UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

JUAN COVARRUBIAS-RODRIGUEZ	)	
	)	
Petitioner,	)	
	)	
v.	)	**Civ. No.**
	)	
KRISTI LYNN NOEM, **Secretary of Homeland Security;**	)	
	)	
PAMELA JO BONDI, **United States Attorney General;**	)	
	)	
TODD LYONS, **Acting Director of Immigration and Customs Enforcement**	)	
	)	
SYLVESTER M. ORTEGA, **Harlingen Field Office Director for Detention and Removal, U.S. Immigration and Customs Enforcement; and,**	)	
	)	
WAYMON BARRY , **Warden, Karnes County Immigration Processing Center;**	)	
	)	
in their official capacities;	)	
	)	
Respondents.	)	

PETITION FOR A WRIT OF HABEAS CORPUS

INTRODUCTION

Juan Covarrubias-Rodriguez ("Petitioner") brings this petition for a writ of habeas corpus to challenge his detention by the Secretary of Homeland Security Kristi L. Noem, Attorney General Pamela J. Bondi, Acting Director of the U.S. Immigration and Customs Enforcement

(ICE) Todd Lyons, San Antonio ICE Field Officer Director Sylvester M. Ortega, and Warden Waymond Barry.

Mr. Covarruvias-Rodriguez is an asylum seeker from Mexico who entered lawfully the united States on or about September 30, 2026 through the Laredo, Texas port of entry. He has no criminal arrests or convictions. Petitioner Covarrubias-Rodriguez has been residing in the United States for almost 20 years.

On July 15, 2025, Petitioner Covarrubias-Rodriguez was arrested by unidentified masked Immigration and Custom Enforcement agents outside his home. The agents did not provide any legal reason to detain and arrest Petitioner Covarrubias-Rodriguez. After detaining Petitioner Covarrubias-Rodriguez, they explained to his family that they were looking for another individual. The agents did not have a warrant or reasonable suspicion to detain Petitioner Cobarruvias, much less probable cause to arrest him. The masked agents did not care. They detained Petitioner Covarrubias-Rodriguez and initiated removal proceedings.

On September 15, 2025, Petitioner Covarrubias-Rodriguez had a bond hearing, but the immigration judge denied the request for bond. The immigration judge's decision, however, is wrong and in violation of Petitioner Covarrubias-Rodriguez's constitutional rights. The immigration judge improperly placed the burden of proof on Petitioner Covarrubias-Rodriguez to demonstrate that he is not a flight risk or a danger to the public. The immigration bond process and the decision violate Petitioner Covarrubias-Rodriguez due process rights. Soon thereafter, Petitioner Covarrubias-Rodriguez retained a second Immigration Counsel, who requested a second bond hearing. The Immigration Judge also denied the second bond hearing.

Petitioner Covarrubias-Rodriguez submits that the Due Process Clause mandates that the Department of Homeland Security (DHS), and not Petitioner, bear the burden to demonstrate by

clear and convincing evidence that detention is justified. This is the majority position of the federal courts that have considered this legal issue. *See Hamal Rajesh v. Barr*, 420 F.Supp.3d 78, 86 (W.D.N.Y. 2019) (concluding that in bond proceedings under 8 U.S.C. § 1226(a) for noncitizens who are not charged as removable because of a criminal conviction, the Government bears the burden of proving, by clear and convincing evidence, that detention is justified) (collecting cases from federal courts in New York, New Jersey, Massachusetts, Virginia, California and Colorado). Petitioner Covarrubias-Rodriguez seeks permanent relief in the form of an order requiring a constitutionally adequate bond hearing at which the Government bears the burden to justify any further detention by proving by clear and convincing evidence that Petitioner is a danger to others or a flight risk.

CUSTODY

1. Petitioner is in the physical custody of Respondent SYLVESTRE M. ORTEGA, Field Office Director for Detention and Removal, U.S. Immigration and Customs Enforcement ("ICE"), DHS, and Respondent WAYMON BARRY, Warden of the Karnes County Immigration Processing Center in Karnes, Texas. At the time of the filing of this petition, Petitioner is detained at the Karnes County Immigration Processing Center in Karnes, Texas. GEO Group owns and operates the detention facility and contracts with the DHS to detain noncitizens, such as Petitioner, pending their removal proceedings. Petitioner is under the direct control of Respondents and their agents.

