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

FUJIAN MA,

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.

CASE NO.: 26-CV-3543-AGS-SBC

**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. Ms. Mardian therefore files this amended petition as of right.

1 INTRODUCTION

2 Fujian Ma has been detained for a little over a month. Under circumstances
3 unique to this case, 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.” *Kydyrali*
6 *v. Wolf*, 499 F. Supp. 3d 768, 772 (S.D. Cal. 2020) (Battaglia, J.).

7 Additionally, *due to circumstances unique to this case*, and because of newly
8 emerging evidence that the neutrality of Otay Mesa’s immigration judges (“IJ”) has
9 been compromised, and some IJs and the Department of Homeland Security
10 (“DHS”) have implemented strategies to detain bond-worthy habeas petitioners, a
11 bond hearing before a randomly selected IJ will no longer reliably satisfy due
12 process. This Court should therefore consider the alternative forms of relief set forth
13 at the end of this petition.

14 STATEMENT OF FACTS

15 Mr. Ma came to the United States in September 2019. Exh. A at ¶ 1. He
16 lawfully entered the country and applied for asylum soon after. *Id.* at ¶¶ 2-3. That
17 asylum petition is still pending. *Id.* at ¶ 4.

18 For nearly seven years, Mr. Ma remained out of custody while his asylum
19 petition wound its way through the immigration services. *See* Exh. A at ¶¶ 1-7. He
20 received permission to work. *Id.* at ¶ 3. Over these years, Mr. Ma never missed an
21 immigration-related appointment and fully complied with all requirements imposed
22 upon him. *Id.* at ¶ 5.

23 Mr. Ma was swept up into custody, however, earlier this year. Exh. A at ¶ 6.
24 A passenger in a car being driven in the Los Angeles area, Mr. Ma was detained by
25 immigration authorities on May 21, 2026. He has been held in custody since.

26 On June 12, 2026, Mr. Ma filed a *pro se* habeas petition requesting a bond
27 hearing. Docket No. 1. In an apparent attempt to circumvent that petition, on June
28 29, Mr. Ma received a simulacrum of a bond hearing.

1 On that date, Mr. Ma was removed from his cell and taken to a video
2 conference. Exh. A at ¶ 9. Before being taken to this video conference, Mr. Ma
3 had received no notice that he was to be part of a legal proceeding. *Id.* at ¶ 10. He
4 had no attorney. *Id.* at ¶ 11. And it was not until after the video conference that
5 Mr. Ma received any documents. *Id.* at ¶ 12. The document he received informed
6 him that he had been denied bond. *Id.* Needless to say, Mr. Ma intends to appeal
7 this potemkin process that resulted in him being denied his freedom. *Id.* at ¶ 13.

8 LEGAL BACKGROUND

9 I. The Fifth Amendment’s Due Process Clause prohibits prolonged 10 immigration detention without a bond hearing.

11 This habeas petition presents a question about whether and when the Fifth
12 Amendment’s Due Process Clause countermands the government’s statutory
13 authority to detain immigrants without bond hearings. Mr. Ma is detained under
14 one such statute, 8 U.S.C. § 1225(b). “Section 1225 applies to ‘applicants for
15 admission’—noncitizens who ‘arrive[] in the United States,’ or are ‘present’ in the
16 United States but have ‘not been admitted.’” *Banda v. McAleenan*, 385 F. Supp. 3d
17 1099, 1111 (W.D. Wash. 2019). It “applies to, among others, noncitizens initially
18 determined to be inadmissible because of . . . lack of valid documentation.” *Id.* That
19 includes persons who, like Mr. Ma, present themselves for inspection at the border
20 and—rather than producing admission documents—make asylum and other fear-
21 based claims. *See id.* at 1109–11 (describing a similar procedural history and
22 finding that petitioner was detained under § 1225(b)). Such immigrants are detained
23 under § 1225(b) not only during their initial proceedings, but also when they appeal
24 to the BIA. *See id.* at 1111 (reaching same conclusion for immigrant with pending
25 BIA appeal).

26 This statutory scheme has left courts to grapple with the limits (if any) of that
27 detention power: Does this statute permit the government to detain immigrants
28 indefinitely, without ever having to prove at a bond hearing that they pose a risk of

1 danger or flight? Three Supreme Court cases are potentially relevant to answering
2 that question.

