



1 2:24-cv-1960-TSZ, Dkt. No. 21, Order (dated July 7, 2025). On August 4, 2025, the  
2 Government complied with this order by providing Martinez with the court-ordered bond hearing  
3 where the Immigration Judge (“IJ”) denied his release after finding that the Government had met  
4 its burden. Dkt. No. 2-2, ECF 102-03, Order of the Immigration Judge. The IJ’s decision is the  
5 focus of this habeas litigation.

6 Instead of administratively appealing the decision (which Martinez still has time to do),  
7 Martinez brings this new habeas litigation and seeks emergency injunctive relief based on his  
8 disagreement with the IJ’s determination. Martinez filed the same type of challenge and TRO  
9 motion in 2019 after an IJ denied his release at his first court-ordered bond hearing. *Martinez v.*  
10 *Clark*, No. 19-cv-1945-RAJ-MLP. The Court denied that TRO motion and dismissed the habeas  
11 petition because Martinez had not exhausted his administrative remedies. *Id.*, Dkt. No. 15, Order  
12 adopting Report and Recommendation (Dkt. No. 14)). This habeas litigation and TRO Motion  
13 merit the same outcome.

14 In all, the motion is procedurally improper in that Martinez is not asking the Court to  
15 preserve the status quo pending further proceedings. Instead, he effectively asks the Court to  
16 rule immediately in his favor on the ultimate issue in this case and to grant him the relief that he  
17 seeks in his habeas petition. The briefing and adjudication of the habeas petition in the ordinary  
18 course are the appropriate mechanism for resolving the legal issues presented in Martinez’s TRO  
19 Motion. *See Guy v. Tanner*, 2014 WL 2818684, at \*3 (E.D. La. June 23, 2014) (“[petitioner’s]  
20 motion [for TRO] is no more than a veiled attempt to expedite the resolution of his habeas  
21 petition”).

22 Federal Respondents respectfully request that the TRO Motion be denied.

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1 **II. BACKGROUND**

2 **A. Removal Proceedings**

3 Petitioner Javier Martinez is a native of Costa Rica and citizen of Nicaragua who initially  
4 entered the United States on or about September 22, 1987. Dkt. No. 1, Pet., ¶ 7. He has two  
5 prior drug conspiracy convictions, with the last conviction being in 2013 resulting in a 60-month  
6 prison sentence. Pet., ¶¶ 14, 17, 18. In 2018, Martinez was released to ICE custody. *Id.*, ¶ 21.

7 Since his release, Martinez has been in immigration removal proceedings. An IJ ordered  
8 him removed to Nicaragua or, in the alternative, Costa Rica, and denied Martinez's application  
9 for relief from removal on March 13, 2019. Pet., ¶ 23. The Board of Immigration Appeals  
10 ("BIA") affirmed this decision on August 27, 2019. *Id.* This decision has been heavily litigated.  
11 *Id.*, ¶ 24. Most recently, the IJ again issued a decision denying all relief and protection from  
12 removal and ordered Martinez removed to Nicaragua, and in the alternative, Costa Rica on  
13 November 15, 2024. *Id.* Martinez has appealed this decision, which is currently pending with  
14 the BIA. *Id.*

15 **B. Habeas Proceedings**

16 **1. *Martinez v. Clark*, No. 2:18-cv-1669-RAJ-MAT**

17 Martinez is subject to mandatory detention pursuant to Section 1226(c). Lambert Decl.,  
18 Ex. K. In November 2018, Martinez filed a habeas petition in this District. *Martinez v. Clark*,  
19 No. 2:18-cv-1669-RAJ-MAT. Using a multi-factor test to analyze Martinez's prolonged  
20 detention (the "*Martinez Test*"), the district court granted the habeas petition in part and ordered  
21 the Government to provide Martinez with a bond hearing where the Government bore the burden  
22 to prove that Martinez would be a danger to the community or a flight risk, if released, by clear  
23 and convincing evidence. *Martinez v. Clark*, 18-cv-1669, 2019 WL 5968089 (W.D. Wash. May  
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1 23, 2019) (Report and Recommendation) (applying multi-factor due process analysis), *adopted*  
2 *by*, 2019 WL 5962685 (W.D. Wash. Nov. 13, 2019).

