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Clerk, U.S. District Court
By: Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

DUONG THUC NGUYEN
Pro Se, Petitioner,

V.

CRYSTAL CARTER, TODD LYONS
and, PAM BONDI
Respondents.

Case No. 26-3008-JWL

PETITION'R TRAVERSE TO RESPONDENTS' ANSWER AND MOTION FOR ORDER REQUIRING INDIVIDUALIZED BOND HEARING (AND CONDITIONAL RELEASE FOR NON-COMPLIANCE)

Petitioner, through undersigned counsel, submits this Traverse in reply to Respondents' Answer and moves for an order requiring an immediate individualized bond hearing. As applied here where Petitioner has been held in mandatory custody for more than twenty (20) months, including more than a year after the Immigration Judge granted Cancellation of Removal continued detention without any neutral custody detention has become unreasonably prolonged and unjustified, in violation of the Fifth Amendment.

Petitioner now clarifies that his detention is governed by 1226(c) and confines his argument accordingly. Petitioner seeks a narrow remedy consistent with this Court's § 1226(c) due-process framework: a prompt bond hearing before an Immigration Judge to determine whether continued detention is necessary based on flight risk or danger. Petitioner also requests a firm compliance deadline and conditional release if Respondents fail to provide the ordered hearing by the Court's date certain.

I. INTRODUCTION

1. Petitioner, DUONG THUC NGUYEN, is a lawful permanent resident ("LPR") who has been detained by ICE since May 29, 2024 over twenty months with no bond hearing and no custody finding by any neutral decision maker.

2. On February 12, 2025, after a merits hearing, the Immigration Judge granted Petitioner's application for Cancellation of Removal. DHS appealed on March 14, 2025. The appeal remains pending before the Board of Immigration Appeals ("BIA").

3. This is not the "brief" detention considered in 'Demore v. Kim.' Nor is it a case where Petitioner "point to no delay caused by the government" (as in Moreno-Bastidas v. Barr). Here, DHS's appeal and systemic administrative delay have kept Petitioner incarcerated long after he prevailed before the Immigration Court.

4. Under the Fifth Amendment, mandatory detention under 8 U.S.C. § 1226(c) may be constitutional for a limited period. But Justice Kennedy's controlling caution in Demore remains: where continued detention becomes "unreasonable or unjustified," due process requires an individualized determination of danger/flight risk.

5. That point has been reached here. This court should order an individualized bond hearing by a date certain, with conditional release if Respondents do not comply.

II. STATEMENT OF FACTS (ADMITTED IN MATERIAL PART; LEGAL CONCLUSIONS DISPUTED)

A. Detention and Procedural History

6. Petitioner is a native and citizen of Vietnam and has been an LPR since June 2000. (Wheeler Decl.)

7. ICE took Petitioner into custody on May 29, 2024 and issued a Notice to Appear that same day. *Id.*

8. DHS alleged removability under INA § 237(a)(2)(A)(ii) and initially also alleged an aggravated felony ground under INA 237(a)(2)(A)(iii). *Id.* DHS later withdrew the aggravated felony charge. *Id.*

9. Petitioner filed an application for Cancellation of Removal for certain permanent residents. *Id.*

10. After hearings in 2024 and early 2025, the Immigration Judge held a merits hearing on February 12, 2025 and granted Cancellation of Removal at the conclusion of that hearing. *Id.*

11. DHS appealed on March 14, 2025. *Id.* The BIA did not issue a briefing schedule until October 9, 2025, nearly seven months after the appeal was filed. *Id.* Briefs were filed on October 30, 2025, and the appeal remains pending. *Id.*

12. Petitioner was detained in a county jail setting (Dodge County Jail) from May 2024 until May 2025, and was then transferred to the Leavenworth Federal Prison complex, where he remains.

13. For the entire period over twenty months Petitioner's confinement has been "prison-like," despite the civil nature of immigration detention.

B. Respondents' Key Contention (Disputed)

14. Respondents content (in substance) that detention remains constitutional because: (a) § 1226(c) mandates detention pending proceedings; (b) Demore and Jennings foreclose relief absent bad-faith delay; and (c) any length is justified because the case is "ongoing," with some continuances requested by Petitioner.

