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

10 **SAMARE ALI,**  
11  
12 **Petitioner,**

13 **v.**

14 **KRISTI NOEM, Secretary of the**  
15 **Department of Homeland Security,**  
16 **PAMELA JO BONDI, Attorney General,**  
17 **TODD M. LYONS, Acting Director,**  
18 **Immigration and Customs Enforcement,**  
19 **JESUS ROCHA, Acting Field Office**  
20 **Director, San Diego Field Office,**  
21 **JEREMY CASEY, Warden at Imperial**  
22 **Regional Detention Facility,**  
23  
24  
25  
26 **Respondents.**

Civil Case No.: 26-cv-1699-RBM

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

27 <sup>1</sup> Federal Rule of Civil Procedure 15(a)(1)(A) permits a party to “amend its  
28 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. Ali therefore files this amended petition as of right.

1 INTRODUCTION

2 Samare Ali has been detained pending his immigration proceedings for  
3 fifteen months. This Court should “join[] the majority of courts across the country  
4 in concluding that [his] unreasonably prolonged detention under 8 U.S.C. §  
5 1225(b) without an individualized bond hearing violates due process.” *Kydyrali v.*  
6 *Wolf*, 499 F. Supp. 3d 768, 772 (S.D. Cal. 2020) (Battaglia, J.).

7 Here, an individualized bond hearing would not be an adequate remedy,  
8 and immediate release is required because of Mr. Ali’s native language and the  
9 immigration court’s failure to obtain the correct interpreter in fifteen months.

10 Additionally, because of newly emerging evidence that immigration  
11 judges’ (“IJ”) neutrality has been compromised, and some IJs and the Department  
12 of Homeland Security (“DHS”) have implemented strategies to detain bond-  
13 worthy habeas petitioners, a bond hearing before a randomly selected IJ will no  
14 longer reliably satisfy due process.

15 This Court should therefore order Mr. Ali’s immediate release.

16 STATEMENT OF FACTS

17 Mr. Ali was born in Togo. Exhibit A, Decl. of Samare Ali at ¶ 1. He fled  
18 [REDACTED] *Id.*

19 Mr. Ali entered the United States seeking asylum on January 3, 2025. *Id.* at  
20 ¶ 2. He was immediately detained by border patrol officers and has been in  
21 immigration detention since. *Id.* at ¶¶ 2–3. It has been fifteen months. *Id.* at ¶ 3.

22 Mr. Ali is a [REDACTED] and Moba is his native  
23 language. *Id.* at ¶ 4. His asylum proceedings have been severely delayed because  
24 the immigration court has failed to provide him with a Moba interpreter at every  
25 one of his court appearances. *Id.* at ¶ 5. Mr. Ali does not know when his next master  
26 calendar hearing is set for. *Id.* at ¶ 6.

27 Mr. Ali is struggling with the conditions of confinement at the Imperial  
28 Regional Detention Facility (“IRDF”). He broke his ankle and is in severe pain and

1 needs surgery. *Id.* at ¶ 11. The surgery cannot be done at the facility, so Mr. Ali  
2 does not know if and when he is going to receive the necessary surgery. *Id.* The  
3 medical staff gives him daily ibuprofen for the pain, but that is causing stomach  
4 problems. *Id.*

5 Mr. Ali is also struggling psychologically. *Id.* at ¶ 12. Detainees cannot use  
6 the internet, so he has no way to connect with his family from detention. *Id.* They  
7 are also restricted from going outside. *Id.* All of this is taking a toll on his mental  
8 and emotional health. *Id.*

### 9 LEGAL BACKGROUND

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

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

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

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

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

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

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

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

1 months. *Id.*

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

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

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

27 These Courts have relied on the due process concerns recognized in  
28 *Zadvydas*. See, e.g., *Kydyrali*, 499 F. Supp. 3d at 771; *Banda*, 385 F. Supp. 3d at

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

8       Neither *Jennings* nor *Demore* undermines that conclusion. *Jennings* held  
9 only that the statute itself did not impose any limits on detention. It “did not  
10 foreclose as-applied constitutional challenges to detention under” mandatory-  
11 detention statutes. *Santos v. Warden Pike Cnty. Corr. Facility*, 965 F.3d 203, 209  
12 (3d Cir. 2020). And *Demore* held only that conviction-based mandatory detention  
13 during immigration proceedings does not necessarily violate due process,  
14 particularly when the detention has an expected duration of about five months. *Id.*  
15 at 208–11. But many persons detained under § 1225(b)—like Mr. Ali—do not  
16 have criminal convictions. And as Justice Kennedy’s concurrence made clear,  
17 *Demore* does not prevent immigrants from arguing that sufficiently prolonged  
18 detention violates due process in their individual cases. *See id.*<sup>2</sup>

