

Magistrate Judge Grady J. Leupold

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

MARIA LOYA MEDINA,

Petitioner,

v.

JULIO HERNANDEZ, *et al.*,¹

Respondents.

Case No. 2:26-cv-00772-GJL

FEDERAL RESPONDENTS'
SUPPLEMENTAL BRIEFING²

Noted for Consideration:
April 17, 2026

Pursuant to this Court's Order (Dkt. 18), Federal Respondents submit the following briefing concerning the Court's jurisdiction, prudential exhaustion, and Petitioner's claims that both her bond hearing and the immigration judge's later-issued bond memorandum are constitutionally deficient and violative of her right to due process under the Fifth Amendment. *Pet.*, ¶¶ 89-106; Dkt. 17, *Traverse*, at 3-21.

Petitioner's claims should be denied for four reasons. First, this Court lacks jurisdiction to review discretionary bond determinations by immigration judges. Second, Petitioner has failed to exhaust her administrative remedies and has not demonstrated entitlement to waiver of the

¹ Pursuant to Federal Rule of Civil Procedure 25(d), Federal Respondents substitute Todd Blanche for Pamela Bondi.

² Respondent Bruce Scott is not a Federal Respondent and is not represented by the U.S. Attorney's Office.

1 prudential exhaustion requirement under the factors set forth in *Laing v. Ashcroft*, 370 F.3d 994,
2 1000–01 (9th Cir. 2004). Third, the constitutionality of bond procedures under 8 U.S.C. § 1226(a)
3 has been consistently upheld, and this Court should not upend the existing administrative process.
4 Fourth, the findings of the immigration judge (“IJ”) in the later-issued written bond memorandum
5 must be affirmed under the deferential abuse of discretion standard applicable to the Court’s
6 habeas review of flight risk determinations.

7 **I. ARGUMENT**

8 **A. Jurisdiction to Consider Each Alleged Defect.**

9 As the Supreme Court has explained, 8 U.S.C. § 1226(e) strips courts of jurisdiction when
10 a noncitizen challenges a “‘discretionary judgment’ by the Attorney General or a ‘decision’ that
11 the Attorney General has made regarding his detention or release.” *See Demore v. Kim*, 538 U.S.
12 510, 516 (2003). Section 1226(e) does not, however, bar jurisdiction of a challenge to “the extent
13 of the Government’s detention authority under the statutory framework as a whole” or to a
14 challenge as to “the constitutionality of the entire statutory scheme under the Fifth Amendment.”
15 *Jennings v. Rodriguez*, 583 U.S. 281, 296-97 (2018); *see also Hernandez v. Sessions*, 872 F.3d
16 976, 987 (9th Cir. 2017) (observing federal courts retain “habeas jurisdiction over constitutional
17 claims or questions of law.”) (quoting *Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir.
18 2011)).

19 **1. The Absence of a Contemporaneous Record.**

20 “[T]he absence of a contemporaneous record does not, in and of itself, constitute a
21 procedural deficiency.” *See W.T.M. v. Bondi*, No. 2:25-CV-02428-RAJ-BAT, 2026 WL 262583,
22 *3 (W.D. Wash. Jan. 30, 2026). In *W.T.M.*, the Court acknowledged that the contemporaneous
23 record requirement established by the Ninth Circuit in *Singh* applies to detainees facing
24 “prolonged” detention. *Id.* (citing *Singh v. Holder*, 638 F.3d 1196, 1208 (9th Cir. 2011)). Here,

1 Petitioner's current detention of roughly three months has not yet become "prolonged." *Diouf v.*
2 *Napolitano*, 634 F.3d 1081, 1192 n.13 (9th Cir. 2011). While Federal Respondents maintain
3 that *Singh* is not controlling, even if it were, Petitioner "was not entitled to a contemporaneous
4 recording at [her] bond hearing given that [s]he was not held in prolonged detention." *Yong Guo*
5 *v. Nielson*, No. C18-1557-RSM-BAT, 2019 WL 2515166, at *2 (W.D. Wash. June 18, 2019).

6 Critically, there is no Supreme Court or Ninth Circuit precedent that mandates a
7 contemporaneous record of immigration bond hearings as a requirement of due process.
8 *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1212–13 (9th Cir. 2022) (concluding that the
9 discretionary detention procedures of § 1226(a) are facially constitutional and satisfy due process
10 requirements). "Nothing in the Due Process Clause requires individualized bond determinations
11 beyond what Congress has established." *Id.* at 1214 (Bumatay, J., concurring). The procedures in
12 bond hearings are less formal than in merits hearings, as reflected in the statutes and regulations
13 governing removal proceedings and custody redetermination hearings. Compare 8 U.S.C. §
14 1229a(b)(4)(C) (requiring a "complete record . . . of all testimony and evidence produced") with
15 8 U.S.C. § 1226 (containing no such requirement). The implementing regulations codify the
16 distinctions between the two types of proceedings, merits and custody. See, e.g., 8 C.F.R. §
17 1003.19(d) (consideration of custody matters "shall be separate and apart from, and shall form no
18 part of, any deportation or removal hearing or proceeding"); accord *Matter of Guerra*, 24 I&N
19 Dec. 37, 40 n.2 (BIA 2006) ("Bond proceedings are separate and apart from the removal
20 hearing.").

