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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

MOHAMMAD HORMOZ ZADEH, Petitioner, v. MARKWAYNE MULLIN, *et al.*, Respondents.	Case No.: 3:26-cv-02756-LL-GC **RETURN TO AMENDED PETITION FOR A WRIT OF HABEAS CORPUS**

INTRODUCTION

This matter is before the Court on consideration of Petitioner's amended writ of habeas corpus. ECF No. 9. Petitioner asserts that he must be released from detention because an Immigration Judge has (twice) granted his petition for asylum, and that the government cannot continue to detain him while it appeals the most recent grant of asylum. Id. The government respectfully opposes this motion on the grounds that Petitioner has not exhausted his administrative remedies, and further because he remains

properly detained pursuant to 8 U.S.C. § 1226(a) pending completion of removal proceedings.

STATEMENT OF FACTS/PROCEDURAL HISTORY

Petitioner entered the United States on a student visa in 2017. ECF No. 9-1 at 78. On or about 09 August 2023 was served with a Notice to Appear in removal proceedings under Section 240 of the Immigration and Nationality Act for failing to comply with the conditions of his non-immigrant status. See Exhibit 1 (NTA) (redacted).[1]

Petitioner was initially granted bond on or about 08 November 2023. Following a government appeal of the bond order, the matter was remanded by the Board of Immigration Appeals (BIA) on 13 December 2024 for further findings and analysis. On 15 January 2025, the Immigration Judge determined that Petitioner was a danger and flight risk.[2] Petitioner was detained on or about 25 February 2025. ECF 9-1, at 78.

Since being detained in February 2025, Petitioner has had several bond redetermination proceedings, with the most recent being held on 4 March 2026.[3] At this

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1. Petitioner was served with an amended charge of inadmissibility (Form I-261) on or about 6 September 2023. The amended charge was based upon the same underlying conduct contained in the NTA (i.e. remaining in the United States without authorization following completion of a specified educational program.

[2] The Immigration Judge summarized the factual support of his findings in a memorandum dated 07 February 2025. For purposes of summary, the Immigration Judge's memorandum in support of the finding of danger to the community details alleged conduct involving online threats; an interaction with law enforcement on or about 13 March 2024 in New York City concerning alleged fare (*i.e.,* public transport) evasion at Grand Central Terminal and resisting arrest (charges were dismissed/prosecutor declined to prosecute); and a 2022 allegation involving an altercation with a roommate. See also sealed Exhibit D to Petitioner's Amended Petition at page 4 of 18 for summary of certain alleged conduct of the Petitioner the government has highlighted in its appeal of his most recent grant of asylum).

[3] The procedural history of this matter includes additional appeals of bond denial to the BIA. On 16 July 2025, the BIA affirmed the Immigration Judge's 15 January 2025 bond denial. Following a *de novo* bond hearing before the Immigration Judge on 20 May 2025, which resulted in denial of bond, the BIA remanded the matter to the Immigration Judge

most recent bond hearing, Petitioner was again denied bond by the Immigration Judge based upon a finding that Petitioner poses a danger to the community. Petitioner currently has an administrative appeal pending before the BIA of this most recent bond denial. *See* Exhibit 2, Bond Appeal (excluding addendum) (redacted).

ARGUMENT

A. Petitioner Has Not Exhausted His Administrative Bond Denial Appeal.

Bond determinations by an Immigration Judge can be appealed to the Board of Immigration Appeals (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."). Likewise, "[a]fter an initial bond redetermination, an alien's request for a subsequent bond redetermination shall be made in writing and shall be considered only upon a showing that the alien's circumstances have changed materially since the prior bond redetermination." 8 C.F.R. § 1003.19(e).

Based upon the information contained in the Amended Petition, Respondents submit that the threshold issue before the Court is whether Petitioner's failure to exhaust administrative remedies precludes consideration of his requested relief. "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). Likewise, 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.

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in an opinion issued 2 February 2026, directing further findings of fact and analysis.

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)).

Here, Petitioner has a pending administrative appeal for his most recent bond denial. Petitioner cannot demonstrate that pursuit of this remedy would be futile, given that the BIA recently remanded one of his earlier appeals to the Immigration Judge for further findings of fact and analysis. Likewise, the procedural history of this matter reflects that Petitioner was initially released on bond for over a year, and the Immigration Judge only denied bond following remand from BIA under circumstances which reflect Petitioner had an interaction with law enforcement while free on bond for alleged fare evasion and resisting arrest – thus reflecting additional alleged questionable conduct while released.

