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9
10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12
13 REMBERTO ARELLANO,

14 Petitioner,

15 v.

16
17 CHRISTOPHER LAROSE, OMDL,

18 Respondent.

Case No.: 26-cv-02196-DMS-MMP

**RESPONSE IN OPPOSITION TO
PETITION FOR A WRIT OF
HABEAS CORPUS**

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21 **I. INTRODUCTION**

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23 Petitioner has filed a second habeas petition under 28 U.S.C. § 2241 on April 7,
24 2026. Petitioner's first petition was filed through counsel. Petitioner is currently in
25 removal proceedings under 8 U.S.C. § 1229a.

26 **II. FACTUAL AND PROCEDURAL BACKGROUND**

27 This Court granted the Petitioner's previous petition on December 16, 2025, and
28 ordered Respondent to provide a bond hearing to Petitioner by December 30, 2025. *See*

1 *Arellano v. LaRose*, 3:25-CV-03316-DMS-AHG, ECF No. 6. Petitioner received a bond
2 hearing before an immigration judge on December 19, 2025. ECF No. 1-4. The
3 immigration judge denied bond on the basis that the Petitioner is a flight risk. *Id.* The
4 Petitioner subsequently filed a Motion for Custody Redetermination with the
5 immigration court. ECF No. 1-5. The immigration judge denied Petitioner's motion on
6 February 17, 2026, because Petitioner's evidence of a new sponsor was insufficient to
7 overcome the court's prior decision. *Id.* Petitioner has not appealed the denial of bond
8 by the immigration judge to the Board of Immigration Appeals. He had until March 19,
9 2026, to perfect an appeal. Instead, Petitioner filed the instant habeas petition on April
10 7, 2026.

11 III. ARGUMENT

12 In the instant petition, Petitioner challenges the length of his detention,
13 assessment by the immigration judge, and failure to consider alternatives to detention.
14 These arguments are well within the experience and expertise of the Board of
15 Immigration Appeals and not properly presented in the first instance to the Federal
16 District Court. The Court should ensure Petitioner properly exhausts administrative
17 remedies. The Ninth Circuit requires that "habeas petitioners exhaust available judicial
18 and administrative remedies before seeking relief under § 2241." *Castro-Cortez v. INS*,
19 239 F.3d 1037, 1047 (9th Cir. 2001). "When a petitioner does not exhaust administrative
20 remedies, a district court ordinarily should either dismiss the petition without prejudice
21 or stay the proceedings until the petitioner has exhausted remedies, unless exhaustion
22 is excused." *Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011); *see also*
23 *Alvarado v. Holder*, 759 F.3d 1121, 1127 n.5 (9th Cir. 2014) (issue exhaustion is a
24 jurisdictional requirement); *Tijani v. Holder*, 628 F.3d 1071, 1080 (9th Cir. 2010) (no
25 jurisdiction to review legal claims not presented in the petitioner's administrative
26 proceedings before the BIA). Here, Petitioner has not appealed the result of his bond
27 hearing held pursuant to 8 U.S.C. § 1226(a). Accordingly, the Court should dismiss
28 without prejudice.

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

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

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); *see also Alvarado v. Holder*, 759 F.3d
28 1121, 1127 n.5 (9th Cir. 2014) (issue exhaustion is a jurisdictional requirement); *Tijani*

1 *v. Holder*, 628 F.3d 1071, 1080 (9th Cir. 2010) (no jurisdiction to review legal claims
2 not presented in the petitioner’s administrative proceedings before the BIA). Moreover,
3 a “petitioner cannot obtain review of procedural errors in the administrative process that
4 were not raised before the agency merely by alleging that every such error violates due
5 process.” *Vargas v. INS*, 831 F.3d 906, 908 (9th Cir. 1987); *see also Sola v. Holder*,
6 720 F.3d 1134, 1135-36 (9th Cir. 2013) (declining to address a due process argument
7 that was not raised below because it could have been addressed by the agency).

8 Here, exhaustion is warranted because agency expertise is required. “[T]he BIA
9 is the subject-matter expert in immigration bond decisions.” *Aden v. Nielsen*, No. C18-
10 1441RSL, 2019 WL 5802013, at *2 (W.D. Wash. Nov. 7, 2019); *Delgado v. Sessions*,
11 No. C17-1031-RSL-JPD, 2017 WL 4776340, at *2 (W.D. Wash. Sept. 15, 2017) (noting
12 a denial of bond to an immigration detainee was “a question well suited for agency
13 expertise”).

14 Waiving exhaustion would also encourage other detainees to bypass the BIA and
15 directly appeal from the immigration judge to federal district court. *See Aden*, 2019 WL
16 5802013, at *2. Individuals, like Petitioner, would have little incentive to seek relief
17 before the BIA if this Court permits review here. And allowing a skip-the-BIA-and-go-
18 straight-to-federal-court strategy would needlessly increase the burden on district
19 courts. *See Bd. of Tr. of Constr. Laborers’ Pension Trust for S. Calif. v. M.M. Sundt*
20 *Constr. Co.*, 37 F.3d 1419, 1420 (9th Cir. 1994) (“Judicial economy is an important
21 purpose of exhaustion requirements.”); *see also Santos-Zacaria v. Garland*, 598 U.S.
22 411, 418 (2023) (noting “exhaustion promotes efficiency”). If the immigration judge
23 erred, this Court should allow the administrative process to correct itself. *See id.*

24 Moreover, detention alone is not an irreparable injury. Discretion to waive
25 exhaustion “is not unfettered.” *Laing v. Ashcroft*, 370 F.3d 994, 998 (9th Cir. 2004).
26 Petitioners bear the burden to show that an exception to the exhaustion requirement
27 applies. *Leonardo*, 646 F.3d at 1161; *Aden*, 2019 WL 5802013, at *3. “[C]ivil detention
28 after the denial of a bond hearing [does not] constitute[] irreparable harm such that

1 prudential exhaustion should be waived.” *Reyes v. Wolf*, No. C20-0377JLR, 2021 WL
2 662659, at *3 (W.D. Wash. Feb. 19, 2021), *aff’d sub nom. Diaz Reyes v. Mayorkas*, No.
3 21-35142, 2021 WL 3082403 (9th Cir. July 21, 2021).

4 Because Respondent has complied with this Court’s previous order to provide
5 Respondent with a bond hearing, and Petitioner has not exhausted his administrative
6 remedies, this matter should be dismissed.

7 **IV. CONCLUSION**

8 For the reasons stated herein, Respondent respectfully requests that the Court
9 deny the Petitioner’s requests for relief on the merits.

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Respectfully submitted,

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