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12 UNITED STATES DISTRICT COURT  
13 DISTRICT OF NEVADA

14 Mamadou Cisse,

15 Petitioner,

16 v.

17 Michael Bernacke, *et al.*,

18 Respondents.

Case No. 2:26-cv-00387-JAD-BNW

**First Amended § 2254 Petition**

## INTRODUCTION

Mamadou Cisse came to the United States in 2023.<sup>1</sup> He was placed into removal proceedings, and he applied for asylum.<sup>2</sup> He was given a work permit, and Cisse was working for Amazon.<sup>3</sup> Cisse was arrested for a domestic violence offense on April 6, 2025 (a first offense).<sup>4</sup> He was initially charged with a felony.<sup>5</sup> He was taken into custody by ICE on April 7, 2025, after he posted bail with the Clark County Detention Center.<sup>6</sup>

On May 7, 2025, Cisse filed a motion for a bond hearing.<sup>7</sup> On May 15, 2025, the Immigration Judge denied Cisse bond because he “has not established that he is not a danger to the community.” The IJ’s decision appears to be based on the alleged victim’s (of the domestic violence offense) inconsistent testimony in court.<sup>8</sup> On June 5, 2025, Cisse pled no contest to a misdemeanor; the felony charge was dismissed.<sup>9</sup>

Cisse has not had the opportunity to seek release on bond for 10 months. His prolonged detention without a bond hearing violates his due process rights under the Fifth Amendment of the United States Constitution.

## JURISDICTION AND VENUE

This Court has jurisdiction pursuant to 28 U.S.C. § 2241, which grants federal courts the authority to issue writs of habeas corpus to individuals in custody

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<sup>1</sup> PEx. 1 at 2.

<sup>2</sup> PEx. 1 at 1.

<sup>3</sup> *Id.*

<sup>4</sup> PEx. 3.

<sup>5</sup> *Id.*

<sup>6</sup> PEx. 1 at 2.

<sup>7</sup> PEx. 1.

<sup>8</sup> PEx. 1 at 18-19.

<sup>9</sup> PEx. 4.

1 if that custody violates “the Constitution or laws or treaties of the United States.”  
2 28 U.S.C. § 2241(c)(3); *see also Demore v. Kim*, 538 U.S. 510, 516–17 (2003) (holding  
3 § 2241 is the proper vehicle through which to challenge the constitutionality of a  
4 noncitizen’s detention without bail); *Jennings v. Rodriguez*, 583 U.S. 281, 294–296  
5 (2018) (holding that neither 8 U.S.C. § 1226(e) nor § 1252(b)(9) bar review of  
6 constitutional challenges to prolonged immigration detention).

7 Venue is proper in the District of Nevada under 28 U.S.C. § 1391(e) because  
8 Cisse is detained in this district and a substantial part of the events or omissions  
9 giving rise to Cisse’s claims occurred in this district.

#### 10 PARTIES

11 Petitioner Cisse is a citizen of Senegal who is currently detained by ICE at  
12 the Nevada Southern Detention Center in Pahrump, Nevada.

13 Respondent John Mattos is the warden of the Nevada Southern Detention  
14 Center. Mattos is the immediate custodian of Cisse.

15 Respondent Michael Bernacke is the Field Office Director for the Salt Lake  
16 City Field Office of ICE Enforcement and Removal Operations, which has  
17 jurisdiction over Cisse. He is named in his official capacity and is a legal custodian  
18 of Cisse.

19 Respondent Kerri Ann Quihuis is the Field Office Director for the Las Vegas  
20 Field Office of ICE Detention and Removal, which has jurisdiction over Cisse. She is  
21 named in her official capacity and is a legal custodian of Cisse.

22 Respondent Todd Lyons is the Acting Director of ICE. He is named in his  
23 official capacity. As the leader of ICE, the agency responsible for detaining and  
24 removing noncitizens, Lyons is a legal custodian of Cisse.

25 Respondent Kristi Noem is the Secretary of the United States Department of  
26 Homeland Security (DHS). She is named in her official capacity. As the Secretary of  
27

1 DHS, Noem is responsible for the administration of immigration laws. *See* 8 U.S.C.  
2 § 1103(a). Noem is a legal custodian of Cisse.

