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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

MARCOS ORTIZ CONTRERAS

Petitioner,

vs.

CHRISTOPHER J. LAROSE, et al.

Respondents.

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

**PETITIONER'S TRAVERSE TO
RESPONDENTS' RETURN TO
PETITION FOR WRIT OF
HABEAS CORPUS**

I. INTRODUCTION

Respondents' Return seeks denial of habeas relief by reframing Petitioner's detention as mandatory detention under 8 U.S.C. § 1226(c) based on old criminal history and by invoking *Demore v. Kim*. But the detention at issue is the detention as imposed and maintained, and Respondents cannot defeat habeas review through a late-stage statutory pivot untethered to any contemporaneous custody determination, notice, or process.

Three points resolve this case.

First, Respondents' attempt to avoid review by asserting § 1226(c) for the first time in the Return is an impermissible post-hoc rationalization that undermines meaningful habeas review and confirms that Petitioner was detained under a legally erroneous theory in the first instance.

Second, even if § 1226(c) could be considered now, it cannot constitutionally justify mandatory, no-bond detention on a decades-delayed "criminal release" theory; Petitioner's Oregon convictions and registration information date back to the 1990s and early 2010s—long before the 2026 ICE arrest.

Third, this Court's recent immigration-habeas decisions, including orders by Judge Andrew G. Schopler, demonstrate that where detention authority is disputed or misapplied, habeas relief is available and the Court may order effective relief. In appropriate cases, that relief may include immediate release; at minimum,

1 it includes prompt individualized process (including a bond hearing) rather than
2 denial of relief on pleading or labeling grounds.
3

4 Petitioner respectfully requests that the Court grant the writ and order
5 Petitioner's immediate release from ICE custody because, as explained below,
6 Respondents have not established a lawful basis for continued detention under the
7 theory advanced in the Return. In the alternative, if the Court concludes that
8 additional process could cure any constitutional defect, Petitioner requests an order
9 requiring a prompt, constitutionally compliant bond hearing at which the
10 government bears the burden to justify continued detention.
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14 **II. RESPONDENTS' § 1226(c) THEORY IS A POST-HOC**
15 **RATIONALIZATION THAT DOES NOT DEFEAT HABEAS REVIEW**

16 **A. The Return Concedes Petitioner Challenged § 1225(b), Then Substitutes §**
17 **1226(c)**

18 Respondents acknowledge that the verified petition challenged the
19 government's claim of mandatory detention under 8 U.S.C. § 1225(b) and sought
20 release or, at minimum, a bond hearing. The Return nonetheless asserts that
21 Petitioner "is subject to mandatory detention under § 1226(c)" due to prior
22 convictions, citing the rap sheet as an exhibit.
23

24 This substitution matters. Habeas review tests the legality of custody as
25 imposed and maintained. It is not a forum for the government to retrofit detention
26 under a different statute after the fact, particularly where the detainee had no notice
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1 or meaningful opportunity to contest the new theory through any contemporaneous
2 custody process.

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4 **B. Habeas Relief Is Not Defeated by Re-Labeling the Detention Statute in**
5 **Litigation**

6 The Return repeatedly argues that Petitioner “failed to plead sufficient
7 information” and did not challenge § 1226(c) “statutorily” or via due process. But
8 Respondents’ position would effectively require a detainee to anticipate and plead
9 against alternative detention theories the government might later invoke, even
10 where DHS did not apply that statute at the time of arrest and initial custody. That
11 is not required under § 2241.
12

13
14 The Court should not allow the government to change the statutory
15 label for detention in litigation in a way that impairs meaningful review of the
16 custody actually imposed and maintained. Respondents’ pivot underscores the need
17 for judicial review of the detention’s lawful basis and the process provided.
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20 **III. THE RETURN’S PLEADING, STANDING, AND “RULE 2(c)”**
21 **ARGUMENTS DO NOT SUPPORT DISMISSAL**

22 Respondents argue that habeas “notice pleading is not sufficient,” cite *Mayle*
23 *v. Felix*, and contend Petitioner has not established standing or adequately pleaded
24 facts. These points miss the mark.
25

