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8 UNITED STATES DISTRICT COURT
9 FOR THE SOUTHERN DISTRICT OF CALIFORNIA
10

11 JESUS O. CHAVARRIA ZELADA) CASE: 26-CV-3681-BJC-JLB
12 PETITIONER,) 
13)
14 V.) TRAVERSE: REPLY TO
15) RETURN
16 IMPERIAL DETENTION FACILITY)
17 DEFENDANT.)
18)
19)
20)
21)
22)
23)
24)
25)

26 This traverse is submitted in response to the
27 return of the habeas petition. Respondents argue the
28 Petition should be dismissed because Petitioner did
29 not appeal the March 11, 2026 bond denial to the Board
30 of Immigration Appeals. Respondents characterize the
31 Petition as an attempt to bypass the administrative
32 process. That is not accurate.

33 Petitioner is not attempting to bypass the Board.
34 Petitioner has appealed his underlying immigration
35 case. As to the bond issue, prior counsel had been
36 retained before undersigned counsel entered the case,
37 and it was understood that prior counsel had pursued
38 or would pursue the bond appeal. When undersigned

1 counsel later discovered that no bond appeal had
2 actually been filed, the appeal deadline had already
3 passed. Petitioner then filed a motion to reconsider
4 the bond denial before the Immigration Court. That
5 motion was denied.

6 Petitioner therefore did not intentionally bypass
7 the administrative process. Petitioner attempted to
8 pursue relief after learning the bond appeal had not
9 been filed. More importantly, this Petition does not
10 ask the Court to reweigh ordinary bond evidence.
11 Petitioner challenges the legality and constitutional
12 sufficiency of the custody process because the bond
13 denial and reconsideration order still do not provide
14 a meaningful explanation why continued civil detention
15 is necessary, or why reasonable conditions cannot
16 mitigate any concern regarding flight risk.

17 I

18 EXHAUSTION SHOULD BE EXCUSED BECAUSE PETITIONER DID
19 NOT DELIBERATELY BYPASS THE BIA

20 Respondents' Return depends heavily on the claim
21 that Petitioner failed to exhaust by not appealing the
22 bond denial to the BIA. Petitioner acknowledges that
23 the bond order reserved appeal and that no bond appeal
24 was filed by the deadline. However, exhaustion under
25 28 U.S.C. § 2241 is prudential, not jurisdictional.
The Court has discretion to excuse exhaustion where

1 the circumstances justify review. This is not a case
2 where Petitioner deliberately skipped the BIA in order
3 to obtain faster federal review. Petitioner was
4 represented by prior counsel at the time of the bond
5 denial. It was understood that prior counsel had
6 pursued or would pursue the bond appeal. Once
7 undersigned counsel learned that no bond appeal had
8 actually been filed, the appeal deadline had already
9 passed. Petitioner then filed a motion to reconsider
10 in Immigration Court to give the agency an opportunity
11 to revisit the custody determination. The Immigration
12 Judge denied that motion.

Those facts matter.

13 Respondents argue that allowing review would
14 encourage detainees to bypass the BIA. But that is not
15 the strategy Petitioner intends to pursue. The failure
16 to file the bond appeal resulted from confusion and
17 prior counsel's failure to pursue the appeal, not from
18 Petitioner's intent to avoid the administrative
19 process. Dismissing the Petition on exhaustion grounds
20 would not serve the purpose of exhaustion. It would
21 not allow a timely BIA appeal because that deadline
22 has already passed. It would only prolong Petitioner's
23 detention without addressing whether the custody
24 process he received was constitutionally sufficient.
25

II

THE PETITION DOES NOT ASK THIS COURT TO REWEIGH BOND
EVIDENCE

Respondents argue that Petitioner is asking this Court to review the Immigration Judge's discretionary bond decision. Petitioner is not asking the Court to substitute its judgment for the Immigration Judge's bond discretion.

Petitioner challenges the process. The March 11, 2026 bond order states only that bond was denied because of "risk of flight as stated on the record." The written order does not explain why Petitioner's sponsor evidence, family support, proposed residence, work history, tax records, community ties, and pending immigration case were insufficient. It also does not explain why reasonable conditions of release could not ensure Petitioner's appearance.

