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The Honorable Theresa L. Fricke

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

Ivan CHEKHOVSKII,
Plaintiff,

v.

BRUCE SCOTT, Warden, Northwest
Immigration and Customs Enforcement
Processing Center;
CAMILLA WAMSLEY, Seattle Field
Office Director, Enforcement and Removal
Operations, United States Immigration and
Customs Enforcement;
KRISTI NOEM, Secretary, United States
Department of Homeland Security;
PAMELA BONDI, Attorney General of
the United States;
CHARLES NEIL FLOYD, US Attorney
for Western District of Washington
Department of Justice;

Respondents.

Case No. C25-2550TLF

PETITIONER'S TRAVERSE

Noted for Consideration:
January 6, 2026

PETITIONER'S TRAVERSE

Case No. C25-2550TLF

Law Office of Liya Djamilova
PO BOX 4249
Seattle, WA 98144
206-623-0118

I. INTRODUCTION

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1. On the date this matter is noted for consideration, January 6, 2026, Petitioner Ivan Chekhovskii (Mr. Chekhovskii), will have been in the custody of the U.S. Immigration and Customs Enforcement (ICE) for 19 months and 3 days. On June 3, 2024, Mr. Chekhovskii sought entry into the U.S. to apply for asylum, passed a credible fear interview, and was detained by ICE and placed in immigration removal proceedings as an arriving alien pursuant to 8 U.S.C. § 1225(b)(1)(B). Detention under 8 U.S.C. §1225(b) is mandated during immigration proceedings and the immigration court twice denied Mr. Chekhovskii an opportunity for an individualized bond hearing citing a lack of jurisdiction over arriving aliens. Andron Decl. at 3. As a result, although there is no evidence that Mr. Chekhovskii presents a flight risk or any current danger to the community, Mr. Chekhovskii remains detained.

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2. However, mandated detention under 8 U.S.C. §1225(b)(1) during the pendency of removal proceedings is not without constitutional limitations and courts across the country and in this district have repeatedly recognized that once an individual has been detained for a prolonged period, the government must justify detention by clear and convincing evidence. See, e.g., *Banda v. McAleenan*, 385 F. Supp. 3d 1099 (W.D. Wash. 2019); *Diaz Reyes v. Wolf*, No. C20-0377-JLR-MAT, 2020 WL 6820903 (W.D. Wash. Aug. 7, 2020), R&R adopted as modified, No. C20-0377JLR, 2020 WL 6820822 (W.D. Wash. Nov. 20, 2020). Ninth Circuit case law, this Court's case law, and case law from around the country demonstrate that Mr. Chekhovskii's continued detention without an individualized bond hearing before a neutral decisionmaker to determine the necessity of such continued detention is in violation of the Due Process Clause of the Fifth Amendment and Mr. Chekhovskii is entitled to an individualized

1 bond hearing in which the government must justify his detention by clear and convincing
2 evidence.

3 3. Accordingly, Mr. Chekhovskii pleads with this Court to order his release or in the
4 alternative Mr. Chekhovskii pleads with this Court to hold an individualized bond hearing
5 within 14 days where the government must justify Mr. Chekhvskii's continued detention by
6 clear and convincing evidence, or to order the government to provide a *recorded* bond hearing
7 in immigration court within 14 days where the government must justify Mr. Chekhovskii's
8 continued detention by clear and convincing evidence.

9 **II. FACTUAL AND PROCEDURAL BACKGROUND**

10 4. Mr. Chekhovskii reasserts the factual and procedural background stated in his
11 initial Habeas complaint. See, Dkt. # 1 at 6-7.

12 **III. ARGUMENT**

13 5. Mr. Chekhovskii's mandatory detention pursuant to 8 U.S.C. § 1225(b) has
14 become unconstitutionally prolonged, and his continued detention without an individualized
15 bond hearing in which the government must justify his detention by clear and convincing
16 evidence violates his Fifth Amendment due process rights.

