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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
10 **(HONORABLE JANIS L. SAMMARTINO)**

11 **HAMOOD ABDIKADIR**
12 **MOHAMED,**

13 Petitioner,

14 v.

15 **MARKWAYNE MULLIN, Secretary**
16 **of the Department of Homeland**
17 **Security, TODD BLANCHE, Acting**
18 **Attorney General, TODD M. LYONS,**
19 **Acting Director, Immigration and**
20 **Customs Enforcement, JESUS**
21 **ROCHA, Acting Field Office Director,**
22 **San Diego Field Office, JEREMY**
CASEY, Warden at Imperial Regional
Detention Center,

23 Respondents.

CIVIL CASE NO.: 26-cv-2612-JLS-BJW

Amended Petition
for a
Writ of Habeas Corpus

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1 INTRODUCTION

2 Hamood Adbikadir Mohamed has been detained pending his immigration
3 proceedings for nearly 16 months. This Court should “join[] the majority of courts
4 across the country in concluding that [his] unreasonably prolonged detention under
5 8 U.S.C. § 1225(b) without an individualized bond hearing violates due process.”
6 *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 772 (S.D. Cal. 2020) (Battaglia, J.).
7 Additionally, because of newly emerging evidence that the neutrality of Otay
8 Mesa’s immigration judges (“IJ”) has been compromised, and some IJs and the
9 Department of Homeland Security (“DHS”) have implemented strategies to detain
10 bond-worthy habeas petitioners, a bond hearing before a randomly selected IJ will
11 no longer reliably satisfy due process. This Court should therefore consider the
12 alternative forms of relief set forth at the end of this petition.

13 STATEMENT OF FACTS

14 Mr. Mohamed came to the United States on January 25, 2025. When he was
15 taken into custody by Border Patrol, he requested asylum. He has been detained
16 ever since.

17 Mr. Mohamed is from Somalia. He fled the war there. When he left, his
18 brother has recently been killed. He had reason to believe he would suffer the same
19 fate. So, he fled because he feared for his life.

20 Since he has been in immigration custody, he has done everything he could
21 to expedite the process. But it was not until March 13, 2026 that his case was heard
22 by an immigration judge. The immigration judge denied asylum. Mr. Mohamed is
23 appealing to the BIA. If necessary, he plans to appeal to the Ninth Circuit. This
24 process could take years.

25 At some point in this process, immigration officers put Mr. Mohamed on an
26 aircraft to deport him. He was shaking, crying, and begging for his life. In an act of
27 bravery and humanity, the pilot refused to take him. So, Mr. Mohamed remains in
28 custody.

1 While he has been held in immigration jail, he developed a urinary tract
2 infection. This is the type of health issue that can be treated in days with generic
3 antibiotics. Mr. Mohamed suffered with it for months.

4 Mr. Mohamed currently suffers from dental pain and bleeding. When he
5 brushes his teeth, his gums bleed. It is well documented that for jails, the solution
6 to all dental issues is to extract teeth. *See* [https://carequest.org/wp-](https://carequest.org/wp-content/uploads/2025/10/CareQuest-Institute_Oral-Health-in-Incarcerated-Persons-FINAL.pdf)
7 [content/uploads/2025/10/CareQuest-Institute_Oral-Health-in-Incarcerated-](https://carequest.org/wp-content/uploads/2025/10/CareQuest-Institute_Oral-Health-in-Incarcerated-Persons-FINAL.pdf)
8 [Persons-FINAL.pdf](https://carequest.org/wp-content/uploads/2025/10/CareQuest-Institute_Oral-Health-in-Incarcerated-Persons-FINAL.pdf). Mr. Mohamed does not want to lose his teeth.

