

1 ERIC GRANT
United States Attorney
2 SHELLEY D. WEGER
Assistant United States Attorney
3 501 I Street, Suite 10-100
Sacramento, CA 95814
4 Telephone: (916) 554-2700
5 Attorneys for Respondents
6
7

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

11 ANTONIO DE SANTIAGO HERNANDEZ,
12 

No. 1:26-CV-05249-EJD

13 Petitioner,

14 v.

15 CHRISTOPHER CHESTNUT,

16 Respondents.

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

17
18 The Court should deny the petition for writ of habeas corpus because Petitioner is subject to
19 mandatory detention under 8 U.S.C. § 1226(c)(1)(A) for having been convicted of crimes involving
20 moral turpitude, specifically stalking in violation of California Penal Code (“PC”) § 646.9(b). Petitioner
21 is also subject to mandatory detention under 8 U.S.C. § 1225(b).

22 **BACKGROUND**

23 Petitioner is a native and citizen of Mexico, who entered the United States without inspection at
24 an unknown place, and on an unknown date. Ex. 1 (I-213); Ex. 2 (Notice to Appear). Petitioner has an
25 extensive history of arrests and convictions spanning almost two decades. Ex. 3 (criminal records).
26 Petitioner’s criminal history includes but is not limited to: Possession of a Controlled Substance (Ex. 3,
27 p.6); Accessory (Ex. 3 p. XX); multiple violations of protective orders (Ex. 3); vandalism (Ex. 3 p. 10).
28 As pertinent to the issues in the petition, on January 28, 2021, Petitioner was convicted of stalking in

1 violation of California PC 646.9(B), a felony. Ex. 3 p. 10. He was sentenced to either 7 months in jail
2 or 16 months in prison. Ex. 3 at p. 10 (cycle 14).

3 On January 20, 2026, Petitioner was arrested for giving a False ID to Specific Peace Officer, in
4 violation of California PC § 148.9(A); violations of a Local Ordinance Violation in violation of
5 California PC § 65000; and a Post Release Community Supervisory Violation in violation of California
6 PC § 3455. Ex. 3. On January 25, 2026, ERO-ICE received a referral from the Pacific Enforcement
7 Response Center regarding Petitioner's immigration status. Ex. 1. Petitioner was in custody at the
8 Santa Clara County Elmwood Correctional Complex Jail in Milpitas, CA, and had a projected release
9 date of April 14, 2026. Ex. 1. On April 14, 2026, Petitioner was placed into DHS custody. Ex. 4 (I-
10 200). DHS initiated removal proceedings under section 240 of the Immigration and Nationality Act
11 ("Act") or ("INA") by issuance of a Notice to Appear ("NTA"), charging Petitioner with removability
12 under section 212 (a)(6)(A)(i) of the Act. Ex. 2.

13 Petitioner has never been released by immigration authorities on an Order of Recognizance
14 ("OREC"), or an Order of Supervision ("OSUP"). Petitioner's next hearing in immigration court is
15 scheduled for August 4, 2026. Ex. 5. As of the date of this filing Petitioner has been in immigration
16 detention for just over three months.

17 ARGUMENT

18 A. Petitioner is subject to mandatory detention under 8 U.S.C. § 1226(c).

19 Under 8 U.S.C. § 1226(c)(1)(A), DHS must detain Petitioner because his 2021 felony conviction
20 under California Penal Code § 646.9(b)—stalking—is a crime involving moral turpitude ("CIMT").

21 *See Castillo v. Larose*, No. 26-cv-02516-BAS-AHG, 2026 WL 1303165 (S.D. Cal. May 12, 2026).

22 Section 646.9(b) provides: "Any person who violates subdivision (a) when there is a temporary
23 restraining order, injunction, or any other court order in effect prohibiting the behavior described in
24 subdivision (a) against the same party, shall be punished by imprisonment in the state prison for two,
25 three, or four years." Cal. PC § 646.9(b). Subdivision (a) provides, "Any person who willfully,
26 maliciously, and repeatedly follows or willfully and maliciously harasses another person and who makes
27 a credible threat with the intent to place that person in reasonable fear for their safety, or the safety of
28 their immediate family, is guilty of the crime of stalking, punishable by imprisonment in a county jail

1 for not more than one year, or by a fine of not more than one thousand dollars (\$1,000), or by both that
2 fine and imprisonment, or by imprisonment in the state prison.”