3 First, in *Zadvydas v. Davis*, the Supreme Court indicated that indefinite
4 immigration detention raises serious due process concerns. 533 U.S. 678 (2001).
5 *Zadvydas* involved a statute authorizing the government to detain immigrants after
6 they are ordered removed. *Id.* at 683. For immigrants who cannot be removed, that
7 statute had the potential to subject them to years, decades, or a lifetime in custody.
8 *See id.* at 690. The Supreme Court held that if the statute “permit[ed] indefinite
9 detention of an alien[,] [it] would raise a serious constitutional problem,” because

10 [t]he Fifth Amendment's Due Process Clause forbids the Government
11 to ‘depriv[e]’ any ‘person ... of ... liberty ... without due process of law.’
12 Freedom from imprisonment—from government custody, detention, or
13 other forms of physical restraint—lies at the heart of the liberty that
14 Clause protects. *See Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). And
15 this Court has said that government detention violates that Clause unless
16 the detention is ordered in a *criminal* proceeding with adequate
17 procedural protections, *see United States v. Salerno*, 481 U.S. 739, 746
18 (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).

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

23 Following *Zadvydas*, the Ninth Circuit applied similar reasoning to
24 § 1225(b). *Rodriguez v. Robbins*, 804 F.3d 1060, 1087–89 (9th Cir. 2015).
25 Employing the constitutional avoidance canon, the Ninth Circuit held that
26 § 1225(b) implicitly entitled detained immigrants to bond hearings every six
27 months. *Id.*

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

7 Finally, the Supreme Court held in *Demore v. Kim* that at least some statutes
8 mandating detention during immigration proceedings do not automatically violate
9 the Due Process Clause. 538 U.S. 510, 513 (2003). *Demore* addressed 8 U.S.C.
10 § 1226(c), which mandates detention without a bond hearing for persons with
11 certain criminal convictions. *Id.* The Court upheld § 1226(c) in a 5-4 opinion based
12 on (1) the government interests justifying the detention of immigrants with certain,
13 aggravated criminal convictions, and (2) the relative brevity of detention in most
14 cases, with the vast majority taking only about five months. *Id.* at 517–31. Justice
15 Kennedy supplied a deciding vote. His concurrence left open the possibility that
16 individual immigrants could be “entitled to an individualized determination as to
17 his risk of flight and dangerousness if the continued detention became unreasonable
18 or unjustified.” *Id.* at 532–33.

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

26 These Courts have relied on the due process concerns recognized in
27 *Zadvydas*. See, e.g., *Kydyrali*, 499 F. Supp. 3d at 771; *Banda*, 385 F. Supp. 3d at
28 1113–17; *Abdul Kadir v. Larose*, No. 25CV1045-LL-MMP, 2025 WL 2932654, at

*3 (S.D. Cal. Oct. 15, 2025). As the Ninth Circuit put it in *Jennings*’ wake, those considerations raise “grave doubts that any statute that allows for arbitrary prolonged detention without any process is constitutional or that those who founded our democracy precisely to protect against the government’s arbitrary deprivation of liberty would have thought so.” *Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018).

Neither *Jennings* nor *Demore* undermines that conclusion. *Jennings* held only that the statute itself did not impose any limits on detention. It “did not foreclose as-applied constitutional challenges to detention under” mandatory-detention statutes. *Santos v. Warden Pike Cnty. Corr. Facility*, 965 F.3d 203, 209 (3d Cir. 2020). And *Demore* held only that conviction-based mandatory detention during immigration proceedings does not necessarily or inherently violate the Due Process Clause, particularly when the detention has an expected duration of only about five months. *Id.* at 208–11. But many persons detained under § 1225(b)—like XXX—do not have criminal convictions. And as Justice Kennedy’s concurrence made clear, *Demore* does not prevent immigrants from arguing that sufficiently prolonged detention violates due process in their individual cases. *See id.*²

Thus, this Court should hold that sufficiently prolonged detention violates the Due Process Clause, as most courts have. *See, e.g., Gao v. LaRose*, No. 25-CV-2084-RSH-SBC, 2025 WL 2770633, at *3 (S.D. Cal. Sept. 26, 2025); *Abdul Kadir v. Larose*, No. 25CV1045-LL-MMP, 2025 WL 2932654, at *4 (S.D. Cal. Oct. 15, 2025); *Cong v. Noem*, No. 25-CV-3730-GPC-DEB, 2026 WL 76566, at *3 (S.D.

