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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ALEXIS BLADIMIR ZELAYA-GONZALEZ,
Petitioner,
v.
JAMISON MATUSZEWSKI, et al.,
Respondents.

Case No.: 23-CV-151 JLS (KSC)
**ORDER DENYING PETITION
FOR WRIT OF HABEAS
CORPUS PURSUANT TO
28 U.S.C. § 2241**

(ECF No. 1)

Presently before the Court is Petitioner Alexis Bladimir Zelaya-Gonzalez’s Petition for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 (“Pet.,” ECF No. 1). Also before the Court is Respondents Jamison Matuszewski (San Diego Field Office Director, Immigration and Customs Enforcement), Joseph Suazo (Calexico Assistant Field Office Director, Immigration and Customs Enforcement), William Derevere (Facility Administrator, Imperial Regional Detention Facility), Matthew Allen (Senior Official Performing the Duties of the Director of U.S. Immigration and Customs Enforcement), and Alejandro Mayorkas’s (Secretary of Homeland Security) (collectively, “Respondents”) Answer in Opposition (“Resp.,” ECF No. 6) and Petitioner’s Traverse (“Traverse,” ECF No. 7). The Court finds this matter appropriately decided on the papers without oral
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1 argument pursuant to Civil Local Rule 7.1(d)(1). Having carefully considered the Parties’
2 filings and the law, the Court **DENIES** the Petition for the reasons that follow.

3 **BACKGROUND**

4 Petitioner, who is proceeding pro se and is presently detained at the Imperial
5 Regional Detention Facility pending removal proceedings, is a native and citizen of El
6 Salvador. Pet. ¶¶ 1, 19. On or about January 7, 2020, Petitioner ran through the San Ysidro,
7 California, Port of Entry without legal documents entitling him to enter the country and
8 was detained by U.S. officials. Resp. Ex. 4 (ECF No. 6-2 at 17).¹ During a sworn
9 interview, Petitioner admitted that he was previously removed by Border Patrol on October
10 20, 2003, and that he was previously deported from the United States in 2007, 2008, and
11 2011. *Id.* He further admitted that he had been arrested in the United States twice, and
12 that he also had been arrested in El Salvador. *See id.* He also admitted that he was a felon
13 in the United States. *See id.* Petitioner was transferred to the custody of the U.S.
14 Department of Homeland Security (“DHS”) pending a credible fear interview with an
15 asylum officer. *Id.*

16 During a February 5, 2020 credible fear interview, Petitioner was found credible.
17 Resp. Ex. 5 (ECF No. 6-2 at 21). Shortly thereafter, Petitioner was placed into removal
18 proceedings. *See* Pet. Ex. A (ECF No. 1-2). Petitioner requested a change in his custody
19 status, but on May 19, 2020, an immigration judge denied his request. Resp. Ex. 14 (ECF
20 No. 6-2 at 72). On September 25, 2020, following a parole interview, U.S. Immigration
21 and Customs Enforcement (“ICE”) declined Petitioner’s request for parole from custody
22 on the basis that Petitioner “ha[d] not established to ICE’s satisfaction that [he is] not a
23 flight risk” and “ha[d] not established to ICE’s satisfaction that [he is] not a security risk
24 or a danger to the community.” Resp. Ex. 15 (ECF No. 6-2 at 74).

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28 ¹ In citing to the exhibits to the Response, the Court refers to the page numbers provided by Respondents
in the upper righthand corner of each page.

