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9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 MOHAMED ADOW HUSSEIN,
12

13 Petitioner,

14 v.

15 MARKWAYNE MULLIN, et al.,¹
16

17 Respondents.
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Case No.: 26-cv-1417-BAS

RESPONSE TO PETITION

19 Petitioner has filed a habeas petition under 28 U.S.C. § 2241. While the government
20 asserts that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b) (*See*
21 *Jennings v. Rodriguez*, 583 U.S. 281 (2018)), Respondents acknowledge that courts in this
22 District have inferred a constitutional right against prolonged mandatory detention. Taking
23 into consideration those prior rulings and the length of time Petitioner has been in custody,
24 the government concedes that this Court should order that Petitioner receive a bond
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26
27 ¹ Pursuant to Fed. R. Civ. Proc. 25(d), Department of Homeland Security (DHS)
28 Secretary Markwayne Mullin is automatically substituted for former DHS Secretary Kristi Noem as the proper defendant.

1 hearing, where the government would bear the burden of proof of establishing, by clear
2 and convincing evidence, that Petitioner poses a danger to the community or a risk of flight.
3 *See Sadeqi v. LaRose*, No. 25-cv-2587-RSH-BJW, 2025 WL 3154520 (S.D. Cal. Nov. 12,
4 2025); *Gao v. LaRose*, No. 25-cv-2084-RSH-SBC, 2025 WL 2770633 (S.D. Cal. Sept. 26,
5 2025).

6 Respondents reject and vigorously dispute Petitioner claim that local IJs are
7 compromised such that this Court should grant immediate release or micromanage the
8 custody redetermination process. This level of district court involvement, in addition to
9 being unwarranted and unnecessary, severely undermines administrative exhaustion
10 principles. Petitioner has administrative remedies available if he disagrees with the IJ's
11 bond ruling. The proper avenue for any grievance in the event of bond denial is to utilize
12 the administrative scheme and appeal his bond denial to the Board of Immigration
13 Appeals (BIA).

14 The BIA is an appellate body within the Executive Office for Immigration Review
15 and possesses delegated authority from the Attorney General. 8 C.F.R. §§ 1003.1(a)(1),
16 (d)(1). The BIA is "charged with the review of those administrative adjudications under
17 the [Immigration and Nationality Act (INA)] that the Attorney General may by regulation
18 assign to it," including immigration judge custody determinations. 8 C.F.R. §§
19 1003.1(d)(1), 236.1, 1236.1. The BIA not only resolves particular disputes before it, but
20 is also directed to, "through precedent decisions, . . . provide clear and uniform guidance
21 to [the Department of Homeland Security], the immigration judges, and the general public
22 on the proper interpretation and administration of the [INA] and its implementing
23 regulations." 8 C.F.R. § 1003.1(d)(1). Decisions rendered by the BIA are final, except for
24 those reviewed by the Attorney General. 8 C.F.R. § 1003.1(d)(7).

25 "District Courts are authorized by 28 U.S.C § 2241 to consider petitions for habeas
26 corpus." *Castro-Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001), *abrogated on other*
27 *grounds by Hernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006). The Ninth Circuit
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1 “require[s], as a prudential matter, that habeas petitioners exhaust available judicial and
2 administrative remedies before seeking relief under § 2241.” *Id.* Specifically, “courts may
3 require prudential exhaustion if (1) agency expertise makes agency consideration
4 necessary to generate a proper record and reach a proper decision; (2) relaxation of the
5 requirement would encourage the deliberate bypass of the administrative scheme; and (3)
6 administrative review is likely to allow the agency to correct its own mistakes and to
7 preclude the need for judicial review.” *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir.
8 2007) (cleaned up).

