UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 25-cv-3082 (JWB-JFD)

Somah Roberts,

Petitioner,

v.

James McHenry, et al.,

Respondents.[1]

RESPONDENTS' ANSWER TO PETITION

INTRODUCTION

Petitioner Somah Roberts (Roberts) filed this habeas action pro se under 28 U.S.C. § 2241 challenging his detention during his ongoing immigration removal proceedings. He argues that his order of removal became final in September 2024, even though his immigration proceedings are open and ongoing before an immigration judge. Because they are, his detention is mandatory under 8 U.S.C. § 1226(c) due to his aggravated felony convictions. His Petition must, therefore, be denied.

BACKGROUND

A. General background.

Roberts was born in Ghana and is a citizen of Liberia. Declaration of Deportation Officer William J. Robinson (Robinson Decl.) ¶ 4; Dkt. 1, Petition ¶ 6. He came to the

[1] Under Fed. R. Civ. P. 25(d), United States Attorney General Pamela Bondi should be substituted for Respondents James McHenry and Lisa Monaco, and Field Office Director Sam Berg should be substituted for Peter Berg. This Answer is filed on behalf of the federal Respondents, and not the county warden.

United States in 2007 as a refugee. Robinson Decl. ¶ 5; Petition ¶ 12. He became a lawful permanent resident in 2013. Robinson Decl. ¶ 7, Petition ¶ 12.

B. Felony convictions.

Roberts has multiple felony convictions, including the following:

- Aggravated robbery-first degree and assault with a dangerous weapon-second degree: sentenced on February 4, 2021, to 36 months. *See* Robinson Decl. ¶ 11, Ex. 2, *State of Minnesota v. Somah Kouch Roberts*, 27-CR-19-20065 (Henn. Cty. Dist. Crt.);
- Aggravated robbery-first degree: sentenced on May 19, 2021, to 60 months. *See* Robinson Decl. ¶ 14, Ex. 3, *State of Minnesota v. Somah Kouch Roberts*, 27-CR-20-27814 (Henn. Cty. Dist. Crt); and
- Felony mail theft: sentenced on January 10, 2022, to 15 months. *See* Robinson Decl. ¶ 10, Ex. 1, *State of Minnesota v. Somah Kouch Roberts*, 70-CR-18-21677 (Scott Cty. Dist. Crt.).

C. Pending removal proceedings.

On August 11, 2021, U.S. Immigration and Customs Enforcement (ICE) issued an Immigration Detainer-Notice of Action (Form I-247) to Roberts, who was serving time on a state conviction at the Minnesota Correctional Facility in St. Cloud. Robinson Decl. ¶ 15.

On August 23, 2021, ICE served Roberts with a Notice to Appear (NTA) (Form 1-862) in immigration proceedings. *Id.* ¶ 16, Ex. 4. As reflected in the NTA, Roberts was charged with removability from the United States under sections 237(a)(2)(A)(ii) and (iii) of the Immigration and Nationality Act, 8 U.S.C. § 1227(a)(2)(A)(ii) and (iii). *Id.*

On May 12, 2023, Roberts filed claims for relief from removal in his removal proceeding. *Id.* ¶ 17. His claims for relief include asylum, withholding of removal, and deferral of removal. *Id.* and Ex. 6.

On July 11, 2024, ICE arrested Roberts at the Minnesota Correctional Facility in Stillwater, Minnesota after he was released from that prison. *Id.* ¶ 18, Ex. 5. The ICE record for his arrest reflects, Roberts "is subject to mandatory custody per section 236(c)." *Id.* Ex. 5 at 4 (referencing 8 U.S.C. § 1226(c)). Roberts sought a bond hearing, but, for unknown reasons, one was not held at that time. Robinson Decl. ¶ 19. Roberts has remained in immigration detention since July 11, 2024, *id.* Ex. 5 at 5, and is currently detained at the Freeborn County jail. Petition, ¶ 1.

On September 16, 2024, the Immigration Judge in Roberts' removal proceedings ordered him removed to Liberia, or in the alternative to Ghana. *Id.* ¶ 20, Ex. 6 ("Order of the Immigration Judge"). In the same order, the Immigration Judge granted Roberts deferral of removal to Liberia under the Convention Against Torture, denying his other claims for relief. *Id.* Both parties reserved appeal. *Id.* Roberts did not appeal, but the agency did, filing its Notice of Appeal to the Board of Immigration Appeals (BIA) on October 15, 2024. *Id.*, Ex. 7 at 8. The agency sought the BIA's review of the Immigration Judge's deferral of removal decision. *Id.*

On July 16, 2025, the BIA issued its decision, determining that Roberts' case should be remanded back to the Immigration Judge for further proceedings. *Id.*, Ex. 7 at 1. As the BIA summarized:

> [T]he record will be remanded for the Immigration Judge to conduct further fact-finding and legal analysis, supported by the record and applicable legal precedent, as to the respondent's eligibility for deferral of removal under the CAT. The parties may update the record, and the Immigration Judge may take whatever action is necessary to comply with this decision.

