UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

SAN DIEGO DIVISION

ARMANDO FUENTES SANCHEZ,

AGENCY No [redacted]

PETITIONER,

V,

Markwayne Mullin, Secretary, U.S. Department of Homeland Security, et. al.,

RESPONDENTS.

PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

Armando Fuentes Sanchez

Petitioner,

v.

Markwayne Mullin, in his official capacity as Secretary of Homeland Security, Christopher LaRose, in his official capacity as Warden of Otay Mesa Detention Center, Patrick Divver, in his official capacity as SAN DIEGO Field Office Director, ICE Enforcement Removal Operations; Todd LYONS, in his official capacity as Acting Director of ICE; and TODD BLANCHE, Acting U.S. Attorney General; IMMIGRATION AND CUSTOMS ENFORCEMENT; DEPARTMENT OF HOMELAND SECURITY,

Respondents.

Case No. '26CV4751 TWR DEB

Agency Number [redacted]

PETITION FOR HABEAS CORPUS

INTRODUCTION

1. Petitioner ARMANDO FUENTES SANCHEZ files this petition for writ of habeas corpus.

2. Petitioner is a native of MEXICO who has resided in the United States since 2002, *for more than 24 years*.

3. Petitioner was detained by immigration authorities in June 2026. He has been detained since that time, and is being held at the Otay Mesa Detention Center.

4. Petitioner is in pending removal proceedings before an immigration judge and is charged with having entered the United States without inspection. He is seeking relief before the immigration court in the form of 42B Cancellation of Removal, and his next hearing is September 8, 2026 at 1pm PST.

5. On August 5, 2026, Petitioner was provided a bond hearing pursuant to *8 CFR §1236.*

6. On August 5, 2026 the Immigration Judge denied bond on the grounds that petitioner had not shown that he was not a flight risk or a danger to the community.

7. The immigration judge failed to properly apply the factors required by the BIA's precedent decisions *Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006) and *Matter of Patel,* 15 I. & N. Dec. 666, 666–67 (BIA 1976). Given that Petitioner has resided in the United States for more than 22 years, has no criminal history aside from driving without a license in Florida that does not permit immigrants without legal status from obtaining driver's licenses, has worked, has established significant family ties, and is eligible for relief from removal, precedent establishes that the immigration judge find that he is *not* a flight risk and order a reasonable bond.

8. Despite precedent, the immigration judge held that Petitioner was such a flight risk that no bond should be afforded and that he should continue to be detained for the duration of his removal proceeding.

9. Petitioner is deprived of his personal liberty and continues to be detained as a result.

10. Any appeal of that decision to the Board of Immigration Appeals is futile and will cause significant delay, impinging on Petitioner's due process and liberty interests.

11. Petitioner's detention violates the Immigration and Nationality Act, the accompanying regulations, and Petitioner's right to Due Process.

JURISDICTION AND VENUE

12. This Court has jurisdiction over the present action based on the United States Constitution Article I, Section 9 (Suspension Clause); 28 U.S.C. § 2241 (habeas corpus); 28 U.S.C. § 1331 (Federal Question), and 28 U.S.C. § 1346(b) (Federal Respondent).

13. Though, in general, the Court does not have jurisdiction to review discretionary bond decisions." Soriano, --- F. Supp. 3d ---, 2026 WL 969764, at *3 (citing 8 U.S.C. § 1226(e)). However, while an IJ's discretionary judgment may not be judicially reviewed pursuant to 8 U.S.C. § 1226(e), district courts retain habeas jurisdiction over "constitutional claims or questions of law." Singh v. Holder, 638 F.3d 1196, 1202 (9th Cir. 2011). See also Calderon-Rodriguez v. Wilcox, 374 F. Supp. 3d 1024, 1031 (W.D. Wash. 2019) ("Federal district courts have habeas jurisdiction to review bond hearing determinations for constitutional claims and legal error."). Such jurisdiction extends to "mixed questions" involving application of law to facts. N.A. v. Warden, No. 5:25-cv-03007-CV-MBK, 2026 WL 734587, at *6 (C.D. Cal. Feb. 20, 2026), report and recommendation adopted sub nom. N.A. v. Warden, Adelanto Det. Facility, No. 5:25-CV-03007-CV-MBK, 2026 WL 734585 (C.D. Cal. Mar. 12, 2026) (citing Martinez v. Clark, 124 F. 4th 775, 783 (9th Cir. 2024)). Indeed, "claims that the discretionary process itself was constitutionally flawed are cognizable in federal court on habeas because they fit comfortably within the scope of § 2241." Id. (internal quotation marks and citation omitted). Because Petitioner argues that the process he was provided at his § 1226(a) bond hearing was legally and constitutionally deficient, this Court retains jurisdiction to review Petitioner's claims

