

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Doe v. Wofford

Doe v. Wofford · No. 1:24-cv-00943-EPG-HC · Decided May 6, 2025

SUMMARY

The United States District Court for the Eastern District of California grants a federal immigration detainee’s motion to proceed under a pseudonym. The court denies respondents’ motion to dismiss, holding that *Demore v. Kim* does not foreclose an as-applied substantive due process challenge to prolonged detention under 8 U.S.C. § 1226(c). The court directs respondents to file an answer addressing the merits and sets a briefing schedule.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	May 6, 2025
DOCKET	1:24-cv-00943-EPG-HC
DISPOSITION	other
PROCEDURAL POSTURE	Petitioner, a federal immigration detainee proceeding under 28 U.S.C. § 2241, moved to proceed under a pseudonym. Respondents moved to dismiss his substantive due process challenge to prolonged detention under 8 U.S.C. § 1226(c). The court granted the pseudonym motion, denied the motion to dismiss, and ordered respondents to answer and produce relevant records.
STANDARD OF REVIEW	On a motion to dismiss, the court considered whether the petition stated a legally cognizable as-applied substantive due process challenge and whether <i>Demore v. Kim</i> foreclosed such relief. The court did not adjudicate the ultimate merits of the detention claim.
PRECEDENTIAL VALUE	nonprecedential district court order
PARTIES	John Doe v. Minga Wofford, et al.

TOPICS

immigration detention

federal habeas corpus

substantive due process

removal proceedings

civil procedure

PRACTICE AREAS

immigration

habeas corpus

constitutional law

civil procedure

QUESTIONS PRESENTED

1. Whether Petitioner should be permitted to proceed under a pseudonym because the need for anonymity outweighed prejudice to respondents and the public interest.
2. Whether *Demore v. Kim* forecloses an as-applied substantive due process challenge to prolonged detention under 8 U.S.C. § 1226(c).
3. Whether the petition stated a cognizable claim that continued detention under § 1226(c) had become punitive and therefore unconstitutional.

HOLDINGS

1. Petitioner may proceed under a pseudonym because the circumstances of his case, including alleged risks of torture or death upon return to Mexico, mental-health concerns, and risks associated with disclosure of sensitive criminal-history information, outweighed the opposing party's identified interests and the public interest in disclosure.
2. *Demore v. Kim* does not foreclose an as-applied constitutional challenge alleging that detention under § 1226(c) has become punitive through excessive prolongation.
3. The petition should not be dismissed on the ground that Petitioner pursued applications and appeals challenging removal; pursuing legitimate defenses does not categorically eliminate a constitutional claim that detention has become unreasonable.

KEY QUOTATIONS

“Demore does not directly address the issue presented here: whether § 1226(c) as applied to Petitioner is punitive and thus unconstitutional.” (Discussion § II.B)

“A due process violation occurs when detention becomes punitive rather than regulatory, meaning there is no regulatory purpose that can rationally be assigned to the detention or the detention appears excessive in relation to its regulatory purpose.” (Discussion § II.B)

FACTUAL BACKGROUND

Petitioner is a Mexican citizen who has lived in the United States since age eight and became a lawful permanent resident in 2000. After serving a prison sentence for California convictions involving lewd acts upon a child and child endangerment, he was released on parole in March 2020 and detained by ICE in June 2021 under 8 U.S.C. § 1226(c). His removal proceedings and challenges to removal and detention remained ongoing, and he had been denied bond after hearings before an immigration judge. He alleged that the duration and circumstances of his detention had become punitive and violated substantive due process.

PROCEDURAL HISTORY

Petitioner was detained by ICE during removal proceedings and was denied bond after multiple administrative and judicial proceedings. He filed this § 2241 petition in the Eastern District of California on August 14, 2024, challenging his prolonged detention on substantive due process grounds. Respondents moved to dismiss, arguing principally that *Demore v. Kim* foreclosed the claim. The court denied dismissal without resolving the merits and set a briefing and record-production schedule.

