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UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

John DOE, Petitioner-Plaintiff, v. PAM BONDI, U.S. Attorney General; KRISTI NOEM, Secretary, United States Department of Homeland Security; CALEB VITELLO, Director, U.S. Immigration and Customs Enforcement; MOISES BECERRA, San Francisco Field Office Director, U.S. Immigration and Customs Enforcement; RON MURRAY, Warden of Mesa Verde ICE Processing Center, Respondents-Defendants.	Case No. 2:25-cv-00647-DJC-DMC **PETITIONER'S SUPPLEMENTAL BRIEF RE: *LEONARDO v. CRAWFORD* AND *DAVIS v. GARLAND***

SUPPLEMENTAL BRIEF

Petitioner, through undersigned Counsel, submits this Supplemental Brief in response to the Court's order to address *Leonardo v. Crawford*, 646 F.3d 1157 (9th Cir. 2011), and *Davis v. Garland*, 708 F. Supp. 3d 283 (W.D.N.Y. 2023). Dkt. 38. During the hearing on April 22, 2025, the Court asked whether Petitioner is required to exhaust administrative remedies, such that he must wait until the Board of Immigration Appeals (BIA) decides his appeal of the Immigration Judge's (IJ) decision denying bond, before seeking review by this Court. For the reasons explained below, both decisions demonstrate that Petitioner does not need to wait for the BIA to decide his appeal and that this Court can adjudicate the merits of his Motion to Enforce now.[1]

As recognized in *Leonardo*, exhaustion of administrative remedies is prudential under 28 U.S.C. § 2241 and may be "excused." *Leonardo*, 646 F.3d at 1160. Here, unlike the petitioner in *Leonardo*, Petitioner has established numerous reasons why exhaustion must be excused. *See* Dkt. 23 at 9-10[2] (providing reasons why exhaustion is not required and citing case law post-dating *Leonardo* where courts have not required exhaustion). Furthermore, in *Davis*, the district court determined that the petitioner "*was not required to exhaust his administrative remedies.*" *Davis*, 708 F. Supp. 3d at 290 (emphasis added). The *Davis* court confirmed that requiring exhaustion in circumstances identical to Petitioner's would be wholly inappropriate due to (1) the substantial constitutional question raised in the motion to enforce, (2) the futility of raising constitutional claims in the administrative process before the BIA, and (3) the irreparable harm that would result to the petitioner if the prudential exhaustion requirement were imposed given that (4) the BIA appeal process is protracted and therefore cannot provide "adequate" relief. *Id.* at 290-91.

I. *Leonardo* does not prevent the Court from adjudicating the Motion to Enforce because Petitioner has demonstrated numerous reasons to "excuse" exhaustion.

As stated above, *Leonardo* does not prevent the Court in this matter from adjudicating

[1] In the alternative, if the Court is going to require exhaustion in this case despite the arguments set forth in Petitioner's Motion to Enforce and the law discussed in this submission, Petitioner requests that the Court stay proceedings. On today's date, the BIA issued a briefing schedule on Petitioner's appeal and set simultaneous briefs to be filed on May 19, 2025. If the BIA has not adjudicated the appeal by the end of May, this Court should adjudicate the Motion to Enforce because Petitioner suffers further irreparable harm each day he remains incarcerated.

[2] Citations to pages within Petitioner's Motion to Enforce follow the internal number of the submission and not the number assigned by ECF.

Petitioner's Motion, nor did it hold that petitioners in habeas proceedings must always wait for the BIA to decide their appeals before seeking enforcement from a district court.[3]

In *Leonardo*, during underlying proceedings before the district court, the petitioner challenged the IJ's determination that his continued prolonged detention was necessary because he was a danger to the community. 2009 WL 10678598 at *1. Unlike Petitioner here, Leonardo did not challenge the constitutionality of his initial arrest, which is something the BIA does not have jurisdiction to consider. *See Am.-Arab Anti-Discrimination Comm. v. Reno*, 70 F.3d 1045, 1058 (9th Cir. 1995) (finding exhaustion to be a "futile exercise because the agency does not have jurisdiction to review" constitutional claims); Dkt. 2 (Petitioner's Motion for Temporary Restraining Order) at 7-9; Dkt. 16 (Notice of Supplemental Authority). He also did not present any grounds for excusing prudential exhaustion. *Leonardo*, 2009 WL 10678598 at *2; *Cf.* Dkt. 23 at 9-10. The district court nonetheless reached the merits of Leonardo's motion to enforce and ultimately held that no due process violation occurred. *Id.*

