

1 Bashir Ghazialam (CA Bar No. 212724)
2 LAW OFFICES OF BASHIR GHAZIALAM
3 P.O. Box 928167
4 San Diego, California 92192
5 Tel: (619) 795-3370
6 Fax: (866) 685-4543
7 bg@lobg.net

8 Attorneys for Petitioner

9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 MUSHEER

12 Petitioner,

13 v.

14 LAROSE, et al.,

15 Respondents.

Case No.: 26-cv-1780-RBB-MSB

**PETITIONER'S TRAVERSE IN
SUPPORT OF PETITION FOR
WRIT OF HABEAS CORPUS**

1 _____ Petitioner (“Mr. Musheer”) asserts that the Court has jurisdiction and authority to
2 review his detention, specifically, whether he is held “in custody in violation of the
3 Constitution or laws or treaties of the United States” (28 U.S.C. § 2241(c)(3)). Mr.
4 Musheer further asserts that exhaustion is not required.

5
6 **I. 8 U.S.C. § 1226(e) does not preclude jurisdiction**

7 As stated in the petition, 8 U.S.C. § 1226(e) does not preclude “habeas jurisdiction
8 over constitutional claims or questions of law.” *Hernandez v. Sessions*, 872 F.3d 976, 987
9 (9th Cir. 2017) (quoting *Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir.
10 2011)). Under § 1226(e) “district courts have jurisdiction to review [an] Immigration
11 Judge’s discretionary bond denial only ‘where that bond denial is challenged as legally
12 erroneous or unconstitutional.’” *Mayancela Mayancela v. FCI Berlin, Warden*, No. 25-
13 CV-348-LM-TSM, 2025 WL 3215638 (D.N.H. Nov. 18, 2025) (quoting *Diaz-Calderon*
14 *v. Barr*, 535 F. Supp. 3d 669, 676 (E.D. Mich. 2020) (quoting *Lopez Reyes v. Bonnar*,
15 362 F. Supp. 3d 762, 772-73 (N.D. Cal. 2019))).

17 Additionally, the Ninth Circuit has already determined that courts may review the
18 agency’s determination that a noncitizen presents a danger or flight risk as a mixed
19 question of law that is reviewed under the abuse of discretion standard. *Martinez v.*
20 *Clark*, 124 F.4th 775, 781 (9th Cir 2024). The agency “abuses its discretion when it fails
21 to ‘consider and address in its entirety the evidence submitted by a petitioner’ and to
22 ‘issue a decision that fully explains the reasons for denyi[al]...’” *Franco-Rosendo v.*
23 *Gonzales*, 454 F.3d 965, 966 (9th Cir. 2006) (quoting *Mohammed v. Gonzales*, 400 F.3d
24

1 785, 792–93 (9th Cir.2005)); *Carnalla-Munoz v. United States Immigr. and*
2 *Naturalization Serv.*, 627 F.2d 1004, 1007 (9th Cir. 1980) (declining to find an abuse of
3 discretion where the “immigration judge and the Board have considered all of the factors
4 upon which petitioners rely”); *Barrera-Leyva v. Immigr. and Naturalization Serv.*, 653
5 F.2d 379, 380 (9th Cir. 1981) (stating that the immigration judge abused its discretion by
6 “failing to consider all of the relevant factors”); *Hernandez v. Garland*, 52 F.4th 757,
7 765-66 (9th Cir. 2022) (holding that an abuse of discretion review is limited to ensuring
8 that the agency relied on the appropriate factors).

10 Furthermore, where a “bond denial is challenged as legally erroneous or
11 unconstitutional,” a district court in habeas proceedings retains jurisdiction over that
12 challenge. *Mayancela Mayancela v. FCI Berlin, Warden*, No. 25-cv-348-LM-TSM, 2025
13 WL 3215638, at *6 (D.N.H. Nov. 18, 2025); *Singh*, 638 F.3d at 1202.

15 Moreover, Mr. Musheer’s contentions are proper constitutional arguments. *See*
16 *Perez v. Wolf*, 445 F. Supp. 3d 275, 291 (N.D. Cal. 2020) (finding petitioner “stated a
17 colorable due process claim. He, like the petitioner in *Singh*, challenges the
18 constitutionality of the standard of proof applied at his bond hearing. . . .”) (internal
19 citation omitted).¹ In other words, Mr. Musheer argues that the IJ’s discretionary
20

22 ¹ Specifically, the *Perez* court noted the argument was “that his bond hearing was
23 constitutionally inadequate because the government failed to produce enough evidence
24 that clearly and convincingly showed that Petitioner is a danger to the community and so
the IJ erred by ruling that Petitioner represents a danger to the community.” *Perez* at 287.

