UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

GABRIEL TORRES-CORONADO,)

Petitioner-Plaintiff,)

v.)

PHILLIP VALDEZ, Warden Eden Detention Center
ROBERT CERNA, Acting Field) Case No _____
Office Director, ERO Dallas;
TODD LYONS, Acting Director, U.S.)
Immigrations and Customs Enforcement;
DAREN K. MARGOLIN, Director, Executive)
Office For Immigration Review;
PAMELA BONDI, U.S. Attorney General;)
and KRISTI NOEM, U.S. Secretary of
of Homeland Security,)

Respondents-Defendants.)

PETITION FOR WRIT OF HABEAS CORPUS AND FOR DECLARATORY JUDGEMENT

I. JURISDICTION, VENUE, AND PARTIES

A. Jurisdiction

This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question for Declaratory Judgement), and Article I § 9, cl. 2 of the U.S. Constitution (Suspension Clause).

The Federal Declaratory Judgment Statute (28 U.S. Code § 2201) authorizes federal courts to issue "declarations," which are legally binding rulings on the rights and legal obligations of parties. The statute provides a tool to resolve legal uncertainties and disputes before an actual injury or lawsuit occurs. A key component of the Act is the requirement of an "actual controversy" to avoid issuing mere advisory opinions. *See Maldonado-Bautista v.*

Santacruz, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. Nov. 25, 2025).[1]

B. Venue

Venue is proper because the Petitioner is in custody at the Eden Detention Facility in Eden, Texas. Further, Petitioner was taken into custody by Dallas Enforcement and Removal who has jurisdiction over Eden, TX. Dallas ERO has jurisdiction over Eden, Texas. Venue is also proper under 28 U.S.C. §§ 1391(b)(2), (e). This is within the Dallas court's (NDTX) jurisdiction.

C. Parties

Petitioner GABRIEL TORRES-CORONADO, a native and citizen of Venezuela, is presently detained by Respondents at the Eden Detention Center, Eden Texas.

Respondent PHILLIP VALDEZ, is the Warden for the Eden Detention Center where Plaintiff is held in Eden, Texas.

Respondent ROBERT CERNA is Assistant Field Office Director for ERO, Dallas, Texas.

Respondent TODD LYONS is the Acting Director for U.S. Immigration and Customs Enforcement.

Respondent DAREN K. MARGOLIN is Director, Executive Office for Immigration Review.

Respondent PAMELA BONDI is the Attorney General of the United States and administers the Department of Justice, including EOIR, the BIA, and the Immigration Courts.

Respondent KRISTI NOEM is the U.S. Secretary of Homeland Security and administers the Department of Homeland Security.

All respondents are named in their official capacities. One or more of the respondents are petitioner's immediate custodians.

[1] The judgment in that case has been appealed to the Ninth Circuit.

II. PETITIONER'S IMMIGRATION HISTORY

Petitioner Gabriel Torres-Coronado, a native and citizen of Venezuela, born on [redacted] entered the U.S. without inspection (EWI) on or about August 23, 2023, seeking asylum due to fear of persecution in Venezuela, based upon membership in "a particular social group" [redacted], under 8 U.S.C. §§ 1101(a)(42)(A), 1158.

Torres-Coronado was released under an Order of Own Recognizance (OSUP) on August 23, 2023, pursuant to 8 USC 1226a as evidenced by the documents issued to him then, which included: A Notice to Appear ("NTA"), Order of Release on Own Recognizance, which were issued on September 23, 2023.

The NTA was filed with the Immigration Court in Dallas, Texas, on or about September 19, 2023, thereby commencing removal proceedings. The NTA states that he is inadmissible pursuant to INA § 212(A)(6)(a)(i).[2] His individual hearing is now scheduled for (accelerated to) April 10, 2026 at 8:30 a.m.

He filed a timely application for asylum, withholding of removal and protection under the Convention Against Torture (form I-589) with the Immigration Court.[3]

III. PETITIONER'S CUSTODY FACTS

Petitioner was first taken into custody by Border Patrol on August 23, 2023 when he entered the U.S. without inspection. He was released that same day pursuant to an Order of Supervision (OSUP). He was ordered to appear at ERO at 8101 N. Stemmons Freeway, Dallas, Texas on September 21, 2023 at 10:00 a.m., which he did. He was next scheduled to appear on September 23, 2024, which he again did. He appeared on each occasion directed to do so by ICE for check-ins pursuant to his OSUP.

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[2] 8 U.S.C. §1182(A)(6)(a)(i)

[3] He also filed for and received Temporary Protected Status for Venezuela.

On September 11, 2025, when Petitioner voluntarily appeared for an ICE check-in, he was taken into custody for the second time, arbitrarily and capriciously and without issuance of any notice or documentation, on the new theory that he fell under 8 USC §1225. However, he was later re-released with the ankle monitor after 21 days—with form 71-071 ATD Enrollment - Notice to Alien. (ATD is "Alternative to Detention", "ATD" herein). Pursuant to the Notice, he was enrolled in a heightened supervisory program which required an ankle monitor and home visits.

