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DETAINED

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



14 **In the matter of:**

) **Case Number: 3:26-cv-02935-JES-BJW**

15)
16 **HATIM ABDEL MONGY**



17 **ABDALA BAKER**

) **PETITIONER'S RESPONSE**
) **TO ORDER TO SHOW**
) **CAUSE**

18)
19 **v.**

20)
21)
22 **CHRISTOPHER J. LAROSE,**
23 **WARDEN OF OTAY MESA**
24 **DETENTION CENTER**

) **Challenge to Unlawful**
) **Incarceration; Request for**
) **Declaratory and Injunctive Relief**

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28)
PETITIONER'S RESPONSE TO ORDER TO SHOW CAUSE

I. PETITIONER DID NOT RECEIVE A CONSTITUTIONALLY ADEQUATE BOND HEARING

1. Petitioner did not receive a constitutionally adequate bond hearing. The Immigration Judge failed to conduct a meaningful individualized assessment of whether Petitioner posed a danger or flight risk and instead offered a conclusory determination unsupported by reasoning or evidence.
2. A constitutionally adequate bond hearing requires that the government bear the burden of proof; that the burden be satisfied by clear and convincing evidence; and that the adjudicator provide an individualized determination supported by reasoned analysis, including consideration of alternatives to detention and the noncitizen's ability to pay. See *Rodriguez-Diaz v. Garland*, 53 F.4th 1189, 1206–07 (9th Cir. 2022).
3. Those requirements were not satisfied here. Petitioner has now been detained for approximately eight months without receiving a constitutionally adequate bond hearing, rendering his continued detention unlawful.
4. Although he was provided a hearing before an Immigration Judge, that proceeding failed to satisfy due process because the government was not required to meet the constitutionally mandated burden of proof, the decision relied on unsupported assertions, and the court failed to meaningfully consider alternatives to detention, Petitioner's ability to pay, and overwhelming evidence of his community ties.
5. Petitioner is a 59-year-old longtime U.S. resident with over twenty years of continuous presence. He has complied with all immigration requirements, has no significant criminal history, and has strong family and community ties, including U.S.-citizen children who depend on him for emotional and financial support.
6. Petitioner's continued detention is not only procedurally deficient, but also substantively unconstitutional. He suffers from severe and documented medical



1 conditions, including [REDACTED]
2 [REDACTED]—all of which have been
3 inadequately treated in detention. During his detention, Petitioner has experienced
4 rapid and dangerous physical deterioration, including significant weight loss and
5 lack of access to necessary specialist care.

- 6 7. Despite these extraordinary humanitarian factors, Respondents continue to detain
7 Petitioner without meaningful review of whether his continued custody is justified.
8 His prolonged detention, under these circumstances, violates the Due Process
9 Clause of the Fifth Amendment.
- 10 8. Petitioner has now fully exhausted available administrative remedies by timely
11 appealing the Immigration Judge’s custody determination and denial of relief to the
12 Board of Immigration Appeals. Because administrative review cannot remedy the
13 ongoing constitutional violations caused by his prolonged detention, habeas relief
14 is appropriate and necessary.
- 15 9. The absence of a reasoned explanation is independently sufficient to render the
16 bond determination defective. See *Rodriguez-Diaz v. Garland*, 53 F.4th 1189,
17 1206–07 (9th Cir. 2022). Courts in this District, including this Court, have required
18 that detention decisions be preceded by a procedurally adequate hearing before a
19 neutral adjudicator. See *Mustafa Anif Afshar v. Marin*, No. ED 26-cv-00308-JAK
20 (C.D. Cal. Apr. 7, 2026) (requiring a pre-detention hearing before a neutral
21 immigration judge); *Vilca Yataco v. Warden*, No. 5:25-cv-03229-JAK (C.D. Cal.
22 Jan. 16, 2026) (prohibiting re-detention absent a hearing where the government
23 proves necessity by clear and convincing evidence).
- 24 10. This Court has already recognized that detention decisions must be preceded by a
25 neutral adjudicatory process sufficient to satisfy due process.
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1 11. Even if the Court were to assume procedural compliance, the record contains no
2 evidence establishing that detention is necessary to mitigate flight risk or danger.
3 The government has failed to show any nexus between Petitioner's continued
4 detention and its purported purposes.

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6 **II. CONSTITUTIONAL CHALLENGES TO MANDATORY DETENTION**
7 **ARE PERMISSIBLE**

8 12. Petitioner challenges his prolonged detention on constitutional, not statutory
9 grounds. Although he is detained pursuant to 8 U.S.C. § 1225(b), such detention
10 remains subject to constitutional limits.

