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9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA
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12 SAIKOU YAYA-DIALLO,

13 Petitioner,

14 v.

15 WARDEN JEREMY CASEY,

16 Respondent.
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Case No. 26-cv-02167-RSH-BLM

**OPPOSITION TO MOTION TO
ENFORCE HABEAS REVIEW**

19 On April 16, 2026, the Court issued an order granting Petitioner's petition for writ
20 of habeas corpus and requiring that Respondent provide Petitioner with a bond hearing "at
21 which the government bears the burden of establishing by clear and convincing evidence
22 that Petitioner is a flight risk." ECF No. 6 at 1:26–2:1. On April 23, 2026, Petitioner was
23 provided with an individualized bond hearing before a neutral immigration judge where
24 the government bore the burden of establishing Petitioner was a danger or flight risk. At
25 the conclusion of the bond hearing, the immigration judge denied Petitioner release on
26 bond based on a finding that Petitioner "poses a significant risk of flight." ECF No. 9-2 at
27 1. Petitioner now seeks to improperly challenge the immigration judge's bond order before
28

1 this Court by filing a “Motion to Enforce Habeas Review.” ECF No. 9.

2 Petitioner seeks review of the immigration judge’s decision at his bond hearing, but
3 Petitioner has not exhausted his administrative remedies. “Exhaustion can be either
4 statutorily or judicially required.” *Acevedo-Carranza v. Ashcroft*, 371 F.3d 539, 541 (9th
5 Cir. 2004). “If exhaustion is statutory, it may be a mandatory requirement that is
6 jurisdictional.” *Id.* (citing *El Rescate Legal Servs., Inc. v. Exec. Office of Immigration*
7 *Review*, 959 F.2d 742, 747 (9th Cir. 1991)). “If, however, exhaustion is a prudential
8 requirement, a court has discretion to waive the requirement.” *Id.* (citing *Stratman v. Watt*,
9 656 F.2d 1321, 1325–26 (9th Cir. 1981)). Here, the proper avenue for Petitioner’s
10 grievance with his bond denial is to utilize the administrative scheme and appeal his bond
11 denial to the Board of Immigration Appeals (BIA). Although Petitioner has commenced
12 the process of exhausting administrative remedies by filing an appeal with the BIA, that
13 appeal remains pending. *See* ECF No. 9 at 1.

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

25 “District Courts are authorized by 28 U.S.C § 2241 to consider petitions for habeas
26 corpus.” *Castro-Cortez v. I.N.S.*, 239 F.3d 1037, 1047 (9th Cir. 2001), *abrogated on other*
27 *grounds by Hernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006). “That section does not
28 specifically require petitioners to exhaust direct appeals before filing petitions for habeas

1 corpus.” *Id.* That said, the Ninth Circuit “require[s], as a prudential matter, that habeas
2 petitioners exhaust available judicial and administrative remedies before seeking relief
3 under § 2241.” *Id.* Specifically, “courts may require prudential exhaustion if (1) agency
4 expertise makes agency consideration necessary to generate a proper record and reach a
5 proper decision; (2) relaxation of the requirement would encourage the deliberate bypass
6 of the administrative scheme; and (3) administrative review is likely to allow the agency
7 to correct its own mistakes and to preclude the need for judicial review.” *Puga v. Chertoff*,
8 488 F.3d 812, 815 (9th Cir. 2007) (cleaned up).

9 “When a petitioner does not exhaust administrative remedies, a district court
10 ordinarily should either dismiss the petition without prejudice or stay the proceedings until
11 the petitioner has exhausted remedies, unless exhaustion is excused.” *Leonardo v.*
12 *Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011) (citations omitted); *see also Alvarado v.*
13 *Holder*, 759 F.3d 1121, 1127 n.5 (9th Cir. 2014), *abrogated on other grounds by Santos-*
14 *Zacaria v. Garland*, 598 U.S. 411 (2023) (“issue exhaustion is a jurisdictional
15 requirement”); *Tijani v. Holder*, 628 F.3d 1071, 1080 (9th Cir. 2010) (court “lacks
16 jurisdiction to review legal claims not presented in an alien’s administrative proceedings
17 before the BIA”). Moreover, “a petitioner cannot obtain review of procedural errors in the
18 administrative process that were not raised before the agency merely by alleging that every
19 such error violates due process.” *Reid v. Engen*, 765 F.2d 1457, 1461 (9th Cir. 1985); *see*
20 *also Sola v. Holder*, 720 F.3d 1134, 1135–36 (9th Cir. 2013) (declining to address a due
21 process argument that was not raised below because it could have been addressed by the
22 agency).

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

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

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

19 Finally, Petitioner bears the burden to show that an exception to the exhaustion
20 requirement applies. *Leonardo*, 646 F.3d at 1161; *Aden*, 2019 WL 5802013, at *3. Here,
21 Petitioner has failed to demonstrate that exhaustion should be waived.

22 This Court has previously reached the same conclusion. *See Rana v. LaRose*, No.
23 26-cv-00285-RSH-DDL, ECF No. 11 (S.D. Cal. Mar. 13, 2026) (denying motion to enforce
24 judgment where petitioner was denied bond on the basis of flight risk because there was
25 no indication that administrative remedies were first exhausted) (citing *Leonardo*, 646 F.3d
26 at 1160); *accord Baker v. Gordon*, No. 25-cv-03539-CAB-SBC, ECF No. 8 at 2:1–5 (S.D.
27 Cal. Jan. 30, 2026) (“As the Ninth Circuit has explained, ‘[Petitioner] pursued habeas
28 review of the [immigration judge’s] adverse bond determination before appealing to the

1 BIA. This short cut was improper. [Petitioner] should have exhausted administrative
2 remedies by appealing to the BIA before asking the federal district court to review the
3 [immigration judge's] decision.'"') (quoting *Leonardo*, 646 F.3d at 1160).

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

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7 Dated: June 11, 2026

Respectfully submitted,

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