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

14 HENRI BA,

15  
16 Petitioner,

17 v.

18 TODD LYONS, et al.,

19 Respondents.

Case No.: 25-cv-2871-CAB-BJW

**RESPONDENTS' SUPPLEMENTAL  
HABEAS RETURN AND  
OPPOSITION TO *EX PARTE*  
APPLICATION FOR TEMPORARY  
RESTRAINING ORDER (ECF NO.  
2)**

20 This Court entered an order on October 29, 2025, granting the Parties' joint  
21 request for an extension of time for Respondents to respond to Petitioner's habeas  
22 petition by November 3, 2025. ECF No. 7. On October 31, 2025, Petitioner was notified  
23 that his requested custody determination hearing by an immigration judge ("bond  
24 hearing") was scheduled for November 6, 2025. ECF No. 8, Ex. A. On October 31,  
25 2025, Respondents sought an additional extension of time to allow for Petitioner's bond  
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1 hearing to occur, which could possibly resolve all the issues presented in the habeas  
2 petition. ECF No. 8. While waiting for the Court to rule on Respondents' opposed  
3 motion for extension of time, out of an abundance of caution, Respondents filed their  
4 return to the habeas petition and application for temporary restraining order on  
5 November 3, 2025. ECF No. 10. Shortly after the filing, the Court granted Respondents'  
6 motion for extension of time through and including November 13, 2025. ECF No. 11.  
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9       Petitioner was successful at his November 6 bond hearing where the immigration  
10 judge ordered his release on a \$5,000 bond. Ex. A, Order of the Immigration Judge.  
11 While Petitioner may object that this is not release on his own recognizance, an alien  
12 with no lawful status is in no way entitled to dictate the terms of his release. Because  
13 an immigration judge has ordered his release, Petitioner's habeas petition seeking  
14 release from custody is moot and should be dismissed.<sup>1</sup>  
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17       If Petitioner disagrees with the terms of the immigration judge's bond amount or  
18 other conditions, he is afforded an opportunity to appeal, which he preserved. Ex. A; 8  
19 C.F.R. § 1236.1(d)(3). Therefore, in the alternative, the habeas petition should be  
20 dismissed for failure to exhaust administrative remedies. Likewise, the TRO application  
21 should be dismissed. Notably, Department of Homeland of Security (DHS) waived  
22 appeal of the immigration judge's decision. Ex. A. As such, DHS is not standing in the  
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27 <sup>1</sup> Petitioner seeks immediate release either under habeas or an injunctive order, as well  
28 as an order enjoining Respondents from re-detaining Petitioner without a pre-  
detention hearing before an Immigration Judge. ECF No. 1, Prayer for Relief.

1 way of Petitioner’s release if Petitioner chooses to comply with the terms of the  
2 immigration judge’s bond order and leave detention.

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4 ARGUMENT

5 There is no “case” or “controversy” when an issue is moot. “[T]he question of  
6 mootness is . . . one which a federal court must resolve before it assumes jurisdiction.”  
7 *North Carolina v. Rice*, 404 U.S. 244, 246 (1971). “A case becomes moot – and  
8 therefore no longer a Case or Controversy for purposes of Article III – when the issues  
9 presented are no longer live or the parties lack a legally cognizable interest in the  
10 outcome.” *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013) (internal quotation marks  
11 and citations omitted). The Supreme Court has routinely cautioned that a case is moot  
12 “if an event occurs while a case is pending on appeal that makes it impossible for the  
13 court to grant ‘any effectual relief whatever’ to a prevailing party.” *Church of*  
14 *Scientology of Cal. v. United States*, 506 U.S. 9, 12 (1992). Thus, even a once-justiciable  
15 case becomes moot and must be dismissed “when the issues presented are no longer  
16 ‘live’ or the parties lack a legally cognizable interest in the outcome.” *Powell v.*  
17 *McCormack*, 395 U.S. 486, 496 (1969).

