

1 ADAM GORDON
United States Attorney
2 ERIN M. DIMBLEBY
Assistant U.S. Attorney
3 California Bar No. 323359
DANIELLE L. BROWN
4 Special Assistant U.S. Attorney
Colorado State Bar No. 57814
5 Office of the U.S. Attorney
880 Front Street, Room 6293
6 San Diego, CA 92101
Telephone: (619) 546-6987/8693
7 Facsimile: (619) 546-7751
Email: erin.dimbleby@usdoj.gov
8 Email: danielle.brown2@usdoj.gov

9 Attorneys for Respondents

10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**
12

13 HATIM ABDEL MONGY ABDALA
14 BAKER,

15
16 Petitioner,

17 v.
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19 CHRISTOPHER LAROSE, *et al.*,

20 Respondents.
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Case No.: 26-cv- 02935-CAB-SBC

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

25 **I. INTRODUCTION**

26 Petitioner has filed a second habeas petition under 28 U.S.C. § 2241. For the
27 reasons set forth below, Respondents respectfully request that the Court deny and
28 dismiss the petition.

II. FACTUAL AND PROCEDURAL BACKGROUND

This Court granted the Petitioner's first petition on December 23, 2025, and ordered Respondents to provide a bond hearing to Petitioner. *See Abdala Baker v. Gordon*, No. 3:25-cv-3539-CAB-SBC, ECF Nos. 4, 5. Petitioner received a bond hearing before an immigration judge on December 23, 2025. *See id.* at ECF Nos. 6, 7. During the bond hearing, the immigration judge denied Petitioner's bond request because he was deemed to be a danger to the community and a flight risk. *Id.* Petitioner then filed an opposition to the bond hearing and this Court agreed with Respondents that Petitioner "should have exhausted administrative remedies by appealing to the BIA before asking the federal district court to review the IJ's decision." *See id.* at ECF No. 8. On February 3, 2026, Petitioner appealed the denial of bond by the immigration judge to the Board of Immigration Appeals (BIA).

Instead of awaiting a decision by the BIA on that appeal as previously directed by this Court, Petitioner filed another petition on May 11, 2026. ECF No. 1. The Court ordered Petitioner to show cause as to how this new petition differs from the previous matter, particularly in light of Petitioner's failure to exhaust administrative remedies. ECF No. 5. Petitioner's response asserted, again, that "Petitioner did not receive a constitutionally adequate bond hearing" because "[t]he [IJ] failed to conduct a meaningful individualized assessment of whether Petitioner posed a danger or flight risk and instead offered a conclusory determination unsupported by reasoning or evidence." ECF No. 6 at 2. Petitioner also now argues that he suffers from severe medical conditions, "including prostate cancer requiring surgical intervention, a history of open-heart surgeries, Type II diabetes, and hypertension—all of which have been inadequately treated in detention." ECF No. 6 at 2-3. The Court then ordered Respondents to respond. ECF No. 8. Respondents herein now respond.

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III. ARGUMENT

A. Petitioner Must Exhaust Administrative Remedies

As a preliminary matter, this Court does not have jurisdiction to review an immigration judge's discretionary factual findings and analysis, nor the ultimate ruling. The District Court's review of the bond proceedings, prior to a BIA appeal, is limited to whether the requirements of its order were followed. *See Martinez v. Clark*, 124 F.4th 775, 785 (9th Cir. 2024). Here, undersigned counsel has reviewed the audio recording of the bond hearing that occurred on December 31, 2025, and provide that Petitioner's bond hearing fully complied with the Court's order directing a bond hearing where the government had the burden of proving by clear and convincing evidence that Petitioner is a danger to the community or such a flight risk. At the hearing, the immigration judge acknowledged that the burden was on the government and confirmed that all evidence that had been submitted by Petitioner and the Department of Homeland Security (DHS) had been received and reviewed.¹ Both sides were given the opportunity to present evidence and argument prior to the immigration judge entering the finding that Petitioner is a danger to the community and a flight risk. Simply put, the immigration judge complied with the Court's order.

