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

12 GHEBREHIWET HABEN,  
13  
14 Petitioner,  
15  
16 v.  
17 JEREMY CASEY, Warden at Imperial  
18 Regional Detention Center,  
19  
20 Respondents.

Case No: 26-cv-2039-JLS-JLB

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

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<sup>1</sup> In response to the Court's Order, the undersigned concludes that appointment of Federal Defenders is appropriate.

1 INTRODUCTION

2 Ghebrehiwet Haben of Eritrea has been detained by Respondents for more  
3 than nine months as he pursued asylum. Last month, an immigration judge denied  
4 asylum but granted him withholding of removal under the Convention Against  
5 Torture (“CAT”) to his home country. Yet Mr. Haben remains detained and he has  
6 never so much as received a bond hearing. This Court should “join[] the majority  
7 of courts across the country in concluding that his unreasonably prolonged  
8 detention under 8 U.S.C. § 1225(b) without an individualized bond hearing violates  
9 due process.” *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 772 (S.D. Cal. 2020)  
10 (Battaglia, J.)/

11 STATEMENT OF FACTS

12 Mr. Haben entered the United States on July 23, 2025. Ex. A ¶ 1. He was  
13 immediately detained. *Id.* He was taken to Imperial Regional Detention Facility,  
14 where he remains. *Id.*

15 On March 9, 2026, the IJ granted him withholding of removal under CAT  
16 with respect to his home country, Eritrea. *Id.* ¶ 2. Respondents have told him they  
17 will look for a third country to deport him, but have not offered any updates—or  
18 even suggestions of which country. *Id.* ¶ 3. Respondents also have not offered him  
19 a bond hearing. *Id.*

20 Mr. Haben is appealing his case to the BIA. *Id.* ¶ 4.

21  
22 LEGAL BACKGROUND

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

25 This habeas petition presents a question about whether and when the Fifth  
26 Amendment’s Due Process Clause countermands the government’s statutory  
27 authority to detain immigrants without bond hearings. Mr. Haben is detained under  
28 one such statute, 8 U.S.C. § 1225(b). “Section 1225 applies to ‘applicants for

1 admission’—noncitizens who ‘arrive[] in the United States,’ or are ‘present’ in the  
2 United States but have ‘not been admitted.’” *Banda v. McAleenan*, 385 F. Supp. 3d  
3 1099, 1111 (W.D. Wash. 2019). It “applies to, among others, noncitizens initially  
4 determined to be inadmissible because of . . . lack of valid documentation.” *Id.* That  
5 includes persons who, like Mr. Haben, are apprehended near the border and—rather  
6 than producing admission documents—make asylum and other fear-based claims.  
7 *See id.* at 1109–11 (describing a similar procedural history and finding that  
8 petitioner was detained under § 1225(b)). Such immigrants are detained under  
9 § 1225(b) not only during their initial proceedings, but also when they appeal to the  
10 BIA. *See id.* at 1111 (reaching same conclusion for immigrant with pending BIA  
11 appeal).

12 In years past, the Ninth Circuit applied the constitutional avoidance canon to  
13 hold that § 1225(b) implicitly entitled detained immigrants to bond hearings every  
14 six months. *Rodriguez v. Robbins*, 804 F.3d 1060, 1087–89 (9th Cir. 2015). But the  
15 Supreme Court overruled that precedent in *Jennings v. Rodriguez*, holding that the  
16 statute does not entitle detainees to bond hearings or otherwise impose “any limit  
17 on the length of detention.” 583 U.S. 281, 297 (2018). But *Jennings* did not address  
18 whether prolonged, mandatory detention without bond hearings violates due  
19 process. *Id.* at 312.<sup>2</sup>

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

26  
27 <sup>2</sup> The Court’s later decision in *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020),  
28 also poses no barrier to relief for a detention-based due process claim. *See Lopez-Arevelo v.*  
*Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at \*7–9 (W.D. Tex. Sept. 22, 2025).

