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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

**BRILIAN NCHUPOH NOPUOWOH,**

Case No.: 26-cv-3614-TWR-MMP

Petitioner,

v.

**CHRISTOPHER LAROSE,** Senior  
Warden at Otay Mesa Detention Center,  
et al.

Respondents.

**AMENDED<sup>1</sup> VERIFIED  
PETITION  
FOR A  
WRIT OF HABEAS CORPUS**

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<sup>1</sup> Federal Rule of Civil Procedure 15(a)(1)(A) permits a party to “amend its pleading once as a matter of course no later than 21 days after serving it.” Fed. R. Civ. Pro. 15(a)(1)(A) (punctuation altered). It is less than 21 days since service. Petitioner therefore files this amended petition as of right, but incorporates the facts, arguments, and exhibits from his original petition.

1 INTRODUCTION

2 Brilian Nchupoh Nopuowoh has been detained pending his immigration  
3 proceedings for 9 months.<sup>2</sup> This Court should “join[] the majority of courts across  
4 the country in concluding that his unreasonably prolonged detention under 8 U.S.C.  
5 § 1225(b) without an individualized bond hearing violates due process.” *Kydyrali*  
6 *v. Wolf*, 499 F. Supp. 3d 768, 772 (S.D. Cal. 2020) (Battaglia, J.). Additionally,  
7 newly emerging evidence suggests that the neutrality of Otay Mesa’s immigration  
8 judges (“IJs”) has been compromised and some IJs and the Department of  
9 Homeland Security (“DHS”) have implemented strategies to detain bond-worthy  
10 habeas petitioners. For this reason, a bond hearing before a randomly selected IJ  
11 will 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 I. Nopuowoh’s Attempt at Seeking Asylum<sup>3</sup>

15 Nopuowoh is a native citizen of Cameroon. In 2024, he was forced to flee  
16 for her safety due to political persecution in his home country. (ECF No. 1 at 11).  
17 For decades, Cameroon has been the site of an ongoing armed conflict between the  
18 Francophone military and Anglophone Separatists fighting for an independent  
19 state. Nopuowoh’s family, though not affiliated with either side, became caught in  
20 a conflict between these two groups. [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

26 <sup>2</sup> Technically, Nopuowoh will have been in custody for 9 months as of 1 day after  
27 this amended petition is filed. These additional months in custody constitute a  
28 changed circumstance that merits reconsideration of this Court’s denial of  
Nopuowoh’s first petition for habeas corpus (No. 26-cv-3040-TWR-MMP).

<sup>3</sup> The history of Nopuowoh’s persecution in Cameroon has been summarized; many  
details have been omitted for the sake of brevity and relevance.

1 [REDACTED]  
2 [REDACTED]  
3 Nopuowoh's family smuggled him out of the country to prevent his  
4 execution. He flew first to Brazil, and then he embarked on the arduous journey to  
5 the United States to seek asylum.

6 **II. Nopuowoh's Immigration Detention**

7 Nopuowoh crossed from Mexico into the U.S. on October 16, 2025. (ECF  
8 No. 1 at 11). DHS placed Nopuowoh into expedited removal proceedings, but he  
9 requested an asylum interview. (*Id.*). After receiving a positive credible fear  
10 determination, DHS placed him into removal proceedings. (*Id.*). At his initial  
11 master calendar hearing, the IJ advised Nopuowoh—who had little knowledge of  
12 his rights or the asylum process—that he should try to obtain counsel. (*Id.*). The IJ  
13 provided Nopuowoh with the pro bono counsel list, and he eventually found an  
14 attorney who filed his applications for asylum, withholding of removal, and relief  
15 under the Convention Against Torture. (*Id.*).

16 On March 2, 2026, DHS filed a motion to pretermite Nopuowoh's applications  
17 for relief and remove him to Uganda. (*Id.*). On April 15, 2026, at what was supposed  
18 to be Nopuowoh's hearing on the merits of his asylum claim, the IJ granted the  
19 motion over Nopuowoh's objection. (*Id.*). On April 30, 2026, Nopuowoh timely  
20 filed a notice of his appeal of the order removing him to Uganda. (*Id.* at 13). As of  
21 the date of this filing, no action has been taken on the appeal. Nopuowoh has not  
22 received a briefing schedule. (*Id.*).