14. Venue is properly with this Court pursuant to 28 U.S.C. § 1391(e)(1) because this is a civil action in which Respondents are employees or officers of the United States, acting in their official capacity; and a substantial part of the events or omissions giving rise to the claim occurred within the Central District of California, and there is no real property involved in this action.

15. Further, pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky,* 410 U.S. 484, 493- 500 (1973), venue lies in the United States District Court for the Southern District of California, the judicial district in which Petitioner is currently detained.

PARTIES

16. Petitioner Armando Fuentes is a citizen of Mexico who resides in Florida. He is in pending removal proceedings and is currently detained at the Otay Mesa detention center.

17. Respondent Patrick Divver is the Director of the San Diego and Imperial Field Office of ICE's Enforcement and Removal Operations division. As such, Jeremy Casey is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity.

18. Respondent Markwayne Mullins is the Secretary of the Department of Homeland Security. He is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Mr. Mullins has ultimate custodial authority over Petitioner and is sued in his official capacity.

19. Respondent Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

20. Respondent Todd Blanche is the acting Attorney General of the United States. He is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. She is sued in her official capacity.

21. Respondent Executive Office for Immigration Review (EOIR) is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings.

22. Respondent Christopher LaRose is Warden of the Otay Mesa Detention Center where Petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his official capacity.

23. Respondent Todd Lyons is the Acting Director of ICE and has authority over the operations of ICE. In that capacity and through his agents, Respondent Lyons has broad authority over the operation and enforcement of the immigration laws. Respondent Lyons is sued in his official capacity.

FACTS

24. Petitioner Armando Fuentes is a native and citizen of Mexico. He is 46 years old. His eldest son [redacted] Fuentes suffers from autism, attention deficit disorder, and diabetes. He does not work and is fully dependent on the Petitioner. His second son, also a US Citizen, [redacted] Fuentes [redacted]z, he was born [redacted] and only recently began a part time job and is largely dependent on the Petitioner as well. He was not apprehended upon entry about 24 years ago. He was arbitrarily detained late June 2026. He is currently held at the Otay Mesa Detention Center.

25. Petitioner arrived in the United States without inspection in 2002 and has resided in the United States since that time, more than 24 years.

26. Petitioner is married and has two children both of whom are United States citizens. Petitioner has resided with his family in Florida for many years. His eldest son [redacted] Fuentes suffers from autism, attention deficit disorder, and diabetes. He does not work and is fully dependent on the Petitioner. His second son, also a US Citizen, [redacted] Fuentes [redacted]z, he was born [redacted] and only recently began a part time job and is largely dependent on the Petitioner as well.

27. He was not apprehended upon entry about 24 years ago. He was arbitrarily detained late June 2026. He is currently held at the Otay Mesa Detention Center.

28. Petitioner was provided a bond hearing before an immigration judge on the 5th of August 2026 pursuant to *8 C.F.R §1236.*

29. Immigration Judge Halliday Roberts held the bond hearing on August 5, 2026.

30. Petitioner submitted over 100 pages of evidence in support of his bond hearing showing that he was not a danger to the community, was well respected and liked by his fellow community members, had paid taxes and was not a flight risk due to his many ties to the United States. He submitters letters from family, employers, and a sponsor to ensure his appearance at future court hearings. Several items of the evidence were referenced during the short bond hearing that lasted less than 12 minutes even with a delay to permit the translation from English to Spanish.

31. The Immigration Judge denied Petitioner's request for release on bond, finding that the Petitioner had failed to show he was not a flight risk or security risk. The Immigration Judge's reasons for denial of bond were 1) his driving without a license conviction posed a danger despite no known harm arising from them; and 2) his driving without a license conviction shows a disregard for the law, which shows that he may not appear to immigration court though no failure to appear to court in the past was ever mentioned, nonetheless he failed to show he was not a flight risk.

32. Petitioner did not file an appeal of the bond decision because it would be futile and he would suffer irreparable harm.

