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

11 Danila Komarov,

12 Petitioner,

13 v.

14 Christopher J. LaRose, *Warden,*
15 *Otay Mesa Detention Center*

16 Respondent.
17
18
19

CASE NO.: 26-cv-3530-LL-SBC

Amended¹ Petition
for a
Writ of Habeas Corpus

20 **INTRODUCTION**

21
22 Danila Komarov has been detained pending his immigration
23 proceedings for seven and a half months. This Court should “join[] the
24

25
26 ¹ Federal Rule of Civil Procedure 15(a)(2) permits a party to amend its
27 pleading with the court’s leave. Fed. R. Civ. P. 15(a)(2). This Court
28 ordered Mr. Komarov to file an amended petition on June 17, 2026. Dckt.
2.

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

STATEMENT OF FACTS

Mr. Komarov came to the United States on November 18, 2025. *See* First Declaration of Danila Komarov, attached as Exh. A, at ¶ 1. He immediately turned himself in to immigration officers and requested asylum. *Id.* He has been detained ever since. *Id.*

ICE gave Mr. Komarov a credible fear interview in November or December, 2025. *Id.* at ¶ 2. Mr. Komarov received a positive determination and by February 2026 he had submitted his asylum application. *Id.* at ¶¶ 2–3. Mr. Komarov’s asylum application was not adjudicated until May 6, 2026, at which point the Immigration Judge denied the application and ordered him removed. *Id.* at ¶ 4. Mr. Komarov has filed a notice of appeal with the Board of Immigration Appeals. *Id.* at ¶ 5. If he loses his appeal to the BIA, he plans to appeal to the Ninth Circuit. *Id.*

Meanwhile, Mr. Komarov is kept in jail-like conditions at the Otay

1 Mesa Detention Center. *Id.* at ¶ 6. Since being detained, Mr. Komarov
 2 has suffered from an infection in his digestive system. *Id.* Mr. Komarov
 3 never had this problem prior to his detention. *Id.*

4 LEGAL BACKGROUND

5 **I. The Fifth Amendment’s Due Process Clause prohibits** 6 **prolonged immigration detention without a bond hearing.**

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

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

1 cases are potentially relevant to answering that question.

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

11 [t]he Fifth Amendment's Due Process Clause forbids the
12 Government to ‘depriv[e] any ‘person ... of ... liberty ... without
13 due process of law.’ Freedom from imprisonment—from
14 government custody, detention, or other forms of physical
15 restraint—lies at the heart of the liberty that Clause protects.
16 *See Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). And this Court
17 has said that government detention violates that Clause unless
18 the detention is ordered in a *criminal* proceeding with
19 adequate procedural protections, *see United States v. Salerno*,
20 481 U.S. 739, 746 (1987), or, in certain special and ‘narrow’
21 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).

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

1 Following *Zadvydas*, the Ninth Circuit applied similar reasoning to
2 § 1225(b). *Rodriguez v. Robbins*, 804 F.3d 1060, 1087–89 (9th Cir. 2015).
3 Employing the constitutional avoidance canon, the Ninth Circuit held
4 that § 1225(b) implicitly entitled detained immigrants to bond hearings
5 every six months. *Id.*

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

13 Finally, the Supreme Court held in *Demore v. Kim* that at least
14 some statutes mandating detention during immigration proceedings do
15 not automatically violate the Due Process Clause. 538 U.S. 510, 513
16 (2003). *Demore* addressed 8 U.S.C. § 1226(c), which mandates detention
17 without a bond hearing for persons with certain criminal convictions. *Id.*
18 The Court upheld § 1226(c) in a 5-4 opinion based on (1) the government
19 interests justifying the detention of immigrants with certain, aggravated
20 criminal convictions, and (2) the relative brevity of detention in most
21 cases, with the vast majority taking only about five months. *Id.* at 517–
22 31. Justice Kennedy supplied a deciding vote. His concurrence left open
23 the possibility that individual immigrants could be “entitled to an
24 individualized determination as to his risk of flight and dangerousness if
25 the continued detention became unreasonable or unjustified.” *Id.* at 532–
26 33.

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

8 These Courts have relied on the due process concerns recognized in
9 *Zadvydas*. See, e.g., *Kydyrali*, 499 F. Supp. 3d at 771; *Banda*, 385 F. Supp.
10 3d at 1113–17; *Abdul Kadir v. Larose*, No. 25CV1045-LL-MMP, 2025 WL
11 2932654, at *3 (S.D. Cal. Oct. 15, 2025). As the Ninth Circuit put it in
12 *Jennings*’ wake, those considerations raise “grave doubts that any statute
13 that allows for arbitrary prolonged detention without any process is
14 constitutional or that those who founded our democracy precisely to
15 protect against the government’s arbitrary deprivation of liberty would
16 have thought so.” *Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018).