DISPOSITION

other

CASES CITED

- Does I thru XXIII v. Advanced Textile Corp., 214 F.3d 1058, 1067-68 (9th Cir. 2000)
- United States v. Doe, 655 F.2d 920, 922 n.1 (9th Cir. 1981)
- Doe v. Kamehameha Sch./Bernice Pauahi Bishop Est., 596 F.3d 1036, 1042 (9th Cir. 2010)
- Doe v. Becerra, No. 23-cv-02382-DMR, 2023 WL 5672192 (N.D. Cal. Sept. 1, 2023)
- L.M. v. Garland, No. 23-241, 2024 WL 1696365 (9th Cir. Apr. 19, 2024)
- Doe v. Becerra, 732 F. Supp. 3d 1071 (N.D. Cal. 2024)
- Doe v. Garland, 109 F.4th 1188, 1199 (9th Cir. 2024)
- Demore v. Kim, 538 U.S. 510 (2003)
- Prieto-Romero v. Clark, 534 F.3d 1053, 1057, 1062 (9th Cir. 2008)
- Zadvydas v. Davis, 533 U.S. 678, 684-86, 689, 694, 701 (2001)
- Martinez v. Clark, 36 F.4th 1219, 1223 (9th Cir. 2022)
- United States v. Quintero, 995 F.3d 1044, 1051 (9th Cir. 2021)
- United States v. Salerno, 481 U.S. 739, 746-47 & n.4 (1987)
- United States v. Torres, United States v. Torres, 995 F.3d 695, 708-10 (9th Cir. 2021)
- United States v. Gelfuso, 838 F.2d 358, 359-60 (9th Cir. 1988)
- Wong Wing v. United States, 163 U.S. 228, 238 (1896)
- Gonzalez v. Bonnar, No. 18-cv-05321-JSC, 2019 WL 330906 (N.D. Cal. Jan. 25, 2019)
- Rodriguez v. Nielsen, No. 18-CV-04187-TSH, 2019 WL 7491555 (N.D. Cal. Jan. 7, 2019)
- Black v. Decker, 103 F.4th 133, 149 n.22 (2d Cir. 2024)
- Liban M.J. v. Secretary of Department of Homeland Security, 367 F. Supp. 3d 959, 965 (D. Minn. 2019)
- Hernandez v. Decker, No. 18-CV-5026 (ALC), 2018 WL 3579108 (S.D.N.Y. July 25, 2018)
- Aroldo Rodriguez Diaz v. Merrick Garland, Rodriguez Diaz v. Garland, 53 F.4th 1189, 1208 (9th Cir. 2022)
- Doe v. Becerra, 723 F. Supp. 3d 688, 692 (N.D. Cal. 2024)
- Henriquez, 2022 WL 2132919, at *5

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 EASTERN DISTRICT OF
CALIFORNIA 10 11 JOHN DOE, Case No. 1:24-cv-00943-EPG-HC 12 Petitioner, ORDER
GRANTING PETITIONER'S MOTION TO PROCEED UNDER 13 v. PSEUDONYM AND
DENYING RESPONDENTS' MOTION TO DISMISS 14 MINGA WOFFORD, et al., (ECF Nos.
2, 8) 15 Respondents. ORDER SETTING BRIEFING SCHEDULE 16 17 Petitioner John Doe,
represented by counsel, is a federal immigration detainee proceeding 18 with a petition for writ of
habeas corpus pursuant to 28 U.S.C. § 2241.

The parties have 19 consented to the jurisdiction of a United States magistrate judge. (ECF Nos. 4,
10, 11.) For the 20 reasons set forth herein, Petitioner's motion to proceed under pseudonym is
granted and 21 Respondents' motion to dismiss is denied. 22 I. 23 BACKGROUND 24 Petitioner
is a citizen of Mexico who has lived in the United States since he was eight 25 years old and
became a permanent resident on July 26, 2000.

(ECF No. 1 at 6.1) In 2011, 26 Petitioner pleaded no contest to two counts of lewd acts upon a
child and one count of child 27 1 endangerment.² (ECF No. 1 at 7; ECF No. 1-10 at 34.) Petitioner
was sentenced to an 2 imprisonment term of eleven years and four months. (ECF No. 1-10 at 34.)
3 In March 2020, Petitioner was released on parole after serving ten years in prison.

(ECF 4 No. 1 at 7.) The California Department of Parole and Rehabilitation Board of Parole
Hearings 5 conducted a screening test and declined to refer Petitioner for an evaluation under the
Sexually 6 Violent Predator ("SVP") program, finding that he did not "meet the case factors and
clinical 7 evaluation criteria for referral to SVP." (ECF No. 1-9 at 170.)

Upon release, Petitioner registered 8 as a sex offender and will continue to do so for the rest of his
life. (ECF No. 1 at 8.) 9 In June 2021, fifteen months after his release from prison, Petitioner was
detained by 10 U.S. Immigration and Customs Enforcement ("ICE") at a routine parole check-in
pursuant to 8 11 U.S.C. § 1226(c). (ECF No. 1 at 8–9 & n.2.)

On June 1, 2021, the Department of Homeland 12 Security ("DHS") issued a Notice to Appear
("NTA") charging Petitioner with removability 13 pursuant to 8 U.S.C. § 1227(a)(2)(A)(iii) for
having an aggravated felony conviction.

The 14 immigration judge ("IJ") found Petitioner statutorily ineligible for a bond hearing. (ECF
No. 1 at 15 9.) 16 Petitioner applied for deferral of removal under the United Nations Convention
Against 17 Torture ("CAT") and sought readjustment of status with a waiver of inadmissibility
under 18 2 In 2010, Petitioner was babysitting the child of one of Petitioner's cousins who had
molested Petitioner 19 when he was a child.

Petitioner alleges that "[i]n a grave lapse of judgment, Mr. Doe lost control while playing a
jumping game with the victim. Thinking about the abuse he suffered, he pulled the victim's 20
underpants roughly for several seconds, which caused an injury to her vagina." (ECF No. 1 at 7.)

