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7 UNITED STATES DISTRICT COURT

8 EASTERN DISTRICT OF CALIFORNIA

9 MALIK,

10 Petitioner,

11 v.

12 WARDEN OF THE GOLDEN
13 STATE ANNEX DETENTION
14 FACILITY, ET AL,

15 Respondents.
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Case No.: 1:25-cv-01607-TLN-AC

TRAVERSE: REPLY TO
RESPONDENTS' OPPOSITION AND
MOTION TO DISMISS

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Statute

8 U.S.C. § 1225(b)(1)	6, 12
8 U.S.C. § 1229a	5, 12

1 8 U.S.C. § 1182(a)(7)(A)(i)(I)6

1 This matter presents the case of a non-binary individual with no criminal
2 history who has, through no fault of their own, been in custody in punishing
3 conditions for almost nine months awaiting resolution of their viable asylum claim.
4 The most recent immigration judge assigned to their case has been fired by
5 Respondents, and it is uncertain as to when there will be a final determination on
6 their claim. Petitioner¹ requests release from detention or at a minimum a bond
7 hearing before a neutral arbiter that comports with due process.
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11 **I. STATEMENT OF FACTS AND PROCEDURAL**
12 **BACKGROUND**

13 Petitioner has been detained at the Golden State Annex Detention Facility since
14 April 4, 2025, or almost 9 months. They presented themselves for entry at the San
15 Francisco International Airport with a valid B-2 visa but were detained upon entry.
16 Petitioner expressed a fear of returning to their home country of India. An asylum
17 officer interviewed Petitioner and determined that they had a credible fear of
18 persecution in India, and on May 15, 2025, issued a Notice to Appear to Petitioner,
19 placing them in removal proceedings pursuant to 8 U.S.C. §1229a. Petitioner was
20 charged as an “arriving alien” who was not in possession of a valid entry document
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27 ¹ Given Petitioner’s nonbinary identity, they will be referred to as “they/them” or “Petitioner.”
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1 pursuant to 8 U.S.C. § 1182(a)(7)(A)(i)(I). Petitioner is being detained pursuant to
2 8 U.S.C. § 1225(b)(1).
3

4 Petitioner has not delayed their proceedings. Petitioner had multiple master
5 calendar hearings, set months apart and in front of three different judges, through
6 no fault of their own. ECF Doc. 1 at 9. Petitioner was arrested on April 4, 2025. At
7 a master calendar hearing on July 9, 2025, Petitioner contested the charge of
8 inadmissibility, as was their right given that they had a valid visa upon entering the
9 U.S. ECF Doc. 14-1 at 2. The case was set over to July 30, 2025, for a hearing on
10 the matter, and the immigration judge sustained the allegations in the Notice to
11 Appear. The case was set to September 4, 2025, for the Petitioner to submit any
12 applications for relief. Petitioner filed their I-589 asylum application in advance of
13 the hearing, on or about August 14, 2025, less than two weeks after the July 30
14 hearing and in advance of the September 4 hearing. See Att. A, cover letter for
15 asylum application. At the hearing on September 4, the case was finally set for a
16 merits hearing for December 10, 2025, 8 months after Petitioner's initial detention.
17 By then the California Collaborative for Immigrant Justice ("CCIJ") connected to
18 Petitioner and worked to obtain pro bono legal counsel for Petitioner. CCIJ entered
19 a limited appearance for Petitioner on or about December 8, 2025. Att. B, EOIR-28
20 from CCIJ. They requested a brief continuance to provide an opportunity to find
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1 counsel and adequately prepare the case.² This was the only time that Petitioner
2 has requested additional time.
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4 The immigration judge presiding over Petitioner's removal proceedings has
5 changed at least two times as a result of the Trump administration's politically
6 motivated purge of judges at the EOIR. ECF Doc. 1 at 9. The case started with
7 Immigration Judge Patrick Barrett. Later, Immigration Judge Alison Daw was
8 assigned to the case, but she was fired in September 2025.³ The case was then
9 assigned to Immigration Judge Denise Hunter. However, Judge Hunter was fired
10 on December 21, 2025.⁴ Although the case is currently scheduled for a merits
11 hearing on February 19, 2026, the EOIR website indicates that Judge Hunter is still
12 assigned to the matter, making it unlikely that hearing will proceed as scheduled.
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22 ² CCIJ located pro bono counsel for Petitioner, who is now represented by Oasis Legal Services
23 which provides pro bono legal services to the LGBTQIA+ communities. Att. D.

