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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

Ahmed Dlawar MUSHEER,

Petitioner,

v.

Christopher J. LAROSE, Senior Warden, Otay Mesa Detention Center, San Diego, California;
Daniel A. BRIGHTMAN, Acting Field Office Director, San Diego Office of Detention and Removal, U.S. Immigrations and Customs Enforcement;
U.S. Department of Homeland Security;
Todd M. LYONS, Acting Director, Immigration and Customs Enforcement, U.S. Department of Homeland Security;
Srice OWEN, Acting Director for Executive Office for Immigration Review;
Kristi NOEM, Secretary, U.S. Department of Homeland Security;
Pam BONDI, Attorney General of the United States;

Respondents.

Case No.: '26CV1780 RMB MSB

PETITION FOR WRIT OF HABEAS CORPUS AND ORDER TO SHOW CAUSE WITHIN THREE DAYS; COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Agency Doc. No.: [redacted]

Petitioner AHMED DLAWAR MUSHEER petitions this Court for a writ of habeas corpus under 28 U.S.C. § 2241 to remedy Respondents' continued unlawful detention of him, and states as follows:

INTRODUCTION

1. Petitioner, AHMED DLAWAR MUSHEER ("Mr. Musheer" or "Petitioner"), by and through his undersigned counsel, hereby petitions this Court under 28 U.S.C. § 2241, et seq., to issue a Writ of Habeas Corpus ordering Mr. Musheer's immediate release from immigration detention by the Department of Homeland Security ("DHS"), United States Immigration and Customs Enforcement ("ICE"). Mr. Musheer challenges the determination that he should remain in immigration custody without bond for the duration of his removal proceedings.

CUSTODY

2. Mr. Musheer is currently in Respondents' legal and physical custody. They are detaining him at the Otay Mesa Detention Center in San Diego, California. He is under Respondents' and their agents' direct control.

PARTIES

3. Mr. Musheer is a 35-year-old citizen of Iraq. He is currently detained at the Otay Mesa Detention Center in San Diego, California. Mr. Musheer was admitted to the United States on a B1/B2 nonimmigrant visa, is married to a U.S. citizen, has a pending Forms I-130 and I-485 application based on his marriage, and also timely filed for asylum within one year of his admission.

4. Mr. Musheer is currently in Respondents' legal and physical custody at the Otay Mesa Detention Center in San Diego, California. CoreCivic, Inc., a Maryland corporation, operates that facility.

5. Respondent Christopher LAROSE is the Warden of the Otay Mesa Detention Center where Petitioner is being held. Respondent Christopher LaRose oversees the day-to-day operations of the Otay Mesa Detention Center and acts at the Direction of Respondents Brightman, Lyons and Noem. Respondent Christopher LaRose is a custodian of Petitioner and is named in his official capacity.

6. Respondent Daniel A. BRIGHTMAN is the Acting Field Office Director of ICE in San Diego, California and is named in his official capacity. ICE is the component of the DHS that is responsible for detaining and removing noncitizens according to immigration law and oversees custody determinations. In his official capacity, he is the legal custodian of Petitioner.

7. Respondent Todd M. LYONS is the Acting Director of ICE and is named in his official capacity. Among other things, ICE is a component of the DHS, 6 U.S.C. § 271, and an "agency" within the meaning of the Administrative Procedure Act ("APA"), 5 U.S.C. § 701(b)(1). It is the agency responsible for enforcing immigration laws, and it is detaining Mr. Musheer. Respondent Lyons has custodial authority over Mr. Musheer, who names him in his official capacity.

8. Respondent Sirce OWEN is the Acting Director of EOIR and has ultimate responsibility for overseeing the operation of the immigration courts and the Board of Immigration Appeals, including bond hearings. Executive Office for Immigration Review

("EOIR") is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings. She is sued in her official capacity.

9. Respondent Kristi NOEM is the Secretary of the DHS and is named in her official capacity. DHS is the federal agency responsible for enforcing immigration laws and granting immigration benefits. See 8 U.S.C. § 1103(a); 8 C.F.R. § 2.1. Respondent Noem has ultimate custodial authority over Mr. Musheer, who names her in her official capacity.

10. Respondent Pam BONDI is the Attorney General of the United States and the most senior official in the U.S. Department of Justice ("DOJ") and is named in her official capacity. She is responsible for the Immigration and Nationality Act's implementation and enforcement (*see* 8 U.S.C. §§ 1103(a)(1), (g)), and oversees the Executive Office for Immigration Review, the office that administers Mr. Musheer's removal proceedings. Mr. Musheer names her in her official capacity.

JURISDICTION AND VENUE

11.This action arises under the United States Constitution and the Immigration and Nationality Act, 8 U.S.C. § 1101 et seq., INA § 101 et seq., to challenge Mr. Musheer's detention under the INA and any inherent or plenary powers the government may claim to continue holding him.

12.This Court has jurisdiction under 28 U.S.C. § 1331, § 2241; 5 U.S.C. §§ 701–706; and the Suspension Clause, U.S. Const. art. I, § 9, cl. 2, and the Fifth and Eighth Amendments of the United States Constitution. Jurisdiction is not limited by a

petitioner's nationality, immigration status, or any other classification. *See Boumediene v. Bush*, 553 U.S. 723, 747 (2008). The Court may grant relief under the Suspension Clause; the Fifth and Eighth Amendments; 5 U.S.C. § 706 (APA); and 28 U.S.C. §§ 1361 (Mandamus Act), 1651 (All Writs Act), 2001 (Declaratory Judgment Act), and 2241 (habeas corpus).

13. Specifically, this Court has jurisdiction under 28 U.S.C. § 2241 to review Mr. Musheer's detention. Federal district courts possess broad authority to issue writs of habeas corpus when a person is held "in custody in violation of the Constitution or laws or treaties of the United States" (28 U.S.C. § 2241(c)(3)), and this authority extends to immigration detention challenges that survived the REAL ID Act's jurisdictional restrictions.

14. Courts are authorized to "dispose of [a habeas petition] as law and justice require," 28 U.S.C. § 2243, and are allowed "broad discretion ... in fashioning the judgment granting relief to a habeas petitioner[.]" *Hilton v. Braunskill*, 481 U.S. 770, 775 (1987). "[H]abeas corpus is, at its core, an equitable remedy." *Schlup v. Delo*, 513 U.S. 298, 319 (1995). "Moreover, in constitutional adjudication as elsewhere, equitable remedies are a special blend of what is necessary, what is fair, and what is workable." *Lemon v. Kurtzman*, 411 U.S. 192, 200 (1973) (footnote omitted).

15. "Once a [constitutional] right and a violation have been shown, the scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies." *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 15, (1971); *see also Stone v. City & County of San Francisco*, 968

F.2d 850, 861 (9th Cir. 1992) ("Federal courts possess whatever powers are necessary to remedy constitutional violations because they are charged with protecting these rights.").

