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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

TU DANH LE,

Petitioner,

v.

MARKWAYNE MULLIN, Secretary of
the Department of Homeland Security,
TODD BLANCHE, Acting Attorney
General, TODD M. LYONS, Acting
Director, Immigration and Customs
Enforcement, JESUS ROCHA, Acting
Field Office Director, San Diego Field
Office, CHRISTOPHER LAROSE,
Warden at Otay Mesa Detention Center,

Respondents.

Civil Case No.: 26-cv-2944-BJC-JAC

**Amended¹ Petition
for a
Writ of Habeas Corpus**

¹ 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. Mr. Le therefore files this amended petition as of right.

1 INTRODUCTION

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

13 STATEMENT OF FACTS

14 Mr. Le came to the United States on November 11, 2025. Exh. A at ¶ 2. He
15 was immediately arrested and requested asylum. *Id.* He has been detained ever
16 since. *Id.* at ¶ 5.

17 Mr. Le passed his credible fear interview and was placed in removal
18 proceedings; his asylum claim is pending. *Id.* at ¶¶ 2–3. Since November, Mr. Le
19 has had four master calendar hearings before the immigration judge. *Id.* at ¶ 3. His
20 next hearing is scheduled for May 27, 2026, and this is also a master calendar
21 hearing. *Id.*

22 If he loses his asylum case, Mr. Le plans to appeal to the BIA. *Id.* at ¶ 4. If
23 the BIA dismisses his appeal, he will likely appeal to the Ninth Circuit. *Id.* Mr. Le
24 has been detained for over six months, but if he does initially lose his asylum case,
25 he will likely be detained for several more years. *Id.* at ¶ 5. Meanwhile, Mr. Le has
26 and will continue to be kept in jail-like conditions at Otay Mesa Detention Center.
27 *Id.* at ¶ 6. He suffers from a skin condition that causes him to break out in very itchy
28 blisters and has not received adequate medical treatment for this condition. *Id.*

LEGAL BACKGROUND

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

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. Mr. Le 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). It “applies to, among others, noncitizens initially determined to be inadmissible because of . . . lack of valid documentation.” *Id.* That includes persons who, like Mr. Le, 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.

First, in *Zadvydas v. Davis*, the Supreme Court indicated that indefinite immigration detention raises serious due process concerns. 533 U.S. 678 (2001). *Zadvydas* involved a statute authorizing the government to detain immigrants after they are ordered removed. *Id.* at 683. For immigrants who cannot be removed, that statute had the potential to subject them to years, decades, or a lifetime in custody.

1 *See id.* at 690. The Supreme Court held that if the statute “permit[ed] indefinite
2 detention of an alien[,] [it] would raise a serious constitutional problem,” because

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

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

16 Following *Zadvydas*, the Ninth Circuit applied similar reasoning to
17 § 1225(b). *Rodriguez v. Robbins*, 804 F.3d 1060, 1087–89 (9th Cir. 2015).
18 Employing the constitutional avoidance canon, the Ninth Circuit held that
19 § 1225(b) implicitly entitled detained immigrants to bond hearings every six
20 months. *Id.*

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

27 Finally, the Supreme Court held in *Demore v. Kim* that at least some statutes
28 mandating detention during immigration proceedings do not automatically violate

1 the Due Process Clause. 538 U.S. 510, 513 (2003). *Demore* addressed 8 U.S.C.
2 § 1226(c), which mandates detention without a bond hearing for persons with
3 certain criminal convictions. *Id.* The Court upheld § 1226(c) in a 5-4 opinion based
4 on (1) the government interests justifying the detention of immigrants with certain,
5 aggravated criminal convictions, and (2) the relative brevity of detention in most
6 cases, with the vast majority taking only about five months. *Id.* at 517–31. Justice
7 Kennedy supplied a deciding vote. His concurrence left open the possibility that
8 individual immigrants could be “entitled to an individualized determination as to
9 his risk of flight and dangerousness if the continued detention became unreasonable
10 or unjustified.” *Id.* at 532–33.

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

18 These Courts have relied on the due process concerns recognized in
19 *Zadvydas*. See, e.g., *Kydyrali*, 499 F. Supp. 3d at 771; *Banda*, 385 F. Supp. 3d at
20 1113–17; *Abdul Kadir v. Larose*, No. 25CV1045-LL-MMP, 2025 WL 2932654, at
21 *3 (S.D. Cal. Oct. 15, 2025). As the Ninth Circuit put it in *Jennings*’ wake, those
22 considerations raise “grave doubts that any statute that allows for arbitrary
23 prolonged detention without any process is constitutional or that those who founded
24 our democracy precisely to protect against the government’s arbitrary deprivation
25 of liberty would have thought so.” *Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir.
26 2018).

