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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

L.B. Petitioner/Plaintiff, vs. CHRISTOPHER J. LAROSE, Warden, Otay Mesa Detention Center; PATRICK DIVVER, Field Office Director, San Diego Office of Detention and Removal; TODD M. LYONS, Acting Director, U.S. Immigration and Customs Enforcement; and TODD BLANCHE, Acting Attorney General, U.S. Department of Justice; and MARKWAYNE MULLIN, Secretary, U.S. Department of Homeland Security Respondents/Defendants.	Case No.: **'26CV3330 JAO JLB** **PETITION FOR A WRIT OF HABEAS CORPUS AND ORDER TO SHOW CAUSE WITHIN THREE DAYS; COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF**

Petitioner L.B. ("Petitioner") petitions this Court for a writ of habeas corpus pursuant to 28 USC §2241 to remedy her unlawful detention and states as follows:

INTRODUCTION

1. Petitioner is a 30-year old Turkish citizen who entered the U.S. on February 25, 2025 and has been detained by DHS ever since. Ex. 3.
2. On January 28, 2026, this Court found that Petitioner's detention had become unconstitutionally prolonged and ordered Respondents to "arrange an individualized bond hearing" at which "Respondents must justify her continued detention by a showing of clear and convincing evidence that Petitioner would likely flee or pose a danger to the community if released." Ex. 1.
3. On February 2, 2026, a bond hearing was held by Immigration Judge ("IJ") Attia at the San Diego immigration court, and bond was denied on "flight risk" grounds. Ex. 4. We now file this action as Petitioner's bond hearing did not comport with the due process that the Constitution requires.
4. Petitioner has been incarcerated for fifteen months. She asks that this Court issue an order to show cause ("OSC") to the Respondents "forthwith," unless Petitioner is not entitled to relief. 28 USC §2243. If an OSC is issued, the Court must require Respondents to file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

5. Petitioner requests a writ of habeas corpus ordering her immediate release. As an alternative to immediate release, Petitioner requests a bond hearing before this Court.

JURISDICTION AND VENUE

6. Jurisdiction is proper and relief available pursuant to 28 USC §2241 (habeas corpus jurisdiction), 28 USC §1331 (federal question), 28 USC §1346 (U.S. as defendant), and Art. I, §9, clause 2 of the United States Constitution (the Suspension Clause).

7. This Court may grant relief pursuant to 28 USC §2241, 28 USC §1651 (All Writs Act), and 28 USC §§2201-02 (Declaratory Judgment Act).

8. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue lies in the United States District Court for the Southern District of California, the district in which Petitioner is detained. Venue is also proper in this Court pursuant to 28 USC §1391(e) because Petitioner is detained in this District, Respondents are employees, officers, and agencies of the United States, and a substantial part of the events or omissions giving rise to the claims occurred in this District.

CUSTODY AND REQUIREMENTS OF 28 USC §2241

9. The Constitution guarantees that the writ of habeas corpus is "available to every individual detained within the United States." *Hamdi v. Rumsfeld*, 542

U.S. 507, 525 (2004) (citing U.S. Const., Art I, § 9, clause. 2). "The essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and . . . the traditional function of the writ is to secure release from illegal custody." *Preiser v. Rodriguez,* 411 U.S. 475, 484 (1973).

10. A writ of habeas corpus is warranted where an individual shows that they are in custody in violation of the Constitution or federal law. 28 USC §2241(c)(3). Petitioner is in custody for the purpose of 28 USC §2241, because she was arrested by Respondents and remains in their legal and physical custody at Otay Mesa Detention Center in San Diego, California. She is under Respondents' direct control.

PARTIES

11. Petitioner is a 30-year-old citizen of Turkey detained by Respondents since February 25, 2025. Ex. 3. She is currently imprisoned at OMDC under the direct control of Respondents.

12. Respondent Christopher J. LaRose, named in his official capacity, is the Warden of OMDC. He is the immediate physical custodian of Petitioner and acts at the direction of Respondents Divver, Lyons, Blanche, and Mullin. He is a proper Respondent under *Doe v. Garland*, 109 F.4th 1188, 1197 (9th Cir. 2024).

13. Respondent Patrick Divver is the San Diego Field Office Director of ICE Enforcement and Removal Operations, a federal law enforcement agency within. He is the legal custodian of Petitioner and is named in his official capacity.

14. Respondent Todd M. Lyons is the Acting Director for ICE and is named in his official capacity. As Acting Director of ICE, Lyons is the legal custodian of Petitioner.

15. Respondent Markwayne Mullin is the Secretary of DHS and has authority over the actions of all other DHS Respondents in this case. Mullin is the legal custodian of Petitioner and is named in his official capacity.

