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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

FATEMEH SHOKRAEIYAN,

Petitioner,

v.

WARDEN OTAY MESA DETENTION CETNER; *et al.*,

Respondents.

Case No.: 26-cv-02130-AGS-BLM

RESPONSE IN OPPOSITION TO AMENDED PETITION FOR A WRIT OF HABEAS CORPUS

I. INTRODUCTION

Petitioner has filed an amended habeas petition under 28 U.S.C. § 2241. Petitioner's first petition was granted by this Court and Respondents provided Petitioner with a bond hearing as directed by this Court. Petitioner is currently in removal proceedings under 8 U.S.C. § 1229a. Based on the arguments set forth below, the Court should deny Petitioner's requests for relief and dismiss the amended petition.

II. FACTUAL AND PROCEDURAL BACKGROUND

This Court granted the Petitioner's first habeas petition on April 15, 2026, and ordered Respondents to provide a bond hearing to Petitioner by April 29, 2026. ECF No. 6. Petitioner received a bond hearing before an immigration judge on April 29, 2026.[1] *See* Exhibit 1 (Order of the Immigration Judge). The immigration judge found that the government met their burden by clear and convincing evidence in demonstrating Petitioner is a significant flight risk and denied bond to Petitioner. *See id.* Petition had until May 29, 2026 to appeal the adverse bond decision to the Board of Immigration Appeals (BIA). *Id.* However, Petitioner did not file an appeal.

On June 18, 2026, Petitioner filed a Motion for Reconsideration of Continued Detention and Request for Release with the Court. ECF No. 8. In it, Petitioner conceded she already had a bond hearing before an immigration court and was denied bond. *See id.* On July 10, 2026, this Court denied Petitioners' motion, explaining Petitioner's motion should be brought before the immigration judge, not the federal court. *See* ECF No. 10. Petitioner subsequently filed a Motion for Bond Redetermination with the immigration court on July 23, 2026. *See* Exhibit 2 (Excerpt of Petitioner's Motion for Bond Redetermination). On July 28, 2026, the immigration judge denied Petitioner's motion because Petitioner's evidence of a new sponsor, medical documentation, and letters "do not amount to materially changed circumstances sufficient for an additional hearing pursuant to 8 CFR 1003.19(e)." *See* Exhibit 3.

Petitioner's final removal order is pending appeal with the BIA. *See* Exhibit 4 (Removal Order dated 4/13/2026, BIA Filing Receipt, and BIA Briefing Schedule). As of this filing, neither the government nor the Petitioner has filed their respective briefs with the BIA.[2] Petitioner remains mandatorily detained 8 U.S.C. § 1225(b)(1) pending

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[1] Petitioner's bond hearing was initially set for April 27, 2026 and continued so that Petitioner could submit evidence from her sponsor. *See* ECF No. 11-3 at 1.

[2] According to the BIA Briefing Schedule in Exhibit 4, the parties' briefing was due on July 8, 2026.

the conclusion of her removal proceedings. Petitioner now files an amended habeas petition requesting her immediate release or another bond hearing before the immigration court. *See* ECF No. 11.

III. ARGUMENT

In the amended petition, Petitioner challenges the length of her detention and the immigration judge's conclusion that she is a flight risk. *See generally* ECF No. 11. Petitioner additionally disagrees with the immigration judge denying her motion for a new bond hearing after presenting evidence of a new sponsor. *See id.* at 8. These arguments are well within the experience and expertise of the Board of Immigration Appeals and not properly presented in the first instance to the Federal District Court. The Court should ensure Petitioner properly exhausts 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 not appealed the result of her bond hearing held pursuant to 8 U.S.C. § 1226(a). Accordingly, the Court should dismiss 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 BIA are final, except for those reviewed by the Attorney General. 8 C.F.R. § 1003.1(d)(7).

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

"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). Moreover, a "petitioner cannot obtain review of procedural errors in the administrative process that were not raised before the agency merely by alleging that every such error violates due process." *Vargas v. INS*, 831 F.3d 906, 908 (9th Cir. 1987); *see also Sola v. Holder*,

720 F.3d 1134, 1135-36 (9th Cir. 2013) (declining to address a due process argument that was not raised below because it could have been addressed by the agency).

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

Waiving exhaustion would also encourage other detainees to bypass the BIA and directly appeal from the immigration judge to federal district court. *See Aden*, 2019 WL 5802013, at *2. Individuals, like Petitioner, would have little incentive to seek relief before the BIA if this Court permits review here. And allowing a skip-the-BIA-and-go-straight-to-federal-court strategy would needlessly increase the burden on district courts. *See Bd. of Tr. of Constr. Laborers' Pension Trust for S. Calif. v. M.M. Sundt Constr. Co.*, 37 F.3d 1419, 1420 (9th Cir. 1994) ("Judicial economy is an important purpose of exhaustion requirements."); *see also Santos-Zacaria v. Garland*, 598 U.S. 411, 418 (2023) (noting "exhaustion promotes efficiency"). If the immigration judge erred, this Court should allow the administrative process to correct itself. *See id.*

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

Because Respondent has complied with this Court's previous order to provide Respondent with a bond hearing and Petitioner has not exhausted her administrative remedies, this matter should be dismissed.

IV. ORAL ARGUMENT

Additionally, for the Oral Argument set on September 8, 2026, Respondents hereby inform the Court that Petitioner requires an interpreter who speaks the Farsi language for the hearing. Respondents will also arrange for Petitioner's in-person appearance.

V. CONCLUSION

For the reasons stated herein, Respondent respectfully requests that the Court deny the Petitioner's requests for relief on the merits.

Dated: August 25, 2026

Respectfully submitted,

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