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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

ITOE PHILEMON SAKWE,

Petitioner,

v.

MARKWAYNE MULLIN, Secretary of the Department of Homeland Security, PAMELA JO BONDI, Attorney General, TODD M. LYONS, Acting Director, Immigration and Customs Enforcement, JESUS ROCHA, Acting Field Office Director, San Diego Field Office, JEREMY CASEY, Warden at Imperial Detention Center,

Respondents.

Case No.: 3:26-cv-02159-BAS-MMP

Motion to Enforce the Judgment

I. Introduction

This Court should order Mr. Sakwe's immediate release, a new bond hearing, or both. It should do so to enforce its order partially granting his habeas petition and ordering a bond hearing under the standards of 8 U.S.C. § 1226(a).

After this Court granted Mr. Sakwe's habeas corpus petition, he received a bond hearing on May 14, 2026. While the immigration judge found that Mr. Sakwe was not a danger to the community, he denied bond based on flight risk.

In making his determination, the immigration judge made two critical errors. First, he misapplied caselaw stating that if Mr. Sakwe's "underlying asylum claim has been denied," then Mr. Sakwe is unlikely to win on appeal "on the merits of his case" and should therefore be denied bond. However, Mr. Sakwe's underlying asylum claim was not adjudicated due to a pretermitted ruling that ordered him removed to Uganda under the DHS Asylum Cooperative Agreement (ACA) with Uganda. This pretermitted ruling bars asylum when asylum would otherwise be meritorious. In fact, ACAs are under intense legal scrutiny. Uganda has only accepted eight deportees since the ACA was made back in September 2025, rendering many removal orders practically useless and potentially legally useless. Therefore, Mr. Sakwe's pretermitted asylum is not indicative of his likelihood of success on appeal and is not clear and convincing evidence of flight risk.

Second, the immigration judge incorrectly asserted that Mr. Sakwe's limited ties to the community made him a flight risk, even though every asylum seeker, especially those detained immediately upon arrival, is in virtually the same position as Mr. Sakwe. Setting aside the judge's questionable stance that Mr. Sakwe's "credible sponsor" and longtime family friend—who was offering incredibly generous living arrangements, immigration appointment assistance, and employment assistance—would not be enough to mitigate flight risk, he implicitly holds that all prolonged detention asylum seeker cases are flight risks. This ruling denied Mr. Sakwe an individualized bond hearing based on circumstances specific to his case.

II. Statement of Facts

Mr. Sakwe was born in Cameroon. Exhibit B, Attorney Dana Morgan Decl. at ¶ 2. He fled Cameron because he was being targeted by the military. *Id.* at ¶ 4. Mr. Sakwe entered the United States seeking asylum on January 26, 2025. *Id.* at ¶ 3. He has been in immigration detention ever since. *Id.*

Mr. Sakwe's individual merits hearing was to occur on January 28, 2026. *Id.* at ¶ 8. The IJ pretermitted his asylum application that day and ordered Mr. Sakwe removed to Uganda. *Id.* According to the DHS attorney, "he did not get a chance to have a hearing. It was pretermitted based on the ACA agreement that [the government] had with Uganda." Exhibit A, Transcript of Itoe Philemon Sakwe's Bond Hearing, at pp. 14.

Mr. Sakwe timely filed his appeal to the Board of Immigration Appeals ("BIA") on February 22, 2026. Exhibit B at ¶ 9. The appeal is still pending. *Id.* Mr. Sakwe filed for habeas corpus under § 2241 because of his prolonged detention. Mr. Sakwe was granted a habeas petition, and his hearing occurred on May 14, 2026. Exhibit A at 1. The DHS attorney asked Mr. Sakwe's bond sponsor, Mr. Boniface Mukum, to testify under oath at the bond hearing. *Id.* at 16. The judge acknowledged that the sponsor submitted the paperwork "under very tight constraints" and did "find his sponsor credible." *Id.* at 32. Boniface Mukum testified extensively about his experience helping many migrants with shelter, immigration appointments, and employment. *Id.* at 16–27.

Mr. Sakwe additionally testified that he had a cousin and brother-in-law living in the United States. *Id.* at 8. He also testified that he would be willing to comply with conditions of release such as electronic monitoring and regular check-ins. *Id.* at 13. He told the judge how he has been working in the detention center as a janitorial porter and kitchen assistant. *Id.* at 11. DHS did not challenge any of Mr. Sakwe's testimony or present evidence to refute his testimony *Id.* at 30.

