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**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT COURT OF CALIFORNIA**

MUHAMMED OZBALIK)
)
Petitioner,)
v.)
CHRISTOPHER J. LAROSE,)
Warden of Otay Mesa Detention Facility)
)
Kenneth C. Smith,)
San Diego Field Office Director,)
U.S. Immigration and Customs Enforcement,)
)
Todd Lyons,)
Acting Director of Immigration)
Customs Enforcement ("ICE");)
)
Kristi Noem,)
Secretary of the U.S. Department of)
Homeland Security)
)
)
Pamela Bondi,)
Attorney General of the United States)
)
Defendants)
_____)

CIVIL No. 25-cv-3656-JES-SBC

AGENCY CASE No:



**PETITIONER'S TRAVERSE TO
RESPONDENTS' RETURN**

Petitioner, Muhammed Ozbalik, through undersigned counsel, respectfully submits this
Traverse to Respondents' Return and states as follows:

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I. INTRODUCTION

Respondents concede the dispositive issue raised in the Petition: that Petitioner is not subject to mandatory detention under INA § 235(b) and instead is detained pursuant to INA § 236(a), entitling him to a bond hearing before an Immigration Judge. This concession alone warrants granting the writ.

II. RESPONDENTS' CONCESSION CONFIRMS PETITIONER'S ENTITLEMENT TO A § 1226(a) BOND HEARING

Respondents acknowledge that, following final judgment invalidating DHS's interim detention guidance, Petitioner is detained under 8 U.S.C. § 1226(a) and is entitled to a bond hearing.

Under binding Ninth Circuit precedent, detention pursuant to § 1226(a) must include a meaningful bond hearing to satisfy due process. *Casas-Castrillon v. Dep't of Homeland Sec.*, 535 F.3d 942, 951 (9th Cir. 2008) (holding that noncitizens detained under § 1226(a) are entitled to a bond hearing); see also *Prieto-Romero v. Clark*, 534 F.3d 1053, 1062–63 (9th Cir. 2008).

III. THE GOVERNMENT BEARS THE BURDEN OF JUSTIFYING CONTINUED DETENTION

At a § 1226(a) bond hearing, the burden rests with the government to justify continued detention. *Singh v. Holder*, 638 F.3d 1196, 1203–05 (9th Cir. 2011) (due process requires the government to prove danger or flight showings at a bond hearing); *Hernandez v. Sessions*, 872 F.3d 976, 988–90 (9th Cir. 2017) (same).

1 Consistent with due process, the government must establish by clear and convincing
2 evidence that the detainee poses a danger to the community, or by a preponderance of the
3 evidence that he presents a flight risk. *Singh*, 638 F.3d at 1203–04; *Hernandez*, 872 F.3d at 991.
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6 **IV. SPECULATIVE FUTURE EVENTS DO NOT DEFEAT PRESENT**
7 **HABEAS RELIEF**

8 Respondents’ attempt to reserve rights based on hypothetical future appellate action or
9 policy changes does not defeat Petitioner’s entitlement to immediate relief. Habeas jurisdiction
10 turns on the lawfulness of detention at the time of review, not speculative future developments.
11 *Zadvydas v. Davis*, 533 U.S. 678, 688–89 (2001) (habeas relief addresses present unlawful
12 custody); *Rodriguez v. Robbins*, 804 F.3d 1060, 1082 (9th Cir. 2015), rev’d on other grounds,
13 583 U.S. 413 (2018).

14 Absent a stay or superseding authority, which Respondents do not identify, Petitioner’s
15 continued detention without a bond hearing violates due process and the INA.
16

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18 **V. DUE PROCESS REQUIRES CONTINUED REVIEW IF BOND IS**
19 **DENIED**

20
21 If an Immigration Judge denies bond, Petitioner’s detention does not become
22 indefinite or insulated from further judicial review. The Ninth Circuit has made clear
23 that continued civil immigration detention must remain reasonable and justified at all
24 times, and habeas review remains available to challenge prolonged or unjustified
25 confinement.

26 Where detention continues following a bond denial, due process requires ongoing
27 custody review and the ability to seek renewed bond consideration based on changed
28 circumstances or the passage of time. *Prieto-Romero v. Clark*, 534 F.3d 1053, 1065–66

1 (9th Cir. 2008); *Casas-Castrillon v. Dep't of Homeland Sec.*, 535 F.3d 942, 951–52 (9th
2 Cir. 2008).

3
4 Moreover, habeas jurisdiction is not exhausted by a single bond hearing. If
5 detention becomes prolonged, arbitrary, or unsupported by current evidence, Petitioner
6 may seek renewed habeas relief challenging the constitutionality of continued custody.
7 *Zadvydass v. Davis*, 533 U.S. 678, 688–89 (2001); *Hernandez v. Sessions*, 872 F.3d 976,
8 991 (9th Cir. 2017).

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11 **VI. REQUEST FOR RELIEF**

12 Because Respondents concede that Petitioner is detained under § 1226(a) and entitled to a
13 bond hearing, Petitioner respectfully requests that the Court:

- 14 1. Grant the Petition for Writ of Habeas Corpus;
15 2. Order Respondents to provide Petitioner with a bond hearing before an
16 Immigration Judge within seven (7) days;
17 3. Order that the government bear the burden of proof at that hearing, consistent
18 with *Singh* and *Hernandez*;
19 4. Order that, if bond is denied, Petitioner shall remain entitled to continued custody
20 review and the ability to seek renewed bond consideration or habeas relief should detention
21 become prolonged or unsupported by current evidence; and
22 5. Grant such other and further relief as the Court deems just and proper.

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24 **VI. CONCLUSION**

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26 There is no remaining dispute. Respondents' concession, coupled with controlling Ninth
27 Circuit and Supreme Court precedent, confirms that Petitioner's detention without a bond
28 hearing is unlawful.

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Respectfully submitted,

Dated: December 23, 2025

Respectfully Submitted,



/s/ Chimnaz Shahbazzade
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