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9 UNITED STATES DISTRICT COURT FOR THE
10 SOUTHERN DISTRICT OF CALIFORNIA

11 KIAOYONG ZHANG,

12 Petitioner,

13 v.

14 SIXTO MARRERO, *et al*,

15 Respondents

16 Case No. 3:26-cv-1646-CAB-SBC

17 PETITIONER'S TRAVERSE TO
18 RESPONDENTS' RETURN TO PETITION
19 FOR WRIT OF HABEAS CORPUS

20 **I. Introduction**

21 Petitioner ("Mr. Zhang" or "Petitioner") submits this Traverse to Respondents' return to
22 Petition filed on April 13, 2026.

23 Respondents contend that the Petition should be dismissed on the grounds that it
24 constitutes an abuse of writ and that Mr. Zhang failed to exhaust his administrative remedies.

25 Mr. Zhang respectfully requests that this Court retain jurisdiction and consider the merits
26 of the Petition. As an initial matter, 8 U.S.C. § 2244 does not bar habeas petitions brought under §
27 2241 by immigration detainees. More importantly, this Petition does not merely challenge Mr.
28 Zhang's detention but instead arises from a new constitutional injury that did not exist at the time
of the prior petition, the constitutionally deficient bond hearing. Further, the requirement of
administrative exhaustion should be waived because pursuing such remedies would subject Mr.

1 Zhang to continued, irreparable harm in the form of prolonged unlawful detention.

2 Because the bond hearing afforded to Mr. Zhang was constitutionally defective, it failed to
3 cure the underlying due process violation in detaining Mr. Zhang. Accordingly, Mr. Zhang's
4 continued detention remains unlawful, and the only appropriate remedy is his prompt release.

5 **II. Facts**

6 On January 19, 2026, Mr Zhang filed a Petition for a Writ of Habeas Corpus pursuant to
7 28 U.S.C. § 2241, challenging his unlawful detention. On January 30, 2026, the Court granted the
8 Petition and ordered Respondents to provide Mr. Zhang a bond hearing pursuant to 8 U.S.C.
9 §1226(a). Following the order, Mr. Zhang was provided a bond hearing.

10 However, during the hearing, the Immigration Judge ("IJ") improperly placed the burden
11 of proof on Mr. Zhang, requiring him to demonstrate, by clear and convincing evidence, that he
12 was neither a flight risk nor a danger to the community.

13 **III. Argument**

14 **A. Petitioner's current petition is not an abuse of writ because 8 U.S.C. § 2244 does**
15 **not bar habeas petitions brought under § 2241, and it challenges new**
16 **constitutional injury**

17 As Respondents concede in the Response, the Ninth Circuit has held that "§ 2244(a)
18 cannot apply to § 2241 petition filed by [immigration] detainee," because "§ 2244(a) bars
19 successive petitions seeking review of the propriety of a detention *pursuant to a judgment of a*
20 *court of the United States*" *Barapind v Reno*, 225 F.3d 1100, 1111 (9th Cir. 2000) (emphasis
21 was original). All of the cases cited by Respondents are inapposite, as they address habeas
22 petitions challenging criminal sentences, not civil immigration detention. *See McCleskey v. Zant*,
23 499 U.S. 467 (1991); *Sanders v. United States*, 373 U.S. 1 (1963), *Calderon v. United States Dist.*
24 *Ct.*, 163 F.3d 530 (9th Cir.1998).

25 Here, Mr. Zhang is detained pursuant to immigration authority exercised by ICE, not
26 "pursuant to a judgment of a court of the United States." *Id.* Accordingly, § 2244 does not bar this
27 Petition.

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1 Moreover, this Petition is not duplicative of the prior habeas petition because it challenges
2 a new constitutional injury that arose after the Court granted relief in the earlier proceeding.
3 Specifically, the present Petition challenges the constitutionally deficient bond hearing that was
4 subsequently provided. As reflected in Mr. Zhang’s response to the Court’s Order to Show Cause,
5 the IJ improperly allocated the burden of proof and failed to provide a constitutionally adequate
6 determination. *See* Dkt. 5. Accordingly, the bond hearing did not cure the unlawful detention, but
7 instead resulted in a new constitutional violation, rendering Mr. Zhang’s continued detention
8 constitutionally unlawful.

