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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Kingsley Ariegwe,

Petitioner,

v.

PAMELA BONDI, Attorney General of the United States; KRISTI NOEM, Secretary, United States Department of Homeland Security; MICHAEL BERNACKE, Field Director, Salt Lake City Office; TODD LYONS, Acting Director; JOHN MATTOS, Warden, Nevada Southern Detention Center,

Respondents.

Case No. 2:25-cv-02478-ART-EJY

Federal Respondents' Response to the Amended Petition, ECF No. 17

Federal Respondents by and through their undersigned counsel hereby file their Response to Petitioner's Amended Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241 (ECF No. 17) ("Petition").[1]

I. Introduction

Petitioner seeks habeas relief in the form of release from immigration detention and related relief concerning the conditions of his confinement. The record demonstrates that his detention is lawful under governing statutory authority and that his medical-care allegations do not rise to the level of a constitutional violation.

[1] Although the Federal Respondents argue in this response that Petitioner is lawfully detained, Federal Respondent John Mattos does not have a position regarding the lawfulness of Petitioner's continued detention.

Petitioner is a native and citizen of Nigeria who was convicted in Montana state court of Attempt (Sexual Intercourse Without Consent) and Unlawful Transactions with Children. Exhibit D, at 1–2. Based on that conviction, the Department of Homeland Security ("DHS") charged Petitioner as removable for having been convicted of an aggravated felony. Exhibit B, at 1; Exhibit C, at 1. DHS took Petitioner into custody pursuant to 8 U.S.C. § 1226 and determined that he would remain detained pending removal proceedings. Exhibit B, at 3–4.

Petitioner is subject to mandatory detention under 8 U.S.C. § 1226(c) because his conviction qualifies as an aggravated felony under 8 U.S.C. § 1101(a)(43)(A) and (U) (rape and attempt to commit rape), as charged in the Form I-261. Exhibit C, at 1. Because Petitioner is detained under § 1226(c), his request for release is foreclosed absent the narrow exception in § 1226(c)(2), which is not alleged here.

Petitioner's Fifth Amendment claim regarding medical care likewise fails. The undisputed declaration of Dr. S. Tiona establishes that Petitioner has received ongoing monitoring, medication management, specialist referral, and hospital evaluation. Exhibit I, at 1–4. At most, Petitioner alleges delay and disagreement with treatment decisions, which do not constitute deliberate indifference under controlling law.

For these reasons, and as set forth more fully below, the Petition should be denied.

II. Factual and Procedural Background

A. Immigration and Criminal History

Petitioner Kingsley Uromo-Okpe Ariegwe is a native and citizen of Nigeria. Exhibit B, at 1.

On March 4, 2004, following a jury trial in the Montana Eighth Judicial District Court, Petitioner was convicted of Attempt (Sexual Intercourse Without Consent) and Unlawful Transactions with Children. Exhibit D, at 1–2. Petitioner subsequently pursued multiple post-conviction and habeas challenges in state and federal court, all of which were denied. Exhibit F, at 1–2; Exhibit G, at 1–3; Exhibit H, at 2–4. The conviction remains valid and final.

On September 24, 2025, DHS encountered Petitioner and initiated removal proceedings by serving him with a Notice to Appear ("NTA"). Exhibit B, at 1. The NTA charged Petitioner as removable for having been convicted of an aggravated felony. Exhibit B, at 1.

On November 26, 2025, DHS lodged an additional charge of removability pursuant to INA § 237(a)(2)(A)(iii), specifying that Petitioner had been convicted of an aggravated felony as defined in INA § 101(a)(43)(U), namely, an attempt to commit an aggravated felony. Exhibit C, at 1. The Form I-261 reflects that the prior aggravated felony subsection was withdrawn and replaced with the attempt provision. *Id.*

That same day, DHS issued a Notice of Custody Determination pursuant to INA § 236, determining that Petitioner would remain detained pending a final administrative determination. Exhibit B, at 3. Petitioner requested immigration judge review of custody. *Id.*

Petitioner remains detained at the Nevada Southern Detention Center ("NSDC"), pending resolution of his removal proceedings.

III. Jurisdiction and Burden of Proof

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).

Section 2241 of Title 28 provides district courts with jurisdiction to hear federal habeas petitions. The burden is on the habeas petitioner to demonstrate that he or she is in custody in violation of the Constitution or laws or treaties of the United States to warrant relief. *See Skaftouros v. United States*, 667 F.3d 144, 158 (2d Cir. 2011). "[T]he petitioner must satisfy his burden of proof by a preponderance of the evidence." *Id.*

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IV. Argument

A. Petitioner Is Subject to Mandatory Detention Pursuant to 8 U.S.C. § 1226(c)

Petitioner's conviction for attempted sexual intercourse without consent subjects him to the mandatory detention provisions of 8 U.S.C. § 1226(c) while his immigration removal proceedings are pending.

