UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOSE DAVID LAINEZ BUESO,

Petitioner,

v.

IMMIGRATION AND CUSTOMS ENFORCEMENT FIELD OFFICE DIRECTOR, *et al.*,

Respondents.

Case No. C25-1748-KKE-MLP

REPORT AND RECOMMENDATION

Petitioner Jose David Lainez Bueso petitions for relief under 28 U.S.C. § 2241 from the physical custody of U.S. Immigration and Customs Enforcement ("ICE") at the Northwest ICE Processing Center ("NWIPC") in Tacoma, Washington. (Dkt. # 7.) Respondents filed a return (dkt. # 13), and Petitioner filed a traverse (dkt. # 16).[1] Having reviewed the parties' submissions, the balance of the record, and the governing law, this Court recommends granting Respondents' motion to dismiss (dkt. # 13) and denying Petitioner's petition for writ of habeas corpus (dkt. # 7) without prejudice. This Court's reasoning follows.

[1] Petitioner's renewed motion for appointment of counsel (dkt. # 17) is DENIED. This Court finds that Petitioner has adequately articulated his claims, and further that dismissal of the habeas petition renders the motion moot. Accordingly, the interests of justice do not require appointment of counsel at this time. *See Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983); (*see also* dkt. # 10).

I. BACKGROUND

Petitioner, a native and citizen of Honduras, entered the United States on a nonimmigrant visitor visa in August 2019. (Hubbard Decl. (dkt. # 14), ¶ 3.) On February 23, 2024, he was issued a Notice to Appear and charged with visa overstay under 8 U.S.C. § 1227(a)(1)(B). (Hubbard Decl., ¶ 4; Johnson Decl. (dkt. # 15), Ex. A.) On October 1, 2024, an immigration judge ("IJ") denied Petitioner's applications for asylum, withholding of removal, and protection under the Convention Against Torture, and ordered Petitioner removed. (Hubbard Decl., ¶¶ 5-6; Johnson Decl., Exs. B-C.) The Board of Immigration Appeals ("BIA") dismissed Petitioner's appeal on March 28, 2025, finalizing the IJ's removal order. (Hubbard Decl., ¶ 8; Johnson Decl., Ex. D.)

On February 2, 2025, Petitioner was transferred to the NWIPC. (Hubbard Decl., ¶ 7.) On April 29, 2025, the Department of Homeland Security ("DHS") was notified that Petitioner had filed a Petition for Review with the Ninth Circuit, which issued a temporary stay of removal. (*Id.*, ¶ 9.) The Ninth Circuit later lifted its stay and transferred the case to the Third Circuit, which issued its own temporary stay. (*Id.*, ¶ 9.)

Petitioner requested a bond hearing on August 5, 2025. (Hubbard Decl., ¶ 10.) After initially withdrawing the request during a hearing on August 11, he renewed the request, and a bond hearing was held on August 13, 2025. (*Id.*, ¶¶ 10-11.) The IJ denied bond, concluding Petitioner had not met his burden to demonstrate he was not a danger or flight risk. (*Id.*; Johnson Decl., Ex. E.) Petitioner has appealed that decision. (Hubbard Decl., ¶ 11.)

On September 12, 2025, the Third Circuit granted Petitioner's motion for a stay of removal. (Hubbard Decl., ¶ 12.) As of October 31, 2025, the stay remains in effect, barring Petitioner's removal. (*Id.*)

1 Petitioner argues his continued detention violates his right to due process and that the
2 Court should order his release.[2] (*See* dkt. ## 7 at 12-17, 16 at 1-4.) Respondents counter that
3 Petitioner's habeas petition should be denied because Petitioner is lawfully detained and failed to
4 exhaust his administrative remedies, and that Petitioner is not entitled to a second court-ordered
5 bond hearing. (*See* dkt. # 13 at 4-10.) They assert that ICE routinely carries out removals to
6 Honduras and that they anticipate no difficulty removing Petitioner once the Third Circuit's stay
7 is lifted.[3] (*Id.* at 8; Hubbard Decl., ¶ 13.)