The immigration judge concluded that Mr. Sakwe did not pose a danger to the community but instead held that he was a flight risk. *Id.* at 31-32. He based his conclusion, in part, on the on the following: limited family ties to the United States, no employment history, no length of residence in the United States, and no

permission or papers to come to the United States.[1] *Id.* at 31. The immigration judge acknowledged that Mr. Sakwe has "been in custody this entire time," and so could not establish any history of residency or employment. *Id.* Additionally, the immigration judge noted, ". . . his record of court appearances, he's been in custody, so court appearances weigh little in relation." *Id.*

The immigration judge also stated:

> We also look at the Matter of R-A-V-P-, which states that if the respondent's **underlying asylum claim has been denied** and it's on appeal, it is very speculative that he is going to be able to win on the **merits of his case**, I do note in this case that he does have a final order of removal. That order of removal is to Uganda, not Cameroon, based upon the ACA with Uganda.

Exhibit A, at 32 (emphasis added in bold).

III. This Court has jurisdiction to consider this motion and does not need Mr. Sakwe to exhaust his claims to the BIA first.

Under § 2241, district courts retain "habeas jurisdiction over constitutional claims or questions of law." *Hernandez v. Sessions*, 872 F.3d 976, 987 (9th Cir. 2017) (cleaned up). As the Ninth Circuit recently held, "the determination whether an alien is 'dangerous' for immigration-detention purposes is a mixed question of law and fact and is reviewable as a 'question of law.'" *Martinez v. Clark*, 124 F.4th 775, 779 (9th Cir. 2024). It explained that, on habeas review, district courts "review for an abuse of discretion." *Id.*

Further, Mr. Sakwe need not exhaust his claims to the BIA first. This motion concerns implementation of this court's orders, an issue that need not be administratively exhausted. Regardless, the BIA's precedent currently holds that it lacks jurisdiction to consider bond in cases like Mr. Sakwe's. *See Matter of Yahure Hurtado*, 29 I&N. Dec. 216 (BIA 2025). This means that "exhaustion would be futile." *Faizyan v. Casey*, No. 25-cv-2884-RBM, 2025 WL 3208844 at *4 (S.D. Cal. Nov. 17, 2025) (collecting cases).

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[1] Mr. Sakwe testified that he asked a public firefighter to help him find border patrol so he could "present [himself] to immigration" officials. At 9. He gave border patrol his ID and cooperated with border patrol. *Id.*

IV. The bond hearing violated the requirements of 8 U.S.C. § 1226(a) because the immigration judge relied on a factual and legal error.

"When questions require a close review of agency-found facts," like an administrative judge's finding of dangerousness or flight risk in a bond hearing, the courts "review for an abuse of discretion." *Martinez v. Clark*, 124 F.4th 775, 784 (9th Cir. 2024). This Court may review a bond hearing on whether the immigration judge abused their discretion when holding that "the government proved by clear and convincing evidence that an alien is a flight risk or a danger to the community to justify denial of bond." *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011).

Here, the immigration judge abused his discretion because he made a factual and legal error by asserting that Mr. Sakwe's "underlying asylum claim has been denied". *Id.* at 32. The immigration judge relied heavily on this error when concluding Mr. Sakwe was a flight risk, and disregarded the credible sponsorship and alternatives to detention. *Id.* However, this conclusion confuses the merits of Mr. Sakwe's asylum claim with the true legal reason for the denial.

According to the record, Mr. Sakwe's asylum case was denied because of the *Agreement Between the Government of the United States of America and the Government of the Republic of Uganda for Cooperation in the Examination of Protection Requests*, a notice by the Homeland Security Department on September 3, 2025. This agreement stipulates that the United States can send third country nationals to Uganda. Under Articles 1 and 2, the ACA is supposed to allow the United States to send asylum seekers or other detained individuals to Uganda to request asylum instead of allowing them to seek asylum in the United States.[2] The agreement also states that, "The government of the Republic of Uganda shall in its complete discretion consider accepting in whole or in part a proposal made by the Government of the United States of America." *ACA* at

[2] Available at: https://www.federalregister.gov/documents/2025/09/03/2025-16808/agreement-between-the-government-of-the-united-states-of-america-and-the-government-of-the-republic.

Article 2 ¶ 1. The government of Uganda still must agree to accept individuals from the United States.

The notice does not modify the asylum law under 8 U.S.C § 1158, and any asylum seeker may be ordered removed to Uganda despite having an otherwise meritorious asylum claim. *See ACA.* The immigration judge cannot evaluate Mr. Sakwe's asylum merits and conclude that relief is "speculative" when the underlying asylum claim was pretermitted, and the merits of his claim were never considered. Thus, the immigration judge's statement that the "underlying asylum claim had been denied" is factually and legally incorrect because a judge denied Mr. Sakwe based on the pretermitted asylum decision, rather than whether he had a meritorious claim to asylum.

