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

10 MOHAMMED BELAL,

11 Petitioner,

12 v.

13 CHRISTOPHER J. LaROSE, *et al.*,

14 Respondents.
15
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Case No.: 26-cv-1427-BAS-BLM

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

18
19 **Introduction**

20 Respondents respectfully request the Court dismiss Petitioner's duplicative
21 petition for writ of habeas corpus as an abuse of the writ. On January 16, 2026,
22 Petitioner filed his first petition for writ of habeas corpus in Case No. 26-cv-283-BAS-
23 VET ("Petition 1").¹ Petitioner has already had this same claim heard by this Court,
24 and this Court denied his petition for writ of habeas corpus on February 19, 2026. Since
25 the Court has found Petitioner is subject to mandatory detention, and there are no
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27

28 ¹ Respondents incorporate the facts from the Court's previous order in Case No. 26-cv-283-BAS-VET, ECF No. 5 at 1-2.

1 changed circumstances or new (and proper) bases warranting habeas relief,
2 Respondent's request the Court deny the Petition as duplicative.

3 **Petitioner filing a new petition for writ of habeas corpus is an abuse**
4 **of the writ**

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

14 **Petitioner has failed to exhaust administrative remedies**

15 Even if Petitioner were permitted to file successive habeas petitions asserting the
16 same claims on the same record, the Court would still have to dismiss because Petitioner
17 has not exhausted his administrative remedies.

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

26 The BIA is an appellate body within the Executive Office for Immigration
27 Review and possesses delegated authority from the Attorney General. 8 C.F.R.
28 §§ 1003.1(a)(1), (d)(1). The BIA is "charged with the review of those administrative

1 adjudications under the [Immigration and Nationality Act (INA)] that the Attorney
2 General may by regulation assign to it,” including immigration judge custody
3 determinations. 8 C.F.R. §§ 1003.1(d)(1), 236.1, 1236.1. The BIA not only resolves
4 particular disputes before it, but is also directed to, “through precedent decisions, []
5 provide clear and uniform guidance to [the Department of Homeland Security], the
6 immigration judges, and the general public on the proper interpretation and
7 administration of the [INA] and its implementing regulations.” *Id.* § 1003.1(d)(1).
8 Decisions rendered by the BIA are final, except for those reviewed by the Attorney
9 General. 8 C.F.R. § 1003.1(d)(7).

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

22 “When a petitioner does not exhaust administrative remedies, a district court
23 ordinarily should either dismiss the petition without prejudice or stay the proceedings
24 until the petitioner has exhausted remedies, unless exhaustion is excused.” *Leonardo v.*
25 *Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011); *see also Alvarado v. Holder*, 759 F.3d
26 1121, 1127 n.5 (9th Cir. 2014) (issue exhaustion is a jurisdictional requirement); *Tijani*
27 *v. Holder*, 628 F.3d 1071, 1080 (9th Cir. 2010) (no jurisdiction to review legal claims
28 not presented in the petitioner’s administrative proceedings before the BIA). Moreover,

1 a “petitioner cannot obtain review of procedural errors in the administrative process that
2 were not raised before the agency merely by alleging that every such error violates due
3 process.” *Vargas v. INS*, 831 F.3d 906, 908 (9th Cir. 1987); *see also Sola v. Holder*,
4 720 F.3d 1134, 1135–36 (9th Cir. 2013) (declining to address a due process argument
5 that was not raised below because it could have been addressed by the agency).

6 Here, exhaustion is warranted because agency expertise is required. “[T]he BIA
7 is the subject-matter expert in immigration bond decisions.” *Aden v. Nielsen*, No. C18-
8 1441RSL, 2019 WL 5802013, at *2 (W.D. Wash. Nov. 7, 2019); *Delgado v. Sessions*,
9 No. C17-1031-RSL-JPD, 2017 WL 4776340, at *2 (W.D. Wash. Sept. 15, 2017) (noting
10 a denial of bond to an immigration detainee was “a question well suited for agency
11 expertise”).

12 Waiving exhaustion would also encourage other detainees to bypass the BIA and
13 directly appeal from the immigration judge to federal district court. *See Aden*, 2019 WL
14 5802013, at *2. Individuals, like Petitioner, would have little incentive to seek relief
15 before the BIA if this Court permits review here. And allowing a skip-the-BIA-and-go-
16 straight-to-federal-court strategy would needlessly increase the burden on district
17 courts. *See Bd. of Tr. of Constr. Laborers’ Pension Trust for S. Calif. v. M.M. Sundt*
18 *Constr. Co.*, 37 F.3d 1419, 1420 (9th Cir. 1994) (“Judicial economy is an important
19 purpose of exhaustion requirements.”); *see also Santos-Zacaria v. Garland*, 598 U.S.
20 411, 418 (2023) (noting “exhaustion promotes efficiency”). If the immigration judge
21 erred, this Court should allow the administrative process to correct itself. *See id.*

22 Moreover, detention alone is not an irreparable injury. Discretion to waive
23 exhaustion “is not unfettered.” *Laing v. Ashcroft*, 370 F.3d 994, 998 (9th Cir. 2004).
24 Petitioners bear the burden to show that an exception to the exhaustion requirement
25 applies. *Leonardo*, 646 F.3d at 1161; *Aden*, 2019 WL 5802013, at *3. “[C]ivil detention
26 after the denial of a bond hearing [does not] constitute[] irreparable harm such that
27 prudential exhaustion should be waived.” *Reyes v. Wolf*, No. C20-0377JLR, 2021 WL
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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 abused the writ by filing a successive petition, the Court should dismiss this matter.

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Respectfully submitted,

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