1 On October 1, 2020, an immigration judge denied Petitioner’s applications for
2 asylum, withholding of removal, and withholding of removal under the United Nations
3 Convention Against Torture (“CAT”). *See* Resp. Ex. 6 (ECF No. 6-2 at 23–32). In
4 November 2020, Petitioner sought review of that decision before the Board of Immigration
5 Appeals (“BIA”). Resp. Ex. 7 (ECF No. 6-2 at 36–43). In January 2021, Petitioner’s
6 custody status was re-evaluated in light of his heightened risk of severe illness and death
7 from Covid-19 due to asthma. Resp. Ex. 16 (ECF No. 6-2 at 78–79). However, DHS
8 determined that Petitioner would remain in DHS detention pending a final administrative
9 determination in his case, given the danger he posed to public safety and his potential flight
10 risk. *See id.*

11 On July 30, 2021, the BIA remanded Petitioner’s proceedings to the immigration
12 judge due to inconsistent findings, but found that Petitioner had waived his application for
13 protection under CAT. *See* Pet. Ex. B (ECF No. 1-3). On March 24, 2022, a different
14 immigration judge, after hearing additional testimony from Petitioner and two expert
15 witnesses retained by Petitioner, found Petitioner’s testimony to be not credible and denied
16 Petitioner’s applications for asylum and withholding of removal. Resp. Ex. 10 (ECF No.
17 6-2 at 52–60). Petitioner again sought review before the BIA. Resp. Ex. 11 (ECF No. 6-2
18 at 61).

19 On September 9, 2022, the BIA dismissed Petitioner’s appeal, finding no error in the
20 immigration judge’s removal order. Pet. Ex. C (ECF No. 1-4). On September 20, 2022,
21 Petitioner sought judicial review of the BIA’s decision in the Ninth Circuit. *See* Resp. Ex.
22 13 (ECF No. 6-2 at 67–70). Petitioner also moved for a stay of removal pending further
23 order of the Ninth Circuit. *See id.* Pursuant to Ninth Circuit General Order 6.4, Petitioner’s
24 removal has been judicially stayed in light of his motion to stay. *See id.* The motion to
25 stay, which is opposed, remains pending. *See id.*

26 On January 24, 2023, Petitioner filed both the instant Petition and a Motion for Leave
27 to Proceed *in Forma Pauperis* (“IFP Mot.,” ECF No. 2). The Petition contends that
28 “Petitioner has been detained for three years, yet has not been provided a bond hearing

1 before a neutral decision maker to determine whether his prolonged detention is justified
2 based on danger or flight risk.” Pet. ¶ 21. The Petition asserts two claims for violation of
3 Petitioner’s due process rights in violation of the Fifth Amendment of the U.S.
4 Constitution. *Id.* ¶¶ 40–46. Petitioner requests that the Court issue a writ of habeas corpus
5 ordering either Petitioner’s (1) immediate release upon the Court’s determination that his
6 continued detention is not justified, or (2) release within 30 days unless Respondents
7 schedule a hearing before an immigration judge to determine whether Petitioner’s detention
8 pending removal is justified. *Id.* ¶¶ 4–5; Prayer for Relief.

9 On January 27, 2023, the Court granted Petitioner’s IFP Motion. *See* ECF No. 3.
10 On February 1, 2023, the Court ordered Respondents to show cause why the Petition should
11 not be granted. *See* ECF No. 4. Respondents timely filed their Answer on March 2, 2023,
12 *see* Resp., and Petitioner filed his Traverse on March 13, 2023, *see* Traverse.

13 **LEGAL STANDARD**

14 A federal prisoner challenging the execution of his or her sentence, rather than the
15 legality of the sentence itself, may file a petition for writ of habeas corpus in the district of
16 his confinement pursuant to 28 U.S.C. § 2241. *See* 28 U.S.C. § 2241(a). The sole judicial
17 body able to review challenges to final orders of deportation, exclusion, or removal is the
18 court of appeals. *See generally* 8 U.S.C. § 1252; *see also Alvarez–Barajas v. Gonzales*,
19 418 F.3d 1050, 1052 (9th Cir. 2005) (citing REAL ID Act, Pub. L. No. 109-13, 119 Stat.
20 231, § 106(a)). However, for claims challenging ancillary or collateral issues arising
21 independently from the removal process—for example, a claim of indefinite detention—
22 federal habeas corpus jurisdiction remains in the district court. *Nadarajah v. Gonzales*,
23 443 F.3d 1069, 1076 (9th Cir. 2006), *abrogated on other grounds by Jennings v. Rodriguez*,
24 138 S. Ct. 830 (2018); *Alvarez v. Sessions*, 338 F. Supp. 3d 1042, 1048–49 (N.D. Cal.
25 2018) (citations omitted).

