

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF
CALIFORNIA

Edelmira Marquez v. Eliseo Ricolcol, Warden

Marquez v. Ricolcol · No. 5:25-cv-00286-AB (DTB) · Decided March 13, 2025

SUMMARY

The United States District Court for the Central District of California issued an order to show cause in a 28 U.S.C. § 2241 habeas action. The court found that the petition appeared unexhausted because the petitioner had not pursued the Bureau of Prisons' four-step administrative remedy process. The petitioner was ordered to explain by April 11, 2025, why the petition should not be dismissed.

CASE DETAILS

COURT	United States District Court for the Central District of California
WRITING FOR THE COURT	David T. Bristow, Magistrate Judge
JURISDICTION	United States District Court for the Central District of California
DECIDED	March 13, 2025
DOCKET	5:25-cv-00286-AB (DTB)
DISPOSITION	other
PROCEDURAL POSTURE	Order to show cause in a federal habeas proceeding under 28 U.S.C. § 2241 concerning apparent failure to exhaust Bureau of Prisons administrative remedies.
STANDARD OF REVIEW	Under Habeas Rule 4, the court must promptly examine a habeas petition and dismiss it if it plainly appears from the petition and attached exhibits that the petitioner is not entitled to relief.
PRECEDENTIAL VALUE	District court order; precedential status is unknown and no reporter citation appears.
PARTIES	Edelmira Marquez v. Eliseo Ricolcol, Warden

TOPICS

- [federal habeas corpus](#) [exhaustion of remedies](#) [post-conviction relief](#) [pleadings](#) [civil procedure](#)

PRACTICE AREAS

- [Federal habeas corpus](#) [Post-conviction relief](#) [Administrative law](#)

QUESTIONS PRESENTED

1. Whether the § 2241 petition should be dismissed or otherwise addressed because Petitioner apparently failed to exhaust available Bureau of Prisons administrative remedies.
2. Whether Petitioner should be given an opportunity to show cause why the petition should not be dismissed for failure to exhaust.

HOLDINGS

1. A § 2241 habeas petition is subject to the screening requirements of the Habeas Rules, including Habeas Rule 4, under which the court must promptly examine the petition and dismiss it when the petition and attached exhibits plainly show that the petitioner is not entitled to relief.
2. Federal prisoners generally must exhaust available federal administrative remedies before seeking habeas relief under § 2241, but the requirement is prudential rather than jurisdictional and may be waived in appropriate circumstances.
3. The ordinary Bureau of Prisons administrative-remedy process requires an inmate to proceed through informal resolution, a formal request to the warden, an appeal to the Regional Director, and an appeal to the General Counsel; a merits decision by the General Counsel ordinarily completes exhaustion.

KEY QUOTATIONS

“Federal prisoners are required to exhaust their federal administrative remedies prior to bringing a petition for a writ of habeas corpus in federal court.”

“The exhaustion requirement applicable to habeas petitions under Section 2241 is a prudential requirement.”

FACTUAL BACKGROUND

Marquez seeks immediate release from prison and placement on supervised release under the amended Federal First Offenders Act. Her § 2241 petition does not indicate that she presented the claim through the Bureau of Prisons administrative-remedy process. The petition therefore appeared, on its face, to be completely unexhausted through the BOP's four-step process.

PROCEDURAL HISTORY

Petitioner filed a § 2241 habeas petition on January 31, 2025, without paying the filing fee or submitting an application to proceed in forma pauperis. After the Clerk issued a discrepancy notice, Petitioner paid the filing fee on March 5, 2025. Upon screening under Habeas Rule 4, the court found that the petition appeared unexhausted because it did not indicate that Petitioner had pursued any of the four levels of the Bureau of Prisons administrative-remedy process. The court issued an order to show cause and allowed a written response by April 11, 2025, without making a final dismissal determination.

DISPOSITION

other

CASES CITED

- Mayle v. Felix, 545 U.S. 644, 656 (2005)
- Martinez v. Roberts, 804 F.2d 570, 571 (9th Cir. 1986) (per curiam)
- Ward v. Chavez, 678 F.3d 1042, 1045 (9th Cir. 2012)
- Singh v. Napolitano, 649 F.3d 899, 900 (9th Cir. 2011) (per curiam) (as amended)
- Brown v. Rison, 895 F.2d 533, 535 (9th Cir. 1990)
- Reno v. Koray, 515 U.S. 50 (1995)
- Laing v. Ashcroft, 370 F.3d 994, 1000 (9th Cir. 2004)
- Montes v. Thornburgh, 919 F.2d 531, 537 (9th Cir. 1990)
- Pagtalunan v. Galaza, 291 F.3d 639 (9th Cir. 2002)

OPINION

UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA CIVIL
MINUTES--GENERAL Case No. 5:25-cv-00286-AB (DTB) Date: March 13, 2025 Title:
Edelmira Marquez v. Eliseo Ricolcol, Warden

===== DOCKET
ENTRY =====

PRESENT: HON. DAVID T. BRISTOW, MAGISTRATE JUDGE Rachel Maurice n/a Deputy
Clerk Court Reporter ATTORNEYS PRESENT FOR PETITIONER: ATTORNEYS PRESENT
FOR RESPONDENT: None present None present PROCEEDINGS: (IN CHAMBERS) ORDER
TO SHOW CAUSE WHY PETITION SHOULD NOT BE DISMISSED DUE TO FAILURE TO
EXHAUST ADMINISTRATIVE REMEDIES On January 31, 2025, Petitioner Edelmira Marquez
("Petitioner") filed a Petition for Writ of Habeas Corpus by a Person in Federal Custody under 28
U.S.C. § 2241 ("Petition") without paying the appropriate filing fee or filing an application to
proceed in forma pauperis ("IFP Application").

