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

HANIBAL TEKLE ZIENAGEBRIEL,
Petitioner,

v.

KRISTI NOEM, 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,
CHRISTOPHER LAROSE, Warden at
Otay Mesa Detention Center,
Respondents.

Civil Case No.: 26-cv-1385-BAS-MSB

**Amended Petition for a Writ of
Habeas Corpus**

1 INTRODUCTION

2 Hanibal Tekle Zienagebriel is an asylum seeker from Eritrea. He has been
3 detained pending his immigration proceedings for over a year. This Court should
4 “join[] the majority of courts across the country in concluding that [his]
5 unreasonably prolonged detention under 8 U.S.C. § 1225(b) without an
6 individualized bond hearing violates due process.” *Kydyrali v. Wolf*, 499 F. Supp.
7 3d 768, 772 (S.D. Cal. 2020) (Battaglia, J.). It should do so because
8 Mr. Zienagebriel satisfies the six-factor test set forth in *Banda v. McAleenan*, 385
9 F. Supp. 3d 1099, 1118 (W.D. Wash. 2019).

10 Additionally, because of newly emerging evidence that the neutrality of
11 Otay Mesa’s immigration judges (“IJ”) has been compromised, and some IJs and
12 the Department of Homeland Security (“DHS”) have implemented strategies to
13 detain bond-worthy habeas petitioners, a bond hearing before a randomly selected
14 IJ will no longer reliably satisfy due process. This Court should therefore consider
15 the alternative forms of relief, including that: 1) the IJ shall consider alternative
16 conditions of release and Petitioner’s ability to pay bond; and 2) Respondents
17 shall make a complete record of the bond hearing available to Petitioner’s
18 counsel.

19 STATEMENT OF FACTS

20 Mr. Zienagebriel was born in Eritrea. Exhibit A, Declaration of Hanibal
21 Tekle Zienagebriel, at ¶ 1. In Eritrea, Mr. Zienagebriel was arrested and held in
22 prison for nearly two years, during which time he was tortured. *Id.* at ¶ 1. When
23 he was released, he fled Eritrea. *Id.* at ¶ 2.

24 On February 25, 2025, Mr. Zienagebriel came through the fence to the
25 United States to seek asylum. *Id.* at ¶ 2. He was taken into custody and transferred
26 to Otay Mesa Detention Center. *Id.* at ¶ 2.

27 Mr. Zienagebriel passed his credible fear interview and was put into
28 removal proceedings. *Id.* at ¶ 3. Neither he nor his attorney have asked for any

1 unreasonable extensions. *Id.* at ¶ 3. His final merits hearing is currently scheduled
2 for May 12, 2026. *Id.* at ¶ 4.

3 If Mr. Zienagebriel loses his case, he plans to appeal to the BIA and the
4 Ninth Circuit. *Id.* at ¶ 4. As a result, Mr. Zienagebriel has now been detained for
5 over a year and may be detained for several more years. *Id.* at ¶ 5.

6 The conditions in Otay Mesa Detention Center are very poor, and
7 Mr. Zienagebriel has skin problems that go untreated and make his daily life very
8 uncomfortable. *Id.* at ¶ 6.

9 LEGAL BACKGROUND

10 I. The Fifth Amendment’s Due Process Clause prohibits prolonged 11 immigration detention without a bond hearing.

12 This habeas petition presents a question about whether and when the Fifth
13 Amendment’s Due Process Clause countermands the government’s statutory
14 authority to detain immigrants without bond hearings. Mr. Zienagebriel is
15 detained under one such statute, 8 U.S.C. § 1225(b). “Section 1225 applies to
16 ‘applicants for admission’—noncitizens who ‘arrive[] in the United States,’ or are
17 ‘present’ in the United States but have ‘not been admitted.’” *Banda v. McAleenan*,
18 385 F. Supp. 3d 1099, 1111 (W.D. Wash. 2019). It “applies to, among others,
19 noncitizens initially determined to be inadmissible because of . . . lack of valid
20 documentation.” *Id.* That includes persons who, like Mr. Zienagebriel, present
21 themselves for inspection at the border and—rather than producing admission
22 documents—make asylum and other fear-based claims. *See id.* at 1109–11
23 (describing a similar procedural history and finding that petitioner was detained
24 under § 1225(b)). Such immigrants are detained under § 1225(b) not only during
25 their initial proceedings, but also when they appeal to the BIA. *See id.* at 1111
26 (reaching same conclusion for immigrant with pending BIA appeal).