Finally, Respondents submit that the prospect of additional time in detention while pursuing an administrative appeal is not alone sufficient to support waiver of exhaustion on grounds of irreparable injury. *See Guzman v. Joyce*, 786 F.Supp.3d 865, 871 (S.D.N.Y. 2025) ("[i]f the possibility of "continued detention were sufficient to excuse exhaustion, exhaustion would always be excused."). The Court should allow the administrative review of the bond appeal to complete to avoid the potential need for premature judicial intervention and allow for the development of a complete administrative record. For all these reasons, prudential principles underlying the rationale for exhaustion of administrative remedies apply in this matter.

Respondents acknowledge that Petitioner focuses on the fact that an Immigration Judge granted asylum for a second time on 26 March 2026. This grant occurred after his 4 March 2026 bond hearing. Petitioner's remedy is not immediate release from detention.

Rather, to the extent he asserts this asylum grant constitutes a material change in circumstance his remedy is to request a bond redetermination hearing under 8 C.F.R. § 1003.19(e). *See. e.g.*, *Francios v. Warden of Otay Mesa Detention Center*, No. 3:25-cv-03635-BTM-MMP, 2026 WL 146627, *3 (S.D. Cal. January 20, 2026) (denying habeas petition seeking review of IJ bond denial for failure to exhaust administrative remedies and noting petitioner could potentially seek bond redetermination based upon material change in circumstance). *See also Rashid v. Trump*, 807 F. Supp. 3d 349 (D. Vt. 2025) (directing a bond hearing as opposed to immediate release for asylum grantee where government appealed grant). Here, Petitioner is free to continue to pursue his pending BIA appeal challenging the 04 March 2026 denial of bond. He is likewise free to seek a new bond determination on the grounds his recent grant of asylum constitutes a material change in circumstance since his last hearing. Petitioner should be required to exhaust his available administrative remedies.

B. Petitioner Is Properly Detained Under Section 1226(a) Because His Removal Proceedings Are Not Yet Complete.

As set forth above, Petitioner originally came to the United States as a student in 2017. He was served with a NTA in 2023 based upon the fact that he was no longer attending school after a certain point in 2020. As visa overstay, Petitioner is subject to the discretionary detention provisions of 8 U.S.C. § 1226(a). *See Buenrostro-Mendez v. Bondi*, 166 F.4th 494, 499 (5th Cir. 2026) (noting Section 1226, "[c]overs numerous grounds of deportability, including for admitted aliens who overstay or violate the terms of their visas, engage in conduct that renders them removable, or were improperly admitted."). *See also Li v. LaRose*, No.: 26-CV-1614 JLS-MMP, 2026 WL 948362, *2 (S.D. Cal. April 8, 2026) (applying Section 1226(a) in a visa overstay detention matter). Accordingly, the statutory detention authority at issue in this matter is Section 1226(a).

The crux of Petitioner's argument is that he is entitled to immediate release because an Immigration Judge has twice granted him asylum and the government has appealed

the grant(s) of asylum while continuing his detention.[4] Petitioner primarily relies on the Ninth Circuit's decision rendered in *Nadarajah v. Gonzales*, 443 F.3d 1069 (2006). In *Nadarajah*, the Court ordered the immediate release of a Sri Lankan national who had twice been granted asylum and had been continuously detained for five years. The facts further indicate that the second government appeal of asylum grant had been affirmed by the BIA. The BIA referred the matter for Attorney General review without releasing the petitioner from detention. The underlying detention authority at issue in *Nadarajah* reflects that the noncitizen there was detained pursuant to 8 U.S.C. § 1225(b) because he was apprehended upon crossing the United States border with Mexico. *See id.* at 1073.

The *Nadarajah* Court's holding requiring release was premised upon application of the United States Supreme Court's holding in *Zadvydas v. Davis*, 533 U.S. 678 (2001) and *Clark v. Martinez*, 543 U.S. 371 (2005). *Zadvydas* involved the continuing detention of noncitizens (who had previously gained lawful admission into the United States) following the issuance of a final order of removal under 8 U.S.C. § 1231(a)(6). The *Zadvydas* Court held that after 6 months in detention following issuance of a final order or removal, "[o]nce the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing." 533 U.S. at 701.

