

1 ADAM GORDON
United States Attorney
2 JULIET KEENE
Assistant United States Attorney
3 NM SBN 126365
Office of the U.S. Attorney
4 880 Front Street, Room 6293
San Diego, CA 92101-8893
5 Telephone: (619) 546-6768
Email: Juliet.Keene@usdoj.gov
6

7 Attorneys for Respondents

8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 JIAXING XIE,

11 Petitioner,

12 v.

13 CHRISTOPHER J. LAROSE, et al.,

14 Respondents.
15

Case No.: 26-cv-1421-LL-BLM

**RESPONDENTS' RESPONSE TO
PETITIONER'S MOTION TO
ALTER OR AMEND JUDGMENT**

Judge: Linda Lopez

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18 On March 16, 2026, the Court issued an order ordering that Respondents provide
19 Petitioner with an individualized bond hearing. ECF No. 5. On March 19, 2026,
20 Petitioner was provided with an individualized bond hearing before a neutral
21 immigration judge (IJ), where the IJ denied Petitioner release on bond, finding
22 Petitioner to be a flight risk. *See* Ex. 1, Bond Order. Petitioner now seeks to challenge
23 the IJ's bond order before this Court. However, such challenge is improper as Petitioner
24 has not exhausted his administrative remedies.

25 "Exhaustion can be either statutorily or judicially required." *Acevedo-Carranza*
26 *v. Ashcroft*, 371 F.3d 539, 541 (9th Cir. 2004). "If exhaustion is statutory, it may be a
27 mandatory requirement that is jurisdictional." *Id.* (citing *El Rescate Legal Servs., Inc.*
28 *v. Exec. Office of Immigration Review*, 959 F.2d 742, 747 (9th Cir. 1991)). "If, however,

1 exhaustion is a prudential requirement, a court has discretion to waive the requirement.”
2 *Id.* (citing *Stratman v. Watt*, 656 F.2d 1321, 1325–26 (9th Cir. 1981)). Here, the proper
3 avenue for Petitioner’s grievance with his bond denial is to utilize the administrative
4 scheme and appeal his bond denial to the Board of Immigration Appeals (BIA).

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

17 “District Courts are authorized by 28 U.S.C § 2241 to consider petitions for
18 habeas corpus.” *Castro–Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001), *abrogated*
19 *on other grounds by Hernandez–Vargas v. Gonzales*, 548 U.S. 30 (2006). “That section
20 does not specifically require petitioners to exhaust direct appeals before filing petitions
21 for habeas corpus.” *Id.* That said, the Ninth Circuit “require[s], as a prudential matter,
22 that habeas petitioners exhaust available judicial and administrative remedies before
23 seeking relief under § 2241.” *Id.* Specifically, “courts may require prudential exhaustion
24 if (1) agency expertise makes agency consideration necessary to generate a proper
25 record and reach a proper decision; (2) relaxation of the requirement would encourage
26 the deliberate bypass of the administrative scheme; and (3) administrative review is
27 likely to allow the agency to correct its own mistakes and to preclude the need for
28 judicial review.” *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007) (cleaned up).

1 “When a petitioner does not exhaust administrative remedies, a district court
2 ordinarily should either dismiss the petition without prejudice or stay the proceedings
3 until the petitioner has exhausted remedies, unless exhaustion is excused.” *Leonardo v.*
4 *Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011) (citations omitted); *see also Alvarado*
5 *v. Holder*, 759 F.3d 1121, 1127 n.5 (9th Cir. 2014), *abrogated on other grounds by*
6 *Santos-Zacaria v. Garland*, 598 U.S. 411 (2023) (“issue exhaustion is a jurisdictional
7 requirement”); *Tijani v. Holder*, 628 F.3d 1071, 1080 (9th Cir. 2010) (court “lacks
8 jurisdiction to review legal claims not presented in an alien’s administrative
9 proceedings before the BIA”). Moreover, “a petitioner cannot obtain review of
10 procedural errors in the administrative process that were not raised before the agency
11 merely by alleging that every such error violates due process.” *Reid v. Engen*, 765 F.2d
12 1457, 1461 (9th Cir. 1985); *see also Sola v. Holder*, 720 F.3d 1134, 1135–36 (9th Cir.
13 2013) (declining to address a due process argument that was not raised below because
14 it could have been addressed by the agency).

