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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Manuel Garcia Ugalde,

Petitioner,

v.

David Venturella, *et al*,

Respondent.

Case No. 2:26-cv-01243-APG-EJY

Federal Respondents' Response to Second Amended Petition for Writ of Habeas Corpus (ECF No. 23-1) and Motion for Temporary Restraining Order (ECF No. 27)

Federal Respondents, through undersigned counsel, hereby file their Response to Petitioner's Second Amended Petition for Writ of Habeas Corpus, ECF No. 23-1 and Motion for Temporary Restraining Order, ECF No. 27. The Petition should be dismissed pursuant to Fed R. Civ. P. 12(b)(1) for failure to exhaust administrative remedies as Petitioner was granted release on bond and did not appeal the bond amount to the Board of Immigration Appeals (BIA). Ripeness is a doctrine of justiciability intended "to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties." *Nat'l Park Hosp. Ass'n v. DOI*, 538 U.S. 803, 807-08, 123 S. Ct. 2026, 2030 (2003) (quoting *Abbott Laboratories v. Gardner*, 387 U.S. 136, 148-149, 18 L. Ed. 2d 681, 87 S. Ct. 1507 (1967)) A premature Habeas Corpus petition necessarily means this Court lacks subject matter jurisdiction at this time. Therefore, the Petition should be dismissed or stayed pending exhaustion of administrative remedies.

If the Court is not inclined to dismiss or stay the petition it should be denied because Petitioner was lawfully detained pursuant to 8 U.S.C. § 1226(a) and was granted release on bond but has not posted the bond amount. The determination made by the Immigration Judge is barred from review pursuant to 8 U.S.C § 1226(e)

I. LEGAL ARGUMENT

A. Petitioner Has Not Exhausted His Administrative Remedies Pursuant to Ninth Circuit Court of Appeals Precedent in order to File and Seek Relief in the District Court and His Petition Should be Dismissed Without Prejudice.

District Courts retain narrow habeas jurisdiction to review "bond hearing determinations for constitutional claims and legal error" following administrative exhaustion. *Singh v. Holder*, 638 F.3d 1196, 1200 (9th Cir. 2011) (citing *Demore v. Kim*, 538 U.S. 510, 516-17, 123 S. Ct. 1708, 155 L. Ed. 2d 724 (2003)). The Ninth Circuit has outlined the proper procedure for challenging immigration bond determinations and requires prudential exhaustion in habeas challenges to decisions by IJs, including bond determinations. *Leonardo v. Crawford*, 646 F.3d 1157, 1159, 1160 (9th Cir. 2011) (citing *Casas-Castrillon v. Dep't of Homeland Security*, 535 F.3d 942 (9th Cir. 2008)). Once a non-citizen has received a bond hearing before an IJ, he or she may appeal the IJ's decision to the BIA. *Id.* If the non-citizen "is dissatisfied with the BIA's decision, he may then file a habeas petition in the district court, challenging continued detention." *Id.* The district court's decision on the habeas petition may be appealed to the Ninth Circuit. *Id.* In a case by non-citizen who does not follow this course and thus fails to exhaust administrative remedies before pursuing habeas relief, "a district court should ordinarily dismiss the petition without prejudice or stay the proceedings until the petitioner has exhausted administrative remedies, unless exhaustion is excused." *Id.* at 1160 (noting that a § 2241 petition may be properly pursued "[o]nce the BIA render[s] its decision"); *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (habeas jurisdiction under "§ 2241 is ordinarily reserved for instances in which no other judicial remedy is available") (citation omitted).

