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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

TOWINSKY LERICHE,


Petitioner,

v.

WARDEN OF THE CALIFORNIA CITY
DETENTION FACILITY, *et al.*,

Respondents.

No. 1:26-CV-05315-VC

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

Petitioner is subject to mandatory detention pursuant to 8 U.S.C. § 1226(c), until his removal order becomes final, because he has been convicted of an aggravated felony.

BACKGROUND

Petitioner is a citizen and native of Haiti. Exhibit A (I-213). He originally entered the United States as a Lawful Permanent Resident. *Id.* In November 2024, Petitioner engaged in conduct that resulted in a felony conviction in the Eleventh Judicial Circuit Court in and for Miami-Dade County for armed robbery, in violation of Florida Statutes § 812.13(2)(B). Exhibits A, B (criminal conviction records). Petitioner was sentenced to two years community control with the Department of Corrections followed by five years of probation. Exhibit B at 2. Petitioner was taken into immigration detention on approximately November 13, 2025. Exhibit A at 2, *see also* Exhibit C (I-862).

On December 8, 2025, Petitioner, with the benefit of counsel, moved to continue his immigration court hearing to December 16, 2025. Exhibit D (Order of the Immigration Judge). On December 18, 2025, Petitioner, with the benefit of counsel, was provided a custody redetermination hearing. The Immigration Judge denied Petitioner's request for change in custody status finding that Petitioner's detention is mandatory on account of his armed robbery conviction. Exhibit E (Order of the Immigration Judge). Petitioner reserved appeal and did not appeal the finding. EOIR Automated Case Information *available at* <https://acis.eoir.justice.gov/en/caseInformation> (enter 061 546 046 and Haiti).

ARGUMENT

A. Petitioner is subject to mandatory detention under section 1226(c).

The detention of a noncitizen pending removal proceedings is governed by 8 U.S.C. 1226. *See Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1196 (9th Cir. 2022). Here, Petitioner is in active removal proceedings thus, his detention remains governed by section 1226(c). *See Prieto-Romero v. Clark*, 534 F.3d 1053 at 1058 (9th Cir. 2008) (finding section 1226 applied to initial detention and detention during BIA review of removal order based on conviction of aggravated felony).¹

Under section 1226(a), the "Attorney General may issue a warrant for the arrest and detention of an alien 'pending a decision on whether the alien is to be removed from the United States.'" *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018) (citation omitted). In general, "the Attorney General 'may release' an alien detained under section 1226(a) 'on ...bond' or 'conditional parole.'" *Id.* (citation omitted).

Additionally, "[s]ection 1226(c) . . . carves out a statutory category of aliens who may *not* be released." *Id.* at 289 (emphasis in original). Under this subsection, "the 'Attorney General shall take into custody any alien' who falls into one of several enumerated categories involving criminal offenses . . . The Attorney General may release aliens in those categories 'only if the Attorney General decides . . . that release of the alien from custody is necessary' for witness-protection purposes and 'the alien satisfies the Attorney General that the alien will not pose a danger to the safety of other persons or of property and is likely to appear for any scheduled proceeding.'" *Id.* (citations omitted).

¹ Here, subsection (a) applied because despite being an aggravated felon, Prieto-Romero was never subject to mandatory detention under subsection (c) because he was "released from his non-Service custodial setting (i.e., from criminal custody)" before October 8, 1998. 534 F.3d at 1058 n.3.

1 Consequently, the detention of noncitizens “within [the] scope” of section 1226(c) “*must*
2 continue ‘pending a decision on whether the [noncitizen] is to be removed from the United States.’” *Id.*
3 (citation omitted) (emphasis in original); *see also Avilez v. Garland*, 69 F.4th 525, 535 (9th Cir. 2023)
4 (concluding that section 1226(c) “applies throughout the administrative and judicial phases of removal
5 proceedings”). The subsection does not “limit the length of the detention it authorizes.” *Jennings*, 583
6 U.S. at 303. In fact, “in *Demore v. Kim*, the Supreme Court rejected a due process challenge to
7 mandatory detention under Subsection C on the ground that the detention authorized by Subsection C is
8 relatively short-lived.” *Avilez*, 69 F.4th at 536 (citing *Demore v. Kim*, 538 U.S. 510, 529 (2003)).
9 Indeed, here it has been less than one month.