3 Pursuant to the district court's order, the IJ held a bond hearing on November 26, 2019.  
4 Pet., ¶ 26. The IJ denied bond after finding that the Government proved by clear and convincing  
5 evidence that Martinez is a flight risk and a danger to the community. *See id.* Martinez  
6 disagreed with this assessment and appealed the decision to the BIA. *Id.* In May 2020, the BIA  
7 dismissed the appeal. *Id.*

8 **2. *Martinez v. Clark, No. 2:19-cv-1945-RAJ-MLP***

9 The day after the IJ held the 2019 court-ordered bond hearing, and prior to appealing the  
10 IJ's decision to the BIA, Martinez filed a new habeas petition and a TRO motion, alleging that  
11 his continued detention without bond violated the district court's order and violated due process.

12 As Magistrate Judge Peterson described:

13 In his motion for a TRO, Petitioner argues that he is entitled to immediate release  
14 because the evidence presented at the bond hearing was insufficient to meet the  
15 clear and convincing evidence standard and therefore the bond hearing did not  
16 comply with Judge Jones's November 13, 2019 Order.

16 Dkt. No. 14, R&R, at 5.

17 The Court adopted Judge Peterson's recommendation that the action be dismissed  
18 without prejudice because Martinez had not exhausted his administrated remedies by appealing  
19 the IJ's bond determination to the BIA. R&R, at 6-9; Dkt. No. 15, Order of Dismissal.

20 Martinez subsequently appealed the IJ's bond determination to the BIA. Pet., ¶ 26. On  
21 May 14, 2020, the BIA issued a decision finding that Martinez is a danger to the community. *Id.*

22 **3. *Martinez v. Clark, No. 20-cv-780-TSZ-MLP***

23 Martinez filed a third habeas petition challenging the BIA's decision. Pet., ¶ 27. The  
24 district court dismissed Martinez's habeas petition finding that the BIA did not err in finding that

1 he was a danger to the community. *Martinez v. Clark*, No. 20-cv-780 TSZ, 2020 WL 7343020,  
2 at \*2 (W.D. Wash. Dec. 14, 2020), *aff'd in part, vacated in part, remanded*, 36 F.4th 1219 (9th  
3 Cir. 2022), *cert. granted, judgment vacated*, 144 S. Ct. 1339, 218 L. Ed. 2d 418 (2024), and *aff'd*,  
4 124 F.4th 775 (9th Cir. 2024). This decision went through various levels of appellate review,  
5 including remand by the Supreme Court because of a change in the law. *See* Pet., ¶ 27. On  
6 December 27, 2024, on remand, the Ninth Circuit affirmed the district court's denial of the  
7 habeas petition. *Martinez v. Clark*, 124 F.4th 775, 786 (9th Cir. 2024) ("Martinez was found to  
8 be a danger to the community, so his detention is clearly "reasonably related" to the  
9 government's interest in protecting the public.").

10 **4. *Martinez v. Scott*, No. 2:24-cv-1960-TSZ-BAT**

11 In November of 2024, Martinez filed a fourth habeas petition arguing that his prolonged  
12 detention violates due process. Pet., ¶ 28. Magistrate Judge Tsuchida issued a Report and  
13 Recommendation recommending that the district court (1) deny Martinez's request for  
14 immediate release, and (2) order the Government provide him with a bond hearing in which the  
15 Government shall bear the burden of justifying his continuing detention by clear and convincing  
16 evidence. Dkt. No. 15, at 8. This Court adopted this recommendation in part and granted  
17 Martinez's due process claim and request for a bond hearing. Dkt. No. 21, Order.

18 The subsequent court-ordered bond hearing is the subject of this fifth habeas petition.  
19 Martinez asserts that the Government has not complied with the Court's order, that the Court-  
20 ordered bond hearing "was fundamentally unfair and constitutes a violation of Due Process," and  
21 that his continued detention violates due process. Pet., Prayer for Relief. He seeks his  
22 "immediate release from ICE custody." *Id.* In the TRO Motion, Martinez asks that this Court  
23 either "schedule a prompt hearing pursuant to 28 U.S.C. § 2243," or issue a TRO releasing him  
24 from ICE detention. TRO Mot., at 26. These requests should be denied.

1 **III. LEGAL STANDARD**

2 The standard for issuing a temporary restraining order is “substantially identical” to the  
3 standard for issuing a preliminary injunction. *Stuhlbarg Int’l Sales Co. v. John D. Brush & Co.*,  
4 240 F.3d 832, 839 n.7 (9th Cir. 2001). “It frequently is observed that a preliminary injunction is  
5 an extraordinary and drastic remedy, one that should not be granted unless the movant, *by a clear*  
6 *showing*, carries the burden of persuasion.” *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997)  
7 (emphasis in original) (internal quotations omitted); *Winter v. Nat. Res. Def. Council, Inc.*, 555  
8 U.S. 7, 22 (2008).

