

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

JAVEIN JUMEL COKE,

Petitioner,

5

BRUCE SCOTT, et al.,

### Respondents.

CASE NO. 2:25-cv-00694-RSM-BAT

## REPORT AND RECOMMENDATION

13 On April 17, 2025, Petitioner filed a 28 U.S.C. § 2241 petition for writ of habeas corpus  
14 requesting the Court order his immediate release or alternatively a bond hearing in which  
15 Respondents must show continued detention is warranted by clear and convincing evidence. See  
16 Habeas Petition. Dkt. 1 at 29. On May 27, 2025, Respondents filed a Return, noted for June 24,  
17 2025, contending the Court should dismiss the habeas petition because Petitioner: (1) is lawfully  
18 detained; (2) could have but has not sought review of his detention by an Immigration Judge (IJ)  
19 and thus has failed to exhaust his remedies; and (3) has failed to show his detention violates Due  
20 Process. Dkt. 9.

21 On June 12, 2025, Petitioner filed a Motion for Temporary Restraining Order (TRO)  
22 raising essentially the same arguments he presented in his habeas petition, i.e., the Court should  
23 order his immediate release because (1) he cannot be returned to Jamaica due to dangers he faces

1 there and thus he cannot be removed within the reasonably foreseeable future; and (2) his current  
2 detention negatively affects his mental health; and (3) he is likely to prevail on the claims for  
3 relief alleged in his habeas petition. Dkt. 12. Respondents filed their response to Petitioner's  
4 TRO on June 16, 2025 as directed by the Court. Dkt. 16. Respondents contend the TRO is  
5 procedurally improper because it asks the Court to immediately rule in Petitioner's favor on the  
6 issues he presents in his habeas petition, and the adjudication of the habeas petition is thus the  
7 proper mechanism to resolve Petitioner's requests for relief.

8 For the reasons below, the Court recommends **DENYING** the habeas petition and the  
9 Motion for TRO. The TRO rises and falls on the claims raised in the habeas petition, and a  
10 dismissal of the habeas petition renders the TRO moot. *See Cruz v. Session*, 2018 WL 6047287  
11 at \*6 (N.D. Cal. Nov. 18, 2018). In both pleadings, Petitioner seeks immediate release despite the  
12 fact he failed to request available relief from an IJ to redetermine Immigration and Custom  
13 Enforcement's (ICE) initial detention determination. The Court should not circumvent the  
14 administrative remedies available to Petitioner by simply ordering a bond hearing or by simply  
15 releasing him. Additionally, Petitioner has not shown, at this juncture, that his removal is not  
16 reasonably foreseeable, and he is thus subject to indefinite detention in violation of *Zadvydas v.*  
17 *Davis*, 533 U.S. 678 (2001), or that his confinement is punitive in violation of the Due Process  
18 clause.

19 **BACKGROUND**

20 **A. Habeas Petition and Return**

21 Petitioner is a native and citizen of Jamaica, has been detained since April 23, 2024, and  
22 is currently held at the Northwest Ice Processing Center (NWIPC). Petitioner entered the country  
23 in 2008 under a temporary visitor's visa, overstayed his visa, and has remained in the country

1 without lawful authorization. In 2017, Petitioner used another person's identity to falsely claim  
2 U.S. Citizenship. In 2023, he pleaded guilty to Aggravated Identity Theft and was sentenced to  
3 24 months of imprisonment.

4 The Department of Homeland Security (DHS) issued a notice to appear on the grounds  
5 Petitioner was subject to removal. After completing his criminal sentence, DHS took Petitioner  
6 into ICE custody and made an initial determination that he should remain in custody pending a  
7 final administrative determination. Petitioner refused to sign the DHS notice of custody  
8 determination which provided notice to Petitioner that he could request an immigration judge to  
9 review the initial DHS custody determination. Dkt. 11, Exhibit E. Respondent avers there is no  
10 record Petitioner has ever requested a bond determination by an IJ of the DHS detention  
11 determination.

12 On October 23, 2024, Petitioner appeared before Immigration Judge (IJ) Laylah  
13 McCullen for the purpose of "seeking the relief of withholding of removal or protection under  
14 the Convention Against Torture." *See* Habeas Petition at 65. Petitioner contends the IJ granted  
15 his application for deferral under the Convention Against Torture (CAT) and the Department of  
16 Homeland Security (DHS) appealed the IJ's decision to the Board of Immigration Appeals  
17 (BIA).

