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7
8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 KELIL ELEMO,

11 Petitioner,

12 v.

13 KRISTI NOEM, Secretary of the
Department of Homeland Security,
14 PAMELA JO BONDI, Attorney General,
TODD M. LYONS, Acting Director,
15 Immigration and Customs Enforcement,
JESUS ROCHA, Acting Field Office
16 Director, San Diego Field Office,
CHRISTOPHER LAROSE, Warden at
17 Otay Mesa Detention Center,

18 Respondents.
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CASE NO.: 26-cv-00281-BJC-JLB

Traverse

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28

TABLE OF CONTENTS

	PAGE
I. INTRODUCTION	1
II. ARGUMENT.....	1
A. Mr. Elemo does not deny that § 1225(b) mandates detention.	1
B. Neither 8 U.S.C. § 1252(g) nor <i>Thuraissigiam</i> prevent this Court from addressing Mr. Elemo’s Detention.	2
1. As other courts in this district have found, this Court has jurisdiction to hear this case.	2
2. Mr. Elemo does have due process rights.	3
C. The government cannot establish that Mr. Elemo’s detention complies with due process.	4
III. BECAUSE IMMIGRATION JUDGES’ NEUTRALITY HAS BEEN SEVERELY COMPROMISED, THIS COURT MUST ORDER OUTRIGHT RELEASE OR AT LEAST PUT IN PLACE ADDITIONAL SAFEGUARDS.	6
IV. CLAIM AND PRAYER FOR RELIEF	11

1 **I. INTRODUCTION**

2 Mr. Elemo has been detained without an individualized assessment of
3 whether he is a flight risk since June 27, 2025. That is, he has been detained for
4 more than seven months and is likely to be detained for an additional prolonged
5 period and his case remains pending. Doc. No. 7 at 1. Under any factor test, due
6 process requirements Mr. Elemo be released from custody or, in the alternative
7 receive a bond hearing.

8 Mr. Elemo’s petition explained that his mandatory detention under 8 U.S.C.
9 § 1225(b) without a bond hearing violates the Due Process Clause. This case turns
10 on how the three-to-five-factor due process test applies to Mr. Elemo’s prolonged
11 detention. Because the factors weigh in his favor, this Court must grant this
12 petition.

13 **Additionally, because of newly emerging evidence that the neutrality of**
14 **Otay Mesa’s immigration judges (“IJ”) has been compromised, and some IJs**
15 **and the Department of Homeland Security (“DHS”) have implemented**
16 **strategies to detain bond-worthy habeas petitioners, a bond hearing before a**
17 **randomly selected IJ will no longer reliably satisfy due process.** This Court
18 should therefore consider the alternative forms of relief set forth at the end of this
19 traverse.

20 **II. ARGUMENT**

21 **A. Mr. Elemo does not deny that § 1225(b) mandates detention.**

22 Much of the government’s arguments in the Return are irrelevant to the
23 claims raised in the petition.

24 Mr. Elemo does not deny that 8 U.S.C. § 1225(b) provides for mandatory
25 detention. He instead argues that that statute violates due process as applied to
26 him. He therefore seeks a release from detention as a constitutional, rather than as
27 a statutory, matter. The government’s arguments establishing the undisputed fact
28 that § 1225(b) provides for mandatory detention are therefore irrelevant. *See Doc.*

1 8 at 4–5.

2 **B. Neither 8 U.S.C. § 1252(g) nor *Thuraissigiam* prevent this Court**
3 **from addressing Mr. Elemo’s Detention.**

4 **1. As other courts in this district have found, this Court has**
5 **jurisdiction to hear this case.**

