

1 ADAM GORDON
United States Attorney
2 HUNTER V. NORTON
Assistant U.S. Attorney
3 Washington D.C. Bar No. 1780736
Office of the U.S. Attorney
4 880 Front Street, Room 6293
San Diego, CA 92101-8893
5 Telephone: (619) 546-8592
Facsimile: (619) 546-7751
6 Email: Hunter.Norton2@usdoj.gov

7 Attorneys for Respondents

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

10 RAMZI FAISAL SALEH AL NAQEEB,

11 Petitioner,

12 v.

13 MARKWAYNE MULLIN, Secretary of
14 the U.S. Department of Homeland
Security, *et al.*,

15 Respondents.
16
17

Case No.: 26-cv-03052-RSH-DEB

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

18
19 Petitioner has filed a Petition for Writ of Habeas Corpus under 28 U.S.C. ¶ 2241.
20 ECF No. 1. Petitioner argues, among other things, that his continued release on bond
21 while subject to GPS monitoring violates his procedural and substantive due process
22 rights under the Fifth Amendment, as well as violating the scope of the Immigration
23 Judge’s bond order. *Id.* at ¶¶ 55-68, 82-105, 106-132. Petitioner requests that this Court
24 “[d]eclare that ICE has abused its delegated discretion,” “[o]rder ICE to remove
25 Petitioner’s GPS ankle monitor,” and “[i]n the alternative, order ICE to provide
26 Petitioner with an individualized review . . . with written findings explaining why GPS
27 monitoring remains necessary and why less restrictive alternatives are insufficient.” *Id.*
28 at ¶¶ f-h. However, this Court lacks jurisdiction to review Petitioner’s claims as his

1 release on bond with an ankle monitor does not satisfy the “in custody” requirement for
2 habeas jurisdiction. *Miranda v. Reno*, 238 F.3d 1156, 1159 (9th Cir. 2001).
3 Furthermore, 8 U.S.C. § 1226(e) precludes jurisdiction over claims involving an
4 Immigration Judge “exercising his statutorily-delegated discretion.” *Hernandez v.*
5 *Sessions*, 872 F.3d 976, 987 (9th Cir. 2017).

6 Even if the Court found it had jurisdiction over these claims, the Ninth Circuit
7 has upheld the constitutionality of Alternatives to Detention such as GPS monitoring
8 and, in fact, encouraged the consideration of “less restrictive alternatives to detention”
9 such as GPS monitoring as a procedural safeguard against violating due process. *Id.* at
10 987.

11 Finally, even if Petitioner’s arguments regarding due process were valid, the
12 Court would still have to dismiss the Petition, because Petitioner has not exhausted his
13 administrative remedies.

14 Petitioner has failed to exhaust his administrative remedies by failing to challenge
15 the IJ’s bond order regarding ADT or GPS monitoring. Petitioner, through counsel, has
16 not appealed either of the two underlying orders granting bond to the BIA. *See* Exhibits
17 3-4. While Petitioner filed an untimely motion to amend his bond conditions that the
18 Immigration Judge ultimately considered, he only challenged the IJ’s order as to the
19 requirement that he live with a sponsor.

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

28

1 The BIA is an appellate body within the Executive Office for Immigration
2 Review and possesses delegated authority from the Attorney General. 8 C.F.R.
3 §§ 1003.1(a)(1), (d)(1). The BIA is “charged with the review of those administrative
4 adjudications under the [Immigration and Nationality Act (INA)] that the Attorney
5 General may by regulation assign to it,” including immigration judge custody
6 determinations. 8 C.F.R. §§ 1003.1(d)(1), 236.1, 1236.1. The BIA not only resolves
7 particular disputes before it, but is also directed to, “through precedent decisions, []
8 provide clear and uniform guidance to [the Department of Homeland Security], the
9 immigration judges, and the general public on the proper interpretation and
10 administration of the [INA] and its implementing regulations.” *Id.* § 1003.1(d)(1).
11 Decisions rendered by the BIA are final, except for those reviewed by the Attorney
12 General. 8 C.F.R. § 1003.1(d)(7).

