UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

HARMANPREET SINGH

Petitioner,

- against -

LADEON FRANCIS, ACTING NEW YORK FIELD OFFICE DIRECTOR, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; KRISTI NOEM, SECRETARY, U.S. DEPARTMENT OF HOMELAND SECURITY; PAMELA BONDI, U.S. ATTORNEY GENERAL; TODD M. LYONS, ACTING DIRECTOR, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; RAUL MALDONADO, JR., WARDEN, METROPOLITAN DETENTION CENTER, BROOKLYN,

Respondents.

----------X

Civil Action No. 26-cv-0344

(Merchant, J.)

MEMORANDUM OF LAW IN OPPOSITION TO MOTION TO ENFORCE

JOSEPH NOCELLA, JR.
United States Attorney
Eastern District of New York
271-A Cadman Plaza East
Brooklyn, New York 11201

March 20, 2026

Kimberly A. Francis
Assistant U.S. Attorney
(Of Counsel)

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

PRELIMINARY STATEMENT 1

I. Statutory And Regulatory Framework 1

II. Petitioner's Relevant Immigration And Detention History 3

A. Petitioner Unlawfully Crosses The Southern Border in 2017 And Is Placed In Removal Proceedings 3

B. Petitioner is Charged with Multiple Crimes and Is Detained in March 2024 3

C. Petitioner Files His First Habeas Action And Receives A Bond Hearing Where The Government Bears The Burden Of Proof 4

D. Petitioner Files A Motion to Enforce 7

ARGUMENT 7

I. Congress Stripped This Court Of Jurisdiction To Review Petitioner's Bond Denial 7

II. The Motion Should Be Denied Because Petitioner Has Not Exhausted Administrative Remedies 9

III. Petitioner's Bond Hearing Complied With This Court's Order 11

IV. The IJ's Reliance on Arrest Records And Criminal Charges Did Not Violate Due Process 13

CONCLUSION 14

TABLE OF AUTHORITIES

Cases

Abbey v. Sullivan, 978 F.2d 37 (2d Cir. 1992) 11

Abdel v. United States, 362 U.S. 217 (1960) 2

ArevaloGuasco v. Dubois, 788 F. App'x 25 (2d Cir. 2019) 8

Barco-Sandoval v. Gonzales, 516 F.3d 35 (2d Cir. 2008) 8, 9

Begay v. United States, 553 U.S. 137 (2008) 12

Birchfield v. North Dakota, 136 S. Ct. 2160 (2016) 12

Bogle v. DuBois, No. 16 Civ. 6178 (CS), 2017 WL 747876 (S.D.N.Y. Feb. 16, 2017) 10

Demore v. Kim, 538 U.S. 510 (2003) 2, 7

Guitard v. U.S. Sec'y of Navy, 967 F.2d 737 (2d Cir. 1992) 11

Gutierrez-Chavez v. I.N.S., 298 F.3d 824 (9th Cir. 2002) 8

Guyadin v. Gonzales, 449 F.3d 465 (2d Cir. 2006) 8

Guzman v. Joyce, 786 F.Supp.3d 865 (S.D.N.Y. 2025) 10

Hamilton v. Shanahan, 2009 WL 5173927 (S.D.N.Y. Dec. 30, 2009) 7

Howell v. INS, 72 F.3d 288 (2d Cir. 1995) 10

Lantigua v. Decker, No. 17 Civ. 4880 (LGS), 2017 WL 5054567 (S.D.N.Y. Oct. 27, 2017) . 8, 14

Leonardo v. Crawford, 646 F.3d 1157 (9th Cir. 2011) 11

Marmolejo-Campos v. Holder, 558 F.3d 903 (9th Cir. 2009) 12

Matter of Guerra, 24 I. & N. Dec. ..... *passim*

Matter of Patel, 15 I. & N. Dec. 666 (BIA 1976) 11

Matter of Siniauskas, 27 I. & N. Dec. 207 (BIA 2018) 12, 13

Nouritajer v. Jaddou, 18 F.4th 85 (2d Cir. 2021) 11

Onuwa v. Bondi, No. 26-2403 (MAS), 2026 WL 772435 (D.N.J. Mar. 19, 2026) 9

Paz Nativi, v. Shanahan, No. 16-cv-8496, 2017 WL 281751 (S.D.N.Y. Jan. 7, 2017) 10