6 First, the government argues that under 8 U.S.C. § 1252(g) this Court lacks
7 jurisdiction. But, the Supreme Court has interpreted the jurisdiction-stripping
8 provision in Section 1252(g) provisions narrowly, limiting it to “three discrete
9 actions”: the “‘decision or action’ to ‘commence proceedings, adjudicate cases, or
10 execute removal orders.’” *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525
11 U.S. 471, 482, 119 S.Ct. 936, 142 L.Ed.2d 940 (1999) (quoting 8 U.S.C.
12 § 1252(g)). The Supreme Court noted that “[t]here are of course many other
13 decisions or actions that may be part of the deportation process.” *Id.* In a later
14 decision, the Court explained that it did not interpret Section 1252(g) “to sweep in
15 any claim that can technically be said to “arise from” the three listed actions of the
16 Attorney General. Instead, we read the language to refer to just those three
17 specific actions themselves.” *Jennings v. Rodriguez*, 583 U.S. 281, 294, 138 S.Ct.
18 830, 200 L.Ed.2d 122 (2018).

19 Here, Mr. Elemo is seeking to review the legality of his detention, arguing
20 that the length of time he has been detained here violates due process—rather than
21 challenging the decision to commence proceedings, the adjudication of his
22 removal case, or an action to execute his removal order. He does not seek to
23 relitigate in this Court the Immigration Judge’s order of removal; indeed, he is
24 currently separately pursuing the merits of his asylum in immigration court. The
25 sole relief he seeks here is release from custody. The governments do not cite any
26 cases where a found to lack subject matter jurisdiction over such a habeas claim.
27 Moreover, courts in this district court have repeatedly found that there is
28 jurisdiction in precisely this type of case. *See, e.g., Gao v. LaRose*, __ F. Supp. 3d
__, 2025 WL 2770633 (S.D. Cal. Sept. 26, 2025) (explaining why this Court has

1 jurisdiction over § 2241 petitions challenging mandatory detention under 28
2 U.S.C. § 1225(b)(1) and ordering an individualized bond hearing); *Rash v.*
3 *LaRose*, No. 26V0008-LL-DEB, 2026 WL 249324, at *1 (S.D. Cal. Jan. 30,
4 2026); *Malyshko v. Warden*, Otay Mesa Det. Ctr., No. 3:26-CV-00069-RBM-
5 SBC, 2026 WL 252367, at *2 (S.D. Cal. Jan. 30, 2026) (finding courts have
6 consistently rejected the government’s argument); *Constantinovici v. Bondi*, ___ F.
7 Supp. 3d ___, 2025 WL 2898985, at *3 (S.D. Cal. Oct. 10, 2025).

8 **2. Mr. Elemo does have due process rights.**

9 *Second*, the government argues that arriving immigrants like Mr. Elemo
10 have no due process rights per *Department of Homeland Security v.*
11 *Thuraissigiam*, 591 U.S. 103, 138–40 (2020). This Court should reject that
12 disturbing argument, as “[m]ost courts” have. *Gao v. LaRose*, No. 25-CV-2084-
13 RSH-SBC, 2025 WL 2770633, at *3 (S.D. Cal. Sept. 26, 2025); *see, e.g., Abdul-*
14 *Samed v. Warden of Golden State Annex Det. Facility*, No. 25-cv-98-SAB-HC,
15 2025 WL 2099343, at *6 (E.D. Cal. July 25, 2025); *Kydyrali v. Wolf*, 499 F.
16 Supp. 3d 768, 772 (S.D. Cal. 2020); *Hernandez v. Wofford*, No. 25-cv-986-KES-
17 CDB (HC), 2025 WL 2420390, at *3 (E.D. Cal. Aug. 21, 2025); *Padilla v. ICE*,
18 704 F. Supp. 3d 1163, 1171–72 (W.D. Wash. 2023). “*Thuraissigiam* addressed a
19 noncitizen’s right to challenge *admission*, not detention.” *Abdul Kadir v. Larose*,
20 No. 25CV1045-LL-MMP, 2025 WL 2932654, at *4 (S.D. Cal. Oct. 15, 2025).
21 “Nowhere in that decision did the Supreme Court suggest that arriving aliens
22 being held under § 1225(b) may be held indefinitely and unreasonably with no
23 due process implications, nor that such aliens have no due process rights
24 whatsoever.” *A.L. v. Oddo*, 761 F. Supp. 3d 822, 825 (W.D. Pa. 2025).¹

25
26 ¹ *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 207-09 (1953), is even
27 less on point. “*Mezei* involved a noncitizen who was permanently excluded from
28 the United States on security grounds, not a detainee raising their due process
rights in the context of detention without a bond hearing.” *Amado v. USDOJ*, No.
25CV2687-LL(DDL), 2025 WL 3079052, at *5 (S.D. Cal. Nov. 4, 2025). Plus,

1 These threshold objections are therefore meritless, and this Court should
2 proceed to evaluate whether § 1225(b) violates due process as applied here.

