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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 HABIBULLAH MIRZAIE,
12
13 Petitioner,
14
15 v.
16 CHRISTOPHER J. LAROSE, et al.,
17
18 Respondents.

Case No.: 25-cv-02568-JO-KSC

**RESPONDENTS’
SUPPLEMENTAL BRIEFING**

**Judge: Hon. Jinsook Ohta
Hearing Date: January 15, 2025
Time: 9:30 a.m.
Courtroom: 4C**

NO ORAL ARGUMENT REQUESTED

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21 **I. Introduction**

22 Pursuant to this Court’s Order requiring supplemental briefing, Respondents
23 address reinstatement of humanitarian parole and Petitioner’s “affirmative” asylum
24 application. While this Court may, and has, ordered Petitioner’s release, the District
25 Court’s jurisdiction does not extend to ordering the Department of Homeland Security
26 (DHS) to grant a noncitizen humanitarian parole or prescribing the adjudication of an
27 asylum application. *See* 8 U.S.C. § 1252(g) and 8 U.S.C. § 1252(b)(9).
28

II. Factual Background

Petitioner is a citizen and national of Afghanistan. On March 20, 2024, Petitioner arrived at the San Ysidro Port of Entry and applied for admission to the United States. ECF 7-1. He was determined to be an arriving alien applying for admission and inadmissible under 8 U.S.C. § 1182(a)(7)(i)(I), as an immigrant not in possession of a valid entry document. He was then placed in removal proceedings under 8 U.S.C. § 1229a and issued a Notice to Appear. Petitioner was then released from DHS custody on parole. *Id.* In September 2024, those removal proceedings were terminated without prejudice. ECF 1 at ¶ 4; ECF 7-2.

On September 18, 2025, Petitioner was apprehended by DHS at Camp Pendleton Marine Base and placed into ICE custody. ECF 7-3; 7-4. Petitioner was determined to be an arriving alien applying for admission and inadmissible under 8 U.S.C. § 1182(a)(7)(i)(I), as an immigrant not in possession of a valid entry document. On September 28, 2025, DHS initiated new removal proceedings under 8 U.S.C. § 1229a and issued a Notice to Appear. ECF 7-5. Petitioner was released from Immigration and Customs Enforcement (ICE) detention on October 10, 2025. Petitioner's removal proceedings under § 1229a are ongoing and Petitioner has an active asylum case pending before an IJ.

III. Argument

A. Mootness

“Mootness is a threshold jurisdictional issue.” *S. Pac. Transp. Co. v. Pub. Util. Comm'n of State of Or.*, 9 F.3d 807, 810 (9th Cir. 1993). The doctrine of mootness ensures a federal court presides only over those actions that present “a case or controversy under Article III, § 2 of the Constitution.” *Spencer v. Kemna*, 523 U.S. 1, 7, 118 S. Ct. 978, 140 L.Ed.2d 43 (1998). An action is moot when a litigant no longer has “a personal stake in the outcome of the suit throughout ‘all stages of federal judicial proceedings.’ ” *Abdala v. I.N.S.*, 488 F.3d 1061, 1063 (9th Cir. 2007) (quoting *United States v. Verdin*, 243 F.3d 1174, 1177 (9th Cir. 2001)). If an event occurs “that prevents

1 the court from granting effective relief, the claim is moot and must be dismissed.” *Am.*
2 *Rivers v. Nat’l Marine Fisheries Serv.*, 126 F.3d 1118, 1123 (9th Cir. 1997).

3 An individual may seek habeas relief under 28 U.S.C. § 2241 if he is “in custody”
4 under federal authority “in violation of the Constitution or laws or treaties of the United
5 States.” 28 U.S.C. § 2241(c). Habeas relief is available to challenge only the legality or
6 duration of confinement. *Pinson v. Carvajal*, 69 F.4th 1059, 1067 (9th Cir. 2023);
7 *Crawford v. Bell*, 599 F.2d 890, 891 (9th Cir. 1979); *Dep’t of Homeland Security v.*
8 *Thraissigiam*, 591 U.S. 103, 117 (2020) (The writ of habeas corpus historically
9 “provide[s] a means of contesting the lawfulness of restraint and securing release.”).
10 “[O]ur review of the history and purpose of habeas leads us to conclude the relevant
11 question is whether, based on the allegations in the petition, release is *legally required*
12 irrespective of the relief requested.” *Pinson*, 69 F.4th at 1072 (emphasis in original);
13 *see also Nettles v. Grounds*, 830 F.3d 922, 934 (9th Cir. 2016) (The key inquiry is
14 whether success on the petitioner’s claim would “necessarily lead to immediate or
15 speedier release.”).

16 The sole relief sought by the Petition filed in this matter was Petitioner’s release
17 from detention. *See* ECF No. 1 “Prayer for Relief.” Petitioner achieved his aim—and
18 was released from detention on October 10, 2025. To the extent that Petitioner brought
19 claims that do not arise under § 2241, which he did not, this Petition should be dismissed
20 as those collateral issues are not within the scope of this habeas case. Petitioner has an
21 active asylum case pending before an immigration judge. Any additional order from
22 this Court at this juncture would be superfluous. Because there are no remaining claims
23 to be ruled upon, dismissal is appropriate.

