

Fernanda Ezquerro
Bar No. 299783
430 Nutmeg Street, Suite 100
San Diego, California 92103
Telephone: (619) 485-8150
fernanda@ezquerrolawgroup.com

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

POPE SOW,

Petitioner,

v.

MARKWAYNE MULLIN, Secretary of
the Department of Homeland Security,
TODD BLANCHE, Acting Attorney
General, TODD M. LYONS, Acting
Director, Immigration and Customs
Enforcement, JESUS ROCHA, Acting
Field Office Director, San Diego Field
Office, CHRISTOPHER LAROSE,
Warden at Otay Mesa Detention Center,

Respondents.

Civil Case No.: 26-cv-02398-AGS-
MMP

**Amended Petition for Writ of
Habeas Corpus**

1 INTRODUCTION

2 This Court previously granted Pope Sow's habeas petition. *See Pope Sow v.*
3 *Larose*, 26-cv-01115-AGS-MMP, Dkt. 8. The Court held that Mr. Sow—an
4 asylum seeker from Senegal must receive a bond hearing before “a neutral
5 immigration judge in which the government bears the burden of establishing by
6 clear and convincing evidence that Petitioner is a danger to the community or a
7 flight risk if released.” *Id.*

8 But the bond hearing afforded to Mr. Sow was fundamentally unfair and
9 violated due process. Specifically, the Immigration Judge (“IJ”) relied heavily on
10 purported “evidence” that does not appear anywhere in the record in finding Mr.
11 Sow to be a flight risk. The IJ then used non-existent evidence to lend greater
12 weight to the government's arguments while giving little to no consideration to
13 Mr. Sow's arguments. This conduct confirms that the IJ failed to act as a neutral
14 adjudicator. Because the government has not demonstrated that it can provide Mr.
15 Sow with a bond hearing before a neutral immigration judge, this Court should
16 order his immediate release.

17 ARGUMENT

18 **I. The IJ applied a double standard and relied on evidence that was not**
19 **in the record.**

20 To meet its burden of showing that Mr. Sow was a flight risk, the DHS
21 attorney at the bond hearing argued that Mr. Sow “has already been ordered
22 removed by an immigration judge,” citing “the Department's exhibits in the
23 record.” Exhibit A, Transcript of Bond Hearing, at 1. The DHS attorney further
24 characterized Mr. Sow an “extreme flight risk,” relying on alleged failures to
25 report to ICE check-ins and his subsequent termination from the ATD program.
26 *Id.* The DHS attorney also asserted that Mr. Sow was unlikely to comply with his
27 court-ordered removal because he purportedly “self-deported” on October 28,
28 2025. *Id.*

1 These arguments were misleading and unsupported by a complete record.
2 The DHS attorney relied on what appears to be a two-page printout dated March
3 27, 2026, (presumably from the ATD program), to support claims of repeated
4 violations. Exhibit B. However, the document itself indicates that it is incomplete;
5 the bottom right corner of the second pages states “1 of 3”, confirming only a
6 portion of the relevant record was submitted. *Id.* This selective submission
7 presents a distorted account of Mr. Sow’s compliance.

8 In reality, Mr. Sow participated in the ATD program for approximately
9 three years. During that time, the only alleged violations appear to stem from
10 October 29, 2025, the same period during which Mr. Sow asserts he was
11 kidnapped and taken to Tijuana against his will. Thus, the record does not support
12 the DHS attorney’s characterization of “repeated” violations.

13 Despite the incomplete and selective nature of the evidence, the IJ relied
14 heavily on these representations in finding that Mr. Sow posed a flight risk. The IJ
15 stated “...That does certainly make him a significant flight risk when this is
16 combined with the fact that the respondent did violate his prior ATD in this case.”
17 Exhibit A at 2. While the IJ expressed skepticism regarding Mr. Sow’s account of
18 how he awoke in Mexico, the IJ failed to address two critical issues: (1) the
19 missing pages of the ATD report submitted by DHS, and (2) the possibility that
20 the alleged violations occurred while Mr. Sow was outside of the United States
21 against his will.

22 The IJ thus afforded greater weight to an incomplete document and the
23 DHS attorney’s unsupported assertions than to Mr. Sow’s explanation. This
24 disparate treatment reflects a clear double standard that did not provide Mr. Sow
25 a fair bond hearing. A “fair trial in a fair tribunal is a basic requirement of due
26 process.” *In re Murchison*, 349 U.S. 133, 136 (1955). Here, the DHS attorney’s
27 incomplete submission and unsubstantiated claims of repeated violations were
28 accepted without scrutiny, while Mr. Sow’s account, offered to explain the same

1 conduct, was neither meaningfully considered nor investigated.

