

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

ALEXANDER BARROS MILLÁN,

Petitioner,

v.

WARDEN ED VOORHIES, et al

Respondents.

Case No. 4:25-cv-02779-CEF

Judge Charles E. Fleming
Magistrate Judge Reuben J. Sheperd

PETITIONER'S EMERGENCY NOTICE TO THE COURT
REGARDING IMMIGRATION COURT'S DEFIANCE OF FEDERAL COURT
AUTHORITY
AND MOTION TO AMEND THE REPORT AND RECOMMENDATION
TO ORDER PETITIONER'S IMMEDIATE RELEASE

INTRODUCTION

Petitioner Alexander Barros Millán respectfully brings this emergency notice to alert the Court to a development that confirms, in real time, every concern this Court expressed in its stay order (Doc. #17): the executive branch's chain of command, from the Attorney General through EOIR leadership to the immigration bench, is systematically overriding federal court authority.

On or about March 5, 2026, Immigration Judge Drucker informed Petitioner's counsel that a "Judge Barker" overrules the California class action in *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal.), in arguing that the Central District of California does not have the power to overrule *Yajure Hurtado*. On or about February 27, 2026, the IJ informed counsel that he does not think the petitioner was part of the class in *Maldonado Bautista*. On or about February 12, 2026, the petitioner's family, observing court proceedings after counsel had logged off, overheard the IJ saying that the bond hearing was destined for denial.

Petitioner does not fault IJ Drucker personally for these statements. Immigration judges are DOJ employees subject to termination at will, operating under explicit directives from their superiors to deny bond hearings regardless of what federal courts have ordered. IJ Drucker's statement is not evidence of one judge's error. The judge has been clear that he is following directives from above. Rather, it is evidence of a **systemic directive from the highest levels of the Department of Justice** compelling immigration judges to disregard federal court authority, and it is precisely the kind of executive branch overreach that habeas corpus exists to remedy.

As one federal judge, appointed by President Trump himself, wrote just yesterday in granting habeas relief: "*This isn't how things are supposed to work in America.*" *Garcia Lanza v. Noem*, No. 1:25-cv-7362-GRB (E.D.N.Y. Mar. 4, 2026), slip op. at 12. That court found ICE's conduct constituted "*pretextual, discriminatory, arbitrary and capricious*" government action, condemned the agency's "*villainy*," and declared: "*While the Executive Branch retains the right, as it has done, to set policy regarding immigration matters, it is forbidden from trampling our system of laws, a system which has safeguarded this nation for close to 250 years.*" *Id.* at 18.

This Court's authority is not advisory. It is not subject to review by an immigration judge, or by the political appointees who direct them. It is not subordinate to a district court in Texas. And it is certainly not overruled by a judge who has issued **no ruling whatsoever** on the legal question at issue. Because the Department of Justice's directive structure has rendered the immigration court incapable of conducting a lawful bond hearing, Petitioner respectfully requests that this Court **amend the Report and Recommendation to order Petitioner's immediate release** rather than remand to a system that, through no fault of the individual judges who serve within it, has been commandeered to produce a predetermined outcome.

I.

**THE "JUDGE BARKER" AUTHORITY CITED BY THE IMMIGRATION COURT
DOES NOT EXIST**

1. IJ Drucker stated that "Judge Barker" ruled that Central District of California's ruling in the *Maldonado Bautista* class action does not have the power to overturn *Yajure Hurtado* nationwide and that Petitioner is ineligible for a bond hearing. **No such ruling exists.** Petitioner's counsel has conducted an exhaustive search of every federal legal database (including PACER, Westlaw, LexisNexis, CourtListener, and Justia) and can locate no ruling by any Judge Barker addressing the § 1225(b)(2)(A) mandatory detention question, the *Maldonado Bautista* class action, or bond hearing eligibility for individuals who entered without inspection.