15. Petitioner disputes those legal conclusions. The Fifth Amendment does not permit open-ended civil incarceration without any neutral custody determination once detention becomes unreasonably prolonged and no longer reasonably relates to a valid regulatory purpose.

III. ARGUMENT

A. This Court Has Jurisdiction to Grant Habeas Relief For an As-Applied Due Process Challenge to Prolonged § 1226(c) Detention.

16. Petitioner seeks relief under 28 U.S.C. § 2241 because he is "in custody in violation of the

constitution." 28 U.S.C. § 2241(c)(3).

17. Respondents may not evade reviews by invoking 1226(e). The Supreme Court has made clear that § 1226(e) does not bar constitutional challenges to the statutory framework authorizing detention without bond.

18. Jennings rejected a statutory "six-month rule," but it expressly did not decide the constitutional question and left as-applied due process claims for adjudication.

B. Demore and Jennings Do Not Authorize Unreasonably Prolonged Mandatory Detention Without Any Neutral Custody Determination.

19. Demore upheld § 1226(c) in the context of detention for the "brief period necessary" to complete removal proceeding emphasizing that such detention generally lasts a short time and has a definite endpoint.

20. Jennings likewise emphasized the statute's mandatory character and rejected judicial rewriting of the statute to add periodic bond hearing as a matter of statutory text. But Jennings did not hold that due process allows any length of detention without a hearing, regardless of duration and regardless of government-caused delay.

21. Critically, Justice Kennedy's concurrence in Demore supplies the constitutional safety valve this Court recognized in Moreno-Bastidas: when continued detention becomes "unreasonable or unjustified," due process entitles the detainee to an individualized determination regarding flight risk and dangerousness.

22. That is exactly the narrow relief requested here: a bond hearing, not wholesale invalidation of § 1226(c), and not a court-imposed bright-line time rule.

C. Under the Factors This Court Has Discussed for § 1226(c) Due-Process Claims, Petitioner's Detention Has Become Unconstitutionally Prolonged

23. In Moreno-Bastidas v. Barr, this Court canvassed post-Jennings cases and noted that courts analyzing prolonged § 1226(c) detention often consider a set of factors, including length of duration, likely future detention, conditions, delays caused by each side, and the likelihood of a final removal order. Moreno-Bastidas, 2020 WL 3639774, at *8 10 (D. Kan. Jul 6 2020)(Lungstrum, J.).

24. In June 2024, this court again recognized that although Demore and Jennings upheld mandatory detention in the ordinary course some courts have found that § 1226(c) detention can become unconstitutionally prolonged, and the Court required Respondents to address that due-process claim when the Petitioner had been in pre-removal custody "for almost two years." See. Martinez Armendariz v. Garland, case No. 24-3106-JWL, order to Show Cause (D. Kan. June 28, 2024).

25. Applying the same case-specific approach here, every meaningful factor favors Petitioner.

1. Total Length of Detention (Over 20 months/626+ Days)

26. Petitioner has been detained since May 28, 2024, over 20 months and over 626 days.

27. This is several multiples longer than the "brief" and limited periods that have Damore's constitutional analysis.

28. Unlike Moreno-Bastidas (five months detention at the time of decision), Petitioner's detention has already crossed the "almost two years" range that this Court recognized may require a due process custody determination.

2. Likely Duration of Future detention (Open-Ended)

29. The BIA appeal remains pending. If the BIA reverses and remands, additional proceedings will occur before the Immigration Court. If the BIA affirms, DHS may still seek further review depending on posture and legal issues. Either way, there is no reliable endpoint in the near term.

30. This "future duration" factor weighs heavily in favor of requiring a bond hearing now.

3. Conditions of Detention (Punitive/Prison-like)

31. Petitioner has been held in jail and then transferred to a federal prison setting. These conditions are materially more punitive than the civil regulatory purpose asserted for immigration detention.

32. Where the government chooses prison-like confinement for due process scrutiny correspondingly increase.

4. Delays Attributable to Petitioner (Limited; Not Bad Faith: Cannot Waive Due Process)

33. Respondents highlight that petitioner requested some continuance in 2024. Petitioner does not deny that he sought time to resolve issues affecting eligibility for relief and to present evidence of rehabilitation.

