

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

Civil Action No. 26-cv-00552-CNS

SEBASTIAN REPELA,

Petitioner,

v.

ICE Field Officer Director-Denver Field Office,

Respondent.

RESPONSE TO ORDER TO SHOW CAUSE (ECF No. 3)

Respondent responds to the Court's February 17, 2026, Order to Show Cause. See ECF No. 3. The Petition for Writ of Habeas Corpus asserts that Petitioner has been held in immigration detention for seven months without a bond hearing. See ECF No. 1 at 1. Petitioner requests his immediate release or a bond hearing. See *id.* at 2.

The Petition should be denied. Petitioner's voluntary departure from the United States to Poland is imminent and will occur on March 21, so Petitioner's requested relief is not warranted.¹ Even if his voluntary departure were not imminent, Petitioner's claim is not properly exhausted. Petitioner can request a bond hearing from an immigration judge because he is detained under 8 U.S.C. § 1226(a), but he has not done so.

¹ Petitioner's voluntary departure will only occur if the Court vacates its February 17, 2026, Order, which ordered Respondent not to remove Petitioner from the District of Colorado or the United States. See ECF No. 6. Respondent is contemporaneously filing an expedited motion requesting that the Court vacate the February 17, 2026, Order.

Petitioner should be required to first request a bond hearing from an immigration judge before proceeding in federal court. The Petition should, therefore, be denied.

BACKGROUND

I. Factual Background

Petitioner is a native and citizen of Poland. See Exhibit 1 (Declaration of D. Walker), ¶ 4. On August 20, 2021, he was admitted to the United States at the John F. Kennedy International Airport in New York on a nonimmigrant B-2 visa. See *id.*, ¶ 5. Through the nonimmigrant B-2 visa, Petitioner was authorized to remain in the United States for a temporary period not to exceed February 19, 2022. See *id.*

Petitioner overstayed the temporary period without the authorization of DHS. See *id.*, ¶ 6.

On August 12, 2025, Immigration and Customs Enforcement (ICE) officers encountered Petitioner at a local jail in Florida. See *id.*, ¶ 7. Petitioner was in custody on state charges relating to eavesdropping and burglary. See *id.* ICE determined that Petitioner overstayed his visa and did not possess documentation authorizing his presence in the United States. See *id.* It further determined that Petitioner is subject to removal from the United States and lodged a detainer with the local jail. See *id.*

On or about November 7, 2025, the State of Florida filed a Notice of Nolle Prosequi of the criminal charges against Petitioner. See *id.*, ¶ 8.

On November 14, 2025, ICE took custody of Petitioner upon his release from state custody. See *id.*, ¶ 9. Petitioner was initially detained in ICE facilities in Florida but was transferred to Denver on December 6, 2025. See *id.*

Petitioner is detained under 8 U.S.C. § 1226(a). *See id.*, ¶ 10.

On December 17, 2025, DHS issued a Notice to Appear (NTA), initiating removal proceedings under 8 U.S.C. § 1229a, before the Executive Office for Immigration Review. *See id.*, ¶ 11. The NTA charged Petitioner with being deportable from the United States under 8 U.S.C. § 1227(a)(1)(B) (any alien who, after admission as a nonimmigrant, has remained in the United States for a time longer than permitted). *See id.* Petitioner has not requested a bond hearing from an immigration judge since his removal proceedings began. *See id.*, ¶ 12.

On February 12, 2026, Petitioner appeared before the immigration judge and requested voluntary departure. *See id.*, ¶ 13. The immigration judge found Petitioner removable as charged in the NTA. *See id.* The immigration judge granted Petitioner's request for voluntary departure under 8 U.S.C. § 1229c(a) until March 16, 2026, with a removal order to Poland in the alternative. *See id.* The immigration judge's grant of voluntary departure was "under safeguards," meaning that Petitioner remains in custody until his departure. *See id.*, ¶ 13, n.1.

On or about March 10, 2026, ICE submitted a travel document request to the Consulate of Poland. *See id.*, ¶ 14. ICE subsequently extended the period of voluntary departure to April 21, 2026, to accommodate the issuance of Petitioner's travel document and his departure from the United States. *See id.*, ¶ 15.

On March 17, 2026, ICE issued a travel itinerary in Petitioner's name. *See id.*, ¶ 16. Petitioner is scheduled to voluntarily depart the United States via commercial

airline leaving from Denver, Colorado, on March 21, 2026, and arriving in Warsaw, Poland, on March 22, 2026. See *id.* ICE, not Petitioner, has paid for that travel itinerary.

On March 18, 2026, the Consulate of Poland notified ICE that a passport was issued to Petitioner and that ICE should receive the passport the next day, March 19. See *id.*, ¶ 17.

II. Procedural Background

Petitioner filed his Petition for Writ of Habeas Corpus on February 11, 2026. See ECF No. 1. The Petition asserts a due process claim for “prolonged and indefinite” detention “without an individualized bond hearing.” *Id.* at 2.

On February 17, 2026, the Court ordered Respondent to show cause why the Petition should not be granted within thirty days. See ECF No. 3. The Court further ordered that Respondent should not remove Petitioner from the District of Colorado or the United States. See ECF No. 6.

ARGUMENT

I. **Petitioner should not be released or receive a bond hearing because his voluntary departure from the United States is imminent.**

The Petition challenges Petitioner’s “prolonged” immigration detention, which has been approximately four months. See ECF No. 1; see Ex. 1, ¶ 9 (Petitioner entered ICE custody on November 14, 2025). The Petition should be denied because Petitioner’s voluntary departure from the United States will occur soon, on March 21, 2026, subject to the Court’s vacatur of its Order prohibiting Petitioner’s removal from the United States.

