

1 no bond was appropriate. Petitioner has appealed the bond order to the Board of Immigration
2 Appeals (“BIA”) and that appeal remains pending.

3 Petitioner’s habeas petition seeking immediate release and a second bond redetermination
4 hearing while his administrative appeal is pending should be denied and dismissed without an
5 evidentiary hearing.

6 **II. FACTS**

7 Petitioner is a native and citizen of Honduras. *See* Declaration of Deportation Officer
8 Christopher J. Hubbard (“Hubbard Decl.”) ¶ 3. He entered the United States at Fort Lauderdale,
9 Florida, on or about August 10, 2019, as a B2 visitor. *Id.* Petitioner remained in the United States
10 longer than he was permitted to on the visa. *Id.* ICE Enforcement and Removal Operations
11 (“ERO”) encountered Petitioner at the Suffolk County jail after one of Petitioner’s criminal
12 arrests. *Id.* at ¶ 4. On February 23, 2024, he was placed in removal proceedings with the issuance
13 of a Notice to Appear charged under INA § 237(a)(1)(B) for the overstay. *Id.*; Declaration of
14 Kristin B. Johnson (“Johnson Decl.”) Ex. A.

15 During removal proceedings, Petitioner was detained at Moshannon Valley Processing
16 Center in Pennsylvania. Hubbard Decl. at ¶ 5; Johnson Decl. Ex. B. On October 1, 2024,
17 Petitioner was denied relief and ordered removed to Honduras by the Immigration Judge. Hubbard
18 Decl. at ¶ 6; Johnson Decl. Ex. C. On November 8, 2024, Petitioner filed an untimely notice of
19 appeal which the Board of Immigration Appeals (“BIA”) then accepted as timely. *Id.*

20 On February 2, 2025, Petitioner was transferred to the Northwest ICE Processing Center
21 (“NWIPC”) in Tacoma, Washington. Hubbard Decl. at ¶ 7. On March 28, 2025, the BIA
22 dismissed Petitioner’s appeal, rendering the removal order final at that time. *Id.* at ¶ 8; Johnson
23 Decl. Ex. D. ERO began processing Petitioner for removal. Hubbard Decl. at ¶ 8.

24

1 On April 29, DHS was informed that Petitioner had filed a Petition for Review with the
2 Ninth Circuit Court of Appeals, a temporary stay had been issued, and Petitioner could not be
3 removed. *Id.* at ¶ 9. Subsequently, on or about May 21, 2025, the Ninth Circuit granted a motion
4 to transfer venue to the Third Circuit Court of Appeals. *Id.* In the process, the Ninth Circuit lifted
5 the temporary stay. *Id.* However, the Third Circuit then issued a temporary stay. *Id.*

6 On August 5, 2025, Petitioner requested a bond hearing. *Id.* at ¶ 10. The Immigration
7 Judge conducted a hearing on August 11, 2025, but Petitioner withdrew the request, and no action
8 was taken by the court. *Id.* Petitioner made a subsequent bond request, and a bond hearing under
9 INA § 236 was conducted on August 13, 2025. *Id.* at ¶ 11; Johnson Decl. Ex. E. The Immigration
10 Judge denied bond on the merits, finding Petitioner did not meet his burden to demonstrate he is
11 neither a danger nor flight risk and that no bond was appropriate. *Id.* Petitioner has filed an appeal
12 of the bond order. *Id.*

13 On or about September 12, 2025, the Third Circuit granted Petitioner's motion for stay.
14 Hubbard Decl. at ¶ 12; *Jose Lainez Bueso v. Attorney General United States of America*, No. 25-
15 1989, Dkts. 5, 22. As of October 31, 2025, the stay issued by the Third Circuit remains in place
16 and Petitioner cannot be removed. *Id.*

