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

10 XIAOYONG ZHANG, a.k.a.
RENSENGDUOIE,
11
12 **Petitioner,**
13 **v.**
14 SIXTO MARRERO, et al.,
15 **Respondents.**
16

Case No.: 3:26-cv-1646-CAB-SBC
**RETURN TO PETITION FOR WRIT
OF HABEAS CORPUS**

17
18 **Introduction**

19 Petitioner filed a petition for writ of habeas corpus on January 19, 2026,
20 challenging his mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and requesting
21 that the court order a bond hearing.¹ Respondents conceded, the court ordered a bond
22 hearing, and Petitioner received his bond hearing. However, the immigration judge
23 denied bond and found Petitioner was a serious risk of flight. Rather than appeal that
24 decision, Petitioner filed this successive habeas petition. The petition must be dismissed
25 because it is an abuse of the writ and because petitioner failed to exhausted his
26 administrative remedies.
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¹ Order Granting Petition at 1, ECF No. 7, Case No. 3:26-cv-00298-RSH-DDL.

1 **Facts**

2 On March 13, 2026, Petitioner filed a Petition for a Writ of Habeas Corpus
3 pursuant to 28 U.S.C. § 2241 (The March Petition) in the above-captioned case. ECF
4 No. 1. The March Petition challenges the lawfulness of Petitioner’s detention under the
5 Due Process Clause and the INA. *Id.* at 12-14.

6 On January 19, 2026, Petitioner filed a Petition for Writ of Habeas Corpus
7 pursuant to 28 U.S.C. § 2241 (The January Petition). S.D.C.A. ECF No. 1, 26-cv-00298-
8 RSH-DDL. The January Petition argued Petitioner was entitled to a bond hearing
9 pursuant to 8 U.S.C. § 1226(a) which provides discretionary detention authority and
10 requires the immigration court to make an individualized custody determination. *Id.* at
11 12-13.

12 The January Petition succeeded. Petitioner persuaded Respondents to concede
13 and instead proceed under § 1226(a) discretionary detention provisions. However, the
14 IJ ultimately found Petitioner ineligible for bond based on risk of flight. Petitioner did
15 not appeal that decision.

16 **Petitioner’s current petition is an abuse of the writ**

17 The doctrine of abuse of the writ generally “forbids the reconsideration of claims
18 that were or could have been raised in a prior habeas petition.” *Calderon v. United States*
19 *Dist Ct*, 163 F.3d 530, 538 (9th Cir.1998) (*en banc*) (overruled in part on other grounds
20 by *Woodford v. Garceau*, 538 U.S. 202 (2003)). Under the abuse of the writ doctrine, a
21 successive petition that raises identical grounds for relief as a prior petition must be
22 dismissed unless the petitioner can show (1) cause for bringing a successive petition
23 and that prejudice would result or (2) that a fundamental miscarriage of justice would
24 result from failure to entertain the claim. *See McCleskey v. Zant*, 499 U.S. 467, 494–95
25 (1991); *Sanders v. United States*, 373 U.S. 1, 15 (1963). The government bears the
26 burden of pleading abuse of the writ, *McCleskey*, 499 U.S. at 477.

27 The January Petition and the March Petition seek the same relief for the same
28 reasons. Notably, the March Petition neither cites to the bond hearing nor explains why

1 that did not satisfy Petitioner’s Habeas Petition. If Petitioner believed the Government
2 did not honor the agreements reached while litigating the January Petition he is free to
3 seek to re-open that case with Judge Huie. Instead, perhaps hoping for a more favorable
4 forum, or hoping to take advantage of the deluge of habeas petitions confronting the
5 Court, he filed a new petition. The Court should dismiss the March Petition as an abuse
6 of the writ.

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

8 Even if Petitioner were permitted to file successive habeas petitions asserting the
9 same claims on the same record, the Court would still have to dismiss the March Petition
10 because Petitioner has not exhausted his administrative remedies.

