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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

N-E-M-B-, an adult,

Petitioner,

v.

CAMILLA WAMSLEY,[1] et al.,

Respondents.[2]

Case No.: 3:25-cv-00989-SI

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

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[1] Camilla Wamsley should be substituted for Drew Bostock as a party in this action. *See* Fed. R. Civ. P. 25(d).

[2] For "core" habeas challenges brought under 28 U.S.C. § 2241, that is, challenges to present physical custody, the only proper respondent is the immediate custodian of the habeas petitioner, "not the Attorney General or some other remote supervisory official." *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004). Thus, the United States Attorney General, the Acting Director of U.S. Immigration and Customs Enforcement ("ICE"), and the Secretary of Homeland Security are not proper respondents to this core habeas petition, because none of those officials have any immediate responsibility for Petitioner's detention. *See id.* at 440 n.13 ("[T]he proper respondent is the person responsible for maintaining-not authorizing-the custody of the prisoner.").

INTRODUCTION

On June 10, 2025, Petitioner filed this petition for writ of habeas corpus under 28 U.S.C. § 2241. Petitioner requests, among other things, that this Court: (1) assume jurisdiction over this matter; (2) declare that Petitioner's re-detention without an individualized determination violates the Due Process Clause of the Fifth Amendment; (3) issue a Writ of Habeas Corpus ordering Respondents to release Petitioner from custody; (4) issue an Order prohibiting the Respondents from transferring Petitioner from the district without the Court's approval. ECF 1 at 19–20.

But on June 10, 2025, Petitioner was also released from detention and has not been in detention since then, nor will Petitioner be subject to detention, absent a change in circumstances, during the pendency of his immigration appeal.

BACKGROUND

On or about August 22, 2023, Petitioner was encountered by U.S. Border Patrol near the San Diego Border Patrol Sector. Chan Decl. ¶ 4. Border Patrol "determined that Petitioner had unlawfully entered the United States from Mexico, that he had not entered using a Port of Entry and without inspection from an immigration officer, and that he did not have the necessary legal documents to enter or remain within the United States." *Id.* Petitioner was determined to be inadmissible. *Id.* Border Patrol issued Petitioner a Notice to Appear, charging him with being inadmissible under INA § 212(a)(6)(A)(i), for being present in the United States without admission or

parole. Petitioner was released on his own recognizance but was not admitted with lawful status into the United States. *Id.* ¶ 5.

On June 10, 2025, ICE's Office of the Principal Legal Advisor ("OPLA") moved to dismiss Petitioner's 8 U.S.C. § 1229a removal proceedings ("1229a proceedings"). *Id.* ¶ 6. The Immigration Judge ("IJ") granted OPLA's motion to dismiss, and Petitioner was detained by ICE's Office of Enforcement and Removal Operations ("ERO") that same day. *Id.* However, later that day, Petitioner was released from detention on interim parole. Chan Decl. ¶ 7. Petitioner's interim parole is valid for one year, expiring on June 10, 2026. *Id.*

On July 3, 2025, Petitioner filed an appeal with the Board of Immigration Appeals ("BIA") challenging the dismissal of his 1229a proceedings. Garousi Decl., Ex. 1. Petitioner contends the IJ made multiple errors of law, including depriving Petitioner of due process by dismissing the proceedings when thereafter ICE sought to place Petitioner in expedited removal. *Id.* at 7–8. Petitioner also alleges the IJ erred by allowing ICE to place Petitioner in expedited removal proceedings. *Id.*

Because Petitioner subsequently appealed the dismissal of his 1229a proceedings, the dismissal is not a final order. *See id.*; *see also* 8 C.F.R. § 1003.39. ERO has agreed to "not detain Petitioner through the adjudication of his BIA appeal, absent criminal activity, failure to comply with release requirements set by ERO, or a change in Petitioner's pending case with the BIA." Chan Decl. ¶ 8.

ARGUMENT

I. This Court lacks jurisdiction because Petitioner has been released from detention.

The Supreme Court explained that a prisoner's claim is at the core of a habeas corpus challenge if it: (1) "goes directly to the constitutionality of his physical confinement itself" and (2) "seeks either immediate release from that confinement or the shortening of its duration." *Preiser v. Rodriguez*, 411 U.S. 475, 489 (1973). Following *Preiser*, the Ninth Circuit adheres "to the principle that the core of habeas is reserved for claims that seek release from confinement." *Pinson v. Carvajal*, 69 F.4th 1059, 1072 (9th Cir. 2023), *cert. denied sub nom. Sands v. Bradley*, 144 S. Ct. 1382 (2024).

Moreover, habeas corpus jurisdiction is limited to petitions from persons who are "in custody in violation of the Constitution and laws of the United States." 28 U.S.C. § 2241(c). The "in custody" requirement is jurisdictional. *Wilson v. Belleque*, 554 F.3d 816, 821 (9th Cir. 2009). "For a habeas petition to continue to present a live controversy after the petitioner's release or deportation, . . . there must be some remaining 'collateral consequence' that may be redressed by success on the petition." *Abdala v. INS*, 488 F.3d 1061, 1064 (9th Cir. 2007).

Here, Petitioner was released from custody and issued parole valid for one year. Chan Decl. ¶ 7. Furthermore, ERO has agreed to not detain Petitioner until the resolution of his BIA appeal absent a change in circumstances. *Id.* ¶ 8. Petitioner's challenge to detention is moot because he has been released from that

detention—the only relief that can be provided through his habeas petition. *See Pinson*, 69 F.4th at 1072.