18 In her written order, IJ McCullen found Petitioner was convicted of aggravated identity  
19 theft which the IJ determined was an "aggravated felony fraud, and also a "discretionary  
20 particularly serious crime." Dkt. 1 at 67. The IJ determined "the conduct and the circumstances  
21 of the crime fall within the discretionary particularly serious crime, which bars him [Petitioner]  
22 from the relief of withholding or removal, both under the INA and the Convention Against  
23 Torture." *Id.* at 68.

1       The IJ further stated if following an appeal, Petitioner's criminal conviction was deemed  
2 not a discretionary particularly serious crime, "the Court would have granted withholding of  
3 removal under the INA to this respondent on the basis that he has a clear probability of  
4 persecution on the basis of his family name," and "respondent [Petitioner] has established it is  
5 more likely than not that he would be tortured if removed to Jamaica." *Id.* at 68-69.

6       An alien is ineligible for withholding of removal if "the alien, having been convicted by a  
7 final judgment of a particularly serious crime is a danger to the community of the United States."  
8 8 U.S.C. § 1231(b)(3)(B)(ii). An aggravated felony resulting in an aggregate sentence of five  
9 years imprisonment is a per se particularly serious crime. *Id.* § 1231(b)(3)(B). However, because  
10 the term "particularly serious crime" is not otherwise defined by statute, the Attorney General  
11 may also "designate offenses as particularly serious crimes through case-by-case adjudication as  
12 well as regulation." *Delgado v. Holder*, 648 F.3d 1095, 1098 (9th Cir. 2011) (en banc). The  
13 applicable legal standard to determine if a crime is particularly serious, described in the BIA's  
14 decision in *Matter of Frentescu*, 18 I. & N. Dec. 244 (BIA 1982), requires the agency to ask if  
15 "the nature of the conviction, the underlying facts and circumstances and the sentence imposed  
16 justify the presumption that the convicted immigrant is a danger to the community." *Delgado*,  
17 648 F.3d at 1107.

18       The IJ's order ultimately denied Petitioner's applications for asylum, withholding of  
19 removal under INS § 241(a)(3), and withholding under the CAT. However, the IJ ordered  
20 "respondent's [Petitioner] application for deferral of removal under the Convention Against  
21 Torture is granted," and "respondent [Petitioner] be removed to Jamaica on the charge contained  
22 in the Notice to Appear, and that his removal be deferred under the Convention Against Torture.  
23 *Id.* at 71-72. Respondent agrees the IJ granted Petitioner's application for deferral of removal

1 under the CAT. Following the IJ's decision, Respondents appealed to the BIA. The BIA placed  
2 the appeal on hold in April 2025 pending confirmation that background checks have been met.  
3 See Return at 3. Respondents aver it submitted background checks to the BIA, and that due to the  
4 pending appeal, no administratively final order of removal has been issued. Dkt. 18.

5 The Court notes deferral of removal under the CAT is governed by 8 C.F.R. § 1208.17  
6 which states:

7 (a) Grant of deferral of removal. An alien who: has been ordered  
8 removed; has been found under § 1208.16(c)(3) to be entitled to  
protection under the Convention Against Torture; and is subject to  
9 the provisions for mandatory denial of withholding of removal  
under § 1208.16(d)(2) or (d)(3), shall be granted deferral of  
removal to the country where he or she is more likely than not to  
10 be tortured.

11 (b) Notice to alien.

12 (1) After an immigration judge orders an alien described in  
13 paragraph (a) of this section removed, the immigration judge shall  
inform the alien that his or her removal to the country where he or  
14 she is more likely than not to be tortured shall be deferred until  
such time as the deferral is terminated under this section. The  
immigration judge shall inform the alien that deferral of removal:

15 (i) Does not confer upon the alien any lawful or permanent  
16 immigration status in the United States;

17 (ii) Will not necessarily result in the alien being released from the  
custody of the Service if the alien is subject to such custody;

18 (iii) Is effective only until terminated; and

19 (iv) Is subject to review and termination if the immigration judge  
20 determines that it is not likely that the alien would be tortured in  
the country to which removal has been deferred, or if the alien  
21 requests that deferral be terminated.

22 (2) The immigration judge shall also inform the alien that removal  
23 has been deferred only to the country in which it has been  
determined that the alien is likely to be tortured, and that the alien

1 may be removed at any time to another country where he or she is  
2 not likely to be tortured.