33. Petitioner's next hearing before the immigration judge is a master calendar hearing set for September 4, 2026 at 1pm.

34. Petitioner remains in the custody of Respondents and detained at the Otay Mesa detention center.

EXHAUSTION TO THE BOARD OF IMMIGRATION APPEALS IS NOT REQUIRED

35. There is no requirement of statutory exhaustion for a petition for writ of habeas corpus. Though exhaustion may be required as a prudential matter this requirement may be waived when administrative remedies are inadequate or would be futile without immediate judicial intervention. *Ward v. Chavez*, 678 F.3d 1042, 1045 (9th Cir. 2012). It has been stated in other cases that Courts have discretion to waive the exhaustion requirement where administrative remedies are not efficacious, irreparable injury would result, or the administrative proceedings would be void. See *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (citation omitted). Here multiple *Liang* factors apply such that waiver is warranted.

36. "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) (internal citations and quotations omitted).

37. Exhaustion aids "judicial review by allowing the appropriate development of a factual record in an expert forum; conserve[s] the court's time because of the possibility that the relief applied for may be granted at the administrative level; and allow[s] the administrative agency an opportunity to correct errors in the course of administrative proceedings." *Ruviwat v. Smith*, 701 F.2d 844, 845 (9th Cir. 1983) (per curiam). Since the exhaustion requirement is judicially created, the failure to exhaust does not deprive a federal court of jurisdiction. See *Brown v. Rison*, 895 F.2d 533, 535 (9th Cir. 1990), overruled on other grounds by *Reno v. Koray*, 515 U.S. 50 (1995). Furthermore, the exhaustion requirement can be waived in Section 2241 cases since it is not a "jurisdictional prerequisite." *Ward*, 678 F.3d at 1045 (citation omitted). Exhaustion may be waived "if pursuing those [administrative] remedies would be futile." Id. (alteration in original) (citation omitted).

38. A "key consideration" in exercising such discretion is whether "relaxation of the requirement would encourage the deliberate bypass of the administrative scheme." Id. (quoting *Montes v. Thornburgh*, 919 F.2d 531, 537 (9th Cir. 1990)). Here, exhaustion of administrative remedies should not be required as respondent's failed to comply with the court's order. See *Wu v. Santacruz*, Case No. 5:26-cv-03552-JDE, 2026 WL 2058439, at *2 (C.D. Cal. July 14, 2026) (finding that "at least as to the question as to whether the IJ complied with this Court's Order, that question does not require agency expertise but rather a legal determination by this Court" was one factor excusing exhaustion); *Kumar v. Rios*, Case No. 5:26-cv01988-MAR, 2026 WL 1764923, at *3 (C.D. Cal. June 12, 2026) ("[E]ven if the BIA were to ultimately reverse the IJ's decision denying bond, that would not afford [the petitioner] an adequate administrative remedy for his prolonged detention in the interim."); *Sanchez v. Santacruz*, Case No. 5:26-cv-SSS-BFM; Dkt. No. 20 at 6 (C.D. Cal. Apr. 27, 2026) (recommending waiver of the exhaustion requirement because, based on data regarding the time for the BIA to process appeals in 2024 and 2025, "forcing [the petitioner] to exhaust his remedies would result in irreparable injury"), report and recommendation accepted by, 2026 WL 118961 (C.D. Cal. Apr. 30, 2026); *Mancia v. Bondi*, Case No. 26-cv-01392-PHX-DWL (CDB), 2026 WL 1085090, at *2 (D. Ariz. Apr. 22, 2026) ("Here, the declines to require exhaustion in light of 'the irreparable harm that would result from wrongful detention, which may result given the lengthy time it takes to have an appeal decided' by the BIA.") (citation omitted); N.A., 2026 WL 1045196, at *6 ("[T]his Court—not the [Bureau of Immigration Appeals]—is best positioned to determine whether the IJ complied with the Court's R&R and the District Court's order adopting it."); *Mau v. Chertoff*, 562 F.Supp.2d 1107, 1114 (S.D. Cal. 2008) ("It should not fall to the [Bureau of Immigration Appeals] to review [the respondents'] compliance with this Court's judgment.")