2. The most prominent federal judge named Barker in immigration law is **J. Campbell Barker** of the United States District Court for the Eastern District of Texas, Tyler Division, appointed by President Trump in 2019. His immigration rulings occurred exclusively in 2024, in *State of Texas v. U.S. Department of Homeland Security*, No. 6:24-cv-00306-JCB (E.D. Tex.), a

case about President Biden's "Keeping Families Together" parole-in-place program under INA § 212(d)(5). *See* 2024 WL 4784931 (E.D. Tex. Aug. 26, 2024) (administrative stay); 2024 WL 4039580 (E.D. Tex. Sept. 3, 2024) (denying intervention); Findings of Fact and Conclusions of Law (E.D. Tex. Nov. 7, 2024) (74-page opinion vacating KFT program). That case involved an **entirely different legal question**, involving parole authority, not mandatory detention under § 1225(b)(2)(A).

3. Judge Barker has issued **no ruling in 2025 or 2026 addressing mandatory detention, bond hearing eligibility, or the *Maldonado Bautista* class action**. His 2025 and 2026 docket consists primarily of patent and business litigation. We could also find no rulings issued by Judge Pamela Barker of the N.D. of Ohio directly referencing this issue. The only other federal judge named Barker, Sarah Evans Barker of the Southern District of Indiana, has been on senior status since 2014 and has no involvement in immigration class actions.

4. That an immigration judge in Cleveland would cite a **nonexistent ruling** to deny a detained person's liberty is not an indictment of IJ Drucker. It is an indictment of the system that placed him in an impossible position. Immigration judges receive their legal guidance from EOIR's Office of the Chief Immigration Judge, which in turn takes direction from the Attorney General. When that guidance instructs judges to deny bond hearings based on authority that does not exist or has been vacated, the individual judge is left to choose between following his superiors or following the law. No immigration judge should be forced to make that choice. But this Court can and must ensure that the law prevails. As Judge Leichty of the Northern District of Indiana wrote: "*All parties must play by the rules. The same wisdom that requires immigrants and noncitizens to follow the law equally requires the government to follow the law.*" *Ortiz v. Warden* (N.D. Ind. Dec. 30, 2025) (granting habeas and ordering release).

II.

**EVEN IF SUCH A RULING EXISTED, A TEXAS DISTRICT COURT HAS
ZERO AUTHORITY OVER PROCEEDINGS IN THE NORTHERN DISTRICT OF
OHIO**

5. What IJ Drucker may have been referencing is the Fifth Circuit's decision in *Buenrostro-Mendez v. Bondi*, Nos. 25-20496 & 25-40701, ___ F.4th ___, 2026 WL 323330 (5th Cir. Feb. 6, 2026), a **2-1 split panel** (Judge Edith Jones and Judge Duncan in the majority; Judge Dana Douglas dissenting) holding that noncitizens present without admission are "applicants for admission" under § 1225(a)(1) subject to mandatory detention. But this ruling is **binding only within the Fifth Circuit** (Texas, Louisiana, and Mississippi). See *Camreta v. Greene*, 563 U.S. 692, 709 n.7 (2011) (a district court decision in one jurisdiction does not bind courts in another).

6. Ohio sits in the **Sixth Circuit**. The Fifth Circuit's decisions have no precedential force here. See *Hart v. Massanari*, 266 F.3d 1155, 1171 (9th Cir. 2001) ("Circuit law is binding only within the circuit."). Even as persuasive authority, *Buenrostro-Mendez* is an outlier: the majority **itself acknowledged "roughly 350 district court decisions" went against the government**. 2026 WL 323330, at *3. Judge Douglas's dissent documented a **92% rejection rate** of the government's position nationwide. *Id.* at *16 n.15 (Douglas, J., dissenting).

7. **No Sixth Circuit court, whether at the district or appellate level, has adopted the government's mandatory detention theory.** Every district court in this circuit to address the question has ruled **unanimously for petitioners**:

- *Lopez-Campos v. Raycraft*, 797 F. Supp. 3d 771, 781 (E.D. Mich. Aug. 29, 2025);
- *Contreras-Cervantes v. Raycraft*, 2025 WL 2952796 (E.D. Mich. 2025);

- *Del Villar v. Noem*, No. 4:25-cv-137, 2025 WL 3231630, at *5 (W.D. Ky. Nov. 19, 2025);
- *Chavez v. Dir. of Detroit Field Office*, No. 4:25-cv-2061, 2025 WL 3187080, at *4 (E.D. Mich. 2025);
- *Pizarro Reyes v. Raycraft*, No. 25-cv-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025);
- *Sanchez Alvarez v. Noem*, 2025 WL 2942648, at *9 (W.D. Mich. Oct. 17, 2025);
- *Gimenez Gonzalez v. Raycraft*, 2025 WL 3006185, at *5 (E.D. Mich. Oct. 27, 2025);
- *Mejicanos Cuyun v. Adducci*, No. 3:25-CV-02785-JJH (N.D. Ohio 2026) (**this district**).