16. Because Mr. Musheer seeks the traditional habeas remedy of release from him unlawful detention, his petition presents precisely the type of threshold legality-of-detention question that § 2241 was designed to address. *See INS v. St. Cyr*, 533 U.S. 289, 301 (2001); *see also Lopez-Marroquin v. Barr*, 955 F.3d 759, 759 (9th Cir. 2020) (citing *Singh v. Holder*, 638 F.3d 1196, 1211-12 (9th Cir. 2011)). And federal courts are not stripped of jurisdiction under 8 U.S.C. § 1252. *See, e.g., Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

17. None of the jurisdiction stripping bars apply. First, 8 U.S.C. § 1226(e) does not preclude, "habeas jurisdiction over constitutional claims or questions of law." *Hernandez v. Sessions*, 872 F.3d 976, 987 (9th Cir. 2017) (quoting *Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011). Under § 1226(e) "district courts have jurisdiction to review [an] Immigration Judge's discretionary bond denial only 'where that bond denial is challenged as legally erroneous or unconstitutional.'" *Mayancela Mayancela v. FCI Berlin, Warden*, No. 25-CV-348-LM-TSM, 2025 WL 3215638 (D.N.H. Nov. 18, 2025) (quoting *Diaz-Calderon v. Barr*, 535 F. Supp. 3d 669, 676 (E.D. Mich. 2020) (quoting *Lopez Reyes v. Bonnar*, 362 F. Supp. 3d 762, 772-73 (N.D. Cal. 2019))).

18. Further, although Section 1252(g) states that no court may hear a noncitizen's case "arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against an [undocumented person]." The U.S. Supreme Court has rejected "the unexamined assumption that § 1252(g) covers the

universe of deportation claims," and has instead endorsed a "much narrower" read that is confined to the "three discrete actions" listed above. *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999). As this Petition is not attacking the commencement of proceedings, adjudication of the case, or the execution of a removal order,[1] the Court has jurisdiction.

19.Finally, the Ninth Circuit has already determined that courts may review the agency's determination that a noncitizen presents a danger or flight risk as a mixed question of law that is reviewed under the abuse of discretion standard. *Martinez v. Clark*, 124 F.4th 775, 781 (9th Cir 2024). The agency "abuses its discretion when it fails to 'consider and address in its entirety the evidence submitted by a petitioner' and to 'issue a decision that fully explains the reasons for denyi[al]...'" *Franco-Rosendo v. Gonzales*, 454 F.3d 965, 966 (9th Cir. 2006) (quoting *Mohammed v. Gonzales*, 400 F.3d 785, 792–93 (9th Cir.2005)); *Carnalla-Munoz v. United States Immigr. and Naturalization Serv.*, 627 F.2d 1004, 1007 (9th Cir. 1980) (declining to find an abuse of discretion where the "immigration judge and the Board have considered all of the factors upon which petitioners rely"); *Barrera-Leyva v. Immigr. and Naturalization Serv.*, 653 F.2d 379, 380 (9th Cir. 1981) (stating that the immigration judge abused its discretion by "failing to consider all of the relevant factors"); *Hernandez v. Garland*, 52 F.4th 757, 765-66 (9th Cir. 2022) (holding that an abuse of discretion review is limited to ensuring that the agency relied on the appropriate factors).

[1] Removal proceedings are on-going and no final order of removal has been entered against Mr. Musheer.

20. Venue is proper in this District under 28 U.S.C. §§ 1391(b)(2) and (e)(1) because a substantial part of the events or omissions giving rise to this claim have happened here, Mr. Musheer is detained here, and his custodian resides here. Venue is also proper under 28 U.S.C. § 2243 because Mr. Musheer's immediate custodian resides in this District. See *Rumsfeld v. Padilla*, 542 U.S. 426, 451-52 (2004) (Kennedy, J., concurring).

FACTUAL BACKGROUND

21. Mr. Musheer, an Iraqi national, was admitted to the United States on a B1/B2 visitor's visa on November 7, 2023. He has remained in the United States since that time. Exh. 2 at 29. He timely filed for asylum (Form I-589)[2] with the United States Citizenship and Immigration Services ("USCIS") on January 2, 2024. Exh. 2 at 30. On information and belief, he attended all scheduled appointments in connection with this application and was issued an employment authorization document.

22. On March 26, 2024, Mr. Musheer married Zinah Thabit Mohammed ("Ms. Mohammed"), a U.S. citizen and he is stepfather to Ms. Mohammed's, sixteen-year-old daughter. Exh. 2 at 37–39. On November 7, 2024, seven months after his marriage, Mr. Musheer applied for adjustment of status with USCIS.[3] Exh. 2 at 31–32. On November

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[2] The basis of his asylum claim is not part of the bond record and the attorney that represented Mr. Musheer at his bond hearing stated that her office had only been recently retained and did not have a copy of the application. Exh. 1.

[3] Submission of this application includes filing both an I-130 petition, which requires establishing that he is in a legitimate marital relationship with a United States citizen, as well as Form I-485, which requires he establish that he was lawfully admitted to the United States and is not subject to any grounds of inadmissibility. As he was not in proceedings at the time of filing and is an immediate relative he was able to submit a concurrent filing. *See* USCIS Concurrent Filing of Form I-485 (https://www.uscis.gov/green-card/green-card-processes-and-procedures/concurrent-

19, 2024, he received a request for evidence, asking for a medical examination, which he timely responded to. On June 9, 2025, he and his wife attended an interview at the San Diego Field Office for adjudication of his adjustment application. *Id.* His application remains pending at this time. Exh. 2 at 33.

23. Mr. Musheer has now been married to his U.S. citizen wife for almost two years, he and his wife reside together at a shared residence[4] with their daughter, they jointly filed their 2024 taxes, and they have traveled around the United States together as a family. Exh. 2 at 35–42. No evidence in the record suggests that this is not a legitimate marital relationship.

24. Per Ms. Mohammed's letter, submitted in the bond packet, Mr. Musheer suffers "from a rare and serious genetic condition, coronary artery dissection, which is believed to have caused his father's sudden death at the age of 32. In Iraq, this condition could not be properly diagnosed or treated. Only after arriving in the United States was he able to receive an accurate diagnosis. He now requires continuous medical monitoring and follow up care." Exh. 2 at 36.

25. Per USCIS published processing times, eighty percent of Form I-485 cases filed with the San Diego Field Office take eleven months to be processed. Exh 5. Despite the case being outside of posted processing timeframe, the USCIS system indicates that the

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filing-of-form-i-485 last accessed March 20, 2026). Further, as his marriage pre-dates the issuance of a Notice to Appear against him, he is not subject to any heightened standard regarding the legitimacy of his marriage. *See generally* 8 U.S.C. § 1225(e); § 1154(g).

[4] In fact, Mr. Musheer was arrested by Immigration officers in the parking lot of his shared residence.

case is processing normally and the earliest Mr. Musheer would be authorized to inquire on his case is October 2, 2026. *Id.*

26. On February 19, 2025, Mr. Musheer was detained by Immigration officers in the parking lot of his apartment complex. He was transferred to the Otay Mesa Detention Center where he remains detained.

