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8
9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 ARNOLD JERRY MARTINEZ-
12 ARAGON,

13 Petitioner,

14 v.

15 **CHRISTOPHER LAROSE, et al.,**
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17 Respondents.
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Case No.: 26-cv-3041-JO-DDL

**RESPONDENTS' RETURN TO
HABEAS PETITION**

I. INTRODUCTION

Petitioner filed a habeas petition under 28 U.S.C. § 2241 challenging his detention by Immigration and Customs Enforcement (ICE) and requesting the Court to release him from custody or order a bond hearing. ECF No. 1. Petitioner is subject to mandatory detention under 8 U.S.C. § 1226(c) pending a final order of removal. Respondents ask the Court to dismiss or deny Petitioner's requested relief.

II. FACTUAL BACKGROUND

Petitioner is a native and citizen of Guatemala. Exhibit (Ex.) 1 (I-213).¹ He entered the United States at an unknown time or date without inspection. *Id.* ICE took custody of Petitioner from the Cecil County, Maryland, Detention Center on October 10, 2025, after his arrest in Maryland on a warrant for failure to appear for trial in Prince George's County, Maryland. *Id.*

On April 25, 2025, Petitioner was convicted of petit larceny in Loudoun County, Virginia. *Id.* On June 20, 2025, Petitioner was arrested for 4th Degree Burglary and Possession with the Intent to Distribute a Controlled Dangerous Substance for which the charges are still pending. On September 20, 2025, Petitioner was again arrested for two counts of theft in Prince George's County, Maryland for which the charges are also still pending. *Id.*

On October 10, 2025, the Department of Homeland Security (DHS) filed a Notice to Appear (NTA) with the Immigration Court, charging Petitioner with removability under INA Section 212(a)(6)(A)(i). Ex. 2 (NTA). Petitioner is also removable pursuant to section 237(a)(2)(A)(iii) of the Immigration and Nationality Act (INA), as an alien convicted of an aggravated felony as defined in INA § 101(a)(43)(G) for "a theft offense or burglary offense... for which the term of imprisonment is at least one year."

Petitioner's first master calendar hearing was scheduled for October 24, 2025. *Id.*

¹ The attached exhibits are true copies of documents obtained from ICE counsel, with limited redactions made to protect against unauthorized disclosures of personally identifiable information that federal agencies under the Privacy Act, 5 U.S.C. § 552a.

1 From October 24, 2025, to May 8, 2026, Petitioner either requested delays to obtain
 2 counsel (Code 1), to gather evidence or perfect his claims (Code 2), or he, or his counsel,
 3 did not appear for the hearings (Code 11). Ex. 3 (Adjournment History), Ex. 4
 4 (Adjournment Codes). Until a final order is issued on June 3, 2026, Petitioner remains
 5 mandatorily detained in ICE custody under 8 U.S.C. § 1226(c).

6 III. ARGUMENT

7 His statutory and constitutional challenges are jurisdictionally barred under 8
 8 U.S.C. § 1252(g); and in any event, must be denied because Petitioner is lawfully
 9 detained under the INA and the Constitution. Petitioner cites no statute or case law to
 10 support his requests for release or bond.

11 A. Petitioner's claims are barred under 8 U.S.C. § 1252(g)

12 Petitioner's claims are barred under 8 U.S.C. § 1252(g). Petitioner bears the
 13 burden of establishing that this Court has subject matter jurisdiction over her claims.
 14 *See Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) ("Federal
 15 courts are courts of limited jurisdiction. . . . It is to be presumed that a cause lies outside
 16 this limited jurisdiction, and the burden of establishing the contrary rests upon the party
 17 asserting jurisdiction.").

18 Pertinent here, 8 U.S.C. § 1252(g) bars judicial review over any claim or cause
 19 of action arising from any decision to commence or adjudicate removal proceedings or
 20 execute removal orders. *See* 8 U.S.C. § 1252(g). These three actions "represent the
 21 initiation or prosecution of various stages in the deportation process" and there was
 22 "good reason for Congress to focus special attention upon and make special provision
 23 for" them. *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999).
 24 "Section 1252(g) was directed against a particular evil: attempts to impose judicial
 25 constraints upon prosecutorial discretion." *Id.* at 485 n.9.