3 Respondent Pam Bondi is the Attorney General of the United States and the  
4 most senior official in the U.S. Department of Justice. Bondi is named in her official  
5 capacity. The Attorney General delegates her authority to interpret the  
6 immigration laws and adjudicate removal cases to the Executive Office of  
7 Immigration Review (EOIR), which includes the immigration courts and the Board  
8 of Immigration Appeals. Bondi is a legal custodian of Cisse.

#### 9 PROCEDURAL HISTORY

10 Cisse entered the United States in August 2023 after fleeing persecution  
11 from the government of Senegal and Senegalese army due to his sexual  
12 orientation.<sup>10</sup> He was interviewed by a USCIS Asylum officer.<sup>11</sup> Cisse was placed  
13 into removal proceedings, and he filed his application for asylum.<sup>12</sup> That application  
14 was denied in July 2025, and Cisse appealed that decision to the BIA. His appeal is  
15 pending.

16 Cisse was arrested for a domestic violence offense on April 6, 2025 (a first  
17 offense).<sup>13</sup> He was initially charged with a felony.<sup>14</sup> He was taken into custody by  
18 ICE on April 7, 2025, after he posted bail with the Clark County Detention  
19 Center.<sup>15</sup>

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23 <sup>10</sup> PEx. 1 at 2.

24 <sup>11</sup> *Id.*

25 <sup>12</sup> *Id.*

26 <sup>13</sup> PEx. 3.

27 <sup>14</sup> *Id.*

<sup>15</sup> PEx. 1 at 2.

On May 7, 2025, Cisse filed a motion for a bond hearing.<sup>16</sup> On May 15, 2025, the Immigration Judge denied Cisse bond because he “has not established that he is not a danger to the community.”<sup>17</sup> The IJ’s decision appears to be based on the alleged victim’s (of the domestic violence offense) inconsistent testimony in court.<sup>18</sup>

On June 5, 2025, Cisse pled no contest to a misdemeanor in Las Vegas Justice Court; the felony charge was dismissed.<sup>19</sup>

Cisse again filed a motion for a bond hearing (pro se).<sup>20</sup> His hearing was rejected because the Immigration Court does not have a record of his case; it appears that because Cisse has appealed the rejection of his asylum claim, the Immigration Court refused to consider a motion for bond.<sup>21</sup>

On February 13, 2026, Cisse filed a pro se Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241.<sup>22</sup>

#### 

**Ground One: Cisse’s prolonged detention without a renewed bond hearing violates his right to due process under the Fifth Amendment of the United States Constitution.**

“The Fifth Amendment’s Due Process Clause forbids the Government to ‘depriv[e]’ any ‘person . . . of . . . liberty . . . without due process of law.’ Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)).

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<sup>16</sup> PEx. 1.

<sup>17</sup> PEx. 1 at 18-19.

<sup>18</sup> *Id.*

<sup>19</sup> PEx. 4.

<sup>20</sup> ECF No. 1-1 at 6.

<sup>21</sup> ECF No. 1-2 at 1-3.

<sup>22</sup> ECF No. 1.

1 “Arbitrary civil detention is not a feature of our American government. ‘[L]iberty is  
2 the norm, and detention prior to trial or without trial is the carefully limited  
3 exception.’” *Rodriguez v. Marin*, 909 F.3d 252, 256–57 (9th Cir. 2018) (quoting  
4 *United States v. Salerno*, 481 U.S. 739, 755 (1987)).

