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

10 WISKENDY FRANCOIS,

11 Petitioner,

12 v.

13 CHRISTOPHER LaROSE, Warden, Otay
14 Mesa Detention Center, *et al.*,

15 Respondent.

Case No.: 26-cv-02556-BTM-GC

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

17 **I. INTRODUCTION**

18 Petitioner requests that the Court order his immediate release from custody
19 arguing, among other things, that his continued detention has become prolonged,
20 punitive, and arbitrary, and that the Court should order his immediate release, or, order
21 that Respondents provide him with a bond hearing. ECF No. 1 at 2, 6-7. However, this
22 is not the first time Petitioner has raised these arguments before this Court.¹ The Court
23 should, again, dismiss Petitioner's claims requesting an individualized bond hearing,
24

25 ¹ See Exhibit 1 at 2-3 ("Francois seeks relief on four grounds. He argues first that the
26 Respondents violated his Due Process rights by denying him an individualized custody
27 review. Second, that the Respondents violated Section 241(a)(6) of the INA, as
28 interpreted in *Zadvydas v. Davis*, 533 U.S. 678 (2001), by indefinitely detaining him.
Third, that the Respondents violated the Administrative Procedure Act ('APA') by
detaining him arbitrarily and capriciously. Fourth, that the Respondents violated Section
236(a) of the INA by subjecting him to 'mandatory detention.'").

1 and deny his claims alleging that Respondents have violated the INA, the APA, and
2 *Zadvydas*. 533 U.S. 678 (2001)

3 II. FACTUAL BACKGROUND²

4 Petitioner, a citizen of Haiti, was admitted into the United States under a B-2
5 nonimmigrant visa on August 16, 2016. On February 6, 2025, Petitioner was arrested
6 on an outstanding capias warrant and for driving with a suspended license. The next
7 day, he was transferred from a Florida county jail to the custody of the Department of
8 Homeland Security. The Department found that Petitioner violated the Immigration and
9 Nationality Act (“INA”) by remaining in the country after his visa expired on February
10 15, 2017. See 8 U.S.C. § 1227(a)(1)(B). The Department then placed Petitioner in
11 Section 1229a removal proceedings.

12 Since Petitioner’s proceedings began on February 27, 2025, he has applied four
13 times to the immigration courts to be released from custody. On March 18, 2025, an
14 immigration judge found that—based on eight traffic-stop violations Petitioner had
15 accumulated since 2021 and his capias-warrant history—he failed to show that he was
16 not a public safety or bail risk. The immigration judge then denied his request. In
17 subsequent orders issued on May 13, June 27, and December 3, an immigration judge
18 held that Petitioner failed to show a material change of circumstances required to
19 reconsider his custody. Petitioner did not appeal these orders to the Board of
20 Immigration Appeals.

21 Petitioner is currently detained at the Otay Mesa Detention Center pursuant to 8
22 U.S.C. § 1226(a). On December 15, 2025, he petitioned the Court for a writ of habeas
23 corpus which was partially denied and dismissed. Petitioner then filed the instant
24 request for a writ of habeas corpus on April 22, 2026. Petitioner also applied for asylum;
25 his case was scheduled to be heard on April 28, 2026, but was continued to May 20,
26
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² Facts not including citations are adopted from the Court’s order in 25-cv-03635-BTM-MMP.

2026, due to an Immigration Court scheduling conflict. No recent delays of Petitioner's immigration proceedings are attributable to DHS. *See* Exhibit 3 at 2.

III. ARGUMENT

A. Petitioner fails to plead sufficient information

Petitioner has failed to plead sufficient information or establish changed circumstances from when the Court previously ruled on his now successive claims for relief. "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).

1 Here, Petitioner bears the burden of establishing that his detention is unlawful.
2 However, given his failure to explain why the Court's previous rulings are no longer
3 valid, or provide sufficient information for the Court to adjudicate a new claim for relief,
4 the Court should deny the petition. *See Alonso Velasquez v. LaRose*, No. 25-cv-3216-
5 JES-AHG, 2025 WL 3473773 (S.D. Cal. Dec. 3, 2025) (dismissing without prejudice
6 habeas petition that failed to allege sufficient factual information).

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

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

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

1 Decisions rendered by the BIA are final, except for those reviewed by the Attorney
2 General. 8 C.F.R. § 1003.1(d)(7).

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

15 “When a petitioner does not exhaust administrative remedies, a district court
16 ordinarily should either dismiss the petition without prejudice or stay the proceedings
17 until the petitioner has exhausted remedies, unless exhaustion is excused.” *Leonardo v.*
18 *Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011); *see also Alvarado v. Holder*, 759 F.3d
19 1121, 1127 n.5 (9th Cir. 2014) (issue exhaustion is a jurisdictional requirement); *Tijani*
20 *v. Holder*, 628 F.3d 1071, 1080 (9th Cir. 2010) (no jurisdiction to review legal claims
21 not presented in the petitioner’s administrative proceedings before the BIA). Moreover,
22 a “petitioner cannot obtain review of procedural errors in the administrative process that
23 were not raised before the agency merely by alleging that every such error violates due
24 process.” *Vargas v. INS*, 831 F.3d 906, 908 (9th Cir. 1987); *see also Sola v. Holder*,
25 720 F.3d 1134, 1135–36 (9th Cir. 2013) (declining to address a due process argument
26 that was not raised below because it could have been addressed by the agency).

27 Here, exhaustion is warranted because agency expertise is required. “[T]he BIA
28 is the subject-matter expert in immigration bond decisions.” *Aden v. Nielsen*, No. C18-

1 1441RSL, 2019 WL 5802013, at *2 (W.D. Wash. Nov. 7, 2019); *Delgado v. Sessions*,
2 No. C17-1031-RSL-JPD, 2017 WL 4776340, at *2 (W.D. Wash. Sept. 15, 2017) (noting
3 a denial of bond to an immigration detainee was “a question well suited for agency
4 expertise”).

5 Waiving exhaustion would also encourage other detainees to bypass the BIA and
6 directly appeal from the immigration judge to federal district court. *See Aden*, 2019 WL
7 5802013, at *2. Individuals, like Petitioner, would have little incentive to seek relief
8 before the BIA if this Court permits review here. And allowing a skip-the-BIA-and-go-
9 straight-to-federal-court strategy would needlessly increase the burden on district
10 courts. *See Bd. of Tr. of Constr. Laborers' Pension Trust for S. Calif. v. M.M. Sundt*
11 *Constr. Co.*, 37 F.3d 1419, 1420 (9th Cir. 1994) (“Judicial economy is an important
12 purpose of exhaustion requirements.”); *see also Santos-Zacaria v. Garland*, 598 U.S.
13 411, 418 (2023) (noting “exhaustion promotes efficiency”). If the immigration judge
14 erred, this Court should allow the administrative process to correct itself. *See id.*

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

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

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1 IV. CONCLUSION

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

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5 DATED: May 4, 2026

Respectfully submitted,

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11 Attorneys for Respondents
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