

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 TRAIG ALI ABDALLA YAGOUB
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13 Petitioner,

14 v.

15 PATRICK DIVVER, et al.,
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17 Respondents.
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Case No.: 26-cv-2233-JLS-JLB

**RESPONDENTS' RETURN TO
HABEAS PETITION**

I. BACKGROUND AND CURRENT SETTING

Petitioner filed an amended petition for a writ of habeas corpus through counsel on February 25, 2026, in *Yagoub v. LaRose, et al.*, 26-cv-0914-JLS-JLB (S.D. Cal. March 10, 2026) at ECF No. 7. This Court granted the petition and ordered a bond hearing by March 24, 2026. *Id.* at ECF No. 11. On March 17, 2026, Respondents provided Petitioner with a bond hearing at which an immigration judge denied Petitioner bond finding that he is a flight risk. Exhibit 1 (IJ Bond Order). Petitioner appealed the order denying bond. Petitioner has now filed a habeas petition which vaguely repeats a challenge to Petitioner's prolonged detention in violation of the 5th Amendment Due Process Clause. ECF No. 1. Even if the Petitioner raises a cognizable claim, which 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 is to utilize the administrative scheme and await the ruling on his appeal by the Board of Immigration Appeals (BIA).

The BIA is an appellate body within the Executive Office for Immigration Review and possesses delegated authority from the Attorney General. 8 C.F.R. §§ 1003.1(a)(1), (d)(1). The BIA is "charged with the review of those administrative adjudications under the [Immigration and Nationality Act (INA)] that the Attorney General may by regulation assign to it," including immigration judge custody determinations. 8 C.F.R. §§

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

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

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

6 Here, requiring Petitioner to exhaust administrative remedies is warranted because
7 agency expertise is required. “[T]he BIA is the subject-matter expert in immigration bond
8 decisions[.]” *Aden v. Nielsen*, No. C18-1441RSL, 2019 WL 5802013, at *2 (W.D. Wash.
9 Nov. 7, 2019); *see also Delgado v. Sessions*, No. C17-1031-RSL-JPD, 2017 WL
10 4776340, at *2 (W.D. Wash. Sept. 15, 2017) (noting a denial of bond to an immigration
11 detainee was “a question well suited for agency expertise”).

12 Waiving exhaustion would also encourage other detainees to bypass the BIA and
13 directly appeal from the immigration judge to federal district court. *See Aden*, 2019 WL
14 5802013, at *2 (“[R]elaxation of the exhaustion requirement would likely encourage
15 other detainees to bypass the BIA and directly appeal their no-bond determinations from
16 the [immigration judge] to federal district court.”). Individuals, like Petitioner, would
17 have little incentive to seek relief before the BIA if this Court permits review here. And
18 allowing a skip-the-BIA-and-go-straight-to-federal-court strategy would needlessly
19 increase the burden on district courts. *See Bd. of Tr. of the Constr. Laborers’ Pension*
20 *Trust for S. Cal. v. M.M. Sundt Constr. Co.*, 37 F.3d 1419, 1420 (9th Cir. 1994) (“Judicial
21 economy is an important purpose of exhaustion requirements.”) (citation omitted);
22 *Santos-Zacaria*, 598 U.S. at 418 (noting “exhaustion promotes efficiency”). If the
23 immigration judge erred, this Court should allow the administrative process to correct
24 itself.

25 Moreover, detention alone is not an irreparable injury. Discretion to waive
26 exhaustion “is not unfettered.” *Laing v. Ashcroft*, 370 F.3d 994, 998 (9th Cir. 2004).
27 “[C]ivil detention after the denial of a bond hearing [does not] constitute[] irreparable
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1 harm such that prudential exhaustion should be waived.” *Reyes v. Wolf*, No. C20-
2 0377JLR, 2021 WL 662659, at *3 (W.D. Wash. Feb. 19, 2021), *aff’d sub nom. Diaz*
3 *Reyes v. Mayorkas*, No. 21-35142, 2021 WL 3082403 (9th Cir. July 21, 2021).

