District Judge Marsha J. Pechman
Magistrate Judge Grady J. Leupold

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ALFREDO PARADA CALDERON, Petitioner, v. DREW BOSTOCK, *et al.*, Respondents.	Case No. 2:24-cv-01619-MJP-GJL FEDERAL RESPONDENTS' RETURN AND MOTION TO DISMISS THE PETITION Noted for Consideration: December 26, 2024

I. INTRODUCTION

Petitioner Alfredo Parada Calderon asserts that his continued immigration detention at the Northwest ICE Processing Center ("NWIPC") without an individualized bond hearing violates due process. Dkt. No. 1, Pet. Parada is a citizen of El Salvador with lawful permanent resident status in the United States. He is also a convicted murderer who was paroled after more than thirty years in a California state prison. U.S. Immigration and Customs Enforcement ("ICE") has lawfully detained Parada since his release from prison in October of 2023 pursuant to Section 236(c) of the Immigration and Nationality Act ("INA"), codified at 8 U.S.C. § 1226(c). *See Jennings v. Rodriguez*, 138 S. Ct. 830, 846 (2018) ("§ 1226(c) makes clear that detention of [noncitizens] within its scope *must* continue 'pending a decision on whether the

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[noncitizen] is to be removed from the United States'") (quoting 8 U.S.C § 1226(c) (emphasis in original). Parada has spent most of his immigration detention at the Golden State Annex ("GSA") in California and is presently detained at the GSA. Earlier this month, ICE granted Parada's request to be transferred from the NWIPC to the GSA. In total, he spent less than three months at the NWIPC.

Parada's habeas claim should be dismissed for numerous reasons. First, the only proper respondent here is the Facility Administrator of the GSA, who is not a party to this action. Second, the GSA and the Facility Administrator are outside the jurisdiction of this District. As a result, this Court does not have jurisdiction over Parada's immediate custodian, and therefore, cannot compel the habeas relief sought here. Third, Parada's convictions mandate his detention pending the finality of his administrative removal proceedings. Finally, when analyzed using a multifactor test specific to noncitizens being held pursuant to Section 1226(c), Parada's continued detention without a bond hearing is not unreasonable.

Accordingly, Federal Respondents respectfully request that this Court deny Parada's Petition for Habeas Corpus and grant its motion to dismiss. This motion is supported by the pleadings and documents on file in this case, the Declaration of George Chavez ("Chavez Decl.") and the Declaration of Michelle R. Lambert ("Lambert Decl."), with exhibits attached thereto. Federal Respondents do not request an evidentiary hearing.

II. FACTUAL BACKGROUND

Parada, a native and citizen of El Salvador, became a lawful permanent resident of the United States in 1990. Pet., ¶ 17; Chavez Decl., ¶ 3; *see also* Lambert Decl., Ex. A, Form I-213. Only months later, Parada murdered a teenager. Pet., ¶ 30. Parada attempted to kill another as he "ran for [his] life bleeding," and chased yet another person after shooting him and causing "a

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deadly wound through [his] lung which could of resulted in [his] death." Dkt. No. 2-1, pp. 138, 140, 142 (Parada's descriptions of incident).

In 1992, Parada was convicted by a California jury of one count of murder and three counts of attempted murder. Pet., ¶ 31; Lambert Decl., Ex. B, Criminal Records, at L68. He was sentenced to prison for a total of 34 years and 8 months to life. Lambert Decl., Ex. B, at L72. ICE took Parada into custody when he was released on parole on October 5, 2023. Chavez Decl., ¶ 5; Lambert Ex. C, Warrant for Arrest. ICE detained him at Golden State Annex ("GSA"), McFarland, California. Chavez Decl., ¶ 6. At that time, ICE determined that Parada would be detained pending a final administrative determination. Lambert Decl., Ex. D, Notice of Custody Determination.

