

1 ADAM GORDON
United States Attorney
2 JACOB T. METZGER
Special Assistant U.S. Attorney
3 Ohio State Bar No. 104783
Office of the U.S. Attorney
4 880 Front Street, Room 6293
San Diego, CA 92101-8893
5 Telephone: (619) 546-8693
Mobile: (619) 885-2119
6 Facsimile: (619) 546-7751
Email: jacob.metzger@usdoj.gov

7 Attorneys for Respondents

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

10 M.K.

11 Petitioner,

12 v.

13 SIXTO MARRERO, *et al.*,

14 Respondents.
15
16
17

Case No. 26-cv-02499-RBM-MMP

**OPPOSITION TO PETITIONER'S
MOTION TO ENFORCE
HABEAS CORPUS ORDER WITH
AMENDED EXHIBIT 2¹**

18 **I. INTRODUCTION**

19 On April 20, 2026, M.K. filed a habeas petition. ECF No. 1. On April 29, 2026,
20 Respondents filed a response identifying our position that Petitioner was subject to
21 mandatory detention under 8 U.S.C. § 1225(b)(2); however, in Respondent's return,
22 acknowledged that the Court's prior jurisprudence reached the opposite conclusion.
23 ECF No.5. Further, Respondents recognized that the Court's prior decisions would
24 control the result of the proceedings and that the government did not oppose a bond
25

26
27 ¹ Due to the inadvertent disclosure of PII in Exhibit 2. Respondents submit this opposition to
28 Petitioner's motion to enforce the Habeas Corpus Order, the declaration, and amended Exhibit 2
with further redactions to preserve Petitioner's anonymity. The only material changes to the
submitted documents are Exhibit 2 and this additional footnote.

1 hearing. ECF No. 5. On May 7, 2026, this Court granted Petitioner's Petition for a Writ
2 of Habeas Corpus and ordered Respondents to provide Petitioner with an individualized
3 bond hearing before an Immigration Judge (IJ) pursuant to 8 U.S.C. § 1226(a) within
4 10 days. ECF No. 7. Further, the Court ordered that the IJ could not deny Petitioner
5 bond on the basis that 8 U.S.C. §1225(b)(2) required mandatory detention. *Id.*

6 On May 13, 2026 and May 15, 2026, an IJ held two separate bond hearings for
7 Petitioner and found that Petitioner was a flight risk and denied bond. *See* ECF No. 10,
8 Exhibit B; ECF No. 10, Exhibit C; ECF No. 10, Exhibit D. On June 26, 2026, Petitioner
9 filed a Motion to Enforce Judgement alleging that the hearing was inadequate as DHS
10 did not provide clear and convincing evidence that Petitioner was a flight risk and did
11 not provide an individualized presentation of the evidence. ECF No. 10.

12 In the Court's Order Setting Briefing Schedule, the Court noted Respondent's
13 transcript and required Respondents to file a copy of their transcript if the bond hearings
14 meaningfully differ. ECF No. 11. Respondents do not contest the validity or accuracy
15 of Petitioner's copy of the transcript. Further, Respondents attach a declaration with the
16 submitted evidence.

17 For the reasons set forth below, Respondents respectfully oppose the motion and
18 request that the Court deny the Petitioner's Motion to Enforce the Habeas Corpus order
19 as the Respondents have complied with the Court's June 18, 2026 order.

20 21 **II. ARGUMENT**

22 **A. PETITIONER HAS NOT EXHAUSTED THEIR ADMINISTRATIVE 23 REMEDIES**

24 Even if Petitioner had made specific arguments as to how the IJ failed to comply
25 with the Court's order, Petitioner has still failed to exhaust administrative remedies
26 "Exhaustion can be either statutorily or judicially required." *Acevedo-Carranza v.*
27 *Ashcroft*, 371 F.3d 539, 541 (9th Cir. 2004). "If exhaustion is statutory, it may be a
28 mandatory requirement that is jurisdictional." *Id.* (citing *El Rescate Legal Servs., Inc. v.*

1 *Exec. Office of Immigration Review*, 959 F.2d 742, 747 (9th Cir. 1991)). “If, however,
2 exhaustion is a prudential requirement, a court has discretion to waive the requirement.”
3 *Id.* (citing *Stratman v. Watt*, 656 F.2d 1321, 1325–26 (9th Cir. 1981)). Here, the proper
4 avenue for Petitioner’s grievance with the bond denial was to utilize the administrative
5 scheme and appeal the bond denial to the BIA. Notably, reserved appeal and that appeal
6 was due on June 12, 2026. *See* ECF No. 9, Exhibit 2.

