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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
2003 W. ADAMS AVE,
EL CENTRO, CA 92243

In the Matter of:

HATEM MOHAMED S. E. A. ABDOU

Petitioner,

V.

Gregory J. Archambeault., Acting Field
Office Director for Immigration and Customs
Enforcement and Removal Operations in
San Diego;

TODD M. LYONS, Acting Director of the U.S.
Immigration and Customs Enforcement;

JEREMY CASEY , Warden of Imperial
Regional Detention Center;

MARKWAYNE MULLIN, Secretary of U.S.
Department of Homeland Security;

PAM BONDI, United States Attorney General;
US DEPARTMENT OF HOMELAND
SECURITY;

US IMMIGRATION AND CUSTOM
ENFORCEMENT

Respondents.

Case No.: 26-cv-02474-JLS-BJW

PETITIONER'S REPLY TO
RESPONDENTS' RETURN
TO HABEAS PETITION

PETITIONER'S REPLY TO RESPONDENTS RETURN TO HABEAS

INTRODUCTION

Respondents' Answer to Habeas Petition concedes the critical facts: Petitioner Hatem Mohamed S. E. A. Abdou received a bond hearing on April 13, 2026, before Immigration Judge ("IJ") Stuart Zander, who denied bond with no reasoning beyond the bare conclusion that Petitioner was a "[r]isk of [f]light as stated on the record." Ex. 4 (IJ Bond Order). Respondents' only substantive argument is that Petitioner must first exhaust his administrative remedies by appealing to the Board of Immigration Appeals ("BIA") before this Court may act.

That argument fails for the same reasons courts in this Circuit have repeatedly rejected it in analogous cases. The BIA appeal deadline does not run until May 13, 2026, and requiring Petitioner to wait through a BIA process that currently resolves non-citizen appeals favorably in only a small fraction of cases would produce irreparable harm in the form of continued unlawful detention. Moreover, the IJ's one-sentence bond order—identical in form to those struck down in this district and across the Ninth Circuit—reflects a legally deficient process that violated Petitioner's Fifth Amendment due process rights. Respondents do not even attempt to defend the adequacy of the bond hearing on the merits.

For these reasons, the Court should GRANT the petition and ORDER Petitioner's immediate release subject to reasonable conditions of supervision.

ARGUMENT

I. THIS COURT HAS JURISDICTION OVER PETITIONER'S CLAIMS.

Respondents argue at length that 8 U.S.C. §§ 1252(g) and 1252(b)(9) strip this Court of jurisdiction. This argument misreads the scope of those provisions and conflicts with binding Ninth Circuit authority.

Section 1252(g) strips jurisdiction only over three discrete actions: the Attorney General's decision to "commence proceedings, adjudicate cases, or execute removal orders." *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999). Petitioner does not challenge any of those decisions here. He challenges the constitutional adequacy of the bond hearing process itself—a claim that sounds squarely in habeas. District courts in this Circuit retain habeas jurisdiction over "constitutional claims or questions of law" arising from immigration custody determinations. *Singh v. Holder*, 638 F.3d 1196, 1202 (9th Cir. 2011); *Calderon-Rodriguez v. Wilcox*, 374 F. Supp. 3d 1024, 1031 (W.D. Wash. 2019). Indeed, "claims that the discretionary process itself was constitutionally flawed are cognizable in federal court on habeas because they fit comfortably within the scope of § 2241." *N.A. v. Warden*, No. 5:25-cv-03007-CV-MBK, 2026 WL 734587, at *6 (C.D. Cal. Feb. 20, 2026) (internal quotation marks omitted).

Nor does § 1252(b)(9)'s so-called "zipper clause" apply. That provision channels judicial review of questions arising from removal proceedings into the petition-for-review process before courts of appeals. But as the Ninth Circuit has explained, § 1252(b)(9) is "a judicial channeling provision, not a claim-barring one." *Aguilar v. ICE*, 510 F.3d 1, 11 (1st Cir. 2007). Constitutional challenges to the bond process are not challenges to removal proceedings themselves. Petitioner's

habeas petition challenges his continued detention without a constitutionally adequate bond hearing—a claim that requires release, not merely review of a removal order. This Court therefore has jurisdiction. See *Perez Velasquez v. Bondi*, No. 26-cv-01759-GPC-DDL, ECF No. 11, at 4-5 (S.D. Cal. Apr. 16, 2026) (retaining jurisdiction over identical constitutional bond hearing challenge).

