

1 District Judge Ricardo S. Martinez
2 Magistrate Judge Brian A. Tsuchida
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UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

9 JAVEIN JUMEL COKE,

Case No. 2:25-cv-00694-RSM-BAT

10 v. Petitioner,

FEDERAL RESPONDENTS' RETURN
11 AND MOTION TO DISMISS THE
PETITION

12 BRUCE SCOTT, *et al.*,

13 Respondents. Noted for Consideration:
June 24, 2025

14
15 I. INTRODUCTION

16 This Court should deny the habeas petition. Petitioner Javein Jumel Coke asserts that
17 his continued immigration detention violates due process because an Immigration Judge ("IJ")
18 has granted him deferred removal under the Convention Against Torture ("CAT"). Dkt. No. 1,
19 Pet. However, the U.S. Department of Homeland Security ("DHS") has appealed this decision
20 to the Board of Immigration Appeals ("BIA"). While this appeal is pending, and Coke's
21 removal proceedings remain ongoing, U.S. Immigration and Customs Enforcement ("ICE")
22 lawfully detains Coke pursuant to Section 236(a) of the Immigration and Nationality Act
23 ("INA"), codified at 8 U.S.C. § 1226(a).

1 This habeas petition should be dismissed because Coke has not exhausted his
2 administrative remedies through the “substantial procedural protections” available under
3 Section 1226(a). *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1214 (9th Cir. 2022). Coke seeks
4 his immediate release, or in the alternative, an individualized bond hearing. Coke should not be
5 granted the relief sought here before being required to seek that relief in his administrative
6 proceedings.

7 Finally, ICE has complied with ICE Directive 16004.1 concerning the review of a
8 detainee's custody following a grant of CAT deferral. Pet., ¶ 4. After reviewing his custody,
9 ICE found that release was not appropriate but would reevaluate Coke's custody status if the
10 BIA dismisses DHS's appeal. Pet., Ex. H. Continued detention is lawful under these
11 circumstances. Regulations provide that ICE may continue detention even after a grant of CAT
12 deferral. 8 C.F.R. § 208.17(c). Thus, even if the BIA denies DHS's appeal, Coke's
13 immigration detention remains lawful.

14 Accordingly, Federal Respondents respectfully requests that this Court deny Coke's
15 Petition for Habeas Corpus and grant its motion to dismiss. This motion is supported by the
16 pleadings and documents on file in this case, the Declaration of Javier Delgado ("Delgado
17 Decl."), and the Declaration of Michelle R. Lambert ("Lambert Decl.") with exhibits attached
18 thereto. Federal Respondents do not request an evidentiary hearing.

II. FACTUAL BACKGROUND

20 Coke is a citizen of Jamaica who entered the United States in 2008 under a temporary
21 visitor's visa. Delgado Decl., ¶ 3; Lambert Decl., Ex. A, Form I-213. He overstayed his visa by
22 failing to depart the United States when required and has remained in the United States without
23 authorization since that time. Delgado Decl., ¶ 3. In 2017, Coke used another person's identity
24 to falsely claim that he was a U.S. citizen. Lambert Decl., Ex. B, Criminal Records, Indictment,

1 at L70. In January 2023, Coke pled guilty to the offense of Aggravated Identification Theft, in
 2 violation of 18 U.S.C. § 1028A, and was sentenced to 24 months of prison. Delgado Decl., ¶ 4;
 3 Lambert Decl., Ex. B, Criminal Records.

4 DHS issued Coke a Notice to Appear (“NTA”) that charged him as removable under 8
 5 U.S.C. § 1227(a)(1)(B) due to overstaying his visa. Delgado Decl., ¶ 5; Lambert Decl., Ex. C,
 6 Notice to Appear; Ex. D, Warrant for Arrest. ICE took custody of Coke upon his release from
 7 prison on April 23, 2024. Delgado Decl., ¶ 5. At that time, ICE determined that Coke would be
 8 detained pending a final administrative determination. Lambert Decl., Ex. E, Notice of Custody
 9 Determination. There is no record that Coke has filed a request for a bond redetermination
 10 hearing with the IJ. Delgado Decl., ¶ 10.

11 The IJ sustained the NTA’s charge of removability. Pet., Ex. F, at 1. Thereafter, Coke
 12 applied for various forms of protection from removal. Delgado Decl., ¶ 6. On October 23,
 13 2024, an IJ granted Coke’s application for deferral of removal under CAT. *Id.* The following
 14 month, DHS filed a timely appeal of the IJ’s grant of CAT deferral with the BIA. *Id.*, ¶ 7. The
 15 BIA placed the appeal on hold in April 2025 pursuant to 8 C.F.R. § 1003.1(d)(6)(ii), pending
 16 confirmation that background check requirements have been met. *Id.*, ¶ 12.

