

District Judge Thomas S. Zilly

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

JESUS GARCIA CALLETANO,

Petitioner,

v.

PAMELA BONDI, *et al.*,

Respondents.

Case No. 2:26-cv-00342-TSZ

FEDERAL RESPONDENTS'¹
RETURN MEMORANDUM

Noted for Consideration:
February 18, 2026

I. INTRODUCTION

Petitioner Jesus Garcia-Calletano disagrees with the outcome of his court-ordered bond hearing where the Immigration Judge ("IJ") determined that he is a danger and a flight and denied bond.

Petitioner invites this Court to reweigh the evidence. Dkt 1, Habeas Petition ("Pet.") ¶¶ 3, 39-46, 48-50. However, this must be denied because pursuant to 8 U.S.C. § 1226(e), this Court does not have jurisdiction to reweigh the evidence of an immigration bond hearing. Petitioner

¹ Respondent Bruce Scott is not a Federal Respondent and is not represented by the U.S. Attorney's Office.

1 asserts that the bond hearing was constitutionally deficient, alleging that the IJ did not allow
2 Petitioner to testify at the bond hearing.

3 However, this is not a constitutionally deficient hearing. The IJ did not exclude any
4 evidence presented by Petitioner, testimonial or otherwise. Petitioner's attorney never called
5 Petitioner as a witness, never asked the IJ if Petitioner could testify at the hearing, and did not
6 object when the IJ did not ask questions that Petitioner wishes the IJ had asked at the hearing.
7 Finally, Petitioner has not established that he has exhausted his administrative remedies before the
8 agency in seeking to cure any alleged errors in the bond hearing. Petitioner has an administrative
9 appeal pending before the Board of Immigration Appeals in which he also asserts that he was not
10 able to testify before the IJ.

11 Accordingly, the Court should deny the habeas petition.

12 II. BACKGROUND

13 On November 25, 2025, Petitioner was granted habeas relief of "a bond hearing under 8
14 U.S.C. § 1226(a)." Pet., Exh. 13 at 6; *Garcia Calletano v. Pamela Bondi*, No. 2:25-cv-02283-TMC
15 (W.D. Wash. 2025). Accordingly, on December 8, 2025, the IJ held a bond hearing pursuant to
16 the district court's order. Steveson Decl., Exh. A, Audio Recording of Bond Hearing. Petitioner
17 filed an 83-page evidence packet. Pet., Exh. 3. Petitioner was represented by legal counsel. DHS
18 also filed evidence, including an incident related to Petitioner's arrest by immigration authorities.
19 Pet., Exh. 2. The hearing was interpreted in Spanish. Steveson Decl., Exh. A, Audio Recording of
20 Bond Hearing. The IJ admitted the evidence that Petitioner previously submitted. *Id.* After
21 admitting the evidence, the IJ invited Petitioner's legal counsel to proceed. *Id.* Petitioner's legal
22 counsel did not question her client about Petitioner's explanation for his social media post and for
23 locking his Jeep doors when approached by immigration authorities. *Id.* At the conclusion of
24 Petitioner's presentation by his legal counsel, DHS was also allowed to present its case. *Id.*

1 At the conclusion of both sides presenting their cases, the IJ asked Petitioner's legal counsel
2 some additional questions, for example, about Petitioner's business. *Id.* The IJ stated that she had
3 "a lot of concerns about the incident where the officers tried to apprehend him." *Id.* To this,
4 Petitioner's legal counsel told the IJ that she had spoken with her client about the incident and that
5 he "is very happy to speak to the court today about that." *Id.* When the IJ stated that his "actions
6 speak for themselves" his legal counsel did not request that Petitioner testify. Legal counsel
7 proposed that Petitioner could speak to it, but also suggested that there was fear in the community
8 as an explanation. *Id.*; *see also* Pet., Exh. 4 at 4. The IJ moved on asking questions about his family,
9 prior to the hearing concluding. *Id.* Petitioner's legal counsel did not call on Petitioner to testify.
10 *Id.* Petitioner's legal counsel did not object to Petitioner not testifying. *Id.* Petitioner's legal counsel
11 did not object to the IJ not asking more questions of the Petitioner. *Id.*

12 The IJ denied bond based on flight risk and danger. Steveson Decl., Exh. B, IJ Order.
13 Initially, Petitioner's legal counsel waived appeal. Steveson Decl., Exh. A, Audio Recording of
14 Bond Hearing. However, Petitioner filed a bond appeal with 30 days, which remains pending with
15 the BIA. Pet., Exh. 8-9.

