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10 **UNITED STATES DISTRICT COURT**
11 **DISTRICT OF NEVADA**

12 Vardan Gukasian,
13 Petitioner,
14 v.
15 Kristi Noem, et al.,
16 Respondents.

Case No. 2:25-cv-01697-JAD-DJA

**Federal Respondents' Sur-Reply to
Petition for Writ of Habeas Corpus**

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18 Pursuant to the Court's Order dated December 4, 2025 (ECF No. 40), Federal
19 Respondents file the following Sur-Reply, specifically responding to the Court request for
20 additional briefing "addressing Gukasian's argument that relief in the form of another bond
21 hearing before the immigration judge changes the merits analysis of his procedural due
22 process claim." *Id.* "The government may also raise any arguments concerning the legal
23 authority of this court to order the relief that Gukasian seeks." *Id.*

24 **I. Introduction**

25 Petitioner's reply brief materially alters the relief requested in his habeas petition.
26 After initially seeking immediate release based on allegedly unconstitutional prolonged
27 detention, Petitioner now asks the Court to order a new bond hearing before an
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1 Immigration Judge (“IJ”) with court-mandated substantive requirements, including: (1)
2 compulsory consideration of Petitioner’s deteriorating health and length of detention as
3 bond factors; (2) placement of the burden of proof on the Government by clear and
4 convincing evidence; and (3) an express requirement that the IJ consider alternatives to
5 detention. ECF No. 36.

6 This reframing does not change the governing constitutional analysis. Under 8
7 U.S.C. § 1226(a) and controlling Ninth Circuit precedent—particularly *Rodriguez Diaz v.*
8 *Garland*, 53 F.4th 1189, 1206–09 (9th Cir. 2022)—Petitioner has already received all the
9 process that is constitutionally due. His new request does not identify any procedural
10 deficiency in the bond process he received. Instead, it seeks to transform habeas review into
11 judicial supervision over the substance of discretionary immigration custody
12 determinations. Neither *Mathews v. Eldridge* nor federal habeas authority permits such relief.

13 Accordingly, Petitioner’s narrowed prayer for relief does not alter the merits
14 analysis of his procedural due process claim, and the Court should deny habeas relief.

15 **II. Statutory and Regulatory Framework Governing § 1226(a) Detention**

16 Petitioner is detained pursuant to 8 U.S.C. § 1226(a), which authorizes discretionary
17 detention of noncitizens pending removal proceedings. The statutory and regulatory
18 framework provides multiple layers of process. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§
19 236.1(d)(1), 1003.19. Following an initial custody determination by DHS, if DHS
20 determines that an alien should remain detained during the pendency of removal
21 proceedings, the alien is afforded a custody redetermination hearing, or “bond hearing,”
22 before an immigration judge. 8 C.F.R. §§ 236.1(d)(1), 1003.19, 1236.1(d). The immigration
23 judge decides whether to release the alien based on a wide variety of factors that account
24 for the alien’s ties to the United States and whether the alien will pose a danger to the
25 community or is a flight risk. *See Matter of Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006). The
26 immigration judge may also “consider the amount of bond that is appropriate.” *Id.* If
27 Petitioner receives an adverse ruling from the IJ, they “may appeal the immigration judge’s
28 decision to the Board of Immigration Appeals (BIA).” *Johnson v. Guzman Chavez*, 594 U.S.

1 523, 527-28 (2021). In addition, following a showing of “change of circumstances,”
2 Petitioner can seek an additional bond redetermination hearing. 8 C.F.R. § 1003.19(e).

3 The Supreme Court and the Ninth Circuit have repeatedly recognized that this
4 scheme satisfies constitutional due process. *See Jennings v. Rodriguez*, 583 U.S. 281, 306–07
5 (2018); *Diaz v. Garland*, 53 F.4th 1189, 1206–09 (9th Cir. 2022). In *Diaz v. Garland*, the
6 Ninth Circuit held that a § 1226(a) detainee who has received an individualized bond
7 hearing and retains the ability to seek further redetermination has received all the process
8 that is due. That holding forecloses Petitioner’s claim absent a showing that the procedures
9 afforded to him were constitutionally deficient—which he has not made. As a result, while
10 his initial requests for release on bond were denied, Petitioner still retains the right to seek
11 an additional bond redetermination hearing.