27 This statutory scheme has left courts to grapple with the limits (if any) of
28 that detention power: Does this statute permit the government to detain

1 immigrants indefinitely, without ever having to prove at a bond hearing that they
2 pose a risk of danger or flight? Three Supreme Court cases are potentially relevant
3 to answering that question.

4 First, in *Zadvydas v. Davis*, the Supreme Court indicated that indefinite
5 immigration detention raises serious due process concerns. 533 U.S. 678 (2001).
6 *Zadvydas* involved a statute authorizing the government to detain immigrants
7 after they are ordered removed. *Id.* at 683. For immigrants who cannot be
8 removed, that statute had the potential to subject them to years, decades, or a
9 lifetime in custody. *See id.* at 690. The Supreme Court held that if the statute
10 “permit[ed] indefinite detention of an alien[,] [it] would raise a serious
11 constitutional problem,” because

12 [t]he Fifth Amendment's Due Process Clause forbids the
13 Government to ‘depriv[e]’ any ‘person ... of ... liberty ... without
14 due process of law.’ Freedom from imprisonment—from
15 government custody, detention, or other forms of physical
16 restraint—lies at the heart of the liberty that Clause protects. *See*
17 *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). And this Court has
18 said that government detention violates that Clause unless the
19 detention is ordered in a *criminal* proceeding with adequate
20 procedural protections, *see United States v. Salerno*, 481 U.S. 739,
21 746 (1987), or, in certain special and ‘narrow’ nonpunitive
22 ‘circumstances,’ *Foucha, supra*, at 80, where a special justification,
23 such as harm-threatening mental illness, outweighs the ‘individual's
24 constitutionally protected interest in avoiding physical restraint.’
25 *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997).

26 *Id.* Ultimately, however, the Court declined to decide whether a statute permitting
27 indefinite detention would violate the Due Process Clause. Instead, the Court
28 employed the constitutional avoidance canon to read implicit limits into the
statute, requiring release after detention became sufficiently prolonged. *Id.* at 699.

Following *Zadvydas*, the Ninth Circuit applied similar reasoning to
§ 1225(b). *Rodriguez v. Robbins*, 804 F.3d 1060, 1087–89 (9th Cir. 2015).
Employing the constitutional avoidance canon, the Ninth Circuit held that

1 § 1225(b) implicitly entitled detained immigrants to bond hearings every six
2 months. *Id.*

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

9 Finally, the Supreme Court held in *Demore v. Kim* that at least some
10 statutes mandating detention during immigration proceedings do not
11 automatically violate the Due Process Clause. 538 U.S. 510, 513 (2003). *Demore*
12 addressed 8 U.S.C. § 1226(c), which mandates detention without a bond hearing
13 for persons with certain criminal convictions. *Id.* The Court upheld § 1226(c) in a
14 5-4 opinion based on (1) the government interests justifying the detention of
15 immigrants with certain, aggravated criminal convictions, and (2) the relative
16 brevity of detention in most cases, with the vast majority taking only about five
17 months. *Id.* at 517–31. Justice Kennedy supplied a deciding vote. His concurrence
18 left open the possibility that individual immigrants could be “entitled to an
19 individualized determination as to his risk of flight and dangerousness if the
20 continued detention became unreasonable or unjustified.” *Id.* at 532–33.