On January 8, 2026, when Petitioner voluntarily appeared for an ICE check-in, he was taken into custody for the third time, despite his absolute compliance with his OSUP and ATD reporting requirements. He is currently held at the Eden Detention Facility, Eden Texas. Petitioner requests of this court an order that his custody be returned to its previous status under the original OSUP or in the alternative under the ATD, and order that it not be otherwise altered.

Respondent further requests that no Immigration Court merits hearing be held until he is released from custody, restoring the *status quo ante* and thus providing him with the time he had relied upon in good faith to complete preparation of his asylum evidence, in the interests of due process and justice.

IV. LEGAL BACKGROUND - PETITIONER'S DUE PROCESS INTEREST IN FREEDOM FROM DETENTION

A. <u>Every person has a liberty interest in freedom from custody</u>.

"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). This fundamental principle of our free society is enshrined in the Fifth Amendment's Due Process Clause, which specifically forbids the Government to "deprive[]" any "person . . . of . . . liberty

. . . without due process of law." U.S. Const. Amend. V.

"[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953). ("[A]liens who have once passed through our gates, even illegally, may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law"). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of liberty" protected by the Due Process Clause. *Zadvydas*, *supra*, 533 U.S. at 678.

The Supreme Court, "...has repeatedly recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection," including an individualized detention hearing. *Addington v. Texas*, 441 U.S. 418, 425 (1979) (collecting cases); *see also Salerno*, *supra*, 481 U.S. at 755 (requiring individualized hearing and strong procedural protections for detention of people charged with federal crimes); *Foucha v. Louisiana*, 504 U.S. 71, 81-83 (1992) (same for civil commitment for mental illness); *Kansas v. Hendricks*, 521 U.S. 346, 357 (1997) (same for commitment of sex offenders).

B. The interplay between 8 U.S.C. §§ 1225 and 1226 based on well-settled law.

For decades, the immigration system has implemented this balance through a network of three mutually exclusive detention statutes.

First, at the border, individuals "seeking admission" who are placed into removal proceedings are subject to detention without a bond hearing under 8 U.S.C. § 1225(b)(2).[4] *See Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) (describing § 1225 as relating to "borders and

[4] Separately, there is also a limited subset of individuals in and around the border who may be placed into the Expedited Removal process and are subject to mandatory detention under 8 U.S.C. § 1225(b)(1). *See Make the Road N.Y. v. Noem*, No. 25-190, 2025 WL 2494908, at *23 (D.D.C. Aug. 29, 2025).

ports of entry"). These individuals may request release through humanitarian parole *from DHS* under 8 U.S.C. § 1182(d)(5)(A), but not in Immigration Court.

Second, individuals arrested inside the United States are generally placed into removal proceedings under 8 U.S.C. § 1229a, during which an Immigration Judge (an "IJ")—and later potentially the BIA and a U.S. Courts of Appeal—will decide whether or not the person should be deported. During these proceedings, a noncitizen may apply for various forms of relief from deportation, such as asylum, withholding of removal, cancellation of removal, and adjustment of status, under various provisions of 8 U.S.C. The IJ usually holds a "Master Calendar" hearing to determine if the person is subject to being deported and, if so, whether or not the individual is eligible to apply to the court for some form (of the aforementioned) statutory relief from deportation.

While a removal case is pending, which in some cases can take years, if the case merits full litigation, the aliens are generally subject to the detention authority of 8 U.S.C. § 1226. *See Jennings*, 583 U.S. at 288-89 (describing § 1226 detention as relating to people "inside the United States" and "present in the country").[5] Most of these individuals are eligible for release on bond with conditions under § 1226(a), and they are consequently entitled to a custody redetermination (colloquially called a "bond hearing") before an IJ to decide whether they should be detained or released (in those cases—most of them—where DHS insists on detaining them indefinitely). *See* 8 C.F.R. §§ 1003.19(a), 1236.1(d). A bond hearing with strong procedural protections is *not* mere regulatory grace; it is the baseline due process requirement for § 1226 detainees. *See Hernandez-Lara v. Lyons*, 10 F.4th 19, 41 (1st Cir. 2021); *Doe v. Tompkins*, 11 F.4th 1, 2 (1st Cir. 2021); *Brito v. Garland*, 22 F.4th 240, 256-57 (1st Cir. 2021) (affirming class wide declaratory judgment).

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[5] This court should note that the Fifth Circuit's ruling in *Buenrostro-Mendez, supra* appears to be irreconcilable with *Jennings* (not to mention many other SCOTUS precedents) and, if so, cannot be good law. Notwithstanding, Counsel is aware that a Motion for Rehearing En Banc is being prepared in that case.

The Supreme Court and First Circuit have recognized only one exception to this constitutional requirement for a bond hearing for § 1226 detainees: In *Demore v. Kim*, 538 U.S. 510 (2003), the Court held that, under 8 U.S.C. § 1226(c), there is a narrow category of people who may be held in mandatory detention for a brief period of time, if the person has conceded removability *and has been convicted of certain crimes* following all of the due process afforded by a criminal adjudication.[6] *See DeMore*, supra, 538 U.S. 510, 513 (2003).