24 ³ *"Sacramento immigration court cuts judges amid nationwide terminations"* KCRA3, Sept. 29,
25 2025, <https://www.kcra.com/article/sacramento-immigration-court-cuts-judges/68123766>

26 ⁴ *"San Francisco Immigration Court Down to four Judges After New Departures,"* KQED, Tyche
27 Hendricks, December 21, 2025. <https://www.kqed.org/news/12068148/san-francisco-immigration-court-down-to-four-judges-after-new-departures>
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1 See Exh. C, screenshot of Petitioner's case status. Indeed, the ousting of so many
2 immigration judges makes additional backlogs inevitable.⁵
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4 Petitioner identifies as non-binary gender queer. ECF No. 1, at 5. Respondents
5 have a long history of showing utter disregard for the needs of trans and nonbinary
6 individuals in custody.⁶ Although there was a memorandum issued by ICE in 2015
7 meant to provide guidance regarding the placement and care of gender
8 nonconforming individuals,⁷ that guidance has been rescinded under the Trump
9 administration. The administration has pushed to remove transgender care
10 requirements from detention facilities and is excluding data on transgender people
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18 ⁵*"Ousted immigration judge describes deepening court backlog,"* PBS News, Nov. 12, 2025,
19 <https://www.pbs.org/newshour/show/ousted-immigration-judge-describes-deepening-court-backlog>

20 ⁶ Nongovernment organizations filed a civil rights complaint and requested that transgender and
21 nonbinary individuals not be detained in civil immigration detention due to the inability of ICE
22 to keep them safe, ensure their wellbeing, or safeguard their access to legal process. *"Complaint*
23 *Underscoring Why People Who Are Transgender and Nonbinary Should Not Be Detained in*
24 *Civil Immigration Detention,"* by National Immigration Project, American Immigration Council, April 9, 2024. https://nipnlg.org/sites/default/files/2024-04/CRCL_complaint-transgender-care.pdf

25 ⁷*"Further Guidance Regarding the Care of Transgender Detainees,"* U.S. Immigration and
26 Customs Enforcement, June 19, 2015(archived).
27 <https://web.archive.org/web/20250203042149/http://www.ice.gov/sites/default/files/documents/Document/2015/TransgenderCareMemorandum.pdf>

1 in detention in violation of congressional mandates.⁸ These moves are after the
2 White House issued an executive order requiring that people in federal custody be
3 placed in facilities based on their sex assigned at birth, among other policies
4 eliminating protections for individuals based on their gender identity.⁹
5

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7 Petitioner has indeed suffered harassment and abuse based on their gender
8 identity at the facility. A duty officer and lieutenant made fun of Petitioner when
9 they inquired about a card that was meant to identify rights for transgender
10 individuals. ECF Doc. 1 at 5. Petitioner fears other inmates and officers in the
11 facility. ECF Doc. 1 at 5. They describe having to “hold it in and hide” their
12 identity to avoid harm. ECF Doc. 1 at 8. They describe lack of proper training of
13 officers which leads to their “further mental isolation and fear.” ECF Doc 1 at 5.
14 The facility is wholly unequipped to provide support to a nonbinary individual.
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18 The conditions at Golden State Annex are extremely poor and punishing.
19 Petitioner, who suffers from debilitating migraines, reports waiting for 6 to 7 days
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23 ⁸“ICE is Excluding Data on Transgender People in Detention,” Vera, June 30, 2025.
24 <https://www.vera.org/news/ice-is-excluding-data-on-transgender-people-in-detention>