16. Respondent Todd Blanche is the Acting Attorney General of the United States and the most senior official in the DOJ which encompasses the BIA and the immigration courts as sub-units of the Executive Office of Immigration Review ("EOIR"). As the head of EOIR, he supervises Immigration Judges and can instruct an IJ to hold a bond hearing. Respondent Blanche is the legal custodian of Petitioner and is named in his official capacity.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

17. There is no statutory requirement to exhaust administrative remedies when noncitizens challenge the lawfulness of their detention. 28 USC §2241. Moreover, "The exhaustion requirement is prudential, rather than

jurisdictional, for habeas claims." *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017).

18. Prudential exhaustion is not required when it would be futile or result in irreparable harm. *See, McCarthy v. Madigan*, 503 U.S. 140, 146-48 (1992) (superseded by statute on unrelated grounds). Here, "pursuit of administrative remedies would be. . . futile," and "irreparable injury will result." *Hernandez,* at 988 (quoting *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004)).

19. Seeking review of her bond denial before the BIA would be futile. Since President Trump took office, the BIA has sided with the government in 97% of published cases. Ex. 14. In *Perez Velasquez v. Bondi,* 3:26-cv-1759-GPC-DDL, 2026 WL 1042479, at *3 (S.D. Cal. April 16, 2026), this Court stated:

> Petitioner points to evidence that BIA has been drastically reshaped within the past year, such that the BIA now functions to rubberstamp IJ bond denials and facilitate noncitizen removal.[..] While such evidence, on its own, is insufficient to waive exhaustion, the statistics support the position that the reconstituted BIA is far less likely to provide Petitioner with any efficacious relief.

20. Moreover, BIA appeals are taking an average of 446 days (15 months) to adjudicate. Ex. 10. Significant increases in what are already protracted adjudication times are anticipated, as the BIA currently faces a backlog of over 200,000 cases, and this Administration has reduced the number of BIA judges from 28 to 15. Ex. 11.

21. Petitioner cannot be expected to endure the very harm she seeks to avoid by appealing the IJ's decision to the BIA and waiting many more months or over a year for a decision that is a foregone conclusion. *See, Vasquez-Rodriguez v. Garland*, 7 F.4th 888, 896 (9th Cir. 2021) ("[W]here the agency's position on the question at issue appears already set, and it is very likely what the result of recourse to administrative remedies would be, such recourse would be futile and is not required.")

22. Every day that Petitioner remains in detention violates her due process right to liberty and constitutes irreparable harm. *See, Addington v. Texas*, 441 U.S. 418, 425 (1979) ("This Court repeatedly has recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection."). To date, Petitioner has already been incarcerated for 15 months.

JURISDICTION TO REVIEW BOND DENIAL

23. Where a petitioner alleges that an immigration judge committed constitutional or legal error, or failed to review probative evidence in the record, district courts have jurisdiction to review denial of bond. *Hernandez v. Sessions*, 872 F.3d 976 (9th Cir. 2017); *Lopez Reyes v. Bonnar,* 362 F. Supp. 3d 762 (N.D. Cal. 2019).

FACTUAL BACKGROUND

24. Petitioner is a 30-year old Turkish citizen who entered the U.S. on February 25, 2025. Ex. 3. She was encountered by DHS, charged as an alien present in the U.S. who has not been admitted or paroled, and detained at Otay Mesa Detention Center ("OMDC") where she remains today. *Id.*

25. She applied for asylum, withholding of removal, and protection under the Convention Against Torture on August 22, 2025. On May 13, 2026, her applications for relief were denied by the immigration court despite USCIS' earlier finding on March 28, 2025 that it was "more likely than not" that she would be tortured if returned to Turkey. Ex. 5. She will appeal this denial of fear-based relief to the Board of Immigration Appeals ("BIA") within the allotted 30-day deadline.

26. Petitioner requested a bond hearing in December 2025 which was denied on jurisdictional grounds on December 16, 2025 as Respondents contended that she was mandatorily detained under 8 USC §1225(b). She filed a habeas petition with this Court, and on January 28, 2026, it was determined that Petitioner's detention had become unduly prolonged and directed Respondents to "arrange an individualized bond hearing" at which "Respondents must justify her continued detention by a showing of clear and convincing evidence that Petitioner would likely flee or pose a danger to the community if released." Ex. 1.

27. On February 2, 2026, a bond hearing was held by IJ Attia at the San Diego immigration court, and bond was denied on "flight risk" grounds. Ex. 4.

LEGAL FRAMEWORK

28. Petitioner seeks immediate release as her February 2, 2026 bond hearing was not constitutionally compliant.

A. Petitioner's Right to Due Process was Violated by a Constitutionally Inadequate Bond Hearing

1. The Bond Hearing by IJ Attia

29. This Court ordered a bond hearing at which the government would bear the burden of showing by clear and convincing evidence that Petitioner was a flight risk or danger to the public. At Petitioner's February 2, 2026 hearing, the IJ did not hold DHS to its burden, did not consider all evidence, and did not rely on probative and specific evidence related to flight risk.

