UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JUAN DANIEL SALGADO-ARGUETA,

Petitioner,

v.

KEVIN RAYCRAFT, Acting Detroit Field Office Director for U.S. Immigration and Customs Enforcement, in his official capacity; TODD LYONS, Acting Director of U.S. Immigration and Customs Enforcement, in his official capacity; and KRISTI NOEM, Secretary of the U.S. Department of Homeland Security, in her official capacity,

Respondents.

Case No. 1:26-cv-00939

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. Petitioner Juan Daniel Salgado-Argueta ("Petitioner" or "Mr. Salgado-Argueta"), a citizen and national of El Salvador, is an asylum seeker who initially entered the United States in 2015 as an unaccompanied minor. He has maintained his continuous physical presence and residence in the United States since his initial entry.

2. On information and belief, Petitioner was unlawfully detained by Respondents without cause and without a warrant in Detroit, Michigan on February 7, 2026.

3. The Department of Justice's Executive Office of Immigration Review ("EOIR") has issued precedential decisions of the Board of Immigration Appeals ("BIA") that purport to unlawfully subject the Petitioner to indefinite, mandatory detention in violation of his Due Process rights under the Constitution, and in violation of the Immigration and Nationality Act ("INA").

4. Subsequent to his detention in detention on February 7, 2026, Petitioner was transferred by the Respondents to the North Lake Processing Center, which U.S. Immigration and

Customs Enforcement ("ICE"), an agency within the U.S. Department of Homeland Security ("DHS"), operates through a contract with The GEO Group, Inc., a company which operates private, for-profit prisons.

5. Petitioner is still currently unlawfully detained in the physical and legal custody of Respondents at the North Lake Processing Center in Baldwin, Michigan.

6. Petitioner has complied with everything required of him by the Government since his initial entry and humanitarian parole into the United States. It is unclear at the moment why Respondents have subjected the Petitioner to detention; however, in any case, Respondents' detention of Petitioner is unlawful.

7. Respondents have detained the Petitioner based not on his personal circumstances or individualized facts but because of Respondents' incorrect categorical determination that, the Fifth Amendment notwithstanding, noncitizens are not entitled to due process of law.[1]

8. But Respondents cannot evade the law so easily. The U.S. Constitution requires the Respondents provide Petitioner at minimum with the rights available to Petitioner when Petitioner filed an application for asylum after releasing him into the United States and instituting full proceedings in immigration court.

9. To the extent that the Respondents intend to subject the Petitioner to indefinite, mandatory detention throughout the remainder of all his proceedings in the United States based on the BIA's recent precedential decisions in *Matter of Q. Li*, 29 I. & N. Dec. 66, 69 (BIA 2025) (holding that "all noncitizens who fall within the scope of 8 U.S.C. § 1225(b)(1) (arriving aliens)

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[1] *See, e.g.,* NBC News, Meet the Press interview of President Donald Trump (May 4, 2025), https://www.nbcnews.com/politics/trump-administration/read-full-transcript-president-donald-trump-interviewed-meet-press-mod-rcna203514 (in response to a question whether noncitizens deserve due process under the Fifth Amendment, President Trump replied "I don't know. It seems—it might say that, but if you're talking about that, then we'd have to have a million or 2 million or 3 million trials.").

must be detained under that section and are "ineligible for any subsequent release on bond" under § 1226(a)" and to oppose bond before the Immigration Judge (IJ) pursuant to *Matter of Yajure Hurtado*, 29 I &N Dec. 216, 229 (BIA 2025) (holding that IJs have no jurisdiction to consider bond for persons charged as "arriving aliens" in removal proceedings), Petitioner's detention is unlawful, in violation of his Due Process rights and the INA.

10. Any characterization of Petitioner's status as an "arriving alien" pursuant to 8 U.S.C. § 1225(b) and his detention without bond by ICE is in violation of 8 U.S.C. § 1226(a).

11. Accordingly, to vindicate Petitioner's rights, this Court should grant the instant petition for a writ of habeas corpus. Petitioner asks this Court: (a) to find that Respondents' attempts to detain and transfer Petitioner are arbitrary and capricious and in violation of the law; (b) to immediately issue an order preventing Petitioner's transfer out of this district; and (c) to order either a bond hearing before an immigration judge **under safeguards** or to order the Respondent's immediate release from detention, or, in the alternative, to show cause in writing within three (3) days why the writ of habeas corpus and other relief requested in the petition should not be granted.

JURISDICTION AND VENUE

12. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et. seq.

13. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), the INA, 8 U.S.C. §§ 1101–1537, regulations implementing the INA, the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 701–706, and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

14. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 et. seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et. seq., the All Writs Act, 28 U.S.C. § 1651, and the Immigration and Nationality Act, 8 U.S.C. § 1252(e)(2).

15. The federal government has waived its sovereign immunity and permitted judicial review of agency action under 5 U.S.C. § 702. In addition, sovereign immunity does not bar claims against federal officials that seek to prevent violations of federal law (rather than provide monetary relief).

16. Venue is proper because Petitioner is detained in Respondents' custody at the North Lake Processing Center in Baldwin, Michigan. The federal district courts have jurisdiction to hear habeas corpus claims by noncitizens challenging the lawfulness or constitutionality of their immigration detention. *See, e.g.*, *Demore v. Kim*, 538 U.S. 510, 516-17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

17. Venue is further proper because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the Western District of Michigan.

18. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue lies in the United States District Court for the Western District of Michigan, the judicial district in which the Petitioner is currently detained.

REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243

19. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, affording as it does a swift and

imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963).

20. There is no statutory exhaustion requirement in 28 U.S.C § 2241. In the absence of a statutory exhaustion requirement, "prudential" exhaustion may be judicially required. *Island Creek Coal Co. v. Bryan*, 937 F.3d 738, 746 (6th Cir. 2019). Whether or not to require prudential exhaustion falls within this Honorable Court's sound judicial discretion, provided that such discretionary requirement complies with statutory schemes and the intent of Congress. *See Shearson v. Holder*, 725 F.3d 588, 593-594 (6th Cir. 2013) (internal citation/quotation omitted).

21. The United States Court of Appeals for the Sixth Circuit has not yet issued a precedential decision as to whether courts or not should impose administrative exhaustion in the context of a noncitizen's habeas petition for unlawful mandatory detention. *See, e.g., Jose O. Puerto-Hernandez v. Robert Lynch, et al.*, No. 25-1097, 2025 WL 3012033 (W.D. Mich. Oct. 28, 2025) (internal citations omitted).

22. As noted above, the precedential decisions issued by the BIA in *Matter of Q. Li* stands for the proposition that the Petitioner is subject to indefinite, mandatory detention and is ineligible for a bond hearing before an immigration judge.

23. The BIA's precedential decisions "serve as precedents in all proceedings involving the same issue or issues." 8 C.F.R. §§ 1003.1(g)(2), (d)(1). Therefore, requiring the Petitioner to seek a bond hearing and, when denied, appeal that denial to the BIA will certainly result in a holding that anyone who is deemed "[a]n alien present in the United States without being admitted or paroled," will be subjected to mandatory detention without bond under 8 U.S.C. § 1225(b)(2).

24. Moreover, the fundamental question presented by this petition is whether 8 U.S.C. § 1225 or 8 U.S.C. § 1226 applies to the Petitioner's detention, which is a purely legal question of

statutory interpretation which would not be impacted by any administrative record developed in immigration court or on appeal to the BIA.