21 While *Singh* formerly required immigration courts in this circuit to create a
22 contemporaneous record of bond hearings for detainees facing prolonged detention, many of
23 those procedural mandates, including the contemporaneous record requirement, are no longer
24 good law. *Rodriguez Diaz*, 53 F.4th at 1196 (noting that "[k]ey aspects" of *Singh* "are no longer

1 good law” and that “*Singh* did not purport to establish a freestanding set of constitutionally
2 mandated procedures that would apply to any detained [noncitizen].”).³ Thus, the absence of a
3 contemporaneous recording does not, standing alone, constitute legal error that is cognizable on
4 habeas review.⁴ Furthermore, as detailed below, IJ’s typically issue oral decisions in bond
5 proceedings and only provide written findings if the decision is appealed. *See* Immigration Court
6 Practice Manual (“ICPM”) ch. 8.3(e)(7) (“Usually, the Immigration Judge’s decision is rendered
7 orally. *If either party appeals*, the Immigration Judge prepares a written decision based on notes
8 from the hearing, however the record will not be transcribed.”) (emphasis added).

9 This Court should not penalize Respondents for failing to provide a contemporaneous
10 record that neither agency policy nor binding precedent requires. And in the absence of any
11 binding precedent requiring a contemporaneous record of § 1226(a) custody proceedings,
12 Petitioner’s claim regarding the lack of a recording is an impermissible challenge to the manner
13 in which her bond hearing was conducted, rather than a cognizable constitutional violation. *See*
14 *Miranda v. Garland*, 34 F.4th 338, 364 (4th Cir. 2022) (noting that judicial imposition of
15 procedures exceeding the current § 1226(a) framework “would in effect be constitutionalizing
16 immigration policy decisions.”).

17 2. The IJ’s Alleged Failure to Issue Findings.

18 The court retains jurisdiction over Petitioner’s claims that the IJ wholly failed to issue
19 findings or apply legal standards because § 1226(e) only strips the court of the power to review
20 discretionary judgments, such as the decision to grant or deny bond in any case. It does not
21 preclude review of constitutional challenges, including whether the IJ failed to follow the required

22
23 ³ The Ninth Circuit has also expressly distinguished *Singh* from cases involving 8 U.S.C. § 1226(a), noting that 8
24 U.S.C. § 1226(c) involves mandatory detention for individuals convicted of certain criminal offenses without any
initial opportunity for release, which creates a higher risk of erroneous deprivation. *Rodriguez Diaz*, 53 F.4th at 1211.

⁴ Consistent with the Court’s scheduling order, Federal Respondents address the legal significance of the later-issued
bond memorandum, including the legal relevance of that practice to the issues presented, further *infra*. *See* § I.D.

1 statutory framework or violated Due Process. When a petitioner argues that an IJ fails to issue
2 findings or apply the correct legal standards, the challenge is not to the IJ's discretionary decision,
3 but to the legality of the process itself—a distinction that the Ninth Circuit has held falls outside
4 the scope of the jurisdiction-stripping provision. *Singh*, 638 F.3d at 1202 (“[C]laims that the
5 discretionary process itself was constitutionally flawed are cognizable in federal court on habeas
6 because they fit comfortably within the scope of § 2241.” (citation modified)). Accordingly,
7 Federal Respondents acknowledge that § 1226(e) does not divest the Court of subject-matter
8 jurisdiction over this specific claim.

9 3.The IJ's Alleged Failure to Consider Bond Amount or Alternative Conditions.

10 The Court lacks jurisdiction to review any claim that the IJ failed to consider alternatives
11 to detention. *Martinez v. Clark*, 124 F.4th 775, 786 (9th Cir. 2024) (rejecting claim that the agency
12 had to consider alternatives to detention before denying him bond). Immigration bonds are issued
13 pursuant to the broad grant of discretionary statutory authority delegated to IJ's under the INA.
14 U.S.C. § 1226(e) (noting that IJ's have “discretionary judgment” regarding the granting of bond,
15 or to determine the type of bond that is appropriate.).