19       Thus, this Court should hold that sufficiently prolonged detention violates  
20 the Due Process Clause, as most courts have. *See, e.g., Gao v. LaRose*, No. 25-  
21 CV-2084-RSH-SBC, 2025 WL 2770633, at \*3 (S.D. Cal. Sept. 26, 2025); *Abdul*  
22 *Kadir*, 2025 WL 2932654, at \*4; *Cong v. Noem*, No. 25-CV-3730-GPC-DEB,  
23 2026 WL 76566, at \*3 (S.D. Cal. Jan. 9, 2026); *Kydyralı*, 499 F. Supp. 3d at 772;

24  
25 <sup>2</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-Arevelo v. Ripa*,  
No. EP-25-CV-337-KC, 2025 WL 2691828, at \*7–9 (W.D. Tex. Sept. 22, 2025). It  
does not purport to hold that immigrants have no constitutional right to due process  
before the government holds them indefinitely in immigration detention. *Id.*

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

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

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

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

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

25 *Id.* Some courts also consider:

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

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

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

16 Second, Mr. Ali has reason to anticipate significant future detention. His  
17 final merits hearing is not yet scheduled. At his final merits hearing, if he is  
18 awarded asylum and DHS does not appeal, he will be released. But in any other  
19 circumstance—if DHS appeals, or if he receives only another form of protection  
20 against torture, like withholding or deferral of removal, he would be detained for  
21 at least another six months. Indeed, ICE is now regularly holding immigrants  
22 granted withholding or deferral of removal for lengthy periods. *See, e.g., De la*  
23 *Rosa Guarin v. LaRose*, 2025 WL 3440689, No. 25-CV-03085-DMS-VET (S.D.  
24 Cal. Dec. 1, 2025); *CMS v. Oddo*, No. 25-CV-216, 2025 WL 3442697 (W.D. Pa.  
25 Dec. 1, 2025); *Gharakhan v. Noem*, No. 25-CV-2879-DMS-AHG, 2025 WL

26 \_\_\_\_\_  
27 <sup>3</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 3097933 (S.D. Cal. Nov. 5, 2025); *Munoz-Saucedo v Pittman*, 789 F. Supp. 3d  
2 387 (D.N.J. 2025); *Villanueva v. Tate*, 801 F. Supp. 3d 689 (S.D. Tex. 2025);  
3 *Zavvar v. Scott*, No. 25-CV-2104-TDC, 2025 WL 2592543 (D. Md. Sept. 8,  
4 2025); *Puertas-Mendoza v. Bondi*, No. SA-25-CA-890-XR, 2025 WL 3142089  
5 (W.D. Tex. Oct. 22, 2025); *Gomez-Simeon v. Bondi*, No. SA-25-CV-01460-JKP,  
6 2025 WL 3470872 (W.D. Tex. Nov. 24, 2025) (all resolving habeas petitions for  
7 noncitizens who received withholding or deferral of removal but who remained  
8 detained or were re-detained for many months).

9 In addition, if Mr. Ali is denied asylum, he intends to appeal to the BIA and  
10 the Ninth Circuit. Exhibit A at ¶ 8. All told, “[t]his process may take up to two  
11 years or longer.” *Banda*, 385 F. Supp. 3d at 1119. Because “Petitioner’s future  
12 detention can last several more months or even years[,]” this factor favors  
13 Mr. Ali. *Abdul Kadir*, 2025 WL 2932654, at \*5.

14 Third, the significant delays in Mr. Ali’s immigration proceedings are  
15 entirely on the government. The immigration court has known that Mr. Ali is a  
16 Moba speaker since the onset of his case. He needs a Moba interpreter to proceed  
17 with his asylum request. But the immigration court has failed to provide him with  
18 a Moba interpreter at each of his master calendar hearings. Exhibit A at ¶ 5.

19 Fourth, Mr. Ali’s conditions of confinement weigh in favor of immediate  
20 release. His confinement at IRDF is indistinguishable from penal confinement and  
21 the conditions are exceedingly challenging for him. Mr. Ali has broken his ankle  
22 and requires surgery that he cannot obtain at IRDF. *Id.* at ¶ 11. He is in horrible  
23 pain and is given ibuprofen every day to manage it, but the daily ibuprofen is  
24 causing him stomach problems. *Id.* Mr. Ali is also suffering psychologically  
25 because of his inability to reach his family from detention and the limited time he  
26 is allowed to be outdoors. *Id.* at ¶ 12.

27 Fifth, there is a significant likelihood that Mr. Ali will prevail on his  
28 asylum claim. He faces political persecution back home in Togo. *Id.* at ¶ 1.

1 Under any test, then, Mr. Ali is entitled to immediate release.

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

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

11 Most importantly, reports are streaming in from this district and elsewhere  
12 that court-ordered "bond hearings [are], effectively, stacked against detainees  
13 from the start." Kyle Cheney, *How ICE Defies Judges' Orders to Release*  
14 *Detainees, Step by Step*, Politico (Feb. 10, 2026),  
15 [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)  
16 [orders-00771727](https://www.politico.com/news/2026/02/10/ice-immigration-detention-court-orders-00771727).