Id. at 5-6.

The BIA's remand decision further instructed:

> FURTHER ORDER: The record is remanded to the Immigration Judge for further proceedings consistent with the foregoing order and ***for the entry of a new decision***.

Id. (emphasis added).

Recently, on remand, the Immigration Judge conducted a pre-hearing conference on August 19, 2025. Robinson Decl. ¶ 22. Roberts requested a 90-day continuance, which the judge denied. The Immigration Judge set a 14-day deadline for any additional filings, and indicated his decision would be issued in the next 60 days (by approximately October 19, 2025). *Id.* ¶ 22.

Roberts' removal proceedings in Immigration Court remain open and pending, and his removal order is not yet final. *Id.* ¶ 23. A bond hearing for Roberts is currently scheduled in those proceedings on September 24, 2025, at 8:30 a.m. *Id.* ¶ 19.

D. This action.

On July 30, 2025, after the BIA issued its July 16, 2025, decision, Roberts filed his Petition initiating this action. *See* Dkt 1. The Court issued an Order to Show Cause, requiring the government's response by September 23, 2025, and the government timely files this Answer, supporting declaration, and exhibits. *See* Dkt. 6.

ARGUMENT

In his Petition, Roberts alleges that he is detained under 8 U.S.C.§ 1231 governing immigration detention of individuals with a final order of removal. *See* Dkt. 1 at 1. He maintains that his removal order became final on September 16, 2024, when the Immigration Judge issued that order, and before it was appealed and then remanded back to the Immigration Judge (where it is pending). *See id.* at 22. He further argues that there is no significant likelihood of his removal in the reasonably foreseeable future under *Zadvydas v. Davis*, 533 U.S. 678 (2001). *Id.* As discussed below, Roberts' removal order is not yet final, and his immigration detention is required under 8 U.S.C. § 1226(c) due the serious nature of his crimes. *See Banyee v. Garland*, 115 F.4th 928, 933-934 (8th Cir. 2024); *Gach v. Charles*, 2024 WL 4774175 at *3 (D. Minn. Oct. 23, 2024), R&R accepted, 2024WL 4772413 (D. Minn. Nov. 13, 2024).

I. Roberts' Immigration Proceedings Are Pending and His Detention Is Required Under 8 U.S.C. § 1226(c).

A. Roberts' immigration proceedings are open and pending, and his order of removal is not yet final.

Roberts incorrectly argues that his removal order became final on September 16, 2024, when the Immigration Judge initially issued it and before it was appealed to the BIA. That is not the case.

As a factual matter, the Immigration Judge issued one order on September 16, 2024, addressing both Roberts' removability and his applications for relief from removal. Robinson Decl. Ex. 6 at 1. Both the Department of Homeland Security (DHS) and Roberts reserved appeal. *Id.* at 4. DHS appealed from the Order on October 15, 2024. *Id.* Ex. 7 at

7. Its appeal notice stated, "I am filing an appeal from the Immigration Judge's decision *in merits proceedings* (example: removal, deportation, exclusion, asylum, etc.) dated 9/16/24." *Id.* (emphasis in original).

The BIA subsequently issued its decision on the administrative appeal, remanding the entire case back to the Immigration Judge and reopening the record. As the BIA stated:

> [T]he record will be remanded for the Immigration Judge ***to conduct further fact-finding and legal analysis***, supported by the record and applicable legal precedent, as to the respondent's eligibility for deferral of removal under the CAT. ***The parties may update the record***, and the Immigration Judge may take whatever action is necessary to comply with this decision.

Id. at 5-6 (emphasis supplied).

The BIA's remand decision further instructed:

> FURTHER ORDER: The record is remanded to the Immigration Judge for further proceedings consistent with the foregoing order and ***for the entry of a new decision***.

Id. (emphasis added).

What will happen next in immigration court is the issuance of a "new decision" based on an updated record. The removal order issued on September 16, 2024, is not, therefore, final. Robinson Decl. ¶ 23. It will be replaced by a new order. Consequently, Roberts' removal proceedings are very much open before the Immigration Judge and awaiting a decision expected in mid-October.

