UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

MAXIM AVILOV,

Petitioner,

v.

Brian MCSHANE Field Office Director of Enforcement and Removal Operations, Philadelphia Field Office, Immigration and Customs Enforcement; Markwayne MULLIN, Secretary, U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; Todd Blanche, Acting U.S. Attorney General; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; Warden of MOSHANNON VALLEY DETENTION CENTER.

Respondents.

Case No. 2:26-cv-02431

AMENDED PETITION FOR WRIT OF HABEAS CORPUS

AMENDED PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner, Maxim Avilov, is in the physical custody of Respondents at the MOSHANNON VALLEY CORRECTIONAL CENTER. He now faces unlawful detention because the Department of Homeland Security (DHS) and the Executive Office of Immigration Review (EOIR) have concluded Petitioner is subject to mandatory detention.
2. Petitioner is charged with, inter alia, having been admitted to the United States but removable as a result of allegedly staying beyond the allotted temporary period ending on April 9, 2016 without authorization from the Immigration and Naturalization Service or its successor the Department of Homeland Security pursuant to INA § 237(a)(1)(B).
3. Based on this allegation in Petitioner's removal proceedings, DHS denied Petitioner release from immigration custody. Petitioner then sought a bond hearing as he was entitled to such under 8 U.S.C. § 1226(a). Petitioner's bond hearing was held on May 7, 2026 and Petitioner was represented by Karyna Schnall, Esq.
4. At the time of Petitioner's custody redetermination hearing, Petitioner had a pending Petition for Writ of Habeas Corpus, wherein he requested multiple forms of relief, including a request for bond hearing.
5. This Honorable Court subsequently requested argument from the parties, which occurred on May 14, 2026 before the Honorable Judge Juan Sanchez in the Eastern District of Pennsylvania District Court.
6. At argument, the Court questioned why Petitioner chose not to withdraw his Petition for Writ being that he had received a bond hearing while his Petition was pending.

7. Petitioner requested that the Court entertain an argument regarding the Constitutional sufficiency of the bond hearing. This Honorable Court permitted Petitioner to file this Amended Petition for Writ of Habeas Corpus in order to allow both parties the opportunity to brief the issue concerning the sufficiency of custody redetermination hearings.
8. Thus, Petitioner files this Amended Petition for Writ of Habeas Corpus.

JURISDICTION

9. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Moshannon Valley Correction Center in Phillipsburg, Pennsylvania. Petitioner filed his original Petitioner for Writ of Habeas Corpus under the jurisdiction of the Eastern District of Pennsylvania as a result of his previous incarceration at Philadelphia Federal Detention Center. Petitioner's undersigned counsel made this filing prior to being informed of Petitioner's transfer.
10. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).
11. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

VENUE

12. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493- 500 (1973), venue lies in the United States District Court for the Eastern District of Pennsylvania, the judicial district in which Petitioner currently is detained.

13. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the Middle District of Pennsylvania.

REQUIREMENTS OF 28 U.S.C. § 2243

14. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

15. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

PARTIES

16. Petitioner, Maxim Avilov, is a citizen of Russia who has been in immigration detention since January 22, 2026. After arresting Petitioner in Philadelphia County, Pennsylvania, ICE did not set bond. Petitioner obtained a custody review hearing before IJ Tamar Wilson on May 7, 2026 and was denied bond.

17. Respondent BRIAN MCSHANE is the Director of the Philadelphia Field Office of ICE's Enforcement and Removal Operations division. As such, BRIAN MCSHANE is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity.
18. Respondent MARKWAYNE MULLIN is the Secretary of the Department of Homeland Security. He is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Mr. Mullen has ultimate custodial authority over Petitioner and is sued in her official capacity.
19. Respondent Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.
20. Respondent TODD BLANCHE is the Acting Attorney General of the United States. He is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. He is sued in his official capacity.
21. Respondent Executive Office for Immigration Review (EOIR) is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings.
22. Respondent WARDEN is employed by the GEO GROUP, managing owners of MOSHANNON VALLEY DETENTION CENTER as Warden of the facility where Petitioner is detained. They have immediate physical custody of Petitioner. They are sued in their official capacity.

