UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

NATHANIEL STERLING, Petitioner,	:	No.: 3:25cv2122 (KAD)
v.	:	
PAMELA J. BONDI et al., Respondents.	:	March 2, 2026

SUPPLEMENTAL RESPONSE TO ORDER TO SHOW CAUSE

Pursuant to the court's February 6, 2026 order (ECF 23), the respondents respectfully submit this supplemental response to the petitioner's Second Amended Petition (ECF 25), which response is limited to "only the newly added claim for habeas relief (the others having already been fully briefed)." (ECF 23.)

The petitioner's Second Amended Petition, among other more minor changes, added a new substantive claim for habeas relief surrounding the adequacy of the petitioner's January 8, 2026 bond hearing before the Immigration Court. That claim should be rejected because: (1) the petitioner, for reasons unclear, elected to forego an administrative appeal of the adverse bond decision, and he therefore failed to exhaust his administrative remedies; and (2) the bond hearing comported with principles of due process, and the petitioner's real grievance – that the Immigration Judge weighed the evidence in a way adverse to the petitioner – is not reviewable by this court.

I. Factual Background to Second Amended Petition

The Second Amended Petition alleges the following additional facts that are relevant to this aspect of the petitioner's claims. On January 8, 2026, the petitioner was afforded a bond hearing in the Chelmsford Immigration Court, the transcript of which is attached to the Second Amended Petition as Exhibit A. (See ECF 25, at ¶62 & Ex. A.) During the bond hearing, a lawyer for DHS offered a mistaken belief that the petitioner "had been convicted of a firearms offense and had additional pending criminal charges." (Id. at ¶65; see also id. Ex. A, at 3 ("I believe that there is a conviction for a firearm charge. Um, I would note that any, as well as I believe at the pending um, driving. Essentially a driving offense."). Counsel for the petitioner responded "to correct the record, stating that Mr. Sterling had not been convicted of a firearms offense, or any other criminal offense, and that he had no pending criminal charges." (Id. ¶66.) Counsel for DHS did not "withdraw" the contention regarding a prior firearms conviction or pending charges. (See id. ¶67.)

The Second Amended Petition also asserts that DHS submitted an evidentiary packet that included "uncorroborated police reports." (Id. ¶68.) Based on the transcript provided by the petitioner, it does not appear that either party lodged objections to any of the exhibits – including the Government's exhibits – offered at the hearing. (See id. Ex. A, at 1:37 (admitting exhibits absent objection).)

Following the hearing, the Immigration Judge "concluded that DHS had met its burden of showing dangerousness by clear and convincing evidence," which decision was "[b]ased on the totality of the record, as well as the department's evidence." (Id. ¶70.) The Second Amended Petition does not allege that the petitioner appealed the adverse bond decision, and that appeal was due by February 9, 2026, the day before the petitioner filed the Second Amended Petition. (See Ex. F.)

II. The Petitioner Failed to Exhaust Administrative Remedies

At the outset, the petitioner failed to appeal the adverse bond decision, and this ground of his habeas petition should be denied on that ground alone. "The general rule is that a party may not seek federal judicial review of an adverse administrative determination until the party has first sought all possible relief within the agency itself." Beharry v. Ashcroft, 329 F.3d 51, 56 (2d Cir. 2003) (internal quotation marks omitted), as amended (July 24, 2003). "Exhaustion of administrative remedies serves numerous purposes, including protecting the authority of administrative agencies, limiting interference in agency affairs, and promoting judicial efficiency by resolving potential issues and developing the factual record." Id.

The respondents acknowledge that "[t]he requirement of administrative exhaustion can be either statutorily or judicially imposed," and that "statutory exhaustion requirements are mandatory, while the judicial (common-law) exhaustion doctrine is discretionary and includes a number of exceptions." Id. Here, there is no statutory requirement for exhaustion, and prudential exhaustion therefore applies. As a result, "exhaustion of administrative remedies may not be required when (1) available remedies provide no genuine opportunity for adequate relief; (2) irreparable injury may occur without immediate judicial relief; (3) administrative appeal would be futile; and (4) in certain instances a plaintiff has raised a substantial constitutional question." Id. at 62.

