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10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA

12 BINIYAM MITIKU DEJU,

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14 Petitioner,

15 v.

16 WARDEN JEREMY CASEY,

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18 Respondent.
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Case No.: 26-cv-02329-AGS-VET

**RESPONSE IN OPPOSITION TO
MOTION TO ENFORCE
JUDGMENT**

I. PROCEDURAL BACKGROUND

On June 5, 2026, the Court ordered Petitioner receive an individualized bond hearing where the government would bear the burden of proving by clear and convincing evidence that Petitioner is a danger to the community or such a flight risk. *See* ECF No. 13. On June 18, 2026, Petitioner was provided with an individualized bond hearing where the immigration judge (IJ) found Petitioner to be a flight risk and denied bond. *See* Exhibit 1 (Bond Hearing Transcript); ECF No. 16 at 23-24. On July 20, 2026, Petitioner filed a Motion to Enforce Judgment. ECF No. 16. Respondent respectfully opposes the motion and requests that it be denied as he has complied with the Court's June 5, 2026 order.

II. ARGUMENT

A. Respondent Complied with the Court's Order

The Court should dismiss Petitioner's motion because the IJ correctly placed the burden on the government, allowed Petitioner to present evidence and make argument, and provided adequate reasoning for his decision to deny bond, finding Petitioner to be a flight risk.

At the hearing, the IJ acknowledged that the burden was on the government and confirmed that all evidence that had been submitted by Petitioner and the Department of Homeland Security (DHS). *See* Exhibit 1 at 1-2. The bond hearing continued with the presentation of evidence by DHS counsel to include an evidence packet. *Id.* Petitioner's counsel provided a legal brief. *Id.* After presentation of evidence, the IJ took argument from both sides. DHS began by acknowledging the government's burden to provide evidence that Petitioner is a danger or flight risk and conceded that no evidence was submitted that would show Petitioner is a danger to the community. *Id.* at 4. Regarding whether Petitioner was a flight risk, DHS discussed the adverse credibility determination made during Petitioner's removal proceedings to include finding that Petitioner "fabricated a significant aspect of his asylum claim, and having perpetrated a fraud upon the court, and having applied the maximum false in uno, as false in omnibus." *Id.* at 3; Exhibit 2 Oral Decision

1 of the IJ (filed under seal). DHS argued that given the adverse credibility finding and that
2 the likelihood of Petitioner being given relief given the finding is low, it was DHS's
3 position that Petitioner posed risk of flight. *See* Exhibit 1 at 4.

4 Petitioner's counsel provided that DHS has multiple methods of tracking Petitioner
5 if he were to be given bond, adding that he has two sponsors, both of which are United
6 States citizens, that can watch over him. *Id.* at 5. Petitioner's counsel further argued that
7 although Petitioner was found to not be credible, he has appealed that finding and it will
8 be up to the Ninth Circuit. *Id.*

9 Taking the evidence provided and the arguments by both sides into consideration,
10 the IJ again addressed again that it was the government's burden to provide evidence as to
11 the danger to the community or flight risk by clear and convincing evidence. As the
12 government did not provide evidence regarding danger, the IJ addressed risk of flight first
13 noting the adverse credibility made at Petitioner's merits hearing and in the removal order.
14 The IJ noted it was found that Petitioner "fraudulently made up an entire incident about
15 being beaten by police in 2020" and that Petitioner "submitted fraudulent letters to the
16 court." The IJ continued by discussing the *Guerra* factors, noting that Petitioner entered
17 the United States without inspection in January 2025 and has been in custody ever since
18 and that all forms of relief have been denied. *Id.* at 7. Further the IJ noted Petitioner has no
19 employment history, no family ties, and has no length of residence in the United States. *Id.*
20 The IJ further expressed concerns regarding Petitioner's sponsors; mainly that it was
21 unclear what the relationships were between Petitioner and the sponsors, noting that he had
22 concerns that the sponsors had never met or possibly never spoke to Petitioner. *Id.* In light
23 of the evidence put forth by DHS, and after analyzing the evidence under the *Guerra*
24 factors, the IJ found Petitioner to be a risk of flight and denied bond. *Id.*

25 The Court should dismiss Petitioner's motion because the IJ correctly placed the
26 burden on the government, allowed the Petitioner to present evidence and make argument,
27 and provided adequate reasoning for his decision to deny bond.

