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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

MOHSEN YOUSEFFI NEJAD,

Petitioner,

v.

CHRISTOPHER LAROSE, et al.,

Respondents.

Case No.: 25-cv-02425-AGS-JLB

**RESPONDENTS' RETURN TO
HABEAS PETITION**

I. INTRODUCTION

Petitioner filed a habeas petition under 28 U.S.C. § 2241 challenging his post-removal-order detention by Immigration and Customs Enforcement (ICE) and requesting the Court to release him from custody or order a bond hearing.¹ ECF No. 1 at 17. The petition, however, is moot. Petitioner's removal proceedings have been reopened at his request, and as an alien convicted of an aggravated felony, he is subject to mandatory

¹ Petitioner also seeks an order enjoining his relocation. ICE has agreed that Petitioner will not be moved out of the Southern District of California during the pendency of this matter.

1 detention under 8 U.S.C. § 1226(c) pending a final order of removal. Because Petitioner's
2 challenges to his post-removal-order detention are moot and he is properly subject to
3 mandatory detention under § 1226(c), Respondents ask the Court to dismiss or deny
4 Petitioner's requested relief.

5 II. FACTUAL BACKGROUND

6 Petitioner is a native and citizen of Iran. *See* Exh. 1 at 1.² He was admitted into the
7 United States in 1979, and adjusted to lawful permanent resident status in 1982. *Id.*

8 On February 4, 2009, Petitioner was convicted under California Health & Safety
9 Code § 11351, for possession for sale of opium, and § 11352, for sale or transportation of
10 opium, and was sentenced to four years' imprisonment. *Id.* at 1, 3.

11 On September 30, 2010, the Department of Homeland Security (DHS) filed a Notice
12 to Appear with the Immigration Court, charging Petitioner with removability under section
13 237(a)(2)(A)(iii) of the Immigration and Nationality Act (INA), as an alien convicted of an
14 aggravated felony (namely, INA § 101(a)(43)(B) illicit trafficking in a controlled
15 substance), and INA § 237(a)(2)(B)(i), as an alien convicted of a violation relating to a
16 controlled substance. *Id.* at 1.

17 On March 3, 2011, Petitioner appeared before an Immigration Judge (IJ). *Id.* The IJ
18 found Petitioner removable under INA § 237(a)(2)(A)(iii) and § 237(a)(2)(B)(i), ordered
19 Petitioner removed from the United States to Iran, and granted him deferral of removal to
20 Iran under the Convention Against Torture. *See id.* at 2–5. Petitioner was later released from
21 ICE custody. ECF No. 1 at ¶ 3.

22 On June 24, 2025, ICE arrested and detained Petitioner based on his final order of
23 removal. *See* Exhs. 2, 3. He is detained in ICE custody at the Otay Mesa Detention Center.
24 ECF No. 1 at ¶ 8.

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27 ² The attached exhibits are true copies of documents obtained from ICE counsel, with
28 few redactions made to protect against unauthorized disclosures of personally identifiable
information that federal agencies maintain under the Privacy Act, 5 U.S.C. § 552a.

1 On August 11, 2025, an IJ granted Petitioner's motion to reopen his removal
2 proceedings. *See* Exh. 4. Petitioner is scheduled to appear before an IJ for a master calendar
3 hearing on October 9, 2025. *See* Exh. 5. Petitioner remains mandatorily detained in ICE
4 custody under 8 U.S.C. § 1226(c).

5 On September 16, 2025, Petitioner filed the instant habeas petition, asserting that his
6 detention is unlawful pursuant to 8 U.S.C. § 1231(a), because his removal from the United
7 States is not reasonably foreseeable and thus violates the Due Process Clause of the Fifth
8 Amendment to the U.S. Constitution, the INA, and regulations. *See* ECF No. 1 at ¶¶ 1–7.
9 The Court then ordered Respondents to file a response to the petition. ECF Nos. 2, 3.

10 III. ARGUMENT

11 The Court must dismiss Petitioner's habeas petition because it is moot and
12 jurisdictionally barred under 8 U.S.C. § 1252(g); and in any event, must be denied because
13 Petitioner is lawfully detained under the INA and the Constitution.