Third, if an individual completes his removal proceedings and all appeals, and is ordered removed, he is subject to detention under 8 U.S.C. § 1231 (a different INA section) *while the government attempts to remove him*. That statute provides for 90 days of mandatory detention called the "removal period," followed by discretionary detention within certain limits. *See Zadvydas v. Davis*, 533 U.S. 678, 699-700 (2001) (holding § 1231 detention may not continue *at all* if removal is not reasonably foreseeable).

This system—in which people arrested inside the United States are generally eligible for a bond hearing and release during immigration proceedings—has existed essentially in its current form since Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, Div. C, § 3003, 110 Stat. 3009-546, 3009-585 to 3009-587 (codified at 8 U.S.C. § 1226).[7] According to IIRIRA's legislative history, § 1226(a) was intended to "restate the [then-]current provisions in section 242(a)(1)[8] regarding the authority of the Attorney General to arrest, detain, and release on bond an alien who is not lawfully in the United States." *See Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1260 (W.D. Wash. 2025) (quoting H.R. Rep. No. 104-469, at 229 (1996)). It also reflected nearly a **century**

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[6] "Convictions" for immigration purposes includes both formal adjudications of guilt and certain factual admissions of guilt made during the judicial process, such as the Massachusetts procedure for admitting to sufficient facts in order to secure a continuance without a finding ("CWOF"). See 8 U.S.C. § 1101(a)(48)(A); *De Vega v. Gonzalez*, 503 F.3d 45, 48-49 (1st Cir. 2007). In Texas, this is called a Deferred Adjudication.

[7] Indeed, it was the law prior to this broad 1996 amendment to the INA (Title 8, U.S. Code).

[8] 8 U.S.C. § 1226

of law in the United States, allowing people **inside the country** to seek release while the government decided whether or not to deport them. *See* 34 Stat. 904-05, § 20 (1907) (providing for release on bond for noncitizens alleged to have entered the United States unlawfully); 39 Stat. 874, 890-91, §§ 19, 20 (1917) (similar); 66 Stat. 163, §§ 241(a)(2), 242(a) (1952) (last codified at 8 U.S.C. § 1252(a)(1) (1994)) (providing for release on bond, including for noncitizens alleged to have entered the United States without inspection). This has been the law since at least 1907 and reflects the above-cited SCOTUS decisions all holding that, in this republic, freedom from detention is the due process, liberty interest norm.

This eligibility for a bond hearing and potential release has applied to people arrested in the United States, **regardless** of whether they initially entered the country with permission. Indeed, shortly after IIRIRA's enactment, the former Immigration and Naturalization Service ("INS") and the Executive Office for Immigration Review ("EOIR," which houses the Immigration Courts and BIA) issued an interim rule to implement the statute that expressly stated: "Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination." 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

Thus, all participants in the immigration system have understood that people arrested inside the United States generally fall within § 1226 for detention purposes and are therefore entitled to receive a bond hearing upon request—even if they initially entered the country without permission. *See Martinez v. Hyde*, No. 25-11613, 2025 WL 2084238, at *4 n.9 (D. Mass. July 24, 2025) (citing the United States Solicitor General's representation to the Supreme Court at oral argument that "DHS's long-standing interpretation has been that 1226(a) applies to those who have crossed the border between ports of entry and are shortly thereafter apprehended").

However, around late 2022, the Immigration Court in Tacoma, Washington began misclassifying §1226 detainees arrested inside the United States as mandatory detainees under §1225(b)(2) solely because they initially entered the country without permission. *See Rodriguez v. Bostock*, 779 F. Supp. 3d at 1244. The U.S. District Court for the Western District of Washington ruled that this practice was likely illegal in April 2025 and ordered a bond hearing for a wrongfully detained litigant. *See id.* at 1263.

Nevertheless, three months later, on July 8, 2025, DHS, "in coordination" with the DOJ adopted the Tacoma Immigration Court's unlawful practice nationwide.[9] Pursuant to the July 2025 Policy, DHS's representatives in the Immigration Courts began to request that Immigration Judges nationwide misclassify bond-eligible § 1226 detainees as mandatory § 1225(b)(2) detainees and refuse to conduct bond hearings on that basis. Some Immigration Judges complied. As a result, numerous detainees were illegally denied bond hearings and sought relief in the federal courts. Numerous courts rejected DHS's newly invented misclassification as illegal and ordered the detainees to receive a prompt bond hearing. *See Romero v. Hyde*, 2025 WL 2403827, at *1 (collecting cases).

As previously noted, the BIA and the Immigration Courts are entities within EOIR, which is part of the DOJ. On September 5, 2025, in *Matter of Yajure-Hurtado*, 29 I&N Dec 216 (BIA 2025) ("*Matter of Hurtado*" or "*Yajure-Hurtado*"), the BIA issued an administratively precedential decision that required all Immigration Judges to misclassify people in this manner. Although the *Yajure-Hurtado* decision is fairly recent, multiple federal courts have already ruled that this BIA decision is *not entitled to any deference* under *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412-13 (2024), and have rejected the BIA's decision as contrary to law. *See, e.g., Chogllo Chafla v. Scott*, No. 25-437, 2025 WL 2688541, at *7 (D. Me. Sept. 21, 2025) ("I find

[9] See Interim Guidance Regarding Detention Authority for Applicants for Admission, https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications for-admission.

