

District Judge Tiffany M. Cartwright
Magistrate Judge Brian A. Tsuchida

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

██████████ ██████████

Petitioner,

v.

CAMMILLA WAMSLEY, *et al.*,

Respondents.

Case No. 2:25-cv-01819-TMC-BAT

FEDERAL RESPONDENTS' RETURN
MEMORANDUM

Noted on motion calendar:
October 10, 2025

I. INTRODUCTION

U.S. Immigration and Customs Enforcement ("ICE") lawfully detains Petitioner ██████████ pursuant to Section 236(c) of the Immigration and Nationality Act ("INA"). 8 U.S.C. § 1226(c); *see also Jennings v. Rodriguez*, 583 U.S. 281, 303 (2018) (stating that "together with § 1226(a), § 1226(c) makes clear that detention of aliens within its scope *must* continue 'pending a decision on whether the alien is to be removed from the United States'" (quoting 8 U.S.C. § 1226(a)) (emphasis in original)). There is no dispute that when ██████████ removal proceedings were initiated in 2024, he was subject to Section 1226(c) mandatory detention because of criminal convictions. However, those criminal convictions were vacated pursuant to California Penal Code § 1473.7(a)(1) and amended in February of 2025. ██████████ now claims that his charge for removal is

1 no longer supported by the amended convictions. “The central fact in this case is that Mr. [REDACTED] is
2 no longer deportable from the United States, nor is he subject to the mandatory detention statute
3 relied on by the immigration judge (“IJ”).” Pet., ¶ 2. [REDACTED] is incorrect.

4 This Court should deny [REDACTED] petition for a writ of habeas corpus. First, [REDACTED] is
5 appropriately detained pursuant to Section 1226(c) despite his vacated convictions. The Board of
6 Immigration Appeals (“BIA”) dismissed [REDACTED] appeal of his removal order and denied his motion
7 to remand his case to the IJ due to the vacatur of his criminal convictions. In addition, [REDACTED] has a
8 pending Petition for Review of this decision. [REDACTED] v. *Bondi*, No. 25-6070 (9th Cir.). Thus, the
9 very issue of his removability after the vacatur is before the Ninth Circuit. Furthermore, [REDACTED] has
10 failed to exhaust his administrative remedies as he has an appeal pending with the BIA concerning
11 his detention status.

12 Finally, [REDACTED] detention comports with both substantive and procedural due process. He
13 has not demonstrated that his continued detention is punitive. As the Supreme Court has repeatedly
14 recognized, detention is a constitutionally permissible aspect of the Government’s enforcement of
15 the immigration laws and fulfills the legitimate purpose of ensuring that individuals appear for
16 their removal proceedings. *See Jennings*, 583 U.S. at 286; *Demore v. Kim*, 538 U.S. 510, 523
17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 690-91 (2001). Consistent with the requirements of due
18 process, [REDACTED] confinement is thus “reasonably related” to a legitimate government interest. *Bell*
19 *v. Wolfish*, 441 U.S. 535, 538-39 (1979). Nor does the length of his detention necessitate his
20 release or, in the alternative, a court-ordered bond hearing.

21 Accordingly, Federal Respondents respectfully request that the Court deny the Petition for
22 Writ of Habeas Corpus. This Return is supported by the pleadings and documents on file in this
23 case and the Declarations of Jamie Burns (“Burns Decl.”) and Michelle R. Lambert (“Lambert
24 Decl.”) and with exhibits attached thereto.

II. FACTUAL BACKGROUND

██████ a native and citizen of Jamaica, was admitted to the United States as a lawful permanent resident in 2012. Burns Decl., ¶ 3; Lambert Decl., Ex. A (Record of Deportable/Inadmissible Alien); Pet., ¶ 23. On January 31, 2020, ██████ was convicted in the Superior Court of California for the County of Nevada for the offense of Home Invasion Robbery in violation of California Penal Code § 211, with a firearm enhancement per California Penal Code § 12022.5(a). Burns Decl., ¶ 5; Lambert Decl., Ex. B (Felony Abstract of Judgment); Pet., ¶ 25. He was sentenced to six years for the § 211 violation and 3 years for the § 12022.5(a) violation. Burns Decl., ¶ 5.

