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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

MILAN M. MILUTINOVIC,

Petitioner,

v.

WARDEN OF IMPERIAL DETENTION FACILITY, et al.,

Respondents.

Case No.: 26-cv-1644 CAB JLB

RESPONSE TO PETITION

I. INTRODUCTION

Petitioner seeks habeas relief challenging his ongoing immigration detention, but his petition fails both at the outset and on the merits. First, the petition should be denied because Petitioner has not exhausted administrative remedies prior to filing this petition. Second, the petition should be denied even if the Court were to reach the merits because Petitioner is subject to mandatory detention under 8 U.S.C. § 1226(c) since he was convicted of an aggravated felony in 2022.

II. FACTUAL BACKGROUND

Petitioner is a Canadian citizen who entered the United States in September 1993. *See* Form I-213, attached as *Exhibit 1*. Since then, he has been convicted of multiple serious criminal offenses including at least three misdemeanors and three violent felonies. *Id.* Most recently, after a jury trial before the Maricopa County, Arizona Superior Court in July 2022, Petitioner was found guilty of attempted armed robbery (a

felony)[1] in connection with an incident where he attempted to rob a stranger at knifepoint in Pheonix, Arizona on December 19, 2020. *See* documents regarding criminal conviction, attached as *Exhibit 2*, pgs. 24-26. On July 27, 2022, he was sentenced to five years of imprisonment[2] and was committed to the Arizona Department of Corrections in connection with this offense. Upon his release from prison on April 8, 2025, he was taken into ICE custody where he remains pending the outcome of his removal proceedings, which were initiated shortly after his conviction in 2022.

On July 27, 2022, Petitioner was charged as an alien removable under Section 237(a)(2)(A)(iii) of the Immigration and Nationality Act which provides: "Any alien who is convicted of an aggravated felony at any time after admission is deportable." Then, on October 8, 2025, an immigration judge denied Petitioner's application for relief from removal and **Petitioner was ordered removed to Canada**. *See* Order of the Immigration Judge (regarding removal) dated October 8, 2025, attached as *Exhibit 3*. Petitioner is currently appealing the immigration judge's order to the Board of Immigration Appeals. His appeal remains pending, and there is no final order of removal at this time.

The immigration judge also held a bond hearing on October 8, 2025. "After full consideration of the evidence presented," the immigration judge denied bond, finding "The Department has met its burden under Franco v. Gonzalez and Singh v. Holder, 638 F.3d 1196 (9th Cir. 2011) to establish that the Respondent would be both a flight risk and danger if released from custody." *See* Order of the Immigration Judge (regarding bond) dated October 8, 2025, attached as *Exhibit 4*.

III. ARGUMENT

a. Petitioner has not exhausted administrative remedies

Petitioner improperly filed the present habeas petition to challenge the immigration judge's order denying him bond (dated October 8, 2025), which was

[1] In violation of Arizona Revised Statute § 13-1904 A2
[2] With a presentence credit of 584 days

entered "[a]fter full consideration of the evidence presented[.]" *Exhibit 4*. The proper remedy is *not* to seek habeas relief, but to await a decision from the Board of Immigration Appeals[3] (BIA), to which Petitioner submitted an appeal. In failing to do so, Petitioner failed to exhaust his administrative remedies before filing this petition.

The Ninth Circuit has repeatedly held that although 28 U.S.C. § 2241 does not contain express exhaustion requirements, courts require "as a prudential matter, that habeas petitioners exhaust available judicial and administrative remedies before seeking relief under § 2241." *Castro–Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001), *abrogated on other grounds by Hernandez–Vargas v. Gonzales*, 548 U.S. 30 (2006). 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) (cleaned up).

"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) (citations omitted); *see also Alvarado v. Holder*, 759 F.3d 1121, 1127 n.5 (9th Cir. 2014), *abrogated on other grounds by Santos-Zacaria v. Garland*, 598 U.S. 411 (2023) ("issue exhaustion is a jurisdictional requirement"); *Tijani v. Holder*, 628 F.3d 1071, 1080 (9th Cir. 2010) (holding, the court "lacks jurisdiction to review legal claims not presented in an alien's administrative

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[3] The BIA is an appellate body within the Executive Office for Immigration Review which possesses delegated authority from the Attorney General. 8 C.F.R. §§ 1003.1(a)(1), (d)(1). The BIA is "charged with the review of those administrative adjudications under the [Immigration and Nationality Act (INA)] that the Attorney General may by regulation assign to it," including immigration judge custody determinations. 8 C.F.R. §§ 1003.1(d)(1), 236.1, 1236.1.

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." *Reid v. Engen*, 765 F.2d 1457, 1461 (9th Cir. 1985); *see also Sola v. Holder*, 720 F.3d 1134, 1135–36 (9th Cir. 2013) (declining to address a due process argument that was not raised below because it could have been addressed by the agency).

