

1 ADAM GORDON
United States Attorney
2 CAMILLE SAVEDRA
California Bar No. 336490
3 Assistant U.S. Attorney
Office of the U.S. Attorney
4 880 Front Street, Room 6293
San Diego, CA 92101-8893
5 Telephone: (619) 546-5084
Email: camille.savedra@usdoj.gov

6 Attorneys for Respondents

7
8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 JOSE ANGEL GIRON RODAS,

Case No.: 26-cv-3535-LL-JAC

11
12 Petitioner,

**RETURN TO PETITION FOR WRIT
OF HABEAS CORPUS**

13 v.

14
15 CHRISTOPHER J. LAROSE, Warden,
Otay Mesa Detention Center; *et al.*,

16
17 Respondents.

18
19
20 **I. INTRODUCTION**

21 Petitioner requests the Court to order his immediate release from Immigration and
22 Customs Enforcement (ICE) custody or require that he be afforded a bond hearing because,
23 he alleges, his mandatory civil immigration detention under 8 U.S.C. § 1226(c) has become
24 “prolonged” in violation of his due process rights under the Fifth Amendment. However, as
25 an alien who has been convicted of a human trafficking offense, he is subject to mandatory
26 detention under § 1226(c). The Supreme Court has upheld the constitutionality of § 1226(c).
27 Because Petitioner is subject to mandatory detention under § 1226(c), Respondents ask that
28 the Court dismiss or deny Petitioner’s requested relief.

II. FACTUAL BACKGROUND

Petitioner is a native and citizen of Guatemala, who entered the United States illegally on or about July 25, 2003, near Douglas, Arizona. *See* Exhibit 1 (Form I-213).¹ On May 23, 2024, Immigration and Customs Enforcement (ICE) apprehended Petitioner after Petitioner was discovered to have transported an illegal alien into the United States. *See id.*; Exhibit 2 (Judgment in a Criminal Case). On January 10, 2025, Petitioner was convicted of Transportation of Certain Aliens under 8 U.S.C. § 1324(a)(1)(A)(ii). *See* Exhibit 3; *U.S. v. Jose Angel Giron Rodas*, No. 3:24-cr-01298-RBM (S.D. Cal.). Petitioner was sentenced to time-served and supervised release. *See id.*

On January 26, 2025, ICE served Petitioner with a Notice to Appear (NTA), charging him with inadmissibility and removability under sections 212(a)(6)(A)(i) of the Immigration and Nationality Act (INA) as an alien present in the United States without being admitted or paroled. *See* Exhibit 3 (Notice to Appear). The filing of the NTA initiated removal proceedings, pursuant to 8 U.S.C. § 1229a, against Petitioner. Within his removal proceedings, Petitioner applied for relief from removal before an immigration judge including asylum under 8 U.S.C. § 1158, withholding of removal under 8 U.S.C. § 1231(b)(3), and relief under the Convention Against Torture. *See* ECF No. 1 at 7. While detained, Petitioner requested an in-custody redetermination proceeding on March 10, 2025 and July 3, 2025. *See* Exhibit 4 (Orders of the Immigration Judge). On both occasions, the immigration judges denied bond to Petitioner due to lack of jurisdiction. *See id.*

Petitioner's initial merits hearing was scheduled for November 14, 2025. *See* ECF No. 1 at 7. Petitioner continued the removal proceedings several times to obtain evidence and to locate new immigration counsel. *See id.* On March 23, 2026, at Petitioner's individual merits hearing, an immigration judge ordered Petitioner removed to Guatemala, or in the alternative, Mexico. *See* Exhibit 5 (Order of the Immigration Judge). On April 22, 2026, Petitioner appealed the removal order with the Board of Immigration Appeals (BIA). *See*

¹ The attached exhibits are true copies, with few redactions of private information, of documents obtained from ICE counsel.

Exhibit 6 (Filing Receipt for Appeal). Since Petitioner's appeal is still pending with the BIA is no administratively final removal order. Therefore, Petitioner remains subject to mandatory detention under § 1226(c).

III. ARGUMENT

A. Petitioner is Lawfully Detained Under the INA and the Constitution.

Petitioner's habeas petition should be denied because he is lawfully detained under 8 U.S.C. § 1226(c) of the INA and the Constitution.

1. Petitioner is mandatorily detained under 8 under U.S.C. § 1226(c)(1)(E).

Petitioner's claims for alleged statutory and constitutional violations fail because Petitioner is subject to mandatory detention under 8 U.S.C. § 1226(c)(1)(E). Based on the plain language of the statute, Petitioner's detention is governed by § 1226. Section 1226(c)(1)(E) requires mandatory detention of an alien who is "inadmissible by reason of having committed any offense covered in section 1182(a)(2) of this title[.]" Section 212(a)(2)(H) of the INA, 8 USC § 1182(a)(2)(H) reads that "[a]ny alien who commits or conspires to commit human trafficking offenses in the United States or outside the United States, or who the consular officer, the Secretary of Homeland Security, the Secretary of State, or the Attorney General knows or has reason to believe is or has been a knowing aider, abettor, assister, conspirator, or colluder with such a trafficker in severe forms of trafficking in persons, as defined in the section 7102 of Title 22, is inadmissible."

