IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

CESAR AUGUSTO CASTILLO RUIZ, Petitioner, v. C. CARTER, *Warden, USP-Leavenworth*; TODD LYONS, *Acting Director, ICE*; MARKWAYNE MULLIN, *Secretary Department of Homeland Security*; and TODD BLANCHE, *Acting U.S. Attorney General*, Respondents.	)	Case No. 26-3067-JWL

RESPONSE TO § 2241 HABEAS PETITION AND ORDER TO SHOW CAUSE

Respondents hereby respond to Petitioner's habeas petition brought pursuant to 28 U.S.C. § 2241 and the Court's Order to Show Cause (Doc. 5). On March 25, 2026, Petitioner Cesar Augusto Castillo Ruiz filed a petition for habeas corpus pursuant to 28 U.S.C. § 2241. Petitioner, a noncitizen, alleges his detention by U.S. Immigration and Customs Enforcement ("ICE") violates 8 U.S.C. § 1231(a)(6) and the due process clause of the Fifth Amendment. Petitioner's detention is governed by 8 U.S.C. § 1226(a), not 8 U.S.C. § 1231(a)(6), however.

STATEMENT OF FACTS

The following facts are based on the declaration of Christopher M. Stice, a Deportation Officer for ICE Enforcement and Removal Operations ("ERO") of the United States Department of Homeland Security ("DHS"). Exhibit 1, Stice Decl. ¶¶ 1-3.

Petitioner is a native and citizen of Nicaragua. *Id.* at ¶ 5. Petitioner unlawfully entered the United States on or about November 21, 2021, near Eagle Pass, Texas. He was subsequently encountered by Customs and Border Protection("CBP") and taken into custody. *Id.* at ¶ 6. On or

about November 23, 2021, Petitioner was placed in removal proceedings through issuance of a Notice to Appear ("NTA"), charging him as inadmissible to the United States pursuant to INA § 212(a)(6)(A)(i), 8 U.S.C. § 1182(a)(6)(A)(i). *Id.* at ¶ 7. On or about November 30, 2021, Petitioner was released from ICE custody on his own recognizance pending removal proceedings. *Id.* at ¶ 8. On or about November 16, 2022, Petitioner filed an application for relief before the Immigration Court. *Id.* at ¶ 9. On May 31, 2024, Petitioner was arrested by New Jersey state authorities for various offenses including criminal sexual contact and recklessly engaging in conduct which creates a substantial risk of bodily injury to a person with a developmental disability. *Id.* at ¶ 10. On or about November 1, 2024, the Petitioner was released and placed on Pretrial Intervention Supervision and proceedings were postponed for a 24-month period. *Id.* at ¶ 11.

On or about January 10, 2025, Petitioner was arrested and taken into ICE custody pursuant to Form I-200, an administrative arrest warrant. *Id.* at ¶ 12. On March 3, 2025, Petitioner, though counsel, filed a motion for bond with the Immigration Court. Petitioner was scheduled for a bond hearing on March 10, 2025, and March 26, 2025, but Petitioner withdrew his bond request at these scheduled hearings. *Id.* at ¶ 13. On March 26, 2025, Petitioner, though counsel, filed another motion for a bond. On April 7, 2025, the Immigration Court held a bond hearing pursuant to INA § 236(a), 8 U.S.C. § 1226(a). DHS did not dispute that Petitioner was eligible for a bond hearing under INA § 236(a), 8 U.S.C. § 1226(a), but instead argued that Petitioner was a danger to the community. Ultimately, the Immigration Judge denied bond because Petitioner "HAS NOT MET THEIR BURDEN TO PROVE THEY ARE NOT A DANGER TO THE COMMUNITY[.]" *Id.* at ¶ 14. The Petitioner, though counsel, attempted to appeal the bond order by filing a Form EOIR-26, Notice of Appeal from a Decision of an Immigration Judge, with the Board of Immigration Appeals ("BIA"). On May 8, 2025, the BIA rejected the Petitioner's Form EOIR-26 based on a

procedural defect but explained that a corrected filing may be submitted. As of the date of this Declaration, Petitioner has not submitted a corrected bond appeal with the BIA or sought another bond hearing before the Immigration Court. *Id.* at ¶ 15.

