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8
9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 ASRAR ZEYNU SIRAJ,

12 Petitioner,

13 v.

14 MARKWAYNE MULLIN, Secretary of the
Department of Homeland Security; et al.,

15 Respondents.

Case No. 26-cv-02091-LL-DEB

**RESPONDENTS' RESPONSE TO
PETITIONER'S MOTION TO
ENFORCE JUDGMENT**

16
17 On April 22, 2026, the Court issued an order granting the petition and ordering
18 that Respondents provide Petitioner with:

19 an individualized bond hearing before a neutral immigration judge in
20 which the government bears the burden of establishing by clear and
21 convincing evidence that Petitioner is a danger to the community or a
22 flight risk if released. The immigration judge shall consider alternative
23 conditions of release and Petitioner's ability to pay bond **if he
determines bond is appropriate.**

24 ECF No. 10 (emphasis added).

25 On April 29, 2026, Petitioner was provided with an individualized bond hearing
26 before a neutral immigration judge (IJ) where the government bore the burden of
27 establishing Petitioner was a danger or flight risk. *See* Exh. 1; ECF No. 12 at 4–22.
28 After considering and weighing the evidence presented, the IJ found that the

1 government met its burden and denied Petitioner bond, finding him to be a flight risk.
2 See ECF No. 12 at 21. The IJ explained that Petitioner was a flight risk based on his
3 order of removal, limited likelihood of success on the appeal thereof, manner of entry
4 into the United States, and minimal ties to the country. See *id.* at 20–21. Because the IJ
5 determined that bond was not appropriate, this Court’s Order did not require him to
6 consider alternatives to detention (ATD) or ability to pay bond. See ECF No. 10
7 (directing consideration of ATD or ability to pay “if he determines bond is
8 appropriate.”).

9 Petitioner now seeks to improperly challenge the IJ’s bond order before this
10 Court. Though styled as a motion to enforce, what Petitioner is really seeking is
11 substantive, judicial review of the IJ’s bond decision. But Petitioner has not exhausted
12 his administrative remedies.

13 “Exhaustion can be either statutorily or judicially required.” *Acevedo–Carranza*
14 *v. Ashcroft*, 371 F.3d 539, 541 (9th Cir. 2004). “If exhaustion is statutory, it may be a
15 mandatory requirement that is jurisdictional.” *Id.* (citing *El Rescate Legal Servs., Inc.*
16 *v. Exec. Office of Immigration Review*, 959 F.2d 742, 747 (9th Cir. 1991)). “If, however,
17 exhaustion is a prudential requirement, a court has discretion to waive the requirement.”
18 *Id.* (citing *Stratman v. Watt*, 656 F.2d 1321, 1325–26 (9th Cir. 1981)). Here, the proper
19 avenue for Petitioner’s grievance with his bond denial is to utilize the administrative
20 scheme and appeal his bond denial to the Board of Immigration Appeals (BIA).

21 The BIA is an appellate body within the Executive Office for Immigration
22 Review and possesses delegated authority from the Attorney General. 8 C.F.R.
23 §§ 1003.1(a)(1), (d)(1). The BIA is “charged with the review of those administrative
24 adjudications under the [Immigration and Nationality Act (INA)] that the Attorney
25 General may by regulation assign to it,” including immigration judge custody
26 determinations. 8 C.F.R. §§ 1003.1(d)(1), 236.1, 1236.1. The BIA not only resolves
27 particular disputes before it, but is also directed to, “through precedent decisions, . . .
28 provide clear and uniform guidance to [the Department of Homeland Security], the

1 immigration judges, and the general public on the proper interpretation and
2 administration of the [INA] and its implementing regulations.” 8 C.F.R. § 1003.1(d)(1).
3 Decisions rendered by the BIA are final, except for those reviewed by the Attorney
4 General. 8 C.F.R. § 1003.1(d)(7).

