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9
10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**
12

13 **SAMSOOR ORIAKHEL,**

14 ***Petitioner,***

15 **v.**

16 **KRISTI NOEM, In her official capacity**
17 **as Secretary of Homeland Security, et al,**

18 ***Respondents.***

Civil Action No. 3:26-cv-01302-TWR-DEB

PETITIONER'S NOTICE OF MOTION TO
ENFORCE JUDGMENT

19 **PLEASE TAKE NOTICE** that Petitioner through counsel, Kurt R. Saccone, Esq., hereby
20 moves this Court to enforce its Order dated March 10, 2026 at Document 5 ordering that
21 Respondents provide Petitioner a bond hearing before an immigration judge pursuant to 8 U.S.C.
22 § 1226(a) within fourteen days of the date of the Order. Petitioner contends that while
23 Respondents purported to hold a bond hearing, the process accorded to Petitioner was so deficient
24 that, in effect, no meaningful bond hearing was held and the bond hearing was constitutionally
25 deficient. This motion is supported by the accompanying Affidavit of Harith Mazrui, Esq.

26 **PLEASE TAKE NOTICE THAT** the motion will be heard at the United States Courthouse,
27 333 West Broadway, San Diego, CA 92101 at a date and time to be set by the Court.
28

1 **PLEASE TAKE FURTHER NOTICE** that Petitioner intends to serve and file reply
2 papers and, therefore, any papers in opposition to this motion are due fourteen days after service
3 of this motion, unless otherwise ordered by the Court. Petitioner asks the Court to order an
4 abbreviated reply deadline given that Petitioner continues to be irreparably harmed by his
5 unlawful detention.

6
7 Dated: March 24, 2026
8 Respectfully Submitted,
9 /s/ Kurt R. Saccone
10 Kurt R. Saccone
11 Bar No. 167630
12 *Of Counsel*
13 Borowski Witmer Immigration Lawyers
14 4343 Union Road
15 Buffalo, NY 14225
16 E-mail: kurt@borowskilaw.com
17 Tel: 716-330-1503
18 *Attorney for Petitioner*
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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF CALIFORNIA
3

4 SAMSOOR ORIAKHEL,
5 *Petitioner,*
6 v.

Civil Action No. 3:26-cv-01302-TWR-DEB

7 KRISTI NOEM, In her official capacity
8 as Secretary of Homeland Security, et al,
9 *Respondents.*

PETITIONER'S MEMORANDUM OF LAW IN
SUPPORT OF MOTION TO ENFORCE
JUDGMENT

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13 Petitioner moves this Court to issue an order finding that Respondents failed to conduct
14 the constitutionally required "bond hearing" prescribed by statute and ordered by this Court, as
15 the hearing he was provided did not comport with due process. The manner in which the hearing
16 was held was violative of Petitioner's due process rights. Further, Respondents are attempting to
17 make an end-run around the judiciary's near-unanimous rejection of the "bond denial policy" they
18 attempted to promulgate through the flawed *Yajure Hurtado* decision. Many Courts nationwide
19 have lost faith in the bond hearing process and have begun ordering immediate release in order to
20 vindicate Petitioners' due process rights. See, e.g., *Solano v. Mason*, No. 2:26-cv-00045
21 (S.D.W.Va., Feb. 4, 2026) (ordering immediate release of detained noncitizen because "this Court
22 has no faith that the Government would comply with an order to hold a bond hearing" and
23 because "ICE has likely violated more court orders in January 2026 than some federal agencies
24 have violated in their entire existence," also finding that a bond hearing would be futile because
25 noncitizens are being "systematically denied bond based on rationales that would not have been
26 deemed sufficient weeks earlier" and therefore there is "no chance any hearing that occurred
27 would comport with due process."").
28