21 “In the wake of *Jennings*,” *Zadvydas*, and *Demore*, “district courts have
22 grappled with how to address due process challenges to prolonged mandatory
23 detention under § 1225(b).” *Banda*, 385 F. Supp. 3d at 1116. But after a full
24 evaluation, “[n]early all district courts that have considered the issue agree that
25 prolonged mandatory detention pending removal proceedings, without a bond
26 hearing, will—at some point—violate the right to due process.” *Id.* (cleaned up)
27 (collecting cases).

1 These Courts have relied on the due process concerns recognized in
2 *Zadvydas*. See, e.g., *Kydyrali*, 499 F. Supp. 3d at 771; *Banda*, 385 F. Supp. 3d at
3 1113–17; *Abdul Kadir v. Larose*, No. 25CV1045-LL-MMP, 2025 WL 2932654,
4 at *3 (S.D. Cal. Oct. 15, 2025). As the Ninth Circuit put it in *Jennings*’ wake,
5 those considerations raise “grave doubts that any statute that allows for arbitrary
6 prolonged detention without any process is constitutional or that those who
7 founded our democracy precisely to protect against the government’s arbitrary
8 deprivation of liberty would have thought so.” *Rodriguez v. Marin*, 909 F.3d 252,
9 256 (9th Cir. 2018).

10 Neither *Jennings* nor *Demore* undermines that conclusion. *Jennings* held
11 only that the statute itself did not impose any limits on detention. It “did not
12 foreclose as-applied constitutional challenges to detention under” mandatory-
13 detention statutes. *Santos v. Warden Pike Cnty. Corr. Facility*, 965 F.3d 203, 209
14 (3d Cir. 2020). And *Demore* held only that conviction-based mandatory detention
15 during immigration proceedings does not necessarily violate due process,
16 particularly when the detention has an expected duration of about five months. *Id.*
17 at 208–11. But many persons detained under § 1225(b)—like Mr. Zienagebriel—
18 do not have criminal convictions. And as Justice Kennedy’s concurrence made
19 clear, *Demore* does not prevent immigrants from arguing that sufficiently
20 prolonged detention violates due process in their individual cases. See *id.*¹

21 Thus, this Court should hold that sufficiently prolonged detention violates
22 the Due Process Clause, as most courts have. See, e.g., *Gao v. LaRose*, No. 25-
23

24 ¹ 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.*

CV-2084-RSH-SBC, 2025 WL 2770633, at *3 (S.D. Cal. Sept. 26, 2025); *Abdul Kadir v. Larose*, No. 25CV1045-LL-MMP, 2025 WL 2932654, at *4 (S.D. Cal. Oct. 15, 2025); *Cong v. Noem*, No. 25-CV-3730-GPC-DEB, 2026 WL 76566, at *3 (S.D. Cal. Jan. 9, 2026); *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 772 (S.D. Cal. 2020) (Battaglia, J.); *Mardian v. Mayorkas*, 25-cv-3467-JLS; *Raeva v. Mayorkas*, 25-cv-3175-JO; *Abdul-Samed v. Warden of Golden State Annex Det. Facility*, No. 25-cv-98-SAB-HC, 2025 WL 2099343, at *6 (E.D. Cal. July 25, 2025); *Hernandez v. Wofford*, No. 25-cv-986-KES-CDB (HC), 2025 WL 2420390, at *3 (E.D. Cal. Aug. 21, 2025); *Padilla v. ICE*, 704 F. Supp. 3d 1163, 1171–72 (W.D. Wash. 2023).

II. Courts have reached different conclusions about when immigration detention becomes indefinitely prolonged, but Mr. Zienagebriel would prevail under any standard, including the *Banda* factors.

