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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Manuel Garcia Ugalde,

Petitioner,

v.

David Venturella, *et al.*,

Respondents.

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

Petitioner's Reply to Federal Respondents' Response to Second Amended Petition for Habeas Corpus and Motion for Temporary Restraining Order (ECF No. 30)

Petitioner Manuel Garcia Ugalde, through undersigned counsel, files this reply to Respondents' combined Response[1] to his Second Amended Petition and Motion for Temporary Restraining Order.

[1] ECF No. 30

INTRODUCTION

Respondents do not answer the claims Petitioner actually brings. Petitioner does not ask this Court to substitute its judgment for the Immigration Judge's discretionary assessment of bond. He challenges a custody process marked by repeated acknowledged errors that culminated in a $15,000 bond imposed after he stated that he had no money, despite the additional requirement of electronic monitoring and without any explanation connecting that amount to the Government's interest in securing his appearance. That constitutional challenge is reviewable under § 2241, and prudential exhaustion should be excused because further administrative review would prolong the detention at issue without resolving Petitioner's independent constitutional claims.

Respondents also mischaracterize the record, including by suggesting that Petitioner was granted bond twice and that he agreed with the June 17 determination. In reality, his first request was withdrawn without adjudication, his renewed request was mishandled and erroneously marked moot, and the June 17 proceeding was the first hearing that resulted in a bond determination. The written order's notation that Petitioner waived appeal also conflicts with the hearing audio. These irregularities demonstrate that the risk of erroneous deprivation is not theoretical.

Finally, Respondents do not address Ground Two at all. They offer no defense of the punitive and coercive conditions imposed during Petitioner's hunger strike and no response to the governing Fifth Amendment standard. The Court should therefore grant the Petition and order Petitioner's release or, at minimum, require a new custody hearing with safeguards sufficient to prevent yet another erroneous deprivation of liberty.

ARGUMENT

I. Exhaustion is a prudential doctrine, not an absolute bar, and dismissal is not required where exhaustion is excused, as it should be here.

Respondents first argue that the Second Amended Petition must be dismissed because Petitioner did not appeal the Immigration Judge's June 17 custody determination to the Board of Immigration Appeals. That argument overstates the exhaustion requirement and mischaracterizes both the record and the nature of Petitioner's claims.

The Ninth Circuit has made clear that exhaustion in § 2241 immigration habeas proceedings is prudential, not jurisdictional. *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017). *Leonardo v. Crawford* does not impose a categorical bar. It states that a district court "ordinarily should either dismiss the petition without prejudice or stay proceedings until the petitioner has exhausted remedies, unless exhaustion is excused." 646 F.3d 1157, 1160 (9th Cir. 2011) (emphasis added). The question is therefore not whether administrative review was theoretically available, but whether requiring it would serve the purposes of prudential exhaustion under the circumstances presented.

It would not. Petitioner challenges the constitutional adequacy of a custody process marked by repeated and acknowledged errors. His renewed bond request was received but not adjudicated, its supporting materials were used in a separate removal proceeding, and the request was then erroneously marked moot based on a nonfinal removal order. When the immigration court finally discovered the error months later, it convened a same-day hearing at which Petitioner appeared pro se, considered an unverified DUI allegation, and imposed a $15,000 bond after Petitioner stated that he had nothing in the bank. The written order then recorded that Petitioner had waived appeal even though the hearing audio reflects that he said he wanted to appeal because he could not pay the bond.

A. Respondents' dubious claims that Petitioner was in "agreement" with his bond decision should not affect this Court's exhaustion analysis.

Respondents repeatedly assert that Petitioner waived appeal and contend that his purported waiver "demonstrat[ed] an agreement" with the $15,000 bond determination.[2] The hearing audio does not support that characterization.[3]

When advised of the bond amount, Petitioner stated that he could not pay $15,000. At the conclusion of the hearing, he stated that he wanted to appeal and asked the Immigration Judge to send him the appropriate appeal form. The Immigration Judge responded affirmatively. The written custody order nevertheless states that both parties waived appeal.