27 Neither *Jennings* nor *Demore* undermines that conclusion. *Jennings* held
28 only that the statute itself did not impose any limits on detention. It “did not

1 foreclose as-applied constitutional challenges to detention under” mandatory-
2 detention statutes. *Santos v. Warden Pike Cnty. Corr. Facility*, 965 F.3d 203, 209
3 (3d Cir. 2020). And *Demore* held only that conviction-based mandatory detention
4 during immigration proceedings does not necessarily or inherently violate the Due
5 Process Clause, particularly when the detention has an expected duration of only
6 about five months. *Id.* at 208–11. But many persons detained under § 1225(b)—
7 like Mr. Le—do not have criminal convictions. And as Justice Kennedy’s
8 concurrence made clear, *Demore* does not prevent immigrants from arguing that
9 sufficiently prolonged detention violates due process in their individual cases. *See*
10 *id.*²

11 Thus, this Court should hold that sufficiently prolonged detention violates
12 the Due Process Clause, as most courts have. *See, e.g., Gao v. LaRose*, No. 25-CV-
13 2084-RSH-SBC, 2025 WL 2770633, at *3 (S.D. Cal. Sept. 26, 2025); *Abdul Kadir*
14 *v. Larose*, No. 25CV1045-LL-MMP, 2025 WL 2932654, at *4 (S.D. Cal. Oct. 15,
15 2025); *Cong v. Noem*, No. 25-CV-3730-GPC-DEB, 2026 WL 76566, at *3 (S.D.
16 Cal. Jan. 9, 2026); *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 772 (S.D. Cal. 2020)
17 (Battaglia, J.); *Mardian v. Mayorkas*, 25-cv-3467-JLS; *Raeva v. Mayorkas*, 25-cv-
18 3175-JO; *Abdul-Samed v. Warden of Golden State Annex Det. Facility*, No. 25-cv-
19 98-SAB-HC, 2025 WL 2099343, at *6 (E.D. Cal. July 25, 2025); *Hernandez v.*
20 *Wofford*, No. 25-cv-986-KES-CDB (HC), 2025 WL 2420390, at *3 (E.D. Cal. Aug.
21 21, 2025); *Padilla v. ICE*, 704 F. Supp. 3d 1163, 1171–72 (W.D. Wash. 2023).

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23
24
25 ² 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 **II. Courts have reached different conclusions about when immigration**
2 **detention becomes indefinitely prolonged, but Mr. Le would prevail**
3 **under any standard.**

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

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

- 16 (1) “the total length of detention to date,”
17 (2) “the likely duration of future detention,” and
18 (3) “the delays in the removal proceedings caused by the petitioner and the
19 government.”

20 *Id.* Some courts also consider:

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

24 *Id.* Other courts have rejected the fourth and fifth factors, holding that they are “not
25 particularly suited to assisting the Court in determining whether detention has
26 become unreasonable and due process requires a bond hearing.” *Lopez v. Garland*,

1 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022); *accord Sanchez-Rivera*, 2023 WL
2 139801, at *5–6.³ Mr. Le would prevail under any of these factors tests.

3 First, the “most important factor,” the length of detention, favors Mr. Le.
4 *Banda*, 385 F. Supp. 3d at 1118. In assessing this factor, “[i]t is important to bear
5 in mind the context: The detention that is being examined here is the detention of a
6 human being who has never been found to pose a danger to the community or to be
7 likely to flee if released.” *Jamal A. v. Whitaker*, 358 F. Supp. 3d 853, 859 (D. Minn.
8 2019). With that context, courts have granted bond hearings for persons detained
9 for “similar . . . lengths of detention.” *Rowe v. Archambeault*, No. 26-cv-1744-
10 GPS-DEB, 2026 WL 879487, *3–*7 (S.D. Cal. Mar. 31, 2026) (collecting cases
11 finding detention of between seven and ten months unreasonable); *see Amado v.*
12 *United States Dep’t of Just.*, No. 25CV2687-LL(DDL), 2025 WL 3079052, at *5
13 (S.D. Cal. Nov. 4, 2025) (“[c]ourts have found detention over seven months without
14 a bond hearing weighs toward a finding that it is unreasonable”). Mr. Le has been
15 detained for over six months. Exh. A at ¶ 5. This factor therefore favors a bond
16 hearing for Mr. Le.

