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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

JOSE D.L.S,

Petitioner,

v.

WARDEN OF IMPERIAL REGIONAL DETENTION FACILITY; *et al.*,

Respondents.

Case No.: 26-cv-03908-BTM-JLB

RETURN TO AMENDED PETITION FOR WRIT OF HABEAS CORPUS

I. INTRODUCTION

Petitioner requests the Court to order his immediate release from Immigration and Customs Enforcement (ICE) custody or require that he be afforded a bond hearing pursuant to 8 U.S.C. § 1226(a) because, he alleges, his civil immigration detention has become "prolonged" in violation of his due process rights under the Fifth Amendment. However, Petitioner is mandatorily detained pursuant to 8 U.S.C. § 1226(c) and the Supreme Court has upheld the constitutionality of § 1226(c). Moreover, Petitioner presents no evidence that the statute, as applied to him, no longer serves an immigration purpose. There being no due process violation established in this case, the Court should deny relief.

II. FACTUAL BACKGROUND

Petitioner is a native and citizen of Dominican Republic, who initially entered the United States illegally on or about October 25, 2006 near Manati, Puerto Rico. *See* Exhibit 1 (I-213).[1] Immigration and Customs Enforcement (ICE) first encountered Petitioner in 2014 when Petitioner was incarcerated in Puerto Rico for weapons offenses and resisting arrest, charges that resulted in convictions. *Id.* On December 22, 2015, Petitioner was ordered removed in absentia. *Id.* On May 20, 2016, Petitioner was arrested by U.S. Customs and Border Protection after presenting officials with a counterfeit Puerto Rican drivers license and possessing of other fraudulent identification documents. *Id.* On August 12, 2022, Petitioner plead guilty to the charges of possessing fraudulent identification in violation of 18 U.S.C. § 1028 and was sentenced to time served. *Id.*; ECF No. 8-1 at 6 (Petitioner's Exhibit B).

In 2023, Petitioner was deported pursuant to the 2015 removal order. ECF No. 8-1 at 7. Sometime after that, Petitioner illegally re-entered the United States. In April 2024, Petitioner was arrested for forcible touching the sexual/intimate parts of another in New York. *See* Exhibit 1. A few months later, Petitioner was arrested for driving while intoxicated in Yorkville, New York, but he was released from local custody before ICE could detain him. *Id.* In November 2024, Petitioner was indicted on an illegal re-entry charge pursuant to 8 U.S.C § 1326 but wasn't arrested for the charge until March 2025. ECF No. 8-1 at 32-33 (Petitioner's Exhibit E). On September 2, 2025, the government dismissed the illegal re-entry charge. ECF No. 8-1 at 28 (Petitioner's Exhibit C). A few days later, Petitioner was taken into ICE custody and issued a Notice to Appear (NTA), charging him with inadmissibility and removability under sections 212(a)(2)(A)(i)(I) and 212(a)(2)(C) of the Immigration and Nationality Act (INA) as having been convicted or admitting to committing acts of a crime involving moral turpitude. *See* Exhibit 1.

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

Petitioner's first master calendar hearing was scheduled for January 26, 2026. See Exhibit 2 (EOIR adjournment history); Exhibit 3 (case adjournment codes).[2] Since then, Petitioner requested numerous continuances to obtain counsel and prepare. *See id.* Petitioner's next master calendar hearing is scheduled for August 6, 2026. *Id.*; ECF No. 8 at 4. There is no administratively final removal order. Therefore, Petitioner remains subject to mandatory detention under § 1226(c).

III. ARGUMENT

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 Amendment's Due Process Clause. According to Petitioner, he seeks immediate release from custody or a bond hearing because Respondents have held him since September 2025.

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

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

In addressing the constitutionality of § 1226(c), the *Demore* court deemed it critically important to address the immigration purpose underlying Congress's enactment of the statute. *See* 538 U.S. at 527–31. In its analysis, the Supreme Court observed that Congress

[2] The explanations for these case adjournment codes can also be found at https://www.justice.gov/eoir/policy-manual-eoir/part-VII/appendices/m.

"adopted [§ 1226(c)] against a backdrop of wholesale failure by the [government] to deal with increasing rates of criminal activity by aliens." *Id.* at 518. It noted that when enacting § 1226(c), Congress had before it a multitude of evidence to support its determination to mandate detention of criminal noncitizens, including: that (1) "criminal aliens who were deported swiftly [had] reentered the country illegally in great numbers"; (2) "[the] near-total inability to remove deportable criminal aliens imposed more than a monetary cost on the Nation"; (3) "deportable criminal aliens who remained in the United States often committed more crimes before being removed"; (4) "one of the major causes of the [the government's] failure to remove deportable criminal aliens was the agency's failure to detain those aliens during their deportation proceedings"; (5) "even with individualized screening, releasing deportable criminal aliens on bond would lead to an unacceptable rate of flight"; and (6) "evidence suggest[ed] that permitting discretionary release of aliens pending their removal hearings would lead to large numbers of deportable criminal aliens skipping their hearings and remaining at large in the United States unlawfully." *Id.* at 518–33.

With the statute's purpose in mind, the Supreme Court upheld the constitutionality of § 1226(c), repeatedly noting, as it had several times before, that detention of a noncitizen during ongoing removal proceedings is constitutional. *See id.* at 513 ("We hold 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 [such] persons . . . be detained for the brief period necessary for their removal proceedings."). The Supreme Court, however, did not foreclose the possibility that a noncitizen detained under § 1226(c) may establish a due process violation depending on the circumstances of their case.