² The Supreme Court’s later decision in *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020), is also inapposite, because it addressed only immigrants’ due process rights in deportation proceedings—i.e., the process due when noncitizens 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.*

Cal. Jan. 9, 2026); *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 772 (S.D. Cal. 2020) (Battaglia, J.); *Mardian v. Mayorkas*, 25-cv-3467-JLS; *Raeva v. Mayorkas*, 25-cv-3175-JO; *Abdul-Samed v. Warden of Golden State Annex Det. Facility*, No. 25-cv-98-SAB-HC, 2025 WL 2099343, at *6 (E.D. Cal. July 25, 2025); *Hernandez v. Wofford*, No. 25-cv-986-KES-CDB (HC), 2025 WL 2420390, at *3 (E.D. Cal. Aug. 21, 2025); *Padilla v. ICE*, 704 F. Supp. 3d 1163, 1171–72 (W.D. Wash. 2023).

II. Courts have reached different conclusions about when immigration detention becomes indefinitely prolonged, but Mr. Ma 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. Ma would automatically qualify, as he has been detained for nearly seven 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,” and
- (5) “the likelihood that the removal proceedings will result in a different final

1 order.”

2 *Id.* Other courts have rejected the fourth and fifth factors, holding that they are “not
3 particularly suited to assisting the Court in determining whether detention has
4 become unreasonable and due process requires a bond hearing.” *Lopez v. Garland*,
5 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022); *accord Sanchez-Rivera*, 2023 WL
6 139801, at *5–6.³ Mr. Ma would prevail under any of these factors tests.

7 First, the length of detention, favors Mr. Ma. This may seem odd, given that
8 Mr. Ma has been in custody for a bit over a month. However, any time in detention
9 is unreasonable in this case. Mr. Ma was out of custody, living in the United States,
10 for nearly seven years before his detention. Exh. A at ¶¶ 2-4. He had received
11 employment authorization and never ran afoul of the conditions of his release into
12 the United States. *Id.* at ¶¶ 3, 5. He was simply swept into custody when questioned
13 by immigration officers. *Id.* at ¶¶ 6-7. This factor therefore favors a meaningful
14 bond hearing.

15 Second, Mr. Ma has reason to anticipate significant future detention. His
16 asylum case is still ongoing. Exh. A at ¶ 4. It has been pending since 2019. *Id.* at
17 ¶¶ 3-4. Because “Petitioner’s future detention can last several more months or even
18 years[,]” this factor favors Mr. Ma. *Abdul Kadir v. Larose*, No. 25CV1045-LL-
19 MMP, 2025 WL 2932654, at *5 (S.D. Cal. Oct. 15, 2025).

20 Third, Mr. Ma has done nothing to delay his case. He has never missed an
21 immigration-related appointment and has complied with requirements imposed on
22 him by his asylum case. Exh. A at ¶ 5.

23 Fourth, Mr. Ma’s conditions of confinement weigh in favor of a bond
24 hearing, because being at the Imperial Regional Detention Facility is
25 ‘indistinguishable from penal confinement.’” *See Abdul Kadir*, 2025 WL 2932654,

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.

at *5 (quoting *Kydyrali*, 499 F. Supp. 3d at 773); Exh. A at ¶ 5.

The fifth factor is at worst, neutral. The merits of Mr. Ma's asylum claim is still being litigated.

Under any test, then, Mr. Ma is entitled to a meaningful bond hearing.

III. Due to circumstances unique to this case, and because immigration judges' neutrality has been compromised, this Court must order outright release, or at least put in place additional safeguards.

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

First and foremost is the travesty of a "bond hearing" that Mr. Ma was recently subjected to. Without notice of any kind, Mr. Ma was taken from his cell to sit in front of a video monitor. Exh. A at ¶¶ 9-12. He had no idea what this video conference would be about, and no attorney for this video conference. *Id.* It was not until the video conference had been terminated that Mr. Ma was provided with anything explaining what had just occurred. *Id.* This bears no resemblance to a process by which a human being's right to be free is subjected to an individualized analysis. This was more farce than process.

Additionally, reports are streaming in from this district and elsewhere that court-ordered "bond hearings [are], effectively, stacked against detainees from the start." Kyle Cheney, *How ICE Defies Judges' Orders to Release Detainees, Step by Step*, Politico (Feb. 10, 2026), <https://www.politico.com/news/2026/02/10/ice-immigration-detention-court-orders-00771727>.

In *Yin v. Moldanado*, a court expressed consternation at an IJ's

1 “conclusory, two-line determination of flight risk” for a person whom DHS had
2 previously agreed “to release . . . on his own recognizance” and who “attend[ed]
3 [all] immigration check-ins” during his release. No. 26-CV-0103 (PKC), 2026
4 WL 295389, at *3 (E.D.N.Y. Feb. 4, 2026).