27.On February 25, 2026, he submitted a motion in support of bond redetermination, arguing that he posed no danger, as he lacks any criminal history. *See* Exh. 2. He also argued that he is not a flight risk, given that his wife's nephew submitted financial documentation and agreed to be his sponsor, and because he has strong family ties and pending relief applications. He submitted a letter from his sponsor, his sponsor's taxes evidencing substantial income to support him, proof of his sponsor's residence, proof of his pending asylum and adjustment applications, and proof of his bona fide marriage. *Id.*

28.On March 4, 2026, a bond hearing was conducted at the Otay Mesa Detention Center by Immigration Judge ("IJ") Olga Attia and Mr. Musheer was represented by Attorney Duran Tovar. Exh. 1. On the day of the hearing DHS uploaded its evidence, which contains only the Notice to Appear, where Mr. Musheer is charged with removability for having overstayed his visa. Exh. 3.

29.The Department agreed that the IJ had jurisdiction over the bond hearing and both parties agreed that the burden of proof was on Mr. Musheer. Attorney Duran argued that Mr. Musheer posed no flight risk given his strong family ties, sponsor, and pending relief applications. Exh. 1 at 2–3.

30. IJ Attia inquired into the basis of the asylum claim and Attorney Duran stated that she was unaware, as her office had not prepared the application. Exh. 1 at 3–4. The IJ then inquired about where Mr. Musheer had applied for his nonimmigrant visa. This information was in fact readily available, as a copy of the visa was submitted in the bond packet and shows that the visa was issued in Baghdad. Exh. 2 at 29. Nevertheless, Attorney Duran consented to IJ Attia questioning Mr. Musheer directly in Arabic, as the IJ stated that she spoke the language.[5] Exh. 1 at 4.

31. After her questioning of Mr. Musheer, IJ Attia memorialized the conversation indicating that she had not only asked at what post he applied for the visa but also if he had traveled to any other counties. She indicated that Mr. Musheer stated that he had traveled to approximately twenty countries in Europe and had returned to Iraq after those visits. Exh. 1 at 4.

32. Next, DHS counsel made its statement which consists entirely of the following:

> "We're asking that you deny a bond or set a high bond for this individual, for the respondent. I believe this, even though he came here in November 2023 and he

[5] Notwithstanding the attorney's agreement to this questioning, it was inappropriate of IJ Attia to even make such a request, given that she had Attorney Duran waive the presence of an Arabic interpreter at the outset of the hearing, which signaled that the IJ did not intend to question Mr. Musheer. Exh. 1 at 1. Further, by questioning Mr. Musheer without an interpreter, Attorney Duran was precluded from asking any follow-up questions, as she stated for the record that she does not speak Arabic and obviously the judge could not act as an interpreter. Further, although IJ Attia indicated that she intended to ask where Mr. Musheer had applied for his visa (a fact already in the record) she took advantage of the opportunity and asked him additional questions and then utilized his responses to deny bond. *See* Exh. 1.

married shortly, it's a little suspicious the fact that he married so quickly after getting to the United States.

The fact that USCIS has not approved that application also might be a matter of concern of the respondent. Also, the income of the respondent is pretty low. I believe he would be a flight risk. He can process his I-130 while waiting in Iraq. He can do consular-processing. So, we're asking that you deny a bond, Your Honor." Exh. 1 at 5.

33. Attorney Duran rebutted that the hearing was about bond eligibility and not about relief eligibility, at which point IJ Attia interrupted and stated "One of the factors the court can consider is relief the respondent seeking in removal proceedings and the viability of it. So, I disagree with you that that's not to be discussed. But please make any arguments you'd like, please." Exh. 1 at 6.

34. Attorney Duran concluded that Mr. Musheer and her office were following up with USCIS regarding his pending marriage-based case and that Mr. Musheer had complied with all requests and attended all interviews. Exh. 1 at 6.

35. IJ Attia then asked Attorney Duran if Mr. Musheer knew his wife before he came to the United States and she indicated that she believed so but was "not very sure."[6] Exh. 1 at 6. This led the IJ to question what representations Mr. Musheer may (or may not have made) when applying for the visa. Attorney Duran stated again that she was not sure

[6] Notably, statements made by attorneys are not evidence. *See Carrillo–Gonzalez v. INS*, 353 F.3d 1077, 1079 (9th Cir.2003) (unsubstantiated statements of counsel do not constitute evidence).

of the facts and that "this was a really quick hire with our office in which we're trying to get applications from him." Exh. 1 at 6–7.

36. IJ Attia then issued her ruling and denied bond after finding that Mr. Musheer was a flight risk. Exh. 1 at 7. She based this finding on the fact that he had admitted to her that he had traveled multiple times and returned to Iraq, as late as March 2023, and that called into question his asylum-related relief. Exh. 1 at 7. She concluded that "International travel does undermine his claim for asylum and fear of returning to Iraq when he was able, essentially, to freely exit and reenter his country." *Id.*

37. Second, she found: "As to his marriage to a United States citizen, it occurred approximately between two and three months after he entered the United States as a non-immigrant visitor, which calls into question the legitimacy of the marriage, given how quickly it occurred." *Id.* She also questioned "whether the respondent knew of his intention to marry this individual when he sought a visa to come to the United States." Exh. 1 at 7–8.

38. She also noted that his visa was still valid at the time he filed for asylum and married but failed to explain the significance of this to her. Exh. 1 at 8. She further found that his only family ties in the United States were through marriage and not "based on blood." *Id.*

39. She concluded: "The court's greatest concern really is the lack of viable relief the respondent may have. The court, as noted, has called into question his application for asylum with USCIS. And then the respondent, one moment, please. He did file an adjustment in I-130 packet with USCIS. Give me a moment to look at the date. That was

filed November 7, 2024. He did attend his interview and was given an RFE, a request for evidence, and then detained by DHS a couple days later. The reality is his I-130 is not approved. So, without that approval, he's not eligible for adjustment of status before the court or for consular processing from abroad. So, at this stage, his relief is limited. It's questionable as to his I-589 doesn't have an approved I-130 for adjustment or consular processing. . . I am going to find that he is a flight risk and that there's no amount of bond that would mitigate that risk." Exh. 1 at 8–9.

40. Mr. Musheer remains in custody and his next Master Calendar hearing is scheduled for April 8, 2026. Exh. 6.

EXHAUSTION OF REMEDIES

41. In the immigration context, "exhaustion of remedies is statutorily required only for appeals of final orders of removal." *See Quintana Casillas v. Sessions*, Civ. 17-01039-DME-CBS, 2017 WL 3088346, at *9 (D. Colo. Jul. 20, 2017) (citing *Hoang v. Comfort*, 282 F.3d 1247, 1254 (10th Cir. 2022), *cert. granted and judgment vacated on other grounds sub nom. by Weber v. Phu Chan Hoang*, 538 U.S. 1010 (2003)). Further, courts may only require exhaustion as a prudential matter when "(1) agency expertise makes agency consideration necessary to generate a proper record and reach a proper decision; (2) relaxation of the requirement would encourage the deliberate bypass of the administrative scheme; and (3) administrative review is likely to allow the agency to correct its own mistakes and to preclude the need for judicial review." *Noriega-Lopez v. Ashcroft*, 335 F.3d 874, 881 (9th Cir. 2003) (citation omitted).

