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9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 CARLOS ALBERTO FERNANDO
12 GARCIA-MARROQUIN

13 Petitioner,
14

15 v.

16 MARKWAYNE MULLINS, et al.,

17 Respondents.
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Case No.: 26-cv-2131-JLS-BLM

**RESPONDENTS' RETURN TO
AMENDED HABEAS PETITION**

1 **I. BACKGROUND AND CURRENT SETTING**

2 Petitioner filed a petition for a writ of habeas corpus through counsel on November
3 6, 2025, in *Garcia-Marroquin v. LaRose*, 25-cv-3013-RSH-AHG (S.D. Cal. November 21,
4 2025) at ECF No. 1.¹ On November 21, 2025, Judge Huie granted the petition, denied the
5 request for release, and ordered a bond hearing. *Id.* at ECF No. 6. On December 1, 2025,
6 Petitioner withdrew his request for a bond hearing and the immigration judge instructed
7 Petitioner’s counsel to request a date for a future bond hearing. Exhibit 1 (IJ Bond Order
8 1). On February 17, 2026, Respondents provided Petitioner with a bond hearing at which
9 an immigration judge denied Petitioner bond finding that he “had not met his burden to
10 establish that he is not a danger to the community or a significant flight risk.” Ex. 2 (IJ
11 Bond Order 2). Petitioner reserved but did not appeal the order denying bond. Petitioner
12 has now filed an amended habeas petition which challenges Petitioner’s detention in
13 violation of the 5th Amendment Due Process Clause and Administrative Procedures Act.
14 ECF No. 1. Even if the Petitioner raises a cognizable claim, the claim is found not to be
15 duplicative of the prior petition, and the petition was granted by this Court, Petitioner has
16 already been provided with the appropriate remedy of a bond hearing.

17 **II. FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES**

18 Petitioner has not exhausted his administrative remedies. “Exhaustion can be either
19 statutorily or judicially required.” *Acevedo–Carranza v. Ashcroft*, 371 F.3d 539, 541 (9th
20 Cir. 2004). “If exhaustion is statutory, it may be a mandatory requirement that is
21 jurisdictional.” *Id.* (citing *El Rescate Legal Servs., Inc. v. Exec. Office of Immigration*
22 *Review*, 959 F.2d 742, 747 (9th Cir. 1991)). “If, however, exhaustion is a prudential
23 requirement, a court has discretion to waive the requirement.” *Id.* (citing *Stratman v.*
24 *Watt*, 656 F.2d 1321, 1325–26 (9th Cir. 1981)). Here, the proper avenue for Petitioner’s
25 grievance with his bond denial was to utilize the administrative scheme and appeal his
26 bond denial to the Board of Immigration Appeals (BIA).

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28 ¹ Respondent filed a Notice of Related Case in this matter at ECF No.

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

12 “District Courts are authorized by 28 U.S.C § 2241 to consider petitions for habeas
13 corpus.” *Castro–Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001), *abrogated on other*
14 *grounds by Hernandez–Vargas v. Gonzales*, 548 U.S. 30 (2006). “That section does not
15 specifically require petitioners to exhaust direct appeals before filing petitions for habeas
16 corpus.” *Id.* That said, the Ninth Circuit “require[s], as a prudential matter, that habeas
17 petitioners exhaust available judicial and administrative remedies before seeking relief
18 under § 2241.” *Id.* Specifically, “courts may require prudential exhaustion if (1) agency
19 expertise makes agency consideration necessary to generate a proper record and reach a
20 proper decision; (2) relaxation of the requirement would encourage the deliberate bypass
21 of the administrative scheme; and (3) administrative review is likely to allow the agency
22 to correct its own mistakes and to preclude the need for judicial review.” *Puga v. Chertoff*,
23 488 F.3d 812, 815 (9th Cir. 2007) (cleaned up).

