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

11
12 POUCHON FRANCIQUE,
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14 Petitioner,
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16 v.
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18 CHRISTOPHER J. LAROSE,
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20 Respondent.
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Case No.: 26-cv-2722-RSH-SBC
RETURN TO PETITION

1 Petitioner has filed a third habeas petition under 28 U.S.C. § 2241. This Court
2 granted the first petition, 26-cv-1126-RSH-JLB (S.D. Cal. Mar 12, 2026) at ECF No. 6,
3 and ordered Respondent to provide Petitioner with a bond hearing by March 19, 2026.
4 Respondent provided a bond hearing on March 17, 2026, in which an immigration judge
5 denied Petitioner a bond finding that Petitioner was a flight risk. *Id.* at ECF No. 7.
6 Petitioner filed a second petition on April 15, 2026, in *Francique v. LaRose*, 26-cv-2304-
7 RSH-JLB (S.D. Cal. April 16, 2026) at ECF No. 1. This Court dismissed this petition on
8 April 16, 2026. *Id.* at ECF No. 3. In the instant petition, Petitioner raises the same
9 challenges to his initial arrest and detention upon which the Court granted the initial
10 petition. ECF No. 1. Petitioner also alleges that his bond hearing was “unjust and unfair”
11 but fails to state sufficient facts upon which this Court to rule.

12 The Constitution limits federal judicial power to designated “cases” and
13 “controversies.” U.S. Const., art. III, § 2; *see also SEC v. Med. Comm. for Human Rights*,
14 404 U.S. 403, 407 (1972) (federal courts may only entertain matters that present a “case”
15 or “controversy” within the meaning of Article III). “Absent a real and immediate threat
16 of future injury there can be no case or controversy, and thus no Article III standing for
17 a party seeking injunctive relief.” *Wilson v. Brown*, No. 05-cv-1774-BAS-MDD, 2015
18 WL 8515412, at *3 (S.D. Cal. Dec. 11, 2015) (citing *Friends of the Earth, Inc. v. Laidlaw*
19 *Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 190 (2000) (“[I]n a lawsuit brought to force
20 compliance, it is the plaintiff’s burden to establish standing by demonstrating that, if
21 unchecked by the litigation, the defendant’s allegedly wrongful behavior will likely occur
22 or continue, and that the threatened injury is certainly impending.”) (simplified)). At the
23 “irreducible constitutional minimum,” standing requires that a petitioner demonstrate the
24 following: (1) an injury in fact (2) that is fairly traceable to the challenged action of the
25 United States and (3) likely to be redressed by a favorable decision. *Lujan v. Defenders*
26 *of Wildlife*, 504 U.S. 555, 560–61 (1992).

1 Moreover, an individual may seek habeas relief under 28 U.S.C. § 2241 if he is “in
2 custody” under federal authority “in violation of the Constitution or laws or treaties of
3 the United States.” 28 U.S.C. § 2241(c). But habeas relief is available to challenge only
4 the legality or duration of confinement. *Pinson v. Carvajal*, 69 F.4th 1059, 1067 (9th Cir.
5 2023); *Crawford v. Bell*, 599 F.2d 890, 891 (9th Cir. 1979); *Dep’t of Homeland Security*
6 *v. Thraissigiam*, 591 U.S. 103, 117 (2020) (The writ of habeas corpus historically
7 “provide[s] a means of contesting the lawfulness of restraint and securing release.”). The
8 Ninth Circuit squarely explained how to decide whether a claim sounds in habeas
9 jurisdiction: “[O]ur review of the history and purpose of habeas leads us to conclude the
10 relevant question is whether, based on the allegations in the petition, release is *legally*
11 *required* irrespective of the relief requested.” *Pinson*, 69 F.4th at 1072 (emphasis in
12 original); *see also Nettles v. Grounds*, 830 F.3d 922, 934 (9th Cir. 2016) (The key inquiry
13 is whether success on the petitioner’s claim would “necessarily lead to immediate or
14 speedier release.”); *Guselnikov v. Noem*, No. 25-cv-1971-BTM-KSC, 2025 WL 2300873,
15 at *1 (S.D. Cal. Aug. 8, 2025) (finding petitioners’ claims did not arise under § 2241
16 because they were not arguing they were unlawfully in custody and receiving the
17 requested relief would not entitle them to release); *Giron Rodas v. Lyons*, No. 25cv1912-
18 LL-AHG, 2025 WL 2300781, at *3 (S.D. Cal. Aug. 1, 2025) (“Like in *Pinson*, the Court
19 lacks jurisdiction over Petitioner’s § 2241 habeas petition since it cannot be fairly read as
20 attacking ‘the legality or duration of confinement.’”) (quoting *Pinson*, 69 F.4th at 1065).

21 Moreover, the Supreme Court has held that “[h]abeas Corpus Rule 2(c) is more
22 demanding [than Federal Rule of Civil Procedure 8(a)]. It provides that the petition must
23 ‘specify all the grounds for relief available to the petitioner’ and ‘state the facts supporting
24 each ground.’” *Mayle v. Felix*, 545 U.S. 644, 655 (2005) (citing Rules Governing Section
25 2254 Cases in the United States District Court (“Federal Habeas Rules”)); *see also James*
26 *v. Borg*, 24 F.3d 20, 26 (9th Cir. 1994) (“Conclusory allegations which are not supported
27 by a statement of specific facts do not warrant habeas relief.”). As stated by the Advisory
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1 Committee’s Note on Habeas Corpus Rule 4, 28 U.S.C., p. 471, “notice pleading is not
2 sufficient, for the petition is expected to state facts that point to a real possibility of
3 constitutional error.”) (internal quotation marks omitted).

