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9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 WILFREDO RODRIGUEZ-
12 HERNANDEZ,

13 Petitioner,
14

15 v.

16 CHRISTOPHER J. LAROSE, et al.,

17 Respondents.
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Case No.: 26-cv-3620-RSH-MMP

RESPONSE TO PETITION

20
21 **I. Introduction**

22 Petitioner has filed a second habeas petition under 28 U.S.C. § 2241. This
23 Petitioner is currently in removal proceedings under 8 U.S.C. § 1229a. Petitioner is
24 detained pursuant to 8 U.S.C. § 1226(c) as a result of his convictions for impaired driving
25 and assault to include Domestic Violence in the Presence of a Child involving
26 Strangulation or Choking in violation of Utah Criminal Code Section 76-4-114(2)(c).
27 Petitioner previously filed a petition with this Court, 26-cv-2222-RSH-MMP, through
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1 counsel alleging the same claims for relief including that his prolonged detention violated
2 due process. This Court denied relief on the merits on April 24, 2026, indicating the
3 petition was “unsupported by evidence, and does not provide legal authority establishing
4 that Petitioner” that Petitioner was entitled to relief. *Id.* at ECF No. 5. This Petition was
5 filed pro se on June 18, 2026, again through counsel, raising a vague due process
6 argument for prolonged detention and an improper 4th Amendment claim. Based on the
7 arguments set forth below, the Court should dismiss this petition as an abuse of the writ
8 and for failing to provide sufficient facts upon which this Court could rule or deny the
9 requests for relief and dismiss the petition.

10 **II. Factual Background¹**

11 The facts remain the same as at the time of the prior Petition with the exception
12 that an immigration judge ordered Petitioner removed to Mexico on June 4, 2026. Ex. 1
13 (IJ Order). Petitioner has until July 6, 2026, to appeal the removal order. There is not yet
14 an administratively final removal order. Petitioner has remained mandatorily detained
15 pursuant to 8 U.S.C. §1226(c) since his transfer to ICE custody from the Salt Lake County
16 Metro Jail on January 22, 2026. Ex. 2 (I-213).

17 **III. Argument**

18 **A. Petitioner raises no new challenges to his detention.**

19 The doctrine of abuse of the writ generally “forbids the reconsideration of claims
20 that were or could have been raised in a prior habeas petition.” *Calderon v. United States*
21 *Dist. Ct.*, 163 F.3d 530, 538 (9th Cir.1998) (*en banc*) (overruled in part on other grounds
22 by *Woodford v. Garceau*, 538 U.S. 202 (2003)). Under the abuse of the writ doctrine, a
23 successive petition must be dismissed unless the petitioner can show (1) cause for
24 bringing a successive petition and that prejudice would result or (2) that a fundamental
25 miscarriage of justice would result from failure to entertain the claim. *See McCleskey v.*

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

1 *Zant*, 499 U.S. 467, 494–95 (1991); *Sanders v. United States*, 373 U.S. 1, 15 (1963). The
2 government bears the burden of pleading abuse of the writ, *McCleskey*, 499 U.S. at 477.

3 After his prior petition was denied in Case No. 26-cv-2222-RSH-MMP, Petitioner
4 has now filed a new petition for writ of habeas corpus that doesn’t meaningfully address
5 his first Petition or provide an explanation for why these arguments weren’t addressed by
6 the Court in the first Petition. Because the arguments in instant Petition are the same as
7 raised in his first Petition, or, as addressed below, an improper habeas claim, and because
8 Petitioner already received a decision on the merits, Respondents contend the instant
9 Petition runs afoul of the abuse of the writ doctrine. The Court should dismiss this Petition
10 as an abuse of the writ

11 **B. Petitioner Fails to Plead Sufficient Information**

12 The Constitution limits federal judicial power to designated “cases” and
13 “controversies.” U.S. Const., art. III, § 2; *see also SEC v. Med. Comm. for Human Rights*,
14 404 U.S. 403, 407 (1972) (federal courts may only entertain matters that present a “case”
15 or “controversy” within the meaning of Article III). “Absent a real and immediate threat
16 of future injury there can be no case or controversy, and thus no Article III standing for
17 a party seeking injunctive relief.” *Wilson v. Brown*, No. 05-cv-1774-BAS-MDD, 2015
18 WL 8515412, at *3 (S.D. Cal. Dec. 11, 2015) (citing *Friends of the Earth, Inc. v. Laidlaw*
19 *Env’tl. Servs. (TOC), Inc.*, 528 U.S. 167, 190 (2000) (“[I]n a lawsuit brought to force
20 compliance, it is the plaintiff’s burden to establish standing by demonstrating that, if
21 unchecked by the litigation, the defendant’s allegedly wrongful behavior will likely occur
22 or continue, and that the threatened injury is certainly impending.”) (simplified)). At the
23 “irreducible constitutional minimum,” standing requires that a petitioner demonstrate the
24 following: (1) an injury in fact (2) that is fairly traceable to the challenged action of the
25 United States and (3) likely to be redressed by a favorable decision. *Lujan v. Defenders*
26 *of Wildlife*, 504 U.S. 555, 560–61 (1992).