Most of Parada's removal proceedings have occurred while ICE has detained him in California. On the day he was taken into custody, DHS served Parada with a Notice to Appear ("NTA") charging him with removal pursuant to 8 U.S.C. § 1227(a)(2)(A)(iii), for his conviction of an aggravated felony, and 8 U.S.C. § 1227(a)(2)(A)(iii), for his conviction of an attempted aggravated felony. Chavez Decl. ¶ 7; Lambert Decl., Ex. E, NTA. On November 1, 2023, an Immigration Judge ("IJ") sustained the charges of removability. Chavez Decl., ¶ 10. Thereafter, Parada filed for relief from removal with the Immigration Court, in Adelanto, California. *Id.*, ¶¶ 11,12. The IJ ordered Parada removed to El Salvador on February 7, 2024. *Id.*, ¶ 13. He appealed the removal order to the Board of Immigration Appeals ("BIA"), which resulted in the record being remanded to the IJ to make additional findings. *Id.*, ¶¶ 14-18. After the record was remanded, the IJ again ordered Parada removed to El Salvador. *Id.*, ¶ 19; Lambert Decl., Ex. F, Order of the IJ. On July 17, 2024, Parada appealed this order to the BIA. Chavez Decl., ¶ 20.

In August of 2024, Parada, along with multiple other detainees housed at GSA, participated in a hunger strike. *Id.*, ¶ 21. This resulted in his transfer to the NWIPC on August

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20, 2024. *Id.*, ¶ 23. Parada's attorneys submitted his brief to the BIA in September. *Id.*, ¶ 27. In November, at the request of the attorneys handling Parada's BIA appeal, ICE approved Parada's transfer back to GSA. *Id.*, ¶¶ 28-29. On November 12, 2024, Parada left the NWIPC and was booked into GSA the following week. *Id.*, ¶ 30. Parada was housed at the NWIPC for less than three months. He is currently at the GSA. *See id.*, ¶ 30.

On November 22, 2024, the BIA dismissed Parada's appeal. Chavez Decl., ¶ 31; Lambert Decl., Ex. G, BIA Decision. Parada filed a Petition for Review ("PFR") with the Ninth Circuit on the same day. *Calderon v. Garland*, 24-7072 (9th Cir. Oct. 22, 2024).

III. LEGAL STANDARD

It is axiomatic that "[t]he district courts of the United States . . . are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute." *Exxon Mobil Corp. v. Allopath Servs., Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted). "[T]he scope of habeas has been tightly regulated by statute, from the Judiciary Act of 1789 to the present day." *Dep't of Homeland Sec. v. Thuraissigiam*, 140 S. Ct. 1959, 1974 n. 20 (2020). Title 28 U.S.C. § 2241 provides district courts the authority to grant habeas relief "within their respective jurisdictions."

To warrant a grant of habeas corpus, the burden is on the petitioner to prove that his or her custody is in violation of the Constitution, laws, or treaties of the United States. *See* 28 U.S.C. § 2241(c)(3); *Lambert v. Blodgett*, 393 F.3d 943, 969 n.16 (9th Cir. 2004).

IV. ARGUMENT

A. Parada has failed to name the proper respondent.

This Court should dismiss this Petition because Parada fails to name the sole proper Respondent for his habeas action to proceed. *See* 28 U.S.C. § 2242 (habeas petitioners "shall allege the facts concerning the applicant's commitment or detention, the name of the person who

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has custody over him and by virtue of what claim or authority, if known."); *Doe v. Garland*, 109 F.4th 1188, 1195 (9th Cir. 2024) ("The plain text of the federal habeas implementation provision delineates that petitions must include the name of 'the' person maintaining custody over the petitioner."). In this case, the only proper Respondent is the Facility Administrator (and de facto warden) of the GSA in McFarland, California, where Parada is currently detained. Chavez Decl., ¶ 30; *see Doe*, 109 F.4th at 1194-95 (holding that the Facility Administrator, "who was the de facto warden," not the ICE Field Office Director, was sole proper Respondent when a noncitizen brings a 28 U.S.C. § 2241 habeas petition).

When Parada filed this litigation in October, he was housed at the NWIPC. At that time, the proper Respondent was Respondent Bruce Scott, the Facility Administrator at the NWIPC. Pet., ¶ 22. However, at his attorneys' request, ICE transferred Parada to the GSA in November. Chavez Decl., ¶ 28. As a result, the only proper respondent here is "the person with the ability to produce the [detainee's] body before the habeas court." *Doe*, 109 F.4th at 1191-92 (quoting *Rumsfeld v. Padilla*, 542, U.S. 426, 434-35 (2004)). This person is the Facility Administrator of the GSA – not Respondent Scott. Respondent Scott's authority over Parada's detention ceased when Parada transferred to the GSA.