5 In considering the issue of prolonged detention in ICE custody pursuant to  
6 mandatory detention, the Ninth Circuit has expressed “grave doubts that any  
7 statute that allows for arbitrary prolonged detention without any process is  
8 constitutional or that those who founded our democracy precisely to protect against  
9 the government’s arbitrary deprivation of liberty would have thought so.”  
10 *Rodriguez*, 909 F.3d at 256. Addressing a similar issue, Justice Kennedy, concurring  
11 in *Demore v. Kim*, 538 U.S. 510, 532 (2003), pronounced that “since the Due Process  
12 Clause prohibits arbitrary deprivations of liberty, a lawful permanent resident alien  
13 such as respondent could be entitled to an individualized determination as to his  
14 risk of flight and dangerousness if the continued detention became unreasonable or  
15 unjustified.” Other circuits have similarly determined that unreasonably prolonged  
16 detention violates a noncitizen’s due process rights. *See Black v. Decker*, 103 F.4th  
17 133, 143 (2d Cir. 2024); *Reid v. Donelan*, 17 F.4th 1, 7 (1st Cir. 2021).

18 Cisse’s continued mandatory detention without a bond hearing is the type of  
19 arbitrary deprivation of liberty the Due Process Clause of the Constitution protects  
20 against. *See Rodriguez*, 909 F.3d at 257 (“The Fifth Amendment says that ‘[n]o  
21 person shall be . . . deprived of life, liberty, or property without due process of law.’  
22 An alien is a ‘person.’ To hold him without bail is to deprive him of bodily ‘liberty.’  
23 And, where there is no bail proceeding, there has been no bail-related ‘process’ at  
24 all. The Due Process Clause—itsself reflecting the language of the Magna Carta—  
25 prevents arbitrary detention.” (quoting *Jennings v. Rodriguez*, 583 U.S. 281, 330  
26 (2018) (Breyer, J., dissenting) (internal citations omitted)).  
27

There is no precedent from the Supreme Court or the Ninth Circuit on the question of when prolonged mandatory detention in immigration custody becomes unconstitutional. However, as outlined above, both the Supreme Court and the Ninth Circuit have suggested that, at some point, continued detention during removal proceedings without a bond hearing will run afoul of the due process guarantee of the Constitution. Furthermore, “[n]early all district courts that have considered the issue agree that prolonged mandatory detention pending removal proceedings, without a bond hearing, will—at some point—violate the right to due process.” *Vargas v. Wolf*, No. 2:19-cv-02135-KJD-DJA, 2020 WL 1929842, at \*7 (D. Nev. Apr. 21, 2020) (quoting *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1116 (W.D. Wash. 2019), *appeal dismissed*, 2019 WL 5885047 (9th Cir. Oct. 9, 2019)); *see also De Leon v. Mayorkas*, No. 2:23-cv-02073-GMN-VCF, 2024 WL 343437 (D. Nev. Jan. 29, 2024); *Ortiz-Castillo v. United States*, No. 2:23-cv-01485-RFB-MDC, 2024 WL 756075 (D. Nev. Feb. 23, 2024); *Arechiga v. Archambeault*, No. 2:23-cv-00600-CDS-VCF, 2023 WL 5207589 (D. Nev. Aug. 11, 2023) (acknowledging that prolonged mandatory detention in immigration custody without a bond hearing can violate the Due Process Clause).

**A. Cisse’s continued detention without a bond hearing violates his due process rights pursuant to *Mathews v. Eldridge*.**

Courts in this circuit have used various legal tests to determine whether due process compels a bond hearing in a particular case. Many courts, including in the District of Nevada, have used the test from *Mathews v. Eldridge*, 424 U.S. 319 (1976), to evaluate whether an ICE detainee’s continued detention without a bond hearing has become unconstitutional. *See, e.g., De Leon*, 2024 WL 343437. Recognizing that “due process is flexible and calls for such procedural protections as the particular situation demands,” *Mathews* lays out a three-factor test to analyze whether a claimant has been provided with adequate due process. *Ortiz-Castillo*,

2024 WL 756075, at \*2 (citing *Mathews*, 424 U.S. at 333). These familiar factors are: (1) “the private interest that will be affected by the official action”; (2) “the risk of erroneous deprivation of such interest through the procedures used, and probable value, if any, of additional or substitute procedural safeguards”; and (3) “the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” *Mathews*, 424 U.S. at 334–35.