JURISDICTION AND VENUE

2. The Court also has jurisdiction over this petition under 28 U.S.C. §§ 2241(c)(1) and (c)(3), Art. I, § 9, C1. 2 of the United States Constitution ("Suspension Clause"). This Court may grant relief pursuant to 28 U.S.C. § 2241. Federal district courts have jurisdiction to hear habeas claims by non-citizens contesting the lawfulness of their immigration detention. *See Jennings v. Rodriguez*, 138 S.Ct. 830, 841 (2018).

3. Venue properly lies within the Southern District of Texas because all of the events or omissions giving rise to this action occurred in the district. 28 U.S.C. § 1391(e)(1)(B).

4. No petition for habeas corpus has previously been filed in any court to review Petitioner's case.

PARTIES

5. Petitioner Cobarruvias-Rodriguez is a national and citizen of Mexico. He is currently detained at the Karnes County Immigration Processing Center, located at 409 FM 1144, Karnes City, Texas 78118.

6. Respondent PAMELA JO BONDI is the Attorney General of the United States and the most senior official in the United States Department of Justice ("DOJ"). She has the authority to interpret the immigration laws and adjudicate removal cases. 8 U.S.C. § 1103(g). The Attorney General delegates this responsibility to the Executive Office for Immigration Review ("EOIR"), which administrates the immigration courts and the Board of Immigration Appeals ("BIA" or "Board"). Respondent is named in her official capacity. Respondent's address is 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530.

7. Respondent TODD LYONS is Acting Director of Immigration and Customs Enforcement. Respondent's address is 500 12th St SW Washington, DC 20536

8. Respondent KRISTI LYNN NOEM is the Secretary of the U.S. Department of Homeland Security ("DHS"), an agency of the United States. Respondent is responsible for the administration of immigration laws pursuant to 8 U.S.C. § 1103(a). The Secretary is a legal custodian of the Plaintiff-Petitioner. Respondent is named in her official capacity. Her address is Department of Homeland Security, Washington, D.C. 20528.

9. Respondent SYLVESTRE M. ORTEGA is the Field Office Director for Detention and Removal (ERO), ICE, DHS, for the San Antonio ERO Office. He is a custodial official acting within the boundaries of the judicial district of the United States Court for the Southern District of Texas. Pursuant to Respondent's orders, Petitioner remains detained. Respondent is sued in his official capacity. Respondent can be served with process at U.S. Immigration and Customs Enforcement, Office of the Principal Legal Advisory, 500 12th St., SW, Mail Stop 5900, Washington, DC 20536-5900.

10. Respondent WAYMON BARRY is the Warden of the Kernes County Immigration Processing Center. He is Petitioner's immediate custodian and resides in the judicial district of the United States Court for the Western District of Texas. Respondent is named in his official capacity. Respondent Barry can be served with process at Corporate Creations Network, Inc., located at 5444 Westheimer, #1000, Houston, Texas 77056.

FACTS

11. On or about September 30, 2006, Petitioner Covarrubias-Rodriguez was admitted into the United States with his valid B-1, B-2, visa at the Laredo Texas International Bridge. Exh. 1. The Government gave Petitioner Covarrubias-Rodriguez permission to remain in the United States until March 29 2007. See id. Petitioner's family also came with him. Petitioner's children,

now adults, Liliana Covarrubias Medina and Juan A. Covarrubias Medina, are in the United Sates. They are DACA holders.

12. Petitioner Covarrubias-Rodriguez had been working in construction an supporting his family. He has no criminal record. He has some property in the United States. He is active in community organizations and also funded a nonprofit organization for San Antonio undeserved children and youth. Petitioner's organization provides college scholarships to member the community. Exh. 2.

