

1
2
3
4
5
6 **UNITED STATES DISTRICT COURT**
7 **WESTERN DISTRICT OF WASHINGTON**
8 **AT SEATTLE**

9 POSTESCU AUREL,

10 Petitioner,

11 v.

12 ICE FIELD OFFICE DIRECTOR,

13 Respondent.

Case No. 2:13-cv-00627-RSM

ORDER DENYING PETITION
FOR WRIT OF HABEAS CORPUS

14 This matter comes before the Court upon the Report and Recommendation of the
15 Honorable Brian A. Tsuchida, United States Magistrate Judge (Dkt. # 10), Respondent's
16 objections thereto (Dkt. # 11), and Respondent's Supplement to its Objections (Dkt. # 12). The
17 Report and Recommendation, dated August 19, 2013, advises the Court to grant habeas relief, as
18 no evidence established that Petitioner had been afforded a sufficient bond hearing at that time.
19 Dkt. # 10, p. 6. However, Petitioner has since been granted bond through an individualized
20 hearing, an audio recording of which has been filed with this Court. Dkt. # 13. As discretionary
21 detention following an adequate bond hearing is lawful and for the reasons stated herein, habeas
22 relief must be denied.
23

24 Petitioner, proceeding pro se, challenges the lawfulness of his continued detention by the
25 United States Immigration and Customs Enforcement ("ICE") agency through a Petition for Writ
26

ORDER DENYING PETITION FOR WRIT
OF HABEAS CORPUS - 1

1 of Habeas Corpus under 28 U.S.C. § 2241. Dkt. # 1. The Petition arises out of removal
2 proceedings initiated against Petitioner Postescu Aurel, a native of Romania. Dkt. # 7, Ex. A, p.
3 3. After being convicted of two counts of Second Degree Theft, Petitioner was served with a
4 Notice to Appear charging him with removal under 8 U.S.C. § 1227(a)(2)(A)(ii). *Id.* at 1.
5 Petitioner was taken into custody on March 9, 2012 and was subsequently denied bond after an
6 individualized bond redetermination hearing on April 18, 2012. Dkt. # 7, Ex. D, p. 1. An
7 Immigration Judge ordered Petitioner removed on December 27, 2012. Dkt. # 7, Ex. B, p. 14.
8 Petitioner then filed a renewed motion for bond redetermination, which an Immigration Judge
9 denied on March 11, 2013. *Id.* at Ex. D, p. 3. In addition to finding that Petitioner remained a
10 danger to the community and a flight risk, the Immigration Judge found that Petitioner's
11 convictions subjected him to mandatory detention under 8 U.S.C. §1226(c). *Id.* at 2-3.

13 Petitioner filed the present Petition for Writ of Habeas Corpus on April 5, 2013, seeking
14 an individualized bond hearing or supervised release pending a final determination on his
15 removal order. Dkt. # 1, p. 2. The Board of Immigration Appeals ("BIA") has since dismissed
16 Petitioner's appeal of his removal order. Dkt. # 8, Ex. A. On July 12, 2013, Petitioner filed a
17 petition for review of the BIA's decision with the United States Court of Appeals for the Ninth
18 Circuit. *See Aurel v. Holder*, No. 13-72468 (9th Cir. 2013). The Ninth Circuit issued a
19 temporary stay for the duration of its review, which remains pending at this time. *Id.* On August
20 29, 2013, Petitioner was granted a \$10,000 bond through a renewed individualized bond
21 redetermination hearing. Dkt. # 11, Ex. A. Respondent therefore requests that the Petition be
22 dismissed as moot, as the Court is unable to affect a remedy addressing Petitioner's requested
23 relief. Dkt. # 7, p. 3.
24
25
26

1 Title 8 U.S.C. § 1226 provides the framework for the arrest, detention, and release of
2 aliens in removal proceedings. Under § 1226(c)(1)(B), “criminal aliens” are subject to
3 mandatory detention for, among other grounds, being deportable for having been convicted of
4 two crimes involving moral turpitude not arising out of a single scheme of criminal misconduct.
5 However, § 1226(c) only governs “during removal proceedings,” which conclude upon dismissal
6 of the petitioner’s appeal by the BIA. *Casas-Castrillon v. Dept. of Homeland Security*, 535 F.3d
7 942, 948 (9th Cir. 2008).

