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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

JEFRY GILBERTO RAMIREZ PEREZ, Petitioner, v. JEREMY CASEY, Facility administrator of Imperial Regional Detention Facility; *et al.*, Respondent.	Case No.: 26-cv-04201-CAB-DEB **RETURN TO PETITION FOR WRIT OF HABEAS CORPUS**

INTRODUCTION

On May 15, 2026, Jefry Gilberto Ramirez Perez ("Petitioner") filed his first petition for writ of habeas corpus in Case No. 26-cv-03066-CAB-DEB ("Petition 1"). In Petition 1, Petitioner argued that his immigration detention without a bond hearing violated the Fifth Amendment. *See* Exhibit 1 (Order Granting Petition 1) at 1. In Response to Petition 1, Respondents conceded that they would not oppose an order from this Court directing that Petitioner receive a bond hearing under 8 U.S.C. § 1226(a). *Id.* The Court granted Petition 1, and directed that Petitioner receive such a hearing by June 17, 2026. *Id.* At a bond hearing held on June 17, 2026, an immigration judge (IJ) found that Petitioner posed a risk of flight and denied his release on bond.[1]

[1] Exhibit 5 ("under the factors the Court must consider pursuant to *Matter of Guerra*,

In the Petition currently before the Court (Petition 2), Petitioner argues for the first time that the government improperly arrested and detained him without an administrative warrant, ECF 1 at ¶¶ 31-44, and that immigration courts are not a "neutral body capable of providing Petitioner with Due Process at a bond hearing." ECF 45-57. For the following reasons, Respondents respectfully request that the Court deny Petition 2.

PETITIONER'S NEW FOURTH AMENDMENT AND IJ NEUTRALITY VIOLATE THE ABUSE OF THE WRIT DOCTRINE

Petitioner's new claims are without merit, as Petitioner was arrested pursuant to an administrative arrest warrant. *See* Exhibit 2 (Warrant for Arrest of Alien). However, even if the government had not obtained an administrative warrant, Petitioner provides no explanation for why this argument wasn't raised in Petition 1. Additionally, even if Petitioner's Fourth Amendment rights were violated, he fails to explain why release from civil immigration custody would be the appropriate remedy.

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

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24 I&N Dec. 37 (BIA 2006), the Respondent poses a risk of flight. Respondent entered the United States illegally. The Respondent has lived in the United States for three years, but has not obtained work authorization or a valid driver's license. He has no family in this country who could assist him with the legalization of his status. His proposed sponsor, [redacted], has insufficient income to support herself and her family, much less the Respondent. Additionally, the Respondent has limited relief available to him, given that he arrived in the U.S. in 2023 and did not file an 1- 589 until 2026, thereby subjecting himself to the one-year asylum bar.")

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Petitioner requested and received a bond hearing pursuant to Petition 1. However, Petitioner was not released on bond due to flight risk. Now, Petitioner has filed a new Petition alleging for the first time that he was arrested without a warrant and implying that immigration judges *in this district* are not capable of following this Court's orders due to bias. However, Petitioner provides no evidence to support either of these novel claims. Because the arguments in Petition 2 could have been raised in Petition 1, and because Petitioner already received his previously requested remedy of a bond hearing under 8 U.S.C. § 1226(a), Respondents contend Petition 2 runs afoul of the abuse of the writ doctrine. The Court should dismiss Petition 2 as an abuse of the writ.

PETITIONER HAS 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 2 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 not 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 already received a bond hearing under 8 U.S.C. § 1226(a), and because he failed to exhaust his administrative remedies by appealing the IJ's denial of bond, the Court should dismiss this matter.

DATED: August 5, 2026

Respectfully submitted,

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s/ Hunter V. Norton
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