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11 **UNITED STATES DISTRICT COURT**
12 **SOUTHERN DISTRICT OF CALIFORNIA**

13 **WUILBER GARCIA-JUAREZ,**

14 **Petitioner,**

15 **v.**

16 **MARKWAYNE MULLIN,**
17 **Secretary of DHS, TODD**
18 **BLANCHE, U.S. Attorney General,**
19 **TODD LYONS, Director of ICE,**
20 **CHRISTOPHER LAROSE, Warden**
21 **of Otay Mesa Detention Center,**

22 **Respondents.**

CIVIL CASE NO.: 26-cv-3007-LL-DEB

Amended¹ Petition
for a
Writ of Habeas Corpus

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27 ¹ Federal Rule of Civil Procedure 15(a)(1)(A) permits a party to “amend its pleading
28 once as a matter of course no later than 21 days after serving it.” Fed. R. Civ. Pro.
15(a)(1)(A) (punctuation altered). It is less than 21 days since service. XXX
therefore files this amended petition as of right.

INTRODUCTION

This petition arises from a sudden change in the way that the Board of Immigration Appeals interprets 8 U.S.C. §§ 1225, 1226. “For decades, and across administrations, DHS has acknowledged that § 1226(a) applies to individuals who entered the United States unlawfully, but who were later apprehended within the borders of the United States long after their entry.” *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1260 (W.D. Wash. 2025) (quoting Petitioner’s brief and noting that Respondents had not contested that claim). But in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), the Board of Immigration Appeals (“BIA”) accepted the government’s new position that inadmissible immigrants are not eligible for bond under § 1226(a), even if they have been living in the United States for years or decades. Instead, the BIA held that all inadmissible immigrants are subject to the mandatory detention provisions in 8 U.S.C. § 1225(b)(2)(A).

Courts do not agree. The government has lost this argument in districts across the United States, *see, e.g., Rodriguez*, 779 F. Supp. 3d at 1260; *Romero v. Hyde*, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Martinez v. Hyde*, 2025 WL 2084238 (D. Mass. July 24, 2025); *Lopez Benitez v. Francis*, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Leal-Hernandez v. Noem*, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Lopez-Campos v. Raycroft*, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Carmona-Lorenzo v. Trump*, No. 4:25CV3172, 2025 WL 2531521, at *5 (D. Neb. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, 2025 WL 2591530, at *7 (C.D. Cal. Sept. 8, 2025); *Hernandez Nieves v. Kaiser*, 2025 WL 2533110 (N.D. Cal. Sept. 3, 2025); *Rosado v. Figueroa*, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), including this one, *see Vasquez Garcia v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025) (Sabraw, J.). This Court should reject that argument, too, and order Petitioner’s immediate release on the bond imposed by the immigration judge (“IJ”).

STATEMENT OF FACTS

Wuilber Garcia Juarez entered the United States without detection in January 2006. Declaration of Wuilber Garcia Juarez, Exhibit A at ¶ 1. He has lived in the U.S. for over 20 years. *Id.* During this entire time, Mr. Garcia Juarez has never been deported. *Id.* at ¶ 2.

Before moving to San Diego, he lived in New York for about 15 years. *Id.* at ¶ 1. He worked and has always paid his taxes using an ITIN number. *Id.* at ¶ 2.

On April 30, 2026, Mr. Garcia Juarez was living in a motor home in Point Loma. *Id.* at ¶ 3. Many ICE officers suddenly surrounded his motor home and told him to come out. *Id.* They immediately arrested him when he came out of the motor home. *Id.* He was placed in removal proceedings and his immigration case remains pending. *Id.* at ¶ 4.

Mr. Garcia Juarez's next master calendar hearing is on June 11, 2026. *Id.* He has not received a bond hearing since being detained. *Id.*

LEGAL BACKGROUND

I. Noncitizens who enter without inspection are entitled to a bond hearing under 8 U.S.C. § 1226(a).

A. In *Yajure Hurtado*, the BIA stripped most noncitizens who enter without inspection of the right to seek bond.

This habeas petition turns on the BIA's recent decision in *Yajure Hurtado*. The issue in *Yajure Hurtado* revolves around two statutes, 8 U.S.C. § 1226(a) and 8 U.S.C. § 1225(b)(2)(A).

