

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
EASTERN DIVISION**

VIKTOR LAZAREV,  
  
Petitioner,  
  
v.  
  
PAM BONDI, et al.,  
  
Respondents.

Case No. 5:25-cv-03307-MWF-DFM

Report and Recommendation of  
United States Magistrate Judge

This Report and Recommendation is submitted to the Honorable Michael W. Fitzgerald, United States District Judge, under 28 U.S.C. § 636 and General Order 05-07 of the United States District Court for the Central District of California.

**I. INTRODUCTION**

On December 8, 2025, Petitioner Viktor Lazarev (“Petitioner”) filed a petition for writ of habeas corpus under 28 U.S.C. § 2241. See Dkt. 1 (“Petition”). Respondents did not file a response, and the time for doing so has passed. See Dkt. 8 (Order Requiring Response to Petition).<sup>1</sup> For the reasons set forth below, the Court recommends that the unopposed Petition be granted in part.

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<sup>1</sup> An Assistant United States Attorney filed a notice of appearance for the government two days before the Court’s order setting a deadline to respond.

## II. BACKGROUND

Petitioner is a native and citizen of Russia. See Petition ¶¶ 11, 16. Petitioner entered the United States on or about October 17, 2017, with a validly issued B2 visitor visa. See id. ¶ 17. Under his B2 visa, Petitioner was permitted to stay in the United States until April 16, 2018. See id. Petitioner remained in the United States thereafter and continues to reside here. See id. In April 2021, Petitioner married a United States citizen. See id. ¶ 18. Petitioner has a California-registered business entity, through which he imports and exports cars and car parts. See id.

In 2023, Homeland Security Investigations (HSI) began an investigation against Petitioner for alleged export violations. See id. ¶ 19. Petitioner has been cooperative with the investigation, which has not resulted in any criminal convictions. See id. Petitioner does not have any criminal history. See id. ¶ 20.

On October 14, 2025, Petitioner was detained by immigration officials. See id. ¶¶ 2, 21. Petitioner remains detained in Adelanto, California. See id. ¶¶ 1, 21. On October 15, 2025, Petitioner was placed into removal proceedings pursuant to 8 U.S.C. § 1229a and charged as removable under 8 U.S.C. § 1227(a)(1)(B) for having remained in the United States for longer than permitted. See id. ¶ 22. On October 31, 2025, Petitioner received a bond hearing purporting to comport with 8 U.S.C. § 1226(a).<sup>2</sup> See id. ¶¶ 11, 23-24; see also Dkt. 2-7 (“IJ Order”). The immigration judge (“IJ”) denied bond because Petitioner “failed to meet his burden to establish that he is not such a substantial flight risk that bond should be denied.” Id. ¶ 23; IJ Order.

Petitioner alleges that his hearing did not meet the minimal due process required for the government to continue to detain him. See Petition ¶¶ 3, 24.

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<sup>2</sup> The record does not explicitly state which provision of the INA governs Petitioner’s detention. Considering the circumstances, the Court understands Petitioner to be detained under 8 U.S.C. § 1226(a).

Petitioner alleges that the IJ relied solely on the HSI investigation for finding him to be a flight risk, and “summarily denied bond based solely on an investigation, without providing a reasoned consideration of all the factors relevant . . . .” Id. ¶¶ 34, 36. Per Petitioner, the IJ should have considered, at a minimum: “whether [Petitioner] has a fixed address in the United States; (2) [Petitioner’s] length of residence in the United States; (3) [Petitioner’s] family ties in the United States, and whether they may entitle [Petitioner] to reside permanently in the United States in the future; and (4) [Petitioner’s] manner of entry into the United States.” Id. ¶ 34. (alterations in original) (quoting Matter of Dobrotvorskii, 29 I&N Dec. 211, 212 (BIA 2025) (citing Matter of Guerra, 24 I&N Dec. 37, 40 (BIA 2006))).

Petitioner alleges that had the IJ considered such factors, he would have seen that Petitioner has been in the United States since 2017; has a fixed address; is married to a United States citizen, and by virtue thereof is eligible to pursue lawful permanent residence; was inspected and admitted into the United States; and, although he overstayed, has no other immigration violations on his record. See Petition ¶ 35. Petitioner also takes issue with the IJ’s “cursory and dismissive” consideration of the HSI investigation and how the IJ apparently “did not consider the fact that Petitioner was not convicted of any criminal offense.” Id. ¶ 36. Ultimately, Petitioner alleges that had the IJ considered all the factors, he would have found Petitioner not to be a flight risk. See id. ¶ 35. Petitioner also takes issue with the IJ’s insertion of “substantial” into the “flight risk” standard. Id. ¶ 37.