3 (c) Detention of an alien granted deferral of removal under this  
4 section. Nothing in this section shall alter the authority of the  
5 Service to detain an alien whose removal has been deferred under  
6 this section and who is otherwise subject to detention. In the case  
of such an alien, decisions about the alien's release shall be made  
according to part 241 of this chapter. Once removal proceedings  
have been completed, the detention and release of aliens shifts to  
INA § 241, 8 U.S.C. § 1231.

7 Section 241(a)(1)(A) of the INA states:

8 when an alien is ordered removed, the Attorney General shall  
9 remove the alien from the United States within a period of 90 days  
(in this section referred to as the 'removal period')." INA §  
10 241(a)(1)(A). During the removal period, continued detention is  
11 required. INA § 241(a)(2). Section 241(a)(6) provides the Attorney  
General with discretionary authority to detain aliens beyond the  
removal period, or to release them under an order of supervision.  
INA § 241(a)(6).

12 As the statutes sets forth, an alien may be detained even when deferral in a CAT case has been  
13 granted.

14 In both the habeas petition and the Motion for TRO, Petitioner argues his continued  
15 detention is unlawful and the Court should order immediate release. He contends under *Zadydas*  
16 *v. Davis*, 533 U.S. 678 (2001) he must be released because his removal is not reasonably  
17 foreseeable. Petitioner reasons he cannot be removed to Jamaica under the CAT and only 3% of  
18 noncitizens who have been granted withholding and CAT relief, like him, are removed to a non-  
19 home country. Petitioner also contends the likelihood he will succeed in showing he is subject to  
20 prohibited indefinite detention is high, and because detention has a negative impact upon his  
21 mental health, the Court should order his immediate release and bar Respondents from again  
22 detaining him while a final immigration determination is still pending.

23 Petitioner also argues in his habeas petition that his prolonged detention violates the

1 Administrative Procedures Act (APA) and his right to Due Process. He contends if ICE's general  
2 policy is to release aliens who have been granted deferred removal and CAT protection, his  
3 continued detention is arbitrary and capricious and violates the law. As a remedy, Petitioner  
4 requests the Court order Respondents to grant a bond hearing in which DHS has the burden to  
5 prove by clear and convincing evidence that he is a danger or a flight risk.

6 In their return, Respondent argues the habeas petition should be denied. Respondent  
7 concedes in October 2024, an IJ granted Petitioner's application for deferral of removal under  
8 CAT, but habeas relief should be denied because Petitioner is lawfully detained and failed to  
9 exhaust his administrative remedies, and further that Petitioner may be lawfully held even upon  
10 the grant of a CAT deferral. Respondents further contend the motion for TRO should be denied  
11 because the Court should deny habeas relief in this matter.

## 12 DISCUSSION

13 The parties do not dispute that at the time Petitioner was convicted of Aggravated  
14 Identity Theft, and subsequently taken into ICE custody, he lacked lawful status in the country;  
15 the IJ found Petitioner's criminal conviction constituted a discretionary particularly serious  
16 crime; Petitioner has never sought IJ review of ICE's initial detention determination; and his  
17 removal proceedings are not yet finalized.

18 Title 8 U.S.C. § 1226 provides the framework for the arrest, detention, and release of  
19 aliens, such as Petitioner who are in removal proceedings. 8 U.S.C. § 1226; *see also Denmore v.*  
20 *Kim*, 538 U.S. 510, 530 (2003) ("Detention during removal proceedings is a constitutionally  
21 permissible part of that process."). Section 1226(a) grants the Attorney General discretionary  
22 authority to determine whether an alien should be detained, released on bond, or released on  
23 conditional parole pending the completion of removal proceedings, unless the alien falls within

1 one of the categories of criminal aliens described in § 1226(c), for whom detention is  
2 mandatory. 8 U.S.C. § 1226.