17 **A. Mr. Chekhovskii's detention pursuant to pursuant to 8 U.S. C. 1225(b)(1)(B) has
18 become unreasonably prolonged in violation of his Fifth Amendment Constitutional Due
19 Process Rights and he is entitled and to an individualized bond hearing to determine
whether continued detention is justified.**

20 6. Mr. Chekhovskii does not dispute the Federal Respondents'¹ assertion that the
21 statute under which Mr. Chekhovskii is detained, § 1225(b)(1)(B), "mandates his detention."
22

23 ¹ Federal Respondents will hereinafter be referred to as "Respondents," acknowledging that Respondent Bruce Scott
is not a Federal Respondent and is not represented by counsel for the Federal Respondents

1 Respondents' Return at 4; Dkt. 1 at 10. However, Mr. Chekhovskii reasserts his argument from
 2 his initial Habeas Petition that the mandatory detention of immigrants can still offend the Due
 3 Process Clause of the U.S. Constitution, as is the case here. The Respondents argue that Mr.
 4 Chekhovskii's Petition should be dismissed in its entirety "because the detention authority does
 5 not afford Petitioner a right to release or any relief requested." Respondents' Return at 5. This
 6 argument ignores the Constitutional arguments raised by Mr. Chekhovskii in his Petition that his
 7 detention has become unconstitutionally prolonged, and that even his mandatory detention under
 8 the statute must still comport with due process. Dkt. 1 at 9-11; *Boumediene v. Bush*, 553 U.S.
 9 723, 797 (2008); *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 772 (S.D. Cal. 2020) ("[T]he Court joins
 10 the majority of courts across the country in concluding that an unreasonably prolonged detention
 11 under 8 U.S.C. § 1225(b) without an individualized bond hearing violates due process.").

12 As the Respondents concede, *Jennings* "did not reach the issue of whether prolonged
 13 detention without such a [bond] hearing could, in individual cases, raise a due process concern."
 14 Respondents' Return at 6; *Jennings v. Rodriguez*, 138 S. Ct. 830, 837 (finding that the statute
 15 section 1225(b)(1)(B), does not impose "any limit on the length of detention" pending a decision
 16 on the asylum application and does not authorize bond hearings or release on
 17 bond). Consequently, Mr. Chekhovskii reasserts his argument that his mandatory detention
 18 under section 1225(b)(1)(B) is unreasonably prolonged in violation of his Due Process rights and
 19 seeks immediate release or an individualized bond hearing under the Fifth Amendment, not
 20 under the detention statute.

21 7. As noted by Mr. Chekhovskii and the Respondents, the issue of whether Mr.
 22 Chekhovskii's detention has become unconstitutionally prolonged should be analyzed and has
 23 been analyzed in the Courts of this district using the multifactor test set out in *Banda v.*

1 *McAleenan*, 385 F. Supp. 3d 1099, 1117-118 (W.D. Wash. 2019); Respondents' Return at 6;
2 Dkt. 1 at 11-19 . The *Banda* multifactor test sets out six factors: (1) length of detention; (2) how
3 long detention is likely to continue absent judicial intervention; (3) conditions of detention; (4)
4 the nature and extent of any delays in removal caused by the petitioner; (5) the nature and extent
5 of any delays caused by the government; and (6) the likelihood that the final proceedings will
6 culminate in a final order of removal. See *Id.* This Court should find that the majority of the
7 factors favor Mr. Chekhovskii, and thus his prolonged detention violates due process. See,
8 *Rahman v. Garland*, No. 2:24-CV-02132-JHC-TLF, 2025 WL 1920341, at *3 (W.D. Wash. June
9 26, 2025) (Finding that an immigrant mandatorily detained under section 1225(b)(1)(B) was
10 entitled to a bond hearing under the *Banda* test); *Abderrahim Belqasim v. Drew Bostock*, No.
11 2:25-cv-01282-LK-TLF, 2025 WL 3466971, at *6 (W.D. Wash October 28, 2025)(Granting
12 habeas petition and ordering a bond hearing for an immigrant mandatorily detained under section
13 1225(b)(1)(B) after 13 months).

