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

SYLVIOUS ATANGA,

Petitioner,

v.

CHRISTOPHER LAROSE, Warden,
Otay Mesa Detention Center,

Respondents.

CIVIL CASE NO.: 26-cv-2312-BAS

**Amended¹ Petition
for a
Writ of Habeas Corpus**

Sylvious Atanga has been detained pending his immigration proceedings for over a year. This Court should “join[] the majority of courts across the country in concluding that [his] unreasonably prolonged detention under 8 U.S.C. § 1225(b) without an individualized bond hearing violates due process.” *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 772 (S.D. Cal. 2020) (Battaglia, J.).

STATEMENT OF FACTS

Sylvious Atanga, a citizen of Cameroon, came to the United States on April 11, 2025. Exh. A at ¶ 1. He was immediately arrested. *Id.* He lost his immigration

¹ Federal Rule of Civil Procedure 15(a)(1)(A) permits a party to “amend its pleading once as a matter of course no later than 21 days after serving it.” Fed. R. Civ. Pro. 15(a)(1)(A) (punctuation altered). It is less than 21 days since service. Mr. Atanga therefore files this amended petition as of right.

1 case on December 17, 2026. *Id.* at ¶ 2.²

2 He then appealed to the BIA. *Id.* at ¶ 4. He lodged his appeal on January 10,
3 2026. Exh. B at ¶ 2. But the BIA did not even issue a briefing schedule in the appeal
4 until 3.5 months later, on April 28, 2026. *Id.* at ¶ 3. As Mr. Atanga's lawyer Ifang
5 Andong attests, even the (late) issuance of this briefing schedule "does not
6 guarantee a reasonable foreseeable resolution of Mr. Atanga's case in immigration
7 court." *Id.* "The appellate process before the immigration courts is, by its nature,
8 indeterminate in duration. The submission of briefs is only one preliminary step in
9 the adjudicatory process." *Id.* "There is no statutory or regulatory deadline requiring
10 the immigration courts to issue a decision within a fixed period following the
11 submission of briefs." *Id.* Based on publicly available information, coupled with
12 Mr. Andong's prior experience in immigration proceedings, "appellate
13 adjudications in immigration court often take many months, and in certain cases
14 years after briefing is completed." *Id.* "In addition, even after the courts adjudicate
15 the appeal, the matter may be remanded and further appealed, making Mr. Atanga's
16 detention to be extended even further." *Id.*

17 LEGAL BACKGROUND

18 I. The Fifth Amendment's Due Process Clause prohibits prolonged 19 immigration detention without a bond hearing.

20 This habeas petition presents a question about whether and when the Fifth
21 Amendment's Due Process Clause countermands the government's statutory
22 authority to detain immigrants without bond hearings. Mr. Atanga is detained under
23

24 ² Mr. Atanga set forth a full procedural history for his immigration case in his
25 previous habeas filings, all of which he incorporates here by reference. *Atanga v.*
26 *LaRose*, 26-cv-1137-BAS. As explained in those filings, the immigration court was
27 responsible for substantial, unjustified delays in processing his asylum case, while
28 his attorney did not delay at all. Though this Court did not disagree with that
characterization, the Court felt that because Mr. Atanga acted so quickly, he
compensated for the immigration court's delays, and the overall time for the
proceedings was not unreasonable. This petition therefore focuses on updates since
the last petition's denial.

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

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

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

25 [t]he Fifth Amendment's Due Process Clause forbids the Government
26 to ‘depriv[e]’ any ‘person ... of ... liberty ... without due process of law.’
27 Freedom from imprisonment—from government custody, detention, or
28 other forms of physical restraint—lies at the heart of the liberty that
Clause protects. *See Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). And
this Court has said that government detention violates that Clause unless

1 the detention is ordered in a *criminal* proceeding with adequate
2 procedural protections, *see United States v. Salerno*, 481 U.S. 739, 746
3 (1987), or, in certain special and ‘narrow’ nonpunitive ‘circumstances,’
4 *Foucha, supra*, at 80, where a special justification, such as harm-
5 threatening mental illness, outweighs the ‘individual’s constitutionally
6 protected interest in avoiding physical restraint.’ *Kansas v. Hendricks*,
7 521 U.S. 346, 356 (1997).

