Magistrate Judge Brian A. Tsuchida

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

ROSA PADILLA PAZ, Petitioner, v. JULIO HERNANDEZ, *et al.*,[1] Respondents.	Case No. 2:26-cv-01394-BAT FEDERAL RESPONDENTS' RETURN MEMORANDUM Noted for Consideration: May 13, 2026.

I. INTRODUCTION

This Court should deny Petitioner Padilla Paz's habeas petition. Dkt. 1, ("Pet."). U.S. Immigration and Customs Enforcement ("ICE") lawfully detains Petitioner at the Northwest ICE Processing Center ("NWIPC"), pending the outcome of her removal proceedings. 8 U.S.C. § 1226(a). Petitioner challenges the immigration judge's ("IJ") custody determination and contends that her bond proceedings violated due process. Pet. ¶¶ 90-110. Her claims fail as a matter of law and procedure.

As an initial matter, this Court lacks jurisdiction to revisit the IJ's discretionary bond

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

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determination or to reweigh the evidence presented at the bond hearing. Congress expressly foreclosed judicial review of discretionary custody determinations under § 1226(a). 8 U.S.C. § 1226(e). Although Petitioner attempts to frame her disagreement with the IJ's conclusions as constitutional error, § 1226(e) bars jurisdiction over discretionary determinations by the Attorney General, including challenges cloaked "in constitutional garb." *Torres-Aguilar v. INS*, 246 F.3d 1267, 1271 (9th Cir. 2001).

To the extent Petitioner raises colorable constitutional claims concerning the procedures employed during her bond proceedings, those claims likewise fail. Petitioner received the process due under the Fifth Amendment: she was represented by counsel, afforded an opportunity to present evidence and argument, and received an individualized custody determination subject to administrative review before the Board of Immigration Appeals ("BIA"). The Ninth Circuit has expressly recognized that the procedures governing detention under 8 U.S.C. § 1226(a) satisfy due process requirements. *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1212-13 (9th Cir. 2022).

The Petition independently fails because Petitioner has not exhausted her administrative remedies. Her appeal of the IJ's custody determination remains pending before the BIA, and she has not established any basis to excuse prudential exhaustion. Permitting judicial intervention at this stage would improperly bypass the administrative review process and undermine the agency's ability to address alleged procedural errors in the first instance.

Finally, the Petition suffers from a threshold procedural defect because it was not properly verified under 28 U.S.C. § 2242 and Local Civil Rule 100(e).

For each of these independent reasons, the Court should deny the Petition in its entirety.

II. FACTUAL AND PROCEDURAL BACKGROUND

This case concerns the Government's responsibilities under 8 U.S.C. § 1226(a), which authorizes the Attorney General to arrest and detain a noncitizen "pending a decision on whether

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[she] is to be removed from the United States." *Jennings v. Rodriguez*, 583 U.S. 281, 306 (2018) (quoting 8 U.S.C. § 1226(a)). Because her removal proceedings are ongoing, Petitioner was lawfully detained pursuant to 8 U.S.C. § 1226(a). *Id.*

Petitioner is a native and citizen of Honduras who entered the United States on an unknown date and at an unknown location, without being admitted or paroled. Declaration of Jarvin Li ("Li Decl.") ¶ 3. On June 15, 2007, Petitioner was convicted of merchandise theft in San Mateo, California, and sentenced to 12 months probation. *Id.* ¶ 4. On February 3, 2010, Petitioner was arrested in San Francisco, California for cocaine distribution. *Id.* ¶ 5.

