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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

AXEL SANTIAGO MORENO TOVAR,

Petitioner,

v.

TODD BLANCHE, et al.,

Respondents.

CASE NO. 1:26-CV-05066-EJD

**MOTION TO DISMISS AMENDED PETITION
FOR WRIT OF HABEAS CORPUS**

I. INTRODUCTION

Petitioner's rhetoric and criticism of the immigration authorities and the immigration judge aside, the facts are not material in dispute. Indeed, Respondents do not dispute that Petitioner is detained under authority of 8 U.S.C. § 1226(a) and was afforded a custody re-determination hearing before any immigration judge ("IJ"), twice. However, Petitioner is *not* entitled to any additional process beyond that statutory framework of 8 U.S.C. § 1226(a). Petitioner does not have a right to immediate release simply because an IJ found that he violated the conditions of his release on bond. Moreover, Petitioner can make his arguments that the IJ erred to the Board of Immigration Appeals ("BIA"). In short, the Petition should be denied because Petitioner has failed to exhaust his administrative remedies.

Under the Immigration and Naturalization Act ("INA"), the Department of Homeland Security ("DHS") is entitled to detain Petitioner under 8 U.S.C. § 1226(a) pending a decision on whether he is to

1 be removed. After Petitioner was arrested by Florida state officials, DHS exercised its discretion to do
2 precisely that on January 15, 2026. Still, Petitioner argues that he is unlawfully detained. But Petitioner
3 failed to depart the United States when required after being admitted to the United States and therefore 8
4 U.S.C. § 1226(a) governs his detention.

5 Petitioner is entitled to the ample process afforded to all section 1226(a) detainees pursuant to a
6 statutory and regulatory scheme that has long been considered sufficient to protect the interests of
7 noncitizens. Petitioner's habeas claim is not cognizable because he has not exhausted his administrative
8 remedies through the "substantial procedural protections" available under Section 1226(a). *Rodriguez*
9 *Diaz v. Garland*, 53 F.4th 1189, 1214 (9th Cir. 2022). "Federal regulations provide that aliens detained
10 under § 1226(a) receive bond hearings at the outset of detention." *Jennings v. Rodriguez*, 583 U.S. 281,
11 306 (2018) (citing 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1)). Petitioner has not been denied an opportunity
12 to be heard before a neutral adjudicator and was not denied review by the Board of Immigration Appeals
13 ("BIA"). Petitioner should not be granted the relief sought here before seeking that relief in his
14 administrative proceedings.

15 II. APPLICABLE LAW

16 A. Immigration Detention Pending Removal Proceedings Under 8 U.S.C. § 1226(a)

17 Congress enacted a multi-layered statute that provides for the civil detention of aliens pending
18 removal. *See Prieto-Romero v. Clark*, 534 F.3d 1053, 1059 (9th Cir. 2008). Where an individual falls
19 within this scheme affects whether his detention is discretionary or mandatory, as well as the kind of
20 review process available. *Id.* at 1057. ICE's authority to detain individuals who were previously lawfully
21 present in the country but are now in removal proceedings (such as a nonimmigrant who overstayed his
22 visa) is generally governed by 8 U.S.C. § 1226. *Jennings*, 583 U.S. at 288. The default rule, Section
23 1226(a), "authorizes the Attorney General to arrest and detain an alien 'pending a decision on whether
24 the alien is to be removed from the United States.'" *Id.* at 306 (quoting Section 1226(a)). The Supreme
25 Court has recognized that "there is little question that the civil detention of aliens during removal
26 proceedings can serve a legitimate government purpose, which is 'preventing deportable . . . aliens from
27 fleeing prior to or during their removal proceedings, thus increasing the chance that, if ordered removed,
28

1 the aliens will be successfully removed.” *Prieto-Romero*, 534 F.3d at 1065 (citing *Demore v. Kim*, 538
2 U.S. 510, 528 (2003)).

3 Every individual apprehended under Section 1226(a) is individually considered for release on
4 bond. 8 U.S.C. § 1226(a); 8 C.F.R. § 236.1(c)(8). “Federal regulations provide that aliens detained under
5 § 1226(a) receive bond hearings at the outset of detention.” *Jennings*, 583 U.S. at 306(citing 8 C.F.R.
6 §§ 236.1(d)(1), 1236.1(d)(1)). “Under § 1226(a) and its implementing regulations, a detainee may
7 request a bond hearing before an IJ at any time before a removal order becomes final.” *Rodriguez Diaz*,
8 53 F.4th at 1197.

