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9
10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA
12

13 Biniyam Mitiku Deju,

14 Petitioner,

15 v.

16 Jeremy Casey, *Warden at Imperial*
17 *Regional Detention Center,*

18 Respondents.
19

CASE NO.: 26-cv-2329-AGS-VET

20 Amended¹ Petition
21 for a
22 Writ of Habeas Corpus

23 INTRODUCTION

24 Biniyam Mitiku Deju has been detained pending his immigration
25 proceedings for nearly 17 months. This Court should “join[] the majority
26 of courts across the country in concluding that [his] unreasonably
27 prolonged detention under 8 U.S.C. § 1225(b) without an individualized
28 bond hearing violates due process.” *Kydyrali v. Wolf*, 499 F. Supp. 3d
768, 772 (S.D. Cal. 2020) (Battaglia, J.). Additionally, because of newly
emerging evidence that the neutrality of Otay Mesa’s immigration
judges (“IJ”) has been compromised, and some IJs and the Department
of Homeland Security (“DHS”) have implemented strategies to detain
bond-worthy habeas petitioners, a bond hearing before a randomly

¹ Federal Rule of Civil Procedure 15(a)(2) permits a party to amend its pleading with the court’s leave. Fed. R. Civ. P. 15(a)(2). This Court granted Mr. Deju’s request to file an amended petition on May 8, 2026. Dckt. 10.

1 selected IJ will no longer reliably satisfy due process. This Court should
2 therefore consider the alternative forms of relief set forth at the end of
3 this petition.

4 STATEMENT OF FACTS

5 Mr. Deju came to the United States on January 6, 2025. *See* First
6 Declaration of Biniyam Mitiku Deju, attached as Exh. A, at ¶ 1. He
7 immediately turned himself in to border patrol and requested asylum.
8 *Id.* He has been detained ever since. *Id.*

9 ICE gave Mr. Deju a credible fear interview in February, 2025. *Id.*
10 at ¶ 2. He received a positive determination, and by May 16, 2025, he
11 had submitted his asylum application. *Id.* at 2–3. There were a number
12 of continuances in the proceedings, none of which were the result of any
13 request made by Mr. Deju. *Id.* at 4. As a result, Mr. Deju’s asylum
14 application was not adjudicated until January 14, 2026, at which point
15 the Immigration Judge denied the application. *Id.* at ¶ 5. Mr. Deju has
16 filed a notice of appeal with Board of Immigration Appeals. *Id.* at ¶ 6. If
17 he loses his appeal to the BIA, he plans to appeal to the Ninth Circuit.
18 *Id.*

19
20 Meanwhile, Mr. Deju is kept in jail-like conditions at Imperial
21 Regional Detention Center. *Id.* at ¶ 7. Since being detained, Mr. Deju
22 has suffered from hypertension. *Id.* In addition, Mr. Deju had surgery to
23 remove a lipoma on September 7, 2025. *Id.* Even now, nearly nine
24 months later, Mr. Deju still experiences pain at the site where the
25 lipoma was removed. *Id.*

LEGAL BACKGROUND

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

This habeas petition presents a question about whether and when the Fifth Amendment's Due Process Clause countermands the government's statutory authority to detain immigrants without bond hearings. Mr. Deju is detained under one such statute, 8 U.S.C. § 1225(b). "Section 1225 applies to 'applicants for admission'—noncitizens who 'arrive[] in the United States,' or are 'present' in the United States but have 'not been admitted.'" *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1111 (W.D. Wash. 2019). It "applies to, among others, noncitizens initially determined to be inadmissible because of . . . lack of valid documentation." *Id.* That includes persons who, like Mr. Deju, present themselves for inspection at the border and—rather than producing admission documents—make asylum and other fear-based claims. *See id.* at 1109–11 (describing a similar procedural history and finding that petitioner was detained under § 1225(b)). Such immigrants are detained under § 1225(b) not only during their initial proceedings, but also when they appeal to the BIA. *See id.* at 1111 (reaching same conclusion for immigrant with pending BIA appeal).

