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IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

LUIS ALBERTO CASTRO FELIX, Petitioner, v. WARDEN, CALIFORNIA CITY DETENTION CENTER, Respondent.	CASE NO. 1:26-cv-04405-DC-CSK **MOTION TO DISMISS PETITION FOR WRIT OF HABEAS CORPUS**

Introduction

Respondents do not dispute that this case is a pre-final order detention case and that Petitioner is detained under 8 U.S.C. § 1226(a). However, the Court should dismiss the Petition for Writ of Habeas Corpus ("Petition") for failure to exhaust administrative remedies. Petitioner was ordered removed, but timely appealed his removal order to the Board of Immigration Appeals ("BIA"); therefore, he is still subject to 8 U.S.C. § 1226(a). Here, on July 7, 2026, Petitioner received a statutorily and constitutionally compliant bond hearing before an Immigration Judge ("IJ"); although the IJ found it did not have jurisdiction, the IJ made alternative findings concluding that even under 8 U.S.C. § 1226(a), Petitioner is a danger and is not entitled to bond. Exh. 2 at 1. Petitioner did not appeal his bond denial to the BIA or request another bond hearing.

Argument

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 constitutes a danger and denied release on bond. Moreover, Petitioner can make his arguments that the IJ erred to the BIA, or request another bond hearing. Thus, the Petition should be dismissed for failure to exhaust administrative remedies.

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

Here, the Court should not excuse prudential exhaustion as Petitioner should be required to actually appeal his bond hearing to the BIA. *See Leonardo v. Crawford*, 646 F.3d at 1160 ("We agree with the government, however, that the district court should have dismissed [petitioner's] claims, without prejudice, for a failure to exhaust administrative remedies.")

The Court should not allow Petitioner to move forward with this litigation without first exhausting his administrative remedies. *See Coke v. Scott*, No. 25-cv-694, 2025 WL 2108711, at *5 (W.D. Wash. June 18, 2025), *report and recommendation adopted*, 2025 WL 2107736 (W.D. Wash. July 28, 2025). As in *Coke*, all of the elements that favor the exhaustion requirement are present here. First, Petitioner seeks release from detention, which "requires consideration of numerous facts which should be developed for presentation and then weighed by an IJ in the first instance." *Coke*, 2025 WL 2108711, at *5. The BIA "has a special expertise in reviewing the question of whether the bond record as a whole makes it substantially unlikely that the Department w[ill] prevail on [the petitioner's] challenge to removability." *Francisco Cortez v. Nielsen*, No. 19-cv-754, 2019 WL 1508458, at *3 (N.D. Cal. Apr. 5, 2019) (internal quotation marks omitted). Second, "a waiver of prudential exhaustion would tend to encourage detainees

to deliberately bypass the administrative scheme which contemplates a bond determination made by an IJ rather than the Court." *Coke*, 2025 WL 2108711, at *5. And third, exhaustion would not be futile because "[the BIA] has not yet been given a chance to address whether Petitioner should be released pending a final determination of removal. The agency should thus be afforded the opportunity to address bail in the first instance." *Id.*

Further, the Court should find that Petitioner has not adequately alleged that seeking a review of his bond hearing before the BIA would be futile. See ECF No. 1. "[G]eneralized contentions of this sort do not establish futility: the futility exception requires a showing that the available administrative remedy is inadequate or unavailing as applied to a petitioner's own case." *Gagik T. v. Chestnut*, No. 1:26- CV-02839-MWJS, 2026 WL 1216897, at *3 (E.D. Cal. May 4, 2026).

Accordingly, for the forgoing reasons, the Petition should be dismissed and judgement entered in favor of Respondent.

CONCLUSION

For the forgoing reasons, the Petition should be dismissed.

Respectfully submitted,

Dated: August 11, 2026

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United States Attorney

By: */s/ Gabriel A. Soto-Perez*
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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. I am the record attorney for Respondent. That on August 11, 2026, I prepared this document and accompanying exhibits for mailing and gave it to a member of the U.S. Attorney support staff who then placed 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 contents in the United States Mail at Sacramento, California. Addressee:

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