9 III. ARGUMENT

10 A. Petitioner Fails to Show Any Due Process Violation

11 1. Exhaustion

12 “If [an alien is] dissatisfied with the IJ’s bond determination, they may file an administrative
13 appeal so that “the necessity of detention can be reviewed by ... the BIA.” *Leonardo v. Crawford*, 646
14 F.3d 1157, 1160 (9th Cir. 2011). “Administrative exhaustion can be either statutorily required or
15 judicially imposed as a matter of prudence.” *Puga v. Chertoff*, 488 F.3d 812, 814-15 (9th Cir. 2007)
16 (citing *Noriega-Lopez v. Ashcroft*, 335 F.3d 874, 881 (9th Cir. 2003)). Although a court does have
17 discretion to waive prudential exhaustion, “this discretion is not unfettered.” *Laing v. Ashcroft*, 370 F.3d
18 994, 998 (9th Cir. 2004). In general terms, exhaustion may be waived “where administrative remedies
19 are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture,
20 irreparable injury will result, or the administrative proceedings would be void.” *S.E.C. v. G.C. George*
21 *Sec., Inc.*, 637 F.2d 685, 688 (9th Cir. 1981); *Laing*, 370 F.3d at 1000.

22 Here, the Court should not excuse prudential exhaustion as Petitioner should be required to seek
23 review before the Board of Immigration Appeals (“BIA”). *See Leonardo v. Crawford*, 646 F.3d 1157,
24 1160 (9th Cir. 2011) (“We agree with the government, however, that the district court should have
25 dismissed [petitioner’s] claims, without prejudice, for a failure to exhaust administrative remedies.”)
26 The Court should not allow Petitioner to move forward with this litigation without first exhausting his
27 administrative remedies. *See Coke v. Scott*, No. 25-cv-694, 2025 WL 2108711, at *5 (W.D. Wash. June
28 18, 2025), *report and recommendation adopted*, 2025 WL 2107736 (W.D. Wash. July 28, 2025). As in

1 *Coke*, all of the elements that favor the exhaustion requirement are present here. First, Petitioner seeks
 2 release from detention, which “requires consideration of numerous facts which should be developed for
 3 presentation and then weighed by an IJ in the first instance.” *Coke*, 2025 WL 2108711, at *5. The BIA
 4 “has a special expertise in reviewing the question of whether the bond record as a whole makes it
 5 substantially unlikely that the Department w[ill] prevail on [the petitioner’s] challenge to removability.”
 6 *Francisco Cortez v. Nielsen*, No. 19-cv-754, 2019 WL 1508458, at *3 (N.D. Cal. Apr. 5, 2019) (internal
 7 quotation marks omitted). Second, “a waiver of prudential exhaustion would tend to encourage
 8 detainees to deliberately bypass the administrative scheme which contemplates a bond determination
 9 made by an IJ rather than the Court.” *Coke*, 2025 WL 2108711, at *5. And third, exhaustion would not
 10 be futile because “an IJ has not yet been given a chance to address whether Petitioner should be released
 11 pending a final determination of removal. The agency should thus be afforded the opportunity to address
 12 bail in the first instance.” *Id.*

13 **2. Petitioner Was Lawfully Arrested and Detained Under 8 U.S.C. § 1226(a)**

14 As Petitioner concedes, he was turned over to immigration authorities by Florida state authorities
 15 after he was arrested. As the IJ indicated, any arrest was a violation of the conditions of Petitioner’s
 16 prior release on bond. Certainly, ICE was authorized to detain Petitioner due to that violation. The
 17 Supreme Court has recognized that “there is little question that the civil detention of aliens during
 18 removal proceedings can serve a legitimate government purpose, which is ‘preventing deportable . . .
 19 aliens from fleeing prior to or during their removal proceedings, thus increasing the chance that, if
 20 ordered removed, the aliens will be successfully removed.’” *Prieto-Romero*, 534 F.3d at 1065 (citing
 21 *Demore v. Kim*, 538 U.S. 510, 528 (2003)). Detention pursuant to § 1226(a) is part of this multi-layered
 22 civil detention structure created by Congress and sanctioned by the Supreme Court. The Supreme Court
 23 has repeatedly “recognized detention during deportation proceedings as a constitutionally valid aspect of
 24 the deportation process.” *Demore*, 538 U.S. at 523.