18  
19 An individual may seek habeas relief under 28 U.S.C. § 2241 if he or she is “in  
20 custody” under federal authority “in violation of the Constitution or laws or treaties of  
21 the United States.” 28 U.S.C. § 2241(c). Such habeas relief is available to challenge  
22 only the legality or duration of confinement. *Pinson v. Carvajal*, 69 F.4th 1059, 1067  
23 (9th Cir. 2023); *Crawford v. Bell*, 599 F.2d 890, 891 (9th Cir. 1979); *Dep’t of Homeland*  
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1 *Security v. Thuraissigiam*, 591 U.S. 103, 117 (2020) (The writ of habeas corpus  
2 historically “provide[s] a means of contesting the lawfulness of restraint and securing  
3 release.”). Thus, now that Petitioner may end his detention by complying with the terms  
4 of his bond, there is no remaining issue for this Court to review and grant “any effectual  
5 relief.” *Church of Scientology of Cal.*, 506 U.S. at 12; *see also Picrin-Peron v. Rison*,  
6 930 F.2d 773, 775 (9th Cir. 1991).  
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9       Petitioner does not allege any collateral consequences if his habeas petition is  
10 rendered moot. To the contrary, “[i]t is clear that the direct consequences of the action  
11 challenged here can no longer be remedied in habeas” and his claim is moot. *Chan v.*  
12 *Sec’y of Homeland Sec.*, No. 16-01709-VBF (GJS), 2016 WL 4204596, at \*2 (C.D. Cal.  
13 Aug. 5, 2016) (quoting *Cox v. McCarthy*, 829 F.2d 800, 803 (9th Cir. 1987)); *Ying Jiao*  
14 *Ye v. Nordheim*, No. 2:18cv10072 JVS (KES), 2019 WL 979245, at \*3 (C.D. Cal. Feb.  
15 27, 2019) (“[H]abeas petitions that raise claims that are fully resolved by release from  
16 custody are rendered moot upon the petitioner’s release.”); *cf. Hoang Trinh v. Homan*,  
17 333 F.Supp.3d 984, 990 (C.D. Cal. 2018) (release by ICE without a bond hearing did  
18 not moot Petitioner’s claim of entitlement to a bond hearing).  
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22       Here, Petitioner received an individualized hearing before an immigration judge  
23 and can now leave detention any time he chooses to pay his bond and comply with any  
24 terms of release. If Petitioner seeks to challenge the bond amount or the terms of his  
25 bond, this habeas petition is not the proper mechanism as a matter of law. The Court  
26 should either dismiss the habeas petition or stay the proceedings until the petitioner has  
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1 exhausted remedies, unless exhaustion is excused. *Leonardo v. Crawford*, 646 F.3d  
2 1157, 1160 (9th Cir. 2011). The Ninth Circuit “requires, as a prudential matter, that  
3 habeas petitioners exhaust available judicial and administrative remedies before seeking  
4 [habeas relief]. *Ortega-Rangel v. Sessions*, 313 F.Supp.3d 993, 1003 (N.D. Cal. 2018).  
5 In some circumstances, none of which apply here, “[c]ourts may nonetheless waive the  
6 prudential exhaustion requirement.” *Id.* In opposing the exhaustion argument, Petitioner  
7 speculated that if bond was granted, “it is almost certain Respondents would invoke the  
8 stay of Petitioner’s release on any bond, and Petitioner’s liberty would continue to be  
9 erroneously deprived.” ECF No. 9 at 5. Petitioner was wrong. The Respondents waived  
10 appeal. Ex. A.  
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14 To the extent Petitioner is dissatisfied with the custody determination, including  
15 the bond amount and any terms of release, he may appeal to the Board of Immigration  
16 Appeals (BIA).<sup>2</sup> 8 C.F.R. § 1236.1(d)(3). Moreover, Petitioner does not have to  
17 remain in detention while appealing; he can pay the bond amount and comply with the  
18 terms of release while pursuing his administrative remedy of appeal to the BIA. 8  
19 C.F.R. § 1236.1(d)(4).  
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25 <sup>2</sup> As of the time of filing, Respondents do not have a copy of the immigration judge’s  
26 written decision. Based on an audio recording of the bond hearing, the immigration  
27 judge found that there were changed circumstances justifying Petitioner’s re-detention  
28 and a forthcoming written order will explain that finding. Respondents will update the  
Court when that decision is available.

1 Accordingly, this Court should dismiss Petitioner's pending habeas petition as  
2 moot. Or, in the alternative, dismiss the habeas petition for failure to exhaust  
3 administrative remedies.  
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5 This 12th day of November, 2025.

6 Respectfully submitted,  
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