13. On July 15, 2025, unidentified masked ICE agents without a warrant, reasonable suspicion or probable cause arrested Petitioner Covarrubias-Petitioner outside his home. Exh. 3 Shortly thereafter, Respondents took Petitioner Covarrubias-Rodriguez to the Karnes County Immigration Processing Center, where he remains behind bars.

14. Petitioner requested a bond hearing and on September 15, 2025, the Immigration Judge denied Petitioner Covarrubias-Rodriguez's request for bond. See Exh. 4.

15. At the hearing, the DHS counsel submitted Form I-213 (Record of Deportable/Inadmissible Alien) and stated that the DHS opposed bond. The DHS presented no other evidence of danger or flight risk.

16. In support of his request for bond, Petitioner submitted proof that he entered lawfully. He submitted support letters from his family, friend, community and U.S. Citizen sponsor. Petitioner's sponsor, submitted evidence the she would provide for him financially and ensure that he appeared at future hearings. In addition, his immigration counsel argued that Petitioner had never been arrested or convicted.

17. After hearing from Petitioner's immigration lawyer, the immigration judge denied bond conclude that Petitioner Covarrubias-Rodriguez "has not met his burden to show he would not be a flight if released form custody." Exh. 4 (Immigration Judge's Bond Order).

18. Petitioner Covarrubias-Rodriguez requested a second bond hearing. The Immigrations Judge also denied the second request. Exh. 5. Despite that the record is devoid of any evidence to indicate that he is a flight risk, or that other conditions of custody can be imposed to prevent flight risk, Petitioner remains behind bars.

19. Petitioner Covarrubias-Rodriguez submits that the immigration judge conducted an unconstitutional bond hearing by relieving the DHS from demonstrating that Petitioner is a flight risk or a danger to the public and instead placing the burden of proof on Petitioner.

20. Petitioner Covarrubias-Rodriguez has no other remedy at law but to seek relief from this Court.

LEGAL FRAMEWORK

21. 8 U.S.C. § 1226(a) provides for the general detention scheme of non-criminal non-citizens. Once a non-citizen is apprehended, the Government makes the initial custody determination. *See* 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8). After the initial custody determination, an Immigration Judge can redetermine the decision. *See* 8 C.F.R. §§ 1003.19, 236.1(d), 1236.1(d).

22. Although § 1226(a) is silent as to who bears the burden of proof at a bond hearing, the BIA has unconstitutionally placed the burden on non-citizens. *In re Adeniji*, 22 I&N Dec. 1102, 1116 (BIA 1999) (holding that "respondent must demonstrate that his release would not pose a danger to property or persons, and that he is likely to appear for any future proceedings"). Since *Adeniji*, the BIA has repeatedly reaffirmed that the burden should be on non-citizens. *See Matter of Fatahi*, 26 I&N Dec. 791, 793 (BIA 2016); *In re Guerra*, 24 I&N Dec. 37, 40 (BIA 2006) ("[t]he

burden is on the alien to show to the satisfaction of the [immigration judge] that he or she merits release on bond.").

23. The Due Process Clause requires a constitutionally adequate bond hearing. "Freedom from imprisonment – from government custody, detention, or other forms of physical restraint – lies at the heart of the liberty" that the Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Detention must "bear [a] reasonable relation to the purpose for which the individual [was] committed." *Id.* at 690 (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)).

24. At a minimum, due process requires "adequate procedural protections" to ensure that the Government's asserted justification for physical confinement "outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Id.* (internal quotation marks omitted).

25. In civil detention cases, the Supreme Court "repeatedly has recognized that civil commitment for *any* purpose constitutes a significant deprivation of liberty." *Singh*, 638 F.3d 1196, 1204–05 (9th Cir. 2011) (quoting *Addington v. Texas*, 441 U.S. 418, 425 (1979)) (emphasis in original).

26. In particular, civil detention is impermissible without an individualized hearing before a neutral decision maker that tests the Government's justification for imprisonment. *See United States v. Salerno*, 481 U.S. 739, 750–51 (1987) (upholding civil pretrial detention of individuals charged with crimes only upon individualized findings of dangerousness or flight risk at custody hearings); *Foucha v. Louisiana*, 504 U.S. 71, 81–83 (1992) (requiring individualized finding of mental illness and dangerousness for civil commitment); *Kansas v. Hendricks*, 521 U.S.

