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

11 OSCAR MALDONADO-ROMERO,

Case No.: 26-cv-2366-RBM-SBC

12 Petitioner,

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

13
14 v.

15 WARDEN of Imperial Regional Detention
16 Facility, et al.,

17 Respondents.
18
19

20 **I. INTRODUCTION**

21 Petitioner requests the Court to order his immediate release from Immigration and
22 Customs Enforcement (ICE) custody or require that he be afforded a bond hearing because,
23 he alleges, his mandatory civil immigration detention under 8 U.S.C. § 1226(c) has become
24 “prolonged” in violation of his due process rights under the Fifth Amendment. The Supreme
25 Court, however, has upheld the constitutionality of § 1226(c). And Petitioner presents no
26 evidence that the statute, as applied to him, no longer serves an immigration purpose. There
27 being no due process violation established in this case, the Court should deny relief.
28

II. FACTUAL BACKGROUND

Petitioner is a native and citizen of El Salvador, who entered the United States illegally on or about March 4, 2006, as an unaccompanied minor, near El Paso, Texas. Exhibit (Ex.) 1 (I-213).¹ Immigration and Customs Enforcement (ICE) apprehended Petitioner, issued a Notice to Appear (NTA), and released him on his own recognizance. On October 30, 2025, in a targeted operation pursuant to an I-200 arrest warrant, Border Patrol Agents apprehended Petitioner as a result of his criminal history. His criminal history includes theft in 2012; felony cruelty to animals with intent to kill, infliction of corporal injury on a spouse or cohabitant, child abuse with possible great bodily injury, violation of a protective order in 2024; and vandalism in 2025. On November 1, 2025, ICE served Petitioner with a NTA, charging him with inadmissibility and removability under sections 212(a)(6)(A)(i) of the Immigration and Nationality Act (INA). Ex. 2 (NTA).

Petitioner's first master calendar hearing was originally scheduled for November 12, 2025. Ex. 2. On March 20, 2026, an immigration judge ordered Petitioner removed to El Salvador. Ex. 3 (IJ Order). Petitioner has filed an appeal of the order to the Board of Immigration Appeals (BIA). There is no administratively final removal order. Therefore, Petitioner remains subject to mandatory detention under § 1226(c) as a deportable alien who has multiple criminal convictions pursuant to 8 U.S.C. 1182(a)(2)(A)(ii).

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. According to Petitioner, he seeks immediate release from custody or a bond hearing because Respondents have held him since October 30, 2025.

A. Petitioner Has Not Established a Due Process Violation under *Demore*.

The Supreme Court has held that mandatory detention under § 1226(c) does not violate due process. *See Demore v. Kim*, 538 U.S. 510, 513 (2003). In so holding, it

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

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

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

27 With the statute’s purpose in mind, the Supreme Court upheld the constitutionality
28 of § 1226(c), repeatedly noting, as it had several times before, that detention of a noncitizen

1 during ongoing removal proceedings is constitutional. *See id.* at 513 (“We hold that
2 Congress, justifiably concerned that deportable criminal aliens who are not detained
3 continue to engage in crime and fail to appear for their removal hearings in large numbers,
4 may require that [such] persons . . . be detained for the brief period necessary for their
5 removal proceedings.”). The Supreme Court, however, did not foreclose the possibility that
6 a noncitizen detained under § 1226(c) may establish a due process violation depending on
7 the circumstances of their case.

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

24 Justice Kennedy’s concurring opinion provided further guidance on when a
25 noncitizen mandatorily detained under § 1226(c) may suffer a due process violation. *See id.*
26 at 532–33. He stated that “since the Due Process Clause prohibits arbitrary deprivations of
27 liberty, a lawful permanent resident alien [] could be entitled to an individualized
28 determination as to his risk of flight and dangerousness if the continued detention became

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

6 **Here, there is no dispute that Petitioner is subject to mandatory detention under**
7 **§ 1226(c) due to his convictions.** Because Petitioner is a criminal noncitizen within the
8 meaning of § 1226(c), his ongoing detention during the pendency of his removal
9 proceedings does not violate due process because it “necessarily serves the purpose of
10 preventing deportable criminal aliens [like him] from fleeing prior to or during their removal
11 proceedings, thus increasing the chance that, if ordered removed, [he] will be successfully
12 removed.” *Demore*, 538 U.S. at 528. And Petitioner has not demonstrated that his detention
13 has become “unreasonable or unjustified” such that his due process rights have been
14 violated. *See id.* at 532–33 (Kennedy, J. concurring). In this case, there is no evidence
15 presented, nor even a claim raised by Petitioner, that the government has unreasonably
16 delayed pursuing and completing his removal proceedings, or that it is seeking to detain
17 him for any reason other than seeking to protect the public and facilitate his removal. *See*
18 *id.* at 532–33.

