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

SINGH BALIHAR,

Petitioner,

v.

WARDEN JEREMY CASEY, *et al.*,

Respondents.

Case No.: 26-cv-2967-JES-AHG

**RESPONSE IN OPPOSITION TO
MOTION**

I. FACTUAL AND PROCEDURAL BACKGROUND

This Court granted the Petitioner's first petition on January 22, 2026, and ordered Respondents to provide a bond hearing to Petitioner by February 5, 2026. *Balihar v. Warden of Imperial Regional Detention Facility, et al.*, 26-cv-0231 (S.D. Cal. January 22, 2026) at ECF No. 5. Petitioner received a bond hearing before an immigration judge on January 27, 2026. The immigration judge denied bond, finding that the Petitioner was a flight risk and a danger to the community. Exhibit 1 (IJ Bond Order). The Petitioner reserved and filed an appeal to the Board of Immigration Appeals (BIA). On May 11, 2026, Petitioner filed the instant Petition alleging prolonged detention. ECF

No. 16. On May 22, 2026, an immigration judge ordered Petitioner removed from the United States to India. Ex. 2 (IJ Removal Order). Petitioner filed an appeal which was rejected by the BIA on May 28, 2026. Petitioner has until June 12, 2026, to cure the defect in his filing.

II. ARGUMENT

Petitioner must exhaust his administrative remedies.

The Ninth Circuit requires that “habeas petitioners exhaust available judicial and administrative remedies before seeking relief under § 2241.” *Castro–Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001). “When a petitioner does not exhaust administrative remedies, a district court ordinarily should either dismiss the petition without prejudice or stay the proceedings until the petitioner has exhausted remedies, unless exhaustion is excused.” *Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011); *see also Alvarado v. Holder*, 759 F.3d 1121, 1127 n.5 (9th Cir. 2014) (issue exhaustion is a jurisdictional requirement); *Tijani v. Holder*, 628 F.3d 1071, 1080 (9th Cir. 2010) (no jurisdiction to review legal claims not presented in the petitioner’s administrative proceedings before the BIA). Here, Petitioner has appealed the result of his bond hearing held pursuant to 8 U.S.C. § 1226(a) but has not received a ruling on the appeal. Accordingly, the Court should dismiss this petition without prejudice.

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

1 BIA are final, except for those reviewed by the Attorney General. 8 C.F.R. §
2 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 IJ to federal district court. *See Aden*, 2019 WL 5802013, at *2.
7 Individuals, like Petitioner, would have little incentive to seek relief before the BIA if
8 this Court permits review here. And allowing a skip-the-BIA-and-go-straight-to-
9 federal-court strategy would needlessly increase the burden on district courts. *See Bd.*
10 *of Tr. of Constr. Laborers’ Pension Trust for S. Calif. v. M.M. Sundt Constr. Co.*, 37
11 F.3d 1419, 1420 (9th Cir. 1994) (“Judicial economy is an important purpose of
12 exhaustion requirements.”); *see also Santos-Zacaria v. Garland*, 598 U.S. 411, 418
13 (2023) (noting “exhaustion promotes efficiency”). If the IJ erred, this Court should
14 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 Respondents have complied with this Court’s previous order to provide
24 Respondent with a bond hearing, Petitioner has not exhausted his administrative
25 remedies, and he has already received the requested relief in the current petition, this
26 matter should be dismissed.

III. CONCLUSION

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

Dated: June 1, 2026

Respectfully submitted,

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