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10  
11 UNITED STATES DISTRICT COURT  
12 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
13 SOUTHERN DIVISION

14 Juan Carlos Hernandez Hernandez,

15 Petitioner,

16 v.

17 Department of Homeland Security;  
18 Kristi NOEM, in her official capacity as  
Secretary, Department of Homeland  
19 Security, et al.,

20 Respondents.

No. 8:25-cv-01928-SVW-MAA

**FEDERAL RESPONDENTS' NOTICE  
OF MOTION AND MOTION TO  
DISMISS PETITIONER JUAN  
CARLOS HERNANDEZ  
HERNANDEZ'S WRIT OF HABEAS  
CORPUS; MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT THEREOF**

[(Proposed) Order Filed Concurrently  
Herewith]

Hearing Date: October 20, 2025  
Hearing Time: 1:30 p.m.  
Ctm: 10A

Honorable Stephen V. Wilson  
United States District Judge

**NOTICE OF MOTION AND MOTION TO DISMISS PETITION FOR WRIT OF  
HABEAS CORPUS**

PLEASE TAKE NOTICE that, on October 20, 2025 at 1:30 p.m., as soon thereafter as they may be heard, Federal Respondents will, and hereby do, move this Court for an order dismissing the claims asserted against them by Petitioner Juan Carlos Hernandez Hernandez's Petition for Writ of Habeas Corpus; Complaint for Declaratory Relief, Injunctive Relief, and Damages Under Bivens ("Petition"). This motion will be made in the First Street Federal Courthouse before the Honorable Stephen V. Wilson, United States District Judge, located at 350 W. 1st Street, Los Angeles, CA 90012.

Federal Respondents bring the motion on the grounds that the Petition is moot because Petitioner is no longer in federal custody or in the United States. Second, the Fourth Amendment violations that Petitioner alleges stemming from the August 20, 2025 encounter with federal agents are not a basis for a habeas petition, both because the arrest itself is a different matter from the basis for subsequently keeping Petitioner in immigration custody, and because 8 U.S.C. § 1252(g) deprives courts of jurisdiction to review removal proceedings. Lastly, Federal Respondents contend that Petitioner's attempt to assert claims against unnamed federal officers under *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971) ("*Bivens*") fail because those claims arise in a new *Bivens* context and special factors counsel against implying a *Bivens* remedy in that new context.

This motion is made upon this Notice, the attached Memorandum of Points and Authorities, and all pleadings, records, and other documents on file with the Court in this action, and upon such oral argument as may be presented at the hearing of this motion.

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Dated: September 18, 2025

Respectfully submitted,

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/s/ Randy Hsieh  
RANDY HSIEH  
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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Federal Respondents hereby move to dismiss Petitioner’s Petition for Writ of Habeas Corpus and its associated injunctive and declaratory claims. As briefed in the Respondents’ Opposition to the *Ex Parte* Application for Temporary Restraining Order (“TRO”) and discussed in hearing before this Court, the relief Petitioner seeks is moot because he was removed from the United States to Mexico on September 2, 2025 and is no longer in Respondents’ custody. Moreover, the Fourth Amendment violations Petitioner alleges stemming from the August 20, 2025 encounter with federal are not a basis for a habeas petition, both because the arrest itself is a different matter from the basis for subsequently keeping Petitioner in custody, and because 8 U.S.C. § 1252(g) deprives courts of jurisdiction to review decisions to arrest and remove non-citizens like Petitioner.

While no *Bivens* defendant has been served, the Respondents further note that Petitioner’s *Bivens* claims fail as a matter of law. Petitioner’s *Bivens* claims arise in a new context and special factors counsel against extending the *Bivens* remedy, just as in *Egbert v. Boule*, 596 U.S. 482 (2022).

Because these defects are incurable, Respondents respectfully request that the Court grant this motion without leave to amend.

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1 **II. PROCEDURAL BACKGROUND**

2 **A. Petitioner's 2013 Order of Expedited Removal**

3 Petitioner is a native and citizen of Mexico. Dkt. 8-1, Declaration of Randy Hsieh  
4 ("Hsieh Decl.") ¶ 4, Exh. C. On July 3, 2013, he was contacted and interviewed by a U.S.  
5 Border Patrol agent after illegally entering the United States at Otay Mesa, California. *Id.*  
6 Petitioner reported having previously been "arrested, detained, deported, or excluded" by  
7 ICE. *Id.* ¶ 5, Exh. D. He stated that he was coming to the United States to work, but that  
8 he did not have any fear of returning to Mexico or that he would be harmed if he returned.  
9 *Id.* ¶ 6, Exh. E. ICE then issued an order of expedited removal on the basis that Petitioner  
10 was inadmissible to the United States. *Id.* ¶ 4, Exh. C. He was removed on July 4, 2013.  
11 *Id.* ¶ 2, Exh. A.