25. This Honorable Court is not bound by and is not required to give deference to any agency interpretation of a statute. *See Loper Bright Enter. v. Raimond*o, 603 U.S. 369, 413 (2024) (holding that federal judges are not required to, and pursuant to the APA are not to defer to an agency interpretation of the law simply because a statute is ambiguous, as that is the role of the federal courts).

26. Finally, the Petitioner's constitutional challenge to his detention does not require exhaustion. The Sixth Circuit has noted that due process challenges, such as the one raised by Petitioner here, generally do not require exhaustion because the BIA cannot review constitutional challenges. *See Sterkaj v. Gonzalez*, 439 F.3d 273, 279 (6th Cir. 2006).

27. Thus, requiring prudential exhaustion is a futile exercise, and will only result in the extended, unlawful detention of the Petitioner.

28. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the Respondents "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an OSC is issued, the Court must require Respondents to file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

29. Petitioner is "in custody" for the purpose of § 2241 because Petitioner is arrested and detained by Respondents.

PARTIES

30. Petitioner Salgado-Argueta is a 27-year-old citizen of El Salvador who has been in immigration detention since February 7, 2026. Petitioner initially entered the United States in

2015. Petitioner is present within the Western District of Michigan as of the time of filing this petition, as he is currently detained at the North Lake Processing Center in Baldwin, Michigan.

31. Respondent Kevin Raycraft is the Acting Director of the Detroit Field Office of ICE's Enforcement and Removal Operations division, a component of the Department of Homeland Security. As such, he is Petitioner's immediate custodian for purposes of habeas and is responsible for Petitioner's detention and removal. *See Roman v. Ashcroft*, 340 F.3d 314 (6th Cir. 2003). He is sued in his official capacity.

32. Respondent Todd Lyons is the Acting Director of U.S. Immigration and Customs Enforcement, the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens, and a component agency of the Department of Homeland Security. He is sued in his official capacity.

33. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the INA, and oversees ICE, which is responsible for Petitioner's detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

LEGAL FRAMEWORK

Release and Indefinite, Mandatory Detention

34. On July 8, 2025, ICE issued interim guidance instructing all ICE employees to consider anyone charged with inadmissibility under § 1182(a)(6)(A)(i)—i.e., those who entered the United States without inspection—to be an "applicant for admission" under 8 U.S.C. § 1225(b)(2)(A) and therefore subject to mandatory detention. The July 8, 2025 DHS policy memorandum states it was issued "in coordination with the Department of Justice (DOJ)." **[Exhibit 1 - July 8, 2025 ICE Guidance Regarding Detention Authority for Applications for Admission]**

35. On information and belief, Petitioner's Notice to Appear charges him with inadmissibility pursuant to INA § 212(a)(6)(A)(i), codified at 8 U.S.C. § 1182(a)(6)(A)(i). Therefore, based on the Respondents' July 8, 2025 ICE Guidance, the Petitioner is purportedly subject to indefinite, mandatory detention. However, whether or not Respondents are correct turns on what provision of law governs Petitioner's detention.

36. As this Honorable Court has jurisdiction over this Petition for a Writ of Habeas Corpus, it must next determine whether the Petitioner's detention is governed by the mandatory detention provisions in 8 U.S.C. § 1225(b)(2) or the discretionary detention provisions in 8 U.S.C. § 1226(a).

37. Noncitizens detained under Section 1225(b)(2) must remain in custody for the duration of their removal proceedings, while those detained under Section 1226(a) are entitled to a bond hearing before an IJ at any time before entry of a final removal order." *See Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1247 (W.D. Wash. 2025).

38. Since July 8, 2025, Respondents have begun widespread arrests and detentions of persons such as the Petitioner, who entered the U.S. without inspection and have been present for years. Respondents now take the position that persons in Petitioner's situation are "applicants for admission" and therefore subject to indefinite, mandatory detention under 8 U.S.C. § 1225(b)(2).

39. To the contrary, the Petitioner is detained pursuant to 8 U.S.C. § 1226(a).

40. 8 U.S.C. § 1225(a)(1) provides that a noncitizen "present in the United States who has not been admitted or who arrives in the United States . . . shall be deemed for purposes of this chapter an applicant for admission." The statute defines an "applicant for admission" as "[a]n alien present in the United States who has not been admitted or who arrives in the United States . . . ." 8 U.S.C. § 1225(a)(1).

41. The Respondents have argued to various courts around the United States that persons such as the Petitioner are subject to § 1225(b)(2), which provides that, "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title." 8 U.S.C. § 1225(b)(2)(A).

42. In other words, § 1225(b)(2)(A) generally requires mandatory detention of certain "applicant[s] for admission" during their removal proceedings. Individuals subject to mandatory detention under § 1225(b)(2)(A) may, however, be "temporarily released on parole 'for urgent humanitarian reasons or significant public benefit.'" *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018) (quoting § 1182(d)(5)(A)). This parole "shall not be regarded as an admission" of the noncitizen. 8 U.S.C. § 1182(d)(5)(A).

43. Once the purposes of parole have been served, the noncitizen "shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States." *Id.*

44. By contrast, § 1226(a) sets forth "the default rule" for detaining noncitizens "already present in the United States." *Jennings*, 583 U.S. at 303. Section 1226(a) provides that, "[o]n a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a).

45. Unlike § 1225(b)(2)(A), noncitizens who fall under § 1226(a) are not subject to mandatory detention. Pending a removal decision, the Attorney General may continue to detain an arrested noncitizen, release them on bond, or release them on conditional parole, unless they fall

within certain exceptions involving criminal offenses and terrorist activities. *See* 8 U.S.C. § 1226(a) (1)-(2), (c).

46. The Respondents have taken the position in courts across the country that § 1226(a), and the possibility of release on bond, only applies to individuals who are present in the country with lawful status but are in removal proceedings. However, section 1226(a) does not contain a requirement of lawful status, and "courts are not free to read into the language [of a statute] what is not there." *See O'Hara v. Nika Techs., Inc.*, 878 F.3d 470, 475 (4th Cir. 2017).

47. Presumably, the Respondents will take the position that the Petitioner in this case is detained pursuant to § 1225(b)(2) because he entered this country without inspection, making him inadmissible under 8 U.S.C. § 1182(a). This argument fails for several reasons.

48. First, the Respondents' treatment of the Petitioner since he arrived in the United States supports the conclusion that he is detained pursuant to § 1226(a). The Petitioner entered the country without inspection in 2015, over 10 years ago. The Respondents have consistently treated the Petitioner as subject to § 1226(a) up to this point.

49. Individuals detained under § 1225(b) may not be released on recognizance; they may only be paroled into the country under § 1182(d)(5)(A) (release on recognizance is a form of "conditional parole" from detention under § 1226 that is distinct from parole under § 1182(d)(5)(A)). *See Martinez v. Hyde*, No. 25-cv-11613, 2025 WL 2084238, at *3 (D. Mass. July 24, 2025))). That distinction is significant.

