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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIDORNIA

Anton Fertikh,

Petitioner,

v.

Jeremy Casay, Warden Imperial Regional Detention Facility;
Daniel A. BRIGHTMAN, Field Office Director, San Diego Field Office, United States Immigration and Customs Enforcement;
Todd M. LYONS, Acting Director, United States Immigration and Customs Enforcement;
Markwayne MULLINS, Secretary or Homelend Security;
Todd BLANCHE, Acting Attorney General,
In their official capacities,

Respondents.

CASE No. 26cv2448-LL-VET
MOTION TO ENFORCE JUDGMENT

I. INTRODUCTION

Petitioner respectfully moves this Court to enforce its May 22 habeas order, at which the Government would bear the burden of establishing, by clear and convincing evidence, that Petitioner would likely flee or pose a danger to the community if released.

This Court's order was explicit: "At the hearing, the government **SHALL BEAR** the burden of establishing by clear and convincing evidence that Petitioner would likely flee or pose a danger to the community if released". **See (Exhibit A)**

Although a bond hearing was held, the hearing did not comply with the Court's order. DHS did not establish dangerousness. DHS did not establish flight risk. DHS did not present testimony, documentary evidence, or argument showing that Petitioner would likely flee if released. Suffice it to say that the bond hearing was constitutionally inadequate.

On June 5, Immigration Judge Anne Kristina Perry ("IJ") held a bond redetermination hearing and denied bond based on flight risk. The IJ never required the Government to prove, by clear and convincing evidence, that Petitioner is a flight risk, as this Court ordered. Instead, the IJ relied on speculation, filled gaps in the Government's evidence, and effectively shifted the burden to Petitioner by questioning his and his sponsor's credibility.

II. STATEMENT OF FACTS

Petitioner is a 34- year-old male citizen of Russia who fled his country due to political persecution stemming from his opposition to Vladimir Putin. Petitioner has been an active supporter of Alexei Navalny and participated in Navalny's Anti-Corruption Foundation, and he publicly opposes the war in Ukraine. As a result of

these political views and activities, Petitioner fears persecution if returned to Russia.

Petitioner waited for more than three months in Mexico to comply with U.S. immigration procedures and lawfully presented himself at a port of entry through the CBP One system. On November 4, 2024, he presented himself at the Calexico, California Port of Entry pursuant to a scheduled CBP One appointment.

Petitioner has been in Immigration Customs Enforcement's ("ICE") custody since November 6, 2024, and is currently detained at the Imperial Regional Detention Facility. He has no criminal history and has passed all background checks. Since entering the United States, he has complied with all immigration requirements, including appearing at all scheduled court hearings.

Petitioner proceeded in Immigration court without counsel for portions of his case and filed his asylum application pro se. His application was denied on June 2, 2025. The hearing was conducted in violation of Respondent's due process rights under the Fifth Amendment and controlling immigration regulations, because Petitioner did not receive actual notice of the advanced hearing date until after the hearing had already occurred. Petitioner timely appealed that decision to the Board of Immigration Appeals on June 11, 2025. The Board dismissed the appeal, rendering the removal order final on December 5, 2025, Petitioner is currently appealing the decision to the Ninth Circuit, where his case remains pending.

On April 16, 2026, Petitioner filed in this Court a Petition for Writ of Habeas Corpus, arguing that his prolonged detention violates the Fifth Amendment's Due Process Clause and seeking his immediate release from immigration custody or, in the alternative, an individualized bond hearing. On May 22, 2026, this Court found that Petitioner's prolonged detention warranted an order requiring Respondents to

provide him with an individualized bond hearing before a neutral adjudicator where the government would bear the burden of demonstrating, by clear and convincing evidence, that Petitioner is either a flight risk or danger to the community. Immigration Judge Perry conducted Petitioner's bond redetermination hearing on June 5, 2026, and denied bond because Petitioner allegedly represented a flight risk. **See ("June 5 Transcript") at 13.**

At the hearing, DHS did not present testimony, documentary evidence, investigative findings, or individualized proof showing that Petitioner would abscond. DHS presented no evidence of: prior failures to appear; absconding; violation of supervision; violations of release; conditions; refusal to comply with court orders; attempts to evade immigration authorities; or any conduct showing that Petitioner would likely flee. DHS made no other arguments that Petitioner was a flight risk.

