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

10 ANWAN NAGASH IBRAHIM,
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, JEREMY CASEY, Warden at
22 Imperial Regional Detention Center,
23
24 Respondents.

Civil Case No.:26-cv-2048-LL-DDL

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

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1 INTRODUCTION

2 Anwar Nagash Ibrahim is an asylum seeker from Kuwait who has been
3 detained pending his immigration proceedings for 20 months. This Court should
4 “join[] the majority of courts across the country in concluding that [his]
5 unreasonably prolonged detention under 8 U.S.C. § 1225(b) without an
6 individualized bond hearing violates due process.” *Kydyrali v. Wolf*, 499 F. Supp.
7 3d 768, 772 (S.D. Cal. 2020) (Battaglia, J.). It should do so because Mr. Ibrahim
8 satisfies the six-factor test set forth in *Banda v. McAleenan*, 385 F. Supp. 3d 1099,
9 1118 (W.D. Wash. 2019).

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

19 STATEMENT OF FACTS

20 Mr. Ibrahim was born in Kuwait and fled due to persecution. Declaration of
21 Anwar Nagash Ibrahim, at ¶ 1. On August 20, 2024, he entered the United States
22 unlawfully to seek asylum. *Id.* at ¶ 2. He was taken into custody and transferred to
23 Otay Mesa Detention Center. *Id.* at ¶ 2.

24 Mr. Ibrahim passed his credible fear interview and was put into removal
25 proceedings. *Id.* at ¶ 3. Neither he nor his attorney asked for any unreasonable
26 extensions. *Id.* at ¶ 3.

27 Mr. Ibrahim applied for asylum before the immigration judge. *Id.* at ¶ 4. On
28 December 3, 2025, he was granted protection under the Convention Against

1 Torture. *Id.* at ¶ 4. However, his case is currently on appeal to the BIA. *Id.* at ¶ 4.
2 If the BIA dismisses his appeal, he will likely appeal to the Ninth Circuit.

3
4 **LEGAL BACKGROUND**

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

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

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

26 First, in *Zadvydas v. Davis*, the Supreme Court indicated that indefinite
27 immigration detention raises serious due process concerns. 533 U.S. 678 (2001).
28 *Zadvydas* involved a statute authorizing the government to detain immigrants

1 after they are ordered removed. *Id.* at 683. For immigrants who cannot be
2 removed, that statute had the potential to subject them to years, decades, or a
3 lifetime in custody. *See id.* at 690. The Supreme Court held that if the statute
4 “permit[ed] indefinite detention of an alien[,] [it] would raise a serious
5 constitutional problem,” because

6 [t]he Fifth Amendment's Due Process Clause forbids the Government
7 to ‘depriv[e]’ any ‘person ... of ... liberty ... without due process of
8 law.’ Freedom from imprisonment—from government custody,
9 detention, or other forms of physical restraint—lies at the heart of the
10 liberty that Clause protects. *See Foucha v. Louisiana*, 504 U.S. 71, 80
11 (1992). And this Court has said that government detention violates
12 that Clause unless the detention is ordered in a *criminal* proceeding
13 with adequate procedural protections, *see United States v. Salerno*,
14 481 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).

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

19 Following *Zadvydas*, the Ninth Circuit applied similar reasoning to
20 § 1225(b). *Rodriguez v. Robbins*, 804 F.3d 1060, 1087–89 (9th Cir. 2015).
21 Employing the constitutional avoidance canon, the Ninth Circuit held that
22 § 1225(b) implicitly entitled detained immigrants to bond hearings every six
23 months. *Id.*

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

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

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

22 These Courts have relied on the due process concerns recognized in
23 *Zadvydas*. See, e.g., *Kydyrali*, 499 F. Supp. 3d at 771; *Banda*, 385 F. Supp. 3d at
24 1113–17; *Abdul Kadir v. Larose*, No. 25CV1045-LL-MMP, 2025 WL 2932654,
25 at *3 (S.D. Cal. Oct. 15, 2025). As the Ninth Circuit put it in *Jennings*’ wake,
26 those considerations raise “grave doubts that any statute that allows for arbitrary
27 prolonged detention without any process is constitutional or that those who
28 founded our democracy precisely to protect against the government’s arbitrary

1 deprivation of liberty would have thought so.” *Rodriguez v. Marin*, 909 F.3d 252,
2 256 (9th Cir. 2018).

