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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

AKYLBK ZHUMAGULOV,

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.: 26-cv-01609-RBM-SBC

Amended¹ Petition
for a
Writ of Habeas Corpus

Akylbek Zhumagulov has been detained pending his immigration proceedings for 18 months and counting. This Court should “join[] the majority of courts across the country in concluding that [his] unreasonably prolonged

¹ Federal Rule of Civil Procedure 15(a)(1)(A) permits a party to “amend its pleading once as a matter of course no later than 21 days after serving it.” Fed. R. Civ. Pro. 15(a)(1)(A) (punctuation altered). It is less than 21 days since service. Petitioner therefore files this amended petition as of right.

1 detention under 8 U.S.C. § 1225(b) without an individualized bond hearing
2 violates due process.” *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 772 (S.D. Cal.
3 2020) (Battaglia, J.).

4 Additionally, because of newly emerging evidence that the neutrality of
5 immigration judges (“IJ”) has been compromised, and some IJs and the
6 Department of Homeland Security (“DHS”) have implemented strategies to detain
7 bond-worthy habeas petitioners, a bond hearing before a randomly selected IJ will
8 no longer reliably satisfy due process. This Court should therefore consider the
9 alternative forms of relief set forth at the end of this petition.

10 STATEMENT OF FACTS

11 Mr. Zhumagulov was born in Kyrgyzstan in 182. Exh. A, Declaration of
12 Akylbek Zhumagulov, at ¶ 1. He entered the US on September 3, 2024. *Id.* More
13 than a year later, an immigration judge denied his claim on December 9, 2025. *Id.*
14 at ¶ 3.

15 On January 5, 2026, he filed a timely notice of appeal with the Board of
16 Immigration Appeals. Exh. B. The BIA set a date for filing briefs to April 7,
17 2026. *Id.* If the BIA denies, the case will proceed to the Ninth Circuit Court of
18 Appeals, which currently has a significant backlog. Exh. A at ¶ 5.

19 Meanwhile, he is detained in jail-like conditions. Exh. A at ¶ 6. His
20 medical requests have not been fully satisfied. *Id.*

21 LEGAL BACKGROUND

22 **I. The Fifth Amendment’s Due Process Clause prohibits prolonged** 23 **immigration detention without a bond hearing.**

24 This habeas petition presents a question about whether and when the Fifth
25 Amendment’s Due Process Clause countermands the government’s statutory
26 authority to detain immigrants without bond hearings. Mr. Zhumagulov is
27 detained under one such statute, 8 U.S.C. § 1225(b). “Section 1225 applies to
28 ‘applicants for admission’—noncitizens who ‘arrive[] in the United States,’ or are

1 ‘present’ in the United States but have ‘not been admitted.’” *Banda v. McAleenan*,
2 385 F. Supp. 3d 1099, 1111 (W.D. Wash. 2019). It “applies to, among others,
3 noncitizens initially determined to be inadmissible because of . . . lack of valid
4 documentation.” *Id.* That includes persons who, like Mr. Zhumagulov, present
5 themselves for inspection at the border and—rather than producing admission
6 documents—make asylum and other fear-based claims. *See id.* at 1109–11
7 (describing a similar procedural history and finding that petitioner was detained
8 under § 1225(b)). Such immigrants are detained under § 1225(b) not only during
9 their initial proceedings, but also when they appeal to the BIA. *See id.* at 1111
10 (reaching same conclusion for immigrant with pending BIA appeal).

11 This statutory scheme has left courts to grapple with the limits (if any) of
12 that detention power: Does this statute permit the government to detain
13 immigrants indefinitely, without ever having to prove at a bond hearing that they
14 pose a risk of danger or flight? Three Supreme Court cases are potentially relevant
15 to answering that question.