B. This Court no longer has jurisdiction to grant the habeas relief requested.

Habeas jurisdiction is only proper in the district of confinement. *Doe*, 109 F.4th at 1198; *Padilla*, 542 U.S. at 435 (finding that the proper respondent "is the warden of the facility where the prisoner is being held," and "not the Attorney General or some other remote supervisory official."). Because of his requested transfer out of the NWIPC, Parada is now detained at the GSA, located in the Eastern District of California. Parada's petition is against a former custodian and should thus be dismissed or transferred to a court with jurisdiction over his current custodian.

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Under the plain language of 28 U.S.C. § 2242, a detainee seeking a writ of habeas corpus must name as respondent "the person who has custody over him." *Doe*, 109 F.4th at 1198. As concluded in *Padilla*, the "use of the definite article in reference to the custodian indicates that there is generally only one proper respondent to a given prisoner's habeas petition," which is the person "with the ability to produce the prisoner's body before the habeas court." 542 U.S. at 434–35. That person is the GSA Facility Administrator.

The question then becomes whether this Court has jurisdiction to grant Parada's requested core habeas relief. Many courts have found that post-petition transfer of the petitioner moots a Section 2241 petition, because – absent limited circumstances discussed below – the Court no longer has personal jurisdiction[1] over the petitioner's immediate custodian and thereby cannot grant any injunctive relief. *See, e.g., White v. Gilley*, No. 6:23-cv-110-CHB, 2023 WL 5987206, at *3 (E.D. Ky. Sept. 13, 2023) (collecting similar cases and concluding that the petitioner's post-filing transfer to another state "moots the petition and deprives the Court of jurisdiction to grant relief"); *Ybarra v. Kallis*, No. 21-cv-1396, 2022 WL 14615503, at *2-3 (D. Minn. Sept. 28, 2022) (finding that, after a post-filing transfer of the petitioner, "the Court does not maintain jurisdiction over the petition at this time because it does not have jurisdiction over the proper respondent – the warden at FCI Elkton in Ohio"); *Aigbekaen v. Warden*, No. 3:21-cv-1672, 2022 WL 3347092, at *3 (D. Conn. Aug. 12, 2022) (finding that a petitioner's claims were moot after he was transferred to a facility in another state, because "injunctive relief (*i.e.*, an order for the Warden of FCI Danbury to take, or refrain from taking, particular action), if granted, would no longer be of any use"); *Ellis v. Von Blanckensee*, No. 20-cv-00139-TUC-JAS,

[1] The nomenclature used to describe habeas jurisdiction can be confusing, with courts often using various terms interchangeably to refer to the same concept. Some courts label it as "territorial jurisdiction," *see Padilla*, 542 U.S. at 444–45, some refer to it as personal jurisdiction, *see Dailey v. Pullen*, No. 3:22-cv-1121, 2023WL 3456696, at *3 (D. Conn. May 15, 2023), and some consider it to be an issue of forum or venue, *see Padilla*, 542 U.S. at 451 (Kennedy, J., concurring). This motion primarily refers to this concept as personal jurisdiction.

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2022 WL 672673, at *2-3 (D. Ariz. Mar. 7, 2022) (finding that the Court "lack[ed] jurisdiction over Petitioner's current custodian . . . in the Northern District of Illinois" after she was transferred out of Arizona).

There is one important exception to the immediate custodian rule when a petitioner is transferred out of district after filing a habeas petition. This exception arises from the Supreme Court's decision in *Ex parte Endo*, 323 U.S. 283 (1944), which involved a habeas petition brought by a Japanese-American citizen incarcerated in California by the War Relocation Authority ("WRA"). *Id.*, at 284-87. While the petition was pending, the petitioner was moved from a concentration camp in the Northern District of California to a camp in Utah. *Id.*, at 285. The Supreme Court concluded that the Northern District of California had acquired jurisdiction over the petition, and the petitioner's post-filing transfer "did not cause it to lose jurisdiction where a person in whose custody she is remains within the district." *Id.*, at 306. Because an Assistant Director of the WRA was assigned to an office in San Francisco, within the jurisdiction of the Northern District of California, "a respondent who has custody of the prisoner [wa]s within reach of the court's process even though the prisoner ha[d] been removed from the district." *Id.* at 304-07. The Court therefore found that the district court had jurisdiction to grant the petitioner's release. *Id.*

