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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

CLAUDIO HERNADNEZ-HERNANDEZ, Petitioner, v. CHRISTOPHER J. LaROSE, Warden of Otay Mesa Detention Center; *et al.*, Respondent.	Case No.: 26-cv-03924-CAB-VET **RETURN TO PETITION FOR WRIT OF HABEAS CORPUS**

INTRODUCTION

Before the Court is Petitioner's third petition for writ of habeas corpus filed on July 8, 2026. Dkt. 1. This Court granted the Petitioner's first petition on February 9, 2026, and ordered Respondents to provide a bond hearing to Petitioner in Case No. 26-cv-00635-CAB-VET. Petitioner received a bond hearing before an immigration judge on February 12, 2026. During the bond hearing, the immigration judge denied Petitioner's bond request because he was deemed to be a significant flight risk. In a subsequent hearing, the immigration judge ordered the alien removed on April 21, 2026. The Petitioner reserved appeal and filed his appeal with the Board of Immigration Appeals on May 5, 2026. *See* Exhibit 2.

On April 27, 2026, Petitioner filed his second petition (Petition II) for writ of habeas corpus in Case No. 26-cv-02689-CAB-SBC. The Court denied Petition II,

finding that Petitioner failed to exhaust his administrative remedies and that even if there were evidence of a fourth amendment violation regarding Petitioner's arrest, release from immigration custody would not be the proper remedy. *See* Exhibit 1 (Court's Order Denying Petition II).

Now, in the Petition currently before the Court (Petition III) Petitioner, through counsel, alleges through four counts that (1) "Mr. Hernandez-Hernandez's Substantive Due Process Rights under the Fifth Amendment" were violated; (2) "Mr. Hernandez-Hernandez's Procedural Due Process Rights under the Fifth Amendment" were violated" (3) "Immediate Release Is Appropriate Remedy for Violation of Petitioner's Fourth Amendment Right by Warrantless Seizure of Person" and (4) "Immediate Release is the Appropriate Remedy." Dkt. 1 at 20-24.

However, Petitioner provides no evidence to support the claim in Count 1 that his substantive due process rights have been violated while in immigration custody. Furthermore, to the extent Petitioner is arguing now for the first time that his re-detention was unlawful, he fails to explain why this argument was not raised in his first petition for writ of habeas corpus. Finally, because Counts 2-4 are repetitive, duplicative, and fail to address any of the Courts findings in its previous order denying Petition II. For the reasons above and further explained below, summary dismissal of the Petition is warranted. *See, e.g.*, *Salas v. Att'y Gen.*, No. 2:23-cv-01118-TL-TLF, 2023 WL 5826738, at *2 (W.D. Wash. Aug. 21, 2023) (finding summary dismissal warranted where it is repetitive and duplicative of previous petitions).

ARGUMENT

A. Petitioner fails to plead sufficient information

Petitioner has failed to plead sufficient information or establish how his detention violates his substantive due process rights. "Absent a real and immediate threat of future injury there can be no case or controversy, and thus no Article III standing for a party seeking injunctive relief." *Wilson v. Brown*, No. 05-cv-1774-BAS-MDD, 2015 WL

8515412, at *3 (S.D. Cal. Dec. 11, 2015) (citing *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 190 (2000) ("[I]n a lawsuit brought to force compliance, it is the plaintiff's burden to establish standing by demonstrating that, if unchecked by the litigation, the defendant's allegedly wrongful behavior will likely occur or continue, and that the threatened injury is certainly impending.") (simplified)). At the "irreducible constitutional minimum," standing requires that a petitioner demonstrate the following: (1) an injury in fact (2) that is fairly traceable to the challenged action of the United States and (3) likely to be redressed by a favorable decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992).

Moreover, 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).

Here, Petitioner bears the burden of establishing that his detention is unlawful. However, given Respondents have already conceded he is detained under § 1226(a) and provided him with a bond hearing, it is unclear how his detention now violates either substantive or procedural due process. By granting Petition I and ordering a bond hearing, the Court has ensured the correct procedural due process has been afforded to Petitioner. Because the habeas petition fails to supply sufficient information for the Court to adjudicate his claims, the Court should deny the petition. *See Alonso Velasquez v. LaRose*, No. 25-cv-3216-JES-AHG, 2025 WL 3473773 (S.D. Cal. Dec. 3, 2025) (dismissing without prejudice habeas petition that failed to allege sufficient factual

information).

