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

10 DAWIT FITSUM KALAYU,
11
12 Petitioner,

13 v.

14 MARKWAYNE MULLIN, Secretary of
15 the Department of Homeland Security,
16 TODD BLANCE, Acting Attorney
17 General, TODD M. LYONS, Acting
18 Director, Immigration and Customs
19 Enforcement, JESUS ROCHA, Acting
20 Field Office Director, San Diego Field
21 Office, and CHRISTOPHER LAROSE,
22 Warden of the Otay Mesa Detention
23 Facility,

24 Respondents.

CIVIL CASE NO.: 26-cv-2394-LL

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

27 ¹ Federal Rule of Civil Procedure 15 permits petitioners to amend their pleadings
28 with leave of Court. This Court gave leave to amend in its scheduling order. Dkt. 5
at 2.

INTRODUCTION

Dawit Kalayu has been detained pending his immigration proceedings for nearly 8 months. 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.). 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 selected IJ will no longer reliably satisfy due process. This Court should therefore consider the alternative forms of relief set forth at the end of this petition.

STATEMENT OF FACTS

Dawit Kalayu, an Ethiopian citizen, came to the United States on September 20, 2025. Exh. A at ¶ 1. He immediately turned himself in to border patrol and was detained. *Id.* Mr. Kalayu quickly found a lawyer and filed for asylum. *Id.* at ¶ 2. But ICE moved to pretermite his asylum claim, telling that judge that he would be sent to Uganda to apply for asylum there. *Id.* Mr. Kalayu told the court that he had heard stories about the refugee camps in Uganda. *Id.* He has heard that the camps are violent, and the Ethiopian government sometimes pays the people running the camps to send people back. *Id.* But the immigration judge agreed to pretermite his asylum claim on March 4, 2026. *Id.* Mr. Kalayu appealed to the BIA. *Id.* at ¶ 3. That appeal remains pending. *Id.* Meanwhile, he remains at Otay Mesa Detention Center in jail-like conditions. *Id.* at ¶ 5.²

² Mr. Kalayu financially qualifies for Federal Defenders’ services. *Id.* at ¶ 6.

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. Kalayu 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. Kalayu, 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 government to detain immigrants after they are ordered removed. *Id.* at 683. For immigrants who cannot be removed, that statute had the potential to subject them to years, decades, or a lifetime in custody.

1 *See id.* at 690. The Supreme Court held that if the statute “permit[ed] indefinite
2 detention of an alien[,] [it] would raise a serious constitutional problem,” because

3 [t]he Fifth Amendment's Due Process Clause forbids the Government
4 to ‘depriv[e]’ any ‘person ... of ... liberty ... without due process of law.’
5 Freedom from imprisonment—from government custody, detention, or
6 other forms of physical restraint—lies at the heart of the liberty that
7 Clause protects. *See Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). And
8 this Court has said that government detention violates that Clause unless
9 the detention is ordered in a *criminal* proceeding with adequate
10 procedural protections, *see United States v. Salerno*, 481 U.S. 739, 746
11 (1987), or, in certain special and ‘narrow’ nonpunitive ‘circumstances,’
12 *Foucha, supra*, at 80, where a special justification, such as harm-
13 threatening mental illness, outweighs the ‘individual's constitutionally
14 protected interest in avoiding physical restraint.’ *Kansas v. Hendricks*,
15 521 U.S. 346, 356 (1997).

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

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

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

Finally, the Supreme Court held in *Demore v. Kim* that at least some statutes
mandating detention during immigration proceedings do not automatically violate

1 the Due Process Clause. 538 U.S. 510, 513 (2003). *Demore* addressed 8 U.S.C.
2 § 1226(c), which mandates detention without a bond hearing for persons with
3 certain criminal convictions. *Id.* The Court upheld § 1226(c) in a 5-4 opinion based
4 on (1) the government interests justifying the detention of immigrants with certain,
5 aggravated criminal convictions, and (2) the relative brevity of detention in most
6 cases, with the vast majority taking only about five months. *Id.* at 517–31. Justice
7 Kennedy supplied a deciding vote. His concurrence left open the possibility that
8 individual immigrants could be “entitled to an individualized determination as to
9 his risk of flight and dangerousness if the continued detention became unreasonable
10 or unjustified.” *Id.* at 532–33.