"Section 1226(a) provides for the arrest and detention of noncitizens 'pending a decision on whether the alien is to be removed from the United States.'" *Hernandez Nieves*, 2025 WL 2533110, at *3. It instructs that the Attorney General "may continue to detain" arrestees or "may release [them] on bond of at least \$1,500 with security approved by, and containing conditions prescribed by, the Attorney General." 8 U.S.C. § 1226(a) (punctuation altered). "Federal regulations" implementing this statute "provide that aliens detained under § 1226(a) receive

1 bond hearings at the outset of detention.” *Jennings v. Rodriguez*, 583 U.S. 281, 306
2 (2018) (citing 8 C.F.R. § 1236.1(d)(1)).

3 Section 1225(b)(2)(A) provides that “in the case of an alien who is an
4 applicant for admission, if the examining immigration officer determines that an
5 alien seeking admission is not clearly and beyond a doubt entitled to be admitted,
6 the alien shall be detained for” certain immigration proceedings. 8 U.S.C.
7 § 1225(b)(2)(A). Federal regulations do not prescribe bond hearings for people
8 detained under that section. Instead, “DHS has the sole discretion to temporarily
9 release on parole ‘any alien applying for admission to the United States’ on a ‘case-
10 by-case basis for urgent humanitarian reasons or significant public benefit.’”
11 *Hernandez Nieves*, 2025 WL 2533110, at *3 (quoting 8 U.S.C. § 1182(d)(5)(A)).

12 By their terms, these statutes apply to different groups of immigrants.
13 “Section 1226(a) sets out the default rule,” which governs unless some other, more
14 specific detention provision overrides it. *Rodriguez* 779 F. Supp. 3d at 1246
15 (cleaned up). Section 1225(b)(2)(A) is more specific, but it applies only to an
16 “applicant for admission” who is also an “alien seeking admission.” 8 U.S.C.
17 § 1225(b)(2)(A).

18 *Yajure Hurtado* considered which of these provisions—the default rule in
19 § 1226(a) or the mandatory detention provision in § 1225(b)(2)(A)—applies to
20 immigrants who enter the United States without inspection but live for years in the
21 country’s interior. 29 I.&N. Dec. at 216. The respondent in *Yajure Hurtado* had
22 entered without inspection in November 2022, before obtaining Temporary
23 Protected Status (“TPS”). *Id.* at 216–17. He was arrested after his TPS expired in
24 April 2025. *Id.* An immigration judge (“IJ”) ruled that he was subject to mandatory
25 detention under § 1225(b)(2)(A). *Id.* at 217.

26 On appeal to the BIA, the respondent conceded that he was an “applicant for
27 admission” in the meaning of § 1225(b)(2)(A), *id.* at 221, because he had not been
28 legally “admitted”—that is, he had not effected a “lawful entry . . . into the United

1 States after inspection and authorization by an immigration officer.” 8 U.S.C.
2 § 1101(a)(13)(A). But he argued that he did not fall within § 1225(b)(2)(A)’s ambit
3 because he was not actively “seeking admission” at the border. 29 I&N Dec. at 221.
4 He had crossed the border and proceeded to the country’s interior years ago. *Id.*

5 The BIA disagreed, holding that only noncitizens who were legally admitted
6 retain bond eligibility. *Id.* at 218, 223. The BIA gave three reasons to support that
7 conclusion.

8 First, the BIA rejected the distinction between immigrants who are
9 “applicants for admission” and those who are “seeking admission.” In the BIA’s
10 view, that distinction would leave people like Mr. Yajure Hurtado without any
11 “legal status” and would create a line-drawing problem. *Id.* at 221.

12 Second, the BIA rejected the argument that interpreting § 1225(b)(2) to cover
13 noncitizens like Mr. Yajure Hurtado renders superfluous much of § 1226(c).
14 Instead, it asserted without explanation that limiting the reach of § 1225(b)(2)
15 would render that provision superfluous. *Id.* at 221–22.

