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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

HAMOOD ABDIKADIR MOHAMED, Petitioner, v. WARDEN JEREMY CASEY, *et al,* Respondents.	Case No.: 3:26-cv-02612-JLS-BJW **RESPONSE TO MOTION TO ENFORCE [ECF NO. 18]**

INTRODUCTION

This immigration habeas matter is before the Court on Petitioner's motion seeking immediate release from custody or, alternatively, a second bond hearing before an Immigration Judge (IJ) other than the IJ who denied Petitioner release on bond on June 12, 2026. The motion asserts that the IJ failed to comply with the directive of this Court to place the burden of proof on the government at the bond hearing. Petitioner further challenges the factual sufficiency of the IJ's determination of risk of flight as a denial of due process. The government primarily opposes the motion on the ground that Petitioner, as of August 27, 2026, is subject to an administratively final order of removal and

mandatory detention under 8 U.S.C. § 1231. In the alternative, the government submits that Petitioner failed to exhaust his administrative remedies by timely appealing the bond order; and further submits that the IJ's determination of flight risk was well within the IJ's discretion and should not be disturbed in these proceedings.

STATEMENT OF FACTS

On May 29, 2026, this Court entered an order requiring the government to provide Petitioner with a bond hearing at which the government would bear the burden of proof as to whether Petitioner would be a danger to the community or a flight risk if released. ECF No. 15. Petitioner's bond hearing was held on June 12, 2026. *See* ECF No. 18-2. The IJ denied Petitioner's request for release based upon a finding of flight risk. *Id.* Appeal of the IJ's bond order to the Board of Immigration Appeals (BIA) was due July 13, 2026. *Id.*

The Petitioner filed an appeal of the denial of the bond order with the BIA which was received on July 13, 2026. (See attached collective Exhibit (redacted)). The appeal was rejected for failure to attach a copy of the IJ's order. *Id.* Petitioner re-submitted his appeal on August 14, 2026, with a letter requesting to consider the appeal (See a collective Exhibit (redacted)). His request to appeal the bond order remains pending with BIA. Meanwhile, on August 27, 2026, the BIA denied the appeal of his underlying order of removal. (See collective Exhibit (redacted)). *See also* Amended Petition, ECF No. 13, Page ID No. 2 (acknowledging pending BIA appeal of IJ denial of asylum).

ARGUMENT

A. Petitioner is Properly Detained Pursuant to an Administratively Final Order of Removal

The statutory authorization for civil detention of noncitizens present in the United States is governed by 8 U.S.C. §§ 1225, 1226, and 1231. "Where an alien falls within this statutory scheme can affect whether his detention is mandatory or discretionary, as well as the kind of review process available to him if he wishes to contest the necessity of his

detention." *Prieto-Romero v. Clark*, 534 F.3d 1053, 1057 (9th Cir. 2008). At the time the Court granted the Petition directing a bond hearing, Petitioner was subject to detention under 8 U.S.C. § 1225(b)(2) as an arriving non-citizen apprehended at the time of his entry without inspection. *See Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). (stating § 1225(b)(2) "serves as the catchall provision that applies to all applicants for admission not covered by § 1225(b)(1).") *Id.*

When the Court first granted a bond hearing, Petitioner's appeal of his removal order was still pending before the BIA. Thus, his detention was governed by § 1225(b)(2). However, when the BIA denied his appeal on August 27, 2026, Petitioner became subject to an administratively final order of removal -- thus shifting his detention authority to § 1231. *See Coria v. Garland*, 114 F.4th 994, 1001 (9th Cir. 2024) ("By statute, an order of removal 'become[s] final upon' a decision of the BIA affirming that order or the expiration of the period for seeking BIA review.") (*quoting* 8 U.S.C. § 1101(a)(47)(B)).

Respondents acknowledge that Petitioner may file an appeal of the BIA order and if he receives a judicial stay of the order of removal his detention authority would shift back to § 1225(b)(2). *See Padilla-Ramirez v. Bible*, 882 F.3d 826, 830 (9th Cir. 2017) noting Section 1231's detention authority applies during the "'removal period' ... which begins on the latest of three dates: (1) the date the order of removal becomes administratively final; (2) if the removal order is judicially reviewed and if a court orders a stay of the removal of the [noncitizen], the date of the court's final order; or (3) if the

[noncitizen] is detained or confined (except under an immigration process), the date the [noncitizen] is released from detention or confinement.") (*quoting* 8 U.S.C. § 1231(a)(1)(B)(i)–(iii)) (cleaned up). Here, upon information and belief, Petitioner has not obtained a judicial stay on appeal of the BIA's order of removal. Thus, at this point, his detention is now mandatory under § 1231 unless and until a judicial stay of removal is obtained from the Ninth Circuit.

B. Petitioner Has Not Exhausted His Administrative Remedies

Petitioner filed a deficient appeal of his bond order which was rejected by the BIA for not attaching the bond order. Petitioner filed a second appeal and has a pending request for BIA to accept his appeal. That request is pending before the BIA. He now seeks release or a new bond hearing while his request is pending. Petitioner, however, should be required to exhaust his administrative remedies before asking the federal district court to review the IJ's bond order. *See 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."); *Francois v. Warden of Otay Mesa Detention Center*, 3:25-cv-03635-BTM-MMP, 2026 WL 146627, at *3 (S.D. Cal. Jan. 20, 2026) (dismissing claim without prejudice because Petitioner failed to appeal adverse bond determination to BIA).

