IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

MAXIM TKACHENKO, Petitioner, v. Misty Mackey, Warden, Midwest Regional Reception Center; TODD LYONS, Acting Director, ICE; and Attorney General of the United States Respondents.	)	Case No. 26-3083-JWL

RESPONSE TO § 2241 HABEAS PETITION AND ORDER TO SHOW CAUSE

Respondents hereby respond to Petitioner's habeas petition brought pursuant to 28 U.S.C. § 2241 and the Court's Order to Show Cause (Doc. 3). On April 10, 2026, Petitioner Maxim Tkachenko filed a petition for habeas corpus pursuant to 28 U.S.C. § 2241, alleging that his continued mandatory detention under 8 U.S.C. § 1226(c) without a bond hearing violates due process. The Court should deny the habeas petition because Petitioner has been detained only for the period necessary to conduct his removal proceedings.

STATEMENT OF FACTS

The following facts are based on the declaration of Joseph L. Carroll, a Deportation Officer for ICE Enforcement and Removal Operations ("ERO") of the United States Department of Homeland Security ("DHS"). Exhibit 1, Carroll Decl. ¶¶ 1-4. Petitioner is a native and citizen of Ukraine. *Id.* ¶ 5. Petitioner was admitted to the United States at New York, New York as a nonimmigrant visitor on or about September 3, 1994. *Id.* ¶ 6. He adjusted his immigration status and became a lawful permanent resident on or about September 22, 2009. *Id.*

On or about October 15, 2012, Petitioner was convicted in the United States District Court, Southern District of Florida for conspiracy to commit hostage taking in violation of 18 U.S.C. § 1203(a) and possession of a firearm in furtherance of a crime in violation of 18 U.S.C. § 924(c)(1)(A). *Id.* ¶ 7. He was sentenced to 210 months on the conspiracy to commit hostage taking offense and 84 months on the firearm offense, to run consecutively. *Id.* On or about January 22, 2014, Petitioner's total sentence was reduced from 294 months to 180 months. *Id.* ¶ 8.

On January 6, 2025, Petitioner was placed in removal proceedings through issuance of a Notice to Appear ("NTA"), charging him as removable from the United States pursuant to section 237(a)(2)(C) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1227(a)(2)(C), as an alien that has been convicted under any law of purchasing, selling, offering for sale, exchanging, using, owning, possessing, or carrying, or of attempting or conspiring to purchase, sell, offer for sale, exchange, use, own, possess, or carry, in violation of any law, any weapon, part, or accessory which is a firearm or destructive device, as defined in 18 U.S.C. § 921(a). *Id.* ¶ 9. On or about January 10, 2025, Petitioner was taken into ICE custody following his release from the Federal Correctional Institution, Fort Dix, in New Jersey. *Id.* ¶ 10. He was served with the NTA on that day. *Id.*

Petitioner appeared before the Immigration Court in Elizabeth, New Jersey, on January 23, 2025. *Id.* ¶ 11. The case was reset to February 6, 2025, to allow Petitioner's attorney time to for preparation. *Id.* Petitioner appeared before the Immigration Court on February 6, 2025. At the hearing, Petitioner admitted to some allegations on the NTA, but denied others and denied the charge of removability. *Id.* ¶ 12. The Immigration Judge ultimately sustained the charge of removability and reset the case to February 20, 2025, for additional filings from the parties, as well as briefing on eligibility for relief in light of Petitioner's criminal convictions. *Id.*

On February 20, 2026, Petitioner appeared again in Immigration Court. *Id.* ¶ 13. The Immigration Judge concluded that Petitioner is eligible to apply for Cancellation of Removal for Certain Permanent Residents pursuant to INA § 240A(a), 8 U.S.C. § 1229b(a). *Id.* The case was again continued to March 11, 2025, for Petitioner to file any applications for relief with the Immigration Court. *Id.* On March 10, 2025, Petitioner filed applications for relief with the Immigration Court. *Id.* ¶ 14. Petitioner appeared again before the Immigration Court on March 11, 2025. *Id.* ¶ 15. The matter was scheduled for a final hearing on Petitioner's applications for relief on June 25, 2025. *Id.*

Hearings on the merits of Petitioner's applications for relief were held on June 25, June 30, and July 7, 2025. *Id.* ¶ 16. At the conclusion of the hearings, the Immigration Judge denied Petitioner's applications for relief and ordered him removed to Ukraine. *Id.* Petitioner filed an appeal of the Immigration Judge's decision with the BIA on August 5, 2025. *Id.* ¶ 18. As of today's date, the BIA has yet to issue a briefing schedule, and Petitioner's appeal remains pending. *Id.* ¶ 19.

