

1 ADAM GORDON
United States Attorney
2 MICHAEL D. WALLACE
Assistant United States Attorney
3 Maryland Bar No. 9912160256
Office of the U.S. Attorney
4 880 Front Street, Room 6293
San Diego, CA 92101-8893
5 Telephone(619) 546-8714
Email: Michael.Wallace4@usdoj.gov

6 Attorneys for Respondents

7
8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10
11 MOHAMMED AWAL ABDUL
12 RAHMAN,

13 Petitioner,

14 v.

15 JEREMY CASEY, *et al.*,

16 Respondents.
17
18
19

Case No.: 26-cv-1418-RSH-BJW

**RESPONSE TO MOTION TO
ENFORCE HABEAS ORDER**

20 **I. INTRODUCTION**

21 Petitioner has filed a second and duplicative habeas petition under 28 U.S.C.
22 § 2241 on March 18, 2026. ECF No. 15. Petitioner is currently in removal proceedings
23 under 8 U.S.C. § 1229a.

24 **II. FACTUAL AND PROCEDURAL BACKGROUND**

25 This Court granted the Petitioner's petition on March 18, 2026, and ordered
26 Respondents to provide a bond hearing to Petitioner by March 25, 2026. ECF No. 7.
27 Petitioner received a bond hearing before an immigration judge from March 24 to
28 March 27, 2026. The immigration judge denied bond on the basis that the Petitioner is

1 a flight risk. The Petitioner has not appealed the denial of bond by the immigration
2 judge to the Board of Immigration Appeals. He has until April 27, 2026, to perfect an
3 appeal. Instead, Petitioner filed the instant motion on April 7, 2026.

4 III. ARGUMENT

5 In the instant motion, Petitioner challenges the factual interpretation and
6 assessment by the immigration judge, application of those facts to the burden of proof
7 ordered by this Court, the length of the hearing, failure to consider alternatives to
8 detention, and the behavior of the immigration judge. Each of these arguments are well
9 within the experience and expertise of the Board of Immigration Appeals and not
10 properly presented in the first instance to the Federal District Court. The Court should
11 ensure Petitioner properly exhausts administrative remedies. The Ninth Circuit requires
12 that “habeas petitioners exhaust available judicial and administrative remedies before
13 seeking relief under § 2241.” *Castro-Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir.
14 2001). “When a petitioner does not exhaust administrative remedies, a district court
15 ordinarily should either dismiss the petition without prejudice or stay the proceedings
16 until the petitioner has exhausted remedies, unless exhaustion is excused.” *Leonardo v.*
17 *Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011); *see also Alvarado v. Holder*, 759 F.3d
18 1121, 1127 n.5 (9th Cir. 2014) (issue exhaustion is a jurisdictional requirement); *Tijani*
19 *v. Holder*, 628 F.3d 1071, 1080 (9th Cir. 2010) (no jurisdiction to review legal claims
20 not presented in the petitioner’s administrative proceedings before the BIA). Here,
21 Petitioner has not appealed the result of his bond hearing held pursuant to 8 U.S.C.
22 § 1226(a). Accordingly, the Court should dismiss without prejudice.

23 The BIA is an appellate body within the Executive Office for Immigration
24 Review (EOIR) and possesses delegated authority from the Attorney General. 8 C.F.R.
25 §§ 1003.1(a)(1), (d)(1). The BIA is “charged with the review of those administrative
26 adjudications under the [INA] that the Attorney General may by regulation assign to
27 it,” including IJ custody determinations. 8 C.F.R. §§ 1003.1(d)(1), 236.1, 1236.1. The
28 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*,

1 720 F.3d 1134, 1135-36 (9th Cir. 2013) (declining to address a due process argument
2 that was not raised below because it could have been addressed by the agency).

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

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

19 Moreover, detention alone is not an irreparable injury. Discretion to waive
20 exhaustion “is not unfettered.” *Laing v. Ashcroft*, 370 F.3d 994, 998 (9th Cir. 2004).
21 Petitioners bear the burden to show that an exception to the exhaustion requirement
22 applies. *Leonardo*, 646 F.3d at 1161; *Aden*, 2019 WL 5802013, at *3. “[C]ivil detention
23 after the denial of a bond hearing [does not] constitute[] irreparable harm such that
24 prudential exhaustion should be waived.” *Reyes v. Wolf*, No. C20-0377JLR, 2021 WL
25 662659, at *3 (W.D. Wash. Feb. 19, 2021), *aff’d sub nom. Diaz Reyes v. Mayorkas*, No.
26 21-35142, 2021 WL 3082403 (9th Cir. July 21, 2021).

27 Because Respondents have complied with this Court’s previous order to provide
28 Respondent with a bond hearing, the second Petition is duplicative of the initial Petition

1 upon which this Court has already ruled, and Petitioner has not exhausted his
2 administrative remedies, this matter should be dismissed.

3 **IV. CONCLUSION**

4 For the reasons stated herein, Respondents respectfully request that the Court
5 deny the Petitioner's requests for relief on the merits.

6
7 Dated: April 21, 2026

Respectfully submitted,

8 ADAM GORDON
United States Attorney

9 s/ Michael D. Wallace
10 MICHAEL D. WALLACE
11 Assistant United States Attorney
Attorneys for Respondents
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28