12 **B. Petitioner's Allegations Regarding his August 2025 Detention, and the**  
13 **Reinstatement of his Expedited Removal**

14 On August 20, 2025, Petitioner was contacted and detained by federal agents while  
15 he was working at a car wash in Huntington Beach, California. Petition for Writ of Habeas  
16 Corpus, ¶ 16. Petitioner complained of a leg injury incurred during his arrest, and he was  
17 taken and admitted to a local hospital. *Id.* ¶¶ 16-22. Petitioner alleges that while in the  
18 hospital, he was not permitted visitors or access to counsel. *Id.* ¶¶ 23-28.

19 On August 28, 2025, Petitioner filed his underlying Petition and *Ex Parte*  
20 Application for Temporary Restraining Order ("Application"). Dkt. 1, 4. Petitioner alleges  
21 causes of action challenging the circumstances of his arrest and attendant alleged  
22 violations of the Fourth and Fifth Amendments. Petition ¶¶ 32-75. Additionally, Petitioner  
23 alleges as an attempted *Bivens* cause of action that federal agents used excessive force in  
24 his arrest in violation of the Fourth Amendment. *Id.* ¶¶ 39-44.

25 As relief, Petitioner seeks, *inter alia*, release from federal custody, access to  
26 counsel, enjoinder from removal, and compensatory damages under *Bivens*. *Id.* at 15-16.

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1 On August 30, 2025, ICE informed Petitioner that under Section 241(a)(5) of the  
2 Immigration and Naturalization Act, he is “removable as an alien who has illegally  
3 reentered the United States after having been previously removed” and thus “subject to  
4 removal by reinstatement of the prior order.” Hsieh Decl. ¶ 2, Exh. A. Petitioner declined  
5 to make a statement contesting the determination of his removability. *Id.*

6 On September 1, 2025, Petitioner was interviewed by official from the Mexican  
7 consulate and plans were made in coordination between ICE and the consulate of  
8 Petitioner’s repatriation. Dkt. 8-2, Declaration of Gabriel P. Cordova ¶¶ 6-8.

9 On September 2, 2025, Petitioner was removed from the United States through the  
10 San Ysidro Port of Entry, where he was received by Mexican authorities who also stamped  
11 his ICE Form I-216 acknowledging his removal. Hsieh Decl. ¶ 3, Exh. B.

12 On September 8, 2025, Petitioner’s Application was heard before this Court. Dkt.  
13 10. The Application was denied as moot on September 9, 2025 “[i]n light of [Petitioner’s]  
14 deportation...insofar as it requests his deportation be prevented and that he gain access to  
15 counsel.” Dkt. 11.

### 16 **III. LEGAL STANDARD**

17 Dismissal is required under Fed. R. Civ. P. 12(b)(6) when a plaintiff fails to plead  
18 “sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its  
19 face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*,  
20 550 U.S. 544, 555, 570 (2007)). A claim is plausible when the plaintiff “pleads factual  
21 content that allows the court to draw the reasonable inference that the defendant is liable  
22 for the misconduct alleged.” *Id.* Generalized allegations or legal conclusions are not  
23 entitled to the presumption of truth and should be set aside. *Id.* at 678-79. “[W]here the  
24 well-pleaded facts do not permit the court to infer more than the mere possibility of  
25 misconduct, the complaint . . . has not ‘show[n]’ [] ‘that the pleader is entitled to relief,’”  
26 and dismissal should be granted. *Id.* at 678 (quoting Fed. R. Civ. P. 8(a)(2)).

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1 **IV. ARGUMENT**

2 **A. The Court Lacks Jurisdiction to Entertain Petitioner's Action under 8**  
3 **U.S.C. § 1252.**

4 As a threshold matter, 8 U.S.C. §§ 1252(g) and (b)(9) preclude review of  
5 Petitioner's claims challenging the decision to take him into custody.