7 The BIA is an appellate body within the Executive Office for Immigration Review
8 and possesses delegated authority from the Attorney General. 8 C.F.R. §§ 1003.1(a)(1),
9 (d)(1). The BIA is “charged with the review of those administrative adjudications under
10 the [Immigration and Nationality Act (INA)] that the Attorney General may by regulation
11 assign to it,” including IJ custody determinations. 8 C.F.R. §§ 1003.1(d)(1), 236.1,
12 1236.1. The BIA not only resolves particular disputes before it, but is also directed to,
13 “through precedent decisions, . . . provide clear and uniform guidance to [the Department
14 of Homeland Security], the IJs, and the general public on the proper interpretation and
15 administration of the [INA] and its implementing regulations.” 8 C.F.R. § 1003.1(d)(1).
16 Decisions rendered by the BIA are final, except for those reviewed by the Attorney
17 General. 8 C.F.R. § 1003.1(d)(7).

18 “District Courts are authorized by 28 U.S.C § 2241 to consider petitions for habeas
19 corpus.” *Castro–Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001), *abrogated on other*
20 *grounds by Hernandez–Vargas v. Gonzales*, 548 U.S. 30 (2006). “That section does not
21 specifically require petitioners to exhaust direct appeals before filing petitions for habeas
22 corpus.” *Id.* That said, the Ninth Circuit “require[s], as a prudential matter, that habeas
23 petitioners exhaust available judicial and administrative remedies before seeking relief
24 under § 2241.” *Id.* Specifically, “courts may require prudential exhaustion if (1) agency
25 expertise makes agency consideration necessary to generate a proper record and reach a
26 proper decision; (2) relaxation of the requirement would encourage the deliberate bypass
27 of the administrative scheme; and (3) administrative review is likely to allow the agency
28 to correct its own mistakes and to preclude the need for judicial review.” *Puga v. Chertoff*,

1 488 F.3d 812, 815 (9th Cir. 2007) (cleaned up).

2 “When a petitioner does not exhaust administrative remedies, a district court
3 ordinarily should either dismiss the petition without prejudice or stay the proceedings
4 until the petitioner has exhausted remedies, unless exhaustion is excused.” *Leonardo v.*
5 *Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011) (citations omitted); *see also Alvarado v.*
6 *Holder*, 759 F.3d 1121, 1127 n.5 (9th Cir. 2014), *abrogated on other grounds by Santos-*
7 *Zacaria v. Garland*, 598 U.S. 411 (2023) (“issue exhaustion is a jurisdictional
8 requirement”); *Tijani v. Holder*, 628 F.3d 1071, 1080 (9th Cir. 2010) (court “lacks
9 jurisdiction to review legal claims not presented in an alien’s administrative proceedings
10 before the BIA”). Moreover, “a petitioner cannot obtain review of procedural errors in
11 the administrative process that were not raised before the agency merely by alleging that
12 every such error violates due process.” *Reid v. Engen*, 765 F.2d 1457, 1461 (9th Cir.
13 1985); *see also Sola v. Holder*, 720 F.3d 1134, 1135–36 (9th Cir. 2013) (declining to
14 address a due process argument that was not raised below because it could have been
15 addressed by the agency).

16 Here, requiring Petitioner to exhaust administrative remedies is warranted because
17 agency expertise is required. “[T]he BIA is the subject-matter expert in immigration bond
18 decisions[.]” *Aden v. Nielsen*, No. C18-1441RSL, 2019 WL 5802013, at *2 (W.D. Wash.
19 Nov. 7, 2019); *see also Delgado v. Sessions*, No. C17-1031-RSL-JPD, 2017 WL
20 4776340, at *2 (W.D. Wash. Sept. 15, 2017) (noting a denial of bond to an immigration
21 detainee was “a question well suited for agency expertise”).

22 Waiving exhaustion would also encourage other detainees to bypass the BIA and
23 directly appeal from the IJ to federal district court. *See Aden*, 2019 WL 5802013, at *2
24 (“[R]elaxation of the exhaustion requirement would likely encourage other detainees to
25 bypass the BIA and directly appeal their no-bond determinations from the [IJ] to federal
26 district court.”). Individuals, like Petitioner, would have little incentive to seek relief
27 before the BIA if this Court permits review here. And allowing a skip-the-BIA-and-go-
28 straight-to-federal-court strategy would needlessly increase the burden on district courts.