In addressing such due process claims (as here), the Court must be principally guided by *Demore*. *See Hohn v. United States*, 524 U.S. 236, 252–53 (1998) ("Our decisions remain binding precedent until we see fit to reconsider them[.]"); *Hart v. Massanari*, 266 F.3d 1155, 1171 (9th Cir. 2001) ("A decision of the Supreme Court will control that corner of the law unless and until the Supreme Court itself overrules or modifies it. Judges of the inferior

courts may voice their criticisms but follow it they must."); *see also Rodriguez Diaz v. Garland*, 53 F.4th at 1214 (Bumatay, concurring) (The Supreme Court "has recently backed away from multi-factorial grand unified theories for resolving legal issues.") (simplified, citing *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 533 (2022)). And *Demore* teaches that detention of noncitizens under § 1226(c) is constitutional so long as detention serves its purported immigration purpose. *See* 538 U.S. at 527–28 (stating that detention of such noncitizens "necessarily serves the purpose of preventing deportable criminal aliens from fleeing prior to or during their removal proceedings, thus increasing the chance that, if ordered removed, the aliens will be successfully removed" and that the evidence Congress had before it in enacting § 1226(c) "certainly support[ed] the approach it selected" in 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 longer. *See id.* at 532; *Jennings v. Rodriguez*, 583 U.S. 281, 312 (2018) (holding that nothing in § 1225(b), § 1226(a), or § 1226(c) "imposes a 6–month time limit on detention without the possibility of bail"); *Reid v. Donelan*, 17 F.4th 1, 7 (1st Cir. 2021) ("It requires no reading of tea leaves to see that *Demore* is fatal to the claim here that every single person detained for six months must be entitled to a bond hearing.").

Second, the record indicates that approximately five months of his detention are a direct result of Petitioner's requests for additional time to obtain counsel or prepare his case. *See* Exhibit 2 (reflecting adjournment code "01" and "02" for alien to seek representation and preparation in most entries). Third, the only delays attributable to the Respondents is transfer of Petitioner to another detention facility, the re-assignment of immigration judges, and docket management. As such, these circumstances do not demonstrate unreasonable or unjustified delays raising the question of "whether the detention is not to facilitate deportation, or to protect against risk of flight or dangerousness, but to incarcerate for other reasons." *Demore*, 538 U.S. at 532–33.

Ninth Circuit caselaw post-*Jennings* further bolsters the assertion that Petitioner has not established that his § 1226(c) detention violates due process. In *Fraihat v. Barr*, the Ninth Circuit addressed a habeas petition brought by a noncitizen detained under § 1226(c)

for more than two years without a bond hearing. *See* 790 F. App'x 120, 120–22 (9th Cir. 2020). There, the Ninth Circuit rejected an argument that due process requires consideration of the prolonged length of his detention. *See id.* at 121 ("Fraihat has not demonstrated that the Constitution requires consideration of the length of his detention in this context[.]"). The *Fraihat* court concluded that "although Fraihat's immigration detention has been prolonged, it has not been arbitrary or indefinite. To the contrary, it has been tied to his removal proceedings." *Id.* at 122. Here, as in *Fraihat*, Petitioner's detention is not arbitrary or indefinite. Rather, as in *Fraihat*, his continued detention has been tied solely to his removal proceedings, not for any arbitrary or 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.

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

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

Second, as to the likely duration of future detention Petitioner's next master calendar hearing is to take place on August 6, 2026. However, Petitioner has a history of continuing his hearings and may continue to delay his removal proceedings. While Petitioner may

pursue his legal remedies as he sees fit, he cannot in turn rely on the delays attendant to his decisions to establish a due process violation. *See Demore*, 538 U.S. at 530 n. 14 ("As we have explained before, however, "the legal system . . . is replete with situations requiring the making of difficult judgments as to which course to follow, and, even in the criminal context, there is no constitutional prohibition against requiring parties to make such choices.") (citations omitted); *id.* at 530-31 ("Respondent was detained for somewhat longer than the average [...] but respondent himself had requested a continuance of his removal hearing."); *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1210 (9th Cir. 2022) ("Rodriguez Diaz in this case has not demonstrated that the fact of the review process following its ordinary course itself created a due process violation."). As Judge Bumatay explained in his concurrence in *Martinez v. Clark*:

> Absent any allegation that the extended detention here is unrelated to an immigration purpose, the mere fact that detention is "prolonged" doesn't alter the statutory framework. Indeed, in our circuit, the median processing time for an immigration case to reach a merits determination is 39 months. Does 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?

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

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

On this record, the Court cannot find that "detention has become so unreasonable as to require an initial bond hearing." *Sanchez-Rivera*, 2023 WL 139801, at *6. Should the Court disagree, Petitioner bears the burden of proof to demonstrate that he is not a danger to the community or a flight risk. *See Rodriguez Diaz*, 53 F.4th at 1211 ("We are aware of no Supreme Court case placing the burden on the government to justify the continued detention of [a noncitizen], much less through an elevated 'clear and convincing' showing."). Indeed, even when considering a noncitizen subject to potentially indefinite

detention after the conclusion of removal proceedings, the Supreme Court held that the noncitizen, not the government, must bear the initial burden of proof to show that release is warranted. *See Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Petitioner cites no support for any contention otherwise.

IV. CONCLUSION

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

DATED: July 22, 2026

Respectfully submitted,

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s/ Camille Savedra
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