16 First, in *Zadvydas v. Davis*, the Supreme Court indicated that indefinite
17 immigration detention raises serious due process concerns. 533 U.S. 678 (2001).
18 *Zadvydas* involved a statute authorizing the government to detain immigrants
19 after they are ordered removed. *Id.* at 683. For immigrants who cannot be
20 removed, that statute had the potential to subject them to years, decades, or a
21 lifetime in custody. *See id.* at 690. The Supreme Court held that if the statute
22 “permit[ed] indefinite detention of an alien[,] [it] would raise a serious
23 constitutional problem,” because [t]he Fifth Amendment’s Due Process Clause
24 forbids the Government to ‘depriv[e]’ any ‘person ... of ... liberty ... without due
25 process of law.’ Freedom from imprisonment—from government custody,
26 detention, or other forms of physical restraint—lies at the heart of the liberty that
27 Clause protects. *See Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). And this Court
28 has said that government detention violates that Clause unless the detention is

1 ordered in a *criminal* proceeding with adequate procedural protections, *see United*
2 *States v Salerno*, 481 U.S. 739, 746 (1987), or, in certain special and ‘narrow’
3 nonpunitive ‘circumstances,’ *Foucha, supra*, at 80, where a special justification,
4 such as harm-threatening mental illness, outweighs the ‘individual’s
5 constitutionally protected interest in avoiding physical restraint.’ *Kansas v.*
6 *Hendricks*, 521 U.S. 346, 356 (1997). *Id.* Ultimately, however, the Court declined
7 to decide whether a statute permitting indefinite detention would violate the Due
8 Process Clause. Instead, the Court employed the constitutional avoidance canon to
9 read implicit limits into the statute, requiring release after detention became
10 sufficiently prolonged. *Id.* at 699.

11 Following *Zadvydas*, the Ninth Circuit applied similar reasoning to
12 § 1225(b). *Rodriguez v. Robbins*, 804 F.3d 1060, 1087–89 (9th Cir. 2015).
13 Employing the constitutional avoidance canon, the Ninth Circuit held that
14 § 1225(b) implicitly entitled detained immigrants to bond hearings every six
15 months. *Id.*

16 The Supreme Court overruled that precedent in *Jennings v. Rodriguez*,
17 holding that the statute does not entitle detainees to bond hearings or otherwise
18 impose “any limit on the length of detention.” 583 U.S. 281, 297 (2018). But
19 though *Jennings* held that § 1225(b) imposes no statutory limit on the length of
20 detention, it reserved the question of whether prolonged, mandatory detention
21 without bond hearings violates due process. *Id.* at 312.

22 Finally, the Supreme Court held in *Demore v. Kim* that at least some
23 statutes mandating detention during immigration proceedings do not
24 automatically violate the Due Process Clause. 538 U.S. 510, 513 (2003). *Demore*
25 addressed 8 U.S.C. § 1226(c), which mandates detention without a bond hearing
26 for persons with certain criminal convictions. *Id.* The Court upheld § 1226(c) in a
27 5-4 opinion based on (1) the government interests justifying the detention of
28 immigrants with certain, aggravated criminal convictions, and (2) the relative

1 brevity of detention in most cases, with the vast majority taking only about five
2 months. *Id.* at 517–31. Justice Kennedy supplied a deciding vote. His concurrence
3 left open the possibility that individual immigrants could be “entitled to an
4 individualized determination as to his risk of flight and dangerousness if the
5 continued detention became unreasonable or unjustified.” *Id.* at 532–33.

