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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

GILBERTO ANTONIO AGUILAR QUINTANILLA,

Petitioner,

v.

CHRISTOPHER J. LAROSE, et al.,

Respondents.

Case No.: 26-cv-04020-RSH-GC

RETURN TO PETITION FOR WRIT OF HABEAS PETITION

I. Introduction

Petitioner has improperly 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 a bond hearing before an immigration judge pursuant to 8 U.S.C. § 1226(a). In fact, Petitioner has a § 1226(a) bond hearing scheduled for July 23, 2026. 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 citizen of Nicaragua. *See* Exhibit 1 (Notice to Appear). On September 7, 2019, he was admitted into the United States on a nonimmigrant visa. *See id.* On or about June 29, 2026, Petitioner was encountered by Immigration and Customs Enforcement (ICE) officers. ECF No. 1 at 2. Petitioner was taken into custody; this is Petitioner's first and only arrest by immigration officers. *See id.* The Department of Homeland (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). Based on that charge, he was issued a Notice to Appear (NTA) and placed in removal proceedings under 8 U.S.C. § 1229a. On July 20, 2026, ICE filed an I-286, amending the NTA withdrawing the 8 U.S.C. § 1182(a)(7) inadmissibility charge, and lodging the correct § 1227(a)(1)(B) charge. *See* Exhibit 2 (I-286)

Petitioner is currently detained at the Otay Mesa Detention Center under 8 U.S.C. § 1226(a). *See* Exhibit 1. As a visa overstay, Petitioner is statutorily entitled to a bond hearing under 8 U.S.C. § 1226(a). Importantly here, Petitioner already is scheduled for a bond hearing, set for July 23, 2026. *See* Exhibit 3 (Notice of Hearing).

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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 apprehended on June 29, 2026, and detained 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) and is entitled to a bond hearing under 8 U.S.C. § 1226(a) before an immigration judge. Petitioner is scheduled to receive such a bond hearing on July 23, 2026. Accordingly, Petitioner is lawfully detained under 8 U.S.C. § 1226(a) and already receiving the relief he is entitled to receive. *See Rodriguez Diaz v. Garland*, 53 F.4th 1189 (9th Cir. 2022) (finding procedures under § 1226(a) satisfy due process).

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. 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 is eligible to have a § 1226(a) bond hearing before an immigration judge, pursuant to 8 U.S.C. § 1226(a). As previously stated, Petitioner is scheduled for such a bond hearing. Accordingly, the Court should dismiss without prejudice or stay these proceedings until the bond hearing is conducted and concluded to ensure that Petitioner exhausts his administrative remedies.

C. Petitioner's Re-Detention Claims Are Unfounded

The Constitution limits federal judicial power to designated "cases" and "controversies." U.S. Const., art. III, § 2; *see also SEC v. Med. Comm. for Human Rights*, 404 U.S. 403, 407 (1972) (federal courts may only entertain matters that present a "case" or "controversy" within the meaning of Article III). "Absent a real and immediate threat of future injury there can be no case or controversy, and thus no Article III standing for a party seeking injunctive relief." *Wilson v. Brown*, No. 05-cv-1774-BAS-MDD, 2015 WL 8515412, at *3 (S.D. Cal. Dec. 11, 2015) (citing *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 190 (2000) ("[I]n a lawsuit brought to force compliance, it is the plaintiff's burden to establish standing by demonstrating that, if unchecked by the litigation, the defendant's allegedly wrongful behavior will likely occur or continue, and that the threatened injury is certainly impending.") (simplified)). At the "irreducible constitutional minimum," standing requires that a petitioner demonstrate the following: (1) an injury in fact (2) that is fairly

traceable to the challenged action of the United States and (3) likely to be redressed by a favorable decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992).

Moreover, the Supreme Court has held that "[h]abeas Corpus Rule 2(c) is more demanding [than Federal Rule of Civil Procedure 8(a)]. It provides that the petition must 'specify all the grounds for relief available to the petitioner' and 'state the facts supporting each ground.'" *Mayle v. Felix*, 545 U.S. 644, 655 (2005) (citing Rules Governing Section 2254 Cases in the United States District Court ("Federal Habeas Rules"); *see also James v. Borg*, 24 F.3d 20, 26 (9th Cir. 1994) ("Conclusory allegations which are not supported by a statement of specific facts do not warrant habeas relief."). As stated by the Advisory Committee's Note on Habeas Corpus Rule 4, 28 U.S.C., p. 471, "notice pleading is not sufficient, for the petition is expected to state facts that point to a real possibility of constitutional error.") (internal quotation marks omitted).

