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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

L.B. Petitioner/Plaintiff, vs. CHRISTOPHER J. LAROSE, Warden, Otay Mesa Detention Center; PATRICK DIVVER, Field Office Director, San Diego Office of Detention and Removal; TODD M. LYONS, Acting Director, U.S. Immigration and Customs Enforcement; and TODD BLANCHE, Acting Attorney General, U.S. Department of Justice; and MARKWAYNE MULLIN, Secretary, U.S. Department of Homeland Security Respondents/Defendants.	**Case # 3:26-cv-3330-RSH-JLB** **PETITIONER'S TRAVERSE**

Petitioner L.B. ("Petitioner") files this Traverse in response to Respondent's Return to our Petition for a Writ of Habeas Corpus filed on May 29, 2026.

Petitioner's Prior Habeas and the Present

Petitioner's current habeas challenges the constitutionality of the bond hearing conducted by the immigration judge ("IJ") on February 2, 2026, while her prior habeas filed in January 2026 was premised on the unconstitutionality of her prolonged detention and whether the IJ had followed this Court's January 28, 2026 Order.[1]

Jurisdiction

Respondents assert that this Court does not have jurisdiction to review an IJ's discretionary factual finding. However, where a petitioner contends that an immigration judge committed constitutional or legal error, or failed to review probative evidence in the record, district courts have jurisdiction to review denial of bond. *Hernandez v. Sessions*, 872 F.3d 976 (9th Cir. 2017); *Lopez Reyes v. Bonnar*, 362 F. Supp. 3d 762 (N.D. Cal. 2019).

[1] Respondents filed a Notice of Related Cases which Petitioner had failed to do. In researching the scope of "related case" prior to filing, Petitioner's counsel had come across *Qualcomm Inc. v. GTE Wireless*, 79 F. Supp. 2d 1177 (S.D. Cal. 1999) and *Highfields Capital v. SeaWorld*, 365 F. Supp. 3d 1050 (D.C. Cal. 2019) which both seemed to indicate that in order to be considered related, the two matters had to be pending. Subsequent to Respondents' filing of their Notice, Petitioner's counsel was able to access Rule 40.1 on the Southern District's webpage (previously, she was unable to do so, because she consistently received error messages on the site). Once she reviewed Rule 40.1, it was clear that *Qualcomm* had relied on a prior version of Rule 40.1, and that the current version clearly states that a case is considered related even if "dismissed or otherwise terminated." Counsel apologizes for her error and any inconvenience to this Court and Respondents.

As Petitioner argues that the IJ committed legal error by not properly applying the burden of proof, by considering factors not indicative of flight risk, and by violating her due process rights, this Court has jurisdiction to hear her claims.

Exhaustion

Since this Court denied Petitioner's Motion to Enforce in March 2026, there has been new evidence regarding the futility of appealing a bond denial to the Board of Immigration Appeals ("BIA") and the length of time required for such an appeal.

For instance, an analysis of BIA data reveals that noncitizens are waiting an average of 446 days to have their appeals decided, and that, more specifically, most bond appeals are taking between six months and one year. Ex. 1. The same statistical analysis establishes that in the first quarter of 2026, the BIA "sustained ***zero*** noncitizen-filed bond appeals." (emphasis added). *Id.*

These figures are relevant to Petitioner's case as they patently expose the futility of appealing her bond denial to the BIA. Moreover, Petitioner will be awaiting a BIA adjudication for at least six months, an unacceptable period as every day spent in detention results in irreparable harm. *See, Addington v. Texas*, 441 U.S. 418,425 (1979) ("This Court repeatedly has recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection."). To date, Petitioner has already been detained for 16 months.

The Ninth Circuit does not require prudential exhaustion "where administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, [or] irreparable injury will result. . . . " *S.E.C. v. G.C. George Sec., Inc.*, 637 F.2d 685, 688 (9th Cir. 1981). "Where the agency's position on the question at issue appears already set, and it is very likely what the result of recourse to administrative remedies would be, such recourse would be futile and is not required." *See, Vasquez-Rodriguez v. Garland*, 7 F.4th 888, 896 (9th Cir. 2021). It is hard to see how an appeal to the BIA can be considered anything but futile when precisely zero bond appeals by noncitizens have been sustained in the first quarter of 2026. And waiting between six months and one year for an adjudication can hardly be called efficacious.

Further, since this Court decided Petitioner's prior Motion to Enforce, district courts have increasingly acknowledged that EOIR adjudications can no longer be trusted to be impartial. For instance, in *Perez Velasquez v. Bondi,* this Court stated:

> Petitioner points to evidence that BIA has been drastically reshaped within the past year, such that the BIA now functions to rubberstamp IJ bond denials and facilitate noncitizen removal.[..] While such evidence, on its own, is insufficient to waive exhaustion, the statistics support the position that the reconstituted BIA is far less likely to provide Petitioner with any efficacious relief. 3:26-cv-1759-GPC-DDL, 2026 WL 1042479, at *3 (S.D. Cal. April 16, 2026)

Similarly, in *Zheng v. Rokosky*, 26-cv-1689, 2026 WL 800203, * at 11 (D.N.J. Mar. 23, 2026), the court declared:

> the Court cannot ignore that the circumstances surrounding these proceedings raise substantial concerns as to whether any non-citizen can receive the impartial hearing that due process requires. . . . Respondents have reportedly terminated nearly one hundred IJs in recent months. And now openly advertise these vacancies for "deportation" judges. *YOU BE THE JUDGE*.... These developments, among others, raise a serious question as to whether the constitutional guarantee of an impartial decisionmaker is being honored in any case brought before an IJ.

And in *Garcia Ortiz v. Henkey,* the court noted that:

> Petitioner has also submitted evidence that Immigration Judges across the country are systemically denying bond to [noncitizen] detainees, regardless of the weight of the evidence. For example, a former legal counsel to Immigration and Customs Enforcement describes how Immigration Judges in the Eastern District of Virginia have "abruptly and uniformly ceased" granting bond in post-habeas cases. 26-cv-0043, 26 WL 948275, at *3 (D. Idaho Apr. 7, 2026).

See also, e.g., Singh v. Valdez, 26-cv-1109, 2026 WL 890240 (D. Col April 1, 2026) ("[T]he mounting evidence that bond determination hearings conducted in Immigration Court... have preordained outcomes has become impossible to ignore."); *Briceno Solano v. Mason*, 818 F. Supp. 3d 802, 836 (S.D. W.V. Feb. 4, 2026) ("there is no chance any [bond] hearing that occurred would comport with due process"); *Chavez Ochoa v. Mason*, 2:26-cv-0130, 2026 WL 541144, at *2 n.4 (S.D.W.V. Feb. 26, 2026) ("immigration judges who provide neutral adjudications have been removed, and bond is systematically denied after a pro forma hearing with a predetermined outcomes.")

In light of the above, we ask that this Court grant Petitioner's petition and order her immediate release from custody.

Date: June 12, 2026

Respectfully submitted,

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