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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

PARDEEP SHARMA aka PARDEEP SINGH,

Petitioner,

v.

JEREMY CASEY, Warden, Imperial Regional Detention Facility, *et al.*,

Respondents.

Case No. 26-cv-00513-BAS-SBC

RETURN TO HABEAS PETITION AND OPPOSITION TO MOTION FOR TEMPORARY RESTRINING ORDER

I. INTRODUCTION

On November 27, 2025, Petitioner Pardeep Sharma aka Pardeep Singh filed a habeas petition in Case No. 25-cv-03335-BAS-DDL alleging that he was improperly detained without bond pending adjudication of his removal proceedings. On December 18, 2025, the Court issued an order granting the petition and ordering that Respondents provide Petitioner with "a bond hearing before an Immigration Judge within 14 days" of the order. Case No. 25-cv-03335-BAS-DDL, ECF No. 9. As Petitioner acknowledges in the instant case, he was afforded a bond hearing and the immigration judge issued a decision on January 23, 2026. ECF No. 1 at ¶ 3, Exhibit E.[1] The immigration judge denied bond, finding that Petitioner "has failed his burden of proof to prove that he would not be a danger to the community or a flight risk if released from detention." ECF No. 1, Exhibit E at p. 1.

Petitioner has now filed a new habeas petition alleging that the immigration judge "(1) misallocated the burden of proof to Petitioner, (2) relied solely on adverse credibility findings that are not probative of danger or flight risk under controlling law, (3) ignored material evidence demonstrating lack of danger and flight risk, and (4) failed to consider less restrictive alternatives to detention." ECF No. 1 at ¶ 4. Petitioner claims that "[t]hese errors render the hearing constitutionally inadequate under binding Ninth Circuit precedent," and that the Court should order immediate release. *Id.* at ¶¶ 4–5. Petitioner has also filed a motion for temporary restraining order and supplemental briefing in support of his petition and motion. ECF Nos. 3–4.

For the reasons set forth below, the Court should deny Plaintiff's motion and dismiss the petition.

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[1] A timely bond hearing was originally held on December 30, 2025, and the immigration judge continued the hearing to January 6, 2026, to allow submission of additional evidence, and then again to January 15, 2026.

II. ARGUMENT

A. Petitioner Has Not Exhausted Administrative Remedies.

Petitioner seeks review of the immigration judge's decision at his bond hearing, but Petitioner has not exhausted his administrative remedies.

"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 his bond denial is to utilize the administrative scheme and appeal his bond denial to the Board of Immigration Appeals (BIA).

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 immigration judge 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 immigration judges, 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 immigration judge 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 [immigration judge] 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 immigration judge 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, Petitioners bear 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 claims that he "has exhausted the process that the agency is capable of providing." ECF No. 1 at ¶ 52. But this is not true, as he has not appealed the immigration judge's bond denial to the BIA, and he makes no effort to demonstrate that exhaustion should be waived.

Judge Bencivengo recently dismissed a habeas petition that, like here, challenged an immigration judge's denial of bond. *See 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 [immigration judge'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 [immigration judge's] decision.'") (quoting *Leonardo*, 646 F.3d at 1160).

Because Petitioner was provided a bond hearing under 8 U.S.C. § 1226(a) and he has not exhausted his administrative remedies, the Court should dismiss this matter.