50. The INA allows an individual paroled into the United States to physically enter the country subject to a reservation of rights by the Government that it may continue to treat the non-citizen "as if stopped at the border." *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 139

(2020) On the other hand, conditional parole—including release on recognizance—releases a noncitizen already in the country from domestic detention. *Id.*

51. Individuals paroled into the country are thus in a fundamentally different and less protected position than "those who are within the United States after an entry, irrespective of its legality." *See Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958)). DHS's decision to place the petitioner in the custody of the Office of Refugee Resettlement ("ORR"), and then release the Petitioner into the care and custody of his aunt in Elizabeth, New Jersey does not support an argument that federal respondents actually intended for him to be paroled into the United States pursuant to § 1182(d)(5)(A). **[Exhibit 2 – ORR Release Notice]** Specifically, unaccompanied children are not released from ICE custody, they are released from the custody of the Department of Health and Human Services pursuant to the William Willberforce Trafficking Victims Protection Reauthorization Act ("TVPRA").

52. Further, applying § 1225 to all persons who have not been admitted into the United States would conflict with the statute's broader structure, the Supreme Court's traditional understanding of the relationship between §§ 1225(b) and 1226(a), and decades of immigration practice. "[O]ne of the most basic . . . . canons" of statutory interpretation is that "a statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant." *Corley v. United States*, 556 U.S. 303, 314 (2009) (quoting *Hibbs v. Winn*, 542 U.S. 88, 101 (2004)) (internal brackets omitted).

53. By contrast, the Respondents' position that § 1225(b) applies to all persons who have not been admitted into the United States would render multiple provisions of § 1226 superfluous. For instance, § 1226(c)(1)(A), (D), and (E) already require mandatory detention of certain categories of inadmissible noncitizens. Indeed, Congress added § 1226(c)(1)(E)—which

requires detention for certain inadmissible noncitizens charged with crimes including burglary, theft, and larceny—just this year through the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).

54. If § 1225(b) already required mandatory detention of all noncitizens who have not been admitted, these provisions would be meaningless.

55. The Respondents' theory also conflicts with the Supreme Court's previous interpretation of the relationship between §§ 1225(b) and 1225(a). In *Jennings*, the Supreme Court explained that § 1225(b) governs noncitizens "seeking admission into the country," whereas § 1226(a) governs noncitizens "already in the country" who are subject to removal proceedings. *Jennings*, 583 U.S. at 289. That interpretation is consistent with the core logic of our immigration system. "[O]ur immigration laws have long made a distinction between those aliens who have come to our shores seeking admission . . . and those who are within the United States after an entry, irrespective of its legality.

56. In the latter instance the Court has recognized additional rights and privileges not extended to those in the former category who are merely 'on the threshold of initial entry.'" *Leng May Ma*, 357 U.S. at 187 (*quoting Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953)); *accord Zadvydas*, 533 U.S. 678, 693 (2001) ("The distinction between an alien who has effected an entry into the United States and one who has never entered runs throughout immigration law.").

57. Given this precedent, it is doubtful that Congress intended § 1225(b)(2) to apply to individuals like the Petitioner who were detained after being present in the U.S. for an extended period of time, who had not committed any crimes, and who were fully compliant with all requirements to attend ICE check-ins and immigration court hearings.

58. Respondents' position is at odds with DHS's own historic understanding of the statute's meaning. DHS's longstanding interpretation of § 1226 "like any other interpretive aid—can inform a court's determination of what the law is." *Hasan v. Crawford*, No. 1:25-cv-1408, 2025 WL 2682255 at *9 (E.D. Va. Sept. 19, 2025) (*quoting Loper Bright Enter. v. Raimondo*, 603 U.S. 369, 386 (2024)). "DHS's long-standing interpretation has been that § 1226(a) applie[d] to those who have crossed the border between ports of entry and are shortly thereafter apprehended." *Id.* (quoting Transcript of Oral Argument at 44:24–45:2, *Biden v. Texas*, 597 U.S. 785 (2022) (No. 21-954)); *see also Benitez v. Francis*, No. 25-cv-5937, 2025 WL 2371588 at *8 (S.D.N.Y. Aug. 13, 2025) (observing that DHS's "novel position would expand § 1225(b) far beyond how it has been enforced historically").

59. DHS's historic practice reinforces § 1226(a)'s application to noncitizens in the Petitioner's position who are arrested well after arriving to this country.

60. Two (2) Circuit Courts of Appeal have weighed in on this legal issue. The Seventh Circuit Court of Appeals in *Castañon Nava v. U.S. Dep't of Homeland Security, et al.,* 161 F.4th 1048 (7th Cir. 2025) (finding that Appellants were unlikely to succeed on the merits of this argument) and the Fifth Circuit Court of Appeals in *Buenrostro-Mendez v. Bondi*, No. 25-20496, --- F.4th ---, 2026 WL 323330 (5th Cir. Feb. 6, 2026) (accepting Respondents' radical reinterpretation of long-settled law).

61. This issue is currently on appeal in at least three additional circuit courts, including the Sixth Circuit Court of Appeals. In fact, the Sixth Circuit is poised to take up the same statutory interpretation issue in *Lopez-Campos v. Raycraft*, Case No. 25-1965 (6th Cir. Oct. 27, 2025) which is currently scheduled for oral argument in March of 2026, pursuant to an expedited schedule. *See* Doc. # 29, No. 25-1965 (scheduling oral arguments for March 18, 2026).

62. Numerous federal district courts have weighed in after the Fifth Circuit's decision in *Buenrostro v. Mendez*, the vast majority of which have disagreed with the Respondents' position, many of which cite to the Seventh Circuit's reasoning in *Castañon Nava*.

63. In just the three business days since the Fifth Circuit's issued, at least *sixty-two* (62) district court judges have issued opinions citing to that decision with more opinions uploading every day.

64. Of those 62 decisions, six were in the Fifth Circuit's jurisdiction, of which four followed the holding of the Fifth Circuit as precedential, one district court ordered additional briefing, and one district court granted the petition for a writ of habeas corpus on procedural due process grounds not reached by the Fifth Circuit Court of Appeals in *Buenrostro v. Mendez*.

65. With regard to the other fifty-six (56) decisions by federal district courts in other circuits that cited to the Fifth Circuit's decision in *Buenrostro-Mendez v. Bondi*, fifty-one (51) of them have disagreed with the Fifth Circuit's holding in that case, while four (4) federal district courts have concurred with the Fifth Circuit's decision, and one of them sought additional briefing based on the Fifth Circuit's decision.

Asylum and Refugee Law

66. The Refugee Act of 1980, the cornerstone of the U.S. asylum system, provides a right to apply for asylum to individuals seeking safe haven in the United States. The purpose of the Refugee Act is to enforce the "historic policy of the United States to respond to the urgent needs of persons subject to persecution in their homelands." Refugee Act of 1980, § 101(a), Pub. L. No. 96-212, 94 Stat. 102 (1980).

67. The "motivation for the enactment of the Refugee Act" was the United Nations Protocol Relating to the Status of Refugees, "to which the United States had been bound since

1968." *INS v. Cardoza-Fonseca*, 480 U.S. 421, 424, 432-33 (1987). The Refugee Act reflects a legislative purpose "to give 'statutory meaning to our national commitment to human rights and humanitarian concerns.'" *Duran v. INS*, 756 F.2d 1338, 1340 n.2 (9th Cir. 1985).

68. The Refugee Act established the right to apply for asylum in the United States and defines the standards for granting asylum. It is codified in various sections of the INA.

