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**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

JORGE FACIO OROZCO,

Petitioner,

v.

Case No. 2:26-cv-176

Agency No.



MATTHEW MORDANT, Warden of Florida
Soft Side South;
KRISTI NOEM, Secretary of Homeland
Security;
PAMELA JO BONDI, U. S. Attorney General;
GARRETT RIPA, Miami Field Office Director,
U.S. Immigration and Customs Enforcement
and Removal Operation;
TODD LYONS, Acting Director of Immigration
and Customs Enforcement;
U.S. DEPARTMENT OF HOMELAND
SECURITY;
U.S. IMMIGRATION AND CUSTOMS
ENFORCEMENT; and
U.S. DEPARTMENT OF JUSTICE

Respondents.

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PETITIONER'S REPLY TO RESPONDENTS' RESPONSE

I. INTRODUCTION

On February 12, 2026, Respondents filed their response to Mr. Jorge Facio Orozco's Petition for Writ of Habeas Corpus. ECF No. 7. This reply follows. For sake of clarity, Petitioner divides this reply into three parts.

First, Petitioner addresses the jurisdictional issue raised by Respondents. Second, Petitioner addresses Fifth Circuit's decision in *Buenrostro-Mendez v. Bondi*, No. 25-20496, 2026 WL 323330 (5th Cir. Feb. 6, 2026), maintaining that due process still applies. Third, Petitioner addresses why ordering a bond hearing under 8 U.S.C. § 1226(a) is not an adequate remedy as required by due process.

II. JURISDICTION

A. 8 U.S.C. § 1252(b)(9) does not preclude subject-matter jurisdiction because it relates to the review of certain removal orders, not challenges to detention.

8 U.S.C. § 1252(b) establishes the requirements for review of certain orders of removal, not challenges to the legality of an alien's detention, "With respect to review of an order of removal under subsection (a)(1), the following requirements apply...". Specifically, 8 U.S.C. § 1252(b)(9) is the "zipper clause." *Canal A Media Holding, LLC v. USCIS*, 964 F.3d at 1257 (11th Cir. 2020).

The U. S. Supreme Court ruled that the zipper clause does not preclude subject-matter jurisdiction "where those bringing suit 'are not asking for review of an order of removal,' 'the decision ... to seek removal,' or 'the process by which ... removability will be determined.'" *DHS v. Regents of Univ. of Cal.*, 140 S. Ct. 1891, 1907 (2020) (quoting *Jennings v. Rodriguez*, 138 S.Ct. 830, 841 (2018))

(plurality opinion)). Here, Petitioner is not asking for the review of an order of removal, the decision to seek removal, nor the process by which removability will be determined. Instead, Petitioner is challenging the legality of his detention. The legality, or lack thereof, of Petitioner's detention does not impinge upon the removal proceedings commenced against him. Even if the government does not restrict Petitioner's liberty, removal proceedings will remain against him, completely unaffected. Therefore, 8 U.S.C. § 1252(b)(9) does not preclude this Court from exercising subject-matter jurisdiction over Petitioner's habeas corpus claim.

In *Jennings v. Rodriguez*, 138 S.Ct. 830 (2018), the U. S. Supreme Court directly addressed this issue in the detention context. The U. S. Supreme Court ruled, "[8 U.S.C. § 1252(b)(9)] does not deprive us of jurisdiction. We are required in this case to decide 'questions of law,' specifically, whether, contrary to the decision of the Court of Appeals, certain statutory provisions require detention without a bond hearing." *Jennings*, 138 S.Ct. at 840. In *Jennings*, the U. S. Supreme Court allowed challenges against the aliens' detention to proceed, holding:

it is enough to note that respondents are not asking for review of an order of removal; they are not challenging the decision to detain them in the first place or to seek removal; and they are not even challenging any part of the process by which their removability will be determined.

138 S.Ct. at 841. Similarly, here, Petitioner is challenging his detention—not an order of removal, not the decision to detain him in the first place or to seek removal, and not any part of the process by which his removability will be

determined. Therefore, this Court has subject-matter jurisdiction to consider Mr. Facio's petition for habeas corpus.

B. 8 U.S.C. § 1252(g) does not preclude subject-matter jurisdiction, because petitioner is not challenging the government's decision to "commence proceedings, adjudicate cases, or execute removal orders"—he is challenging his detention.