9
10 **LEGAL BACKGROUND**

11 **I. The Fifth Amendment’s Due Process Clause prohibits prolonged**
12 **immigration detention without a bond hearing.**

13 This habeas petition presents a question about whether and when the Fifth
14 Amendment’s Due Process Clause countermands the government’s statutory
15 authority to detain immigrants without bond hearings. Mr. Mohamed is detained
16 under one such statute, 8 U.S.C. § 1225(b). “Section 1225 applies to ‘applicants for
17 admission’—noncitizens who ‘arrive[] in the United States,’ or are ‘present’ in the
18 United States but have ‘not been admitted.’” *Banda v. McAleenan*, 385 F. Supp. 3d
19 1099, 1111 (W.D. Wash. 2019). It “applies to, among others, noncitizens initially
20 determined to be inadmissible because of . . . lack of valid documentation.” *Id.* That
21 includes persons who, like Mr. Mohamed, present themselves for inspection at the
22 border and—rather than producing admission documents—make asylum and other
23 fear-based claims. *See id.* at 1109–11 (describing a similar procedural history and
24 finding that petitioner was detained under § 1225(b)). Such immigrants are detained
25 under § 1225(b) not only during their initial proceedings, but also when they appeal
26 to the BIA. *See id.* at 1111 (reaching same conclusion for immigrant with pending
27 BIA appeal).

28 This statutory scheme has left courts to grapple with the limits (if any) of that

1 detention power: Does this statute permit the government to detain immigrants
2 indefinitely, without ever having to prove at a bond hearing that they pose a risk of
3 danger or flight? Three Supreme Court cases are potentially relevant to answering
4 that question.

5 First, in *Zadvydas v. Davis*, the Supreme Court indicated that indefinite
6 immigration detention raises serious due process concerns. 533 U.S. 678 (2001).
7 *Zadvydas* involved a statute authorizing the government to detain immigrants after
8 they are ordered removed. *Id.* at 683. For immigrants who cannot be removed, that
9 statute had the potential to subject them to years, decades, or a lifetime in custody.
10 *See id.* at 690. The Supreme Court held that if the statute “permit[ed] indefinite
11 detention of an alien[,] [it] would raise a serious constitutional problem,” because

12 [t]he Fifth Amendment's Due Process Clause forbids the Government
13 to ‘depriv[e]’ any ‘person ... of ... liberty ... without due process of law.’
14 Freedom from imprisonment—from government custody, detention, or
15 other forms of physical restraint—lies at the heart of the liberty that
16 Clause protects. *See Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). And
17 this Court has said that government detention violates that Clause unless
18 the detention is ordered in a *criminal* proceeding with adequate
19 procedural protections, *see United States v. Salerno*, 481 U.S. 739, 746
20 (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).

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

25 Following *Zadvydas*, the Ninth Circuit applied similar reasoning to
26 § 1225(b). *Rodriguez v. Robbins*, 804 F.3d 1060, 1087–89 (9th Cir. 2015).
27 Employing the constitutional avoidance canon, the Ninth Circuit held that
28

1 § 1225(b) implicitly entitled detained immigrants to bond hearings every six
2 months. *Id.*

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

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

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

28 These Courts have relied on the due process concerns recognized in

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

9 Neither *Jennings* nor *Demore* undermines that conclusion. *Jennings* held
10 only that the statute itself did not impose any limits on detention. It “did not
11 foreclose as-applied constitutional challenges to detention under” mandatory-
12 detention statutes. *Santos v. Warden Pike Cnty. Corr. Facility*, 965 F.3d 203, 209
13 (3d Cir. 2020). And *Demore* held only that conviction-based mandatory detention
14 during immigration proceedings does not necessarily or inherently violate the Due
15 Process Clause, particularly when the detention has an expected duration of only
16 about five months. *Id.* at 208–11. But many persons detained under § 1225(b)—
17 like Mr. Mohamed—do not have criminal convictions. And as Justice Kennedy’s
18 concurrence made clear, *Demore* does not prevent immigrants from arguing that
19 sufficiently prolonged detention violates due process in their individual cases. See
20 *id.*¹

