

Robert Pauw, WSBA No. 13613
GIBBS HOUSTON PAUW
1000 Second Avenue, Suite 1600
Seattle, WA 98104-1003
Phone: (206)682-1080
Fax: (206)689-2270
Email: rpauw@ghp-law.net

G. Michael Zeno, Jr., WSBA No. 14589
Law Office of G. Michael Zeno, Jr., P.S.
135 Lake Street S., Suite 257
Kirkland, WA 98033
Phone: (425) 947-8050
Fax: (425) 947-8052
Email: mikez@zenolawfirm.com

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Vanessa Soto Gimenez,

Petitioner

vs.

Case No. 2:26-cv-966

Julio HERNANDEZ, Seattle Field Office Acting
Director, Enforcement and Removal Operations, U.S.
Immigration and Customs Enforcement;
Bruce SCOTT, Warden, Northwest ICE Processing
Center;

Kristi NOEM, Secretary of Department of Homeland
Security;
U.S. DEPARTMENT OF HOMELAND SECURITY;
Pamela BONDI, United States Attorney General,

PETITIONER'S RESPONSE TO
GOVERNMENT'S RETURN

Respondents

PETITIONER'S RESPONSE TO GOVERNMENT'S RETURN - 1

Gibbs Houston Pauw
1000 Second Avenue, Suite 1600
Seattle, WA 98104
Ph. (206) 682-1080
Fax. (206) 689-2270

INTRODUCTION

Even if the *Puga* factors support a requirement of exhaustion (as explained below, they do not), the Government has no response to the fact that Ms. Soto would suffer irreparable injury by being forced to wait for a decision from the Board of Immigration Appeals. Ms. Soto is currently in divorce proceedings and involved in a custody dispute with her husband. Her husband is alcoholic, threatening, and abusive. While Ms. Soto is in detention, her children are left in his custody. Ms. Soto does not have a meaningful opportunity to present her claims to the family court in Florida and protect her U.S. citizen children. Waiting for a bond decision from the Board would constitute irreparable injury, which counsels against requiring exhaustion. *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004).

As to the merits of the four Claims presented in the Habeas Petition: the Government has no response to Claim I and Claim IV.¹ In Claim I, Ms. Soto argues that there is no evidence in the record showing that she is a danger to the community or a flight risk, and that therefore her continued detention violates Due Process. Dkt. 1, ¶73. The Government does not present any argument that continued immigration detention is constitutional if there is no evidence of danger to the community or flight risk. Nor does the Government point to any evidence in the record

¹ The Government mischaracterizes Ms. Soto's Claim II and Claim III and fails to give a viable response to those claims. According to the Government, those claims are not colorable because an IJ does not have to "disregard" the fact that a noncitizen was arrested even if the charges were later dismissed, and the IJ is entitled to "consider" the fact that an application for an immigration benefit has been denied. Dkt. 6, p. 9. However, Ms. Soto nowhere argues that those facts must be disregarded. Her claims are that an IJ violates due process by denying bond based solely on those facts. See Dkt. 1, ¶75, 77. The Government has no response to the claims that the IJ violates due process by denying bond based solely on those considerations.

1 supporting a claim that Ms. Soto is a danger to the community or a flight risk. Ms. Soto should
 2 be immediately released from detention for that reason alone.

3 With respect to Claim IV, Ms. Soto argues that where a person such as herself has been
 4 previously vetted by USCIS and granted an immigration benefit (Ms. Soto was previously vetted
 5 and granted a work authorization document and Temporary Protected Status), then as a matter of
 6 due process before denying bond the Government has the burden of proving danger to the
 7 community or flight risk, and if the IJ finds the noncitizen's evidence in support of bond
 8 insufficient then the IJ must explain why and offer the noncitizen an opportunity to respond.
 9 Dkt. 1, ¶¶43, 47, 81. Where these due process rights are violated and the Government fails to
 10 meet its burden of proof, the noncitizen is entitled to immediate release. *See, e.g., W.T.M. v.*
 11 *Bondi*, 2026 U.S. Dist. LEXIS 21315, *10 (W.D. Wash. Jan. 30, 2026) (ordering immediate
 12 release; "it is clear from the existing record in this case that the IJ's bond denial was
 13 constitutionally deficient, because there are no circumstances in which the IJ could plausibly
 14 establish that Petitioner posed a flight risk"); *Garcia v. Hyde*, 2025 U.S. Dist. LEXIS 253787
 15 (D.R.I. Dec. 3, 2025) (ordering habeas petitioner's immediate release from custody "[g]iven the
 16 due process violations that pervaded his bond hearing").