10 Petitioner is subject to mandatory confinement because he is “deportable by reason of having
11 committed any offense covered in section 1227(a)(2)(A)(iii).” 8 U.S.C. § 1226(c)(1)(B) (citation
12 modified). This section encompasses aggravated felonies, including “a theft offense or burglary offense
13 for which the term of imprisonment at least one year.” *See* 8 U.S.C. § 1101(a)(43)(G).

14 Petitioner was convicted of violating Florida Statutes § 812.13(2)(B). The conviction overlaps
15 and is necessarily a categorical match for the federal offense of Robbery with a Firearm or Dangerous
16 Weapon under 18 U.S.C. § 2113(d) – Robbery with a Firearm or Dangerous Weapon. Specifically, the
17 federal statute criminalizes robbery or any act in aid of robbery and in the course of the robbery or act
18 the use or carrying of a firearm or dangerous weapon. 18 U.S.C. § 2113(d). Similarly, the Florida
19 statute makes criminal anyone who, in the course of committing the robbery, carried a firearm or other
20 deadly weapon. Fl. Stats. § 812.13(2)(B). Thus, the state statute is a categorical match of the federal
21 offense. Because Petitioner is deportable for having committed an offense covered in section
22 1227(a)(2)(A)(iii), his detention is mandatory under 8 U.S.C. 1226(c)(1)(B).

23 A person “who believes that he is not covered by § 1226(c) may . . . ask for what is known as a
24 ‘Joseph hearing’” from the immigration court. *Jennings v. Rodriguez*, 583 U.S. 281, 289 n.1 (citing
25 *Matter of Joseph*, 22 I. & N. Dec. 799 (BIA 1999)). At such a hearing, “the detainee may avoid
26 mandatory detention by demonstrating that he is not an alien, was not convicted of the predicate crime,
27 or that the [government] is otherwise substantially unlikely to establish that he is in fact subject to
28 mandatory detention.” *Id.* (quoting *Demore*, 538 U.S. 510, 514 n.3 (2003)). Petitioner requested a

1 custody redetermination hearing and failed to appeal it. Therefore, for this additional reason, the
2 petition should be denied.

3 **B. Habeas Relief is Barred for Failure to Exhaust Administrative Remedies.**

4 Although Petitioner is mandatorily detained pursuant to 8 USC § 1226(c), it does not appear that
5 Petitioner has sought relief through the immigration courts. A noncitizen challenging his detention must
6 ordinarily exhaust his administrative remedies before filing a habeas petition. To do this he must seek
7 release through the immigration courts and if he receives an adverse decision, he must file an appeal
8 with the BIA. Then, when he receives that decision, he may file a new habeas petition in District Court.
9 *See Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011). When administrative remedies are not
10 exhausted “a district court ordinarily should either dismiss the petition without prejudice or stay the
11 proceedings until the petitioner has exhausted remedies, unless exhaustion is excused.” *Id.* The factors
12 courts evaluate when deciding whether to require administrative exhaustion are whether:

13 (1) agency expertise makes agency consideration necessary to generate a
14 proper record and reach a proper decision; (2) relaxation of the
15 requirement would encourage the deliberate bypass of the administrative
16 scheme; and (3) administrative review is likely to allow the agency to
correct its own mistakes and to preclude the need for judicial review.

17 *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007). Here these factors weigh in favor of requiring
18 exhaustion. The custody determination issues are factual claims that should be properly addressed and
19 developed by the agency before returning the case to this Court. If the Court relaxes the administrative
20 exhaustion requirement it would encourage other noncitizens dissatisfied with the outcome of their bond
21 hearings to circumvent the Immigration Courts and file directly with District Courts.

