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8 IN THE UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
10

11 ERNEST MILFORD,

No. 1:26-CV-05262-VC

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13 Petitioner,
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15 U.S. ATTORNEY GENERAL *et al*,
16 Respondents.
17

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

18 Respondents oppose the petition for writ of habeas corpus and request for injunctive relief as
19 petitioner is subject to the criminal mandatory detention statute, 8 U.S.C. § 1226(c)(1)(B). This
20 detention is mandatory under the statute. Petitioner seeks to have this Court undertake an evaluation of
21 the validity of the immigration judge's finding that petitioner is removable due to his criminal
22 convictions at the same time that Petitioner is litigating this question before the Board of Immigration
23 Appeals. There is no mechanism for such a parallel form of review, nor does this Court substantively
24 engage in the basis for removal in habeas proceedings.

25 Petitioner is a native and citizen of Haiti. He was adjusted to Lawful Permanent Resident status
26 on or about February 14, 2001. He was placed in removal proceedings in December 2023, after
27 committing state and federal crimes. Ex. 1 (notice to appear); Ex. 2 (federal conviction); 3 (state
28 conviction). On or about March 27, 2026, an immigration judge ordered Petitioner removed from the

1 United States. See EOIR Automated Case Information *available at*
2 <https://acis.eoir.justice.gov/en/caseInformation>. Petitioner filed an appeal with the BIA on May 5, 2026.
3 *Id.*; Ex. 4 (BIA filing receipt).

4 **I. PETITIONER CANNOT LITIGATE THE MERITS OF HIS CHALLENGE TO HIS REMOVAL ORDER IN**
5 **HABEAS COURT.**

6 Although the instant petition is packaged as a challenge to the lawfulness of Petitioner's
7 detention, there is no way for the Court to engage in the analysis of whether Petitioner is subject to
8 mandatory detention under 8 U.S.C. § 1226(c) without also engaging in the substance of Petitioner's
9 removal order.

10 Petitioner was charged with removability based on his criminal convictions. See Ex. 1. The
11 immigration judge ordered Petitioner removed on this basis.¹ Petitioner has appealed that order.
12 Therefore, his removal order is not yet administratively final. By seeking release or other relief from
13 this Court, Petitioner necessarily asks this Court to review the substantive question of whether his
14 criminal convictions count mandate his continued pre-order detention under 8 U.S.C. § 1226(c). But
15 this question has already been answered by the immigration judge and is either a final decision or part of
16 Petitioner's appeal to the BIA.

17 For two reasons, the Court should decline to examine whether petitioner's convictions mandate
18 his detention for immigration purposes in these habeas proceedings. First, petitioner has not exhausted
19 administrative remedies on the issue. "[Courts] require, as a prudential matter, that habeas petitioners
20 exhaust available judicial and administrative remedies before seeking relief under § 2241." *Castro-*
21 *Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001), abrogated on other grounds, *Fernandez-Vargas v.*
22 *Gonzalez*, 548 U.S. 30 (2006). If petitioner seeks to challenge whether he is entitled to a bond hearing,
23 his recourse would be to request a hearing under *Matter of Joseph*, 22 I&N Dec. 799 (BIA 1999). The
24 immigration judge would then have first pass on the question of petitioner's eligibility for a bond
25 hearing.

26
27 ¹ There is no prompt detention requirement. *Nielsen v. Preap*, 586 U.S. 409, 413–417 (2019).
28 Rather, once the conviction is final, § 1226(c) applies regardless of any delay between release and
immigration detention. *Id.*

1 Second, merits review of the immigration charges in habeas review are inconsistent with the
2 statutory scheme. 8 U.S.C. § 1252(b)(9). The zipper clause channels review of legal and factual issues
3 relating to orders of removal to one place: the Court of Appeals. Petitioner must wait until his removal
4 order is final to challenge that removal order in the Ninth Circuit.