Singh v. Holder, 638 F.3d 1196 (9th Cir. 2011) 12

United States v. DeSantiago-Gonzalez, 207 F.3d 261 (5th Cir. 2000) 12

Vargas v. Davies, No. 15 CIV. 3525 (ER), 2016 WL 3044850 (S.D.N.Y. May 27, 2016) 9, 13

Velasco Lopez v. Decker, 978 F.3d 842 (2d Cir. 2020) 2, 3, 12

Y.C. v. Holder, 741 F.3d 324 (2d Cir. 2013) 8

Statutes

8 U.S.C. § 1231 ..... 4, 5

8 U.S.C. § 1101(a)(47)(B) 4

8 U.S.C. § 1226(a) ..... *passim*

8 U.S.C. § 1226(e) ..... *passim*

Regulations

8 C.F.R. § 236.1 ..... 2, 3, 9

8 C.F.R. § 1003.19 ..... *passim*

8 C.F.R. § 1241.1 4

Respondents (or the "government") respectfully submit this memorandum of law in opposition to the Petitioner's Motion to Enforce, ECF No. 16 (the "Motion" or "Mot.") and in response to this Court's Order to Show Cause, dated March 13, 2026.

PRELIMINARY STATEMENT

Petitioner, who pursuant to this Court's prior order was provided with a bond hearing before an Immigration Judge ("IJ") at which the government bore the burden of proof by clear and convincing evidence, now brings a motion to enforce the Court's prior order. He claims that his bond hearing violated the Court's order because the IJ supposedly weighed too heavily his prior criminal history, and because the IJ's reliance on arrest reports and criminal charges not resulting in conviction violated his due process rights.

The Motion should be denied for three independent reasons. First, this Court lacks jurisdiction to review what is, in substance, a claim that the IJ improperly weighed the evidence at the bond hearing in exercising his discretion to deny Petitioner bond. Accepting Petitioner's invitation to do so risks a torrent of petitions in federal court second-guessing IJ determinations; Congress rightly acted to foreclose that outcome. Second, Petitioner has not exhausted administrative remedies (*i.e.*, an appeal to the Board of Immigration Appeals ("BIA")), which is the proper forum in which to advance his central contention that the IJ incorrectly weighed the evidence. Third, the transcript of the proceeding reflects that, consistent with the Court's Order, the IJ held the government to its burden of proof. That Petitioner did not receive the result he desired does not mean that the bond hearing failed to comply with this Court's order or violated due process. The Motion should therefore be denied.

STATEMENT OF FACTS

I. Statutory And Regulatory Framework

For more than a century, Congress has authorized immigration officials to arrest and detain

certain aliens subject to removal until their removal proceedings conclude with admission or removal. *See Abdel v. United States*, 362 U.S. 217, 233-34 (1960). Over time, the aliens those laws cover, the scope of the authority to detain, and the avenues for release have evolved. But it has remained true that "[d]etention during removal proceedings is a constitutionally valid aspect of the deportation process" because "deportation proceedings would be vain if those accused could not be held in custody pending the inquiry." *Demore v. Kim*, 538 U.S. 510, 523 (2003); *Velasco Lopez v. Decker*, 978 F.3d 842, 848 (2d Cir. 2020).

In 1996, Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Pub. L. No. 104-208 § 302, div. C, 110 Stat. 3009-546 (1996). Under that law, as codified at 8 U.S.C. § 1226(a)(2), "an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States." "[P]ending such decision," the Executive "may release the alien on—bond" subject to certain conditions. *See* 8 U.S.C. § 1226(a).