25 ⁹ “Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the
26 Federal Government,” The White House, January 20, 2025.
27 <https://www.whitehouse.gov/presidential-actions/2025/01/defending-women-from-gender-ideology-extremism-and-restoring-biological-truth-to-the-federal-government/>
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1 for a response for a medical team. When crying or showing signs of mental
2 suffering, they have been scolded and threatened with a write up. ECF Doc 1 at 6.
3
4 Petitioner reports being “hooted at,” “made sounds at” and denied food by the
5 facility staff. *Id.* Petitioner suffers from “anxiety, depression and other mental
6 health problems” on account of persecution due to their gender identity but has
7 been told that the purpose of any psychiatric care in the facility is to “stabilize” the
8 detainee rather than to help them.¹⁰ ECF Doc. 1 at 7-8.
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11 Petitioner’s description comports with independent review of the care provided
12 at Golden State Annex by the California Department of Justice.¹¹ In its recent
13 review of conditions at the facility, it was found that “[m]ental health and medical
14 staff did not engage in appropriate treatment planning or multidisciplinary
15 treatment to address detainee needs;” “[s]uicide prevention and interventions were
16 insufficient due to inconsistent suicide risk assessments, facility related risks, and
17 lack of safety planning,” and [d]etainees were over-disciplined, including
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24 ¹⁰ Petitioner has provided under seal a report regarding their mental health that was recently
25 prepared by the SDP-Keck Human Rights Clinic. Petitioner is diagnosed with 
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27 ¹¹“Immigration Detention in California: A Comprehensive Review with a Focus on Mental
28 Health,” California Department of Justice, 2025.
<https://oag.ca.gov/system/files/media/immigration-detention-2025.pdf>

1 punishment for making complaints.” Report at p. 53. In addition, detainees with
2 special vulnerabilities (e.g. prior victims of assault and LGBTQ+ detainees) were
3 placed at higher security levels, despite higher risks of harm. *Id.* p. 7.
4

5 Petitioner also reports constant noise and lights that make it impossible to sleep;
6 fights and thefts among inmates; limited library access and no internet access;
7 extreme temperature changes from hot to cold; outside time reduced to 2 hours a
8 day and often restricted or cancelled; dirty dorms; unsanitary toilets; and inedible
9 food that is expired or with hair, insects or foreign objects. ECF Doc. 1 at 6-7.
10

11 There has also been a recent outbreak of scabies in the facility.¹²
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13 Respondents have not contested the factual allegations of the conditions of
14 confinement made in Petitioner’s petition.
15

16 II. ARGUMENT

17 Respondents argue that this matter be dismissed “for two related reasons” – that
18 the INA mandates detention and that Petitioner has not pursued relief in
19 Immigration Court. (Respondents’ Opposition, p. 2). Petitioner will address these
20 arguments in turn.
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27 ¹²“Scabies outbreak hits Central Valley ICE detention center. What’s being done?” The Fresno
28 Bee, December 23, 2025. <https://www.fresnobee.com/article313927143.html>

A. Individuals Subject to Mandatory Detention Maintain a Constitutional Right to Challenge Prolonged Detention.

As a matter of statutory law, Petitioner is subject to mandatory detention pursuant to 8 USC 1225(b)(1). Respondents initially sought to place Petitioner in expedited removal proceedings. However, after Petitioner established a credible fear, Respondents vacated the expedited removal order, placed Petitioner in standard removal proceedings pursuant to 8 U.S.C. §1229a, and charged them as an arriving alien. Respondents' first argument is that these facts end the matter.¹³

However, it is long settled that noncitizens have due process rights, and a chorus of courts has held that this includes the right to be free from prolonged detention without any opportunity to seek release from a judge. *See 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) ("Although the Ninth Circuit has yet to take a position on whether due process requires a bond hearing for noncitizens detained under 8 U.S.C. § 1225(b)....'essentially all district courts that have

¹³ Respondents cite heavily to *Demore v. Kim*, 538 U.S. 510, 523 (2003) While the Supreme Court has declined to adopt a bright-line rule for when prolonged immigration detention without bond violates the Constitution, *Demore* only upheld "brief" detentions under Section 1226(c), which last "roughly a month and a half in the vast majority of cases in which it is invoked, and about five months in the minority of cases in which the [noncitizen] chooses to appeal." See *Demore*, 538 U.S. at 529-30.

