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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

JIMMY GUERRERO-CORTEZ,

Petitioner,

v.

PATRICK DIVVER, *et al.*,

Respondents.

Case No.: 26-cv-3047-BJC-MSB

RESPONSE IN OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS

I. FACTUAL AND PROCEDURAL BACKGROUND

This Court granted the Petitioner's prior petition on February 26, 2026, and ordered Respondents to provide a bond hearing to Petitioner by March 12, 2026. *Guerrero-Cortez v. Divver,* 26-cv-0787-BJC-MMP (S.D. Cal. February 26, 2026) at ECF No. 5. Petitioner received a bond hearing before an immigration judge on March 4, 2026. Ex. 1 (IJ Bond Order). The immigration judge denied bond, finding that Petitioner "posed too great a flight risk." *Id.* at p. 1. On February 19, 2026, an immigration judge granted the Department of Homeland Security's Motion to Pretermit the Petitioner's asylum application. Ex. 2 (IJ Pretermit Order). The Petitioner filed

notices to appeal the denial of bond and the order granting DHS' motion to pretermit on March 9, 2026, which are still pending before the Board of Immigration Appeals. Ex. 1. The BIA has not dismissed Petitioner's appeals as indicated in Petitioner's petition. ECF No. 1. Because the immigration judge complied with the Court's order, this Court lacks jurisdiction to directly review an immigration judge's bond determination, and Petitioner has not exhausted his administrative remedies, the Court should dismiss this petition.

II. ARGUMENT

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

Absent a ruling by the BIA, this Court does not have jurisdiction to review an immigration judge's discretionary factual findings and analysis nor the ultimate ruling. *Martinez v. Clark,* 124 F.4th 775 (9th Cir. 2024), does not hold that the District Court has jurisdiction to review an immigration judge's denial of bond for an abuse of discretion. The Ninth Circuit at no point in its opinion addresses District Court jurisdiction to hear appeals of an IJ's decisions but rather rules on the matter before it. In *Martinez,* the Petitioner had exhausted his administrative remedies through the BIA prior to filing a habeas petition with the District Court challenging the bond hearing. *See, generally, Martinez,* 124 F.4th 775. Here, Petitioner has appealed the bond denial ruling and now attempts an end run around the BIA directly to the District Court. The Ninth Circuit found they had jurisdiction to consider a challenge to the danger finding of the BIA not that the District Court may intervene in the appropriate administrative appeal process to the BIA. See i*d.* at 784 ("Because *we* have jurisdiction here, … (emphasis added)). As to District Court jurisdiction, the Ninth Circuit, citing to *Wilkinson v. Garland,* 601 U.S. 209 (2024), specifically stated that "the District Court's review of the **BIA's** "dangerousness" determination is for abuse of discretion…" *Martinez,* 124 F.4th at 779-780 (emphasis added). The District Court's jurisdiction to review a bond hearing, prior to a BIA appeal, is limited to whether the requirements of

its order were followed. Here, Petitioner has appealed and the administrative appeal scheme should be permitted to reach its conclusion.

Here, the immigration judge held the bond hearing in a timely fashion, considered the evidence presented, and applied the appropriate burden of proof. The immigration judge complied with the Court's order. There is no evidence provided by the Petitioner that the hearing was conducted in such an egregious manner so as to give rise to a substantive or procedural due process violation. Dissatisfaction with the ruling does give rise to a claim for relief. Petitioner has alleged nothing more. Therefore, the Court should ensure Petitioner properly exhausts his administrative remedies before seeking relief from this Court.

B. Petitioner must exhaust his administrative remedies.

The Ninth Circuit requires that "habeas petitioners exhaust available judicial and administrative remedies before seeking relief under § 2241." *Castro–Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001). "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); *see also Alvarado v. Holder*, 759 F.3d 1121, 1127 n.5 (9th Cir. 2014) (issue exhaustion is a jurisdictional requirement); *Tijani v. Holder*, 628 F.3d 1071, 1080 (9th Cir. 2010) (no jurisdiction to review legal claims not presented in the petitioner's administrative proceedings before the BIA). Here, Petitioner has appealed the result of his bond hearing held pursuant to 8 U.S.C. § 1226(a) but has not received a ruling on the appeal. Accordingly, the Court should dismiss this motion without prejudice.

The BIA is an appellate body within the Executive Office for Immigration Review (EOIR) 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 [INA] that the Attorney General may by regulation assign to it," including IJ 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 DHS, the immigration judges, and the general public on the proper interpretation and administration of the [INA] and its implementing regulations." *Id.* § 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). "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) (internal quotation marks omitted).

"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); *see also Alvarado v. Holder*, 759 F.3d 1121, 1127 n.5 (9th Cir. 2014) (issue exhaustion is a jurisdictional requirement); *Tijani v. Holder*, 628 F.3d 1071, 1080 (9th Cir. 2010) (no jurisdiction to review legal claims not presented in the petitioner'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." *Vargas v. INS*, 831 F.3d 906, 908 (9th Cir. 1987); *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, exhaustion 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); *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 IJ to federal district court. *See Aden*, 2019 WL 5802013, at *2. 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 Constr. Laborers' Pension Trust for S. Calif. v. M.M. Sundt Constr. Co.*, 37 F.3d 1419, 1420 (9th Cir. 1994) ("Judicial economy is an important purpose of exhaustion requirements."); *see also Santos-Zacaria v. Garland*, 598 U.S. 411, 418 (2023) (noting "exhaustion promotes efficiency"). If the IJ erred, this Court should allow the administrative process to correct itself. *See id.*

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). 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. "[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).

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

hearing and Petitioner has not exhausted his administrative remedies, this matter should be dismissed.

III. CONCLUSION

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

Dated: June 5, 2026

Respectfully submitted,

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