

DETAINED

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

In the matter of:) **Case Number: 26-cv-2329-AGS-**
) **VET**

BINIYAM MITIKU DEJU)

v.)

A-Number 

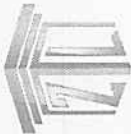
**SIXTO MARRERO, WARDEN
OF IMPERIAL REGIONAL
ADULT DETENTION FACILITY**)

**MOTION TO ENFORCE
JUDGMENT**

) **Challenge to Unlawful Incarceration;
Request for Declaratory and Injunctive
Relief**
)

I. STATEMENT OF FACTS

1. Petitioner **Biniyam Mitiku Deju** (“Petitioner”) respectfully moves this Court to enforce its judgment pursuant to 28 U.S.C. § 1651 and challenges his continued, prolonged, and unconstitutional detention under 8 U.S.C. § 1226(a).
2. Petitioner remains detained at the Imperial Regional Detention Facility. He is a 46-year-old married native and citizen of Ethiopia.
3. Petitioner entered the United States on or about January 6, 2025. Fearing persecution because of his political views, he sought protection and refuge in the United States and applied for asylum on or about May 6, 2025. See Exhibit “A” NTA
4. On January 14, 2026, the Immigration Judge denied Petitioner’s application for asylum under Section 208(a) of the INA, withholding of removal under Section 241(b)(3) of the INA, and protection under the Convention Against Torture. Petitioner timely appealed the Immigration Judge’s decision, and that appeal remains pending.
5. On or about June 5, 2026, this Court granted Petitioner’s habeas petition in Case No. 26-cv-2329-AGS-VET and ordered that Petitioner receive a constitutionally adequate bond hearing before an Immigration Judge. See Exhibit “B” Order Granting Habeas Petition.
6. On or about June 18, 2026, the Immigration Judge denied bond, finding that Petitioner posed a flight risk. See Exhibit “C” Bond Denial Order.
7. Petitioner timely appealed the bond denial on or about July 14, 2026, and that appeal remains pending before the Board of Immigration Appeals. See Exhibit “D”, Screenshot of Email Confirmation for Bond Appeal.
8. Despite this Court’s order, Petitioner has remained continuously detained at the Imperial Regional Detention Facility.



- 1 9. The pending administrative appeal does not remedy the constitutional
2 deficiencies in the bond proceeding or Respondents' failure to comply with this
3 Court's order; instead, it only prolongs Petitioner's unlawful detention.
4 10. Petitioner has no criminal history and poses neither a danger to the community
5 nor a flight risk.
6 11. Petitioner remains in ICE custody after the denial of his bond request and
7 without a constitutionally adequate justification for continued detention.
8 12. Petitioner therefore respectfully seeks immediate release from custody.
9 13. During his prolonged confinement, Petitioner has suffered significant and
10 worsening deterioration of his physical and mental health. His continued
11 detention has caused, and continues to cause, irreparable harm.
12 14. The Constitution protects all persons within the United States from arbitrary
13 deprivation of liberty. Even in the immigration context, detention remains
14 subject to constitutional limitations, and prolonged civil detention without
15 adequate procedural safeguards violates the Fifth Amendment. See *Zadvydas v.*
16 *Davis*, 533 U.S. 678, 690–95 (2001). Absent intervention by this Court,
17 Petitioner will remain detained without meaningful review and in continuing
18 violation of this Court's prior order. This Court retains inherent authority to
19 enforce its judgments and ensure compliance.
20 15. Accordingly, Petitioner respectfully requests that this Court enforce its June 5,
21 2026, order and order his immediate release from ICE custody. In the
22 alternative, Petitioner requests that Respondents be ordered to provide a
23 constitutionally compliant bond hearing within seven (7) days, at which the
24 Government bears the burden of proof by clear and convincing evidence.
25 16. Petitioner's continued detention is arbitrary, unlawful, and in direct violation of
26 due process. Immediate judicial intervention is necessary to remedy the ongoing
27 deprivation of liberty and to enforce this Court's judgment.
28



JURISDICTION EXISTS AND EXHAUSTION IS NOT REQUIRED

17. This Court has jurisdiction over Petitioner's constitutional claims under 28 U.S.C. § 2241, which authorizes federal courts to review the legality of executive detention. The writ of habeas corpus remains available to challenge unlawful immigration detention, particularly where a petitioner alleges violations of due process.
18. The Supreme Court has long recognized that habeas jurisdiction extends to noncitizens challenging the legality of their detention. See *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001) (confirming availability of habeas relief to challenge post-removal-period detention); *Demore v. Kim*, 538 U.S. 510, 516–17 (2003) (recognizing habeas jurisdiction over immigration detention challenges).

