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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
(HONORABLE JANIS L. SAMMARTINO)

HAMOOD ABDIKADIR MOHAMED, Petitioner, v. MARKWAYNE MULLIN, Secretary of the Department of Homeland Security, TODD BLANCHE, Acting Attorney General, TODD M. LYONS, Acting Director, Immigration and Customs Enforcement, JESUS ROCHA, Acting Field Office Director, San Diego Field Office, JEREMY CASEY, Warden at Imperial Regional Detention Center, Respondents.	CIVIL CASE NO.: 26-cv-2612-JLS-BJW **REPLY IN SUPPORT OF MOTION TO ENFORCE**

This Court ordered Respondents to provide Mr. Mohamed a bond hearing at which "[t]he Government SHALL bear the burden of establishing by clear and convincing evidence that Petitioner is a danger to the community or a flight risk if released." ECF No. 15 at 2. At the bond hearing held on June 12, 2026, the government submitted no evidence. The immigration court's record contained

exactly two exhibits: this Court's order and Mr. Mohamed's evidentiary submission. ECF No. 18-2 at (02:14). The government's entire presentation consisted of roughly one minute of unsworn argument, in which its counsel conceded: "I'm sure he doesn't have any intention of fleeing the United States." *Id.* at (42:11). The immigration judge ("IJ") nonetheless denied bond, reciting the clear and convincing standard in her written order while resting her decision entirely on what Mr. Mohamed had purportedly failed to prove.

Respondents' opposition disputes none of this. It does not deny that the government presented no evidence. It does not deny that the burden of proof was never allocated to the government at the hearing. It does not identify a single item of affirmative government proof supporting the IJ's flight-risk finding. It does not dispute the accuracy of the hearing transcript. Instead, Respondents offer three reasons why this Court should decline to look: that the Board of Immigration Appeals' ("BIA") August 27, 2026 affirmance of Mr. Mohamed's removal order extinguishes the Court's authority, that Mr. Mohamed failed to exhaust administrative remedies, and that the IJ's decision is insulated by discretion. Each argument fails, and the last is self-defeating: the only defense of the IJ's order that Respondents can muster is a catalogue of Mr. Mohamed's supposed failures of proof, which is precisely how a hearing looks when the burden never left the detainee.

I.

THIS COURT RETAINS AUTHORITY TO ENFORCE ITS JUDGMENT

Respondents lead with the argument that the BIA's affirmance of the removal order, entered more than two months after the IJ violated this Court's judgment, shifted Mr. Mohamed's detention authority to 8 U.S.C. § 1231 and thereby placed the violation beyond remedy. Opp'n at 2-4. The argument fails for three reasons.

First, district courts retain authority to review compliance with their own orders granting habeas relief, including orders for bond hearings. *Leonardo v. Crawford*, 646 F.3d 1157, 1161 (9th Cir. 2011); *accord Safinejad v. LaRose*, No. 26-cv-531-JES-AHG, ECF No. 15 at 3 (S.D. Cal. June 9, 2026) ("District courts have the authority to review compliance with prior orders granting habeas relief, including orders for bond hearings."); *see also C.A.R.V. v. Wofford*, No. 1:25-CV-01395-JLT-SKO, 2026 WL 241823, at *4 (E.D. Cal. Jan. 29, 2026) ("any alleged exhaustion requirement [] must fully contend with the Court's continuing authority to enforce its own injunction"). The violation of this Court's judgment occurred on June 12, 2026, while the judgment was fully operative and while, as Respondents concede, Mr. Mohamed's detention was governed by § 1225(b)(2). Opp'n at 3. A judgment violated in June is not cured by an agency decision in August. Respondents identify no authority holding that an intervening change in detention authority strips a district court of the power to remedy a completed violation of its own judgment.