The government's mandatory detention theory has a zero percent success rate in this circuit. For an immigration judge in Cleveland to invoke a Texas court as authority to override this unanimous consensus, and the orders of this very Court, is a **jurisdictional impossibility**.

III.

THIS COURT'S ORDERS ARE SUPREME OVER

ANY IMMIGRATION COURT DETERMINATION

8. Under the Supremacy Clause, U.S. Const. art. VI, cl. 2, and the federal court hierarchy established by Article III, this Court's orders bind every executive branch official operating within its jurisdiction. *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803) ("It is emphatically the province and duty of the judicial department to say what the law is."); *Cooper v. Aaron*, 358 U.S. 1, 18 (1958).

9. Immigration judges are **not Article III judges**. They are **employees of the Department of Justice** who "statutorily act as the Attorney General's delegates." 8 C.F.R. § 1003.10(a). The Attorney General oversees both the immigration judges who adjudicate bond claims *and* the Office of Immigration Litigation that argues *against* bond. Over 100 immigration

judges have been fired or pushed out since January 2025, sending an unmistakable message to those who remain: follow DOJ directives or lose your career. IJ Drucker and his colleagues on the Cleveland immigration bench have been placed in an untenable position, ordered by their employer to reach conclusions that federal courts have overwhelmingly rejected, under threat of professional consequences if they exercise independent judgment. This structural coercion is precisely why Article III oversight through habeas corpus is indispensable.

10. **This Court's Magistrate Judge has already recommended that Petitioner is detained under § 1226(a) and is entitled to a bond hearing.** This Court issued a stay (Doc. #17) specifically because the Cleveland Immigration Court would "subvert this Court's authority." The fact that IJ Drucker, despite that stay, despite the R&R, and despite the unanimous Sixth Circuit district court consensus, communicated to Petitioner that a nonexistent Texas ruling overrides a federal district court's authority is not a reflection of IJ Drucker's judgment; it is a reflection of the directives flowing from the Department of Justice to every immigration courtroom in the country. It proves the stay was necessary, and it proves that remand to any immigration judge operating under those directives would be futile and that this court should step in to amend and enforce the petitioner's immediate release on bond.

IV.

THE COMPLETE LEGAL FRAMEWORK COMPELS PETITIONER'S IMMEDIATE RELEASE

A. Constitutional Authority

11. **Fifth Amendment Due Process Clause, U.S. Const. amend. V.** "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). Petitioner has been detained **over eight months** without a bond hearing, exceeding the six-month presumptive reasonableness period by more than two months. *Id.* at 701. Justice Kennedy’s controlling concurrence in *Demore v. Kim*, 538 U.S. 510, 531-33 (2003), preserved as-applied challenges where officials “unreasonabl[y] delay” proceedings. In addition, the IJ has already hinted that bond would be denied, despite no actual hearing or argument occurring yet.

12. **Suspension Clause, U.S. Const. art. I, § 9, cl. 2.** The government’s attempt to nullify this Court’s habeas jurisdiction by directing immigration judges to ignore its orders constitutes a de facto suspension of the writ. *INS v. St. Cyr*, 533 U.S. 289, 301 (2001) (habeas protections are “strongest” when “reviewing the legality of Executive detention”).

13. **Supremacy Clause, U.S. Const. art. VI, cl. 2.** Executive agencies are subordinate to Article III courts. *Marbury*, 5 U.S. at 177; *Cooper*, 358 U.S. at 18.

B. Statutory Authority

14. **28 U.S.C. § 2241** grants this Court jurisdiction to order Petitioner’s release. *Hilton v. Braunskill*, 481 U.S. 770, 775 (1987).