16 In *Prieto-Romero*, the Ninth Circuit recognized that even prolonged detention under
17 section 1226(a) does not license courts to “review the reasonableness of the amount of bond.”
18 *Prieto-Romero v. Clark*, 534 F.3d 1053, 1067 (9th Cir. 2008). Such a challenge would have the
19 Court “second-guess the IJ's discretionary assessment of the bond amount required” to secure a
20 noncitizen's presence at removal proceedings. *Id.*

21 In this regard, Petitioner's reliance on *Hernandez* is misplaced. First, unlike the Petitioner
22 in this case, *Hernandez* arose in the context of two noncitizens facing prolonged detention under
23 § 1226(a). *Hernandez*, 872 F.3d at 984-85 (noting plaintiff Hernandez had been detained for a
24 little over six months prior to her release, while plaintiff Matias had been detained for

1 approximately four years). Second, *Hernandez* concerns an IJ's obligation to consider a
2 detainee's ability to pay when setting a bond once release is deemed appropriate – not whether
3 release is deemed to be appropriate at all. *Id.* at 994 (relying on the *absence* of a dangerousness
4 or flight-risk determination in the procedural due process analysis).

5 In this case, the IJ found Petitioner failed to prove she was not a flight risk and,
6 consequently, denied bond. Andrade Decl., Ex. B. After finding Petitioner to be a flight risk, the
7 IJ concluded that no bond amount or alternative conditions would sufficiently ensure her
8 appearance at her removal proceedings. *Id.* at 5. As set forth in further detail below, this
9 determination is a discretionary judgment unreviewable under § 1226(e), and the absence of
10 prolonged detention further distinguishes Petitioner's case from those upon which she relies. Pet.,
11 at ¶¶ 30-32; Dkt. 17, at 5-6. Accordingly, the Court is without authority to review the IJ's
12 discretionary determination.

13 **B. Legal Sufficiency of the 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.
16 Petitioner bears the burden to show to the satisfaction of the IJ that she merits release on bond.
17 *Id.* The following are factors an IJ may consider in making bond determinations:

18 “(1) whether the detainee has a fixed address in the United States; (2) the
19 detainee's length of residence in the United States; (3) the detainee's family ties
20 in the United States, and whether they may entitle the detainee to reside
21 permanently in the United States in the future; (4) the detainee's employment
22 history; (5) the detainee's record of appearance in court; (6) the detainee's criminal
23 record, including the extensiveness of criminal activity, the recency of such
24 activity, and the seriousness of the offenses; (7) the detainee's history of
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.”

1 *Youngchun Kim v. Mullin, et al.*, No. C26-0805-SKV, 2026 WL 948347, *2 (W.D. Wash. Apr. 8,
2 2026) (citing *Guerra*, 24 I&N at 40); *see also Matter of R-A-V-P-*, 27 I&N Dec. 803, 805 (BIA
3 2020).

4 The habeas court's review of an IJ's determination as to dangerousness and flight risk is
5 for abuse of discretion. *Anyanwu v. Bondi*, Case No. C25-995-JLR-MLP, 2025 WL 3466910, at
6 *4 (W.D. Wash. Oct. 6, 2025), *report and recommendation adopted*, No. C25-0995JLR, 2025
7 WL 3187485 (W.D. Wash. Nov. 14, 2025) (citing *Martinez*, 124 F.4th at 784-85). "That deference
8 reflects Congress's decision to cabin judicial review in removal proceedings." *Martinez*, 124
9 F.4th at 784 (citing *Patel v. Garland*, 596 U.S. 328, 332 (2022)). Under an abuse of discretion
10 standard, the court is not permitted to reweigh evidence. *Id.* at 785 (citing *Konou v. Holder*, 750
11 F.3d 1120 (9th Cir. 2014)); *see also Quan v. Barr*, No. 20-CV-08118-LB, 2021 WL 308610, at
12 *4 (N.D. Cal. Jan. 29, 2021), *aff'd sub nom. Quan v. Garland*, No. 21-15416, 2022 WL 576215
13 (9th Cir. Feb. 25, 2022). Instead, its review is limited to whether the IJ's decision "reflects clear
14 legal error or is unsupported by sufficient evidence." *Hilario Pankim v. Barr*, No. 20-CV-02941-
15 JSC, 2020 WL 2542022, at *8 (N.D. Cal. May 19, 2020) (citation and quotation omitted).

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

1 990 (9th Cir. 2010) (explaining that the IJ must “consider the issues raised,” and announce a
2 decision “in terms sufficient to enable a reviewing court to perceive” that they have “heard and
3 thought and not merely reacted.” (citation omitted)).

