

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

Jose Rogelio Cumbe Lema,

Petitioner,

v.

Mary De Anda-Ybarra, *et al.*,

Respondents.

Case No: 3:26-CV-00249-KC

**PETITIONER'S REPLY TO
RESPONDENT'S RESPONSE TO THE
PETITION FOR WRIT OF
HABEAS CORPUS**

INTRODUCTION

Petitioner Jose Rogelio Cumbe Lema hereby submits this Reply Brief in response to Respondent's Response to the Petition for Writ of Habeas Corpus [Docket No. 1].

Petitioner replies to the issues and arguments made by the Respondent's. The absence of any rebuttal is not, however, a waiver or abandonment of any claim or argument made previously. For arguments not addressed herein, Petitioner stands on the arguments and incorporates by reference the legal analysis and authorities contained in his Petition for Writ of Habeas Corpus, the motion for issuance order to show cause and the memorandum of law in support of the motion for temporary restraining order and/or preliminary injunction relief, and the Reply filed contemporaneously herewith shall govern and control the issues raised in connection with this matter. Petitioner argues that the Government is misinterpreting the law, is not applying the correct law in this case. The cases on which Respondents rely do not control the outcome here.

Additionally, the court should deny Respondents' request for additional time to present an exhaustive opposition brief as this court has already given enough time to present an answer or other responsive pleading. This case concerns a petition for a writ of habeas corpus, where the petitioner's physical liberty is at stake. Courts have repeatedly recognized that habeas proceedings require prompt adjudication due to the irreparable harm caused by continued unlawful detention. Granting Respondents additional time would prolong Petitioner's confinement and undermine the core purpose of habeas relief. The prejudice to Petitioner—who remains detained during the pendency of this matter—far outweighs any inconvenience claimed by Respondents.

Significantly, Respondents have been aware of the factual and legal issues underlying this case since the filing of the petition and, in many instances, well before. The habeas claims arise from Respondents' own actions and records, which are within their exclusive control. Allowing

further delay rewards lack of diligence and encourages piecemeal litigation, contrary to principles of judicial efficiency and fairness.

In its Response, “the Government acknowledges that this Court has previously rejected its arguments concerning the applicability of § 1225”. Mr. Jose Rogelio Cumbe Lema is properly subject to 8 U.S.C. 1226(a), not 8 U.S.C. 1225. *See, e.g.,* Kyle Cheney, *More Than 100 Judges Have Ruled Against the Trump Admin’s Mandatory Detention Policy*, POLITICO (Oct. 31, 2025), <https://perma.cc/H6MZ-VC2Z>; *Hernandez Hervert v. Bondi*, No. 1:25-cv-01763-RP, 2025 (W.D. Tex. Nov. 14, 2025); *Lopez Baltazar v. Vasquez*, No. 5:25-cv-00160 (W.D. Tex. Oct. 14, 2025.); *Rodriguez Cortina v. De Anda-Ybarra*, No. 25-cv-523, 2025 WL 3218682 (W.D. Tex. Nov. 18, 2025); *Dominguez Vega v. Thompson*, 5:25-cv-01439, (W.D. Tex. Nov. 19, 2025); *Galdamez Martinez v. Noem*, 25-cv-1373, 2025 WL 3471575 (W.D. Tex. Nov. 26, 2025); *Rodriguez Rivera v. Bondi*, No. 1:25-CV-1979-RP, 2025 WL_ (W.D. Tex. Dec. 19, 2025); *Alvarez Sanchez v. Vergara*, No. 1:25-cv-02043, 2025 WL_ (W.D. Tex. Dec. 29, 2025); *Perez v. Bondi / Aldana Perez v. Vergara*, No. 5:25-cv-01534, 2025 WL _ (W.D. Tex. Dec. 5, 2025). The court’s reasoning applies with equal force here.

