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

11 KEVIN RODRIGUEZ MIRANDA,
12 

13 Petitioner,

14 v.

15 CHRISTOPHER CHESTNUT,

16 Respondent.

CASE NO. 1:26-CV-05306-TLN-JDP

**MOTION TO DISMISS PETITION
FOR WRIT OF HABEAS CORPUS**

17 **I. INTRODUCTION**

18 Petitioner is a drug offender, arrested and charged with multiple drug-related offenses. Because
19 of his crimes, Petitioner's detention is mandated under 8 U.S.C. § 1226(c). Petitioner has not sought
20 relief through the immigration courts and provides insufficient justification for circumventing the
21 administrative forum and demanding intervention by this Court. Petitioner's habeas petition must be
22 denied.

23 **II. BACKGROUND**

24 Petitioner is a citizen and native of El Salvador. Exhibit A (NTA). He entered the United States
25 on an unknown date and time. *Id.* On April 12, 2025, Petitioner was arrested for drug possession and
26 sales. Exhibit B (rap sheet). On April 15, 2025, Petitioner was charged with various drug offenses.
27 Exhibit C (court criminal docket sheet and criminal complaint). Contrary to Petitioner's assertion that
28 these drug charges were dropped, there exists an active bench warrant for Petitioner's arrest. *Id.*

1 Petitioner came into DHS custody on or about August 29, 2025, from the detention facility where he
2 was held pending his drug charges. Exhibit C; *see also* Dkt. 1. On January 5, 2026, Petitioner was
3 ordered removed to El Salvador by an Immigration Judge. Exhibit D (Order of the Immigration Judge).
4 Petitioner appealed the removal order to the Board of Immigration Appeals. Exhibit E. On May 29,
5 2026, the BIA issued a briefing schedule in which any appeal brief was due by June 22, 2026. *Id.*

6 Petitioner is an illicit controlled substance trafficker which renders him inadmissible under 8
7 U.S.C. § 1182(a)(2)(C) and subjects him to mandatory detention under 8 U.S.C. § 1226(c)(1)(A).

8 III. LEGAL STANDARDS

9 A. Habeas

10 Federal courts have authority to grant writs of habeas corpus to any person held “in custody in
11 violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(c)(3). Habeas
12 corpus “entitles [a] prisoner to a meaningful opportunity to demonstrate that he is being held pursuant to
13 ‘the erroneous application or interpretation’ of relevant law.” *Boumediene v. Bush*, 553 U.S. 723, 779
14 (2008) (quoting *INS v. St. Cyr*, 533 U.S. 289, 302 (2001)). “The essence of habeas corpus is an attack
15 by a person in custody upon the legality of that custody,” and thus to warrant relief, a petitioner must
16 demonstrate that his detention is unlawful. *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973); *see Lambert*
17 *v. Blodgett*, 393 F.3d 943, 969 n.16 (9th Cir. 2004) (“In state collateral litigation, as well as federal
18 habeas proceedings, it is the petitioner who bears the burden of proving his case.”); *see also Davis v.*
19 *Woodford*, 384 F.3d 628, 638 (9th Cir. 2004) (“petitioner carries the burden of proving by a
20 preponderance of the evidence that he is entitled to habeas relief” when challenging incarceration by the
21 state under 28 U.S.C. § 2254).

22 IV. ARGUMENT

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

24 An alien who is or has been illicit trafficker in any controlled substance or in any listed chemical,
25 or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit
26 trafficking in any such controlled or listed substance or chemical, or endeavored to do so is inadmissible.
27 8 U.S.C. § 1182(a)(2)(C)(i). Here, Petitioner was arrested for multiple drug offenses, including sales of
28 narcotics. Exhibit B. From Petitioner’s own submissions, there is substantial evidence and reason to

1 believe he is an illicit controlled substance trafficker. *See e.g. Javier v. Lynch*, 646 Fed. App'x 512 (9th
2 Cir. 2016) (unpublished) (substantial evidence supported immigration judge's determination that there
3 was reason to believe alien participated in controlled substance trafficking rendering her inadmissible
4 even though state dropped criminal charges against her in light of evidence that police officers found
5 35.6 grams of cocaine concealed within vehicle driven by her ex-boyfriend in which she was a
6 passenger, officers found plastic bag containing \$3,900 in cash tucked between her buttocks and alien
7 did not contest civil forfeiture of confiscated cash); *Retano v. Ashcroft*, 112 Fed. App'x 649 (9th Cir.
8 2004) (unpublished) ("8 USC § 1182(a)(2)(C)(i) does not require a criminal conviction to establish
9 either inadmissibility or a lack of appellate review, rather the attorney general only need have reason to
10 believe that the alien is or has been involved in illicit drug trafficking") (internal citation omitted);
11 *Gomez-Granillo v. Holder*, 654 F.3d 826 (9th Cir. 2011) (petition for review granted on other grounds)
12 (substantial evidence supported the immigration judge's reason to believe alien knowingly in drug
13 engaged in drug trafficking when alien was in possession of substantial amount of drugs in his truck);
14 *Chaves-Reyes v. Holder*, 741 F.3d 1 (9th Cir. 2014) (petition for review denied in case where alien had
15 large amount of drugs in his vehicle, coupled with guilty plea which was later overturned by Court of
16 Appeals, and appellate court stated the evidence strongly suggested Petitioner indeed knew truck
17 contained drugs); *see also* Dkt. 1 at 12.