17 Former ICE Counsel Jorge Artieda attests to seeing "a seismic shift in bond  
18 hearing outcomes for individuals who had been granted federal habeas relief and  
19 ordered § 1226(a) bond hearings . . . in the Eastern District of Virginia." Exhibit  
20 B, Declaration of Jorge Artieda, at 2. In a declaration filed in *Briceno Solano v.*  
21 *Mason*, No. 26-CV-00045, 2026 WL 311624 (S.D.W. Va. Feb. 4, 2026),  
22 Mr. Artieda reported that the pattern of granting bond in appropriate cases  
23 "abruptly and uniformly ceased" in early January, in a way that "suggests  
24 coordinated institutional direction." *Id.* IJs there now rely on a "remarkably  
25 narrow and predictable set of rationales to deny bond—rationales that appear to  
26 bear little relationship to genuine individualized risk assessment and that would  
27 not have been deemed sufficient to justify denial just weeks earlier." *Id.* at 3. In  
28 Mr. Artieda's professional opinion, the IJs' rationales "do not appear to be

1 grounded in legitimate risk assessment” but are “pretexts designed to ensure  
2 denial of bond regardless of the individual facts of each case.” *Id.* at 4.

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

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

23 This trend is also occurring in San Diego. In a recently filed declaration,  
24 local attorney Edward Perez attests that he has similar concerns about some  
25 immigration judges at Otay Mesa. In his experience, many Otay Mesa IJs are  
26 resistant to implementing habeas orders requiring bond hearings. *Elsayed v.*  
27 *Noem*, Case No. 26-cv-368, Doc. 5-2 at ¶ 7 (S.D. Cal. Feb. 9, 2026). These IJs  
28 have begun denying bond on the ground that court hearings are coming up, and

1 release would disrupt the hearing schedule. *Id.* Of course, that logic could justify  
2 any asylum seeker’s detention, and it has nothing to do with danger or flight. *Id.*  
3 Furthermore, the Department of Homeland Security (“DHS”) has started  
4 appealing bonds to take advantage of the automatic stay. *Id.* Both of these  
5 strategies ensure that even those who pose no risk of danger or flight will stay in  
6 detention. *Id.*

7 Judges have begun to take note of this trend and order that individuals be  
8 released from custody, rather than granted a bond hearing. In *Said v. Noem*, a  
9 court ordered a bond hearing for a habeas petitioner, only to learn that “[t]he IJ  
10 denied Petitioner the opportunity to present testimony, declined to consider the  
11 sworn, documentary evidence submitted by Petitioner, and based his decision on  
12 an uncorroborated, unauthenticated claim by a government official that Petitioner  
13 failed to share his location for the ISAP.” No. 25-CV-938-MOC, 2026 WL  
14 295651, at \*5 (W.D.N.C. Feb. 4, 2026). The original habeas Order “presupposed  
15 that this hearing would be conducted in accordance with Petitioner’s due process  
16 rights,” the court wrote. “It was not.” *Id.*

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

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

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

1           These IJs are under no illusions about why they were let go. Former  
2 Baltimore IJ Emmett Soper stated: "I think the current administration of the  
3 immigration courts does not fundamentally see the immigration courts as neutral  
4 decision-makers. I think that they see the immigration courts as a tool for this  
5 administration to advance its policy objectives." Geoff Bennett & Ali Schmitz,  
6 *Ousted Immigration Judge Describes Deepening Court Backlog*, PBS NewsHour  
7 (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)  
8 [describes-deepening-court-backlog](https://www.pbs.org/newshour/show/ousted-immigration-judge-describes-deepening-court-backlog). Former San Francisco IJ Jeremiah Johnson  
9 similarly understood "the hint that they should be hearing cases a certain way,  
10 deciding cases a certain way. Move faster. Less due process, essentially." Hilda  
11 Gutierrez, Michael Bott & Son Vo, *'An all-out attack on immigration court:' SF*  
12 *immigration judges speak out after firings*, NBC Bay Area (Nov. 25, 2025),  
13 [https://www.nbcbayarea.com/investigations/san-francisco-immigration-judges-](https://www.nbcbayarea.com/investigations/san-francisco-immigration-judges-speak-out-firings/3986850/)  
14 [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  
15 more direct: "We were told to facilitate deportation... Due process is dead in  
16 immigration courts." Isabela Dias, *"Fired for No Reason": Former Immigration*  
17 *Judges Speak Out Against Trump's Assault on the Courts*, Mother Jones (Oct. 9,  
18 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/)  
19 [trump-assault-purge-dhs-ice/](https://www.motherjones.com/politics/2025/10/immigration-court-judge-trump-assault-purge-dhs-ice/).

