Janice Deaton (CA SBN 135188)
Jdeaton@immdef.org
IMMIGRANT DEFENDERS LAW CENTER
634 S. Spring Street, 10th Floor
Los Angeles, CA 90014
Telephone: 619-768-7134
Facsimile: 213-282-3133

Pro Bono Attorneys for Petitioner

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Lucas Ernesto Garcia Juarez,

Petitioner,

vs.

CHRISTOPHER J. LAROSE, Senior Warden of Otay Mesa Detention Center, Et. Al.

Respondents.

Case No.: 3:26-cv-03991-LEK-MMP

PETITIONER'S TRAVERSE

Petitioner Lucas Ernesto Garcia Juarez respectfully submits his traverse to his writ of habeas corpus to seek enforcement of his rights as members of the bond eligible class certified in *Maldonado Bautista v. Santacruz*, no. 5:25-cv-01873-SSS-BFM(C.D. Cal.) and based on the warrantless arrest in his case. Mr. Garcia is in the physical custody of Respondents at the Otay Mesa Detention Facility in San Diego California.

Mr. Garcia requests immediate release from detention in his Petition for a Writ of Habeas Corpus. (DOC. 1) In its Response, the government does not oppose a bond hearing under 8 U.S.C. § 1226(a), however they oppose any order from this court ordering Mr. Garcia's immediate release. DOC. 4. Because a bond hearing will not provide Mr. Garcia with the relief he is entitled to, this Court should grant Mr. Garcia's Petition and order immediate release from custody.

I. DISCUSSION

A. This Court Should Order the Immediate Release of Mr. Garcia Based on His Warrantless Arrest

In his petition, Mr. Garcia alleges he was arrested without a warrant and in violation of the Fourth Amendment. DOC 1. ¶ ¶67-69. He requests immediate release as his remedy. The government concedes Mr. Garcia was arrested without a warrant, although it states, "8 U.S.C. § 1357(a)(2) authorizes arrests without a warrant." DOC 4 ft. 2. Warrantless arrests made pursuant to 8 U.S.C. § 1357(a)(2), are authorized in ONLY two circumstances: a) When the individual is entering or attempting to enter the United States unlawfully in the officer's presence or view, and b) when the officer has "reason to believe" the individual is unlawfully in the U.S. *and is likely to escape* before an administrative arrest warrant can be obtained. 8U.S.C. 1357(a)(2). (Emphasis added.) The regulation implementing this provision, 8 C.F.R. § 287.8(c)(2)(ii), mirrors the statute, providing that "a warrant of arrest shall be obtained except when the designated immigration officer has reason to believe that the person is likely to escape before a warrant can be obtained." 8 C.F.R. § 287.8.

The flight-risk determination "is not mere verbiage," and, critically, the escape-risk determination must be individualized and particularized to the specific person being arrested. *United States v. Pacheco-Alvarez*, 227 F. Supp. 3d 863 (S.D. Ohio 2016). None of these requirements were met at the time of Mr. Garcia's warrantless arrest. The factors courts consider in the escape-risk analysis include the totality of

circumstances known to the officer *before* the arrest, including whether the officer could determine the individual's identity, previous escape attempts, and community ties such as family, a home, or a job. *M-J-M-A- v. Hermosillo,* 822 F.Supp.3d 1147 (D. Or. 2026).

Here, however, Mr. Garcia was anonymous to the arresting ICE officers. He was collateral to their investigation and was previously unknown to ICE. Nor did he have an NTA issued against him. *See, Castanon Nava v. Dep't of Homeland Sec.*, 806 F. Supp. 3d 823 (N.D. Ill. 2025) In *Castanon Nava v. Department of Homeland Security*, the Northern District of Illinois held that ICE's arrest of collaterals—persons encountered in the field and previously unknown to ICE—constituted warrantless arrests, and that ICE lacked statutory and regulatory authority to issue I-200 administrative warrants in the field without the concurrent or prior issuance of a Notice to Appear, as such a policy "would largely (if not entirely) negate 8 U.S.C. § 1357(a)(2)" and allow ICE to "entirely circumvent the requirements of Section 1357(a)(2)" by avoiding the statutory requirement that warrantless arrests be supported by probable cause that the arrestee was likely to escape before a warrant could be obtained." *Id* at 851. The *Castanon Nava* Court went on to say, with sad accuracy, that "[c]itizens and non-citizens with legal status who share commonalities (such as race/ethnicity, a preference for speaking Spanish, or employment in certain occupations or locations) with—or mere physical proximity to—Latino foreign nationals may now find themselves more likely to be subjected to ICE questioning for sometimes lengthy periods of detention, and, potentially, warrantless arrests during immigration enforcement operations. [*internal citations omitted.*]... Adherence to the [...] direction to "seriously appl[y]" the probable cause requirements of Section 1357(a)(2), will help protect citizens and other persons with legal status who face questioning by ICE officers against being subjected to prolonged detentions and warrantless, collateral arrests." *Ibid.*

