UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No.: 1:26-cv-22754-DSL

SERAFIN MORAN SANTIAGO,

Petitioner,

v.

MIAMI FEDERAL DETENTION CENTER,

Respondent.
_____/

RETURN TO PETITION FOR WRIT OF HABEAS CORPUS

Respondent, through the undersigned Assistant U.S. Attorney and pursuant to the Court's *Order to Show Cause* [DE 4], responds to the *Petition for Writ of Habeas Corpus* [DE 1] (the Petition).

OVERVIEW

Petitioner Serafin Moran Santiago (Petitioner)—a convicted child rapist—proceeding pro se, challenges his immigration detention as unlawful or unconstitutional and seeks his immediate release. Petition at ¶ 15. But Petitioner's criminal history subjects him to *mandatory* immigration detention under 8 U.S.C. § 1226(c), pending completion of his removal proceedings. Accordingly, the Petition should be denied.

FACTUAL & PROCEDURAL BACKGROUND

Petitioner is a native and citizen of Cuba. **Exh. A**, Form I-213, dated March 31, 2026. On or about April 4, 2018, Petitioner applied for admission into the U.S. from Mexico at or near Eagle Pass, TX. *Id.* Petitioner was placed in expedited removal proceedings and detained pending a credible fear interview. *Id.* On April 28, 2018, Petitioner received a positive fear

finding by U.S. Citizenship and Immigration Services Asylum Pre-Screening Office (APSO) and was issued a Notice to Appear (NTA) pending removal proceedings. *Id.* On October 11, 2018, Petitioner was granted asylum by an immigration judge, and admitted as an asylee. **Exh. B**, IJ Grant of Asylum. On February 21, 2020, Petitioner filed a Form I-485, Application to Adjust Status, which remains pending. Exh. A.

On May 25, 2022, Petitioner was convicted in the Superior Court of Washington in and for Spokane County for the offense of Rape of a Child in the 3rd Degree, in violation of WA RCW 9A.44.079(1). **Exh. C**, Criminal Record, Case No. 21110574-32. Petitioner was sentenced to 13 months in prison.

On November 25, 2022, Immigration and Customs Enforcement (ICE) Enforcement Removal Operations (ERO) encountered Petitioner at a Corrections Center in Aberdeen, Washington. **Exh. D**, Form I-213, dated February 9, 2023. On February 9, 2023, ICE took custody of Petitioner after his criminal sentence was complete. *Id.* Petitioner was issued an NTA charging him as removable under Section 237(a)(2)(E)(i) of the Immigration and Nationality Act (Act), as amended, as an alien who at any time after entry has been convicted of a crime of domestic violence, a crime of stalking, or a crime of child abuse, child neglect, or child abandonment, and Section 237(a)(2)(A)(iii) of the Act, as amended, in that, at any time after admission, he has been convicted of an aggravated felony as defined in section 101(a)(43)(A) of the Act, a law relating to Murder, Rape or Sexual Abuse of a Minor and detained pending removal proceedings. **Exh. E**, NTA dated March 9, 2023.

On March 24, 2023, an Immigration Judge dismissed Petitioner's removal proceedings and ordered Petitioner released on his own recognizance pending the appeal of his rape conviction before the Washington Court of Appeals. **Exh. F**, Order of Dismissal. On

September 28, 2023, the Washington Court of Appeals affirmed the Petitioner's conviction. Exh. A.

On March 31, 2026, Petitioner was encountered by immigration officials and was placed under arrest and taken into ICE custody. Exh. A. On that same date, Petitioner was issued a Final Administrative Removal Order (I-851) and held in ICE/ERO custody pending removal. *Id.* On April 8, 2026, DHS issued an NTA for Petitioner charging him as removable under INA § 237(a)(2)(A)(iii) (defined in section 101(a)(43)(A) of the Act as a law relating to Murder, Rape or Sexual Abuse of a Minor and detained pending removal proceedings) INA § 237(a)(2)(A)(iii) (defined in section 101(a)(43)(F) of the Act as a crime of violence for which the term of imprisonment ordered is at least one year), and INA § 237(a)(2)(E)(i). **Exh. G**, NTA dated April 8, 2026.

Petitioner is currently detained at the Krome North Service Processing Center in Miami, Florida, pending completion of his removal proceedings. **Exh. H**, Detention History.