The relevant statutes and regulations support the clear factual record. 8 C.F.R. § 1241.1 describes the point at which a removal order becomes final for the purposes of triggering the effectuation of a removal order under 8 U.S.C. § 1231. It states:

> An order of removal made by the immigration judge at the conclusion of proceedings under section 240 of the Act [8 U.S.C. § 1229a entitled "Removal proceedings"] shall be become final:
>
> (a) Upon dismissal of an appeal by the Board of Immigration Appeals;
> (b) Upon waiver of appeal by the respondent;
> (c) Upon expiration of the time allotted for an appeal if the respondent does not appeal within that time;
> (d) If certified to the Board or the Attorney General, upon the date of the subsequent decision ordering removal;
> (e) If an immigration judge orders an alien removed in the alien's absence, immediately upon entry of such an order; or
> (f) If an immigration judge issues an alternate order of removal in connection with a grant of voluntary departure, upon overstay of the voluntary departure period, or upon the failure to post a required voluntary departure bond within 5 business days. If the respondent has filed a timely appeal with the Board, the order shall become final upon an order of removal by the Board or the Attorney General, or upon overstay of the voluntary departure period granted or reinstated by the Board or the Attorney General.

See also 8 U.S.C. § 1231(a)(B)(i) (the statutory removal period does not begin until the removal order becomes administratively final); 8 U.S.C. § 1101(a)(47) (addressing two finality scenarios).

Here, the BIA has not dismissed an appeal from the removal order but has instead remanded it to the Immigration Judge and reopened the record, necessitating a new order. A removal order is not final where the record is open, and a new decision is pending. *See* 8 C.F.R. § 1003.1(d)(7)(i) ("The Board [of Immigration Appeals] may return a case to DHS or an immigration judge for such further action as may be appropriate *without entering a final decision on the merits of a case.*") (emphasis added); *see also Abdisalan v. Holder,* 774 F.3d 517, 526 (9th Cir. 2014) ("When the BIA remands to the IJ for any reason, no

final order of removal exists until all administrative proceedings have concluded"); *Alam v. Holder,* 546 Fed. Appx. 121, 122 (4th Cir. Nov. 7, 2013) (removal order not final where BIA remanded order to Immigration Judge on withholding of removal and CAT claims); *Satheeskumar v Attorney General*, 480 Fed. Appx. 121, 123 (3d Cir. 2012) (same); *Tshiteya v. Crawford,* 2013 WL 6635096 at *3 (E.D Va. Dec. 16, 2013) (same).

Roberts' contention that the Immigration Judge's single order addressing his removal and his claims for relief from removal should be considered different orders with multiple finality dates is incorrect for the reasons discussed above and practically unworkable. In order for the agency to effectuate Roberts' removal, it has to know what country to remove him to. If deferral of removal to Liberia is granted under the CAT, it will have to determine whether a third country (here Ghana, Roberts' birth country) is a viable option. It will not do so until it knows what relief Roberts is granted. And that is not determined until the Immigration Judge rules on the reopened record. It is also possible in the reopened proceedings for the Immigration Judge issue a new ruling on other matters affecting removal – the record is open, and a new decision will soon be issued that governs the agency's next steps.

The cases Roberts cites are inapplicable to a situation, like the one here, where the BIA has remanded to the Immigration Judge for a new removal order and that decision is pending. *See* Dkt. 1 at 7.

Johnson v. Guzman Chavez, 594 U.S. 523 (2021), does not apply because that case involved habeas petitioners with reinstated removal orders. *Id.* at 529-530. This is an entirely distinct removal process governed by 8 U.S.C. § 1231(a)(5). *Id.* It applies where

an individual has a prior removal order, has been removed, and then illegally reenters the United States.[2] *Guzman Chavez* at 531-532. In a reinstated removal order situation, § 1231 "explicitly insulates the removal orders from review, while also generally foreclos[ing] discretionary relief from the terms of the reinstated order." *Guzman Chavez*, 594 U.S. at 530. However, a claim for withholding of removal under § 1231(b)(3)(A) is still allowed. *Id.*

In that specialized reinstatement of removal context, the Supreme Court held that a reinstated removal order was final when it previously became so, and the individual was removed. 594 U.S. at 535. Consequently, the petitioners asserting withholding of removal claims in that context were detained under § 1231, because the reinstated removal order had previously reached finality, and removal had been effectuated. *Id.* And textually reinstatement of removal is governed by § 1231, the post removal order statute. *Id.* at 542.

This is not that case here. Roberts does not have a reinstated removal order that previously became final. Quite the opposite, his removal proceedings are open, and a final removal order is yet to be issued. The unique factual and statutory underpinnings of *Guzman Chavez* are not present here.

Nor is the Court's decision in *Nasrallah v. Barr*, 590 U.S. 573 (2020), applicable. That case involved the scope of appellate court review of a BIA order involving CAT relief.

---

[2] 8 U.S.C. § 1231(a)(5) states: "If the Attorney General finds that an alien has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal, *the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed, the alien is not eligible and may not apply for any relief under this chapter*, and the alien shall be removed under the prior order at any time after the reentry." (emphasis added).