69. The INA gives the Attorney General or the Secretary of Homeland Security discretion to grant asylum to noncitizens who satisfy the definition of "refugee." Under that definition, individuals generally are eligible for asylum if they have experienced past persecution or have a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion and if they are unable or unwilling to return to and avail themselves of the protection of their homeland because of that persecution of fear. 8 U.S.C. § 1101(a)(42)(A).

70. Although a grant of asylum may be discretionary, the right to apply for asylum is not. The Refugee Act broadly affords a right to apply for asylum to any noncitizen "who is physically present in the United States or who arrives in the United States[.]" 8 U.S.C. § 1158(a)(1).

71. Because of the life-or-death stakes, the statutory right to apply for asylum is robust. The right necessarily includes the right to counsel, at no expense to the government, *see* 8 U.S.C. § 1229a(b)(4)(A), § 1362, the right to notice of the right to counsel, *see* 8 U.S.C. § 1158(d)(4), and the right to access information in support of an application, *see* § 1158(b)(1)(B) (placing the burden on the applicant to present evidence to establish eligibility).

72. Noncitizens seeking asylum are guaranteed Due Process under the Fifth Amendment to the U.S. Constitution. *Reno v. Flores*, 507 U.S. 292, 306 (1993).

73. Noncitizens who are applicants for asylum are entitled to a full hearing in immigration court before they can be removed from the United States. 8 U.S.C. § 1229a. Consistent with due process, noncitizens may seek administrative appellate review before the BIA of removal orders entered against them and judicial review in federal court upon a petition for review. 8 U.S.C. § 1252(a) *et seq*.

Right to a Neutral Arbiter in Immigration Court

74. 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,* 533 U.S. at 690).

75. Federal regulations provide that the relevant factors for consideration for bond in immigration court are that "release would not pose a danger to other persons or to property" and that the detainee would be "likely to appear for any scheduled proceeding or interview." 8 C.F.R. § 1003.19(h)(3).

76. Thus, 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.

77. 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).

78. Further, pursuant to 8 C.F.R. § 1003.10(b), "In all cases, immigration judges shall seek to resolve the questions before them in a timely and impartial manner consistent with the Act and regulations."

79. An IJ is "an attorney whom the Attorney General appoints as an administrative judge within the Executive Office for Immigration Review." 8 U.S.C. § 1101(b)(4).

80. The Office of Personnel Management has categorized career attorney positions as Schedule A. 5 C.F.R. § 213.3102. All IJs are career Schedule A appointees. Consequently, the Civil Service Reform Act of 1978 ("CRSA") set forth at 5 U.S.C. §§ 2301 and 2302 outlined below apply to the appointment of IJs.

81. As outlined above, IJs are required to exercise independent judgment, and to serve as impartial arbiters, following the statute and regulations. IJ's decisions are final unless they are formally appealed to the BIA.

82. Similarly, the BIA is composed of fifteen (15) Board Members, including the Chairman and Vice Chairman. Board Members are "attorneys appointed by the Attorney General." 8 C.F.R. § 1003.1(a)(2).

83. The BIA Chair is a career Senior Executive Service ("SES") position. Under the regulations, the Attorney General "may designate one or two Vice Chairmen to assist the Chairman."

84. Both Vice Chair positions are career positions, not political appointments. The remainder of the BIA member positions are also career Schedule A positions.

85. Thus, the civil service laws set forth at 5 U.S.C. §§ 2301 and 2302 apply to all IJs and BIA Board Members, including the Chair and Vice Chair(s).

86. CRSA Section 2302 sets forth a list of "prohibited personnel practices" and states that "[a]ny employee who has authority to take, direct others to take, recommend, or approve any personnel action shall not, with respect to such authority…take or fail to take, or threaten to take or fail to take, any personnel action against any employee or applicant for employment because

of—…refusing to obey an order that would require the individual to violate a law, a rule or regulation." 5 U.S.C. § 2302(b)(9)(D).

FACTUAL BACKGROUND

87. Juan Daniel Salgado-Argueta, a citizen and national of El Salvador, is an asylum seeker who initially entered the United States in 2015 when he was 16 years old. Subsequent to his initial entry, he was placed in the custody of the Office of Refugee Resettlement ("ORR"), an office within the Department of Health and Human Services ("DHHS"). He was later released from ORR custody into the care and custody of his aunt in Elizabeth, New Jersey. **[Exhibit 2 – ORR Release Notice]**

88. Mr. Salgado-Argueta has maintained residence and physical presence in the United States since his initial entry. He has fully complied with all requirements to attend ICE check-ins and immigration court hearings.

89. After his initial entry, Mr. Salgado-Argueta filed an application for asylum, as well as an application for employment authorization based on his pending asylum application. His Employment Authorization Document reflects eligibility under category "C08," which corresponds to applicants with a pending asylum application. **[Exhibit 3 – Employment Authorization Document]** On information and belief, his asylum is still currently pending.

90. Mr. Salgado-Argueta has a 4-year-old U.S. Citizen son with his previous partner, Katherin Ruby Calva Cordon ("Ms. Calva Cordon"). Following Ms. Calva Cordon's recent heart surgery in January 2026, she has been physically unable to take care of their son. **[Exhibit 4 – Medical Documents]** As a result, Mr. Salgado-Argueta has become the primary caretaker of his son who currently is residing with him and his girlfriend.

91. Petitioner has tried to participate fully and actively in pursuing relief from removal laws of this country. However, on or about February 7, 2026, Mr. Salgado-Argueta was detained along with a crew of 4 other workers. On information and belief, 2 of the workers detained were U.S. citizens and released immediately while the other 2 workers had Temporary Protected Status and were also released. All 4 of the workers, like Mr. Salgado-Argueta, were unjustly detained without cause and without a warrant.

92. On information and belief, Mr. Salgado-Argueta has no criminal history in the United States or anywhere else in the world.

93. As a result, Mr. Salgado-Argueta remains in detention and without relief from this court, faces the prospect of months, or even years, in immigration custody, separated from his family and community.

94. At the same time, Respondents, in conjunction with the Attorney General of the United States, have taken steps to deprive the Petitioner of a neutral arbiter in immigration court.

95. As former New York IJ George Pappas has stated publicly, "*I can tell you that today, the immigration courts are substantively dead. They are completely absent of due process. Of fair hearings. They exist only for show, and in name only. Period. The courts are dead. If you're concerned about doing due process of fair hearings, they're gone. So we can start from that position.*"[2]

96. The immigration court system is not an independent adjudicative body. It operates under the DOJ. In the last year the DOJ and its sub-agencies, the EOIR and the BIA, in apparent

[2] Radley Balko, *"The courts are dead." An interview with a fired immigration judge*, The Watch (Jan. 8, 2026), https://radleybalko.substack.com/p/the-courts-are-dead-an-interview (Last visited Feb. 4, 2026).

coordination with the Respondents, have systematically dismantled the integrity of the immigration court system to turn it into an extension of DHS' deportation and detention operations.

97. The evidence of EOIR's institutional capture falls into seven categories, each independently sufficient to establish bias, but together demonstrating systematic destruction of judicial independence: (a) the ongoing mass-scale purge of IJs perceived as obstacles to DHS' enforcement agenda; (b) the parallel purge and reconstitution of the BIA, resulting in a 97% pro-government decision rate; (c) the recruitment and installation of explicitly enforcement-aligned "deportation judges" with dramatically reduced qualifications; (d) EOIR policy directives establishing expectations that adjudications favor the government over noncitizens; (e) explicit instructions to defy district court rulings that impede DHS's enforcement goals; (f) new instructions to EOIR judges to find a reason to deny bond after a federal court has issued a writ of habeas corpus; and (g) the destruction of the right to appeal to the Board of Immigration Appeals.