30. First, the IJ opened the hearing by telling Petitioner to go first since the burden was hers. Ex. 2. When counsel for Petitioner conveyed that DHS bore the burden, the IJ answered, "Is that the case? Because this is somebody who entered and is present without inspection. So, I would assume that the burden would be on the [Petitioner]." *Id.* The IJ then stated "It's not an issue. I'll place the burden on DHS." *Id.* Despite uttering the magic words at that point, she clearly did not shift the burden in practice.

31. By way of evidence, DHS submitted only Petitioner's Notice to Appear indicating that Petitioner is a citizen of Turkey who entered the U.S. without a visa on February 25, 2025, and her Form I-213 Notice of Inadmissible Alien[1] issued by DHS at the same time. Ex. 3. DHS called no witnesses and had not a single question for Petitioner. Instead, DHS simply asserted that Petitioner did not have a lengthy history of residence or employment in the U.S., lacked close family ties here, and had an upcoming merits' hearing. Ex. 2.

32. At the close of DHS' presentation, the IJ was obligated to rule on whether DHS had carried its burden by clear and convincing evidence before asking Petitioner to rebut. Instead of making this finding based on DHS' evidence, the IJ turned to Petitioner's immigration counsel to elicit more information that she would then use to deny bond. The IJ asked if Petitioner had family in the U.S. to which counsel responded that she had two brothers in California. *Id.* The IJ asked where her mother was, to which counsel responded that the mother had returned to Turkey after USCIS found that she had failed to show a strong likelihood of torture there (in direct contrast to its finding with regards to Petitioner). *Id.* When the IJ asked counsel if the mother's claims were

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[1] "An I-213 form is nothing more than an uncorroborated police report created by a DHS officer" and cannot, by itself, establish dangerousness as a matter of law. *Gil Espana v. Nessinger*, 1:26-cv-014, 2026 WL 821788, at *11 (D.R.I. March 25, 2026)

similar to Petitioner's, counsel answered that the claims were "similar," but that the mother had not suffered as much harm. *Id.*

33. The IJ then asked why Petitioner's Form I-213 that was completed when she entered the U.S. in February 2025 did not designate a point of contact in the U.S. *Id.* Counsel for Petitioner answered that the question would need to be put to Petitioner, and although she was present, the IJ moved on without asking,[2] then used the lack of contact information in the Form I-213 against her. *Id.*

34. Finally, the IJ asked why Petitioner had entered the U.S. unlawfully, instead of presenting herself to officials at the border to request asylum. Counsel answered that individuals are no longer able to do so, to which the IJ responded (incorrectly), "I believe anyone can present themselves at a port-of-entry and claim a fear." *Id.* In fact, President Trump rescinded the right to seek asylum at the border on January 20, 2025 upon taking office.[3] The IJ's

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[2] The I-213 states "U.S. Address: IN DHS CUSTODY." "United States Point of Contact Information: Point of contact name not provided. IN DHS CUSTODY. Point of contact phone number not provided." There is no evidence that DHS ever *requested* a point of contact. As Petitioner was in DHS custody, there was no reason for her to provide a U.S. address and phone number. Regardless, Petitioner has now been in the U.S. for over a year and her bond sponsor provided a fixed address and phone to the IJ. Ex. 3.

[3] *See* Proclamation 10888, Guaranteeing the States Protection Against Invasion, January 20, 2025

"belief" was erroneous, yet she based her denial of bond on Petitioner's failure to seek asylum at the border – something that she lawfully *could not do.*

35. The IJ gave DHS the chance to make any final arguments, and DHS responded that it had nothing further. Bond was then denied on flight risk grounds. Ex. 4. The IJ cited Petitioner's relatively short time in the U.S., her limited family ties, her upcoming merits' hearing, the denial of her mother's case, and her unlawful entry to the U.S. Ex. 2. She concluded by stating that "no amount of bond can mitigate the risk." Ex. 4.

36. The IJ committed legal error by:

- Balancing the whole of the evidence instead of placing the burden on DHS by clear and convincing evidence,
- Basing its denial of bond on information it elicited from Petitioner's counsel, rather than on evidence submitted by DHS,
- Surmising that Petitioner's claim for relief was "tenuous" because her mother had been denied – even though their cases are not identical and USCIS had found that the mother did not face a likelihood of torture in Turkey, but that Petitioner did,
- Relying on the absence of a point of contact in Petitioner's February 2025 I-213,
- Penalizing Petitioner for entering the U.S. unlawfully instead of requesting asylum at the border, despite there being no mechanism to do so,
- Referencing her upcoming merits' hearing as a negative factor.

2. ***Failure to Hold DHS to its Clear & Convincing Burden of Proof***

37. When a noncitizen's detention has become unreasonably prolonged, the government must carry the burden of proof by clear and convincing evidence that the noncitizen is a flight risk of danger to the community. *Faizi v. Larose*, 3:25-cv-2974-JO-MSB, 2026 WL 1112035, at *5O (S.D. Cal. Apr. 24, 2026). This standard is described as requiring "an abiding conviction that the truth of the factual contentions is highly probable." *Mondaca-Vega v. Lynch*, 808 F.3d 413, 422 (9th Cir. 2015) (*en banc*).

