

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 26-cv-000186-CYC

ENRIQUE CASTRO DE SANTIAGO,

Petitioner,

v.

KRISTI NOEM, United States Secretary, Department of Homeland Security,
TODD M. LYONS, Acting Director, United States Immigration and Customs
Enforcement (ICE),
MARCOS CHARLES, Acting Executive Associate Director, ICE Enforcement and
Removal Operations,
ROBERT G. HAGAN, ICE Denver Field Office Director,
JUAN BALTASAR, Warden, GEO-ICE immigration detention facility in Aurora, CO, and
PAMELA BONDI, United States Attorney General,

Respondents.

**RESPONSE TO ORDER TO SHOW CAUSE WHY THE PETITION FOR A
WRIT OF HABEAS CORPUS SHOULD NOT BE GRANTED (ECF No. 4)**

Petitioner Enrique Castro de Santiago's petition for a writ of habeas corpus, ECF No. 1, should be denied. First, to the extent his petition seeks review of the Department of Homeland Security's (DHS) decision to cancel his release on bond, the Court lacks jurisdiction to review that discretionary determination. Second, insofar as his petition is premised on the idea that DHS's appeal of an Immigration Judge's decision is not valid because it was not properly served on him, he has not administratively exhausted that claim before the Board of Immigration Appeals (BIA). And even if the Court addresses that challenge, it fails because the appeal was timely taken. Finally, Petitioner has not separately stated an Administrative Procedure Act (APA) claim challenging a final

agency action in his habeas petition. Accordingly, the Court should deny the petition and dismiss this case.

BACKGROUND

I. Petitioner's immigration history and present detention

Petitioner is a native of Mexico. Ex. 1 ¶ 4 (Declaration of Kurt Nissen). In March 1999, he attempted to unlawfully enter the United States several times. *Id.* ¶¶ 5–7. At some point he succeeded, entering without being inspected, admitted, or paroled. *Id.* ¶ 8. Since 2001, he has been convicted of several crimes in Colorado—most recently in July 2021. *Id.* ¶¶ 9, 20.

ICE officers first encountered Petitioner in December 2017. *Id.* ¶ 10. They determined that he did not have documents authorizing his entry into or presence in the United States, and he was issued a Notice to Appear and placed in removal proceedings. *Id.* ¶¶ 10–11. In January 2018, after a custody redetermination hearing before an Immigration Judge, Petitioner was released on bond. *Id.* ¶¶ 12–13. He then failed to appear for his removal proceedings and was ordered removed to Mexico. *Id.* ¶ 14.

ICE officers encountered Petitioner again in May 2019 and arrested him to effectuate his removal. *Id.* ¶ 15. An Immigration Judge granted his request to re-open his removal proceedings, and in August 2019, he was again released on bond. *Id.* ¶¶ 16–18. In the removal proceedings, Petitioner conceded that he was inadmissible and sought cancellation of removal. *Id.* ¶ 19. The Immigration Judge held a hearing in October 2023, but reserved a decision at that time. *Id.* ¶ 21.

Petitioner was arrested on three occasions in 2025. *Id.* ¶ 22. ICE officers encountered him again on September 30, 2025. *Id.* ¶ 23. At that point, he had been convicted of a crime and arrested several times since his August 2019 release on bond. *Id.* ICE cancelled his bond and took him into custody. *Id.*; *see also* Ex. 1 Attach. 1 (bond cancellation letter).

On December 10, 2025, the Immigration Judge heard additional evidence and issued a decision granting Petitioner's request for cancellation of removal. *Id.* ¶ 24. Afterwards, Petitioner filed a motion for a custody determination, but then withdrew it. *Id.* ¶ 25.

On January 9, 2026, DHS appealed the Immigration Judge's decision granting cancellation of removal to the BIA. *Id.* ¶ 26; *see also* Ex. 2 (notice of appeal). DHS filed the appeal via the Executive Office of Immigration Review's electronic filing system, ECAS. *See* Ex. 2. Although the appeal was filed on January 9, the BIA did not acknowledge receipt of the appeal until January 23, 2026. Ex. 1 ¶ 27; *see also* Ex. 3 (letter from the BIA acknowledging receipt). The filing receipt notes that "[i]f the appeal was filed by DHS and the respondent/applicant wishes to be represented by an attorney or accredited representative in these new proceedings, counsel must complete a new Form EOIR-27 (Notice of Entry of Appearance as Attorney or Representative before the Board of Immigration Appeals)." Ex. 3 at 2. It also states that "[u]nless a Form EOIR-27 is received from counsel, the respondent/applicant will be considered pro se before the Board and all *future* notices, including the Board's decision, will be sent directly to the respondent/applicant and not to counsel." *Id.* (emphasis added).