III. LEGAL STANDARD

A. This Court Has Jurisdiction to Enforce its Habeas Order

This Court retains jurisdiction to enforce its order. As a general matter, "[d]istrict courts have the authority to review compliance with prior orders granting habeas relief, including orders for bond hearings." *Bayani v. LaRose*, No. 26-CV-0266-JES-VET, 2026 WL 1270059, at *3 (S.D. Cal. May 8, 2026) (citing *Leonardo v. Crawford*, 646 F.3d 1157, 1161 (9th Cir. 2011)). While district courts do not have jurisdiction to review an IJ's discretionary bond decision, they do retain habeas jurisdiction over constitutional claims and questions of law. Zarei v. Larose, No. 26-CV-02335-GPC-MMP, 2026 WL 1415042, at *2 (S.D. Cal. May 19, 2026) ("[8 U.S.C.] §1226(e) precludes jurisdiction over claims that an IJ, exercising his statutorily-delegated discretion, set an excessively high bond amount. . . . That

provision does not, however, preclude habeas jurisdiction over constitutional claims or questions of law.") (internal quotation marks omitted). This jurisdiction extends to mixed questions "involving the application of law to facts." *Zarei*, 2026 WL 1415042, *2. As discussed below, Petitioner argues that his bond hearing was legally and constitutionally insufficient. Because Petitioner attacks the legal and constitutional sufficiency of his bond hearing, and not the IJ's discretionary bond decision, this Court retains jurisdiction to review his claims.

B. Petitioner Is Not Required to Exhaust His Administrative Remedies

Petitioner need not exhaust his appeals of the bond denial to the Board of Immigration Appeals ("BIA") before returning to this Court for two reasons. First, habeas petitions for immigration detainees under 28 U.S.C. § 2241 are subject only to "prudential rather than jurisdictional" exhaustion. *Singh v. Holder*, 638 F.3d 1196 n.3 (9th Cir. 2011). Under this prudential framework, courts may excuse exhaustion "where administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void." *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (internal question and citation omitted). Moreover, in cases involving motions to enforce bond orders, courts in this district have recognized that they retain the authority to enforce compliance with their orders directing the government to provide bond hearings in the immigration context, regardless of any exhaustion requirement. *Bayani*, 2026 WL 1270059 at *4; *see also Judulang v. Chertoff*, 562 F.Supp. 2d 1119 (S.D. Cal. 2008) ("[P]etitioner is entitled to the habeas court's continuing supervision to ensure the government's compliance with the court's order").

Here, Petitioner meets several of the factors that justify waiving prudential exhaustion. The only administrative remedy Petitioner could seek is to appeal the IJ's decision to the BIA. However, such an appeal would not be adequate or efficacious. While the BIA has general subject matter expertise in immigration bond determinations, Petitioner here is challenging the constitutional adequacy of his bond hearing before IJ Perry—a legal question which is "better suited to review by the federal courts." *Zarei*, 2026 WL 1415042 at *3. Moreover, the BIA's average processing time for bond appeals was 204 days (as of 2024). *Rodriguez v. Bostock*, 779 F.Supp. 3d 1239, 1248 (W.D. Wash. 2025). That length of time is inadequate to ensure Petitioner's constitutionally-mandated due process rights are respected, especially considering he has already been detained for nearly a two year. Given the exceedingly long time Petitioner will have to wait for his appeal to be completed, an appeal of Immigration Judge Perry's, denial to the BIA would be inadequate.