3 Neither *Jennings* nor *Demore* undermines that conclusion. *Jennings* held
4 only that the statute itself did not impose any limits on detention. It “did not
5 foreclose as-applied constitutional challenges to detention under” mandatory-
6 detention statutes. *Santos v. Warden Pike Cnty. Corr. Facility*, 965 F.3d 203, 209
7 (3d Cir. 2020). And *Demore* held only that conviction-based mandatory detention
8 during immigration proceedings does not necessarily violate due process,
9 particularly when the detention has an expected duration of about five months. *Id.*
10 at 208–11. But many persons detained under § 1225(b)—like Mr. Ibrahim—do
11 not have criminal convictions. And as Justice Kennedy’s concurrence made clear,
12 *Demore* does not prevent immigrants from arguing that sufficiently prolonged
13 detention violates due process in their individual cases. *See id.*¹

14 Thus, this Court should hold that sufficiently prolonged detention violates
15 the Due Process Clause, as most courts have. *See, e.g., Gao v. LaRose*, No. 25-
16 CV-2084-RSH-SBC, 2025 WL 2770633, at *3 (S.D. Cal. Sept. 26, 2025); *Abdul*
17 *Kadir v. Larose*, No. 25CV1045-LL-MMP, 2025 WL 2932654, at *4 (S.D. Cal.
18 Oct. 15, 2025); *Cong v. Noem*, No. 25-CV-3730-GPC-DEB, 2026 WL 76566, at
19 *3 (S.D. Cal. Jan. 9, 2026); *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 772 (S.D. Cal.
20 2020) (Battaglia, J.); *Mardian v. Mayorkas*, 25-cv-3467-JLS; *Raeva v. Mayorkas*,
21 25-cv-3175-JO; *Abdul-Samed v. Warden of Golden State Annex Det. Facility*, No.
22 25-cv-98-SAB-HC, 2025 WL 2099343, at *6 (E.D. Cal. July 25, 2025);
23 *Hernandez v. Wofford*, No. 25-cv-986-KES-CDB (HC), 2025 WL 2420390, at *3
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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 (E.D. Cal. Aug. 21, 2025); *Padilla v. ICE*, 704 F. Supp. 3d 1163, 1171–72 (W.D.
2 Wash. 2023).

3 **II. Courts have reached different conclusions about when immigration**
4 **detention becomes indefinitely prolonged, but Mr. Ibrahim would**
5 **prevail under any standard, including the *Banda* factors.**

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

- 15 (1) the total length of detention to date;
- 16 (2) the likely duration of future detention;
- 17 (3) the conditions of detention;
- 18 (4) delays in the removal proceedings caused by the detainee;
- 19 (5) delays in the removal proceedings cause by the government; and
- 20 (6) the likelihood that the removal proceedings will result in a final order
21 of removal.

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

24 *First*, the “most important factor,” the length of detention, favors Mr.
25 Ibrahim. *Banda*, 385 F. Supp. 3d at 1118. In assessing this factor, “[i]t is
26 important to bear in mind the context: The detention that is being examined here
27 is the detention of a human being who has never been found to pose a danger to
28 the community or to be likely to flee if released.” *Jamal A. v. Whitaker*, 358 F.

1 Supp. 3d 853, 859 (D. Minn. 2019). With that context, courts have granted bond
2 hearings for persons detained between nine and eleven months. *See Ashemuke v.*
3 *ICE Field Off. Dir.*, No. C23-1592-RSL-MLP, 2024 WL 1683797, at *4 (W.D.
4 Wash. Feb. 29, 2024), *report and recommendation adopted*, No. C23-1592-RSL,
5 2024 WL 1676681 (W.D. Wash. Apr. 18, 2024) (“approximately eleven
6 months”); *Brissett v. Decker*, 324 F. Supp. 3d 444, 452 (S.D.N.Y. 2018) (“over
7 nine months”); *Perez v. Decker*, No. 18-CV-5279 (VEC), 2018 WL 3991497, at
8 *5 (S.D.N.Y. Aug. 20, 2018) (“more than nine months”); *Masood v. Barr*, No. 19-
9 CV-07623-JD, 2020 WL 95633, at *2 (N.D. Cal. Jan. 8, 2020) (“nearly nine
10 months”). Mr. Ibrahim has been detained for even longer, for 20 months. Exh. A
11 at ¶ 2. This factor therefore strongly favors Mr. Ibrahim.

