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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

NICOLAS CHILEL MONSON,

Petitioner,

v.

MARKWAYNE MULLIN, *et al.*,

Respondents.

Case No. 26-cv-03261-LL-DDL

OPPOSITION TO PETITIONER'S MOTION TO ENFORCE HABEAS CORPUS ORDER

I. INTRODUCTION

On May 27, 2026, Nicolas Chilel Monson, Petitioner, represented by counsel, filed a habeas petition. ECF No. 1. On June 2, 2026, Respondents filed a response identifying Respondents' position that Respondents did not oppose an order from the Court directing a bond hearing. ECF No. 4. On June 4, 2026, Petitioner, again represented by counsel, filed a traverse. ECF No. 5. On June 4, 2026, The Court issued an order directing Respondents to hold an individualized bond hearing before an

immigration judge pursuant to 8 U.S.C. § 1226(a) no later than 14 days from the order. ECF No. 6. On June 18, 2026, a 45-minute bond hearing was held by an Immigration Judge (IJ). Exhibit 1; Exhibit 2. Bond was denied as Petitioner was deemed a flight risk. *Id.*

On August 14, 2026, Petitioner, proceeding pro se, filed a motion to enforce judgement; however, Petitioner's counsel was still noted as the attorney of record on this case. *Id.* Subsequently, the Court ordered Respondents to respond to Petitioner's motion to enforce the court order by August 26, 2026 and attach the bond hearing transcript in their response. Exhibit 2. Petitioner's motion to enforce alleges that the Respondents did not comply with the Court's order to provide "an individualized bond hearing before an immigration judge pursuant to 8 U.S.C. § 1226(a)" ECF No. 6. On August 26, 2026, Petitioner's counsel filed a motion to terminate their representation and is pending a ruling.

For the reasons set below, Respondents respectfully oppose the motion and ask that Petitioner's request is denied as the motion (1) was improperly filed, as Petitioner has noticed counsel on the record, (2) is meritless, as Respondents provided a meaningful individualized bond hearing and the IJ applied the *Guerra* factors correctly, and (3) is improper, as Petitioner did not exhaust their administrative remedies.

II. ARGUMENT

A. PETITIONER HAS FILED A PRO SE MOTION WHILE REPRESENTED BY COUNSEL; THUS, IT SHOULD BE STRUCK AS THE MOTION WAS IMPROPERLY FILED

Petitioner is represented by counsel. ECF No. 1. On August 14, 2026, Petitioner filed this motion pro se. ECF No. 8 at page 1. After discussion with Petitioner's counsel, Petitioner's counsel filed a motion to withdraw on August 26, 2026; however, the motion to withdraw has not been granted. ECF No. 10. Pursuant to the local rules,

> [w]henever a party has appeared by an attorney, the party may not afterwards appear or act in the party's own behalf in the action, or take any step in that action, unless an order of substitution has first have been made

> by the Court, after notice to the attorney of such party, and to the opposite party; provided, that the Court may in its discretion hear a party in open court, notwithstanding the fact that the party has appeared, or is represented by an attorney.

CivLR 83.3(f). Here, no notice of a pro se filing has been made to the government or the Court. Therefore, Respondents ask the Court to strike the pleading in the event that the motion to withdraw is denied. *See Matheu-Yancor v. Larose et. al,* 26-cv-02350-RSH-MMP (S.D. Cal. July 8, 2026) ECF No. 12 (Court rejected document filed pro se by a party represented by counsel); *Colon Tovar v. LaRose et al,* 26-cv-03390-AGS-DDL (S.D. Cal. June 23, 2026) ECF No. 5 (Court struck a second habeas petition filed pro se by a party represented by counsel). In the event the motion is granted and the Court does not strike the motion, the Court should still deny the petition as Respondents abided by the Court order and Petitioner did not exhaust his administrative remedies.

B. RESPONDENTS HAVE COMPLIED WITH THE COURT'S ORDER AND PROVIDED A BOND HEARING IN COMPLIANCE WITH 1226(A) AND THE IJ CORRECTLY APPLIED THE *GUERRA* FACTORS

The June 18, 2026 bond hearing complied with the Court's order directing an individualized bond hearing before an IJ pursuant to 8 U.S.C. § 1226(a) and the IJ applied the *Guerra* Factors appropriately. *Matter of Guerra*, 24 I. & N. Dec. 37 (BIA 2006). The Court's minute order did not shift the burden. ECF No. 6. The burden in an individualized bond hearing, pursuant to 8 U.S.C. § 1226(a), is on the Petitioner to prove they are not a flight risk, and they do not pose a risk of danger to the community.

