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

ANGELO ALESSANDRO CODALLO-
CAMBERO,

Petitioner,

v.

PATRICK DIVVER, et al.,

Respondent.

Case No.: 26-cv-03566-JES-JAC

**RESPONDENTS' RETURN TO
HABEAS PETITION**

I. INTRODUCTION

Petitioner has filed a fourth habeas petition under 28 U.S.C. § 2241. Petitioner is currently in removal proceedings under 8 U.S.C. § 1229a.¹ On March 3, 2026, Petitioner had a bond hearing before an immigration judge (IJ) pursuant to 8 U.S.C. § 1226(a). Petitioner was ultimately denied bond and failed to file an appeal of his bond denial to the Board of Immigration Appeals (BIA). Based on the arguments set forth below, the Court should deny any requests for relief and dismiss the petition.

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¹ Petitioner is not subject to a final order of removal. *See* 8 C.F.R. § 1241.1.

II. STATEMENT OF FACTS

Petitioner is a native and citizen of Venezuela. *See* Exhibit 1 (Notice to Appear). On or about June 13, 2025, he was admitted into the United States on a nonimmigrant visa. *See id.* On March 6, 2025, Petitioner was arrested by Enforcement and Removal Operations (ERO) and taken into Immigration and Customs Enforcement (ICE) custody pursuant to § 1226(a). *See* Exhibit 2 (I-213). DHS determined that Petitioner is deportable/removable under 8 U.S.C. § 1227(a)(1)(B), as an individual who was admitted to the United States and has remained for a time longer than permitted by law (i.e., a visa overstay). *See* Exhibit 1. Based on that charge, he was issued a Notice to Appear (NTA) and placed in removal proceedings under 8 U.S.C. § 1229a. *See id.* On April 22, 2025, Petitioner was provided with a bond hearing pursuant to § 1226(a). *See* Exhibit 3 (IJ Order dated April 22, 2025). The IJ denied bond holding that the IJ was “not satisfied that the respondent is not a danger.” *See id.* Petitioner failed to file an appeal of his bond denial to the BIA. *See* Exhibit 4 (Executive Officer of Immigration Review Electronic Courts and Appeals printout). On March 20, 2026, an IJ denied all of Petitioner’s applications for relief from removal, and was ordered removed to Venezuela. *See* Exhibit 5 (IJ Order dated March 20, 2026). On May 26, 2026, Petitioner filed an appeal of his removal order to the BIA, which the BIA treated as timely. *See* Exhibit 6 (BIA Receipt). Therefore, Petitioners’ removal proceedings remain pending. *See id.*

On April 22, 2026, Petitioner filed his first petition for writ of habeas corpus (“Petition 1”). *Codallo-Cambero v. Bondi et al*, 26-cv-02559-JES-AHG (S.D. Cal.), ECF No. 1. Petitioner claimed that he was entitled to relief from this Court given that “Prolonged Immigration Detention Violates Due Process;” and “Conditions and length of detention Render Custody Excessive Relative to Its Purpose.” *See id.* In Petition 1, Petitioner made no argument, nor any mention, that his bond hearing was constitutionally defective. *See id.* This Court denied Petition 1, holding that Petitioner’s

1 “detention period under § 1231 is just over one month, which is still within the
2 presumptively reasonable period articulated in *Zadvydas*.” *See id.*, ECF No. 12 at 4.

3 On May 8, 2026, Petitioner filed his second petition for writ of habeas corpus
4 (“Petition 2”). *Codallo-Cambero v. Divver et al*, 26-cv-02906-JES-AHG (S.D. Cal.),
5 ECF No. 1. Petitioner argued that he was entitled to relief from this Court due to
6 Violations of the Administrative Procedures Act (APA) and Due Process. *See generally*
7 *id.* On May 13, 2026, this Court issued an order to show cause to Petitioner as to why
8 case should not be closed. *See id.*, ECF No 6. Petitioner failed to respond to the Court’s
9 order, and on May 21, 2026, the Court dismissed Petition 2 as “Duplicative.” *See id.*,
10 ECF No. 7.