The Court must ensure Petitioner properly exhausts administrative remedies. The Ninth Circuit requires that "habeas petitioners exhaust available judicial and administrative remedies before seeking relief under § 2241." *Castro-Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001). "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); *see also Alvarado v. Holder*, 759 F.3d 1121, 1127 n.5 (9th Cir. 2014) (issue exhaustion is a

¹ DHS submitted evidence that included records relating to convictions, arrests, and failures to comply.

1 jurisdictional requirement); *Tijani v. Holder*, 628 F.3d 1071, 1080 (9th Cir. 2010) (no
2 jurisdiction to review legal claims not presented in the petitioner’s administrative
3 proceedings before the BIA). Here, a bond hearing was held pursuant to 8 U.S.C. §
4 1226(a) on December 31, 2025. The immigration judge denied bond based on danger
5 and flight risk. Petitioner filed an appeal on February 2, 2026.

6 The BIA is an appellate body within the Executive Office for Immigration
7 Review and possesses delegated authority from the Attorney General. 8 C.F.R.
8 §§ 1003.1(a)(1), (d)(1). The BIA is “charged with the review of those administrative
9 adjudications under the [Immigration and Nationality Act (INA)] that the Attorney
10 General may by regulation assign to it,” including immigration judge custody
11 determinations. 8 C.F.R. §§ 1003.1(d)(1), 236.1, 1236.1. The BIA not only resolves
12 particular disputes before it, but is also directed to, “through precedent decisions, . . .
13 provide clear and uniform guidance to [the Department of Homeland Security], the
14 immigration judges, and the general public on the proper interpretation and
15 administration of the [INA] and its implementing regulations.” 8 C.F.R. § 1003.1(d)(1).
16 Decisions rendered by the BIA are final, except for those reviewed by the Attorney
17 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). “That section
21 does not specifically require petitioners to exhaust direct appeals before filing petitions
22 for habeas corpus.” *Id.* That said, the Ninth Circuit “require[s], as a prudential matter,
23 that habeas petitioners exhaust available judicial and administrative remedies before
24 seeking relief under § 2241.” *Id.* Specifically, “courts may require prudential exhaustion
25 if (1) agency expertise makes agency consideration necessary to generate a proper
26 record and reach a proper decision; (2) relaxation of the requirement would encourage
27 the deliberate bypass of the administrative scheme; and (3) administrative review is
28 likely to allow the agency to correct its own mistakes and to preclude the need for

1 judicial review.” *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007) (cleaned up).

2 “When a petitioner does not exhaust administrative remedies, a district court
3 ordinarily should either dismiss the petition without prejudice or stay the proceedings
4 until the petitioner has exhausted remedies, unless exhaustion is excused.” *Leonardo v.*
5 *Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011) (citations omitted); *see also Alvarado*
6 *v. Holder*, 759 F.3d 1121, 1127 n.5 (9th Cir. 2014), *abrogated on other grounds by*
7 *Santos-Zacaria v. Garland*, 598 U.S. 411 (2023) (“issue exhaustion is a jurisdictional
8 requirement”); *Tijani v. Holder*, 628 F.3d 1071, 1080 (9th Cir. 2010) (court “lacks
9 jurisdiction to review legal claims not presented in an alien’s administrative
10 proceedings before the BIA”). Moreover, “a petitioner cannot obtain review of
11 procedural errors in the administrative process that were not raised before the agency
12 merely by alleging that every such error violates due process.” *Reid v. Engen*, 765 F.2d
13 1457, 1461 (9th Cir. 1985); *see also Sola v. Holder*, 720 F.3d 1134, 1135–36 (9th Cir.
14 2013) (declining to address a due process argument that was not raised below because
15 it could have been addressed by the agency).

16 Here, requiring Petitioner to exhaust administrative remedies is warranted
17 because agency expertise is required. “[T]he BIA is the subject-matter expert in
18 immigration bond decisions[.]” *Aden v. Nielsen*, No. C18-1441RSL, 2019 WL
19 5802013, at *2 (W.D. Wash. Nov. 7, 2019); *see also Delgado v. Sessions*, No. C17-
20 1031-RSL-JPD, 2017 WL 4776340, at *2 (W.D. Wash. Sept. 15, 2017) (noting a denial
21 of bond to an immigration detainee was “a question well suited for agency expertise”).

