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

HU TONGXING¹,

Petitioner,

v.

CHRISTOPHER J. LAROSE,
Warden at Otay Mesa Detention
Center;

MARKWAYNE MULLIN,
Secretary of U.S. Department of
Homeland Security;

TODD LYONS, Acting Director of
U.S. Immigration and Customs
Enforcement;

DANIEL A. BRIGHTMAN,
Director, San Diego Field Office,
Immigration and Customs
Enforcement, Enforcement and
Removal Operations;

TODD BLANCHE, Acting Attorney
General of the U.S.

Respondents.

CASE NO.: 26-cv-2674-JLS-SBC

**Amended² Petition for a Writ
of Habeas Corpus Under 28
U.S.C. § 2241**

¹ Mr. Tongxing's name on the docket is written as "Hu Tonxing" but his correct legal name is Hu Tongxing.

² Federal Rule of Civil Procedure 15(a)(2) permits a party to "amend its pleading . . . with the court's leave." The Court granted Mr. Tongxing's request to file an amended petition by May 29, 2026. [ECF 8.]

1 **STATUS OF IMMIGRATION PROCEEDINGS³**

2 On May 27, 2026, Mr. Hu Tongxing's application for asylum was
3 granted by an immigration judge. The government reserved its right
4 to appeal that grant of asylum. The government has thirty (30) days
5 within which to file an appeal. Mr. Tongxing remains in custody.

6
7 **INTRODUCTION TO HABEAS PETITION**

8 Constitutionally, there must come a time at which an immigrant
9 who does not pose any danger or flight risk should be released pending
10 immigration proceedings. For Mr. Tongxing, that time is now.
11 Mr. Tongxing has been detained at the Otay Mesa Detention Center
12 pending immigration proceedings for nearly 9 months. This Court
13 should "join[] the majority of courts across the country in concluding
14 that [his] unreasonably prolonged detention under 8 U.S.C. § 1225(b)
15 without an individualized bond hearing violates due process." *Kydyrali*
16 *v. Wolf*, 499 F. Supp. 3d 768, 772 (S.D. Cal. 2020) (Battaglia, J.).

17 Additionally, because of recent evidence that the neutrality of
18 Otay Mesa's immigration judges ("IJ") has been compromised, a bond
19 hearing before a randomly selected IJ will not reliably satisfy due
20 process. This Court should therefore consider other forms of relief as
21 set forth at the end of this petition.

22 **JURISDICTION AND VENUE**

23 This Court has jurisdiction under 28 U.S.C. § 2241 (federal
24 habeas statute); 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 2201-2
25 (declaratory judgment), and United States Constitution Article I,
26 Section 9 (Suspension Clause).

27
28 ³ This information comes to Counsel from Mr. Tongxing's immigration attorney.

Venue is proper in the Southern District of California under 28 U.S.C. § 1391 because this is a civil action in which Respondents are agencies of the United States, Petitioner is detained in this district, and a substantial part of the events or omissions giving rise to this action occurred in this district.

PARTIES

Petitioner Hu Tongxing is in immigration proceedings and is detained at the Otay Mesa Detention Facility, located in the Southern District of California.

Respondent Christopher J. Larose is the Warden of the Otay Mesa Detention Facility, where Mr. Tongxing is detained. He has immediate physical custody of Mr. Tongxing and is sued in his official capacity.

Respondent Markwayne Mullin is the U.S. Secretary of Homeland Security. He is responsible for the implementation and enforcement of the Immigration and Nationality Act and oversees ICE, which is responsible for Mr. Tongxing's detention. Mr. Mullin has ultimate custodial authority over Mr. Tongxing. He is sued in his official capacity.

Respondent Todd Lyons is the Acting Director of U.S. Immigration and Customs Enforcement and has authority over ICE operations. In that capacity and through his agents, Mr. Lyons has authority over the operation and enforcement of the immigration laws. Mr. Lyons is sued in his official capacity.

Respondent Daniel A. Brightman is the Director of the San Diego Field Office of ICE's Enforcement and Removal Operations. He is therefore the custodian of all people held at the Otay Mesa Detention Center and is Mr. Tongxing's immediate custodian and responsible for

1 his detention. He is sued in his official capacity.