6 Section 1252(g) specifically deprives courts of jurisdiction, including habeas corpus  
7 jurisdiction, to review "any cause or claim by or on behalf of any alien arising from the  
8 decision or action by the Attorney General to [1] *commence proceedings*, [2] adjudicate  
9 cases, or [3] execute removal orders against any alien under this chapter."<sup>1</sup> 8 U.S.C. §  
10 1252(g) (emphasis added). Section 1252(g) eliminates jurisdiction "[e]xcept as provided  
11 in this section and notwithstanding any other provision of law (statutory or nonstatutory),  
12 including section 2241 of title 28, United States Code, or any other habeas corpus  
13 provision, and sections 1361 and 1651 of such title."<sup>2</sup> Except as provided in § 1252, courts  
14 "cannot entertain challenges to the enumerated executive branch decisions or actions."  
15 *E.F.L. v. Prim*, 986 F.3d 959, 964–65 (7th Cir. 2021).

16 The Ninth Circuit has held that Section 1252(g) bars *Bivens* claims premised on the  
17 claim that the government wrongfully took the alien into detention as a "false arrest" in  
18 violation of the Fourth Amendment. *See Sissoko v. Rocha*, 509 F.3d 947 (9th Cir. 2007)  
19 (alleged violation of Fourth Amendment via arrest did not support *Bivens* claims).

20 Section 1252(g) also bars district courts from hearing challenges to the *method* by  
21 which the Secretary of Homeland Security chooses to commence removal proceedings,  
22 including the decision to detain an alien pending removal. *See Alvarez v. ICE*, 818 F.3d  
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24 <sup>1</sup> Much of the Attorney General's authority has been transferred to the Secretary of  
25 Homeland Security and many references to the Attorney General are understood to refer  
26 to the Secretary. *See Clark v. Martinez*, 543 U.S. 371, 374 n.1 (2005)

27 <sup>2</sup> Congress initially passed § 1252(g) in the IIRIRA, Pub. L. 104-208, 110 Stat.  
28 3009. In 2005, Congress amended § 1252(g) by adding "(statutory or nonstatutory),  
including section 2241 of title 28, United States Code, or any other habeas corpus  
provision, and sections 1361 and 1651 of such title" after "notwithstanding any other  
provision of law." REAL ID Act of 2005, Pub. L. 109-13, § 106(a), 119 Stat. 231, 311.

1 1194, 1203 (11th Cir. 2016) (“By its plain terms, [§ 1252(g)] bars us from questioning  
2 ICE’s discretionary decisions to commence removal” and also to review “ICE’s decision  
3 to take [plaintiff] into custody and to detain him during removal proceedings”).

4 **B. Petitioner’s Fourth Amendment and Fifth Amendment Claims and His**  
5 **Attendant Requested Relief From Custody Are Also Moot Given His**  
6 **Deportation.**

7 Petitioner was deported on September 2, 2025 pursuant to his order of expedited  
8 removal and he is no longer in federal custody. Hsieh Decl. ¶¶ 2-3, Exhs. A, B; Cordova  
9 Decl. ¶ 9. While “[d]eportation from the United States after filing a habeas petition does  
10 not necessarily moot a petitioner’s claim,” such an ongoing petition must “continue to  
11 present a live controversy after the petitioner’s release or deportation” and “there must be  
12 some remaining ‘collateral consequence’ that may be redressed by success on the  
13 petition.” *Abdala v. I.N.S.*, 488 F.3d 1061, 1064 (9th Cir. 2007) (citing *Spencer v. Kenma*,  
14 523 U.S. 1, 7 (1993)). For example, “where a petitioner only requested a stay  
15 of deportation, his habeas petition was rendered moot upon his deportation” *Id.*

16 Here, Petitioner’s request for habeas relief is completely moot because of his  
17 removal to Mexico. *See Picrin-Person v. Rison*, 930 F.2d 773, 775-76 (9th Cir. 1991). He  
18 is not in the Respondents’ custody, and there is no “release” left to order. All the habeas  
19 relief he seeks in the Petition has become inapplicable since his repatriation to Mexico on  
20 September 2, 2025. As for the “[c]ompensatory” and “[p]unitive damages” he seeks for  
21 the purported injuries he sustained during his arrest, such tort damage allegations are not  
22 a basis for a habeas petition as described below, and do not fall within habeas jurisdiction.

