

The Honorable John H. Chun

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FRANCISCO GUERRERO ESPINOSA,

Petitioner,

v.

ICE FIELD OFFICE DIRECTOR,

Respondent.

Case No. 2:26-cv-00034-JHC

FEDERAL RESPONDENTS' RETURN
MEMORANDUM

I. INTRODUCTION

In this habeas petition, Petitioner Francisco Guerrero Espinosa asks this Court to either order his release or to order a bond hearing. Dkt. 6, p. 2. Petitioner, however, fails to mention that he already received a bond hearing less than two weeks before he filed this habeas petition. The result of that bond hearing was that the immigration judge held she lacked jurisdiction but found in the alternative that Petitioner was a flight risk and would have denied bond on that basis as well.

This Court should deny the habeas petition because Petitioner has not yet exhausted his administrative remedies. Ordinarily, if a noncitizen is "dissatisfied with the [immigration judge's] bond determination, they may file an administrative appeal so that 'the necessity of detention can be reviewed by ... the BIA,'" (the Board of Immigration Appeals). *Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011) (quoting *Prieto-Romero v. Clark*, 534 F.3d 1053, 1059 (9th Cir.

2008)). Once the BIA issues its decision, the noncitizen may then pursue habeas relief in the district court and then to the Court of Appeals. *Id.* The Court should require the same here.

II. FACTS

Petitioner is a native and citizen of Mexico. Reed Decl., ¶ 4. On September 18, 2025, Petitioner was encountered by ICE Officers in Beaverton, Oregon as part of a targeted operation. *Id.* ICE Officers determined that Petitioner was inadmissible under Section 212(a)(6)(A)(i) of the Immigration and Naturalization Act (“INA”), as he had entered the United States at an unknown time and place other than as designated by the Secretary of Homeland Security. *Id.* On the same day, September 18, 2025, ERO issued Petitioner a Notice to Appear (“NTA”) charging him as having violated INA § 212(a)(6)(A)(i). *Id.*, ¶ 5; Strong Decl., Ex. A, Notice to Appear.

ICE placed Petitioner in custody at the Northwest ICE Processing Center on the same day as his arrest. Reed Decl., ¶ 4; *see also* Dkt. 6, p. 2. Thus, if Petitioner contends that he has spent 700 days in custody, *see* Dkt. 6, p. 6,¹ Petitioner has only been detained approximately 127 days in custody.

Petitioner has a lengthy immigration history, having entered the United States, been encountered by the Border Patrol, and granted voluntary return to Mexico on nine occasions between 2006 and 2021. Reed Decl., ¶¶ 6-15.

On December 23, 2025, Petitioner, represented by counsel, appeared in Immigration Court for a bond hearing. Reed Decl., ¶ 16. The Immigration Judge denied Petitioner a bond, finding lack of jurisdiction, and in the alternative, that Petitioner is a flight risk. *Id.*; Strong Decl., Ex. B, Order of the Immigration Judge.

¹ Petitioner’s handwriting is unclear, and he may have meant 100 days, which is approximately how long his detention was as of December 26, 2025.

1 Petitioner filed a Form I-589, Application for Asylum and Associated Relief with the
2 Immigration Court on November 28, 2025. Reed Decl., ¶ 17. Petitioner will have an individual
3 hearing to determine his form I-589 in the Immigration Court on January 28, 2026. *Id.*, ¶ 18. Based
4 upon past experience, ERO will not have any significant delays in effectuating Petitioner's
5 removal to Mexico, should the Immigration Court order such. *Id.*, ¶ 19.

6 III. ARGUMENT

7 Petitioner is detained pursuant to INA § 1225(b)(2). Reed Decl., ¶ 4. Nevertheless,
8 Petitioner argues that he is detained under INA § 1236(a), as a noncitizen with pending
9 immigration proceedings. Dkt. 6. Regardless of what detention authority applies, Petitioner has no
10 path for habeas relief.

