UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

Elena Samoilova,
Petitioner,
v.
CHRISTOPHER J. LAROSE, Warden,
Otay Mesa Detention Center,
Respondent.
Case No.: 3:26-cv-03101-JO-VET

FILED
JUN 17 2026
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY 007 DEPUTY

PETITIONER'S REPLY (TRAVERSE) TO RESPONDENT'S RETURN TO PETITION FOR WRIT OF HABEAS CORPUS

Hearing: July 2, 2026
Hon. Jinsook Ohta

I. INTRODUCTION

Respondent's Return rests on two propositions: that Petitioner received a bond hearing, and that she failed to appeal its outcome to the Board of Immigration Appeals ("BIA"). Neither answers the claim actually pleaded. Petitioner does not ask this Court to re-weigh bond evidence; she contends that the March 4, 2026 hearing was constitutionally inadequate because the Immigration Judge ("IJ") made no individualized findings, disregarded material record evidence, and rested a flight risk determination on the single circumstance – a visa overstay – that is common to nearly every person in removal proceedings. The Due Process Clause of the Fifth Amendment entitles a civil detainee to more than the form of a hearing; it requires its substance.

II. THE MARCH 4, 2026 BOND HEARING DID NOT COMPORT WITH DUE PROCESS

A. The IJ made no individualized findings. The IJ's written order is a pre- printed form on which two boxes are checked: "Denied" and "Deemed to be a flight risk, and no amount of bond will mitigate such risk." Return, Ex. 3. It identifies no evidence, weighs no factor, and explains nothing. An IJ determining bond must consider the individualized factors set out in *Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006) – including fixed address, length of residence, family ties, employment history, record of appearance, and criminal record – and the record must reflect that consideration. *See Singh v. Holder*, 638 F.3d 1196, 1206 n. 5 (9th Cir. 2011).

B. The IJ disregarded the record before her. Petitioner submitted a comprehensive bond packet: proof of a verified residence (lease), tax returns evidencing employment authorized by her valid Employment Authorization Document (issued in connection with a pending asylum application and valid through April 13, 2030, see Return, Ex. 2), letters of support from U.S. citizens, a financially secure sponsor, and a copy of her husband's pending Form I-589 asylum application, filed with USCIS in October 2022, on which Petitioner is included as his spouse. The order reflects consideration of none of it. A determination that "no amount of bond could mitigate risk" - as to a detainee with no criminal history (Return, Ex. 2: "Criminal Record: NEGATIVE"), a verified address, lawful employment, and two independent pending paths to immigration status – cannot be reconciled with any individualized weighing of the Guerra factors.

C. The record before the IJ contradicted the I-213 on a material point. The Form I-231 on which Respondents rely states "Spouse: Subject is not married." Return, Ex. 2. Petitioner is and was lawfully married; her husband's Form I-589, listing her as his spouse, was in the record before the IJ. The IJ neither resolved nor acknowledged this contradiction. Where the principal document supporting detention contains a demonstrated material error bearing directly on flight risk – marital and derivative-beneficiary status – due process does not permit the error to pass unexamined.

D. Reliance on manner-of-entry/overstay alone is impermissible. Stripped of the disregarded evidence, the only circumstance supporting the flight-risk finding is Petitioner's B-2 overstay – the very charge that places her in proceedings. The BIA itself has rejected sole reliance in requiring a bond of almost every alien who is held in deportation proceedings. "*Matter of Patel*, 15 I&N Dec. 666, 666-67 (BIA 1976). Evidence common to virtually all detainees does not meaningfully distinguish the individual and cannot carry an individualized determination. *See Singh*, 638 F.3d at 1205.

III. PRUDENTIAL EXHAUSTION SHOULD BE EXCUSED

Respondents argue the petition should be dismissed because Petitioner did not appeal the bond denial to the BIA. But exhaustion under 28 U.S.C. § 2241 is not statutorily required; it is a prudential doctrine courts may waive. *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2007). Exhaustion may be excused where administrative remedies are inadequate or not efficacious, where pursuit of them would be a futile gesture, or where irreparable injury will result. *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004); *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007). Each ground is present here.