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

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

1 Decisions rendered by the BIA are final, except for those reviewed by the Attorney
2 General. 8 C.F.R. § 1003.1(d)(7).

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

15 “When a petitioner does not exhaust administrative remedies, a district court
16 ordinarily should either dismiss the petition without prejudice or stay the proceedings
17 until the petitioner has exhausted remedies, unless exhaustion is excused.” *Leonardo v.*
18 *Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011); *see also Alvarado v. Holder*, 759 F.3d
19 1121, 1127 n.5 (9th Cir. 2014) (issue exhaustion is a jurisdictional requirement); *Tijani*
20 *v. Holder*, 628 F.3d 1071, 1080 (9th Cir. 2010) (no jurisdiction to review legal claims
21 not presented in the petitioner’s administrative proceedings before the BIA). Moreover,
22 a “petitioner cannot obtain review of procedural errors in the administrative process that
23 were not raised before the agency merely by alleging that every such error violates due
24 process.” *Vargas v. INS*, 831 F.3d 906, 908 (9th Cir. 1987); *see also Sola v. Holder*,
25 720 F.3d 1134, 1135–36 (9th Cir. 2013) (declining to address a due process argument
26 that was not raised below because it could have been addressed by the agency).

27 Here, exhaustion is warranted because agency expertise is required. “[T]he BIA
28 is the subject-matter expert in immigration bond decisions.” *Aden v. Nielsen*, No. C18-

1 1441RSL, 2019 WL 5802013, at *2 (W.D. Wash. Nov. 7, 2019); *Delgado v. Sessions*,
2 No. C17-1031-RSL-JPD, 2017 WL 4776340, at *2 (W.D. Wash. Sept. 15, 2017) (noting
3 a denial of bond to an immigration detainee was “a question well suited for agency
4 expertise”).

5 Waiving exhaustion would also encourage other detainees to bypass the BIA and
6 directly appeal from the immigration judge to federal district court. *See Aden*, 2019 WL
7 5802013, at *2. Individuals, like Petitioner, would have little incentive to seek relief
8 before the BIA if this Court permits review here. And allowing a skip-the-BIA-and-go-
9 straight-to-federal-court strategy would needlessly increase the burden on district
10 courts. *See Bd. of Tr. of Constr. Laborers’ Pension Trust for S. Calif. v. M.M. Sundt*
11 *Constr. Co.*, 37 F.3d 1419, 1420 (9th Cir. 1994) (“Judicial economy is an important
12 purpose of exhaustion requirements.”); *see also Santos-Zacaria v. Garland*, 598 U.S.
13 411, 418 (2023) (noting “exhaustion promotes efficiency”). If the immigration judge
14 erred, this Court should allow the administrative process to correct itself. *See id.*²
15 Moreover, detention alone is not an irreparable injury. Discretion to waive exhaustion
16 “is not unfettered.” *Laing v. Ashcroft*, 370 F.3d 994, 998 (9th Cir. 2004). Petitioners
17 bear the burden to show that an exception to the exhaustion requirement applies.
18 *Leonardo*, 646 F.3d at 1161; *Aden*, 2019 WL 5802013, at *3. “[C]ivil detention after
19 the denial of a bond hearing [does not] constitute[] irreparable harm such that prudential
20 exhaustion should be waived.” *Reyes v. Wolf*, No. C20-0377JLR, 2021 WL 662659, at
21 *3 (W.D. Wash. Feb. 19, 2021), *aff’d sub nom. Diaz Reyes v. Mayorkas*, No. 21-35142,
22 2021 WL 3082403 (9th Cir. July 21, 2021).

23 **8 U.S.C. § 2244**

24 In the Ninth Circuit, § 2244(a) cannot apply to a § 2241 petition filed by an
25 immigration detainee. *Luis Carlos Z.Z. v. Chestnut et. al.*, (E.D. Cal. 26-cv-2309-TLN-
26 JDP, Apr. 1, 2026) 2026 WL 890476 at *2 (citing *Barapind v. Reno*, 225 F.3d 1100,
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1 1111 (9th Cir. 2000)). This is because “§ 2244(a) bars successive petitions seeking
2 review of the propriety of a detention ‘pursuant to a judgment of a court of the United
3 States[,]’ ” and individuals such as Petitioner who are in custody pending the outcome
4 of their immigration proceedings are not detained “pursuant to a judgment of a court of
5 the United States.” *Barapind v Reno*, 225 F.3d at 1111. (quoting 28 U.S.C. § 2244(a)).

6 There is thus no statutory bar affecting the Court’s ability to hear the claims
7 asserted in the Petition. But for the reasons above, there are prudential reasons why the
8 Court should deny the petition. Specifically, because Petitioner was provided an
9 individualized bond hearing under 8 U.S.C. § 1226(a) in response to his last petition,
10 and because there are no new material facts relevant to the bond hearing, and because
11 Petitioner has not exhausted his administrative remedies, the Court should dismiss this
12 matter.

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14 DATED: April 13, 2026

Respectfully submitted,

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17 *s/ Hunter V. Norton*
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19 Assistant United States Attorney
20 Attorney for Respondents
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