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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Henry Alexander Berrios,

Petitioner,

v.

Eric Rokosky,

Respondent.

No. CV-26-02786-PHX-SHR (JFM)

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

I. INTRODUCTION AND RELEVANT FACTS.

Respondent hereby responds to the Petition for Writ of Habeas Corpus. Doc. 1.[1] Petitioner is a citizen and native of El Salvador who entered the United States without

[1] The undersigned apologizes to the Court for the repeated issues in this case regarding Respondent's response to the Petition. Due to an administrative error related to the processing of service, the United States Attorney's Office ("USAO") did not register that it had been served until after the deadline to file had passed. When the Court contacted the USAO to ask whether a response would be forthcoming, the undersigned was out of state at a departmental training. The undersigned asked a coverage AUSA to file a motion for extension of time on his behalf, and the coverage AUSA confirmed that she would, but evidently, no such motion was filed. The undersigned and his colleagues apologize to the Court for their disorganization in this matter and appreciate the Court's forbearance and understanding as they work through their unprecedentedly heavy caseload.

inspection. *See* I-213, attached as Exhibit A, at 2.[2] On March 5, 2028, Petitioner was found of four charges in the United States District Court for the Eastern District of Virginia. *Id.*; *see also United States v. Berrios*, No. 1:07-cr-00081-CMH-5 (E.D. Va.), Doc. 172 ("Judgment"), attached as Exhibit E, at 1. Specifically, Petitioner was found guilty of conspiracy to commit murder in aid of racketeering, conspiracy to commit aggravated assault in aid of racketeering, aggravated assault in aid of racketeering, and attempted murder in aid of racketeering. *Id.* Petitioner was sentenced to a total of 243 months in prison. *Id.* at 2. Petitioner was also sentenced to three years of supervised release after his conviction. *See id.* at 3. One of the conditions of his supervised release was that he "shall [have] no contact of any kind with [redacted]." *Id.* at 4.[3]

On or about November 13, 2025, Petitioner was released into immigration custody by the Bureau of Prisons. *Id.* at 1. That same day, immigration officials advised Petitioner of his rights and served him with a warrant for his arrest. *See* Warrant and Notice of Rights, attached as Exhibit C, at 1–2. Immigration officials placed Petitioner into removal proceedings a few days later. *See* Notice to Appear, attached as Exhibit B, at 1. On March 11, 2026, an immigration judge ordered Petitioner removed to El Salvador. *See* Removal Order, attached as Exhibit D, at 3. Petitioner filed an appeal, and his appeal is still pending.

Petitioner raises essentially one ground for relief: his detention has become unreasonably prolonged. Doc 1. at 4. However, it is unlikely that Petitioner can state a claim for prolonged detention under Section 1226(c). Even if Petitioner's prolonged-detention claim is legally cognizable, it does not entitle him to release, merely an additional bond hearing. Thus, the Court should deny the Petition.

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[2] Some of the exhibits attached to this response have been partially redacted. The undersigned was sent these documents with redactions already applied and cannot speak to the specific content that was redacted. However, should the Court require it, Respondents will provide an unredacted copy of any document to both the Court and Petitioner.

[3] Immigration officials appear to have confirmed that Petitioner [redacted]

II. THE PETITION MUST BE DENIED

A. Petitioner is ineligible for release on bond.

Petitioner argues that he has been detained for six months thus far, and because he appealed his removal order, he will remain in detention for "another 6 months to a year," which renders his detention unlawfully prolonged. *See* Doc. 1 at 4. However, Petitioner is required to be detained without bond by statute, and he has not shown that his detention has become prolonged. Thus, his petition should be denied.

Petitioner is subject to mandatory detention under Section 1226(c). Although most aliens in removal proceedings are eligible for release on bond, *see* 8 U.S.C. § 1226(a), certain aliens with criminal convictions are not. 8 U.S.C. § 1226(c). Any alien who is inadmissible "by reason of having committed any offense covered in section 1182(a)(2)" is ineligible for release on bond. 8 U.S.C. § 1226(c)(1)(A); *see also* 8 U.S.C. § 1182(a)(2)(B) ("Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct . . . , for which the aggregate sentences to confinement were 5 years or more is inadmissible."). As discussed above, Petitioner was convicted of four offenses and was sentenced to 243 months in prison. Ex. A at 2; Ex. E at 2. Moreover, an immigration judge determined that Petitioner was indeed removable under Section 1182(a)(2)(B). Ex. D at 1. Thus, Petitioner is properly detained under Section 1226(c).

B. Petitioner cannot state a claim for prolonged detention.

Petitioner's claim that his detention for six months is prolonged and unconstitutional is unavailing since he is statutorily subject to mandatory detention pending removal proceedings. *See Avilez v. Garland*, 69 F.4th 525, 536 (9th Cir. 2023) ("[D]etention under [8 U.S.C. § 1226(c)] has a 'definite termination point': the conclusion of removal proceedings") (quoting *Demore v. Kim*, 538 U.S. 510, 529 (2003)). There is substantial authority that suggests that due process is not implicated by prolonged detention under Section 1226(c). *See, e.g.*, *Demore v. Kim*, 538 U.S. 510, 526–28 (2003); *Banyee v. Garland*, 115 F.4th 928, 930 (8th Cir. 2024) ("Due process imposes no time limit on detention pending deportation[.]"). However,

Respondent acknowledges that several courts have held otherwise. *See Espinoza v. Wofford*, 2025 U.S. Dist. LEXIS 104422, at *8–14 (E.D. Cal. May 30, 2025) (discussing that the question is unsettled); *Blake v. Mullin*, 2026 U.S. Dist. LEXIS 73989 at *5 (S.D. Cal. Apr. 2, 2026) (collecting cases). The courts that have found that prolonged detention violates due process have held that the proper remedy is a bond hearing, not merely release. *See, e.g.*, *Souza v. Warden*, 2026 U.S. Dist. LEXIS 86814, at *11–12 (E.D. Cal. Apr. 17, 2026). If the Court is inclined to hold that prolonged detention implicates due-process concerns, Respondent will not contest that Petitioner's detention is "prolonged." However, Respondent preserves his position that due process is not implicated by prolonged detention.

Petitioner was convicted of attempted murder and aggravated assault, for which he was sentenced to 243 months in prison. He is properly subject to detention without bond during the pendency of his removal proceedings. As such, the Court should deny the Petition.

III. CONCLUSION

In light of the above, Respondent respectfully requests that the Court deny the Petition for Writ of Habeas Corpus.

RESPECTFULLY SUBMITTED this 22nd day of June 2026.

TIMOTHY COURCHAINE
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District of Arizona

s/Brooks Chupp
BROOKS CHUPP
Assistant United States Attorney
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CERTIFICATE OF SERVICE

I hereby certify that on June 22, 2026, I will send this document and its exhibits by registered mail to:

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s/B. Chupp

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