

Magistrate Judge Grady J. Leupold

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

VANESSA SOTO GIMENEZ,

Petitioner,

v.

JULIO HERNANDEZ, *et al.*,¹²

Respondents.

Case No. 2:26-cv-00966-GJL

FEDERAL RESPONDENTS'
RETURN MEMORANDUM

Noted for Consideration:
April 13, 2026.

I. INTRODUCTION

After her initial bond denial, Petitioner now seeks relief from this Court based on her disagreement with the immigration court's discretionary weighing of evidence at her bond hearing. Dkt. 1, Petition ("Pet."). Although she has not filed for review with the Board of Immigration Appeals ("BIA"), Petitioner asks this Court to excuse the exhaustion requirement and adjudicate her claims without the benefit of the administrative record. Habeas corpus, however, is not a vehicle for relitigating discretionary decisions or evidentiary determinations.

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

² Pursuant to Fed. R. Civ. P. 25 (d), Federal Respondents substitute Secretary of the U.S. Department of Homeland Security Markwayne Mullin for Kristi Noem, and Acting U.S. Attorney General Todd Blanche for Pamela Bondi.

1 At her bond hearing, the immigration judge determined that Petitioner had not established
2 that she is not a flight risk and a danger to the community. Petitioner challenges the evidence the
3 judge considered and how the judge weighed the evidence, but that discretionary determination
4 is not reviewable in habeas. *See* 8 U.S.C. § 1226(e). The Court should deny the Petition.

5 II. FACTUAL AND PROCEDURAL BACKGROUND

6 A. Legal Background

7 The Immigration and Nationality Act governs the detention and release of noncitizens
8 during and following their removal proceedings. *See Johnson v. Guzman Chavez*, 594 U.S. 523,
9 526-29 (2021). The general detention periods are generally referred to as “pre-order” (meaning
10 before the entry of a final order of removal) and “post-order” (meaning after the entry of a final
11 order of removal). *Compare* 8 U.S.C. § 1226 (authorizing pre-order detention) *with* § 1231(a)
12 (authorizing post-order detention).

13 Section 1226(a) “authorizes the Attorney General to arrest and detain noncitizen ‘pending
14 a decision on whether the [noncitizen] is to be removed from the United States.’” *Jennings v.*
15 *Rodriguez*, 138 S. Ct. 830, 847 (2018) (quoting 8 U.S.C. § 1226(a)). The Supreme Court has
16 recognized that “there is little question that the civil detention of [noncitizens] during removal
17 proceedings can serve a legitimate government purpose, which is ‘preventing deportable
18 [noncitizens] from fleeing prior to or during their removal proceedings, thus increasing the chance
19 that, if ordered removed, the [noncitizens] will be successfully removed.’” *Prieto-Romero v.*
20 *Clark*, 534 F.3d 1053, 1065 (9th Cir. 2008) (citing *Demore v. Kim*, 538 U.S. 510, 528 (2003)).

21 Every noncitizen apprehended under Section 1226(a) is individually considered for
22 release on bond. 8 U.S.C. § 1226(a); 8 C.F.R. § 236.1(c)(8). “Federal regulations provide that
23 [noncitizens] detained under § 1226(a) receive bond hearings at the outset of detention.” *Jennings*
24 *v. Rodriguez*, 583 U.S. 281, 306 (2018) (citing 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1)). An ICE

1 officer initially assesses whether the noncitizen has “demonstrate[d]” that “release would not pose
2 a danger to property or persons, and that the [noncitizen] is likely to appear for any future
3 proceeding.” 8 C.F.R. § 236.1(c)(8). If the ICE officer denies bond, the noncitizen may ask an IJ
4 for a redetermination of the custody decision. 8 C.F.R. § 236.1(d)(1). Thus, the initial bond
5 hearing for a noncitizen detained under Section 1226(a) is also called a “redetermination hearing.”
6 At this hearing, the noncitizen bears the burden of establishing “that he or she does not present a
7 danger to persons or property, is not a threat to the national security, and does not pose a risk of
8 flight.” *Matter of Guerra*, 24 I. & N. Dec. 37, 38 (BIA 2006). Bond hearings are separate and
9 apart from, and form no part of, a noncitizen’s removal hearings. 8 C.F.R. § 1003.19(d).