Sixty years later, the *Padilla* court considered the precedent set by the *Endo* case and confirmed its limited applicability, stating:

> *Endo* stands for the important but limited proposition that when the Government moves a habeas petitioner after she properly files a petition naming her immediate custodian, the District Court retains jurisdiction *and may direct the writ to any respondent within its jurisdiction who has legal authority to effectuate the prisoner's release*.

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542 U.S. at 440–41 (emphasis added). After *Padilla*, therefore, when evaluating a habeas petition filed by a prisoner who is later transferred out of district, the question becomes whether the Court has jurisdiction over any supervisory official with sufficient authority over the petitioner's custody to effectuate the petitioner's release. In *Endo*, a supervisory official from the agency other than the petitioner's prior immediate custodian remained in the district. In this case, the only immediate physical custodian of Parada is the Facility Administrator at the GSA as recently emphasized by the Ninth Circuit. *Doe*, 109 F.4th at 1195-98.

Federal Respondents acknowledge that the Ninth Circuit has stated that a post-filing transfer does not destroy habeas jurisdiction after *Padilla*. *Johnson v. Gill*, 883 F.3d 756, 761 (9th Cir. 2018). However, the *Johnson* Court made no effort to explain why, post-*Padilla*, a court retains jurisdiction to consider a habeas petition that names someone other than the current custodian as respondent. Furthermore, the opinion fails to address the appropriate respondent to the petition or the district court's authority over that respondent after the petitioner's transfer. And it does not even mention *Padilla*, the "seminal case interpreting and clarifying the jurisdictional bounds of § 2241." *Doe*, 2024 WL 3561360, at *3. Finally, *Johnson* fails to address how a district court has personal jurisdiction over a custodian located outside of its reach.

"The court issuing a writ of habeas corpus must have personal jurisdiction over the custodian; without such jurisdiction, the court lacks the authority to direct the actions of the restraining authority." *Tapia v. Barron*, No. 2:23-cv-1531, 2024 WL 2946184, at *2 (W.D. Wash. Jan. 12, 2024) (R&R), *adopted by*, 2024 WL 2943939 (W.D. Wash. June 11, 2024). This Court lacks personal jurisdiction over Parada's current custodian who is in the Eastern District of California. While courts in this District have found that while it may not have jurisdiction to order an out-of-jurisdiction custodian to do anything, they have jurisdiction to deny the habeas

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claims and dismiss the petition on the merits. *Id.*, at *3; *Jackson v. Warden of the FDC at SeaTac*, No. 2:24-cv-547, 2024 WL 4227765, at *3 ("Notwithstanding any limitations on its ability to *grant* habeas relief, this Court retains jurisdiction to *deny* relief."). Under this logic, this Court should only retain jurisdiction if it intends to deny Parada's requested relief.

Accordingly, this Court should dismiss the habeas petition for lack of jurisdiction or retain jurisdiction and deny Parada's requested relief.

C. In the alternative, this Court may transfer the Petition to the Eastern District of California.

In the alternative, this Court may "transfer the action to any other such court in which the action could have been brought if it is in the interest of justice." *Miller v. Hambrick*, 905 F.2d 259, 262 (9th Cir. 1990); *see also* 28 U.S.C. § 1404(a). Because Parada is now housed at a facility located in the Eastern District of California, the Court may find that it is in the interest of justice to transfer his petition to that district. 28 U.S.C. § 1404(a). This would also ensure that the deciding court has personal jurisdiction over Parada's immediate custodian if any habeas relief is granted. Furthermore, the transfer of Parada's habeas litigation would be in line with his transfer to the GSA – which occurred at his attorneys' request.