17 ERO routinely removes noncitizens with removal orders to Honduras. Hubbard Decl. at
18 ¶ 13. ERO does not anticipate difficulty removing Petitioner to Honduras once there is no longer
19 a stay of removal. *Id.* When the mandate issues, ERO will remove Petitioner to Honduras in the
20 normal course. *Id.*

21 III. LEGAL STANDARD

22 It is axiomatic that “[t]he district courts of the United States . . . are courts of limited
23 jurisdiction. They possess only that power authorized by Constitution and statute.” *Exxon Mobil*
24 *Corp. v. Allopach Servs., Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted). “[T]he

1 scope of habeas has been tightly regulated by statute, from the Judiciary Act of 1789 to the present
2 day.” *Dep’t of Homeland Sec. v. Thuraissigiam*, 140 S. Ct. 1959, 1974 n.20 (2020). Title 28
3 U.S.C. § 2241 provides district courts with jurisdiction to hear federal habeas petitions.

4 To warrant a grant of habeas corpus, the petitioner must demonstrate that his or her
5 custody is in violation of the Constitution, laws, or treaties of the United States. *See* 28 U.S.C.
6 § 2241(c)(3).

7
8 **IV. ARGUMENT**

9 **A. ICE lawfully detains Petitioner pursuant to 8 U.S.C. § 1226(a) and he has been given
10 a bond hearing pursuant to 8 C.F.R. § 236.1(d)(1).**

11 Because his removal proceedings are ongoing, Petitioner is lawfully detained pursuant to
12 8 U.S.C. § 1226(a). The Ninth Circuit has found that the Section 1226(a) and its implementing
13 regulations satisfy due process. *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1209-10 (9th Cir.
14 2022). Throughout his removal proceedings, Petitioner has had the right to seek the very relief he
15 seeks here, a bond determination hearing which could lead to his release.

16 Congress enacted a multi-layered statute that provides for the continued civil detention of
17 noncitizens pending removal. *See Prieto-Romero v. Clark*, 534 F.3d 1053, 1059 (9th Cir. 2008).

18 Where an individual falls within this scheme affects whether his detention is discretionary or
19 mandatory, as well as the kind of review process available. *Id.* at 1057. This case concerns the
20 Government’s responsibilities under 8 U.S.C. § 1226(a), which “authorizes the Attorney General
21 to arrest and detain an alien ‘pending a decision on whether the alien is to be removed from the
22 United States.’” *Jennings v. Rodriguez*, 583 U.S. 281, 306 (2018) (quoting 8 U.S.C. § 1226(a)).

23 The Supreme Court has recognized that “there is little question that the civil detention of aliens
24 during removal proceedings can serve a legitimate government purpose, which is ‘preventing
deportable . . . aliens from fleeing prior to or during their removal proceedings, thus increasing

1 the chance that, if ordered removed, the aliens will be successfully removed.” *Prieto-Romero*,
2 534 F.3d at 1065 (citing *Demore v. Kim*, 538 U.S. 510, 528 (2003)).

3 Section 1226(a) provides, in part, as follows:

4 On a Warrant issued by the Attorney General, an alien may be arrested and
5 detained pending a decision on whether the alien is to be removed from the United
6 States. Except as provided in subsection (c) of this section and pending such
7 decision, the Attorney General –

8 (1) may continue to detain the arrested alien; and

9 (2) may release the alien on –

10 (A) bond of at least \$1,500 with security approved by, and
11 containing conditions prescribed by, the Attorney General; or

12 (B) conditional parole . . .

13 8 U.S.C. § 1226(a).

14 “Section 1226(a) and its implementing regulations provide extensive procedural
15 protections that are unavailable under other detention provisions.” *Rodriguez Diaz*, 53 F.4th at
16 1202. Every noncitizen apprehended under Section 1226(a) is individually considered for release
17 on bond. 8 U.S.C. § 1226(a); 8 C.F.R. § 236.1(c)(8). An ICE officer initially assesses whether the
18 noncitizen has “demonstrate[d]” that “release would not pose a danger to property or persons, and
19 that the alien is likely to appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8).