Aside from raising doubt that Petitioner knowingly and voluntarily waived appeal of the bond order, the discrepancy between the audio and the order is relevant to the broader pattern of error that has riddled Petitioner's proceedings. Petitioner's renewed bond submission was received but diverted into his merits proceeding; his custody request was then erroneously treated as moot; the error went undiscovered for months; the eventual hearing was held on same-day notice; an unverified DUI allegation was discussed; and the written order recorded a waiver inconsistent with Petitioner's statements at the hearing. Even if Petitioner theoretically could have perfected an appeal, these repeated irregularities demonstrate a heightened risk of error in the custody process he actually received, and, in any event, exhaustion should be excused.

B. Respondents misread binding precedent on exhaustion.

Respondents argue that administrative exhaustion becomes mandatory once invoked and rely on *Vidal v. Immigration & Customs Enforcement*, No. 2:21-cv-00012-

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[2] ECF No. 30 at 11, 14.

[3] *See* ECF No. 23, ex. 12 (manually filed with the Court).

JAD-DJA, 2021 U.S. Dist. LEXIS 25413 (D. Nev. Feb. 10, 2021), together with *Fort Bend County v. Davis*, 587 U.S. 541 (2019).[4] Those authorities do not require dismissal here.

Vidal reached its conclusion in the circumstances presented in that case, but it does not eliminate the Ninth Circuit's established rule that § 2241 exhaustion is prudential and subject to waiver. *See Hernandez*, 872 F.3d at 988–89; *Laing v. Ashcroft*, 370 F.3d 994, 997–1000 (9th Cir. 2004); *Leonardo*, 646 F.3d at 1160. A recent decision from this District distinguished *Vidal* and declined to treat exhaustion under § 2241 as a mandatory claim-processing rule under *Fort Bend*. *See Garcia Garcia v. Blanche*, No. 2:26-cv-01502-MMD-DJA, ECF No. 15 at 2–4 (D. Nev. July 2, 2026).

That distinction follows from the nature of the exhaustion requirements at issue. *Fort Bend* concerned a statutory requirement imposed by Title VII. 587 U.S. at 548–51. Section 2241 contains no comparable statutory exhaustion provision. The exhaustion requirement applicable here is instead a judicially created, prudential doctrine whose application remains subject to the court's discretion. *See Laing*, 370 F.3d at 997–1000.

C. The Court should excuse exhaustion here.

The Supreme Court has recognized that prudential exhaustion may be excused where requiring administrative review would cause undue prejudice or irreparable harm, where the agency lacks authority to grant effective relief, or where the adequacy of the administrative remedy is itself in question. *McCarthy v. Madigan*, 503 U.S. 140, 146–49 (1992). Those considerations apply here.

First, requiring Petitioner to pursue administrative review now would prolong the very detention he challenges as unconstitutional. Continued unlawful detention

[4] ECF No. 30 at 6.

constitutes irreparable injury. *Hernandez*, 872 F.3d at 988–89. Petitioner challenges whether the custody process complied with due process where the Immigration Judge imposed a monetary condition that continues to detain him without meaningfully considering his inability to pay or explaining why $15,000 was necessary in addition to electronic monitoring.

Second, the record does not reflect a deliberate decision to bypass administrative review. Petitioner expressed an interest in appealing and specifically linked that interest to his inability to pay. The written order's contrary notation of waiver distinguishes this case from one in which a represented detainee knowingly elects to accept a custody determination and proceeds directly to federal court. Excusing exhaustion on this unusual record would not encourage detainees to deliberately circumvent available agency procedures.

Third, the BIA is not the proper forum to conclusively resolve Petitioner's constitutional claims. The BIA may correct certain factual, evidentiary, or procedural errors. But Petitioner's claim extends beyond ordinary disagreement with the Immigration Judge's evaluation of the record. He challenges whether the procedures used to continue his detention—including the failure to meaningfully consider financial circumstances and alternatives to detention—were constitutionally adequate as applied.

