

1 ADAM GORDON
United States Attorney
2 MICHAEL D. WALLACE
Assistant United States Attorney
3 Maryland Bar No. 9912160256
Office of the U.S. Attorney
4 880 Front Street, Room 6293
San Diego, CA 92101-8893
5 Telephone: 619-546-8714
Email: Michael.Wallace4@usdoj.gov

6 Attorneys for Respondents
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9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 IRVIN MORALES CASTILLO
12

13 Petitioner,

14 v.

15 MARKWAYNE MULLINS, et al.,
16

17 Respondents.
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Case No.: 26-cv-2353-TWR-VET

RESPONDENTS' RETURN TO
HABEAS PETITION

I. BACKGROUND AND CURRENT SETTING

Petitioner filed a petition for a writ of habeas corpus through counsel on January 2, 2026, in *Morales-Castillo v. Divver*, 26-cv-0020-TWR-VET (S.D. Cal. July 15, 2026) at ECF No. 1. Respondents conceded in their return that Petitioner appeared to be a member of the Bond Eligible Class certified in *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ---, 2025 WL 3288403 (C.D. Cal. Nov. 25, 2025) and acknowledged that Petitioner was detained under 8 U.S.C. § 1226(a) and entitled to an order from this Court directing a bond hearing be held pursuant to 8 U.S.C. § 1226(a). This Court granted the petition and ordered a bond hearing by January 29, 2026. *Morales-Castillo*, 26-cv-0020-TWR-VET at ECF No. 6. On January 20, 2026, Respondents provided Petitioner with a bond hearing at which an immigration judge denied Petitioner bond finding that he is a danger to the community and a flight risk. Exhibit 1 (IJ Bond Order). Petitioner reserved but did not appeal the order denying bond. Petitioner has now filed a habeas petition which vaguely challenges Petitioner's prolonged detention in violation of the 5th Amendment Due Process Clause. ECF No. 1. Even if the Petitioner raises a cognizable claim, is sufficiently pleaded, and granted by this Court, Petitioner has already been provided with the appropriate remedy of a bond hearing.

II. FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES

Petitioner has not exhausted his administrative remedies. "Exhaustion can be either statutorily or judicially required." *Acevedo-Carranza v. Ashcroft*, 371 F.3d 539, 541 (9th Cir. 2004). "If exhaustion is statutory, it may be a mandatory requirement that is jurisdictional." *Id.* (citing *El Rescate Legal Servs., Inc. v. Exec. Office of Immigration Review*, 959 F.2d 742, 747 (9th Cir. 1991)). "If, however, exhaustion is a prudential requirement, a court has discretion to waive the requirement." *Id.* (citing *Stratman v. Watt*, 656 F.2d 1321, 1325–26 (9th Cir. 1981)). Here, the proper avenue for Petitioner's grievance with his bond denial was to utilize the administrative scheme and appeal his bond denial to the Board of Immigration Appeals (BIA).

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

12 “District Courts are authorized by 28 U.S.C § 2241 to consider petitions for habeas
13 corpus.” *Castro–Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001), *abrogated on other*
14 *grounds by Hernandez–Vargas v. Gonzales*, 548 U.S. 30 (2006). “That section does not
15 specifically require petitioners to exhaust direct appeals before filing petitions for habeas
16 corpus.” *Id.* That said, the Ninth Circuit “require[s], as a prudential matter, that habeas
17 petitioners exhaust available judicial and administrative remedies before seeking relief
18 under § 2241.” *Id.* Specifically, “courts may require prudential exhaustion if (1) agency
19 expertise makes agency consideration necessary to generate a proper record and reach a
20 proper decision; (2) relaxation of the requirement would encourage the deliberate bypass
21 of the administrative scheme; and (3) administrative review is likely to allow the agency
22 to correct its own mistakes and to preclude the need for judicial review.” *Puga v. Chertoff*,
23 488 F.3d 812, 815 (9th Cir. 2007) (cleaned up).