RESPONSE

A. Petitioner is subject to mandatory detention under Section 1226(c) pending completion of his removal proceedings; he is not entitled to a bond hearing or to be released

As a result of his 2022 third degree felony rape conviction (Exh. C), which was subsequently affirmed on appeal, Petitioner's immigration detention is governed by 8 U.S.C. § 1226(c). Section 1226(c) states that "[t]he Attorney General *shall take into custody* any alien who" qualifies for mandatory detention. *See* 8 U.S.C. § 1226(c)(1) (emphasis added). The statute prohibits release of noncitizens whom the Attorney General has taken into custody, except that the Attorney General may make exceptions for certain witness-protection purposes, which are inapplicable in this case. *See* 8 U.S.C. § 1226(c)(2) (stating that "[t]he

Attorney General may release an alien described in paragraph (1) *only if* the Attorney General decides" that release is "necessary" for witness protection) (emphasis added).

The Supreme Court has definitively and consistently affirmed the constitutionality of detention pending removal, including mandatory detention under Section 1226(c). *See, e.g., Demore v. Kim*, 538 U.S. 510, 523 (2003) (listing cases). Confronted with a "near-total inability to remove deportable criminal aliens" and statistics showing a recidivism rate for criminal aliens approaching 80 percent, *see Demore*, 538 U.S. at 518-19, Congress enacted § 1226(c). Section 1226(c) makes clear that "aliens detained under [§ 1226(c)] are not entitled to be released under any circumstances other than those expressly recognized by the statute." *Jennings v. Rodriguez*, 583 U.S. 281, 303 (2018).

In *Demore*, the Supreme Court affirmed the constitutionality of mandatory detention pending removal. In doing so, the Court distinguished the case in two key respects from its earlier decision in *Zadvydas v. Davis*, 533 U.S. 678 (2001), where the Court applied the canon of constitutional avoidance to read into the post-order detention statute an implicit temporal limitation. First, the Court emphasized that for the noncitizens challenging their detention in *Zadvydas*, removal was "no longer practically attainable" and therefore detention "did not serve its purported immigration purpose." *Demore*, 538 U.S. at 527. Conversely, mandatory detention pending removal proceedings "serves the purpose of preventing deportable criminal aliens from fleeing prior to or during their removal proceedings." *Id.* at 528. Second, the Court emphasized that the post-order detention in *Zadvydas* was "indefinite" and "potentially permanent" while pre-order detention has an "obvious termination point"—the conclusion of removal proceedings. *Id.* at 528-29. The considerations that justified the imposition of a

temporal limit on immigration detention in *Zadvydas* were absent in *Demore*, and the Court declined to impose additional, constitutional limits on the operation of § 1226(c).

Indeed, in *Demore*, the Supreme Court affirmed the mandatory detention pending removal proceedings of a lawful permanent resident for longer than six months, when he had conceded the charges against him but was seeking relief from removal. There, the detained noncitizen had already "spen[t] six months" in immigration custody before the Supreme Court upheld the constitutionality of his mandatory detention. *Demore*, 538 U.S. at 531. As a result of the Court's reversal of the decision affirming his release, he was to be returned to custody until removal proceedings were completed, which would take additional time. He had not yet had his removal hearing (because he asked for a continuance), and he could still appeal to the Board of Immigration Appeals if the Immigration Judge ordered him removed. *Demore*, 538 U.S. at 530-31. Thus—while Petitioner here had only been detained for about two weeks at the time he filed his Petition and has now been detained for still less than one month—*Demore* itself "implicitly foreclose[s]" the notion that the Constitution mandates a bond hearing near the six-month mark under section 1226(c). *See Reid v. Donelan*, 819 F.3d 486, 497 (1st Cir. 2016).

Demore resolves the Petition. Petitioner's detention continues to "serve its purported immigration purpose" — ensuring his appearance at his removal proceedings and protecting the community from aliens who have committed crimes that Congress concluded warranted mandatory detention. *Demore*, 538 U.S. at 527. The prospect of obtaining a removal order and the government's interest in enforcing that order remain significant throughout the immigration proceedings. The risk that an alien with a criminal history will commit further crimes or otherwise present a danger to the community, if released, presumably remains

constant until removal proceedings are completed and does not lessen at any arbitrary fixed point in time. Similarly, the risk that an alien with a criminal history, if released, will fail to appear for removal proceedings does not dissipate after a certain amount of time has passed. In fact, the government's interest in keeping the alien detained (and the alien's incentive to abscond) will typically increase over time as removal proceedings progress toward their completion, as criminal alien on the cusp of removal has a greater incentive to abscond than one who is at the beginning of his proceedings. *See Matter of Andrade*, 19 I. & N. Dec. 488, 490 (BIA 1987). In other words, Petitioner's detention under § 1226(c) does not cease to be justified simply because time has passed. Further, his pre-removal-order detention is not potentially indefinite, as it will terminate once his removal proceedings conclude. Thus, *Demore* compels this Court to conclude that Petitioner's detention is constitutional.