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**C. Alleged Fourth Amendment Violations Are Not a Basis for a Habeas Petition.**

Courts in this District have noted that “claims of false arrest and/or excessive force” in connection with an arrest may not properly be asserted in a habeas petition, or as part of a habeas petition. *Robinson v. Hartley*, 2013 WL 866074, at \*1 (C.D. Cal. March 6, 2013) (citing *Preiser v. Rodriguez*, 411 U.S. 475, 498-500(1973)); *Quezada-Montero v. Metropolitan Correctional Facility*, 2008 WL 4552955, at \*2 (C.D. Cal. October 8, 2008) (citing *Crawford v. Bell*, 599 F.2d 890, 891 (9th Cir. 1979)).

Here, a significant portion of Petitioner’s factual allegations (*see* Petition ¶¶ 16-21) and First through Fourth Causes of Action (*see id.* ¶¶ 32-56) relate to alleged Fourth Amendment violations, specifically the nature of his arrest and the alleged physical injury he suffered, which he contends resulted from the excessive use of force in his arrest. But the circumstances of his initial arrest by CBP, even if they were allegedly unlawful and involved excessive force, would not establish that Petitioner was not thereafter properly detained by ICE as a removable alien under immigration law. Such claims and allegations are not proper for a habeas petition, and in any event are also mooted by Petitioner’s deportation.

**D. To The Extent Petitioner Seeks to Assert *Bivens* Claims, those Claims Are Barred Because They Arise in a New *Bivens* Context and Fail to Meet the Standard Set by The Supreme Court in *Egbert*.**

While he has not served any individual *Bivens* defendant, Petitioner also cannot state a *Bivens* constitutional tort claim as a matter of law. The Supreme Court has articulated a two-step inquiry for courts to undertake when evaluating whether to permit a *Bivens* claim. *See Hernandez v. Mesa*, 140 S. Ct. 735, 743 (2020). The first step involves determining whether this case presented a “new context.” *Ziglar v. Abbasi*, 137 S. Ct. 1843, 1859 (2017). If a case presents a new context, the second step examines whether special factors counsel hesitation in recognizing a *Bivens* remedy. *Id.* at 1857. More recently, the Supreme Court recognized that “those steps often resolve to a single question:

1 whether there is any reason to think that Congress might be better equipped to create a  
2 damages remedy.” *Egbert*, 596 U.S. at 492. Put another way, the question is not “whether  
3 a court can determine a damages amount” but “[r]ather, . . . whether ‘there are sound  
4 reasons to think Congress might doubt the efficacy or necessity of a damages remedy’ at  
5 all.” *Id.* at 501 (quoting *Abbasi*, 137 S. Ct. at 1858).

6 1. Petitioner’s Claims Present a New Context.

7 This case presents a new *Bivens* context because it differs in “meaningful way[s]”  
8 from the three *Bivens* cases recognized by the Supreme Court. *Abbasi*, 137 S. Ct. at 1859.  
9 Petitioner’s claim bears no resemblance to *Davis v. Passman*, 442 U.S. 228 (1979) (Fifth  
10 Amendment sex discrimination) or *Carlson v. Green*, 446 U.S. 14 (1980) (Eighth  
11 Amendment inadequate medical care). While this case does bear a few superficial  
12 similarities to *Bivens*, those “superficial similarities are not enough to support the judicial  
13 creation of a cause of action.” *Egbert*, 596 U.S. at 495.

14 Here, unlike *Bivens*—a warrantless search and seizure by narcotics officers in a  
15 residence—this case arises from Petitioner’s arrest in public by CBP officers pursuant to  
16 his unlawful immigration status, against a procedural background of his having already  
17 been removed from the United States and his being subject to expedited removal. It is thus  
18 inarguably a new *Bivens* context. Indeed, this case bears striking similarities to *Egbert*  
19 itself, where the aggrieved also alleged that a federal law enforcement officer used  
20 excessive force in throwing him to the ground while conducting an immigration operation.  
21 *Id.* at 489. In *Egbert*, the Supreme Court found that the aggrieved plaintiff’s Fourth  
22 Amendment claim presented a new context and that *Bivens* remedies were foreclosed from  
23 being extended to that new context, despite the “superficial similarities” in that they both  
24 “involve similar allegations of excessive force.” *Id.* at 494-495. Of note, the Supreme  
25 Court found that unlike *Bivens*, regulating the conduct of federal immigration agents has  
26 national security implications and a “*Bivens* cause of action may not lie where [] national  
27 security is at issue.” *Id.* at 494 (citing *Haig v. Agee*, 453 U.S. 280, 292 (1981)). This Court  
28 should find the same with Petitioner’s claim.

