



Mr. Redkin is an asylum seeker from Ukraine who entered lawfully, timely applied for asylum and was detained by ICE when crossing the immigration checkpoint north of Laredo. He has no criminal arrests or convictions. He is in immigration custody pending his removal proceedings.

Mr. Redkin requested a bond hearing, but the immigration judge denied the request for bond. The immigration judge's decision, however, is wrong and in violation of Mr. Redkin's constitutional rights. The immigration judge improperly placed the burden of proof on Mr. Redkin to demonstrate that he is not a flight risk or a danger to the public. The immigration bond process and the decision violate Mr. Redkin's due process rights.

Mr. Redkin submits that the Due Process Clause mandates that the Department of Homeland Security (DHS), and not Petitioner, bear the burden to demonstrate by clear and convincing evidence that detention is justified. This is the majority position of the federal courts that have considered this legal issue. *See Hamal Rajesh v. Barr*, 420 F.Supp.3d 78, 86 (W.D.N.Y. 2019) (concluding that in bond proceedings under 8 U.S.C. § 1226(a) for noncitizens who are not charged as removable because of a criminal conviction, the Government bears the burden of proving, by clear and convincing evidence, that detention is justified) (collecting cases from federal courts in New York, New Jersey, Massachusetts, Virginia, California and Colorado). This is true whether it is the initial bond hearing or at a subsequent bond hearing. *J.C.G. v. Genalo*, 2025 U.S. Dist. LEXIS 8279 at \*27-28, 2025 WL 88831 (S.D.N.Y. Jan. 14, 2025) (citing to other district court cases.)

Mr. Redkin 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, or, in the alternative, release from detention.

### **CUSTODY**

1. Petitioner is in the physical custody of Respondent MIGUEL VERGARA, Field Office Director for Detention and Removal, U.S. Immigration and Customs Enforcement (“ICE”), DHS, and Respondent MARIO GARCIA, Warden of the Webb County Detention Center in Laredo, Texas. At the time of the filing of this petition, Petitioner is detained at the Webb County Detention Center. CoreCivic owns and operates the detention facility and contracts with the DHS to detain noncitizens, such as Petitioner, pending their removal proceedings. Petitioner is under the direct control of Respondents and their agents.

### **JURISDICTION AND VENUE**

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

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

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

### **PARTIES**

5. Mykyta Redkin is a national and citizen of Ukraine. He is currently detained at the Laredo Detention Center located at 9998 US-83, Laredo, Texas 78046.

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

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

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

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

10. Respondent MARIO GARCIA is the Warden of the WEBB COUNTY DETENTION CENTER. He is Petitioner’s immediate custodian and resides in the judicial

district of the United States Court for the Southern District of Texas. Respondent is named in his official capacity. Respondent Garcia can be served with process at CT Corporation System, 1999 Bryan, Ste. 900, Dallas, Texas 75201.

### FACTS

11. On August 5, 2022, Petitioner flew to the United States and was admitted at Miami International Airport. Exh. 1 (Petitioner's I-94). He was given permission to remain in this country until February 4, 2023.

12. On or about October 12, 2022, Petitioner applied for asylum fearing reprisal because [REDACTED] Exh. 2 (I-589 Asylum Application receipt). He subsequently applied for and received work authorization from the DHS. Exh. 3 (Employment Authorization Document).

13. On September 22, 2025, Petitioner presented himself at the Laredo North immigration checkpoint. Exh. 4 (I-213).

14. Immigration officers at the checkpoint questioned Petitioner and determined that notwithstanding the filing of his asylum application, he was in the United States without authorization. The DHS officers then arrested Petitioner, initiated removal proceedings, and transported him to a immigration detention center. Exh. 5 (Notice to Appear).

15. Petitioner requested a bond hearing and an immigration judge heard his request on October 8, 2025. At the hearing, the DHS counsel submitted Form I-213 (Record of Deportable/Inadmissible Alien) and stated that the DHS opposed bond. The DHS presented no other evidence of danger or flight risk.

16. In support of his request for bond, Petitioner submitted proof that he entered lawfully, timely applied for asylum and was gainfully employed. He also submitted support letters

from his U.S. citizen aunt and permanent resident cousin. Petitioner's cousin agreed to serve as his sponsor, provide for him financially and ensure that he appeared at future hearings. Exh. 6 (Index of Documents in Support of Bond<sup>1</sup>). In addition, his immigration counsel argued that Petitioner had never been arrested or convicted.

17. After hearing from Petitioner's immigration lawyer, the immigration judge denied bond conclude that Mr. Redkin "has not met his burden to show he would not be a flight if released form custody." Exh. 7 (Immigration Judge's Bond Order).

18. Mr. Redkin remains detained. There continues to be no evidence in the record to indicate that he is a flight risk, or that other conditions of custody can be imposed to prevent flight risk.

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

20. Mr. Redkin has no other remedy at law but to seek relief from this Court.

### **LEGAL FRAMEWORK**

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

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

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<sup>1</sup> Petitioner is submitting only the index of documents and can provide the Court with the 120 pages he presented to the immigration court.

1116 (BIA 1999) (holding that “respondent must demonstrate that his release would not pose a danger to property or persons, and that he is likely to appear for any future proceedings”).

23. Until the immigration reforms of 1996, the Board of Immigration Appeals, which is a part of the Department of Justice, interpreted the statute’s discretionary authority as involving a presumption against detention and the Government shouldered the burden of proving that the noncitizen’s detention was warranted. *Lopez v. Decker*, 978 F.3d 842, 848 (2nd Cir. 2020) (describing the history of § 1226(a)); *Matter of Patel*, 15 I&N Dec. 666 (BIA 1976) (“An alien generally is not and should not be detained or required to post bond except on a finding that he is a threat to national security or that he is a poor bail risk.”); Alina Das, *Immigration Detention: Information Gaps and Institutional Barriers to Reform*, 80 U. Chi. L. Rev. 137, 157-58 (2013).