Ongoing, Mass-Scale Purge of IJs
Perceived as Obstacles to the Government's Enforcement Agenda.

98. As of September 26, 2025, the administration has terminated 128 immigration judges ("IJs"), which constituted more than one seventh of the immigration bench.[3]

99. Former New York IJ David K.S. Kim has explained the targeting criteria publicly, stating, "I do not know the exact reason for my termination, but most of those dismissed, including myself, were judges with high asylum approval rates."[4]

100. Former Baltimore IJ Emmett Soper has stated publicly, "I think the current administration of the immigration courts does not fundamentally see the immigration courts as

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[3] *Trump Administration Continues Firing Immigration Judges -- IFPTE responds*, IFPTE (Sept. 26, 2025), https://www.ifpte.org/news/trump-administration-continues-firing-immigration-judges-ifpte-respondsnbsp (Last visited Feb. 4, 2026).

[4] 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 (Last visited Feb. 4, 2026).

neutral decision-makers. I think that they see the immigration courts as a tool for this administration to advance its policy objectives."[5]

101. Former San Francisco IJ Jeremiah Johnson has stated publicly that he got "the hint that they should be hearing cases a certain way, deciding cases a certain way. Move faster. Less due process, essentially."[6]

102. San Francisco IJ George Pappas was even more direct in his public assessment, stating, "We were told to facilitate deportation… Due process is dead in immigration courts."[7]

103. In support of the lack of due process available to the Petitioner in immigration court, in addition to all the publicly available materials, the Petitioner attaches the declaration of a former immigration judge (retired), Lawrence O. Burman, submitted under penalty of perjury. **[Exhibit 5 – Declaration of Retired IJ Lawrence O. Burman]**

The Government has imposed a pervasive climate of fear designed to ensure compliance with its deportation agenda by IJs.

104. Former Baltimore IJ David C. Koelsch describes the current environment as "an atmosphere of paranoia and fear, which is exactly what they want."[8]

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[5] 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 (Last visited Feb. 4, 2026).

[6] 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/ (Last visited Feb. 4, 2026).

[7] 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 (Last visited Feb. 4, 2026).

[8] Poggio, *supra* note 8.

105. 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."[9]

106. 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."[10]

Judicial independence is compromised when the self-interest of IJs requires favoring the government.

107. As former San Francisco IJ Elizabeth Young has stated publicly, "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.'"[11]

108. Former Boston IJ Sarah Cade has stated publicly, "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."[12]

109. It is wholly illegal for the Government to terminate IJs who are granting relief by impartially applying the law to the facts to the best of their ability; however, that is exactly what is happening.

110. IJs have essentially been unlawfully forbidden from following the statute and regulation where in conflict with the Government's mass deportation agenda. No adjudicator can

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[9] 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-syste m-jeopardy-due-trumps-firings/409544/ (Last visited Feb. 4, 2026).

[10] 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/ (Last visited Feb. 4, 2026).

[11] Poggio, *supra* note 8.

[12] Poggio, *supra* note 8.

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.

The BIA Purge and Resulting Statistical Evidence of Bias.

111. A parallel purge occurred at the BIA which was reduced from 28 members to 15 members. All Biden appointees on the BIA were fired.[13]

112. The statistical impact of this purge is stark. As of February 4, 2026, the reconstituted BIA has issued 73 published decisions.[14] Of those, 71 decisions (97%) favored the administration.[15]

113. By contrast, during the entire four-year span of the prior administration, the BIA issued 76 published decisions.[16] 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.

The Installation and Recruitment of Judges Aligned with Enforcement Agenda.

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[13] 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/ (Last visited on Feb. 4, 2026).

[14] Exec. Off. for Immigr. Rev., *Volume 29*, U.S. Dep't of Just. (Jan. 21, 2025), https://www.justice.gov/eoir/volume-29 (Last visited on Feb. 4, 2026).

[15] *Id.* Of the remaining two decisions: one decision was neutral (involving attorney sanctions) and one decision disfavored the administration.

[16] 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) (Last visited on Feb. 4, 2026).

114. To replace purged judges, the DOJ launched recruitment for what it explicitly marketed as "deportation judges."[17] Respondent Noem/DHS–a party in immigration proceedings before EOIR via its subagency Respondent Lyons/ICE– promoted these openings on social media (Instagram and X) with enforcement-focused language, stating "Bring the hammer down on criminal illegal aliens" and "Defend your communities, your culture, your very way of life."[18]

115. In addition, the DOJ in conjunction with the Department of Defense has authorized up to 600 military lawyers to serve as temporary IJs for a renewable term not to exceed six months, while simultaneously eliminating requirements to serve as temporary IJs.[19]

116. 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.

117. The Government 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 IJs, which includes six weeks of initial training, one year of mentorship by an experienced judge, and two years of quarterly reviews.[20]

118. Corey Lewandowski, an adviser to Respondent DHS Secretary Noem, responded to the announcement by posting on social media, stating, "I see more deportations of illegal

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[17] Coral Murphy Marcos, "U.S. justice department recruiting legal experts to serve as 'deportation' judges," The Guardian (Nov. 21, 2025) , https://www.theguardian.com/us-news/2025/nov/21/us-justice-department-ad-deportation-judges (Last visited on Feb. 4, 2026).

[18] *See* https://x.com/DHSgov/status/1991887545236701694; *see also* https://www.instagram.com/p/DRVT8DmCQKD/?hl=en (Nov. 21, 2025) (Last visited on Feb. 4, 2026).

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

[20] 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-an d-potentially (Last visited on Feb. 4, 2026).

immigrants in the near future"[21]—an explicit acknowledgment of the mass deportation policy objective underlying these appointments and the erosion of institutional boundaries between DOJ and DHS.

119. In December 2025, 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."[22]

EOIR Policy Memoranda Establishing Expectations that Adjudications Favor the Government over Noncitizens.

120. In addition to unfounded personnel changes, EOIR's initial acting director Sirce E. Owen (replaced by Director Daren K. Margolin in October 2025) quickly issued "a string of sharply worded policy memos" that immediately "[set] the tone for her leadership."[23]

121. "Sources familiar with Owen described her as a "restrictionist loyalist" with a reputation for denying cases."[24]

122. 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."[25]

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[21] Corey R. Lewandowski (@CLewandowski), X (Sept. 2, 2025, 1:47 PM), https://x.com/clewandowski/status/1962950546652070269 ((Last visited on Feb. 4, 2026).

[22] *US army lawyer fired as immigration judge after defying Trump deportation agenda*, The Guardian (Feb. 10, 2025), https://www.theguardian.com/us-news/2025/dec/19/army-lawyer-fired-immigration-trump-deportation (Last visited on Feb. 4, 2026).

[23] E. Tammy Kim, *Inside Donal Trump's Attack on Immigration Courts*, The New Yorker (Oct. 23, 2025) https://www.newyorker.com/inside-donald-trumps-attack-on-immigration-court (Last visited on Feb. 4, 2026).

[24] Dias, *supra* note 11.

[25] 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 (Last downloaded on Feb. 4, 2026).