Indeed, there is no reason to depart from the Court’s sound statutory analysis here, where Petitioner has resided continuously in the United States for approximately thirty-seven (37) years. Nevertheless, the Government continues to make the same unfounded arguments to justify Petitioner’s continued unlawful detention. **Petitioner primarily submits this reply to address in greater detail why ordering “a bond hearing under 8 U.S.C. § 1226(a), with all attendant burdens of proof” is not an adequate remedy.** As detailed in *Section IV*, the systematic transformation of the immigration court from a neutral adjudicatory body into an instrument of the administration’s enforcement agenda has rendered it structurally incapable of providing Petitioner

with the impartial tribunal and individualized assessment that 1226(a) and due process requires. Accordingly, the Court should exercise its equitable authority to order Petitioner's immediate release. In the alternative, the Court should conduct its own bail hearing. At a minimum, if the Court declines to order release or conduct its own hearing, it should order a bond hearing before an immigration judge with explicit procedural safeguards and retain jurisdiction to review the determination to ensure compliance with due process. Such proposed remedies are addressed in more detail in *Section VI*.

DISCUSSION

I. EXHAUSTION OF ADMINISTRATIVE REMEDIES PRIOR TO THE FILING OF THE HABES PETITION IS NOT REQUIRED

Petitioner contends that exhaustion of administrative remedies is not a prerequisite to seeking habeas relief. Moreover, even assuming arguendo that exhaustion was required, such efforts would be futile and incapable of providing meaningful relief.

First, exhaustion does not apply whereas here, a petition challenges only the agency action collateral to removal proceedings. 8 U.S.C. § 1252(d)(1) applies only to challenges to a “final order of removal.” Therefore, when a noncitizen files a habeas petition challenging detention, bond, custody, or other collateral issues, the exhaustion requirement does not apply. The Fifth Circuit held that unlike 28 U.S.C. § 2254, Section 2241’s text does not require exhaustion. *See Montano v. Texas*, 867 F.3d 540, 542 (5th Cir. 2017). Accordingly, the Court retains jurisdiction without any statutory exhaustion barrier.

Second, exhaustion is not required where a petitioner raises a claim that agency would clearly reject. Here, the IJ’s exercise of authority is clearly at odds - to deny Petitioner release on bond on the ground that the IJ has no jurisdiction or statutory authority pursuant to *Matter of Yajure*

Hurtado, nor statutory authority to impose conditions other than monetary conditions directly contravenes the specific language of INA § 236(a) codified in 8 U.S.C. 1226(a), which confers the IJ such authority. *See Gallegos-Hernandez v. United States*, 688 F.3d 190, 194 (5th Cir. 2012) (exhaustion is not required where a petitioner raises a claim that agency would clearly reject); *Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 496 (S.D.N.Y. 2025) (exhaustion is not statutorily required and was excused given that available remedies provided no genuine opportunity for adequate relief and the petitioner raised a substantial constitutional question); *Buenrostro-Mendez*, 2025 WL 2886346, at *3 (exhaustion was not statutorily required under the circumstances and the issue of statutory interpretation belongs in the province of the courts).

Third, the court should find that any administrative exhaustion would be futile. Exhaustion is not required “where the attempt to exhaust such remedies would itself be a patently futile course of action.” *Hinojosa v. Horn*, 896 F.3d 305, 314 (5th Cir. 2018) (quoting *Fuller v. Rich*, 11 F.3d 61, 62 (5th Cir. 1994) (per curiam)). BIA decisions are binding on immigration judges, and *Matter of Yajure Hurtado* thus precludes an IJ from finding jurisdiction over noncitizens, like Petitioner, to hold a custody redetermination hearing. Therefore, judicial intervention enjoining Respondents from preventing Petitioner from being released or having a bond hearing pursuant to the holding in *Yajure Hurtado* is necessary to enable Petitioner to avail himself of his administrative remedies. Even if the IJ holds a custody redetermination hearing and determines that lacks jurisdiction pursuant to *Matter of Yajure Hurtado* a remedy of an appeal taken to the BIA from the determination would also be futile pursuant to *Matter of Yajure Hurtado*.

Finally, exhaustion of administrative remedies would be futile in this case because the BIA has no jurisdiction to adjudicate constitutional issues raised here. *See Mathews v. Eldridge*, 424 U.S. 319, 328-30 (1976) (A constitutional challenge to administrative action does not require

exhaustion.); *Ramirez Osorio v. INS*, 745 F.2d 937, 939 (5th Cir. 1984) (holding that “exhaustion is not required when administrative remedies are inadequate”).