Bond determinations by an IJ can be appealed to the BIA. See 8 C.F.R. 1003.19(f) ("An appeal from the determination by an Immigration Judge may be taken to the Board of Immigration Appeals pursuant to [8 C.F.R.] § 1003.38."). "Exhaustion can be either

statutorily or judicially required." *Acevedo-Carranza v. Ashcroft*, 371 F.3d 539, 541 (9th Cir. 2004). In the Ninth Circuit, as a prudential matter, habeas petitioners are required to exhaust available judicial and administrative remedies before seeking judicial relief. *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 (2006). Prudential exhaustion may be required 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." *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007) (citing *Noriega-Lopez v. Ashcroft*, 335 F.3d 874, 881 (9th Cir. 2003)). Finally, "[a] court may waive the prudential exhaustion requirement if '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.'" *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017) (*quoting Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004)).

Failure to seek administrative review in and of itself is not a valid ground for excusing prudential exhaustion because "any party could obtain judicial review of initial agency actions simply by waiting for the administrative appeal period to run and then filing an action in district court." *Stock W. Corp. v. Lujan*, 982 F.2d 1389, 1394 (9th Cir. 1993). *See also Rojas-Garcia v. Ashcroft*, 339 F.3d 814, 819 (9th Cir. 2003) (holding a

petitioner must exhaust administrative remedies, to include appeal of claims that are reviewable by the BIA before raising those claims in a habeas petition to avoid premature interference with agency process and to compile a full judicial record.). Therefore, to the extent the Court determines that Petitioner may still seek release or a new bond hearing in spite of his final order of removal -- the Court should await the BIA's decision on his pending bond appeal.

C. The IJ's Finding of Flight Risk Should Not Be Disturbed

Should the Court decide to examine the IJ's order on the merits, the standard of review is abuse of discretion. *Martinez v. Clark*, 124 F.4th 775, 784 (9th Cir. 2024). A court abuses its discretion "when it applies the wrong legal standard or when its findings of fact or its application of law to fact are 'illogical, implausible, or without support in inferences that may be drawn from the record.'" *United States v. Chichande*, 113 F.4th 913, 919–20 (9th Cir. 2024) (*quoting Glick v. Edwards*, 803 F.3d 505, 508 (9th Cir. 2015)). That is, the court must be "left with a definite and firm conviction" that the IJ "committed a clear error of judgment" to find abuse of discretion. *United States v. Ressam*, 679 F.3d 1069, 1086 (9th Cir. 2012) (*quoting United States v. Hinkson*, 585 F.3d 1247, 1260 (9th Cir. 2009)).

In a recent decision in this district denying a motion to enforce based upon an IJ's finding of flight risk, the court applied the following factors:

> (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 United 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 recency 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; and (9) the alien's manner of entry to the United States.

Eljaraouy v. Casey, No.: 3:26-cv-01449-BTM-AHG, 2026 WL 2172341, *1 (S.D. Cal. July 28, 2026). *(citing Martinez*, 124 F.4th at 783 (*quoting In re Guerra*, 24 I. & N. Dec. 37, 40 (B.I.A. 2006)). Utilizing the abuse of discretion standard and the *Guerra* factors, the IJ acted within her discretion.

More specifically, the IJ's order reflects that she applied the clear and convincing standard of proof in Petitioner's hearing. *See* IJ order ("the Court does find that the evidence in this case shows, by a standard of clear and convincing, that Respondent poses a risk of flight."). While Petitioner argues mere recitation of the standard does not suffice, the court in *Eljaraouy* held that the IJ's statement at the hearing and recitation of the standard in the bond order reflected application of the correct standard of proof. *See Id.* at 2026 WL 2172341, *1. This court should likewise find that the IJ's statement of the standard in the bond order establishes the correct standard of proof was applied.

Next, the IJ's order reflects that the IJ properly considered and applied the *Guerra* factors. Namely, the bond order recites Petitioner's lack of residence in the United States, his illegal entry into the United States, no job history, and his only fixed address would

be a relative who could not have the ability to assist with adjustment of his status.[1] Taken together, the IJ's consideration of these factors reflect conscientious consideration and deliberation of recognized factors that weigh on the determination of flight risk. As such, this Court should hold that the IJ did not abuse her discretion in finding Petitioner posed a risk of flight if released on bond.

Finally, mere disagreement with an Immigration Judge's bond decision is outside the scope of judicial habeas review. *See Rodriguez-Diaz v. Garland.* 53 F.4th 1189, 1212-13 (9th Cir. 2022) (noting court lacks direct judicial review jurisdiction of bond decisions under 8 U.S.C. § 1226(e)). Likewise, the fundamental fairness of a particular process for constitutional purposes "does not turn on the result obtained in any individual case." *Walters v. National Association of Radiation Survivors*, 473 U.S. 305, 321 (1985). Respondents submit that Petitioner's motion should be viewed as a mere disagreement with the IJ's determination of flight risk. While Petitioner postures his claim as a violation of due process -- his arguments invite direct judicial review of the underlying order. The motion to enforce should therefore be denied.

[1] "The existence of a valid, reliable, and credible sponsor is relevant to the determination of flight risk." *Matter of Dobrotvorskii*, 29 I&N Dec. 211, 213 (BIA 2025); see also *Matter of R-A-V-P-*, 27 I&N Dec. 803, 806 & n.3 (BIA 2020) (in assessing flight risk, IJ may consider sponsor's ability to financially support noncitizen and ensure his or her presence at future immigration hearings).

CONCLUSION

For the foregoing reasons, Respondents respectfully request the motion to enforce be denied in all respects.

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Respectfully submitted,

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