15. **28 U.S.C. § 2243** requires courts to act “forthwith” and “summarily hear and determine the facts.” *Harris v. Nelson*, 394 U.S. 286, 298-300 (1969); *Carafas v. LaVallee*, 391 U.S. 234, 238 (1968).

16. **8 U.S.C. § 1226(a)** governs Petitioner’s detention, as this Court’s Magistrate Judge found, providing for release on bond or conditional parole. The Seventh Circuit in

Castañon-Nava v. U.S. DHS, 161 F.4th 1048 (7th Cir. 2025), found the government was “not likely” to succeed in arguing otherwise.

17. **5 U.S.C. § 706(2)(A) (APA Vacatur)**. *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025), the **only** BIA authority supporting mandatory detention, was **vacated on February 18, 2026** by Judge Sykes in *Maldonado Bautista*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal.) (enforcement order). A vacated decision has no legal force. *Nez Perce Tribe v. Idaho Power Co.*, 847 F. Supp. 791, 808 (D. Idaho 1994).

18. The **Laken Riley Act** of January 2025, which expanded mandatory detention under § 1226(c), would be rendered superfluous if the government’s § 1225(b)(2)(A) reading were correct. *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) (canon against surplusage). *Jennings v. Rodriguez*, 583 U.S. 281 (2018), itself distinguished between aliens “seeking admission” and those “already in the country.”

C. Binding Sixth Circuit Authority

19. *Ly v. Hansen*, 351 F.3d 263, 270-72 (6th Cir. 2003) (18 months unreasonable; case-by-case analysis required). *Rosales-Garcia v. Holland*, 322 F.3d 386 (6th Cir. 2003) (en banc) (six-month limit). *Hamama v. Adducci*, 946 F.3d 875 (6th Cir. 2020) (as-applied due process challenges available through habeas). *Roman v. Ashcroft*, 340 F.3d 314, 326 (6th Cir. 2003) (exception when government acts to evade habeas review).

V.

REMAND TO IMMIGRATION COURT IS FUTILE AND WOULD DEEPEN THE

HARM

20. The information communicated by IJ Drucker is not an isolated error by one judge. It is the predictable result of a top-down directive structure in which the Department of Justice, through the Attorney General, EOIR, the BIA, and the Office of the Chief Immigration Judge, has systematically instructed immigration judges nationwide to deny bond hearings regardless of what federal courts have ordered:

(a) On January 13, 2026, **Chief Immigration Judge Teresa L. Riley, based in Cleveland**, issued nationwide guidance instructing all IJs that *Maldonado Bautista* “is not a nationwide injunction and does not purport to vacate, stay or enjoin *Yajure Hurtado*.” AILA Practice Alert (Jan. 2026).

(b) Between December 19, 2025 and January 30, 2026, **551 habeas petitions** were filed in the Central District of California alone because IJs continued denying bond hearings.

(c) Cleveland IJs continue issuing orders stating: **“Denied, because the Court does not have the authority to redetermine bond in this case.”** Herman Legal Group, “Why Cleveland IJs Are Still Denying Bond After Bautista” (Feb. 2026).

(d) Judge Sykes characterized the government’s strategy as a **“deliberately dense three-step maneuver”** to circumvent federal court orders. *Maldonado Bautista* (C.D. Cal. Feb. 18, 2026) (enforcement order).

21. Remanding to the immigration court is not a remedy; it is a continuation of the constitutional violation. This is not because IJ Drucker or any individual immigration judge lacks integrity. It is because the system within which they operate has been engineered to produce a specific outcome. An immigration judge who grants bond in defiance of EOIR directives risks termination. An immigration judge who follows this Court’s order risks professional retaliation

from DOJ leadership. No judge should face that choice, and no petitioner's liberty should depend on whether a DOJ employee is willing to risk his career. The only remedy that protects both the petitioner's rights and the immigration judge's independence is for this Article III Court to order release directly.

VI.

