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

MOHAMED ADOW HUSSEIN,
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,
JEREMY CASEY, Warden at Imperial
Regional Detention Facility,
Respondents.

Civil Case No.: 26-cv-1417-BAS

**Amended¹ Petition for a
Writ of Habeas Corpus**

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. Mr. Hussein therefore files this amended petition as of right.

1 INTRODUCTION

2 Mohamed Adow Hussein has been detained pending his immigration
3 proceedings for nearly fifteen months. This Court should “join[] the majority of
4 courts across the country in concluding that [his] unreasonably prolonged
5 detention under 8 U.S.C. § 1225(b) without an individualized bond hearing
6 violates due process.” *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 772 (S.D. Cal.
7 2020) (Battaglia, J.). Additionally, because of newly emerging evidence that the
8 neutrality of Otay Mesa’s immigration judges (“IJ”) has been compromised, and
9 some IJs and the Department of Homeland Security (“DHS”) have implemented
10 strategies to detain bond-worthy habeas petitioners, a bond hearing before a
11 randomly selected IJ will no longer reliably satisfy due process. This Court should
12 therefore consider the alternative forms of relief set forth at the end of this
13 petition.

14 STATEMENT OF FACTS

15 Mr. Hussein was born in Somalia. Exhibit A, Declaration of Mohamed
16 Adow Hussein at ¶ 1. He is ethnically Bantu and faces discrimination in Somalia
17 as a result. *Id.* Specifically, Mr. Hussein has been targeted by  a
18 politically powerful majority group in his region of Somalia. *Id.*

19 Mr. Hussein fled Somalia and entered the United States on January 1, 2025.
20 *Id.* at ¶ 3. He came here to seek asylum. *Id.* He has been detained while fighting
21 his immigration case for nearly fifteen months. *Id.* at ¶ 4.

22 Mr. Hussein’s primary language is Somali Garre. *Id.* at ¶ 5. However, the
23 immigration court repeatedly failed to obtain a Somali Garre interpreter in the
24 eight months prior to Mr. Hussein securing an immigration attorney. *Id.* at ¶ 6;
25 Exhibit B, Declaration of Elizabeth Lopez at ¶¶ 5–6. This is the primary reason
26 for the lengthy delay in his immigration case. Exhibit B at ¶ 7. Once represented,
27 Mr. Hussein was set to have his final merits hearing on February 24, 2026, but
28 was unable to proceed because the court had hired an Oromo Garre interpreter,

1 not a Somali Garre interpreter. *Id.* at ¶ 5. Mr. Hussein only understood about one-
2 third of what was being said. *Id.*

3 As a result, Mr. Hussein’s final merits hearing was rescheduled to March
4 16, 2026. *Id.* at ¶ 6. The immigration court provided Mr. Hussein with a Somali
5 interpreter that day. *Id.* Mr. Hussein speaks some Somali, so he agreed to go
6 forward, but there were some problems. Exhibit A at ¶ 5; Exhibit B at ¶ 6. Both
7 the interpreter and Mr. Hussein asked for clarification at various points during the
8 final merits hearing. Exhibit B at ¶ 6.

9 Ultimately, Mr. Hussein was denied asylum by the immigration judge
10 (“IJ”) at his final merit’s hearing. *Id.* at ¶ 8. He intends to file an appeal with the
11 Board of Immigration Appeals (“BIA”) and the Ninth Circuit. Exhibit A at ¶ 8;
12 Exhibit B at ¶ 9. Mr. Hussein’s appeal is due April 16, 2026. *Id.* Mr. Hussein will
13 likely be detained for several more years while his appeal is ongoing.

14 LEGAL BACKGROUND

15 **I. The Fifth Amendment’s Due Process Clause prohibits prolonged** 16 **immigration detention without a bond hearing.**

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

1 § 1225(b) not only during their initial proceedings, but also when they appeal to
2 the BIA. *See id.* at 1111 (reaching same conclusion for immigrant with pending
3 BIA appeal).

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

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

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

27 *Id.* Ultimately, however, the Court declined to decide whether a statute permitting
28 indefinite detention would violate the Due Process Clause. Instead, the Court

1 employed the constitutional avoidance canon to read implicit limits into the
2 statute, requiring release after detention became sufficiently prolonged. *Id.* at 699.

3 Following *Zadvydas*, the Ninth Circuit applied similar reasoning to
4 § 1225(b). *Rodriguez v. Robbins*, 804 F.3d 1060, 1087–89 (9th Cir. 2015).
5 Employing the constitutional avoidance canon, the Ninth Circuit held that
6 § 1225(b) implicitly entitled detained immigrants to bond hearings every six
7 months. *Id.*

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

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

26 “In the wake of *Jennings*,” *Zadvydas*, and *Demore*, “district courts have
27 grappled with how to address due process challenges to prolonged mandatory
28 detention under § 1225(b).” *Banda*, 385 F. Supp. 3d at 1116. But after a full

1 evaluation, “[n]early all district courts that have considered the issue agree that
2 prolonged mandatory detention pending removal proceedings, without a bond
3 hearing, will—at some point—violate the right to due process.” *Id.* (cleaned up)
4 (collecting cases).