23 With that appeal pending, he filed his initial *pro se* petition for habeas corpus  
24 in the Southern District of California on May 14, 2026. (*See* No. 26-cv-3040-TWR-  
25 MMP; ECF No. 1). This Court denied the petition without prejudice. (*See id.*, ECF  
26 No. 7). On June 18, 2026, Nopuowoh filed a second *pro se* petition, and he was  
27 appointed the undersigned counsel. This amended petition follows.  
28

LEGAL BACKGROUND

**I. The Fifth Amendment’s Due Process Clause prohibits prolonged immigration detention without a bond hearing.<sup>4</sup>**

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. The government asserts that Nopuowoh 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) (quoting 8 U.S.C. § 1225(a)(1)). It “applies to, among others, noncitizens initially determined to be inadmissible because of . . . lack of valid documentation.” *Id.* That includes individuals who, like Nopuowoh, 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.

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<sup>4</sup> This Court has already held that unreasonably prolonged detention under 8 U.S.C. § 1225(b) without an individualized bond hearing violates Due Process. *See, e.g.*, Minute Order Granting in Part Petition, *Chen v. U.S. ICE*, No. 26-CV-2157 TWR (AHG) (S.D. Cal. filed May 5, 2026), ECF No. 13. He briefs the issue here regardless to preserve it and present a context for his further arguments.

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

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

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

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

26 The Supreme Court overruled that precedent in *Jennings v. Rodriguez*,  
27 holding that the statute does not entitle detainees to bond hearings or otherwise  
28 impose “any limit on the length of detention.” 583 U.S. 281, 297 (2018). But though

1 *Jennings* held that § 1225(b) imposes no statutory limit on the length of detention,  
2 it reserved the question of whether prolonged, mandatory detention without bond  
3 hearings violates due process. *Id.* at 312.

4 Finally, the Supreme Court held in *Demore v. Kim* that at least some statutes  
5 mandating detention during immigration proceedings do not automatically violate  
6 the Due Process Clause. 583 U.S. 281, 513 (2003). *Demore* addressed 8 U.S.C.  
7 § 1226(c), which mandates detention without a bond hearing for persons with  
8 certain criminal convictions. *Id.* The Court upheld § 1226(c) in a 5-4 opinion based  
9 on (1) the government interests justifying the detention of immigrants with certain,  
10 aggravated criminal convictions, and (2) the relative brevity of detention in most  
11 cases, with the vast majority taking only about five months. *Id.* at 517–31. Justice  
12 Kennedy supplied a deciding vote. His concurrence left open the possibility that  
13 individual immigrants could be “entitled to an individualized determination as to  
14 his risk of flight and dangerousness if the continued detention became unreasonable  
15 or unjustified.” *Id.* at 532–33.

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

23 These Courts have relied on the due process concerns recognized in  
24 *Zadvydas*. See, e.g., *Kydyrali*, 499 F. Supp. 3d at 771; *Banda*, 385 F. Supp. 3d at  
25 1113–17; *Abdul Kadir v. Larose*, No. 25-cv-1045-LL-MMP, 2025 WL 2932654, at  
26 \*3 (S.D. Cal. Oct. 15, 2025). As the Ninth Circuit put it in *Jennings*’ wake, those  
27 considerations raise “grave doubts that any statute that allows for arbitrary  
28 prolonged detention without any process is constitutional or that those who founded

1 our democracy precisely to protect against the government’s arbitrary deprivation  
2 of liberty would have thought so.” *Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir.  
3 2018).

4 Neither *Jennings* nor *Demore* undermines that conclusion. *Jennings* held  
5 only that the statute itself did not impose any limits on detention. It “did not  
6 foreclose as-applied constitutional challenges to detention under” mandatory-  
7 detention statutes. *Santos v. Warden Pike Cnty. Corr. Facility*, 965 F.3d 203, 209  
8 (3d Cir. 2020). And *Demore* held only that conviction-based mandatory detention  
9 during immigration proceedings does not necessarily or inherently violate the Due  
10 Process Clause, particularly when the detention has an expected duration of only  
11 about five months. *Id.* at 208–11. But many persons detained under § 1225(b)—  
12 like Nopuowoh—do not have criminal convictions. And as Justice Kennedy’s  
13 concurrence made clear, *Demore* does not prevent immigrants from arguing that  
14 sufficiently prolonged detention violates due process in their individual cases. *See*  
15 *id.*<sup>5</sup>