20           This has had the predictable effect on those who remain. According to  
21 former San Francisco IJ Elizabeth Young, "I've talked to many of [the judges still  
22 serving], and they're like, 'When I go into court, I am concerned about applying  
23 the law, but I'm also concerned that I should deny more, because if I don't, then  
24 I'll get fired.'" Marco Poggio, *Judges See an Immigration Court Gutted from*  
25 *Inside*, Law360 (Oct. 31, 2025),  
26 [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)  
27 [gutted-from-inside](https://www.law360.com/articles/2381003/judges-see-an-immigration-court-gutted-from-inside). Meanwhile, Department of Justice recruitment materials seek  
28 "deportation judges" to fill the empty IJ slots, Coral Murphy Marcos, *US Justice*

1 *Department Recruiting Legal Experts to Serve as 'Deportation' Judges,*  
2 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)  
3 [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  
4 down on criminal illegal aliens” and “defend your communities, your culture,  
5 your very way of life.” dhsgov, Instagram (Nov. 21, 2025),  
6 <https://www.instagram.com/p/DRVt8DmCQKD/?hl=en>.

7 *Second*, a parallel purge occurred at the BIA, which was reduced from 28  
8 members to 15 members. All Biden appointees on the BIA were fired. Am. Imm.  
9 Council, *BIA Decision Strips Immigration Judges of Bond Authority, All but*  
10 *Guaranteeing Mandatory Detention for Undocumented Immigrants* (Sept. 12,  
11 2025), [https://www.americanimmigrationcouncil.org/blog/bia-ruling-](https://www.americanimmigrationcouncil.org/blog/bia-ruling-immigration-judges-bond-mandatory-detention-undocumented-immigrants/)  
12 [immigration-judges-bond-mandatory-detention-undocumented-immigrants/](https://www.americanimmigrationcouncil.org/blog/bia-ruling-immigration-judges-bond-mandatory-detention-undocumented-immigrants/). The  
13 statistical impact is stark. As of January 22, 2026, the reconstituted BIA has  
14 issued 71 published decisions. Exec. Off. for Immigr. Rev., *Volume 29*, U.S. Dep't  
15 of Just. (Jan. 21, 2025), <https://www.justice.gov/eoir/volume-29>. Of those, 69  
16 decisions (97%) favored the administration. By contrast, during the entire four-  
17 year span of the prior administration, the BIA issued 76 published decisions.  
18 Exec. Off. for Immigr. Rev., *Volume 28*, U.S. Dep't of Just. (June 13, 2025),  
19 <https://www.justice.gov/eoir/volume-28>. (First decision, *Matter of DIKHTYAR*,  
20 28 I&N Dec. 214 (BIA 2021), issued 01/22/2021). Of those, 46 decisions (60%)  
21 favored the administration. The transformation from 60% to 97% pro-government  
22 outcomes—achieved through wholesale termination of one administration's  
23 appointees —speaks for itself.

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

1 The policy directives include: a memorandum dated June 27, 2025, warning  
2 judges not to demonstrate “bias directed against DHS” or to be “adjudicatory  
3 outliers,” at risk of “close examination and potential action,” Exec. Off. for  
4 Immigr. Rev., Policy Memorandum 25-33, Neutrality and Impartiality in  
5 Immigration Court Proceedings (June 27, 2025), [https://iptp-  
6 production.s3.amazonaws.com/media/documents/2025.06.27 EOIR - PM 25-  
7 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  
8 full evidentiary hearings, styled as efficiency guidance but functioning as a  
9 directive to reduce due process protections, Exec. Off. for Immigr. Rev., Policy  
10 Memorandum 25-28, Pretermission of Legally Insufficient Application for  
11 Asylum (Apr. 11, 2025), <https://www.justice.gov/eoir/media/1396411/dl?inline>;  
12 and memoranda restricting immigration judges’ ability to grant continuances,  
13 Exec. Off. for Immigr. Rev., Policy Memorandum 25-27, Cancellation of  
14 Director’s Memorandum 23-01 and Reinstatement of Policy Memorandum 19-13  
15 (Mar. 21, 2025), <https://www.justice.gov/eoir/media/1394086/dl>, and  
16 administrative closure, Exec. Off. for Immigr. Rev., Policy Memorandum 25-29,  
17 Cancellation of Director’s Memorandum 22-03 (Apr. 18, 2025),  
18 <https://www.justice.gov/eoir/media/1397161/dl?inline>.

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

25 Please provide the following guidance to all immigration judges  
26 forthwith: *Maldonado Bautista* is not a nationwide injunction and does  
27 not purport to vacate, stay, or enjoin *Yajure Hurtado*. Therefore  
28 *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

1 ordering specific action, while the latter is a court order compelling a  
2 party to do or stop doing a specific act. A declaratory judgment is not  
3 an equitable remedy and does not, by itself, have the effect of  
4 compelling specific action by a party. Thank you for your attention to  
5 this matter.

