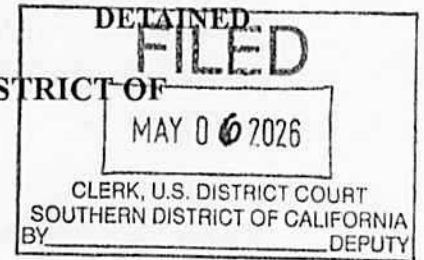


UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF
CALIFORNIA



RANA AJAYA

Case no: 26-cv-2563-RHS-DDL

A#:



Honorable district judge Robert S.
Huie

Petitioner
V.

CHRISTOPHER J LAROSE
Respondent

**MOTION TO RECONSIDER DISMISSAL OF PETITION OF HABEAS
CORPUS**

On April 22 2026, petitioner Ajaya Rana filed a second petition for a writ of habeas corpus and based his arguments on previous habeas bond order not being held on neutral grounds his petition was dismissed without prejudice on April 29,2026. Petitioner moves this court to consider its order based on this new argument set forward below:

Exception to Exhaustion of Administrative Remedies

The court dismissed this petition of a writ of habeas corpus based on the respondents argument of the petitioner not exhausting his administrative remedies due to fact that his unfair bond hearing has not yet being fully adjudicated by the BIA(Board of Immigration Appeals). Petitioner did not receive the argument of the respondent response to his petition timely causing the petitioner not to file a appropriate reply to the respondent response.

However, the court did not consider the argument I placed forward that the respondent did not hold a bond hearing that comports with due process "Perez v. Paulk, 2026 U.S Dist. LEXIS 79536".

Respondents argue that petitioner's motion should be denied because petitioner has not exhausted his administrative remedies due to his prior bond decision still pending before the BIA. Respondents concede this point but contend without citation to a statute or regulation. Respondents do not point any other provision of the immigration law where congress clearly required exhaustion in this context and neither should the court find one. In absence of an applicable statute or rule mandating administrative exhaustion by petitioner, the court has discretion to decide if exhaustion should be required "McCarthy v Madigan, 503 U.S 140, 144, 112 S Ct. 1081, 117 L. Ed. 2D 291 (1992)".

The central question presented by the petitioner's motion is whether the Due process Clause requires that the government be required to prove, by clear and convincing evidence, that the non citizen is a flight risk or a danger to the community to justify the denial of bond. That determination is principally a legal question of constitutional interpretation and does not require the record that would be developed if the court required petitioner to exhaust his administrative remedies "Soto-Medina , 2026 U.S Dist. LEXIS 11113, 2026 WL 161002, at *3".

During the course of the bond hearing both the immigration court and the respondents agreed on the fact that petitioner does not pose any danger to the community but failed to consider the fact that the petitioner was not given time to provide evidences of his ties to community and other evidences to prove that he is at flight risk. The whole ruling of the immigration judge denying his bond relief was based solely on the respondents argument that he was at flight risk without no evidence on the record from the petitioner due to the court denial of rescheduling a new bond hearing where the petitioner is fully prepared with his evidence to overcome its flight risk bar. Second my current pending appeal to the BIA will be futile because the BIA does not have jurisdiction to adjudicate the constitutional issues raised in this case. See " In Re Rodriguez-Carrillo, 22 I. & N Dec 1031, 1035 (BIA

1999)". Neither the immigration judge nor this board may rule the constitutionality of the statutes that the Federal Court administer.

The court assumed that exhaustion is required in this case, however, the fact that the BIA cannot review the constitutional challenge raised in petitioner's motion should place this case squarely within an exception to the exhaustion requirement. In *McCarthy*, the Supreme Court recognized three circumstances where the interest of the individual weighs heavily against requiring administrative exhaustion. "*Gibson v. Berryhill*, 411 U.S. 564, 575 n. 14, 93 S. Ct. 1689, 36 L. Ed. 2d 488 (1973)", An agency ... may be unable to consider whether to grant relief because it lacks institutional competence to resolve the particular type of issue presented, such as the constitutionality of a statute.