Respondents cite *Vargas v. INS* for the proposition that a petitioner may not obtain judicial review of an unexhausted procedural error merely by characterizing it as a due-process violation. 831 F.2d 906, 908 (9th Cir. 1987). They likewise cite *Sola v. Holder*, in which the court declined to consider a purported due-process error that the agency could have remedied. 720 F.3d 1134, 1135–36 (9th Cir. 2013). But those decisions distinguish ordinary procedural errors within the agency's corrective authority from constitutional questions the agency cannot conclusively resolve. *See Vargas*, 831 F.2d at 908; *Sola*, 720 F.3d at 1135–36. Here, although the BIA might

review the Immigration Judge's bond determination, it cannot definitively resolve whether the procedures that continue to deprive Petitioner of liberty satisfy the Fifth Amendment.

Ground Two provides an additional reason administrative review would not furnish an adequate remedy. The BIA does not supervise the conditions at Nevada Southern Detention Center and could not adjudicate or remedy Petitioner's claim that Respondents subjected him to punitive conditions during his hunger strike. Respondents do not contend otherwise.

The factors identified in *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007), likewise favor excusing exhaustion. Agency expertise is not necessary to determine whether the process used to impose an unaffordable monetary condition complied with due process or whether Petitioner's conditions of civil confinement were punitive. Excusing exhaustion on a record involving an acknowledged failure to adjudicate a custody request, same-day notice, an internally inconsistent appeal record, and continued detention under an unexplained monetary condition would not encourage wholesale bypass of administrative review. And administrative review is unlikely to eliminate the need for judicial intervention because Respondents defend the legal sufficiency of the same procedures Petitioner challenges and because the BIA cannot resolve Ground Two.

Respondents' remaining exhaustion authorities do not require a different result. *Leonardo* expressly recognizes that exhaustion may be excused, and *Puga* confirms that prudential exhaustion is flexible. *Alvarado v. Holder* and *Tijani v. Holder* arose in petitions for review of removal orders, not § 2241 habeas challenges to ongoing detention. *See Alvarado v. Holder*, 759 F.3d 1121, 1127 (9th Cir. 2014); *Tijani v. Holder*, 628 F.3d 1071, 1080 (9th Cir. 2010). *Vargas* and *Sola* distinguish remediable procedural errors from constitutional claims outside the agency's ultimate authority. And *Hernandez* confirms that courts may waive prudential

exhaustion where requiring administrative review would prolong an allegedly unconstitutional detention and cause irreparable harm. 872 F.3d at 988–89. The Court should therefore excuse exhaustion and reach the merits.

II. Section 1226(e) does not bar Petitioner's constitutional challenges.

Respondents mischaracterize the claim as dissatisfaction with a discretionary bond amount. According to Respondents, Petitioner received bond but "simply does not like the amount he must pay."[5] That framing avoids the constitutional issue. Petitioner does not ask the Court to decide that some other amount would better reflect the evidence. He asks the Court to determine whether the process that produced his continued detention complied with the rule that financial circumstances and alternative release conditions must be considered in a manner that reasonably relates the conditions of release to the Government's legitimate interest. That is a legal and constitutional claim reviewable under § 2241.

Section 1226(e) prevents courts from reweighing ordinary bond evidence or substituting their judgment for the Immigration Judge's discretionary assessment. It does not bar review of claims that the procedures and legal standards governing detention violate due process. *Hernandez*, 872 F.3d at 981, 987–88; *Singh v. Holder*, 638 F.3d 1196, 1200–02 (9th Cir. 2011); *see also Martinez v. Clark*, 124 F.4th 775, 784–85 (9th Cir. 2024) (distinguishing impermissible reweighing from review for application of the correct legal standard and clear legal error).

Portillo Portillo v. Blanche, No. 2:26-cv-00155-CDS-NJK, 2026 U.S. Dist. LEXIS 78409, at *2–4 (D. Nev. Apr. 10, 2026), confirms the distinction. There, as here, the Immigration Judge imposed a $15,000 bond, and the respondents argued that the petitioner had received the hearing the court ordered and was required to pursue relief before the BIA. 2026 U.S. Dist. LEXIS 78409, at *2–3. The court

[5] ECF No. 30 at 11.

nevertheless held that it had jurisdiction over the petitioner's legal and constitutional claims and reviewed whether the $15,000 determination complied with *Hernandez*. *Id.* at *3–4. Because the Immigration Judge summarily imposed $15,000 without explaining why that amount was necessary in light of the petitioner's finances and alternatives to detention, the court held that the order was deficient under *Hernandez*. *Id.* at *3–4.