24 “When a petitioner does not exhaust administrative remedies, a district court
25 ordinarily should either dismiss the petition without prejudice or stay the proceedings
26 until the petitioner has exhausted remedies, unless exhaustion is excused.” *Leonardo v.*
27 *Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011) (citations omitted); *see also Alvarado v.*

1 *Holder*, 759 F.3d 1121, 1127 n.5 (9th Cir. 2014), *abrogated on other grounds by Santos-*
2 *Zacaria v. Garland*, 598 U.S. 411 (2023) (“issue exhaustion is a jurisdictional
3 requirement”); *Tijani v. Holder*, 628 F.3d 1071, 1080 (9th Cir. 2010) (court “lacks
4 jurisdiction to review legal claims not presented in an alien’s administrative proceedings
5 before the BIA”). Moreover, “a petitioner cannot obtain review of procedural errors in
6 the administrative process that were not raised before the agency merely by alleging that
7 every such error violates due process.” *Reid v. Engen*, 765 F.2d 1457, 1461 (9th Cir.
8 1985); *see also Sola v. Holder*, 720 F.3d 1134, 1135–36 (9th Cir. 2013) (declining to
9 address a due process argument that was not raised below because it could have been
10 addressed by the agency).

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

17 Waiving exhaustion would also encourage other detainees to bypass the BIA and
18 directly appeal from the immigration judge to federal district court. *See Aden*, 2019 WL
19 5802013, at *2 (“[R]elaxation of the exhaustion requirement would likely encourage
20 other detainees to bypass the BIA and directly appeal their no-bond determinations from
21 the [immigration judge] to federal district court.”). Individuals, like Petitioner, would
22 have little incentive to seek relief before the BIA if this Court permits review here. And
23 allowing a skip-the-BIA-and-go-straight-to-federal-court strategy would needlessly
24 increase the burden on district courts. *See Bd. of Tr. of the Constr. Laborers’ Pension*
25 *Trust for S. Cal. v. M.M. Sundt Constr. Co.*, 37 F.3d 1419, 1420 (9th Cir. 1994) (“Judicial
26 economy is an important purpose of exhaustion requirements.”) (citation omitted);
27 *Santos-Zacaria*, 598 U.S. at 418 (noting “exhaustion promotes efficiency”). If the
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1 immigration judge erred, this Court should allow the administrative process to correct
2 itself.

3 Moreover, detention alone is not an irreparable injury. Discretion to waive
4 exhaustion “is not unfettered.” *Laing v. Ashcroft*, 370 F.3d 994, 998 (9th Cir. 2004).
5 “[C]ivil detention after the denial of a bond hearing [does not] constitute[] irreparable
6 harm such that prudential exhaustion should be waived.” *Reyes v. Wolf*, No. C20-
7 0377JLR, 2021 WL 662659, at *3 (W.D. Wash. Feb. 19, 2021), *aff’d sub nom. Diaz*
8 *Reyes v. Mayorkas*, No. 21-35142, 2021 WL 3082403 (9th Cir. July 21, 2021).

9 Finally, Petitioners bear the burden to show that an exception to the exhaustion
10 requirement applies. *Leonardo*, 646 F.3d at 1161; *Aden*, 2019 WL 5802013, at *3. Here,
11 Petitioner claims that he “has exhausted the process that the agency is capable of
12 providing.” ECF No. 1 at ¶ 52. But this is not true, as he has not appealed the immigration
13 judge’s bond denial to the BIA, and he makes no effort to demonstrate that exhaustion
14 should be waived.

15 Judge Bencivengo recently dismissed a habeas petition that challenged an
16 immigration judge’s denial of bond. *See Baker v. Gordon*, No. 25-cv-03539-CAB-SBC,
17 ECF No. 8 at 2:1–5 (S.D. Cal. Jan. 30, 2026) (“As the Ninth Circuit has explained,
18 ‘[Petitioner] pursued habeas review of the [immigration judge’s] adverse bond
19 determination before appealing to the BIA. This short cut was improper. [Petitioner]
20 should have exhausted administrative remedies by appealing to the BIA before asking
21 the federal district court to review the [immigration judge’s] decision.’”) (quoting
22 *Leonardo*, 646 F.3d at 1160).

23 Because Petitioner was provided a bond hearing under 8 U.S.C. § 1226(a) and
24 failed to exhaust his administrative remedies, the Court should dismiss this matter.