3 **C. The government cannot establish that Mr. Elemo’s detention**
4 **complies with due process.**

5 The government does not deny that when deciding whether prolonged
6 detention violates the due process clause, courts typically look to either three or
7 five factors. *See Sanchez-Rivera v. Matuszewski*, No. 22-CV-1357-MMA (JLB),
8 2023 WL 139801, at *5–6 (S.D. Cal. Jan. 9, 2023) (surveying different
9 approaches). Courts generally agree that relevant factors include:

- 10 (1) “the total length of detention to date,”
11 (2) “the likely duration of future detention,” and
12 (3) “the delays in the removal proceedings caused by the petitioner and the
13 government.”

14 *Id.* Some courts also consider:

- 15 (4) “the conditions of detention,” and
16 (5) “the likelihood that the removal proceedings will result in a different final
17 order.”

18 *Id.* The government makes no argument whatsoever about factors 3, 4, or 5. Doc.
19 8 at 8-9. Hearing no objection from the government, then, this Court should find
20 that all of those factors favor a bond hearing.

21 The government does discuss the first factor, **length of detention**. Doc. 8 at
22 8-9. The government concedes that Mr. Elemo has been detained for over seven
23 months. Doc. 8 at 8. It argues that because Mr. Elemo’s detention does not fall
24 within the range of months of district court cases cited by the government, his
25 detention is not unreasonable. *Id.* (citing cases finding prolonged detentions of 27
26 to 42 months).

27 _____
28 the Supreme Court has since called into question *Mezei*’s continued validity. *See*
Kydyrali v. Wolf, 499 F. Supp. 3d 768, 772 (S.D. Cal. 2020).

1 But multiple years of detention is not required in order to raise a due
2 process violation. While over 7 months of detention “does not presumptively
3 establish unreasonably prolonged detention, it is also not so little time as to
4 preclude constitutional scrutiny.” *Babaveisi v. LaRose*, No. 25-CV-3746-GPC-
5 SBC, 2026 WL 76565, at *6 (S.D. Cal. Jan. 9, 2026). The length of detention
6 does not “serve as a safe harbor or insulate Petitioner’s case from constitutional
7 review.” *Sadeqi v. LaRose*, No. 25-CV-2587-RSH-BJW, 2025 WL 3154520, at *3
8 (S.D. Cal. Nov. 12, 2025).

9 Additionally, courts have previously found that similar lengths of detention
10 were unreasonable. *See, e.g., Amado v. United States Dep’t of Just.*, No. 25-CV-
11 2687-LL-DDL, 2025 WL 3079052, at *6 (S.D. Cal. Nov. 4, 2025) (“Courts have
12 found detention over seven months without a bond hearing weighs toward a
13 finding that it is unreasonable.”); *Masood v. Barr*, No. 19-CV-07623-JD, 2020
14 WL 95633, at *3 (N.D. Cal. Jan. 8, 2020) (finding detention for nearly nine
15 months weighs in favor of the petitioner); *Gao v. LaRose*, No. 25-CV-2084-RSH-
16 SBC, 2025 WL 2770633, at *5 (S.D. Cal. Sept. 26, 2025) (“The Court finds that
17 Petitioner’s detention for over 10 months without a bond hearing, in the context of
18 the specific circumstances described above, has become unreasonable and violates
19 due process.”). Thus, the government’s claim that Mr. Elemo has not been
20 detained for long enough therefore makes no sense.