1 **I. LEGAL BACKGROUND**

2 This Court has jurisdiction to consider this Motion. See *Mikhail v. Bondi, et al.*, No. 1:26-
3 cv-01072-DJC-EFB (E.D.C.A. Feb. 25, 2026 at Dkt. Entry 17) (“As the Court is not reviewing
4 the propriety of the Immigration Judge’s bond determination, the Court has jurisdiction over the
5 motion”). Petitioner is not asking the Court to review the propriety of the bond determination on
6 the merits, but rather, to determine whether the hearing that took place was a constitutionally
7 sufficient bond hearing. Petitioner believes that, upon review of counsel’s affidavit attached, and
8 perhaps upon a review of the audio recording of the hearing (which Petitioner can lodge with this
9 Court if the Court desires), this Court will agree that the immigration judge, who provided
10 absolutely no rationale for his finding of danger to the community other than the perceived failure
11 of Petitioner’s counsel to provide a copy of a police report, was simply implementing a bond
12 denial policy and that the hearing was not constitutionally sufficient.

13 Constitutional challenges withstand any jurisdiction-stripping provisions such as 8 U.S.C.
14 § 1226(e). See *Singh v. Holder*, 638 F.3d 1196, 1202 (9th Cir. 2011) (holding that § 1226(e)
15 “does not limit habeas jurisdiction over constitutional claims or questions of law”); *Treio v.*
16 *Bullock*, 2026 WL 598391, at *2 (E.D. Tenn. Mar. 3, 2026) (“[T]his Court’s jurisdiction to
17 review Petitioner’s bond hearing is limited to whether it satisfied due process or otherwise
18 suffered some defect that rendered it noncompliant with this Court’s Order.”); *Picado v. Hyde*,
19 2026 WL 352691, at *4 (D.R.I. Feb. 9, 2026) (finding that § 1226(e) does not strip the court of
20 jurisdiction where a noncitizen “argues that the IJ failed to comport with due process
21 requirements when she denied him release on bond”); *Garcia v. Hyde*, 2025 WL 3466312, at *7
22 (D.R.I. Dec. 3, 2025) (“[C]ourts can review the IJ’s decision to ensure that it comported with
23 procedural due process requirements.”); *Escobar Segura v. Bondi, et al*, No. 1:26-cv-304-LMB-
24 WEF (E.D.Va. March 11, 2026 at Dkt. Entry 14) (“§ 1226(e) does not bar judicial review where a
25 noncitizen asserts that the factors an Immigration Judge employed in denying his request for
26 release on bond failed to comport with due process.”).

27 Likewise, any exhaustion arguments are unavailing to the government, as no statute
28 provides that administrative exhaustion is jurisdictional. See *McCarthy v. Madigan*. 503 U.S. 140,

1 144 (1992) (“[W]here Congress has not clearly required exhaustion, sound judicial discretion
2 governs.”). The Board of Immigration Appeals is notoriously slow, taking months on end to
3 adjudicate bond appeal requests, and for the reasons cited *infra* is also unlikely to comport with
4 due process in its treatment of a bond appeal.

5 The *Mathews v. Eldridge* factors are typically used to determine what process is due to
6 noncitizens in immigration court proceedings. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).
7 Applying *Mathews* comports with the Supreme Court's guidance in *Jennings* that “‘due process is
8 flexible,’ ... and ... ‘calls for such procedural protections as the particular situation demands.’” *Id.*
9 citing *Jennings v. Rodriguez*, 583 U.S. 281, 314, (quoting *Morrissey v. Brewer*, 408 U.S. 471,
10 481, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972)). The Supreme Court in *Mathews* identified three
11 factors bearing on the constitutional need for procedural protections: (1) “the private interest that
12 will be affected by the official action”; (2) “the risk of an erroneous deprivation of such interest
13 through the procedures used, and the probable value, if any, of additional or substitute procedural
14 safeguards”; and (3) “the Government's interest, including the function involved and the fiscal
15 and administrative burdens that the additional or substitute procedural requirement would entail.”
16 These factors are analyzed with respect to the facts of this matter, *infra*.

