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19 UNITED STATES DISTRICT COURT
20
21 FOR THE CENTRAL DISTRICT OF CALIFORNIA

22 R.S.,

23 No. 5:25-cv-02594-MWC-SK

24 Petitioner,

25 **FEDERAL RESPONDENTS'**
26 **OPPOSITION TO PETITIONER'S**
27 **MOTION FOR PRELIMINARY**
28 **INJUNCTION; SUGGESTION OF**
29 **MOOTNESS**

30 v.

31 ERNESTO SANTACRUZ JR., et al.,

32 Respondents.

33 Honorable Michelle Williams Court

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1 **I. INTRODUCTION**

2 On October 3, 2025, the Court issued an order (Dkt. 7) stating that Respondents
3 are required to provide Petitioner with an individualized bond hearing before an
4 Immigration Judge (“IJ”) pursuant to 8 U.S.C. § 1226(a) within seven days. In
5 compliance with the Court’s order, Petitioner’s bond hearing took place on October 9,
6 2025; bond was denied as the IJ found that Respondent did not meet his burden in
7 demonstrating he is not a flight risk. Respondents’ counsel is informed that Petitioner
8 reserved his right to appeal the bond decision. Respondents’ counsel will supplement
9 this Opposition with the written bond decision as soon as counsel receives it.

10 Providing Petitioner with the 1226(a) bond hearing moots the requested
11 preliminary injunction and this habeas petition more generally. *See, e.g., Javier Gonzales*
12 *et al. v. Kristi Noem et al.*, 5:25-cv-02054-ODW-BFM, Dkt. no. 16 (August 25, 2025
13 minute order by Hon. Judge Wright, denying as moot the petitioners’ pending request for
14 a preliminary injunction given their receipt pursuant to a TRO of 1226(a) bond hearings
15 and issuing the petitioners an order to show cause re: dismissal); Dkt. no. 17 (notice of
16 voluntary dismissal); and Dkt. no. 18 (order dismissing petition); *Moises Salomon*
17 *Zaragoza Mosqueda v. Kristi Noem et al.*, 5:25-cv-002304-CAS-BFM, Dkt. no. 15
18 (September 17, 2025 minute order by Hon. Judge Snyder, denying preliminary
19 injunction and issuing OSC re dismissal for mootness given the petitioners’ receipt of
20 immigration bond hearings); and Dkt. no. 16 (notice of voluntary dismissal).

21 To the extent Petitioner disagrees with the outcome of his bond hearing, this Court
22 has no jurisdiction to undo the IJ’s bond determination; Petitioner may appeal his bond
23 determination to the Board of Immigration Appeals. In his Motion for Preliminary
24 Injunction, Petitioner provides no facts beyond what the Court already considered in his
25 Ex Parte Application for Temporary Restraining Order that warrant his immediate
26 release.

27 Accordingly, Respondents respectfully request that Petitioner voluntarily dismiss
28 this action, or that the Court issue an order to show cause re: dismissal.

1 **II. LEGAL FRAMEWORK**

2 ICE/ERO has the discretion to detain certain non-citizens “pending a decision on
3 whether the [non-citizen] is to be removed from the United States.” 8 U.S.C. § 1226(a);
4 *see* 8 U.S.C. § 1226(c). Provided the non-citizen does not fall under the § 1226(c)
5 mandatory detention provisions, ICE/ERO may either “continue to detain the” non-
6 citizen or “release the [non-citizen] on” bond or conditional parole. 8 U.S.C. §
7 1226(a)(1)-(2).