21 As to the second factor, future delays, the government implies that the case
22 will be resolved soon. Doc. 8 at 9. “While the Court cannot definitively determine
23 the duration of petitioner’s future detention, based on the current record, it
24 appears likely petitioner will face many more months and potentially years in
25 detention,” since whether the case is decided in Petitioner’s favor or not, there
26 will likely be an appeal that case last several more months or years. *Babaveisi v.*
27 *LaRose*, No. 25-CV-3746-GPC-SBC, 2026 WL 76565, at *6 (S.D. Cal. Jan. 9,
28 2026) (citing *Belqasim v. Bostock*, No. 2:25-CV-01282-LK-TLF, 2025 WL

1 3466971, at *9 (W.D. Wash. Oct. 28, 2025), report and recommendation adopted
2 sub nom. *Belqasim v. Hermosillo*, No. 2:25-CV-01282-LK, 2025 WL 3170929
3 (W.D. Wash. Nov. 13, 2025). “[A] removal order may not become final until after
4 the appeals Petitioner could file, to both the Board of Immigration Appeals and
5 Ninth Circuit... These appeals can take a long time.” *Guatam v. Corr. Corp. of*
6 *Am.*, No. 3:25-CV-3600-JES-DEB, 2026 WL 25846, at *5 (S.D. Cal. Jan. 5,
7 2026); *See also Abdul-Samed v. Warden of Golden State Annex Det. Facility*, No.
8 1:25-CV-00098-SAB-HC, 2025 WL 2099343, at *7 (E.D. Cal. July 25, 2025)
9 (“Although the Court recognizes that future events are difficult to predict, the
10 Court nevertheless finds that in the event Petitioner’s applications for relief from
11 removal are denied, Petitioner’s possible administrative appeal and judicial
12 review by the Ninth Circuit will be sufficiently lengthy such that this factor
13 weighs in favor of Petitioner.”). Thus, this factor weighs heavily in Mr. Elemo’s
14 favor.

15 Because these two factors, and the other factors not addressed by the
16 government, weigh in favor of Mr. Elemo, this Court must grant the petition.

17 **III. BECAUSE IMMIGRATION JUDGES’ NEUTRALITY HAS BEEN SEVERELY**
18 **COMPROMISED, THIS COURT MUST ORDER OUTRIGHT RELEASE OR AT**
19 **LEAST PUT IN PLACE ADDITIONAL SAFEGUARDS.**

20 In a perfect world, this Court could remedy the due process violation by
21 ordering a bond hearing before a neutral immigration judge (“IJ”), allowing the IJ
22 to determine whether Mr. Elemo posed a risk of danger or flight. Unfortunately,
23 attacks on IJ independence under the current administration have severely
24 compromised IJs’ neutrality. As a result, there is a serious risk that an IJ will
25 order Mr. Elemo’s continued detention even if he poses no danger or flight risk.
26 Several data points support that conclusion.

27 Mr. Elemo attaches a declaration filed in *Briceno Solano v. Mason*, No. 26-
28 CV-00045 (S.D.W.Va.). *See* Exhibit B. After reviewing the declaration, the court
in *Briceno Solano* granted outright release rather than a bond hearing. *Briceno*

1 *Solano v. Mason*, No. 26-CV-00045, 2026 WL 311624, at *20 (S.D.W. Va. Feb.
2 4, 2026).

3 In the declaration, Former ICE Counsel Jorge Artieda attests to “a seismic
4 shift in bond hearing outcomes for individuals who had been granted federal
5 habeas relief and ordered § 1226(a) bond hearings . . . in the Eastern District of
6 Virginia.” Exh. B at 2. The pattern of granting bond in appropriate cases “abruptly
7 and uniformly ceased” in early January, in a way that “suggests coordinated
8 institutional direction.” *Id.* IJs there now rely on a “remarkably narrow and
9 predictable set of rationales to deny bond—rationales that appear to bear little
10 relationship to genuine individualized risk assessment and that would not have
11 been deemed sufficient to justify denial just weeks earlier.” *Id.* at 3. In Mr.
12 Artieda’s professional opinion, the IJs’ rationales “do not appear to be grounded
13 in legitimate risk assessment” but are “pretexts designed to ensure denial of bond
14 regardless of the individual facts of each case.” *Id.* at 4.