19 Instead, Petitioner claims that he is entitled to immediate release or a bond hearing
20 because he has been in prolonged detention for several months.. First, in *Demore*, the
21 Supreme Court did not embrace any bright-line period-of-time marker for when a noncitizen
22 under § 1226(c) may suffer a due process violation, and in fact, upheld the constitutionality
23 of the noncitizen’s detention even though it had passed six months and was likely to extend
24 longer. *See id.* at 532; *Jennings v. Rodriguez*, 583 U.S. 281, 312 (2018) (holding that nothing
25 in § 1225(b), § 1226(a), or § 1226(c) “imposes a 6-month time limit on detention without
26 the possibility of bail”); *Reid v. Donelan*, 17 F.4th 1, 7 (1st Cir. 2021) (“It requires no
27 reading of tea leaves to see that *Demore* is fatal to the claim here that every single person
28 detained for six months must be entitled to a bond hearing.”).

1 Ninth Circuit caselaw post-*Jennings* further bolsters the assertion that Petitioner has
2 not established that his § 1226(c) detention violates due process. In *Fraihat v. Barr*, the
3 Ninth Circuit addressed a habeas petition brought by a noncitizen detained under § 1226(c)
4 for more than two years without a bond hearing. *See* 790 F. App'x 120, 120–22 (9th Cir.
5 2020). There, the Ninth Circuit rejected an argument that due process requires consideration
6 of the prolonged length of his detention. *See id.* at 121 (“Fraihat has not demonstrated that
7 the Constitution requires consideration of the length of his detention in this context[.]”).
8 The *Fraihat* court concluded that “although Fraihat’s immigration detention has been
9 prolonged, it has not been arbitrary or indefinite. To the contrary, it has been tied to his
10 removal proceedings.” *Id.* at 122. Here, as in *Fraihat*, Petitioner’s detention is not arbitrary
11 or indefinite. Rather, as in *Fraihat*, his continued detention has been tied solely to his
12 removal proceedings, not for any arbitrary or improper purpose, and his choice to appeal
13 the order to the Board of Immigration Appeals on November 24, 2025.

14 Under *Demore* and *Fraihat* (the two most prescient cases applicable to the due
15 process claim at issue here), Petitioner has not demonstrated that his detention under
16 § 1226(c) violates his due process rights. *See Demore*, 538 U.S. at 528, 530–33; *Fraihat*,
17 790 F. App'x at 122.

18 **B. Petitioner Has Not Established a Due Process Violation Under the**
19 **Factor-Based Test.**

20 To the extent the Court disagrees that *Demore* supplies the framework for analyzing
21 Petitioner’s due process challenge and is inclined to apply a factor-based test, courts in this
22 district have applied the test in *Lopez v. Garland*, 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022),
23 to determine whether a petitioner’s mandatory detention has become unreasonable, and
24 thus, unconstitutionally prolonged. *See, e.g., Sanchez-Rivera*, No. 22-cv-1357-MMA-JLB,
25 2023 WL 139801 at *5 (S.D. Cal. Jan. 9, 2023) (“[W]hile the *Mathews* factors may be well-
26 suited to determining whether due process requires a second bond hearing, they are not
27 particularly dispositive of whether prolonged mandatory detention has become
28 unreasonable in a particular case.”); *Durand v. Allen*, No. 23-cv-00279-RBM-BGS, 2024

1 WL 711607, at *4 (S.D. Cal. Feb. 21, 2024) (“[T]he *Lopez* test is most applicable to due
2 process challenges raised by noncitizens detained under § 1226(c) seeking an initial bond
3 hearing.”). Under *Lopez*, to determine whether continued mandatory detention has become
4 unreasonable, “the Court will look to the total length of detention to date, the likely duration
5 of future detention, and the delays in the removal proceedings caused by the petitioner and
6 the government.” 631 F. Supp. 3d at 879.

