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

10 IBRAHIM OLAWALE-BANKOLE,

11 Petitioner,

12 v.

13 PAMELA BONDI, U.S. Attorney
General, *et al.*,

14 Respondent.
15
16
17

Case No.: 26-cv-2400-AGS-VET

**RETURN TO PETITION
FOR WRIT OF HABEAS CORPUS**

18
19 **Introduction**

20 Respondents respectfully request the Court dismiss Petitioner's second petition
21 for writ of habeas corpus as moot and find that Petitioner has failed to exhaust his
22 administrative remedies. On March 5, 2026, this Court granted Petitioner's first
23 petition and ordered that Respondents provide an individualized bond hearing by
24 March 19, 2026. *See* Exhibit 7. Petitioner received a compliant bond hearing on March
25 16, 2026, at which the Immigration Judge (IJ) denied bond based on serious risk of
26 flight. Petitioner filed an appeal of the IJ's bond denial with the Board of Immigration
27 Appeals on April 7, 2026. That appeal, as well as the appeal of his removal order from
28 2024, are both still pending. Because Petitioner has failed to exhaust his administrative

1 remedies after the Court already granted his requested relief once before, the instant
2 petition should be dismissed as moot.

3 **Petitioner has failed to exhaust administrative remedies**

4 Even if Petitioner were permitted to file successive habeas petitions asserting the
5 same claims on the same record, the Court would still have to dismiss the petition
6 because Petitioner has not exhausted his administrative remedies.

7 “Exhaustion can be either statutorily or judicially required.” *Acevedo-Carranza*
8 *v. Ashcroft*, 371 F.3d 539, 541 (9th Cir. 2004). “If exhaustion is statutory, it may be a
9 mandatory requirement that is jurisdictional.” *Id.* (citing *El Rescate Legal Servs., Inc.*
10 *v. Exec. Off. of Immigr. Rev.*, 959 F.2d 742, 747 (9th Cir. 1991)). “If, however,
11 exhaustion is a prudential requirement, a court has discretion to waive the requirement.”
12 *Id.* (citing *Stratman v. Watt*, 656 F.2d 1321, 1325–26 (9th Cir. 1981)). Here, Petitioner
13 is attempting to bypass the administrative scheme by not appealing his bond denial to
14 the Board of Immigration Appeals (BIA).

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

27 “District Courts are authorized by 28 U.S.C § 2241 to consider petitions for
28 habeas corpus.” *Castro-Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001). “That

1 section does not specifically require petitioners to exhaust direct appeals before filing
2 petitions for habeas corpus.” *Id.* That said, the Ninth Circuit “require[s], as a prudential
3 matter, that habeas petitioners exhaust available judicial and administrative remedies
4 before seeking relief under § 2241.” *Id.* Specifically, “courts may require prudential
5 exhaustion if (1) agency expertise makes agency consideration necessary to generate a
6 proper record and reach a proper decision; (2) relaxation of the requirement would
7 encourage the deliberate bypass of the administrative scheme; and (3) administrative
8 review is likely to allow the agency to correct its own mistakes and to preclude the need
9 for judicial review.” *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007) (internal
10 quotation marks omitted).

11 “When a petitioner does not exhaust administrative remedies, a district court
12 ordinarily should either dismiss the petition without prejudice or stay the proceedings
13 until the petitioner has exhausted remedies, unless exhaustion is excused.” *Leonardo v.*
14 *Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011); *see also Alvarado v. Holder*, 759 F.3d
15 1121, 1127 n.5 (9th Cir. 2014) (issue exhaustion is a jurisdictional requirement); *Tijani*
16 *v. Holder*, 628 F.3d 1071, 1080 (9th Cir. 2010) (no jurisdiction to review legal claims
17 not presented in the petitioner’s administrative proceedings before the BIA). Moreover,
18 a “petitioner cannot obtain review of procedural errors in the administrative process that
19 were not raised before the agency merely by alleging that every such error violates due
20 process.” *Vargas v. INS*, 831 F.3d 906, 908 (9th Cir. 1987); *see also Sola v. Holder*,
21 720 F.3d 1134, 1135–36 (9th Cir. 2013) (declining to address a due process argument
22 that was not raised below because it could have been addressed by the agency).

23 Here, exhaustion is warranted because agency expertise is required. “[T]he BIA
24 is the subject-matter expert in immigration bond decisions.” *Aden v. Nielsen*, No. C18-
25 1441RSL, 2019 WL 5802013, at *2 (W.D. Wash. Nov. 7, 2019); *Delgado v. Sessions*,
26 No. C17-1031-RSL-JPD, 2017 WL 4776340, at *2 (W.D. Wash. Sept. 15, 2017) (noting
27 a denial of bond to an immigration detainee was “a question well suited for agency
28 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. Individuals, like Petitioner, would have little incentive to seek relief
4 before the BIA if this Court permits review here. And allowing a skip-the-BIA-and-go-
5 straight-to-federal-court strategy would needlessly increase the burden on district
6 courts. *See Bd. of Tr. of Constr. Laborers' Pension Trust for S. Calif. v. M.M. Sundt*
7 *Constr. Co.*, 37 F.3d 1419, 1420 (9th Cir. 1994) (“Judicial economy is an important
8 purpose of exhaustion requirements.”); *see also Santos-Zacaria v. Garland*, 598 U.S.
9 411, 418 (2023) (noting “exhaustion promotes efficiency”). If the immigration judge
10 erred, this Court should allow the administrative process to correct itself. *See id.*

11 Moreover, detention alone is not an irreparable injury. Discretion to waive
12 exhaustion “is not unfettered.” *Laing v. Ashcroft*, 370 F.3d 994, 998 (9th Cir. 2004).
13 Petitioners bear the burden to show that an exception to the exhaustion requirement
14 applies. *Leonardo*, 646 F.3d at 1161; *Aden*, 2019 WL 5802013, at *3. “[C]ivil detention
15 after the denial of a bond hearing [does not] constitute[] irreparable harm such that
16 prudential exhaustion should be waived.” *Reyes v. Wolf*, No. C20-0377JLR, 2021 WL
17 662659, at *3 (W.D. Wash. Feb. 19, 2021), *aff’d sub nom. Diaz Reyes v. Mayorkas*, No.
18 21-35142, 2021 WL 3082403 (9th Cir. July 21, 2021).

19 Because Petitioner has (1) already received a bond hearing since the Court
20 granted his last petition, and (2) failed to exhaust his administrative remedies, the Court
21 should dismiss this matter.

22 DATED: April 29, 2026

Respectfully submitted,

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25
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