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

11 LUIS ANTONIO MENDOZA-
12 GONZAGA,

13 Petitioner,

14 v.

15 CHRISTOPHER J. LAROSE, et al.
16

17 Respondents.
18

Case No.: 26-cv-2941-RFL-BJW

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

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

1 **II. FACTUAL BACKGROUND**

2 Petitioner is a native and citizen of Mexico who was granted asylum on January 13,
3 2016.xas. Exhibit (Ex.) 1 (Asylee Grant).¹ Between 2019 and 2024, Petitioner committed
4 and was convicted of several crimes. *See* Ex. 2 (I-213). On July 14, 2022, Petitioner was
5 convicted of driving the wrong way in a stolen vehicle on a highway to evade police. *See*
6 *id.* On December 19, 2022, Petitioner was convicted of possession of a controlled substance
7 for sale and sentenced to 90 days of incarceration. *Id.* Petitioner possessed personal
8 identification with the intent to defraud in 2024 and was convicted again. *Id.* As a result,
9 upon his release from criminal detention, on or about August 1, 2025, Immigration and
10 Customs Enforcement (ICE) apprehended Petitioner and served him with a Notice to
11 Appear (NTA) and a Notice of Intent to Terminate (NOIT) Asylum Status. Ex. 3 (NTA);
12 Ex. 4 (NOIT). 2025, ICE served Petitioner with a Notice to Appear (NTA), charging him
13 with inadmissibility and removability under sections 212(a)(6)(A)(i) of the Immigration and
14 Nationality Act. Ex. 3.

15 Petitioner’s first master calendar hearing was originally scheduled for August 12,
16 2025. Ex. 3. From August 12, 2025, to May 18, 2026, Petitioner requested seven delays to
17 obtain counsel and prepare resulting in about seven months of delay out of the total of nine
18 and half months of detention. Ex. 5 (EOIR adjournment history); Ex. 6 (case adjournment
19 codes)². The immigration judge granted one last delay to May 28, 2026, for the last master
20 calendar hearing at the request of Petitioner in order that he may determine whether he will
21 receive post-conviction relief. As a result, there is no administratively final removal order.
22 Therefore, Petitioner remains subject to mandatory detention under § 1226(c).

23 **III. ARGUMENT**

24 The Court should deny Petitioner’s habeas petition because he has not met his burden
25 of demonstrating that his detention under 8 U.S.C. § 1226(c) is unlawful under the Fifth
26

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

28 ² The explanations for these case adjournment codes can be found at
<https://www.justice.gov/eoir/policy-manual-eoir/part-VII/appendices/m>.

1 Amendment’s Due Process Clause. According to Petitioner, he seeks immediate release
2 from custody or a bond hearing because Respondents have held him since May 30, 2025.

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

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

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

1 “evidence suggest[ed] that permitting discretionary release of aliens pending their removal
2 hearings would lead to large numbers of deportable criminal aliens skipping their hearings
3 and remaining at large in the United States unlawfully.” *Id.* at 518–33.

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

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

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

11 Here, there is no dispute that Petitioner is subject to mandatory detention under
12 § 1226(c) due to his convictions. *See* ECF No. 1 at ¶¶ 27-28, 33. Because Petitioner is a
13 criminal noncitizen within the meaning of § 1226(c), his ongoing detention during the
14 pendency of his removal proceedings does not violate due process because it “necessarily
15 serves the purpose of preventing deportable criminal aliens [like him] from fleeing prior to
16 or during their removal proceedings, thus increasing the chance that, if ordered removed,
17 [he] will be successfully removed.” *Demore*, 538 U.S. at 528. And Petitioner has not
18 demonstrated that his detention has become “unreasonable or unjustified” such that his due
19 process rights have been violated. *See id.* at 532–33 (Kennedy, J. concurring). In this case,
20 there is no evidence presented, nor even a claim raised by Petitioner, that the government
21 has unreasonably delayed pursuing and completing his removal proceedings, or that it is
22 seeking to detain him for any reason other than seeking to protect the public and facilitate
23 his removal. *See id.* at 532–33.