Moreover, an individual may seek habeas relief under 28 U.S.C. § 2241 if he is “in custody” under federal authority “in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(c). But habeas relief is available to challenge only the legality or duration of confinement. *Pinson v. Carvajal*, 69 F.4th 1059, 1067 (9th Cir. 2023); *Crawford v. Bell*, 599 F.2d 890, 891 (9th Cir. 1979); *Dep’t of Homeland Security v. Thraissigiam*, 591 U.S. 103, 117 (2020) (The writ of habeas corpus historically “provide[s] a means of contesting the lawfulness of restraint and securing release.”). The Ninth Circuit squarely explained how to decide whether a claim sounds in habeas jurisdiction: “[O]ur review of the history and purpose of habeas leads us to conclude the relevant question is whether, based on the allegations in the petition, release is *legally required* irrespective of the relief requested.” *Pinson*, 69 F.4th at 1072 (emphasis in original); *see also Nettles v. Grounds*, 830 F.3d 922, 934 (9th Cir. 2016) (The key inquiry is whether success on the petitioner’s claim would “necessarily lead to immediate or speedier release.”); *Guselnikov v. Noem*, No. 25-cv-1971-BTM-KSC, 2025 WL 2300873, at *1 (S.D. Cal. Aug. 8, 2025) (finding petitioners’ claims did not arise under § 2241 because they were not arguing they were unlawfully in custody and receiving the requested relief would not entitle them to release); *Giron Rodas v. Lyons*, No. 25cv1912-LL-AHG, 2025 WL 2300781, at *3 (S.D. Cal. Aug. 1, 2025) (“Like in *Pinson*, the Court lacks jurisdiction over Petitioner’s § 2241 habeas petition since it cannot be fairly read as attacking ‘the legality or duration of confinement.’”) (quoting *Pinson*, 69 F.4th at 1065).

Moreover, the Supreme Court has held that “[h]abeas Corpus Rule 2(c) is more demanding [than Federal Rule of Civil Procedure 8(a)]. It provides that the petition must ‘specify all the grounds for relief available to the petitioner’ and ‘state the facts supporting each ground.’” *Mayle v. Felix*, 545 U.S. 644, 655 (2005) (citing Rules Governing Section 2254 Cases in the United States District Court (“Federal Habeas Rules”)); *see also James v. Borg*, 24 F.3d 20, 26 (9th Cir. 1994) (“Conclusory allegations which are not supported by a statement of specific facts do not warrant habeas relief.”). As stated by the Advisory

1 Committee’s Note on Habeas Corpus Rule 4, 28 U.S.C., p. 471, “notice pleading is not
2 sufficient, for the petition is expected to state facts that point to a real possibility of
3 constitutional error.”) (internal quotation marks omitted).

4 Here, Petitioner vaguely raises a claim under the 5th amendment in the Prayer for
5 Relief section of his petition but fails to provide any legal support for relief, any facts to
6 support his argument for that relief, and fails to address the statute mandating his
7 detention or the caselaw related to 8 U.S.C. §1226(c). Petitioner’s habeas petition fails to
8 supply sufficient information for specify any ground for relief or the Court to adjudicate
9 his claim. As such, the Court should deny the petition. *See Alonso Velasquez v. LaRose*,
10 No. 25-cv-3216-JES-AHG, 2025 WL 3473773 (S.D. Cal. Dec. 3, 2025) (dismissing
11 without prejudice habeas petition that failed to allege sufficient factual information).

12 **C. Petitioner is lawfully detained.**

13 The Court should deny Petitioner’s habeas petition because he has not met his
14 burden of demonstrating that his detention under 8 U.S.C. § 1226(c) is unlawful under
15 the Fifth Amendment’s Due Process Clause. According to Petitioner, he seeks immediate
16 release from custody or a bond hearing because Respondents have held him since May
17 30, 2025.