26 B. Petitioner Has Not Established a Due Process Violation under *Demore*.

27 The Supreme Court has held that mandatory detention under § 1226(c) does not
 28 violate due process. *See Demore v. Kim*, 538 U.S. 510, 513 (2003). In so holding, it

1 recognized that for over a hundred years, the Supreme Court “has firmly and repeatedly
2 endorsed the proposition that Congress may make rules as to aliens that would be
3 unacceptable if applied to citizens.” *Id.* at 522 (collecting cases). Consequently, the
4 Supreme Court has, time and time again, “recognized [that] detention during deportation
5 proceedings [is] a constitutionally valid aspect of the deportation process.” *Id.* at 523; *see*
6 *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1217 (9th Cir. 2022) (Bumatay, concurring)
7 (“For over a century, whenever Congress has granted the Executive authority to detain
8 aliens pending removal proceedings, the Supreme Court has repeatedly upheld such
9 detention as consistent with the Constitution.”).

10 In addressing the constitutionality of § 1226(c), the *Demore* court deemed it
11 critically important to address the immigration purpose underlying Congress’s
12 enactment of the statute. *See* 538 U.S. at 527–31. In its analysis, the Supreme Court
13 observed that Congress “adopted [§ 1226(c)] against a backdrop of wholesale failure by
14 the [government] to deal with increasing rates of criminal activity by aliens.” *Id.* at 518.
15 It noted that when enacting § 1226(c), Congress had before it a multitude of evidence
16 to support its determination to mandate detention of criminal noncitizens, including:
17 that (1) “criminal aliens who were deported swiftly [had] reentered the country illegally
18 in great numbers”; (2) “[the] near-total inability to remove deportable criminal aliens
19 imposed more than a monetary cost on the Nation”; (3) “deportable criminal aliens who
20 remained in the United States often committed more crimes before being removed”; (4)
21 “one of the major causes of the [the government’s] failure to remove deportable criminal
22 aliens was the agency’s failure to detain those aliens during their deportation
23 proceedings”; (5) “even with individualized screening, releasing deportable criminal
24 aliens on bond would lead to an unacceptable rate of flight”; and (6) “evidence
25 suggest[ed] that permitting discretionary release of aliens pending their removal
26 hearings would lead to large numbers of deportable criminal aliens skipping their
27 hearings and remaining at large in the United States unlawfully.” *Id.* at 518–33.

28 With the statute’s purpose in mind, the Supreme Court upheld the

1 constitutionality of § 1226(c), repeatedly noting, as it had several times before, that
2 detention of a noncitizen during ongoing removal proceedings is constitutional. *See id.*
3 at 513 (“We hold that Congress, justifiably concerned that deportable criminal aliens
4 who are not detained continue to engage in crime and fail to appear for their removal
5 hearings in large numbers, may require that [such] persons . . . be detained for the brief
6 period necessary for their removal proceedings.”). The Supreme Court, however, did
7 not foreclose the possibility that a noncitizen detained under § 1226(c) may establish a
8 due process violation depending on the circumstances of their case.

