



1 statutory requirement. Brown v. Rison, 895 F.2d 533, 535 (9th Cir. 1990). Thus, “because exhaustion  
2 is not required by statute, it is not jurisdictional.” Id. If Petitioner has not properly exhausted his  
3 claims, the district court, in its discretion, may either “excuse the faulty exhaustion and reach the  
4 merits or require the petitioner to exhaust his administrative remedies before proceeding in court.”

5 The first step in seeking administrative remedies is a request for informal resolution. 28 C.F.R.  
6 § 542.13. When informal resolution procedures fail to achieve sufficient results, the BOP makes  
7 available to inmates a formal three-level administrative remedy process: (1) a Request for  
8 Administrative Remedy (“BP-9”) filed at the institution where the inmate is incarcerated; (2) a  
9 Regional Administrative Remedy Appeal (“BP-10”) filed at the Regional Office for the geographic  
10 region in which the inmate’s institution is located; and (3) a Central Office Administrative Remedy  
11 Appeal (“BP-11”) filed with the Office of General Counsel. 28 C.F.R. § 542.10 et seq.

12 According to the petition, there was an incident report written on May 6, 2020 related to the  
13 administrative detention. (See Doc. 1 at 8.) Petitioner does not provide any additional information  
14 regarding administrative remedies he has sought, including a BP-9 “Request for Administrative  
15 Remedy,” a BP-10 “Regional Administrative Remedy Appeal,” or a BP-11 “Central Office  
16 Administrative Remedy Appeal.” Therefore, the claims have not been administratively exhausted.

17 Although the exhaustion requirement is subject to waiver in § 2241 cases “it is not lightly to be  
18 disregarded.” Murillo v. Mathews, 588 F.2d 759, 762, n.8 (9th Cir. 1978) (citation omitted). A “key  
19 consideration” in exercising such discretion is whether “relaxation of the requirement would  
20 encourage the deliberate bypass of the administrative scheme[.]” Laing v. Ashcroft, 370 F.3d 994,  
21 1000 (9th Cir. 2004) (internal quotation marks omitted). In this case, it is clear that Petitioner has  
22 deliberately bypassed the administrative review process. Such action should not be condoned. The  
23 Court finds the petition should be dismissed for lack of exhaustion.

#### 24 **RECOMMENDATION**

25 Accordingly, the Court RECOMMENDS that the petition for writ of habeas corpus be  
26 DISMISSED without prejudice for failure to exhaust administrative remedies.

27 These Findings and Recommendations are submitted to the United States District Court Judge  
28 assigned to this case, pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304 of the

1 Local Rules of Practice for the United States District Court, Eastern District of California. Within  
2 twenty-one days after being served with a copy, Petitioner may file written objections with the Court.  
3 Such a document should be captioned “Objections to Magistrate Judge’s Findings and  
4 Recommendations.” The Court will then review the Magistrate Judge’s ruling pursuant to 28 U.S.C. §  
5 636 (b)(1)(C). Petitioner is advised that failure to file objections within the specified time may waive  
6 the right to appeal the Order of the District Court. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

7  
8 IT IS SO ORDERED.

9 Dated: December 20, 2021

/s/ Jennifer L. Thurston  
CHIEF UNITED STATES MAGISTRATE JUDGE