II. PETITIONER IS NOT SUBJECT TO ANY DETENTION AT ALL – IF ANY NOT MANDATORY DETENTION

Petitioner argues that the Habeas Petition should be granted under the plain language of the provision 8 U.S.C. § 1226(a).

Petitioner is not subject to mandatory detention under 8 U.S.C. § 1225(b)(2) in fact is not subject to any detention at all - if any it would be under 8 U.S.C. § 1226(a). Respondent’s novel interpretation of the civil immigration detention statutes, as laid out on July 8, 2025, ICE Memorandum (ICE Memo), and the BIA precedential decision, *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), contravenes the plain language and statutory framework of the Immigration and Nationality Act (INA). As the Supreme Court explained in *Jennings v. Rodriguez*, § 1226(a)—and its authority to seek release on bond—governs the detention of those, like Plaintiffs, who are “already in the country” and are detained “pending the outcome of removal proceedings.” 583 U.S. 281, 289 (2018).

By contrast, § 1225(b)(2)’s mandatory detention scheme applies “at the Nation’s borders and ports of entry” primarily to noncitizens “seeking to enter the country.” *Id.* at 287. DHS cannot retroactively convert an individual in § 240 proceedings into a § 1225(b) detainee because § 1225(b) applies only at the time of “inspection and admission,” not years later when placed in removal proceedings.

III. THIS COURT SHOULD ENFORCE BAUTISTA

In *Miranda Silva v. Noem*, et al., 4:25-cv-05784 (S.D. Tex. Dec.15, 2025) and *Gaspar Pinal v. Tate*, et al., 4:26-cv-00151 (S.D. Tex. Jan.14,2026) the court noted that a district court in

the Central District of California certified a class of petitioners similarly situated to people like Petitioner and found no reason to depart from its prior decisions or the decisions. In the above cases, this court enforced the class-action ruling that § 1226(a), not § 1226(b)(2) applies to people like Petitioner. The court's reasoning applies with equal force here. As such, by virtue of the final judgment issued on December 18, 2025, in *Maldonado Bautista v. Santacruz* this court should determine that Petitioner is not subject to mandatory detention under 8 U.S.C. § 1225(b)(2) in fact is not subject to any detention at all - if any it would be under 8 U.S.C. § 1226(a).

**IV. DUE PROCESS REQUIRES THAT AN IMPARTIAL ADJUDICATOR
DECIDE IF PETITIONER'S CONTINUED DETENTION BEARS A
REASONABLE RELATION FLIGHT RISK AND DANGER TO THE
COMMUNITY**

As relevant here, due process requires that immigration detention “bear[] a reasonable relation to the purpose for which the individual was committed.” *Demore v. Kim*, 538 U.S. 510, 527 (2003) (quoting *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001)). Specifically, immigration detention must be reasonably related to the government's goals of preventing flight and protecting the community from harm and be accompanied by adequate procedural protections to ensure that those goals are being served. *See Zadvydas*, 533 U.S. at 690-91. Chief among these procedural protections is “the guarantee of an impartial and disinterested tribunal,” which the Due Process Clause requires “in both civil and criminal cases.” *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980). The immigration court system has been transformed into a body that is structurally incapable of upholding Petitioner's statutory and constitutional rights.

**V. EOIR'S PROFOUND INSTITUTIONAL TRANSFORMATION PRECLUDES
IMPARTIAL ADJUDICATION OF PETITIONER'S BOND REQUEST**

The immigration court system is not an independent adjudicative body. It operates under the Department of justice (“DOJ”). In the last year the DOJ and its sub-agencies, the Executive

Office for Immigration Review (“EOIR”) and the Board of Immigration Appeals (“BIA”), in apparent coordination with the Department of Homeland Security (“DHS”) have systematically dismantled the integrity of the immigration court system to turn it into an extension of DHS’ deportation and detention operations. The evidence of EOIR’s institutional capture falls into five categories, each independently sufficient to establish bias, but together demonstrating systematic destruction of judicial independence: (1) the ongoing mass-scale purge of immigration judges perceived as obstacles to DHS’ enforcement agenda; (2) the parallel purge and reconstitution of the BIA, resulting in a 97% pro-government decision rate; (3) the recruitment and installation of explicitly enforcement-aligned “deportation judges” with dramatically reduced qualifications; (4) EOIR policy directives establishing expectations that adjudications favor the government over noncitizens; and (5) explicit instructions to defy district court rulings that impede DHS’s enforcement goals. Each category is addressed in turn below.

