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9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA
11

12 KSENIIA RUMIANTSEVA,
13 Petitioner,

14 v.

15 CHRISTOPHER J. LAROSE,
16 WARDEN OF OTAY MESA
DETENTION CENTER,

17 Respondent.
18
19

Case No. 26-cv-02214-JO-DEB

**OPPOSITION TO MOTION TO
ENFORCE JUDGMENT**

20 On April 27, 2026, the Court issued an order granting Petitioner's petition for writ
21 of habeas corpus and ordering that Respondent provide Petitioner with an "individualized
22 bond hearing before a neutral immigration judge where the government bears the burden
23 of proving by clear and convincing evidence that Petitioner is a danger to the community
24 or such a flight risk that no amount of bond or alternative conditions of release 'would
25 suffice to ensure [her] future appearance.'" ECF No. 6 at ¶ 1 (quoting *Hernandez v.*
26 *Sessions*, 872 F.3d 976, 983 (9th Cir. 2017); citing *Hernandez*, 872 F.3d at 990–91 n.18;
27 *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011)). The Court also ordered, "[i]n setting
28 the amount of bond, the immigration judge must consider Petitioner's financial

1 circumstances and alternative conditions of release as set forth in *Hernandez*, 872 F.3d at
2 990–91.” ECF No. 6 at ¶ 1. On May 4, 2026, Petitioner was provided with an individualized
3 bond hearing before a neutral immigration judge where the government bore the burden of
4 establishing Petitioner was a danger or flight risk. At the conclusion of the bond hearing,
5 the immigration judge denied Petitioner release on bond because the Department of
6 Homeland Security (DHS) had “established by clear and convincing evidence that
7 [Petitioner] poses an extreme risk of flight such that no bond would be sufficient to mitigate
8 the risk.” ECF No. 7-1, Exh. A. Petitioner now seeks to improperly challenge the
9 immigration judge’s bond order before this Court by filing a Motion to Enforce Judgment.
10 ECF No. 8.¹

11 As an initial matter, the government bore the burden of proof by clear and convincing
12 evidence as reflected in the transcript of the bond hearing. *See* Exh. 1 at 1:22–2:2 (counsel
13 for the parties agreeing with immigration judgment’s statement that “the burden of proof
14 is on the government”); 4:18–19 (“All right, counsel for the government is there anything
15 further that you want me to consider or add now is the time[?] The burden is yours.”); 7:9–
16 12 (“I find that the government has not established by clear and convincing evidence that
17 the [Petitioner] poses a danger to the community. But I do find that they’ve established by
18 clear and convincing evidence that the respondent poses an extreme risk of flight such that
19 no bond is appropriate.”).

20 Next, Petitioner seeks review of the immigration judge’s decision at her bond
21 hearing, but Petitioner has not exhausted her administrative remedies. “Exhaustion can be
22 either statutorily or judicially required.” *Acevedo-Carranza v. Ashcroft*, 371 F.3d 539, 541
23 (9th Cir. 2004). “If exhaustion is statutory, it may be a mandatory requirement that is
24 jurisdictional.” *Id.* (citing *El Rescate Legal Servs., Inc. v. Exec. Office of Immigration*

25
26 ¹ The Notice of Electronic Filing associated with Petitioner’s Motion to Enforce Judgment
27 described the filing as an “emergency” motion and was brought on an ex parte basis.
28 However, Petitioner failed to comply with Civil Local Rule 83.3(g)(2)’s meet-and-confer
requirement prior to seeking ex parte relief.

1 *Review*, 959 F.2d 742, 747 (9th Cir. 1991)). “If, however, exhaustion is a prudential
2 requirement, a court has discretion to waive the requirement.” *Id.* (citing *Stratman v. Watt*,
3 656 F.2d 1321, 1325–26 (9th Cir. 1981)). Here, the proper avenue for Petitioner’s
4 grievance with her bond denial is to utilize the administrative scheme and appeal her bond
5 denial to the Board of Immigration Appeals (BIA).