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

12 Following *Zadvydas*, the Ninth Circuit applied similar reasoning to
13 § 1225(b). *Rodriguez v. Robbins*, 804 F.3d 1060, 1087–89 (9th Cir. 2015).
14 Employing the constitutional avoidance canon, the Ninth Circuit held that
15 § 1225(b) implicitly entitled detained immigrants to bond hearings every six
16 months. *Id.*

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

23 Finally, the Supreme Court held in *Demore v. Kim* that at least some statutes
24 mandating detention during immigration proceedings do not automatically violate
25 the Due Process Clause. 538 U.S. 510, 513 (2003). *Demore* addressed 8 U.S.C.
26 § 1226(c), which mandates detention without a bond hearing for persons with
27 certain criminal convictions. *Id.* The Court upheld § 1226(c) in a 5-4 opinion based
28 on (1) the government interests justifying the detention of immigrants with certain,
aggravated criminal convictions, and (2) the relative brevity of detention in most
cases, with the vast majority taking only about five months. *Id.* at 517–31. Justice

1 Kennedy supplied a deciding vote. His concurrence left open the possibility that
2 individual immigrants could be “entitled to an individualized determination as to
3 his risk of flight and dangerousness if the continued detention became unreasonable
4 or unjustified.” *Id.* at 532–33.

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

12 These Courts have relied on the due process concerns recognized in
13 *Zadvydas*. See, e.g., *Kydyrali*, 499 F. Supp. 3d at 771; *Banda*, 385 F. Supp. 3d at
14 1113–17; *Abdul Kadir v. Larose*, No. 25CV1045-LL-MMP, 2025 WL 2932654, at
15 *3 (S.D. Cal. Oct. 15, 2025). As the Ninth Circuit put it in *Jennings*’ wake, those
16 considerations raise “grave doubts that any statute that allows for arbitrary
17 prolonged detention without any process is constitutional or that those who founded
18 our democracy precisely to protect against the government’s arbitrary deprivation
19 of liberty would have thought so.” *Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir.
20 2018).

21 Neither *Jennings* nor *Demore* undermines that conclusion. *Jennings* held
22 only that the statute itself did not impose any limits on detention. It “did not
23 foreclose as-applied constitutional challenges to detention under” mandatory-
24 detention statutes. *Santos v. Warden Pike Cnty. Corr. Facility*, 965 F.3d 203, 209
25 (3d Cir. 2020). And *Demore* held only that conviction-based mandatory detention
26 during immigration proceedings does not necessarily or inherently violate the Due
27 Process Clause, particularly when the detention has an expected duration of only
28 about five months. *Id.* at 208–11. But many persons detained under § 1225(b)—

1 like Mr. Atanga—do not have criminal convictions. And as Justice Kennedy’s
2 concurrence made clear, *Demore* does not prevent immigrants from arguing that
3 sufficiently prolonged detention violates due process in their individual cases. *See*
4 *id.*³

5 Thus, this Court should hold that sufficiently prolonged detention violates
6 the Due Process Clause, as most courts have. *See, e.g., Gao v. LaRose*, No. 25-CV-
7 2084-RSH-SBC, 2025 WL 2770633, at *3 (S.D. Cal. Sept. 26, 2025); *Abdul Kadir*
8 *v. Larose*, No. 25CV1045-LL-MMP, 2025 WL 2932654, at *4 (S.D. Cal. Oct. 15,
9 2025); *Cong v. Noem*, No. 25-CV-3730-GPC-DEB, 2026 WL 76566, at *3 (S.D.
10 Cal. Jan. 9, 2026); *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 772 (S.D. Cal. 2020)
11 (Battaglia, J.); *Mardian v. Mayorkas*, 25-cv-3467-JLS; *Raeva v. Mayorkas*, 25-cv-
12 3175-JO; *Abdul-Samed v. Warden of Golden State Annex Det. Facility*, No. 25-cv-
13 98-SAB-HC, 2025 WL 2099343, at *6 (E.D. Cal. July 25, 2025); *Hernandez v.*
14 *Wofford*, No. 25-cv-986-KES-CDB (HC), 2025 WL 2420390, at *3 (E.D. Cal. Aug.
15 21, 2025); *Padilla v. ICE*, 704 F. Supp. 3d 1163, 1171–72 (W.D. Wash. 2023).

16 **II. Courts have reached different conclusions about when immigration**
17 **detention becomes indefinitely prolonged, but Mr. Atanga would prevail**
18 **under any standard.**

19 Though courts agree that due process mandates a bond hearing when
20 detention grows unreasonably prolonged, they disagree about how to assess
21 whether a particular migrant’s detention has reached that point. *Sanchez-Rivera v.*
22 *Matuszewski*, No. 22-CV-1357-MMA (JLB), 2023 WL 139801, at *5–6 (S.D. Cal.
23 Jan. 9, 2023) (Anello, J.) (surveying the various approaches). Some courts have
24

25 ³ 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-Arevelo v. Ripa*,
No. EP-25-CV-337-KC, 2025 WL 2691828, at *7–9 (W.D. Tex. Sept. 22, 2025). It
does not purport to hold that immigrants have no constitutional right to due process
before the government holds them indefinitely in immigration detention. *Id.*

1 “conclude[d] . . . that detention becomes prolonged after six months and entitles [a
2 petitioner] to a bond hearing.” *Rodriguez v. Nielsen*, No. 18-CV-04187-TSH, 2019
3 WL 7491555, at *6 (N.D. Cal. Jan. 7, 2019). In that case, Mr. Atanga would
4 automatically qualify, as he has been detained for well over a year.