Here, Petitioner asserts in his petition claims and allegations concerning revocation of release, re-detention, and termination of removal proceedings. However, Petitioner's June 29, 2026, apprehension was his first DHS apprehension, so there was no prior release to revoke and no prior determination by DHS that Petitioner poses no danger to the community and is not a flight risk. Moreover, while Petitioner asserts legal claims concerning termination of removal proceedings, he provides no factual support for such claims. Respondents agree that there is no factual support for such claims because Petitioner's removal proceedings have not been terminated.

As such, there is no controversy concerning re-detention/release for this Court to resolve. Federal courts do not have jurisdiction "to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it." *Church of Scientology of Cal. v. United States*, 506 U.S. 9, 12 (1992) (internal quotations and citations omitted). "A claim is moot if it has lost its character as a present, live controversy." *Am. Rivers v. Nat'l Marine Fisheries Serv.*, 126 F.3d 1118, 1123 (9th Cir. 1997) (citation omitted).

Accordingly, Petitioner fails to properly state a sufficient habeas claim, and the petition should be denied.

D. Administrative Procedure Claims Are Without Merit

The Administrative Procedure Act (APA) does not provide an avenue for relief in this case. The APA places limits on when agency action is subject to judicial review. "Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review." 5 U.S.C. § 704; *Navajo Nation v. Dep't of the Interior*, 876 F.3d 1144, 1171 (9th Cir. 2017) ("[Section] 704's requirement that to proceed under the APA, agency action must be final or otherwise reviewable by statute is an independent element without which courts may not determine APA claims."). Reviewable "agency action" is defined to include "the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act." 5 U.S.C. § 551(13). "While this definition is 'expansive,' federal courts 'have long recognized that the term [agency action] is not so all-encompassing as to authorize . . . judicial review over everything done by an administrative agency.'" *Wild Fish Conservancy v. Jewell*, 730 F.3d 791, 800–01 (9th Cir. 2013) (quoting *Fund for Animals, Inc. v. U.S. Bureau of Land Management*, 460 F.3d 13, 19 (D.C. Cir. 2006)).

Here, it is not altogether clear what final agency action Petitioner seeks review over. Importantly, habeas relief is available to challenge only the legality or duration of confinement. *Pinson*, 69 F.4th at 1067; *see also Flores-Miramontes*, 212 F.3d at 1140 ("For purposes of immigration law, at least, 'judicial review' refers to petitions for review of agency actions, which are governed by the Administrative Procedure Act, while habeas corpus refers to habeas petitions brought directly in district court to challenge illegal confinement."). To the extent Petitioner asserts a violation of 8 C.F.R. § 239.2, such a challenge is inapposite as Petitioner's removal proceedings have just begun and have not been terminated. The Court should therefore reject Petitioner's APA claims.

E. Petitioner's Fourth Amendment Claim Lacks Jurisdiction

Petitioner fails to explain why release is the remedy for alleged violations claims under the Fourth Amendment. *United States v. Crews*, 445 U.S. 463, 474 (1980) (noting, in the criminal context, that Fourth Amendment's "exclusionary principle" "delimits what proof the Government may offer against the accused at trial, closing the courtroom door to evidence secured by official lawlessness," but an individual "is not himself a suppressible 'fruit'"); *Cruz v. Barr*, 926 F.3d 1128, 1146 (9th Cir. 2019) (releasing petitioner on Fourth Amendment grounds because fruits of the regulatory violation were the only evidence of petitioner's alienage). Moreover, Fourth Amendment claims related to alienage "belong in front of an Immigration Judge, not a federal district court." *See Marvan v. Slaughter*, No. CV 25-49-H-DLC, 2025 WL 1940043, at *3 (D. Mont. July 15, 2025) (denying habeas petition challenging detention based on Fourth Amendment violations for lack of subject matter jurisdiction). Petitioner cannot simply "'bypass the immigration courts and proceed directly to district court. Instead, [she] must exhaust the administrative process before [her] can access the federal courts.'" *Id.* at *4 (quoting *J.E.F.M.*, 837 F.3d at 1029). To the extent Petitioner desires to bring such claims, this Court does not have jurisdiction. Under 8 U.S.C. § 1252(b)(9), "[j]udicial review of all questions of law and fact . . . *arising from any action taken or proceeding brought to remove an alien from the United States* under this subchapter shall be available only in judicial review of a final order under this section." Further, judicial review of a final order is available only through "a petition for review filed with an appropriate court of appeals." 8 U.S.C. § 1252(a)(5).

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IV. CONCLUSION

For the foregoing reasons, Respondents respectfully request that the Court dismiss this action without prejudice and deny all requests for relief.

DATED: July 21, 2026

Respectfully submitted,

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s/ Antonio Estrada
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