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10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA

12 CLAUDIO HERNANDEZ-HERNANDEZ,

13 Petitioner,

14 v.

15 CHRISTOPHER LAROSE, *et al.*,

16 Respondents.
17

Case No.: 26-cv-02689-CAB-SBC

RETURN TO PETITION FOR
WRIT OF HABEAS CORPUS

18 I. INTRODUCTION

19 Petitioner has filed a second and duplicative habeas petition under 28 U.S.C. §
20 2241 on April 27 2026. ECF No. 3. Petitioner is currently in removal proceedings
21 under 8 U.S.C. § 1229a. *See* Exhibit 2 (“Order of the Immigration Judge”).

22 II. FACTUAL BACKGROUND¹

23 This Court granted the Petitioner’s first petition on February 9, 2026, and ordered
24 Respondents to provide a bond hearing to Petitioner. *See* Exhibit 1 (“Court’s Order”).
25 Petitioner received a bond hearing before an immigration judge on February 12, 2026.
26 ECF No. 1 at ¶ 8. During the bond hearing, the immigration judge denied Petitioner’s
27

28 ¹ The attached exhibits are true copies, with few redactions of private information, of documents obtained from ICE counsel.

1 bond request because he was deemed to be a significant flight risk. ECF No. 1 at page
2 22. In a subsequent hearing, the immigration judge ordered the alien removed on April
3 21, 2026. *See* Exhibit 2 (“Order of the Immigration Judge”). Petitioner has until May
4 21, 2026, to perfect an appeal. *Id.* Instead, Petitioner filed this Petition on April 27,
5 2026. ECF No. 1.

6 **III. ARGUMENT**

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

8 Petitioner has failed to plead sufficient information or establish how his APA and
9 Due Process arguments aren’t already moot based on the Court’s previous order
10 granting his first petition. “Absent a real and immediate threat of future injury there can
11 be no case or controversy, and thus no Article III standing for a party seeking injunctive
12 relief.” *Wilson v. Brown*, No. 05-cv-1774-BAS-MDD, 2015 WL 8515412, at *3 (S.D.
13 Cal. Dec. 11, 2015) (citing *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC),*
14 *Inc.*, 528 U.S. 167, 190 (2000) (“[I]n a lawsuit brought to force compliance, it is the
15 plaintiff’s burden to establish standing by demonstrating that, if unchecked by the
16 litigation, the defendant’s allegedly wrongful behavior will likely occur or continue,
17 and that the threatened injury is certainly impending.”) (simplified)). At the “irreducible
18 constitutional minimum,” standing requires that a petitioner demonstrate the following:
19 (1) an injury in fact (2) that is fairly traceable to the challenged action of the United
20 States and (3) likely to be redressed by a favorable decision. *Lujan v. Defenders of*
21 *Wildlife*, 504 U.S. 555, 560–61 (1992).

22 Moreover, the Supreme Court has held that “[h]abeas Corpus Rule 2(c) is more
23 demanding [than Federal Rule of Civil Procedure 8(a)]. It provides that the petition
24 must ‘specify all the grounds for relief available to the petitioner’ and ‘state the facts
25 supporting each ground.’” *Mayle v. Felix*, 545 U.S. 644, 655 (2005) (citing Rules
26 Governing Section 2254 Cases in the United States District Court (“Federal Habeas
27 Rules”)); *see also James v. Borg*, 24 F.3d 20, 26 (9th Cir. 1994) (“Conclusory allegations
28 which are not supported by a statement of specific facts do not warrant habeas relief.”).

1 As stated by the Advisory Committee’s Note on Habeas Corpus Rule 4, 28 U.S.C., p.
2 471, “notice pleading is not sufficient, for the petition is expected to state facts that point
3 to a real possibility of constitutional error.”) (internal quotation marks omitted).

4 Here, Petitioner bears the burden of establishing that his detention is unlawful.
5 However, given Respondents have already conceded he falls under § 1226(a), his claim
6 Respondents violated the APA is moot. Furthermore, the Ninth Circuit has recently
7 stayed application of the District Court’s order in *Maldonado Bautista v. Santacruz*, No.
8 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ---, 2025 WL 3713987 (C.D. Cal. Dec. 18,
9 2025), outside of the Central District of California. Because the habeas petition fails to
10 supply sufficient information for the Court to adjudicate his claims, the Court should
11 deny the petition. *See Alonso Velasquez v. LaRose*, No. 25-cv-3216-JES-AHG, 2025
12 WL 3473773 (S.D. Cal. Dec. 3, 2025) (dismissing without prejudice habeas petition
13 that failed to allege sufficient factual information).

