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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DANIEL DIAZ LOPEZ,

Petitioner,

v.

WARDEN OF MESA VERDE DETENTION
FACILITY ET AL.,

Respondents.

CASE NO. 1:26-CV-05061-JLT-FJS

**MOTION TO DISMISS; ANSWER AND
OPPOSITION TO HABEAS PETITION;
OPPOSITION TO ALL RELIEF**

I. INTRODUCTION

Respondent waives any hearing and are amenable to the Court ruling on the underlying petition for writ of habeas corpus ("Petition") without further briefing.

Petitioner is subject to mandatory detention under 8 USC § 1226(c)(1)(A), and alternatively, subject to mandatory detention pursuant to 8 USC 1225(b)(2)(A).

II. BACKGROUND

Petitioner, an arriving alien, is a native and citizen of Mexico who was paroled into the United States on December 11, 2023, at San Ysidro, California, for criminal prosecution. Exhibit 1. He was served with a Notice to Appear charged with 8 USC § 1182(a)(7)(A)(i). On December 17, 2025, he was encountered by ICE ERO officers at Folsom State Prison where he was serving a sentence of 4 years and 8 months in prison for violation Cal. Pen. Code § 273a(A), Cause Injury/Health Endangerment and Cal.

1 Pen. Code § 69, Obstruct/Resist Executive Officer, and released into ICE's custody. Exhibits 2-3. He
2 has the following criminal convictions and sentences: April 13, 2005, conviction for two counts of Cal.
3 Pen. Code 272(a)(1)(contributing to delinquency of minor) and one count of Cal. Pen. Code § 484/488
4 (petty theft), and sentenced to 10 days in jail; August 4, 2005, conviction for Cal. Pen. Code § 496(a),
5 Receiving Known Stolen Property, and sentenced to 8 months in jail; October 24, 2012, conviction for
6 Cal. Pen. Code § 273a(b), Willful Cruelty to Child, and Cal. Pen. Code 273.6(b), violating a domestic
7 court order resulting in physical injury, and sentenced to 45 days in jail; July 8, 2014, conviction for
8 DUI and Driving without a License, sentenced to 4 days in jail; May 10, 2018, conviction for Cal. Pen.
9 Code 243(e)(1), Domestic Battery, and sentenced to 60 days in jail; October 31, 2024, Cal. Pen. Code
10 273a(a) Child Abuse with Possible Great Bodily Injury/Death, and Cal. Pen. Code 69,
11 Obstructing/Resisting Executive Officer, and sentenced to 4 years and 8 months in prison. Exhibit 4.
12 According to ICE, Petitioner has not had or requested a *Joseph* hearing to date. Petitioner's individual
13 (trial) hearing in immigration court is currently scheduled for August 14, 2026. Exhibit 5.

14 III. LEGAL STANDARD

15 Federal courts have authority to grant writs of habeas corpus to any person held "in custody in
16 violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3). Habeas
17 corpus "entitles [a] prisoner to a meaningful opportunity to demonstrate that he is being held pursuant to
18 'the erroneous application or interpretation' of relevant law." *Boumediene v. Bush*, 553 U.S. 723, 779
19 (2008) (quoting *INS v. St. Cyr*, 533 U.S. 289, 302 (2001)). "The essence of habeas corpus is an attack by
20 a person in custody upon the legality of that custody," and thus to warrant relief, a petitioner must
21 demonstrate that his detention is unlawful. *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973); see *Lambert*
22 *v. Blodgett*, 393 F.3d 943, 969 n.16 (9th Cir. 2004) ("In state collateral litigation, as well as federal
23 habeas proceedings, it is the petitioner who bears the burden of proving his case."); see also *Davis v.*
24 *Woodford*, 384 F.3d 628, 638 (9th Cir. 2004) ("petitioner carries the burden of proving by a
25 preponderance of the evidence that he is entitled to habeas relief" when challenging incarceration by the
26 state under 28 U.S.C. § 2254).

27 IV. ARGUMENT

28 The government submits that Petitioner is subject to mandatory detention under 8 USC

1 § 1226(c)(1)(A), or alternatively, under 8 U.S.C. § 8 U.S.C. § 1225(b)(2)(A). As such, the Court should
2 find Petitioner cannot succeed on the merits of his habeas claim and should deny habeas relief. The
3 government did not violate any statute, regulation, or the constitution by arresting Petitioner for his
4 immigration violations and detaining him for the pendency of his lawful removal proceedings.