123. 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";[26] 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;[27] and memoranda restricting IJs' ability to grant continuances[28] and administrative closure.[29]

EOIR Issuance of Explicit Directives to Ignore Federal District Court Rulings that Impede DHS's Policy Objectives.

124. The clearest evidence that EOIR has abandoned its role as a neutral tribunal comes from its responses to federal court orders protecting the right to a bond hearing in habeas.

125. In 2025 the Administration radically reinterpreted existing law in order to find all noncitizens who ever entered the United States without inspection subject to indefinite, mandatory detention in a July 8, 2025 ICE Policy Memorandum.[30] **[Exhibit 1 – July 8, 2025 ICE Guidance Regarding Detention Authority for Applications for Admission]**

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[26] 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/2025.06.27EOIR-PM25-33.pdf (Last visited on Feb. 4, 2026).

[27] 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 (Last visited on Feb. 4, 2026).

[28] 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 (Last visited on Feb. 4, 2026).

[29] 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 (Last visited on Feb. 16, 2026). https://www.justice.gov/eoir/media/1397161/dl?inline (Last visited on Feb. 4, 2026).

[30] Maria Sacchetti and Carole D. Leonnig, " *ICE declares millions of undocumented immigrants ineligible for bond hearings*," The Washington Post (July 15, 2025), https://www.washingtonpost.com/immigration/2025/07/14/ice-trump-undocumented-immigrants-bond-hearings/ (Last visited on Feb. 4, 2026).

126. In response, on July 28, 2025, the American Civil Liberties Union ("ACLU") and the Northwest Immigration Rights Project ("NWIRP") filed *Maldonado Bautista v. Santacruz* in the Central District of California.

127. *Maldonado Bautista v. Santacruz* is a nationwide class action on behalf of noncitizens who entered the United States without inspection but who were not apprehended at the border seeking declaratory and injunctive relief that the class is eligible for bond hearings pursuant to 8 U.S.C. § 1226(a), and not subject to indefinite, mandatory detention pursuant to 8 U.S.C. § 1225(b)(2).

128. On September 5, 2025, the BIA issued a decision in *Matter of Yajure-Hurtado*, 29 I.&N. Dec. 216 (BIA 2025) (holding that under the plain language of section 235(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1225(b)(2)(A) (2018), IJs lack jurisdiction to hear bond requests or to grant bond to noncitizens who are present in the United States without admission).

129. In November 2025, United States District Judge Sunshine Sykes issued both declaratory and injunctive relief in *Maldonado-Bautista v. Santacruz*, 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).

130. Judge Sykes certified a nationwide class and entered final judgment. *Id.*

131. Rather than comply with the order, EOIR leadership directed all IJs to ignore the order. On January 13, 2026, Chief Immigration Judge Teresa L. Riley sent an email to all IJs 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."

[Exhibit 6 - Am. Immigr. Laws. Ass'n, Practice Alert: EOIR Issues Nationwide Guidance on *Maldonado Bautista*][31]

132. The effect was immediate: ACLU lawyers reported that IJs who had begun granting bond hearings in compliance with Judge Sykes' ruling reversed course after receiving Chief Judge Riley's directive.[32]

133. IJs 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.

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

> "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***. ...

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[31] *See* AILA Doc. No. 26011404 (Jan. 16, 2026), https://www.aila.org/library/practice-alert-eoir-issues-nationwide-guidance-on-maldonado-bautista (Last visited on Feb. 4, 2026).

[32] *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/ (Last visited on Feb. 4, 2026).

> 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.***"

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

135. Judge Sykes' found that the government is not merely disagreeing with her legal conclusions—it is engaged in "deliberate" defiance, "manufacturing arguments," and instructing IJs to rely on "interpretations that were expressly found unlawful."

136. In other words, when presented with a federal court order protecting noncitizens' rights, EOIR's response was to order judges to violate it.

137. In addition, this Administration has, over the course of the past year, established a pattern and practice of defying federal court orders on the flimsiest of pretexts (or with no excuse whatsoever) when those orders did not further its immigration enforcement goals. In recent weeks, federal judges throughout the United States have criticized the systematic legal and constitutional abuses by the Administration.[33]

138. Below are just a few examples of rulings by federal district judges that address these issues.

- In addition to Judge Sykes' January 16, 2026 ruling in *Maldonado Bautista v. Santacruz*, in *Singh v. Bowen*, Case No. 5:26-cv-00016-SSS-BFM, 2026 WL 130587, at *3 (C.D. Cal. Jan. 15, 2026), she threatened to hold administration officials in contempt for what she labeled its "continued defiance" of valid court orders requiring bond hearings for detained immigrants.
- United States Chief Judge for the District of Minnesota Patrick Schiltz issued a ruling on January 28, 2026, stating that "ICE has likely violated more court orders in January 2026 than some federal agencies have violated in their entire existence." He estimated, conservatively, that the agency had violated court orders

[33] Kyle Cheney, "*Judges across the country rebuke ICE for defying court orders*," Politico.com (Jan. 30, 2026) https://www.politico.com/news/2026/01/30/ice-immigration-court-orders-00757894 (Last visited on Feb. 4, 2026).

by federal district judges in Minnesota at least 96 times in the month of January 2026 alone. In his ruling, he further stated, "ICE is not a law unto itself." *Juan T.R. v. Noem*, Case No. 26-CV-0107-PJS-DLM, 2026 WL 232015, at *1 (D.Minn. Jan. 28, 2026).

- United States District Judge Christine O'Hearn chastised the Administration's defiance of her order to release a noncitizen detainee from ICE custody without any conditions, noting that they instead required him to submit to electronic monitoring. "Respondents blatantly disregarded this Court's Order…This was not a misunderstanding or lack of clarity; it was knowing and purposeful." *Cruz Santos v. Baker*, Case No. 1:25-cv-18959-CPO, (D.N.J. Jan. 27, 2026).
- United States District Judge Roy Dalton found that the U.S. Attorney and Assistant U.S. Attorney violated their duty of candor to the Court in their filings opposing a bond hearing for the habeas petitioner and ordered them to show cause why they should not be sanctioned. *Gimenez Rivero v. Mina*, Case No. 6:26-cv-66-RBD-NWH, 2026 WL 199319, at *4-5 (M.D. Fla. Jan. 26, 2026).
- United States District Judge Mary McElroy held that the administration defied her orders regarding the location of an ICE detainee, who was moved to a facility in Massachusetts that she had previously deemed "wholly unsuitable." *Neto v. Hyde*, Case No. 25-00425-MSM-AEM, 2026 WL 205533, at *2 (D.R.I. Jan. 27, 2026). Judge McElroy further stated, "[i]t seems clear that the Court can conclude that the [administration] willfully violated two of this Court's orders and willfully misrepresented facts to the Court on January 23, 2026" and issued an Order to Show Cause. *Id.* at *3.
- United States District Judge Angel Kelley held that ICE moved a detained immigrant out of Maine without warning and in violation of an order to keep her in place which caused to miss her hearing for relief. Judge Kelley stated, "[t]he Court notes that ICE signing its own permission slip, citing its own operational needs as reason for the transfer, offers little comfort or justification for ignoring a Federal Court Order," *de Rodriquez v. Hyde*, Case No. 25-CV-13210-AK, 2026 WL 220416, at fn. 1 (D.Mass. Jan.28, 2026).
- United States District Judge Donovan Frank stated in a footnote that it is "deeply concerning" that ICE appears to be "attempting to hide the location of detainees, and thus, make habeas proceedings more difficult for a petitioner and their counsel." *X.D.B. v. Noem*, Case No. 0: 26-cv-00588-DWF-DJF (D.Minn. Jan. 28, 2026).
- United States District Judge Michael J. Davis recently observed that "[t]here has been an undeniable move by the Government in the past month to defy court orders or at least to stretch the legal process to the breaking point in an attempt to deny noncitizens their due process rights… With the evidence currently before the Court, it can only conclude that Respondents are attempting to 'undermin[e] the regulatory and statutory authority of the immigration courts to coerce perpetual, infinite detention.'" *Marco M. v. Bondi*, Case No. 25-cv-4816-MJD-JFD, 2026 WL 194406, at *1 (D.Minn. Jan. 25, 2026).