At Petitioner's hearing, the IJ acknowledged that the *Guerra* factors did not favor release. Exhibit 2 at page 2. Petitioner had a removal order. *Id.* At the time, an appeal was pending; however, the appeal was recently dismissed by the Board of Immigration Appeals. Exhibit 3. The familial connections are all children who are not citizens and not lawful permanent residents. Exhibit 2 at page 3-4. Petitioner had been in the country for over twenty years, but during that time had not sought legal status. *Id.* at page 4-5.

Petitioner entered illegally. *Id.* at 6. Petitioner, during that time, worked, but did not have a work permit or employment authorization. *Id.* Nor had Petitioner had a driver's license in his over 20 years of time in the United States, but Petitioner admitted to driving; thus, breaking the law. *Id.* at 5-6. Petitioner had a sponsor that he met from church, but he had never been to his house, and he does not know what his sponsor does for a living. *Id.* The government's attorney elicited testimony from Petitioner and determined that they had not filed their taxes. *Id.* at 9-10. The IJ did note that, as the Petitioner did not have a criminal history, he was not a danger to the community. *Id.* at 9.

At the conclusion of the hearing, the IJ permitted closing arguments. *Id.* at 9-13. After closing arguments, the IJ addressed the *Guerra* factors in assessing flight risk. *Id.* The IJ noted that as Petitioner did not have a fixed address, entered the country illegally, has never pushed to adjust his status, and has worked without obtaining the legal authorization, the objective evidence clearly indicated Petitioner posed a risk of flight. *Id.* 13-15. The IJ noted that the government had the opportunity to appeal the decision by July 20. *Id.* Accordingly the IJ issued a bond denial order. Exhibit 1. Petitioner notes in their Petition that they appealed their bond determination; however, there is no evidence to indicate Petitioner appealed their bond determination.[1] ECF No. 8 at page 4. The IJ's determination that Petitioner did not meet their burden was substantiated by the record, the Court order was complied with, and the IJ did not err by determining Petitioner is a flight risk.

C. PETITIONERS HAVE NOT EXHAUSTED THEIR ADMINISTRATIVE REMEDIES

Even if Petitioner had made specific arguments as to how the IJ failed to comply with the Court's order, Petitioner has still failed to exhaust administrative remedies

[1] Based on representations made to Counsel by DHS, Petitioner did not seek appeal of the bond order, but to a decision on the merits. Exhibit 3. That appeal was dismissed by the board of immigration appeals. *Id.*

"Exhaustion can be either statutorily or judicially required." *Acevedo–Carranza v. Ashcroft*, 371 F.3d 539, 541 (9th Cir. 2004). "If exhaustion is statutory, it may be a mandatory requirement that is jurisdictional." *Id.* (citing *El Rescate Legal Servs., Inc. v. Exec. Office of Immigration Review*, 959 F.2d 742, 747 (9th Cir. 1991)). "If, however, exhaustion is a prudential requirement, a court has discretion to waive the requirement." *Id.* (citing *Stratman v. Watt*, 656 F.2d 1321, 1325–26 (9th Cir. 1981)). Here, the proper avenue for Petitioner's grievance with the bond denial is to utilize the administrative scheme and appeal the bond denial to the BIA. Notably, in Petitioner's motion, Petitioner notes that they have appealed the bond denial to the BIA. ECF No. 8 at page 4. However, there is no evidence provided that Petitioner did, in reality, appeal his bond denial determination.

The BIA is an appellate body within the Executive Office for Immigration Review and possesses delegated authority from the Attorney General. 8 C.F.R. §§ 1003.1(a)(1), (d)(1). The BIA is "charged with the review of those administrative adjudications under the [Immigration and Nationality Act (INA)] that the Attorney General may by regulation assign to it," including IJ custody determinations. 8 C.F.R. §§ 1003.1(d)(1), 236.1, 1236.1. The BIA not only resolves particular disputes before it, but is also directed to, "through precedent decisions, . . . provide clear and uniform guidance to [the Department of Homeland Security], the IJs, and the general public on the proper interpretation and administration of the [INA] and its implementing regulations." 8 C.F.R. § 1003.1(d)(1). Decisions rendered by the BIA are final, except for those reviewed by the Attorney General. 8 C.F.R. § 1003.1(d)(7).

"District Courts are authorized by 28 U.S.C § 2241 to consider petitions for habeas corpus." *Castro–Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001), *abrogated on other grounds by Hernandez–Vargas v. Gonzales*, 548 U.S. 30 (2006). "That section does not specifically require petitioners to exhaust direct appeals before filing petitions for habeas corpus." *Id.* That said, the Ninth Circuit "require[s], as a prudential matter, that habeas petitioners exhaust available judicial and administrative remedies before seeking relief

under § 2241." *Id.* Specifically, "courts may require prudential exhaustion 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) (cleaned up).

