UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

Genauris Jose Arias Lara	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 1: 25-cv-229-LM-AJ
	)	
Warden, FCI-Berlin, et al.,	)	
	)	
Respondents.	)	
	)	

RESPONDENTS' OBJECTION TO
FIRST AMENDED PETITION FOR WRIT OF HABEAS CORPUS

In his first amended petition for writ of habeas corpus, ECF No. 15, Petitioner Genauris Jose Arias seeks relief that is not cognizable under that statute and to which he is not entitled. Therefore, his petition should be denied.

I. Habeas is unavailable where Petitioner is no longer in custody.

The statute under which Petitioner has brought this claim applies, on its face, only to persons in custody. As pertinent here, 28 U.S.C. § 2241(c) provides that "[t]he writ of habeas corpus shall not extend to a *prisoner* unless . . . [h]e is *in custody* in violation of the Constitution or laws or treaties of the United States[.]"[1] (Emphasis added.) Both this language and "the common-law history of the writ" make clear "that the essence of habeas corpus is an attack by a

[1] The remaining provisions of the statute hold that the writ is available to "a prisoner" who is: "in custody under or by color of the authority of the United States or is committed for trial before some court thereof," 28 U.S.C. § 2441(c)(1); "in custody for an act done or omitted in pursuance of an Act of Congress, or an order, process, judgment or decree of a court or judge of the United States," 28 U.S.C. § 2241(c)(2); a foreign citizen "in custody for an act done or omitted" under what might be summed up as diplomatic privilege or immunity, 28 U.S.C. § 2241(c)(4); required in court for testimony or trial. 28 U.S.C. § 2241(c)(5). None of these provisions apply to Petitioner here – but nor do any apply to a person who is not in custody.

person in custody upon the legality of that custody, and that the traditional function of the writ is to secure release from illegal custody." *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973); *see also Munaf v. Geren*, 553 U.S. 674, 693 (2008) ("Habeas is at its core a remedy for unlawful executive detention. . . . The typical remedy for such detention is, of course, release."). In concluding that habeas could not provide an asylum-seeker with additional review of his asylum claim and the opportunity to gain legal status in this country, the Supreme Court explained, "The writ simply provided a means of contesting the lawfulness of restraint and securing release." *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 117 (2020); *see also Gomes v. US Dep't of Homeland Sec., Acting Sec'y*, 561 F. Supp. 3d 198, 201 (D.N.H. 2020) (following *Thuraissigiam* to find that "the type of relief sought [was] the touchstone for determining whether a habeas petition would have been cognizable at common law in 1789 . . . . and the unifying feature of those varied petitions was the relief sought: release from restraint.") (cleaned up).

Here, however, Petitioner is not a prisoner and is not in custody; thus, by § 2241's plain language, the writ of habeas corpus shall *not* extend to him.

It is true that § 2241's "in custody" language "does not require that a prisoner be physically confined in order to challenge his sentence on habeas corpus." *Maleng v. Cook*, 490 U.S. 488, 491 (1989); *Sagar v. Cattell*, No. 04-CV-204-PB, 2005 WL 2704894, *2 (D.N.H. Oct. 20, 2005). But "habeas corpus relief is reserved" for a "severe restraint on individual liberty." *Lillios v. State of N.H.*, 788 F.2d 60, 61 (1st Cir. 1986). To bring a habeas claim, "there must be a restraint on liberty that is 'not shared by the public generally' as well as 'some type of continuing governmental supervision.'" *Sagar v. Cattell*, No. 04-CV-204-PB, 2005 WL 2704894, at *2 (D.N.H. Oct. 20, 2005) (quoting *Lefkowitz v. Fair*, 816 F.2d 17, 19 (1st Cir.

1987) (quotations omitted). And even the most liberal construction of habeas' "in custody" requirement has "never extended it to the situation where a habeas petitioner suffers no present restraint from a conviction." *Maleng*, 490 U.S. at 492.

Petitioner here, who has been released without any conditions on his liberty, cannot show any restraint under which he suffers, let alone the required "severe restraint."[2] *Cf. Flores Salazar v. Moniz*, No. CV 25-11159-LTS, 2025 WL 1703516, at *5 (D. Mass. June 11, 2025) (habeas petition *not* mooted by petitioner's release from ICE custody where release was conditioned on numerous requirements, including but not limited to use of a GPS ankle monitor, consent to ICE inspections of the monitoring equipment, ICE approval of his weekly schedule with changes allowed only on advance request, limit of his movements to a specific area within Texas without advance permission, monthly check-ins at ICE office 170+ miles away from his home that could include search of his possessions and car, limited use of alcohol, and verification of his location with ICE "at any time . . . 24 hours a day[ ], seven days a week").

