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

10 MILKI TURI GEZALI,

11 Petitioner,

12 v.

13 KRISTI NOEM, Secretary of the  
14 Department of Homeland Security,  
15 PAMELA JO BONDI, Attorney General,  
16 TODD M. LYONS, Acting Director,  
17 Immigration and Customs Enforcement,  
18 JESUS ROCHA, Acting Field Office  
19 Director, San Diego Field Office,  
20 JEREMY CASEY, Warden at Imperial  
21 Regional Detention Facility,

22 Respondents.

Civil Case No.: 26-cv-1632-JLS

**Amended<sup>1</sup> Petition for a  
Writ of Habeas Corpus<sup>2</sup>**

24  
25 <sup>1</sup> Federal Rule of Civil Procedure 15(a)(1)(A) permits a party to “amend its  
26 pleading once as a matter of course no later than 21 days after serving it.” Fed. R.  
27 Civ. Pro. 15(a)(1)(A) (punctuation altered). It is less than 21 days since service.  
28 Mr. Gezali therefore files this amended petition as of right.

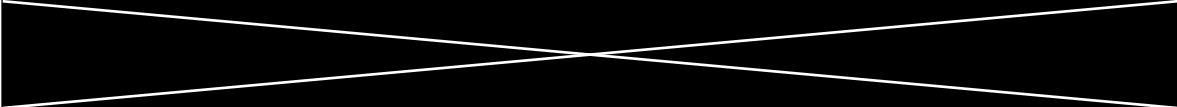
<sup>2</sup> On March 17, 2026, this Court requested Federal Defenders to screen Mr. Gezali’s case and determine whether appointment of counsel was warranted. After interviewing Mr. Gezali, undersigned counsel determined his case is meritorious and he financially qualifies for Federal Defenders’ services.

1 INTRODUCTION

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

13 STATEMENT OF FACTS

14 Mr. Gezali was born in Ethiopia. Exhibit A, Declaration of Milki Turi  
15 Gezali at ¶ 1. He fled Ethiopia because of political persecution. *Id.* at ¶ 2.

16   
17  
18 Mr. Gezali entered the United States to seek asylum on January 8, 2025. *Id.*  
19 at ¶ 3. He was immediately detained by border patrol officers and has been in  
20 immigration detention ever since. *Id.* Mr. Gezali has been in detention while  
21 fighting his immigration case for over fourteen months. *Id.* at ¶ 4.

22 Three weeks passed before Mr. Gezali had his credible fear interview. *Id.* at  
23 ¶ 5. His asylum application was denied on November 7, 20205, ten months after  
24 his initial detention. *Id.* at ¶ 6. Mr. Gezali does not know why it took so long for  
25 his asylum application to be decided. *Id.* at ¶ 7. He believes it was because the  
26 immigration court repeatedly failed to have an Oromo interpreter ready at several  
27 of his court appearances. *Id.* Whenever this happened, his court appearance had to  
28 be rescheduled. *Id.*

1 Mr. Gezali appealed the IJ’s denial of his asylum application to the Board  
2 of Immigration Appeals (“BIA”) on December 7, 2025. *Id.* at ¶ 8. He has had no  
3 news from the court since he submitted his appeal. *Id.* It has been almost four  
4 months. *Id.*

5 Mr. Gezali’s health has deteriorated during his time in custody at the Imperial  
6 Regional Detention Facility. He has gastritis, heart problems, and difficulty  
7 breathing. *Id.* at ¶ 11. Mr. Gezali does not receive adequate medical care for these  
8 issues. *Id.* He is also unable to reach any of his family members, which is taking an  
9 emotional toll. *Id.*