26 Petitioner is detained now and seeks relief from present custody, an injury
27 plainly redressable by a bond hearing or release order. Respondents’ standing
28

1 paragraph is generic and does not address that detention is the archetypal injury for
2 habeas purposes.
3

4 Nor does the petition fail Rule 2(c). The petition identifies the detention, the
5 statutory basis DHS invoked, and the relief requested. Respondents do not dispute
6 that Petitioner is in ICE custody, that removal proceedings are pending, or that DHS
7 is resisting bond. The Court should therefore reach the merits rather than dismiss
8 on formal pleading grounds.
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11 **IV. § 1226(c) DOES NOT PROVIDE A LAWFUL BASIS FOR NO-BOND**
12 **DETENTION HERE**

13 **A. The Underlying Criminal History Is Decades Old**

14 Respondents' Return asserts § 1226(c) applies due to "criminal history,"
15 citing a prior conviction as a CIMT and pointing to the rap sheet. The FBI/III record
16 reflects Oregon arrests and convictions dating back to 1996–1997, including felony
17 dispositions, and shows Oregon sex-offender registry information with a
18 registration date in 2010.
19
20

21 Whatever classification questions might exist under § 1226(c)(1), the factual
22 posture is undisputed in the government's own attachment: these events occurred
23 long before the 2026 detention.
24

25 **B. "Mandatory detention" cannot be constitutionally justified by a**
26 **decades-delayed custody theory**
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1 Respondents ask the Court to accept mandatory, no-bond detention based on
2 stale criminal history and to treat *Demore* as foreclosing due process review. But
3 *Demore* itself—and especially Justice Kennedy’s controlling concurrence—
4 recognizes that due process prohibits arbitrary detention and requires inquiry where
5 detention becomes unreasonable or unjustified.
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8 Here, the core constitutional problem is that DHS seeks categorical detention
9 with no individualized hearing even though the alleged criminal-custody basis is
10 decades removed from the present detention. That is precisely the kind of
11 “unreasonable or unjustified” detention due process forbids.
12

13
14 **C. Due process requires release; at minimum, a prompt individualized bond
15 hearing**

16 Even if Respondents could invoke § 1226(c), they still must confront due
17 process. The Return acknowledges that *Demore* does not “foreclose the possibility”
18 of an as-applied due process violation and quotes Justice Kennedy’s concurrence
19 regarding “unreasonable delay” or detention serving punitive ends rather than
20 removal facilitation.
21

22 Given the disputed statutory basis, the government’s post-hoc shift in
23 detention theory, and the absence of any individualized custody review under that
24 new theory, the Court should grant the writ and order Petitioner’s immediate release.
25
26 At minimum, if the Court concludes additional process could cure the due process
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1 violation, it should order a prompt bond hearing at which the government bears the
2 burden to justify any continued detention.
3

4 **V. EXHAUSTION DOES NOT BAR RELIEF (AND THE RETURN**
5 **MISSTATES FUTILITY)**

6 Respondents argue Petitioner “has not availed himself of the administrative
7 remedies” to challenge § 1226(c) and contend he has been in custody only since
8 March 12, 2026. But this is a habeas action challenging the legality of present
9 physical custody and seeking the writ’s traditional remedy: an order ending
10 unlawful detention. Administrative exhaustion is not a jurisdictional bar to § 2241
11 relief, and it is not required where the agency process cannot provide the principal
12 relief sought—immediate release from custody—or where requiring pursuit of
13 additional administrative steps would merely prolong an unlawful deprivation of
14 liberty.
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18 In any event, exhaustion is excused as futile. Petitioner does not merely seek
19 a discretionary custody redetermination; he challenges DHS’s authority to hold him
20 without lawful statutory basis and without constitutionally required process—
21 particularly where Respondents invoke INA §1226(c) only post-hoc, decades after
22 any criminal “release,” and without any contemporaneous custody determination,
23 notice, or opportunity to contest that theory. An Immigration Judge cannot grant the
24 relief Petitioner principally seeks here: an order terminating unlawful detention on
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1 the ground that the government lacks lawful authority to continue holding him
2 under the circumstances presented. Nor can an IJ adjudicate the purely legal
3 questions that drive the custody's illegality, including whether DHS may
4 retroactively recharacterize the statutory basis for detention, whether §1226(c)'s
5 "when released" requirement is satisfied on a decades-delayed theory, and whether
6 continued detention absent individualized process violates the Due Process Clause.
7
8 Where the agency has no power to grant effective relief or to resolve the core legal
9 and constitutional questions presented, requiring administrative exhaustion would
10 be an idle act inconsistent with habeas's purpose.
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14 Further, Respondents' approach would risk converting exhaustion into
15 an obstacle that prolongs detention and delays judicial review: DHS could detain
16 under one theory, advance a different theory in federal court, and then argue the
17 detainee must first pursue an administrative process he was never told applied.
18 Section 2241 exists to ensure prompt judicial review of the legality of custody. The
19 Court should therefore reject Respondents' exhaustion argument and address the
20 lawfulness of detention directly.
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24 **VI. THIS COURT'S RECENT SDCA IMMIGRATION-HABEAS
25 DECISIONS SUPPORT EFFECTIVE RELIEF**

