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28UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MARIO LANDEROS JIMENEZ,

Petitioner,

v.

CHAD WOLF, et al.,

Respondents.

Case No. 19-cv-07996-NC

**ORDER GRANTING  
PETITIONER'S MOTION FOR  
TEMPORARY RESTRAINING  
ORDER**

Re: Dkt. No. 18

Before the Court is plaintiff Mario Landeros Jimenez's motion for a temporary restraining order. See Dkt. No. 18. Landeros Jimenez argues that respondent federal officers failed to provide him with a constitutionally compliant bond hearing and should be temporarily restrained from continuing his detention. Because Respondents failed to prove dangerousness or likelihood of flight by clear and convincing evidence, the Court GRANTS Landeros Jimenez's motion for a temporary restraining order.

**I. Background**

Landeros Jimenez is a Mexican citizen. See Dkt. No. 1, Ex. BB at 3. In January 2018, Landeros Jimenez and his brother were arrested in Sacramento, California for possession of 47 pounds of methamphetamine for sale. *Id.*, Ex. I at 4. A year later, on January 16, 2019, Landeros Jimenez pled no contest to acting as an Accessory After the Fact, Cal. Pen. Code § 32, and was sentenced to three years in custody. *Id.*, Ex. J.

1 Landeros Jimenez was released from Sacramento County Jail the next day for time served.  
2 See *id.* at 14. Upon release, Landeros Jimenez was apprehended by United States  
3 Immigration and Customs Enforcement (“ICE”). See *id.*, Ex. A. ICE placed Landeros  
4 Jimenez in removal proceedings and detained him at the Mesa Verde Detention Center. *Id.*

5 On October 1, 2019, the Immigration Judge (“IJ”) denied Landeros Jimenez’s  
6 asylum application and ordered his removal. See *id.*, Ex. BB. Landeros Jimenez’s appeal  
7 of that order is still pending. See *id.*, Ex. CC.

8 Landeros Jimenez petitioned this Court for habeas relief on December 5, 2019,  
9 arguing that his continued detention without a bond hearing violated his constitutional and  
10 statutory rights under the Fifth Amendment, Eighth Amendment, and Section 504 of the  
11 Rehabilitation Act. See Dkt. No. 1. The Court granted Landeros Jimenez’s petition on  
12 January 30, 2020, and ordered Respondents to provide him with a bond or custody  
13 redetermination hearing. See Dkt. No. 16. The Court also required Respondents to justify  
14 Landeros Jimenez’s continued detention by clear and convincing evidence. See *id.* at 6–7  
15 (citing *Singh v. Holder*, 638 F.3d 1196, 1203–04 (9th Cir. 2011)).

16 On February 26, 2020, the Immigration Court held a custody redetermination  
17 hearing for Landeros Jimenez. See, Dkt. No. 18, Ex. GG. The IJ ordered Landeros  
18 Jimenez’s continued detention without bond, finding that Respondents “met their burden to  
19 establish [that Landeros Jimenez] is both a danger and flight risk.” *Id.* The IJ did not issue  
20 a written memorandum decision but noted that he would do so if Landeros Jimenez filed  
21 an appeal. See Dkt. No. 18, Ex. FF at 12.

22 Landeros Jimenez now moves for a temporary restraining order, arguing that  
23 Respondents failed to justify his continued detention without bond. See Dkt. No. 18. The  
24 Court conducted a hearing on March 4, 2020. See Dkt. Nos. 20, 22. All parties have  
25 consented to the jurisdiction of a magistrate judge. See Dkt. Nos. 5, 10.

26 **II. Discussion**

27 Before the Court reaches the merits of Landeros Jimenez’s motion, it will first  
28 address two threshold issues raised by Respondents: (1) whether the Court has jurisdiction

1 and (2) whether the Court should wait for the IJ to issue a written decision or for the Board  
2 of Immigration Appeals (“BIA”) to decide Landeros Jimenez’s appeal.

3 **A. Whether the Court Has Jurisdiction**

4 Respondents argue that the Court lacks jurisdiction under 8 U.S.C. § 1226(e)  
5 because the IJ’s decision denying Landeros Jimenez bond is a discretionary one not subject  
6 to judicial review. See Dkt. No. 21 at 16.

7 The Court disagrees. Although § 1226(e) restricts federal court jurisdiction, “it  
8 does not limit habeas jurisdiction over constitutional claims or questions of law.” Singh,  
9 638 F.3d at 1202; cf. Rodriguez v. Marin, 909 F.3d 252, 256 (9th Cir. 2018) (finding  
10 jurisdiction to consider the “minimum requirements of due process”). Likewise, “habeas  
11 courts are empowered to make an assessment concerning compliance with their mandates.”  
12 Judulang v. Chertoff, 562 F. Supp. 2d 1119, 1126 (citing Harvest v. Castro, 520 F.3d  
13 1055, 1064 (9th Cir. 2008)). Here, Landeros Jimenez challenges the IJ and Respondent’s  
14 failure to satisfy the minimum requirements of due process. In particular, he argues that  
15 Respondents failed to prove by clear and convincing evidence that he is dangerous or a  
16 flight risk. This alleged error violates his constitutional right to due process (see generally  
17 Dkt. No. 16) and the Court has jurisdiction to review that error.