The *Mathews* factors provide an appropriate framework to analyze the constitutionality of Cisse’s continued detention. As applied to his case, the factors this Court should consider are: (1) Cisse’s liberty interest; (2) the risk that Cisse is erroneously deprived of his liberty due to his continued mandatory detention without a bond hearing, and the probable value of a bond hearing in ensuring that he is not erroneously deprived of his liberty; and (3) the government’s interest in detaining Cisse without affording him a bond hearing, and the fiscal and administrative burdens that affording him a bond hearing would entail.

**1. The first *Mathews* factor weighs in Cisse’s favor because his liberty interest is substantial.**

Cisse has been detained for 11 months (since April 2025),<sup>23</sup> and it has been almost 10 months (since May 2025) since the government has had to provide any justification for Cisse’s continued detention.<sup>24</sup> See *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1207 (9th Cir. 2022) (finding that detention of 14 months after first bond hearing qualifies as “prolonged”); see also *Lopez v. Garland*, 631 F. Supp. 3d 870, 880 (E.D. Cal. 2022) (finding detention of approximately one year without a bond hearing to be unreasonable and listing cases in which detention of less than a

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<sup>23</sup> PEx. 1.

<sup>24</sup> PEx. 1 at 18-19; ECF No. 1-2 at 1-3.

1 year without a bond hearing was deemed unreasonable). Cisse's private interest in  
 2 being free from such prolonged detention is clearly substantial. *See Singh v. Holder*,  
 3 638 F.3d 1196, 1208 (9th Cir. 2011) ("The private interest here—freedom from  
 4 prolonged detention—is unquestionably substantial."). Therefore, this factor weighs  
 5 strongly in Cisse's favor.

6 To the extent some courts have noted that the interest in being free from  
 7 prolonged detention may be diminished where a petitioner plays a role in his  
 8 prolonged detention by his decision to challenge his removal order, this Court  
 9 should not find Cisse's pending immigration appeal weighs against his request for a  
 10 bond hearing, because Cisse has raised substantial and legitimate challenges to his  
 11 removal. *See Rodriguez Diaz*, 53 F.4th at 1207–08; *but see Jimenez v. Wolf*, No. 19-  
 12 CV-07996-NC, 2020 WL 510347, at \*3 (N.D. Cal. Jan. 30, 2020) ("Jimenez cannot be  
 13 faulted, however, for his decision to accept the assistance of counsel, his decision to  
 14 appeal, or his unfortunate history of schizophrenia.").

15 Cisse's liberty interest should not be diminished as a result of the exercise of  
 16 his appellate rights, especially where his challenges may be meritorious. However,  
 17 if this Court finds his liberty interest is diminished by his actions, it should be to a  
 18 minimal degree. *See Ortiz-Castillo*, 2024 WL 756075, at \*3 (determining that  
 19 petitioner's liberty interest was only minimally diminished by his challenges to his  
 20 removal where he raised legitimate collateral challenges to his removal order and  
 21 made use of the statutorily permitted appeals process).

22 All told, the first *Mathews* factor supports granting relief.

23 **2. The second *Mathews* factor weighs in Cisse's favor**  
 24 **because he can show that his continued detention**  
 25 **without a bond hearing is likely to result in the**  
 26 **erroneous deprivation of his liberty.**

27 "The second *Mathews* factor is 'the risk of an erroneous deprivation of [Cisse's  
 liberty] interest through the procedures used, and the probable value, if any, of

1 additional or substitute procedural safeguards.” *Rodriguez Diaz*, 53 F.4th at 1209  
2 (quoting *Mathews*, 424 U.S. at 335). In this analysis, the Court looks at “the existing  
3 agency procedures” and whether they sufficiently protect the petitioner’s liberty  
4 interest and mitigate the risk of erroneous deprivation. *Id.* For example, in  
5 evaluating the risk of erroneous deprivation in the context of noncitizen detention,  
6 the Ninth Circuit has looked to whether the detainee has a statutory right to  
7 procedural protections, such as individualized custody determinations and the right  
8 to seek additional bond hearings throughout detention. *See id.* at 1209–10 (finding a  
9 small risk of erroneous deprivation where petitioner was detained under a different  
10 provision and thus received numerous procedural protections, including  
11 individualized custody determinations and right to seek additional bond hearings).