17
18 **II. THE BOND DENIAL POLICY, THE ONGOING IMMIGRATION COURT**
19 **DEFIANCE OF COURT ORDERS, AND THE ADMINISTRATION’S**
20 **ONGOING INTERFERENCE WITH THE INDEPENDENCE OF**
21 **IMMIGRATION JUDGES**

22 Central District of California Federal Judge Sunshine Sykes issued both declaratory and
23 injunctive relief holding that members of a class of noncitizens who entered without inspection
24 but were not apprehended at the border are detained under § 1226(a), not § 1225(b)(2), and are
25 therefore entitled to bond hearings. *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-
26 BFM, 2025 WL 3289861 (C.D. Cal. Nov. 20, 2025); *Maldonado Bautista v. Santacruz*, No.
27 5:25-CV-01873-SSS-BFM, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025). On January 13,
28 2026, Chief Immigration Judge Teresa L. Riley sent an email to all immigration judges

1 nationwide instructing: "Please provide the following guidance to all immigration judges
2 forthwith: *Maldonado Bautista* is not a nationwide injunction and does not purport to vacate, stay,
3 or enjoin *Yajure Hurtado*. Therefore *Yajure Hurtado* remains binding precedent on agency
4 adjudications. For clarification, declaratory judgments differ from injunctions in that the former
5 clarifies parties' legal rights and relationships without ordering specific action, while the latter is a
6 court order compelling a party to do or stop doing a specific act. A declaratory judgment is not an
7 equitable remedy and does not, by itself, have the effect of compelling specific action by a party.
8 Thank you for your attention to this matter."¹

9 On January 16, 2026, Judge Sykes issued a scathing order directly addressing the
10 government's systematic defiance:

11 "This matter is yet another in a slew of habeas petitions following the Court's ruling in
12 *Bautista v. Santacruz* that has unfortunately become routine in this Court. But individuals
13 filing these habeas petitions are not to blame; rather, the current volume of habeas petitions and
14 temporary restraining orders being filed can be attributed to ***Respondents' deliberate choice to***
15 ***continue defying the final judgment entered in Bautista***. ... Despite the clarity of the Court's
16 previous orders and legal doctrines that preclude Respondents from relitigating issues at the heart
17 of these requests, Respondents continue to manufacture arguments for sake of opposition. At
18 this point in time, ***the Court can no longer confer Respondents with the benefit of the doubt as***
19 ***to the intent of their filings***. Despite the final judgment in *Bautista*, it appears that immigration
20 judges continue to rely on legal interpretations that were expressly found unlawful. ...
21 Respondents are collaterally estopped from relitigating the issue as to whether Bond Eligible
22 Class members are entitled to the exact relief as provided in the *Bautista* final judgment.
23 Accordingly, Respondents are collaterally estopped from relitigating this issue against all
24 members of the Bond Eligible Class."

25 *Palomera Baltazar v. Janecka*, No. 5:26-cv-00019-SSS-BFM at *2-3 (C.D. Cal. Jan. 16,

26
27 ¹ Am. Immigr. Laws. Ass'n, Practice Alert: EOIR Issues Nationwide Guidance on *Maldonado Bautista*, AILA Doc.
28 No. 26011404 (Jan. 16, 2026), <https://www.aila.org/library/practice-alert-eoir-issues-nationwide-guidance-on-maldonado-bautista>.

2026). (emphasis added).

This systematic institutional defiance of federal court orders, orchestrated by EOIR leadership, cannot be permitted to proceed when the liberty interest affected by it is so fundamental. No clearer evidence of institutional capture could exist: when presented with a federal court order protecting noncitizens' rights, EOIR's response was to order judges to violate it.

Bond hearings in immigration court sadly no longer provide even a semblance of adequate due process protection, in no small part because of Trump administration interference with the quasi-independence of the immigration courts. There has been an initiative to fire immigration judges based on perceived political lines. As of September 26, 2025, the administration has terminated 128 immigration judges ("IJs"). Former New York IJ David K.S. Kim explained the targeting criteria: "I do not know the exact reason for my termination, but most of those dismissed, including myself, were judges with high asylum approval rates."²

Former Baltimore IJ Emmett Soper stated: "I think the current administration of the immigration courts does not fundamentally see the immigration courts as neutral decision-makers. I think that they see the immigration courts as a tool for this administration to advance its policy objectives."³ Former San Francisco IJ Jeremiah Johnson similarly understood "the hint that they should be hearing cases a certain way, deciding cases a certain way. Move faster. Less due process, essentially."⁴ Former San Francisco IJ George Pappas was even more direct: "We were told to facilitate deportation... Due process is dead in immigration courts."⁵ Former Baltimore IJ David C. Koelsch described it as "an atmosphere of paranoia and fear, which is exactly what they

² Woo-Sun Lim, *Former judge highlights legal failures in U.S. worker detentions*, The Dong-A Ilbo (Sept. 20, 2025), <https://www.donga.com/en/article/all/20250920/5859412/1>.