1) The Ongoing, Mass-Scale Purge of Immigration Judges Perceived as Obstacles to Enforcement Agenda

As of September 26, 2025, the administration has terminated 128 immigration judges (“IJs”).¹ Former New York IJ David K.S. Kim explained the targeting criteria: “I do not know the exact reason for my termination, but most of those dismissed, including myself, were judges with high asylum approval rates.”² This is not the complaint of disgruntled employees—these are career jurists with decades of combined experience who felt compelled to speak out publicly.

The terminated and resigned judges report three consistent themes. **First, explicit pressure to serve as instruments of mass deportation rather than neutral adjudicators.** Former

¹ Trump Administration Continues Firing Immigration Judges -- IFPTE responds, IFPTE (Sept. 26, 2025), <https://www.ifpte.org/news/trump-administration-continues-firing-immigration-judges-ifpte-responds>

² 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>.

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."³ 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."⁴ Former San Francisco IJ George Pappas was even more direct: "We were told to facilitate deportation... Due process is dead in immigration courts."⁵

Second, a pervasive climate of fear designed to ensure compliance. Former Baltimore IJ David C. Koelsch described it as "an atmosphere of paranoia and fear, which is exactly what they want."⁶ Former Annandale IJ Anam Petit observed: "There's a climate of fear...Judges feel like, if they step a toe out of line right now...or they're one [asylum] grant away from being fired because of the arbitrary nature of the firings."⁷ Former New York IJ Carmen Maria Rey Caldas similarly described judges working "under 'constant threat' of getting fired if they don't follow certain rules from leadership."⁸

Third, the inevitable compromise of judicial independence when self-preservation requires favoring the government. Former San Francisco IJ Elizabeth Young explained: "I've talked to many of [the judges still serving], and they're like, 'When I go into court, I am concerned

³ 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>.

⁴ 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)

⁵ Marco Poggio, Judges See an Immigration Court Guttled from Inside, Law360 (Oct. 31, 2025), <https://www.law360.com/articles/2381003/judges-see-an-immigration-court-guttled-from-inside>

⁶ Poggio, supra note 8

⁷ Eric Katz, 'Climate of Fear': Immigration Judges Say Functioning of Their Court System Is in Jeopardy Due to Trump's Firings, Gov't Executive (Nov. 14, 2025), <https://www.govexec.com/management/2025/11/climate-fear-immigration-judges-say-functioning-their-court-system-jeopardy-due-trumps-firings/409544/>.

⁸ 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/>

about applying the law, but I'm also concerned that I should deny more, because if I don't, then I'll get fired."⁹ Former Boston IJ Sarah Cade reached her breaking point: "I felt I might have to compromise my ethics and might be put in a place where I felt like I was going to be asked to violate due process. So I left and I went to private practice."¹⁰

The message to remaining immigration judges is unmistakable: neutrality is a terminable offense. No adjudicator can remain impartial when faced with the choice between upholding due process and keeping their position. Any immigration judge assigned to Petitioner's bond hearing now operates under the understanding that granting bond may cost them their livelihood.

2) The BIA Purge and Resulting Statistical Evidence of Bias

A parallel purge occurred at the BIA which was reduced from 28 members to 15 members. All Biden appointees on the BIA were fired.¹¹ The statistical impact is stark. As of January 22, 2026, the reconstituted BIA has issued 71 published decisions.¹² Of those, 69 decisions (97%) favored the administration.¹³ By contrast, during the entire four-year span of the prior administration, the BIA issued 76 published decisions.¹⁴ 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.

3) The Installation and Recruitment of Judges Aligned with Enforcement Agenda

⁹ Poggio, supra note 8.

¹⁰ Poggio, supra note 8.

¹¹ 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-undocumented-immigrants/>.

