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

11 ATILMIS MEHMET,

12 Petitioner,

13 v.

14 JEREMY CASEY, Warden,

15 Respondent.
16

Case No.: 26-cv-03842-TWR-BJW

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

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20 **I. INTRODUCTION**

21 Petitioner has filed a second habeas petition under 28 U.S.C. § 2241. Petitioner's
22 first petition was filed through counsel. Petitioner is currently in removal proceedings
23 under 8 U.S.C. § 1229a.

24 **II. FACTUAL AND PROCEDURAL BACKGROUND**

25 This Court granted the Petitioner's previous petition on March 24, 2026, and
26 ordered Respondent to provide a bond hearing to Petitioner within fourteen days of the
27 Court's order. *See Atilmis v. Warden of Imperial Regional Detention Facility; et al.*,
28 3:26-CV-01587-TWR-BJW, ECF No. 6. Petitioner received a bond hearing before an

1 immigration judge on March 30, 2026. *See* Exhibit 1 (Order of the Immigration Judge).
2 The immigration judge denied bond on the basis that the Petitioner is a significant flight
3 risk. *Id.* Petitioner has not appealed the denial of bond by the immigration judge to the
4 Board of Immigration Appeals (BIA). He had until April 29, 2026, to perfect an appeal.
5 Instead, Petitioner filed the instant habeas petition on July 1, 2026.

6 III. ARGUMENT

7 In the instant petition, Petitioner challenges the length his detention and that his
8 re-detention without a fair hearing violates his due process. *See* ECF No. 1. However,
9 Petitioner fails to acknowledge in his petition that he was indeed provided a bond
10 hearing on March 30, 2026 pursuant to this Court's order. Moreover, Petitioner fails to
11 inform the Court that he did not appeal the adverse bond decision to the BIA. As such,
12 the Court should ensure Petitioner properly exhausts administrative remedies. The
13 Ninth Circuit requires that "habeas petitioners exhaust available judicial and
14 administrative remedies before seeking relief under § 2241." *Castro-Cortez v. INS*, 239
15 F.3d 1037, 1047 (9th Cir. 2001). "When a petitioner does not exhaust administrative
16 remedies, a district court ordinarily should either dismiss the petition without prejudice
17 or stay the proceedings until the petitioner has exhausted remedies, unless exhaustion
18 is excused." *Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011); *see also*
19 *Alvarado v. Holder*, 759 F.3d 1121, 1127 n.5 (9th Cir. 2014) (issue exhaustion is a
20 jurisdictional requirement); *Tijani v. Holder*, 628 F.3d 1071, 1080 (9th Cir. 2010) (no
21 jurisdiction to review legal claims not presented in the petitioner's administrative
22 proceedings before the BIA). Since Petitioner has not appealed the result of his bond
23 hearing held pursuant to 8 U.S.C. § 1226(a), the Court should dismiss without prejudice.

24 The BIA is an appellate body within the Executive Office for Immigration
25 Review (EOIR) and possesses delegated authority from the Attorney General. 8 C.F.R.
26 §§ 1003.1(a)(1), (d)(1). The BIA is "charged with the review of those administrative
27 adjudications under the [INA] that the Attorney General may by regulation assign to
28 it," including IJ custody determinations. 8 C.F.R. §§ 1003.1(d)(1), 236.1, 1236.1. The

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

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

19 “When a petitioner does not exhaust administrative remedies, a district court
20 ordinarily should either dismiss the petition without prejudice or stay the proceedings
21 until the petitioner has exhausted remedies, unless exhaustion is excused.” *Leonardo v.*
22 *Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011); *see also Alvarado v. Holder*, 759 F.3d
23 1121, 1127 n.5 (9th Cir. 2014) (issue exhaustion is a jurisdictional requirement); *Tijani*
24 *v. Holder*, 628 F.3d 1071, 1080 (9th Cir. 2010) (no jurisdiction to review legal claims
25 not presented in the petitioner’s administrative proceedings before the BIA). Moreover,
26 a “petitioner cannot obtain review of procedural errors in the administrative process that
27 were not raised before the agency merely by alleging that every such error violates due
28 process.” *Vargas v. INS*, 831 F.3d 906, 908 (9th Cir. 1987); *see also Sola v. Holder*,

1 720 F.3d 1134, 1135-36 (9th Cir. 2013) (declining to address a due process argument
2 that was not raised below because it could have been addressed by the agency).

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

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

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

1 immigration judge denied bond after finding that Petitioner posed a significant flight
2 risk. *See* Exhibit 1. Petitioner failed to appeal the adverse bond decision. As such, the
3 Court should dismiss this petition without prejudice.

4 **IV. CONCLUSION**

5 Because Respondent has complied with this Court's previous order to provide
6 Respondent with a bond hearing, and Petitioner has not exhausted his administrative
7 remedies, this matter should be dismissed.

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9 Dated: July 9, 2026

Respectfully submitted,

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11 United States Attorney

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13 CAMILLE SAVEDRA
14 Assistant United States Attorney
15 Attorneys for Respondent
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