14 A. Petitioner's claims are moot and thus not justiciable

15 "Under Article III of the Constitution, federal courts may adjudicate only actual,
16 ongoing cases or controversies." *Lewis v. Cont'l Bank Corp.*, 494 U.S. 472, 477 (1990).
17 And there is no "case" or "controversy" when an issue is moot. The question of mootness
18 is one that the court must resolve before it assumes jurisdiction. *North Carolina v. Rice*, 404
19 U.S. 244, 246 (1971). "A case becomes moot—and therefore no longer a Case or
20 Controversy for purposes of Article III—when the issues presented are no longer live or the
21 parties lack a legally cognizable interest in the outcome." *Already, LLC v. Nike, Inc.*, 568
22 U.S. 85, 91 (2013) (simplified). Thus, "if an event occurs while a case is pending on appeal
23 that makes it impossible for the court to grant 'any effectual relief whatever' to a prevailing
24 party, the appeal must be dismissed." *Church of Scientology of California v. United States*,
25 506 U.S. 9, 12 (1992) (quoting *Mills v. Green*, 159 U.S. 651, 653 (1895)).

26 Petitioner's habeas petition challenges ICE's authority to revoke his release and
27 detain him for purposes of executing his 2011 removal order. *See* ECF No. 1 at ¶¶ 4–5. In
28 support, Petitioner raises arguments and authority relevant to detention post a final order of

1 removal. *See id.* As stated above, however, Petitioner has successfully reopened his removal
2 proceedings. *See* Exh. 4. With proceedings reopened, Petitioner no longer has a final order
3 of removal, and his statutory and constitutional challenges based thereon no longer present
4 a live controversy. *See* 8 C.F.R § 241.4(b)(1) (A noncitizen who has filed a motion to reopen
5 proceedings remains subject to the regulations concerning detention beyond the removal
6 period “unless the motion to reopen is granted.”). There being no final order of removal in
7 this case, Petitioner’s present habeas claims are moot, and the Court cannot effectuate relief
8 under this petition. *Church of Scientology of California*, 506 U.S. at 12 (“It has long been
9 settled that a federal court has no authority to give opinions upon moot questions or abstract
10 propositions, or to declare principles or rules of law which cannot affect the matter in issue
11 in the case before it.”). Thus, the Court must dismiss Petitioner’s habeas petition.

12 **B. Petitioner’s claims are barred under 8 U.S.C. § 1252(g)**

13 Even if the Court declined to dismiss the petition as moot, Petitioner’s claims are
14 barred under 8 U.S.C. § 1252(g). Petitioner bears the burden of establishing that this Court
15 has subject matter jurisdiction over her claims. *See Kokkonen v. Guardian Life Ins. Co. of*
16 *Am.*, 511 U.S. 375, 377 (1994) (“Federal courts are courts of limited jurisdiction. . . . It is
17 to be presumed that a cause lies outside this limited jurisdiction, and the burden of
18 establishing the contrary rests upon the party asserting jurisdiction.”).

19 Pertinent here, 8 U.S.C. § 1252(g) bars judicial review over any claim or cause of
20 action arising from any decision to commence or adjudicate removal proceedings or execute
21 removal orders. *See* 8 U.S.C. § 1252(g). These three actions “represent the initiation or
22 prosecution of various stages in the deportation process” and there was “good reason for
23 Congress to focus special attention upon, and make special provision for” them. *Reno v.*
24 *Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999). “Section 1252(g) was
25 directed against a particular evil: attempts to impose judicial constraints upon prosecutorial
26 discretion.” *Id.* at 485 n.9.

27 Here, Petitioner’s habeas claims stem from the decision to execute his then-final
28 order of removal. As reflected by Petitioner’s Warrant for Removal/Deportation, ICE

1 arrested and detained Petitioner because he had a final order of removal that it intended to
2 execute. *See* Exh. 2. Because Petitioner's claims necessarily arise "from the decision or
3 action by the Attorney General to . . . execute removal orders," review of Petitioner's claims
4 is barred under 8 U.S.C. § 1252(g). Thus, the Court must dismiss the habeas petition.

