

1 ADAM GORDON
United States Attorney
2 ALLIE E. MALONE
Assistant U.S. Attorney
MO State Bar No. 70688
3 Office of the U.S. Attorney
880 Front Street, Room 6293
4 San Diego, CA 92101-8893
Telephone: (619) 674-9225
5 Facsimile: (619) 546-7751
Email: allie.malone.subke@usdoj.gov

6 Attorneys for Respondent

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

10 ISSENOVA AISARA,

Petitioner,

11 v.

12 SIXTO MARRERO,

13 Respondent.
14

Case No.: 26-cv-1432-BJC-BJW

RESPONSE TO PETITION

15 **I. INTRODUCTION**

16 Petitioner was denied bond at the conclusion of a hearing before a neutral
17 immigration judge on February 27, 2026. She now improperly challenges the
18 immigration judge's order via the present habeas action rather than pursuing the
19 required administrative appeal to the Board of Immigration Appeals. As such, she has
20 failed to exhaust administrative remedies and her habeas petition should be dismissed
21 accordingly.

22 **II. FACTUAL BACKGROUND**

23 Petitioner is a native and citizen of Kazakhstan who entered the United States on
24 February 13, 2016 pursuant to a nonimmigrant tourist visa that was valid for six months.
25 Petitioner failed to depart the United States after six months, thereby overstaying her
26 visa and rendering herself removable from the United States under 8 U.S.C. §
27 127(a)(1)(B). Petitioner applied for asylum and withholding of removal shortly before
28 her tourist visa was set to expire. Those applications remain pending and her next

1 immigration hearing is scheduled for April 1, 2026.

2 On January 15, 2026, Petitioner was taken into immigration custody pursuant to
3 8 U.S.C. §1226(a). That same day, she was issued a Notice to Appear, charging her as
4 removable from the United States. Petitioner thereafter sought release on bond before
5 an immigration judge, and **a bond hearing was held on February 27, 2026**. “After full
6 consideration of the evidence presented,” **the immigration judge denied bond** and
7 Petitioner reserved appeal. See Order of the Immigration Judge, attached as *Exhibit 1*.
8 However, **she has not filed an appeal** with the Board of Immigration Appeals to date,
9 and she instead improperly filed the present habeas action to challenge the immigration
10 judge’s order.

11 III. ARGUMENT

12 Petitioner improperly filed the present habeas petition challenging the
13 immigration judge’s order. The proper remedy would be to appeal the order to the Board
14 of Immigration Appeals (BIA), and in failing to do so, Petitioner failed to exhaust her
15 administrative remedies before filing this petition. The BIA is an appellate body within
16 the Executive Office for Immigration Review which possesses delegated authority from
17 the Attorney General. 8 C.F.R. §§ 1003.1(a)(1), (d)(1). The BIA is “charged with the
18 review of those administrative adjudications under the [Immigration and Nationality
19 Act (INA)] that the Attorney General may by regulation assign to it,” including
20 immigration judge custody determinations. 8 C.F.R. §§ 1003.1(d)(1), 236.1, 1236.1.

21 The Ninth Circuit has repeatedly held that although 28 U.S.C. § 2241 does not
22 contain express exhaustion requirements, courts require “as a prudential matter, that
23 habeas petitioners exhaust available judicial and administrative remedies before seeking
24 relief under § 2241.” *Castro–Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001),
25 *abrogated on other grounds by Hernandez–Vargas v. Gonzales*, 548 U.S. 30 (2006).
26 Specifically, “courts may require prudential exhaustion if (1) agency expertise makes
27 agency consideration necessary to generate a proper record and reach a proper decision;
28 (2) relaxation of the requirement would encourage the deliberate bypass of the

1 administrative scheme; and (3) administrative review is likely to allow the agency to
2 correct its own mistakes and to preclude the need for judicial review.” *Puga v. Chertoff*,
3 488 F.3d 812, 815 (9th Cir. 2007) (cleaned up).