16 Third, the BIA claimed that the legislative history supported its construction
17 of § 1225, because in enacting IIRIRA, Congress sought to remedy the inequity of
18 the prior statutory scheme, which provided greater procedural and substantive
19 rights to noncitizens who entered without inspection (and were placed in
20 deportation proceedings) than those who presented themselves to authorities for
21 inspection (and were placed in exclusion proceedings). *Id.* at 223–25. But the BIA
22 did not cite any legislative history specifically addressing detention statutes or
23 custody determinations that would support its interpretation. *Id.*

24 For these reasons, the BIA concluded that noncitizens who enter without
25 inspection have no right to seek bond from an IJ, regardless of how long they have
26 been residing in the country and irrespective of whether they were apprehended by
27 immigration authorities. *Id.* at 228.

28

B. Courts disagree with the BIA's reasoning.

Since *Yajure Hurtado* was decided, many immigrants who otherwise would have received bond hearings under § 1226(a) have challenged that decision in the federal courts. Courts broadly agree that the BIA's novel constructions of § 1225(b)(2)(A) and § 1226(a) are not correct.

On the one hand, § 1225(b)(2)(A) is best read to apply to immigrants who are at or near the border or other ports of entry, for at least three reasons.

First, § 1225(b)(2)(A)'s statutory context strongly suggests that it applies only to persons apprehended at or near the border. As the Supreme Court recognized in *Jennings*, § 1225(b) is concerned “primarily [with those] seeking entry,” and is generally imposed “at the Nation’s borders and ports of entry, where the Government must determine whether [a noncitizen] seeking to enter the country is admissible.” 583 U.S. at 297, 287. Throughout its text, the statute refers to “inspections”—a term not defined in the INA but which typically connotes an examination upon or soon after physical entry. 8 U.S.C. § 1225 (“Inspection by immigration officers; expedited removal of inadmissible arriving [noncitizens]; referral for hearing”); *id.* § 1225(b)(1)–(2) (referring to “inspections” in their titles); *id.* § 1225(d)(1) (authorizing immigration officials to search certain conveyances in order to conduct “inspections” where noncitizens “are being brought into the United States”). Many statutory provisions, various regulations, and BIA precedent discuss “inspection” in the context of admission processes at ports of entry, further supporting the conclusion that § 1225 has a limited temporal and geographic scope. 8 U.S.C. § 1187(h)(2)(B)(i); 8 U.S.C. § 1225a; 8 U.S.C. § 1752a; 8 C.F.R. § 235.1; *Matter of Quilantan*, 25 I&N Dec. 285 (BIA 2010). Petitioner’s interpretation accords with these usages.

Second, consistent with the statute’s overall focus on the moment of physical entry, § 1225(b)(2)’s plain language limits the statute’s reach to persons actively attempting to enter the United States. The statute applies only to those who are *both*

1 “applicants for admission” *and* in the process of “seeking admission.” 8 U.S.C.
2 § 1225(b)(2)(A). Because the statute’s first clause already limits the provision to
3 “applicants for admission,” the phrase “seeking admission” must have a different
4 meaning. Any other reading would constitute “an obvious violation of the rule
5 against surplusage.” *Romero*, 2025 WL 2403827, at *10.

6 On its face, the phrase “seeking admission” suggests an active attempt to
7 enter the country. Congress’s use of the present and present progressive tenses
8 “necessarily requires some sort of present-tense action,” excluding noncitizens in
9 the interior who are no longer in the process of seeking admission to the U.S.
10 *Romero*, 2025 WL 2403827, at *9 (cleaned up); *accord Rosado*, 2025 WL
11 2337099, at *11 (similar); *Lopez Benitez*, 2025 WL 2371588, at *6 (noting the
12 statute’s “present-tense active language”). “Realistically speaking,” it is hard to
13 accept that the statute’s plain language could mean anything else: “[I]f Congress’s
14 intention” to detain everyone who entered without inspection “was so clear, why
15 did it take thirty years to notice?” *Romero*, 2025 WL 2403827, at *12.

16 *Third*, the statutory history supports a limited reading of § 1225(b)’s reach.
17 When Congress amended § 1225(b)’s predecessor statute—which authorized
18 detention only of arriving noncitizens—to include individuals who had not been
19 admitted, legislators expressed concerns about recent arrivals to the United States
20 who lacked the documents to remain in the country. H.R. Rep. No. 104-469, pt. 1,
21 at 157–58, 228–29 (1996); H.R. Rep. No. 104-828, at 209 (1996) (Conf. Rep.).
22 There was no suggestion in the legislative history that Congress intended to subject
23 all people present in the United States after an unlawful entry to mandatory
24 detention and thereby transform immigration detention and sweep millions of
25 noncitizens into § 1225(b).