LEGAL FRAMEWORK

23. Petitioner acknowledges that federal courts do not have jurisdiction to review an Immigration Judge's discretionary determination to grant or deny bond in any specific case.[1] However, bond hearings must be fundamentally fair in order to afford a detainee due process. In a fundamentally fair bond hearing, due process has three essential elements. "An alien: (1) is entitled to factfinding based on a record produced before the decisionmaker and disclosed to him or her; (2) must be allowed to make arguments on his or her own behalf; and (3) has the right to an individualized determination of his [or her] interests."[2] Petitioner also acknowledges that federal courts offer great deference to IJ's regarding their bond determinations. "Nevertheless, a 'decisionmaker must actually consider the evidence and argument that a party presents,' and denies due process when it acts 'as a mere rubber-stamp.' Abdulai, 239 F.3d at 549 (citation omitted)."[3]

24. Petitioner specifically avers that the bond hearing violated his constitutional right to due process because the IJ failed to provide the meaningful and individualized custody determination required under the Fifth Amendment. Although Petitioner submitted substantial evidence directly relevant to the dispositive custody issues, including evidence of family ties, community support, stable residence, employment history, financial resources, and likelihood of appearance at future proceedings, the IJ failed to

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[1] *Zheng v. Rokosky*, No. 26-CV-01689, 2026 WL 800203, at *3 (D.N.J. Mar. 23, 2026).

[2] *Ghanem v. Warden Essex Cnty. Corr. Facility*, No. 21-1908, 2022 WL 574624, at *2 (3d Cir. Feb. 25, 2022).

[3] Zheng, *supra*. at *5.

meaningfully acknowledge, analyze, or engage with that evidence on the record. Rather than adjudicating whether Petitioner constituted a danger to the community or a flight risk based upon the evidentiary record before the Court, the IJ improperly focused on the perceived merits and credibility of Petitioner's underlying asylum claim, including issues that had not yet been fully prepared, developed, or litigated in removal proceedings. In doing so, the Immigration Judge effectively deprived Petitioner of a meaningful opportunity to be heard on the actual custody issues governing detention and release, thereby rendering the bond proceeding fundamentally unfair.

FACTUAL BACKGROUND

25. Maxim Avilov is a native and citizen of Russia. He is forty-eight years old. He is married to Svetlana Avilova (A [redacted]). They have two daughters, juvenile I. A. ([redacted] , who is 15 years old and juvenile V. A. ([redacted]), who is 12.
26. Maxim Avilov entered the United States on or about July 5, 2017, on a nonimmigrant B1/B2 visa with authorization to remain in the United States for a temporary period not to exceed March 29, 2018.
27. On December 22, 2017, Maxim Avilov's wife, Svetlana Avilova, submitted Form I-589, Application for Asylum and for Withholding of Removal with USCIS, listing Respondent as a derivative applicant. Because the principal application was filed within one year of arrival, Respondent is deemed to have been included in a timely asylum application
28. When Respondent was detained on April 7, 2026, and placed in removal proceedings, he filed his own Form I-589 on April 30, 2026, based on the same protected ground, facts, and circumstances previously asserted in his wife's timely asylum application. Pursuant

to 8 C.F.R. § 208.4(a)(4)(i)(C), the loss of derivative status and the initiation of removal proceedings constitute "changed circumstances" materially affecting Respondent's eligibility for asylum, thereby excusing any delay in filing his individual application. Accordingly, Respondent's Form I-589 is timely filed or, in the alternative, falls within the changed-circumstances exception to the one-year filing deadline.

29. On May 3, 2018, Svetlana Avilova appeared for her asylum interview before USCIS regarding her application for asylum. Following the interview, USCIS referred her case to the Philadelphia Immigration Court for removal proceedings.
30. On October 14, 2020, the IJ closed the Avilovs' removal proceedings due to failure to prosecute.
31. Since his entry into the United States, Maxim Avilov has continuously maintained valid employment authorization, established a successful business, paid taxes each year, purchased a home, and remained fully compliant with all laws of the United States.
32. On April 7, 2026, Maxim Avilov was detained near his residence and placed into ICE custody.
33. On May 7, 2026, his custody redetermination hearing took place before Immigration Judge Tamar Wilson in Elizabeth Immigration Court.
34. Prior to the hearing, Avilov's counsel submitted a 361-page evidentiary packet, which included, among other materials, Avilov's employment authorization document; evidence of his attendance at a biometrics appointment; his Form I-589, Application for Asylum; his wife's Form I-589 and evidence of its timely filing; property ownership records; mortgage payment documentation; proof of business ownership; vehicle financing records; multiple professional certifications; his wife's employment verification letter;

the children's school records; numerous affidavits attesting to Avilov's good moral character; and federal income tax returns for tax years 2018 through 2025, including a 2025 IRS Account Transcript confirming payment of taxes.

