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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

NIMA RAFIEI,

Petitioner,

v.

CHRISTOPHER LAROSE, *et al.*,

Respondents.

Case No.: 26-cv-2333-JO-DDL

**RESPONSE IN OPPOSITION TO
AMENDED PETITION FOR WRIT
OF HABEAS CORPUS**

I. FACTUAL AND PROCEDURAL BACKGROUND

This Court granted the Petitioner's prior petition on February 20, 2026, and ordered Respondents to provide a bond hearing to Petitioner by February 25, 2026. *Rafiei v. LaRose*, 26-cv-0668-JO-BJW (S.D. Cal. February 20, 2026) at ECF No. 11. Petitioner received a bond hearing before an immigration judge on February 24, 2026. Respondents provided a status report to the Court as to the date and result of the bond hearing on February 24, 2026. *Id.* at ECF No. 13. The immigration judge denied bond, finding that "the government met it's burden by clear and convincing evidence of demonstrating that the respondent is a flight risk under the Matter of Guerra factors and

1 no amount of bond or alternatives to detention would mitigate that risk.” Ex. 1 (IJ
2 Order). The Petitioner reserved appeal but failed to file an appeal to the Board of
3 Immigration Appeals. *Id.* Because the immigration judge complied with the Court’s
4 order, this Court lacks jurisdiction to directly review an immigration judge’s bond
5 determination, and Petitioner has not exhausted his administrative remedies, the Court
6 should dismiss this petition.

7 II. ARGUMENT

8 A. This Court does not have jurisdiction to review the immigration judge’s 9 ruling.

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

24 Here, the immigration judge held the bond hearing in a timely fashion, applied
25 the burden of proof required by this Court’s order, inquired about Petitioner’s financial
26 circumstances, and considered whether alternatives to detention would mitigate the risk
27 of flight. Simply put, the immigration judge complied with the Court’s order. There is
28 no evidence provided by the Petitioner, or by the transcript, that the hearing was

1 conducted in such an egregious manner so as to give rise to a substantive due process
2 violation.

3 In his original Petition, Petitioner only claimed that “Although the Writ of Habeas
4 Corpus ordered that Respondents hold a true and meaningful bond hearing for me, my
5 bond request was denied. In fact, this denial was in contrast to the spirit of the Writ of
6 Habeas Corpus” provides no basis for relief. ECF No. 1 at p. 7. In fact, Petitioner only
7 alleges it was not fair because “my bond request was denied...” *Id.* While not raised by
8 the Petitioner in the original Petition, Petitioner now claims that the judge not calling
9 his alleged sponsor during the bond hearing amounts to a due process violation. ECF
10 No, 10 at p. 5. A call, or lack thereof, does not amount to a due process violation. The
11 purported sponsor was not, as the judge noted, a close family tie or other closely
12 connected or verified individual but rather Petitioner’s “father’s friend’s son” of whom
13 Petitioner did not “know where [his] father found this person” or how old the person
14 was. Transcript at pp. 5-6. Dissatisfaction with the ruling does give rise to a claim for
15 relief. Petitioner has alleged nothing more. Therefore, the Court should ensure
16 Petitioner properly exhausts his administrative remedies.

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

18 The Ninth Circuit requires that “habeas petitioners exhaust available judicial and
19 administrative remedies before seeking relief under § 2241.” *Castro-Cortez v. INS*, 239
20 F.3d 1037, 1047 (9th Cir. 2001). “When a petitioner does not exhaust administrative
21 remedies, a district court ordinarily should either dismiss the petition without prejudice
22 or stay the proceedings until the petitioner has exhausted remedies, unless exhaustion
23 is excused.” *Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011); *see also*
24 *Alvarado v. Holder*, 759 F.3d 1121, 1127 n.5 (9th Cir. 2014) (issue exhaustion is a
25 jurisdictional requirement); *Tijani v. Holder*, 628 F.3d 1071, 1080 (9th Cir. 2010) (no
26 jurisdiction to review legal claims not presented in the petitioner’s administrative
27 proceedings before the BIA). Here, Petitioner has appealed the result of his bond
28

1 hearing held pursuant to 8 U.S.C. § 1226(a) but has not received a ruling on the appeal.
2 Accordingly, the Court should dismiss this motion without prejudice.