10 **LEGAL BACKGROUND**

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

13 This habeas petition presents a question about whether and when the Fifth  
14 Amendment’s Due Process Clause countermands the government’s statutory  
15 authority to detain immigrants without bond hearings. Mr. Gezali is detained  
16 under one such statute, 8 U.S.C. § 1225(b). “Section 1225 applies to ‘applicants  
17 for admission’—noncitizens who ‘arrive[] in the United States,’ or are ‘present’ in  
18 the United States but have ‘not been admitted.’” *Banda v McAleenan*, 385 F.  
19 Supp. 3d 1099, 1111 (W.D. Wash. 2019). It “applies to, among others,  
20 noncitizens initially determined to be inadmissible because of . . . lack of valid  
21 documentation.” *Id.* That includes persons who, like Mr. Gezali, are detained at  
22 the border and 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 Government  
13 to ‘depriv[e]’ any ‘person ... of ... liberty ... without due process of  
14 law.’ Freedom from imprisonment—from government custody,  
15 detention, or other forms of physical restraint—lies at the heart of the  
16 liberty that Clause protects. *See Foucha v. Louisiana*, 504 U.S. 71, 80  
17 (1992). And this Court has said that government detention violates  
18 that Clause unless the detention is ordered in a *criminal* proceeding  
19 with adequate procedural protections, *see United States v. Salerno*,  
20 481 U.S. 739, 746 (1987), or, in certain special and ‘narrow’  
21 nonpunitive ‘circumstances,’ *Foucha, supra*, at 80, where a special  
22 justification, such as harm-threatening mental illness, outweighs the  
23 ‘individual's constitutionally protected interest in avoiding physical  
24 restraint.’ *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997).

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

25 Following *Zadvydas*, the Ninth Circuit applied similar reasoning to  
26 § 1225(b). *Rodriguez v. Robbins*, 804 F.3d 1060, 1087–89 (9th Cir. 2015).  
27 Employing the constitutional avoidance canon, the Ninth Circuit held that  
28

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).

28 These Courts have relied on the due process concerns recognized in

1 *Zadvydas*. See, e.g., *Kydyrali*, 499 F. Supp. 3d at 771; *Banda*, 385 F. Supp. 3d at  
2 1113–17; *Abdul Kadir v. Larose*, No. 25-CV-1045-LL-MMP, 2025 WL 2932654,  
3 at \*3 (S.D. Cal. Oct. 15, 2025). As the Ninth Circuit put it in *Jennings*’ wake,  
4 those considerations raise “grave doubts that any statute that allows for arbitrary  
5 prolonged detention without any process is constitutional or that those who  
6 founded our democracy precisely to protect against the government’s arbitrary  
7 deprivation of liberty would have thought so.” *Rodriguez v. Marin*, 909 F.3d 252,  
8 256 (9th Cir. 2018).

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

20 Thus, this Court should hold that sufficiently prolonged detention violates  
21 the Due Process Clause, as most courts have. See, e.g., *Gao v. LaRose*, No. 25-  
22 CV-2084-RSH-SBC, 2025 WL 2770633, at \*3 (S.D. Cal. Sept. 26, 2025); *Abdul*  
23 *Kadir*, 2025 WL 2932654, at \*4; *Cong v. Noem*, No. 25-CV-3730-GPC-DEB,  
24

25 <sup>3</sup> The Supreme Court’s later decision in *Dep’t of Homeland Sec. v. Thuraissigiam*,  
26 591 U.S. 103 (2020), is also inapposite, because it addressed only immigrants’ due  
27 process rights in deportation proceedings—i.e., the process due when noncitizens  
28 seek to stay in the country instead of being removed. See *Lopez-Arevalo v. Ripa*,  
No. EP-25-CV-337-KC, 2025 WL 2691828, at \*7–9 (W.D. Tex. Sept. 22, 2025). It  
does not purport to hold that immigrants have no constitutional right to due process  
before the government holds them indefinitely in immigration detention. *Id.*

1 2026 WL 76566, at \*3 (S.D. Cal. Jan. 9, 2026); *Kydyrali*, 499 F. Supp. 3d at 772;  
2 *Mardian v. Mayorkas*, 25-cv-3467-JLS; *Raeva v. Mayorkas*, 25-CV-3175-JO;  
3 *Abdul-Samed v. Warden of Golden State Annex Det Facility*, No. 25-CV-98-  
4 SAB-HC, 2025 WL 2099343, at \*6 (E.D. Cal. July 25, 2025); *Hernandez v.*  
5 *Wofford*, No. 25-cv-986-KES-CDB-HC, 2025 WL 2420390, at \*3 (E.D. Cal. Aug.  
6 21, 2025); *Padilla v. ICE*, 704 F. Supp. 3d 1163, 1171–72 (W.D. Wash. 2023).