17 Neither *Jennings* nor *Demore* undermines that conclusion.
18 *Jennings* held only that the statute itself did not impose any limits on
19 detention. It “did not foreclose as-applied constitutional challenges to
20 detention under” mandatory-detention statutes. *Santos v. Warden Pike*
21 *Cnty. Corr. Facility*, 965 F.3d 203, 209 (3d Cir. 2020). And *Demore* held
22 only that conviction-based mandatory detention during immigration
23 proceedings does not necessarily or inherently violate the Due Process
24 Clause, particularly when the detention has an expected duration of only
25 about five months. *Id.* at 208–11. But many persons detained under
26 § 1225(b)—like Mr. Komarov—do not have criminal convictions. And as
27 Justice Kennedy’s concurrence made clear, *Demore* does not prevent
28

1 immigrants from arguing that sufficiently prolonged detention violates
2 due process in their individual cases. *See id.*²

3 Thus, this Court should hold that sufficiently prolonged detention
4 violates the Due Process Clause, as most courts have. *See, e.g., Gao v.*
5 *LaRose*, No. 25-CV-2084-RSH-SBC, 2025 WL 2770633, at *3 (S.D. Cal.
6 Sept. 26, 2025); *Abdul Kadir v. Larose*, No. 25CV1045-LL-MMP, 2025
7 WL 2932654, at *4 (S.D. Cal. Oct. 15, 2025); *Cong v. Noem*, No. 25-CV-
8 3730-GPC-DEB, 2026 WL 76566, at *3 (S.D. Cal. Jan. 9, 2026); *Kydyrali*
9 *v. Wolf*, 499 F. Supp. 3d 768, 772 (S.D. Cal. 2020) (Battaglia, J.); *Mardian*
10 *v. Mayorkas*, No. 25-cv-3467-JLS, 2026 WL 92064, at *2 (S.D. Cal. Jan.
11 13, 2026); *Raeva v. Mayorkas*, No. 25-cv-3175-JO (S.D. Cal. 2025) (Ohta,
12 J.); *Abdul-Samed v. Warden of Golden State Annex Det. Facility*, No. 25-
13 cv-98-SAB-HC, 2025 WL 2099343, at *6 (E.D. Cal. July 25, 2025);
14 *Hernandez v. Wofford*, No. 25-cv-986-KES-CDB (HC), 2025 WL 2420390,
15 at *3 (E.D. Cal. Aug. 21, 2025); *Padilla v. ICE*, 704 F. Supp. 3d 1163,
16 1171–72 (W.D. Wash. 2023).

17 **II. Courts have reached different conclusions about when**
18 **immigration detention becomes indefinitely prolonged, but**
19 **Mr. Komarov would prevail under any standard.**

20 Though courts agree that due process mandates a bond hearing
21 when detention grows unreasonably prolonged, they disagree about how
22

23 ² The Supreme Court's later decision in *Dep't of Homeland Sec. v.*
24 *Thuraissigiam*, 591 U.S. 103 (2020), is also inapposite, because it
25 addressed only immigrants' due process rights in deportation
26 proceedings—i.e., the process due when noncitizens seek to stay in the
27 country instead of being removed. *See Lopez-Arevelo v. Ripa*, No. EP-25-
28 CV-337-KC, 2025 WL 2691828, at *7–9 (W.D. Tex. Sept. 22, 2025). It does
not purport to hold that immigrants have no constitutional right to due
process before the government holds them indefinitely in immigration
detention. *Id.*

1 to assess whether a particular migrant's detention has reached that
2 point. *Sanchez-Rivera v. Matuszewski*, No. 22-CV-1357-MMA (JLB),
3 2023 WL 139801, at *5–6 (S.D. Cal. Jan. 9, 2023) (Anello, J.) (surveying
4 the various approaches). Some courts have “conclude[d] . . . that detention
5 becomes prolonged after six months and entitles [a petitioner] to a bond
6 hearing.” *Rodriguez v. Nielsen*, No. 18-CV-04187-TSH, 2019 WL
7 7491555, at *6 (N.D. Cal. Jan. 7, 2019). In that case, Mr. Komarov would
8 automatically qualify, as he will have been detained for nearly eight
9 months by the conclusion of the briefing in this case.

