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

12 PAWAN KUMAR SINGH,

13 Petitioner,

14 v.

15 MARKWAYNE MULLIN, Secretary of
16 the Department of Homeland Security,
17 TODD BLANCHE, Acting Attorney
18 General, TODD M. LYONS, Acting
19 Director, Immigration and Customs
20 Enforcement, JESUS ROCHA, Acting
21 Field Office Director, San Diego Field
22 Office, CHRISTOPHER LAROSE,
23 Warden at Otay Mesa Detention Center,

24 Respondents.

Civil Case No.: 26-cv-1425-JLS-BLM

**Traverse in Support of Petition for
Writ of Habeas Corpus**

INTRODUCTION

This Court previously granted Pawan Kumar Singh’s habeas petition because he is “not subject to expedited removal under § 1225(b)” and is thus “entitled to a bond hearing under § 1226(a).” *Singh v. Archambeault*, 25-cv-3720-JLS-DDL; Amended Petition, Dkt. 5, Exhibit A. But in the subsequent bond hearing, the IJ found that Mr. Singh was a flight risk for that *exact* reason—stating only that it was “considering, uh, the expedited removal order” Dkt. 5, Exh. B at 6. Accordingly, Mr. Singh seeks an order from this Court enforcing its prior conclusion and precluding the IJ from relying on an “expedited removal” to find him a flight risk.

In their Return, Respondents never address this argument. Instead, they make two boilerplate arguments: 1) that Mr. Singh “has not appealed the result of his bond hearing” to the BIA; and 2) that the IJ did not “misapply the burden of proof.” Dkt. 8 at 2–5. But in the unique circumstances presented here, exhaustion would serve no purpose because the BIA has no authority to consider expedited removal issues or enforce this Court’s Order. What’s more, Respondents’ burden-shifting argument is irrelevant because Mr. Singh never argued that the IJ misapplied the burden of proof. Because the government’s arguments are nonresponsive and the agency has shown itself to be incapable of providing a fair bond hearing, this Court should order Mr. Singh’s immediate release, as other courts in this district have increasingly done.

LEGAL BACKGROUND

I. In these unique circumstances, exhaustion would serve no purpose because the BIA lacks authority to consider expedited removal issues.

In their return, Respondents correctly admit that the law “does not specifically require petitioners to exhaust direct appeals before filing petitions for habeas corpus” because exhaustion to the BIA is “prudential.” Dkt. 8 at 3 (quoting *Castro-Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001)). And

1 Respondents correctly note that “courts may require prudential exhaustion if
2 (1) agency expertise makes agency consideration necessary to generate a proper
3 record and reach a proper decision; (2) relaxation of the requirement would
4 encourage the deliberate bypass of the administrative scheme; and (3)
5 administrative review is likely to allow the agency to correct its own mistakes and
6 to preclude the need for judicial review.” Dkt. 8 at 3 (quoting *Puga v. Chertoff*,
7 488 F.3d 812, 815 (9th Cir. 2007)).

8 But as to the first factor, Respondents only make the generic statement that
9 “agency expertise is required” because the BIA is “the subject matter expert in
10 immigration bond decisions.” Dkt. 8 at 3. While this may be true in a typical case,
11 the facts here are unique because they involve the interplay between bond and
12 expedited removal. In Mr. Singh’s first habeas, this Court found that he is “not
13 subject to expedited removal under § 1225(b)” because he has “resided in the
14 United States for fifteen years, has had continuous employment authorization,
15 approved employment-based immigration petitions, and has substantial familial
16 connections in Arizona.” Dkt. 5, Exh. B at 6. Yet the IJ relied solely on the
17 expedited removal order to find that Mr. Singh was a flight risk and deny bond.
18 This is the equivalent of acquitting an individual of a crime but then keeping him
19 in custody because he is a flight risk—the former necessarily precludes the latter.

20 And importantly, the BIA has no authority—let alone expertise—to make
21 decisions regarding expedited removal. As the Ninth Circuit concluded in *United*
22 *States v. Barajas-Alvarado*, 8 U.S.C. § 1225(b)(1)(A)(i) “limits administrative
23 and judicial review of expedited removal proceedings” by stating that the
24 immigration officer “shall order the alien removed from the United States
25 without further hearing or review.” 655 F.3d 1077, 1081 (9th Cir. 2011)
26 (emphasis *Barajas-Alvarado*). In fact, *Barajas-Alvarado* found that “some
27 meaningful review of an expedited removal order is constitutionally required” but
28 restricted this review to federal courts—rather than the BIA. *Id.* at 1082. In other

1 words, the BIA *never* reviews expedited removal orders and thus has no expertise
2 on them—thus, the first *Puga* factor weighs in Mr. Singh’s favor.

