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

11 JAIRON ENRIQUE BORJAS
12 CASTILLO,

13
14 Petitioner,

15 v.

16 PATRICK DIVVER, San Diego Field
17 Office Director, Enforcement and
18 Removal Operations, United States
19 Immigration and Customs Enforcement;
et al.,

20 Respondents.
21

Case No.: 26-cv-02909-BAS-VET

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

22 **I. INTRODUCTION**

23 Petitioner filed a habeas petition under 28 U.S.C. § 2241. Petitioner is currently
24 in removal proceedings under 8 U.S.C. § 1229a. Petitioner is seeking immediate release
25 or, in the alternative, an individualized bond hearing. However, Petitioner has not
26 exhausted all his administrative remedies. Accordingly, the Court should deny
27 Petitioner's requests for relief.

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II. FACTUAL AND PROCEDURAL BACKGROUND

On November 8, 2025, Petitioner was detained by Immigration and Customs Enforcement (ICE) based on Petitioner's conviction for driving under the influence on January 26, 2025, and his arrest in 2024 for felony threats and domestic violence charges. On December 29, 2025, Petitioner received a bond hearing before an immigration judge. *See* Exhibit 1 (Order of the Immigration Judge).¹ The immigration judge denied bond on the basis that the Petitioner is a danger to the community. *Id.* The Petitioner had until January 28, 2026 to file an appeal with the Board of Immigration Appeals (BIA). *Id.* Petitioner never appealed the denial of bond to the BIA. Instead, Petitioner filed the instant petition before the Court.

III. ARGUMENT

In the instant petition, Petitioner challenges the length of his detention. *See* ECF No. 1. Petitioner claims he poses no danger to the community and has strong family ties. *See* ECF No. 1 at 12. However, an immigration judge already assessed those factors during his custody determination hearing on December 29, 2025. *See* Exhibit 1. To the extent Petitioner disagrees with the immigration judge's assessment, these arguments are well within the experience and expertise of the Board of Immigration Appeals and not properly presented in the first instance to the Federal District Court. The Court should ensure Petitioner properly exhausts administrative remedies. The Ninth Circuit requires that "habeas petitioners exhaust available judicial and administrative remedies before seeking relief under § 2241." *Castro-Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001). "When a petitioner does not exhaust administrative remedies, a district court ordinarily should either dismiss the petition without prejudice or stay the proceedings until the petitioner has exhausted remedies, unless exhaustion is excused." *Leonardo v.*

¹ The attached exhibits are true copies, with redactions of private information, of documents obtained from Immigration and Customs Enforcement (ICE) counsel. Other facts have been obtained from ICE counsel.

1 *Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011); *see also Alvarado v. Holder*, 759 F.3d
2 1121, 1127 n.5 (9th Cir. 2014) (issue exhaustion is a jurisdictional requirement); *Tijani*
3 *v. Holder*, 628 F.3d 1071, 1080 (9th Cir. 2010) (no jurisdiction to review legal claims
4 not presented in the petitioner’s administrative proceedings before the BIA). Here,
5 Petitioner has not appealed the result of his bond hearing held pursuant to 8 U.S.C.
6 § 1226(a). Accordingly, the Court should dismiss without prejudice.

7 The BIA is an appellate body within the Executive Office for Immigration
8 Review (EOIR) and possesses delegated authority from the Attorney General. 8 C.F.R.
9 §§ 1003.1(a)(1), (d)(1). The BIA is “charged with the review of those administrative
10 adjudications under the [INA] that the Attorney General may by regulation assign to
11 it,” including IJ custody determinations. 8 C.F.R. §§ 1003.1(d)(1), 236.1, 1236.1. The
12 BIA not only resolves particular disputes before it, but is also directed to, “through
13 precedent decisions, [] provide clear and uniform guidance to DHS, the immigration
14 judges, and the general public on the proper interpretation and administration of the
15 [INA] and its implementing regulations.” *Id.* § 1003.1(d)(1). Decisions rendered by the
16 BIA are final, except for those reviewed by the Attorney General. 8 C.F.R. §
17 1003.1(d)(7).

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

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 Because Respondents have provided Petitioner with a bond hearing, and
12 Petitioner has not exhausted his administrative remedies, this matter should be
13 dismissed.

14 IV. CONCLUSION

15 For the reasons stated herein, Respondents respectfully request that the Court
16 deny the Petitioner’s requests for relief on the merits.

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18 Dated: May 18, 2026

Respectfully submitted,

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