

1 **Kara Hartzler**
2 Bar No. 293751
3 Federal Defenders of San Diego, Inc.
4 225 Broadway, Suite 900
5 San Diego, California 92101-5030
6 Telephone: (619) 234-8467
7 Facsimile: (619) 687-2666
8 Kara_hartzler@fd.org
9 Attorneys for Petitioner

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

10 ARIA TADAYYONI MOGHADDAM,
11
12 Petitioner,

13 v.


14 MARKWAYNE MULLIN, Secretary of
15 the Department of Homeland Security,
16 TODD BLANCHE, Acting Attorney
17 General, TODD M. LYONS, Acting
18 Director, Immigration and Customs
19 Enforcement, JESUS ROCHA, Acting
20 Field Office Director, San Diego Field
21 Office, CHRISTOPHER LAROSE,
22 Warden at Otay Mesa Detention Center,
23
24 Respondents.

Civil Case No.:26-cv-2018-BAS-MSB

**Amended Petition for a
Writ of Habeas Corpus**


20
21
22
23
24
25
26
27
28

1 INTRODUCTION

2 Aria Tadayyoni Moghaddam is an asylum seeker from Iran who was
3 tortured on account of his conversion to  He has been detained
4 pending his immigration proceedings for over a year. This Court should “join[]
5 the majority of courts across the country in concluding that [his] unreasonably
6 prolonged detention under 8 U.S.C. § 1225(b) without an individualized bond
7 hearing violates due process.” *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 772 (S.D.
8 Cal. 2020) (Battaglia, J.). It should do so because Mr. Moghaddam satisfies the
9 six-factor test set forth in *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1118
10 (W.D. Wash. 2019).

11 Additionally, because of newly emerging evidence that the neutrality of
12 Otay Mesa’s immigration judges (“IJ”) has been compromised, and some IJs and
13 the Department of Homeland Security (“DHS”) have implemented strategies to
14 detain bond-worthy habeas petitioners, a bond hearing before a randomly selected
15 IJ will no longer reliably satisfy due process. This Court should therefore consider
16 the alternative forms of relief, including that: 1) the IJ shall consider alternative
17 conditions of release and Petitioner’s ability to pay bond; and 2) Respondents
18 shall make a complete record of the bond hearing available to Petitioner’s
19 counsel.

20 STATEMENT OF FACTS

21 Mr. Moghaddam was born in Iran. Exhibit A, Declaration of Aria
22 Tadayyoni Moghaddam, at ¶ 1. In 2017,  *Id.* at ¶ 1.
23 As a result, he was persecuted and tortured in his country in January 2025 and
24 fled to the United States. *Id.* at ¶ 1.

25 Mr. Moghaddam came to the port of entry on March 25, 2025, and asked to
26 seek asylum. *Id.* at ¶ 2. He was taken into custody and transferred to Otay Mesa
27 Detention Center, where he was placed in removal proceedings. *Id.* at ¶ 2.
28

1 Mr. Moghaddam has had nine hearings before an immigration judge. *Id.* at
2 ¶ 3. At least two of his hearings were cancelled because he was assigned to a
3 different immigration judge. *Id.* at ¶ 3. Neither Mr. Moghaddam nor his attorney
4 ever asked for any unreasonable extensions. *Id.* at ¶ 3.

5 Mr. Moghaddam’s merits hearing is currently scheduled for April 16, 2026.
6 *Id.* at ¶ 4. If he is denied asylum, he plans to appeal to the BIA. *Id.* at ¶ 4. If the
7 BIA dismisses his appeal, he will likely appeal to the Ninth Circuit. *Id.* at ¶ 4.

8 Mr. Moghaddam has been detained for over a year. *Id.* at ¶ 5. If he loses his
9 case, he will likely be detained for several more years. *Id.* at ¶ 5. He also suffers
10 from a very painful hernia that was aggravated by the torture he experienced in
11 Iran. *Id.* at ¶ 6. However, the doctors at Otay Mesa Detention Center have told
12 Mr. Moghaddam that he cannot get the surgery he needs while he is detained
13 there. *Id.* at ¶ 6.

14 LEGAL BACKGROUND

15 **I. The Fifth Amendment’s Due Process Clause prohibits prolonged** 16 **immigration detention without a bond hearing.**

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

1 but also when they appeal to the BIA. *See id.* at 1111 (reaching same conclusion
2 for immigrant with pending BIA appeal).

