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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

LUIS MANUEL DE LA TORRE-DURAN, Petitioner, v. MARKWAYNE MULLIN, Secretary of the Department of Homeland Security, *et al.*, Respondents.	Case No.: 26-cv-03129-BAS-MSB **RETURN TO AMENDED PETITION FOR WRIT OF HABEAS CORPUS**

I. Introduction

Petitioner filed a habeas petition under 28 U.S.C. § 2241. Petitioner is currently in removal proceedings under 8 U.S.C. § 1229a and is charged with deportability/removability under 8 U.S.C. § 1227(a)(1)(B), as an individual who was admitted to the United States but remained for a time longer than permitted by law (i.e., a visa overstay). As such, Petitioner is detained pursuant to 8 U.S.C. § 1226(a). Petitioner is entitled to and received a bond hearing before an immigration judge pursuant to 8 U.S.C. § 1226(a) on September 8, 2025. The immigration judge denied bond and Petitioner did not appeal the adverse decision. Based on the arguments set

forth below, the Court should deny Petitioner's requests for relief and dismiss the petition.

II. Factual Background

Petitioner is a native and national of Mexico. *See* Exhibit 1 (Form I-213).[1] On October 01, 2002, he was admitted into the United States on a nonimmigrant visa. *See id.* Petitioner remained in the United States even though his visa status expired on October 31, 2002. *Id.* Petitioner was subsequently convicted in the State of Utah for the following offenses: alcohol/drug-related reckless driving in 2006; violation of a protective order in 2022; and reckless driving and misdemeanor fraud in January of 2025. *See id.* On January 16, 2025, Immigration and Customs Enforcement (ICE) issued a warrant for Petitioner's arrest and subsequently took him into ICE custody. *See* Exhibit 2 (Warrant for Arrest of Alien). The Department of Homeland Security (DHS) determined that Petitioner is deportable/removable under 8 U.S.C. § 1227(a)(1)(B), as an individual who was admitted to the United States and has remained for a time longer than permitted by law (i.e., a visa overstay). *See* Exhibit 3 (Notice to Appear). Based on that charge, he was issued a Notice to Appear and placed in removal proceedings under 8 U.S.C. § 1229a. *See id.*

On September 8, 2025, Petitioner had a Custody Redetermination Proceeding in front of an immigration judge. *See* Exhibit 4 (Order of the Immigration Judge). The immigration judge denied bond to petitioner because he had "not met his burden of demonstrating he is not a danger to the community or a flight risk." *Id.* Petitioner and DHS waived appeal. *Id.* Within Petitioner's removal proceedings, Petitioner applied for Cancellation of Removal pursuant to 8 U.S.C. § 1229b(b)(1). However, an immigration judge denied Petitioner's application and on April 17, 2026, ordered Petitioner removed to Mexico. *See* Exhibit 5. On April 29, 2026, Petitioner appealed the removal order to the Board of Immigration Appeals (BIA) and that appeal is still pending. *See* Exhibit 6

[1] The attached exhibits are true copies, with redactions of private information, of documents obtained from ICE counsel.

(Filing Receipt for Appeal). Petitioner is currently detained at the Otay Mesa Detention Center under 8 U.S.C. § 1226(a).

III. Argument

A. Petitioner is Lawfully Detained Under 8 U.S.C. § 1226(a)

Petitioner's due process claims are premature and without merit. Section 1226 provides for arrest and detention "pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). Under § 1226(a), the government may detain an alien during his removal proceedings, release him on bond, or release him on conditional parole. By regulation, immigration officers can release aliens upon the alien demonstrating that he "would not pose a danger to property or persons" and "is likely to appear for any future proceeding." 8 C.F.R. § 236.1(c)(8). An alien can also request a custody redetermination (i.e., a bond hearing) by an immigration judge at any time before a final order of removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1), 1003.19.

As set forth above, Petitioner was detained on January 16, 2025, pursuant to 8 U.S.C. § 1226(a). DHS determined that Petitioner is deportable/removable under 8 U.S.C. § 1227(a)(1)(B), as an individual who was admitted to the United States but remained for a time longer than permitted by law (i.e., a visa overstay). Based on that charge, he was issued a Notice to Appear (NTA) and placed in removal proceedings under 8 U.S.C. § 1229a. Petitioner is detained pursuant to 8 U.S.C. § 1226(a). Accordingly, Petitioner is entitled to and received a bond hearing before an immigration judge on September 8, 2025, which resulted in a denial of bond. *See* Exhibit 4. Petitioner did not appeal the adverse bond decision.

B. Administrative Remedies Should Be Exhausted

Petitioner's request for habeas relief is not ripe for review. The Court should ensure Petitioner properly exhausts administrative remedies prior to seeking judicial action in the District Court. The Ninth Circuit requires that "habeas petitioners exhaust available judicial and administrative remedies before seeking relief under § 2241."

Castro–Cortez v. INS, 239 F.3d 1037, 1047 (9th Cir. 2001). "When a petitioner does not exhaust administrative remedies, a district court ordinarily should either dismiss the petition without prejudice or stay the proceedings until the petitioner has exhausted remedies, unless exhaustion is excused." *Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011); *see also Alvarado v. Holder*, 759 F.3d 1121, 1127 n.5 (9th Cir. 2014) (issue exhaustion is a jurisdictional requirement); *Tijani v. Holder*, 628 F.3d 1071, 1080 (9th Cir. 2010) (no jurisdiction to review legal claims not presented in the petitioner's administrative proceedings before the BIA). Here, Petitioner received a bond hearing pursuant to 8 U.S.C. § 1226(a) on September 8, 2025, which resulted in an adverse decision for Petitioner. However, Petitioner chose not to appeal that decision with the BIA. Petitioner failed to exhaust his administrative remedies. Accordingly, the Court should dismiss the petition without prejudice.

IV. CONCLUSION

For the foregoing reasons, Respondents respectfully request that the Court dismiss this action without prejudice

DATED: June 12, 2026

Respectfully submitted,

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s/ Camille Savedra
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