1 In Petitioner's Motion to Enforce Judgement, Petitioner, through counsel, alleges
2 several times that the IJ "failed to conduct a meaningful individualized assessment of
3 whether Petitioner posed a danger or flight risk" (*Id.* at 8, 12 and 15); however, counsel
4 fails to point to any portion of the bond hearing that does not comply with this Courts order.
5 Moreover, Petitioner's counsel asserts that the IJ based his opinion on "unsupported
6 assertions." *See* ECF No. 16 at 9. Ignoring the fact that an adverse credibility finding had
7 been made by the IJ in the removal order. *See* Exhibit 2. Most notably, counsel makes no
8 mention of the IJ's consideration of the *Guerra* factors weighing against Petitioner. Instead,
9 Petitioner's counsel makes unsupported and conclusory arguments that are not based on
10 what occurred at the bond hearing and are not supported by the record before this Court.
11 Petitioner's counsel provides that "[d]espite substantial evidence that Petitioner is not a
12 flight risk or danger and has strong community ties, Respondents continue to detain him
13 without meaningful review." *Id.* at 10. However, Petitioner does not point to any portion
14 of the bond hearing showing Petitioner has "strong community ties" and fails to
15 acknowledge that the IJ found that Petitioner does not have any family or community ties,
16 to include a lack of known relationships with his sponsors. *See* Exhibit 1 at 7. Most notably,
17 Petitioner fails to acknowledge that the IJ, in making an individualized determination as to
18 flight and danger, specifically declined to make a finding of dangerousness as to Petitioner.
19 *See id.* at 7.

20 Petitioner through counsel states that the IJ "committed legal and factual error in
21 concluding that Petitioner poses a danger to the community or a flight risk." *See* ECF No.
22 16 at 14. Petitioner, however, fails to acknowledge that the IJ has wide discretion in
23 deciding the factors that may be considered. *Matter of Guerra*, 24 I&N Dec. 37 (BIA
24 2006). An alien's objection to the outcome of a bond hearing (as here) does not establish
25 that the procedures governing the proceeding at which bond was denied violated due
26 process. *Rodriguez Diaz*, 53 F.4th at 1189, 1213 (quoting *Ching v. Mayorkas*, 725 F.3d
27 1149, 1156 (9th Cir. 2013)) ("It is process that the procedural due process right protects,
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1 not the outcome.”). In asking this Court to review the IJ’s bond denial order and grant
2 immediate release, Petitioner “comes close to asking [the Court] to directly review the
3 [immigration judge’s] bond decision, a task Congress has expressly forbidden [federal
4 courts] from undertaking.” *Rodriguez Diaz*, 53 F.4th at 1212–13 (quoting *Borbot v.*
5 *Warden*, 906 F.3d 274, 279 (3rd Cir. 2018)). Congress has determined that an IJ’s
6 “discretionary bond determinations [are] not reviewable in federal court.” *Id.* at 1209; *see*
7 *also* 8 U.S.C. § 1226(e) (“The Attorney General’s discretionary judgment regarding the
8 application of this section shall not be subject to review. No court may set aside any
9 action or decision by the Attorney General under this section regarding the detention of
10 any alien or the revocation or denial of bond or parole.”).

11 Since Petitioner has received an individualized custody determination as ordered
12 by this Court, Petitioner’s motion to enforce judgment should be denied.