Second, on Respondents' own account, the claimed shift in detention authority is contingent and reversible. Respondents acknowledge that if Mr. Mohamed petitions the Ninth Circuit for review of the BIA's decision and obtains a judicial stay of removal, "his detention authority would shift back to § 1225(b)(2)." Opp'n at 3 (citing *Padilla-Ramirez v. Bible*, 882 F.3d 826, 830 (9th Cir. 2018)). Given that Mr. Hamood is doing everything he can to get status in the United States. It is fully anticipated that a petition for review and request for stay of removal will be filed on or before September 28, 2026; upon that filing, removal is temporarily stayed. *See* 9th Cir. Gen. Order 6.4(c); *De Leon v. INS*, 115 F.3d 643, 644 (9th Cir. 1997)." Attorney Chavez has an appointment to speak with Mr. Hamood on Thursday, September 17, 2026 to confirm that he has or will file the PFR. The premise of Respondents' lead argument therefore dissolves on their own terms: the detention authority they invoke to defeat enforcement is the same authority they concede yields to a stay.

Third, Respondents' position would allow the government to profit from its own noncompliance. Had the IJ complied with this Court's judgment on June 12, Mr. Mohamed would have received a lawful hearing at a time when, by Respondents' own account, he was eligible for bond, and on this record, where the government offered no evidence and conceded he had no intention of fleeing, a lawful hearing pointed in one direction. Instead, the IJ conducted a hearing that

flipped the burden, and the months since have been consumed by the noncompliance itself, including Respondents' attempt to remove Mr. Mohamed. Respondents now ask the Court to treat the time their violation consumed as the reason no remedy is available. Equity forbids that result, and the Court's authority over its own judgment does not depend on the government's cooperation in preserving it.

II.

THE COURT SHOULD EXCUSE EXHAUSTION

A. Correction of the Record Regarding Mr. Mohamed's Pro Se Appeal

The Motion to Enforce stated that no BIA appeal of the bond order had been filed. But Respondents' exhibits show that Mr. Mohamed, acting pro se from detention, in fact did more than counsel knew. The chronology, drawn entirely from Respondents' own filings, is as follows. Mr. Mohamed's notice of appeal of the bond order was received by the BIA on July 13, 2026, the day it was due; Respondents themselves describe it as "received on July 13, 2026." Opp'n at 2. The BIA rejected the timely appeal by notice dated July 23, 2026, for a single defect: failure to attach a copy of the IJ's decision. ECF No. 20-1 at 2. Mr. Mohamed received the rejection by mail on July 28, 2026, and within a day prepared a corrected filing and a motion asking the Board to accept it: "I'm detained and a Pro-Se. I am pleading with the Board of Immigration and Appeals to grant this motion in my favor." ECF No. 20-

1 at 4. The BIA received the corrected appeal on August 4, 2026, issued a filing receipt on August 14, 2026, ECF No. 20-1 at 3, and has not acted on it since. Counsel was unaware of these pro se filings when the Motion was prepared and corrects the record here.

Far from defeating the Motion, this chronology strengthens it. It refutes any suggestion of a "deliberate bypass" of the administrative scheme: a detained, non-English-speaking asylum seeker filed a timely appeal on his own, saw it rejected on a paperwork technicality, and refiled within days. And it illustrates why the administrative remedy is inadequate: the corrected appeal has now sat before the Board for six weeks without action, while in the interim the same Board summarily affirmed Mr. Mohamed's removal order without opinion. ECF No. 20-1 at 6.

B. Exhaustion Is Prudential and Warrants Waiver Here

Exhaustion in § 2241 immigration habeas cases "is a prudential rather than jurisdictional requirement." *Singh v. Holder*, 638 F.3d 1196, 1203 n.3 (9th Cir. 2011). It may be waived 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); *see Singh v. LaRose*, No. 26-CV-1425 JLS (GC), 2026 WL 1387428, at *3 (S.D. Cal. May 18, 2026). Courts in this District have repeatedly excused exhaustion for the limited purpose of reviewing compliance

with a prior order for a bond hearing. *See Safinejad*, ECF No. 15 at 4-6; *Bayani v. LaRose*, Case No. 26-cv-2660-JES-VET, ECF No. 19 at 5-8 (S.D. Cal. May 5, 2026); *Perez Velasquez v. Bondi*, No. 26-CV-01759-GPC-DDL, 2026 WL 1042479 (S.D. Cal. Apr. 16, 2026); *Mau v. Chertoff*, 562 F. Supp. 2d 1107 (S.D. Cal. 2008); *Judulang v. Chertoff*, 562 F. Supp. 2d 1119 (S.D. Cal. 2008).