³ Geoff Bennett & Ali Schmitz, *Ousted Immigration Judge Describes Deepening Court Backlog*, PBS NewsHour (Nov. 12, 2025), <https://www.pbs.org/newshour/show/ousted-immigration-judge-describes-deepening-court-backlog>.

⁴ Hilda Gutierrez, Michael Bott & Son Vo, *'An all-out attack on immigration court:' SF immigration judges speak out after firings*, NBC Bay Area (Nov. 25, 2025), <https://www.nbcbayarea.com/investigations/san-francisco-immigration-judges-speak-out-firings/3986850/>.

⁵ Marco Poggio, *Judges See an Immigration Court Gutted from Inside*, Law360 (Oct. 31, 2025), <https://www.law360.com/articles/2381003/judges-see-an-immigration-court-gutted-from-inside>.

1 want."⁶ Former Annandale, Virginia IJ Anam Petit observed: "There's a climate of fear...Judges
2 feel like, if they step a toe out of line right now...or they're one [asylum] grant away from being
3 fired because of the arbitrary nature of the firings."⁷ Former New York IJ Carmen Maria Rey
4 Caldas similarly described immigration judges working "under 'constant threat' of getting fired if
5 they don't follow certain rules from leadership."⁸ Former San Francisco IJ Elizabeth Young
6 explained: "I've talked to many of [the judges still serving], and they're like, 'When I go into
7 court, I am concerned about applying the law, but I'm also concerned that I should deny more,
8 because if I don't, then I'll get fired.'"⁹ Former Boston IJ Sarah Cade reached her breaking point:
9 "I felt I might have to compromise my ethics and might be put in a place where I felt like I was
10 going to be asked to violate due process. So I left and I went to private practice."¹⁰

11 The message to remaining immigration judges is unmistakable: neutrality is a terminable
12 offense. No adjudicator can remain impartial when faced with the choice between upholding due
13 process and keeping their position. Any immigration judge assigned to Petitioner's bond hearing
14 now operates under the understanding that granting bond may cost them their livelihood.

15 A parallel purge occurred at the BIA which was reduced from 28 members to 15
16 members. All Biden appointees on the BIA were fired.¹¹ The statistical impact is stark. As of
17 January 22, 2026, the reconstituted BIA has issued 71 published decisions.¹² Of those, 69
18 decisions (97%) favored the administration.¹³ By contrast, during the entire four-year span of the

19 ⁶ Poggio, *supra* note 8.

20 ⁷ Eric Katz, 'Climate of Fear': Immigration Judges Say Functioning of Their Court System Is in Jeopardy Due to
21 Trump's Firings, Gov't Executive (Nov. 14, 2025), [https://www.govexec.com/management/2025/11/climate-fear-immigration-judges-say-functioning-their-court-syste](https://www.govexec.com/management/2025/11/climate-fear-immigration-judges-say-functioning-their-court-system-jeopardy-due-trumps-firings/409544/)
[m-jeopardy-due-trumps-firings/409544/](https://www.govexec.com/management/2025/11/climate-fear-immigration-judges-say-functioning-their-court-syste-m-jeopardy-due-trumps-firings/409544/).

22 ⁸ Isabela Dias, "Fired for No Reason": Former Immigration Judges Speak Out Against Trump's Assault on the
23 Courts, Mother Jones (Oct. 9, 2025), <https://www.motherjones.com/politics/2025/10/immigration-court-judge-trump-assault-purge-dhs-ice/>.

24 ⁹ Poggio, *supra* note 8.

25 ¹⁰ Poggio, *supra* note 8.