III. Petitioner's June 17 bond hearing did not cure the constitutional defects.

A. Asking Petitioner about his finances without more was not meaningful consideration of his ability to pay.

Respondents acknowledge that *Hernandez* requires consideration of financial circumstances and alternatives to detention.[6] But they contend that the Immigration Judge satisfied that requirement merely by asking Petitioner how much money he had, regardless of whether the answer bore any discernible relationship to the amount imposed.[7] *Hernandez* does not reduce due process to the asking of a question. The constitutional purpose of considering finances and alternatives is to ensure that the resulting condition is reasonably related to securing appearance rather than functioning as detention based on poverty. *Hernandez*, 872 F.3d at 990–93. A monetary condition cannot serve as a meaningful incentive without regard to the person's resources, and a process that fails to evaluate whether lesser or nonmonetary conditions can reasonably secure appearance risks accomplishing little beyond punishing poverty. *Id.* at 991–92.

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[6] *Id.* at 12–13.

[7] *Id.* at 13–14.

Here, Petitioner told the Immigration Judge that he had nothing in the bank. He explained that he had been unable to work while detained. His grandfather was not working because of a heart condition and would have to "find a way" to help. The Immigration Judge nevertheless imposed $15,000 plus electronic monitoring. Neither the oral ruling nor the written order explains why $15,000 was necessary, why a lower amount would be insufficient, what significance the Immigration Judge assigned to Petitioner's lack of funds, or why electronic monitoring and other conditions could not adequately address the identified risk.

The sentence Respondents selectively quote from *Hernandez*—that consideration does not guarantee release on a bond the noncitizen can obtain—does not authorize a nominal inquiry divorced from the decision.[8] It simply recognizes that, after meaningful consideration of finances, alternatives, and all legitimate risk factors, due process does not invariably compel an amount within the detainee's immediate means. It does not permit the Immigration Judge to hear that a detainee has nothing, impose $15,000 without explanation, and treat the financial inquiry as constitutionally sufficient merely because it occurred.

Again, *Portillo* answers Respondents directly. The court found an unexplained $15,000 bond deficient because the order did not show why that amount was necessary in light of the petitioner's financial circumstances and possible alternatives. 2026 U.S. Dist. LEXIS 78409, at *3–4. The court did not hold that the Constitution was satisfied because finances had been mentioned somewhere in the proceeding. It required an explanation demonstrating that the required factors meaningfully informed the decision.

[8] *See* ECF No. 30 at 12–13.

B. Respondents' DUI authorities concern a finding the Immigration Judge did not make and a criminal history Petitioner does not have.

Respondents devote substantial discussion to *Matter of Siniauskas*, *Iglesias-Romero v. Mattos*, and *Abel v. Bondi*, all concerning dangerousness findings based on established DUI convictions or arrests.[9] Those authorities do not address this case.

First, Petitioner does not have the DUI conviction Respondents repeatedly discuss. DHS could not verify one during the hearing and later acknowledged that the rap sheet reflected only the domestic-violence matter.

Second, the Immigration Judge expressly found that Petitioner was not a danger. The stated basis for the monetary condition was flight risk. *Siniauskas*, *Iglesias-Romero*, and the cited *Abel* decision concern whether established DUI histories reasonably supported denial of bond based on danger. They neither justify a flight-risk determination nor explain why $15,000 was necessary to address flight risk after the imposition of electronic monitoring.

Third, Petitioner does not ask the Court to determine how much his criminal history is "worth" in bond.[10] The claim is that the Immigration Judge did not explain the relationship between Petitioner's financial circumstances, the available alternatives, the asserted flight risk, and the particular condition that continues to detain him. Respondents' extended discussion of DUI authorities addresses a dangerousness finding the Immigration Judge did not make, based on a conviction Petitioner does not have, and needlessly consumes the parties' and the Court's resources while distracting from the constitutional question actually presented.

