

District Judge Lauren King

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

FRANKLIN SANCHEZ HENAO,

Petitioner,

v.

JULIO HERNANDEZ, *et al.*,

Respondents.

Case No. 2:26-cv-00707-LK

FEDERAL RESPONDENTS'
OPPOSITION TO PETITIONER'S
MOTION TO ENFORCE ORDER

Noted for Consideration:
April 21, 2026

I. INTRODUCTION

Petitioner Franklin Alberto Sanchez Henao disagrees with the outcome of his court-ordered bond hearing where the Immigration Judge ("IJ") determined that the Department of Homeland Security ("DHS") proved by clear and convincing evidence that he is a flight risk. This bond hearing was held pursuant to this Court's Order requiring the Government to provide Petitioner with an individualized bond hearing under Section 1226(a) with the burden on the Government to show danger to the community or flight risk by clear and convincing evidence. Dkt. No. 10 ("Order"). On April 9, 2027, the Government complied with the Order. Steveson Decl., Ex. A, Audio Recording of April 9, 2026, bond hearing.

Petitioner now argues that he did not receive habeas relief although a bond hearing under the required evidentiary standard was held. Dkt. 13. Petitioner cites to a BIA case and argues that the factors necessarily compel his release and that the IJ did not explain his findings. Dkt. 13, pg. 4-6.

After stating the evidentiary standard and flight risk finding, the IJ asked Sanchez Henao's legal counsel present at the bond hearing if there was "anything else?" Steveson Decl., Exh. I, at 10:56-11:12. His legal counsel responded "no." *Id.* No request for the IJ to give a more detailed assessment or explanation of his findings was made. The fact that the bond hearing did not result in Petitioner's desired outcome does not negate the fact that the Government complied with the Order. Petitioner has received the habeas relief ordered.

Accordingly, this Court should deny the Motion.

II. RELEVANT BACKGROUND

On April 9, 2026, the IJ held a bond hearing applying the standards set forth in *Singh v. Holder*, 638 F.3d 1196 (9th Cir. 2011). Steveson Decl., Ex. A. At the end of the bond hearing, the IJ found that DHS had met its burden of establishing by clear and convincing evidence that Petitioner is a flight risk. Ex. A, at 10:56. The IJ asked legal counsel present at the hearing if there was "anything else?" *Id.*, at 11:03. Petitioner's legal counsel at the bond hearing responded "no." *Id.*, at 11:10. Petitioner reserved the right to appeal the IJ's decision. Steveson Decl., Exh. J, Summary Bond Order. If Petitioner files an administrative appeal, the IJ will prepare a written memorandum explaining the decision. *See* Immigration Court Practice Manual, Ch. 9 – Detention and Bond, § 9.3(e)(7) ("If either party appeals, the Immigration Judge prepares a written decision . . .").

III. ARGUMENT

A. Jurisdiction to Consider Each Alleged Defect

As the Supreme Court has explained, 8 U.S.C. § 1226(e) strips courts of jurisdiction when a noncitizen challenges a "discretionary judgment" by the Attorney General or a "decision" that

1 the Attorney General has made regarding his detention or release.” *See Demore v. Kim*, 538 U.S.
2 510, 516 (2003). Section 1226(e) does not, however, bar jurisdiction of a challenge to “the extent
3 of the Government’s detention authority under the statutory framework as a whole” or to a
4 challenge as to “the constitutionality of the entire statutory scheme under the Fifth Amendment.”
5 *Jennings v. Rodriguez*, 583 U.S. 281, 296-97 (2018); *see also Hernandez v. Sessions*, 872 F.3d
6 976, 987 (9th Cir. 2017) (observing federal courts retain “habeas jurisdiction over constitutional
7 claims or questions of law.”) (quoting *Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir.
8 2011)).

9 In this case, Petitioner gives his own analysis of the competing evidence and asserts that
10 the IJ came to an “absurd outcome in light of the facts.” Dkt. 13, pg. 6. The reweighing of the
11 evidence is precluded by Section 1226(e). However, the Court still retains habeas jurisdiction over
12 Constitutional claims.