As a general matter, the implementing regulations at 8 C.F.R. § 236.1(c)(8) provide that for an alien to secure release on bond under § 1226(a)(2), "the alien must demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding." In other words, the regulations "established a presumption of detention and placed on the arrested individual the burden of demonstrating, to the satisfaction of the arresting officer" that he would not pose a danger or a flight risk. *See Velasco Lopez*, 978 F.3d at 849. Though such regulation "applies only to the initial custody determination made by the arresting officer," shortly after it was implemented, the BIA "began applying" it "to bond hearing[s] conducted by immigration judges." *Id.*

Though neither 8 U.S.C. § 1226(a) nor 8 C.F.R. § 236.1(c)(8) provides for the burden of proof to ever shift to the government to prove an alien's danger or flight risk to sustain his

detention, in *Velasco Lopez*, the Second Circuit held that an alien detained for fifteen months under § 1226(a) without a bond hearing was entitled to one where the burden of proof was on the government to show by clear and convincing evidence that the detainee was a danger or a flight risk. *See generally id.*

After an IJ's bond determination, the alien may appeal a bond denial order to the BIA. *See* 8 C.F.R. § 236.1(d)(3). However, Congress stripped the federal courts of jurisdiction to review a bond denial, providing in 8 U.S.C. § 1226(e) that the Executive's "discretionary judgment regarding the application of [§ 1226] shall not be subject to review," and "[n]o court may set aside any action or decision by the Attorney General under [§ 1226] regarding the detention of any alien or the revocation or denial of bond." *Id.*

II. Petitioner's Relevant Immigration And Detention History

A. Petitioner Unlawfully Crosses The Southern Border in 2017 And Is Placed In Removal Proceedings

In December 2017, Petitioner unlawfully entered the United States near Otay Mesa, California, outside of a port of entry, and when encountered by U.S. Customs and Border Protection ("CBP"), Petitioner admitted that he was a national of India. *See* ECF No. 9-1, Decl. of Roberto Rodriguez dated Jan. 29, 2026 ("Decl.")), ¶ 3 & Ex. A at 2. Petitioner was placed in removal proceedings, and in February 2018, he was released on bond. *Id.* ¶ 4, Ex. C.

B. Petitioner is Charged with Multiple Crimes and Is Detained in March 2024

On February 8, 2024, ICE ordered Petitioner to appear at 26 Federal Plaza, New York, New York for an interview with ICE on March 8, 2024. *Id.* ¶ 6. ICE ordered Petitioner to appear for the interview after ICE officers reviewed electronic databases and discovered that Petitioner had been charged with felony and misdemeanor criminal charges in Indiana, involving an arrest on August 6, 2023, related to, *inter alia*, possession and dealing of marijuana, possession of

methamphetamine, and possession of drug paraphernalia. *Id.* ¶ 6. Petitioner also had been arrested in February 2023 for operating a motor vehicle while intoxicated and endangering a person; possession of marijuana; and operating a vehicle with a controlled substance in the body of a vehicle, all in violation of Indiana state law. *Id.* Ex. F at 2-3. On March 8, 2024, Petitioner reported to 26 Federal Plaza, where he was served with an I-200 Warrant of Arrest, Decl. ¶ 6, Ex. D, and taken into custody. *See also id.*, Ex. E (I-286).

Petitioner requested a custody determination hearing on March 21, 2025 and, on March 31, 2025, an IJ conducted a hearing and denied bond. *Id.* ¶ 8. On May 6, 2025, the IJ issued a written bond memorandum memorializing the decision, which found that Petitioner posed a danger to the community based on his criminal history, including his history of driving while intoxicated, as well as a misbehavior incident while in custody. *Id.* & Ex. F at 3-4. On September 9, 2025, the BIA agreed with the IJ's finding that the Petitioner posed a danger to the community on the basis of his criminal history and dismissed Petitioner's bond appeal. *Id.* & Ex. G at 1-2.

On May 15, 2025, the IJ denied Petitioner's applications for relief from removal and issued a written decision on July 17, 2025, ordering Petitioner's removal to India. *Id.* ¶ 9. Petitioner filed an appeal of the IJ's decision with the BIA, which was dismissed by the BIA on January 13, 2026, rendering it administratively final. *Id.* ¶ 10; *see also* 8 U.S.C. § 1101(a)(47)(B); 8 C.F.R. § 1241.1. On the same day, Petitioner filed a Petition for Review with the Second Circuit. *Id.* ¶ 11. That petition is pending.