6 Am. Immigr. Laws. Ass'n, Practice Alert: EOIR Issues Nationwide Guidance  
7 on *Maldonado Bautista*, AILA Doc. No. 26011404 (Jan. 16, 2026),  
8 [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)  
9 [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,  
10 calling out “Respondents’ deliberate choice to continue defying the final  
11 judgment entered in *Bautista*.” *Palomera Baltazar v. Janecka*, No. 5:26-cv-  
12 00019-SSS-BFM at \*2-3 (C.D. Cal. Jan. 16, 2026).

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

16 The “equitable and flexible nature of habeas relief” affords district  
17 courts significant discretion over the appropriate remedies for violations of  
18 law and the Constitution. *Velasco Lopez v. Decker*, 978 F.3d 842, 855 (2d Cir.  
19 2020); *see also Schlup v. Delo*, 513 U.S. 298, 319 (1995) (“[H]abeas corpus  
20 is, at its core, an equitable remedy”). This Court should order a remedy that  
21 fully addresses the statutory and constitutional violations in this case and is  
22 efficient to administer. *Carafas v. LaVallee*, 391 U.S. 234, 238 (1968) (the  
23 habeas statute “does not limit the relief that may be granted to discharge of the  
24 applicant from physical custody. Its mandate is broad with respect to the relief  
25 that may be granted”).

#### 26 CLAIM AND PRAYER FOR RELIEF

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

Accordingly, Petitioner respectfully requests that this Court:

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

2             Given the immigration court’s repeated failure to obtain a Moba interpreter  
3 for Mr. Ali in fifteen months, the likelihood that it will successfully obtain one for  
4 a rapidly set bond hearing is very low. Mr. Ali will not have a fair hearing unless  
5 he is able to communicate with his attorney and the immigration judge. Allowing  
6 further delays to give the government time to obtain the proper interpreter is not  
7 the solution either. Fifteen months have already passed without a Moba  
8 interpreter. The government should not be permitted to detain him any further.

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

27             **Thus, Mr. Ali should be granted immediate release. He now has an**  
28 immigration attorney supporting him and a sister who is a United States citizen

1 who can act as his sponsor, if the Court agreed to this remedy.

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

5 Specifically, the Court should order:

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

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

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

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

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

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

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

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Respectfully submitted,

Dated: April 1, 2026

s/ Camille Fenton  
Camille Fenton  
Federal Defenders of San Diego, Inc.  
Attorneys for Mr. Ali  
Email: camille\_fenton@fd.org

# EXHIBIT A

1 **Camille Fenton**  
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7 camille\_fenton@fd.org

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

11 **SAMARE ALI,**  
12  
13 **Petitioner,**

Civil Case No.: 26-cv-1699-RBM

14 v.

**Declaration of**  
**Mr. Ali**  
**in Support of Petition**  
**for a Writ of Habeas Corpus**

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

24 **Respondents.**

25 I, Samare Ali, declare:

- 26 1. I was born in Togo. I fled Togo and came to the United States to seek  
27 asylum. [REDACTED]
- 28 2. I entered the United States on January 3, 2025. I was detained by border  
patrol just after crossing the border.
3. I have been in immigration detention ever since. It has been fifteen months.
4. I am [REDACTED] and Moba is my native language.  
I speak some French, but not enough to understand legal proceedings.
5. My immigration case has been delayed because the immigration court has  
failed to get me a Moba interpreter for every one of my court appearances.



**EXHIBIT B**

## **DECLARATION OF JORGE E. ARTIEDA**

I, Jorge E. Artieda, declare as follows under penalty of perjury pursuant to 28 U.S.C. § 1746:

### **I. PROFESSIONAL BACKGROUND AND QUALIFICATIONS**

**1.** I am an attorney licensed to practice law in the Commonwealth of Virginia and am admitted to practice before the United States District Courts for the Eastern and Western Districts of Virginia.

**2.** I have over two decades of experience in immigration law and federal law enforcement, including:

a. Service as a prosecutor in New York City;

b. Service as legal counsel to Immigration and Customs Enforcement (ICE) Headquarters in Washington, D.C.;

c. Service as Assistant Chief Counsel for ICE in Virginia;

d. Service as a Special Assistant United States Attorney in Virginia; and

e. For the past decade, private practice as an immigration attorney specializing in detention and removal defense, including routine representation of detained individuals in bond proceedings before Immigration Judges in the Eastern District of Virginia.

**3.** I am proud of my years of service as a government attorney. My time working within the City of New York, Immigration and Customs Enforcement, and as a federal prosecutor was among the most meaningful work of my career. I remain grateful for the opportunity to have served the public in those capacities and continue to hold deep respect for the dedicated public servants who work within these institutions to faithfully administer our immigration laws.

**4.** Based on this extensive experience on both sides of immigration enforcement and litigation, I am intimately familiar with the standards, practices, and norms governing bond determinations in immigration proceedings in this district.