13 **B. Administrative Remedies Should Be Exhausted**

14 Even if Petitioner had made specific arguments as to how the IJ failed to comply
15 with the Court’s order, Petitioner has still failed to exhaust administrative remedies.
16 “Exhaustion can be either statutorily or judicially required.” *Acevedo–Carranza v.*
17 *Ashcroft*, 371 F.3d 539, 541 (9th Cir. 2004). “If exhaustion is statutory, it may be a
18 mandatory requirement that is jurisdictional.” *Id.* (citing *El Rescate Legal Servs., Inc. v.*
19 *Exec. Office of Immigration Review*, 959 F.2d 742, 747 (9th Cir. 1991)). “If, however,
20 exhaustion is a prudential requirement, a court has discretion to waive the requirement.”
21 *Id.* (citing *Stratman v. Watt*, 656 F.2d 1321, 1325–26 (9th Cir. 1981)). Here, the proper
22 avenue for Petitioner’s grievance with her bond denial is to utilize the administrative
23 scheme and appeal her bond denial to the Board of Immigration Appeals (BIA).

24 The BIA is an appellate body within the Executive Office for Immigration Review
25 and possesses delegated authority from the Attorney General. 8 C.F.R. §§ 1003.1(a)(1),
26 (d)(1). The BIA is “charged with the review of those administrative adjudications under
27 the [Immigration and Nationality Act (INA)] that the Attorney General may by regulation
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1 assign to it,” including immigration judge custody determinations. 8 C.F.R. §§
2 1003.1(d)(1), 236.1, 1236.1. The BIA not only resolves particular disputes before it, but is
3 also directed to, “through precedent decisions, . . . provide clear and uniform guidance to
4 [the Department of Homeland Security], the immigration judges, and the general public on
5 the proper interpretation and administration of the [INA] and its implementing
6 regulations.” 8 C.F.R. § 1003.1(d)(1). Decisions rendered by the BIA are final, except for
7 those reviewed by the Attorney General. 8 C.F.R. § 1003.1(d)(7).

8 “District Courts are authorized by 28 U.S.C § 2241 to consider petitions for habeas
9 corpus.” *Castro–Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001), *abrogated on other*
10 *grounds by Hernandez–Vargas v. Gonzales*, 548 U.S. 30 (2006). “That section does not
11 specifically require petitioners to exhaust direct appeals before filing petitions for habeas
12 corpus.” *Id.* That said, the Ninth Circuit “require[s], as a prudential matter, that habeas
13 petitioners exhaust available judicial and administrative remedies before seeking relief
14 under § 2241.” *Id.* Specifically, “courts may require prudential exhaustion if (1) agency
15 expertise makes agency consideration necessary to generate a proper record and reach a
16 proper decision; (2) relaxation of the requirement would encourage the deliberate bypass
17 of the administrative scheme; and (3) administrative review is likely to allow the agency to
18 correct its own mistakes and to preclude the need for judicial review.” *Puga v. Chertoff*,
19 488 F.3d 812, 815 (9th Cir. 2007) (cleaned up).

20 “When a petitioner does not exhaust administrative remedies, a district court
21 ordinarily should either dismiss the petition without prejudice or stay the proceedings until
22 the petitioner has exhausted remedies, unless exhaustion is excused.” *Leonardo v.*
23 *Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011) (citations omitted); *see also Alvarado v.*
24 *Holder*, 759 F.3d 1121, 1127 n.5 (9th Cir. 2014), *abrogated on other grounds by Santos–*
25 *Zacaria v. Garland*, 598 U.S. 411 (2023) (“issue exhaustion is a jurisdictional
26 requirement”); *Tijani v. Holder*, 628 F.3d 1071, 1080 (9th Cir. 2010) (court “lacks
27 jurisdiction to review legal claims not presented in an alien’s administrative proceedings
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1 before the BIA”). Moreover, “a petitioner cannot obtain review of procedural errors in the
2 administrative process that were not raised before the agency merely by alleging that every
3 such error violates due process.” *Reid v. Engen*, 765 F.2d 1457, 1461 (9th Cir. 1985); *see*
4 *also Sola v. Holder*, 720 F.3d 1134, 1135–36 (9th Cir. 2013) (declining to address a due
5 process argument that was not raised below because it could have been addressed by the
6 agency).