11 13. The Supreme Court has not foreclosed as-applied constitutional challenges to
12 mandatory detention. *Jennings v. Rodriguez*, 583 U.S. 281 (2018), did not resolve
13 constitutional questions. Likewise, while *Demore v. Kim*, 538 U.S. 510 (2003),
14 rejected a facial challenge, it recognized the availability of constitutional review in
15 individual cases.

16 14. Courts in this District have applied due process limitations to prolonged
17 immigration detention, including detention under § 1225(b), where no adequate
18 bond hearing has been provided.

19 15. District courts across California, including this Court, have consistently enforced
20 these constitutional limits and have recognized that prolonged detention without
21 adequate procedural safeguards cannot stand and have granted habeas relief in
22 similar circumstances. In prior habeas matters, this Court has required respondents
23 to justify continued detention through a constitutionally sufficient process and has
24 ordered relief where such justification was absent.

25 16. Likewise, this Court has repeatedly granted habeas relief and ordered immediate
26 release where detention became unlawful: In *Haghani Hafezi v. LaRose*, No. 3:26-
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1 cv-01398-CAB-JLB (S.D. Cal. Mar. 16, 2026), this Court granted a writ of habeas
2 corpus and ordered immediate release after concluding continued detention could
3 not be justified and removal was not reasonably foreseeable. In *Aliyev v. LaRose*,
4 No. 3:26-cv-01119-CAB-JLB (S.D. Cal. Mar. 12, 2026), the Court
5 likewise granted habeas relief and ordered immediate release, finding the petitioner
6 was in custody in violation of federal law and the Constitution. In *Benitez Oliva v.*
7 *Noem*, No. 3:26-cv-00493-CAB (S.D. Cal. Feb. 18, 2026), the Court
8 ordered immediate release and enjoined re-detention absent a pre-detention
9 hearing, emphasizing the need for constitutionally adequate process before
10 depriving liberty.

11 17. Supreme Court precedent reinforces these principles. In *Zadvydas v. Davis*, 533
12 U.S. 678, 690–91 (2001), the Court held that civil detention violates due process
13 when it becomes prolonged and no longer bears a reasonable relation to its purpose.
14 Where detention is untethered from its justification—particularly in the absence of
15 meaningful review—release is required.

16 18. Although *Jennings v. Rodriguez*, 583 U.S. 281 (2018), rejected certain statutory
17 interpretations, it expressly left open constitutional challenges to prolonged
18 detention. And while *Demore v. Kim*, 538 U.S. 510 (2003), upheld detention in
19 limited circumstances, it did so based on the premise of brief confinement and does
20 not authorize prolonged detention without individualized review.

21 19. Consistent with these authorities—including the prior rulings of this Court—where
22 a noncitizen has been subjected to prolonged detention without a constitutionally
23 adequate bond hearing and without evidence demonstrating necessity, the
24 appropriate remedies are immediate release or, at minimum, a prompt and
25 appropriate remedies are immediate release or, at minimum, a prompt and
26 constitutionally compliant bond hearing.
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1 20. This Court has repeatedly exercised its habeas authority to remedy unconstitutional
2 immigration detention, including in cases involving prolonged custody without
3 meaningful procedural safeguards.

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5 **III. JURISDICTION EXISTS AND EXHAUSTION IS NOT REQUIRED**

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7 21. This Court has jurisdiction over Petitioner’s constitutional claims under 28 U.S.C.
8 § 2241, which authorizes federal courts to review the legality of executive
9 detention. The writ of habeas corpus remains available to challenge unlawful
10 immigration detention, particularly where a petitioner alleges violations of due
11 process.

12 22. The Supreme Court has long recognized that habeas jurisdiction extends to
13 noncitizens challenging the legality of their detention. See *Zadvydas v. Davis*, 533
14 U.S. 678, 687 (2001) (confirming availability of habeas relief to challenge post-
15 removal-period detention); *Demore v. Kim*, 538 U.S. 510, 516–17 (2003)
16 (recognizing habeas jurisdiction over immigration detention challenges).

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18 **Exhaustion is not Required for Constitutional Challenges**

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20 23. Exhaustion of administrative remedies is not required where a petitioner raises
21 constitutional claims that the agency lacks authority to resolve. The Ninth Circuit
22 has consistently held that exhaustion is prudential—not jurisdictional—and does
23 not apply where it would be futile or inadequate.