9 “A plaintiff seeking a preliminary injunction must show that: (1) [he] is likely to succeed  
10 on the merits, (2) [he] is likely to suffer irreparable harm in the absence of preliminary relief, (3)  
11 the balance of equities tips in her favor, and (4) an injunction is in the public interest.” *Disney*  
12 *Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017) (internal quotation omitted).  
13 Alternatively, a plaintiff can show that there are “serious questions going to the merits and the  
14 balance of hardships tips sharply towards [plaintiff], as long as the second and third *Winter*  
15 factors are satisfied.” *Id.* (internal quotation omitted).

16 The purpose of preliminary injunctive relief is to preserve the status quo pending final  
17 judgment, rather than to obtain a preliminary adjudication on the merits. *Sierra On-Line, Inc. v.*  
18 *Phoenix Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir. 1984). “A preliminary injunction can take  
19 two forms.” *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 878 (9th  
20 Cir. 2009). “A prohibitory injunction prohibits a party from taking action and ‘preserves the  
21 status quo pending a determination of the action on the merits.’” *Id.* (internal quotation omitted).  
22 “A mandatory injunction orders a responsible party to take action.” *Id.*, at 879 (internal  
23 quotation omitted). “A mandatory injunction goes well beyond simply maintaining the status  
24 quo pendente lite and is particularly disfavored.” *Id.* (internal quotation omitted).

1 “In general, mandatory injunctions are not granted unless extreme or very serious damage  
2 will result and are not issued in doubtful cases.” *Id.* (internal quotation omitted). Where a  
3 plaintiff seeks mandatory injunctive relief, “courts should be extremely cautious.” *Stanley v.*  
4 *Univ. of S. California*, 13 F.3d 1313, 1319 (9th Cir. 1994) (internal quotation omitted). Thus, in  
5 a mandatory injunction request, the moving party “must establish that the law and facts *clearly*  
6 *favor* [his] position, not simply that [he] is likely to succeed.” *Garcia*, 786 F.3d at 740  
7 (emphasis original).

8 Here, rather than preserving the status quo, Martinez seeks mandatory injunctive relief in  
9 the form of an order requiring his immediate release.

#### 10 **IV. ARGUMENT**

##### 11 **A. Martinez cannot establish that the law and facts favor his release.**

##### 12 **1. Martinez has failed to exhaust his administrative remedies.**

13 This habeas litigation should be dismissed because Martinez has failed to  
14 administratively appeal the IJ’s denial of bond to the BIA. Although exhaustion of  
15 administrative remedies is not a jurisdictional prerequisite for habeas petitions, courts generally  
16 “require, as a prudential matter, that habeas petitioners exhaust available judicial and  
17 administrative remedies before seeking [such] relief.” *Castro-Cortez v. INS*, 239 F.3d 1037,  
18 1047 (9th Cir. 2001) (abrogated on other grounds by *Fernandez-Vargas v. Gonzales*, 548 U.S. 30  
19 (2006)). The exhaustion requirement is subject to waiver because it is not a “‘jurisdictional’  
20 prerequisite.” *Id.*

21 Courts may require prudential exhaustion where: “(1) agency expertise makes agency  
22 consideration necessary to generate a proper record and reach a proper decision; (2) relaxation of  
23 the requirement would encourage the deliberate bypass of the administrative scheme; and (3)

1 administrative review is likely to allow the agency to correct its own mistakes and to preclude  
2 the need for judicial review.” *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007).

3 In 2019, a court in this District denied the substantially same claim for failure to exhaust  
4 brought by Martinez in response to his first court-ordered bond hearing. *Martinez v. Clark*, No.  
5 2:19-cv-1945-RAJ-MLP. “The Ninth Circuit has held that the proper procedure to challenge an  
6 IJ’s bond determination is to appeal to the BIA, wait for the BIA to render its decision, and then  
7 file a habeas petition in district court.” *Id.*, Dkt. No. 14, R&R (citing *Leonardo v. Crawford*, 646  
8 F.3d 1157, 1159-61 (9th Cir. 2011)). The R&R further discussed Judge Lasnik’s decision in  
9 *Aden v. Nielsen*, 18-cv-1441-RSL, 2019 WL 5802013 (W.D. Wash. Nov. 7, 2019). R&R, at 7-8.