Here, ICE had no information regarding Mr. Garica at all, no probable cause he was likely to escape and made no inquiry prior to arresting him. Any post-deprivation bond hearing before an immigration judge cannot retroactively cure a due process violation such as this one, that arose at the moment of an unlawful warrantless arrest. Mr. Garcia should be released.

B. This Court Should Order the Immediate Release of Mr. Garcia Because Bond Hearings in Immigration Court Are No Longer an Adequate Remedy

"[T]he essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and...the traditional function of the writ is to secure release from illegal custody." *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). While a bond hearing under 8 U.S.C. § 1226(a), is an intermediate relief option to a writ of habeas corpus, the Court may still provide the traditional remedy of immediate release and remains "free to fashion the remedy as law and justice require." *Mubanga v. Mullin*, No. 26-cv-02565-JO-AHG, 2026 U.S. Dist. LEXIS 148785, at 2 (S.D. Cal. July 6, 2026) (citing *Burnett v. Lampert*, 432 F.3d 996, 999 (9th Cir. 2005)). Accordingly, courts retain full discretion to fashion equitable relief as appropriate and necessary. *See* Burnett *v. Lampert*, 432 F.3d 996, 999 (9th Cir. 2005 ("A federal court is vested with the largest power to control and direct the form of judgment to be entered in cases brought up before it on habeas corpus.")

Bond hearings in immigration court are no longer an adequate remedy for habeas petitions. Recent developments in immigration court proceedings show that immigration judges are failing to comply with habeas courts' orders to provide constitutionally adequate bond hearings. *See, Mubanga v. Mullin*, No. 26-cv-02565-JO-AHG, 2026 U.S. Dist. LEXIS 148785, at 2 (S.D. Cal. July 6, 2026). In *Mubanga,* the court discussed "sham" hearing conducted pursuant to successful habeas petitions. These sham hearings are leaving successful habeas petitioners to suffer additional weeks or months of unlawful detention after their bond hearings are either denied or where the financial burden of the high bond amount prevents

release. *Id.* Therefore, bond hearings have not been shown to constitutionally protect petitioners, and immediate release is the proper remedy. *Id; see Boukoubongue v. Mullin,* No. 26-cv-02491-JO-VET, 2026 LX 389362 (S.D. Cal. July 9, 2026).

Numerous courts nationwide have declined to order new bond hearings in cases "involving unlawful detention under § 1225(b) because . . . doing so would effectively allow the Government to transform an unlawful detention into a lawful one through post-hoc justifications." *Mubanga v. Mullin*, No. 26-cv-02565-JO-AHG, 2026 U.S. Dist. LEXIS 148785, at 4 n.6 (S.D. Cal. July 6, 2026); *Zheng v. Rokosky*, No. 26-CV-01689, 2026 U.S. Dist. LEXIS 60485, 2026 WL 800203, at 11 (D.N.J. Mar. 23, 2026) (ordering release of detainee who was unlawfully detained under § 1225 when he should have been subject to § 1226).

Bond hearings in immigration court have drastically changed under the current administration. *Mubanga v. Mullin*, No. 26-cv-02565-JO-AHG, 2026 U.S. Dist. LEXIS 148785, at 3 (S.D. Cal. July 6, 2026); *Immigration Bonds in the Second Trump Administration*, Boundless Immigration Blog (May 11, 2026), https://bklg.org/blog/immigration-bonds-in-second-trump-admin/#bond-grants-and-denials-by-immigration-judge. In the first six months of the current presidential administration, the bond grant rate was similar to historical rates. *See id.* However, the grant rate plummeted beginning in July 2025, and 2026 has seen the lowest grant rate on record, with immigration judges denying two-thirds of bond requests. *Id.*

This is consistent throughout the country. *See* Exhibit G, Declaration of Zabdi Salazar on National Trends ("Completed bond records increased from 34,845 in 2024 to 80,130 in 2025. . . . [T]he grant rate fell from 42.2% to 36.7%, while denials … rose from 36.1% to 43.2%." ¶ 3.) *See also,* Exhibit I, (Declaration of Jorge E. Artieda regarding systematic change in bond hearing outcomes in Virgina and Maryland.)