39. Prudential exhaustion should be waived because administrative remedies are inadequate and exhaustion would be futile. The Board of Immigration Appeals has been drastically re-shaped within the past year such that it now serves to rubberstamp IJ Bond denials and facilitate the removal of noncitizens. Of the 39 Board of Immigration Appeals decisions issued in the months May through August 2025 in cases where the noncitizen appealed Adelanto immigration court bond decisions, none of those cases overturned an immigration judge's

finding that the noncitizen was a danger to others or a flight risk. Of the six decisions which sustained the appeal and remanded the case, all were due to procedural errors made by the immigration judge.

40. The precedent decisions issued by the Board of Immigration Appeals under the Trump Administration further indicate that it is futile to require prudential exhaustion in this case. A March 30, 2026 report issued by the National Public Radio found that last year, 97 percent of Board published decisions were in favor of the Department of Homeland Security. On April 9, 2026, *The New York Times* reported that "The administration has instructed judges to stop granting bond to immigrants who crossed the border illegally, a change from decades of practice. The new policy has required people to remain in detention for extended periods even if they do not have a criminal record and have lived in the country for years."

41. Petitioner would suffer irreparable injury in the form of continued detention without a legally adequate opportunity to demonstrate his entitlement to bond. Several courts have found that continued detention after a potentially legally inadequate hearing may constitute such irreparable harm. W.T.M. v. Bondi, No. 2:25-CV-02428-RAJ-BAT, 2026 WL 262583, at *3 (W.D. Wash. Jan. 30, 2026) (finding irreparable injury where BIA review exceeded 200 days and "[d]istrict courts in this Circuit 'routinely' waive prudential exhaustion requirements for noncitizens facing prolonged detention while awaiting administrative appeals." (quoting Rodriguez v. Bostock, 779 F. Supp. 3d 1239, 1251 (W.D. Wash. 2025)); C.A.R.V. v. Wofford, No. 1:25- CV-01395-JLT-SKO, 2026 WL 241823, at *5 n.7 (E.D. Cal. Jan. 29, 2026) (holding petitioner satisfied irreparable injury Laing factor by "demonstrating the irreparable harm that would result from wrongful detention, which may result given the lengthy time it take to have an appeal decided."); Loba L.M. v. Andrews, No. 1:25-CV-00611-JLT-SAB, 2026 WL 710307, at *5 (E.D. Cal. Mar. 13, 2026) (adopting reasoning of C.A.R.V.); Garcia v. Hyde, No. 25-CV-585-JJM-PAS, --- F. Supp. 3d ---, 2025 WL 3466312, at *6 (D.R.I. Dec. 3, 2025) (finding irreparable injury in the form of continued detention where petitioner would likely face several additional months of detention while awaiting BIA review); Hechavarria v. Whitaker, 358 F. Supp. 3d 227, 240 (W.D.N.Y. 2019) (waiving exhaustion requirement where "delays inherent in the [BIA review] process ... would result in the very harm that the bond hearing was designed to prevent:

prolonged detention without due process during lengthy and backlogged removal proceedings"); Soriano, --- F. Supp. 3d -- -, 2026 WL 969764, at *4 ("Moreover, given the lengthy delays inherent in the current appeals process, the Court finds Petitioner will suffer irreparable injury if he is required to wait for a BIA decision before being permitted to file a habeas claim."). Thus, while continued detention alone may not constitute irreparable injury, the inherent delays in the current appeals process support a finding that Petitioner will suffer irreparable injury if he is required to wait for BIA adjudication of his bond denial.

42. The Ninth Circuit has acknowledged that "economic burdens imposed on detainees and their families as a result of detention" as well as "the collateral harms to children of detainees whose parents are detained" are relevant considerations in the irreparable harm analysis. *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017). Accordingly, Petitioner's evidence regarding his two children with one with autism and complex medical needs and his position as the sole economic provider for his partner and children supports a finding of irreparable injury justifying a waiver of the exhaustion requirement. See *Malakhov v. Scott*, No. 2:26-CV-00646-JHC, 2026 WL 809881, at *3 (W.D. Wash. Mar. 24, 2026) (finding petitioner demonstrated irreparable harm through potential collateral harm faced by his children); *Soriano*, --- F. Supp. 3d ---, 2026 WL 969764, at *4 (noting that petitioner had "dependents who rely on him financially and emotionally, and that relationship is severely negatively impacted by his continued detention" when determining that petitioner will suffer irreparable injury if required to exhaust his BIA appeal).

43. As such it is futile to require Petitioner to appeal to the Board of Immigration Appeals and any requirement of prudential exhaustion should be waived.