6 “In the wake of *Jennings*,” *Zadvydas*, and *Demore*, “district courts have
7 grappled with how to address due process challenges to prolonged mandatory
8 detention under § 1225(b).” *Banda*, 385 F. Supp. 3d at 1116. But after a full
9 evaluation, “[n]early all district courts that have considered the issue agree that
10 prolonged mandatory detention pending removal proceedings, without a bond
11 hearing, will—at some point—violate the right to due process.” *Id.* (cleaned up)
12 (collecting cases). These Courts have relied on the due process concerns
13 recognized in *Zadvydas*. See, e.g., *Kydyrali*, 499 F. Supp. 3d at 771; *Banda*, 385
14 F. Supp. 3d at 1113–17; *Abdul Kadir v. Larose*, No. 25CV1045-LL-MMP, 2025
15 WL 2932654, at *3 (S.D. Cal. Oct. 15, 2025). As the Ninth Circuit put it in
16 *Jennings*’ wake, those considerations raise “grave doubts that any statute that
17 allows for arbitrary prolonged detention without any process is constitutional or
18 that those who founded our democracy precisely to protect against the
19 government’s arbitrary deprivation of liberty would have thought so.” *Rodriguez*
20 *v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018).

21 Neither *Jennings* nor *Demore* undermines that conclusion. *Jennings* held
22 only that the statute itself did not impose any limits on detention. It “did not
23 foreclose as-applied constitutional challenges to detention under” mandatory-
24 detention statutes. *Santos v. Warden Pike Cnty Corr. Facility*, 965 F.3d 203, 209
25 (3d Cir. 2020). And *Demore* held only that conviction-based mandatory detention
26 during immigration proceedings does not necessarily or inherently violate the Due
27 Process Clause, particularly when the detention has an expected duration of only
28 about five months. *Id.* at 208–11. But many persons detained under § 1225(b)—

1 like Mr. Zhumagulov—do not have criminal convictions. And as Justice
2 Kennedy’s concurrence made clear, *Demore* does not prevent immigrants from
3 arguing that sufficiently prolonged detention violates due process in their
4 individual cases. *See id.*²

5 Thus, this Court should hold that sufficiently prolonged detention violates
6 the Due Process Clause, as most courts have. *See, e.g., Gao v. LaRose*, No. 25-
7 CV-2084-RSH-SBC, 2025 WL 2770633, at *3 (S.D. Cal. Sept. 26, 2025); *Abdul*
8 *Kadir v. Larose*, No. 25CV1045-LL-MMP, 2025 WL 2932654, at *4 (S.D. Cal.
9 Oct. 15, 2025); *Cong v. Noem*, No. 25-CV-3730-GPC-DEB, 2026 WL 76566, at
10 *3 (S.D. Cal. Jan. 9, 2026); *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 772 (S.D. Cal.
11 2020) (Battaglia, J.); *Mardian v. Mayorkas*, 25-cv-3467-JLS; *Raeva v. Mayorkas*,
12 25-cv-3175-JO; *Abdul-Samed v. Warden of Golden State Annex Det. Facility*, No.
13 25-cv-98-SAB-HC, 2025 WL 2099343, at *6 (E.D. Cal. July 25, 2025);
14 *Hernandez v. Wofford*, No. 25-cv-986-KES-CDB (HC), 2025 WL 2420390, at *3
15 (E.D. Cal. Aug. 21, 2025); *Padilla v. ICE*, 704 F. Supp. 3d 1163, 1171–72 (W.D.
16 Wash. 2023).

17 **II. Courts have reached different conclusions about when immigration**
18 **detention becomes indefinitely prolonged, but Mr. Zhumagulov would**
19 **prevail under any standard.**

20 Though courts agree that due process mandates a bond hearing when
21 detention grows unreasonably prolonged, they disagree about how to assess
22 whether a particular migrant’s detention has reached that point. *Sanchez-Rivera v.*
23 *Matuszewski*, No. 22-CV-1357-MMA (JLB), 2023 WL 139801, at *5–6 (S.D.