139. There are many other examples of the Respondents failing to comply with federal court orders related to the Administration's immigration agenda, particularly with regard to habeas petitions for detained immigrants. However, other notable examples of the Administration's defiance of federal court orders requiring it to comply with the law and the Constitution include the case of Kilmar Abrego Garcia, in which the Administration defied orders from multiple federal district court judges, including United States District Judge James Boasberg and United States District Judge Paula Xinis.[34]

140. Moreover, the Abrego Garcia case resulted in former Acting Deputy Director for the DOJ's Office of Immigration Litigation coming forward as a whistleblower regarding the Administration's intentional defiance of the federal courts.[35]

141. Importantly, Mr. Reuveni's testimony establishes that he was instructed by Drew Ensign to not to communicate via e-mail (presumably to avoid a paper trail).[36] This is important, because it establishes a pattern when viewed in conjunction with the Respondents' attempts to evade the requirement that they provide noncitizens in immigration detention with a bond hearing when required to do so by law, in that there have been alleged verbal instructions to IJs that they find grounds to deny bond after the issuance of a writ of habeas corpus.

EOIR Has Now Instructed IJs to Deny Bond After a Petition for a Writ of Habeas Corpus is Granted.

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[34] Erica Orden, "*Conservative Judge blasts Trump administration's 'shocking conduct' in Abrego Garcia case*," Politico.com (April 17, 2025), https://www.politico.com/news/2025/04/17/abrego-garcia-appeal-wilkinson-00298063 (Last visited on Feb. 4, 2026).

[35] Erez Reuveni, "*Protected Whistleblower Disclosure of Erez Reuveni Regarding Violation of Laws, Rules & Regulations, Abuse of Authority, and Substantial and Specific Danger to Health and Safety at the Department of Justice*," (June 24, 2025), https://www.judiciary.senate.gov/imo/media/doc/06-24-2025_-_Protected_Whistleblower_Disclosure_of_Erez_Reuveni_Redacted.pdf (Last visited on February 4, 2026).

[36] *Id.* at p. 19 (fn. 41 indicates that DOJ's implementation of restrictions on communications may be in violation of 5 U.S.C. § 2302(b)(13).

142. Since Respondents implemented their new detention policy guidance on July 8, 2025, there have been thousands of petitions for writ of habeas corpus filed throughout the United States. The overwhelming consensus of federal district judges is that the July 8, 2025 policy does not comport with the law. As a result, Respondents are regularly losing that argument in federal courts and have pivoted to a new strategy.

143. In early January 2026, two IJ assigned to the Annandale detained docket—Judges Raphael Choi and Karen Donoso-Stevens—were abruptly removed in the middle of a bond hearing after they had been granting bond and had begun on the record to question the government's blanket detention position and insistence to keep persons detained under *Yajure Hurtado*. They were replaced by judges who have denied bond to noncitizens. **[Exhibit 5]**

144. The timing, consistency, and outcome of these assignments demonstrate institutional control over results. Judges who provide meaningful review are removed. Judges who deny bond remain. This is not independent adjudication. It is a system designed to nullify federal habeas relief.

145. On information and belief, in January 2026, IJs have received verbal guidance with regard to how they should handle a bond hearing after a writ of habeas corpus has been issued.

146. Even if the Respondents were to schedule a bond hearing for the Petitioner in this case, that remedy has now been rendered illusory. In post-habeas cases across this district, IJs are now systematically denying bond on pretextual grounds that bear no relationship to individualized risk assessments.

147. Since the week of January 5, 2026, when the two IJs handling detained cases were demoted, the IJs that replaced them have been relying on the same narrow set of justifications, repeated across cases:

- Minor or non-existent criminal history is treated as proof of danger.
- The mere fact of removal proceedings is cited as flight risk.
- Boilerplate language about "incentive to flee" replaces individualized analysis.
- Speculation about future conduct substitutes for evidence.
- Before January 5, 2026, bonds were set at high amount, but were set nonetheless. Now, that is even impossible.

These rationales ensure detention regardless of the individual's actual circumstances.

148. The bond outcomes from the last few weeks have shifted dramatically. Many detainees who asked for bond had no criminal history, long residence in the United States, strong family ties, and viable claims for relief were given bond so they could go out and support their loved ones.

149. Before this wave of habeas litigation, similarly situated individuals routinely received bond. Suddenly, bond hearings began resulting in denials or very high bonds in much larger numbers. The sudden and uniform shift cannot be explained by coincidence. The pattern is consistent and predictable: habeas granted, bond hearing ordered, bond denied, detention continues.

150. On information and belief, nationally renowned immigration attorney and litigator Charles Kuck has submitted a Freedom of Information Act ("FOIA") request seeking from EOIR, "Copies of all correspondence, emails, phone records, hand written notes, or any other form of communication or notetaking related to communications from the Head EOIR office or field offices, officials or judges by any leadership staff related to instructions to IJs on bond hearings related to habeas corpus related cases, the Maldonado Injunction or any other type of bond hearing, suggesting, instructing, ordering or otherwise discussing bond cases, or the need to make bond harder to obtain or denying bond any ground, including but not limited to speculative relief, sponsor support, length of time in the United States, prior arrests without disqualifying convictions, or for any other reason." That request is currently pending.

151. The bond hearings being provided in immigration court are now pro forma proceedings with predetermined outcomes to give the appearance of due process while denying its substance.

152. Ordering a bond hearing in this matter will not vindicate Petitioner's rights. It will only delay relief and allow the government to claim technical compliance while continuing unlawful detention.

153. When the government fails to provide a required bond hearing, or when that hearing is rendered a "pro forma" exercise, immediate release is the only adequate remedy.

154. As the Supreme Court held in *Zadvydas v. Davis*, 533 U.S. 678 (2001), when detention loses its relationship to its underlying purpose—such as when there is no significant likelihood of a lawful hearing or removal in the reasonably foreseeable future—it loses its legal justification.

155. Due to the Government's own actions, immediate release under an Order of Supervision is now the only outcome that satisfies the requirements of due process because the bond hearing remedy has been rendered meaningless through institutional manipulation.

The Destruction of the Right to Appeal to the Board of Immigration Appeals.

156. On February 6, 2026, DOJ published an "Interim, Final Rule" in the Federal Register to take effect on March 9, 2026 (unsurprisingly, in violation of the Administrative Procedure Act) which fully strips due process from the BIA appellate process. 91 Fed. Reg 5267 (Feb. 6, 2026) to be codified at 8 C.F.R. §§ 1003, 1208, and 1240.