Here, Petitioner was convicted of 8 U.S.C. § 1324(a)(1)(A(ii), the transportation of certain aliens, on January 10, 2025. *See* Exhibit 2. Since Petitioner was convicted of a human trafficking related offense, Petitioner's conviction falls squarely within the mandatory detention provision under § 1226(c)(1)(E).

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

The Court should deny Petitioner's habeas petition because he has not met his burden of demonstrating that his detention under 8 U.S.C. § 1226(c) is unlawful under the Fifth

1 Amendment's Due Process Clause. According to Petitioner, he seeks immediate release
2 from custody or a bond hearing because Respondents have held him since January 10, 2025.
3 See ECF No. 1.

4 The Supreme Court has held that mandatory detention under § 1226(c) does not
5 violate due process. See *Demore v. Kim*, 538 U.S. 510, 513 (2003). In so holding, it
6 recognized that for over a hundred years, the Supreme Court “has firmly and repeatedly
7 endorsed the proposition that Congress may make rules as to aliens that would be
8 unacceptable if applied to citizens.” *Id.* at 522 (collecting cases). Consequently, the
9 Supreme Court has, time and time again, “recognized [that] detention during deportation
10 proceedings [is] a constitutionally valid aspect of the deportation process.” *Id.* at 523; see
11 *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1217 (9th Cir. 2022) (Bumatay, concurring)
12 (“For over a century, whenever Congress has granted the Executive authority to detain
13 aliens pending removal proceedings, the Supreme Court has repeatedly upheld such
14 detention as consistent with the Constitution.”).

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

1 “evidence suggest[ed] that permitting discretionary release of aliens pending their removal
2 hearings would lead to large numbers of deportable criminal aliens skipping their hearings
3 and remaining at large in the United States unlawfully.” *Id.* at 518–33.

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

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

Justice Kennedy’s concurring opinion provided further guidance on when a noncitizen mandatorily detained under § 1226(c) may suffer a due process violation. *See id.* at 532–33. He stated that “since the Due Process Clause prohibits arbitrary deprivations of liberty, a lawful permanent resident alien [] could be entitled to an individualized determination as to his risk of flight and dangerousness if the continued detention became unreasonable or unjustified.” *Id.* at 532. He then explained what circumstances may meet the unreasonable or unjustified standard: “Were there to be an unreasonable delay by [DHS] in pursuing and completing deportation proceedings, it could become necessary then to inquire whether the detention is not to facilitate deportation, or to protect against risk of flight or dangerousness, but to incarcerate for other reasons.” *Id.* at 532–33.

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

Instead, Petitioner claims that he is entitled to immediate release or a bond hearing because he has been in prolonged detention for several months. First, in *Demore*, the Supreme Court did not embrace any bright-line period-of-time marker for when a noncitizen under § 1226(c) may suffer a due process violation, and in fact, upheld the constitutionality of the noncitizen’s detention even though it had passed six months and was likely to extend

1 longer. *See id.* at 532; *Jennings v. Rodriguez*, 583 U.S. 281, 312 (2018) (holding that nothing
2 in § 1225(b), § 1226(a), or § 1226(c) “imposes a 6-month time limit on detention without
3 the possibility of bail”); *Reid v. Donelan*, 17 F.4th 1, 7 (1st Cir. 2021) (“It requires no
4 reading of tea leaves to see that *Demore* is fatal to the claim here that every single person
5 detained for six months must be entitled to a bond hearing.”).

6 Second, during Petitioner’s detention, he filed asylum applications and rescheduled
7 his merits hearing several times to obtain evidence and locate new immigration counsel. *See*
8 ECF No. 1 at 7. Moreover, the record indicates Petitioner requested a bond hearing on two
9 occasions, however, the immigration court did not have jurisdiction based on the statutory
10 authority in which Petitioner was being held. *See* Exhibit 4. Third, there does not appear to
11 be any delay on part of Respondents during the removal proceedings. *See* ECF No. 1 at 7.
12 As such, these circumstances do not demonstrate unreasonable or unjustified delays raising
13 the 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. at
15 532–33.