"Exhaustion can be either statutorily or judicially required." *Acevedo-Carranza v. Ashcroft*, 371 F.3d 539, 541 (9th Cir. 2004). The Ninth Circuit precedent requires that an

alien *must* seek review from the BIA on bond determinations prior to filing a habeas petition. See *Castro-Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001), *abrogated on other grounds by, Fernandez-Vargas v. Gonzales*, 548 U.S. 30, 126 S. Ct. 2422, 165 L. Ed. 2d 323 (2006) ("[28 U.S.C. § 2241] does not specifically require petitioners to exhaust direct appeals before filing petitions for habeas corpus. However, we require, as a prudential matter, that habeas petitioners exhaust available judicial and administrative remedies before seeking relief under § 2241.") (citing *United States v. Pirro*, 104 F.3d 297, 299 (9th Cir. 1997); *Brown v. Rison*, 895 F.2d 533, 535 (9th Cir. 1990)).

In this case, Petitioner was granted bond, Petitioner was dissatisfied with the amount, but did not appeal the decision to the BIA before opting for a Habeas Petition in District Court. The BIA appeal remains pending. Petitioner is required to exhaust his administrative remedies first before seeking relief from the District Court. If he is dissatisfied with the BIA's decision, then he may file a petition for habeas corpus in the District Court.

Petitioner is attempting to short cut the administrative process by bypassing the BIA which is improper. Petitioner should have exhausted his administrative remedies by waiting for a decision from the BIA before seeking the federal district court to review the IJ's decision. These are mandatory administrative remedies that must be exhausted before this Court can review the IJ's decision. *See, e.g., Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011) (petitioner "pursued habeas review of the IJ's adverse bond determination before appealing to the BIA. This short cut was improper. Leonardo should have exhausted administrative remedies by appealing to the BIA before asking the federal district court to review the IJ's decision"); *Alvarado v. Holder*, 759 F.3d 1121, 1127 n.5 (9th Cir. 2014) (issue exhaustion is a jurisdictional requirement); *Tijani v. Holder*, 628 F.3d 1071, 1080 (9th Cir. 2010) (no jurisdiction to review legal claims not presented in the petitioner's administrative proceedings before the BIA). Moreover, "a petitioner cannot obtain review of procedural errors in the administrative process that were not raised before the agency merely by alleging that every such error violates due process." *Vargas v. INS*, 831 F.2d 906, 908 (9th Cir. 1987); see also *Sola v. Holder*, 720 F.3d 1134, 1135-36 (9th Cir. 2013) (declining to

address a due-process argument that was not raised below because it could have been addressed by the agency).

In this case, Federal Respondents are seeking dismissal of this matter without prejudice or in the alternative to stay the proceedings until the Petitioner has exhausted administrative remedies pursuant to *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004).

B. The Exhaustion Requirement Is Mandatory and Must be Applied.

Exhaustion "'prevent[s] premature interference with agency processes, so that the agency may function efficiently and so that it may have an opportunity to correct its own errors.'" *Arsdi v. Holder*, 659 F.3d 925, 928 (9th Cir. 2011) (quoting *Weinberger v. Salfi*, 422 U.S. 749, 765, 95 S. Ct. 2457, 45 L. Ed. 2d 522 (1975)); *Taleghani v. Wolf*, Case No. 2:20-cv-02198-APG-DJA (D. Nev. Feb 5, 2021); 2021 U.S. Dist. LEXIS 261260 at *8. "The exhaustion requirement is prudential, rather than jurisdictional, for habeas claims." *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017). "Administrative exhaustion can be either statutorily required or judicially imposed as a matter of prudence." *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007) (citation omitted). In § 2241 habeas cases, the exhaustion requirement "is prudential, rather than jurisdictional." *Arango Marquez v. I.N.S.*, 346 F.3d 892, 897 (9th Cir. 2003). Thus, exhaustion is subject to waiver in certain instances. *Hernandez v. Sessions*, 872 F.3d 976, 988-89 (9th Cir. 2017)). "Nevertheless, prudential limits, like jurisdictional limits and limits on venue, are ordinarily not optional." *Puga*, 488 F.3d at 815 (internal quotation marks and citation omitted). "Although courts have discretion to waive the exhaustion requirement when it is prudentially required, this discretion is not unfettered." *Laing*, 370 F.3d at 998 (citing *Castro-Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001) ("Prudential limits, like jurisdictional limits and limits on venue, are ordinarily not optional.")). District courts must determine whether "the exhaustion requirement has been satisfied or properly waived" before addressing the underlying merits. *Id.* (citation omitted). To decide whether exhaustion is required, courts consider the *Puga* factors to determine if:

> (1) agency expertise makes agency consideration necessary to generate a proper record and reach a proper decision; (2) relaxation of the requirement would encourage the deliberate bypass of the administrative scheme; and (3) administrative review is likely to allow the agency to correct its own mistakes and to preclude the need for judicial review. *Id.* (quoting *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007)).