26 The BIA’s contrary reading of the legislative history is not persuasive. True,
27 IIRIRA “altered the typology of immigration *proceedings* to ‘place[] on equal
28 footing’ ‘all immigrants who have not been lawfully admitted.’” *Romero*, 2025 WL

1 2403827, at *12 (emphasis added) (quoting *Torres v. Barr*, 976 F.3d 918, 928 (9th
2 Cir. 2020)). But that “says nothing about *detention* pending the outcome of those
3 proceedings.” *Id.* (emphasis added). All these indicators suggest that
4 § 1225(b)(2)(A) applies only to recent arrivals at the border or ports of entry, not
5 people who have already entered the country.

6 On the other hand, § 1226(a) is best read to apply to some inadmissible
7 persons. It cannot plausibly be the case that all inadmissible persons fall under
8 § 1225(b)(2)(A) and none fall under § 1226(a).

9 *First*, § 1226(a)’s statutory structure makes clear that it reaches some
10 individuals who have not been admitted and have entered without inspection.
11 Section 1226(c) exempts specific categories of noncitizens from the default
12 eligibility to seek release on bond in § 1226(a). “Among the individuals carved out
13 and subject to mandatory detention are certain categories of ‘inadmissible’
14 noncitizens.” *Rodriguez*, 779 F. Supp. 3d at 1246 (quoting 8 § 1226(c)(1)(A), (D),
15 (E)). The 2025 Laken Riley Act (“LRA”) added to that list. “This ‘new’ category”
16 of persons not eligible for bond “includes those noncitizens who are deemed
17 inadmissible, including for being ‘present in the United States without being
18 admitted or paroled,’ and who have been arrested, charged with, or convicted of
19 certain crimes.” *Rosado*, 2025 WL 2337099, at *9 (citing 8 U.S.C. § 1226(c)(1)(E);
20 LRA, Pub. L. No. 119-1). If § 1226(a) did not apply to inadmissible noncitizens,
21 then the longstanding carve outs that refer to inadmissibility and Congress’ most
22 recent amendments would all be surplusage. *See Garcia*, 2025 WL 2549431, at *6.
23 The better reading is the Supreme Court’s in *Jennings*: that § 1226(a) “applies to
24 aliens already present in the United States.” 583 U.S. at 303.

25 *Second*, § 1226(a)’s legislative history supports Petitioner’s reading. “After
26 passing the IIRIRA, Congress declared the new § 1226(a) ‘restates the current
27 provisions in [the predecessor statute] regarding the authority of the Attorney
28 General to arrest, detain, and release on bond’ a noncitizen ‘who is not lawfully in

1 the United States.” *Rosado*, 2025 WL 2337099, at *9. Because noncitizens deemed
2 inadmissible “were entitled to discretionary detention under § 1226(a)’s
3 predecessor statute, and Congress declared the statute’s scope unchanged by
4 IIRIRA,” § 1226(a) must “allow for a discretionary release on bond for”
5 inadmissible noncitizens, too. *Id.*

6 Thus, the best reading of 8 U.S.C. §§ 1225, 1226 shows that petitioner is
7 eligible for bond. And under the Supreme Court’s recent decision in *Loper Bright*
8 *v. Raimondo*, this Court must independently interpret the meaning and scope of
9 §§ 1225(b), 1226(a) using the traditional tools of statutory construction. 603 U.S.
10 369, 385, 401 (2024); *see also Rodriguez*, 779 F. Supp. 3d at 1251; *Kostak*, 2025
11 WL 2472136, at *2 n.29; *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL
12 1869299, at *8 n.9 (D. Mass. July 7, 2025). Because the BIA’s decision in *Yajure*
13 *Hurtado* is a deviation from the agency’s long-standing interpretation of §§ 1225,
14 1226; is not guidance issued contemporaneously with enactment of the relevant
15 statutes; and contradicts the statutory interpretations of dozens of federal courts,
16 this Court should give it no weight. If anything, the government’s “decades of
17 practice” providing bond hearings to those who entered without inspection is a
18 more persuasive guide. *Martinez*, 2025 WL 2084238, at *4.