8 **II. DISCUSSION**

9 **A. Statutory Basis for Detention**

10 Title 8 U.S.C. § 1226 governs the arrest, detention, and release of noncitizens like
11 Petitioner who are in removal proceedings. 8 U.S.C. § 1226; *see also Demore v. Kim*, 538 U.S.
12 510, 530 (2003). Under § 1226(a), the DHS has discretionary authority to detain a noncitizen,
13 release them on bond, or release them on conditional parole pending removal proceedings. This
14 discretionary authority does not apply to noncitizens who fall within the criminal categories
15 described in § 1226(c), for whom detention is mandatory.

16 When a noncitizen is taken into immigration custody under § 1226(a), ICE makes an
17 initial custody determination, which may include setting bond. 8 C.F.R. § 236.1(c)(8). A detainee
18 may then request a bond redetermination hearing before an IJ. 8 C.F.R. § 236.1(d)(1). At that
19 hearing, the detainee bears the burden of demonstrating to the IJ that they warrant release on
20 bond. *See In re Guerra*, 24 I. & N. Dec. 37, 40 (B.I.A. 2006). The IJ must consider whether the
21 detainee "is a threat to national security, a danger to the community at large, likely to abscond, or
22

23 [2] Petitioner requests in the alternative that he receive an individualized bond hearing. (Dkt. # 7 at 5.)

[3] Petitioner acknowledges that his petition does not assert a claim for indefinite detention. (Dkt. # 7 at 14.)

1 otherwise a poor bail risk." *Id.* (citing *Matter of Patel*, 15 I. & N. Dec. 666 (BIA 1976)). The IJ
2 may also weigh other discretionary factors. *Id.*

3 If the IJ denies bond, the detainee may appeal to the BIA. 8 C.F.R. § 236.1(d)(3). If the
4 BIA affirms, the detainee may seek habeas relief in federal district court. *Leonardo v. Crawford*,
5 646 F.3d 1157, 1159-61 (9th Cir. 2011). While district courts have jurisdiction to review bond
6 determinations for constitutional or legal error, *Singh v. Holder*, 638 F.3d 1196, 1202 (9th Cir.
7 2011), they may not second-guess an IJ's discretionary judgment under § 1226(a). 8 U.S.C.
8 § 1226(e).

9 **B. Prudential Exhaustion**

10 Because Petitioner's removal proceedings are ongoing, his detention is governed by
11 § 1226(a). *Prieto-Romero v. Clark*, 534 F.3d 1053, 1062 (9th Cir. 2008). Petitioner received a
12 bond redetermination hearing from an IJ and has appealed the bond decision to the BIA, and
13 Respondents aver that Petitioner should be required to await the BIA's decision before asking the
14 Court to intervene and order a second bond hearing. (Dkt. # 13 at 6-8.) Petitioner counters that he
15 need not exhaust this remedy because he has already been detained for over 21 months. (Dkt.
16 # 16, ¶¶ 1, 11-12.)

17 As Respondents concede (dkt. # 13 at 6-7), exhaustion here is a prudential, not
18 jurisdictional, requirement and is therefore subject to waiver. *See, e.g.*, *Hernandez v. Sessions*,
19 872 F.3d 976, 988 (9th Cir. 2017). A court may still require prudential exhaustion where: (1)
20 agency expertise is necessary to build a proper record; (2) waiving the requirement would
21 encourage bypassing the administrative scheme; and (3) administrative review is likely to allow
22 the agency to correct its own mistakes, obviating the need for judicial intervention. *Id.* If a court
23 determines that an immigration detainee has failed to exhaust administrative remedies as a

prudential matter, it should either dismiss the matter without prejudice or stay the case to permit exhaustion. *Id.*

This Court finds prudential exhaustion appropriate here. First, Petitioner seeks release while his appeal is pending before the BIA. This request involves numerous factual considerations that the BIA is best positioned to weigh in the first instance. *See Francisco Cortez v. Nielsen*, 2019 WL 1508458, at *3 (N.D. Cal. Apr. 5, 2019).