11 Section 1225(b)(2)(A) of the INA requires mandatory detention of "an alien who is an
12 applicant for admission, if the examining immigration officer determines that an alien seeking
13 admission is not clearly and beyond a doubt entitled to be admitted[.]"

14 Even if Petitioner were being detained under INA § 1236(a), the Ninth Circuit has endorsed
15 that noncitizens like Petitioner should exhaust their administrative remedies through the BIA,
16 before seeking habeas relief in the district court. *Leonardo*, 646 F.3d at 1160. To the extent
17 Petitioner might argue exhaustion of administrative remedies is not a jurisdictional prerequisite for
18 habeas petitions, courts still generally "require, as a prudential matter, that habeas petitioners
19 exhaust available judicial and administrative remedies before seeking [such] relief." *Castro-*
20 *Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001) (abrogated on other grounds by *Fernandez-*
21 *Vargas v. Gonzales*, 548 U.S. 30 (2006)). Nevertheless, "when a petitioner does not exhaust
22 administrative remedies, a district court ordinarily should either dismiss the petition without
23 prejudice or stay the proceedings until the petitioner has exhausted remedies, unless exhaustion is
24 excused." *Leonardo*, 646 F.3d at 1160.

1 *Aden v. Nielson*, No. 18-1441-RSL, 2019 WL 5802013 (W.D. Wash. Nov. 7, 2019) is
2 instructive why the Court should require Petitioner to exhaust his remedies before the BIA. In
3 *Aden*, the Court required a petitioner to exhaust his administrative remedies prior to bringing a
4 claim that the IJ erroneously applied the evidentiary standard during a court-ordered bond hearing,
5 allegedly depriving the petitioner of his due process rights. *Id.* at *1. The Court looked at Ninth
6 Circuit jurisprudence distinguishing “between constitutional claims that only an Article III court
7 can resolve and issues with constitutional implications that may nonetheless be corrected by the
8 BIA on appeal.... The latter category of challenges is subject to prudential exhaustion
9 requirements.” *Id.* The Court found that the BIA could assess petitioner’s assertions that the IJ
10 relied too heavily on his criminal history. *Id.*, at *2 (“the BIA is capable of re-assessing the
11 evidence and determining whether the government has carried its burden of demonstrating by clear
12 and convincing evidence that [the petitioner] is a current danger and must be detained”). Similarly,
13 if Petitioner appeals the IJ’s order, the BIA is well equipped to address any evidence he seeks to
14 present regarding the alternative finding that he is a flight risk. Like in *Aden*, this is a finding that
15 the BIA is capable of reassessing.

16 To the extent that Petitioner might argue that prudential exhaustion should be excused, the
17 Court must consider whether “(1) agency expertise makes agency consideration necessary to
18 generate a proper record and reach a proper decision; (2) relaxation of the requirement would
19 encourage the deliberate bypass of the administrative scheme; and (3) administrative review is
20 likely to allow the agency to correct its own mistakes and to preclude the need for judicial review.”
21 *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017) (quoting *Puga v. Chertoff*, 488 F.3d 812,
22 815 (9th Cir. 2007)). Here, the *Puga* factors weigh in favor of requiring prudential exhaustion.

23 The first *Puga* factor weighs in favor of exhaustion because the BIA has subject-matter
24 expertise for individual immigration bond decisions. Here, the Court would benefit from an

1 administrative appellate record because the IJ has reached an alternative finding that is factual in
2 nature, *i.e.*, whether Petitioner is a flight risk. The second *Puga* factor also weighs in favor of
3 exhaustion because there is no question that where it has jurisdiction, the Immigration Court has
4 authority to deny bond if he is a flight risk. Instead, if Petitioner were to appeal to the BIA, his
5 case would look like *Aden*, which concerned a challenge of whether sufficient evidence was
6 proffered to meet that standard. 2019 WL 5802013, at *2. Allowing a “relaxation of the exhaustion
7 requirement” for Petitioner would permit other detainees to directly appeal their alternative bond
8 determinations to federal district court without any further without an administrative appellate
9 record. Last, the third *Puga* factor weighs in favor of exhaustion because the BIA is capable of
10 reviewing evidentiary findings and could preclude the need for judicial review.