2 Moreover, the IJ relied on assertions that are not supported by the record in
3 concluding that Mr. Sow posed a flight risk. This Court explicitly ordered that Mr.
4 Sow receive a bond hearing “in which the government bears the burden of
5 establishing by clear and convincing evidence that Petitioner is a danger to the
6 community or a flight risk if released. Dkt. 8. The standard was not met here.

7 Because the IJ applied a double standard, relied on an incomplete
8 evidentiary record, and credited unsupported representations over record
9 evidence, Mr. Sow was denied a fundamentally fair bond hearing in violation of
10 due process.

11 **II. As in *Miri* and *Zheng*, this Court should order Mr. Sow’s immediate**
12 **release.**

13 Courts are increasingly ordering release in lieu of a bond hearing. *See*,
14 *e.g.*, *Hernandez-Garcia v. Warden*, 26-cv-1248-JO-BLM, Dkt. 11 (Mar. 26,
15 2026); *Izquierdo Mendez v. Casey*, 26-cv-1731-JO-SBC, Dkt. 6 (Mar. 30,
16 2026). For instance, the district court in *Miri* ordered the petitioner’s “prompt
17 release” and prohibited the government from re-detaining him “absent
18 compliance with due process and his legal protections.” 2026 WL 622302, at
19 *11. The court found this to be “the remedy that will best return Miri to the
20 status quo and restore his position as it was prior to the detention.” *Id.*

21 In *Zheng v. Rokosky*, No. 26-CV-01689, 2026 WL 800203, at *3 (D.N.J.
22 Mar. 23, 2026), the district court similarly held that the petitioner’s five-month
23 detention had “become so unreasonable” that “the only just remedy in these
24 circumstances is immediate release.” *Id.* at *8. It explained that “Respondents
25 have now violated Petitioner’s due process rights twice: first when they initially
26 detained him unlawfully under § 1225(b), and then again when they deprived him
27 of a constitutionally adequate bond hearing.” *Id.* It noted that “[c]ourts across the
28 country confronting due process violations akin to that here have recognized that

1 a new hearing would either be unnecessary, futile, or an inadequate remedy.” *Id.*
2 at *10 (collecting cases). Not only was the record “entirely devoid of any
3 individualized justification for Petitioner’s continued detention,” there was no
4 longer “any reason to believe that a second hearing would be fundamentally fair.”
5 *Id.* Given that Respondents were “given an opportunity to cure their earlier
6 constitutional violation by providing Petitioner a fundamentally fair bond
7 hearing” but “woefully failed to do so,” the court declined to give them a “third
8 bite at the apple” and ordered immediate release. *Id.* at *11.

9 Here, Mr. Sow has been detained *longer* than the petitioner in *Zheng*. So as
10 in *Zheng*, his detention has “become so unreasonable” that “the only just remedy
11 in these circumstances is immediate release.” *Id.* at *8. And just as in *Zheng*,
12 Respondents were “given an opportunity to cure their earlier constitutional
13 violation by providing [Mr. Sow]” a fundamentally fair bond hearing” but
14 “woefully failed to do so,” and this Court should decline to give them a “third bite
15 at the apple.” *Id.* at *11. So as in *Miri*, immediate release is “the remedy that will
16 best return [Mr. Sow] to the status quo and restore his position as it was prior to
17 the detention.” 2026 WL 622302, at *11. *Id.*

18 CONCLUSION

19 Because Respondents have failed to provide Mr. Sow a fair bond hearing,
20 this Court should order his immediate release. Should this Court decline to order
21 immediate release, it should at least order a new bond hearing in front of a
22 different IJ.

23 Respectfully submitted,

24 Dated: May 5, 2026

25 *s/ Fernanda Ezquerro*

26 Fernanda Ezquerro

27 Attorneys for Mr. Sow

28 Email: fernanda@ezquerrolawgroup.com

EXHIBIT A

(0:02) This is Immigration Judge Mark Sameth, the Otay Immigration Court. Today's date is April 3rd, 2026. (0:09) These are bond proceedings in the case of Pape Soe, A number 

(0:16) The respondent is present, detained, and represented. (0:19) Appear on behalf of the respondent today is... (0:22) Good afternoon, John Wells, Pro Bono Counsel for the respondent. (0:25) And appear on behalf of the government today is... (0:27) Nalene Martinez.