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

- 8 (1) “the total length of detention to date,”
9 (2) “the likely duration of future detention,” and
10 (3) “the delays in the removal proceedings caused by the petitioner and the
11 government.”

12 *Id.* Mr. Atanga prevails under this factors test.

13 First, the “most important factor,” the length of detention, favors Mr. Atanga.
14 *Banda*, 385 F. Supp. 3d at 1118. In assessing this factor, “[i]t is important to bear
15 in mind the context: The detention that is being examined here is the detention of a
16 human being who has never been found to pose a danger to the community or to be
17 likely to flee if released.” *Jamal A. v. Whitaker*, 358 F. Supp. 3d 853, 859 (D. Minn.
18 2019). With that context, courts have granted bond hearings for persons detained
19 between nine and eleven months. *See Ashemuke v. ICE Field Off. Dir.*, No. C23-
20 1592-RSL-MLP, 2024 WL 1683797, at *4 (W.D. Wash. Feb. 29, 2024), *report and*
21 *recommendation adopted*, No. C23-1592-RSL, 2024 WL 1676681 (W.D. Wash.
22 Apr. 18, 2024) (“approximately eleven months”); *Brissett v. Decker*, 324 F. Supp.
23 3d 444, 452 (S.D.N.Y. 2018) (“over nine months”); *Perez v. Decker*, No. 18-CV-
24 5279 (VEC), 2018 WL 3991497, at *5 (S.D.N.Y. Aug. 20, 2018) (“more than nine
25 months”); *Masood v. Barr*, No. 19-CV-07623-JD, 2020 WL 95633, at *2 (N.D.
26 Cal. Jan. 8, 2020) (“nearly nine months”). Mr. Atanga has been detained for over a
27 year. Exh. A at ¶ 1. This factor therefore strongly favors a bond hearing.

Second, Mr. Atanga has reason to anticipate significant future detention. Mr. Atanga's case is on appeal. Exh. B at ¶ 2. But because of the Board's three-and-a-half month delay even in issuing a briefing schedule, the briefing has not begun. The first appellate briefs are due in mid-May. And "[t]he appellate process before the immigration courts is, by its nature, indeterminate in duration. The submission of briefs is only one preliminary step in the adjudicatory process." *Id.* "There is no statutory or regulatory deadline requiring the immigration courts to issue a decision within a fixed period following the submission of briefs." *Id.* Based on publicly available information, coupled with Mr. Andong's prior experience in immigration proceedings, "appellate adjudications in immigration court often take many months, and in certain cases years after briefing is completed." *Id.*

Furthermore, "even after the courts adjudicate the appeal, the matter may be remanded and further appealed, making Mr. Atanga's detention to be extended even further." *Id.* And if Mr. Atanga loses at the BIA, he can appeal to the Ninth Circuit. All told, "[t]his process may take up to two years or longer." *Banda*, 385 F. Supp. 3d at 1119. Because "Petitioner's future detention can last several more months or even years[.]" this factor favors Mr. Atanga. *Abdul Kadir v. Larose*, No. 25CV1045-LL-MMP, 2025 WL 2932654, at *5 (S.D. Cal. Oct. 15, 2025).

Third, the reason for the delay strongly favors Mr. Atanga. The only delays in his case are attributable to the immigration courts, including the most recent three-and-a-half month delay in issuing a briefing schedule for appeal. Exh. B at ¶¶ 3–2.

Thus, Mr. Atanga is entitled to a bond hearing.

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

In a perfect world, this Court could remedy the due process violation by ordering a bond hearing before a neutral immigration judge ("IJ"), allowing the IJ

1 to determine whether Mr. Atanga posed a risk of danger or flight. Unfortunately,
2 attacks on IJ independence under the current administration have severely
3 compromised IJs' neutrality. As a result, there is a serious risk that an IJ will order
4 Mr. Atanga's continued detention even if he poses no danger or flight risk. Several
5 data points support that conclusion.