C. Petitioner Files This Habeas Action And This Court Orders A Bond Hearing Where The Government Bears The Burden Of Proof

Petitioner filed this habeas action on January 20, 2026. The government opposed the petition, contending that Petitioner was subject to detention under 8 U.S.C. Section 1231, which governs post-removal order detention, and not Section 1226(a), as Petitioner claimed. *See*

generally ECF No. 9. Accordingly, the government contended that Petitioner was not entitled to a bond hearing because Section 1231 detention is mandatory for the 90-day removal period, which Petitioner was in. *Id.*

On February 24, 2026, the Court granted the petition, concluding that Petitioner was subject to Section 1226(a) and ordering Respondents to provide Petitioner with a bond hearing where the government bore the burden of proving by clear and convincing evidence that Petitioner was a danger or flight risk. *See* ECF No. 13.

Petitioner's bond hearing was held on March 4, 2026. Both Petitioner's counsel and counsel for DHS made written submissions and presented argument as to whether Petitioner should be granted bond, and DHS argued for Petitioner's continued detention. *See* ECF Nos. 16-2, 16-3 (the parties' respective written evidentiary submissions); *see also generally* Declaration of AUSA Kimberly Francis ("Decl."), Ex. A (Transcript of Proceedings ("Tr.")).[1] The IJ noted at the outset, and repeatedly throughout the proceedings, that, pursuant to this Court's order, the government bore the burden of proof by clear and convincing evidence. *Id.* at 13, 27, 53, 77.

To meet its burden, the government had submitted documents relating to Petitioner's state law criminal charges, including probable cause affidavits and charging information. These reflected, among other things, that, leading to his arrest in February 2023 for driving while intoxicated, Petitioner, while driving, was weaving on the road and almost struck a raised curb. ECF No. 16-2 at 9. After Petitioner was stopped, the officer observed Petitioner displaying poor dexterity as he began to look through his paperwork, observed a strong smell of marijuana coming from the vehicle, and found a "rolled blunt" containing marijuana sitting in the center console of

[1] For the Court's convenience, this Office arranged for a written transcription to be prepared of the audio file from Petitioner's bond hearing. Respondents will provide the underlying audio file—which Petitioner cites in his Motion—to the Court upon request.

the vehicle. *Id.* at 10. Another partially smoked, rolled blunt containing marijuana was found near the front passenger seat, and a plastic bag of marijuana was found rolled up in a paper towel in a storage area under the radio. *Id.* The officer observed that Petitioner's eyes were "very bloodshot." *Id.* Petitioner failed a field sobriety test. *Id.*

The IJ also had before him information related to Petitioner's separate arrest in August 2023 for possession of methamphetamine, marijuana, and related paraphernalia. *See* ECF No. 16-2 at 15. This arrest stemmed from an incident where the police were called to the apartment that Petitioner shared with his then-girlfriend. *Id.* at 17. Officers found methamphetamine, marijuana and paraphernalia in plain view in the bedroom Petitioner shared with his girlfriend. *Id.* at 17-18. After obtaining a search warrant, officers also located "methamphetamine smoking devices, marijuana, marijuana smoking devices, marijuana edibles and candies, and Suboxone." *Id.* at 18.

The government further presented argument at the bond hearing, contending that Petitioner's criminal charges, including for possession of very serious substances after already being arrested for possession of marijuana and driving while impaired, reflected a pattern of behavior. Tr. 28. The government also argued that it was troubling that Petitioner attempted to distance himself from the event, as it appeared he was unwilling to take accountability. *Id.* The government further noted that there was no evidence of Petitioner's intent to rehabilitate himself, acknowledging that, while Petitioner had submitted evidence that he was put on a waiting list for AA (Alcoholics Anonymous), there was no indication that he ever actually joined AA, what any AA program entailed, or how long he was a part of AA, if at all. *Id.* In sum, the government argued that Petitioner continued to be a danger. *Id.* 32.