24 24. In *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011), the Ninth Circuit
25 confirmed that due process challenges to bond procedures are properly brought in
26 habeas and do not require exhaustion where the agency cannot provide the
27 requested relief. Similarly, in *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir.
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1 2017), the court held that noncitizens may seek habeas relief to challenge
2 constitutionally deficient bond proceedings.

3 25. District courts across this Circuit have applied the same principle in prolonged
4 detention cases. Where the claim is that the process itself is unconstitutional,
5 requiring exhaustion would serve no purpose because the agency cannot cure the
6 constitutional defect.

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8 **Exhaustion is Excused Where it Would be Futile or Inadequate**

9 26. Even where exhaustion might otherwise apply, it is excused where administrative
10 remedies are inadequate or futile. See *Laing v. Ashcroft*, 370 F.3d 994, 1000–01
11 (9th Cir. 2004) (recognizing exceptions to exhaustion where remedies are
12 inadequate, futile, or where irreparable harm would result).

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14 27. Here, exhaustion is futile because Petitioner challenges the legal sufficiency of the
15 bond hearing framework itself, not merely an individual decision. The Board of
16 Immigration Appeals lacks authority to impose the constitutionally required burden
17 of proof or to restructure detention proceedings to conform to due process
18 requirements articulated in *Rodriguez-Diaz*.

19 28. Moreover, Petitioner faces ongoing and irreparable harm, including continued
20 unlawful detention and severe medical deterioration. Under such circumstances,
21 courts routinely excuse exhaustion.

22 **Courts in This District Routinely Exercise Jurisdiction Without Requiring**
23 **Exhaustion**

24 29. Courts in this District, including this Court, regularly exercise habeas jurisdiction
25 over immigration detention claims without requiring exhaustion, particularly where
26 constitutional violations are alleged.
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1 30. In *Aliyev v. LaRose*, No. 3:26-cv-01119-CAB-JLB (S.D. Cal. Mar. 12, 2026), this
2 Court exercised jurisdiction and granted habeas relief challenging the legality of
3 detention. Similarly, in *Haghani Hafezi v. LaRose*, No. 3:26-cv-01398-CAB-JLB
4 (S.D. Cal. Mar. 16, 2026), this Court granted a writ and ordered release without
5 requiring further administrative review.

6 31. And in *Benitez Oliva v. Noem*, No. 3:26-cv-00493-CAB (S.D. Cal. Feb. 18, 2026),
7 this Court granted habeas relief and ordered release, underscoring that
8 unconstitutional detention warrants immediate judicial intervention.

9 32. In *Labadze v. Warden of Otay Mesa Detention Center*, No. 3:26-cv-00862-CAB-
10 DEB, this Court granted habeas relief and ordered release after Respondents re-
11 detained Petitioner by provoking her order on supervision, explaining that giving
12 Petitioner a bond hearing now would not remedy the Fifth Amendment violation
13 she has already experienced.

14 33. These cases reflect a consistent practice: where detention violates constitutional
15 standards, federal courts do not require prolonged administrative exhaustion before
16 granting relief.

17 34. Here, Petitioner's challenge is not to the outcome of a discretionary decision, but
18 to the constitutional adequacy of the process itself. Because the agency cannot
19 remedy these constitutional violations, exhaustion is not required.

20 35. Requiring Petitioner to pursue additional administrative remedies would only
21 prolong unlawful detention and exacerbate the ongoing harm he is suffering. Under
22 settled Supreme Court and Ninth Circuit precedent, this Court should exercise
23 jurisdiction and grant relief.
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26 **VI. CONCLUSION**

27 36. Wherefore, Petitioner respectfully requests this Court to grant the following:
28 Petitioner respectfully requests that this Court Issue a Writ of Habeas Corpus

PETITIONER'S RESPONSE TO ORDER TO SHOW CAUSE



1 ordering Petitioner’s immediate release; or In the alternative, order Respondents to
2 provide a bond hearing within 7 days; Require the Government to bear the burden
3 of proof by clear and convincing evidence; Declare Petitioner’s detention
4 unconstitutional.

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6 DATED: May 27, 2026

Respectfully submitted

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10 _____
11 Naira Zohrabyan
12 Attorney for Petitioner



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CERTIFICATE OF SERVICE

I, undersigned counsel, hereby certify that on this date, I filed this **PETITIONER'S RESPONSE TO ORDER TO SHOW CAUSE**, using the CM/ECF system.

DATED: May 27, 2026

Respectfully submitted



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