24 Instead, Petitioner claims that he is entitled to immediate release or a bond hearing
25 because he has been in prolonged detention for several months., First, in *Demore*, the
26 Supreme Court did not embrace any bright-line period-of-time marker for when a noncitizen
27 under § 1226(c) may suffer a due process violation, and in fact, upheld the constitutionality
28 of the noncitizen’s detention even though it had passed six months and was likely to extend

1 longer. *See id.* at 532; *Jennings v. Rodriguez*, 583 U.S. 281, 312 (2018) (holding that nothing
2 in § 1225(b), § 1226(a), or § 1226(c) “imposes a 6–month time limit on detention without
3 the possibility of bail”); *Reid v. Donelan*, 17 F.4th 1, 7 (1st Cir. 2021) (“It requires no
4 reading of tea leaves to see that *Demore* is fatal to the claim here that every single person
5 detained for six months must be entitled to a bond hearing.”).

6 Second, the record indicates that all, but about two months of his detention is result
7 of delays requested by the Petitioner for additional time to obtain counsel, prepare his
8 application for relief, and seek collateral post-conviction relief. Third, the only delay
9 attributable to the Respondents is the initial few days to schedule the first master calendar
10 hearing as well as one delay request resulting, in total to less than two months of detention
11 attributable to Respondents. As such, these circumstances do not demonstrate unreasonable
12 or unjustified delays raising the question of “whether the detention is not to facilitate
13 deportation, or to protect against risk of flight or dangerousness, but to incarcerate for other
14 reasons.” *Demore*, 538 U.S. at 532–33.

15 Ninth Circuit caselaw post-*Jennings* further bolsters the assertion that Petitioner has
16 not established that his § 1226(c) detention violates due process. In *Fraihat v. Barr*, the
17 Ninth Circuit addressed a habeas petition brought by a noncitizen detained under § 1226(c)
18 for more than two years without a bond hearing. *See* 790 F. App’x 120, 120–22 (9th Cir.
19 2020). There, the Ninth Circuit rejected an argument that due process requires consideration
20 of the prolonged length of his detention. *See id.* at 121 (“*Fraihat* has not demonstrated that
21 the Constitution requires consideration of the length of his detention in this context[.]”).
22 The *Fraihat* court concluded that “although *Fraihat*’s immigration detention has been
23 prolonged, it has not been arbitrary or indefinite. To the contrary, it has been tied to his
24 removal proceedings.” *Id.* at 122. Here, as in *Fraihat*, Petitioner’s detention is not arbitrary
25 or indefinite. Rather, as in *Fraihat*, his continued detention has been tied solely to his
26 removal proceedings, not for any arbitrary or improper purpose, and his choice to appeal
27 the order to the Board of Immigration Appeals on November 24, 2025.

28 Under *Demore* and *Fraihat* (the two most prescient cases applicable to the due

1 process claim at issue here), Petitioner has not demonstrated that his detention under
2 § 1226(c) violates his due process rights. *See Demore*, 538 U.S. at 528, 530–33; *Fraihat*,
3 790 F. App’x at 122.

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

6 To the extent the Court disagrees that *Demore* supplies the framework for analyzing
7 Petitioner’s due process challenge and is inclined to apply a factor-based test, courts in this
8 district have applied the test in *Lopez v. Garland*, 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022),
9 to determine whether a petitioner’s mandatory detention has become unreasonable, and
10 thus, unconstitutionally prolonged. *See, e.g., Sanchez-Rivera*, No. 22-cv-1357-MMA-JLB,
11 2023 WL 139801 at *5 (S.D. Cal. Jan. 9, 2023) (“[W]hile the *Mathews* factors may be well-
12 suited to determining whether due process requires a second bond hearing, they are not
13 particularly dispositive of whether prolonged mandatory detention has become
14 unreasonable in a particular case.”); *Durand v. Allen*, No. 23-cv-00279-RBM-BGS, 2024
15 WL 711607, at *4 (S.D. Cal. Feb. 21, 2024) (“[T]he *Lopez* test is most applicable to due
16 process challenges raised by noncitizens detained under § 1226(c) seeking an initial bond
17 hearing.”). Under *Lopez*, to determine whether continued mandatory detention has become
18 unreasonable, “the Court will look to the total length of detention to date, the likely duration
19 of future detention, and the delays in the removal proceedings caused by the petitioner and
20 the government.” 631 F. Supp. 3d at 879.

