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

10 MURTADHA ALI ALRIKABI,

11 Petitioner,

12 v.

13 PAMELA BONDI, U.S. Attorney General, *et*
14 *al.*,

15 Respondent.

Case No.: 26-cv-02561-DMS-VET

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

17 **I. INTRODUCTION**

18 Petitioner requests that the Court order his immediate release from custody “on
19 the grounds that continued detention violates the Due Process Clause of the Fifth
20 Amendment and the Supreme Court ruling in *Zadvydas v. Davis*, 533 U.S. 678 (2001).”
21 ECF No. 1 at ¶¶ I, IV-VI. In support of his requested relief, Petitioner claims that his
22 detention is “post-final order” and beyond the 6-month period where detention is
23 presumed reasonable under *Zadvydas*. *Id.* at ¶ I. However, Petitioner is subject to
24 mandatory detention under 8 U.S.C § 1226(c)(1)(B) due to being inadmissible based on
25 a prior felony conviction for an aggravated felony¹. See Exhibit 3. Accordingly,
26 Respondents respectfully request that the Court deny these requests for relief.

27
28 ¹ Petitioner’s RAP Sheet is attached at Exhibit 1.

II. FACTUAL BACKGROUND²

Petitioner is a native and citizen of Iraq, who was admitted to the United States as a Lawful Permanent Resident (LPR) based on his parents immigration status. See Exhibit 3 at 3. On October 5, 2023, Petitioner was convicted in the California Superior Court for San Diego County of receiving stolen property under Cal. Pen. Code § 496(d), among other charges, and was sentenced to two years in custody. See Exhibit 1; Exhibit 3 at 3. Upon release from state custody, Petitioner was taken into Immigration and Customs Enforcement (ICE) custody on February 20, 2025. Exhibit 3 at 1. Petitioner was placed in removal proceedings and charged with inadmissibility based on his aggravated felony conviction pursuant to 8 U.S.C. § 1227(a)(2)(A)(iii). *Id.* at 3. Petitioner received a bond hearing on August 25, 2025, where the Immigration Judge found that the government established by clear and convincing evidence that Petitioner is a danger to the community. See Exhibit 2 at 1. Petitioner remains mandatorily detained under 8 U.S.C § 1226(c)(1)(B) until his pending appeals before the Board of Immigration Appeals are adjudicated. See Exhibit 4 at 1. Petitioner, through counsel, requested his most recent extension of the briefing schedule in his pending bond appeal three days ago on April 27, 2026. *Id.*

III. ARGUMENT

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

Petitioner has failed to plead sufficient information or establish how mandatory detention under 8 U.S.C. § 1226(c)(1)(B) violates his right to due process. “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

² The attached exhibits are true copies, with few redactions of private information, of documents obtained from ICE counsel.

1 by demonstrating that, if unchecked by the litigation, the defendant's allegedly
 2 wrongful behavior will likely occur or continue, and that the threatened injury is
 3 certainly impending.") (simplified)). At the "irreducible constitutional minimum,"
 4 standing requires that a petitioner demonstrate the following: (1) an injury in fact
 5 (2) that is fairly traceable to the challenged action of the United States and (3) likely to
 6 be redressed by a favorable decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–
 7 61 (1992).

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

18 Here, Petitioner bears the burden of establishing that his detention is unlawful.
 19 However, given his prior criminal history, Petitioner has failed to explain why
 20 mandatory detention under 8 U.S.C. § 1226(c)(1)(B) is statutorily improper or violates
 21 his due process rights while his appeal is pending before the BIA. Because the habeas
 22 petition fails to supply sufficient information for the Court to adjudicate his claims, the
 23 Court should deny the petition. *See Alonso Velasquez v. LaRose*, No. 25-cv-3216-JES-
 24 AHG, 2025 WL 3473773 (S.D. Cal. Dec. 3, 2025) (dismissing without prejudice habeas
 25 petition that failed to allege sufficient factual information).

26 **B. Petitioners statutory and constitutional claims are without merit**

27 As to whether Petitioner's mandatory detention under § 1226(c) is statutorily
 28 improper or violates due process, the Supreme Court in *Demore v. Kim* held no. *See*

1 538 U.S. 510, 513 (2003). In so holding, the *Demore* court recognized that for over a
2 hundred years, the Supreme Court “has firmly and repeatedly endorsed the proposition
3 that Congress may make rules as to aliens that would be unacceptable if applied to
4 citizens.” *Id.* at 522 (collecting cases). Consequently, the Supreme Court has, time and
5 time again, “recognized [that] detention during deportation proceedings [is] a
6 constitutionally valid aspect of the deportation process.” *Id.* at 523; *see Rodriguez Diaz*
7 *v. Garland*, 53 F.4th 1189, 1217 (9th Cir. 2022) (Bumatay, concurring) (“For over a
8 century, whenever Congress has granted the Executive authority to detain aliens
9 pending removal proceedings, the Supreme Court has repeatedly upheld such detention
10 as consistent with the Constitution.”).