5 These Courts have relied on the due process concerns recognized in
6 *Zadvydas*. See, e.g., *Kydyrali*, 499 F. Supp. 3d at 771; *Banda*, 385 F. Supp. 3d at
7 1113–17; *Abdul Kadir v. Larose*, No. 25-CV-1045-LL-MMP, 2025 WL 2932654,
8 at *3 (S.D. Cal. Oct. 15, 2025). As the Ninth Circuit put it in *Jennings*’ wake,
9 those considerations raise “grave doubts that any statute that allows for arbitrary
10 prolonged detention without any process is constitutional or that those who
11 founded our democracy precisely to protect against the government’s arbitrary
12 deprivation of liberty would have thought so.” *Rodriguez v. Marin*, 909 F.3d 252,
13 256 (9th Cir. 2018).

14 Neither *Jennings* nor *Demore* undermines that conclusion. *Jennings* held
15 only that the statute itself did not impose any limits on detention. It “did not
16 foreclose as-applied constitutional challenges to detention under” mandatory-
17 detention statutes. *Santos v. Warden Pike Cnty. Corr. Facility*, 965 F.3d 203, 209
18 (3d Cir. 2020). And *Demore* held only that conviction-based mandatory detention
19 during immigration proceedings does not necessarily violate due process,
20 particularly when the detention has an expected duration of about five months. *Id.*
21 at 208–11. But many persons detained under § 1225(b)—like Mr. Hussein—do
22 not have criminal convictions. And as Justice Kennedy’s concurrence made clear,
23 *Demore* does not prevent immigrants from arguing that sufficiently prolonged
24 detention violates due process in their individual cases. See *id.*²

25
26 ² The Supreme Court’s later decision in *Dep’t of Homeland Sec. v. Thuraissigiam*,
27 591 U.S. 103 (2020), is also inapposite, because it addressed only immigrants’ due
28 process rights in deportation proceedings—i.e., the process due when noncitizens
seek to stay in the country instead of being removed. See *Lopez-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

Thus, this Court should hold that sufficiently prolonged detention violates the Due Process Clause, as most courts have. *See, e.g., Gao v. LaRose*, No. 25-CV-2084-RSH-SBC, 2025 WL 2770633, at *3 (S.D. Cal. Sept. 26, 2025); *Abdul Kadir*, 2025 WL 2932654, at *4; *Cong v. Noem*, No. 25-CV-3730-GPC-DEB, 2026 WL 76566, at *3 (S.D. Cal. Jan. 9, 2026); *Kydyrali*, 499 F. Supp. at 772; *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. Hussein would prevail under any standard.

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). Some courts have “conclude[d] . . . that detention becomes prolonged after six months and entitles [a petitioner] to a bond hearing.” *Rodriguez v. Nielsen*, No. 18-CV-04187-TSH, 2019 WL 7491555, at *6 (N.D. Cal. Jan. 7, 2019). In that case, Mr. Hussein would automatically qualify, as he has been detained for nearly fifteen months.

Other courts have adopted various factors tests. *See Sanchez-Rivera*, 2023 WL 139801, at *5–6 (surveying different approaches). Courts generally agree that relevant factors include:

before the government holds them indefinitely in immigration detention. *Id.*

(1) “the total length of detention to date,”

(2) “the likely duration of future detention,” and

(3) “the delays in the removal proceedings caused by the petitioner and the government.”

Id. Mr. Hussein prevails on all three factors.

First, the “most important factor,” the length of detention, favors Mr. Hussein. *Banda*, 385 F. Supp. 3d at 1118. In assessing this factor, “[i]t is important to bear in mind the context: The detention that is being examined here is the detention of a human being who has never been found to pose a danger to the community or to be likely to flee if released.” *Jamal A. v. Whitaker*, 358 F. Supp. 3d 853, 859 (D. Minn. 2019). With that context, “[c]ourts have found that detention over seven months without a bond hearing weighs toward a finding that it is unreasonable.” *Amando v. United States Dep’t of Just.*, No. 25-CV-2687-LL-DDL, 2025 WL 3079052, at *5 (S.D. Cal. Nov. 4, 2025) (collecting cases). Mr. Hussein has been detained for nearly fifteen months. Exhibit A at ¶¶ 3, 4. This factor therefore favors him.

