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9 IN THE UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF CALIFORNIA

11 NICOLAS DANIEL MIRASOL MORALES,
12 

13 Plaintiff,

14 v.

15 RON MURRAY, *et al.*,

16 Respondents.
17

CASE NO. 1:26-CV-05106-DJC-JDP

OPPOSITION TO PETITION FOR WRIT
OF HABEAS CORPUS AND ALL INJUNCTIVE
RELIEF; RESPONSE TO ORDER TO SHOW
CAUSE

18 Petitioner is detained pursuant to 8 U.S.C. § 1226(a). Thus, the only relief he should be granted
19 is a custody redetermination hearing pursuant to 8 U.S.C. § 1226(a) and its implementing regulations
20 where he bears the burden of establishing that he does not constitute a flight risk or a danger. The Ninth
21 Circuit has held that section 1226(a) provides facially constitutional procedures.

22 **BACKGROUND**

23 Petitioner is a native and citizen of Argentina. Exhibit A (Form I-213).¹ Petitioner was admitted
24 to the United States on or about August 6, 2020, on a nonimmigrant B2 (visitor for pleasure) visa.
25 Exhibit B (Notice to Appear). The visa required Petitioner to leave the U.S. by February 5, 2021. *Id.*
26 Petitioner did not leave as required. Petitioner was detained by ICE on or about June 26, 2026, at the

27
28 ¹ Undersigned counsel has provided the relevant documents that are available within the
timeframe to respond to the petition.

San Francisco Airport. Exhibit A. Petitioner is in removal proceedings and is detained under 8 U.S.C. § 1226(a).

LEGAL STANDARD

I. Detention Under 8 U.S.C. §1226

Section 1226, of Title 8 of the United States Code governs the detention of aliens who have been lawfully admitted into the U.S. but are deportable and subject to removal proceedings. Section 1226(a) provides for the arrest and detention of these aliens “pending a decision on whether the alien is to be removed from the United States.” 8 U.S.C. § 1226(a). Under § 1226(a), DHS may, in its discretion, detain an alien during his removal proceedings, release him on bond, or release him on conditional parole.² An alien can request a custody redetermination (*i.e.*, a bond hearing) by an IJ at any time before a final order of removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d)(1), 1003.19. Application for a bond redetermination hearing may be made by a respondent (here, the Petitioner) orally, in writing, or, at the discretion of the immigration judge, by telephone. 8 C.F.R. § 1003.19(b). At a custody redetermination, the IJ may continue detention or release the alien on bond or conditional parole. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). IJs have broad discretion in deciding whether to release an alien on bond. *See In re Guerra*, 24 I&N Dec. 37, 39–40 (BIA 2006) (listing nine factors for IJs to consider); *Matter of Siniauskas*, 27 I&N Dec. 207, 207–208 (discussing Respondent’s burden) (BIA 2018) (“An alien in a custody determination under section 236(a) of the Immigration and Nationality Act, 8 U.S.C. § 1226(a) (2012), must establish to the satisfaction of the Immigration Judge and the Board that he or she does not present a danger to persons or property, is not a threat to the national security, and does not pose a risk of flight.”). A custody redetermination decision may be appealed to the Board of Immigration Appeals.

ARGUMENT

Here, Respondents do not dispute that Petitioner is entitled to receive a custody re-determination hearing under section 1226(a) and its implementing regulations. Under § 1226(a), it is the detainee who

² Being “conditionally paroled under the authority of § 1226(a)” is distinct from being “paroled into the United States under the authority of § 1182(d)(5)(A).” *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1116 (9th Cir. 2007) (holding that because release on “conditional parole” under § 1226(a) is not a parole, the alien was not eligible for adjustment of status under § 1255(a)).

1 must request the bond hearing. Here, the petition for writ of habeas corpus can be construed as
2 Petitioner's request for a hearing.