15 Mr. Artieda further attests that to having “communicated with numerous
16 immigration attorneys practicing all over the United States who handle detention
17 cases.” *Id.* at 5. “These conversations have confirmed that the pattern [he] ha[s]
18 observed is widespread and consistent.” *Id.* Based on these conversations,
19 Mr. Artieda believes that these bond denials are part of a “coordinated
20 institutional effort.” *Id.* at 6. That coordinated effort supports outright release or,
21 at a minimum, additional scrutiny from this Court.

22 Mr. Artieda’s observations are consistent with sustained attacks on IJs’
23 independence under this administration. Several examples illustrate the point.

24 *First*, the Trump administration has eliminated 128 IJs insufficiently
25 aligned with the administration’s priorities, illustrating to the remaining IJs the
26 cost of resistance. *See Woo-Sun Lim, Former judge highlights legal failures in*
27 *U.S. worker detentions*, The Dong-A Ilbo (Sept. 20, 2025),
28 <https://www.donga.com/en/article/all/20250920/5859412/1>.

1 These IJs are under no illusions about why they were let go. Former
2 Baltimore IJ Emmett Soper stated: “I think the current administration of the
3 immigration courts does not fundamentally see the immigration courts as neutral
4 decision-makers. I think that they see the immigration courts as a tool for this
5 administration to advance its policy objectives.” Geoff Bennett & Ali Schmitz,
6 *Ousted Immigration Judge Describes Deepening Court Backlog*, PBS NewsHour
7 (Nov. 12, 2025), [https://www.pbs.org/newshour/show/ousted-immigration-judge-](https://www.pbs.org/newshour/show/ousted-immigration-judge-describes-deepening-court-backlog)
8 [describes-deepening-court-backlog](https://www.pbs.org/newshour/show/ousted-immigration-judge-describes-deepening-court-backlog). Former San Francisco IJ Jeremiah Johnson
9 similarly understood “the hint that they should be hearing cases a certain way,
10 deciding cases a certain way. Move faster. Less due process, essentially.” Hilda
11 Gutierrez, Michael Bott & Son Vo, *‘An all-out attack on immigration court:’ SF*
12 *immigration judges speak out after firings*, NBC Bay Area (Nov. 25, 2025),
13 [https://www.nbcbayarea.com/investigations/san-francisco-immigration-judges-](https://www.nbcbayarea.com/investigations/san-francisco-immigration-judges-speak-out-firings/3986850/)
14 [speak-out-firings/3986850/](https://www.nbcbayarea.com/investigations/san-francisco-immigration-judges-speak-out-firings/3986850/). Former San Francisco IJ George Pappas was even
15 more direct: “We were told to facilitate deportation... Due process is dead in
16 immigration courts.” Isabela Dias, *“Fired for No Reason”: Former Immigration*
17 *Judges Speak Out Against Trump’s Assault on the Courts*, Mother Jones (Oct. 9,
18 2025), [https://www.motherjones.com/politics/2025/10/immigration-court-judge-](https://www.motherjones.com/politics/2025/10/immigration-court-judge-trump-assault-purge-dhs-ice/)
19 [trump-assault-purge-dhs-ice/](https://www.motherjones.com/politics/2025/10/immigration-court-judge-trump-assault-purge-dhs-ice/).