II. Petitioner's release moots any ability to claim habeas relief.

To the extent that this Petition is allowed because it is an amendment of a petition originally filed while Petitioner was in custody, *see* Fed. R. Civ. P. 15, his release from custody nonetheless moots the matter. Because "the traditional function of the writ is to secure release from illegal custody . . . the release of a habeas petitioner from the challenged custody may moot a habeas petition." *Gicharu v. Moniz*, No. CV 23-11672-MJJ, 2023 WL 5833115, at *1 (D. Mass. Sept. 8, 2023), *aff'd,* No. 23-1818, 2024 WL 4493395 (1st Cir. May 8, 2024) (cleaned up).

[2] Respondents recognize that the Declaration submitted in support of their original Motion to Dismiss, ECF No. 5, does not specify that Petitioner was released with no conditions. Attached at Exhibit A is correspondence with agency counsel providing this information, which was relayed to Petitioner's counsel and which counsel has not repudiated. Should the Court request, Respondents will submit a more formal declaration to this effect.

Following this principle, courts have found that "[a] habeas petition will become moot once the prisoner is released from custody unless the petitioner can show some sufficient collateral consequence of the underlying proceeding." *Leitao v. Reno*, 311 F.3d 453, 455 (1st Cir. 2002); *see Barrera v. McDonald*, No. 1:18-CV-12437-DLC, 2019 WL 4804854, at *2 (D. Mass. Sept. 30, 2019) (immigration judge's release of habeas petitioner mooted his petition); *Chaleunphong v. Strafford Cnty. Dep't of Corr. Superintendent Christopher Brackett*, No. 18-CV-1093-JL, 2019 WL 13323898, at *5 (D.N.H. June 5, 2019) (ICE's release of habeas petitioner mooted the petition).

Certainly, "unconditional release from physical confinement" does not always eliminate "collateral consequences" of a challenged legal proceeding. *Kwarye v. United States Immigr. & Customs Enf't*, No. 2:24-CV-00404-JAW, 2025 WL 947869, at *2 (D. Me. Mar. 28, 2025) (recognizing that removal from the country may not moot a habeas petition because when a noncitizen is removed, the resulting bar on readmission is a "legally cognizable collateral consequence that preserves a live controversy"). But "there are no apparent collateral consequences from an allegedly too-lengthy period of temporary detention," and Petitioner has failed to identify any. *Id.*

Further, the relief Petitioner seeks is not relief that habeas authorizes this Court to provide because the proposed relief cannot remedy the allegedly unlawful custody in which he was held after his release from that custody. As already noted, the "essence" of habeas corpus is "an attack by a person in custody upon the legality of that custody." *Preiser*, 411 U.S. at 484. Thus, it is unsurprising that release is the "traditional function" of the writ, because release is the most direct and immediate relief from unlawful detention. Certainly, "immediate physical release is not the only remedy under the federal writ of habeas corpus." *Trump v. J. G. G.*, 604

U.S. 670, 672 (2025). However, the writ must nonetheless address the lawfulness of the petitioner's current detention. *See id.* (even where immigration detainees did not "formally request release from confinement," their claims lay in habeas "because their claims for relief *necessarily imply the invalidity of their confinement*") (cleaned up) (emphasis added); *Nance v. Ward*, 597 U.S. 167 (2022) ("An inmate must proceed in habeas when the relief he seeks would necessarily imply the invalidity of his conviction or sentence.") (cleaned up).

Procedurally, it makes sense that for some petitioners, challenging the validity of their confinement implicates relief other than immediate physical release. For instance, where habeas petitioners alleged that their immigration detention was unlawful because they were being held without individualized bond hearings at which the government would bear the burden to establish that they posed a risk of flight or danger, the remedy they sought was declaratory relief holding that as a matter of law, they were entitled to such individualized bond hearings. *Guerrero Orellana v. Moniz*, No. 25-CV-12664-PBS, 2025 WL 3687757, at *7 (D. Mass. Dec. 19, 2025). That is, rather than seeking immediate release from custody, petitioners sought relief that rendered their custody lawful.

