

ERIC GRANT
United States Attorney
ELISA M. RODRIGUEZ
Assistant United States Attorney
2500 Tulare Street, Suite 4401
Fresno, CA 93721
Telephone: (559) 497-4000
Facsimile: (559) 497-4099

Attorneys for Respondent

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ROMULA HERNANDEZ RUBIO,


Petitioner,

v.

TONYA ANDREWS,

Respondent.

No. 1:26-CV-05090-TLN-AC

**OPPOSITION TO PETITION FOR
WRIT OF HABEAS CORPUS AND
ALL INJUNCTIVE RELIEF**

I. INTRODUCTION

Petitioner is a felon convicted of armed robbery, aggravated assault with a deadly weapon, petit theft, and battery. Because of his crimes, Petitioner's detention is mandated under 8 U.S.C. § 1226(c) and the Laken Riley Act. Petitioner has not sought relief through the immigration courts and provides insufficient justification for circumventing the administrative forum and demanding intervention by this Court. Petitioner's habeas petition and all injunctive relief must be denied.

II. BACKGROUND

Petitioner is a native and citizen of Mexico who entered the United States without admission or parole at an unknown place, on an unknown date. Exhibit A (Notice to Appear).¹ On January 12, 2026,

¹ Respondents respectfully request that the Court take judicial notice of the attached exhibits pursuant to Federal Rule of Evidence 201(b)(2), because their contents "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." *See also, e.g., Dent v. Holder*, 627 F.3d 365, 371 (9th Cir. 2010) (taking judicial notice of documents in an alien's "A-file" on the basis that "they are official agency records"); *Da Cunha v. Freden*, 2025 WL

Petitioner was convicted in Florida of armed robbery, aggravated assault with a deadly weapon, petit theft, battery and credited for time served. Exhibit B (criminal conviction records). Petitioner came to DHS's attention as a result of these convictions. Exhibit C (I-213). According to Petitioner, he was detained by immigration authorities on April 28, 2026, after serving six months of his sentence. Exhibit A. Because of Petitioner's criminal conviction, he is subject to mandatory detention under 8 U.S.C. § 1226(c).

III. ARGUMENT

A. The Laken Riley Act (LRA)

In January 2025, the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025) was enacted. It amends 8 U.S.C. § 1226(c) to require that aliens who are present in the country without having been admitted must be detained by the federal government (the "Government") immediately upon their release from custody by state or local officials if they have committed certain state crimes. Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3, 3 (2025). Additionally, it "expand[ed] the category of covered crimes, and to require the detention not only of those who have been convicted of any of the newly added crimes but also of anyone who has been accused of one." *Black v. Almodovar*, 156 F.4th 171, 181 (2d Cir. 2025) (Nardini, J., Dissenting).

"As the legislative history of the Laken Riley Act makes clear, many members of Congress 'thought it necessary' to enact a new law mandating detention in more circumstances because of their perception that the Executive Branch had failed to enforce the detention options that were already available to it. *Chen v. Almodovar*, No. 1:25-CV-8350-MKV, 2025 WL 3484855, at *6 (S.D.N.Y. Dec. 4, 2025).

Importantly, the Laken Riley Act amendments to 8 U.S.C. § 1226(c) are not punitive, nor do they take away any substantive or procedural constitutional right. The amendments merely mandate the detention of illegally present aliens who are charged with, is arrested for, convicted of, admits to having committed, or admits to committing acts which constitute the essential elements of any burglary, theft,

3280575, at *2 (W.D.N.Y. Nov. 25, 2025) (taking judicial notice of an alien's Form I-213). *Reyn's Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006) ("We may take judicial notice of court filings and other matters of public record.").

larceny, shoplifting, assault of a law enforcement officer, or any crime that results in death or serious bodily injury to another person, during the pendency of their removal proceedings. *See* 8 U.S.C. § 1226(c)(1)(E). It makes no difference if the crime occurred before the act was signed into law. *See* 171 Cong. Rec. S83-08, 171 Cong. Rec. S83-08, S85 (describing the critical components of the Laken Riley Act as (1) the unlawful entry of the alien and (2) the commission of a crime after illegally entering the country, even if released by immigration authorities).