20 This has had the predictable effect on those who remain. According to
21 former San Francisco IJ Elizabeth Young, “I’ve talked to many of [the judges still
22 serving], and they’re like, ‘When I go into court, I am concerned about applying
23 the law, but I’m also concerned that I should deny more, because if I don’t, then
24 I’ll get fired.’” Marco Poggio, *Judges See an Immigration Court Gutted from*
25 *Inside*, Law360 (Oct. 31, 2025),
26 [https://www.law360.com/articles/2381003/judges-see-an-immigration-court-](https://www.law360.com/articles/2381003/judges-see-an-immigration-court-gutted-from-inside)
27 [gutted-from-inside](https://www.law360.com/articles/2381003/judges-see-an-immigration-court-gutted-from-inside). Meanwhile, Department of Justice recruitment materials seek
28 “deportation judges” to fill the empty IJ slots, Coral Murphy Marcos, *US Justice*

1 *Department Recruiting Legal Experts to Serve as ‘Deportation’ Judges,*
2 Guardian, [https://www.theguardian.com/us-news/2025/nov/21/us-justice-](https://www.theguardian.com/us-news/2025/nov/21/us-justice-department-ad-deportation-judges)
3 [department-ad-deportation-judges](https://www.theguardian.com/us-news/2025/nov/21/us-justice-department-ad-deportation-judges), inviting candidates to “bring the hammer
4 down on criminal illegal aliens” and “defend your communities, your culture,
5 your very way of life.” dhsgov, Instagram (Nov. 21, 2025),
6 <https://www.instagram.com/p/DRVT8DmCQKD/?hl=en>.

7 *Second*, a parallel purge occurred at the BIA, which was reduced from 28
8 members to 15 members. All Biden appointees on the BIA were fired. Am. Imm.
9 Council, *BIA Decision Strips Immigration Judges of Bond Authority, All but*
10 *Guaranteeing Mandatory Detention for Undocumented Immigrants* (Sept. 12,
11 2025), [https://www.americanimmigrationcouncil.org/blog/bia-ruling-](https://www.americanimmigrationcouncil.org/blog/bia-ruling-immigration-judges-bond-mandatory-detention-undocumented-immigrants/)
12 [immigration-judges-bond-mandatory-detention-undocumented-immigrants/](https://www.americanimmigrationcouncil.org/blog/bia-ruling-immigration-judges-bond-mandatory-detention-undocumented-immigrants/). The
13 statistical impact is stark. As of January 22, 2026, the reconstituted BIA has
14 issued 71 published decisions. Exec. Off. for Immigr. Rev., *Volume 29*, U.S.
15 Dep’t of Just. (Jan. 21, 2025), <https://www.justice.gov/eoir/volume-29>. Of those,
16 69 decisions (97%) favored the administration. By contrast, during the entire four-
17 year span of the prior administration, the BIA issued 76 published decisions.
18 Exec. Off. for Immigr. Rev., *Volume 28*, U.S. Dep’t of Just. (June 13, 2025),
19 <https://www.justice.gov/eoir/volume-28>. (First decision, *Matter of DIKHTYAR*,
20 28 I&N Dec. 214 (BIA 2021), issued 01/22/2021). Of those, 46 decisions (60%)
21 favored the administration. The transformation from 60% to 97% pro-government
22 outcomes—achieved through wholesale termination of one administration’s
23 appointees —speaks for itself.

24 *Third*, beyond personnel changes, EOIR’s new acting director, Sirce E.
25 Owen, has issued “a string of sharply worded policy memos” encouraging IJs to
26 side with the government over immigrants and minimize due process. E. Tammy
27 Kim, *Inside Donald Trump’s Attack on Immigration Courts*, New Yorker,
28 <https://www.newyorker.com/inside-donald-trumps-attack-on-immigration-court>.