HUMAN DIGNITY AND THE EQUAL APPLICATION OF LAW

22. This filing is not political. This Court's jurisdiction does not depend on which party controls the White House, and the Constitution does not apply selectively based on a person's country of origin or manner of entry. Yet the record in this case, and the broader pattern of which it is a part, compels the observation that the government appears to invoke the rule of law vigorously in some contexts while systematically disregarding it in others. The Department of Homeland Security demands strict compliance with immigration law from individuals like Petitioner, who has maintained perfect compliance with every obligation for over two years, holds a valid work authorization, passed his credible fear interview, and is pursuing a meritorious asylum claim. Yet that same government refuses to comply with federal court orders declaring its own detention policy unlawful. It demands that immigrants follow the law while instructing its own judges to ignore it.

23. The rule of law cannot be a one-way street. It cannot be invoked to detain a father for eight months while simultaneously being discarded when a federal court orders that detention to end. When the government applies legal obligations selectively, demanding obedience from those it detains while reserving for itself the right to disobey, it undermines the very foundation upon which its authority rests. As the Supreme Court warned in *Yick Wo v. Hopkins*, 118 U.S.

356, 373-74 (1886), a law that is “applied and administered by public authority with an evil eye and an unequal hand” violates the Constitution “whatever may have been the intent of the [law] as adopted.” The equal protection of the laws is not a courtesy extended at the government’s discretion. It is a constitutional command.

24. There is a painful irony at the heart of this case that this Court should not overlook. The United States’ own foreign and economic policies have contributed significantly to the conditions of instability, poverty, and violence from which many asylum seekers flee. The history of United States intervention in Latin America, from economic sanctions to covert operations to trade policies that destabilized regional economies, is well-documented and not subject to serious dispute. To use a metaphor the Court may find instructive: when a neighbor’s house is burning, one does not set the fire, watch the family flee, and then punish them for running onto your lawn. Yet that is functionally what occurs when the government creates or exacerbates the conditions that drive migration and then detains those who arrive seeking safety, without even affording them the dignity of a hearing to determine whether their detention serves any legitimate purpose. The question before this Court is not whether the United States must accept every person who arrives at its door. The question is whether the United States must *hear* them before locking them away. The answer, under every principle of American law, is yes.

25. Alexander Barros Millán is not a political symbol. He is a father. He has three young daughters, including a fourteen-year-old with severe autism who depends on him as her primary caretaker. His wife depends on him. His family depends on him. He has lived in this country, worked in this country, built a life in this country, and complied with every obligation this country has imposed on him. He has never been convicted of a crime. He has never missed a

hearing. He has never failed to report. The government has offered no evidence, none whatsoever, that he poses a danger to anyone or a risk of flight.

26. Alexander Barros Millan came here seeking political asylum. He complied with the US government's procedure, waited for an appointment, was paroled into the country, and timely filed an asylum application citing past persecution by assassins who came to his house in Venezuela seeking to do harm to him for his political opinions, and thus his well founded fear of similar persecution for his political beliefs if removed to Venezuela.

27. News reports have already shown that Venezuelan deportees from America are imprisoned in Venezuela, considered traitors to the regime that continues even with Maduro in US detention.

28. The Supreme Court has held that "*in our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.*" *United States v. Salerno*, 481 U.S. 739, 755 (1987). "*Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action.*" *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). These are not liberal principles or conservative principles. They are American principles, affirmed by justices appointed by presidents of both parties across more than two centuries.

29. Judge Brown, a Trump appointee, wrote yesterday that the government's conduct in immigration detention constitutes actions that "*the laws of human decency condemn.*" *Garcia Lanza v. Noem*, No. 1:25-cv-7362-GRB (E.D.N.Y. Mar. 4, 2026), slip op. at 18. He found ICE's behavior "*a reprehensible act of unimaginable cruelty*" and declared: "*While the Executive Branch retains the right, as it has done, to set policy regarding immigration matters, it is*

forbidden from trampling our system of laws, a system which has safeguarded this nation for close to 250 years.” Id. These are not the words of a partisan. They are the words of a federal judge confronting what happens when the government treats human beings as instruments of policy rather than as persons endowed with rights.

30. Petitioner’s fourteen-year-old daughter with severe autism did not choose immigration policy. She did not enter this country without inspection. She did not violate any law. She cannot fully understand why her father has been taken from her, and she cannot articulate the distress his absence causes. But she feels it. Every day she feels it. Her younger sisters feel it. Every day this Court delays is a day their suffering deepens, suffering inflicted not by any necessity of law, but by a bureaucratic machinery that has substituted political directive for legal judgment. People’s lives should never be used as political instruments. The law has spoken. It is time for this Court to act.