Petitioner cites to the declaration of Petitioner's criminal defense counsel, which states that counsel 21 retained the services of a Forensic Sexual Assault Nurse Examiner ("SANE") to review and interpret the 22 results of the Sexual Assault Response Team ("SART") examination.

(Id.; ECF No. 1-9 at 121.) The SANE concluded that the injuries did not appear sexual in nature but were more consistent with a 23 straddle-type injury. Additionally, the prosecution never discovered any DNA evidence suggesting a penetrative sexual injury. (ECF No. 1-9 at 121.) Respondent cites to police reports, one of which 24 documents a conversation an officer had with the emergency room doctor who had examined the victim.

(ECF No. 8 at 2 n.3; ECF No. 1-10 at 42.) The doctor told the officer that he observed bruising on the 25 outer vulva area, linear bruising along the lines where underwear would be, a laceration on the vaginal opening, and coagulated blood inside the vaginal canal. (ECF No. 1-10 at 42.)

The other police report 26 documents a conversation an officer had regarding the SART exam with someone who appears to be a medical professional. The person stated there were several abrasions in the genital area, a specific fresh 27 abrasion with oozing blood between the labia majora and labia minora, bruising on the side of the clitoris, and abrasions around the anus.

(ECF No. 1-10 at 60.) The person indicated that this appeared to be most 1 Immigration and Nationality Act ("INA") § 212(h). (ECF No. 1 at 9.) On September 7, 2022, the 2 IJ denied Petitioner's applications for relief and ordered Petitioner removed to Mexico. (ECF No. 3 1-4.)

On February 14, 2023, the Board of Immigration Appeals ("BIA") summarily affirmed the 4 IJ's decision without opinion. (ECF No. 1-5.) 5 Petitioner appealed the BIA's decision to the Ninth Circuit, which granted the petition for 6 review on April 19, 2024, and remanded the matter based on the IJ's failure to adequately 7 consider expert testimony on Petitioner's risk of torture in Mexico.

(ECF No. 1-6.) On January 8, 8 2025, the BIA, in turn, remanded the matter to the immigration court for further proceedings. 9 (ECF No. 13-1.) 10 Meanwhile, Petitioner filed a petition for writ of habeas corpus in the United States 11 District Court for the Northern District of California, challenging his prolonged detention on 12 procedural due process grounds.

(ECF No. 1 at 10.) On September 1, 2023, the district court 13 granted the petition and ordered a bond hearing at which "DHS must establish by clear and 14 convincing evidence that Petitioner is a flight risk or a danger to the community in order to 15 continue his detention." Doe v. Becerra, No. 23-cv-02382-DMR, 2023 WL 5672192, at *4 (N.D. 16 Cal. Sept. 1, 2023).

On September 12, 2023, an IJ conducted a bond hearing and denied bond. 17 (ECF No. 1-12.) 18 Petitioner appealed, and on January 31, 2024, the BIA granted Petitioner's appeal, 19 finding that the IJ's decision "cannot be upheld as currently constituted" because it is "unclear 20 whether the

burden was consistently applied when analyzing whether [Petitioner] presents a 21 danger to the community” and the IJ did not “meaningfully address the tests and tools underlying 22 the expert’s determination.” (ECF No. 1-13 at 4, 5.)

The BIA remanded the matter, directing the 23 IJ to “issue a new decision that reflects proper application of the burden of proof,” “consider and 24 address the record evidence more fully,” “enter more detailed factual findings and legal 25 conclusions as to whether [Petitioner] presents a future danger to the community,” and “assess 26 anew whether DHS has submitted sufficient evidence to outweigh” Petitioner’s “lengthy 27 residence in the United States, his strong family and community ties, his education and 1 a significant flight risk that no bond or release conditions could mitigate the risk.” (Id.)

On 2 February 26, 2024, the IJ issued a new decision denying bond. (ECF No. 1-14.) On October 22, 3 2024, the BIA declined to reverse the IJ’s findings “[g]iven the deferential nature of our review 4 as to the underlying factual findings[.]” (ECF No. 12 at 13; ECF No. 12-1 at 3.) 5 Meanwhile, on June 26, 2024, Petitioner filed a petition for writ of habeas corpus in the 6 United States District Court for the Northern District of California, challenging his prolonged 7 detention on substantive due process grounds.

(ECF No. 1 at 13.) On July 31, 2024, the Ninth 8 Circuit issued *Doe v. Garland*, 109 F.4th 1188, 1199 (9th Cir. 2024), which “affirm[ed] the 9 application of the immediate custodian and district of confinement rules to core habeas petitions 10 filed pursuant to 28 U.S.C. § 2241, including those filed by immigrant detainees.” Accordingly, 11 Petitioner filed a notice of voluntary dismissal.

