IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

JAIR MARIN MORALES, Petitioner, v. SAMUEL OLSON, Director, ICE Field Office; MARKWAYNE MULLIN, DHS Secretary; TODD BLANCHE, Acting Attorney General; TODD M. LYONS, Acting Director, ICE; and MISTY MACKEY, Warden, Midwest Regional Reception Center, Respondents.	)	Case No. 26-3099-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. 4). On April 22, 2026, Petitioner Jair Marin Morales 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. Further, because Petitioner is detained pursuant to 8 U.S.C. § 1226(c), *Galdamez Orellana* has no bearing on this case.

STATEMENT OF FACTS

The following facts are based on the declaration of Jennifer Quinn, a Deportation Officer for ICE Enforcement and Removal Operations ("ERO") of the United States Department of Homeland Security ("DHS"). Exhibit 1, Quinn Decl. ¶¶ 1-4. Petitioner is a native and citizen of Mexico. *Id.* ¶ 5. He was not in possession of a valid visa at the time of his entry into the United States. *Id.*

On January 15, 2025, Petitioner was convicted of possession of a narcotic drug in violation of Indiana Code 35-48-4-6(a) and unlawful carrying of a handgun in violation of Indiana Code 35-47-2-1.5(b). *Id.* ¶ 6. On January 16, 2025, Petitioner was placed in removal proceedings through issuance of a Notice to Appear ("NTA"), charging him with removability pursuant to section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1182(a)(7)(A)(i)(I), for not possessing a valid entry document, and pursuant to INA § 212(a)(2)(A)(i)(II), 8 U.S.C. § 1182(a)(2)(A)(i)(II), for being convicted of a controlled substance offense. *Id.* ¶ 7. Petitioner is subject to mandatory detention under INA § 236(c), 8 U.S.C. § 1226(c) due to his controlled substance offense. *Id.* ¶ 8.

On March 14, 2025, Petitioner filed an application for relief with the Immigration Court. *Id.* ¶ 9. On March 18, 2025, the immigration judge found that removability had been established. *Id.* ¶ 10. The case was continued to allow Petitioner the opportunity to pursue eligibility for a collateral petition. *Id.* Additional hearings in Petitioner's case were held on April 25, 2025, May 16, 2025, and July 3, 2025. *Id.* ¶ 11. Continuances were granted on each of these dates to allow Petitioner to continue to pursue the mentioned collateral petition. *Id.* On July 29, 2025, another continuance was granted over DHS opposition. *Id.*

On September 4, 2025, Petitioner appeared again before the Immigration Court. Petitioner's attorney informed the Immigration Court that Petitioner is no longer pursuing the collateral petition and will, instead, proceed only on the application for relief previously filed on March 14, 2025. *Id.* ¶ 12. The case was reset to October 21, 2025, for a hearing on the merits of Petitioner's application for relief. *Id.* Hearings on the merits of Petitioner's applications for relief were held on October 21, 2025, and November 19, 2025. *Id.* ¶ 13.

In a written decision dated January 15, 2026, the immigration judge denied Petitioner's application for relief and ordered him removed to Mexico. *Id.* Petitioner filed an appeal of the immigration judge's decision with the Board of Immigration Appeals ("BIA") on February 6, 2026. *Id.* ¶ 15. As of today's date, the BIA has yet to issue a briefing schedule, and Petitioner's appeal remains pending. *Id.* ¶ 16. Because Petitioner's case remains pending on appeal, the immigration judge's order is not yet final. *Id.* ¶ 17. ERO cannot execute Petitioner's removal order until the BIA rules on his appeal. *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 controlled substance offenses. *See also* 8 U.S.C. § 1227(a)(2)(B); Quinn Decl., ¶¶ 7-8. As such, the Court's analysis of 8 U.S.C. § 1225(b)(2)(A) in *Galdamez Orellana v. Welsh*, No. 26-3019-JWL, 2026 WL 710121 (D. Kan. Mar. 13, 2026), has no bearing on the legal basis for Petitioner's detention here.

Although Petitioner alleges that his sixteen 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.

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).

[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.

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 sixteen-month detention during his removal proceedings 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. Rather, Petitioner informed the immigration judge on March 18, 2025, that he would be pursuing eligibility for a collateral petition and requested four continuances over a nearly six-month period to pursue that petition. Quinn Decl., ¶¶ 10-12. Then, on September 4, 2025, Petitioner informed the immigration court that he would no longer pursue the collateral petition for which he had requested the repeated continuances. *Id.* ¶¶ 11-12. The case was then reset to October 21, 2025, for a hearing on the merits of Petitioner's application for relief. *Id.* ¶ 12.

The immigration judge entered an order of removal on January 15, 2026, and Petitioner's proceedings have continued only because he filed an appeal with the BIA. Quinn Decl., ¶¶ 13, 15. 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 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 sixteen months, six months of delay are directly attributable to Petitioner's decision to pursue a collateral petition, which he ultimately abandoned. Quinn Decl., ¶¶ 10-12. Moreover, unlike in *Nguyen*, an additional four months of detention are the result of Petitioner's decision to appeal the immigration judge's order of removal. Quinn Decl., ¶¶ 13, 15; *Nguyen*, 2026 WL 522650, at *2. As such, the delays in Petitioner's removal proceedings are 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 his confinement is indistinguishable from criminal confinement, he has not alleged any facts suggesting that the conditions of his confinement have been harsh. *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 request numerous continuances in the immigration court—including over the objection of DHS—and to appeal to the BIA. Quinn Decl., ¶ 10-13, 15. 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. Although Petitioner has appealed to the BIA, an immigration judge has already ordered Petitioner removed to Mexico. Quinn Decl., ¶ 13, 15. For this reason, the sixth factor weighs in Respondents' favor.

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 May 14, 2026, the foregoing was electronically filed with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to all CM/ECF participants.

/s/ *Audrey D. Koehler*
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