itself overrules or modifies it. Judges of the inferior courts may voice their criticisms,
16 but follow it they must.”); *see also Rodriguez Diaz v. Garland*, 53 F.4th at 1214
17 (Bumatay, concurring) (The Supreme Court “has recently backed away from multi-
18 factorial grand unified theories for resolving legal issues.”) (simplified, citing *Kennedy*
19 *v. Bremerton Sch. Dist.*, 597 U.S. 507, 533 (2022)). And *Demore* teaches that detention
20 of noncitizens under § 1226(c) is constitutional so long as detention serves its purported
21 immigration purpose. *See* 538 U.S. at 527–28 (stating that detention of such noncitizens
22 “necessarily serves the purpose of preventing deportable criminal aliens from fleeing
23 prior to or during their removal proceedings, thus increasing the chance that, if ordered
24 removed, the aliens will be successfully removed” and that the evidence Congress had
25 before it in enacting § 1226(c) “certainly support[ed] the approach it selected” in
26 declining to afford such noncitizens bond hearings during removal proceedings).

27 Justice Kennedy's concurring opinion provided further guidance on when a
28 noncitizen mandatorily detained under § 1226(c) may suffer a due process violation.

1 *See id.* at 532–33. He stated that “since the Due Process Clause prohibits arbitrary
2 deprivations of liberty, a lawful permanent resident alien [] could be entitled to an
3 individualized determination as to his risk of flight and dangerousness if the continued
4 detention became unreasonable or unjustified.” *Id.* at 532. He then explained what
5 circumstances may meet the unreasonable or unjustified standard: “Were there to be an
6 unreasonable delay by [DHS] in pursuing and completing deportation proceedings, it
7 could become necessary then to inquire whether the detention is not to facilitate
8 deportation, or to protect against risk of flight or dangerousness, but to incarcerate for
9 other reasons.” *Id.* at 532–33.

10 Here, Petitioner does not challenge DHS’s determination that he is subject to
11 mandatory detention under § 1226(c)(1)(B) due to his criminal history. As Petitioner’s
12 criminal record brings him within § 1226(c)’s reach, his ongoing detention during the
13 pendency of his removal proceedings does not violate due process because it
14 “necessarily serves the purpose of preventing deportable criminal aliens [like him] from
15 fleeing prior to or during their removal proceedings, thus increasing the chance that, if
16 ordered removed, [he] will be successfully removed.” *Demore*, 538 U.S. at 528; Exhibit
17 1; Exhibit 3 at 3-6.. Further, Petitioner has not demonstrated that his detention has
18 become “unreasonable or unjustified” such that his due process rights have been
19 violated. *See id.* at 532–33 (Kennedy, J. concurring). There is no evidence presented,
20 nor even a claim raised by Petitioner, that the government has unreasonably delayed
21 pursuing his removal proceedings, or that it is seeking to detain him for any reason other
22 than seeking to protect the public and facilitate his removal. *See id.* at 532–33. There
23 being no showing of unreasonable, arbitrary, or unjustified detention, the Court cannot
24 find that Petitioner has met his burden to show that his mandatory detention under §
25 1226(c) violates due process.

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1 **IV. CONCLUSION**

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

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5 DATED: April 24, 2026

Respectfully submitted,

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7 United States Attorney

8 *s/Hunter V. Norton*
9 Hunter V. Norton
10 Assistant United States Attorney
11 Attorneys for Respondents
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