17 ARGUMENT

18 A. Ms. Soto Should Not Be Required to Exhaust Administrative Remedies.

19 The Government agrees that in habeas proceedings, there is no statutory requirement to
 20 exhaust administrative remedies. Dkt. 6, p. 5. A consideration of the *Puga* factors, *Puga v.*
 21 *Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007), may in appropriate circumstances weigh in favor of

22 PETITIONER'S RESPONSE TO GOVERNMENT'S RETURN - 3

Gibbs Houston Pauw
 1000 Second Avenue, Suite 1600
 Seattle, WA 98104
 Ph. (206) 682-1080
 Fax. (206) 689-2270

1 waiving the exhaustion requirement. Contrary to what the Government says, the *Puga* factors
2 weigh in favor of waiving exhaustion.

3 (1) The first factor is whether agency expertise makes agency consideration necessary to
4 generate a proper record and reach a proper decision. The Government claims that the Court
5 would benefit from an administrative appellate record because the immigration judge has
6 reached a finding that is factual in nature. That is not so. The IJ never made any relevant factual
7 findings. All the IJ did was check boxes on a form denial letter. See Dkt. 1-1 (Exhibits), pp. 61,
8 75, 87. There is no agency expertise needed to develop facts to determine that the IJ's terse
9 mechanical denial violates due process. *W.T.M. v. Bondi*, 2026 U.S. Dist. LEXIS 21315, *6
10 (W.D. Wash. Jan. 30, 2026) (where a petitioner claims that a bond hearing fails to comport with
11 due process, the issue "is better suited to review by the federal courts").

12 (2) The second factor is whether relaxation of the requirement would encourage the
13 deliberate bypass of the administrative scheme. Ms. Soto is not seeking review of a run-of-the-
14 mill bond denial. This is not a case in which the IJ weighed all of the relevant evidence and
15 concluded that the noncitizen is a danger to the community or a flight risk – the necessary
16 findings that have to be made to deny bond. To the contrary, the IJ never weighed any relevant
17 evidence and never made a finding that Ms. Soto is a danger to the community or a flight risk.
18 The constitutional issue presented here is not routine and relaxing the exhaustion requirement
19 would not permit other detainees to bypass the administrative appeal process.

20 (3) The third factor is whether administrative review is likely to allow the agency to
21 correct its own mistakes and to preclude the need for judicial review. Here, the Government
22 does not contest Ms. Soto's claim that since January 2025 the Board's official policy has been to

1 deny bond in every single case. *See* Dkt. 1, ¶62, citing cases. The Government does not even
2 argue that there is a slight chance that Ms. Soto's bond denial would be reversed by the Board.
3 *See also Singh v. Valdez*, 2026 U.S. Dist. LEXIS 71846, *13 (D. Colo. Apr. 1, 2026) ("the
4 mounting evidence that bond determination hearings conducted in Immigration Court under
5 §1226(a) have preordained outcomes has become impossible to ignore"). Under current
6 conditions, there is no reasonable possibility that the Board will overturn a bond denial.

7 Even if the *Puga* factors favor requiring exhaustion, the court still has authority to waive
8 the requirement of exhaustion where administrative remedies are inadequate or ineffective, or
9 where irreparable injury will likely result. *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004).
10 Ms. Soto has provided substantial evidence to show that an appeal to the BIA is inadequate and
11 ineffective, and that requiring exhaustion will cause irreparable hardship. Dkt. 1, ¶¶64, 65; Dkt
12 1-1, pp. 89-112. The Government's laconic response is that once the Board issues a decision
13 there will be a record for the Court to review. Dkt. 6, p. 7. That is a non-response to the
14 compelling reasons why the exhaustion requirement should be waived for Ms. Soto.

15 Nor does *Aden v. Nielsen*, 2019 U.S. Dist. LEXIS 194142 (W.D. Wash. Nov. 7, 2019),
16 which required the petitioner to exhaust an appeal, help the Government. In *Aden*, the IJ actually
17 considered the evidence of danger to the community and flight risk, weighed the evidence, and –
18 the petitioner claimed – weighed the evidence in an unlawful manner. The court held that "his
19 case is a common one," *id.* at *7, and has not established that the agency is "unlikely to change
20 [the IJ's decision] on appeal." Here in contrast – where the IJ has not made any finding
21 regarding danger to the community or flight risk – Ms. Soto's case is not a "common one," and
22 there is undisputed evidence that the Board's official policy is to deny bond in every case that

comes before it. Moreover, in contrast to *Aden* where there were no special circumstances establishing that immigration detention imposed irreparable hardship, here Ms. Soto has provided reasons specific to her situation establishing both that an appeal to the BIA would be inadequate and ineffective, and that her continued detention causes irreparable hardship.