24 ² The Supreme Court’s later decision in *Dep’t of Homeland Sec. v. Thuraissigiam*,
25 591 U.S. 103 (2020), is also inapposite, because it addressed only immigrants’
26 due process rights in deportation proceedings—i.e., the process due when
27 noncitizens seek to stay in the country instead of being removed. *See Lopez-*
28 *Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *7–9 (W.D. Tex.
Sept. 22, 2025). It does not purport to hold that immigrants have no constitutional
right to due process before the government holds them indefinitely in immigration
detention. *Id.*

1 Cal. Jan. 9, 2023) (Anello, J.) (surveying the various approaches). Some courts
2 have “conclude[d] . . . that detention becomes prolonged after six months and
3 entitles [a petitioner] to a bond hearing.” *Rodriguez v. Nielsen*, No. 18-CV-04187-
4 TSH, 2019 WL 7491555, at *6 (N.D. Cal. Jan. 7, 2019). In that case,
5 Mr. Zhumagulov would automatically qualify, as he has been detained for well
6 over a year.

7 Other courts have adopted various factors tests. *See Sanchez-Rivera*, 2023
8 WL 139801, at *5–6 (surveying different approaches). Courts generally agree that
9 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
13 and the 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
17 different final order.”

18 *Id.* Other courts have rejected the fourth and fifth factors, holding that they are
19 “not particularly suited to assisting the Court in determining whether detention
20 has become unreasonable and due process requires a bond hearing.” *Lopez v*
21 *Garland*, 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022); *accord Sanchez-Rivera*,
22 2023 WL 139801, at *5–6.³ Mr. Zhumagulov would prevail under any of these
23 factors tests.

24
25
26
27 ³ Courts also disagree about whether to account for any criminal convictions that
28 have led to the deportation. *Sanchez-Rivera*, 2023 WL 139801, at *5–6. But such
factors—if appropriate at all—are irrelevant where, as here, the person is not
being removed as a result of criminal convictions.

1 First, the “most important factor,” the length of detention, favors
2 Mr. Zhumagulov. *Banda*, 385 F. Supp. 3d at 1118. In assessing this factor, “[i]t is
3 important to bear in mind the context: The detention that is being examined here
4 is the detention of a human being who has never been found to pose a danger to
5 the community or to be likely to flee if released.” *Jamal A. v. Whitaker*, 358 F.
6 Supp. 3d 853, 859 (D. Minn. 2019). With that context, “[c]ourts have found
7 detention over seven months without a bond hearing weighs toward a finding that
8 it is unreasonable.” *Amado v. United States Dep’t of Just.*, No. 25CV2687-
9 LL(DDL), 2025 WL 3079052, at *5 (S.D. Cal. Nov. 4, 2025). Mr. Zhumagulov
10 has been detained for over 18 months. Exh. A at ¶ 1–2. This factor therefore
11 favors a bond hearing.

12 Second, Mr. Zhumagulov has reason to anticipate significant future
13 detention. After more than 18 months, his asylum case is still pending and it is
14 unknown when it will be decided by the BIA. Exh. A at ¶ 5. Even if there is a
15 negative ruling by the BIA, Mr. Zhumagulov will proceed to the Ninth Circuit,
16 which has a significant backlog in cases. *Id.* All told, “[t]his process may take up
17 to two years or longer.” *Banda*, 385 F. Supp. 3d at 1119. Because “Petitioner’s
18 future detention can last several more months or even years[,]” this factor favors
19 Mr. Zhumagulov. *Abdul Kadir v. Larose*, No. 25CV1045-LL-MMP, 2025 WL
20 2932654, at *5 (S.D. Cal. Oct. 15, 2025).

21 Third, it took over a year for his case to be decided by an immigration
22 judge. Moreover, the briefs to the BIA were not due until four months after the
23 immigration judge’s denial. Exh. C. Once the briefs are filed, it will likely take
24 several more months for the case to be decided. Mr. Zhumagulov intends to
25 continue his appeal should the BIA deny. Exh. A at ¶ 5.

26 Fourth, Mr. Zhumagulov’s conditions of confinement weigh in favor of a
27 bond hearing, because “Petitioner’s confinement at OMDC is ‘indistinguishable
28

1 from penal confinement.” *Abdul Kadir*, 2025 WL 2932654, at *5 (quoting
2 *Kydyrali*, 499 F. Supp. 3d at 773); Exh. A at ¶ 6.

