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

11 ANDERSON MORALES THOMPSON, Case No.: 26-cv-2743-JLS-BJW
12 Petitioner, **RETURN TO PETITION FOR WRIT**
13 **OF HABEAS CORPUS**
14 v.
15 MARKWAYNE MULLIN, et al.,
16 Respondents.
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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, that he had previously been paroled into the United States, and that his parole
24 was improperly revoked. In the alternative, Petitioner argues that his detention has become
25 “prolonged” in violation of his due process rights under the Fifth Amendment. However,
26 Petitioner’s prior proceeding under which Petitioner was not detained was terminated in
27 2024. New proceedings were initiated in October 2025 after Petitioner was transferred from
28 state prison custody to immigration custody, and a new Notice to Appear was served.

1 Petitioner is subject to mandatory civil immigration detention under 8 U.S.C. § 1226(c), as
2 found by an Immigration Judge at a bond hearing on April 2, 2026. The Supreme Court has
3 upheld the constitutionality of § 1226(c). Therefore, this Petition should be denied.

4 II. FACTUAL BACKGROUND

5 Petitioner is a native and citizen of the Dominican Republic, who entered the United
6 States as a legal permanent resident on or about August 28, 2009. *See* Exh. 1 at 2. (October
7 2025 I-213).¹ Petitioner has multiple criminal convictions in the State of New Hampshire,
8 including a 2019 conviction for two counts of Possession of a Controlled Drug Schedule 1-
9 4 involving fentanyl and cocaine. Exh. 2 (conviction documents).

10 On November 9, 2021, Petitioner entered the United States from the Dominican
11 Republic at John F. Kennedy International Airport, and his inspection was deferred to
12 Boston Deferred Inspection in Boston Massachusetts to review Petitioner's criminal history
13 and obtain certified court records. Exh. 3 at 2 (March 2022 I-213). Petitioner appeared for
14 his deferred inspection on January 4, 2022, and it was determined that Petitioner was
15 inadmissible due to prior convictions. *Id.* at 2-3. A Notice to Appear (NTA) was issued
16 placing Petitioner in removal proceedings, but Immigration and Customs Enforcement
17 declined to detain Petitioner. Exh. 4 (January 2022 NTA); Exh. 3 at 3. Those proceedings
18 were terminated by an Immigration Judge (IJ) on November 26, 2024. Exh. 5 (IJ Order
19 Terminating Proceedings).

20 On October 17, 2025, Petitioner was released from the Northern New Hampshire
21 Correctional Facility to an Immigration ICE Detainer after being sentenced to 2 ½ years for
22 Drug Sale. Exh. 1 at 2. On October 21, 2025, ICE served Petitioner with a Notice to Appear
23 (NTA), charging him with inadmissibility under removability under section 237(a)(2)(B)(i)
24 and (A)(iii) of the Immigration and Nationality Act (INA) and filed it with the Immigration
25 Court. *See* Exh. 6 (October 2025 NTA).

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

1 On April 1, 2026, an IJ found Petitioner removable as charged, and ordered Petitioner
2 removed to the Dominican Republic. Exh. 7 (IJ Removal Order). On April 2, 2026,
3 Petitioner received a bond hearing before an IJ, who denied Petitioner’s request for bond
4 because the IJ found that Petitioner was an aggravated felon, and thus subject to mandatory
5 detention per INA § 101(a)(43)(G). Exh. 8 (IJ Bond Order). Petitioner appealed his removal
6 order to the Board of Immigration Appeals (BIA). The appeal is pending. There is no final
7 order of removal at this time, and Petitioner remains mandatorily detained, as found by the
8 IJ, pursuant to 8 U.S.C. § 1226(c).

9 **III. ARGUMENT**

10 The Court should deny Petitioner’s habeas petition because he has not met his burden
11 of demonstrating that his detention under 8 U.S.C. § 1226(c) is unlawful under the Fifth
12 Amendment’s Due Process Clause. According to Petitioner, he seeks immediate release
13 from custody or a bond hearing because of his prior parole into the United States, and due
14 to the length of his detention. However, the proceedings under which ICE declined to detain
15 Petitioner were terminated in 2024, and ICE initiated new proceedings in 2025. Further, an
16 IJ has already found that Petitioner is subject to mandatory detention as an aggravated felon.

