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9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 JAIDIVERT HURTADO ANCHICO,
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13 Petitioner,
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15 v.
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17 WARDEN OF OTAY MESA
18 DETENTION FACILITY, et al.,
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20 Respondents.
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Case No.: 26-cv-03559-LL-JAC

**RESPONSE TO AMENDED
MOTION TO ENFORCE
JUDGMENT**

On May 20, 2026, Petitioner was granted habeas relief, and this Court ordered that Respondents provide Petitioner with a bond hearing before an immigration judge (IJ) pursuant to 8 U.S.C. § 1226(a). *Hurtado-Anchico v. Warden et al*, 26-cv-02502-LL-DDL, ECF No. 6. (S.D. 2026). On May 29, 2026, Respondents provided Petitioner with the Court ordered bond hearing. Petitioner was ultimately denied bond by the IJ. On July 10, 2026, Petitioner filed an Amended Motion to Enforce its judgement, claiming that he has proven “by clear and convincing evidence” that Respondents’ violated this Court’s order. *See Anchico v. Warden of Otay Mesa Detention Facility et al*, 26-cv-03559, ECF No. 9 (S.D. 2026); *see also Stone v. City & Cty. of San Francisco*, 968 F.2d 850, 856 (9th Cir. 1992). For the foregoing reasons, this Court should deny Petitioner’s motion.

I. Argument

A. Respondent’s Complied with the Court’s Order

Petitioner claims that Respondents violated this Court’s order as the bond hearing provided by Respondents was constitutionally defective because the “IJ failed to comply with this Court’s Order because it did not ‘consider alternative conditions of release’ during [Petitioner’s] bond hearing.” *Anchico v. Warden of Otay Mesa Detention Facility et al*, ECF No. 9 at 3. However, contrary to Petitioner’s claim, Respondent’s complied with the order.

On May 20, 2026, this Court ordered that Petitioner be provided with a bond hearing pursuant to 8 U.S.C. § 1226(a). *Hurtado-Anchico v. Warden et al*, ECF No. 6. In compliance with the Court’s order, on May 29, 2026, Respondents provided Petitioner with a bond order pursuant to 8 U.S.C. § 1226(a) before an IJ. *See* Exhibit 1 (IJ Order). At the conclusion of the hearing, the IJ denied bond, holding that he “did not find the [Petitioner’s] testimony to be credible in light of the I-213, the court further found the [Petitioner] did not meet his burden of demonstrating he is not a danger to the community or a flight risk in light of the smuggling incident.” *See id.* In other words, the IJ properly placed the burden on the Petitioner. The IJ then properly pointed out and analyzed why Respondent failed to

1 meet its burden to show that he was not a danger to the community. Once the IJ determines
2 Petitioner is a danger to the community, the IJ cannot consider alternative conditions of
3 release, as no amount of bond can mitigate danger to the community. *See Matter of Urena*,
4 25 I&N Dec. 140 (BIA 2009) (Dangerous aliens are properly detained without bond
5 pending the completion of proceedings to remove them from the United States. Only if an
6 alien has established that he would not pose a danger to property or persons should an
7 Immigration Judge decide the amount of bond necessary to ensure the alien's presence at
8 proceedings to remove him from the United States)

9 In a custody redetermination under section 236(a) of the Immigration and
10 Nationality Act, 8 U.S.C. § 1226(a) (2000), where an alien must establish to the satisfaction
11 of the Immigration Judge that he or she does not present a danger to others, a threat to the
12 national security, or a flight risk, **the Immigration Judge has wide discretion in deciding**
13 **the factors that may be considered.** *Matter of Guerra*, 24 I&N Dec. 37 (BIA
14 2006)(emphasis added). **In determining whether an alien presents a danger to the**
15 **community at large and thus should not be released on bond pending removal**
16 **proceedings, an Immigration Judge should consider both direct and circumstantial**
17 **evidence of dangerousness**, including whether the facts and circumstances present
18 national security considerations. *Matter of Hussam Fatahi*, 26 I&N Dec. 791 (BIA
19 2016)(emphasis added).

20 Here, Petitioner does not dispute that the burden was properly placed on him to show
21 he was not a danger to the community or a flight risk. Rather, Petitioner contests the IJ's
22 finding that Petitioner was a danger to the community. *See Anchico v. Warden of Otay*
23 *Mesa Detention Facility et al*, generally ECF No. 9. The IJ has wide discretion to make the
24 determination as to whether Petitioner is a danger to the community as established by
25 *Matter of Guerra* and *Matter of Hussam Fatahi*. The IJ took testimony and analyzed the
26 evidence presented before him. As a result, the IJ held that Petitioner had not met his burden
27 to show he is "not a danger to the community or a flight risk in light of the smuggling
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1 incident.” When the IJ found that Petitioner was a danger to the community, pursuant to
2 *Matter of Urena*, the IJ then properly denied bond, as no amount of bond can mitigate a
3 finding of danger to the community. Therefore, given that this finding was within the IJ’s
4 discretion, Respondent’s did not violate the District Court’s order and provided Petitioner
5 with a bond pursuant to 8 U.S.C. § 1226(a).

6 **B. Administrative Remedies Should Be Exhausted**

7 The Court should ensure Petitioner properly exhausts administrative remedies. The
8 Ninth Circuit requires that “habeas petitioners exhaust available judicial and
9 administrative remedies before seeking relief under § 2241.” *Castro–Cortez v. INS*, 239
10 F.3d 1037, 1047 (9th Cir. 2001). “When a petitioner does not exhaust administrative
11 remedies, a district court ordinarily should either dismiss the petition without prejudice
12 or stay the proceedings until the petitioner has exhausted remedies, unless exhaustion is
13 excused.” *Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011); *see also Alvarado*
14 *v. Holder*, 759 F.3d 1121, 1127 n.5 (9th Cir. 2014) (issue exhaustion is a jurisdictional
15 requirement); *Tijani v. Holder*, 628 F.3d 1071, 1080 (9th Cir. 2010) (no jurisdiction to
16 review legal claims not presented in the petitioner’s administrative proceedings before
17 the BIA).

18 Here, Petitioner was already provided with a bond hearing pursuant to 8 U.S.C. §
19 1226(a). Petitioner has yet to file a bond appeal before the Board of Immigration Appeals
20 (BIA). *See* Exhibit 2 (EOIR Courts & Appeals System printout). Accordingly, the Court
21 should dismiss without prejudice or stay these proceedings until the bond appeal is
22 decided before the BIA.

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II. CONCLUSION

For the foregoing reasons, Respondents respectfully request that the Court dismiss this action.

DATED: July 21, 2026

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s/ Antonio Estrada
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