24 **B. Petitioner’s humanitarian parole and asylum status is not reasonably related**
25 **to the question of Petitioner’s detention, and relief is thus barred by 8 U.S.C.**
26 **§ 1252.**

27 Petitioner bears the burden of establishing that this Court has subject matter
28 jurisdiction over his claims. *See Ass’n of Am. Med. Coll. v. United States*, 217 F.3d 770,

1 778-79 (9th Cir. 2000); *Finley v. United States*, 490 U.S. 545, 547-48 (1989).
2 Petitioner’s claims are barred under 8 U.S.C. § 1252(g) and 8 U.S.C. § 1252(b)(9).

3 Courts lack jurisdiction to review a decision to commence or adjudicate removal
4 proceedings or execute removal orders. *See* 8 U.S.C. § 1252(g) (“[N]o court shall have
5 jurisdiction to hear any cause or claim by or on behalf of any alien arising from the
6 decision or action by the Attorney General to commence proceedings, adjudicate cases,
7 or execute removal orders.”); *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S.
8 471, 483 (1999) (“There was good reason for Congress to focus special attention upon,
9 and make special provision for, judicial review of the Attorney General’s discrete acts
10 of “commenc[ing] proceedings, adjudicat[ing] cases, [and] execut[ing] removal
11 orders”—which represent the initiation or prosecution of various stages in the
12 deportation process.”). § 1252(g) removes district court jurisdiction over “three discrete
13 actions that the Attorney may take: [his] ‘decision or action’ to ‘commence proceedings,
14 adjudicate cases, or execute removal orders.’” *Reno*, 525 U.S. at 482 (emphasis
15 removed).

16 DHS’s decision to revoke Mr. Mirzaie’s parole status and commence removal
17 proceedings are squarely within the sole discretion of the Attorney General. Congress
18 has explicitly foreclosed district court jurisdiction over (“ . . . the decision or action by
19 the Attorney General to commence proceedings [and] adjudicate cases”). 8 U.S.C. §
20 1252(g). Under 8 U.S.C. § 1252(b)(9), “[j]udicial review of all questions of law and
21 fact . . . arising from any action taken or proceeding brought to remove an alien from
22 the United States under this subchapter shall be available only in judicial review of a
23 final order under this section.” Further, judicial review of a final order is available only
24 through “a petition for review filed with an appropriate court of appeals.” 8 U.S.C.
25 § 1252(a)(5).

26 “[A] court should first identify what legal (or factual) question the plaintiff raises
27 and then determine whether that question ‘arises from’ an action taken to remove an
28 alien or removal proceedings.” *Cancino-Castellar v. Nielsen*, 338 F. Supp. 3d 1107,

1 1115 (S.D. Cal. 2018) (citing *Jennings v. Rodriguez*, 583 U.S. 281, 840 (2018)). Where
2 the relief sought “is the premise of removal proceedings—assessing whether an
3 individual is removable from the United States and the government's evidence on that
4 issue,” the Court should find that it lacks jurisdiction pursuant to Section 1252(b)(9).
5 *Id.*; *Botezatu v. INS*, 195 F.3d 311 (7th Cir.1999) (no jurisdiction over challenge to a
6 refusal to grant humanitarian parole instead of enforcing removal order). “Immigration
7 judges shall have exclusive jurisdiction over asylum applications filed by an alien who
8 has been served a . . . Notice to Appear.” 8 C.F.R. § 208.2(b). Removal proceedings
9 commence by the filing of a notice to appear in immigration court. *See Jimenez-Angeles*
10 *v. Ashcroft*, 291 F.3d 594, 600 (9th Cir. 2002). Meaning the filing of the Notice to
11 Appear, which commenced removal proceedings against Petitioner, gave the
12 immigration court exclusive jurisdiction over his asylum application.

13 While Petitioner was previously released from custody on parole, discretionary
14 decisions are not subject to judicial review. *See* 8 CFR § 212.5(e)(2)(i) (“When a
15 charging document is served on the alien, the charging document will constitute written
16 notice of termination of parole”); 8 U.S.C. § 1226(e) (“No court may set aside any
17 action or decision by the Attorney General under this section regarding the detention or
18 any alien or the revocation or denial of bond or parole.”); *Jennings*, 583 at 295 (“As we
19 have previously explained, § 1226(e) precludes an alien from ‘challeng[ing] a
20 “discretionary judgment” by the Attorney General or a “decision” that the Attorney
21 General has made regarding his detention or release.’”).

22 DHS retains discretion to revoke parole for noncitizens, and there is no statutory
23 or constitutional mechanism by which this Court may compel DHS to grant
24 humanitarian parole. Although, in the context of a detained petitioner, a court may
25 conclude that parole revocation must be supported by an individualized determination
26 (*see, e.g., Noori v. Larose et al.*, 25-cv-1824, 2025 WL 2800149, at *7–8 (S.D. Cal.
27 Oct. 1, 2025)), courts have consistently declined to go so far as ordering to actually *grant*
28 humanitarian parole to a noncitizen. This Court lacks jurisdiction to intrude upon the

1 Attorney General’s authority to revoke its parole decision, initiate removal proceedings,
2 or adjudicate Mr. Mirzaie’s asylum application as it stands.

3 **IV. CONCLUSION**

4 For the foregoing reasons, Respondents respectfully request that the Court
5 dismiss this action.

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7 DATED: December 15, 2025

Respectfully submitted,

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11 Attorney for Respondents
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