Petitioner alleges that he is being unlawfully detained without a fair bond hearing in violation of his Fifth Amendment right to due process, his Fourth Amendment right against unreasonable seizure, and the Administrative Procedure Act. See id. ¶¶ 31-44. Petitioner seeks, inter alia, a writ of habeas

corpus requiring his release unless Respondents provide him with a constitutionally compliant bond hearing within seven days. See id. at 12-13.

### III. DISCUSSION

The Court must first address whether it has jurisdiction. District courts have jurisdiction to review noncitizens' habeas petitions filed under 28 U.S.C. § 2241, and courts may grant the writ of habeas corpus if the petitioner is "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3); see also Zadvydas v. Davis, 533 U.S. 678, 687-88 (2001); Martinez v. Clark, 124 F.4th 775, 781-83 (9th Cir. 2024).

The legal test for a bond (or "custody redetermination") hearing under 8 U.S.C. § 1226(a) gives the Attorney General "broad discretion" to release most detained noncitizens on bond or with other conditions pending removal proceedings. See, e.g., Matter of Guerra, 24 I&N Dec. 37, 39-40 (BIA 2006). 8 U.S.C. § 1226(e) bars judicial review of an IJ's "discretionary judgment" to deny release on bond and precludes courts from setting aside any action or decision by the Attorney General under § 1226 regarding the detention of any noncitizen or the revocation or denial of bond or parole. However, section 1226(e) "does not limit habeas jurisdiction over constitutional claims or questions of law." Singh v. Holder, 638 F.3d 1196, 1202 (9th Cir. 2011), abrogated on other grounds by Jennings v. Rodriguez, 583 U.S. 281 (2018); see also Rodriguez Diaz v. Garland, 53 F.4th 1189, 1209 (9th Cir. 2022).

In Martinez, the Ninth Circuit considered what types of inquiries are questions of fact, mixed questions of law and fact, and pure questions of law. See 124 F.4th at 782-83. On one side of the spectrum are purely legal questions, which are reviewable by federal courts. See id. at 781-82. On the other side of the spectrum are "underlying factual determinations," such as credibility, which are unreviewable. Id. at 782-83 (citing Wilkinson v. Garland, 601 U.S. 209, 225 (2024)). In the middle are mixed questions of fact and law,

such as those involving “[t]he application of a statutory legal standard . . . to an established set of facts.” Wilkinson, 601 U.S. at 212. Mixed questions, such as whether a noncitizen is “dangerous” for detention purposes, are reviewable as questions of law. See Martinez, 124 F.4th at 779. When mixed questions “require a close review of agency-found facts, like the ‘dangerousness’ determination” the court reviews for an “abuse of discretion.” Id. at 784 (citations omitted).

Here, the Court identifies two reviewable questions, both raised via Petitioner’s due process claim: (1) did the IJ apply the correct legal standard when he inserted “substantial” into “flight risk,” and (2) did the IJ correctly apply the legal standard to Petitioner’s facts (which underlying facts, to be clear, are unreviewable). See Petition ¶¶ 34-37.

On the first question, Petitioner contends that the appropriate standard is not whether a detainee is a “substantial” flight risk, but whether the detainee is a “flight risk.” Id. ¶ 37 (“The case law governing immigration bond asks if a detainee is a flight risk – there are no defined gradations of ‘substantial’ or ‘insubstantial’ flight risks.” (citing Dobrotvorskii, 29 I&N Dec. at 212)). As noted above, the government has not responded. To the extent that the IJ applied a heightened “substantial” flight risk standard and assessed Petitioner under that standard, this may have been an abuse of discretion.

