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

STEPHAN RYTOV,

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-2954-JES-JLB

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

1 INTRODUCTION

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

13 STATEMENT OF FACTS

14 Mr. Rytov entered the United States on August 25, 2025, to escape
15 persecution in Russia. Declaration of Stephan Rytov, Exhibit A, at ¶¶ 1–2. He
16 feared for his life if he stayed in Russia and came here to seek political asylum. *Id.*
17 at ¶ 1. He was arrested and detained as soon as he arrived. *Id.* at ¶ 2. He passed his
18 credible fear interview and was placed in removal proceedings. *Id.* In the almost
19 nine months since then, he has been detained at Otay Mesa in conditions
20 indistinguishable from jail. *Id.* at ¶ 5.

21 The delay is far from intentional on Mr. Rytov’s part; he wants the case to
22 go as fast as possible. To that end, he hired a lawyer, who appeared during his
23 removal proceedings. *Id.* at ¶ 4. But the lawyer’s contract ended when his asylum
24 claim was denied by the immigration judge. *Id.*

25 On April 8, 2026, an immigration judge ordered Mr. Rytov removed. *Id.* at
26 ¶ 3. Mr. Rytov has filed a pro se appeal of his removal with the BIA. *Id.* at ¶¶ 3–4.
27 If Mr. Rytov loses his appeal to the BIA, he plans to appeal to the Ninth Circuit. *Id.*
28 at ¶ 3.

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. Rytov 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. Rytov, 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. Rytov—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.*¹

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).

22
23
24
25 ¹ 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.*

II. Courts have reached different conclusions about when immigration detention becomes indefinitely prolonged, but Mr. Rytov would prevail under any standard.

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

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

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

Id. Some courts also consider:

- (4) “the conditions of detention.”

Id. Other courts have rejected the fourth factor, holding that it “not particularly suited to assisting the Court in determining whether detention has become unreasonable and due process requires a bond hearing.” *Lopez v. Garland*, 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022); *accord Sanchez-Rivera*, 2023 WL 139801, at *5–6.² Mr. Rytov would prevail under any of these factors tests.

² Courts also disagree about whether to account for any criminal convictions that 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

1 First, the “most important factor,” the length of detention, strongly favors
2 Mr. Rytov. *Banda*, 385 F. Supp. 3d at 1118. In assessing this factor, “[i]t is
3 important to bear in mind the context: The detention that is being examined here is
4 the detention of a human being who has never been found to pose a danger to the
5 community or to be likely to flee if released.” *Jamal A. v. Whitaker*, 358 F. Supp.
6 3d 853, 859 (D. Minn. 2019). With that context, courts have granted bond hearings
7 for persons detained between nine and eleven months. *See Ashemuke v. ICE Field*
8 *Off. Dir.*, No. C23-1592-RSL-MLP, 2024 WL 1683797, at *4 (W.D. Wash. Feb.
9 29, 2024), *report and recommendation adopted*, No. C23-1592-RSL, 2024 WL
10 1676681 (W.D. Wash. Apr. 18, 2024) (“approximately eleven months”); *Brissett v.*
11 *Decker*, 324 F. Supp. 3d 444, 452 (S.D.N.Y. 2018) (“over nine months”); *Perez v.*
12 *Decker*, No. 18-CV-5279 (VEC), 2018 WL 3991497, at *5 (S.D.N.Y. Aug. 20,
13 2018) (“more than nine months”); *Masood v. Barr*, No. 19-CV-07623-JD, 2020
14 WL 95633, at *2 (N.D. Cal. Jan. 8, 2020) (“nearly nine months”). Mr. Rytov has
15 been detained for the same amount of time as many of these cases. Exh. A at ¶ 2.
16 This factor therefore clearly favors a bond hearing.

17 Second, Mr. Rytov has reason to anticipate significant future detention. He
18 has filed an appeal with the BIA. Exh. A at ¶ 3. BIA appeals can take months, and
19 afterward, a petitioner may appeal to the Ninth Circuit. *See Banda*, 385 F. Supp. 3d
20 at 1119. All told, “[t]his process may take up to two years or longer.” *Id.* Because
21 “Petitioner’s future detention can last several more months or even years[,]” this
22 factor favors Mr. Rytov. *Abdul Kadir v. Larose*, No. 25CV1045-LL-MMP, 2025
23 WL 2932654, at *5 (S.D. Cal. Oct. 15, 2025).