14 **1. *The total length of Mr. Chekhovskii's detention of nearly 19 months without a court-***
15 ***ordered bond hearing is unconstitutionally prolonged.***

16 8. In this analysis of whether a non-citizen's detention has been unreasonably
17 prolonged pending removal proceedings, courts have found the length of detention to be the most
18 important factor. *Banda v. McAleenan*, 385 F. Supp. 3d 1099 (W.D. Wash. 2019). Respondents
19 acknowledge that this factor likely favors the Petitioner. Respondents' Return at 7. Mr.
20 Chekhovskii's nearly 19 months of detention is undoubtedly prolonged in violation of his
21 constitutional Due Process rights, and this Court should find this factor in Mr. Chekhovskii's
22 favor. *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1118-19 (W.D. Wash. 2019) (granted bond
23 hearing after 17 months); *Lett v. Decker*, 346 F. Supp. 3d 379, 387-88 (S.D.N.Y. 2018) (granting

1 bond hearing after more than months detention); *Brissett v. Decker*, 324 F. Supp. 3d 444, 452-53
2 (S.D.N.Y. 2018) (granting bond after more than 9 months detention); *Bermudez Paiz*, 2018 WL
3 6928794, at *10 (recommending granting bond after 18 months detention); *Perez v. Decker*, No.
4 18-5279, 2018 WL 3991497, at *4-*5 (S.D.N.Y. Aug. 20, 2018) (granting bond hearing after 9
5 months detention); *Abderrahim Belqasim v. Drew Bostock*, No. 2:25-cv-01282-LK-TLF, 2025
6 WL 3466971, at *6 (W.D. Wash October 28, 2025) (recommending bond after 13 months in
7 detention); *Rahman v. Garland*, No. 2:24-CV-02132-JHC-TLF, 2025 WL 1920341, at *6 (W.D.
8 Wash. June 26, 2025)(recommending bond after less than 13 months in detention).

9 **2. Likely Duration of Future Detention.**

10 9. In finding this second factor in Banda’s favor, the *Banda* Court provides that in its
11 analysis the Court considered “how long detention is likely to continue absent judicial
12 intervention; in other words, the ‘*anticipated*’ duration of all removal proceedings—including
13 administrative and judicial appeals.” *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1119 (W.D.
14 Wash. 2019) citing to *Jamal v. Whitaker*, 358 F. Supp. 3d 853, at 859. The Banda court
15 considered that although the petitioner in that case “only recently filed the appeal of the IJ’s
16 removal order with the BIA [,] if the BIA affirms, the petitioner will have the opportunity to seek
17 review in the Ninth Circuit,” and noted that “this process may take up two years or longer.” See
18 *Id.*

19 10. Similarly, in analyzing the likely duration of future detention in *Calderon v.*
20 *Bostock*, Magistrate Judge Leupold also considered the anticipated duration of all removal
21 proceedings including administrative and judicial appeals and in doing so recommended that this
22 factor should weigh in favor of granting the petitioner a bond hearing. *Calderon v. Bostock*, No.
23 2:24-CV-01619-MJP-GJL Report and Recommendation Pg. 10 at 11-23, Pg. 11 at 1-5). While

1 noting that “any estimate as to how long Petitioner’s detention will continue requires a certain
2 degree of speculation,” Magistrate Judge Leupold considered the anticipated timelines for civil
3 appeal from notice of appeal until final decision as noted on the Ninth Circuit Court website. *Id.*
4 Subsequently the Honorable Judge Pechman adopted Magistrate Judge Leupold’s
5 recommendation that this this factor should also weigh in favor of the petitioner. *Calderon v.*
6 *Bostock*, No. 2:24-CV-01619-MJP-GJL, 2025 WL 879718, at *3 (W.D. Wash. Mar. 21, 2025)