34. But exercising statutory rights and preparing a meritorious application for relief is not "delay" that justifies indefinite civil incarceration especially where Petitioner ultimately prevailed before the Immigration Judge.

35. Moreover, the bulk of the detention (and the most constitutionally salient portion) occurred after the Immigration Judge granted Cancellation when Petitioner was no longer seeking continuance and when the case posture changed to a government-initiated appeal.

5. Delays Attributable to the Government (Material and Outcome-Determination)

36. DHS filed a timely administrative appeal of the Immigration Judge's grant of relief. That was the government's choice.

37. The BIA did not issue a briefing schedule until October 9, 2025, nearly seven months after DHS filed its appeal. Petitioner did not cause that delay. The government is responsible for the administrative process it invokes.

38. Since briefs were filed October 30, 2025, the case remains pending with no decision. This ongoing administrative delay after Petitioner won before the Immigration Court keeps Petitioner incarcerated with no individualized custody determination. That is precisely the situation in which detention becomes "unreasonable or unjustified."

6. Likelihood the Proceedings Will Result in a Final Order of Removal (Reduced)

39. In Moreno-Bastidas, this Court noted that the petitioner's merits arguments has been rejected by the IJ, reducing their persuasive weight.

40. Here, the opposite is true: after a merits hearing, the IJ granted Cancellation of removal. While not final due to DHS's appeal, that grant materially reduces the likelihood of removal and further undermines the government's claim that continued incarceration is reasonably related to effectuating removal.

41. Put simply: the government's "tether" argument is weakest when (a) the detainee has already won relief on the merits, and (b) continuing detention is driven by the government's appeal and administrative delay.

D. Respondents' "Demore/Jennings Means Detain Until the End" Theory Is Overboard and Would Eliminate the Constitutional Safety Valve

42. Respondents' approach would mean: so long as removal is theoretically possible (even after Immigration Judge granted relief), a person can be incarcerated for years with no hearing. That cannot be reconciled with due process and the Supreme Court's recognition that prolonged civil detention raises grave constitutional concerns.

43. Petitioner does not ask this Court to "graft some arbitrary time limit" onto § 1226(c). Petitioner asks only what due process requires once detention is unreasonably prolonged: an individualized custody hearing before a neutral decisionmaker.

E. The Proper Remedy Is a Prompt Individualized Bond Hearing, With a Firm Compliance Deadline and Conditional Release

44. Where § 1226(c) detention becomes unconstitutionally prolonged, the standard and narrowly tailored remedy is an individualized bond hearing before an Immigration Judge.

45. Petitioner requests that this Court order Respondents to produces Petitioner for an individualized bond hearing before an Immigration Judge on or before Friday, March 13, 2026.

46. Petitioner further requests that the Court order that if Respondents fail to provide the bond hearing by March 13, 2026, Respondents shall immediately release Petitioner from ICE custody no later than Friday March 20, 2026, subject to appropriate conditions of supervision as set by DHS/ICE (including, if necessary, reporting requirements, electronic monitoring, or other conditions short of incarceration).

47. This relief is consistent with how courts including within the Tenth Circuit remedy unconstitutionally prolonged § 1226(c) detention: a prompt bond hearing with a clear enforceable compliance deadline, and release if the government does not comply.

48. Petitioner also requests an order requiring Respondents to file a notice of compliance within 24 hours after the bond hearing occurs (or after release, if Respondents do not comply).

IV. CONCLUSION AND PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that the Court:

A. Grant the Petition to the extent it seeks an individualized custody determination;

B. Order Respondents to provide Petitioner an individualized bond hearing before an Immigration Judge on or before March 13, 2026;

C. Order that, if Respondents fail to provide that hearing by March 13, 2026, Petitioner shall be release from ICE custody no later than March 20, 2026; or

D. Order Petitioner's immediate release;

E. Grant such other and further relief the Court deems just and proper.

V. VERIFICATION

I Duong Thuc Nguyen, declare under penalty of perjury under the laws of the United States that I am the Petitioner in the above-entitled action, that I have read the foregoing Traverse to Respondents' Response to the Writ of Habeas Corpus and know the contends, therefore; and that the same is true and correct to the best of my knowledge, information and belief.

2-16-2026

FCI Leavenworth

[redacted]

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