4 In light of these principles, the record supports the legal sufficiency of the IJ’s bond
5 findings under the deferential abuse of discretion standard. Andrade Decl., Ex. B. The IJ observed
6 Petitioner has “significant equities in the United States” and acknowledged the considerable
7 evidence Petitioner presented at her bond hearing. *Id.* at 4; Dkt. 5-9 (Bond Evidence). The IJ
8 expressly considered both favorable and adverse equities, including Petitioner’s long-time
9 residence, family ties, employment history, lack of criminal record, and strong community
10 support. Andrade Decl., Ex. B at 3-4. The IJ balanced these positive considerations with the
11 adverse equities, including Petitioner’s prior removal order and subsequent unlawful reentry, her
12 limited avenues for relief, which diminish her incentive to appear at future proceedings, as well
13 as her use of a false Social Security number and her resistance during arrest. *Id.* at 2-4 (citing
14 Petitioner’s Form I-213); Andrade Decl., Ex. A (Form I-213); *see also Matter of Andrade*, 19
15 I&N Dec. 488, 490 (BIA 1987) (stating that a noncitizen with a greater likelihood of being granted
16 relief has a stronger motivation to appear for a hearing than one who has less potential to obtain
17 relief); *Matter of Gonzalez Jimenez*, 29 I&N Dec. 129, 132 (BIA 2025) (explaining that the use
18 of false Social Security number is a negative consideration that weighs against a favorable
19 exercise of discretion). Because all these factors are expressly contemplated by *Guerra* and
20 affirmed by subsequent caselaw, the written bond memorandum reflects a reasonable and
21 individualized evaluation of flight risk. *Guerra*, 24 I&N Dec. at 40. Affording proper deference
22 to the IJ, the Court should decline to disturb this discretionary determination.

23 The fact that the IJ ultimately reached a bond decision other than the one Petitioner wanted
24 does not rise to the level of a constitutional violation. This Court lacks the authority to reassess

1 the evidence presented at the bond hearing and come to a different conclusion, which is the thrust
2 of what Petitioner is now seeking, albeit cloaked “in constitutional garb.” *Torres-Aguilar v. INS*,
3 246 F.3d 1267, 1271 (9th Cir. 2001).

4 In sum, Petitioner received a bond hearing that gave her a meaningful opportunity to be
5 heard, at the hearing the correct burden of proof under § 1226(a) was applied, and she ultimately
6 received a reasoned adjudication. Because the fundamental requirement of due process is “the
7 opportunity to be heard at a meaningful time and in a meaningful manner,” *Mathews v. Eldridge*,
8 424 U.S. 319, 333 (1976), Petitioner’s hearing provided all that was required.

9 **C. IJ’s Alleged Failure to Consider Bond Amount and Alternative Conditions.**

10 The IJ is not required by statute or the Constitution to conduct an evaluation of alternatives
11 to detention or bond amount once flight risk or dangerousness is established. *Martinez*, 124 F.4th
12 at 786 (“Nowhere in *Singh* did we suggest that due process also mandates that immigration courts
13 consider release conditions or conditional parole before deciding that an alien is a danger to the
14 community.”); *see also Miranda*, 34 F.4th at 364 (“In § 1226(a), Congress provided the
15 government with discretion to determine when to grant [a noncitizen] bond. It did not mandate
16 the factors that must be considered in determining whether to grant bond.”)

17 Petitioner argues that conditions of release must be considered to ensure that detention is
18 reasonably related to the government’s interest in protecting the public and ensuring compliance
19 with immigration proceedings. Dkt. 17, at 5-6. However, contrary to Petitioner’s assertions,
20 *Hernandez* does not create a due process requirement to evaluate alternatives to detention or
21 financial resources where, as here, the IJ concluded that no combination of conditions would
22 reasonably ensure appearance at any future immigration court proceedings. *Martinez*, 124 F.4th
23 at 786 (finding *Hernandez* inapplicable because neither the detainees’ financial circumstances nor
24

1 alternative release conditions were considered, “even though they were determined not to be
2 dangerous or flight risks.”) (citing *Hernandez*, 872 F.3d at 984-85, 990-91).

3 After concluding Petitioner posed a flight risk, the IJ determined that “no amount of bond
4 or condition of parole would ensure [her] presence at future hearings in her case.” Andrade Decl.,
5 Ex. B at 5. As stated above and reiterated here: the IJ was under no obligation to evaluate
6 alternative conditions or financial resources. *Martinez*, 124 F.4th at 786; *see also Miranda*, 34
7 F.4th at 365 (concluding petitioner had “failed to meet his burden to show a likelihood of success
8 on his claim that due process requires immigration judges in § 1226(a) bond hearings to consider
9 [a detainee’s] ability to pay and alternative conditions on release.”). Once the IJ found that
10 Petitioner failed to meet her burden of proving she was not a flight risk, the conclusion that bond
11 was inappropriate was a standard exercise of discretion that does not constitute an independent
12 legal defect entitling Petitioner to habeas relief.