7 Some Courts have applied the test in *Banda v. McAleenan*, which considers: (1) the
8 total length of detention to date; (2) the likely duration of future detention; (3) conditions of
9 detention; (4) delays in the removal proceedings caused by the detainee; (5) delays in the
10 removal proceedings caused by the government; and (6) the likelihood that the removal
11 proceedings will result in a final order of removal. *See* 385 F. Supp. 3d 1099, 1106 (W.D.
12 Wash. 2019). The *Lopez* test considers substantially similar factors, with the exception of
13 the conditions of detention factor. *See* 631 F. Supp. 3d at 879. Because conditions of
14 confinement claims are not cognizable in habeas, Respondents contend that the *Lopez* test
15 is more appropriate here. *See Zelaya-Gonzalez v. Matuszewski*, No. 23-cv-151-JLS-KSC,
16 2023 WL 3103811, at *3 (S.D. Cal. Apr. 25, 2023) (Claim alleging “unconstitutional
17 conditions of confinement, is not cognizable in habeas.”) (citing *Nettles v. Grounds*, 830
18 F.3d 922, 933 (9th Cir. 2016)).

19 Turning to the *Lopez* factors, none weigh in favor of finding a due process violation.
20 First, as to the length of detention, Petitioner has been detained for about 6 months. “In
21 general, as detention continues past a year, courts become extremely wary of permitting
22 continued custody absent a bond hearing.” *Sibomana v. LaRose*, No. 22-cv-933-LL-NLS,
23 2023 WL 3028093, at *4 (S.D. Cal. Apr. 20, 2023) (citation omitted); *see Sanchez-Rivera*
24 *v. Matuszewski*, No. 22-cv-1357-MMA-JLB, 2023 WL 139801, at *6 (S.D. Cal. Jan. 9,
25 2023) (detained for three years); *Durand v. Allen*, 2024 WL 711607, at * (over two-and-a-
26 half years); *Yagao v. Figueroa*, No. 17-cv-2224-AJB-MDD, 2019 WL 1429582, at
27 *2 (S.D. Cal. Mar. 29, 2019) (two years). Petitioner’s detention falls short of the length
28 these courts have found to raise due process concerns.

1 Second, as to the likely duration of future detention, while Petitioner may pursue his
2 legal remedies as he sees fit, he cannot in turn rely on the delays attendant to his decisions
3 to establish a due process violation. *See Demore*, 538 U.S. at 530 n. 14 (“As we have
4 explained before, however, “the legal system . . . is replete with situations requiring the
5 making of difficult judgments as to which course to follow, and, even in the criminal
6 context, there is no constitutional prohibition against requiring parties to make such
7 choices.”) (citations omitted); *id.* at 530-31 (“Respondent was detained for somewhat longer
8 than the average [...] but respondent himself had requested a continuance of his removal
9 hearing.”); *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1210 (9th Cir. 2022) (“Rodriguez
10 Diaz in this case has not demonstrated that the fact of the review process following its
11 ordinary course itself created a due process violation.”). As Judge Bumatay explained in his
12 concurrence in *Martinez v. Clark*:

13 Absent any allegation that the extended detention here is unrelated to an
14 immigration purpose, the mere fact that detention is “prolonged” doesn’t alter
15 the statutory framework. Indeed, in our circuit, the median processing time
16 for an immigration case to reach a merits determination is 39 months. Does
17 that mean that any immigration proceeding appealed in the Ninth Circuit
would automatically invalidate mandatory detention under § 1226(c)? Why
should our delays in processing cases impact Congress’s design?

18 124 F.4th 775, 788 (9th Cir. 2024).

19 Third, as to the delays in the removal proceedings caused by Petitioner and the
20 government, there has been no unreasonable delay by Respondents.

21 On this record, the Court cannot find that “detention has become so unreasonable as
22 to require an initial bond hearing.” *Sanchez-Rivera*, 2023 WL 139801, at *6. Should the
23 Court disagree, Petitioner bears the burden of proof to demonstrate that he is not a danger
24 to the community or a flight risk. *See Rodriguez Diaz*, 53 F.4th at 1211 (“We are aware of
25 no Supreme Court case placing the burden on the government to justify the continued
26 detention of [a noncitizen], much less through an elevated ‘clear and convincing’
27 showing.”). Indeed, even when considering a noncitizen subject to potentially indefinite
28 detention after the conclusion of removal proceedings, the Supreme Court held that the

1 noncitizen, not the government, must bear the initial burden of proof to show that release is
2 warranted. *See Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Petitioner cites no support for
3 any contention otherwise.

4 **IV. CONCLUSION**

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

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8 DATED: May 1, 2026

Respectfully submitted,

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