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**IN THE UNITED STATES DISTRICT COURT**

**FOR THE DISTRICT OF ARIZONA**

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| Jesus Maria Rodriguez-Delgado,<br><br>Petitioner,<br><br>v.<br><br>Kristi Noem, et al.,<br><br>Respondents. | No. 2:25-cv-02241-PHX-SPL (CDB)<br><br>**RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS** |

Respondents, by the through undersigned counsel, respond in opposition to the Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2241 and Title 28 U.S.C. § 1983 (The Bivens Act), and Other Relief (Emergency – Noncitizen Detained for Removal from US)" (Doc. 1). Because Petitioner's immigration proceedings have been reopened, his claims challenging termination of his INA § 240 removal proceedings under section 240 of the Immigration and Nationality Act ("INA") and initiation of INA § 235 expedited removal proceedings are moot. Additionally, as an arriving alien, Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2), but even if he was not, his detention is not prolonged. Finally, Petitioner cannot assert a *Bivens* claim in this habeas action, but even if he could, the Ninth Circuit has explicitly rejected *Bivens* claims arising in the immigration detention context.

## I. Factual Background.[1]

Petitioner is a native and citizen of Cuba. Doc. 1 at ¶ 1. He entered the United States "at or near El Paso, TX" on August 17, 2020. *Id.* On August 19, 2020, Petitioner was detained by DHS, issued a notice to appear under the Migrant Protection Protocol, and returned to Mexico. *Id.* at ¶ 2. On May 17, 2021, DHS granted Petitioner humanitarian parole under 8 U.S.C. § 1182(d)(5). *Id.* at ¶ 5. Petitioner's grant of humanitarian parole expired by its own terms on May 15, 2022. *Id.* at ¶¶ 7, 9. On January 28, 2025, Petitioner submitted a Form I-485 (Application to Register Permanent Resident or Adjust Status) and a Form I-765 (Application for Employment Authorization) to USCIS. *Id.* at ¶ 10. Petitioner's Form I-765 was approved on April 1, 2025. *Id.* at Ex. J. His Form I-485 is pending with USCIS. On May 30, 2025, the government moved to dismiss Petitioner's immigration proceedings, which the Court granted, *id.* at ¶ 16; *Id.* at Ex. J, but which have since been reopened, *see* Ex. A, Order of the Immigration Judge dated June 26, 2025. Petitioner was taken into DHS custody subject to expedited removal proceedings, and detained. Doc. 1. at ¶¶ 17, 19.

Petitioner filed this action in the Southern District of Florida on June 12, 2025. It was later transferred to this District. Petitioner seeks his immediate release from DHS custody, a declaratory judgment that expedited removal proceedings are not applicable to him, an order enjoining DHS from "applying expedited removal proceedings against Petitioner, or, in any way physically removing [him] from the U.S.," an order requiring USCIS to continue processing his Form I-485, attorney's fees, and "any other relief" the "Court may identify." Doc. 1 at Prayer for Relief.

## II. Argument.

### A. Petitioner's claims related to expedited removal are moot.

Mootness is "the doctrine of standing set in a time frame: the requisite personal

[1] Facts taken from the Complaint are referenced only for expediency given the short response deadline allowed to Respondents. Any facts taken from Petitioner's pleadings are not admitted as true nor adopted by Respondents.

interest that must exist at the commencement of litigation (standing) must continue throughout its existence (mootness)." *United States Parole Comm'n v. Geraghty*, 445 U.S. 388, 397 (1980) (internal quotation marks omitted). "To qualify as a case fit for federal-court adjudication, 'an actual controversy must be extant at all stages of review, not merely at the time the complaint is filed.'" *Arizonans for Off. Eng. v. Arizona*, 520 U.S. 43, 67 (1997) (internal quotations and citations omitted.) "A case becomes moot . . . 'when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome.'" *Am. Diabetes Ass'n v. United States Dep't of the Army*, 938 F.3d 1147, 1152 (9th Cir. 2019) (internal quotations and citations omitted.) The Supreme Court cautions, "[p]ast exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief, however, if unaccompanied by any continuing, present adverse effects." *O'Shea v. Littleton*, 414 U.S. 488, 495-96 (1974). Another way of determining whether a "live controversy" exists is to assess the relief a court may grant: "A case becomes moot only when it is impossible for a court to grant 'any effectual relief whatever' to the prevailing party.'" *Knox v. Serv. Emps. Int'l Union, Loc. 1000*, 567 U.S. 298, 307 (2012) (internal quotations and citations omitted.) "[A]s long as the parties have a concrete interest, however small, in the outcome of the litigation, the case is not moot." *Ellis v. Bhd. Of Ry., Airline & S.S. Clerks, Freight Handlers, Exp. & Station Emps.*, 466 U.S. 435, 442 (1984).

On June 10, 2025, Petitioner moved to reopen his removal proceedings. The motion to reopen was granted by the immigration court on June 26, 2025. Petitioner's immigration case is pending in Miami before Immigration Judge Christine Reis. *See* Ex. A; Ex. B, EOIR Automated Case Information. Thus, insofar as the Petition challenges ICE's decision to terminate Petitioner's INA § 240 removal proceedings and proceed under INA § 235 for expedited removal or to remove him pursuant to an expedited removal order, those claims are moot because Petitioner's removal proceedings before the immigration court have been reopened and he has not been issued an expedited removal order. As such, the Court cannot grant Petitioner the relief that he seeks—that is, a declaratory judgment that he is not

subject to expedited removal proceedings or an order enjoining DHS from applying expedited removal proceedings against Petitioner.[2]