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

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

16 [t]he Fifth Amendment's Due Process Clause forbids the Government
17 to ‘depriv[e] any ‘person ... of ... liberty ... without due process of
18 law.’ Freedom from imprisonment—from government custody,
19 detention, or other forms of physical restraint—lies at the heart of the
20 liberty that Clause protects. *See Foucha v. Louisiana*, 504 U.S. 71, 80
21 (1992). And this Court has said that government detention violates
22 that Clause unless the detention is ordered in a *criminal* proceeding
23 with adequate procedural protections, *see United States v. Salerno*,
24 481 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).

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

1 Following *Zadvydas*, the Ninth Circuit applied similar reasoning to
2 § 1225(b). *Rodriguez v. Robbins*, 804 F.3d 1060, 1087–89 (9th Cir. 2015).
3 Employing the constitutional avoidance canon, the Ninth Circuit held that
4 § 1225(b) implicitly entitled detained immigrants to bond hearings every six
5 months. *Id.*

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

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

24 “In the wake of *Jennings*,” *Zadvydas*, and *Demore*, “district courts have
25 grappled with how to address due process challenges to prolonged mandatory
26 detention under § 1225(b).” *Banda*, 385 F. Supp. 3d at 1116. But after a full
27 evaluation, “[n]early all district courts that have considered the issue agree that
28 prolonged mandatory detention pending removal proceedings, without a bond

1 hearing, will—at some point—violate the right to due process.” *Id.* (cleaned up)
2 (collecting cases).

3 These Courts have relied on the due process concerns recognized in
4 *Zadvydas*. See, e.g., *Kydyrali*, 499 F. Supp. 3d at 771; *Banda*, 385 F. Supp. 3d at
5 1113–17; *Abdul Kadir v. Larose*, No. 25CV1045-LL-MMP, 2025 WL 2932654,
6 at *3 (S.D. Cal. Oct. 15, 2025). As the Ninth Circuit put it in *Jennings*’ wake,
7 those considerations raise “grave doubts that any statute that allows for arbitrary
8 prolonged detention without any process is constitutional or that those who
9 founded our democracy precisely to protect against the government’s arbitrary
10 deprivation of liberty would have thought so.” *Rodriguez v. Marin*, 909 F.3d 252,
11 256 (9th Cir. 2018).

12 Neither *Jennings* nor *Demore* undermines that conclusion. *Jennings* held
13 only that the statute itself did not impose any limits on detention. It “did not
14 foreclose as-applied constitutional challenges to detention under” mandatory-
15 detention statutes. *Santos v. Warden Pike Cnty. Corr. Facility*, 965 F.3d 203, 209
16 (3d Cir. 2020). And *Demore* held only that conviction-based mandatory detention
17 during immigration proceedings does not necessarily violate due process,
18 particularly when the detention has an expected duration of about five months. *Id.*
19 at 208–11. But many persons detained under § 1225(b)—like Mr. Moghaddam—
20 do not have criminal convictions. And as Justice Kennedy’s concurrence made
21 clear, *Demore* does not prevent immigrants from arguing that sufficiently
22 prolonged detention violates due process in their individual cases. See *id.*¹

23

24

25 ¹ The Supreme Court’s later decision in *Dep’t of Homeland Sec. v. Thuraissigiam*,
26 591 U.S. 103 (2020), is also inapposite, because it addressed only immigrants’ due
27 process rights in deportation proceedings—i.e., the process due when noncitizens
28 seek to stay in the country instead of being removed. See *Lopez-Arevalo v. Ripa*,
No. EP-25-CV-337-KC, 2025 WL 2691828, at *7–9 (W.D. Tex. Sept. 22, 2025). It
does not purport to hold that immigrants have no constitutional right to due process
before the government holds them indefinitely in immigration detention. *Id.*

