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

DARIO ESAU MENDOZA QUIROGA ,	)	
Petitioner,	)	
v.	)	**Civ. No. 26-cv-4160**
TODD BLANCHE, **Acting United States Attorney General;**	)	
MARKWAYNE MULLIN, **Secretary of Homeland Security;**	)	
SYLVESTER M. ORTEGA, **San Antonio Acting Field Office Director For Detention and Removal, U.S. Immigration and Customs Enforcement; and,**	)	
BOBBY THOMPSON, **Warden, South Texas ICE Processing Center,**	)	
in their official capacities;	)	
Respondents.	)	

PETITION FOR A WRIT OF HABEAS CORPUS

INTRODUCTION

Dario Esau Mendoza Quiroga ("Petitioner") brings this petition for a writ of habeas corpus to challenge his detention by the Secretary of Homeland Security Markwayne Mullin, Acting Attorney General Todd Blanche, Acting Director of the U.S. Immigration and Customs Enforcement (ICE) Todd Lyons, San Antonio ICE Field Officer Director Sylvester M. Ortega, and Warden Bobby Thompson, South Texas Immigration Processing Center.

Mr. Mendoza Quiroga is an asylum seeker from Mexico who lawfully entered the United States on or about July 5, 2017, as a B-1 visa holder. He has resided in the United States since his lawful admission. Petitioner Mendoza Quiroga is married to Nancy Alaniz. Both Mr. Mendoza Quiroga and Ms. Alaniz have resided in Texas since the time of Petitioner's admission. Petitioner Mendoza Quiroga is the derivative beneficiary of a pending U visa petition. United States Citizenship and Immigration Services ("USCIS") has made a prima facie determination regarding that petition. A U visa provides deferred removal protection for victims of serious criminal activity.

On or about September 16, 2025, Petitioner Mendoza Quiroga was arrested by the New Braunfels Police Department on suspicion of driving while intoxicated. At the time of this filing, the State has not formally charged Petitioner Mendoza Quiroga. The Comal County District Attorney has not filed an information or complaint with the County Courts of Comal County in Petitioner Mendoza Quiroga's case. Following his arrest, on or about February 5, 2026, DHS took custody of Petitioner after he was released from state custody. Respondents arrested Petitioner and initiated removal proceedings against him. Respondent Lyons delivered Petitioner to Respondent Thompson, where Petitioner remains detained.

On April 17, 2026, Petitioner Mendoza Quiroga had a bond hearing before an immigration judge. At the conclusion of the hearing, the IJ found that Petitioner had not met his burden of proving that he was not a flight risk or a danger to the community and denied bond. The IJ's decision, however, was wrong and violated Petitioner Mendoza Quiroga's constitutional rights. The immigration judge improperly placed the burden of proof on Petitioner Mendoza Quiroga to demonstrate that he is not a flight risk or a danger to the public. The immigration bond process and decision violated Petitioner Mendoza Quiroga's due process rights.

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

CUSTODY

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

JURISDICTION AND VENUE

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

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

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

PARTIES

4. Petitioner Dario Esau Mendoza Quiroga is a national and citizen of Mexico. He is currently detained at the South Texas Immigration Processing Center, located at 655 Veterans Drive, Pearsall, Texas 7801.

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

6. Respondent TODD LYONS is the Acting Director of Immigration and Customs

Enforcement. Respondent's address is 500 12th Street SW, Washington, D.C. 20536.

7. Respondent MARKWAYNE MULLIN is the Secretary of the U.S. Department of Homeland Security ("DHS"), an agency of the United States. Respondent is responsible for administering immigration laws pursuant to 8 U.S.C. § 1103(a). The Secretary is a legal custodian of Petitioner. Respondent is named in his official capacity. His address is Department of Homeland Security, Washington, D.C. 20528.

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

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

FACTS

10. On or about July 5, 2017, Petitioner Mendoza Quiroga was admitted into the United States with his valid B-1 visa. Exh. 1.