17 **A. Petitioner is Subject to Mandatory Detention**

18 Here, Petitioner is subject to mandatory detention under § 1226(c) due to his
19 convictions for Control Drug Schedule 1-4: Possession, in violation of New Hampshire
20 Revised Statute § 318-B:2,I for possession of cocaine and fentanyl. *See* Exh. 2. Section
21 1226(c) provides for the mandatory detention of “any alien who . . . is deportable by reason
22 of having committed any offense covered in section 1227(a)(2)(A)(ii), (A)(iii), (B), (C), or
23 (D) of this title” Under § 1227(a)(2)(B)(ii), “[a]ny alien who at any time after
24 admission has been convicted of a violation of . . . any law or regulation of a State, the
25 United States, or a foreign country relating to a controlled substance (as defined in section
26 802 of title 21), other than a single offense involving possession for one’s own use of 30
27 grams or less of marijuana, is deportable.” Because Petitioner’s state law convictions
28 involved cocaine and fentanyl, both Schedule II controlled substances under 21 U.S.C.

1 § § 802(6) and 812, Petitioner falls within these statutes and thus is subject to mandatory
2 detention. *See Pagayon v. Holder*, 675 F.3d 1182, 1189 (9th Cir. 2011) (“Section
3 1227(a)(2)(B)(i) ‘requires the government to prove that the substance underlying an alien’s
4 state law conviction for possession is one that is covered by Section 102 of the [federal
5 Controlled Substances Act (codified as 21 U.S.C. § 802)]’” (quoting *Ruiz-Vidal v.*
6 *Gonzales*, 473 F.3d 1072, 1076 (9th Cir., 2007)).

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

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

19 In addressing the constitutionality of § 1226(c), the *Demore* court deemed it critically
20 important to address the immigration purpose underlying Congress’s enactment of the
21 statute. *See* 538 U.S. at 527–31. In its analysis, the Supreme Court observed that Congress
22 “adopted [§ 1226(c)] against a backdrop of wholesale failure by the [government] to deal
23 with increasing rates of criminal activity by aliens.” *Id.* at 518. It noted that when enacting
24 § 1226(c), Congress had before it a multitude of evidence to support its determination to
25 mandate detention of criminal noncitizens, including: that (1) “criminal aliens who were
26 deported swiftly [had] reentered the country illegally in great numbers”; (2) “[the] near-total
27 inability to remove deportable criminal aliens imposed more than a monetary cost on the
28 Nation”; (3) “deportable criminal aliens who remained in the United States often committed

1 more crimes before being removed”; (4) “one of the major causes of the [the government’s]
2 failure to remove deportable criminal aliens was the agency’s failure to detain those aliens
3 during their deportation proceedings”; (5) “even with individualized screening, releasing
4 deportable criminal aliens on bond would lead to an unacceptable rate of flight”; and (6)
5 “evidence suggest[ed] that permitting discretionary release of aliens pending their removal
6 hearings would lead to large numbers of deportable criminal aliens skipping their hearings
7 and remaining at large in the United States unlawfully.” *Id.* at 518–33.

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

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

1 fleeing prior to or during their removal proceedings, thus increasing the chance that, if
2 ordered removed, the aliens will be successfully removed” and that the evidence Congress
3 had before it in enacting § 1226(c) “certainly support[ed] the approach it selected” in
4 declining to afford such noncitizens bond hearings during removal proceedings).

5 Justice Kennedy’s concurring opinion provided further guidance on when a
6 noncitizen mandatorily detained under § 1226(c) may suffer a due process violation. *See id.*
7 at 532–33. He stated that “since the Due Process Clause prohibits arbitrary deprivations of
8 liberty, a lawful permanent resident alien [] could be entitled to an individualized
9 determination as to his risk of flight and dangerousness if the continued detention became
10 unreasonable or unjustified.”² *Id.* at 532. He then explained what circumstances may meet
11 the unreasonable or unjustified standard: “Were there to be an unreasonable delay by [DHS]
12 in pursuing and completing deportation proceedings, it could become necessary then to
13 inquire whether the detention is not to facilitate deportation, or to protect against risk of
14 flight or dangerousness, but to incarcerate for other reasons.” *Id.* at 532–33.

15 Because Petitioner is a criminal noncitizen within the meaning of § 1226(c), his
16 ongoing detention during the pendency of his removal proceedings does not violate due
17 process because it “necessarily serves the purpose of preventing deportable criminal aliens
18 [like him] from fleeing prior to or during their removal proceedings, thus increasing the
19 chance that, if ordered removed, [he] will be successfully removed.” *Demore*, 538 U.S. at
20 528. And Petitioner has not demonstrated that his detention has become “unreasonable or
21 unjustified” such that his due process rights have been violated. *See id.* at 532–33 (Kennedy,
22 J. concurring). In this case, there is no evidence presented, nor even a claim raised by
23 Petitioner, that the government has unreasonably delayed pursuing and completing his
24 removal proceedings, or that it is seeking to detain him for any reason other than seeking to
25 protect the public and facilitate his removal. *See id.* at 532–33; *see also generally* ECF No.
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28 ² Notably, Petitioner is not a lawful permanent resident and is thus arguably not entitled to
such a due process challenge. *See* Exh. 1. Even assuming he was, he has not established a
violation as more fully explained below.

