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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
CIVIL DIVISION

Claudy Dornevil,	
Petitioner,	Case No. 4:25-cv-1809
	JUDGE BENITA Y. PEARSON
v.	
KRISTI NOEM, ET AL.	
	REPLY TO MOTION TO DISMISS
Respondents.	

U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO

INTRODUCTION

Petitioner Claudy Dornveil is an applicant for asylum who fled from gang violence in Cabaret, Haiti. In 2021, the President of Haiti, Jovenel Moïse, was assassinated, setting off a crisis of gang violence that has spiraled through several parts of Haiti. Petitioner Claudy Dornveil's hometown of Cabaret, Haiti, has been struck by gang violence, causing Petitioner to flee for his personal safety and seek asylum in the United States.

Respondent was arrested while attending Immigration Court Proceedings following a motion to Dismiss proceedings by the Department of Homeland Security. Petitioner has since been detained contrary to operations of law and without proper due process (ECF No. 1, Petition *et seq*). Petitioner filed a petition for a writ of habeas corpus with this court, and Respondents replied with a motion to dismiss, citing 8 U.S.C. 1252(e) and the judicially-constructed doctrine of prudential exhaustion.

LAW AND ARGUMENT

I. EXHAUSTION IS NOT A JURISDICTIONAL REQUIREMENT

While Respondents cite non-binding authority on the judicially-constructed doctrine of prudential exhaustion in its Motion to Dismiss (ECF No. 5, Motion PageID #49, 4-5), it is not a "jurisdictional prerequisite" for a habeas corpus petition, and moreover, this prerequisite is subject to waiver. *Ward v. Chavez,* 678 F.3d 1042, 1045 (9th Cir 2012). Here, the facts support waiver.

II. FUTILITY DOCTRINE AND EXCEPTIONS TO EXHAUSTION

Even when courts find a requirement of exhaustion for considering a habeas corpus petition, prudential exhaustion may further be waived if "administrative remedies are inadequate

or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void." Laing v. Ashcroft, 370 F.3d 994, 1000 (9th Cir. 2004) *see also* "exhaustion is not required if pursuing those remedies would be futile" *Fraley v. U.S. Bureau of Prisons* 1 F.3d 924,925 (9th Cir. 1993). Here, an appeal would be futile, because the Immigration Judge was acting according to Policy Memorandum 25-09, issued January 29, 2025, which reads, "DHS, not EOIR, exercises prosecutorial functions in immigration proceedings in immigration courts and before the Board of Immigration Appeals (the Board); thus, it is the only agency for whom it is appropriate to determine whether a particular case warrants an exercise of prosecutorial discretion."[1] Since this policy memorandum would be controlling over both the Immigration Judge, as well as the Board of Immigration Appeals, any appeal by petitioner would be wasteful[2], long[3], and futile, and would ultimately result in irreparable injury to Petitioner through extended unlawful detention, and should this Court take jurisdiction over the petition, the instant administrative proceedings may be voided.

III. PETITIONER IS CLEARLY INELIGIBLE FOR EXPEDITED REMOVAL UNDER 8 U.S.C. § 1225 AND 8 U.S.C. § 1252(e) CANNOT APPLY

By the plain language of the Statute, Petitioner would not be eligible for Expedited Removal. Respondents do not contest that Respondent was granted Humanitarian Parole at a port of entry with an expiration date of July 23, 2026. Expedited removal is applicable only to

[1]https://iptp-production.s3.amazonaws.com/media/documents/2025.01.29_EOIR_PM_25-09_Cancellation_of_Policy_Memorandum_21-25.pdf

[2] An appeal from an Immigration Judge Decision requires a $1,010.00 fee. *See* https://www.justice.gov/eoir/types-appeals-motions-and-required-fees

[3] In a recent FOIA request, the Department of Justice found the average processing time for a BIA Appeal to be 190 days for a detained case (see attached exhibit). If Petitioner's detention is ultimately found to be unlawful, a 190 day appeal period is not reasonable for a Habeas Petition, which is supposed to be heard expeditiously.

"individuals who have not been admitted or paroled into the United States and who cannot demonstrate that they have been continuously present in the United States for two years" (ECF No. 5, Motion to Dismiss at Page #3). By the uncontested facts, Petitioner is not eligible for expedited removal, both by operation of statute, as well as Federal Regulation *see* 8 C.F.R. § 235.3 (b)(ii), "As specifically designated by the Commissioner, aliens who arrive in, attempt to enter, or have entered the United States without having been admitted or paroled following inspection by an immigration officer at a designated port-of-entry", *see also* 8 U.S.C. § 1225 (b)(1)(A)(iii)(II), "An alien described in this clause is an alien who is not described in subparagraph (F), who has not been admitted or paroled into the United States, and who has not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility under this subparagraph."