On March 12, 2026, Petitioner was transferred to the Midwest Regional Reception Center in Leavenworth, Kansas. During the day, Petitioner is housed in a pod with approximately 26 other individuals. *Id.* ¶ 21. He has regular access to books, board games, video games, TV, and outdoor recreation. *Id.* Detainees are classified based on a security assessment that includes an individual's criminal history. *Id.* Petitioner is subject to the highest security level based on his serious criminal convictions. *Id.*

ARGUMENT

"The federal district courts have habeas corpus jurisdiction to consider the statutory and constitutional grounds for immigration detention that are unrelated to a final order of removal."

Zhiriakov v. Barr, No. 20-3141-JWL, 2020 WL 3960442, *6 (D. Kan. July 13, 2020) (citation omitted). To obtain habeas corpus relief, a petitioner must demonstrate that "[h]e is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3).

I. Petitioner's detention without a bond hearing complies with the Supreme Court's holding in *Demore v. Kim*, 538 U.S. 510 (2003).

Petitioner is detained pursuant to 8 U.S.C. § 1226(c)(1)(B), which mandates detention of noncitizens who have committed certain firearm offenses. *See also* 8 U.S.C. § 1227(a)(2)(C); Carroll Decl., ¶ 7. Although Petitioner alleges that his thirteen months of detention without a bond hearing violate the due process clause, the Supreme Court in *Demore v. Kim* rejected a petitioner's argument that "his detention under § 1226(c) violated due process because the [Immigration and Naturalization Service] had made no determination that he posed either a danger to society or a flight risk." 538 U.S. 510, 514 (2003). There, the Court held that "Congress, justifiably concerned that deportable criminal aliens who are not detained continue to engage in crime and fail to appear for their removal hearings in large numbers, may require that persons such as respondent be detained for the brief period necessary for their removal proceedings." *Id.* at 513.[1]

The Court then distinguished pre-final-order-of-removal detention from post-final-order-of-removal detention, noting that post-removal detention, "*unlike detention pending a determination of removability*" has no obvious termination point. *Id.* at 529 (citing *Zadvydas v. Davis,* 533 U.S. 678, 697 (2001)). Although the Court recognized that removal proceedings, at that time, were often concluded in a period of less than 90 days, it concluded that the respondent's six-month detention, which included the respondent's own request for continuance of his removal hearing, did not violate due process. *Id.* at 530-31.

[1] Subsequently, in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), the Supreme Court held that Section 1226(c) itself does not grant any right to a bond hearing after any particular amount of time.

Although it appears the Tenth Circuit has not yet addressed allegedly unconstitutionally prolonged detention under § 1226(c), the Eighth Circuit Court of Appeals in *Banyee v. Garland*, rejected a petitioner's argument that his year-long detention pursuant to § 1226(c) violated his due process rights. *Banyee v. Garland*, 115 F.4th 928, 931 (8th Cir. 2024). There, the Eighth Circuit recognized that the Supreme Court had "described detention pending deportation as 'brief,' 'limited,' and 'short,'" but nonetheless rejected the contention that "length determines legality." *Id.* at 932. Instead, the Eighth Circuit emphasized that "what matters is that detention pending deportation 'has a definite termination point'—deporting or releasing the alien—making it 'materially different' from the 'potentially permanent' confinement authorized by other statutes." *Id.* (alterations omitted) (citing *Demore*, 538 U.S. at 528-29 and *Zadvydas*, 533 U.S. at 697).

Thus, the Eighth Circuit held that *Demore* and *Zadvydas* "leave no room for a multi-factor 'reasonableness' test" as the Supreme Court has "already done whatever balancing is necessary" in concluding that due process is satisfied if "detention necessarily serves the purpose of preventing deportable aliens from fleeing prior to or during their removal proceedings." *Id.* at 933 (citing *Zadvydas*, 533 U.S. at 682; *Demore*, 538 U.S. at 528).

Here, Petitioner's thirteen-month detention during his removal proceedings, which includes applications for relief and an appeal he filed, is within "the brief period necessary for . . . removal proceedings." *Demore*, 538 U.S. at 513. Petitioner makes no argument, nor is there any evidence to suggest that Petitioner's ongoing removal proceedings are a sham. The immigration judge has entered an order of removal and Petitioner's proceedings have continued only because he filed an appeal with the BIA. Carroll Decl., ¶ 18. Because Petitioner's removal remains practically attainable, Petitioner's detention under section 1226(c) bears a reasonable relation to the legitimate purposes that the Supreme Court identified in *Demore*. *See Demore*, 538

U.S. at 527. As such, section 1226(c) is constitutional as applied to Petitioner and the Court should deny the habeas petition.