On February 12, 2026, an immigration judge granted Petitioner's request for voluntary departure. *See* Ex. 1, ¶ 13. Since that time, ICE has prepared for Petitioner's voluntary departure. Around March 10, ICE submitted a travel document request to the Consulate of Poland. *See id.*, ¶ 14. On March 17, ICE issued Petitioner a travel itinerary that has Petitioner scheduled to depart the United States on March 21, 2026, and arrive in Poland on March 22, 2026. *See id.*, ¶ 16. On March 18, the Consulate of Poland issued Petitioner a passport. *See id.*, ¶ 17. ICE should receive that passport by tomorrow, March 19, in time for Petitioner's March 21 voluntary departure. *See id.*

Given Petitioner's imminent voluntary departure, his release or a bond hearing is not warranted. Petitioner should not be released or provided a bond hearing because he will soon voluntarily depart from the United States as he requested and as ordered by the immigration judge. *See id.*, ¶ 13. Indeed, the immigration judge's grant of voluntary departure was entered "under safeguards," meaning that the immigration judge ordered that Petitioner remain in custody until his voluntary departure. *See id.*, ¶ 13, n.1. As a result, Petitioner's release via court order or following a bond hearing is unnecessary and would contravene the immigration judge's voluntary departure order. *Cf. Zadvydas v. Davis*, 533 U.S. 678, 699 (2001) (observing that, in the post-final-removal-order context, the "basic purpose" of detention is to "assur[e] the alien's presence at the moment of removal").

All told, the Petition should be denied because Petitioner's voluntary departure from the United States will occur in a matter of days.

II. In any event, Petitioner has failed to exhaust his claim.

Petitioner asserts that he is being detained without a bond hearing. See ECF No. 1. He, however, *never requested* a bond hearing before the immigration judge, so he has not exhausted his administrative remedies for a bond hearing.

Petitioner is detained pursuant to Section 1226(a) and can request a bond hearing pursuant to federal regulation. Under Section 1226(a), DHS “may ... detain” or “may release” an alien on “bond ... or conditional parole.” 8 U.S.C. § 1226(a)(1), (2). If DHS decides to detain an alien under Section 1226(a), federal regulations allow an alien to request a bond hearing in front of an immigration judge by making an application at any point before entry of final order of removal. See 8 C.F.R. § 236.1(d)(1) (“After an initial custody determination by the district director, including the setting of a bond, the respondent may, at any time before an order under 8 CFR part 240 becomes final, request amelioration of the conditions under which he or she may be released.”); 8 C.F.R. § 1003.19 (providing framework for requesting a bond determination). In short, an alien like Petitioner “may request a custody redetermination hearing from an IJ at any time before a removal order becomes final.” *L.G. v. Choate*, 744 F. Supp. 3d 1172, 1179 (D. Colo. 2024).

Although detained under Section 1226(a), Petitioner has not requested a bond hearing from an immigration judge pursuant to federal regulation. Petitioner has been in removal proceedings since December 17, 2025. See Ex. 1, ¶ 11. Since that time, however, he has not filed a motion for custody determination with the Executive Office of Immigration Review or otherwise requested a bond hearing. See *id.* To date, he has

not requested a bond hearing from an immigration judge, despite having appeared before one. See *id.*, ¶¶ 12-13. In short, Petitioner has not exercised his option to request a bond hearing.

Because Petitioner has not requested a bond hearing, he has not exhausted his administrative remedies.

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). “Exhaustion is typically nonjurisdictional....” *Santos-Zacaria v. Garland*, 598 U.S. 411, 417 (2023).

Where a habeas petitioner has failed to request an immigration bond hearing before an immigration judge, federal courts have concluded that the habeas petitioner has failed to exhaust his administrative remedies. See, e.g., *Almonte Rojas v. Genalo*, No. 25-cv-6543-EK, 2026 WL 275991, at *1 (E.D.N.Y. Feb. 3, 2026) (denying habeas petition because a habeas petitioner “must first exhaust the administrative remedies at her disposal” and the habeas petitioner did “not contest that she has never requested a bond hearing”); *Orellana Serrano v. McDonald*, No. 25-cv-13395-IT, 2025 WL 3296037, at *1 (D. Mass. Nov. 26, 2025) (denying habeas petition because “where [a petitioner] has not sought a bond hearing before the immigration court, the court agrees that [the petitioner] must exhaust his administrative remedies before requesting relief”); see also *Modesto v. Lowe*, No. 17-cv-02165, 2018 WL 1123706, at *3 (M.D. Pa. Feb. 26, 2018) (“[D]iscretionary detainees held under 8 U.S.C. § 1226(a) have a whole set of available

administrative remedies that should be exhausted before a petition for writ of habeas corpus would be necessary.”).

In short, Petitioner has failed to exhaust because he has not requested a bond hearing. As noted, federal regulations allow Petitioner to “request a bond hearing in front of an immigration judge by filing an application for a change in the alien’s detention conditions.” *Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021) (citing 8 C.F.R. § 236.1(d)(1); 8 C.F.R. § 1003.19). Petitioner does not have a final order of removal and is not precluded from requesting a bond hearing before an immigration judge. Because he has not done so, he has not exhausted his administrative remedies. As a matter of judicial efficiency and as per applicable regulations, Petitioner should be required to first exhaust his administrative remedies before an immigration judge before seeking a habeas remedy in federal court.

In sum, because Petitioner has not exhausted his available administrative remedies, his Petition should be denied.

CONCLUSION

For the foregoing reasons, the Petition should be denied.

Dated: March 18, 2026.

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CERTIFICATE OF SERVICE

I hereby certify that, on March 18, 2026, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system and caused the foregoing document, along with any unpublished cases, to be sent by U.S. mail to the following:

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Pro se

s/ Nicholas A. Deuschle

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