12 **III. Petitioner’s Reframed Request Does Not Alter the *Mathews v. Eldridge* Analysis**

13 Petitioner contends that seeking a new bond hearing—rather than immediate
14 release—changes the balance of the *Mathews v. Eldridge* factors. It does not.

15 **A. The Private Interest Remains Unchanged**

16 Petitioner’s private interest in freedom from detention is the same interest
17 considered by the Court when it denied his request for immediate release. The form of
18 relief sought does not alter the nature or weight of that interest. Detention pending removal
19 proceedings, while significant, is expressly authorized by statute and has long been
20 recognized as constitutionally permissible when accompanied by adequate procedural
21 safeguards. *Demore v. Kim*, 538 U.S. 510, 523; *Diaz v. Garland*, 53 F.4th at 1206, 1210.

22 **B. There Is No Heightened Risk of Erroneous Deprivation**

23 The second *Mathews* factor—risk of erroneous deprivation—still does not favor
24 Petitioner because the existing § 1226(a) process already provides individualized review
25 designed to minimize error. Immigration Judges conducting bond hearings may consider
26 any relevant information bearing on flight risk or danger to the community. Under 8
27 C.F.R. § 1003.19(d), “[t]he determination of the Immigration Judge as to custody status or
28 bond may be based upon any information that is available to the Immigration Judge or that

1 is presented to him or her by the alien or the Service.” Nothing in the statute or governing
2 regulations prevents a detainee from presenting evidence related to medical conditions,
3 detention history, or other personal circumstances. Indeed, Petitioner does not contend that
4 he was barred from presenting any evidence at his prior bond hearing, nor does he argue
5 that the IJ applied an improper legal standard or refused to consider relevant information.

6 Moreover, § 1226(a) and its implementing regulations expressly allow detainees to
7 seek a new bond redetermination upon a showing of materially changed circumstances. *See*
8 8 C.F.R. § 1003.19(e); *Diaz v. Garland*, 53 F.4th at 1209. To the extent Petitioner believes
9 his health or circumstances have deteriorated since his prior hearing, the regulations
10 already provide a mechanism to present that evidence to an IJ in the first instance. Due
11 process does not require layering additional judicially created procedures onto this
12 framework.

13 **C. The Government’s Interests Strongly Weigh Against the Requested Relief**

14 The Government has a substantial interest in the uniform and efficient
15 administration of immigration detention statutes, the preservation of Executive discretion
16 in custody determinations, and the avoidance of judicial micromanagement of agency
17 adjudication. *Diaz v. Garland*, 53 F.4th at 1208; 8 U.S.C. 1226(e)

18 Ordering Immigration Judges to weigh specific factors in a prescribed manner,
19 assign a particular burden of proof, or explicitly analyze alternatives to detention would
20 impose significant administrative burdens, risk inconsistent standards across jurisdictions,
21 and impermissibly intrude on the discretionary bond determinations that require
22 Immigration Judges to weigh a range of individualized factors. *See In re Guerra*, 24 I. & N.
23 Dec. 37, 40 (“An Immigration Judge has broad discretion in deciding the factors that he or
24 she may consider in custody redeterminations. The Immigration Judge may choose to give
25 greater weight to one factor over others, as long as the decision is reasonable.”); *see also Diaz*,
26 53 F.4th at 1208 (“[T]he IJ’s discretionary bond determination was not reviewable in
27 federal court, *see* 8 U.S.C. 1226(e).”)
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1 These concerns weigh heavily against the relief Petitioner seeks and reinforce that
2 the *Mathews* balance remains unchanged.

3 **IV. Petitioner Seeks Substantive, Not Procedural, Relief**

4 In sum, although framed in procedural terms, Petitioner’s request is substantively
5 transformative. Each component of the requested relief alters the substance of discretionary
6 immigration custody determinations, which is barred from judicial review. *See* 8 U.S.C. §
7 1226(e); *Martinez v. Clark*, 36 F.4th 1219, 1227 (9th Cir. 2022)(citing *Jennings v. Rodriguez*,
8 138 S. Ct. 830, 841(2018).