10 The noncitizen may appeal the IJ’s custody redetermination to the BIA. 8 C.F.R.
11 §§ 236.1(d)(3)(i), 1236.1(d)(3)(i); *Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011).
12 If the noncitizen remains dissatisfied, he may file a petition for writ of habeas corpus in federal
13 district court. *See id.* Further, a noncitizen who remains detained under Section 1226(a) after the
14 initial bond hearing may request that the IJ conduct another custody redetermination whenever
15 “circumstances have changed materially since the prior bond redetermination.” 8 C.F.R.
16 § 1003.19(e).

17 **B. Petitioner Vanessa Soto Gimenez**

18 Petitioner is a native and citizen of Venezuela. Declaration of Rita Soraghan (“Soraghan
19 Decl.”) ¶ 3. On November 16, 2016, Petitioner was admitted to the United States on a non-
20 immigrant visitor visa. *Id.* ¶ 4. She was authorized to remain in the United States until May 15,
21 2017. *Id.* Petitioner remained in the United States beyond the period of authorization. *Id.* On or
22 about November 30, 2025, Petitioner was arrested by the Alachua County, FL Sheriff’s Office
23 for Battery, a crime of domestic violence. *Id.* ¶ 5. On December 1, 2025, ERO encountered her in
24 the Alachua County Jail and two days later transported her to the ERO office in Jacksonville, FL

1 for processing. *Id.* ¶ 6. On December 3, 2025, Petitioner was personally served with a Notice to
2 Appear (“NTA”) charging her as removable under 8 U.S.C. § 1227(a)(1)(B). *Id.* ¶ 7. The NTA
3 was filed with the court on December 4, 2025. *Id.* Petitioner has been detained since December
4 3, 2025. *Id.* ¶ 8.

5 On December 15, 2025, Petitioner filed a Bond Redetermination Request with the
6 Orlando, Florida Immigration Court. *Id.* ¶ 9. The order of the Immigration Judge (“IJ”) dated
7 December 22, 2025 indicates that the request was withdrawn. *Id.* This withdrawal was due to
8 Petitioner’s transfer from the Orlando Immigration Court’s jurisdiction. *Id.*

9 On December 29, 2025, Petitioner filed another Bond Redetermination Request, this time
10 with the Tacoma, WA Immigration Court. *Id.* ¶ 10. After a bond hearing where Petitioner had the
11 opportunity to provide evidence and argument, the IJ denied the request based on Petitioner’s
12 prior criminal arrest for domestic violence battery and removal proceedings demonstrating flight
13 risk in an order dated January 6, 2026. *Id.*; Pet. ¶¶ 61, 75, 77. Petitioner reserved appeal. Soraghan
14 Decl. ¶ 10. On February 3, 2026, Petitioner filed another Bond Redetermination Request with the
15 Tacoma Immigration Court. *Id.* ¶ 11. In an order dated February 4, 2026, the IJ denied the request,
16 citing no materially changed circumstances. *Id.*

17 On February 20, 2026, Petitioner filed another Bond Redetermination Request. *Id.* ¶ 12.
18 In an order dated March 6, 2026, the IJ denied the request citing that Petitioner’s “application for
19 asylum, withholding of removal, and Convention Against Torture were denied. She was ordered
20 removed. The court does not find favorable changed circumstances.” *Id.* On March 4, 2026,
21 Petitioner had an individual calendar hearing in the Tacoma Immigration Court. *Id.* ¶ 13. In an
22 order dated the same day, the IJ denied all forms of relief and ordered Petitioner removed to
23 Venezuela. *Id.* Petitioner reserved appeal. *Id.*

On March 9, 2026, Petitioner filed a Notice of Appeal with the Board of Immigration Appeals. *Id.* ¶ 14. The appeal is pending. *Id.* Because Petitioner's order of removal is not administratively final, she is detained pursuant to 8 U.S.C. § 1226(a). *Id.* ¶ 15.

III. LEGAL STANDARD

It is axiomatic that "[t]he district courts of the United States . . . are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute." *Exxon Mobil Corp. v. Allopah Servs., Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted). "[T]he scope of habeas has been tightly regulated by statute, from the Judiciary Act of 1789 to the present day." *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 125 n.20 (2020). Title 28 U.S.C. § 2241 provides district courts with jurisdiction to hear federal habeas petitions.