1 Indeed, the Supreme Court has defined “new context” very broadly. *Hernandez*,  
2 140 S. Ct. at 743. Even where the difference between a claim and the one recognized in  
3 *Bivens* is small, “the new-context inquiry is easily satisfied.” *Abbasi*, 137 S. Ct. at 1865.  
4 Moreover, although the *Bivens* plaintiff relied on the Fourth Amendment, this does not  
5 mean all Fourth Amendment claims have a *Bivens* remedy. *See id.* at 1864 (“[y]et even a  
6 modest extension is still an extension.”).

7 2. Special Factors Counsel Against Implying a *Bivens* Remedy.

8 Special factors also counsel against recognizing a new *Bivens* remedy. *Hernandez*,  
9 140 S. Ct. at 743 (recognizing “separation-of-powers principles” as “central” to this  
10 analysis). “Because recognizing a *Bivens* cause of action is an extraordinary act that places  
11 great stress on the separation of powers,” courts “have a concomitant responsibility to  
12 evaluate any grounds that counsel against *Bivens* relief.” *Egbert*, 596 U.S. at 497 n.3  
13 (internal quotation marks and citations omitted). Here, both inquiries, as to whether  
14 Congress is better positioned to authorize a damages action and whether alternative  
15 remedial structures exist, are answered in the affirmative.<sup>3</sup>

16 “[W]hen alternative methods of relief are available, a *Bivens* remedy usually is not.”  
17 *Abbasi*, 582 U.S. at 145; *Egbert*, 596 U.S. at 493 (“If there are alternative remedial  
18 structures in place, that alone, like any special factor, is reason enough to limit the power  
19 of the Judiciary to infer a new *Bivens* cause of action.”) (quotations omitted). As discussed  
20 in *Egbert*, “Congress has provided alternative remedies for aggrieved parties” like  
21 Petitioner, set forth in federal regulations, which “independently foreclose a *Bivens*  
22 action.” *Egbert*, 596 U.S. at 497. Specifically, under 8 C.F.R. §§ 287.10(a)-(b), the U.S.  
23 Department of Homeland Security must investigate “[a]lleged violations of the standards  
24 for enforcement activities” and take complaints from “[a]ny persons wishing to lodge a  
25 complaint.” *Id.* Furthermore, Petitioner had the immigration administrative system

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27 <sup>3</sup> Indeed, in an area like immigration law enforcement, there is no evidence of  
28 Congressional disinterest in legislating on the subject such that it may be inferred to have  
been relegated to monetary tort remedies issued by District Courts.

1 available for any grievances related to his detention and removal. Indeed, Petitioner has  
2 provided no evidence that he has pursued any of the administrative remedies set forth by  
3 Congress. Because of these alternative methods of relief, special factors counsel against  
4 judicially extending the implied *Bivens* liability into a new context.

5 **E. The Court Should Grant This Motion Without Leave to Amend.**

6 Leave to amend should not be granted when amendment would be futile, and futility  
7 alone is enough to refuse amendment. *Lipton v. Pathogenesis Corp.*, 284 F.3d 1027, 1039  
8 (9th Cir. 2002) (“[b]ecause any amendment would be futile, there was no need to prolong  
9 the litigation by permitting further amendment”). Here, the bulk of Petitioner’s claims are  
10 moot. His *Bivens* claim is likewise defective and foreclosed by *Egbert*. Because  
11 amendment would be futile, Respondents respectfully request that the Court recommend  
12 granting this motion without leave to amend.

13 **V. CONCLUSION**

14 For the foregoing reasons, Respondents respectfully request that the Court grant this  
15 motion.

16 Respectfully submitted,

17 Dated: September 18, 2025

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22 /s/ Randy Hsieh

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**LOCAL RULE 11-6.2 CERTIFICATE OF COMPLIANCE**

The undersigned, counsel of record for the Federal Defendants certifies that this brief contains 2,788 words, which complies with the word limit of L.R. 11-6.1.

Dated: September 18, 2025

/s/ Randy Hsieh

RANDY HSIEH