1 Thus, this Court should hold that sufficiently prolonged detention violates
2 the Due Process Clause, as most courts have. *See, e.g., Gao v. LaRose*, No. 25-
3 CV-2084-RSH-SBC, 2025 WL 2770633, at *3 (S.D. Cal. Sept. 26, 2025); *Abdul*
4 *Kadir v. Larose*, No. 25CV1045-LL-MMP, 2025 WL 2932654, at *4 (S.D. Cal.
5 Oct. 15, 2025); *Cong v. Noem*, No. 25-CV-3730-GPC-DEB, 2026 WL 76566, at
6 *3 (S.D. Cal. Jan. 9, 2026); *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 772 (S.D. Cal.
7 2020) (Battaglia, J.); *Mardian v. Mayorkas*, 25-cv-3467-JLS; *Raeva v. Mayorkas*,
8 25-cv-3175-JO; *Abdul-Samed v. Warden of Golden State Annex Det. Facility*, No.
9 25-cv-98-SAB-HC, 2025 WL 2099343, at *6 (E.D. Cal. July 25, 2025);
10 *Hernandez v. Wofford*, No. 25-cv-986-KES-CDB (HC), 2025 WL 2420390, at *3
11 (E.D. Cal. Aug. 21, 2025); *Padilla v. ICE*, 704 F. Supp. 3d 1163, 1171–72 (W.D.
12 Wash. 2023).

13 **II. Courts have reached different conclusions about when immigration**
14 **detention becomes indefinitely prolonged, but Mr. Moghaddam would**
15 **prevail under any standard, including the *Banda* factors.**

16 Though courts agree that due process mandates a bond hearing when
17 detention grows unreasonably prolonged, they disagree about how to assess
18 whether a particular migrant’s detention has reached that point. *Sanchez-Rivera v.*
19 *Matuszewski*, No. 22-CV-1357-MMA (JLB), 2023 WL 139801, at *5–6 (S.D.
20 Cal. Jan. 9, 2023) (Anello, J.) (surveying the various approaches). Because it
21 incorporates nearly all the factors, many courts have found it “most appropriate to
22 apply the *Banda* test to Petitioner’s detention here under § 1225(b), as other
23 courts within this district have done in the past.” *Sandesh v. Noem*, 26-cv-846-
24 JES-DDL, Dkt. 13 at 5 (Mar. 5, 2026 S.D. Cal). The *Banda* factors include:

- 25 (1) the total length of detention to date;
- 26 (2) the likely duration of future detention;
- 27 (3) the conditions of detention;
- 28 (4) delays in the removal proceedings caused by the detainee;

- 1 (5) delays in the removal proceedings cause by the government; and
- 2 (6) the likelihood that the removal proceedings will result in a final order
- 3 of removal.

4 *Banda*, 385 F. Supp. 3d at 1106. Applying these factors here shows that
5 Mr. Moghaddam’s detention has become prolonged.

6 *First*, the “most important factor,” the length of detention, favors
7 Mr. Moghaddam. *Banda*, 385 F. Supp. 3d at 1118. In assessing this factor, “[i]t is
8 important to bear in mind the context: The detention that is being examined here
9 is the detention of a human being who has never been found to pose a danger to
10 the community or to be likely to flee if released.” *Jamal A. v. Whitaker*, 358 F.
11 Supp. 3d 853, 859 (D. Minn. 2019). With that context, courts have granted bond
12 hearings for persons detained between nine and eleven months. *See Ashemuke v.*
13 *ICE Field Off. Dir.*, No. C23-1592-RSL-MLP, 2024 WL 1683797, at *4 (W.D.
14 Wash. Feb. 29, 2024), *report and recommendation adopted*, No. C23-1592-RSL,
15 2024 WL 1676681 (W.D. Wash. Apr. 18, 2024) (“approximately eleven
16 months”); *Brissett v. Decker*, 324 F. Supp. 3d 444, 452 (S.D.N.Y. 2018) (“over
17 nine months”); *Perez v. Decker*, No. 18-CV-5279 (VEC), 2018 WL 3991497, at
18 *5 (S.D.N.Y. Aug. 20, 2018) (“more than nine months”); *Masood v. Barr*, No. 19-
19 CV-07623-JD, 2020 WL 95633, at *2 (N.D. Cal. Jan. 8, 2020) (“nearly nine
20 months”). Mr. Moghaddam has been detained for even longer—i.e., over a year.
21 Exh. A at ¶ 2. This factor therefore strongly favors Mr. Moghaddam.

22 *Second*, Mr. Moghaddam has reason to anticipate significant future
23 detention. If he loses his case on April 16, he will appeal to the BIA, and if he
24 loses there, he will appeal to the Ninth Circuit. Exh. A at ¶ 4. All told, “[t]his
25 process may take up to two years or longer.” *Banda*, 385 F. Supp. 3d at 1119.
26 Because “Petitioner’s future detention can last several more months or even
27 years[,]” this factor favors Mr. Moghaddam. *Abdul Kadir v. Larose*, No.
28 25CV1045-LL-MMP, 2025 WL 2932654, at *5 (S.D. Cal. Oct. 15, 2025).