"When a petitioner does not exhaust administrative remedies, a district court ordinarily should either dismiss the petition without prejudice or stay the proceedings until the petitioner has exhausted remedies, unless exhaustion is excused." *Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011) (citations omitted); *see also Alvarado v. Holder*, 759 F.3d 1121, 1127 n.5 (9th Cir. 2014), *abrogated on other grounds by Santos-Zacaria v. Garland*, 598 U.S. 411 (2023) ("issue exhaustion is a jurisdictional requirement"); *Tijani v. Holder*, 628 F.3d 1071, 1080 (9th Cir. 2010) (court "lacks jurisdiction to review legal claims not presented in an alien's administrative proceedings before the BIA"). Moreover, "a petitioner cannot obtain review of procedural errors in the administrative process that were not raised before the agency merely by alleging that every such error violates due process." *Reid v. Engen*, 765 F.2d 1457, 1461 (9th Cir. 1985); *see also Sola v. Holder*, 720 F.3d 1134, 1135–36 (9th Cir. 2013) (declining to address a due process argument that was not raised below because it could have been addressed by the agency).

Here, requiring Petitioner to exhaust administrative remedies is warranted because agency expertise is required. "[T]he BIA is the subject-matter expert in immigration bond decisions[.]" *Aden v. Nielsen*, No. C18-1441RSL, 2019 WL 5802013, at *2 (W.D. Wash. Nov. 7, 2019); *see also Delgado v. Sessions*, No. C17-1031-RSL-JPD, 2017 WL 4776340, at *2 (W.D. Wash. Sept. 15, 2017) (noting a denial of bond to an immigration detainee was "a question well suited for agency expertise").

Waiving exhaustion would also encourage other detainees to bypass the BIA and directly appeal from the IJ to federal district court. *See Aden*, 2019 WL 5802013, at *2

("[R]elaxation of the exhaustion requirement would likely encourage other detainees to bypass the BIA and directly appeal their no-bond determinations from the [IJ] to federal district court."). Individuals, like Petitioner, would have little incentive to seek relief before the BIA if this Court permits review here. And allowing a skip-the-BIA-and-go-straight-to-federal-court strategy would needlessly increase the burden on district courts. *See Bd. of Tr. of the Constr. Laborers' Pension Trust for S. Cal.. v. M.M. Sundt Constr. Co.*, 37 F.3d 1419, 1420 (9th Cir. 1994) ("Judicial economy is an important purpose of exhaustion requirements.") (citation omitted); *Santos-Zacaria*, 598 U.S. at 418 (noting "exhaustion promotes efficiency"). If the IJ erred, this Court should allow the administrative process to correct itself.

Moreover, detention alone is not an irreparable injury. Discretion to waive exhaustion "is not unfettered." *Laing v. Ashcroft*, 370 F.3d 994, 998 (9th Cir. 2004). "[C]ivil detention after the denial of a bond hearing [does not] constitute[] irreparable harm such that prudential exhaustion should be waived." *Reyes v. Wolf*, No. C20-0377JLR, 2021 WL 662659, at *3 (W.D. Wash. Feb. 19, 2021), *aff'd sub nom. Diaz Reyes v. Mayorkas*, No. 21-35142, 2021 WL 3082403 (9th Cir. July 21, 2021).

Finally, Petitioner bears the burden to show that an exception to the exhaustion requirement applies. *Leonardo*, 646 F.3d at 1161; *Aden*, 2019 WL 5802013, at *3. Here, Petitioner has failed to demonstrate that exhaustion should be waived. Other courts in this district agree. *See, e.g.*, *Rana v. LaRose*, No. 26-cv-00285-RSH-DDL, ECF No. 11 (S.D. Cal. Mar. 13, 2026) (denying motion to enforce judgment where petitioner was denied bond on the basis of flight risk because there was no indication that administrative remedies were first exhausted) (citing *Leonardo*, 646 F.3d at 1160); *Baker v. Gordon*, No. 25-cv-03539-CAB-SBC, ECF No. 8 at 2:1–5 (S.D. Cal. Jan. 30, 2026) ("As the Ninth Circuit has explained, '[Petitioner] pursued habeas review of the [IJ's] adverse bond determination before appealing to the BIA. This short cut was improper. [Petitioner] should have exhausted administrative remedies by appealing to the BIA before asking the federal district court to review the [IJ's] decision.'") (quoting *Leonardo*, 646 F.3d at

1160).

III. CONCLUSION

For the foregoing reasons, Respondents request that the Court deny Petitioner's motion to enforce the Court's order.

DATED: August 26, 2026

Respectfully submitted,

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s/ Jacob T. Metzger
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