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

10 ALAN RAFAEL RIOS MENDOZA,

11 Petitioner,

12 v.

13 MARKWAYNE MULLIN, Secretary, United
14 States Department of Homeland Security; *et*
15 *al.*,

16 Respondent.

Case No.: 26-cv-02825-JLS-AHG

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

17 **I. INTRODUCTION**

18 Alan Rafael Rios Mendoza (“Petitioner”) has filed a petition for writ of habeas
19 corpus alleging his immigration detention violates the INA, APA, and the Due Process
20 Clause of the Fifth Amendment. ECF No. 1 at 4. He requests that the Court “(1)
21 Declar[e] that § 1226(a), not § 1225(b)(2)(A), governs [Petitioners] detention; and (2)
22 Requir[e] that he receive a prompt individualized bond hearing before an Immigration
23 Judge where the Government bears the burden of proving flight risk or danger by clear
24 and convincing evidence.” ECF No. 1 at 5. However, Petitioner is subject to mandatory
25 detention under the Laken Riley Act (8 U.S.C § 1226(c)(1)(E)) for his January 4, 2026,
26 felony arrest for Inflicting Corporal Injury on a Spouse/Cohabitant under California
27 Penal Code § 273.5(A). *See* Exhibit 4. Accordingly, Respondents respectfully request
28 that the Court deny these requests for relief.

1 **II. FACTUAL BACKGROUND¹**

2 Petitioner is a native and citizen of Mexico, who entered the United States
3 illegally as a minor in 1994. *See* Exhibit 1 at 4; Exhibit 3 at 1. On February 21, 2026,
4 Petitioner was arrested by immigration officials and charged with inadmissibility under
5 8 U.S.C. §§ 1182(a)(6)(A)(i), (a)(7)(A)(i)(I). *See* Exhibit 3 at 4. On March 31, 2026,
6 Petitioner was set to receive a bond hearing before an immigration judge, but the request
7 for custody redetermination was withdrawn by Petitioner’s counsel. *See* Exhibit 2.

8 Shortly before his arrest by federal immigration officials, Petitioner was arrested
9 by San Bernadino Police Department on January 4, 2026, for Inflicting Corporal Injury
10 on a Spouse/Cohabitant under California Penal Code § 273.5(A). *See* Exhibit 4.
11 Petitioner is subject to mandatory detention under 8 U.S.C. § 1226(c)(1)(E) while his
12 immigration proceedings remain pending.

13 **III. ARGUMENT**

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

15 Petitioner has failed to plead sufficient information or establish how mandatory
16 detention under 8 U.S.C. § 1226(c)(1)(E) violates the INA, the APA, or his Fifth
17 Amendment right to due process. “Absent a real and immediate threat of future injury
18 there can be no case or controversy, and thus no Article III standing for a party seeking
19 injunctive relief.” *Wilson v. Brown*, No. 05-cv-1774-BAS-MDD, 2015 WL 8515412, at
20 *3 (S.D. Cal. Dec. 11, 2015) (citing *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs.*
21 *(TOC), Inc.*, 528 U.S. 167, 190 (2000) (“[I]n a lawsuit brought to force compliance, it
22 is the plaintiff’s burden to establish standing by demonstrating that, if unchecked by the
23 litigation, the defendant’s allegedly wrongful behavior will likely occur or continue,
24 and that the threatened injury is certainly impending.”) (simplified)). At the “irreducible
25 constitutional minimum,” standing requires that a petitioner demonstrate the following:
26 (1) an injury in fact (2) that is fairly traceable to the challenged action of the United
27

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

1 States and (3) likely to be redressed by a favorable decision. *Lujan v. Defenders of*
2 *Wildlife*, 504 U.S. 555, 560–61 (1992).

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

13 Here, Petitioner bears the burden of establishing that his detention is unlawful.
14 However, given his prior criminal history, Petitioner has failed to explain why
15 mandatory detention for less than three months under 8 U.S.C. § 1226(c)(1)(E) violates
16 the INA, the APA, or his Fifth Amendment due process rights. Instead, Petitioner only
17 argues that he is detained under 8 U.S.C. § 1226(a) and, accordingly, is entitled to a
18 bond hearing. ECF No 1 at 4. Because the petition fails to supply sufficient information
19 for the Court to adjudicate his claims, the Court should deny the petition. *See Alonso*
20 *Velasquez v. LaRose*, No. 25-cv-3216-JES-AHG, 2025 WL 3473773 (S.D. Cal. Dec. 3,
21 2025) (dismissing without prejudice habeas petition that failed to allege sufficient
22 factual information).

