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8
9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 OMID NAZARI,

12
13 Petitioner,

14 v.

15 SIXTO MARRERO, Warden of Imperial
16 Regional Adult Detention Facility, *et al.*,

17 Respondents.
18

Case No.: 26-cv-02466-RSH-AHG

19
20 **RESPONSE IN OPPOSITION TO**
MOTION TO ENFORCE
JUDGEMENT

21 **I. FACTUAL AND PROCEDURAL BACKGROUND**

22 This Court granted the Petitioner's habeas petition on April 27, 2026, and ordered
23 Respondents to provide a bond hearing to Petitioner by within seven days of the Court's
24 order. ECF No. 5. Petitioner received a bond hearing before an immigration judge on
25 May 1, 2026. *See* Exhibit 1 (Order of the Immigration Judge). The immigration judge
26 denied bond, finding that the government "sustained their burden of proof by clear and
27 convincing evidence to show that respondent would be a danger to the community and
28 he would present such a risk of flight that no amount of bond would be sufficient to

1 ensure his presence when requested by immigration officials.” *Id.* Petitioner reserved
2 appeal. *Id.* On May 9, 2026, Petitioner appealed the denial of bond to the Board of
3 Immigration Appeals (BIA). *See* ECF No. 6-3. His appeal is still pending BIA review
4 and decision. Because the immigration judge complied with the Court’s order, this
5 Court lacks jurisdiction to directly review an immigration judge’s bond determination,
6 and Petitioner has not exhausted his administrative remedies, the Court should deny
7 Petitioner’s motion to enforce judgement.

8 II. ARGUMENT

9 Ultimately, Respondents’ position is that Petitioner’s motion should be denied
10 for failure to exhaustion administrative remedies. However, given the multiple
11 inconsistent and incorrect factual allegations, the motion should also be denied for
12 failing to provide sufficient factual and legal support. Petitioner correctly states that he
13 has been detained since he attempted to enter the United States in January 2025 and is
14 challenging his prolonged detention without an adequate bond hearing. ECF No. 6 at
15 ¶¶ 7, 8. However, he later contends that he is “solely challenging his detention and
16 revocation of parole.” *Id.* at ¶ 53; *see, e.g., id.* at ¶ 65 (“ICE has violated Petitioner’s
17 due process rights by revoking Petitioner’s parole”).¹ Petitioner also confusingly
18 contends that he is seeking relief from removal in his immigration proceedings in the
19 form of cancellation of removal and that on April 20, 2026, an immigration judge denied
20 Petitioner’s application for cancellation of removal. *See id.* at ¶¶ 64, 71. However,
21 Petitioner’s individual merits hearing occurred on May 21, 2026, at which time an
22 immigration judge ruled on Petitioner’s applications for asylum, withholding of
23 removal, and relief under the Convention Against Torture. *See* Exhibit 2. The
24 immigration judge made no ruling as to cancellation of removal, as no application for
25 such relief was filed by Petitioner. *See* Exhibit 2 at 4.

26
27
28 ¹ Petitioner has never been paroled into the United States by the government.

1 The Ninth Circuit requires that “habeas petitioners exhaust available judicial and
2 administrative remedies before seeking relief under § 2241.” *Castro–Cortez v. INS*, 239
3 F.3d 1037, 1047 (9th Cir. 2001). “When a petitioner does not exhaust administrative
4 remedies, a district court ordinarily should either dismiss the petition without prejudice
5 or stay the proceedings until the petitioner has exhausted remedies, unless exhaustion
6 is excused.” *Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011); *see also*
7 *Alvarado v. Holder*, 759 F.3d 1121, 1127 n.5 (9th Cir. 2014) (issue exhaustion is a
8 jurisdictional requirement); *Tijani v. Holder*, 628 F.3d 1071, 1080 (9th Cir. 2010) (no
9 jurisdiction to review legal claims not presented in the petitioner’s administrative
10 proceedings before the BIA). Here, Petitioner has appealed the result of his bond
11 hearing held pursuant to 8 U.S.C. § 1226(a) but has not received a ruling on the appeal.
12 Accordingly, the Court should dismiss this motion without prejudice.