The IJ denied Petitioner bond, finding that the Government met its burden. *Id.* 61; *see also* ECF No. 15-1 (IJ order stating that "government has demonstrated by clear and convincing

evidence that the respondent is a danger to the community"). In particular, the IJ, pointed to Petitioner's arrests for driving under the influence and for possession of controlled substances including methamphetamine. Tr. 61. He acknowledged that the charges were dismissed but explained that his task was to look at the underlying circumstances to evaluate dangerousness. *Id.* To that end, he concluded that the charges were serious and that the conduct involved was "very dangerous," and he denied bond. *Id.*

D. Petitioner Files A Motion to Enforce

On March 13, 2026, Petitioner filed the Motion. He contends that the IJ misapplied the burden and gave improper weight to Petitioner's criminal history. Mot. at 1-8. He also contends that the IJ's reliance on arrest records and criminal charges not leading to conviction violated due process. *Id.* at 2, 9-10.

ARGUMENT

I. Congress Stripped This Court of Jurisdiction to Review Petitioner's Bond Denial

While bond determinations may be appealed to the BIA, *see* 8 C.F.R. § 1003.19(f), federal court review of discretionary bond decisions is explicitly barred by the Immigration and Nationality Act ("INA"). In particular, Congress barred courts from reviewing "[t]he Attorney General's discretionary judgment regarding the application of" § 1226, including prohibiting courts from "set[ting] aside any . . . decision by the Attorney General . . . regarding . . . the . . . denial of bond." *See* 8 U.S.C. § 1226(e); *see also Hamilton v. Shanahan*, No. 09-CV-6869 (SAS), 2009 WL 5173927, at *3 (S.D.N.Y. Dec. 30, 2009) ("Section 1226(e) specifically divests this Court of jurisdiction to review the decisions of the IJ and the BIA (acting on behalf of the Attorney General) regarding detention of aliens under section 1226."); *Cf. Demore v. Kim*, 538 U.S. 510, 516-17 (2003) (noting that § 1226(e) bars federal review of a "discretionary judgment" or a "decision" of the Attorney General).

As the Second Circuit has concluded, § 1226(e) "precludes judicial review of the IJ's weighing of evidence and factual findings regarding whether [an alien] is a danger to the community." *ArevaloGuasco v. Dubois*, 788 F. App'x 25, 27 (2d Cir. 2019).

Thus, in sum, habeas relief "is not available to claim that the [government] simply came to an unwise, yet lawful, conclusion when it did exercise its discretion." *Gutierrez-Chavez v. I.N.S.*, 298 F.3d 824, 828 (9th Cir. 2002).

"Courts may nonetheless exercise jurisdiction over questions of law or constitutional challenges to the application of § 1226." *Lantigua v. Decker*, No. 17-CV-4880 (LGS), 2017 WL 5054567, at *2 (S.D.N.Y. Oct. 27, 2017) (citations omitted). "In assessing whether a petitioner raises a question of law or a constitutional challenge, a petitioner's arguments are assessed 'regardless of the rhetoric employed in the petition.'" *Id.* (quoting *Barco-Sandoval v. Gonzales*, 516 F.3d 35, 39 (2d Cir. 2008)). "An assertion that an IJ . . . misread, misunderstood, or misapplied the law in weighing factors relevant to the grant or denial of discretionary relief does not convert what is essentially an argument that an IJ . . . abused their discretion into a legal question." *Id.* (citing *Guyadin v. Gonzales*, 449 F.3d 465, 468 (2d Cir. 2006)); *cf. Y.C. v. Holder*, 741 F.3d 324, 336 (2d Cir. 2013) ("We have rejected attempts to frame disagreements over factfinding as constitutional claims or legal questions.").

Here, Petitioner argues that the IJ "failed to correctly hold the DHS to the clear and convincing evidence standard and was overly credulous with regards to an arrest report in dismissed criminal proceedings." Mot. at 4. But this challenge is, in essence, a disagreement with the IJ's weighing of the evidence as to which this Court lacks jurisdiction.