10 In *Aden*, the court required a petitioner to exhaust his administrative remedies prior to  
11 bringing a claim that the IJ erroneously applied the evidentiary standard during a court-ordered  
12 bond hearing, allegedly depriving the petitioner of his due process rights. 2019 WL 5802013, at  
13 \*1. The Court looked at Ninth Circuit jurisprudence distinguishing “between constitutional  
14 claims that only an Article III court can resolve and issues with constitutional implications that  
15 may nonetheless be corrected by the BIA on appeal. . . . The latter category of challenges is  
16 subject to prudential exhaustion requirements.” *Id.* The Court found that the BIA could assess  
17 petitioner’s assertions that the IJ relied too heavily on his criminal history. *Id.*, at \*2 (“the BIA is  
18 capable of re-assessing the evidence and determining whether the government has carried its  
19 burden of demonstrating by clear and convincing evidence that [the petitioner] is a current  
20 danger and must be detained”).

21 The R&R then discussed the Ninth Circuit’s decision in *Leonardo*, which held that the  
22 habeas petition challenging a court-ordered bond hearing determination should have been  
23 dismissed without prejudice for failure to exhaust. R&R, at 8-9. While exhaustion is not  
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1 required, the Ninth Circuit found that the petitioner, with claims similar to here, did not  
2 demonstrate grounds for excusing the exhaustion requirement. *Leonardo*, 646 F.3d at 1161.

3 Here, Martinez has also not demonstrated grounds for excusing the exhaustion  
4 requirement. While Martinez claims that this Court should review the bond hearing for  
5 compliance with its prior order, TRO Mot., at 23, he provides no reason why this should not be  
6 done after a BIA review of this case. The BIA is the “subject-matter expert in immigration bond  
7 decisions and has the authority to review appeals from bond determinations by IJs.” *Aden*, 2019  
8 WL 5802013, at \*2. Also, allowing a “relaxation of the exhaustion requirement” would likely  
9 open the floodgates to other detainees to directly appeal their no-bond determinations to federal  
10 district court. *Id.* Lastly, the BIA has the authority to correct the alleged errors. *Id.*

11 Martinez’s administrative appeal is not futile. Only if he remains unsatisfied by the  
12 BIA’s decision may he file a habeas petition in a district court. *See Reyes v. Wolf*, No. 20-cv-377-  
13 JLR, 2021 WL 662659, at \* (W.D. Wash. Feb. 19, 2021) (denying motion to enforce due to the  
14 petitioner’s failure to demonstrate that prudential exhaustion requirements should be waived).

15 Accordingly, the TRO Motion should be denied and the Petition dismissed because  
16 Martinez failed to exhaust his administrative remedies.

17 **2. The Government complied with this Court’s Order.**

18 This Court ordered the Government to provide Martinez with a bond hearing within 60  
19 days where the Government would bear “the burden to show by clear and convincing evidence  
20 that [Martinez] continues to pose a risk of flight or danger to the community.” *Martinez v.*  
21 *Alfonso-Royals*, No. 2:24-cv-1960-TSZ, Dkt. No. 21, Order (dated July 7, 2025). The  
22 Government provided Martinez with a bond hearing where the IJ complied with these  
23 requirements by placing the appropriate burden on the Government and weighing the evidence  
24 presented. Lambert Decl., Ex. A, Audio Recording of Bond Redetermination Hearing.

1 At the bond hearing, both parties were represented by counsel. At the beginning of the  
2 hearing, the IJ explained that the Government bore the burden to prove that Martinez is a flight  
3 risk or a danger to the community by clear and convincing evidence. *Id.* The IJ accepted  
4 evidence from both parties and listened to arguments from counsel. *Id.* First, the Government  
5 went through Martinez’s criminal history and argued that the denial of the only remaining  
6 pathway for relief from removal had been denied and is currently on appeal at the BIA. *Id.*

7 Martinez’s counsel presented various members of the community and Martinez’s family  
8 was present at the hearing. While Martinez offered their live testimony, the IJ did not take oral  
9 testimony and relied on their letters that already were submitted by Martinez. Otherwise, he  
10 allowed Martinez’s counsel to proffer what further testimony the letter writers could add to their  
11 statements. The IJ carefully listened to the testimony. Notably, while reviewing the letters, the  
12 IJ posed specific questions to one of the witnesses present in Court based on her statements in  
13 her letter. *Id.*, at 31:22. Thus, the IJ may have limited testimony to written statements, but  
14 sought additional information when necessary.