7 11. In Mr. Chekhovskii’s case, the Respondents argue that this factor should favor
8 them because the Government has opposed Mr. Chekhovskii’s motion to stay removal, and Mr.
9 Chekhovskii’s appeal case is in the final PFR stage. Respondents’ Return at 7. However, the
10 Respondents do not address the time frame of Mr. Chekhovskii’s 9th Circuit Appeal case, which
11 will likely take until between March and September of 2026 to be scheduled for oral argument.
12 Dkt. 1 at 15; *Sarr v. Scott*, No. 2:24-CV-01293-RAJ-BAT, 2025 WL 388652, at *7 (W.D. Wash.
13 Feb. 4, 2025) citing to U.S. Court of Appeals for the Ninth Circuit, Frequently Asked Questions,
14 www.ca9.uscourts.gov/content/faq.php (last accessed December 6, 2025). The Respondents’
15 argument regarding this second *Banda* factor makes no claim or estimate of how much longer
16 Mr. Chekhovskii will likely be detained, nor do the Respondents specifically refute Mr.
17 Chekhovskii’s argument that he will likely be detained for several more months, if not years,
18 depending on when an oral argument is schedule in his case, and if the Ninth Circuit remands his
19 case back to the Board of Immigration Appeals due to the alleged legal errors raised in his
20 appeal.

21 This Court should follow the precedent set by the *Banda* and *Calderon* Courts and find
22 this factor in Mr. Chekhovskii’s favor. However, as argued in his original Petition, if this Court
23 declines to speculate as to the likely duration of the future detention on the basis that Mr.

1 Chekhovskii recently submitted his Petition for Review with the appellate Court, this Court
2 should find this factor neutral not favoring either party. Dkt. 1 at 16; *Doe v. Bostock*, No. C24-
3 0326-JLR-SKV, 2024 WL 3291033, at *10 (W.D. Wash. Mar. 29, 2024), *report and*
4 *recommendation adopted*, No. C24-0326JLR-SKV, 2024 WL 2861675 (W.D. Wash. June 6,
5 2024).

6 **3. *The conditions of Mr. Chekhovskii's conditions at the Northwest Immigration and***
7 ***Customs Enforcement Processing Center (NWIPC) are substantially similar if not***
8 ***worse than conditions in criminal detention facilities across in the United States.***

9 12. In considering the conditions of detention, courts have found that “[t]he more that
10 the conditions under which the [noncitizen] is being held resemble penal confinement, the
11 stronger his argument that he is entitled to a bond hearing.” *Banda v. McAleenan*, 385 F. Supp.
12 3d 1099, 1119 (W.D. Wash. 2019) (quoting *Jamal v. Whitaker*, 358 F. Supp. 3d 853, 860 (D.
13 Minn. 2019).

14 13. The Respondents do not offer any argument that this factor should favor them.
15 The Respondents address this third *Banda* factor by merely stating “As for the third *Banda*
16 factor- conditions of detention, Petitioner is detained at the NWIPC.” Respondents’ Return at 7.
17 Mr. Chekhovskii reasserts the argument outlined in his initial Habeas pleading as to this factor.
18 Dkt. 1 at 16-17.

19 14. This Court should consider the Respondents’ lack of argument regarding this
20 factor to be a concession that this factor favors Mr. Chekhovskii. Moreover, in considering Mr.
21 Chekhovskii’s arguments on this factor and the fact that the Courts of this district have already
22 previously found that conditions at the NWIPC are as a generally “similar to those in many
23 prisons and jails,” this Court should find this factor in Mr. Chekhovskii’s favor. *Doe v. Bostock*,
24 No. C24-0326-JLR-SKV, 2024 WL 3291033, at *11 (W.D. Wash. Mar. 29, 2024), *report and*

1 *recommendation adopted*, No. C24-0326JLR-SKV, 2024 WL 2861675 (W.D. Wash. June 6,
2 2024).

3 **4. *Mr. Chekhovskii has not been the cause of any delays in his removal proceedings.***

4 15. Mr. Chekhovskii reasserts and reaffirms his arguments as to this factor from his
5 initial Habeas pleading and asks this Court to find this factor also weights in his favor. Dkt 1 at
6 18. The Respondents acknowledge that “there is no evidence that Petitioner has intentionally
7 caused any delay,” yet they argue that this factor should be neutral. Respondents’ Return at 7.

