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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JOSE GARCIA CERON,

Petitioner,

v.

WARDEN, CALIFORNIA CITY DETENTION
FACILITY,

Respondents.

CASE NO. 1:26-CV-05189-TLN-AC

**RESPONDENTS' RESPONSE TO PETITION
FOR WRIT OF HABEAS CORPUS**

INTRODUCTION

Petitioner is subject to mandatory detention under 8 U.S.C. § 1226(c)(1)(B) due to a conviction for a violation of a state law relating to a controlled substance. His detention while removal proceedings are ongoing has not become unconstitutionally prolonged. Because of Petitioner's criminal history, he is not entitled to relief.

FACTUAL BACKGROUND

Petitioner is a native and citizen of Mexico who became a lawful permanent resident on or about April 8, 2020. Ex. 1. On May 10, 2023, the Eleventh Judicial Circuit Court, Miami-Dade County, Florida, convicted Petitioner of attempted premeditated Murder, in violation of Florida Statute sections 782.04(1)(a)(1), 777.04(1), 775.087, and 777.011, in addition to other crimes, and sentenced him to six years in prison. Exs. 1, 2. On January 28, 2026, the Department of Homeland Security (DHS),

1 Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations (ERO) charged
2 Petitioner with deportability under 8 U.S.C. § 1227(a)(2)(A)(iii) and took him into custody for the
3 pendency of removal proceedings. Exs. 1, 3. On July 6, 2026, Petitioner filed the present petition.
4 Petitioner has not properly requested a bond hearing with the Immigration Court. Ex. 4.

5 6 LEGAL ARGUMENT

7 I. Petitioner's detention comports with the Constitution.

8 Aliens who are deportable from the United States for having been convicted of an aggravated
9 felony are subject to mandatory detention. *See* 8 U.S.C. §§ 1226(c)(1)(B), 1227(a)(2)(A)(iii).
10 "Aggravated felony" includes attempted crimes of violence where the term of imprisonment is at least
11 one year. §§ 1101(a)(43)(F), (U).

12 Mandatory detention under § 1226(c) is facially constitutional. *Demore v. Kim*, 538 U.S. 510,
13 531 (2003) ("Detention during removal proceedings is a constitutionally permissible part of that
14 process."). In *Demore*, the Supreme Court held, "Congress, justifiably concerned that deportable
15 criminal aliens who are not detained continue to engage in crime and fail to appear for their removal
16 hearings in large numbers, may require that persons such as [the alien] be detained for the brief period
17 necessary for their removal proceedings." *Id.* at 513.

18 Detention during removal proceedings remains constitutional for so long as it continues to "serve
19 its purported immigration purpose." *Id.* at 527. Those purposes—ensuring an alien's appearance for
20 removal proceedings, preventing him from committing further offenses, and ensuring removal is
21 effectuated if so ordered—are present throughout removal proceedings and do not abate over time while
22 those proceedings are still pending.¹ *Id.* at 527–28; *see also Rodriguez Diaz v. Garland*, 53 F.4th 1189,
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26 ¹ In upholding mandatory detention under § 1226(c), the Supreme Court relied on an understanding that
27 in the majority of cases, detention lasts for less than 90 days. *Demore*, 538 U.S. at 529; *but see Jennings*, 138
28 S. Ct. at 869 (Breyer, J., dissenting) (noting that those statistics were wrong and that detention normally lasts
twice that long). The Supreme Court noted that in 15% of cases, detention lasted longer where the noncitizen
appealed to the BIA, and that such appeals took an average of an additional four months. *Demore*, 538 U.S. at

1 1208 (9th Cir. 2022) (“These are interests of the highest order that only increase with the passage of
2 time.”). *Rodriguez Diaz* has led at least one court in this district to hold that “[d]ue process doesn’t
3 require bond hearings for criminal aliens mandatorily detained under § 1226(c)—even for prolonged
4 periods.” *Keo v. Warden of the Mesa Verde ICE Processing Center*, 1:24-cv-00919-HBK (HC), 2025
5 WL 1029392, at *7 (E.D. Cal. Apr. 7, 2025).

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7 Here, Petitioner has a conviction for attempted murder, which is an aggravated felony as a crime
8 of violence. *See Matter of Alcantar*, 20 I&N Dec. 801 (BIA 1994); *cf. Hylor v. United States*, 896 F.3d
9 1219 (11th Cir. 2018) (finding attempted premeditated murder in Florida to be a violent felony under the
10 Armed Career Criminal Act). Because of that, Petitioner is subject to detention under § 1226(c) and has
11 no statutory or constitutional right to a bond hearing. *See Jennings v. Rodriguez*, 583 U.S. 281, 289
12 (2018).