157. Under the new rule, summary dismissal becomes the default: for most future appeals, the BIA will automatically dismiss unless a majority of permanent Board members vote

within 10 days to accept the case *en banc*. If no vote occurs, the appeal is dismissed within 15 days, and the IJ's decision is adopted as the final agency decision for judicial review. *Id.*

158. Other major changes include: the reduction of the deadline to file an appeal from 30 days to 10 days, with limited asylum-related exceptions; briefing is compressed into a single 20-day simultaneous briefing period for the rare, accepted cases, with no reply briefs and extensions only for exceptional circumstances; IJ transcript review for error is eliminated. *Id.*

159. This represents a major and unprecedented shift in the immigration appellate system and is likely to face significant legal challenges.

160. Just as the Respondents' radical reinterpretation of the law 1225(b) and 1226(a) have flooded federal district courts nationwide with habeas petitions with no end in sight,[37] this new, dramatic change is expected to inundate the federal circuit courts with appeals, as automatic summary dismissals and compressed procedures push more cases into petitions for review.

161. The conversion of the immigration court system by Respondents into an enforcement arm of the Administration, in collusion with DOJ, and the consistent and intentional recalcitrance of the Respondents to comply with valid federal court orders when it conflicts with the Respondents' immigration enforcement goals, requires a more robust remedy than merely ordering a bond hearing in immigration court and trusting the Respondents to act in good faith. Simply put, Respondents have lost the benefit of the doubt.

CLAIMS FOR RELIEF

COUNT ONE
Violation of Fifth Amendment Right to Due Process
Procedural Due Process

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[37] Nate Raymond, Kristina Cooke, and Brad Heath. "*Courts have ruled 4,400 times that ICE jailed people illegally. It hasn't stopped*," Reuters (Feb. 14, 2026) https://www.reuters.com/legal/government/courts-have-ruled-4400-times-that-ice-jailed-people-illegally-it-hasnt-stopped-2026-02-14/ (Last visited Feb. 16, 2025).

162. Petitioner restates and realleges all paragraphs as if fully set forth here.

163. The Due Process Clause of the Fifth Amendment to the U.S. Constitution prohibits the federal government from depriving any person of "life, liberty, or property, without due process of law." U.S. Const. Amend. V. Due process protects "all 'persons' within the United States, including [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693.

164. To determine whether a civil detention violates a detainee's Fifth Amendment procedural due process rights, courts apply the balancing test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976). *United States v. Silvestre-Gregorio*, 983 F.3d 848, 852 (6th Cir. 2020) (applying the *Matthews v. Eldridge* test in the context of immigration).

165. *Matthews v. Eldridge* requires a court to consider the following three factors: "(1) the private interest that will be affected by the official action; (2) the risk of erroneous deprivation of that interest; and (3) the government's interest, including the fiscal and administrative burdens that the additional or substitute procedures entail." *See Lopez-Campos v. Raycraft, et al.*, No. 2:25-cv-12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025) at *9 (*citing Mathews*, 424 U.S. at 335).

166. The Petitioner was detained and has been denied a bond hearing based on no individualized circumstances applicable to him. Further, the Petitioner was detained based upon the Administration's novel interpretation of existing law, and without notice or any opportunity to contest the redetermination of his custody.

167. All of the foregoing violates his due process rights.

COUNT TWO
Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A), the Immigration and Nationality Act – 8 U.S.C. § 1226, and Federal Regulations
Not in Accordance with Law and in Excess of Statutory Authority
Unlawful Detention

168. Petitioner restates and realleges all paragraphs as if fully set forth here.

169. Under the APA, a court shall "hold unlawful and set aside agency action" that is an abuse of discretion. 5 U.S.C. § 706(2)(A).

170. An action is an abuse of discretion if the agency "entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (*quoting Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

171. To survive an APA challenge, the agency must articulate "a satisfactory explanation" for its action, "including a rational connection between the facts found and the choice made." *Dep't of Com. v. New York*, 139 S. Ct. 2551, 2569 (2019) (citation omitted).

172. On information and belief, Respondents have made no individualized finding that Petitioner is a danger to the community or a flight risk.

173. By categorically detaining the Petitioner and transferring Petitioner away from the district in which he resides or the district in which he lives without consideration of Petitioner's individualized facts and circumstances, Respondents have violated the INA, implementing regulations, and the APA.

174. By detaining and transferring the Petitioner categorically, Respondents have further abused their discretion.

175. At a minimum, the Petitioner must be provided with a fair bond hearing before a neutral arbiter who shall make an individualized determination as to whether or not the Respondent is a flight risk or danger to the community.

COUNT THREE
Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A)
Not in Accordance with Law and in Excess of Statutory Authority
Violation of 8 C.F.R. § 239.2(c)

176. Petitioner restates and realleges all paragraphs as if fully set forth here.

177. Under the APA, a court "shall . . . hold unlawful . . . agency action" that is "not in accordance with law;" "contrary to constitutional right;" "in excess of statutory jurisdiction, authority, or limitations;" or "without observance of procedure required by law." 5 U.S.C. § 706(2)(A)-(D).

178. Under the APA, an agency must provide "reasoned explanation for its action" and "may not depart from a prior policy *sub silentio* or simply disregard rules that are still on the books." *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009). *see also Dep't of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 24-33 (2020) (holding that rescission of immigration policy without considering "particular reliance interests" is arbitrary and capricious in violation of the APA).

PRAYER FOR RELIEF

On the basis of the foregoing, the Petitioner respectfully requests that this Honorable Court issue a Writ of Habeas Corpus:

1. Ordering Respondents to release Petitioner from custody immediately, or, in the alternative, hold its own bond hearing before this Court.

2. In the event that the Court instead orders Respondents to promptly provide the Petitioner with a bond hearing before an immigration judge, the Petitioner respectfully requests the following additional safeguards:

    a. That the Respondents shall bear the burden of establishing by clear and convincing evidence that the Petitioner poses a danger or flight risk;

    b. That the Government shall not take into account or argue against bond based on any *ultra vires* factors outside the regulations;

c. That any bond set shall take into account the Petitioner's ability to pay and to the greatest extent possible utilize alternatives to detention;

d. That any order denying bond based on flight risk or danger shall detail with specificity the evidentiary/factual basis for such finding, and disclose the substance of any communications of any kind (direct or indirect, verbal, written, or in any other form) received by the Immigration Judge issuing the order after December 1, 2025 regarding bond determinations for noncitizens after a writ habeas corpus has been issued;

e. That the Court shall retain jurisdiction to review the bond decision to ensure compliance with the Court's order and due process; and

f. That Respondents shall be prohibited from invoking the automatic stay provisions under 8 C.F.R. § 1003.19(i)(2) as that regulation violates the procedural due process rights of noncitizens granted bond.

Dated: March 23, 2026

Respectfully submitted,

s/ Amy Maldonado
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ATTORNEY FOR PETITIONER

VERIFICATION

On this 23rd day of March, 2026, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. I make this verification in lieu of and acting on behalf of the Petitioner, Juan Daniel Salgado-Argueta, because the Petitioner is currently detained and because of the urgent nature of the relief requested. I am authorized to make this verification as a member of the legal team representing the Petitioner, Juan Daniel Salgado-Argueta.

Dated: 03/23/2026

East Lansing, MI

s/ Amy Maldonado

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