25 III. Petitioner Fails to Plead Sufficient Information

26 The Constitution limits federal judicial power to designated “cases” and
27 “controversies.” U.S. Const., art. III, § 2; *see also SEC v. Med. Comm. for Human Rights*,

1 404 U.S. 403, 407 (1972) (federal courts may only entertain matters that present a “case”
2 or “controversy” within the meaning of Article III). “Absent a real and immediate threat
3 of future injury there can be no case or controversy, and thus no Article III standing for
4 a party seeking injunctive relief.” *Wilson v. Brown*, No. 05-cv-1774-BAS-MDD, 2015
5 WL 8515412, at *3 (S.D. Cal. Dec. 11, 2015) (citing *Friends of the Earth, Inc. v. Laidlaw*
6 *Env’tl. Servs. (TOC), Inc.*, 528 U.S. 167, 190 (2000) (“[I]n a lawsuit brought to force
7 compliance, it is the plaintiff’s burden to establish standing by demonstrating that, if
8 unchecked by the litigation, the defendant’s allegedly wrongful behavior will likely occur
9 or continue, and that the threatened injury is certainly impending.”) (simplified)). At the
10 “irreducible constitutional minimum,” standing requires that a petitioner demonstrate the
11 following: (1) an injury in fact (2) that is fairly traceable to the challenged action of the
12 United States and (3) likely to be redressed by a favorable decision. *Lujan v. Defenders*
13 *of Wildlife*, 504 U.S. 555, 560–61 (1992).

14 Moreover, an individual may seek habeas relief under 28 U.S.C. § 2241 if he is “in
15 custody” under federal authority “in violation of the Constitution or laws or treaties of
16 the United States.” 28 U.S.C. § 2241(c). But habeas relief is available to challenge only
17 the legality or duration of confinement. *Pinson v. Carvajal*, 69 F.4th 1059, 1067 (9th Cir.
18 2023); *Crawford v. Bell*, 599 F.2d 890, 891 (9th Cir. 1979); *Dep’t of Homeland Security*
19 *v. Thraissigiam*, 591 U.S. 103, 117 (2020) (The writ of habeas corpus historically
20 “provide[s] a means of contesting the lawfulness of restraint and securing release.”). The
21 Ninth Circuit squarely explained how to decide whether a claim sounds in habeas
22 jurisdiction: “[O]ur review of the history and purpose of habeas leads us to conclude the
23 relevant question is whether, based on the allegations in the petition, release is *legally*
24 *required* irrespective of the relief requested.” *Pinson*, 69 F.4th at 1072 (emphasis in
25 original); *see also Nettles v. Grounds*, 830 F.3d 922, 934 (9th Cir. 2016) (The key inquiry
26 is whether success on the petitioner’s claim would “necessarily lead to immediate or
27 speedier release.”); *Guselnikov v. Noem*, No. 25-cv-1971-BTM-KSC, 2025 WL 2300873,

1 at *1 (S.D. Cal. Aug. 8, 2025) (finding petitioners' claims did not arise under § 2241
2 because they were not arguing they were unlawfully in custody and receiving the
3 requested relief would not entitle them to release); *Giron Rodas v. Lyons*, No. 25cv1912-
4 LL-AHG, 2025 WL 2300781, at *3 (S.D. Cal. Aug. 1, 2025) ("Like in *Pinson*, the Court
5 lacks jurisdiction over Petitioner's § 2241 habeas petition since it cannot be fairly read as
6 attacking 'the legality or duration of confinement.'") (quoting *Pinson*, 69 F.4th at 1065).

7 Moreover, the Supreme Court has held that "[h]abeas Corpus Rule 2(c) is more
8 demanding [than Federal Rule of Civil Procedure 8(a)]. It provides that the petition must
9 'specify all the grounds for relief available to the petitioner' and 'state the facts supporting
10 each ground.'" *Mayle v. Felix*, 545 U.S. 644, 655 (2005) (citing Rules Governing Section
11 2254 Cases in the United States District Court ("Federal Habeas Rules"); *see also James*
12 *v. Borg*, 24 F.3d 20, 26 (9th Cir. 1994) ("Conclusory allegations which are not supported
13 by a statement of specific facts do not warrant habeas relief."). As stated by the Advisory
14 Committee's Note on Habeas Corpus Rule 4, 28 U.S.C., p. 471, "notice pleading is not
15 sufficient, for the petition is expected to state facts that point to a real possibility of
16 constitutional error.") (internal quotation marks omitted).

17 Here, Petitioner's habeas petition fails to supply sufficient information for the
18 Court to adjudicate his claim. As such, the Court should deny the petition. *See Alonso*
19 *Velasquez v. LaRose*, No. 25-cv-3216-JES-AHG, 2025 WL 3473773 (S.D. Cal. Dec. 3,
20 2025) (dismissing without prejudice habeas petition that failed to allege sufficient factual
21 information).

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24 DATED: April 21, 2026

ADAM GORDON
United States Attorney

25 s/ Michael D. Wallace
26 MICHAEL D. WALLACE
27 Assistant United States Attorney
28