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[9] *Id.* at 7–9.

[10] *Id.* at 13.

C. *Rodriguez Diaz* and *Gukasian* involved disagreement with outcomes reached through available procedures; this case identifies demonstrated defects in the procedures themselves.

Respondents also rely on *Rodriguez Diaz v. Garland*, 53 F.4th 1189 (9th Cir. 2022), and *Gukasian v. Mullin*, No. 2:25-cv-01697-JAD-DJA, 2026 U.S. Dist. LEXIS 247445 (D. Nev. May 11, 2026), to characterize the Petition as disagreement with the outcome of constitutionally adequate procedures. Resp. at 9–11. The record presents a materially different claim.

In *Rodriguez Diaz*, the petitioner received an initial bond determination, sought redetermination, appealed to the BIA, and later received another bond hearing. 53 F.4th at 1195–96. The Ninth Circuit rejected the argument that the unfavorable results themselves demonstrated that the procedures were constitutionally deficient. *Id.* at 1210–13. But the court did not hold that § 1226(a) procedures are categorically immune from as-applied challenge. It expressly recognized that the due-process inquiry is context dependent and considered whether the procedures created a sufficient risk of error in the circumstances presented. *Id.* at 1206–13.

Similarly, *Gukasian* rejected an argument that the Immigration Judge's adverse evaluation of the evidence established that the available procedures were inadequate. The petitioner there had received two bond hearings and relied on the Immigration Judge's unfavorable assessment of his evidence as proof that the procedures themselves were inadequate. 2026 U.S. Dist. LEXIS 247445, at *15–16.

Here, Petitioner identifies procedural failures independent of the unfavorable outcome. His renewed custody filing was used in a removal proceeding rather than adjudicated as a bond request. The request was then treated as moot based on a nonfinal removal order. The error persisted for months. The eventual hearing was convened on same-day notice, proceeded without counsel or meaningful preparation, included unresolved reliance on inaccurate criminal-history information, and

resulted in an unexplained $15,000 bond despite Petitioner's statement that he had no assets and despite the imposition of electronic monitoring. The written order then recorded an appeal waiver inconsistent with Petitioner's statements during the hearing.

Petitioner is therefore not reasoning backward from the fact that he remains detained. The record independently demonstrates repeated failures in the procedures meant to protect against erroneous detention. Neither *Rodriguez Diaz* nor *Gukasian* requires the Court to disregard those failures.

IV. Respondents fail to engage with Ground Two entirely; this Court should find they have waived any argument.

Ground Two alleges that Respondents subjected Petitioner to punitive and coercive conditions during his hunger strike, including conditioning the return of his mattress on his agreement to eat and delaying his access to time-sensitive appeal paperwork during a period of severe medical vulnerability. Respondents do not address that claim at all. They do not dispute the underlying records, identify a legitimate nonpunitive purpose for the challenged conduct, argue that the restrictions were proportionate to any medical or security interest, or respond to the governing Fifth Amendment standard.

Respondents' filing serves as both their response to the Second Amended Petition and their opposition to Petitioner's motion for a temporary restraining order. As to the motion, Local Rule 7-2(d) provides that "[t]he failure of an opposing party to file points and authorities in response to any motion . . . constitutes a consent to the granting of the motion." Because Respondents offer no opposition to the request for emergency relief based on Ground Two, the Court may treat their silence as consent to granting that portion of the motion. *See* Vijdani v. Mattos, No. 2:25-cv-02496-GMN-EJY, ECF No. 23 at 9 (D. Nev. Feb. 27, 2026) ("Respondents do not respond to this ground for relief. *See* LR 7-2(d).").