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

25 “When a petitioner does not exhaust administrative remedies, a district court
26 ordinarily should either dismiss the petition without prejudice or stay the proceedings
27 until the petitioner has exhausted remedies, unless exhaustion is excused.” *Leonardo v.*
28 *Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011); *see also Alvarado v. Holder*, 759 F.3d

1 1121, 1127 n.5 (9th Cir. 2014) (issue exhaustion is a jurisdictional requirement); *Tijani*
2 *v. Holder*, 628 F.3d 1071, 1080 (9th Cir. 2010) (no jurisdiction to review legal claims
3 not presented in the petitioner’s administrative proceedings before the BIA). Moreover,
4 a “petitioner cannot obtain review of procedural errors in the administrative process that
5 were not raised before the agency merely by alleging that every such error violates due
6 process.” *Vargas v. INS*, 831 F.3d 906, 908 (9th Cir. 1987); *see also Sola v. Holder*,
7 720 F.3d 1134, 1135–36 (9th Cir. 2013) (declining to address a due process argument
8 that was not raised below because it could have been addressed by the agency).

9 Here, exhaustion is warranted because agency expertise is required. “[T]he BIA
10 is the subject-matter expert in immigration bond decisions.” *Aden v. Nielsen*, No. C18-
11 1441RSL, 2019 WL 5802013, at *2 (W.D. Wash. Nov. 7, 2019); *Delgado v. Sessions*,
12 No. C17-1031-RSL-JPD, 2017 WL 4776340, at *2 (W.D. Wash. Sept. 15, 2017) (noting
13 a denial of bond to an immigration detainee was “a question well suited for agency
14 expertise”).

15 Waiving exhaustion would also encourage other detainees to bypass the BIA and
16 directly appeal from the immigration judge to federal district court. *See Aden*, 2019 WL
17 5802013, at *2. Individuals, like Petitioner, would have little incentive to seek relief
18 before the BIA if this Court permits review here. And allowing a skip-the-BIA-and-go-
19 straight-to-federal-court strategy would needlessly increase the burden on district
20 courts. *See Bd. of Tr. of Constr. Laborers’ Pension Trust for S. Calif. v. M.M. Sundt*
21 *Constr. Co.*, 37 F.3d 1419, 1420 (9th Cir. 1994) (“Judicial economy is an important
22 purpose of exhaustion requirements.”); *see also Santos-Zacaria v. Garland*, 598 U.S.
23 411, 418 (2023) (noting “exhaustion promotes efficiency”). If the immigration judge
24 erred, this Court should allow the administrative process to correct itself. *See id.*

25 Moreover, detention alone is not an irreparable injury. Discretion to waive
26 exhaustion “is not unfettered.” *Laing v. Ashcroft*, 370 F.3d 994, 998 (9th Cir. 2004).
27 Petitioners bear the burden to show that an exception to the exhaustion requirement
28 applies. *Leonardo*, 646 F.3d at 1161; *Aden*, 2019 WL 5802013, at *3. “[C]ivil detention

1 after the denial of a bond hearing [does not] constitute[] irreparable harm such that
2 prudential exhaustion should be waived.” *Reyes v. Wolf*, No. C20-0377JLR, 2021 WL
3 662659, at *3 (W.D. Wash. Feb. 19, 2021), *aff’d sub nom. Diaz Reyes v. Mayorkas*, No.
4 21-35142, 2021 WL 3082403 (9th Cir. July 21, 2021).

5 Because Petitioner has (1) already received a bond hearing under 8 U.S.C.
6 § 1226(a), (2) failed to exhaust his administrative remedies, and (3) already been
7 released from custody on bond, the Court should deny the Petition.

8 **CONCLUSION**

9 For the foregoing reasons, Respondents respectfully request that the Court
10 dismiss this action.

11 DATED: June 2, 2026

Respectfully submitted,

12 ADAM GORDON
13 United States Attorney

14
15 *s/ Hunter V. Norton*
16 HUNTER V. NORTON
17 Assistant United States Attorney
18 Attorneys for Respondents
19
20
21
22
23
24
25
26
27
28