9 In addressing such due process claims (as here), the Court must be principally
10 guided by *Demore*. *See Hohn v. United States*, 524 U.S. 236, 252–53 (1998) (“Our
11 decisions remain binding precedent until we see fit to reconsider them[.]”); *Hart v.*
12 *Massanari*, 266 F.3d 1155, 1171 (9th Cir. 2001) (“A decision of the Supreme Court will
13 control that corner of the law unless and until the Supreme Court itself overrules or
14 modifies it. Judges of the inferior courts may voice their criticisms but follow it they
15 must.”); *see also Rodriguez Diaz v. Garland*, 53 F.4th at 1214 (Bumatay, concurring)
16 (The Supreme Court “has recently backed away from multi-factorial grand unified
17 theories for resolving legal issues.”) (simplified, citing *Kennedy v. Bremerton Sch.*
18 *Dist.*, 597 U.S. 507, 533 (2022)). And *Demore* teaches that detention of noncitizens
19 under § 1226(c) is constitutional so long as detention serves its purported immigration
20 purpose. *See* 538 U.S. at 527–28 (stating that detention of such noncitizens “necessarily
21 serves the purpose of preventing deportable criminal aliens from fleeing prior to or
22 during their removal proceedings, thus increasing the chance that, if ordered removed,
23 the aliens will be successfully removed” and that the evidence Congress had before it
24 in enacting § 1226(c) “certainly support[ed] the approach it selected” in declining to
25 afford such noncitizens bond hearings during removal proceedings).

26 Justice Kennedy’s concurring opinion provided further guidance on when a
27 noncitizen mandatorily detained under § 1226(c) may suffer a due process violation.
28 *See id.* at 532–33. He stated that “since the Due Process Clause prohibits arbitrary

1 deprivations of liberty, a lawful permanent resident alien [] could be entitled to an
2 individualized determination as to his risk of flight and dangerousness if the continued
3 detention became unreasonable or unjustified.” *Id.* at 532. He then explained what
4 circumstances may meet the unreasonable or unjustified standard: “Were there to be an
5 unreasonable delay by [DHS] in pursuing and completing deportation proceedings, it
6 could become necessary then to inquire whether the detention is not to facilitate
7 deportation, or to protect against risk of flight or dangerousness, but to incarcerate for
8 other reasons.” *Id.* at 532–33.

9 Here, there is no dispute that Petitioner is subject to mandatory detention under
10 § 1226(c) due to his conviction for theft and his pending offenses in Maryland. Because
11 Petitioner is a criminal noncitizen within the meaning of § 1226(c), his ongoing
12 detention during the pendency of his removal proceedings does not violate due process
13 because it “necessarily serves the purpose of preventing deportable criminal aliens [like
14 him] from fleeing prior to or during their removal proceedings, thus increasing the
15 chance that, if ordered removed, [he] will be successfully removed.” *Demore*, 538 U.S.
16 at 528. And Petitioner has not demonstrated that his detention has become
17 “unreasonable or unjustified” such that his due process rights have been violated. *See*
18 *id.* at 532–33 (Kennedy, J. concurring). In this case, there is no evidence presented, nor
19 even a claim raised by Petitioner, that the government has unreasonably delayed
20 pursuing and completing his removal proceedings, or that it is seeking to detain him for
21 any reason other than seeking to protect the public and facilitate his removal. *See id.* at
22 532–33.

23 Instead, Petitioner claims that he is entitled to immediate release or a bond
24 hearing because he has been in prolonged detention for several months., First, in
25 *Demore*, the Supreme Court did not embrace any bright-line period-of-time marker for
26 when a noncitizen under § 1226(c) may suffer a due process violation, and in fact,
27 upheld the constitutionality of the noncitizen’s detention even though it had passed six
28 months and was likely to extend longer. *See id.* at 532; *Jennings v. Rodriguez*, 583 U.S.

1 281, 312 (2018) (holding that nothing in § 1225(b), § 1226(a), or § 1226(c) “imposes a
2 6-month time limit on detention without the possibility of bail”); *Reid v. Donelan*, 17
3 F.4th 1, 7 (1st Cir. 2021) (“It requires no reading of tea leaves to see that *Demore* is
4 fatal to the claim here that every single person detained for six months must be entitled
5 to a bond hearing.”).

6 Second, the record indicates that all, but about a month and a half of his
7 detention, are a direct result of Petitioner’s requests for additional time to obtain
8 counsel, prepare his application for relief, and failing to show at two master calendar
9 hearings. *See* Exs. 3 and 4. Third, the only delay attributable to the Respondents is the
10 initial two weeks of detention due to the scheduling of the initial removal proceeding
11 and the month between the last master calendar hearing and the merits hearing. As such,
12 these circumstances do not demonstrate unreasonable or unjustified delays raising the
13 question of “whether the detention is not to facilitate deportation, or to protect against
14 risk of flight or dangerousness, but to incarcerate for other reasons.” *Demore*, 538 U.S.
15 at 532–33.