Further, the other district court have similarly excused administrative exhaustion where a petitioner raises a due process challenge to the discretionary bond process under § 1226(a). See "*Soto-Medina*, 2026 U.S Dist. LEXIS 11113, 2026 WL 161002, at *4" (concluding exhaustion was not required because the petition raised a question of constitutional interpretation regarding the burden of proof in bond hearings, the BIA cannot review constitutional challenges, and BIA precedent placing the burden of proof on the non citizen would likely require further judicial review). "*Hechavarria v. Whitaker*, 358 F. Supp. 3D 227, 237-38(W.D.N.Y 2019)" (concluding that exhaustion was not required because delays inherent in a BIA appeal would result in petitioner's prolonged detention without due process and because petitioner's motion to enforce raised constitutional questions which the BIA has no jurisdiction to decide). "*Alvarado Lopez v Dillman*, No. 1: 25-cv-2456, 2026 U.S Dist. LEXIS 50661, 2026 WL 688958, at *4-5 (E.D Va Mar 11, 2026)" (concluding that exhaustion was not required for a petitioner asserting a fifth amendment challenge to the procedures used during a § 1226(a) bond hearing). See also "*Mathon v. Searls*, 623 F. Supp. 3D 203, 213 (W.D.N.Y 2022)".

Burden of proof wrongfully shifted to the petitioner

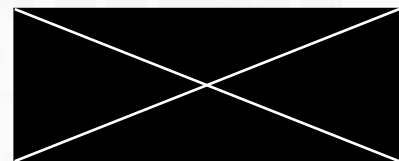
During the bond proceedings the immigration wrongfully shifted the burden of proof on the petitioner, the government should have been responsible for meeting their burden of proof stating as to why the petitioner is at flight risk or why he pose a danger to the community.

The immigration judge wrongfully based her decision on the petitioner not meeting his burden of proof and deeming him at flight risk. This is a constitutional erroneous verdict made by the immigration judge.

Conclusion

Petitioner is asserting that the bond hearing held before immigration judge Attia Olga did not comport with the minimal requirements of due process because it was not individualized and the burden of proof was incorrectly placed on petitioner. Petitioner asserts the bond hearing was not held on fair grounds and argues that this court should use its discretion to reconsider re-opening this case grants this petition and order respondents to hold a fair bond hearing with specific instructions or order respondents to immediately release petitioner from detention. Attached with this motion is my sponsor package I was preparing to submit to the immigration court as evidence to overcome my flight risk bar before the immigration judge turned down my request to reschedule a new bond hearing and ordered by bond denied.

Petitioner moves this court to Order a new bond hearing where the Department of Homeland Security shall bear the burden of establishing by clear and convincing evidence that petitioner is either a danger to the community or a flight risk. Any bond decision made must be individualized, meaning after and reflective of the consideration of all evidence provided. Or in alternative, order respondents to immediately release petitioner if the respondents fails to comply.



RANA AJAYA
pro se

May 1 2026

Affidavit of Lila Dangi Affirming Support for Ajaya Rana

My name is Lila Dangi, a naturalized citizen of the United States of America with my address at [REDACTED] I work at Gas Station located at [REDACTED], Annual Income of approximately [REDACTED]

Ajaya Rana is a son of Dil Bahadur Rana . Dil Bahadur Rana is my best friend from Nepal. I personally swear and affirm to provide support to Ajaya Rana [REDACTED] upon his release from ICE custody. Ajaya Rana will be welcome in our home and will be provided with adequate food, shelter and basic necessities. I further swear and affirm that I shall assist Ajaya Rana in appearing in United States Immigration Court and all ICE appointment.

Ajaya Rana is currently detained at the San Diego, CA Immigration Processing Otay Mesa Detention Center Core civic 7488 Calzada De La Fuente, San Diego, CA 92154, United States.

[REDACTED]
Signature of Lila Dangi
Tel: [REDACTED]
Email: [REDACTED]

STATE OF Texas }
COUNTY OF Lampasas }

On this 9th day of February 2026
before me Patrishia Teresa Johnson (name of notary public), personally appeared Lila Dangi who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of TX that foregoing paragraph is true and correct. WITNESS my hand and official seal.