Though courts agree that due process mandates a bond hearing when detention grows unreasonably prolonged, they disagree about how to assess whether a particular migrant’s detention has reached that point. *Sanchez-Rivera v. Matuszewski*, No. 22-CV-1357-MMA (JLB), 2023 WL 139801, at *5–6 (S.D. Cal. Jan. 9, 2023) (Anello, J.) (surveying the various approaches). Because it incorporates nearly all the factors, many courts have found it “most appropriate to apply the *Banda* test to Petitioner’s detention here under § 1225(b), as other courts within this district have done in the past.” *Zienagebriel v. Noem*, 26-cv-846-JES-DDL, Dkt 13 at 5 (Mar. 5, 2026 S.D. Cal). The *Banda* factors include:

- (1) the total length of detention to date;
- (2) the likely duration of future detention;
- (3) the conditions of detention;
- (4) delays in the removal proceedings caused by the detainee;
- (5) delays in the removal proceedings cause by the government; and
- (6) the likelihood that the removal proceedings will result in a final order of removal.

1 *Banda*, 385 F. Supp. 3d at 1106. Applying these factors here shows that
2 Mr. Zienagebriel's detention has become prolonged.

3 *First*, the "most important factor," the length of detention, favors
4 Mr. Zienagebriel. *Banda*, 385 F. Supp. 3d at 1118. In assessing this factor, "[i]t is
5 important to bear in mind the context: The detention that is being examined here
6 is the detention of a human being who has never been found to pose a danger to
7 the community or to be likely to flee if released." *Jamal A. v. Whitaker*, 358 F.
8 Supp. 3d 853, 859 (D. Minn. 2019). With that context, courts have granted bond
9 hearings for persons detained between nine and eleven months. *See Ashemuke v.*
10 *ICE Field Off. Dir.*, No. C23-1592-RSL-MLP, 2024 WL 1683797, at *4 (W.D.
11 Wash. Feb. 29, 2024), *report and recommendation adopted*, No. C23-1592-RSL,
12 2024 WL 1676681 (W.D. Wash. Apr. 18, 2024) ("approximately eleven
13 months"); *Brissett v. Decker*, 324 F. Supp. 3d 444, 452 (S.D.N.Y. 2018) ("over
14 nine months"); *Perez v. Decker*, No. 18-CV-5279 (VEC), 2018 WL 3991497, at
15 *5 (S.D.N.Y. Aug. 20, 2018) ("more than nine months"); *Masood v. Barr*, No. 19-
16 CV-07623-JD, 2020 WL 95633, at *2 (N.D. Cal. Jan. 8, 2020) ("nearly nine
17 months"). Mr. Zienagebriel has been detained for even longer, for over a year.
18 Exh. A at ¶ 5. This factor therefore strongly favors Mr. Zienagebriel.

19 *Second*, Mr. Zienagebriel has reason to anticipate significant future
20 detention, as he intends to appeal to the BIA and the Ninth Circuit if he loses his
21 asylum claim. *Id.* at ¶ 4. All told, "[t]his process may take up to two years or
22 longer." *Banda*, 385 F. Supp. 3d at 1119. Because "Petitioner's future detention
23 can last several more months or even years[.]" this factor favors Mr. Zienagebriel.
24 *Abdul Kadir v. Larose*, No. 25CV1045-LL-MMP, 2025 WL 2932654, at *5 (S.D.
25 Cal. Oct. 15, 2025).

26 *Third*, conditions of confinement weigh in favor of him. "Petitioner's
27 confinement at [Otay Mesa Detention Center] is 'indistinguishable from penal
28 confinement.'" *Abdul Kadir*, 2025 WL 2932654, at *5 (quoting *Kydyrali*, 499 F.

1 Supp. 3d at 773). These jail-like conditions are a greater hardship in
2 Mr. Zienagebriel's case, because he has skin problems that go untreated and make
3 his daily life very uncomfortable. Exh. A at ¶ 6.

4 *Fourth* and *fifth*, Mr. Zienagebriel has not caused any unreasonable delays
5 in his removal proceedings; thus, this factor is arguably neutral.