1 6 (containing no allegation of unreasonable delay); Exh. 8 (bond denial). Petitioner has also
2 failed to exhaust his administrative remedies and failed to show why it would be futile to
3 ask the BIA to review whether the IJ “properly included [him] in a mandatory detention
4 category.” *See id.* at 532 (Kennedy, J. concurring). “Had he prevailed in such a proceeding,
5 the Immigration Judge then would have had to determine if he ‘could be considered . . . for
6 release under the general bond provisions” of § 1226(a).”³ *See id.*

7 Instead, Petitioner claims that he is entitled to immediate release or a bond hearing
8 because he has been in mandatory detention for over seven months, he has been diligently
9 pursuing his case, and he plans to appeal to the Ninth Circuit if the BIA denies his appeal.
10 *See* ECF No. 6 at ¶¶ 11-13. These claims do not amount to a due process violation. First, in
11 *Demore*, the Supreme Court did not embrace any bright-line period-of-time marker for
12 when a noncitizen under § 1226(c) may suffer a due process violation, and in fact, upheld
13 the constitutionality of the noncitizen’s detention even though it had passed six months and
14 was likely to extend longer. *See id.* at 532; *Jennings v. Rodriguez*, 583 U.S. 281, 312 (2018)
15 (holding that nothing in § 1225(b), § 1226(a), or § 1226(c) “imposes a 6-month time limit
16 on detention without the possibility of bail”); *Reid v. Donelan*, 17 F.4th 1, 7 (1st Cir. 2021)
17 (“It requires no reading of tea leaves to see that *Demore* is fatal to the claim here that every
18 single person detained for six months must be entitled to a bond hearing.”).

19 Second, Petitioner does not allege any undue delays in the proceedings, instead
20 characterizing this factor as “arguably neutral.” ECF No. 6 at 12.

21 Ninth Circuit caselaw post-*Jennings* further bolsters the assertion that Petitioner has
22 not established that his § 1226(c) detention violates due process. In *Frailhat v. Barr*, the
23 Ninth Circuit addressed a habeas petition brought by a noncitizen detained under § 1226(c)
24 for more than two years without a bond hearing. *See* 790 F. App’x 120, 120–22 (9th Cir.
25 2020). There, the Ninth Circuit rejected an argument that due process requires consideration
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28 ³ Given the vacatur of *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), the IJs are
no longer bound to apply the case and may independently find that they have jurisdiction to
grant noncitizens who entered the United States without inspection bond under § 1226(a).

1 of the prolonged length of his detention. *See id.* at 121 (“*Fraihat* has not demonstrated that
2 the Constitution requires consideration of the length of his detention in this context[.]”).
3 The *Fraihat* court concluded that “although *Fraihat*’s immigration detention has been
4 prolonged, it has not been arbitrary or indefinite. To the contrary, it has been tied to his
5 removal proceedings.” *Id.* at 122. Here, as in *Fraihat*, Petitioner’s detention is not arbitrary
6 or indefinite. Rather, as in *Fraihat*, his continued detention has been tied solely to his
7 removal proceedings, not for any arbitrary or improper purpose. Petitioner has already had
8 his final merits hearing, and is now pursuing the denial of relief.

9 Under *Demore* and *Fraihat* (the two most prescient cases applicable to the due
10 process claim at issue here), Petitioner has not demonstrated that his detention under
11 § 1226(c) violates his due process rights. *See Demore*, 538 U.S. at 528, 530–33; *Fraihat*,
12 790 F. App’x at 122.

13 **C. Petitioner Has Not Established a Due Process Violation Under the**
14 **Factor-Based Test.**

15 To the extent the Court disagrees that *Demore* supplies the framework for analyzing
16 Petitioner’s due process challenge and is inclined to apply a factor-based test, courts in this
17 district have applied the test in *Lopez v. Garland*, 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022),
18 to determine whether a petitioner’s mandatory detention has become unreasonable, and
19 thus, unconstitutionally prolonged. *See, e.g., Sanchez-Rivera*, No. 22-cv-1357-MMA-JLB,
20 2023 WL 139801 at *5 (S.D. Cal. Jan. 9, 2023) (“[W]hile the *Mathews* factors may be well-
21 suited to determining whether due process requires a second bond hearing, they are not
22 particularly dispositive of whether prolonged mandatory detention has become
23 unreasonable in a particular case.”); *Durand v. Allen*, No. 23-cv-00279-RBM-BGS, 2024
24 WL 711607, at *4 (S.D. Cal. Feb. 21, 2024) (“[T]he *Lopez* test is most applicable to due
25 process challenges raised by noncitizens detained under § 1226(c) seeking an initial bond
26 hearing.”). Under *Lopez*, to determine whether continued mandatory detention has become
27 unreasonable, “the Court will look to the total length of detention to date, the likely duration
28 of future detention, and the delays in the removal proceedings caused by the petitioner and

1 the government.” 631 F. Supp. 3d at 879.