Second, Petitioner will suffer irreparable injury if forced to exhaust his BIA appeal. Courts throughout the Ninth Circuit, and several courts in this district, have recognized that prolonged detention without a legally adequate bond hearing constitutes irreparable harm. *See, e.g., Zarei*, 2026 WL 1415042 at *4; *Perez Velasquez v. Bondi*, No. 26-CV-01759-GPC-DDL, 2026 WL 1042479 at *4 (S.D. Cal. Apr. 16, 2026). Petitioner also faces other irreparable harm if Respondents continue to detain him without an adequate bond hearing—prolonged detention causing him significant physical and emotional harm, including severe worsening medical conditions, anxiety, depression, panic attacks, and difficulty sleeping. Faced with the prospect of such irreparable harm, courts in the Ninth Circuit routinely waive prudential exhaustion requirements. *See Rodriguez*, 779 F.Supp.3d at 1253-1254 (collecting cases).

Because an appeal of Immigration Judge Perry's decision to the BIA would be ineffective and result in further irreparable injury to Petitioner, this Court should exercise its authority to waive any prudential exhaustion requirement.

C. Standard of Review of the IJ'S Decision

District courts review an IJ's finding that an immigration detainee poses a flight risk or danger to the community for abuse of discretion. *Zarei*, 2026 WL 1415042, at *4. Analyzing abuse of discretion requires the court to determine whether the IJ "applied the correct legal standard." *Zarei*, 2026 WL 1415042, at *4. Accordingly, the court examines whether the IJ "relied upon proof that—as a matter of law—could not establish" that Petitioner was a flight risk or danger to his community. (citing *Kharis v. Sessions*, No. 18-CV-04800-JST, 2018 WL 5809432, at *5 (N.D. Cal. Nov. 6, 2018)) (internal question marks omitted).

In Petitioner's case, the applicable legal standard for the IJ was provided by this Court in its May 22 Order: due process requires that Respondents provide Petitioner with "an individualized bond hearing" where Respondents "bear the burden of establishing by clear and convincing evidence that Petitioner poses a danger to the community or a risk of flight." To comply with this Court's order and satisfy principles of due process, the IJ was thus required to determine whether Petitioner is a flight risk or danger to his community. Under the Board of Immigration Appeals' decision in *In re Guerra*, an IJ should consider "any or all of the following" factors in making this determination:

> (1) whether the alien has a fixed address in the United States; (2) the alien's length of residence in the United States; (3) the alien's family ties in the Unites States, and whether they may entitle the alien to reside permanently in the United States in the future; (4) the alien's employment history; (5) the

alien's record of appearance in court; (6) the alien's criminal record, including the extensiveness of criminal activity, the regency of such activity, and the seriousness of the offenses; (7) the alien's history of immigration violations; (8) any attempts by the alien to flee prosecution or otherwise escape from authorities; (9) the alien's manner of entry to the United States. 24 I. & N. Dec. 37, 40 (BIA 2006).

IV. ARGUMENT

The Immigration Judge concluded: "The court finds, by clear and convincing evidence, that Respondent poses a risk of flight". But the decision does not identify evidence presented by DHS establishing flight risk by clear and convincing evidence. Instead, the Immigration Judge Perry relied on: the existence of a final administrative order of removal; dismissal of Petitioner appeal by the BIA; the pendency of his Petition for Review before the Ninth Circuit; the speculative likelihood of success on appeal; his status as an arriving alien; absence of a fixed address; absence of traditional community ties; and the fact that his proposed sponsor is a volunteer whom he knows by telephone. Those factors are not proof presented by DHS that Petitioner would likely flee. The distinction matters. This Court ordered the Government to establish flight risk. The Immigration Judge's Perry independent reliance on generalized factors did not satisfy DHS's burden.

