ANTHONY E. COLOMBO, JR.
California Bar No. 218411
The Senator Building
105 West F Street, Ste. 312
San Diego, California 92101
Telephone: (619) 236-1704
Email: anthonycolombolegal@gmail.com

Attorney for Mr. Omar Andres Briceno Borges

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

OMAR ANDRES BRICENO BORGES, Petitioner, v. CHRISTOPHER J. LAROSE, Warden at Otay Mesa Detention Center, Respondents.	CIVIL CASE NO.: 26cv03952-DMS-MMP **Amended[1] Petition for a Writ of Habeas Corpus**

[1] Federal Rule of Civil Procedure 15(a)(1)(A) permits a party to "amend its pleading once as a matter of course no later than 21 days after serving it." Fed. R. Civ. Pro. 15(a)(1)(A) (punctuation altered). It is less than 21 days since service. Mr. Briceno Borges therefore files this amended petition as of right and incorporates all the previous advanced arguments and exhibits into this amended pleading.

INTRODUCTION

This case presents a unique due process violation. The Immigration Court itself scheduled an individualized custody hearing to determine whether Petitioner's continued detention was justified. When the parties appeared, however, the Immigration Judge declined to conduct the hearing, concluding that the court lacked jurisdiction. As a result, Petitioner has remained incarcerated for months without any neutral decision-maker ever determining whether he presents either a danger to the community or a risk of flight.

The legal question to be addressed here is a simple one - Whether the Fifth Amendment permits the Government to continue detaining a lawful permanent resident under 8 U.S.C. § 1225(b) after the Immigration Court scheduled—but ultimately refused to conduct—an individualized custody hearing, thereby leaving Petitioner detained without any neutral determination that he presents either a danger to the community or a risk of flight? The answer is also simple – NO.

Mr. Briceno Borges has been detained pending his immigration proceedings since March 13, 2026. This Court should "join[] the 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

Petitioner, Omar Andres Briceno Borges, is a native and citizen of Venezuela. He lawfully entered the United States on January 16, 2012, pursuant to a B-1/B-2 visa. On February 21, 2013, the United States granted him asylum after determining that he had established a well-founded fear of persecution in Venezuela. As a result of that grant of asylum, Petitioner adjusted his status to that of a Lawful Permanent Resident in 2015, and he has maintained that status ever since. Since obtaining lawful permanent resident status, Petitioner has established deep and substantial ties to the United States. He resides in Orlando, Florida, with his wife and three United States citizen children. Petitioner and his wife own their family home, have established significant financial and community ties, and have built their lives in this country. Petitioner has maintained steady employment, serves in executive leadership positions with family-owned businesses, and has consistently met his financial and tax obligations.

Petitioner is a devoted husband and father. One of his children has been diagnosed with Autism Spectrum Disorder, and requires substantial parental involvement, consistency, and support. The educational and psychological records

submitted with this Petition demonstrate that his children benefit significantly from Petitioner's daily presence and active participation in their care, education, and treatment. His prolonged detention has placed extraordinary emotional, developmental, and financial burdens upon his family.

On March 13, 2026, Petitioner was apprehended by the Department of Homeland Security near the United States-Mexico border. He has remained continuously detained since that date at the Otay Mesa Detention Center while removal proceedings remain pending. No final order of removal has been entered.

During those proceedings, the Immigration Judge acknowledged Petitioner's status as a Lawful Permanent Resident and initially scheduled an individualized custody hearing for July 2, 2026. Petitioner appeared expecting the Court to determine whether his continued detention was justified based upon an individualized assessment of danger to the community or risk of flight. Instead, the Immigration Judge concluded that the Immigration Court lacked jurisdiction over custody because the Department of Homeland Security was treating Petitioner as an applicant for admission. As a result, the scheduled custody hearing was never conducted. Consequently, no Immigration Judge—or any other neutral decision-maker—has ever made an individualized determination that Petitioner's continued detention is necessary because he presents either a danger to the community or a risk of flight.

Petitioner does not challenge the merits of his pending removal proceedings in this habeas action. He does not ask this Court to determine whether he is removable or entitled to immigration relief. Rather, he challenges only the constitutionality of his continued civil detention without the individualized custody determination required by the Due Process Clause of the Fifth Amendment.

