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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

RAHUL SHARMA,

Petitioner,

v.

WARDEN JEREMY CASEY,

Respondent.

Case No.: 26-cv-02680-CAB-VET

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

Introduction

On January 5, 2026, Rahul Sharma (“Petitioner”) filed his first petition for writ of habeas corpus in Case No. 26-cv-00050-CAB-SBC. *See* Exhibit 1 (“Petition 1”). In Petition 1 Petitioner, through counsel, argued that his arrest and mandatory detention under 8 U.S.C. § 1225(b)(2) violated “the Due Process Clause of the Fifth Amendment,” the “INA,” the “Administrative Procedure Act,” the “*Accardi* Doctrine,” the “Suspension Clause of the U.S. Constitution,” and entitled him to relief under the “Declaratory Judgment Act.” *Id.* at 18-23. Respondents conceded that Petitioner was detained under 8 U.S.C. § 1226(a) and thus entitled to a bond hearing under the same. *See* Exhibit 2 (Order Granting Petition 1) at 1-2. Petitioner acknowledged that Respondents’ concessions “resolve[d] the core statutory dispute raised in the Petition” and the Court accordingly ordered Respondents to provide Petitioner with a bond

1 hearing. *Id.* at 2. Respondents provided Petitioner with a compliant bond hearing and
2 Petition 1 was dismissed. *See* Exhibit 3 (Notice of Compliance).

3 **Petitioner raising new challenges to his re-detention, that could have been**
4 **raised in Petition 1, is an abuse 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 must be dismissed unless the petitioner can show (1) cause for
10 bringing a successive petition and that prejudice would result or (2) that a fundamental
11 miscarriage of justice would result from failure to entertain the claim. *See McCleskey*
12 *v. Zant*, 499 U.S. 467, 494–95 (1991); *Sanders v. United States*, 373 U.S. 1, 15 (1963).
13 The government bears the burden of pleading abuse of the writ, *McCleskey*, 499 U.S. at
14 477.

15 After receiving a bond hearing in Case No. 26-cv-00050-CAB-SBC, Petitioner
16 has now filed a new amended petition for writ of habeas corpus that doesn’t
17 meaningfully address Petition 1 or provide an explanation for why these arguments
18 weren’t raised previously. The instant Petition (“Petition 2”) argues for the first time
19 that Petitioner was re-detained without adequate due process based on having been
20 previously released from immigration custody. ECF No. 8 at 3-7. However, Petition 1
21 raised both due process and APA challenges—however—these arguments focused
22 primarily on Special Immigrant Juvenile status. Exhibit 1 at 18-23. Because the
23 arguments in Petition 2 could have been raised in Petition 1, and because Petitioner
24 already received an individualized bond hearing, Respondents contend Petition 2 runs
25 afoul of the abuse of the writ doctrine. Furthermore, if Petitioner believed the
26 Government did not honor the court’s order in Petition 1, he is free to seek to re-open
27 that case with the Court. Instead, perhaps hoping for a different forum, or hoping to take
28 advantage of the deluge of habeas petitions confronting the Court, he filed a new

1 petition. The Court should dismiss Petition 2 as an abuse of the writ.

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

3 Even if Petitioner were permitted to file successive habeas petitions asserting new
4 claims that could have been raised previously, the Court would still have to dismiss
5 Petition 2 because Petitioner has not exhausted his administrative remedies.

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

14 The BIA is an appellate body within the Executive Office for Immigration
15 Review and possesses delegated authority from the Attorney General. 8 C.F.R.
16 §§ 1003.1(a)(1), (d)(1). The BIA is “charged with the review of those administrative
17 adjudications under the [Immigration and Nationality Act (INA)] that the Attorney
18 General may by regulation assign to it,” including immigration judge custody
19 determinations. 8 C.F.R. §§ 1003.1(d)(1), 236.1, 1236.1. The BIA not only resolves
20 particular disputes before it, but is also directed to, “through precedent decisions, []
21 provide clear and uniform guidance to [the Department of Homeland Security], the
22 immigration judges, and the general public on the proper interpretation and
23 administration of the [INA] and its implementing regulations.” *Id.* § 1003.1(d)(1).
24 Decisions rendered by the BIA are final, except for those reviewed by the Attorney
25 General. 8 C.F.R. § 1003.1(d)(7).