6 *Sixth*, regarding the likelihood that the removal proceedings will result in a
7 final order of removal, Mr. Zienagebriel has a strong chance of winning his case
8 on appeal. If he were to lose before the immigration judge, Mr. Zienagebriel has a
9 strong asylum claim and would likely win on appeal to the BIA or the Ninth
10 Circuit. *Id.* at ¶ 4. Accordingly, under the *Banda* factors, Mr. Zienagebriel is
11 entitled to release or a bond hearing.

12 **III. Because immigration judges' neutrality has been compromised, this**
13 **Court must order outright release, or at least additional safeguards.**

14 In a perfect world, this Court could remedy the due process violation by
15 ordering a bond hearing before a neutral immigration judge ("IJ"), allowing the IJ
16 to determine whether Mr. Zienagebriel posed a risk of danger or flight.
17 Unfortunately, attacks on IJ independence under the current administration have
18 severely compromised IJs' neutrality. As a result, there is a serious risk that an IJ
19 will order Mr. Zienagebriel's continued detention even if he poses no danger or
20 flight risk. Several data points support that conclusion.

21 Most importantly, reports are streaming in from this district and elsewhere
22 that court-ordered "bond hearings [are], effectively, stacked against detainees
23 from the start." Kyle Cheney, *How ICE Defies Judges' Orders to Release*
24 *Detainees, Step by Step*, Politico (Feb. 10, 2026),
25 [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)
26 [orders-00771727](https://www.politico.com/news/2026/02/10/ice-immigration-detention-court-orders-00771727).

27 Former ICE Counsel Jorge Artieda attests to seeing "a seismic shift in bond
28 hearing outcomes for individuals who had been granted federal habeas relief and

1 ordered § 1226(a) bond hearings . . . in the Eastern District of Virginia.” Exhibit
2 B, Declaration of Jorge Artieda, at 2. In a declaration filed in *Briceno Solano v.*
3 *Mason*, No. 26-CV-00045, 2026 WL 311624 (S.D.W. Va. Feb. 4, 2026),
4 Mr. Artieda reported that the pattern of granting bond in appropriate cases
5 “abruptly and uniformly ceased” in early January, in a way that “suggests
6 coordinated institutional direction.” *Id.* IJs there now rely on a “remarkably
7 narrow and predictable set of rationales to deny bond—rationales that appear to
8 bear little relationship to genuine individualized risk assessment and that would
9 not have been deemed sufficient to justify denial just weeks earlier.” *Id.* at 3. In
10 Mr. Artieda’s professional opinion, the IJs’ rationales “do not appear to be
11 grounded in legitimate risk assessment” but are “pretexts designed to ensure
12 denial of bond regardless of the individual facts of each case.” *Id.* at 4.

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

20 A recently retired immigration judge with 27 years of experience on the
21 bench and 10 years of experience as an INS attorney reports similar observations.
22 See Declaration of Lawrence O. Burman, Exhibit C. Judge Burman recounts that
23 in his years of conducting bond hearings, “[i]t was rare for a bond to be denied
24 solely based on flight risk.” *Id.* at ¶ 11. Rather, “a higher bond amount was
25 imposed to ensure the individual’s appearance at future hearings.” *Id.* Judge
26 Burman also notes that “[a]lthough immigration judges are expected to act as
27 neutral adjudicators,” he has “noticed increasing concern among members of the
28 bench about institutional intimidation and the perception that decisions

1 unfavorable to the government could negatively affect judicial tenure.” *Id.* at ¶ 20.
2 Specifically, he has observed a “notable rise in bond denials and adverse case
3 outcomes,” which “undermines due process and erodes confidence in the
4 Immigration Court system.” *Id.* at ¶ 21.