16 Petitioner has filed an application for Cancellation of Removal. Pet., Exh. 4 at 3. He is
17 scheduled for a hearing on that matter on March 6, 2026. Steveson Decl., Exh. C, Notice of
18 Hearing. If Petitioner's application for cancellation of removal is ultimately granted, he will
19 become a lawful permanent resident. 8 U.S.C. § 1229b(b)(1).

20 III. ARGUMENT

21 A. Petitioner's habeas should be denied because Petitioner has failed to exhaust his 22 administrative remedies

23 Petitioner has failed to exhaust his administrative remedies. His administrative appeal of
24 the IJ's order is pending before the BIA. Pet., Exh. 9. Although exhaustion of administrative

1 remedies is not a jurisdictional prerequisite for habeas petitions, courts generally “require, as a
2 prudential matter, that habeas petitioners exhaust available judicial and administrative remedies
3 before seeking [such] relief.” *Castro-Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001)
4 (abrogated on other grounds by *Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006)). The
5 exhaustion requirement is subject to waiver because it is not a “jurisdictional prerequisite.” *Id.*

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

11 In response in a similar case, a court in this District required a petitioner to exhaust his
12 administrative remedies prior to bringing a claim that the IJ erroneously applied the evidentiary
13 standard during a court-ordered bond hearing, allegedly depriving the petitioner of his due process
14 rights. *Aden v. Nielsen*, 18-cv-1441-RSL, 2019 WL 5802013, at *1 (W.D. Wash. Nov. 7, 2019).
15 In *Aden*, the petitioner alleged that the IJ applied the wrong evidentiary standard and relied too
16 heavily on his criminal history during the court-ordered bond hearing.² *Id.*, at *2. In *Aden*, this
17 Court looked at Ninth Circuit jurisprudence distinguishing “between constitutional claims that
18 only an Article III court can resolve and issues with constitutional implications that may
19 nonetheless be corrected by the BIA on appeal. . . . The latter category of challenges is subject to
20 prudential exhaustion requirements.” *Id.*, at 1. That court found that the BIA could assess a
21 petitioner’s assertions that the IJ relied too heavily on his criminal history. *Id.*, at *2 (“the BIA is
22 capable of re-assessing the evidence and determining whether the government has carried its
23

24 ² In *Aden*, the petitioner file a motion to enforce on the underlying habeas rather than file a new habeas.

1 burden of demonstrating by clear and convincing evidence that [the petitioner] is a current danger
2 and must be detained”).

3 In the instant case, Petitioner has not demonstrated that waiver of prudential exhaustion
4 here is appropriate. The BIA is the “subject-matter expert in immigration bond decisions and has
5 the authority to review appeals from bond determinations by IJs.” *Id.* Also, allowing a “relaxation
6 of the exhaustion requirement” would likely open the floodgates to other detainees to directly
7 appeal their bond denials to federal district court. *Id.* Lastly, the BIA has the authority to correct
8 the alleged errors. *Id.*

9 Petitioner’s administrative appeal is not futile and his continued detention pending his
10 administrative appeal does not violate due process. Accordingly, this habeas should be dismissed
11 because Petitioner has failed to exhaust his administrative remedies. *Id.* (“The BIA reviews the
12 IJ’s factual determinations for clear error and reviews questions of law, discretion, and judgment
13 *de novo*. 8 C.F.R. § 1003.1(d)(3)(i),(ii). Only if he remains unsatisfied by the BIA’s decision may
14 he file a habeas petition in a district court.”); *see also Reyes v. Wolf*, No. 20-cv-377-JLR, 2021 WL
15 662659, at * (W.D. Wash. Feb. 19, 2021) (denying motion to enforce due to the petitioner’s failure
16 to demonstrate that prudential exhaustion requirements should be waived).