In Reno v. Am.-Arab Anti-Discrimination Comm., 525 U.S. 471, 482

(1999), the U. S. Supreme Court ruled, "The provision [8 U.S.C. § 1252(g)] applies only to three discrete actions that the Attorney General may take: her 'decision or action' to 'commence proceedings, adjudicate cases, or execute removal orders.'"

More recently, *Canal A. Media Holding, LLC v. USCIS*, 964 F.3d 1250, 1257 (11th Cir. 2020) similarly held, "Instead, § 1252(g) bars challenges only to the 'three discrete actions' enumerated in the statute." Here, Petitioner is challenging his detention, not the government's decision to commence proceedings, adjudicate cases, or execute removal orders. Therefore, this Court has subject-matter jurisdiction to review Mr. Facio's petition for a writ of habeas corpus.

Mr. Facio's position is also consistent with Supreme Court and Eleventh Circuit precedents directly addressing habeas corpus petitions. For example, in *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001), the U. S. Supreme Court ruled that U. S. district courts have subject-matter jurisdiction to review "challenges to the lawfulness of immigration-related detention."

The U. S. Supreme Court explained:

We note at the outset that the primary federal habeas corpus statute, 28 U.S.C. 2241 confers jurisdiction upon the federal courts to hear these cases. See 2241(c)(3) (authorizing any person to claim in federal court that he or she is being held 'in custody in violation of the Constitution or laws ... of

the United States’).

Zadvydas, 533 U.S. at 687. Similarly, *Madu v. U.S. Atty. Gen.*, 470 F.3d 1362, 1368 (11th Cir. 2006), held that 8 U. S. C. § 1252(g) “does not proscribe substantive review of the underlying legal bases” for an alien’s detention. Therefore, consistent with U. S. Supreme Court and Eleventh Circuit precedents, 28 U.S.C. § 2241 establishes subject-matter jurisdiction to review habeas corpus petitions in immigration-related detention cases.

In an unrelated case, *Gupta v. McGahey*, 709 F.3d 1062, 1063 (11th Cir. 2013), the Eleventh Circuit found no jurisdiction in a *Bivens* claim “aris[ing] from the agents’ decision or action to commence removal proceedings.” In *Gupta*, a citizen of India sought declaratory relief and monetary damages for alleged irregularities during his arrest and seizure of property by Immigration Customs Enforcement. 709 F.3d at 1064. The purpose of the arrest and seizure of property were to commence removal proceedings. *Id.* at 1065. There, the alien was not challenging his detention. In fact, he had been released on bond prior to the suit. *Id.* at 1064. Here, Mr. Facio is not challenging his initial arrest nor the government’s decision to commence removal proceedings. He is challenging the lawfulness of his continued detention without an individualized bond hearing. *See Javier Gimenez Rivero v. Sheriff John Mina et al.*, Case No. 6:26-cv-66-RBD-NWH, at 4-6 (M. D. Fla. Jan. 26, 2026) (“Because Gupta directly challenged his removal, the Eleventh Circuit affirmed the district court’s dismissal of his case on jurisdictional grounds under § 1252(g). But § 1252(g) does not ‘impose a general jurisdictional limitation.’” (internal citations omitted)).

C. Numerous U. S. district courts have found subject-matter jurisdiction in cases identical to Petitioner's.

In *Hernandez Lopez v. Miami Federal Detention Center FDC et al.*, Case No. 26-20187-CV-DIMITROULEAS (S. D. Fla. Jan. 27, 2026), *Acando Ceballo v. Parra et al.*, Case No.: 25-cv-25271-JB (S. D. Fla. Dec. 4, 2025), and *Duvallon Boffill v. Field Office Director, Miami Field Office et al.*, Case No.: 25-cv-25179-JB, (S. D. Fla. Nov. 20, 2025), the Southern District of Florida reviewed habeas corpus petitions by aliens detained by the Department of Homeland Security, which alleged that the alien was subject to mandatory detention under 8 U. S. C. § 1225(b)(2). Before granting the petitions, *Hernandez Lopez*, at 3, *Acando Ceballo*, at 4, and *Duvallon Boffill*, at 4, determined:

District courts have the authority to grant writs of habeas corpus. See 28 U.S.C. § 2241(a). Habeas corpus is fundamentally ‘a remedy for unlawful executive detention.’ *Munaf v. Geren*, 553 U.S. 674, 693 (2008) (citation omitted). A writ may be issued to a petitioner who demonstrates that he is being held in custody in violation of the Constitution or federal law. See 28 U.S.C. § 2241(c)(3). The Court’s jurisdiction extends to challenges involving immigration-related detention. See *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

Regarding 8 U.S.C. § 1252(b)(9), *Duvallon Boffill*, at 9, explained:

This position was squarely addressed in *Jennings v. Rodriguez*, where the United States Supreme Court held that ‘questions of law’ regarding whether ‘certain statutory provisions require detention without a bond hearing’ *do not* ‘arise from’ the decision to remove an alien from the country as set forth in section 1252(b)(9). *Jennings*, 583 U.S. 281, 292–294 (2018).