346, 357 (1997) (upholding civil commitment of sex offenders after jury trial on lack of volitional control and dangerousness).

27. The Ninth Circuit and other district courts have held that immigration detainees are entitled to bond hearings at which *the Federal Government* bears the burden to prove by clear and convincing evidence that detainees would be a flight risk or danger to the community. *See, e.g.*, *Singh*, 638 F.3d at 1204–05; *Pensamiento v. McDonald*, 315 F. Supp. 3d 684, 692 (D. Mass. 2018) (holding that due process requires the burden of proof be placed on the government in custody redetermination hearings for non-criminal aliens) (Saris, C.J.); *Alvarez Figueroa v. McDonald*, Civil Action No. 18-10097-PBS, 2018 U.S. Dist. LEXIS 80781, at *15–16 (D. Mass. May 14, 2018) ("The *Zadvydas* Court then cited to criminal pretrial detention and civil commitment cases, making it clear that one important procedural protection for preventive detention is the placement of the burden of proof on the government.") (Saris, C.J.); *Doe v. Tompkins*, Case No. 18-cv-12266-PBS, 2019 U.S. Dist. LEXIS 22616, at *4 (D. Mass. Feb. 12, 2019) (holding that due process requires that the burden of proving that the respondent is dangerous and is a flight risk be placed on the government in § 1226(a) custody redetermination hearings) (Saris, C.J.); *Diaz-Ortiz v. Tompkins*, Case No. 18-cv-12600-PBS, 2019 U.S. Dist. LEXIS 14155, at *3–4 (D. Mass. Jan. 29, 2019) (same) (Saris, C.J.); *Martinez v. Decker*, No. 18- CV-6527 (JMF), 2018 U.S. Dist. LEXIS 178577, at *13 (S.D.N.Y. Oct. 17, 2018) (concluded that "due process requires the Government to bear the burden of proving that detention is justified at a bond hearing under Section 1226(a)."); *Darko v. Sessions*, 342 F. Supp. 3d 429, 436 (S.D.N.Y. 2018) (same; further, "the Court concludes that the government must bear the burden by clear and convincing evidence."); *Haughton v. Crawford*, 221 F. Supp. 3d 712, 713–17 (E.D. Va. 2016) ("the significant deprivation of liberty warrants the robust procedural protections afforded by requiring the government to demonstrate

by clear and convincing evidence that petitioner's ongoing detention is appropriate to protect the community and ensure petitioner's appearance at future proceedings."); *Portillo v. Hott*, 322 F. Supp. 3d 698, 2018 WL 3237898, at *8 *n.9 (E.D. Va. 2018) (reaffirming *Haughton* as "good authority").

28. Petitioner Covarrubias-Rodriguez should be given a constitutionally adequate hearing.

The *Mathews v. Eldridge* Test Applies to Petitioner's Due Process Claim That in Immigration Bond Hearings, the DHS Bears the Burden of Proof To Demonstrate By Clear and Convincing Evidence That Noncitizens are a Flight Risk or Danger to the Public

Addington v. Texas, 441 U.S. 418 (1979) confirms that courts should employ the three-prong test in *Mathews v. Eldridge*, 424 U.S. 319 (1976) when determining the procedures applicable when the government deprives a person of his liberty. There, the Court stated:

> In considering what standard should govern in a civil commitment proceeding, we must assess both the extent of the individual's interest in not being involuntarily confined indefinitely and the state's interest in committing the [person] under a particular standard of proof. Moreover, we must be mindful that the function of legal process is to minimize the risk of erroneous decisions.

Id. at 426 (citing to *Mathews v. Eldridge*, 424 U.S. at 335; *Speiser v. Randall*, 357 U.S. 513 (1958)).

The Court emphasized that it "repeatedly has recognized that civil commitment for ***any*** purpose constitutes a significant deprivation of liberty that requires due process protection." *Id.* (citations omitted) (emphasis added). Thus, the standard of proof must "reflect[ ] the value society places on individual liberty." *Id.* (quoting *Tippett v. Maryland*, 436 F.2d 1153, 1166 (4th Cir. 1971)).

