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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

DONALDO ANTONIO GUTIERREZ-PANIAGUA,

Petitioner,

v.

MARKWAYNE MULLIN, et al.,

Respondents.

Case No.: 26-CV-2512-GPC-JLB

RETURN TO PETITION FOR WRIT OF HABEAS CORPUS

I. INTRODUCTION

This Court previously found that Petitioner was detained pursuant to 8 U.S.C. § 1226, and ordered Petitioner be provided with a bond hearing. *Gutierrez-Paniagua v. Noem, et. al*, No: 3:25-CV-3250-GPC-AHG, ECF No. 7. Petitioner was provided with a bond hearing on December 19, 2025, at which time the Immigration Judge denied bond based on a finding that Petitioner was subject to mandatory detention under 8 U.S.C. § 1226(c). Exh. 1 (IJ Bond Order)[1]. Respondents submitted a notice of

[1] The attached exhibits are copies of true documents obtained from ICE counsel.

compliance on December 23, 2025. No: 3:25-CV-3250-GPC-AHG, ECF No. 9. Petitioner now seeks a second bite of the habeas apple. This Court should decline to intervene and dismiss the petition.

II. FACTUAL AND PROCEDURAL BACKGROUND

Respondents incorporate by reference the factual and procedural background from its previous filing in Case No: 3: 3:25-CV-3250-GPC-AHG, ECF No. 1, and provide the following additional information.

Petitioner was taken into immigration custody on May 28, 2025 at the Turner Guilford Knight Correctional Center, in Miami-Dade County, Florida, after being arrested for Burglary Occupied Conveyance, Fraud-Illegal Use Credit Cards, and Petit Theft. Exh. 2 (I-213). On December 19, 2025, an immigration judge (IJ) held a bond hearing, and denied bond on a finding that Petitioner is subject to mandatory detention under 8 U.S.C. § 1226(c). Exh. 1. On January 7, 2026, Petitioner's merits hearing was held. Exh. 3 (IJ removal order). At the conclusion of the hearing, the IJ denied all applications for relief, granted the government's motion to pretermit the form I-589, and ordered Petitioner removed to Honduras. *Id.* Petitioner filed an appeal of the denial of relief, along with the bond denial, to the BIA. Exhs. 4 and 5 (BIA Briefing Schedules). As a result, there is no administratively final order of removal at this time. Petitioner remains detained after an IJ finding that § 1226(c)'s mandatory detention provision applies to him.

III. ARGUMENT

A. Petitioner is Lawfully Detained Under 8 U.S.C. § 1226(c)

An IJ previously found that Petitioner is subject to mandatory detention under 8 U.S.C. § 1226(c). That determination is being appealed to the BIA. This Court should decline to intervene in those determinations. Section 1226(c) provides for the mandatory detention of specific categories of aliens, including, as applicable here, "any alien who . . . is charged with, is arrested for, is convicted of, admits having committed,

or admits committing acts which constitute the essential elements of any burglary, theft, [or] larceny." Here, Petitioner was encountered

This Court has already ruled that Petitioner is detained under § 1226 and ordered a bond hearing. *Chiapot Perez v. Noem, et. al*, No: 3:25-CV-3161-JES-VET, ECF No. 7. A bond hearing has already taken place, and Petitioner was ordered detained.

B. Administrative Remedies Should Be Exhausted

The Court should ensure Petitioner properly exhausts administrative remedies. "Exhaustion can be either statutorily or judicially required." *Acevedo–Carranza v. Ashcroft*, 371 F.3d 539, 541 (9th Cir. 2004). "If exhaustion is statutory, it may be a mandatory requirement that is jurisdictional." *Id.* (citing *El Rescate Legal Servs., Inc. v. Exec. Office of Immigration Review*, 959 F.2d 742, 747 (9th Cir. 1991)). "If, however, exhaustion is a prudential requirement, a court has discretion to waive the requirement." *Id.* (citing *Stratman v. Watt*, 656 F.2d 1321, 1325–26 (9th Cir. 1981)). Here, the proper avenue for Petitioner's grievance with his bond denial is to utilize the administrative scheme and appeal his bond denial to the Board of Immigration Appeals (BIA).

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

"District Courts are authorized by 28 U.S.C § 2241 to consider petitions for

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

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

Here, requiring Petitioner to exhaust administrative remedies is warranted because agency expertise is required. "[T]he BIA is the subject-matter expert in immigration bond decisions[.]" *Aden v. Nielsen*, No. C18-1441RSL, 2019 WL

5802013, at *2 (W.D. Wash. Nov. 7, 2019); *see also Delgado v. Sessions*, No. C17-1031-RSL-JPD, 2017 WL 4776340, at *2 (W.D. Wash. Sept. 15, 2017) (noting a denial of bond to an immigration detainee was "a question well suited for agency expertise").

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

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

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

Judge Bencivengo recently dismissed a habeas petition that, like here, challenged an immigration judge's denial of bond. *See Baker v. Gordon*, No. 25-cv-03539-CAB-

SBC, ECF No. 8 at 2:1–5 (S.D. Cal. Jan. 30, 2026) ("As the Ninth Circuit has explained, '[Petitioner] pursued habeas review of the [immigration judge's] adverse bond determination before appealing to the BIA. This short cut was improper. [Petitioner] should have exhausted administrative remedies by appealing to the BIA before asking the federal district court to review the [immigration judge's] decision.'") (quoting *Leonardo*, 646 F.3d at 1160). Other courts in this district agree. *See, e.g.*, *Rana v. LaRose*, No. 26-cv-00285-RSH-DDL, ECF No. 11 (S.D. Cal. Mar. 13, 2026) (denying motion to enforce judgment where petitioner was denied bond on the basis of flight risk because there was no indication that administrative remedies were first exhausted) (citing *Leonardo*, 646 F.3d at 1160); *Sharma v. Archambrault*, 2026 WL 381611, at *2 (S.D. Cal. February 11, 2026) ("Exhaustion would protect administrative authority and promote judicial efficiency. Release on bond falls within the agency's discretionary power and falls within its special expertise."). s

IV. CONCLUSION

For the reasons stated herein, Respondents respectfully request that the Court deny the petition.

Dated: June 9, 2026

Respectfully submitted,

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