D. ICE lawfully detains Parada pursuant to 8 U.S.C. § 1226(c).

Parada's continued detention without a bond hearing is statutorily mandated pursuant to 8 U.S.C. § 1226(c). Section 1226 provides the framework for the arrest, detention, and release of noncitizens in removal proceedings. *See* 8 U.S.C. § 1226. Section 1226(a) grants DHS the discretionary authority to determine whether a noncitizen should be detained, released on bond, or released on conditional parole pending the completion of removal proceedings. In contrast, detention pursuant to Section 1226(c) is mandatory for noncitizens who commit certain criminal offenses. Section 1226(c) ensures that criminal and terrorist noncitizens that Congress deemed

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most dangerous and most likely to abscond complete their removal proceedings. *Demore v. Kim*, 538 U.S. 510, 520 (2003). This detention may end prior to the conclusion of removal proceedings "only if the [noncitizen] is released for witness-protection purposes." *Jennings v. Rodriguez*, 583 U.S. 281, 304 (2018) (internal quotation marks and citations omitted). Section 1226(c) includes any noncitizen who "is deportable by reason of having committed any offense covered in Section 1227(a)(2)(A)(ii), (A)(iii), (B), (C), or (D) of this title." 8 U.S.C. § 1226(c)(1)(B).

There is no dispute that Parada is currently subject to mandatory detention pursuant to 8 U.S.C. § 1226(c) due to his criminal convictions and is not statutorily eligible for a bond hearing. Pet. ¶ 50. The dispute is about whether his continued detention without a bond hearing is constitutional. Pet., ¶¶ 103-07. Because Parada's detention comports with due process as described below, this Court should not order a bond hearing.

E. Parada has not met his burden of establishing that his mandatory detention violates his rights under the Fifth Amendment's Due Process Clause.

Parada's continued detention pursuant to Section 1226(c) without a court-ordered bond hearing does not violate his due process rights. The Supreme Court "has firmly and repeatedly endorsed the proposition that Congress may make rules as to [noncitizens] that would be unacceptable if applied to citizens." *See Demore*, 538 U.S. at 522 (citations omitted). Detention is a constitutionally permissible aspect of the Government's enforcement of the immigration laws and fulfills the legitimate purpose of ensuring that individuals appear for their removal proceedings. *See Jennings*, 583 U.S. at 286; *Demore*, 538 U.S. at 523; *Zadvydas v. Davis*, 533 U.S. 678, 690-91 (2001). Consistent with the requirements of due process, Parada's confinement is thus "reasonably related" to a legitimate government interest. *Bell v. Wolfish*, 441 U.S. 535, 538-39 (1979).

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Parada's detention, although prolonged, is constitutional. First, Parada incorrectly frames his detention as having "no end in sight." Pet., ¶ 1. As described above, his Section 1226(c) detention will end when his removal proceedings end. His citation to *Zadvydas* as "the seminal case on due process for noncitizens in long-term immigration detention" is misplaced. Pet., ¶¶ 8, 72. While *Zadvydas* is a seminal due process case, it analyzed the potential of indefinite detention pursuant to 8 U.S.C. § 1231(a)(6) for noncitizens with final orders of removal – which is not at issue here. *Zadvydas*, 533 U.S. at 682. After *Jennings*, the Ninth Circuit has repeatedly declined in published decisions to state whether noncitizens detained under Section 1226(c) should be afforded bond hearings *at any time*. *See, e.g.*, *Avilez v. Garland*, 69 F.4th 525, 538 (9th Cir. 2023) (ruling "we make no determination regarding the issue" as to whether the noncitizen detained under 8 U.S.C. § 1226(c) has suffered a due process violation based on length of detention). Here, Parada's detention is not arbitrary or indefinite; instead, it is tied to his removal proceedings and will end upon the issuance of a final order of removal.

Second, Parada wrongly asserts that "[d]etention without a bond hearing is unconstitutional when it becomes prolonged" and defines prolonged as detention lasting six months. Pet., ¶¶ 77, 78. In *Demore*, the Supreme Court addressed the constitutionality of 8 U.S.C. § 1226(c) and therein considered a noncitizen's claim of a due process violation based on the length of his detention. 538 U.S. at 510-33. In addition to upholding the constitutionality of 8 U.S.C. § 1226(c) and finding that the noncitizen's due process claim must fail, the Supreme Court did not embrace any bright-line rule for when a noncitizen detained under 8 U.S.C. § 1226(c) *may* suffer a due process violation. In fact, the Court upheld the constitutionality of the noncitizen's detention even though it had surpassed six months and was likely to extend longer. *Id.*; *see 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

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entitled to a bond hearing."). Accordingly, the length of detention alone does not determine the constitutionality of continued detention without a bond hearing.