16 Ninth Circuit caselaw post-*Jennings* further bolsters the assertion that Petitioner has
17 not established that his § 1226(c) detention violates due process. In *Fraihat v. Barr*, the
18 Ninth Circuit addressed a habeas petition brought by a noncitizen detained under § 1226(c)
19 for more than two years without a bond hearing. *See* 790 F. App’x 120, 120–22 (9th Cir.
20 2020). There, the Ninth Circuit rejected an argument that due process requires consideration
21 of the prolonged length of his detention. *See id.* at 121 (“*Fraihat* has not demonstrated that
22 the Constitution requires consideration of the length of his detention in this context[.]”).
23 The *Fraihat* court concluded that “although *Fraihat*’s immigration detention has been
24 prolonged, it has not been arbitrary or indefinite. To the contrary, it has been tied to his
25 removal proceedings.” *Id.* at 122. Here, as in *Fraihat*, Petitioner’s detention is not arbitrary
26 or indefinite. Rather, as in *Fraihat*, his continued detention has been tied solely to his
27 removal proceedings, not for any arbitrary or improper purpose, and his choice to appeal
28 the order to the Board of Immigration Appeals on April 22, 2026.

1 Under *Demore* and *Frailhat* (the two most prescient cases applicable to the due
2 process claim at issue here), Petitioner has not demonstrated that his detention under
3 § 1226(c) violates his due process rights. See *Demore*, 538 U.S. at 528, 530–33; *Frailhat*,
4 790 F. App'x at 122.

5 **3. Petitioner Has Not Established a Due Process Violation Under the**
6 **Factor-Based Test.**

7 To the extent the Court disagrees that *Demore* supplies the framework for analyzing
8 Petitioner's due process challenge and is inclined to apply a factor-based test, courts in this
9 district have applied the test in *Lopez v. Garland*, 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022),
10 to determine whether a petitioner's mandatory detention has become unreasonable, and
11 thus, unconstitutionally prolonged. See, e.g., *Sanchez-Rivera*, No. 22-cv-1357-MMA-JLB,
12 2023 WL 139801 at *5 (S.D. Cal. Jan. 9, 2023) (“[W]hile the *Mathews* factors may be well-
13 suited to determining whether due process requires a second bond hearing, they are not
14 particularly dispositive of whether prolonged mandatory detention has become
15 unreasonable in a particular case.”); *Durand v. Allen*, No. 23-cv-00279-RBM-BGS, 2024
16 WL 711607, at *4 (S.D. Cal. Feb. 21, 2024) (“[T]he *Lopez* test is most applicable to due
17 process challenges raised by noncitizens detained under § 1226(c) seeking an initial bond
18 hearing.”). Under *Lopez*, to determine whether continued mandatory detention has become
19 unreasonable, “the Court will look to the total length of detention to date, the likely duration
20 of future detention, and the delays in the removal proceedings caused by the petitioner and
21 the government.” 631 F. Supp. 3d at 879.

22 Some Courts have applied the test in *Banda v. McAleenan*, which considers: (1) the
23 total length of detention to date; (2) the likely duration of future detention; (3) conditions of
24 detention; (4) delays in the removal proceedings caused by the detainee; (5) delays in the
25 removal proceedings caused by the government; and (6) the likelihood that the removal
26 proceedings will result in a final order of removal. See 385 F. Supp. 3d 1099, 1106 (W.D.
27 Wash. 2019). The *Lopez* test considers substantially similar factors, with the exception of
28 the conditions of detention factor. See 631 F. Supp. 3d at 879. Because conditions of

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

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

17 Second, the likely duration of future detention weighs against Petitioner. Petitioner’s
18 individual merits hearing took place on March 23, 2026, in which Petitioner was ordered
19 removed to Guatemala or to Mexico. *See* Exhibit 5. Petitioner opted to appeal the final
20 removal order to the BIA, which remains pending. While Petitioner may pursue his legal
21 remedies as he sees fit, he cannot in turn rely on the delays attendant to his decisions to
22 establish a due process violation. *See Demore*, 538 U.S. at 530 n. 14 (“As we have explained
23 before, however, “the legal system . . . is replete with situations requiring the making of
24 difficult judgments as to which course to follow, and, even in the criminal context, there is
25 no constitutional prohibition against requiring parties to make such choices.”) (citations
26 omitted); *id.* at 530-31 (“Respondent was detained for somewhat longer than the average
27 [...] but respondent himself had requested a continuance of his removal hearing.”);
28 *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1210 (9th Cir. 2022) (“Rodriguez Diaz in this

1 case has not demonstrated that the fact of the review process following its ordinary course
2 itself created a due process violation.”). As Judge Bumatay explained in his concurrence in
3 *Martinez v. Clark*:

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

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

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

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

25 ///

26 ///

27 ///

28 ///

1 IV. CONCLUSION

2 For the reasons stated herein, Respondents respectfully request the Court to deny this
3 habeas petition.

4 DATED: June 22, 2026

Respectfully submitted,

6 ADAM GORDON
7 United States Attorney

8 s/ Camille Savedra
9 CAMILLE SAVEDRA
10 Assistant United States Attorney
11 Attorneys for Respondents
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28