16 Thus, this Court should once again hold that sufficiently prolonged detention  
17 violates the Due Process Clause, as most courts have. *See, e.g., Mardian v.*  
18 *Mayorkas*, No. 25-cv-3467-JLS, 2026 WL 92064, at \*2 (S.D. Cal. Jan. 13, 2026);  
19 *Cong v. Noem*, No. 25-cv-3730-GPC-DEB, 2026 WL 76566, at \*3 (S.D. Cal. Jan.  
20 9, 2026); *Raeva v. Mayorkas*, 25-cv-3175-JO, ECF No. 17 (S.D. Cal. Nov. 24,  
21 2025); *Abdul Kadir v. Larose*, No. 25-cv-1045-LL-MMP, 2025 WL 2770633, at \*4  
22 (S.D. Cal. Oct. 15, 2025); *Gao v. LaRose*, No. 25-cv-2084-RSH-SBC, 2025 WL  
23 2770633, at \*3 (S.D. Cal. Sept. 26, 2025); *Hernandez v. Wofford*, No. 25-cv-986-  
24

25 <sup>5</sup> 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 KES-CDB (HC), 2025 WL 2420390, at \*3 (E.D. Cal. Aug. 21, 2025); *Abdul-Samed*  
2 *v. Warden of Golden State Annex Det. Facility*, No. 25-cv-98-SAB-HC, 2025 WL  
3 2099343, at \*6 (E.D. Cal. July 25, 2025); *Padilla v. ICE*, 704 F. Supp. 3d 1163,  
4 1171–72 (W.D. Wash. 2023); *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 772 (S.D. Cal.  
5 2020) (Battaglia, J.);.

6 **II. Courts have reached different conclusions about when immigration**  
7 **detention becomes indefinitely prolonged, but Nopuowoh would prevail**  
8 **under any standard.**

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

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

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

25 *Id.* Some courts also consider:

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

1 *Id.* Other courts have rejected the fourth and fifth factors, holding that they are “not  
2 particularly suited to assisting the Court in determining whether detention has  
3 become unreasonable and due process requires a bond hearing.” *Lopez v. Garland*,  
4 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022); *accord Sanchez-Rivera*, 2023 WL  
5 139801, at \*5–6.<sup>6</sup> Regardless of which these factors are analyzed, Nopuowoh  
6 should prevail.

7 First, the “most important factor,” the length of detention, favors Nopuowoh.  
8 *Banda*, 385 F. Supp. 3d at 1118. In assessing this factor, “[i]t is important to bear  
9 in mind the context: The detention that is being examined here is the detention of a  
10 human being who has never been found to pose a danger to the community or to be  
11 likely to flee if released.” *Kydyrali*, 499 F. Supp. 3d at 774 (citation omitted). With  
12 that context, “[c]ourts have found detention over seven months without a bond  
13 hearing weighs toward a finding that it is unreasonable.” *Amado v. United States*  
14 *Dep’t of Just.*, No. 25-cv-2687-LL-DDL, 2025 WL 3079052, at \*5 (S.D. Cal. Nov.  
15 4, 2025). Nopuowoh has been detained for even longer, over 9 months by the time  
16 this Court will issue its decision. This factor therefore favors ordering a bond  
17 hearing. *See also Brissett v. Decker*, 324 F. Supp. 3d 444, 452 (S.D.N.Y. 2018)  
18 (granting bond after finding nine months detention was unreasonable).

19 Second, Nopuowoh has reason to anticipate significant future detention. His  
20 appeal to the BIA was just recently filed, and the process is likely to be protracted.  
21 Recent research on BIA appeals demonstrates that processing time is slowing for  
22 both appeals by detained and non-detained immigrants, but the processing time is  
23 higher for detained immigrants. *See Ex. A, Decl. of Zabdi J. Salazar*, ¶ 3. Looking  
24 overall at approximately 7,500 cases from 2024 to 2026, the median processing  
25 time for non-detained cases was 558 days. *Id.* ¶ 3. Every year, the length of the

26  
27 <sup>6</sup> 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 removal is not  
based on prior convictions. Further, Nopuowoh has no criminal record.

1 process increases. *Id.* ¶ 3. While most detained case appeals were resolved in a  
2 year, 18.6% took more than one year, and 5% took four years or longer. *Id.* ¶ 10.  
3 The fastest case completions involve procedural or administrative/withdrawal,  
4 whereas substantive appeals—such as Nopuowoh’s—tend to take longer to be  
5 resolved.