42. Further, the exhaustion requirement may be waived if "administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury would result, or the administrative proceedings would be void." *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (quotation marks and citation omitted).

43. The Court should not require exhaustion here. First, "[b]ecause this action involves a legal question, an 'administrative appellate record is not necessary to resolve' [Petitioner]'s challenge to the Immigration Judge's bond determination." *Miri v. Bondi*, No. 5:26-CV-00698-MEMF-MAR, 2026 WL 622302, at *10–11 (C.D. Cal. Mar. 5, 2026) (quoting *Hernandez*, 872 F.3d at 989).

44. Moreover, Mr. Musheer raises issues of constitutional law in this Petition "an area over which the Immigration Court and the BIA lack any authority to adjudicate, thereby rendering appeal to those bodies futile." *Garcia v. Hyde*, No. 25-CV-585-JJM-PAS, 2025 WL 3466312, at *7 (D.R.I. Dec. 3, 2025) (citing *Matter of Cruz de Ortiz*, 25 I&N Dec. 601, 605 (BIA 2011) ("[N]either we nor the Immigration Judges have authority to rule on the constitutionality of the statutes we administer."); *see also Hechavarria v. Whitaker*, 358 F. Supp. 3d 227, 238 (W.D.N.Y. 2019) (waiving exhaustion requirement because "the BIA does not have jurisdiction to adjudicate constitutional issues"). "District courts, by contrast, are well-suited to review constitutional claims such as the ones at issue here." *Garcia* at *7 (citing *Mayancela*, 2025 WL 3215638, at *5-6; *Massingue v. Streeter*, No. 3:19-CV-30159-KAR, 2020 WL 1866255 (D. Mass. Apr. 14, 2020); *Diaz Ortiz v. Smith*, 384 F. Supp. 3d 140, 144-45 (D. Mass. 2019).

45. Finally, as argued more extensively below, the Board of Immigration Appeals ("the Board" or "BIA") is unlikely to correct its own mistakes given the fact that since 2025 the BIA has issued a record number of precedential decisions all of but a few of which are favorable to the Department.[7] Failure to grant Mr. Musheer's habeas now will not preclude the need for judicial review, it will simply delay it and during the time review is delayed, Mr. Musheer will have been unconstitutionally detained.

46. Alternatively, even if the Court finds exhaustion applies, the Court should waive it. First, courts have found that "loss of liberty is a ... severe form of irreparable injury," allowing for waiver of exhaustion. *Ferrara v. United States*, 370 F. Supp. 2d 351, 360 (D. Mass. 2005); *see also Brito v. Garland*, 22 F.4th 240, 256 (1st Cir. 2021) (noting that "exhaustion might not be required if [the petitioner] were challenging her incarceration ... or the ongoing deprivation of some other liberty interest"). In addition, Mr. Musheer is at greater risk of suffering serious injury, as per his wife, he suffers from a rare medical condition and it is unlikely that he will receive adequate care while detained.[8]

47. Second, courts have found that the BIA appeal process is not efficient. In *Garcia v. Hyde*, the court found that forcing the petitioner to go through a BIA appeal first, would cause "further irreparable harm and hardship." 2025 WL 3466312 at *6 (citing

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[7] *See infra* notes 25; 26.

[8] NPR, Immigration detention on track for deadliest fiscal year since 2004, March 10, 2026 (https://www.npr.org/2026/03/10/g-s1-111238/immigration-detention-deaths-custody last accessed March 19, 2026) ("Still, medical professionals who were assigned to work in immigration detention centers told NPR they witnessed chaotic screenings – and life-threatening delays in getting medicine and care to detainees. Overcrowded and understaffed conditions have pushed some to quit.").

Gomes v. Hyde, 804 F. Supp. 3d 265, 272 (D. Mass. 2025) ("According to data released by the Executive Office for Immigration Review, the average processing time for bond appeals exceeded 200 days in 2024." *Id.* (citing *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1248-49 (W.D. Wash. 2025)). This will result in even more prolonged detention. *See Hechavarria*, 358 F. Supp. 3d at 240 (W.D.N.Y. 2019) (waiving exhaustion requirement where "delays inherent in the [BIA review] process ... would result in the very harm that the bond hearing was designed to prevent: prolonged detention without due process during lengthy and backlogged removal proceedings") (internal quotations and citations omitted).[9]

48. Finally, in so far as *Leonardo* can be read to require exhaustion, the holding of that case is limited to petitions where the petitioner has not "demonstrated grounds for excusing the exhaustion requirement." 646 F.3d at 1161; *see also Ortega-Rangel v. Sessions*, 313 F. Supp. 3d 993, 1004 (N.D. Cal. 2018) ("The Government's insistence that Ms. Ortega's failure to exhaust administrative remedies is governed by *Leonardo* is unpersuasive. While the petitioner in *Leonardo* failed to appeal the IJ's decision to the BIA before filing his petition in district court, the Ninth Circuit concluded the petitioner failed to exhaust administrative remedies not only because he did not file an appeal with the BIA but also because he did not demonstrate "grounds for excusing the exhaustion requirement." *Id.* at 1160–1161. Here, unlike *Leonardo*, Ms. Ortega has demonstrated that irreparable harm warrants the excuse of administrative exhaustion.")

[9] *See* argument *infra* that EOIR is no longer a neutral body, which also supports waiver of exhaustion, as appealing to the BIA would be futile.

LEGAL BACKGROUND

49. **Permissive detention under 8 U.S.C. § 1226(a)**: During the pendency of removal proceedings noncitizens may be detained under 8 U.S.C. § 1226(a).[10] This section authorizes DHS to release noncitizens with a bond of at least $1,500.00. Noncitizens who are not released by DHS may seek a bond redetermination with an immigration judge. IJs should order release on bond absent a finding that the noncitizen presents a "a threat to national security, a danger to the community at large, likely to abscond, or otherwise a poor bail risk." *Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006).

50. In considering danger and flight, IJs examine a nonexclusive list of factors including: (1) whether the noncitizen has a fixed address in the United States; (2) the noncitizen's length of residence in the United States; (3) the noncitizen's family ties in the United States, and whether they may entitle the noncitizen to reside permanently in the United States in the future; (4) the noncitizen's employment history; (5) the noncitizen's record of appearance in court; (6) the noncitizen's criminal record, including the extensiveness of criminal activity, the recency of such activity, and the seriousness of the offenses; (7) the noncitizen's history of immigration violations; (8) any attempts by the noncitizen to flee prosecution or otherwise escape from authorities; and (9) the noncitizen's manner of entry to the United States). *Id.* The Board has also indicated that IJs may consider the likelihood of relief. *See Matter of Andrade*, 19 I&N Dec. 488, 490

[10] Other statues, not relevant here authorize the mandatory detention of certain noncitizens; however, here there is no contention that Mr. Musheer is detained under § 1236(a), as DHS agreed the IJ had jurisdiction over a bond hearing. *See* Exh. 1 at 2.

