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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

ROBINJIT SINGH, Petitioner, v. CHRISTOPHER J. LAROSE, Senior Warden, Otay Mesa Detention Center; et al., Respondents.	Case No.: 26-cv-02095-BAS-DEB **RETURN TO HABEAS PETITION**

I. INTRODUCTION

On March 13, 2026, this Court granted Petitioner's habeas petition and issued the following writ:

> The Court **ORDERS** a bond hearing before an Immigration Judge for Petitioner Robinjit Singh [redacted] within 14 days of the date of this Order. At that hearing, the Government bears the burden of establishing, by clear and convincing evidence, that Petitioner poses a danger to the community or a flight risk. Concerns about interrupting court schedules are not a ground to deny bond. If Petitioner is granted bond, then Respondents are prohibited from invoking the automatic stay procedure for bond appeals to the Board of Immigration Appeals.

ECF No. 1-2. In compliance with the Order, Petitioner was afforded a bond hearing before an Immigration Judge (IJ) on March 18, 2026. *See* ECF No. 1-3. The IJ denied bond, finding that Petitioner was "a significant flight risk" and that "no amount of bond

1 will mitigate such risk." *Id.* at 2. Petitioner reserved appeal and has up to April 17, 2026,
2 to file a notice of appeal with the Board of Immigration Appeals. As of the date of this
3 filing, he has not filed an appeal.
4 Instead, Petitioner filed this habeas petition, alleging that his bond hearing was
5 constitutionally deficient because the IJ denied his motion to continue the bond hearing.
6 *See* ECF No. 1 at ¶ 6. But his mere disagreement with the IJ's finding that he and his
7 counsel should have been prepared for the bond hearing does not amount to a procedural
8 due process violation. *See* Declaration of Elvira La Pierre ("La Pierre Decl.") at ¶¶ 4–7.
9 Further, Petitioner has not exhausted his administrative remedies and the circumstances
10 of this case do not warrant excusing the requirement here. Accordingly, the Court should
11 deny Petitioner's request for relief.

12 **II. ARGUMENT**

13 Petitioner seeks review of the IJ's decision at his bond hearing, but Petitioner has
14 not exhausted his administrative remedies.
15 While 28 U.S.C. § 2241 "does not specifically require petitioners to exhaust
16 direct appeals before filing petitions for habeas corpus," the Ninth Circuit "require[s],
17 as a prudential matter, that habeas petitioners exhaust available judicial and
18 administrative remedies before seeking relief under § 2241." *Castro Cortez v. INS*, 239
19 F.3d 1037, 1047 (9th Cir. 2001), *abrogated on other grounds by Fernandez-Vargas v.*
20 *Gonzales*, 548 U.S. 30 (2006). Like jurisdictional limits and limits on venue, prudential
21 limits are "ordinarily not optional." *Id.*
22 Courts have required exhaustion where "(1) agency expertise makes agency
23 consideration necessary to generate a proper record and reach a proper decision; (2)
24 relaxation of the requirement would encourage the deliberate bypass of the administrative
25 scheme; and (3) administrative review is likely to allow the agency to correct its own
26 mistakes and to preclude the need for judicial review." *Puga v. Chertoff*, 488 F.3d 812,
27 815 (9th Cir. 2007) (simplified). "When a petitioner does not exhaust administrative
28 remedies, a district court ordinarily should either dismiss the petition without prejudice

1 or stay the proceedings until the petitioner has exhausted remedies, unless exhaustion is
2 excused." *Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011).

3 Here, all three prudential concerns weigh in favor of requiring agency exhaustion.
4 Petitioner seeks release or another bond hearing, after an IJ denied his same-day request
5 to continue his bond hearing and denied him bond, finding that he presents a significant
6 flight risk. The proper avenue for Petitioner's grievance with his bond denial is to utilize
7 the administrative scheme and appeal the adverse decision to the Board of Immigration
8 Appeals (BIA).