3 The Ninth Circuit has held that California PC 646.9(a) is categorically a CIMT. *Orellana v.*
4 *Barr*, 967 F.3d 927 (9th Cir. 2020). Subdivision (b) of section 646.9 requires the same elements as
5 subdivision (a) plus a temporary restraining order or other order in effect prohibiting the behavior
6 described in subdivision (a). Thus, Petitioner is inadmissible under 8 U.S.C. § 1182(a) as a result of his
7 conviction for felony stalking.

8 Once Petitioner was released from criminal custody, § 1226(c) automatically triggered
9 mandatory detention. And there is no prompt detention requirement. *Nielsen v. Preap*, 586 U.S. 409,
10 413–417 (2019). Rather, once the conviction is final, § 1226(c) applies regardless of any delay between
11 release and immigration detention. *Id.*

12 **B. Petitioner’s Detention is Constitutional**

13 Petitioner’s detention under § 1226(c), while removal proceedings are pending, is proper. This is
14 not a case where detention is indefinite. Rather, detention will conclude at the end of his removal
15 proceedings. *Jennings v. Rodriguez*, 583 U.S. 281, 304 (2018). Detention under Section 1226(c) is
16 facially constitutional. *Demore v. Kim*, 538 U.S. 510, 531 (2003) (“Detention during removal
17 proceedings is a constitutionally permissible part of that process.”). The Supreme Court has held that
18 “Congress, justifiably concerned that deportable criminal aliens who are not detained continue to engage
19 in crime and fail to appear for their removal hearings in large numbers, may require that persons such as
20 [the lawful permanent resident at issue in *Demore*] be detained for the brief period necessary for their
21 removal proceedings.” *Id.* at 513.

22 Detention during removal proceedings remains constitutional so long as it continues to “serve its
23 purported immigration purpose.” *Demore*, 538 U.S. at 527. Those purposes—ensuring a noncitizen’s
24 appearance for removal proceedings and preventing her from committing further offenses—are present
25 throughout removal proceedings and do not abate over time while those proceedings are still pending.
26 *Id.* The government’s interests, “are interests of the highest order that only increase with the passage of
27 time.” *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1208 (9th Cir. 2022) (quoting *Demore*, 538 U.S. at
28 515). Indeed the “longer the challenges to an IJ’s order of removal take, the more resources the

1 government devotes to securing an alien's ultimate removal" and, correspondingly, "[t]he risk of a
2 detainee absconding also inevitably escalates as the time for removal becomes more imminent." *Id.*

3 Here, Petitioner is detained during his removal proceedings to ensure that the Immigration and
4 Nationality Act is properly executed. Under these circumstances, his detention is constitutional, and the
5 Court should deny relief.

6 **C. Petitioner is also subject to mandatory detention under 8 U.S.C. § 1225(b)**

7 In addition to section 1226(c), Petitioner is also subject to mandatory detention under section
8 1225(b). He entered the United States without inspection and is thus, an "applicant for admission" who
9 is subject to mandatory immigration detention under 8 U.S.C. § 1225(b). *Joaquin Herrera Avila v.*
10 *Bondi*, No. 25-3741 (8th Cir. March 25, 2026); *Buenrostro-Mendez v. Bondi*, No. 25-20496, 2026 WL
11 323330, at *1 (5th Cir. Feb. 6, 2026); *see also Cortes Alonzo v. Noem*, 1:25-cv-01519-WBS-SCR at Dkt.
12 14 (E.D. Cal. Nov. 17, 2025). Petitioner does not possess a right to freedom from immigration detention
13 in any form other than the form provided by Congress. *Shaughnessy v. United States ex rel. Mezei*, 345
14 U.S. 206, 212 (1953), *reaffirmed in DHS v. Thuraissigiam*, 591 U.S. 103, 139 (2020).

15 **CONCLUSION**

16 For the foregoing reasons, the petition should be denied.

17
18 Dated: July 23, 2026

Respectfully submitted,

19 ERIC GRANT
20 United States Attorney

21 By: /s/ Shelley D. Weger
22 SHELLEY D. WEGER
23 Assistant United States Attorney
24 Attorneys for Respondents
25
26
27
28

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is 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. She also certifies that on June 16, 2026, a copy of the OPPOSITION was served by placing said copy in a postpaid envelope addressed to the person(s) hereinafter named, at the place(s) and address(es) stated below, which is/are the last known address(es), and by depositing said envelope and contents in the United States Mail at Sacramento, California.

Addressee: **Antonio De Santiago Hernandez**


CALIFORNIA CITY (ICE)
P.O. Box 2513
22844 Virginia Boulevard
California City, CA 93505

/s/ Shelley D. Weger
SHELLEY D. WEGER