8 When a non-citizen is taken into ICE/ERO custody pursuant to 8 U.S.C. §
9 1226(a), ICE/ERO makes an initial custody determination, including consideration of a
10 bond. *See* 8 C.F.R. §§ 236.1(c)(8), 236.1(d). ICE/ERO may “in [its] discretion, release
11 an alien. . . provided that the alien must demonstrate to the satisfaction of the officer that
12 such release would not pose a danger to property or persons, and that the alien is likely
13 to appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8). The ability to pay a cash
14 bond is one factor among many that ICE/ERO may consider in making the initial
15 custody determination. 8 C.F.R. § 236.1. The regulations further provide ICE/ERO with
16 discretion to set a bond amount and/or prescribe other conditions for release. 8 U.S.C. §
17 1226(a); *see also* 8 C.F.R. §§ 236.1(c)(8), (d)(1). ICE/ERO makes these determinations
18 based on the likelihood a non-citizen may abscond and whether the non-citizen poses a
19 danger to property or persons. 8 C.F.R. § 236.1(c)(8).

20 A non-citizen may seek review of ICE/ERO’s initial custody determination before
21 an IJ, commonly referred to as a “bond hearing.” 8 C.F.R. § 236.1(d)(1); 8 C.F.R. §
22 1003.19. Upon a non-citizen’s “[a]pplication to an immigration judge” to “request
23 amelioration of the conditions under which he or she may be released[,]” the IJ may
24 decide “to detain the [non-citizen] in custody, release the [non-citizen], and determine
25 the amount of bond, if any, under which the [non-citizen] may be released[.]” 8 C.F.R. §
26 236.1(d)(1). To seek such review, the non-citizen must submit a request to the IJ either
27 orally or in writing. 8 C.F.R. § 1003.19(b). In a bond hearing, the burden is on the non-
28 citizen to establish to the satisfaction of the IJ, that he or she is not “a threat to national

1 security, a danger to the community at large, likely to abscond, or otherwise a poor bail
2 risk.” *In re Guerra*, 24 I. & N. Dec. 37, 40 (B.I.A. 2006). Non-citizens may present
3 evidence in support of their request for a bond determination. *See* 8 C.F.R. § 1003.19(d)
4 (“The determination of the Immigration Judge as to custody status or bond may be based
5 upon any information that is available to the Immigration Judge or that is presented to
6 him or her by the [non-citizen] or the Service.”).

7 IJs have broad discretion in deciding whether to release a non-citizen on bond.
8 *Guerra*, 24 I. & N. Dec. at 39. They can consider multiple discretionary factors,
9 including any information that the IJ may deem to be relevant. *Id.* at 40. These
10 nonexclusive factors include:

11 (1) whether the [non-citizen] has a fixed address in the United States;
12 (2) the [noncitizen’s] length of residence in the United States; (3) the
13 [non-citizen’s] family ties in the United States, and whether they may
14 entitle the [non-citizen] to reside permanently in the United States in
15 the future; (4) the [non-citizen’s] employment history; (5) the [non-
16 citizen’s] record of appearance in court; (6) the [non-citizen’s]
17 criminal record, including the extensiveness of criminal activity, the
18 recency of such activity, and the seriousness of the offenses; (7) the
19 [non-citizen’s] history of immigration violations; (8) any attempts by
20 the [non-citizen] to flee prosecution or otherwise escape authorities;
21 and (9) the [non-citizen’s] manner of entry to the United States.

22 *Id.* In considering these or other relevant factors, IJs “may choose to give greater weight
23 to one factor over others, as long as the decision is reasonable.” *Id.* Further, the INA in
24 no way “limit[s] the discretionary factors that may be considered” in bond
25 determinations. *Id.*; *see also* 8 C.F.R. § 1003.19(d) (“The determination of the
Immigration Judge as to custody status or bond may be based upon any information that
is available to the Immigration Judge or that is presented to him or her by the [non-
citizen] or [ICE].”).