35. Counsel also submitted supporting documentation relating to Avilov's sponsor, Igor Dubinin, including a copy of his United States passport, driver's license, 2025 Form W-2, 2024 federal income tax return, and proof of residence. In addition, counsel filed a witness list identifying Mr. Dubinin as a witness for the custody redetermination hearing. Counsel also submitted evidence demonstrating that criminal proceedings had been initiated against Respondent in Russia as a result of his expression of political opinions on social media.

ANALYSIS

36. On May 7, 2026, IJ Tamar Wilson concluded that Maxim Avilov posed a flight risk and denied his request for custody redetermination. However, the proceedings violated Respondent's constitutional right to due process because the IJ failed to act as a neutral and impartial adjudicator and denied Respondent a fundamentally fair bond hearing. Rather than conducting an individualized assessment limited to the issues of custody, danger, and flight risk, the Immigration Judge improperly delved into the merits of Respondent's underlying asylum claim and attempted to assess whether Respondent was "guilty" of the politically motivated criminal allegations initiated against him in Russia based on his expression of political views.[4] The Immigration Judge further relied on those improper considerations in denying bond.

[4] Transcript of Bond Hearing at 10, Lines 4-8, *In the Matter of Avilov, Maxim*, File No.: A 216 488 788 (N.J. Immigr. Ct. May 7, 2026) (Transcript admitted to the Court on May 13, 2026.)

37. Despite Respondent having submitted a 361-page evidentiary packet containing extensive documentary evidence demonstrating longstanding compliance with immigration requirements, valid employment authorization, substantial family and community ties, financial stability, tax compliance, business ownership, and a fixed residence, the Immigration Judge repeatedly acted as though she had not reviewed the record and refused to meaningfully consider portions of the evidence even after specifically requesting them during the proceedings.[5] The Immigration Judge further compelled counsel to prematurely litigate and explain the merits of Respondent's asylum claim during a custody hearing, despite the asylum case not being before the Court for adjudication and not being prepared for merits consideration.[6] Throughout the hearing, the Immigration Judge repeatedly interrupted counsel[7], denied counsel a meaningful opportunity to fully present argument and evidence, and demonstrated an apparent unwillingness to meaningfully engage with the substantial unrebutted evidence submitted in support of Respondent's release.

38. Additionally, despite counsel having filed a witness list in advance and Respondent's sponsor being present and available to testify via Webex, the Immigration Judge failed to call or hear the witness, even though the proposed testimony was directly relevant to Respondent's community ties, proposed residence, financial support, and likelihood of appearance at future proceedings. As a result, the Immigration Judge denied bond based on speculation, predetermined conclusions, and improper credibility and merits-related

[5] *Id.* at 8:13.
[6] *Id.* at 9:10-10:8.
[7] *Id.* at 7:6-10; 8:1-6.

considerations rather than a fair and individualized evaluation of the evidence properly before the Court.

39. Notably, the Immigration Judge further concluded that it was unclear whether Respondent would appear for future immigration proceedings because his prior removal proceedings had been closed for failure to prosecute, improperly attributing the procedural posture of the prior case and DHS's inaction to Respondent despite the absence of any evidence that Respondent had ever failed to appear for a scheduled immigration hearing or otherwise violated any court order.[8]

40. Moreover, instead of focusing on the legally relevant issues of danger and flight risk, the Immigration Judge repeatedly questioned counsel regarding Respondent's prior entries into the United States[9], the timing of his asylum filing[10], and the legitimacy of his fear of return in an apparent effort to undermine the merits and credibility of Respondent's asylum claim rather than assess the custody factors properly before the Court.[11] Although framed as part of the bond analysis, the proceedings effectively became an improper preliminary adjudication of Respondent's asylum case, despite counsel expressly advising the Court that Respondent's asylum claim was fact-intensive, had not yet been prepared for merits adjudication, and was not before the Court for substantive review at the custody hearing.

