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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

KEVIN TREJO BLANCO, Petitioner, v. CHRISTOPHER J. LAROSE, *Warden, Otay Mesa Detention Center, et al.*, Respondent.	Case No.: 26-cv-02862-AGS-AHG **RETURN TO AMENDED PETITION FOR WRIT OF HABEAS CORPUS**

Introduction

As previously provided to the Court, Petitioner has filed a second petition for writ of habeas corpus arguing that his detention has become prolonged and excessive in violation of the due process clause and that he is not a danger to the community. *See* ECF 1 at 6-7. However, this Court previously granted a habeas petition for Petitioner and ordered that he receive an individualized bond hearing. *See* ECF 5 at 8. Petitioner received a compliant bond hearing and his appeal to the Board of Immigration Appeals (BIA) was due March 9, 2026. *See* ECF 5 at 10. To date, there is no evidence that an appeal was filed. Because the Petitioner did not appeal, he failed to exhaust his administrative remedies, and the Court should dismiss the Petition.

In the present case, Petitioner through Counsel has filed an amended petition which, again, fails to acknowledge this Court's prior order granting his requested relief. *See* ECF 5 at 8. To the extent Petitioner now, for the first time, claims he "has never been shown a warrant" *See* ECF 13, he is mistaken. Petitioner was served a copy of the arrest warrant. *See* Exhibit 1. Regardless, this argument is an abuse of the writ as Petitioner could have argued this previously. Finally, Respondents have already conceded Petitioner was detained under 8 U.S.C. § 1225(a), making the majority of the amended petition moot.

Petitioner alleging he has not received an individualized bond hearing is an abuse of the writ

The doctrine of abuse of the writ generally "forbids the reconsideration of claims that were or could have been raised in a prior habeas petition." *Calderon v. United States Dist. Ct.*, 163 F.3d 530, 538 (9th Cir.1998) (*en banc*) (overruled in part on other grounds by *Woodford v. Garceau*, 538 U.S. 202 (2003)). Under the abuse of the writ doctrine, a successive petition must be dismissed unless the petitioner can show (1) cause for bringing a successive petition and that prejudice would result or (2) that a fundamental miscarriage of justice would result from failure to entertain the claim. *See McCleskey v.*

Zant, 499 U.S. 467, 494–95 (1991); *Sanders v. United States*, 373 U.S. 1, 15 (1963). The government bears the burden of pleading abuse of the writ, *McCleskey*, 499 U.S. at 477.

After receiving a bond hearing in Case No. 25-cv-03778-AGS-AHG, Petitioner, through Counsel, has now filed a new amended petition for writ of habeas corpus that doesn't meaningfully address Petition 1 and alleges he has not received an individualized bond hearing and was arrested without a warrant. The instant Petition ("Petition 3") argues that he has been detained without an individualized bond hearing and arrested without a warrant. ECF No. 13. However, Petition 1 was granted and the Petitioner was afforded an individualized bond hearing on February 5, 2026, where the immigration judge denied bond because it was determined that he was a danger to the community. *See* ECF 5 at 10. Because the main argument in Petition 3 is that he did not receive an individualized bond hearing, and because Petitioner already received an individualized bond hearing, Respondents contend Petition 3 runs afoul of the abuse of the writ doctrine. Furthermore, if Petitioner believed the Government did not honor the Court's order in Petition 1, he is free to seek to re-open that case with the Court. Instead, perhaps hoping for a different forum, or hoping to take advantage of the deluge of habeas petitions confronting the Court, he filed a new petition. The Court should dismiss Petition 3 as an abuse of the writ.

Petitioner has failed to exhaust administrative remedies

Even if the Court were to entertain the substance of Petitioner's claims for a second time[1], 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,

[1] *See* Case No. 25-cv-03778-AGS-AHG

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 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 immigration judge 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).

Because Petitioner has (1) already received the requested habeas relief (bond hearing), (2) failed to exhaust his administrative remedies, and (3) abused the writ by filing a successive petition alleging he has not received an individualized bond hearing..

I. CONCLUSION

For the reasons stated herein, Respondents respectfully request that the Court dismiss Petitioner's new claims for relief.

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Respectfully submitted,

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