3 The same is true for the third *Puga* factor—whether “administrative review
4 is likely to allow the agency to correct its own mistakes and to preclude the need
5 for judicial review.” 488 F.3d at 815. Because the BIA has no authority to review
6 expedited removal orders, it cannot “correct [the agency’s] own mistakes” by
7 determining—as this Court did—that Mr. Singh is “not subject to expedited
8 removal under § 1225(b).” Dkt. 5, Exh. B at 6. Thus, any exhaustion would be
9 futile, and the third *Puga* factor weighs in Mr. Singh’s favor.

10 Finally, enforcing this Court’s order would not “encourage the deliberate
11 bypass of the administrative scheme.” *Puga*, 488 F.3d at 815. As explained, the
12 facts of this case are unique—it is highly unusual for a person to receive an
13 expedited removal order when, as this Court found, that person has “resided in the
14 United States for fifteen years, has had continuous employment authorization,
15 approved employment-based immigration petitions, and has substantial familial
16 connections in Arizona.” Dkt. 5, Exh. B at 6. Thus, this Court can easily
17 distinguish the need for judicial review here from the bulk of cases that do not
18 involve the interplay between bond and expedited removal.

19 Because all three *Puga* factors weigh in Mr. Singh’s favor, and because
20 Respondents have not even attempted to apply those factors to the unique
21 circumstances here, this Court should find that Mr. Singh was not required to
22 exhaust his administrative remedies.

23 **II. Respondents have waived any argument on the merits.**

24 On the merits, Mr. Singh argued that the IJ erred by finding him a flight
25 risk solely on the basis of an expedited removal. *See* Dkt. 5, Exh. B at 6 (“I
26 am going to find that the respondent, uh, is a significant flight risk, um, and
27 that there's no amount of bond, uh, that would mitigate that risk. Um, and the
28 Court is considering, uh, the expedited removal order.”). Not only did this

1 directly defy this Court’s Order stating that Mr. Singh is *not* subject to
2 expedited removal for bond purposes, it entirely ignored the facts that *were*
3 relevant to flight risk. And those facts all showed that Mr. Singh poses no risk
4 of flight. Mr. Singh came to the United States on an H-1B visa in 2011 as a
5 software engineer, worked for years as a functional analyst for Starbucks and
6 other companies, and filed an I-140 Immigrant Petition for Alien Worker that
7 would allow him to become a lawful permanent resident. Dkt. 5, Exh. C.
8 Mr. Singh also has no criminal history and owns a home in Phoenix, Arizona,
9 where he lives with his wife and U.S.-born daughter. *Id.*

10 Respondents address none of these facts and instead make the generic
11 argument that the IJ “did not misapply the burden of proof.” Dkt. 8 at 4.
12 Because Mr. Singh never made this argument, it is nonresponsive and
13 irrelevant. And because Respondents never address the *actual* facts in this
14 case or make any substantive argument as to flight risk, they have waived
15 their opportunity to do so. *See United States v. Castillo-Marin*, 684 F.3d 914,
16 919 (9th Cir. 2012) (“[W]hen the government does not make an argument that
17 ‘was available at the time it filed its answering brief, it has waived that
18 argument.’”) (quoting *United States v. McEnry*, 659 F.3d 893, 902 (9th Cir.
19 2011)) (cleaned up). Thus, this Court should grant Mr. Singh’s petition and
20 order his immediate release.

21 Courts in this district are increasingly ordering release in lieu of a bond
22 hearing. *See, e.g., Perez Velasquez v. Bondi*, 26-cv-1759-GPC-DDL, Dkt. 11
23 (Apr. 16, 2026); *Hernandez-Garcia v. Warden*, 26-cv-1248-JO-BLM, Dkt. 11
24 (Mar. 26, 2026); *Izquierdo Mendez v. Casey*, 26-cv-1731-JO-SBC, Dkt. 6
25 (Mar. 30, 2026). And in the Central District of California, a district court in
26 *Miri* ordered the petitioner’s “prompt release” and prohibited the government
27 from redetaining him “absent compliance with due process and his legal
28 protections.” No. 5:26-CV-00698-MEMF-MAR, 2026 WL 622302, at *11

1 (C.D. Cal. Mar. 5, 2026). The court found this to be “the remedy that will best
2 return Miri to the status quo and restore his position as it was prior to the
3 detention.” *Id.* So as in these cases, immediate release is “the remedy that will
4 best return [Mr. Singh] to the status quo and restore his position as it was prior
5 to the detention.” 2026 WL 622302, at *11. *Id.*

6
7 **CONCLUSION**

8 For these reasons, this Court should grant Mr. Singh’s habeas petition and
9 order his immediate release.

10 Respectfully submitted,

11 Dated: April 30, 2026

s/ Kara Hartzler

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