590 U.S. at 576. The Court's decision was "narrow" and addressed only whether the circuit court could review a noncitizen's factual attacks on the BIA's CAT decision deferentially or not at all under 8 U.S.C. § 1252. *Id.* This case does not involve the scope of appellate review by the circuit court or § 1252.

A Report and Recommendation recently issued in *Roosevelt B. v. Bondi*, 25-cv-3198 (PJS/DTS), Dkt. 15 (Sept. 19, 2025), arose in a different factual scenario than this one. In that case, the noncitizen appealed to the BIA after he was ordered removed. *Id.* at *2-3. The BIA affirmed the removal order. *Id.* The noncitizen then appealed to the Eighth Circuit Court of Appeals, which stayed his removal and remanded the case back to the BIA, which ultimately remanded it back to the Immigration Judge. *Id.* The key difference in that case is that the BIA affirmed the removal order (on the noncitizen's appeal). That is not what happened here. Rather, in this case the BIA *remanded* the removal order to the Immigration Judge (on the agency's appeal), reopening the record and instructing the Immigration Judge to issue a new order.

Additionally, the court in *Roosevelt B.* likened his situation to the petitioners in *Guzman Chavez*, stating that "withholding-only proceedings" do not affect the finality of removal orders. Withholding-only proceedings occurred in *Guzman Chavez* because there was already a reinstated removal order. Neither Roosevelt B. nor Roberts are in withholding-only proceedings with a reinstated removal order. They are in what the *Guzman Chavez* Court referred to as "standard removal proceedings," not reinstated removal proceedings as in *Guzman Chavez*. 594 U.S. at 531. And, as a further point of distinction, Roberts' only remaining claim for relief is for deferral of removal under the

CAT, not withholding (or withholding only). *See* Robinson Decl. Ex. 6. In sum, the reasoning of the non-binding R&R in *Roosevelt B.* does not apply here.

In sum, Roberts does not have a final order of removal at this juncture. His removal proceedings are open due to the BIA's remand of his immigration proceedings to the Immigration Judge for a new order, expected soon.

B. Roberts' immigration detention is required under 8 U.S.C. § 1226(c).

Because Roberts' removal order is not final, he is currently in immigration detention under 8 U.S.C. § 1226(c) due to his felony convictions. *See* Robinson Decl. Ex. 5 at 4 and ¶¶ 16, 23. He has been detained under this authority for approximately 14 months during his removal proceedings.

The Eighth Circuit Court of Appeals' decision in *Banyee,* 115 F.4th at 933-934, controls regarding the constitutionality of Roberts' detention under § 1226(c). In that case, the circuit court rejected the multi-factor test previously used in this District to assess the constitutionality of detention under § 1226(c) and held that detention required during removal proceedings is "constitutionally valid." *Id.* at 931 (citing *Demore v. Kim*, 538 U.S. 510 (2003)); *see also Gach,* 2024 WL 4774175 at *3 (following *Banyee*).

Roberts' situation does not differ -- § 1226(c)(1)(B) requires his detention during his removal proceedings due to the nature of his convictions giving rise to those

proceedings. *See* Robinson Decl. Ex. 4.[3] The end point to his § 1226(c) detention is in sight, with a removal order by the Immigration Judge expected by mid-October.[4]

II. An Evidentiary Hearing Is Unnecessary.

In a habeas corpus proceeding an evidentiary hearing is necessary only where material facts are in dispute. *See Ruiz v. Norris*, 71 F.3d 1404, 1406 (8th Cir. 1995). Such is not the case here where the parties dispute a legal question – when Roberts' order of removal became final. Consequently, no evidentiary hearing is necessary.

---

[3] Roberts requested a bond hearing when he was brought into ICE custody in July 2024. He did not receive a bond hearing at that time but has one scheduled for September 24, 2025. Robinson Decl. ¶ 19. Bond is not allowed under 8 U.S.C. § 1226(c), except for the narrow circumstance in § 1226(c)(4).

[4] If the Court determines that Roberts' removal order is final, the government respectfully requests to supplement the record on the likelihood of his removal in the reasonably foreseeable future. *See Zadvydas*, 533 U.S. at 701. Because the agency considers him detained under § 1226(c) and the country to which he would be removed is still under consideration by the Immigration Judge, it has not yet been able to determine to which country Roberts will be removed.

CONCLUSION

The government respectfully requests that the Court recommend denial of the Petition.

Dated: September 23, 2025

JOSEPH H. THOMPSON
Acting United States Attorney

s/ Ann M. Bildtsen

By: ANN MARIE BILDTSEN
Assistant United States Attorney
Attorney ID Number 0271494
600 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415
(612) 664-5600
Ann.Bildtsen@usdoj.gov
Attorneys for the Federal Respondents