8 16. This Court should find that because Mr. Chekhovskii has not engaged in dilatory
9 tactics, this fourth *Banda* factor is in his favor, not neutral.

10 **5. *Delays in removal proceedings caused by the Government.***

11 17. Mr. Chekhovskii reasserts and reaffirms his argument from his initial Habeas
12 pleading as to this fifth *Banda* factor. Dkt. 1 at 18-19. In contrast to their argument regarding the
13 fourth *Banda* factor, where the Respondents state that the absence of delay caused by Petitioner
14 should be considered a neutral factor, here the Respondents argue that a lack of delay caused by
15 the Government should favor the Government. Respondents’ Return at 7. Mr. Chekhovskii’s
16 duration in detention has been caused primarily by government and court backlog, and thus
17 delays in adjudicating his case have been caused by the Government. *See Djelassi v. ICE Field*
18 *Off. Dir.*, 434 F. Supp. 3d 917, 922-923 (W.D. Wash. 2020)(finding that the record reflects that
19 delay in this case is a product of the BIA’s and Ninth Circuit’s “crowded dockets,” which courts
20 typically attribute to the Government—not the Petitioner (citing *Martinez v. Clark*, No. 18-1669,
21 2019 WL 5968089, at *10 (W.D. Wash. May 23, 2019), R & R adopted, 2019 WL 5962685
22 (W.D. Wash. Nov. 13, 2019)).

1 However, even if, *arguendo*, this Court finds no evidence of delay caused by either Mr.
2 Chekhovskii or the Government, this Court should find that both the fourth and fifth *Banda*
3 factors are neutral, or that they favor their respective parties.

4 **6. *The likelihood that removal proceedings will result in a final order of removal.***

5 18. Mr. Chekhovskii reasserts and reaffirms his argument from his initial Habeas
6 pleading as to this factor and asks the Court to find this factor in his favor or neutral. Dkt. 1 at
7 19-20. The Respondents argue that this factor should favor them because “Petitioner’s only
8 available relief from removal is his PFR.” Respondents’ Return at 7. However, this argument is
9 unavailing as to why his removal proceedings will result in a final order of removal; the
10 Respondents do not make any argument as to why his case will ultimately be denied. While Mr.
11 Chekhovskii’s final available relief is his PFR with the 9th Circuit Court of appeals, he has filed a
12 good-faith appeal of the denial of his asylum application with the Ninth Circuit. He has argued
13 that the BIA erred in failing to review his fear of future persecution under the disfavored group
14 analysis and should the Court of Appeals agree with his arguments, the case will likely be
15 remanded back to the Board for further analysis of the other issues not considered by the BIA on
16 appeal. As a result, this Court should find this final factor favors Mr. Chekhovskii because there
17 is a strong likelihood of success on the merits, or that his case will be remanded.

18 In the alternative, this Court should find this factor to be neutral if it lacks enough
19 information to determine whether or not his appeal is non-frivolous or whether he will likely
20 prevail.

21 19. Accordingly, after weighing all six of the *Banda* factors, this Court should find
22 that Mr. Chekhovskii’s nearly 19-month prolonged detention under 8 U.S.C. § 1225(b) has
23 become unreasonably prolonged in violation of his Fifth Amendment Constitutional Due Process

1 rights and he is entitled to an individualized bond hearing where the government must justify Mr.
2 Chekhovskii's continued detention by clear and convincing evidence.