8 U.S.C. § 1226 provides the framework for the arrest, detention, and release of non-citizens who are in removal proceedings. 8 U.S.C. § 1226; *see also Demore v. Kim*, 538 U.S. 510, 530, 123 S. Ct. 1708, 155 L. Ed. 2d 724 (2003) ("Detention during removal proceedings is a constitutionally permissible part of that process."); *Avilez v. Garland*, 69 F.4th 525, 529-530 (9th Cir. 2023). "Subsection c applies throughout the administrative and judicial phases of removal proceedings ...." *Avilez*, 69 F.4th at 535. This means individuals who are detained under § 1226(c) "are not statutorily eligible for release on bond during the judicial phase of the proceedings, except under the narrow circumstances defined by § 1226(c)(2)." *Id.* at 535-36; 8 U.S.C. § 1226(c).

Under 8 U.S.C. § 1226(c), the Attorney General must detain, without the possibility of release, any noncitizen who has been convicted of certain offenses, including aggravated felonies as defined in 8 U.S.C. § 1101(a)(43). Subsection (A) of § 1101(a)(43) includes "murder, rape, or sexual abuse of a minor," and subsection (U) extends this definition to attempts or conspiracies to commit such offenses. Thus, a conviction for attempted rape under state law constitutes an aggravated felony triggering mandatory detention under § 1226(c).

Petitioner is subject to mandatory detention because DHS has charged him as removable for an aggravated felony, specifically an attempt to commit rape. Exhibit C, at 1. Section 1101(a)(43)(A) defines aggravated felony to include "rape," and § 1101(a)(43)(U) includes an "attempt" to commit such an offense. Because Petitioner's Montana conviction qualifies as "attempted rape" for immigration purposes, § 1226(c)(1)(B) mandates detention during the pendency of removal proceedings.

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I. Categorical Approach Framework

When determining whether a state conviction qualifies as an aggravated felony, courts apply the categorical approach established in *Taylor v. United States*, 495 U.S. 575 (1990). Under this approach, adjudicators compare the elements of the state offense to those of the corresponding federal generic offense, without considering the underlying specific facts. If the state statute's minimum conduct matches or is narrower than the generic federal definition, the conviction qualifies categorically. Where a statute is divisible, the "modified categorical approach" described in *Descamps v. United States*, 570 U.S. 254 (2013) allows limited review of judicial documents to identify the specific crime of conviction.

The Ninth Circuit and the Board of Immigration Appeals both apply this analytical framework when determining whether a sexual offense is categorically an aggravated felony under § 1101(a)(43)(A). *Rendon v. Holder*, 764 F.3d 1077, 1082–84 (9th Cir. 2014); *See also Matter of Keeley*, 27 I. & N. Dec. 146 (BIA 2017) (defining the generic federal meaning of "rape" under § 1101(a)(43)(A) and applying the categorical approach).

a. Federal Definition of Rape

In the immigration context, the generic federal definition of rape encompasses "an act of vaginal, anal, or oral intercourse or digital or mechanical penetration of the vagina or anus, no matter how slight," and it also requires that the "underlying sexual act be committed without consent." *Matter of Keeley*, 27 I. & N. Dec. 146, 148 (BIA 2017); *Elmakhzoumi v. Sessions*, 885 F.3d 953, 959–60 (9th Cir. 2018) (citing *Matter of Keeley*, 27 I. & N. Dec. 146 (BIA 2017), and noting BIA's conclusion that generic rape under § 1101(a)(43)(A) includes at minimum vaginal, anal, and oral intercourse). Thus, for a state conviction to be categorically rape, it must criminalize nonconsensual penetration as defined by federal law.

b. Montana Statutory Framework and *State v. Ariegwe*

The Montana statute criminalizing "sexual intercourse without consent" provides, in relevant part:

> A person who knowingly subjects another person to any act of sexual intercourse without consent commits the offense of sexual intercourse without consent.

Mont. Code Ann. § 45-5-503(1).

The term "sexual intercourse" is defined separately in Mont. Code Ann. § 45-2-101(68) as "penetration of the vulva, anus, or mouth of one person by the penis of another person." The attempt statute, Mont. Code Ann. § 45-4-103(1), criminalizes conduct performed with the purpose of committing an offense coupled with a substantial step toward its commission.

In *State of Mont. v. Ariegwe*, 2007 MT 204, 338 Mont. 442, 167 P.3d 815 (attached herein as Exhibit E) the Montana Supreme Court confirmed that a jury convicted Petitioner of "attempted sexual intercourse without consent and unlawful transactions with children," under Mont. Code Ann. § 45-5-503 and 45-4-103. Exhibit E, at 6–7; Exhibit D, at 1.

c. Application Under the Categorical Approach

Under the categorical approach, §§ 45-4-103 and 45-5-503 of the Montana Code match the federal definition of "rape" because the elements require nonconsensual penetration of the vulva, anus, or mouth—a core component of generic rape under federal law. *See United States v. Yanez-Saucedo*, 295 F.3d 991, 996 (9th Cir. 2002) (concluding that third-degree rape based on nonconsensual sexual intercourse fits within the generic, contemporary definition of rape); *see also Matter of Keeley*, 27 I. & N. Dec. 146, 148 (BIA 2017). The attempt provision at § 45-4-103 extends to substantial steps taken toward this nonconsensual sexual act, which renders it an "attempt to commit rape" within the meaning of 8 U.S.C. § 1101(a)(43)(U). Nothing in Montana law broadens the offense beyond this generic definition.

