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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SIBAN VELAT,

Petitioner,

v.

KRISTI NOEM, Secretary of the Department of Homeland Security, PAMELA JO BONDI, Attorney General, TODD M. LYONS, Acting Director, Immigration and Customs Enforcement, JESUS ROCHA, Acting Field Office Director, San Diego Field Office, CHRISTOPHER LAROSE, Warden at Otay Mesa Detention Center,

Respondents.

Case No: 3:26-CV-1746-BAS-BLM

Traverse in Support of a Writ of Habeas Corpus

INTRODUCTION

The government agrees that Siban Velat has been detained by Respondents for more than fourteen months as he pursues asylum from Turkey. It also agrees that at least some of that delay is *not* Mr. Velat's fault. Indeed, the Return shows that that no more than *three* months of delay can be squarely attributed to Mr. Velat seeking more time to prepare his case. ECF No. 9-4 at 8. That *leaves almost a year* at the feet of Respondents and the immigration court system.

First, here was the initial delay in even granting Mr. Velat a credible fear interview, which Mr. Velat passed. Return 2. There was thus a five-month delay in Mr. Velat even getting his first hearing in immigration court. *See* ECF No. 9-4 at 8. Another four months of delay was caused by the immigration court changing hearing dates or being too busy to complete the hearing. *See id* None of that is Mr. Velat's fault.

And when combined with the fact he passed his credible fear interview and stark conditions of confinement, Mr. Velat provides firm grounds to grant the Petition.

I. The vast majority of the delay can be attributed to Respondents or the immigration court system.

Given this Court's understandable focus on the cause of delay, it is important to underscore the following: The government's own filings confirm that it is responsible for the vast majority of delay. First, it acknowledges there was an unusual "delay between [Mr. Velat's] unlawful entry into the United States and the issuance of his NTA." Return 12. But it suggests—without quite arguing— that Mr. Velat is to blame because he was subject to expedited removal. *Id.* That is non-responsive.

Even if Mr. Velat was subject to expedited removal, Respondents remained obligated to provide him with a credible fear interview. 8 U.S.C. § 1225(b)(1)(A)(ii). The statute does not give the government permission to delay

those proceedings just because it deems a person subject to expedited removal. Yet Mr. Velat did not receive a credible fear interview until nearly two months after he was detained. ECF No. 9-3 at 2 (showing that Mr. Velat was detained on February 21, 2025, and received a credible fear interview and determination on April 17, 2025).

And once Mr. Velat satisfied an asylum officer that he had a credible fear of torture in Turkey, *see* ECF No. 9-3 at 3, it then took Respondents two months to even issue Mr. Velat a Notice to Appear—for a hearing still two weeks later. ECF No. 9-1 at 2.

Respondents also give the wrong impression when they say that "all continuance requests have been to the benefit of Petitioner." Return 12. While that is technically true, it omits that, starting in October 23, 2025, delays can be attributed to the immigration court system. *See* ECF No. 9-4 at 8. That is a problem because "[c]ontinued detention will also appear more unreasonable when the delay in the proceedings was caused by the immigration court or other non-ICE government officials." *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1119 (W.D. Wash. 2019).

Even if one takes out the three months of delay arguably attributable to Mr. Velat, that leaves at least eleven months of detention for which he is not responsible. That puts him squarely in the heartland of other cases in which district courts have granted habeas relief. *See, e.g*, *Raeva v. Mayorkas*, 25-cv-3175-JO (about 11 months); *Mardian v. Mayorkas*, 25-cv-3467-JLS (about 13 months); *Malyshko v. Warden*, 26-cv-69-RBM (about 13 months); *Brissett v. Decker*, 324 F. Supp. 3d 444, 452 (S.D.N.Y. 2018) ("over nine months"); *Perez v. Decker*, No. 18-CV-5279 (VEC), 2018 WL 3991497, at *5 (S.D.N.Y. Aug. 20, 2018) ("more than nine months"); *Masood v. Barr*, No. 19-CV-07623-JD, 2020 WL 95633, at *2 (N.D. Cal. Jan. 8, 2020) ("nearly nine months"). Indeed, "[c]ourts have found detention over seven months without a bond hearing weighs toward a finding that

it is unreasonable." *Amado*, 2025 WL 3079052 at *5 (collecting cases).