38. There is a significant difference between a typical bond hearing and one in which DHS bears the burden of proof. In a typical hearing, the IJ weighs evidence and decides if a noncitizen merits release. *Mathon v. Searls*, 623 F.Supp.3d 203, 214 (W.D.N.Y. 2022). In the latter, DHS must prove that it is "highly probable" that a detainee will flee if released. A factual contention cannot be "highly probable" if it is based on conjecture or surmise." *Id.* at 216. Concerns about what an alien might or might not do if released may be enough to meet the standard of proof applicable in "typical" bond hearings, but "[i]f the clear and convincing standard means what it says, it cannot permit detention based on mere speculation that an alien's release might possibly" pose a flight risk. *Id.* (citing *Addington v. Texas*, 441 U.S. 418, 427 (1979)).

39. An "agency acts contrary to the law when it gives mere lip service or verbal commendation of a standard but then fails to abide the standard in its

reasoning and decision." *Nat'l Resc's Defense Council v. Pritzker,* 828 F.3d 1125, 1135 (9th Cir. 2016). *See, Cervantes Arrendondo v. Baltazar*, 1:25-cv-3040-RBJ, Order ECF 26, at 8 (D. Colo Dec. 18, 2025) (despite IJ's statement that they were placing the burden on DHS, the court was "not confident" that they had done so) (Ex. 16.a); *Mathon*, 623 F.Supp.3d at 214 ("the mere utterance of the correct standard is insufficient to demonstrate that it was applied when the rest of that decision demonstrates otherwise.").

40. In the present case, the IJ stated that the Petitioner bore the burden of proof, then later stated that she would place the burden on DHS. Ex. 2. It is clear, though, that her statement was "mere lip service." In *Cervantes Arrendondo,* the court outlined how a bond hearing in which DHS has the burden should proceed. First, after DHS presents its arguments, the IJ must state whether it has carried its burden. If DHS proves flight risk or danger in the first instance, the IJ may *then* consider the noncitizen's rebuttal evidence. Order, ECF 26, at 9 (Ex. 16.a). The *Cervantes* court ordered the IJ to identify what evidence "*submitted by respondents*" satisfied its burden. *Id,* at 2 (emphasis in original). As the IJ had merely weighed the evidence holistically rather than considering only DHS' evidence to determine if the clear and convincing standard had been met, the bond hearing was noncompliant. *Id.*

41. Petitioner's bond hearing mirrors this same deficiency. DHS submitted only the Petitioner's Notice to Appear and Form I-213. Exs. 2 & 3. It called no witnesses and had not one question for Petitioner. Instead of stating at that point whether DHS had shown flight risk by clear and convincing evidence, the IJ embarked on a fishing expedition to uncover information on which to base a denial. It was the IJ, not DHS, that specifically asked Petitioner's counsel if Petitioner had family members in the U.S. Ex. 2. It was the IJ, not DHS, that questioned Petitioner's counsel about the Form I-213, her unlawful entry to the U.S., and her mother's case. *Id.* The IJ then used Petitioner's counsel's responses to deny bond.

42. Courts have found analogous behavior by IJs to violate due process. In *Abulashvili v. Att'y Gen of U.S.*, 663 F.3d 197, 207 (3d Cir. 2011), the Circuit Court found that the IJ was not a neutral arbiter where she conducted all the cross-examination herself. The court wrote:

> The Due Process Clause cannot tolerate a situation where a supposedly neutral fact finder interjects herself into the proceedings to the extent of assuming the role of opposing counsel and taking over cross-examination for the government.

See also, Guasco v. McShane, No. 1:25-cv-1650, 2025 WL 3270201, at *2 (M.D. Pa. Nov. 24, 2025) ("for decades, courts have assailed the Government's practice of acting both as the prosecution and the judge in

making a unilateral and unreviewed decision as to detention") (internal citation omitted).

3. The IJ Relied on Evidence that was not Probative and Specific as to Flight Risk

43. The IJ must base its decisions on evidence that is "probative and specific." *See e.g., Ortega-Rangel v. Sessions*, 313 F. Supp. 3d 993, 1004-05 (N.D. Cal. 2018); *Garcia v. Hyde*, 1:25-cv-00585, 2025 WL 3466312, *9 (D.R.I. Dec. 3, 2025). In this case, though, the IJ failed to do so. She cited Petitioner's relatively short time in the U.S., her limited family ties (despite having two brothers in California), her upcoming merits' hearing, the denial of her mother's case, and her unlawful entry to the U.S. She failed to explain though how any of these factors established flight risk. Ex. 2.

a. The IJ did not Explain the Link between Unlawful Entry or the Upcoming Merits Hearing and Flight Risk

44. The IJ averred that because Petitioner had entered the U.S. unlawfully, she was a flight risk. Ex. 2. She neglected to explain, though, how the two are related. In *Mendez Trigueros v. Guadin*, the IJ had likewise failed to draw the connection between the relied upon evidence and flight risk. 1:26-cv-00205, ECF 13 (E.D. Va. Feb. 18, 2026) (Ex. 16.b). In that case, the IJ referenced the noncitizen's unlawful employment and differences between income as

reported on his tax return and his immigration application. The District Court found the hearing deficient as the IJ had not articulated how these actions were related to flight risk. ECF 13, at 5-6. (Ex. 16.b).