16 Ninth Circuit caselaw post-*Jennings* further bolsters the assertion that Petitioner
17 has not established that his § 1226(c) detention violates due process. In *Fraihat v. Barr*,
18 the Ninth Circuit addressed a habeas petition brought by a noncitizen detained under §
19 1226(c) for more than two years without a bond hearing. *See* 790 F. App’x 120, 120–
20 22 (9th Cir. 2020). There, the Ninth Circuit rejected an argument that due process
21 requires consideration of the prolonged length of his detention. *See id.* at 121 (“*Fraihat*
22 has not demonstrated that the Constitution requires consideration of the length of his
23 detention in this context[.]”). The *Fraihat* court concluded that “although *Fraihat*’s
24 immigration detention has been prolonged, it has not been arbitrary or indefinite. To the
25 contrary, it has been tied to his removal proceedings.” *Id.* at 122. Here, as in *Fraihat*,
26 Petitioner’s detention is not arbitrary or indefinite. Rather, as in *Fraihat*, his continued
27 detention has been tied solely to his removal proceedings, not for any arbitrary or
28 improper purpose.

Under *Demore* and *Fraihat* (the two most prescient cases applicable to the due process claim at issue here), Petitioner has not demonstrated that his detention under § 1226(c) violates his due process rights. *See Demore*, 538 U.S. at 528, 530–33; *Fraihat*, 790 F. App'x at 122.

C. Petitioner Has Not Established a Due Process Violation Under the Factor-Based Test.

To the extent the Court disagrees that *Demore* supplies the framework for analyzing Petitioner's due process challenge and is inclined to apply a factor-based test, courts in this district have applied the test in *Lopez v. Garland*, 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022), to determine whether a petitioner's mandatory detention has become unreasonable, and thus, unconstitutionally prolonged. *See, e.g., Sanchez-Rivera*, No. 22-cv-1357-MMA-JLB, 2023 WL 139801 at *5 (S.D. Cal. Jan. 9, 2023) (“[W]hile the *Mathews* factors may be well-suited to determining whether due process requires a second bond hearing, they are not particularly dispositive of whether prolonged mandatory detention has become unreasonable in a particular case.”); *Durand v. Allen*, No. 23-cv-00279-RBM-BGS, 2024 WL 711607, at *4 (S.D. Cal. Feb. 21, 2024) (“[T]he *Lopez* test is most applicable to due process challenges raised by noncitizens detained under § 1226(c) seeking an initial bond hearing.”). Under *Lopez*, to determine whether continued mandatory detention has become unreasonable, “the Court will look to the total length of detention to date, the likely duration of future detention, and the delays in the removal proceedings caused by the petitioner and the government.” 631 F. Supp. 3d at 879.

Some Courts have applied the test in *Banda v. McAleenan*, which considers: (1) the total length of detention to date; (2) the likely duration of future detention; (3) 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. *See* 385 F. Supp. 3d 1099, 1106 (W.D. Wash. 2019). The *Lopez* test considers substantially similar factors,

1 with the exception of the conditions of detention factor. *See* 631 F. Supp. 3d at 879.
2 Because conditions of confinement claims are not cognizable in habeas, Respondents
3 contend that the *Lopez* test is more appropriate here. *See Zelaya-Gonzalez v.*
4 *Matuszewski*, No. 23-cv-151-JLS-KSC, 2023 WL 3103811, at *3 (S.D. Cal. Apr. 25,
5 2023) (Claim alleging “unconstitutional conditions of confinement, is not cognizable in
6 habeas.”) (citing *Nettles v. Grounds*, 830 F.3d 922, 933 (9th Cir. 2016)).