1 *Third*, conditions of confinement weigh in favor of him. “Petitioner’s
2 confinement at [Otay Mesa Detention Center] is ‘indistinguishable from penal
3 confinement.’” *Abdul Kadir*, 2025 WL 2932654, at *5 (quoting *Kydyrali*, 499 F.
4 Supp. 3d at 773). Additionally, Mr. Moghaddam suffers from a very painful
5 hernia that was aggravated by the torture he experienced in Iran. Exh. A at ¶ 6.
6 However, the doctors at Otay Mesa Detention Center have told Mr. Moghaddam
7 that he cannot get the surgery he needs while he is detained there. *Id.* at ¶ 6.

8 *Fourth* and *fifth*, Mr. Moghaddam has not caused any unreasonable delays
9 in his removal proceedings. *Id.* at ¶ 3. By contrast, at least two of Mr.
10 Moghaddam’s hearings were cancelled because he was assigned to a different
11 judge. Exh. A at ¶ 3. Thus, this factor weighs in Mr. Moghaddam’s favor, or is at
12 least arguably neutral.

13 *Sixth*, regarding the likelihood that the removal proceedings will result in a
14 final order of removal, Mr. Moghaddam has a strong asylum claim and would
15 likely win on appeal. *Id.* at ¶ 1. Accordingly, under the *Banda* factors,
16 Mr. Moghaddam is entitled to release or a bond hearing.

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

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

26 Most importantly, reports are streaming in from this district and elsewhere
27 that court-ordered “bond hearings [are], effectively, stacked against detainees
28 from the start.” Kyle Cheney, *How ICE Defies Judges’ Orders to Release*

1 *Detainees, Step by Step*, Politico (Feb. 10, 2026),
2 [https://www.politico.com/news/2026/02/10/ice-immigration-detention-court-](https://www.politico.com/news/2026/02/10/ice-immigration-detention-court-orders-00771727)
3 [orders-00771727](https://www.politico.com/news/2026/02/10/ice-immigration-detention-court-orders-00771727).

4 Former ICE Counsel Jorge Artieda attests to seeing “a seismic shift in bond
5 hearing outcomes for individuals who had been granted federal habeas relief and
6 ordered § 1226(a) bond hearings . . . in the Eastern District of Virginia.” Exhibit
7 B, Declaration of Jorge Artieda, at 2. In a declaration filed in *Briceno Solano v.*
8 *Mason*, No. 26-CV-00045, 2026 WL 311624 (S.D.W. Va. Feb. 4, 2026),
9 Mr. Artieda reported that the pattern of granting bond in appropriate cases
10 “abruptly and uniformly ceased” in early January, in a way that “suggests
11 coordinated institutional direction.” *Id.* IJs there now rely on a “remarkably
12 narrow and predictable set of rationales to deny bond—rationales that appear to
13 bear little relationship to genuine individualized risk assessment and that would
14 not have been deemed sufficient to justify denial just weeks earlier.” *Id.* at 3. In
15 Mr. Artieda’s professional opinion, the IJs’ rationales “do not appear to be
16 grounded in legitimate risk assessment” but are “pretexts designed to ensure
17 denial of bond regardless of the individual facts of each case.” *Id.* at 4.

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

25 A recently retired immigration judge with 27 years of experience on the
26 bench and 10 years of experience as an INS attorney reports similar observations.
27 *See* Declaration of Lawrence O. Burman, Exhibit C. Judge Burman recounts that
28 in his years of conducting bond hearings, “[i]t was rare for a bond to be denied

1 solely based on flight risk.” *Id.* at ¶ 11. Rather, “a higher bond amount was
2 imposed to ensure the individual’s appearance at future hearings.” *Id.* Judge
3 Burman also notes that “[a]lthough immigration judges are expected to act as
4 neutral adjudicators,” he has “noticed increasing concern among members of the
5 bench about institutional intimidation and the perception that decisions
6 unfavorable to the government could negatively affect judicial tenure.” *Id.* at ¶ 20.
7 Specifically, he has observed a “notable rise in bond denials and adverse case
8 outcomes,” which “undermines due process and erodes confidence in the
9 Immigration Court system.” *Id.* at ¶ 21.

