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

11 WISKENDY FRANCOIS,

12 Petitioner,

13 v.

14 CHRISTOPHER LaROSE, Warden Otay
15 Mesa Detention Center, *et al.*,

16 Respondents.

CIVIL CASE NO.: 26CV2556-BTM

**Traverse in Support of Petition for
Writ of
Habeas Corpus**

17 **INTRODUCTION**

18 Petitioner moves this Court for his immediate release based on violations of due
19 process. Petitioner's prolonged detention over 15 months and the repeated
20 continuances of his Merits Hearing on his asylum case by the Immigration Court
21 have place him in indefinite detention.

22 **A. Changed Circumstances Support Petitioner's Demand for Immediate
23 Release: Immigration Judges' Neutrality Has Been Compromised.**

24 On May 13, 2026, Mr. Francois was again denied bond by an immigration judge
25 (IJ). Exh. A. The IJ relied on prior denials to determine that Mr. Francois did not
26 meet his burden of demonstrating materially changed circumstances pursuant to 8
27 C.F.R. § 1003.19(e). It has become clear through this denial that the IJs will not
28 consider the fact that all of Petitioner's traffic violations have been cleared as a
change in circumstance. As a reminder, Petitioner suffered eight traffic stops over

1 a four-year period. That is an average of two traffic stops per year. The most severe
2 charge was a misdemeanor for being an unlicensed driver. ECF No. 8-1, at 22-23.
3 A capias warrant issued and has since been cleared. ECF No.1-2, at 4-13. In the
4 eight and a half years Petitioner resided in the United States he had no other arrests,
5 convictions or failures to appear. Petitioner, objectively, does not pose an ongoing
6 danger or a flight risk; however, due to attacks on IJ independence under the current
7 administration the IJ's neutrality is compromised.

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

13 In *Yin v. Moldanado*, a court expressed consternation at an IJ's "conclusory,
14 two-line determination of flight risk" for a person whom DHS had previously
15 agreed "to release . . . on his own recognizance" and who "attend[ed] [all]
16 immigration check-ins" during his release. No. 26-CV-0103 (PKC), 2026 WL
17 295389, at *3 (E.D.N.Y. Feb. 4, 2026).

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

26 And in *Picado v. Hyde*, a district judge ordered outright release after two
27 deficient bond hearings. No. 26-CV-065-JJM-PAS, 2026 WL 352691, at *7 (D.R.I.
28

1 Feb. 9, 2026). The IJ in the second hearing had deemed the immigrant a danger to
2 the community based on an uncorroborated police report accusing him of driving
3 90 mph in a 55-mph zone. *Id.*

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

15 He is far from the only one to express concerns. In a declaration filed in *Briceno*
16 *Solano v. Mason*, No. 26-CV-00045, 2026 WL 311624 (S.D.W. Va. Feb. 4, 2026),
17 Former ICE Counsel Jorge Artieda attests to seeing "a seismic shift in bond hearing
18 outcomes for individuals who had been granted federal habeas relief and ordered
19 § 1226(a) bond hearings . . . in the Eastern District of Virginia." Exh. B at 2. The
20 pattern of granting bond in appropriate cases "abruptly and uniformly ceased" in
21 early January, in a way that "suggests coordinated institutional direction." *Id.* IJs
22 there now rely on a "remarkably narrow and predictable set of rationales to deny
23 bond—rationales that appear to bear little relationship to genuine individualized
24 risk assessment and that would not have been deemed sufficient to justify denial
25 just weeks earlier." *Id.* at 3. In Mr. Artieda's professional opinion, the IJs' rationales
26 "do not appear to be grounded in legitimate risk assessment" but are "pretexts
27 designed to ensure denial of bond regardless of the individual facts of each case."
28

1 *Id.* at 4.