7 Here, requiring Petitioner to exhaust administrative remedies is warranted because
8 agency expertise is required. “[T]he BIA is the subject-matter expert in immigration bond
9 decisions[.]” *Aden v. Nielsen*, No. C18-1441RSL, 2019 WL 5802013, at *2 (W.D. Wash.
10 Nov. 7, 2019); *see also Delgado v. Sessions*, No. C17-1031-RSL-JPD, 2017 WL 4776340,
11 at *2 (W.D. Wash. Sept. 15, 2017) (noting a denial of bond to an immigration detainee was
12 “a question well suited for agency expertise”).

13 Waiving exhaustion would also encourage other detainees to bypass the BIA and
14 directly appeal from the immigration judge to federal district court. *See Aden*, 2019 WL
15 5802013, at *2 (“[R]elaxation of the exhaustion requirement would likely encourage other
16 detainees to bypass the BIA and directly appeal their no-bond determinations from the
17 [immigration judge] to federal district court.”). Individuals, like Petitioner, would have
18 little incentive to seek relief before the BIA if this Court permits review here. And allowing
19 a skip-the-BIA-and-go-straight-to-federal-court strategy would needlessly increase the
20 burden on district courts. *See Bd. of Tr. of the Constr. Laborers’ Pension Trust for S. Cal.*
21 *v. M.M. Sundt Constr. Co.*, 37 F.3d 1419, 1420 (9th Cir. 1994) (“Judicial economy is an
22 important purpose of exhaustion requirements.”) (citation omitted); *Santos-Zacaria*, 598
23 U.S. at 418 (noting “exhaustion promotes efficiency”). If the IJ erred, this Court should
24 allow the administrative process to correct itself.

25 Moreover, detention alone is not an irreparable injury. Discretion to waive
26 exhaustion “is not unfettered.” *Laing v. Ashcroft*, 370 F.3d 994, 998 (9th Cir. 2004).
27 “[C]ivil detention after the denial of a bond hearing [does not] constitute[] irreparable harm
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1 such that prudential exhaustion should be waived.” *Reyes v. Wolf*, No. C20-0377JLR, 2021
2 WL 662659, at *3 (W.D. Wash. Feb. 19, 2021), *aff’d sub nom. Diaz Reyes v. Mayorkas*,
3 No. 21-35142, 2021 WL 3082403 (9th Cir. July 21, 2021).

4 Finally, Petitioner bears the burden to show that an exception to the exhaustion
5 requirement applies. *Leonardo*, 646 F.3d at 1161; *Aden*, 2019 WL 5802013, at *3. Here,
6 Petitioner has failed to demonstrate that exhaustion should be waived. Other courts in this
7 district agree. *See, e.g., Rana v. LaRose*, No. 26-cv-00285-RSH-DDL, ECF No. 11 (S.D.
8 Cal. Mar. 13, 2026) (denying motion to enforce judgment where petitioner was denied
9 bond on the basis of flight risk because there was no indication that administrative remedies
10 were first exhausted) (citing *Leonardo*, 646 F.3d at 1160); *Baker v. Gordon*, No. 25-cv-
11 03539-CAB-SBC, ECF No. 8 at 2:1–5 (S.D. Cal. Jan. 30, 2026) (“As the Ninth Circuit has
12 explained, ‘[Petitioner] pursued habeas review of the [immigration judge’s] adverse bond
13 determination before appealing to the BIA. This short cut was improper. [Petitioner] should
14 have exhausted administrative remedies by appealing to the BIA before asking the federal
15 district court to review the [immigration judge’s] decision.’”) (quoting *Leonardo*, 646 F.3d
16 at 1160).

17 III. CONCLUSION

18 For the reasons stated herein, Respondent respectfully request that the Court deny
19 Petitioner’s Motion to Enforce Judgment.

20 DATED: July 28, 2026

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