11. After entering the United States in 2017, Petitioner established residence in Martindale, Texas. He resides with his wife, who is the direct beneficiary of a U visa petition. See Exh. 2. Before his arrest, Petitioner Mendoza Quiroga was self-employed.

12. Petitioner was arrested by the New Braunfels Police Department on suspicion of driving while intoxicated. At the time of this filing, that matter remains pending, and no formal complaint or information has been filed with the courts.

13. On February 5, 2026, Respondents took custody of Petitioner after he was released from the Comal County Jail. See Exh. 3. The Government charged Petitioner as a noncitizen who, after admission, remained in the United States longer than permitted. See Exh. 1.

14. On April 17, 2026, Petitioner had a bond hearing before an immigration judge. See Exh. 4.

15. DHS counsel submitted Form I-213, Record of Deportable/Inadmissible Alien, and stated that DHS opposed bond. See id. DHS presented no other evidence of danger or flight risk. See id.

16. Upon information and belief, in support of his request for bond, Petitioner submitted proof that he entered the United States lawfully. He submitted support letters from his family, friends, community members, and U.S. citizen sponsor. Petitioner's sponsor submitted evidence that he would provide financial support and ensure that Petitioner appeared at future hearings. Petitioner Mendoza Quiroga also submitted evidence of his pending U visa application.

17. At the conclusion of the hearing, the IJ found that Petitioner had not met his burden

of proving that he was not a flight risk or a danger to the community. The IJ concluded that Petitioner was both a danger to the public and a flight risk and denied bond. See Exh. 4.

18. Although the record contains no evidence indicating that Petitioner Mendoza Quiroga is a flight risk, or that alternative conditions of custody would be insufficient to mitigate any risk of flight, Petitioner remains detained.

19. Petitioner Mendoza Quiroga submits that the immigration judge conducted an unconstitutional bond hearing by relieving DHS of the burden to demonstrate that Petitioner is a flight risk or a danger to the public and instead placing that burden on Petitioner. Petitioner also submits that, by acting as both prosecutor and judge, IJ Crossan conducted a fundamentally unfair bond hearing in violation of Petitioner's procedural due process rights under the Fifth Amendment to the United States Constitution. Petitioner's asylum and withholding requests were denied by the IJ on or about May 5, 2026. Petitioner Mendoza Quiroga timely filed a notice of appeal. He is not subject to a final order of removal.

20. Petitioner Mendoza Quiroga has no other remedy at law except to seek relief from this Court.

LEGAL FRAMEWORK

21. 8 U.S.C. § 1226(a) provides for the general detention scheme of non-criminal non-citizens. Once a non-citizen is apprehended, the Government makes the initial custody determination. *See* 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8). After the initial custody determination, an Immigration Judge can redetermine the decision. *See* 8 C.F.R. §§ 1003.19, 236.1(d), 1236.1(d). This framework also provides that immigration judges must remain neutral, unbiased and conduct hearings as and remain independent arbitrators.

22. Although § 1226(a) is silent as to who bears the burden of proof at a bond hearing, the BIA has unconstitutionally placed the burden on non-citizens. *In re Adeniji*, 22 I&N Dec. 1102,

1116 (BIA 1999) (holding that "respondent must demonstrate that her release would not pose a danger to property or persons, and that he is likely to appear for any future proceedings"). Since *Adeniji*, the BIA has repeatedly reaffirmed that the burden should be on non-citizens. *See Matter of Fatahi*, 26 I&N Dec. 791, 793 (BIA 2016); *In re Guerra*, 24 I&N Dec. 37, 40 (BIA 2006) ("[t]he burden is on the alien to show to the satisfaction of the [immigration judge] that he or she merits release on bond.").