13 The BIA is an appellate body within the Executive Office for Immigration
14 Review (EOIR) and possesses delegated authority from the Attorney General. 8 C.F.R.
15 §§ 1003.1(a)(1), (d)(1). The BIA is “charged with the review of those administrative
16 adjudications under the [INA] that the Attorney General may by regulation assign to
17 it,” including IJ custody determinations. 8 C.F.R. §§ 1003.1(d)(1), 236.1, 1236.1. The
18 BIA not only resolves particular disputes before it, but is also directed to, “through
19 precedent decisions, [] provide clear and uniform guidance to DHS, the immigration
20 judges, and the general public on the proper interpretation and administration of the
21 [INA] and its implementing regulations.” *Id.* § 1003.1(d)(1). Decisions rendered by the
22 BIA are final, except for those reviewed by the Attorney General. 8 C.F.R. §
23 1003.1(d)(7).

24 “District Courts are authorized by 28 U.S.C § 2241 to consider petitions for
25 habeas corpus.” *Castro–Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001). “That
26 section does not specifically require petitioners to exhaust direct appeals before filing
27 petitions for habeas corpus.” *Id.* That said, the Ninth Circuit “require[s], as a prudential
28 matter, that habeas petitioners exhaust available judicial and administrative remedies

1 before seeking relief under § 2241.” *Id.* Specifically, “courts may require prudential
2 exhaustion if (1) agency expertise makes agency consideration necessary to generate a
3 proper record and reach a proper decision; (2) relaxation of the requirement would
4 encourage the deliberate bypass of the administrative scheme; and (3) administrative
5 review is likely to allow the agency to correct its own mistakes and to preclude the need
6 for judicial review.” *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007) (internal
7 quotation marks omitted).

8 “When a petitioner does not exhaust administrative remedies, a district court
9 ordinarily should either dismiss the petition without prejudice or stay the proceedings
10 until the petitioner has exhausted remedies, unless exhaustion is excused.” *Leonardo v.*
11 *Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011); *see also Alvarado v. Holder*, 759 F.3d
12 1121, 1127 n.5 (9th Cir. 2014) (issue exhaustion is a jurisdictional requirement); *Tijani*
13 *v. Holder*, 628 F.3d 1071, 1080 (9th Cir. 2010) (no jurisdiction to review legal claims
14 not presented in the petitioner’s administrative proceedings before the BIA). Moreover,
15 a “petitioner cannot obtain review of procedural errors in the administrative process that
16 were not raised before the agency merely by alleging that every such error violates due
17 process.” *Vargas v. INS*, 831 F.3d 906, 908 (9th Cir. 1987); *see also Sola v. Holder*,
18 720 F.3d 1134, 1135-36 (9th Cir. 2013) (declining to address a due process argument
19 that was not raised below because it could have been addressed by the agency).

20 Here, exhaustion is warranted because agency expertise is required. “[T]he BIA
21 is the subject-matter expert in immigration bond decisions.” *Aden v. Nielsen*, No. C18-
22 1441RSL, 2019 WL 5802013, at *2 (W.D. Wash. Nov. 7, 2019); *Delgado v. Sessions*,
23 No. C17-1031-RSL-JPD, 2017 WL 4776340, at *2 (W.D. Wash. Sept. 15, 2017) (noting
24 a denial of bond to an immigration detainee was “a question well suited for agency
25 expertise”).

26 Waiving exhaustion would also encourage other detainees to bypass the BIA and
27 directly appeal from the immigration judge to federal district court. *See Aden*, 2019 WL
28 5802013, at *2. Individuals, like Petitioner, would have little incentive to seek relief

1 before the BIA if this Court permits review here. And allowing a skip-the-BIA-and-go-
2 straight-to-federal-court strategy would needlessly increase the burden on district
3 courts. *See Bd. of Tr. of Constr. Laborers' Pension Trust for S. Calif. v. M.M. Sundt*
4 *Constr. Co.*, 37 F.3d 1419, 1420 (9th Cir. 1994) (“Judicial economy is an important
5 purpose of exhaustion requirements.”); *see also Santos-Zacaria v. Garland*, 598 U.S.
6 411, 418 (2023) (noting “exhaustion promotes efficiency”). If the IJ erred, this Court
7 should allow the administrative process to correct itself. *See id.*

8 Moreover, detention alone is not an irreparable injury. Discretion to waive
9 exhaustion “is not unfettered.” *Laing v. Ashcroft*, 370 F.3d 994, 998 (9th Cir. 2004).
10 Petitioners bear the burden to show that an exception to the exhaustion requirement
11 applies. *Leonardo*, 646 F.3d at 1161; *Aden*, 2019 WL 5802013, at *3. “[C]ivil detention
12 after the denial of a bond hearing [does not] constitute[] irreparable harm such that
13 prudential exhaustion should be waived.” *Reyes v. Wolf*, No. C20-0377JLR, 2021 WL
14 662659, at *3 (W.D. Wash. Feb. 19, 2021), *aff’d sub nom. Diaz Reyes v. Mayorkas*, No.
15 21-35142, 2021 WL 3082403 (9th Cir. July 21, 2021).