[Emphasis added.]. Regarding 8 U.S.C. § 1252(g), *Duvallon Boffill*, at 7, ruled, “Here, Petitioner’s claim does not implicate the Attorney General’s decision to commence proceedings, adjudicate cases, or execute removal orders. Rather,

Petitioner challenges the legality of his detention. Such claim is reviewable.”

III. DUE PROCESS APPLIES

Respondents’ cite *Buenrostro-Mendez v. Bondi*, No. 25-20496, 2026 WL 323330 (5th Cir. Feb 6, 2026) in their Response, arguing that Petitioner does not qualify for bond under 8 U.S.C. § 1226(a). ECF No. 7, at 3. However, *Buenrostro* does not address constitutional due process issue, and it is not binding precedent in the Eleventh Circuit.

Even in the Fifth Circuit, district courts have granted writs of habeas corpus in situations identical to that of Mr. Facio, on constitutional due process grounds. *See e. g., Hassen v. Noem*, 3:26-cv-00048-DB, fn. 1 (W.D. Tex. Feb. 9, 2026) & *Clemente Ceballos v. Garite*, 3:26-cv-00312-DB, fn. 2 (W.D. Tex. Feb 10, 2026). (“*Buenrostro-Mendez* does not change this case’s outcome on procedural due process grounds.”).

In the Eleventh Circuit, the law is *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (C.D. Cal. Feb. 18, 2026), vacating *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). With *Matter of Yajure Hurtado* no longer being good-law, Respondents must apply *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006), which considers manner of entry a relevant, but not determining factor, applying the framework under 8 U. S. C. § 1226(a).

However, Respondents have a history of not complying with *Maldonado Bautista*, No. 5:25-CV-01873-SSS-BFM, at 15 (C.D. Cal. Feb. 18, 2026):

Respondents have violated and continue to violate the law by detaining Bond Eligible Class members in contravention of the Final Judgment.

Worse, Respondents proffer frivolous arguments that aim to insulate unlawful policies from judicial review while taking positions that seek to bludgeon separation of powers into oblivion.

Therefore, exhaustion is not necessary and a bond hearing under 8 U. S. C. § 1226(a) is not an adequate remedy.

IV. ADEQUATE REMEDY

There is no reason to depart from the Court's sound statutory analysis regarding 8 U. S. C. § 1226(a), where Petitioner has resided continuously in the United States for decades.¹ Nevertheless, the Government makes the same unfounded arguments to justify Petitioner's continued unlawful detention. As detailed in *Section A*, the systematic transformation of the immigration court into an instrument of the administration's enforcement agenda has rendered it incapable of providing Petitioner with the impartial tribunal and individualized assessment that 1226(a) and due process require. Therefore, the Court should exercise its equitable authority, ordering Petitioner's immediate release. In the alternative, the Court should conduct its own bail hearing. At a minimum, the Court should order a bond hearing before an immigration judge with explicit procedural safeguards, retaining jurisdiction to review the determination to ensure compliance with due process. Proposed remedies are addressed in *Section B*.

A. DUE PROCESS REQUIRES THAT AN IMPARTIAL ADJUDICATOR DECIDE IF PETITIONER'S CONTINUED DETENTION BEARS A REASONABLE RELATION TO FLIGHT RISK AND DANGER TO THE COMMUNITY.

¹ See *MARTINEZ DIAZ v. WARDEN RANDALL TATE*, No. CV 4:25-6354, 2026 WL 143151 (S.D. Tex. Jan. 20, 2026); *Garcia Pescador v. Dickey*, No. CV 4:25-6070, 2026 WL 74188 (S.D. Tex. Jan. 9, 2026); *Gutierrez v. Thompson*, No. 4:25-4695, 2025 WL 3187521 (S.D. Tex. Nov. 14, 2025).