Respondents' authorities involve a different posture. *Leonardo* and *Francois* each concerned a petitioner who sought habeas review of an adverse bond determination in the first instance, without any prior judgment to enforce. *Leonardo*, 646 F.3d at 1160; *Francois v. Warden of Otay Mesa Det. Ctr.*, No. 3:25-cv-03635-BTM-MMP, 2026 WL 146627, at *3 (S.D. Cal. Jan. 20, 2026). Here, this Court has already adjudicated the constitutional claim, entered judgment, and prescribed the standard that governed the hearing. The question presented is not whether the IJ's discretionary call was correct; it is whether Respondents complied with this Court's judgment. That question belongs to this Court, not the agency.

C. Respondents' Own Brief Establishes Futility

Respondents' two arguments cannot coexist. Section A of their opposition insists that Mr. Mohamed's detention is now mandatory under § 1231 by virtue of an administratively final removal order. Opp'n at 4. If that is so, the IJ and the BIA lack jurisdiction to grant him bond at all, 8 C.F.R. § 1236.1(d)(1), and the pending bond appeal that Section B insists he must exhaust is incapable of affording any

relief. Respondents cannot simultaneously maintain that the administrative process must be awaited and that it is legally powerless to order release. On Respondents' own theory, exhaustion is the definition of a futile gesture.

The Board's treatment of Mr. Mohamed's own filings confirms the point, and it does not stand alone. As courts in this District have recognized, the reconstituted Board "appears to have largely ceased functioning as a meaningful check on lower-level agency errors, instead upholding 97% of all immigration appeals in 2025, including bond determinations, a rate exceeding the 16-year historical average by at least 30 percentage points." *Tiboko-Tifuh v. Noem*, No. 26-cv-1215-JO-DEB, 2026 WL 1603795, at *3 (S.D. Cal. June 4, 2026) (citing *Perez Velasquez*, 2026 WL 1042479, at *3 n.2). The Board's affirmance without opinion of Mr. Mohamed's removal order, issued by a single appellate immigration judge while his bond appeal languished, is of a piece. ECF No. 20-1 at 6.

Finally, irreparable injury is ongoing. Mr. Mohamed has been detained since January 25, 2025, now approaching twenty months. ECF No. 15 at 1. Every week of delay pending an administrative process that cannot grant relief is a week of unconstitutional detention that no later remedy restores. *See Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017).

III.

THE IJ VIOLATED THIS COURT'S JUDGMENT AND ABUSED HER DISCRETION

A. Reciting the Standard Is Not Applying It

Respondents' own statement of the standard of review decides this motion. An adjudicator abuses her discretion "when [she] applies the wrong legal standard." Opp'n at 6 (quoting *United States v. Chichande*, 113 F.4th 913, 919-20 (9th Cir. 2024)). And review under that standard is not satisfied by incantation: "[a]n agency acts contrary to the law when it gives mere lip service or verbal commendation of a standard but then fails to abide the standard in its reasoning and decision." *Nat. Res. Def. Council, Inc. v. Pritzker*, 828 F.3d 1125, 1135 (9th Cir. 2016); *see also Garcia v. Hyde*, 817 F. Supp. 3d 112, 126 (D.R.I. 2025) (abuse of discretion shown where the IJ "simply did not apply the right standard to the facts" or where "the evidence itself could not—as a matter of law—have supported the decision to deny bond").