3 The fifth factor does not apply, because Mr. Zhumagulov’s asylum claim is
4 still pending and thus no “different” outcome can occur.

5 Under any test, then, Mr. Zhumagulov is entitled to a bond hearing.

6 **III. Because immigration judges’ neutrality has been compromised, this**
7 **Court must order outright release or at least put in place additional**
8 **safeguards.**

9 In a perfect world, this Court could remedy the due process violation by
10 ordering a bond hearing before a neutral immigration judge (“IJ”), allowing the IJ
11 to determine whether Mr. Zhumagulov posed a risk of danger or flight.

12 Unfortunately, attacks on IJ independence under the current administration have
13 severely compromised IJs’ neutrality. As a result, there is a serious risk that an IJ
14 will order Mr. Zhumagulov’s continued detention even if he poses no danger or
15 flight risk. Several data points support that conclusion.

16 Most importantly, reports are streaming in from this district and elsewhere
17 that court-ordered “bond hearings [are], effectively, stacked against detainees
18 from the start.” Kyle Cheney, *How ICE Defies Judges’ Orders to Release*
19 *Detainees, Step by Step*, Politico (Feb. 10, 2026),
20 [https://www.politico.com/news/2026/02/10/ice-immigration-detention-court-](https://www.politico.com/news/2026/02/10/ice-immigration-detention-court-orders-00771727)
21 [orders-00771727](https://www.politico.com/news/2026/02/10/ice-immigration-detention-court-orders-00771727).

22 In *Yin v. Moldanado*, a court expressed consternation at an IJ’s
23 “conclusory, two-line determination of flight risk” for a person whom DHS had
24 previously agreed “to release . . . on his own recognizance” and who “attend[ed]
25 [all] immigration check-ins” during his release. No. 26-CV-0103 (PKC), 2026
26 WL 295389, at *3 (E.D.N.Y. Feb. 4, 2026).

27 In *Said v. Noem*, a court ordered a bond hearing for a habeas petitioner,
28 only to learn that “[t]he IJ denied Petitioner the opportunity to present testimony,
declined to consider the sworn, documentary evidence submitted by Petitioner,

1 and based his decision on an uncorroborated, unauthenticated claim by a
2 government official that Petitioner failed to share his location for the ISAP.” No.
3 3:25-CV-938-MOC, 2026 WL 295651, at *5 (W.D.N.C. Feb. 4, 2026). The
4 original habeas “Order presupposed that this hearing would be conducted in
5 accordance with Petitioner’s due process rights,” the court wrote. “It was not.” *Id.*

6 And in *Picado v. Hyde*, a district judge ordered outright release after two
7 deficient bond hearings. No. 26-CV-065-JJM-PAS, 2026 WL 352691, at *7
8 (D.R.I. Feb. 9, 2026). The IJ in the second hearing had deemed the immigrant a
9 danger to the community based on an uncorroborated police report accusing him
10 of driving 90 mph in a 55-mph zone. *Id.*

11 In a recently filed declaration, local attorney Edward Perez attests that he
12 has similar concerns about some immigration judges at Otay Mesa. In his
13 experience, some Otay Mesa IJs are resistant to implementing habeas orders
14 requiring bond hearings. *Elsayed v. Noem*, Case No. 26-cv-368, Doc. 5-2 at ¶ 7
15 (S.D. Cal. Feb. 9, 2026). These IJs have begun denying bond on the ground that
16 court hearings are coming up, and release would disrupt the hearing schedule. *Id.*
17 Of course, that logic could justify any asylum seeker’s detention, and it has
18 nothing to do with danger or flight. *Id.* Furthermore, the Department of Homeland
19 Security (“DHS”) has started appealing bonds to take advantage of the automatic
20 stay. *Id.* Both of these strategies ensure that even those who pose no risk of
21 danger or flight will stay in detention. *Id.*