13 **D. Legal Significance of Later-Issued Bond Memo.**

14 The Immigration Court Practice Manual (“ICPM”), a subset of the EOIR Policy Manual,
15 provides that: “[b]ond hearings are generally not recorded.” ICPM ch. 8.3(e)(3).⁵ The practice
16 manual also discusses the process of issuing bond decisions, explaining:

17 “The Immigration Judge’s decision is based on any information that is available
18 to the Immigration Judge or that is presented by the parties. *See* 8 C.F.R. §
19 1003.19(d). Usually, the Immigration Judge’s decision is rendered orally. *If either*
party appeals,⁶ the Immigration Judge prepares a written decision based on notes
from the hearing, however the record will not be transcribed.”

20 *Id.* at 8.3(e)(7) (emphasis added); *see also* 8 C.F.R. § 1003.19(f) (“The determination of an
21 Immigration Judge with respect to custody status or bond redetermination shall be entered on the

22 ⁵Available at: <https://www.justice.gov/eoir/policy-manual-eoir/part-II/icpm/chapter-8-3> (last visited April 13, 2026).

23 ⁶ While Petitioner alleges that counsel at her bond hearing waived her right to appeal without providing enough
24 information for her to first make an informed decision, she does not assert a claim of ineffective assistance of counsel.
Dkt. 2 at ¶¶ 18-20 (Petitioner’s Decl.); Dkt. 5-12 at 4 (Affidavit of Benjamin Cornell). To the extent she alleges
prejudice from her bond hearing, the Court must also evaluate the degree of fault attributable to counsel.

1 appropriate form at the time such decision is made and the parties shall be informed *orally or in*
2 *writing* of the reasons for the decision.”) (emphasis added). The regulation therefore allows an IJ
3 to inform a noncitizen of their bond decision orally and does not mandate that the IJ “shall” issue
4 the bond decision in writing. *See id.*

5 The BIA Practice Manual (“BIAPM”) parallels the ICPM.⁷ Under the chapter 6.3(b),
6 (“Procedure”), it states:

7 “Appeals of bond decisions made by Immigration Judges are briefed and
8 processed in the same manner as appeals of Immigration Judge removal decisions,
9 *except that bond hearings are not transcribed.*”

10 BIAPM ch. 6.3(b) (emphasis added); *see also* ch. 6.3(b)(2) (explaining that bond hearings are
11 “seldom recorded and are not routinely transcribed”). Thus, according to agency policy, bond
12 hearings are generally not recorded. *Id.*; *see also Matter of Chirinos*, 16 I&N Dec. 276, 277 (BIA
13 1977) (“[T]here is no right to a transcript of a bond redetermination hearing.”).

14 Here, the IJ followed agency policy and regulation when he orally rendered his bond
15 decision, even if he did not record it or issue a contemporaneous decision in writing. *See Joseph*
16 *v. Holder*, 600 F.3d 1235, 1241 n.5 (9th Cir. 2010) (summarizing how bond hearings are informal,
17 generally not recorded, citing portions of the agency practice manuals to that effect, and stating
18 that “[a]lthough only one published federal decision has cited the Immigration Court Practice
19 Manual, we find it to be a useful resource to determine the procedure before the IJ. *See Vongsa*
20 *Sengkeo v. Horgan*, 670 F.Supp.2d 116, 120 n. 5 (D. Mass. 2009) (citing Practice Manual).”); *see*
21 *also Miti v. Moniz*, --- F. Supp. 3d ---, 2026 WL 884639, *5 n.12 (D. Mass. 2026) (declining to
22 address petitioner’s argument that the lack of a contemporaneous written decision violated due
23 process and noting that this practice, regardless of its constitutionality, “is at least standard.”).

24 ⁷ Available at: <https://www.justice.gov/eoir/policy-manual-eoir/part-III/bia/chapter-6> (last visited April 13, 2026).

1 Furthermore, IJs typically deliver bond decisions orally; a written memorandum is
2 prepared only upon a party's appeal, at which point the IJ drafts the decision based on hearing
3 notes without a formal transcription of the record. ICPM ch. 8.3(e)(7). This procedural framework
4 is well-established and has been consistently upheld as satisfying the requirements of the Due
5 Process Clause. *Rodriguez Diaz*, 53 F.4th at 1213-14; *see also Borbot v. Warden Hudson Cnty.*
6 *Corr. Facility*, 906 F. 3d 274, 279 (3d Cir. 2018) ("Borbot was granted meaningful process [under
7 § 1226(a)] prior to filing his habeas petition," and due process did not require anything further);
8 *Miranda*, 34 F.4th at 366 (concluding "that the current procedures used for detention under §
9 1226(a) satisfy due process."); *Ayobi v. Castro*, 2020 WL 13411861, *9 (W.D. Tex. Feb. 25,
10 2020) ("[T]he Court concludes that the Constitution does not necessarily require that a § 1226(a)
11 detainee be provided with contemporaneous written findings and conclusions following his or her
12 bond hearing.").