6 Plus, the resolution of the BIA appeal would not mean the resolution of the  
7 case. If the BIA denies his appeal, he will then likely appeal to the Ninth Circuit.  
8 All told, “[t]his [appeal] process may take up to two years or longer.” *Banda*, 385  
9 F. Supp. 3d at 1119. The unique posture of Nopuowoh’s case makes him even more  
10 susceptible to prolonged detention. This is because even if he wins the appeal on  
11 his third country removal, his case is not over. He would then still have to go  
12 through the process of litigating his asylum case—which itself could result in  
13 appeals to the BIA and Ninth Circuit. Thus, since “Petitioner’s future detention can  
14 last several more months or even years [during the adjudication of his case],” this  
15 factor favors Nopuowoh. *Abdul Kadir v. Larose*, No. 25-cv-1045-LL-MMP, 2025  
16 WL 2932654, at \*5 (S.D. Cal. Oct. 15, 2025).

17 Third, the delay factor also favors Nopuowoh. “Evidence that the  
18 [noncitizen] acted in bad faith or sought to deliberately slow the proceedings in  
19 hopes of obtaining release cuts against the [noncitizen].” *Banda*, 385 F. Supp. 3d at  
20 1119 (W.D. Wash. 2019) (citations omitted). A noncitizen exercising his rights to  
21 obtain an attorney or appeal his case do not constitute bad faith or deliberate delay.  
22 *See Doe v. Andrews*, No. 1:25-CV-00333-JLT-HBK (HC), 2026 WL 797694, at  
23 \*11 (E.D. Cal. Mar. 23, 2026) (“A pro se litigant asking for additional time to  
24 navigate the immigration system and obtain an attorney does not constitute  
25 evidence of bad faith.”); *Henriquez v. Garland*, No. 5:22-CV-00869-EJD, 2022 WL  
26 2132919, at \*5 (N.D. Cal. June 14, 2022) (“The BIA appeal is a perfectly legitimate  
27 proceeding Petitioner is legally entitled to pursue.”). Thus, in this case, “[t]he record  
28

1 does not indicate that [Petitioner] has been dilatory in pursuing his rights.”  
2 *Kydyrali*, 499 F. Supp. 3d at 773.

3 Fourth, Nopuowoh’s conditions of confinement weigh in favor of a bond  
4 hearing, because being at Otay Mesa Detention Center is “indistinguishable from  
5 penal confinement.” *Id.* (citations and quotations omitted). This is particularly hard  
6 on Nopuowoh due to his various medical and psychological conditions, many of  
7 which were caused by his past trauma in Cameroon. (ECF No. 1-5 (under seal  
8 exhibit)). These conditions are not likely to improve while he is detained. Rather,  
9 they are prone to being exacerbated by the harsh conditions of his confinement,  
10 which include “over crowded housing conditions, restricted movement, unsanitary  
11 environment, lack of fruits and vegetables, poor nutrition, [lack of] clean drinking  
12 water, [and] lack of medical aids and drugs . . . .” (ECF No. 1 at 14).

13 Finally, the fifth factor weighs in favor of Nopuowoh. “In considering the  
14 ‘likelihood that the removal proceedings will result in a final order of removal,’ the  
15 Court considers ‘whether the noncitizen has asserted any defenses to removal.’”  
16 *Asayehegn v. Larose*, No. 3:26-cv-00663-RBM-BJW, 2026 WL 937126, at \*4  
17 (S.D. Cal. Apr. 7, 2026) (quoting *Banda*, 385 F. Supp. at 1120). Here, Nopuowoh  
18 has asserted legitimate, good faith defenses to his removal in the form of his  
19 applications for asylum and similar forms of relief. An IJ made a positive credible  
20 fear determination, which goes in Nopuowoh’s favor as well. *See Gurung v. Larose*,  
21 No. 26-cv-920-LL-MSB, 2026 WL 776841, at \*5 (S.D. Cal. Mar. 19, 2026).  
22 He also can present strong arguments against his third-party removal by challenging  
23 the Asylum Cooperative Agreement and contesting Uganda’s status as a “safe third  
24 country.” This leans in his favor; but admittedly, the IJ denied his motion, which  
25 goes against him. Overall, however, this factor weighs more in favor of Nopuowoh  
26 than DHS.