17 Second, Mr. Le has reason to anticipate significant future detention. His
18 asylum case is still ongoing. *Id.* at ¶ 2. And if he loses his asylum claim, he will
19 appeal to the BIA, *id.* at ¶ 3, after which he would have the opportunity to appeal
20 to the Ninth Circuit. All told, “[t]his process may take up to two years or longer.”
21 *Banda*, 385 F. Supp. 3d at 1119. Because “Petitioner’s future detention can last
22 several more months or even years[,]” this factor favors Mr. Le. *Abdul Kadir v.*
23 *Larose*, No. 25CV1045-LL-MMP, 2025 WL 2932654, at *5 (S.D. Cal. Oct. 15,
24 2025).

25
26
27 ³ Courts also disagree about whether to account for any criminal convictions that
28 have led to the deportation. *Sanchez-Rivera*, 2023 WL 139801, at *5–6. But such
factors—if appropriate at all—are irrelevant where, as here, the person is not being
removed as a result of criminal convictions.

1 Third, the delay factor is neutral because there is no indication that Mr. Le
2 has engaged in unreasonable delay.

3 Fourth, Mr. Le's conditions of confinement weigh in favor of a bond hearing.
4 Detainees at the Otay Mesa Detention Center ("OMDC") are "locked up behind
5 razor wire and concrete walls in a secured facility, forced to wear a color-coded
6 prisoner jump suit, forbidden from accessing the internet, restricted access to
7 outdoor space, restricted on visitation, and guarded at all times with armed guards
8 authorized to inflict punishment for violations of rules." *Id.* In fact, individuals
9 charged with federal criminal convictions are regularly incarcerated at the facility.
10 Accordingly, "Petitioner's confinement at OMDC is 'indistinguishable from penal
11 confinement.'" *Id.* (quoting *Kydyrali*, 499 F. Supp. 3d at 773).

12 These conditions are exacerbated by Mr. Le's physical health problems. He
13 suffers from a skin condition that causes itchy blisters to form on his body. Exhibit
14 A at ¶ 6; *see generally* Le Medical Records, ECF Nos. 1 at 19, 38. Mr. Le has been
15 quarantined twice for the condition but has not received adequate medical care
16 while confined. Exhibit A at ¶ 6.

17 The fifth factor does not apply, because Mr. Le's asylum claim is still
18 pending and thus no "different" outcome can occur.

19 Under any test, then, Mr. Le is entitled to a bond hearing.

20 **III. Because immigration judges' neutrality has been compromised, this**
21 **Court must order outright release—or at least put in place additional**
22 **safeguards.**

23 In a perfect world, this Court could remedy the due process violation by
24 ordering a bond hearing before a neutral immigration judge ("IJ"), allowing the IJ
25 to determine whether Mr. Le posed a risk of danger or flight. Unfortunately, attacks
26 on IJ independence under the current administration have severely compromised
27 IJs' neutrality. As a result, there is a serious risk that an IJ will order Mr. Le's
28

1 continued detention even if he poses no danger or flight risk. Several data points
2 support that conclusion.

3 Most importantly, reports are streaming in from this district and elsewhere
4 that court-ordered “bond hearings [are], effectively, stacked against detainees
5 from the start.” Kyle Cheney, *How ICE Defies Judges’ Orders to Release*
6 *Detainees, Step by Step*, Politico (Feb. 10, 2026),
7 [https://www.politico.com/news/2026/02/10/ice-immigration-detention-court-](https://www.politico.com/news/2026/02/10/ice-immigration-detention-court-orders-00771727)
8 [orders-00771727](https://www.politico.com/news/2026/02/10/ice-immigration-detention-court-orders-00771727).