1 The policy directives include: a memorandum dated June 27, 2025 warning
2 judges not to demonstrate “bias directed against DHS” or to be “adjudicatory
3 outliers,” at risk of “close examination and potential action,” Exec. Off. for
4 Immigr. Rev., Policy Memorandum 25-33, Neutrality and Impartiality in
5 Immigration Court Proceedings (June 27, 2025), [https://iptp-
6 production.s3.amazonaws.com/media/documents/2025.06.27_EOIR_-_PM_25-
7 33.pdf](https://iptp-production.s3.amazonaws.com/media/documents/2025.06.27_EOIR_-_PM_25-33.pdf); a memorandum encouraging judges to deny asylum applications without
8 full evidentiary hearings, styled as efficiency guidance but functioning as a
9 directive to reduce due process protections, Exec. Off. for Immigr. Rev., Policy
10 Memorandum 25-28, Pretermission of Legally Insufficient Application for
11 Asylum (Apr. 11, 2025), [https://www.justice.gov/eoir/media/1396411/dl?inline](https://www.justice.gov/eoir/media/1396411/dl?inline;);
12 and memoranda restricting immigration judges’ ability to grant continuances,
13 Exec. Off. for Immigr. Rev., Policy Memorandum 25-27, Cancellation of
14 Director’s Memorandum 23-01 and Reinstatement of Policy Memorandum 19-13
15 (Mar. 21, 2025), <https://www.justice.gov/eoir/media/1394086/dl>, and
16 administrative closure, Exec. Off. for Immigr. Rev., Policy Memorandum 25-29,
17 Cancellation of Director’s Memorandum 22-03 (Apr. 18, 2025),
18 <https://www.justice.gov/eoir/media/1397161/dl?inline>.

19 *Fourth*, EOIR personnel have at times directed IJs to ignore federal court
20 orders related to bond hearings. On January 13, 2026, in the wake of *Maldonado*
21 *Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3289861 (C.D.
22 Cal. Nov. 20, 2025); *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-
23 BFM, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025), Chief Immigration
24 Judge Teresa L. Riley sent all IJs the following instructions:

25 Please provide the following guidance to all immigration judges
26 forthwith: *Maldonado Bautista* is not a nationwide injunction and
27 does not purport to vacate, stay, or enjoin *Yajure Hurtado*.
28 Therefore *Yajure Hurtado* remains binding precedent on agency
adjudications. For clarification, declaratory judgments differ from

1 injunctions in that the former clarifies parties’ legal rights and
2 relationships without ordering specific action, while the latter is a
3 court order compelling a party to do or stop doing a specific act. A
4 declaratory judgment is not an equitable remedy and does not, by
5 itself, have the effect of compelling specific action by a party.
Thank you for your attention to this matter.

6 Am. Immigr. Laws. Ass’n, Practice Alert: EOIR Issues Nationwide
7 Guidance on *Maldonado Bautista*, AILA Doc. No. 26011404 (Jan. 16, 2026),
8 [https://www.aila.org/library/practice-alert-eoir-issues-nationwide-guidance-on-](https://www.aila.org/library/practice-alert-eoir-issues-nationwide-guidance-on-maldonado-bautista)
9 [maldonado-bautista](https://www.aila.org/library/practice-alert-eoir-issues-nationwide-guidance-on-maldonado-bautista). A few days later, Judge Sykes issued a scathing order,
10 calling out “Respondents’ deliberate choice to continue defying the final
11 judgment entered in *Bautista*.” *Palomera Baltazar v. Janecka*, No. 5:26-cv-
12 00019-SSS-BFM at *2-3 (C.D. Cal. Jan. 16, 2026).

13 The Otay Mesa IJs’ resistance to granting bond therefore accords with the
14 larger movement to eliminate or silence IJs who side with immigrants, while
15 bringing those that remain into line with the administration’s priorities.

16 The “equitable and flexible nature of habeas relief” affords district courts
17 significant discretion over the appropriate remedies for violations of law and the
18 Constitution. *Velasco Lopez v. Decker*, 978 F.3d 842, 855 (2d Cir. 2020); *see also*
19 *Schlup v. Delo*, 513 U.S. 298, 319 (1995) (“[H]abeas corpus is, at its core, an
20 equitable remedy”). This Court should order a remedy that fully addresses the
21 statutory and constitutional violations in this case and is efficient to administer.
22 *Carafas v. LaVallee*, 391 U.S. 234, 238 (1968) (the habeas statute “does not limit
23 the relief that may be granted to discharge of the applicant from physical custody.
24 Its mandate is broad with respect to the relief that may be granted”).