First, BIA review is necessary to generate a proper record and reach a proper decision regarding Petitioner's Petition because BIA is the subject-matter expert in immigration detention decisions and has the authority to review appeals from bond determinations by IJs. Executive Office for Immigration Review, Dep't of Justice, BIA Practice Manual (2026), at 1.4(a).

Second, if the court were to relax the exhaustion requirement, Petitioner would be allowed to bypass the administrative scheme, and relaxation would highly likely encourage other detainees to bypass the BIA and directly appeal their no-bond determinations from the IJ to federal district court.

Third, administrative review would allow the agency to court any mistakes and preclude the need for judicial review. The BIA has the authority to correct any erroneous factual determinations and evidentiary errors alleged by Petitioner. 8 C.F.R. § 1003.1(d)(3)(i)-(ii)). The BIA is an appellate body within the Executive Office for Immigration Review ("EOIR"). *See* 8 C.F.R. § 1003.1(d)(1). Members of the BIA possess delegated authority from the Attorney General. 8 C.F.R. § 1003.1(a)(1). The BIA is "charged with the review of those administrative adjudications under the [INA] that the Attorney General may by regulation assign to it," including IJ custody determinations. 8 C.F.R. §§ 1003.1(d)(1). The BIA not only resolves particular disputes before it, but also "through precedent decisions, [it] shall provide clear and uniform guidance to DHS, the immigration judges, and the general public on the proper interpretation and administration of the [INA] and its implementing regulations." *Id.* § 1003.1(d)(1). "The decision of the [BIA] shall be final except in those cases reviewed by the Attorney General." 8 C.F.R. § 1003.1(d)(7). Taken together, the three *Puga* factors weigh strongly in favor of requiring exhaustion.

The first factor supports exhaustion because the BIA possesses subject-matter expertise

in immigration merits and custody matters and can generate a more complete record to facilitate meaningful review. The second factor also favors exhaustion, as relaxing the requirement in this case would risk encouraging detainees to bypass the administrative process without yielding broader guidance for future cases. Finally, the third factor confirms that exhaustion is appropriate, since the BIA has the authority to correct the alleged factual and evidentiary errors, potentially obviating the need for judicial intervention. *Martinez v. Scott*, 2025 U.S. Dist. LEXIS 186226, *15-16. If after the BIA renders its decision, Petitioner is not satisfied, he is then permitted to file in the district court and seek relief because he would have exhausted his administrative remedies. However, in this case Petitioner did not exhaust his administrative remedies and the case should be dismissed without prejudice or in the alternative stay the proceedings until the BIA hears this matter and renders a decision. "Allowing a short-circuit of the clearly established BIA appeals process would result in unnecessary judicial review of unexhausted claims and encourage deliberate bypass of the administrative scheme". *Puga*, 488 F.3d at 815. Instead, "administrative review is likely to allow the agency to correct its own mistakes and to preclude the need for judicial review." *Id. Lopez -Herrera v. Barr*, Case No. 2:19-cv-01153-APG-NJK (D. Nev. Aug 12, 2019) at *19, 2019 U.S. Dist. LEXIS 135144 at *19.