5 **Mandatory Detention pursuant to 8 U.S.C. § 1226(c)**

6 Petitioner is subject to detention under 8 U.S.C. § 1226(c)(1)(A) as he is inadmissible by having
7 committed the requisite offenses and sentences pursuant 8 USC § 1182(a)(2)(B). An alien convicted of 2
8 or more offenses (other than purely political offenses), regardless of whether the conviction was in a
9 single trial or whether the offenses arouse from a single scheme of misconduct and regardless of whether
10 the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or
11 more is inadmissible. 8 USC § 1182(a)(2)(B). All of Petitioner's sentences total more than 5 years in
12 custody. *See* Exhibits 3-4.

13 Noncitizens detained under § 1226(c) have no statutory right to bond hearings. *See Jennings v.*
14 *Rodriguez*, 583 U.S. 281, (2018). As the Court is aware, the United States Supreme Court noted in
15 *Jennings v. Rodriguez*, 583 U.S. 281, 289 n.1 (2018), that anyone who believes that he is not covered by
16 § 1226(c) can ask for what is known as a *Joseph* hearing pursuant to *Matter of Joseph*, 22 I. & N. Dec.
17 799 (BIA 1999). Noncitizens “who deny that they satisfy any § 1226(c) predicate may challenge their
18 mandatory detention in a *Joseph* hearing” in immigration court. *See also Nielsen v. Preap*, 586 U.S. 392,
19 418 n.8 (2019); 8 C.F.R. § 1003.19(h)(2)(ii). At a *Joseph* hearing, “the detainee may avoid mandatory
20 detention by demonstrating that he is not an alien, was not convicted of the predicate crime, or that the
21 INS is otherwise substantially unlikely to establish that he is in fact subject to mandatory detention.”
22 *Demore v. Kim*, 538 U.S. 510, 514, n. 3, 123 S.Ct. 1708 (2003).

23 According to ICE, Petitioner has not requested or had a *Joseph* hearing to date. Petitioner is
24 required to exhaust administrative remedies by seeking and obtaining a *Joseph* hearing. He has not
25 demonstrated any reasons why prudential exhaustion should be excused pursuant to *Puga v. Chertoff*,
26 488 F.3d 812, 815 (9th Cir. 2007). Further, notwithstanding Petitioner's declaration on bond outcomes
27 and amounts, even if administrative exhaustion should be excused pursuant to *Puga*, he has not
28

1 demonstrated any other exceptions to the general rule requiring exhaustion pursuant to *Laing v.*
2 *Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004).

3 No immigration judge has yet addressed Petitioner's detention under § 1226(c), which is the
4 proper recourse. *See Smith v. Berryhill*, 587 U.S. 471, 488 (2019) ("Fundamental principles of
5 administrative law ... teach that a federal court generally goes astray if it decides a question that has been
6 delegated to an agency if that agency has not first had a chance to address the question.").

7 In an analogous case, *Gutierrez-Guerra v. Warden*, No. 1:26-cv-02545, 2026 WL 1745492 at *3
8 (E.D. Jun. 17, 2026)(findings and recommendations), the magistrate judge recommended dismissal of a
9 habeas petition and rejected the due process argument:

10
11 The crux of Petitioner's due process claim here is that Respondent has denied him the protections
12 he is entitled to under 8 U.S.C. § 1226(a). To reach this question, the undersigned would
13 necessarily have to determine whether he is subject to § 1226(c)(1)(A) via the controlled
substances traffickers provisions at § 1182(a)(2)(C). *See Jennings*, 583 U.S. at 289 (noting that §
1226(c) "carves out a statutory category of [noncitizens] who may *not* be released under View
more Negative Treatments § 1226(a).") (emphasis in original).

14 The undersigned ultimately agrees with Judge Drozd's TRO ruling that the prudential exhaustion
15 requirement should not be waived as to Petitioner's contention that § 1226(a) serves as the basis
16 for his detention. The need for agency development of the factual record is particularly strong
17 here given the complexity of § 1182(a)(2)(C). Unlike other provisions triggering mandatory
18 detention under § 1226(c) (e.g., 8 U.S.C. § 1227(a)(2)), 8 U.S.C. § 1182(a)(2)(C) turns not on
19 criminal conviction but on whether the government "knows or has reason to know" the
20 noncitizen has engaged in or benefitted from trafficking of controlled substances. 8 U.S.C. §
1182(a)(2)(C)(i)-(ii). The immigration court and BIA are best positioned "to generate a proper
21 record and reach a proper decision" as to these factual inquiries. *Puga*, 488 F.3d at 815; *see also*
22 *Cruz v. Sessions*, No. 18-CV-06215-LHK, 2018 WL 6047287, at *5 (N.D. Cal. Nov. 18, 2018)
23 (declining to waive the petitioner's failure to exhaust where "the question of whether Petitioner's
24 conviction is [subject to § 1182(a)(2)] is best decided by the BIA in the first instance.").