9 Here, agency expertise is required to determine immigration bond decisions.
10 “[T]he BIA is the subject-matter expert in immigration bond decisions[.]” *Aden v.*
11 *Nielsen*, No. C18-1441RSL, 2019 WL 5802013, at *2 (W.D. Wash. Nov. 7, 2019); *see*
12 *also Delgado v. Sessions*, No. C17-1031-RSL-JPD, 2017 WL 4776340, at *2 (W.D.
13 Wash. Sept. 15, 2017) (noting a denial of bond to an immigration detainee was “a
14 question well suited for agency expertise”). Allowing a skip-the-BIA-and-go-straight-to-
15 federal-court strategy would needlessly increase the burden on district courts. *See Bd. of*
16 *Tr. of the Constr. Laborers’ Pension Trust for S. Cal. v. M.M. Sundt Constr. Co.*, 37 F.3d
17 1419, 1420 (9th Cir. 1994) (“Judicial economy is an important purpose of exhaustion
18 requirements.”) (citation omitted); *Santos-Zacaria*, 598 U.S. at 418 (noting “exhaustion
19 promotes efficiency”). As this Court noted, if the immigration judge errs, the district court
20 should allow the administrative process to correct itself. *See Sharma v. Archambault*,
21 2026 WL 381611, at *2 (S.D. Cal. February 11, 2026) (“Exhaustion would protect
22 administrative authority and promote judicial efficiency. Release on bond falls within the
23 agency’s discretionary power and falls within its special expertise.”).

24 Moreover, the government vigorously disputes Petitioner’s contention that
25 Immigration Judges in this district are biased or compromised. Petitioner’s “trend
26 evidence” lacks foundation and relevance and is replete with inadmissible opinions and
27 hearsay. It wholly fails to establish that government procedures governing bond
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1 proceedings violate due process. *Rodriguez Diaz*, 53 F.4th at 1189, 1213 (quoting *Ching*
2 *v. Mayorkas*, 725 F.3d 1149, 1156 (9th Cir. 2013) (“It is process that the procedural due
3 process right protects, not the outcome.”)).

4 Significantly, despite Petitioner’s assertion that all IJS are compromised by fear of
5 termination, counsel cites no habeas case from this district where the Court found a local
6 IJ deliberately flouted a court order to hold a bona fide bond hearing or where DHS failed
7 to comply with an immigration judge’s order granting bond following a district court
8 order. To the contrary, numerous habeas cases in this district confirm that IJs have
9 complied in good faith with this court’s orders, conducted individualized bond hearings,
10 and granted bond in many cases, often on a very quick turnaround. *See, e.g., Ramirez*
11 *Ceja v. Divver*, No. 26-cv-00254-DMS-DEB, ECF No. 6 (S.D. Cal. Feb. 19, 2025) (Joint
12 Status Report reflecting immigration judge granted bond at Otay Mesa Immigration
13 Court); *Prabhpreet v. LaRose*, No. 26-cv-00393-JES-SBC, ECF No. 10 (S.D. Cal. Feb.
14 19, 2026) (same); *I.E. v. Casey*, No. 25-cv-03227-DMS-DDL, ECF No. 10 (S.D. Cal.
15 Dec. 16, 2025) (same for Imperial Regional Detention Facility); *Gautam v. Correctional*
16 *Corp. of Am.*, No. 25-cv-03600-JES-DEB, ECF No. 8 (S.D. Cal. Jan. 9, 2026) (Notice of
17 Compliance); *Alemanji v. Mayorkas*, No. 25-cv-03499-JO-DDL, ECF No. 13 (S.D. Cal.
18 Dec. 23, 2025) (Notice Confirming Bond Hearing); *Xie v. LaRose*, No. 26-cv-00529-
19 RBM-DDL (Notice of Compliance; bond granted)(S.D. Cal. March 4, 2026) *Ding v.*
20 *LaRose*, 26-cv-01117-TWR-JLB (bond granted)(S.D. Cal. March 4, 2026); *Jacinto*
21 *Rodriguez v. LaRose*, 26-cv-00693-BAS-DEB (S.D. Cal. Feb. 24, 2026) (bond granted);
22 and *Lorenzo v. LaRose*, 26cv1041-LL (S.D. Cal. March 2, 2026) (bond granted); 26 CV
23 1338 JO VET.) (bond granted); *Luis Alberto Corado-Serrano v. Bondi*, 26-CV-1338-JO
24 VET (S.D. Cal. March 27, 2026) (bond granted); and *Paniagua-Padilla v. Bondi*, 26-cv-
25 01332-JO-VET (S.D. Cal. April 1, 2026) (bond granted).

1 Based on this record, there is no reason for the Court to take any action beyond
2 ordering a bond hearing.

3 DATED: March 31, 2026

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