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

10 ERROL GEORGE HUNTER,
11
Petitioner,
12
v.
13 TODD BLANCHE,
14
Respondent.

Case No. 26-cv-03615-BTM-VET

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

15
16 **I. INTRODUCTION**

17 On March 9, 2026, Petitioner filed an Amended Petition for Writ of Habeas
18 Corpus in Case No. 26-cv-00894-BTM-VET. The Court granted the Amended Petition
19 on April 17, 2026, and ordered that Respondents provide Petitioner with a bond hearing
20 before a neutral and open-minded immigration judge where “the Government [would]
21 bear[] the burden of establishing by clear and convincing evidence that Petitioner poses
22 a danger to the community or a risk of flight.” *See* Exhibit 1 (Order of the Court, Apr.
23 17, 2026) at 4.

24 Respondents provided Petitioner with a compliant bond hearing on April 28,
25 2026. *See* Exhibit 2 (Order of the Immigration Judge, Apr. 28, 2026); Exhibit 3 (Bond
26 Memorandum). The immigration judge found that “the Department of Homeland
27 Security (“Department”) met its burden to demonstrate that [Petitioner] poses a danger
28 to the community, and denied his request to be released from custody.” Exhibit 3 at 1.

Petitioner has now filed a new habeas petition alleging again that immigration judge's "are bias[ed] and prejudice[d]" and that "Petitioner was given the burden to prove to the court that he is not a danger to the community or a flight risk [in violation of the Court's prior order]." ECF No. 1 at 3. Petitioner claims the Court should "grant his immediate release." *Id.* at 4.

For the reasons set forth below, the Court should dismiss the new petition.

II. ARGUMENT

A. Petitioner Has Not Exhausted Administrative Remedies.

Petitioner seeks review of the immigration judge's decision at his bond hearing, but Petitioner has not exhausted his administrative remedies.

"Exhaustion can be either statutorily or judicially required." *Acevedo-Carranza v. Ashcroft*, 371 F.3d 539, 541 (9th Cir. 2004). "If exhaustion is statutory, it may be a mandatory requirement that is jurisdictional." *Id.* (citing *El Rescate Legal Servs., Inc. v. Exec. Office of Immigration Review*, 959 F.2d 742, 747 (9th Cir. 1991)). "If, however, exhaustion is a prudential requirement, a court has discretion to waive the requirement." *Id.* (citing *Stratman v. Watt*, 656 F.2d 1321, 1325–26 (9th Cir. 1981)). Here, the proper avenue for Petitioner's grievance with his bond denial is to allow the Board of Immigration Appeals (BIA) to rule on his pending appeal of the immigration judge's order denying bond.

The BIA is an appellate body within the Executive Office for Immigration Review and possesses delegated authority from the Attorney General. 8 C.F.R. §§ 1003.1(a)(1), (d)(1). The BIA is "charged with the review of those administrative adjudications under the [Immigration and Nationality Act (INA)] that the Attorney General may by regulation assign to it," including immigration judge custody determinations. 8 C.F.R. §§ 1003.1(d)(1), 236.1, 1236.1. The BIA not only resolves particular disputes before it, but is also directed to, "through precedent decisions, . . . provide clear and uniform guidance to [the Department of Homeland Security], the immigration judges, and the general public on the proper interpretation and

1 administration of the [INA] and its implementing regulations.” 8 C.F.R. § 1003.1(d)(1).
2 Decisions rendered by the BIA are final, except for those reviewed by the Attorney
3 General. 8 C.F.R. § 1003.1(d)(7).

4 “District Courts are authorized by 28 U.S.C § 2241 to consider petitions for
5 habeas corpus.” *Castro–Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001), *abrogated*
6 *on other grounds by Hernandez–Vargas v. Gonzales*, 548 U.S. 30 (2006). “That section
7 does not specifically require petitioners to exhaust direct appeals before filing petitions
8 for habeas corpus.” *Id.* That said, the Ninth Circuit “require[s], as a prudential matter,
9 that habeas petitioners exhaust available judicial and administrative remedies before
10 seeking relief under § 2241.” *Id.* Specifically, “courts may require prudential exhaustion
11 if (1) agency expertise makes agency consideration necessary to generate a proper
12 record and reach a proper decision; (2) relaxation of the requirement would encourage
13 the deliberate bypass of the administrative scheme; and (3) administrative review is
14 likely to allow the agency to correct its own mistakes and to preclude the need for
15 judicial review.” *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007) (cleaned up).

16 “When a petitioner does not exhaust administrative remedies, a district court
17 ordinarily should either dismiss the petition without prejudice or stay the proceedings
18 until the petitioner has exhausted remedies, unless exhaustion is excused.” *Leonardo v.*
19 *Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011) (citations omitted); *see also Alvarado*
20 *v. Holder*, 759 F.3d 1121, 1127 n.5 (9th Cir. 2014), *abrogated on other grounds by*
21 *Santos-Zacaria v. Garland*, 598 U.S. 411 (2023) (“issue exhaustion is a jurisdictional
22 requirement”); *Tijani v. Holder*, 628 F.3d 1071, 1080 (9th Cir. 2010) (court “lacks
23 jurisdiction to review legal claims not presented in an alien’s administrative
24 proceedings before the BIA”). Moreover, “a petitioner cannot obtain review of
25 procedural errors in the administrative process that were not raised before the agency
26 merely by alleging that every such error violates due process.” *Reid v. Engen*, 765 F.2d
27 1457, 1461 (9th Cir. 1985); *see also Sola v. Holder*, 720 F.3d 1134, 1135–36 (9th Cir.
28 2013) (declining to address a due process argument that was not raised below because

1 it could have been addressed by the agency).