18 **B. Whether Landeros Jimenez’s Motion is Premature**

19 Next, Respondents argue that the Court should stay ruling on Landeros Jimenez’s  
20 motion because it is premature. See Dkt. No. 21 at 12–16. Respondents contend that the  
21 Court should wait for Landeros Jimenez to exhaust his direct appeal to the BIA or,  
22 alternatively, wait for the IJ to issue his written decision.

23 Administrative exhaustion is sometimes required before a district court can review  
24 an IJ’s bond determination. See Leonardo v. Crawford, 646 F.3d 1157, 1160 (9th Cir.  
25 2011). For habeas claims, administrative exhaustion is prudential, not jurisdictional. See  
26 Hernandez v. Sessions, 872 F.3d 976, 988 (9th Cir. 2017). Prudential exhaustion may be  
27 required when:

28 (1) agency expertise makes agency consideration necessary to generate a

- 1 proper record and reach a proper decision;
- 2 (2) relaxation of the requirement would encourage the deliberate bypass of
- 3 the administrative scheme; and
- 4 (3) administrative review is likely to allow the agency to correct its own
- 5 mistakes and to preclude the need for judicial review.

6 *Id.* (quoting *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007)). Thus, a court may  
7 waive the prudential exhaustion requirement if “administrative remedies are inadequate or  
8 not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable  
9 injury will result, or the administrative proceedings would be void.” *Laing v. Ashcroft*,  
10 370 F.3d 994, 1000 (9th Cir. 2004).

11 Here, administrative exhaustion would be futile and cause irreparable harm. First,  
12 the parties provided the documents and evidence considered by the IJ in the custody  
13 redetermination hearing. See Dkt. No. 18, Exs. DD, EE. No further fact-finding is  
14 necessary. All that remains is the legal question of whether the IJ and Respondents applied  
15 the proper burden of proof at the custody redetermination hearing. See *Hernandez*, 872  
16 F.3d at 989 (“[A]n administrative appellate record is not necessary to resolve the purely  
17 legal questions presented by Plaintiffs’ challenge to the government’s policy of refusing to  
18 require ICE and IJs to consider financial circumstances and alternative conditions of  
19 release in bond determinations.”).

20 Second, Landeros Jimenez has been detained for almost one and a half years,  
21 exceeding the length of the time served for his underlying conviction. He continues to  
22 suffer harm from his continued detention that cannot be repaired. See *Villalta v. Sessions*,  
23 No 17-cv-05390-LHK, 2017 WL 4355182, at \*3 (N.D. Cal. Oct. 2, 2017). And, at the  
24 hearing, Respondents were unable to provide an estimate for when the BIA would resolve  
25 Landeros Jimenez’s appeal or when the IJ would provide a written decision. Such  
26 uncertainty is unacceptable after a year of continued detention without constitutionally  
27 required process. Accordingly, the Court finds that waiver of the prudential exhaustion  
28 requirement is appropriate in this case.

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**C. Whether the Court should Issue a Temporary Restraining Order**

The legal standard for a temporary restraining order mirrors that of a preliminary injunction. See *Stuhlbarg Int'l Sales Co., Inc. v. John D. Brush & Co., Inc.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). A plaintiff must demonstrate that “he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter v. Nat'l Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). When a plaintiff seeks a mandatory injunction, however, he “must establish that the law and facts clearly favor [his] position, not simply that [he] is likely to succeed.” *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (emphasis in original).

**1. Likelihood of Success on the Merits**

In the Court’s January 30, 2020, order granting Landeros Jimenez’s habeas petition, the Court ordered Respondents to prove Landeros Jimenez was dangerous or a flight risk by clear and convincing evidence or to release him. See Dkt. No. 16. Landeros Jimenez contends that he is clearly favored to succeed on the merits because Respondents failed to meet that burden.

“‘[C]lear and convincing evidence’ is a high burden and must be demonstrated in fact, not ‘in theory.’” *Obregon v. Sessions*, No. 17-cv-01463-WHO, 2017 WL 1407889, at \*7 (N.D. Cal. Apr. 20, 2017) (citing *United States v. Patriarca*, 948 F.2d 789, 792 (1st Cir. 1991)). “An agency acts contrary to the law when it gives mere lip service or verbal commendation of a standard but then fails to abide the standard in its reasoning and decision.” *Nat’l Res. Def. Council, Inc. v. Pritzker*, 828 F.3d 1125, 1135 (9th Cir. 2016).