15 At the conclusion of the hearing, the IJ denied bond and conditional release, finding  
16 Martinez to be a danger to the community and a flight risk.

17 Martinez does not agree with the decision and now raises various procedural arguments  
18 and questions the weight the IJ placed on his past criminal convictions. Although this Court  
19 does have habeas jurisdiction to review bond hearing determinations for constitutional claims  
20 and legal error, *Hernandez v. Sessions*, 872 F.3d 976, 987 (9th Cir. 2017), habeas jurisdiction  
21 over such legal and constitutional claims is proper only if they are “colorable,” i.e., “the claim  
22 must have some possible validity.” *Hernandez*, 872 F.3d at 988; *Mendez-Castro v. Kukasey*, 552  
23 F.3d 975, 978 (9th Cir. 2009)). “[A] petitioner may not create the jurisdiction that Congress  
24 chose to remove simply by cloaking an abuse of discretion argument in constitutional garb.” *Id.*

1 Martinez has not demonstrated such a colorable claim. As described below, Martinez  
2 should be required to appeal the IJ's order to the BIA. If Martinez files an administrative appeal,  
3 the IJ will write a bond memorandum delineating his reasoning and analysis. Thus, the BIA will  
4 have the benefit of this information, where this Court does not at this time. Furthermore,  
5 Petitioner's assertions concerning the IJ's analysis are speculative until the IJ provides a written  
6 decision with his analysis. However, the audio recording of the bond hearing does not support  
7 Martinez's claims. Lambert Decl., Ex. A.

8 **3. Martinez is not entitled to immediate release.**

9 This Court should deny Martinez's request for immediate release from immigration  
10 detention. A noncitizen is entitled to release if he can show that his immigration detention is  
11 indefinite as defined in *Zadvydas*. *Hong v. Mayorkas*, No. 2:20-cv-1784, 2021 WL 8016749, at  
12 \*6 (W.D. Wash. June 8, 2021), *report and recommendation adopted*, 2022 WL 1078627 (W.D.  
13 Wash. Apr. 11, 2022). While Martinez's detention has been prolonged while he litigates his  
14 removal order in various forums, he cannot allege that his detention has become indefinite.  
15 Martinez has presented no evidence that ICE will be unable to remove him if his removal order  
16 ultimately becomes final.

17 Accordingly, this Court should not grant Martinez's request for immediate release.

18 **B. Martinez has not demonstrated irreparable harm absent a TRO.**

19 Martinez asserts that he is suffering irreparable injury by his continued detention. Mot.,  
20 at 24. Martinez's contention is false. The bond hearing provided him with all process that was  
21 due to him. The IJ applied the standards ordered by this Court. If Martinez disagrees with how  
22 the IJ allocated the weight of the evidence or conducted the hearing, he should administratively  
23 appeal the bond determination. Martinez "cites no authority for the position that detention  
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1 following a bond hearing constitutes irreparable harm sufficient to waive the [administrative]  
2 exhaustion requirement.” *Aden*, 2019 WL 5802013, at \*3.

3 Accordingly, Martinez cannot show irreparable harm.

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5 **C. The balance of the equities and public interests do not favor granting emergency injunctive relief.**

6 It is well settled that the public interest in enforcement of United States’ immigration  
7 laws is significant. *See, e.g., United States v. Martinez-Fuerte*, 428 U.S. 543, 556-58 (1976);  
8 *Blackie’s House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1221 (D.C. Cir. 1981) (“The Supreme  
9 Court has recognized that the public interest in enforcement of the immigration laws is  
10 significant.”) (citing cases); *see also Nken v. Holder*, 556 U.S. 418, 435 (2009) (“There is  
11 always a public interest in prompt execution of removal orders). Furthermore, the immigration  
12 laws and regulations provide for the relief sought here through the administrative process. This  
13 public interest outweighs Martinez’s private interest here.

14 Accordingly, this Court should deny his TRO Motion.

15 **V. CONCLUSION**

16 For the foregoing reasons, this Court should deny Martinez’s TRO Motion and his habeas  
17 petition in its entirety.

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*I certify that this memorandum contains 3,409 words, in compliance with the Local Civil Rules.*