26 “District Courts are authorized by 28 U.S.C § 2241 to consider petitions for
27 habeas corpus.” *Castro–Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001). “That
28 section does not specifically require petitioners to exhaust direct appeals before filing

1 petitions for habeas corpus.” *Id.* That said, the Ninth Circuit “require[s], as a prudential
2 matter, that habeas petitioners exhaust available judicial and administrative remedies
3 before seeking relief under § 2241.” *Id.* Specifically, “courts may require prudential
4 exhaustion if (1) agency expertise makes agency consideration necessary to generate a
5 proper record and reach a proper decision; (2) relaxation of the requirement would
6 encourage the deliberate bypass of the administrative scheme; and (3) administrative
7 review is likely to allow the agency to correct its own mistakes and to preclude the need
8 for judicial review.” *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007) (internal
9 quotation marks omitted).

10 “When a petitioner does not exhaust administrative remedies, a district court
11 ordinarily should either dismiss the petition without prejudice or stay the proceedings
12 until the petitioner has exhausted remedies, unless exhaustion is excused.” *Leonardo v.*
13 *Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011); *see also Alvarado v. Holder*, 759 F.3d
14 1121, 1127 n.5 (9th Cir. 2014) (issue exhaustion is a jurisdictional requirement); *Tijani*
15 *v. Holder*, 628 F.3d 1071, 1080 (9th Cir. 2010) (no jurisdiction to review legal claims
16 not presented in the petitioner’s administrative proceedings before the BIA). Moreover,
17 a “petitioner cannot obtain review of procedural errors in the administrative process that
18 were not raised before the agency merely by alleging that every such error violates due
19 process.” *Vargas v. INS*, 831 F.3d 906, 908 (9th Cir. 1987); *see also Sola v. Holder*,
20 720 F.3d 1134, 1135–36 (9th Cir. 2013) (declining to address a due process argument
21 that was not raised below because it could have been addressed by the agency).

22 Here, exhaustion is warranted because agency expertise is required. “[T]he BIA
23 is the subject-matter expert in immigration bond decisions.” *Aden v. Nielsen*, No. C18-
24 1441RSL, 2019 WL 5802013, at *2 (W.D. Wash. Nov. 7, 2019); *Delgado v. Sessions*,
25 No. C17-1031-RSL-JPD, 2017 WL 4776340, at *2 (W.D. Wash. Sept. 15, 2017) (noting
26 a denial of bond to an immigration detainee was “a question well suited for agency
27 expertise”).

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

11 Moreover, detention alone is not an irreparable injury. Discretion to waive
12 exhaustion “is not unfettered.” *Laing v. Ashcroft*, 370 F.3d 994, 998 (9th Cir. 2004).
13 Petitioners bear the burden to show that an exception to the exhaustion requirement
14 applies. *Leonardo*, 646 F.3d at 1161; *Aden*, 2019 WL 5802013, at *3. “[C]ivil detention
15 after the denial of a bond hearing [does not] constitute[] irreparable harm such that
16 prudential exhaustion should be waived.” *Reyes v. Wolf*, No. C20-0377JLR, 2021 WL
17 662659, at *3 (W.D. Wash. Feb. 19, 2021), *aff’d sub nom. Diaz Reyes v. Mayorkas*, No.
18 21-35142, 2021 WL 3082403 (9th Cir. July 21, 2021).

19 Because Petitioner has (1) already received a bond hearing under 8 U.S.C.
20 § 1226(a), (2) failed to exhaust his administrative remedies, and (3) abused the writ by
21 filing a successive petition with challenges that could have been raised in Petition 1, the
22 Court should dismiss this matter.

23 DATED: May 18, 2026

Respectfully submitted,

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26 s/ Hunter V. Norton
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