(ECF No. 1 at 14.) 12 On August 14, 2024, Petitioner filed the instant petition for writ of habeas corpus in this 13 Court challenging his prolonged detention on substantive due process grounds. (ECF No. 1.) 14 Respondent filed a motion to dismiss, and Petitioner filed an opposition. (ECF Nos. 8, 12.) 15 II. 16 DISCUSSION 17 A. Petitioner’s Motion to Proceed Under Pseudonym 18 “[M]any federal courts, including the Ninth Circuit, have permitted parties to proceed 19 anonymously when special circumstances justify secrecy.” *Does I thru XXIII v. Advanced* 20 *Textile Corp.*, 214 F.3d 1058, 1067 (9th Cir.

2000). “In this circuit, we allow parties to use 21 pseudonyms in the ‘unusual case’ when nondisclosure of the party’s identity ‘is necessary... to 22 protect a person from harassment, injury, ridicule or personal embarrassment.’” *Id.* at 1067–68 23 (quoting *United States v. Doe*, 655 F.2d 920, 922 n.1 (9th Cir. 1981)). “[A] party may preserve 24 his or her anonymity in judicial proceedings in special circumstances when the party’s need for 25 anonymity outweighs prejudice to the opposing party and the public’s interest in knowing the 26 party’s identity.” *Advanced Textile Corp.*, 214 F.3d at 1068.

27 To determine whether to allow a party to proceed anonymously when the opposing party has objected, a district court must balance 1 reasonableness of the anonymous party's fears,... (3) the anonymous party's vulnerability to such retaliation," (4) the 2 prejudice to the opposing party, and (5) the public interest. 3 *Doe v. Kamehameha Sch./Bernice Pauahi Bishop Est.*, 596 F.3d 1036, 1042 (9th Cir.

2010) 4 (quoting *Advanced Textile Corp.*, 214 F.3d at 1068). 5 Petitioner has moved to proceed under pseudonym for the following reasons: 6 (1) to protect Mr. Doe from unnecessarily heighten risk of harm and injury by private or government actors in Mexico if facts 7 relating to his claim for protection under the Convention Against Torture are disclosed to the public; and (2) to prevent his mental 8 health conditions from worsening; and (3) to prevent any harm he might experience in detention from revelation of sensitive criminal 9 history information.

10 (ECF No. 2 at 3.) With respect to the first factor, Petitioner notes that he has applied for 11 protection under CAT because of his fear of return to Mexico. Petitioner has declared that he has 12 been threatened with death because of his offense against his cousin's daughter, and the victim's 13 father, who allegedly has connections with organized crime and law enforcement in Michoacan, 14 Mexico, has admitted in a statement to law enforcement of his intent to have Petitioner killed.

15 With respect to the second and third factor, Petitioner argues that his fears are corroborated by 16 country conditions evidence and uncontested expert testimony. The expert "testified that 'the 17 level of danger Mr. [Doe] faces of being tortured or killed is extreme, and more probably than 18 the likelihood of him not being tortured or killed upon his deportation.'" (ECF No. 2 at 4 19 (emphasis deleted) (alteration in original) (citation omitted).)

The expert "described the 20 'lynching of suspected pedophiles' by members of organized crime as 'commonplace' and 21 broadly accepted," and stated that "'Mr. [Doe's] conviction for child molestation will make him 22 an ideal target for cartels to send a message.'" (Id. (alteration in original) (citation omitted).) 23 Petitioner also moves to proceed under pseudonym to avoid exacerbating pre-existing 24 mental health conditions.

Petitioner has received mental health treatment for symptoms of 25 anxiety, depression, and adjustment disorder since 2015. (ECF No. 2 at 5.) In 2022, a licensed 26 clinical psychologist found that Petitioner's "psychological profile is suggestive of Major 27 Depressive Disorder and Generalized Anxiety Disorder, as well as the psychological sequelae of childhood sexual abuse[.]" (ECF No. 1-9 at 73.)

In 2022, while in ICE detention, Petitioner was 1 sexually assaulted by another detainee.³ (ECF No. 1-16 at 4 ¶ 8.) Petitioner has been prescribed 2 Celexa and Wellbutrin to manage his symptoms of anxiety and depression. (Id. at ¶ 9.) "Finally, 3 Petitioner contends that revealing his

criminal history and mental health history could put him at risk of harm inside detention.” (ECF No. 2 at 5.)

Respondent “moves to strike use of a pseudonym and urges this Court compel filing of a lawful § 2241 petition,” noting that “Petitioner, an adult violent sex offender with a requirement that he register as such, has not been granted leave of this Court to hide his identity.” (ECF No. 8 at 1 n.1.) Respondent does not identify any prejudice Respondent would suffer if Petitioner is allowed to proceed under pseudonym, and Respondent does not provide authority in support of the opposition to the motion to proceed under pseudonym.

As noted by Petitioner, “[t]wo courts have permitted [Petitioner] to proceed under pseudonym given the sensitive nature of his claim for relief, and in neither instance has the government opposed,” citing to *Doe v. Becerra*, No. 23-cv-02382-DMR, 2023 WL 5672192, at *1 n.1 (N.D. Cal. Sept. 1, 2023); *L.M. v. Garland*, No. 23-241, 2024 WL 1696365, at *1 n.1 (9th Cir.