To warrant a grant of habeas corpus, the burden is on the petitioner to prove that his or her custody is in violation of the Constitution, laws, or treaties of the United States. *See* 28 U.S.C. § 2241(c)(3); *Lambert v. Blodgett*, 393 F.3d 943, 969 n.16 (9th Cir. 2004).

IV. ARGUMENT

A. Petitioner has Failed to Exhaust her Administrative Remedies

This Court should require Petitioner to avail herself of the substantial procedural protections available to her before seeking habeas relief in a federal district court. Although exhaustion of administrative remedies is not a jurisdictional prerequisite for habeas petitions, courts generally "require, as a prudential matter, that habeas petitioners exhaust available judicial and administrative remedies before seeking [such] relief." *Castro-Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001) (abrogated on other grounds by *Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006)).

The district court's decision in *Aden v. Nielson*, No. 18-cv-1441, 2019 WL 5802013 (W.D. Wash. Nov. 7, 2019), is instructive as to why this Court should require Petitioner to exhaust his

1 remedies concerning the immigration judge's bond order before the BIA. In *Aden*, the Court
2 required a petitioner to exhaust his administrative remedies prior to bringing a claim that the
3 immigration judge erroneously applied the evidentiary standard during a court-ordered bond
4 hearing, allegedly depriving the petitioner of his due process rights. *Id.* at *1. The Court looked
5 at Ninth Circuit jurisprudence distinguishing "between constitutional claims that only an
6 Article III court can resolve and issues with constitutional implications that may nonetheless be
7 corrected by the BIA on appeal. The latter category of challenges is subject to prudential
8 exhaustion requirements." *Id.*

9 The court found that the BIA could assess petitioner's assertions that the immigration
10 judge 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
12 clear and convincing evidence that [the petitioner] is a current danger and must be detained").
13 Similarly, if Petitioner appeals the immigration judge's order, the BIA is well equipped to address
14 any evidence he seeks to present regarding the alternative finding that he is a flight risk. Like in
15 *Aden*, this is a finding that the BIA is capable of reassessing.

16 When determining whether administrative exhaustion should be excused, the Court must
17 consider whether "(1) agency expertise makes agency consideration necessary to generate a
18 proper record and reach a proper decision; (2) relaxation of the requirement would encourage the
19 deliberate bypass of the administrative scheme; and (3) administrative review is likely to allow
20 the agency to correct its own mistakes and to preclude the need for judicial review." *Hernandez*
21 *v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017) (quoting *Puga v. Chertoff*, 488 F.3d 812, 815 (9th
22 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 immigration judge has reached a finding that is factual
2 in nature, *i.e.*, whether Petitioner is a danger to the community or a flight risk. The second *Puga*
3 factor also weighs in favor of exhaustion because there is no question that where it has
4 jurisdiction, the immigration court has authority to deny bond if a person is deemed a flight risk
5 or a danger to the community. Allowing a "relaxation of the exhaustion requirement" for
6 Petitioner would permit other detainees to directly appeal their alternative bond determinations to
7 federal district court without any further administrative appellate record. Last, the third *Puga*
8 factor weighs in favor of exhaustion because the BIA is capable of reviewing evidentiary findings
9 and could preclude the need for judicial review.

10 Petitioner's arguments that prudential exhaustion should be excused on the grounds that
11 her administrative remedies are inadequate or ineffective, that irreparable injury will result, or
12 that the administrative proceedings would be void, is without merit. *Laing v. Ashcroft*, 370 F.3d
13 994, 1000 (9th Cir. 2004). Once the BIA determines the outcome of her appeal, Federal
14 Respondents and Petitioner will have created an appellate record for this Court to review in a
15 subsequent habeas case. Furthermore, she may get the relief she seeks here through the BIA. The
16 *Laing* factors do not favor excusing the prudential exhaustion requirements, which should be
17 applied here.

18 Accordingly, the Petition should be dismissed because Petitioner has failed to exhaust her
19 administrative remedies.