44. The combination of evidence in this case—including evidence that (1) the reconstituted BIA is unlikely to provide Petitioner with any efficacious relief, and (2) Petitioner would likely face lengthy continued detention while unable to provide for his family and care for his children with complex medical needs—suggest that waiver of exhaustion is appropriate.

THE COURT HAS JURISDICTION OVER MIXED QUESTIONS OF LAW AND LEGAL QUESTIONS

44. The jurisdiction stripping provision at 8 U.S.C. § 1226(e) applies only to a challenge to a "discretionary judgment by the Attorney General or a decision that the Attorney General has made regarding his detention or release." *Jennings v. Rodriguez*, 583 U.S. 281, 295 (2018) (plurality) (cleaned up).

45. The Court has jurisdiction to address legal claims and mixed questions of law. *Martinez v. Clark*, 124 F.4th 775, 783 (9th Cir. 2024).

46. The Court must apply Board of Immigration Appeals precedent to determine whether Petitioner presents such a risk of flight that a decision denying bond in its entirety is warranted. *Matter of Guerra*, 24 I. & N. Dec. 37 (BIA 2006); *Matter of Patel,* 15 I. & N. Dec. 666, 666–67 (BIA 1976).

47. The application of these precedent decisions to undisputed facts is reviewable as a mixed question of law. *Wilkinson v. Garland*, 601 U.S. 209, 221 (2024).

LEGAL STANDARD

48. "In light of Martinez, courts may review an IJ's finding that an alien poses a flight risk for abuse of discretion." Zaitsev v. Warden of Adelanto ICE Processing Center, No. 2:26-CV-00454-SPG-AS, 2026 WL 391429, at *10 (C.D. Cal. Feb. 9, 2026) (citing 124 F. 4th at 784). "'[A]buse of discretion' review does not involve 'reweigh[ing] evidence' but rather determining whether the IJ 'applied the correct legal standard.'" Loba L.M. v. Andrews, No. 1:25-CV-00611-JLT-SAB, 2026 WL 710307, at *5 (E.D. Cal. Mar. 13, 2026) (quoting Martinez, 124 F. 4th at 784) (alterations in original). Thus, "the Court must decide whether the IJ 'relied upon proof that—as a matter of law—could not establish'" the conclusion drawn. Kharis v. Sessions, No. 18-CV-04800-JST, 2018 WL 5809432, at *5 (N.D. Cal. Nov. 6, 2018) (quoting Nguti v. Sessions, No. 16-CV-6703, 2017 WL 5891328, at *3 (W.D.N.Y. Nov. 29, 2017)). The scope of this Court's review remains the same whether the government or petitioner bears the burden of proof. Id. Lastly, "the reviewing court must bear in mind that 'the government's discretion to incarcerate

noncitizens is always constrained by the requirements of due process.'" Loba L.M., 2026 WL 710307, at *5 (quoting Hernandez, 872 F.3d at 981).

CAUSES OF ACTION

COUNT I

Violation of Administrative Procedure Act: Ongoing Detention Unauthorized Under *Matter of Patel*

48. Petitioner incorporates the allegations in the paragraphs above as though fully set forth here.

49. In *Matter of Patel*, Dec. 666, 666–67 (BIA 1976), the Board of Immigration Appeals considered whether an immigration judge erred in releasing a noncitizen on a bond of $500 rather than releasing him on his own recognizance. In setting a bond of $500, judge relied upon the noncitizen having "overstayed his student visa" and the fact that "the visa petition of which he is the beneficiary was denied because he lacked a labor certification." *Id.* at 667.

50. The Board reversed and held that "[t]hese factors bear little if any relevance to the issue of whether or not the [noncitizen] is likely to appear for his deportation proceeding." *Id.* According to the Board, "[s]uch a broad interpretation of what constitutes an 'adverse factor' in this context could result in requiring a bond of almost every alien who is held in deportation proceedings." *Id.* Therefore, the Board ordered the release of the noncitizen on his own recognizance. *Id.*

51. *Matter of Patel* continues to be binding precedent. *See Matter of R-A-V-P-*, 27 I. & N. Dec. 803, 805 (BIA 2020) ("we have found that an alien who had prior lawful status and a probable path to future lawful status, as well as immediate family members with whom he could continue to reside in the United States, did not present a flight risk. *See Matter of Patel*, 15 I&N Dec. 666, 667 (BIA 1976)").