7 **II. Courts have reached different conclusions about when immigration**  
8 **detention becomes indefinitely prolonged, but Mr. Gezali would prevail**  
9 **under any standard.**

10 Though courts agree that due process mandates a bond hearing when  
11 detention grows unreasonably prolonged, they disagree about how to assess  
12 whether a particular migrant’s detention has reached that point. *Sanchez-Rivera v.*  
13 *Matuszewski*, No. 22-CV-1357-MMA (JLB), 2023 WL 139801, at \*5–6 (S.D.  
14 Cal. Jan. 9, 2023) (Anello, J.) (surveying the various approaches). Some courts  
15 have “conclude[d] . . . that detention becomes prolonged after six months and  
16 entitles [a petitioner] to a bond hearing.” *Rodriguez v. Nielsen*, No. 18-CV-04187-  
17 TSH, 2019 WL 7491555, at \*6 (N.D. Cal. Jan. 7, 2019). In that case, Mr. Gezali  
18 would automatically qualify, as he has been detained for over fourteen months.

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

- 22 (1) “the total length of detention to date,”  
23 (2) “the likely duration of future detention,” and  
24 (3) “the delays in the removal proceedings caused by the petitioner and the  
25 government.”

26 *Id.* Some courts also consider:

- 27 (4) “the conditions of detention,” and  
28 (5) “the likelihood that the removal proceedings will result in a different

1 final order.”

2 *Id.* Other courts have rejected the fourth and fifth factors, holding that they are  
3 “not particularly suited to assisting the Court in determining whether detention  
4 has become unreasonable and due process requires a bond hearing.” *Lopez v.*  
5 *Garland*, 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022); *accord Sanchez-Rivera*,  
6 2023 WL 139801, at \*5–6.<sup>4</sup> Mr. Gezali would prevail under any of these factors  
7 tests.

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

19 Second, Mr. Gezali has reason to anticipate significant future detention. He  
20 has been denied asylum by the IJ and has begun the appeals process to the BIA  
21 and eventually the Ninth Circuit. Exhibit A at ¶¶ 6, 8. All told, “[t]his process  
22 may take up to two years or longer.” *Banda*, 385 F. Supp. 3d at 1119. Because  
23 “Petitioner’s future detention can last several more months or even years[,]” this  
24 factor favors Mr. Gezali. *Abdul Kadir*, 2025 WL 2932654, at \*5.

25 Third, the delay factor cuts against the government because it seems that  
26

27 <sup>4</sup> Courts also disagree about whether to account for any criminal convictions that  
28 have led to the deportation. *Sanchez-Rivera*, 2023 WL 139801, at \*5–6. But such  
factors—if appropriate at all—are irrelevant where, as here, the person is not being  
removed as a result of criminal convictions.

1 the lion's share of the delay has been because of the government's failure to  
2 secure an Oromo interpreter for Mr. Gezali's court appearances. Exhibit A at ¶ 7.  
3 Moreover, Mr. Gezali has heard nothing from the immigration court since he  
4 submitted his appeal to the BIA nearly four months ago. *Id.* at ¶ 9.

5 Fourth, Mr. Gezali's conditions of confinement weigh in favor of a bond  
6 hearing. His confinement at Imperial Regional Detention Facility is  
7 indistinguishable from penal confinement. He suffers from gastritis, heart  
8 problems, and difficulty breathing, and is not receiving adequate medical care for  
9 these issues. *Id.* at ¶ 11. In addition, he is entirely cut off from his family, which is  
10 taking an emotional toll on him. *Id.*

11 Fifth, there is a significant likelihood that Mr. Gezali will prevail on his  
12 asylum claim. [REDACTED]

13 [REDACTED]  
14 Under any test, then, Mr. Gezali is entitled to release or a bond hearing.