21 Thus, this Court should hold that sufficiently prolonged detention violates
22 the Due Process Clause, as most courts have. See, e.g., *Gao v. LaRose*, No. 25-CV-
23 2084-RSH-SBC, 2025 WL 2770633, at *3 (S.D. Cal. Sept. 26, 2025); *Abdul Kadir*
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25 ¹ 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.*

1 v. *Larose*, No. 25CV1045-LL-MMP, 2025 WL 2932654, at *4 (S.D. Cal. Oct. 15,
2 2025); *Cong v. Noem*, No. 25-CV-3730-GPC-DEB, 2026 WL 76566, at *3 (S.D.
3 Cal. Jan. 9, 2026); *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 772 (S.D. Cal. 2020)
4 (Battaglia, J.); *Mardian v. Mayorkas*, 25-cv-3467-JLS; *Raeva v. Mayorkas*, 25-cv-
5 3175-JO; *Abdul-Samed v. Warden of Golden State Annex Det. Facility*, No. 25-cv-
6 98-SAB-HC, 2025 WL 2099343, at *6 (E.D. Cal. July 25, 2025); *Hernandez v.*
7 *Wofford*, No. 25-cv-986-KES-CDB (HC), 2025 WL 2420390, at *3 (E.D. Cal. Aug.
8 21, 2025); *Padilla v. ICE*, 704 F. Supp. 3d 1163, 1171–72 (W.D. Wash. 2023).

9 **II. Courts have reached different conclusions about when immigration**
10 **detention becomes indefinitely prolonged, but Mr. Mohamed would**
11 **prevail under any standard.**

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

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

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

28 *Id.* Some courts also consider:

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

4 *Id.* Other courts have rejected the fourth and fifth factors, holding that they are “not
5 particularly suited to assisting the Court in determining whether detention has
6 become unreasonable and due process requires a bond hearing.” *Lopez v. Garland*,
7 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022); *accord Sanchez-Rivera*, 2023 WL
8 139801, at *5–6.² Mr. Mohamed would prevail under any of these factors tests.

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

20 Second, Mr. Mohamed has reason to anticipate significant future detention.
21 His asylum case is still ongoing. And if he loses his asylum claim, he will appeal
22 to the BIA, after which he would have the opportunity to appeal to the Ninth Circuit.
23 All told, “[t]his process may take up to two years or longer.” *Banda*, 385 F. Supp.
24 3d at 1119. Because “Petitioner’s future detention can last several more months or

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26

27 ² Courts also disagree about whether to account for any criminal convictions that
28 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 even years[.]” this factor favors Mr. Mohamed. *Abdul Kadir v. Larose*, No.
2 25CV1045-LL-MMP, 2025 WL 2932654, at *5 (S.D. Cal. Oct. 15, 2025).

3 Third, the delay factor favors Mr. Mohamed. Immigration officials arrested
4 Mr. Mohamed in January 2025. They did not decide his asylum case until March,
5 13, 2026. Mr. Mohamed has done nothing to delay the process.

6 Fourth, Mr. Mohamed’s conditions of confinement weigh in favor of a bond
7 hearing, because being at Imperial Regional is ‘indistinguishable from penal
8 confinement.’” *Abdul Kadir*, 2025 WL 2932654, at *5 (quoting *Kydyrali*, 499 F.
9 Supp. 3d at 773). Mr. Mohamed suffered from a urinary tract infection that took
10 months to treat. This is the type of health issue that should be resolved in a week
11 with a round of antibiotics. Furthermore, Mr. Mohamed suffers from bleeding
12 gums. He wants a repair, not an extraction. But neither is likely to happen any time
13 soon.

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

16 Under any test, then, Mr. Mohamed is entitled to a bond hearing.

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

20 In a perfect world, this Court could remedy the due process violation by
21 ordering a bond hearing before a neutral immigration judge (“IJ”), allowing the IJ
22 to determine whether Mr. Mohamed posed a risk of danger or flight. Unfortunately,
23 attacks on IJ independence under the current administration have severely
24 compromised IJs’ neutrality. As a result, there is a serious risk that an IJ will order
25 Mr. Mohamed’s continued detention even if he poses no danger or flight risk.
26 Several data points support that conclusion.