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

17 Judges have begun to take note of this trend and order that individuals be
18 released from custody, rather than granted a bond hearing. In *Said v. Noem*, a
19 court ordered a bond hearing for a habeas petitioner, only to learn that “[t]he IJ
20 denied Petitioner the opportunity to present testimony, declined to consider the
21 sworn, documentary evidence submitted by Petitioner, and based his decision on
22 an uncorroborated, unauthenticated claim by a government official that Petitioner
23 failed to share his location for the ISAP.” No. 3:25-CV-938-MOC, 2026 WL
24 295651, at *5 (W.D.N.C. Feb. 4, 2026). The original habeas Order “presupposed
25 that this hearing would be conducted in accordance with Petitioner’s due process
26 rights,” the court wrote. “It was not.” *Id.*

27 In *Picado v. Hyde*, a district judge ordered outright release after two
28 deficient bond hearings. No. 26-CV-065-JJM-PAS, 2026 WL 352691, at *7

1 (D.R.I. Feb. 9, 2026). The IJ in the second hearing had deemed the immigrant a
2 danger to the community based on an uncorroborated police report accusing him
3 of driving 90 mph in a 55-mph zone. *Id.*

4 These trends are consistent with sustained attacks on IJs' independence
5 under this administration. Several examples illustrate the point.

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

11 These IJs are under no illusions about why they were let go. Former
12 Baltimore IJ Emmett Soper stated: "I think the current administration of the
13 immigration courts does not fundamentally see the immigration courts as neutral
14 decision-makers. I think that they see the immigration courts as a tool for this
15 administration to advance its policy objectives." Geoff Bennett & Ali Schmitz,
16 *Ousted Immigration Judge Describes Deepening Court Backlog*, PBS NewsHour
17 (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)
18 [describes-deepening-court-backlog](https://www.pbs.org/newshour/show/ousted-immigration-judge-describes-deepening-court-backlog). Former San Francisco IJ Jeremiah Johnson
19 similarly understood "the hint that they should be hearing cases a certain way,
20 deciding cases a certain way. Move faster. Less due process, essentially." Hilda
21 Gutierrez, Michael Bott & Son Vo, *'An all-out attack on immigration court: ' SF*
22 *immigration judges speak out after firings*, NBC Bay Area (Nov. 25, 2025),
23 [https://www.nbcbayarea.com/investigations/san-francisco-immigration-judges-](https://www.nbcbayarea.com/investigations/san-francisco-immigration-judges-speak-out-firings/3986850/)
24 [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
25 more direct: "We were told to facilitate deportation... Due process is dead in
26 immigration courts." Isabela Dias, *"Fired for No Reason": Former Immigration*
27 *Judges Speak Out Against Trump's Assault on the Courts*, Mother Jones (Oct. 9,
28 2025), <https://www.motherjones.com/politics/2025/10/immigration-court-judge->

1 [trump-assault-purge-dhs-ice/](#).

2 This has had the predictable effect on those who remain. According to
3 former San Francisco IJ Elizabeth Young, “I’ve talked to many of [the judges still
4 serving], and they’re like, ‘When I go into court, I am concerned about applying
5 the law, but I’m also concerned that I should deny more, because if I don’t, then
6 I’ll get fired.’” Marco Poggio, *Judges See an Immigration Court Gutted from*
7 *Inside*, Law360 (Oct. 31, 2025),
8 [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)
9 [gutted-from-inside](https://www.law360.com/articles/2381003/judges-see-an-immigration-court-gutted-from-inside). Meanwhile, Department of Justice recruitment materials seek
10 “deportation judges” to fill the empty IJ slots, Coral Murphy Marcos, *US Justice*
11 *Department Recruiting Legal Experts to Serve as ‘Deportation’ Judges*,
12 *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)
13 [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
14 down on criminal illegal aliens” and “defend your communities, your culture,
15 your very way of life.” dhsgov, Instagram (Nov. 21, 2025),
16 <https://www.instagram.com/p/DRVt8DmCQKD/?hl=en>.