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

14 In *Said v. Noem*, a court ordered a bond hearing for a habeas petitioner,
15 only to learn that “[t]he IJ denied Petitioner the opportunity to present testimony,
16 declined to consider the sworn, documentary evidence submitted by Petitioner,
17 and based his decision on an uncorroborated, unauthenticated claim by a
18 government official that Petitioner failed to share his location for the ISAP.” No.
19 3:25-CV-938-MOC, 2026 WL 295651, at *5 (W.D.N.C. Feb. 4, 2026). The
20 original habeas “Order presupposed that this hearing would be conducted in
21 accordance with Petitioner’s due process rights,” the court wrote. “It was not.” *Id.*

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

27 In a recently filed declaration, local attorney Edward Perez attests that he has
28 similar concerns about some immigration judges at Otay Mesa. In his experience,

1 some Otay Mesa IJs are resistant to implementing habeas orders requiring bond
2 hearings. *Elsayed v. Noem*, Case No. 26-cv-368, Doc. 5-2 at ¶ 7 (S.D. Cal. Feb. 9,
3 2026). These IJs have begun denying bond on the ground that court hearings are
4 coming up, and release would disrupt the hearing schedule. *Id.* Of course, that logic
5 could justify any asylum seeker’s detention, and it has nothing to do with danger or
6 flight. *Id.* Furthermore, the Department of Homeland Security (“DHS”) has started
7 appealing bonds to take advantage of the automatic stay. *Id.* Both of these strategies
8 ensure that even those who pose no risk of danger or flight will stay in detention.
9 *Id.*

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

24 Mr. Artieda further attests that to having “communicated with numerous
25 immigration attorneys practicing all over the United States who handle detention
26 cases.” *Id.* at 5. “These conversations have confirmed that the pattern [he] ha[s]
27 observed is widespread and consistent.” *Id.* Based on these conversations,
28 Mr. Artieda believes that these bond denials are part of a “coordinated institutional

1 effort.” *Id.* at 6. That coordinated effort supports outright release or, at a minimum,
2 additional scrutiny from this Court.

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

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

10 These IJs are under no illusions about why they were let go. Former
11 Baltimore IJ Emmett Soper stated: "I think the current administration of the
12 immigration courts does not fundamentally see the immigration courts as neutral
13 decision-makers. I think that they see the immigration courts as a tool for this
14 administration to advance its policy objectives." Geoff Bennett & Ali Schmitz,
15 *Ousted Immigration Judge Describes Deepening Court Backlog*, PBS NewsHour
16 (Nov. 12, 2025), [https://www.pbs.org/newshour/show/ousted-immigration-judge-](https://www.pbs.org/newshour/show/ousted-immigration-judge-describes-deepening-court-backlog)
17 [describes-deepening-court-backlog](https://www.pbs.org/newshour/show/ousted-immigration-judge-describes-deepening-court-backlog). Former San Francisco IJ Jeremiah Johnson
18 similarly understood “the hint that they should be hearing cases a certain way,
19 deciding cases a certain way. Move faster. Less due process, essentially.” Hilda
20 Gutierrez, Michael Bott & Son Vo, *'An all-out attack on immigration court:' SF*
21 *immigration judges speak out after firings*, NBC Bay Area (Nov. 25, 2025),
22 [https://www.nbcbayarea.com/investigations/san-francisco-immigration-judges-](https://www.nbcbayarea.com/investigations/san-francisco-immigration-judges-speak-out-firings/3986850/)
23 [speak-out-firings/3986850/](https://www.nbcbayarea.com/investigations/san-francisco-immigration-judges-speak-out-firings/3986850/). Former San Francisco IJ George Pappas was even
24 more direct: "We were told to facilitate deportation... Due process is dead in
25 immigration courts." Isabela Dias, *"Fired for No Reason": Former Immigration*
26 *Judges Speak Out Against Trump's Assault on the Courts*, Mother Jones (Oct. 9,
27 2025), [https://www.motherjones.com/politics/2025/10/immigration-court-judge-](https://www.motherjones.com/politics/2025/10/immigration-court-judge-trump-assault-purge-dhs-ice/)
28 [trump-assault-purge-dhs-ice/](https://www.motherjones.com/politics/2025/10/immigration-court-judge-trump-assault-purge-dhs-ice/).

