TIMOTHY COURCHAINE
United States Attorney
District of Arizona
TRACY RILEY
Special Assistant United States Attorney
Arizona State Bar No. 027318
Two Renaissance Square
40 North Central Avenue, Suite 1800
Phoenix, Arizona 85004-4449
Telephone: (602) 514-7500
Fax: (602) 514-7760
Email: tracy.riley@usdoj.gov
Attorneys for Respondents

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Gislane dos Santos Matheus, Petitioner, v. Warden, *et al.* Respondents.	No. CV-26-05710-PHX-DJH **RESPONSE PETITION FOR WRIT OF HABEAS CORPUS**

Respondents, by and through undersigned counsel, hereby respond to the Petition for Writ of Habeas Corpus (Doc. 1) and the Court's Order (Doc. 3).

I. FACTUAL BACKGROUND

On December 16, 2025, Petitioner filed her first habeas petition, which was granted on March 17, 2026. *Matheus v. Unknown Party,* CV-25-04688-PHX-DJH (DMF), Doc. 13. This Court held that Petitioner was detained under 8 U.S.C. § 1226(a) and ordered a bond hearing. *Id.* On March 19, 2026, Petitioner appeared before an Immigration Judge during a bond hearing at which she presented evidence. Ex. A, Order of the Immigration Judge (Mar. 19, 2026), at 1. The Immigration Judge denied bond finding Petitioner failed to meet her burden to show that she is not a flight risk. *Id.* at 1. Petitioner did not appeal the decision. Petitioner requested another bond hearing, which was set for August 12, 2026.

Ex. B, Order of the Immigration Judge (Aug. 12, 2026). Petitioner withdrew the bond request and took a "no action" order. *Id.* at 1. Petitioner's appeal in her removal proceedings remain pending.

II. THE HABEAS PETITION SHOULD BE DENIED

A. Petitioner has not exhausted her administrative remedies.

The Ninth Circuit has held that a Petitioner should exhaust administrative remedies by appealing a bond order to the BIA prior to filing a habeas petition. *Leonardo v. Crawford,* 646 F.3d 1157, 1160 (9th Cir. 2011)(citing *Rojas-Garcia v. Ashcroft*, 339 F.3d 814, 819 (9th Cir. 2003)("a petitioner 'must exhaust administrative remedies before raising… constitutional claims in a habeas petition when those claims are reviewable by the BIA on appeal.")). If there is no exhaustion, "a district court should ordinarily either dismiss the petition without prejudice or stay the proceedings until the petitioner has exhausted remedies, unless exhaustion is excused." *Leonardo*, 646 F.3d at 1160. Where the BIA is empowered to reverse or remand a finding of an IJ, the proper avenue is to appeal first at the BIA. *Sharma v. Archembrault*, 26-C513-BAS-SBC, 2026 WL 381611, at *2 (S.D. Cal. Feb. 11, 2026). Bypassing this already established procedure encourages detainees who disagree with their bond outcome to directly appeal these determinations from the IJ to the federal district court. *Aden v. Nielsen*, No. C18-1441RSL, 2019 WL 5802013 at *2; See also *Fernandes v. Warden, Otay Mesa Det. Ctr.*, 2026 U.S. Dist. LEXIS 81800 at *6 (S.D. Cal Apr. 14, 2026).

Petitioner did not appeal the bond order finding flight risk, nor did she move forward with the August bond hearing that she had requested. Petitioner is required to exhaust her administrative remedies prior to filing a habeas petition, and the Court should dismiss the Petition as those remedies are not exhausted.

B. Petitioner's claim is not a "case or controversy".

Petitioner has already been granted a bond hearing with individualized findings, which is the proper relief as she is held under 8 U.S.C. § 1226(a). Indeed, the Immigration Judge in this case made an individualized finding that Petitioner is not entitled to bond

because of the flight risk she presents. Because the only relief Petitioner is entitled to, a bond hearing, has taken place, there is no further relief this Court can order. This Petition is moot.

Federal courts have jurisdiction only over "Cases and Controversies." *United States Parole Comm'n v. Geraghty*, 445 U.S. 388, 395 (1980) (internal quotation marks omitted). "The case or controversy requirement of Article III admonishes federal courts to avoid premature adjudication and to abstain from entangling themselves in abstract disagreements." *Cardenas-Leal v. Lucero*, 2017 U.S. Dist. LEXIS 168043 at *7–8 (D. Ariz. Sept. 7, 2017) (quoting *U.S. West, Inc. v. Tristani*, 182 F.3d 1202, 1208 (10th Cir. 1999)). To present a court with a case or controversy, a party "must demonstrate an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical." *Bishop Paiute Tribe v. Inyo Cty.*, 863 F.3d 1144, 1153 (9th Cir. 2017) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)) (internal quotation marks omitted). When a habeas petitioner has already received the "primary relief sought in his habeas corpus petition," the petitioner's case no longer presents a justiciable case or controversy. *Munoz v. Rowland*, 104 F.3d 1096, 1097–98 (9th Cir. 1997). Specifically, an immigration detainee who seeks a bond hearing and has already been granted one no longer has a justiciable claim. *Flores-Torres v. Mukasey*, 548 F.3d 708, 710 & n. 3 (9th Cir. 2008); *Mendez-Galdamez v. Gurule*, 2018 U.S. Dist. LEXIS 223610 at *3–4 (D. Ariz. May 22, 2018).