9 **B. Administrative Exhaustion should be waived because administrative remedies**
10 **are inadequate.**

11 Mr. Zhang respectfully requests the Court to waive the administrative exhaustion
12 requirement because an appeal to the Board of Immigration Appeals (“BIA”) would cause
13 irreparable harm.

14 “On habeas review under § 2241, exhaustion is a prudential rather than jurisdictional
15 requirement.” *Singh v. Holder*, 638 F.3d 1196, 1203 n.3 (9th Cir. 2011). “Courts may require
16 prudential exhaustion if (1) agency expertise makes agency consideration necessary to generate a
17 proper record and reach a proper decision; (2) relaxation of the requirement would encourage the
18 deliberate bypass of the administrative scheme; and (3) administrative review is likely to allow
19 the agency to correct its own mistakes and to preclude the need for judicial review.” *Puga v.*
20 *Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007) (internal quotation marks omitted)

21 Here, the *Puga* factors weigh against requiring exhaustion. First, agency expertise is not
22 necessary in this case Mr. Zhang challenges the constitutionality of his bond hearing, specifically
23 whether the IJ improperly placed the burden of proof and afforded constitutionally adequate
24 process These are pure legal questions that fall squarely within the competence of the federal
25 courts. Accordingly, “an administrative appellate record is not necessary to resolve [Mr. Zhang’s]
26 challenge to the Immigration Judge’s bond determination.” *Miri v. Bondi*, No. 5:26-cv-00698-
27 MEMF-MAR, 2026 WL 622302 (C.D. Cal. Mar.5, 2026) (citing *Hernandez v. Sessions*, 872 F.3d
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1 976, 989 (9th Cir. 2017)).

2 Second, excusing exhaustion would not encourage deliberate bypass of the administrative
3 scheme. The dispute concerns constitutional errors that occurred during the bond hearing, an issue
4 that falls squarely within the province of the federal courts. Because Mr. Zhang challenges the
5 legality of the procedures employed, judicial review is both appropriate and necessary. Further,
6 resolution by this Court would also provide meaningful guidance for future detainees subjected to
7 similar constitutional violations

8 Third, even though the BIA is capable of reviewing Mr. Zhang’s bond determination,
9 requiring administrative exhaustion would result in prolonged proceedings and subject Mr. Zhang
10 to unreasonable and unconstitutional continued detention, thereby causing irreparable injury. *See*
11 *Hernandez v. Sessions*, 872 F.3d 976, 987 (holding a court may waive exhaustion requirements if
12 “pursuit of administrative remedies” would lead to “irreparable injury”)

13 Furthermore, even if *Puga* factors are weighted in favor of requiring exhaustion, a court
14 may still waive the exhaustion requirement if “administrative remedies are inadequate or not
15 efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will
16 result, or the administrative proceedings would be void.” *Hernandez v. Sessions*, 872 F.3d 976,
17 988 (9th Cir. 2017) (quoting *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004))

18 Here, requiring Mr. Zhang to appeal to the BIA would result in irreparable harm. An
19 appeal would take months, if not longer, during which Petitioner would remain in custody as a
20 result of the very constitutional violations at issue *See Diana Carolina Rivera Mendoza v*
21 *Pamela Bondi*, No. CV 25-3227-MWF (AGR) (C.D Cal. Apr 1, 2026) (holding that
22 administrative exhaustion should be waived because “to require Petitioner to appeal to BIA would
23 be a futile gesture, and would instead needlessly prolong Petitioner’s detention.”).