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

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

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

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

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

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

4 Here, there is no dispute that Petitioner is subject to mandatory detention under
5 § 1226(c) due to his arrest. Because Petitioner is a criminal noncitizen within the meaning
6 of § 1226(c), his ongoing detention during the pendency of his removal proceedings does
7 not violate due process because it “necessarily serves the purpose of preventing
8 deportable criminal aliens [like him] from fleeing prior to or during their removal
9 proceedings, thus increasing the chance that, if ordered removed, [he] will be successfully
10 removed.” *Demore*, 538 U.S. at 528. And Petitioner has not demonstrated that his
11 detention has become “unreasonable or unjustified” such that his due process rights have
12 been violated. *See id.* at 532–33 (Kennedy, J. concurring). In this case, there is no
13 evidence presented, nor even a claim raised by Petitioner, that the government has
14 unreasonably delayed pursuing and completing his removal proceedings, or that it is
15 seeking to detain him for any reason other than seeking to protect the public and facilitate
16 his removal. *See id.* at 532–33.

17 Instead, Petitioner claims that he is entitled to immediate release or a bond hearing
18 because he has been detained for several months without providing any support for why
19 this detention amounts to unlawful detention. First, in *Demore*, the Supreme Court did
20 not embrace any bright-line period-of-time marker for when a noncitizen under § 1226(c)
21 may suffer a due process violation, and in fact, upheld the constitutionality of the
22 noncitizen’s detention even though it had passed six months and was likely to extend
23 longer. *See id.* at 532; *Jennings v. Rodriguez*, 583 U.S. 281, 312 (2018) (holding that
24 nothing in § 1225(b), § 1226(a), or § 1226(c) “imposes a 6–month time limit on detention
25 without the possibility of bail”); *Reid v. Donelan*, 17 F.4th 1, 7 (1st Cir. 2021) (“It requires
26 no reading of tea leaves to see that *Demore* is fatal to the claim here that every single
27 person detained for six months must be entitled to a bond hearing.”). Here, Petitioner has
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1 been detained just over five months since January 22, 2026.

2 Second, the record does not indicate unreasonable delay on either party such that
3 the immigration court completed its proceedings in a little over four months. Ex. 1.
4 Petitioner is also mere days from a final order of removal. As such, these circumstances
5 do not demonstrate unreasonable or unjustified delays raising the question of “whether
6 the detention is not to facilitate deportation, or to protect against risk of flight or
7 dangerousness, but to incarcerate for other reasons.” *Demore*, 538 U.S. at 532–33.

8 Ninth Circuit caselaw post-*Jennings* further bolsters the assertion that Petitioner
9 has not established that his § 1226(c) detention violates due process. In *Fraihat v. Barr*,
10 the Ninth Circuit addressed a habeas petition brought by a noncitizen detained under §
11 1226(c) for more than two years without a bond hearing. *See* 790 F. App’x 120, 120–22
12 (9th Cir. 2020). There, the Ninth Circuit rejected an argument that due process requires
13 consideration of the prolonged length of his detention. *See id.* at 121 (“Fraihat has not
14 demonstrated that the Constitution requires consideration of the length of his detention in
15 this context[.]”). The *Fraihat* court concluded that “although Fraihat’s immigration
16 detention has been prolonged, it has not been arbitrary or indefinite. To the contrary, it
17 has been tied to his removal proceedings.” *Id.* at 122. Here, as in *Fraihat*, Petitioner’s
18 detention is not arbitrary or indefinite. Rather, as in *Fraihat*, his continued detention has
19 been tied solely to his removal proceedings, not for any arbitrary or improper purpose,
20 and his choice to appeal the order to the Board of Immigration Appeals on November 24,
21 2025.

22 Under *Demore* and *Fraihat* (the two most prescient cases applicable to the due
23 process claim at issue here), Petitioner has not demonstrated that his detention under
24 § 1226(c) violates his due process rights. *See Demore*, 538 U.S. at 528, 530–33; *Fraihat*,
25 790 F. App’x at 122.

