

1 ADAM GORDON
United States Attorney
2 KIM A. C. GREGG
Assistant U.S. Attorney
3 California Bar No. 318764
Office of the U.S. Attorney
4 880 Front Street, Room 6293
San Diego, CA 92101-8893
5 Telephone: (619) 546-8437
Email: Kim.Gregg@usdoj.gov

6 Attorneys for Respondent
7

8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
10

11 ALIBEK ISLAMOV,

Petitioner,

13 v.
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15 CHRISTOPHER J. LAROSE, et al.,

16 Respondents.
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Case No. 26-cv-02239-AGS-AHG

RETURN TO HABEAS PETITION

I. INTRODUCTION

On January 14, 2026, Judge Lopez granted Petitioner's prolonged-mandatory-detention habeas petition and ordered Respondents "to arrange an individualized bond hearing before a neutral immigration judge in which the government bears the burden of establishing by clear and convincing evidence that Petitioner is a danger to the community or a flight risk if released." *Islamov v. Larose et al.*, 25-cv-03390-LL-MSB, ECF No. 9 at 11 (S.D. Cal. Jan. 14, 2026) ("*Islamov I*").

As Petitioner acknowledges, he was afforded that bond hearing before an Immigration Judge (IJ) on January 20, 2026. ECF No. 1 at ¶ 40. The IJ denied bond, finding that "DHS has established by clear and convincing evidence that the Respondent is both a danger and a flight risk." Exh. 1 at 1.¹ *See id.* In so finding, the IJ relied on, *inter alia*, an FBI memorandum indicating Petitioner's suspected affiliation with ISIS-ideology and financial transactions disproportionate to his income. *See* ECF No. 1-20 at 9–11. Petitioner reserved appeal and had up to February 19, 2026, to file a notice of appeal with the Board of Immigration Appeals (BIA). *Id.* at 2. He chose not to.

Instead, on April 9, 2026, about two months after his bond hearing and a month after his time to appeal expired, Petitioner filed this second habeas petition. Through it, he reasserts the prolonged detention claim that Judge Lopez previously ruled on and asks the Court to overturn the IJ's bond findings and order his immediate release. *See* ECF No. 1 at 13–19. The petition must be dismissed because it is an abuse of the writ and because petitioner failed to exhaust his administrative remedies.

II. ARGUMENT

A. This Habeas Petition Should Be Dismissed for 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). Under this doctrine, a successive

¹ The attached exhibit is a true copy of a document obtained from ICE counsel.

1 petition that raises identical grounds for relief as a prior petition must be dismissed
2 unless the petitioner can show (1) cause for bringing a successive petition and that
3 prejudice would result or (2) that a fundamental miscarriage of justice would result from
4 failure to entertain the claim. *See McCleskey v. Zant*, 499 U.S. 467, 494–95 (1991);
5 *Sanders v. United States*, 373 U.S. 1, 15 (1963). The government bears the burden of
6 pleading abuse of the writ. *See McCleskey*, 499 U.S. at 477.

7 Here, Petitioner’s successive habeas petition raises the same due process
8 prolonged detention claim and request for release that Judge Lopez already ruled on.
9 *See Islamov I*, 25-cv-03390-LL-MSB at ECF No. 6 at 10 n.1 (“Although Petitioner
10 requests immediate release from detention, he provides no authority to show he is
11 entitled to such relief. The Court thus finds the appropriate remedy in this case is a bond
12 hearing. *See Lopez v. Garland*, 631 F. Supp. 3d 870, 882 (E.D. Cal. 2022).”). Indeed, a
13 few days before filing this second petition, Petitioner filed a motion to enforce judgment
14 in his prior habeas case—further showing that the claims are duplicative. *See Islamov*
15 *I*, 25-cv-03390-LL-MSB at ECF No. 11 (filed April 6, 2026).

16 Because Petitioner cannot show that prejudice would result from dismissal of this
17 petition or that a fundamental justice would result from failure to entertain it, the Court
18 should reject his attempt at relitigating his prolonged detention claim. Accordingly, the
19 Court should dismiss the claim for abuse of the writ.

20 **B. Petitioner Has Not Exhausted Administrative Remedies.**

21 To the extent the Court entertains Petitioner’s challenge to the IJ’s bond ruling as
22 “constitutionally deficient,” it should also be dismissed. It’s clear that Petitioner seeks
23 review of the IJ’s bond decision. But he forfeited his right to appeal that decision and
24 should not be rewarded for his failure to exhaust clearly available administrative
25 remedies. *See Laing v. Ashcroft*, 370 F.3d 994, 998 (9th Cir. 2004) (“[A] litigant’s
26 failure to seek timely administrative relief did not constitute exhaustion of
27 administrative remedies and accordingly the court lacked jurisdiction.”) (citation
28 omitted).