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

Petitioner would have little incentive to seek relief before the BIA if this Court permits review. Waiving exhaustion requirements would also encourage other detainees to bypass the BIA and directly appeal from the immigration judge to federal district court. *See Aden*, 2019 WL 5802013, at *2 ("[R]elaxation of the exhaustion requirement would likely encourage other detainees to bypass the BIA and directly appeal their no-bond determinations from the [immigration judge] to federal district court."). And allowing a skip-the-BIA-and-go-straight-to-federal-court strategy would needlessly increase the burden on district courts. *See Bd. of Tr. of the Constr. Laborers' Pension Trust for S. Cal.. v. M.M. Sundt Constr. Co.*, 37 F.3d 1419, 1420 (9th Cir. 1994) ("Judicial economy is an important purpose of exhaustion requirements.") (citation omitted); *Santos-Zacaria*, 598 U.S. at 418 (noting "exhaustion promotes efficiency"). If the immigration judge erred, this Court should allow the administrative process to correct itself.

Moreover, detention alone is not an irreparable injury. Discretion to waive exhaustion "is not unfettered." *Laing v. Ashcroft*, 370 F.3d 994, 998 (9th Cir. 2004). "[C]ivil detention after the denial of a bond hearing [does not] constitute[] irreparable

harm such that prudential exhaustion should be waived." *Reyes v. Wolf*, No. C20-0377JLR, 2021 WL 662659, at *3 (W.D. Wash. Feb. 19, 2021), *aff'd sub nom. Diaz Reyes v. Mayorkas*, No. 21-35142, 2021 WL 3082403 (9th Cir. July 21, 2021).

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

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

b. Petitioner is subject to mandatory detention under 8 U.S.C. § 1226(c) pending a final order of removal

8 U.S.C. § 1226(c) requires the detention of noncitizens who are removable because of certain criminal convictions, including convictions for aggravated felonies, pending the outcome of their removal proceedings. *See Demore v. Kim*, 538 U.S. 510, 527–28 (2003). Here, an immigration judge found that Petitioner is removable under Section 237(a)(2)(A)(iii) of the Immigration and Nationality Act which provides: "Any alien who is convicted of an aggravated felony at any time after admission is deportable." Petitioner's felony conviction from 2022 –which arises from his attempt to rob a stranger at knifepoint– is an "aggravated felony" for purposes of 8 U.S.C. § 1226(c) and his current detention is therefore mandatory.

To the extent Petitioner alleges that he is entitled to release or a bond hearing

under the INA, the statutory text explicitly forecloses such contentions and permits release "'*only if* the Attorney General decides' both that doing so is necessary for witness-protection purposes and that the alien will not pose a danger or flight risk." *Jennings v. Rodriguez*, 583 U.S. 281, 303 (emphasis in original). Because Petitioner's removal proceedings are pending and he has not been granted release for witness-protection purposes, § 1226(c) mandates his detention until the proceedings have concluded. *See Demore*, 538 U.S. at 527–28 (noting that detention under the statute has "a definite termination point" and "[s]uch detention necessarily serves the purpose of preventing deportable criminal aliens from fleeing prior to or during their removal proceedings, thus increasing the chance that, if ordered removed, the aliens will be successfully removed."). His Petition must be denied accordingly.

c. Petitioner's current detention does not violate due process

Petitioner's detention under § 1226(c) does not violate due process. In *Demore*, the Supreme Court considered the statute at issue and held: "Detention during removal proceedings is a constitutionally permissible part of that process." 538 U.S. at 531. And the Court may not impose temporal limitations on the statute where none exist. *See Jennings*, 583 U.S. at 312 (rejecting the dissent's drawing of a "6-month limitation out of thin air").

Even if the Court infers a constitutional right against prolonged mandatory detention, Petitioner's claim still fails. "In general, as detention continues past a year, courts become extremely wary of permitting continued custody absent a bond hearing." *Sibomana v. LaRose*, No. 22-cv-933-LL-NLS, 2023 WL 3028093, at *4 (S.D. Cal. Apr. 20, 2023) (citation omitted); *see also, e.g.*, *Sanchez-Rivera v. Matuszewski*, No. 22-cv-1357-MMA-JLB, 2023 WL 139801, at *6 (S.D. Cal. Jan. 9, 2023) (detained for three years); *Durand v. Allen*, No. 3:23-cv-00279-RBM-BGS, 2024 WL 711607, at *5 (S.D. Cal. Feb. 21, 2024) (detained for over two-and-a-half years); *Yagao v. Figueroa*, No. 17-cv-2224-AJB-MDD, 2019 WL 1429582, at *2 (S.D. Cal. Mar. 29, 2019) (detained for two years). Petitioner has currently been in ICE custody for just

over 11 months such that his detention falls significantly short of the length courts have found to raise due process concerns for individuals detained under 8 U.S.C. § 1226(c).

Though the length of detention is considered an important factor, courts have also considered the likely duration of future detention and any delay in the removal proceedings by the petitioner or the government to determine whether "detention has become so unreasonable as to require an initial bond hearing." *See Sanchez-Rivera*, 2023 WL 139801, at *6. These factors do not raise due process concerns. Petitioner has been ordered removed to Canada. While he has appealed, there is no indication of any delay in the removal proceedings on the part of the government. Further, it is possible that Petitioner will become subject to a final an executable order of removal shortly. On this record, the Court cannot find that "detention has become so unreasonable as to require an initial bond hearing." *Sanchez-Rivera*, 2023 WL 139801, at *6.

IV. CONCLUSION

For the reasons discussed herein, Respondents respectfully request that the Court dismiss this petition for lack of jurisdiction or deny it on the merits.

DATED: March 25, 2026

Respectfully submitted,

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