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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

M.P.,

Petitioner,

v.

CHRISTOPHER J. LAROSE, Warden, Otay Mesa Detention Center; PATRICK DIVVER, Field Office Director, San Diego Field Office, United States Immigration and Customs Enforcement; TODD M. LYONS, Acting Director, United States Immigration and Customs Enforcement; MARKWAYNE MULLIN, Secretary of Homeland Security; TODD BLANCHE, United States Attorney General, *in their official capacities*,

Respondents.

Case No.: 3:26-cv-03243-JES-MSB

TRAVERSE IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

TRAVERSE IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

I. INTRODUCTION

Petitioner respectfully submits this traverse to Respondents' return in accordance with the Court's order, ECF No. 3. The Respondents' return—a concession—confirms that the Court should grant the petition.

In light of the government's response, Petitioner succeeds on the merits. As such, the Court should grant the petition on all grounds, as Petitioner has shown that his prolonged detention violates both substantive and procedural due process.

Where Petitioner and Respondent disagree, however, is in regard to the remedy. Respondent—while acknowledging that Petitioner's detention has become unconstitutionally prolonged—argues that Petitioner should receive a bond hearing where the government would bear the burden of proof that Petitioner—a young man with no immigration or criminal history in the U.S. fleeing religious persecution—poses a danger to the community or risk of flight. Dkt. 5. However, for the reasons in the habeas petition and outlined below, an immigration bond hearing is insufficient to remedy Petitioner's unconstitutional detention. The violations in Petitioner's case allow this Court to order outright release rather than a bond hearing.

II. ARGUMENT

It is well-established that a court may authorize release as a remedy to a habeas petition alleging unconstitutional detention. *See Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973) (finding "that the traditional function of the writ is to secure release from illegal custody.").

Respondents acknowledge that Petitioner remains detained contrary to the U.S. Constitution. This unlawful violation of Petitioner's rights permits this Court to order outright release rather than a bond hearing. *See Maciel v. Noem*, 2026 WL 496948, at *5 (E.D. Cal. Feb. 23, 2026) ("Because Respondents do not assert any alternative basis for Petitioner's detention, and do not provide any extenuating

circumstances that would warrant Petitioner's continued unlawful detention pending a bond hearing, the court finds that the appropriate relief is Petitioner's immediate release.").

Indeed, Courts in this district have done just that in similar circumstances. *Aliyev v. LaRose*, No. 3:26-CV-01119-CAB-JLB, 2026 WL 699818, at *3 (S.D. Cal. Mar. 12, 2026); *Rodas-Dieguez v. Noem*, No. 3:26-CV-00976-RBM-MMP, 2026 WL 549910, at *1 (S.D. Cal. Feb. 26, 2026); *Zheng v. Casey*, No. 3:26-CV-01110-RBM-BLM, 2026 WL 559780, at *1 (S.D. Cal. Feb. 27, 2026);

Release is fair, efficient, and workable. Respondents have an array of less restrictive tools to use and may impose conditions on Petitioner to ensure his appearance at future appointments and hearings. *See Doe v. Becerra*, 732 F. Supp. 3d 1071, 1091 (N.D. Cal. 2024) (ordering respondents to propose an order of release under conditions "the government believes will help address its concerns regarding flight risk or danger to the community."). In fact, the Ninth Circuit has observed that "the Intensive Supervision Appearance Program—which relies on various alternative release conditions—resulted in a 99% attendance rate at all EOIR hearings." *Hernandez v. Sessions*, 872 F.3d 976, 991 (9th Cir. 2017).

A. An immigration bond hearing is insufficient to remedy Petitioner's unconstitutional detention because immigration judges are no longer unbiased, neutral adjudicators.

As outlined in detail in Petitioner's habeas petition, the actions of EOIR demonstrate that EOIR staff, including immigration judges (IJs) are increasingly and systemically biased. There is a significant and unacceptable risk that Petitioner could face unconstitutional bias and partiality at a bond hearing. "[A]cross the country the integrity of these bond proceedings has now been cast sharply into doubt." *Garcia Ortiz v. Henkey*, 2026 WL 948275, at *2 (D. Idaho Apr. 7, 2026).

Several sources from this district and elsewhere report that federal court-ordered "bond hearings [are], effectively, stacked against detainees from the start."

