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

12 PEDRO SIMON-JUAN,

13
14 Petitioner,

15 v.

16 PAMELA J. BONDI, U.S. Attorney General;
17 et al.,

18 Respondents.
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Case No.: 26-cv-02237-AGS-MMP

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

1 **I. INTRODUCTION**

2 Petitioner requests that the Court order his immediate release from custody
3 arguing, among other things, that his re-detention violated the APA, and the Constitution.
4 ECF No. 1 at 2-8. However, Petitioner has failed to provide sufficient information for the
5 Court to adjudicate his claims and he has failed to exhaust his administrative remedies.
6 Accordingly, the Court should deny or dismiss the Petition.

7 **II. FACTUAL BACKGROUND**

8 Petitioner is a native and citizen of Guatemala who entered the United States
9 unlawfully on October 30, 2018, and was apprehended by U.S. Border Patrol. A week
10 after his arrest. Petitioner was released from custody on an order of release on
11 recognizance (OREC) due to a “lack of bed space.” See Exhibit 3. Upon release,
12 Petitioner signed an acknowledgement of the terms of his OREC and attested to the
13 following: “I understand that failure to comply with the terms of this order and addendum
14 may subject me to a fine, more restrictive release conditions, *detention*, criminal
15 prosecution, and/or revocation of my employment authorization document. *Id.* at 4
16 (emphasis added). One of those terms was that Petitioner must not “commit any crimes
17 or be associated with any criminal activity while on this Order of Release on
18 Recognizance.” *Id.* at 3. On June 29, 2019, Petitioner was first convicted of inflicting
19 corporal injury on a spouse/cohabitant under Cal. Pen. Code § 273.5(A) and sentenced to
20 three years’ probation. *See* Exhibit 3 at 3; Exhibit 6.

21 Petitioner also applied for asylum, but all claims for relief were denied by an
22 Immigration Judge (IJ) and Petitioner was ordered removed to Guatemala on September
23 14, 2023. On September 29, 2023, Petitioner timely filed an appeal with the Board of
24 Immigration Appeals which is still pending. *See* Exhibit 5. On July 9, 2025, Petitioner
25 was taken into custody at his scheduled ICE check-in appointment because multiple
26 criminal arrests and convictions violated the terms of his OREC. *See* Exhibits 2, 3, 6.

III. ARGUMENT

A. **Petitioner fails to plead sufficient information**

Petitioner has failed to plead sufficient information for his claims that Respondents violated the APA and the Constitution upon re-detaining him. “Absent a real and immediate threat of future injury there can be no case or controversy, and thus no Article III standing for a party seeking injunctive relief.” *Wilson v. Brown*, No. 05-cv-1774-BAS-MDD, 2015 WL 8515412, at *3 (S.D. Cal. Dec. 11, 2015) (citing *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 190 (2000) (“[I]n a lawsuit brought to force compliance, it is the plaintiff’s burden to establish standing by demonstrating that, if unchecked by the litigation, the defendant’s allegedly wrongful behavior will likely occur or continue, and that the threatened injury is certainly impending.”) (simplified)). At the “irreducible constitutional minimum,” standing requires that a petitioner demonstrate the following: (1) an injury in fact (2) that is fairly traceable to the challenged action of the United States and (3) likely to be redressed by a favorable decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992).

Moreover, the Supreme Court has held that “[h]abeas Corpus Rule 2(c) is more demanding [than Federal Rule of Civil Procedure 8(a)]. It provides that the petition must ‘specify all the grounds for relief available to the petitioner’ and ‘state the facts supporting each ground.’” *Mayle v. Felix*, 545 U.S. 644, 655 (2005) (citing Rules Governing Section 2254 Cases in the United States District Court (“Federal Habeas Rules”); *see also James v. Borg*, 24 F.3d 20, 26 (9th Cir. 1994) (“Conclusory allegations which are not supported by a statement of specific facts do not warrant habeas relief.”). As stated by the Advisory Committee’s Note on Habeas Corpus Rule 4, 28 U.S.C., p. 471, “notice pleading is not sufficient, for the petition is expected to state facts that point to a real possibility of constitutional error.”) (internal quotation marks omitted).