45. Moreover, the *Mendez Trigueros* court stated, "Were a noncitizen's unlawful status, and the unauthorized employment that often, if not typically attaches to it, in and of itself, a proper basis upon which to deny bond," there would be no discretion to grant bond and detention would become *de facto* mandatory. The court concluded that the:

> considerations upon which it was determined that Petitioner constitutes a flight risk were so lacking in probative value . . . that their use in determining flight risk failed to provide the Petitioner with constitutionally sufficient due process. ECF 13, at 6. (Ex. 16.b).

46. In *Romero-Nolasco v. McDonald*, 1:25-cv-12492, ECF 22 (D. Mass. Jan. 14, 2026), the IJ determined that the noncitizen was a flight risk where the noncitizen had been criminally charged, stating:

> Respondent's conduct here demonstrates . . . that he is unwilling or incapable of conforming to the laws of the United States or the state where he resides, or the order of this court, including the final removal order, should his appeal be unsuccessful, and that no bond amount or condition of release would be appropriate. ECF 22, at 2 (Ex. 16.c).

The District Court rejected the IJ's conclusion, writing:

> That may be true, but it does not explain how that equates to flight risk. The evidence of an arrest and resulting criminal charges, by themselves, could not—as a matter of law—have supported the IJ's decision to deny bond on the ground that he is a flight risk. ECF 22, at 5. (Ex. 16.c).

The IJ in the present case committed the same error.

b. Lack of Evidence Regarding Speculative Relief & Flight Risk

47. The IJ found that Petitioner's was a flight risk, because her claim for relief from removal was "tenuous." Ex. 2. The district court in *Cervantes Arrendonde* had similarly found that the noncitizen's claim was "speculative." 1:25-cv-3040-RBJ, ECF 26 (D. Colo Dec. 18, 2025) (Ex.16.a). *Cervantes* rejected the IJ's finding, because DHS had submitted no evidence addressing this factor. In this case, DHS likewise failed to any present evidence regarding the strength of Petitioner's immigration case.

48. Moreover, the weight of an immigration case is not necessarily indicative of flight risk. In *S.E. v. Noem*, the IJ denied bond where the noncitizen had entered the U.S. illegally and had a removal order on appeal to the BIA. The district court stated that the IJ's decision:

> reflect[ed] blanket characterizations about circumstances common to many individuals in immigration proceedings, not individualized determinations as are necessary when applying a heightened evidentiary burden in a detention case. 1:26-cv-00356-DAD-SCR, 2026 WL 627456, at *4 (E.D. Cal. March 5, 2026), Findings & Recommendations adopted in relevant part, 2026 WL 836327 (March 26, 2026).

49. In *Chavarria Mejia v Crawford*, the district court found the bond hearing violated due process where the IJ's finding of flight risk was grounded on a

weak application for relief, among other factors. The court wrote that the IJ had erred in "prejudging" the petitioner's immigration relief prospects. 1:26-cv-253, 2026 WL 819603, at *5 (E.D. Va. March 25, 2026). *See also, Lima Soriano v. Hernandez*, 2:26-cv-0900, 2026 WL 969764 (W.D. Wash. Apr. 10, 2026) (IJ erred in finding flight risk based on violation of immigration laws, unlawful employment, and "exceedingly weak" opportunities of relief from removal as IJ provided no rationale of how these factions related to flight risk).

c. Lack of Evidence Regarding the Relationship Between Petitioner's & her Mother's Case and Flight Risk.

50. The IJ concluded that Petitioner was a flight risk, because her mother was deported to Turkey. Ex. 2. DHS, though, had not submitted *any* evidence regarding the Petitioner's or her mother's case, or her mother's deportation. Moreover, the IJ failed to explain how the mother's removal made Petitioner a flight risk.

51. In *Garcia v. Hyde*, the District Court found that the petitioner had not received the due process he was owed where the IJ had not relied on probative evidence specific to the petitioner. 2025 WL 3466312, at *9. In that case, the IJ denied bond based on a police report showing that petitioner's boyfriend had sold drugs. The District Court found this evidence insufficient as it spoke to the

boyfriend's actions rather than her own. In the current case, the IJ erred in basing her denial on Petitioner's mother's removal rather than her own.