19 Thus, Petitioner may be detained, if at all, pursuant to 8 U.S.C. § 1226(a).
20 Both the statute and its associated regulations entitle Petitioner to a bond hearing.
21 *See* 8 C.F.R. §§ 326.1(d), 1236.1, 1003.19(a)-(f). Accordingly, the Fifth
22 Amendment’s due process clause requires the government to provide the legally
23 required bond hearing before Petitioner is detained. *See Hernandez-Lara v. Lyons*,
24 10 F.4th 19, 27 (1st Cir. 2021).

25 The statute and regulations implement the due process protection that attends
26 any civil detention. *See Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018)
27 (expressing “grave doubts that any statute that allows for arbitrary prolonged
28 detention without any process is constitutional or that those who founded our

1 democracy precisely to protect against the government's arbitrary deprivation of
2 liberty would have thought so"). The Supreme Court has "repeatedly recognized
3 that civil commitment for any purpose constitutes a significant deprivation of
4 liberty that requires due process protection," including an individualized detention
5 hearing. *Addington v. Texas*, 441 U.S. 418, 425 (1979); *see also United States v.*
6 *Salerno*, 481 U.S. 739, 755 (1987); *Foucha v. Louisiana*, 504 U.S. 71, 81–83
7 (1992); *Kansas v. Hendricks*, 521 U.S. 346, 357 (1997).

8 Here, Petitioner never received the bond hearing required under § 1226(a),
9 but the government detained him anyway. That violated the statute, regulations, due
10 process, and the Administrative Procedures Act. This Court should therefore grant
11 the petition and order that Mr. Garcia Juarez receive an appropriate bond hearing.

12 **C. The Ninth Circuit's stay in *Maldonado Bautista* does not prevent**
13 **this Court from granting relief.**

14 In *Maldonado-Bautista v. DHS*, 25-cv-1873-SSS-BFM (C.D. Cal.), a district
15 judge granted national, class-wide relief to plaintiffs challenging the BIA's
16 interpretation of §§ 1225, 1226. *Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-
17 BFM, 2025 WL 3713987, at *32 (C.D. Cal. Dec. 18, 2025), *judgment entered sub*
18 *nom. Maldonado Bautista v. Noem*, No. 5:25-CV-01873-SSS-BFM, 2025 WL
19 3678485 (C.D. Cal. Dec. 18, 2025). The Ninth Circuit subsequently stayed the
20 order, "insofar as the district court's judgment extends beyond the Central District
21 of California." *Maldonado Bautista v. DHS*, No. 26-1044, Dkt. No. 5.1 (Mar 6,
22 2026). The Ninth Circuit left the judgement in place in the Central District. *Id.*

23 Because of the stay order, the government is no longer required to follow
24 *Maldonado Bautista* in this district. But the stay order does not indicate any opinion
25 on the stay order's merits or prevent this Court from finding in Petitioner's favor.
26 It means only that this Court must do an independent evaluation on the merits. For
27 the reasons given above, that independent evaluation demands relief here.

II. Because immigration judges' neutrality has been compromised, this Court must order outright release, or at least put in place additional safeguards.

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

Most importantly, reports are streaming in from this district and elsewhere that court-ordered "bond hearings [are], effectively, stacked against detainees from the start." Kyle Cheney, *How ICE Defies Judges' Orders to Release Detainees, Step by Step*, Politico (Feb. 10, 2026), <https://www.politico.com/news/2026/02/10/ice-immigration-detention-court-orders-00771727>. In a recently filed declaration, local attorney Edward Perez attests that some immigration judges at Otay Mesa have shown a concerning pattern of resistance to implementing habeas orders requiring bond hearings. *Elsayed v. Noem*, Case No. 26-cv-368, Doc. 5-2 at ¶ 7 (S.D. Cal. Feb. 9, 2026). These IJs have begun denying bond on the ground that court hearings are coming up, and release would disrupt the hearing schedule. *Id.* Of course, that logic could justify any asylum seeker's detention, and it has nothing to do with danger or flight. *Id.* Furthermore, the Department of Homeland Security ("DHS") has started appealing bonds to take advantage of the automatic stay. *Id.* Both of these strategies ensure that even those who pose no risk of danger or flight will stay in detention. *Id.*

He is far from the only one to express concerns. In a declaration filed in *Briceno Solano v. Mason*, No. 26-CV-00045, 2026 WL 311624 (S.D.W. Va. Feb. 4, 2026), Former ICE Counsel Jorge Artieda attests to seeing "a seismic shift in

