

1 TODD A. BLANCHE
Deputy Attorney General
2 BILAL A. ESSAYLI
First Assistant United States Attorney
3 DAVID M. HARRIS
Assistant United States Attorney
4 Chief, Civil Division
DANIEL A. BECK
5 Assistant United States Attorney
Chief, Complex and Defensive Litigation Section
6 JASMIN YANG (Cal Bar No. 255254)
Assistant United States Attorney
7 Federal Building, Suite 7516
300 North Los Angeles Street
8 Los Angeles, California 90012
Telephone: (213) 894-8827
9 E-mail: jasmin.yang@usdoj.gov

10 Attorneys for Federal Respondents

11 UNITED STATES DISTRICT COURT
12 FOR THE CENTRAL DISTRICT OF CALIFORNIA
13

14 MOISES GOMEZ MENDEZ,

15 Petitioner,

16 v.

17 PAMELA BONDI, et al.,

18 Respondents.
19

No. 5:25-cv-03401-DOC-E

**FEDERAL RESPONDENTS'
OPPOSITION TO PETITIONER'S
REQUEST TO CONVERT JANUARY
5TH PI HEARING INTO TRO
ENFORCEMENT HEARING**

Honorable David O. Carter
United States District Judge

1 **I. INTRODUCTION**

2 On December 19, 2025, the Court issued an order (the “TRO Order”) (Dkt. 11)
3 requiring Respondents to provide Petitioner with an individualized bond hearing before
4 an Immigration Judge (“IJ”) pursuant to 8 U.S.C. § 1226(a) within seven days.¹ In
5 compliance with the Court’s order, Petitioner’s bond hearing took place on December
6 23, 2025. *See* Dkt. 12-1, December 23, 2025 Order of the Immigration Judge (“Bond
7 Order”). Petitioner was responded by counsel and presented over 100 pages of evidence.
8 *See* Dkt. 16-2, Respondent’s Motion for Custody Redetermination. The IJ denied release
9 on bond, finding that Respondent did not meet his burden in demonstrating he is not a
10 flight risk. Dkt. 12-1. Petitioner reserved his right to appeal the bond decision. In
11 explaining his reasoning, the IJ stated the following:

12 Respondent is a flight risk such that no bond is appropriate. The respondent
13 has been ordered removed after his application was denied pursuant to
14 Matter of HAAV, though that remains on appeal. The respondent does have
15 significant ties to the United States, though these ties do not provide the
16 respondent with viable forms of relief – they have aged out for cancellation
17 purposes, they have not filed a petition for the respondent (and even if they
18 did, upon approval the respondent would have to seek consular processing).
19 The respondent has engaged in unlawful employment, starting his own
20 business and earning substantial income, never having had employment
21 authorization in the United States. Further, the respondent has a history (at
22 least 3 arrests and convictions) for driving without a license, which coupled
23 with his illegal entry, establishes the respondent’s disregard for the laws of
24
25

26 ¹ Respondents addressed their failure to comply with the November 19, 2025
27 deadline to file a response to the Court’s Order to Show Cause for Why Preliminary
28 Injunction Should Not Issue in a separate filing at Dkt. 12. Again, Respondents and
Respondents’ counsel sincerely apologize to the Court and to Petitioner for the
inconvenience Respondents’ late response has caused.

1 the United States. Thus, the Court finds the respondent a flight risk such
2 that no bond is appropriate.

