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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

YAKUBU ALHASSAN,

Petitioner,

v.

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

Respondents.

Civil Case No.: 26-cv-02012-BAS

Amended[1] Petition for a Writ of Habeas Corpus[2]

[1] Federal Rule of Civil Procedure 15(a)(1)(A) permits a party to "amend its 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. Alhassan therefore files this amended petition as of right.

[2] On April 2, 2026, this Court requested Federal Defenders to screen Mr. Alhassan's case and determine whether appointment of counsel was warranted. After interviewing Mr. Alhassan and speaking with his immigration attorney, undersigned counsel determined his case is meritorious and he financially qualifies for Federal Defenders' services.

INTRODUCTION

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

STATEMENT OF FACTS

Mr. Alhassan was born in Ghana. Exhibit A, Attorney Hashim Siddique Decl. at ¶ 1. He fled Ghana because of persecution over his sexual orientation. Id. at ¶ 4. Mr. Alhassan entered the United States seeking asylum on February 23, 2025. *Id.* at ¶ 3. He has been in immigration detention ever since. *Id.* It has been nearly fourteen months. *Id.*

Mr. Alhassan was in immigration detention for six months before he received his credible fear interview. *Id.* at ¶ 5. It was conducted on October 1, 2025. *Id.* Mr. Alhassan retained his attorney in early December 2025. *Id.* at ¶ 6. He filed his asylum application shortly thereafter, on January 22, 2026. *Id.* at ¶ 7. Mr. Alhassan's individual merits hearing is scheduled for April 22, 2026. *Id.* at ¶ 8.

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Legal Background

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

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

This statutory scheme has left courts to grapple with the limits (if any) of that detention power: Does this statute permit the government to detain immigrants indefinitely, without ever having to prove at a bond hearing that they pose a risk of danger or flight? Three Supreme Court cases are potentially relevant to answering that question.

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

"permit[ed] indefinite detention of an alien[,] [it] would raise a serious constitutional problem," because

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

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

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

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

Finally, the Supreme Court held in *Demore v. Kim* that at least some

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

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

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

Neither *Jennings* nor *Demore* undermines that conclusion. *Jennings* held

only that the statute itself did not impose any limits on detention. It "did not foreclose as-applied constitutional challenges to detention under" mandatory-detention statutes. *Santos v. Warden Pike Cnty. Corr. Facility*, 965 F.3d 203, 209 (3d Cir. 2020). And *Demore* held only that conviction-based mandatory detention during immigration proceedings does not necessarily violate due process, particularly when the detention has an expected duration of about five months. *Id.* at 208–11. But many persons detained under § 1225(b)—like Mr. Alhassan—do not have criminal convictions. And as Justice Kennedy's concurrence made clear, *Demore* does not prevent immigrants from arguing that sufficiently prolonged detention violates due process in their individual cases. *See id.*[3]

Thus, this Court should hold that sufficiently prolonged detention violates the Due Process Clause, as most courts have. *See, e.g.*, *Gao v. LaRose*, No. 25-CV-2084-RSH-SBC, 2025 WL 2770633, at *3 (S.D. Cal. Sept. 26, 2025); *Abdul Kadir*, 2025 WL 2932654, at *4; *Cong v. Noem*, No. 25-CV-3730-GPC-DEB, 2026 WL 76566, at *3 (S.D. Cal. Jan. 9, 2026); *Kydyrali*, 499 F. Supp. 3d at 772; *Mardian v. Mayorkas*, 25-cv-3467-JLS; *Raeva v. Mayorkas*, 25-CV-3175-JO; *Abdul-Samed v. Warden of Golden State Annex Det. Facility*, No. 25-CV-98-SAB-HC, 2025 WL 2099343, at *6 (E.D. Cal. July 25, 2025); *Hernandez v. Wofford*, No. 25-cv-986-KES-CDB-HC, 2025 WL 2420390, at *3 (E.D. Cal. Aug. 21, 2025); *Padilla v. ICE*, 704 F. Supp. 3d 1163, 1171–72 (W.D. Wash. 2023).

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

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II. Courts have reached different conclusions about when immigration detention becomes indefinitely prolonged, but Mr. Alhassan would prevail under any standard.

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

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

17 (1) "the total length of detention to date,"
18 (2) "the likely duration of future detention," and
19 (3) "the delays in the removal proceedings caused by the petitioner and the
20 government."