1 While 28 U.S.C. § 2241 “does not specifically require petitioners to exhaust
2 direct appeals before filing petitions for habeas corpus,” the Ninth Circuit “require[s],
3 as a prudential matter, that habeas petitioners exhaust available judicial and
4 administrative remedies before seeking relief under § 2241.” *Castro Cortez v. INS*, 239
5 F.3d 1037, 1047 (9th Cir. 2001), *abrogated on other grounds by Fernandez-Vargas v.*
6 *Gonzales*, 548 U.S. 30 (2006). Like jurisdictional limits and limits on venue, prudential
7 limits are “ordinarily not optional.” *Id.*

8 Courts have required exhaustion where “(1) agency expertise makes agency
9 consideration necessary to generate a proper record and reach a proper decision; (2)
10 relaxation of the requirement would encourage the deliberate bypass of the administrative
11 scheme; and (3) administrative review is likely to allow the agency to correct its own
12 mistakes and to preclude the need for judicial review.” *Puga v. Chertoff*, 488 F.3d 812,
13 815 (9th Cir. 2007) (simplified). “When a petitioner does not exhaust administrative
14 remedies, a district court ordinarily should either dismiss the petition without prejudice
15 or stay the proceedings until the petitioner has exhausted remedies, unless exhaustion is
16 excused.” *Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011).

17 Here, all three prudential concerns weigh in favor of requiring agency exhaustion.
18 Petitioner seeks release after an IJ denied his request for bond finding that “DHS has
19 established by clear and convincing evidence that the Respondent is both a danger and
20 a flight risk.” Exh. 1 at 1. Petitioner’s mere disagreement with the weight the IJ afforded
21 to the government’s evidence and arguments—including the FBI memorandum
22 flagging a national security risk—does not amount to a constitutional violation. *See*
23 ECF No. 1-20 at 9–11. The proper avenue for Petitioner’s grievance with his bond
24 denial is to utilize the administrative scheme and appeal the adverse decision to the
25 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). Pertinent here, “the BIA is the subject-matter expert in

1 immigration bond decisions[.]” *Aden v. Nielsen*, No. C18-1441RSL, 2019 WL
2 5802013, at *2 (W.D. Wash. Nov. 7, 2019); *see Delgado v. Sessions*, No. C17-1031-
3 RSL-JPD, 2017 WL 4776340, at *2 (W.D. Wash. Sept. 15, 2017) (noting a denial of
4 bond to an immigration detainee was “a question well suited for agency expertise”). As
5 Petitioner’s claims concern matters that fall squarely within the BIA’s authority and
6 expertise, and exhaustion would generate a proper record for review, the BIA is the
7 appropriate body to first pass on the IJ’s bond determination. Moreover, agency
8 exhaustion is especially “necessary to generate a proper record and reach a proper
9 decision,” where, as here, the IJ’s oral decision is not memorialized in writing for
10 appellate review until a party files an appeal.² *See* Executive Office for Immigration
11 Review, Immigration Court Practice Manual, Ch. 8.3(e)(7) (updated Mar. 18, 2026),
12 <https://www.justice.gov/eoir/policy-manual-eoir/part-II/icpm/chapter-8-3>. Given the
13 BIA’s expertise in bond decisions and the need to develop a proper record for review,
14 the Court should require agency exhaustion here. *See Liu v. Waters*, 55 F.3d 421, 424
15 (9th Cir. 1995) (“The exhaustion requirement avoids premature interference with the
16 agency’s processes and helps to compile a full judicial record.”) (simplified).

17 Second, allowing Petitioner to challenge the IJ’s bond denial directly to federal
18 district court would permit him, and encourage others, to bypass the administrative
19 scheme in place to deal with such claims. Ninth Circuit precedent has required
20 petitioners in these circumstances to have exhausted administrative remedies by
21 “appealing to the BIA *before* asking the federal district court to review the IJ’s
22 decision.” *Leonardo*, 646 F.3d at 1160 (explaining that pursuing habeas review before
23 appealing to the BIA was an “improper” shortcut) (emphasis added); *Aden*, 2019 WL
24 5802013, at *2 (“[R]elaxation of the exhaustion requirement would likely encourage
25 other detainees to bypass the BIA and directly appeal their no-bond determinations from
26 the IJ to federal district court.”). Individuals, like Petitioner, would have little incentive

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28 ² Because of this, Petitioner’s failure to appeal the bond order handicaps the undersigned’s ability to readily ascertain the complete basis for the IJ’s decision.

1 to seek relief before the BIA if this Court permits review here. And allowing a
2 skip-the-BIA-and-go-straight-to-federal-court strategy would needlessly increase the
3 burden on district courts. *See McCarthy v. Madigan*, 503 U.S. 140, 145 (1992)
4 (Exhaustion “serves the twin purposes of protecting administrative agency authority
5 and promoting judicial efficiency.”); *Bd. of Trs. of the Constr. Laborers’ Pension Trust*
6 *for S. Cal. v. M.M. Sundt Constr. Co.*, 37 F.3d 1419, 1420 (9th Cir. 1994) (“Judicial
7 economy is an important purpose of exhaustion requirements.”).