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1 ANALYSIS

2 Respondents contend that the Petition must be denied because: (1) Petitioner’s
3 detention does not violate the Fifth Amendment’s due process clause, *see generally* Resp.;
4 and (2) to the extent Petitioner contends that his conditions of confinement are
5 unconstitutional, his claim is not cognizable in habeas, *see id.* at 16 n.11.²

6 Petitioner does not address Respondents’ second argument. *See generally* Traverse.
7 The Court, however, agrees with Respondents that the Petition, to the extent premised on
8 a claim of unconstitutional conditions of confinement, is not cognizable in habeas;
9 accordingly, this Court lacks jurisdiction over such a claim. *See, e.g., Nettles v. Grounds*,
10 830 F.3d 922, 933 (9th Cir. 2016) (“We have long held that prisoners may not challenge
11 mere conditions of confinement in habeas corpus.” (citing *Crawford v. Bell*, 599 F.2d 890,
12 891–92 (9th Cir. 1979))) (footnote omitted). Although a district court may construe a
13 habeas petition amenable to conversion on its face as a civil rights claim after warning the
14 *pro se* litigant of the possible consequences of conversion and providing an opportunity to
15 withdraw or amend, *see id.* at 936 (citations omitted), the Court declines to exercise its
16 discretion to do so here, *see, e.g., Graf v. Ponce*, No. CV 21-8363-VAP(E), 2022 WL
17 2102887, at *5–6 (C.D. Cal. Feb. 22, 2022) (citation omitted) (declining to convert § 2241
18 petition’s conditions of confinement challenges to civil rights claim). “[C]onversion is
19 impossible here because, among other decisive reasons, Petitioner seeks no damages under
20 *Bivens*—the only available remedy for his category of claims (assuming they are even
21 otherwise actionable).” *Malone v. Warden, Victorville II*, No. 522CV00171JFWSK, 2022
22 WL 619019, at *1 (C.D. Cal. Feb. 7, 2022) (citing *Carlson v. Green*, 446 U.S. 14, 16, 19
23 (1980)). Accordingly, the Court finds that it lacks jurisdiction over any claim concerning
24 conditions of confinement; thus, any such claims in the Petition must be denied.

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28 ² In citing to Respondents’ Answer, the Court refers to the blue numbers stamped in the upper righthand
corner of each page by the District’s Case Management/Electronic Case Filing system.

1 The Court thus turns to the crux of Respondents’ argument: that Petitioner’s
2 detention does not violate the Fifth Amendment. *See generally* Resp. Respondents assert
3 that Petitioner is being detained pursuant to 8 U.S.C. § 1225(b)(1)(B)(ii), *see* Resp. at 10,
4 which provides: “If the [asylum] officer determines at the time of the interview that an
5 alien has a credible fear of persecution . . . , the alien ***shall be detained*** for further
6 consideration of the application for asylum.” 8 U.S.C. § 1225(b)(1)(B)(ii) (emphasis
7 added); *see also* *Jennings v. Rodriguez*, 138 S. Ct. 830, 842 (2018) (noting that
8 “§[] 1225(b) . . . thus mandate[s] detention of applicants for admission until certain
9 proceedings have concluded”). Although the issuance of a final order of removal shifted
10 Petitioner’s detention authority to 8 U.S.C. § 1231, *see* Resp. at 11, Petitioner’s petition for
11 review in the Ninth Circuit and the attendant judicial stay of his removal order shifted his
12 detention authority back to 8 U.S.C. § 1225(b)(1)(B)(ii), *see* Resp. at 11 (citing *Prieto-*
13 *Romero v. Clark*, 534 F.3d 1053, 1060, 1062 (9th Cir. 2008)). As the Ninth Circuit has yet
14 to rule on the petition for review or Petitioner’s motion to stay, Petitioner remains detained
15 under 8 U.S.C. § 1225(b)(1)(B)(ii). *See* Resp. at 11 (citing *Lopez-Velazquez v. Johnson*,
16 No. 16-CV-01226-EMC, 2016 WL 4073338, at *5 n.3 (N.D. Cal. Aug. 1, 2016)). And the
17 Supreme Court has recognized that “nothing in the statutory text [of § 1225(b)] imposes a
18 limit on the length of detention,” and § 1225(b) “says [no]thing whatsoever about bond
19 hearings.” *Jennings*, 138 S. Ct. at 842. The Supreme Court has further held that the express
20 exception to detention provided in 8 U.S.C. § 1182(d)(5)(A)—which permits the Attorney
21 General to temporarily parole, in limited circumstances, an inadmissible alien detained
22 pursuant to § 1225(b)(1)—“implies that there are no *other* circumstances under which
23 aliens detained under § 1225(b) may be released.” *Id.* at 844 (emphasis in original)
24 (citation omitted).