14 **B. Fourth Amendment Claims Fail**

15 To the extent Petitioner asserts claims under the Fourth Amendment, he fails to
16 explain why release is the remedy for such alleged violations. *United States v. Crews*,
17 445 U.S. 463, 474 (1980) (noting, in the criminal context, that Fourth Amendment’s
18 “exclusionary principle” “delimits what proof the Government may offer against the
19 accused at trial, closing the courtroom door to evidence secured by official
20 lawlessness,” but an individual “is not himself a suppressible ‘fruit’”); *Cruz v. Barr*,
21 926 F.3d 1128, 1146 (9th Cir. 2019) (releasing petitioner on Fourth Amendment
22 grounds because fruits of the regulatory violation were the only evidence of petitioner’s
23 alienage).

24 Moreover, Fourth Amendment claims related to alienage “belong in front of an
25 Immigration Judge, not a federal district court.” *See Marvan v. Slaughter*, No. CV 25-
26 49-H-DLC, 2025 WL 1940043, at *3 (D. Mont. July 15, 2025) (denying habeas petition
27 challenging detention based on Fourth Amendment violations for lack of subject matter
28 jurisdiction). Petitioner cannot simply “bypass the immigration courts and proceed

1 directly to district court. Instead, [he] must exhaust the administrative process before
2 [he] can access the federal courts.” *Id.* at *4 (quoting *J.E.F.M.*, 837 F.3d at 1029). To
3 the extent Petitioner desires to bring such claims, this district court does not have
4 jurisdiction. Under 8 U.S.C. § 1252(b)(9), “[j]udicial review of all questions of law and
5 fact . . . arising from any action taken or proceeding brought to remove an alien from
6 the United States under this subchapter shall be available only in judicial review of a
7 final order under this section.” Further, judicial review of a final order is available only
8 through “a petition for review filed with an appropriate court of appeals.” 8 U.S.C.
9 § 1252(a)(5).

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

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

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

1 immigration judges, and the general public on the proper interpretation and
2 administration of the [INA] and its implementing regulations.” *Id.* § 1003.1(d)(1).
3 Decisions rendered by the BIA are final, except for those reviewed by the Attorney
4 General. 8 C.F.R. § 1003.1(d)(7).

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

17 “When a petitioner does not exhaust administrative remedies, a district court
18 ordinarily should either dismiss the petition without prejudice or stay the proceedings
19 until the petitioner has exhausted remedies, unless exhaustion is excused.” *Leonardo v.*
20 *Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011); *see also Alvarado v. Holder*, 759 F.3d
21 1121, 1127 n.5 (9th Cir. 2014) (issue exhaustion is a jurisdictional requirement); *Tijani*
22 *v. Holder*, 628 F.3d 1071, 1080 (9th Cir. 2010) (no jurisdiction to review legal claims
23 not presented in the petitioner’s administrative proceedings before the BIA). Moreover,
24 a “petitioner cannot obtain review of procedural errors in the administrative process that
25 were not raised before the agency merely by alleging that every such error violates due
26 process.” *Vargas v. INS*, 831 F.3d 906, 908 (9th Cir. 1987); *see also Sola v. Holder*,
27 720 F.3d 1134, 1135–36 (9th Cir. 2013) (declining to address a due process argument
28 that was not raised below because it could have been addressed by the agency).

1 Here, exhaustion is warranted because agency expertise is required. “[T]he BIA
2 is the subject-matter expert in immigration bond decisions.” *Aden v. Nielsen*, No. C18-
3 1441RSL, 2019 WL 5802013, at *2 (W.D. Wash. Nov. 7, 2019); *Delgado v. Sessions*,
4 No. C17-1031-RSL-JPD, 2017 WL 4776340, at *2 (W.D. Wash. Sept. 15, 2017) (noting
5 a denial of bond to an immigration detainee was “a question well suited for agency
6 expertise”).

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

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

25 Because Petitioner has (1) already received a bond hearing before an immigration
26 judge under § 1226(a), and (2) failed to exhaust his administrative remedies, the Court
27 should dismiss this matter.

1 **IV. CONCLUSION**

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

4
5 DATED: May 5, 2026

Respectfully submitted,

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