Kara Hartzler
Bar No. 293751
Federal Defenders of San Diego, Inc.
225 Broadway, Suite 900
San Diego, California 92101-5030
Telephone: (619) 234-8467
Facsimile: (619) 687-2666
Kara_hartzler@fd.org

Attorneys for Mr. Gebremeskel

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

HAYLEYESUS GEBRU GEBREMESKEL,

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 Center,

Respondents.

Civil Case No.:26-cv-1631-BJC-BJW

Amended Petition for a Writ of Habeas Corpus

INTRODUCTION

Hayleyesus Gebru Gebremeskel is an asylum seeker from Ethiopia who was arrested [redacted] He has been detained pending his immigration proceedings for 15 months. This Court should "join[] the majority of courts across the country in concluding that [his] unreasonably prolonged detention under 8 U.S.C. § 1225(b) without an individualized bond hearing violates due process." *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 772 (S.D. Cal. 2020) (Battaglia, J.). It should do so because Mr. Gebremeskel satisfies the six-factor test set forth in *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1118 (W.D. Wash. 2019).

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

STATEMENT OF FACTS

Mr. Gebremeskel was born in Ethiopia and faced persecution because of [redacted] As a result, he made his way to the U.S. to apply for asylum. *Id.* at ¶ 1.

On December 31, 2024, Mr. Gebremeskel crossed the border into the U.S. from Mexico and was immediately taken into Border Patrol custody. *Id.* at ¶ 2. He passed his credible fear interview and was put into removal proceedings, where he applied for asylum. *Id.* at ¶ 3.

Mr. Gebremeskel applied for asylum before the immigration judge. *Id.* at ¶ 4. However, the IJ denied his application for asylum. *Id.* at ¶ 4. On October 5, 2025, Mr. Gebremeskel filed an appeal to the BIA, which is currently pending. *Id* at ¶ 4. If the BIA dismisses his appeal, he will likely appeal to the Ninth Circuit. *Id.* at ¶ 4.

Mr. Gebremeskel has been detained for over 15 months. If the BIA dismisses his appeal, Mr. Gebremeskel will likely appeal to the Ninth Circuit. *Id.* at ¶ 5.

LEGAL BACKGROUND

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

This habeas petition presents a question about whether and when the Fifth Amendment's Due Process Clause countermands the government's statutory authority to detain immigrants without bond hearings. Mr. Gebremeskel is detained under one such statute, 8 U.S.C. § 1225(b). "Section 1225 applies to 'applicants for admission'—noncitizens who 'arrive[] in the United States,' or are 'present' in the United States but have 'not been admitted.'" *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1111 (W.D. Wash. 2019). It "applies to, among others, noncitizens initially determined to be inadmissible because of . . . lack of valid documentation." *Id.* That includes persons who, like Mr. Gebremeskel, seek asylum at or near the border. *See id.* at 1109–11 (describing a similar procedural history and finding that petitioner was detained under § 1225(b)). Such immigrants are detained under § 1225(b) not only during their initial proceedings, but also when they appeal to the BIA. *See id.* at 1111 (reaching same conclusion for immigrant with pending BIA appeal).

This statutory scheme has left courts to grapple with the limits (if any) of that detention power: Does this statute permit the government to detain immigrants indefinitely, without ever having to prove at a bond hearing that they

pose a risk of danger or flight? Three Supreme Court cases are potentially relevant to answering that question.

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

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

Id. Ultimately, however, the Court declined to decide whether a statute permitting indefinite detention would violate the Due Process Clause. Instead, the Court 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 § 1225(b) implicitly entitled detained immigrants to bond hearings every six months. *Id.*

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

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

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

These Courts have relied on the due process concerns recognized in *Zadvydas*. *See, e.g* , *Kydyrali*, 499 F. Supp. 3d at 771; *Banda*, 385 F. Supp. 3d at 1113–17; *Abdul Kadir v. Larose*, No. 25CV1045-LL-MMP, 2025 WL 2932654,

at *3 (S.D. Cal. Oct. 15, 2025). As the Ninth Circuit put it in *Jennings*' wake, those considerations raise "grave doubts that any statute that allows for arbitrary prolonged detention without any process is constitutional or that those who founded our democracy precisely to protect against the government's arbitrary deprivation of liberty would have thought so." *Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018).