1 bond hearing outcomes for individuals who had been granted federal habeas relief
2 and ordered § 1226(a) bond hearings . . . in the Eastern District of Virginia.”
3 Declaration of Jorge E. Artieda, Exhibit B at 2. The pattern of granting bond in
4 appropriate cases “abruptly and uniformly ceased” in early January, in a way that
5 “suggests coordinated institutional direction.” *Id.* IJs there now rely on a
6 “remarkably narrow and predictable set of rationales to deny bond—rationales that
7 appear to bear little relationship to genuine individualized risk assessment and that
8 would not have been deemed sufficient to justify denial just weeks earlier.” *Id.* at
9 3. In Mr. Artieda’s professional opinion, the IJs’ rationales “do not appear to be
10 grounded in legitimate risk assessment” but are “pretexts designed to ensure denial
11 of bond regardless of the individual facts of each case.” *Id.* at 4.

12 Mr. Artieda further attests that to having “communicated with numerous
13 immigration attorneys practicing all over the United States who handle detention
14 cases.” *Id.* at 5. “These conversations have confirmed that the pattern [he] ha[s]
15 observed is widespread and consistent.” *Id.* Based on these conversations,
16 Mr. Artieda believes that these bond denials are part of a “coordinated institutional
17 effort.” *Id.* at 6.

18 Courts have started to notice the same problems. In *Yin v. Moldanado*, a
19 court expressed consternation at an IJ’s “conclusory, two-line determination of
20 flight risk” for a person whom DHS had previously agreed “to release . . . on his
21 own recognizance” and who “attend[ed] [all] immigration check-ins” during his
22 release. No. 26-CV-0103 (PKC), 2026 WL 295389, at *3 (E.D.N.Y. Feb. 4,
23 2026).

24 In *Said v. Noem*, a court ordered a bond hearing for a habeas petitioner,
25 only to learn that “[t]he IJ denied Petitioner the opportunity to present testimony,
26 declined to consider the sworn, documentary evidence submitted by Petitioner,
27 and based his decision on an uncorroborated, unauthenticated claim by a
28 government official that Petitioner failed to share his location for the ISAP.” No.

1 3:25-CV-938-MOC, 2026 WL 295651, at *5 (W.D.N.C. Feb. 4, 2026). The
2 original habeas “Order presupposed that this hearing would be conducted in
3 accordance with Petitioner’s due process rights,” the court wrote. “It was not.” *Id.*

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

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

11 *First*, the Trump administration has eliminated 128 IJs insufficiently aligned
12 with the administration’s priorities, illustrating to the remaining IJs the cost of
13 resistance. *See* Woo-Sun Lim, *Former judge highlights legal failures in U.S.*
14 *worker detentions*, The Dong-A Ilbo (Sept. 20, 2025),
15 <https://www.donga.com/en/article/all/20250920/5859412/1>.

16 These IJs are under no illusions about why they were let go. Former
17 Baltimore IJ Emmett Soper stated: “I think the current administration of the
18 immigration courts does not fundamentally see the immigration courts as neutral
19 decision-makers. I think that they see the immigration courts as a tool for this
20 administration to advance its policy objectives.” Geoff Bennett & Ali Schmitz,
21 *Ousted Immigration Judge Describes Deepening Court Backlog*, PBS NewsHour
22 (Nov. 12, 2025), [https://www.pbs.org/newshour/show/ousted-immigration-judge-](https://www.pbs.org/newshour/show/ousted-immigration-judge-describes-deepening-court-backlog)
23 [describes-deepening-court-backlog](https://www.pbs.org/newshour/show/ousted-immigration-judge-describes-deepening-court-backlog). Former San Francisco IJ Jeremiah Johnson
24 similarly understood “the hint that they should be hearing cases a certain way,
25 deciding cases a certain way. Move faster. Less due process, essentially.” Hilda
26 Gutierrez, Michael Bott & Son Vo, *‘An all-out attack on immigration court:’ SF*
27 *immigration judges speak out after firings*, NBC Bay Area (Nov. 25, 2025),
28 <https://www.nbcbayarea.com/investigations/san-francisco-immigration-judges->