(BIA 1987) (granting a high bond amount where "the respondent's crimes, combined with the other evidence of record, negatively affect the likelihood of his future appearance such that his release on a lower bond is not warranted.").

51. **EOIR is no longer a neutral body:** Beginning in 2025, the immigration court system has been transformed into a body that is structurally incapable of upholding Petitioner's statutory and constitutional rights. EOIR has never been an independent judicial body but rather it is an Article I administrative court, which bows to the directives of the Executive. The collusion between DHS and EOIR has become even more readily apparent than in past years due to (1) the firing of immigration judges with high asylum grant rates, (2) the reduction of BIA members, (3) the rebranding of immigration judges into deportation judges, (3) the substantial increase in precedential decisions issued by the BIA that disfavor noncitizens (without any countervailing favorable precedent), (4) directives by EOIR to favor the Department, and (5) instructions by EOIR for IJs to defy federal court rulings.[11]

52. First, as of September 26, 2025, the administration terminated 128 IJs.[12] The terminated and resigned judges report three consistent themes. First, explicit pressure to serve as instruments of mass deportation rather than neutral adjudicators. Former Baltimore IJ Emmett Soper stated: "I think the current administration of the immigration

[11] As noted above, these factors also support the court waiving exhaustion due to futility.
[12] Trump Administration Continues Firing Immigration Judges – IFPTE responds Sept 26, 2025 (https://www.ifpte.org/news/trump-administration-continues-firing-immigration-judges-ifpte-respondsnbsplast accessed March 19, 2026).

courts does not fundamentally see the immigration courts as neutral decision-makers. I think that they see the immigration courts as a tool for this administration to advance its policy objectives."[13] Former San Francisco IJ Jeremiah Johnson similarly understood "the hint that they should be hearing cases a certain way, deciding cases a certain way. Move faster. Less due process, essentially."[14] Former San Francisco IJ George Pappas was even more direct: "We were told to facilitate deportation. . . Due process is dead in immigration courts."[15]

53. Further, IJs fear they will lose their jobs if they do not comply with directives. "Judges feel like, if they step a toe out of line right now...or they're one [asylum] grant away from being fired because of the arbitrary nature of the firings."[16] Bloomberg News reported that "[t]op immigration court leaders are telling new judges to refrain from granting migrants asylum in most cases, multiple people familiar with the matter said as the Trump administration carries out its detention and deportation agenda. Justice Department Board of Immigration Appeals judges and others who assisted with training

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[13] PBS News, Ousted immigration judge describes deepening court backlog Nov 12, 2025 (https://www.pbs.org/newshour/show/ousted-immigration-judge-describes-deepening-court-backlog last accessed March 19, 2026).

[14] NBC Bay Area. 'An all-out attack on immigration court:' SF immigration judges speak out after firings Nov. 25, 2025 (https://www.nbcbayarea.com/investigations/san-francisco-immigration-judges-speak-out-firings/3986850/ last accessed March 19, 2026).

[15] Law 360, Judges See an Immigration Court Gutted from Inside (https://www.law360.com/articles/2381003/judges-see-an-immigration-court-gutted-from-inside last accessed March 19, 2026).

[16] 'Climate of fear': Immigration judges say functioning of their court system is in jeopardy due to Trump's firings, Nov 14, 2025 (https://www.govexec.com/management/2025/11/climate-fear-immigration-judges-say-functioning-their-court-system-jeopardy-due-trumps-firings/409544/ last accessed March 19, 2026).

of three dozen new judges in October told the recruits asylum should be granted only in rare circumstances. . ."[17] A recently hired temporary military judge was swiftly fired shortly after being hired. Although an official reason for his firing was not provided, the available statistics show that "[o]f the 11 cases he concluded in November, he granted asylum or some other type of relief allowing the migrant to remain in the United States a total of six times."[18]

54. There is also clear data that was analyzed for Sacramento and San Francisco immigration courts showing that the IJs fired from those courts had higher asylum grant rates than other judges. "[E]ach of the three judges denied asylum claims at far lower rates than other judges in Sacramento and nationwide. Maggard, for instance, denied less than 5% of claims — far below the national average of roughly 60% for immigration judges." [19]

55.For San Francisco, "[a]lmost all of the judges fired this year offered asylum or other forms of deportation relief at rates significantly higher than the national average of 45% in federal fiscal 2024, according to information from the Transactional Records Access Clearinghouse at Syracuse University. Eleven of the 12 had grant rates higher

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[17] Bloomberg Law News, Feb 4, 2026, Trump Immigration Judges Pushed to Deny Asylum in Swift Training (https://news.bloomberglaw.com/us-law-week/trump-immigration-judges-pushed-to-deny-asylum-in-swift-training last accessed March 19, 2026).

[18] Military lawyer swiftly fired from immigration bench after defying Trump deportation push, Dec 9, 2025 (https://www.courthousenews.com/military-lawyer-swiftly-fired-from-immigration-bench-after-defying-trump-deportation-push/ last accessed March 19, 2026).

[19] Former judges say mass firings could undermine immigration court system, Sept 30, 2025 (https://www.capradio.org/articles/2025/09/30/former-judges-say-mass-firings-could-undermine-immigration-court-system/ last accessed March 19, 2026);

than 90%."[20] All of this fear has led to the erosion of judicial independence. Former San Francisco IJ Elizabeth Young explained: "I've talked to many of [the judges still serving], and they're like, 'When I go into court, I am concerned about applying the law, but I'm also concerned that I should deny more, because if I don't, then I'll get fired."[21]

56. Remaining immigration judges, thus, have a clear directive to deny more cases or be fired. No adjudicator can remain impartial when faced with the choice between upholding due process or maintaining their livelihood. Any immigration judge assigned to a noncitizen's bond hearing now operates under the understanding that granting bond may cost them their job.

57. Along the same lines, beginning in 2025, the Trump administration reduced the number of BIA members.[22] This move is seen by many as an attempt to ensure that the smaller number of Board members are politically aligned with the Administration's anti-immigrant goals.[23] In addition, the administration published Appellate Procedures for the

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[20] How firing 57% of the bench remade SF's immigration court, Dec 4, 2025 (https://sfstandard.com/2025/12/04/sf-immigration-judges-fired-asylum-data/ last accessed March 19, 2026).

[21] *See supra* note 12.

[22] Federal Register, Reducing the Size of the Board of Immigration Appeals (https://www.federalregister.gov/documents/2025/04/14/2025-06294/reducing-the-size-of-the-board-of-immigration-appeals last accessed March 19, 2026).

[23] CLINIC, Precedent or Policy? A Quiet Transformation of the Board of Immigration Appeals (https://www.cliniclegal.org/resources/precedent-or-policy-quiet-transformation-board-immigration-appeals last accessed March 19, 2026) ("5 ("The Trump administration's own purge of the Board echoes efforts by the Bush administration to turn the tide of Board adjudications against noncitizens. Prior Board members with extensive experience advocating for noncitizens have been dismissed. On April 14, 2025, the Trump administration published an interim final rule restricting the size of the Board to 15 members. This step goes beyond the Bush administration's strategy. A smaller Board permits decisions to be published based on a smaller majority of members. The

Board of Immigration Appeals, which were to make summary dismissal of all appeals, the default.[24] Despite these rules being temporarily blocked by a federal court[25], by promulgating these rules, the agency is attempting to render administrative review obsolete.