Nonetheless, the core theme throughout each of these cases is that the relief requested, if not limited to release from physical confinement, served in some way to remedy the illegality of the challenged detention, and therefore, was contingent on petitioner being detained.

III. Petitioner lacks standing to request injunctive relief from this Court.

The Supreme Court has long held that an injunction is an equitable remedy and is "unavailable . . . where there is no showing of any real or immediate threat that the plaintiff will be wronged again," or no "likelihood of substantial and immediate irreparable injury." *City of Los Angeles v. Lyons*, 461 U.S. 95, 111, 103 S. Ct. 1660, 1670, 75 L. Ed. 2d 675 (1983) (cleaned

up). In the words of the First Circuit, "[t]o justify an injunction when the incident now lies in the past, there must be a real and immediate threat of future legal violations rather than an abstract or conjectural one." *Asociacion De Periodistas De Puerto Rico v. Mueller*, 680 F.3d 70, 84–85 (1st Cir. 2012) (cleaned up) (denying claim for injunctive relief by journalists injured in conflict with FBI agents at scene of a search warrant because the basis for relief was journalists' subjective fears, which were "generic" and "speculative").

This limitation arises from the principle that courts should refrain from offering "what would amount to an advisory opinion without the possibility of any judicial relief." *Efreom v. McKee*, 46 F.4th 9, 22 (1st Cir. 2022) (cleaned up). Article III does not provide courts the authority to take such an action. *Mangual v. Rotger-Sabat*, 317 F.3d 45, 60 (1st Cir. 2003) ("If events have transpired to render a court opinion merely advisory, Article III considerations require dismissal of the case.").

Here, Petitioner requests this Court to "[e]njoin Respondents from re-detaining [him] unless: (a) they determine that a material change of his individual circumstances occurs such that he becomes a danger to the public or a flight risk, or (b) he becomes subject to a final order of removal from the United States." Am. Pet. at 8 (ECF No. 15). But he offers no evidence of any "real or immediate threat" that he will be re-detained. Even assuming for the sake of argument that his previous detention was unlawful, "the fact of a prior injury does not satisfy the requirement that an injury be "actual or imminent."[3] *Drewniak v. U.S. Customs & Border Prot.*,

[3] Respondents cannot ignore the fact that recent months have seen a sharp increase in habeas petitions challenging the lawfulness of immigration detention, or that judges in this court have found in petitioners' favor on several occasions. However, Petitioner has not claimed that these cases show that his risk of re-detention is "actual or imminent." Further, to show that he faces a "real or immediate threat" of re-detention, Petitioner cannot simply rely on this increase in petitions; rather, he would need to show that re-detention *of persons who have been released after filing habeas petitions challenging immigration detention* is likely or imminent.

554 F. Supp. 3d 348, 362 (D.N.H. 2021). In short, he makes no showing that his proposed injunction would offer anything other than an impermissible advisory opinion.

IV. Even if habeas gave this Court authority to grant the kind of relief that Petitioner has requested – which it does not – he has failed to demonstrate his entitlement to that relief.

Petitioner's immigration history is straightforward and demonstrates that he is not entitled to a declaration that his detention authority falls under 8 U.S.C. § 1226(a). He is a citizen and national of the Dominican Republic. Am. Pet. ¶ 2 (ECF No. 15); Arias Lara Decl. ¶ 1 (ECF No. 15-1). In July 2024, he entered the United States without inspection and was subsequently apprehended and detained by Customs and Border Protection ("CBP") officers. Am. Pet. ¶ 24. Consistent with 8 U.S.C. § 1225(b)(1)(A)(i), he was issued an Expedited Removal order. *Id.* ¶ 25. However, when he expressed fear of returning to his home country, he was provided a Credible Fear Interview with an asylum officer. Am. Pet. ¶ 26 (ECF No. 15); *see* 8 U.S.C. § 1225(b)(1)(A)(ii) (if inadmissible noncitizen expresses "fear of persecution," he "shall" be referred for interview). The officers determined that Petitioner did not have a credible fear of persecution, but after Petitioner requested that the decision be reviewed, an Immigration Judge ("IJ") reviewed the determination, vacated it, and allowed Petitioner to apply for asylum. Am. Pet. ¶ 27 (ECF No. 15); Arias Lara Decl. ¶¶ 6-7 (ECF No. 15-1).