11 Because Petitioner was convicted of a theft offense and received a sentence of
12 more than one year in custody, he is properly detained under 8 U.S.C. § 1226(c)(1)(B)
13 for having an “aggravated felony.” *See* 8 U.S.C. § 1101(a)(43)(G). When “an alien” “is
14 deportable” due to such “an aggravated felony” conviction, the government “shall take
15 [that person] into custody.” 8 U.S.C. § 1226(c)(1)(B); 8 U.S.C. § 1227(a)(2)(A)(iii).
16 Furthermore, given this conviction, Petitioner’s release is warranted “‘only if the
17 Attorney General decides’ both that doing so is necessary for witness-protection
18 purposes and that the alien will not pose a danger or flight risk.” *Jennings v. Rodriguez*,
19 583 U.S. 281, 303 (2018) (quoting 8 U.S.C. § 1226(c)(4)). Nothing suggests that
20 Petitioner falls into that “narrow” category here. *See id.*

21 **C. Petitioner has failed to exhaust administrative remedies**

22 Even if the Court were to entertain the substance of Petitioner’s claims, the Court
23 would still have to dismiss because Petitioner has not exhausted his administrative
24 remedies. “Exhaustion can be either statutorily or judicially required.” *Acevedo–*
25 *Carranza v. Ashcroft*, 371 F.3d 539, 541 (9th Cir. 2004). “If exhaustion is statutory, it
26 may be a mandatory requirement that is jurisdictional.” *Id.* (citing *El Rescate Legal*
27 *Servs., Inc. v. Exec. Off. of Immigr. Rev.*, 959 F.2d 742, 747 (9th Cir. 1991)). “If,
28 however, exhaustion is a prudential requirement, a court has discretion to waive the

1 requirement.” *Id.* (citing *Stratman v. Watt*, 656 F.2d 1321, 1325–26 (9th Cir. 1981)).
2 Here, Petitioner is attempting to bypass the administrative scheme by filing a habeas
3 petition while simultaneously delaying his bond appeal before the BIA. See Exhibit 4
4 at 1.

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

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

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

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

19 Waiving exhaustion would also encourage other detainees to bypass the BIA and
20 directly appeal from the immigration judge to federal district court. *See Aden*, 2019 WL
21 5802013, at *2. Individuals, like Petitioner, would have little incentive to seek relief
22 before the BIA if this Court permits review here. And allowing a skip-the-BIA-and-go-
23 straight-to-federal-court strategy would needlessly increase the burden on district
24 courts. *See Bd. of Tr. of Constr. Laborers’ Pension Trust for S. Calif. v. M.M. Sundt*
25 *Constr. Co.*, 37 F.3d 1419, 1420 (9th Cir. 1994) (“Judicial economy is an important
26 purpose of exhaustion requirements.”); *see also Santos-Zacaria v. Garland*, 598 U.S.
27 411, 418 (2023) (noting “exhaustion promotes efficiency”). If the immigration judge
28 erred, this Court should allow the administrative process to correct itself. *See id.*

1 Moreover, detention alone is not an irreparable injury. Discretion to waive
2 exhaustion “is not unfettered.” *Laing v. Ashcroft*, 370 F.3d 994, 998 (9th Cir. 2004).
3 Petitioners bear the burden to show that an exception to the exhaustion requirement
4 applies. *Leonardo*, 646 F.3d at 1161; *Aden*, 2019 WL 5802013, at *3. “[C]ivil detention
5 after the denial of a bond hearing [does not] constitute[] irreparable harm such that
6 prudential exhaustion should be waived.” *Reyes v. Wolf*, No. C20-0377JLR, 2021 WL
7 662659, at *3 (W.D. Wash. Feb. 19, 2021), *aff’d sub nom. Diaz Reyes v. Mayorkas*, No.
8 21-35142, 2021 WL 3082403 (9th Cir. July 21, 2021).

9 Because Petitioner has (1) already received a bond hearing before an immigration
10 judge where the government had the burden of establishing danger to the community
11 by clear and convincing evidence, and (2) failed to exhaust his administrative remedies,
12 the Court should dismiss this matter.

13 IV. CONCLUSION

14 For the reasons stated herein, Respondents respectfully request that the Court
15 deny or dismiss this habeas petition along with the motion for injunctive relief.

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17 DATED: April 30, 2026

Respectfully submitted,

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