21 *Id*. Mr. Alhassan prevails on all three factors.

22 First, the "most important factor," the length of detention, favors
23 Mr. Alhassan. *Banda*, 385 F. Supp. 3d at 1118. In assessing this factor, "[i]t is
24 important to bear in mind the context: The detention that is being examined here
25 is the detention of a human being who has never been found to pose a danger to
26 the community or to be likely to flee if released." *Jamal A. v. Whitaker*, 358 F.
27 Supp. 3d 853, 859 (D. Minn. 2019). With that context, "[c]ourts have found that
28 detention over seven months without a bond hearing weighs toward a finding that

it is unreasonable." *Amando v. United States Dep't of Just.*, No. 25-CV-2687-LL-DDL, 2025 WL 3079052, at *5 (S.D. Cal. Nov. 4, 2025) (collecting cases). Mr. Alhassan has been detained for almost fourteen months. Exhibit A at ¶ 3. This factor therefore favors him.

Second, Mr. Alhassan has reason to anticipate significant future detention. His individual merits hearing is not until April 22, 2026. *Id.* at ¶ 7. At his final merits hearing, if he is awarded asylum and DHS does not appeal, he will be released. But in any other circumstance—if DHS appeals, or if he receives only another form of protection against torture, like withholding or deferral of removal, he would be detained for at least another six months. Indeed, ICE is now regularly holding immigrants granted withholding or deferral of removal for lengthy periods. *See, e.g.*, *De la Rosa Guarin v. LaRose*, 2025 WL 3440689, No. 25-CV-03085-DMS-VET (S.D. Cal. Dec. 1, 2025); *CMS v. Oddo*, No. 25-CV-216, 2025 WL 3442697 (W.D. Pa. Dec. 1, 2025); *Gharakhan v. Noem*, No. 25-CV-2879-DMS-AHG, 2025 WL 3097933 (S.D. Cal. Nov. 5, 2025); *Munoz-Saucedo v. Pittman*, 789 F. Supp. 3d 387 (D.N.J. 2025); *Villanueva v. Tate*, 801 F. Supp. 3d 689 (S.D. Tex. 2025); *Zavvar v. Scott*, No. 25-CV-2104-TDC, 2025 WL 2592543 (D. Md. Sept. 8, 2025); *Puertas-Mendoza v. Bondi*, No. SA-25-CA-890-XR, 2025 WL 3142089 (W.D. Tex. Oct. 22, 2025); *Gomez-Simeon v. Bondi*, No. SA-25-CV-01460-JKP, 2025 WL 3470872 (W.D. Tex. Nov. 24, 2025) (all resolving habeas petitions for noncitizens who received withholding or deferral of removal but who remained detained or were re-detained for many months).

In addition, if Mr. Alhassan is denied asylum, he intends to appeal to the BIA and the Ninth Circuit. Exhibit A at ¶ 9. All told, "[t]his process may take up to two years or longer." *Banda*, 385 F. Supp. 3d at 1119. Because "Petitioner's future detention can last several more months or even years[,]" this factor favors Mr. Alhassan. *Abdul Kadir v. Larose*, No. 25-CV-1045-LL-MMP, 2025 WL 2932654, at *5 (S.D. Cal. Oct. 15, 2025).

Third, the delay caused by the government is arbitrary and unjustified. After Mr. Alhassan was initially detained, *six* months inexplicably passed before he was given his credible fear interview. Exhibit A at ¶ 5. That hold up alone is responsible for the lion's share of delay in this case.

Thus, Mr. Alhassan is entitled to release or a bond hearing.

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

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

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

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

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

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

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

This trend is also occurring in San Diego. In a recently filed declaration, local attorney Edward Perez attests that he has similar concerns about some

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

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

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

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

First, the Trump administration has eliminated 128 IJs insufficiently

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

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

This has had the predictable effect on those who remain. According to former San Francisco IJ Elizabeth Young, "I've talked to many of [the judges still serving], and they're like, 'When I go into court, I am concerned about applying the law, but I'm also concerned that I should deny more, because if I don't, then I'll get fired.'" Marco Poggio, *Judges See an Immigration Court Gutted from*