Significantly, courts that have considered similar challenges to the procedures in initial bond proceedings under 8 U.S.C. § 1226(a) have also applied the *Mathews v. Eldridge*

test. *See e.g., Hernandez-Lara v. Lyons*, 10 F.4th 19, 27-35 (1st Cir. 2021); *Doe v. Tompkins*, 11 F.4th 1 (1st Cir. 2021) (the court follows *Hernandez-Lara v. Lyons*); *Darko v. Sessions*, 342 F. Supp. 3d 429, 435 (S.D.N.Y. 2018) (concluding that at initial bond hearings under 1226(a), the DHS bears the burden of proof to show by clear and convincing evidence that the noncitizen is a danger or a flight risk and employs language from *Mathews v. Eldrige* in its reasoning); *Martinez v. Decker*, No. 18-CV-6527 (JMF), 2018 U.S. Dist. LEXIS 178577, 2018 WL 5023946 (S.D.N.Y. Oct. 17, 2018) (same); *Ortiz v. Freden*, No. 25-CV-960-LJV, 2025 U.S. Dist. LEXIS 217654 2025 WL 3085032 (W.D.N.Y. Nov. 4, 2025); *Amezcua Olvera v. Correa et al.*, Case No. 5:20-cv-00124-DAE (W.D. Tex. May 11, 2021) (adopting magistrate judge's report and recommendation (attached as Exh. 6.

The *Mathews v. Eldrige* test requires this Court to consider (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews v. Eldridge*, 424 U.S. at 333.

The private interest involved here is of the highest order. "Freedom from imprisonment – from government custody, detention or other forms of physical restraint – lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 695 (2001) (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)). "[L]iberty is the norm" in our society "and detention prior to trial or without trial is the carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755 (1987). The Supreme Court has counseled courts to be "careful not to minimize the importance and fundamental nature" of a person's liberty rights. *Foucha v. Louisiana*, 504 U.S. at 80.

A noncitizen's detention pending their removal proceedings is indistinguishable from criminal incarceration, whether pretrial or after adjudication of guilt. They are behind bars and not free to leave the facility. Their meals and sleeping times are fixed. They can only spend a few hours per day outside in the sun. Their ability to see their family is strictly limited. They are guarded by officers authorized to employ any amount of physical force necessary for the occasion. These are Petitioner's conditions of confinement and thus, there can be no doubt that he is significantly deprived of his liberty.

The second *Mathews* factor, that is the risk of an erroneous deprivation of a person's liberty interest under the present procedures and the probable value of additional or substitute procedures, weighs in favor of Petitioner. It bears repeating that removal proceedings are civil, not criminal in nature. More than money is at stake in an immigration bond hearing; a person's freedom hangs in the balance. And yet, noncitizens in removal proceedings must represent themselves if unable to afford an attorney. 8 U.S.C. § 1229a(b)(4)(A) ("the alien shall have the privilege of being represented, at no expense to the Government, by counsel of the alien's choosing....").

Because they are detained, noncitizens in removal proceedings are unable able to gather evidence in support of their request for bond. In fact, many noncitizens in removal proceedings in Texas were not living in this state prior to their detention and so their out-of-state attorneys and family are not able to assist, and the noncitizen's personal records are not within their reach..

Unrepresented noncitizens are also at a disadvantage because they may not be fully proficient in English and are untrained in immigration law and procedures. The Department of Homeland Security (DHS), in turn, is represented by lawyers who are familiar with and known by the immigration judges. Cf. *Santosky v. Kramer*, 455 U.S. 745, 763 (1982) (noting

heightened risk of error in parental rights termination proceedings exists in part because "[t]he State's attorney usually will be an expert on the issues contested and the procedures employed at the factfinding hearing").

