UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

ENAYETULLAH WALIZADA, *Petitioner*, v. DONALD J. TRUMP, in his official capacity as President of the United States; PATRICIA HYDE, in her official capacity as Acting Boston Field Office Director, Immigration and Customs Enforcement, Enforcement and Removal Operations; DAVID W. JOHNSTON in his official capacity as Vermont Sub-Office Director of Immigration and Customs Enforcement, Enforcement and Removal Operations; TODD M. LYONS, in his official capacity as Acting Director, U.S. Immigration and Customs Enforcement; PETE R. FLORES, in his official Capacity as Acting Commissioner for U.S. Customs and Border Protection; KRISTI NOEM, in her official capacity as Secretary of the U.S. Department of Homeland Security; MARCO RUBIO, in his official capacity as Secretary of State; PAMELA BONDI, in her official capacity as United States Attorney General; GREG HALE, in his official capacity as Superintendent of the Northwest State Correctional Facility in St. Albans, Vermont, *Respondents*.	)	Case No. 2:25-cv-768

FEDERAL RESPONDENTS' PRE-HEARING SUBMISSION

In its December 11 Opinion and Order, the Court concluded that Petitioner met his burden to establish that his three-month detention without a bond hearing (while removal and asylum proceedings are pending) has been unreasonably prolonged in violation of the Due Process Clause of the Fifth Amendment. ECF No. 20, at 34-35. The Court therefore granted

the habeas petition and ordered as a remedy "an individualized bond hearing at which the Federal Respondents shall bear the burden of proving by clear and convincing evidence that Mr. Walizada poses a risk of flight or a danger to the community." *Id.* at 36.

Federal Respondents disagree with the Court's statutory and constitutional analyses but aside from those substantive disagreements, Federal Respondents object to a bond hearing conducted in a federal district court, rather than immigration court, for the reasons set forth below.

I. The proper remedy is a bond hearing before an Immigration Judge.

In granting immigration habeas petitions concerning detention without a bond hearing, the vast majority of courts—including in this district—order as a remedy a bond hearing before an Immigration Judge ("IJ"). *See, e.g.*, *Lopez-Arevelo v. Ripa*, No. 25-cv-337, 2025 WL 2691828, at *12 (W.D. Tex. Sept. 22, 2025) ("[T]he comfortable majority position—both historically and in recent weeks—is to instead require a bond hearing before an IJ."); *Lopez v. Trump*, No. 25-cv-863, 2025 WL 3264151, at *6 (D. Vt. Nov. 17, 2025) (ordering bond hearing before IJ); *Piedrahita-Sanchez v. Turek*, No. 25-cv-875, ECF No. 13, at 18 (D. Vt. Nov. 14, 2025) (same); *Yapangui v. Hale*, No. 25-cv-884, 2025 WL 3207070, at *8 (D. Vt. Nov. 17, 2025) (same); *Lala Inamagua v. Hale*, No. 25-cv-892, ECF No. 19, at 6 (D. Vt. Dec. 1, 2025) (same); *Rashid v. Hale*, No. 25-cv-732, ECF No. 13, at 32 (D. Vt. Oct. 27, 2025) (same); *Romero v. Francis*, No. 25-cv-8112, 2025 WL 3110459, at *4 (S.D.N.Y. Nov. 6, 2025); *Alvarez Ortiz v. Freden*, No. 25-cv-960, 2025 WL 3085032, at *15 (W.D.N.Y. Nov. 4, 2025).

That result "makes sense, given that the Court has found . . . *procedural* due process violation[s]." *Lopez-Arevelo*, 2025 WL 2691828, at *12. In those cases, as here, courts have

held that the petitioners' "rights are not violated by the very fact of" detention. *Id.* "Rather, they are violated because [the petitioners have] been detained without a bond hearing that accords with due process." *Id.* And to date, each petitioner in this District who has been afforded habeas relief in the form of an order requiring a bond hearing before an IJ has promptly received such a hearing and has been released on bond.[1]

