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Attorney for Petitioner
BYRON NOE HERRERA AJTUN

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BYRON NOE HERRERA AJTUN,

Plaintiff,

v.

CHRISTOPHER J. LAROSE, Senior
Warden, Otay Mesa Detention Center;
DANIEL A. BRIGHTMAN, San Diego
Field Office Director, Immigration and
Customs Enforcement and Removal
Operations ("ICE/ERO"); DAVID J.
VENTURELLA, Senior Official
Performing Duties of Director of
Immigration Customs Enforcement
("ICE"); U.S. Immigration and Customs
Enforcement; MARKWAYNE MULLIN,
Secretary of the Department of
Homeland Security ("DHS"); U.S.
Department of Homeland Security; and
TODD BLANCHE, Acting Attorney
General of the United States,

Respondents.

CASE NO.: 3:26-cv-03820-RBM-MMP

**PETITIONER'S TRAVERSE TO
RESPONDENTS' ABBREVIATED
RESPONSE**

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Respondents' abbreviated response substantially narrows the issues presented.

Although Respondents preserve their legal position that Petitioner's detention is governed by 8 U.S.C. § 1225(b), Respondents do not oppose this Court ordering an individualized bond hearing pursuant to 8 U.S.C. § 1226(a). Therefore, the remaining issues concern only (1) the timing of that hearing and (2) whether this Court should specify the burden of proof governing the hearing it orders.

I. The Court Should Order the Bond Hearing Within Seven Days.

Respondents request fourteen days to provide the hearing, citing generalized staffing constraints and agency workload. That request should be denied.

This is not a case in which a bond hearing must be initiated from the beginning. Petitioner timely requested a custody redetermination hearing before the Immigration Court. DHS argued that the Immigration Court lacked jurisdiction because Petitioner was subject to mandatory detention under 8 U.S.C. § 1225(b), and the Immigration Judge agreed. As a result, the hearing did not proceed—not because of scheduling, evidentiary, or administrative concerns—but solely because of the jurisdictional ruling. The only issue preventing the hearing from occurring was the legal question now before this Court.

Respondents now acknowledge that this Court may order a bond hearing pursuant to 8 U.S.C. § 1226(a). Under these circumstances, there is no justification for an additional fourteen-day delay based solely on generalized references to agency workload. Had Respondents taken the position they now advance, the Immigration

1 Court could have proceeded directly to the merits of Petitioner's custody request.

2 For these reasons, the Court should order the hearing within seven (7) days.

3 **II. If the Court Grants the Petition, It Should Specify the Procedures**
4 **Governing the Bond Hearing.**

5 Respondents acknowledge that this Court may order an individualized bond
6 hearing pursuant to 8 U.S.C. § 1226(a), yet ask the Court to refrain from specifying
7 the burden of proof applicable at that hearing.
8

9 If the Court grants the Petition, it should resolve that issue now. The burden of
10 proof is not a collateral procedural matter. It is integral to the adequacy of the relief
11 requested and often determinative of the outcome of a custody proceeding. An order
12 directing only that a hearing occur, while leaving unresolved the governing burden of
13 proof, risks further litigation regarding whether the hearing afforded Petitioner the
14 relief to which he is entitled.
15

16 This Court possesses broad equitable authority in habeas proceedings to
17 fashion relief that fully remedies the statutory violation before it. Having determined
18 that a hearing under 8 U.S.C. § 1226(a) is warranted, the Court should also specify
19 the minimum procedures necessary to ensure that the hearing meaningfully remedies
20 Petitioner's unlawful detention.
21

22 Respondents' position further illustrates why this issue should be resolved
23 now. Respondents acknowledge that a § 1226(a) bond hearing may be ordered, yet ask
24 the Court to leave unresolved the procedural framework governing that hearing.
25 Resolving the burden-of-proof issue at the same time promotes judicial economy,
26 avoids piecemeal litigation, and ensures that the Court's order provides complete and
27
28

1 effective relief.

2 Accordingly, if the Court grants the Petition, it should direct that Respondents
3 bear the burden of establishing, by clear and convincing evidence, that Petitioner's
4 continued detention is necessary because he presents a danger to the community or a
5 risk of flight.
6

7 **III. Conclusion**

8 Respondents no longer oppose the principal relief sought in the Petition—an
9 individualized bond hearing under 8 U.S.C. § 1226(a). The remaining issues concern
10 only the timing of that hearing and the procedures necessary to ensure that it
11 provides meaningful relief.
12

13 For the foregoing reasons, Petitioner respectfully requests that the Court:

- 14 1. Grant the Petition for Writ of Habeas Corpus;
- 15 2. Order Respondents to provide Petitioner with an individualized bond hearing
16 pursuant to 8 U.S.C. § 1226(a) within seven (7) days of the Court's Order;
- 17 3. Direct that, at such hearing, Respondents bear the burden of proving by clear
18 and convincing evidence that Petitioner's continued detention is necessary
19 because he presents a danger to the community or a risk of flight; and
20 4. Grant such other and further relief as the Court deems just and proper.
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25 Date: July 8, 2026

STERGER LAW GROUP, P.C.

26 By: /s/ Richard S. Sterger, Esq.

27 Richard S. Sterger, Esq.

28 Attorney for Petitioner