As relevant here, due process requires that immigration detention “bear[] a reasonable relation to the purpose for which the individual was committed.” *Demore v. Kim*, 538 U.S. 510, 527 (2003) (quoting *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001)). Immigration detention must be reasonably related to preventing flight and protecting the community from harm and be accompanied by adequate procedural protections. *See Zadvydas*, 533 U.S. at 690-91. The chief protection is “the guarantee of an impartial and disinterested tribunal,” which the Due Process Clause requires “in both civil and criminal cases.” *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980). Immigration courts have been transformed into entities incapable of upholding Petitioner’s statutory and constitutional rights.

B. EOIR'S PROFOUND INSTITUTIONAL TRANSFORMATION PRECLUDES IMPARTIAL ADJUDICATION OF PETITIONER'S BOND REQUEST.

The immigration court system is not an independent adjudicative body. It operates under the Department of justice (“DOJ”). The DOJ and its sub-agencies, the Executive Office for Immigration Review (“EOIR”) and the Board of Immigration Appeals (“BIA”), in apparent coordination with the Department of Homeland Security (“DHS”) dismantled the integrity of the immigration court system, turning it into an extension of DHS’ deportation and detention operations. The evidence of EOIR’s institutional capture falls into five categories: (1) the ongoing mass-scale purge of immigration judges perceived as obstacles to DHS’ enforcement agenda; (2) the purge and reconstitution of the BIA, resulting in a 97% pro-government decision rate; (3) the recruitment and installation of enforcement-aligned “deportation judges” with dramatically reduced

qualifications; (4) EOIR policy directives establishing expectations and adjudications favoring the government over noncitizens; and (5) instructions to defy district court rulings that impede DHS's enforcement goals. Each category is addressed in turn below.

1) The Ongoing, Mass-Scale Purge of Immigration Judges Perceived as Obstacles to Enforcement Agenda

As of September 26, 2025, the administration has terminated 128 immigration judges (“IJs”).² Former New York IJ David K.S. Kim explained the targeting criteria: “I do not know the exact reason for my termination, but most of those dismissed, including myself, were judges with high asylum approval rates.”³ This is not the complaint of disgruntled employees—these are career jurists with decades of combined experience who felt compelled to speak out publicly.

The terminated and resigned judges report three consistent themes. **First, explicit pressure to serve as instruments of mass deportation rather than neutral adjudicators.** Former Baltimore IJ Emmett Soper stated: “I think the current administration of the immigration courts does not fundamentally see the immigration courts as neutral decision-makers. I think that they see the immigration courts as a tool for this administration to advance its policy objectives.”⁴ Former San Francisco IJ Jeremiah Johnson similarly understood “the hint that they should be hearing cases a certain way, deciding cases a

² *Trump Administration Continues Firing Immigration Judges -- IFPTE responds*, IFPTE (Sept. 26, 2025), <https://www.ifpte.org/news/trump-administration-continues-firing-immigration-judges-ifpte-responds>.

³ Woo-Sun Lim, *Former judge highlights legal failures in U.S. worker detentions*, The Dong-A Ilbo (Sept. 20, 2025), <https://www.donga.com/en/article/all/20250920/5859412/1>.

⁴ Geoff Bennett & Ali Schmitz, *Ousted Immigration Judge Describes Deepening Court Backlog*, PBS NewsHour (Nov. 12, 2025), <https://www.pbs.org/newshour/show/ousted-immigration-judge-describes-deepening-court-backlog>.

certain way. Move faster. Less due process, essentially.”⁵ Former San Francisco IJ George Pappas was even more direct: “We were told to facilitate deportation... Due process is dead in immigration courts.”⁶

Second, a pervasive climate of fear designed to ensure compliance. Former Baltimore IJ David C. Koelsch described it as “an atmosphere of paranoia and fear, which is exactly what they want.”⁷ Former Annandale IJ Anam Petit observed: “There’s a climate of fear...Judges feel like, if they step a toe out of line right now...or they’re one [asylum] grant away from being fired because of the arbitrary nature of the firings.”⁸ Former New York IJ Carmen Maria Rey Caldas described judges working “under ‘constant threat’ of getting fired if they don’t follow certain rules from leadership.”⁹

Third, the inevitable compromise of judicial independence when self-preservation requires favoring the government. Former San Francisco IJ Elizabeth Young explained: “I’ve talked to many of [the judges still serving], and they’re like, ‘When I go into court, I am concerned about applying the law, but I’m also concerned that I should deny more, because if I don’t, then I’ll get

⁵ Hilda Gutierrez, Michael Bott & Son Vo, ‘An all-out attack on immigration court:’ SF immigration judges speak out after firings, NBC Bay Area (Nov. 25, 2025),

<https://www.nbcbayarea.com/investigations/san-francisco-immigration-judges-speak-out-firings/3986850/>.