10 This trend is also occurring in San Diego. In a recently filed declaration,
11 local attorney Edward Perez attests that he has similar concerns about some
12 immigration judges at Otay Mesa. In his experience, many Otay Mesa IJs are
13 resistant to implementing habeas orders requiring bond hearings. *Elsayed v.*
14 *Noem*, Case No. 26-cv-368, Doc. 5-2 at ¶ 7 (S.D. Cal. Feb. 9, 2026). These IJs
15 have begun denying bond on the ground that court hearings are coming up, and
16 release would disrupt the hearing schedule. *Id.* Of course, that logic could justify
17 any asylum seeker’s detention, and it has nothing to do with danger or flight. *Id.*
18 Furthermore, the Department of Homeland Security (“DHS”) has started
19 appealing bonds to take advantage of the automatic stay. *Id.* Both of these
20 strategies ensure that even those who pose no risk of danger or flight will stay in
21 detention. *Id.*

22 Judges have begun to take note of this trend and order that individuals be
23 released from custody, rather than granted a bond hearing. In *Said v. Noem*, a
24 court ordered a bond hearing for a habeas petitioner, only to learn that “[t]he IJ
25 denied Petitioner the opportunity to present testimony, declined to consider the
26 sworn, documentary evidence submitted by Petitioner, and based his decision on
27 an uncorroborated, unauthenticated claim by a government official that Petitioner
28 failed to share his location for the ISAP.” No. 3:25-CV-938-MOC, 2026 WL

1 295651, at *5 (W.D.N.C. Feb. 4, 2026). The original habeas Order “presupposed
2 that this hearing would be conducted in accordance with Petitioner's due process
3 rights,” the court wrote. “It was not.” *Id.*

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

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

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

16 These IJs are under no illusions about why they were let go. Former
17 Baltimore IJ Emmett Soper stated: “I think the current administration of the
18 immigration courts does not fundamentally see the immigration courts as neutral
19 decision-makers. I think that they see the immigration courts as a tool for this
20 administration to advance its policy objectives.” Geoff Bennett & Ali Schmitz,
21 *Ousted Immigration Judge Describes Deepening Court Backlog*, PBS NewsHour
22 (Nov. 12, 2025), [https://www.pbs.org/newshour/show/ousted-immigration-judge-](https://www.pbs.org/newshour/show/ousted-immigration-judge-describes-deepening-court-backlog)
23 [describes-deepening-court-backlog](https://www.pbs.org/newshour/show/ousted-immigration-judge-describes-deepening-court-backlog). Former San Francisco IJ Jeremiah Johnson
24 similarly understood “the hint that they should be hearing cases a certain way,
25 deciding cases a certain way. Move faster. Less due process, essentially.” Hilda
26 Gutierrez, Michael Bott & Son Vo, *'An all-out attack on immigration court:' SF*
27 *immigration judges speak out after firings*, NBC Bay Area (Nov. 25, 2025),
28 <https://www.nbcbayarea.com/investigations/san-francisco-immigration-judges->

1 speak-out-firings/3986850/. Former San Francisco IJ George Pappas was even
2 more direct: "We were told to facilitate deportation... Due process is dead in
3 immigration courts." Isabela Dias, *"Fired for No Reason": Former Immigration*
4 *Judges Speak Out Against Trump's Assault on the Courts*, Mother Jones (Oct. 9,
5 2025), [https://www.motherjones.com/politics/2025/10/immigration-court-judge-](https://www.motherjones.com/politics/2025/10/immigration-court-judge-trump-assault-purge-dhs-ice/)
6 [trump-assault-purge-dhs-ice/](https://www.motherjones.com/politics/2025/10/immigration-court-judge-trump-assault-purge-dhs-ice/).

