ADAM GORDON
United States Attorney
JACOB T. METZGER
Special Assistant U.S. Attorney
Ohio State Bar No. 104783
Office of the U.S. Attorney
880 Front Street, Room 6293
San Diego, CA 92101-8893
Telephone: (619) 546-8693
Mobile: (619) 885-2119
Facsimile: (619) 546-7751
Email: jacob.metzger@usdoj.gov

Attorneys for Respondents

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

GERARDO JOSE NUNEZ-RAMIREZ,

Petitioner,

v.

SIXTO MARRERO, *et al.*,

Respondents.

Case No. 26-cv-03276-LL-GC

OPPOSITION TO PETITIONER'S MOTION TO ENFORCE HABEAS CORPUS ORDER

I. INTRODUCTION

On May 28, 2026, Gerardo filed a habeas petition. ECF No. 1. On June 8, 2026, Respondents filed a response identifying our position that Petitioner was subject to mandatory detention under 8 U.S.C. § 1225(b)(2); however, in Respondent's return, acknowledged that the Court's prior jurisprudence reached the opposite conclusion. ECF No.4. Further, Respondents recognized that the Court's prior decisions would control the result of the proceedings and that the government did not "oppose the petition and defers to the Court on the appropriate relief." ECF No. 4. On June 18, 2026, this Court granted Petitioner's Petition for a Writ of Habeas Corpus and ordered Respondents to provide Petitioner with an individualized bond hearing before an Immigration Judge (IJ) pursuant to 8 U.S.C. § 1226(a) within 7 days. ECF No. 8. Further, the Court ordered that the IJ could not deny Petitioner bond on the basis that 8 U.S.C. §1225(b)(2) required mandatory detention. *Id.*

On June 23, 2026, an IJ held a 1.5-hour long bond hearing and found that Petitioner was a flight risk and denied bond. *See* Exhibit 1 (Bond Order); Exhibit 2 (Bond Hearing Audio). Petitioner filed a Motion to Enforce Habeas Corpus Order alleging (1) Respondents did not provide a meaningful, individualized bond hearing, (2) the IJ ignored the factors established in *Guerra* and the evidentiary record, (3) and deficiencies consistent with "broader concerns regarding bond adjudications." For the reasons set forth below, Respondents respectfully oppose the motion and request that the Court deny the Petitioner's Motion to Enforce the Habeas Corpus order as the Respondents have complied with the Court's June 18, 2026 order.

II. ARGUMENT

A. RESPONDENTS HAVE PROVIDED A MEANINGFUL INDIVIDUALIZED BOND HEARING AND THE IJ APPLIED THE *GUERRA* FACTORS.

Petitioner's bond hearing fully complied with the Court's order directing a meaningfully individualized bond hearing and the IJ applied the *Guerra* Factors appropriately. *Matter of Guerra*, 24 I. & N. Dec. 37 (BIA 2006). At a custody

redetermination hearing under 8 U.S.C. § 1226(a), the noncitizen bears the burden of establishing "that he or she does not present a danger to persons or property, is not a threat to the national security, and does not pose a risk of flight." *Id.* at 38. At Petitioner's hearing, the IJ acknowledged that the burden was on the Petitioner and confirmed that all evidence that had been submitted by Petitioner and the DHS. *See* Exhibit 2 at 1:10-2:20. Petitioner's counsel presented evidence about the application of the *Guerra* Factors to Petitioner, noting family connections, a fixed address, and noting other factors. *Id.* at 2:20-6:00. Petitioner had their opportunity to present their facts to the IJ to prove, during their bond hearing, that Petitioner was not a flight risk.

The bond hearing continued with a presentation of evidence by DHS counsel. DHS presented evidence that indicated Petitioner was lying about his income to the tax authorities and to the IJ. *Id.* at 11:00-21:10 Further, DHS noted that the Petitioner crossed border illegally, not through a port of entry. *Id.* at 21:20-23:00. DHS had their opportunity to prove, during the bond hearing, that Petitioner was a flight risk. At the conclusion of DHS's presentation, Petitioner's counsel had the opportunity to further question Petitioner. *Id.* at 27:00.

After the presentation of evidence, the IJ questioned the Petitioner. Ultimately, the IJ found issues with the Petitioner's credibility. *Id.* at 1:21:50-1:24:50. The IJ noted Petitioner was likely actively committing crimes by evading taxes and that releasing Petitioner would allow him to continue to evade paying taxes. *Id.* at 1:10:00-1:13:00. Further, the IJ noted that the Petitioner called his sponsor his neighbor; however, the IJ noted that Petitioner's sponsor did not live next to Petitioner, nor did the sponsor refer to themselves as Petitioner's neighbor. *Id.* at 1:20:00-1:21:50. The IJ found that the Petitioner was clearly and repeatedly not being candid to the IJ about his income and his sponsor, found that Petitioner was a flight risk, and denied Petitioner bond. *Id.* at 1:24:00-1:26:15.