⁶ Marco Poggio, *Judges See an Immigration Court Gutted from Inside*, Law360 (Oct. 31, 2025),

<https://www.law360.com/articles/2381003/judges-see-an-immigration-court-gutted-from-inside>.

⁷ Poggio, *supra* note 8.

⁸ Eric Katz, ‘Climate of Fear’: Immigration Judges Say Functioning of Their Court System Is in Jeopardy Due to Trump’s Firings, Gov’t Executive (Nov. 14, 2025),

<https://www.govexec.com/management/2025/11/climate-fear-immigration-judges-say-functioning-their-court-system-jeopardy-due-trumps-firings/409544/>.

⁹ Isabela Dias, ‘Fired for No Reason’: Former Immigration Judges Speak Out Against Trump’s Assault on the Courts, Mother Jones (Oct. 9, 2025),

<https://www.motherjones.com/politics/2025/10/immigration-court-judge-trump-assault-purge-dhs-ice/>.

fired.”¹⁰ Former Boston IJ Sarah Cade reached her breaking point: “I felt I might have to compromise my ethics and might be put in a place where I felt like I was going to be asked to violate due process. So I left and I went to private practice.”¹¹

The message to remaining immigration judges is unmistakable: neutrality is a terminable offense. No adjudicator can remain impartial when faced with the choice between upholding due process and keeping their position. Any immigration judge assigned to Petitioner's bond hearing now operates under the understanding that granting bond may cost them their livelihood.

2) *The BIA Purge and Resulting Statistical Evidence of Bias*

A parallel purge occurred at the BIA—reduced from 28 to 15 members. All Biden appointees were fired.¹² The statistical impact is stark. As of January 22, 2026, the reconstituted BIA issued 71 published decisions.¹³ Of those, 69 decisions (97%) favored the administration.¹⁴ In contrast, during the entire four-years of the prior administration, the BIA issued 76 published decisions.¹⁵ Of those, 46 decisions (60%) favored the administration. The transformation from 60% to 97% pro-government outcomes—achieved through termination of one administration's appointees—speaks for itself.

¹⁰ Poggio, *supra* note 8.

¹¹ Poggio, *supra* note 8.

¹² Am. Imm. Council, *BIA Decision Strips Immigration Judges of Bond Authority, All but Guaranteeing Mandatory Detention for Undocumented Immigrants* (Sept. 12, 2025), <https://www.americanimmigrationcouncil.org/blog/bia-ruling-immigration-judges-bond-mandatory-detention-undocumented-immigrants/>.

¹³ Exec. Off. for Immigr. Rev., *Volume 29*, U.S. Dep't of Just. (Jan. 21, 2025), <https://www.justice.gov/eoir/volume-29>.

¹⁴ Of the remaining two decisions: 1 decision was neutral (involving attorney sanctions) and 1 decision disfavored the administration.

¹⁵ Exec. Off. for Immigr. Rev., *Volume 28*, U.S. Dep't of Just. (June 13, 2025), <https://www.justice.gov/eoir/volume-28>. (First decision, *Matter of DIKHTYAR*, 28 I&N Dec. 214 (BIA 2021), issued 01/22/2021).

3) *The Installation and Recruitment of Judges Aligned with Enforcement Agenda*

To replace purged judges, the DOJ launched recruitment, marketing it as "deportation judges."¹⁶ DHS—a party in immigration proceedings before EOIR—promoted these openings on social media with enforcement-focused language: "Bring the hammer down on criminal illegal aliens" and "Defend your communities, your culture, your very way of life."¹⁷

Furthermore, the DOJ authorized up to 600 military lawyers to serve as temporary immigration judges for a renewable term not to exceed six months, simultaneously eliminating requirements to serve as a temporary immigration judge.¹⁸ Previously, temporary judge candidates were required to have served as immigration judges, appellate immigration judges, or administrative judges within another agency, or to have at least 10 years of immigration law experience. The administration removed those requirements, allowing "any attorney" to be selected as a temporary immigration judge, reducing training to approximately two weeks—far less than the standard training for permanent immigration judges, which includes six weeks of initial training, one year of mentorship by an experienced judge, and two years of quarterly reviews.¹⁹ Corey Lewandowski, an advisor to DHS Secretary Noem, responded to the announcement: "I see more

¹⁶ Murphy Marcos *supra* note 2.