B. The denial of bond violates Due Process.

The Government acknowledges that this Court has jurisdiction to review the IJ's bond denial for constitutional and legal claims. Dkt. 6, pp. 7-8. The Government argues that this Court does not have jurisdiction because Ms. Soto's constitutional and legal claims are not "colorable"; instead, her claims "amount to nothing more than a challenge to how the Immigration Judge weighed the evidence." *Id.*, p. 8. However, the Government nowhere cites to any record evidence showing that the IJ "weighed the evidence," and Ms. Soto maintains that the IJ never did in fact weigh the evidence. See Dkt. 1, ¶27 (alleging that the IJ did not make a finding of danger to the community or flight risk); Dkt. 1-1, pp. 61, 75, 87 (IJ's bond decisions reflecting that the IJ did not weigh any relevant evidence). The Government cites Claims II and III in the Habeas Petition as evidence that the IJ weighed evidence. Dkt. 6, p. 9, citing ¶¶75, 77. But those Claims – claims that it is unconstitutional to deny bond solely on the basis of an arrest on a charge that was subsequently dismissed, or on the basis of a final order of removal – were made as a protective measure in case the Government argued or submitted evidence that the IJ did in fact deny bond on the basis of danger to the community or flight risk. Those Claims are not evidence showing that the IJ did in fact weigh any evidence.

The Government's arguments on the merits of the Claims presented by Ms. Soto are off-key. First, the Government describes Claims II and III as claims that the IJ's bond decision is

1 constitutionally defective because “the Immigration Judge considered her prior arrest and final
 2 removal order as evidence of danger and flight risk.” Dkt. 6, p. 9. That is a mischaracterization
 3 of Ms. Soto’s Claims. Ms. Soto does not claim that it would be unconstitutional for an IJ to
 4 consider a prior arrest and/or a final removal order in making a bond decision. Rather, her
 5 Claims are that an IJ who makes a finding of “danger to the community” or “flight risk” based
 6 solely on the fact of a prior arrest commits or solely on the existence of a removal order makes a
 7 legal and constitutional error. Dkt. 1, ¶¶75, 77. *See, e.g., Singh v. Holder*, 638 F.3d 1196, 1206
 8 (9th Cir. 2011) (“not all criminal convictions conclusively establish that an alien presents a
 9 danger to the community, even where the crimes are serious enough to render the alien
 10 removable”); *id.* at 1205 (although a final order of removal an order “is a relevant factor in the
 11 calculus,” it alone does not justify denial of bond). *See also Rodriguez v. Greene*, 2026 U.S.
 12 Dist. LEXIS 41849, *32 (N.D. Ohio Mar. 2, 2026) (finding due process violation where “the IJ’s
 13 decision . . . contain[ed] zero reference to any record or arguments put forth by either party,” and
 14 held that the petitioner was a danger to the community and a flight risk “without supplying any
 15 reasoning [as to] how the IJ came to such a conclusion”).

16 The Government’s second point has no discernable relevance. The Government says that
 17 the IJ’s weighing of the facts “does not constitute an abuse of discretion.” But, as explained
 18 above, there is no evidence in the record that the IJ actually weighed any facts, and the
 19 Government does not provide any reason to believe that the IJ did weigh the facts. The
 20 Government asserts that a reasonable factfinder “could have determined” that Ms. Soto is a
 21 danger to the community or a flight risk. But the Government does not point to any evidence in
 22 the record that would support such a finding and there is none. In short, based on the undisputed

PETITIONER’S RESPONSE TO GOVERNMENT’S RETURN - 7

Gibbs Houston Pauw
 1000 Second Avenue, Suite 1600
 Seattle, WA 98104
 Ph. (206) 682-1080
 Fax. (206) 689-2270

1 record in this case, no reasonable person could possibly conclude that Ms. Soto is a danger to the
2 community or a flight risk. *See, e.g., Maui v. Chertoff*, 562 F. Supp. 2d 1107, 1116 (S.D. Cal.
3 2008) (as a matter of law, government did not establish dangerousness by pointing only to past
4 DUI convictions that were four to six years old).