Despite the obvious plain reading of the statute finding Petitioner ineligible for Expedited Removal, Respondents raise an argument that both individuals who and who are not eligible for expedited removal have limited means for challenging their detention pursuant to 8 U.S.C. § 1225 (b)(1)(D). While this jurisdictional limitation has been upheld for individuals who are eligible for expedited removal, similarly applying this jurisdictional limitation to individuals who **are not** eligible for expedited removal would run into serious Constitutional concerns under both the Fifth Amendment Right to Due Process, as well as the Suspension Clause of the Constitution. Respondents' argument rests largely on *Dep't of Homeland Sec. v. Thuraissigiam, 591 U.S. 111* (2020) (ECF No. 5, Motion PageID # 48 50-53, 3, 5-8), which upheld a challenge to the entire

system of Expedited Removal, but Petitioners' arguments would expand the application of the ruling far beyond its original scope:

> While aliens who have established connections in this country have due process rights in deportation proceedings, the Court long ago held that Congress is entitled to set the conditions for an alien's lawful entry into this country and that, as a result, an alien at the threshold of initial entry cannot claim any greater rights under the Due Process clause [....] Respondent attempted to enter the country illegally and was apprehended just 25 yards from the border. He therefore has no entitlement to procedural rights other than those afforded by statute. [...] neither the Suspension Clause nor the Due Process Clause of the Fifth Amendment requires any further review of respondent's claims, and IIRIRA's limitations on habeas review are constitutional as applied.

id at 112 (internal quotations omitted. Emphasis added). Indeed, Petitioner is situated very differently from *Thuraissigiam*, who was apprehended 25 yards into the interior of the United States and had established no connections to the country prior to entry. Petitioner, however, declared himself a port of entry, was given Humanitarian Parole, was permitted to apply for, and was given a work permit. Prior to Petitioner's abrupt apprehension at his immigration hearing, Petitioner had done everything Respondents had requested of him, and presented no flight risk to justify his detention - after all, he was detained while leaving the Immigration Proceedings that he was told to attend.

The Subject Matter restrictions over 1252(a)(2)(A) were upheld by the Supreme Court over Fifth Amendment and Suspension Clause concerns, because the Court found that the Constitutional remedies did not apply to aliens who are apprehended at or near the border. If Respondents' arguments were to stand, the jurisdiction-stripping provisions would apply to all

aliens, including long-time residents who were clearly intended to be excluded from Expedited Removal.

This construction of 1252(a)(2)(A) and subsequently 8 U.S.C. § 1252(e) is constitutionally intolerable, and would directly run counter to the Due Process and Suspension Clauses of the United States Constitution. Rather, 1252(a)(2)(A) should be read to apply only to those aliens who are eligible for Expedited Review: those who have been apprehended at or near the border, or entered the United States without inspection and have been present for less than 2 years. Because Petitioner was "admitted or Paroled," he is ineligible for the provisions of the expedited removal statutes, and the jurisdiction-stripping provisions of 8 U.S.C. § 1252(e) should not apply to him.

IV. RESPONDENTS' ARGUMENTS ARE UNCONSTITUTIONAL AS APPLIED

Respondents argue there is no exception in 8 U.S.C. § 1252(e) for review of constitutional claims (ECF No 5. At PageID #54, 9), however application of 8 U.S.C. § 1252(e) to someone ineligible for expedited removal would plainly violate U.S. Const. Art I, § 9, cl. 2, "The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it." Respondents have cited no authority foreclosing judicial review of someone clearly ineligible for removal under the expedited removal statutes.

V. THIS COURT HAS JURSIDICTION EVEN IF 8 U.S.C. 1252(e) APPLIES

Assuming, *arguendo*, that 8 U.S.C. § 1252(e) applies, this court explicitly has jursidiction under a habeas corpus petition. The statute reads:

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> Judicial review of any determination made under section 1225(b)(1) of this title is available in habeas corpus proceedings, but shall be limited to determinations of—
>
> **(A)**whether the petitioner is an alien,
>
> **(B)**whether the petitioner was ordered removed under such section, and
>
> **(C)**whether the petitioner can prove by a preponderance of the evidence that the petitioner is an alien lawfully admitted for permanent residence, has been admitted as a refugee under section 1157 of this title, or has been granted asylum under section 1158 of this title, such status not having been terminated, and is entitled to such further inquiry as prescribed by the Attorney General pursuant to section 1225(b)(1)(C) of this title.

Since Petitioner has argued that he was not properly ordered removed under 1225(b)(1), and continues to argue that the Department of Homeland Security lacks jurisdiction to order him removed, there is no cognizable basis to deny jurisdiction over this claim.

CONCLUSION

For the reasons set forth, Petitioner respectfully requests this Court deny Respondent's motion to dismiss.

Respectfully submitted,

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