17 **B. Pursuant to 8 U.S.C. § 1226(e), this Court lacks jurisdiction to review the IJ’s**
18 **decision denying bond relief in this case**

19 It is premature for this Court to determine whether it has jurisdiction to enforce its prior
20 order.

21 The government held a bond hearing: the only way the motion to enforce succeeds
22 is if that hearing were so defective as to be a nullity. As discussed above, until the
23 BIA reviews the IJ’s no-bond determination, this Court cannot evaluate the merits
24 of his constitutional claim and therefore cannot determine whether the government
has fully complied with its underlying order.

1 *Aden*, 2019 WL 5802013, at *3. However, in the event this Court's analysis of the habeas proceeds
2 further, a statutory bar divests the Court of jurisdiction to review the IJ's bond denial. As Petitioner
3 was previously ordered to have a bond hearing under 8 U.S.C. § 1226(a), he is subject to the
4 judicial review limitations set forth in 8 U.S.C. § 1226(e).

5 Petitioner asserts that he had a "constitutionally flawed" bond hearing. Pet., ¶ 3. Yet the
6 crux of Petitioner's challenge here is to present additional evidence and argument not an attempt
7 to get a new bond hearing due to any alleged constitutional flaw, but to get immediate release in
8 habeas. For example, Petitioner submits the same bond hearing packet he submitted before and
9 argues that "[t]hese valuable positive statements about who the Petitioner is and what good things
10 he has done with his life is very strong. This information militates towards an easy finding that
11 he's neither a flight risk nor a danger to society."

12 In another example, Petitioner once again invites this Court to reweigh the evidence:

13 Here, the Immigration Judge appears to have pre-judged the Petitioner's "danger"
14 to the community based on his poorly thought out TikTok posting, Petitioner's
15 Exhibit 1. Petitioner also failed to extend his hands for handcuffing the moment he
saw the immigration authorities approaching his vehicle which apparently is not
considered resisting?

16 Pet., ¶ 40.

17 Petitioner also submits additional evidence in an attempt to convince this Court to order
18 his immediate release. For example, for the first time, Petitioner submits a declaration about the
19 events related to his immigration arrest. Pet., Exh. 7. This declaration was never submitted to the
20 IJ and the hearing recording indicates that the IJ admitted all of the Petitioner's evidence that was
21 submitted. Steveson Decl., Exh. A, Audio Recording of Bond Hearing; Pet., Exh. 3. Petitioner also
22 now includes medical records that he did not present to the IJ. Pet., Exh. 11.

23 Petitioner states his goal in seeking release in this habeas. It is not to have a hearing on his
24 application for cancellation of removal in a non-detained setting. Petitioner believes that if he is

1 not detained his application for cancellation of removal will not take place for “years from now.”
2 Pet., ¶ 52. Currently, Petitioner’s application for cancellation of removal is scheduled in less than
3 one month, on March 6, 2026. Pet., Steveson Decl., Exh. C, Notice of Hearing.

4 Instead, Petitioner hopes to delay the immigration court’s decision to someday file a
5 different application. Pet., ¶ 52. However, Petitioner is ineligible to adjust status through his spouse
6 or child, because he has never been inspected and admitted or paroled into the United States. 8
7 U.S.C. § 1255(a); Pet., Exh. 3 at 3; *see also* Steveson Decl., Exh. B at 3.

8 A court may review an IJ’s bond determination for constitutional and legal error, but a
9 court does not have jurisdiction to review the IJ’s discretionary decisions. *Arciaga v. Asher*, Case
10 No. C14-1659-JLR, 2015 WL 500189, at *3 (W.D. Wash. Jan. 23, 2015).

11 This Court should decline Petitioner’s invitation to reweigh the evidence, consider new
12 evidence, and consider alternative future applications. This Court should deny the habeas for lack
13 of jurisdiction pursuant to 8 U.S.C. § 1226(e).