5 Third: the Government states that the IJ's decision is supportable because the IJ could
6 properly "consider" Ms. Soto's conviction. Govt Return, p. 9 (claiming that the IJ does not have
7 to "disregard the conviction altogether"). That reflects a fundamental factual misunderstanding.
8 Ms. Soto was arrested (improperly), but she was never convicted. Dkt. 1-1, p. 74. Where a
9 person has been arrested but not convicted, it is a legal error to make a finding of danger to the
10 community based on a claim that the person has been convicted. The Government attempts to
11 distinguish *Jatinder Singh v. Noem*, 2026 U.S. Dist. LEXIS 21296 (W.D. Wash. Feb. 2, 2026), to
12 no avail. In that case, the petitioner was arrested by DHS upon his arrival in the United States;
13 he was vetted and released from detention pending removal proceedings. He was subsequently
14 arrested and charged with DUI. While that charge was pending against him, DHS arrested him;
15 he was not convicted. This Court The court ordered immediate release because the "detention of
16 Petitioner violates the due process protections afforded to him by the Constitution." *Id.* at *13.
17 Ms. Soto's case is similar (like Jatinder Singh, she was previously vetted and granted an
18 immigration benefit), and what this Court said applies here.

19 [A]ll that is provided are conclusory statements that Petitioner violated the terms of his
20 release and that he is now a flight risk. These conclusory statements are insufficient to
21 find the government's potential interest in detaining Petitioner without process outweighs
22 Petitioner's liberty interest.

Id.

1 As its fourth point, the Government attempts to distinguish *W.T.M. v. Bondi*, 2026 U.S.
2 Dist. LEXIS 21315 (W.D. Wash. Jan. 30, 2026). However that case, like *Singh v. Noem*, is on
3 all fours with this case. In *W.T.M.*, a bond hearing was held before an immigration judge and the
4 IJ denied bond based solely on the fact that a bench warrant had been issued against the
5 petitioner, even though the warrant was inactive. This Court reviewed the IJ's decision and
6 concluded:

7 [I]t is clear from the existing record in this case that the IJ's bond denial was
8 constitutionally deficient, because there are no circumstances in which the IJ could
9 plausibly establish that Petitioner posed a flight risk. The IJ did not provide any
10 reasoning for his finding that Petitioner was "an extreme flight risk."

11 *Id.* at *10. Accordingly, *W.T.M.* was ordered to be released immediately. Similarly this Court
12 should order the immediate release of Ms. Soto.

13 **C. Ms. Soto Is Entitled to Immediate Release.**

14 The Government argues that Ms. Soto is not entitled to immediate release under
15 *Zadvydas v. Davis*, 533 U.S. 678 (2001). But that argument is a red herring. Ms. Soto does not
16 claim that she is under a final order of removal and entitled to release under the *Zadvydas*
17 indefinite detention rule. *See* Dkt. 1, Claims I–IV. Rather, she is entitled to immediate release
18 because she has not been afforded a bond hearing that comports with due process and there is no
19 evidence to support a finding of danger to the community or flight risk. Courts have over and
20 over held that in such circumstances, the petitioner is being held in detention in violation of Due
21 Process and is entitled to immediate release. *See, e.g., Haiguang Zheng v. Rokosky*, --- F. Supp.
22 3d ---, 2026 U.S. Dist. LEXIS 60485, *10-11 (D.N.J. Mar. 23, 2026) (ordering immediate release
after the IJ "failed to provide any explanation whatsoever for ... holding that Petitioner is a flight

1 risk, and by all appearances acted as a 'mere rubber-stamp' ... for Respondents' predetermined
 2 decision to deny bond"); *Miri v. Bondi*, 2026 U.S. Dist. LEXIS 46944, *26 (C.D. Cal. Mar. 5,
 3 2026) (ordering immediate release, the IJ "did not explain the reasons for denying Miri's bond"
 4 and "did not describe ... what evidence was relied on"; "the record does not establish that the
 5 Immigration Judge relied on the appropriate factors"); *Tran v. Bondi*, 2025 U.S. Dist. LEXIS
 6 265787, *19 (W.D. Wash. Dec. 24, 2025) (ordering immediate release, "all three *Mathews*
 7 factors favor Petitioner" and thus the "detention of Petitioner with apparently no process at all
 8 violates the due process protections afforded to him by the Constitution"); *Jimenez v. Bondi*,
 9 2025 U.S. Dist. LEXIS 253558, *6 (W.D. Wash. Dec. 3, 2025) (ordering immediate release and
 10 holding: "[b]ased on ... review of the *Mathews* factors, ... due process requires that Petitioner
 11 receive proper notice and an opportunity to respond before he can be re-detained"); *Garcla v.*
 12 *Hyde*, 2025 U.S. Dist. LEXIS 253787 (D.R.I. Dec. 3, 2025) (ordering habeas petitioner's
 13 immediate release from custody "[g]iven the due process violations that pervaded his bond
 14 hearing"); *Arzate v. Andrews*, 2025 U.S. Dist. LEXIS 149743, *18 (E.D. Cal. Aug. 4, 2025)
 15 (ordering immediate release where petitioner was not provided with a pre-deprivation bond
 16 hearing); *Pinchi v. Noem*, 2025 U.S. Dist. LEXIS 127539, *2 (N.D. Cal. July 4, 2025) (where
 17 petitioner from Peru was detained upon initial entry to the U.S., released on her own
 18 recognizance and given a notice to appear for later removal proceedings, and petitioner filed for
 19 asylum, court ordered immediate release where she was re-arrested without a bond hearing)