4 Petitioner’s claim that the bond hearing was generally “unjust and unfair” is not
5 sufficient to provide a basis for relief. ECF No. 1 at p. 7. This Court does not have
6 jurisdiction in any context to review the findings of the immigration judge but that is
7 especially true in a petition for habeas corpus where relief is limited to challenges to the
8 constitutionality of an individual’s detention which, in this case, have already been
9 resolved by this Court’s prior ruling. Here, if any claim has been raised, Petitioner’s
10 habeas petition still fails to supply sufficient information for the Court to adjudicate his
11 claim. As such, the Court should deny the petition. *See Alonso Velasquez v. LaRose*, No.
12 25-cv-3216-JES-AHG, 2025 WL 3473773 (S.D. Cal. Dec. 3, 2025) (dismissing without
13 prejudice habeas petition that failed to allege sufficient factual information).

14 **B. This Court does not have jurisdiction to review the immigration judge’s**
15 **ruling.**

16 If this Court finds that Petitioner has raised sufficient facts upon which to rule, the
17 Court should still dismiss this Petition. This Court lacks jurisdiction to review an
18 immigration judge’s discretionary factual findings and analysis nor the ultimate ruling.
19 Petitioner cites to no authority to support jurisdiction in the Federal District Court but in
20 other case, petitioners have cited *Martinez v. Clark*, 124 F.4th 775 (9th Cir. 2024), as
21 holding that the District Court has jurisdiction to review an immigration judge’s denial
22 of bond for an abuse of discretion. The Ninth Circuit at no point in its opinion addresses
23 District Court jurisdiction to hear appeals of an IJ’s decisions but rather rules on the
24 matter before it, which was the decision of the BIA of an appeal of a IJ’s bond denial.
25 *See, generally, id.* The Court found they had jurisdiction to consider a challenge to the
26 danger finding of the BIA not that the District Court may intervene in the appropriate
27 administrative remedy through the BIA to the Ninth Circuit. *See id.* at 784 (“Because *we*

1 have jurisdiction here, ...(emphasis added)). The District Court’s jurisdiction is limited
2 to whether the requirements of its order were followed. Therefore, the Court should
3 ensure Petitioner properly exhausts administrative remedies.

4 Here, the immigration judge complied with this Court’s order to hold a bond
5 hearing held the bond hearing in a timely fashion. There is no evidence provided by the
6 Petitioner that the hearing was conducted in such an egregious manner so as to potentially
7 give rise to a substantive due process violation. Petitioner simply does not like the result
8 which does not, and cannot, give rise to a claim for relief.

9 **C. Petitioner must exhaust his administrative remedies.**

10 The Ninth Circuit requires that “habeas petitioners exhaust available judicial and
11 administrative remedies before seeking relief under § 2241.” *Castro–Cortez v. INS*, 239
12 F.3d 1037, 1047 (9th Cir. 2001). “When a petitioner does not exhaust administrative
13 remedies, a district court ordinarily should either dismiss the petition without prejudice
14 or stay the proceedings until the petitioner has exhausted remedies, unless exhaustion is
15 excused.” *Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011); *see also Alvarado*
16 *v. Holder*, 759 F.3d 1121, 1127 n.5 (9th Cir. 2014) (issue exhaustion is a jurisdictional
17 requirement); *Tijani v. Holder*, 628 F.3d 1071, 1080 (9th Cir. 2010) (no jurisdiction to
18 review legal claims not presented in the petitioner’s administrative proceedings before
19 the BIA). Here, Petitioner has appealed the result of his bond hearing held pursuant to
20 U.S.C. § 1226(a) but has not received a ruling on the appeal. Accordingly, the Court
21 should dismiss this motion without prejudice.

22 The BIA is an appellate body within the Executive Office for Immigration Review
23 (EOIR) and possesses delegated authority from the Attorney General. 8 C.F.R. §§
24 1003.1(a)(1), (d)(1). The BIA is “charged with the review of those administrative
25 adjudications under the [INA] that the Attorney General may by regulation assign to it,”
26 including IJ custody determinations. 8 C.F.R. §§ 1003.1(d)(1), 236.1, 1236.1. The BIA
27 not only resolves particular disputes before it, but is also directed to, “through precedent
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1 decisions, [] provide clear and uniform guidance to DHS, the immigration judges, and
2 the general public on the proper interpretation and administration of the [INA] and its
3 implementing regulations.” *Id.* § 1003.1(d)(1). Decisions rendered by the BIA are final,
4 except for those reviewed by the Attorney General. 8 C.F.R. § 1003.1(d)(7).

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

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

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1 Here, exhaustion is warranted because agency expertise is required. “[T]he BIA is
2 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 IJ to federal district court. *See Aden*, 2019 WL 5802013, at *2.
9 Individuals, like Petitioner, would have little incentive to seek relief before the BIA if
10 this Court permits review here. And allowing a skip-the-BIA-and-go-straight-to-federal-
11 court strategy would needlessly increase the burden on district courts. *See Bd. of Tr. of*
12 *Constr. Laborers’ Pension Trust for S. Calif. v. M.M. Sundt Constr. Co.*, 37 F.3d 1419,
13 1420 (9th Cir. 1994) (“Judicial economy is an important purpose of exhaustion
14 requirements.”); *see also Santos-Zacaria v. Garland*, 598 U.S. 411, 418 (2023) (noting
15 “exhaustion promotes efficiency”). If the IJ erred, this Court should allow the
16 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 Respondents have complied with this Court’s previous order to provide
26 Respondent with a bond hearing and Petitioner has not exhausted his administrative
27 remedies, this matter should be dismissed.

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I. CONCLUSION

For the reasons stated herein, Respondents respectfully request that the Court dismiss the petition.

DATED: May 11, 2026

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s/ Michael D. Wallace
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