1 *See Bd. of Tr. of the Constr. Laborers' Pension Trust for S. Cal. v. M.M. Sundt Constr.*
2 *Co.*, 37 F.3d 1419, 1420 (9th Cir. 1994) (“Judicial economy is an important purpose of
3 exhaustion requirements.”) (citation omitted); *Santos-Zacaria*, 598 U.S. at 418 (noting
4 “exhaustion promotes efficiency”). If the IJ erred, this Court should allow the
5 administrative process to correct itself.

6 Moreover, detention alone is not an irreparable injury. Discretion to waive
7 exhaustion “is not unfettered.” *Laing v. Ashcroft*, 370 F.3d 994, 998 (9th Cir. 2004).
8 “[C]ivil detention after the denial of a bond hearing [does not] constitute[] irreparable
9 harm such that prudential exhaustion should be waived.” *Reyes v. Wolf*, No. C20-
10 0377JLR, 2021 WL 662659, at *3 (W.D. Wash. Feb. 19, 2021), *aff'd sub nom. Diaz Reyes*
11 *v. Mayorkas*, No. 21-35142, 2021 WL 3082403 (9th Cir. July 21, 2021).

12 Finally, Petitioner bears the burden to show that an exception to the exhaustion
13 requirement applies. *Leonardo*, 646 F.3d at 1161; *Aden*, 2019 WL 5802013, at *3. Here,
14 Petitioner has failed to demonstrate that exhaustion should be waived. Other courts in this
15 district agree. *See, e.g., Rana v. LaRose*, No. 26-cv-00285-RSH-DDL, ECF No. 11 (S.D.
16 Cal. Mar. 13, 2026) (denying motion to enforce judgment where petitioner was denied
17 bond on the basis of flight risk because there was no indication that administrative
18 remedies were first exhausted) (citing *Leonardo*, 646 F.3d at 1160); *Baker v. Gordon*,
19 No. 25-cv-03539-CAB-SBC, ECF No. 8 at 2:1–5 (S.D. Cal. Jan. 30, 2026) (“As the Ninth
20 Circuit has explained, ‘[Petitioner] pursued habeas review of the [IJ’s] adverse bond
21 determination before appealing to the BIA. This short cut was improper. [Petitioner]
22 should have exhausted administrative remedies by appealing to the BIA before asking the
23 federal district court to review the [IJ’s] decision.’”) (quoting *Leonardo*, 646 F.3d at
24 1160).

25 **B. DURING THE MAY 13 AND MAY 15 HEARINGS, RESPONDENTS**
26 **PROVIDED A MEANINGFUL INDIVIDUALIZED BOND HEARING AND**
27 **THE IJ APPROPRIATELY APPLIED THE *GUERRA* FACTORS**

28 The IJ provided the Petitioner two separate bond hearings, each of these bond
hearings fully complied with the Court’s order directing a meaningfully individualized

1 bond hearing and the IJ applied the *Guerra* Factors appropriately. *Matter of Guerra*, 24
2 I. & N. Dec. 37 (BIA 2006). During both the first and second bond hearing, the IJ
3 acknowledged the burden was on the government to establish by clear and convincing
4 evidence that Petitioner poses a danger to the community or risk of flight, recognizing
5 this Court's order. *See* ECF No. 10, Exhibit B at Page 3; ECF No. 10, Exhibit C at Page
6 3; ECF No. 7 at 5. The IJ admitted evidence from both the parties including an evidence
7 packet submitted by Petitioner, an evidence packet submitted by the government, a bond
8 redetermination request, and the IJ's oral decision. *See* ECF No. 10, Exhibit B at Page
9 2; ECF No. 10, Exhibit C at Page 2; ECF No. 10, Exhibit D at 26.² During both
10 hearings, Petitioner provided testimony regarding his sponsor. *See* ECF No. 10, Exhibit
11 B at Page 8-13; *See* ECF No. 10, Exhibit C at Page 5-16. During the second hearing,
12 Petitioner's sponsor was able to provide testimony. *See* ECF No. 10, Exhibit D at Page
13 13. After the conclusion of evidence, the IJ allowed both parties the opportunity to make
14 closing arguments. *See* ECF No. 10, Exhibit B at Page 13-19; ECF No. 10, Exhibit D
15 at Page 14-23.