B. Petitioner's Detention is Constitutional and Mandatory Under 8 U.S.C. § 1226(c)

Here, Petitioner's detention is mandatory under 8 U.S.C. § 1226(c)(1)(E). This subsection states that "[t]he Attorney General shall take into custody any alien who... (i) is inadmissible under paragraph (6)(A)... of section 1182(a) of this title; and (ii) is charged with, is arrested for, *is convicted of*, admits having committed, or admits committing acts which constitute the essential elements of any burglary, *theft*, larceny, shoplifting, or assault of a law enforcement officer offense, or any crime that results in death or serious bodily injury to another person." 8 U.S.C. § 1226(c)(1)(E)(i)–(ii) (emphasis added).

Certainly, Petitioner was convicted for an offense that falls within section 1226(c)(1)(E)(i)–(ii). As such, Petitioner is currently detained pursuant to 8 U.S.C. § 1226(c) while his removal proceedings are pending. This is not a case where detention is indefinite. Rather, "detention under § 1226(c) has a definite termination point: the conclusion of removal proceedings." *Jennings v. Rodriguez*, 583 U.S. 281, 304 (2018) (quotation marks omitted).

The Supreme Court has upheld mandatory detention under Section 1226(c) as facially constitutional. *Demore v. Kim*, 538 U.S. 510, 531 (2003) ("Detention during removal proceedings is a constitutionally permissible part of that process.") The Supreme Court stated that "Congress, justifiably concerned that deportable criminal aliens who are not detained continue to engage in crime and fail to appear for their removal hearings in large numbers, may require that persons such as [the lawful permanent resident at issue in *Demore*] be detained for the brief period necessary for their removal proceedings." *Id.* at 513. It observed that Congress enacted Section 1226(c) to curb the risk of flight by deportable criminal noncitizens:

Congress also had before it evidence that one of the major causes of the INS' failure to remove deportable criminal aliens was the agency's failure to detain those aliens during their deportation proceedings. . . . Once

1 released, more than 20% of deportable criminal aliens failed to appear for
 2 their removal hearings. . . . Some studies presented to Congress suggested
 3 that detention of criminal aliens during their removal proceedings might be
 4 the best way to ensure their successful removal from this country. *See, e.g.*,
 5 1989 House Hearing 75; Inspection Report, App. 46; S. Rep. 104-48, at 32
 6 (“Congress should consider requiring that all aggravated felons be detained
 7 pending deportation. Such a step may be necessary because of the high rate
 8 of no-shows for those criminal aliens released on bond”). It was following
 9 those Reports that Congress enacted 8 U.S.C. § 1226, requiring the
 10 Attorney General to detain a subset of deportable criminal aliens pending a
 11 determination of their removability.

12 *Id.* at 519–21. The Supreme Court held that “[i]n the exercise of its broad power over naturalization
 13 and immigration, Congress regularly makes rules that would be unacceptable if applied to citizens.” *Id.*
 14 at 521 (citation omitted). It reaffirmed that immigration detention can be constitutional even in the
 15 absence of any showing that an individual detainee posed a flight risk or a danger to the community.
 16 *See Id.* at 523–27 (discussing *Carlson v. Landon*, 342 U.S. 524 (1952), and concluding that detention
 17 was constitutional “even without any finding of flight risk” or “individualized finding of likely future
 18 dangerousness”). In short, “the Supreme Court recognized [that] there is little question that the civil
 19 detention of aliens during removal proceedings can serve a legitimate government purpose, which is
 20 ‘preventing deportable . . . aliens from fleeing prior to or during their removal proceedings, thus
 21 increasing the chance that, if ordered removed, the aliens will be successfully removed.’” *See Prieto-*
 22 *Romero v. Clark*, 534 F.3d 1053, 1065 (9th Cir. 2008) (quoting *Demore*, 538 U.S. at 528).