In rendering its decision on appeal, the Ninth Circuit relied on *Casas-Castrillon v. DHS*, 636 F.3d 942 (9th Cir. 2008), and *Prieto-Romero v. Clark*, 534 F.3d 1053 (9th Cir. 2008), which held that noncitizens initially detained under 8 U.S.C. § 1226(c) "shifted" to being detained under 8 U.S.C. § 1226(a) once their removal proceedings "before the BIA were complete" and they were issued a judicial stay of removal while their petitions for review were pending before the circuit court. *Casas-Castrillon*, 636 F.3d at 948; *Prieto-Romero*, 534 F.3d at 1059-60.[4] As this Court is aware, § 1226(a) sets forth the general framework for detention during removal proceedings. *Matter of Guerra*, 24 I&N Dec. 37, 37-38 (BIA 2006). Importantly, the *Leonardo* court further recognized that habeas petitioners need not exhaust administrative remedies, 646

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[3] As an initial matter, the district court in *Leonardo* incorrectly held that 8 U.S.C. § 1226(e) barred review of the IJ's bond determination. *See Leonardo v. Crawford*, No. CV 07-0545-PHX-SMM, 2009 WL 10678598, at *2 (D. Ariz. Oct. 13, 2009), *vacated and remanded*, 646 F.3d 1157 (9th Cir. 2011). This was partly because, in the court's view, the IJ had "complied exactly with [the] Court's order," as the petitioner did not suffer a due process violation. *Id.* On appeal, the Ninth Circuit made clear that, contrary to the district court's finding, 8 U.S.C. § 1226(e) did not bar judicial review. *Leonardo*, 646 F.3d at 1160 (stating that the district court was "incorrect" when it "concluded that 8 U.S.C. § 1226(e) deprives judicial review of a bond determination for constitutional and legal error.").

[4] Due to the Supreme Court's decision in *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018), the Ninth Circuit has since disavowed the reasoning and holdings of *Casas-Castrillon* and *Prieto-Romero* that detention authority "shifts" following the BIA's completion of removal proceedings. *See Avilez v. Garland*, 69 F.4th 525 (9th Cir. 2023).

F.3d at 1160-61, but noted that Leonardo himself had not "demonstrated grounds for excusing the exhaustion requirement," *id.* at 1161.

Accordingly, because Petitioner has demonstrated ample grounds for excusing the exhaustion requirement,[5] *Leonardo* poses no barrier to this Court ruling on the merits of his motion to enforce.

II. *Davis* correctly held that administrative exhaustion was not required and proceeded to reach the merits of the petitioner's motion to enforce.

In *Davis*, the district court adjudicated a habeas petitioner's motion to enforce which argued "that his bond hearing did not comport with the Court's order" and correctly held that administrative exhaustion was not required. 708 F.Supp.3d at 290; *see also id.* at 290-91 ("courts in this District—including this Court—have found that a party challenging an IJ's compliance with a judgment ordering a constitutionally adequate bond hearing need not exhaust administrative remedies before seeking review of those inadequacies in court."). The court acknowledged that:

> courts need not require a party to exhaust all administrative remedies when "(1) available remedies provide no genuine opportunity for adequate relief; (2) irreparable injury may occur without immediate judicial relief; (3) administrative appeal would be futile; and (4) in certain instances a plaintiff has raised a substantial constitutional question."

Id. (citing *Guitard v. U.S. Sec'y of Navy*, 967 F.2d 737, 741 (2d Cir. 1992) (citation and internal quotation marks omitted)).