26 After an initial bond hearing, a non-citizen may request subsequent bond hearings
27 by showing that his or her “circumstances have materially changed since the prior bond”
28 hearing. *See* 8 C.F.R. § 1003.19(e). Non-citizens can then seek administrative review of

1 the IJ's bond decision from the BIA by filing an appeal of the IJ's order within 30 days.
2 See 8 C.F.R. § 236.1(d)(3) ("An appeal relating to bond and custody determinations may
3 be filed to the Board of Immigration Appeals[.]"); 8 C.F.R. §§ 1003.1(b)(7), 1003.19(f),
4 1003.38. The Secretary's "discretionary judgment" regarding "the detention or release of
5 any [noncitizen] or the grant, revocation, or denial of bond or parole[.]" is not subject to
6 judicial review. 8 U.S.C. § 1226(e). The bond decision does not statutorily have to be
7 revisited at any point in the removal process and the length of detention does not have to
8 be considered in the bond decision. *Jennings v. Rodriguez*, 583 U.S. 281, 304-07 (2018).

9 **III. ARGUMENT**

10 **A. There Is No Jurisdiction to Contest the IJ's Bond Decision**

11 8 U.S.C. § 1226(e) provides that bond decisions "shall not be subject to judicial
12 review" and that "[n]o court may set aside any action or decision . . . regarding the
13 detention or release of any alien or the grant, revocation, or denial of bond[.]". As the
14 Supreme Court has recognized, "§ 1226(e) precludes an alien from challenging a
15 discretionary judgment by the Attorney General or a decision that the Attorney General
16 has made regarding his detention or release." *Jennings*, 583 U.S. at 295 (internal
17 quotations, alterations, and citations omitted). Similarly, because section 1226(e)
18 commits bond determinations to agency discretion by statute, the Court also lacks
19 jurisdiction pursuant to 8 U.S.C. § 1252(a)(2)(B)(ii). See *Kucana v. Holder*,
20 558 U.S. 233, 241-52 (2009); *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1212-13 (9th
21 Cir. 2022) (noting that court lacked jurisdiction to entertain disagreement with merits of
22 IJ's bond decision and that disagreement with outcome of bond proceedings does not
23 demonstrate procedural due process violation). Thus, Petitioner's Motion for Preliminary
24 Injunction should be denied because the Court lacks jurisdiction to review his custody
25 determination and bond orders under both section 1226(e) and section 1252(a)(2)(B)(ii).

26 To the extent Petitioner may claim the procedures used at his bond hearing violate
27 due process, the IJ applied the applicable procedures set forth by 8 U.S.C. § 1226(a), 8
28 C.F.R. § 236.1, and 8 C.F.R. § 1003.19. Those procedures comply with procedural due

1 process even under the three-factor test set forth in *Mathews v. Eldridge*, 424 U.S. 319
2 (1976). *See Rodriguez Diaz* 53 F.4th at 1203-14.¹

3 **B. Petitioner Adds No New Allegations to his TRO Application Justifying
4 Immediate Release**

5 This Court has already determined that, based on the information Petitioner
6 supplied in his Ex Parte Application for Temporary Restraining Order, that Petitioner has
7 failed to make the requisite showing of likelihood of success on the merits to warrant
8 immediate release. Dkt. 7 at 8-9. The Motion for Preliminary Injunction adds no new
9 facts justifying immediate release. The Court's order that Petitioner receive a bond
10 hearing is narrowly tailored injunctive relief sufficient to address Petitioner's claimed
11 due process violation. Respondents have already complied with this order.

12 **IV. CONCLUSION**

13 For these reasons, Federal Respondents respectfully request that the Court deny
14 the Motion for Preliminary Injunction and issue an order to show cause for why this
15 habeas petition should not be dismissed.

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27 ¹ Respondents' counsel is informed that Petitioner's counsel intends to file
28 supplemental briefing concerning Petitioner's disagreement with the outcome of his
bond hearing. Respondents reserve the right to respond to this supplemental briefing
after it is filed.

1 Dated: October 14, 2025

Respectfully submitted,

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14 **CERTIFICATE OF COMPLIANCE WITH L.R. 11-6.2**

15 The undersigned, counsel of record for Federal Respondents, certifies that this
16 brief contains 1,627 words, which complies with the word limit of L.R. 11-6.1
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