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14 **II. Petitioner’s conviction renders him ineligible for a bond, an issue that must be litigated
before the Immigration Court.**

15 “[Courts] require, as a prudential matter, that habeas petitioners exhaust available judicial and
16 administrative remedies before seeking relief under § 2241.” *Castro-Cortez v. INS*, 239 F.3d 1037, 1047
17 (9th Cir. 2001), abrogated on other grounds, *Fernandez-Vargas v. Gonzalez*, 548 U.S. 30 (2006).
18 “Administrative exhaustion can be either statutorily required or judicially imposed as a matter of
19 prudence.” *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007) (citing *Noriega-Lopez v. Ashcroft*, 335
20 F.3d 874 (9th Cir. 2003)). Although a court does have discretion to waive prudential exhaustion, “this
21 discretion is not unfettered.” *Laing v. Ashcroft*, 370 F.3d 994, 998 (9th Cir. 2004) (citing *Castro Cortez*,
22 239 F.3d at 1047). In general terms, exhaustion may be waived “where administrative remedies are
23 inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable
24 injury will result, or the administrative proceedings would be void.” *Id.* at 1000 (quoting *S.E.C. v. G.C.*
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28 529.

1 *George Sec., Inc.*, 637 F.2d 685 (9th Cir. 1981).

2 Aliens who wish to contend that they are not subject to § 1226(c) mandatory detention may
3 address that issue in Immigration Court under *Matter of Joseph*, 22 I&N Dec. 799 (BIA 1999). In a
4 *Joseph* hearing, Petitioner would have the opportunity to demonstrate that he is not convicted of the
5 predicate crime or that the government is otherwise substantially unlikely to establish that he is, in fact,
6 subject to mandatory detention. *See* 8 C.F.R. § 1003.19(h)(2)(ii); *Demore*, 538 U.S. at 514 n.3 (citing 8
7 C.F.R. § 3.19(h)(2)(ii) (2002); *Matter of Joseph*, 22 I&N Dec. 799 (BIA 1999)) (explaining the
8 availability of a *Joseph* hearing to challenge § 1226(c) detention).
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10 Here, Petitioner has not challenged his detention at a *Joseph* hearing, and so has not exhausted
11 his administrative remedies. It is Petitioner's burden to establish that exhaustion should be waived.
12 Petitioner fails to make any showing and he should not be permitted to bypass the available
13 administrative remedy. Accordingly, the petition should be denied. *See generally Almanza v. Charles*,
14 No. 1:26-cv-2914-DAD-CSK, Dkt. No. 11 (E.D. Cal. Apr. 23, 2026) (minute order denying motion for
15 temporary restraining order because petitioner had not exhausted his administrative remedies through a
16 *Joseph* hearing or shown why the exhaustion requirement should be waived).
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18 Additionally, Petitioner has not properly requested a bond hearing. Once arrested, following a
19 custody determination by DHS, an alien may request that an immigration judge hold a hearing to
20 redetermine his custody. *See* 8 C.F.R. §§ 1003.19, 1236.1 (2026). The initial request for a custody
21 redetermination hearing may be made by the alien or the alien's attorney and may be an oral or written
22 request. 8 C.F.R. § 1103.19(b). The request must be made to the correct Immigration Court. *See* 8
23 C.F.R. § 1003.19(c). In this case, the Executive Office for Immigration Review's (EOIR) electronic
24 case system demonstrates that Petitioner has not requested a custody redetermination with the correct
25 Immigration Court. Ex. 4. Exhibit 4 shows Petitioner's case next to another example case for
26 comparison. The example case shows three electronic records of proceedings (eROPs), with two eROP
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1 types: merit and bond. The example shows two bond eROPs for this alien, which may occur when, for
2 instance, the first request is withdrawn and a subsequent request is made; when the alien makes another
3 request based on a material change in circumstances following the decision in the first request; or when
4 the first request is denied for lack of authority to order bond and a District Court orders a bond hearing.
5 In contrast, Petitioner's case only shows one eROP for the merits of his removal proceedings and none
6 for bond.
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8 Thus, Petitioner's administrative remedies are not exhausted.

9 **CONCLUSION**

10 For the reasons set forth above, Respondents respectfully request that the Court deny the Petition
11 for a Writ of Habeas Corpus. Respondents do not request a hearing.
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13 Dated: July 20, 2026

ERIC GRANT
United States Attorney

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16 By: /s/ Sean Davis
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