2 Todd Blanche is the Acting Attorney General of the U.S. and is
3 responsible for the Department of Justice. He is sued in his official
4 capacity.

5 **STATEMENT OF FACTS**

6
7 Mr. Tongxing comes from China. Specifically, he comes from
8 Heilongjiang Province, an area of China near that country's border
9 with Russia. He is thirty-one (31) years old.

10 Mr. Tongxing crossed into the United States from the Republic of
11 Mexico on August 31, 2025. He was detained by immigration officials
12 that day and has been in immigration custody since. He applied for
13 asylum in this country based on his having been persecuted in China
14 on the basis of his religion.

15 As noted above, On May 27, 2026, Mr. Hu Tongxing's application
16 for asylum was granted by an immigration judge. The government
17 reserved its right to appeal that grant of asylum. The government has
18 thirty (30) days within which to file an appeal.

19 Mr. Tongxing remains in custody following this grant of asylum.

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ARGUMENT

I.

THE COURT SHOULD ORDER THE IMMEDIATE RELEASE OF MR. TONGXING OR ORDER A BOND HEARING IN IMMIGRATION COURT BECAUSE HIS PROLONGED DETENTION VIOLATES THE FIFTH AMENDMENT'S DUE PROCESS CLAUSE.

This petition addresses the question of whether and when the Fifth Amendment's Due Process Clause negates the government's statutory authority to detain immigrants without bond hearings. Mr. Tongxing is detained under one such statute – 8 U.S.C. § 1225(b).

A. Legal Background.

1. The Statute.

“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 people like Mr. Tongxing, who present themselves for inspection at the border and—rather than producing admission documents—make asylum and other fear-based claims. 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 (Petitioner had pending appeal with BIA and court analyzed under § 1225(b)).

Section 1225(b)(1)(A) states that a person without documentation is subject to expedited removal proceedings unless that person

1 indicates an intention to apply for asylum. Section 1225(b)(1)(A) spells
2 out the procedure for asylum interviews and in subsection (IV) states,
3 “Any alien subject to the procedures under this clause shall be
4 detained pending a final determination of credible fear of persecution
5 and, if found not to have such a fear, until removed.”

6 2. The Cases.

7 But what are the limits of statutory language that appears on its
8 face to permit the indefinite detention of a human being without due
9 process? Does the statute truly allow the government to deny even an
10 opportunity for an asylum seeker to proceed to a bond hearing so that
11 he can establish he is neither a flight risk nor danger? There are cases
12 suggesting limits to such indefinite detention.

13 The first in this line was *Zadvydas v. Davis*, where the Supreme
14 Court indicated that indefinite immigration detention raises serious
15 due process concerns. 533 U.S. 678 (2001). *Zadvydas* involved a statute
16 (8 USC § 1231(a)(6)) authorizing the government to detain immigrants
17 after they were ordered removed. *Id.* at 683. If the government could
18 not remove the immigrant for whatever reason, the statutory language
19 appeared to permit detention lasting a limitless period, including the
20 rest of the immigrant’s life. *See id.* at 690.

21 But the Supreme Court held that if the statute “permit[ed]
22 indefinite detention of an alien[,] [it] would raise a serious
23 constitutional problem” because
24

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

(1992). And this Court has said that government detention violates that Clause unless the detention is ordered in a *criminal* proceeding with adequate procedural protections, see *United States v. Salerno*, 481 U.S. 739, 746 (1987), or, in certain 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).

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

Several years later, the Ninth Circuit addressed § 1225(b) and borrowed from the reasoning in *Zadvydas* to hold that statute did not permit limitless detention. *Rodriguez v. Robbins*, 804 F.3d 1060, 1085 (9th Cir. 2015). As in *Zadvydas*, the court avoided confronting the constitutional question by reading an implicit limit into the statute and holding that “the mandatory provisions of § 1225(b) simply expire at six months . . .” *Id.* at 1082.

The Supreme Court then overruled *Robbins* in *Jennings v. Rodriguez*, holding § 1225(b) does not entitle detainees to bond hearings or otherwise impose “any limit on the length of detention.” 583 U.S. 281, 297 (2018). But although *Jennings* held that § 1225(b) imposes no *statutory* limit on the length of detention, it did not address whether prolonged, mandatory detention without bond hearings violates *constitutional* due process. *Id.* at 312 (noting the Ninth Circuit had no occasion to review the constitutional arguments and remanding for further proceedings).