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

15 Turning to the *Lopez* factors, none weigh in favor of finding a due process violation.
16 First, as to the length of detention, Petitioner has been detained for nearly eight months. *See*
17 ECF No. 6 at 12. “In general, as detention continues past a year, courts become extremely
18 wary of permitting continued custody absent a bond hearing.” *Sibomana v. LaRose*,
19 No.22-cv-933-LL-NLS, 2023 WL 3028093, at *4 (S.D. Cal. Apr. 20, 2023) (citation
20 omitted); *see Sanchez-Rivera v. Matuszewski*, No. 22-cv-1357-MMA-JLB, 2023 WL
21 139801, at *6 (S.D. Cal. Jan. 9, 2023) (detained for three years); *Durand v. Allen*, 2024 WL
22 711607, at * (over two-and-a-half years); *Yagao v. Figueroa*, No. 17-cv-2224-AJB-MDD,
23 2019 WL 1429582, at *2 (S.D. Cal. Mar. 29, 2019) (two years). Petitioner’s nearly eight-
24 month detention falls significantly short of the length courts have found to raise due process
25 concerns. And again, in *Demore*, the noncitizen was in detention for six months, yet the
26 Supreme Court reversed the district court’s order requiring a bond hearing. *See, e.g., Reid*, 17
27 F.4th at 8 (“It is simply not possible to read *Demore* as anticipating that the Court’s opinion
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1 would have been different if Kim’s detention had lasted one day more.”).

2 Second, as to the likely duration of future detention, Petitioner has filed an appeal
3 with the BIA. There is no indication that the BIA would delay adjudication of Petitioner’s
4 case. Petitioner claims that this factor should weigh in his favor because the case “will likely
5 go to the Ninth Circuit. ECF No. 6 at 12. The Court should reject this claim as speculative
6 and unsupported by evidence. *See D.D. v. LaRose, et al.*, Case No. 25-cv-02581-BJC-JLB,
7 ECF No. 10 at 8 (S.D. Cal. Oct. 22, 2025) (addressing “Petitioner’s claim that his detention
8 will continue for a significant time in the future” and “declin[ing] to engage in the
9 speculation that Petitioner relies on in his argument on this point.”). Moreover, while
10 Petitioner may pursue his legal remedies as he sees fit, he cannot in turn rely on the delays
11 attendant to his decision to establish a due process violation. *See Demore*, 538 U.S. at 530
12 n. 14 (“As we have explained before, however, “the legal system . . . is replete with
13 situations requiring the making of difficult judgments as to which course to follow, and,
14 even in the criminal context, there is no constitutional prohibition against requiring parties
15 to make such choices.”) (citations omitted); *id.* at 530-31 (“Respondent was detained for
16 somewhat longer than the average [...] but respondent himself had requested a continuance
17 of his removal hearing.”); *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1210 (9th Cir. 2022)
18 (“Rodriguez Diaz in this case has not demonstrated that the fact of the review process
19 following its ordinary course itself created a due process violation.”). As Judge Bumatay
20 explained in his concurrence in *Martinez v. Clark*:

21 Absent any allegation that the extended detention here is unrelated to an
22 immigration purpose, the mere fact that detention is “prolonged” doesn’t alter
23 the statutory framework. Indeed, in our circuit, the median processing time
24 for an immigration case to reach a merits determination is 39 months. Does
25 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?

26 124 F.4th 775, 788 (9th Cir. 2024).

27 Third, as to the delays in the removal proceedings caused by Petitioner and the
28 government, there has been no unreasonable delay by either, as discussed above. So this

1 factor is neutral.

2 On this record, the Court cannot find that “detention has become so unreasonable as
3 to require an initial bond hearing.” *Sanchez-Rivera*, 2023 WL 139801, at *6. Should the
4 Court disagree, Petitioner bears the burden of proof to demonstrate that he is not a danger
5 to the community or a flight risk. *See Rodriguez Diaz*, 53 F.4th at 1211 (“We are aware of
6 no Supreme Court case placing the burden on the government to justify the continued
7 detention of [a noncitizen], much less through an elevated ‘clear and convincing’
8 showing.”). Indeed, even when considering a noncitizen subject to potentially indefinite
9 detention after the conclusion of removal proceedings, the Supreme Court held that the
10 noncitizen, not the government, must bear the initial burden of proof to show that release is
11 warranted. *See Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Petitioner cites no support for
12 his contention otherwise.

13 **IV. CONCLUSION**

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

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17 DATED: June 2, 2026

Respectfully submitted,

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