### **II. PURPOSE OF THIS DECLARATION**

**5.** I submit this declaration to provide the Court with direct, firsthand observations of a dramatic and systematic change in bond hearing outcomes that have occurred over the past three weeks in immigration proceedings in Virginia and Maryland, particularly before Immigration Judges assigned to the detained docket.

6. This declaration is based on: (a) my personal observations of bond hearings I have attended; (b) my review of written bond decisions issued to clients; (c) communications with numerous immigration attorneys practicing in this district; and (d) my professional knowledge of historical bond practices in this jurisdiction spanning more than a decade.

7. I authorize any attorney representing detained individuals in habeas corpus proceedings or emergency motions for immediate release to use and file this declaration in support of their clients' cases.

### **III. THE SEISMIC SHIFT: SYSTEMATIC DENIAL OF BOND IN POST-HABEAS CASES**

8. Beginning in or around the first week of January 2026, I began observing what can only be described as a seismic shift in bond hearing outcomes for individuals who had been granted federal habeas relief and ordered § 1226(a) bond hearings by this Court and other judges in the Eastern District of Virginia.

9. Prior to this shift, while bond amounts had increased in recent months, bond was *routinely granted* in post-habeas cases where individuals demonstrated: (a) lack of significant criminal history; (b) strong family ties in the United States; (c) lengthy residence in the country; (d) viable claims for relief from removal; and (e) community support including stable housing and employment prospects.

10. Beginning approximately three weeks ago, this pattern *abruptly and uniformly ceased*. In numerous cases I have personally observed or learned about from colleagues, Immigration Judges have denied bond in circumstances that, weeks earlier, would have resulted in bond being set.

11. In my professional observation, the consistency, timing, and uniformity of these denials cannot be readily explained by coincidence, changes in individual case facts, or independent judicial decision-making. The pattern appears systematic and suggests coordinated institutional direction.

### **IV. THE REASSIGNMENT OF IMMIGRATION JUDGES CHOI AND DONOSO-STEVENSON**

12. What I believe to be compelling evidence of possible institutional coordination occurred in early January 2026, when two Immigration Judges who had been assigned to the Annandale detained docket for years—Immigration Judge Raphael Choi and Immigration Judge Karen Donoso-Stevens—were abruptly reassigned to the non-detained docket.

13. Prior to their reassignment from the detained docket, these judges were conducting what appeared to be meaningful individualized bond assessments in

post-habeas cases. They were granting bond in appropriate cases and, critically, had begun questioning—*on the record*—the government's blanket detention positions and the Department of Justice's insistence on maintaining detention under circumstances that appeared not to justify continued custody.

14. The timing and circumstances of their reassignment are, in my view, extraordinary. Judges who appeared to be fulfilling their duty to conduct individualized bond assessments and who were openly questioning government positions were removed from the very docket where such assessments are most critical.

15. Since their reassignment, the Immigration Judges who replaced them on the detained docket have, based on my observations, *systematically denied bond* in post-habeas cases. This pattern suggests that the reassignment may not have been administrative happenstance but rather a deliberate effort to ensure predetermined outcomes—continued detention—regardless of individual circumstances.

## **V. PRETEXTUAL AND LEGALLY INSUFFICIENT RATIONALES FOR DENYING BOND**

16. Over the past three weeks, Immigration Judges have, in my observation, relied 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.

17. These rationales, which I believe to be pretextual, include but are not limited to:

- a. Treating the absence of a financial sponsor as dispositive of flight risk, even when other equities (family ties, length of residence, employment history, community support) overwhelmingly favor release;
- b. Finding that a sponsor who is not a *financial* sponsor is insufficient, despite no legal requirement that sponsors provide financial guarantees;
- c. Treating the fact that an individual did not seek relief from removal until after being detained as evidence of lack of intent to comply with immigration proceedings;
- d. Finding that applications for relief under INA § 240A(b) (cancellation of removal) are "speculative" and therefore do not mitigate flight risk, despite the fact that all immigration relief applications involve some degree of uncertainty and merit assessment;

e. Characterizing unlawful entry into the United States—*by itself*—as establishing flight risk, a rationale that would render bond impossible for the vast majority of detained individuals;

f. Treating the accumulation of unlawful presence (which is a civil violation, not a crime) as evidence of danger or disregard for the law;

g. Finding that unauthorized employment—a status violation shared by millions of undocumented immigrants—constitutes a significant negative factor warranting denial of bond;

h. Treating minor discrepancies in addresses listed on various documents as evidence of "deceitfulness," even when such discrepancies are readily explained and do not reflect any intent to mislead;

i. Questioning the accuracy of tax returns and suggesting "underreporting" based on subjective assessments of lifestyle (such as photographs showing children at Disneyland or a respondent in a vehicle), without any actual evidence of fraud or misrepresentation;

j. Imposing on respondents the burden of proving that they *will* appear for future court proceedings—an impossible burden that requires proving a negative—even though many respondents have never failed to appear for any prior proceeding because *they have never been required to appear* until being placed in removal proceedings; and

k. Dismissing applications for cancellation of removal as "pro forma" when they have not been fully completed or developed, even though detained individuals often lack access to the resources and legal support necessary to perfect such applications while in custody.