II. The Executive Officer for Immigration Review's electronic filing and records management system, ECAS

The Executive Office for Immigration Review has implemented an electronic filing and records management system, called ECAS, to “support[] the full life cycle of an immigration case” and “retain all records and case-related documents in electronic format.” Program Overview, <https://www.justice.gov/eoir/ecas-attorneys-and-accredited-representatives> (last visited February 9, 2026) [<https://perma.cc/46XS-8K8S>].

ECAS has been “fully implemented at all immigration courts and adjudication centers and the Board of Immigration Appeals.” *Id.* As a result, all events for a specific case can be viewed through a single electronic portal throughout the case’s lifecycle. Frequently Asked Questions, “What is Case Portal?”, <https://www.justice.gov/eoir/ecas-attorneys-and-accredited-representatives> (last visited February 9, 2026) [<https://perma.cc/46XS-8K8S>].

III. This action

Petitioner initiated this action on January 15, 2026, by filing a petition seeking a writ of habeas corpus. ECF No. 1. In the petition, he claims that his immigration bond “has never been revoked or canceled by the DHS.” *Id.* ¶ 34; *see also id.* ¶ 31 (stating that Petitioner “challeng[es] the legality of his detention given that he has an active immigration bond that has not been challenged or canceled by the DHS”). He also argued that DHS could not lawfully detain him because the Immigration Judge had granted him cancellation of removal and, at the point when he filed the petition, he could not “confirm that DHS in fact filed a timely appeal of the IJ decision granting him relief

from removal.” *Id.* ¶ 41; *see also id.* ¶ 26 (stating that “[o]n January 13, 2026, [Petitioner] confirmed that no appeal was pending on the ECAS platform”).

In addition, the petition purports to assert a claim under the Administrative Procedure Act, 5 U.S.C. §§ 701–06. ECF No. 1 ¶¶ 43–51.

On January 28, 2026, Petitioner filed a motion to supplement his habeas petition, ECF No. 9, which the Court granted on February 2, ECF No. 13. In the motion to supplement, Petitioner acknowledged that as of January 28, ECAS reflected that on January 9, 2026, DHS filed an appeal of the Immigration Judge’s order canceling his removal. ECF No. 9 ¶ 1. He argues, however, that even though his counsel before the Immigration Judge (who represents him in this action as well) was using ECAS for those proceedings, DHS was required to serve the appeal on him personally “[b]ecause the BIA case is separate from the case before the Immigration Court, [and] there is no presumption of continuing representation from the Immigration Court.” *Id.* ¶ 4; *see also id.* ¶¶ 5–7 (laying out this argument). Further, according to Petitioner, DHS has “to date never accomplished service of process” of the appeal on Petitioner. *Id.* ¶ 2. His position thus is that the appeal to the BIA is “impotent.” *Id.* ¶ 12.

The motion to supplement also expands Petitioner’s arguments about his immigration bond. He claims that “[n]o statute or regulation permits the revocation of a bond set by an Immigration Judge by unilateral action of ICE.” *Id.* ¶ 18. Rather, in his view, “[i]t’s the Immigration Court that has bond review authority over [DHS], not the other way around.” *Id.* ¶ 19.

ARGUMENT

I. **The Court lacks jurisdiction to review ICE's decision to revoke Petitioner's bond.**

The INA expressly grants the Attorney General authority to “at any time . . . revoke a bond or parole authorized under subsection (a), rearrest the alien under the original warrant, and detain the alien.” 8 U.S.C. § 1226(b). This “discretionary judgment . . . shall not be subject to review,” and “[n]o court may set aside any action or decision by the Attorney General under this section regarding the detention of any alien or the revocation or denial of bond or parole.” *Id.* § 1226(e) (emphasis added). The Tenth Circuit has confirmed that, “to the extent [a petitioner] challenges the agency’s discretionary bond decision . . . the court lack[s] jurisdiction” pursuant to § 1226(e). *Mwangi v. Terry*, 465 F. App’x 784, 787 (10th Cir. 2012); see also *Jennings v. Rodriguez*, 583 U.S. 281, 295–96 (2018) (concluding that § 1226(e) precludes challenges to a discretionary judgment to detain).