5 Petitioner's contention that he must be released because there is no significant likelihood of his
6 removal in reasonably foreseeable future (known as SLRRFF) is misplaced. SLRRFF only applies to
7 post-removal-order detention. Petitioner is under pre-removal-order detention because he has appealed
8 his removal order to the BIA. Thus, he is mistaken when he contends that he is detained under 8 USC
9 1231(a). See ECF 1 at p. 7.

10 **II. PETITIONER'S DETENTION IS CONSTITUTIONAL; IT IS NOT PROLONGED OR INDEFINITE.**

11 Petitioner has been in ICE custody since on or about February 11, 2025, or a little over five
12 months while. See ECF 1. Thus, Petitioner has not been detained longer than 6 month, the benchmark
13 that courts find presumptively reasonable in the context removable-but-unremovable limbo where
14 detention could be potentially permanent. However, this benchmark should not be applied to pre-order
15 detention.

16 The Supreme Court has upheld mandatory detention under § 1226(c) as facially constitutional.
17 *Demore v. Kim*, 538 U.S. 510, 531 (2003) (citing *Wong Wing v. United States*, 163 U.S. 228, 235 (1896);
18 *Carlson v. Landon*, 342 U.S. 524 (1952); *Reno v. Flores*, 507 U.S. 292 (1993)). The Court observed that
19 Congress enacted § 1226(c) to curb the risk of flight by deportable criminal non-citizens. *Demore*, 538
20 U.S. at 513 ("Congress, justifiably concerned that deportable criminal [non-citizens] who are not detained
21 continue to engage in crime and fail to appear for their removal hearings in large numbers, may require
22 that persons such as respondent be detained for the brief period necessary for their removal proceedings.").
23 The Court found "detention during deportation proceedings as a constitutionally valid aspect of the
24 deportation process" and noted that "deportation proceedings would be vain if those accused could not be
25 held in custody pending the inquiry into their true character." *Id.* at 523 (quotation marks omitted). The
26 Court further reaffirmed that immigration detention can be constitutional even in the absence of any
27 showing that an individual detainee posed a flight risk or a danger to the community. See *id.* at 523–27
28 (discussing *Carlson*, 342 U.S. 524, and concluding that detention was constitutional "even without any

1 finding of flight risk” or “individualized finding of likely future dangerousness”). In short, “the Supreme
2 Court recognized [that] there is little question that the civil detention of [non-citizens] during removal
3 proceedings can serve a legitimate government purpose, which is ‘preventing deportable . . . [non-citizens]
4 from fleeing prior to or during their removal proceedings, thus increasing the chance that, if ordered
5 removed, the [non-citizens] will be successfully removed.’” *Prieto-Romero v. Clark*, 534 F.3d 1053, 65
6 (9th Cir. 2008) (quoting *Demore*, 538 U.S. at 528).

7 Indeed, no Supreme Court authority “suggests that length determines legality. To the contrary,
8 what matters is that detention pending deportation ‘has a definite termination point’ — deporting or re-
9 leasing the alien — making it ‘materially different’ from the ‘potentially permanent’ confinement
10 authorized by other statutes.” *Banyee v. Garland*, 115 F.4th 928, 932 (8th Cir. 2024) (quoting *Demore*,
11 538 U.S. at 528–29). Indeed, *Zadvydas v. Davis*, 533 U.S. 678, 697 (2001), drew precisely this definite-
12 versus-indefinite distinction, imposing constitutional limits (if at all) only on the latter kind of detention.
13 Therefore, the Supreme Court “has suggested that keeping aliens locked up when deportation is only ‘a
14 remote possibility’ would also pose a constitutional problem. But not, as in this case, when deportation
15 is still on the table.” *Banyee*, 115 F.4th at 933 (quoting *Zadvydas*, 533 U.S. at 690).

16 Petitioner’s detention pending the outcome of his removal proceedings is constitutional.

17 CONCLUSION

18 For the foregoing reasons and because Petitioner is subject to mandatory detention, the petition
19 should be denied.

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21 Dated: July 23, 2026

Respectfully submitted,

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