24 Third, the delay factor is neutral because there is no indication that Mr. Rytov
25 has engaged in unreasonable delay.

26 Fourth, Mr. Rytov’s conditions of confinement weigh in favor of a bond
27

28 removed as a result of criminal convictions.

1 hearing. At Otay Mesa Detention Center, detainees are “locked up behind razor
2 wire and concrete walls in a secured facility, forced to wear a color-coded prisoner
3 jump suit, forbidden from accessing the internet, restricted access to outdoor space,
4 restricted on visitation, and guarded at all times with armed guards authorized to
5 inflict punishment for violations of rules.” *Abdul Kadir*, 2025 WL 2932654, at *5.
6 Accordingly, “Petitioner’s confinement at OMDC is ‘indistinguishable from penal
7 confinement.’” *Id.* (quoting *Kydyrali*, 499 F. Supp. 3d at 773); Exh. A at ¶ 5. “Otay
8 Mesa is the only facility in California with a policy and practice to strip search
9 detainees after each non-legal contact visit. Detainees report that this practice has
10 an overwhelming negative impact on the mental health and dignity of detainees.”
11 Rob Bonta et al., *Immigration Detention in California: A Review of Conditions of*
12 *Confinement*, California Department of Justice 117 (2026),
13 <https://oag.ca.gov/system/files/media/immigration-detention-2026.pdf>. In these
14 jail-like conditions, Mr. Rytov contends with the same jail-like confinements that
15 people in criminal detention are subject to.

16 Under any test, then, Mr. Rytov is entitled to a bond hearing.

17 **III. Because immigration judges’ neutrality has been severely compromised,**
18 **this Court must order outright release, or at least put in place additional**
19 **safeguards.**

20 In a perfect world, this Court could remedy the due process violation by
21 ordering a bond hearing before a neutral immigration judge (“IJ”), allowing the IJ
22 to determine whether Mr. Rytov posed a risk of danger or flight. Unfortunately,
23 attacks on IJ independence under the current administration have severely
24 compromised IJs’ neutrality. As a result, there is a serious risk that an IJ will order
25 Mr. Rytov’s continued detention even if he poses no danger or flight risk. Several
26 data points support that conclusion.

27 There are consistent reports of sustained attacks on IJs’ independence under
28 this administration. Several examples illustrate the point.

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

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

25 This has had the predictable effect on those who remain. According to
26 former San Francisco IJ Elizabeth Young, "I've talked to many of [the judges still
27 serving], and they're like, 'When I go into court, I am concerned about applying
28 the law, but I'm also concerned that I should deny more, because if I don't, then

1 I'll get fired.” Marco Poggio, *Judges See an Immigration Court Gutted from*
2 *Inside*, Law360 (Oct. 31, 2025),
3 [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)
4 [gutted-from-inside](https://www.law360.com/articles/2381003/judges-see-an-immigration-court-gutted-from-inside). Meanwhile, Department of Justice recruitment materials seek
5 “deportation judges” to fill the empty IJ slots, Coral Murphy Marcos, *US Justice*
6 *Department Recruiting Legal Experts to Serve as ‘Deportation’ Judges*,
7 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)
8 [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
9 down on criminal illegal aliens” and “defend your communities, your culture,
10 your very way of life.” dhsgov, Instagram (Nov. 21, 2025),
11 <https://www.instagram.com/p/DRVt8DmCQKD/?hl=en>.