At any stage of the proceeding a case becomes moot when "it no longer present[s] a case or controversy under Article III, § 2 of the Constitution." *Spencer v. Kemna*, 523 U.S. 1, 7 (1998). The test for mootness is whether the court can give a party any effective relief if it decides the matter on the merits in their favor. *Reimers v. Oregon*, 863 F.2d 630, 632 (9th Cir. 1989). A case loses its quality as a live controversy and becomes moot when the court can no longer issue effective relief. *Feldman v. Bomar*, 518 F.3d 637, 642-43 (9th Cir. 2008); *see also Picrin-Peron v. Rison*, 930 F.2d 773, 775 (9th Cir. 1991) ("if it appears that [the court is] without power to grant the relief requested, then the case is moot.").

It is indisputable that an alien, at a minimum, *may* be detained and receive a bond hearing. 8 U.S.C. § 1226(a) (stating that an alien "may be arrested and detained pending a decision on whether the alien is to be removed"). Although Petitioner requests release as an alternative, the underlying issue is actually the result of the bond hearing.

Petitioner has already received her court-ordered bond hearing and was granted a second bond hearing, which she chose not to go forward with. The immigration judge previously found that Petitioner would not be granted release on bond under Section 1226(a) based on an individualized finding that she is a flight risk. In other words, Petitioner has already received the individualized determination that she seeks from the Court in this action, and the Court should therefore dismiss the Petition as moot.

C. Petitioner challenges the finding of flight risk, which is unreviewable.

Although Petitioner's argument is couched in language regarding due process and prolonged detention, the ultimate argument is that she disagrees with the outcome of the bond hearing. Petitioner argues that detention under § 1226(a) is prolonged and unconstitutional based on the denial of bond. However, Petitioner disagrees with the findings by the Immigration Judge and is attempting to have the decision overturned.

An immigration judge's discretionary bond determination is not reviewable in federal court. *See* 8 U.S.C. § 1226(e) ("The Attorney General's discretionary judgment regarding the application of this section shall not be subject to review. No court may set aside any action or decision by the Attorney General under this section regarding the detention of any alien or the revocation or denial of bond or parole. Petitioner argues that the burden of proof in any further bond hearing be on the government.

To the extent that an alien establishes that her detention under § 1226 has become prolonged in violation of the Due Process Clause due to articulable deficiencies in her individual bond proceedings (*i.e.*, through an as-applied challenge to his detention under INA § 236(a)), the Ninth Circuit has suggested that those procedural deficiencies are best remedied "through means short of major changes to the burden of proof". *Id.*, at 1214, citing *Miranda v. Garland*, 34 F.4th 338, 361 (4th Cir. 2022). An alien's objection to the

outcome of a bond hearing does not establish that the procedures governing the proceeding at which bond was denied violated due process. *Rodriguez Diaz*, 53 F.4th at 1189, 1213, quoting *Ching v. Mayorkas*, 725 F.3d 1149, 1156 (9th Cir. 2013) ("It is process that the procedural due process right protects, not the outcome."). In asking the District Court to review the Immigration Judge bond order and compel a second bond hearing at which the Government must bear the burden of proof (ostensibly because she disagreed with the outcome of the first court-ordered proceeding), an alien "comes close to asking [the District Court] to directly review the IJ's bond decision, a task Congress has expressly forbidden [federal courts] from undertaking." *Rodriguez Diaz*, 53 F.4th at 1212-13, quoting *Borbot v. Warden*, 906 F.3d 274, 279 (3rd Cir. 2018).

Petitioner does not identify an error in the bond redetermination process other than her disagreement at the outcome. However, these arguments are foreclosed by regulation and case law and therefore should be denied.

For the foregoing reasons, Respondents respectfully request that this Court deny the Petition for Habeas Corpus (Doc. 1).

RESPECTFULLY SUBMITTED this 21st day of August, 2026.

TIMOTHY COURCHAINE
United States Attorney
District of Arizona

s/ Tracy Riley
TRACY RILEY
Special Assistant United States Attorney
Attorneys for the United States