On February 11, 2010, Petitioner was encountered by ICE officers at the San Francisco County Jail. *Id.* ¶ 6. The ICE officers determined Petitioner was an alien present in the United States without being admitted or paroled and detained her. *Id.* Based on her representations, Petitioner was issued a Notice to Appear ("NTA") alleging her to be a native and citizen of Mexico and charging removability under Immigration Nationality Act ("INA") § 212(a)(6)(A)(i), and placed in removal proceedings in the San Francisco, California Immigration Court. *Id.*

On February 11, 2010, Petitioner, pro se, signed a sworn statement claiming the factual allegations in the NTA were true, waiving any relief from removal, and requesting her removal to Mexico. *Id.* ¶ 7. On February 11, 2010, Petitioner was ordered removed to Mexico by an Immigration Judge ("IJ") in San Francisco, California. *Id.* ¶ 8. Petitioner was removed to Mexico at the San Ysidro, California Port of Entry and prohibited from entering, or attempting to enter, the United States for a period of 10 years. *Id.*

On an unknown date after being removed, Petitioner again entered the United States at an unknown location, without being admitted or paroled. *Id.* ¶ 9. On October 5, 2010, Petitioner was arrested in San Francisco, California for cocaine distribution. *Id.* ¶ 10. On October 8, 2010, Petitioner was encountered by ICE officers at the San Francisco County Jail. *Id.* ¶ 11. Petitioner,

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pro se, signed a sworn statement claiming to being born in, and a citizen of, Mexico. *Id.*

On October 8, 2010, ICE reinstated Petitioner's prior removal order to Mexico. *Id.* ¶ 12. Petitioner was removed to Mexico at the San Ysidro, California Port of Entry and prohibited from entering, or attempting to enter, the United States for a period of 20 years. *Id.* On an unknown date after being removed, Petitioner once again entered the United States at an unknown location, without being admitted or paroled. *Id.* ¶ 13. On March 1, 2011, Petitioner was convicted of cocaine distribution in San Francisco, California, and sentenced to 4 days imprisonment and 3 years probation. *Id.* ¶ 14.

On April 16, 2014, Petitioner was arrested for cocaine distribution in San Francisco, California. *Id.* ¶ 15. The charges were not pursued. *Id.* On June 2, 2025, Petitioner was identified by ICE officers outside her residence in San Francisco, California and detained pursuant to an arrest warrant. *Id.* ¶ 16. Petitioner was issued a Notice to Appear ("NTA") charging removability under Immigration Nationality Act ("INA") § 212(a)(6)(A)(i), and placed in removal proceedings in the Tacoma, Washington Immigration Court. *Id.*

On October 10, 2025, Petitioner, with counsel, appeared at a merits hearing before an IJ in Tacoma, Washington. *Id.* ¶ 17. The IJ denied applications for relief from removal and ordered Petitioner removed to Honduras. *Id.* Petitioner, through counsel, appealed the IJ's order of removal to the Board of Immigration Appeals ("BIA"). *Id.* That appeal is still pending. *Id.*

On October 21, 2025, Petitioner, with counsel, appeared at a bond hearing before an IJ in Tacoma, Washington. *Id.* ¶ 18; Declaration of Alixandria K. Morris ("Morris Decl."), Ex. 2. The IJ concluded that bond jurisdiction was unavailable and, in the alternative, found Petitioner to present a danger and flight risk. *Id.* Petitioner, through counsel, appealed the IJ's denial of bond to the BIA. Li Decl. ¶ 18; Morris Decl., Ex. 1. That appeal is still pending. *Id.*

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III. LEGAL STANDARD

Federal courts are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute." *Exxon Mobil Corp. v. Allopath 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 petitioner must demonstrate 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.

The Ninth Circuit has cautioned that courts should be careful not to excuse exhaustion where, as here, "relaxation of exhaustion requirements would encourage the deliberate bypass of the administrative scheme." *Noriega-Lopez v. Ashcroft*, 335 F.3d 874, 882 (9th Cir. 2003). Indeed, the record reflects that the instant petition was filed while Petitioner's appeal with the BIA remains pending. Li Decl. ¶ 18; Morris Decl., Ex. 2. The Court has further cautioned that exhaustion should not be excused where "agency expertise makes agency consideration necessary to generate a proper record and reach a proper decision" or "administrative review is likely to allow the agency to correct its own mistakes and to preclude the need for judicial review." *Id.* All three factors favor enforcing the exhaustion requirement in this case. "Beyond the need for the record to be further developed, further proceedings in the immigration court could preclude the need for judicial review and failure to require exhaustion could encourage the deliberate bypass of the agency." *See Zhibo Zuo v. Hermosillo*, No. 2:26-CV-00708-JHC, 2026 WL 809882, at *3 (W.D. Wash. Mar. 24, 2026) (concluding the *Puga* factors did not favor excusing prudential

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exhaustion where, as here, the record was inconclusive with respect to the immigration judge's reasoning for the denial of bond); *Youngchun Kim v. Mullin, et al.,* No. C26-0805-SKV, 2026 WL 948347, at *4 (W.D. Wash. Apr. 8, 2026) (finding no justification for waiving the exhaustion requirement).