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

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

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

1 orders-00771727.

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

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

23 A recently retired immigration judge with 27 years of experience on the  
24 bench and 10 years of experience as an INS attorney reports similar observations.  
25 *See* Declaration of Lawrence O. Burman, Exhibit C. Judge Burman recounts that  
26 in his years of conducting bond hearings, “[i]t was rare for a bond to be denied  
27 solely based on flight risk.” *Id.* at ¶ 11. Rather, “a higher bond amount was  
28 imposed to ensure the individual’s appearance at future hearings.” *Id.* Judge

1 Burman also notes that “[a]lthough immigration judges are expected to act as  
2 neutral adjudicators,” he has “noticed increasing concern among members of the  
3 bench about institutional intimidation and the perception that decisions  
4 unfavorable to the government could negatively affect judicial tenure.” *Id.* at ¶ 20.  
5 Specifically, he has observed a “notable rise in bond denials and adverse case  
6 outcomes,” which “undermines due process and erodes confidence in the  
7 Immigration Court system.” *Id.* at ¶ 21.

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

20 Judges have begun to take note of this trend and order that individuals be  
21 released from custody, rather than granted a bond hearing. In *Said v. Noem*, a  
22 court ordered a bond hearing for a habeas petitioner, only to learn that “[t]he IJ  
23 denied Petitioner the opportunity to present testimony, declined to consider the  
24 sworn, documentary evidence submitted by Petitioner, and based his decision on  
25 an uncorroborated, unauthenticated claim by a government official that Petitioner  
26 failed to share his location for the ISAP.” No. 25-CV-938-MOC, 2026 WL  
27 295651, at \*5 (W.D.N.C. Feb. 4, 2026). The original habeas Order “presupposed  
28 that this hearing would be conducted in accordance with Petitioner’s due process

1 rights,” the court wrote. “It was not.” *Id.*

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

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

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

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

1 immigration courts." Isabela Dias, *"Fired for No Reason": Former Immigration*  
2 *Judges Speak Out Against Trump's Assault on the Courts*, Mother Jones (Oct. 9,  
3 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/)  
4 [trump-assault-purge-dhs-ice/](https://www.motherjones.com/politics/2025/10/immigration-court-judge-trump-assault-purge-dhs-ice/).

5 This has had the predictable effect on those who remain. According to  
6 former San Francisco IJ Elizabeth Young, "I've talked to many of [the judges still  
7 serving], and they're like, 'When I go into court, I am concerned about applying  
8 the law, but I'm also concerned that I should deny more, because if I don't, then  
9 I'll get fired.'" Marco Poggio, *Judges See an Immigration Court Gutted from*  
10 *Inside*, Law360 (Oct. 31, 2025),  
11 [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)  
12 [gutted-from-inside](https://www.law360.com/articles/2381003/judges-see-an-immigration-court-gutted-from-inside). Meanwhile, Department of Justice recruitment materials seek  
13 "deportation judges" to fill the empty IJ slots, Coral Murphy Marcos, *US Justice*  
14 *Department Recruiting Legal Experts to Serve as 'Deportation' Judges*,  
15 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)  
16 [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  
17 down on criminal illegal aliens" and "defend your communities, your culture,  
18 your very way of life." dhsgov, Instagram (Nov. 21, 2025),  
19 <https://www.instagram.com/p/DRVT8DmCQKD/?hl=en>.

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

1 decisions (97%) favored the administration. By contrast, during the entire four-  
2 year span of the prior administration, the BIA issued 76 published decisions.  
3 Exec. Off. for Immigr. Rev., *Volume 28*, U.S. Dep't of Just. (June 13, 2025),  
4 <https://www.justice.gov/eoir/volume-28>. (First decision, *Matter of DIKHTYAR*,  
5 28 I&N Dec. 214 (BIA 2021), issued 01/22/2021). Of those, 46 decisions (60%)  
6 favored the administration. The transformation from 60% to 97% pro-government  
7 outcomes—achieved through wholesale termination of one administration's  
8 appointees —speaks for itself.