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

16 **3. The Application.**

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

24 These Courts have relied on the due process concerns recognized
25 in *Zadvydas*. See, e.g., *Kydyrali*, 499 F. Supp. 3d at 771; *Banda*, 385 F.
26 Supp. 3d at 1116–18; *Abdul Kadir v. Larose*, No. 25CV1045-LL-MMP,
27 2025 WL 2932654, at *3 (S.D. Cal. Oct. 15, 2025). As the Ninth Circuit
28

1 put it in *Jennings*' wake, those considerations raise "grave doubts that
2 any statute that allows for arbitrary prolonged detention without any
3 process is constitutional or that those who founded our democracy
4 precisely to protect against the government's arbitrary deprivation of
5 liberty would have thought so." *Rodriguez v. Marin*, 909 F.3d 252, 256
6 (9th Cir. 2018).

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

20 Thus, like most courts, this Court should find that sufficiently
21 prolonged detention violates the Due Process Clause. *See, e.g., Gao v.*
22 *LaRose*, No. 25-CV-2084-RSH-SBC, 2025 WL 2770633, at *3 (S.D. Cal.
23 Sept. 26, 2025); *Abdul Kadir v. Larose*, No. 25CV1045-LL-MMP, 2025
24 WL 2932654, at *4 (S.D. Cal. Oct. 15, 2025); *Cong v. Noem*, No. 25-CV-
25 3730-GPC-DEB, 2026 WL 76566, at *3 (S.D. Cal. Jan. 9, 2026);
26 *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 772 (S.D. Cal. 2020) (Battaglia,
27 J.); *Mardian v. Mayorkas*, 25-CV-3467-JLS; *Raeva v. Mayorkas*, 25-CV-
28 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).

B. The Circumstances of Mr. Tongxing’s Case Demonstrate that his Detention is Impermissibly Prolonged Under the Fifth Amendment.

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 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-4187-TSH, 2019 WL 7491555, at *6 (N.D. Cal. Jan. 7, 2019). In that case, Mr. Tongxing would automatically qualify, as he has been detained for nearly 9 months.

Other courts have adopted various factors tests. *See Sanchez-Rivera*, 2023 WL 139801, at *5–6 (surveying different approaches).

Courts generally agree that the 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

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

3 *Id.* Other courts have rejected the fourth and fifth factors, holding they
4 are “not particularly suited to assisting the Court in determining
5 whether detention has become unreasonable and due process requires
6 a bond hearing.” *Lopez v. Garland*, 631 F. Supp. 3d 870, 879 (E.D. Cal.
7 2022); *accord Sanchez-Rivera*, 2023 WL 139801, at *5–6. Mr. Tongxing
8 would prevail under any of these factors tests and submits the
9 following analysis of the factors:

10 **1. Length of Detention.**

11 First, the “most important factor,” length of detention, favors
12 Mr. Tongxing. *Banda*, 385 F. Supp. 3d at 1118. In assessing this factor,
13 “[i]t is important to bear in mind the context: The detention being
14 examined here is the detention of a human being who has never been
15 found to pose a danger to the community or to be likely to flee if
16 released.” *Jamal A. v. Whitaker*, 358 F. Supp. 3d 853, 859 (D. Minn.
17 2019). With that context, “[c]ourts have found detention over seven
18 months without a bond hearing weighs toward a finding that it is
19 unreasonable.” *Amado v. United States Dep’t of Just.*, No. 25CV2687-
20 LL(DDL), 2025 WL 3079052, at *5 (S.D. Cal. Nov. 4, 2025).

21 As of the filing of this petition, Mr. Tongxing will have been in
22 custody since August 31, 2025—nearly 9 months. This obviously
23 surpasses the seven-month yardstick discussed above.