3 When an alien such as Petitioner, is arrested and taken into immigration custody pursuant  
4 to § 1226(a), ICE makes an initial custody determination, including the setting of bond. *See* 8  
5 C.F.R. § 236.1. After the initial custody determination, the alien may request a bond  
6 redetermination by an IJ. *Id.*

7 At the bond hearing, the burden is on the detainee to show to the satisfaction of the IJ that  
8 he warrants release on bond. *See Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006). In making  
9 a bond decision under § 1226(a), an IJ “must consider whether an alien who seeks a change in  
10 custody status is a threat to national security, a danger to the community at large, likely to  
11 abscond, or otherwise a poor bail risk.” *Id.* (citing *Matter of Patel*, 15 I&N Dec. 666 (BIA  
12 1976)). An IJ may also consider any number of discretionary factors, including: (1) whether the  
13 alien has a fixed address in the United States; (2) the alien’s length of residence in the United  
14 States; (3) the alien’s family ties in the United States, and whether they may entitle the alien to  
15 reside permanently in the United States in the future; (4) the alien’s employment history; (5) the  
16 alien’s record of appearance in court; (6) the alien’s criminal record, including the extensiveness  
17 of criminal activity, the recency of such activity, and the seriousness of the offenses; (7) the  
18 alien’s history of immigration violations; (8) any attempts by the alien to flee persecution or  
19 otherwise escape authorities, and (9) the alien’s manner of entry to the United States. *Id.*

20 Once an IJ has made an initial bond redetermination, an alien’s request for a subsequent  
21 bond redetermination must be made in writing and must show that the alien’s circumstances have  
22 changed materially since the prior bond redetermination. 8 C.F.R. § 1003.19(e). Any alien  
23 detainee who is detained under 8 U.S.C. § 1226(a), may appeal an Immigration Judge’s bond

1 determination to the BIA. *See Prieto-Romero v. Clark*, 534 F.3d 1053, 1059 (9th Cir. 2008)); 8  
2 C.F.R. § 236.1. If the BIA denies relief, an alien detainee may then “may file a petition for  
3 habeas corpus in the district court.” *See Singh v. Holder*, 638 F.3d 1196, 1200–03 (9th Cir.  
4 2011)).

5 Because Petitioner’s removal proceedings are ongoing, his continued detention is  
6 governed by § 1226(a). Petitioner does not claim he availed himself of his right to have an IJ  
7 review the initial ICE detention determination, and Respondents aver Petitioner has not  
8 requested a bond hearing before an IJ. Petitioner argues he need not exhaust this particular  
9 remedy because exhaustion is a prudential, rather than a jurisdictional requirement. *See e.g.*  
10 *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017) (citation omitted). However, the Court  
11 may require prudential exhaustion when:

12 (1) agency expertise makes agency consideration necessary to  
13 generate a proper record and reach a proper decision; (2) relaxation  
14 of the requirement would encourage the deliberate bypass of the  
15 administrative scheme; and (3) administrative review is likely to  
16 allow the agency to correct its own mistakes and to preclude the  
17 need for judicial review.

18 *Id.* (citation omitted). If the Court determines an immigration detainee has failed to exhaust  
19 prudentially administrative remedies the Court should either dismiss the matter without prejudice  
20 or stay the matter to permit exhaustion. *Id.*

21 Here, Petitioner should be required to prudentially exhaust his remedies. First, Petitioner  
22 seeks release from detention. His release requires consideration of numerous facts which should  
23 be developed for presentation and then weighed by an IJ in the first instance.

24 Second, a waiver of prudential exhaustion would tend to encourage detainees to  
25 deliberately bypass the administrative scheme which contemplates a bond determination made  
26 by an IJ rather than the Court.

1       And third, the agency's position on bail cannot be said to be already set or predetermined  
2 thus rendering futile any attempt by Petitioner to exhaust his remedies. This is because an IJ has  
3 not yet been given a chance to address whether Petitioner should be released pending a final  
4 determination of removal. The agency should thus be afforded the opportunity to address bail in  
5 the first instance.

6       The Court accordingly concludes Petitioner's request for immediate release as set forth in  
7 his habeas petition and his motion for a TRO be DENIED without prejudice because Petitioner  
8 has administrative remedies that are available to him that he should utilize and exhaust as a  
9 prudential matter.

10      Because the Court recommends DENYING both the habeas petition and the motion for  
11 TRO for failure to exhaust available administrative remedies, the Court also touches upon  
12 Petitioner's claim detention negatively affects his mental health, his *Zadvydas* claim and his  
13 APA claim.