Additionally, all of this administration's third-country designations are currently under heavy scrutiny because the agreements allegedly,

> [d]o not provide asylum officers or immigration judges to consider whether any individual asylum seeker would lack access to a full and fair asylum process in an ACA country, even if the individual has specific grounds to believe that they, in particular, would not have access to a full or fair process in that country.

U.T. v. Barr, 20-cv-00116-EGS, Dkt. No. 157-1 at pp. 42 (September 9, 8 2025).

In practice, the agreement with Uganda has rarely resulted in completed removals because Uganda has not accepted many deportees from the United States. Since the DHS policy was released back in September 2025, only eight total third-country nationals have been removed to Uganda. *See Uganda, Third Country Deportation Watch* (July 10, 2026).[3] Uganda's asylum process is

[3] Available at: https://www.thirdcountrydeportationwatch.org/uganda; *see also* https://www.bbc.com/news/articles/c8ej43z8yw4o.

reportedly underfunded and backlogged. *Id.* Uganda has also been reported as unsafe for asylum seekers, since people are often sent to overcrowded settlements with little legal assistance available. *Id.*

Since Uganda has yet to accept him, the immigration judge effectively detained Mr. Sakwe indefinitely because he failed to recognize that Uganda has not even accepted Mr. Sakwe's removal, per the ACA itself, and that the ACA agreement may be unenforceable due to pending litigation. *See Uferk v. Brightman*, 26-CV-02354-RBM-DDL, 2026 WL 1157166 (S.D. Cal. Apr. 28, 2026) (granting habeas in part because the appeal was likely to take longer than most appeals due to the ACA Uganda litigation). The immigration judge's ruling shows that he grossly miscalculated how much weight the probability of relief carries when the asylum claim has never been discussed or adjudicated.[4] By the time Mr. Sakwe is up for appeal, the individual removal order will likely not be in force, meaning his asylum claim can be heard. Ultimately, an original finding that Mr. Sakwe had a pretermitted removal order does not mean he would likely be denied an asylum claim on appeal if the order is no longer enforceable or he cannot be deported to Uganda.

Thus, the immigration judge's statement that the "underlying asylum claim" was denied was both factually and legally incorrect and cannot be considered clear and convincing evidence that Mr. Sakwe presented a flight risk. Therefore, the IJ abused his discretion and violated the requirements of 8 U.S.C. § 1226(a).

[4] The immigration judge cited *Matter of R-A-V-P-*, 27 I. & N. Dec. 803 (BIA 2020), which held that a judge may deny bond when the respondent does not "demonstrate a sufficient likelihood that he would be granted asylum." Notably, it does not address pretermitted denials or other types of denials when an asylum merits hearing has not been held. Further, *Matter of R-A-V-P-* explicitly puts the burden on the respondent. *See Matter of R-A-V-P-*, at 807. In this case, the habeas order explicitly shifted the burden to the government. *See* Exhibit A at 2.

V. The bond hearing violated the requirements of 8 U.S.C. § 1226(a) because the immigration judge did not conduct a true individualized bond hearing

To fulfill the due process requirement of a bond hearing under 8 U.S.C. § 1226(a), an immigration judge must provide an individualized bond hearing. *See Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1202 (9th Cir. 2022).

DHS asked Mr. Sakwe's sponsor, Mr. Boniface Mukum, to testify at the bond hearing. Exhibit A at 15. The judge acknowledged that the sponsor submitted the paperwork "under very tight constraints" and even still found that his sponsor was credible due to the sponsor's funds and experience helping other migrants. *Id.* at 32. However, the immigration judge ruled that credible sponsor was not strong enough to overcome the risk of fight. *Id.*

The immigration judge concluded that Mr. Sakwe was a flight risk because of limited family ties to the United States, no employment history, no length of residence in the United States, and no permission or papers to come to the United States. *Id.* at 31. Curiously, the immigration judge acknowledged that Mr. Sakwe has "been in custody this entire time," so could not establish any history of residency or employment. *Id.* Additionally, the immigration judge weighed that same fact against him by stating, ". . . his record of court appearances, he's been in custody, so court appearances weigh little in relation." *Id.*

These factors cannot be grounds for denying bond following a successful prolonged detention habeas petition. By definition, almost everyone who qualifies for this type of habeas relief is here on their own seeking asylum, was taken into custody immediately upon crossing the border, and has remained in custody for many months. Thus, by definition and through no fault of their own, these immigrants will have little to no family here and will not own property in the United States. But that does not affirmatively *prove* that all these immigrants are flight risks. It *proves* only that they fled their home country alone and, in a hurry, as many asylum seekers are required to do, and have been in detention since their

arrival.