- 9 • The requested mandatory consideration of specific bond factors impermissibly
10 converts discretionary judgment into a court-directed checklist; *See In re Guerra*, 24 I.
11 & N. Dec. 37, 40; *Diaz v. Garland*, 53 F.4th at 1208; and 8 U.S.C. § 1226(e).
- 12 • Shifting the burden of proof to the Government by clear and convincing evidence
13 imposes a standard expressly rejected in *Diaz v. Garland*, 53 F.4th at 1211 (“We are
14 aware of no Supreme Court case placing the burden on the government to justify the
15 continued detention of an alien, much less through an elevated ‘clear and
16 convincing’ showing.”); and
- 17 • Requiring explicit consideration of alternatives to detention mandates a particular
18 mode of reasoning rather than ensuring access to a hearing.

19 These requests do not remedy a procedural defect. They seek to redefine how
20 Immigration Judges exercise discretion—precisely the type of intervention that § 1226(e)
21 prohibits and that habeas review does not authorize.

22 **V. The Court Lacks Authority to Direct Immigration Judge Decision-Making**

23 Federal district courts possess the authority to order that a constitutionally adequate
24 bond hearing occur or to order release if such a hearing is not provided, but not to dictate
25 discretionary outcomes. *See Jennings*, 583 U.S. at 308; *Singh v. Holder*, 638 F.3d 1196, 1202
26 (9th Cir. 2011). They do not, however, possess authority to supervise or direct how
27 Immigration Judges weigh evidence, assign burdens of proof, or exercise discretionary
28 judgment in individual cases. *Diaz v. Garland*, 53 F.4th at 1208.

1 Immigration Judges are Executive Branch adjudicators operating within a detailed
2 statutory and regulatory framework. Directing them to apply specific substantive criteria
3 would improperly intrude upon the Executive's discretionary authority and convert habeas
4 review into ongoing judicial oversight of agency adjudication. 8 U.S.C. § 1226(e).

5 **VI. Health Conditions and Length of Detention Are Triggers for Review, Not**
6 **Mandatory Bond Factors**

7 Petitioner conflates two distinct concepts: the circumstances that may trigger
8 constitutional scrutiny and the factors that must be weighed in a bond determination.
9 Length of detention may prompt a detainee to seek judicial review, but it does not become
10 the sole factor that an IJ must credit. *See In re Guerra*, 24 I. & N. Dec. 37, 40¹; *Diaz v.*
11 *Garland*, 53 F.4th at 1208–09. Similarly, medical conditions may be presented to an IJ as
12 part of an individualized assessment, but due process does not require courts to compel
13 their consideration or dictate the weight they receive. *See In re Guerra*, 24 I. & N. Dec. 37,
14 40; *Diaz v. Garland*, 53 F.4th at 1208; and 8 U.S.C. 1226(e).

15 The Constitution guarantees access to a fair process—not a particular outcome or
16 methodology. *See Diaz v. Garland*, 53 F.4th at 1209 (Due process entitles them only to
17 adequate procedures for contesting detention.) Petitioner has received that process.

18 **VII. Conclusion**

19 Petitioner's reframed request for relief does not alter the constitutional analysis
20 governing his habeas claim. He has received an individualized bond hearing, appellate
21 review, and retains the ability to seek further redetermination upon materially changed
22 circumstances. Due process requires nothing more.

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25 ¹ "Immigration Judges may look to a number of factors in determining whether an alien merits release from
26 bond, as well as the amount of bond that is appropriate. These factors may include any or all of the following:
27 (1) whether the alien has a fixed address in the United States; (2) the alien's length of residence in the United
28 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."

1 Because the Court lacks authority to order Immigration Judges to apply
2 court-mandated substantive criteria, and because the existing statutory framework satisfies
3 constitutional requirements, the Court should deny the Petition for Writ of Habeas Corpus
4 and decline to order the relief Petitioner seeks.

5 Respectfully submitted this 2nd day of January 2026.

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10 /s/ Summer A. Johnson
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