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

10 JESUS ORLANDO
ZELADA CHAVARRIA,

11 Petitioner,

12 v.

13 WARDEN, Imperial Regional Detention
14 Facility; *et al.*,

15 Respondent.
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Case No.: 26-cv-03681-BJC-MMP

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

INTRODUCTION

On February 6, 2026, Jesus Orlando Zelada Chavarria (“Petitioner”) filed his first petition for writ of habeas corpus in Case No. 26-cv-00748-BJC-MMP. In that case, Respondents conceded that Petitioner was detained under 8 U.S.C. § 1226(a), and, that Petitioner was entitled to a bond hearing. This Court granted the Petition and ordered that Respondents provide Petitioner with a bond hearing which Petitioner received on March 11, 2026¹. *See* Exhibit 1. At Petitioner’s bond hearing, the Immigration Judge (IJ) issued an oral decision denying bond and concluded that Petitioner had not met his burden² of demonstrating that he is not a risk of flight. *See* Exhibit 2 (“IJ Order Denying Bond”). Petitioner reserved appeal of this decision and his appeal was due to the Board of Immigration Appeals by April 10, 2026. However, it appears no bond appeal was ever filed. *See* Exhibit 3 (BIA Case Search).

Petitioner has now filed a second Petition for Writ of Habeas Corpus attacking the bond process and alleging he was “not provided a meaningful and individualized custody determination.” ECF No. 1 at 5-9. However, this Court has already granted the relief Petitioner requests, Respondents have complied with the Court’s previous order, and Petitioner has failed to exhaust his administrative remedies before returning to this Court for a second time. Accordingly, Respondents respectfully request that the Court dismiss the Petition.

ARGUMENT

Petitioner is attempting to bypass the administrative scheme by not pursuing an appeal of his bond denial to the Board of Immigration Appeals (BIA). “Exhaustion can be either statutorily or judicially required.” *Acevedo–Carranza v. Ashcroft*, 371 F.3d

¹ The bond hearing was continued twice before ultimately taking place on March 11, 2026.

² The Ninth Circuit has confirmed that at a bond hearing under 8 U.S.C. § 1226(a), the burden is on the detainee to demonstrate by a preponderance of the evidence that he is not a flight risk or danger to the community. *See Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1197 (9th Cir. 2022); *see also Dos Santos v. Becerra*, No. 26-cv-01423-GPC-VET, 2026 WL 800201 (S.D. Cal. Mar. 23, 2026).

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. Off. of Immigr. Rev.*, 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)).

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

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

1 for judicial review.” *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007) (internal
2 quotation marks omitted).

3 “When a petitioner does not exhaust administrative remedies, a district court
4 ordinarily should either dismiss the petition without prejudice or stay the proceedings
5 until the petitioner has exhausted remedies, unless exhaustion is excused.” *Leonardo v.*
6 *Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011); *see also Alvarado v. Holder*, 759 F.3d
7 1121, 1127 n.5 (9th Cir. 2014) (issue exhaustion is a jurisdictional requirement); *Tijani*
8 *v. Holder*, 628 F.3d 1071, 1080 (9th Cir. 2010) (no jurisdiction to review legal claims
9 not presented in the petitioner’s administrative proceedings before the BIA). Moreover,
10 a “petitioner cannot obtain review of procedural errors in the administrative process that
11 were not raised before the agency merely by alleging that every such error violates due
12 process.” *Vargas v. INS*, 831 F.3d 906, 908 (9th Cir. 1987); *see also Sola v. Holder*,
13 720 F.3d 1134, 1135–36 (9th Cir. 2013) (declining to address a due process argument
14 that was not raised below because it could have been addressed by the agency).

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

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

1 411, 418 (2023) (noting “exhaustion promotes efficiency”). If the immigration judge
2 erred, this Court should allow the administrative process to correct itself. *See id.*

3 Moreover, detention alone is not an irreparable injury. Discretion to waive
4 exhaustion “is not unfettered.” *Laing v. Ashcroft*, 370 F.3d 994, 998 (9th Cir. 2004).
5 Petitioners bear the burden to show that an exception to the exhaustion requirement
6 applies. *Leonardo*, 646 F.3d at 1161; *Aden*, 2019 WL 5802013, at *3. “[C]ivil detention
7 after the denial of a bond hearing [does not] constitute[] irreparable harm such that
8 prudential exhaustion should be waived.” *Reyes v. Wolf*, No. C20-0377JLR, 2021 WL
9 662659, at *3 (W.D. Wash. Feb. 19, 2021), *aff’d sub nom. Diaz Reyes v. Mayorkas*, No.
10 21-35142, 2021 WL 3082403 (9th Cir. July 21, 2021).

11 Here, Petitioner has not provided any evidence that the Immigration Judge
12 conducted his bond hearing improperly or otherwise failed to consider the evidence he
13 submitted in support of bond. Though Petitioner implies the brevity of the IJ’s order
14 denying bond indicates that the IJ’s reasoning was conclusory, this is not the case.
15 Immigration Judge’s issue oral decisions at the conclusion of bond hearings. When a
16 party appeals an IJ’s bond decision to the BIA, the IJ then produces a comprehensive
17 written memorandum detailing the evidence and his/her analysis. *See* U.S. Dep’t of
18 Justice, Exec. Office for Immigr. Review, *Immigration Court Practice Manual*, ch. 8.3
19 (2025 ed.), [justice.gov](https://www.justice.gov) (“[u]sually, the Immigration Judge’s decision is rendered orally.
20 If either party appeals, the Immigration Judge prepares a written decision based on notes
21 from the hearing”).

22 Petitioner asks this Court to waive the exhaustion requirement, in part, because
23 he alleges the Immigration Judge violated his right to due process by not adequately
24 considering his evidence and ultimately issuing a conclusory decision. However, by not
25 appealing to the BIA, nor citing to the audio recording of the hearing, he asks this Court
26 to find his bond hearing was insufficient based on no evidence. Respondents
27 respectfully request that the Court not reward this strategy and, instead, find that
28 Petitioner must first exhaust his administrative remedies.

1 Because Petitioner has already received a bond hearing under 8 U.S.C. § 1226(a)
2 and failed to exhaust his administrative remedies, the Court should dismiss this matter.

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4 DATED: July 2, 2026

Respectfully submitted,

5 ADAM GORDON
6 United States Attorney

7 s/ Hunter V. Norton
8 HUNTER V. NORTON
9 Assistant United States Attorney
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