ICE took custody of ██████ on or about March 12, 2024, after ██████ was paroled from state prison. Burns Decl., ¶ 6; Lambert Decl., Ex. C (Warrant for Arrest); Ex. D (Notice of Custody Determination); Pet., ¶ 26. ICE served Petitioner with a Notice to Appear (“NTA”) charging him with removability pursuant to 8 U.S.C. § 1227(a)(2)(A)(iii) for having been convicted of an aggravated felony as defined in 8 U.S.C. § 1101(a)(43)(G), a law related to a theft offense or burglary offense for which at least a one-year term of imprisonment was imposed. Burns Decl., ¶ 6; Lambert Decl., Ex. E (NTA); Pet., ¶ 27.

The IJ sustained the charges of removability on May 15, 2024. Burns Decl., ¶ 9; Pet., ¶ 28. On December 16, 2024, the IJ denied ██████ applications for relief from removal and ordered ██████ removed to Jamaica. Burns Decl., ¶ 13; Lambert Decl., Ex. F (Order of the IJ). ██████ appealed this decision to the Board of Immigration Appeals (“BIA”). Burns Decl., ¶¶ 14-16; Pet., ¶ 28.

In February of 2025, ██████ conviction was vacated upon his unopposed motion to withdraw his guilty plea pursuant to California Penal Code § 1473.7(a)(1). Dkt. No. 4-2, Ex. B, Stipulation and Order. He pled no contest to convictions of California Penal Codes § 459 and

§ 25400(a)(3) with a sentence of six years, 8 months. *Id.* His sentence was deemed served by the time and parole served previously. *Id.*

On March 4, 2025, [REDACTED] submitted his brief to the BIA for his appeal of the removal order, as well as a motion to remand the proceedings to the IJ to terminate removal proceedings due to the vacatur of his original convictions. Burns Decl., ¶ 16; Pet., ¶ 30.

While the administrative appeal of his removal order and motion to remand were still pending, [REDACTED] filed a motion for a bond hearing with the IJ. Pet., ¶ 31. On August 6, 2025, the IJ denied the bond redetermination request and found that [REDACTED] is subject to mandatory detention pursuant to 8 U.S.C. § 1226(c). Lambert Decl., Ex. G (Order of the IJ). [REDACTED] has an appeal of this decision pending before the BIA. Burns Decl., ¶ 19; Pet., ¶ 36.

On September 26, 2025, the BIA denied the motion to remand and dismissed [REDACTED] appeal of the removal order. Burns Decl., ¶ 22; Lambert Decl., Ex. H (BIA Decision). That same day, [REDACTED] filed a Petition for Review with the Ninth Circuit Court of Appeals, which stayed his removal pursuant to General Order 6.4(c). [REDACTED] v. *Bondi*, No. 25-6070.

On September 19, 2025, [REDACTED] filed the instant habeas petition. First, he asserts that his detention violates 8 U.S.C. § 1226(a) and alleges “the IJ blatantly erred in refusing to consider release on bond by finding that [he] remains subject to mandatory detention even though he is no longer removable.” Pet., ¶¶ 112-120. Second, [REDACTED] alleges that his detention violates substantive due process. *Id.*, ¶¶ 121-129. Third, [REDACTED] claims that his prolonged detention violates procedural due process. *Id.*, ¶¶ 130-134. As described below, this Court should deny these claims.

III. ARGUMENT

A. Section 1226(c) mandates [REDACTED] immigration detention pending the finality of his removal proceedings.

[REDACTED] detention is statutorily mandated pursuant to Section 1226(c). In this litigation,

1 ■■■■ does not deny that his original convictions supported a charge of removability under 8 U.S.C.
2 § 1227(a)(2)(A)(iii), and in turn, mandated his detention pursuant to 8 U.S.C. § 1226(c)(1)(B).
3 ■■■■ claim here is that Section 1226(c) no longer applies because of the vacatur of these
4 decisions. However, both the IJ and the BIA have disagreed. Lambert Decl., Ex. G & H. ■■■■
5 has sought further review of both orders. This Court should require ■■■■ to exhaust his
6 administrative or appellate remedies prior to bringing this issue before a district court.

7 Section 1226 provides the framework for the arrest, detention and release of aliens in
8 removal proceedings. See 8 U.S.C. § 1226. Persons detained under Section 1226(a) are entitled
9 to “custody redetermination hearings,” which are separate from the removal proceedings
10 themselves. *Matter of Guerra*, 24 I. & N. Dec. 37, 40 n.2 (BIA 2006) (“Bond proceedings are
11 separate and apart from the removal hearing”). Where an individual is detained under Section
12 1226(a), a hearing before an IJ to reconsider custody is commonly referred to as a “bond hearing.”