20 **B. Petitioner has not identified any colorable constitutional or legal error arising from**
21 **the bond hearing**

22 An immigration judge's discretionary decision to deny bond is not subject to judicial
23 review. 8 U.S.C. § 1226(e); *see also Romero-Torres v. Ashcroft*, 327 F.3d 887, 891-92 (9th Cir.
24 2003). Federal district courts retain habeas jurisdiction only to review bond determinations for

1 constitutional claims or legal error, *Singh v. Holder*, 638 F.3d 1196, 1200 (9th Cir. 2011); see
2 also *Hernandez*, 872 F.3d at 987 (citing *Leonardo v. Crawford*, 646 F.3d at 1160). Moreover,
3 whether a noncitizen is “dangerous” for detention purposes presents a mixed question of law and
4 fact reviewable as a question of law, subject to abuse-of-discretion review. *Martinez v. Clark*,
5 124 F.4th 775, 779 (9th Cir. 2024).

6 Critically, habeas jurisdiction exists only where the asserted constitutional or legal claims
7 are “colorable,” that is, they must have “some possible validity.” *Hernandez*, 872 F.3d at 988
8 (quoting *Torres-Aguilar v. I.N.S.*, 246 F.3d 1267, 1271 (9th Cir. 2001)); *Mendez-Castro v.*
9 *Mukasey*, 552 F.3d 975, 978 (9th Cir. 2009). A petitioner “may not create the jurisdiction that
10 Congress chose to remove simply by cloaking an abuse of discretion argument in constitutional
11 garb.” *Hernandez*, 872 F.3d at 988 (quoting *Torres-Aguilar*, 246 F.3d at 1271). As the Ninth
12 Circuit has emphasized, only “rare case[s]” present a colorable constitutional or legal challenge
13 to immigration bond procedures. *Id.* at 989. This is not such a case.

14 Here, ICE detained this person pursuant to 8 U.S.C. § 1226(a). After Petitioner overstayed
15 her non-immigrant visa, she was brought to ICE’s attention following her criminal arrest for
16 domestic violence battery. Soraghan Decl. ¶¶ 4-7. Petitioner exercised her right to a bond hearing
17 before an immigration judge. Dkts. 1-1, pgs. 62-63, 76-77, 88-89. The IJ denied bond on the basis
18 that she presented a flight risk or danger to the community. At bottom, Petitioner simply disagrees
19 with the Immigration Judge’s decision. Although she attempts to repackage that disagreement as
20 procedural deficiencies or legal error (Pet. ¶¶ 75, 77, 79-83), her arguments amount to nothing
21 more than a challenge to how the Immigration Judge weighed the evidence of her prior criminal
22 arrest for domestic violence battery and final removal order as evidence of danger or flight risk:
23 precisely the type of discretionary determination that is unreviewable.

1 *First*, Petitioner contends that the hearing was constitutionally deficient because the
2 Immigration Judge considered her prior arrest and final removal order as evidence of danger and
3 flight risk. Pet. ¶¶ 75, 77. This argument is foreclosed by binding precedent. Petitioner does not
4 dispute the accuracy of the information considered by the immigration judge; her objection is
5 purely based on disagreement that the subsequently dismissed criminal offenses should not have
6 been given weight. *Id.* ¶ 75. Her next argument is disagreement with how the immigration judge
7 weighed the evidence of her final removal order in considering whether Petitioner is a flight risk.
8 *Id.* ¶ 77. These arguments do not establish any constitutional infirmity.

9 *Second*, Petitioner's claims amount to an impermissible request for de novo review of the
10 evidentiary record. Pet. ¶¶ 69-83. She asserts that the record compels a finding that she is not a
11 flight risk or danger to the community. However, the fact that the Immigration Judge weighed the
12 facts differently does not constitute an abuse of discretion. There is no basis to conclude that no
13 reasonable factfinder could have determined that Petitioner posed a flight risk or danger to the
14 community, nor do Petitioner's disagreements transform a discretionary determination into a legal
15 error.

16 *Third*, Petitioner's assertion that the Immigration Judge abused their discretion by
17 considering Petitioner's criminal conviction misstates the governing law. The authorities cited by
18 Petitioner require only that an Immigration Judge "consider" the passage of time since a criminal
19 act, not disregard the conviction altogether. Petitioner's reliance on *Singh v. Noem*, No. 2:26-cv-
20 00079-DGE, 2026 WL 265670 (W.D. Wash. Feb. 2, 2026), is likewise misplaced. That case did
21 not hold that consideration of criminal history violates due process. Rather, the court found a due
22 process violation where ICE revoked a prior release based solely on a pending criminal charge,
23 without evidence of any violation of release conditions, and without a pre-deprivation hearing.
24 *Id.* at *5. Those circumstances are not present here.