Here, the Court found that "it would be futile to order another bond hearing before an IJ" because an IJ earlier found the petitioner to be statutorily ineligible for release on bond. ECF No. 20, at 36. Federal Respondents, however, did not make an administrative-exhaustion argument (i.e., that district court review is unavailable until a petitioner first requests bond from an IJ), where a futility analysis may be pertinent. And "because the Immigration Court originally concluded that [petitioner] was categorically ineligible for bond, it has not yet had the opportunity to consider the merits of [petitioner's] request for release on bond . . . ." *Gomez v. Hyde*, No. 25-cv-11571, 2025 WL 1869299, at *8 (D. Mass. July 7, 2025). Immigration courts are well-positioned to consider such requests and routinely do so in good faith when ordered by a district court. *E.g.*, *Lopez*, 2025 WL 3264151; *Piedrahita-Sanchez*, No. 25-cv-875; *Yapangui*, 2025 WL 3207070; *Lala Inamagua*, No. 25-cv-892; *Rashid*, No. 25-cv-732. Accordingly, a more appropriate remedy would be to allow the immigration court to "pass on the merits of [petitioner's] request for bond in the first instance." *Gomez*, 2025 WL 1869299, at *8-9 (ordering the immigration court to conduct a new bond hearing). In fact, petitioner has an individual hearing in immigration court set for December

[1] Some courts have instead chosen to order immediate release upon granting the writ. *See, e.g.*, *Lopez Benitez v. Francis*, No. 25-cv-5937, 2025 WL 2371588, at *15 (S.D.N.Y. Aug. 13, 2025). That remedy would be inappropriate here because the petitioner has been detained for a relatively short period and because a bond hearing in the immigration court would provide the petitioner with the very process that this Court found to be lacking. Indeed, the Second Circuit has taken this approach. In *Black v. Decker*, 103 F.4th 133 (2d Cir. 2024) and *Velasco Lopez v. Decker*, 978 F.3d 842 (2d Cir. 2020), that court blessed district court orders granting bond hearings before Immigration Judges. That would be the appropriate approach in this case too.

30, 2025.

II. An immigration court bond hearing would avoid several practical difficulties.

An immigration court bond hearing would avoid several practical issues raised by holding such a hearing in this Court. First, given the petitioner's asylum application, Pet. ¶ 1, there are confidentiality protections that potentially limit the information that can be discussed in open court. *See, e.g.*, 8 C.F.R. § 1208.6; 8 U.S.C. § 1367. Second, Immigration and Customs Enforcement has an online system for posting bonds ordered by IJs. *See* https://cebonds.ice.gov/. If this Court orders the petitioner to post a bond, it is unclear which entity would be the right one to receive it because the petitioner is detained pending proceedings before a different tribunal in a different branch of government. Third, this Court has granted the petition for a writ of habeas corpus, so there is nothing left to decide in this case. Were it to issue an order releasing petitioner, however, the case would potentially be left open for the duration of the petitioner's removal and asylum proceedings because this Court would need to act if the petitioner absconded, violated a condition of release, or a bond otherwise needed to be revoked. Such an outcome would essentially make this Court the superintendent of the immigration court, which would be inconsistent with the scheme devised by Congress in the Immigration and Nationality Act and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

III. Federal Respondents do not intend to submit any new evidence.

If the Court proceeds with a bond hearing, Federal Respondents do not intend to submit any new evidence concerning the petitioner's dangerousness or risk of flight. Petitioner does not appear to have any criminal history in the United States. As to petitioner's risk of flight, Federal Respondents note that the petitioner's trucking job appears to take him

all over the country, including to or across the United States border. *See* Pet. ¶ 3. Additionally, Federal Respondents lack information that would indicate strong and deep-rooted ties to the United States. The petition makes reference only to "his wife's family," who reside in Oregon (as does petitioner). Pet. ¶ 35.

Further, because the petitioner resides in Oregon, he would presumably return there upon any order of release, putting him thousands of miles away from this Court. Petitioner may move to transfer his immigration proceedings to an immigration court there, making it especially unusual that he may be subject to a bond or conditions of release set by a district court in Vermont. Thus, taking all of these factors into account, Federal Respondents respectfully submit that the most appropriate course is to modify the remedy and allow for a bond hearing before the immigration court.

Dated: December 18, 2025

Respectfully submitted,

MICHAEL P. DRESCHER
First Assistant United States Attorney

By: /s/ *Matthew J. Greer*
MATTHEW J. GREER
Assistant United States Attorney
United States Attorney's Office
P.O. Box 570
Burlington, Vermont 05402-0570
(802) 951-6725
Matthew.Greer@usdoj.gov

Attorney for Federal Respondents