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

10 GOCHA KUKHUA,
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-2089-RBM-
BJW

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

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1 INTRODUCTION

2 Gocha Kuhkhua is an asylum seeker from Georgia who has been detained
3 pending his immigration proceedings for 16 months. He has three abnormal
4 growths in his abdomen and liver that are not receiving treatment and are causing
5 him severe pain. This Court should “join[] the majority of courts across the
6 country in concluding that [his] unreasonably prolonged detention under 8 U.S.C.
7 § 1225(b) without an individualized bond hearing violates due process.” *Kydyrali*
8 *v. Wolf*, 499 F. Supp. 3d 768, 772 (S.D. Cal. 2020) (Battaglia, J.). It should do so
9 because Mr. Kuhkhua satisfies the six-factor test set forth in *Banda v. McAleenan*,
10 385 F. Supp. 3d 1099, 1118 (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. Kuhkhua was born in Georgia. Declaration of Gocha Kuhkhua, at ¶ 1.
22 Because of his political activism and sexual orientation, Mr. Kuhkhua was
23 persecuted there and fled to avoid being killed. *Id.* at ¶ 1.

24 On December 25, 2024, Mr. Kuhkhua entered the United States unlawfully
25 to seek asylum. *Id.* at ¶ 2. After Border Patrol agents apprehended him, he was
26 taken to the hospital and then transferred to Otay Mesa Detention Center. *Id.* at ¶
27 2.
28 //

1 Mr. Kuhkhua passed his credible fear interview and was put into removal
2 proceedings. *Id.* at ¶ 3. Neither he nor his attorney asked for any unreasonable
3 extensions. *Id.* at ¶ 3.

4 Mr. Kuhkhua applied for asylum before the immigration judge. *Id.* at ¶ 4.
5 But on December 17, 2025, the judge denied his application and ordered him
6 removed. *Id.* at ¶ 4. He appealed his case to the BIA, where it is currently
7 pending. *Id.* at ¶ 4. If the BIA dismisses his appeal, he will likely appeal to the
8 Ninth Circuit. *Id.* at ¶ 4.

9 My Kuhkhua has been detained for over 16 months. *Id.* at ¶ 5. In the last
10 four months, he has developed three abnormal growths in his liver and abdomen
11 that are causing him severe pain. *Id.* at ¶ 5. The doctors are not treating these
12 growths; they are simply giving him painkillers. *Id.* at ¶ 5. But the painkillers are
13 not working, and Mr. Kuhkhua spends most of the day in excruciating pain and
14 cannot sleep at night. *Id.* at ¶ 5. He also suffers from a hernia and diabetes. *Id.* at ¶
15 5.

16 LEGAL BACKGROUND

17 **I. The Fifth Amendment’s Due Process Clause prohibits prolonged** 18 **immigration detention without a bond hearing.**

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

1 finding that petitioner was detained under § 1225(b)). Such immigrants are
2 detained under § 1225(b) not only during their initial proceedings, but also when
3 they appeal to the BIA. *See id.* at 1111 (reaching same conclusion for immigrant
4 with pending BIA appeal).

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

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

18 [t]he Fifth Amendment's Due Process Clause forbids the Government
19 to ‘depriv[e] any ‘person ... of ... liberty ... without due process of
20 law.’ Freedom from imprisonment—from government custody,
21 detention, or other forms of physical restraint—lies at the heart of the
22 liberty that Clause protects. *See Foucha v. Louisiana*, 504 U.S. 71, 80
23 (1992). And this Court has said that government detention violates
24 that Clause unless the detention is ordered in a *criminal* proceeding
25 with adequate procedural protections, *see United States v. Salerno*,
26 481 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).

27 *Id.* Ultimately, however, the Court declined to decide whether a statute permitting
28 indefinite detention would violate the Due Process Clause. Instead, the Court

1 employed the constitutional avoidance canon to read implicit limits into the
2 statute, requiring release after detention became sufficiently prolonged. *Id.* at 699.