3 Dkt. 12-1.

4 Although Petitioner disagrees with the outcome of his bond hearing, this court has
5 no habeas jurisdiction to review Petitioner's denial of bond simply because he disagrees
6 with how the IJ weighed evidence. There is no dispute that Petitioner received his bond
7 hearing on December 23, 2025. Providing Petitioner with the 1226(a) bond hearing
8 moots the requested preliminary injunction and this habeas petition more generally. *See,*
9 *e.g., R.S. v. Santacruz, et al.*, 5:25-cv-02594-MWC-SK, Dkt. 18 (October 28, 2025
10 minute order by Hon. Judge Court denying petitioner's request for preliminary
11 injunction given receipt of bond hearing); *Javier Gonzales et al. v. Kristi Noem et al.*,
12 5:25-cv-02054-ODW-BFM, Dkt. 16 (August 25, 2025 minute order by Hon. Judge
13 Wright, denying as moot the petitioners' pending request for a preliminary injunction
14 given their receipt pursuant to a TRO of 1226(a) bond hearings and issuing the
15 petitioners an order to show cause re: dismissal); Dkt. 17 (notice of voluntary dismissal);
16 and Dkt. no. 18 (order dismissing petition); *Moises Salomon Zaragoza Mosqueda v.*
17 *Kristi Noem et al.*, 5:25-cv-002304-CAS-BFM, Dkt. 15 (September 17, 2025 minute
18 order by Hon. Judge Snyder, denying preliminary injunction and issuing OSC re
19 dismissal for mootness given the petitioners' receipt of immigration bond hearings); and
20 Dkt. 16 (notice of voluntary dismissal).

21 To the extent Petitioner disagrees with the outcome of his bond hearing, this Court
22 has no jurisdiction to undo the IJ's bond determination; Petitioner may appeal his bond
23 determination to the Board of Immigration Appeals.

24 **II. LEGAL FRAMEWORK**

25 ICE/ERO has the discretion to detain certain non-citizens "pending a decision on
26 whether the [non-citizen] is to be removed from the United States." 8 U.S.C. § 1226(a);
27 *see* 8 U.S.C. § 1226(c). Provided the non-citizen does not fall under the § 1226(c)
28 mandatory detention provisions, ICE/ERO may either "continue to detain the" non-

1 citizen or “release the [non-citizen] on” bond or conditional parole. 8 U.S.C. §
2 1226(a)(1)-(2).

3 When a non-citizen is taken into ICE/ERO custody pursuant to 8 U.S.C. §
4 1226(a), ICE/ERO makes an initial custody determination, including consideration of a
5 bond. *See* 8 C.F.R. §§ 236.1(c)(8), 236.1(d). ICE/ERO may “in [its] discretion, release
6 an alien. . . provided that the alien must demonstrate to the satisfaction of the officer that
7 such release would not pose a danger to property or persons, and that the alien is likely
8 to appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8). The ability to pay a cash
9 bond is one factor among many that ICE/ERO may consider in making the initial
10 custody determination. 8 C.F.R. § 236.1. The regulations further provide ICE/RO with
11 discretion to set a bond amount and/or prescribe other conditions for release. 8 U.S.C. §
12 1226(a); *see also* 8 C.F.R. §§ 236.1(c)(8), (d)(1). ICE/ERO makes these determinations
13 based on the likelihood a non-citizen may abscond and whether the non-citizen poses a
14 danger to property or persons. 8 C.F.R. § 236.1(c)(8).

15 A non-citizen may seek review of ICE/ERO’s initial custody determination before
16 an IJ, commonly referred to as a “bond hearing.” 8 C.F.R. § 236.1(d)(1); 8 C.F.R. §
17 1003.19. Upon a non-citizen’s “[a]pplication to an immigration judge” to “request
18 amelioration of the conditions under which he or she may be released[.]” the IJ may
19 decide “to detain the [non-citizen] in custody, release the [non-citizen], and determine
20 the amount of bond, if any, under which the [non-citizen] may be released[.]” 8 C.F.R. §
21 236.1(d)(1). To seek such review, the non-citizen must submit a request to the IJ either
22 orally or in writing. 8 C.F.R. § 1003.19(b). In a bond hearing, the burden is on the non-
23 citizen to establish to the satisfaction of the IJ, that he or she is not “a threat to national
24 security, a danger to the community at large, likely to abscond, or otherwise a poor bail
25 risk.” *In re Guerra*, 24 I. & N. Dec. 37, 40 (B.I.A. 2006). Non-citizens may present
26 evidence in support of their request for a bond determination. *See* 8 C.F.R. § 1003.19(d)
27 (“The determination of the Immigration Judge as to custody status or bond may be based
28

1 upon any information that is available to the Immigration Judge or that is presented to
2 him or her by the [non-citizen] or the Service.”).