1 This has had a predictable effect on those who remain. According to former
2 San Francisco IJ Elizabeth Young, “I’ve talked to many of [the judges still
3 serving], and they’re like, ‘When I go into court, I am concerned about applying
4 the law, but I’m also concerned that I should deny more, because if I don’t, then
5 I’ll get fired.’” Marco Poggio, *Judges See an Immigration Court Gutted from*
6 *Inside*, Law360 (Oct. 31, 2025),
7 [https://www.law360.com/articles/2381003/judges-see-an-immigration-court-](https://www.law360.com/articles/2381003/judges-see-an-immigration-court-gutted-from-inside)
8 [gutted-from-inside](https://www.law360.com/articles/2381003/judges-see-an-immigration-court-gutted-from-inside). Meanwhile, Department of Justice recruitment materials seek
9 “deportation judges” to fill the empty IJ slots, Coral Murphy Marcos, *US Justice*
10 *Department Recruiting Legal Experts to Serve as ‘Deportation’ Judges*,
11 *Guardian*, [https://www.theguardian.com/us-news/2025/nov/21/us-justice-](https://www.theguardian.com/us-news/2025/nov/21/us-justice-department-ad-deportation-judges)
12 [department-ad-deportation-judges](https://www.theguardian.com/us-news/2025/nov/21/us-justice-department-ad-deportation-judges), inviting candidates to “bring the hammer
13 down on criminal illegal aliens” and “defend your communities, your culture,
14 your very way of life.” dhsgov, Instagram (Nov. 21, 2025),
15 <https://www.instagram.com/p/DRVt8DmCQKD/?hl=en>.

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

1 I&N Dec. 214 (BIA 2021), issued 01/22/2021). 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
4 appointees —speaks for itself.

5 *Third*, beyond personnel changes, EOIR's new acting director, Sirce E.
6 Owen, has issued “a string of sharply worded policy memos” encouraging IJs to
7 side with the government over immigrants and minimize due process. E. Tammy
8 Kim, *Inside Donald Trump’s Attack on Immigration Courts*, New Yorker,
9 <https://www.newyorker.com/inside-donald-trumps-attack-on-immigration-court>.

10 The policy directives include: a memorandum dated June 27, 2025 warning
11 judges not to demonstrate “bias directed against DHS” or to be “adjudicatory
12 outliers,” at risk of “close examination and potential action,” Exec. Off. for
13 Immigr. Rev., Policy Memorandum 25-33, Neutrality and Impartiality in
14 Immigration Court Proceedings (June 27, 2025), [https://iptp-](https://iptp-production.s3.amazonaws.com/media/documents/2025.06.27_EOIR_-_PM_25-33.pdf)
15 [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)
16 [33.pdf](https://iptp-production.s3.amazonaws.com/media/documents/2025.06.27_EOIR_-_PM_25-33.pdf); a memorandum encouraging judges to deny asylum applications without
17 full evidentiary hearings, styled as efficiency guidance but functioning as a
18 directive to reduce due process protections, Exec. Off. for Immigr. Rev., Policy
19 Memorandum 25-28, Pretermission of Legally Insufficient Application for
20 Asylum (Apr. 11, 2025), [https://www.justice.gov/eoir/media/1396411/dl?inline](https://www.justice.gov/eoir/media/1396411/dl?inline;);
21 and memoranda restricting immigration judges’ ability to grant continuances,
22 Exec. Off. for Immigr. Rev., Policy Memorandum 25-27, Cancellation of
23 Director's Memorandum 23-01 and Reinstatement of Policy Memorandum 19-13
24 (Mar. 21, 2025), <https://www.justice.gov/eoir/media/1394086/dl>, and
25 administrative closure, Exec. Off. for Immigr. Rev., Policy Memorandum 25-29,
26 Cancellation of Director's Memorandum 22-03 (Apr. 18, 2025),
27 <https://www.justice.gov/eoir/media/1397161/dl?inline>.

1 *Fourth*, EOIR personnel have at times directed IJs to ignore federal court
2 orders related to bond hearings. On January 13, 2026, in the wake of *Maldonado*
3 *Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3289861 (C.D.
4 Cal. Nov. 20, 2025); *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-
5 BFM, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025), Chief Immigration
6 Judge Teresa L. Riley sent all IJs the following instructions:

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

18 Am. Immigr. Laws. Ass'n, Practice Alert: EOIR Issues Nationwide Guidance
19 on *Maldonado Bautista*, AILA Doc. No. 26011404 (Jan. 16, 2026),
20 [https://www.aila.org/library/practice-alert-eoir-issues-nationwide-guidance-](https://www.aila.org/library/practice-alert-eoir-issues-nationwide-guidance-on-maldonado-bautista)
21 [on-maldonado-bautista](https://www.aila.org/library/practice-alert-eoir-issues-nationwide-guidance-on-maldonado-bautista). A few days later, Judge Sykes issued a scathing order,
22 calling out "Respondents' deliberate choice to continue defying the final
23 judgment entered in *Bautista*." *Palomera Baltazar v. Janecka*, No. 5:26-cv-
24 00019-SSS-BFM at *2-3 (C.D. Cal. Jan. 16, 2026).