8
9 The statutory basis for detention shifts upon conclusion of the alien’s removal
10 proceedings. Upon dismissal of an appeal by the BIA and a request for judicial review, an alien
11 ordered removed is subject to discretionary detention under 8 U.S.C. § 1226(a) “pending a
12 decision on whether the alien is to be removed from the United States.” *Id.* Unlike mandatory
13 detention under § 1226(c), the Attorney General has the discretion under § 1226(a) to (1)
14 continue to detain the alien, or (2) release the alien on bond of at least \$1,500 or on conditional
15 parole. 8 U.S.C. § 1226(a). Before making a bond determination, the Attorney General is
16 required to provide the alien with an individualized bond hearing in front of a neutral decision-
17 maker. *Casas-Castrillon*, 535 F.3d at 951. In order to comply with due process, this “*Casas*”
18 hearing must (1) place the burden of proof on the government to establish by clear and
19 convincing evidence that the alien is a flight risk or will pose a danger to the community, and (2)
20 be recorded contemporaneously through a transcript, audio recording, or similar measure. *Singh*
21 *v. Holder*, 638 F.3d 1196, 1202-08 (9th Cir. 2001).

22
23 The discretionary decisions reached at a *Casas* hearing that satisfies the above
24 requirements are not subject to judicial review. *See* 8 U.S.C. § 1226(e) (providing that “no court
25 may set aside any action or decision by the Attorney General under this section regarding the
26

1 detention or release of any alien or the grant, revocation, or denial of bond or parole.”). As a
2 result, the Court is unable to review the reasonableness of a bond amount. *See Prieto-Romero v.*
3 *Clark*, 534 F.3d 1053, 1067 (9th Cir. 2008) (declining to review the reasonableness of a \$15,000
4 bond alleged to be too expensive for the petitioner to afford); *Karanja v. Clark*, 2009 WL 86489
5 (W.D. Wash. 2009) (concluding that the court was not entitled to review the petitioner’s
6 allegedly excessive \$20,000 bond).

7
8 Following the filing of the Magistrate Judge’s Report and Recommendations, Petitioner
9 received a *Casas* hearing, thereby mooting his Petition for Writ of Habeas Corpus. An audio
10 recording of that hearing indicated that an Immigration Judge granted a \$10,000 bond despite
11 determining that the government met its burden of proving that Petitioner was a flight risk. Dkt.
12 # 14, tracks 3 (4:50), 4 (0:55). Petitioner reserved his right to appeal this determination. *Id.* at
13 track 4 (1:39). The Petition is therefore moot, as the requested relief has been granted and the
14 Court is not permitted to review the determined bond amount for reasonableness.

15
16 The Court, having reviewed Petitioner’s Petition for Writ of Habeas Corpus,
17 Respondent’s Return Memorandum and Motion to Dismiss, the Report and Recommendation of
18 the Honorable Brian A. Tsuchida, United States Magistrate Judge, any objections or responses to
19 that, and the remaining record, finds and Orders as follows:

20 (1) The Court declines to adopt the Report and Recommendation.

21 (2) Petitioner’s Petition for Writ of Habeas Corpus, (Dkt. # 1) is **DENIED** as moot, and

22 Respondent’s Return and Motion to Dismiss, (Dkt. # 7), is **GRANTED**.

23 //

24 //

25 //

1 (3) The Clerk shall send copies of this Order to Petitioner, to counsel for Respondent, and to
2 the Honorable Brian A. Tsuchida.

3
4 Dated this 28 day of October 2013.

5
6 

7
8 RICARDO S. MARTINEZ
9 UNITED STATES DISTRICT JUDGE
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26