3 Following *Zadvydas*, the Ninth Circuit applied similar reasoning to
4 § 1225(b). *Rodriguez v. Robbins*, 804 F.3d 1060, 1087–89 (9th Cir. 2015).
5 Employing the constitutional avoidance canon, the Ninth Circuit held that
6 § 1225(b) implicitly entitled detained immigrants to bond hearings every six
7 months. *Id.*

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

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

26 “In the wake of *Jennings*,” *Zadvydas*, and *Demore*, “district courts have
27 grappled with how to address due process challenges to prolonged mandatory
28 detention under § 1225(b).” *Banda*, 385 F. Supp. 3d at 1116. But after a full

1 evaluation, “[n]early all district courts that have considered the issue agree that
2 prolonged mandatory detention pending removal proceedings, without a bond
3 hearing, will—at some point—violate the right to due process.” *Id.* (cleaned up)
4 (collecting cases).

5 These Courts have relied on the due process concerns recognized in
6 *Zadvydas*. See, e.g., *Kydyrali*, 499 F. Supp. 3d at 771; *Banda*, 385 F. Supp. 3d at
7 1113–17; *Abdul Kadir v. Larose*, No. 25CV1045-LL-MMP, 2025 WL 2932654,
8 at *3 (S.D. Cal. Oct. 15, 2025). As the Ninth Circuit put it in *Jennings*’ wake,
9 those considerations raise “grave doubts that any statute that allows for arbitrary
10 prolonged detention without any process is constitutional or that those who
11 founded our democracy precisely to protect against the government’s arbitrary
12 deprivation of liberty would have thought so.” *Rodriguez v. Marin*, 909 F.3d 252,
13 256 (9th Cir. 2018).

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

25
26 ¹ The Supreme Court’s later decision in *Dep’t of Homeland Sec. v. Thuraissigiam*,
27 591 U.S. 103 (2020), is also inapposite, because it addressed only immigrants’ due
28 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

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. Kuhkhua 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;

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before the government holds them indefinitely in immigration detention. *Id.*

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

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

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

24 *Second*, Mr. Kuhkhua has reason to anticipate significant future detention,
25 as his case is on appeal to the BIA and will likely go to the Ninth Circuit. *Id.* at
26 ¶ 4. All told, “[t]his process may take up to two years or longer.” *Banda*, 385 F.
27 Supp. 3d at 1119. Because “Petitioner’s future detention can last several more
28

1 months or even years[.]” this factor favors Mr. Kuhkhua. *Abdul Kadir v. Larose*,
2 No. 25CV1045-LL-MMP, 2025 WL 2932654, at *5 (S.D. Cal. Oct. 15, 2025).

3 *Third*, conditions of confinement weigh in favor of him. “Petitioner's
4 confinement at [Otay Mesa Detention Center] is ‘indistinguishable from penal
5 confinement.’” *Abdul Kadir*, 2025 WL 2932654, at *5 (quoting *Kydyrali*, 499 F.
6 Supp. 3d at 773). And in the last four months, he has developed three abnormal
7 growths in his liver and abdomen that are causing him severe pain. Exh. A at ¶ 5.
8 The doctors at the detention center are not treating these growths; they are simply
9 giving him painkillers. *Id.* at ¶ 5. But the painkillers are not working, and Mr.
10 Kuhkhua spends most of the day in excruciating pain and cannot sleep at night.
11 *Id.* at ¶ 5. Thus, the conditions of confinement are severely affecting his well-
12 being.

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

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

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

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

28

1 Most importantly, reports are streaming in from this district and elsewhere
2 that court-ordered “bond hearings [are], effectively, stacked against detainees
3 from the start.” Kyle Cheney, *How ICE Defies Judges’ Orders to Release*
4 *Detainees, Step by Step*, Politico (Feb. 10, 2026),
5 [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)
6 [orders-00771727](https://www.politico.com/news/2026/02/10/ice-immigration-detention-court-orders-00771727).

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

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

28

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

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

26 Judges have begun to take note of this trend and order that individuals be
27 released from custody, rather than granted a bond hearing. In *Said v. Noem*, a
28 court ordered a bond hearing for a habeas petitioner, only to learn that “[t]he IJ

1 denied Petitioner the opportunity to present testimony, declined to consider the
2 sworn, documentary evidence submitted by Petitioner, and based his decision on
3 an uncorroborated, unauthenticated claim by a government official that Petitioner
4 failed to share his location for the ISAP.” No. 3:25-CV-938-MOC, 2026 WL
5 295651, at *5 (W.D.N.C. Feb. 4, 2026). The original habeas Order “presupposed
6 that this hearing would be conducted in accordance with Petitioner's due process
7 rights,” the court wrote. “It was not.” *Id.*