Second, waiving exhaustion would encourage detainees to deliberately bypass the established administrative scheme, which contemplates bond determinations by IJs and appeals to the BIA, not the district court. *See Coke v. Scott*, 2025 WL 2108711, at *5 (W.D. Wash. June 18, 2025), *report and recommendation adopted,* 2025 WL 2107736 (W.D. Wash. July 28, 2025).

Third, the agency's position on bail cannot be said to be already set or predetermined thus rendering futile any attempt by Petitioner to exhaust his remedies. The BIA has not had the opportunity to address the merits of Petitioner's appeal and should be afforded the chance to do so.

Accordingly, this Court concludes that Petitioner's request for immediate release should be denied without prejudice for failure to exhaust available administrative remedies. Although this Court recommends denying the habeas petition for failure to exhaust, in the alternative it briefly addresses Petitioner's conditions of confinement and due process claims.

C. Conditions of Confinement

Petitioner claims his conditions of confinement violate the Fifth Amendment and warrant his release. (Dkt. ## 7 at 14-17, 16 at 2-4.) Generally, challenges to the fact of confinement are proper in habeas proceedings, *see Crawford v. Bell*, 599 F.2d 890, 891 (9th Cir. 1979), while

challenges to the conditions of confinement are pursued through civil rights actions, *see Badea v. Cox*, 931 F.2d 573, 574 (9th Cir. 1991).

Although it is unclear whether these claims are cognizable in a § 2241 petition, *see Pinson v. Carvajal*, 69 F.4th 1059 (9th Cir. 2023) (holding such claims do not sound in habeas), even assuming they are, Petitioner fails to demonstrate entitlement to relief.

To evaluate the constitutionality of civil detention conditions, courts assess whether they "amount to punishment of the detainee." *Bell v. Wolfish*, 441 U.S. 520, 535 (1979); *see also Kingsley v. Hendrickson*, 576 U.S. 389 (2015). Punishment can be shown by an express intent to punish or by a restriction not reasonably related to a legitimate governmental objective. *Bell*, 441 U.S. at 539; *Kingsley*, 576 U.S. at 398.

Petitioner has not shown Respondents possess an express intent to punish him. The government has legitimate interests in ensuring noncitizens appear for proceedings and in protecting the community. *Jennings v. Rodriguez*, 583 U.S. 281, 286 (2018). Petitioner fails to establish that his conditions are excessive in relation to these objectives. While he argues detention harms his mental and physical health (*see, e.g.*, dkt. # 16, ¶ 4), he presents insufficient evidence that the inherent discomforts of confinement rise to a constitutional violation.

Accordingly, this Court recommends denying Petitioner's request for release based on his conditions of confinement.

D. Due Process

The Fifth Amendment entitles noncitizens to due process in deportation proceedings. *Reno v. Flores*, 507 U.S. 292, 306 (1993). However, "detention during deportation proceedings [is] a constitutionally valid aspect of the deportation process." *Demore*, 538 U.S. at 523. Thus, the process due must account for the government's interests in immigration enforcement.