13 IJs, however, are specifically prohibited from considering release of an alien detained
14 under Section 1226(c). 8 C.F.R. § 1003.19(h)(2)(i)(D). Pursuant to Section 1226(c), ICE must
15 detain aliens that commit certain criminal offenses until removal proceedings have concluded. 8
16 U.S.C. § 1226(c). Detention may end prior to the conclusion of removal proceedings only if the
17 alien is released for witness-protection purposes. *Jennings*, 583 U.S. at 303.

18 To ensure that only aliens described in Section 1226(c) are detained under this provision,
19 aliens may request a “hearing at which [they are] entitled to raise any nonfrivolous argument
20 available to demonstrate that [they are] not properly included in a mandatory detention category.”
21 *Demore*, 538 U.S. at 514 n.3 (citing 8 C.F.R. § 3.19(h)(2)(ii), *In re Joseph*, 22 I. & N. Dec. 799
22 (1999)). This subset of custody redetermination hearings is commonly referred to as a “*Joseph*
23 hearing.”

24 //

1 On July 30, 2025, █████ requested a *Joseph* hearing arguing that “given the vacatur of his
2 conviction, DHS was ‘substantially unlikely’ to prevail on its charges of removability.” Dkt. No.
3 3, at 4. The IJ’s order from the *Joseph* hearing on August 8, 2025, explicitly found that █████ is
4 subject to mandatory detention under Section 1226(c) after considering the vacatur of his original
5 convictions. Lambert Decl., Ex. G. █████ alleges that the IJ failed to address the question of
6 whether ICE was substantially likely to prevail on its charge of removability as he purports is
7 required under *Matter of Joseph*. Dkt. No. 3, at 7-8. █████ further disagrees with the IJ’s statutory
8 analysis and has administratively appealed the IJ’s order to the BIA. Pet., ¶¶ 34-36, 58.

9 Contrary to █████ argument, this Court should require him to exhaust his administrative
10 remedies before bringing his statutory claim before a district court. Dkt. No. 3, at 17-20.
11 Depending on the results of this appeal, █████ may obtain an individualized bond hearing.
12 Although exhaustion of administrative remedies is not a jurisdictional prerequisite for habeas
13 petitions, courts generally “require, as a prudential matter, that habeas petitioners exhaust available
14 judicial and administrative remedies before seeking [such] relief.” *Castro-Cortez v. INS*, 239 F.3d
15 1037, 1047 (9th Cir. 2001) (abrogated on other grounds by *Fernandez-Vargas v. Gonzales*, 548
16 U.S. 30 (2006)). The exhaustion requirement is subject to waiver because it is not a
17 “‘jurisdictional’ prerequisite.” *Id.*

18 Courts may require prudential exhaustion where: “(1) agency expertise makes agency
19 consideration necessary to generate a proper record and reach a proper decision; (2) relaxation of
20 the requirement would encourage the deliberate bypass of the administrative scheme; and (3)
21 administrative review is likely to allow the agency to correct its own mistakes and to preclude the
22 need for judicial review.” *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007).

23 The Court should not allow █████ to move forward with his statutory claim without first
24 exhausting his administrative remedies. For instance, a court in this Circuit dismissed a habeas

petition by an alien detained pursuant to Section 236(c) because, like here, the petitioner had an appeal pending before the BIA concerning the IJ's denial of bond redetermination. *Francisco Cortez v. Nielsen*, No. 19-cv-00754-PJH, 2019 WL 1508458, at *3 (N.D. Cal. Apr. 5, 2019). The court found that the BIA "has a special expertise in reviewing the question of whether the bond record as a whole makes it substantially unlikely that the Department w[ill] prevail on [the petitioner's] challenge to removability." *Id.* (internal quotation marks omitted).

Also, allowing a "relaxation of the exhaustion requirement" would promote the avoidance of appealing similar IJ orders to the BIA. Lastly, the BIA has the authority to correct the alleged errors. *Id.* The BIA is not precluded from providing relief to █████ because it need not reach any constitutional issues to resolve the appeal. *Cortez*, 2019 WL 1508458, at*3. The outcome of the appeal may provide █████ with the relief sought here – an individualized bond hearing and ultimately release.