13 **B. Legal Sufficiency of IJ’s Bond Determination**

14 The IJ’s determination that Petitioner is a flight risk is supported by specific evidence in
15 the record, consistent with the discretionary factors set forth in *Guerra*, 24 I&N Dec. at 40. The
16 following are factors an IJ may consider in making bond determinations:

17 “(1) whether the detainee has a fixed address in the United States; (2) the
18 detainee’s length of residence in the United States; (3) the detainee’s family
19 ties in the United States, and whether they may entitle the detainee to reside
20 permanently in the United States in the future; (4) the detainee’s employment
21 history; (5) the detainee’s record of appearance in court; (6) the detainee’s criminal
22 record, including the extensiveness of criminal activity, the recency of such
23 activity, and the seriousness of the offenses; (7) the detainee’s history of
24 immigration violations; (8) any attempts by the detainee to flee prosecution or
otherwise escape authorities; and (9) the detainee’s manner of entry to the United
States.”

23 *Youngchun Kim v. Mullin, et al.*, No. C26-0805-SKV, 2026 WL 948347, *2 (W.D. Wash. Apr. 8,
24 2026) (citing *Guerra*, 24 I&N at 40); *see also Matter of R-A-V-P-*, 27 I&N Dec. 803, 805 (BIA 2020).

1 The habeas court's review of an IJ's determination as to dangerousness and flight risk is
2 for abuse of discretion. *Anyanwu v. Bondi*, Case No. C25-995-JLR-MLP, 2025 WL 3466910, at
3 *4 (W.D. Wash. Oct. 6, 2025), *report and recommendation adopted*, No. C25-0995JLR, 2025 WL
4 3187485 (W.D. Wash. Nov. 14, 2025) (citing *Martinez*, 124 F.4th at 784-85). "That deference
5 reflects Congress's decision to cabin judicial review in removal proceedings." *Martinez*, 124 F.4th
6 at 784 (citing *Patel v. Garland*, 596 U.S. 328, 332 (2022)). Under an abuse of discretion standard,
7 the court is not permitted to reweigh evidence. *Id.* at 785 (citing *Konou v. Holder*, 750 F.3d 1120
8 (9th Cir. 2014)); *see also Quan v. Barr*, No. 20-CV-08118-LB, 2021 WL 308610, at *4 (N.D. Cal.
9 Jan. 29, 2021), *aff'd sub nom. Quan v. Garland*, No. 21-15416, 2022 WL 576215 (9th Cir. Feb.
10 25, 2022). Instead, its review is limited to whether the IJ's decision "reflects clear legal error or is
11 unsupported by sufficient evidence." *Hilarto Pankim v. Barr*, No. 20-CV-02941-JSC, 2020 WL
12 2542022, at *8 (N.D. Cal. May 19, 2020) (citation and quotation omitted).

13 An IJ "has extremely broad discretion" in deciding whether or not to release a noncitizen
14 on bond. *Guerra*, 24 I&N Dec. at 39. The IJ "may choose to give greater weight to one factor over
15 others, as long as the decision is reasonable." *Id.* at 40. There is a presumption that the IJ satisfies
16 the due process requirement to consider all the evidence presented. *See Larita-Martinez v. INS*,
17 220 F.3d 1092, 1095-96 (9th Cir. 2000) ("We embrace the view of our sister circuits and hold that
18 an alien attempting to establish that the [agency] violated his right to due process by failing to
19 consider relevant evidence must overcome the presumption that it did review the evidence.").
20 Furthermore, the IJ is not required to address every piece of evidence submitted nor do they "have
21 to write an exegesis on every contention." *Najmabadi v. Holder*, 597 F.3d 983, 990 (9th Cir. 2010)
22 (explaining that the IJ must "consider the issues raised," and announce a decision "in terms
23 sufficient to enable a reviewing court to perceive" that they have "heard and thought and not
24 merely reacted." (citation omitted)).

1 In this case, the immigration judge considered various *Guerra* factors including such things
2 as whether Petitioner has a fixed address, length of time in the United States and legal status that
3 could entitle Petitioner to reside in the United States in the future, employment history, criminal
4 history, record of appearances, history of immigration violations, and manner of entry into the
5 United States. Dkts. 13-1 and 13-2; Steveson Decl., Exh. I.

6 Petitioner received a bond hearing that gave him a meaningful opportunity to be heard,
7 applying the burden of proof as ordered by this Court. Because the fundamental requirement of
8 due process is “the opportunity to be heard at a meaningful time and in a meaningful
9 manner,” *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976), Petitioner’s hearing provided all that
10 was required. Furthermore, Petitioner has additional opportunity to appeal that decision to the BIA
11 and receive a detailed written assessment from the IJ after filing his appeal.