5 **C. Petitioner is lawfully detained**

6 Even if the Court assumed jurisdiction to review Petitioner's claims, the Court must
7 deny his request for relief because Petitioner was properly re-detained under 8 U.S.C.
8 § 1231(a) and is currently lawfully detained under 8 U.S.C. § 1226(c).

9 **1. Petitioner was properly re-detained**

10 Petitioner asserts that Respondents are detaining him unlawfully. *See generally* ECF
11 No. 1 at 2–3. "To determine whether Congress has authorized [a petitioner's] detention, we
12 must first identify the statutory provision that purports to confer such authority on the
13 Attorney General." *Prieto-Romero v. Clark*, 534 F.3d 1053, 1057 (9th Cir. 2008).

14 ICE's authority to detain, release, and re-detain noncitizens who are subject to a final
15 order of removal is governed by 8 U.S.C. § 1231(a), which provides that "the Attorney
16 General shall remove the alien from the United States within a period of 90 days." 8 U.S.C.
17 § 1231(a)(1)(A). "If the alien does not leave or is not removed within the removal period,
18 the alien, pending removal, shall be subject to supervision under regulations prescribed by
19 the Attorney General." 8 U.S.C. § 1231(a)(3); *see also* 8 U.S.C. § 1231(a)(6) (providing for
20 detention beyond the removal period for certain "inadmissible or criminal aliens").

21 Petitioner contends that the special review procedures under 8 C.F.R. § 241.13
22 govern his detention, but that section applies only where there has been a determination that
23 there is no significant likelihood of the noncitizen's removal in the reasonably foreseeable
24 future. *See* 8 C.F.R. § 241.13(b)(1). Because there is no evidence that his
25 post-removal-order release was because of such a finding, 8 C.F.R. § 241.4 governs here.
26 *See id.* ("Section 241.4 shall continue to govern the detention of aliens under a final order
27 of removal, including aliens who have requested a review of the likelihood of their removal
28 under this section, *unless the Service makes a determination under this section that there is*

1 *no significant likelihood of removal in the reasonably foreseeable future.”* (emphasis
2 added).

3 As relevant, a noncitizen may be released under 8 C.F.R. § 241.4(j)(1) on conditions
4 appropriate in an individual case, and such release may be revoked under 8 C.F.R.
5 § 241.4(l)(2)(iii) where “appropriate to enforce a removal order.” Here, Petitioner was
6 subject to a final, executable order of removal, which means that he had no right to remain
7 in the United States. *See* Exh. 1 at 5 (“Deferral of removal does not confer upon [Petitioner]
8 any lawful or permanent immigration status in the United States”). He had a temporary right
9 not to be repatriated to Iran, but he had no right not to be resettled in a third country. *See id.*
10 (Deferral of removal “is limited only to Iran”; Petitioner “may be removed to a country
11 other than Iran.”). ICE re-detained Petitioner for purposes of executing his then-final 2011
12 removal order. *See* Exh. 2; 8 U.S.C. § 1231(b)(2)(E); 8 C.F.R. § 241.4(l)(2)(iii). Because
13 the regulations provide for revocation of release under these circumstances, ICE had lawful
14 authority to re-detain Petitioner. *See* 8 C.F.R. § 241.4(l)(2)(iii).

15 Even assuming the agency’s compliance with the regulations fell short, Petitioner has
16 not established prejudice. *See Organized Vill. of Kake v. U.S. Dep’t of Agric.*, 795 F.3d 956,
17 969 (9th Cir. 2015) (“Of course, not every violation of the APA invalidates an agency
18 action; rather, it is the burden of the opponent of the action to demonstrate that an error is
19 prejudicial.”); *Jicarilla Apache Nation v. U.S. Dep’t of Interior*, 613 F.3d 1112, 1121 (D.C.
20 Cir. 2010) (“Courts reviewing agency action under section 706(2)(A)’s ‘arbitrary and
21 capricious’ standard must take ‘due account . . . of the rule of prejudicial error.’ 5 U.S.C.
22 § 706.”).