Lantigua is instructive. There, like here, the IJ found the alien to be a danger to the community based on allegations in a criminal complaint. *Lantigua*, 2017 WL 5054567, at *1. The

petitioner claimed it was improper for the IJ to excessively rely on the criminal complaint because the IJ "assumed facts from it without corroboration." *Id.* at *3. The Honorable Lorna Schofield, however, held that § 1226(e) precluded federal court jurisdiction to review the weight the IJ gave the criminal complaint because that was a discretionary decision. *Id.* As Judge Schofield held, "[t]he [IJ] has broad discretion to consider any information . . . including a criminal complaint." *Id. See also Vargas v. Davies*, No. 15-CV-3525, 2016 WL 3044850, at *4 (S.D.N.Y. May 27, 2016) ("To the extent Petitioner simply asks the Court to second-guess the IJ's weighing of the evidence, that would not go beyond a mere challenge to the IJ's discretion or sufficiently state a constitutional claim, and Petitioner would lose on the merits"); *Sheriff v. Searls*, 2021 WL 6797495, at *6 (W.D.N.Y. Aug. 16, 2021) ("under 28 U.S.C. § 1226(e), the Court lacks jurisdiction to review an [IJ]'s discretionary determinations such as what weight to assign the evidence"); *Onuwa v. Bondi,* No. 26-CV-2403 (MAS), 2026 WL 772435, at *2 (D.N.J. Mar. 19, 2026) (Petitioner's argument that IJ's "determination of the facts at his bond hearing was incorrect . . . present[ed] little more than Petitioner's disagreement with the immigration judge" which the court lacked authority to do); *cf. Barco-Sandoval v. Gonzales*, 516 F.3d 35, 39 (2d Cir. 2007) (in the context of a court of appeals petition for review of a final order of removal, "a petitioner cannot 'us[e] the rhetoric of a 'constitutional claim' or 'question of law' to disguise what is essentially a quarrel about factfinding or the exercise of discretion.'") (citation omitted).

Accordingly, this Court should deny the Motion for lack of jurisdiction.

II. The Motion Should Be Denied Because Petitioner Has Not Exhausted Administrative Remedies

The Motion should be denied for the additional reason that Petitioner has not exhausted administrative remedies (namely, appeal to the BIA). *See* 8 C.F.R. § 236.1(d)(3). Petitioner's deadline to appeal the March 4, 2026 bond decision to the BIA is April 3, 2026, yet he filed this

Motion before even attempting to utilize that administrative remedy.

Exhaustion is generally required as a prudential matter before immigration detention may be challenged in court. *See Howell v. INS*, 72 F.3d 288, 291 (2d Cir. 1995) ("Under the doctrine of exhaustion of administrative remedies, 'a party may not seek federal judicial review of an adverse administrative determination until the party has first sought all possible relief within the agency itself.'") (quoting *Guitard v. U.S. Sec'y of Navy*, 967 F.2d 737, 740 (2d Cir. 1992)).

Generally, courts apply the prudential exhaustion requirement "to provide the agency with a chance to correct its own errors, protect[ ] the authority of administrative agencies, and otherwise conserve judicial resources by limiting interference in agency affairs, developing the factual record to make judicial review more efficient, and resolving issues to render judicial review unnecessary." *Guzman v. Joyce*, 786 F.Supp.3d 865, 869 (S.D.N.Y. 2025) (citation omitted).

This doctrine applies to challenges to immigration bond decisions. *See Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011) ("Here, Leonardo pursued habeas review of the IJ's adverse bond determination before appealing to the BIA. This short cut was improper. Leonardo should have exhausted administrative remedies by appealing to the BIA before asking the federal district court to review the IJ's decision."). Numerous judges within this Circuit have also applied this doctrine to challenges to immigration bond decisions. *See, e.g.*, *Bogle v. DuBois*, No. 16 Civ. 6178 (CS), 2017 WL 747876, at *3 (S.D.N.Y. Feb. 16, 2017) ("Seeking habeas relief before appealing [an IJ's denial of bond] to the BIA is an 'improper shortcut.' The proper procedure is to seek relief from the BIA and then, if the IJ is affirmed, file a habeas petition." (internal citations omitted)); *Paz Nativi v. Shanahan*, No. 16-cv-8496, 2017 WL 281751, at *2-3 (S.D.N.Y. Jan. 7, 2017) (dismissing habeas petition where petitioner failed to exhaust available administrative remedies before filing suit in federal court).