A. Futility.

Petitioner's claim is constitutional: the BIA cannot adjudicate the adequacy, under the Fifth Amendment, of the procedures the agency itself employs. Moreover, a court in this District recently found, on the Executive Office for Immigration Review's own data, that the BIA affirmed immigration-judge decisions in appeals, including bond determinations, at an unprecedented rate in 2025 –

exceeding its 16-year historical average by at least 30 percentage points – such that requiring an appeal would risk doing little more than "rubberstamp[ing] IJ bond denials". *Perez Velasquez v. Bondi*, No. 26-cv-01759-GPC-DDL, 2026 WL 1042479, at *3 & n.2 (S.D. Cal. Apr. 16, 2026); *cf. Vasquez-Rodriguez v. Garland*, 7 F.4th 888, 896 (9th Cir. 2021) (court cannot require exhaustion where the agency's position appears "to be already set" and the appeal's outcome "very likely" a "foregone conclusion").

B. Irreparable harm.

Courts have repeatedly excused exhaustion in detention cases because BIA bond appeals take months: an average processing time of 204 days in 2024 according to EOIR's own data, *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1253 (W.D. Wash. 2025); "often four months or more," *Villalta v. Sessions*, No. 17-cv-05330-LHK, 2017 WL 4355182, at *3-4 (N.D. Cal. Oct. 2017); up to six months, *Y.S.G. v. Andrews*, No. 2:25-cv-1884-SCR, 2025 WL 2979309, at *8 (E.D. Cal. Oct. 22, 2025). Requiring BIA review would inflict "the very harm that the bond hearing was designed to prevent": prolonged detention without due process. *Hechavarria v. Whitaker*, 358 F. Supp. 3d 227, 237 (W.D.N.Y. 2019). Petitioner has been detained since February 19, 2026 – almost four months – and, per Respondents' own exhibit, with "no merits hearing schedule as of now". Return, Ex. 2. A months-long administrative appeal as the price of judicial review would itself work the constitutional injury.

IV. THE PRIOR PETITION DOES NOT BAR THIS ONE

Respondents note that Petitioner's first habeas petition was denied on April 21, 2026. That denial does not preclude the present petition. Section 2241 petitions challenging ongoing civil detention are not subject to the second-or-successive bar applicable to post-conviction review, and the material circumstances have changed: detention has continued and lengthened without a scheduled merits hearing; new evidence bearing on the constitutional inadequacy of the March 4, 2026 hearing has been assembled, including documentation of the I-231's material error concerning Petitioner's marital status; and this petition presents the distinct claim that the hearing itself – not merely its outcome – violated due process.

V. RELIEF REQUESTED

Petitioner respectfully requests that the Court deny Respondent's request to dismiss and grant the following relief:

1. Order Petitioner's immediate release from custody, on appropriate conditions of supervision. On this record – no criminal history (Return, Ex. 2: "Criminal record: NEGATIVE"), a verified residence, employment authorized by a valid EAD, tax compliance, a financially secure sponsor, letters of support , and two independent pending paths to immigration status – no

reasonable application of the Matter of Guerra factors could support a finding that Petitioner is a flight risk whom "no amount of bond" could secure. Where the outcome of a constitutionally an adequate hearing is not reasonably in doubt, and where Petitioner has already spent almost four months detained pursuant to a defective order, release is the appropriate remedy;

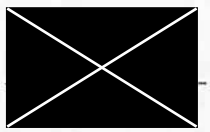
2. In the alternative, order Petitioner released within seven days unless Respondents provide her a new bond hearing comporting with due process, at which the Immigration Judge must make individualized findings on the record addressing the Guerra factors and the evidence submitted, must resolve the documented error in the Form I-213 concerning Petitioner's marital status, and must consider alternatives to detention and ability to pay, see *Hernandez v. Sessions*, 872 F.3d 976 (9th Cir. 2017);

3. In the further alternative, order that Petitioner receive such a new bond hearing within seven days; and

4. Grand such other relief as the Court deems just. Should the Court conclude that exhaustion bars any claim, Petitioner requests that dismissal be without prejudice and accompanied by an order directing expedited administrative review.

Respectfully submitted,

Date: 06/16/2026



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CERTIFICATE OF SERVICE

I hereby certify that on 06/16/2026 (date), a true and correct copy of the foregoing Reply (Traverse) to Respondents' Return was served on Respondents by mailing it, first-class postage prepaid, to their counsel of record:

Antonio Estrada, Special Assistant U.S. Attorney
Office of the U.S. Attorney,
Southern District of California
880 Front Street, Room 6293
San Diego, CA 92101

By: [redacted]
Elena Samolova