Yajure Hurtado to be unavailing . . . ."); Order (D.E. 22), *Hilario Rodriguez*, No. 25-12358, at 4 n.4; *Sampiao*, No. 25-11981, 2025 WL 2607924, at *8 n.11 ("[T]he Court disagrees with the BIA for the reasons given herein."); *Pizarro Reyes*, 2025 WL 2609425, at *7 ("[T]he BIA's decision to pivot from three decades of consistent statutory interpretation and call for [petitioner's] detention under §1225(b)(2)(A) is at odds with every District Court that has been confronted with the same question of statutory interpretation."); *Maldonado-Bautista, supra.*

C. <u>The government's limited right to detain Petitioner during his removal Proceedings</u>.

As an alien in removal (*e.g.*, deportation) proceedings, the government has the initial right to detain him. DHS exercised that right, then released him *twice*. Now, without just cause, ICE arrested him for the third time. The power to detain has limits and procedures, which have been exceeded and ignored in his case. Petitioner's detention during removal proceedings is subject to 8 U.S.C. § 1226.[10] As a non-criminal alien, his detention is not required by § 1226(c)(1) but rather *requires a discretionary decision* under 8 CFR § 236(c)(9) which reads:

> (9) When an alien who, having been arrested and taken into custody, has been released, such release may be revoked at any time **in the discretion of the district director**, acting district director, deputy district director, assistant district director for investigations, assistant district director for detention and deportation, or officer in charge (except foreign), in which event the alien may be taken into physical custody and detained. If detained, unless a breach has occurred, any outstanding bond shall be revoked and canceled.

Bold emphasis supplied.

The decision to re-detain Petitioner was *standardless*. It was not due to any fault of his (as he was fully compliant with the conditions of his OSUP and later ATD). It was the product, instead, of a nationwide decision to detain as many "illegal aliens" as possible, *regardless* of the individual merits of the case. No cause or justification was cited *to him* to revoke his liberty. No

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[10] The undersigned is aware of the Fifth Circuit's decision in *Buenrostro-Mendez v. Bondi, et al.*, No. 25-20496 (5th Cir. Feb. 6, 2026) available at http://www.ca5.uscourts.gov/opinions/pub/25/25-20496-CV0.pdf Please see fn. 2, *infra*.

opportunity to be heard was provided. No "decision" was made *as to his re-detention.*

This is a textbook example of the principle that the failure to exercise discretion is a *per se* abuse of discretion. *Accardi v. Shaughnessy*, 347 U.S. 260 (1954); *INS v. Rios-Pineda*, 471 U.S. 444 (1985). The minimum due process that is required is notice and an opportunity to be heard (before Torres-Coronado's re-arrest). *Mathews v. Eldridge*, 424 U.S. 319 (1976). "Arresting everyone", as your Respondents are doing, is the opposite of the exercise of discretion. It is "capable of repetition, yet evading review". *FEC v. Wisconsin Right to Life, Inc.*, 551 U.S. 449, 462 (2007); *Alvarez v. Smith*, 558 U.S. 87, 93-94 (2009).

Torres-Coronado was given no reason why he has been rearrested, despite faithful compliance with his OSUP and ATD. He was given no opportunity to respond. He has no criminal history. Moreover, Torres-Coronado's full compliance with his OSUP and ATD—including self-surrender when he was re-arrested, proves that he is not a flight risk. *No reason was given for her re-arrest.*

C. <u>Federal Regulations, having the force and effect of law, cannot be ignored</u>.

8 CFR Sec. 236(c)(9) *requires* one of the named DHS agents to exercise individual discretion before re-arresting Torres-Coronado. This regulation, which has been ignored by your Respondents, has the force and effect of law. 5 U.S.C. § 551, *et seq.*; *Chrysler Corp. v. Brown*, 441 U.S. 281 (1979); *Accardi v. Shaughnessy, supra.* Thus, her deprivation of liberty was not in accordance with the due process of law.[11]

D. <u>The Department of Justice has engaged in corrupt practices that render administrative review futile</u>.

Counsel is informed and believes that on or about January 13, 2026, an email was sent to all ACIJs (Assistant Chief Immigration Judges) instructing them that immigration courts should

[11] The *Buenrostro-Mendez v. Bondi, et al.*, No. 25-20496 (5th Cir. Feb. 6, 2026) did not address this argument and is limited to the statutory violation.

disregard the nationwide, class action declaratory judgment in *Maldonado-Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. Nov. 25, 2025).[12] This instruction, affecting hundreds of thousands of detained removal cases, proves the contempt with which the DOJ views contrary judicial rulings and the rule of law, itself. It is *evidence* that the decision to detain Torres-Coronado is similarly standardless and contemptuous of law and due process.