5 In *Said v. Noem*, a court ordered a bond hearing for a habeas petitioner,
6 only to learn that “[t]he IJ denied Petitioner the opportunity to present testimony,
7 declined to consider the sworn, documentary evidence submitted by Petitioner,
8 and based his decision on an uncorroborated, unauthenticated claim by a
9 government official that Petitioner failed to share his location for the ISAP.” No.
10 3:25-CV-938-MOC, 2026 WL 295651, at *5 (W.D.N.C. Feb. 4, 2026). The
11 original habeas “Order presupposed that this hearing would be conducted in
12 accordance with Petitioner’s due process rights,” the court wrote. “It was not.” *Id.*

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

18 In a recently filed declaration, local attorney Edward Perez attests that he has
19 similar concerns about some immigration judges at Otay Mesa. In his experience,
20 some Otay Mesa IJs are resistant to implementing habeas orders requiring bond
21 hearings. *Elsayed v. Noem*, Case No. 26-cv-368, Doc. 5-2 at ¶ 7 (S.D. Cal. Feb. 9,
22 2026). These IJs have begun denying bond on the ground that court hearings are
23 coming up, and release would disrupt the hearing schedule. *Id.* Of course, that logic
24 could justify any asylum seeker’s detention, and it has nothing to do with danger or
25 flight. *Id.* Furthermore, the Department of Homeland Security (“DHS”) has started
26 appealing bonds to take advantage of the automatic stay. *Id.* Both of these strategies
27 ensure that even those who pose no risk of danger or flight will stay in detention.
28 *Id.*

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

15 Mr. Artieda further attests that to having “communicated with numerous
16 immigration attorneys practicing all over the United States who handle detention
17 cases.” *Id.* at 5. “These conversations have confirmed that the pattern [he] ha[s]
18 observed is widespread and consistent.” *Id.* Based on these conversations,
19 Mr. Artieda believes that these bond denials are part of a “coordinated institutional
20 effort.” *Id.* at 6. That coordinated effort supports outright release or, at a minimum,
21 additional scrutiny from this Court.

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

24 *First*, the Trump administration has eliminated 128 IJs insufficiently aligned
25 with the administration’s priorities, illustrating to the remaining IJs the cost of
26 resistance. *See Woo-Sun Lim, Former judge highlights legal failures in U.S.*
27 *worker detentions, The Dong-A Ilbo* (Sept. 20, 2025),
28

1 <https://www.donga.com/en/article/all/20250920/5859412/1>.

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

21 This has had the predictable effect on those who remain. According to
22 former San Francisco IJ Elizabeth Young, "I've talked to many of [the judges still
23 serving], and they're like, 'When I go into court, I am concerned about applying
24 the law, but I'm also concerned that I should deny more, because if I don't, then
25 I'll get fired.'" Marco Poggio, *Judges See an Immigration Court Gutted from*
26 *Inside*, Law360 (Oct. 31, 2025),
27 [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)
28 [gutted-from-inside](https://www.law360.com/articles/2381003/judges-see-an-immigration-court-gutted-from-inside). Meanwhile, Department of Justice recruitment materials seek

1 “deportation judges” to fill the empty IJ slots, Coral Murphy Marcos, *US Justice*
2 *Department Recruiting Legal Experts to Serve as ‘Deportation’ Judges*,
3 *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)
4 [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
5 down on criminal illegal aliens” and “defend your communities, your culture,
6 your very way of life.” dhsgov, Instagram (Nov. 21, 2025),
7 <https://www.instagram.com/p/DRVt8DmCQKD/?hl=en>.

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

25 *Third*, beyond personnel changes, EOIR’s new acting director, Sirce E.
26 Owen, has issued “a string of sharply worded policy memos” encouraging IJs to
27 side with the government over immigrants and minimize due process. E. Tammy
28 Kim, *Inside Donald Trump’s Attack on Immigration Courts*, *New Yorker*,

