

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

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Sukhjinder Singh Kewal Sin Johal,

Case No.: 25-CV-1408-J

Petitioner

**PETITIONER'S REPLY TO  
RESPONDENTS' RESPONSE TO  
THE VERIFIED PETITION FOR  
WRIT OF HABEAS CORPUS**

v.

Pamela Bondi, Attorney General; et al.,

**EXPEDITED HANDLING  
REQUESTED**

Respondents.

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**INTRODUCTION**

Petitioner, Sukhjinder Singh Kewal Sin Johal, filed a petition for a writ of habeas corpus on November 24, 2025 alleging that he is being detained in violation of law. ECF No. 1. Petitioner also filed a motion to expedite on November 25, 2025. ECF No. 5. On November 26, 2025, the Court issued an Order for Response ordering Respondents to state the cause of Petitioner's detention within 10 days. ECF No. 9. Respondents filed their opposition response to the habeas petition on December 8, 2025, explaining why, in their view, Petitioner is lawfully detained, and also requesting that the petition be dismissed for lack of jurisdiction and failure to exhaust administrative remedies. *See* ECF Nos. 11, 11-1, 11-2, 11-3. Petitioner does not contest the timeliness of Respondents' filing. *See* Fed. R. Civ. P. 6(a)(1)(C).

Notwithstanding Respondents' contentions, a preponderance of the evidence demonstrates that Petitioner is being held in violation of the laws or constitution of the

United States. Consequently, the Court must grant the habeas petition and order the immigration court to set a reasonable bond.

### **PROCEDURAL & FACTUAL HISTORY**

Johal incorporates by reference the facts alleged in his verified habeas corpus petition. *See* ECF No. 1.

Additionally, Respondents correctly point out that Johal has *not* exhausted all administrative remedies available to him. *See* ECF No. 11 at 3. That is, Johal has not appealed the bond decision to the Board of Immigration Appeals (“BIA”) because doing so would be futile. ECF No. 1, ¶¶ 8, 33. The undersigned’s inclusion of a statement that all administrative remedies have been exhausted was made in error and is withdrawn. Johal continues to assert that pursuing non-exhausted remedies would be futile and that prudential exhaustion is not warranted or justified.

Johal’s filing of a motion to reconsider is not an action required to exhaust administrative remedies. It was filed with the hope that the immigration judge would recognize their own clear error on a faster timeline than any BIA appeal will ever process.

### **ARGUMENT**

Respondents argue Johal’s petition should be dismissed because: (1) the Court lacks subject-matter jurisdiction over Johal’s claims; and (2) Johal has failed to exhaust his administrative remedies.

#### **I. The Court has jurisdiction.**

Respondents cite 8 U.S.C. § 1226(e) for the proposition that the Court lacks subject-matter jurisdiction. In *Jennings v. Rodriguez*, 583 U.S. 281, 295 (2018), the

Supreme Court stated that § 1226(e) “precludes an alien from challenging a **discretionary** judgment by the Attorney General or a decision that the Attorney General has made regarding his detention or release.” (emphasis added).

However, Petitioner does not challenge any discretionary judgment by the Attorney General, nor any decision that the Attorney General has made regarding Petitioner’s detention or release. Indeed, Petitioner agrees with the Attorney General that he is not a flight risk or danger. Petitioner challenges only the Attorney General’s legal claim that Petitioner needs to demonstrate changed circumstances from his prior bond hearing in circumstances where **there was no prior bond hearing**. Stated differently, Petitioner presents a pure legal question: did the Attorney General act unlawfully by denying bond based on an obvious misunderstanding of governing laws and regulations?

The great weight of authority indicates that a due process violation occurs and detention becomes unlawful when federal agencies violate their own regulations. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954) (agencies are required to follow their own regulations); *Morton v. Ruiz*, 415 U.S. 199, 235 (1974) (“Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures. This is so even where the internal procedures are possibly more rigorous than otherwise would be required.”); *Roble v. Bondi*, --- F. Supp. 3d ---, 2025 WL 2443453 (D. Minn. Aug. 25, 2025); *Sarail A. v. Bondi*, --- F. Supp. 3d ---, 2025 WL 2533673 (D. Minn. Sept. 3, 2025); *Yee S. v. Bondi*, --- F. Supp. 3d ---, 2025 WL 2879479, at \*6 (D. Minn. Oct. 9, 2025) (ordering release because Petitioner has shown that ICE’s re-detention of him . . . violated the law because ICE did not comply with its own regulations under

