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

11 PAWAN KUMAR SINGH,

12 Petitioner,

13
14 v.

15 KRISTI NOEM, *et al.*,

16 Respondents.
17
18

Case No.: 26-cv-1425-JLS-BLM

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

19
20 **I. INTRODUCTION**

21 Petitioner has filed a second habeas petition under 28 U.S.C. § 2241. ECF No.
22 5. Petitioner is currently in removal proceedings under 8 U.S.C. § 1229a.

23 **II. FACTUAL AND PROCEDURAL BACKGROUND**

24 This Court granted the Petitioner's first petition on January 26, 2026, and ordered
25 Respondents to provide a bond hearing to Petitioner by February 9, 2026. *Singh v.*
26 *Archambeault*, 25-cv-3720-JLS-DDL, ECF No. 8. Petitioner received a bond hearing
27 before an immigration judge on February 2, 2026. Respondents provided a status report
28 to the Court as to the date and result of the bond hearing on February 13, 2026. *Id.* at

1 ECF No. 10. The immigration judge denied bond, finding that the Petitioner was a
2 significant flight risk. Exhibit 1 (IJ Order). The Petitioner reserved appeal but failed to
3 file an appeal to the Board of Immigration Appeals by March 15, 2026. On March 30,
4 2026, Petitioner filed the instant habeas petition advancing a challenge to the bond
5 hearing. ECF No. 15.

6 **III. ARGUMENT**

7 The Court should ensure Petitioner properly exhausts administrative remedies.
8 The Ninth Circuit requires that “habeas petitioners exhaust available judicial and
9 administrative remedies before seeking relief under § 2241.” *Castro–Cortez v. INS*, 239
10 F.3d 1037, 1047 (9th Cir. 2001). “When a petitioner does not exhaust administrative
11 remedies, a district court ordinarily should either dismiss the petition without prejudice
12 or stay the proceedings until the petitioner has exhausted remedies, unless exhaustion
13 is excused.” *Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011); *see also*
14 *Alvarado v. Holder*, 759 F.3d 1121, 1127 n.5 (9th Cir. 2014) (issue exhaustion is a
15 jurisdictional requirement); *Tijani v. Holder*, 628 F.3d 1071, 1080 (9th Cir. 2010) (no
16 jurisdiction to review legal claims not presented in the petitioner’s administrative
17 proceedings before the BIA). Here, Petitioner has not appealed the result of his bond
18 hearing held pursuant to 8 U.S.C. § 1226(a). Accordingly, the Court should dismiss
19 without prejudice.

20 The BIA is an appellate body within the Executive Office for Immigration
21 Review (EOIR) and possesses delegated authority from the Attorney General. 8 C.F.R.
22 §§ 1003.1(a)(1), (d)(1). The BIA is “charged with the review of those administrative
23 adjudications under the [INA] that the Attorney General may by regulation assign to
24 it,” including IJ custody determinations. 8 C.F.R. §§ 1003.1(d)(1), 236.1, 1236.1. The
25 BIA not only resolves particular disputes before it, but is also directed to, “through
26 precedent decisions, [] provide clear and uniform guidance to DHS, the immigration
27 judges, and the general public on the proper interpretation and administration of the
28 [INA] and its implementing regulations.” *Id.* § 1003.1(d)(1). Decisions rendered by the

1 BIA are final, except for those reviewed by the Attorney General. 8 C.F.R. §
2 1003.1(d)(7).

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

15 “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). Moreover,
22 a “petitioner cannot obtain review of procedural errors in the administrative process that
23 were not raised before the agency merely by alleging that every such error violates due
24 process.” *Vargas v. INS*, 831 F.3d 906, 908 (9th Cir. 1987); *see also Sola v. Holder*,
25 720 F.3d 1134, 1135-36 (9th Cir. 2013) (declining to address a due process argument
26 that was not raised below because it could have been addressed by the agency).

27 Here, exhaustion is warranted because agency expertise is required. “[T]he BIA
28 is the subject-matter expert in immigration bond decisions.” *Aden v. Nielsen*, No. C18-

1 1441RSL, 2019 WL 5802013, at *2 (W.D. Wash. Nov. 7, 2019); *Delgado v. Sessions*,
2 No. C17-1031-RSL-JPD, 2017 WL 4776340, at *2 (W.D. Wash. Sept. 15, 2017) (noting
3 a denial of bond to an immigration detainee was “a question well suited for agency
4 expertise”).

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

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

23 Because Respondents have complied with this Court’s previous order to provide
24 Respondent with a bond hearing and Petitioner has not exhausted his administrative
25 remedies, this matter should be dismissed.

26 **B. The Immigration Judge Did Not Misapply the Burden of Proof.**

27 In general, an alien detained under section 1226(a) bears the burden of proof with
28 respect to demonstrating that he merits release on bond in custody redetermination

1 proceedings before the immigration judge. *See* 8 C.F.R. § 1003.19(h)(3) (an alien
2 applying for custody redetermination by the immigration judge “must first demonstrate,
3 by clear and convincing evidence, that release would not pose a danger to other persons
4 or to property. If an alien meets this burden, the alien must further demonstrate, by clear
5 and convincing evidence, that the alien is likely to appear for any scheduled proceeding
6 or interview.”). The imposition of the burden of proof upon an alien in section 1226(a)
7 bond proceedings facially satisfies due process. *See Rodriguez Diaz v. Garland*, 53
8 F.4th 1189, 1211–14 (9th Cir. 2022).

9 An alien’s objection to the outcome of a bond hearing (as here) does not establish
10 that the procedures governing the proceeding at which bond was denied violated due
11 process. *Rodriguez Diaz*, 53 F.4th at 1189, 1213 (quoting *Ching v. Mayorkas*, 725 F.3d
12 1149, 1156 (9th Cir. 2013)) (“It is process that the procedural due process right protects,
13 not the outcome.”). In asking this Court to review the immigration judge’s bond denial
14 order and grant immediate release, Petitioner “comes close to asking [the Court] to
15 directly review the [immigration judge’s] bond decision, a task Congress has expressly
16 forbidden [federal courts] from undertaking.” *Rodriguez Diaz*, 53 F.4th at 1212–13
17 (quoting *Borbot v. Warden*, 906 F.3d 274, 279 (3rd Cir. 2018)). Congress has
18 determined that an immigration judge’s “discretionary bond determinations [are] not
19 reviewable in federal court.” *Id.* at 1209; see also 8 U.S.C. § 1226(e) (“The Attorney
20 General’s discretionary judgment regarding the application of this section shall not be
21 subject to review. No court may set aside any action or decision by the Attorney General
22 under this section regarding the detention of any alien or the revocation or denial of
23 bond or parole.”).

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1 **IV. CONCLUSION**

2 For the reasons stated herein, Respondents respectfully request that the Court
3 dismiss the Petitioner's amended petition.

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5 Dated: April 20, 2026

Respectfully submitted,

6 ADAM GORDON
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