The Email sent by Chief Immigration Judge, Theresa L. Riley, reflecting the position of the Department of Justice (DOJ) reads:

> From: Riley, Teresa (EOIR) teresa.riley2@USDOJ.gov
>
> Sent: Tuesday, January 13, 2026 at 1:29 p.m.
>
> Subject: Guidance
>
> Maldonado Bautista is not a nationwide injunction and does not purport to vacate, stay, or enjoin Yugure Hurtado. Yugure Hurtado remains binding precedent in agency adjudications. For clarification, declaratory judgments differ from injunctions in that the former clarifies parties 'legal rights and relationships without ordering specific action, while the later is a court order compelling a party to do or to 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 in this matter.
>
> Sincerely,
>
> Teresa L. Riley
>
> Chief Immigration Judge

Counsel is further informed and believes that Immigration Judges were removed from the detained docket if they had followed federal court orders and granted bonds to aliens who were included in the *Maldonado-Bautista* ***nationwide class action order***. Immigration Judges who followed judicial orders were summarily replaced with IJ's who would <u>not</u> grant bonds.

The following post was made by an AILA (American Immigration Lawyers Association) committee member to the Dallas Immigration Attorney Facebook Group.

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[12] The judgment in that case has been appealed to the Ninth Circuit.

Because it is AILA's policy not to have members draft affidavits based on information learned through participation in committees and because this is a private group, counsel is redacting the name of the original poster as well as those who left emojis.

Dallas Immigration Attorney Facebook Page

> Redacted photo Redacted name
> January 14 at 10:46 a.m.
>
> DETAINED DOCKET UPDATE - Yesterday, EOIR received guidance that Maldonado Bautista is not binding and instructing all IJs to follow Yajure Hurtado. We are receiving reports that IJs who were following Maldonado Bautista and granting bonds were pulled from their benches mid-docket this morning and reassigned to non-detained dockets
> Emojis [names redacted] 8 comments

Source: Dallas Immigration Attorney Facebook Page

An article published by THE HILL on December 11, 2025, entitled: *The Trump administration's assault on immigration courts and judges* describes a new recruiting campaign, wherein the DOJ is looking for "deportation judges" to serve the immigration court system. DHS Secretary Neom posted: "If you are a legal professional, the Trump administration is calling on YOU to join the Department of Justice as a Deportation Judge." (Emphasis added)

The government wants IJ's predisposed to enter removal/deportation orders promptly, regardless of due process. Recent job postings for judges by DHS are blunt: "Bring down the hammer on criminal illegal aliens," says one. Another says, "END THE INVASION." The government's scheme destroys the independence of the EOIR's Immigration Court system.

The foregoing evidence supports the main prayer in this *habeas corpus* petition, which is to ask for an order compelling Respondents to release Torres-Coronado, not merely order a bond hearing.. That "hearing" will now occur in a kangaroo court.

In concert with the above scheme, in the last 12 months, more than 100 Immigration Judges have been fired in the middle of court hearings. Many IJ's have been given no reason for

their terminations. An analysis by NPR[13] found that the administration tends to fire judges with backgrounds in immigrant defense.

These dismissals and demotions convey to all sitting IJ's still on the bench that they should rule in the government's favor regardless of federal court orders to the contrary and the individual merits of each case.

Below, Petitioner prays the court to issue an order that his custody be returned to its previous OSUP status or ATD status and order that this not be altered, in the same manner as previously.

V. DENIAL OF DUE PROCESS TO PETITIONER

Last year, U.S. Immigration and Customs Enforcement ("ICE") began a routine practice of re-apprehending non-citizens who they previously released, either on Orders of Supervision ("OSUP's") or appearance bonds, pursuant to 8 USC § 1226, during the pendency of removal (e.g., deportation) proceedings. ICE is now operating under apprehension quotas which are fueling these unlawful re-apprehensions. Many non-citizens apprehended by DHS, who were released under Orders of Supervision "OSUPs", pursuant to 8 USC Sec. 1226 had these orders illegally revoked without cause and in violation of published regulations.

The recent Board of Immigration Appeals ("BIA") decision of *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA Sept. 5, 2025) stripped Immigration Judges of jurisdiction to provide bond hearings to the majority of aliens in removal proceedings, including those who initially entered the U.S. without inspection ("EWI's" – Entry without Inspection). This includes those who were previously classified by the U.S. Department of Homeland Security ("DHS") and the U.S. Department of Justice ("DOJ") as bond eligible and are now being arbitrarily and

[13] National Public Radio

capriciously reclassified to mandatory detention, which abruptly and unlawfully reversed decades of settled immigration practice in order to deny immigration bonds to potentially millions of people nationwide, including to potentially many thousands in Texas.