Furthermore, the issue of █████ removability is also properly before the Ninth Circuit. 8 U.S.C. § 1252(b)(9). █████ has filed a PFR concerning the BIA's order denying his motion to remand and appealing his removal order. Lambert Decl., Ex. H. While district courts have jurisdiction to hear challenges to the interpretation of the INA's detention provisions, the specific challenge here would require this Court to decide █████ removability and potentially issue a decision that may conflict with the Ninth Circuit's PFR decision. Thus, even if this Court were to waive the exhaustion requirement concerning the IJ's order, this Court should abstain from deciding the statutory issue presented in the habeas petition.

B. █████ detention comports with substantive due process.

This Court should not grant █████ request for immediate release because he has not established that his detention is punitive and violates substantive due process. █████ detention has become neither unreasonable nor punitive. As the Supreme Court has repeatedly recognized,

1 detention is a constitutionally permissible aspect of the Government's enforcement of the
2 immigration laws and fulfills the legitimate purpose of ensuring that individuals appear for their
3 removal proceedings. *See e.g., Demore*, 538 U.S. at 523. Consistent with the requirements of due
4 process, [REDACTED] confinement is thus "reasonably related" to a legitimate government interest. *Bell*,
5 441 U.S. at 538-39.

6 As a preliminary point, in addition to raising the same argument as his statutory claim
7 addressed above, [REDACTED] substantive due process claim is essentially a conditions of confinement
8 claim concerning his purported lack of medical care in ICE detention.¹ *See* Dkt. No. 3, at 10; Pet.,
9 ¶¶ 39-47, 68-72. This Court should not consider such a conditions of confinement claim as part
10 of a 28 U.S.C. § 2241 habeas corpus petition. Challenges to the legality or duration of confinement
11 should be pursued in a habeas proceeding, *see Crawford v Bell*, 599 F.2d 890, 891 (9th Cir. 1979),
12 while challenges to conditions of confinement should be pursued in a civil rights action. *See Badea*
13 *v. Cox*, 931 F.2d 573, 574 (9th Cir. 1991). Moreover, "[t]he appropriate remedy for such
14 constitutional violations, if proven, would be a judicially mandated change in conditions and/or an
15 award of damages, but not release from confinement." *Crawford*, 599 F.2d at 891.

16 While courts in this District have adjudicated conditions of confinement claims related to
17 the COVID-19 pandemic, those cases were decided under unique circumstances not present here.
18 *See, e.g., Dawson v. Asher*, No. 20-cv-0409, 2020 WL 1704324, at *8-9 (W.D. Wash. Apr. 8,
19 2020) (explaining the circumstances under which the Court undertook consideration of COVID-
20 19-related conditions of confinement claims in petitions brought under 28 U.S.C. § 2241).
21 Accordingly, this Court should decline to extend such consideration to the claim in this case.

22
23 ¹ Federal Respondents were unable to obtain a medical provider review of [REDACTED] medical records for the purpose of
24 this habeas due to the expedited briefing schedule. Thus, Federal Respondents cannot provide a factual analysis
concerning [REDACTED] claim involving the right to adequate medical care. *Gordon v. Cnty. of Orange*, 888 F.3d 1118,
1124-25 (9th Cir. 2018).

1 Furthermore, [REDACTED] detention is not punitive because it is reasonably related to legitimate
2 governmental objectives. When evaluating the constitutionality of civil detention conditions under
3 the Fifth Amendment, a district court must determine whether those conditions “amount to
4 punishment of the detainee.” *Bell*, 441 U.S. at 535. A petitioner may show punishment through
5 an express intent to punish or a condition that is not “reasonably related to a legitimate
6 governmental objective.” *Id.*; see also *Kingsley v. Hendrickson*, 576 U.S. 389, 398 (2015) (noting
7 that “a pretrial detainee can prevail by providing only objective evidence that the challenged
8 governmental action is not rationally related to a legitimate governmental objective or that it is
9 excessive in relation to that purpose”). “A restriction is punitive where it is intended to punish, or
10 where it is ‘excessive in relation to [its] non-punitive purpose.’” See *Jones v. Blanas*, 393 F.3d
11 918, 933-34 (9th Cir. 2004).

12 [REDACTED] presents no evidence that the medical treatment at the NWIPC constitutes an express
13 intent to punish him. He falls well short of demonstrating that his confinement at NWIPC with
14 the medical treatment available is so excessive that it evinces “an expressed intent to punish on the
15 part of detention facility officials.” *Bell*, 441 U.S. at 538.

