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

WILLIN GALINDO MORALES
HERNANDEZ,

Petitioner,

v.

WARDEN, Imperial Regional Detention
Facility, et al.,

Respondent.

Case No.: 26-cv-3570-CAB-SBC

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

I. Introduction

On April 22, 2026, Petitioner filed his first petition for writ of habeas corpus in Case No. 26-cv-2543-AGS-DDL. In Petition 1 Petitioner, through counsel, argued that his arrest and detention under 8 U.S.C. § 1225(b)(2) violated Immigration and Naturalization Act and requested relief as member of the *Maldonado-Bautista* class. *Morales-Hernandez v. Giles*, 26-cv-2543-AGS-DDL (S.D. Cal. April 30, 2006) at ECF No. 1. Respondents conceded that Petitioner was entitled to relief, and the Court granted the petition. The Court ordered Respondents to provide Petitioner with a bond hearing by May 14, 2026. *Id.* at ECF No. 6. Respondents provided Petitioner with a bond hearing on May 13, 2026 at which an immigration judge denied bond finding the at Petitioner is a danger to the community because of two convictions for

1 aggravated driving under the influence offenses. Exhibit 1 (IJ Bond Order): Exhibit 2
2 (NY Criminal Record). Petitioner has appealed the denial of bond to the Board of
3 Immigration Appeals. On June 15, 2026, Petitioner filed a second petition for a writ
4 of habeas corpus. ECF No. 1.

5 **II. Petitioner raising a new challenge to his detention, that could have**
6 **been raised in his first petition, is an abuse of the writ**

7 The doctrine of abuse of the writ generally “forbids the reconsideration of claims
8 that were or could have been raised in a prior habeas petition.” *Calderon v. United States*
9 *Dist. Ct.*, 163 F.3d 530, 538 (9th Cir.1998) (*en banc*) (overruled in part on other grounds
10 by *Woodford v. Garceau*, 538 U.S. 202 (2003)). Under the abuse of the writ doctrine, a
11 successive petition must be dismissed unless the petitioner can show (1) cause for
12 bringing a successive petition and that prejudice would result or (2) that a fundamental
13 miscarriage of justice would result from failure to entertain the claim. *See McCleskey*
14 *v. Zant*, 499 U.S. 467, 494–95 (1991); *Sanders v. United States*, 373 U.S. 1, 15 (1963).
15 The government bears the burden of pleading abuse of the writ, *McCleskey*, 499 U.S. at
16 477.

17 After receiving a bond hearing in Case No. 26-cv-2543-AGS-DDL, Petitioner
18 has now filed a new amended petition for writ of habeas corpus that doesn’t
19 meaningfully address Petition 1 or provide an explanation for why these arguments
20 weren’t raised previously. The instant Petition (“Petition 2”) argues for the first time
21 that Petitioner was detained without a warrant in violation of 8 U.S.C. § 1226(a). ECF
22 No. 8 at 2-3. Petitioner’s detention was raised in the first petition. Therefore, the current
23 claim for relief related to how Petitioner was detained, should and could have been
24 raised in the first Petition. Because the argument in this Petition could have been raised
25 in the first Petition, and because Petitioner already received an individualized bond
26 hearing, Respondents contend the instant Petition runs afoul of the abuse of the writ
27 doctrine. The Court should dismiss this Petition as an abuse of the writ.
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2 **III. Petitioner has failed to exhaust his administrative remedies**

3 Even if Petitioner were permitted to file successive habeas petitions asserting new
4 claims that could have been raised previously, the Court should dismiss the instant
5 Petition because Petitioner has not exhausted his administrative remedies.

6 “Exhaustion can be either statutorily or judicially required.” *Acevedo-Carranza*
7 *v. Ashcroft*, 371 F.3d 539, 541 (9th Cir. 2004). “If exhaustion is statutory, it may be a
8 mandatory requirement that is jurisdictional.” *Id.* (citing *El Rescate Legal Servs., Inc.*
9 *v. Exec. Off. of Immigr. Rev.*, 959 F.2d 742, 747 (9th Cir. 1991)). “If, however,
10 exhaustion is a prudential requirement, a court has discretion to waive the requirement.”
11 *Id.* (citing *Stratman v. Watt*, 656 F.2d 1321, 1325–26 (9th Cir. 1981)). Here, Petitioner
12 is attempting to bypass the administrative scheme by seeking relief with this Court prior
13 to a ruling on his appeal of his bond denial from the Board of Immigration Appeals
14 (BIA).

15 The BIA is an appellate body within the Executive Office for Immigration
16 Review and possesses delegated authority from the Attorney General. 8 C.F.R.
17 §§ 1003.1(a)(1), (d)(1). The BIA is “charged with the review of those administrative
18 adjudications under the [Immigration and Nationality Act (INA)] that the Attorney
19 General may by regulation assign to it,” including immigration judge custody
20 determinations. 8 C.F.R. §§ 1003.1(d)(1), 236.1, 1236.1. The BIA not only resolves
21 particular disputes before it, but is also directed to, “through precedent decisions, []
22 provide clear and uniform guidance to [the Department of Homeland Security], the
23 immigration judges, and the general public on the proper interpretation and
24 administration of the [INA] and its implementing regulations.” *Id.* § 1003.1(d)(1).
25 Decisions rendered by the BIA are final, except for those reviewed by the Attorney
26 General. 8 C.F.R. § 1003.1(d)(7).
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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). Finally, Petitioner provides this
21 Court with no legal or factual support in his pleading to waive the exhaustion
22 requirement.

23 **IV. Respondents properly detained Petitioner**

24 To the extent Petitioner requests immediate release because of a lack of an
25 administrative warrant, Respondents respectfully oppose. Petitioner was issued an
26 administrative warrant on January 7, 2026. *See* Exhibit 3. Further, Respondents note
27 that 8 U.S.C. § 1357(a)(2) authorizes warrantless arrests and 8 C.F.R. § 287.3(d)
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1 provides the government 48 hours to issue a warrant if it determines that the noncitizen
2 will remain custody. *See Garcia-Juarez v. Blanche*, No. 26-cv-3007-LL-DEB, ECF No.
3 18 (S.D. Cal. June 30, 2026).

4 Because Petitioner has (1) already received a bond hearing under 8 U.S.C.
5 § 1226(a), (2) failed to exhaust his administrative remedies, (3) abused the writ by filing
6 a successive petition with a challenge that could have been raised in his first Petition,
7 and (4) the claim for relief is without merit, the Court should dismiss this matter.

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9 DATED: July 13, 2026

Respectfully submitted,

10 ADAM GORDON
11 United States Attorney

12 s/ Michael D. Wallace
13 MICHAEL D. WALLACE
14 Assistant United States Attorney
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