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

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

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

16 These IJs are under no illusions about why they were let go. Former Baltimore
17 IJ Emmett Soper stated: “I think the current administration of the immigration
18 courts does not fundamentally see the immigration courts as neutral decision-
19 makers. I think that they see the immigration courts as a tool for this administration
20 to advance its policy objectives.” Geoff Bennett & Ali Schmitz, *Ousted*
21 *Immigration Judge Describes Deepening Court Backlog*, PBS NewsHour (Nov. 12,
22 2025), [https://www.pbs.org/newshour/show/ousted-immigration-judge-describes-](https://www.pbs.org/newshour/show/ousted-immigration-judge-describes-deepening-court-backlog)
23 [deepening-court-backlog](https://www.pbs.org/newshour/show/ousted-immigration-judge-describes-deepening-court-backlog). Former San Francisco IJ Jeremiah Johnson similarly
24 understood “the hint that they should be hearing cases a certain way, deciding cases
25 a certain way. Move faster. Less due process, essentially.” Hilda Gutierrez, Michael
26 Bott & Son Vo, *'An all-out attack on immigration court:' SF immigration judges*
27 *speak out after firings*, NBC Bay Area (Nov. 25, 2025),
28

1 [https://www.nbcbayarea.com/investigations/san-francisco-immigration-judges-](https://www.nbcbayarea.com/investigations/san-francisco-immigration-judges-speak-out-firings/3986850/)
 2 [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
 3 more direct: "We were told to facilitate deportation... Due process is dead in
 4 immigration courts." Isabela Dias, *"Fired for No Reason": Former Immigration*
 5 *Judges Speak Out Against Trump's Assault on the Courts*, Mother Jones (Oct. 9,
 6 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/)
 7 [trump-assault-purge-dhs-ice/](https://www.motherjones.com/politics/2025/10/immigration-court-judge-trump-assault-purge-dhs-ice/).

8 This has had the predictable effect on those who remain. According to former
 9 San Francisco IJ Elizabeth Young, "I've talked to many of [the judges still serving],
 10 and they're like, 'When I go into court, I am concerned about applying the law, but
 11 I'm also concerned that I should deny more, because if I don't, then I'll get fired.'" Marco Poggio, *Judges See an Immigration Court Guttled from Inside*, Law360 (Oct.
 12 31, 2025), [https://www.law360.com/articles/2381003/judges-see-an-immigration-](https://www.law360.com/articles/2381003/judges-see-an-immigration-court-guttled-from-inside)
 13 [court-guttled-from-inside](https://www.law360.com/articles/2381003/judges-see-an-immigration-court-guttled-from-inside). Meanwhile, Department of Justice recruitment materials
 14 seek "deportation judges" to fill the empty IJ slots, Coral Murphy Marcos, *US*
 15 *Justice Department Recruiting Legal Experts to Serve as 'Deportation' Judges*,
 16 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)
 17 [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 down
 18 on criminal illegal aliens" and "defend your communities, your culture, your very
 19 way of life." dhsgov, Instagram (Nov. 21, 2025),
 20 <https://www.instagram.com/p/DRVt8DmCQKD/?hl=en>.

21
 22 *Second*, EOIR personnel have at times directed IJs to ignore federal court
 23 orders related to bond hearings. On January 13, 2026, in the wake of *Maldonado*
 24 *Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3289861 (C.D.
 25 Cal. Nov. 20, 2025); *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-
 26 BFM, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025), Chief Immigration
 27 Judge Teresa L. Riley sent all IJs the following instructions:

28 Please provide the following guidance to all immigration judges

1 forthwith: *Maldonado Bautista* is not a nationwide injunction and does
 2 not purport to vacate, stay, or enjoin *Yajure Hurtado*. Therefore
 3 *Yajure Hurtado* remains binding precedent on agency adjudications.
 4 For clarification, declaratory judgments differ from injunctions in that
 5 the former clarifies parties' legal rights and relationships without
 6 ordering specific action, while the latter is a court order compelling a
 7 party to do or stop doing a specific act. A declaratory judgment is not
 8 an equitable remedy and does not, by itself, have the effect of
 9 compelling specific action by a party. Thank you for your attention to
 10 this matter.

11 Am. Immigr. Laws. Ass'n, Practice Alert: EOIR Issues Nationwide Guidance
 12 on *Maldonado Bautista*, AILA Doc. No. 26011404 (Jan. 16, 2026),
 13 [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)
 14 [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,
 15 calling out “Respondents’ deliberate choice to continue defying the final
 16 judgment entered in *Bautista*.” *Palomera Baltazar v. Janecka*, No. 5:26-cv-
 17 00019-SSS-BFM at *2-3 (C.D. Cal. Jan. 16, 2026).