6 The BIA is an appellate body within the Executive Office for Immigration Review
7 and possesses delegated authority from the Attorney General. 8 C.F.R. §§ 1003.1(a)(1),
8 (d)(1). The BIA is “charged with the review of those administrative adjudications under
9 the [Immigration and Nationality Act (INA)] that the Attorney General may by regulation
10 assign to it,” including immigration judge custody determinations. 8 C.F.R.
11 §§ 1003.1(d)(1), 236.1, 1236.1. The BIA not only resolves particular disputes before it, but
12 is also directed to, “through precedent decisions, . . . provide clear and uniform guidance
13 to DHS, the immigration judges, and the general public on the proper interpretation and
14 administration of the [INA] and its implementing regulations.” 8 C.F.R. § 1003.1(d)(1).
15 Decisions rendered by the BIA are final, except for those reviewed by the Attorney
16 General. 8 C.F.R. § 1003.1(d)(7).

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

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

15 Here, requiring Petitioner to exhaust administrative remedies is warranted because
16 agency expertise is required. “[T]he BIA is the subject-matter expert in immigration bond
17 decisions[.]” *Aden v. Nielsen*, No. C18-1441RSL, 2019 WL 5802013, at *2 (W.D. Wash.
18 Nov. 7, 2019); *see also Delgado v. Sessions*, No. C17-1031-RSL-JPD, 2017 WL 4776340,
19 at *2 (W.D. Wash. Sept. 15, 2017) (noting a denial of bond to an immigration detainee was
20 “a question well suited for agency 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 (“[R]elaxation of the exhaustion requirement would likely encourage other
24 detainees to bypass the BIA and directly appeal their no-bond determinations from the
25 [immigration judge] to federal district court.”). Individuals, like Petitioner, would have
26 little incentive to seek relief before the BIA if this Court permits review here. And allowing
27 a petitioner to skip the BIA and go straight to federal court would needlessly increase the
28 burden on district courts. *See Bd. of Tr. of the Constr. Laborers’ Pension Trust for S. Cal.*

1 v. *M.M. Sundt Constr. Co.*, 37 F.3d 1419, 1420 (9th Cir. 1994) (“Judicial economy is an
2 important purpose of exhaustion requirements.”) (citation omitted); *Santos-Zacaria*, 598
3 U.S. at 418 (noting “exhaustion promotes efficiency”). If the immigration judge erred, this
4 Court should allow the administrative process to correct itself.

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

11 Finally, Petitioner bears the burden to show that an exception to the exhaustion
12 requirement applies. *Leonardo*, 646 F.3d at 1161; *Aden*, 2019 WL 5802013, at *3. Here,
13 Petitioner has failed to demonstrate that exhaustion should be waived.

14 Other courts in this district agree. *See, e.g., Rana v. LaRose*, No. 26-cv-00285-RSH-
15 DDL, ECF No. 11 (S.D. Cal. Mar. 13, 2026) (denying motion to enforce judgment where
16 petitioner was denied bond on the basis of flight risk because there was no indication that
17 administrative remedies were first exhausted) (citing *Leonardo*, 646 F.3d at 1160); *Baker*
18 v. *Gordon*, No. 25-cv-03539-CAB-SBC, ECF No. 8 at 2:1–5 (S.D. Cal. Jan. 30, 2026) (“As
19 the Ninth Circuit has explained, ‘[Petitioner] pursued habeas review of the [immigration
20 judge’s] adverse bond determination before appealing to the BIA. This short cut was
21 improper. [Petitioner] should have exhausted administrative remedies by appealing to the
22 BIA before asking the federal district court to review the [immigration judge’s] decision.’”) (quoting *Leonardo*, 646 F.3d at 1160).

24 Because Petitioner was provided a bond hearing as ordered by this Court, and she
25 has not exhausted her administrative remedies, there is no further relief this Court can
26 provide.

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1 Dated: May 22, 2026

Respectfully submitted,

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4 MATTHEW RILEY
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5 Attorney for Respondent
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