3 A bond hearing in lieu of release is particularly appropriate when, as here, where Petitioner has
4 remained beyond his authorized period. Exhibits A, B. *See also Mansoor v. Figueroa*, No. 3:17-cv-
5 01695-GPC (NLS), 2018 WL 840253, at *4 (S.D. Cal. Feb. 13, 2018) (Immigration Judges are well
6 suited to assess eligibility for release, while a district court "lacks the factual support to make a
7 determination about Petitioner's risk of flight or dangerousness to the community"); *Arshakyam v.*
8 *Warden of Cal. City Det.*, No. 1:25-cv-01780-DAD-AC (HC), 2026 WL 143143 at *5 (E.D. Cal. Jan.
9 20, 2026) (granting a bond hearing not immediate release).

10 The Ninth Circuit has found section 1226(a)'s procedures to be constitutionally sufficient while
11 acknowledging that not all as-applied challenges are foreclosed. *Rodriguez Diaz v. Garland*, 53 F.4th
12 1189, 1213 (9th Cir. 2022) (finding § 1226(a)'s procedures satisfied due process both facially and as
13 applied to Rodriguez Diaz); *id.* at 1197–98 (describing procedures and discussing their adequacy).
14 There is nothing unique however about this case that would make section 1226(a)'s procedures
15 constitutionally deficient as applied to Petitioner.

16 Moreover, both the Ninth Circuit in *Rodriguez Diaz* and the Supreme Court in *Jennings* found
17 section 1226(a) does not require the government to bear the burden. *See Jennings v. Rodriguez*, 583
18 U.S. 281, 306 (2018) (noting in section 1226(a) "'even remotely supports the imposition' of 'periodic
19 bond hearings every six months in which the Attorney General must prove by clear and convincing
20 evidence that the alien's continued detention is necessary.'"). In addition, the Ninth Circuit questioned
21 how the burden-shifting and standard of proof that Petitioner demands could be constitutionally
22 required:

23 Nothing in this record suggests that placing the burden of proof on the
24 government was constitutionally necessary to minimize the risk of error,
25 much less that such burden-shifting would be constitutionally necessary in
26 all, most, or many cases. There is no reason to believe that, as a general
27 proposition, the government will invariably have more evidence than the
28 alien on most issues bearing on alleged lack of future dangerousness or
flight risk.

1 *Rodriguez Diaz*, 53 F.4th at 1212. Accordingly, if the Court grants Petitioner a bond hearing, he should
2 bear the burden of proof at the hearing.

3 Finally, Petitioner should be required to exhaust his administrative remedy before filing a habeas
4 petition. When, as here, the Petitioner is prudentially required to exhaust administrative remedies but
5 has failed to do so, the district court may dismiss the petition without prejudice or stay the proceedings
6 until the petitioner has exhausted administrative remedies. *Hernandez v. Sessions*, 872 F.3d 976, 988
7 (9th Cir. 2017). The Court should dismiss this petition or, alternatively, stay these proceedings.
8 Requiring Petitioner to exhaust his administrative remedy under section 1226(a) through the
9 immigration court would allow the agency to address the detention issue in the first instance and may
10 “preclude the need for judicial review.” *Okoth v. Kaiser*, No. 1:25-cv-01936-KES-SAB, 2026 WL
11 45199, at *4 (E.D. Cal. Jan. 7, 0226).

12 In response to this Court’s July 6, 2026, Order, requiring Respondents to substantively address
13 whether any provision of law or fact in this case would distinguish it from those identified in the Court’s
14 Order (Dkt. 5), Respondents note that unlike the petitioners in the case cited, Petitioner’s presence in the
15 United States had an expiration date and was required to leave. The other petitioners entered the United
16 States without parole and existed within the United States without having ever encountered immigration
17 authorities. Further, Petitioner claims himself a member of the *Garro Pinchi* class, an issue that may be
18 addressed once current appeals on this issue are resolved. However, as to the *Garro Pinchi* argument,
19 Respondents detained Petitioner on account of his overstayed visa, he never attempted to leave the U.S.
20 once his visa expired, and never made his unlawful presence known to DHS, rendering him a flight risk.

21 CONCLUSION

22 For the foregoing reasons, the petition for a writ of habeas corpus should be denied, or at a
23 minimum stayed until Petitioner exhausts his administrative remedy.

24 Dated: July 9, 2026

ERIC GRANT
United States Attorney

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26 By: /s/ ELISA M. RODRIGUEZ
27 ELISA M. RODRIGUEZ
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OPPOSITION