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

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

B. Petitioner has Not Filed a Board of Immigration Appeal as it Will be Futile and Cause Unreasonable Delay

The Ninth Circuit does not require petitioners to exhaust direct appeals before filing petitions of habeas corpus. *Castro-Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001). The current realities at the Board of Immigration Appeals (BIA) are a perfect example of why no such absolute requirement exists.

It is widely understood that lengthy backlogs in processing and issuing receipt notices for appeals are the new normal at the BIA. This is likely due to the current administration's purge at the BIA. The BIA was reduced from 28 members to 15 members. All Biden appointees on the BIA were fired. Am. Imm. Council, *BIA Decision Strips Immigration Judges of Bond Authority, All but Guaranteeing Mandatory Detention for Undocumented Immigrants* (Sept. 12, 2025), <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 reconstituted BIA has issued 71 published decisions. Exec. Off. for Immigr. Rev., *Volume 29*, U.S. Dep't of Just. (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.

In this particular instance, waiving exhaustion is both practical and would avoid further violations of Petitioner's due process rights.

C. The IJ's Repeated Continuances of Petitioner's Merits Hearing Demonstrate the Administration's Minimization of Due Process

While Petitioner has remained in custody over 15 and a half months, the Merits Hearing on his asylum case has been rescheduled *five times* by the IJs. It is becoming more and more unlikely that Petitioner will receive a Merits Hearing in the reasonably foreseeable future. Petitioner was scheduled to have a Merits Hearing *yesterday*, May 20, 2026, and it was rescheduled on by the IJ to June 5, 2026.¹

For clarity, the IJ continuances were as follows:

(1) December 23, 25: Continued by IJ for "unplanned/sick leave." ECF No. 8-1 at 20.

(2) March 16, 2026: Continued by IJ for "IJ Reassignment." *Id.*

(3) April 8, 2026: Petitioner's counsel sought a brief continuance due to a calendar conflict, request was denied. On date of hearing, IJ continued hearing "due to court scheduling issues unrelated to Respondent's continuance request." Exh. B.

(4) April 28, 2026: Continued by IJ "due to calendar conflict and docketing management needs." Exh. C.

(5) May 20, 2026: IJ continued hearing to June 5, 2026.

There is a pattern here. It is pattern of delay and disregard for Petitioner's due process rights. Petitioner has reason to believe these continuances are systemic and intentional.

The 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->

¹ As the continuance just occurred, Petitioner is not in receipt of an official record; however, his immigration attorney confirmed the IJ continued the hearing.

1 donald-trumps-attack-on-immigration-court. The policy directives include: a
 2 memorandum dated June 27, 2025 warning judges not to demonstrate “bias directed
 3 against DHS” or to be “adjudicatory outliers,” at risk of “close examination and
 4 potential action,” Exec. Off. for Immigr. Rev., Policy Memorandum 25-33,
 5 Neutrality and Impartiality in Immigration Court Proceedings (June 27, 2025),
 6 [https://iptp-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)
 7 [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 applications
 8 without full evidentiary hearings, styled as efficiency guidance but functioning as
 9 a directive to reduce due process protections, Exec. Off. for Immigr. Rev., Policy
 10 Memorandum 25-28, Pretermission of Legally Insufficient Application for Asylum
 11 (Apr. 11, 2025), <https://www.justice.gov/eoir/media/1396411/dl?inline>; and
 12 memoranda restricting immigration judges’ ability to grant continuances, Exec.
 13 Off. for Immigr. Rev., Policy Memorandum 25-27, Cancellation of Director's
 14 Memorandum 23-01 and Reinstatement of Policy Memorandum 19-13 (Mar. 21,
 15 2025), <https://www.justice.gov/eoir/media/1394086/dl>, and administrative closure,
 16 Exec. Off. for Immigr. Rev., Policy Memorandum 25-29, Cancellation of Director's
 17 Memorandum 22-03 (April 18, 2025),
 18 <https://www.justice.gov/eoir/media/1397161/dl?inline>.

19 CONCLUSION

20 For the reasons stated, Petitioner respectfully requests the Court to order his
 21 immediate release from custody, and all other relief that the Court deems just and
 22 proper.

23 Respectfully submitted,

24
 25 Dated: May 21, 2026

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