The petitioner does not mention any efforts on his part to exhaust his administrative remedies, and he also does not attempt to explain why that requirement should be excused under the circumstances. Importantly, however, he also does not deny that administrative remedies were available to him following the Immigration Judge's denial of bond; he appears to have simply chosen not to file an appeal and instead rely exclusively on this court for possible relief. But that strategic choice was a poor one, because there is not good cause to excuse his failure to exhaust under the facts of this case.

First, appeal to the BIA both provided the opportunity for adequate relief and would not have been futile. The type of injury claimed here – even if framed in constitutional terms, a framing about which the respondents have serious questions – implicates a type of "procedural defect[]" that the BIA "clearly can address" on appeal. United States v. Gonzalez-Roque, 301 F.3d 39, 47 (2d Cir. 2002). And there can be no plausible argument that an appeal would have been futile, because the BIA could have ordered the evidence weighed differently or otherwise remanded for a new bond hearing. That is in contrast to those cases in which courts have excused nonexhaustion because BIA precedent required the imposition of a different burden of proof. See, e.g., J.C.G. v. Genalo, No. 1:24-CV-08755 (JLR), 2025 WL 88831, at *5-6 (S.D.N.Y. Jan. 14, 2025) (exhaustion futile in light of "burden-shifting" argument). The petitioner does not and cannot make that argument in this case, since the Immigration Judge placed the burden of proof on the Government. (See Ex. A, at 5.) Instead, the petitioner here makes arguments that fall comfortably within the confines of BIA review, and appeal of the Immigration Judge's adverse bond order clearly could have resulted in reversal of the decision denying bond.

Second, concerns regarding irreparable harm cannot justify circumventing administrative review because "[i]f incarceration alone were the irreparable injury complained of, then the exception would swallow the rule that . . . administrative remedies must be exhausted before resorting to the federal courts." Giwah v. McElroy, No. 97 CIV. 2524 (RWS), 1997 WL 782078, at *4 (S.D.N.Y. Dec. 19, 1997). Put another way, in any habeas case challenging detention – whether immigration or post-conviction – the case involves claimed "irreparable harm" in the form of continued detention. But that alone cannot excuse nonexhaustion, lest the rule favoring exhaustion become meaningless. Moreover, unlike in some other cases where district courts excused a failure to exhaust on irreparable-harm grounds, the petitioner here received a prompt bond hearing and therefore was not subjected to "unreasonably prolonged . . . detention without adequate procedural protection." Hechavarria v. Whitaker, 358 F. Supp. 3d 227, 237 n.3 (W.D.N.Y. 2019).

Third, as noted above, the petitioner's claim, while couched in constitutional terms, raises due process concerns only in the most conclusory manner. The petitioner, however, "cannot evade BIA review merely by labeling the claim a due process claim"; Gonzalez-Rocque, 301 F.3d at 48; and the court should not permit him to bypass administrative-exhaustion requirements by doing the same. And in any event, "because his procedural due process claim could also be addressed head-on by the BIA, there is insufficient justification to excuse [the petitioner] from the exhaustion requirement here." Paz Nativi v. Shanahan, No. 16-CV-8496 (JPO), 2017 WL 281751, at *3 (S.D.N.Y. Jan. 23, 2017).