22 Waiving exhaustion would also encourage other detainees to bypass the BIA and
23 directly appeal from the immigration judge to federal district court. *See Aden*, 2019 WL
24 5802013, at *2 (“[R]elaxation of the exhaustion requirement would likely encourage
25 other detainees to bypass the BIA and directly appeal their no-bond determinations from
26 the [immigration judge] to federal district court.”). Individuals, like Petitioner, would
27 have little incentive to seek relief before the BIA if this Court permits review here. And
28 allowing a skip-the-BIA-and-go-straight-to-federal-court strategy would needlessly

1 increase the burden on district courts. *See Bd. of Tr. of the Constr. Laborers' Pension*
2 *Trust for S. Cal. v. M.M. Sundt Constr. Co.*, 37 F.3d 1419, 1420 (9th Cir. 1994)
3 (“Judicial economy is an important purpose of exhaustion requirements.”) (citation
4 omitted); *Santos-Zacaria*, 598 U.S. at 418 (noting “exhaustion promotes efficiency”).
5 If the IJ erred, this Court should allow the administrative process to correct itself.

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

12 Petitioner bears the burden to show that an exception to the exhaustion
13 requirement applies. *Leonardo*, 646 F.3d at 1161; *Aden*, 2019 WL 5802013, at *3. Here,
14 Petitioner has failed to demonstrate that exhaustion should be waived. Other courts in
15 this district agree. *See, e.g., Rana v. LaRose*, No. 26-cv-00285-RSH-DDL, ECF No. 11
16 (S.D. Cal. Mar. 13, 2026) (denying motion to enforce judgment where petitioner was
17 denied bond on the basis of flight risk because there was no indication that
18 administrative remedies were first exhausted) (citing *Leonardo*, 646 F.3d at 1160);
19 *Baker v. Gordon*, No. 25-cv-03539-CAB-SBC, ECF No. 8 at 2:1–5 (S.D. Cal. Jan. 30,
20 2026) (“As the Ninth Circuit has explained, ‘[Petitioner] pursued habeas review of the
21 [immigration judge’s] adverse bond determination before appealing to the BIA. This
22 short cut was improper. [Petitioner] should have exhausted administrative remedies by
23 appealing to the BIA before asking the federal district court to review the [immigration
24 judge’s] decision.’”) (quoting *Leonardo*, 646 F.3d at 1160).

25 Finally, the Ninth Circuit has confirmed that prolonged detention does not entitle
26 noncitizens to a second bond hearing under 8 U.S.C. § 1226(a). *Rodriguez Diaz v.*
27 *Garland*, 53 F.4th 1189 (9th Cir. 2022).

1 Because Respondents have complied with this Court's previous order to provide
2 Petitioner with a bond hearing, and Petitioner has not exhausted his administrative
3 remedies, this matter should be dismissed. *See, e.g., Lahadi v. Casey*, No. 26-cv-3539-
4 CAB-MAS, ECF No. 6 (S.D. Cal. June 23, 2026); *Micha Angono v. Casey*, No. 26-cv-
5 2313-CAB-DEB, ECF No. 11 (S.D. Cal. June 22, 2026); *Asonganyi v. Casey*, No. 26-
6 cv-3297-CAB-BJW, ECF No. 4 (S.D. Cal. June 5, 2026); *Hernandez-Hernandez v.*
7 *LaRose*, No. 26-cv-2689-CAB-SBC, ECF No. 9 (S.D. Cal. May 28, 2026); *Khursand*
8 *v. LaRose*, No. 26-cv-845-CAB-JLB, ECF No. 10 (S.D. Cal. May 14, 2026).