27 Most importantly, reports are streaming in from this district and elsewhere
28 that court-ordered “bond hearings [are], effectively, stacked against detainees

1 from the start.” Kyle Cheney, *How ICE Defies Judges’ Orders to Release*
2 *Detainees, Step by Step*, Politico (Feb. 10, 2026),
3 [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)
4 [orders-00771727](https://www.politico.com/news/2026/02/10/ice-immigration-detention-court-orders-00771727).

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

10 In *Said v. Noem*, a court ordered a bond hearing for a habeas petitioner,
11 only to learn that “[t]he IJ denied Petitioner the opportunity to present testimony,
12 declined to consider the sworn, documentary evidence submitted by Petitioner,
13 and based his decision on an uncorroborated, unauthenticated claim by a
14 government official that Petitioner failed to share his location for the ISAP.” No.
15 3:25-CV-938-MOC, 2026 WL 295651, at *5 (W.D.N.C. Feb. 4, 2026). The
16 original habeas “Order presupposed that this hearing would be conducted in
17 accordance with Petitioner’s due process rights,” the court wrote. “It was not.” *Id.*

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

23 In a recently filed declaration, local attorney Edward Perez attests that he has
24 similar concerns about some immigration judges at Otay Mesa. In his experience,
25 some Otay Mesa IJs are resistant to implementing habeas orders requiring bond
26 hearings. *Elsayed v. Noem*, Case No. 26-cv-368, Doc. 5-2 at ¶ 7 (S.D. Cal. Feb. 9,
27 2026). These IJs have begun denying bond on the ground that court hearings are
28 coming up, and release would disrupt the hearing schedule. *Id.* Of course, that logic

1 could justify any asylum seeker’s detention, and it has nothing to do with danger or
2 flight. *Id.* Furthermore, the Department of Homeland Security (“DHS”) has started
3 appealing bonds to take advantage of the automatic stay. *Id.* Both of these strategies
4 ensure that even those who pose no risk of danger or flight will stay in detention.
5 *Id.*

6 He is far from the only one to express concerns. In a declaration filed in
7 *Briceno Solano v. Mason*, No. 26-CV-00045, 2026 WL 311624 (S.D.W. Va. Feb.
8 4, 2026), Former ICE Counsel Jorge Artieda attests to seeing “a seismic shift in
9 bond hearing outcomes for individuals who had been granted federal habeas relief
10 and ordered § 1226(a) bond hearings . . . in the Eastern District of Virginia.” Exh.
11 B at 2. The pattern of granting bond in appropriate cases “abruptly and uniformly
12 ceased” in early January, in a way that “suggests coordinated institutional
13 direction.” *Id.* IJs there now rely on a “remarkably narrow and predictable set of
14 rationales to deny bond—rationales that appear to bear little relationship to genuine
15 individualized risk assessment and that would not have been deemed sufficient to
16 justify denial just weeks earlier.” *Id.* at 3. In Mr. Artieda’s professional opinion, the
17 IJs’ rationales “do not appear to be grounded in legitimate risk assessment” but are
18 “pretexts designed to ensure denial of bond regardless of the individual facts of
19 each case.” *Id.* at 4.