On August 22, 2025, the Immigration Court held a hearing to consider Petitioner's application for relief. The hearing was continued to complete testimony on a later date. *Id.* at ¶ 16. On September 5, 2025, the Immigration Court concluded the hearing on Petitioner's application for relief. *Id.* at ¶ 17. On September 16, 2025, the Immigration Judge denied Petitioner's application for relief and ordered him removed to Nicaragua. *Id.* at ¶ 18. On October 2, 2025, Petitioner, though counsel, filed an appeal of the Immigration Judge's September 16, 2025 decision with the BIA. On February 9, 2026, the BIA issued a briefing schedule, granting the parties until March 2, 2026, to file any appellate briefs. On February 15, 2026, Petitioner sought a twenty-one-day extension to file his brief. The BIA granted the motion, allowing the parties until March 23, 2026, to file any brief. Petitioner filed his brief on March 23, 2026, and his appeal remains pending with the BIA. *Id.* at ¶ 19.

Pursuant to 8 C.F.R. § 1241.1(a), an order of removal made by the Immigration Judge at the conclusion of proceedings shall become final upon dismissal of an appeal by the BIA. *Id.* at ¶ 20. The Petitioner does not have a final order of removal because he appealed the Immigration Judge's September 16, 2025, decision, and that appeal remains pending before the BIA. *Id.* at ¶ 21. As of the date of this Declaration, Petitioner remains in ICE custody at the Midwest Regional Reception Center in Leavenworth, Kansas. *Id.* at ¶ 22. If Petitioner's order of removal becomes final, ICE will attempt to effectuate Petitioner's removal. *Id.* at ¶ 23. ICE will update the Court on any further developments in this matter. *Id.* at ¶ 24.

ARGUMENT

"The federal district courts have habeas corpus jurisdiction to consider the statutory and constitutional grounds for immigration detention that are unrelated to a final order of removal." *Zhiriakov v. Barr*, No. 20-3141-JWL, 2020 WL 3960442, *6 (D. Kan. July 13, 2020) (citation omitted). To obtain habeas corpus relief, a petitioner must demonstrate that "[h]e is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3).

The Immigration and Nationality Act ("INA") provides that "an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). Detention under § 1226(a) is generally discretionary. The Attorney General "may" either "continue to detain the arrested alien" or release the alien on bond or conditional parole. *Id.* § 1226(a)(1)-(2). The INA further provides that certain inadmissible aliens ordered removed may be detained for removal if they are "determined by the Attorney General to be a risk to the community or unlikely to comply with the order of removal." 8 U.S.C. § 1231(a)(6).

Here, Petitioner entered the United States on November 21, 2021 near Eagle Pass, Texas. Ex. 1, Stice Decl., ¶ 6. Petitioner was placed in removal proceedings shortly thereafter. *Id.* at ¶ 7. On November 16, 2022, he filed an application for relief before the immigration court. *Id.* at ¶ 9. On May 31, 2024, he was arrested for various crimes and subsequently on November 1, 2024 was released and placed on Pretrial Intervention Supervision. *Id.* at ¶¶ 10-11. He was taken into ICE custody on January 10, 2025. *Id.* at ¶ 12.

On September 16, 2025, the Immigration Judge denied Petitioner's application for relief and ordered him removed to Nicaragua. *Id.* at ¶ 18. On October 2, 2025, through counsel, Petitioner appealed; he filed his brief March 23, 2026, and the appeal remains pending. *Id.* at ¶ 19.

Because Petitioner's appeal remains pending, his order of removal is not yet final. 8 U.S.C. § 1231(a)(1)(B); *see also* 8 CFR § 1241.1. As such, Petitioner is subject to detention under 8 U.S.C. § 1226(a), not 8 U.S.C. § 1231(a)(6). The Supreme Court's holding in *Zadvydas v. Davis* therefore has no bearing on the Constitutionality of Petitioner's pre-final order of removal detention. *See Zadvydas v. Davis*, 533 U.S. 678, 682 (2001) ("In these cases, we must decide whether this *post-removal-period statute* authorizes the Attorney General to detain a removable alien indefinitely beyond the removal period or only for a period reasonably necessary to secure the alien's removal.") (emphasis added).

Moreover, Petitioner's detention does not violate the due process clause. On April 7, 2025, he was afforded a bond hearing where he was represented by counsel; at the hearing he was found to be a danger to the community. *Id.* at ¶ 14. Petitioner, through counsel, attempted to appeal the bond but it was rejected for procedural defects which were explained along with the fact that it could be resubmitted; no such filing was made. *Id.* at ¶ 15. To date, Petitioner has not submitted any further request for bond. *Id.*

Bond decisions are appealable to the BIA. 8 C.F.R. § 1003.19(f). Further, the regulations allow Petitioner to obtain an additional bond hearing upon a showing that his circumstances have changed materially since the prior bond determination. 8 C.F.R. § 1003.19(e).