12 *Second*, a parallel purge occurred at the BIA, which was reduced from 28
13 members to 15 members. All Biden appointees on the BIA were fired. Am. Imm.
14 Council, *BIA Decision Strips Immigration Judges of Bond Authority, All but*
15 *Guaranteeing Mandatory Detention for Undocumented Immigrants* (Sept. 12,
16 2025), [https://www.americanimmigrationcouncil.org/blog/bia-ruling-immigration-](https://www.americanimmigrationcouncil.org/blog/bia-ruling-immigration-judges-bond-mandatory-detention-undocumented-immigrants/)
17 [judges-bond-mandatory-detention-undocumented-immigrants/](https://www.americanimmigrationcouncil.org/blog/bia-ruling-immigration-judges-bond-mandatory-detention-undocumented-immigrants/). The statistical
18 impact is stark. As of January 22, 2026, the reconstituted BIA has issued 71
19 published decisions. Exec. Off. for Immigr. Rev., *Volume 29*, U.S. Dep’t of Just.
20 (Jan. 21, 2025), <https://www.justice.gov/eoir/volume-29>. Of those, 69 decisions
21 (97%) favored the administration. By contrast, during the entire four-year span of
22 the prior administration, the BIA issued 76 published decisions. Exec. Off. for
23 Immigr. Rev., *Volume 28*, U.S. Dep’t of Just. (June 13, 2025),
24 <https://www.justice.gov/eoir/volume-28>. (First decision, *Matter of DIKHTYAR*, 28
25 I&N Dec. 214 (BIA 2021), issued 01/22/2021). Of those, 46 decisions (60%)
26 favored the administration. The transformation from 60% to 97% pro-government
27 outcomes—achieved through wholesale termination of one administration’s
28 appointees—speaks for itself.

1 *Third*, beyond personnel changes, EOIR's new acting director, Sirce E.
2 Owen, has issued "a string of sharply worded policy memos" encouraging IJs to
3 side with the government over immigrants and minimize due process. E. Tammy
4 Kim, *Inside Donald Trump's Attack on Immigration Courts*, New Yorker,
5 <https://www.newyorker.com/inside-donald-trumps-attack-on-immigration-court>.
6 The policy directives include: a memorandum dated June 27, 2025 warning
7 judges not to demonstrate "bias directed against DHS" or to be "adjudicatory
8 outliers," at risk of "close examination and potential action," Exec. Off. for
9 Immigr. Rev., Policy Memorandum 25-33, Neutrality and Impartiality in
10 Immigration Court Proceedings (June 27, 2025), [https://iptp-](https://iptp-production.s3.amazonaws.com/media/documents/2025.06.27_EOIR_-_PM_25-33.pdf)
11 [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)
12 [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
13 full evidentiary hearings, styled as efficiency guidance but functioning as a
14 directive to reduce due process protections, Exec. Off. for Immigr. Rev., Policy
15 Memorandum 25-28, Pretermission of Legally Insufficient Application for
16 Asylum (Apr. 11, 2025), [https://www.justice.gov/eoir/media/1396411/dl?inline](https://www.justice.gov/eoir/media/1396411/dl?inline;);
17 and memoranda restricting immigration judges' ability to grant continuances,
18 Exec. Off. for Immigr. Rev., Policy Memorandum 25-27, Cancellation of
19 Director's Memorandum 23-01 and Reinstatement of Policy Memorandum 19-13
20 (Mar. 21, 2025), <https://www.justice.gov/eoir/media/1394086/dl>, and
21 administrative closure, Exec. Off. for Immigr. Rev., Policy Memorandum 25-29,
22 Cancellation of Director's Memorandum 22-03 (Apr. 18, 2025),
23 <https://www.justice.gov/eoir/media/1397161/dl?inline>.

24 *Fourth*, EOIR personnel have at times directed IJs to ignore federal court
25 orders related to bond hearings. On January 13, 2026, in the wake of *Maldonado*
26 *Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3289861 (C.D.
27 Cal. Nov. 20, 2025); *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-
28 BFM, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025), Chief Immigration

1 Judge Teresa L. Riley sent all IJs the following instructions:

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

13 Am. Immigr. Laws. Ass'n, Practice Alert: EOIR Issues Nationwide Guidance
14 on *Maldonado Bautista*, AILA Doc. No. 26011404 (Jan. 16, 2026),
15 [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)
16 [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,
17 calling out “Respondents’ deliberate choice to continue defying the final
18 judgment entered in *Bautista*.” *Palomera Baltazar v. Janecka*, No. 5:26-cv-
19 00019-SSS-BFM at *2-3 (C.D. Cal. Jan. 16, 2026).

20 The Otay Mesa IJs’ resistance to granting bond therefore accords with
21 the larger movement to eliminate or silence IJs who side with immigrants,
22 while bringing those that remain into line with the administration’s priorities.