II. The *Moreno-Bastidas* factors favor Respondents.

Although it is Respondents' position that the Court's analysis need not go further, Respondents recognize that this Court has previously analyzed six factors in weighing as-applied due process challenges to mandatory detention. *See, e.g.*, *Nguyen v. Carter*, No. 26-3008-JWL, 2026 WL 522650, at *2 (D. Kan. Feb. 25, 2026); *Moreno-Bastidas v. Barr*, No. 20-3137-JWL, 2020 WL 3639774, at *8 (D. Kan. July 6, 2020). Those factors include:

> (1) the total length of detention to date; (2) the likely duration of future detention; (3) the conditions of detention; (4) delays in the removal proceedings caused by the detainee; (5) delays in the removal proceedings caused by the government; and (6) the likelihood that the removal proceedings will result in a final order of removal.

Nguyen, 2026 WL 522650, at *2. Respondents disagree that use of these factors is appropriate in light of *Demore*, but the factors nonetheless favor Respondents in this case.

First, Petitioner's total length of detention falls well below time periods previously held unconstitutional by this Court. *See Nguyen*, 2026 WL 522650, at *2 (twenty-one months of pre-removal custody weighs heavily in favor of the petitioner); *Martinez Armendariz*, 2024 WL 3226094, at *2 (two years of pre-removal custody requires a bond hearing). *Cf. Moreno-Bastidas*, 2020 WL 3639774, at *10 (five months of pre-removal custody insufficient to establish unreasonable detention). Although Petitioner has now been detained for slightly over thirteen months, Petitioner was ordered removed from the United States six months after he was taken into ICE custody and a portion of that time included continuances so that Petitioner's attorney could prepare his case and so that Petitioner could file applications for relief with the immigration court. Carroll Decl., ¶¶ 10-14. Moreover, unlike in *Nguyen*, Petitioner filed the appeal of his removal

order, not the Government. Carroll Decl., ¶ 18; *Nguyen*, 2026 WL 522650, at *2. As such, the delay in the conclusion of Petitioner's removal proceedings is attributable to Petitioner, not Respondents, and this factor should weigh against Petitioner.

Second, with respect to future detention, although Respondents do not know when Petitioner's appeal will be resolved, because Petitioner filed an appeal of the immigration court's decision, this factor should not weigh against Respondents. *Cf. Nguyen*, 2026 WL 522650, at *3 (finding that the second factor slightly favored the petitioner where the Government had appealed the immigration judge's order).

Third, although Petitioner argues that he has been held in prison and that his confinement has been more punitive than necessary, he has not shown that the conditions of his confinement have been harsh. Further, Respondents have presented evidence that Petitioner has regular access to books, board games, vide games, TV, and outdoor recreation. Carroll Decl., ¶ 21. Respondents also note that Petitioner is subject to the highest security level based on his serious criminal convictions. *Id.* The third factor should not weigh against Respondents. *See Nguyen*, 2026 WL 522650, at *3.

Turning to the fourth and fifth factors, as noted above, unlike in *Nguyen*, the majority of the delay in this case arises from Petitioner's decision to appeal the immigration judge's decision. Carroll Decl., ¶ 18. Although the briefing schedule in Petitioner's case has not yet been issued, the delay is still attributable to Petitioner's decision to appeal. These factors should weigh against Petitioner.

Sixth, there is a high likelihood that Petitioner's removal proceedings will result in a final order of removal. The immigration judge's well-reasoned order was attached to the Petition at Doc. 1-3, pp. 15-23. There, the immigration judge outlined the applicable statutes and caselaw and

applied it to Petitioner's case. *Id.* Although Petitioner argues that the immigration judge should have given greater weight to his allegedly low risk of reoffending, Petitioner does not dispute that he is removable from the United States because of his underlying conviction. The sixth factor therefore heavily favors Respondents.

Because the six factors first discussed by this Court in *Moreno-Bastidas* favor Respondents, Petitioner's habeas petition should be denied.

CONCLUSION

For the foregoing reasons, the Court should enter judgment against Petitioner on his § 2241 habeas petition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on April 30, 2026, the foregoing was electronically filed with the Clerk of the Court by using the CM/ECF system, which will provide notice to all registered parties. I further certify that I will cause a copy of the foregoing filing to be placed in the United States mail, postage prepaid, addressed to the following non-CM/ECF participant:

Maxim Tkachenko, [redacted]
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/s/ *Audrey D. Koehler*
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