<https://www.newyorker.com/inside-donald-trumps-attack-on-immigration-court>.
The policy directives include: a memorandum dated June 27, 2025 warning judges not to demonstrate “bias directed against DHS” or to be “adjudicatory outliers,” at risk of “close examination and potential action,” Exec. Off. for Immigr. Rev., Policy Memorandum 25-33, Neutrality and Impartiality in Immigration Court Proceedings (June 27, 2025), 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 full evidentiary hearings, styled as efficiency guidance but functioning as a directive to reduce due process protections, Exec. Off. for Immigr. Rev., Policy Memorandum 25-28, Pretermission of Legally Insufficient Application for Asylum (Apr. 11, 2025), [https://www.justice.gov/eoir/media/1396411/dl?inline](https://www.justice.gov/eoir/media/1396411/dl?inline;); and memoranda restricting immigration judges’ ability to grant continuances, Exec. Off. for Immigr. Rev., Policy Memorandum 25-27, Cancellation of Director's Memorandum 23-01 and Reinstatement of Policy Memorandum 19-13 (Mar. 21, 2025), <https://www.justice.gov/eoir/media/1394086/dl>, and administrative closure, Exec. Off. for Immigr. Rev., Policy Memorandum 25-29, Cancellation of Director's Memorandum 22-03 (Apr. 18, 2025), <https://www.justice.gov/eoir/media/1397161/dl?inline>.

Fourth, EOIR personnel have at times directed IJs to ignore federal court orders related to bond hearings. On January 13, 2026, in the wake of *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3289861 (C.D. Cal. Nov. 20, 2025); *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025), Chief Immigration Judge Teresa L. Riley sent all IJs the following instructions:
Please provide the following guidance to all immigration judges forthwith: *Maldonado Bautista* is not a nationwide injunction and does not purport to vacate, stay, or enjoin *Yajure Hurtado*. Therefore *Yajure Hurtado* remains binding precedent on agency adjudications. For clarification, declaratory judgments differ from injunctions in that

1 the former clarifies parties' legal rights and relationships without
2 ordering specific action, while the latter is a court order compelling a
3 party to do or stop doing a specific act. A declaratory judgment is not
4 an equitable remedy and does not, by itself, have the effect of
compelling specific action by a party. Thank you for your attention to
this matter.

5 Am. Immigr. Laws. Ass'n, Practice Alert: EOIR Issues Nationwide Guidance
6 on *Maldonado Bautista*, AILA Doc. No. 26011404 (Jan. 16, 2026),
7 [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)
8 [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,
9 calling out “Respondents’ deliberate choice to continue defying the final
10 judgment entered in *Bautista*.” *Palomera Baltazar v. Janecka*, No. 5:26-cv-
11 00019-SSS-BFM at *2-3 (C.D. Cal. Jan. 16, 2026).

12 IJs’ resistance to granting bond therefore accords with the larger
13 movement to eliminate or silence IJs who side with immigrants, while
14 bringing those that remain into line with the administration’s priorities.

15 The “equitable and flexible nature of habeas relief” affords district
16 courts significant discretion over the appropriate remedies for violations of
17 law and the Constitution. *Velasco Lopez v. Decker*, 978 F.3d 842, 855 (2d Cir.
18 2020); *see also Schlup v. Delo*, 513 U.S. 298, 319 (1995) (“[H]abeas corpus
19 is, at its core, an equitable remedy”). This Court should order a remedy that
20 fully addresses the statutory and constitutional violations in this case and is
21 efficient to administer. *Carafas v. LaVallee*, 391 U.S. 234, 238 (1968) (the
22 habeas statute “does not limit the relief that may be granted to discharge of the
23 applicant from physical custody. Its mandate is broad with respect to the relief
24 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 bond hearing before a randomly selected IJ would not properly redress the constitutional violations present in this matter, Petitioner urges the court to provide an alternative corrective measure. That might include outright release. *See, e.g.*, Order, ECF No. 14 at 19, *Miri v. Bondi*, No. 5:26-CV-00698-MEMF (C.D. Cal. March 5, 2026); *Moctezuma v. Henkey*, No. 1:25-CV-00741-BLW, 2026 WL 18809, at *5 (D. Idaho Jan. 2, 2026).

Or it could mean holding a bond hearing in district court. *See, e.g.*, *L.G.M. v. LaRocco*, 788 F.Supp.3d 401, 405-07 (E.D.N.Y. 2025).

A third option would be to craft an order like the Court's procedure in the *Sandesh* case. *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 **ten days** of its order. *Id.*

(a) At that hearing, the government shall bear the burden of establishing by clear and convincing evidence that Petitioner 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 if he or she determines bond is appropriate. *Id.*

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

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

3 Finally, this Court should order all other relief that the Court deems just and
4 proper.

5
6 Respectfully submitted,

7
8 Dated: July 2, 2026

s/ Robert H. Rexrode

9 Robert H. Rexrode

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11 Attorney Petitioner

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