Exhaustion is not Required for Constitutional Challenges

19. Exhaustion of administrative remedies is not required where a petitioner raises constitutional claims that the agency lacks authority to resolve. The Ninth Circuit has consistently held that exhaustion in immigration habeas proceedings is prudential, not jurisdictional, and may be excused where administrative remedies are inadequate, futile, or incapable of preventing irreparable harm. See *Laing v. Ashcroft*, 370 F.3d 994, 1000–01 (9th Cir. 2004).
20. In *Singh v. Holder*, 638 F.3d 1196, 1203–05 (9th Cir. 2011), the Ninth Circuit confirmed that due process requires a meaningful bond hearing in prolonged immigration detention cases and that the Government must justify continued detention by clear and convincing evidence. In *Hernandez v. Sessions*, 872 F.3d 976, 987–89 (9th Cir. 2017), the Ninth Circuit held that jurisdictional bars on review of discretionary bond determinations do not preclude federal court review of claims that the bond process itself is constitutionally flawed, and it

1 further held that the district court did not err in waiving prudential exhaustion
2 where administrative review would be inadequate. These authorities apply here
3 because Petitioner does not merely dispute the Immigration Judge's
4 discretionary weighing of facts; he challenges the constitutional adequacy of the
5 court-ordered hearing he received.

6 21. More recently, the Ninth Circuit reaffirmed that federal courts may review legal
7 and constitutional defects in immigration detention bond proceedings. See
8 *Martinez v. Clark*, 124 F.4th 775, 783–86 (9th Cir. 2024) (holding, after remand
9 from the Supreme Court, that federal courts have jurisdiction to review legal
10 questions arising from bond determinations, including the application of
11 governing detention standards). Thus, even where a custody determination is
12 pending before the BIA, federal courts retain authority to decide whether the
13 process used to justify detention complies with due process and with a prior
14 federal court order.

15 22. District courts across this Circuit have applied the same principle in prolonged
16 detention cases. Where the claim is that the process itself is unconstitutional,
17 requiring exhaustion would serve no purpose because the agency cannot provide
18 the remedy Petitioner seeks: enforcement of this Court's judgment, immediate
19 release, or a new constitutionally compliant hearing under standards fixed by
20 this Court.

21 23. Petitioner's timely appeal of the bond denial does not change this analysis. The
22 appeal preserves Petitioner's objections; it does not supply an adequate or
23 exclusive remedy for an ongoing constitutional violation. A pending BIA appeal
24 cannot retroactively transform an inadequate bond hearing into the
25 constitutionally adequate hearing this Court ordered, nor can it provide prompt
26 relief from the continuing deprivation of liberty caused by Respondents'
27 noncompliance.
28



Exhaustion is Excused Where it Would be Futile or Inadequate

24. Even where exhaustion might otherwise apply, it is excused where administrative remedies are inadequate, futile, or unable to prevent irreparable injury. See *Laing v. Ashcroft*, 370 F.3d 994, 1000–01 (9th Cir. 2004) (recognizing futility, inadequacy, and irreparable harm as exceptions to prudential exhaustion). See also *Hernandez*, 872 F.3d at 988–89 (affirming waiver of prudential exhaustion in a challenge to constitutionally deficient immigration bond procedures).

25. Here, exhaustion is futile and inadequate because Petitioner challenges the legal sufficiency of the bond hearing framework and Respondents' compliance with this Court's order, not merely the result of a discretionary custody decision. The Board of Immigration Appeals cannot enforce this Court's judgment, cannot remedy the constitutional harm already caused by an inadequate hearing, and cannot provide the immediate judicial relief necessary to end unlawful detention. Administrative review therefore would not address the injury presented in this motion.

