IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

ELIAS ISAI AGUILAR GARCIA, Petitioner, v. JACOB WELSH, Warden, Chase County Jail; CHRISTOPHER CHAMBERLAIN, Assistant Direct., ICE Field Office; PAMELA BONDI, Attorney General; and KRISTI NOEM, Secretary of Homeland Security, Respondents.	)	Case No. 26-3028-JWL

RESPONSE TO AMENDED PETITION AND ORDER TO SHOW CAUSE

This matter is before the Court on the Amended Petition of Elias Isai Aguilar Garcia ("Petitioner") for a writ of habeas corpus under 28 U.S.C. § 2241. Petitioner, a noncitizen, challenges his recent detention by Immigration and Customs Enforcement (ICE). Petitioner asserts that he should be released from custody because he asserts that his bond hearing pursuant to 8 U.S.C. § 1226(a) violated due process. The Court should deny the Petition because (1) the Court lacks jurisdiction over the Attorney General's exercise of discretion in either detaining or releasing aliens on bond or conditional parole; and (2) Petitioner has not exhausted his administrative remedies.

STATEMENT OF THE FACTS

Petitioner is a noncitizen who entered the United States without authorization in or about 2008. Am. Pet., Doc. 4, ¶ 19. Petitioner was not apprehended by the Department of Homeland Security (DHS) until February 6, 2026. *Id.* ¶ 26. On February 13, 2026, DHS uploaded its Notice to Appear with the Immigration Court in Kansas City, Missouri, thereby initiating Petitioner's

removal proceedings. Exhibit 1, Notice to Appear; *see also* 8 C.F.R. § 123.1(a).[1] On February 16, 2026, Petitioner filed his Verified Petition for a Writ of Habeas Corpus. Doc. 1. Petitioner alleged he was improperly subjected to mandatory detention under 8 U.S.C. § 1225(b)(2) and that he was entitled to consideration for release on bond under 8 U.S.C. § 1226(a). *Id.* ¶¶ 54-56. Petitioner further alleged that his detention under 8 U.S.C. § 1225(b)(2)—i.e., his detention without a bond hearing—violated the Immigration and Nationality Act (INA), the Administrative Procedure Act, his right to substantive due process, and his right to procedural due process. *Id.* ¶¶ 53-70.

On March 3, 2026, an immigration judge held a custody redetermination hearing for Petitioner pursuant to 8 C.F.R. § 1236. Exhibit 2, Order of the Immigration Judge. After consideration of evidence, the immigration judge denied Petitioner's request for a change in custody status on the basis that Petitioner remains a danger to the community. *Id.* On March 9, 2026, Petitioner amended his petition to allege that his § 1226(a) bond hearing did not comport with due process. Doc. 4.

ARGUMENT

The Immigration and Nationality Act (INA) provides that the Attorney General may exercise her discretion to either detain or release an alien on bond or conditional parole. *Chen v. Dorneker*, No. 21-3230-JWL, 2021 WL 5769354, at *2 (D. Kan. Dec. 6, 2021) (citing 8 U.S.C. § 1226(a)(1)-(2); 8 C.F.R. § 236.1(c)(8)). The INA further provides that "[t]he Attorney General's discretionary judgment regarding the application of [§ 1226] shall not be subject to review." 8 U.S.C. § 1226(e); *see also Chen*, 2021 WL 5769354, at *2. If an alien disagrees with the immigration judge's determination, the alien may appeal the decision to the Board of Immigration Appeals (BIA). 8 C.F.R. §§ 236.1(d)(3), 1003.19(f).

[1] Petitioner alleges that DHS did not file Petitioner's Notice to Appear until March 7, 2026, but this allegation is not consistent with the record of the immigration court. *See* Exhibit 1, Notice to Appear; *see also* 8 C.F.R. § 123.1(a).

Relevant here, "[t]he exhaustion of available administrative remedies is a prerequisite for § 2241 habeas relief . . . ." *Garza v. Davis*, 596 F.3d 1198, 1203 (10th Cir. 2010) (citing *Williams v. O'Brien*, 792 F.2d 986, 987 (10th Cir. 1986)); *see also United States v. Jenkins*, 38 F.3d 1143, 1144 (10th Cir. 1994) (vacating the district court's award of sentence credit and refusing to reach merits of appeal because Petitioner had not exhausted administrative remedies before seeking judicial review). The administrative exhaustion requirement "serves two main purposes." *Woodford v. Ngo*, 548 U.S. 81, 89 (2006). First, it protects agency authority by giving the agency "an opportunity to correct its own mistakes with respect to the programs it administers before it is haled into federal court" and by discouraging "disregard of the agency's procedures." *Id.* (citation omitted). Second, it "promotes efficiency" by permitting claims to be settled at an administrative level, and even when this is not possible, it allows for the development of "a useful record for subsequent judicial consideration." *Id.* (citation omitted). A petitioner pursuing an administrative claim must use "all steps that the agency holds out." *Ford v. Hudson*, No. 21-3080-JWL, 2021 WL 3032696, at *2 (D. Kan. June 1, 2021) (citation omitted).

