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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 SAEID ZAREI,

11 Petitioner,

12 v.

13 CHRISTOPHER LAROSE, Warden of
Otay Mesa Detention Center, et.al.,

14 Respondents.

Case No.: 26-cv-2335 GPC (MMP)

RESPONSE TO PETITION

15 **I**

16 **INTRODUCTION**

17 Petitioner, disappointed in the outcome of his bond hearing, asks this Court to
18 ignore jurisdictional guardrails and administrative exhaustion by directing his release
19 from Immigration and Customs Enforcement (ICE) custody. Because Petitioner has
20 available remedies in the normal immigration appeal process, the Petition should be
21 denied.
22

23 **II**

24 **FACTUAL AND PROCEDURAL BACKGROUND**

25 Petitioner, a native and citizen of Iran who was apprehended when he entered
26 without inspection on March 27, 2025, filed his first habeas petition on January 18,
27 2026. See Petition, 3:26-cv-00308-GPC-MMP, ECF No. 1. Petitioner did not then have
28 any valid entry documents to enter the United States. See Response to Petition, 3:26-

1 cv-00308-GPC-MMP, ECF No. 4. On March 27, 2025, he was determined to be
2 inadmissible under 8 U.S.C. § 1182(a)(7)(A)(i)(I) and pending expedited removal
3 proceedings pursuant to 8 U.S.C. § 1225(b)(1), he was taken into Immigration and
4 Customs Enforcement (ICE) custody pursuant to 8 U.S.C. § 1225(b)(1)(B). *Id.* at
5 Exhibit 2, Notice and Order of Expedited Removal. He was later interviewed by an
6 asylum officer, pursuant to 8 U.S.C. § 1225(b)(1)(B), and after receiving a positive
7 credible fear determination, Petitioner was issued a Notice to Appear (NTA). *Id.* at Ex.
8 3 *See* Exhibit 3, NTA. The filing of the NTA initiated full removal proceedings,
9 pursuant to 8 U.S.C. § 1229a, against Petitioner, enabling him to seek relief before an
10 IJ. *Id.* Those proceedings remain ongoing, with a merits hearing set to occur in the near
11 future. *See* Petition in Case No. 3:26-cv-00308-GPC-MMP at p.8, ¶ 20, ECF No. 1.

12 On January 20, 2026, this Court ordered the government to provide Petitioner a
13 bond hearing. *See* Order Granting in Part Petition for Writ of Habeas Corpus, Case 3:26-
14 cv-00308-GPC-MMP, ECF No. 5. As directed by the Court, Petitioner was provided a
15 bond hearing on February 5, 2026. The Immigration Judge denied bond on the basis
16 that Petitioner poses a flight risk. *See* Notice of Compliance, Case 3:26-cv-00308-GPC-
17 MMP, ECF No. 7. Petitioner

18 On April 13, 2026, Petitioner filed this second Petition for Writ of Habeas
19 Corpus, seeking immediate release from custody. *See* Petition, ECF No. 1. The Petition
20 concedes he failed to appeal the IJ’s bond decision. *Id.* at p.2.

21 **III**
22 **ARGUMENT**

23 **A. Petitioner Has Not Exhausted Administrative Remedies.**

24 Petitioner essentially seeks review of the IJ’s bond decision, but such a review is
25 premature and filed in the wrong forum. Simply stated, Petitioner is required to exhaust
26 administrative remedies and has not done so.

27 “Exhaustion can be either statutorily or judicially required.” *Acevedo–Carranza*
28 *v. Ashcroft*, 371 F.3d 539, 541 (9th Cir. 2004). “If exhaustion is statutory, it may be a

1 mandatory requirement that is jurisdictional.” *Id.* (citing *El Rescate Legal Servs., Inc.*
2 *v. Exec. Office of Immigration Review*, 959 F.2d 742, 747 (9th Cir. 1991)). “If, however,
3 exhaustion is a prudential requirement, a court has discretion to waive the requirement.”
4 *Id.* (citing *Stratman v. Watt*, 656 F.2d 1321, 1325–26 (9th Cir. 1981)). Here, the proper
5 avenue for Petitioner’s grievance with his bond denial is to utilize the administrative
6 scheme and appeal his bond denial to the Board of Immigration Appeals (BIA).