This "novel" misinterpretation of dispositive case law is now subject to a nationwide class action order in *Maldonado-Bautista v. Santacruz*, No. 5:25-cv-01873 (Nov. 25, 2025).[14] However, in *Hassen v. Noem*, No. 3:26-cv-00048 (WDTX Feb. 9, 2026) [15] the court just ruled this week that Torres-Coronado's claims have Fifth Amendment due process merit that was not reached in *Maldonado-Bautista.*

Most recently in *Buenrostro-Mendez v. Bondi, et al.*, No. 25-20496 (5th Cir. Feb. 6, 2026) a 2-1 opinion that supports Respondents' scheme of broadly reclassifying aliens released from custody under 8 U.S.C. Sec. 1226 into Sec. 1225 of the statute, which does not permit immigration appearance bonds (on the legal theory that they are "applicants for admission" wherever and wherever they are encountered. However, as the Majority opinion author acknowledges, apparently **365 out of 367 U.S. District Court Judges have published decisions to the contrary** and counsel is informed by *Buenrostro-Mendez* counsel that *en banc* reconsideration shortly will be sought.[16] *Buenrostro-Mendez*, though precedential, is wrongly decided and your instant petitioner in good faith wishes to litigate his claims—not waive them—as it is quite probable that the main issue in this case will be decided differently in other

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[14] This order is on appeal in the Ninth Circuit. In *Buenrostro-Mendez,* cited above in the text on this page, on Feb. 6, 2026, in a 2-to-1 opinion, the Fifth Circuit ruled in favor of the government's novel interpretation. However, as has just been noted—and held in two WDTX court orders issued this week, only the government's *statutory* scheme has been upheld (for now) in the Fifth Circuit. The constitutional, Fifth Amendment, procedural and substantive due process claims were not addressed in *Buenrostro-Mendez*—they were remanded. *Cumbe-Lema v. De Anda-Ybarra*, No. 3:26-cv-00249 (WDTX Feb. 9, 2026) available at gov.uscourts.txwd.1172887626.7.0.pdf and *Hassen v. Noem*, No. 3:26-cv-00048 (WDTX Feb. 9, 2026) available at gov.uscourts.txwd.1172884560.8.0.pdf Your Petitioner's case is *directly* apposite to *Hassan, supra,* as he has now *twice* been released by DHS while his *prima facie* timely-filed asylum claim is pending in Immigration Court.

[15] gov.uscourts.txwd.1172884560.8.0.pdf (Last accessed February 11, 2026

[16] Even since February 6, 2026, more courts have disagreed with the majority opinion in *Maldonado-Bautista, supra* and the alien's counsel in that case are preparing to file for *en banc* reconsideration, *ergo* the judgment may not yet be final.

federal circuits, leading ineluctably to resolution by SCOTUS. Moreover, as noted above, Petitioner's *constitutional* claims (below) are unaffected by *Buenrostro-Mendez.*

At issue in these cases is that DHS and DOJ began systemically misclassifying people arrested *inside* the United States. These aliens are generally subject to the detention provisions of 8 U.S.C. § 1226, which usually (for non-criminal aliens) allows for release on bond during the pendency of immigration proceedings. DHS and DOJ began reclassifying hundreds of thousands of aliens as subject to 8 U.S.C. § 1225, which does not allow for release on bond. This misclassification is contrary to 30 years of settled case law and practice, and unlawfully premised solely upon the manner in which the person initially entered the country—in some cases, decades ago.

As a result of this misclassification policy, DHS is currently arresting vast numbers of people within Texas and unlawfully, unconstitutionally detaining them in jails and camps, without any possibility of release and without any due process protections. In a great many of these cases, the individuals were in full compliance with their 8 U.S.C. Sec.§ 1226 Orders of Supervision ("OSUP's) or ATD..

This sudden, massive and lawless deprivation of liberty to people who had previously been on *non-detained immigration court dockets* operates to their prejudice on the merits. Most of these aliens had set dates in the future for the trial of claims for statutory relief from deportation, such as asylum under 8 U.S.C. §1158 or Cancellation of Removal under §1229b (available to non-criminal aliens who have resided in the U.S. longer than 10 years and had immediate, citizen or resident family dependents). Now suddenly detained, these aliens have to prepare their evidence and in many cases obtain in less than 30 days or have their statutory claims deemed abandoned. Your plaintiff is among those whose case timeline has been rocketed, providing him with less than 30 days before his filings are all due to the immigration court

before the merits hearing. DHS' and DOJ's scheme is to spirit these people away as summarily as possible.

The unlawful actions of DHS and DOJ have resulted in a proliferation of independent federal lawsuits to protect the constitutional and statutory rights of noncitizens. At least 365 federal judges have ruled that DHS and DOJ are breaking the law. *See, e.g.*, Memorandum and Order (D.E. 22), *Hilario Rodriguez v. Moniz*, No. 25-12358 (D. Mass. Sept. 18, 2025) (Joun, J.); *Rodriguez Vasquez v. Bostock*, 2025 WL 2782499 (W.D. Wash. Sept. 30, 2025). A federal district court in Washington rejected the government's interpretation of detention policy, collecting several cases where other federal courts have concluded that the BIA's stance "belies the statutory text". And, in *Maldonado-Bautista v. Santacruz*, No. 25-cv-01873 (C.D. Cal. Nov. 25, 2025) there is a nationwide class action order barring Respondents' reclassification scheme and overruling *Yajure-Hurtado, supra.*