12 *Second*, Mr. Ibrahim has reason to anticipate significant future detention, as
13 his case is on appeal to the BIA and will likely go to the Ninth Circuit. *Id.* at ¶ 4.
14 All told, “[t]his process may take up to two years or longer.” *Banda*, 385 F. Supp.
15 3d at 1119. Because “Petitioner’s future detention can last several more months or
16 even years[,]” this factor favors Mr. Ibrahim. *Abdul Kadir v. Larose*, No.
17 25CV1045-LL-MMP, 2025 WL 2932654, at *5 (S.D. Cal. Oct. 15, 2025).

18 *Third*, conditions of confinement weigh in favor of him. “Petitioner’s
19 confinement at [Otay Mesa Detention Center] is ‘indistinguishable from penal
20 confinement.’” *Abdul Kadir*, 2025 WL 2932654, at *5 (quoting *Kydyrali*, 499 F.
21 Supp. 3d at 773).

22 *Fourth and fifth*, Mr. Ibrahim has not caused any unreasonable delays in his
23 removal proceedings; thus, this factor is arguably neutral.

24 *Sixth*, regarding the likelihood that the removal proceedings will result in a
25 final order of removal, Mr. Ibrahim has a strong asylum claim and would likely
26 win on appeal. *Id.* at ¶ 4. Accordingly, under the *Banda* factors, Mr. Ibrahim is
27 entitled to release or a bond hearing.

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

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

10 Most importantly, reports are streaming in from this district and elsewhere
11 that court-ordered “bond hearings [are], effectively, stacked against detainees
12 from the start.” Kyle Cheney, *How ICE Defies Judges’ Orders to Release*
13 *Detainees, Step by Step*, Politico (Feb. 10, 2026),
14 [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)
15 [orders-00771727](https://www.politico.com/news/2026/02/10/ice-immigration-detention-court-orders-00771727).

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

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

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

23 This trend is also occurring in San Diego. In a recently filed declaration,
24 local attorney Edward Perez attests that he has similar concerns about some
25 immigration judges at Otay Mesa. In his experience, many Otay Mesa IJs are
26 resistant to implementing habeas orders requiring bond hearings. *Elsayed v.*
27 *Noem*, Case No. 26-cv-368, Doc. 5-2 at ¶ 7 (S.D. Cal. Feb. 9, 2026). These IJs
28 have begun denying bond on the ground that court hearings are coming up, and

1 release would disrupt the hearing schedule. *Id.* Of course, that logic could justify
2 any asylum seeker’s detention, and it has nothing to do with danger or flight. *Id.*
3 Furthermore, the Department of Homeland Security (“DHS”) has started
4 appealing bonds to take advantage of the automatic stay. *Id.* Both of these
5 strategies ensure that even those who pose no risk of danger or flight will stay in
6 detention. *Id.*

7 Judges have begun to take note of this trend and order that individuals be
8 released from custody, rather than granted a bond hearing. In *Said v. Noem*, a
9 court ordered a bond hearing for a habeas petitioner, only to learn that “[t]he IJ
10 denied Petitioner the opportunity to present testimony, declined to consider the
11 sworn, documentary evidence submitted by Petitioner, and based his decision on
12 an uncorroborated, unauthenticated claim by a government official that Petitioner
13 failed to share his location for the ISAP.” No. 3:25-CV-938-MOC, 2026 WL
14 295651, at *5 (W.D.N.C. Feb. 4, 2026). The original habeas Order “presupposed
15 that this hearing would be conducted in accordance with Petitioner’s due process
16 rights,” the court wrote. “It was not.” *Id.*