23 Detention during removal proceedings remains constitutional so long as it continues to “serve its
 24 purported immigration purpose.” *Demore*, 538 U.S. at 527. Those purposes—ensuring an alien’s
 25 appearance for removal proceedings and preventing him from committing further offenses—are present
 26 throughout removal proceedings and do not abate over time while those proceedings are still pending.²
 27 *Id.* Further, “[t]he government has an obvious interest in ‘protecting the public from dangerous criminal
 28 aliens.’” *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1208 (9th Cir. 2022) (quoting *Demore*, 538 U.S. at
 29 515). “These are interests of the highest order that only increase with the passage of time.” *Id.* “The

² In upholding mandatory detention under § 1226(c), the Supreme Court relied on an understanding that in the majority of cases, detention lasts for less than 90 days. *Demore*, 538 U.S. at 529; *but see Jennings*, 138 S. Ct. at 869 (Breyer, J., dissenting) (noting that those statistics were wrong and that detention normally lasts twice that long). The Supreme Court noted that in 15% of cases, detention lasted longer where the noncitizen appealed to the BIA, and that such appeals took an average of an additional four months. *Demore*, 538 U.S. at 529.

1 longer detention lasts and the longer the challenges to an IJ's order of removal take, the more resources
2 the government devotes to securing an alien's ultimate removal" and, correspondingly, "[t]he risk of a
3 detainee absconding also inevitably escalates as the time for removal becomes more imminent." *Id.* This
4 precedent has led at least one court in this district to hold that "[d]ue process doesn't require bond
5 hearings for criminal aliens mandatorily detained under § 1226(c)—even for prolonged periods." *Keo v.*
6 *Warden of the Mesa Verde ICE Processing Center*, 1:24-cv-00919-HBK (HC), 2025 WL 1029392, at *7
7 (E.D. Cal. Apr. 7, 2025).

8 There is no bright line rule that detention beyond six-month is constitutionally impermissible.
9 *See Gonzalez v. Bonnar*, No. 18-cv-05321-JSC, 2019 WL 330906, at *2 (N.D. Cal. Jan. 25, 2019)
10 ("[T]he Supreme Court's decision in *Jennings* establishes there is no . . . bright-line rule). There is a
11 general dearth of guidance on the appropriate test or standard to apply to an as-applied challenge to
12 prolonged detention claims. Some courts have applied bright line rules. *See, e.g., Rodriguez v. Nielsen*,
13 No. 18-cv-04187-TSH, 2019 WL 7491555, at *6 (N.D. Cal. Jan. 7, 2019). Others have applied the
14 three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976). *See, e.g., Henriquez v. Garland*,
15 no. 22-cv-869-EJD, 2022 WL 2132919 (N.D. Cal. June 14, 2022); *Ramazan v. Andrews*, No. 1:25-cv-
16 01356-KES-SKO, 2025 WL 3145562, at *6 (E.D. Cal. Nov. 10, 2025). Many others have fashioned
17 their own "myriad of overlapping balancing tests." *Keo*, 2025 WL 1029392, at *5 (collecting cases).

18 Without persuasive guidance on which test applies, "the decision depends on the individual
19 circumstances of each case." *Gonzalez*, 2019 WL 330906, at *2. Each balancing test is rife with
20 criticism. For example, "while the *Mathews* factors may be well-suited to determining whether due
21 process requires a second bond hearing, they are not particularly dispositive of whether prolonged
22 mandatory detention has become unreasonable in a particular case." *Sanchez-Rivera v. Matuszewski*,
23 No. 22-cv-1357-MMA (JLB), 2023 WL 139801, at *5 (S.D. Cal. Jan. 9, 2023) (internal quotation
24 omitted). Similarly, elements in other balancing tests help in determining whether detention has become
25 unreasonably prolonged. *See Lopez v. Garland*, 631 F. Supp. 3d 870, 879 (E.D. Cal. Sept. 29, 2022)
26 (these factors, "the conditions of detention, the likelihood that the removal proceedings will result in a
27 final order of removal, whether the detention will exceed the time the petitioner spent in prison for the
28 crime that made him removable, and the nature of the crimes the petitioner committed[,] are not

1 particularly suited to assisting the Court . . .”).