9 *Third*, beyond personnel changes, EOIR's new acting director, Sirce E.  
10 Owen, has issued “a string of sharply worded policy memos” encouraging IJs to  
11 side with the government over immigrants and minimize due process. E. Tammy  
12 Kim, *Inside Donald Trump's Attack on Immigration Courts*, New Yorker,  
13 <https://www.newyorker.com/inside-donald-trumps-attack-on-immigration-court>.  
14 The policy directives include: a memorandum dated June 27, 2025 warning  
15 judges not to demonstrate “bias directed against DHS” or to be “adjudicatory  
16 outliers,” at risk of “close examination and potential action,” Exec. Off. for  
17 Immigr. Rev., Policy Memorandum 25-33, Neutrality and Impartiality in  
18 Immigration Court Proceedings (June 27, 2025), [https://iptp-](https://iptp-production.s3.amazonaws.com/media/documents/2025_06.27_EOIR_-_PM_25-33.pdf)  
19 [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)  
20 [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  
21 full evidentiary hearings, styled as efficiency guidance but functioning as a  
22 directive to reduce due process protections, Exec. Off. for Immigr. Rev., Policy  
23 Memorandum 25-28, Pretermission of Legally Insufficient Application for  
24 Asylum (Apr. 11, 2025), <https://www.justice.gov/eoir/media/1396411/dl?inline>;  
25 and memoranda restricting immigration judges' ability to grant continuances,  
26 Exec. Off. for Immigr. Rev., Policy Memorandum 25-27, Cancellation of  
27 Director's Memorandum 23-01 and Reinstatement of Policy Memorandum 19-13  
28 (Mar. 21, 2025), <https://www.justice.gov/eoir/media/1394086/dl>, and

1 administrative closure, Exec. Off. for Immigr. Rev., Policy Memorandum 25-29,  
2 Cancellation of Director's Memorandum 22-03 (Apr. 18, 2025),  
3 <https://www.justice.gov/eoir/media/1397161/dl?inline>.

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

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

21 Am. Immigr. Laws. Ass'n, Practice Alert: EOIR Issues Nationwide Guidance  
22 on *Maldonado Bautista*, AILA Doc. No. 26011404 (Jan. 16, 2026),  
23 [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)  
24 [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,  
25 calling out “Respondents’ deliberate choice to continue defying the final  
26 judgment entered in *Bautista*.” *Palomera Baltazar v. Janecka*, No. 5:26-cv-  
27 00019-SSS-BFM at \*2-3 (C.D. Cal. Jan. 16, 2026).

28 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

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

10 **CLAIM AND PRAYER FOR RELIEF**

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

13 Accordingly, Petitioner respectfully requests that this Court:

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

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

1 remedies Respondents' violation of [Petitioner's] due process rights  
2 through her continued detention." Order, ECF No. 14 at 19, *Miri v.*  
3 *Bondi*, No. 5:26-CV-00698-MEMF (C.D. Cal. March 5, 2026) ("Miri's  
4 prompt release is the remedy that will best return Miri to the status quo  
5 and restore his position as it was prior to the detention that Miri  
6 contends was in violation of his constitutional and statutory  
7 protections.").

8 **2. In the alternative, order a prompt § 1226(a) bond hearing, with**  
9 **safeguards and oversight provided by this Court. See Order, ECF**  
10 **No. 13, *Sandesh v. LaRose*, No. 3:26-CV-00846-JES (S.D. Cal. March**  
11 **5, 2026). Specifically, the Court should order:**

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

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

19 (b) The IJ shall consider alternative conditions of release and  
20 Petitioner's ability to pay bond if he or she determines bond is  
21 appropriate. *Id.*

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

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

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

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

Respectfully submitted,

Dated: March 26, 2026

s/ Camille Fenton

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