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

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

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

7 [t]he Fifth Amendment's Due Process Clause forbids the
8 Government to ‘depriv[e] any ‘person ... of ... liberty ... without
9 due process of law.’ Freedom from imprisonment—from
10 government custody, detention, or other forms of physical
11 restraint—lies at the heart of the liberty that Clause protects.
12 *See Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). And this
13 Court has said that government detention violates that
14 Clause unless the detention is ordered in a *criminal*
15 proceeding with adequate procedural protections, *see United*
16 *States v. Salerno*, 481 U.S. 739, 746 (1987), or, in certain
17 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).

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

23 Following *Zadvydas*, the Ninth Circuit applied similar reasoning
24 to § 1225(b). *Rodriguez v. Robbins*, 804 F.3d 1060, 1087–89 (9th Cir.
25 2015). Employing the constitutional avoidance canon, the Ninth Circuit
26 held that § 1225(b) implicitly entitled detained immigrants to bond
27 hearings every six months. *Id.*

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

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

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

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

11 Neither *Jennings* nor *Demore* undermines that conclusion.
12 *Jennings* held only that the statute itself did not impose any limits on
13 detention. It “did not foreclose as-applied constitutional challenges to
14 detention under” mandatory-detention statutes. *Santos v. Warden Pike*
15 *Cnty. Corr. Facility*, 965 F.3d 203, 209 (3d Cir. 2020). And *Demore* held
16 only that conviction-based mandatory detention during immigration
17 proceedings does not necessarily or inherently violate the Due Process
18 Clause, particularly when the detention has an expected duration of
19 only about five months. *Id.* at 208–11. But many persons detained under
20 § 1225(b)—like Mr. Deju—do not have criminal convictions. And as
21 Justice Kennedy’s concurrence made clear, *Demore* does not prevent
22 immigrants from arguing that sufficiently prolonged detention violates
23 due process in their individual cases. See *id.*²

24
25 ² The Supreme Court’s later decision in *Dep’t of Homeland Sec. v.*
26 *Thuraissigiam*, 591 U.S. 103 (2020), is also inapposite, because it
27 addressed only immigrants’ due process rights in deportation
28 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 before the government holds them indefinitely in

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

II. Courts have reached different conclusions about when immigration detention becomes indefinitely prolonged, but Mr. Deju would prevail under any standard.

Though courts agree that due process mandates a bond hearing when detention grows unreasonably prolonged, they disagree about how to assess whether a particular migrant’s detention has reached that point. *Sanchez-Rivera v. Matuszewski*, No. 22-CV-1357-MMA (JLB), 2023 WL 139801, at *5–6 (S.D. Cal. Jan. 9, 2023) (Anello, J.) (surveying the various approaches). Some courts have “conclude[d] . . . that detention becomes prolonged after six months and entitles [a petitioner] to a bond hearing.” *Rodriguez v. Nielsen*, No. 18-CV-04187-TSH, 2019 WL 7491555, at *6 (N.D. Cal. Jan. 7, 2019). In that case, Mr. Deju would automatically qualify, as he has been detained for well over a year.

immigration detention. *Id.*

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

4 (1) “the total length of detention to date,”

5 (2) “the likely duration of future detention,” and

6 (3) “the delays in the removal proceedings caused by the petitioner
7 and the government.”

8 *Id.* Some courts also consider:

9 (4) “the conditions of detention,” and

10 (5) “the likelihood that the removal proceedings will result in a
11 different final order.”

12 *Id.* Other courts have rejected the fourth and fifth factors, holding that
13 they are “not particularly suited to assisting the Court in determining
14 whether detention has become unreasonable and due process requires a
15 bond hearing.” *Lopez v. Garland*, 631 F. Supp. 3d 870, 879 (E.D. Cal.
16 2022); *accord Sanchez-Rivera*, 2023 WL 139801, at *5–6. ³ Mr. Deju
17 would prevail under any of these factors tests.