On the second question, the undeveloped record leaves the Court at a disadvantage. As just noted, the government has not responded. Petitioner did not provide the Court with the hearing transcript or a written BIA decision, nor is it even clear that Petitioner appealed the IJ’s order to the BIA.<sup>3</sup>

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<sup>3</sup> A habeas petitioner seeking relief under 28 U.S.C. § 2241 generally must first exhaust all available administrative remedies. See Ward v. Chavez, 678 F.3d 1042, 1045 (9th Cir. 2012); Rojas-Garcia v. Ashcroft, 339 F.3d 814, 819 (9th Cir. 2003) (noting that “petitioner must exhaust administrative

Petitioner provided the Court with the IJ's written order, which is a very brief, one-page, check-the-box form. See IJ Order. Though the order notes that the decision was made “[a]fter full consideration of the evidence presented,” the IJ cites no evidence or caselaw. See id.

“Generally, in the absence of any red flags, [the Court] take[s] the BIA at its word.” See Martinez, 124 F.4th at 785. “But when there is an indication that something is amiss, like if the BIA ‘misstat[es] the record’ or ‘fail[s] to mention highly probative or potentially dispositive evidence,’ we do not credit its use of a ‘catchall phrase’ to the contrary.” Id. (alterations in original) (quoting Cole v. Holder, 659 F.3d 762, 771-72 (9th Cir. 2011)). Here, the IJ does not mention any evidence or reference the record in any fashion. See IJ Order. Thus, there is at least an argument that “something is amiss,” such that the court should not credit “catchall” phrases. See Martinez, 124 F.4th at 785 (citation omitted).

“Under an abuse of discretion standard, ‘we cannot reweigh evidence . . . [but] can [only] determine whether the BIA applied the correct legal standard.’” Id. (alterations in original) (quoting Konou v. Holder, 750 F.3d 1120, 1127 (9th Cir. 2014) (simplified)). Based on the limited record before the Court, the Court cannot say that the IJ did not abuse his discretion in determining that Petitioner was a flight risk. See id. (“we accept that the BIA ‘applied the correct legal standard’ if the BIA ‘expressly cited and applied [the relevant caselaw] in rendering its decision.’”) (alteration in original) (citing

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remedies before raising the constitutional claims in a habeas petition when those claims are reviewable by the BIA on appeal”). However, because the exhaustion requirement is not a “jurisdictional prerequisite,” it is subject to waiver. Ward, 678 F.3d at 1045-46; Arango Marquez v. INS, 346 F.3d 892, 897 (9th Cir. 2003). As the government has not responded to the Petition, Respondents have not argued that the Petition should be dismissed for failure to exhaust.

Mendez-Castro v. Mukasey, 552 F.3d 975, 980 (9th Cir. 2009)). Accordingly, the Court will recommend that Petitioner receive a new, individualized, constitutionally compliant bond hearing under 8 U.S.C. § 1226(a) before a neutral IJ.

The Court addresses one additional matter. To the extent Petitioner intended to argue that he can never receive a fair hearing before an IJ because all IJs are non-neutral arbiters due to current political pressures, see Petition ¶ 30, this argument is not well taken. Petitioner has made no attempt at showing that there was any actual bias on the part of the IJ who presided over his hearing, nor does the record suggest there was any impermissible risk of actual bias. Petitioner therefore fails to demonstrate that he was deprived of a neutral decision maker in violation of due process. See Williams v. Pennsylvania, 579 U.S. 1, 8 (2016) (holding that there is an “impermissible risk of actual bias when a judge earlier had significant, personal involvement as a prosecutor in a critical decision regarding the defendant’s case” and explaining that “an unconstitutional potential for bias exists when the same person serves as both accuser and adjudicator in a case”).

Considering the foregoing, the Court recommends the Petition be GRANTED in part.

#### IV. RECOMMENDATION

IT IS THEREFORE RECOMMENDED that the District Judge issue an Order: (1) accepting this Report and Recommendation; (2) granting, in part, the unopposed Petition; and (3) issuing a writ ordering—(a) Respondents to arrange for a new, individualized, constitutionally compliant bond hearing under 8 U.S.C. § 1226(a) before an immigration judge within seven (7) days of the issuance of the writ; (b) Respondents to release Petitioner from custody if Petitioner is not timely provided with the aforementioned bond hearing; and (c) the parties to file a status report within ten (10) days of the issuance of the writ detailing if and when the bond hearing occurred, if bond was granted or denied, and if bond was denied, the reasons for denial.

Date: January 14, 2026

  
DOUGLAS F. McCORMICK  
United States Magistrate Judge