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

12 In *Yin v. Moldanado*, a court expressed consternation at an IJ's
13 "conclusory, two-line determination of flight risk" for a person whom DHS had
14 previously agreed "to release . . . on his own recognizance" and who "attend[ed]
15 [all] immigration check-ins" during his release. No. 26-CV-0103 (PKC), 2026
16 WL 295389, at *3 (E.D.N.Y. Feb. 4, 2026).

17 In *Said v. Noem*, a court ordered a bond hearing for a habeas petitioner,
18 only to learn that "[t]he IJ denied Petitioner the opportunity to present testimony,
19 declined to consider the sworn, documentary evidence submitted by Petitioner,
20 and based his decision on an uncorroborated, unauthenticated claim by a
21 government official that Petitioner failed to share his location for the ISAP." No.
22 3:25-CV-938-MOC, 2026 WL 295651, at *5 (W.D.N.C. Feb. 4, 2026). The
23 original habeas "Order presupposed that this hearing would be conducted in
24 accordance with Petitioner's due process rights," the court wrote. "It was not." *Id.*

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

1 of driving 90 mph in a 55-mph zone. *Id.*

2 In a recently filed declaration, local attorney Edward Perez attests that he has
3 similar concerns about some immigration judges at Otay Mesa. In his experience,
4 some Otay Mesa IJs are resistant to implementing habeas orders requiring bond
5 hearings. *Elsayed v. Noem*, Case No. 26-cv-368, Doc. 5-2 at ¶ 7 (S.D. Cal. Feb. 9,
6 2026). These IJs have begun denying bond on the ground that court hearings are
7 coming up, and release would disrupt the hearing schedule. *Id.* Of course, that logic
8 could justify any asylum seeker's detention, and it has nothing to do with danger or
9 flight. *Id.* Furthermore, the Department of Homeland Security ("DHS") has started
10 appealing bonds to take advantage of the automatic stay. *Id.* Both of these strategies
11 ensure that even those who pose no risk of danger or flight will stay in detention.
12 *Id.*

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

27 Mr. Artieda further attests that to having "communicated with numerous
28 immigration attorneys practicing all over the United States who handle detention

1 cases.” *Id.* at 5. “These conversations have confirmed that the pattern [he] ha[s]
2 observed is widespread and consistent.” *Id.* Based on these conversations,
3 Mr. Artieda believes that these bond denials are part of a “coordinated institutional
4 effort.” *Id.* at 6. That coordinated effort supports outright release or, at a minimum,
5 additional scrutiny from this Court.

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

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

13 These IJs are under no illusions about why they were let go. Former
14 Baltimore IJ Emmett Soper stated: “I think the current administration of the
15 immigration courts does not fundamentally see the immigration courts as neutral
16 decision-makers. I think that they see the immigration courts as a tool for this
17 administration to advance its policy objectives.” Geoff Bennett & Ali Schmitz,
18 *Ousted Immigration Judge Describes Deepening Court Backlog*, PBS NewsHour
19 (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)
20 [describes-deepening-court-backlog](https://www.pbs.org/newshour/show/ousted-immigration-judge-describes-deepening-court-backlog). Former San Francisco IJ Jeremiah Johnson
21 similarly understood “the hint that they should be hearing cases a certain way,
22 deciding cases a certain way. Move faster. Less due process, essentially.” Hilda
23 Gutierrez, Michael Bott & Son Vo, *‘An all-out attack on immigration court:’ SF*
24 *immigration judges speak out after firings*, NBC Bay Area (Nov. 25, 2025),
25 [https://www.nbcbayarea.com/investigations/san-francisco-immigration-judges-](https://www.nbcbayarea.com/investigations/san-francisco-immigration-judges-speak-out-firings/3986850/)
26 [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
27 more direct: “We were told to facilitate deportation... Due process is dead in
28

1 immigration courts." Isabela Dias, *"Fired for No Reason": Former Immigration*
2 *Judges Speak Out Against Trump's Assault on the Courts*, Mother Jones (Oct. 9,
3 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/)
4 [trump-assault-purge-dhs-ice/](https://www.motherjones.com/politics/2025/10/immigration-court-judge-trump-assault-purge-dhs-ice/).

