ADAM GORDON
United States Attorney
DANIELLE L. BROWN
Colorado State Bar No. 57814
Special Assistant U.S. Attorney
Office of the U.S. Attorney
880 Front Street, Room 6293
San Diego, CA 92101
Telephone: (619) 546-8693
Facsimile: (619) 546-7751
Email: Danielle.Brown2@usdoj.gov

Attorneys for Respondents

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

WILLIAM MICAEL MORALES ORTIZ,

Petitioner,

v.

MARKWAYNE MULLIN, Secretary, U.S. Department of Homeland Security; *et al.*,

Respondents.

Case No. 26-cv-04127-GPC-MMP

RETURN TO PETITION FOR WRIT OF HABEAS CORPUS

Petitioner has filed a petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241. The petition asserts two claims: (1) alleged violation of the *Accardi* doctrine as to 8 C.F.R. § 187.8; and (2) alleged due process violation as to the § 1226(a) bond hearing Petitioner received. Based on those claims, Petitioner requests the Court order Respondents to release Petitioner, or, alternatively, provide him with an individualized bond hearing. However, Petitioner fails to articulate a cognizable habeas claim that would entitle him to such relief.

The Supreme Court has held that "[h]abeas Corpus Rule 2(c) is more demanding

[than Federal Rule of Civil Procedure 8(a)]. It provides that the petition must 'specify all the grounds for relief available to the petitioner' and 'state the facts supporting each ground.'" *Mayle v. Felix*, 545 U.S. 644, 655 (2005) (citing Rules Governing Section 2254 Cases in the United States District Court ("Federal Habeas Rules"); *see also James v. Borg*, 24 F.3d 20, 26 (9th Cir. 1994) ("Conclusory allegations which are not supported by a statement of specific facts do not warrant habeas relief."). As stated by the Advisory Committee's Note on Habeas Corpus Rule 4, 28 U.S.C., p. 471, "notice pleading is not sufficient, for the petition is expected to state facts that point to a real possibility of constitutional error.") (internal quotation marks omitted).

Petitioner's first claim alleges a "[v]iolation of the *Accardi* Doctrine with respect to 28 C.F.R. § 287.8(C)(2)(I) and (II)." ECF No. 1 at 23. Petitioner provides that the "Pinellas County Sheriff's Office, acting under the direction of the Department of Homeland Security (DHS), arrested Petitioner, taking him into custody without a warrant." Respondents respectfully disagree. Petitioner was issued an administrative warrant on May 26, 2026. *See* Exhibit 1. Further, Respondents note that 8 U.S.C. § 1357(a)(2) authorizes warrantless arrests and 8 C.F.R. § 287.3(d) provides the government 48 hours to issue a warrant if it determines that the noncitizen will remain custody. *See Garcia-Juarez v. Blanche*, No. 26-cv-3007-LL-DEB, ECF No. 18 (S.D. Cal. June 30, 2026).

Regarding Petitioner's second claim, Petitioner alleges a violation of his Due Process rights contending that during Petitioner's bond hearing the immigration judge (IJ) incorrectly placed the burden of proof on Petitioner and the bond hearing was not held in an impartial tribunal. *See* ECF No. 1 at 26-27. However, this Court and the Ninth Circuit has confirmed that at a bond hearing under 8 U.S.C. § 1226(a), the burden is on the detainee to demonstrate by a preponderance of the evidence that he is not a flight risk or danger to the community. *See Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1197 (9th Cir. 2022); *see also Dos Santos v. Becerra*, No. 26-cv-01423-GPC-VET, 2026 WL 800201 (S.D. Cal. Mar. 23, 2026). Here, Petitioner requested a custody redetermination

hearing under 8 U.S.C. § 1226(a), which was held on July 2, 2026. *See* Exhibits 2, 3. After presentation of evidence by both the Petitioner and DHS, the IJ denied bond, finding that Petitioner was a danger to the community. *Id.* Petitioner reserved his right to appeal and the deadline to appeal is August 3, 2026. *Id.* As of this filing, an appeal has not yet been received. Moreover, Petitioner's claims regarding impartiality are conclusory and unsupported by the record before this Court.

To the extent Petitioner is seeking another bond hearing, as he has already received a bond hearing pursuant to § 1226(a), he is entitled to no further relief. *See Rodriguez v. Garland*, 53 F.4th 1189, 1203 (9th Cir. 2022) (holding Due Process Clause did not entitle the petitioner to a second bond hearing at which the government bears the burden of proof); *see also Gutierrez-Valtierra*, No. 26-cv-2926-BAS-SBC, ECF No. 19 (S.D. Cal. July 13, 2026) (denying similar claims as those asserted herein).

Accordingly, because Petitioner has failed to present any claims that would entitle him to habeas relief, Petitioner's habeas petition is legally infirm and should be denied. *See Alonso Velasquez v. LaRose*, No. 25-cv-3216-JES-AHG, 2025 WL 3473773 (S.D. Cal. Dec. 3, 2025).

Moreover, even if the Court were to entertain the substance of Petitioner's claims, the Court would still have to dismiss because Petitioner has not exhausted his 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. Off. of Immigr. Rev.*, 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, Petitioner is attempting to bypass the administrative scheme by not pursuing an appeal of 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." *Id.* § 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). "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 seeking relief under § 2241." *Id.* Specifically, "courts may require prudential exhaustion if (1) agency expertise makes agency consideration necessary to generate a proper record and reach a proper decision; (2) relaxation of the requirement would encourage the deliberate bypass of the administrative scheme; and (3) administrative review is likely to allow the agency to correct its own mistakes and to preclude the need for judicial review." *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007) (internal quotation marks omitted).

"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. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011); *see also Alvarado v. Holder*, 759 F.3d 1121, 1127 n.5 (9th Cir. 2014) (issue exhaustion is a jurisdictional requirement); *Tijani v. Holder*, 628 F.3d 1071, 1080 (9th Cir. 2010) (no jurisdiction to review legal claims

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

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

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

Moreover, detention alone is not an irreparable injury. Discretion to waive exhaustion "is not unfettered." *Laing v. Ashcroft*, 370 F.3d 994, 998 (9th Cir. 2004). Petitioners bear the burden to show that an exception to the exhaustion requirement applies. *Leonardo*, 646 F.3d at 1161; *Aden*, 2019 WL 5802013, at *3. "[C]ivil detention after the denial of a bond hearing [does not] constitute[] irreparable harm such that prudential exhaustion should be waived." *Reyes v. Wolf*, No. C20-0377JLR, 2021 WL

662659, at *3 (W.D. Wash. Feb. 19, 2021), *aff'd sub nom. Diaz Reyes v. Mayorkas*, No. 21-35142, 2021 WL 3082403 (9th Cir. July 21, 2021).

For the reasons stated herein, Respondents respectfully request the Court deny the habeas petition on its merits.

DATED: July 24, 2026

ADAM GORDON
United States Attorney

s/ Danielle L. Brown
DANIELLE L. BROWN
Special Assistant United States Attorney
Attorneys for Respondents