21 Some Courts have applied the test in *Banda v. McAleenan*, which considers: (1) the
22 total length of detention to date; (2) the likely duration of future detention; (3) conditions of
23 detention; (4) delays in the removal proceedings caused by the detainee; (5) delays in the
24 removal proceedings caused by the government; and (6) the likelihood that the removal
25 proceedings will result in a final order of removal. *See* 385 F. Supp. 3d 1099, 1106 (W.D.
26 Wash. 2019). The *Lopez* test considers substantially similar factors, with the exception of
27 the conditions of detention factor. *See* 631 F. Supp. 3d at 879. Because conditions of
28 confinement claims are not cognizable in habeas, Respondents contend that the *Lopez* test

1 is more appropriate here. *See Zelaya-Gonzalez v. Matuszewski*, No. 23-cv-151-JLS-KSC,
2 2023 WL 3103811, at *3 (S.D. Cal. Apr. 25, 2023) (Claim alleging “unconstitutional
3 conditions of confinement, is not cognizable in habeas.”) (citing *Nettles v. Grounds*, 830
4 F.3d 922, 933 (9th Cir. 2016)).

5 Turning to the *Lopez* factors, none weigh in favor of finding a due process violation.
6 First, as to the length of detention, Petitioner has been detained for less than 10 months,
7 over seven of which are due to Petitioner’s continuances. “In general, as detention continues
8 past a year, courts become extremely wary of permitting continued custody absent a bond
9 hearing.” *Sibomana v. LaRose*, No. 22-cv-933-LL-NLS, 2023 WL 3028093, at *4 (S.D.
10 Cal. Apr. 20, 2023) (citation omitted); *see Sanchez-Rivera v. Matuszewski*,
11 No. 22-cv-1357-MMA-JLB, 2023 WL 139801, at *6 (S.D. Cal. Jan. 9, 2023) (detained for
12 three years); *Durand v. Allen*, 2024 WL 711607, at * (over two-and-a-half years); *Yagao v.*
13 *Figueroa*, No. 17-cv-2224-AJB-MDD, 2019 WL 1429582, at *2 (S.D. Cal. Mar. 29, 2019)
14 (two years). Petitioner’s detention falls short of the length these courts have found to raise
15 due process concerns.

16 Second, as to the likely duration of future detention, Petitioner has again requested a
17 delay of the proceedings which has delayed the proceeding to May 28, 2026.. While
18 Petitioner may pursue his legal remedies as he sees fit, he cannot in turn rely on the delays
19 attendant to his decisions to establish a due process violation. *See Demore*, 538 U.S. at 530
20 n. 14 (“As we have explained before, however, “the legal system . . . is replete with
21 situations requiring the making of difficult judgments as to which course to follow, and,
22 even in the criminal context, there is no constitutional prohibition against requiring parties
23 to make such choices.”) (citations omitted); *id.* at 530-31 (“Respondent was detained for
24 somewhat longer than the average [...] but respondent himself had requested a continuance
25 of his removal hearing.”); *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1210 (9th Cir. 2022)
26 (“Rodriguez Diaz in this case has not demonstrated that the fact of the review process
27 following its ordinary course itself created a due process violation.”). As Judge Bumatay
28 explained in his concurrence in *Martinez v. Clark*:

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

8 124 F.4th 775, 788 (9th Cir. 2024).

9 Third, as to the delays in the removal proceedings caused by Petitioner and the
10 government, there has been no unreasonable delay by Respondents, as discussed above.
11 Petitioner’s continuance requests, resulting in about eight months of delay, causes this factor
12 to weigh against the Petitioner.

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

24 IV. CONCLUSION

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

27 DATED: May 18, 2026

Respectfully submitted,

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s/ Michael D. Wallace

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