For these reasons, under similar circumstances, courts frequently have refused to excuse a habeas petitioner's failure to exhaust available administrative remedies when those remedies could have resulted in the petitioner obtaining the same relief sought in the habeas proceeding. See, e.g., Dembele v. Decker, No. 18-cv-05070 (JPO), 2018 WL 4960234, at *3 (S.D.N.Y. Oct. 9, 2018) (in case involving IJ denial of bond, petitioner "must exhaust his administrative remedies before pursuing habeas relief in this Court"); Gaitan v. Decker, No. 17-cv-05690 (WHP), 2018 WL 740996, at *3 (S.D.N.Y. Feb. 7, 2018) ("Court declines to consider whether these [IJ] holdings were correct while Ortiz's administrative appeal on those determinations are pending"); Garcia v. Decker, No. 18-cv-03840 (AT), 2018 WL 2849743, at *1 (S.D.N.Y. June 7, 2018) (exhaustion required where BIA appeal of bond could provide relief); Paz Nativi, 2017 WL 281751, at *1 ("The pendency of a BIA appeal that could potentially moot [petitioner's] habeas petition counsels for the Court to stay its hand until the exhaustion of administrative review in the name of preserving scarce judicial resources and avoiding the possibility of duplicative or conflicting rulings"); Perdomo v. Decker, No. 17-cv-03268 (AKH), 2017 WL 4280684, at *1 (S.D.N.Y. July 31, 2017) (staying case "pending resolution of petitioner's appeal" to the BIA); Bogle v. Dubois, 236 F. Supp. 3d 820, 822-23 (S.D.N.Y. 2017) ("Seeking habeas relief before appealing to the BIA is an improper 'short cut'"); Cepeda v. Shanahan, No. 15 CIV. 09446 (AT), 2016 WL 3144394, at *2 (S.D.N.Y. Apr. 22, 2016) ("it is premature to reach this constitutional question" pending resolution of BIA appeal); Palaniandi v. Jones, No. 15-cv-04021 (RA), 2016 WL 1459607, at *2 (S.D.N.Y. Mar. 10, 2016) ("Petitioner's remedy lies with the BIA, to which he has already filed an appeal"); Herrera v. Mechkowski, No. 15-cv-07058 (GBD), 2016 WL 595999, at *1 (S.D.N.Y. Feb. 11, 2016) ("federal judicial review of [bond] issue would be premature" pending BIA appeal); see also Molina Posadas v. Shanahan, No. 15 CIV. 5691(AT), 2016 WL 146556, at *1 (S.D.N.Y. Jan. 12, 2016) ("To the extent that Petitioner wishes to argue that the August 25 Hearing did not satisfy the requirements of § 1226(a) and the Due Process Clause, once any administrative exhaustion requirements have been satisfied, he may file another habeas petition raising these new arguments" (emphasis added)).

The same result should be reached here, and the petition should be denied.

III. The Petitioner's Claim Fails on the Merits

Even if the court were to excuse the petitioner's failure to exhaust his administrative remedies, his claim regarding the adequacy of his bond hearing should fail on the merits. As a preliminary matter, it is important to ascertain the scope of his claim: he does not allege, as many of the habeas petitions he has cited do, that the Government is wrongly labeling him as subject to mandatory detention and is not providing him a bond hearing; he also does not allege, as many of the habeas petitions he has cited do, that the Immigration Judge applied the wrong legal standard or misallocated the burden of proof. Rather, the petitioner's argument – though characterized as one sounding in due process – is scarcely about process at all and instead is really aimed at the manner in which the Immigration Judge weighed the evidence in the record, an issue over which this court does not have jurisdiction to consider. See 8 U.S.C. § 1226(e).

The petitioner's stated claim arises out of the Immigration Judge's alleged "reliance on uncorroborated police reports or inaccurate law-enforcement allegations," which the petitioner claims violated his constitutional right to due process. (ECF 25, at ¶75.) As it pertains to the admissibility of evidence, "[t]he Federal Rules of Evidence do not apply in [immigration] proceedings; rather, [e]vidence is admissible provided that it does not violate the alien's right to due process of law." Zerrei v. Gonzales, 471 F.3d 342, 346 (2d Cir. 2006) (second alternation in original; internal quotation marks omitted). And "[t]he standard for due process is satisfied if the evidence is probative and its use is fundamentally fair, fairness in this context being closely related to the reliability and trustworthiness of the evidence." Id. (internal quotation marks omitted).