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

18 These Courts have relied on the due process concerns recognized in
19 *Zadvydas*. See, e.g., *Kydyrali*, 499 F. Supp. 3d at 771; *Banda*, 385 F. Supp. 3d at
20 1113–17; *Abdul Kadir v. Larose*, No. 25CV1045-LL-MMP, 2025 WL 2932654, at
21 *3 (S.D. Cal. Oct. 15, 2025). As the Ninth Circuit put it in *Jennings*’ wake, those
22 considerations raise “grave doubts that any statute that allows for arbitrary
23 prolonged detention without any process is constitutional or that those who founded
24 our democracy precisely to protect against the government’s arbitrary deprivation
25 of liberty would have thought so.” *Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir.
26 2018).

27 Neither *Jennings* nor *Demore* undermines that conclusion. *Jennings* held
28 only that the statute itself did not impose any limits on detention. It “did not

1 foreclose as-applied constitutional challenges to detention under” mandatory-
 2 detention statutes. *Santos v. Warden Pike Cnty. Corr. Facility*, 965 F.3d 203, 209
 3 (3d Cir. 2020). And *Demore* held only that conviction-based mandatory detention
 4 during immigration proceedings does not necessarily or inherently violate the Due
 5 Process Clause, particularly when the detention has an expected duration of only
 6 about five months. *Id.* at 208–11. But many persons detained under § 1225(b)—
 7 like Mr. Kalayu—do not have criminal convictions. And as Justice Kennedy’s
 8 concurrence made clear, *Demore* does not prevent immigrants from arguing that
 9 sufficiently prolonged detention violates due process in their individual cases. *See*
 10 *id.*³

11 Thus, this Court should hold that sufficiently prolonged detention violates
 12 the Due Process Clause, as most courts have. *See, e.g., Gao v. LaRose*, No. 25-CV-
 13 2084-RSH-SBC, 2025 WL 2770633, at *3 (S.D. Cal. Sept. 26, 2025); *Abdul Kadir*
 14 *v. Larose*, No. 25CV1045-LL-MMP, 2025 WL 2932654, at *4 (S.D. Cal. Oct. 15,
 15 2025); *Cong v. Noem*, No. 25-CV-3730-GPC-DEB, 2026 WL 76566, at *3 (S.D.
 16 Cal. Jan. 9, 2026); *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 772 (S.D. Cal. 2020)
 17 (Battaglia, J.); *Mardian v. Mayorkas*, 25-cv-3467-JLS; *Raeva v. Mayorkas*, 25-cv-
 18 3175-JO; *Abdul-Samed v. Warden of Golden State Annex Det. Facility*, No. 25-cv-
 19 98-SAB-HC, 2025 WL 2099343, at *6 (E.D. Cal. July 25, 2025); *Hernandez v.*
 20 *Wofford*, No. 25-cv-986-KES-CDB (HC), 2025 WL 2420390, at *3 (E.D. Cal. Aug.
 21 21, 2025); *Padilla v. ICE*, 704 F. Supp. 3d 1163, 1171–72 (W.D. Wash. 2023).

22
 23
 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.*

II. Courts have reached different conclusions about when immigration detention becomes indefinitely prolonged, but Mr. Kalayu 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). Most have adopted factors tests. *See Sanchez-Rivera*, 2023 WL 139801, at *5–6 (surveying different approaches). Courts generally agree that relevant factors include:

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

Id. Some courts also consider:

- (4) “the conditions of detention,” and
- (5) “the likelihood that the removal proceedings will result in a different final order.”