22 He is far from the only one to express concerns. In a declaration filed in
23 *Briceno Solano v. Mason*, No. 26-CV-00045, 2026 WL 311624 (S.D.W. Va. Feb.
24 4, 2026), Former ICE Counsel Jorge Artieda attests to seeing “a seismic shift in
25 bond hearing outcomes for individuals who had been granted federal habeas relief
26 and ordered § 1226(a) bond hearings . . . in the Eastern District of Virginia.” Exh.
27 B at 2. The pattern of granting bond in appropriate cases “abruptly and uniformly
28 ceased” in early January, in a way that “suggests coordinated institutional

1 direction.” *Id.* IJs there now rely on a “remarkably narrow and predictable set of
2 rationales to deny bond—rationales that appear to bear little relationship to
3 genuine individualized risk assessment and that would not have been deemed
4 sufficient to justify denial just weeks earlier.” *Id.* at 3. In Mr. Artieda’s
5 professional opinion, the IJs’ rationales “do not appear to be grounded in
6 legitimate risk assessment” but are “pretexts designed to ensure denial of bond
7 regardless of the individual facts of each case.” *Id.* at 4.

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

15 These trends are consistent with sustained attacks on IJs’ independence
16 under this administration. Several examples illustrate the point.

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

22 These IJs are under no illusions about why they were let go. Former
23 Baltimore IJ Emmett Soper stated: “I think the current administration of the
24 immigration courts does not fundamentally see the immigration courts as neutral
25 decision-makers. I think that they see the immigration courts as a tool for this
26 administration to advance its policy objectives.” Geoff Bennett & Ali Schmitz,
27 *Ousted Immigration Judge Describes Deepening Court Backlog*, *PBS NewsHour*
28 (Nov. 12, 2025), <https://www.pbs.org/newshour/show/ousted-immigration-judge->

1 describes-deepening-court-backlog. Former San Francisco IJ Jeremiah Johnson
2 similarly understood “the hint that they should be hearing cases a certain way,
3 deciding cases a certain way. Move faster. Less due process, essentially.” Hilda
4 Gutierrez, Michael Bott & Son Vo, *‘An all-out attack on immigration court:’ SF*
5 *immigration judges speak out after firings*, NBC Bay Area (Nov. 25, 2025),
6 [https://www.nbcbayarea.com/investigations/san-francisco-immigration-judges-](https://www.nbcbayarea.com/investigations/san-francisco-immigration-judges-speak-out-firings/3986850/)
7 [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
8 more direct: “We were told to facilitate deportation... Due process is dead in
9 immigration courts.” Isabela Dias, *“Fired for No Reason”: Former Immigration*
10 *Judges Speak Out Against Trump’s Assault on the Courts*, Mother Jones (Oct. 9,
11 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/)
12 [trump-assault-purge-dhs-ice/](https://www.motherjones.com/politics/2025/10/immigration-court-judge-trump-assault-purge-dhs-ice/).

13 This has had the predictable effect on those who remain. According to
14 former San Francisco IJ Elizabeth Young, “I’ve talked to many of [the judges still
15 serving], and they’re like, ‘When I go into court, I am concerned about applying
16 the law, but I’m also concerned that I should deny more, because if I don’t, then
17 I’ll get fired.’” Marco Poggio, *Judges See an Immigration Court Gutted from*
18 *Inside*, Law360 (Oct. 31, 2025),
19 [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)
20 [gutted-from-inside](https://www.law360.com/articles/2381003/judges-see-an-immigration-court-gutted-from-inside). Meanwhile, Department of Justice recruitment materials seek
21 “deportation judges” to fill the empty IJ slots, Coral Murphy Marcos, *US Justice*
22 *Department Recruiting Legal Experts to Serve as ‘Deportation’ Judges*,
23 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)
24 [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
25 down on criminal illegal aliens” and “defend your communities, your culture,
26 your very way of life.” dhsgov, Instagram (Nov. 21, 2025),
27 <https://www.instagram.com/p/DRVT8DmCQKD/?hl=en>.

