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DETAINED

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10 Attorneys for Petitioner Hatim Abdel Mongy Abdala Baker
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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**

16 **HATIM ABDEL MONGY**
17 **ABDALA BAKER**



18
19 **v.**

) **PETITIONER'S REPLY TO**
) **RESPONDENTS' RETURN**

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 REPLY TO RESPONDENTS' RETURN**



**I. PETITIONER DID NOT RECEIVE A CONSTITUTIONALLY
ADEQUATE BOND HEARING**

1. Contrary to Respondents' assertion in their Return, 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.

PETITIONER'S REPLY TO RESPONDENTS' RETURN



- 1 6. Petitioner's continued detention is not only procedurally deficient, but also
2 substantively unconstitutional. He suffers from severe and documented medical
3 conditions, including prostate cancer requiring surgical intervention, a history of
4 open-heart surgeries, Type II diabetes, and hypertension—all of which have been
5 inadequately treated in detention. During his detention, Petitioner has experienced
6 rapid and dangerous physical deterioration, including significant weight loss and
7 lack of access to necessary specialist care.
- 8 7. Despite these extraordinary humanitarian factors, Respondents continue to detain
9 Petitioner without meaningful review of whether his continued custody is justified.
10 His prolonged detention, under these circumstances, violates the Due Process
11 Clause of the Fifth Amendment.
- 12 8. Petitioner has now fully exhausted available administrative remedies by timely
13 appealing the Immigration Judge's custody determination and denial of relief to the
14 Board of Immigration Appeals. Because administrative review cannot remedy the
15 ongoing constitutional violations caused by his prolonged detention, habeas relief
16 is appropriate and necessary.
- 17 9. The absence of a reasoned explanation is independently sufficient to render the
18 bond determination defective. See *Rodriguez-Diaz v. Garland*, 53 F.4th 1189,
19 1206–07 (9th Cir. 2022). Courts in this District, including this Court, have required
20 that detention decisions be preceded by a procedurally adequate hearing before a
21 neutral adjudicator. See *Mustafa Anif Afshar v. Marin*, No. ED 26-cv-00308-JAK
22 (C.D. Cal. Apr. 7, 2026) (requiring a pre-detention hearing before a neutral
23 immigration judge); *Vilca Yataco v. Warden*, No. 5:25-cv-03229-JAK (C.D. Cal.
24 Jan. 16, 2026) (prohibiting re-detention absent a hearing where the government
25 proves necessity by clear and convincing evidence).
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1 10. This Court has already recognized that detention decisions must be preceded by a
2 neutral adjudicatory process sufficient to satisfy due process.

3 11. Even if the Court were to assume procedural compliance, the record contains no
4 evidence establishing that detention is necessary to mitigate flight risk or danger.
5 The government has failed to show any nexus between Petitioner's continued
6 detention and its purported purposes.

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

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

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

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

20 15. District courts across California, including this Court, have consistently enforced
21 these constitutional limits and have recognized that prolonged detention without
22 adequate procedural safeguards cannot stand and have granted habeas relief in
23 similar circumstances. In prior habeas matters, this Court has required respondents
24 to justify continued detention through a constitutionally sufficient process and has
25 ordered relief where such justification was absent.
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1 16. Likewise, this Court has repeatedly granted habeas relief and ordered immediate
2 release where detention became unlawful: In *Haghani Hafezi v. LaRose*, No. 3:26-
3 cv-01398-CAB-JLB (S.D. Cal. Mar. 16, 2026), this Court granted a writ of habeas
4 corpus and ordered immediate release after concluding continued detention could
5 not be justified and removal was not reasonably foreseeable. In *Aliyev v. LaRose*,
6 No. 3:26-cv-01119-CAB-JLB (S.D. Cal. Mar. 12, 2026), the Court
7 likewise granted habeas relief and ordered immediate release, finding the petitioner
8 was in custody in violation of federal law and the Constitution. In *Benitez Oliva v.*
9 *Noem*, No. 3:26-cv-00493-CAB (S.D. Cal. Feb. 18, 2026), the Court
10 ordered immediate release and enjoined re-detention absent a pre-detention
11 hearing, emphasizing the need for constitutionally adequate process before
12 depriving liberty.

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

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

23 19. Consistent with these authorities—including the prior rulings of this Court—where
24 a noncitizen has been subjected to prolonged detention without a constitutionally
25 adequate bond hearing and without evidence demonstrating necessity, the
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1 appropriate remedies are immediate release or, at minimum, a prompt and
2 constitutionally compliant bond hearing.

3 20. This Court has repeatedly exercised its habeas authority to remedy unconstitutional
4 immigration detention, including in cases involving prolonged custody without
5 meaningful procedural safeguards.

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

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

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

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

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

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

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).

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

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

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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.