3 **B. The Court Should Require a Bond Hearing Where the Government Must Bear the**
4 **Burden to Justify Continued Detention and Consider Alternatives to Detention.**

5 20. Due Process requires the Government to show by clear and convincing evidence
6 that the detainee presents a flight risk or a danger to the community at the time of the bond
7 hearing in order to continue to detain a noncitizen for a prolonged period of time while removal
8 proceedings are pending. *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1120–21 (W.D. Wash.
9 2019) (citing to *Calderon-Rodriguez v. Wilcox*, No. 18-1373, 2019 WL 487709, at *6 (W.D.
10 Wash. Jan. 9, 2019), R & R adopted, 374 F.Supp.3d 1024 (W.D. Wash. 2019) (citing *Singh v.*
11 *Holder*, 638 F.3d 1196, 1208 (9th Cir. 2011)); see also *Cortez v. Sessions*, 318 F. Supp. 3d 1134,
12 1146-47 (N.D. Cal. 2018) (holding that *Singh's* standards continue to apply to prolonged
13 detention bond hearings post-*Jennings*). In this case, the Respondents concede that Petitioner's
14 detention is "prolonged." Respondents' Return at 8.

15 21. The Ninth Circuit's decision in *Singh v. Holder* holds as a constitutional matter that
16 the Due Process Clause requires the government to justify continued detention by clear and
17 convincing evidence after it has become prolonged. 638 F.3d 1196, 1203–05 (9th Cir. 2011);
18 accord *Kashem v. Barr*, 941 F.3d 358, 380 (9th Cir. 2019) (noting that *Singh's* clear and
19 convincing evidence burden is a procedural due process standard that "applies in a range of civil
20 proceedings involving substantial deprivations of liberty"). In Westlaw, *Singh* is flagged as
21 having been abrogated as "[r]ecognized by *Rodriguez Diaz v. Garland*," 53 F.4th 1189 (9th Cir.
22 2022). But *Rodriguez Diaz* leaves open the question of whether *Singh* remains good law outside
23 the context of the statutorily implied hearings where it held the clear and convincing evidence

1 standard applied (hearings that no longer exist after subsequent Supreme Court and circuit
2 cases)). 53 F.4th at 1202.

3 22. Moreover, as noted, cases like *Kashem* recognize that the burden of proof
4 requirement in *Singh* is a constitutional holding. See 941 F.3d at 380. *Singh*'s constitutional
5 holding therefore continues to apply in cases like this one that do not rest on a statutorily implied
6 right to a hearing. Indeed, "[a]bsent controlling authority to the contrary, the reasoning of *Singh*
7 and its holding remain applicable to § 1226(c) cases, like this one, where there is a substantial
8 liberty interest at stake." *J.P. v. Garland*, 685 F. Supp. 3d 943, 949 (N.D. Cal. 2023) (alteration
9 in original) (internal quotation marks omitted) (quoting *Pham v. Becerra*, No. 23-cv-01288-
10 CRB, 2023 WL 2744397, at *7 (N.D. Cal. Mar. 31, 2023)). And in any event, "the [Ninth]
11 Circuit Court [of Appeals] has signaled that the clear and convincing evidence standard remains
12 good law for immigration detainees subject to prolonged detention." *Anyanwu v. U.S. Immigr. &*
13 *Customs Enft Field Off. Dir.*, No. 2:24-CV-00964-LK- GJL, 2024 WL 4627343, at *8 (W.D.
14 Wash. Sept. 17, 2024), *R&R adopted*, No. C24-0964 TSZ, 2024 WL 4626381 (W.D. Wash. Oct.
15 30, 2024).

16 23. The clear and convincing evidence requirement is consistent with a long line of
17 Supreme Court precedent requiring the government to bear the burden of proof in civil detention
18 schemes. See *United States v. Salerno*, 481 U.S. 739, 750 n.4 (1987) (upholding pre-trial
19 detention where the detainee was afforded a "full-blown adversary hearing," requiring the
20 government to justify detention with "clear and convincing evidence" before a "neutral
21 decisionmaker"); *Foucha v. Louisiana*, 504 U.S. 71, 81-83 (1992) (striking down civil detention
22 scheme that placed burden on the detainee); *Zadvydas v. Davis*, 533 U.S. 678, 683-84, 692
23 (2001) (finding administrative custody review procedures deficient because, inter alia, they

1 placed burden of proof on detainee); *see also Tijani v. Willis*, 430 F.3d 1241, 1244 (9th Cir.
2 2005). In sum, the Court should hold that the Government must justify Mr. Chekhovskii's
3 continued detention by clear and convincing evidence at a hearing before a neutral
4 decisionmaker.

