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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

ASRAR ZEYNU SIRAJ,

Petitioner,

v.

MARYKWAYNE MULLIN, Secretary
of the Department of Homeland Security,
TODD BLANCHE, Acting Attorney
General, TODD M. LYONS, Acting
Director, Immigration and Customs
Enforcement, JESUS ROCHA, Acting
Field Office Director, San Diego Field
Office, JEREMY CASEY, Warden at
Imperial Regional Detention Facility,

Respondents.

Civil Case No.: 26-cv-2091-LL-DEB

**Petitioner's Reply in Support of
Motion to Enforce**

INTRODUCTION

In his motion to enforce, Mr. Siraj made one clear argument as to why this Court should order Mr. Siraj's immediate release, a new bond hearing, or both: that the immigration judge ("IJ") failed to comply with this Court's order by not considering any alternative conditions of release.

This Court clearly ordered the IJ to "consider alternative conditions of release" during Mr. Siraj's bond hearing. Minute Order, ECF No. 10. At no point during the fifty-minute hearing did the IJ even mention, let alone thoughtfully consider and discuss, potential alternative conditions of release. *See* ECF 12.

In its response, the government argues that (1) the IJ did not need to consider alternatives to detention ("ATD") because the IJ found Mr. Siraj to be a flight risk, and (2) Mr. Siraj must exhaust his administrative remedies before challenging the immigration court bond proceedings. Neither of these arguments should prevail. This Court should order Mr. Perez's immediate release subject to reasonable conditions of supervision. At a minimum, it should order a new bond hearing so an IJ can conduct a hearing that follows this Court's order.

ARGUMENT

I. This Court ordered the IJ to consider alternatives to detention, and the IJ did not follow this order.

It is clear from the bond hearing transcripts that the IJ did not consider alternatives to detention as ordered by this Court. *See* ECF 12 at Exh. B. The government does not seem to dispute this in its response to Petitioner's motion to enforce. *See* ECF 15. That response, however, indicates Respondent and Petitioner disagree on the reading of this Court's order. In part, this Court mandated, "The immigration judge shall consider alternative conditions of release and Petitioner's ability to pay bond if he determines bond is appropriate." Minute Order, ECF 10. Respondent argues that "if he determines bond is appropriate" modifies both the order to consider alternative conditions of release *and* the

1 ability to pay bond—and thus only required the IJ to consider alternatives to
2 detention *if* bond is appropriate. ECF 15 at 2. Petitioner argues it makes the most
3 sense that the order to consider alternatives to detention is separate and apart from
4 the bond determination.

5 The government’s argument conflating the requirements in this Court’s
6 order does not make sense considering the many different findings an IJ can make
7 at a bond hearing—and the options for release. Money bond—and a person’s
8 ability to pay that bond—is separate and apart from other considerations available
9 to an IJ. An IJ can order release on recognizance, release with specific conditions,
10 release on bond requiring monetary payment, community-based supervised
11 release, any number of requirements provided by ICE’s ATD program, or a
12 combination of these options. *See Alternatives to Detention*, ICE (May 18, 2026),
13 available at: <https://www.ice.gov/features/atd>; *Alternatives to Immigration*
14 *Detention: An Overview*, American Immigration Counsel (July 11, 2023),
15 available at: [https://www.americanimmigrationcouncil.org/report/alternatives-](https://www.americanimmigrationcouncil.org/report/alternatives-immigration-detention-overview/)
16 [immigration-detention-overview/](https://www.americanimmigrationcouncil.org/report/alternatives-immigration-detention-overview/). Many of the above requirements can be ordered
17 without requiring Petitioner to pay a bond, and many of those requirements would
18 be considered ATDs that would have complied with this Court’s order. Instead,
19 none of those options were considered, and the IJ denied bond outright because he
20 found Petitioner to be a flight risk.

21 As laid out in Petitioner’s Motion to Enforce, the IJ found Mr. Siraj to be a
22 flight risk even though Mr. Siraj has been detained for the entirety of his time in
23 the United States and has relatives who live here (one of which is a citizen). *See*
24 ECF 12 at 2. A petitioner’s inability to demonstrate ties to the United States that
25 are impossible to develop while in the confines of detention (like employment or
26 history of attending immigration proceedings) does not mean the IJ can ignore a
27 court order to consider alternatives. And, in fact, had the IJ considered the Court’s
28

1 order, those ATDs could have provided assurances that are otherwise, in the IJ's
2 view, missing from Petitioner's history.