Apr. 19, 2024). (ECF No. 12 at 3 n.1.) Other courts have permitted habeas petitioners to proceed under pseudonym under similar circumstances. See, e.g., *Doe v. Becerra*, 732 F. Supp. 3d 1071, 1091 (N.D. Cal. 2024) (“Given the circumstances of Mr. Doe’s petition and his allegations that he will face torture or death if he returns to Mexico, the Court previously granted Mr. Doe’s motions to proceed under pseudonym[.]”), abrogated on other grounds by *Doe*, 109 F.4th 1188.

The Court finds that upon balance, the factors weigh in favor of Petitioner. Accordingly, the Court will grant Petitioner’s motion to proceed under pseudonym. B. Motion to Dismiss Petitioner asserts that his prolonged detention has become punitive and violates substantive due process. (ECF No. 1 at 34.)

In the motion to dismiss, Respondent contends that “[t]he Supreme Court has repeatedly upheld detention pending removal proceedings, as in this case, under § 1226(c),” citing to *Demore v. Kim*, 538 U.S. 510 (2003). (ECF No. 8 at 3.) Petitioner made a Prison Rape Elimination Act complaint against the other detainee. An investigation Congress has enacted a complex statutory scheme governing the detention of noncitizens during removal proceedings and following the issuance of a final order of removal. “Where an alien falls within this statutory scheme can affect whether his detention is mandatory or discretionary, as well as the kind of review process available to him if he wishes to contest the necessity of his detention.” *Prieto-Romero v. Clark*, 534 F.3d 1053, 1057 (9th Cir.

2008). Here, Petitioner is detained pursuant to 8 U.S.C. § 1226(c),⁴ which provides: (c) Detention of criminal aliens (1) Custody The Attorney General shall take into custody any alien who-- (A) is inadmissible by reason of having committed any offense covered in section

1182(a)(2) of this title, 11 (B) is deportable by reason of having committed any 12 offense covered in section 1227(a)(2)(A)(ii), (A)(iii), (B), (C), or (D) of this title, 13 (C) is deportable under section 1227(a)(2)(A)(i) of this title 14 on the basis of an offense for which the alien has been sentence¹ to a term of imprisonment of at least 1 year, or 15 (D) is inadmissible under section 1182(a)(3)(B) of this title 16 or deportable under section 1227(a)(4)(B) of this title, 17 when the alien is released, without regard to whether the alien is released on parole, supervised release, or probation, 18 and without regard to whether the alien may be arrested or imprisoned again for the same offense.

19 (2) Release 20 The Attorney General may release an alien described in 21 paragraph (1) only if the Attorney General decides pursuant to section 3521 of Title 18 that release of the alien from custody 22 is necessary to provide protection to a witness, a potential witness, a person cooperating with an investigation into major 23 criminal activity, or an immediate family member or close associate of a witness, potential witness, or person cooperating 24 with such an investigation, and the alien satisfies the Attorney General that the alien will not pose a danger to the safety of 25 other persons or of property and is likely to appear for any scheduled proceeding.

A decision relating to such release shall 26 27 4 The Ninth Circuit has “conclude[d] that Subsection C applies throughout the administrative and judicial 1 take place in accordance with a procedure that considers the severity of the offense committed by the alien. 2 3 8 U.S.C. § 1226(c). 4 In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court addressed a challenge to 5 prolonged detention under § 1231(a)(6) by noncitizens who “had been ordered removed by the 6 government and all administrative and judicial review was exhausted, but their removal could 7 not be effectuated because their designated countries either refused to accept them or the United 8 States lacked a repatriation treaty with the receiving country.” *Prieto–Romero*, 534 F.3d at 1062 9 (citing *Zadvydas*, 533 U.S. at 684–86).

The Supreme Court held that § 1231(a)(6) does not 10 authorize indefinite detention and “limits an alien’s post-removal-period detention to a period 11 reasonably necessary to bring about that alien’s removal from the United States.” *Zadvydas*, 533 12 U.S. at 689.

Thus, after a presumptively reasonable detention period of six months, a noncitizen 13 was entitled to release if “it has been determined that there is no significant likelihood of removal 14 in the reasonably foreseeable future.” *Id.* at 701. 15 In *Demore v. Kim*, 538 U.S. 510 (2003), the Supreme Court rejected a facial challenge to 16 mandatory detention under 8 U.S.C. § 1226(c).

The Supreme Court upheld its “longstanding 17 view that the Government may constitutionally detain deportable aliens during the limited period 18 necessary for their removal proceedings.” *Id.* at 526. The Supreme Court distinguished *Zadvydas* 19 by emphasizing that mandatory detention under § 1226(c) has “a definite termination point” and 20 “in the majority of cases it lasts for less than the 90 days... considered presumptively valid in 21 *Zadvydas*.” *Id.* at 529.