Thus, the length of detention and the cause of prolonged detention favor Mr. Velat. *See Banda*, 385 F. Supp. 3d at 1118–20.

II. The other *Banda* factors favor release.

Furthermore, the other *Banda* factors favor release. Detention likely will continue for at least another year as Mr. Velat pursues his appeal before the BIA and Ninth Circuit. *See Banda*, 385 F. Supp. 3d at 1119 ("This process may take up to two years or longer."). After all, an asylum officer employed by Respondents determined that Mr. Velat is credible and that he has a real fear of torture if he returns to Turkey. ECF No. 9-3 at 3.

What is more, Mr. Velat's appeal appears to have merit. For example, it appears that the immigration judge deemed him not credible because while Mr. Velat estimated that he was detained in Turkey for "5-6 hours," his mother estimated merely "3–4." *See* ECF No. 9-6 at 4. Yet "[i]t is well settled in [the Ninth] [C]ircuit that minor inconsistencies that do not go to the heart of an applicant's claim for asylum cannot support an adverse credibility determination." *Zhu v. Mukasey*, 537 F.3d 1034, 1038-39 (9th Cir. 2008) (quoting *Kaur v. Gonzales*, 418 F.3d 1061, 1064 (9th Cir. 2005)). The IJ also "must provide a petitioner with a reasonable opportunity to offer an explanation of any perceived inconsistencies that form the basis of a denial of asylum." *Id.* at 1039 (quoting *Don v. Gonzales,* 476 F.3d 738, 741 (9th Cir. 2007)). Thus, "[a]n adverse credibility finding is improper when an IJ fails to address a petitioner's explanation for a discrepancy or inconsistency." *Id.* (quoting *Kaur,* 379 F.3d at 887).

III. New reports that Respondents are pressuring immigration judges to deny bond undermine their neutrality and this Court should grant release or maintain jurisdiction over Mr. Velat's case.

Given the IJ's apparent disregard for Ninth Circuit precedent and recent news reports on IJ neutrality, this Court should consider alternative remedies,

including ordering release outright.

An alarming report from The New York Times documents not just how Respondents have purged IJs seen as insufficiently supportive of the President but also discourage those IJs who remain from granting bond. For example, the chief immigration judge now "receive[s] daily reports about bond rulings." Nicholas Nehamas et al., *Immigration Judges Are Purged as Trump Speeds Deportations*, N.Y. Times, April 12, 2026, at A1.[1] "Her office has sometimes emailed judges asking for an explanation about their decisions to grant bond," while there is no indication that she seeks explanation for the denial of bond. *Id.*

The message is clear. As one IJ told the Times, "the "pressure to deny bond is overt." *Id.* That IJ explained that "there was a requirement to inform a supervisor every time bond was granted, underscoring how closely the administration was monitoring decisions." *Id.*

Thus, although this Court understandably has resisted finding that IJ's as a class are not applying the law faithfully, the evidence continues to mount. Given the IJ's apparent disregard for the law in Mr. Velat's merits hearing, this Court should consider granting release or holding a bond hearing itself.

Alternatively, it should craft an order like Judge Simmons's procedure in the *Sandesh* case. *See* Order, ECF No. 13, *Sandesh v. LaRose*, No. 3:26-CV-00846-JES (S.D. Cal. March 5, 2026). Specifically, the Court should order:

(1) Respondents provide Petitioner with a hearing and individualized bond determination within **ten days** of its order. *Id.*

(a) At that hearing, the government shall bear the burden of establishing by clear and convincing evidence that Petitioner poses a

[1] The article is available at https://www.nytimes.com/2026/04/09/us/politics/trump-miller-immigration-judges-purge.html

danger or flight risk, while further specifying that concerns about interrupting court schedules is not a ground to deny bond. *Id.*

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

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

(2) Respondents are ordered to file a Notice of Compliance within **five days** of providing Petitioner with the bond hearing, including apprising the Court of the results of the hearing. *Id.*

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

Finally, this Court should order all other relief that the Court deems just and proper.

Respectfully submitted,

Dated: April 22, 2026

s/ Daniel J. Yadron, Jr.

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