25 IJs' resistance to granting bond therefore accords with the larger
26 movement to eliminate or silence IJs who side with immigrants, while
27 bringing those that remain into line with the administration's priorities.

28 The "equitable and flexible nature of habeas relief" affords district
courts significant discretion over the appropriate remedies for violations of
law and the Constitution. *Velasco Lopez v. Decker*, 978 F.3d 842, 855 (2d Cir.
2020); *see also Schlup v. Delo*, 513 U.S. 298, 319 (1995) ("[H]abeas corpus

1 is, at its core, an equitable remedy”). This Court should order a remedy that
2 fully addresses the statutory and constitutional violations in this case and is
3 efficient to administer. *Carafas v. LaVallee*, 391 U.S. 234, 238 (1968) (the
4 habeas statute “does not limit the relief that may be granted to discharge of the
5 applicant from physical custody. Its mandate is broad with respect to the relief
6 that may 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 For the reasons just given, the Fifth Amendment Due Process Clause
11 prohibits the government from continuing to detain Petitioner. Because ordering a
12 bond hearing before a randomly selected IJ would not properly redress the
13 constitutional violations present in this matter, Petitioner urges the court to provide
14 an alternative corrective measure.

15 Accordingly, Petitioner respectfully requests that this Court:

16 **1. Order Respondents to immediately release Petitioner from custody.**

17 “In recent months, courts across the country have ordered the release of
18 detainees in similar situations.” *Moctezuma v. Henkey*, No. 25-CV-
19 00741-BLW, 2026 WL 18809, at *5 (D. Idaho Jan. 2, 2026) (given that
20 the government’s repeated use of unlawful detention policies across the
21 country, causing petitioners to “sit in jail waiting for a judicial
22 decision,” the court would order immediate release instead of causing
23 additional delay through a bond hearing) (citing *Lepe v. Andrews*, 801 F.
24 Supp. 3d 1104 (E.D. Cal. 2025); *J.U. v. Maldonado*, No. 25-CV-4836,
25 2025 WL 2772765, at *10 (E.D.N.Y. Sept. 29, 2025); *Rosado v.*
26 *Figueroa*, No. 25-CV-2157, 2025 WL 2337099, at *19 (D. Ariz. Aug.
27 11, 2025); *Pinchi v. Noem*, No. 25-CV-05632, 2025 WL 1853763, at *4
28 (N.D. Cal. July 4, 2025). *Santiago v. Noem*, No. EP-25-CV-361, 2025

1 WL 2792588, at *13-14 (W.D. Tex. Oct. 2, 2025) (“Without a
2 legitimate interest in her detention, immediate release appropriately
3 remedies Respondents’ violation of [Petitioner’s] due process rights
4 through her continued detention.”). Order, ECF No. 14 at 19, *Miri v.*
5 *Bondi*, No. 26-CV-00698-MEMF (C.D. Cal. March 5, 2026) (“Miri’s
6 prompt release is the remedy that will best return Miri to the status quo
7 and restore his position as it was prior to the detention that Miri
8 contends was in violation of his constitutional and statutory
9 protections.”).

10 2. **In the alternative, order a prompt § 1226(a) bond hearing, with**
11 **safeguards and oversight provided by this Court.** *See* Order, ECF
12 No. 13, *Sandesh v. LaRose*, No. 3:26-CV-00846-JES (S.D. Cal. March
13 5, 2026). Specifically, the Court should order:

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

16 (a) At that hearing, the government shall bear the burden of
17 establishing by clear and convincing evidence that Petitioner
18 poses a danger or flight risk, while further specifying that
19 concerns about interrupting court schedules is not a ground to
20 deny bond. *Id.*

21 (b) The IJ shall consider alternative conditions of release
22 and Petitioner’s ability to pay bond if he or she determines bond
23 is appropriate. *Id.*

24 (c) Respondents shall make a complete record of the bond
25 hearing available to Petitioner and his counsel. *Id.*

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

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

3 3. Order all other relief that the Court deems just and proper.

4 Respectfully submitted,

5 Dated: May 18, 2026

6 s/ Kara Hartzler

7 Kara Hartzler

8 Federal Defenders of San Diego, Inc.

9 Attorneys for Mr. Le

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