26. Moreover, Petitioner faces ongoing and irreparable harm, including continued unlawful detention and severe medical deterioration. Under such circumstances, courts routinely excuse exhaustion.

27. Nor should Respondents be permitted to defeat enforcement of this Court's judgment simply by pointing to a pending administrative appeal. The relevant question is whether Petitioner received the process this Court ordered. Because he did not, the constitutional violation is complete and ongoing. Requiring Petitioner to await administrative review would convert exhaustion from a prudential doctrine into a mechanism for prolonging unlawful custody, precisely the harm habeas exists to prevent.



1 28. This conclusion follows from settled habeas principles as well. The Supreme
2 Court has recognized that habeas remains available to challenge unlawful
3 executive detention, including immigration detention. See *Zadvydas v. Davis*,
4 533 U.S. 678, 687–88 (2001); *Demore v. Kim*, 538 U.S. 510, 516–17 (2003).
5 Because Petitioner seeks relief from unlawful detention and enforcement of a
6 federal court judgment—not ordinary appellate review of a discretionary bond
7 amount—the existence of a pending administrative appeal does not strip this
8 Court of jurisdiction or require Petitioner to wait while the constitutional injury
9 continues.

10 **Courts in This District Routinely Exercise Jurisdiction Without Requiring**
11 **Exhaustion**

12 29. Courts in this District, including this Court, regularly exercise habeas
13 jurisdiction over immigration detention claims without requiring exhaustion,
14 particularly where constitutional violations are alleged.

15 30. Most importantly, in **Khan v. Noem**, No. 3:26-cv-01274-JO-MMP, U.S.
16 Southern District Court granted Motion to Enforce Judgment based on
17 inadequate bond hearing.

18 31. Similarly, in **Rumiantseva v. Larose**, No. 26-cv-2214-JO-DEB, U.S. Southern
19 District Court granted Motion to Enforce Judgment based on inadequate bond
20 hearing.

21 32. Likewise, in **Hagos v. Warden Jeremy Casey**, No. 3:26-cv-02365-JO-SBC,
22 U.S. Southern District Court granted Motion to Enforce Judgment based on
23 inadequate bond hearing.

24 33. These cases reflect a consistent practice: where detention violates constitutional
25 standards or the bond hearing fails to provide the process required by due
26 process, federal courts do not require prolonged administrative exhaustion
27 before granting habeas or enforcement relief. That approach is consistent with
28



1 *Hernandez, Laing, Zadvydas, and Demore*, which preserve federal court review
2 where liberty is restrained and administrative remedies are inadequate to cure
3 the constitutional harm.

4 34. Here, Petitioner's challenge is not to the outcome of a discretionary decision,
5 but to the constitutional adequacy of the process itself and to Respondents'
6 failure to provide the hearing this Court ordered. Because the agency cannot
7 remedy these constitutional violations or enforce this Court's judgment,
8 exhaustion is not required notwithstanding Petitioner's pending bond appeal.

9 35. Requiring Petitioner to pursue or await additional administrative remedies
10 would only prolong his unlawful detention and exacerbate the ongoing harm he
11 is suffering. Under settled Supreme Court and Ninth Circuit precedent, and
12 because this motion seeks enforcement of a federal court judgment and relief
13 from an inadequate bond hearing, this Court should exercise jurisdiction and
14 grant relief now.

15
16 **II. PETITIONER DID NOT RECEIVE A CONSTITUTIONALLY**
17 **ADEQUATE BOND HEARING**

18 32. Petitioner did not receive a constitutionally adequate bond hearing. The
19 Immigration Judge failed to conduct a meaningful individualized assessment of
20 whether Petitioner posed a danger or flight risk and instead offered a conclusory
21 determination unsupported by reasoning or evidence.