¹² Exec. Off. for Immigr. Rev., Volume 29, U.S. Dep't of Just. (Jan. 21, 2025), <https://www.justice.gov/eoir/volume-29>

¹³ Of the remaining two decisions: 1 decision was neutral (involving attorney sanctions) and 1 decision disfavored the administration

¹⁴ 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)

To replace purged judges, the DOJ launched recruitment for what it explicitly marketed as "deportation judges."¹⁵ DHS—a party in immigration proceedings before EOIR—promoted these openings on social media with enforcement-focused language: "Bring the hammer down on criminal illegal aliens" and "Defend your communities, your culture, your very way of life."¹⁶

In addition, the DOJ has authorized up to 600 military lawyers to serve as temporary immigration judges for a renewable term not to exceed six months, while simultaneously eliminating requirements to serve as a temporary immigration judge.¹⁷ Previously, temporary judge candidates were required to have served as a former immigration judge, appellate immigration judge, or administrative judge within another agency, or to have at least 10 years of immigration law experience. The administration removed those requirements entirely, allowing "any attorney" to be selected as a temporary immigration judge and reduced training to approximately two weeks—far less than the standard training for permanent immigration judges, which includes six weeks of initial training, one year of mentorship by an experienced judge, and two years of quarterly reviews.¹⁸ Corey Lewandowski, an adviser to DHS Secretary Noem, responded to the announcement by posting: "I see more deportations of illegal immigrants in the near future"¹⁹—an explicit acknowledgment of the mass deportation policy objective underlying these appointments and the erosion of institutional boundaries between DOJ and DHS. In December, one of the appointed temporary judges was fired just a month into his six-month term. "That judge, Christopher Day, had granted asylum claims in just over half the cases he heard."²⁰

¹⁵ Murphy Marcos supra note 2.

¹⁶ dhsgov, Instagram (Nov. 21, 2025), <https://www.instagram.com/p/DRVT8DmCQKD/?hl=en>.

¹⁷ Designation of Temporary Immigration Judges, 90 Fed. Reg. 41,883 (Aug. 28, 2025).

¹⁸ Margy O'Herron, Using Military Lawyers as Immigration Judges is Ill-Advised and Potentially Illegal, Brennan Ctr. for Just. (Sept. 29, 2025), <https://www.brennancenter.org/our-work/analysis-opinion/using-military-lawyers-immigration-judges-ill-advised-and-potentially>

¹⁹ Corey R. Lewandowski (@CLewandowski), X (Sept. 2, 2025, 1:47 PM), <https://x.com/clewandowski/status/1962950546652070269>.

²⁰ Balko, supra note 1.

4) A Barrage Of EOIR Policy Memoranda Establishing Expectations That Adjudications Favor The Government Over Noncitizens

Beyond personnel changes, EOIR's new acting director, Sirce E. Owen, quickly “a string of sharply worded policy memos” that immediately “[set] the tone for her leadership.”²¹ “Sources familiar with Owen described her as a “restrictionist loyalist” with a reputation for denying cases.”²² The Catholic Legal Immigration Network (CLINIC) observed that “these memos also seem intended to reshape EOIR, which is meant to be a neutral arbiter, into a politically driven tool advancing the Trump administration’s clearly anti-immigrant views.”²³ 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”;²⁴ 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;²⁵ and memorandums restricting immigration judges’ ability to grant continuances²⁶ and administrative closure.²⁷

5) EOIR Has Issued Explicit Directives To Ignore District Court Rulings That Impede DHS's Policy Objectives

²¹ US army lawyer fired as immigration judge after defying Trump deportation agenda, The Guardian (Dec. 19, 2025), <https://www.theguardian.com/us-news/2025/dec/19/army-lawyer-fired-immigration-trump-deportation>.

²² Dias, *supra* note 8.

²³ Cath. Legal Immigr. Network, Inc., Navigating EOIR Directives Under Trump 2.0: Practical Guidance for Advocates and Programs (Apr. 22, 2025), <https://www.cliniclegal.org/file-download/download/public/77642>.

²⁴ 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.

²⁵ 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>.

²⁶ 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>

²⁷ 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>.