Accordingly, Petitioner's Expedited Removal order was vacated and the Department of Homeland Security initiated removal proceedings under 8 U.S.C. § 1229a. Notice to Appear, Pet.'s Ex. 3, at 19 (ECF No. 15-1). The Immigration and Nationality Act ("INA") mandates that noncitizens in this position "*shall* be detained for further consideration of the application for asylum." 8 U.S.C. § 1225(b)(1)(B)(ii) (emphasis added). However, on August 28, 2024, Petitioner was released on parole for one year under the discretionary authority identified at

8 U.S.C. § 1182(d)(5)(A) [INA § 212(d)(5)(A)]. Interim Not., Pet.'s Sub-Ex. A at 8 (ECF No. 15-1) (identifying parole authority). As pertinent here, that statute provides:

> The Secretary of Homeland Security may . . . in his discretion parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States, but such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the Secretary of Homeland Security, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.

The notice Petitioner received authorizing his parole explained that the parole expired automatically at the end of its term, and that "ICE may . . . terminate parole on notice prior to the automatic termination date. Parole is entirely within the discretion of ICE and can be terminated at any time and for any reason." Interim Not. at 8 (ECF No. 15-1). Accordingly, should Petitioner be detained in the future, the authority for that detention derives from 8 U.S.C. § 1225(b)(1).[4] *Matter of M-S*, 27 I&N Dec. 509 (A.G. 2019).

Petitioner asks this Court for an order "determining that [his] custody is controlled by § 236(a) of the Immigration and Nationality Act [codified at 8 U.S.C. § 1226(a)]." Am. Pet. at 8 (ECF No. 15). His only basis for this claim, however, is that both the Notice of Custody Determination he received in August 2024 and the warrant under

[4] Respondents are aware of this Court's September 8, 2025, Order in *Jimenez v. FCI Berlin, Warden, et al*, 1:25-cv-00326-LM-AJ (ECF No. 16). They respectfully submit that the fact that Petitioner here was released under ICE's discretionary parole authority, on notice that his parole could be terminated at any time at the agency's discretion, distinguishes his case from *Jimenez*. In particular, Respondents disagree where an asylum officer does not find credible fear at the time of the interview, mandatory detention is not required. *Id.* at 15. On the contrary, where an asylum officer finds that a noncitizen has not demonstrated a credible fear, the noncitizen remains in expedited removal proceedings, which require his mandatory detention until removed. 8 U.S.C. § 1225(b)(1)(B)(iii)(IV) ("Any alien subject to the procedures under this clause shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed.').

which he was detained in March reference 2025 8 U.S.C. § 1226. *Id.* ¶¶ 37-38. But this evidence is insufficient to support his claim: although the top of each form refers to authority *derived* from § 1226, that language applies to the officials authorized to make arrests, not to Petitioner.

The Notice of Custody Determination states that the officer signing the form is acting "pursuant to the authority contained in section 236 of the INA," and the top of the warrant form directs the warrant to the attention of "[a]ny immigration officer authorized pursuant to sections 236 and 287 of the Immigration and Nationality Act [codified at 8 U.S.C. §§ 1226 and 1357] and part 287 of title 8, Code of Federal Regulations, to serve warrants of arrest for immigration violations." Am. Pet., Exs. 4, 5 (ECF No. 15-1) at 23, 25. This language describes the official who is acting or to whom the document is derived, rather than drawing any conclusion about the noncitizen subject to the document. Notably, 8 U.S.C. § 1226(a) holds that "on a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States." Conversely, 8 U.S.C. § 1225 does not reference arrest authority at all. Thus, any reference to the authority to arrest on a warrant must rely on § 1226 and could not rely on § 1225.

As another district court has held.

> This language is best read not as an invocation of Section 1226 or an admission that that provision applies to [the petitioner]. Rather, it describes the agents to whom the warrant is directed and identifies two sources for their arrest authority. This language does not state that [the petitioner] is subject to the discretionary detention provisions of Section 1226 or excepted from the provisions of Section 1225.

Rojas v. Olson, No. 25-CV-1437-BHL, 2025 WL 3033967, at *9 (E.D. Wis. Oct. 30, 2025)

V. Conclusion

For the above reasons, the Amended Petition should be denied.

Respectfully submitted,

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