Here, Petitioner has made no such argument or request. *Id.* at ¶ 15. "The exhaustion of available administrative remedies is a prerequisite for § 2241 habeas relief," however. *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).

Because Petitioner has adequate procedural protections under the INA, but has failed to exhaust them, the Court should deny the habeas petition. Simply put, Petitioner has not availed himself of the administrative process and instead went directly to the District Court in order to request a new bond hearing.

Petitioner's due process claim should further fail because the Supreme Court has permitted detention during removal proceedings without an individualized determination of flight risk or danger to the community for noncitizens subject to mandatory detention under 8 U.S.C. § 1226(c). *Demore v. Kim*, 538 U.S. 510, 513 (2003). That certain noncitizens may be categorically presumed ineligible for release and held for the duration of their removal proceedings supports the conclusion that the individualized bond procedures available under section 1226(a) are likewise constitutional. *But see Nguyen v. Carter*, No. 26-3008-JWL, 2026 WL 522650, at *2-3 (D. Kan. Feb. 25, 2026) (assessing six factors in an as-applied due process challenge to mandatory detention without a bond hearing under section 1226(c)) (citations omitted).

The Supreme Court in *Jennings v. Rodriguez* rejected the Ninth Circuit Court of Appeals' determination that section 1226(a) requires "the Government to provide procedural protections that go well beyond the initial bond hearing established by existing regulations—namely, periodic bond hearings every six months in which the Attorney General must prove by clear and convincing evidence that the alien's continued detention is necessary." 583 U.S. 281, 306 (2018). There, the Court focused solely on the statutory text and did not reach the constitutional arguments raised. *Id.* Still, the court explicitly rejected the notion that bond hearings should be held every six months. It also found there was no statutorily implied time limit on detention under § 1226(a) because it has a "definite termination point: the conclusion of removal proceedings." *Id.* at 304.

Here, it is Respondents' position that 8 U.S.C. § 1226(a) and its implementing regulations provide adequate procedural protections, but that Petitioner has failed to avail himself to them. If the Court wishes to conduct further analysis, however, Respondents would point the Court to recent decisions affirming this position. *See Salazar v. Noem*, No. 2:26-CV-00433-SPC-NPM, 2026 WL 617393, at *1 (M.D. Fla. Mar. 5, 2026)(finding detention under 8 U.S.C. § 1226(a) does not violate due process rights and that petitioner received process he is due – an initial bond hearing); *see also Borbot v. Warden Hudson Cnty. Corr. Facility*, 906 F. 3d 274, 279 (3d Cir. 2018) ("Borbot was granted meaningful process [under § 1226(a)] prior to filing his habeas petition," and due process did not require anything further); *Miranda v. Garland*, 34 F.4th 338, 346 (4th Cir. 2022)[1] ("the detention procedures adopted for § 1226(a) bond hearings provide sufficient process to satisfy constitutional requirements."); *Rodriguez Diaz v. Garland*, 53 F.4th

[1] It is worth noting that the test set forth by the Supreme Court in *Mathews v. Eldridge*, 424 U.S. 319 (1976) would not be applicable because Petitioner, a noncitizen, is raising a substantive due process challenge, as opposed to a procedural due process challenge. *Miranda* applied *Mathews* for the benefit of the Petitioner, not because it found it to be the applicable standard.

1189, 1213 (9th Cir. 2022) ("§ 1226(a)'s procedures satisfy due process, both facially and as applied to Rodriguez Diaz.").

Petitioner's pleadings show a misunderstanding of his current detention and the applicable statutory provisions and case law. Petitioner is being properly held under Section 1226(a). He has been afforded all the process he is due – an initial bond hearing where he was found to be a danger to the community. He has not properly appealed this determination or requested a new hearing on changes in circumstance. Moreover, circuits courts have found in similar circumstances that no due process rights were violated when analyzing this specific statute.

CONCLUSION

For the foregoing reasons, the Court should enter judgment against Petitioner on his § 2241 habeas petition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on April 23, 2026, the foregoing was electronically filed with the Clerk of the Court by using the CM/ECF system, which will provide notice to all registered parties. I further certify that I will cause a copy of the foregoing filing to be placed in the United States mail, postage prepaid, addressed to the following non-CM/ECF participant:

Cesar Augusto Castillo Ruiz
#[redacted]
Midwest Regional Reception Center
100 Highway Terrace
Leavenworth, Kansas 66048

/s/ Wendy A. Lynn
Wendy A. Lynn