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

11 JUAN ANGEL GODINES-GOMEZ,

12
13 Petitioner,

14 v.

15 PATRICK DIVVER, Field Office
16 Director of Enforcement and Removal
17 Operations, San Diego Field Office,
18 Immigration and Customs Enforcement;
et al.,

19
20 Respondents.

Case No.: 26-cv-02652-BTM-MSB

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

21 **I. INTRODUCTION**

22 This is Petitioner's second habeas petition under 28 U.S.C. § 2241. Petitioner's
23 prior petition was filed through different counsel. Petitioner is currently in removal
24 proceedings under 8 U.S.C. § 1229a.

25 **II. FACTUAL AND PROCEDURAL BACKGROUND**

26 This Court granted the Petitioner's first petition on February 12, 2026, and
27 ordered Respondents to provide a bond hearing to Petitioner by February 26, 2026. *See*
28

1 *Godines Gomez v. Divver; et al.*, 3:26-CV-00674-LL-SBC, ECF No. 5. Petitioner
2 received a bond hearing before an immigration judge on February 19, 2026. *See* Exhibit
3 1 (Order of the Immigration Judge). The immigration judge denied bond on the basis
4 that the Petitioner is a significant flight risk. *Id.* The Petitioner had until March 23, 2026
5 to file an appeal with the Board of Immigration Appeals (BIA). *Id.* Petitioner never
6 appealed the denial of bond to the BIA. Instead, Petitioner, through new counsel, filed
7 the instant petition on April 27, 2026.

8 III. ARGUMENT

9 In the instant petition, Petitioner challenges the length of his detention and the
10 assessment by the immigration judge during his custody determination hearing. *See*
11 ECF 1 at 4. These arguments are well within the experience and expertise of the Board
12 of Immigration Appeals and not properly presented in the first instance to the Federal
13 District Court. The Court should ensure Petitioner properly exhausts administrative
14 remedies. The Ninth Circuit requires that “habeas petitioners exhaust available judicial
15 and administrative remedies before seeking relief under § 2241.” *Castro-Cortez v. INS*,
16 239 F.3d 1037, 1047 (9th Cir. 2001). “When a petitioner does not exhaust administrative
17 remedies, a district court ordinarily should either dismiss the petition without prejudice
18 or stay the proceedings until the petitioner has exhausted remedies, unless exhaustion
19 is excused.” *Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011); *see also*
20 *Alvarado v. Holder*, 759 F.3d 1121, 1127 n.5 (9th Cir. 2014) (issue exhaustion is a
21 jurisdictional requirement); *Tijani v. Holder*, 628 F.3d 1071, 1080 (9th Cir. 2010) (no
22 jurisdiction to review legal claims not presented in the petitioner’s administrative
23 proceedings before the BIA). Here, Petitioner has not appealed the result of his bond
24 hearing held pursuant to 8 U.S.C. § 1226(a). Accordingly, the Court should dismiss
25 without prejudice.

26 The BIA is an appellate body within the Executive Office for Immigration
27 Review (EOIR) and possesses delegated authority from the Attorney General. 8 C.F.R.
28 §§ 1003.1(a)(1), (d)(1). The BIA is “charged with the review of those administrative

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

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

21 “When a petitioner does not exhaust administrative remedies, a district court
22 ordinarily should either dismiss the petition without prejudice or stay the proceedings
23 until the petitioner has exhausted remedies, unless exhaustion is excused.” *Leonardo v.*
24 *Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011); *see also Alvarado v. Holder*, 759 F.3d
25 1121, 1127 n.5 (9th Cir. 2014) (issue exhaustion is a jurisdictional requirement); *Tijani*
26 *v. Holder*, 628 F.3d 1071, 1080 (9th Cir. 2010) (no jurisdiction to review legal claims
27 not presented in the petitioner’s administrative proceedings before the BIA). Moreover,
28 a “petitioner cannot obtain review of procedural errors in the administrative process that

1 were not raised before the agency merely by alleging that every such error violates due
2 process.” *Vargas v. INS*, 831 F.3d 906, 908 (9th Cir. 1987); *see also Sola v. Holder*,
3 720 F.3d 1134, 1135-36 (9th Cir. 2013) (declining to address a due process argument
4 that was not raised below because it could have been addressed by the agency).

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

11 Waiving exhaustion would also encourage other detainees to bypass the BIA and
12 directly appeal from the immigration judge to federal district court. *See Aden*, 2019 WL
13 5802013, at *2. Individuals, like Petitioner, would have little incentive to seek relief
14 before the BIA if this Court permits review here. And allowing a skip-the-BIA-and-go-
15 straight-to-federal-court strategy would needlessly increase the burden on district
16 courts. *See Bd. of Tr. of Constr. Laborers’ Pension Trust for S. Calif. v. M.M. Sundt*
17 *Constr. Co.*, 37 F.3d 1419, 1420 (9th Cir. 1994) (“Judicial economy is an important
18 purpose of exhaustion requirements.”); *see also Santos-Zacaria v. Garland*, 598 U.S.
19 411, 418 (2023) (noting “exhaustion promotes efficiency”). If the immigration judge
20 erred, this Court should allow the administrative process to correct itself. *See id.*

21 Moreover, detention alone is not an irreparable injury. Discretion to waive
22 exhaustion “is not unfettered.” *Laing v. Ashcroft*, 370 F.3d 994, 998 (9th Cir. 2004).
23 Petitioners bear the burden to show that an exception to the exhaustion requirement
24 applies. *Leonardo*, 646 F.3d at 1161; *Aden*, 2019 WL 5802013, at *3. “[C]ivil detention
25 after the denial of a bond hearing [does not] constitute[] irreparable harm such that
26 prudential exhaustion should be waived.” *Reyes v. Wolf*, No. C20-0377JLR, 2021 WL
27 662659, at *3 (W.D. Wash. Feb. 19, 2021), *aff’d sub nom. Diaz Reyes v. Mayorkas*, No.
28 21-35142, 2021 WL 3082403 (9th Cir. July 21, 2021).

1 Because Respondents have complied with this Court's previous order to provide
2 Respondent with a bond hearing, and Petitioner has not exhausted his administrative
3 remedies, this matter should be dismissed.

4 **IV. CONCLUSION**

5 For the reasons stated herein, Respondents respectfully request that the Court
6 deny the Petitioner's requests for relief on the merits.

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8 Dated: May 14, 2026

Respectfully submitted,

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United States Attorney

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12 Assistant United States Attorney
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