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

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

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

26. In particular, civil detention is impermissible without an individualized hearing before a neutral decision maker that tests the Government's justification for imprisonment. *See United States v. Salerno*, 481 U.S. 739, 750–51 (1987) (upholding civil pretrial detention of

individuals charged with crimes only upon individualized findings of dangerousness or flight risk at custody hearings); *Foucha v. Louisiana*, 504 U.S. 71, 81–83 (1992) (requiring individualized finding of mental illness and dangerousness for civil commitment); *Kansas v. Hendricks*, 521 U.S. 346, 357 (1997) (upholding civil commitment of sex offenders after jury trial on lack of volitional control and dangerousness).

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

that the government must bear the burden by clear and convincing evidence."); *Haughton v. Crawford*, 221 F. Supp. 3d 712, 713–17 (E.D. Va. 2016) ("the significant deprivation of liberty warrants the robust procedural protections afforded by requiring the government to demonstrate by clear and convincing evidence that petitioner's ongoing detention is appropriate to protect the community and ensure petitioner's appearance at future proceedings."); *Portillo v. Hott*, 322 F. Supp. 3d 698, 2018 WL 3237898, at *8 *n.9 (E.D. Va. 2018) (reaffirming *Haughton* as "good authority").

28. Petitioner Mendoza Quiroga should be given a constitutionally adequate hearing.

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

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

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

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

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

Significantly, courts that have considered similar challenges to the procedures in initial bond proceedings under 8 U.S.C. § 1226(a) have also applied the *Mathews v. Eldridge* test. *See e.g., Hernandez-Lara v. Lyons*, 10 F.4th 19, 27-35 (1st Cir. 2021); *Doe v. Tompkins*, 11 F.4th 1 (1st Cir. 2021) (the court follows *Hernandez-Lara v. Lyons*); *Darko v. Sessions*, 342 F. Supp. 3d 429, 435 (S.D.N.Y. 2018) (concluding that at initial bond hearings under 1226(a), the DHS bears the burden of proof to show by clear and convincing evidence that the noncitizen is a danger or a flight risk and employs language from *Mathews v. Eldrige* in its reasoning); *Martinez v. Decker*, No. 18-CV-6527 (JMF), 2018 U.S. Dist. LEXIS 178577, 2018 WL 5023946 (S.D.N.Y. Oct. 17, 2018) (same); *Ortiz v. Freden*, No. 25-CV-960-LJV, 2025 U.S. Dist. LEXIS 217654 2025 WL 3085032 (W.D.N.Y. Nov. 4, 2025); *Amezcua Olvera v. Correa et al.*, Case No. 5:20-cv-00124-DAE (W.D. Tex. May 11, 2021) (adopting magistrate judge's report and recommendation (attached as Exh. 6.

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

The private interest involved here is of the highest order. "Freedom from imprisonment – from government custody, detention or other forms of physical restraint – lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 695 (2001) (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)). "[L]iberty is the norm" in our society "and detention prior to trial or without trial is the carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755 (1987). The Supreme Court has

counseled courts to be "careful not to minimize the importance and fundamental nature" of a person's liberty rights. *Foucha v. Louisiana*, 504 U.S. at 80.

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

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

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

Unrepresented noncitizens are also at a disadvantage because they may not be fully proficient in English and are untrained in immigration law and procedures. The Department

of Homeland Security (DHS), in turn, is represented by lawyers who are familiar with and known by the immigration judges. Cf. *Santosky v. Kramer*, 455 U.S. 745, 763 (1982) (noting heightened risk of error in parental rights termination proceedings exists in part because "[t]he State's attorney usually will be an expert on the issues contested and the procedures employed at the factfinding hearing").

Lastly, noncitizens, whether represented or unrepresented, often face the daunting task of *proving a negative*. Take Petitioner's case for example. She has no criminal convictions. At the time of her arrest and initiation of removal proceedings, she was in lawful status. She has a fixed address, was employed, and has paid her taxes. Exh. 7 (Petitioner's bond application). And still the immigration judge denied bond to Petitioner finding her a flight risk, notwithstanding Petitioner's residence in the United States, and strong community ties. Exh. ____. She is currently applying for asylum, withholding of removal under both the Immigration and Nationality Act and the Convention Against Torture.