1 *Second*, a parallel purge occurred at the BIA, which was reduced from 28
2 members to 15 members. All Biden appointees on the BIA were fired. Am. Imm.
3 Council, *BIA Decision Strips Immigration Judges of Bond Authority, All but*
4 *Guaranteeing Mandatory Detention for Undocumented Immigrants* (Sept. 12,
5 2025), [https://www.americanimmigrationcouncil.org/blog/bia-ruling-](https://www.americanimmigrationcouncil.org/blog/bia-ruling-immigration-judges-bond-mandatory-detention-undocumented-immigrants/)
6 [immigration-judges-bond-mandatory-detention-undocumented-immigrants/](https://www.americanimmigrationcouncil.org/blog/bia-ruling-immigration-judges-bond-mandatory-detention-undocumented-immigrants/). The
7 statistical impact is stark. As of January 22, 2026, the reconstituted BIA has
8 issued 71 published decisions. Exec. Off. for Immigr. Rev., *Volume 29*, U.S.
9 Dep't of Just. (Jan. 21, 2025), <https://www.justice.gov/eoir/volume-29>. Of those,
10 69 decisions (97%) favored the administration. By contrast, during the entire four-
11 year span of the prior administration, the BIA issued 76 published decisions.
12 Exec. Off. for Immigr. Rev., *Volume 28*, U.S. Dep't of Just. (June 13, 2025),
13 <https://www.justice.gov/eoir/volume-28>. (First decision, *Matter of DIKHTYAR*,
14 28 I&N Dec. 214 (BIA 2021), issued 01/22/2021). Of those, 46 decisions (60%)
15 favored the administration. The transformation from 60% to 97% pro-government
16 outcomes—achieved through wholesale termination of one administration's
17 appointees —speaks for itself.

18 *Third*, beyond personnel changes, EOIR's new acting director, Sirce E.
19 Owen, has issued "a string of sharply worded policy memos" encouraging IJs to
20 side with the government over immigrants and minimize due process. E. Tammy
21 Kim, *Inside Donald Trump's Attack on Immigration Courts*, New Yorker,
22 <https://www.newyorker.com/inside-donald-trumps-attack-on-immigration-court>.
23 The policy directives include: a memorandum dated June 27, 2025 warning
24 judges not to demonstrate "bias directed against DHS" or to be "adjudicatory
25 outliers," at risk of "close examination and potential action," Exec. Off. for
26 Immigr. Rev., Policy Memorandum 25-33, Neutrality and Impartiality in
27 Immigration Court Proceedings (June 27, 2025), [https://iptp-](https://iptp-production.s3.amazonaws.com/media/documents/2025.06.27_EOIR_-_PM_25-)
28 [production.s3.amazonaws.com/media/documents/2025.06.27_EOIR - PM 25-](https://iptp-production.s3.amazonaws.com/media/documents/2025.06.27_EOIR_-_PM_25-)

1 33.pdf; a memorandum encouraging judges to deny asylum applications without
2 full evidentiary hearings, styled as efficiency guidance but functioning as a
3 directive to reduce due process protections, Exec. Off. for Immigr. Rev., Policy
4 Memorandum 25-28, Pretermission of Legally Insufficient Application for
5 Asylum (Apr. 11, 2025), <https://www.justice.gov/eoir/media/1396411/dl?inline>;
6 and memoranda restricting immigration judges' ability to grant continuances,
7 Exec. Off. for Immigr. Rev., Policy Memorandum 25-27, Cancellation of
8 Director's Memorandum 23-01 and Reinstatement of Policy Memorandum 19-13
9 (Mar. 21, 2025), <https://www.justice.gov/eoir/media/1394086/dl>, and
10 administrative closure, Exec. Off. for Immigr. Rev., Policy Memorandum 25-29,
11 Cancellation of Director's Memorandum 22-03 (Apr. 18, 2025),
12 <https://www.justice.gov/eoir/media/1397161/dl?inline>.