7 Turning to the *Lopez* factors, none weigh in favor of finding a due process
8 violation. First, as to the length of detention, Petitioner has been detained for about 7
9 months, over five of which are due to Petitioner’s continuances. “In general, as
10 detention continues past a year, courts become extremely wary of permitting continued
11 custody absent a bond hearing.” *Sibomana v. LaRose*, No. 22-cv-933-LL-NLS, 2023
12 WL 3028093, at *4 (S.D. Cal. Apr. 20, 2023) (citation omitted); *see Sanchez-Rivera v.*
13 *Matuszewski*, No. 22-cv-1357-MMA-JLB, 2023 WL 139801, at *6 (S.D. Cal. Jan. 9,
14 2023) (detained for three years); *Durand v. Allen*, 2024 WL 711607, at * (over two-and-
15 a-half years); *Yagao v. Figueroa*, No. 17-cv-2224-AJB-MDD, 2019 WL 1429582, at
16 *2 (S.D. Cal. Mar. 29, 2019) (two years). Petitioner’s detention falls short of the length
17 these courts have found to raise due process concerns.

18 Second, Petitioner’s merits hearing is in about two weeks on June 3, 2026. His
19 path to removal or release will be made clearer on that date. While Petitioner may
20 pursue his legal remedies in the future as he sees fit, he cannot in turn rely on the delays
21 attendant to his decisions to establish a due process violation. *See Demore*, 538 U.S. at
22 530 n. 14 (“As we have explained before, however, “the legal system . . . is replete with
23 situations requiring the making of difficult judgments as to which course to follow, and,
24 even in the criminal context, there is no constitutional prohibition against requiring
25 parties to make such choices.”) (citations omitted); *id.* at 530-31 (“Respondent was
26 detained for somewhat longer than the average [...] but respondent himself had
27 requested a continuance of his removal hearing.”); *Rodriguez Diaz v. Garland*, 53 F.4th
28 1189, 1210 (9th Cir. 2022) (“Rodriguez Diaz in this case has not demonstrated that the

1 fact of the review process following its ordinary course itself created a due process
2 violation.”). As Judge Bumatay explained in his concurrence in *Martinez v. Clark*:

3 Absent any allegation that the extended detention here is unrelated to an
4 immigration purpose, the mere fact that detention is “prolonged” doesn’t alter the
5 statutory framework. Indeed, in our circuit, the median processing time for an
6 immigration case to reach a merits determination is 39 months. Does that mean
7 that any immigration proceeding appealed in the Ninth Circuit would
8 automatically invalidate mandatory detention under § 1226(c)? Why should our
9 delays in processing cases impact Congress's design?

10 124 F.4th 775, 788 (9th Cir. 2024).

11 Third, as to the delays in the removal proceedings caused by Petitioner and the
12 government, there has been no unreasonable delay by Respondents, as discussed above.
13 Petitioner’s continuance requests, resulting in over five months of delay, causes this
14 factor to weigh against the Petitioner.

15 On this record, the Court cannot find that “detention has become so unreasonable
16 as to require an initial bond hearing.” *Sanchez-Rivera*, 2023 WL 139801, at *6. Should
17 the Court disagree, Petitioner bears the burden of proof to demonstrate that he is not a
18 danger to the community or a flight risk. *See Rodriguez Diaz*, 53 F.4th at 1211 (“We
19 are aware of no Supreme Court case placing the burden on the government to justify
20 the continued detention of [a noncitizen], much less through an elevated ‘clear and
21 convincing’ showing.”). Indeed, even when considering a noncitizen subject to
22 potentially indefinite detention after the conclusion of removal proceedings, the
23 Supreme Court held that the noncitizen, not the government, must bear the initial burden
24 of proof to show that release is warranted. *See Zadvydas v. Davis*, 533 U.S. 678, 701
25 (2001). Petitioner cites no support for any contention otherwise.
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IV. CONCLUSION

For the reasons stated herein, Respondents respectfully request that the Court dismiss this petition for lack of jurisdiction or deny it on the merits.

DATED: May 21, 2026

Respectfully submitted,

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