26 **2. Petitioner Has Not Established a Due Process Violation Under the Factor-**
27 **Based Test.**

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

17 Some Courts have applied the test in *Banda v. McAleenan*, which considers: (1)
18 the total length of detention to date; (2) the likely duration of future detention; (3)
19 conditions of detention; (4) delays in the removal proceedings caused by the detainee; (5)
20 delays in the removal proceedings caused by the government; and (6) the likelihood that
21 the removal proceedings will result in a final order of removal. *See* 385 F. Supp. 3d 1099,
22 1106 (W.D. Wash. 2019). The *Lopez* test considers substantially similar factors, with the
23 exception of the conditions of detention factor. *See* 631 F. Supp. 3d at 879. Because
24 conditions of confinement claims are not cognizable in habeas, Respondents contend that
25 the *Lopez* test is more appropriate here. *See Zelaya-Gonzalez v. Matuszewski*, No. 23-cv-
26 151-JLS-KSC, 2023 WL 3103811, at *3 (S.D. Cal. Apr. 25, 2023) (Claim alleging
27 "unconstitutional conditions of confinement, is not cognizable in habeas.") (citing *Nettles*
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1 *v. Grounds*, 830 F.3d 922, 933 (9th Cir. 2016)).

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

13 Second, as to the likely duration of future detention, Petitioner is mere days away
14 from a final order on July 6, 2026. Should Petitioner file an appeal of his removal order
15 which he does not raise in his petition, any delay in the proceedings should weigh against
16 Petitioner. While Petitioner may pursue his legal remedies as he sees fit, he cannot in turn
17 rely on the delays attendant to his decisions to establish a due process violation. *See*
18 *Demore*, 538 U.S. at 530 n. 14 (“As we have explained before, however, “the legal system
19 . . . is replete with situations requiring the making of difficult judgments as to which
20 course to follow, and, even in the criminal context, there is no constitutional prohibition
21 against requiring parties to make such choices.”) (citations omitted); *id.* at 530-31
22 (“Respondent was detained for somewhat longer than the average [...] but respondent
23 himself had requested a continuance of his removal hearing.”); *Rodriguez Diaz v.*
24 *Garland*, 53 F.4th 1189, 1210 (9th Cir. 2022) (“Rodriguez Diaz in this case has not
25 demonstrated that the fact of the review process following its ordinary course itself
26 created a due process violation.”). As Judge Bumatay explained in his concurrence in
27 *Martinez v. Clark*:

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

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

10 Third, as to the delays in the removal proceedings caused by Petitioner and the
11 government, there has been no unreasonable delay by either party to this point. While not
12 a *Lopez* factor, with the issuance of the removal order and his criminal history, Petitioner
13 is unlikely to be successful in his asylum claim.

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

25 **D. Fourth Amendment Claims Fail**

26 To the extent Petitioner asserts claims under the Fourth Amendment, he fails to
27 explain why release is the remedy for such alleged violations. *United States v. Crews*,
28 445 U.S. 463, 474 (1980) (noting, in the criminal context, that Fourth Amendment’s
“exclusionary principle” “delimits what proof the Government may offer against the

1 accused at trial, closing the courtroom door to evidence secured by official lawlessness,”
2 but an individual “is not himself a suppressible ‘fruit’”); *Cruz v. Barr*, 926 F.3d 1128,
3 1146 (9th Cir. 2019) (releasing petitioner on Fourth Amendment grounds because fruits
4 of the regulatory violation were the only evidence of petitioner’s alienage).

5 Moreover, Fourth Amendment claims related to alienage “belong in front of an
6 Immigration Judge, not a federal district court.” See *Marvan v. Slaughter*, No. CV 25-49-
7 H-DLC, 2025 WL 1940043, at *3 (D. Mont. July 15, 2025) (denying habeas petition
8 challenging detention based on Fourth Amendment violations for lack of subject matter
9 jurisdiction). Petitioner cannot simply “bypass the immigration courts and proceed
10 directly to district court. Instead, [he] must exhaust the administrative process before [he]
11 can access the federal courts.” *Id.* at *4 (quoting *J.E.F.M.*, 837 F.3d at 1029). To the
12 extent Petitioner desires to bring such claims, this district court does not have jurisdiction.
13 Under 8 U.S.C. § 1252(b)(9), “[j]udicial review of all questions of law and fact . . . arising
14 from any action taken or proceeding brought to remove an alien from the United States
15 under this subchapter shall be available only in judicial review of a final order under this
16 section.” Further, judicial review of a final order is available only through “a petition for
17 review filed with an appropriate court of appeals.” 8 U.S.C. § 1252(a)(5).

18 IV. CONCLUSION

19 For the reasons stated herein, Respondents respectfully request that the Court deny
20 the Petitioner’s requests for relief on the merits.
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23 DATED: June 30, 2026

ADAM GORDON
United States Attorney

24
25 s/ Michael D. Wallace
MICHAEL D. WALLACE
26 Assistant United States Attorney
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