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

10 To the extent Petitioner asserts claims regarding conditions of his confinement
11 and inadequate medical care, the Court lacks jurisdiction over such claims because they
12 do not challenge the lawfulness of his custody. An individual may seek habeas relief
13 under 28 U.S.C. § 2241 if he is "in custody" under federal authority "in violation of the
14 Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c). But habeas
15 relief is available to challenge only the legality or duration of confinement. *Pinson v.*
16 *Carvajal*, 69 F.4th 1059, 1067 (9th Cir. 2023); *Crawford v. Bell*, 599 F.2d 890, 891 (9th
17 Cir. 1979); *Dep't of Homeland Security v. Thraissigiam*, 591 U.S. 103, 117 (2020) (The
18 writ of habeas corpus historically "provide[s] a means of contesting the lawfulness of
19 restraint and securing release."). The Ninth Circuit squarely explained how to decide
20 whether a claim sounds in habeas jurisdiction: "[O]ur review of the history and purpose
21 of habeas leads us to conclude the relevant question is whether, based on the allegations
22 in the petition, release is *legally required* irrespective of the relief requested." *Pinson*,
23 69 F.4th at 1072 (emphasis in original); *see also Nettles v. Grounds*, 830 F.3d 922, 934
24 (9th Cir. 2016) (The key inquiry is whether success on the petitioner's claim would
25 "necessarily lead to immediate or speedier release."). Here, Petitioner's claims
26 regarding the conditions of his confinement do not arise under § 2241. *See Nettles*, 830
27 F.3d at 933 ("We have long held that prisoners may not challenge mere conditions of
28 confinement in habeas corpus."); *Giron Rodas v. Lyons*, No. 25cv1912-LL-AHG, 2025

1 WL 2300781, at *3 (S.D. Cal. Aug. 1, 2025) (“Like in *Pinson*, the Court lacks
2 jurisdiction over Petitioner’s § 2241 habeas petition since it cannot be fairly read as
3 attacking ‘the legality or duration of confinement.’”) (quoting *Pinson*, 69 F.4th at 1065);
4 *Guselnikov v. Noem*, No. 25-cv-1971-BTM-KSC, 2025 WL 2300873, at *1 (S.D. Cal.
5 Aug. 8, 2025) (finding petitioners’ claims did not arise under § 2241 because they were
6 not arguing they were unlawfully in custody and receiving the requested relief would
7 not entitle them to release).

8 However, Respondents acknowledge the serious nature of Petitioner’s claim and
9 accordingly provide a more thoroughly response. Respondents have reviewed
10 Petitioner’s medical history and provide this Court with the attached declaration from
11 Dr. Rae Patterson. *See* Exhibit 1. Dr. Patterson, an internal medicine physician with
12 more than 25 years of clinical experience, establishes that Petitioner has received, and
13 will continue to receive, appropriate medical care at Otay Mesa Detention Center
14 (OMDC). Petitioner has been seen multiple times by medical providers at OMDC, and
15 provided with lab tests, medications, and outside care. Dr. Patterson provides a detailed
16 explanation on Petitioner’s current and past medical conditions, to include confirming
17 that Petitioner’s medical conditions are not “urgent and life-threatening” and that he
18 does not have prostate cancer as alleged in Petitioner’s second petition. *Id.* Dr. Patterson
19 further notes that Petitioner was taken offsite and underwent a transurethral resection
20 of prostate (TURP) in response to his benign prostatic hyperplasia (BPH). Notably, Dr.
21 Patterson provides that the care Petitioner “has received is appropriate, his conditions
22 are far from life threatening, and the treatment for those conditions is will within the
23 scope and expertise of the providers [she] supervise[s] at OMDC. [Petitioner] will
24 continue to receive appropriate and timely care during the remainder of his detention at
25 OMDC.” *Id.* at ¶ 47.

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1 IV. CONCLUSION

2 For the reasons stated herein, Respondents respectfully request that the Court
3 deny Petitioner's requests for relief and dismiss the petition.

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5 Dated: June 26, 2026

Respectfully submitted,

6 ADAM GORDON
United States Attorney

7 s/ Danielle L. Brown
8 DANIELLE L BROWN
Special Assistant United States Attorney
9 Attorneys for Respondents
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