26 ¹¹ 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-](https://www.americanimmigrationcouncil.org/blog/bia-ruling-immigration-judges-bond-mandatory-detention-undocumented-immigrants/)
[ruling-immigration-judges-bond-mandatory-detention-undoc](https://www.americanimmigrationcouncil.org/blog/bia-ruling-immigration-judges-bond-mandatory-detention-undocumented-immigrants/) umented-immigrants/.

27 ¹² Exec. Off. for Immigr. Rev., *Volume 29*, U.S. Dep't of Just. (Jan. 21, 2025),

28 <https://www.justice.gov/eoir/volume-29>.

¹³ Of the remaining two decisions: 1 decision was neutral (involving attorney sanctions) and 1 decision disfavored the administration

1 prior administration, the BIA issued 76 published decisions.¹⁴ Of those, 46 decisions (60%)
2 favored the administration. The transformation from 60% to 97% pro-government
3 outcomes—achieved through wholesale termination of one administration's appointees —speaks
4 for itself.

5 To replace purged judges, the DOJ launched recruitment for what it explicitly marketed
6 as "deportation judges."¹⁵ DHS—a party in immigration proceedings before EOIR— promoted
7 these openings on social media with enforcement-focused language: "Bring the hammer down on
8 criminal illegal aliens" and "Defend your communities, your culture, your very way of life."¹⁶

9 Beyond personnel changes, EOIR's new acting director, Sirce E. Owen, quickly issued "a
10 string of sharply worded policy memos" that immediately "[set] the tone for her leadership."¹⁷
11 "Sources familiar with Owen described her as a "restrictionist loyalist" with a reputation for
12 denying cases."¹⁸ The Catholic Legal Immigration Network (CLINIC) observed that "these
13 memos also seem intended to reshape EOIR, which is meant to be a neutral arbiter, into a
14 politically driven tool advancing the Trump administration's clearly anti-immigrant views."¹⁹ The
15 policy directives include: a memorandum dated June 27, 2025 warning judges not to demonstrate
16 "bias directed against DHS" or to be "adjudicatory outliers," at risk of "close examination and
17 potential action";²⁰ a memorandum encouraging judges to deny asylum applications without full
18 evidentiary hearings, styled as efficiency guidance but functioning as a directive to reduce due
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20 ¹⁴ Exec. Off. for Immigr. Rev., *Volume 28*, U.S. Dep't of Just. (June 13, 2025), [https://www.justice.gov/eoir/volume-](https://www.justice.gov/eoir/volume-28)
21 [28](https://www.justice.gov/eoir/volume-28). (First decision, *Matter of DIKHTYAR*, 28 I&N Dec. 214 (BIA 2021), issued 01/22/2021)

22 ¹⁵ Murphy Marcos *supra* note 2.

23 ¹⁶ dhsgov, Instagram (Nov. 21, 2025), <https://www.instagram.com/p/DRVT8DmCOKD/?hl=en>.

24 ¹⁷ *US army lawyer fired as immigration judge after defying Trump deportation agenda*, The Guardian (Dec. 19,
2025), <https://www.theguardian.com/us-news/2025/dec/19/army-lawyer-fired-immigration-trump-deportation>.

25 ¹⁸ Dias, *supra* note 8.

26 ¹⁹ Cath. Legal Immigr. Network, Inc., *Navigating EOIR Directives Under Trump 2.0: Practical Guidance for*
Advocates and Programs (Apr. 22, 2025), <https://www.cliniclegal.org/file-download/download/public/77642>.

27 ²⁰ Exec. Off. for Immigr. Rev., Policy Memorandum 25-33, *Neutrality and Impartiality in Immigration Court*
Proceedings (June 27, 2025),
28 https://iptp-production.s3.amazonaws.com/media/documents/2025.06.27_EOIR_-_PM_25-33.pdf.

1 process protections;²¹ and memorandums restricting immigration judges' ability to grant
2 continuances²² and administrative closure.²³

3 Thus, it is clear that Petitioner cannot receive a fair bond hearing in compliance with due
4 process from an immigration court system that has been co-opted into a deportation machine.
5 Courts have recognized such.