52. Further, the IJ relied on Petitioner's mother's deportation to Turkey without knowing anything about either the mother's or the Petitioner's case. Again, DHS did not submit *any* evidence related to their cases. It submitted no proof of the mother's removal from the U.S. or her asylum claim, and it submitted no evidence regarding Petitioner's asylum application or her detailed supporting declaration. Instead of holding DHS to its evidentiary burden, the IJ simply inquired of Petitioner's counsel where the mother was and if the two cases were similar. Ex. 2. DHS cannot be said to have carried its burden when the IJ based her finding of flight risk on her own questions to Petitioner's counsel instead of on the evidence presented by DHS.

4. ***The IJ Failed to Consider Alternatives to Detention***

53. The Ninth Circuit requires that alternatives to detention be considered. *Hernandez v. Sessions*, 872 F.3d at 990. (*See also, Mau v. Chertoff,* 562 F.Supp.2d 1107, 1118 (S.D. Cal. 2008) (hearing noncompliant where bond denied even though DHS presented no evidence showing that petitioner was a threat to the public even with appropriate conditions). The IJ in the current case did not mention alternatives to detention, even in passing, or explain why they would not mitigate any flight concerns.

B. Petitioner's Bond Hearing was not Impartial

54. The Due Process Clause requires "the guarantee of an impartial and disinterested tribunal." *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980). IJs, like other judicial officers, have a "responsibility to function as neutral and impartial arbiters" and "must assiduously refrain from becoming advocates for either party." *Aguilar-Solis v. I.N.S.*, 168 F.3d 565, 569 (1st Cir. 1999). *See also, Elias v. Gonzales*, 490 F.3d 444, 451 (6th Cir. 2007); *Islam v. Gonzales,* 469 F.3d 53, 55 (2d Cir. 2006).

1. Policy Directives Mandating that IJ Adjudications Favor DHS & Warning that IJs must Obey the President

55. IJs are not part of the judicial branch, but are employees of the Department of Justice. This leaves them susceptible to the vagaries of the President and his Administration. In August 2025, the DOJ circulated a policy memo to all IJs reminding them that the Attorney General sets policy for the immigration courts and that a "determination and ruling by the Attorney General with respect to all questions of law shall be controlling."[4] Ex. 7. The memo,

[4] DOJ Policy Memo 25-42, Adjudicator Independence and Impartiality, Aug. 22, 2025 https://www.justice.gov/eoir/media/1411796/dl?inline (Ex. 7).

ironically titled "Adjudicator Independence and Impartiality," explicitly declares that immigration judges are:

> inferior officers subject to both appointment and removal by the Attorney General...[and that] the President must be able to remove...not just those who disobey his commands...[and] those who exercise their discretion in a way that is not intelligent or wise, those who have different views of policy... and those in whom he has simply lost confidence.

The Memo warns that IJs with "statistically improbable outcome metrics" (high grant rates) "warrant[] close examination and potential action." Ex. 7.

2. IJs Fearful of Terminations Cannot be Neutral Adjudicators

56. Within hours of Trump's swearing in, the entire immigration court leadership was fired. (Ex. 8.b). Since then, more than one in every seven IJs has been fired.[5] "The roster of those who've lost their jobs since President Donald Trump returned to office includes judges with higher than average rates of granting migrants asylum, judges with dual citizenship and those with a

[5] As of September 26, 2025, the administration had terminated 128 IJs. Trump Administration Continues Firing Immigration Judges (Sept. 26, 2025) https://www.ifpte.org/news/trump-administration-continues-firing-immigration-judges-ifpte-respondsnbsp.
"Trump fired a third of the BIA judges too. So, it's just another rubber stamp for the priorities of the administration." Radley Balko, Substack, "The courts are dead" An interview with a fired immigration judge, Jan. 8, 2026. (Ex. 8.b).

history of providing legal defense to immigrants."[6] Former IJ Lawrence Burman writes:

> Since January 2025, I have observed a troubling trend of Immigration Judges being terminated without explanation or notice.... From conversations within the immigration branch and professional organizations, including the National Association of Immigration Judges (of which I was an officer), it is clear that judges were removed for their strong commitment to due process for those appearing before them. (Ex. 8.a).

Statements of other former IJs are attached as Ex. 8.

57. These firings act as a stark admonition to the remaining judges that neglecting to toe the party line places their jobs at risk. Adjudicators fearful of losing their jobs have a *vested financial interest* in the outcome of a case. The Supreme Court has long held that officers acting in a judicial capacity are "disqualified by their interest in the controversy to be decided." *Tumey v. Ohio*, 273 U.S. 510 (1927).