A petitioner may nevertheless avoid the requirement by demonstrating one of the *Laing* factors applies in their case. *Laing v. Ashcroft*, 370 F.3d 994, 1000–01 (9th Cir. 2004). "The party moving the court to waive prudential exhaustion requirements bears the burden of demonstrating that at least one of these Laing factors applies." *Aden v. Nielsen*, C18-1441-RSL, 2019 WL 5802013, at *2 (W.D. Wash. Nov. 7, 2019).

Here, Petitioner fails to cite any legal authority or factual allegations supporting her claim that she has exhausted all applicable requirements or that exhaustion should be excused. *See generally* Dkt. 1. Allowing those who argue procedural errors in their custody or bond determinations to bypass the administrative process would disrupt the agency's autonomy and result in unnecessary judicial review of unexhausted claims." *Id.* (citation omitted).

Because she failed to demonstrate that the prudential exhaustion requirement should be waived, the Court should require exhaustion in the instant case. *See Martinez v. Scott*, No. 2:25-CV-01538-TSZ-GJL, 2025 WL 2689844, at *6 (W.D. Wash. Aug. 27, 2025) (setting forth the standards for applying the prudential exhaustion doctrine and concluding petitioner had "failed to demonstrate that the administrative exhaustion requirement should be waived"), *report and recommendation adopted,* No. C25-1538 TSZ, 2025 WL 2689066 (W.D. Wash. Sept. 19, 2025).

B. Petitioner Has Not Identified Valid Constitutional or Legal Errors That Occurred in Her Bond Hearing.

1. <u>Petitioner Received a Constitutionally Adequate Bond Hearing.</u>

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Assuming, without conceding, that the *Mathews* framework applies, Petitioner's claims fail to raise due process concerns. *Mathews v. Eldridge*, 424 U.S. 319, 334-35 (1976); *see also E.A. T.-B. v. Wamsley*, No. C25-1192-KKE, 795 F. Supp.3d 1316, 1321 n.4 (W.D. Wash. Aug. 19, 2025) (collecting cases employing the *Mathews* factors in similar immigration detention contexts).[2] In applying *Mathews* in this context, this Court must "weigh heavily" the fact "that control over matters of immigration is a sovereign prerogative, largely within the control of the executive and the legislature." *Rodriguez Diaz*, 53 F.4th at 1213 (recognizing that "[t]he role of the judiciary is limited to determining whether the procedures meet the essential standard of fairness under the Due Process Clause and does not extend to imposing procedures that merely displace congressional choices of policy." (citation omitted)).

Here, an analysis of the *Mathews* test reflects Petitioner's bond hearing comports with due process. *Id.* With respect to the first *Mathews* factor, Federal Respondents acknowledge the freedom from physical restraint is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004) (citation omitted). However, the Supreme Court has been clear that in the immigration context, the Constitution permits "rules that would be unacceptable if applied to citizens." *Rodriguez Diaz*, 53 F.4th at 1207 (quoting *Demore v. Kim*, 538 U.S. 510, 522 (2003)); *see also Miranda v. Garland*, 34 F.4th 338, 359 (4th Cir. 2022) (collecting cases).

While Federal Respondents acknowledge that Petitioner's detention (prior to the issuance of the temporary restraining order at Dkt. 13) was prolonged, the Court must "consider the process petitioner received during the time [she was detained, [and] the further process available to [her]."