Lastly, noncitizens, whether represented or unrepresented, often face the daunting task of *proving a negative*. Take Petitioner's case for example. He has no criminal record. His location has been known by the Government for years, as his children filed accurate DACA applications whereby the name and addresses of the applicant's parents are required. He has a fixed address, was employed, and has pied some taxes. Exh. 7 (Petitioner's bond application). And still the immigration judge denied bond to Petitioner finding him a flight risk, notwithstanding Petitioner's long residence in the United States, and strong community ties. Exh. 3. He is currently applying for asylum, withholding of removal under both the Immigration and Nationality Act and the Convention Against Torture.

At his bond proceeding, Petitioner bore the burden of proof to demonstrate he was not a flight risk. The evidence of flight risk was not overwhelming. The DHS presented no evidence or argument. Petitioner's evidence showed that he was a good candidate for bond. *See* Exh. 7. Thus, the allocation of the burden of proof was critical and created the risk of an erroneous decision. Indeed, the allocation of the burden of proof in this case was determinative and resulted in the deprivation of Petitioner's liberty. *See Carey v. Piphus*, 435 U.S. 247, 259 (1978) ("Procedural due process rules are meant to protect persons not from deprivation, but from the mistaken or unjustified deprivation of life, liberty, or property.").

The last factor is the Government's interest. Petitioner does not dispute that Respondents have legitimate interests in ensuring that the immigration laws are enforced, that noncitizens appear for their removal proceedings, and in the execution of removal orders. But these interests do not support placing the burden on noncitizens. If that is the case, then

the DHS never has to make any showing that a noncitizen is a flight risk or a danger. Further, the DHS's interest in securing the appearance of noncitizens at removal hearings is weak where the noncitizen is not a flight risk or a danger. *Hernandez-Lara v. Lyons*, 10 F.4th at 32. Additionally, the Government counts with a vast array of methods and tools to protect such interest, such as ancle monitoring and periodic reporting.

Detention incidental to removal must "bear[ ] [a] reasonable relation to [its] purpose." *Zadvydas*, 533 U.S. at 690. As the First Circuit noted, unnecessary detention imposes significant societal costs. *Id.* at 25. Noncitizens are separated from their families and they lose their jobs and property as they are unable to meet financial obligations. Their families, most whom are U.S. citizens or permanent residents, are deprived of financial support and care. "The needless detention of those individuals thus 'separates families and removes from the community breadwinners, caregivers, parents, siblings, and employees.' Those ruptures in the fabric of communal life impact society in intangible ways that are difficult to calculate in dollars and cents." *Id.* at 33 (internal citation omitted).

Therefore, the balance of the *Mathews* factors weighs in favor imposing the burden of proof on the DHS to demonstrate that noncitizens in removal proceedings are a flight risk or danger.

And similarly, the Government should be required to demonstrate by clear and convincing evidence that a noncitizen is flight risk or danger. In the civil context, the Court has required that the government justify detention by clear and convincing evidence. *See, e.g., Addington*, 441 U.S. at 433 (involuntary civil commitment to mental hospital); *Foucha*, 504 U.S. at 86 (confinement of insanity acquittees). There is no reason to depart from *Addington* and *Foucha* and impose a different burden in immigration bond proceedings like the First Circuit did in *Hernandez-Lara*. The disadvantages the vast majority of detained

noncitizens face in removal proceedings are not ameliorated by having the DHS bear a lower burden of proof. Most of these noncitizens are still unrepresented, untrained in the law, likely do not speak English, and lack the credibility or familiarity with the immigration judges that the government lawyers enjoy.

1. *Rodriguez Diaz v. Garland*, 53 F.4th 1189 (9th Cir. 2022) is of Limited Impact to Petitioner's Due Process Claim that the DHS Bears a Heightened Burdened in Initial Bond Proceedings

Both *Rodriguez Diaz v. Garland* and *Singh v. Garland*, 639 F.3d 1196 (9th Cir. 2011) are of limited value to this habeas. Neither case dealt with the legal issue presented in this case: what party should bear the burden of proof at an initial bond hearing under § 1226(a).

