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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11 LUIS ANTONIO MENDOZA-
12 GONZAGA,

13 Petitioner,

14 v.
15

16 CHRISTOPHER LAROSE, *et al.*,

17 Respondents.
18

Case No.: 26-cv-2941-RFL-BJW

**RESPONSE IN OPPOSITION TO
MOTION TO ENFORCE HABEAS
ORDER**

19
20 **I. FACTUAL AND PROCEDURAL BACKGROUND**

21 This Court granted the Petitioner's prior petition on May 21, 2026, and ordered
22 Respondents to provide a bond hearing to Petitioner by June 4, 2026. ECF No. 5.
23 Petitioner received a bond hearing before an immigration judge on June 2, 2026. The
24 immigration judge denied bond, finding that "the government met their burden by clear
25 and convincing evidence that the respondent is both a danger to the community and a
26 flight risk given his criminal history as articulated on the record." Ex. 1 (IJ Order). The
27 Petitioner reserved appeal but failed to file an appeal to the Board of Immigration
28 Appeals by the deadline of July 2, 2026. *Id.* Respondents provided a status report on

1 June 10, 2026, detailing the result of the bond hearing. ECF No. 6. Because the
2 immigration judge complied with the Court's order, this Court lacks jurisdiction to
3 directly review an immigration judge's bond determination, and Petitioner has not
4 exhausted his administrative remedies nor has he argued why the Court should waive
5 exhaustion, the Court should dismiss this petition.

6 II. ARGUMENT

7 A. This Court does not have jurisdiction to review the immigration judge's 8 ruling.

9 This Court does not have jurisdiction to directly review an immigration judge's
10 discretionary factual findings and analysis nor the ultimate ruling. Petitioner cites to
11 *Martinez v. Clark*, 124 F.4th 775 (9th Cir. 2024), as holding that the District Court has
12 jurisdiction to review an immigration judge's denial of bond for an abuse of discretion.
13 The Ninth Circuit at no point in its opinion addresses District Court jurisdiction to hear
14 an appeal which proceeded through the proper administrative scheme, an appeal to the
15 BIA which was then appealed to the District Court. *See, generally, id.* The Court found
16 they had jurisdiction to consider a challenge to the danger finding of the BIA not that
17 the District Court may intervene in the appropriate administrative remedy. *See id.* at
18 784 ("Because *we* have jurisdiction here, ...(emphasis added)). The District Court may
19 review the BIA's ruling to determine whether the BIA applied the correct legal standard
20 but may not reweigh the evidence under an abuse of discretion standard. *Id.* at 785. The
21 District Court's review of the bond proceedings, prior to a BIA appeal is limited to
22 whether the requirements of its order were followed.

23 Petitioner emphasizes that the immigration judge's ruling consists of a checked
24 box, was cursory, or ignored or did not specifically mention all the evidence before him.
25 ECF No. 9 at pages 6, 11. Petitioner makes conclusory statements but cannot show that
26 the immigration judge did not consider the evidence presented to him. One of the
27 reasons, Petitioner cannot demonstrate a failure on the part of the immigration judge is
28 that immigration judges are not required to issue written bond rulings until there is an

1 appeal to the BIA. *See* EOIR Policy Manual, Part III – Board Practice Manual,
2 3.2(a)(1)(stating “The decision of an Immigration Judge may be rendered either orally
3 or in writing) and Part II-OCIJ Immigration Court Practice Manual, 8.3 Bond
4 Proceedings, para. (e)(7) (stating “Usually, the Immigration Judge’s [bond] decision is
5 rendered orally. If either party appeals, the Immigration Judge prepares a written
6 decision based on notes from the hearing...” The language of the instant IJ bond order
7 only serves to demonstrate the importance of requiring the exhaustion of administrative
8 remedies in order to provide a full record for a competent review of the complete basis
9 for the ruling, which is not present here, to include exhibits admitted at the hearing and
10 any part of the IJ’s decision contained in their notes. In addition, while Petitioner
11 recognizes that the Court may not reweigh the evidence under an abuse of discretion
12 standard, he proceeds to ask this Court to do just that. *See, generally*, ECF No. 9. at
13 pages 8-12. Among the facts Petitioner wishes this Court to reweigh are the *Guerra*
14 factors which Petitioner represents as required elements of a bond hearing. *Id.*; *Matter*
15 *of Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006). As the Ninth Circuit pointed out, the
16 *Guerra* factors are not required by rather a list of “nine factors an IJ “may” consider
17 [which] “include any or all of the following...” *Martinez*, 124 F.4th at 783 (quoting
18 *Guerra*, 24 I. & N. Dec. at 40). The immigration judge is not required to specifically
19 address each *Guerra* factor but may have documented the evidence before the
20 immigration court and their ruling more fully had, as described above, Petitioner
21 appealed to the BIA. Finally, Petitioner makes much of the immigration judge’s flight
22 risk determination. ECF No. 9 at pages 11-16. Even if this Court accepts Petitioner’s
23 arguments as true and accurate, which Respondents do not concede, it is irrelevant to
24 the denial of bond as once an immigration judge rules that a Petitioner is a danger to the
25 community, it is dispositive of Petitioner’s eligibility for release and the immigration
26 judge need not make a determination on the flight risk posed by the Petitioner. *Matter*
27 *of Urena*, 25 I&N Dec. 140, 141 (BIA 2009).

