

The Honorable Jamal N. Whitehead

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LILIA BARRIOS ARROYO,

Petitioner,

v.

ICE FIELD OFFICE DIRECTOR,

Respondent.

Case No. 2:26-cv-00994-JNW

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Noted for Consideration:
April 13, 2026

INTRODUCTION

Petitioner is a native and citizen of Mexico who is currently appealing her order of removal at the Board of Immigration Appeals (BIA). She has been given several bond redetermination hearings before an Immigration Judge and has been denied bond. Petitioner did not appeal the orders denying bond to the BIA. Instead, she now comes to this Court and asks that she be released from custody or for this Court to order the government to conduct yet another bond redetermination hearing.

The habeas petition should be denied without an evidentiary hearing for three reasons: (1) Petitioner is lawfully detained pursuant to Section 236(a) of the Immigration and Nationality Act (INA) while her removal proceedings are ongoing; (2) Petitioner failed to exhaust her

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1 administrative remedies by repeatedly failing to avail herself of the remedies available through
2 the Immigration Court and the BIA to seek bond during removal proceedings; and (3)
3 Petitioner's detention is not prolonged because she has only been detained since July 23, 2025 -
4 just over eight months.

5 FACTS

6 Petitioner is a native and citizen of Mexico. *See* Declaration of Deportation Officer
7 Christopher Hubbard (Hubbard Decl.) ¶ 3. On July 21, 2025, Petitioner was encountered by ERO
8 officers while she was detained in the Orange County Jail after having been arrested for
9 Aggravated Battery with a Deadly Weapon. *Id.* at ¶ 4. An immigration detainer was issued
10 because Petitioner was subject to detention pursuant the Laken Riley Act and to 8 U.S.C. §
11 1226(c)(3). *Id.*

12 On July 23, 2025, Petitioner was taken into ICE custody and a Notice to Appear was
13 issued charging her with violating INA § 212(a)(6)(A)(i) for being an alien who is present in the
14 United State without being admitted or paroled and INA § 212(a)(7)(A)(i)(I) for being an alien
15 who was not in possession of a valid unexpired immigration visa or other valid entry document
16 at the time of application for admission. *Id.* at ¶ 5.

17 On August 11, 2025, Petitioner appeared for a bond hearing before an Immigration Judge
18 at the Immigration Court in Miami, Florida. *Id.* at ¶ 7. The Immigration Judge denied bond. *Id.*
19 Petitioner did not appeal. *Id.*

20 On September 8, 2025, Petitioner appeared with counsel for a master calendar hearing.
21 *Id.* at ¶ 8. She admitted to entering the United States in 2004 without a valid entry document or
22 other documentation required for lawful entry. *Id.* Petitioner and her counsel appeared for her
23 merits hearing on October 16, 2025. *Id.* at ¶ 9. The Immigration Judge denied all relief and
24

1 ordered Petitioner removed to Mexico. *Id.* Petitioner filed a timely appeal to the BIA on October
2 28, 2025. *Id.* at ¶ 10. That appeal is still pending. *Id.*

3 On December 6, 2025, Petitioner filed a bond redetermination request, which was
4 scheduled for December 15, 2025. *Id.* at ¶ 11. Petitioner and her counsel appeared for the bond
5 hearing but withdrew their motion. *Id.* On December 23, 2025, Petitioner requested another bond
6 redetermination hearing. *Id.* at ¶ 12. On January 8, 2026, Petitioner withdrew her request. *Id.* On
7 January 27, 2026, Petitioner requested another bond redetermination hearing. *Id.* at ¶ 13. The
8 Immigration Judge denied bond on February 2, 2026. *Id.* Petitioner did not appeal. *Id.*

9 On February 5, 2026, Petitioner filed another Bond Redetermination Request. *Id.* at ¶ 15.
10 On February 13, 2026, an Immigration Judge denied the request noting that a bond hearing was
11 held on August 11, 2025, and that there are no changed material circumstances. *Id.* Both parties
12 reserved appeal. *Id.* On March 5, 2026, Petitioner filed another Bond Redetermination Request.
13 *Id.* at ¶ 16. On March 7, 2026, an Immigration Judge denied the request noting the *Maldonado*
14 *Bautista* litigation is currently stayed by the Ninth Circuit Court. *Id.* No appeal to any bond
15 ruling has been filed with the BIA. *Id.* at ¶ 17.