**18.** In my professional assessment, these rationales do not appear to be grounded in legitimate risk assessment. They appear to be pretexts designed to ensure denial of bond regardless of the individual facts of each case.

**19.** The rationales being employed to deny bond appear to depart significantly from the standards articulated in BIA precedent governing bond determinations.

**20.** The rationales I have observed over the past three weeks—treating unlawful entry alone as establishing flight risk, dismissing relief applications as inherently "speculative," requiring financial sponsorship as a prerequisite, and treating any immigration violation as dispositive—appear to represent a departure from these precedential standards. BIA case law requires that Immigration Judges consider the *specific circumstances* of each case and weigh multiple factors in reaching bond

determinations. The systematic application of categorical exclusions based on status violations common to the detained population does not appear consistent with the individualized, fact-specific analysis that BIA precedent mandates.

## **VI. OBSERVATIONS FROM JANUARY 14 and JANUARY 28, 2026, DETENTION DOCKET**

**21.** On January 14 and January 28, 2026, I personally observed bond hearings before Immigration Judge Gardey at the Annandale Immigration Court. What I witnessed confirmed the systematic pattern of denial that has emerged over the past three weeks.

**22.** Multiple cases that would have resulted in bond being set just weeks earlier were denied. The denials were based on the same rationales I have described above: lack of financial sponsors, unauthorized work, the "speculative" nature of relief applications, and immigration violations that are endemic to the detained population.

**23.** In each instance I observed, the Immigration Judge appeared to apply factors that, if consistently applied, would make bond impossible for virtually any detained individual in removal proceedings. There did not appear to be meaningful individualized assessment. The hearings appeared to be perfunctory exercises designed to create a veneer of due process while ensuring predetermined outcomes.

**24.** The cases I observed on the above dates, involved individuals with no criminal history, or only minor criminal history unrelated to violence or flight. These individuals had family members present in court, stable housing, employment prospects, and pending applications for relief. Under the standards that prevailed in this district for years—and indeed, as recently as three weeks ago—these individuals would have been granted bond.

## **VII. CORROBORATION FROM THE IMMIGRATION LEGAL COMMUNITY**

**25.** My observations are not isolated. In recent weeks, I have communicated with numerous immigration attorneys practicing all over the United States who handle detention cases. These conversations have confirmed that the pattern I have observed is widespread and consistent.

**26.** Colleagues have reported the same experience: clients who were granted federal habeas relief and ordered § 1226(a) bond hearings are now being systematically denied bond based on rationales that would not have been deemed sufficient weeks earlier.

**27.** These attorneys have described bond hearings as appearing to be "pro forma" exercises where the outcome seems predetermined. Meaningful individualized

review appears to have been replaced by boilerplate language and cookie-cutter denials.

**28.** The consistency of these reports across multiple practitioners, representing different clients before different Immigration Judges, suggests that this is not a matter of individual judicial discretion or case-specific circumstances. It appears to be a coordinated institutional effort.

## **VIII. PROFESSIONAL ASSESSMENT AND CONCLUSION**

**29.** Based on my two decades of experience in immigration law, including my service within the ICE, the pattern of events over the past three weeks—the abrupt reassignment of judges who were granting bond and questioning government positions, the immediate and uniform shift to systematic denial of bond, and the reliance on a narrow set of rationales across multiple judges and cases—suggests what appears to be a coordinated effort by the Executive Office for Immigration Review (EOIR) and the Department of Justice to undermine federal habeas relief.

**30.** In my professional judgment, this apparent coordination is the most plausible explanation for what I and my colleagues have observed. Independent adjudication does not typically produce this level of uniformity in outcome and reasoning across multiple judges and cases in such a compressed timeframe.

**31.** The bond hearings being provided to individuals who have been granted federal habeas relief do not appear to be genuine adjudications. They appear to be illusory remedies—proceedings designed to create the appearance of due process while ensuring that individuals remain detained indefinitely.

**32.** What I have witnessed over the past three weeks appears to be a systematic effort to nullify the constitutional protections that federal courts have recognized and enforced through habeas corpus. It appears to be a deliberate campaign to render meaningless the bond hearings that this Court and others have ordered.

**33.** I am profoundly concerned by what I have witnessed. As an attorney who has dedicated my career to the fair administration of immigration law—having served both as a government attorney enforcing those laws and as a private practitioner defending individuals subject to them—I find what appears to be a coordinated effort to undermine judicial authority and deny due process to be deeply troubling and inconsistent with the values I learned and embraced during my years of public service.