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[2] Federal Respondents note that in *W.T.M.*, the Court recognized that the contemporaneous record requirement established by the Ninth Circuit in *Singh* applies to detainees facing "prolonged" detention. *Id.* (citing *Singh v. Holder*, 638 F.3d 1196, 1208 (9th Cir. 2011)). Here, Petitioner's current detention of roughly three months has not yet become "prolonged." *Diouf v. Napolitano*, 634 F.3d 1081, 1192 n.13 (9th Cir. 2011). While Federal Respondents maintain that *Singh* is not controlling, even if it were, Petitioner "was not entitled to a contemporaneous recording at his bond hearing given that he was not held in prolonged detention." *Yong Guo v. Nielson*, No. C18-1557-RSM-BAT, 2019 WL 2515166, at *2 (W.D. Wash. June 18, 2019).

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Rodriguez Diaz, 53 F.4th at 1208. Even if the Court were to find the private interest at stake weighs in Petitioner's favor, in light of the substantial process available to her during her confinement, "this factor should not be accorded overwhelming weight." *Arshad v. Noem*, No. C26-726-RSM, 2026 WL 864737, at *3 (W.D. Wash. Mar. 30, 2026) (citations omitted).

With respect to the second *Mathews* factor, the statutory framework governing Petitioner's detention provides adequate safeguards to protect against arbitrary deprivation of liberty while also protecting the government's interests in ensuring that she does not abscond while removal proceedings are ongoing. *Rodriguez Diaz*, 53 F.4th at 1209-10. Bond hearings are procedurally less formal than merits hearings, as reflected in the statutes and regulations governing custody redetermination and removal proceedings. *Compare* 8 U.S.C. § 1229a(b)(4)(C) (requiring a "complete record . . . of all testimony and evidence produced") *with* 8 U.S.C. § 1226 (containing no such requirement). The implementing regulations codify the distinctions between the two types of proceedings, merits and custody. *See, e.g.*, 8 C.F.R. § 1003.19(d) (consideration of custody matters "shall be separate and apart from, and shall form no part of, any deportation or removal hearing or proceeding"); *accord Matter of Guerra*, 24 I&N Dec. 37, 40 n.2 (BIA 2006) ("Bond proceedings are separate and apart from the removal hearing.").

Here, the IJ followed agency policy and regulation when he rendered his bond decision. Morris Decl., Exs. 1-2; *see also Joseph v. Holder*, 600 F.3d 1235, 1241 n.5 (9th Cir. 2010); *see Vongsa Sengkeo v. Horgan*, 670 F.Supp.2d 116, 120 n. 5 (D. Mass. 2009) (citing Practice Manual); *Miti v. Moniz*, --- F. Supp. 3d ----, 2026 WL 884639, *5 n.12 (D. Mass. 2026).

Thus, the record reflects that Petitioner has received a hearing, represented by counsel, where she had the opportunity to present or rebut any evidence that may bear on her dangerousness or flight risk. The IJ issued a decision after considering the evidence and arguments presented by both parties. Morris Decl., Ex. 2; 8 C.F.R. §§ 1003.19(d), (f). When Petitioner filed an appeal, the IJ prepared a comprehensive written decision based on notes from the bond hearing. Morris Decl., Ex. 1; *see* ICPM ch. 8.3(e)(7).

The Ninth Circuit has upheld these procedures as satisfying the requirements of the Due Process Clause. *Rodriguez Diaz*, 53 F.4th at 1213-14; *see also Borbot v. Warden Hudson Cnty. Corr. Facility*, 906 F. 3d 274, 279 (3d Cir. 2018) ("Borbot was granted meaningful process [under § 1226(a)] prior to filing his habeas petition," and due process did not require anything further); *Miranda*, 34 F.4th at 366 (concluding "that the current procedures used for detention under § 1226(a) satisfy due process."). Accordingly, the safeguards governing Petitioner's detention are substantial and "sufficiently protected [Petitioner's] liberty interest and mitigated the risk of erroneous deprivation." *Rodriguez Diaz*, 53 F.4th at 1209.