The reconsideration order did not cure the problem. The Immigration Judge denied reconsideration under the materially changed circumstances standard and stated concerns regarding address history, alleged false information in the I-589, speculative relief, and evasive answers. However, the order still did not meaningfully explain why detention is necessary instead of release under conditions.

The issue before this Court is therefore legal and constitutional: whether Petitioner's continued civil

1 detention is lawful where the custody process did not
2 provide a meaningful individualized explanation and
3 did not address reasonable conditions of release.

4 III

5 THE ADDRESS AND I-589 CONCERNS DO NOT JUSTIFY
6 CONTINUED DETENTION WITHOUT A CONDITIONS ANALYSIS

7 The reconsideration order relied in part on
8 alleged failure to notify DHS of an address change and
9 alleged false information in the I-589. Petitioner
10 does not argue that the Immigration Judge was
11 forbidden from considering those facts. However, those
12 concerns must be connected to flight risk and to
13 whether conditions can ensure appearance. An address
14 issue does not automatically make a person a flight
15 risk requiring detention. If the Court had concerns
16 about Petitioner's address history, those concerns
17 could be addressed through a verified sponsor, a fixed
18 residence, address reporting, ICE supervision, check-
19 ins, travel restrictions, and electronic monitoring if
20 necessary.

21 Likewise, alleged false information in the I-589
22 may be relevant to the merits or credibility of the
23 asylum claim. But that is different from showing that
24 no bond or release condition can ensure Petitioner's
25 appearance. Petitioner is pursuing his immigration
case and has appealed the underlying immigration

1 matter. That gives him an incentive to appear and
2 continue the process.

3 The Immigration Judge's order did not explain why
4 the address issue or I-589 concern could not be
5 mitigated by conditions. It simply treated those
6 concerns as supporting continued detention. That is
7 not a meaningful individualized custody determination.

8 IV

9 THE COURT SHOULD NOT ACCEPT RESPONDENTS' "NO EVIDENCE"

10 ARGUMENT

11 Respondents argue Petitioner has not provided
12 evidence that the bond hearing was improper and has
13 not cited the audio recording. Respondents submitted
14 the written bond order, and that order is itself the
15 problem. It states only "risk of flight as stated on
16 the record."

17 If Respondents believe the oral bond decision
18 contains a detailed individualized analysis,
19 Respondents could have submitted that transcript or
20 audio citation with the Return. Instead, the record
21 before this Court contains a one-line written bond
22 denial and a reconsideration order that still does not
23 address why conditions are insufficient.

24 Petitioner respectfully submits that the Court
25 should not require Petitioner to remain detained based
on an unexplained custody determination when the

1 written record does not show a meaningful conditions
2 analysis.

3
4 V

5 PETITIONER HAS NOT ALREADY RECEIVED THE RELIEF
6 REQUESTED HERE

7 Respondents argue this Court already granted the
8 relief requested because Petitioner received a bond
9 hearing after the first habeas petition. But the
10 present Petition raises a different issue.

11 The first habeas petition challenged the denial of
12 any bond hearing based on lack of jurisdiction. This
13 Court granted relief and ordered a § 1226(a) bond
14 hearing. Petitioner received a hearing, but the
15 resulting custody process did not provide a meaningful
16 individualized determination sufficient to justify
17 continued detention.

18 A bond hearing must be meaningful. A hearing that
19 ends in a conclusory denial, without explaining why
20 evidence and conditions are insufficient, does not
21 satisfy due process. Therefore, the present Petition
22 is not duplicative of the first habeas petition. It
23 challenges the continued detention after the
24 constitutionally insufficient bond process.
25

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Court reject Respondents' exhaustion argument, grant the Petition, and order Respondents to release Petitioner under reasonable conditions.

In the alternative, Petitioner requests that the Court order a new constitutionally sufficient bond hearing before an Immigration Judge within seven days, with a reasoned decision addressing the evidence and explaining whether reasonable conditions can mitigate any asserted flight risk.

Date: 7/7/2026

Respectfully Submitted,

/s/ Joseph Mbacho
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