At her bond proceeding, Petitioner bore the burden of proof to demonstrate he was not a flight risk nor a danger to the public. The evidence of flight risk was not overwhelming. The DHS presented no evidence or argument. Petitioner's evidence showed that he was a good candidate for bond. Thus, the allocation of the burden of proof was critical and created the risk of an erroneous decision. Indeed, the allocation of the burden of proof in this case was determinative and resulted in the deprivation of Petitioner's liberty. *See Carey v. Piphus*, 435 U.S. 247, 259 (1978) ("Procedural due process rules are meant to protect persons not from deprivation, but from the mistaken or unjustified deprivation of life, liberty, or property."). IJ Crossan's role as prosecutor and adjudicator also rendered Petitioner's bond hearing fundamentally unfair. A pillar of procedural due process is the opportunity to be meaningfully heard.

The last factor is the Government's interest. Petitioner does not dispute that Respondents have legitimate interests in ensuring that the immigration laws are enforced, that noncitizens appear for their removal proceedings, and in the execution of removal orders. But these interests do not support placing the burden on noncitizens. If that is the case, then the DHS never has to make any showing that a noncitizen is a flight risk or a danger. Further, the DHS's interest in securing the appearance of noncitizens at removal hearings is weak where the noncitizen is not a flight risk or a danger. *Hernandez-Lara v. Lyons*, 10 F.4th at 32. Additionally, the Government counts with a vast array of methods and tools to protect such interest, such as ankle monitoring and periodic reporting.

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

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

And similarly, the Government should be required to demonstrate by clear and convincing evidence that a noncitizen is flight risk or danger. In the civil context, the Court has required that the government justify detention by clear and convincing evidence. *See,*

e.g., Addington, 441 U.S. at 433 (involuntary civil commitment to mental hospital); *Foucha*, 504 U.S. at 86 (confinement of insanity acquittees). There is no reason to depart from *Addington* and *Foucha* and impose a different burden in immigration bond proceedings like the First Circuit did in *Hernandez-Lara*. The disadvantages the vast majority of detained noncitizens face in removal proceedings are not ameliorated by having the DHS bear a lower burden of proof. Most of these noncitizens are still unrepresented, untrained in the law, likely do not speak English, and lack the credibility or familiarity with the immigration judges that the government lawyers enjoy.

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

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

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

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

Singh v. Garland is also of limited value after the Supreme Court's decision in *Jennings v. Rodriguez*, 138 S.Ct. 830 (2016). Previously, the Ninth Circuit had held that periodic bond hearings were statutorily required for detained noncitizens in removal proceedings, whether subject to mandatory or discretionary detention. The *Jennings* Court held that nothing in the Immigration and Nationality Act required periodic bond hearings. After *Jennings*, *Singh*'s statements about the standard of proof are dicta.

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

CAUSES OF ACTION

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

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

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

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

COUNT II

PROCEDURAL DUE PROCESS -GOVERNMENT'S EVIDENCE IS LEGALLY INSUFFICIENT

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

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

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

COUNT III

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

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

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

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

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

39. Respondents have failed to articulate reasoned explanations for their decisions, which represent changes in the agencies' policies and positions; have considered factors that Congress did not intend to be considered; have entirely failed to consider important aspects of the problem; and have offered explanations for their decisions that run counter to the evidence before the agencies.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PRAYER FOR RELIEF

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

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

That the immigration judge must remain a neutral and impartial adjudicator who will make a decision entirely on the evidence presented by DHS.

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

Dated: June 30, 2026

Respectfully submitted,

/s/ Alfonso Otero

Alfonso Otero
Texas Bar No. 24009189

Alfonso Otero Attorney at Law, PC
8620 N. New Braunfels, Ste. 605
San Antonio, TX 78217
(210) 587-4000 (phone)
(210) 802-5303 (fax)
alfonso.otero.briz@gmail.com

ATTORNEY FOR PETITIONER