16 ARGUMENT

17 I. Petitioner is lawfully detained pursuant to INA § 236(a), 8 U.S.C. § 1226(a), 18 during her removal proceedings.

19 Petitioner is lawfully detained during her removal proceedings pursuant to INA § 236(a),
20 8 U.S.C. § 1226(a). The Ninth Circuit has found that Section 1226(a) and its implementing
21 regulations satisfy due process. *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1209-10 (9th Cir.
22 2022).

23 Congress enacted a multi-layered statute that provides for the continued civil detention of
24 noncitizens pending removal. *See Prieto-Romero v. Clark*, 534 F.3d 1053, 1059 (9th Cir. 2008).

Where an individual falls within this scheme affects whether his detention is discretionary or mandatory, as well as the kind of review process available. *Id.* at 1057. This case concerns the Government’s responsibilities under 8 U.S.C. § 1226(a), which “authorizes the Attorney General to arrest and detain an alien ‘pending a decision on whether the alien is to be removed from the United States.’” *Jennings v. Rodriguez*, 583 U.S. 281, 306 (2018) (quoting 8 U.S.C. § 1226(a)).

The Supreme Court has recognized that “there is little question that the civil detention of aliens during removal proceedings can serve a legitimate government purpose, which is ‘preventing deportable . . . aliens from fleeing prior to or during their removal proceedings, thus increasing the chance that, if ordered removed, the aliens will be successfully removed.’” *Prieto-Romero*, 534 F.3d at 1065 (citing *Demore v. Kim*, 538 U.S. 510, 528 (2003)).

Section 1226(a) provides, in part, as follows:

On a Warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) of this section and pending such decision, the Attorney General –

- (1) may continue to detain the arrested alien; and
- (2) may release the alien on -
 - (A) bond of at least \$1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or
 - (B) conditional parole . . .

8 U.S.C. § 1226(a).

“Section 1226(a) and its implementing regulations provide extensive procedural protections that are unavailable under other detention provisions.” *Rodriguez Diaz*, 53 F.4th at 1202. Every noncitizen apprehended under Section 1226(a) is individually considered for release on bond. 8 U.S.C. § 1226(a); 8 C.F.R. § 236.1(c)(8). An ICE officer initially assesses whether the noncitizen has “demonstrate[d]” that “release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8).

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

9 The noncitizen may appeal the Immigration Judge’s custody redetermination to the BIA.
10 8 C.F.R. §§ 236.1(d)(3)(i), 1236.1(d)(3)(i); *Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir.
11 2011). Further, a noncitizen who remains detained pursuant to Section 1226(a) after the initial
12 bond hearing may request that the Immigration Judge conduct another custody redetermination
13 whenever “circumstances have changed materially since the prior bond redetermination.” 8
14 C.F.R. § 1003.19(e).

15 Here, ICE determined, pursuant to 8 C.F.R. § 236.1(c)(8), that Petitioner would remain in
16 detention during her removal proceedings. Hubbard Decl. at ¶ 4. A detainer was issued noting
17 Petitioner was subject to detention pursuant the Laken Riley Act and to 8 U.S.C. § 1226(c)(3).
18 *Id.* Petitioner, through counsel, requested bond redetermination hearings before an Immigration
19 Judge multiple times pursuant to 8 C.F.R. § 236.1(d)(1). She was denied bond and if she was
20 dissatisfied with the Immigration Judge’s findings, she could have appealed those decisions to
21 the BIA, but she did not. 8 C.F.R. §§ 236.1(d)(3)(i), 1236.1(d)(3)(i).

22 Thus, Petitioner has failed to meet her burden of demonstrating that her custody is in
23 violation of the Constitution, laws, or treaties of the United States to warrant a grant of habeas
24 corpus. *See* 28 U.S.C. § 2241(c)(3). She is lawfully detained and has had the right to seek the

1 very relief she seeks here - a bond redetermination hearing which could lead to her release –
2 throughout her removal proceedings. Petitioner could have appealed the Immigration Judge’s
3 bond orders to the BIA and can also still seek bond redetermination hearings based on changed
4 circumstances to seek bond during her removal proceedings. Petitioner should not be allowed to
5 invoke this Court’s jurisdiction when those administrative avenues are available.

6 **II. The Court should not order the Immigration Court to conduct another bond**
7 **redetermination hearing.**

8 Petitioner’s request that this Court order the Immigration Court to conduct another bond
9 redetermination hearing should be denied because she has not exhausted her administrative
10 remedies and even if her claims were ripe for review, her detention is not prolonged or
11 unreasonable such that due process requires another bond redetermination hearing at this stage.