¹⁷ dhsgov, Instagram (Nov. 21, 2025), <https://www.instagram.com/p/DRVT8DmCOKD/?hl=en>.

¹⁸ Designation of Temporary Immigration Judges, 90 Fed. Reg. 41,883 (Aug. 28, 2025).

¹⁹ Margy O'Herron, *Using Military Lawyers as Immigration Judges is Ill-Advised and Potentially Illegal*, Brennan Ctr. for Just. (Sept. 29, 2025),

<https://www.brennancenter.org/our-work/analysis-opinion/using-military-lawyers-immigration-judges-ill-advised-and-potentially>.

deportations of illegal immigrants in the near future”²⁰—an explicit acknowledgment of the mass deportation policy objective underlying these appointments and the erosion of institutional boundaries between DOJ and DHS. In December, one of the appointed temporary judges was fired just a month into his six-month term. “That judge, Christopher Day, had granted asylum claims in just over half the cases he heard.”²¹

4) A Barrage Of EOIR Policy Memoranda Establishing Expectations That Adjudications Favor The Government Over Noncitizens

EOIR’s new acting director, Sirce E. Owen, issued “a string of sharply worded policy memos” that immediately “[set] the tone for her leadership.”²² “Sources familiar with Owen described her as a ‘restrictionist loyalist’ with a reputation for denying cases.”²³ The Catholic Legal Immigration Network (CLINIC) observed that “these memos also seem intended to reshape EOIR, which is meant to be a neutral arbiter, into a politically driven tool advancing the Trump administration’s clearly anti-immigrant views.”²⁴ The policy directives include a memorandum, dated June 27, 2025, warning judges not to demonstrate “bias directed against DHS” or to be “adjudicatory outliers,” at risk of “close examination and potential action”;²⁵ a memorandum encouraging judges to deny asylum

²⁰ Corey R. Lewandowski (@CLewandowski), X (Sept. 2, 2025, 1:47 PM), <https://x.com/clewandowski/status/1962950546652070269>.

²¹ Balko, *supra* note 1.

²² *US army lawyer fired as immigration judge after defying Trump deportation agenda*, The Guardian (Dec. 19, 2025), <https://www.theguardian.com/us-news/2025/dec/19/army-lawyer-fired-immigration-trump-deportation>.

²³ Dias, *supra* note 8.

²⁴ Cath. Legal Immigr. Network, Inc., *Navigating EOIR Directives Under Trump 2.0: Practical Guidance for Advocates and Programs* (Apr. 22, 2025), <https://www.cliniclegal.org/file-download/download/public/77642>.

²⁵ Exec. Off. for Immigr. Rev., Policy Memorandum 25-33, *Neutrality and Impartiality in Immigration Court Proceedings* (June 27, 2025), https://iptp-production.s3.amazonaws.com/media/documents/2025.06.27_EOIR_-_PM_25-33.pdf.

without full evidentiary hearings, styled as efficiency guidance but functioning as directives to reduce due process protections;²⁶ and memoranda restricting immigration judges' ability to grant continuances²⁷ and administrative closure.²⁸

5) EOIR Has Issued Explicit Directives To Ignore District Court Rulings That Impede DHS's Policy Objectives

The clearest evidence that EOIR has abandoned its role as a neutral tribunal comes from its response to federal court orders protecting bond hearing rights. In *Maldonado Bautista v. Santacruz*, the Central District of California issued declaratory and injunctive relief, holding that noncitizens who entered without inspection, but were not apprehended at the border, are detained under § 1226(a), not § 1225(b)(2), entitling them to bond hearings.

Maldonado Bautista v. Santacruz, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3289861 (C.D. Cal. Nov. 20, 2025); *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025). Judge Sunshine Sykes certified a nationwide class, entering final judgment. *Id.* EOIR leadership directed all immigration judges to ignore the order. On January 13, 2026, Chief Immigration Judge Teresa L. Riley sent an email to all immigration judges instructing:

Please provide the following guidance to all immigration judges forthwith: *Maldonado Bautista* is not a nationwide injunction and does not purport to vacate, stay, or enjoin *Yajure Hurtado*. Therefore *Yajure Hurtado* remains binding precedent on agency adjudications. For clarification, declaratory judgments differ from injunctions in that the

²⁶ Exec. Off. for Immigr. Rev., Policy Memorandum 25-28, Pretermission of Legally Insufficient Application for Asylum (Apr. 11, 2025), <https://www.justice.gov/eoir/media/1396411/dl?inline>.

