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**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

Gabriel Elias Lobo Quintero,

Petitioner,

vs.

WARDEN, ET AL,

Respondents.

Case No.: 1:26-cv-05092

**TRAVERSE AND OPPOSITION TO
MOTION TO DISMISS**

I. INTRODUCTION

Respondents do not dispute the facts that matter. Petitioner has no criminal history. He is detained under the discretionary authority of 8 U.S.C. § 1226(a), not under any mandatory detention provision. He has a pending asylum application, a valid history of employment authorization including a commercial driver's license, and a United States citizen infant son who was one month old when Petitioner was detained. Petitioner's family reports that his physical and psychological health has been deteriorating in custody. And in the more than two months he has been detained, he has never once received a custody hearing before a neutral decisionmaker.

Respondents' Motion to Dismiss rests almost entirely on *Demore v. Kim*, 538 U.S. 510 (2003), a case about the mandatory detention, under 8 U.S.C. § 1226(c), of a criminal alien who conceded his own removability and did not dispute that he fell within a mandatory detention category. *Id.* at 522–23. That case has no application to a noncitizen, like Petitioner, who is

1 detained under the discretionary authority of § 1226(a) and has no criminal history at all.
 2 Respondents' exhaustion argument fares no better: it faults Petitioner—arrested hours before he
 3 was asked to sign an English-language custody form, without counsel, without an interpreter
 4 present for the form itself, and processed the same day—for not requesting, at that moment, the
 5 very relief he now seeks through counsel. The Motion should be denied, and the Court should
 6 proceed to the merits of the Petition.
 7

8 **II. PETITIONER IS DETAINED UNDER § 1226(a), NOT § 1226(c), AND**
 9 **DEMORE DOES NOT CONTROL**

10 Respondents argue that "[t]he Constitution requires neither release from custody nor a bond
 11 hearing in which the government bears the burden of proof in this case," relying principally on
 12 *Demore*. ECF No. 9 at 4–5. But *Demore* addressed only the constitutionality of mandatory
 13 detention under § 1226(c) of a criminal alien who had conceded removability, and whose detention
 14 the Court expected to last a “brief” period — “roughly a month and a half in the vast majority of
 15 cases.” 538 U.S. at 529–30.
 16

17 Petitioner is detained under § 1226(a). Respondents' own evidence confirms it: the Notice
 18 of Custody Determination was issued “[p]ursuant to the authority contained in section 236 of the
 19 Immigration and Nationality Act,” 8 U.S.C. § 1226, Ex. 3, and Respondents' brief does not contend
 20 otherwise. Petitioner also has no criminal history whatsoever. Ex. 1 at 2 (“Subject has no criminal
 21 history”); *id.* at 3 (“No other criminal history”). Detention under § 1226(a) is discretionary, not
 22 mandatory, and the Ninth Circuit has long recognized that noncitizens detained under § 1226(a)
 23 are constitutionally entitled to an individualized bond hearing before a neutral decisionmaker.
 24 *Casas-Castrillon v. Dep't of Homeland Sec.*, 535 F.3d 942, 950–51 (9th Cir. 2008); *Rodriguez Diaz*
 25 *v. Garland*, 53 F.4th 1189, 1196 (9th Cir. 2022) (§ 1226(a) “provides the general process for
 26 arresting and detaining [noncitizens]” and confers, among other protections, “an initial bond
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hearing before a neutral decisionmaker”). *Demore's* holding, tethered to § 1226(c)'s mandatory scheme and a conceded ground of removal, simply does not reach this case.

III. EXHAUSTION SHOULD BE EXCUSED AND DOES NOT BAR PETITIONER'S CONSTITUTIONAL CLAIM

Respondents argue Petitioner failed to exhaust administrative remedies because he “refused to sign” the Form I-286 custody redetermination form at intake. ECF No. 9 at 2–3 (citing Ex. 3). That characterization omits the circumstances: the form was presented to Petitioner on the same day he was arrested during a fugitive-operations stop, while he was being processed into custody, without counsel present. Ex. 1 at 8–9 (custody determination made 05/13/2026, the date of arrest). Declining to check a box on an intake form under those circumstances is not a knowing waiver of the right to seek review of one's detention, and it is not the kind of “deliberate bypass” of the administrative process that prudential exhaustion doctrine is designed to discourage.

The Ninth Circuit's three-factor test in *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007), confirms exhaustion should be excused here:

First, agency expertise is not needed to decide the constitutional question Petitioner raises—what process is due at an initial custody determination—which is a pure question of law rather than a fact-intensive removability determination. *See Singh v. Holder*, 638 F.3d 1196, 1203 n.3 (9th Cir. 2011) (administrative record unnecessary to decide a due-process challenge to detention procedures).

Second, excusing exhaustion here will not “encourage the deliberate bypass of the administrative scheme.” *Puga*, 488 F.3d at 815. Petitioner is not attempting to skip ahead of an available remedy; newly appointed counsel is pursuing Petitioner's rights before the immigration court in parallel with this action.