To determine whether an immigrant is a flight risk or poses a danger to the community, an IJ must consider factors including: (1) whether the immigrant has a fixed address in the United States; (2) the immigrant’s length of residence in the United States; (3) the immigrant’s family ties in the United States, (4) the immigrant’s employment history, (5) the immigrant’s record of appearance in court, (6) the immigrant’s criminal record, including the extensiveness of criminal activity, the recency of such activity, and

1 the seriousness of the offenses, (7) the immigrant’s history of immigration violations; (8)  
2 any attempts by the immigrant to flee prosecution or otherwise escape from authorities;  
3 and (9) the immigrant’s manner of entry to the United States. See *In re Guerra*, 24 I.&N.  
4 Dec. 37 (B.I.A. 2006).

5 Respondents have not met their burden to prove Landeros Jimenez’s dangerousness  
6 or flight risk by clear and convincing evidence. Respondents presented three documents  
7 for the IJ’s consideration: (1) Landeros Jimenez’s conviction documents; (2) Sacramento  
8 County Sheriff’s Department arrest report; and (3) the IJ’s October 1, 2019, order. See  
9 Dkt. No. 18, Ex. DD. Those documents, however, do not satisfy Respondents’ burden.

10 In the unofficial hearing transcript, the IJ appears to rely primarily on Landeros  
11 Jimenez’s conviction to establish both dangerousness and flight risk. See Dkt. No. 18, Ex.  
12 FF. But Landeros Jimenez was convicted of acting as an accessory after the fact to his  
13 brother’s possession of methamphetamine for sale. See Dkt. No. 18, Ex. DD at 14. The  
14 arrest report contains no indication of violence in connection with that crime or, indeed,  
15 any facts regarding Landeros Jimenez’s conduct. See *id.* at 28. Further, Landeros Jimenez  
16 apparently has no criminal history outside of his conviction for accessory after the fact to  
17 suggest that he would be a danger to the community. See *id.*

18 In response, Respondents point to the IJ’s October 1, 2019, decision ordering  
19 Landeros Jimenez’s removal as a “critical piece of evidence.” Dkt. No. 21 at 20. That  
20 piece of evidence does not help Respondents’ position.<sup>1</sup> It fills no fact-finding gaps left by  
21 the arrest report and conviction documents. Although the IJ found that Landeros  
22 Jimenez’s conviction was a “particularly serious crime,” a “particularly serious crime” is  
23 not synonymous with dangerousness or risk of flight. See *id.* at 48–49 & n.2 (noting that  
24 danger to the community is a separate determination). Put simply, the record is devoid of  
25 any evidence suggesting Landeros Jimenez is dangerous or a flight risk.

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28 <sup>1</sup> Indeed, some of the IJ’s findings appear to cut the other way. See, e.g., Dkt. No. 18, Ex.  
DD at 47 (noting Landeros Jimenez’s 11-year residence in the United States and ability to  
hold three jobs simultaneously).

1 Respondents also failed to show that alternatives to detention would be inadequate.  
2 The IJ’s sole statement regarding alternatives to detention was that “a bond would [not] be  
3 appropriate . . . because I don’t think there’s any way [Landeros Jimenez will] be able to  
4 remain in the United States.” Dkt. No. 18, Ex. FF at 10. Respondents’ failure to show that  
5 there are no less restrictive alternatives to detention is error. Hernandez, 872 F.3d at 991.

6 In short, Landeros Jimenez has shown a strong likelihood of success on the merits.

7 **2. Irreparable Harm**

8 “[T]he deprivation of constitutional rights ‘unquestionably constitutes irreparable  
9 injury.’” Melendres v. Arpaio, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting Elrod v.  
10 Burns, 427 U.S. 347, 373 (1976)). Landeros Jimenez has been deprived of both his due  
11 process rights and his right to be free from unlawful detention. This deprivation is ongoing  
12 and constitutes irreparable harm.

13 **3. Balance of Equities and Public Interest<sup>2</sup>**

14 The balance of equities and public interest both weigh in Landeros Jimenez’s favor.  
15 His continued detention causes significant harm in the form of the deprivation of  
16 constitutional rights. In contrast, the harm to Respondents’ is minimal if appropriate  
17 conditions of supervision are imposed. Accordingly, the Court GRANTS Landeros  
18 Jimenez’s motion for a temporary restraining order.

19 **III. Conclusion**

20 The Court GRANTS Landeros Jimenez’s motion for a temporary restraining order.  
21 Respondents must release Landeros Jimenez immediately under appropriate conditions of  
22 supervision, such as an ankle monitor and reporting requirements.

23 **IT IS SO ORDERED.**

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25 Dated: March 6, 2020

  
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NATHANAEL M. COUSINS  
United States Magistrate Judge

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28 <sup>2</sup> The balance of hardships and public interest factor merge when the government is the  
opposing party. Nken v. Holder, 556 U.S. 418, 435 (2009).