27 In sum, under any test, Nopuowoh is entitled to a bond hearing.  
28

1 **III. Because immigration judges' neutrality has been compromised, this**  
2 **Court must order outright release or at least put in place additional**  
3 **safeguards.**

4 In a perfect world, this Court could remedy the due process violation by  
5 ordering a bond hearing before a neutral immigration judge ("IJ"), allowing the IJ  
6 to determine whether Nopuowoh posed a risk of danger or flight. Unfortunately,  
7 attacks on IJ independence under the current administration have severely  
8 compromised IJs' neutrality. As a result, there is a serious risk that an IJ will order  
9 Nopuowoh's continued detention even if she poses no danger or flight risk.  
10 Empirical evidence and recent judicial findings support that conclusion.

11 Most importantly, reports are streaming in from this district and elsewhere  
12 that court-ordered "bond hearings [are], effectively, stacked against detainees  
13 from the start."<sup>7</sup> In *Yin v. Moldanado*, a court expressed consternation at an IJ's  
14 "conclusory, two-line determination of flight risk" for a person whom DHS had  
15 previously agreed "to release . . . on his own recognizance" and who "attend[ed]  
16 [all] 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,  
19 only to learn that "[t]he IJ denied Petitioner the opportunity to present testimony,  
20 declined to consider the sworn, documentary evidence submitted by Petitioner,  
21 and based his decision on an uncorroborated, unauthenticated claim by a  
22 government official that Petitioner failed to share his location [with  
23 immigration]." No. 3:25-cv-938-MOC, 2026 WL 295651, at \*5 (W.D.N.C. Feb.  
24 4, 2026). The original habeas order "presupposed that this hearing would be  
25 conducted in accordance with Petitioner's due process rights," the court wrote. *Id.*  
26 "It was not." *Id.*

27 <sup>7</sup> Kyle Cheney, *How ICE Defies Judges' Orders to Release Detainees, Step by Step*,  
28 Politico (Feb. 10, 2026), <https://www.politico.com/news/2026/02/10/ice-immigration-detention-court-orders-00771727>.

1 And in *Picado v. Hyde*, a district judge ordered outright release after two  
2 deficient bond hearings. No. 26-cv-065-JJM-PAS, 2026 WL 352691, at \*7 (D.R.I.  
3 Feb. 9, 2026). The IJ in the second hearing had deemed the immigrant a danger to  
4 the community based on an uncorroborated police report accusing him of driving  
5 90 mph in a 55-mph zone. *Id.*

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

17 Perez is far from the only one to express concerns. In a declaration filed in  
18 *Briceno Solano v. Mason*, No. 26-cv-00045, 2026 WL 311624 (S.D.W. Va. Feb. 4,  
19 2026), ECF No. 24-1, Former ICE Counsel Jorge Artieda attests to seeing "a  
20 seismic shift in bond hearing outcomes for individuals who had been granted  
21 federal habeas relief and ordered § 1226(a) bond hearings . . . in the Eastern District  
22 of Virginia." *Id.* at 2. The pattern of granting bond in appropriate cases "abruptly  
23 and uniformly ceased" in early January, in a way that "suggests coordinated  
24 institutional direction." *Id.* IJs there now rely on a "remarkably narrow and  
25 predictable set of rationales to deny bond—rationales that appear to bear little  
26 relationship to genuine individualized risk assessment and that would not have been  
27 deemed sufficient to justify denial just weeks earlier." *Id.* at 3. In Mr. Artieda's  
28 professional opinion, the IJs' rationales "do not appear to be grounded in legitimate

1 risk assessment” but are “pretexts designed to ensure denial of bond regardless of  
2 the individual facts of each case.” *Id.* at 4.

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

10 These trends are consistent with sustained attacks on IJs’ independence under  
11 this administration. Several examples illustrate the point. *First*, the Trump  
12 administration has eliminated 128 IJs insufficiently aligned with the  
13 administration’s priorities, illustrating to the remaining IJs the cost of resistance.<sup>8</sup>  
14 These IJs are under no illusions about why they were let go. Former Baltimore IJ  
15 Emmett Soper stated: “I think the current administration of the immigration courts  
16 does not fundamentally see the immigration courts as neutral decision-makers. I  
17 think that they see the immigration courts as a tool for this administration to  
18 advance its policy objectives.”<sup>9</sup> Former San Francisco IJ Jeremiah Johnson  
19 similarly understood “the hint that they should be hearing cases a certain way,  
20 deciding cases a certain way. Move faster. Less due process, essentially.”<sup>10</sup> Former  
21

22 <sup>8</sup> Woo-Sun Lim, *Former judge highlights legal failures in U.S. worker detentions*,  
23 The Dong-A Ilbo (Sept. 20, 2025),  
<https://www.donga.com/en/article/all/20250920/5859412/1>.