B. The Immigration Judge Did Not Misapply the Burden of Proof.

Petitioner is incorrect about the burden of proof in 8 U.S.C. § 1226(a) bond proceedings. In general, an alien detained under section 1226(a) bears the burden of proof with respect to demonstrating that he merits release on bond in custody redetermination proceedings before the immigration judge. *See* 8 C.F.R. § 1003.19(h)(3) (an alien applying for custody redetermination by the immigration judge "must first demonstrate, by clear and convincing evidence, that release would not pose a danger to other persons or to property. If an alien meets this burden, the alien must further demonstrate, by clear and convincing evidence, that the alien is likely to appear for any scheduled proceeding or interview."). In fact, Petitioner, through counsel, acknowledged in a legal brief filed on January 15, 2026, that he bore the burden of proving that he is neither a danger to the community nor a flight risk. *See* Respondent's Closing Brief in Support of Release on Bond, ECF No. 1, Exhibit G at 67–73, p. 2 (arguing that Petitioner "has met his burden to show that he is neither a danger to the community nor a flight risk if released"), p. 6 ("Under the totality of the circumstances, Respondent has met his burden under INA § 236(a) [8 U.S.C. § 1226(a)] to demonstrate that he would neither be a danger to the community nor a flight risk if released.").

The imposition of the burden of proof upon an alien in section 1226(a) bond proceedings facially satisfies due process. *See Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1211–14 (9th Cir. 2022). To the extent that an alien establishes that his detention

under section 1226(a) has become prolonged in violation of the Due Process Clause due to articulable deficiencies in his individual bond proceedings (i.e., through an as-applied challenge to his detention under section 1226(a)), the Ninth Circuit has suggested that those procedural deficiencies are best remedied "through means short of major changes to the burden of proof." *Id.* at 1214 (citing *Miranda v. Garland*, 34 F.4th 338, 361 (4th Cir. 2022)).

An alien's objection to the outcome of a bond hearing (as here) does not establish that the procedures governing the proceeding at which bond was denied violated due process. *Rodriguez Diaz*, 53 F.4th at 1189, 1213 (quoting *Ching v. Mayorkas*, 725 F.3d 1149, 1156 (9th Cir. 2013) ("It is process that the procedural due process right protects, not the outcome."). In asking this Court to review the immigration judge's bond denial order and grant immediate release, Petitioner "comes close to asking [the Court] to directly review the [immigration judge's] bond decision, a task Congress has expressly forbidden [federal courts] from undertaking." *Rodriguez Diaz*, 53 F.4th at 1212–13 (quoting *Borbot v. Warden*, 906 F.3d 274, 279 (3rd Cir. 2018)). Congress has determined that an immigration judge's "discretionary bond determinations [are] not reviewable in federal court." *Id.* at 1209; see also 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.").

C. The Immigration Properly Found Petitioner Lacked Credibility.

Petitioner argues that the immigration judge's denial of bond "rested on speculative credibility assessments related to past trauma and conjecture about future employment conduct, none of which establishes a legitimate regulatory basis for detention." ECF No. 1 at ¶ 58. The Court should reject this argument.

"Credibility determinations are reviewed under the substantial evidence standard." *Joseph v. Holder*, 600 F.3d 1235, 1240 (9th Cir. 2010) (citing *Soto–Olarte*

v. Holder, 555 F.3d 1089, 1091 (9th Cir. 2009)). "Under the substantial evidence standard, credibility findings are upheld unless the evidence compels a contrary result." *Id.* (citing *Don v. Gonzales*, 476 F.3d 738, 741 (9th Cir. 2007)).

Here, the immigration judge concluded that Petitioner did not provide credible testimony in two ways. First, Petitioner claimed he would continue to work at the same 7-11 store where he was the victim of armed robbery causing post-traumatic stress disorder, major depressive disorder, and generalized anxiety disorder. ECF No. 1, Exhibit E at p. 1. The immigration judge concluded that such testimony was not credible because "no rational human being would continue to work at the same 7-11 where they were the victim of armed robbery when they have a way to work that does not involve the risk of armed robbery and dos not aggravate any mental health issues incurred from the alleged armed robbery." *Id.* at p. 2. Second, Petitioner testified that he would not continue to drive a commercial tractor trailer in violation of federal regulation. *Id.* at p. 1. The immigration judge concluded that such testimony was not credible because Petitioner had renewed his commercial driver's license, "thus signifying his intent to continue to drive commercial vehicle in violation of federal regulations." *Id.* at p. 2.