II. EXHAUSTION SHOULD BE WAIVED BECAUSE APPEAL TO THE BIA WOULD BE FUTILE AND WOULD CAUSE IRREPARABLE HARM.

Respondents' primary argument is that Petitioner must appeal the Immigration Judge's bond denial to the BIA before seeking habeas relief. Even assuming the prudential exhaustion requirement applies here, waiver is warranted under multiple *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) factors.

A. Administrative Remedies Are Futile.

A court may waive the prudential exhaustion when 1) administrative remedies are inadequate or not efficacious"; (2) "pursuit of administrative remedies would be a futile gesture"; (3) "irreparable injury will result"; or (4) "the administrative proceedings would be void." *Laing*, 370 F.3d at 1000. All conditions are met here. The BIA has been dramatically restructured over the past year in ways that render meaningful relief from that body a near impossibility for non-citizen appellees in bond proceedings. The BIA now agrees with the Department of Homeland Security in approximately 97% of cases, with recent figures for 2026 approaching 90%. See Ximena Bustillo & Rahul Mukherjee, NPR (Mar. 20, 2026) available at <https://www.npr.org/2026/03/20/nx-s1-5707535/trump-immigration-detention-appeals-board-deportation>. The Board, formerly comprised of 26 members with bipartisan balance, now sits with only 15 members—13 of whom were appointed by the current administration. *Id.*

The Court in *Perez Velasquez v. Bondi*, a case factually and legally analogous to this one decided in this district less than two weeks ago, found this same evidence sufficient to support a finding that the BIA is "unlikely to provide Petitioner with any efficacious relief" and that waiver of exhaustion was warranted. No. 26-cv-01759-GPC-DDL, ECF No. 11, at 6. Respondents here have offered no response to this evidence. They cannot simply assert that Petitioner must appeal to a body that the evidence demonstrates is overwhelmingly unlikely to grant relief.

B. Requiring Exhaustion Would Cause Irreparable Harm.

Exhaustion may also be waived when "irreparable injury will result." *Laing*, 370 F.3d at 1000. Courts in this Circuit consistently find irreparable injury in cases involving continued detention pending a potentially months-long BIA appeal following a constitutionally deficient bond hearing. See *W.T.M. v. Bondi*, No. 2:25-CV-02428-RAJ-BAT, 2026 WL 262583, at *3 (W.D. Wash. Jan. 30, 2026); *C.A.R.V. v. Wofford*, No. 1:25-CV-01395-JLT-SKO, 2026 WL 241823, at *5 n.7 (E.D. Cal. Jan. 29, 2026).

Petitioner here faces the prospect of additional months of detention while awaiting BIA review in a case where the IJ provided no reasoning beyond a bare flight-risk label. The inherent delay in the BIA process, combined with the near-certain futility of relief, constitutes irreparable injury. *Soriano v. Hernandez*, 2:26-cv-00900-DGE, ---F. Supp. 3d---, 2026 WL 969764, at * 3 and 4. Moreover, Petitioner is a derivative to a meritorious claim for asylum based on his wife's 

 His wife and his three (3) children are distraught by his absence. His business and finances and his company are also stranded without his presence. Petitioner's medical condition of diabetes 2 and heart condition is not supported by the lack of medical care inside the facility supports his argument of irreparable harm. The prospect of continued indefinite detention

without any meaningful opportunity to challenge his custody status is precisely the harm that habeas is designed to remedy.

Accordingly, the Court should exercise its discretion to waive the exhaustion requirement.

III. PETITIONER'S BOND HEARING WAS LEGALLY AND CONSTITUTIONALLY DEFICIENT CAUSING HIS DETENTION TO BE UNLAWFUL UNDER 8 U.S.C. § 1226 (a) BECAUSE PETITIONER IS NOT DANGEROUS TO THE COMMUNITY AND HE IS NOT A FLIGHT RISK AS HE HAS DEEP ROOTS IN THE COMMUNITY INCLUDING A MERITORIOUS CLAIM FOR RELIEF

Respondents do not defend the adequacy of Petitioner's bond hearing on the merits. ("Petitioner makes assertions that the bond hearing was constitutionally defective without providing the Bond transcript or any other objective evidence."). This is a telling concession: Respondents offer no argument that the IJ applied the correct legal standard, considered the relevant factors, or provided reasoning adequate to satisfy due process.

The IJ's order in this case states only that bond was denied because Petitioner was a "[r]isk of [f]light as stated on the record." Ex. 4 (IJ Bond Order). There is no indication that the IJ weighed—or even considered—any of the nine factors set forth in *In re Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006), which govern flight-risk determinations under 8 U.S.C. § 1226(a). Courts in this Circuit may review an IJ's bond denial for abuse of discretion and must determine whether the IJ "applied the correct legal standard." *Loba L.M. v. Andrews*, No. 1:25-CV-00611-JLT-SAB, 2026 WL 710307, at *5 (E.D. Cal. Mar. 13, 2026) (quoting *Martinez v. Clark*, 124 F.4th 775, 784 (9th Cir. 2024)).

An IJ's bare, boilerplate flight-risk conclusion—without any discussion of the *Guerra* factors or the evidence before the court—cannot satisfy this standard. The IJ here was required to consider relevant evidence including, at minimum, Petitioner's length of residence in the United States, his family ties, employment history, immigration violations, and criminal record (if any). *Guerra*, 24 I. & N. Dec. at 40. The record before this Court does not reflect that the IJ engaged in any such analysis. Where, as here, an IJ fails to mention highly probative or potentially dispositive evidence, this Court will not credit a vague assertion that the evidence was fully considered. *Cole v. Holder*, 659 F.3d 762, 771-72 (9th Cir. 2011).

Courts in this Circuit have consistently held that bond orders with this same boilerplate language—"[r]isk of [f]light as stated on the record"—are legally and constitutionally inadequate. See *Perez Velasquez*, No. 26-cv-01759-GPC-DDL, at 10-12 (finding identical bond order language deficient); *Soriano*, 2026 WL 969764, at *5-6; *Lemus Crispin v. Bondi*, No. 1:26-CV-191 (LMB/WEF), 2026 WL 768859, at *5 (E.D. Va. Mar. 18, 2026). Due process requires that the IJ "consider the relevant evidence." *Vilchez v. Holder*, 682 F.3d 1195, 1198 (9th Cir. 2012). That requirement was not satisfied here.

Respondents' suggestion that Petitioner has not provided "objective evidence" of the bond hearing's deficiency, is meritless. The IJ's own written order is in the record. Ex. 4. It speaks for itself. No further transcript is required for this Court to determine that a one-sentence flight-risk conclusion, with no analysis of the *Guerra* factors, falls short of the legal standard. See *Perez Velasquez*, No. 26-cv-01759-GPC-DDL, at 10 (reaching same conclusion based on the IJ's written order).

IV. THE APPROPRIATE REMEDY IS PETITIONER'S IMMEDIATE RELEASE.

Having determined that Petitioner's bond hearing was legally and constitutionally inadequate, the Court should order Petitioner's immediate release subject to reasonable conditions of supervision. Federal courts have "a fair amount of flexibility" in fashioning habeas relief. *Burnett v. Lampert*, 432 F.3d 996, 999 (9th Cir. 2005). Multiple courts in this Circuit, including in this district, have ordered immediate release upon finding that an IJ provided a legally or constitutionally deficient bond hearing. See *Perez Velasquez*, No. 26-cv-01759-GPC-DDL, at 13; *Soriano*, 2026 WL 969764, at *6; *W.T.M.*, 2026 WL 262583, at *5; *Miri v. Bondi*, No. 5:26-CV-00698-MEMF-MAR, 2026 WL 622302, at *11 (C.D. Cal. Mar. 5, 2026).

The circumstances here support immediate release rather than remand for a new hearing. A remand to the same IJ—or another IJ in the same court—risks further delay and another inadequate proceeding, compounding the constitutional violation Petitioner has already suffered. Petitioner has been in ICE custody since April 2, 2026. His removal proceedings remain pending and he has not been ordered removed. There is no basis for his continued detention absent a legally adequate bond determination, and no such determination has been made.

The Court should therefore order Respondents to release Petitioner within forty-eight (48) hours under appropriate conditions of supervision pursuant to 8 C.F.R. § 241.5, and should enjoin Respondents from relocating Petitioner outside of the Southern District of California pending final resolution of this matter.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Court GRANT the petition for writ of habeas corpus and ORDER Respondents to release Petitioner from custody within forty-eight (48) hours subject to reasonable conditions of supervision.

Dated: April 29, 2026

Respectfully Submitted,

//s//, GIHAN L. THOMAS

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