11 If Petitioner might argue that prudential exhaustion should be excused because his
12 “administrative remedies are inadequate or not efficacious, pursuit of administrative remedies
13 would be a futile gesture, irreparable injury will result, or the administrative proceedings would
14 be void,” he would be wrong. *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004). While
15 Petitioner might point to the BIA’s precedential decision that the Immigration Court that his appeal
16 might be dismissed on jurisdictional grounds without reaching the alternative bond order, it is
17 speculative to reach that assumption. *Corrales Castillo v. Wamsley*, No. 25-2172-TMC, 2025 WL
18 3204370, at *3 (W.D. Wash. Nov. 17, 2025) (“Speculation that the BIA will ignore the existence
19 of *Rodriguez Vazquez* entirely and thus decline to review the alternative basis for Padilla-Paz’s
20 detention is not sufficient grounds for what would essentially be advisory habeas relief” and
21 denying habeas relief). Moreover, even if that were to occur, the Department and Petitioner will
22 have created an appellate record for this Court to review in a subsequent habeas proceeding.
23 Moreover, Petitioner cannot point to an irreparable injury because the alternative determination
24 gave him the benefits of a bond hearing, *i.e.*, an individualized determination that he should not be

1 released because he is a flight risk, which he can appeal to the BIA. The *Laing* factors do not favor
2 excusing the prudential exhaustion requirements, which should be applied here. Because Petitioner
3 has not yet exhausted his remedies, his habeas petition is premature and should be denied.

4 IV. CONCLUSION

5 Courts in this district have denied habeas relief where Petitioner received an alternative
6 finding at a bond hearing that they either posed a danger to the community or presented a flight
7 risk recognizing that the IJ's determination "is a separate basis for the 'legality of [his] custody.'" *Cantero Garcia v. Wamsley*, No. 25-2092-TMC, 2025 WL 3123996, at *2 (W.D. Wash. Nov. 7,
8 2025) (quoting *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973)). The habeas petition should be
9 denied.
10

11 DATED this 26th day of January, 2026.

12 Respectfully submitted,

13 CHARLES NEIL FLOYD
14 United States Attorney

15 s/ James C. Strong

16 JAMES C. STRONG, WSBA No. 59151
17 Assistant United States Attorney
18 United States Attorney's Office
19 Western District of Washington
20 700 Stewart Street, Suite 5220
21 Seattle, Washington 98101-1271
22 Phone: 206-553-7970
23 Fax: 206-553-4067
24 Email: james.strong@usdoj.gov

Attorneys for Federal Respondents

*I certify that this memorandum contains 1,585
words 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 United States' Return Memorandum, and the supporting Declarations of Cheng Liu and James C. Strong (with Exhibits A-D) with the Clerk of the Court using the CM/ECF system, which will send notice of such filing to the following CM/ECF participant(s):

- 0 -

I further certify that on this date, I arranged for service of the aforementioned documents on the following non-CM/ECF participant via Certified Mail with return receipt, postage prepaid, addressed as follows:

Francisco Guerrero Espinosa, *Pro Se* Petitioner
A# [REDACTED]
NW ICE Processing Center
1623 E. J Street, Suite 5
Tacoma, WA 98421-1615

DATED this 26th day of January, 2026.

s/ Stephanie Huerta-Ramirez

STEPHANIE HUERTA-RAMIREZ, Legal Assistant
United States Attorney's Office
700 Stewart Street, Suite 5220
Seattle, WA 98101
Phone: (206) 553-7970
Fax: (206) 553-4073
Email: Stephanie.Huerta-Ramirez@usdoj.gov