20 **D. The Government's Return Is Not Responsive to Claims I and IV.**

21 The Government has not responded to Claim I. The Government does not dispute Ms.
 22 Soto's claim that the IJ has failed to make a finding of "danger to the community" or "flight

1 risk.” Habeas Petition, ¶27. There is no evidence in the record showing that the IJ ever made
 2 such a determination. Further, whether or not the IJ made such a finding, there is no evidence in
 3 the record that could possibly support such a finding. The Government points to not one iota of
 4 evidence in the record.² What the uncontroverted record shows is that Ms. Soto is not a danger
 5 to the community or a flight risk. For that reason, Ms. Soto’s Claim I should be granted and she
 6 should be immediately released from custody.

7 The Government has not responded to Claim IV. Ms. Soto alleges that she was
 8 previously vetted by USCIS, was granted immigration benefits, complied with all immigration
 9 requirements, has not been convicted of any criminal offense, and never failed to appear for any
 10 immigration appointment. Dkt. 1, ¶¶15, 19, 34, 35. The Government does not dispute those
 11 facts. Under such circumstances, as a matter of procedural due process under the *Mathews v.*
 12 *Eldridge* analysis, Ms. Soto is entitled to a bond hearing at which: the IJ must consider all
 13 relevant evidence in the record and make a bond decision based only on that evidence; if the
 14 immigration judge deems Ms. Soto’s evidence to be insufficient to overcome whatever evidence
 15 the Government submits, then she is entitled to an explanation from the IJ and a meaningful
 16 opportunity to respond; and she is entitled to a written decision from the IJ explaining the
 17 reasons for concluding that she is a danger to the community or a flight risk. Dkt. 1, ¶¶80, 81,
 18 82. Nowhere does the Government respond to that claim. Because DHS previously vetted Ms.
 19 Soto and granted her immigration benefits, her situation is similar to that in which DHS had a

20 ² The Government does assert that the IJ did properly “consider” Ms. Soto’s “criminal
 21 conviction,” Govt Return, p. 9, but there is no evidence in the record to show a conviction..
 22 To the contrary, the record establishes that Ms. Soto has never been convicted of a crime. Dkt.
 1-1, p. 74.

1 person in custody, vetted that person, and released that person from detention. For noncitizens in
2 that situation, numerous courts have held that if a bond hearing consistent with due process has
3 not been provided, then the person is entitled to immediate release. *See* cases cited *supra*, pp. 9-
4 10. *See also Zambrano-Vazquez v. Noem*, 2026 U.S. Dist. LEXIS 48184, *10 (W.D. Wash. Mar.
5 9, 2026) (court ordered immediate release where the IJ found danger to the community and flight
6 risk based on a “long history of drug use” even though the petitioner had a clean record for the
7 past decade; this Court found “no evidence on the record” of present danger to the community or
8 flight risk and held: “the Government’s arrest and detention of Petitioner with what appears no
9 reasoning nor process violates Petitioner’s due process protections under the Constitution”).

10 CONCLUSION

11 For the foregoing reasons, Ms. Soto requests an order that she be released from detention
12 immediately.

Dated this 10th day of April, 2026.

/s/ Robert Pauw
Robert Pauw
GIBBS HOUSTON PAUW
1000 Second Ave., Suite 1600
Seattle, WA 98104
(206) 682-1080
rpauw@ghp-law.net

/s/ G. Michael Zeno, Jr.
G. Michael Zeno, Jr.
Law Office of G. Michael Zeno, Jr., P.S.
135 Lake Street S., Suite 257
Kirkland, WA 98033
(425) 947-8050
mikez@zenolawfirm.com

Attorneys for Vanessa Soto Gimenez

I certify that this brief contains 3,671 words,
in compliance with the Local Civil Rules.