The record shows recitation without application. At the hearing, the IJ framed the proceeding from the outset as Mr. Mohamed's burden to carry: "we are here to discuss your request for release on bond." ECF No. 18-2 at (02:14). At no point in the hearing did the IJ state that the government bore any burden, let alone the clear and convincing burden this Court ordered; the only participant who mentioned the

government's burden was Mr. Mohamed's counsel. *Id.* at (43:58). The government submitted nothing. When asked for its position, DHS counsel offered roughly one minute of argument resting on the pretermitted asylum application and the pending removal order, and conceded: "I'm sure he doesn't have any intention of fleeing the United States, but that doesn't mean that he's going to continue to report and to stay in contact with the authorities that need to be kept informed of his whereabouts." *Id.* at (42:11). The IJ's oral ruling then walked through the *Matter of Guerra* factors, 24 I&N Dec. 37, 40 (BIA 2006), exclusively as deficits in Mr. Mohamed's showing, and never mentioned any burden or standard of proof at all. ECF No. 18-2 at (44:54-50:42).

The written order confirms rather than cures the violation. It states that "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," IJ Bond Order, ECF No. 18-2, but it never identifies whose evidence, because there was no government evidence to identify. Every consideration the order recites is an absence in Mr. Mohamed's case: he "entered the country illegally," has "no job history in this country," and his proposed sponsor "would not have any ability to assist him to adjust his status." *Id.* And the order's citation to *Matter of R-A-V-P*, 27 I&N Dec. 803 (BIA 2020), gives the analysis away: *R-A-V-P* articulates the ordinary bond framework in which the noncitizen bears the burden of establishing that he is not a flight risk. An IJ actually

holding the government to a clear and convincing burden has no use for *R-A-V-P*. An IJ applying the familiar burden-on-the-detainee framework reaches for it reflexively. This IJ reached for it, both on the record and in writing. ECF No. 18-2 at (50:42); IJ Bond Order.

B. Respondents' Opposition Confirms the Burden Never Shifted

This is the hearing Respondents themselves agreed to provide. In their Return, they "concede[d] that this Court should order that Petitioner receive a bond hearing, where the government would bear the burden of proof of establishing, by clear and convincing evidence, that Petitioner poses a danger to the community or a risk of flight." ECF No. 15 at 2 (quoting Ret., ECF No. 14, at 1). The judgment they now resist embodies their own concession.

Asked in federal court to defend a hearing at which the government supposedly carried a clear and convincing burden, Respondents identify the following: Mr. Mohamed'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." Opp'n at 7-8. Not one of these is affirmative government evidence. Each is a gap in the detainee's showing. And the authorities Respondents cite in support are *Matter of R-A-V-P* itself and *Matter of Dobrotvorskii*, 29 I&N Dec. 211 (BIA 2025), Opp'n at 8 n.1, both decisions applying the framework in which the noncitizen bears the burden.

When the government's best defense of a burden-on-the-government hearing consists exclusively of the noncitizen's failures of proof, argued through burden-on-the-noncitizen precedent, the burden never shifted. Respondents' brief is not a rebuttal of the Motion; it is Exhibit A to it.

C. A Record With No Government Evidence Cannot Satisfy Clear and Convincing Proof

Even setting aside the failure to allocate the burden, the record could not, as a matter of law, support the finding the IJ made. A pending or final removal order and a doubtful appeal do not, standing alone, constitute clear and convincing evidence of flight risk. *Singh*, 638 F.3d at 1205 (removal order, though "a relevant factor in the calculus," "alone does not constitute clear and convincing evidence" of flight risk); *Sales v. Johnson*, 323 F. Supp. 3d 1131, 1141 (N.D. Cal. 2017) ("the fact of an order of removal is not, by itself, sufficient to deny bond," particularly where the government presented no other evidence of flight risk). In *Safinejad*, the court granted enforcement where the IJ relied on only the asylum denial and an adverse credibility finding and failed to discuss any other evidence or any of the *Guerra* factors. *Safinejad*, ECF No. 15 at 7-9. Here the government's position is weaker still: it presented no evidence at all, its counsel conceded Mr. Mohamed has no intention of fleeing, and the IJ found he poses no danger to the community. IJ Bond Order. A finding that the government proved flight risk by clear and convincing evidence, on

a record where the government proved nothing, is "illogical, implausible, [and] without support in inferences that may be drawn from the record" under Respondents' own standard. Opp'n at 6 (quoting *Chichande*, 113 F.4th at 919-20).

