

1 The Advisory Committee Notes to Rule 8 indicate that the court may dismiss a petition for writ of
2 habeas corpus, either on its own motion under Rule 4, pursuant to the respondent's motion to
3 dismiss, or after an answer to the petition has been filed. Herbst v. Cook, 260 F.3d 1039 (9th
4 Cir.2001).

5 B. Lack of Habeas Jurisdiction

6 Petitioner is currently detained at the Mesa Verde Detention Facility. (Doc. 1 at 1.¹) The
7 petition is unclear, but it appears he has been ordered removed and is currently detained pending
8 removal. He first challenges an order of the immigration judge denying asylum. (Doc. 1 at 7.) He
9 next challenges a dismissal for lack of jurisdiction by the Ninth Circuit Court of Appeals
10 concerning a request for deferral under the Convention Against Torture treaty. (Doc. 1 at 7.)
11 Finally, he challenges the denial of withholding of removal by the immigration judge. (Doc. 1 at
12 8.)

13 Writ of habeas corpus relief extends to a person in custody under the authority of the
14 United States. See 28 U.S.C. § 2241. While a federal prisoner who wishes to challenge the
15 validity or constitutionality of his conviction must bring a petition for writ of habeas corpus under
16 28 U.S.C. § 2255, a petitioner challenging the manner, location, or conditions of that sentence's
17 execution must bring a petition for writ of habeas corpus under 28 U.S.C. § 2241. Brown v.
18 United States, 610 F.2d 672, 677 (9th Cir. 1990).

19 To receive relief under 28 U.S.C. § 2241 a petitioner in federal custody must show that his
20 sentence is being executed in an illegal, but not necessarily unconstitutional, manor. See, e.g.,
21 Clark v. Floyd, 80 F.3d 371, 372, 374 (9th Cir. 1995) (contending time spent in state custody
22 should be credited toward federal custody); Brown, 610 F.2d at 677 (challenging content of
23 inaccurate pre-sentence report used to deny parole). A petitioner filing a petition for writ of
24 habeas corpus under 28 U.S.C. § 2241 must file the petition in the judicial district of the
25 petitioner's custodian. Brown, 610 F.2d at 677.

26 In this case, Petitioner challenges the immigration judge's order of removal entered
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28 ¹ Page references are to ECF pagination.

1 against him as well as the dismissal of his petition by the Ninth Circuit.

2 The federal district court has no jurisdiction over collateral challenges to removal
3 proceedings. A petition for review to the courts of appeal is the sole and exclusive means of
4 review of an administrative order of removal, deportation, or exclusion. 8 U.S.C. § 1252.

5 Section 1252(a)(5) (emphasis added) provides:

6 Notwithstanding any other provision of law (statutory or nonstatutory), including
7 section 2241 of Title 28, or any other habeas corpus provision, and sections 1361
8 and 1651 of such title, a petition for review filed with an appropriate court of
9 appeals in accordance with this section shall be the sole and exclusive means for
10 judicial review of an order of removal entered or issued under any provision of this
11 chapter, except as provided in subsection (e) of this section. For purposes of this
12 chapter, in every provision that limits or eliminates judicial review or jurisdiction
13 to review, the terms "judicial review" and "jurisdiction to review" include habeas
14 corpus review pursuant to section 2241 of Title 28, or any other habeas
15 corpus provision, sections 1361 and 1651 of such title, and review pursuant to
16 any other provision of law (statutory or nonstatutory). (Emphasis supplied).

17 In addition, pursuant to § 1252(a)(2)(C), “no court shall have jurisdiction to review any
18 final order of removal against an alien who is removable by reason of having committed a
19 criminal offense covered in section 1182(a)(2)” Accordingly, to the extent that Petitioner is
20 seeking judicial of his removal proceedings, the Court is without jurisdiction.

21 In addition, § 1226(e) prohibits judicial review of “[t]he Attorney General's discretionary
22 judgment” regarding “the detention or release of any alien or the grant, revocation, or denial of
23 bond or parole.” Insofar as Petitioner requests judicial review of the decision whether or not to
24 grant release on a bond pending removal, the Court is without jurisdiction.

25 Finally, since a district court is a lower court, this Court has no jurisdiction to review a
26 decision of the Ninth Circuit Court of Appeals.

27 ORDER

28 The Clerk of the Court is DIRECTED to assign a United States District Judge to this case.

RECOMMENDATION

Accordingly, the Court RECOMMENDS that the petition for writ of habeas corpus be
DISMISSED for lack of jurisdiction.

This Findings and Recommendation is submitted to the United States District Court Judge
assigned to this case, pursuant to the provisions of 28 U.S.C. section 636 (b)(1)(B) and Rule 304

1 of the Local Rules of Practice for the United States District Court, Eastern District of California.
2 Within twenty-one days after being served with a copy, any party may file written objections with
3 the court and serve a copy on all parties. Such a document should be captioned “Objections to
4 Magistrate Judge’s Findings and Recommendation.” Replies to the objections shall be served and
5 filed within ten court days (plus three days if served by mail) after service of the objections. The
6 Court will then review the Magistrate Judge’s ruling pursuant to 28 U.S.C. § 636 (b)(1)(C). The
7 parties are advised that failure to file objections within the specified time may waive the right to
8 appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

9
10 IT IS SO ORDERED.

11 Dated: December 11, 2017

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE