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

ZULFIA KUNAKBAEVA,  
  
Petitioner,  
  
v.  
  
WARDEN, OTAY MESA DETENTION  
CENTER, et al.,  
  
Respondents.

Case No.: 3:26-cv-02791-RSH-JLB

**RESPONSE TO PETITION  
(ECF NO. 1) AND MOTION TO  
ENFORCE (ECF NO. 2)**

**I. Introduction and Background**

This is the second habeas petition that Petitioner has filed to challenge her immigration detention which began when she sought entry into the United States on December 22, 2024. The Court granted the first petition on March 2, 2026 and ordered Respondents to “arrange a bond hearing for petitioner . . . before an immigration court.”<sup>1</sup> Petitioner was provided a bond hearing on March 4, 2026. After full consideration of the evidence presented, the immigration judge determined that “DHS established by clear and convincing evidence that Respondent poses an extreme risk of flight such that no amount of bond would ameliorate the risk” and denied bond accordingly. (Order of the Immigration Judge, attached as *Exhibit 1*). Petitioner timely appealed the immigration judge’s Order to the Board of Immigration Appeals (“BIA”), and her appeal remains pending.

Petitioner now improperly seeks to challenge the immigration judge’s bond

<sup>1</sup> ORDER GRANTING PETITION FOR WRIT OF HABEAS CORPUS (ECF No. 8), Case No. 26-cv-660-RSH-JLB

1 determination via the present habeas petition which should be dismissed for two  
2 independent reasons. First, Petitioner failed to exhaust administrative remedies before  
3 filing this action because her appeal of the immigration judge’s bond determination  
4 remains pending before the BIA. Second, even if the Court were to consider the merits  
5 of this petition, the record establishes that Petitioner already received the relief to which  
6 she is entitled—a bond hearing—and she does not establish any basis for additional  
7 habeas relief.

8 **II. Petitioner Failed to Exhaust Administrative Remedies or Establish an**  
9 **Exception to the Exhaustion Requirement**

10 It is well established that habeas petitioners must exhaust all available  
11 administrative remedies before seeking habeas relief in federal court. *Rojas-Garcia v.*  
12 *Ashcroft*, 339 F.3d 814, 819 (9th Cir. 2003) (“The exhaustion requirement avoids  
13 premature interference with the agency’s processes and helps to compile a full judicial  
14 record”). “When a petitioner does not exhaust administrative remedies, a district court  
15 ordinarily should either dismiss the petition without prejudice or stay the proceedings  
16 until the petitioner has exhausted remedies[.]” *Leonardo v. Crawford*, 646 F.3d 1157,  
17 1160 (9th Cir. 2011).

18 Petitioner appealed the immigration judge’s bond determination to the BIA, and  
19 that appeal remains pending. Because the BIA has not yet issued a final decision, the  
20 administrative process remains ongoing and Petitioner’s claims remain unexhausted.  
21 Petitioner likewise fails to establish that any exception to the exhaustion requirement  
22 applies in her case. The issues she raises (whether the immigration judge complied with  
23 the Court’s prior Order and whether the bond determination was legally sufficient) are  
24 squarely within the BIA’s authority to review and remedy. Indeed, Petitioner is actively  
25 pursuing that very relief through her appeal pending with the BIA. Accordingly, the  
26 Court should either dismiss the petition or stay the present habeas proceedings until  
27 Petitioner has exhausted remedies.

28 **III. Petitioner Already Received a Constitutionally Sufficient Bond**

1           **Hearing**

2           Even if the Court were to consider the petition on the merits, it should reject  
3 Petitioner’s conclusory allegations that the immigration judge applied the wrong  
4 evidentiary standard<sup>2</sup> and did not provide “an individualized and ‘fact-specific’  
5 inquiry”<sup>3</sup> at the bond hearing on March 4, 2026. First, Petitioner acknowledges that the  
6 immigration judge applied the proper evidentiary standard, but she argues that DHS  
7 failed to meet that burden. In other words, Petitioner merely disagrees with how the  
8 immigration judge weighed the evidence, which does not give rise to a cognizable  
9 habeas claim. Instead, this is an issue for the BIA that must be resolved through the  
10 ordinary administrative review process. Second, Petitioner does not allege that any  
11 specific constitutional violation took place at her March 4, 2026 bond hearing.

12           As set forth in the immigration judge’s Order (*Exhibit 1*) and Bond Memorandum  
13 (attached as *Exhibit 2*), “DHS established by clear and convincing evidence that  
14 [Petitioner] poses an extreme flight risk such that no amount of bond would secure her  
15 presence at subsequent hearings,” and the reasoning for her decision is set forth in the  
16 Bond Memorandum (*Exhibit 2*). Petitioner does not allege that the immigration judge  
17 considered any improper factors in denying bond. Rather, she merely disagrees with the  
18 outcome which again, does not amount to a constitutional violation or provide a proper  
19 basis for habeas relief, and her petition should be denied accordingly. The Court should  
20 likewise reject Petitioner’s argument that she is entitled to relief based on the length of  
21 her detention because the remedy for such claim is a bond hearing, which she has  
22 already been given.

23           **IV. Conclusion**

24           For the foregoing reasons, Respondents respectfully request that the petition be  
25 denied.

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28 <sup>2</sup> See Petition (ECF No. 1, ¶ 13)

<sup>3</sup> See Petition (ECF No. 1, ¶ 13)

1 DATED: May 26, 2026

Respectfully submitted,

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3 United States Attorney

4 s/ Allie E. Malone  
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6 Assistant United States Attorney  
7 Attorneys for Respondents  
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