6 III. ISSUES WITH PETITIONER'S PURPORTED "BOND HEARING"

7 Petitioner was granted a bond hearing on March 13, 2026, but Respondents did not
8 conduct that hearing in accordance with the law. *See, infra*, Affidavit of Harith Mazrui. Petitioner
9 was not afforded due process in his bond hearing, as is legally required even in immigration court
10 proceedings. Bond was denied entirely, on the basis of Petitioner being a "danger to the
11 community," due to the pendency of criminal charges against Petitioner stemming from an
12 allegation of domestic violence. However, Petitioner and his wife, the complainant, were not
13 permitted to testify. The effect, if any, of Petitioner's wife's letter, in which she discounted the
14 pending criminal charges and indicated that she wanted her husband back home, were not
15 discussed or even acknowledged. Rather, the immigration judge based his entire denial of bond
16 on the fact that Petitioner's counsel did not file a copy of the police report from the incident with
17 the immigration court, despite Petitioner's counsel explaining that the police report was not
18 available.

19 Although he was not specifically instructed to do so by this Court, the Immigration Judge
20 did not assess whether any alternatives to detention, such as geographical restrictions, ankle
21 monitoring devices, cell phone monitoring apps, or higher bond amounts, could mitigate the
22 finding any "flight risk" concerns. IJs routinely consider, and order, such alternatives in their
23 bond orders when they deem them necessary to mitigate flight risk, but the IJ failed to properly

24 ²¹ Exec. Off. for Immigr. Rev., Policy Memorandum 25-28, Pretermission of Legally Insufficient Application for
25 Asylum (Apr. 11, 2025), <https://www.justice.gov/eoir/media/1396411/dl?inline>.

26 ²² Exec. Off. for Immigr. Rev., Policy Memorandum 25-27, Cancellation of Director's Memorandum 23-01 and
27 Reinstatement of Policy Memorandum 19-13 (Mar. 21, 2025), <https://www.justice.gov/eoir/media/1394086/dl>.

28 ²³ Exec. Off. for Immigr. Rev., Policy Memorandum 25-29, Cancellation of Director's Memorandum 22-03 (Apr. 18,
2025), <https://www.justice.gov/eoir/media/1397161/dl?inline>.

1 consider them.

2 Under *Mathews v. Eldridge*, the three-part test is satisfied:

3 **1. The private interest that will be affected by the official action:**

4 The private interest affected by the official action is the most significant private interest
5 there is – that of liberty. “Freedom from imprisonment—from government custody, detention, or
6 other forms of physical restraint—lies at the heart of the liberty [the Due Process] Clause
7 protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Petitioner’s private interest in his own
8 liberty – to be free from confinement – is an interest so strong that many of the most fundamental
9 concepts of our constitution exist to protect it. *See United States v. Haymond*, 588 U.S. 634, 637
10 (2019) (“Only a jury, acting on proof beyond a reasonable doubt, may take a person’s liberty.
11 That promise stands as one of the Constitution’s most vital protections against arbitrary
12 government.”). “In the United States, even a scoundrel has the right to remain free until due
13 process has proven him a scoundrel.” *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 157 (W.D.N.Y.
14 2025); see also *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004) (finding that even accused enemy-
15 combatants have a due process right to challenge their status). Petitioner, being kept in unsanitary
16 and dangerous conditions at a for-profit detention center, has an inalienable liberty interest – and
17 such an interest weighs extremely heavily against any competing interests.

18 **2. The risk of an erroneous deprivation of such interest through the procedures**
19 **used, and the probable value, if any, of additional or substitute procedural**
20 **safeguards:**

21 The process used in the purported “bond hearing” held by the Government in response to
22 this Court’s Order clearly has resulted in the erroneous deprivation of Petitioner’s liberty interest
23 because it was wholly inadequate to comport with due process requirements. The IJ did not
24 articulate a single reason for her finding of danger to the community.

25 The value of additional or substitute procedural safeguards would be high. The reality
26 here is that the Immigration Court system is no longer a fair, neutral tribunal. The administration
27 has stamped out any semblance of decision-making independence through its ruthless purges of
28 immigration judges, and its directives to disregard court orders and order noncitizens deported in

1 an expeditious manner.