There are "exceptions to the exhaustion requirement," specifically "when (1) available remedies provide no genuine opportunity for adequate relief; (2) irreparable injury may occur without immediate judicial relief; (3) administrative appeal would be futile; and (4) in certain instances a plaintiff has raised a substantial constitutional question." *Id.* However, "[e]xhaustion is the rule, waiver the exception." *Abbey v. Sullivan*, 978 F.2d 37, 44 (2d Cir. 1992).

While Petitioner argues that his detention has "gone on too long" and asks the Court to "remove this matter from the offending agencies entirely," Mot. at 11, he does not meaningfully contend that any of the exhaustion exceptions apply here. Thus, the Motion should be denied for failure to exhaust administrative remedies.

III. Petitioner's Bond Hearing Complied with This Court's Order

Petitioner argues that the IJ failed to apply the clear and convincing evidence standard properly, repeatedly asserting that the IJ "presupposed dangerousness." Mot. at 1, 5. But this assertion, and the other rhetoric and labels that Petitioner applies, cannot change the fact that, at bottom, Petitioner's challenge boils down to a disagreement with the IJ's weighing of the evidence pertaining to discretionary bond factors. *See Nouritajer v. Jaddou*, 18 F.4th 85, 89 (2d Cir. 2021) (the use of "labels" does not control jurisdictional questions). As noted above, the Court is jurisdictionally barred from considering such claims.

But even if the Court reviews the IJ's decision, the Motion should be denied. IJ's enjoy broad latitude to consider all evidence probative of flight risk and dangerousness, and here, the IJ appropriately considered the evidence before denying bond.

In making a bond decision, an IJ "must consider whether an alien who seeks a change in custody status is a threat to national security, a danger to the community at large, likely to abscond, or otherwise a poor bail risk." *Matter of Guerra*, 24 I. & N. Dec. at 40 (citing *Matter of Patel*, 15 I. & N. Dec. 666 (BIA 1976)). An IJ may consider any number of discretionary factors, including

"the alien's criminal record, including the extensiveness of criminal activity, the recency of such activity, and the seriousness of the offenses." *Id.*; *see also Singh v. Holder*, 638 F.3d 1196, 1206 (9th Cir. 2011) (quoting *Matter of Guerra*, 24 I. & N. Dec. at 40). And "[t]he determination of the Immigration Judge as to custody status or bond may be based upon any information that is available to the Immigration Judge or that is presented to him or her by the alien or [ICE]." *Id.* (quoting 8 C.F.R. § 1003.19(d)).

Petitioner faults the IJ for placing "undue weight" on his criminal history, Mot. at 1, and points to "other cases" where, in what Petitioner contends were factually similar circumstances, bond was granted, Mot. at 9 (citing, *e.g.*, *Velasco Lopez*, 978 F.3d at 853). But bond determinations are inherently fact- and case-specific, and the fact that a different IJ, faced with a different record, decided to grant bond in a different case does not mean that the IJ here failed to comply with the Court's order. "An Immigration Judge has broad discretion in deciding the factors that he or she may consider in custody redeterminations. The Immigration Judge may choose to give greater weight to one factor over others, as long as the decision is reasonable." *Matter of Guerra*, 24 I. & N. Dec. at 40.