12 **C. This Court should require prudential exhaustion.**

13 This Court should deny the Motion due to Petitioner’s failure to exhaust his administrative
14 remedies. This Court should require Petitioner to appeal the IJ’s bond determination to the BIA.
15 Courts generally “require, as a prudential matter, that habeas petitioners exhaust available judicial
16 and administrative remedies before seeking [such] relief.” *Castro-Cortez v. INS*, 239 F.3d 1037,
17 1047 (9th Cir. 2001) (abrogated on other grounds by *Fernandez-Vargas v. Gonzales*, 548 U.S. 30
18 (2006)). The exhaustion requirement is subject to waiver because it is not a “jurisdictional
19 prerequisite.” *Id.*

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

1 Here, Petitioner has not demonstrated that waiver of prudential exhaustion is appropriate.
2 His dispute amounts to a disagreement with the weight the IJ afforded certain evidence from DHS,
3 did not provide an oral assessment explaining the findings, and that the evidence necessitated some
4 amount of bond. Dkt. 13, pg. 4-6. Sanchez Henao's legal counsel at the bond hearing did not ask
5 the IJ for clarification of any findings. Steveson Decl, Exh. I. This is not a constitutional error
6 outside of the jurisdiction of the BIA.

7 The BIA is the "subject-matter expert in immigration bond decisions and has the authority
8 to review appeals from bond determinations by IJs." *Aden v. Nielsen*, 18-cv-1441-RSL, 2019 WL
9 5802013, at *2 (W.D. Wash. Nov. 7, 2019). Also, allowing a "relaxation of the exhaustion
10 requirement" would likely open the floodgates to other detainees to directly appeal their no-bond
11 determinations to federal district court. *Id.* Furthermore, once appealed, the BIA would have the
12 benefit of a written memorandum by the IJ explaining the decision. Lastly, the BIA has the
13 authority to correct the alleged errors. *Id.* ("The BIA reviews the IJ's factual determinations for
14 clear error and reviews questions of law, discretion, and judgment *de novo*. 8 C.F.R. §
15 1003.1(d)(3)(i),(ii).").

16 Accordingly, the Motion should be dismissed because Petitioner has failed to exhaust his
17 administrative remedies. *See Reyes v. Wolf*, No. 20-cv-377-JLR, 2021 WL 662659, at *8 (W.D.
18 Wash. Feb. 19, 2021) (denying motion to enforce due to the petitioner's failure to demonstrate that
19 prudential exhaustion requirements should be waived).

20 **D. The IJ complied with the Order.**

21 Even if this Court were to waive prudential exhaustion here, the Motion still should be
22 denied because Petitioner has received the relief granted in the Order. In evaluating the Motion,
23 this Court should determine whether the IJ complied with its Order, not "review the hearing
24 evidence *de novo*["] *Apollinaire v. Barr*, No. 19-cv-6285, 2019 WL 4023560, *3 (W.D.N.Y. Aug.

27, 2019). At the April 9, 2026 bond hearing, the IJ required the Government to prove by clear and convincing evidence that Petitioner was a flight risk or a danger to the community by clear and convincing evidence. The IJ found that the Government had met this burden by proving that Petitioner is a flight risk. The IJ asked if Sanchez Henao's legal counsel at the bond hearing if there was anything further. Steveson Decl., Exh. I, at 11:03.

The record provides a rational basis for the IJ to find that DHS met its burden of proving Petitioner to be a flight risk by clear and convincing evidence. Steveson Decl, Ex. A; Dkt. 13-1. At the bond hearing, the IJ repeatedly explained that the Government bore the burden to prove by clear and convincing evidence that Petitioner's detention was justified. The IJ accepted evidence from both parties, listened to their arguments, and allowed legal counsel to raise any issues.

The Government has complied with the Order.

IV. CONCLUSION

For all of the foregoing reasons, this Court should deny Petitioner's Motion.

DATED this 17th day of April, 2026.

Respectfully submitted,

s/ Jordan C. Steveson

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I certify that this memorandum contains 1,984 words, in compliance with the Local Civil Rules.