3 IJs have broad discretion in deciding whether to release a non-citizen on bond.
4 *Guerra*, 24 I. & N. Dec. at 39. They can consider multiple discretionary factors,
5 including any information that the IJ may deem to be relevant. *Id.* at 40. These
6 nonexclusive factors include:

7 (1) whether the [non-citizen] has a fixed address in the United States;
8 (2) the [noncitizen’s] length of residence in the United States; (3) the
9 [non-citizen’s] family ties in the United States, and whether they may
10 entitle the [non-citizen] to reside permanently in the United States in
11 the future; (4) the [non-citizen’s] employment history; (5) the [non-
12 citizen’s] record of appearance in court; (6) the [non-citizen’s]
13 criminal record, including the extensiveness of criminal activity, the
14 recency of such activity, and the seriousness of the offenses; (7) the
[non-citizen’s] history of immigration violations; (8) any attempts by
the [non-citizen] to flee prosecution or otherwise escape authorities;
and (9) the [non-citizen’s] manner of entry to the United States.

15 *Id.* In considering these or other relevant factors, IJs “may choose to give greater weight
16 to one factor over others, as long as the decision is reasonable.” *Id.* Further, the INA in
17 no way “limit[s] the discretionary factors that may be considered” in bond
18 determinations. *Id.*; see also 8 C.F.R. § 1003.19(d) (“The determination of the
19 Immigration Judge as to custody status or bond may be based upon any information that
20 is available to the Immigration Judge or that is presented to him or her by the [non-
21 citizen] or [ICE].”).

22 After an initial bond hearing, a non-citizen may request subsequent bond hearings
23 by showing that his or her “circumstances have materially changed since the prior bond”
24 hearing. See 8 C.F.R. § 1003.19(e). Non-citizens can then seek administrative review of
25 the IJ’s bond decision from the BIA by filing an appeal of the IJ’s order within 30 days.
26 See 8 C.F.R. § 236.1(d)(3) (“An appeal relating to bond and custody determinations may
27 be filed to the Board of Immigration Appeals[.]”); 8 C.F.R. §§ 1003.1(b)(7), 1003.19(f),
28 1003.38. The Secretary’s “discretionary judgment” regarding “the detention or release of

1 any [noncitizen] or the grant, revocation, or denial of bond or parole[]” is not subject to
2 judicial review. 8 U.S.C. § 1226(e). The bond decision does not statutorily have to be
3 revisited at any point in the removal process and the length of detention does not have to
4 be considered in the bond decision. *Jennings v. Rodriguez*, 583 U.S. 281, 304-07 (2018).

5 **III. ARGUMENT - THIS CASE SHOULD BE DISMISSED AS MOOT**

6 **A. There Is No Jurisdiction to Contest the IJ’s Bond Decision**

7 Petitioner is not entitled to injunctive relief because there is no likelihood of
8 success on the merits; this Court lacks jurisdiction to review the IJ’s bond decision. “The
9 Ninth Circuit has stated that an alien dissatisfied with an [Immigration Judge’s] bond
10 determination has the option of appealing to the BIA.” *Cruz v. Sessions*, 2018 WL
11 6047287, at *4 (N.D. Cal. Nov. 18, 2018) (citing *Leonardo v. Crawford*, 646 F.3d 1157,
12 1160 (9th Cir. 2011). *Diaz Reyes v. Mayorkas*, 854 Fed. Appx. 190, 191 (9th Cir. 2021)
13 (“Under *Leonardo v. Crawford* . . . a petitioner is generally required to exhaust
14 administrative remedies before seeking judicial review of challenges to an IJ’s denial of
15 bond.”); *R.S.*, 5:25-cv-02594-MWC-SK, Dkt. 18 at 5 (“The Court finds that it does not
16 have jurisdiction to review Judge White’s bond determination.”).