In this case, Federal Respondents' position is that Petitioner should not be permitted to short-circuit the clearly established BIA appeals process by first seeking relief in the District Court without exhausting his administrative remedies by filing an appeal with the BIA. Furthermore, by allowing Petitioner to bypass appealing and obtaining a decision from the BIA, it will result in unnecessary judicial review of unexhausted claims and encourage deliberate bypass of the administrative scheme. These are mandatory administrative remedies that must be exhausted before a court like this one can review the IJ's decision. *Vidal v. Immigration Customs Enforcement*, Case No. 2:21-cv-00012-JAD-DJA (D. Nev., Feb 10, 2021) at *4; 2021 U.S. Dist. LEXIS 25413 at *4. [a] claim-processing rule [is] 'mandatory' in the sense that a court must enforce the rule if a party 'properly raise[s]' it." *Fort Bend Cnty., Texas v. Davis*, 587 U.S. 541, 139 S. Ct. 1843, 1849, 204 L. Ed. 2d 116 (2019) (quoting *Eberhart*

v. United States, 546 U.S. 12, 19, 126 S. Ct. 403, 163 L. Ed. 2d 14 (2005) (per curiam)). *Suate-Orellana v. Garland*, 101 F.4th 624, 629 (9th Cir. 2024). Federal Respondents' position, which is supported by existing case law, is that the exhaustion requirement is a claim processing rule which is mandatory in the sense that this court must enforce the rule now that Federal Respondents have properly raised it.

II. JURISDICTION AND LEGAL STANDARDS

8 U.S.C. § 1226(a) does not explicitly grant an alien a right to be released on bond; rather, the section merely grants the Attorney General authority to release an alien in the exercise of discretion where bond is warranted if there is a reasonable foundation for the denial. *Matter of Guerra*, 24 I&N Dec. 37 9 BIA 2006) (citing 8 U.S.C. § 1226(a), *Carlson v. Landon*, 342 U.S. 524, 534 (1952)). The burden is on the aliens seeking redetermination to show they merit release on bond based on several factors including criminal history, manner of entry, and the IJ is not limited to only criminal history that results in conviction. *Id.* at 40, See also, *Matter of Patel*, 15 I&N Dec 666 (BIA 1976). The Alien must prove that they are not "a threat to national security, a danger to the community at large, likely to abscond, or otherwise a poor bail risk" *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1197 (9th Cir. 2022) (quoting *Guerra* at 40); See also, *Iglesias-Romero v. Mattos*, No. 2:26-cv-00499-APG-NJK, 2026 U.S. Dist. LEXIS 106881, at 8 (D. Nev. May 13, 2026) ("The IJ did not abuse his discretion. He applied the correct legal standard of *Guerra*.")

DUI is a significantly adverse factor in determining bond in the immigration setting. *Matter of Siniauskas*, 27 I&N Dec. 207 (BIA 2018) ("Driving under the influence is a significant adverse consideration in determining whether an alien is a danger to the community in bond proceedings.") Additionally, the BIA states that family and community ties do not necessarily mitigate dangerousness, but rather, relate to the analysis of risk of flight. *Id.* ("[F]amily and community ties generally do not mitigate an alien's dangerousness.") "[A]n Immigration Judge should only set a monetary bond if the respondent *first* establishes that he is not a danger to the community." *Id.* (citing *Matter of Urena*, 25 I&N Dec. at 141. (BIA 2009) (emphasis added)).

In *Rodriguez Diaz*, the Ninth Circuit rejected a claim that it is constitutionally inadequate for the burden of proof to rest on an alien in immigration bond proceedings. *Id.* at 1213. ("[T]he Supreme Court has told us, "[t]he role of the judiciary is limited to determining whether the procedures meet the essential standard of fairness under the Due Process Clause and does not extend to imposing procedures that merely displace congressional choices of policy." That is the approach we have followed here. For the reasons given, § 1226(a)'s procedures satisfy due process, both facially and as applied to Rodriguez Diaz.") (quoting *Landon*, 459 U.S. at 34-35.)