23 To the extent formal notice of the reason for revocation of his release was required
24 and lacking, Petitioner knew, at the time of his re-detention, that he was subject to a final
25 order of removal. *See* ECF No. 1 at ¶ 26. He also knew, based on the Order of the
26 Immigration Judge, that his protection from removal was “limited only to Iran” and that he
27 “may be removed to a country other than Iran.” Exh. 1 at 5. As such, any challenge that
28

1 Petitioner would have raised to challenge the reason for his re-detention under the
2 regulations would have failed.

3 Because Petitioner cannot show prejudice under the circumstances of his case, the
4 alleged violation of agency regulations does not warrant release here. *See, e.g., United*
5 *States v. Hernandez-Rojas*, 617 F.2d 533, 535 (9th Cir. 1980) (INS' failure to follow
6 regulations requiring that an arrested noncitizen be advised of his right to speak to his consul
7 was not prejudicial and thus not a ground for challenging the conviction); *United States v.*
8 *Barraza-Leon*, 575 F.2d 218, 221–22 (9th Cir. 1978) (holding that even assuming that the
9 judge had violated the rule by failing to inquire into the noncitizen's background, any error
10 was harmless because there was no showing that the petitioner was qualified for relief from
11 deportation); *Carnation Co. v. Sec'y of Lab.*, 641 F.2d 801, 804 n.4 (9th Cir. 1981)
12 (“violations of procedural regulations should be upheld if there is no significant possibility
13 that the violation affected the ultimate outcome of the agency's action” (citation omitted)).

14 **2. Petitioner is subject to mandatory detention under 8 U.S.C § 1226(c)**

15 Because Petitioner's removal proceedings have been reopened, his detention is no
16 longer governed by 8 U.S.C. § 1231 and 8 C.F.R. § 241.4, but rather, by 8 U.S.C. § 1226.
17 *See* 8 C.F.R. § 241.4(b)(1) (“An alien who has filed a motion to reopen immigration
18 proceedings . . . shall remain subject to the provisions of this section unless the motion to
19 reopen is granted. Section 236 of the Act [8 U.S.C. § 1226] and 8 C.F.R. § 236.1 govern
20 custody determinations for aliens who are in pending immigration proceedings[.]”).

21 Petitioner is lawfully detained because he is subject to mandatory detention under 8
22 U.S.C. § 1226(c). That statute provides that the Attorney General “shall take into custody
23 any alien who . . . is deportable by reason of having committed any offense covered in
24 section 1227(a)(2)(A)(ii), (A)(iii), (B), (C), or (D) of this title,” 8 U.S.C. § 1226(c)(1)(B),
25 and “governs detention of deportable criminal aliens pending their removal proceedings,”
26 *Demore v. Kim*, 538 U.S. 510, 527–28 (2003).

27 Based on his criminal history, Petitioner is charged with removability under two of
28 the enumerated categories of offenses under the statute: 8 U.S.C. § 1227(a)(2)(A)(iii), for

1 an aggravated felony illicit trafficking offense, and § 1227(a)(2)(B), for a controlled
2 substance offense. *See* Exhs. 1 at 1; 6. As Petitioner is removable for having committed
3 offenses listed in 8 U.S.C. § 1226(c), he is subject to mandatory detention under the statute.

4 To the extent Petitioner alleges that he is entitled to release or a bond hearing under
5 the INA, the statutory text explicitly forecloses such contentions and permits release “‘only
6 if the Attorney General decides’ both that doing so is necessary for witness-protection
7 purposes and that the alien will not pose a danger or flight risk.” *Jennings v. Rodriguez*, 583
8 U.S. 281, 303 (emphasis in original) (quoting § 1226(c)). Because Petitioner’s removal
9 proceedings are pending and he has not been granted release for witness-protection
10 purposes, § 1226(c) mandates his detention until the proceedings have concluded. *See*
11 *Demore*, 538 U.S. at 527–28 (noting that detention under the statute has “a definite
12 termination point” and “[s]uch detention necessarily serves the purpose of preventing
13 deportable criminal aliens from fleeing prior to or during their removal proceedings, thus
14 increasing the chance that, if ordered removed, the aliens will be successfully removed.”).