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

18 “District Courts are authorized by 28 U.S.C § 2241 to consider petitions for
19 habeas corpus.” *Castro–Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001), *abrogated*
20 *on other grounds by Hernandez–Vargas v. Gonzales*, 548 U.S. 30 (2006). The Ninth
21 Circuit “require[s], as a prudential matter, that habeas petitioners exhaust available
22 judicial and administrative remedies before seeking relief under § 2241.” *Id.*
23 Specifically, “courts may require prudential exhaustion if (1) agency expertise makes
24 agency consideration necessary to generate a proper record and reach a proper decision;
25 (2) relaxation of the requirement would encourage the deliberate bypass of the
26 administrative scheme; and (3) administrative review is likely to allow the agency
27 to correct its own mistakes and to preclude the need for judicial review.” *Puga v.*
28 *Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007) (cleaned up).

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

14 Here, requiring Petitioner to exhaust administrative remedies is warranted
15 because agency expertise is required. “[T]he BIA is the subject-matter expert in
16 immigration bond decisions[.]” *Aden v. Nielsen*, No. C18-1441RSL, 2019 WL
17 5802013, at *2 (W.D. Wash. Nov. 7, 2019); *see also Delgado v. Sessions*, No. C17-
18 1031-RSL-JPD, 2017 WL 4776340, at *2 (W.D. Wash. Sept. 15, 2017) (noting a denial
19 of bond to an immigration detainee was “a question well suited for agency expertise”).
20 Moreover, waiving exhaustion would encourage other detainees to bypass the BIA and
21 directly appeal from the immigration judge to federal district court. *See Aden*, 2019 WL
22 5802013, at *2 (“[R]elaxation of the exhaustion requirement would likely encourage
23 other detainees to bypass the BIA and directly appeal their no-bond determinations from
24 the [immigration judge] to federal district court.”). Individuals like Petitioner would
25 have little incentive to seek relief before the BIA if this Court permits review here. And
26 allowing a skip-the-BIA-and-go-straight-to-federal-court strategy would needlessly
27 increase the burden on district courts. *See Bd. of Tr. of the Constr. Laborers’ Pension*
28 *Trust for S. Cal. v. M.M. Sundt Constr. Co.*, 37 F.3d 1419, 1420 (9th Cir. 1994)

1 (“Judicial economy is an important purpose of exhaustion requirements.”) (citation
2 omitted); *Santos-Zacaria*, 598 U.S. at 418 (noting “exhaustion promotes efficiency”).
3 If the immigration judge erred, this Court should allow the administrative process to
4 correct itself.

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

11 Finally, the Petitioner bears the burden to show that an exception to the
12 exhaustion requirement applies. *Leonardo*, 646 F.3d at 1161; *Aden*, 2019 WL 5802013,
13 at *3. Here, Petitioner has made no such showing and makes no effort to demonstrate
14 that exhaustion should be waived.

15 A matter recently decided by District Court Judge Cathy Bencivengo is
16 instructive. She recently dismissed a habeas petition that, like here, challenged an
17 immigration judge’s denial of bond. *See Baker v. Gordon*, No. 25-cv-03539-CAB-SBC,
18 ECF No. 8 at 2:1–5 (S.D. Cal. Jan. 30, 2026) (“As the Ninth Circuit has explained,
19 “[Petitioner] pursued habeas review of the [immigration judge’s] adverse bond
20 determination before appealing to the BIA. This short cut was improper. [Petitioner]
21 should have exhausted administrative remedies by appealing to the BIA before asking
22 the federal district court to review the [immigration judge’s] decision.”) (quoting
23 *Leonardo*, 646 F.3d at 1160). Judge Bashant likewise issued an order denying relief
24 under similar circumstances. *See Sharma v. Archambault*, 2026 WL 381611, at *2
25 (S.D. Cal. February 11, 2026) (“Exhaustion would protect administrative authority and
26 promote judicial efficiency. Release on bond falls within the agency’s discretionary
27 power and falls within its special expertise.”).

