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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

JORGE RIVERA LARIOS, Petitioner, v. SERGIO ALBARRAN, et al., Respondents.	Case No. 3:25-cv-08799-AMO **RESPONDENTS' OPPOSITION TO MOTION TO ENFORCE PRELIMINARY INJUNCTION**

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I. INTRODUCTION

Respondents have fully complied with the Court's preliminary injunction. The Court ordered that "Respondents are ENJOINED AND RESTRAINED from re-detaining Rivera Larios without notice and a pre-deprivation hearing before an Immigration Judge to evaluate whether his re-detention is warranted based on flight risk or a danger to the community." Dkt. 22 at 18. Petitioner admits that he received notice and a pre-deprivation hearing before an Immigration Judge, where the IJ determined that he was both a flight risk and a danger to the community. *See* Dkt. 26 ("Mot.") at 4-5. That should end the matter. The government complied with the preliminary injunction and provided Petitioner with the process ordered by the Court before taking him into custody.

Petitioner is unsatisfied with the result of the hearing he received, and so he now raises new arguments for why he thinks the IJ should have ruled differently. But those arguments find no basis in the actual preliminary injunction that the Court actually issued. Specifically, the Court did not order that the only basis on which the government could re-detain Petitioner was his August 2025 arrest. It did not order that the only facts that the IJ could consider were those post-dating Petitioner's release due to the COVID pandemic in January 2022. And it did not order the IJ to do anything more than determine whether Petitioner was a flight risk or a danger to the community. Thus, the government did not violate the preliminary injunction when the IJ considered the full breadth of Petitioner's criminal and immigration history, determined that he was both a flight risk and a danger to the community, and deferred to DHS's ultimate decision whether to return him to custody in light of those findings.

But the Court should not even reach the merits of Petitioner's motion, because he failed to exhaust his administrative remedies before filing it. Petitioner is asking this Court to directly review the decision of an IJ. However, Petitioner was required to appeal the IJ's decision to the Board of Immigration Appeals before seeking relief from this Court. The Ninth Circuit has held that it is reversible error for a district court to reach new arguments regarding the manner in which an IJ conducted a bond hearing when the petitioner failed to appeal to the BIA first. That holding forecloses Petitioner's motion here.

The Court should deny the motion.

II. RELEVANT BACKGROUND

A. Petitioner's Criminal History.

Petitioner has entered the United States unlawfully at least six times. Since his most recent reentry in 2016, he has been arrested six times. *See* Dkt. 14-1 ("Ramirez Decl."), ¶¶ 12-23. Petitioner was convicted in 2019 of felony transport of a controlled substance. *See id.* ¶ 15 & Ex. 6. He was sentenced to participation in a work program, to pay a fine, and three years of probation, a condition of which included a firearm restriction. *See id.*

Following his conviction, Petitioner was twice arrested in 2021. First, in January, the Lake County Sheriff's Department arrested Petitioner on felony charges of being a felon in possession of a firearm and ammunition, and on misdemeanor charges of possession of a controlled substance and possession of a switchblade in a vehicle. *See id.* ¶ 16 & Ex. 6. Then, in July, the Lake County Sheriff's Department arrested Petitioner on a misdemeanor charge of use or being under the influence of a controlled substance. *See id.* ¶ 17 & Ex. 6. He was convicted on April 4, 2022, of a felony charge of being a felon in possession of a firearm, and was sentenced to 180 days in jail, two years of probation, and participation in a work program. *Id.* ¶ 21.

B. Petitioner's 2022 Release Due To The COVID Pandemic.

ICE arrested Petitioner in September 2021. *See id.* ¶ 18. In January 2022, Petitioner was released on an Order of Supervision. *See id.* ¶ 20 & Ex. 2. As Petitioner admits, he was released "pursuant to *Fraihat v. ICE*, 445 F.Supp.3d 709 (April 20, 2020 C.D. Cal.) as he was identified as having one or more risk factors for COVID-19, specifically, being a smoker." Pet. ¶ 32; *see also id.* ¶ 3; Mot. 4. There is no record that DHS (or an IJ) ever previously determined that Petitioner was not a flight risk or a danger to the community. *See* Dkt. 27 ¶ 16.

C. Petitioner's 2025 Arrest, Re-Detention, and Preliminary Injunction.

On August 17, 2025, local law enforcement officers arrested Petitioner for felony infliction of corporal injury to a spouse or cohabitant, a domestic violence offense. *See* Pet. ¶¶ 5, 22, 60; Ramirez Decl. ¶ 23 & Ex. 6. Local authorities released him without filing criminal charges.

