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9
10 **UNITED STATES DISTRICT COURT**

11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 ELMER LEONEL GARCIA-CASTRO,

13
14 Petitioner,

15 v.

16 WARDEN, Otay ICE Detention Center,

17
18 Respondent.

Case No.: 26-cv-02787-AGS-VET

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

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1 **Introduction**

2 Petitioner has filed a second petition for writ of habeas corpus arguing that he has
3 been detained beyond the post-final order presumptively reasonable detention period
4 under *Zadvydas v. Davis*, 533 U.S. 678 (2001). However, the Court previously granted a
5 habeas petition for Petitioner and ordered that he receive an individualized bond hearing.
6 *See* Exhibit 1. Petitioner received a compliant bond hearing and subsequently appealed
7 the Immigration Judge’s bond decision to the Board of Immigration Appeals. *See* Exhibit
8 2. Because that appeal is still pending, Petitioner has failed to exhaust his administrative
9 remedies and the Court should dismiss the Petition.

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

11 Even if the Court were to entertain the substance of Petitioner’s claims for a second
12 time¹, the Court would still have to dismiss because Petitioner has not exhausted his
13 administrative remedies. “Exhaustion can be either statutorily or judicially required.”
14 *Acevedo–Carranza v. Ashcroft*, 371 F.3d 539, 541 (9th Cir. 2004). “If exhaustion is
15 statutory, it may be a mandatory requirement that is jurisdictional.” *Id.* (citing *El Rescate*
16 *Legal Servs., Inc. v. Exec. Off. of Immigr. Rev.*, 959 F.2d 742, 747 (9th Cir. 1991)). “If,
17 however, exhaustion is a prudential requirement, a court has discretion to waive the
18 requirement.” *Id.* (citing *Stratman v. Watt*, 656 F.2d 1321, 1325–26 (9th Cir. 1981)).
19 Here, Petitioner is attempting to bypass the administrative scheme by filing a habeas
20 petition while his appeal of the order denying his release on bond is pending with the
21 BIA.

22 The BIA is an appellate body within the Executive Office for Immigration Review
23 and possesses delegated authority from the Attorney General. 8 C.F.R. §§ 1003.1(a)(1),
24 (d)(1). The BIA is “charged with the review of those administrative adjudications under
25 the [Immigration and Nationality Act (INA)] that the Attorney General may by regulation
26 assign to it,” including immigration judge custody determinations. 8 C.F.R. §§

27 _____
28 ¹ *See* Case No. 25-cv-03287-AGS

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

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

18 “When a petitioner does not exhaust administrative remedies, a district court
19 ordinarily should either dismiss the petition without prejudice or stay the proceedings
20 until the petitioner has exhausted remedies, unless exhaustion is excused.” *Leonardo v.*
21 *Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011); *see also Alvarado v. Holder*, 759 F.3d
22 1121, 1127 n.5 (9th Cir. 2014) (issue exhaustion is a jurisdictional requirement); *Tijani*
23 *v. Holder*, 628 F.3d 1071, 1080 (9th Cir. 2010) (no jurisdiction to review legal claims not
24 presented in the petitioner’s administrative proceedings before the BIA). Moreover, a
25 “petitioner cannot obtain review of procedural errors in the administrative process that
26 were not raised before the agency merely by alleging that every such error violates due
27 process.” *Vargas v. INS*, 831 F.3d 906, 908 (9th Cir. 1987); *see also Sola v. Holder*, 720

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1 F.3d 1134, 1135–36 (9th Cir. 2013) (declining to address a due process argument that
2 was not raised below because it could have been addressed by the agency).

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

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

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

1 Because Petitioner has (1) already received habeas relief and a bond hearing, and
2 (2) failed to exhaust his administrative remedies, the Court should dismiss this matter.

3 I. CONCLUSION

4 For the reasons stated herein, Respondents respectfully request that the Court
5 dismiss Petitioner's new claims for relief.

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7 DATED: May 18, 2026

Respectfully submitted,

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