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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

NIKOLAI PELEVIN,

Petitioner,

v.

SIXTO MARRERO, *Warden, Imperial
Regional Detention Facility, et al.,*

Respondents.

Case No.: **26-cv-02477-LEK-AHG**

**PETITIONER'S TRAVERSE SUPPORTING
PETITION FOR WRIT OF HABEAS
CORPUS**

Petitioner, Nikolai Pelevin, through counsel, traverses Respondents' Response to
Petition.

A. INTRODUCTION

Respondents concede that Petitioner should receive a bond hearing, where the government would bear the burden of proof establishing, by clear and convincing evidence, that Petitioner poses a danger to the community or risk of flight risk. (ECF 4 at 1.) However, as argued in the petition, in practice, a bond hearing is not an adequate remedy in this case.

B. DUE PROCESS REQUIRES THAT AN IMPARTIAL ADJUDICATOR DECIDE IF PETITIONER'S CONTINUED DETENTION BEARS A REASONABLE RELATION TO FLIGHT RISK AND DANGER TO THE COMMUNITY.

"A neutral judge is one of the most basic due process protections." *Castro-Cortez v. INS*, 239 F.3d 1037, 1049 (9th Cir. 2001), abrogated on other grounds by *Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006). See also *Diouf v. Napolitano* ("Diouf II"), 634 F.3d 1081, 1091-92 (9th Cir. 2011) (neutral adjudication decreases the risk of erroneous deprivation). Due process requires that immigration detention, "'bear [] a reasonable relation to the purpose for which the individual was committed.'" *Demore v. Kim*, 538 U.S. 510, 527 (2003) (quoting *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001)). Specifically, immigration detention must be reasonably related to the government's goals of preventing flight and protecting the community from harm and be accompanied by adequate procedural protections to ensure that those goals are being served. See *Zadvydas*, 533 U.S. at 690-91. Chief among these procedural protections is "the guarantee of an impartial and disinterested tribunal," which the Due Process Clause

1 requires "in both civil and criminal cases." *Marshall v. Jerrica, Inc.*, 446 U.S. 238, 242
2 (1980).
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4 The systematic transformation of EOIR (the sub-agency within the DOJ that
5 houses the Immigration Courts and BIA) into an instrument of the current
6 administration's enforcement agenda has made it structurally incapable of providing
7 Petitioners with the impartial tribunal and individualized assessment that due process
8 requires. *See Perez Velasquez v. Bondi*, No. 26-cv-01759-GPC-DDL (S.D. Cal. April. 16,
9 2026) (ordering immediate release after finding Petitioner's post-habeas bond hearing
10 legally and constitutionally deficient.)
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14 The ongoing mass-scale purge of immigration and BIA judges, the installation of
15 explicitly enforcement-aligned "deportation judges," EOIR policy directives establishing
16 that adjudications favor the government over noncitizens, and explicit instructions to
17 defy district court rulings, demonstrate that the immigration system is not an
18 independent adjudicative body.¹ Since the administration change, DHS has filed 309%
19 more appeals. The increase in DHS bond appeals saw the most dramatic increase. The
20 BIA sustained DHS appeals at a markedly higher rate.² This increase in both DHS bond
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26 ¹ See ECF 1-2 at pp 18-51, NEW YORK TIMES, *How Trump Purged Immigration Judges to*
27 *Speed Up Deportations* April 9, 2026

28 ² See Ex. 1 Jayashri Srikantiah and Rajan Lukose, *The Board of Immigration Appeals*
Under the Second Trump Administration An Empirical Analysis of Grant Rates and DHS
Appellate Behavior March 3, 2026

1 appeals, and BIA grants of these appeals, demonstrate an institution change seeking to
2 keep noncitizens unlawfully detained. Petitioner has been detained for over 15 months
3 with no bond hearing. He has an ongoing appeal with no definitive end date. Based on
4 recent case law and statistics, a bond hearing is not an adequate remedy in this case.
5

6 Since a bond hearing in this context is likely to be biased, perfunctory, and
7 outcome-determinative in favor of detention, it would not cure the constitutional injury.
8 Petitioner presently suffers from more than 15 months of confinement without a
9 neutral, effective review. The traditional habeas remedy of release—squarely within the
10 historical core of habeas jurisdiction—therefore provides the only meaningful relief
11 capable of stopping the ongoing due-process violation.
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16 Dated: May 4, 2026

Respectfully submitted,

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18 By:/s/ Chantal Venter

19 Chantal Venter

20 Attorney for Petitioner
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TABLE OF EXHIBITS

Exhibit 1: Jayashri Srikantiah and Rajan Lukose, *The Board of Immigration Appeals Under the Second Trump Administration An Empirical Analysis of Grant Rates and DHS Appellate Behavior* March 3, 2026.