Rodriguez Diaz v. Garland framed the issue in that case as follows: does the Due Process Clause entitle Rodriguez Diaz to a second bond hearing at which the government bears the burden of proof by clear and convincing evidence? *Rodriguez Diaz v. Garland*, 53 F.4th at 1203. *Singh v. Holder*, 638 F.3d 1196 (9th Cir. 2011), in turn, concerned the standard of proof in bond hearings for persons who are facing prolonged detention while their petitions for review are pending. *Id.* at 1200. Neither of these cases concerned initial bond hearings.

In *Rodriguez Diaz v. Garland*, the Ninth Circuit held that based on its review of Supreme Court and Ninth Circuit precedent, noncitizens in removal proceedings detained under § 1226(a) were not entitled to a second bond hearing after they were denied bond in the initial bond hearing. Its opinion on the procedures in place in initial bond hearings is dicta.

Singh v. Garland is also of limited value after the Supreme Court's decision in *Jennings v. Rodriguez*, 138 S.Ct. 830 (2016). Previously, the Ninth Circuit had held that periodic bond hearings were statutorily required for detained noncitizens in removal proceedings, whether subject to mandatory or discretionary detention. The *Jennings* Court

held that nothing in the Immigration and Nationality Act required periodic bond hearings. After *Jennings*, *Singh*'s statements about the standard of proof are dicta.

To be sure, *Rodriguez Diaz* and *Singh* present competing views on the Due Process Clause and the burden of proof that should apply when the government detains noncitizens for removal proceedings. But these cases are dispositive of a issue not presented in this Petition.

CAUSES OF ACTION

COUNT I
PROCEDURAL DUE PROCESS VIOLATION – DENIAL OF A BOND HEARING

29. Petitioner re-alleges and incorporates herein by reference every allegation set forth in the preceding paragraphs.

30. Petitioner's detention is unlawful and violates his due process rights because has not received a Constitutionally adequate bond hearing.

31. This Court should immediately order a Constitutionally adequate bond hearing, where the Government and not the Petitioner bears the burden of proof flight risk and/or danger to the community by clear and convincing evidence.

COUNT II
PROCEDURAL DUE PROCESS -GOVERNMENT'S EVIDENCE IS LEGALLY INSUFFICIENT

32. Petitioner re-alleges and incorporates herein by reference every allegation set forth in the preceding paragraphs.

33. Petitioner's detention is unlawful because the Government's evidence does not meet any legal standard to prove flight risk.

34. This Court should declare the Immigration Judge's order invalid, revoke it and order Petitioner released on a reasonable bond.

COUNT III

Violation of the APA
Contrary to Law and Arbitrary and Capricious Agency Policy

35. Petitioner re-alleges and incorporates herein by reference every allegation set forth in the preceding paragraphs.

36. The APA provides that a "reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

37. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those noncitizens who are not arriving in the United States, who are not making an application for admission, and are detained far from the international border. Noncitizens are detained (and released) under § 1226(a) and are eligible for release on bond, unless they were initially detained pursuant to § 1225(b)(1) or (b), or were detained under § 1226(c) or § 1231.

38. Nonetheless, Respondents have adopted a policy and practice of applying § 1225(b)(2) to noncitizens like Petitioner who is not arriving in the United States, was not arrested near the international border, and has made no application for admission.

39. Respondents have failed to articulate reasoned explanations for their decisions, which represent changes in the agencies' policies and positions; have considered factors that

Congress did not intend to be considered; have entirely failed to consider important aspects of the problem; and have offered explanations for their decisions that run counter to the evidence before the agencies.

40. The application of § 1225(b)(2) and *Matter of Yajure Hurtado* to Petitioner is arbitrary, capricious, and not in accordance with law, and as such, it violates the APA. *See* 5 U.S.C. § 706(2). Further, their refusal to provide him with a bond hearing violates § 706(1) of the APA.

COUNT V
Violation of the APA --
Impermissible Retroactive Application of New Legal Interpretation

41. Petitioner re-alleges and incorporates herein by reference every allegation set forth in the preceding paragraphs.

42. The APA provides that a "reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

43. Respondents adopted a new interpretation of the INA and its regulations in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) and *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025). Prior to these BIA decisions, Respondents interpreted and applied the INA detention and release scheme to empower Respondents to detain and release or afford a bond hearing before an immigration judge to most people who entered without inspection, unless their criminal history rendered them ineligible. This was accomplished under § 1226(a).