VII.

THIS COURT SHOULD AMEND THE R&R AND ORDER IMMEDIATE RELEASE

31. Magistrate Judge Sheperd performed exactly the work that the Federal Magistrates Act contemplates. He reviewed the petition, analyzed the law, weighed the arguments, and produced a Report and Recommendation that is thorough, well-reasoned, and consistent with the holdings of over 350 federal judges who have addressed this question. His R&R stands as a model of careful judicial analysis. It recommended that Petitioner is detained under § 1226(a) and is entitled to a bond hearing. The government filed objections. The objection period expired. The record is complete.

32. What remains is for this Court to act. The R&R has been pending without a final order from this Court. In the time since, conditions have not improved. They have deteriorated. The immigration court has cited nonexistent authority to deny Petitioner's rights. The government's primary legal authority has been vacated under the APA. Petitioner's detention has grown longer. His daughter's suffering has deepened. The only thing standing between Alexander Barros Millán and the relief that the law requires, that the Magistrate Judge recommended, and that 350 federal judges have confirmed he is owed, is the entry of a final order by this Court.

33. This Court knows, perhaps better than most, what prolonged and unjust detention looks like. Before taking the bench, Judge Fleming spent thirty years as an Assistant Federal Public Defender in this district, representing individuals whom the government sought to deprive of their liberty. That career was built on a principle as old as the Republic itself: that every person, regardless of status or circumstance, deserves to have a neutral judge hear their case before they are locked away. That principle does not change because the person is an immigrant rather than a criminal defendant. If anything, it applies with greater force here, because Mr. Barros Millán has never been charged with a crime, has never been convicted of anything, and has complied with every obligation this country has asked of him for over two years. He is not asking for special treatment. He is asking only for what the law provides: the chance to be heard.

34. The Great Writ of habeas corpus has endured for centuries because it embodies a simple truth: no government, however powerful, may cage a human being without answering to a court of law. *Boumediene v. Bush*, 553 U.S. 723, 739 (2008) ("The Framers viewed freedom from unlawful restraint as a fundamental precept of liberty."). That truth does not enforce itself. It requires a judge to give it force. It requires a judge to say, with the full weight of Article III

behind the words: this detention is unlawful, and it ends today. Petitioner respectfully submits that this is such a moment. The Magistrate Judge has done his work with care and precision. The law is clear. The equities are overwhelming. What remains is for this Court to bring this matter to a just conclusion.

35. Because the DOJ's directive structure has rendered the immigration court incapable of conducting a lawful bond hearing, Petitioner respectfully requests that this Court **amend the Report and Recommendation** pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b)(3), which authorizes the district court to "accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions." The R&R recommended a bond hearing before the immigration court. The facts since that recommendation demonstrate that remedy is no longer viable. The appropriate remedy is **release on minimal conditions**.

36. This Court has full authority to order release under 28 U.S.C. § 2241. *Hilton v. Braunskill*, 481 U.S. 770, 775 (1987); *Boumediene v. Bush*, 553 U.S. 723, 783 (2008) (habeas is "at its core a remedy for unlawful executive detention"). Where the government has shown it will not comply with court-supervised bond hearings, direct release is the only effective remedy. *See Ly*, 351 F.3d at 268 (courts should not permit the government to "drag its heels indefinitely").

35. This Court must also address the risk of pretermission. Petitioner passed his credible fear interview and is pursuing a meritorious asylum claim. Congress has provided by statute that "any alien who is physically present in the United States . . . irrespective of such alien's status, may apply for asylum." 8 U.S.C. § 1158(a)(1). This is not a discretionary courtesy. It is a

statutory right enacted by Congress that no executive agency may nullify. Yet the government has demonstrated, in this case and nationwide, a pattern of using pretermission to extinguish asylum claims before they can be heard. EOIR Policy Memorandum 25-28 (Apr. 11, 2025) expressly encourages immigration judges to pretermite asylum applications without evidentiary hearings. The BIA's decision in *Matter of H-A-A-V-*, 29 I&N Dec. 233 (BIA 2025), expanded this authority further. And in *Maldonado Bautista* itself, ICE attempted to pretermite class members' proceedings and effectuate removal before the federal court could act, which is precisely what prompted Judge Sykes's enforcement order.