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

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

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

20 These IJs are under no illusions about why they were let go. Former
21 Baltimore IJ Emmett Soper stated: "I think the current administration of the
22 immigration courts does not fundamentally see the immigration courts as neutral
23 decision-makers. I think that they see the immigration courts as a tool for this
24 administration to advance its policy objectives." Geoff Bennett & Ali Schmitz,
25 *Ousted Immigration Judge Describes Deepening Court Backlog*, PBS NewsHour
26 (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)
27 [describes-deepening-court-backlog](https://www.pbs.org/newshour/show/ousted-immigration-judge-describes-deepening-court-backlog). Former San Francisco IJ Jeremiah Johnson
28 similarly understood “the hint that they should be hearing cases a certain way,

1 deciding cases a certain way. Move faster. Less due process, essentially.” Hilda
2 Gutierrez, Michael Bott & Son Vo, *'An all-out attack on immigration court: SF*
3 *immigration judges speak out after firings*, NBC Bay Area (Nov. 25, 2025),
4 [https://www.nbcbayarea.com/investigations/san-francisco-immigration-judges-](https://www.nbcbayarea.com/investigations/san-francisco-immigration-judges-speak-out-firings/3986850/)
5 [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
6 more direct: “We were told to facilitate deportation... Due process is dead in
7 immigration courts.” Isabela Dias, *“Fired for No Reason”: Former Immigration*
8 *Judges Speak Out Against Trump’s Assault on the Courts*, Mother Jones (Oct. 9,
9 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/)
10 [trump-assault-purge-dhs-ice/](https://www.motherjones.com/politics/2025/10/immigration-court-judge-trump-assault-purge-dhs-ice/).

11 This has had the predictable effect on those who remain. According to
12 former San Francisco IJ Elizabeth Young, “I’ve talked to many of [the judges still
13 serving], and they’re like, ‘When I go into court, I am concerned about applying
14 the law, but I’m also concerned that I should deny more, because if I don’t, then
15 I’ll get fired.’” Marco Poggio, *Judges See an Immigration Court Guttled from*
16 *Inside*, Law360 (Oct. 31, 2025),
17 [https://www.law360.com/articles/2381003/judges-see-an-immigration-court-](https://www.law360.com/articles/2381003/judges-see-an-immigration-court-guttled-from-inside)
18 [guttled-from-inside](https://www.law360.com/articles/2381003/judges-see-an-immigration-court-guttled-from-inside). Meanwhile, Department of Justice recruitment materials seek
19 “deportation judges” to fill the empty IJ slots, Coral Murphy Marcos, *US Justice*
20 *Department Recruiting Legal Experts to Serve as ‘Deportation’ Judges*,
21 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)
22 [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
23 down on criminal illegal aliens” and “defend your communities, your culture,
24 your very way of life.” dhsgov, Instagram (Nov. 21, 2025),
25 <https://www.instagram.com/p/DRVT8DmCQKD/?hl=en>.

26 *Second*, a parallel purge occurred at the BIA, which was reduced from 28
27 members to 15 members. All Biden appointees on the BIA were fired. Am. Imm.
28 Council, *BIA Decision Strips Immigration Judges of Bond Authority, All but*

1 *Guaranteeing Mandatory Detention for Undocumented Immigrants* (Sept. 12,
2 2025), [https://www.americanimmigrationcouncil.org/blog/bia-ruling-
3 immigration-judges-bond-mandatory-detention-undocumented-immigrants/](https://www.americanimmigrationcouncil.org/blog/bia-ruling-immigration-judges-bond-mandatory-detention-undocumented-immigrants/). The
4 statistical impact is stark. As of January 22, 2026, the reconstituted BIA has
5 issued 71 published decisions. Exec. Off. for Immigr. Rev., *Volume 29*, U.S. Dep't
6 of Just. (Jan. 21, 2025), <https://www.justice.gov/eoir/volume-29>. Of those, 69
7 decisions (97%) favored the administration. By contrast, during the entire four-
8 year span of the prior administration, the BIA issued 76 published decisions.
9 Exec. Off. for Immigr. Rev., *Volume 28*, U.S. Dep't of Just. (June 13, 2025),
10 <https://www.justice.gov/eoir/volume-28>. (First decision, *Matter of DIKHTYAR*,
11 28 I&N Dec. 214 (BIA 2021), issued 01/22/2021). Of those, 46 decisions (60%)
12 favored the administration. The transformation from 60% to 97% pro-government
13 outcomes—achieved through wholesale termination of one administration's
14 appointees—speaks for itself.