58. Next, the Board has issued a record number of precedential decisions that are devastating and detrimental to noncitizens. As of March 19, 2026, the reconstituted BIA has issued 89 published decisions.[26] In 2025, all but two favored the Department (97%).[27] In 2026, of the twenty-one decisions decided as of March 19, 2026, all but one favored the Department.[28] By contrast, during the entire four-year span of the prior administration, the BIA issued 76 published decisions.[29] Of those, 46 decisions (60%) favored the administration. A historical look at BIA decisions spanning 2009 to 2026

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attorney general can ensure that this smaller majority consists of politically aligned appointees.").

[24] Federal Register, Appellate Procedures for the Board of Immigration Appeals (https://www.federalregister.gov/documents/2026/02/06/2026-02326/appellate-procedures-for-the-board-of-immigration-appeals last accessed March 19, 2026),

[25] *AMICA v. EOIR*, Case 1:26-cv-00696 (March 8, 2026).

[26] Including decisions issued by the Attorney General. *See* EOIR Agency Decisions Vol 29 (https://www.justice.gov/eoir/volume-29 last accessed March 19, 2026).

[27] NPR, An immigration court few have heard of is quietly shaping policy behind the scenes March 20, 2026 (https://www.npr.org/2026/03/20/nx-s1-5707535/trump-immigration-detention-appeals-board-deportation last accessed Mach 20, 2026) (in the only case against DHS, the DHS attorney failed to appear at the hearing); *see also* National Immigration Project Chart; however, note that as of the date the chart was published in February 2026, the BIA issued twelve additional precedential decisions that are against noncitizens (https://nipnlg.org/sites/default/files/2026-02/BIA-Decisions-Trump-2.0.pdf last accessed March 20, 2026).

[28] *Supra* note 26 NPR (the one case involved the noncitizen withdrawing the appeal).

[29] EIOR Agency Decisions Vol 28 (https://www.justice.gov/eoir/volume-28 last accessed March 19, 2026).

shows that under both Trump presidencies the BIA favored the Department more than under any other president.[30] The transformation from 60% to 97% pro-government outcomes—achieved through wholesale termination of the prior administration's appointees—speaks for itself.

59. To replace purged judges, the DOJ launched recruitment for what it explicitly marketed as "deportation judges."[31] DHS—the party opposing noncitizens in immigration proceedings before EOIR— promoted these openings on social media with enforcement-focused language: "Bring the hammer down on criminal illegal aliens" and "Defend your communities, your culture, your very way of life."[32] In addition, DOJ authorized up to 600 military lawyers to serve as temporary judges for a renewable term not to exceed six months, while simultaneously eliminating requirements to serve as a temporary judge.[33] Previously, temporary judge candidates were required to have served as a former immigration judge, appellate immigration judge, or administrative judge within another agency, or to have at least 10 years of immigration law experience. The administration removed those requirements entirely, allowing "any attorney" to be selected as a temporary immigration judge and reduced training to approximately two weeks—far less than the standard training for permanent immigration judges, which includes six weeks of

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[30] *Supra* note 26 NPR.

[31] https://join.justice.gov/

[32] Dhsgov Instagram Nov 21, 2025 (https://www.instagram.com/p/DRVUMVfCRzP/ last accessed March 19, 2026).

[33] Federal Register, Designation of Temporary Immigration Judges (https://www.federalregister.gov/documents/2025/08/28/2025-16573/designation-of-temporary-immigration-judges last accessed March 19, 2026).

initial training, one year of mentorship by an experienced judge, and two years of quarterly reviews.[34]

60. In addition to personnel changes, EOIR's new Acting Director, Sirce E. Owen, issued new policy directives including a memorandum dated June 27, 2025 warning judges not to demonstrate "bias directed against DHS" or to be "adjudicatory outliers," at risk of "close examination and potential action";[35] a memo encouraging judges to deny asylum applications without full evidentiary hearings, styled as efficiency guidance but functioning as a directive to reduce due process protections;"[36] and memorandums restricting immigration judges ability to grant continuance[37] and administrative closure.[38]

61. Finally, the clearest evidence that EOIR has abandoned its role as a neutral tribunal comes from its response to federal court orders protecting bond hearing rights. In *Maldonado Baiitista v. Santacruz,* the Central District of California issued both declaratory and injunctive relief holding that noncitizens who entered without inspection but were not apprehended at the border are detained under § 1226(a), not §1225(b)(2),

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[34] Brennan Center For Justice, Using Military Lawyers as Immigration Judges is Ill-Advised and Potentially Illegal Sept 29, 2025 (https://www.brennancenter.org/our-work/analysis-opinion/using-military-lawyers-immigration-judges-ill-advised-and-potentially last accessed March 19, 2026).

[35] EOIR PM 25-33 (https://www.justice.gov/eoir/media/1404956/dl?inline last accessed March 19, 2026).

[36] EOIR PM 25-28 (https://www.justice.gov/eoir/media/1396411/dl?inline last accessed March 19, 2026).

[37] EOIR PM 25-27 (https://www.justice.gov/eoir/media/1394086/dl?inline last accessed March 19, 2026).

[38] EOIR PM 25-29 (https://www.justice.gov/eoir/media/1397161/dl?inline last accessed March 19, 2026).

and are therefore entitled to bond hearings. *Maldonado Baiitista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3288403 (C.D. Cal. Nov. 20, 2025).

62. Judge Sunshine Sykes certified a nationwide class and entered final judgment. *Id.* Rather than comply with the order, EOIR leadership directed all immigration judges to ignore the order. "On January 13, 2026, Chief Immigration Judge Teresa L. Riley issued guidance instructing IJs that, notwithstanding the district court's amended order and final judgment, IJs continued to be bound by *Yajure Hurtado*."[39]

63. When presented with a federal court order protecting noncitizens' rights, EOIR's response was to order judges to violate it. The ultimate victim is the detained noncitizen, who like Petitioner, remains detained in violation of due process, and is denied their fundamental right to have an impartial adjudicator determine whether their continued detention serves any legitimate purpose related to flight risk or community safety.

FIRST CAUSE OF ACTION

Fifth Amendment Substantive Due Process Violation

64. Mr. Musheer re-alleges and incorporates by reference, as if fully set forth herein, the allegations in paragraphs 1-63 above.

65. The Supreme Court has long recognized that the Fifth and Fourteenth Amendments refer to all "persons," not just "citizens." Noncitizens, even those who are inadmissible or removable, must be afforded due process protection. *See Yick Wo v. Hopkins*, 118 U.S.