11 On June 5, 2026, Petitioner filed his third petition for writ of habeas corpus
12 (“Petition 3”). *Codallo-Cambero v. Divver et al*, 26-cv-03428-BAS-DDL (S.D.Cal),
13 ECF No. 1. Petitioner again argued that he was entitled to relief from this Court due to
14 Violation of the APA and Due Process. *See generally id.* Again, Petitioner failed to
15 argue that his bond hearing was constitutionally defective. *See id.* The Court noted that
16 “[r]ather than respond to Judge Simmons’s ruling in the prior case, Petitioner now
17 brings this third Petition only a few weeks later, again seeking to challenge his
18 immigration detention.” *See id.*, ECF No. 4. As such, the court found that, “[u]pon
19 review...this Petition is repetitive and runs afoul of Judge Simmons’s Order to Show
20 Cause in the second action.” *See id.* The Court accordingly dismissed Petition 3 without
21 prejudice. *See id.*

22 On June 15, 2026, merely 10 days after Petition 3 was dismissed, Petitioner filed
23 his fourth petition for writ of habeas corpus. *Codallo-Cambero v. Divver*, 26-cv-03566-
24 JES-JAC (S.D. Cal), ECF No 1. Petitioner again requests relief from this Court due to
25 APA and Due Process violations. *See id.* However, Petitioner now, for the first time,
26 argues that his previously held bond hearing is constitutionally defective. *See id.* at 13.
27 Based on the arguments set forth below, the Court should deny any requests for relief
28 and dismiss the petition.

III. ARGUMENT

A. Raising new challenges to his bond denial, that could have been raised in his first Petition, 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, Petitioner has now filed not one, not two, not three but *four* petitions for writ of habeas corpus. Petitioner fails to meaningfully address Petitions, 1, 2 and 3 or provide an explanation for why these arguments were not raised previously. The instant Petition (“Petition 4”) argues for the first time that Petitioner did not receive an adequate bond hearing. Because the arguments in Petition 4 could have been raised in all three prior petitions, and because Petitioner already received an individualized bond hearing, Respondents contend Petition 4 runs afoul of the abuse of the writ doctrine. As such, the Court should dismiss Petition 4 as an abuse of the writ.

B. Petitioners Claims of Violations of the APA and Due Process are subject to summary dismissal.

A habeas petition is subject to summary dismissal when it is repetitive or duplicative. *See Salas v. Att’y Gen.*, No. 2:23-cv-01118-TL-TLF, 2023 WL 5826738, at *2 (W.D. Wash. Aug. 21, 2023).

1 Here, as previously held by the Court, this Petition is repetitive and runs afoul of
2 Judge Simmons' Order to Show Cause in the second habeas action. Therefore,
3 Petitioner's APA and Due Process claims in Petition 4 should be summarily dismissed.

4 **C. Petitioner has failed to exhaust administrative remedies**

5 Even if Petitioner were permitted to file successive habeas petitions asserting new
6 claims that could have been raised previously, the Court would still have to dismiss
7 Petition 4 because Petitioner has failed to exhaust his administrative remedies.

8 "Exhaustion can be either statutorily or judicially required." *Acevedo-Carranza*
9 *v. Ashcroft*, 371 F.3d 539, 541 (9th Cir. 2004). "If exhaustion is statutory, it may be a
10 mandatory requirement that is jurisdictional." *Id.* (citing *El Rescate Legal Servs., Inc.*
11 *v. Exec. Off. of Immigr. Rev.*, 959 F.2d 742, 747 (9th Cir. 1991)). "If, however,
12 exhaustion is a prudential requirement, a court has discretion to waive the requirement."
13 *Id.* (citing *Stratman v. Watt*, 656 F.2d 1321, 1325–26 (9th Cir. 1981)). Here, Petitioner
14 is attempting to bypass the administrative scheme by not pursuing an appeal of his bond
15 denial to the Board of Immigration Appeals (BIA).

16 The BIA is an appellate body within the Executive Office for Immigration
17 Review and possesses delegated authority from the Attorney General. 8 C.F.R.
18 §§ 1003.1(a)(1), (d)(1). The BIA is "charged with the review of those administrative
19 adjudications under the [Immigration and Nationality Act (INA)] that the Attorney
20 General may by regulation assign to it," including immigration judge custody
21 determinations. 8 C.F.R. §§ 1003.1(d)(1), 236.1, 1236.1. The BIA not only resolves
22 particular disputes before it, but is also directed to, "through precedent decisions, []
23 provide clear and uniform guidance to [the Department of Homeland Security], the
24 immigration judges, and the general public on the proper interpretation and
25 administration of the [INA] and its implementing regulations." *Id.* § 1003.1(d)(1).
26 Decisions rendered by the BIA are final, except for those reviewed by the Attorney
27 General. 8 C.F.R. § 1003.1(d)(7).
28

1 “District Courts are authorized by 28 U.S.C § 2241 to consider petitions for
2 habeas corpus.” *Castro–Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001). “That
3 section does not specifically require petitioners to exhaust direct appeals before filing
4 petitions for habeas corpus.” *Id.* That said, the Ninth Circuit “require[s], as a prudential
5 matter, that habeas petitioners exhaust available judicial and administrative remedies
6 before seeking relief under § 2241.” *Id.* Specifically, “courts may require prudential
7 exhaustion if (1) agency expertise makes agency consideration necessary to generate a
8 proper record and reach a proper decision; (2) relaxation of the requirement would
9 encourage the deliberate bypass of the administrative scheme; and (3) administrative
10 review is likely to allow the agency to correct its own mistakes and to preclude the need
11 for judicial review.” *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007) (internal
12 quotation marks omitted).