17 8 U.S.C. § 1226(e) provides that bond decisions “shall not be subject to judicial
18 review” and that “[n]o court may set aside any action or decision . . . regarding the
19 detention or release of any alien or the grant, revocation, or denial of bond[.]” As the
20 Supreme Court has recognized, “§ 1226(e) precludes an alien from challenging a
21 discretionary judgment by the Attorney General or a decision that the Attorney General
22 has made regarding his detention or release.” *Jennings*, 583 U.S. at 295 (internal
23 quotations, alterations, and citations omitted). Similarly, because section 1226(e)
24 commits bond determinations to agency discretion by statute, the Court also lacks
25 jurisdiction pursuant to 8 U.S.C. § 1252(a)(2)(B)(ii). See *Kucana v. Holder*, 558 U.S.
26 233, 241-52 (2009); *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1212-13 (9th Cir. 2022)
27 (noting that court lacked jurisdiction to entertain disagreement with merits of IJ’s bond
28 decision and that disagreement with outcome of bond proceedings does not demonstrate

1 procedural due process violation). Thus, the preliminary injunction should be denied
2 because the Court lacks jurisdiction to review his custody determination and bond orders
3 under both section 1226(e) and section 1252(a)(2)(B)(ii).

4 **B. Petitioner has Failed to Exhaust Administrative Remedies; the BIA**
5 **Should Consider Plaintiff's Appeal**

6 In *Martinez v. Scott*, 2025 WL 2689844, at *1 (W.D. Wash. Aug. 27, 2025),
7 *report and recommendation adopted at 2025 WL 2689066* (W.D. Wash. Sept. 19, 2025),
8 the petitioner challenged the results of his bond hearing before an IJ, arguing that the
9 denial of bond violated his due process rights, and asked the district court to reverse the
10 IJ's denial of bond. The detainee in *Martinez v. Scott* argued that his bond hearing
11 violated due process because the IJ erred in refusing to let his witnesses testify and did
12 not question his witnesses properly. *Id.* at *3. The district court dismissed the habeas
13 petition because the detainee failed to exhaust administrative remedies by filing an
14 appeal with the BIA. *Id.* at *7. The Court should do the same here.

15 In determining whether exhaustion (i.e., going through the administrative
16 appellate process with the BIA) was required, the *Martinez v. Scott* court analyzed the
17 factors in *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007): (1) whether agency
18 expertise makes agency consideration necessary to generate a proper record and reach a
19 proper decision; (2) whether relaxation of the requirement would encourage the
20 deliberate bypass of the administrative scheme; and (3) whether administrative review is
21 likely to allow the agency to correct its own mistakes and to preclude the need for
22 judicial review. As in *Martinez v. Scott*, each of the *Puga* factors favors requiring
23 exhaustion here. The BIA has subject matter expertise in reviewing individual
24 immigration bond decisions, the authority to review IJ's bond decisions, and, if
25 necessary, can generate a more complete factual record for review. 2025 WL 2689844,
26 at *4.

27 Importantly, the second *Puga* factor, "whether relaxation of the requirement
28 would encourage the deliberate bypass of the administrative scheme," weighs heavily in

1 favor of requiring administrative exhaustion. 2025 WL 2689844, at *5 (citing *Puga*, 488
2 F.3d at 815). Courts consider whether the resolution of the case at bar would answer a
3 recurring legal question thereby reducing the number of future habeas filings. *Id.*
4 Because the flight risk determination in any given bond hearing is a fact-intensive
5 inquiry, although this Court's reappraisal of Petitioner's bond decision would provide
6 Petitioner with review, it would provide no concrete guidance for future, and other fact-
7 dependent, flight risk or dangerousness determinations for other detainees. "Rather,
8 relaxing the exhaustion requirements in this case would encourage others to immediately
9 seek habeas review if they deem the federal courts to be a more sympathetic forum." *Id.*
10 The practical consequences of Petitioner's desired result would be that the district courts
11 will be overrun with appeals that should be heard by the BIA under the guise of habeas
12 petitions.

13 Lastly, the third *Puga* factor asks whether administrative review is likely to allow
14 the agency to correct its own mistakes and preclude the need for judicial review. *Puga*,
15 488 F.3d at 815. The BIA has the authority to correct any erroneous factual
16 determinations and evidentiary errors Plaintiff alleges. 8 C.F.R. § 1003.1(d)(3)(i)-(ii).
17 Allowing the BIA to consider the appeal would give the agency to correct any mistakes
18 in Petitioner's case and potentially preclude the need for judicial review. This last factor
19 also favors requiring exhaustion.

