

1 Whether the emergency motion is construed as a habeas petition under 28 U.S.C. § 2241
2 or a request for relief under the All Writs Act, 28 U.S.C. § 1651(a), this court may not entertain it.
3 Petitioner is in ICE custody following a decision of the Attorney General to seek his removal.
4 The Attorney General and Secretary of Homeland Security share authority over detention
5 decisions pending removal proceedings. See 8 U.S.C. § 1226(a); §§ 1103 (a), (g)(2). Review is
6 available before a U.S. Immigration Judge. See 8 C.F.R. § 1236.1(d)(1); 8 C.F.R. § 1003.19(d).
7 Detention is mandatory in some circumstances following criminal conviction, see 8 U.S.C. §
8 1226(c), and deportable non-citizens who have been convicted of crimes do not enjoy a
9 fundamental right to be free from detention pending removal proceedings. See Alikhani v.
10 Fasano, 70 F. Supp. 2d 1124, 1133 (S.D. Cal. 1999). In any case, petitioner here does not purport
11 to challenge the denial of bond and does not seek a bond hearing. Instead, he plainly seeks relief
12 from the pending removal proceedings themselves.

13 The immigration courts have exclusive original jurisdiction over individual applications
14 for asylum and relief from removal, and the district courts have no authority to review the merits
15 of individual asylum claims, review removal proceedings, or determine the legitimacy of any
16 orders of removal. See 8 U.S.C. § 1252(a)(2)(A), (B); § 1252(g); see also Momeni v. Chertoff,
17 522 F.3d 1094, 1095-96 (9th Cir. 2008). Removal orders affecting persons convicted of crimes
18 are specifically excluded from the jurisdiction of the district court. 8 U.S.C. § 1252(a)(2)(C).
19 These several statutory limitations on judicial review, by their express language, override any
20 assertion of the district courts' habeas jurisdiction. 8 U.S.C. § 1252(a)(2)(A), (B) & (C).
21 Removal proceedings are ongoing here. The immigration court has exclusive jurisdiction, and
22 this court has no authority to interfere.

23 District courts do maintain jurisdiction under 28 U.S.C. § 2241 to consider habeas
24 challenges to immigration detention that are independent of the merits of the removal matter.
25 Singh v. Holder, 638 F.3d 1196, 1211-12 (9th Cir. 2011). Here, however, petitioner's only theory
26 for the unlawfulness of his custody is that his asylum should not have been revoked and he should
27 not be removed because he withdrew his guilty pleas in the criminal case and will be subject to

28 ////

1 persecution if returned to Nigeria. There are no grounds for habeas relief presented here that are
2 independent of the propriety of removal.¹

3 Although petitioner alleges that his asylum has already been revoked, immigration
4 proceedings have not concluded and he may yet be eligible for withholding of removal upon a
5 showing that his return to Nigeria would risk his safety or his life.² In any event, that is a
6 question for the immigration courts. Petitioner is represented by counsel in his immigration case,
7 and that system includes a review process. See 8 U.S.C. §§ 1252(a)(5), (b)(9); see also J.E.F.M.
8 v. Lynch, 837 F.3d 1026, 1031 (9th Cir. 2016) (any issue arising from any removal-related
9 activity can be reviewed only through the petition for review process created by statute). There is
10 no role for this court in the determination of petitioner’s immigration status.

11 Accordingly, it is HEREBY ORDERED that the Clerk of Court randomly assign a district
12 judge to this case.

13 It is FURTHER RECOMMENDED that the Emergency Motion for Release from ICE
14 Detention be dismissed for lack of jurisdiction.

15 These findings and recommendations are submitted to the United States District Judge
16 assigned to the case, pursuant to the provisions of 28 U.S.C. §636(b)(1). Within twenty-one days
17 after being served with these findings and recommendations, any party may file written
18 objections with the court and serve a copy on all parties. Such a document should be captioned
19 “Objections to Magistrate Judge’s Findings and Recommendations.” If petitioner files objections,
20 he shall also address whether a certificate of appealability should issue and, if so, why and as to
21 which issues. See 28 U.S.C. § 2253(c)(2). Any reply to the objections shall be served and filed
22 within fourteen days after service of the objections. The parties are advised that failure to file
23


24 ¹ Petitioner’s assertion of various medical problems does not support habeas relief because it
25 does not implicate the lawfulness of his detention. At most, the petition suggests grievances
26 related to the conditions of petitioner’s confinement, which may not be addressed in habeas. See
27 generally, Preiser v. Rodriguez, 411 U.S. 475, 484-486 (1973) (conditions of confinement claims
should proceed in civil rights cases, in which the remedy is correction of the constitutional
deficiency rather than release).

28 ² Withholding of removal may be available under section 241(b)(3) of the Immigration and
Nationality Act and/or Article III of the Convention Against Torture.

1 objections within the specified time may waive the right to appeal the District Court's order.

2 Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

3 DATED: April 14, 2021

4 
5 ALLISON CLAIRE
6 UNITED STATES MAGISTRATE JUDGE

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28