In this case, there can be no real dispute that the petitioner's past arrests or other encounters with law enforcement are probative of his dangerousness to the community; indeed, the case law provides that Immigration Judges may consider "the totality of a detainee's prior criminal history, including arrests and unarraigned charges, in determining danger to the community." Vargas v. Davies, No. 15 CIV. 3525 (ER), 2016 WL 3044850, at *4 (S.D.N.Y. May 27, 2016). The case law also is clear that the admission of "uncorroborated police reports" is not fundamentally unfair, since "police reports and complaints, even if containing hearsay and not a part of the formal record of conviction, are appropriately admitted for the purposes of considering an application for discretionary relief." Carcamo v. U.S. Dep't of Just., 498 F.3d 94, 98 (2d Cir. 2007). As such, the police reports were probative evidence (to which the petitioner did not object), and the Immigration Judge's admission – and "reliance" – on them did not render the proceeding fundamentally unfair.

With respect to the petitioner's emphasis on DHS counsel's equivocal statements that she "believe[d]" both that the firearms charge resulted in a conviction and that there remained a pending charge for a "driving offense," counsel for the petitioner promptly corrected those beliefs, and there is nothing in the record to indicate that the Immigration Judge "relied on . . . materially inaccurate . . . information provided by DHS." (Id. ¶83.) As discussed above, counsel for the petitioner had ample opportunity, and availed himself of that opportunity, to correct the record with respect to the lack of a firearms conviction and pending criminal charges. (See Ex. A, at 4.) Following that correction, there was no counterargument from counsel for DHS, there was no further discussion of those points, and there is nothing in the record to indicate that DHS's original argument had any bearing on the Immigration Judge's decision.

In the end, and perhaps most importantly, the petitioner's various arguments on these issues illustrate that the actual dispute here is not about the admission of evidence, but instead is about how that properly admitted evidence was weighed by the Immigration Judge. The Government's exhibits, which consisted of police reports, were admitted absent objection, and that evidentiary decision was proper regardless. Those police reports established several "law enforcement contacts" since the 2020 denial of discretionary relief in immigration court, and the Immigration Judge determined those contacts to satisfy the Government's burden of proof on dangerousness, factoring in the petitioner's arguments to the contrary. The petitioner disagrees with the weight the

Immigration Judge gave the evidence (see ECF 25, at ¶81), but that weighing of the evidence is not subject to review in this court.[1] See 8 U.S.C. § 1226(e) ("The Attorney General's discretionary judgment regarding the application of this section shall not be subject to review. No court may set aside any action or decision by the Attorney General under this section regarding the detention of any alien or the revocation or denial of bond or parole.").

In sum, there is nothing about the bond proceeding itself that violated the petitioner's right to due process; he was given an opportunity shortly after his detention to offer evidence and present arguments through his counsel to try to rebut the Government's efforts to prove that he is a danger to the community, and the Government's evidence in support of its own effort was properly admitted without objection. The proceeding was fundamentally fair, and the constitution does not require more.

IV. **Conclusion**

For the foregoing reasons, the habeas petition should be denied.

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[1]Indeed, the petitioner's citation to In re Jose Alejandro Rodriguez Pena, I. & N. Dec. 358, 359 (BIA 2025), reveals the flaw with his argument, since the petitioner cites that BIA decision for a proposition about the proper weight to give police reports where there was not a criminal conviction. (See ECF 25, at ¶75.) But since the case law is clear that the Immigration Judge properly admits such reports into evidence, the question of weight is one for the Immigration Judge (and the BIA on review), not the district court on a habeas petition. For that reason, the decision in Rosa Pineda v. Nessinger, No. 1:25-CV-522-MSM-AEM, 2025 WL 3267328, at *1 (D.R.I. Nov. 24, 2025), also is not persuasive, since the court there made the same mistake the petitioner makes here.

Respectfully submitted,

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