24 **2. Likely Duration of Future Detention.**

25 Second, given that the government has reserved its right to
26 appeal Mr. Tongxing being granted asylum, and has thirty (30) days in
27 which to do so, Mr. Tongxing is guaranteed to spend at least an
28

1 additional month in custody. Should the government file an appeal,
2 Mr. Tongxing would remain in custody more or less indefinitely. It is
3 unknown how long any appeal to the BIA will take to resolve but it is
4 safe to say it will at least take many months. And Mr. Tongxing would
5 appeal to the Ninth Circuit any decision by the BIA overturning his
6 grant of asylum. All told, “[t]his process may take up to two years or
7 longer.” *Banda*, 385 F. Supp. 3d at 1119. Because “Petitioner’s future
8 detention can last several more months or even years[,]” this factor
9 favors Mr. Tongxing’s requests. See *Abdul Kadir v. Larose*, No. 25-CV-
10 1045-LL-MMP, 2025 WL 2932654, at *5 (S.D. Cal. Oct. 15, 2025).

11 **3. Source of Delay.**

12 Third, the delay factor favors Mr. Tongxing. He has not delayed
13 in any sense and has sought to proceed with his asylum claims as
14 quickly as possible.
15

16 **4. Conditions of Confinement.**

17 Fourth, Mr. Tongxing’s conditions of confinement weigh in favor
18 of a bond hearing. In considering the conditions of detention, “[t]he
19 more that the conditions under which the [noncitizen] is being held
20 resemble penal confinement, the stronger his argument that he is
21 entitled to a bond hearing.” *Banda*, 385 F. Supp. 3d at 1119.
22 Mr. Tongxing is housed in the Otay Mesa Detention Center – the same
23 facility that houses many pretrial criminal detainees in this district. At
24 Otay Mesa, detainees are “locked up behind razor wire and concrete
25 walls in a secured facility, forced to wear a color-coded prisoner jump
26 suit, forbidden from accessing the internet, restricted access to outdoor
27 space, restricted on visitation, and guarded at all times with armed
28 guards authorized to inflict punishment for violations of rules.” *Abdul*

1 *Kadir*, 2025 WL 2932654, at *5. Accordingly, “Petitioner’s confinement
2 at OMDC is ‘indistinguishable from penal confinement.’” *Id.* (quoting
3 *Kydyrali*, 499 F. Supp. 3d at 773).

4 **5. Likelihood of a Different Result.**

5 The fifth factor favors Mr. Tongxing. He has been granted
6 asylum. In the current environment in which immigration judges
7 operate (*see infra* Section C), this is no small indication that
8 Mr. Tongxing’s asylum request is a strong one.

9 Under any test, then, Mr. Tongxing is entitled to a bond hearing.
10

11 **C. Immediate Release is the Appropriate Remedy Due to the** 12 **Erosion of Immigration Judge Neutrality.**

13 Ideally, this Court could remedy the due process violation by
14 ordering a bond hearing before a neutral immigration judge, allowing
15 the IJ to determine whether Mr. Tongxing posed a risk of danger or
16 flight. But attacks on IJ independence under the current
17 administration have severely compromised IJs’ neutrality. There is a
18 growing understanding that court-ordered “bond hearings [are],
19 effectively, stacked against detainees from the start.” Kyle Cheney,
20 *How ICE Defies Judges’ Orders to Release Detainees, Step by Step*,
21 Politico (Feb. 10, 2026), <https://tinyurl.com/fucm99m9>. As a result,
22 there is a serious risk that an IJ will order Mr. Tongxing’s continued
23 detention even if he poses no danger or flight risk. Several data points
24 support that conclusion.

25 **1. Concerns from Other Cases.**

26 In *Yin v. Moldonado*, a court expressed consternation at an IJ’s
27 “conclusory, two-line determination of flight risk” for a person whom
28 DHS had previously agreed “to release . . . on his own recognizance”

1 and who “attend[ed] [all] immigration check-ins” during his release.
2 No. 26-CV-0103 (PKC), 2026 WL 295389, at *3 (E.D.N.Y. Feb. 4, 2026).