16 In addition, the APA does not provide an avenue for relief at this juncture. The
17 APA places limits on when agency action is subject to judicial review. “Agency action
18 made reviewable by statute and final agency action for which there is no other adequate
19 remedy in a court are subject to judicial review.” 5 U.S.C. § 704; *Navajo Nation v. Dep’t*
20 *of the Interior*, 876 F.3d 1144, 1171 (9th Cir. 2017) (“[Section] 704’s requirement that
21 to proceed under the APA, agency action must be final or otherwise reviewable by
22 statute is an independent element without which courts may not determine APA
23 claims.”). Reviewable “agency action” is defined to include “the whole or a part of an
24 agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure
25 to act.” 5 U.S.C. § 551(13). “While this definition is ‘expansive,’ federal courts ‘have
26 long recognized that the term [agency action] is not so all-encompassing as to authorize
27 . . . judicial review over everything done by an administrative agency.’” *Wild Fish*
28 *Conservancy v. Jewell*, 730 F.3d 791, 800–01 (9th Cir. 2013) (quoting *Fund for*

1 *Animals, Inc. v. U.S. Bureau of Land Management*, 460 F.3d 13, 19 (D.C. Cir. 2006)).
2 Here, Petitioner's appeal of the immigration court's decision is still pending with the
3 BIA. As such, there is no agency action for the Court to review.

4 Finally, the District Court's review of the bond proceedings, prior to a BIA
5 appeal, is limited to whether the requirements of its order were followed. *See Martinez*
6 *v. Clark*, 124 F.4th 775, 785 (9th Cir. 2024). Here, the immigration judge held the bond
7 hearing in a timely fashion, applied the burden of proof required by this Court's order,
8 and considered Petitioner's service in the Islamic Revolutionary Guard Corps
9 ("IRGC"), a designated foreign terrorist organization. Simply put, the immigration
10 judge complied with the Court's order. There is no evidence provided by the Petitioner
11 that the hearing was conducted in such an egregious manner so as to give rise to a
12 substantive due process violation. Moreover, Petitioner's dissatisfaction with the
13 immigration judge's ruling does give rise to a claim for relief. Petitioner has alleged
14 nothing more.

15 As with other similarly brought motions, the Court should deny this motion. *See*,
16 *e.g.*, *L.B. v. LaRose*, No. 26-cv-182-RSH-BJW, ECF No. 14 (S.D. Cal. Mar. 27, 2026);
17 *Singh v. Noem*, No. 26-cv-1225-RSH-JLB, ECF No. 8 (S.D. Cal. Mar. 24, 2026); *Rana*
18 *v. LaRose*, No. 26-cv-00285-RSH-DDL, ECF No. 11 (S.D. Cal. Mar. 13, 2026)
19 (denying motion to enforce judgment where petitioner was denied bond on the basis of
20 flight risk because there was no indication that administrative remedies were first
21 exhausted) (citing *Leonardo*, 646 F.3d at 1160); *Baker v. Gordon*, No. 25-cv-03539-
22 CAB-SBC, ECF No. 8 at 2:1–5 (S.D. Cal. Jan. 30, 2026) ("As the Ninth Circuit has
23 explained, '[Petitioner] pursued habeas review of the [immigration judge's] adverse
24 bond determination before appealing to the BIA. This short cut was improper.
25 [Petitioner] should have exhausted administrative remedies by appealing to the BIA
26 before asking the federal district court to review the [immigration judge's] decision.'")
27 (quoting *Leonardo*, 646 F.3d at 1160).

28 ///

III. CONCLUSION

Because this Court lacks jurisdiction to review the immigration judge's findings, Respondents have complied with this Court's previous order to provide Respondent with a constitutionally adequate bond hearing, and Petitioner has not exhausted his administrative remedies, this motion should be dismissed. For the reasons stated herein, Respondents respectfully request that the Court deny Petitioner's motion.

Dated: May 26, 2026

Respectfully submitted,

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