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10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 M.M.,

13 Petitioner,

14 v.

15 CHRISTOPHER J. LAROSE, Warden,
16 Otay Mesa Detention Center; et al.,

17 Respondents.

Case No.: 26-cv-02346-BJC-BJW

**RETURN TO PETITION FOR
WRIT OF HABEAS PETITION**

28

1 **I. Introduction**

2 Petitioner has prematurely filed a habeas petition under 28 U.S.C. § 2241.
3 Petitioner is currently in removal proceedings under 8 U.S.C. § 1229a and is charged
4 with deportability/removability under 8 U.S.C. § 1227(a)(1)(B), as an individual who
5 was admitted to the United States but remained for a time longer than permitted by law
6 (i.e., a visa overstay). As such, Petitioner is detained pursuant to 8 U.S.C. § 1226(a).
7 Petitioner is entitled to a bond hearing before an immigration judge pursuant to 8 U.S.C.
8 § 1226(a), but Petitioner has not requested one. Based on the arguments set forth below,
9 the Court should deny Petitioner's requests for relief and dismiss the petition.

10 **II. Factual Background**

11 Petitioner is a native and national of Afghanistan. *See* Exhibit 1.¹ On September
12 30, 2022, he was admitted into the United States on a nonimmigrant visa. *See id.*
13 Petitioner's visa status expired on June 1, 2024. *Id.* On May 17, 2023, Petitioner filed
14 an Application for Asylum and Withholding of Removal. *Id.* Several months later,
15 Respondents approved Petitioner's Application for Employment Authorization. *Id.* On
16 April 10, 2026, Petitioner was apprehended by San Diego Immigration and Customs
17 Enforcement (ICE)/Enforcement and Removal Operations (ERO) in Oceanside. *See id.*
18 Department of Homeland Security (DHS) determined that Petitioner is
19 deportable/removable under 8 U.S.C. § 1227(a)(1)(B), as an individual who was
20 admitted to the United States and has remained for a time longer than permitted by law
21 (i.e., a visa overstay). *See* Exhibit 2. Based on that charge, he was issued a Notice to
22 Appear (NTA) and placed in removal proceedings under 8 U.S.C. § 1229a. *See id.*
23 Petitioner's asylum application remains pending. *See* Exhibit 1.

24 Petitioner is currently detained at the Otay Mesa Detention Center under 8 U.S.C.
25 § 1226(a). *See* Exhibit 2. As of this filing, Petitioner has not requested a bond hearing
26 from the detention facility.

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28 ¹ The attached exhibits are true copies, with redactions of private information, of documents obtained from ICE counsel.

1 **III. Argument**

2 **A. Petitioner is Lawfully Detained Under 8 U.S.C. § 1226(a)**

3 Petitioner’s due process claims are premature and without merit. Section 1226
4 provides for arrest and detention “pending a decision on whether the alien is to be
5 removed from the United States.” 8 U.S.C. § 1226(a). Under § 1226(a), the government
6 may detain an alien during his removal proceedings, release him on bond, or release
7 him on conditional parole. By regulation, immigration officers can release aliens upon
8 the alien demonstrating that he “would not pose a danger to property or persons” and
9 “is likely to appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8). An alien can also
10 request a custody redetermination (i.e., a bond hearing) by an immigration judge at any
11 time before a final order of removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§
12 236.1(d)(1), 1236.1(d)(1), 1003.19.

13 As set forth above, Petitioner was apprehended on April 10, 2026, and detained
14 pursuant to 8 U.S.C. § 1226(a). DHS determined that Petitioner is deportable/removable
15 under 8 U.S.C. § 1227(a)(1)(B), as an individual who was admitted to the United States
16 but remained for a time longer than permitted by law (i.e., a visa overstay). Based on
17 that charge, he was issued a Notice to Appear (NTA) and placed in removal proceedings
18 under 8 U.S.C. § 1229a. Petitioner is detained pursuant to 8 U.S.C. § 1226(a).
19 Accordingly, Petitioner is entitled to a bond hearing before an immigration judge, which
20 he has yet to request and adjudicate on the merits.

21 **B. Administrative Remedies Should Be Exhausted**

22 Petitioner’s request for habeas relief is not ripe for review. The Court should
23 ensure Petitioner properly exhausts administrative remedies prior to seeking judicial
24 action. The Ninth Circuit requires that “habeas petitioners exhaust available judicial and
25 administrative remedies before seeking relief under § 2241.” *Castro–Cortez v. INS*, 239
26 F.3d 1037, 1047 (9th Cir. 2001). “When a petitioner does not exhaust administrative
27 remedies, a district court ordinarily should either dismiss the petition without prejudice
28 or stay the proceedings until the petitioner has exhausted remedies, unless exhaustion

1 is excused.” *Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011); *see also*
2 *Alvarado v. Holder*, 759 F.3d 1121, 1127 n.5 (9th Cir. 2014) (issue exhaustion is a
3 jurisdictional requirement); *Tijani v. Holder*, 628 F.3d 1071, 1080 (9th Cir. 2010) (no
4 jurisdiction to review legal claims not presented in the petitioner’s administrative
5 proceedings before the BIA). Here, Petitioner is eligible to have a bond hearing before
6 an immigration judge, pursuant to 8 U.S.C. § 1226(a). As previously stated, Petitioner
7 has not requested to have a bond hearing even though the Respondents concede he is
8 entitled to one, upon a request made to the detention facility. Accordingly, the Court
9 should dismiss without prejudice or stay these proceedings until a bond hearing is
10 conducted and concluded.

11 **C. Administrative Procedure Claims Are Without Merit**

12 The Administrative Procedure Act (APA) does not provide an avenue for relief
13 in this case. The APA places limits on when agency action is subject to judicial review.
14 “Agency action made reviewable by statute and final agency action for which there is
15 no other adequate remedy in a court are subject to judicial review.” 5 U.S.C. § 704;
16 *Navajo Nation v. Dep’t of the Interior*, 876 F.3d 1144, 1171 (9th Cir. 2017)
17 (“[Section] 704’s requirement that to proceed under the APA, agency action must be
18 final or otherwise reviewable by statute is an independent element without which courts
19 may not determine APA claims.”). Reviewable “agency action” is defined to include
20 “the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent
21 or denial thereof, or failure to act.” 5 U.S.C. § 551(13). “While this definition is
22 ‘expansive,’ federal courts ‘have long recognized that the term [agency action] is not so
23 all-encompassing as to authorize . . . judicial review over everything done by an
24 administrative agency.’” *Wild Fish Conservancy v. Jewell*, 730 F.3d 791, 800–01 (9th
25 Cir. 2013) (quoting *Fund for Animals, Inc. v. U.S. Bureau of Land Management*, 460
26 F.3d 13, 19 (D.C. Cir. 2006)). Here, Petitioner improperly raises APA claims to
27 challenge his detention. Petitioner is entitled to a bond hearing, but he has not requested
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1 one. There is no agency action for the Court to review. The Court should therefore reject
2 Petitioner's APA claims.

3 **IV. CONCLUSION**

4 For the foregoing reasons, Respondents respectfully request that the Court
5 dismiss this action without prejudice

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7 DATED: April 23, 2026

Respectfully submitted,

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9 United States Attorney

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