41. In substance, the Immigration Judge appeared to search for reasons to deny bond based on matters irrelevant to the custody determination while disregarding substantial unrebutted evidence directly relevant to Respondent's likelihood of appearance and

[8] *Id*. at 6:18-25; 10:18-23.
[9] *Id.* at 5:18.
[10] *Id.* at 5:23-6:25.
[11] *Id.* at 5:17-21; 9:10-10:3.

community ties.[12] The proceedings therefore ceased to function as a neutral and individualized custody determination and instead became a constitutionally deficient hearing in which Respondent was deprived of a meaningful opportunity to present evidence and obtain a fair adjudication of his request for release.

42. Petitioner acknowledges that this Court, as well as many others, has determined that detainees do not have a fundamental right to an additional custody redetermination hearing after they have been denied bond. Even though several district courts have indicated that, while an IJ *can* consider likelihood of success on the merits of the underlying claim, it should not be the predominant or controlling factor when making a custody redetermination. If an immigration petitioner is actively litigating an asylum claim based on a belief that they would suffer immense harm if deported, that petitioner has a vested interest in appearing at all immigration proceedings. Further, Petitioner in this case was previously subject to removal proceedings and does not have a single incident of failure to appear at a removal proceeding.

43. However, Petitioner does not argue that he is merely contesting the outcome of the bond hearing, nor that the IJ simply placed undue weight on the merits of the underlying asylum case. Petitioner avers that the nature of the IJ's attitude towards the evidence that his counsel submitted and IJ Wilson's seeming unpreparedness for the hearing indicates that the decision to deny bond was predetermined. IJ Wilson did not reference any specific pieces of evidence presented by Petitioner. She noted merely that he owned his own house and business. However, as previously stated, Petitioner's counsel submitted almost 400 pages of evidence and had witnesses prepared to testify. IJ Wilson's decision

[12] *Id.* at 11:17-23.

to not consider any of this evidence was an egregious violation of Petitioner's right to an individualized bond hearing. Petitioner's evidence directly relevant to the issue of flight risk was not considered by the court.

44. Petitioner does not ask this Honorable Court to reconsider the facts of the bond hearing or make a determination as to whether bond should or should not have been granted. Petitioner acknowledges that it is within the IJ's sole jurisdiction to make a custody redetermination. However, the nature and conduct of the bond hearing were so egregiously biased toward continued detention that the proceeding lacked the neutrality and meaningful individualized consideration required by due process. Rather than adjudicating the actual custody factors based upon the evidence presented, the Immigration Judge relied on improper considerations while disregarding substantial evidence directly relevant to flight risk and likelihood of appearance. As a result, Petitioner was deprived of the individualized bond hearing based upon the evidentiary record that is required under Third Circuit law.

45. Thus, Petitioner prays this Honorable Court order the following relief:

CLAIMS FOR RELIEF

COUNT 1

Violation of Due Process – Insufficient Bond Hearing

46. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

47. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment – from government custody,

detention, or other forms of physical restraint – lies at the heart of the liberty that the Clause protects."

48. Petitioner has a fundamental interest in liberty and being free from official restraint.

49. The government's detention of Petitioner subsequent to a constitutionally insufficient custody redetermination hearing violates his right to due process.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

a. Assume jurisdiction over this matter;

b. Order that the Petitioner shall not be transferred outside the Eastern District of Pennsylvania or the detention facility that Petitioner is currently detained at;

c. Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner, or, in the alternative, remand the issue to the IJ for a new custody redetermination hearing that is constitutionally sufficient;

d. Declare that Petitioner's detention is unlawful;

e. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and

f. Grant any other and further relief that this Court deems just and proper.

CERTIFICATION OF SERVICE

I, Lynne A. Jaworski, Esq., certify that on May 26, 2026, I served copies of the following documents:

Amended Petition for Writ of Habeas Corpus

Via ECF filing and thus via email to the entered parties.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment. (See Rule 1:4-4(b)).

May 26, 2026 /s/ Lynne A. Jaworski

Date Signature