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

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 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.

[1] The Supreme Court's later decision in *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020), is also inapposite, because it addressed only immigrants' due 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 before the government holds them indefinitely in immigration detention. *Id.*

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. Gebremeskel 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." *Sandesh 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.

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

First, the "most important factor," the length of detention, favors Mr. Gebremeskel. *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, courts have granted bond hearings for persons detained between nine and eleven months. *See Ashemuke v ICE Field Off. Dir.*, No. C23-1592-RSL-MLP, 2024 WL 1683797, at *4 (W.D. Wash. Feb. 29, 2024), *report and recommendation adopted*, No. C23-1592-RSL, 2024 WL 1676681 (W.D. Wash. Apr. 18, 2024) ("approximately eleven months"); *Brissett v. Decker*, 324 F. Supp. 3d 444, 452 (S.D.N.Y. 2018) ("over nine months"); *Perez v. Decker*, No. 18-CV-5279 (VEC), 2018 WL 3991497, at *5 (S.D.N.Y. Aug. 20, 2018) ("more than nine months"); *Masood v. Barr*, No. 19-CV-07623-JD, 2020 WL 95633, at *2 (N.D. Cal. Jan. 8, 2020) ("nearly nine months"). Mr. Gebremeskel has been detained for even longer, for 15 months. Exh. A at ¶ 2. This factor therefore strongly favors Mr. Gebremeskel.

Second, Mr. Gebremeskel has reason to anticipate significant future detention, as he has appealed his case to the BIA and will likely appeal to the Ninth Circuit. *Id.* at ¶ 4. 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. Gebremeskel. *Abdul Kadir v. Larose*, No. 25CV1045-LL-MMP, 2025 WL 2932654, at *5 (S.D. Cal. Oct. 15, 2025).

Third, conditions of confinement weigh in favor of him. "Petitioner's confinement at [Otay Mesa Detention Center] is 'indistinguishable from penal confinement.'" *Abdul Kadir*, 2025 WL 2932654, at *5 (quoting *Kydyrali*, 499 F. Supp. 3d at 773).

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

Sixth, regarding the likelihood that the removal proceedings will result in a final order of removal, Mr. Gebremeskel has a strong asylum claim and would likely win on appeal. *Id.* at ¶ 4. Accordingly, under the *Banda* factors, Mr. Gebremeskel is entitled to release or a bond hearing.

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

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

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

Former ICE Counsel Jorge Artieda attests to seeing "a seismic shift in bond hearing outcomes for individuals who had been granted federal habeas relief and ordered § 1226(a) bond hearings . . . in the Eastern District of Virginia." Exhibit B, Declaration of Jorge Artieda, at 2. In a declaration filed in *Briceno Solano v. Mason*, No. 26-CV-00045, 2026 WL 311624 (S.D.W. Va. Feb. 4, 2026), Mr. Artieda reported that the pattern of granting bond in appropriate cases "abruptly and uniformly ceased" in early January, in a way that "suggests

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

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

A recently retired immigration judge with 27 years of experience on the bench and 10 years of experience as an INS attorney reports similar observations. *See* Declaration of Lawrence O. Burman, Exhibit C. Judge Burman recounts that in his years of conducting bond hearings, "[i]t was rare for a bond to be denied solely based on flight risk." *Id.* at ¶ 11. Rather, "a higher bond amount was imposed to ensure the individual's appearance at future hearings." *Id.* Judge Burman also notes that "[a]lthough immigration judges are expected to act as neutral adjudicators," he has "noticed increasing concern among members of the bench about institutional intimidation and the perception that decisions unfavorable to the government could negatively affect judicial tenure." *Id.* at ¶ 20. Specifically, he has observed a "notable rise in bond denials and adverse case outcomes," which "undermines due process and erodes confidence in the Immigration Court system." *Id.* at ¶ 21.

