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

PAPE SOW,

Petitioner,

v.

OTAY MESA DETENTION CENTER
WARDEN, et al.,

Respondents.

Case No.: 3:26-cv-02398-AGS-MMI

**RESPONSE TO PETITIONER'S
AMENDED PETITION FOR
WRIT OF HABEAS CORPUS
(ECF NO. 13)**

I. Introduction and Factual Background

This is the second habeas petition that Petitioner has filed to challenge his immigration detention which began when he sought admission into the United States on October 28, 2025. His first habeas petition¹ was granted on March 26, 2026² and Petitioner was provided a bond hearing on April 3, 2026. Bond was denied after the immigration judge (IJ) determined that the government met its burden of establishing Petitioner is a flight risk by clear and convincing evidence. Petitioner appealed the IJ's bond determination to the Board of Immigration Appeals (BIA) and his appeal remains

¹ Petition (ECF No. 1), 3:26-cv-01115-AGS-MMP

² Order Granting Habeas Petition and Ordering Bond Hearing (ECF No. 8), 26-cv-01115-AGS-MMP

1 pending. Petitioner now attempts to improperly challenge the IJ's bond determination
2 through the present habeas action. However, his appeal to the BIA remains pending,
3 which means he has not exhausted his administrative remedies before seeking habeas
4 relief from this Court. Additionally, he has failed to establish that his detention has
5 become unreasonably prolonged. His habeas petition should be dismissed accordingly.

6 **II. Petitioner was Provided a Constitutionally Sufficient Bond Hearing on**
7 **April 3, 2026**

8 Petitioner was provided a bond hearing on April 3, 2026. After full consideration
9 of the evidence presented, the IJ denied bond, finding "[t]he government met its burden
10 of demonstrating that [Mr. Sow] is a flight risk[.]" (Order of the IJ, attached as *Exhibit*
11 *1*). The basis for the IJ's denial of bond is set forth in his order (*Exhibit 1*). And based
12 on counsel's review of the audio recording from bond hearing,³ the IJ denied bond in
13 part because Petitioner, who was ordered removed from the United States on February
14 11, 2026, violated the terms of his prior ATD by leaving the United States without
15 authorization and by failing to report for mandatory ICE check-ins. Petitioner's counsel
16 did not dispute these facts at the bond hearing. He instead argued there are mitigating
17 factors, but the immigration judge ultimately determined that the government met its
18 burden of establishing that Petitioner is a flight risk by clear and convincing evidence.

19 Petitioner now argues that the IJ "applied a double standard and relied on
20 evidence that was not in the record" (ECF No. 13 at 2). However, he did not raise these
21 objections during the bond hearing. Nor did he dispute the government's evidence (he
22 instead argued there were mitigating factors). Accordingly, the Court should reject
23 Petitioner's attempt to use this habeas proceeding to raise arguments that he failed to
24 raise at the bond hearing.

25 Further, Petitioner appealed the immigration judge's bond decision to the Board
26 of Immigration Appeals, and his appeal remains pending. It is well established that

27 _____
28 ³ To the extent the Court deems it necessary, Respondents are happy to provide a copy
of the audio recording to the Court.

1 habeas petitioners must exhaust all available administrative remedies before seeking
2 habeas relief in federal court. *Rojas-Garcia v. Ashcroft*, 339 F.3d 814, 819 (9th Cir.
3 2003) (“The exhaustion requirement avoids premature interference with the agency's
4 processes and helps to compile a full judicial record”). “When a petitioner does not
5 exhaust administrative remedies, a district court ordinarily should either dismiss the
6 petition without prejudice or stay the proceedings until the petitioner has exhausted
7 remedies[.]” *Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011).

8 Petitioner has already been afforded a constitutionally sufficient bond hearing to
9 contest his detention, and his only apparent issue with that hearing is that the IJ did not
10 rule in his favor. But mere disagreement with the outcome of the hearing, disguised as
11 alleged constitutional issues, does not give rise to a cognizable habeas claim. Rather, to
12 the extent Petitioner challenges the IJ’s bond determination, the proper remedy lies in
13 the administrative appeal process before the BIA. Petitioner’s appeal to the BIA remains
14 pending and he failed to exhaust administrative remedies by filing the present action
15 while that appeal remains pending.

16 **III. Petitioner’s Detention has not Become Prolonged**

17 Petitioner’s reliance on *Miri v. Bondi*⁴ and *Zheng v. Rokosky*⁵ for his argument
18 that the Court should order his immediate release is misplaced because the petitioners
19 in those cases were not arriving aliens like Mr. Sow in the present case. That distinction
20 is critical because courts have repeatedly recognized that arriving aliens, who are
21 subject to mandatory detention, are in a fundamentally different legal position than
22 those who are detained under other statutory provisions.

23 As an arriving alien, Petitioner is subject to mandatory detention under 8 U.S.C.
24 § 1225(b)(1), which does not “impose[] any limit on the length of detention” or “say[]
25 anything whatsoever about bond hearings.” *Jennings v. Rodriguez*, 583 U.S. 281, 297
26

27 ⁴ No. 5:26-CV-00698-MEMF-MAR, 2026 WL 622302, at *6 (C.D. Cal. Mar. 5, 2026)

28 ⁵ No. 26-CV-01689, 2026 WL 800203 (D.N.J. Mar. 23, 2026)

(2018). While courts generally “become extremely wary of permitting continued custody absent a bond hearing” once detention continues past a year, Petitioner’s current detention falls significantly short of the length courts have found to raise due process concerns. *Sibomana v. LaRose*, No. 22-cv-933-LL-NLS, 2023 WL 3028093, at *4 (S.D. Cal. April 20, 2023) (citation omitted); *see also Durand v. Allen*, No. 3:23-cv-00279-RBM-BGS, 2024 WL 711607, at *5 (S.D. Cal. Feb. 21, 2024) (detained over two-and-a-half years); *Sanchez-Rivera v. Matuszewski*, No. 22-cv-1357-MMA (JLB), 2023 WL 139801, at *6 (S.D. Cal. Jan. 9, 2023) (three years); *Yagao v. Figueroa*, No. 17-cv-2224-AJB-MDD, 2019 WL 1429582, at *2 (S.D. Cal. March 29, 2019) (two years).

IV. Conclusion

For the foregoing reasons, Respondents respectfully request that this habeas petition be dismissed.

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