1 determination that he should remain in immigration custody without bond for the
2 duration of his removal proceedings, itself was constitutionally flawed. Specifically,
3 whether the IJ conducted an individualized assessment, and weighed “the non-exclusive
4 factors” that immigration judges may “utilize in determining whether bond is warranted
5 and under what conditions,” which help ensure “substantial process”, as follows:
6

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

16 *Mejia Orozco v. Lyons*, No. 1:25-CV-017652-AJT-WEF, 2025 (E.D. Va., Nov. 7, 2025),
17 citing *Miranda v Garland*, 34 F.4th 338 (4th Cir. 2022), at 362 n.10 (citing *In re Guerra*,
18 24 I. & N. Dec. at 40)

19 Accordingly, the Court has jurisdiction to review whether the IJ's denial of bond to
20 Mr. Musheer on the basis of flight risk without properly weighing all the relevant factors
21 complies with constitutional Due Process requirements. In other words, whether the IJ
22 “‘considered and addressed in its entirety the evidence submitted by a petitioner’ and to
23 ‘issue a decision that fully explains the reasons for denyi[al]...’” *Franco-Rosendo v.*
24 *Gonzales*, 454 F.3d 965, 966 (9th Cir. 2006) (quoting *Mohammed v. Gonzales*, 400 F.3d
785, 792–93 (9th Cir.2005)).

1 As outlined in the petition, the IJ failed to consider all the relevant factors and
2 failed to weigh all the evidence offered by Mr. Musheer at his bond hearing and she
3 failed to issue a decision that fully explains the reasons for the denial, and this Court has
4 jurisdiction to review that decision to ensure whether it complies with constitutional Due
5 Process requirements.

6
7 **II. Exhaustion does not preclude review**

8 None of the Respondents' arguments for exhaustion are availing. Further,
9 numerous courts have found exhaustion waived or excused in similar circumstances. *See*
10 *Loba L.M. v. Andrews*, No. 1:25-CV-00611-JLT-SAB, 2026 WL 710307, at *5 (E.D. Cal.
11 Mar. 13, 2026); *Estrada-Samayoa v. Cruz*, No. 1:25-CV-01565-EFB (HC), 2025 WL
12 3268280, at *8 (E.D. Cal. Nov. 24, 2025) (collecting cases); *Rodriguez v. Bostock*, 779 F.
13 Supp. 3d 1239, 1254 (W.D. Wash. 2025) (waiving prudential exhaustion requirement in
14 similar circumstances); *Marroquin Ambriz v. Barr*, 420 F. Supp. 3d 953, 962 (N.D. Cal.
15 2019); *J.A.C.P.*, 2025 WL 3013328, at *7, n.9; *Guzman v. Andrews*, No. 1:25-CV-01015-
16 KES-SKO (HC), 2025 WL 2617256, at *3 (E.D. Cal. Sept. 9, 2025); *see generally*
17 *Rodriguez Diaz v. Barr*, No. 4:20-CV-01806-YGR, 2020 WL 1984301, at *5 (N.D. Cal.
18 Apr. 27, 2020) (collecting cases).

19
20 In addition to the arguments raised in the motion, the Court may also excuse
21 exhaustion because Mr. Musheer has demonstrated that the BIA appeal process is
22 inefficient. In *Garcia v. Hyde*, the court found that forcing the petitioner to go through a
23 BIA appeal first, would cause "further irreparable harm and hardship." No. 25-CV-585-
24

1 JJM-PAS, 2025 WL 3466312, *6 (D.R.I. Dec. 3, 2025) (citing *Gomes v. Hyde*, 804 F.
2 Supp. 3d 265, 272 (D. Mass. 2025) (“According to data released by the Executive Office
3 for Immigration Review, the average processing time for bond appeals exceeded 200
4 days in 2024.” *Id.* (citing *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1248–49 (W.D.
5 Wash. 2025)). And according to more updated data discussed below, this average has
6 increased dramatically in the past year, particularly in the past several months, and
7 continues to be rising.

9 This will result in even more prolonged detention. *See Hechavarria*, 358 F. Supp.
10 3d at 240 (W.D.N.Y. 2019) (waiving exhaustion requirement where “delays inherent in
11 the [BIA review] process ... would result in the very harm that the bond hearing was
12 designed to prevent: prolonged detention without due process during lengthy and
13 backlogged removal proceedings”) (internal quotations and citations omitted). *See also*
14 *Perez*, 445 F.Supp at 286 (“Even assuming the Government is correct that Petitioner’s
15 BIA appeal will take two months. . . these two months, coupled with his already two-year
16 detention, still present irreparable harm as it is possible Petitioner is being held
17 unlawfully.”) (internal citation omitted).

19 More recently, a white paper on BIA bias published by the Stanford Law School
20 entitled, *The Board of Immigration Appeals Under the Second Trump Administration; An*
21 *Empirical Analysis of Grant Rates and DHS Appellate Behavior* (published March 23,
22
23
24

1 2026)², which analyzed 79,149 BIA appeals decided between January 21, 2024, and
2 January 20, 2026, drawn from the EOIR FOIA Library, revealed the following two
3 findings:

4 “1. Noncitizen appeals succeed less often. The noncitizen-filed grant rate, the share
5 of noncitizen-initiated appeals where the noncitizen prevailed, fell from 20.05% to
6 10.31%, a decline of 9.74 percentage points. The drop is statistically significant,
7 spans every appeal type, the five largest federal circuits, and both represented and
8 pro se noncitizens.