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

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

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

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

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

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

This has had the predictable effect on those who remain. According to former San Francisco IJ Elizabeth Young, "I've talked to many of [the judges still

serving], and they're like, 'When I go into court, I am concerned about applying the law, but I'm also concerned that I should deny more, because if I don't, then I'll get fired.'" Marco Poggio, *Judges See an Immigration Court Gutted from Inside*, Law360 (Oct. 31, 2025), https://www.law360.com/articles/2381003/judges-see-an-immigration-court-gutted-from-inside. Meanwhile, Department of Justice recruitment materials seek "deportation judges" to fill the empty IJ slots, Coral Murphy Marcos, *US Justice Department Recruiting Legal Experts to Serve as 'Deportation' Judges,* Guardian, https://www.theguardian.com/us-news/2025/nov/21/us-justice-department-ad-deportation-judges, inviting candidates to "bring the hammer down on criminal illegal aliens" and "defend your communities, your culture, your very way of life." dhsgov, Instagram (Nov. 21, 2025), https://www.instagram.com/p/DRVT8DmCQKD/?hl=en.

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

outcomes—achieved through wholesale termination of one administration's appointees —speaks for itself.

Third, beyond personnel changes, EOIR's new acting director, Sirce E. Owen, has issued "a string of sharply worded policy memos" encouraging IJs to side with the government over immigrants and minimize due process. E. Tammy Kim, *Inside Donald Trump's Attack on Immigration Courts*, New Yorker, https://www.newyorker.com/inside-donald-trumps-attack-on-immigration-court. The policy directives include: a memorandum dated June 27, 2025 warning judges not to demonstrate "bias directed against DHS" or to be "adjudicatory outliers," at risk of "close examination and potential action," Exec. Off. for Immigr. Rev., Policy Memorandum 25-33, Neutrality and Impartiality in Immigration Court Proceedings (June 27, 2025), 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 full evidentiary hearings, styled as efficiency guidance but functioning as a directive to reduce due process protections, Exec. Off. for Immigr. Rev., Policy Memorandum 25-28, Pretermission of Legally Insufficient Application for Asylum (Apr. 11, 2025), https://www.justice.gov/eoir/media/1396411/dl?inline; and memoranda restricting immigration judges' ability to grant continuances, Exec. Off. for Immigr. Rev., Policy Memorandum 25-27, Cancellation of Director's Memorandum 23-01 and Reinstatement of Policy Memorandum 19-13 (Mar. 21, 2025), https://www.justice.gov/eoir/media/1394086/dl, and administrative closure, Exec. Off. for Immigr. Rev., Policy Memorandum 25-29, Cancellation of Director's Memorandum 22-03 (Apr. 18, 2025), https://www.justice.gov/eoir/media/1397161/dl?inline.

Fourth, EOIR personnel have at times directed IJs to ignore federal court orders related to bond hearings. On January 13, 2026, in the wake of *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3289861 (C.D.

Cal. Nov. 20, 2025); *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025), Chief Immigration Judge Teresa L. Riley sent all IJs the following instructions:

> Please provide the following guidance to all immigration judges forthwith: *Maldonado Bautista* is not a nationwide injunction and does not purport to vacate, stay, or enjoin *Yajure Hurtado*. Therefore *Yajure Hurtado* remains binding precedent on agency adjudications. For clarification, declaratory judgments differ from injunctions in that the former clarifies parties' legal rights and relationships without ordering specific action, while the latter is a 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.

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

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

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 is, at its core, an equitable remedy"). This Court should order a remedy that fully addresses the statutory and constitutional violations in this case and is efficient to administer. *Carafas v. LaVallee*, 391 U.S. 234, 238 (1968) (the

habeas statute "does not limit the relief that may be granted to discharge of the applicant from physical custody. Its mandate is broad with respect to the relief that may be granted").

CLAIM AND PRAYER FOR RELIEF

Accordingly, Petitioner respectfully requests that this Court:

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

1. Respondents provide Petitioner with a hearing and individualized bond determination within **ten days** of its order. *Id*
   (a) At that hearing, the government shall bear the burden of establishing by clear and convincing evidence that Petitioner poses a danger or flight risk. *Id.*
   (b) The IJ shall consider alternative conditions of release and Petitioner's ability to pay bond. *Id.*
   (c) Respondents shall make a complete record of the bond hearing available to Petitioner and his counsel. *Id.*
2. 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.*
3. 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: April 1, 2026

s/ Kara Hartzler

Kara Hartzler
Federal Defenders of San Diego, Inc.
Attorneys for Mr. Gebremeskel
Email: kara_hartzler@fd.org