13 “When a petitioner does not exhaust administrative remedies, a district court
14 ordinarily should either dismiss the petition without prejudice or stay the proceedings
15 until the petitioner has exhausted remedies, unless exhaustion is excused.” *Leonardo v.*
16 *Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011); *see also Alvarado v. Holder*, 759 F.3d
17 1121, 1127 n.5 (9th Cir. 2014) (issue exhaustion is a jurisdictional requirement); *Tijani*
18 *v. Holder*, 628 F.3d 1071, 1080 (9th Cir. 2010) (no jurisdiction to review legal claims
19 not presented in the petitioner’s administrative proceedings before the BIA). Moreover,
20 a “petitioner cannot obtain review of procedural errors in the administrative process that
21 were not raised before the agency merely by alleging that every such error violates due
22 process.” *Vargas v. INS*, 831 F.3d 906, 908 (9th Cir. 1987); *see also Sola v. Holder*,
23 720 F.3d 1134, 1135–36 (9th Cir. 2013) (declining to address a due process argument
24 that was not raised below because it could have been addressed by the agency).

25 Here, exhaustion is warranted because agency expertise is required. “[T]he BIA
26 is the subject-matter expert in immigration bond decisions.” *Aden v. Nielsen*, No. C18-
27 1441RSL, 2019 WL 5802013, at *2 (W.D. Wash. Nov. 7, 2019); *Delgado v. Sessions*,
28 No. C17-1031-RSL-JPD, 2017 WL 4776340, at *2 (W.D. Wash. Sept. 15, 2017) (noting

1 a denial of bond to an immigration detainee was “a question well suited for agency
2 expertise”).

3 Waiving exhaustion would also encourage other detainees to bypass the BIA and
4 directly appeal from the immigration judge to federal district court. *See Aden*, 2019 WL
5 5802013, at *2. Individuals, like Petitioner, would have little incentive to seek relief
6 before the BIA if this Court permits review here. And allowing a skip-the-BIA-and-go-
7 straight-to-federal-court strategy would needlessly increase the burden on district
8 courts. *See Bd. of Tr. of Constr. Laborers’ Pension Trust for S. Calif. v. M.M. Sundt*
9 *Constr. Co.*, 37 F.3d 1419, 1420 (9th Cir. 1994) (“Judicial economy is an important
10 purpose of exhaustion requirements.”); *see also Santos-Zacaria v. Garland*, 598 U.S.
11 411, 418 (2023) (noting “exhaustion promotes efficiency”). If the immigration judge
12 erred, this Court should allow the administrative process to correct itself. *See id.*

13 Moreover, detention alone is not an irreparable injury. Discretion to waive
14 exhaustion “is not unfettered.” *Laing v. Ashcroft*, 370 F.3d 994, 998 (9th Cir. 2004).
15 Petitioners bear the burden to show that an exception to the exhaustion requirement
16 applies. *Leonardo*, 646 F.3d at 1161; *Aden*, 2019 WL 5802013, at *3. “[C]ivil detention
17 after the denial of a bond hearing [does not] constitute[] irreparable harm such that
18 prudential exhaustion should be waived.” *Reyes v. Wolf*, No. C20-0377JLR, 2021 WL
19 662659, at *3 (W.D. Wash. Feb. 19, 2021), *aff’d sub nom. Diaz Reyes v. Mayorkas*, No.
20 21-35142, 2021 WL 3082403 (9th Cir. July 21, 2021).

21 Because Petitioner has (1) already received a bond hearing under 8 U.S.C.
22 § 1226(a), (2) failed to exhaust his administrative remedies, and (3) abused the writ by
23 filing a successive petition with challenges that could have been raised in his prior
24 petitions, the Court should dismiss this matter.

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1 IV. CONCLUSION

2 For the reasons stated herein, Respondents respectfully request the Court dismiss
3 this petition.

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5 DATED: June 23, 2026

Respectfully submitted,

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8 s/ ANTONIO ESTRADA
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