12 If Petitioner was dissatisfied with the Immigration Judge’s bond determinations, she could
13 have appealed those decisions to the BIA. 8 C.F.R. §§ 236.1(d)(3)(i), 1236.1(d)(3)(i). She can also
14 request another bond redetermination hearing based on changed circumstances and avail herself
15 of her appeal rights with any additional bond order. Petitioner should be required to exhaust her
16 available administrative remedies before asking this Court to intervene. *See Cristobal v. Asher*,
17 20-cv-1493-RSM-BAT, 2020 WL 8678097, at * 3 (W.D. Wash. Dec. 14, 2020), *Rep. & Rec.*
18 *adopted by* 2021 WL796597 (W.D. Wash. Mar. 2, 2021).

19 Courts generally “require, as a prudential matter, that habeas petitioners exhaust available
20 judicial and administrative remedies before seeking [such] relief.” *Castro-Cortez v. INS*, 239 F.3d
21 1037, 1047 (9th Cir. 2001) (abrogated on other grounds by *Fernandez-Vargas v. Gonzales*, 548
22 U.S. 30 (2006)). Courts may require prudential exhaustion where: “(1) agency expertise makes
23 agency consideration necessary to generate a proper record and reach a proper decision; (2)
24 relaxation of the requirement would encourage the deliberate bypass of the administrative scheme;

1 and (3) administrative review is likely to allow the agency to correct its own mistakes and to
2 preclude the need for judicial review.” *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007).

3 This case meets the elements requiring prudential exhaustion. The BIA has special
4 expertise in reviewing bond determinations. *See Francisco Cortez v. Nielsen*, 2019 WL 1508458,
5 at *3 (N.D. Cal. Apr. 5, 2019). Allowing a relaxation of the exhaustion requirement would promote
6 the avoidance of seeking a bond redetermination by an IJ with an appeal to the BIA to head straight
7 to district court. And finally, the outcome of a bond redetermination hearing and/or BIA appeal
8 may provide Petitioner with the relief sought here – release on bond.

9 Even if Petitioner’s habeas petition was ripe for review, the Court should not order the
10 Immigration Court to conduct another custody redetermination hearing because Petitioner’s
11 detention is not prolonged or unreasonable. Courts in this District apply a six-factor test to
12 determine whether prolonged mandatory detention violates due process in a particular case: “(1)
13 the total length of detention to date; (2) the likely duration of future detention; (3) the conditions
14 of detention; (4) delays in the removal proceedings caused by the detainee; (5) delays in the
15 removal proceedings caused by the government; and (6) the likelihood that the removal
16 proceedings will result in a final order of removal.” *See Banda v. McAleenan*, 385 F.Supp.3d 1099,
17 1106 (W.D. Wash. 2019),

18 Here, Petitioner has been detained since July 23, 2025 - just over eight months. Hubbard
19 Decl. ¶ 5. This is far below the range of what courts in this District typically find unreasonable.
20 *See Maliwat v. Scott*, 2025 WL 2256711, at *3-4 (W.D. Wash. Aug. 7, 2025) (citing cases finding
21 periods of detention ranging from eleven to thirty months to favor the detainee; finding same for
22 a petitioner detained for nearly twelve months); *Toktosunov v. Wamsley*, 2025 WL 3492858, at
23 *2-4 (W.D. Wash. Dec. 5, 2025) (finding sixteen months of detention favored detainee); *Banda*,
24 385 F. Supp. at 1118-19 (finding approximate seventeen-month detention strongly favored

1 detainee). Furthermore, Petitioner's removal proceedings are not expected to last much longer, and
2 it is likely that they will culminate in a final order of removal.

3 Thus, even if Petitioner's request for a bond hearing was ripe for consideration, her
4 detention is neither prolonged nor unreasonable and due process does not require this Court to
5 order the Immigration Court to conduct another custody redetermination hearing.

6 WHEREFORE, Petitioner's habeas petition should be denied and dismissed without an
7 evidentiary hearing.

8 DATED this 8th day of April, 2026.

9 Respectfully submitted,

10 s/ Kristin B. Johnson

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19 *Attorney for Respondent*

20 *I certify that this memorandum contains 2,113 words, in*
21 *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 on today's date, I electronically filed the foregoing 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 on today's date, I arranged for service of the foregoing and Declaration of Christopher Hubbard on the following non-CM/ECF participant(s), via Certified Mail with return receipt, postage prepaid, marked "*Legal Mail, Open in Presence of Detainee*," addressed as follows:

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

DATED this 8th day of April, 2026.

s/ Joseph A. Fonseca
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