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

21 Pertinent here, "the BIA is the subject-matter expert in immigration bond
22 decisions[.]" *Aden v. Nielsen*, No. C18-1441RSL, 2019 WL 5802013, at *2 (W.D.
23 Wash. Nov. 7, 2019); *see Delgado v. Sessions*, No. C17-1031-RSL-JPD, 2017 WL
24 4776340, at *2 (W.D. Wash. Sept. 15, 2017) (noting a denial of bond to an immigration
25 detainee was "a question well suited for agency expertise"). As Petitioner's claims
26 concern matters that fall squarely within the BIA's authority and expertise, and
27 exhaustion would generate a proper record for review, the BIA is the appropriate body
28 to first pass on the IJ's bond determination. Moreover, agency exhaustion is especially

1 "necessary to generate a proper record and reach a proper decision," where, as here, the
2 IJ's oral decision is not memorialized in writing for appellate review until a party files
3 an appeal. *See* Executive Office for Immigration Review, Immigration Court Practice
4 Manual, Ch. 8.3(e)(7) (updated Mar. 18, 2026), https://www.justice.gov/eoir/policy-
5 manual-eoir/part-II/icpm/chapter-8-3. Given the BIA's expertise in bond decisions and
6 the need to develop a proper record for review, the Court should require agency
7 exhaustion here. *See Liu v. Waters*, 55 F.3d 421, 424 (9th Cir. 1995) ("The exhaustion
8 requirement avoids premature interference with the agency's processes and helps to
9 compile a full judicial record.") (simplified).
10 Second, allowing Petitioner to challenge the IJ's bond denial directly to federal
11 district court would permit him, and encourage others, to bypass the administrative
12 scheme in place to deal with such claims. Ninth Circuit precedent has required
13 petitioners in these circumstances to have exhausted administrative remedies by
14 "appealing to the BIA *before* asking the federal district court to review the IJ's
15 decision." *Leonardo*, 646 F.3d at 1160 (explaining that pursuing habeas review before
16 appealing to the BIA was an "improper" shortcut) (emphasis added); *Aden*, 2019 WL
17 5802013, at *2 ("[R]elaxation of the exhaustion requirement would likely encourage
18 other detainees to bypass the BIA and directly appeal their no-bond determinations from
19 the IJ to federal district court."). Individuals, like Petitioner, would have little incentive
20 to seek relief before the BIA if this Court permits review here. And allowing a
21 skip-the-BIA-and-go-straight-to-federal-court strategy would needlessly increase the
22 burden on district courts. *See McCarthy v. Madigan*, 503 U.S. 140, 145 (1992)
23 (Exhaustion "serves the twin purposes of protecting administrative agency authority
24 and promoting judicial efficiency."); *Bd. of Trs. of the Constr. Laborers' Pension Trust*
25 *for S. Cal. v. M.M. Sundt Constr. Co.*, 37 F.3d 1419, 1420 (9th Cir. 1994) ("Judicial
26 economy is an important purpose of exhaustion requirements.").
27 Third, if the IJ erred in denying a continuance and finding Petitioner to be a
28 significant flight risk, the Court should allow the administrative process to correct itself

1 and decline Petitioner's invitation to permit him a shortcut here. Because the BIA has
2 the authority to determine whether the IJ's decision was supported by evidence,
3 administrative review would allow the agency "to correct its own mistakes and to
4 preclude the need for judicial review." *Puga*, 488 F.3d at 815. As all three prudential
5 factors favor requiring administrative exhaustion, the Court must impose the
6 requirement here.

7 Finally, Petitioner bears the burden to show that an exception to the exhaustion
8 requirement applies. *See Leonardo*, 646 F.3d at 1161; *Aden*, 2019 WL 5802013, at *3.
9 Here, Petitioner contends that "[e]xhausting his constitutional claim would be futile
10 because the agency does not have the authority to rule on constitutional questions." ECF
11 No. 1 at ¶ 17. But the questions at issue here—whether the IJ abused its discretion to
12 deny Petitioner's motion for a continuance and whether the IJ erred in finding that he
13 presents a significant flight risk—are questions well within the BIA's authority and
14 expertise to review. *See Aden*, 2019 WL 5802013, at *2 ("[T]he BIA is the
15 subject-matter expert in immigration bond decisions."); *Delgado*, 2017 WL 4776340,
16 at *2 (noting a denial of bond to an immigration detainee was "a question well suited
17 for agency expertise"); *see also* 8 C.F.R. § 1003.29 ("An Immigration Judge may, in
18 the exercise of discretion, grant a motion for continuance for good cause shown.").