20 If the ICE officer denies bond, the noncitizen may ask an Immigration Judge for a
21 redetermination of the custody decision. 8 C.F.R. § 236.1(d)(1). Thus, the initial bond hearing
22 held before an Immigration Judge for a noncitizen detained under Section 1226(a) is also called
23 a “redetermination hearing.” At this hearing, the noncitizen bears the burden of establishing “that
24 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.” *Matter of Guerra*, 24 I. & N. Dec. 37, 38 (BIA 2006). Bond
hearings are separate and apart from, and form no part of, a noncitizen’s removal hearings.

8 C.F.R. § 1003.19(d).

1 The noncitizen may appeal the Immigration Judge's custody redetermination to the BIA.
2 8 C.F.R. §§ 236.1(d)(3)(i), 1236.1(d)(3)(i); *Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir.
3 2011). Further, a noncitizen who remains detained pursuant to Section 1226(a) after the initial
4 bond hearing may request that the Immigration Judge conduct another custody redetermination
5 whenever "circumstances have changed materially since the prior bond redetermination."
6 8 C.F.R. § 1003.19(e).

7 Here, ICE determined that Petitioner would remain in detention. Hubbard Decl. at ¶ 5;
8 Johnson Decl. Ex. B; 8 C.F.R. § 236.1(c)(8). Petitioner then requested a bond redetermination
9 hearing before the Immigration Judge pursuant to Section 1226(a). Hubbard Decl. at ¶¶ 10-11;
10 8 C.F.R. § 236.1(d)(1). A bond hearing was conducted on August 13, 2025. *Id.* The Immigration
11 Judge denied bond on the merits, finding Petitioner did not meet his burden to demonstrate he is
12 neither a danger nor flight risk and that no bond was appropriate. *Id.* Petitioner has filed an appeal
13 of the bond order. *Id.*

14 **B. Petitioner has failed to exhaust his administrative remedies.**

15 This Court should require Petitioner to avail himself of the substantial procedural
16 protections of Section 1226(a) before seeking habeas relief in a federal district court. Petitioner
17 has requested and received a bond redetermination hearing from an Immigration Judge pursuant
18 to 8 C.F.R. § 236.1(d)(1). And he has appealed the bond decision to the BIA. Petitioner should
19 be required to await the BIA's decision before asking this Court to intervene and order a second
20 bond hearing.

21 Although exhaustion of administrative remedies is not a jurisdictional prerequisite for
22 habeas petitions, courts generally "require, as a prudential matter, that habeas petitioners exhaust
23 available judicial and administrative remedies before seeking [such] relief." *Castro-Cortez v. INS*,
24 239 F.3d 1037, 1047 (9th Cir. 2001) (abrogated on other grounds by *Fernandez-Vargas v.*

1 *Gonzales*, 548 U.S. 30 (2006)). The exhaustion requirement is subject to waiver because it is not
2 a “‘jurisdictional’ prerequisite.” *Id.*

3 Courts may require prudential exhaustion where: “(1) agency expertise makes agency
4 consideration necessary to generate a proper record and reach a proper decision; (2) relaxation of
5 the requirement would encourage the deliberate bypass of the administrative scheme; and
6 (3) administrative review is likely to allow the agency to correct its own mistakes and to preclude
7 the need for judicial review.” *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007).

8 The Court should not allow Petitioner to move forward with this litigation without first
9 exhausting his administrative remedies at the BIA. Similarly, a court in this district dismissed a
10 noncitizen’s habeas petition because the petitioner had failed to seek a bond redetermination
11 hearing at the administrative level. *Cristobal v. Asher*, 20-cv-1493-RSM-BAT, 2020 WL
12 8678097, at * 3 (W.D. Wash. Dec. 14, 2020), *Rep. & Rec. adopted by* 2021 WL796597 (W.D.
13 Wash. Mar. 2, 2021). In *Cristobal*, the petitioner had been detained for 15 months and was denied
14 bond at an initial bond redetermination hearing, but he never sought a second bond
15 redetermination hearing based on changed circumstances before filing a habeas petition. In
16 comparison, Petitioner has been given an initial bond redetermination hearing and is appealing
17 that order before the BIA. He has failed to await a decision on his appeal before filing a habeas
18 petition in the district court. Therefore, this Court should also dismiss this Petition.