Id. Other courts have rejected the fourth and fifth factors, holding that they are “not particularly suited to assisting the Court in determining whether detention has become unreasonable and due process requires a bond hearing.” *Lopez v. Garland*, 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022); *accord Sanchez-Rivera*, 2023 WL 139801, at *5–6.⁴ Mr. Kalayu would prevail under any of these factors tests.

First, the “most important factor,” the length of detention, favors Mr. Kalayu. *Banda*, 385 F. Supp. 3d at 1118. In assessing this factor, “[i]t is important to bear

⁴ Courts also disagree about whether to account for any criminal convictions that have led to the deportation. *Sanchez-Rivera*, 2023 WL 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 in mind the context: The detention that is being examined here is the detention of a
 2 human being who has never been found to pose a danger to the community or to be
 3 likely to flee if released.” *Jamal A. v. Whitaker*, 358 F. Supp. 3d 853, 859 (D. Minn.
 4 2019). With that context, “[c]ourts have found detention over seven months without
 5 a bond hearing weighs toward a finding that it is unreasonable.” *Amado v. United*
 6 *States Dep’t of Just.*, No. 25CV2687-LL(DDL), 2025 WL 3079052, at *5 (S.D. Cal.
 7 Nov. 4, 2025). Mr. Kalayu has been detained for over 7 months. Exh. A at ¶ 1. This
 8 factor therefore favors a bond hearing.

9 Second, Mr. Kalayu has reason to anticipate significant future detention. He
 10 just filed his appeal to the BIA in March. *Id.* at ¶ 2. And if he loses on appeal, he
 11 would have the opportunity to appeal again to the Ninth Circuit. All told, “[t]his
 12 process may take up to two years or longer.” *Banda*, 385 F. Supp. 3d at 1119.
 13 Because “Petitioner’s future detention can last several more months or even
 14 years[,]” this factor favors Mr. Kalayu. *Abdul Kadir v. Larose*, No. 25CV1045-LL-
 15 MMP, 2025 WL 2932654, at *5 (S.D. Cal. Oct. 15, 2025).

16 Third, the delay factor is Mr. Kalayu. Mr. Kalayu did not unduly delay in his
 17 case, and his claim was pretermitted in the ordinary course. Exh. A at ¶ 2.

18 Fourth, Mr. Kalayu’s conditions of confinement weigh in favor of a bond
 19 hearing, because being at Otay Mesa is “indistinguishable from penal
 20 confinement.” *Abdul Kadir*, 2025 WL 2932654, at *5 (quoting *Kydyrali*, 499 F.
 21 Supp. 3d at 773); Exh. A at ¶ 4.

22 The fifth factor favors Mr. Kalayu, because he may win on appeal.

23 Under any test, then, Mr. Kalayu is entitled to a bond hearing.

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

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

1 to determine whether Mr. Kalayu 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. Kalayu'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 B 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>; 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
party to do or stop doing a specific act. A declaratory judgment is not
an equitable remedy and does not, by itself, have the effect of
compelling specific action by a party. Thank you for your attention to
this matter.

17 Am. Immigr. Laws. Ass'n, Practice Alert: EOIR Issues Nationwide Guidance
18 on *Maldonado Bautista*, AILA Doc. No. 26011404 (Jan. 16, 2026),
19 [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)
20 [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,
21 calling out “Respondents’ deliberate choice to continue defying the final
22 judgment entered in *Bautista*.” *Palomera Baltazar v. Janecka*, No. 5:26-cv-
23 00019-SSS-BFM at *2-3 (C.D. Cal. Jan. 16, 2026).

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

27 The “equitable and flexible nature of habeas relief” affords district
28 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 the Court’s procedure in the
22 *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 Respectfully submitted,

15
16 Dated: May 15, 2026

/s/ Katie Hurrelbrink

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