15 Here, requiring Petitioner to exhaust administrative remedies is warranted
16 because agency expertise is required. “[T]he BIA is the subject-matter expert in
17 immigration bond decisions[.]” *Aden v. Nielsen*, No. C18-1441RSL, 2019 WL
18 5802013, at *2 (W.D. Wash. Nov. 7, 2019); *see also Delgado v. Sessions*, No. C17-
19 1031-RSL-JPD, 2017 WL 4776340, at *2 (W.D. Wash. Sept. 15, 2017) (noting a denial
20 of bond to an immigration detainee was “a question well suited for agency expertise”).

21 Waiving exhaustion would also encourage other detainees to bypass the BIA and
22 directly appeal from the immigration judge to federal district court. *See Aden*, 2019 WL
23 5802013, at *2 (“[R]elaxation of the exhaustion requirement would likely encourage
24 other detainees to bypass the BIA and directly appeal their no-bond determinations from
25 the [immigration judge] to federal district court.”). Individuals, like Petitioner, would
26 have little incentive to seek relief before the BIA if this Court permits review here. And
27 allowing a skip-the-BIA-and-go-straight-to-federal-court strategy would needlessly
28 increase the burden on district courts. *See Bd. of Tr. of the Constr. Laborers’ Pension*

1 *Trust for S. Cal. v. M.M. Sundt Constr. Co.*, 37 F.3d 1419, 1420 (9th Cir. 1994)
2 (“Judicial economy is an important purpose of exhaustion requirements.”) (citation
3 omitted); *Santos-Zacaria*, 598 U.S. at 418 (noting “exhaustion promotes efficiency”).
4 If the IJ erred, this Court should allow the administrative process to correct itself.

5 Moreover, detention alone is not an irreparable injury. Discretion to waive
6 exhaustion “is not unfettered.” *Laing v. Ashcroft*, 370 F.3d 994, 998 (9th Cir. 2004).
7 “[C]ivil detention after the denial of a bond hearing [does not] constitute[] irreparable
8 harm such that prudential exhaustion should be waived.” *Reyes v. Wolf*, No. C20-
9 0377JLR, 2021 WL 662659, at *3 (W.D. Wash. Feb. 19, 2021), *aff’d sub nom. Diaz*
10 *Reyes v. Mayorkas*, No. 21-35142, 2021 WL 3082403 (9th Cir. July 21, 2021).

11 Finally, Petitioners bear the burden to show that an exception to the exhaustion
12 requirement applies. *Leonardo*, 646 F.3d at 1161; *Aden*, 2019 WL 5802013, at *3. Here,
13 Petitioner has failed to demonstrate that exhaustion should be waived.

14 Other courts in this district agree. *See, e.g., Rana v. LaRose*, No. 26-cv-00285-
15 RSH-DDL, ECF No. 11 (S.D. Cal. Mar. 13, 2026) (denying motion to enforce judgment
16 where petitioner was denied bond on the basis of flight risk because there was no
17 indication that administrative remedies were first exhausted) (citing *Leonardo*, 646 F.3d
18 at 1160); *Baker v. Gordon*, No. 25-cv-03539-CAB-SBC, ECF No. 8 at 2:1–5 (S.D. Cal.
19 Jan. 30, 2026) (“As the Ninth Circuit has explained, ‘[Petitioner] pursued habeas review
20 of the [immigration judge’s] adverse bond determination before appealing to the BIA.
21 This short cut was improper. [Petitioner] should have exhausted administrative
22 remedies by appealing to the BIA before asking the federal district court to review the
23 [immigration judge’s] decision.’”) (quoting *Leonardo*, 646 F.3d at 1160).

24 Because Petitioner was provided a bond hearing as ordered by this Court, and he
25 has not exhausted his administrative remedies, there is no further relief this Court can
26 provide.

27 DATED: April 23, 2026

Respectfully submitted,

ADAM GORDON
United States Attorney

s/ Juliet M. Keene

JULIET M. KEENE
Assistant United States Attorney
Attorney for Respondents