While it is unclear whether the doctrine of voluntary cessation applies to habeas cases, *see Picrin-Peron v. Rison*, 930 F.2d 773, 776 (9th Cir. 1991), even if it does apply, this case does not fall within this mootness exception. When conduct is ceased voluntarily, the party claiming mootness must demonstrate "it is absolutely clear the allegedly wrongful behavior could not reasonably be expected to recur." *Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 190 (2000). Though demonstrating voluntary compliance sufficient to moot a case is a "formidable burden[,]" *id.*, assurances under oath to not repeat the immediately complained of conduct are sufficient to meet that burden, *see Picrin-Peron*, 930 F.2d at 776 (finding government's declaration assuring "[a]bsent [petitioner's] reinvolvement with the criminal justice system, a change in the Cuban government enabling him to return to Cuba, or the willingness of a third country to accept him, [petitioner] will be paroled for another year" was sufficient to show voluntary cessation exception did not apply).

As demonstrated by the Chan Declaration, ERO has specifically provided under oath that Petitioner would not be detained pending the resolution of his BIA appeal absent a change of circumstances. Chan Decl. ¶ 8. The assurances from ERO here are on all fours with those in *Picrin-Peron*. Continued intervention from the Court at this time is unnecessary given ICE's assurances and Petitioner's pursuit of an appeal before the BIA.

Furthermore, the outcome of Petitioner's appeal affects whether the complained of behavior is reasonably likely to occur. *Doe No. 1 v. Reed*, 697 F.3d 1235 (9th Cir. 2012) ("A moot case cannot be revived by alleged future harm that is 'so remote and speculative that there is no tangible prejudice to the *existing interests* of the parties.'" (emphasis in original)). Adjudicating the merits of the petition before a decision from the BIA, which could take over a year, *e.g.*, *Doe v. Decker*, No. 21 Civ. 5257, 2021 WL 5112624, *3 (S.D.N.Y. Nov. 3, 2021) (citing the Executive Office for Immigration Review's statistic that appealed immigration cases last 382 days on average),[3] would be premature because the BIA could remand Petitioner's case to the IJ for the continuation of 1229a proceedings. The outcome of the BIA appeal affects what detention authority Petitioner could be subjected to. If Petitioner wishes to challenge any future assertion of detention authority, Petitioner must file a habeas petition based on those specific facts. *See McFalls v. Vilsack*, No. 3:16-cv-2116-SI, 2022 WL 1488451, at *3 (D. Or. May 11, 2022) ("The burden of filing a new complaint on a new set of facts, however, does not create a live controversy in this case."). Given ICE's assurance not to detain Petitioner during the pendency of his appeal and the speculative nature of potential future harm, the Court should deny the Petition because it is moot.

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[3] As of April 4, 2025, 160,098 appeals were pending with the BIA, and the BIA had adjudicated 16,913 appeals. *See* EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, *All Appeals Filed, Completed, and Pending* (Apr. 4, 2025), https://www.justice.gov/eoir/media/1344986/dl?inline.

II. Even if the Court finds the Petition is not moot or a mootness exception applies, the Court should dismiss the Petition for failure to exhaust administrative remedies.

Although exhaustion of administrative remedies is not a jurisdictional prerequisite for habeas petitions, courts generally "require, as a prudential matter, that habeas petitioners exhaust available judicial and administrative remedies before seeking [such] relief[.]" *Castro-Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001), *abrogated on other grounds by Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006). "Courts may require prudential exhaustion if (1) agency expertise makes agency consideration necessary to generate a proper record and reach a proper decision; (2) relaxation of the requirement would encourage the deliberate bypass of the administrative scheme; and (3) administrative review is likely to allow the agency to correct its own mistakes and to preclude the need for judicial review." *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007) (citation and internal quotation marks omitted).

"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). Exhaustion may only be excused where "administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void." *S.E.C. v. G.C. George Sec., Inc.*, 637 F.2d 685, 688 n.4 (9th Cir. 1981).

If Petitioner is permitted to evade the administrative process by proceeding with his Petition, it would "disrupt the agency's autonomy and result in unnecessary judicial review of unexhausted claims." *Resendiz v. Holder*, No. C 12-4850, 2012 WL 5451162, at *5 (N.D. Cal. Nov. 7, 2012); *see also Leonardo*, 646 F.3d at 1161 ("[The petitioner] should have exhausted administrative remedies by appealing to the BIA before asking the federal district court to review the IJ's decision . . . Once the BIA rendered its decision, [the petitioner] could have properly pursued habeas relief in the district court[.]"); *Liu v. Waters*, 55 F.3d 421, 425 (9th Cir. 1995) (petitioner "cannot obtain review of procedural errors in the administrative process that were not raised before the agency merely by alleging that every such error violated due process"); *see also Sola v. Holder*, 720 F.3d 1134, 1136 (9th Cir. 2013) ("[c]hallenges to procedural errors correctable by the administrative tribunal, must be exhausted before we undertake review") (quoting *Sanchez-Cruz v. INS*, 255 F.3d 775, 780 (9th Cir. 2001)).

Importantly, Petitioner will not be detained absent a change in circumstance while his BIA appeal resolves, thus irreparable injury is unlikely to occur. Considering Petitioner will remain out of custody during the pendency of his administrative appeal, the Court should require Petitioner to exhaust his administrative remedies before proceeding on a habeas petition.

CONCLUSION

Respondents respectfully request the Court dismiss the Petition for Writ of Habeas Corpus.

Respectfully submitted this 29th day of July, 2025.

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/s/ Ariana N. Garousi
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