2 The IJ did not assess Petitioner's circumstances under a totality of the circumstances
3 analysis. He, in fact, made no assessment whatsoever.

4 **3. The Government's interest, including the function involved and the fiscal and**
5 **administrative burdens that the additional or substitute procedural requirement**
6 **would entail:**

7 The government has little, to no, legitimate interest in detaining Petitioner. The cost of
8 providing additional safeguards is not burdensome. Indeed, it would be less of a fiscal and
9 administrative burden for the Government to return Petitioner home to await a determination on
10 his immigration proceedings than to continue to detain him. Any factors attendant to the pending
11 criminal charges, for which Petitioner was granted and posted a bond in the criminal court, should
12 be dealt with by the criminal justice system, not be the immigration court bureaucracy. The
13 Government's interest, as interpreted by this Court, a co-equal branch of government, is
14 analogous to the interest of the people, and not necessarily the interest of the executive branch
15 alone. Further, the Government "cannot reasonably assert that it is harmed in any legally
16 cognizable sense by being enjoined from constitutional violations." *Zepeda v. U.S. Immigr. &*
17 *Nat. Serv.*, 753 F.2d 719, 727 (9th Cir. 1983).

18
19 **CONCLUSION**

20 Based on the foregoing, Petitioner asks this Court to 1) find that Respondents are not in
21 compliance with this Court's order to hold a bond hearing given that the hearing that took place
22 did not comport with due process, and 2) order Petitioner immediately released and that
23 Respondents may not re-detain him without a pre-deprivation hearing, with adequate advance
24 notice of at least fourteen days, before a neutral arbiter, where the burden shall be on the
25 government to establish by clear and convincing evidence that Petitioner is a danger to the
26 community or a flight risk, and where the arbiter must take into consideration Petitioner's ability
27 to pay any monetary bond amount that is set as well as any alternatives to detention that may be
28 used to meet the government's interests in the least restrictive manner possible; or 3) in the

1 alternative, order a new bond hearing with specific instructions that the immigration judge must
2 analyze all the factors, allow testimony to be presented, and consider any Alternatives to
3 Detention (ATDs) or other restrictions which could be instituted; or other such relief as this Court
4 may see fit.

5
6 Dated: March 24, 2026

7 Respectfully Submitted,

8 /s/ Kurt R. Saccone

9 Kurt R. Saccone

10 Bar No. 167630

Of Counsel

Borowski Witmer Immigration Lawyers

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Buffalo, NY 14225

12 E-mail: kurt@borowskilaw.com

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Attorney for Petitioner

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF CALIFORNIA
3

4 **SAMSOOR ORIAKHEL,**
5 *Petitioner,*
6 **v.**

Civil Action No. 3:26-cv-01302-TWR-DEB

7 **KRISTI NOEM, In her official capacity**
8 **as Secretary of Homeland Security, et al,**
9 *Respondents.*

PROPOSED ORDER

10
11
12 THIS MATTER comes before the Court on Petitioner's Motion to Enforce Court Order.
13 Having considered the motion, the memorandum and exhibits in support thereof, and any
14 subsequent submissions related to the motion, the Petition, and the applicable law, the Court
15 ORDERS as follows:

- 16
17 1. Petitioner's Motion to Enforce is GRANTED.
18 2. The Court further ORDERS that Respondents, shall release Petitioner from custody
19 immediately, with no further restrictions on his freedom; and
20 3. Respondents, and all of their officers, agents, servants, employees, attorneys, successors,
21 assigns, and persons acting in concert or participation with them, are hereby ENJOINED
22 and RESTRAINED from re-detaining Petitioner without a pre-deprivation hearing, with
23 adequate advance notice of at least fourteen days, before a neutral arbiter, where the
24 burden shall be on the government to establish by clear and convincing evidence that
25 Petitioner is a danger to the community or a flight risk, and where the arbiter must take
26 into consideration Petitioner's ability to pay any monetary bond amount that is set as well
27 as any alternatives to detention that may be used to meet the government's interests in the
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1 least restrictive manner possible.

2 It is so ORDERED.

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4 DATED this _____ day of _____, 2026.

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UNITED STATES DISTRICT JUDGE

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