25 **3. Section 1226(a) Provides Procedural Protections That Satisfy Due Process**

26 “Section 1226(a) and its implementing regulations provide extensive procedural protections that
 27 are unavailable under other detention provisions.” *Rodriguez Diaz*, 53 F.4th at 1202. This statute
 28 provides “numerous levels of review, each offering [the detainee] the opportunity to be heard by a

1 neutral decisionmaker,” which ensure that “the risk of erroneous deprivation” is “relatively small.”
2 *Rodriguez Diaz*, 53 F.4th at 1209-10. In *Rodriguez Diaz*, the Ninth Circuit concluded that these
3 “procedures satisfy due process, both facially and as applied to Rodriguez Diaz.” *Rodriguez Diaz*, 53
4 F.4th at 1213; *see also Njonjo v. Albarran*, No. 26-cv-2188, 2026 WL 716771, at *3 (N.D. Cal. Mar. 13,
5 2026) (“In light of the explicit holding from *Rodriguez Diaz* that those post-deprivation procedures
6 satisfied the strictures of due process, the Court is unable to adopt Njonjo's position [that he “is owed a
7 pre-deprivation hearing on flight risk, as opposed to the post-deprivation procedures”]).

8 Every individual apprehended under Section 1226(a) is individually considered for release on
9 bond. 8 U.S.C. § 1226(a); 8 C.F.R. § 236.1(c)(8). An ICE officer initially assesses whether the detainee
10 has “demonstrate[d]” that “release would not pose a danger to property or persons, and that the alien is
11 likely to appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8). If the ICE officer denies bond, the
12 noncitizen may ask an IJ for a redetermination of the custody decision. 8 C.F.R. § 236.1(d)(1). Thus,
13 the initial bond hearing held before an IJ for an individual detained under Section 1226(a) is also called
14 a “redetermination hearing.” At this hearing, the detainee bears the burden of establishing “that he or she
15 does not present a danger to persons or property, is not a threat to the national security, and does not
16 pose a risk of flight.” *Matter of Guerra*, 24 I. & N. Dec. 37, 38 (BIA 2006). If the detainee meets his
17 burden, the IJ will order release. *Rodriguez Diaz*, 53 F.4th at 1197. “The detainee may be represented
18 by counsel and can submit evidence in support of his claims.” *Id.* Bond hearings are separate and apart
19 from, and form no part of, an individual’s removal hearings. 8 C.F.R. § 1003.19(d).

20 The individual may appeal the IJ’s custody redetermination to the BIA. 8 C.F.R.
21 §§ 236.1(d)(3)(i), 1236.1(d)(3)(i); *Leonardo v. Crawford*, 646 F.3d at 1160. Further, an alien who
22 remains detained pursuant to Section 1226(a) after the initial bond hearing may request that the IJ
23 conduct another custody redetermination whenever “circumstances have changed materially since the
24 prior bond redetermination.” 8 C.F.R. § 1003.19(e). If dissatisfied with the outcome of any subsequent
25 hearing, an alien may appeal that decision to the Board of Immigration Appeals (“BIA”) as well. *See*
26 *Matter of Uluocha*, 20 I. & N. Dec. 133, 134 (BIA 1989).

27 Here, everyone agrees ICE detained Petitioner pursuant to 8 U.S.C. § 1226(a). Petitioner
28 received a bond hearing before a neutral adjudicator. Petitioner’s is the one who has not appealed that

adverse decision to the BIA despite that procedure being available to him. Petitioner cannot be heard to assert a constitutional infirmity when the law already provided for the very mechanism that he asks the Court to require—a lawful and individualized custody determination.

Any alleged harm from the fact of detention alone is insufficient because “detention during deportation proceedings [is] a constitutionally valid aspect of the deportation process.” *Demore*, 538 U.S. at 523; *see also Reno v. Flores*, 507 U.S. 292, 306 (1993); *Carlson v. Landon*, 342 U.S. 524, 538 (1952). And as noted by the Ninth Circuit in *Rodriguez Diaz*, the risk of erroneous deprivation and value of additional process is small due to the procedural safeguards that Section 1226(a) provides. Petitioner is entitled to request a bond hearing before an IJ, and if he can show that he would not pose a flight risk or danger, he may be released. He did not apparently meet that burden and any error by the IJ could be cured by BIA review. Petitioner cannot establish that his lawfully authorized detention requires additional procedure as he has failed to avail himself of the procedure protections already afforded by the § 1226(a) framework.

IV. CONCLUSION

For the foregoing reasons, the Court should dismiss the Petition and enter judgment in favor of Respondents.

Respectfully submitted,

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