Moreover, the BIA, and federal courts, have recognized that driving under the influence "is an extremely dangerous crime." *Matter of Siniauskas*, 27 I. & N. Dec. 207, 208 (BIA 2018) (citing *Begay v. United States*, 553 U.S. 137, 141 (2008)). "It takes 'a grisly toll on the Nation's roads, claiming thousands of lives, injuring many more victims, and inflicting billions of dollars in property damage every year.'" *Id.* (citing *Birchfield v. North Dakota*, 136 S. Ct. 2160, 2166 (2016)). "[T]he very nature of the crime of [driving while intoxicated] presents a 'serious risk of physical injury' to others . . . ." *Id.* (citing *United States v. DeSantiago-Gonzalez*, 207 F.3d 261, 264 (5th Cir. 2000); *see also Marmolejo-Campos v. Holder*, 558 F.3d 903, 913 (9th Cir. 2009)

(noting that "the dangers of drunk driving are well established")). Given that, it was reasonable for the IJ to conclude that the government met its burden of showing dangerousness based on Petitioner's history, which included driving under the influence and nearly striking a curb while doing so, in addition to possession of methamphetamine and marijuana.

IV. The IJ's Reliance on Arrest Records And Criminal Charges Did Not Violate Due Process

Finally, Petitioner contends that the IJ's reliance on arrest records and criminal charges that did not result in convictions violated due process, citing inapposite cases from distinct contexts. *See* Mot. at 9-10. For example, he cites cases from the criminal context that stand for the proposition that there is a presumption of innocence and that charges must be proven beyond a reasonable doubt, Mot. at 9-10, as well as cases from the context of removal proceedings, where courts assessed what level of evidence would be sufficient to establish removability, *see id.*

But none of the cases Petitioner cites forecloses use of such evidence in immigration court bond proceedings. Pursuant to 8 C.F.R. § 1003.19(d), "[t]he determination of the Immigration Judge as to custody status or bond may be based upon any information that is available to the Immigration Judge or that is presented to him or her by the alien or the Service." And, as mentioned, *Matter of Guerra*, 24 I. & N. Dec. at 40 affirmed an IJ's "determin[ation] that evidence in the record of serious criminal activity, even if it had not resulted in a conviction, outweighed other factors." *See also Matter of Siniauskas*, 27 I. & N. Dec. 207, 208 (BIA 2018) (IJ should consider nature and circumstances of alien's criminal activity, and that it is "proper to consider both arrests and convictions").

Indeed, numerous federal courts, including within this Circuit, have recognized that such conduct can appropriately be considered in the context of immigration court bond proceedings. *See, e.g.*, *Vargas*, 2016 WL 3044850, at * 4 ("And while Petitioner's claim turns in part on the

proposition that a past criminal record, standing alone, can never establish danger to the community by clear and convincing evidence, [caselaw] does not prohibit IJs from assessing the totality of a detainee's prior criminal history, including arrests and unarraigned charges, in determining danger to the community."); *Lantigua*, 2017 WL 5054567, at *3 ("The Petition also alleges that the IJ's use of the criminal complaint was improper because the IJ assumed facts from it without corroboration. This argument also fails. The IJ has broad discretion to consider "any information that is available to [him] or that is presented to [him] by the alien or [ICE]," including a criminal complaint.") (citing 8 C.F.R. § 1003.19(d)).

At bottom, Petitioner is asking this Court to impose evidentiary standards from distinct contexts that do not apply in immigration court bond proceedings. He cites no authority that would permit the Court to do so, and he ignores authority, cited above, showing that the IJ's consideration of the evidence in his bond proceeding was permissible.

CONCLUSION

For the reasons stated herein, the Petition should be denied.

Dated: Brooklyn, New York
March 20, 2026

Respectfully submitted,

JOSEPH NOCELLA, JR.
UNITED STATES ATTORNEY
Eastern District of New York
Attorney for Respondents
271-A Cadman Plaza East
Brooklyn, New York 11201

By: */s/ Kimberly A. Francis*
Kimberly A. Francis
Assistant United States Attorney
(718) 254-6147
kimberly.francis@usdoj.gov

CERTIFICATE OF COMPLIANCE PURSUANT TO LOCAL RULE 7.1(C)

I, Kimberly A. Francis, certify that Respondents' Memorandum of Law, dated March 20, 2026 complies with the requirements of Local Rule 7.1(c), in that it contains 4,504 words.

Dated: March 20, 2026
Brooklyn, New York

/s/ Kimberly A. Francis
Assistant U.S. Attorney