However, Justice Kennedy specifically noted that “a lawful permanent 22 resident alien such as respondent could be entitled to an individualized determination as to his 23 risk of flight and dangerousness if the continued detention became unreasonable or unjustified.” 24 *Demore*, 538 U.S. at 532 (Kennedy, J., concurring). 25 There has been “a dearth of guidance regarding the point at which an individual’s 26 continued mandatory detention under Section 1226(c) becomes unconstitutional.” *Gonzalez v. 27 Bonnar*, No. 18-cv-05321-JSC, 2019 WL 330906, at *3 (N.D.

Cal. Jan. 25, 2019). The Ninth Circuit has yet to take a position on whether due process requires a bond hearing and/or release 1 from custody for noncitizens detained under 8 U.S.C. § 1226(c), but it has recognized that 2 “district courts throughout this circuit have ordered immigration courts to conduct bond hearings 3 for noncitizens held for prolonged periods under § 1226(c)” based on due process and noted that 4 “[a]ccording to one such court order, the ‘prolonged mandatory detention pending removal 5 proceedings, without a bond hearing, will—at some point—violate the right to due process.’” 6 *Martinez v. Clark*, 36 F.4th 1219, 1223 (9th Cir.

2022) (citation omitted), vacated on other 7 grounds, 144 S. Ct. 1339 (2024). 8 “The Due Process Clause of the Fifth Amendment mandates that ‘[n]o person shall... be 9 deprived of life, liberty, or property, without due process of law.’” *United States v. Quintero*, 995 10 F.3d 1044, 1051 (9th Cir. 2021) (quoting U.S. Const. amend. V). “The Due Process Clause 11 ‘protects individuals against two types of government action’: violations of substantive due 12 process and procedural due process.” *Id.* (quoting *United States v. Salerno*, 481 U.S. 739, 746 13 (1987)). “[S]ubstantive due process prevents the government from engaging in conduct that 14 shocks the conscience, or interferes with rights implicit in the concept of ordered liberty.” 15 *Salerno*, 481 U.S. at 746 (internal quotation marks and citations omitted). “When government 16 action depriving a person of life, liberty, or property survives substantive due process scrutiny, it 17 must still be implemented in a fair manner.

This requirement has traditionally been referred to as 18 ‘procedural’ due process.” *Salerno*, 481 U.S. at 746 (citation omitted). 19 In *Wong Wing v. United States*, 163 U.S. 228 (1896), the Supreme “Court held that 20 punitive measures could not be imposed upon aliens ordered removed because ‘all persons 21 within the territory of the United States are entitled to the protection’ of the Constitution.” 22 *Zadvydas*, 533 U.S. at 694 (quoting *Wong Wing*, 163 U.S. at 238).

See *Zadvydas*, 533 U.S. at 23 694 (Kennedy, J., dissenting) (“Where detention is incident to removal, the detention cannot be 24 justified as punishment nor can the confinement or its conditions be designed in order to punish.” 25 (citing *Wong Wing*, 163 U.S. 228)). 26 “As an initial matter, the mere fact that a person is detained does not inexorably lead to 27 the conclusion that the government has imposed punishment.” *Salerno*, 481 U.S. at 746 (citing 1 detention can

‘become excessively prolonged, and therefore punitive,’ resulting in a due process 2 violation.” United States v. Torres, 995 F.3d 695, 708 (9th Cir.

2021) (quoting Salerno, 481 U.S. 3 at 747 n.4). “The point at which detention constitutes a due process violation requires a case-by- 4 case analysis.” Torres, 995 F.3d at 708 (citing United States v. Gelfuso, 838 F.2d 358, 359–60 5 (9th Cir. 1988)). “A due process violation occurs when detention becomes punitive rather than 6 regulatory, meaning there is no regulatory purpose that can rationally be assigned to the 7 detention or the detention appears excessive in relation to its regulatory purpose.” Torres, 995 8 F.3d at 708 (citing Salerno, 481 U.S. at 747). “[W]hile the existence of some threshold of per se 9 due process violation may be ‘undisputed,’ it has also never been clearly delineated in the 10 context of immigration detention.” Doe v. Becerra, 704 F. Supp. 3d 1006, 1020 (N.D.

Cal. 2023) 11 (citation omitted), abrogated on other grounds by Doe v. Garland, 109 F.4th 1188 (9th Cir. 12 2024). 13 Here, Respondent contends that Demore forecloses relief and warrants dismissal. 14 Respondent notes that Petitioner has had a full bond hearing and his detention (the length of 15 which “solely stem[s] from adjudication of Petitioner’s voluntary and numerous applications for 16 review and related appeals seeking relief from removal”) has a definite termination point when 17 his removal proceeding ends.

Respondent argues that detention pending removal proceedings is 18 constitutionally permissible because the government has significant interests that do not wane 19 with the passage of time. 20 As noted above, the Supreme Court rejected a facial challenge to mandatory detention 21 under 8 U.S.C. § 1226(c) in Demore. See Demore, 538 U.S. at 514 (“Respondent... filed a 22 habeas corpus action pursuant to 28 U.S.C. § 2241... challenging the constitutionality of 23 § 1226(c) itself.” (emphasis added)); Black v. Decker, 103 F.4th 133, 149 n.22 (2d Cir.