The court then explained why exhaustion was *not* required. *Id.* at 290. Specifically, "Davis's challenge to the bond hearing that he received under this Court's order raises a 'substantial constitutional question' over which the BIA would lack jurisdiction, rendering appeal to that body 'futile'" and thus meeting "the third and fourth exhaustion exceptions." *Id.* (noting that the petitioner challenged (1) whether his hearing had been conducted by a neutral

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[5] *See, e.g.*, Dkt. 23 at 9-10 (noting futility of appeal on issues BIA has no authority to resolve, BIA's lack of expertise in adjudicating whether the Court's orders have been followed, extended length of time of BIA appeals, and the continuing violation of Petitioner's constitutional rights); Dkt. 24 at 1-5 (noting irreparable harm caused by conditions of confinement, including being placed in solitary confinement after being brutally assaulted and beaten, which is deteriorating Petitioner's pre-existing medical and psychiatric conditions each day); *cf. Ortega-Rangel v. Sessions*, 313 F. Supp. 3d 993, 1003 (N.D. Cal. 2018) (applying *Leonardo* to similarly-situated petitioner and finding exception to exhaustion requirement had been met).

decisionmaker and (2) whether the IJ correctly applied the burden of proof). Furthermore, "because of delays inherent in the administrative process, BIA review would result in the very harm that the bond hearing was designed to prevent: prolonged detention without due process during lengthy and backlogged removal proceedings." *Id.* (quoting *Hechavarria v. Whitaker*, 358 F. Supp. 3d 227, 237 (W.D.N.Y. 2019) (citation and internal quotation mars omitted)). "So irreparable injury may result in a situation where there really is no genuine opportunity for timely, and therefore adequate, relief." *Id.*

As set forth in Petitioner's Motion to Enforce, he meets each of the four disjunctive criteria for not requiring the prudential exhaustion of administrative remedies. *See* Dkt. 23 at 9-10.

Having determined that administrative exhaustion was not required, the *Davis* court proceeded to adjudicate the merits of the petitioner's motion to enforce.[6] Unlike what occurred during Petitioner's hearing on March 10, 2025, in *Davis*, there was no indication that the IJ (1) refused to allow the petitioner and his witnesses to testify, (2) deprived the petitioner of the opportunity to examinate the government's witnesses, or (3) failed to consider highly probative evidence in the record. Quite the opposite—the IJ "not only stated repeatedly that he was applying the correct standard—he also analyzed the evidence under that standard." *Davis*, 708 F. Supp. 3d at 296. In Petitioner's case, the IJ explicitly misstated the burden of proof, in violation of this Court's March 3 Order. *See* App'x at 32 (citing *Matter of Guerra* and stating, "a respondent seeking bond must establish that he 'does not present a danger to person or property.'). Moreover, far from relying only on "records of criminal convictions—standing by themselves"—which the *Davis* court confirmed would not have constituted clear and convincing evidence of dangerousness, *id.* at 297 (citing *Blandon v. Barr*, 434 F. Supp. 3d at 37-38 (W.D.N.Y. 2020))—the IJ considered "Davis's criminal record, which included

[6] At the hearing on April 22, Respondents relied heavily on *Davis* to argue that "this Court will not—indeed, it cannot—reexamine the evidence and review whether IJ Driscoll assigned the proper weight to each item in the proper context." 708 F. Supp. 3d at 298. But Petitioner is not asking the Court to undertake that analysis. Instead, Petitioner asks this Court—like the court in *Davis*—to determine whether Respondents complied with this Court's order to provide Petitioner a constitutionally-mandated bond hearing where DHS bore the burden to establish danger or flight by clear and convincing evidence.

numerous, relatively recent convictions for "driving under the influence, theft, disorderly conduct, resisting arrest, strangulation, assault, and drug possession," as well as his violation of a "protection order" involving his wife, before finding that Davis had neither "shown any rehabilitation" nor "addressed past patterns of behavior." *Id.*

Had Davis received a hearing like Petitioner's, where the IJ relied on unproven allegations, faulted him for not submitted a written declaration (though she provided him no notice that a declaration would be required), refused to hear any witness testimony, improperly and contrary to this Court's order placed the burden of proof on Petitioner, and prevented the cross-examination of government witnesses, the *Davis* court would have found that the government did not comply with its order. Petitioner asks this Court to find the same here.

Dated: April 28, 2025

Respectfully Submitted

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