1 In asking this Court to review the immigration judge’s bond denial order and
2 grant immediate release, Petitioner “comes close to asking [the Court] to directly review
3 the [immigration judge’s] bond decision, a task Congress has expressly forbidden
4 [federal courts] from undertaking.” *Rodriguez Diaz*, 53 F.4th at 1212–13 (quoting
5 *Borbot v. Warden*, 906 F.3d 274, 279 (3rd Cir. 2018)). Congress has determined that an
6 immigration judge’s “discretionary bond determinations [are] not reviewable in federal
7 court.” *Id.* at 1209; see also 8 U.S.C. § 1226(e) (“The Attorney General’s discretionary
8 judgment regarding the application of this section shall not be subject to review. No
9 court may set aside any action or decision by the Attorney General under this section
10 regarding the detention of any alien or the revocation or denial of bond or parole.”).

11 Alleged errors regarding the immigration judge’s factual findings and application
12 of the law to the facts are appropriately litigated before the BIA, not forum-shopped to
13 the district court. *Id.* (“The BIA has the authority to determine whether the Immigration
14 Judge correctly applied the law to the facts in determining whether Petitioner should or
15 should not be released.”). Because Petitioner received a bond hearing and has not
16 exhausted his administrative remedies, the Court should dismiss this matter.

17 **B. Conditions of Confinement Allegations are Not Proper Habeas Claims**

18 To the extent Petitioner asserts claims regarding conditions of his confinement,
19 Petition, ECF No. 1 p.2, the Court lacks jurisdiction over such claims because they do
20 not challenge the lawfulness of his custody. An individual may seek habeas relief under
21 28 U.S.C. § 2241 if he is “in custody” under federal authority “in violation of the
22 Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(c). But habeas
23 relief is available to challenge only the legality or duration of confinement. *Pinson v.*
24 *Carvajal*, 69 F.4th 1059, 1067 (9th Cir. 2023); *Crawford v. Bell*, 599 F.2d 890, 891 (9th
25 Cir. 1979); *Thraissigiam*, 591 U.S. at 117 (the writ of habeas corpus historically
26 “provide[s] a means of contesting the lawfulness of restraint and securing release.”).
27 The Ninth Circuit squarely explained how to decide whether a claim sounds in habeas
28 jurisdiction: “[O]ur review of the history and purpose of habeas leads us to conclude

1 the relevant question is whether, based on the allegations in the petition, release is
2 legally required irrespective of the relief requested.” *Pinson*, 69 F.4th at 1072 (emphasis
3 in original); *see also Nettles v. Grounds*, 830 F.3d 922, 934 (9th Cir. 2016) (the key
4 inquiry is whether success on the petitioner’s claim would “necessarily lead to
5 immediate or speedier release.”).

6 Here, Petitioner’s claims regarding the conditions of his confinement do not arise
7 under § 2241. *See Nettles*, 830 F.3d at 933 (“We have long held that prisoners may not
8 challenge mere conditions of confinement in habeas corpus.”); *Giron Rodas v. Lyons*,
9 No. 25cv1912-LL-AHG, 2025 WL 2300781, at *3 (S.D. Cal. Aug. 1, 2025) (the Court
10 lacks jurisdiction over Petitioner’s § 2241 habeas petition that cannot be fairly read as
11 attacking the legality or duration of confinement.); *Guselnikov v. Noem*, No. 25-cv-
12 1971-BTM-KSC, 2025 WL 2300873, at *1 (S.D. Cal. Aug. 8, 2025) (finding
13 petitioners’ claims did not arise under § 2241 because they were not arguing they were
14 unlawfully in custody and receiving the requested relief would not entitle them to
15 release). Thus, Petitioner’s conditions of confinement allegations should be
16 disregarded.

17 **IV**
18 **CONCLUSION**

19 For the reasons stated herein, Respondents respectfully request that the Court
20 dismiss this petition for lack of jurisdiction or deny it on the merits.

21
22 DATED: April 24, 2026

Respectfully submitted,

23
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25
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