1 *Fourth, W.T.M. v. Bondi*, No. 2:25-cv-02428-RAJ-BAT, 2026 WL 262583, at *4 (W.D.
 2 Wash. Jan. 30, 2026), is distinguishable. There, the court identified error because the Immigration
 3 Judge provided no reasoning to support a finding that the petitioner posed an extreme flight risk
 4 as the order at issue was not a bond memorandum. Federal Respondents respectfully disagree
 5 with that decision as the immigration judge was not provided the opportunity to issue a bond
 6 memorandum describing the reasons for denial of bond, which only emphasizes the need for
 7 exhaustion of administrative remedies. Here, the proper course is for Petitioner to exhaust her
 8 administrative remedies for the reasons stated above. That process will provide a more complete
 9 record and a definitive explanation of the Immigration Judge's reasoning for review by the Board
 10 of Immigration Appeals or, if denied, a future habeas court. Requiring exhaustion here is both
 11 appropriate and consistent with established principles of administrative review.

12 In sum, Petitioner identifies no colorable constitutional claim or legal error. Her petition
 13 is an unreviewable challenge to the Immigration Judge's discretionary weighing of the evidence
 14 and should be rejected.

15 **C. Petitioner is not entitled to release.**

16 This Court should deny Petitioner's request for immediate release from immigration
 17 detention. Pet., Prayer for Relief ¶ 2, pg. 24. A noncitizen is entitled to release if she can show
 18 that her immigration detention is indefinite as defined in *Zadvydas v. Davis*, 533 U.S. 678 (2001).
 19 *Hong v. Mayorkas*, No. 2:20-cv-1784, 2021 WL 8016749, at *6 (W.D. Wash. June 8, 2021),
 20 *report and recommendation adopted*, 2022 WL 1078627 (W.D. Wash. Apr. 11, 2022). While
 21 Petitioner's detention continues while her removal proceedings are ongoing, she cannot allege
 22 that her detention has become indefinite. Petitioner has an order of removal, which is not
 23 administratively final while Petitioner seeks appellate review by the BIA. Soraghan Decl. ¶¶ 13-
 24 15. Petitioner has presented no evidence that ICE will be unable to remove her if her removal

1 order ultimately becomes final. Nor has Petitioner provided any legal basis for her immediate
2 release from detention while detained pursuant to 8 U.S.C. § 1226(a).

3 As she is in ongoing removal proceedings, there is no doubt that Petitioner's continued
4 detention is related to a legitimate government purpose. The Supreme Court has repeatedly
5 recognized that detention is a constitutionally permissible aspect of the Government's
6 enforcement of the immigration laws and fulfills the legitimate purpose of ensuring that
7 individuals appear for their removal proceedings. *See Jennings*, 583 U.S. at 286; *Demore*,
8 538 U.S. at 523; *Zadvydas*, 533 U.S. at 690-91. Consistent with the requirements of due process,
9 Petitioner's confinement is thus "reasonably related" to a legitimate government interest and is
10 constitutional while her removal proceedings are pending, *Bell v. Wolfish*, 441 U.S. 535, 538-39
11 (1979). Accordingly, this Court should not grant Petitioner's request for immediate release.

12 V. CONCLUSION

13 "[T]he essence of habeas corpus is an attack by a person in custody upon the legality of
14 that custody, and . . . the traditional function of the writ is to secure release from illegal custody."
15 *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). At her bond hearing, the immigration judge
16 determined that Petitioner presents a flight risk and a danger to the community. Petitioner takes
17 issue with the immigration judge's discretionary decision, specifically, how she viewed the
18 evidence. That is not within this Court's habeas jurisdiction to review. 8 U.S.C. § 1226(e).

19 Because Petitioner has not demonstrated by a preponderance of the evidence that "the fact
20 or duration of [her] confinement" violates any law, *see Preiser*, 411 U.S. at 489, habeas relief
21 must be denied.

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1 Dated this 6th day of April, 2026.

2 Respectfully submitted,

3 s/ Alixandria K. Morris

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14 I certify that this memorandum contains 3,237
15 words, in compliance with the Local Civil Rules.