12 As in all procedural due process analyses, the Court looks at the “risk of error  
13 inherent” in the processes used, “as applied to the generality of cases.” *Mathews*,  
14 424 U.S. at 344; *see, e.g., Goldberg v. Kelly*, 397 U.S. 254, 269 (1970) (finding  
15 additional process was needed because the written-submission process provided was  
16 “an unrealistic option for most recipients, who lack the educational attainment  
17 necessary to write effectively and who cannot obtain professional assistance”).

18 Here, the second factor weighs in Cisse’s favor because there is a significant  
19 risk that he is being erroneously deprived of his liberty. It has been 10 months since  
20 the government had to provide any justification for Cisse’s continued detention.<sup>25</sup>  
21 The passage of a substantial period since a determination was made regarding  
22 whether Cisse needs to be detained establishes a risk that he is erroneously being  
23 subjected to continued detention.

24 At a full and fair bond hearing, the government would unlikely be able to  
25 establish that Cisse is a flight risk or danger to the community. Cisse has a pending  
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27 <sup>25</sup> PEx. 1 at 18-19; ECF No. 1-2 at 1-3.

1 asylum application<sup>26</sup> as well as friends and relatives in the United States.<sup>27</sup> Prior to  
 2 his detention, he had a work permit, and he was employed at Amazon.<sup>28</sup> His  
 3 diligence and demonstrated commitment to fighting his removal also show that  
 4 Cisse is unlikely to flee. Finally, the government would not be able to prove that  
 5 Cisse is a danger given that it appears his criminal record is minimal.<sup>29</sup> Indeed, his  
 6 one arrest resulted in a no contest plea to a misdemeanor.<sup>30</sup>

7 Relatedly, the probable value of additional procedural safeguards is high  
 8 because Cisse has not been provided with any constitutionally adequate procedural  
 9 safeguards in 10 months, and because he would likely be released if given a new  
 10 bond hearing. “[A]s the period of confinement grows, so do the required procedural  
 11 protections no matter what level of due process may have been sufficient at the  
 12 moment of initial detention.” *Hong v. Mayorkas*, 2022 WL 1078627, at \*5 (W.D.  
 13 Wash. Apr. 11, 2022) *appeal dismissed sub nom. Yang v. Mayorkas*, 2022 WL  
 14 4127534 (9th Cir. Sept. 6, 2022) (quoting *Velasco Lopez v. Decker*, 978 F.3d 842, 853  
 15 (2d Cir. 2010)). Here, even assuming Cisse’s denial of bond and subsequent  
 16 detention was constitutionally permissible, his continued detention of 11 months  
 17 (he was originally detained in April 2025), including almost 10 seven months since  
 18 his first and only bond hearing, has rendered his detention unconstitutional.

19 To comport with due process, Cisse should be afforded a renewed bond  
 20 hearing before an immigration judge where the government must prove that Cisse  
 21 presents a flight risk or danger by clear and convincing evidence to justify continued  
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 24 <sup>26</sup> PEx. 1 at 2.

25 <sup>27</sup> PEx. 5.

26 <sup>28</sup> PEx. 1 at 2.

27 <sup>29</sup> PEx. 4.

<sup>30</sup> *Id.*

1 detention. As noted above, it is likely Cisse would be released if given a new bond  
2 hearing because the government could not meet their burden in this case.

3           **3. The third *Mathews* factor weighs in Cisse's favor because**  
4           **the administrative and fiscal burden of conducting a**  
5           **bond hearing is not significant and neither is the**  
6           **government's interest in detaining Cisse without a bond**  
7           **hearing.**