Clark also involved application of 8 U.S.C. § 123(a)(6). Specifically, *Clark* extended application of the holding of *Zadvydas* to noncitizens subject to a final order of removal who had not been admitted entry into the United States. *Id.* Petitioner now relies on *Nadarajah* to argue he must be immediately released because there is no significant likelihood of his removal in the reasonably foreseeable future given the grant of asylum.

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4. On or about 2 February 2026, the BIA remanded the initial grant of asylum back to the Immigration Judge to more fully explain its decision. The original grant of asylum was entered on 14 July 2025 and was appealed by the government on 13 August 2025. See sealed Exhibit D to the Amended Petition at page 5 of 18.

It is the position of Respondents that *Nadarajah* is factually distinguishable from this case and further that the continuing application of that decision to cases involving detention outside of the Section 1231(a)(6) context is highly questionable following the United States Supreme Court's decision in *Jennings v. Rodriguez*, 583 U.S. 281 (2018).

Specifically, *Jennings* rejected extension of the application of *Zadvydas*'s six-month reasonableness analysis to persons detained under 8 U.S.C. § 1225 who are not yet subject to a final order of removal. Likewise, *Jennings* held that noncitizens detained under the authority of 8 U.S.C. § 1226(a) are not statutorily entitled to "periodic bond hearings every six months in which the Attorney General must prove by clear and convincing evidence that the alien's continued detention is necessary." *Id.* at 583 U.S. at 306. The partial abrogation of the holding of *Nadarajah* by *Jennings* has been judicially recognized in this district. *See Esquivel-Ipina v. LaRose*, 812 F.Supp.3d 1073, 1077 (S.D. Cal. 2025). *See also Miranda v. Garland*, 34 F.4th 338 361 (4th Cir. 2022) which summarized *Jennings* holding as follows:

> *Jennings* confirms that *Zadvyas* should not be expanded beyond the context of the indefinite and potentially permanent detention involved there. In *Jennings*, an alien challenged his detention based on statutory grounds, specifically under §§ 1225 and 1226. The Supreme Court rejected the alien's attempt to analogize his case to *Zadvyas*. The Court explained that *Zadvyas* involved a limitless detention, whereas detention under §§ 1225 and 1226 is for a specified period of time—the time it takes to conduct a removal hearing."

Here, removal proceedings against Petitioner are not complete. As such, Respondents submit that *Jennings* authorizes his continued detention under 1226(a) because Petitioner has been provided with discretionary bond release review and has been determined to be a danger to the community. His continued detention is therefore authorized pending completion of his removal proceedings.

Likewise, *Nadarajah* involved a detainee who apparently never received an individual bond hearing and was detained for over five years. Rather, the *Nadarajah*

petitioner was offered parole on payment of a $20,000.00 bond he could not initially afford, and payment was later rejected on grounds the parole order was stale and could not be honored. 443 F.3d at 1073. Petitioner here, conversely, has received multiple individual bond hearings and his current period of detention is approximately 15 months. Likewise, the Ninth Circuit ordered the *Nadarajah* petitioner released after the BIA had affirmed the second grant of asylum. Here, the government's BIA appeal of the most recent grant of asylum remains pending. This case is therefore in a distinct procedural posture that the situation addressed in *Nadarajah*.

Finally, the *Nadarajah* petitioner was found to be a danger to the community by an Immigration Judge in a Section 1226(a) bond proceeding. Rather, the issue addressed in *Nadarajah* was whether the asylum applicant in that case was affiliated with a separatist group. 443 F.3d at 1073. This fact distinguishes the present case based upon the government's interest in detaining noncitizens in the removal process found to present a danger to the community. *See Martinez v. Clark,* 36 F.4th 1219, 1232 (9th Cir. 2024) *vacated on other grounds by* 114 S. Ct. 1339 (2024) ("[Appellant] was found to be a danger to the community and so his detention is clearly 'reasonably related' to the government's interest in protecting the public."). Likewise, the detained noncitizen in *Nadarajah* had never been released from detention since crossing the border whereas the concerns with the Petitioner herein involve alleged questionable conduct that includes a police interaction that occurred in March 2024 after being initially released on bond. As such, the government interest in detention of Petitioner is greater than that demonstrated in *Nadarajah* based upon the totality of Petitioner's alleged questionable conduct while present in the United States while out of detention.