On October 14, 2025, Petitioner attended a check-in appointment at the ICE Field Office in San Francisco. *See* Pet. ¶ 22. The ICE Field Office Director determined that Petitioner's August 2025

criminal arrest evidenced a violation of his conditions of supervision, and placed Petitioner in detention. *See* Ramirez Decl. Ex. 4; *see also* Pet.¶ 22.

Petitioner filed this habeas petition on October 14, and moved for a temporary restraining order on October 15. *See* Dkt. Nos. 1, 5. The Court granted Petitioner's request for a temporary restraining order as modified, and ordered Petitioner's release. *See* Dkt. No. 7. The government confirmed that Petitioner was released at approximately 7:00 a.m. on the morning of October 16. *See* Dkt. No. 9.

After subsequent briefing and a hearing, the Court granted Petitioner's motion for a preliminary injunction. The Court specifically ordered that "Respondents are ENJOINED AND RESTRAINED from re-detaining Rivera Larios without notice and a pre-deprivation hearing before an Immigration Judge to evaluate whether his re-detention is warranted based on flight risk or a danger to the community." Dkt. 22 at 18.

D. The Bond Hearing

Immigration Judge Samantha Begovich conducted the bond hearing ordered by the preliminary injunction on November 3, 2025. *See* Dkt. 27 ¶ 7 & Ex. A.[1] Both parties submitted evidence in advance of the hearing, including Petitioner's responses to the IJ's legal and factual questions. *Id.* Exs. B, C. That evidence included records of Petitioner's criminal and immigration history, *id.* Ex. B, as well as his statements that he previously worked for the Sinaloa cartel smuggling drugs into the United States, *see id.* Ex. B (ECF pp. 89, 105, 114-15). The IJ questioned Petitioner extensively. *See id.* ¶¶ 11-14. She heard closing arguments from both parties. *Id.* ¶¶ 15-16.

At the conclusion of the hearing, the IJ made alternate rulings. First, consistent with both parties' positions, she found that she lacked statutory authority to conduct the hearing, but would do so pursuant to the Court's order. *See id.* ¶¶ 10, 17. Second, she found that, based on his history of criminal arrests and convictions and immigration violations, Petitioner was both a danger to the community and a flight risk. *See id.* ¶¶ 17-18. The IJ ruled from the bench and has not issued a written order.[2]

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[1] Due to the highly expedited briefing schedule set for this motion, the government has not been able to obtain a transcript or audio recording of the bond hearing. If the Court determines that such materials are necessary to the resolution of the motion, the government would submit them as post-filing exhibits as quickly as possible after they could be obtained.

[2] There is no requirement that an IJ issue a written order following such a hearing. Either party may request a written order, but to the government's knowledge, Petitioner has not done so.

Although the IJ found Petitioner to be both a flight risk and a danger, she did not expressly order that he be re-detained. Rather, she indicated that DHS could decide whether to re-detain him in light of her rulings. *See id.* ¶ 20.

Following the hearing, DHS re-detained Petitioner. *See id.* ¶¶ 22, 24.

III. ARGUMENT

A. Respondents Complied With The Preliminary Injunction.

The preliminary injunction prohibited the government from re-detaining Petitioner "without notice and a pre-deprivation hearing before an Immigration Judge to evaluate whether his re-detention is warranted based on flight risk or a danger to the community." Dkt. 22 at 18. Petitioner concedes that he received a hearing before an IJ, at which the IJ determined he was *both* a flight risk and a danger to the community. *See* Mot. 4-5. Thus, the government complied with the preliminary injunction.

Indeed, Petitioner all but admits that the government complied with the letter of the preliminary injunction.[3] Nevertheless, Petitioner mounts three arguments for why the IJ's decision did not comply with the injunction's spirit. *See* Mot. 7-11. None has merit.

1. The IJ did not need to base her decision on the August 2025 arrest.

First, Petitioner argues that, even though the IJ found him to be both a flight risk and a danger to the community, she did not specifically find that he violated the conditions of his release, and therefore the government has no authority to detain him. *See* Mot. 7. But the Court did not limit the IJ's analysis to whether Petitioner violated the conditions of his release. *See* Dkt. 22 at 18. Rather, the Court ordered that any such hearing should "evaluate whether his re-detention is warranted based on flight risk or a danger to the community." *Id.* That is what the IJ did, considering Petitioner's full immigration and criminal history.