18 First, the “most important factor,” the length of detention, favors
19 Mr. Deju. *Banda*, 385 F. Supp. 3d at 1118. In assessing this factor, “[i]t
20 is important to bear in mind the context: The detention that is being
21 examined here is the detention of a human being who has never been
22 found to pose a danger to the community or to be likely to flee if
23 released.” *Jamal A. v. Whitaker*, 358 F. Supp. 3d 853, 859 (D. Minn.
24 2019). With that context, “[c]ourts have found detention over seven
25

26 ³ Courts also disagree about whether to account for any criminal
27 convictions that have led to the deportation. *Sanchez-Rivera*, 2023 WL
28 139801, at *5–6. But such factors—if appropriate at all—are irrelevant
where, as here, the person is not being removed as a result of criminal
convictions.

1 months without a bond hearing weighs toward a finding that it is
2 unreasonable.” *Amado v. United States Dep’t of Just.*, No. 25CV2687-
3 LL(DDL), 2025 WL 3079052, at *5 (S.D. Cal. Nov. 4, 2025). Mr. Deju has
4 been detained for quite a bit longer, nearing 17 months. Exh. A at ¶ 1.
5 This factor therefore favors a bond hearing.

6 Second, Mr. Deju has reason to anticipate significant future
7 detention. His asylum case is still ongoing. *Id.* at ¶ 5–6. He has appealed
8 Immigration Judge’s adverse ruling to the BIA, and will continue to
9 appeal to the Ninth Circuit if necessary. *Id.* at ¶ 6. All told, “[t]his process
10 may take up to two years or longer.” *Banda*, 385 F. Supp. 3d at 1119.
11 Because “Petitioner’s future detention can last several more months or
12 even years[,]” this factor favors Mr. Deju. *Abdul Kadir v. Larose*, No.
13 25CV1045-LL-MMP, 2025 WL 2932654, at *5 (S.D. Cal. Oct. 15, 2025).

14 Third, the delay factor favors Mr. Deju. Mr. Deju was detained on
15 January 6, 2025, and he filed his asylum application on May 16, 2025.
16 Exh. A at ¶¶ 1–3. Despite Mr. Deju’s best efforts and desires, there were
17 numerous continuances in the proceedings, and the Immigration Judge
18 did not deny his application until January 14, 2026. *Id.* at ¶¶ 4–5.
19 Because the only delays are attributable to the government, this factor
20 favors release.

21 Fourth, Mr. Deju’s conditions of confinement weigh in favor of a
22 bond hearing, because being at Imperial Regional is ‘indistinguishable
23 from penal confinement.” *Abdul Kadir*, 2025 WL 2932654, at *5
24 (quoting *Kydyrali*, 499 F. Supp. 3d at 773); Exh. A at ¶ 7. The conditions
25 are such that Mr. Deju is suffering from hypertension. Exh. A. at ¶ 7.

26 The fifth factor does not apply, because Mr. Deju’s asylum claim is
27 still pending and thus no “different” outcome can occur.

28 Under any test, then, Mr. Deju is entitled to a bond hearing.

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

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

12 Most importantly, reports are streaming in from this district and
13 elsewhere that court-ordered "bond hearings [are], effectively, stacked
14 against detainees from the start." Kyle Cheney, *How ICE Defies*
15 *Judges' Orders to Release Detainees, Step by Step*, Politico (Feb. 10,
16 2026), [https://www.politico.com/news/2026/02/10/ice-immigration-](https://www.politico.com/news/2026/02/10/ice-immigration-detention-court-orders-00771727)
17 [detention-court-orders-00771727](https://www.politico.com/news/2026/02/10/ice-immigration-detention-court-orders-00771727).

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

23 In *Said v. Noem*, a court ordered a bond hearing for a habeas
24 petitioner, only to learn that "[t]he IJ denied Petitioner the opportunity
25 to present testimony, declined to consider the sworn, documentary
26 evidence submitted by Petitioner, and based his decision on an
27 uncorroborated, unauthenticated claim by a government official that
28 Petitioner failed to share his location for the ISAP." No. 3:25-CV-938-

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

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

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

23 He is far from the only one to express concerns. In a declaration
24 filed in *Briceno Solano v. Mason*, No. 26-CV-00045, 2026 WL 311624
25 (S.D.W. Va. Feb. 4, 2026), Former ICE Counsel Jorge Artieda attests to
26 seeing “a seismic shift in bond hearing outcomes for individuals who had
27 been granted federal habeas relief and ordered § 1226(a) bond hearings .
28 . . in the Eastern District of Virginia.” Exh. B at 2. The pattern of