25 Petitioner does not contest, *see generally* *Traverse*, and the Court agrees, that
26 Petitioner is being detained under § 1225(b)(1)(B)(ii). Accordingly, the Court finds that
27 Petitioner has no Fifth Amendment right to a bond hearing or to parole pending his removal
28 proceedings. As the Supreme Court has reaffirmed as recently as 2020, the only due

1 process due an alien seeking admission to the United States is “those rights regarding
2 admission that Congress has provided by statute.” *Dep’t of Homeland Sec. v.*
3 *Thuraissigiam*, 140 S. Ct. 1959, 1983 (2020). The Ninth Circuit, applying the Supreme
4 Court’s holding in *Thuraissigiam*, has explicitly stated that, “[a]ccordingly, any rights [an
5 inadmissible alien] may have in regard to removal or admission are purely statutory in
6 nature and are not derived from, or protected by, the Constitution’s Due Process Clause.”
7 *Mendoza-Linares v. Garland*, 51 F.4th 1146, 1167 (9th Cir. 2022). Ultimately, “[t]he
8 recognized liberty interests of U.S. citizens and aliens are not coextensive: the Supreme
9 Court has ‘firmly and repeatedly endorsed the proposition that Congress may make rules
10 as to aliens that would be unacceptable if applied to citizens.’” *Rodriguez Diaz v. Garland*,
11 53 F.4th 1189, 1206 (9th Cir. 2022) (quoting *Demore v. Kim*, 538 U.S. 510, 522 (2003)).

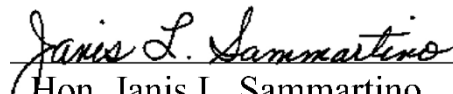
12 For the reasons provided by Respondents, *see* Resp. at 13–16, the authorities
13 Petitioner cites to support his due process claim are inapposite, *see* Pet. ¶¶ 22–39. Binding
14 Ninth Circuit and Supreme Court precedents are clear that Petitioner lacks any rights
15 beyond those conferred by statute, and no statute entitles Petitioner to a bond hearing.
16 Accordingly, the Petition is without merit and must be denied.

17 CONCLUSION

18 In light of the foregoing, the Court **DENIES** the Petition (ECF No. 1). The Court
19 need not issue a certificate of appealability in this case. *See Udom v. U.S. Immigr., Customs*
20 *Enf’t*, No. 11-CV-2699-IEG NLS, 2012 WL 380135, at *4 (S.D. Cal. Feb. 6, 2012) (noting
21 no certificate of appealability required for order denying § 2241 petition (citing *Forde v.*
22 *U.S. Parole Comm’n*, 114 F.3d 878, 879 (9th Cir. 1997))). As this concludes the litigation
23 in this matter, the Court **DIRECTS** the Clerk of the Court to close the file.

24 IT IS SO ORDERED.

25 Dated: April 25, 2023

26 
27 Hon. Janis L. Sammartino
28 United States District Judge