section 241.13(i)(2)"); *Constantinovici v. Bondi*, --- F. Supp. 3d ---, 2025 WL 2898985 (S.D. Cal. Oct. 10, 2025); *Rokhfirooz v. Larose*, No. 25-CV-2053-RSH-VET, 2025 WL 2646165, at \*4 (S.D. Cal. Sept. 15, 2025) (granting habeas and ordering release); *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at \*4 (E.D. Cal. July 16, 2025) (finding petitioner was likely to succeed on unlawful redetention claim because "there is no indication that an informal interview was provided"); *Rombot v. Souza*, 296 F. Supp. 3d 383, 387-88 (D. Mass. 2017) (holding that ICE's failures to follow regulatory revocation procedures rendered detention unlawful); *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 164 (W.D.N.Y. 2025) ("because ICE did not follow its own regulations in deciding to redetain [the petitioner], his due process rights were violated, and he is entitled to release"); *Momennia v. Bondi*, No. 25-CV-1067-J, 2025 WL 3011896 (W.D. Okla. Oct. 15, 2025), *adopted*, 2025 WL 3006045 (W.D. Okla. Oct. 27, 2025) (regulatory violation constitutes due process violation requiring immediate release); *Pham v. Bondi*, No. 25-CV-1157-SLP, 2025 WL 3243870, at \*1 (W.D. Okla. Nov. 20, 2025) ("A majority of district courts have found such regulatory defects amount to due process violations that entitle a petitioner to habeas relief. ... The Court finds the majority view persuasive and consistent with the facts and circumstances of this case."); *Hamidi v. Bondi*, No. 25-CV-1205-G, 2025 WL 3452454, at \*2 (W.D. Okla. Dec. 1, 2025) ("The Magistrate Judge found that ICE failed to comply with 8 C.F.R. § 241.13(i)(3) in re-detaining Petitioner. The Court agrees with and adopts the Magistrate Judge's findings in this regard.").

The majority of courts to have recently considered the issue of whether there is habeas corpus jurisdiction to challenge unlawful agency actions that inhibit one's ability

to seek bond have found that jurisdiction exists. For example, numerous habeas petitions have been granted to hold that the auto-stay provision of 8 C.F.R. § 1003.19(i)(2) violates due process rights. *E.g.*, *Gunaydin v. Trump*, 784 F. Supp. 3d 1175, 1190 (D. Minn. May 21, 2025); *Maldonado v. Olson*, 795 F. Supp. 3d 1134, 1145 (D. Minn. Aug. 15, 2025); *Silva v. Larose*, No. 25-CV-2329-JES-KSC, 2025 WL 2770639, at \*2-5 (S.D. Cal. Sept. 29, 2025); *Arce v. Trump*, --- F. Supp. 3d ---, 2025 WL 2675934 (D. Neb. Sept. 18, 2025); *Sampiao v. Hyde*, --- F. Supp. 3d ---, 2025 WL 2607924 (D. Mass. Sept. 9, 2025).

To be as clear as possible, if Petitioner had *previously had a bond hearing* at which his bond was denied, and then the immigration judge held that he failed to demonstrate changed circumstances for purposes of 8 C.F.R. § 1003.19(e), Petitioner would agree that there is no jurisdiction in this Court. The distinguishing factor in Petitioner's case is that he had never previously had a bond hearing, much less one at which a bond was denied, meaning it was a logical impossibility for Petitioner to demonstrate that there were changed circumstances under § 1003.19(e).

The cases Respondents cite to claim a lack of jurisdiction are inapposite. For example, *Mwangi v. Terry*, 465 F. App'x 784 (10th Cir. 2012) involved a habeas petition where the individual was denied bond after being found to present a danger to the community. *See* 465 F. App'x at 786. Conversely, the immigration judge in Petitioner's case found that he was neither a flight risk nor a danger. ECF No. 1, ¶ 6.

## **II. Exhaustion is unnecessary and futile.**

“While the exhaustion doctrine often ‘serves the twin purposes of protecting administrative agency authority and promoting judicial efficiency,’ there are

‘circumstances in which the interests of the individual weigh heavily against requiring administrative exhaustion.’” *Sampiao v. Hyde*, --- F. Supp. 3d ---, 2025 WL 2607924, at \*6 (D. Mass. Sept. 9, 2025) (quoting *Portela-Gonzalez v. Sec’y of the Navy*, 109 F.3d 74, 77 (1st Cir. 1997) and *McCarthy v. Madigan*, 503 U.S. 140, 145-46 (1992)). “As relevant here, ‘a court may consider relaxing the [exhaustion requirement] when unreasonable or indefinite delay threatens unduly to prejudice the subsequent bringing of a judicial action.’” *Id.* (citations omitted). “And, relatedly, if the situation is such that ‘a particular plaintiff may suffer irreparable harm if unable to secure immediate judicial consideration of his claim,’ exhaustion may be excused even though ‘the administrative decisionmaking schedule is otherwise reasonable and definite.’” *Portela-Gonzalez*, 109 F.3d at 77 (quoting *McCarthy*, 503 U.S. at 147). “Irreparable harm may be established where a petitioner will be incarcerated or detained pending the exhaustion of administrative remedies.” *Sampiao*, 2025 WL 2607924, at \*6.

Waiver of the exhaustion requirement is warranted here because Johal is likely to experience irreparable harm if he is unable to seek habeas relief until the BIA decides an appeal of the Immigration Judge’s order denying his bond based solely on a lack of changed circumstances. “According to data released by the Executive Office for Immigration Review, the average processing time for bond appeals exceeded 200 days in 2024.” *Id.* (citing *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1248 (W.D. Wash. 2025)).

## CONCLUSION

The Court must grant the habeas petition, declare that the immigration judge denied Petitioner due process of law and otherwise acted unlawfully by misconstruing 8 C.F.R.

§ 1003.19(e), and remand back to the agency with instructions to set a reasonable bond in light of the evidence previously presented and the immigration court's prior findings that Petitioner is neither a flight risk nor a danger.

DATED: December 9, 2025

Respectfully submitted,

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