7 This has had the predictable effect on those who remain. According to
8 former San Francisco IJ Elizabeth Young, "I've talked to many of [the judges still
9 serving], and they're like, 'When I go into court, I am concerned about applying
10 the law, but I'm also concerned that I should deny more, because if I don't, then
11 I'll get fired.'" Marco Poggio, *Judges See an Immigration Court Gutted from*
12 *Inside*, Law360 (Oct. 31, 2025),
13 [https://www.law360.com/articles/2381003/judges-see-an-immigration-court-](https://www.law360.com/articles/2381003/judges-see-an-immigration-court-gutted-from-inside)
14 [gutted-from-inside](https://www.law360.com/articles/2381003/judges-see-an-immigration-court-gutted-from-inside). Meanwhile, Department of Justice recruitment materials seek
15 "deportation judges" to fill the empty IJ slots, Coral Murphy Marcos, *US Justice*
16 *Department Recruiting Legal Experts to Serve as 'Deportation' Judges*,
17 Guardian, [https://www.theguardian.com/us-news/2025/nov/21/us-justice-](https://www.theguardian.com/us-news/2025/nov/21/us-justice-department-ad-deportation-judges)
18 [department-ad-deportation-judges](https://www.theguardian.com/us-news/2025/nov/21/us-justice-department-ad-deportation-judges), inviting candidates to "bring the hammer
19 down on criminal illegal aliens" and "defend your communities, your culture,
20 your very way of life." dhsgov, Instagram (Nov. 21, 2025),
21 <https://www.instagram.com/p/DRVT8DmCQKD/?hl=en>.

22 *Second*, a parallel purge occurred at the BIA, which was reduced from 28
23 members to 15 members. All Biden appointees on the BIA were fired. Am. Imm.
24 Council, *BIA Decision Strips Immigration Judges of Bond Authority, All but*
25 *Guaranteeing Mandatory Detention for Undocumented Immigrants* (Sept. 12,
26 2025), [https://www.americanimmigrationcouncil.org/blog/bia-ruling-](https://www.americanimmigrationcouncil.org/blog/bia-ruling-immigration-judges-bond-mandatory-detention-undocumented-immigrants/)
27 [immigration-judges-bond-mandatory-detention-undoc](https://www.americanimmigrationcouncil.org/blog/bia-ruling-immigration-judges-bond-mandatory-detention-undocumented-immigrants/) umented-immigrants/. The
28 statistical impact is stark. As of January 22, 2026, the reconstituted BIA has

1 issued 71 published decisions. Exec. Off. for Immigr. Rev., *Volume 29*, U.S. Dep't
2 of Just. (Jan. 21, 2025), <https://www.justice.gov/eoir/volume-29>. Of those, 69
3 decisions (97%) favored the administration. By contrast, during the entire four-
4 year span of the prior administration, the BIA issued 76 published decisions.
5 Exec. Off. for Immigr. Rev., *Volume 28*, U.S. Dep't of Just. (June 13, 2025),
6 <https://www.justice.gov/eoir/volume-28>. (First decision, *Matter of DIKHTYAR*,
7 28 I&N Dec. 214 (BIA 2021), issued 01/22/2021). Of those, 46 decisions (60%)
8 favored the administration. The transformation from 60% to 97% pro-government
9 outcomes—achieved through wholesale termination of one administration's
10 appointees—speaks for itself.

11 *Third*, beyond personnel changes, EOIR's new acting director, Sirce E.
12 Owen, has issued “a string of sharply worded policy memos” encouraging IJs to
13 side with the government over immigrants and minimize due process. E. Tammy
14 Kim, *Inside Donald Trump's Attack on Immigration Courts*, New Yorker,
15 <https://www.newyorker.com/inside-donald-trumps-attack-on-immigration-court>.
16 The policy directives include: a memorandum dated June 27, 2025 warning
17 judges not to demonstrate “bias directed against DHS” or to be “adjudicatory
18 outliers,” at risk of “close examination and potential action,” Exec. Off. for
19 Immigr. Rev., Policy Memorandum 25-33, Neutrality and Impartiality in
20 Immigration Court Proceedings (June 27, 2025), [https://iptp-](https://iptp-production.s3.amazonaws.com/media/documents/2025.06.27_EOIR_-_PM_25-33.pdf)
21 [production.s3.amazonaws.com/media/documents/2025.06.27_EOIR_-_PM_25-](https://iptp-production.s3.amazonaws.com/media/documents/2025.06.27_EOIR_-_PM_25-33.pdf)
22 [33.pdf](https://iptp-production.s3.amazonaws.com/media/documents/2025.06.27_EOIR_-_PM_25-33.pdf); a memorandum encouraging judges to deny asylum applications without
23 full evidentiary hearings, styled as efficiency guidance but functioning as a
24 directive to reduce due process protections, Exec. Off. for Immigr. Rev., Policy
25 Memorandum 25-28, Pretermission of Legally Insufficient Application for
26 Asylum (Apr. 11, 2025), [https://www.justice.gov/eoir/media/1396411/dl?inline](https://www.justice.gov/eoir/media/1396411/dl?inline;);
27 and memoranda restricting immigration judges' ability to grant continuances,
28 Exec. Off. for Immigr. Rev., Policy Memorandum 25-27, Cancellation of

1 Director's Memorandum 23-01 and Reinstatement of Policy Memorandum 19-13
2 (Mar. 21, 2025), <https://www.justice.gov/eoir/media/1394086/dl>, and
3 administrative closure, Exec. Off. for Immigr. Rev., Policy Memorandum 25-29,
4 Cancellation of Director's Memorandum 22-03 (Apr. 18, 2025),
5 <https://www.justice.gov/eoir/media/1397161/dl?inline>.