16 During the first bond hearing on May 13, the IJ noted their concern with
17 Petitioner's sponsor and found that the sponsor was not credible. *See* ECF No. 10,
18 Exhibit B at Page 21. Specifically, the IJ noted their concern with the connection to the
19 Petitioner, noting that the sponsor stated their relationship as cousins, but found they
20 are not related as the sponsor was Petitioner's brother's wife's sister. *Id.* at 20-21.
21 Further, the IJ noted that in a previous immigration hearing, Petitioner's testimony was
22 found not to be credible by a separate IJ as it was inconsistent. *Id.* at 21. The IJ
23 specifically considered the Petitioner's adverse credibility finding. *Id.* at 21. The IJ
24 further noted that Petitioner does not have any blood relatives in the United States, aside
25

26 ² During the bond hearings, some of the evidence was entered in a different order.
27 Petitioner's evidence packet was noted as Exhibit 2 during the May 13 bond hearing but noted as
28 Exhibit 1 during the May 15 bond hearing. The government's evidence packet was always noted as
Exhibit 3. The bond redetermination request was noted as Exhibit 1 during the May 13 hearing but
as Exhibit 2 during the May 15 hearing. It appears that the IJ's oral decision was only referred to in
the second hearing as Exhibit 4.

1 from Petitioner's daughter who was also in custody. *Id* at 19-20. The IJ did consider
2 that Petitioner has factors that weighed both for and against Petitioner. *Id.* 19-23. The
3 IJ noted Petitioner did not enter the country illegally and enter without inspection and
4 that Petitioner had a place to live, which is evidence in favor of Petitioner. *Id.* At the
5 conclusion of the hearing, the IJ provided the Petitioner with another opportunity to be
6 heard and ruled that, if there is a material change and the sponsor wants to testify, the
7 IJ was willing to provide another bond hearing and consider the testimony. *Id.* at 22.
8 However, unless Petitioner provided new information, the IJ found that the sponsor was
9 not credible. *Id.* Thus, the Court properly applied the *Guerra* factors and addressed the
10 Court's order during the May 13 hearing, even providing the Petitioner with the
11 opportunity to readdress the arguments later if there was a material change in
12 circumstances and the Petitioner's sponsor wanted to testify. *See* ECF No. 10, Exhibit
13 B.

14 During the May 15 hearing, the IJ incorporated the testimony of the previous bond
15 hearing. *See* ECF No. 10, Exhibit C at 2. Petitioner was questioned by government
16 counsel. *Id.* at 5-15. Petitioner noted that they had a close relationship with their
17 sponsor; however, Petitioner had never met their sponsor in person and indicated
18 Petitioner had mainly communicated with their sponsor via Instagram. *Id.* at 6. During
19 the sponsor's testimony, she indicated that she communicates with Petitioner via
20 WhatsApp and did use Instagram but that she did not really use social media and
21 admitted to deleting the application. *See* ECF No. 10, Exhibit D at 8-11. During the
22 government's closing statement, government's counsel noted that Petitioner does not
23 have residence in the United States, has no employment history in the United States,
24 has never been in the United States, and does not have direct family ties, but did note
25 that Petitioner's sponsor is related to his brother's wife. *Id.* at 17-22. At the conclusion
26 of the hearing, the IJ weighed the *Guerra* factors and noted that while the Petitioner
27 entered the country legally and has been detained for the entirety of the time, he has no
28 family ties aside from his daughter also in custody, and the IJ did not believe that the

1 sponsor was credible. *Id.* at 27-28. Further, the IJ noted that Petitioner had a previous
2 adverse credibility finding. *Id.* at 26-27. In this bond hearing, the IJ noted that Petitioner
3 was not answering questions correctly, blamed the interpreter for not understanding
4 things, and weaved in memory issues. *Id.* Thus, the IJ found that he was not credible
5 and instituted an adverse credibility finding. *Id.* Therefore, the IJ denied the Petitioner's
6 request for bond, finding Petitioner to be a flight risk. *Id.* at 27-29. At the conclusion
7 of the May 15 bond hearing, Petitioner reserved their right to appeal and was given a
8 deadline of June 15, 2026. *Id.* at 29.

9 In sum, the IJ correctly applied the *Guerra* factors in denying the bond request due
10 to a risk of flight and addressed the Court's order during both the May 13 and the May
11 15 bond hearings. *See* ECF No. 10, Exhibit B; ECF No. 10, Exhibit C; ECF No. 10,
12 Exhibit D. Petitioner's Motion to Enforce the Court Order should be denied.

13 III. CONCLUSION

14 For the foregoing reasons, Respondents request that the Court deny Petitioner's
15 motion for temporary restraining order and dismiss his habeas petition.

16
17 DATED: July 21, 2026

Respectfully submitted,

18 ADAM GORDON
United States Attorney

19 s/ Jacob T. Metzger
20 JACOB T. METZGER
21 Special Assistant U.S. Attorney
22 Attorney for Respondents
23
24
25
26
27
28