Some cases that reject the BIA's *Yajure-Hurtado* decision:

- *Hyppolite v. Noem*, 2025 WL 2829511 (E.D.N.Y. Oct. 6, 2025): Granted relief, finding the BIA's interpretation incorrect and that the individual was entitled to a bond hearing.
- *Guerrero Orellana v. Moniz*, — F. Supp. 3d —, 2025 WL 2809996 (D. Mass. Oct. 3, 2025): Found that the BIA decision was based on a flawed interpretation of the law and that a bond hearing was required.
- *Lepe v. Andrews*, — F. Supp. 3d —, 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025): Granted relief, agreeing with the Ninth Circuit that bond hearings are required despite the BIA's decision.
- *Barrera v. Tindall*, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025): Granted relief, finding that the BIA decision was not based on a correct understanding of the law and that a bond hearing was necessary.
- *Zaragoza Mosqueda et al. v. Noem*, 2025 WL 2591530 (C.D. Cal. Sept. 2025): Directly addressed the BIA decision and found it to be a misinterpretation of the law, holding that a bond hearing is required.

See also, Sampiao v. Hyde, No. 25-11981, 2025 WL 2607924 (D. Mass. Sept. 9, 2025) (Kobick, J.); *Pizarro Reyes v. Raycraft*, No. 25-12546, 2025 WL 2609425, at *7 (E.D. Mich. Sept. 9,

2025) (collecting cases). Nevertheless, DHS and DOJ continue to violate the law and detain people without due process in violation of their statutory, regulatory, and constitutional rights.

Immigration Judges are no longer independent and neutral arbiters in rendering bond redetermination decisions based on full and fair hearings, as DOJ has put its thumb on the scales of justice through a nationwide campaign of punishments, firings, removals from detained dockets and potentially other practices causing widespread denials for pretextual reasons or bond amounts bearing no relationship to the amount needed to ameliorate flight risk.

On information and belief, Immigration Judges ("IJs") who lawfully issued immigration appearance bonds, even under a federal court order to provide a bond hearing, have been punished by the U.S. Department of Justice ("DOJ"). Many IJ's were removed from detained dockets and replaced with ones who would deny bail pretextually; others were simply terminated from employment without cause. This entire DOJ and DHS scheme, as stated above and for which evidence is submitted herewith, is unlawful and germane to the detention of your instant petitioner.

CLAIMS FOR RELIEF

COUNT ONE
Violation of 8 U.S.C. § 1226(a) and Associated Regulations

Petitioner may be detained, if at all, pursuant to 8 U.S.C. § 1226(a).

Under § 1226(a) and its associated regulations, petitioner is entitled to a bond hearing. See 8 C.F.R. §§ 236.1(d), 1236.1, 1003.19(a)-(f).

Plaintiff has not been and will not be provided with a bond hearing as required by law. Moreover, even if this court orders a bond hearing, it will take place in a kangaroo court.[17]

[17] This, the result of the firing or other adverse personnel action by DOJ against IJ's who have granted bond hearings or actual bond to aliens, including those ordered by federal district courts.

Further, under§ 1226(a) and its associated regulations, petitioner's custody status cannot be arbitrarily misclassified and altered, as he has not violated the terms of his release on his own recognizance, without notice and an opportunity to be heard. **Petitioner is entitled to immediate release from custody.**

COUNT TWO
Violation of Fifth Amendment Right to Due Process
(Failure to Provide Bond Hearing Under 8 U.S.C. § 1226(a))

Because petitioner is subject to detention, if at all, under 8 U.S.C. § 1226(a), the Due Process Clause of the Fifth Amendment to the United States Constitution requires that he receive a bond hearing with strong procedural protections. *See Hernandez-Lara v. Lyons,* 10 F.4th 19 at 41 (1st Cir. 2021); *Doe v. Tompkins*, 11 F.4th at 2 (1st Cir. 2021).

COUNT THREE
Violation of Fifth Amendment Right to Due Process
(Failure to Provide an Individualized Hearing for Domestic Civil Detention)

The Fifth Amendment's Due Process Clause specifically forbids the Government to deprive any "person . . . of . . . liberty . . . without due process of law." U.S. Const. Amend. V. "[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693; *cf. Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 139-40 (2020) (holding noncitizens' due process rights were limited where the person was not residing in the United States, but rather had been arrested 25 yards into U.S. territory, apparently moments after he crossed the border while he was still "on the threshold" of the border).

"Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of liberty" protected by the Due Process Clause. *Zadvydas,*

533 U.S. 678 at (2001) and cases cited therein.

The Supreme Court, thus, "has repeatedly recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection," including an individualized detention hearing. *Addington,* 441 U.S. at 425; see also *Salerno*, 481 U.S. at 755; *Foucha*, 504 U.S. at 81-83; *Hendricks*, 521 U.S. at 357.