Nor is Petitioner correct that only a violation of his conditions of release could provide the statutory authority to re-detain him. To the contrary, 8 U.S.C. § 1231(a)(6) expressly provides for the

[3] In an attempt to meet-and-confer regarding Petitioner's arguments and to resolve the parties' dispute without the Court's intervention, undersigned counsel asked Petitioner's counsel what provision of the preliminary injunction they contended the government violated. Rather than identify any term or language from the Court's order, however, Petitioner's counsel merely responded that she believed the government violated the order "in its entirety"—effectively conceding that she could not identify any portion of the order that the government had actually violated.

detention of an inadmissible alien such as Petitioner whom the Attorney General has determined to be "a risk to the community or unlikely to comply with the order of removal." Similarly, DHS regulations authorize detention beyond the 90-day removal period in a variety of circumstances, including when the individual is "likely to pose a threat to the community following release" or would "pose a significant flight risk if released." 8 C.F.R. § 241.4(e)(4), (6). Unsurprisingly, when an IJ determines that an immigration detainee is both a danger and a flight risk, there is authority to continue his detention.

And indeed, it makes especially good sense for the IJ to consider Petitioner's full criminal and immigration history here, where he has not previously received a bond hearing and he was released in 2022 for COVID-related health reasons—*not* because DHS determined that he was not a flight risk or a danger. *See* Pet. ¶¶ 3, 32; Mot. 4; Ramirez Decl. Ex. 2; Dkt. 27 ¶ 16.

Petitioner's argument amounts to an effort to twist a specific issue presented in the preliminary-injunction briefing into the sole issue that could support his detention before the IJ. But the fact that the government initially decided to re-detain Petitioner because of its evaluation of his recent arrest did not constrain the IJ's ability to look more broadly—and nothing in the Court's order says otherwise.

2. The IJ reasonably determined that Petitioner is a danger and a flight risk.

Petitioner disagrees with the IJ's determination that he is both a danger to the community and a flight risk. But the IJ appropriately considered Petitioner's extensive history of criminal and immigration violations when she made those determinations.

Petitioner argues that the IJ "failed to consider" the "remoteness" of Petitioner's arrests and immigration violations, "without regard for his conduct subsequent to his release." Mot. 9; *see also id.* at 9-10. But it is unclear why Petitioner claims the IJ "failed to consider" those issues, since his counsel presented them directly to the IJ at the hearing. *See* Dkt. 27 at ¶ 15. Indeed, the IJ has not even issued a written order setting forth the basis for her decision. Even so, the IJ is not required "to write an exegesis on every contention" or 'expressly parse or refute on the record each individual argument or piece of evidence offered by the petitioner.'" *Najmabadi v. Holder*, 597 F.3d 983, 990 (9th Cir. 2010) (citation omitted) (citing rule in the context of the BIA as the initial arbiter on a motion to reopen); *see also, e.g.*, *Calmo v. Sessions*, No. 17-cv-07124-WHA, 2018 WL 2938628, at *4 (N.D. Cal. June 12, 2018) (rejecting argument that IJ's written order must discuss each item of evidence submitted during the bond

hearing). To the contrary, the IJ is presumed to have considered the relevant evidence submitted, and "[t]he agency's failure to mention specific evidence, by itself, does not overcome this presumption." *Larita-Martinez v. INS*, 220 F.3d 1092, 1095 (9th Cir. 2000); *Fernandez v. Gonzales*, 439 F.3d 592, 603 (9th Cir. 2006) (same). There is no indication here that the IJ did not carefully consider the full record.

In reality, the IJ plainly "considered" Petitioner's arguments, but found them unconvincing in light of the nature, volume, and recency of his criminal conduct. And the IJ certainly had discretion to do so. Petitioner was arrested five times between 2016 and 2022, for offenses ranging from carrying a concealed dagger, to driving under the influence, to possessing narcotics for sale. *See* Ramirez Decl. ¶¶ 12-17. He was convicted of a felony narcotics offense in 2019. *See id.* ¶ 15. He was repeatedly arrested after that conviction, leading to a second felony conviction in 2022—just three years ago—for being a felon in possession of a firearm. *See id.* ¶¶ 16-17. Moreover, Petitioner's admitted past drug-smuggling work for the Sinaloa cartel was presented to the IJ. *See* Dkt. 27 ¶ 12 & Ex. B (ECF pp. 89, 105, 114-15). The IJ was well within her discretion to find a danger to the community based on this history of offenses and gang association. *See, e.g.*, *Calmo*, 2018 WL 2938628, at *5 (rejecting argument that IJ "failed to consider" petitioner's countervailing evidence and finding no legal error in conclusion that petitioner was a danger to the community).