At the conclusion of the hearing, after Petitioner's counsel reserved appeal, Petitioner's counsel inquired about a higher bond; however, due to the Petitioner's

misrepresentations, the IJ declined. *Id.* at 1:26:25-1:27:30. The IJ provided a meaningful individualized bond hearing and, applying the *Guerra* factors, determined that Petitioner's credibility and candor to the court, indicated that Petitioner was a flight risk. To the extent Petitioner argues that the IJ committed reviewable legal error in the application of the *Guerra* factors, he is incorrect. *Guerra* does not require an IJ to consider *all* of the listed factors. 24 I. & N. Dec. at 40 ("Immigration Judges may look to a number of factors in determining whether an alien merits release from bond ... [t]hese factors may include any or all of the following:"). Petitioner's Motion to Enforce the Court Order should be denied.

B. PETITIONER'S "BROADER CONCERNS REGARDING BOND ADJUDICATIONS" LACK SPECIFICITY NOR NOTE ANY CONGIZABLE COURT VIOLATION.

Petitioner's motion details "broader concerns regarding bond adjudications"; however, Petitioner's motion uses general language citing "recent reporting." Petitioner has failed to identify any particular monitoring, pressure, or even to provide the specific reporting addressed in Petitioner's motion. ECF No. 10 at 2-3. The Federal Rules of Civil Procedure require that a motion made to the court "state with particularity the grounds for seeking the order." Fed. R. Civ. P. 7(b)(2). Here, Petitioners' general statements citing ambiguous unspecified reporting fail to articulate any basis for the Court to find that Respondents have violated the Court's order in this case. Moreover, "discretionary decisions granting or denying bond are not subject to judicial review[.]" *Prieto-Romero v. Clark*, 534 F.3d 1053, 1058 (9th Cir. 2008) (citing 8 U.S.C. § 1226(e)). 8 U.S.C. § 1226(e) "precludes an alien from 'challeng[ing] a discretionary judgment by the Attorney General or a decision that the Attorney General has made regarding his detention or release.'" *Jennings v. Rodriguez*, 138 S. Ct. 830, 841 (2018) (quoting *Demore v. Kim*, 538 U.S. 510, 516 (2003)).

Because Petitioner is challenging the IJ's discretionary decision to deny his release on bond and has otherwise failed to articulate a specific basis for the Court to find that

Respondents have violated the Court's order, the Court should deny Petitioner's Motion to Enforce.

C. PETITIONERS HAVE NOT EXHAUSTED THEIR ADMINISTRATIVE REMEDIES

Even if Petitioner had made specific arguments as to how the IJ failed to comply with the Court's order, Petitioner has still failed to exhaust administrative remedies "Exhaustion can be either statutorily or judicially required." *Acevedo–Carranza v. Ashcroft*, 371 F.3d 539, 541 (9th Cir. 2004). "If exhaustion is statutory, it may be a mandatory requirement that is jurisdictional." *Id.* (citing *El Rescate Legal Servs., Inc. v. Exec. Office of Immigration Review*, 959 F.2d 742, 747 (9th Cir. 1991)). "If, however, exhaustion is a prudential requirement, a court has discretion to waive the requirement." *Id.* (citing *Stratman v. Watt*, 656 F.2d 1321, 1325–26 (9th Cir. 1981)). Here, the proper avenue for Petitioner's grievance with the bond denial is to utilize the administrative scheme and appeal the bond denial to the BIA. Notably, Petitioner has until July 23, 2026 to appeal the bond determination. *See* Exhibit 2 at 1:26:25-1:27:30.

The BIA is an appellate body within the Executive Office for Immigration Review and possesses delegated authority from the Attorney General. 8 C.F.R. §§ 1003.1(a)(1), (d)(1). The BIA is "charged with the review of those administrative adjudications under the [Immigration and Nationality Act (INA)] that the Attorney General may by regulation assign to it," including IJ custody determinations. 8 C.F.R. §§ 1003.1(d)(1), 236.1, 1236.1. The BIA not only resolves particular disputes before it, but is also directed to, "through precedent decisions, . . . provide clear and uniform guidance to [the Department of Homeland Security], the IJs, and the general public on the proper interpretation and administration of the [INA] and its implementing regulations." 8 C.F.R. § 1003.1(d)(1). Decisions rendered by the BIA are final, except for those reviewed by the Attorney General. 8 C.F.R. § 1003.1(d)(7).

"District Courts are authorized by 28 U.S.C § 2241 to consider petitions for habeas corpus." *Castro–Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001), *abrogated on other*

grounds by Hernandez–Vargas v. Gonzales, 548 U.S. 30 (2006). "That section does not specifically require petitioners to exhaust direct appeals before filing petitions for habeas corpus." *Id.* That said, the Ninth Circuit "require[s], as a prudential matter, that habeas petitioners exhaust available judicial and administrative remedies before seeking relief under § 2241." *Id.* Specifically, "courts may require prudential exhaustion if (1) agency expertise makes agency consideration necessary to generate a proper record and reach a proper decision; (2) relaxation of the requirement would encourage the deliberate bypass of the administrative scheme; and (3) administrative review is likely to allow the agency to correct its own mistakes and to preclude the need for judicial review." *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007) (cleaned up).