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1 Here, the immigration judge held the bond hearing in a timely fashion and applied
2 the burden of proof required by this Court's order. Simply put, the immigration judge
3 complied with the Court's order. There is no evidence provided by the Petitioner, or by
4 the transcript, that the hearing was conducted in such an egregious manner so as to give
5 rise to a substantive due process violation. Dissatisfaction with the ruling does give rise
6 to a claim for relief. Petitioner has alleged nothing more. Therefore, the Court should
7 ensure Petitioner properly exhausts his administrative remedies.

8 **B. Petitioner must exhaust his administrative remedies.**

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

21 The BIA is an appellate body within the Executive Office for Immigration
22 Review (EOIR) and possesses delegated authority from the Attorney General. 8 C.F.R.
23 §§ 1003.1(a)(1), (d)(1). The BIA is "charged with the review of those administrative
24 adjudications under the [INA] that the Attorney General may by regulation assign to
25 it," including IJ custody determinations. 8 C.F.R. §§ 1003.1(d)(1), 236.1, 1236.1. The
26 BIA not only resolves particular disputes before it, but is also directed to, "through
27 precedent decisions, [] provide clear and uniform guidance to DHS, the immigration
28 judges, and the general public on the proper interpretation and administration of the

1 [INA] and its implementing regulations.” *Id.* § 1003.1(d)(1). Decisions rendered by the
2 BIA are final, except for those reviewed by the Attorney General. 8 C.F.R. §
3 1003.1(d)(7).

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

16 “When a petitioner does not exhaust administrative remedies, a district court
17 ordinarily should either dismiss the petition without prejudice or stay the proceedings
18 until the petitioner has exhausted remedies, unless exhaustion is excused.” *Leonardo v.*
19 *Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011); *see also Alvarado v. Holder*, 759 F.3d
20 1121, 1127 n.5 (9th Cir. 2014) (issue exhaustion is a jurisdictional requirement); *Tijani*
21 *v. Holder*, 628 F.3d 1071, 1080 (9th Cir. 2010) (no jurisdiction to review legal claims
22 not presented in the petitioner’s administrative proceedings before the BIA). Moreover,
23 a “petitioner cannot obtain review of procedural errors in the administrative process that
24 were not raised before the agency merely by alleging that every such error violates due
25 process.” *Vargas v. INS*, 831 F.3d 906, 908 (9th Cir. 1987); *see also Sola v. Holder*,
26 720 F.3d 1134, 1135-36 (9th Cir. 2013) (declining to address a due process argument
27 that was not raised below because it could have been addressed by the agency).

1 Here, exhaustion is warranted because agency expertise is required. “[T]he BIA
2 is the subject-matter expert in immigration bond decisions.” *Aden v. Nielsen*, No. C18-
3 1441RSL, 2019 WL 5802013, at *2 (W.D. Wash. Nov. 7, 2019); *Delgado v. Sessions*,
4 No. C17-1031-RSL-JPD, 2017 WL 4776340, at *2 (W.D. Wash. Sept. 15, 2017) (noting
5 a denial of bond to an immigration detainee was “a question well suited for agency
6 expertise”).

7 Waiving exhaustion would also encourage other detainees to bypass the BIA and
8 directly appeal from the IJ to federal district court. *See Aden*, 2019 WL 5802013, at *2.
9 Individuals, like Petitioner, would have little incentive to seek relief before the BIA if
10 this Court permits review here. And allowing a skip-the-BIA-and-go-straight-to-
11 federal-court strategy would needlessly increase the burden on district courts. *See Bd.*
12 *of Tr. of Constr. Laborers’ Pension Trust for S. Calif. v. M.M. Sundt Constr. Co.*, 37
13 F.3d 1419, 1420 (9th Cir. 1994) (“Judicial economy is an important purpose of
14 exhaustion requirements.”); *see also Santos-Zacaria v. Garland*, 598 U.S. 411, 418
15 (2023) (noting “exhaustion promotes efficiency”). If the IJ erred, this Court should
16 allow the administrative process to correct itself. *See id.*

17 Moreover, detention alone is not an irreparable injury. Discretion to waive
18 exhaustion “is not unfettered.” *Laing v. Ashcroft*, 370 F.3d 994, 998 (9th Cir. 2004).
19 Petitioners bear the burden to show that an exception to the exhaustion requirement
20 applies. *Leonardo*, 646 F.3d at 1161; *Aden*, 2019 WL 5802013, at *3. “[C]ivil detention
21 after the denial of a bond hearing [does not] constitute[] irreparable harm such that
22 prudential exhaustion should be waived.” *Reyes v. Wolf*, No. C20-0377JLR, 2021 WL
23 662659, at *3 (W.D. Wash. Feb. 19, 2021), *aff’d sub nom. Diaz Reyes v. Mayorkas*, No.
24 21-35142, 2021 WL 3082403 (9th Cir. July 21, 2021). Here, Petitioner provides the
25 Court with no argument related to the waiver of administrative exhaustion.

26 Because this Court lacks jurisdiction to review the IJ’s findings, Respondents
27 have complied with this Court’s previous order to provide Respondent with a bond
28

1 hearing and Petitioner has not exhausted his administrative remedies or even provided
2 this Court with a basis to waive exhaustion, this matter should be dismissed.

3 **III. CONCLUSION**

4 For the reasons stated herein, Respondents respectfully request that the Court
5 dismiss the petition.

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7 Dated: July 8, 2026

Respectfully submitted,

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