Petitioner's cited cases do not support his argument, because they involved individuals with significantly less serious criminal and immigration history than his own. *See, e.g.*, *Ramos v. Sessions*, 293 F. Supp. 3d 1021, 1036 (N.D. Cal. 2018) (two misdemeanor DUI convictions in which sentencing judge declined to impose any custodial time); *Judulang v. Chertoff*, 562 F. Supp. 2d 1119, 1125 (S.D. Cal. 2008) (single DUI conviction seven years prior to bond hearing); *Mau v. Chertoff*, 562 F. Supp. 2d 1107, 1118 (C.D. Cal. 2008) (three DUI convictions over two-year period).

3. The bond hearing was not fundamentally unfair.

Finally, Petitioner argues that the bond hearing "failed to comport with due process" because, even though the IJ found him to be both a flight risk and a danger to the community, the IJ ultimately "deferred" to DHS's decision whether to re-detain him in these circumstances. Mot. 10. Petitioner claims this violated the Court's instruction that the hearing must occur before a "neutral" arbiter. *Id.*

The argument is puzzling. Petitioner never bothers to explain why the IJ's determination that

DHS could make the ultimate decision whether to detain him reflects bias in the IJ's weighing of the evidence. If anything, it seems most likely to be the result of the unusual procedural posture in which the hearing was conducted. As Petitioner acknowledges, both parties agreed that the IJ lacked statutory authority to conduct the hearing, and the IJ expressly found that she lacked such authority to do so. *See* Dkt. 27 ¶¶ 8-10, 17. Rather, the IJ's authority was derived from the Court's preliminary injunction itself. *See id.* But the preliminary injunction did not order the IJ to make a final detention decision; rather, it enjoined the government from re-detaining Petitioner "without notice and a pre-deprivation hearing before an Immigration Judge to evaluate whether his re-detention is warranted based on flight risk or a danger to the community." Dkt. 22 at 18. The IJ performed the role she was asked to perform under the preliminary injunction; she found that Petitioner was both a flight risk *and* a danger to the community. Thus, DHS would be justified in exercising its discretion to re-detain him on those grounds.

Petitioner simply ignores that Congress vested DHS with wide discretion to make detention decisions in the post-removal period. *See* 8 U.S.C. § 1231(a)(3), (6); *see also* Dkt. 21 at 1-2 (explaining the discretionary nature of post-removal-period detention under § 1231(a)(6)). The immigration courts are not typically involved in such post-removal-order detention decisions. *See generally* 8 C.F.R. § 241.4. Under the statute applicable to Petitioner, then, the IJ properly reserved to DHS the decision whether to re-detain him, after evaluating whether he was a flight risk or a danger to the community such that his detention could be supported by those grounds.

Petitioner also argues in passing that other procedural rulings by the immigration court somehow reflect a due process violation. *See* Mot. 11. But courts have wide discretion to manage their dockets. Indeed, it is ironic that Petitioner first moved this Court for a bond hearing before an immigration judge on an emergency basis, and now argues that he received a bond hearing too quickly. In any event, none of the calendaring decisions Petitioner identifies reflect a due process violation, much less a violation of the preliminary injunction.

B. Petitioner Failed To Exhaust His Administrative Remedies.

Setting aside the merits problems above, Petitioner's motion fails for a straightforward procedural reason as well: he is seeking review of an IJ's decision, but he has not appealed to the BIA.

"This short cut was improper. [Petitioner] should have exhausted administrative remedies by appealing to the BIA before asking the federal district court to review the IJ's decision." *Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011).

Leonardo is particularly instructive. The petitioner in that case had successfully filed a habeas petition, resulting in a bond hearing before an IJ. *See id.* at 1159. But "the IJ denied bond, concluding that Leonardo posed a danger to the community." *Id.* "Rather than appealing the IJ's adverse bond determination to the BIA, Leonardo filed a motion for review of the IJ's decision in his pending habeas case, arguing that the hearing failed to satisfy due process or conform to the district court's previous order." *Id.* The Ninth Circuit held that "the district court should have dismissed Leonardo's claims, without prejudice, for a failure to exhaust administrative remedies." *Id.* at 1160. And the Ninth Circuit expressly "reject[ed] Leonardo's contention that the district court should have addressed his challenges to the IJ's decision based on the court's authority to ensure compliance with its earlier habeas order." *Id.* at 1161. By "affording a bond hearing before an immigration judge," the government had "'complied exactly with'" the preliminary injunction. *Id.* "The district court was under no obligation to address Leonardo's new arguments under the ambit of ensuring compliance with the earlier order." *Id.*

