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6
7 IN THE UNITED STATES DISTRICT COURT
8 EASTERN DISTRICT OF CALIFORNIA

9 JOSEPH KIMANI,

10 Petitioner,

11 v.

12 WARDEN, CALIFORNIA CENTER ICE,

13 Respondents.
14

CASE NO. 1:26-CV-05209-DJC-SCR

**RESPONDENTS' RESPONSE TO PETITION
FOR WRIT OF HABEAS CORPUS**

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16 **INTRODUCTION**

17 Petitioner is subject to detention under § 1226(a) but has not requested a bond hearing. Because
18 Petitioner has not pursued his administrative remedies, he is not entitled to relief. This case is
19 distinguished from the cases cited in the Court's minute order, ECF No. 5, in that the parties agree
20 Petitioner is subject to § 1226(a), but Petitioner has not sought a bond hearing.

21 **FACTUAL BACKGROUND**

22 Petitioner is a native and citizen of Kenya who was admitted to the United States as a
23 nonimmigrant for the American Journey Cultural Exchange program. Ex. 1. Petitioner did not
24 participate in the program after entry. *Id.* On February 4, 2026, the Department of Homeland Security
25 (DHS), Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations (ERO)
26 encountered Petitioner at the Palm Beach County Jail (Florida) following his arrest for DUI and
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1 determined to retain him in custody for the pendency of removal proceedings. Ex. 2; ECF No. 1 at 18.
2 Petitioner did not request an immigration judge review that determination. ECF No. 1 at 18. In April
3 2026, DHS, U.S. Citizenship and Immigration Services charged Petitioner with deportability under 8
4 U.S.C. § 1227(a)(1)(C)(1) and ERO served a warrant for his arrest. Ex. 1. On July 6, 2026, Petitioner
5 filed the present petition. Petitioner has not requested a custody redetermination hearing from the
6 Executive Office of Immigration Review (EOIR). Ex. 3.

8 LEGAL ARGUMENT

9 I. Petitioner's detention comports with the Constitution.

10 An alien may be detained while a decision about whether to remove him is pending. 8 U.S.C.
11 § 1226(a). Detention during removal proceedings remains constitutional for so long as it continues to
12 "serve its purported immigration purpose." *Demore v. Kim*, 538 U.S. 510, 527 (2003). Those
13 purposes—ensuring an alien's appearance for removal proceedings, preventing her from committing
14 further offenses, and ensuring removal is effectuated if so ordered—are present throughout removal
15 proceedings and do not abate over time while those proceedings are still pending. *Id.* at 527–28; *see*
16 *also Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1208 (9th Cir. 2022) ("These are interests of the highest
17 order that only increase with the passage of time.").

18 Here, Petitioner is detained while in removal proceedings and following an arrest for DUI. His
19 detention protects the public and ensures that he will both appear for Immigration Court and be removed
20 if he is ordered removed. These are valid immigration reasons to detain Petitioner.

21 Thus, Petitioner's detention under § 1226(a) is constitutional.

24 II. Petitioner's administrative remedies are not exhausted.

25 "[Courts] require, as a prudential matter, that habeas petitioners exhaust available judicial and
26 administrative remedies before seeking relief under § 2241." *Castro-Cortez v. INS*, 239 F.3d 1037, 1047
27 (9th Cir. 2001), abrogated on other grounds, *Fernandez-Vargas v. Gonzalez*, 548 U.S. 30 (2006).
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1 “Administrative exhaustion can be either statutorily required or judicially imposed as a matter of
2 prudence.” *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007) (citing *Noriega-Lopez v. Ashcroft*, 335
3 F.3d 874 (9th Cir. 2003)). Although a court does have discretion to waive prudential exhaustion, “this
4 discretion is not unfettered.” *Laing v. Ashcroft*, 370 F.3d 994, 998 (9th Cir. 2004) (citing *Castro Cortez*,
5 239 F.3d at 1047). In general terms, exhaustion may be waived “where administrative remedies are
6 inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable
7 injury will result, or the administrative proceedings would be void.” *Id.* at 1000 (quoting *S.E.C. v. G.C.*
8 *George Sec., Inc.*, 637 F.2d 685 (9th Cir. 1981).

10 Petitioner has not pursued, let alone exhausted, his administrative remedies. Once arrested,
11 following a custody determination by DHS, an alien may request that an immigration judge hold a
12 hearing to redetermine his custody. *See* 8 C.F.R. §§ 1003.19, 1236.1 (2026). The initial request for a
13 custody redetermination hearing may be made by the alien or the alien’s attorney and may be an oral or
14 written request. 8 C.F.R. § 1103.19(b). The request must be made to the correct Immigration Court.
15 *See* 8 C.F.R. § 1003.19(c).

17 Here, EOIR’s electronic case system demonstrates that Petitioner has not requested a custody
18 redetermination with the correct Immigration Court. Ex. 3. Exhibit 3 shows Petitioner’s case next to
19 another example case for comparison. The example case shows three electronic records of proceedings
20 (eROPs), with two eROP types: merit and bond. The example shows two bond eROPs for this alien,
21 which may occur when, for instance, the first request is withdrawn and a subsequent request is made;
22 when the alien makes another request based on a material change in circumstances following the
23 decision in the first request; or when the first request is denied for lack of authority to order bond and a
24 District Court orders a bond hearing. In contrast, Petitioner’s case only shows one eROP for the merits
25 of his removal proceedings and none for bond. This evidence shows that Petitioner has not requested a
26 bond hearing with an immigration judge.
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1 Accordingly, Petitioner has not exhausted his administrative remedies.

2 **CONCLUSION**

3 For the reasons set forth above, Respondents respectfully request that the Court deny the Petition
4 for a Writ of Habeas Corpus. Respondents do not request a hearing.
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8 Dated: July 13, 2026

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10 By: /s/ Sean Davis
11 SEAN DAVIS
12 Special Assistant United States Attorney
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