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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GABRIEL ELIAS LOBO QUINTERO,

Petitioner,

v.

TONYA ANDREWS ET AL

Respondents.

CASE NO. 1:26-CV-05092-NW

**MOTION TO DISMISS AND OPPOSITION TO
PETITION FOR WRIT OF HABEAS CORPUS;
OPPOSITION TO MOTION FOR TEMPORARY
RESTRAINING ORDER; OPPOSITION TO
ALL RELIEF**

I. INTRODUCTION

The Court should dismiss or deny Petitioner's petition for a writ of habeas corpus because he is properly in removal proceedings, failed to demonstrate entitlement to relief, and he did not exhaust administrative remedies by seeking a bond hearing before an immigration judge. Respondents do not request a hearing and do not intend to file additional affirmative briefing. He was admitted on a non-immigrant visa. It appears he was not previously detained.

II. BACKGROUND

A. Petitioner Entered the United States.

Petitioner is a native and citizen of Venezuela who was admitted on December 20, 2017 as a non-immigrant B2 (tourist) visa. He remained in the United States beyond the authorized time period.
Exhibit 1.

1 **B. ERO Arrested Petitioner on May 13, 2026**

2 On May 13 2026, ERO arrested Petitioner following a traffic stop. Exhibit 2. Petitioner was
3 detained pursuant to section 236 (a) of the Immigration Nationality Act.

4 **C. No Bond Hearing History before the Immigration Court.**

5 According to ICE, Petitioner has not had a bond hearing before the immigration court. Petitioner
6 refused to sign the custody redetermination hearing form (I-286) to request an immigration judge
7 hearing. Exhibit 3. Petitioner's next immigration court hearing is currently scheduled for July 17, 2026
8 at 8:30 am. Exhibit 4.

9 **III. ARGUMENT**

10 Petitioner's current detention pending removal proceedings is constitutional. The Constitution
11 requires neither release from custody nor a bond hearing in which the government bears the burden of
12 proof in this case. Therefore, the Court should dismiss Petitioner's habeas petition and TRO.

13 **A. The Court Must Dismiss a Petition for Habeas Corpus**

14 **1. The Standard for Granting Habeas Relief is Not Met and Petitioner has Not**
15 **Exhausted Administrative Remedies.**

16 A district court may grant a writ of habeas corpus when the petitioner "is in custody in violation
17 of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3). "[D]istrict courts
18 retain jurisdiction under 28 U.S.C. § 2241 to consider habeas challenges to immigration detention that
19 are sufficiently independent of the merits of [a] removal order." *Lopez-Marroquin v. Barr*, 955 F.3d 759,
20 759 (9th Cir. 2020) (citing *Singh v. Holder*, 638 F.3d 1196, 1211–12 (9th Cir. 2011)). Petitioner has not
21 demonstrated any constitutional deficiencies warranting immediate release or a second bond hearing.
22 When a petitioner does not exhaust administrative remedies, however, a district court ordinarily should
23 either dismiss the petition without prejudice or stay the proceedings until the petitioner has exhausted
24 remedies, unless exhaustion is excused. *Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011).

25 The Ninth Circuit in *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007) stated, "Courts may
26 require prudential exhaustion if '(1) agency expertise makes agency consideration necessary to generate
27 a proper record and reach a proper decision; (2) relaxation of the requirement would encourage the
28 deliberate bypass of the administrative scheme; and (3) administrative review is likely to allow the

1 agency to correct its own mistakes and to preclude the need for judicial review.” *Noriega-Lopez*, 335
2 F.3d at 881 (quoting *Montes v. Thornburgh*, 919 F.2d 531, 537 (9th Cir.1990)). Here, the factors weigh
3 in favor of Respondents.

4 Petitioner has not exhausted his administrative remedy since there is no record before this Court
5 of Petitioner having a bond hearing or requesting a bond hearing the Immigration Court, and Petitioner
6 refused to sign the custody redetermination form to request a hearing before an immigration judge. *See*
7 Exhibit 3. Immigration Court Practice Manual ch. 8.3(c) reads, “A request for a bond hearing is
8 ordinarily made in writing. In addition, except as provided in subsection (3), below, a request for a bond
9 hearing may be made orally.” 8 CFR § 1003.19(b), reads “Application for an initial bond
10 redetermination by a respondent, or his or her attorney or representative may be made orally, in writing
11 or at the discretion of the Immigration Judge, by telephone.” 8 CFR § 1003.19(c) reads, “Applications
12 for the exercise of authority to review bond determinations shall be made to one of the following offices,
13 in the designated order: (1) If the respondent is detained, to the Immigration Court having jurisdiction
14 over the place of detention; (2) To the Immigration Court having administrative control over the case;
15 or (3) To the Office of the Chief Immigration Judge for designation of an appropriate Immigration
16 Court.” There is nothing in the record before the Court to indicate Petitioner made a written or oral
17 request for a custody redetermination/bond hearing. Petitioner is free to request a bond hearing before
18 the immigration court by making a motion to the immigration court.