4 “When a petitioner does not exhaust administrative remedies, a district court
5 ordinarily should either dismiss the petition without prejudice or stay the proceedings
6 until the petitioner has exhausted remedies, unless exhaustion is excused.” *Leonardo v.*
7 *Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011) (citations omitted); *see also Alvarado*
8 *v. Holder*, 759 F.3d 1121, 1127 n.5 (9th Cir. 2014), *abrogated on other grounds by*
9 *Santos-Zacaria v. Garland*, 598 U.S. 411 (2023) (“issue exhaustion is a jurisdictional
10 requirement”); *Tijani v. Holder*, 628 F.3d 1071, 1080 (9th Cir. 2010) (court “lacks
11 jurisdiction to review legal claims not presented in an alien’s administrative
12 proceedings before the BIA”). Moreover, “a petitioner cannot obtain review of
13 procedural errors in the administrative process that were not raised before the agency
14 merely by alleging that every such error violates due process.” *Reid v. Engen*, 765 F.2d
15 1457, 1461 (9th Cir. 1985); *see also Sola v. Holder*, 720 F.3d 1134, 1135–36 (9th Cir.
16 2013) (declining to address a due process argument that was not raised below because
17 it could have been addressed by the agency).

18 Here, requiring Petitioner to exhaust administrative remedies is warranted
19 because agency expertise is required. “[T]he BIA is the subject-matter expert in
20 immigration bond decisions[.]” *Aden v. Nielsen*, No. C18-1441RSL, 2019 WL
21 5802013, at *2 (W.D. Wash. Nov. 7, 2019); *see also Delgado v. Sessions*, No. C17-
22 1031-RSL-JPD, 2017 WL 4776340, at *2 (W.D. Wash. Sept. 15, 2017) (noting a denial
23 of bond to an immigration detainee was “a question well suited for agency expertise”).

24 Waiving exhaustion would also encourage other detainees to bypass the BIA and
25 directly appeal from the immigration judge to federal district court. *See Aden*, 2019 WL
26 5802013, at *2 (“[R]elaxation of the exhaustion requirement would likely encourage
27 other detainees to bypass the BIA and directly appeal their no-bond determinations from
28 the [immigration judge] to federal district court.”). Petitioner would have little incentive

1 to seek relief before the BIA if this Court permits review here. And allowing a skip-the-
2 BIA-and-go-straight-to-federal-court strategy would needlessly increase the burden on
3 district courts. *See Bd. of Tr. of the Constr. Laborers' Pension Trust for S. Cal. v. M.M.*
4 *Sundt Constr. Co.*, 37 F.3d 1419, 1420 (9th Cir. 1994) (“Judicial economy is an
5 important purpose of exhaustion requirements.”) (citation omitted); *Santos-Zacaria*,
6 598 U.S. at 418 (noting “exhaustion promotes efficiency”). If the immigration judge
7 erred, this Court should allow the administrative process to correct itself.

8 Moreover, detention alone is not an irreparable injury. Discretion to waive
9 exhaustion “is not unfettered.” *Laing v. Ashcroft*, 370 F.3d 994, 998 (9th Cir. 2004).
10 “[C]ivil detention after the denial of a bond hearing [does not] constitute[] irreparable
11 harm such that prudential exhaustion should be waived.” *Reyes v. Wolf*, No. C20-
12 0377JLR, 2021 WL 662659, at *3 (W.D. Wash. Feb. 19, 2021), *aff'd sub nom. Diaz*
13 *Reyes v. Mayorkas*, No. 21-35142, 2021 WL 3082403 (9th Cir. July 21, 2021).

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

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

27 **IV. CONCLUSION**

28 Petitioner failed to exhaust her administrative remedies by failing to appeal the

1 immigration judge's bond determination to the BIA and her petition should be
2 dismissed accordingly.

3 DATED: March 18, 2026

Respectfully submitted,

4 ADAM GORDON
5 United States Attorney

6 s/ Allie E. Malone
7 ALLIE E. MALONE
8 Assistant United States Attorney
9 Attorneys for Respondents
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