²⁷ Exec. Off. for Immigr. Rev., Policy Memorandum 25-27, Cancellation of Director's Memorandum 23-01 and Reinstatement of Policy Memorandum 19-13 (Mar. 21, 2025), <https://www.justice.gov/eoir/media/1394086/dl>.

²⁸ Exec. Off. for Immigr. Rev., Policy Memorandum 25-29, Cancellation of Director's Memorandum 22-03 (Apr. 18, 2025), <https://www.justice.gov/eoir/media/1397161/dl?inline>.

former clarifies parties' legal rights and relationships without ordering specific action, while the latter is a court order compelling a party to do or stop doing a specific act. A declaratory judgment is not an equitable remedy and does not, by itself, have the effect of compelling specific action by a party. Thank you for your attention to this matter.²⁹

The effect was immediate: ACLU lawyers reported that immigration judges granting bond hearings in compliance with Judge Sykes' ruling reversed course after receiving Chief Judge Riley's directive.³⁰ Immigration judges were faced an impossible choice—comply with a federal district court or defy it and retain their positions.

On January 16, 2026, Judge Sykes issued a scathing order:

“This matter is yet another in a slew of habeas petitions following the Court’s ruling in *Bautista v. Santacruz* that has unfortunately become routine in this Court. But individuals filing these habeas petitions are not to blame; rather, the current volume of habeas petitions and temporary restraining orders being filed can be attributed to ***Respondents’ deliberate choice to continue defying the final judgment entered in Bautista.***

...

Despite the clarity of the Court’s previous orders and legal doctrines that preclude Respondents from relitigating issues at the heart of these requests, Respondents continue to manufacture arguments for sake of opposition. At this point in time,

the Court can no longer confer Respondents with the benefit of the doubt as to the intent of their filings.

Despite the final judgment in *Bautista*, it appears that immigration judges continue to rely on legal interpretations that were expressly found unlawful. ... Respondents are collaterally estopped from relitigating the issue as to whether Bond Eligible Class members are entitled to the exact relief as provided in the *Bautista* final judgment. Accordingly, Respondents are collaterally estopped from relitigating

²⁹ Am. Immigr. Laws. Ass'n, Practice Alert: EOIR Issues Nationwide Guidance on *Maldonado Bautista*, AILA Doc. No. 26011404 (Jan. 16, 2026), <https://www.aila.org/library/practice-alert-eoir-issues-nationwide-guidance-on-maldonado-bautista>.

³⁰ *Immigration judges told to ignore rulings on bond hearings, documents show*, Massachusetts Lawyer Weekly (Jan. 20, 2026), <https://masslawyersweekly.com/2026/01/20/immigration-judges-ignore-bond-hearing-rulings/>.

this issue against all members of the Bond Eligible Class.”

Palomera Baltazar v. Janecka, No. 5:26-cv-00019-SSS-BFM at *2-3 (C.D. Cal. Jan. 16, 2026). (emphasis added)

Judge Sykes' findings are devastating: the government is not merely disagreeing with her legal conclusions—it is engaged in "deliberate" defiance, "manufacturing arguments," and instructing immigration judges to rely on "interpretations that were expressly found unlawful." This is not a case of good-faith disagreement over statutory interpretation. It is systematic and institutional defiance of federal court orders, orchestrated by EOIR and enforced through the threat of termination. No clearer evidence of institutional capture could exist: when presented with a federal court order protecting noncitizens' rights, EOIR's response was to order judges to violate it. The ultimate victim is the detained noncitizen, remaining detained in violation of the due process without an impartial adjudicator determine whether continued detention serves any legitimate purpose related to flight risk or community safety.