22 33. A constitutionally adequate bond hearing requires that the government bear the
23 burden of proof; that the burden be satisfied by clear and convincing evidence;
24 and that the adjudicator provide an individualized determination supported by
25 reasoned analysis, including consideration of alternatives to detention and the
26 noncitizen's ability to pay. See *Rodriguez-Diaz v. Garland*, 53 F.4th 1189,
27 1206–07 (9th Cir. 2022).
28

1 34. Those requirements were not satisfied here. Petitioner has remained detained
2 since his January 2025 entry and continues to be detained without a
3 constitutionally adequate justification for continued custody.

4 35. Although he was provided a hearing before an Immigration Judge, that
5 proceeding failed to satisfy due process because the government was not
6 required to meet the constitutionally mandated burden of proof, the decision
7 relied on unsupported assertions, and the court failed to meaningfully consider
8 alternatives to detention, Petitioner's ability to pay, and substantial evidence of
9 his community ties.

10 36. Despite these extraordinary humanitarian factors, Respondents continue to
11 detain Petitioner without meaningful review of whether his continued custody
12 is justified. His prolonged detention, under these circumstances, violates the
13 Due Process Clause of the Fifth Amendment.

14 37. Although Petitioner timely appealed the Immigration Judge's custody
15 determination to the Board of Immigration Appeals, exhaustion is not a
16 prerequisite to this Court's review. The appeal confirms that Petitioner
17 diligently preserved his objections, but it does not cure the constitutional defect
18 in the hearing already held, provide immediate relief from ongoing unlawful
19 detention, or divest this Court of authority to enforce its own order. Because
20 administrative review cannot remedy Respondents' noncompliance with this
21 Court's judgment or the continuing due process violation, habeas relief is
22 appropriate and necessary.

23 38. The absence of a reasoned explanation is independently sufficient to render the
24 bond determination defective. See *Rodriguez-Diaz v. Garland*, 53 F.4th 1189,
25 1206–07 (9th Cir. 2022). Courts in this District, including this Court, have
26 required that detention decisions be preceded by a procedurally adequate
27 hearing before a neutral adjudicator. See *Mustafa Anif Afshar v. Marin*, No. ED
28



1 26-cv-00308-JAK (C.D. Cal. Apr. 7, 2026) (requiring a pre-detention hearing
2 before a neutral immigration judge); *Vilca Yataco v. Warden*, No. 5:25-cv-
3 03229-JAK (C.D. Cal. Jan. 16, 2026) (prohibiting re-detention absent a hearing
4 where the government proves necessity by clear and convincing evidence).

5 39. This Court has already recognized that detention decisions must be preceded by
6 a neutral adjudicatory process sufficient to satisfy due process.

7 40. Even if the Court were to assume procedural compliance, the record contains
8 no evidence establishing that detention is necessary to mitigate flight risk or
9 danger. The government has failed to show any nexus between Petitioner's
10 continued detention and its purported purposes.

11
12 **III. CLAIMS FOR RELIEF**
13 **GROUND ONE**

14 **VIOLATION OF FIFTH AMENDMENT DUE PROCESS — FAILURE TO**
15 **PROVIDE A CONSTITUTIONALLY ADEQUATE BOND HEARING**

16 41. The allegations in the above paragraphs are realleged and incorporated herein.

17 42. Due process requires that continued civil detention be justified through a fair
18 procedure.

19 43. At a constitutionally adequate bond hearing, the government must bear the
20 burden of proof; the burden must be satisfied by clear and convincing
21 evidence; the adjudicator must consider alternatives to detention; and the
22 adjudicator must evaluate ability to pay and conditions of release.

23 44. Petitioner has been denied such a hearing.

24 45. Despite substantial evidence that Petitioner is not a flight risk or danger and
25 has strong community ties, Respondents continue to detain him without
26 meaningful review.

27 46. This lack of procedural safeguards renders his detention unconstitutional.
28



1 47. Petitioner has due process rights to challenge his detention. See *Zadvydas v.*
2 *Davis*, 533 U.S. 678, 693, 695 (2001); *Rodriguez-Diaz v. Garland*, 53 F.4th
3 1189, 1205–06 (9th Cir. 2022).