(Docket No. 1). On February 3, 2025, the Clerk issued a Notice re: Discrepancies ordering
Petitioner to pay the appropriate filing fee or file an IFP Application. (Docket No. 2). On March 5,
2025, Petitioner paid the filing fee. (Docket No. 4). A habeas petition brought pursuant to 28
U.S.C. § 2241 is subject to the same screening requirements as a habeas petition brought pursuant
to 28 U.S.C. § 2254.

See Rules Governing Section 2254 Cases in the United States District Courts ("Habeas Rules"),
Habeas Rule 1(b)(providing that district courts may apply the Habeas Rules to habeas petitions not
brought pursuant to 28 U.S.C. § 2254).

In turn, Habeas Rule 4 requires a federal judge to "promptly examine" a petition after filing, and
the judge "must dismiss" the petition if it "plainly appears from the petition and any attached
exhibits that the petitioner is not entitled to relief[.]" See Mayle v. Felix, 545 U.S. 644, 656 (2005)
(citing Habeas Rule 4).

Accordingly, the Court has reviewed the Petition pursuant to Habeas Rule 4, and it appears to be subject to dismissal on the grounds that Petitioner has not exhausted the applicable administrative remedies with respect to the one claim raised therein.

The Court will not make a final determination regarding whether the Petition should be dismissed, however, without first giving Petitioner an opportunity to address the issue of exhaustion. Accordingly, the Court hereby issues this Order to Show Cause as to why the Petition should not be dismissed on the basis that the claim raised therein is unexhausted, and specifically orders Petitioner to respond to the Order to Show Cause in writing by no later than April 11, 2025.

The Court further directs Petitioner to review the information that follows, which provides additional explanation as to why the Petition appears to be subject to dismissal. The Exhaustion Requirement “Federal prisoners are required to exhaust their federal administrative remedies prior to bringing a petition for a writ of habeas corpus in federal court.” *Martinez v. Roberts*, 804 F.2d 570, 571 (9th Cir.

1986) (per curiam); see also *Ward v. Chavez*, 678 F.3d 1042, 1045 (9th Cir. 2012). The exhaustion requirement applicable to habeas petitions under Section 2241 is a prudential requirement. See *Singh v. Napolitano*, 649 F.3d 899, 900 (9th Cir. 2011) (per curiam) (as amended); see also *Ward*, 678 F.3d at 1045 (“As a prudential matter, courts require that habeas petitioners exhaust all available judicial and administrative remedies before seeking relief under § 2241.”).

As the exhaustion requirement is judicially created, the failure to exhaust does not deprive a federal court of jurisdiction. See *Brown v. Rison*, 895 F.2d 533, 535 (9th Cir. 1990), overruled on other grounds by *Reno v. Koray*, 515 U.S. 50 (1995). Further, the exhaustion requirement can be waived in Section 2241 cases since it is not a “jurisdictional prerequisite.” *Ward*, 678 F.3d at 1045 (citation omitted).

Exhaustion may be waived “if pursuing those [administrative] remedies would be futile.” *Id.* (alteration in original) (citation omitted). Courts also have discretion to waive the exhaustion requirement where administrative remedies are inadequate or not efficacious, irreparable injury would result, or the administrative proceedings would be void. See *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir.

2004) (citation omitted). A “key consideration” in exercising such discretion is whether “relaxation of the requirement would encourage the deliberate bypass of the administrative scheme.” *Id.* (quoting *Montes v. Thornburgh*, 919 F.2d 531, 537 (9th Cir. 1990)).

The BOP provides an administrative remedy process through which inmates may seek formal review of an issue relating to any aspect of their confinement. See 28 C.F.R. § 542.10(a). Generally, in order to exhaust available administrative remedies, an inmate must proceed through a four-step process using the appropriate form: (1) Informal resolution (Form BP-8), (2) formal

written administrative remedy request to the Warden of the facility of incarceration (Form BP-9), (3) appeal to the Regional Director (Form BP-10), and (4) appeal to the General Counsel (Form BP-11).

See 28 C.F.R. §§ 542.13-542.15. A final decision on the merits of the claim from the General Counsel completes the BOP administrative remedy process. See 28 C.F.R. §§ 542.15(a), 542.18. Alternatively, if the Office of General Counsel does not respond to the appeal within the time allotted by the regulations, the inmate may consider the absence of a response to be a denial.

28 C.F.R. § 542.18. Here, Petitioner has raised a single ground for relief in the Petition, seeking immediate release from prison and to be put on supervised release per the amended Federal First Offenders Act. (Petition at 1).

The Petition does not reflect that Petitioner's claim was raised in the BOP administrative process or otherwise exhausted through all four levels of review, since Petitioner does not indicate that any administrative challenge to the claim was made.

Therefore, based on the face of the Petition, it appears the Petition is completely unexhausted in terms of the BOP's four-step process of administrative appeals, and Petitioner must show cause as set forth in this Order as to why the Petition should not be dismissed on such basis. Petitioner is warned that the failure to timely respond to this Order may result in a recommendation that this action be dismissed for failure to comply with the Court's Order and/or for failure to prosecute pursuant to Fed.R.Civ.P.

41(b). See *Pagtalunan v. Galaza*, 291 F.3d 639 (9th Cir. 2002). IT IS SO ORDERED.