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

12 YANG LIU,

13 Petitioner,

14 v.

15 MARKWAYNE MULLIN; et al.,

16 Respondents.
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Case No.: 26-cv-03686-RSH-DEB

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

I. Introduction

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

II. Factual Background

Petitioner is a native and citizen of China. *See* Exhibit 1 (Notice to Appear). On September 7, 2019, he was admitted into the United States on a nonimmigrant visa. *See id.* On May 31, 2026, Petitioner was encountered by Immigration and Customs Enforcement (ICE) officers. *See* Exhibit 2 (I-213). Petitioner was taken into custody; this is Petitioner's first and only arrest by immigration officers. *See id.* The Department of Homeland (DHS) determined that Petitioner is deportable/removable under 8 U.S.C. § 1227(a)(1)(B), as an individual who was admitted to the United States and has remained for a time longer than permitted by law (i.e., a visa overstay). Based on that charge, he was issued a Notice to Appear (NTA) and placed in removal proceedings under 8 U.S.C. § 1229a.

Petitioner is currently detained at the Otay Mesa Detention Center under 8 U.S.C. § 1226(a). *See* Exhibit 1. As of this filing, Petitioner has not requested a bond hearing from the detention facility. *See* Exhibit 3 (EOIR Electronic Courts & Appeals System).

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III. Argument

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

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

As set forth above, Petitioner was apprehended on May 31, 2026, and detained pursuant to 8 U.S.C. § 1226(a). DHS determined that Petitioner is deportable/removable under 8 U.S.C. § 1227(a)(1)(B), as an individual who was admitted to the United States but remained for a time longer than permitted by law (i.e., a visa overstay). Based on that charge, he was issued a Notice to Appear (NTA) and placed in removal proceedings under 8 U.S.C. § 1229a. Petitioner is detained pursuant to 8 U.S.C. § 1226(a). Accordingly, Petitioner is entitled to a bond hearing before an immigration judge, which he has yet to request and adjudicate on the merits.

B. Administrative Remedies Should Be Exhausted

Petitioner's request for habeas relief is not ripe for review. The Court should ensure Petitioner properly exhausts administrative remedies prior to seeking judicial action. The Ninth Circuit requires that "habeas petitioners exhaust available judicial and administrative remedies before seeking relief under § 2241." *Castro-Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001). "When a petitioner does not exhaust administrative remedies, a district court ordinarily should either dismiss the petition without prejudice 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, Petitioner is eligible to have a bond hearing before an immigration judge,
 7 pursuant to 8 U.S.C. § 1226(a). As previously stated, Petitioner has not requested to
 8 have a bond hearing even though the Respondents concede he is entitled to one, upon a
 9 request made to the detention facility. Accordingly, the Court should dismiss without
 10 prejudice or stay these proceedings until a bond hearing is conducted and concluded.

11 **C. Petitioner’s Re-Detention Claims Are Unfounded**

12 The Constitution limits federal judicial power to designated “cases” and
 13 “controversies.” U.S. Const., art. III, § 2; *see also SEC v. Med. Comm. for Human*
 14 *Rights*, 404 U.S. 403, 407 (1972) (federal courts may only entertain matters that present
 15 a “case” or “controversy” within the meaning of Article III). “Absent a real and
 16 immediate threat of future injury there can be no case or controversy, and thus no Article
 17 III standing for a party seeking injunctive relief.” *Wilson v. Brown*, No. 05-cv-1774-
 18 BAS-MDD, 2015 WL 8515412, at *3 (S.D. Cal. Dec. 11, 2015) (citing *Friends of the*
 19 *Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 190 (2000) (“[I]n a
 20 lawsuit brought to force compliance, it is the plaintiff’s burden to establish standing by
 21 demonstrating that, if unchecked by the litigation, the defendant’s allegedly wrongful
 22 behavior will likely occur or continue, and that the threatened injury is certainly
 23 impending.”) (simplified)). At the “irreducible constitutional minimum,” standing
 24 requires that a petitioner demonstrate the following: (1) an injury in fact (2) that is fairly
 25 traceable to the challenged action of the United States and (3) likely to be redressed by
 26 a favorable decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992).

27 Here, Petitioner asserts in his petition claims and allegations concerning
 28 revocation of release and re-detention. However, Petitioner’s May 31, 2026,

1 apprehension was his first DHS apprehension, so there was no prior release to revoke.
2 As such, there is no controversy concerning re-detention/release for this Court to
3 resolve. Federal courts do not have jurisdiction “to give opinions upon moot questions
4 or abstract propositions, or to declare principles or rules of law which cannot affect the
5 matter in issue in the case before it.” *Church of Scientology of Cal. v. United States*,
6 506 U.S. 9, 12 (1992) (internal quotations and citations omitted). “A claim is moot if it
7 has lost its character as a present, live controversy.” *Am. Rivers v. Nat’l Marine*
8 *Fisheries Serv.*, 126 F.3d 1118, 1123 (9th Cir. 1997) (citation omitted).

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10 **IV. CONCLUSION**

11 For the foregoing reasons, Respondents respectfully request that the Court
12 dismiss this action without prejudice

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14 DATED: July 1, 2026

Respectfully submitted,

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