25 In *Buckley v. Chestnut*, No. 1:26-cv-02624-DAD-JDP, 2026 WL 1030931 at *4 (E.D. Cal. Apr.
26 15, 2026), a 1226(c) mandatory detention case, the alien requested a *Joseph* hearing, withdrew that
27 request believing that such a hearing would be futile, and subsequently renewed the request for a
28 hearing. Although the district court granted relief on other grounds, the district court found the alien did
not exhaust administrative remedies before the immigration judge and by pursuing appeal to the BIA
and found that the prudential exhaustion requirement should not be waived as to his contention that
1226(c) cannot serve as a basis for his detention. *Id.*

1 In *Martinez v. Warden, Golden State Annex*, No. 1:26-cv-2998-DAD-CSK, 2026 WL 1398848
2 (E.D. Cal. May 19, 2026), the Court dismissed a habeas petition in a 1226(c) case where alien failed to
3 seek *Joseph* hearing and did not exhaust administrative remedies. *See also e.g. Roudy Dorcilhomme v.*
4 *Pamela Bondi*, No. 3:26-cv-00663, 2026 WL 1998736 at *2 (W.D. Penn. Jul. 10, 2026)(“Because
5 Petitioner has not requested a *Joseph* hearing or otherwise shown that the *Joseph* process is unavailable,
6 unreasonably delayed, or inadequate, the Court will not resolve this Section 1226(c) classification here.
7 Petitioner may present a classification challenge to an immigration judge through the available *Joseph*
8 procedure and may renew his habeas petition if that process proves unavailable, unreasonably delayed,
9 or inadequate.”)

10 As such, Petitioner is currently detained pursuant to 8 U.S.C. § 1226(c) while is removal
11 proceedings are pending. This is not a case where detention is indefinite. Rather, “detention under
12 § 1226(c) has a definite termination point: the conclusion of removal proceedings.” *Jennings v.*
13 *Rodriguez*, 583 U.S. 281, 304 (2018) (quotation marks omitted). The Supreme Court has upheld
14 mandatory detention under Section 1226(c) as facially constitutional. *Demore v. Kim*, 538 U.S. at 531
15 (“Detention during removal proceedings is a constitutionally permissible part of that process.”) The
16 Supreme Court stated that “Congress, justifiably concerned that deportable criminal aliens who are not
17 detained continue to engage in crime and fail to appear for their removal hearings in large numbers, may
18 require that persons such as [the lawful permanent resident at issue in *Demore*] be detained for the brief
19 period necessary for their removal proceedings.” *Id.* at 513. It observed that Congress enacted
20 Section 1226(c) to curb the risk of flight by deportable criminal noncitizens

21 Congress has determined that there is no liberty interest in remaining out of custody when the
22 mandatory detention provision of Section 1226(c) applies. In *Singh v. Warden of California City*
23 *Detention Facility*, 1:25-cv-01862-DJC-EFB, 2026 WL 457119 (E.D. Cal. Feb. 18, 2026), the Court
24 rejected the due process arguments of the alien, held under 1226(c).

25 The Court in *Singh* stated,

26 “Petitioner argues in the alternative that a detention longer than six months is presumptively
27 unreasonable or that, absent this bright-line rule, his detention has been so lengthy as to violate
28 his due process rights. ECF No. 1 at 8-13. Petitioner’s first argument fails as a matter of law and
fact. In *Jennings v. Rodriguez*, 583 U.S. 281, 304 (2018), the Supreme Court rejected a similar
argument, that detention under § 1226(c) contained an implicit “time limit devised by courts,”

because the section intrinsically limited detention to “‘a definite termination point’: the conclusion of removal proceedings.” *Jennings*, 583 U.S. at 304 (quoting *Demore*, 538 U.S. at 529). The Court specifically rejected the Court of Appeals’ interpretation of 8 U.S.C. § 1226(c) that included “an implicit 6-month time limit on the length of mandatory detention.” *Id.* Petitioner’s alternative argument also fails to persuade. There is limited legal authority for petitioner’s position that, as a matter of law, there is a temporal point at which a detention under section 1226(c) becomes so lengthy as to violate due process. *See generally Jennings*, 583 U.S. at 304; *see also Gonzalez v. Bonnar*, No. 18-cv-05321-JSC, 2019 WL 330906, at *3 (N.D. Cal. Jan. 25, 2019) (observing that, since *Jennings*, there has been “a dearth of guidance regarding the point at which an individual’s continued mandatory detention under Section 1226(c) becomes unconstitutional”); *Martinez v. Clark*, 36 F.4th 1219, 1223 (9th Cir. 2022) (“Whether due process requires a bond hearing for aliens detained under § 1226(c) is not before us today. And we take no position on that question.”), *vacated and remanded on other grounds*, 144 S. Ct. 1339 (2024); *Avilez v. Garland*, 69 F.4th 525, 538 (9th Cir. 2023) (declining to reach question of whether due process required a bond hearing for noncitizen detained under § 1226(c) and remanding to district court for consideration of due process claim)