4 48. As the Ninth Circuit held, the Due Process Clause applies to noncitizens
5 regardless of whether they are “seeking admission” or are “admitted” under
6 immigration law. *Wong v. United States*, 373 F.3d 952, 973 (9th Cir. 2004),
7 abrogated on other grounds by *Wilkie v. Robbins*, 551 U.S. 537 (2007); see
8 also *Padilla v. U.S. Immigr. & Customs Enf’t*, 704 F. Supp. 3d 1163, 1171
9 (W.D. Wash. 2023). The Due Process Clause allows Petitioner to challenge
10 his detention.

11 49. Petitioner challenges his deprivation of liberty and detention, not the
12 procedures governing admission into the United States.

13 50. To the extent Respondent contends that Petitioner lacks due process rights,
14 that position is unsupported by law. Courts have recognized that even
15 noncitizens seeking admission retain constitutional protections against
16 unlawful detention and mistreatment. See *Rosales-Garcia v. Holland*, 322 F.3d
17 386, 412 (6th Cir. 2003) (en banc); see also *Jean v. Nelson*, 472 U.S. 846, 874
18 (1985) (Marshall, J., dissenting). Accordingly, Petitioner has the right to
19 challenge the constitutionality of his prolonged detention under the Due
20 Process Clause of the Fifth Amendment.

21
22 51. Courts have recognized that due process requires meaningful custody review
23 where prolonged immigration detention lacks adequate procedural safeguards.
24 Petitioner therefore seeks enforcement of this Court’s prior order and relief
25 from continued detention based on the constitutionally deficient bond
26 proceeding.
27
28



GROUND TWO

**PROLONGED DETENTION UNDER 8 U.S.C. § 1226(a) IS SUBJECT
TO CONSTITUTIONAL LIMITS**

52. The allegations in the above paragraphs are realleged and incorporated herein.

53. Petitioner's continued detention without a bond hearing violates the Fifth Amendment.

54. Petitioner has a fundamental liberty interest in freedom from physical restraint. That interest is substantial and ongoing.

55. The risk of erroneous deprivation is exceptionally high because Petitioner has not received a constitutionally sufficient hearing before a neutral decisionmaker. No mechanism currently exists to test whether his continued detention is justified.

56. The government's interest in avoiding such a hearing is minimal. Providing a bond hearing imposes little administrative burden while ensuring constitutionally required protections.

57. Under the Due Process Clause, prolonged detention, especially approaching or exceeding several months, requires an individualized determination of necessity.

58. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty [the Due Process Clause] protects." *Zadvydas*, 533 U.S. at 690.

59. Petitioner has an interest in remaining with his community, working, and continuing the process of seeking relief from removal. See *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972).

60. The government's interest in detaining Petitioner without notice, reasoning, and a hearing is low. See *Pinchi*, 2025 WL 2084921, at *5; *Matute*, 2025 WL 2817795, at *6; *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019).



1 Respondents identify no burden that would have resulted from providing
2 proper notice, reasoning, and a pre-deprivation hearing.

3 61. The government's actions deprived Petitioner of due process. Because
4 Petitioner is detained under 8 U.S.C. § 1226(a) while his appeal remains
5 pending, the issue before this Court is whether continued detention complies
6 with the Constitution and this Court's prior order.

7 62. Furthermore, Petitioner challenges his detention on constitutional grounds, not
8 statutory grounds. Although he is detained pursuant to 8 U.S.C. § 1226(a), his
9 detention remains subject to constitutional limits. The Supreme Court has not
10 precluded noncitizens from bringing as-applied constitutional challenges to
11 their detention. *Jennings v. Rodriguez*, 583 U.S. 281 (2018), did not explicitly
12 address constitutional arguments. Likewise, although *Demore v. Kim*, 538
13 U.S. 510 (2003), rejected a facial challenge to mandatory detention under §
14 1226(c), the Supreme Court has recognized judicial review over as-applied
15 challenges to detention. See *Nielsen v. Preap*, 586 U.S. 392, 420 (2019);
16 *Demore*, 538 U.S. at 532–33 (Kennedy, J., concurring).