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

13 And in *Picado v. Hyde*, a district judge ordered outright release
14 after two deficient bond hearings. No. 26-CV-065-JJM-PAS, 2026 WL
15 352691, at *7 (D.R.I. Feb. 9, 2026). The IJ in the second hearing had
16 deemed the immigrant a danger to the community based on an
17 uncorroborated police report accusing him of driving 90 mph in a 55-
18 mph zone. *Id.*

19 **2. Evidence of a Concerted Effort.**

20 These trends are consistent with sustained attacks on IJs’
21 independence under the current administration. Several examples
22 illustrate the point.
23

24 **a. Immigration Judges.**

25 First, the Trump administration has eliminated 128 IJs
26 insufficiently aligned with the administration’s priorities, illustrating
27 to the remaining IJs the cost of resistance. See Woo-Sun Lim, *Former*
28 *judge highlights legal failures in U.S. worker detentions*, The Dong-A

1 Ilbo (Sept. 20, 2025), <https://tinyurl.com/4p9xsyys>.

2 These IJs are under no illusions about why they were let go.
3 Former Baltimore IJ Emmett Soper stated: "I think the current
4 administration of the immigration courts does not fundamentally see
5 the immigration courts as neutral decision-makers. I think that they
6 see the immigration courts as a tool for this administration to advance
7 its policy objectives." Geoff Bennett & Ali Schmitz, *Ousted Immigration*
8 *Judge Describes Deepening Court Backlog*, PBS NewsHour (Nov. 12,
9 2025), <https://tinyurl.com/4y2a4stn>. Former San Francisco IJ Jeremiah
10 Johnson similarly understood "the hint that they should be hearing
11 cases a certain way, deciding cases a certain way. Move faster. Less
12 due process, essentially." Hilda Gutierrez, Michael Bott & Son Vo, *'An*
13 *all-out attack on immigration court: SF immigration judges speak out*
14 *after firings*, NBC Bay Area (Nov. 25, 2025),
15 <https://tinyurl.com/426jy9dk>. Former San Francisco IJ George Pappas
16 was even more direct: "We were told to facilitate deportation... Due
17 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://tinyurl.com/yevhp32h>.

21 This has had predictable effect on those who remain. According to
22 former San Francisco IJ Elizabeth Young, "I've talked to many of [the
23 judges still serving], and they're like, 'When I go into court, I am
24 concerned about applying the law, but I'm also concerned that I should
25 deny more, because if I don't, then I'll get fired.'" Marco Poggio, *Judges*
26 *See an Immigration Court Gutted from Inside*, Law360 (Oct. 31, 2025),
27 <https://tinyurl.com/dyc6utv6>. Meanwhile, Department of Justice
28 recruitment materials seek "deportation judges" to fill the empty IJ

1 slots, Coral Murphy Marcos, *US Justice Department Recruiting Legal*
2 *Experts to Serve as 'Deportation' Judges*, Guardian,
3 <https://tinyurl.com/4amnhj6u>. These materials invite to “bring the
4 hammer down on criminal illegal aliens” and “defend your
5 communities, your culture, your very way of life.” dhsgov, Instagram
6 (Nov. 21, 2025), <https://tinyurl.com/y4ueh7nd>.

7 **b. The BIA**

8 Second, a parallel purge occurred at the BIA, which was reduced
9 from 28 members to 15 members. All Biden appointees on the BIA
10 were fired. Am. Imm. Council, *BIA Decision Strips Immigration Judges*
11 *of Bond Authority, All but Guaranteeing Mandatory Detention for*
12 *Undocumented Immigrants* (Sept. 12, 2025), [https://tinyurl.com/](https://tinyurl.com/3p8rxjdf)
13 [3p8rxjdf](https://tinyurl.com/3p8rxjdf)/. The statistical impact is stark. As of January 22, 2026, the
14 reconstituted BIA has issued 71 published decisions. Exec. Off. for
15 Immigr. Rev., *Volume 29*, U.S. Dep't of Just. (Jan. 21, 2025),
16 <https://www.justice.gov/eoir/volume-29>. Of those, 69 decisions (97%)
17 favored the administration. By contrast, during the entire four-year
18 span of the prior administration, the BIA issued 76 published
19 decisions. Exec. Off. for Immigr. Rev., *Volume 28*, U.S. Dep't of Just.
20 (June 13, 2025), <https://www.justice.gov/eoir/volume-28>. (First decision,
21 *Matter of DIKHTYAR*, 28 I&N Dec. 214 (BIA 2021), issued 01/22/2021).
22 Of those, 46 decisions (60%) favored the administration. The
23 transformation from 60% to 97% pro-government outcomes—achieved
24 through wholesale termination of one administration's appointees —
25 speaks for itself.