36. If this Court orders Petitioner's release without addressing pretermission, there is a substantial risk that ICE will rearrest Petitioner, the immigration court will pretermite his asylum claim under EOIR directives, and removal will be effectuated before this Court or any federal court can intervene. This would render the habeas proceeding meaningless and violate both the statutory right to seek asylum under 8 U.S.C. § 1158(a)(1) and the principle of *non-refoulement* codified at 8 U.S.C. § 1231(b)(3), which provides that "the Attorney General may not remove an alien to a country if the Attorney General decides that the alien's life or freedom would be threatened in that country." As the Supreme Court held in *INS v. Cardoza-Fonseca*, 480 U.S. 421, 440 (1987), the asylum provisions of the INA were enacted to bring the United States into compliance with its obligations under the 1967 United Nations Protocol Relating to the Status of Refugees, and Congress's intent was to give "*statutory meaning to our national commitment to human rights and humanitarian concerns.*" *Id.* at 436 (quoting legislative history). Pretermiteing Petitioner's asylum claim without a hearing would betray that commitment and make a mockery of this Court's habeas order. This Court should expressly prohibit pretermission of Petitioner's asylum and related applications as a condition of its order.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

- (1) **Amend the Report and Recommendation** pursuant to Fed. R. Civ. P. 72(b)(3) and 28 U.S.C. § 636(b)(1) to replace the recommendation for a bond hearing before the immigration court with an order for Petitioner's **immediate release** on minimal conditions, given the immigration court's demonstrated inability and refusal to comply with federal court authority;
- (2) Order Petitioner's release on the following **minimal conditions** designed to ensure compliance while protecting Petitioner's family from further harm:
 - (a) Petitioner will reside at a verified address within the jurisdiction of the Cleveland ICE Field Office;
 - (b) Petitioner will report telephonically to ICE on a monthly basis, or at such frequency as the Court determines appropriate;
 - (c) Petitioner will surrender his passport and any travel documents to ICE;
 - (d) Petitioner will not travel outside the Northern District of Ohio without prior written permission;
 - (e) Petitioner will comply with all court orders and appear at all immigration proceedings;
 - (f) **No GPS ankle monitoring or in-person check-ins shall be required**, as Petitioner is the primary caretaker of a fourteen-year-old daughter with severe autism and two younger daughters, and the burden of such conditions would fall disproportionately on the children whom this Court seeks to protect;

(3) **Enjoin the pretermission of Petitioner's asylum application** and all related applications for withholding of removal under 8 U.S.C. § 1231(b)(3) and protection under the Convention Against Torture, and prohibit any immigration judge, EOIR official, or DHS officer from dismissing, pretermittting, or otherwise terminating Petitioner's applications for relief without a full evidentiary hearing on the merits, as required by 8 U.S.C. § 1158(a)(1), 8 U.S.C. § 1229a(b)(4)(B), and the Due Process Clause of the Fifth Amendment;

(4) **Enjoin Petitioner's removal, deportation, transfer, or redetention** from the Northern District of Ohio during all proceedings, including any appeal, absent a material change in circumstances and prior leave of this Court;

(5) **Retain jurisdiction** to ensure compliance and address any future violations;

(6) **Take judicial notice** that the information communicated by IJ Drucker, citing nonexistent authority from a court in another circuit, confirms the systemic pattern of DOJ-directed EOIR noncompliance with federal court orders;

(7) Rule on an **emergency, expedited basis** without awaiting further government response, as the government has had ample opportunity to be heard and the record is complete; and

(8) Grant such other and further relief as the Court deems just and proper.

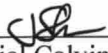
Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on March 5, 2026, a copy of the foregoing Petitioner's Emergency Notice to the Court Regarding Immigration Court's Defiance of Federal Court Authority and Motion to Amend the Report and Recommendation to Order Petitioner's Immediate Release was served via the Court's CM/ECF electronic filing system on all counsel of record.



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