In sum, this Court should rule that Parada has not established a violation of his due process rights. He is a criminal noncitizen in pending removal proceedings. His detention serves the immigration purpose for which 8 U.S.C. § 1226(c) was enacted into law. Finally, Parada has not demonstrated that his detention is unreasonable or unjustified under Supreme Court caselaw for noncitizens in pending civil immigration removal proceedings. *See Demore*, 538 U.S. at 527-28, 530-33.

F. Parada's detention does not violate his due process rights under the *Martinez* test.

In this District, courts have employed a multifactor test (the "*Martinez* test") when analyzing whether prolonged detention pursuant to Section 1226(c) satisfies due process. *Martinez v. Clark*, No. 18-cv-1669, 2019 WL 5968089 (W.D. Wash. May 23, 2019) (Report and Recommendation) (applying multi-factor due process analysis), *adopted by*, 2019 WL 5962685 (W.D. Wash. Nov. 13, 2019). In *Martinez*, the district court declined to adopt a bright-line rule that Section 1226(c) detention becomes unreasonably prolonged after six months. *Martinez*, 2019 WL 5968089, at *7. Instead, the court analyzed:

> (1) the total length of detention to date; (2) the likely duration of future detention; (3) whether the detention will exceed the time petitioner spent in prison for the crime that made him removable; (4) the nature of the crimes that petitioner committed; (5) the conditions of detention; (6) delays in the removal proceedings caused by petitioner; (7) delays in the removal proceedings caused by the government; and (8) the likelihood that the removal proceedings will result in a final order of removal.

2019 WL 5968089, at *9.

The Petition does not address the *Martinez* test. Interestingly, Parada relies on a different multi-factor test that analyzed detention pursuant to 8 U.S.C. § 1225(b). Pet., ¶¶ 81-87 (applying the test used in *Djelassi v. ICE Field Off. Dir.*, 434 F. Supp. 3d 917, 929 (W.D. Wash 2020)).

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The difference between the Section 1225(b) test and the *Martinez* test is that the *Martinez* test is tailored to detention pursuant to Section 1226(c) by factoring in the criminal conduct of the detainee. It is understandable for Parada to want to omit his criminal convictions from a due process analysis because, as a convicted murderer that spent more than 30 years in prison, these factors will not favor Parada. However, this Court should take his criminal conduct into its due process analysis because he is detained pursuant to Section 1226(c).

A substantial portion of the supporting documents submitted by Parada here comprise of letters, certificates, and other information purported to show his "transformation." *See, e.g*, Pet., ¶¶ 4-6, 32-42. But neither the *Martinez* test nor the Section 1225(b) test applied in the Petition include an analysis of the detainee's rehabilitation or continued danger to the community. While this information may be relevant in other contexts, it should not factor into whether a detainee's continued statutorily mandated detention without a bond hearing is unreasonable and violates due process.

The *Martinez* test demonstrates that Parada's detention has not become unreasonably prolonged. First, Parada's detention has lasted approximately a year. Pointing to cases that analyzed various lengths of time (6 months, 12 months, 15 months), the district court in *Martinez* stated that the longer mandatory detention continues beyond the "brief" period authorized in *Demore*, the harder it is to justify. *Martinez*, 2019 WL 5968089, at *9 (petitioner detained for nearly thirteen months).

The second factor analyzes how long the detention is likely to continue absent judicial intervention. *Martinez*, 2019 WL 5968089, at *9. This factor should be neutral because this Court would have to speculate as to how long detention is likely to continue at this time. The BIA has recently dismissed his appeal and Parada filed a PFR on the same date. If the PFR is denied, then Parada's detention pursuant to 8 U.S.C. § 1226(c) will end.