The record demonstrates that Petitioner possesses substantial ties to the United States that bear directly upon any custody determination. He has lived lawfully in this country for more than a decade, has maintained lawful permanent resident status since 2015, owns a home, supports his wife and three children, operates businesses, maintains employment, and has extensive family and community support. His wife has declared under penalty of perjury that Petitioner will reside with his family if released and will fully comply with all future immigration proceedings and any conditions imposed by the Court. Numerous declarations submitted in support of this Petition attest to Petitioner's honesty, reliability, work ethic, and dedication to his family and community.

Nevertheless, despite Petitioner's substantial ties to the United States and despite the absence of any individualized finding that he poses either a danger to the community or a risk of flight, he continues to be detained solely because the custody hearing that was scheduled to evaluate those issues never occurred. Thus, Petitioner's continued detention rests not upon an individualized determination of necessity, but upon the absence of any custody determination at all. The Due

Process Clause does not tolerate civil detention based solely upon executive designation. At some point, continued physical restraint requires a neutral decisionmaker to determine whether detention remains necessary. The continued detention, without the process guaranteed by the Fifth Amendment, is the basis for this Petition.

LEGAL BACKGROUND

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

This habeas petition presents a question about whether and when the Fifth Amendment's Due Process Clause countermands the government's statutory authority to detain immigrants without bond hearings. Mr. Briceno Borges is detained under one such statute, 8 U.S.C. § 1225(b). "Section 1225 applies to 'applicants for admission'—noncitizens who 'arrive[] in the United States,' or are 'present' in the United States but have 'not been admitted.'" *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1111 (W.D. Wash. 2019). It "applies to, among others, noncitizens initially determined to be inadmissible because of . . . lack of valid documentation." *Id.* That includes persons like Mr. Briceno Borges. *See id.* at 1109–11 (describing a similar procedural history and finding that petitioner was detained under § 1225(b)). Such immigrants are detained under § 1225(b) not only

during their initial proceedings, but also when they appeal to the BIA. *See id.* at 1111 (reaching same conclusion for immigrant with pending BIA appeal).

This statutory scheme has left courts to grapple with the limits (if any) of that detention power: Does this statute permit the government to detain immigrants indefinitely, without ever having to prove at a bond hearing that they pose a risk of danger or flight? Three Supreme Court cases are potentially relevant to answering that question.

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

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

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

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

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

Finally, the Supreme Court held in *Demore v. Kim* that at least some statutes mandating detention during immigration proceedings do not automatically violate the Due Process Clause. 538 U.S. 510, 513 (2003). *Demore* addressed 8 U.S.C. § 1226(c), which mandates detention without a bond hearing for persons with certain criminal convictions. *Id.* The Court upheld § 1226(c) in a 5-4 opinion based

on (1) the government interests justifying the detention of immigrants with certain, aggravated criminal convictions, and (2) the relative brevity of detention in most cases, with the vast majority taking only about five months. *Id.* at 517–31. Justice Kennedy supplied a deciding vote. His concurrence left open the possibility that individual immigrants could be "entitled to an individualized determination as to his risk of flight and dangerousness if the continued detention became unreasonable or unjustified." *Id.* at 532–33.

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

These Courts have relied on the due process concerns recognized in *Zadvydas*. *See, e.g.*, *Kydyrali*, 499 F. Supp. 3d at 771; *Banda*, 385 F. Supp. 3d at 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). Simply put, *Jennings* addressed a statutory question, this case presents a constitutional one. 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 Mr. Briceno Borges—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]

[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.*

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. 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). As these Courts no doubt understood, the absence of any individualized hearing is not merely procedural. It has concrete consequences. Every additional day of detention deprives Petitioner's family—including his children—of a father without any judicial determination that continued confinement is necessary.

II. Courts have reached different conclusions about when immigration detention becomes indefinitely prolonged, but Mr. Briceno Borges 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. Briceno Broges would automatically qualify in September.

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 order."

Id. Other courts have rejected the fourth and fifth factors, holding that they are "not particularly suited to assisting the Court in determining whether detention has become unreasonable and due process requires a bond hearing." *Lopez v. Garland*, 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022); *accord Sanchez-Rivera*, 2023 WL

139801, at *5–6.[3] Mr. Briceno Borges would prevail under any of these factors or tests.