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

8 Waiving exhaustion would also encourage other detainees to bypass the BIA and
9 directly appeal from the immigration judge to federal district court. *See Aden*, 2019 WL
10 5802013, at *2 (“[R]elaxation of the exhaustion requirement would likely encourage
11 other detainees to bypass the BIA and directly appeal their no-bond determinations from
12 the [immigration judge] to federal district court.”). Individuals, like Petitioner, would
13 have little incentive to seek relief before the BIA if this Court permits review here. And
14 allowing a skip-the-BIA-and-go-straight-to-federal-court strategy would needlessly
15 increase the burden on district courts. *See Bd. of Tr. of the Constr. Laborers’ Pension*
16 *Trust for S. Cal. v. M.M. Sundt Constr. Co.*, 37 F.3d 1419, 1420 (9th Cir. 1994)
17 (“Judicial economy is an important purpose of exhaustion requirements.”) (citation
18 omitted); *Santos-Zacaria*, 598 U.S. at 418 (noting “exhaustion promotes efficiency”).
19 If the immigration judge erred, this Court should allow the administrative process to
20 correct itself.

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 “[C]ivil detention after the denial of a bond hearing [does not] constitute[] irreparable
24 harm such that prudential exhaustion should be waived.” *Reyes v. Wolf*, No. C20-
25 0377JLR, 2021 WL 662659, at *3 (W.D. Wash. Feb. 19, 2021), *aff’d sub nom. Diaz*
26 *Reyes v. Mayorkas*, No. 21-35142, 2021 WL 3082403 (9th Cir. July 21, 2021).

27 Finally, Petitioners bear the burden to show that an exception to the exhaustion
28 requirement applies. *Leonardo*, 646 F.3d at 1161; *Aden*, 2019 WL 5802013, at *3. Here,

1 Petitioner has already appealed the immigration judge's order denying bond to the BIA
2 and his appeal remains pending. *See* Exhibit 4 (Filing Receipt of Petitioner's Bond
3 Appeal).

4 Judge Bencivengo recently dismissed a habeas petition that, like here, challenged
5 an immigration judge's denial of bond. *See Baker v. Gordon*, No. 25-cv-03539-CAB-
6 SBC, ECF No. 8 at 2:1–5 (S.D. Cal. Jan. 30, 2026) (“As the Ninth Circuit has explained,
7 ‘[Petitioner] pursued habeas review of the [immigration judge’s] adverse bond
8 determination before appealing to the BIA. This short cut was improper. [Petitioner]
9 should have exhausted administrative remedies by appealing to the BIA before asking
10 the federal district court to review the [immigration judge’s] decision.’”) (quoting
11 *Leonardo*, 646 F.3d at 1160).

12 Because Petitioner was provided a bond hearing before a neutral immigration
13 judge where the burden of proof was correctly placed on the Government, and because
14 Petitioner has not yet exhausted his administrative remedies, the Court should dismiss
15 this matter.¹

16 **B. Petitioner Provides No Evidence That Immigration Judges in the Southern**
17 **District of California are Biased or Prejudiced.**

18 Petitioner argues, as he did in the previous case, that immigration judges currently
19 are biased, prejudiced, and have “been placed for the sole purpose [of] deny[ing] bonds
20 and asylums and relief.” ECF No. 1 at 3. Though, Petitioner provides no evidence to
21 support these assertions. Furthermore, the Court previously declined to question the
22 neutrality of immigration judges and instead included additional safeguards in its order
23

24
25 ¹ Exhibit 3 at 1 (“The Court first convened on April 27, 2026, for a custody
26 redetermination hearing, at which time the [c]ourt granted the [Petitioner] a continuance
27 to submit additional evidence. The [c]ourt reconvened the next day, found the
28 Department of Homeland Security (“Department”) met its burden to demonstrate the
respondent poses a danger to the community, and denied his request to be released from
custody. (Order of the Immigration Judge, Apr. 28, 2026.) The [Petitioner] reserved his
right to appeal the [c]ourt’s decision, and the [c]ourt informed him that his appeal would
be due at the Board of Immigration Appeals by May 28, 2026. (Id.) On May 26, 2026,
the [Petitioner] filed a Notice of Appeal with the Board of Immigration Appeals.”)

1 to address Petitioner's concerns.² In his current Petition, however, Petitioner fails to
2 explain how the Court's safeguards were insufficient or otherwise show that
3 Respondents have violated the Court's prior order. Accordingly, Respondents
4 respectfully request that the Court continue to decline to rule on this issue where there
5 is no evidence before the Court that Petitioner's concerns are valid in the Southern
6 District of California.

7 III. CONCLUSION

8 For the foregoing reasons, Respondents request that the Court dismiss the
9 Petition.

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11 Dated: July 9, 2026

Respectfully submitted,

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14 s/ Hunter V. Norton
15 HUNTER V. NORTON
16 Assistant United States Attorney
17 Attorney for Respondents
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25 ² Exhibit 1 at 3 ("The bond hearing must be before a fair, neutral, and open minded IJ.
26 If the IJ denies bond, the judge must make specific findings as to why Petitioner is a
27 danger to the community or a flight risk. If Respondents or the IJ fail to comply with
28 this order and the writ, Petitioner can apply to this Court for relief. Respondents have
shown the upmost respect for this Court's judgments and have timely followed them
thereby enabling the mutual respect of the Court. There is no reason to believe that the
mutual respect for coequal branches of the government will not continue here in the
Southern District of California.").