**B. Petitioner is subject to mandatory detention.**

Petitioner is subject to mandatory detention pursuant to 8 U.S.C. § 1225(b). Aliens who arrive in the United States and are paroled into but not "admitted" into the United States are "applicants for admission." 8 U.S.C. § 1225(a)(1). Applicants for admission are inspected by immigration officers. 8 U.S.C. § 1225(a)(1)(3). If the examining officer finds the alien "is not clearly and beyond a doubt entitled to be admitted, the alien *shall be detained* for a proceeding under [8 U.S.C.] section 1229a . . ." 8 U.S.C. § 1225(b)(2)(A) (emphasis added). However, there is a carve-out that authorizes temporary parole "for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A). Parole is not admission, and once its purpose is fulfilled the noncitizen "shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States." 8 U.S.C. § 1182(d)(5)(A). Parole under section 1182(d)(5)(A) terminates either upon written notice served to the noncitizen or automatically when the time for which it was authorized expires. 8 C.F.R. § 212.5(e)(1)-(2). Because Petitioner was an arriving alien in 2020 and subject to mandatory detention at that time, he is subject to mandatory detention now that his parole has expired. *See Jennings v. Rodriguez*, 583 U.S. 281, 300 (2018) ("[Excepting parole,] there are no *other* circumstances under which aliens detained under § 1225(b) may be released."); *id.* at 287-88 (describing the construction and meaning of 8 U.S.C. § 1225). Even if Petitioner were not subject to mandatory detention, his detention—which began on May 30, 2025, and has lasted just five weeks—is not prolonged.

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[2] If the Court determines that these claims are not moot by virtue of Petitioner's reopened removal proceedings, Respondents respectfully request an opportunity to address their authority to terminate proceedings under INA § 240 and institute proceedings under INA § 235 in a supplemental response.

**C. Petitioner's Bivens claims are not cognizable in habeas.**

The Petition purports to assert a claim under "Title 28 U.S.C. § 1983 (The Bivens Act)." *See* Doc. 1 at 1 and *passim*. To the extent Petitioner seeks to recover monetary damages for the purported violations of his constitutional rights pursuant to *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971), Plaintiff cannot bring a civil claim for monetary damages in a habeas action. *See Preiser v. Rodriguez*, 411 U.S. 475, 494 (1973) ("In the case of a damages claim, habeas corpus is not an appropriate or available federal remedy.").

Addressing the merits of the purported *Bivens* claim, Respondents note that there is no 28 U.S.C. § 1983. Presumably Petitioner intended to cite 42 U.S.C. § 1983, but § 1983 authorizes a private cause of action for "the deprivation of a right secured by the federal Constitution or statutory law" by "a person acting under color of *state* law." *Anderson v. Warner*, 451 F.3d 1063, 1067 (9th Cir. 2006) (emphasis added). Section 1983 does not waive the sovereign immunity of the United States or its agencies. *See, e.g., Jachetta v. United States*, 653 F.3d 898, 908 (9th Cir. 2011) ("We find no evidence in . . . [42 U.S.C. § 1983] that Congress intended to subject federal agencies to § 1983 . . . liability."); *Goh v. Dep't of Veterans Affs.*, No. 1:14-CV-00315 LJO, 2014 WL 5093279, at *4 (E.D. Cal. Oct. 9, 2014) ("[S]uits against the United States brought under the civil rights statutes, [including] 42 U.S.C. § . . . 1983 . . ., are barred by sovereign immunity.") (citation omitted).

In *Bivens*, the Supreme Court held that an action for money damages may be brought against federal agents acting under color of their authority for injuries caused by their unconstitutional conduct. 403 U.S. at 397. A proper *Bivens* claim, by definition, seeks damages for constitutional violations against a federal official in his individual, not official, capacity. *See, e.g., Morgan v. United States*, 323 F.3d 776, 780 n.3 (9th Cir. 2003); *Vaccaro v. Dobre*, 81 F.3d 854, 856 (9th Cir. 1996). "There is no such animal as a *Bivens* suit against a public official tortfeasor in his or her official capacity." *Solida v. McKelvey*, 820 F.3d 1090, 1094 (9th Cir. 2016) (quoting *Farmer v. Perrill*, 275 F.3d 958, 963 (10th Cir. 2001));

*see also Holloman v. Watt*, 708 F.2d 1399, 1401-02 (9th Cir. 1983) (per curiam) (holding that a *Bivens* claim may be maintained only against federal employees in their individual rather than official capacities). "An action against an officer, operating in his or her official capacity as a United States agent, operates as a claim against the United States." *Solida*, 820 F.3d at 1095. The Petition appears to assert claims against the Respondents only in their official capacities, but the United States has not waived its sovereign immunity for such claims.

Finally, even if the Petition did name the Respondents in their individual capacities, the Ninth Circuit has specifically declined to extend *Bivens* to permit immigration detainees to sue federal agents for wrongful detention pending removal. *See Mirmehdi v. United States*, 689 F.3d 975, 983 (9th Cir. 2012) (analyzing factors counseling against extending *Bivens* and holding that "[a]ccordingly, we decline to extend *Bivens* to allow the Mirmehdis to sue federal agents for wrongful detention pending deportation given the extensive remedial procedures available to and invoked by them and the unique foreign policy considerations implicated in the immigration context."); *see also Alvarez v. United States Immigr. and Customs Enf't*, 818 F.3d 1194, 1208 (11th Cir. 2019) (same). And, depending on the precise nature of Petitioner's purported *Bivens* claim, which is not well-pled, the Court likely lacks jurisdiction to review the claim pursuant to the jurisdiction pursuant to 8 U.S.C. § 1252(g), which provides:

> Except as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien *arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders* against any alien under this chapter.

*Id.* (emphasis added).

**III. Conclusion.**

In light of the foregoing, Respondents request that the Petition for Writ of Habeas Corpus be denied.

Respectfully submitted this 7th day of July, 2025.

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