24 <sup>9</sup> Geoff Bennett & Ali Schmitz, *Ousted Immigration Judge Describes Deepening*  
25 *Court Backlog*, PBS NewsHour (Nov. 12, 2025),  
<https://www.pbs.org/newshour/show/ousted-immigration-judge-describes-deepening-court-backlog>.

26 <sup>10</sup> Hilda Gutierrez, Michael Bott & Son Vo, *'An all-out attack on immigration*  
27 *court: SF immigration judges speak out after firings*, NBC Bay Area (Nov. 25,  
28 2025), <https://www.nbcbayarea.com/investigations/san-francisco-immigration-judges-speak-out-firings/3986850/>.

1 San Francisco IJ George Pappas was even more direct: "We were told to facilitate  
2 deportation... Due process is dead in immigration courts."<sup>11</sup>

3 This has had a predictable effect on those who remain. According to former  
4 San Francisco IJ Elizabeth Young, "I've talked to many of [the judges still  
5 serving], and they're like, 'When I go into court, I am concerned about applying  
6 the law, but I'm also concerned that I should deny more, because if I don't, then  
7 I'll get fired.'"<sup>12</sup> Meanwhile, Department of Justice recruitment materials seek  
8 "deportation judges" to fill the empty IJ slots,<sup>13</sup> inviting candidates to "[b]ring the  
9 hammer down on criminal illegal aliens" and "[d]efend your communities, your  
10 culture, your very way of life."<sup>14</sup>

11 *Second*, a parallel purge occurred at the BIA, which was reduced from 28  
12 members to 15 members. All Biden appointees on the BIA were fired.<sup>15</sup> The  
13 statistical impact is stark. As of January 22, 2026, the reconstituted BIA has issued  
14 71 published decisions.<sup>16</sup> Of those, 69 decisions (97%) favored the administration.  
15 By contrast, during the entire four-year span of the prior administration, the BIA  
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18 <sup>11</sup> Isabela Dias, "Fired for No Reason": Former Immigration Judges Speak Out  
19 Against Trump's Assault on the Courts, Mother Jones (Oct. 9, 2025),  
20 [https://www.motherjones.com/politics/2025/10/immigration-court-judge-trump-](https://www.motherjones.com/politics/2025/10/immigration-court-judge-trump-assault-purge-dhs-ice/)  
21 [assault-purge-dhs-ice/](https://www.motherjones.com/politics/2025/10/immigration-court-judge-trump-assault-purge-dhs-ice/).

22 <sup>12</sup> Marco Poggio, *Judges See an Immigration Court Guttled from Inside*, Law360  
(Oct. 31, 2025), [https://www.law360.com/articles/2381003/judges-see-an-](https://www.law360.com/articles/2381003/judges-see-an-immigration-court-guttled-from-inside)  
23 [immigration-court-guttled-from-inside](https://www.law360.com/articles/2381003/judges-see-an-immigration-court-guttled-from-inside).

24 <sup>13</sup> Coral Murphy Marcos, *US Justice Department Recruiting Legal Experts to*  
25 *Serve as 'Deportation' Judges*, Guardian, [https://www.theguardian.com/us-](https://www.theguardian.com/us-news/2025/nov/21/us-justice-department-ad-deportation-judges)  
26 [news/2025/nov/21/us-justice-department-ad-deportation-judges](https://www.theguardian.com/us-news/2025/nov/21/us-justice-department-ad-deportation-judges)

27 <sup>14</sup> Caption, posted by DHS (@dhsgov), INSTAGRAM (Nov. 21, 2025),  
28 <https://www.instagram.com/p/DRVt8DmCQKD/?hl=en>.

<sup>15</sup> 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-](https://www.americanimmigrationcouncil.org/blog/bia-ruling-immigration-judges-bond-mandatory-detention-undocumented-immigrants/)  
immigration-judges-bond-mandatory-detention-undocumented-immigrants/.

<sup>16</sup> Exec. Off. for Immigr. Rev., *Volume 29*, U.S. Dep't of Just. (Jan. 21, 2025), <https://www.justice.gov/eoir/volume-29>.

