

**UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF
CALIFORNIA**

Jose Monteroso Agustin v. Fereti Semaia, et al.

Agustin · No. 5:25-cv-02788-SRM-JDE · Decided November 25, 2025

OPINION

Jose Monteroso Agustin v. Fereti Semaia, et al.

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 CENTRAL DISTRICT OF CALIFORNIA

10 Case No. 5:25-cv-02788-SRM-JDE

11 JOSE MONTEROSO AGUSTIN,

12 ORDER TO SHOW CAUSE AS TO

Petitioner, WHY THIS ACTION SHOULD NOT

13 BE DISMISSED AS MOOT IN ITS

14 v. ENTIRETY

15 FERETI SEMAIA, et al., 16 Respondents. 17 18 19 On November 10, 2025, the Court granted
in part Petitioner’s Ex Parte Application 20 for a Temporary Restraining Order and directed
Respondents to provide Petitioner with a 21 bond hearing pursuant to 8 U.S.C. Section 1226(a),
and among other actions, enjoined 22 Respondents from transferring, relocating, or removing
Petitioner outside of the Central 23 District of California pending final resolution of this case. Dkt.
10. In addition, the Court 24 required Respondents to show cause as to why the Court should not
issue a preliminary 25 injunction in this case. Id. 26 Thereafter, Respondents filed a status report
in response to the Court’s Order on 27 November 17, 2025, that states Petitioner received a bond
hearing pursuant to Section 28 1226(a) on this same date. Dkt. 11. Included with Respondents’
status report is the Order of the Immigration Judge reflecting Petitioner’s hearing and request for a
change in 1 2 custody status, which was denied based on Petitioner “not demonstrate[ing] that he
is not 3 a flight risk.” Dkt. 11-1. Because Petitioner received the bond hearing pursuant to Section
4 1226(a), Respondents argue the habeas petition is moot and therefore dismissal is 5 appropriate.
Dkt. 11 at 2-3. 6 In response, Petitioner contends the Immigration Judge used an incorrect burden
of 7 proof to determine whether he should be released on bond that did not afford him Due 8
Process, citing *Singh v. Holder*, 638 F.3d 1196, 1203-04 (9th Cir. 2011), and *Rodriguez 9 Diaz v.*
Garland, 53 F.4th 1189, 1199 (9th Cir. 2022), as support. Dkt. 12 at 3. In other 10 words,
Petitioner claims that the hearing did not satisfy Section 1226(a) nor the Court’s 11 TRO and he
remains detained pursuant to an unlawful adjudication and that constitutional 12 violations

remain. Id. at 9-10. Petitioner further states that as the habeas petition is still 13 active, the TRO's other protections remain and meaningful relief in the form of 14 immediate release or a constitutionally adequate Section 1226(a) hearing remain 15 available. Id. at 5. For this reason, Petitioner requests the Court reaffirm that the TRO has 16 not been satisfied and rule on the preliminary injunction or enforce the Section 1226(a) 17 process as required under the Fifth Amendment. Id. at 10. 18 19 In turn, Respondents filed a reply as directed by the Court in which they assert the 20 proper procedure would be to appeal to the Board of Immigration Appeals (BIA) as 21 regards any error in the Immigration Judge's determination. Dkt. 13 at 2-3. Respondents 22 allege Petitioner must first exhaust his administrative remedies in appealing the 23 Immigration Judge's Order as to his bond status prior to seeking habeas review of that 24 claim. Id. at 4-5. 25 As a general matter, when a detainee has received a bond hearing before an 26 Immigration Judge, the petitioner may appeal that IJ's decision to the BIA if not satisfied 27 with the outcome. See *Leonardo v. Crawford*, 646 F.3d 1157, 1159 (9th Cir. 2011). Then, 28 if the detainee disagrees with the BIA's decision, he or she may challenge the continued detention by filing a habeas petition. See id. And upon an adverse ruling by the district 1 2 court, a decision on a habeas petition may be appealed to the Ninth Circuit. See id. 3 Because of this established procedure, habeas review of an IJ's bond determination prior 4 to appealing to the BIA would in most circumstances be improper. See id. at 1160. 5 Mainly, the Immigration and Nationality Act contains an administrative exhaustion 6 requirement that has been applied to habeas petitions. See, e.g., *Puga v. Chertoff*, 488 7 F.3d 812, 814-15 (9th Cir. 2007) (citation omitted). "When a petitioner does not exhaust 8 administrative remedies, a district court ordinarily should either dismiss the petition 9 without prejudice or stay the proceedings until the petitioner has exhausted remedies, 10 unless exhaustion is excused." *Leonardo*, 646 F.3d at 1160 (citations omitted). 11 Courts may excuse, or rather, waive the exhaustion requirement when 12 "administrative remedies are inadequate or not efficacious, pursuit of administrative 13 remedies would be a futile gesture, irreparable injury will result, or the administrative 14 proceedings would be void." See *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 15 2004) (citation omitted); see also *Puga*, 488 F.3d at 815 (listing factors a court may 16 consider in determining if the exhaustion of administrative remedies should be waived). 17 Whether a matter is moot depends on if "there is a present controversy as to which 18 19 effective relief can be granted." See *Nw. Env't Def. Ctr. v. Gordon*, 849 F.2d 1241, 1244 20 (9th Cir. 1988). Actions in this Circuit have been deemed to be moot "when interim relief 21 or events have deprived the court of the ability to redress the party's injuries." See *United 22 States v. Alder Creek Water Co.*, 823 F.2d 343, 345 (9th Cir. 1987). 23 Here, the crux of the Petition is that Petitioner was wrongly subjected to mandatory 24 detention under 8 U.S.C. Section 1225(b)(2)(A), which applies to noncitizens seeking 25 admission into the country, when he should have been granted an individualized bond 26 hearing under 8 U.S.C. Section 1226(a), which applies to noncitizens already in the 27 country pending the outcome of removal proceedings. Dkt. 1 at 9. Petitioner received an 28 individualized bond hearing pursuant

to Section 1226(a). Dkt. 11-1. Based on what is 1 before the Court, Petitioner has not sought a stay of proceedings to pursue an appeal to 2 ||the BIA of the Immigration Judge's determination nor does the Court conclude 3 || circumstances favor waiver of administrative exhaustion at this juncture. Accordingly, 4 ||the Court deems it appropriate to deny Petitioner's request for a preliminary injunction 5 || and will instead direct the parties to show cause as to why this action should not be 6 || dismissed in its entirety. 7 Upon consideration, the Court Orders as follows: 8 1. The Court DENIES as MOOT Petitioner's request for preliminary injunction. ? 2. The Court ORDERS Petitioner to show cause in writing as to why the case in its '0 entirety should not be dismissed as moot on or before December 1, 2025. Respondents shall respond on or before December 8, 2025. Petitioner shall file any reply on or before

12 December 16, 2025.

13 IT IS SO ORDERED. 15

16 Dated: November 25, 2025 Wel2

V7 HON. SERENA R. MURILLO

18 UNITED STATES DISTRICT JUDGE

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