1           These courts have taken their cues largely from *Zadvydas v. Davis*, 533 U.S.  
2 678 (2001). There, the Court construed a statute to provide that persons detained  
3 following a final removal order may not be subjected to indefinite detention. *Id.* at  
4 699. The Court justified its holding by describing the serious due process concerns  
5 that indefinite detention would occasion:

6           A statute permitting indefinite detention of an alien would raise a  
7 serious constitutional problem. The Fifth Amendment's Due Process  
8 Clause forbids the Government to 'depriv[e]' any 'person ... of ...  
9 liberty ... without due process of law.' Freedom from imprisonment—  
10 from government custody, detention, or other forms of physical  
11 restraint—lies at the heart of the liberty that Clause protects. *See*  
12 *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). And this Court has said  
13 that government detention violates that Clause unless the detention is  
14 ordered in a *criminal* proceeding with adequate procedural  
15 protections, *see United States v. Salerno*, 481 U.S. 739, 746 (1987),  
16 or, in certain special and 'narrow' nonpunitive 'circumstances,'  
17 *Foucha, supra*, at 80, where a special justification, such as harm-  
18 threatening mental illness, outweighs the 'individual's constitutionally  
19 protected interest in avoiding physical restraint.' *Kansas v. Hendricks*,  
20 521 U.S. 346, 356 (1997).

21 *Id.*

22           As the Ninth Circuit put it in *Jennings'* wake, these considerations raise  
23 "grave doubts that any statute that allows for arbitrary prolonged detention without  
24 any process is constitutional or that those who founded our democracy precisely to  
25 protect against the government's arbitrary deprivation of liberty would have  
26 thought so." *Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018). The same  
27 concerns have led district courts to conclude that immigrants cannot be detained  
28 indefinitely without bond hearings pending their immigration proceedings.

29 **II. Courts have reached different conclusions about when immigration  
30 detention becomes indefinitely prolonged, but Mr. Haben would  
31 prevail under any standard.**

32           Though courts agree that due process mandates a bond hearing when  
33 detention grows unreasonably prolonged, they disagree about how to assess

1 whether a particular migrant’s detention has reached that point. *Sanchez-Rivera v.*  
2 *Matuszewski*, No. 22-CV-1357-MMA (JLB), 2023 WL 139801, at \*5–6 (S.D. Cal.  
3 Jan. 9, 2023) (Anello, J.) (surveying the various approaches). Some courts have  
4 “conclude[d] . . . that detention becomes prolonged after six months and entitles [a  
5 petitioner] to a bond hearing.” *Rodriguez v. Nielsen*, No. 18-CV-04187-TSH, 2019  
6 WL 7491555, at \*6 (N.D. Cal. Jan. 7, 2019).

7 In that case, Mr. Haben would automatically qualify, as he has been detained  
8 for nearly nine months.

9 Other courts have adopted multifactor tests. *See Sanchez-Rivera*, 2023 WL  
10 139801, at \*5–6 (surveying different approaches). Courts generally agree that  
11 relevant factors include:

- 12 (1) “the total length of detention to date,”  
13 (2) “the likely duration of future detention,” and  
14 (3) “the delays in the removal proceedings caused by the petitioner and the  
15 government.”

16 *Id.* Some courts also consider:

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

20 *Id.*; *but see Lopez v. Garland*, 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022) (holding  
21 that the fourth and fifth factors are “not particularly suited to assisting the Court in  
22 determining whether detention has become unreasonable and due process requires  
23 a bond hearing”); *Sanchez-Rivera*, 2023 WL 139801, at \*5–6 (agreeing with  
24 *Lopez*).

25 Mr. Haben would prevail under any of those tests.

26 First, the “most important factor,” the length of detention, favors Mr. Haben.  
27 *Banda*, 385 F. Supp. 3d at 1118. “It is important to bear in mind the context: The  
28 detention that is being examined here is the detention of a human being who has