24 “When a petitioner does not exhaust administrative remedies, a district court
25 ordinarily should either dismiss the petition without prejudice or stay the proceedings
26 until the petitioner has exhausted remedies, unless exhaustion is excused.” *Leonardo v.*
27 *Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011) (citations omitted); *see also Alvarado v.*

1 *Holder*, 759 F.3d 1121, 1127 n.5 (9th Cir. 2014), *abrogated on other grounds by Santos-*
2 *Zacaria v. Garland*, 598 U.S. 411 (2023) (“issue exhaustion is a jurisdictional
3 requirement”); *Tijani v. Holder*, 628 F.3d 1071, 1080 (9th Cir. 2010) (court “lacks
4 jurisdiction to review legal claims not presented in an alien’s administrative proceedings
5 before the BIA”). Moreover, “a petitioner cannot obtain review of procedural errors in
6 the administrative process that were not raised before the agency merely by alleging that
7 every such error violates due process.” *Reid v. Engen*, 765 F.2d 1457, 1461 (9th Cir.
8 1985); *see also Sola v. Holder*, 720 F.3d 1134, 1135–36 (9th Cir. 2013) (declining to
9 address a due process argument that was not raised below because it could have been
10 addressed by the agency).

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

17 Waiving exhaustion would also encourage other detainees to bypass the BIA and
18 directly appeal from the immigration judge to federal district court. *See Aden*, 2019 WL
19 5802013, at *2 (“[R]elaxation of the exhaustion requirement would likely encourage
20 other detainees to bypass the BIA and directly appeal their no-bond determinations from
21 the [immigration judge] to federal district court.”). Individuals, like Petitioner, would
22 have little incentive to seek relief before the BIA if this Court permits review here. And
23 allowing a skip-the-BIA-and-go-straight-to-federal-court strategy would needlessly
24 increase the burden on district courts. *See Bd. of Tr. of the Constr. Laborers’ Pension*
25 *Trust 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.”) (citation omitted);
27 *Santos-Zacaria*, 598 U.S. at 418 (noting “exhaustion promotes efficiency”). If the
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1 immigration judge erred, this Court should allow the administrative process to correct
2 itself.

3 Moreover, detention alone is not an irreparable injury. Discretion to waive
4 exhaustion “is not unfettered.” *Laing v. Ashcroft*, 370 F.3d 994, 998 (9th Cir. 2004).
5 “[C]ivil detention after the denial of a bond hearing [does not] constitute[] irreparable
6 harm such that prudential exhaustion should be waived.” *Reyes v. Wolf*, No. C20-
7 0377JLR, 2021 WL 662659, at *3 (W.D. Wash. Feb. 19, 2021), *aff’d sub nom. Diaz*
8 *Reyes v. Mayorkas*, No. 21-35142, 2021 WL 3082403 (9th Cir. July 21, 2021).

9 Finally, Petitioners bear the burden to show that an exception to the exhaustion
10 requirement applies. *Leonardo*, 646 F.3d at 1161; *Aden*, 2019 WL 5802013, at *3. Here,
11 Petitioner claims that he “has exhausted the process that the agency is capable of
12 providing.” ECF No. 1 at ¶ 52. But this is not true, as he has not appealed the immigration
13 judge’s bond denial to the BIA, and he makes no effort to demonstrate that exhaustion
14 should be waived.

15 Judge Bencivengo recently dismissed a habeas petition that challenged an
16 immigration judge’s denial of bond. *See Baker v. Gordon*, No. 25-cv-03539-CAB-SBC,
17 ECF No. 8 at 2:1–5 (S.D. Cal. Jan. 30, 2026) (“As the Ninth Circuit has explained,
18 ‘[Petitioner] pursued habeas review of the [immigration judge’s] adverse bond
19 determination before appealing to the BIA. This short cut was improper. [Petitioner]
20 should have exhausted administrative remedies by appealing to the BIA before asking
21 the federal district court to review the [immigration judge’s] decision.’”) (quoting
22 *Leonardo*, 646 F.3d at 1160).

23 Because Petitioner was provided a bond hearing under 8 U.S.C. § 1226(a) and
24 failed to exhaust his administrative remedies, the Court should dismiss this matter.

25 DATED: April 21, 2026

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