44. The retroactive application of *Matter of Yajure Hurtado* is arbitrary, capricious, and not in accordance with law, and as such, it violates the APA. *See* 5 U.S.C. § 706(2).

COUNT VI
Violation of the Administrative Procedure Act
Contrary to Law and Arbitrary and Capricious Agency Policy
Failure to Adhere to Prior Published Precedent

45. Petitioner re-alleges and incorporates herein by reference every allegation set forth in the preceding paragraphs.

46. The APA provides that a "reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

47. The Executive Office for Immigration Review (EOIR) is an adjudicatory body that functions much like the federal court system. The immigration court renders decisions on legal issues concerning a noncitizens removability, eligibility for relief and fitness for bond. The BIA reviews decisions and from time-to-time issues precedential decisions.

48. The parties expect the BIA and the immigration courts to apply faithfully Supreme Court, circuit court, and BIA precedent as well as decision-making principles that ensure consistency and predictability in deciding cases. The rule of orderliness is one such principle that circuit courts and district courts apply. Under the rule of orderliness, "one panel of [the circuit] court may not overturn another panel's decision, absent an intervening change in law, such as by a statutory amendment, or the Supreme Court, or [the] en banc court." *Mercado v. Lynch*, 823 F.3d 276, 279 (5th Cir. 2016). This rule is also applied by the district courts. *See Silo Rest. Inc. v. Allied Prop. & Cas. Ins. Co.*, 420 F. Supp. 3d 562, 575-76 (W.D. Tex. 2019).

49. The EOIR has acknowledged that it does not abide by the rule of orderliness. The EOIR calls it the "prior-panel-precedent" rule. *See* EOIR Policy Memoranda (PM) 25-34 (July 3, 2025) found at https://www.justice.gov/eoir/media/1406956/dl?inline. The EOIR acknowledges

that the functional equivalent of the rule of orderliness exists in its regulations and in narrow circumstances, one panel can overrule an earlier panel if a majority of the permanent Board members vote to reject the earlier decision. 8 C.F.R. § 1003.1(g)(3). Nevertheless, there is no rule or guidance for immigration courts for resolving conflicts between prior BIA precedents or which BIA precedent to follow. EOIR PM 25-34 at 2.

50. Instead, EOIR instructs immigration judges to essentially "try their best." *Id.* at 4. "Until the Board or the Attorney General resolves any conflicts in Board precedent… or adopts a clear rule regarding which precedent should control when there is a conflict, Immigration Judges will have to apply their best judgment and traditional legal tools or methods of analysis in order to adjudicate cases before them where Board precedent is in conflict." *Id.* The rule of orderliness thus does not control.

51. Prior BIA precedent requires application of *Matter of Cabrera-Fernandez*, 28 I&N Dec. 747 (BIA 2023) and *Matter of Akhmedov,* 29 I&N Dec. 166 (BIA 2025).

52. The disregard of the rule of orderliness and application of § 1225(b)(2) to Petitioner are agency actions that are arbitrary, capricious, and not in accordance with law, and as such, they violate the APA. *See* 5 U.S.C. § 706(1) and (2).

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

1. Issue an Order declaring that Petitioner is detained under 8 U.S.C. § 1226(a);
2. Issue an order instructing Respondents to release Petitioner or, alternatively, grant him a bond hearing before an immigration judge where the DHS bears the burden to demonstrate flight risk or danger to the public by clear and convincing evidence.

3. Award Petitioner reasonable costs and attorney's fees under the Equal Access to Justice Act ("EAJA"), as amended, pursuant to 28 U.S.C. § 2412.; and,
4. Grant any other relief which this Court deems just and proper.

Dated: January 30, 2026

Respectfully submitted,

/s/ Alfonso Otero

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ATTORNEY FOR PETITIONER

VERIFICATION OF COUNSEL

I, Alfonso Otero, hereby certify that I am familiar with the case of the named Petitioner and that the facts as stated above are true and correct to the best of my knowledge and belief.

/s/ Alfonso Otero
Alfonso Otero