Even if the Court infers a constitutional right against prolonged mandatory detention, Petitioner's claim still fails. "In general, as detention continues past a year, courts become extremely wary of permitting continued custody absent a bond hearing." *Sibomana v. LaRose*, No. 22-cv-933-LL-NLS, 2023 WL 3028093, at *4 (S.D. Cal. April 20, 2023) (citation omitted); *see also Durand v. Allen*, No. 3:23-cv-00279-RBM-BGS, 2024 WL 711607, at *5 (S.D. Cal. Feb. 21, 2024) (detained over two-and-a-half years); *Sanchez-Rivera v. Matuszewski*, No. 22-cv-1357-MMA (JLB), 2023 WL 139801, at *6 (S.D. Cal. Jan. 9, 2023) (three years); *Yagao v. Figueroa*, No. 17-cv-2224-AJB-MDD, 2019 WL 1429582, at *2 (S.D. Cal. March 29, 2019) (two years). Petitioner's detention falls significantly short of the length courts have found to raise due process concerns.

In similar cases, courts in this district have applies the test in *Banda v. McAleenan*, 385 F. Sup. 3d 1099, 1106 (W.D. Wash. 2019), first adopted by Judge Battaglia in *Kydyrali v. Wolf*, 499 F. Supp. 3d 768 (S.D. Cal. 2020). Under *Banda*, to determine whether continued mandatory detention has become unreasonable, courts look at (1) total length of detention to date; (2) likely duration of future detention; (3) conditions of detention; (4) delays in the removal proceedings caused by the detainee; (5) delays in the removal proceedings caused by the government; and (6) the likelihood that the removal proceedings will result in a final order of removal. *Banda*, 385 F. Sup. 3d at 1106.

First, Petitioner's approximate 8-month detention should not favor granting his release. The length of detention in *Kydyrali* was 27 months, three times as long as Petitioner's detention. *See Kydyrali*, 499 F. Supp. 3d at 773. This relatively short duration does not justify habeas relief. *See Prieto-Romero v. Clark*, 534 F.3d 1053, 1065 (9th Cir. 2008) (finding no constitutional violation in detention of more than three years under § 1226(a)); *see also Durand v. Allen*, No. 3:23-cv-00279-RBM-BGS, 2024 WL 711607 at *5 (S.D. Cal. Feb. 21, 2024) (32 months); *Sibomana*, 2023 WL

3028093, at *4 (19 months); *Sanchez-Rivera*, 2023 WL 139801 at *6 (three years); *Yagao v. Figueroa*, No. 17-CV-2224-AJB-MDD, 2019 WL 1429582, at *1 (S.D. Cal. Mar. 29, 2019) (42 months).

Notably, "the length of detention . . . is the most important factor." *Banda*, 385 F. Supp. 3d at 1118. In short, the period of Petitioner's detention is reasonable. Moreover, the length of Petitioner's detention, by itself, does not favor granting habeas relief. *See Sadeqi v. LaRose*, No. 25-cv-2587-RSH-BJW, 2025 WL 3154520, at *3 (S.D. Cal. Nov. 12, 2025) ("The Court agrees with Respondents that the length of Petitioner's detention to date—almost 12 months—does not by itself, without more, establish prolonged detention in violation of due process.").

Second, the likely duration of future detention weighs against Petitioner. Petitioner has voluntarily initiated appeals to the Board of Immigration Appeals regarding his immigration case and those matters are still pending. Any length of detention after Petitioner voluntarily initiated those proceedings is purely speculative. Accordingly, the fourth factor (delays in the removal proceedings caused by Petitioner) also weigh against him. The fifth factor (delays in the removal proceedings caused by the government) are neutral as there is no evidence before the Court that the government has caused delay in Petitioner's immigration case. The sixth and final factor weighs in favor of Respondents because an immigration judge has entered a removal order against Petitioner, which Petitioner has appealed to the BIA.

Balancing the above factors, the record does not support a finding that "detention has become so unreasonable as to require an initial bond hearing," *Sanchez-Rivera*, 2023 WL 139801, at *6, or an order requiring Petitioner's release.

B. Petitioner raising new challenges to his re-detention, that could have been raised in Petition 1, 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 his first Petition, Petitioner has now filed two additional petitions for writ of habeas corpus that doesn't meaningfully address the Court's previous findings or provide an explanation for why he didn't contest his re-detention in his first Petition for writ of habeas corpus. Because this argument could have been raised in Petition 1 (instead of solely claiming that he was a *Bautista* class-member), and because Petitioner already received an individualized bond hearing under 8 U.S.C. § 1226(a), Respondents contend Petition III 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 was free to seek to re-open that case with the Court by filing a motion to enforce judgment.

C. Petitioner has still failed to exhaust administrative remedies

Even if Petitioner were permitted to file successive habeas petitions asserting new claims that could have been raised previously, the Court would still have to dismiss Petition 3 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 simultaneously filing a habeas

Petition while 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 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) failed to provide sufficient information that his detention violates due process, already received a bond hearing under 8 U.S.C. § 1226(a), (2) failed to exhaust his administrative remedies, and (3) abused the writ by filing a successive petition with challenges that could have been raised in Petition 1, the Court should dismiss this matter.

DATED: July 16, 2026

Respectfully submitted,

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