17 *Second*, a parallel purge occurred at the BIA, which was reduced from 28
18 members to 15 members. All Biden appointees on the BIA were fired. Am. Imm.
19 Council, *BIA Decision Strips Immigration Judges of Bond Authority, All but*
20 *Guaranteeing Mandatory Detention for Undocumented Immigrants* (Sept. 12,
21 2025), [https://www.americanimmigrationcouncil.org/blog/bia-ruling-](https://www.americanimmigrationcouncil.org/blog/bia-ruling-immigration-judges-bond-mandatory-detention-undocumented-immigrants/)
22 [immigration-judges-bond-mandatory-detention-undocumented-immigrants/](https://www.americanimmigrationcouncil.org/blog/bia-ruling-immigration-judges-bond-mandatory-detention-undocumented-immigrants/). The
23 statistical impact is stark. As of January 22, 2026, the reconstituted BIA has
24 issued 71 published decisions. Exec. Off. for Immigr. Rev., *Volume 29*, U.S.
25 Dep’t of Just. (Jan. 21, 2025), <https://www.justice.gov/eoir/volume-29>. Of those,
26 69 decisions (97%) favored the administration. By contrast, during the entire four-
27 year span of the prior administration, the BIA issued 76 published decisions.
28 Exec. Off. for Immigr. Rev., *Volume 28*, U.S. Dep’t of Just. (June 13, 2025),

1 <https://www.justice.gov/eoir/volume-28>. (First decision, *Matter of DIKHTYAR*,
2 28 I&N Dec. 214 (BIA 2021), issued 01/22/2021). Of those, 46 decisions (60%)
3 favored the administration. The transformation from 60% to 97% pro-government
4 outcomes—achieved through wholesale termination of one administration’s
5 appointees —speaks for itself.

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

11 The policy directives include: a memorandum dated June 27, 2025 warning
12 judges not to demonstrate “bias directed against DHS” or to be “adjudicatory
13 outliers,” at risk of “close examination and potential action,” Exec. Off. for
14 Immigr. Rev., Policy Memorandum 25-33, Neutrality and Impartiality in
15 Immigration Court Proceedings (June 27, 2025), [https://iptp-](https://iptp-production.s3.amazonaws.com/media/documents/2025.06.27_EOIR_-_PM_25-33.pdf)
16 [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_25-33.pdf)
17 [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
18 full evidentiary hearings, styled as efficiency guidance but functioning as a
19 directive to reduce due process protections, Exec. Off. for Immigr. Rev., Policy
20 Memorandum 25-28, Pretermission of Legally Insufficient Application for
21 Asylum (Apr. 11, 2025), <https://www.justice.gov/eoir/media/1396411/dl?inline>;
22 and memoranda restricting immigration judges’ ability to grant continuances,
23 Exec. Off. for Immigr. Rev., Policy Memorandum 25-27, Cancellation of
24 Director’s Memorandum 23-01 and Reinstatement of Policy Memorandum 19-13
25 (Mar. 21, 2025), <https://www.justice.gov/eoir/media/1394086/dl>, and
26 administrative closure, Exec. Off. for Immigr. Rev., Policy Memorandum 25-29,
27 Cancellation of Director’s Memorandum 22-03 (Apr. 18, 2025),
28 <https://www.justice.gov/eoir/media/1397161/dl?inline>.

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

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

18 Am. Immigr. Laws. Ass'n, Practice Alert: EOIR Issues Nationwide Guidance
19 on *Maldonado Bautista*, AILA Doc. No. 26011404 (Jan. 16, 2026),
20 [https://www.aila.org/library/practice-alert-eoir-issues-nationwide-guidance-](https://www.aila.org/library/practice-alert-eoir-issues-nationwide-guidance-on-maldonado-bautista)
21 [on-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,
22 calling out "Respondents' deliberate choice to continue defying the final
23 judgment entered in *Bautista*." *Palomera Baltazar v. Janecka*, No. 5:26-cv-
24 00019-SSS-BFM at *2-3 (C.D. Cal. Jan. 16, 2026).

25 IJs' resistance to granting bond therefore accords with the larger
26 movement to eliminate or silence IJs who side with immigrants, while
27 bringing those that remain into line with the administration's priorities.