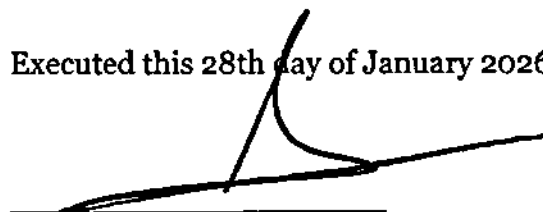
**34.** The individuals affected by this systematic denial of bond are not abstractions. They are human beings with families, with children, with jobs, with lives in this country. They have been found by federal courts to be entitled to bond hearings.

They are now being denied those hearings in any meaningful sense, held in detention not because they pose a danger or a flight risk, but because, in my observation, the Executive Branch appears to have decided to circumvent federal court orders through institutional means.

**35.** I submit this declaration in the hope that it will assist courts in understanding the reality of what appears to be occurring in immigration proceedings in this district and in ensuring that the constitutional right to habeas corpus is not rendered meaningless.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 28th day of January 2026, in Arlington, Virginia.



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(703) 649-6491 (facsimile)  
jorge@artiedalaw.com

**EXHIBIT C**

**AFFIDAVIT OF LAWRENCE O. BURMAN**

I, Lawrence O. Burman, swear under penalty of perjury, that the following information is true and correct to the best of my knowledge, information, and belief:

**Experience**

1. I am over 18 years of age, and a citizen of the United States.
2. I was admitted to the Maryland Bar in November 1978 and have maintained active status since that time.
3. I was employed by the United States Department of Justice from September 1988 until my retirement on December 31, 2025.
4. I served as an Immigration Judge from my appointment in April 1998 until my retirement.
5. Before that, I worked as an assistant district counsel for the former Immigration and Naturalization Service (INS) in Baltimore, Maryland, from 1991 to 1998 – a role now absorbed by the Department of Homeland Security.
6. Prior to that, from 1990 to 1991, I served as assistant general counsel at INS Headquarters in Washington, D C.
7. From 1988 to 1990, I worked as a general attorney for INS in Baltimore.

**Experience as an Immigration Judge**

8. During my 27 years as an Immigration Judge, I presided over both detained and non-detained dockets in Memphis TN and Northern Virginia. I also heard detained cases on detail to detention facilities in Texas, California, New Mexico, Louisiana and Pennsylvania. I was assigned to the Annandale VA detained docket most recently in December 2025 for a short period to cover judges who were on leave.
9. While presiding over the detained docket, I adjudicated requests for custody redetermination (also known as bond hearings). In making these adjudications, I considered whether the alien was a flight risk or a danger to the community.
10. I have been asked to prepare this affidavit to explain my decades of experience as an Immigration Judge regarding the application of “flight risk” when denying a bond, as well as my professional observations regarding recent adjudicatory patterns and their potential implications.
11. Over my time on the bench, I found that concerns about flight risk were usually addressed by setting an appropriate bond amount. It was rare for a bond to be denied solely based on flight risk; more often, a higher bond amount was imposed to ensure the individual’s appearance at future hearings.
12. In my experience, bond was not denied solely due to a person’s manner of entry into the United States or because they had not yet applied for relief before being encountered by immigration officials. Such factors werer never the main reason for denial, and generally not considered at all.


13. It was also extremely rare to see a bond denial based on flight risk where the alien had a fixed address, a job, a proposed application for relief, or family ties to the United States.
14. In my experience, bonds in excess of \$15,000 were relatively uncommon on the dockets on which I served. This is largely because a person's ability to pay a bond should be considered when adjudicating a bond request, and because immigration delivery bonds generally require payment of the full amount to post.
15. Earlier in my tenure, judges typically maintained a regular detained docket. In the last decade, the Immigration Court in Annandale, Virginia, assigned certain judges to detained matters on a full-time basis, while others would substitute when needed.
16. Since around 2017, Immigration Judges Raphael Choi and Karen Donoso-Stevens had been assigned to the detained dockets. IJ Choi was previously the Chief Counsel of the Office of Principal Legal Advisor for Arlington, Virginia, and IJ Donoso-Stevens was a senior attorney for the detained docket for the Office of Principal Legal Advisor for Arlington, Virginia
17. I recently learned that both IJ Choi and IJ Donoso-Stevens were abruptly removed from the detained docket in January 2026, in the middle of their morning dockets, and were replaced by newly-appointed judges.

Concerns about the Immigration Court System

18. Since January 2025, I have observed a troubling trend of Immigration Judges being terminated without explanation or notice. In all my years on the bench, I have never witnessed such a high level of turnover.
19. From conversations within the immigration bench and professional organizations, including the National Association of Immigration Judges (of which I was an officer), it is clear that judges were removed for their strong commitment to due process for those appearing before them.
20. Although immigration judges are expected to act as neutral adjudicators, I have 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.
21. I am concerned that the notable rise in bond denials and adverse case outcomes undermines due process and erodes confidence in the Immigration Court system.

Signed this 14th day of February 2026 in the County of Arlington, Commonwealth of Virginia.

February 14, 2026

  
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Lawrence O. Burman