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

11 JORGE ANTONIO GUTIERREZ-
12 VALTIERRA,

13 Petitioner,

14 v.
15

16 TODD BLANCHE, *et al.*,

17 Respondents.
18

Case No.: 26-CV-2926-BJC-SBC

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

19
20 **I. INTRODUCTION**

21 This Court previously found that Petitioner was detained pursuant to 8 U.S.C.
22 § 1226, and ordered Petitioner be provided with a bond hearing. *Gutierrez-Valtierra*,
23 *et al.*, No: 3:26-CV-1343-BAS-VET, ECF No. 11. Petitioner was provided with a bond
24 hearing on April 3, 2026, at which time the Immigration Judge denied bond. Exh. 1 (IJ
25 Bond Order)¹. Rather than appeal the bond denial to the Board of Immigration Appeals
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27

28 ¹ The attached exhibits are copies of true documents obtained from ICE counsel.

(BIA), Petitioner now seeks a second bite of the habeas apple. This Court should decline to intervene and dismiss the petition.

II. FACTUAL AND PROCEDURAL BACKGROUND

Respondents incorporate by reference the factual and procedural background from previous filings in Case No: 3:26-CV-1343-BAS-VET, ECF No. 6, and provide the following additional information.

On April 3, 2026, an immigration judge (IJ) held a bond hearing, and denied bond on a finding that Petitioner had not met his burden (as the bond hearing was held pursuant to 8 U.S.C. § 1226) of demonstrating that he was not a danger to the community or a flight risk. Exh. 1. Petitioner's appeal is still pending before the Board of Immigration Appeals (BIA). As a result, there is no administratively final order of removal at this time.

III. ARGUMENT

A. Petitioner is Lawfully Detained Under 8 U.S.C. § 1226(a)

Section 1226 provides for arrest and detention "pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). Under § 1226(a), the government may detain an alien during his removal proceedings, release him on bond, or release him on conditional parole. By regulation, immigration officers can release aliens upon demonstrating that the alien "would not pose a danger to property or persons" and "is likely to appear for any future proceeding." 8 C.F.R. § 236.1(c)(8). An alien can also request a custody redetermination (i.e., a bond hearing) by an IJ at any time before a final order of removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1), 1003.19.

This Court has already ruled that Petitioner is detained under § 1226(a) and ordered a bond hearing. *Gutierrez-Valtierra, et. al*, No: 3:26-CV-1343-BAS-VET, ECF No. 11. A bond hearing has already taken place, and Petitioner was ordered detained.

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B. Administrative Remedies Should Be Exhausted

The Court should ensure Petitioner properly exhausts administrative remedies. “Exhaustion can be either statutorily or judicially required.” *Acevedo–Carranza v. Ashcroft*, 371 F.3d 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. Office of Immigration Review*, 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)). Here, the proper avenue for Petitioner’s grievance with his bond denial is to utilize the administrative scheme and appeal his bond denial to the Board of Immigration Appeals (BIA).

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.” 8 C.F.R. § 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), *abrogated on other grounds by Hernandez–Vargas v. Gonzales*, 548 U.S. 30 (2006). “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

1 seeking relief under § 2241.” *Id.* Specifically, “courts may require prudential exhaustion
2 if (1) agency expertise makes agency consideration necessary to generate a proper
3 record and reach a proper decision; (2) relaxation of the requirement would encourage
4 the deliberate bypass of the administrative scheme; and (3) administrative review is
5 likely to allow the agency to correct its own mistakes and to preclude the need for
6 judicial review.” *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007) (cleaned up).

7 “When a petitioner does not exhaust administrative remedies, a district court
8 ordinarily should either dismiss the petition without prejudice or stay the proceedings
9 until the petitioner has exhausted remedies, unless exhaustion is excused.” *Leonardo v.*
10 *Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011) (citations omitted); *see also Alvarado*
11 *v. Holder*, 759 F.3d 1121, 1127 n.5 (9th Cir. 2014), *abrogated on other grounds by*
12 *Santos-Zacaria v. Garland*, 598 U.S. 411 (2023) (“issue exhaustion is a jurisdictional
13 requirement”); *Tijani v. Holder*, 628 F.3d 1071, 1080 (9th Cir. 2010) (court “lacks
14 jurisdiction to review legal claims not presented in an alien’s administrative
15 proceedings before the BIA”). Moreover, “a petitioner cannot obtain review of
16 procedural errors in the administrative process that were not raised before the agency
17 merely by alleging that every such error violates due process.” *Reid v. Engen*, 765 F.2d
18 1457, 1461 (9th Cir. 1985); *see also Sola v. Holder*, 720 F.3d 1134, 1135–36 (9th Cir.
19 2013) (declining to address a due process argument that was not raised below because
20 it could have been addressed by the agency).