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. Most importantly, in *Khav v. Noem*, No. 3:26-cv-01274-JO-MMP, U.S. Southern
15 District Court granted Motion to Enforce Judgment based on inadequate bond
16 hearing.

17 34. Similarly, in *Rumiantseva v. Larose*, No. 26-cv-2214-JO-DEB, U.S. Southern
18 District Court granted Motion to Enforce Judgment based on inadequate bond
19 hearing.
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21 35. Likewise, in *Hagos v. Warden Jeremy Casey*, No. 3:26-cv-02365-JO-SBC, U.S.
22 Southern District Court granted Motion to Enforce Judgment based on inadequate
23 bond hearing.

24 36. These cases reflect a consistent practice: where detention violates constitutional
25 standards, federal courts do not require prolonged administrative exhaustion before
26 granting relief.
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1 37. Here, Petitioner's challenge is not to the outcome of a discretionary decision, but
2 to the constitutional adequacy of the process itself. Because the agency cannot
3 remedy these constitutional violations, exhaustion is not required.

4 38. Requiring Petitioner to pursue additional administrative remedies would only
5 prolong unlawful detention and exacerbate the ongoing harm he is suffering. Under
6 settled Supreme Court and Ninth Circuit precedent, this Court should exercise
7 jurisdiction and grant relief.

8 **IV. PETITIONER DID NOT RECEIVE ADEQUATE AND TIMELY**
9 **MEDICAL CARE**

10 39. Respondents' assertion that Petitioner received adequate and timely medical care
11 is contradicted by the record. The issue is not merely whether Petitioner eventually
12 received treatment; it is whether officials responded reasonably and promptly to a
13 known, serious, and worsening medical condition while Petitioner remained wholly
14 dependent on the government for care.

15 40. Civil detainees may not be subjected to conditions amounting to punishment, and
16 the government's failure to provide constitutionally adequate medical care violates
17 due process where officials fail to take reasonable available measures despite an
18 objectively serious medical need. See *Gordon v. County of Orange*, 888 F.3d 1118,
19 1124–25 (9th Cir. 2018) (medical-care claims by detainees are governed by an
20 objective deliberate-indifference standard); *Castro v. County of Los Angeles*, 833
21 F.3d 1060, 1071–73 (9th Cir. 2016) (en banc) (objective standard applies to civil
22 detainee due-process claims). Under this standard, Petitioner need not prove
23 subjective intent to punish; it is enough that the response to his serious medical
24 needs was objectively unreasonable.

25 41. The Ninth Circuit has repeatedly recognized that delay in providing necessary
26 medical care may itself establish unconstitutional indifference where the delay
27 causes needless pain, deterioration, or risk of further injury. See *Jett v. Penner*, 439
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1 F.3d 1091, 1096–98 (9th Cir. 2006) (delay and failure to respond to a serious
2 medical need supported deliberate-indifference claim); *Hallett v. Morgan*, 296 F.3d
3 732, 744 (9th Cir. 2002) (delays in medical treatment violate the Constitution when
4 they cause harm); *Estelle v. Gamble*, 429 U.S. 97, 104–05 (1976) (deliberate
5 indifference includes intentionally denying or delaying access to medical care).

6 42. Here, Petitioner began requesting medical assistance in January 2026 and
7 repeatedly alerted DHS and ICE to worsening symptoms, pain, and physical
8 decline. Despite those repeated requests, necessary specialist care and surgical
9 intervention were delayed for months. A true and correct copy of the Medical
10 Correspondence Timeline is attached as **Exhibit “A.”**

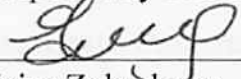
11 43. The eventual surgery does not cure the constitutional violation. On June 8, 2026,
12 after months of documented requests and deterioration, Petitioner was transported
13 from OMDC to UC San Diego Health and underwent prostate surgery. That
14 hospitalization confirms the seriousness and urgency of the condition; it does not
15 justify the preceding delay. The need for surgery demonstrates that Petitioner’s
16 complaints were not speculative or minor, and that continued detention in a
17 custodial setting exposes him to a substantial risk of irreparable harm.

18 VI. CONCLUSION

19 44. Wherefore, Petitioner respectfully requests this Court to grant the following:
20 Petitioner respectfully requests that this Court Issue a Writ of Habeas Corpus
21 ordering Petitioner’s immediate release; or In the alternative, order Respondents to
22 provide a bond hearing within 7 days; Require the Government to bear the burden
23 of proof by clear and convincing evidence; Declare Petitioner’s detention
24 unconstitutional.

25 DATED: July 8, 2026

Respectfully submitted

26 
27 Naira Zohrabyan

28 Attorney for Petitioner



CERTIFICATE OF SERVICE

I, undersigned counsel, hereby certify that on this date, I filed this
PETITIONER'S REPLY TO RESPONDENTS' RETURN, using the
CM/ECF system.

DATED: July 8, 2026

Respectfully submitted



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