Here, Petitioner bears the burden of establishing that his detention is unlawful. In support of an APA violation, Petitioner cites to Judge Curiel’s opinion in *Noori* and

1 argues “revocation should only occur when (1) the parole’s purpose is served or (2) when
2 humanitarian reasons and public benefit are no longer warranted, and the noncitizen is
3 provided written notice.” No. 25-CV-1824-GPC-MSB, 2025 WL 2800149 (S.D. Cal.
4 Oct. 1, 2025). However, Petitioner doesn’t apply this test to the facts. Here, the stated and
5 signed purpose for Petitioner’s release was “lack of bed space” and he was provided
6 written notice (which he signed) that criminal convictions could terminate his OREC. See
7 Exhibit 2. Given his failure to provide sufficient facts to support his claim, Petitioner’s
8 case should be dismissed. *See Alonso Velasquez v. LaRose*, No. 25-cv-3216-JES-AHG,
9 2025 WL 3473773 (S.D. Cal. Dec. 3, 2025) (dismissing without prejudice habeas petition
10 that failed to allege sufficient factual information).

11 **B. Petitioner has failed to exhaust administrative remedies**

12 Even if the Court were to entertain the substance of Petitioner’s claims for a second
13 time¹, the Court would still have to dismiss because Petitioner has not exhausted his
14 administrative remedies. “Exhaustion can be either statutorily or judicially required.”
15 *Acevedo–Carranza v. Ashcroft*, 371 F.3d 539, 541 (9th Cir. 2004). “If exhaustion is
16 statutory, it may be a mandatory requirement that is jurisdictional.” *Id.* (citing *El Rescate*
17 *Legal Servs., Inc. v. Exec. Off. of Immigr. Rev.*, 959 F.2d 742, 747 (9th Cir. 1991)). “If,
18 however, exhaustion is a prudential requirement, a court has discretion to waive the
19 requirement.” *Id.* (citing *Stratman v. Watt*, 656 F.2d 1321, 1325–26 (9th Cir. 1981)).
20 Here, Petitioner is attempting to bypass the administrative scheme by filing a habeas
21 petition while not having previously appealed the August 2025 order denying his release
22 on bond to the BIA.

23 The BIA is an appellate body within the Executive Office for Immigration Review
24 and possesses delegated authority from the Attorney General. 8 C.F.R. §§ 1003.1(a)(1),
25 (d)(1). The BIA is “charged with the review of those administrative adjudications under
26 the [Immigration and Nationality Act (INA)] that the Attorney General may by regulation

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28 ¹ Petitioner’s first petition for writ of habeas corpus was dismissed. *See* Exhibit 1.

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

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

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

1 process.” *Vargas v. INS*, 831 F.3d 906, 908 (9th Cir. 1987); *see also Sola v. Holder*, 720
2 F.3d 1134, 1135–36 (9th Cir. 2013) (declining to address a due process argument that
3 was not raised below because it could have been addressed by the agency).

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

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

20 Moreover, detention alone is not an irreparable injury. Discretion to waive
21 exhaustion “is not unfettered.” *Laing v. Ashcroft*, 370 F.3d 994, 998 (9th Cir. 2004).
22 Petitioners bear the burden to show that an exception to the exhaustion requirement
23 applies. *Leonardo*, 646 F.3d at 1161; *Aden*, 2019 WL 5802013, at *3. “[C]ivil detention
24 after the denial of a bond hearing [does not] constitute[] irreparable harm such that
25 prudential exhaustion should be waived.” *Reyes v. Wolf*, No. C20-0377JLR, 2021 WL
26 662659, at *3 (W.D. Wash. Feb. 19, 2021), *aff’d sub nom. Diaz Reyes v. Mayorkas*, No.
27 21-35142, 2021 WL 3082403 (9th Cir. July 21, 2021).

1 Because Petitioner has (1) already requested bond and been denied based on risk
2 of flight, and (2) failed to exhaust his administrative remedies, the Court should dismiss
3 this matter.

4 **IV. CONCLUSION**

5 For the reasons stated herein, Respondents respectfully request that the Court deny
6 or dismiss Petitioner's claims for relief again.

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8 DATED: May 4, 2026

Respectfully submitted,

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