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

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

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

1 These IJs are under no illusions about why they were let go. Former
2 Baltimore IJ Emmett Soper stated: "I think the current administration of the
3 immigration courts does not fundamentally see the immigration courts as neutral
4 decision-makers. I think that they see the immigration courts as a tool for this
5 administration to advance its policy objectives." Geoff Bennett & Ali Schmitz,
6 *Ousted Immigration Judge Describes Deepening Court Backlog*, PBS NewsHour
7 (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)
8 [describes-deepening-court-backlog](https://www.pbs.org/newshour/show/ousted-immigration-judge-describes-deepening-court-backlog). Former San Francisco IJ Jeremiah Johnson
9 similarly understood "the hint that they should be hearing cases a certain way,
10 deciding cases a certain way. Move faster. Less due process, essentially." Hilda
11 Gutierrez, Michael Bott & Son Vo, *'An all-out attack on immigration court:' SF*
12 *immigration judges speak out after firings*, NBC Bay Area (Nov. 25, 2025),
13 [https://www.nbcbayarea.com/investigations/san-francisco-immigration-judges-](https://www.nbcbayarea.com/investigations/san-francisco-immigration-judges-speak-out-firings/3986850/)
14 [speak-out-firings/3986850/](https://www.nbcbayarea.com/investigations/san-francisco-immigration-judges-speak-out-firings/3986850/). Former San Francisco IJ George Pappas was even
15 more direct: "We were told to facilitate deportation... Due process is dead in
16 immigration courts." Isabela Dias, *"Fired for No Reason": Former Immigration*
17 *Judges Speak Out Against Trump's Assault on the Courts*, Mother Jones (Oct. 9,
18 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/)
19 [trump-assault-purge-dhs-ice/](https://www.motherjones.com/politics/2025/10/immigration-court-judge-trump-assault-purge-dhs-ice/).

20 This has had the predictable effect on those who remain. According to
21 former San Francisco IJ Elizabeth Young, "I've talked to many of [the judges still
22 serving], and they're like, 'When I go into court, I am concerned about applying
23 the law, but I'm also concerned that I should deny more, because if I don't, then
24 I'll get fired.'" Marco Poggio, *Judges See an Immigration Court Gutted from*
25 *Inside*, Law360 (Oct. 31, 2025),
26 [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)
27 [gutted-from-inside](https://www.law360.com/articles/2381003/judges-see-an-immigration-court-gutted-from-inside). Meanwhile, Department of Justice recruitment materials seek
28 "deportation judges" to fill the empty IJ slots, Coral Murphy Marcos, *US Justice*

1 *Department Recruiting Legal Experts to Serve as 'Deportation' Judges,*
2 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)
3 [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
4 down on criminal illegal aliens” and “defend your communities, your culture,
5 your very way of life.” dhsgov, Instagram (Nov. 21, 2025),
6 <https://www.instagram.com/p/DRVT8DmCQKD/?hl=en>.

7 *Second*, a parallel purge occurred at the BIA, which was reduced from 28
8 members to 15 members. All Biden appointees on the BIA were fired. Am. Imm.
9 Council, *BIA Decision Strips Immigration Judges of Bond Authority, All but*
10 *Guaranteeing Mandatory Detention for Undocumented Immigrants* (Sept. 12,
11 2025), [https://www.americanimmigrationcouncil.org/blog/bia-ruling-](https://www.americanimmigrationcouncil.org/blog/bia-ruling-immigration-judges-bond-mandatory-detention-undocumented-immigrants/)
12 [immigration-judges-bond-mandatory-detention-undocumented-immigrants/](https://www.americanimmigrationcouncil.org/blog/bia-ruling-immigration-judges-bond-mandatory-detention-undocumented-immigrants/). The
13 statistical impact is stark. As of January 22, 2026, the reconstituted BIA has
14 issued 71 published decisions. Exec. Off. for Immigr. Rev., *Volume 29*, U.S. Dep't
15 of Just. (Jan. 21, 2025), <https://www.justice.gov/eoir/volume-29>. Of those, 69
16 decisions (97%) favored the administration. By contrast, during the entire four-
17 year span of the prior administration, the BIA issued 76 published decisions.
18 Exec. Off. for Immigr. Rev., *Volume 28*, U.S. Dep't of Just. (June 13, 2025),
19 <https://www.justice.gov/eoir/volume-28>. (First decision, *Matter of DIKHITYAR*,
20 28 I&N Dec. 214 (BIA 2021), issued 01/22/2021). Of those, 46 decisions (60%)
21 favored the administration. The transformation from 60% to 97% pro-government
22 outcomes—achieved through wholesale termination of one administration's
23 appointees —speaks for itself.

24 *Third*, beyond personnel changes, EOIR's new acting director, Sirce E.
25 Owen, has issued “a string of sharply worded policy memos” encouraging IJs to
26 side with the government over immigrants and minimize due process. E. Tammy
27 Kim, *Inside Donald Trump's Attack on Immigration Courts*, New Yorker,
28 <https://www.newyorker.com/inside-donald-trumps-attack-on-immigration-court>.