19 Accordingly, since he did not make a custody redetermination/bond request before ICE or the
20 Immigration Court, his habeas petition must be dismissed for failure to exhaust administrative remedies.
21 *Leonardo v. Crawford*, 646 F.3d 1157, 1161 (9th Cir. 2011)(“When a petitioner does not exhaust
22 administrative remedies, a district court ordinarily should either dismiss the petition or stay the
23 proceedings until the petitioner has exhausted remedies, unless exhaustion is excused.”). In *Leonardo*,
24 *supra*, in the context of a *Casas-Castrillon* bond hearing, an alien sought habeas review of an IJ’s adverse
25 bond determination before appealing to the BIA. The Ninth Circuit held that the alien’s shortcut pursuit
26 of habeas review was improper, and the alien should have exhausted administrative remedies by
27 appealing to the BIA before asking the federal district court to review the IJ’s decision. *Leonardo, supra*,
28 citing *Rojas-Garcia v. Ashcroft*, 339 F.3d 814, 819 (9th Cir. 2003)(a petitioner “must exhaust

administrative remedies before raising...constitutional claims in a habeas petition when those claims are reviewable by the BIA on appeal.”). *See also Nicole Jemna v. Warden of Otay Mesa Detention Center*, 3:26-cv-00725-RBM-VET, 2026 WL 788172, *3 (S.D. Cal. March 20, 2026)(court denied alien’s habeas petition and dismissed his claims without prejudice, finding the alien failed to exhaust his administrative remedies when he appealed the IJ’s bond denial with the BIA but sought habeas review ahead of his pending appeal.)

Notably, Petitioner can also request a bond hearing during his upcoming master calendar hearing, currently scheduled for July 17, 2026, or any other master calendar hearing scheduled in the future. *See* Exh. 4. Immigration Court Practice Manual ch. 8.3(d) reads, “If an alien requests a bond hearing during another type of hearing (for example, during a master calendar hearing in removal proceedings), the Immigration Judge may: stop the hearing and conduct a bond hearing on that date; complete the other hearing and conduct a bond hearing on that date; complete the other hearing and schedule a bond hearing for a later date; or stop the other hearing and schedule a bond hearing for a later date.”

Permitting Petitioner to seek redress in federal court simply by alleging a constitutional violation bypasses the administrative scheme, encourages others to do so, and essentially weakens the effectiveness of the regulations.

2. **Petitioner is Subject to Removal because He Stayed Longer than Permitted without authorization**

Pursuant to 8 USC § 1227(a)(1)(B), after admission as a nonimmigrant he remained in the United States for a time longer than permitted.

Thus, Petitioner is lawfully subject to removal, and his detention status falls under Section 1226.

3. **Habeas Relief is Not Warranted Because Petitioner is Lawfully Detained Pending Removal Proceedings**

The Supreme Court held that mandatory detention pending removal proceedings is facially constitutional in *Demore v. Kim*, 538 U.S. 510 (2003). In *Kim*, the Court specifically held that “[d]etention during removal proceedings is a constitutionally permissible part of that process.” *Demore*, 538 U.S. at 531. Mandatory detention can be constitutional even in the absence of any showing that an individual detainee posed a flight risk or a danger to the community. *See Id.* at 523–27 (discussing *Carlson v. Landon*, 342 U.S. 524 (1952), and concluding that detention was constitutional “even without any finding of flight

1 risk” or “individualized finding of likely future dangerousness”). Detention pending removal proceedings
2 remains constitutional so long as it continues to “serve its purported immigration purpose.” *Id.* at 527
3 (citing *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001)).

4 Here, Petitioner is lawfully detained pending his removal proceedings under Section 1226. Under
5 Section 1226, “an alien may be arrested and detained pending a decision on whether the alien is to be
6 removed from the United States.” 8 U.S.C. § 1226(a).

7 The Supreme Court has consistently affirmed the constitutionality of detention pending removal
8 proceedings, notwithstanding that the government has never borne the burden to justify that detention by
9 clear and convincing evidence. *See e.g., Demore*, 538 U.S. at 531; *Reno v. Flores*, 507 U.S. 292, 306
10 (1993); *Carlson*, 342 U.S. at 538; *Zadvydas*, 533 U.S. at 701. In fact, the Supreme Court repeatedly upheld
11 detention pending removal proceedings on the basis of a categorical, rather than individualized,
12 assessment that a valid immigration purpose warranted interim custody. *See Demore*, 538 U.S. at 531;
13 *Flores*, 507 U.S. at 306; *Carlson*, 342 U.S. at 538.

14 Therefore, Petitioner is not unconstitutionally detained, and the Court should dismiss or deny the
15 petition.

16 IV. CONCLUSION

17 For the reasons set forth above, Petitioner petition for a writ of habeas corpus should be dismissed
18 or denied because: (1) he is lawfully detained under Section 1226 pending removal; (2) he has failed to
19 demonstrate entitlement to habeas relief and failed to exhaust administrative remedies; and (3) his current
20 detention is constitutionally reasonable and he has been provided the process due to him.

21 Dated: July 8, 2026

ERIC GRANT
United States Attorney

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23 By: /s/ ANTHONY ANDREWS
24 ANTHONY ANDREWS
Assistant United States Attorney
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CERTIFICATE OF SERVICE BY MAIL

The undersigned hereby certifies that I am an employee in the Office of the United States Attorney for the Eastern District of California and is a person of such age and discretion to be competent to serve papers; that on July 8, 2026, I served a copy of Respondents' Motion to Dismiss and Opposition to Petition for Writ of Habeas Corpus; Opposition to Motion for Temporary Restraining Order; Opposition to All Relief by forwarding this document to a legal assistant of the same office who subsequently placed said copy in a postpaid envelope addressed to the person hereinafter named, at the place and address stated below which is the last known address, and by depositing said envelope and its contents in the United States Mail at Sacramento, California.

/s/ Anthony Andrews
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