8           The third and final *Mathews* factor also weighs in Cisse's favor. While it may  
9 be true that the government "has a strong interest in preventing aliens from  
10 'remain[ing] in the United States in violation of our law'" and "has an obvious  
11 interest in 'protecting the public from dangerous criminal aliens,'" those interests  
12 are not the ones implicated by this petition. See *Rodriguez Diaz*, 53 F.4th at 1208  
13 (quoting *Demore*, 538 U.S. at 518, 515). "[I]t is important to stress that the  
14 government interest at stake here is not the continued detention of Petitioner, but  
15 the government's ability to detain him without a bond hearing." *Singh v. Garland*,  
16 No. 1:23-CV-01043-EPG-HC, 2023 WL 5836048, at \*6 (E.D. Cal. Sept. 8, 2023)  
17 (internal quotations omitted); see also *Henriquez v. Garland*, No. 5:22-cv-00869-  
18 EJD, 2022 WL 2132919, at \*5 (N.D. Cal. June 14, 2022) ("Although the Government  
19 has a strong interest in enforcing the immigration laws and in ensuring that  
20 lawfully issued removal orders are promptly executed, the Government's interest in  
21 detaining Petitioner without providing an individualized bond hearing is low.").

22           The government's interest in continuing to detain Cisse without a bond  
23 hearing is minimal, especially because "[c]ourts generally have found that the cost  
24 of providing a bond hearing is relatively minimal." *Eliazar G.C. v. Wofford*, No.  
25 1:24-CV-01032-EPG-HC, 2025 WL 711190, at \*8 (E.D. Cal. Mar. 5, 2025); see also  
26 *Singh v. Barr*, 400 F. Supp. 3d 1005, 1021–22 (S.D. Cal. 2019) ("Here, given the  
27 'minimal cost of conducting a bond hearing, and the ability of the IJ to adjudicate  
the ultimate legal issue as to whether [petitioner's] continued detention is justified,

the Court concludes that the government's interest is not as weighty as [petitioner's]."). As a result, the third factor weighs in Cisse's favor.

**B. This Court should order Respondents to release Cisse or provide a constitutionally adequate hearing to seek release on bond.**

Cisse's continued detention violates his rights under the Due Process Clause of the United States Constitution. Accordingly, he must be given a constitutionally adequate hearing in which he can seek release on bond, with the burden on the government to prove that he should continue to be detained. If Cisse is not granted such a hearing, he must be released from his unconstitutional detention. *See, e.g., Lopez Reyes v. Bonnar*, 362 F. Supp. 3d 762, 778 (N.D. Cal. 2019) (granting relief and ordering the government to either hold a timely bond hearing or release the petitioner); *Singh v. Barr*, 400 F. Supp. at 1022 (granting relief and ordering the government to hold a new custody hearing with the burden on the government within 15 days or release the petitioner); *Ortiz-Castillo*, 2024 WL 756075 (granting petition and ordering respondents to provide petitioner with a bond hearing before an immigration judge with the burden on the government within 30 days); *Arechiga*, 2023 WL 5207589 (ordering respondents to provide a bond hearing in front of an immigration judge with the burden on the government within 21 days, and that failure to do so may result in release of the petitioner).

Given Cisse's prolonged detention, the Court should order his release if Respondents fail to schedule a bond hearing before an immigration judge within 30 days, with the burden on the government.

**CONCLUSION**

Accordingly, Cisse respectfully requests that this Court:

1. Issue a writ of habeas corpus to have Cisse brought before the Court so that he may be discharged from his unconstitutional confinement within 30 days unless Respondents schedule a bond hearing before an immigration judge,

1 at which the judge must order the release of Cisse unless ICE can establish by clear  
2 and convincing evidence that he presents a risk of flight or danger to the  
3 community.

4 2. Grant such other and further relief as, in the interests of justice,  
5 may be appropriate.

6 Dated March 11, 2026.

7 Respectfully submitted,

8 Rene L. Valladares  
9 Federal Public Defender

10 /s/ Kimberly Sandberg

11 Kimberly Sandberg  
12 Assistant Federal Public Defender  
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**DECLARATION UNDER PENALTY OF PERJURY**

I declare under penalty of perjury under the laws of the United States of America and the State of Nevada that the facts alleged in this petition are true and correct to the best of counsel's knowledge, information, and belief.

Dated March 11, 2026.

Respectfully submitted,

Rene L. Valladares  
Federal Public Defender

/s/ Kimberly Sandberg  
Kimberly Sandberg  
Assistant Federal Public Defender