Petitioner relies on the court's reasoning in *Cumbe-Lema v. De Anda-Ybarra*, No. 3:26-cv-00249 (WDTX Feb. 9, 2026) available at gov.uscourts.txwd.1172887626.7.0.pdf and *Hassen v. Noem*, No. 3:26-cv-00048 (WDTX Feb. 9, 2026) available at gov.uscourts.txwd.1172884560.8.0.pdf Your Petitioner's case is *directly* apposite to *Hassan, supra,* as he has now *twice* been released by DHS while his *prima facie* timely-filed asylum claim is pending in Immigration Court.

COUNT FOUR
Violation of Fifth Amendment Right to Due Process
(Denial of Substantive Due Process)

A.

Because Petitioner will be denied bond even if a hearing is ordered by this Court and the Immigration Judge finds him deserving, he will not be released.[18] The government will take no steps to ensure that immigration detention bears a "reasonable relation" to the purposes of immigration detention (i.e., the prevention of flight and danger to the community during the pendency of removal proceedings) and is not impermissibly punitive. *See Zadvydas*, 533 U.S. at 690; *Demore*, 538 U.S. at 532-33 (Kennedy, J., concurring).

Jailing a petitioner without bond proceedings is unlawful, regardless of what statute might apply to purportedly authorize such detention.

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[18] Assuming there remains an IJ brave enough to consider or grant a bond request by an alien

B.

Petitioner's sudden, lawless re-jailing further denies him due process by making preparation for trial, which includes the gathering and filing of evidence with the Immigration Court virtually impossible. It makes conferring with any counsel in preparation for testimony exhaustingly more difficult and costly and moreover, the permitted telephonic attorney-client conferences are recorded and monitored by DHS. The government's purpose is not merely to suddenly deprive Petitioner of liberty, but to shank him as he prepares to present his asylum claim. This violates cardinal due process rules under *Mathews v. Eldridge*, 424 U.S. 319 (1976)[*meaningful* notice and an opportunity to be heard].

Petitioner has not been and will not be provided with a bond hearing as required by law. Alteration to petitioner's custody to jail without bond or opportunity for a bond hearing is therefore unlawful. Additionally, as he was compliant with his OSUP, this status should be restored, obviating the need for a bond hearing. Petitioner relies on the court's reasoning in *Cumbe-Lema v. De Anda-Ybarra*, No. 3:26-cv-00249 (WDTX Feb. 9, 2026) available at gov.uscourts.txwd.1172887626.7.0.pdf and *Hassen v. Noem*, No. 3:26-cv-00048 (WDTX Feb. 9, 2026) available at gov.uscourts.txwd.1172884560.8.0.pdf Your Petitioner's case is *directly* apposite to *Hassan, supra,* as he has now *twice* been released by DHS while his *prima facie* timely-filed asylum claim is pending in Immigration Court.

COUNT FIVE
Declaratory Judgement Act
(Whether 8 USC §1225 or 8 USC §1226 applies to Petitioner's immigration detention)

Petitioner has been misclassified by DHS and DOJ as being in custody pursuant to 8 USC §1225, not 8 USC §1226. Misclassification following a correct classification is not permitted pursuant to the statutes, regulations and case law cited *infra.*

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following relief:

(1) Assume jurisdiction over this matter;

(2) Grant a Declaratory Judgement holding that Petitioner is properly held in custody solely pursuant to 8 USC §1226.

(3) Find that Petitioner's five above-stated counts have legal merit (only one of which is necessary for the relief prayed, should the court find such merit).

(4) Order that Petitioner's detention is unlawful and that he be released pursuant to the All Writs Act, 28 U.S.C. Sec. 1651 and Rule 65, Fed. R. Civ. Pro., waiving the requirement for a cash bond under Rule 65(c) [or by Petitioner's posting of a bond in an amount the court deems prudent].

(5) Issue a writ of *habeas corpus* and such injunctive relief incident thereto, ordering Respondents to release Respondent from Custody pursuant to the terms and conditions of his Order of Supervision in place at the time of his unlawful re-arrest on September 11, 2025 or ATD on January 8, 2026.

(6) In the alternative to order Respondents to conduct a bond redetermination hearing within 14 days of this court's order requiring DHS to show by "clear and convincing evidence"[19] that Petitioner is a flight risk, danger to the community or danger to national security and further for the Immigration Court report to this Court its outcome, an order from the IJ evaluating all evidence presented, weight given, and the reasons for any ruling issuing therefrom.

(7) Issue a preliminary injunction and writ of *habeas corpus*, ordering Respondents

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[19] *Cumbe-Lema v. De Anda-Ybarra*, No. 3:26-cv-00249 (WDTX Feb. 9, 2026) available at gov.uscourts.txwd.1172887626.7.0.pdf and *Hassen v. Noem*, No. 3:26-cv-00048 (WDTX Feb. 9, 2026) available at gov.uscourts.txwd.1172884560.8.0.pdf Your Petitioner's case is *directly* apposite to *Hassan, supra,* as he has now *twice* been released by DHS while his *prima facie* timely-filed asylum claim is pending in Immigration Court.

to hold Petitioner's Immigration Court Proceedings in abeyance pending the resolution of this action, in view of Respondents' actions prejudicial to his trial preparation rights.

(8) Grant any further relief this Court deems just.

Respectfully submitted,

/s/ Sondra Turin

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