15 Because Petitioner is lawfully detained under § 1226(c), and the statute does not
16 entitle him to release at this time, his petition must be denied.

17 **3. Petitioner’s detention does not violate due process**

18 Petitioner’s detention under § 1226(c) does not violate due process. In *Demore*, the
19 Supreme Court considered the statute at issue and held: “Detention during removal
20 proceedings is a constitutionally permissible part of that process.” 538 U.S. at 531. And the
21 Court may not impose temporal limitations on the statute where none exist. *See Jennings*,
22 583 U.S. at 312 (rejecting the dissent’s drawing of a “6-month limitation out of thin air”).

23 Even if the Court infers a constitutional right against prolonged mandatory detention,
24 Petitioner’s claim still fails. Petitioner has been detained for a little over three months. *See*
25 ECF No. 1 at ¶ 9. “In general, as detention continues past a year, courts become extremely
26 wary of permitting continued custody absent a bond hearing.” *Sibomana v. LaRose*,
27 No. 22-cv-933-LL-NLS, 2023 WL 3028093, at *4 (S.D. Cal. Apr. 20, 2023) (citation
28 omitted); *see also, e.g., Sanchez-Rivera v. Matuszewski*, No. 22-cv-1357-MMA-JLB, 2023

1 WL 139801, at *6 (S.D. Cal. Jan. 9, 2023) (detained for three years); *Durand v. Allen*, No.
2 3:23-cv-00279-RBM-BGS, 2024 WL 711607, at *5 (S.D. Cal. Feb. 21, 2024) (over
3 two-and-a-half years); *Yagao v. Figueroa*, No. 17-cv-2224-AJB-MDD, 2019 WL 1429582,
4 at *2 (S.D. Cal. Mar. 29, 2019) (two years). Petitioner’s thirteen-week detention falls
5 significantly short of the length courts have found to raise due process concerns.

6 Though the length of detention is considered the most important factor, courts have
7 also considered the likely duration of future detention and any delay in the removal
8 proceedings by the petitioner or the government to determine whether “detention has
9 become so unreasonable as to require an initial bond hearing.” *See Sanchez-Rivera*, 2023
10 WL 139801, at *6.³ Neither of these factors raise due process concerns either. Petitioner’s
11 removal proceedings were promptly reopened at his request, and he is scheduled to appear
12 for a hearing on October 9, 2025. *See* Exh. 5. There is no indication that any final decision
13 by the IJ would be delayed. And there is no indication of any delay in the removal
14 proceedings by the government. On this record, the Court cannot find that “detention has
15 become so unreasonable as to require an initial bond hearing.” *Sanchez-Rivera*, 2023 WL
16 139801, at *6. And again, the Supreme Court in *Demore* rejected a due process challenge
17 to mandatory detention under § 1226(c), explaining that “this Court has recognized
18 detention during deportation proceedings as a constitutionally valid aspect of the
19 deportation process.” 538 U.S. at 523.

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22 ³ Though Petitioner cites *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) in his
23 petition, courts in this district have declined to apply the *Mathews* test under these
24 circumstances and have instead applied the test in *Lopez v. Garland*, 631 F. Supp. 3d 870,
25 879 (E.D. Cal. 2022). *See Sanchez-Rivera*, 2023 WL 139801, at *5 (“while the *Mathews*
26 factors may be well-suited to determining whether due process requires a second bond
27 hearing, they are not particularly dispositive of whether prolonged mandatory detention has
28 become unreasonable in a particular case.”); *see also Lopez v. Garland*, 631 F. Supp. 3d
870, 879 (E.D. Cal. 2022) (“To determine whether § 1226(c) detention has become
unreasonable, the Court will look to the total length of detention to date, the likely duration
of future detention, and the delays in the removal proceedings caused by the petitioner and
the government.”).

1 IV. CONCLUSION

2 For the reasons stated herein, Respondents respectfully request that the Court dismiss
3 this petition for lack of jurisdiction or deny it on the merits.

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5 DATED: September 30, 2025

Respectfully submitted,

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