3 The IJ's finding that Mr. Siraj is a flight risk directly clashes with this
4 Court's order to consider ATDs: the IJ made this finding without any
5 consideration as to whether any of the available ATDs would affect that
6 determination. Some of the ATD options, such as an ankle monitor or other
7 electronic monitoring, provide the kind of assurance that even a money bond
8 cannot. These monitoring devices inform the Respondent of Petitioner's every
9 move and every location, ensuring Petitioner will appear for court or face re-
10 detention and other consequences if he fails to appear. This is also why Petitioner
11 argues that Respondent's reading of the Court's order makes no sense: it is
12 possible to consider ATDs without needing to consider ability to pay bond—and,
13 in fact, would be a prudent consideration for an IJ to make when considering
14 whether someone is a risk of flight. Because the IJ did not consider any of the
15 ATDs available to ensure Mr. Siraj's return to court, and violated this Court's
16 order as a result, this Court should order Mr. Siraj's immediate release.

17 **II. This Court should not require prudential exhaustion to the BIA.**

18 There is no exhaustion provision in 8 U.S.C. § 1226(a). *See Picado v.*
19 *Hyde*, No. 26-cv-65-JJM-PAS, 2026 WL 352691, *5 (D.R.I. Feb. 9, 2026)
20 (explaining this statutory point). As a result, courts have prudential discretion to
21 decide whether to require exhaustion or not. *Id.*

22 Here, there are countless reasons why this Court should not require
23 exhaustion: Mr. Siraj was illegally detained without any individualized bond
24 hearing for nearly ten months even before this Court ordered the bond hearing at
25 issue; this motion concerns enforcement of the terms of this Court's order; it
26 appears futile to require Mr. Siraj to appeal that hearing to an administrative
27 agency that holds that immigration judges lack jurisdiction over bond hearings in
28 cases like his; the BIA is both overwhelmed with appeals and staffed at half-

1 capacity, such that bond appeals will likely take even longer than the average 200-
2 day period from years past; and it is irreparable harm to continue to detain Mr.
3 Siraj in immigration custody when a constitutionally adequate bond hearing could
4 and should result in his release.

5 Courts generally begin their prudential exhaustion analysis as to any agency
6 determination by looking to the *Puga* factors: “1) whether agency expertise makes
7 agency consideration necessary to generate a proper record and reach a proper
8 decision; 2) whether relaxation of the requirement would encourage the deliberate
9 bypass of the administrative scheme; and 3) whether administrative review is
10 likely to allow the agency to correct its own mistakes and preclude the need for
11 judicial review.” *Miri*, 2026 WL 622302 at *10 (citing *Puga v. Chertoff*, 488 F.3d
12 812, 815 (9th Cir. 2007)). “Nonetheless, even if the three *Puga* factors weigh in
13 favor of prudential exhaustion, a court may waive the prudential exhaustion
14 requirement if ‘administrative remedies are inadequate or not efficacious, pursuit
15 of administrative remedies would be a futile gesture, irreparable injury will result,
16 or the administrative proceedings would be void.” *Hernandez v. Sessions*, 872
17 F.3d 976, 988 (9th Cir. 2017) (quoting *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th
18 Cir. 2004)).

19 None of the three *Puga* factors favor exhaustion. The first *Puga* factor does
20 not favor exhaustion: “the Board of Immigration Appeals is not a ‘fact-finding
21 authority’ and would only be reviewing ‘legal error,’ [so] there is no ‘further
22 development of the record needed’ to resolve the issues.” *Miri*, 2026 WL 622302
23 at *10. “And, in any event, the underlying factual record is straightforward and
24 undisputed.” *Gomes v. Hyde*, 804 F. Supp. 3d 265, 273 (D. Mass. 2025). Neither
25 does the second factor favor exhaustion: whether Respondents followed this
26 Court’s order does not encourage bypass of the administrative scheme, and
27 regardless, whether Mr. Siraj is a flight risk is “a mixed question of fact and law”
28 that “resolution by this Court can provide guidance for future detainees.” *Miri*,

2026 WL 622302 at *11. Neither does the third factor favor exhaustion: While the BIA is theoretically capable of correcting its own mistakes, it does not appear it would hold that it has jurisdiction to do so in cases like Mr. Siraj’s. *See, e.g., Faizyan v. Casey*, No. 25-cv-2884-RBM, 2025 WL 3208844, *4 (S.D. Cal. Nov. 17, 2025) (noting this futility). And, in any event, requiring Mr. Siraj to go before the BIA would significantly prolong his illegal detention by many, many months. *Miri*, 2026 WL 622302 at *11.

Regardless, even if *all* of the *Puga* factors favored exhaustion, the apparent futility of an appeal to the BIA, coupled with the prolonged irreparable injury that has already resulted and will continue to result, counsel in favor of not requiring exhaustion in Mr. Siraj’s case. Indeed, the Ninth Circuit has recognized “the irreparable harms imposed on anyone subject to immigration detention.” *Hernandez*, 872 F.3d at 995.” Courts have also “found that continued detention after a potentially legally inadequate hearing may constitute such irreparable harm.” *Perez Velasquez*, 2026 WL 1042479 at *4 (collecting cases). For both of these reasons, “district courts in this circuit have routinely waived prudential exhaustion requirements for noncitizens . . . facing prolonged detention while awaiting administrative appeals.” *Rodriguez*, 779 F. Supp. 3d at 1253–54 (collecting cases).

