UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

Juan Francisco Mendez, Petitioner, v. Strafford County Department of Corrections, Superintendent, et al., Respondents.	)	No. 1:25-cv-00147-JL-AJ

FEDERAL RESPONDENTS' OBJECTION TO PETITIONER'S FURTHER MEMORANDUM IN SUPPORT OF PETITION AND REQUEST FOR STATUS CONFERENCE (ECF No. 13)

Federal Respondents, Patricia H. Hyde, Acting Director of Boston Field Office, U.S. Immigration and Customs Enforcement ("ICE"), Enforcement Removal Operations ("ERO"); Kristi Noem, Secretary of the Department of Homeland Security ("DHS"), and Pamela Bondi, Attorney General, hereby object to Petitioner's further memorandum in support of petition and request for a status conference.[1] ECF No. 13. Because Petitioner has not yet exhausted the administrative and judicial remedies available for amending the conditions of his release and return of his private property is unrelated to his release from detention, this motion should be denied.

[1] Further, Federal Respondents object to the form of the motion. If Petitioner wishes to reach resolution of these issues by agreement, *see* ECF No. 13 at 7, he and his counsel may contact the Federal Respondents directly, without involving the Court. If Petitioner wants the Court to act, he may file a motion for specific relief and an expedited briefing schedule, should he consider that necessary, to allow the parties the opportunity to provide the Court the information it needs to rule. Federal Respondents recognize that the Court's inherent discretion to manage its docket allows the Court to hold a status conference, but are puzzled by what purpose a status conference with the Court will serve that direct communication will not, as a status conference is not a vehicle to receive specific Court action.

I. Petitioner Has Failed to Exhaust His Administrative Remedies Regarding the Conditions of his Release.[2]

The requirement that a petitioner seeking habeas relief from a court must first exhaust available remedies has been long established. *See, e.g., Rogers v. United States*, 180 F.3d 349, 357-58 (1st Cir. 1999); *Woodford v. Ngo*, 548 U.S. 81, 88-89 (2006). The exhaustion requirement protects administrative agency authority, by allowing an agency to address its own errors, and promotes judicial efficiency, by providing a complete record for the reviewing court. *Id.* This principle applies to immigration detainees and encompasses remedies available through the immigration court system. *See Campbell v. Chadbourne*, 505 F. Supp. 2d 191, 197 (D. Mass. 2007) (dismissing immigration detainee's habeas petition where detainee "was entitled to have

[2] ISAP, the program to which Petitioner objects, is part of ICE's "Alternatives to Detention" program, which enables non-citizens to remain in their communities pending removal proceedings, while increasing court appearance rates and allowing ICE to conduct case management services. ICE, "Alternatives to Detention," https://www.ice.gov/features/atd. Compliance reviews at 30-day intervals allow ICE to determine the appropriate level of supervision and de-escalate conditions as appropriate. ICE, "Alternatives to Detention Frequently Asked Questions," https://www.ice.gov/atd-faq (Enrollment, Escalation, and Termination Questions). "Approximately 90% of participants were terminated from ISAP and migrated to Non-Detained status as a result of Administrative Closure, Program De-Escalation, or Prosecutorial Discretion. Some of these individuals may have had their cases concluded, but the majority were still in removal proceedings." *Id.* (Compliance Questions). ICE does not classify ISAP as detention, but as release with enhanced supervision. *See* DHS, *Privacy Impact Assessment for the Alternatives to Detention (ATD) Program*, March 17, 2023 ("ATD is not a form of custody; rather, it is a program that provides for supervision over some noncitizens on the non-detained docket using case management services and, as appropriate, monitoring technologies."), available at https://www.dhs.gov/sites/default/files/2023-08/privacy-pia-ice062-atd-august2023.pdf. Federal Respondents do not concede that ISAP enrollment and GPS monitoring constitute "detention" sufficient to meet the requirements of a habeas petition in this case, nor that ICE did not have discretion to place Petitioner in ISAP where the immigration judge's bond order did not preclude such conditions of release. However, the Court need not resolve these questions to deny this motion, in light of Petitioner's failure to allow the administrative process to proceed.

his custody determination reviewed by an Immigration Judge and to pursue an appeal of any decision rendered by the Immigration Judge to the Board of Immigration Appeals," did not do so, and "he must do so before seeking relief in federal court"); *Kaweesa v. Ashcroft*, 345 F. Supp. 2d 79, 100 (D. Mass. 2004) ("As a prudential matter, then, a court should not grant habeas relief unless a petitioner has exhausted all available administrative and judicial remedies.").