1 never been found to pose a danger to the community or to be likely to flee if  
2 released.” *Jamal A. v. Whitaker*, 358 F. Supp. 3d 853, 859 (D. Minn. 2019). With  
3 that context, courts have granted bond hearings for persons detained between nine  
4 and eleven months. *See Ashemuke v. ICE Field Off. Dir.*, No. C23-1592-RSL-MLP,  
5 2024 WL 1683797, at \*4 (W.D. Wash. Feb. 29, 2024), *report and recommendation*  
6 *adopted*, No. C23-1592-RSL, 2024 WL 1676681 (W.D. Wash. Apr. 18, 2024)  
7 (“approximately eleven months”); *Brissett v. Decker*, 324 F. Supp. 3d 444, 452  
8 (S.D.N.Y. 2018) (“over nine months”); *Perez v. Decker*, No. 18-CV-5279 (VEC),  
9 2018 WL 3991497, at \*5 (S.D.N.Y. Aug. 20, 2018) (“more than nine months”);  
10 *Masood v. Barr*, No. 19-CV-07623-JD, 2020 WL 95633, at \*2 (N.D. Cal. Jan. 8,  
11 2020) (“nearly nine months”). Mr. Haben fits neatly in that range.

12 Second, Mr. Haben has reason to anticipate significant future detention  
13 during his appellate process. A BIA appeal itself can take months, and afterward, a  
14 petitioner may appeal to the Ninth Circuit. *See Banda*, 385 F. Supp. 3d at 1119. All  
15 told, “[t]his process may take up to two years or longer.” *Id.* Because “Petitioner’s  
16 future detention can last several more months or even years[,]” this factor also  
17 favors Mr. Haben. *Abdul Kadir v. Larose*, No. 25CV1045-LL-MMP, 2025 WL  
18 2932654, at \*5 (S.D. Cal. Oct. 15, 2025) (Lopez. J.).

19 Third, Mr. Haben did not delay his asylum proceedings. He merely pursued  
20 his remedies based on a credible fear of torture. That is why the IJ granted CAT  
21 relief.

22 Four, Mr. Haben’s conditions of confinement also favor a bond hearing.  
23 Mr. Haben is detained in a penal environment despite committing no crime.  
24 Meanwhile, the Imperial Regional Detention Center has a history of poor  
25 conditions. *See Durand v. Allen*, No. 3:23-cv-00279-RBM-BGS, 2024 U.S. Dist.  
26 LEXIS 29823, at \*4 (S.D. Cal. Feb. 21, 2024).

27 Thus, under any test, then, Mr. Haben is entitled to a bond hearing.  
28

1 **III. New reports that Respondents are pressuring immigration judges to**  
2 **deny bond undermine their neutrality and this Court should grant**  
3 **release or maintain jurisdiction over Mr. Haben’s case.**

4 Given recent news reports on IJ neutrality, this Court should consider  
5 alternative remedies, including ordering release outright.

6 An alarming report from The New York Times documents not just how  
7 Respondents have purged IJs seen as insufficiently supportive of the President but  
8 also discourage those IJs who remain from granting bond. For example, the chief  
9 immigration judge now “receive[s] daily reports about bond rulings.” Nicholas  
10 Nehamas et al., *Immigration Judges Are Purged as Trump Speeds Deportations*,  
11 N.Y. Times, April 12, 2026, at A1.<sup>3</sup> “Her office has sometimes emailed judges  
12 asking for an explanation about their decisions to grant bond,” while there is no  
13 indication that she seeks explanation for the denial of bond. *Id.*

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

18 Thus, this Court should consider granting release or holding a bond hearing  
19 itself.

20 **CLAIM AND PRAYER FOR RELIEF**

21 **Detaining Petitioner Without a Bond Hearing Violates the Fifth**  
22 **Amendment’s Due Process Clause**

23 This Court should either order Mr. Haben released or hold a bond hearing  
24 itself. Alternatively, it should craft an order like Judge Simmons’s procedure in  
25 the *Sandesh* case. *See* Order, ECF No. 13, *Sandesh v. LaRose*, No. 3:26-CV-  
26 00846-JES (S.D. Cal. March 5, 2026). Specifically, the Court should order:

27 <sup>3</sup> The article is available at  
28 <https://www.nytimes.com/2026/04/09/us/politics/trump-miller-immigration-judges-purge.html>

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

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

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

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

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

15 (3) Prohibit ICE from invoking the automatic stay provisions under 8 C.F.R.  
16 § 1003.19(i)(2) to defeat the IJ's bond determination.

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

19 Respectfully submitted,

20 Dated: April 30, 2026

21 s/ Daniel J. Yadron, Jr.  
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