1 The policy directives include: a memorandum dated June 27, 2025 warning
2 judges not to demonstrate “bias directed against DHS” or to be “adjudicatory
3 outliers,” at risk of “close examination and potential action,” Exec. Off. for
4 Immigr. Rev., Policy Memorandum 25-33, Neutrality and Impartiality in
5 Immigration Court Proceedings (June 27, 2025), [https://iptp-](https://iptp-production.s3.amazonaws.com/media/documents/2025.06.27_EOIR_-_PM_25-33.pdf)
6 [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)
7 [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
8 full evidentiary hearings, styled as efficiency guidance but functioning as a
9 directive to reduce due process protections, Exec. Off. for Immigr. Rev., Policy
10 Memorandum 25-28, Pretermission of Legally Insufficient Application for
11 Asylum (Apr. 11, 2025), [https://www.justice.gov/eoir/media/1396411/dl?inline](https://www.justice.gov/eoir/media/1396411/dl?inline;);
12 and memoranda restricting immigration judges’ ability to grant continuances,
13 Exec. Off. for Immigr. Rev., Policy Memorandum 25-27, Cancellation of
14 Director's Memorandum 23-01 and Reinstatement of Policy Memorandum 19-13
15 (Mar. 21, 2025), <https://www.justice.gov/eoir/media/1394086/dl>, and
16 administrative closure, Exec. Off. for Immigr. Rev., Policy Memorandum 25-29,
17 Cancellation of Director's Memorandum 22-03 (Apr. 18, 2025),
18 <https://www.justice.gov/eoir/media/1397161/dl?inline>.

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

25 Please provide the following guidance to all immigration judges
26 forthwith: *Maldonado Bautista* is not a nationwide injunction and does
27 not purport to vacate, stay, or enjoin *Yajure Hurtado*. Therefore
28 *Yajure Hurtado* remains binding precedent on agency adjudications.
For clarification, declaratory judgments differ from injunctions in that

1 the former clarifies parties' legal rights and relationships without
2 ordering specific action, while the latter is a court order compelling a
3 party to do or stop doing a specific act. A declaratory judgment is not
4 an equitable remedy and does not, by itself, have the effect of
5 compelling specific action by a party. Thank you for your attention to
6 this matter.

6 Am. Immigr. Laws. Ass'n, Practice Alert: EOIR Issues Nationwide Guidance
7 on *Maldonado Bautista*, AILA Doc. No. 26011404 (Jan. 16, 2026),
8 [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)
9 [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,
10 calling out “Respondents’ deliberate choice to continue defying the final
11 judgment entered in *Bautista*.” *Palomera Baltazar v. Janecka*, No. 5:26-cv-
12 00019-SSS-BFM at *2-3 (C.D. Cal. Jan. 16, 2026).

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

16 The “equitable and flexible nature of habeas relief” affords district
17 courts significant discretion over the appropriate remedies for violations of
18 law and the Constitution. *Velasco Lopez v. Decker*, 978 F.3d 842, 855 (2d Cir.
19 2020); *see also Schlup v. Delo*, 513 U.S. 298, 319 (1995) (“[H]abeas corpus
20 is, at its core, an equitable remedy”). This Court should order a remedy that
21 fully addresses the statutory and constitutional violations in this case and is
22 efficient to administer. *Carafas v. LaVallee*, 391 U.S. 234, 238 (1968) (the
23 habeas statute “does not limit the relief that may be granted to discharge of the
24 applicant from physical custody. Its mandate is broad with respect to the relief
25 that may be granted”).

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CLAIM AND PRAYER FOR RELIEF

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. 1:25-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. 5:26-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.”).

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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:

1. Respondents provide Petitioner with a hearing and individualized bond determination within **ten days** of its order. *Id.*
 - (a) At that hearing, the government shall bear the burden of establishing by clear and convincing evidence that Petitioner poses a danger or flight risk. *Id.*
 - (b) The IJ shall consider alternative conditions of release and Petitioner’s ability to pay bond. *Id.*
 - (c) Respondents shall make a complete record of the bond hearing available to Petitioner and his counsel. *Id.*
2. Respondents are ordered to file a Notice of Compliance within **five days** of providing Petitioner with the bond hearing, including apprising the Court of the results of the hearing. *Id.*
3. Prohibit ICE from invoking the automatic stay provisions under 8 C.F.R. § 1003.19(i)(2) to defeat the IJ’s bond determination.

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

Respectfully submitted,

Dated: April 8, 2026

s/ Kara Hartzler
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