As to the merits of the Petition, Respondents have at minimum waived any argument opposing Ground Two and left its factual and legal basis unrebutted. Other judges in this District have treated the Government's failure to respond to a habeas claim as waiver. *See Rodriguez v. Mullin*, No. 2:26-cv-00531-APG-NJK, 2026 U.S. Dist. LEXIS 70864, at *10–12 (D. Nev. Apr. 1, 2026); *Melendez Paz v. Mullin*, No. 2:26-cv-00296-RFB-MDC, 2026 U.S. Dist. LEXIS 96025, at *6–7 (D. Nev. May 1, 2026). Although those decisions involved challenges to mandatory detention rather than punitive conditions of confinement, they support the narrower proposition that Respondents may not ignore a separately pleaded constitutional ground and later expect the Court to construct a defense on their behalf.

Because Respondents have not contested Ground Two's facts, legal standard, or requested relief, the Court should grant the requested TRO relief and grant Ground Two on the merits.

V. The demonstrated risk of error supports immediate release or, at minimum, a new hearing with the burden on Respondents.

The appropriate remedy remains immediate release because another bond hearing would not adequately remedy the statutory and constitutional injuries Petitioner has already suffered. Petitioner requested custody review, submitted the evidence the Immigration Judge directed him to provide, and nevertheless remained detained for months because his filing was diverted into the merits proceeding and then erroneously marked moot. When the immigration court eventually attempted to cure that error, it convened a same-day hearing that produced another series of irregularities and left Petitioner detained under an unexplained $15,000 condition that the record establishes he cannot satisfy. A further hearing would therefore represent not the first opportunity to provide constitutionally adequate process, but a third attempt to correct a custody process that has repeatedly failed.

Portillo Portillo does not require a different remedy. There, the court was addressing compliance with an earlier order that required only a bond hearing and expressly concluded that Respondents had not violated that order. Here, by contrast, Petitioner seeks relief from a cumulative series of statutory and constitutional errors that preceded and infected the eventual bond determination, as well as an independent conditions-of-confinement violation that Respondents have not defended.

Courts in this District have declined to leave a petitioner detained while giving the Government another opportunity to cure an already completed constitutional violation through a post hoc bond hearing. *See Melendez Paz v. Mullin*, No. 2:26-cv-00296-RFB-MDC, 2026 WL 1194944, at *7 (D. Nev. May 1, 2026) (concluding that ordering a bond hearing would permit the Government to "transform an unlawful detention into a lawful one through post-hoc justifications"); *Jimenez v. Lyons*, No. 2:26-cv-00971-GMN-NJK, ECF No. 22 at 8–9 (D. Nev. May 28, 2026) (holding that a prompt bond hearing would not adequately remedy the statutory and constitutional injury already suffered and ordering release); *see also Sanchez Sandoval v. Blanche*, No. 2:26-cv-01387-RFB-NJK, ECF No. 17 at 5–6 (D. Nev. June 23, 2026) (rejecting reliance on a subsequent bond order because it did not cure the prior unlawful detention). The same concern applies here. Respondents should not receive successive opportunities to repair the custody process while Petitioner bears the cost of each error through continued incarceration.

Ground Two further supports that remedy. Respondents have not defended the punitive and coercive conditions imposed during Petitioner's detention and have therefore left unrebutted an independent constitutional challenge to the legality of that custody. Those conditions underscore why continued detention pending yet another attempt at adequate process would not provide complete or equitable habeas

relief. Under the Court's broad authority to fashion relief as law and justice require, immediate release subject to reasonable conditions is warranted.

In the alternative, the Court should order a prompt, recorded bond hearing at which Respondents bear the burden of proving by clear and convincing evidence that continued detention is necessary, the Immigration Judge meaningfully considers Petitioner's ability to pay and all reasonable alternatives to detention, and Petitioner is released if Respondents fail to provide that hearing within the time ordered.

CONCLUSION

For the foregoing reasons, the Court should grant the Second Amended Petition and order Petitioner's immediate release. Respondents have repeatedly failed to provide timely and constitutionally adequate custody process, and Petitioner should not remain detained while the Government receives yet another opportunity to correct errors whose consequences he has already borne through continued detention. Respondents have also waived or forfeited any opposition to Ground Two by failing to address it.

Dated July 23, 2026.

Respectfully submitted,

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