17 **III. LEGAL STANDARD**

18 It is axiomatic that “[t]he district courts of the United States . . . are courts of limited
 19 jurisdiction. They possess only that power authorized by Constitution and statute.” *Exxon*
Mobil Corp. v. Allopath Servs., Inc., 545 U.S. 546, 552 (2005) (internal quotations omitted).
 21 “[T]he scope of habeas has been tightly regulated by statute, from the Judiciary Act of 1789 to
 22 the present day.” *Dep’t of Homeland Sec. v. Thuraissigiam*, 140 S. Ct. 1959, 1974 n. 20 (2020).
 23 Title 28 U.S.C. § 2241 provides district courts with jurisdiction to hear federal habeas petitions.
 24

1 To warrant a grant of habeas corpus, the petitioner must demonstrate that his or her
 2 custody is in violation of the Constitution, laws, or treaties of the United States. *See* 8 U.S.C.
 3 § 2241(c)(3).

4 **IV. ARGUMENT**

5 **A. ICE lawfully detains Coke pursuant to 8 U.S.C. § 1226(a).**

6 Because his removal proceedings are ongoing, Coke is lawfully detained pursuant to 8
 7 U.S.C. § 1226(a). The Ninth Circuit has found that the Section 1226(a) and its implementing
 8 regulations satisfy due process. *Rodriguez Diaz*, 53 F.4th at 1209-10. Throughout his removal
 9 proceedings, Coke has had the right to seek the very relief he seeks here, a bond determination
 10 hearing which could lead to his release.

11 Congress enacted a multi-layered statute that provides for the continued civil detention
 12 of noncitizens pending removal. *See Prieto-Romero v. Clark*, 534 F.3d 1053, 1059 (9th Cir.
 13 2008). Where an individual falls within this scheme affects whether his detention is
 14 discretionary or mandatory, as well as the kind of review process available. *Id.*, at 1057. This
 15 case concerns the Government's responsibilities under 8 U.S.C. § 1226(a), which "authorizes
 16 the Attorney General to arrest and detain an alien 'pending a decision on whether the alien is to
 17 be removed from the United States.'" *Jennings v. Rodriguez*, 583 U.S. 281, 306 (2018)
 18 (quoting 8 U.S.C. § 1226(a)). The Supreme Court has recognized that "there is little question
 19 that the civil detention of aliens during removal proceedings can serve a legitimate government
 20 purpose, which is 'preventing deportable . . . aliens from fleeing prior to or during their removal
 21 proceedings, thus increasing the chance that, if ordered removed, the aliens will be successfully
 22 removed.'" *Prieto-Romero*, 534 F.3d at 1065 (citing *Demore v. Kim*, 538 U.S. 510, 528
 23 (2003)).

1 Section 1226(a) provides, in part, as follows:

2 On a Warrant issued by the Attorney General, an alien may be arrested and
 3 detained pending a decision on whether the alien is to be removed from the
 4 United States. Except as provided in subsection (c) of this section and pending
 5 such decision, the Attorney General -

6 (1) may continue to detain the arrested alien; and
 7 (2) may release the alien on -
 8 (A) bond of at least \$1,500 with security approved by, and
 9 containing conditions prescribed by, the Attorney General; or
 10 (B) conditional parole . . .

11 8 U.S.C. § 1226(a).

12 “Section 1226(a) and its implementing regulations provide extensive procedural
 13 protections that are unavailable under other detention provisions.” *Rodriguez Diaz*, 53 F.4th at
 14 1202. Every noncitizen apprehended under Section 1226(a) is individually considered for
 15 release on bond. 8 U.S.C. § 1226(a); 8 C.F.R. § 236.1(c)(8). An ICE officer initially assesses
 16 whether the noncitizen has “demonstrate[d]” that “release would not pose a danger to property
 17 or persons, and that the alien is likely to appear for any future proceeding.” 8 C.F.R.
 18 § 236.1(c)(8). If the ICE officer denies bond, the noncitizen may ask an IJ for a redetermination
 19 of the custody decision. 8 C.F.R. § 236.1(d)(1). Thus, the initial bond hearing held before an IJ
 20 for a noncitizen detained under Section 1226(a) is also called a “redetermination hearing.” At
 21 this hearing, the noncitizen bears the burden of establishing “that he or she does not present a
 22 danger to persons or property, is not a threat to the national security, and does not pose a risk of
 23 flight.” *Matter of Guerra*, 24 I. & N. Dec. 37, 38 (BIA 2006). Bond hearings are separate and
 24 apart from, and form no part of, a noncitizen’s removal hearings. 8 C.F.R. § 1003.19(d).

