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9
10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 ELENA SAMOILOVA,

13 Petitioner,

14 v.

15 CHRISTOPHER J. LAROSE, et al.,

16 Respondents.
17

Case No.: 26-cv-03101-JO-VET

**RESPONDENTS' RETURN TO
HABEAS PETITION**

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1 **I. Introduction**

2 Petitioner has filed a second habeas petition under 28 U.S.C. § 2241. Petitioner
3 is currently in removal proceedings under 8 U.S.C. § 1229a and is charged with
4 deportability/removability under 8 U.S.C. § 1227(a)(1)(B), as an individual who was
5 admitted to the United States but remained for a time longer than permitted by law (i.e.,
6 a visa overstay). As such, Petitioner is detained pursuant to 8 U.S.C. § 1226(a). On
7 March 4, 2026, Petitioner was provided with a bond hearing before an immigration
8 judge (IJ) pursuant to 8 U.S.C. § 1226(a).¹ Petitioner was ultimately denied bond.
9 Based on the arguments set forth below, the Court should deny any requests for relief
10 and dismiss the petition.

11 **II. Factual Background²**

12 Petitioner is a native and citizen of Russia. *See* Exhibit 1 (Notice to Appear). On
13 May 2, 2022, she was admitted into the United States on a nonimmigrant visa. *See id.*
14 On February 19, 2026, Petitioner was apprehended by San Diego ICE/ERO. *See* Exhibit
15 2 (Form I-213). DHS determined that Petitioner is deportable/removable under 8 U.S.C.
16 § 1227(a)(1)(B), as a visa overstay. *See* Exhibit 1. Based on that charge, she was issued
17 a Notice to Appear (NTA) and placed in removal proceedings under 8 U.S.C. § 1229a.
18 *See id.* A bond hearing pursuant to 8 U.S.C. § 1226(a) was held for Petitioner on March
19 4, 2026, where bond was ultimately denied. *See* Exhibit 3 (IJ Order Denying Bond).
20 Although she had the right to appeal the IJ’s decision, Petitioner never appealed her
21 bond denial to the Board of Immigration Appeals (BIA). *See* Exhibit 4 (EOIR Courts
22 & Appeals System Printout).

23 On March 15, 2026, Petitioner filed her first petition for writ of habeas corpus,
24 arguing that Respondents had violated her rights to Due Process, violated 8 U.S.C. §
25 1231(a)(6), and violated the Administrative Procedure Act. *Samoilova v. LaRose et al.*,
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27 ¹ Petitioner is not subject to a final order of removal. *See* 8 C.F.R. § 1241.1.

28 ² The attached exhibits are true copies, with redactions of private information, of documents obtained from ICE counsel.

1 26-cv-01616-CAB-MSB, ECF No. 1. On April 21, 2026, this Court denied Petitioner’s
2 first habeas petition on all grounds. *See id.*, No. 6.

3 On May 18, 2026, Petitioner filed a second petition for writ of habeas corpus *pro*
4 *se. Samoilova v. Larose et al*, 26-cv-03101-JO-VET, ECF No. 1. Petitioner presents no
5 new arguments or evidence. Based on the arguments set forth below, the Court should
6 deny any requests for relief and dismiss the petition.

7 **III. Argument**

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

9 Section 1226 provides for arrest and detention “pending a decision on whether
10 the alien is to be removed from the United States.” 8 U.S.C. § 1226(a). Under § 1226(a),
11 the government may detain an alien during his removal proceedings, release him on
12 bond, or release him on conditional parole. By regulation, immigration officers can
13 release aliens upon demonstrating that the alien “would not pose a danger to property
14 or persons” and “is likely to appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8).
15 An alien can also request a custody redetermination (i.e., a bond hearing) by an IJ at
16 any time before a final order of removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§
17 236.1(d)(1), 1236.1(d)(1), 1003.19.

18 As set forth above, Petitioner was already given a bond hearing entitled to her
19 under 8 U.S.C. § 1226(a) as a visa overstay. Her bond hearing was adjudicated on the
20 merits, and the IJ denied Petitioner’s bond request accordingly. Therefore, Petitioner is
21 lawfully detained pursuant to 8 U.S.C. § 1226(a).

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

23 The Court should ensure Petitioner properly exhausts administrative remedies.
24 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).

6 Here, Respondents provided Petitioner a bond hearing before an IJ pursuant to 8
7 U.S.C. § 1226(a). The IJ properly denied bond. Petitioner failed to file an appeal of her
8 bond denial with the BIA and therefore failed to exhaust the administrative remedies
9 available to her. Accordingly, the Court should dismiss without prejudice or stay these
10 proceedings until an appeal is ruled upon by the BIA.

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)).

27 Here, it is not altogether clear what final agency action Petitioner seeks review
28 of. Importantly, habeas relief is available to challenge only the legality or duration of

1 confinement. *Pinson*, 69 F.4th at 1067; *see also Flores-Miramontes*, 212 F.3d at 1140
2 (“For purposes of immigration law, at least, ‘judicial review’ refers to petitions for
3 review of agency actions, which are governed by the Administrative Procedure Act,
4 while habeas corpus refers to habeas petitions brought directly in district court to
5 challenge illegal confinement.”). The Court should therefore reject Petitioner’s APA
6 claims.

7 **IV. CONCLUSION**

8 For the foregoing reasons, Respondents respectfully request that the Court
9 dismiss this action.

10 DATED: May 29, 2026

Respectfully submitted,

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12 United States Attorney

13 *s/ Antonio Estrada*
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