First, the "most important factor," the length of detention, favors Mr. Briceno Borges. *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. Briceno Borges has been detained for 5 months, and in September will have hit the 6 months mark. This factor therefore favors a bond hearing be held *now*.

Second, Mr. Briceno Borges has reason to anticipate significant future detention. His case is still ongoing. And if he loses, he will appeal to the BIA, after which he would have the opportunity to appeal to the Ninth Circuit. 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

[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 because of criminal convictions.

years[,]" this factor favors Mr. Briceno Borges. *Abdul Kadir v. Larose*, No. 25CV1045-LL-MMP, 2025 WL 2932654, at *5 (S.D. Cal. Oct. 15, 2025).

Third, the delay factor favors Mr. Briceno Borges. It took the immigration court almost 5 months to make the determination it would not set a bond for lack of jurisdiction. Mr. Briceno Borges has worked diligently to get an attorney and pursue his immigration claim. Because the only delays are attributable to the government, this factor favors release.

Fourth, Mr. Briceno Borges' conditions of confinement weigh in favor of a bond hearing, because being at the Otay Mesa Detention Center is 'indistinguishable from penal confinement.'" *Abdul Kadir*, 2025 WL 2932654, at *5 (quoting *Kydyrali*, 499 F. Supp. 3d at 773).

The fifth factor does not apply, because Mr. Briceno Borges' immigration case is still pending and thus no "different" outcome can occur.

Under any test, then, Mr. Briceno Borges is entitled to a bond hearing.

III. 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. Briceno Borges 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 continued detention even if Mr. Briceno Borges poses no danger or flight risk. Several data points support that conclusion.

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

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

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

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

Attorney Perez is far from the only one to express concerns. In a declaration filed in *Briceno Solano v. Mason*, No. 26-CV-00045, 2026 WL 311624 (S.D.W. Va. Feb. 4, 2026), Former ICE Counsel Jorge Artieda attests to seeing "a seismic shift in bond hearing outcomes for individuals who had been granted federal habeas relief and ordered § 1226(a) bond hearings . . . in the Eastern District of Virginia."

Exh. B at 2. The pattern of granting bond in appropriate cases "abruptly and uniformly ceased" in early January, in a way that "suggests coordinated institutional direction." *Id.* IJs there now rely on a "remarkably narrow and predictable set of rationales to deny bond—rationales that appear to bear little relationship to genuine, individualized risk assessment and that would not have been deemed sufficient to justify denial just weeks earlier." *Id.* at 3. In Mr. Artieda's professional opinion, the IJs' rationales "do not appear to be grounded in legitimate risk assessment" but are "pretexts designed to ensure denial of bond regardless of the individual facts of each case." *Id.* at 4.

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

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

First, the Trump administration has eliminated 128 IJs insufficiently aligned with the administration's priorities, illustrating to the remaining IJs the cost of resistance. *See* Woo-Sun Lim, *Former judge highlights legal failures in U.S.*

worker detentions, The Dong-A Ilbo (Sept. 20, 2025), https://www.donga.com/en/article/all/20250920/5859412/1.

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

This has had the predictable effect on those who remain. According to former San Francisco IJ Elizabeth Young, "I've talked to many of [the judges still serving], and they're like, 'When I go into court, I am concerned about applying the law, but I'm also concerned that I should deny more, because if I don't, then I'll get fired.'" Marco Poggio, *Judges See an Immigration Court Gutted from Inside*, Law360 (Oct. 31, 2025), https://www.law360.com/articles/2381003/judges-see-an-immigration-court-gutted-from-inside. Meanwhile, Department of Justice recruitment materials seek "deportation judges" to fill the empty IJ slots, Coral Murphy Marcos, *US Justice Department Recruiting Legal Experts to Serve as 'Deportation' Judges,* Guardian, https://www.theguardian.com/us-news/2025/nov/21/us-justice-department-ad-deportation-judges, inviting candidates to "bring the hammer down on criminal illegal aliens" and "defend your communities, your culture, your very way of life." dhsgov, Instagram (Nov. 21, 2025), https://www.instagram.com/p/DRVT8DmCQKD/?hl=en.