25 **IV. CLAIM AND PRAYER FOR RELIEF**

26 Detaining Petitioner Without a Bond Hearing Violates the Fifth
27 Amendment’s Due Process Clause
28

1 Here, because ordering a 1226(a) bond hearing before a randomly selected
2 IJ would not properly redress the statutory and constitutional violations present in
3 this matter, Petitioner urges the court to provide an alternative corrective measure:

4 **First, Petitioner submits that immediate release is the most appropriate**
5 **remedy.** “In recent months, courts across the country have ordered the release of
6 detainees in similar situations.” *Moctezuma v. Henkey*, No. 1:25-CV-00741-BLW,
7 2026 WL 18809, at *5 (D. Idaho Jan. 2, 2026) (given that the government’s
8 repeated use of unlawful detention policies across the country, causing petitioners
9 to “sit in jail waiting for a judicial decision,” the court would order immediate
10 release instead of causing additional delay through a bond hearing). (citing *Lepe*
11 *v. Andrews*, 801 F. Supp. 3d 1104 (E.D. Cal. 2025); *J.U. v. Maldonado*, No. 25-
12 cv-4836, 2025 WL 2772765, at *10 (E.D.N.Y. Sept. 29, 2025); *Rosado v.*
13 *Figueroa*, No. 25-cv-2157, 2025 WL 2337099, at *19 (D. Ariz. Aug. 11, 2025);
14 *Pinchi v. Noem*, No. 25-cv-05632, 2025 WL 1853763, at *4 (N.D. Cal. July 4,
15 2025). *Santiago v. Noem*, No. EP-25-CV-361, 2025 WL 2792588, at *13-14
16 (W.D. Tex. Oct. 2, 2025) (“Without a legitimate interest in her detention,
17 immediate release appropriately remedies Respondents’ violation of [Petitioner’s]
18 due process rights through her continued detention.”)

19 **In the alternative, Petitioner requests a custody hearing before this**
20 **Court.** The habeas court can hold its own custody hearing and determine whether
21 the government can prove by clear and convincing evidence that Petitioner must
22 remain in custody, or whether he may be released on recognizance. *See, e.g., e.g.*
23 *L.G.M. v. LaRocco*, 788 F.Supp.3d 401, 405-07 (E.D.N.Y. 2025) (ordering a bond
24 hearing held by the habeas court, as this would be more efficient than delegating
25 the task to the agency and ensure proper constitutional oversight); *Flores-Powell*
26 *v. Chadbourne*, 677 F.Supp.2d 474-78 (D. Mass 2010) (granting petition and
27 discussing at length habeas court’s equitable power, which includes power to hold
28 its own bail hearing); *see also Santos v. Lowe*, No. 1:18-CV-1553, 2020 WL

1 4530728, at *4 (M.D. Pa. Aug. 6, 2020) (finding that habeas court-ordered bond
2 hearing was not individualized and did not comport with due process, and
3 granting motion to enforce to hold the court’s own bond determination); *Ramirez*
4 *v. Watkins*, No. 10-cv-126, 2010 WL 6269226, at *19-20 (S.D. Tex. Nov. 3,
5 2010), *rep. and rec not reached*, (S.D. Tex. Dec. 8, 2010) (dismissing case as
6 moot) (recommending the habeas court conduct its own bail inquiry, as it would
7 be more efficient, ensure supervision over any compliance issues, and avoid
8 further proceedings).

9 **At a minimum, the court should order that Petitioner be provided a**
10 **1226(a) bond hearing, but with additional safeguards.** Specifically, the Court
11 should order:

- 12 1. A bond hearing where the government shall bear the burden of
13 establishing by clear and convincing evidence that Petitioner poses a
14 danger or flight risk, while further specifying that concerns about
15 interrupting court schedules is not a ground to deny bond.
- 16 2. Provide that the habeas court shall retain jurisdiction to review the
17 immigration judge bond decision to ensure compliance with the
18 court’s order and due process.
- 19 3. Prohibit ICE from invoking the automatic stay provisions under 8
20 C.F.R. § 1003.19(i)(2) to defeat the IJ’s bond determination.

21 Order all other relief that the Court deems just and proper.

22
23 Respectfully submitted,

24
25 Dated: February 12, 2026

s/ Zandra L. Lopez

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