Singh v. Warden of California City Det. Facility, No. 1:25-CV-01862-DJC-EFB, 2026 WL 457119, at *4-5 (E.D. Cal. Feb. 18, 2026)

Here, Petitioner has only been detained for a little more than seven months and is detained during his removal proceedings to protect the public and mitigate flight risk. Considering the individual facts in this case, Petitioner’s detention is constitutional. Petitioner’s detention is not unduly prolonged unlike *Garcia v. Warden of Golden State Annex Detention Facility*, No. 1:26-cv-1386-DC-AC, 2026 WL 981170 at *4 (E.D. Cal. April 13, 2026)(alien detained three years without being considered for bond in the past 29 months); *Rene Alexander Estrada Marroquin v. Chestnut*, No. 1:25-cv-01798-EPG-HC, 2026 WL 629695 (E.D. Cal. March 6, 2026), where an alien held under § 1226(c) for two years and seven months without a bond hearing was granted habeas relief (bond hearing before an immigration judge). Further, “the Ninth Circuit has upheld detention that lasted forty-one months and would continue while the petitioner’s petition for review was pending in the Ninth Circuit.” *Espinoza v. Wofford*, No. 1:24-cv-01118-SAB-HC, 2025 WL 1556590 (E.D. Cal. Jun. 2, 2025), at *10 (citing *Prieto-Romero v. Clark*, 534 F.3d 1053 (9th Cir. 2008)).

Mandatory Detention under 8 USC § 1225(b)(2)

Petitioner is thus an “applicant for admission” who is subject to mandatory detention by ICE under 8 U.S.C. § 1225(b)(2). *Joaquin Herrera Avila v. Bondi*, No. 25-3741 (8th Cir. March 25, 2026); *Buenrostro-Mendez v. Bondi*, No. 25-20496, 2026 WL 323330, at *1 (5th Cir. Feb. 6, 2026); *see also*

1 *Cortes Alonzo v. Noem*, 1:25-cv-01519-WBS-SCR at Dkt. 14 (E.D. Cal. Nov. 17, 2025).

2 An “alien who ‘arrives in the United States,’ or ‘is present’ in this country but ‘has not been
3 admitted,’ is treated as ‘an applicant for admission.’” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018)
4 (quoting 8 U.S.C. § 1225(a)(1)). As an applicant for admission, petitioner is subject to mandatory
5 detention and thus ineligible for a bond hearing. Petitioner does not possess a right to freedom from
6 immigration detention in any form other than the form provided by Congress. *Shaughnessy v. United*
7 *States ex rel. Mezei*, 345 U.S. 206, 212 (1953), *reaffirmed in DHS v. Thuraissigiam*, 591 U.S. 103, 139
8 (2020).

9 **V. CONCLUSION**

10 For the foregoing reasons, the government respectfully requests that the Court dismiss or deny
11 the habeas petition and all requested relief.

12 Dated: July 22, 2026

ERIC GRANT
United States Attorney

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15 By: /s/ Anthony Andrews
16 ANTHONY ANDREWS
Assistant United States Attorney
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CERTIFICATE OF SERVICE BY MAIL

The undersigned hereby certifies that I am an employee in the Office of the United States Attorney for the Eastern District of California and is a person of such age and discretion to be competent to serve papers. I am the record attorney for Respondents. That on July 22, 2026, I prepared the **Motion to Dismiss; Answer and Opposition to Habeas Petition; Opposition to All Relief** and accompany exhibits, for mailing and gave it to a member of the U.S. Attorney support staff who subsequently placed in a postpaid envelope addressed to the person hereinafter named, at the place and address stated below, which is the last known address, and by depositing said envelope and contents in the United States Mail at Sacramento, California. Addressee:

Daniel Diaz Lopez

**Mesa Verde Detention Facility
425 Golden State Ave
Bakersfield, CA 93301**

/s/ Anthony Andrews
ANTHONY ANDREWS
Assistant United States Attorney