8 Third, because the BIA has the authority to determine whether the IJ’s bond
9 decision was supported by sufficient evidence, administrative review would have
10 allowed the agency “to correct its own mistakes and to preclude the need for judicial
11 review.” *Puga*, 488 F.3d at 815. By choosing not to appeal the bond decision, however,
12 Petitioner deprived the agency of the opportunity to correct itself and should not be
13 rewarded for inexcusably bypassing the available administrative scheme.

14 As all three prudential factors favor requiring administrative exhaustion, the
15 Court must impose the requirement here. Finally, Petitioner bears the burden to show
16 that an exception to the exhaustion requirement applies. *See Leonardo*, 646 F.3d at
17 1161; *Aden*, 2019 WL 5802013, at *3.

18 Here, Petitioner states that an appeal to the BIA would be futile because the BIA
19 would apply “*Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), and *Matter*
20 *of Q. Li*, 29 I. & N. Dec. 66 (BIA 2025), which hold that detention is mandatory under
21 8 U.S.C. § 1225(b)(2).” But Petitioner’s bond denial was not based on § 1225(b)(2) for
22 lack of jurisdiction. It was based on a finding that the government met its burden to
23 establish that Petitioner is a danger to the community and a flight risk—the standard as
24 set forth in Judge Lopez’s order. *See* Exh. 1. The BIA has authority to review such
25 denials. *See, e.g., Martinez v. Clark*, 124 F.4th 775, 780–81 (9th Cir. 2024) (discussing
26 the procedural history, which included the petitioner appropriately exhausting his
27 administrative remedies by appealing the IJ’s bond denial to the BIA and subsequently
28 filing a habeas petition challenging the BIA’s affirmance of the IJ’s decision).

1 There being no adequate reason to waive the exhaustion requirement here, the
2 Court should dismiss Petitioner's request for relief. *See Laing*, 370 F.3d at 998, 1001
3 (explaining that the discretion to waive exhaustion "is not unfettered" and remanding
4 the case to the district court for dismissal because there was, as here, "no indication in
5 the record, or the briefs, of any reason to waive the exhaustion requirement.").

6 Moreover, detention alone is not an irreparable injury. "[C]ivil detention after the
7 denial of a bond hearing [does not] constitute[] irreparable harm such that prudential
8 exhaustion should be waived." *Reyes v. Wolf*, No. C20-0377JLR, 2021 WL 662659, at
9 *3 (W.D. Wash. Feb. 19, 2021), *aff'd sub nom. Diaz Reyes v. Mayorkas*, No. 21-35142,
10 2021 WL 3082403 (9th Cir. July 21, 2021).

11 Other courts have dismissed habeas petitions under similar circumstances. *See*
12 *Sharma v. Casey et al.*, 26-cv-00513-BAS-SBC, ECF No. 10 at 3–4 (Feb. 11, 2026)
13 (Bashant, C.J.) (rejecting the petitioner's futility argument, finding: "Exhaustion would
14 protect administrative authority and promote judicial efficiency. Release on bond falls
15 within the agency's discretionary power and falls within its special expertise."); *Abdala*
16 *Baker v. Gordon et al.*, 25-cv-03539-CAB-SBC, ECF No. 8 at 2 (Jan. 30, 2026)
17 (Bencivengo, J.) ("As the Ninth Circuit has explained, Petitioner pursued habeas review
18 of the IJ's adverse bond determination before appealing to the BIA. This short cut was
19 improper. Petitioner should have exhausted administrative remedies by appealing to the
20 BIA before asking the federal district court to review the IJ's decision.") (simplified);
21 *Singh v. Noem et al.*, 26-cv-1225-RSH-JLB, ECF No. 8 at 2 (Huie, J.) ("Petitioner is
22 required to exhaust his administrative remedies through an appeal to the BIA before
23 seeking habeas review of the immigration judge's adverse bond determination.").

24 Because Petitioner has been provided the relief that Judge Lopez ordered in his
25 first petition and has failed to exhaust available administrative remedies for challenging
26 the IJ's bond decision, the Court should dismiss this petition. *See Laing*, 370 F.3d at
27 998 ("[A] litigant's failure to seek timely administrative relief did not constitute
28 exhaustion of administrative remedies and accordingly the court lacked jurisdiction.").

1 **III. CONCLUSION**

2 For the reasons stated, Respondents request the Court to dismiss this successive
3 petition as an abuse of the writ and for failure to exhaust administrative remedies.

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5 Dated: April 17, 2026

Respectfully submitted,

6 ADAM GORDON
7 United States Attorney

8 s/ Kim A. C. Gregg
9 KIM A. C. GREGG
10 Assistant United States Attorney
11 Attorney for Respondents
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