13 The Supreme Court has declined to impose a contemporaneous verbatim record
14 requirement on criminal trials. *See Mayer v. City of Chicago*, 404 U.S. 189, 193-94 (1971)
15 (requiring "that the State must afford the indigent a record of sufficient completeness to permit
16 proper consideration of (his) claims" but noting that "[a] record of sufficient completeness does
17 not translate automatically into a complete verbatim transcript"). Thus, there is no basis for this
18 Court to now impose one on immigration custody redetermination hearings, especially where the
19 full range of constitutional rights available in criminal proceedings is not required even in the
20 more formal removal proceedings. *See INS v. Lopez-Mendoza*, 468 U.S. 1032, 1038 (1984).

21 Courts in this District consider procedural due process claims like Petitioner's under
22 *Mathews v. Eldridge*, 424 U.S. 319, 334-35 (1976). *See E.A. T.-B. v. Wamsley*, No. C25-1192-
23 KKE, 795 F. Supp.3d 1316, 1321 n.4 (W.D. Wash. Aug. 19, 2025) (collecting cases employing
24 the *Mathews* factors in similar immigration detention contexts). In applying *Mathews* in this

1 context, this Court must “weigh heavily” the fact “that control over matters of immigration is a
2 sovereign prerogative, largely within the control of the executive and the legislature.” *Landon v.*
3 *Plasencia*, 459 U.S. 21, 34 (1982); *see also El Rescate Legal Servs., Inc. v. Exec. Off. of*
4 *Immigr. Rev.*, 959 F.2d 742, 750 (9th Cir. 1991) (“Once we determine that the Attorney General’s
5 construction of the statute is not arbitrary, capricious, or manifestly contrary to the statute, we
6 cannot impose procedures that merely displace policy choices made by the sovereign.” (citing
7 *Landon*, 459 U.S. at 34-35)); *Rodriguez Diaz*, 53 F.4th at 1213 (recognizing that “[t]he role of the
8 judiciary is limited to determining whether the procedures meet the essential standard of fairness
9 under the Due Process Clause and does not extend to imposing procedures that merely displace
10 congressional choices of policy.” (citation omitted)).

11 Here, an analysis of the *Mathews* test reflects Petitioner’s bond hearing comports with due
12 process. *Id.* With respect to the first *Mathews* factor, Federal Respondents acknowledge the
13 freedom from physical restraint is “the most elemental of liberty interests.” *Hamdi v. Rumsfeld*,
14 542 U.S. 507, 529 (2004) (citation omitted). In that respect, the Supreme Court has been clear:
15 the Constitution permits “rules that would be unacceptable if applied to citizens.” *Rodriguez Diaz*,
16 53 F.4th at 1207 (quoting *Demore*, 538 U.S. at 522); *see also Miranda*, 34 F.4th at 359 (collecting
17 cases).

18 Petitioner’s detention has not reached the six-month threshold of being considered
19 prolonged. *Diouf*, 634 F.3d at 1192 n.13 (noting “[a]s a general matter, detention is prolonged
20 when it has lasted six months and is expected to continue more than minimally beyond six
21 months.”). Moreover, the Court must “consider the process petitioner received during the time
22 [s]he was detained, [and] the further process available” to her. *Rodriguez Diaz*, 53 F.4th at 1208.
23 Even if the Court were to find the private interest at stake weighs in Petitioner’s favor, in light of
24 the substantial process available to her during her confinement, “this factor should not be

1 accorded overwhelming weight.” *Arshad v. Noem*, No. C26-726-RSM, 2026 WL 864737 (W.D.
2 Wash. Mar. 30, 2026) (citation omitted).

3 With respect to the second *Mathews* factor, the statutory framework governing
4 Petitioner’s detention provides safeguards to protect against arbitrary deprivation of liberty while
5 also protecting the government’s interests in ensuring that she does not abscond while removal
6 proceedings are ongoing. *Rodriguez Diaz*, 53 F.4th at 1209-10. She has received a hearing,
7 represented by counsel, where she had the opportunity to present or rebut any evidence that may
8 bear on her dangerousness or flight risk. *Guerra*, 24 I&N Dec. at 40-41. The IJ issued an oral
9 decision after considering the evidence and arguments presented. 8 C.F.R. §§ 1003.19(d), (f).
10 Once Petitioner filed an appeal, the IJ provided a legally sufficient written memorandum detailing
11 his in-court findings. ICPM ch. 8.3(e)(7). Accordingly, the safeguards governing her detention
12 are substantial and “sufficiently protected [Petitioner’s] liberty interest and mitigated the risk of
13 erroneous deprivation.” *Rodriguez Diaz*, 53 F.4th at 1209.