Second, a parallel purge occurred at the BIA, which was reduced from 28 members to 15 members. All Biden appointees on the BIA were fired. Am. Imm. Council, *BIA Decision Strips Immigration Judges of Bond Authority, All but Guaranteeing Mandatory Detention for Undocumented Immigrants* (Sept. 12, 2025), https://www.americanimmigrationcouncil.org/blog/bia-ruling-immigration-judges-bond-mandatory-detention-undoc umented-immigrants/. The statistical

impact is stark. As of January 22, 2026, the reconstituted BIA has issued 71 published decisions. Exec. Off. for Immigr. Rev., *Volume 29*, U.S. Dep't of Just. (Jan. 21, 2025), https://www.justice.gov/eoir/volume-29. Of those, 69 decisions (97%) favored the administration. By contrast, during the entire four-year span of the prior administration, the BIA issued 76 published decisions. Exec. Off. for Immigr. Rev., *Volume 28*, U.S. Dep't of Just. (June 13, 2025), https://www.justice.gov/eoir/volume-28. (First decision, *Matter of DIKHTYAR*, 28 I&N Dec. 214 (BIA 2021), issued 01/22/2021). Of those, 46 decisions (60%) favored the administration. The transformation from 60% to 97% pro-government outcomes—achieved through wholesale termination of one administration's appointees —speaks for itself.

Third, beyond personnel changes, EOIR's new acting director, Sirce E. Owen, has issued "a string of sharply worded policy memos" encouraging IJs to side with the government over immigrants and minimize due process. E. Tammy 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; 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 the former clarifies parties' legal rights and relationships without ordering specific action, while the latter is a court order compelling a party to do or stop doing a specific act. A declaratory judgment is not 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.

Am. Immigr. Laws. Ass'n, Practice Alert: EOIR Issues Nationwide Guidance on *Maldonado Bautista*, AILA Doc. No. 26011404 (Jan. 16, 2026), 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' deliberate choice to continue defying the final judgment entered in *Bautista*." *Palomera Baltazar v. Janecka,* No. 5:26-cv-00019-SSS-BFM at *2-3 (C.D. Cal. Jan. 16, 2026).

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

The "equitable and flexible nature of habeas relief" affords district courts significant discretion over the appropriate remedies for violations of law and the Constitution. *Velasco Lopez v. Decker*, 978 F.3d 842, 855 (2d Cir. 2020); *see also Schlup v. Delo*, 513 U.S. 298, 319 (1995) ("[H]abeas corpus is, at its core, an equitable remedy"). This Court should order a remedy that fully addresses the statutory and constitutional violations in this case and is efficient

to administer. *Carafas v. LaVallee*, 391 U.S. 234, 238 (1968) (the habeas statute "does not limit the relief that may be granted to discharge of the applicant from physical custody. Its mandate is broad with respect to the relief that may be granted").

Regardless of whatever concerns exist nationally, this Court need not resolve them broadly. This case presents a narrower question: whether this Petitioner may continue to be detained after the very custody hearing intended to test the necessity of detention was never conducted.

CLAIM AND PRAYER FOR RELIEF

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

As set forth above, Petitioner has remained in immigration detention for months without ever receiving the individualized custody determination that the Immigration Court initially scheduled but ultimately declined to conduct. During that time, he has been separated from his lawful permanent resident wife, his three United States citizen children—including a child with autism spectrum disorder—and the home, businesses, and community he has established during more than a decade of lawful residence in the United States. Notwithstanding Petitioner's substantial ties to this country and the absence of any individualized finding that he presents either a danger to the community or a risk of flight, his continued detention persists solely because no neutral decisionmaker has ever evaluated whether such detention is justified. It is that continuing deprivation of liberty, without the individualized process guaranteed by the Due Process Clause of the Fifth Amendment, that gives rise to this Petition. The Constitution does not permit the Executive Branch to continue depriving a person of physical liberty indefinitely without meaningful process before a neutral decision-maker. A bond hearing is requested, and it is requested one be ordered held forthwith.

Here, however, because ordering a bond hearing before a randomly selected IJ. which may not be "neutral," and thus cannot 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.*
c. Prohibit ICE from invoking the automatic stay provisions under 8 C.F.R. § 1003.19(i)(2) to defeat the IJ's bond determination.

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

Respectfully submitted,

Dated: July 22, 2026

s/ Anthony E. Colombo, Jr.
Attorney for Omar Andres Briceno Borges