Here, Petitioner was given a custody redetermination hearing pursuant to 8 C.F.R. § 1236 and the immigration judge determined that Petitioner remains a danger to the community. Exhibit 2, Order of the Immigration Judge; *see also* Am. Pet., Doc. 4, ¶ 28. Petitioner now alleges that the immigration judge erred in accepting certain evidence presented by DHS and in concluding that Petitioner is a danger to the community. *Id.* ¶¶ 27-28. Although Petitioner generally asserts that he was given a "wholly inadequate" and "constitutionally defective" bond hearing, Petitioner's disagreement lies with the immigration judge's acceptance of certain evidence and the immigration judge's conclusion regarding the evidence presented. *Compare* ¶ 53 (requesting release because of "wholly inadequate bond hearing") and ¶ 56 (requesting release because of "constitutionally defective bond hearing") *with* ¶¶ 26-27 (arguing that the immigration judge accepted and relied

upon unsubstantiated evidence in determining that Petitioner is a danger to the community) and ¶ 58 (arguing that Petitioner is not a danger to the community).

Indeed, Petitioner recognizes that detention is permitted to ensure the appearance of noncitizens at future immigration proceedings and to prevent danger to the community. *Id.* ¶ 61. Nevertheless, Petitioner asks this Court to substitute its judgment for that of the immigration judge in violation of § 1226(e) before Petitioner has attempted to exhaust his administrative remedies with the BIA. *Id.* ¶¶ 57-58.[2] Although "[a] narrow exception to the exhaustion requirement applies if a petitioner can demonstrate that exhaustion is futile," the exception applies only in extraordinary circumstances. *Garza*, 596 F.3d at 1203; *see also Garner v. United States*, No. 21-3138-JWL, 2021 WL 3856618, *2 (D. Kan. Aug. 30, 2021) (citation and internal quotation marks omitted). Moreover, the petitioner "bears the burden of demonstrating the futility of administrative review." *Garner*, 2021 WL 3856618, *2 (citation omitted).

Additionally, a contention that the administrative process will take "too long" does not establish futility. *See, e.g.*, *Randolph v. Hudson*, No. 22-3049-JWL, 2022 WL 1909051, at *2-3 (D. Kan. June 3, 2022) (finding in favor of the Bureau of Prisons where "Petitioner acknowledges that he has not fully exhausted his administrative remedies, but argues that the process was taking too long and he is past his alleged release date"); *Johnson v. Hudson*, No. 20-3193-JWL, 2020 WL 6798808, at *2 (D. Kan. Nov. 19, 2020) (rejecting a prisoner's assertion that "exhaustion will take too long based on the time guidelines for each step of the administrative remedy process and will cause him irreparable harm"); *Gaines v. Samuels*, No. 13-3019-RDR, 2013 WL 591383, at *2 (D. Kan. Feb. 14, 2013) (citing *Preiser v. Rodriguez*, 411 U.S. 475, 494-95 (1973) and stating "[t]he

[2] Petitioner's deadline to appeal the immigration judge's bond order has not yet passed.

Supreme Court has required that even those inmates who may be entitled to immediate release exhaust their administrative remedies").

Although Petitioner asserts that he cannot seek review of his claims at the BIA because the BIA does not have authority to rule on the constitutionality of the statutes administered by the immigration courts, Petitioner does not allege the unconstitutionality of a statute under the INA in his Amended Petition.[3] Instead, Petitioner alleges that the immigration judge erred in accepting certain evidence in the bond hearing and in concluding that Petitioner is a danger to the community. Am. Pet., Doc. 4, ¶¶ 26-27. Thus, Petitioner's implicit argument that an appeal to the BIA would be futile is unsupported by the factual allegations contained in the Amended Petition.

Because Petitioner the heart of Petitioner's claim is his disagreement with the Attorney General's discretionary judgment regarding the application of § 1226 (i.e., the determination that Petitioner is a danger to the community), the Court should conclude that it lacks jurisdiction over Petitioner's claim under § 1226(e). Moreover, because Petitioner has failed to exhaust his administrative remedies, the Court should decline to grant Petitioner the relief he seeks.

Finally, if the Court has any concerns regarding the constitutionality of the bond hearing or the immigration judge's order, the Court should not order release but, rather, should remand the case to the immigration judge to provide clarification of his decision or to conduct a new bond hearing. If, however, the Court orders release, Respondents respectfully request seven days to effectuate release so that DHS may coordinate with the detention facility, arrange a release time and transportation, and process the release.

[3] Although Petitioner asserts that he was initially improperly subjected to mandatory detention under 8 U.S.C. § 1225(b)(2), Petitioner was granted a custody redetermination hearing pursuant to 8 C.F.R. § 1236 on March 3, 2026. Thus, Petitioner is no longer detained pursuant to § 1225(b)(2) and is instead detained pursuant to the immigration judge's determination that Petitioner is a danger to the community. As such, the Court need not address the issue of § 1225(b)(2) detention.

CONCLUSION

For the reasons stated above, Respondents respectfully request that the Court deny Petitioner's Amended Petition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 30, 2026, the foregoing document was electronically filed by using the CM/ECF System, which will send notification of such filing to the following ECF registrants:

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