

1 TODD 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 WHITNEY C. WAKEFIELD (WA Bar No. 61571)
Special Assistant United States Attorney
7 Federal Building, Suite 7516
300 North Los Angeles Street
8 Los Angeles, California 90012
Telephone: (213) 894-2574
9 E-mail: Whitney.Wakefield@usdoj.gov

10 Attorneys for Federal Respondents

11
12 UNITED STATES DISTRICT COURT
13 FOR THE CENTRAL DISTRICT OF CALIFORNIA
14

15 MAGOMED MUMAEV,
16 Petitioner,
17 v.
18 FERETI SEMAIA, in official capacity,
Facility Administrator of ICE
19 Processing Center, et al.,
20 Respondents.

No. 5:25-cv-03409-FLA-MAR

**FEDERAL RESPONDENTS'
OPPOSITION TO PETITIONER'S
MOTION FOR TEMPORARY
RESTRAINING ORDER**

Honorable Fernando L. Aenlle-Rocha
United States District Judge

I. INTRODUCTION

Petitioner, a detainee in immigration custody since April 3, 2025, was denied release on bond by a hearing before an Immigration Judge, who found he had not met his burden to prove he was not a flight risk. The Immigration Judge considered Petitioner's evidence, but explained that it did not overcome his lack of sufficiently strong ties to the United States. Petitioner then filed a petition for writ of habeas corpus asking the Court to order his immediate release. *See* Pet. for a Writ of Habeas Corpus ("Petition"), Docket No. 5. Petitioner then filed his Motion for Temporary Restraining Order, seeking essentially the same relief. *See* Motion for Temporary Restraining Order ("Motion"), Docket No. 6. Petitioner primarily argues that the Immigration Court erred in denying his bond. *See* Motion at 5, Petition at 7.

Petitioner has received a bond hearing, at which he was represented by counsel, and the IJ considered Petitioner's exhibits. This Court has no habeas jurisdiction to review Petitioner's denial of bond and undo the IJ's bond determination simply because he disagrees with the outcome of his bond hearing. Petitioner may appeal his bond determination to the Board of Immigration Appeals, should he choose to do so. Further, Petitioner has not exhausted his administrative remedies with the Immigration Court, and cannot immediately jump into a habeas petition with a TRO application to try to overrule the Immigration Court bond process. The Court should dismiss this habeas petition.

II. LEGAL FRAMEWORK

ICE/ERO has the discretion to detain certain non-citizens "pending a decision on whether the [non-citizen] is to be removed from the United States." 8 U.S.C. § 1226(a); *see* 8 U.S.C. § 1226(c). Provided the non-citizen does not fall under the § 1226(c) mandatory detention provisions, ICE/ERO may either "continue to detain the" non-citizen or "release the [non-citizen] on" bond or conditional parole. 8 U.S.C. § 1226(a)(1)-(2).

When a non-citizen is taken into ICE/ERO custody pursuant to 8 U.S.C. § 1226(a), ICE/ERO makes an initial custody determination, including consideration of a

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

11 A non-citizen may seek review of ICE/ERO’s initial custody determination before
12 an IJ, commonly referred to as a “bond hearing.” 8 C.F.R. § 236.1(d)(1); 8 C.F.R. §
13 1003.19. Upon a non-citizen’s “[a]pplication to an immigration judge” to “request
14 amelioration of the conditions under which he or she may be released[.]” the IJ may
15 decide “to detain the [non-citizen] in custody, release the [non-citizen], and determine
16 the amount of bond, if any, under which the [non-citizen] may be released[.]” 8 C.F.R. §
17 236.1(d)(1). To seek such review, the non-citizen must submit a request to the IJ either
18 orally or in writing. 8 C.F.R. § 1003.19(b). In a bond hearing, the burden is on the non-
19 citizen to establish to the satisfaction of the IJ, that he or she is not “a threat to national
20 security, a danger to the community at large, likely to abscond, or otherwise a poor bail
21 risk.” *In re Guerra*, 24 I. & N. Dec. 37, 40 (B.I.A. 2006). Non-citizens may present
22 evidence in support of their request for a bond determination. See 8 C.F.R. § 1003.19(d)
23 (“The determination of the Immigration Judge as to custody status or bond may be based
24 upon any information that is available to the Immigration Judge or that is presented to
25 him or her by the [non-citizen] or the Service.”).