1 granting bond in appropriate cases “abruptly and uniformly ceased” in
2 early January, in a way that “suggests coordinated institutional
3 direction.” *Id.* IJs there now rely on a “remarkably narrow and
4 predictable set of rationales to deny bond—rationales that appear to
5 bear little relationship to genuine individualized risk assessment and
6 that would not have been deemed sufficient to justify denial just weeks
7 earlier.” *Id.* at 3. In Mr. Artieda’s professional opinion, the IJs’ rationales
8 “do not appear to be grounded in legitimate risk assessment” but are
9 “pretexts designed to ensure denial of bond regardless of the individual
10 facts of each case.” *Id.* at 4.

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

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

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

28 These IJs are under no illusions about why they were let go.

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

22 This has had the predictable effect on those who remain. According
23 to former San Francisco IJ Elizabeth Young, “I’ve talked to many of [the
24 judges still serving], and they’re like, ‘When I go into court, I am
25 concerned about applying the law, but I’m also concerned that I should
26 deny more, because if I don’t, then I’ll get fired.” Marco Poggio, *Judges*
27 *See an Immigration Court Guttled from Inside*, Law360 (Oct. 31, 2025),
28 <https://www.law360.com/articles/2381003/judges-see-an-immigration->

1 court-gutted-from-inside. Meanwhile, Department of Justice
2 recruitment materials seek “deportation judges” to fill the empty IJ
3 slots, Coral Murphy Marcos, *US Justice Department Recruiting Legal*
4 *Experts to Serve as ‘Deportation’ Judges*, Guardian,
5 [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)
6 [department-ad-deportation-judges](https://www.theguardian.com/us-news/2025/nov/21/us-justice-department-ad-deportation-judges), inviting candidates to “bring the
7 hammer down on criminal illegal aliens” and “defend your communities,
8 your culture, your very way of life.” dhsgov, Instagram (Nov. 21, 2025),
9 <https://www.instagram.com/p/DRVt8DmCQKD/?hl=en>.

10 *Second*, a parallel purge occurred at the BIA, which was reduced
11 from 28 members to 15 members. All Biden appointees on the BIA were
12 fired. Am. Imm. Council, *BIA Decision Strips Immigration Judges of*
13 *Bond Authority, All but Guaranteeing Mandatory Detention for*
14 *Undocumented Immigrants* (Sept. 12, 2025),
15 [https://www.americanimmigrationcouncil.org/blog/bia-ruling-](https://www.americanimmigrationcouncil.org/blog/bia-ruling-immigration-judges-bond-mandatory-detention-undocumented-immigrants/)
16 [immigration-judges-bond-mandatory-detention-undocumented-](https://www.americanimmigrationcouncil.org/blog/bia-ruling-immigration-judges-bond-mandatory-detention-undocumented-immigrants/)
17 [immigrants/](https://www.americanimmigrationcouncil.org/blog/bia-ruling-immigration-judges-bond-mandatory-detention-undocumented-immigrants/). The statistical impact is stark. As of January 22, 2026, the
18 reconstituted BIA has issued 71 published decisions. Exec. Off. for
19 Immigr. Rev., *Volume 29*, U.S. Dep’t of Just. (Jan. 21, 2025),
20 <https://www.justice.gov/eoir/volume-29>. Of those, 69 decisions (97%)
21 favored the administration. By contrast, during the entire four-year
22 span of the prior administration, the BIA issued 76 published decisions.
23 Exec. Off. for Immigr. Rev., *Volume 28*, U.S. Dep’t of Just. (June 13,
24 2025), <https://www.justice.gov/eoir/volume-28>. (First decision, *Matter of*
25 *DIKHTYAR*, 28 I&N Dec. 214 (BIA 2021), issued 01/22/2021). Of those,
26 46 decisions (60%) favored the administration. The transformation from
27 60% to 97% pro-government outcomes—achieved through wholesale
28 termination of one administration’s appointees —speaks for itself.