(0:28) And these proceedings are being conducted in the English language. (0:33) I do note that there is a habeas order in this case. (0:37) I did not see... (0:39) The burden is shifted to the government by clear and convincing evidence.

(0:42) Do both parties agree there is jurisdiction and the burden is on the government by clear and convincing evidence? (0:48) Yes, Your Honor. (0:49) Yes, Your Honor. (0:50) All right.

The court has received the following exhibits. (0:53) Exhibit 1 is the initial bond determination request. (0:57) Exhibit 2 is DHS evidence of March 27th.

(1:01) And exhibit 3 is respondent's legal brief of April 2nd. (1:05) Government, did you have any objections to any of these exhibits? (1:07) No, Your Honor. (1:08) And Counselor Respondent, do you have any objections to any of these exhibits? (1:12) No, Your Honor.

(1:13) All right. The court will admit exhibits 1, 2, and 3 at this time. (1:17) Counselor Respondent, did you have any additional witnesses or evidence or... (1:20) Sorry, the burden is on the government.

(1:22) Government, did you have any additional witnesses or evidence or just argument? (1:25) Just argument, Your Honor. (1:25) Okay. Please proceed.

(1:28) Your Honor, the respondent is a flight risk because he was already ordered removed on February 11th, 2026, (1:35) and he has very little viable immigration relief. (1:38) He is an extreme flight risk because of his termination from the ATD program (1:43) due to his failure to report to ICE check-ins. (1:46) He also left the United States and went to Mexico without preauthorization, (1:51) which makes it highly unlikely he will appear for his ordered removal.

(1:57) His proposed sponsor's annual income is only \$19,579, (2:03) which is far too low to support the respondent, especially in San Diego. (2:09) Okay. Counselor Respondent, would you like to be heard? (2:13) Yes, thank you, Your Honor.

(2:15) Here, the respondent would argue that his flight risk is mitigated (2:19) first by his community ties with his family members. (2:22) He has several cousins that live in the area, including his cousin and sponsor, (2:27) who lives in the exact same building as the respondent did prior to his detention (2:31) and where he still holds a lease. (2:35) Respondent's flight risk is also mitigated by his medical concerns, (2:39) including his type 1 diabetes, which he would

like to continue treatment for here in San Diego, (2:44) given this is where he was diagnosed with it and has received care, treatment, (2:48) and received prescriptions and medications for that condition.

(2:55) With regards to the time where he did leave the United States, (3:00) the respondent alleges that he was a victim of a crime at this time, (3:05) where he was driving for Lyft, (3:08) and he alleges that he was knocked unconscious, taken across the border, (3:13) and left there while his car was stolen. (3:17) Upon waking up and realizing he was in Tijuana, (3:20) he went back to the border and applied for admission, (3:24) and he was taken to the hospital due to his diabetic condition at that time. (3:29) So the respondent just requests that the court, while there is some flight risk here, (3:34) the respondent respectfully requests the court set an appropriate bond amount (3:37) with potential ATD to offset these flight risk concerns.

(3:42) Okay. Counsel, didn't the respondent make multiple statements (3:45) that he was out partying with friends and woke up in Mexico? (3:51) To my knowledge, she did not make those statements. (3:54) From the DHS evidence, from what I can tell, (3:57) it was someone who claimed to be his sister by the name of Abby Usa.

(4:06) I do not know who this is, and when I spoke with the respondent (4:09) and some of his family members, they also did not know who that is. (4:12) I know he does not have a sister of that name. (4:15) But to my knowledge, the respondent has not made any of those statements.

(4:19) Okay. The court is prepared to rule at this time. (4:25) The court finds that based on the evidence before it, (4:28) based on the fact that the respondent already has an order of removal, (4:33) even that is on appeal, his likelihood of receiving relief is minimal at this point.

(4:41) That does certainly make him a significant flight risk. (4:44) When this is combined with the fact that the respondent (4:47) did violate his prior ATD in this case, (4:52) the court finds that the government did meet its burden of demonstrating (4:55) that the respondent is a flight risk by clearing the evidence, (4:59) and the court finds that no bond would be appropriate in this case (5:02) given his past violations. (5:05) Counselor Respondent, do you want to reserve appeal? (5:09) Yes, please, Your Honor.

Thank you. (5:10) All right. Any appeal will be due no later than May 4, 2026.

(5:15) Thank you, everyone, and this hearing is adjourned. (5:18) Thank you very much. Thank you, Counsel.

(5:20) Thank you, Counsel.