1 issued 76 published decisions.<sup>17</sup> Of those, 46 decisions (60%) favored the  
2 administration. The transformation from 60% to 97% pro-government outcomes—  
3 achieved through wholesale termination of one administration's appointees —  
4 speaks for itself.

5 *Third*, beyond personnel changes, the 2025 acting director of the Executive  
6 Office for Immigration Review (“EOIR”) issued “a string of sharply worded  
7 policy memos” encouraging IJs to side with the government over immigrants and  
8 minimize due process.<sup>18</sup> The policy directives include: a memorandum dated June  
9 27, 2025 warning judges not to demonstrate “bias directed against DHS” or to be  
10 “adjudicatory outliers,” at risk of “close examination and potential action,”<sup>19</sup> a  
11 memorandum encouraging judges to deny asylum applications without full  
12 evidentiary hearings, styled as efficiency guidance but functioning as a directive  
13 to reduce due process protections;<sup>20</sup> and memoranda restricting immigration  
14 judges’ ability to grant continuances<sup>21</sup> and administrative closure.<sup>22</sup>

15 *Fourth*, EOIR personnel have at times directed IJs to ignore federal court  
16 orders related to bond hearings. On January 13, 2026, in the wake of *Maldonado*

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18 <sup>17</sup> Exec. Off. for Immigr. Rev., *Volume 28*, U.S. Dep’t of Just. (June 13, 2025),  
19 <https://www.justice.gov/eoir/volume-28>. (First decision, *Matter of DIKHTYAR*, 28  
I&N Dec. 214 (BIA 2021), issued 01/22/2021).

20 <sup>18</sup> E. Tammy Kim, *Inside Donald Trump’s Attack on Immigration Courts*, New  
Yorker, [https://www.newyorker.com/inside-donald-trumps-attack-on-](https://www.newyorker.com/inside-donald-trumps-attack-on-immigration-court)  
immigration-court.

21 <sup>19</sup> Exec. Off. for Immigr. Rev., Policy Memorandum 25-33, Neutrality and  
22 Impartiality in Immigration Court Proceedings (June 27, 2025), [https://iptp-](https://iptp-production.s3.amazonaws.com/media/documents/2025.06.27_EOIR_-_PM_25-33.pdf)  
23 [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)  
33.pdf

24 <sup>20</sup> Exec. Off. for Immigr. Rev., Policy Memorandum 25-28, Pretermission of  
Legally Insufficient Application for Asylum (Apr. 11, 2025),  
25 <https://www.justice.gov/eoir/media/1396411/dl?inline>

26 <sup>21</sup> 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>,

27 <sup>22</sup> Exec. Off. for Immigr. Rev., Policy Memorandum 25-29, Cancellation of  
28 Director’s Memorandum 22-03 (Apr. 18, 2025),  
<https://www.justice.gov/eoir/media/1397161/dl?inline>.

1 *Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM, 2025 WL 3289861 (C.D.  
2 Cal. Nov. 20, 2025); *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-  
3 BFM, 2025 WL 3288403, at \*9 (C.D. Cal. Nov. 25, 2025), Chief Immigration  
4 Judge Teresa L. Riley sent all IJs the following instructions:

5  
6 Please provide the following guidance to all immigration judges  
7 forthwith: *Maldonado Bautista* is not a nationwide injunction and does  
8 not purport to vacate, stay, or enjoin *Yajure Hurtado*. Therefore  
9 *Yajure Hurtado* remains binding precedent on agency adjudications.  
10 For clarification, declaratory judgments differ from injunctions in that  
11 the former clarifies parties' legal rights and relationships without  
12 ordering specific action, while the latter is a court order compelling a  
13 party to do or stop doing a specific act. A declaratory judgment is not  
14 an equitable remedy and does not, by itself, have the effect of  
15 compelling specific action by a party. Thank you for your attention to  
16 this matter.<sup>23</sup>

17 A few days later, U.S. District Judge Sunshine S. Sykes issued a scathing  
18 order, calling out “Respondents’ deliberate choice to continue defying the final  
19 judgment entered in *Bautista*.” *Baltazar v. Janecka*, No. 5:26-cv-00019-SSS-  
20 BFM, 2026 WL 413734, at \*1–2 (C.D. Cal. Jan. 16, 2026). IJs’ resistance to  
21 granting bond therefore accords with the larger movement to eliminate or  
22 silence IJs who side with immigrants, while bringing those that remain into line  
23 with the administration’s priorities.