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

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

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

6 These IJs are under no illusions about why they were let go. Former
7 Baltimore IJ Emmett Soper stated: "I think the current administration of the
8 immigration courts does not fundamentally see the immigration courts as neutral
9 decision-makers. I think that they see the immigration courts as a tool for this
10 administration to advance its policy objectives." Geoff Bennett & Ali Schmitz,
11 *Ousted Immigration Judge Describes Deepening Court Backlog*, PBS NewsHour
12 (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)
13 [describes-deepening-court-backlog](https://www.pbs.org/newshour/show/ousted-immigration-judge-describes-deepening-court-backlog). Former San Francisco IJ Jeremiah Johnson
14 similarly understood “the hint that they should be hearing cases a certain way,
15 deciding cases a certain way. Move faster. Less due process, essentially.” Hilda
16 Gutierrez, Michael Bott & Son Vo, *'An all-out attack on immigration court:' SF*
17 *immigration judges speak out after firings*, NBC Bay Area (Nov. 25, 2025),
18 [https://www.nbcbayarea.com/investigations/san-francisco-immigration-judges-](https://www.nbcbayarea.com/investigations/san-francisco-immigration-judges-speak-out-firings/3986850/)
19 [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
20 more direct: "We were told to facilitate deportation... Due process is dead in
21 immigration courts." Isabela Dias, *"Fired for No Reason": Former Immigration*
22 *Judges Speak Out Against Trump's Assault on the Courts*, Mother Jones (Oct. 9,
23 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/)
24 [trump-assault-purge-dhs-ice/](https://www.motherjones.com/politics/2025/10/immigration-court-judge-trump-assault-purge-dhs-ice/).

25 This has had the predictable effect on those who remain. According to
26 former San Francisco IJ Elizabeth Young, “I've talked to many of [the judges still
27 serving], and they're like, ‘When I go into court, I am concerned about applying
28 the law, but I'm also concerned that I should deny more, because if I don't, then

1 I'll get fired.” Marco Poggio, *Judges See an Immigration Court Gutted from*
2 *Inside*, Law360 (Oct. 31, 2025),
3 [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)
4 [gutted-from-inside](https://www.law360.com/articles/2381003/judges-see-an-immigration-court-gutted-from-inside). Meanwhile, Department of Justice recruitment materials seek
5 “deportation judges” to fill the empty IJ slots, Coral Murphy Marcos, *US Justice*
6 *Department Recruiting Legal Experts to Serve as ‘Deportation’ Judges*,
7 *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)
8 [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
9 down on criminal illegal aliens” and “defend your communities, your culture,
10 your very way of life.” dhsgov, Instagram (Nov. 21, 2025),
11 <https://www.instagram.com/p/DRVT8DmCQKD/?hl=en>.

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

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

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

1 Judge Teresa L. Riley sent all IJs the following instructions:

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

13 Am. Immigr. Laws. Ass'n, Practice Alert: EOIR Issues Nationwide Guidance
14 on *Maldonado Bautista*, AILA Doc. No. 26011404 (Jan. 16, 2026),
15 [https://www.aila.org/library/practice-alert-eoir-issues-nationwide-guidance-
16 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,
17 calling out “Respondents’ deliberate choice to continue defying the final
18 judgment entered in *Bautista*.” *Palomera Baltazar v. Janecka*, No. 5:26-cv-
19 00019-SSS-BFM at *2-3 (C.D. Cal. Jan. 16, 2026).

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

23 The “equitable and flexible nature of habeas relief” affords district
24 courts significant discretion over the appropriate remedies for violations of
25 law and the Constitution. *Velasco Lopez v. Decker*, 978 F.3d 842, 855 (2d Cir.
26 2020); *see also Schlup v. Delo*, 513 U.S. 298, 319 (1995) (“[H]abeas corpus
27 is, at its core, an equitable remedy”). This Court should order a remedy that
28 fully addresses the statutory and constitutional violations in this case and is
efficient to administer. *Carafas v. LaVallee*, 391 U.S. 234, 238 (1968) (the
habeas statute “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”).

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CLAIM AND PRAYER FOR RELIEF

**Detaining Petitioner Without a Bond Hearing Violates the Fifth
Amendment's Due Process Clause**

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

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

a. 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.*

b. 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.*

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c. 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.

Respectfully submitted,

Dated: May 22, 2026

s/James Chavez
Respectfully submitted,
s/ James M. Chavez
JAMES M. CHAVEZ
Attorney for Petitioner