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

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

17 *Id.* Some courts also consider:

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

21 *Id.* Other courts have rejected the fourth and fifth factors, holding that
22 they are “not particularly suited to assisting the Court in determining
23 whether detention has become unreasonable and due process requires a
24 bond hearing.” *Lopez v. Garland*, 631 F. Supp. 3d 870, 879 (E.D. Cal.

2022); accord *Sanchez-Rivera*, 2023 WL 139801, at *5–6.³ Mr. Komarov would prevail under any of these factors tests.

First, the “most important factor,” the length of detention, favors Mr. Komarov. *Banda*, 385 F. Supp. 3d at 1118. In assessing this factor, “[i]t is important to bear in mind the context: The detention that is being examined here is the detention of a human being who has never been found to pose a danger to the community or to be likely to flee if released.” *Jamal A. v. Whitaker*, 358 F. Supp. 3d 853, 859 (D. Minn. 2019). With that context, “[c]ourts have found detention over seven months without a bond hearing weighs toward a finding that it is unreasonable.” *Amado v. United States Dep’t of Just.*, No. 25CV2687-LL(DDL), 2025 WL 3079052, at *5 (S.D. Cal. Nov. 4, 2025). Mr. Komarov has already been detained that long. Exh. A at ¶ 1. This factor therefore favors a bond hearing.

Second, Mr. Komarov has reason to anticipate significant future detention. His asylum case is still ongoing. *Id.* at ¶¶ 4–5. He has appealed the Immigration Judge’s adverse ruling to the BIA, and will continue to appeal to the Ninth Circuit if necessary. *Id.* at ¶ 5. All told, “[t]his process may take up to two years or longer.” *Banda*, 385 F. Supp. 3d at 1119. Because “Petitioner’s future detention can last several more months or even years[,]” this factor favors Mr. Komarov. *Abdul Kadir v. Larose*, No. 25CV1045-LL-MMP, 2025 WL 2932654, at *5 (S.D. Cal. Oct. 15, 2025).

³ 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 removed as a result of criminal convictions.

1 Third, the delay factor favors Mr. Komarov, or is at worst a neutral
2 factor. Mr. Komarov was detained on November 18, 2025, and he filed his
3 asylum application in February 2026. Exh. A at ¶¶ 1–3. Nonetheless, the
4 Immigration Judge did not deny his application until May 6, 2026. *Id.* at
5 ¶¶ 3–4. Because there is no delay attributable to Mr. Komarov, this factor
6 favors release.

7 Fourth, Mr. Komarov’s conditions of confinement weigh in favor of
8 a bond hearing, because being at the Otay Mesa Detention Center is
9 “indistinguishable from penal confinement.” *Abdul Kadir*, 2025 WL
10 2932654, at *5 (quoting *Kydyrali*, 499 F. Supp. 3d at 773); Exh. A at ¶ 6.
11 The conditions are such that Mr. Komarov is suffering from an infection
12 in his digestive system. *Id.*

13 The fifth factor does not apply, because Mr. Komarov’s asylum
14 claim is still pending on appeal and thus no “different” outcome can occur.

15 Under any test, then, Mr. Komarov is entitled to a bond hearing.

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

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

27 Most importantly, reports are streaming in from this district and
28

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

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

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

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

27 In a recently filed declaration, local attorney Edward Perez attests
28

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

12 He is far from the only one to express concerns. In a declaration
13 filed in *Briceno Solano v. Mason*, 818 F. Supp. 3d 802 (S.D.W. Va. 2026),
14 Former ICE Counsel Jorge Artieda attests that "detainees 'who were
15 granted federal habeas relief and ordered § 1226(a) bond hearings are
16 now being systematically denied bond based on rationales that would not
17 have been deemed sufficient weeks earlier,' in what 'appears to be a
18 systematic effort to nullify the constitutional protections that federal
19 courts have recognized and enforced through habeas corpus.'" *Id.* at 835.
20 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'
23 independence under this administration. Several examples illustrate the
24 point.

25 *First*, the Trump administration has eliminated 128 IJs
26 insufficiently aligned with the administration's priorities, illustrating to
27 the remaining IJs the cost of resistance. *See Woo-Sun Lim, Former judge*
28

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

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

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

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

1 <https://www.justice.gov/eoir/volume-28>. (First decision, *Matter of*
2 *DIKHTYAR*, 28 I&N Dec. 214 (BIA 2021), issued 01/22/2021). Of those,
3 46 decisions (60%) favored the administration. The transformation from
4 60% to 97% pro-government outcomes—achieved through wholesale
5 termination of one administration's appointees —speaks for itself.