Kyle Cheney, *How ICE Defies Judges' Orders to Release Detainees, Step by Step*, Politico (Feb. 10, 2026), https://www.politico.com/news/2026/02/10/ice-immigration-detention-court-orders-00771727. The New York Times reported that one sitting immigration judge explained the "pressure to deny bond is overt" and that "there was a requirement to inform a supervisor every time bond was granted[.]" Nicholas Nehamas et al., *How Trump Purged Immigration Judges to Speed Up Deportations*, N.Y. Times (April 9, 2026) https://www.nytimes.com/2026/04/09/us/politics/trump-miller-immigration-judges-purge.html [hereinafter *How Trump Purged Immigration Judges*, N.Y. Times]. It further reported that the Office of the Chief Immigration Judge "has sometimes emailed [immigration] judges asking for an explanation about their decisions to grant bond[.]" *Id.*

This aligns with general indications of bias in immigration court. *See* Maria Sacchetti, *Trump Officials Hire 'Deportation Judges' With Less Training, Experience*, Washington Post (Apr. 27, 2026), https://www.washingtonpost.com/immigration/2026/04/27/justice-department-immigration-judges-deportation/ ("Former judges who were fired say they fear Trump is forcing out judges who rule against the government and replacing them with loyalists[.]"); *How Trump Purged Immigration Judges*, N.Y. Times ("[M]ore than two dozen immigration judges who have served under the second Trump administration described feeling a consistent sense of pressure to deport immigrants or risk losing their jobs."); Ximena Bustillo & Rahul Mukherjee, *An Immigration Court Few Have Heard of Is Quietly Shaping Policy Behind the Scenes*, NPR (Mar. 20, 2026), https://www.npr.org/2026/03/20/nx-s1-5707535/trump-immigration-detention-appeals-board-deportation ("Last year, [BIA] decisions backed [DHS] lawyers in 97% of publicly posted cases; that's at least 30 percentage points higher than the average from the last 16 years.").

Statements made by top White House officials similarly demonstrate intent to bypass the statutory and constitutional process due to immigrants. For example, Stephen Miller, a White House Deputy Chief of Staff—known to be one of the President's top advisors on immigration—wrote on X: "If you illegally invaded our country the only 'process' you are entitled to is deportation." Stephen Miller (@StephenM), X (Apr. 1, 2025), https://x.com/StephenM/status/1907116768474071069.

The data shows that all of this has caused the bond grant rate to decline substantially. Nationwide, IJs are granting bond at a rate of just 31.7% in 2026. Joseph Gunther & Brandon Marrow, *Immigration Bonds in the Second Trump Administration*, bklg blog (May 12, 2026), https://bklg.org/blog/immigration-bonds-in-second-trump-admin/?utm_source=bento&utm_medium=email&utm_campaign=broadcast&bento_uuid=d047674d-eafe-42da-ae7d-09f00774298a (chart titled "Annual Bond Grants and Denials, 2013 – Apr. 2026"). During the entirety of the first Trump administration, the annual bond grant rate was over 50%. *Id.* In 2023 and 2024, it decreased but never dipped below 40%. *Id.*

This district is not exempt from these alarming trends. *See Perez Velasquez v. Bondi*, No. 26-CV-01759-GPC-DDL, 2026 WL 1042479, at *5 (S.D. Cal. Apr. 16, 2026) ("There is no evidence that the IJ considered the *Guerra* factors or applied them to the set of facts before her.... the IJ failed to consider all relevant evidence as required by due process."). A local immigration attorney recently filed a declaration explaining that in his experience, many Otay Mesa Immigration Court judges are resistant to implementing habeas orders requiring bond hearings. Perez Declaration, ECF 5-2 at ¶ 7, *Elsayed v. Noem*, No. 26-cv-368-BAS-AHG (S.D. Cal. Feb. 9, 2026). Indeed, more attorneys in Southern California are publicly speaking out. Gustavo Solis, *Lawyers Accuse Immigration Courts of Holding 'Sham' Bond Hearings*, KPBS

(June 4, 2026) (profiling a bond case in which one attorney's bond grant for a client with no criminal convictions was set at $50,000).