1 *Inside*, Law360 (Oct. 31, 2025),
2 https://www.law360.com/articles/2381003/judges-see-an-immigration-court-
3 gutted-from-inside. Meanwhile, Department of Justice recruitment materials seek
4 "deportation judges" to fill the empty IJ slots, Coral Murphy Marcos, *US Justice*
5 *Department Recruiting Legal Experts to Serve as 'Deportation' Judges,*
6 Guardian, https://www.theguardian.com/us-news/2025/nov/21/us-justice-
7 department-ad-deportation-judges, inviting candidates to "bring the hammer
8 down on criminal illegal aliens" and "defend your communities, your culture,
9 your very way of life." dhsgov, Instagram (Nov. 21, 2025),
10 https://www.instagram.com/p/DRVT8DmCQKD/?hl=en.
11 *Second*, a parallel purge occurred at the BIA, which was reduced from 28
12 members to 15 members. All Biden appointees on the BIA were fired. Am. Imm.
13 Council, *BIA Decision Strips Immigration Judges of Bond Authority, All but*
14 *Guaranteeing Mandatory Detention for Undocumented Immigrants* (Sept. 12,
15 2025), https://www.americanimmigrationcouncil.org/blog/bia-ruling-
16 immigration-judges-bond-mandatory-detention-undoc umented-immigrants/. The
17 statistical impact is stark. As of January 22, 2026, the reconstituted BIA has
18 issued 71 published decisions. Exec. Off. for Immigr. Rev., *Volume 29*, U.S. Dep't
19 of Just. (Jan. 21, 2025), https://www.justice.gov/eoir/volume-29. Of those, 69
20 decisions (97%) favored the administration. By contrast, during the entire four-
21 year span of the prior administration, the BIA issued 76 published decisions.
22 Exec. Off. for Immigr. Rev., *Volume 28*, U.S. Dep't of Just. (June 13, 2025),
23 https://www.justice.gov/eoir/volume-28. (First decision, *Matter of DIKHTYAR*,
24 28 I&N Dec. 214 (BIA 2021), issued 01/22/2021). Of those, 46 decisions (60%)
25 favored the administration. The transformation from 60% to 97% pro-government
26 outcomes—achieved through wholesale termination of one administration's
27 appointees —speaks for itself.
28 *Third*, beyond personnel changes, EOIR's new acting director, Sirce E.

1 Owen, has issued "a string of sharply worded policy memos" encouraging IJs to
2 side with the government over immigrants and minimize due process. E. Tammy
3 Kim, *Inside Donald Trump's Attack on Immigration Courts*, New Yorker,
4 https://www.newyorker.com/inside-donald-trumps-attack-on-immigration-court.
5 The policy directives include: a memorandum dated June 27, 2025 warning
6 judges not to demonstrate "bias directed against DHS" or to be "adjudicatory
7 outliers," at risk of "close examination and potential action," Exec. Off. for
8 Immigr. Rev., Policy Memorandum 25-33, Neutrality and Impartiality in
9 Immigration Court Proceedings (June 27, 2025), https://iptp-
10 production.s3.amazonaws.com/media/documents/2025.06.27_EOIR_-_PM_25-
11 33.pdf; a memorandum encouraging judges to deny asylum applications without
12 full evidentiary hearings, styled as efficiency guidance but functioning as a
13 directive to reduce due process protections, Exec. Off. for Immigr. Rev., Policy
14 Memorandum 25-28, Pretermission of Legally Insufficient Application for
15 Asylum (Apr. 11, 2025), https://www.justice.gov/eoir/media/1396411/dl?inline;
16 and memoranda restricting immigration judges' ability to grant continuances,
17 Exec. Off. for Immigr. Rev., Policy Memorandum 25-27, Cancellation of
18 Director's Memorandum 23-01 and Reinstatement of Policy Memorandum 19-13
19 (Mar. 21, 2025), https://www.justice.gov/eoir/media/1394086/dl, and
20 administrative closure, Exec. Off. for Immigr. Rev., Policy Memorandum 25-29,
21 Cancellation of Director's Memorandum 22-03 (Apr. 18, 2025),
22 https://www.justice.gov/eoir/media/1397161/dl?inline.
23 *Fourth*, EOIR personnel have at times directed IJs to ignore federal court
24 orders related to bond hearings. On January 13, 2026, in the wake of *Maldonado*
25 *Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3289861 (C.D.
26 Cal. Nov. 20, 2025); *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-
27 BFM, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025), Chief Immigration
28 Judge Teresa L. Riley sent all IJs the following instructions:

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

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

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

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

CLAIM AND PRAYER FOR RELIEF

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

Accordingly, Petitioner respectfully requests that this Court:

1. **Order Respondents to immediately release Petitioner from custody.** "In recent months, courts across the country have ordered the release of detainees in similar situations." *Moctezuma v. Henkey*, No. 25-CV-00741-BLW, 2026 WL 18809, at *5 (D. Idaho Jan. 2, 2026) (given that the government's repeated use of unlawful detention policies across the country, causing petitioners to "sit in jail waiting for a judicial decision," the court would order immediate release instead of causing additional delay through a bond hearing) (citing *Lepe v. Andrews*, 801 F. Supp. 3d 1104 (E.D. Cal. 2025); *J.U. v. Maldonado*, No. 25-CV-4836, 2025 WL 2772765, at *10 (E.D.N.Y. Sept. 29, 2025); *Rosado v. Figueroa*, No. 25-CV-2157, 2025 WL 2337099, at *19 (D. Ariz. Aug. 11, 2025); *Pinchi v. Noem*, No. 25-CV-05632, 2025 WL 1853763, at *4 (N.D. Cal. July 4, 2025). *Santiago v. Noem*, No. EP-25-CV-361, 2025 WL 2792588, at *13-14 (W.D. Tex. Oct. 2, 2025) ("Without a legitimate interest in her detention, immediate release appropriately remedies Respondents' violation of [Petitioner's] due process rights through her continued detention."). Order, ECF No. 14 at 19, *Miri v. Bondi*, No. 26-CV-00698-MEMF (C.D. Cal. March 5, 2026) ("Miri's prompt release is the remedy that will best return Miri to the status quo and restore his position as it was prior to the detention that Miri contends was in violation of his constitutional and statutory protections.").
2. **In the alternative, order a prompt § 1226(a) bond hearing, with safeguards and oversight provided by this Court.** *See* Order, ECF

No. 13, *Sandesh v. LaRose*, No. 3:26-CV-00846-JES (S.D. Cal. March 5, 2026). Specifically, the Court should order:

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

(a) At that hearing, the government shall bear the burden of establishing by clear and convincing evidence that Petitioner poses a danger or flight risk, 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.*

b. 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.*

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

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

Respectfully submitted,

Dated: April 13, 2026

s/ Camille Fenton

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EXHIBIT A

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

YAKUBU ALHASSAN,

Petitioner,

v.

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

Respondents.

Civil Case No.: 26-cv-02012-BAS

Declaration of Immigration Attorney Hashim Siddique in Support of Amended Petition for a Writ of Habeas Corpus

I, Hashim Siddique, declare:

1. I represent Yakubu Alhassan in his immigration proceedings.
2. Mr. Alhassan was born in Ghana.
3. Mr. Alhassan was placed in immigration custody on February 23, 2025, just after entering the United States. He has been detained ever since. It has been nearly fourteen months.
4. Mr. Alhassan is seeking asylum here in the United States because he faces persecution in Ghana over his sexual orientation.
5. Mr. Alhassan's credible fear interview was not conducted until October 1, 2025, over six months after his initial detention.

6. Mr. Alhassan retained me as his attorney in December 2025. I entered my first appearance on December 10, 2025.
7. We timely filed Mr. Alhassan's asylum application on January 22, 2026, about a month after I began my representation, and less than three months after the credible fear interview.
8. Mr. Alhassan's individual merits hearing is scheduled for April 22, 2026.
9. If the immigration judge ("IJ") denies Mr. Alhassan's request for asylum, he intends to appeal to the Board of Immigration Appeals ("BIA").

I declare under penalty of perjury that the foregoing is true and correct, executed on April 13, 2026.

/s/ Hashim Siddique
HASHIM SIDDIQUE
Declarant

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-STEVENS

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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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 NorthernVirginia. 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.

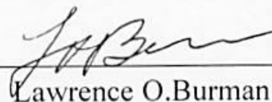
13. It was also extremely rare to see a bond denial based on flight risk where the alien had a fixed address, a job, a proposed application for relief, or family ties to the United States.
14. In my experience, bonds in excess of $15,000 were relatively uncommon on the dockets on which I served. This 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.

<u>Concerns about the Immigration Court System</u>

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



Lawrence O.Burman