Nor does the ability to appeal the denial of bond or an unreasonably high bond provide an adequate remedy. The inherent delays in the current appeals process show petitioners will suffer irreparable injury if required to wait for Board of Immigration Appeals (BIA) adjudication of bond denials. *Velasquez v. Bondi*, No. 26-cv-01759-GPC-DDL, 2026 U.S. Dist. LEXIS 85165, at 9 (S.D. Cal. Apr. 16, 2026); *see W.T.M. v. Bondi*, No. 2:25-CV-02428-RAJ-BAT, 2026 U.S. Dist. LEXIS 21315, 2026 WL 262583, at *3 (W.D. Wash. Jan. 30, 2026) (finding irreparable injury where BIA review exceeded 200 days and "[d]istrict courts in this Circuit 'routinely' waive prudential exhaustion requirements for noncitizens facing prolonged detention while awaiting administrative appeals." (quoting *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1251 (W.D. Wash. 2025)); *Garcia v. Hyde*, No. 25-CV-585-JJM-PAS, __ F. Supp. 3d __, 2025 U.S. Dist. LEXIS 253787, 2025 WL 3466312, at 6 (D.R.I. Dec. 3, 2025) (finding irreparable injury in the form of continued detention where petitioner would likely face several additional months of detention while awaiting BIA review); *Hechavarria v. Whitaker*, 358 F. Supp. 3d 227, 240 (W.D.N.Y. 2019) (waiving exhaustion requirement where "delays inherent in the [BIA review] process ... would result in the very harm that the bond hearing was designed to prevent: prolonged detention without due process during lengthy and backlogged removal proceedings"); *Soriano*, __ F. Supp. 3d __, 2026 U.S. Dist. LEXIS 79044, 2026 WL 969764, at 4 ("Moreover, given the lengthy delays inherent in the current appeals process, the Court finds Petitioner will suffer irreparable injury if he is required to wait for a BIA decision before being permitted to file a habeas claim."). The "BIA has been drastically reshaped within the past year, such that the BIA now functions to rubberstamp IJ bond denials and facilitate noncitizen removal." *Id.* at 8.[1]

[1] *See also,* Ximena Bustillo and Rahul Mukherjee, *An immigration court few have heard of is quietly shaping policy behind the scene*, NPR (Mar. 20, 2026) https://www.npr.org/2026/03/20/nx-s1-5707535/trump-immigration-

As the attached declarations and exhibits indicate, where bond hearings are conducted pursuant to favorable habeas petitions, immigration judges have typically been setting extremely high bonds or even denying bond all together. There have been seismic shifts in bond hearing outcomes for individuals who had been granted federal habeas relief in certain districts, where immigrants are routinely denied bond. Exhibit D, ¶¶8-11. Judges who follow the law and protect immigrants' due process rights have been removed and fired. Exhibit F, Affidavit Lawrence O. Burman, Retired Immigration Judge ¶¶ 18-21.

Anecdotally, in the office of undersigned counsel alone, there have recently been two bond orders of $35,000, two for $20,000, and several for between $13,000 and $15,000. *See,* Exhibit K, Declaration of Counsel. These unreasonably high bonds resulted in the further incarceration of those petitioners for several weeks and months, while they used "GO FUND ME" pages and other creative means of raising the money for release.

///

///

///

///

---

detentionappeals-board-deportation[1]; Jason A. Cade, *Welcome to the Trump Administration's Board of Immigration Appeals. The Immigrant Always Loses*. 136 Yale L.J. Forum _ (forthcoming 2026), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6506380 (detailing how the reshaped BIA "foreordains" results for immigrant appellees); Jayashri Srikantiah & Rajan Lukose, Stanford White Paper: *The Board of Immigration Appeals Under the Second Trump Administration: An Empirical Analysis of Grant Rates and DHS Appellate Behavior* (March 23, 2026), https://law.stanford.edu/documents/research-on-bia-decision-making/ (outlining how the success rate of noncitizen appeals has plummeted since January 21, 2026). *Velasquez v. Bondi*, No. 26-cv-01759-GPC-DDL, 2026 U.S. Dist. LEXIS 85165, at 8 (S.D. Cal. Apr. 16, 2026).

CONCLUSION

Petitioner has shown that he was arrested without a warrant in violation of DHS regulations and the Immigration and Nationality Act. Additionally, he is part of the Maldonado class of individuals, which is not contested here. Because a bond hearing is no longer an adequate remedy, he must be released immediately.

Dated: July 27, 2026

Respectfully Submitted,
/s/Janice Deaton
Janice Deaton
Immigrant Defenders Law Center
Attorney for Petitioner