24 Therefore, the administrative exhaustion requirement should be waived.

25 **C. Burden of Proof Was Improperly Placed on Petitioner**

26 In *Singh v. Holder*, the Ninth Circuit held that “the government must prove by clear and
27 convincing evidence that an alien is a flight risk or a danger to the community to justify denial of
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1 bond.” 638 F.3d 1196, 1203 (9th Cir. 2011). Courts have repeatedly reached the same conclusion
2 in the habeas context, holding that due process requires the government to bear the burden of
3 proof to justify continued detention. *See e.g., Al-Sadeai v. United States Immigration & Customs*
4 *Enforcement*, 540 F. Supp. 3d 983, 991 (S.D. Cal. 2021), *Benites v. Janecka*, No. 5:26-cv-00222-
5 SSS-BFM, 2026 U.S. Dist. LEXIS 42678, at *4 n.1 (E.D. Cal. Mar. 2, 2026); *Sandesh v. Larose*,
6 No. 26-cv-0846-JES-DDL, 2026 U.S. Dist. LEXIS 45941 (S.D. Cal. Mar. 4, 2026).

7 Courts have also held that when an Immigration Judge improperly places the burden of
8 proof on the petitioner, it violates the Fifth Amendment’s Due Process Clause. *See Al-Sadeai v.*
9 *United States Immigration & Customs Enf’t*, 540 F. Supp. 3d 983, 991 (S.D. Cal. 2021) (holding
10 that “IJ’s placement of the burden of proof on Petitioner violated the Fifth Amendment Due
11 Process Clause” because “noncitizens still face such a significant possible deprivation of liberty at
12 the time of their initial bond hearing under Section 1226(a) that the Due Process Clause requires
13 the burden of proof to justify detention be placed on the Government, following *Singh*.”)

14 Here, although Mr. Zhang was provided a bond hearing, the Immigration Judge
15 improperly placed the burden on him to demonstrate that he was not a flight risk or a danger to
16 the community. Under *Singh*, the Government, not Mr. Zhang, must bear the burden of proving,
17 by clear and convincing evidence, that continued detention is justified. This requirement is
18 particularly important here, where the Government seeks to detain Mr. Zhang after previously
19 allowing him to remain at liberty.

20 Immigration detention violates the Due Process Clause unless “a special justification . . .
21 outweighs the individual’s constitutionally protected interest in avoiding physical restraint.”
22 *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (internal citation omitted). The greater the potential
23 deprivation of liberty, the greater level of procedural protections required. *Singh v. Holder*, 638
24 F.3d 1196, 1203-04 (9th Cir. 2011) (quoting *Addington v. Texas*, 441 U.S. 418, 427, 99 S. Ct.
25 1804, 60 L. Ed. 2d 323 (1979)) (“ [I]t is improper to ask the individual to share equally with
26 society the risk of error when the possible injury to the individual—deprivation of liberty—is so
27 significant.”)

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These protections are especially critical in cases such as this, where the Government has re-detained a noncitizen, who was previously released and allowed to pursue relief out of custody, without providing essentially any procedural safeguards. Requiring Mr Zhang to bear the burden of proof under these circumstances not only compounds the constitutional violation caused by his unlawful detention but also renders the bond hearing fundamentally unfair.

Accordingly, because the Immigration Judge improperly allocated the burden of proof, the bond hearing was constitutionally deficient and failed to cure the underlying due process violation. Mr. Zhang’s continued detention is therefore unlawful.

Because the IJ improperly allocated the burden of proof and abused its discretion in denying Mr. Zhang’s bond, his bond hearing failed to provide adequate process and did not cure the underlying constitutional violations. Accordingly, Mr. Zhang’s continued detention is unlawful, and the only appropriate remedy is his immediate release. *Diana Carolina Rivera Mendoza v. Pamela Bondi*, No. CV 25-3227-MWF (AGR) (C.D. Cal. Apr. 1, 2026) (holding that when respondents fail to provide a constitutionally adequate bond hearing, immediate release is the proper remedy)

Based on the foregoing, Mr. Zhang respectfully requests that the Court grant the Petition and order his immediate release without the imposition of any conditions more restrictive than those previously in place.

Dated: April 16, 2026

Respectfully submitted,
Juris Path Law Firm, PC

/s/Yunchao Song
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