1 speak-out-firings/3986850/. Former San Francisco IJ George Pappas was even
2 more direct: "We were told to facilitate deportation... Due process is dead in
3 immigration courts." Isabela Dias, *"Fired for No Reason": Former Immigration*
4 *Judges Speak Out Against Trump's Assault on the Courts*, Mother Jones (Oct. 9,
5 2025), [https://www.motherjones.com/politics/2025/10/immigration-court-judge-](https://www.motherjones.com/politics/2025/10/immigration-court-judge-trump-assault-purge-dhs-ice/)
6 [trump-assault-purge-dhs-ice/](https://www.motherjones.com/politics/2025/10/immigration-court-judge-trump-assault-purge-dhs-ice/).

7 This has had the predictable effect on those who remain. According to
8 former San Francisco IJ Elizabeth Young, "I've talked to many of [the judges still
9 serving], and they're like, 'When I go into court, I am concerned about applying
10 the law, but I'm also concerned that I should deny more, because if I don't, then
11 I'll get fired.'" Marco Poggio, *Judges See an Immigration Court Gutted from*
12 *Inside*, Law360 (Oct. 31, 2025),
13 [https://www.law360.com/articles/2381003/judges-see-an-immigration-court-](https://www.law360.com/articles/2381003/judges-see-an-immigration-court-gutted-from-inside)
14 [gutted-from-inside](https://www.law360.com/articles/2381003/judges-see-an-immigration-court-gutted-from-inside). Meanwhile, Department of Justice recruitment materials seek
15 "deportation judges" to fill the empty IJ slots, Coral Murphy Marcos, *US Justice*
16 *Department Recruiting Legal Experts to Serve as 'Deportation' Judges*,
17 Guardian, [https://www.theguardian.com/us-news/2025/nov/21/us-justice-](https://www.theguardian.com/us-news/2025/nov/21/us-justice-department-ad-deportation-judges)
18 [department-ad-deportation-judges](https://www.theguardian.com/us-news/2025/nov/21/us-justice-department-ad-deportation-judges), inviting candidates to "bring the hammer
19 down on criminal illegal aliens" and "defend your communities, your culture,
20 your very way of life." dhsgov, Instagram (Nov. 21, 2025),
21 <https://www.instagram.com/p/DRVt8DmCQKD/?hl=en>.

22 *Second*, a parallel purge occurred at the BIA, which was reduced from 28
23 members to 15 members. All Biden appointees on the BIA were fired. Am. Imm.
24 Council, *BIA Decision Strips Immigration Judges of Bond Authority, All but*
25 *Guaranteeing Mandatory Detention for Undocumented Immigrants* (Sept. 12,
26 2025), [https://www.americanimmigrationcouncil.org/blog/bia-ruling-immigration-](https://www.americanimmigrationcouncil.org/blog/bia-ruling-immigration-judges-bond-mandatory-detention-undocumented-immigrants/)
27 [judges-bond-mandatory-detention-undoc](https://www.americanimmigrationcouncil.org/blog/bia-ruling-immigration-judges-bond-mandatory-detention-undocumented-immigrants/) umented-immigrants/. The statistical
28 impact is stark. As of January 22, 2026, the reconstituted BIA has issued 71

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

Third, beyond personnel changes, EOIR's new acting director, Sirce E. Owen, has issued “a string of sharply worded policy memos” encouraging IJs to side with the government over immigrants and minimize due process. E. Tammy Kim, *Inside Donald Trump's Attack on Immigration Courts*, New Yorker, <https://www.newyorker.com/inside-donald-trumps-attack-on-immigration-court>. The policy directives include: a memorandum dated June 27, 2025 warning judges not to demonstrate “bias directed against DHS” or to be “adjudicatory outliers,” at risk of “close examination and potential action,” Exec. Off. for Immigr. Rev., Policy Memorandum 25-33, Neutrality and Impartiality in Immigration Court Proceedings (June 27, 2025), https://iptp-production.s3.amazonaws.com/media/documents/2025.06.27_EOIR_-_PM_25-33.pdf; a memorandum encouraging judges to deny asylum applications without full evidentiary hearings, styled as efficiency guidance but functioning as a directive to reduce due process protections, Exec. Off. for Immigr. Rev., Policy Memorandum 25-28, Pretermission of Legally Insufficient Application for Asylum (Apr. 11, 2025), <https://www.justice.gov/eoir/media/1396411/dl?inline>; and memoranda restricting immigration judges' ability to grant continuances, Exec. Off. for Immigr. Rev., Policy Memorandum 25-27, Cancellation of