2 Under any of the above tests, though, Petitioner’s detention is constitutional. Moreover,
3 Petitioner’s detention has “a definite and evidently impending termination point” when his removal
4 proceedings conclude. *Soberanes v. Comfort*, 388 F.3d 1305, 1311 (10th Cir. 2004); *see also Prieto-*
5 *Romero*, 534 F.3d at 1065 (holding that an alien’s detention was not unconstitutionally indefinite when
6 it was prolonged by a challenge to his removal order and distinguishing a case in which the government
7 made an “unusual move” that delayed resolution).

8 The government’s interest here is also strong. “The government has an obvious interest in
9 ‘protecting the public from dangerous criminal aliens.’” *Rodriguez Diaz*, 53 F.4th at 1208 (quoting
10 *Demore*, 538 U.S. at 515). Considering the individual facts in this case, Petitioner’s detention is
11 constitutional, and this Court should deny the petition.

12 **C. Detention is Mandatory Under 8 U.S.C. § 1226(c)(1)(B) – Aggravated Felonies**

13 Petitioner is subject to mandatory detention under 8 U.S.C. § 1226(c)(1)(B) because of his armed
14 robbery and assault with a deadly weapon convictions which are deportable offenses under 8 U.S.C. §
15 1227(a)(2)(A)(iii). Under 8 U.S.C. § 1101(a)(43)(F), a “crime of violence” for which the sentence is at
16 least one year qualifies as an aggravated felony. Petitioner’s armed robbery and assault convictions
17 resulted in a prison sentence of 220 days. *See* Exhibit B. This Court should find that Fla. Stat. §
18 812.13(2)(a) qualifies as an aggravated felony. *See Basden v. Warden of Golden State Annex Ice*
19 *Detention Facility*, No. 1:26-cv-00123-KES-SKO, 2026 WL 836325 (E.D. Cal. Mar. 26, 2026)
20 (Findings and Recommendations of magistrate that Fla. Stat. § 812.13(2)(c) is a crime of violence citing
21 *Castro-Mercedes v. U.S. Attorney General*, No. 21-127321, 2025 WL 833203 (11th Cir. Mar. 17,
22 2025)). While *Castro-Mercedes* related to a robbery committed without a weapon, this case involves a
23 deadly weapon, and it stands to reason that the deadly weapon brandished by Petitioner is the aggravated
24 element.

25 Likewise, the Eleventh Circuit holds that an assault with a deadly weapon conviction under Fla.
26 Stat. § 784.021(1)(a) is a crime of violence. *United States v. Golden*, 854 F.3d 1256, 1257 (11th Cir.
27 2017) (citing *Turner v. Warden Coleman FCI*, 709 F. 3d 1328, 1337-38 & n.6 (11th Cir. 2013); *United*
28 *States v. Edwards*, 833 F. App’s 323, 325 (11th Cir. Nov. 4, 2020). The Florida Statutes § 784.021(1)(a)

1 is codified as an aggravated assault with a deadly weapon without intent to kill. The federal aggravated
2 assault offense at 18 U.S.C. § 111 defines assault with a dangerous weapon as an attempt to cause bodily
3 harm with a dangerous weapon or causing bodily harm with a dangerous weapon. The Florida offense
4 categorically relates to the federal offense of assault because the elements align and the maximum
5 penalty must be greater than one year. Therefore, Petitioner's aggravated assault conviction qualifies as
6 an aggravated felony and mandates his detention.

