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

9 CRISTIAN GOMEZ-COMINGUEZ,

10 Petitioner,

11 v.

12 WARDEN of the Imperial Regional
13 Detention Facility, et al.,

14 Respondents.

Case No.: 26-cv-1560-RBM-MMP

RETURN TO PETITION

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1 **I. Introduction**

2 Petitioner has filed a habeas petition under 28 U.S.C. § 2241. Petitioner is
3 currently in removal proceedings under 8 U.S.C. § 1229a and is charged with
4 deportability/removability under 8 U.S.C. § 1227(a)(1)(B), as an individual who was
5 admitted to the United States but remained for a time longer than permitted by law (i.e.,
6 a visa overstay). As such, Petitioner is detained pursuant to 8 U.S.C. § 1226(a).
7 Petitioner had a bond hearing before an immigration judge pursuant to 8 U.S.C.
8 § 1226(a), and he has not appealed the immigration judge's order denying bond. Based
9 on the arguments set forth below, the Court should deny any requests for relief and
10 dismiss the petition.

11 **II. Factual Background¹**

12 Petitioner is a native and citizen of Mexico. In 2003, he was admitted into the
13 United States on a nonimmigrant visa. On August 12, 2025, he was encountered by Salt
14 Lake City ICE/ERO during a probation check-in subsequent to his May 30, 2025,
15 conviction for aggravated Assault with a Weapon and his April 20, 2018, convictions
16 for possession of drug paraphernalia and possession of a controlled substance. Exhibit
17 1 (I-213). DHS determined that Petitioner is deportable/removable under 8 U.S.C.
18 § 1227(a)(1)(B), as an individual who was admitted to the United States and has
19 remained for a time longer than permitted by law (i.e., a visa overstay). Based on his
20 charges of removability, he was issued a Notice to Appear (NTA) and placed in removal
21 proceedings under 8 U.S.C. § 1229a. Within his removal proceedings, Petitioner can
22 apply for relief from removal before an immigration judge (IJ), including asylum under
23 8 U.S.C. § 1158, withholding of removal under 8 U.S.C. § 1231(b)(3), relief under the
24 Convention Against Torture, and adjustment of status (*see* 8 C.F.R. 1245.2(a)(1)(i)).

25 Petitioner is currently detained at the Imperial Regional Detention Center under
26 8 U.S.C. § 1226(a). On September 26, 2025, Petitioner, through immigration counsel,
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28 ¹ The attached exhibits are true copies, with redactions of private information, of documents obtained from ICE counsel.

1 had a bond hearing before an immigration judge pursuant to 8 U.S.C. § 1226(a). The
2 immigration judge denied Petitioner bond on the merits of his request. Petitioner has
3 not appealed the immigration judge’s bond order to the Board of Immigration Appeals.

4 III. Argument

5 A. Petitioner is Lawfully Detained Under 8 U.S.C. § 1226(a)

6 Section 1226 provides for arrest and detention “pending a decision on whether
7 the alien is to be removed from the United States.” 8 U.S.C. § 1226(a). Under § 1226(a),
8 the government may detain an alien during his removal proceedings, release him on
9 bond, or release him on conditional parole. By regulation, immigration officers can
10 release aliens upon demonstrating that the alien “would not pose a danger to property
11 or persons” and “is likely to appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8).
12 An alien can also request a custody redetermination (i.e., a bond hearing) by an IJ at
13 any time before a final order of removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§
14 236.1(d)(1), 1236.1(d)(1), 1003.19.

15 As set forth above, DHS determined that Petitioner is deportable/removable
16 under 8 U.S.C. § 1227(a)(1)(B), as an individual who was admitted to the United States
17 but remained for a time longer than permitted by law (i.e., a visa overstay). Based on
18 that charge, he was issued a Notice to Appear (NTA) and placed in removal proceedings
19 under 8 U.S.C. § 1229a. As such, Petitioner is detained pursuant to 8 U.S.C. § 1226(a).
20 The immigration judge has convened a bond hearing , and Petitioner has not appealed
21 the immigration judge’s bond order.