Petitioner provided evidence of ties to the local community in the form of a financially secure sponsor willing to ensure their attendance at future court hearings, as well as a separate housing sponsor willing to provide housing. All this combined reduces the risk of future non-appearance. Petitioner also provided two letters of support from volunteer organizations and two letters of support from U.S.

citizen supporting the Petitioner. Additionally, Petitioner have another sponsor who has pledged to provide financial and emotional support during his removal proceedings if released on bond. **See (Exhibit B, C, D).**

To prove a flight risk under the «preponderance of the evidence» standard, the Government must prove there is a «high probability» that the Petitioner will fail to appear at future Court hearings. See *Mondaca-Vega v. Lynch*, 808 F.3d 413, 422 (9th Cir. 2015) (en banc); *Colorado v. New Mexico*, 467 U.S. 310, 316 (1984) (under the standard, evidence must "instantly tilt the evidentiary scales in the affirmative when weighted against the evidence offered in opposition"). In making that determination, the Immigration Judge considers factors such as the individual's: (1) existence of a fixed address in the United States upon release; (2) length of residence in the country; (3) family ties in the United States and potential for permanent residence in the country; (4) employment history; (5) record of appearance in court; (6) criminal record; (7) history of immigration violations; (8) any attempts to flee prosecution or otherwise escape from the authorities; and (9) manner of entry to the country. *See Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006) (discussing factors relevant to an IJ's flight risk inquiry of a detainee); *see also Singh v. Holder*, 638 F.3d 1196, 1206 n. 5 (9th Cir. 2011) ("Guerra discusses nine factors that, 'Immigration Judge may look to in determining whether an alien merits release from bond, as well as the amount of bind that is appropriate.'"). Where the record evidence regarding flight risk or dangerousness falls short of the required standard, the government does not carry its burden and cannot prevail. *See Singh*, 638 F.3d at 1205 (equivocal evidence of dangerousness from both parties is insufficient to satisfy the clear and convincing standard).

Even assuming that the Immigration Judge relied on: final administrative order of removal; dismissal of Petitioner appeal by the BIA; the pendency of his Petition for

Review before the Ninth Circuit; the speculative likelihood of success on appeal, this circumstance alone does not allow Petitioner to be classified as unreliable or prone to evading law enforcement. Therefore, it is not sufficient to establish a reasonable expectation of future failure to appear. *See Sing*, 638 F.3d at *1205.

The Immigration Judge expressly found that DHS failed to meet its burden on dangerousness. The decision states: "While the Court does not find that the Department met their burden to show Respondent is a danger to the community..."Thus, one of the two possible grounds for continued detention under this Court's order was not established. DHS also failed to establish that Petitioner would likely flee if released. At the hearing, DHS did not present testimony, documentary evidence, investigative findings, or individualized proof showing that Petitioner would abscond. DHS presented no evidence of: prior failures to appear; absconding; violation of supervision; violations of release; conditions; refusal to comply with court orders; attempts to evade immigration authorities; or any conduct showing that Petitioner would likely flee. DHS did not argue that Petitioner was a flight risk. In fact, the Petitioner legal entry to the US — weighed in his favor. *See Perez Velasquez*, 2026 WL 1042479 (finding that petitioner did not receive a constitutionally adequate bond hearing where the IJ relied of evidence with little relevance to petitioner's risk of flight).

The only question DHS asked concerned whether Petitioner "would forced into military service". **("June 5 Transcript") at 9.** That question does not establish that Petitioner would likely flee if released on the United States. Accordingly, DHS did not satisfy the burden imposed by this Court. The Immigration Judge relied heavily on the fact that Petitioner has a final administrative order of removal and pending Petition for Review before the Ninth Circuit. But those facts alone cannot satisfy the standard ordered by this Court.