1 considered the issue agree that prolonged mandatory detention pending removal
2 proceedings, without a bond hearing, will – at some point – violate the right to due
3 process.” (citing *Martinez v. Clark*, No. C18-1669-RAJ-MAT, 2019 WL 5968089,
4 at *6 (W.D. Wash. May 23, 2019)); *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 772
5 (S.D. Cal. 2020) (“[T]he Court joins the majority of courts across the country in
6 concluding that an unreasonably prolonged detention under 8 U.S.C. § 1225(b)
7 without an individualized bond hearing violates due process.”); *Gao v. LaRose*,
8 No. 25-cv-2084-RSH-SBC, 2025 WL 2770633, at *4 (S.D. Cal. Oct. 21,
9 2015)(holding that noncitizens subject to mandatory detention maintain a due
10 process right to challenge prolonged detention). Therefore, the Court can consider
11 whether Petitioner’s detention is in violation of the constitutional right to due
12 process.
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18 Courts have used several tests for determining when detention becomes
19 prolonged such that it violates the constitution. These tests include the analysis set
20 forth in *Mathews v. Eldridge*, 424 U.S. 319, 335, (1976), the *Banda* test from
21 *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1106 (W.D. Wash. 2019), and a six-
22 month benchmark. Under any of these tests, Petitioner’s detention is
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1 1. The Mathews v. Eldridge Test

2 Under *Mathews v. Eldridge*, to determine what protections due process
3
4 demands in a given situation, courts consider three factors: (1) the private interest
5 that will be affected by the official action; (2) the risk of erroneous deprivation of
6 such interest through the procedures used, and the probable value of additional
7 safeguards; and (3) the government's interest, including the function involved and
8 the burdens that would be imposed by additional process. See *Mathews v.*
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10 *Eldridge*, 424 U.S. 319, 335, (1976).

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12 Under the first factor, the Court evaluates Petitioner's private interest in
13 being free from detention against the government's interest in ensuring appearance
14 for removal and protecting the public. Petitioner has no criminal record, has
15 pursued relief in court, and has been detained for nearly nine months. Compared
16 to the six-month period in *Zadvydas*, Petitioner's detention qualifies as prolonged.
17 *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Petitioner's private interest in being
18 free from prolonged detention of nearly nine months without any individualized
19 bond hearing weighs in Petitioner's favor.
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22 Under this factor, the Court can also look at the reason for the lengthy period
23 of detention. Apart from a request by Petitioner for a brief continuance after a
24 nonprofit organization began representing Petitioner, all of the delay in this case is
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1 attributable to delays in the administrative process. Petitioner was initially detained
2 on April 4, 2025, and at a master calendar hearing in July 2025 requested a hearing
3 on the allegations contained in the Notice to Appear. Petitioner then had 2
4 additional master calendar hearings, first for establishing removability, and then to
5 permit Petitioner to file his asylum application. *Masood v. Barr*, No. 19-cv-07623-
6 JD, 2020 WL 95633 (N.D. Cal. 2020) (“It ill suits the United States to suggest that
7 he could shorten his detention by giving up [his] rights and abandoning his asylum
8 application.”)

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12 Moreover, the immigration judge handling Petitioner’s case was recently
13 fired as part of a wave of mass firings of immigration judges. Thus, even though
14 there is a merits hearing on Petitioner’s asylum application scheduled for February
15 19, 2026, there is no judge to hear the application, making that date meaningless.
16 This is the second judge assigned to Petitioner’s case to be fired. In addition, the
17 Trump administration recently ordered a “pause” on asylum decisions, leaving
18 open the possibility of indefinite detention of petitioner.¹⁴
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25 ¹⁴*Trump says pause on asylum decisions will last ‘a long time,’* USA Today, Thao Nguyen, Nov.
26 30 2025. (“When asked by a journalist how long the pause on asylum processing would last,
27 President Trump said the pause has ‘no time limit, but it could be a long time.’”) <https://www.usatoday.com/story/news/politics/2025/11/30/donald-trump-pause-asylum-applications/87544306007/>
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1 Given that in nearly nine months no neutral arbiter has evaluated whether
2 Petitioner presents a flight risk or a danger to the public, the first factor weighs in
3 favor of Petitioner.
4