22 B. Administrative Remedies Should Be Exhausted

23 “Exhaustion can be either statutorily or judicially required.” *Acevedo–Carranza*
24 *v. Ashcroft*, 371 F.3d 539, 541 (9th Cir. 2004). “If exhaustion is statutory, it may be a
25 mandatory requirement that is jurisdictional.” *Id.* (citing *El Rescate Legal Servs., Inc.*
26 *v. Exec. Off of Immigr. Rev.*, 959 F.2d 742, 747 (9th Cir. 1991)). “If, however,
27 exhaustion is a prudential requirement, a court has discretion to waive the requirement.”
28 *Id.* (citing *Stratman v. Watt*, 656 F.2d 1321, 1325–26 (9th Cir. 1981)). Here, Petitioner

1 is attempting to bypass the administrative scheme by not appealing his underlying bond
2 denial to the Board of Immigration Appeals (BIA).

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

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

26 “When a petitioner does not exhaust administrative remedies, a district court
27 ordinarily should either dismiss the petition without prejudice or stay the proceedings
28 until the petitioner has exhausted remedies, unless exhaustion is excused.” *Leonardo v*

1 *Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011); *see also Alvarado v. Holder*, 759 F.3d
2 1121, 1127 n.5 (9th Cir. 2014) (issue exhaustion is a jurisdictional requirement); *Tijani*
3 *v. Holder*, 628 F.3d 1071, 1080 (9th Cir. 2010) (no jurisdiction to review legal claims
4 not presented in the petitioner’s administrative proceedings before the BIA). Moreover,
5 a “petitioner cannot obtain review of procedural errors in the administrative process that
6 were not raised before the agency merely by alleging that every such error violates due
7 process.” *Vargas v. INS*, 831 F.3d 906, 908 (9th Cir. 1987); *see also Sola v. Holder*,
8 720 F.3d 1134, 1135-36 (9th Cir. 2013) (declining to address a due process argument
9 that was not raised below because it could have been addressed by the agency).

10 Here, exhaustion is warranted because agency expertise is required. “[T]he BIA
11 is the subject-matter expert in immigration bond decisions.” *Aden v Nielsen*, No. C18-
12 1441RSL, 2019 WL 5802013, at *2 (W.D. Wash. Nov. 7, 2019); *Delgado v Sessions*,
13 No. C17-1031-RSL-JPD, 2017 WL 4776340, at *2 (W.D. Wash. Sept. 15, 2017) (noting
14 a denial of bond to an immigration detainee was “a question well suited for agency
15 expertise”).

16 Waiving exhaustion would also encourage other detainees to bypass the BIA and
17 directly appeal from the IJ to federal district court. *See Aden*, 2019 WL 5802013, at *2.
18 Individuals, like Petitioner, would have little incentive to seek relief before the BIA if
19 this Court permits review here. And allowing a skip-the-BIA-and-go-straight-to-
20 federal-court strategy would needlessly increase the burden on district courts. *See Bd*
21 *of Tr. of Constr. Laborers’ Pension Trust for S. Calif. v. M.M Sundt Constr. Co.*, 37
22 F.3d 1419, 1420 (9th Cir. 1994) (“Judicial economy is an important purpose of
23 exhaustion requirements.”); *see also Santos-Zacaria v. Garland*, 598 U.S. 411, 418
24 (2023) (noting “exhaustion promotes efficiency”). If the IJ erred, this Court should
25 allow the administrative process to correct itself. *See id.*

26 Moreover, detention alone is not an irreparable injury. Discretion to waive
27 exhaustion “is not unfettered.” *Laing v. Ashcroft*, 370 F.3d 994, 998 (9th Cir. 2004).
28 Petitioners bear the burden to show that an exception to the exhaustion requirement

1 applies. *Leonardo*, 646 F.3d at 1161; *Aden*, 2019 WL 5802013, at *3. “[C]ivil detention
2 after the denial of a bond hearing [does not] constitute[] irreparable harm such that
3 prudential exhaustion should be waived.” *Reyes v Wolf*, No. C20-0377JLR, 2021 WL
4 662659, at *3 (W.D. Wash. Feb. 19, 2021), *aff’d sub nom. Diaz Reyes v. Mayorkas*, No.
5 21-35142, 2021 WL 3082403 (9th Cir. July 21, 2021).

6 Because Petitioner has not exhausted his administrative remedies, this matter
7 should be dismissed.

8 IV. CONCLUSION

9 For the foregoing reasons, Respondents respectfully request that the Court
10 dismiss this action.

11 DATED: March 20, 2026

Respectfully submitted,

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13 United States Attorney

14 *s/ Michael D. Wallace*
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16 Assistant United States Attorney
17 Attorneys for Respondents
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