16 Furthermore, the Supreme Court has recognized “a legitimate government interest in
17 ensuring noncitizens appear for their removal or deportation proceedings and protecting the
18 community from harm.” *Bryan v. ICE Field Off. Dir.*, No. 21-cv-00154, 2021 WL 4556148, at *4
19 (W.D. Wash. June 14, 2021), *report and recommendation adopted*, 2021 WL 4552442 (W.D.
20 Wash. Oct. 5, 2021) (citing *Jennings*, 583 U.S. at 285-88; *Demore*, 538 U.S. at 520-22; *Zadvydas*,
21 533 U.S. at 690-91). As the Supreme Court has emphasized, “[t]he wide range of ‘judgment calls’
22 that meet constitutional and statutory requirements [for federal detention] are confided to officials
23 outside of the Judicial Branch of Government.” *Bell*, 441 U.S. at 562. The Constitution thus
24 leaves the Government latitude in determining how it may achieve its legitimate interest in

1 executing the immigration laws. In evaluating those determinations, courts must be careful to
2 impose only what the Constitution requires – not “a court’s idea of how best to operate a detention
3 facility.” *Id.*, at 539.

4 [REDACTED] was originally convicted of serious crimes; and even after vacatur, he remains
5 convicted of two different serious crimes. Both the IJ and the BIA have determined that his
6 detention is mandatory under Section 1226(c) despite the vacatur. Thus, [REDACTED] detention is
7 proportionately related to the Government’s non-punitive responsibilities and administrative
8 purposes. While civil detainees retain greater liberty protections than individuals convicted of
9 crimes, *see, e.g., Youngberg v. Romeo*, 457 U.S. 307, 321-22 (1982); *Bell*, 441 U.S. at 535, [REDACTED]
10 continued immigration detention pending removal cannot be described as punitive or excessive in
11 relation to the legitimate governmental purpose of protecting the public and ensuring his
12 appearance at his immigration proceedings.

13 [REDACTED] seeks his release from detention if this Court were to find a substantive due process
14 violation. Dkt. No. 3, at 10-11. However, he fails to demonstrate that even if the alleged due
15 process violations were established, they would warrant or require immediate release “as opposed
16 to injunctive relief that would leave him detained while ameliorating any unconstitutional
17 conditions at the NWIPC.” *Ortiz v. Barr*, No. 20-cv-497, 2020 WL 13577427, at *7 n.8 (W.D.
18 Wash. April 10, 2020); *accord Doe v. Bostock*, No. 24-cv-326, 2024 WL 3291033, at *8 (W.D.
19 Wash. Mar. 29, 2024). Moreover, [REDACTED] asserts that his detention should be non-mandatory under
20 Section 1226(a). And if this Court were to find that the length of his detention has become
21 unreasonable, then this Court should order the immigration court to hold a bond hearing that would
22 be available to him under Section 1226(a). Therefore, even if this Court were to find a due process
23 violation concerning [REDACTED] medical care or the prolonged nature of his detention, immediate
24 release would not be an appropriate form of relief.

C. [REDACTED] detention comports with procedural due process.

[REDACTED] continued detention pursuant to Section 1226(c) does not violate his procedural due process rights. [REDACTED] contends that his “prolonged detention without review violates procedural due process.” Dkt. No. 3, at 11. In *Demore*, the Supreme Court rejected a due process challenge to Section 1226(c) explaining that Congress drafted Section 1226(c) to respond to the high rates of crime and flight by removable noncitizens convicted of certain crimes. The Court held that “the Government may constitutionally detain deportable [noncitizens] during the limited period necessary for their removal proceedings.” 538 U.S. at 518-21, 526.

In addition, the Supreme Court did not embrace any bright-line rule for when a noncitizen under Section 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 entitled to a bond hearing.”).

1. The *Martinez* Test

Despite the lack of Ninth Circuit published decisions *on if, or when*, noncitizens detained under 8 U.S.C. § 1226(c) may demonstrate a violation of their due process rights post-*Jennings*, [REDACTED] detention meets due process requirements under the multi-factor test previously employed in this District (the “*Martinez* test”) to determine whether Section 1226(c) detention has become unreasonable.² *Martinez v. Clark*, 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), *but see Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1214

² [REDACTED] utilizes a multi-factor test for prolonged detention under 8 U.S.C. § 1225(b). Dkt. No. 3, at 13 (citing *Djelassi v. ICE Field Off. Dir.*, 434 F. Supp. 3d 917, 929 (W.D. Wash. 2020); *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1106 (W.D. Wash. 2019)). Federal Respondents have cited the *Martinez* test as it is applicable to Section 1226(c).