23 The “equitable and flexible nature of habeas relief” affords district
24 courts significant discretion over the appropriate remedies for violations of
25 law and the Constitution. *Velasco Lopez v. Decker*, 978 F.3d 842, 855 (2d Cir.
26 2020); *see also Schlup v. Delo*, 513 U.S. 298, 319 (1995) (“[H]abeas corpus
27 is, at its core, an equitable remedy”). This Court should order a remedy that
28 fully addresses the statutory and constitutional violations in this case and is
efficient to administer. *Carafas v. LaVallee*, 391 U.S. 234, 238 (1968) (the
habeas statute “does not limit the relief that may be granted to discharge of the
applicant from physical custody. Its mandate is broad with respect to the relief
that may be granted”).

CLAIM AND PRAYER FOR RELIEF

Detaining Petitioner Without a Bond Hearing Violates the Fifth Amendment's Due Process Clause

Here, because ordering a § 1226(a) bond hearing before a randomly selected IJ would not properly redress the statutory and constitutional violations present in this matter, Petitioner urges the court to provide an alternative corrective measure:

1. **First, Petitioner submits that immediate release is the most appropriate remedy.** “In recent months, courts across the country have ordered the release of detainees in similar situations.” *Moctezuma v. Henkey*, No. 1:25-CV-00741-BLW, 2026 WL 18809, at *5 (D. Idaho Jan. 2, 2026) (given that the government’s repeated use of unlawful detention policies across the country, causing petitioners to “sit in jail waiting for a judicial decision,” the court would order immediate release instead of causing additional delay through a bond hearing). (citing *Lepe v. Andrews*, 801 F. Supp. 3d 1104 (E.D. Cal. 2025); *J.U. v. Maldonado*, No. 25-cv-4836, 2025 WL 2772765, at *10 (E.D.N.Y. Sept. 29, 2025); *Rosado v. Figueroa*, No. 25-cv-2157, 2025 WL 2337099, at *19 (D. Ariz. Aug. 11, 2025); *Pinchi v. Noem*, No. 25-cv-05632, 2025 WL 1853763, at *4 (N.D. Cal. July 4, 2025). *Santiago v. Noem*, No. EP-25-CV-361, 2025 WL 2792588, at *13-14 (W.D. Tex. Oct. 2, 2025) (“Without a legitimate interest in her detention, immediate release appropriately remedies Respondents’ violation of [Petitioner’s] due process rights through her continued detention.”))
2. **In the alternative, Petitioner requests a custody hearing before this Court.** The habeas court can hold its own custody hearing and determine whether the government can prove by clear and convincing evidence that Petitioner must remain in custody, or whether he may be released on recognizance. *See, e.g., e.g. L.G.M. v. LaRocco*, 788 F.Supp.3d 401, 405-

07 (E.D.N.Y. 2025) (ordering a bond hearing held by the habeas court, as this would be more efficient than delegating the task to the agency and ensure proper constitutional oversight); *Flores-Powell v. Chadbourne*, 677 F.Supp.2d 474-78 (D. Mass 2010) (granting petition and discussing at length habeas court's equitable power, which includes power to hold its own bail hearing); *see also Santos v. Lowe*, No. 1:18-CV-1553, 2020 WL 4530728, at *4 (M.D. Pa. Aug. 6, 2020) (finding that habeas court-ordered bond hearing was not individualized and did not comport with due process, and granting motion to enforce to hold the court's own bond determination); *Ramirez v. Watkins*, No. 10-cv-126, 2010 WL 6269226, at *19-20 (S.D. Tex. Nov. 3, 2010), *rep. and rec not reached*, (S.D. Tex. Dec. 8, 2010) (dismissing case as moot) (recommending the habeas court conduct its own bail inquiry, as it would be more efficient, ensure supervision over any compliance issues, and avoid further proceedings).

3. **At a minimum, the court should order that Petitioner be provided a § 1226(a) bond hearing, with safeguards and oversight provided by this Court.** *See* Order, ECF No. 13, *Sandesh v. LaRose*, No. 3:26-CV-00846-JES (S.D. Cal. March 5, 2026). Specifically, the Court should order:

a. Respondents provide Petitioner with a hearing and individualized bond determination within **fourteen days** of its order, unless Petitioner requests a continuance. *Id.*

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

(b) The IJ shall consider alternative conditions of release and Petitioner's ability to pay bond. *Id.*

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

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

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

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

Respectfully submitted,

Dated: May 22, 2026

s/ Kara Hartzler

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