52. Immigration judges are required to follow precedent. 8 C.F.R. § 1003.1(g) ("decisions of the Board and decisions of the Attorney General are binding on

all officers and employees of DHS or immigration judges in the administration of the immigration laws of the United States.").

53. The one exception to *Matter of Patel* is that the bond statute now requires the posting of a minimum bond of $1500 when a noncitizen is ordered released by the Attorney General. 8 U.S.C. § 1226(a)(2).

54. The immigration judge found that Petitioner was a flight risk because his convictions for driving without a license showed he disregarded the law, which showed he might disregard the immigration laws, which means he might not appear at his immigration court hearings.

55. *Matter of Patel* dictates that *no bond* should have been required at all, let alone a finding that Petitioner was a flight risk of such a magnitude that no bond could be set to provide incentives for his continued appearance before the immigration court. *Matter of Patel,* 15 I. & N. Dec. 666, 667 (BIA 1976) ("it appears to us that no reasons have been given to justify holding the respondent under even a minimal bond.")

56. "[A]n individual's bond hearing fails to comport with due process where an Immigration Judge relies on considerations that would lead to an automatic denial of bond in all cases." *Lemus Crispin v. Bondi*, No. 1:26-CV-191 (LMB/WEF), 2026 WL 768859, at *5 (E.D. Va. Mar. 18, 2026).

57. The finding that Petitioner came to the United States unlawfully and worked without authorization is not a basis for determining that Petitioner is a flight risk and denying bond. *Lemus Crispin v. Bondi*, No. 1:26-CV-191 (LMB/WEF), 2026 WL 768859, at *6 (E.D. Va. Mar. 18, 2026).

58. Petitioner establishes that he is not a flight risk for purposes of 8 U.S.C. § 1226(a). He has lived in the United States for more than 24 years. He has two US citizen children. He is eligible for cancellation of removal before the immigration judge under 8 U.S.C. § 1255(i). He has three convictions for driving without a license in Florida. A state that does not permit undocumented immigrants to receive a driver's license.

59. *Matter of Patel* dictates that Petitioner be released from custody without any showing of bond required at all, and the amended bond statute requires a minimum bond of $1500. 8 U.S.C. § 1226(a)(2). As such, the immigration judge was required to issue the minimum bond of $1500.

COUNT II

Violation of Administrative Procedure Act: Abuse of Discretion in Failing to Properly Apply *Matter of Guerra*

60. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

61. The denial of release on bond is a final agency action where, as here, prudential exhaustion not required.

62. Under the Administrative Procedure Act, a court must "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law," that is "contrary to constitutional right [or] power," or that is "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(A)-(C).

63. Immigration judges are required to follow precedent. 8 C.F.R. § 1003.1(g) ("decisions of the Board and decisions of the Attorney General are binding on all officers and employees of DHS or immigration judges in the administration of the immigration laws of the United States.").

64. The Board of Immigration Appeals' precedent decision in *Matter of Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006) requires that the noncitizen demonstrate that he is not "a threat to national security, a danger to the community at large, likely to abscond, or otherwise a poor bail risk." *Id.* If these factors are met, the immigration judge is required to order release. *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1197 (9th Cir. 2022).

65. The *Matter of Guerra* factors include any or all of the following:

(1) whether the alien has a fixed address in the United States;

(2) the alien's length of residence in the United States;
(3) the alien's family ties in the United States, and whether they may entitle the alien to reside permanently in the United States in the future;
(4) the alien's employment history;
(5) the alien's record of appearance in court;
(6) the alien's criminal record, including the extensiveness of criminal activity, the recency of such activity, and the seriousness of the offenses;
(7) the alien's history of immigration violations;
(8) any attempts by the alien to flee prosecution or otherwise escape from authorities; and
(9) the alien's manner of entry to the United States.

Matter of Guerra, 24 I. & N. Dec. 37, 40 (BIA 2006).

66. The immigration judge failed to apply the full set of *Matter of Guerra* factors.

67. Solely traffic related convictions do not on their own show danger to the community and therefore cannot form the basis of a denial of release on bond

68. Petitioner has a fixed address with his family, has resided in the United States for more than 24 years, has worked, has no prior immigration violations with the exception of his unlawful entry, and has not attempted to escape authorities.