22 In *Leonardo*, *supra*, in the context of a *Casas-Castrillon* bond hearing, an alien sought habeas
23 review of an IJ’s adverse bond determination before appealing to the BIA. The Ninth Circuit held that
24 the alien’s shortcut pursuit of habeas review was improper, and the alien should have exhausted
25 administrative remedies by appealing to the BIA before asking the federal district court to review the
26 IJ’s decision. *Leonardo*, *supra*, citing *Rojas-Garcia v. Ashcroft*, 339 F.3d 814, 819 (9th Cir. 2003) (a
27 petitioner “must exhaust administrative remedies before raising...constitutional claims in a habeas
28 petition when those claims are reviewable by the BIA on appeal.”). *See also Nicole Jemna v. Warden*

of Olay Mesa Detention Center, 3:26-cv-00725-RBM-VET, 2026 WL 788172, *3 (S.D. Cal. March 20, 2026)(court denied alien’s habeas petition and dismissed his claims without prejudice, finding the alien failed to exhaust his administrative remedies when he appealed the IJ’s bond denial with the BIA but sought habeas review ahead of his pending appeal.)

Respondents should not be faulted for Petitioner not exercising a right. *See generally e.g. Pruden v. Amador County Jail*, No. 2:24-cv-0402-KJN P, 2024 WL 583702 (E.D. Cal. Feb. 13, 2024) (context of civil rights action) (inmate acknowledged administrative grievance procedures but did not submit a request for administrative relief, court recommend dismissal for failure to exhaust administrative remedies).

C. Petitioner has not Proven Prolonged Detention

Petitioner’s alternative request as habeas relief in the form of release or a bond hearing does not prove that his detention is unconstitutionally prolonged. In *Doe v. Chestnut*, the District Court favorably cited a five-factor test from the Northern District. *Doe v. Chestnut*, 810 F. Supp. 3d 1169, 1183 (E.D. Cal. 2025). That test examined:

(1) the length of detention and whether it is excessive in relation to its regulatory purpose; (2) the government's contribution to any delay; (3) the evidence supporting the determination that detention is warranted to prevent flight risk or community danger; (4) whether the government interests in ensuring appearance at future proceedings and protecting the community could be protected through alternatives to detention that are less harsh; and (5) the conditions of detention and how they compare to conditions under which pretrial criminal detainees or people convicted of crimes are held.

Doe v. Chestnut, 810 F. Supp. 3d 1169, 1179 (E.D. Cal. 2025). Petitioner has been detained since November 2025. This is about a quarter of the time that the Ninth Circuit has found to be “approaching the limits of what due process can tolerate” in the criminal pretrial detention context. *Doe*, 810 F. Supp. 3d at 1184. The evidence warrants detention first as a matter of law and then, to prevent flight and protect the community against danger. Petitioner’s criminal history paired with the violence underlying his crimes suggests that no one and nowhere is safe were Petitioner to be released. Petitioner provided no evidence that the government’s interests in ensuring his appearance and protecting the community could be protected through alternatives to detention. In failing to show how these alternatives would protect the government’s and public’s interest, Petitioner fails to meet the burden of factor four.

1 Petitioner failed to prove that the conditions at the detention facility are more severe than those where
2 individuals in criminal cases are detained. Finally, Petitioner has not acknowledged the process that he
3 has received to date – a custody redetermination hearing, with the benefit of counsel, and the
4 opportunity to appeal the finding, which he chose not to exercise.

5 Even if this Court adopts the standard from *Doe*, Petitioner has not shown his detention has
6 caused him to suffer a substantive due process violation and fails to show he is likely to succeed on the
7 merits of his claim.

8 **CONCLUSION**

9 Petitioner's detention is mandatory under 8 U.S.C. § 1226(c). He is not entitled to a bond
10 hearing nor is he entitled to release.

11 Dated: July 27, 2026

Respectfully submitted,

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13 United States Attorney

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16 Assistant United States Attorney
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