Here, Petitioner was previously detained in May 2019 after failing to appear in his removal proceedings. Ex. 1 ¶¶ 14–15. He was then released on bond in August 2019. *Id.* ¶ 17. DHS then revoked his bond and took him back into custody on September 30, 2025 pending resolution of his removal proceedings. *Id.* ¶ 23; see also Ex. 1 Attach. 1 (bond revocation). The Court lacks jurisdiction to review this discretionary decision to revoke Petitioner’s bond, or to order his release based on the purported ineffectiveness of the bond’s revocation.

In short, the Court lacks jurisdiction to consider any challenge to the revocation of Petitioner's bond.¹

II. Petitioner has not exhausted his administrative remedies as to his claim that DHS's appeal of the Immigration Judge's decision is invalid

Generally, "[t]he exhaustion of available administrative remedies is a prerequisite for § 2241 habeas relief, although . . . the statute itself does not expressly contain such a requirement." *Garza v. Davis*, 596 F.3d 1198, 1203 (10th Cir. 2010). In a different immigration context, the Tenth Circuit has held that "the failure to exhaust issues before the BIA bars judicial review through habeas just as it does through a petition for review." *Soberanes v. Comfort*, 388 F.3d 1305, 1309 (10th Cir. 2004).

Here, Petitioner appears to claim that the appeal to the BIA that DHS filed on January 9 is invalid because he was not properly served with the appeal. See ECF No. 9 ¶ 12 (arguing that "[p]ersonal service on [Petitioner] was required"). The BIA has authority to reject an appeal if proper service is not accomplished. See 8 C.F.R. § 1003.3(a)(1) (appeal to the BIA "must reflect proof of service of a copy of the appeal and all attachments on the opposing party," and the "appeal is not properly filed unless it is received at the Board, along with all required documents, fees or fee waiver requests, and proof of service, within the time specified"); see also BIA Practice Manual, Ch. 4.2(b), <https://www.justice.gov/eoir/reference-materials/bia/chapter-4/2> (last visited February 9, 2026) [<https://perma.cc/F2SQ-EJ7S>] (the BIA may reject appeal if it "is

¹ Since his present detention began on September 30, 2025, Petitioner requested a custody redetermination, but then withdrew that request. Ex. 1 ¶ 25.

received by the Board but has not been properly filed (for example, the filing fee is missing or Proof of Service has not been completed)").

Petitioner can therefore seek relief as to the service issue from the BIA in the first instance. He is not permitted to use a habeas petition as a "substitute for direct appeal" to the BIA. *Soberanes*, 388 F.3d at 1309 (citation omitted); see also *Reyes v. Lynch*, No. 15-cv-00442-MEH, 2015 WL 5081597, at *3 (D. Colo. Aug. 28, 2015) ("[F]ederal courts must await exhaustion of all administrative appeals before reviewing immigration decisions, whether by a habeas corpus action or a petition for review.").

III. Even if the Court reaches the merits, Petitioner is not entitled to release because his bond was revoked and the order cancelling his removal is not final.

First, on the merits of Petitioner's challenge about his bond revocation, Petitioner is mistaken that DHS did not revoke his bond. See Ex. 1 ¶¶ 23 (averring that "ICE cancelled Petitioner's bond" on September 30, 2025); Ex. 1 Attach. 1 (bond cancellation notice dated September 30, 2025). In addition, to the extent Petitioner argues that revocation was improper because there purportedly was no change in his circumstances, that argument fails. For one thing, courts have held that there is "no support for imposing a 'change in circumstances' requirement on DHS before it can revoke a bond under § 1226(b)." *Salvador F.-G. v. Noem*, No. 25-CV-0243-CVE-MTS, 2025 WL 1669356, at *9 (N.D. Okla. June 12, 2025). For another, and in any event, Petitioner's circumstances did change: between May 2019 and September 2025, Petitioner was convicted of a crime (in September 2021), and was then arrested three times in 2025. Ex. 1 ¶¶ 20, 22. Thus, even if the Court had jurisdiction to consider it,

Petitioner's challenge to his detention based on his revoked immigration bond lacks merit.

Second, Petitioner has not been awarded cancellation of removal, and he remains in removal proceedings, because the Immigration Judge's order canceling removal is not final. Like other Immigration Judge decisions, a decision cancelling removal "becomes final upon waiver of appeal or upon expiration of the time to appeal if no appeal is taken whichever occurs first." 8 C.F.R. § 1003.39; *see also id.* § 1240.21(c) (stating that "[t]he awarding of [cancellation of removal] shall be determined according to the date the order granting such relief becomes final as defined in §§ 1003.1(d)(7) and 1003.39 of this chapter"). Conversely, if an appeal *is* taken within the time to appeal, the decision cancelling removal is not final.