If the existence of a final administrative removal order were enough to flight risk by clear and convincing evidence, then DHS would automatically prevail in nearly every post-final-order detention case without presenting individualized evidence. That would render this Court's order meaningless. The Court required an individualized evidentiary determination. It did not authorize a presumption of detention based on procedural posture. The decision shows that the burden was not meaningfully placed on DHS. Rather than requiring DHS to prove that Petitioner would likely flee, the Immigration Judge relied on the absence of favorable factors such as family ties, employment, a fixed address, and an established sponsor relationship. That effectively required Petitioner to prove that he was not a flight risk. That is the opposite of what this Court ordered. This Court placed the burden on the Government. DHS did not carry that burden.

The IJ erred by relying on a removal order to justify the denial of bond. The fact that IJ suggested the due to the removal order Petitioners relief from removal appears incredibly limited and therefore speculative. This is in opposite to the holding in *Singh v. Holder* 638 F.3d 1196, 1205 (9th Cir. 2011). The IJ has granted bond to similarly situated individuals in the same detention facility who have removal orders and yet they were released on bond. Additionally, the district court was well-aware of the fact that Petitioner had a removal order when it ruled that Petitioner's due process rights were violated.

Lastly the 14th Amendment of the U.S. Constitution provides that similarly situated people are to be treated the same. Therefore, a denial of bond on the basis of a removal order when similarly situated people in the detention are being granted bond even when they have removal orders violated the 14th Amendment of the U.S Constitution.

The IJ reference the fact that Petitioner has no friends or family members in the United States who would be able to help him adjust and while Petitioner as actively seeking Asylum and while there is an administratively entered removal order, Petitioner is confident that upon a proper review of his clams in the Ninth Circuit he will ultimately prevail. Therefore, a review of the Guerra nine factors under Guerra do not set forth friends or family members who would help a person adjust status at a basis for consideration of flight risk or danger to the society.

Lastly of recent, this Court has recognized the fact that Immigration bond hearing is being conducted by partial Judge.

The IJ also failed to consider less restrictive alternatives to detention, including bond or release with conditions such as electronic monitoring. Because Respondents have now failed to provide the constitutionally adequate hearing this Court order, a hearing is unlikely to cure the same defects. Petitioner therefore respectfully requests that the Court enforce its Order by directing his immediate release on appropriate conditions. *See Boukoubonge v. Mullin* "the court fainds that (1) it has jurisdiction to address Petitioner's challenge to his prolonged immigration detention, and (2) Petitioner's immigration detention without a bond hearing has exceeded constitutional limits citing *Mubanga v. Mullin, No. 26-CV-02565-JO-AHG, Dkt. 2 (S.D. Cal. Jul. 6, 2026)* "the court finds that ordering a bond hearing would not sufficiently protect Petitioner's constitutional rights and orders his immediate release.

V. CONCLUSION

For the reason set forth above, Petitioner respectfully requests that this Court:

1. Order Respondents to release Petitioner from custody within forty-eight (48)

hours under appropriate conditions of supervision set forth in 8 C.F.R. § 241.5;

a. Within forty-eight (48) hours of any such order, require Respondents to file with this Court a declaration confirming Petitioner has been released from custody and a copy of the conditions of supervision;

b. In the event this Court issues such order, additionally order Respondents to return to Petitioner all property confiscated from him during his arrest and processing into detention, including but not limited to any personal identification, employment authorization document, medical insurance card, money, and documents he received upon entry and release into the United States;

2. In the alternative, order a new bond hearing before a neutral adjudicator who has not previously presided over any aspect of Petitioner's bond proceedings, with the following directives:

a. Respondents bear the burden of proof by clear and convincing evidence at all stages of the hearing and in any written decision;

b. If the IJ makes a determination of flight risk, the IJ must set a specific bond amount and explain on the record why no lesser amount or conditions of release would secure Petitioner's appearance; and

c. The IJ may not categorically deny bond without an analysis of conditions of release;

3. Enjoin Respondents from transferring Petitioner out of the Southern District of California pending final resolution of this matter;

4. Grant such further relief as this Court deems just and proper.