3 The BIA is an appellate body within the Executive Office for Immigration
4 Review (EOIR) and possesses delegated authority from the Attorney General. 8 C.F.R.
5 §§ 1003.1(a)(1), (d)(1). The BIA is “charged with the review of those administrative
6 adjudications under the [INA] that the Attorney General may by regulation assign to
7 it,” including IJ custody determinations. 8 C.F.R. §§ 1003.1(d)(1), 236.1, 1236.1. The
8 BIA not only resolves particular disputes before it, but is also directed to, “through
9 precedent decisions, [] provide clear and uniform guidance to DHS, the immigration
10 judges, and the general public on the proper interpretation and administration of the
11 [INA] and its implementing regulations.” *Id.* § 1003.1(d)(1). Decisions rendered by the
12 BIA are final, except for those reviewed by the Attorney General. 8 C.F.R. §
13 1003.1(d)(7).

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

26 “When a petitioner does not exhaust administrative remedies, a district court
27 ordinarily should either dismiss the petition without prejudice or stay the proceedings
28 until the petitioner has exhausted remedies, unless exhaustion is excused.” *Leonardo v.*

1 *Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011); *see also Alvarado v. Holder*, 759 F.3d
2 1121, 1127 n.5 (9th Cir. 2014) (issue exhaustion is a jurisdictional requirement); *Tijani*
3 *v. Holder*, 628 F.3d 1071, 1080 (9th Cir. 2010) (no jurisdiction to review legal claims
4 not presented in the petitioner’s administrative proceedings before the BIA). Moreover,
5 a “petitioner cannot obtain review of procedural errors in the administrative process that
6 were not raised before the agency merely by alleging that every such error violates due
7 process.” *Vargas v. INS*, 831 F.3d 906, 908 (9th Cir. 1987); *see also Sola v. Holder*,
8 720 F.3d 1134, 1135-36 (9th Cir. 2013) (declining to address a due process argument
9 that was not raised below because it could have been addressed by the agency).

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

16 Waiving exhaustion would also encourage other detainees to bypass the BIA and
17 directly appeal from the IJ to federal district court. *See Aden*, 2019 WL 5802013, at *2.
18 Individuals, like Petitioner, would have little incentive to seek relief before the BIA if
19 this Court permits review here. And allowing a skip-the-BIA-and-go-straight-to-
20 federal-court strategy would needlessly increase the burden on district courts. *See Bd.*
21 *of Tr. of Constr. Laborers’ Pension Trust for S. Calif. v. M.M. Sundt Constr. Co.*, 37
22 F.3d 1419, 1420 (9th Cir. 1994) (“Judicial economy is an important purpose of
23 exhaustion requirements.”); *see also Santos-Zacaria v. Garland*, 598 U.S. 411, 418
24 (2023) (noting “exhaustion promotes efficiency”). If the IJ erred, this Court should
25 allow the administrative process to correct itself. *See id.*

26 Moreover, detention alone is not an irreparable injury. Discretion to waive
27 exhaustion “is not unfettered.” *Laing v. Ashcroft*, 370 F.3d 994, 998 (9th Cir. 2004).
28 Petitioners bear the burden to show that an exception to the exhaustion requirement

1 applies. *Leonardo*, 646 F.3d at 1161; *Aden*, 2019 WL 5802013, at *3. “[C]ivil detention
2 after the denial of a bond hearing [does not] constitute[] irreparable harm such that
3 prudential exhaustion should be waived.” *Reyes v. Wolf*, No. C20-0377JLR, 2021 WL
4 662659, at *3 (W.D. Wash. Feb. 19, 2021), *aff’d sub nom. Diaz Reyes v. Mayorkas*, No.
5 21-35142, 2021 WL 3082403 (9th Cir. July 21, 2021).

6 Because this Court lacks jurisdiction to review the IJ’s findings, Respondents
7 have complied with this Court’s previous order to provide Respondent with a bond
8 hearing and Petitioner has not exhausted his administrative remedies, this matter should
9 be dismissed.

10 III. CONCLUSION

11 For the reasons stated herein, Respondents respectfully request that the Court
12 dismiss the petition.

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14 Dated: May 22, 2026

Respectfully submitted,

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19 Assistant United States Attorney
20 Attorneys for Respondents
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