(9th Cir. 2022) (CJumatay, concurring) (“[T]he [Supreme] Court has recently backed away from multifactorial ‘grand unified theor[ies]’ for resolving legal issues”) (citation omitted); *id.* (“I think this case is better decided through the text, structure, and history of the Constitution, rather than through interest balancing.”).

In *Martinez*, the district 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. These factors favor Federal Respondents position that [REDACTED] continued immigration detention without a bond hearing is not unreasonable.

First, [REDACTED] approximate eighteen-month detention likely favors granting him a court-ordered bond hearing. 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. [REDACTED] PFR is currently pending at the Ninth Circuit.

The third and fourth factors clearly favor the Government. These factors involve a review of the length of detention compared to the noncitizen’s criminal sentence and nature of his crime. *Martinez*, 2019 WL 5968089, at *9. Both [REDACTED] original and amended criminal convictions resulted in sentences of more than six years – approximately four times the length of his immigration detention. Furthermore, [REDACTED] convictions are serious felonies.

The fifth factor analyzes the conditions of detention. [REDACTED] is currently detained at the NWIPC which is an immigration detention facility.

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. While [REDACTED] may pursue his legal remedies as he so chooses, his litigation choices alone are the reason for his delayed time in immigration detention. See *Demore*, 538 U.S. at 531 (upholding a noncitizen’s “longer than the average” period of detention while noting that it was the noncitizen who had asked for a continuance in furtherance of his challenge to his removability before the agency); *Rodriguez Diaz*, 53 F.4th at 1208. In addition, the Government has not delayed his removal proceedings. He has been ordered removed, the removal order has been reviewed by the BIA, and now [REDACTED] PFR is pending at the Ninth Circuit. Accordingly, this Court should find that the sixth and seventh factors favor Federal Respondents.

The last factor – the likelihood that the removal proceedings will result in a final order of removal – favors Federal Respondents. The IJ has denied [REDACTED] applications for relief of removal and has ordered him removed to Jamaica. The BIA has dismissed [REDACTED] appeal of this removal order and has denied a motion to remand his removal proceedings to the IJ due to the vacatur of his original criminal convictions.

The totality of the *Martinez* factors favors Federal Respondents. Therefore, [REDACTED] continued immigration detention without a bond hearing is not unreasonable and this Court should deny his habeas claim.

2. If this Court orders a bond hearing, the Government should not be required to justify detention by clear and convincing evidence.

The Constitution does not require the Government to bear the burden of establishing that a noncitizen will be a flight risk or danger – much less by clear-and-convincing evidence – to justify temporary detention pending removal proceedings. The Supreme Court has consistently affirmed the constitutionality of detention pending removal proceedings notwithstanding that the

1 Government has *never* borne the burden to justify that detention by clear-and-convincing evidence.
2 *E.g.*, *Demore*, 538 U.S. at 531; *Carlson*, 342 U.S. at 538; *see Zadvydas*, 533 U.S. at 701.

3 Furthermore, *Demore* upheld mandatory detention under Section 1226(c), which expressly
4 puts the burden on the alien even in the only situation in which release is permitted: When release
5 is for witness-protection purposes. Section 1226(c) altogether prohibits release of specified
6 criminal or terrorist aliens, except that the alien may be released if it is “necessary” for witness
7 protection and “the alien satisfies the Attorney General” that he “will *not* pose a danger to the
8 safety of other persons or of property and is likely to appear for any scheduled proceeding.” 8
9 U.S.C. § 1226(c)(2) (emphasis added). And in *Zadvydas*, the Court placed the burden on the
10 noncitizen who is subject to potentially indefinite detention following entry of a final order of
11 removal to show “that there is no significant likelihood of removal in the reasonably foreseeable
12 future.” 533 U.S. at 701.

13 Federal Respondents acknowledge that Courts in this District have applied the clear-and-
14 convincing standard when ordering bond hearings for petitioners that were subject to mandatory
15 prolonged detention. However, if this Court should order a bond hearing, the clear-and-convincing
16 standard should not be applied for the reasons stated above in this case.

17 **IV. CONCLUSION**

18 For all of the foregoing reasons, Federal Respondents respectfully request that this Court
19 deny the Petition for Writ of Habeas Corpus.

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1 DATED this 2nd day of October, 2025.

2 Respectfully submitted,

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16 I certify that this memorandum contains 4,361
17 words, in compliance with the Local Civil Rules.