28 The "equitable and flexible nature of habeas relief" affords district
courts significant discretion over the appropriate remedies for violations of
law and the Constitution. *Velasco Lopez v. Decker*, 978 F.3d 842, 855 (2d Cir.
2020); see also *Schlup v. Delo*, 513 U.S. 298, 319 (1995) ("[H]abeas corpus

1 is, at its core, an equitable remedy”). This Court should order a remedy that
2 fully addresses the statutory and constitutional violations in this case and is
3 efficient to administer. *Carafas v. LaVallee*, 391 U.S. 234, 238 (1968) (the
4 habeas statute “does not limit the relief that may be granted to discharge of the
5 applicant from physical custody. Its mandate is broad with respect to the relief
6 that may be granted”).

7 **CLAIM AND PRAYER FOR RELIEF**

8 Accordingly, Petitioner respectfully requests that this Court:

- 9 **1. Order Respondents to immediately release Petitioner from**
10 **custody.** “In recent months, courts across the country have ordered
11 the release of detainees in similar situations.” *Moctezuma v. Henkey*,
12 No. 1:25-CV-00741-BLW, 2026 WL 18809, at *5 (D. Idaho Jan. 2,
13 2026) (given that the government’s repeated use of unlawful
14 detention policies across the country, causing petitioners to “sit in jail
15 waiting for a judicial decision,” the court would order immediate
16 release instead of causing additional delay through a bond hearing)
17 (citing *Lepe v. Andrews*, 801 F. Supp. 3d 1104 (E.D. Cal. 2025); *J.U.*
18 *v. Maldonado*, No. 25-cv-4836, 2025 WL 2772765, at *10 (E.D.N.Y.
19 Sept. 29, 2025); *Rosado v. Figueroa*, No. 25-cv-2157, 2025 WL
20 2337099, at *19 (D. Ariz. Aug. 11, 2025); *Pinchi v. Noem*, No. 25-
21 cv-05632, 2025 WL 1853763, at *4 (N.D. Cal. July 4, 2025).
22 *Santiago v. Noem*, No. EP-25-CV-361, 2025 WL 2792588, at *13–
23 14 (W.D. Tex. Oct. 2, 2025) (“Without a legitimate interest in her
24 detention, immediate release appropriately remedies Respondents’
25 violation of [Petitioner’s] due process rights through her continued
26 detention.”). Order, ECF No. 14 at 19, *Miri v. Bondi*, No. 5:26-CV-
27 00698-MEMF (C.D. Cal. March 5, 2026) (“Miri’s prompt release is
28 the remedy that will best return Miri to the status quo and restore his

position as it was prior to the detention that Miri contends was in violation of his constitutional and statutory protections.”).

2. **In the alternative, order a prompt § 1226(a) bond hearing, with safeguards and oversight provided by this Court.** *See* Order, ECF No. 13, *Sandesh v. LaRose*, No. 3:26-CV-00846-JES (S.D. Cal. March 5, 2026). Specifically, the Court should order:

A. Respondents provide Petitioner with a hearing and individualized bond determination within **ten days** of its order. *Id.*

i. At that hearing, the government shall bear the burden of establishing by clear and convincing evidence that Petitioner poses a danger or flight risk, while further specifying that concerns about interrupting court schedules is not a ground to deny bond. *Id.*

ii. The IJ shall consider alternative conditions of release and Petitioner’s ability to pay bond if he or she determines bond is appropriate. *Id.*

iii. Respondents shall make a complete record of the bond hearing available to Petitioner and his counsel. *Id.*

B. Respondents are ordered to file a Notice of Compliance within **five days** of providing Petitioner with the bond hearing, including apprising the Court of the results of the hearing. *Id.*

C. Prohibit ICE from invoking the automatic stay provisions under 8 C.F.R. § 1003.19(i)(2) to defeat the IJ’s bond determination.

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

Respectfully submitted,

Dated: March 11, 2026

s/ Kara Hartzler

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