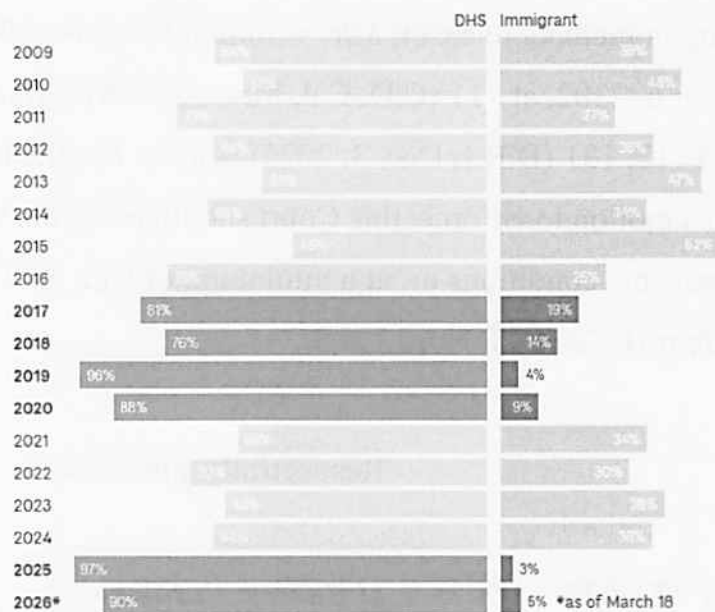
Finally, it is worth noting how long a BIA appeal takes, and the deck that is currently stacked against immigrants at the BIA. “According to data released by the Executive Office for Immigration Review, the average processing time for bond appeals exceeded 200 days in 2024.” *Gomes*, 804 F. Supp. 3d at 273 (citing *Rodriguez*, 779 F. Supp. 3d at 1248–49). And that is the case even when the BIA is fully staffed. At present, the BIA has been reduced from 28 members to 15. Current reporting provides “evidence that BIA has been drastically reshaped within the past year, such that the BIA now functions to rubberstamp IJ bond denials.” *Perez Velasquez*, 2026 WL 1042479 at *3. As NPR reported in late

March 2026, BIA decisions “backed Department of Homeland Security lawyers in 97% of publicly posted cases; that’s at least 30 percentage points higher than the average from the last 16 years.” Ximena Vustillo & Rahul Mukherjee, *An immigration court few have heard of is quietly shaping policy behind the scenes*, NPR (Mar. 20, 2026).¹ A graphic of the turn-around at the BIA is striking:

Board of Immigration Appeals has overwhelmingly sided with DHS during the Trump administrations

Percentage of court cases that sided with either the Department of Homeland Security (DHS) or the immigrant, by year

Years in **bold** are during both Trump administrations



Notes

The cases above include only publicly published BIA precedent decisions. Numbers do not add up to 100%. NPR excluded one case in 2026 where the petitioner is appealing the approval of their own spouse’s green card, which was referred to U.S. Citizenship and Immigration Services. In other years, other cases were excluded from the analysis because the filings were procedural requests.

Source: NPR analysis of Executive Office for Immigration Review decisions

Credit: Rahul Mukherjee and Ximena Bustillo/NPR

At the end of the day, Mr. Siraj’s motion—a motion based on the standards identified in this Court’s prior order identifying a legal violation stemming from a BIA decision, and a motion regarding the irreparable harm he has continued to

¹ Available at <https://www.npr.org/2026/03/20/nx-s1-5707535/trump-immigration-detention-appeals-board-deportation>.

face during his ten months in immigration detention—is not an appropriate one in which to require exhaustion to the BIA as a prudential matter.

CONCLUSION

As noted in Mr. Siraj’s motion to enforce, courts are increasingly ordering release in lieu of a bond hearing. *See, e.g., Hernandez-Garcia v. Warden*, No. 26-cv-1248-JO-BLM, ECF No. 11 (Mar. 26, 2026); *Izquierdo Mendez v. Casey*, No. 26-cv-1731-JO-SBC, ECF No. 6 (Mar. 30, 2026). This is especially true where courts are finding issues with the bond hearings conducted before the IJs. *See Zheng v. Rokosky*, No. 26-cv-01689, 2026 WL 800203, at *8 (D.N.J. Mar. 23, 2026) (ordering immediate release); *Miri v. Bondi*, No. 26-cv-00698-MEMF-MAR, 2026 WL 622302, at *11 (C.D. Cal. Mar. 5, 2026) (same); *Garcia v. Hyde*, 817 F.Supp.3d 112, 131 (D.R.I. Dec. 3, 2025) (same). For the reasons Mr. Siraj identified in his motion to enforce, this Court should order his immediate release subject to reasonable conditions or, at a minimum, order a new bond hearing before a different IJ. *See* ECF No. 12 at 3.

Respectfully submitted,

Dated: May 27, 2026

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