24 The “equitable and flexible nature of habeas relief” affords district  
25 courts significant discretion over the appropriate remedies for violations of  
26 law and the Constitution. *Velasco Lopez v. Decker*, 978 F.3d 842, 855 (2d Cir.  
27 2020) (citing *Boumediene v. Bush*, 553 U.S. 723, 786 (2008)); *see also Schlup*  
28 *v. Delo*, 513 U.S. 298, 319 (1995) (“[H]abeas corpus is, at its core, an

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1 equitable remedy”). This Court should order a remedy that fully addresses the  
2 statutory and constitutional violations in this case and is efficient to  
3 administer. *Carafas v. LaVallee*, 391 U.S. 234, 238 (1968) (the habeas statute  
4 “does not limit the relief that may be granted to discharge of the applicant  
5 from physical custody. Its mandate is broad with respect to the relief that may  
6 be granted”).

7 **CLAIM AND PRAYER FOR RELIEF**

8 **Detaining Petitioner Without a Bond Hearing Violates the Fifth**  
9 **Amendment’s Due Process Clause**

10 Here, because ordering a bond hearing before a randomly selected IJ would  
11 not properly redress the constitutional violations present in this matter, Petitioner  
12 urges the court to provide an alternative corrective measure. Petitioner suggests the  
13 following remedies (with citation to this Court’s authority to order them):

14 **Primary Proposed Relief: Outright release.** *See, e.g., Miri v. Bondi*, No.  
15 5:26-cv-00698-MEMF-MAR, 2026 WL 622302, at \*12 (C.D. Cal. Mar. 5, 2026);  
16 *Moctezuma v. Henkey*, No. 1:25-cv-00741-BLW, 2026 WL 18809, at \*5 (D. Idaho  
17 Jan. 2, 2026).

18 **Alternative Proposed Relief: Bond hearing before district court.**  
19 *See, e.g., L.G.M. v. LaRocco*, 788 F. Supp. 3d 401, 405-07 (E.D.N.Y. 2025).

20 **Second Alternative Proposed Relief: Bond hearing before IJ with**  
21 **strict due process safeguards.** *See Sandesh v. LaRose*, No. 3:26-cv-846-JES-  
22 DDL (S.D. Cal. March 5, 2026).

23 Specifically, if this Court chooses this option, it could follow *Sandesh* by  
24 including the following safeguards used in that case (ECF No. 13):

25 a. Respondents provide Petitioner with a hearing and individualized bond  
26 determination within **ten days** of its order. *Id.*

27 (a) At that hearing, the government shall bear the burden of  
28 establishing by clear and convincing evidence that Petitioner poses a

1 danger or flight risk, while further specifying that concerns about  
2 interrupting court schedules is not a ground to deny bond. *Id.*

3 (b) The IJ shall consider alternative conditions of release and  
4 Petitioner's ability to pay bond if the IJ determines bond is appropriate.  
5 *Id.*

6 (c) Respondents shall make a complete record of the bond hearing  
7 available to Petitioner and her counsel. *Id.*

8 b. Respondents are ordered to file a Notice of Compliance within **five days**  
9 of providing Petitioner with the bond hearing, including apprising the  
10 Court of the results of the hearing. *Id.*

11 c. Prohibit ICE from invoking the automatic stay provisions under 8 C.F.R.  
12 § 1003.19(i)(2) to defeat the IJ's bond determination.

13 **Regardless of the remedy selected**, this Court should also retain jurisdiction  
14 to enforce compliance, including through sanctions. Finally, this Court should order  
15 all other relief that it deems just and proper.

16  
17 Respectfully submitted,

18  
19 Dated: July 15, 2026

s/ Alana L. McMains

Alana L. McMains  
MCMAINS LAW, APC  
Attorney for Petitioner

**28 U.S.C. § 2242 VERIFICATION STATEMENT**

I am submitting this verification on behalf of the Petitioner because I am the Petitioner's attorney. I have discussed with the Petitioner the events described in this Petition. Based on those discussions, along with my review of the filings in this case and Petitioner's prior sworn habeas petition, I hereby verify under penalty of perjury under the laws of the United States and the State of California that the statements made in this petition are true and correct to the best of my knowledge, information, and belief.

I further verify that, based on my conversations with Petitioner along with his sworn statements in his original petition, Petitioner is indigent and thus qualifies for appointed counsel under the Criminal Justice Act.

Dated: July 15, 2026

s/ Alana L. McMains

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