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

24 As to whether Petitioner’s mandatory detention under § 1226(c) is statutorily
25 improper or violates due process, the Supreme Court in *Demore v. Kim* held no. *See*
26 538 U.S. 510, 513 (2003). In so holding, the *Demore* court recognized that for over a
27 hundred years, the Supreme Court “has firmly and repeatedly endorsed the proposition
28 that Congress may make rules as to aliens that would be unacceptable if applied to

1 citizens.” *Id.* at 522 (collecting cases). Consequently, the Supreme Court has, time and
2 time again, “recognized [that] detention during deportation proceedings [is] a
3 constitutionally valid aspect of the deportation process.” *Id.* at 523; *see Rodriguez Diaz*
4 *v. Garland*, 53 F.4th 1189, 1217 (9th Cir. 2022) (Bumatay, concurring) (“For over a
5 century, whenever Congress has granted the Executive authority to detain aliens
6 pending removal proceedings, the Supreme Court has repeatedly upheld such detention
7 as consistent with the Constitution.”).

8 The Laken Riley Act expanded the category of aliens subject to mandatory
9 detention by amending § 1226(c) to include § 1226(c)(1)(E), which states that the
10 Attorney General “shall” take into custody and alien who “(i) is inadmissible under
11 paragraph (6)(A), (6)(C), or (7) of section [1182(a)]; and (ii) is charged with, *is arrested*
12 *for*, is convicted of, admits having committed, or admits committing acts which
13 constitute the essential elements of any burglary, theft, larceny, shoplifting, or assault
14 of a law enforcement officer offense, *or any crime that results in death or serious bodily*
15 *injury to another person.”* 8 U.S.C. § 1226(c)(1)(E) (emphasis added).

16 Because Petitioner was arrested on January 4, 2026, for Inflicting Corporal Injury
17 on a Spouse/Cohabitant under California Penal Code § 273.5(A), he falls squarely
18 within § 1226(c)(1)(E). Accordingly, his detention does not violate the INA nor the
19 APA. Nor does his current detention time of less than three months violate his “due
20 process” rights. *See Demore v. Kim*, 538 U.S. 510, 531 (denying habeas relief after “six
21 months” of immigration detention under 8 U.S.C. § 1226(c)).

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

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

1 however, exhaustion is a prudential requirement, a court has discretion to waive the
2 requirement.” *Id.* (citing *Stratman v. Watt*, 656 F.2d 1321, 1325–26 (9th Cir. 1981)).
3 Here, Petitioner is attempting to bypass the Board of Immigration Appeals and the
4 administrative scheme by filing a habeas petition shortly after withdrawing his custody
5 redetermination request in Immigration Court. *See* Exhibit 2.

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

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

3 “When a petitioner does not exhaust administrative remedies, a district court
4 ordinarily should either dismiss the petition without prejudice or stay the proceedings
5 until the petitioner has exhausted remedies, unless exhaustion is excused.” *Leonardo v.*
6 *Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011); *see also Alvarado v. Holder*, 759 F.3d
7 1121, 1127 n.5 (9th Cir. 2014) (issue exhaustion is a jurisdictional requirement); *Tijani*
8 *v. Holder*, 628 F.3d 1071, 1080 (9th Cir. 2010) (no jurisdiction to review legal claims
9 not presented in the petitioner’s administrative proceedings before the BIA). Moreover,
10 a “petitioner cannot obtain review of procedural errors in the administrative process that
11 were not raised before the agency merely by alleging that every such error violates due
12 process.” *Vargas v. INS*, 831 F.3d 906, 908 (9th Cir. 1987); *see also Sola v. Holder*,
13 720 F.3d 1134, 1135–36 (9th Cir. 2013) (declining to address a due process argument
14 that was not raised below because it could have been addressed by the agency).

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

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

1 411, 418 (2023) (noting “exhaustion promotes efficiency”). If the immigration judge
2 erred, this Court should allow the administrative process to correct itself. *See id.*

3 Moreover, detention alone is not an irreparable injury. Discretion to waive
4 exhaustion “is not unfettered.” *Laing v. Ashcroft*, 370 F.3d 994, 998 (9th Cir. 2004).
5 Petitioners bear the burden to show that an exception to the exhaustion requirement
6 applies. *Leonardo*, 646 F.3d at 1161; *Aden*, 2019 WL 5802013, at *3. “[C]ivil detention
7 after the denial of a bond hearing [does not] constitute[] irreparable harm such that
8 prudential exhaustion should be waived.” *Reyes v. Wolf*, No. C20-0377JLR, 2021 WL
9 662659, at *3 (W.D. Wash. Feb. 19, 2021), *aff’d sub nom. Diaz Reyes v. Mayorkas*, No.
10 21-35142, 2021 WL 3082403 (9th Cir. July 21, 2021).

11 Because Petitioner withdrew his request for custody redetermination and failed
12 to exhaust his administrative remedies, 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.

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17 DATED: May 12, 2026

Respectfully submitted,

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