1 Third, administrative review is not “likely to allow the agency to correct its own mistakes
2 and preclude the need for judicial review,” *id.*, where—as here—nearly two months have passed
3 with no custody review of any kind, and the constitutional defect is the total absence of process
4 rather than an error correctable on further agency review.
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6 **IV. DUE PROCESS REQUIRES THAT PETITIONER RECEIVE THE**
7 **INDIVIDUALIZED BOND HEARING HE HAS NEVER RECEIVED**

8 The Ninth Circuit's decision in *Rodriguez Diaz v. Garland*, 53 F.4th 1189 (9th Cir. 2022),
9 does not foreclose Petitioner's claim; if anything, it confirms it. In *Rodriguez Diaz*, the Ninth
10 Circuit held that due process does not require the government to bear the clear-and-convincing
11 burden of proof at a § 1226(a) custody hearing, distinguishing *Singh v. Holder* on the ground that
12 *Singh* addressed detention under § 1226(c) pending a petition for review. *Id.* at 1195, 1202–03.
13 But the panel's holding rested expressly on the premise that § 1226(a) “offers substantial
14 procedural protections to detained persons,” including “an initial bond hearing before a neutral
15 decisionmaker, the opportunity to be represented by counsel and to present evidence, the right to
16 appeal, and the right to seek a new hearing when circumstances materially change”—protections
17 the petitioner in that case had actually received. *Id.* at 1193, 1202.
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20 Petitioner has received none of those protections. He has had no bond hearing of any kind—
21 initial or otherwise—in the more than two months he has been detained. *Rodriguez Diaz* addressed
22 what standard of proof applies once a § 1226(a) detainee receives the hearing the statute and
23 regulations contemplate; it did not hold, and could not have held, that due process is satisfied where
24 no hearing occurs at all. Petitioner's claim is narrower and more fundamental than the claim
25 *Rodriguez Diaz* rejected: he seeks the individualized custody determination that § 1226(a)'s own
26 procedural scheme is supposed to guarantee, and that Respondents do not dispute he has not
27 received.
28

1 A hearing is also necessary because Respondents' own account of Petitioner's arrest is
2 internally inconsistent and, on Petitioner's information, incomplete. Respondents represent that
3 "ERO arrested Petitioner following a traffic stop." ECF No. 9 at 2. But Respondents' own Exhibit
4 1 describes a targeted Fugitive Operations apprehension outside Petitioner's residence, not a traffic
5 stop: officers "observed an individual fitting the physical description exiting the apartment,"
6 approached him "seated in the driver's seat," and took him into custody there. Ex. 1 at 9. Petitioner
7 has dashcam footage from the encounter that is inconsistent with any suggestion that he attempted
8 to flee. Petitioner also reports that ICE's initially stated basis for detaining him—a neighbor's
9 unsubstantiated accusation of package theft—was changed mid-encounter to the overstay charge
10 Respondents now rely on. *See also* ECF No. 1 at 6 ¶ 23 ("ICE convict[ed] me guilty of theft"
11 before recharacterizing the basis for detention). These are precisely the kind of disputed,
12 individualized facts bearing on flight risk that only a hearing before a neutral decisionmaker can
13 resolve; they cannot be resolved on the papers, and they underscore why an initial custody
14 determination cannot be dispensed with here.

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18 The *Mathews v. Eldridge* factors confirm that due process requires this hearing now. *See*
19 *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). Petitioner's private interest in his liberty is
20 substantial and has only grown more urgent during this detention. He has no criminal history, has
21 held valid employment authorization including a commercial driver's license, and is the sole means
22 of financial and emotional support for his infant son, born April 4, 2026, who was barely one
23 month old when Petitioner was taken into custody. Ex. 1 at 8 (listing son as U.S. citizen); ECF 1
24 at 6-7 ¶¶ 23–24. Petitioner's family further reports that his physical and psychological health has
25 deteriorated significantly in custody, including diagnosed low cholesterol, numbness in his hands,
26 hair loss, and a diagnosis of severe distress. These circumstances heighten, rather than diminish,
27 Petitioner's private interest under the first *Mathews* factor. The risk of erroneous deprivation absent
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1 a hearing is high, because Respondents concede no custody review has occurred at all. And the
2 government's burden in providing the initial hearing that its own regulations already contemplate,
3 see 8 C.F.R. § 1003.19, is minimal—particularly compared to the cost of Petitioner's continued,
4 unreviewed, and deteriorating detention.
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6 V. CONCLUSION

7 For the foregoing reasons, and for the reasons set forth in the Petition, Petitioner
8 respectfully requests that this Court deny Respondents' Motion to Dismiss, issue the writ of habeas
9 corpus, and order that Petitioner receive an individualized custody hearing before a neutral
10 decisionmaker at which Respondents bear the burden of justifying his continued detention, or in
11 the alternative, order Petitioner's release. Petitioner further requests that, upon any release,
12 Respondents be ordered to return all personal property and documents confiscated from Petitioner
13 at the time of his arrest and during his detention, including his employment authorization document
14 and commercial driver's license.
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18 Dated: July 17, 2026

Respectfully submitted,

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20 /s/ Danica Mazenko

DANICA MAZENKO

Attorney for Gabriel Lobo Quintero
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