25 The noncitizen may appeal the IJ’s custody redetermination to the BIA. 8 C.F.R.
 26 §§ 236.1(d)(3)(i), 1236.1(d)(3)(i); *Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011).
 27 Further, a noncitizen who remains detained pursuant to Section 1226(a) after the initial bond

1 hearing may request that the IJ conduct another custody redetermination whenever
2 "circumstances have changed materially since the prior bond redetermination." 8 C.F.R.
3 § 1003.19(e).

4 Here, ICE determined that Coke would remain in detention. Lambert Decl., Ex. E; 8
5 C.F.R. § 236.1(c)(8). The simple fact in this case is that Coke has never sought a bond
6 redetermination hearing before the IJ, which has been available to him under Section 1226(a).
7 Delgado Decl., ¶ 10; 8 C.F.R. § 236.1(d)(1). This Court should not allow Coke to use habeas to
8 seek relief that he failed to seek through his administrative proceedings.

9 **B. Coke has failed to exhaust his administrative remedies.**

10 This Court should require Coke to avail himself of the substantial procedural protections
11 of Section 1226(a) before seeking habeas relief in a federal district court. Coke has never
12 requested a bond redetermination hearing from an IJ. 8 C.F.R. § 236.1(d)(1). And even if he
13 were to disagree with an IJ's future bond decision, he would be able administratively appeal the
14 decision to the BIA. Therefore, Coke has several layers of process available to him prior to
15 seeking this Court's intervention.

16 Although exhaustion of administrative remedies is not a jurisdictional prerequisite for
17 habeas petitions, courts generally "require, as a prudential matter, that habeas petitioners
18 exhaust available judicial and administrative remedies before seeking [such] relief." *Castro-*
19 *Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001) (abrogated on other grounds by *Fernandez-*
20 *Vargas v. Gonzales*, 548 U.S. 30 (2006)). The exhaustion requirement is subject to waiver
21 because it is not a "'jurisdictional' prerequisite.'" *Id.*

22 Courts may require prudential exhaustion where: "(1) agency expertise makes agency
23 consideration necessary to generate a proper record and reach a proper decision; (2) relaxation
24 of the requirement would encourage the deliberate bypass of the administrative scheme; and (3)

1 administrative review is likely to allow the agency to correct its own mistakes and to preclude
 2 the need for judicial review.” *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007).

3 The Court should not allow Coke to move forward with this litigation without first
 4 exhausting his administrative remedies. Like the circumstances here, a court in this district
 5 dismissed a noncitizen’s habeas petition because the petitioner had failed to seek a bond
 6 redetermination hearing at the administrative level. *Cristobal v. Asher*, 20-cv-1493-RSM-BAT,
 7 2020 WL 8678097, at * 3 (W.D. Wash. Dec. 14, 2020), *Rep. & Rec. adopted by* 2021
 8 WL796597 (W.D. Wash. Mar. 2, 2021). In *Cristobal*, the petitioner had been detained for 15
 9 months and was denied bond at an initial bond redetermination hearing, but he never sought a
 10 second bond redetermination hearing based on changed circumstances before filing a habeas
 11 petition. In comparison, Coke has not even pursued the preliminary administrative remedy that
 12 the *Cristobal* petitioner had pursued – an initial bond redetermination hearing – before filing a
 13 habeas petition in the district court. Therefore, this Court should also dismiss this Petition.

14 Furthermore, this case meets the elements requiring prudential exhaustion. Even if the
 15 IJ had denied bond, Coke would have had the ability to appeal the denial to the BIA. The BIA
 16 “has a special expertise in reviewing the question of whether the bond record as a whole makes
 17 it substantially unlikely that the Department w[ill] prevail on [the petitioner’s] challenge to
 18 removability.” *Francisco Cortez v. Nielsen*, No. 19-CV-00754-PJH, 2019 WL 1508458, at *3
 19 (N.D. Cal. Apr. 5, 2019) (internal quotation marks omitted). Also, allowing a “relaxation of the
 20 exhaustion requirement” would promote the avoidance of seeking a bond redetermination by the
 21 IJ or an appeal of similar IJ orders to the BIA. Finally, the outcome of a bond redetermination
 22 hearing before an IJ or a subsequent BIA appeal may provide Coke with the relief sought here –
 23 an individualized bond hearing and ultimately release.

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1 Accordingly, the Petition should be dismissed because Coke has failed to exhaust his
2 administrative remedies.