5 24. Finally, in a bond hearing either before this Court or the Immigration Court
6 alternatives to detention should also be considered. Supreme Court precedent demonstrates that
7 detention is not reasonably related to its purpose of mitigating flight risk or danger where there
8 are alliterative conditions of release that could mitigate those risks. *See Bell v. Wolfish*, 441 U.S.
9 520, 538-40 (1079). Notably, ICE itself operates the Intensive Supervision Appearance Program
10 (ISAP), an alternatives-to-detention program that offers varying levels of monitoring to address
11 such risks. *See, e.g., Hernandez v. Sessions*, 872 F.3d at 991 (observing that ISAP "resulted in a
12 99% attendance rate at all EOIR hearings and a 9%% attendance rate at final hearings"). It
13 follows that alternatives to detention must be considered in determining whether prolonged
14 detention is warranted.

15 **C. Under 28 U.S.C.A. § 2241(c)(3) this Court is authorized to hold a bond hearing and**
16 **order Mr. Chekhovskii released upon a determination that Mr. Chekhovskii does not**
17 **present a danger to the community and upon a determination that Mr. Chekhovskii is not**
18 **a flight risk.**

19 25. Section § 2241 of Title 28 of the United States Code "authorizes a district court to
20 grant a writ of habeas corpus whenever a petitioner is 'in custody in violation of the Constitution
21 or laws or treaties of the United States.'" 28 U.S.C.A. § 2241(c)(3). If a habeas court determines
22 that a petitioner is being held unlawfully either without bond or under excessive bond, the court
23 can either order the agency to hold a bond hearing to establish bond in a reasonable amount or
24 hold the bond hearing itself and to order the defendant released pendente lite, either under FRAP

1 23(b) or by virtue of its inherent authority. *Nadarajah v. Gonzales*, 443 F.3d 1069, 1084 (9th Cir.
2 2006) (ordering “immediate release, subject to terms and conditions to be set by the appropriate
3 delegate of the Attorney General”). Therefore, This Court has the authority to grant Mr.
4 Chekhovskii’s petition for immediate release or, in the alternative, order a bond hearing either
5 before this Court or in Immigration Court.

6 **D. If this Court orders an individualized bond hearing to be held before the Immigration
Court, this Court should order that such a hearing be recorded.**

7
8 26. Ordinarily bond hearings in Immigration Court are not recorded or transcribed, as
9 a result those seeking to appeal the decision of the IJ must rely on their recollection of the IJs
10 analysis rather than rely on the record. In a recent decision in *Rodriguez v. Bostock*, this Court
11 ordered the Government to provide the petitioner with a bond hearing before the immigration
12 court and ordered the Government must record this hearing. *Rodriguez v. Bostock*, No. 3:25-CV-
13 05240-TMC, 2025 WL 1193850, at *17–18 (W.D. Wash. Apr. 24, 2025). Similarly, Mr.
14 Chekhovskii petitions this Court for a *recorded* individualized bond hearing that requires the
15 Government to show by clear and convicting evidence that the presents a flight risk or a danger
16 to the community at the time of the bond hearing in order to continue to detain a him, so that
17 there is a clear record of the analysis conducted by the IJ in any such bond hearing.

18 IV. CONCLUSION

19 27. In light of the above, this Court should find that Mr. Chekhovskii’s nearly 19-
20 month prolonged detention under 8 U.S.C. § 1225(b) has become unreasonably prolonged in
21 violation of his Fifth Amendment Constitutional Due Process rights and he is entitled to an
22 individualized bond hearing before a neutral decisionmaker where the government must justify
23 his continued detention by clear and convincing evidence.

24 PETITIONER’S TRAVERSE

Case No. C25-2550TLF