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The third and fourth factors clearly favor Federal Respondents. These factors review the length of the petitioner's immigration detention compared to his criminal sentence and the nature of his crime. *Martinez*, 2019 WL 5968089, at *9. Parada is a convicted murderer that spent more than 30 years in prison. In contrast, Parada's immigration detention has been approximately one year. Section 1226(c) ensures that criminal and terrorist noncitizens that Congress deemed most dangerous and most likely to abscond complete their removal proceedings. *Demore*, 538 U.S. at 520. Congress reviewed evidence and concluded that, "even with individualized screening, releasing deportable criminal [noncitizens] on bond would lead to an unacceptable risk of flight." *Id.* As a result, this congressional purpose should provide more weight to two factors than any of the other factors used to assess whether immigration detention has become unreasonably delayed.

The fifth factor analyzes the conditions of detention. Parada is currently detained at the GSA. However, the Petition provides no information about the conditions at the GSA. Pet., ¶ 85. The conditions at the NWIPC have no relevance to his current conditions of confinement nor most of his total time in immigration detention. Thus, this factor should be neutral, at worst.

Under the sixth and seventh factors, the Court considers "the nature and extent of any delays in the removal proceedings caused by the petitioner and the government, respectively." *Martinez*, 2019 WL 5968089, at *10. Federal Respondents agree with Parada's assessment that these factors should be neutral. Pet., ¶ 86.

The last factor – the likelihood that the removal proceedings will result in a final order of removal favors Federal Respondents. The IJ denied Parada's applications for relief of removal. Parada has waived any appeal of the denial of all avenues of relief except for one. And the BIA recently dismissed his appeal of the IJ's denial of that application for relief. *See* Lambert Decl., Ex. G.

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Overall, the third, fourth, and eighth factors of the *Martinez* test favor Federal Respondent's position that Parada's continued detention without a bond hearing remains reasonable. Only the first factor arguably may favor Parada. The remaining factors are neutral. Accordingly, the *Martinez* test demonstrates that Parada's Section 1226(c) mandatory detention has not become unreasonable or his due process rights have been violated.

G. If this Court finds that Parada's continued detention without a bond hearing has become unreasonable, this Court should order a bond hearing before an IJ with Parada bearing the burden of proof to justify release.

This Court should reject Parada's assertion that the Government "must bear the burden of proof by clear and convincing evidence that [Parada] is a danger or flight risk." Pet., ¶¶ 96-100 (citing *Singh v. Holder*, 638 F.3d 1196 (9th Cir. 2011)). Neither Section 1226(c) nor the Constitution support Parada's argument that the Government should bear the burden of proof at a bond hearing in relation to immigration detention. Pursuant to the text of 8 U.S.C. § 1226(c), in the sole instance where release is permitted, Congress mandated that the burden of proof be *on the noncitizen, not the government* to justify release. *See* 8 U.S.C. § 1226(c)(2) (emphasis added). The Supreme Court affirmed that the statute is clear on this point in *Jennings*, 583 U.S. at 303-04.

Supreme Court caselaw also supports the position that the burden of proof be placed on Parada if a court-ordered bond hearing is granted. Simply put, the Supreme Court has *always* affirmed the constitutionality of civil immigration detention pending removal proceedings, notwithstanding that the Government has *never* borne the burden to justify such detention by clear and convincing evidence. *See, e.g., Demore*, 538 U.S. at 522, 531; *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1211 (9th Cir. 2022) ("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."). In fact, even when considering a

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noncitizen subjected to potentially indefinite detention after the conclusion of removal proceedings, the Supreme Court placed the burden on the noncitizen, as opposed to the Government, to justify release. *See Zadvydas*, 533 U.S. at 701.

Additionally, this Court should not require a court-ordered bond hearing to include the consideration of alternatives to detention. Pet., ¶ 101. "Due process does not require immigration courts to consider conditional release when determining whether to continue to detain [a noncitizen] under § 1226(c) as a danger to the community." *Martinez v. Clark*, 36 F.4th 1219, 1231 (9th Cir. 2022), *cert. granted, judgment vacated*, 144 S. Ct. 1339 (2024).

CONCLUSION

For the foregoing reasons, Federal Respondents respectfully request that the Court dismiss Parada's petition without prejudice so that he may refile in his current district of confinement, the Eastern District of California. Alternatively, this Court may transfer this case. Accordingly, if the Court finds that transfer of this matter is not futile, it may transfer the matter to the Eastern District of California for further litigation there.

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Respectfully submitted,

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I certify that this memorandum contains 4,970 words, in compliance with the Local Civil Rules.