While Petitioner's current detention has thus far been quite short, for avoidance of doubt, the length of detention is not dispositive as to whether habeas relief should be granted. Among the courts that have recognized either constitutional limits or implied statutory limits on the length of pre-removal order detention, several have denied habeas petitions where detention was longer that at issue in this case. *See e.g. Rampersadsingh v. DHS,* No. 23-20709-CIV-WPD, DE 11 (S.D. Fla. March 17, 2023) (Dimitrouleas, J.) (recognizing that the petitioner's 14-month detention pending removal proceedings did not violate due process because the "Supreme Court's *Demore* and *Jennings* decisions foreclose Petitioner's claim that his continued detention is unconstitutional"); *O.D. v. Warden, Stewart Detention Ctr.*, 2021 WL 5413968 at *4-5 (M.D. Ga. Jan. 14, 2021), *adopted by*, 2021 WL 5413966 (M.D. Ga. Apr. 1, 2021) (denying habeas relief to § 1226(c) petitioner who had been detained for nineteen months); *Sigal v. Searls*, 2018 WL 5831326 at *5, 9 (W.D.N.Y. Nov. 7, 2018) (denying habeas

relief to petitioner detained for seventeen months after "tak[ing] into account all of the factual circumstances"); *see also Hylton v. Shanahan*, No., 2015 WL 3604328, at *6 (S.D.N.Y. June 9, 2015) (detention without bail for roughly two years did not violate due process); *Luna-Aponte v. Holder*, 143 F. Supp. 2d 189, 197 (W.D.N.Y. 2010) (same, after three years).

B. Petitioner has failed to exhaust his administrative remedies

Although he didn't request one and Section 1226(c) categorically forecloses it, if the Court determines Petitioner is nonetheless entitled to a bond hearing, that relief should still be denied because Petitioner has never requested a custody determination, nor has an IJ determined in the first instance that he is statutorily ineligible to be released on bond or, alternatively, that he poses a danger to the community or a flight risk.

The administrative exhaustion requirement is jurisdictional, and applies to habeas proceedings. *Sundar v. INS*, 328 F.3d 1320, at 1323-24 (11th Cir. 2003). Pursuant to 8 C.F.R. § 1003.19, an alien is entitled to have his custody determination reviewed by an IJ and to then pursue an appeal of any bond decision to the BIA. 8 C.F.R. § 1003.19(a) & (f). Such relief must first be pursued by a petitioner at the administrative level, before seeking habeas relief in federal court. *Resheroop v. Garland*, No. 6:21-cv-06060, 2022 WL 18530 (W.D. N.Y. 2022) (rejecting a procedural due process claim based on the alien's contention that he was not required to exhaust his administrative remedies by seeking a bond hearing before an IJ prior to filing a habeas petition); *Campbell v. Chadbourne*, 505 F. Supp. 2d 191, 197 (D. Mass. 2007).

Here, Petitioner has made no request for a bond hearing since being detained less than a month ago. As a result, an IJ has never determined in the first instance whether Petitioner's 2022 rape conviction subjects him to mandatory detention and precludes his release on bond. Instead of requesting a bond hearing with an IJ, Petitioner has improperly come straight to

this Court seeking habeas relief. And even then, he only requests immediate release—completely circumventing the IJ and the potential that, notwithstanding whether Section 1226(c) applies, an IJ may independently find him to be a danger to the community and/or a flight risk and deny bond on either of those bases.

CONCLUSION

Due to his criminal history, Petitioner's detention is governed by Section 1226(c), is mandatory, constitutional, and he is not entitled to a bond hearing. As such, the Petition should be denied.

Should the Court determine otherwise *and* excuse Petitioner's failure to exhaust his administrative remedies, Petitioner would still not be entitled to immediate release as he requests in his Petition. Rather, he would be presented to an IJ for a bond hearing, where Petitioner must bear the burden of proof.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on April 28, 2026, I filed a copy of the foregoing via CM/ECF and on April 29, 2026,[1] will cause a copy to be sent via U.S. Mail to the pro se Petitioner at:

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[1] This response was finalized and filed after it could be printed and processed for same-day mailing.