Given that the government had the burden to affirmatively *prove* risk of flight by clear and convincing evidence, these factors are not proper grounds for denying bond. *See N.A. v. Warden*, No. 25-cv-03007-MBK, 2026 WL 734587, at *8 (C.D. Cal. Feb. 20, 2026), *report and recommendation adopted sub nom. N.A. v. Warden*, No. 25-cv-03007-MBK, 2026 WL 734585 (C.D. Cal. Mar. 12, 2026) (opining that short length of residence did not meet the government's burden because, while "undoubtedly relevant to flight risk," it is "also true of virtually every asylum seeker apprehended at the border, many of whom the Government releases on bond"); *Sabino v. Semaia,* No. 5:26-CV-02994-MAR, 2026 WL 1802430 *4 (C.D. Cal. June 18, 2026) (granting immediate release in part because the "IJ relied on 'mechanistic factors' that are true of nearly every member of the Maldonado Bautista class and failed to consider Petitioner's individual circumstances").

Because of his detention, Mr. Sakwe could not demonstrate any of the factors mentioned by the immigration judge—nor should he have had to, given the burden was the government's. Any work or good conduct inside the detention center showing he is a responsible or honest person went completely unaddressed. Asylum seekers by definition have limited family or community ties to the United States, especially when they are detained upon arrival and never have the chance to establish substantial ties to the community. Despite this hurdle, Mr. Sakwe does have support from an experienced sponsor and family friend, Boniface Mukum, as well as a few family members, which is more than many asylum seekers coming to the United States can say they have.

The immigration judge implicitly concluded that Mr. Sakwe was a flight risk based on evidence that applies to every asylum seeker, virtually ruling that most, if not all, prolonged detention habeas cases should not be granted bond. Thus, he abused his discretion and violated the requirements of 8 U.S.C. §

1226(a) by not providing an individualized bonding hearing.

VI. This Court should remedy the violations of its order by ordering immediate release, a new bond hearing, or both.

As a court in the District of New Jersey ruled recently when ordering a habeas petitioner's immediate release, "Respondents have now violated Petitioner's due process rights twice: first when they initially detained him unlawfully under § 1225(b), and then again when they deprived him of a constitutionally adequate bond hearing." *Zheng v. Rokosky*, 826 F. Supp. 3d 545, 560 (D.N.J. Mar. 23, 2026). It noted that "[c]ourts across the country confronting due process violations akin to that here have recognized that a new hearing would either be unnecessary, futile, or an inadequate remedy." *Id.* at 562. It explained, "Indeed, this Court, following many others around the country, no longer orders even initial bond hearings in cases like this one involving unlawful detention under § 1225(b) because Respondents' conduct can no longer be attributed to mere negligence or ineptitude, and doing so would effectively allow the Government to transform an unlawful detention into a lawful one through *post-hoc* justifications." *Id.* at 563 (citation and footnote omitted).

As in *Zheng* and other cases around the country, *see id.* at 563 n.14 (collecting cases), this Court should remedy the violation of its order and the repeated legal errors Mr. Sakwe has faced through immediate release. As the court in *Zheng* explained, "immediate release is the appropriate remedy and . . . any future attempt to re-detain Petitioner under § 1226(a) must comport with due process." *Id.* As another court in the Central District recently found, immediate release is "the remedy that will best return [Petitioner] to the status quo and restore his position as it was prior to detention." *Miri*, 2026 WL 622302 at *11.

This Court could order Mr. Sakwe's "immediate release . . . subject to reasonable conditions of supervision," as a court in the District of Rhode Island did when facing similar bond hearing violations late last year. *Garcia v. Hyde*,

817 F. Supp 3d 112, 131 (D. R.I. Dec. 3, 2025). In so doing, it reasoned, "Given the due process violations that pervaded his bond hearing, the Court finds that [Petitioner's] immediate release is appropriate." *Id.* It cited to *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972), for the proposition that "due process is flexible and calls for such procedural protections as the particular situation demands." *Id.* It noted, "The Court is mindful that, in recent months, IJs have faced enormous pressure from the Executive Branch to dismiss cases quickly and rule in certain ways." *Id.* (footnotes omitted). "However, '[d]ue process is not satisfied . . . by rubberstamp denials [of bond],' and IJs are not absolved of their duty to ensure that noncitizens receive constitutionally adequate bond hearings." *Id.* (internal alterations in original) (quoting *Chi Thon Ngo v. INS*, 192 F.3d 398 (3d Cir. 1999)).

VII. Conclusion

At a minimum, this Court should order a new bond hearing before an immigration judge subject to the same procedural requirements as the original order. However, it should consider ordering Mr. Sakwe's immediate release until such a compliant bond hearing is held.

Respectfully submitted,

Dated: July 28, 2026

s/ Hannah Pineiro Basalone
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