17 63. On January 14, 2026, an Immigration Judge ordered Petitioner removed, and
18 Petitioner timely appealed that decision to the Board of Immigration Appeals,
19 where it remains pending.
20

21 64. A final decision from the Board of Immigration Appeals may take at least six
22 additional months, extending Petitioner's detention to approximately one year
23 or more.

24 65. Petitioner challenges his prolonged detention on constitutional grounds, not
25 statutory grounds. Although he is detained pursuant to 8 U.S.C. § 1226(a), his
26 detention remains subject to constitutional limits. The Supreme Court has not
27 precluded noncitizens from bringing as-applied constitutional challenges to
28

1 immigration detention. *Jennings v. Rodriguez*, 583 U.S. 281 (2018), did not
2 resolve such constitutional claims, and *Demore v. Kim*, 538 U.S. 510 (2003),
3 does not bar as-applied challenges to prolonged detention. See *Nielsen v.*
4 *Preap*, 586 U.S. 392, 420 (2019); *Demore*, 538 U.S. at 532–33 (Kennedy, J.,
5 concurring).

6 66. This Court should so hold as well.

7 67. Petitioner has remained detained since January 2025, with no clear endpoint
8 while his immigration appeal remains pending. This prolonged and
9 indeterminate detention is arbitrary, excessive in duration, and
10 unconstitutional absent a constitutionally adequate bond determination.

11 **GROUND THREE**

12 **FAILURE TO COMPLY WITH FEDERAL COURT ORDER**

13
14 68. The District Court explicitly required that the government bear the burden of
15 proving by clear and convincing evidence that Petitioner is a danger or flight
16 risk. The Immigration Judge failed to apply this standard, instead relying on
17 unsupported assertions. This constitutes noncompliance with this Court's order
18 and warrants enforcement.

19
20 69. The Immigration Judge committed legal and factual error in concluding that
21 Petitioner poses a danger to the community or a flight risk. DHS failed to meet
22 its burden of proving dangerousness or flight risk by clear and convincing
23 evidence, as required by this Court's order.

24 70. The Immigration Judge further erred in finding that no condition of release
25 could ensure Petitioner's appearance. The record lacks individualized evidence
26 supporting that finding, and continued detention is legally unjustified.

27 71. Because the Immigration Judge did not apply the required constitutional
28 safeguards, Respondents have not complied with this Court's order.



1 Enforcement is therefore necessary to remedy the ongoing deprivation of
2 liberty and to ensure that any continued detention is supported by clear and
3 convincing evidence after a meaningful individualized hearing.

4
5 **PRAYER FOR RELIEF**

6 Wherefore, Petitioner respectfully requests that this Court enforce its prior judgment
7 and grant the following relief:

- 8 1. Enforce its prior order requiring a constitutionally adequate bond
9 hearing;
10 2. Order Petitioner's immediate release from custody; or, in the
11 alternative,
12 3. Order, in the alternative, a constitutionally compliant bond hearing
13 within seven (7) days, at which the government bears the burden of
14 proving by clear and convincing evidence that continued detention is
15 necessary and that no conditions of release can reasonably address any
16 proven flight risk or danger;
17 4. Issue an order to show cause;
18 6. Grant any further relief the Court deems just and proper.

19
20 DATED: July 20, 2026

21 Respectfully submitted,

22
23 

24 _____
25 Naira Zohrabyan
26 Attorney for Petitioner
27
28



CERTIFICATE OF SERVICE

I, undersigned counsel, hereby certify that on this date, I filed this Motion to Enforce Judgment using the CM/ECF system.

DATED: July 20, 2026

Respectfully submitted,



Naira Zohrabyan
Attorney for Petitioner
Zohrabyan Law, APC

ZOHRABYAN
LAW, APC



CERTIFICATE OF SERVICE

I, undersigned counsel, hereby certify that on this date, I filed this **MOTION TO ENFORCE JUDGMENT** using the CM/ECF system.

DATED: July 20, 2026,

Respectfully submitted



Naira Zohrabyan
Attorney for Petitioner
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