Similarly, Courts in the District of Nevada rejected this claim in similarly situated cases in *Iglesias-Romero v. Mattos*, No. 2:26-cv-00499-APG-NJK, ECF No. 14 and *Abel v. Bondi*, 2:26-cv-00672-APG-NJK, ECF No. 20; See also, *Gukasian v. Mullin*, No. 2:25-cv-01697-JAD-DJA, 2026 LX 247445 (D. Nev. May 11, 2026). In *Iglesias-Romero*, the Court reiterated that the burden of proof being paced upon an alien in a bond hearing pursuant to 8 U.S.C. § 1226(a) does not violate due process protections. In *Iglesias-Romero*, Petitioner was found by an Immigration Judge to be a danger to the community because of one DUI conviction and one additional DUI arrest. He argued in his Habeas Petition that the Due Process clause was violated because Government needed to bear the burden of proof by clear and convincing evidence that Petitioner was a danger to the community. The Court denied this ground for relief at 3-4 citing *Rodriguez Diaz*, at 1213 that "§ 1226(a)'s procedures satisfy due process[.]" The Court found that in accordance with *Begay v. United States*, 533 U.S. 137, (2008) and *Siniauskas*, which both support an IJ's determination that DUIs are a dangerous criminal offense, that the Immigration Judge did not commit clear error in denying bond. *Id.* at 5-6. Similarly, in *Abel*, at 2-4, the Court again rejects a claim that an immigration Judge applied the incorrect standard of proof when denying an alien release on bond when he had 2 DUI convictions and a pending DUI arrest. In both *Abel* and *Iglesias-Romero*, the Court went on to explain that the immigration Judge did not abuse their discretion in denying release on bond because the Immigration Judge applied the

correct legal standard for the determination set forth in *Guerra*. *Abel*, at 5; *Iglesias-Romero*, at 5.

In *Gukasian*, the Court found that Due Process was satisfied where an alien-petitioner had two bond hearings and was denied released at both by the Immigration Judge even after being in detention for more than 14 months at the time. The Court states that the Petitioner's arguments that the procedures followed at the § 1226(a) bond hearing were insufficient mirror rejected arguments in *Diaz*. *Id*. at 15. (In his attempt to show that § 1226(a)'s procedures were constitutionally insufficient, Rodriguez Diaz argued that the IJ's denial of his requests for bond show[] that the procedures in place *did* result in the erroneous deprivation of [his] private liberty interest. The Ninth Circuit panel rejected that reasoning, explaining that this is merely a disagreement with the merits of the IJ's decision, which we lack jurisdiction to review. The same is true in this case.) (Internal quotations omitted). The Court concluded that it may only determine if the procedures protect due process rights, not whether the outcome was correct. *Id*. at 16. In determining whether due process was satisfied, the court applied the *Matthews v. Eldridge* test. *Id*. at 12-20. The Court found the first factor only weighs slightly in favor of the alien-petitioner because he extended his own detention by filing a BIA appeal of his removal order. The Court found the second and third factors weigh heavily for the Government due to the Petitioner not showing that § 1226(a)'s procedures created an erroneous risk of deprivation and the Government's significant interest in removing an alien from the United States following an order of removal.

A. Jurisdiction Under § 1226(e)

Section 1226 prohibits federal courts from reviewing "discretionary judgement[s]" as to detention determinations of noncitizens. The statute specifically provides that "[n]o court may set aside any action or decision by the Attorney General under this section regarding the detention or release of an alien or the grant, revocation, or denial of bond or parole." 8 U.S.C. § 1226(e). The Ninth Circuit has interpreted section 1226(e) to mean "that an alien may not use the federal courts to 'challeng[e] a 'discretionary judgment' . . .

made regarding his detention or release.'" *Martinez v. Clark*, 36 F.4th 1219, 1227 (9th Cir. 2022) (quoting *Jennings v. Rodriguez*, 138 S. Ct. 830, 841 (2018) (plurality opinion)). However, section 1226(e) "does not limit habeas jurisdiction over 'constitutional claims or questions of law.'" *Martinez*, 36 F.4th at 1227 (quoting *Patel v. Garland*, 142 S. Ct. 1614, 1626 (2022) (holding that federal courts have habeas jurisdiction over "questions of law or constitutional questions" but not "an immigration court's determination that a noncitizen is a danger to the community"); *see also Singh v. Holder,* 638 F.3d 1196, 1207 n.6. (9th Cir. 2011).