14 As to the third *Mathews* factor, the process Petitioner received reflects Congress’ intent
15 to afford broad discretion to the government in determining which individuals should remain
16 detained for removal proceedings. *Demore*, 538 U.S. at 521; *Frailhat v. ICE*, 16 F.4th 613, 647
17 (9th Cir. 2021) (“The government has an understandable interest in detaining such persons to
18 ensure attendance at immigration proceedings, improve public safety, and promote compliance
19 with the immigration laws.”). The Government’s interest in maintaining the existing procedures
20 for bond hearings to ensure that removal orders can be promptly executed is thus legitimate and
21 significant. While Petitioner may disagree with Congress’ judgment regarding the importance of
22 detention as a means of ensuring removal, due process does not require the government “to
23 employ the least burdensome means to accomplish its goal,” *Demore*, 538 U.S. at 528, or to
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1 provide procedures “that reduce the risk of erroneous deprivation to zero, a result that is beyond
2 grasp.” *Rodriguez Diaz*, 53 F.4th at 1213.

3 Although Petitioner is dissatisfied with the outcome of her bond determination, the IJ
4 properly weighed the evidence and concluded she was a flight risk. The Court should decline to
5 disturb the IJ’s discretionary determination. 8 U.S.C. § 1226(e).

6 In sum, due process does not require bond hearings to be recorded and issuing written
7 decisions only upon appeal is standard practice. Thus, the substantial procedural protections
8 afforded to Petitioner under existing § 1226(a) procedures satisfy due process. *Rodriguez Diaz*.
9 53 F.4th at 1209 (“[W]e conclude that the existing agency procedures sufficiently protected [a
10 Section 1226(a) detained noncitizen’s] liberty interest and mitigated the risk of erroneous
11 deprivation.”); *id.* at 1207-10 (holding that Section 1226(a)’s procedural protections are
12 constitutional under the *Mathews* test).

13 **E. Prudential Exhaustion.**

14 Section 2241 “does not specifically require petitioners to exhaust direct appeals before
15 filing petitions for habeas corpus.” *Castro-Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir.2001).
16 While courts have discretion to waive the exhaustion requirement when it is prudentially required,
17 this discretion is not unfettered. *Id.* (“Prudential limits, like jurisdictional limits and limits on
18 venue, are ordinarily not optional.”).

19 A petitioner may nevertheless avoid the requirement by demonstrating one of the
20 following *Laing* factors applies in their case: (1) “administrative remedies are inadequate or not
21 efficacious,” (2) “pursuit of administrative remedies would be a futile gesture,” (3) “irreparable
22 injury will result,” or (4) “the administrative proceedings would be void.” *Laing*, 370 F.3d at 1000
23 (quoting *S.E.C. v. G.C. George Sec., Inc.*, 637 F.2d 685, 688 (9th Cir. 1981)). The party moving
24 the court to waive prudential exhaustion requirements bears the burden of demonstrating that at

1 least one of the *Laing* factors applies. *See Ortega-Rangel v. Sessions*, 313 F. Supp. 3d 993, 1003
2 (N.D. Cal. 2018).

3 Petitioner has not shown that her administrative remedies are inadequate or efficacious
4 under the first *Laing* factor. *Id.* While immediate habeas review may result in a faster decision,
5 Petitioner's complaints regarding the time it takes for the BIA to adjudicate a bond appeal fall
6 short of demonstrating that the current procedures are inadequate or inefficient. *Martinez v. Scott*,
7 No. 2:25-CV-01538-TSZ-GJL, 2025 WL 2689844, at *6 (W.D. Wash. Aug. 27, 2025), *report*
8 *and recommendation adopted*, No. C25-1538 TSZ, 2025 WL 2689066 (W.D. Wash. Sept. 19,
9 2025). "Indeed, a version of Petitioner's argument could be made by virtually every litigant
10 attempting to bypass the administrative process by proceeding directly to the federal courts.
11 Permitting Petitioner to avoid the administrative scheme based solely on the additional time
12 required to pursue administrative remedies would create an exception to exhaustion that would
13 swallow the rule." *Id.*