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

19 Please provide the following guidance to all immigration judges
20 forthwith: Maldonado Bautista is not a nationwide injunction and
21 does not purport to vacate, stay, or enjoin Yajure Hurtado.
22 Therefore Yajure Hurtado remains binding precedent on agency
23 adjudications. For clarification, declaratory judgments differ from
24 injunctions in that the former clarifies parties' legal rights and
25 relationships without ordering specific action, while the latter is a
26 court order compelling a party to do or stop doing a specific act. A
declaratory judgment is not an equitable remedy and does not, by
itself, have the effect of compelling specific action by a party.
Thank you for your attention to this matter.

27 Am. Immigr. Laws. Ass'n, Practice Alert: EOIR Issues Nationwide Guidance on
28 *Maldonado Bautista*, AILA Doc. No. 26011404 (Jan. 16, 2026),

1 [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)
2 [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,
3 calling out “Respondents’ deliberate choice to continue defying the final
4 judgment entered in *Bautista*.” *Palomera Baltazar v. Janecka*, No. 5:26-cv-
5 00019-SSS-BFM at *2-3 (C.D. Cal. Jan. 16, 2026). IJs’ resistance to granting
6 bond therefore accords with the larger movement to eliminate or silence IJs who
7 side with immigrants, while bringing those that remain into line with the
8 administration’s priorities.

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

18 CLAIM AND PRAYER FOR RELIEF

19 I. Detaining Petitioner Without a Bond Hearing Violates the Fifth 20 Amendment’s Due Process Clause

21 Here, because ordering a bond hearing before a randomly selected IJ would
22 not properly redress the constitutional violations present in this matter, Petitioner
23 urges the court to provide an alternative corrective measure. That might include
24 outright release. *See, e.g.*, Order, ECF No. 14 at 19, *Miri v. Bondi*, No. 5:26-CV-
25 00698-MEMF (C.D. Cal. March 5, 2026); *Moctezuma v. Henkey*, No. 1:25-CV-
26 00741-BLW, 2026 WL 18809, at *5 (D. Idaho Jan. 2, 2026). Or it could mean
27 holding a bond hearing in district court. *See, e.g.*, *L.G.M. v. LaRocco*, 788
28 F.Supp.3d 401, 405-07 (E.D.N.Y. 2025).

1 A third option would be to craft an order like this District Judge Simmons
2 has done in the past in the *Sandesh* case. See Order, ECF No. 13, *Sandesh v.*
3 *LaRose*, No. 3:26-CV-00846-JES (S.D. Cal. March 5, 2026). Specifically, the
4 Court should order:

- 5 1. Respondents provide Petitioner with a hearing and individualized
6 bond determination within ten days of its order. *Id.*
 - 7 (a) At that hearing, the government shall bear the burden of
8 establishing by clear and convincing evidence that Petitioner
9 poses a danger or flight risk, while further specifying that
10 concerns about interrupting court schedules is not a ground to
11 deny bond. *Id.*
 - 12 (b) The IJ shall consider alternative conditions of release and
13 Petitioner's ability to pay bond if he or she determines bond is
14 appropriate. *Id.*
 - 15 (c) Respondents shall make a complete record of the bond hearing
16 available to Petitioner and his counsel. *Id.*
 - 17 2. Respondents are ordered to file a Notice of Compliance within five
18 days of providing Petitioner with the bond hearing, including
19 apprising the Court of the results of the hearing. *Id.*
 - 20 3. Prohibit ICE from invoking the automatic stay provisions under
21 8 C.F.R. § 1003.19(i)(2) to defeat the IJ's bond determination.
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1 4. Finally, this Court should order all other relief that the Court deems
2 just and proper.

3
4 Respectfully submitted,

5
6 Dated: March 25, 2026

s/ Zandra L. Lopez

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