The immigration judge relied on Petitioner's lack of credibility when concluding that Petitioner "demonstrates a total disregard for U.S. law (not to lie under oath)" and that his "poor credibility also demonstrates risk of flight in that any promise by [Petitioner] to report for removal if he is ordered removed while in a non-detained status carries little weight from someone with adverse credibility and a poor character for truthfulness." *Id.* Petitioner claims that "[c]ourts have held that credibility assessments, standing alone, are not evidence of dangerousness or flight risk, particularly where they relate to past events rather than future compliance." ECF No. 1 at ¶ 46. But he cites no authority to support this assertion. Moreover, the immigration judge's credibility assessment related to future events, including Petitioner's likely intent to continue violating the law based on his renewal of his commercial driver's license, and his non-credible testimony that he would work at the same 7-11 where he had been victimized.

Ultimately, substantial evidence supports the immigration judge's credibility determination, and the Court should not second-guess the immigration judge's credibility determination. *See Hilario Pankim*, No. 20-cv-02941-JSC, 2020 WL 2542022, at *8 ("In reviewing the [immigration judge's] determination, district courts 'may not second-guess the [immigration judge's] weighing of the evidence.'") (quoting *Calmo v. Sessions*, No. C 17-07124 WHA, 2018 WL 2938628, at *4 (N.D. Cal. June 12, 2018)).

D. The Immigration Judge Properly Considered the Evidence.

Petitioner argues that the immigration judge ignored material evidence demonstrating that he is not a danger to the community or a flight risk. ECF No. 1 at ¶¶ 47–48. But the immigration judge stated that he denied Petitioner's request for a change in custody status "[a]fter full consideration of the evidence presented[.]" ECF No. 1, Exhibit E at p. 1. Moreover, immigration judges are not required to discuss each piece of evidence submitted. *See Perez v. Wolf*, 445 F. Supp. 3d 275, 290 (N.D. Cal. 2020) (where the immigration judge stated at the bond hearing that she "would consider all of the evidence" when taking the matter under submission, "[t]he fact that the [immigration judge] did not mention the evidence specifically in her decision does not overcome the presumption that the [immigration judge] satisfied the due process requirement to consider such evidence.") (citing *Larita-Martinez v. INS*, 220 F.3d 1092, 1096 (9th Cir. 2000); *Cole v. Holder*, 659 F.3d 762, 771 (9th Cir. 2011) ("That is not to say that the BIA must discuss each piece of evidence submitted. When nothing in the record or the BIA's decision indicates a failure to consider all the evidence, a general statement that the agency considered all the evidence before it may be sufficient.") (cleaned up).

E. The Immigration Judge Was Not Required to Consider Less Restrictive Alternatives to Detention.

Petitioner relies on *Hernandez v. Sessions*, 872 F.3d 976 (9th Cir. 2017), to argue that the immigration judge violated due process by failing to consider less restrictive

alternatives to detention. ECF No. 1 at ¶ 49. But *Hernandez* analyzed whether a detainee's financial circumstances or alternative conditions of release should be considered in bond hearings "for non-citizens who are determined *not* to be a danger to the community and *not* to be so great a flight risk as to require detention without bond." 872 F.3d at 1000 (emphasis added); *see also id.* at 981 ("The government has already determined that the class members are neither dangerous nor enough of a flight risk to require detention without bond."). *Hernandez* does not require immigration judges to consider alternatives to release for non-citizens like Petitioner who have been found to be a danger to the community and/or a flight risk. *See Perez*, 445 F. Supp. 3d at 291 ("Under Ninth Circuit precedent, however, an [immigration judge] need only consider 'alternative conditions to release' once the [immigration judge] determines that the detainee is 'neither dangerous nor so great a flight risk as to require detention without bond.'") (quoting *Hernandez*, 872 F.3d at 991).

III. CONCLUSION

For the foregoing reasons, Respondents request that the Court deny Petitioner's motion for temporary restraining order and dismiss his habeas petition.

Dated: February 5, 2026

Respectfully submitted,

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s/ Matthew Riley
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