69. The finding that Petitioner was a flight risk such that no bond amount will secure his appearance at future immigration court hearings is an abuse of discretion in light of the *Matter of Guerra* factors. The factors were not taken into account and thus the hearing was legally and constitutionally defective.

70. The IJ's failure to consider or apply any of the Guerra factors and decision to instead rely on three pieces of evidence that "bear little if any relevance" to Petitioner's risk of flight, see Matter of Patel, 15 I. & N. Dec. 666, 666-67 (BIA 1976), while seemingly ignoring all evidence in Petitioner's favor constitutes a misapplication of the legal standard to the facts. Indeed, the IJ "relied upon proof that—as a matter of law—could not establish" that Petitioner was a flight risk. Kharis, 2018 WL 5809432, at *5 (quoting Nguti, 2017 WL 5891328). See also Lemus Crispin v. Bondi, No. 1:26-CV-191 (LMB/WEF), 2026 WL 768859, at *5 (E.D. Va. Mar. 18, 2026) (finding IJ

relied on "three facts that do not pass constitutional muster" in holding that petitioner failed to show he is not a risk of flight"). Thus, the IJ's finding of flight risk "was an error of law and the denial of bond was inappropriate." Judulang v. Chertoff, 562 F. Supp. 2d 1119, 1127 (S.D. Cal. 2008) (considering IJ's finding of present dangerousness). Cf. Zhou v. Trump, No. 25-CV-3503JLS-DEB, 2026 WL 937125 (S.D. Cal. Apr. 7, 2026) (declining to find that bond hearing was legally inadequate when record indicated that IJ applied the Guerra factors).

71. The IJ's misapplication of the legal standard also bears on Petitioner's due process rights. "[D]ue process requires [an] IJ to consider the relevant evidence[.]" Vilchez v. Holder, 682 F.3d 1195, 1198 (9th Cir. 2012) (citing Larita–Martinez v. I.N.S., 220 F.3d 1092, 1095 (9th Cir. 2000)). The Court notes that the IJ's order stated that it was made "[a]fter full consideration of the evidence presented[.]" ECF No. 1-4, at 2. In the absence of red flags, federal courts generally take immigration courts "at [their] word" regarding their consideration of evidence. Martinez, 124 F.4th at 785. See also Cole v. Holder, 659 F.3d 762 (9th Cir. 2011). Further, "[a]n IJ's failure to cite every piece of evidence in the record does not amount to clear error." See Larita-Martinez v. INS, 220 F.3d 1092, 1096 (9th Cir. 2000). However, when there is an indication that an IJ failed to actually consider all the evidence—such as if the IJ "fail[s] to mention highly probative of potentially dispositive evidence"—the Court will not credit an IJ's vague assertion. Cole, 659 F.3d at 771-72.

COUNT III

Violation of Administrative Procedure Act: Abuse of Discretion in Failing to Set Reasonable Bond Amount

70. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

71. The denial of release on bond is a final agency action where, as here, prudential exhaustion not required.

72. Under the Administrative Procedure Act, a court must "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law," that is "contrary to constitutional

right [or] power," or that is "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(A)-(C).

73. The immigration judge was required to set a reasonable bond amount to address any concerns that Petitioner is a flight risk, unless no bond amount would secure attendance in removal proceedings. *See e.g. Matter of R-A-V-P-*, 27 I. & N. Dec. 803, 807 (BIA 2020) (finding no amount of bond would secure attendance where the noncitizen had limited avenue for relief and minimal ties to the United States).

74. As Petitioner has valid avenues for relief and has established ties to the United States, the immigration judge was required to set a reasonable bond.

PRAYER FOR RELIEF

WHEREFORE, Petitioners respectfully request that this Court:

a. Assume jurisdiction over this matter;

b. Declare that the Immigration Judge's bond denial violated due process and was an abuse of discretion;

c. Issue a writ of habeas corpus requiring that Respondents release Petitioner;

d. Enjoin Respondents from re-detaining Petitioner unless his re-detention is ordered at a custody hearing before a neutral arbiter in which he is determined to be a flight risk or danger to the community in compliance with governing law and due process;

e. Alternatively, order that Petitioner be released on a bond of $1500;

f. Award reasonable attorneys' fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d), 5 U.S.C. § 504, or any other applicable law; and

g. Order further relief as this Court deems just and appropriate.

Dated: AUGUST 19, 2026

Respectfully Submitted,

/S/STEPHANIE M. ALCALA, ESQ.
Counsel for Petitioner