Because the exhaustion mandate here arises from common law, not statute, courts have some "leeway" to relax the requirement. *See Anversa v. Partners Healthcare Sys., Inc.*, 835 F.3d 167, 176 (1st Cir. 2016) ("That leeway is built into the common-law doctrine of administrative exhaustion."). Courts have recognized exceptions to the § 2241 exhaustion requirement when exhausting administrative appeals "'are unavailable or wholly inappropriate to the relief sought, or where the attempt to exhaust such remedies would itself be a patently futile course of action.'" *Rodriguez-Rosa v. Spaulding*, No. CV 19-11984- MBB, 2020 WL 2543239, at *10 n.21 (D. Mass. May 19, 2020) (quoting *Williams v. Willis*, 765 F. App'x 83, 83-84 (5th Cir. 2019) (citations omitted)). "The burden of demonstrating an exception from the exhaustion requirement falls on the party seeking to avoid the requirement." *Rose v. Yeaw*, 214 F.3d 206, 211 (1st Cir. 2000). But relaxing the requirement does not mean allowing a petitioner to file for habeas part way through the remedy process. *Woodford*, 548 U.S. 88-89 ("[N]o one is entitled to judicial relief for a supposed . . . injury *until* the prescribed administrative remedy has been exhausted." (cleaned up) (emphasis added)).

Turning to remedies available to Petitioner here, federal regulations provide a scheme by which non-citizens who have been released from immigration detention may seek modifications to the terms of their release. Under 8 C.F.R. § 1236.1(d)(1), titled "Application to immigration judge," such a non-citizen "may, at any time before an order [of removal] becomes final,

request" from an immigration judge "amelioration of the conditions under which he or she may be released." Further, if the non-citizen "has been released from custody, an application for amelioration of the terms of release must be filed within 7 days of release." *Id.*[3] If the seven-day period for appeal to the immigration judge has passed, a non-citizen may request review of their conditions of release from the district director. 8 C.F.R. § 1236.1(d)(2). A petitioner may appeal either determination to the Bureau of Immigration Appeals ("BIA") under the procedures at 8 C.F.R. § 1236.1(d)(3).[4]

Petitioner makes no showing that he has exhausted the remedies available under this regulatory scheme. The fact that he has filed a motion asking the immigration judge to review his conditions of release, on which a hearing is scheduled, does not satisfy the exhaustion requirement or allow him to pursue habeas relief in this court.

Further, while the exhaustion requirement under § 2241 is prudential, he has offered no basis for this Court to waive it here. He has not shown that such remedies are unavailable, unsuited to the relief sought, or that they will be futile; rather, the fact that he has filed a motion with the immigration judge shows that he is aware of his administrative remedies and is willing and able to pursue them.[5] Asking the Court to act at this juncture risks wasting judicial resources

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[3] ICE has represented to agency counsel that Petitioner's immigration attorney filed a motion about his GPS monitoring and enrollment in ISAP on May 15, 2025, and that it is set for a hearing on May 29, 2025. Given the short timeline for this response, undersigned counsel does not yet have a copy of this motion, but will supplement this response with a copy when available.

[4] 8 C.F.R. §1236.1 applies to the Executive Office for Immigration Review, Department of Justice; the same language applies to the Department of Homeland Security, appearing at 8 C.F.R. § 236.1; *see also* 8 C.F.R. § 1003.19(a) (addressing custody and bond procedures for immigration judges).

[5] Given the allegations in Petitioner's previous pleadings, *see generally* ECF No. 8, Federal Respondents note that Petitioner has failed to provide *any* evidence of bad faith or punitive motive by ICE sufficient to suggest that he cannot obtain relief through the immigration court system. In particular, Federal Respondents note that their representation to the Court in a past hearing that Petitioner had not filed a motion for bond hearing, though inaccurate, was not

on a matter that may be more efficiently be resolved through the immigration court system. Moreover, should Petitioner's recourse to the immigration remedies fail, this Court would have the benefit of an administrative record on which to rely.

Because Petitioner has administrative remedies available to provide the relief he seeks, his motion for a status conference should be denied.

II. The Return of Petitioner's Personal Property May Not Be Addressed Under Habeas.

Petitioner also seeks return of his private property, specifically his wallet and his telephone. Without taking any position on the merits, Federal Respondents object to Petitioner raising these claims in a habeas petition. Section 2241 allows a petitioner to challenge only the lawfulness of his detention. "While a habeas petition is a vehicle capable of challenging the basis of a governmental restriction on a person's liberty, it is not capable of addressing private property rights." *Ameziane v. Obama*, 58 F. Supp. 3d 99, 102 (D.D.C. 2014) (cleaned up). "Countless" have "held that claims for the return of lost, damaged, or confiscated property are not cognizable in a writ of habeas corpus." *Id.* (collecting cases).

Respectfully submitted,

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Acting United States Attorney

/s/ Anna Dronzek

willfully false. *See* ECF No. 13 at 3. At the time counsel made that representation, ICE counsel had been unable to locate the request for bond hearing because of confusion about the Petitioner's A# (the unique identifier provided by USCIS to non-citizens to track their interactions with the immigration system). Petitioner's attorney acknowledges this confusion in her affidavit attached to Petitioner's previous motion for status conference, which references three different A#s in the case. ECF No. 8-1, ¶¶ 24-25, at 5-6; *see also* Pet.'s Mot. for Custody Redetermination, ECF No. 8-4 at 6 (showing two redacted A#s). This kind of clerical error is insufficient to support the allegations of punitive motive and bad faith that permeate Petitioner's pleadings.

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