24. After passage of the Illegal Immigration Reform and Immigrant Responsibility Act (“IIRIRA”), Pub. L. No. 104-208, 110 Stat. 3009 (1996), the former Immigration and Naturalization Service (INS) amended the regulations that changed the standard for the initial post-arrest custody determination made by immigration officers. *Lopez v. Decker*, 978 F.3d at 849. The noncitizen is now required “to demonstrate to the satisfaction of the [immigration] officer” that the noncitizen is neither a flight risk nor a danger to property or persons, and that he is likely to appear at future hearings. 8 C.F.R. § 236.1(c)(8).

25. In enacting § 236.1(c)(8), the INS acknowledged the sharp departure from long established procedures. Alina Das, *Immigration Detention: Information Gaps and Institutional Barriers to Reform*, 80 U. Chi. L. Rev. at 156 (citing to Final Rule: Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (1997)).

26. Later, the BIA began applying the standard in § 236.1(c)(8) to reviews by immigration judges of an arresting officer’s decision to detain a noncitizen. *Lopez v. Decker*, 978 F.3d at 849 (citing to *Matter of Adeniji*, 22 I&N Dec. 1102, 1112 (1999) and *Matter of Guerra*, 24 I&N Dec. 37, 38 (BIA 2006)). 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.”).<sup>2</sup>

27. To be released under § 1226(a), a noncitizen “must establish to the satisfaction of the Immigration Judge, or the Board, that he or she does not present a danger to persons or property, is not a threat to the national security, and does not pose a risk of flight.” *Matter of Guerra*, 24 I&N Dec. at 38 (citing *Matter of Adeniji*, *supra*). This regulatory rule, however, runs counter to the constitutional imperative that liberty is the norm. The Supreme Court has made plain that “commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection.” *Addington v. Texas*, 441 U.S. 418, 425 (1979).

28. 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. *Zadydas 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)).

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<sup>2</sup> For this reason, any argument that Petitioner must exhaust administrative remedies is a red herring. The BIA has addressed the precise legal issue and concluded that the noncitizen bears the burden of proof.

29. The Supreme Court has held that the Due Process Clause "applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. at 693. Throughout the Court's civil detention jurisprudence, it has always required the government to bear the burden of proof. *Addington v. Texas*, 441 U.S. 418 (1979). Thus, the Court has required that civil detention be the "exception", not the norm. *See United States v. Salerno*, 481 U.S. 739, 755 (1987) (allowing for pretrial detention in "carefully limited" circumstances).

30. In *Addington v. Texas*, 441 U.S. 418 (1979), the Court held that in civil commitment proceedings, the government's burden of proof must be "equal to or greater than the 'clear and convincing' standard" to meet due process guarantees. *Addington v. Texas*, 441 U.S. at 433. The appellant in *Addington*, a mental patient who had been committed indefinitely to a state mental hospital, sought review of the decision from the Texas Supreme Court which held that a preponderance of the evidence standard satisfied the due process requirement. *Addington v. Texas*, 441 U.S. at 421-22.

31. 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." *Zadvydas v. Davis*, 533 U.S. at 690 (quoting *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)).

32. 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).

33. 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. at 357 (upholding civil commitment of sex offenders after jury trial on lack of volitional control and dangerousness).

34. 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”).

### **CAUSES OF ACTION**

#### **COUNT I PROCEDURAL DUE PROCESS VIOLATION – RIGHT TO CONSTITUTIONALLY ADEQUATE BOND HEARING**

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

36. Petitioner’s detention is unlawful and violates his right to due process because he has not received a constitutionally adequate bond hearing.

37. The Court should order an immediate constitutionally adequate bond hearing at which the Government bears the burden of showing by clear and convincing evidence that Petitioner is a danger to the community or a flight risk.

#### **COUNT II PROCEDURAL DUE PROCESS – EVIDENCE FAILS TO SHOW FLIGHT RISK**

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

39. Petitioner’s detention is unlawful and violates his right to due process because the Government’s evidence that Petitioner is a flight risk fails as a matter of law.

40. The Court should reverse the immigration court's decision and set a bond in Petitioner's case.

**COUNT III**  
**ADMINISTRATIVE PROCEDURE ACT –**  
**CONTRARY TO LAW AND ARBITRARY AND CAPRICIOUS AGENCY POLICY**

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. The BIA's determination that noncitizens bear the burden of proof in immigration bond hearing is unlawful and in conflict with Supreme Court law.

44. Respondents have failed to articulate reasoned explanations for their reading of the INA; 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.

45. Imposing the burden of proof on noncitizens detained under § 1226(a) 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 constitutionally adequate bond hearing violates § 706(1) of the APA.

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

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

47. 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).

48. 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).

49. 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).

#### **PRAYER FOR RELIEF**

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

1. Assume jurisdiction over this action;
2. Order Respondents to release Petitioner immediately on his own recognizance or under parole, bond, or reasonable conditions of supervision;
3. In the alternative, order a constitutionally adequate, individualized bond hearing in which the Government bears the burden of establishing by clear and convincing evidence that Petitioner’s continued detention is justified;
4. 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,
5. Grant any other relief which this Court deems just and proper.

Dated: November 23, 2025

Respectfully submitted,

/s/ Javier N. Maldonado

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**ATTORNEY FOR PETITIONER**

**VERIFICATION OF COUNSEL**

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

/s/ Javier N. Maldonado  
Javier N. Maldonado