58. In *Tumey*, a judge had a direct, albeit small, pecuniary interest in the outcome of the matter before him. The Court stated that there were doubtless men who would not allow $12 to affect their judgment:

> but the requirement of due process of law in judicial procedure is not satisfied by the argument that men of the highest honor and the

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[6] Politico, 'Immigration courts thrown into chaos as Trump administration purges dozens of judges." Dec. 6, 2025 https://www.politico.com/news/2025/12/06/trump-immigration-court-judge-purges-00679376

> greatest self-sacrifice could carry it on without danger of injustice. Every procedure which would offer a possible temptation to the average man as a judge to forget the burden of proof required to convict the defendant, or which might lead him not to hold the balance nice, clear, and true between the State and the accused denies the latter due process of law.

In the present case, we are not dealing with a miniscule one-time payment, but rather the IJs' entire livelihood. Expecting IJs to adjudicate impartially when their very jobs are on the line is not realistic.

3. ***Replacement of IJs by "Deportation Judges"***

59. The DOJ has authorized up to 600 military lawyers to serve as replacements for the fired IJs.[7] DHS is involved in the recruitment efforts for these positions which they have dubbed "Deportation Judges." Ex. 15. The ads call on applicants to "join TheJusticeDept as a Deportation Judge to restore integrity and honor to our Nation's Immigration Court system," and "Deliver justice to criminal illegal aliens. Become a deportation judge. Save your country." *Id.*

60. The replacement of qualified IJs with military attorneys having little or no immigration law experience "raise[s] serious concerns about judicial

[7] Designation of Temporary Immigration Judges, 90 Fed. Reg. 41,883 (Aug. 28, 2025)

independence and due process for individuals navigating the immigration system."[8] Former IJ George Pappas explains:

> When you join the military you take an oath. That oath is not only to the Constitution, but to the commander in chief. So there's an internal conflict between their oath and what they're supposed to do on the bench. That in and of itself is cause for a prejudicial hearing. (Ex. 8.b)

4. Bias & Pre-ordained Outcomes Specifically in Bond Hearings

61. Since January 2026, there has been a marked increase in bonds being denied due to flight risk. Statements from experienced immigration attorneys who have witnessed and experienced this development are attached at Exhibit 9. What these practitioners describe is a startling and abrupt shift in which bonds are systematically denied with boilerplate language and "cookie-cutter" denials as if "reading from a script." Ex. 9.

62. District Courts are increasingly recognizing that IJs cannot be counted on to be impartial. Recently, in *Garcia Ortiz v. Henkey*, the judge noted:

> Petitioner has also submitted evidence that Immigration Judges across the country are systemically denying bond to [noncitizen] detainees, regardless of the weight of the evidence. For example, a former legal counsel to Immigration and Customs Enforcement describes how Immigration Judges in the Eastern District of Virginia have "abruptly

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[8] Justice Connection, "Filling the Immigration Courts with Temporary Unqualified Attorney Judges Will Undermine the Integrity of the Immigration Court System" https://www.thejusticeconnection.org/filling-the-immigration-courts-with-temporary-unqualified-attorneys-as-judges/

> and uniformly ceased" granting bond in post-habeas cases. 26-cv-0043, 26 WL 948275, at *3 (D. Idaho Apr. 7, 2026).

See also, *Chavez Ochoa v. Mason*, 2:26-cv-0130, 2026 WL 541144, at *2 n.4 (S.D.W.V. Feb. 26, 2026) ("immigration judges who provide neutral adjudications have been removed, and bond is systematically denied after a pro forma hearing with a predetermined outcomes.").

63. Similarly, in *Zheng v. Rokosky*, 26-cv-1689, 2026 WL 800203 (D.N.J. Mar. 23, 2026), the court declared:

> the Court cannot ignore that the circumstances surrounding these proceedings raise substantial concerns as to whether any non-citizen can receive the impartial hearing that due process requires. As one court observed long ago, judges need not "shut our eyes to matters of public notoriety and general cognizance. When we take our seats on the bench we are not struck with blindness and forbidden to know as judges what we see" as ordinary members of society. *Ho Ah Kow v. Nunan*, 12 F. Cas. 252, 255 (C.D. Cal. 1879). Respondents have reportedly terminated nearly one hundred IJs in recent months. And now openly advertise these vacancies for "deportation" judges. *YOU BE THE JUDGE*.... These developments, among others, raise a serious question as to whether the constitutional guarantee of an impartial decisionmaker is being honored in any case brought before an IJ.

See also, Singh v. Valdez, 26-cv-1109, 2026 WL 890240 (D. Col April 1, 2026) ("[T]he mounting evidence that bond determination hearings conducted in Immigration Court... have preordained outcomes has become impossible to ignore.").

64. In the current case, Petitioner has a fixed address as demonstrated by the sponsor letter submitted with her bond request (Ex. 6), two brothers in California, an application for asylum/withholding of removal/Convention Against Torture protection pending at the BIA, and no criminal record. Had she received a bond hearing before a neutral arbiter who had held DHS to its burden of proof, she would have been released.