2024) 24 (“Demore ruled on a due process challenge to the facial constitutionality of section 1226(c)[.]”). 25 Demore does not directly address the issue presented here: whether § 1226(c) as applied to 26 Petitioner is punitive and thus unconstitutional.

In fact, in Nielsen v. Preap, 586 U.S. 392 (2019), 27 the Supreme Court expressly preserved the right to bring such an as-applied challenge: “Our 1 applied challenges—that is, constitutional challenges to applications of the statute as we have 2 now read it.” Preap, 586 U.S. at 420. 3 Although Petitioner has had a bond hearing and his detention has a definite termination 4 point when his removal proceedings end, the Court notes that in upholding mandatory detention 5 under 8 U.S.C. § 1226(c) in Demore, the Supreme Court made repeated references to the “brief” 6 and “limited” timeframe at issue.

See Demore, 538 U.S. at 513 (“brief period”); id. at 523 7 (“brief period”); id. at 526 (“limited period”); id. at 529 n.12 (“[t]he very limited time of the 8 detention at stake under § 1226(c)”); id.

at 531 (“limited period”). Demore specifically noted that 9 “the detention at stake under § 1226(c) lasts roughly a month and a half in the vast majority of 10 cases in which it is invoked, and about five months in the minority of cases in which the alien 11 chooses to appeal,” relying on statistics from the Executive Office for Immigration Review 12 (“EOIR”).

538 U.S. at 530. However, “[t]hirteen years after the decision in Demore, the 13 government admitted that the figures it provided to the Court, and which the Court relied on, 14 contained ‘several significant errors,’” and for the years 1999–2001, the “average length of 15 detention in cases where the alien appealed [was] 382 days, or a little more than a year.” 16 Rodriguez v. Nielsen, No. 18-CV-04187-TSH, 2019 WL 7491555, at *5 (N.D.

Cal. Jan. 7, 2019) 17 (citing Letter from Acting Solicitor General Ian H. Gershengorn to Hon. Scott S. Harris (Aug. 18 26, 2016), at 2, 3, Demore v. Kim, 538 U.S. 510 (2003) (No. 01-1491)). “The data from the 19 Jennings case show that 460 members of the respondent section 1226(c) subclass were detained 20 for an average of 427 days (over fourteen months) with some individual detention periods 21 exceeding four years.” Rodriguez, 2019 WL 7491555, at *5 (citing Joint Appendix (Table 20) 22 (Aug.

26, 2016), Jennings v. Rodriguez, 583 U.S. 281 (2018) (No. 15-1204)). The Government 23 Accountability Office conducted a study and “found that as of 2015, the median length of time it 24 takes the BIA to complete an appeal of a removal order exceeds 450 days.” Rodriguez, 2019 WL 25 7491555, at *5 (citing United States Government Accountability Office, Immigration Courts: 26 Actions Needed to Reduce Case Backlog and Address Long-Standing Management and 27 Operational Challenges 33 (2017), <https://www.gao.gov/assets/690/685022.pdf>).

1 “It is undisputed that at some point,... detention can ‘become excessively prolonged, 2 and therefore punitive,’ resulting in a due process violation.” Torres, 995 F.3d at 708 (quoting 3 Salerno, 481 U.S. at 747 n.4).

To the extent Respondent argues that there is no due process 4 violation because the length of detention is a result of Petitioner’s various applications for relief, 5 the Court rejects such a contention. “Petitioner is entitled to raise legitimate defenses to removal 6... and such challenges to his removal cannot undermine his claim that detention has become 7 unreasonable.” Liban M.J. v. Sec’y of Dep’t of Homeland Sec., 367 F. Supp. 3d 959, 965 (D.

8 Minn. 2019) (citing Hernandez v. Decker, No. 18-CV-5026 (ALC), 2018 WL 3579108, at *9 9 (S.D.N.Y. July 25, 2018) (“the mere fact that a noncitizen opposes his removal is insufficient to 10 defeat a finding of unreasonably prolonged detention, especially where the Government fails to 11 distinguish between bona fide and frivolous arguments in opposition”)). “[T]he fact that 12 Petitioner chose to pursue [an application for relief] and requested continuances to further that 13

application does not deprive him of a constitutional right to due process.” Henriquez, 2022 WL 14 2132919, at *5.

15 The Court recognizes that “the government clearly has a strong interest in preventing 16 aliens from ‘remain[ing] in the United States in violation of our law’” and “has an obvious 17 interest in ‘protecting the public from dangerous criminal aliens.’” Rodriguez Diaz, 53 F.4th at 18 1208 (quoting Demore, 538 U.S. at 518, 515).