The clearest evidence that EOIR has abandoned its role as a neutral tribunal comes from its response to federal court orders protecting bond hearing rights. In *Maldonado Bautista v. Santacruz*, the Central District of California issued both declaratory and injunctive relief holding that noncitizens who entered without inspection but were not apprehended at the border are detained under § 1226(a), not § 1225(b)(2), and are therefore entitled to bond hearings. *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). Judge Sunshine Sykes certified a nationwide class and entered final judgment. *Id.* Rather than comply with the order, EOIR leadership directed all immigration judges to ignore the order. On January 13, 2026, Chief Immigration Judge Teresa L. Riley sent an email to all immigration judges instructing:

"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."²⁸

The effect was immediate: ACLU lawyers reported that immigration judges who had begun granting bond hearings in compliance with Judge Sykes' ruling reversed course after receiving Chief Judge Riley's directive.²⁹ Immigration judges were placed in an impossible position—comply with a federal district court order and risk termination or defy the federal court and retain their positions.

²⁸ 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>

²⁹ Immigration judges told to ignore rulings on bond hearings, documents show, Massachusetts Lawyer Weekly (Jan. 20, 2026), <https://masslawyersweekly.com/2026/01/20/immigration-judges-ignore-bond-hearing-rulings/>

On January 16, 2026, Judge Sykes issued a scathing order directly addressing the government's systematic defiance:

“This matter is yet another in a slew of habeas petitions following the Court’s ruling in *Bautista v. Santacruz* that has unfortunately become routine in this Court. ... But individuals filing these habeas petitions are not to blame; rather, the current volume of habeas petitions and temporary restraining orders being filed can be attributed to *Respondents’ deliberate choice to continue defying the final judgment entered in Bautista. ...*

Despite the clarity of the Court’s previous orders and legal doctrines that preclude Respondents from relitigating issues at the heart of these requests, Respondents continue to manufacture arguments for sake of opposition. At this point in time, *the Court can no longer confer Respondents with the benefit of the doubt as to the intent of their filings.*

Despite the final judgment in *Bautista*, it appears that immigration judges continue to rely on legal interpretations that were expressly found unlawful. ... Respondents are collaterally estopped from relitigating the issue as to whether Bond Eligible Class members are entitled to the exact relief as provided in the *Bautista* final judgment. Accordingly, Respondents are collaterally estopped from relitigating this issue against all members of the Bond Eligible Class.”

Palomera Baltazar v. Janecka, No. 5:26-cv-00019-SSS-BFM at *2-3 (C.D. Cal. Jan. 16, 2026). (emphasis added)

Judge Sykes' findings are devastating: the government is not merely disagreeing with her legal conclusions—it is engaged in "deliberate" defiance, "manufacturing arguments," and instructing immigration judges to rely on "interpretations that were expressly found unlawful." This is not a case of good-faith disagreement over statutory interpretation. It is systematic institutional defiance of federal court orders, orchestrated by EOIR leadership and enforced through the threat of termination. No clearer evidence of institutional capture could exist: when presented with a federal court order protecting noncitizens' rights, EOIR's response was to order judges to violate it. The ultimate victim is the detained noncitizen, who like Petitioner, remains

detained in violation of the due process and is denied their fundamental right to have an impartial adjudicator determine whether their continued detention serves any legitimate purpose related to flight risk or community safety.

VI. PRAYER FOR RELIEF

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”). Here, because ordering a 1226(a) bond hearing before EOIR—a clearly compromised adjudicatory body—would not properly redress the statutory and constitutional violations present in this matter, Petitioner urges the court to provide an alternative corrective measure:

First, Petitioner submits that immediate release is the most appropriate remedy. Petitioner's lack of criminal history, strong family ties to the United States, and long duration of residency all support his immediate release. “In recent months, courts across the country have ordered the release of detainees in similar situations.” *Moctezuma v. Henkey*, No. 1:25-CV-00741-BLW, 2026 WL 18809, at *5 (D. Idaho Jan. 2, 2026) (given that the government’s repeated use of unlawful detention policies across the country, causing petitioners to “sit in jail waiting for a judicial decision,” the court would order immediate release instead of causing additional delay