26 Given the effort of the current administration to pressure
27 immigration courts to value deportation over the statutory and due
28

1 process rights of immigrants, the only way to ensure Mr. Tongxing
2 receives due process is to order his immediate release from custody.

3 **3. The Court has Authority to Fashion Necessary**
4 **Relief.**

5 The “equitable and flexible nature of habeas relief” affords
6 district courts significant discretion over the appropriate remedies
7 for violations of law and the Constitution. *Velasco Lopez v. Decker*,
8 978 F.3d 842, 855 (2d Cir. 2020); *see also Schlup v. Delo*, 513 U.S.
9 298, 319 (1995) (“[H]abeas corpus is, at its core, an equitable
10 remedy”). This Court should order a remedy that fully addresses
11 the statutory and constitutional violations in this case and is
12 efficient to administer. *Carafas v. LaVallee*, 391 U.S. 234, 238
13 (1968) (the habeas statute “does not limit the relief that may be
14 granted to discharge of the applicant from physical custody. Its
15 mandate is broad with respect to the relief that may be granted”).

16 **PRAYER FOR RELIEF**

17
18 Here, because ordering a bond hearing before a randomly
19 selected IJ would not properly redress the constitutional violations
20 here, Mr. Tongxing urges the Court to provide an alternative corrective
21 measure. Ideally, that would take the form of immediate release. *See*,
22 *e.g.*, Order, ECF No. 14 at 19, *Miri v. Bondi*, No. 5:26-CV-00698-MEMF
23 (C.D. Cal. March 5, 2026); *Moctezuma v. Henkey*, No. 1:25-CV-00741-
24 BLW, 2026 WL 18809, at *5 (D. Idaho Jan. 2, 2026). Or the Court could
25 choose to hold a bond hearing in district court. *See, e.g., L.G.M. v.*
26 *LaRocco*, 788 F.Supp.3d 401, 405-07 (E.D.N.Y. 2025).

27 The Court could also adopt an approach similar to that found in
28 the *Sandesh* case. *See* Order, ECF No. 13, *Sandesh v. LaRose*, No. 3:26-

CV-00846-JES (S.D. Cal. March 5, 2026). If that approach is taken, the Court should order:

1. Respondents provide Petitioner with a hearing and individualized bond determination within ten days of its order.
Id.
 - (a) At that hearing, the government shall bear the burden of establishing by clear and convincing evidence that Petitioner poses a danger or flight risk, while further specifying that concerns about interrupting court schedules is not a ground to deny bond. *Id.*
 - (b) The IJ shall consider alternative conditions of release and Petitioner's ability to pay bond if he or she determines bond is appropriate. *Id.*
 - (c) Respondents shall make a complete record of the bond hearing available to Petitioner and his counsel. *Id.*
2. Respondents are ordered to file a Notice of Compliance within five days of providing Petitioner with the bond hearing, including apprising the Court of the results of the hearing. *Id.*
3. Prohibit ICE from invoking the automatic stay provisions under 8 C.F.R. § 1003.19(i)(2) to defeat the IJ's bond determination.

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

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Respectfully submitted,

Dated: May 29, 2026

s/ Robert H. Rexrode

Robert H. Rexrode

Attorney for Mr. Tongxing

Email:

robert_rexrode@rexrodelawoffices.com

VERIFICATION

I, Robert H. Rexrode, declare as follows:

I am an attorney admitted to practice law in the State of California.

I am the attorney of record for Petitioner in this action. I have prepared the foregoing Amended Petition for a Writ of Habeas Corpus under 28 U.S.C. § 2241 based on my review of records, including communications with Mr. Tongxing's immigration attorney, and on information provided to me by Petitioner.

Because Petitioner is currently detained, it has not been feasible for him to review and sign this petition prior to filing. The factual allegations in the petition are true and correct to the best of my knowledge, information, and belief.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that this declaration was executed on May 29, 2026.

s/ Robert H. Rexrode

Robert H. Rexrode

Attorney for Mr. Tongxing

email: robert_rexrode@rexrodelawoffices.com