14 Second, Petitioner argues that "lengthy delays in adjudication often moot pending bond
15 appeals before they are adjudicated," making appeal to the BIA a futile gesture. Dkt. 17, at 20.⁸
16 On this point, Petitioner's reliance on *Rodriguez v. Bostock*, 802 F. Supp. 3d 1297, 1307 (W.D.
17 Wash. 2025), is misplaced. Dkt. 17, at 20; Pet., at ¶ 82. There, the Court waived the exhaustion
18 requirement after concluding that Rodriguez – who had been subject to prolonged detention –
19 would face irreparable harm by having no "meaningful opportunity to show his entitlement to
20 bond under Section 1226." *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1252-53 (W.D. Wash.
21 2025). Conversely, Petitioner, whose detention has not yet become prolonged, received a bond
22 hearing where she was provided with a meaningful opportunity to demonstrate her entitlement to
23

24 ⁸ This argument necessarily implicates a consideration of whether requiring administrative exhaustion would render the administrative proceedings void under the fourth *Laing* factor. *See Laing*, 370 F.3d at 1000.

1 bond. *Id.* While Petitioner may disagree with the outcome of that bond hearing, her disagreement
2 with the outcome does not equate to a failure of process. *See Ching v. Mayorkas*, 725 F.3d 1149,
3 1156 (9th Cir. 2013) (“It is process that the procedural due process right protects, not the
4 outcome.”).

5 Petitioner fails to present facts and argument sufficient to demonstrate that administrative
6 remedies are futile or that exhaustion would render proceedings void. *See Aden v. Nielsen*, No.
7 2:18-cv-1441-RSL, 2019 WL 5802013, at *3 (W.D. Wash. Nov. 7, 2019) (explaining “exhaustion
8 is futile where the administrative agency’s procedures guarantee a particular result and the agency
9 is unlikely to change them on appeal). As she “has not demonstrated that the BIA has a specific
10 policy of affirming IJs’ bond decisions” she has “not shown that appeal would be futile.” *Id.*
11 Similarly, because the Petitioner failed to demonstrate that requiring exhaustion would render the
12 administrative proceedings void, she has not established the applicability of the final *Laing* factor.

13 Petitioner asserts that requiring administrative exhaustion will lead to irreparable harm to
14 her, her spouse, who recently suffered a stroke and underwent heart surgery, her two U.S. citizen
15 children. Dkt. 17 at 20-21; Dkt. 2 at ¶¶ 6, 24. With Petitioner absent, her sixteen-year-old son has
16 assumed responsibility for his father and sister’s care. Dkt. 3 at ¶¶ 8-12. While Petitioner relies
17 on *Rodriguez* in support of her irreparable harm argument, she fails to acknowledge the material
18 distinctions between that case and her own. Dkt. 17, at 20-21; *Rodriguez*, 779 F. Supp. 3d at 1253-
19 54 (detailing uncontested evidence of the “unique harm” lead plaintiff would face in continued
20 detention, noting that courts in this circuit have “routinely waived prudential exhaustion
21 requirements for noncitizens ... *facing prolonged detention* while awaiting administrative
22 appeals.”) (emphasis added). Petitioner’s reliance on *W.T.M.* is likewise misplaced. Dkt. 17, at
23 21. There, the Court concluded petitioner “presented evidence unique to him” due to the serious
24 injuries he sustained at the time of his arrest and his ongoing medical needs. *W.T.M.*, 2026 WL

262583 at *3. While acknowledging that the hardships faced by Petitioner and her family are significant, Federal Respondents contend they are not unique enough to constitute the irreparable harm required to waive prudential exhaustion. *Martinez*, 2025 WL 2689844, at *6-7.

Moreover, Petitioner's "irreparable harm-based argument begs the constitutional questions presented in [her] petition by assuming that [P]etitioner has suffered constitutional injury." *Cortez v. Nielsen*, No. 19-cv-00754-PJH, 2019 WL 1508458, at *3 (N.D. Cal. Apr. 5, 2019) (quoting *Resendiz v. Holder*, 2012 WL 5451162, at *5 (N.D. Cal. Nov. 7, 2012)); *see also Hilario*, 2020 WL 2542022, at *7. "Allowing those who argue procedural errors in their custody or bond determinations to bypass the administrative process would disrupt the agency's autonomy and result in unnecessary judicial review of unexhausted claims." *Resendiz*, 2012 WL 5451162, at *5. As the circumstances presented by the instant case do not warrant a waiver of the prudential exhaustion requirement, the petition should be denied. *Kim*, 2026 WL 948347, at *2.

II. CONCLUSION

For the foregoing reasons, Federal Respondents respectfully request that this Court deny the habeas petition.

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1 DATED this 14th day of April, 2026.

2 Respectfully submitted,

3 s/ Barbara Andrade

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15 *words, in compliance with Local Civil Rules*