

1 ADAM GORDON
United States Attorney
2 CAMILLE SAVEDRA
California Bar No. 336490
3 Assistant U.S. Attorney
Office of the U.S. Attorney
4 880 Front Street, Room 6293
San Diego, CA 92101-8893
5 Telephone: (619) 546-5084
Email: camille.savedra@usdoj.gov
6

7 Attorneys for Respondents

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

11 MILTON OMAR HERNANDEZ
12 MENDEZ,

13
14 Petitioner,

15 v.

16 DANIEL A. BRIGHTMAN, Field
17 Office Director of ICE Enforcement and
18 Removal Operations, San Diego
California; *et al.*,

19
20 Respondents.

Case No.: 26-cv-03468-TWR-AHG

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

21 **I. INTRODUCTION**

22 This is Petitioner's fourth habeas petition under 28 U.S.C. § 2241 filed this year,
23 through counsel. Petitioner's first habeas petition resulted in the Court issuing an order
24 granting the petition and ordering Respondents provide Petitioner with a bond hearing.
25 Respondents fully complied with the Court's order and Petitioner received a bond
26 hearing on January 20, 2026. Petitioner was denied bond because he posed a danger and
27 flight risk. Petitioner's second and third habeas petitions were dismissed by this Court
28 for failure to exhaust administrative remedies and lack of jurisdiction. As with the

1 previous two petitions, the Court should dismiss the instant petition because Petitioner
2 still has not exhausted his administrative remedies and the Court lacks jurisdiction to
3 review the immigration judge's decision.

4 II. FACTUAL AND PROCEDURAL BACKGROUND

5 This Court granted the Petitioner's first petition on January 13, 2026, and ordered
6 Respondents to provide a bond hearing within fourteen days of the date of the order.¹
7 *See Hernandez-Mendez v. Noem; et al.*, 3:26-CV-00006-TWR-SBC, ECF No. 8.
8 Petitioner received a bond hearing before an immigration judge on January 20, 2026.
9 *See* Exhibit 1. The immigration judge denied bond on the basis that the Petitioner is a
10 danger and flight risk. *Id.* On March 26, 2026, Petitioner requested an immigration
11 judge review the January 20, 2026 bond hearing. *See* Exhibit 2. On April 14, 2026, the
12 immigration judge denied the request because there was no "material change" in
13 Petitioner's circumstances. *Id.*

14 On April 28, 2026, Petitioner filed his second habeas petition which was assigned
15 at random to a district judge. *See Hernandez-Mendez v. Brightman; et al.*, 3:26-CV-
16 02702-TWR-SBC, ECF No. 1. This Court promptly dismissed Petitioner's second
17 petition on April 29, 2026, because "Petitioner has failed to exhaust his administrative
18 remedies by appealing to the Board of Immigration Appeals and has not raised any basis
19 for waiving exhaustion[.]" *Id.*, ECF No. 3.

20 On April 30, 2026, Petitioner appealed the April 14, 2026 bond decision (*see*
21 Exhibit 3), which is still pending with the Board of Immigration Appeals (BIA). Since
22 then, Petitioner, through same counsel, filed *two* additional habeas petitions with the
23 Court, including the instant petition, which were also initially assigned at random to a
24 district judge. On June 5, 2026, this Court denied Petitioner's third petition finding the
25

26 ¹ Prior to filing his first habeas petition, Petitioner requested a bond hearing from the
27 detention facility on December 9, 2025 and again on December 24, 2025. The first
28 hearing was withdrawn at the request of Petitioner's counsel and the second hearing
resulted in the denial of bond due to lack of jurisdiction.

1 Court “has no jurisdiction to review the immigration judge’s discretionary decision to
2 deny bond[.]” *See Hernandez-Mendez v. Brightman; et al.*, 3:26-CV-03384-TWR-SBC,
3 ECF No. 3. Four days later, Petitioner filed the instant habeas petition, again requesting
4 this Court review the immigration judge’s decision and order *another* individualized
5 bond hearing. *See* ECF No. 1.

6 III. ARGUMENT

7 As in his previous petitions, in the instant petition, Petitioner mainly challenges
8 the assessment by the immigration judge despite Petitioner’s alleged lack of criminal
9 history and ties to the community. *See* ECF 1 at 6-7. These arguments are well within
10 the experience and expertise of the Board of Immigration Appeals and not properly
11 presented in the first instance to the Federal District Court. The Court should ensure
12 Petitioner properly exhausts administrative remedies. The Ninth Circuit requires that
13 “habeas petitioners exhaust available judicial and administrative remedies before
14 seeking relief under § 2241.” *Castro-Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir.
15 2001). “When a petitioner does not exhaust administrative remedies, a district court
16 ordinarily should either dismiss the petition without prejudice or stay the proceedings
17 until the petitioner has exhausted remedies, unless exhaustion is excused.” *Leonardo v.*
18 *Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011); *see also Alvarado v. Holder*, 759 F.3d
19 1121, 1127 n.5 (9th Cir. 2014) (issue exhaustion is a jurisdictional requirement); *Tijani*
20 *v. Holder*, 628 F.3d 1071, 1080 (9th Cir. 2010) (no jurisdiction to review legal claims
21 not presented in the petitioner’s administrative proceedings before the BIA). Here,
22 Petitioner appealed the result of his bond hearing held pursuant to 8 U.S.C. § 1226(a)
23 and that appeal is still pending. Accordingly, the Court should dismiss without
24 prejudice.

25 The BIA is an appellate body within the Executive Office for Immigration
26 Review (EOIR) and possesses delegated authority from the Attorney General. 8 C.F.R.
27 §§ 1003.1(a)(1), (d)(1). The BIA is “charged with the review of those administrative
28 adjudications under the [INA] that the Attorney General may by regulation assign to

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

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

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

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

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

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

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

1 Finally, the District Court's review of the bond proceedings, prior to a BIA
2 appeal, is limited to whether the requirements of its order were followed. *See Martinez*
3 *v. Clark*, 124 F.4th 775, 785 (9th Cir. 2024). Here, the immigration judge held the bond
4 hearing in a timely fashion, applied the burden of proof required by this Court's order,
5 and found Petitioner posed a danger to the community and a flight risk. Simply put, the
6 immigration judge complied with the Court's order. There is no evidence provided by
7 the Petitioner that the hearing was conducted in such an egregious manner so as to give
8 rise to a substantive due process violation. Moreover, Petitioner's dissatisfaction with
9 the immigration judge's ruling does give rise to a claim for relief. Petitioner has alleged
10 nothing more.

11 IV. CONCLUSION

12 Because Respondents have complied with this Court's previous order to provide
13 Respondent with a bond hearing, this Court does not have jurisdiction to review the
14 immigration judge's bond decision, and Petitioner has not exhausted his administrative
15 remedies, this matter should be dismissed. For the reasons stated herein, Respondents
16 respectfully request that the Court deny the instant petition.

17 Dated: June 22, 2026

Respectfully submitted,

18 ADAM GORDON
19 United States Attorney

20 s/ Camille Savedra
21 CAMILLE SAVEDRA
22 Assistant United States Attorney
23 Attorneys for Respondents
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