C. What remedy is appropriate?

65. Habeas corpus is an equitable remedy and "[f]ederal courts have a fair amount of flexibility" to tailor the remedy to the constitutional violation. *Burnett v. Lampert*, 432 F.3d 996, 999 (9th Cir. 2005). Given the numerous problems with the IJ bond hearing on March 2, 2026, and the dearth of any substantive evidence presented by DHS to satisfy its burden of demonstrating by clear and convincing evidence that Petitioner is a flight risk, ordering *another* immigration bond hearing would be inadequate relief. Petitioner should not be left languishing behind bars while Respondents receive another chance to "get it right." Her due process rights have been trampled on for over 15 months in detention without a constitutionally sufficient bond hearing.

66. Immediate release is the only just remedy here. Courts have typically resolved these challenges either by releasing the petitioner, or as happened here, by ordering a bond hearing. However, as stated in *Garcia Ortiz v. Henkey, 2026*

*WL 948275, at *2,* "Given the broader irregularities in bond hearings across the country," only immediate release, as opposed to a second bond hearing, will alleviate the violation. *Id.,* at *3.

67. Other courts have agreed. In *Zheng v. Rokosky*, the court stated:

> Indeed, this Court, following many others around the country, no longer orders even initial bond hearings in cases like this one involving unlawful detention under § 1225(b) because Respondents' conduct can no longer be attributed to mere negligence or ineptitude, ... and doing so would effectively allow the Government to transform an unlawful detention into a lawful one through *post-hoc* justifications... 26-cv-01689, 2026 WL 800203, at *11 (D.N.J. Mar. 23, 2026).

See also, Singh v. Valdez, 26-cv-1109, 2026 WL 890240, at *5 (D. Col. Apr. 1, 2026) (quoting *Zheng v. Rokosky*); *Briceno Solano v. Mason*, 818 F. Supp. 3d 802, 836 (S.D.W.V. Feb. 4, 2026) ("there is no chance any [bond] hearing that occurred would comport with due process")

68. Accordingly, in all of the above cases, the district courts ordered immediate release rather than a bond hearing, as did the courts in *Lima Soriano v. Hernandez* and *S.E. v. Noem*.

69. Should the Court decide, though, that a bond hearing is necessary, we ask that it be conducted by this Court. *See, 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) (discussing the court's equitable power, which includes power to hold its own bail hearing); *Santos v. Lowe*, No. 1:18-CV-1553, 2020 WL 4530728, at *4 (M.D. Pa. Aug. 6, 2020) (habeas court reached its own bond determination).

CAUSE OF ACTION -- COUNT ONE
Petitioner's Detention Violates Her Fifth Amendment Right to Due Process

70. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

71. The Government may not deprive a person of life, liberty, or property without due process of law. U.S. Constitution, Amendment V. "Freedom from imprisonment -- from government custody, detention, or other forms of physical restraint -- lies at the heart of the liberty that Clause protects." *Zadvydas v. Davis,* 533 U.S. 678, 690 (2001). Due process protects "all 'persons' within the United States, including [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Id.*, at 693.

72. Petitioner has a fundamental interest in liberty and being free from official restraint. Respondents' prolonged detention of Petitioner without a

constitutionally-compliant bond hearing serves no legitimate purpose and violates her right to Due Process.

PRAYER FOR RELIEF

73. WHEREFORE, Petitioner respectfully asks that this Court take jurisdiction over this matter and grant the following relief:

a. Issue an Order to Show Cause requiring Respondents to respond within three days;

b. Issue a Writ of Habeas Corpus ordering Petitioner's immediate release and all property, including identity documents returned to her. In the alternative, we ask that this Court conduct a bond hearing at which Respondents must show by clear and convincing evidence that Petitioner is a flight risk;

c. Should this Court not so order, we ask that Respondents be directed to provide Petitioner a bond hearing before a *neutral* arbiter within 10 days at which Respondents must show by clear and convincing evidence that Petitioner is a flight risk; that at the conclusion of DHS' presentation of evidence, the IJ state whether DHS carried its burden of proof, what evidence was relied on in reaching that determination and how it relates to flight risk; & that the IJ consider alternatives to detention and the ability to pay a bond;

d. Enjoin Respondents from transferring Petitioner out of this Court's jurisdiction during the pendency of this action;

e. Enjoin Respondents from re-detaining Petitioner unless her re-detention is ordered at a custody hearing before a neutral arbiter in which the government bears the burden of proving, by clear and convincing evidence, changed circumstances rendering Petitioner a flight risk or danger to the community;

f. Award Petitioners' attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 USC §2412, and on any other basis justified under law; and

g. Grant any other and further relief that this Court deems just and proper.

Date: May 28, 2026

Respectfully submitted,

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VERIFICATION PURSUANT TO 28 USC 2242

I am submitting this verification on behalf of the Petitioner because I am Petitioner's attorney. I have discussed with the Petitioner the events described in the Petition. Based on those discussions, I hereby verify that the factual statements

made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge and abilities.

Executed on this 28th day of May 2026, in San Diego, California.

Linette Tobin
Attorney for Petitioner