19 Furthermore, this case meets the elements requiring prudential exhaustion because
20 Petitioner’s appeal remains pending before the BIA. The BIA “has a special expertise in
21 reviewing the question of whether the bond record as a whole makes it substantially unlikely that
22 the Department w[ill] prevail on [the petitioner’s] challenge to removability.” *Francisco Cortez*
23 *v. Nielsen*, No. 19-CV-00754-PJH, 2019 WL 1508458, at *3 (N.D. Cal. Apr. 5, 2019) (internal
24 quotation marks omitted). Also, allowing a “relaxation of the exhaustion requirement” would

1 promote the avoidance of seeking a bond redetermination by the Immigration Judge or an appeal
2 of similar Immigration Judge orders to the BIA. Finally, the outcome of Petitioner's BIA appeal
3 may provide him with the relief sought here.

4 Accordingly, the Petition should be dismissed because Petitioner has failed to exhaust his
5 administrative remedies.

6 **C. Petitioner is not entitled to release.**

7 This Court should deny Petitioner's request for immediate release from immigration
8 detention. A noncitizen is entitled to release if he can show that his immigration detention is
9 indefinite as defined in *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). *Hong v. Mayorkas*,
10 No. 2:20-cv-1784, 2021 WL 8016749, at *6 (W.D. Wash. June 8, 2021), *report and*
11 *recommendation adopted*, 2022 WL 1078627 (W.D. Wash. Apr. 11, 2022). While Petitioner's
12 detention continues while his removal proceedings are ongoing, he cannot allege that his detention
13 has become indefinite. Petitioner has presented no evidence that ICE will be unable to remove
14 him if his removal order ultimately becomes final. Nor has Petitioner provided any legal basis for
15 his immediate release from detention while detained pursuant to 8 U.S.C. § 1226(a).

16 To the contrary, ICE has stated that ERO routinely removes noncitizens with removal
17 orders to Honduras. Hubbard Decl. at ¶ 13. ERO does not anticipate difficulty removing Petitioner
18 to Honduras once there is no longer a stay of removal. *Id.* When the mandate issues, ERO will
19 remove Petitioner to Honduras in the normal course. *Id.*

20 Accordingly, this Court should deny Petitioner's request for immediate release.

21 **D. Petitioner is not entitled to a second court-ordered bond hearing.**

22 This Court should require Petitioner to await a decision from the BIA before ordering that
23 he receive a second bond hearing, as this may obviate the need for federal litigation.

24

1 Petitioner’s detention comports with due process. “Due process is flexible and calls for
2 such procedural protections as the particular situation demands.” *Mathews v. Eldridge*, 424 U.S.
3 319, 334 (1976). The *Mathews* test does not demonstrate that Petitioner’s detention violates his
4 constitutional due process rights. Under *Mathews*, “[t]he fundamental requirement of due process
5 is the opportunity to be heard at a meaningful time and in a meaningful manner.” *Id.* at 333
6 (internal quotation marks omitted). Petitioner has such an opportunity available to him through
7 his removal proceedings.

8 Pursuant to *Mathews*, district courts must analyze (1) “the private interest that will be
9 affected by the official action,” (2) “the risk of an erroneous deprivation of such interest through
10 the procedures used, and the probable value, if any, of additional or substitute procedural
11 safeguards,” and (3) “the Government’s interest, including the function involved and the fiscal
12 and administrative burdens that the additional or substitute procedural requirement would
13 entail.” *Mathews*, 424 U.S. at 335.