B. The Court Has No Jurisdiction Under 1226 (e) Absent a Due Process Violation and Petitioner Has Been Afforded the Due Process to Which He is Entitled.

The Ninth Circuit has interpreted section 1226(e) to bar federal court challenges to "discretionary judgment[s]" regarding detention or release. *Martinez v. Clark*, 36 F.4th 1219, 1227 (9th Cir. 2022) (quoting *Jennings v. Rodriguez*, 138 S. Ct. 830, 841 (2018)). However, section 1226(e) does not limit habeas jurisdiction over constitutional claims or questions of law. *Id.* (citing *Patel v. Garland*, 142 S. Ct. 1614, 1626 (2022)).

In determinizing whether there has been a violation of a detainee's constitutional due process, the Ninth Circuit's decision in *Diaz v. Garland* provides dispositive guidance on the due process requirements for immigration bond proceedings for detainees held pursuant to section 1226(a). 53 F.4th 1189 (9th Cir. 2022). In *Diaz*, the court addressed whether petitioners who had received bond hearings before an immigration judge, with the opportunity to appeal adverse decisions to the Board of Immigration Appeals, had been afforded constitutionally adequate process. *Id.* at 1194-95. The court concluded that they had, holding that "so long as the government follows reasonable, individualized determinations to ensure that the alien is properly in removal proceedings, due process does not require more bond hearings even after a prolonged period." *Id.* at 1218.

The *Diaz* court emphasized that due process does not guarantee any particular outcome, but rather ensures access to adequate procedures for contesting detention. *Id.* at 1213. The court noted that petitioners had a right to and received bond hearings before an

immigration judge and possessed "the right to appeal to the BIA." *Id.* at 1209. This procedural framework, the court held, satisfied constitutional requirements because it provided a neutral decisionmaker, an opportunity to be heard, and appellate review of adverse determinations. *Id.* at 1210.

The instant matter is procedurally similar *Diaz*. However, Petitioner was granted bond, he simply does not like the amount he must pay to satisfy the bond. Petitioner received a bond redetermination hearing before an immigration judge, wherein he was afforded the opportunity to present evidence, call witnesses, and contest the grounds for his continued detention. Following a grant of release on bond, Petitioner had an opportunity to have the determination reviewed by the BIA. This procedural posture mirrors precisely the circumstances in *Diaz*, where the Ninth Circuit held that such procedures satisfy constitutional due process requirements.

Under *Diaz*, the relevant inquiry is not whether Petitioner prevailed in his bond proceedings, but whether he received constitutionally adequate process to challenge his detention. 53 F.4th at 1194. The record establishes that he did. Petitioner appeared before an immigration judge who independently evaluated the evidence and applicable legal standards. He was permitted to present testimony and documentary evidence, and afforded the opportunity to challenge the government's basis for detention. Upon receiving an unfavorable decision, he reserved appellate review before the BIA, although he chose not to pursue an appeal.

The Constitution guarantees procedural safeguards, not substantive outcomes. *See Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (establishing framework for evaluating procedural due process claims). *Diaz* makes clear that when an immigration detainee receives a bond hearing before an immigration judge with the opportunity for BIA review, "1226(a)'s procedures satisfy due process both facially and as applied." *Id.* at 1213. Petitioner has received exactly this process.

Moreover, *Diaz* forecloses any argument that continued detention following a bond hearing and appeal constitutes a constitutional violation. The Ninth Circuit explicitly

rejected the notion that due process entitles immigration detainees to release on bond; rather, due process entitles them only to adequate procedures for contesting detention. *Id.* at 1209. Petitioner received those procedures. That the Immigration Judge ultimately determined that his continued detention was warranted does not transform an adequate process into an inadequate one. Because Petitioner has received precisely this process, his due process rights have been vindicated, and habeas relief on this ground is unwarranted.