6 *Third*, beyond personnel changes, EOIR's new acting director,
7 Sirce E. Owen, has issued “a string of sharply worded policy memos”
8 encouraging IJs to side with the government over immigrants and
9 minimize due process. E. Tammy Kim, *Inside Donald Trump’s Attack*
10 *on Immigration Courts*, New Yorker,
11 [https://www.newyorker.com/inside-donald-trumps-attack-on-](https://www.newyorker.com/inside-donald-trumps-attack-on-immigration-court)
12 [immigration-court](https://www.newyorker.com/inside-donald-trumps-attack-on-immigration-court). The policy directives include: a memorandum dated
13 June 27, 2025 warning judges not to demonstrate “bias directed against
14 DHS” or to be “adjudicatory outliers,” at risk of “close examination and
15 potential action,” Exec. Off. for Immigr. Rev., Policy Memorandum 25-
16 33, *Neutrality and Impartiality in Immigration Court Proceedings*
17 (June 27, 2025), [https://iptp-](https://iptp-production.s3.amazonaws.com/media/documents/2025.06.27_EOIR_PM_25-33.pdf)
18 [production.s3.amazonaws.com/media/documents/2025.06.27 EOIR -](https://iptp-production.s3.amazonaws.com/media/documents/2025.06.27_EOIR_PM_25-33.pdf)
19 [PM 25-33.pdf](https://iptp-production.s3.amazonaws.com/media/documents/2025.06.27_EOIR_PM_25-33.pdf); a memorandum encouraging judges to deny asylum
20 applications without full evidentiary hearings, styled as efficiency
21 guidance but functioning as a directive to reduce due process
22 protections, Exec. Off. for Immigr. Rev., Policy Memorandum 25-28,
23 *Pretermission of Legally Insufficient Application for Asylum* (Apr. 11,
24 2025), <https://www.justice.gov/eoir/media/1396411/dl?inline>; and
25 memoranda restricting immigration judges’ ability to grant
26 continuances, Exec. Off. for Immigr. Rev., Policy Memorandum 25-27,
27 *Cancellation of Director's Memorandum 23-01 and Reinstatement of*
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1 Policy Memorandum 19-13 (Mar. 21, 2025),
2 <https://www.justice.gov/eoir/media/1394086/dl>, and administrative
3 closure, Exec. Off. for Immigr. Rev., Policy Memorandum 25-29,
4 Cancellation of Director's Memorandum 22-03 (Apr. 18, 2025),
5 <https://www.justice.gov/eoir/media/1397161/dl?inline>.

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

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

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

1 deliberate choice to continue defying the final judgment entered in
2 *Bautista.*” *Palomera Baltazar v. Janeka*, No. 5:26-cv-00019-SSS-
3 BFM at *2-3 (C.D. Cal. Jan. 16, 2026).

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

8 The “equitable and flexible nature of habeas relief” affords
9 district courts significant discretion over the appropriate remedies
10 for violations of law and the Constitution. *Velasco Lopez v. Decker*,
11 978 F.3d 842, 855 (2d Cir. 2020); *see also Schlup v. Delo*, 513 U.S.
12 298, 319 (1995) (“[H]abeas corpus is, at its core, an equitable
13 remedy”). This Court should order a remedy that fully addresses the
14 statutory and constitutional violations in this case and is efficient to
15 administer. *Carafas v. LaVallee*, 391 U.S. 234, 238 (1968) (the
16 habeas statute “does not limit the relief that may be granted to
17 discharge of the applicant from physical custody. Its mandate is
18 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 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.*
 - (i) 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.*
 - (ii) The IJ shall consider alternative conditions of release and Petitioner's ability to pay bond if he or she determines bond is appropriate. *Id.*
 - (iii) Respondents shall make a complete record of the bond hearing available to Petitioner and his counsel. *Id.*

- 1 b. Respondents are ordered to file a Notice of Compliance within
2 **five days** of providing Petitioner with the bond hearing,
3 including apprising the Court of the results of the hearing. *Id.*
4 c. Prohibit ICE from invoking the automatic stay provisions under
5 8 C.F.R. § 1003.19(i)(2) to defeat the IJ's bond determination.

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

8 Respectfully submitted,

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10
11 Dated: July 2, 2026

s/ Paul A. Barr

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