14 **C. The IJ complied with the prior habeas order**

15 The prior Order required the Government to Petitioner a bond hearing under Section
16 1226(a). Pet., Exh. 13 at 6. In response to Petitioner’s habeas filing this Court should determine
17 whether the IJ complied with the Order, “not to review the hearing evidence *de novo*.”
18 *Apollinaire v. Barr*, No. 19-cv-6285, 2019 WL 4023560, *3 (W.D.N.Y. Aug. 27, 2019). To
19 analyze Petitioner’s arguments, this Court would need to reweigh the evidence far beyond
20 identifying any alleged legal or constitutional errors.

21 Petitioner simply disagrees with the IJ’s determination. However, an IJ’s discretionary
22 decision to deny bond is not subject to judicial review. *See* 8 U.S.C. § 1226(e); *see also* *Romero-*
23 *Torres v. Ashcroft*, 327 F.3d 887, 891-92 (9th Cir. 2003); *Prieto-Romero v. Clark*, 534 F.3d 1053,
24 1058 (9th Cir. 2008) (“[An] alien may appeal the IJ’s bond decision to the BIA, *see* 8 C.F.R. §

1 236.1(d), but discretionary decisions granting or denying bond are not subject to judicial review,
2 *see* § 1226(e).”). Although this Court does have habeas jurisdiction to review bond hearing
3 determinations for constitutional claims and legal error, *Singh*, 638 F.3d at 1200; *see also*
4 *Hernandez v. Sessions*, 872 F.3d 976, 987 (9th Cir. 2017), habeas jurisdiction over such legal and
5 constitutional claims is proper only if they are “colorable,” i.e., “the claim must have some possible
6 validity.” *Hernandez*, 872 F.3d at 988; *Mendez-Castro v. Kukasey*, 552 F.3d 975, 978 (9th Cir.
7 2009)). “[A] petitioner may not create the jurisdiction that Congress chose to remove simply by
8 cloaking an abuse of discretion argument in constitutional garb.” *Id.* Petitioner has not
9 demonstrated a colorable claim.

10 Procedural due process for an 8 U.S.C. § 1226(a) bond hearing requires “an individualized
11 determination of the government’s interest in his continued detention by a neutral decisionmaker.”
12 *Prieto-Romero v. Clark*, 534 F.3d 1053, 1068 (9th Cir. 2008). The decisionmaker must consider
13 whether the individual would be a danger or a flight risk. *Id.* at 1066; *see also Matter of Guerra*,
14 241 I&N. Dec 37 (BIA 2006).

15 Petitioner alleges that the IJ “did not allow Petitioner to testify at his hearing” and that the
16 IJ “gave no reason to exclude Petitioner’s testimony....” Pet., ¶¶ 3.A., 40. However, the hearing
17 recording includes no such prohibition by the IJ. Steveson, Exh. A, Audio Recording of Bond
18 Hearing. Petitioner’s attorney never called Petitioner to testify at hearing. *Id.* The IJ cannot make
19 a ruling to exclude testimony or explain reasons evidence or testimony is being excluded unless
20 Petitioner moves to present the evidence.

21 The hearing recording is clear, the IJ excluded none of the evidence presented by Petitioner.
22 Petitioner has not demonstrated a colorable claim of a constitutional error.

23 Even if this Court finds that Petitioner’s bond hearing was constitutionally inadequate, the
24 proper remedy should not be immediate release, but rather another bond hearing.

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IV. CONCLUSION

For the foregoing reasons, Petitioner's habeas petition should be denied.

DATED this 13th day of February, 2026.

Respectfully submitted,

s/ Jordan C. Steveson

JORDAN C. STEVESON, WSBA No. 40636

Special Assistant United States Attorney

United States Attorney's Office

Western District of Washington

1201 Pacific Ave., Ste. 700

Tacoma, WA 98402

Phone: (253) 428-3802

Email: jordan.steveson@usdoj.gov

Attorneys for Federal Respondents

I certify that this memorandum contains 2,397 words, in compliance with Local Civil Rules