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

1 nonexclusive factors include:

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

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

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

1 1003.38. The Secretary’s “discretionary judgment” regarding “the detention or release of
2 any [noncitizen] or the grant, revocation, or denial of bond or parole[.]” is not subject to
3 judicial review. 8 U.S.C. § 1226(e). The bond decision does not statutorily have to be
4 revisited at any point in the removal process and the length of detention does not have to
5 be considered in the bond decision. *Jennings v. Rodriguez*, 583 U.S. 281, 304-07 (2018).

6 **III. ARGUMENT**

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

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

23 To the extent Petitioner may claim the procedures used at his bond hearing violate
24 due process, the IJ applied the applicable procedures set forth by 8 U.S.C. § 1226(a), 8
25 C.F.R. § 236.1, and 8 C.F.R. § 1003.19. Those procedures comply with procedural due
26 process even under the three-factor test set forth in *Mathews v. Eldridge*, 424 U.S. 319
27 (1976). See *Rodriguez Diaz* 53 F.4th at 1203-14.

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

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

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

Importantly, the second *Puga* factor, "whether relaxation of the requirement would encourage the deliberate bypass of the administrative scheme," weighs heavily in favor of requiring administrative exhaustion. 2025 WL 2689844, at *5 (citing *Puga*, 488

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

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

19 That Petitioner remains in custody following his negative bond hearing is not
20 irreparable harm that excuses exhaustion.

21 **C. Petitioner Fails to Establish Any Legal Deficiency in the Bond**
22 **Proceedings, and Even if He Had, Immediate Release Would Not be**
23 **the Remedy**

24 Petitioner essentially just re-argues the merits of his bond hearing, starting with
25 the premise that he is not a flight risk, and asserting that the Immigration Court therefore
26 must have applied the incorrect legal standard in making its findings. But he does not
27 establish any evidence that the Immigration Court actually applied the incorrect law.
28 And after asserting that 'no evidence' was presented, he concedes that the government

submitted background checks on him as evidence to show that he was a flight risk, complaining that these background checks were generated by the government. *See* TRO Application, p. 14. He then concedes that the government also presented his apparently false submission of forms to USCIS as further evidence that he was a flight risk, and attempts to argue that this should not matter. *Id.* But the question is not his *credibility*, but rather that such efforts to defraud government immigration services shows that he is a *flight risk* in that he is very unlikely to comply with the rules. Just disagreeing with the Immigration Court on such evidentiary matters is not something that can be raised as a habeas petition, and much less by TRO application.

D. Petitioner Does Not Identify any Due Process Violation or Error of Law that Justifies Habeas Relief

Petitioner acknowledges that he has had a bond hearing. Dkt. 6. Petitioner was represented by counsel at the bond hearing (*Id.*), the IJ received and considered Petitioner's exhibits, and the IJ identified the legal standard and the facts that he considered in making Petitioner's bond determination. Dkt. 6-4, Ex. D (Bond Decision). Petitioner subsequently filed an appeal with the BIA, which remains pending. Dkt. 6-5, Ex. E (BIA Filing Receipt). Petitioner's disagreement with the outcome of the bond hearing is not a legal error that permits this Court to undo the IJ's bond decision.

As the Ninth Circuit noted in *Rodriguez-Diaz v. Garland*, 53 F.4th 1189, 1209 (9th Cir. 2022) the IJ's discretionary bond decision is not reviewable in federal court under 8 U.S.C. § 1226(e), but the Ninth Circuit would have habeas jurisdiction to consider any error of law including a due process violation. Petitioner's disagreement with the merits does not indicate that a procedural due process violation has occurred.

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

1 elect this Court over the BIA for his appellate forum. Respondents respectfully requests
2 that the Court dismiss this petition.

3
4
5 Dated: December 29, 2025

Respectfully submitted,

6 TODD BLANCHE
Deputy Attorney General
7 BILAL A. ESSAYLI
First Assistant United States Attorney
8 DAVID M. HARRIS
Assistant United States Attorney
9 Chief, Civil Division
DANIEL A. BECK
10 Assistant United States Attorney
Chief, Complex and Defensive Litigation Section
11

12 /s/ Whitney Wakefield
13 WHITNEY WAKEFIELD
Special Assistant United States Attorney

14 Attorneys for Federal Respondents
15
16

17 * The undersigned, counsel of record for the Federal Respondents certifies that this brief
18 contains 2,426 words, which complies with the word limit of L.R. 11-6.1.
19
20
21
22
23
24
25
26
27
28