1 *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022). The Ninth Circuit has held that
2 § 1226(a) and its regulations generally satisfy due process. *Id.* at 1202.
3 Procedural due process requires an opportunity to be heard "at a meaningful time and in a
4 meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (quotation omitted). Courts
5 in this district apply the *Mathews* test to due process challenges to immigration detention. *See*
6 *Rodriguez Diaz*, 53 F.4th at 1206-07; *see also E.A. T.-B. v. Wamsley*, 795 F. Supp. 3d 1316, 1321
7 n. 4 (W.D. Wash. 2025) (collecting cases). To determine whether the procedures provided are
8 constitutionally sufficient, *Mathews* requires balancing: (1) the private interest; (2) the
9 government's interest; and (3) the risk of erroneous deprivation and the value of additional
10 safeguards. 424 U.S. at 335.
11 This Court finds the *Mathews* test appropriate here, which the parties appear to concede.
12 (Dkt. ## 7 at 11, 13 at 9.) Because Petitioner received a bond hearing and appealed to the BIA,
13 the question is whether those safeguards were sufficient for his prolonged detention.
14 First, the private interest—freedom from imprisonment—is "fundamental." *Hernandez*,
15 872 F.3d at 993. Although Petitioner's 21-month detention presumptively constitutes prolonged
16 detention, a court cannot merely count months. *Rodriguez Diaz*, 53 F.4th at 1208. It must also
17 consider the process received, further process available, and whether detention was prolonged
18 partly due to Petitioner's own litigation choices. *Id.* Here, while the private interest weighs in
19 Petitioner's favor, it is not accorded overwhelming weight given the process available and
20 Petitioner's contribution to the delay.
21 Second, the public interest weighs strongly in Respondents' favor. As discussed in the
22 exhaustion analysis above, the government has a significant interest in the orderly administration
23 of removal proceedings. *Id.* at 1209.

1 Third, the risk of erroneous deprivation is low. Petitioner received a bond hearing where
2 an IJ made an individualized determination regarding his flight risk and danger to the
3 community, which Petitioner subsequently appealed. These procedures align with those the
4 Ninth Circuit deemed sufficient in *Rodriguez Diaz*, 53 F.4th at 1209-10. Petitioner has not
5 demonstrated that any additional procedural safeguards were necessary.

6 Petitioner contends his bond hearing was constitutionally defective, alleging both that the
7 IJ improperly placed the burden of proof on him and failed to properly consider certain evidence.
8 (Dkt. ## 7 at 12-13, 16 at 2-4.) These arguments are unavailing. First, the Ninth Circuit has
9 expressly upheld the constitutionality of placing the burden on the noncitizen in § 1226(a) bond
10 proceedings. *Rodriguez Diaz*, 53 F.4th at 1212. Second, Petitioner's claim that the IJ failed to
11 adequately consider evidence—such as his behavior in detention, lawful entry, or health
12 conditions—invites this Court to reweigh discretionary factual determinations, which it may not
13 do. *Sales v. Johnson*, 323 F. Supp. 3d 1131, 1138-39 (N.D. Cal. 2017). The record reflects that
14 the IJ considered Petitioner's submissions (Johnson Decl., Ex. E), and there is no requirement
15 that every piece of evidence be explicitly discussed, so long as highly probative or dispositive
16 evidence is not ignored. *Cole v. Holder*, 659 F.3d 762, 771-72 (9th Cir. 2011). No such omission
17 is apparent here. Accordingly, the third *Mathews* factor weighs in Respondents' favor.

18 On balance, two factors weigh heavily for Respondents, and one weighs for Petitioner.
19 Accordingly, even if this Court were to reach the merits, Petitioner has failed to establish a due
20 process violation.

21 //

22 //

23 //

III. CONCLUSION

For the foregoing reasons, this Court recommends granting Respondents' motion to dismiss (dkt. # 13) and denying Petitioner's petition for writ of habeas corpus (dkt. # 7) without prejudice. A proposed order accompanies this Report and Recommendation. In addition, Petitioner's renewed motion for appointment of counsel (dkt. # 17) is DENIED.

Objections to this Report and Recommendation, if any, should be filed with the Clerk and served upon all parties to this suit not later than **fourteen (14) days** from the date on which this Report and Recommendation is signed. Failure to file objections within the specified time may affect your right to appeal. Objections should be noted for consideration on the District Judge's motions calendar **fourteen (14) days** from the date they are filed. Responses to objections may be filed by **the day before the noting date**. If no timely objections are filed, the matter will be ready for consideration by the District Judge on **January 1, 2026**.

The Clerk is directed to send copies of this Report and Recommendation to the parties and to the Honorable Kymberly K. Evanson.

Dated this 11th day of December, 2025.

MICHELLE L. PETERSON
United States Magistrate Judge