14 With respect to the first factor – the private interest at stake – while it is true as a general
15 matter that freedom from physical restraint “lies at the heart of the liberty that [the Due Process]
16 Clause protects,” *Zadvydas*, 533 U.S. at 690 (internal quotation marks omitted), the Supreme
17 Court has clarified that “[i]n the exercise of its broad power over naturalization and immigration,
18 Congress regularly makes rules that would be unacceptable if applied to citizens.” *Demore*,
19 538 U.S. at 522. Accordingly, while the “Fifth Amendment entitles aliens to due process of law
20 in deportation proceedings, detention during deportation proceedings [is] a constitutionally valid
21 aspect of the deportation process.” *Id.* at 523. Any assessment of the private interests at stake
22 must therefore account for the fact that the Supreme Court has never held that noncitizens have a
23 constitutional right to be released from custody during the pendency of removal proceedings and
24 has in fact held precisely the opposite. *Id.* at 530; *Carlson v. Landon*, 342 U.S. 524, 538 (1952).

1 Furthermore, this Court “cannot simply count his months of detention.” *Rodriguez Diaz*, 53 F.4th
2 at 1208. This Court should consider the process that is available to Petitioner and consider that he
3 is currently pursuing an administrative appeal. *Id.*

4 As for the second factor, the existing implementing regulations are sufficient to protect
5 Petitioner’s “liberty interest and mitigate[] the risk of erroneous deprivation.” *Id.* at 1209.
6 Petitioner has received sufficient procedural safeguards. ICE served him with a Notice of Custody
7 Determination when he was first detained that allowed him to request review of the custody
8 determination by a neutral Immigration Judge. Johnson Decl. Ex. B. He has requested a bond
9 redetermination hearing twice. Hubbard Decl. at ¶¶ 10-11. Both requests were granted, and he
10 was given an individualized bond hearing by an Immigration Judge. *Id.* He has also availed
11 himself of the right to appeal the order and obtain review by the BIA. *Id.*

12 Regarding the third factor, the Government has a significant interest in the orderly process
13 of removal proceedings. Here, Petitioner is pursuing the administrative processes available to him
14 concerning his custody status. Accordingly, a grant of a second bond redetermination hearing by
15 this Court, while Petitioner’s appeal is still pending, would undermine the administrative process
16 by allowing noncitizens to go directly to district court without exhausting their administrative
17 remedies first.

18 Accordingly, Petitioner’s detention comports with due process and this Court should not
19 order a second bond redetermination hearing while his appeal of the Immigration Judge’s bond
20 determination remains pending at the BIA.

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23 //

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1 **IV. CONCLUSION**

2 For the foregoing reasons, Respondent respectfully requests that this Court deny the
3 habeas petition and dismiss this matter.

4 DATED this 31st day of October, 2025.

5
6 Respectfully submitted,

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9 s/ Kristin B. Johnson

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19 I certify that this memorandum contains 2,917 words,
20 in compliance with the Local Civil Rules.

CERTIFICATE OF SERVICE

I hereby certify that I am an employee in the Office of the United States Attorney for the Western District of Washington and of such age and discretion as to be competent to serve papers;

I further certify that on this date, I electronically filed the foregoing and supporting Declarations of Christopher Hubbard and Kristin B. Johnson (with accompanying Exhibits A through E), with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following CM/ECF participant(s):

- 0 -

I further certify that on this date, I arranged for service of the above-mentioned documents on the following non-CM/ECF participant via Certified Mail, Return Receipt Requested, postage prepaid, marked "*Legal Mail, Open in Presence of Detainee,*" and addressed as follows:

Jose David Lainez Bueso, *Pro Se Petitioner*
A#
NW ICE Processing Center
1623 E. J Street, Suite 5
Tacoma, WA 98421-1615

DATED this 31st day of October, 2025.

s/ Caitlin Froelich
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