21 Here, requiring Petitioner to exhaust administrative remedies is warranted
22 because agency expertise is required. “[T]he BIA is the subject-matter expert in
23 immigration bond decisions[.]” *Aden v. Nielsen*, No. C18-1441RSL, 2019 WL
24 5802013, at *2 (W.D. Wash. Nov. 7, 2019); *see also Delgado v. Sessions*, No. C17-
25 1031-RSL-JPD, 2017 WL 4776340, at *2 (W.D. Wash. Sept. 15, 2017) (noting a denial
26 of bond to an immigration detainee was “a question well suited for agency expertise”).

27 Waiving exhaustion would also encourage other detainees to bypass the BIA and
28 directly appeal from the immigration judge to federal district court. *See Aden*, 2019 WL

1 5802013, at *2 (“[R]elaxation of the exhaustion requirement would likely encourage
2 other detainees to bypass the BIA and directly appeal their no-bond determinations from
3 the [immigration judge] to federal district court.”). Individuals, like Petitioner, would
4 have little incentive to seek relief before the BIA if this Court permits review here. And
5 allowing a skip-the-BIA-and-go-straight-to-federal-court strategy would needlessly
6 increase the burden on district courts. *See Bd. of Tr. of the Constr. Laborers’ Pension*
7 *Trust for S. Cal. v. M.M. Sundt Constr. Co.*, 37 F.3d 1419, 1420 (9th Cir. 1994)
8 (“Judicial economy is an important purpose of exhaustion requirements.”) (citation
9 omitted); *Santos-Zacaria*, 598 U.S. at 418 (noting “exhaustion promotes efficiency”).
10 If the immigration judge erred, this Court should allow the administrative process to
11 correct itself.

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

18 Finally, Petitioners bear the burden to show that an exception to the exhaustion
19 requirement applies. *Leonardo*, 646 F.3d at 1161; *Aden*, 2019 WL 5802013, at *3. Here,
20 Petitioner has made so such showing and makes no effort to demonstrate that exhaustion
21 should be waived.

22 Judge Bencivengo recently dismissed a habeas petition that, like here, challenged
23 an immigration judge’s denial of bond. *See Baker v. Gordon*, No. 25-cv-03539-CAB-
24 SBC, ECF No. 8 at 2:1–5 (S.D. Cal. Jan. 30, 2026) (“As the Ninth Circuit has explained,
25 ‘[Petitioner] pursued habeas review of the [immigration judge’s] adverse bond
26 determination before appealing to the BIA. This short cut was improper. [Petitioner]
27 should have exhausted administrative remedies by appealing to the BIA before asking
28 the federal district court to review the [immigration judge’s] decision.’”) (quoting

1 *Leonardo*, 646 F.3d at 1160). Other courts in this district agree. *See, e.g., Rana v.*
2 *LaRose*, No. 26-cv-00285-RSH-DDL, ECF No. 11 (S.D. Cal. Mar. 13, 2026) (denying
3 motion to enforce judgment where petitioner was denied bond on the basis of flight risk
4 because there was no indication that administrative remedies were first exhausted)
5 (citing *Leonardo*, 646 F.3d at 1160); *Sharma v. Archambault*, 2026 WL 381611, at *2
6 (S.D. Cal. February 11, 2026) (“Exhaustion would protect administrative authority and
7 promote judicial efficiency. Release on bond falls within the agency’s discretionary
8 power and falls within its special expertise.”).

9 **IV. CONCLUSION**

10 For the reasons stated herein, Respondents respectfully request that the Court
11 deny the petition.

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13 Dated: May 22, 2026

Respectfully submitted,

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