C. Petitioner Was Granted a Constitutionally Adequate Bond Hearings.

"Initially, the bond is set by DHS. *Upon the alien's request*, an Immigration Judge may conduct a bond hearing, in which the Immigration Judge has the authority to redetermine the amount of bond set by DHS." OCIJ Immigration Court Practice Manual, Rule 8.3(a) (emphasis added). A request for a bond hearing is ordinarily made in writing. In addition, except as provided in subsection (3), below, a request for a bond hearing may be made orally." OCIJ Immigration Court Practice Manual, Rule 8.3(c).

8 U.S.C. § 1226(a) does not explicitly grant an alien a right to be released on bond; rather, the section merely grants the Attorney General authority to release an alien in the exercise of discretion where bond is warranted if there is a reasonable foundation for the denial. *Matter of Guerra*, 24 I&N Dec. 37 9 BIA 2006) (citing 8 U.S.C. § 1226(a), *Carlson v. Landon*, 342 U.S. 524, 534 (1952)). The burden is on the aliens seeking redetermination to show they merit release on bond based on several factors including criminal history, manner of entry, and the IJ is not limited to only criminal history that results in conviction. *Id.* at 40, See also, *Matter of Patel*, 15 I&N Dec 666 (BIA 1976). The Alien must prove that they are not "a threat to national security, a danger to the community at large, likely to abscond, or otherwise a poor bail risk" *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1197 (9th Cir. 2022) (quoting *Guerra* at 40).

The Ninth Circuit has directed that an Immigration Officials must consider an alien's ability to pay when setting monetary bonds. *Hernandez v. Sessions*, 872 F.3d 976, 990-91, 994 (9th Cir. 2017) However, the Court goes on to say "[e]ven though consideration of these matters does not guarantee that a non-citizen will actually be released on a bond that

he is financially able to obtain once all flight risk factors are considered, IJs and ICE will certainly be less likely to impose an excessive bond if they are mandated to at least consider financial circumstances and alternative conditions before setting the amount." *Id.* at 993-94.

D. All Relief Should Be Denied because the Government Did not Violate the Immigration and Nationality Act or the Due Process Clause.

Claim 1 should be denied, as pointed out by Petitioner, his bond hearing was mistakenly marked as moot. An unintentional outcome to his original bond redetermination request that was later cured once the error was discovered.

Petitioner contends that the evidence considered by the Immigration Judge does not warrant the bond amount that was sent, this is a discretionary decision of the Attorney General that this court cannot review. Even if this court could review it, there are no guidelines as to how much each offense is worth in bond settings, it is purely Immigration Judge discretion. Respondents' position is that 8 U.S.C. § 1226(e) precludes any court from reviewing the discretion of the Attorney General under this section. That being a discretionary monetary bond. "The Attorney General's discretionary judgment regarding the application of this section shall not be subject to review." *Id.*

The Petitioner is first asking this Court to review the findings of the Immigration Judge and find that there is not sufficient evidence to determine that the bond amount was appropriate. The Immigration Judge, in his discretion determined that Petitioner demonstrates some risks that require sufficient monetary bond and conditions to ensure future appearances and compliance. To ensure his appearance at future proceedings and compliance with immigration officials she determined in her broad discretion that $15,000 and alternatives to detentions would suffice. This determination had a reasonable basis and is only subject to review at the BIA.

Additionally, the Immigration Judge asked about and considered the financial ability of the Petitioner, satisfying the Ninth Circuit precedent. It matters not that Petitioner is able to afford the bond, the Ninth Circuit did not direct that bond has to be within an

alien's means to pay, but rather that the Immigration Judge has to consider it along with other factors. The Immigration Judge made a decision that has a reasonable basis in applicable administrative law that is best reviewed initially by the BIA before reaching this Court. It is particularly unique that a Petitioner was granted bond twice and seeks a petition for Habeas Corpus. Petitioner waived his right to appeal the bond determination, demonstrating an agreement with it.

Respondents request that the Second Amended Petition be dismissed and the Motion for TRO denied.

Respectfully submitted this 20th day of July 2026.

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