1 *Third*, beyond personnel changes, EOIR's new acting director,
2 Sirce E. Owen, has issued "a string of sharply worded policy memos"
3 encouraging IJs to side with the government over immigrants and
4 minimize due process. E. Tammy Kim, *Inside Donald Trump's Attack*
5 *on Immigration Courts*, New Yorker,
6 [https://www.newyorker.com/inside-donald-trumps-attack-on-](https://www.newyorker.com/inside-donald-trumps-attack-on-immigration-court)
7 [immigration-court](https://www.newyorker.com/inside-donald-trumps-attack-on-immigration-court). The policy directives include: a memorandum dated
8 June 27, 2025 warning judges not to demonstrate "bias directed
9 against DHS" or to be "adjudicatory outliers," at risk of "close
10 examination and potential action," Exec. Off. for Immigr. Rev., Policy
11 Memorandum 25-33, Neutrality and Impartiality in Immigration
12 Court Proceedings (June 27, 2025), [https://iptp-](https://iptp-production.s3.amazonaws.com/media/documents/2025.06.27_EOIR_-_PM_25-33.pdf)
13 [production.s3.amazonaws.com/media/documents/2025.06.27 EOIR -](https://iptp-production.s3.amazonaws.com/media/documents/2025.06.27_EOIR_-_PM_25-33.pdf)
14 [PM 25-33.pdf](https://iptp-production.s3.amazonaws.com/media/documents/2025.06.27_EOIR_-_PM_25-33.pdf); a memorandum encouraging judges to deny asylum
15 applications without full evidentiary hearings, styled as efficiency
16 guidance but functioning as a directive to reduce due process
17 protections, Exec. Off. for Immigr. Rev., Policy Memorandum 25-28,
18 Pretermission of Legally Insufficient Application for Asylum (Apr. 11,
19 2025), <https://www.justice.gov/eoir/media/1396411/dl?inline>; and
20 memoranda restricting immigration judges' ability to grant
21 continuances, Exec. Off. for Immigr. Rev., Policy Memorandum 25-27,
22 Cancellation of Director's Memorandum 23-01 and Reinstatement of
23 Policy Memorandum 19-13 (Mar. 21, 2025),
24 <https://www.justice.gov/eoir/media/1394086/dl>, and administrative
25 closure, Exec. Off. for Immigr. Rev., Policy Memorandum 25-29,
26 Cancellation of Director's Memorandum 22-03 (Apr. 18, 2025),
27 <https://www.justice.gov/eoir/media/1397161/dl?inline>.

28 *Fourth*, EOIR personnel have at times directed IJs to ignore

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

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

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

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

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

12 CLAIM AND PRAYER FOR RELIEF

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

15 Here, because ordering a bond hearing before a randomly selected
16 IJ would not properly redress the constitutional violations present in
17 this matter, Petitioner urges the court to provide an alternative
18 corrective measure. That might include outright release. *See, e.g.,* Order,
19 ECF No. 14 at 19, *Miri v. Bondi*, No. 5:26-CV-00698-MEMF (C.D. Cal.
20 March 5, 2026); *Moctezuma v. Henkey*, No. 1:25-CV-00741-BLW, 2026
21 WL 18809, at *5 (D. Idaho Jan. 2, 2026). Or it could mean holding a bond
22 hearing in district court. *See, e.g., L.G.M. v. LaRocco*, 788 F.Supp.3d 401,
23 405-07 (E.D.N.Y. 2025).

24 A third option would be to craft an order like the Court’s procedure
25 in the *Sandesh* case. *See* Order, ECF No. 13, *Sandesh v. LaRose*, No.
26 3:26-CV-00846-JES (S.D. Cal. March 5, 2026). Specifically, the Court
27 should order:
28

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

3 *Id.*

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

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

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

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

17 c. Prohibit ICE from invoking the automatic stay provisions under
18 8 C.F.R. § 1003.19(i)(2) to defeat the IJ's bond determination.

19 Finally, this Court should order all other relief that the Court
20 deems just and proper.
21

22
23 Respectfully submitted,

24
25 Dated: May 28, 2026

s/ Paul A. Barr

26 Paul A. Barr

27 Flowers Keller LLP

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