15 *Third*, beyond personnel changes, EOIR's new acting director, Sirce E.
16 Owen, has issued “a string of sharply worded policy memos” encouraging IJs to
17 side with the government over immigrants and minimize due process. E. Tammy
18 Kim, *Inside Donald Trump's Attack on Immigration Courts*, New Yorker,
19 <https://www.newyorker.com/inside-donald-trumps-attack-on-immigration-court>.
20 The policy directives include: a memorandum dated June 27, 2025 warning
21 judges not to demonstrate “bias directed against DHS” or to be “adjudicatory
22 outliers,” at risk of “close examination and potential action,” Exec. Off. for
23 Immigr. Rev., Policy Memorandum 25-33, Neutrality and Impartiality in
24 Immigration Court Proceedings (June 27, 2025), [https://iptp-
25 production.s3.amazonaws.com/media/documents/2025.06.27_EOIR_-_PM_25-
26 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
27 full evidentiary hearings, styled as efficiency guidance but functioning as a
28 directive to reduce due process protections, Exec. Off. for Immigr. Rev., Policy

1 Memorandum 25-28, Pretermission of Legally Insufficient Application for
2 Asylum (Apr. 11, 2025), <https://www.justice.gov/eoir/media/1396411/dl?inline>;
3 and memoranda restricting immigration judges' ability to grant continuances,
4 Exec. Off. for Immigr. Rev., Policy Memorandum 25-27, Cancellation of
5 Director's Memorandum 23-01 and Reinstatement of Policy Memorandum 19-13
6 (Mar. 21, 2025), <https://www.justice.gov/eoir/media/1394086/dl>, and
7 administrative closure, Exec. Off. for Immigr. Rev., Policy Memorandum 25-29,
8 Cancellation of Director's Memorandum 22-03 (Apr. 18, 2025),
9 <https://www.justice.gov/eoir/media/1397161/dl?inline>.

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

16 Please provide the following guidance to all immigration judges
17 forthwith: *Maldonado Bautista* is not a nationwide injunction and does
18 not purport to vacate, stay, or enjoin *Yajure Hurtado*. Therefore
19 *Yajure Hurtado* remains binding precedent on agency adjudications.
20 For clarification, declaratory judgments differ from injunctions in that
21 the former clarifies parties' legal rights and relationships without
22 ordering specific action, while the latter is a court order compelling a
23 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.

24 Am. Immigr. Laws. Ass'n, Practice Alert: EOIR Issues Nationwide Guidance
25 on *Maldonado Bautista*, AILA Doc. No. 26011404 (Jan. 16, 2026),
26 [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)
27 [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,
28 calling out "Respondents' deliberate choice to continue defying the final

1 judgment entered in *Bautista*.” *Palomera Baltazar v. Janecka*, No. 5:26-cv-
2 00019-SSS-BFM at *2-3 (C.D. Cal. Jan. 16, 2026).

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

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

16 **CLAIM AND PRAYER FOR RELIEF**

17 Accordingly, Petitioner respectfully requests that this Court:

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

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

1 25-cv-05632, 2025 WL 1853763, at *4 (N.D. Cal. July 4, 2025). *Santiago*
2 *v. Noem*, No. EP-25-CV-361, 2025 WL 2792588, at *13-14 (W.D. Tex.
3 Oct. 2, 2025) (“Without a legitimate interest in her detention, immediate
4 release appropriately remedies Respondents’ violation of [Petitioner’s] due
5 process rights through her continued detention.”). Order, ECF No. 14 at 19,
6 *Miri v. Bondi*, No. 5:26-CV-00698-MEMF (C.D. Cal. March 5, 2026)
7 (“Miri’s prompt release is the remedy that will best return Miri to the status
8 quo and restore his position as it was prior to the detention that Miri
9 contends was in violation of his constitutional and statutory protections.”).

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.*
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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 15, 2026

s/ Kara Hartzler
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