Because Mont. Code Ann. §§ 45-4-103 and 45-5-503 criminalize nonconsensual sexual penetration and attempt thereof—conduct that is congruent with the federal definition of rape as articulated in *Yanez Saucedo* and *Matter of Keeley*—Mr. Ariegwe's

conviction constitutes an aggravated felony under 8 U.S.C. § 1101(a)(43)(A), (U). Under 8 U.S.C. § 1226(c), detention of a noncitizen who is removable by reason of having committed an aggravated felony is mandatory. Once § 1226(c) applies, detention is mandatory and the immigration court lacks authority to grant bond except under § 1226(c)(2). *Avilez*, 69 F.4th at 535–36; *Singh v. Holder*, 638 F.3d 1196, 1203–04 (9th Cir. 2011).

B. Petitioner's Medical Care Does Not Violate the Fifth Amendment

Petitioner's Fifth Amendment medical care claim is addressed under the objective standard of a Fourteenth Amendment due process claim, as set out in *Castro v. County of Los Angeles*, 833 F.3d 1060 (9th Cir. 2016). *See Fraihat v. U.S. Immigration and Customs Enforcement*, 16 F.4th 613, 636 (9th Cir. 2021) (applying test from *Castro* to immigration detainees' deliberate indifference claim); *see also Malinski v. New York*, 324 U.S. 401, 415 (1945) (Frankfurter, J., concurring) (confirming that due process under Fifth and Fourteen amendments have "the same meaning").

Thus, to state a claim for deliberate indifference, Petitioner must allege facts to show that: (i) Respondents made an intentional decision with respect to the conditions under which Petitioner was confined; (ii) those conditions put Petitioner at substantial risk of suffering serious harm; (iii) Respondents did not take reasonable available measures to abate that risk, even though a reasonable official in the circumstances would have appreciated the high degree of risk involved—making the consequences of Respondents' conduct obvious; and (iv) by not taking such measures, Respondents caused Petitioner's injuries. *Gordon v. Cnty. of Orange*, 888 F.3d 1118, 1125 (9th Cir. 2018). Under this test, Petitioner must "prove more than negligence but less than subjective intent—something akin to reckless disregard." *Castro*, 833 F.3d at 1069. Petitioner cannot establish deliberate indifference here.

Petitioner has been detained at Nevada Southern Detention Center ("NSDC") since September 30, 2025. *See* Exhibit I, Declaration of Dr. Tiona at ¶ 11. Prior to his NSDC detention, in December 2024, Petitioner's PSA levels were 7.5. *Id.* at ¶ 12. As such, he was

diagnosed with "low grade" prostate cancer. *Id.* When re-checked on October 9, 2025, while detained at NSDC, Petitioner's PSA levels were 9.6. *Id.* at ¶ 13. As with his original 7.5 level, 9.6 is considered a mild PSA level. *Id.* On December 9, 2025, Petitioner was sent off site to Las Vegas Urology where he was seen by PA Slade (supervised by Dr. Grigoriev). *Id.* at ¶ 14. PA Slade recommended a routine repeat of Petitioner's PSA labs in three months. *Id.* at ¶ 15. CoreCivic's[2] Regional Medical Director, Dr. Tiona, reviewed Petitioner's medical records and agrees with PA Slade's assessment and recommendation. *Id.* at ¶ 16. As detailed below, CoreCivic is following those recommendations.

Consistent with PA Slade's recommendation, Petitioner is scheduled to have his PSA labs repeated on February 23, 2026. *Id.* at ¶ 17. Petitioner is also scheduled for a follow-up with urology within the next three weeks. *Id.* The treatment and monitoring Petitioner has received for his low-grade prostate cancer during his detention at NSDC has complied with the standard of care. *Id.* at ¶ 18. In Dr. Tiona's opinion, no additional treatment is clinically indicated or necessary at this time. *Id.* at ¶ 19. As Dr. Tiona's opinion makes clear, Petitioner has received constitutionally adequate medical care that complies with the standard of care. Petitioner presents no evidence that any CoreCivic employee made an intentional decision that placed Petitioner at risk of serious harm. The opposite is true. Petitioner is receiving timely and appropriate medical care that follows the recommendations of his outside urologist. Significantly, aside from speculative and generic avowals from counsel, Petitioner presents no medical evidence (or any evidence at all) to support the conclusion that Petitioner's prostate cancer is not being properly managed. For these reasons, Petitioner cannot succeed on the merits of his Fifth Amendment deliberate indifference to medical needs claim.

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[2] NSDC is run by CoreCivic, which has a contract with the United States. *See* https://www.cetient.com/case/north-v-corecivic-inc-9828713 (last visited, February 12, 2026).

IV. Conclusion

For the foregoing reasons, Federal Respondents respectfully request that the Court deny the Petition (ECF No. 17) and dismiss this action.

Respectfully submitted this 20th day of February 2026.

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/s/ Christian R. Ruiz
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