The Ninth Circuit has stated that “[t]hese are 19 interests of the highest order that only increase with the passage of time,” noting that “[t]he 20 longer detention lasts and the longer the challenges to an IJ’s order of removal take, the more 21 resources the government devotes to securing an alien’s ultimate removal” and “[t]he risk of a 22 detainee absconding also inevitably escalates as the time for removal becomes more imminent.” 23 Rodriguez Diaz, 53 F.4th at 1208.

However, the Ninth Circuit in “Torres held that these 24 interests, which are nearly identical to the interests that support pretrial criminal detention, are 25 not so overpowering that they automatically trounce detainees’ unquestionably strong interests in 26 their own physical liberty in every case.” Doe, 732 F. Supp. 3d at 1082. See Torres, 995 F.3d at 27 710 (“[A]ll parties agree that at some point, regardless of the risks associated with Torres’s 1 F.3d 98, 103 (2d Cir.

2012) (“We stress, moreover, that our repeated statements that length of 2 detention alone is not dispositive must not be read to authorize detentions of any length simply 3 because the other relevant factors weigh against the defendant. There is no bright-line limit on 4 the length of detention that applies in all circumstances; but for every set of circumstances, due 5 process does impose some limit.”).

6 Based on the foregoing, the Court finds that Demore does not necessarily preclude relief 7 or foreclose as-applied challenges. Therefore, dismissal based on Demore is not warranted and 8 the motion to dismiss will be denied. 9 C. Substantive Due Process Claim 10 Having found that dismissal is not warranted, the Court will direct Respondent to file an 11 answer that more fully addresses the merits of Petitioner’s substantive due process claim.

In the 12 petition, Petitioner relies on a decision from the United States District Court for the Northern 13 District of California that “defined the contours of substantive due process in a challenge to ICE 14 detention.” (ECF No. 1 at 17.)

In Doe v. Becerra, 732 F. Supp. 3d 1071, the district court applied 15 the following five factors, which drew “from Ninth Circuit cases regarding detention before 16 criminal trial and civil commitment proceedings,” to determine “whether continued detention 17 under Section 1226(c) violates substantive due process”: 18 (1) the length of detention and whether it is excessive in relation to its regulatory purpose; 19 (2) the government’s contribution to any delay; 20 (3) the evidence supporting the determination that detention is 21 warranted to prevent flight risk or

community danger; 22 (4) whether the government interests in ensuring appearance at future proceedings and protecting the community could be 23 protected through alternatives to detention that are less harsh; and 24 (5) the conditions of detention and how they compare to conditions under which pretrial criminal detainees or people convicted of 25 crimes are held.

26 Doe, 732 F. Supp. 3d at 1080 (citing Doe v. Becerra, 723 F. Supp. 3d 688, 692 (N.D. Cal. 27 2024)). 1 As argued by Respondent, (ECF No. 8 at 6), the Court acknowledges that a decision from 2 the United States District Court for the Northern District of California is not binding on this 3 Court.

The Court further recognizes that in light of the Ninth Circuit’s decision in Doe v. 4 Garland, 109 F.4th 1188, the United States District Court for the Northern District of California 5 lacked § 2241 jurisdiction in Doe v. Becerra, 732 F. Supp. 3d 1071. Nonetheless, this does not 6 prevent the Court from considering Doe, 732 F. Supp. 3d 1071, as persuasive authority.

7 The Court notes, however, that it has not made a determination on whether the Doe five- 8 factor test should be adopted in this matter. The parties should address this test in their pleadings 9 and may offer alternative tests. Additionally, Respondent should address “whether any of ICE’s 10 Alternatives to Detention programs (or other potential alternatives to custodial detention) would 11 adequately protect the government’s interests in protecting the public and ensuring that Mr. Doe 12 appears at future proceedings.” Doe, 723 F. Supp. 3d at 692.

13 III. 14 ORDER 15 Accordingly, the Court HEREBY ORDERS that: 16 1. Petitioner’s motion to proceed under pseudonym (ECF No. 2) is GRANTED; 17 2. Respondent’s motion to dismiss (ECF No. 8) is DENIED; 18 3. Within THIRTY (30) days of the date of service of this order, Respondent SHALL FILE 19 an ANSWER addressing the merits of the Petition. 20 4. Within THIRTY (30) days of the date of service of this order, Respondent SHALL FILE 21 any and all transcripts or other documents necessary for the resolution of the issues 22 presented in the Petition.

The transcripts or other documents shall only be filed 23 electronically and, to the extent practicable, provided in Optical Character 24 Recognition (“OCR”) format. Respondent shall not file a hard copy of the 25 transcripts or other documents unless so ordered by this Court. 26 /// 27 /// 1 5. Petitioner MAY FILE a Traverse within THIRTY (30) days of the date of service of 2 Respondent’s Answer.

If no Traverse is filed, the Petition and Answer are deemed 3 submitted at the expiration of the thirty days. 4 5 IT IS SO ORDERED. 6| Dated: _May 6, 2025 hey — 4 UNITED STATES MAGISTRATE JUDGE 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28