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

17 “When a petitioner does not exhaust administrative remedies, a district court
18 ordinarily should either dismiss the petition without prejudice or stay the proceedings
19 until the petitioner has exhausted remedies, unless exhaustion is excused.” *Leonardo v.*
20 *Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011) (citations omitted); *see also Alvarado*
21 *v. Holder*, 759 F.3d 1121, 1127 n.5 (9th Cir. 2014), *abrogated on other grounds by*
22 *Santos-Zacaria v. Garland*, 598 U.S. 411 (2023) (“issue exhaustion is a jurisdictional
23 requirement”); *Tijani v. Holder*, 628 F.3d 1071, 1080 (9th Cir. 2010) (court “lacks
24 jurisdiction to review legal claims not presented in an alien’s administrative
25 proceedings before the BIA”). Moreover, “a petitioner cannot obtain review of
26 procedural errors in the administrative process that were not raised before the agency
27 merely by alleging that every such error violates due process.” *Reid v. Engen*, 765 F.2d
28 1457, 1461 (9th Cir. 1985); *see also Sola v. Holder*, 720 F.3d 1134, 1135–36 (9th Cir.

1 2013) (declining to address a due process argument that was not raised below because
2 it could have been addressed by the agency).

3 Here, requiring Petitioner to exhaust administrative remedies is warranted
4 because agency expertise is required. “[T]he BIA is the subject-matter expert in
5 immigration bond decisions[.]” *Aden v. Nielsen*, No. C18-1441RSL, 2019 WL
6 5802013, at *2 (W.D. Wash. Nov. 7, 2019); *see also Delgado v. Sessions*, No. C17-
7 1031-RSL-JPD, 2017 WL 4776340, at *2 (W.D. Wash. Sept. 15, 2017) (noting a denial
8 of bond to an immigration detainee was “a question well suited for agency expertise”).

9 Waiving exhaustion would also encourage other detainees to bypass the BIA and
10 directly appeal from the immigration judge to federal district court. *See Aden*, 2019 WL
11 5802013, at *2 (“[R]elaxation of the exhaustion requirement would likely encourage
12 other detainees to bypass the BIA and directly appeal their no-bond determinations from
13 the [immigration judge] to federal district court.”). Individuals, like Petitioner, would
14 have little incentive to seek relief before the BIA if this Court permits review here. And
15 allowing a skip-the-BIA-and-go-straight-to-federal-court strategy would needlessly
16 increase the burden on district courts. *See Bd. of Tr. of the Constr. Laborers’ Pension*
17 *Trust for S. Cal. v. M.M. Sundt Constr. Co.*, 37 F.3d 1419, 1420 (9th Cir. 1994)
18 (“Judicial economy is an important purpose of exhaustion requirements.”) (citation
19 omitted); *Santos-Zacaria*, 598 U.S. at 418 (noting “exhaustion promotes efficiency”).
20 If the IJ erred, this Court should allow the administrative process to correct itself.

21 Moreover, detention alone is not an irreparable injury. Discretion to waive
22 exhaustion “is not unfettered.” *Laing v. Ashcroft*, 370 F.3d 994, 998 (9th Cir. 2004).
23 “[C]ivil detention after the denial of a bond hearing [does not] constitute[] irreparable
24 harm such that prudential exhaustion should be waived.” *Reyes v. Wolf*, No. C20-
25 0377JLR, 2021 WL 662659, at *3 (W.D. Wash. Feb. 19, 2021), *aff’d sub nom. Diaz*
26 *Reyes v. Mayorkas*, No. 21-35142, 2021 WL 3082403 (9th Cir. July 21, 2021).

27 Finally, Petitioners bear the burden to show that an exception to the exhaustion
28 requirement applies. *Leonardo*, 646 F.3d at 1161; *Aden*, 2019 WL 5802013, at *3. Here,

1 Petitioner has failed to demonstrate that exhaustion should be waived.

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

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

15 DATED: May 21, 2026

Respectfully submitted,

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