7 **D. *Joseph* mandates detention for qualifying convictions**

8 The Department of Homeland Security (DHS) initially determines whether an alien is subject to
9 mandatory detention under INA § 236(c), 8 U.S.C. § 1226(c), and Immigration Judges cannot
10 redetermine the conditions of custody imposed by DHS with respect to aliens in removal proceedings
11 subject to mandatory detention. 8 C.F.R. § 1003.19(h)(2)(i)(D). However, an alien subject to mandatory
12 detention may seek a determination from an Immigration Judge regarding whether the alien is "properly
13 included" in a mandatory detention category. *See* 8 C.F.R. § 1003.19(h)(2)(ii); *Matter of Joseph*, 22
14 I&N Dec. 799 (BIA 1999).

15 A person "who believes that he is not covered by § 1226(c) may . . . ask for what is known as a
16 'Joseph hearing'" from the immigration court. *Jennings v. Rodriguez*, 583 U.S. 281, 289 n.1 (citing
17 *Matter of Joseph*, 22 I. & N. Dec. 799 (BIA 1999)). At such a hearing, "the detainee may avoid
18 mandatory detention by demonstrating that he is not an alien, was not convicted of the predicate crime,
19 or that the [government] is otherwise substantially unlikely to establish that he is in fact subject to
20 mandatory detention." *Id.* (quoting *Demore*, 538 U.S. 510, 514 n.3 (2003)). Petitioner has not requested
21 such a hearing. Petitioner's failure to seek and exhaust his administrative remedies bars him from
22 habeas relief. *See Buckley v. Chestnut*, No. 1:26-cv-02624-DAD-JDP, 2026 WL 1030931, at *3 (E.D.
23 Cal. Apr. 16, 2026).

24 **E. Petitioner's Detention is not Prolonged**

25 Petitioner seemingly argues that *Zadvydas v. Davis*, 533 U.S. 678 (2001) supports his position that
26 his ongoing detention requires he be provided immediate release or a bond hearing. *See generally* Dkt. 1.
27 The Supreme Court explained in *Jennings* why Petitioner is wrong.

28 [T]he Court of Appeals all but ignored the statutory text. Instead, it read

Zadvydas v. Davis, ... as essentially granting a license to graft a time limit onto the text of § 1225(b). *Zadvydas*, however, provides no such authority.

Zadvydas concerned § 1231(a)(6), which authorizes the detention of aliens who have already been ordered removed from the country. Under this section, when an alien is ordered removed, the Attorney General is directed to complete removal within a period of 90 days, 8 U.S.C. § 1231(a)(1)(A), and the alien must be detained during that period, § 1231(a)(2). After that time elapses, however, § 1231(a)(6) provides only that certain aliens “may be detained” while efforts to complete removal continue. ...

In *Zadvydas*, the Court construed § 1231(a)(6) to mean that an alien who has been ordered removed may not be detained beyond “a period reasonably necessary to secure removal,” ... and it further held that six months is a presumptively reasonable period After that, the Court concluded, if the alien ‘provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future,’ the Government must either rebut that showing or release the alien.

Jennings v. Rodriguez, 583 U.S. 281 at 298-99 (internal citations omitted).

As the Supreme Court reminded us in *Jennings*, under *Zadvydas*, the right to a habeas challenge to detention based on prolonged detention does not even attach until *after* a final order of removal has been issued *and* the 90-day removal period has passed. Even after those two conditions are met, detention remains presumptively reasonable for six months after that. However, the Court cannot reach a prolonged detention argument because in the entire time of his two-months’ detention, Petitioner has not requested any relief from the immigration courts, i.e., a *Joseph* hearing. Thus, *Zadvydas* does not apply here.

IV. CONCLUSION

For these reasons, Respondent respectfully requests that the Court deny Petitioner’s Habeas petition and all injunctive relief.

Dated: July 8, 2026

Respectfully submitted,

ERIC GRANT
United States Attorney

By: /s/ Elisa M. Rodriguez
ELISA M. RODRIGUEZ
Assistant United States Attorney
Attorneys for Respondent