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

12 Please provide the following guidance to all immigration judges
13 forthwith: *Maldonado Bautista* is not a nationwide injunction and does
14 not purport to vacate, stay, or enjoin *Yajure Hurtado*. Therefore
15 *Yajure Hurtado* remains binding precedent on agency adjudications.
16 For clarification, declaratory judgments differ from injunctions in that
17 the former clarifies parties' legal rights and relationships without
18 ordering specific action, while the latter is a court order compelling a
19 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.

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

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

4 The “equitable and flexible nature of habeas relief” affords district
5 courts significant discretion over the appropriate remedies for violations of
6 law and the Constitution. *Velasco Lopez v. Decker*, 978 F.3d 842, 855 (2d Cir.
7 2020); *see also Schlup v. Delo*, 513 U.S. 298, 319 (1995) (“[H]abeas corpus
8 is, at its core, an equitable remedy”). This Court should order a remedy that
9 fully addresses the statutory and constitutional violations in this case and is
10 efficient to administer. *Carafas v. LaVallee*, 391 U.S. 234, 238 (1968) (the
11 habeas statute “does not limit the relief that may be granted to discharge of the
12 applicant from physical custody. Its mandate is broad with respect to the relief
13 that may be granted”).

14 **CLAIM AND PRAYER FOR RELIEF**

15 Accordingly, Petitioner respectfully requests that this Court:

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

17 “In recent months, courts across the country have ordered the release of
18 detainees in similar situations.” *Moctezuma v. Henkey*, No. 1:25-CV-
19 00741-BLW, 2026 WL 18809, at *5 (D. Idaho Jan. 2, 2026) (given that the
20 government’s repeated use of unlawful detention policies across the
21 country, causing petitioners to “sit in jail waiting for a judicial decision,”
22 the court would order immediate release instead of causing additional delay
23 through a bond hearing) (citing *Lepe v. Andrews*, 801 F. Supp. 3d 1104
24 (E.D. Cal. 2025); *J.U. v. Maldonado*, No. 25-cv-4836, 2025 WL 2772765,
25 at *10 (E.D.N.Y. Sept. 29, 2025); *Rosado v. Figueroa*, No. 25-cv-2157,
26 2025 WL 2337099, at *19 (D. Ariz. Aug. 11, 2025); *Pinchi v. Noem*, No.
27 25-cv-05632, 2025 WL 1853763, at *4 (N.D. Cal. July 4, 2025). *Santiago*
28 *v. Noem*, No. EP-25-CV-361, 2025 WL 2792588, at *13-14 (W.D. Tex.

1 Oct. 2, 2025) (“Without a legitimate interest in her detention, immediate
2 release appropriately remedies Respondents’ violation of [Petitioner’s] due
3 process rights through her continued detention.”). Order, ECF No. 14 at 19,
4 *Miri v. Bondi*, No. 5:26-CV-00698-MEMF (C.D. Cal. March 5, 2026)
5 (“Miri’s prompt release is the remedy that will best return Miri to the status
6 quo and restore his position as it was prior to the detention that Miri
7 contends was in violation of his constitutional and statutory protections.”).

8
9
10 **2. In the alternative, order a prompt § 1226(a) bond hearing, with**
11 **safeguards and oversight provided by this Court.** *See* Order, ECF
12 No. 13, *Sandesh v. LaRose*, No. 3:26-CV-00846-JES (S.D. Cal.
13 March 5, 2026). Specifically, the Court should order:

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

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

20 (b) The IJ shall consider alternative conditions of release and
21 Petitioner’s ability to pay bond. *Id.*

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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.

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

Respectfully submitted,

Dated: April 6, 2026

s/ Kara Hartzler

Kara Hartzler
Federal Defenders of San Diego, Inc.
Attorneys for Mr. Moghaddam
Email: kara_hartzler@fd.org