1 Director's Memorandum 23-01 and Reinstatement of Policy Memorandum 19-13
2 (Mar. 21, 2025), <https://www.justice.gov/eoir/media/1394086/dl>, and
3 administrative closure, Exec. Off. for Immigr. Rev., Policy Memorandum 25-29,
4 Cancellation of Director's Memorandum 22-03 (Apr. 18, 2025),
5 <https://www.justice.gov/eoir/media/1397161/dl?inline>.

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

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

23 Am. Immigr. Laws. Ass'n, Practice Alert: EOIR Issues Nationwide Guidance
24 on *Maldonado Bautista*, AILA Doc. No. 26011404 (Jan. 16, 2026),
25 [https://www.aila.org/library/practice-alert-eoir-issues-nationwide-guidance-](https://www.aila.org/library/practice-alert-eoir-issues-nationwide-guidance-on-maldonado-bautista)
26 [on-maldonado-bautista](https://www.aila.org/library/practice-alert-eoir-issues-nationwide-guidance-on-maldonado-bautista). A few days later, Judge Sykes issued a scathing order,
27 calling out "Respondents' deliberate choice to continue defying the final
28 judgment entered in *Bautista*." *Palomera Baltazar v. Janecka*, No. 5:26-cv-
00019-SSS-BFM at *2-3 (C.D. Cal. Jan. 16, 2026).

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

The "equitable and flexible nature of habeas relief" affords district courts significant discretion over the appropriate remedies for violations of law and the Constitution. *Velasco Lopez v. Decker*, 978 F.3d 842, 855 (2d Cir. 2020); *see also Schlup v. Delo*, 513 U.S. 298, 319 (1995) ("[H]abeas corpus is, at its core, an equitable remedy"). This Court should order a remedy that fully addresses the statutory and constitutional violations in this case and is efficient to administer. *Carafas v. LaVallee*, 391 U.S. 234, 238 (1968) (the habeas statute "does not limit the relief that may be granted to discharge of the applicant from physical custody. Its mandate is broad with respect to the relief that may be granted").

CLAIM AND PRAYER FOR RELIEF

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

Here, because ordering a bond hearing before a randomly selected IJ would not properly redress the constitutional violations present in this matter, Petitioner urges the court to provide an alternative corrective measure. That might include outright release. *See, e.g.,* Order, ECF No. 14 at 19, *Miri v. Bondi*, No. 5:26-CV-00698-MEMF (C.D. Cal. March 5, 2026); *Moctezuma v. Henkey*, No. 1:25-CV-00741-BLW, 2026 WL 18809, at *5 (D. Idaho Jan. 2, 2026). Or it could mean holding a bond hearing in district court. *See, e.g., L.G.M. v. LaRocco*, 788 F.Supp.3d 401, 405-07 (E.D.N.Y. 2025).

A third option would be to craft an order like Judge Simmons's procedure in the *Sandesh* case. *See* Order, ECF No. 13, *Sandesh v. LaRose*, No. 3:26-CV-00846-JES (S.D. Cal. March 5, 2026). Specifically, the Court should order:

(1) Respondents provide Petitioner with a hearing and individualized bond determination within **ten days** of its order. *Id.*

(a) At that hearing, the government shall bear the burden of establishing by clear and convincing evidence that Petitioner poses a danger or flight risk, while further specifying that concerns about interrupting court schedules is not a ground to deny bond. *Id.*

(b) The IJ shall consider alternative conditions of release and Petitioner's ability to pay bond. *Id.*

(c) Respondents shall make an audio recording of the bond hearing available to Petitioner and his counsel should Petitioner request it. *Id.*

(2) Respondents are ordered to file a Notice of Compliance within **five days** of providing Petitioner with the bond hearing, including apprising the Court of the results of the hearing. *Id.*

(3) Prohibit ICE from invoking the automatic stay provisions under 8 C.F.R. § 1003.19(i)(2) to defeat the IJ's bond determination.

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

Respectfully submitted,

Dated: May 22, 2026

s/ Kara Hartzler

Kara Hartzler

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