5 In regard to the second *Mathews* factor, Respondents have provided no
6 process at all. Petitioner requested a bond from the immigration judge, who ruled
7 Petitioner ineligible for bond. There are no procedural safeguards provided to
8 Petitioner to prevent their prolonged or even indefinite detention. As Petitioner has
9 been held for nearly nine months and it is not clear when the detention will end
10 given the recent firing of the judge assigned to the case, the risk of erroneous
11 deprivation weighs in Petitioner's favor.
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15 In regard to the third *Mathews* factor, the government has an interest in
16 carrying out the immigration laws, including effectuating removal. However, the
17 whole purpose of a bond hearing is to inquire whether the noncitizen is a flight risk
18 or a danger to the community.¹⁵ Without a hearing, the government's interest is
19 speculative. Given the minimal cost of a bond hearing, this factor also weighs in
20 Petitioner's favor.
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27 ¹⁵ Regarding flight risk, petitioner has the support of multiple non-profits who can provide
28 services upon release, including Oasis Legal Services (Att. D) and the SDP Keck Human Rights
Clinic. In addition, according to the Respondents' own records, Petitioner has no criminal record.

1 2. The Banda Test

2 The *Banda* test balances six factors: (1) the total length of detention to date;
3
4 (2) the likely duration of future detention; (3) conditions of detention; (4) delays in
5 the removal proceedings caused by the detainee; (5) delays in the removal
6 proceedings caused by the government; and (6) the likelihood that the removal
7 proceedings will result in a final order or removal. *See Banda v. McAleenan*, 385
8 F. Supp. 3d 1099, 1106 (W.D. Wash. 2019).
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11 Petitioner has been detained for nearly nine months, longer than the six-month
12 presumptive period set forth in *Zadvydas*. Many courts have found a comparable
13 length of time of detention to the Petitioner's to be unreasonably long. *See, e.g.*
14 *Hoyos Amado*, 2025 WL 3079052, at *5, 3:25-cv-02687, (S.D. Cal. Oct. 9, 2025)
15 (“Courts have found detention over seven months without a bond hearing weighs
16 toward a finding that it is unreasonable.”) (collecting cases); *Tonoyan v. Andrews*,
17 No. 1:25-cv-00815-SKO (HC), 2025 WL 3013684, at *4 (E.D. Cal. Oct. 28, 2025)
18 (Petitioner has been detained approximately 11 months. This period...qualifies as
19 prolonged.”); *Gao v. LaRose*, 2025 WL 2770633, at *5 (“The Court finds that
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1 The likely duration of future detention is long (and indeterminate) given the
2 firing of the immigration judge assigned to Petitioner's case. The duration of future
3 detention is also of long duration as the government is likely to appeal any grant of
4 immigration relief to Petitioner. Should the immigration judge deny relief,
5 Petitioner would likely appeal. Respondents' own records show that there are over
6 200,000 appeals pending at the Board of Immigration Appeals.¹⁶ There are
7 currently only nine permanent members of the BIA, down from twenty-six at the
8 beginning of 2025.¹⁷

12 The conditions of Petitioner's detention are more akin to criminal
13 punishment than civil detention, which weighs this third factor in Petitioner's
14 favor. Petitioner suffers from mental health issues due to past trauma, and the
15 evidence shows that the Golden State Annex does not properly care for detainees
16 with mental health needs. In addition, Petitioner suffers from debilitating migraines
17 and does not get proper medical attention. The facility is ill-prepared for proper
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23 ¹⁶ Executive Office for Immigration Review Adjudication Statistics: All Appeals Filed,
24 Completed, Pending. Nov. 18, 2025. <https://www.justice.gov/eoir/media/1344986/dl?inline>