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

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

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

20 **III. Petitioner Fails to Plead Sufficient Information**

21 The Constitution limits federal judicial power to designated “cases” and
22 “controversies.” U.S. Const., art. III, § 2; *see also SEC v. Med. Comm. for Human Rights*,
23 404 U.S. 403, 407 (1972) (federal courts may only entertain matters that present a “case”
24 or “controversy” within the meaning of Article III). “Absent a real and immediate threat
25 of future injury there can be no case or controversy, and thus no Article III standing for
26 a party seeking injunctive relief.” *Wilson v. Brown*, No. 05-cv-1774-BAS-MDD, 2015
27 WL 8515412, at *3 (S.D. Cal. Dec. 11, 2015) (citing *Friends of the Earth, Inc. v. Laidlaw*

1 *Env'tl. Servs. (TOC), Inc.*, 528 U.S. 167, 190 (2000) (“[I]n a lawsuit brought to force
2 compliance, it is the plaintiff’s burden to establish standing by demonstrating that, if
3 unchecked by the litigation, the defendant’s allegedly wrongful behavior will likely occur
4 or continue, and that the threatened injury is certainly impending.”) (simplified)). At the
5 “irreducible constitutional minimum,” standing requires that a petitioner demonstrate the
6 following: (1) an injury in fact (2) that is fairly traceable to the challenged action of the
7 United States and (3) likely to be redressed by a favorable decision. *Lujan v. Defenders*
8 *of Wildlife*, 504 U.S. 555, 560–61 (1992).

9 Moreover, an individual may seek habeas relief under 28 U.S.C. § 2241 if he is “in
10 custody” under federal authority “in violation of the Constitution or laws or treaties of
11 the United States.” 28 U.S.C. § 2241(c). But habeas relief is available to challenge only
12 the legality or duration of confinement. *Pinson v. Carvajal*, 69 F.4th 1059, 1067 (9th Cir.
13 2023); *Crawford v. Bell*, 599 F.2d 890, 891 (9th Cir. 1979); *Dep’t of Homeland Security*
14 *v. Thraissigiam*, 591 U.S. 103, 117 (2020) (The writ of habeas corpus historically
15 “provide[s] a means of contesting the lawfulness of restraint and securing release.”). The
16 Ninth Circuit squarely explained how to decide whether a claim sounds in habeas
17 jurisdiction: “[O]ur review of the history and purpose of habeas leads us to conclude the
18 relevant question is whether, based on the allegations in the petition, release is *legally*
19 *required* irrespective of the relief requested.” *Pinson*, 69 F.4th at 1072 (emphasis in
20 original); *see also Nettles v. Grounds*, 830 F.3d 922, 934 (9th Cir. 2016) (The key inquiry
21 is whether success on the petitioner’s claim would “necessarily lead to immediate or
22 speedier release.”); *Guselnikov v. Noem*, No. 25-cv-1971-BTM-KSC, 2025 WL 2300873,
23 at *1 (S.D. Cal. Aug. 8, 2025) (finding petitioners’ claims did not arise under § 2241
24 because they were not arguing they were unlawfully in custody and receiving the
25 requested relief would not entitle them to release); *Giron Rodas v. Lyons*, No. 25cv1912-
26 LL-AHG, 2025 WL 2300781, at *3 (S.D. Cal. Aug. 1, 2025) (“Like in *Pinson*, the Court

1 lacks jurisdiction over Petitioner's § 2241 habeas petition since it cannot be fairly read as
2 attacking 'the legality or duration of confinement.'" (quoting *Pinson*, 69 F.4th at 1065).

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

13 Here, Petitioner's habeas petition fails to supply sufficient information for the
14 Court to adjudicate his claim. As such, the Court should deny the petition. *See Alonso*
15 *Velasquez v. LaRose*, No. 25-cv-3216-JES-AHG, 2025 WL 3473773 (S.D. Cal. Dec. 3,
16 2025) (dismissing without prejudice habeas petition that failed to allege sufficient factual
17 information).

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20 DATED: May 5, 2026

ADAM GORDON
United States Attorney

21 s/ Michael D. Wallace
22 MICHAEL D. WALLACE
23 Assistant United States Attorney
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