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[39] NWIRP, PRACTICE ADVISORY Seeking Bond Hearings for Maldonado Bautista Class Members – Noncitizens Who Entered Without Inspection and Are Detained Subject to Matter of Yajure Hurtado Feb 11, 2026 (https://www nwirp org/uploads/2026/2026.02.11DraftBautistaPracticeAdvisoryUpdate.pdf last accessed March 19, 2026).

356, 369 (1886) ("The Fourteenth Amendment to the Constitution is not confined to the protection of citizens."). As stated by the Court, the provisions of the Fourteenth Amendment "are universal in their application, to all persons within the territorial jurisdiction, without regard to any differences of race, of color, or of nationality" *Id.*

66. The Supreme Court has held that "even one whose presence in this country is unlawful, involuntary, or transitory is entitled to that constitutional protection [of the Due Process Clauses of the Fifth and Fourteenth Amendments]" *Mathews v. Diaz*, 426 U.S. 67, 75 n.7 (1976); *see also Plyler v. Doe*, 457 U.S. 202, 210 (1982) ("Whatever his status under the immigration laws, [a noncitizen] is surely a 'person' in any ordinary sense of that term."); *Wong Wing v. United States*, 163 U.S. 228, 238 (1896) ("Persons within the territory of the United States... even [noncitizens]... [may not]... be deprived of life, liberty or property without due process of law.").

67. "The touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), including "the exercise of power without any reasonable justification in the service of a legitimate government objective." *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998). Further, "[t]he fact that a decision-making process involves discretion does not prevent an individual from having a protectable liberty interest." *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019).

68. Substantive due process, thus, requires that all forms of civil detention—including immigration detention—bear a "reasonable relation" to a non-punitive purpose. *See Jackson v. Indiana*, 406 U.S. 715, 738 (1972). The Supreme Court has recognized only

two permissible non-punitive purposes for immigration detention: ensuring a noncitizen's appearance at immigration proceedings and preventing danger to the community. *Zadvydas*, 533 U.S. at 690–92; *see also Demore v. Kim*, 538 U.S. 510 at 519–20, 527–28, 31 (2003).

69. IJ Attia's decision finding that Petitioner poses a flight risk that no amount of bond can ameliorate is unlawful and in violation of Petitioner's due process rights. *Cf. Martinez*, 124 F.4th at 779. Civil detention cannot rest on conjecture. Due process requires evidentiary support, not unsupported speculation about relief eligibility and unsubstantiated allegations of potential misrepresentation.

70.The IJ found that Mr. Musheer's substantial family ties were insufficient to ensure his appearance at future hearings because "[h]is family in the United States is not his immediate family based on blood." Exh. 1 at 8. This finding is absurd. First, Mr. Musheer has now been married to his wife for two years and this is not a recent relationship.[40] Further, the evidence submitted to the IJ showed that Mr. Musheer and his wife live at a shared residence, file taxes jointly, and travel together. Exh. 2. Further, Ms. Mohammed, her daughter, and her nephew all wrote letters of support on Mr. Musheer's behalf, evidencing that he is enmeshed and a member of their family.

71.Moreover, for hundreds of years the U.S. Supreme Court has recognized the marital relationship as the cornerstone of American life. *See Maynard v. Hill*, 125 U.S.

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[40] This is a presumptively valid marriage, and upon his green card being issued Mr. Musheer will be issued a permanent and not conditional card, as conditional residency is only issued to noncitizens in marriages to U.S. citizens or lawful permanent residents of less than two years. *See* PL 99-639 § 5, Marriage Fraud Amendments Act of 1986.

190, 205, 211 (Marriage is "the most important relation in life" and "the foundation of the family and society, without which there would be neither civilization nor progress."); *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535, 541 (1942) (Marriage "one of the basic civil rights of man," "fundamental to the very existence and survival of the race."); *Griswold v. Connecticut*, 381 U.S. 479, 486 (1965) ("We deal with a right of privacy older than the Bill of Rights—older than our political parties, older than our school system. Marriage is a coming together for better or for worse, hopefully enduring, and intimate to the degree of being sacred. It is an association that promotes a way of life, not causes; a harmony in living, not political faiths; a bilateral loyalty, not commercial or social projects. Yet it is an association for as noble a purpose as any involved in our prior decisions."); *Boddie v. Connecticut*, 401 U.S. 371, 376, 383 (1971) ("[M]arriage involves interests of basic importance to our society" and is "a fundamental human relationship.").

72. Finally, the marital relationship is also recognized as one of significant importance under the immigration laws as certain waivers of inadmissibility require a U.S. citizen spouse or lawful permanent resident spouse as a qualifying relative. *See* 8 U.S.C. §§ 1182(a)(9)(B)(v); 1182(i). Thus, the IJ abused discretion in minimizing Mr. Musheer's strong family ties. Further, as his family ties qualify him for permanent residency, these factors are entitled to great weight.

73. Next, the IJ found that Mr. Musheer's relief was limited because his I-130 petition had not yet been approved. Exh. 1 at 8. First, DHS presented no derogatory evidence suggesting that the I-130 will not be approved and in fact in arguing that Mr. Musheer

could consular process, DHS endorsed the fact that it believes the I-130 will be approved, otherwise there would be no means for Mr. Musheer to consular process. Exh. 1 at 5. Moreover, the fact that the immigration services officer sent out a request for evidence only requesting only a medical examination report strongly suggests that there was no issues with the bona fides of the relationship, and that the petition as well as the application was approvable but for the completion of the medical examination.

74. Further, as evidenced by the USCIS processing times, USCIS considers its processing of Mr. Musheer's case to be within normal processing times, and government delay in processing a nondiscretionary application is not a basis for the IJ to find that relief is limited. *See* Exh. 5; *see also Ching v. Mayorkas*, 725 F.3d 1149, 1155 (9th Cir. 2013) (finding that the government has a non-discretionary duty to adjudicate an I-130 petition and to do so within a reasonable time) (citing *Hernandez v. Ashcroft*, 345 F.3d 824, 833–34 (9th Cir. 2003) ("The decision of whether to approve an I–130 visa petition is a nondiscretionary one. . .").

75. USCIS processing times are entirely out of Mr. Musheer's control, it is also entirely out of his control that the relief he is applying for requires an I-130 petition to be approved first and jurisdiction over I-130 petitions has been vested solely with USCIS, eliminating the possibility of the immigration court adjudicating the visa petition at the same time as his adjustment application. Mr. Musheer is not at fault for and has not caused the delay, as he has the right to pursue relief when facing deportation. *See Gonzalez v. Bonnar*, 2019 WL 330906, at *4 (N.D. Cal. Jan. 25, 2019) ("the government cites no authority for the proposition that a petitioner who pursues his available legal

remedies must forego any challenge to the reasonableness of his detention in the interim – and the Court is unaware of any."); *see also Sajous v. Decker*, 2018 WL 2357266, at *11 (S.D.N.Y. May 23, 2018) ("[i]f immigration officials have caused delay, it weighs in favor of finding continued detention unreasonable....Continued detention will also appear more unreasonable when the delay in the proceedings was caused by the immigration court or other non-ICE government officials.").