14      Turning first to Petitioner's conditions of confinement claim, to evaluate the  
15 constitutionality of a civil detention condition under the Fifth Amendment, the Court must  
16 determine whether those conditions "amount to punishment of the detainee." *Bell v. Wolfish*, 441  
17 U.S. 520, 535 (1979); *see also Kingsley v. Hendrickson*, 576 U.S. 389, 135 S. Ct. 2466, 2473-74  
18 (2015). Punishment may be shown through an express intent to punish or a restriction or  
19 condition that "is not reasonably related to a legitimate governmental objective." *Bell*, 441 U.S.  
20 at 539; *see also Kingsley*, 135 S. Ct. at 2473-74 (clarifying "a pretrial detainee can prevail by  
21 providing only objective evidence that the challenged governmental action is not rationally  
22 related to a legitimate governmental objective or that it is excessive in relation to that purpose").  
23 Petitioner has not shown Respondents possess an express intent to punish him in a manner that is

1 not reasonably related to a legitimate governmental objective. The Supreme Court has  
2 recognized legitimate government interests in ensuring noncitizens appear for their removal or  
3 deportation proceedings and protecting the community from harm. *See Jennings v. Rodriguez*,  
4 138 S. Ct. 830, 836 (2018); *Denmore*, 538 U.S. at 520-22; *Zadvydas*, 533 U.S. at 690-91.  
5 Petitioner fails to establish that the conditions of his detention are excessive in relation to these  
6 legitimate objectives.

7 Petitioner argues his detention negatively affects his mental health, but he presents  
8 insufficient information to show the inherent discomforts of immigration confinement violate the  
9 constitution. Accordingly, the Court recommends Petitioner's request he be released based upon  
10 the impact of detention on his health be **DENIED**.

11 As to whether Petitioner can be removed, the Court finds, Petitioner has not yet shown  
12 his detention is indefinite within the meaning of *Zadvydas v. Davis*, 533 U.S. 678 (2001). *See*  
13 *Prieto-Romero v. Clark*, 534 F.3d 1053, 1062-63 (2008). There is no dispute Respondents could  
14 remove Petitioner to his home county of Jamaica, i.e. there is no dispute Jamaica would accept  
15 Petitioner upon his removal. Rather the issue is whether Petitioner will prevail on his CAT claim  
16 which would serve to prevent removal to Jamaica, and if he so prevails, whether there are  
17 countries other than Jamaica that would accept Petitioner. Whether Petitioner is correct he is  
18 entitled to CAT protection and no country outside of Jamaica will accept him is a determination  
19 that is still pending at this time. Thus, the Court cannot say it is a foregone conclusion Petitioner  
20 will in fact prevail on his CAT claim or that he will not be removed to a country other than  
21 Jamaica. The Court accordingly concludes that while the merits of Petitioner's *Zadvydas* claim  
22 need not be resolved, even if the Court were to consider the claim, Petitioner has failed to  
23 establish he is entitled to immediate release under *Zadvydas*.

1 And lastly, Petitioner argues that he is being held arbitrarily in violation of the APA. The  
2 Court rejects the argument as Petitioner has failed to avail himself of IJ review of the detention  
3 decision and thus has failed to utilize his administrative remedies.

4 In short, the Court should DENY both the motion for a TRO and the habeas petition  
5 without prejudice. Petitioner has an available administrative remedy—a bond redetermination  
6 hearing conducted by an IJ and review by the BIA in the event bond is denied—which he should  
7 utilize and exhaust before the Court entertains habeas relief. The other grounds he presents for  
8 release—impact of confinement on his health, *Zadvydas* indefinite detention, and APA violations  
9 are unsupported and not grounds to grant the immediate release from confinement that he  
10 requests.

11 **OBJECTIONS AND APPEAL**

12 This Report and Recommendation is not an appealable order. Therefore, Petitioner  
13 should not file notice of appeal in the Court of Appeals for the Ninth Circuit until the assigned  
14 District Judge enters a judgment in the case.

15 Objections, however, may be filed and served upon all parties no later than **July 7, 2025**.  
16 The Clerk should note the matter for **July 8, 2025**, as ready for the District Judge's consideration  
17 if no objection is filed.

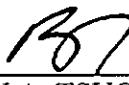
18 If objections are filed, any response to the objection is due within 14 days after being  
19 served with the objections. A party filing an objection must also note the matter for the Court's  
20 consideration 14 days from the date the objection is filed and served. The matter will then be  
21 ready for the Court's consideration on the date the response is due.

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1 Petitioner should note that the failure to timely object to this report and recommendation  
2 may affect the right to appeal. The clerk shall also provide Petitioner with a copy of this report  
3 and recommendation.

4 DATED this 18th day of June, 2025.

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8 BRIAN A. TSUCHIDA  
9 United States Magistrate Judge  
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