Leonardo is on all fours with this case, and requires the Court to deny Petitioner's motion for failure to exhaust administrative remedies. Just as in that case, the government provided Petitioner with the bond hearing ordered by the preliminary injunction. And again, just as in that case, the IJ found Petitioner was a danger to the community, but Petitioner seeks to review that determination in the "pending habeas case," rather than appealing to the BIA. And, once more as in that case, the Court should deny the motion without prejudice based on Petitioner's failure to exhaust.

Like the Petitioner in *Leonardo*, Petitioner has not demonstrated good cause to forego the exhaustion requirement here. Courts may waive the exhaustion requirement under certain circumstances, but their "discretion to waive the exhaustion requirement when it is prudentially required . . . is not unfettered." *Laing v. Ashcroft*, 370 F.3d 994, 998 (9th Cir. 2004). Waiver may be appropriate "where administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void." *Id.* at 1000. But there is no indication here that the BIA could not adequately review Petitioner's

arguments, or that he would suffer an "irreparable injury" in the meantime. To the contrary, courts routinely enforce the exhaustion requirement in habeas cases notwithstanding that such petitioners remain detained pending BIA review. *See, e.g.*, *Leonardo*, 646 F.3d at 1160.

Indeed, a "key consideration" in the exhaustion analysis is "whether 'relaxation of the requirement would encourage the deliberate bypass of the administrative scheme.'" *Laing*, 370 F.3d at 1000 (citation omitted). Waiving the exhaustion requirement for Petitioner, who filed this motion just days after his bond hearing without ever filing an appeal to the BIA, would encourage other detainees to deliberately bypass the administrative scheme in favor of immediate judicial proceedings. It would essentially turn the district court into a court of appeals for IJ bond determinations, supplanting the BIA.

Petitioner's rush to return to this Court demonstrates the wisdom of the exhaustion requirement. In his haste, Petitioner did not obtain an audio recording or transcript of the IJ hearing, or request a written order from the IJ. These failures inhibit meaningful review of the IJ's decision. By contrast, adherence to the ordinary administrative review procedure would allow for the development of just such a record, and therefore support review of the IJ's decision based on more than a handful of hearsay paragraphs from Petitioner's counsel's declaration.

For all of these reasons, this Court should follow the ordinary course and uphold the administrative exhaustion requirement in this case. *See Jimenez v. Napolitano*, No. 12-cv-03558-RMW, 2013 WL 5442377, at *12 n.1 (N.D. Cal. Sept. 30, 2013).

C. Petitioner Is Not Entitled To Release.

Even if the Court determines that the bond hearing was deficient in some manner, the appropriate remedy would not be release—and certainly not release with an absolute, unqualified prohibition on re-detention. *Cf.* Mot. 12. Rather, if the Court finds that Petitioner did not receive a constitutionally adequate bond hearing, the appropriate remedy would be to order an additional hearing to allow the IJ to correct the errors.

"It is not the Court's province to determine in the first instance, especially on a motion for a temporary restraining order, whether Petitioner is a danger to the community." *Lopez Reyes v. Bonnar*, 362 F. Supp. 3d 762, 778 (N.D. Cal. 2019), *appeal dismissed sub nom. Reyes v. Bonnar*, No. 19-15604, 2019 WL 4855033 (9th Cir. May 8, 2019). To order otherwise would unnecessarily contravene the

statute's implementing regulations, which place review of custody determinations in the hands of the immigration court and the BIA. The Supreme Court has consistently upheld the constitutionality of detention, citing the government's legitimate interest in protecting the public and preventing aliens from absconding into the United States and never appearing for their removal proceedings. *See Jennings v. Rodriguez*, 583 U.S. 281, 286 (2018); *Demore v. Kim*, 538 U.S. 510, 520-22 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 690-91 (2001). The Court should not override this "constitutionally valid aspect of the deportation process," *Demore*, 538 U.S. at 523, when an alternative remedial measure—a new hearing—is available.

IV. CONCLUSION

For the foregoing reasons, the Court should deny the motion to enforce the preliminary injunction.

Respectfully submitted,

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Dated: November 12, 2025

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