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

20 *Second*, a parallel purge occurred at the BIA, which was reduced from 28
21 members to 15 members. All Biden appointees on the BIA were fired. Am. Imm.
22 Council, *BIA Decision Strips Immigration Judges of Bond Authority, All but*
23 *Guaranteeing Mandatory Detention for Undocumented Immigrants* (Sept. 12,
24 2025), [https://www.americanimmigrationcouncil.org/blog/bia-ruling-immigration-](https://www.americanimmigrationcouncil.org/blog/bia-ruling-immigration-judges-bond-mandatory-detention-undocumented-immigrants/)
25 [judges-bond-mandatory-detention-undoc](https://www.americanimmigrationcouncil.org/blog/bia-ruling-immigration-judges-bond-mandatory-detention-undocumented-immigrants/) umented-immigrants/. The statistical
26 impact is stark. As of January 22, 2026, the reconstituted BIA has issued 71
27 published decisions. Exec. Off. for Immigr. Rev., *Volume 29*, U.S. Dep't of Just.
28 (Jan. 21, 2025), <https://www.justice.gov/eoir/volume-29>. Of those, 69 decisions

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

Third, beyond personnel changes, EOIR's new acting director, Sirce E. Owen, has issued “a string of sharply worded policy memos” encouraging IJs to side with the government over immigrants and minimize due process. E. Tammy Kim, *Inside Donald Trump's Attack on Immigration Courts*, New Yorker, <https://www.newyorker.com/inside-donald-trumps-attack-on-immigration-court>. The policy directives include: a memorandum dated June 27, 2025 warning judges not to demonstrate “bias directed against DHS” or to be “adjudicatory outliers,” at risk of “close examination and potential action,” Exec. Off. for Immigr. Rev., Policy Memorandum 25-33, Neutrality and Impartiality in Immigration Court Proceedings (June 27, 2025), 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 full evidentiary hearings, styled as efficiency guidance but functioning as a directive to reduce due process protections, Exec. Off. for Immigr. Rev., Policy Memorandum 25-28, Pretermission of Legally Insufficient Application for Asylum (Apr. 11, 2025), [https://www.justice.gov/eoir/media/1396411/dl?inline](https://www.justice.gov/eoir/media/1396411/dl?inline;); and memoranda restricting immigration judges' ability to grant continuances, Exec. Off. for Immigr. Rev., Policy Memorandum 25-27, Cancellation of Director's Memorandum 23-01 and Reinstatement of Policy Memorandum 19-13 (Mar. 21, 2025), <https://www.justice.gov/eoir/media/1394086/dl>, and

1 administrative closure, Exec. Off. for Immigr. Rev., Policy Memorandum 25-29,
2 Cancellation of Director's Memorandum 22-03 (Apr. 18, 2025),
3 <https://www.justice.gov/eoir/media/1397161/dl?inline>.

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

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

21 Am. Immigr. Laws. Ass'n, Practice Alert: EOIR Issues Nationwide Guidance
22 on *Maldonado Bautista*, AILA Doc. No. 26011404 (Jan. 16, 2026),
23 [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)
24 [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,
25 calling out “Respondents’ deliberate choice to continue defying the final
26 judgment entered in *Bautista*.” *Palomera Baltazar v. Janecka*, No. 5:26-cv-
27 00019-SSS-BFM at *2-3 (C.D. Cal. Jan. 16, 2026).

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

The “equitable and flexible nature of habeas relief” affords district
courts significant discretion over the appropriate remedies for violations of

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

9
10 **CLAIM AND PRAYER FOR RELIEF**

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

13 Here, because ordering a bond hearing before a randomly selected IJ would
14 not properly redress the constitutional violations present in this matter, Petitioner
15 urges the court to provide an alternative corrective measure. That might include
16 outright release. *See, e.g.*, Order, ECF No. 14 at 19, *Miri v. Bondi*, No. 5:26-CV-
17 00698-MEMF (C.D. Cal. March 5, 2026); *Moctezuma v. Henkey*, No. 1:25-CV-
18 00741-BLW, 2026 WL 18809, at *5 (D. Idaho Jan. 2, 2026). Or it could mean
19 holding a bond hearing in district court. *See, e.g.*, *L.G.M. v. LaRocco*, 788
20 F.Supp.3d 401, 405-07 (E.D.N.Y. 2025).

21 A third option would be to craft an order like Judge Simmons’s procedure in
22 the *Sandesh* case. *See* Order, ECF No. 13, *Sandesh v. LaRose*, No. 3:26-CV-00846-
23 JES (S.D. Cal. March 5, 2026). Specifically, the Court should order:

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

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

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

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

6 b. Respondents are ordered to file a Notice of Compliance within five days
7 of providing Petitioner with the bond hearing, including apprising the
8 Court of the results of the hearing. *Id.*

9 c. Prohibit ICE from invoking the automatic stay provisions under 8 C.F.R.
10 § 1003.19(i)(2) to defeat the IJ's bond determination.

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

13
14
15 Respectfully submitted,

16
17 Dated: May 2, 2026

s/ Katie Hurrelbrink

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