25 ¹⁷ "Precedent or Policy? A Quiet Transformation of the Board of Immigration Appeals."
26 Catholic Legal Immigration Network (Clinic), August 22, 2025.
27 <https://www.cliniclegal.org/resources/precedent-or-policy-quiet-transformation-board-immigration-appeals>

1 housing of a person of nonbinary gender identity. Petitioner fears for their safety
2 as a nonbinary person, and has suffered discrimination from staff. Petitioner
3 reports being “hooted at,” “made sounds at” and denied food by the facility staff.
4 Petitioner also reports constant noise and lights that make it impossible to sleep;
5 fights and thefts among inmates; limited library access and no internet access;
6 extreme temperature changes from hot to cold; outside time reduced to 2 hours a
7 day and often restricted or cancelled; dirty dorms; unsanitary toilets; and inedible
8 food that is expired or with hair, insects or foreign objects. Most recently there are
9 reports of a scabies outbreak at the facility.
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13 The fourth and fifth factors, government vs. petitioner delays, also weigh in
14 Petitioner’s favor, as they have not caused delays in the case. At a master calendar
15 hearing on July 9, 2025, Petitioner contested the charge of inadmissibility, as was
16 their right given that they had a valid visa upon entering the U.S. ECF Doc. 14-1 at
17 2. The case was set over to July 30, 2025, for a hearing on the matter, and the
18 immigration judge sustained the allegations in the Notice to Appear. The case was
19 set to September 4, 2025, for the Petitioner to submit any applications for relief,
20 and Petitioner did not delay in filing their application. Petitioner filed their I-589
21 asylum application in advance of the hearing, on or about August 14, 2025, less
22 than two weeks after the July 30 hearing. The merits hearing was then set for
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1 December 10, 2025. While Petitioner sought one brief continuance to secure
2 counsel and obtain documents after a non-profit began assisting them, Respondents
3 have fired two judges handling Petitioner's case. The status of any currently
4 scheduled hearing is indeterminate since the assigned judge is no longer working at
5 the court. The fourth and fifth factors weigh in Petitioner's favor.
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8 Lastly, the final *Banda* factor weighs in Petitioner's favor as they have a
9 viable asylum claim pending. Petitioner presents a strong asylum case based on
10 persecution in India as an LGBTQ person. Although Petitioner is not asking this
11 Court to review the asylum case or removal process, the fact that Petitioner has a
12 viable claim weighs in their favor in evaluating the prolonged detention.
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15 **B. Petitioner Has Pursued Relief in Immigration Court.**
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17 The second reason that Respondents offer in opposition to Petitioner's habeas is
18 that "Petitioner has not pursued appropriate remedies in the Immigration Court."
19 This is a curious argument given that Petitioner has applied for asylum, secured
20 pro bono counsel, and submitted evidence to the immigration court in support of
21 the application. Although subject to mandatory detention, Petitioner also requested
22 bond from the immigration court. Not surprisingly, the immigration judge found
23 Petitioner ineligible for bond under the statute. Any appeal of that determination
24 would be futile. Respondents appear to argue both that Petitioner is not eligible for
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1 release through the immigration process and that Petitioner should seek release
2 through the immigration process. Petitioner has no realistic remedy for their
3 prolonged detention apart from this habeas petition. See *Wang v. Reno*, 81 F.3d
4 808, 815–16 (9th Cir. 1996) (per curiam) (“the inability of the INS to adjudicate
5 the constitutional claim completely undermines most, if not all, of the purposes
6 underlying exhaustion.”)
7

8 9 10 **III. CONCLUSION**

11 For all the foregoing reasons, this Court should grant the Petition for a Writ of
12 Habeas Corpus and order release within 14 days unless the Respondents hold a
13 bond hearing for Petitioner before a neutral arbiter at which the Respondents must
14 meet their burden of justifying any continued detention by clear and convincing
15 evidence that Petitioner is either a flight risk or a danger to the community.
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19 Date: December 29, 2025

Respectfully Submitted,

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21 /s/

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23 _____
24 Joye Wiley
25 Attorney for Petitioner
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