76. Moreover, the IJ's suggestion that Mr. Musheer married his wife soon after entering the United States and while still in valid nonimmigrant status, is insufficient to overcome the clear evidence of the legitimacy of the marriage, given that the couple has been married for almost two years, reside together, comingle finances, travel together, and have a joint life.

77. There is also no evidence that Mr. Musheer knew his wife before arriving in the United States, but even if he did they married more than ninety days after his admission, which means no presumption of preconceived intent even applies. *See* 9 FAM 302.9. Assuming *arguendo* preconceived intent could be applied (an entirely speculative belief at this point) the Board has found this fact does not warrant a discretionary denial of adjustment of status and no waiver is required. *See Matter of Cavazos*, 17 I&N Dec. 215, 216 (BIA 1980) (finding that in the absence of other adverse factors, an application for adjustment of status should be granted in the exercise of discretion notwithstanding the fact that the applicant entered the United States as a nonimmigrant with a preconceived intention to remain); *Matter of Ibrahim*, 18 I&N Dec. 55, 55 (BIA 1981) (limiting *Cavazos* to immediate relatives).

78. Further, the IJ's suggestion that the marriage was not legitimate because they married so soon after his admission, though it was in fact more than ninety days after, is refuted by the fact that Mr. Musheer did not pursue immigration benefits based on his marriage until seven months later. An individual who is not in a good faith marriage would be unlikely to delay filing for immigration benefits for such a significant period of time.[41] In homing in solely on the timing of the marriage, the IJ turned a blind eye to all the other evidence that supported the bona fides of the marriage.

79. Finally, the IJs findings that Mr. Musheer's asylum relief is somehow undermined by his prior international travel is wholly unsupported by the record. Not only did the IJ inappropriately obtain this information by conversing directly with Mr. Musheer in Arabic without the aid of an interpreter (after having had his attorney waive the presence of an interpreter), the IJ also indicated she was only going to be asking where Mr. Musheer applied for his nonimmigrant visa, a fact that was already in the record, as the visa was submitted to the court.

80. Moreover, as there is no information about Mr. Musheer's asylum claims in the record there was no way for the IJ to know if the harm Mr. Musheer fears only arose after his last travel outside of Iraq and before arriving in the United States. Further, although the BIA has allowed IJs to consider relief in bond, here given that there was no

[41] In so far as the IJ noted a nine-year age difference between Mr. Musheer and Ms. Mohammed, this hardly undercuts the legitimacy of the marriage. *See* Exh. 2 at 2. President Trump immigrated Melania despite the couple's twenty-four-year age difference after all.

information on the asylum claim in the record, the IJ had no basis to enter any of her findings, which are based on pure conjecture.

81. Finally, any other flight risk concerns, which are truly speculative given both his strong family ties and the viability of his marriage-based relief, could have been ameliorated by a larger bond amount, particularly given the financially stability of his sponsor.

82. Due process is not satisfied "by rubberstamp denials [of bond]," and IJs are not absolved of their duty to ensure that noncitizens receive constitutionally adequate bond hearings. *Chi Thou Ngo v. INS*, 192 F.3d 390, 398 (2d Cir 1999) ("The stakes are high and ... grudging and perfunctory review is not enough to satisfy the due process right to liberty, even for [noncitizens].").

83. Petitioner's detention is punitive as it bears no "reasonable relation" to any legitimate government purpose. *Zadvydas*, 533 U.S. at 690 (finding immigration detention is civil and thus ostensibly "nonpunitive in purpose and effect"). Respondents' detention of Petitioner is unjustified and unlawful.

84. Accordingly, Petitioner is being detained in violation of the Due Process Clause of the Fifth Amendment.

SECOND CAUSE OF ACTION

Fifth Amendment Procedural Due Process Violation

85. Mr. Musheer re-alleges and incorporates by reference, as if fully set forth herein, the allegations in paragraphs 1-63 above.

86. As part of the liberty protected by the Due Process Clause, Petitioner has a

weighty liberty interest in avoiding incarceration. *See Young v. Harper*, 520 U.S. 143, 146—47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781–82 (1973). Further, the procedural component of the Due Process Clause prohibits the government from imposing even permissible physical restraints without adequate procedural safeguards. Chief among these procedural protections is "the guarantee of an impartial and disinterested tribunal," which the Due Process Clause requires "in both civil and criminal eases." *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980).

87. Accordingly, "[i]n the context of immigration detention, it is well-settled that due process requires adequate procedural protections to ensure that the government's asserted justification for physical confinement outweighs the individual's constitutional protected interest in avoiding physical restraint." *Hernandez*, 872 F.3d at 990 (internal quotations and citations omitted).

88.Mr. Musheer has been denied his fundamental right to have an impartial adjudicator determine whether his detention serves any legitimate purpose related to flight risk, thus, depriving him of his right to procedural due process.

89.The lack of neutrality by IJ Attia is evidenced not only by the fact that she remains on the bench and was not one of the hundreds of immigration judges purged due to too high of grant rates but this is further demonstrated by the fact that her asylum denial rate doubled from 2020 to 2025. *See* Exh. 7. This jump in denials make sense because if her denial rate was not going up she would be out of a job.

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THIRD CAUSE OF ACTION

Violation of the Administrative Procedures Act

90. Mr. Musheer re-alleges and incorporates by reference, as if fully set forth herein, the allegations in paragraphs 1-63 above.

91. Under the Administrative Procedure Act, a court must "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law," that is "contrary to constitutional right [or] power," or that is "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(A)–(C).

92. Respondents' detention of Mr. Musheer is arbitrary and capricious, violates the INA and the Fifth Amendment, is not authorized under § 1225(b)(2), and therefore is in violation of 5 U.S.C. § 706(2).

PRAYER FOR RELIEF

Mr. Musheer asks this Court to grant the following relief:

1. Issue a Writ of Habeas Corpus ordering Respondents to release Mr. Musheer from custody immediately;
2. Declare the continued detention of Mr. Musheer violates the Due Process Clause of the U.S. Constitution;
3. Enjoin Respondents from re-detaining Petitioner unless his re-detention is ordered at a custody hearing before a neutral arbiter in which the government bears the burden of proving, by clear and convincing

evidence that Mr. Musheer is a flight risk or danger to the community;

4. Award Petitioner his costs and reasonable attorneys' fees in this action as provided for by the Equal Access to Justice Act, 28 U.S.C. § 2412, and on any further basis justified under law;

5. Grant any other relief that may be fit and proper.

Dated: March 20, 2026

Respectfully submitted,

By: /s/ Bashir Ghazialam
Bashir Ghazialam

Attorney for Petitioner

VERIFICATION PURSUANT TO 28 U.S.C. 2242

I am submitting this verification on behalf of the Petitioner because I am one of Petitioner's attorneys. I hereby verify under penalty of perjury pursuant to 28 U.S.C. § 2242 that the factual allegations in this petition are true and correct to the best of my knowledge, information, and belief, based upon the records available and information provided by Petitioner.

Executed on this March 20, 2026, in San Diego, California.

/s/ Bashir Ghazialam
Bashir Ghazialam
Attorney for Petitioner