Because of the substantial risk of bias, IJs are not constitutionally neutral adjudicators. To appropriately remedy Petitioner's unlawful detention as efficiently as possible, and to save the Court and all parties from the necessity of an enforcement action, the Court should grant immediate release.

B. In the alternative, this Court should conduct a bail hearing.

In the alternative, this Court can hold its own custody hearing and determine whether DHS can prove by clear and convincing evidence that Petitioner must remain in custody or whether he may be released on recognizance, an appropriate bond, or supervised release. *See Santos v. Lowe*, 2020 WL 4530728, at *4 (M.D. Pa. Aug. 6, 2020) (ordering that the federal court would conduct a bail hearing to remedy the defects in an immigration bond hearing which had been ordered to remedy prolonged detention); *L.G.M. v. LaRocco*, 788 F. Supp. 3d 401, 405-07 (E.D.N.Y. 2025) (holding that the federal court would conduct the bond hearing); *Flores-Powell v. Chadbourne*, 677 F.Supp.2d 476-478 (D. Mass 2010) (ordering a bail hearing and collecting cases in which the federal court conducted a bail hearing).

There is no barrier to the Court conducting its own bail hearing. *See Hensley v. Mun. Ct., San Jose Milpitas Jud. Dist., Santa Clara Cnty.*, 411 U.S. 345, 350 (1973) ("The very nature of the writ demands that it be administered with the initiative and flexibility essential to ensure that miscarriages of justice within its reach are surfaced and corrected." (citation omitted)). If the Court does not order outright release, a federal bail hearing provides the most efficient and certain remedy to Petitioner's unconstitutional detention.

C. In the second alternative, this Court should order an immigration bond hearing with strong procedural protections, including clear allocation of the burden to the government.

In the alternative, should the Court decline to order Petitioner's immediate release, it should order a prompt immigration bond hearing with strong procedural protections.

In Respondents' return, "the government concedes that this Court should order that Petitioner receive a bond hearing, where the government would bear the burden of proof of establishing, by clear, and convincing evidence, that Petitioner poses a danger to the community or a risk of flight." Dkt. 5. Consistent with that concession—and to ensure that the hearing meaningfully protects Petitioner's due process rights—the Court's order should explicitly incorporate this burden-shifting requirement.

Petitioner's *pro bono* counsel's experience, and that of similarly situated individuals, demonstrates that absent clear, express language in the Court's order, immigration courts do not uniformly apply the proper burden allocation, notwithstanding the government's concession in the Return.

Accordingly, the Court should make explicit that at the bond hearing, the government bears the burden of proving, by clear and convincing evidence, that Petitioner poses either a danger to the community or a risk of flight. To ensure the hearing is constitutionally adequate and meaningfully effectuates the Court's order, the Court should further require the following minimum safeguards:

(1) The hearing shall occur within 14 days of the Court's order;

(2) The immigration judge shall conduct an individualized determination based on the evidentiary record in the bond proceedings;

(3) The immigration judge shall consider Petitioner's ability to pay and set bond, if any, in an amount that is not excessive;

(4) The immigration judge shall expressly consider alternatives to detention and less restrictive conditions of release before denying custody determination;

(5) The immigration judge shall make explicit findings on the record as to whether the government has met its burden, including a specific determination as to

why less restrictive alternatives to detention, whether alone or in combination, are insufficient if detention is continued;

(6) The decision shall be accompanied by a written or transcribed oral explanation sufficient to permit meaningful review; and

(7) If Petitioner is released, Respondents shall not re-detain Petitioner absent prior notice to, and authorization from, this Court.

These protections are necessary to ensure that any bond hearing ordered by this Court is not merely procedural, but meaningful and consistent with due process.

III. CONCLUSION

In light of the government's response, Petitioner succeeds on the merits. As such, the Court should grant the petition on all grounds, as Petitioner has shown that his prolonged detention violates both substantive and procedural due process.

The appropriate remedy for the constitutional violation of Petitioner's rights is outright release, not a bond hearing that could further jeopardize Petitioner's constitutional rights. In the alternative, and given the systemic bias present against non-citizens in bond hearings in immigration court, this Court should conduct a bail hearing. In the second alternative, this Court should order an immigration bond hearing with strong procedural protections, including clear allocation of the burden to the government.

Dated: June 5, 2026

Respectfully submitted,

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