26 This Court's recent immigration-habeas decisions illustrate that, when
27 the government's asserted detention authority does not withstand scrutiny in the
28

1 return posture, the Court grants meaningful relief—whether by ordering release
2 where warranted or, at minimum, requiring prompt individualized custody review.
3

4 **A. Judge Schopler grants habeas relief and orders prompt custody review**

5 In *Singh v. Warden of Imperial Regional Detention Facility*, No.
6 26-cv-0457-AGS-BJW, Judge Andrew G. Schopler granted the habeas petition and
7 ordered a bond hearing, noting the government’s acknowledgement that petitioner
8 was entitled to a bond hearing under § 1226(a).
9

10 In *Cruz Bautista v. Noem*, No. 26-cv-00943-AGS-BLM, the docket reflects
11 the same pattern: habeas granted and bond hearing ordered where detention
12 authority did not withstand scrutiny in the return posture.
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15 And in Case No. 25-cv-3732-AGS-BLM, Judge Schopler again granted
16 habeas relief and ordered a bond hearing by a date certain—confirming that the
17 remedy in this Court is practical and prompt.
18

19 **B. Judge Schopler rejects broad mandatory-detention assertions and**
20 **incorporates his reasoning across SDCA cases**

21 In *Jamalashvili v. Warden*, No. 26-cv-0961-AGS-DEB, Judge Schopler
22 addressed the government’s reliance on mandatory detention arguments in the
23 return posture and incorporated his reasoning from prior SDCA cases before
24 ordering a bond hearing. The order reflects that DHS’s “position” about mandatory
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1 detention does not end the analysis and that the Court will enforce the correct
2 detention framework and provide the appropriate process.
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4 Those decisions strongly support relief here. Respondents' Return presents
5 the same basic posture: DHS relies on a categorical mandatory-detention label and
6 asks the Court to deny a hearing. This Court's consistent response has been to grant
7 relief and order a bond hearing where the detention authority is disputed or
8 misapplied.
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11 **VII. RELIEF REQUESTED**

12 For the foregoing reasons, Petitioner respectfully requests that the Court
13 grant the petition and order relief sufficient to end the ongoing unlawful detention:
14

- 15 1. Order Petitioner's immediate release from ICE custody;
- 16 2. In the alternative, order a prompt, constitutionally compliant bond hearing
17 before an Immigration Judge;
- 18 3. If a bond hearing is ordered, require that the government justify continued
19 detention under constitutionally adequate standards, including by bearing
20 the burden of proof.
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22

23 This requested relief is consistent with core habeas principles: where custody
24 is unlawful, the writ's traditional function is to end it. Ordering immediate release
25 here would ensure that continued detention does not rest on a statutory basis first
26 articulated in litigation rather than through a contemporaneous custody
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1 determination and process. If the Court instead concludes that additional process
2 could cure the constitutional defect, a prompt bond hearing, with the government
3 bearing the burden to justify continued detention, is the minimum relief required by
4 due process and consistent with this Court's recent immigration-habeas practice.
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7 Respectfully submitted on April 27, 2026

8
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