20 **C. Petitioner Does Not Identify any Due Process Violation or Error of Law**
21 **that Justifies Habeas Relief**

22 Petitioner acknowledges that he has had a bond hearing. Dkt. 15 at 2. Petitioner
23 was represented by counsel at the bond hearing (Dkt. 16-2) and the IJ received and
24 reviewed Petitioner's exhibits (*Id.*). Following "full consideration of all the evidence
25 presented," the IJ denied bond for the reasons stated in the Bond Order. Dkt. 12-1.
26 Petitioner reserved his right to appeal before the BIA. *Id.* Petitioner's disagreement with
27 the outcome of the bond hearing and his disagreement with how the IJ weighed different
28 items of evidence (i.e., deciding that flight risk was likely because of Petitioner's

1 employment without an employment authorization, three arrests and convictions for
2 driving without a license and illegal entry into the United States) is not a legal error that
3 permits this Court to undo the IJ's bond decision.

4 As the Ninth Circuit noted in *Rodriguez-Diaz v. Garland*, 53 F.4th 1189, 1209
5 (9th Cir. 2022) the IJ's discretionary bond decision is not reviewable in federal court
6 under 8 U.S.C. § 1226(e), but the Ninth Circuit would have habeas jurisdiction to
7 consider any error of law including a due process violation. However, Petitioner points
8 to no legal error and seeks to label his disagreement with the IJ's denial of bond as a due
9 process violation to manufacture district court habeas jurisdiction. *Borbot v. Warden*
10 *Hudson Cnty. Corr. Facility*, 906 F.3d 274, 279 (3rd Cir. 2018) ("This comes close to
11 asking this Court to directly review the IJ's bond decision, a task Congress has expressly
12 forbidden us from undertaking."). Petitioner's *ipsedixit* pronouncement that "had the [IJ]
13 properly weighed all the factors, he would have found Petitioner not to be flight risk"
14 (Dkt. 15 at 5) is insufficient to show there was any legal error. Petitioner identifies no
15 legal error with the IJ's decision. All of Petitioner's claimed legal errors are disputes
16 with how the IJ weighed evidence. Petitioner's disagreement with the merits does not
17 indicate that a procedural due process violation has occurred.

18 Petitioner has the burden to show that he merits release on bond. *Guerra*, 24 I & N
19 Dec. at 40. *Guerra* sets out a non-exhaustive list of nine factors an IJ may consider in
20 evaluating whether to release an immigration detainee on bond. *Id.* Had Petitioner
21 appealed to the BIA and this Court had jurisdiction to review the BIA's decision, the
22 district court's review of the BIA's flight risk determination would be under the abuse of
23 discretion standard. *Martinez v. Clark*, 124 F.4th 775, 779 (9th Cir. 2024). Under this
24 standard, "we cannot reweigh evidence ... [but] can [only] determine whether the BIA
25 applied the correct legal standard." *Id.* at 785. All of Petitioner's arguments do not
26 suggest that the IJ applied the incorrect legal standard; rather what Petitioner is
27 requesting is that this Court reweigh evidence, which is forbidden. *Id.* at 785. *See also*
28 *R.S.*, 5:25-cv-02594-MWC-SK, Dkt. 18 at 8.

Moreover, even if some legal error had occurred, the proper remedy would be to require another bond hearing that addresses the alleged error, not release.

IV. CONCLUSION

To the extent Petitioner disagrees with the outcome of his bond hearing, this Court has no habeas jurisdiction to undo the IJ's bond determination; Petitioner may not simply elect this Court over the BIA for his appellate forum. Respondents respectfully request that the Court dismiss this petition and vacate the January 5, 2025 hearing.

Dated: December 31, 2025

Respectfully submitted,

TODD A. BLANCHE
Deputy Attorney General
BILAL A. ESSAYLI
First Assistant United States Attorney
DAVID M. HARRIS
Assistant United States Attorney
Chief, Civil Division
DANIEL A. BECK
Assistant United States Attorney
Chief, Complex and Defensive Litigation Section
JASMIN YANG
Assistant United States Attorney

/s/ Jasmin Yang

JASMIN YANG

Assistant United States Attorney

Attorneys for Federal Respondents

LOCAL RULE 11-6.2 CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for the Federal Respondents certifies that this brief contains 2,902 words, which complies with the word limit of L.R. 11-6.1.

Dated: December 31, 2025

/s/ Jasmin Yang

JASMIN YANG