Here, the Immigration Judge granted Petitioner's application for cancellation of removal on December 10, 2025. Ex. 1 ¶¶ 24. Under 8 C.F.R § 1003.38(b), an appeal was due "within 30 calendar days"—that is, by January 9, 2026. *See id.* And DHS filed its appeal on January 9, 2026, via ECAS. Ex. 1 ¶¶ 26; *see also* Ex. 2 (notice of appeal); Ex. 3 (BIA acknowledgment of appeal). Thus, contrary to Petitioner's suggestions, there is no final decision granting Petitioner cancellation of removal because an appeal was taken before the Immigration Judge's decision became final. His removal proceedings are therefore ongoing.

Petitioner's claim about inadequate service likewise lacks merit. As described above, he posits that even though he was represented by counsel before the Immigration Judge and using the ECAS electronic filing system for that part of his

removal proceedings, DHS was required to serve the appeal on him personally, rather than via his counsel through ECAS. See ECF No. 9 ¶ 7 (claiming that “[b]ecause [Petitioner] has no attorney registered to him at the BIA, service of process to him via ECAS was unavailing,” and that DHS was required to “provide[] personal service of process to him”).

Although the Executive Office of Immigration Review’s regulations and policy manuals do not appear to speak directly to this situation, the filing receipt prepared by the BIA strongly indicates that service by ECAS is sufficient. See Ex. 3 at 2. In particular, the filing receipt states that “[i]f the appeal was filed by DHS and the respondent/applicant wishes to be represented by an attorney or accredited representative in these new proceedings, counsel must complete a new” notice of entry of appearance form—i.e., a Form EOIR-27. *Id.* at 2. And, the filing receipt continues, “[u]nless a Form EOIR-27 is received from counsel, the respondent/applicant will be considered pro se before the Board and all **future** notices, including the Board’s decision, will be sent directly to the respondent/applicant and not to counsel.” *Id.* (emphasis added). The filing receipt’s reference to “future” notices indicates that the BIA expects that in this situation, DHS’s filing of the appeal by ECAS suffices to notify the alien (through counsel who participates in ECAS) that the appeal itself has been filed. See *id.*

The Notice of Appeal form reinforces this conclusion. Within the form’s “proof of service” section, there is a checkbox next to the statement: “No service needed. I electronically filed this document, and the opposing party is participating in ECAS.” See

Ex. 2 at 7. If Petitioner's argument were correct, the only "opposing party" that could be participating in ECAS at this stage would be DHS, as no alien could be represented in an appeal that has not yet been filed. On the other hand, it is common for service of a notice of appeal to be accomplished in the same manner as service of other documents filed with the tribunal that issued the decision being appealed.²

For these reasons, Petitioner's claim about inadequate service also fails on the merits.

IV. Any APA claim does not differ from Petitioner's general habeas claim that his detention is unlawful.

"At its historical core, the writ of habeas corpus has served as a means of reviewing the legality of Executive detention." *Rasul v. Bush*, 542 U.S. 466, 474 (2004) (citation omitted); *see also Boumediene v. Bush*, 553 U.S. 723, 779 (2008) (explaining that "the privilege of habeas corpus entitles the prisoner to a meaningful opportunity to demonstrate that he is being held pursuant to 'the erroneous application or interpretation' of relevant law" (quoting *I.N.S. v. St. Cyr*, 533 U.S. 289, 302 (2001))).

In asserting that no lawful basis exists to justify his custody, Petitioner invokes the Court's authority to review of the legality of his custody through a habeas proceeding. His petition thus does not raise a substantive claim under the APA challenging a final agency action, *see* 5 U.S.C. § 704, but rather is a challenge to unlawful detention under the general habeas standard.

² Undersigned counsel is unaware whether ECAS sent an electronic notification of filing to Petitioner's counsel in the removal proceedings (who is also his counsel here) when DHS filed the appeal on January 9, 2026.

CONCLUSION

For the reasons discussed above, the Court should deny Petitioner's habeas petition.

Dated: February 9, 2026

PETER MCNEILLY
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s/ Brad Leneis

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CERTIFICATE OF SERVICE

I hereby certify that on February 9, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to all counsel of record.

s/ Brad Leneis

Brad Leneis
U.S. Attorney's Office