Second, Mr. Hussein has reason to anticipate significant future detention. The IJ has denied him asylum and ordered his removal. Exhibit B at ¶ 8. Mr. Hussein intends to appeal that decision to the BIA and the Ninth Circuit. Exhibit B at ¶ 9; Exhibit A at ¶ 8. All told, “[t]his process may take up to two years or longer.” *Banda*, 385 F. Supp. 3d at 1119. Because “Petitioner’s future detention can last several more months or even years[.]” this factor favors Mr. Hussein. *Abdul Kadir v. Larose*, 2025 WL 2932654, at *5.

Finally, Respondents are primarily responsible for the delays in this case. They have known that Mr. Hussein is a Somali Garre speaker since the beginning of his detention. Yet, Respondents failed to secure a Somali Garre interpreter for all his court appearances. Exhibit A at ¶ 6; Exhibit B at ¶¶ 5–6. This caused approximately eight months of delay at the beginning of Mr. Hussein’s case,

1 before he was able to secure an attorney. At Mr. Hussein's first scheduled final
2 merits hearing, Respondents brought an Omoro Garre interpreter, not a Somali
3 Garre interpreter. Exhibit B at ¶ 5. As a result, Mr. Hussein only understood one-
4 third of what was being said, and the final merits hearing had to be rescheduled.
5 *Id.* The final merits hearing went forward on March 16, 2026, with a Somali
6 interpreter, not a Somali Garre interpreter. *Id.* at ¶ 6. Mr. Hussein had to ask for
7 clarification at various points during the hearing. *Id.* In all that time, Respondents
8 never secured the best interpreter for Mr. Hussein. Their failure to do so stalled
9 his immigration proceedings for many months.

10 Thus, Mr. Hussein is entitled to release or a bond hearing.

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

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

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

26 Former ICE Counsel Jorge Artieda attests to seeing "a seismic shift in bond
27 hearing outcomes for individuals who had been granted federal habeas relief and
28 ordered § 1226(a) bond hearings . . . in the Eastern District of Virginia." Exhibit

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

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

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

1 Specifically, he has observed a “notable rise in bond denials and adverse case
2 outcomes,” which “undermines due process and erodes confidence in the
3 Immigration Court system.” *Id.* at ¶ 21.

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

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

26 In *Picado v. Hyde*, a district judge ordered outright release after two
27 deficient bond hearings. No. 26-CV-065-JJM-PAS, 2026 WL 352691, at *7
28 (D.R.I. Feb. 9, 2026). The IJ in the second hearing had deemed the immigrant a

1 danger to the community based on an uncorroborated police report accusing him
2 of driving 90 mph in a 55-mph zone. *Id.*

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

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

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

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

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

1 28 I&N Dec. 214 (BIA 2021), issued 01/22/2021). Of those, 46 decisions (60%)
2 favored the administration. The transformation from 60% to 97% pro-government
3 outcomes—achieved through wholesale termination of one administration's
4 appointees —speaks for itself.

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

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

28 *Fourth*, EOIR personnel have at times directed IJs to ignore federal court

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

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

17 Am. Immigr. Laws. Ass'n, Practice Alert: EOIR Issues Nationwide Guidance
18 on *Maldonado Bautista*, AILA Doc. No. 26011404 (Jan. 16, 2026),
19 [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)
20 [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,
21 calling out "Respondents' deliberate choice to continue defying the final
22 judgment entered in *Bautista*." *Palomera Baltazar v. Janecka*, No. 26-CV-
23 00019-SSS-BFM at *2-3 (C.D. Cal. Jan. 16, 2026).

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

27 The "equitable and flexible nature of habeas relief" affords district
28 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
is, at its core, an equitable remedy"). This Court should order a remedy that

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

6 **CLAIM AND PRAYER FOR RELIEF**

7 For the reasons just given, the Fifth Amendment Due Process Clause
8 prohibits the government from continuing to detain Petitioner.

9 Accordingly, Petitioner respectfully requests that this Court:

10 **1. Order Respondents to immediately release Petitioner from custody.**

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

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

4 **2. In the alternative, order a prompt § 1226(a) bond hearing, with**
5 **safeguards and oversight provided by this Court. See Order, ECF**
6 **No. 13, *Sandesh v. LaRose*, No. 3:26-CV-00846-JES (S.D. Cal. March**
7 **5, 2026). Specifically, the Court should order:**

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

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

15 (b) The IJ shall consider alternative conditions of release and
16 Petitioner’s ability to pay bond if he or she determines bond is
17 appropriate. *Id.*

18 (c) Respondents shall make a complete record of the bond
19 hearing available to Petitioner and his counsel. *Id.*

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

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

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1 3. Order all other relief that the Court deems just and proper.
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3 Respectfully submitted,
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5 Dated: March 24, 2026

s/ Camille Fenton

6 Camille Fenton

7 Federal Defenders of San Diego, Inc.

8 Attorneys for Mr. Hussein

9 Email: camille_fenton@fd.org
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