D. The Hearing Was Not Individualized

The Motion detailed three additional defects that Respondents do not answer. First, the IJ dismissed the single strongest datum in the record, Mr. Mohamed's perfect appearance history, with circular reasoning: "Respondent has made all his court appearances, but only because he is in custody." IJ Bond Order. On that logic, no detained person could ever demonstrate reliability, and the factor is read out of *Guerra* for the entire detained population. Second, the IJ ignored undisputed testimony that Mr. Mohamed's valid passport is held by ICE. ECF No. 18-2 at (41:52). That fact bears directly on his practical ability to abscond and on the availability of conditions of release, and neither the oral ruling nor the written order acknowledges it. Third, the IJ gave no consideration to whether a monetary bond or conditions of release could address any residual flight concern, an inquiry this Court's judgment contemplated and due process requires. *Hernandez v. Sessions*, 872 F.3d at 990–91. A hearing that ignores the detainee's probative evidence and forecloses the possibility of conditions is a hearing in form, not substance.

E. Respondents' Remaining Authorities Do Not Help Them

Eljaraouy v. Casey, No. 3:26-cv-01449-BTM-AHG, 2026 WL 2172341 (S.D. Cal. July 28, 2026), is an unpublished order with no binding force, and on Respondents' own description it is distinguishable: there, "the IJ's statement at the hearing and recitation of the standard in the bond order reflected application of the correct standard of proof." Opp'n at 7. Here the transcript affirmatively shows the standard and its allocation were never mentioned at the hearing at all, by anyone but Mr. Mohamed's counsel, and the government presented no evidence to which any standard could attach. To whatever extent *Eljaraouy* is read to hold that a bare recitation in a written order satisfies a judgment placing a clear and convincing burden on the government, it cannot be squared with *Singh* or *Pritzker* and should not be followed.

Rodriguez-Diaz v. Garland, 53 F.4th 1189 (9th Cir. 2022), is doubly inapplicable. Section 1226(e)'s limitation on review governs custody decisions under § 1226, and Respondents themselves insist that Mr. Mohamed's detention was governed by § 1225(b)(2) and is now governed by § 1231. Opp'n at 3-4. More fundamentally, Mr. Mohamed does not ask this Court to reweigh a discretionary determination. He asks it to determine whether Respondents complied with its judgment, a legal question that remains reviewable on habeas. *Martinez v. Clark*, 124 F.4th 775, 781-84 (9th Cir. 2024). *Walters v. National Association of Radiation*

Survivors, 473 U.S. 305 (1985), supplies a general proposition about facial challenges to procedures and says nothing about whether this hearing complied with this judgment.

IV.

THE APPROPRIATE REMEDY IS RELEASE

The government had its hearing. It was ordered to come forward with clear and convincing evidence; it came forward with none, and its counsel conceded the central fact. The IJ found Mr. Mohamed poses no danger to the community. On this record, a compliant hearing admits of one outcome, and ordering a second hearing would reward noncompliance with a second bite while Mr. Mohamed serves his twentieth month in detention. The Court should order his release, subject to reasonable conditions of supervision.

In the alternative, the Court should order a new bond hearing within fourteen days before an immigration judge other than IJ Perry, with express instructions that (1) the government bears the burden of proving danger or flight risk by clear and convincing evidence through affirmative evidence of record; (2) the IJ must address the *Guerra* factors and Mr. Mohamed's evidence, including the passport held by ICE; and (3) the IJ must consider whether a monetary bond or conditions of release would ameliorate any concern, and require Respondents to file a notice of

compliance within five days of the hearing apprising the Court of the result. *See Safinejad*, ECF No. 15 at 9 (ordering a second hearing within fourteen days and a notice of compliance within five days apprising the court of the results).

CONCLUSION

Respondents do not defend what happened on June 12, 2026; they argue only that no court may look at it. This Court ordered a hearing with the burden on the government. The government treated that order as a formality, and its opposition, built entirely on Mr. Mohamed's supposed failures of proof, confirms it. The Court should grant the Motion and order Mr. Mohamed's release or, in the alternative, a compliant hearing before a different immigration judge.

Dated: September 16, 2026

Respectfully submitted,

s/ James M. Chavez
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