18 As the Supreme Court recognized in *Demore v. Kim*, , 538 U.S. 510, 514 fn. 3 (2003), Petitioner
19 can challenge his mandatory detention under *Matter of Joseph*, 22 I. & N. Dec. 799 (BIA 1999), in a
20 "Joseph Hearing" where a detainee may avoid mandatory detention by demonstrating that he is not
21 convicted of the predicate crime, or that the government is otherwise substantially unlikely to establish
22 that he is in fact subject to mandatory detention. *See* 8 CFR § 1003.19(h)(2)(ii) (2002).

23 Thus, in this case, if Petitioner contends that he is not subject to mandatory detention under 8
24 U.S.C. § 1226(c), the District Court is not the correct forum to make that claim. In other words,
25 Petitioner has not exhausted his administrative remedy to contest his mandatory detention under the
26 procedures available in immigration court. *See Matter of Joseph*, 22 I. & N. Dec. 799 (BIA 1999). This
27 is certainly not the type of exhaustion the Court should waive. The Court should require Petitioner to
28 exhaust his Joseph Hearing before any collateral challenge to his mandatory detention under 8 U.S.C. §

1 1226(c) in this Court. Notably, there is currently nothing in the administrative record indicating
2 Petitioner requested a Joseph Hearing.

3 As such, Petitioner is currently detained pursuant to 8 U.S.C. § 1226(c) while is removal
4 proceedings are pending. This is not a case where detention is indefinite. Rather, “detention under
5 § 1226(c) has a definite termination point: the conclusion of removal proceedings.” *Jennings v.*
6 *Rodriguez*, 583 U.S. 281, 304 (2018) (quotation marks omitted).

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

15 Congress also had before it evidence that one of the major causes of the INS’ failure
16 to remove deportable criminal aliens was the agency’s failure to detain those aliens
17 during their deportation proceedings. . . . Once released, more than 20% of
18 deportable criminal aliens failed to appear for their removal hearings. . . . Some
19 studies presented to Congress suggested that detention of criminal aliens during
20 their removal proceedings might be the best way to ensure their successful removal
21 from this country. *See, e.g.*, 1989 House Hearing 75; Inspection Report, App. 46;
22 S. Rep. 104-48, at 32 (“Congress should consider requiring that all aggravated
felons be detained pending deportation. Such a step may be necessary because of
the high rate of no-shows for those criminal aliens released on bond”). It was
following those Reports that Congress enacted 8 U.S.C. § 1226, requiring the
Attorney General to detain a subset of deportable criminal aliens pending a
determination of their removability.

23 *Id.* at 519–21. The Supreme Court held that “[i]n the exercise of its broad power over naturalization
24 and immigration, Congress regularly makes rules that would be unacceptable if applied to citizens.” *Id.*
25 at 521 (citation omitted). It reaffirmed that immigration detention can be constitutional even in the
26 absence of any showing that an individual detainee posed a flight risk or a danger to the community. *See*
27 *Id.* at 523–27 (discussing *Carlson v. Landon*, 342 U.S. 524 (1952), and concluding that detention was
28 constitutional “even without any finding of flight risk” or “individualized finding of likely future

dangerousness”). In short, “the Supreme Court recognized [that] there is little question that the civil detention of aliens during removal proceedings can serve a legitimate government purpose, which is ‘preventing deportable . . . aliens from fleeing prior to or during their removal proceedings, thus increasing the chance that, if ordered removed, the aliens will be successfully removed.’” *See Prieto-Romero v. Clark*, 534 F.3d 1053, 1065 (9th Cir. 2008) (quoting *Demore*, 538 U.S. at 528).

Detention during removal proceedings remains constitutional so long as it continues to “serve its purported immigration purpose.” *Demore*, 538 U.S. at 527. Those purposes—ensuring an alien’s appearance for removal proceedings and preventing him from committing further offenses—are present throughout removal proceedings and do not abate over time while those proceedings are still pending.¹ *Id.* Further, “[t]he government has an obvious interest in ‘protecting the public from dangerous criminal aliens.’” *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1208 (9th Cir. 2022) (quoting *Demore*, 538 U.S. at 515). “These are interests of the highest order that only increase with the passage of time.” *Id.* “The longer detention lasts and the longer the challenges to an IJ’s order of removal take, the more resources the government devotes to securing an alien’s ultimate removal” and, correspondingly, “[t]he risk of a detainee absconding also inevitably escalates as the time for removal becomes more imminent.” *Id.* This precedent has led at least one court in this district to hold that “[d]ue process doesn’t require bond hearings for criminal aliens mandatorily detained under § 1226(c)—even for prolonged periods.” *Keo v. Warden of the Mesa Verde ICE Processing Center*, 1:24-cv-00919-HBK (HC), 2025 WL 1029392, at *7 (E.D. Cal. Apr. 7, 2025). Any claim regarding prolonged detention is without merit, as Petitioner has only been in ICE custody for a little over two months. *See generally Lopez v. Garland*, 631 F. Supp. 870, 880 (E.D. Cal. 2022) (internal citations omitted) (“As detention continues past a year, courts have become extremely wary of permitting continued custody absent a bond hearing.”).

¹ 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.

CONCLUSION

As stated, and confirmed by Petitioner, he is subject to a removal order, and this process underpins the mandates of 1226(c)'s detention requirement that dangerous aliens remain detained until they are removed. Accordingly, the Court should deny habeas relief.

Respectfully submitted,

Dated: July 23, 2026

ERIC GRANT
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