3 **C. Coke is not entitled to release.**

4 This Court should deny Coke's request for immediate release from immigration
5 detention. Pet., at 30. A noncitizen is entitled to release if he can show that his immigration
6 detention is indefinite as defined in *Zadvydas*. *Hong v. Mayorkas*, No. 2:20-cv-1784, 2021 WL
7 8016749, at *6 (W.D. Wash. June 8, 2021), *report and recommendation adopted*, 2022 WL
8 1078627 (W.D. Wash. Apr. 11, 2022). While Coke's detention continues while his removal
9 proceedings are ongoing, he cannot allege that his detention has become indefinite. Coke has
10 presented no evidence that ICE will be unable to remove him if his removal order ultimately
11 becomes final. Nor has Coke provided any legal basis for his immediate release from detention
12 while detained pursuant to 8 U.S.C. § 1226(a).

13 Accordingly, this Court should not grant Coke's request for immediate release.

14 **D. Coke is not entitled to a court-ordered bond hearing.**

15 This Court should require Coke to first move for a bond redetermination hearing as part
16 of his removal proceedings. He has not requested that the IJ conduct a custody redetermination
17 since his removal proceedings began. 8 C.F.R. § 1003.19(e). The appropriate place to first
18 introduce this request is before the IJ and not this Court, as this may obviate the need for federal
19 litigation.

20 Coke's detention comports with due process. "Due process is flexible and calls for such
21 procedural protections as the particular situation demands." *Mathews v. Eldridge*, 424 U.S.
22 319, 334 (1976). The *Mathews* test does not demonstrate that Coke's detention violates his
23 constitutional due process rights. Under *Mathews*, "[t]he fundamental requirement of due
24 process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Id.*, at

1 333 (internal quotation marks omitted). He has such an opportunity available to him through
 2 his removal proceedings.

3 Pursuant to *Mathews*, district courts must analyze (1) “the private interest that will be
 4 affected by the official action,” (2) “the risk of an erroneous deprivation of such interest through
 5 the procedures used, and the probable value, if any, of additional or substitute procedural
 6 safeguards,” and (3) “the Government’s interest, including the function involved and the fiscal
 7 and administrative burdens that the additional or substitute procedural requirement would
 8 entail.” *Mathews*, 424 U.S. at 335.

9 With respect to the first factor – the private interest at stake – while it is true as a general
 10 matter that freedom from physical restraint “lies at the heart of the liberty that [the Due Process]
 11 Clause protects,” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (internal quotation marks
 12 omitted), the Supreme Court has clarified that “[i]n the exercise of its broad power over
 13 naturalization and immigration, Congress regularly makes rules that would be unacceptable if
 14 applied to citizens.” *Demore*, 538 U.S. at 522. Accordingly, while the “Fifth Amendment
 15 entitles aliens to due process of law in deportation proceedings, detention during deportation
 16 proceedings [is] a constitutionally valid aspect of the deportation process.” *Id.*, at 523. Any
 17 assessment of the private interests at stake must therefore account for the fact that the Supreme
 18 Court has never held that aliens have a constitutional right to be released from custody during
 19 the pendency of removal proceedings and has in fact held precisely the opposite. *Id.*, at 530;
 20 *Carlson v. Landon*, 342 U.S. 524, 538 (1952). Furthermore, this Court “cannot simply count his
 21 months of detention.” *Rodriguez Diaz*, 53 F.4th at 1208. This Court should consider the
 22 process that was available to him and that he chose not to pursue. *Id.*

23 As for the second factor, the existing implementing regulations are sufficient to protect
 24 Coke’s “liberty interest and mitigate[] the risk of erroneous deprivation.” *Id.*, at 1209. Coke

1 has received sufficient procedural safeguards. ICE served him with a Notice of Custody
2 Determination when he was first detained that allowed him to request review of the custody
3 determination by a neutral IJ. Lambert Decl., Ex. E. He has not availed himself of this process
4 and subsequent layers of review. *Id.*, at 1209-10 (analyzing second *Mathews* factor in relation
5 to Section 1226(a)).

6 Regarding the third factor, the Government has a significant interest in the orderly
7 process of removal proceedings. Here, Coke has failed to seek the administrative processes
8 available to him concerning his custody status. Accordingly, a grant of a bond redetermination
9 hearing by this Court would undermine the administrative process by allowing noncitizens to go
10 directly to district court without exhausting – or even attempting to exhaust – their
11 administrative remedies first.

12 Accordingly, Coke's detention comports with due process and this Court should not
13 order a bond redetermination hearing.

14 **CONCLUSION**

15 For the foregoing reasons, this Court should dismiss Coke's Petition in its entirety.

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1 DATED this 27th day of May, 2025.

2 Respectfully submitted,

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15 I certify that this memorandum contains 2,753
16 words, in compliance with the Local Civil Rules.