As to the third *Mathews* factor, the process Petitioner received reflects Congress' intent to afford broad discretion to the government in determining which individuals should remain detained for removal proceedings. *Demore*, 538 U.S. at 521. The Government's interest in maintaining the existing procedures for bond hearings to ensure that removal orders can be promptly executed is thus legitimate and significant. While Petitioner may disagree with Congress' judgment regarding the importance of detention as a means of ensuring removal, contrary to her assertions, due process does not require the government "to employ the least burdensome means to accomplish its goal," *Demore*, 538 U.S. at 528, or to provide procedures "that reduce the risk of erroneous deprivation to zero, a result that is beyond grasp." *Rodriguez Diaz*, 53 F.4th at 1213.

In sum, Petitioner received a bond hearing that gave her a meaningful opportunity to be heard. At the hearing, the correct burden of proof under § 1226(a) was applied, and she ultimately received a reasoned adjudication. Because the fundamental requirement of due process is "the

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opportunity to be heard at a meaningful time and in a meaningful manner," *Mathews*, 424 U.S. at 333, Petitioner's hearing provided all that was required.

2. <u>The IJ's Alleged Failure to Conduct Meaningful Individualized Determination.</u>

Federal Respondents reject the assertion that there is "no reason to believe" petitioner is a flight risk or danger to the community. Pet. ¶¶ 67-80. "Nothing in the Due Process Clause requires individualized bond determinations beyond what Congress has established." *Id.* at 1214 (Bumatay, J., concurring). Petitioner fails to rebut the presumption that the IJ satisfies the due process requirement to consider all the evidence presented, and the Court should decline to add requirements beyond what Congress has established. *See Larita-Martinez v. INS*, 220 F.3d 1092, 1095-96 (9th Cir. 2000) ("We embrace the view of our sister circuits and hold that an alien attempting to establish that the [agency] violated [her] right to due process by failing to consider relevant evidence must overcome the presumption that it did review the evidence."). Therefore, the Court should uphold the IJ's discretionary ruling, particularly where the IJ's bond denial contains reasoning that clearly demonstrates consideration of the relevant evidence and mitigating factors. Morris Decl., Ex. 1.

3. <u>Legal Sufficiency of the IJ's Findings.</u>

The burden is on the noncitizen to show to the satisfaction of the IJ that she merits release on bond. *Youngchun Kim,* 2026 WL 948347, *2 (citing *Guerra*, 24 I&N at 40); *see also Matter of R-A-V-P-*, 27 I&N Dec. 803, 805 (BIA 2020). The following are factors an IJ may consider in making bond determinations:

> "(1) whether the detainee has a fixed address in the United States; (2) the detainee's length of residence in the United States; (3) the detainee's family ties in the United States, and whether they may entitle the detainee to reside permanently in the United States in the future; (4) the detainee's employment history; (5) the detainee's record of appearance in court; (6) the detainee's criminal record, including the extensiveness of criminal activity, the recency of such activity, and the seriousness of the offenses; (7) the detainee's history of

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> immigration violations; (8) any attempts by the detainee to flee prosecution or otherwise escape authorities; and (9) the detainee's manner of entry to the United States."

Id.

The habeas court's review of an IJ's determination as to dangerousness and flight risk is for abuse of discretion. *Anyanwu v. Bondi*, Case No. C25-995-JLR-MLP, 2025 WL 3466910, at *4 (W.D. Wash. Oct. 6, 2025), *report and recommendation adopted*, No. C25-0995JLR, 2025 WL 3187485 (W.D. Wash. Nov. 14, 2025) (citation omitted). "That deference reflects Congress's decision to cabin judicial review in removal proceedings." *Martinez v. Clark*, 124 F.4th 775, 784 (9th Cir. 2024) (citing *Patel v. Garland,* 596 U.S. 328, 332 (2022)). Under an abuse of discretion standard, the court is not permitted to reweigh evidence. *Id.* at 785 (citing *Konou v. Holder*, 750 F.3d 1120 (9th Cir. 2014)). Instead, its review is limited to whether the IJ's decision "reflects clear legal error or is unsupported by sufficient evidence." *Hilario Pankim v. Barr*, No. 20-CV-02941-JSC, 2020 WL 2542022, at *8 (N.D. Cal. May 19, 2020) (citation and quotation omitted).