9 2. The Department of Homeland Security (DHS) substantially expanded its use of
10 the appeals process. The DHS filed 309% more appeals after the administration
11 change, substantially increasing its share of the BIA docket. Bond appeals saw the
12 most dramatic shift: DHS-filed appeals in bond cases increased 28-fold, and the
13 noncitizen-filed share of the bond docket dropped from 93.2% to 45.1%. The
14 Board sustained DHS appeals at a markedly higher rate (51.6% to 69.0%).”

15 *Id. at 2.*

16 Furthermore, in deeming exhaustion waived or excused, the *Rodriguez v. Bostock*
17 Court explained:

18 The BIA appeals process is long and generally moots pending bond appeals
19 before they are adjudicated. *See* Dkt. 5 ¶ 5; Dkt. 7 ¶¶ 5–6. In 2024, EOIR data
20 showed an average processing time of 204 days for bond appeals. Dkt. 7 ¶ 5. EOIR
21 data also showed that 200 bond appeal cases “took a year or longer to resolve.” *Id.*
22 ¶ 6. During the time it takes the BIA to resolve an appeal, most detainees’ claims
23 are mooted. Dkt. 5 ¶ 5. Some detainees are released because ICE exercises its own
24 authority to place detainees on bond. *See id.* ¶ 5(a),(d),(g). Other detainees are
ordered removed from the United States during their bond appeal. *Id.* ¶ 5(b), (c),
(f). And still others not captured in the EOIR data elect not to appeal a negative
bond determination. *Id.* ¶ 5(e); *see also id.* ¶ 7 (declining representation for a bond
hearing “based on the Tacoma Immigration Court practice of finding such
individuals subject to mandatory detention.”). The few cases to reach the BIA,
even when they have resolved a bond appeal in favor of the detainees, have also

² Found at <https://law.stanford.edu/documents/research-on-bia-decision-making/> (last accessed April 1, 2026).

1 had limited impact. *See id.* ¶¶ 3, 11; Dkt. 8 ¶¶ 4–5. In April 2023, the BIA issued
2 an unpublished decision involving a noncitizen “present in the United States, [that]
3 ha[d] not been admitted, and that an immigration officer found . . . [was] not
4 clearly and beyond a doubt entitled to be admitted.” Dkt. 4-2 at 3. The Tacoma IJ
5 determined that the individual was subject to mandatory detention under Section
6 1225(b)(2)(A). *Id.* at 2. The Board remanded the case to the IJ, concluding that if
7 the individual was issued a warrant of arrest with a notice to appear, “he would be
8 subject to detention under” Section 1226. *Id.* at 3–4. Then in September 2023, the
9 BIA issued a second unpublished decision for a person who had entered the United
10 States “without being admitted or paroled.” Dkt. 4-1 at 4. The BIA remanded the
11 case to the IJ, writing that it was “unaware of any precedent stating that an
12 Immigration Judge lacks authority to redetermine the custody conditions of a
13 respondent in removal proceedings under the circumstances here.” *Id.* Despite
14 these decisions, three of the four Tacoma IJs continue to deny bond to individuals
15 apprehended while residing in the country and treated as “present in the United
16 States without inspection.” Dkt. 5 ¶¶ 3, 11; Dkt. 8 ¶¶ 4–5. The BIA has also denied
17 a request by advocates to publish one of these decisions as precedent. Dkt. 4-4 at 2.

11 *Rodriguez v. Bostock* Dkt. 29 (Order Granting Preliminary Injunction) at 9-10 (Apr. 24,
12 2025).

13 Finally, in *Leonardo* the petitioner there had not “demonstrated grounds for
14 excusing the exhaustion requirement.” 646 F.3d at 1161. Whereas, here, Mr. Musheer has
15 raised numerous arguments in support of why exhaustion should either be excused or
16 waived.³ Other than cite cases where exhaustion was required, the Respondents have not
17 meaningfully countered any arguments raised.

19 Dated: April 1, 2026

Respectfully submitted,

20 By: /s/ Bashir Ghazialam

Bashir Ghazialam

21 Attorney for Petitioner

22
23 ³ *See also* NPR, An immigration court few have heard of is quietly shaping policy behind
24 the scenes March 20, 2026 (<https://www.npr.org/2026/03/20/nx-s1-5707535/trump-immigration-detention-appeals-board-deportation> (last accessed April 1, 2026) for additional support on futility.

CERTIFICATE OF SERVICE

I hereby certify that on April 1, 2026, I caused the foregoing document to be electronically filed with the Clerk of the Court for the United States District Court for the Southern District of California by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

Executed on: April 1, 2026

/s/ Bashir Ghazialam
Bashir Ghazialam