Next, in *Rodriguez-Diaz v. Garland*, 53 F.4th 1189 (9th Cir. 2022), the Court considered a post-*Jennings* claim whether due process requires a second bond hearing for a detainee held pursuant to Section 1226(a) whose initial bond was denied due to danger to the community. The Ninth Circuit rejected this argument and held that the extensive

procedural protections built into Section 1226(a) was subject to numerous levels of review, each offering noncitizen the opportunity to be heard by neutral decisionmaker. *See also Id. at* 1205-6 (noting in the immigration context the Court interprets the "[D]ue Process Clause consistent with longstanding precedent recognizing that the process due aliens must account for the government's countervailing interests in immigration enforcement—considerations that do not apply to U.S. citizens.").

Application of *Jennings* and *Rodriguez-Diaz* to this case reflect that Petitioner's continued detention based upon a finding of danger to the community does not violate due process where his continuing detention has been subject to multiple instances of administrative review. Simply put, the holding of *Nadarajah* which applied the Supreme Court's Section 1231 analysis to a case where the statutory detention authority was not dependent on a final order of removal can no longer be considered good law. Here, Petitioner is detained under the authority of Section 1226(a), and his removal proceedings are not complete. This Court should therefore apply *Jennings* and hold Petitioner is not entitled to immediate release because his removal proceedings are not complete and he has received multiple bond hearings.

Respondents acknowledge that Petitioner asserts that *Nadarajah* remains good law based upon the holdings of the Ninth Circuit in *Prieto-Romero v. Clark*, 534 F.3d 1053 (9th Cir. 2008) and *Avilez v. Garland*, 69 F.4th 525 (9th Cir. 2023). ECF No. 9 at 5-8. In *Prieto-Romero*, the Ninth Circuit held that a noncitizen who was detained under the authority of 8 U.S.C. § 1226(a) remained under Section 1226(a) detention authority (as opposed to Section 1231) while an administrative final order of removal was stayed pending appeal to the Ninth Circuit. In *Avilez*, the Ninth Circuit held that a stay of a final order of removal in a matter involving a noncitizen detained under the mandatory detention provision of Section 1226(c) did not shift to discretionary detention under Section 1226(a) during the pendency of appeal. The interplay of the holding of *Avilez* and the Ninth Circuit's prior holding in *Prieto-Romero*, as noted by the Court, was that

initial statute of detention remained in place during judicial stay of an administrative final order of removal. *See Avilez at* 69 F.4th at 537 ("We follow *Jennings* and *Prieto-Romero* and hold that [8 U.S. C. § 1226] Subsection C authorizes detention during the judicial review phase of removal proceedings.").

In summary, the holding of *Prieto-Romero* reflects a decision by the Ninth Circuit where it refused to shift detention authority from Section 1226(a) to Section 1231 while a final order of removal was stayed pending judicial review. *Avilez*, on the other hand, applied *Jennings* to hold that a stay pending appeal of a final order of removal did not shift detention authority from Section 1226(c) to 1226(a). Neither case supports the proposition advanced by Petitioner that an asylum grantee whose removal proceedings are not final can no longer be subjected to detention under Section 1226(a). Indeed, the petitioner in *Nadarajah* was subject to detention under Section 1225(b) as an arriving noncitizen as opposed to Section 1226(a) in the first instance. For all of these reasons, the Court should reject the premise that the holdings of *Prieto-Romero* and *Avilez* support the proposition advanced by Petitioner.

CONCLUSION

For the foregoing reasons, Respondents respectfully submit that the Court should deny Petitioner's request for relief in all respects.

EVIDENTIARY HEARING NOT REQUESTED

Because the record shows that Petitioner is not entitled to habeas relief, there is no need for an evidentiary hearing in this matter. *See Schriro v. Landrigan*, 550 U.S. 465, 474 (2007) ("[I]f the record refutes the applicant's factual allegations or otherwise precludes habeas relief, a district court is not required to hold an evidentiary hearing.").

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Respectfully submitted,

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