V. PRAYER FOR RELIEF

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

discharge of the applicant from physical custody. Its mandate is broad with respect to the relief that may be granted”). Here, a 1226(a) bond hearing before EOIR—a clearly compromised adjudicatory body—would not redress the statutory and constitutional violations. Therefore, Petitioner urges the court to provide an alternative corrective measure:

1. **First, Petitioner submits that immediate release is the most appropriate remedy.**

Petitioner's lack of criminal history, strong family ties to the United States, and long duration of residency support his immediate release. “In recent months, courts across the country have ordered the release of detainees in similar situations.” *Moctezuma v. Henkey*, No. 1:25-CV-00741-BLW, 2026 WL 18809, at *5 (D. Idaho Jan. 2, 2026) (**given that the government’s repeated use of unlawful detention policies across the country, causing petitioners to “sit in jail waiting for a judicial decision,” the court would order immediate release instead of causing additional delay through a bond hearing**). (citing *Lepe v. Andrews*, 801 F. Supp. 3d 1104 (E.D. Cal. 2025); *J.U. v. Maldonado*, No. 25-cv-4836, 2025 WL 2772765, at *10 (E.D.N.Y. Sept. 29, 2025); *Rosado v. Figueroa*, No. 25-cv-2157, 2025 WL 2337099, at *19 (D. Ariz. Aug. 11, 2025); *Pinchi v. Noem*, No. 25-cv-05632, 2025 WL 1853763, at *4 (N.D. Cal. July 4, 2025). *Santiago v. Noem*, No. EP-25-CV-361, 2025 WL 2792588, at *13-14 (W.D. Tex. Oct. 2, 2025)(“Without a legitimate

interest in her detention, immediate release appropriately remedies Respondents' violation of [Petitioner's] due process rights through her continued detention.”)

2. In the alternative, Petitioner requests a custody hearing before this Court.

The habeas court can hold its own custody hearing and determine whether the government can prove by clear and convincing evidence that Petitioner must remain in custody, or whether he may be released on recognizance.³¹

3. At a minimum, the court should order that Petitioner be provided a 1226(a) bond hearing, but with additional safeguards.

Specifically, the Court should order:

- a. A bond hearing where the government shall bear the burden of establishing by clear and convincing evidence that Petitioner poses a danger or flight risk to “[reflect] the concern that ‘[b]ecause the alien's potential loss of liberty is so severe ... he should not have to share the risk of error equally.’” *See Lopez-Arevelo v. Ripa*, 801 F. Supp. 3d 668, 688 (W.D. Tex. 2025).³²

³¹ See e.g. *L.G.M. v. LaRocco*, 788 F.Supp.3d 401, 405-07 (E.D.N.Y. 2025) (ordering a bond hearing held by the habeas court, as this would be more efficient than delegating the task to the agency and ensure proper constitutional oversight); *Flores-Powell v. Chadbourne*, 677 F.Supp.2d 474-78 (D. Mass 2010) (granting petition and discussing at length habeas court's equitable power, which includes power to hold its own bail hearing); see also *Santos v. Lowe*, No. 1:18-CV-1553, 2020 WL 4530728, at *4 (M.D. Pa. Aug. 6, 2020) (finding that habeas court-ordered bond hearing was not individualized and did not comport with due process, and granting motion to enforce to hold the court's own bond determination); *Ramirez v. Watkins*, No. 10-cv-126, 2010 WL 6269226, at *19-20 (S.D. Tex. Nov. 3, 2010), *rep. and rec not reached*, (S.D. Tex. Dec. 8, 2010) (dismissing case as moot) (recommending the habeas court conduct its own bail inquiry, as it would be more efficient, ensure supervision over any compliance issues, and avoid further proceedings).

³² See also *Lopez-Arevelo v. Ripa*, 801 F. Supp. 3d 668, 688 (W.D. Tex. 2025) (noting that “as of 2020, the ‘vast majority’—an ‘overwhelming consensus’—of courts granting immigration detainees' habeas petitions have placed

- b. Provide that the habeas court shall retain jurisdiction to review the immigration judge bond decision, ensuring compliance with the court's order and due process.
- c. Prohibit ICE from invoking the automatic stay provisions under 8 C.F.R. § 1003.19(i)(2) because their application violates the procedural due process rights of noncitizens granted bond. *See Gutierrez v. Thompson*, No. 4:25-4695, 2025 WL 3187521, at *8 (S.D. Tex. Nov. 14, 2025).

Respectfully submitted this 19th day of February, 2026,

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CERTIFICATE OF SERVICE

I hereby certify that, on February 19, 2026, I electronically served a true and correct copy of the foregoing on counsel for Respondents via transmission of a Notice of Electronic Filing generated by the CM/ECF system of the U.S. District Court for the Middle District of Florida.

by: /s/ José Manuel Godínez Samperio
José Manuel Godínez Samperio, Esq. (FBN 111231)