through a bond hearing). (citing *Lepe v. Andrews*, 801 F. Supp. 3d 1104 (E.D. Cal. 2025); *J.U. v. Maldonado*, No. 25-cv-4836, 2025 WL 2772765, at *10 (E.D.N.Y. Sept. 29, 2025); *Rosado v. Figueroa*, No. 25-cv-2157, 2025 WL 2337099, at *19 (D. Ariz. Aug. 11, 2025); *Pinchi v. Noem*, No. 25-cv-05632, 2025 WL 1853763, at *4 (N.D. Cal. July 4, 2025). *Santiago v. Noem*, No. EP-25-CV-361, 2025 WL 2792588, at *13-14 (W.D. Tex. Oct. 2, 2025) (“Without a legitimate interest in her detention, immediate release appropriately remedies Respondents’ violation of [Petitioner’s] due process rights through her continued detention.”))

In the alternative, Petitioner requests a custody hearing before this Court. The habeas court can hold its own custody hearing and determine whether the government can prove by clear and convincing evidence that Petitioner must remain in custody, or whether he may be released on recognizance.³⁰

At a minimum, the court should order that Petitioner be provided a 1226(a) bond hearing, but with additional safeguards. Specifically, the Court should order:

- A) A bond hearing where the government shall bear the burden of establishing by clear and convincing evidence that Petitioner poses a danger or flight risk to “[reflect] the concern that ‘[b]ecause the alien’s potential loss of liberty is so severe ... he should not

³⁰ See e.g. *L.G.M. v. LaRocco*, 788 F.Supp.3d 401, 405-07 (E.D.N.Y. 2025) (ordering a bond hearing held by the habeas court, as this would be more efficient than delegating the task to the agency and ensure proper constitutional oversight); *Flores-Powell v. Chadbourne*, 677 F.Supp.2d 474-78 (D. Mass 2010) (granting petition and discussing at length habeas court’s equitable power, which includes power to hold its own bail hearing); see also *Santos v. Lowe*, No. 1:18-CV-1553, 2020 WL 4530728, at *4 (M.D. Pa. Aug. 6, 2020) (finding that habeas court-ordered bond hearing was not individualized and did not comport with due process, and granting motion to enforce to hold the court’s own bond determination); *Ramirez v. Watkins*, No. 10-cv-126, 2010 WL 6269226, at *19-20 (S.D. Tex. Nov. 3, 2010), rep. and rec not reached, (S.D. Tex. Dec. 8, 2010) (dismissing case as moot) (recommending the habeas court conduct its own bail inquiry, as it would be more efficient, ensure supervision over any compliance issues, and avoid further proceedings)

have to share the risk of error equally.’” *See Lopez-Arevelo v. Ripa*, 801 F. Supp. 3d 668, 688 (W.D. Tex. 2025).³¹

B) Provide that the habeas court shall retain jurisdiction to review the immigration judge bond decision to ensure compliance with the court’s order and due process.

C) Prohibit ICE from invoking the automatic stay provisions under 8 C.F.R. § 1003.19(i)(2) because this court has ruled that their application violates the procedural due process rights of noncitizens granted bond. *See Gutierrez v. Thompson*, No. 4:25-4695, 2025 WL 3187521, at *8 (S.D. Tex. Nov. 14, 2025).

CONCLUSION

For these reasons, and the reasons stated in the Petition, the Court should GRANT the Petition for Writ of Habeas Corpus and order Petitioner’s immediate release or, in the alternative, a bond hearing which places the burden of proof on the government.

Dated this February 06, 2026.

Respectfully submitted,

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³¹ *See also Lopez-Arevelo v. Ripa*, 801 F. Supp. 3d 668, 688 (W.D. Tex. 2025) (noting that “as of 2020, the ‘vast majority’—an ‘overwhelming consensus’—of courts granting immigration detainees’ habeas petitions have placed the burden on the Government to prove by clear and convincing evidence that the detainee poses a danger or flight risk. Velasco Lopez, 978 F.3d at 855 n.14 (citations omitted))

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Jose Rogelio Cumbe Lema and submit this verification on his behalf.

I hereby verify that the factual statements made in the foregoing Reply are true and correct to the best of my knowledge.

Dated this 6th day of February 2026.

/s/ Elva Lorena Gaona Krewson

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Instrument was sent via ECF on February 6th, 2026, to all counsel of record.

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