Given these principles, Petitioner has not shown that the IJ's bond determination was legally insufficient. Although Petitioner disagrees with the outcome of her bond hearing, the record reflects that the IJ considered and weighed the evidence she presented and concluded that Petitioner failed to demonstrate she was not a danger to the community or a flight risk. Morris Decl., Exs. 1-2. As noted above, the fact that the IJ reached a different conclusion than the one Petitioner sought does not amount to a constitutional violation. And "[t]o the extent that Petitioner asks the Court to second-guess the IJ's weighing of the evidence, that claim is directed solely to the IJ's discretion and is unreviewable." *See Sales v. Johnson*, 323 F. Supp. 3d 1131, 1138-39 (N.D. Cal. 2017).

The record also supports the reasonableness of the IJ's determination. Petitioner entered the United States undetected on multiple occasions, claimed to be from a country other than her

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country of origin, and accumulated multiple criminal charges. Li Decl. ¶¶ 3-16. Taken together, these facts support the IJ's finding that Petitioner presented both danger and flight concerns and demonstrate that the decision fell well within the IJ's discretion.

Petitioner argues that she was the victim of abuse and trafficking that influenced or compelled her criminal conduct. But the IJ expressly considered those allegations in reaching his decision. Morris Decl., Ex. 1. After weighing that evidence against the broader record, the IJ nevertheless found Petitioner to be a danger and flight risk. Because the IJ personally observed Petitioner and her counsel, assessed credibility firsthand, and evaluated the evidence in context, this Court should not substitute its judgment for the IJ's or conduct a de novo review of the record. The relevant question is whether the IJ abused his discretion, and Petitioner has not made that showing.

Petitioner's reliance on a clinical psychologist's opinion and recidivism statistics (Dkt. 1 ¶ 69) further confirms that the dangerousness and flight risk analysis involved competing considerations and predictive judgments. That reasonable disagreement exists over how to weigh this evidence undercuts any claim that the IJ acted arbitrarily or irrationally. Accordingly, Petitioner has not established that the IJ's finding of danger and flight risk was an abuse of discretion.

C. Petitioner Has Not Verified Her Habeas Petition.

The Petition should also be denied because it was not properly verified. Habeas petitions must be verified "by the person for whose relief it is intended or by someone acting in his behalf." 28 U.S.C. § 2242. Local Civil Rule 100(e) permits a third party to verify a petition on behalf of a detained person only where the filing explains why the petitioner did not personally verify the petition and states that the verifier knows the facts alleged or identifies the basis for any information and belief.

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Here, Petitioner did not sign or verify the Petition. Although counsel signed the filing, counsel did not provide a verification satisfying either 28 U.S.C. § 2242 or Local Civil Rule 100(e). The Petition therefore lacks a compliant verification from either Petitioner or a third party acting on her behalf in accordance with the governing rules.

Nor does Dkt. 3-1 cure that defect. Although styled as a declaration, the document is not signed under penalty of perjury and does not satisfy the requirements of 28 U.S.C. § 1746.

Courts in this District have recognized the importance of compliance with these verification requirements in habeas proceedings. *Compare Manjit Singh v. Bondi*, No. C26-0477-KKE, 2026 WL 586230, at *2 (W.D. Wash. Mar. 2, 2026) (considering petition properly verified when Petitioner's counsel complied with Local Civil Rule 100(e)), *with Pogosian v. Santacruz*, No. 5:26-cv-00540-SRM-E, 2026 WL 413639, at *3 (C.D. Cal. Feb. 11, 2026) (denying motion for temporary restraining order when "the facts in the Petition are not verified, there is no statement addressing 28 U.S.C § 2242 or [the local civil rule], and the facts in the exhibits and declaration d[id] not inform th[e] inquiry").

Because the Petition does not satisfy the threshold procedural requirements governing habeas applications, the Court should deny the Petition.

V. CONCLUSION

For the foregoing reasons, Federal Respondents respectfully request that this Court deny the habeas petition.

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Dated this 8th day of May, 2026.

Respectfully submitted,

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I certify that this memorandum contains 3,924 words, in compliance with the Local Civil Rules.