"When a petitioner does not exhaust administrative remedies, a district court ordinarily should either dismiss the petition without prejudice or stay the proceedings until the petitioner has exhausted remedies, unless exhaustion is excused." *Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011) (citations omitted); *see also Alvarado v. Holder*, 759 F.3d 1121, 1127 n.5 (9th Cir. 2014), *abrogated on other grounds by Santos-Zacaria v. Garland*, 598 U.S. 411 (2023) ("issue exhaustion is a jurisdictional requirement"); *Tijani v. Holder*, 628 F.3d 1071, 1080 (9th Cir. 2010) (court "lacks jurisdiction to review legal claims not presented in an alien's administrative proceedings before the BIA"). Moreover, "a petitioner cannot obtain review of procedural errors in the administrative process that were not raised before the agency merely by alleging that every such error violates due process." *Reid v. Engen*, 765 F.2d 1457, 1461 (9th Cir. 1985); *see also Sola v. Holder*, 720 F.3d 1134, 1135–36 (9th Cir. 2013) (declining to address a due process argument that was not raised below because it could have been addressed by the agency).

Here, requiring Petitioner to exhaust administrative remedies is warranted because agency expertise is required. "[T]he BIA is the subject-matter expert in immigration bond decisions[.]" *Aden v. Nielsen*, No. C18-1441RSL, 2019 WL 5802013, at *2 (W.D. Wash. Nov. 7, 2019); *see also Delgado v. Sessions*, No. C17-1031-RSL-JPD, 2017 WL

4776340, at *2 (W.D. Wash. Sept. 15, 2017) (noting a denial of bond to an immigration detainee was "a question well suited for agency expertise").

Waiving exhaustion would also encourage other detainees to bypass the BIA and directly appeal from the IJ to federal district court. *See Aden*, 2019 WL 5802013, at *2 ("[R]elaxation of the exhaustion requirement would likely encourage other detainees to bypass the BIA and directly appeal their no-bond determinations from the [IJ] to federal district court."). Individuals, like Petitioner, would have little incentive to seek relief before the BIA if this Court permits review here. And allowing a skip-the-BIA-and-go-straight-to-federal-court strategy would needlessly increase the burden on district courts. *See Bd. of Tr. of the Constr. Laborers' Pension Trust for S. Cal.. v. M.M. Sundt Constr. Co.*, 37 F.3d 1419, 1420 (9th Cir. 1994) ("Judicial economy is an important purpose of exhaustion requirements.") (citation omitted); *Santos-Zacaria*, 598 U.S. at 418 (noting "exhaustion promotes efficiency"). If the IJ erred, this Court should allow the administrative process to correct itself.

Moreover, detention alone is not an irreparable injury. Discretion to waive exhaustion "is not unfettered." *Laing v. Ashcroft*, 370 F.3d 994, 998 (9th Cir. 2004). "[C]ivil detention after the denial of a bond hearing [does not] constitute[] irreparable harm such that prudential exhaustion should be waived." *Reyes v. Wolf*, No. C20-0377JLR, 2021 WL 662659, at *3 (W.D. Wash. Feb. 19, 2021), *aff'd sub nom. Diaz Reyes v. Mayorkas*, No. 21-35142, 2021 WL 3082403 (9th Cir. July 21, 2021).

Finally, Petitioner bears the burden to show that an exception to the exhaustion requirement applies. *Leonardo*, 646 F.3d at 1161; *Aden*, 2019 WL 5802013, at *3. Here, Petitioner has failed to demonstrate that exhaustion should be waived. Other courts in this district agree. *See, e.g.*, *Rana v. LaRose*, No. 26-cv-00285-RSH-DDL, ECF No. 11 (S.D. Cal. Mar. 13, 2026) (denying motion to enforce judgment where petitioner was denied bond on the basis of flight risk because there was no indication that administrative remedies were first exhausted) (citing *Leonardo*, 646 F.3d at 1160); *Baker v. Gordon*, No. 25-cv-03539-CAB-SBC, ECF No. 8 at 2:1–5 (S.D. Cal. Jan. 30, 2026) ("As the Ninth

Circuit has explained, '[Petitioner] pursued habeas review of the [IJ's] adverse bond determination before appealing to the BIA. This short cut was improper. [Petitioner] should have exhausted administrative remedies by appealing to the BIA before asking the federal district court to review the [IJ's] decision.'") (quoting *Leonardo*, 646 F.3d at 1160).

III. CONCLUSION

For the foregoing reasons, Respondents request that the Court deny Petitioner's motion for temporary restraining order and dismiss his habeas petition.

DATED: July 8, 2026

Respectfully submitted,

ADAM GORDON
United States Attorney

s/ Jacob T. Metzger
JACOB T. METZGER
Special Assistant U.S. Attorney
Attorney for Respondents