19 Petitioner also argues that exhaustion should be excused because the "BIA
20 process is long, and the lengthy delays in adjudication often moot pending bond appeals
21 before they are adjudicated." ECF No. 1 at ¶ 14. The Court should reject the argument
22 as speculative. *See generally* 8 C.F.R. § 1003.1(e)(8) ("[A]fter completion of the record
23 on appeal, including any briefs, motions, or other submissions on appeal, the Board
24 member or panel to which the case is assigned shall issue a decision on the merits as
25 soon as practicable, with a priority for cases or custody appeals involving detained
26 aliens."). Moreover, the case he cites in support of the BIA's purported delay is
27 unpersuasive because it was decided in the context of a motion to dismiss, and the
28 district court was "required to accept as true the Bond Appeal Class's allegations about

1 the BIA's processing time for appeals, including that between FY 2015 and FYI 2024,
2 200 bond appeal cases 'took a year or longer to resolve.'" *Rodriguez v. Bostock*, 802 F.
3 Supp. 3d 1297, 1319 (W.D. Wash. 2025).

4 Additionally, detention alone is not an irreparable injury. "[C]ivil detention after
5 the denial of a bond hearing [does not] constitute[] irreparable harm such that prudential
6 exhaustion should be waived." *Reyes v. Wolf*, No. C20-0377JLR, 2021 WL 662659, at
7 *3 (W.D. Wash. Feb. 19, 2021), *aff'd sub nom. Diaz Reyes v. Mayorkas*, No. 21-35142,
8 2021 WL 3082403 (9th Cir. July 21, 2021).

9 Based on the foregoing, Petitioner has not met his burden to show that exhaustion
10 should be excused here. *See Laing v. Ashcroft*, 370 F.3d 994, 1001 (9th Cir. 2004) (The
11 discretion to waive exhaustion "is not unfettered."). Indeed, this and other courts have
12 dismissed habeas petitions under similar circumstances. *See* Exh. 1 at 4–5 (Bashant,
13 C.J.) (rejecting the petitioner's futility argument, finding: "Exhaustion would protect
14 administrative authority and promote judicial efficiency. Release on bond falls within
15 the agency's discretionary power and falls within its special expertise."); Exh. 2 at 3
16 (Bencivengo, J.) ("As the Ninth Circuit has explained, Petitioner pursued habeas review
17 of the IJ's adverse bond determination before appealing to the BIA. This short cut was
18 improper. Petitioner should have exhausted administrative remedies by appealing to the
19 BIA before asking the federal district court to review the IJ's decision.") (simplified);
20 Exh. 3 (Huie, J.) ("Petitioner is required to exhaust his administrative remedies through
21 an appeal to the BIA before seeking habeas review of the immigration judge's adverse
22 bond determination.").

23 Simply put, Petitioner was provided an individualized bond hearing consistent
24 with this Court's Order. His disagreement with the IJ's denial of his motion for a
25 continuance does not amount to a procedural due process violation—especially where,
26 as here, this Court has already found Petitioner's detention to be unreasonably prolonged,
27 Petitioner sought (and thus, could reasonably be expected to be prepared for) the very
28 bond hearing he was being afforded, the counsel representing Petitioner in his habeas

1 cases is the same one representing him in immigration court, and his counsel did not
2 request a continuance until the day of the hearing despite knowing about it two days
3 before. *See* La Pierre Decl. at ¶¶ 4–7. Because Petitioner has been afforded the process
4 he was due under the Court's prior order and he has failed to exhaust his administrative
5 remedies, the Court should deny his request for relief.

6 **III. CONCLUSION**

7 For the reasons stated herein, Respondents request the Court to deny the petition.

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9 Dated: April 15, 2026 Respectfully submitted,

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11 United States Attorney

12 *s/ Kim A. C. Gregg*
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14 Assistant United States Attorney
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