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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

	)	
MAURICIO LOTERO CANO	)	
	)	
	)	
Petitioner,	)	Civil Action No. 2:26-cv-1140
	)	
v.	)	EMERGENCY
	)	PETITION FOR WRIT OF
JAMISON, J.L.,	)	HABEAS CORPUS
Warden,	)	
Federal Detention Center	)	
Philadelphia	)	
	)	
MICHAEL T. ROSE	)	
Acting Field Office Director	)	
Immigration and Customs Enforcement	)	
Philadelphia Field Office	)	
	)	
TODD LYONS,	)	
Acting Director,	)	
United States Immigration and	)	
Customs Enforcement (ICE),	)	
	)	
KRISTI NOEM,	)	
Secretary of the Department of	)	
Homeland Security, (DHS) and,	)	
	)	
PAMELA JO BONDI,	)	
Attorney General of the	)	
United States of America	)	
	)	
Respondents	)	
	)	

INTRODUCTION

1. Mauricio Lotero Cano, a citizen of Colombia, is [REDACTED]
[REDACTED] He entered the United States in November 2024 by formally requesting legal protection through CBP One, rather than crossing the border unlawfully. He was paroled by the U.S. authorities and commenced establishing a life and career in the United States.
2. Prior to his arrest, Mr. Lotero Cano was employed as a chef at a prominent restaurant in Philadelphia. His fiancée, who holds Lawful Permanent Resident status, is expecting their first child, with a due date in April.
3. Mr. Lotero Cano is presently detained pending removal proceedings. He has not been provided with access to a hearing before a neutral decisionmaker, such as a federal judge or immigration judge, to determine whether his continued detention is justified on the grounds of danger to the community or flight risk.
4. Matter of Q. Li, 29 I&N Dec. 66 (BIA 2025), held that mandatory detention under 8 U.S.C. § 1225(b)(2)(A) applies to individuals who are arrested upon entry, paroled from detention and charged as inadmissible to the United States, and subsequently rearrested by ICE. This holding conflicts with the plain language and structure of the statute, as well as decades of uncontroverted agency practice. Therefore, the application of § 1225(b)(2) to Petitioner is contrary to law and violates the Immigration and Nationality Act (INA) and the Administrative Procedure Act (APA).
5. Petitioner is instead properly detained pursuant to 8 U.S.C. § 1226(a) which authorizes release on bond after a hearing before an immigration judge.

6. In the alternative, if Petitioner's re-detention occurs pursuant to 8 U.S.C. § 1225(b)(2), this constitutes a violation of his rights to substantive and procedural due process. Application of the *Mathews v. Eldridge* balancing test shows that a bond hearing is necessary to protect Petitioner from an unnecessary deprivation of liberty. *See Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).
7. Petitioner therefore respectfully requests that this Court issue a writ of habeas corpus and order Petitioner's release from custody, with appropriate conditions of supervision if necessary. In the alternative, Petitioner requests that this Court conduct or order an immigration judge to conduct a bond hearing at which (1) the government bears the burden of proving flight risk and/or dangerousness by clear and convincing evidence and (2) the reviewing court considers alternatives to detention that could mitigate risk of flight. *See German Santos v. Warden Pike Cty. Corr. Facility*, 965 F.3d 203, 213-214 (3d Cir. 2020).

JURISDICTION

8. Petitioner is in the physical custody of the Respondents at the Federal Detention Center in Philadelphia, Pennsylvania.
9. This Court has jurisdiction under 28 U.S.C. § 2241(c)(3) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the U.S. Constitution (the Suspension Clause).
10. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and 28 U.S.C. § 1261, the All-Writs Act.
11. 8 U.S.C. § 1252(b)(9) does not strip the Court of jurisdiction over Petitioner's challenge to his continued detention because the challenge is collateral to "the removal process," and is not "inextricably linked" to any removal action. *See Khalil v. President, United*

States, No. 25-2162, 2026 WL 111933, at *9 (3d Cir. Jan. 15, 2026); *Kourouma v. Jamison*, No. 26-0182, 2026 WL 120208, at *3 (E.D. Pa. Jan. 15, 2026) (“[W]hether a bond hearing is required prior to detention . . . is collateral to the removal process.” (*Cantu-Cortes v. O'Neill*, No. 25-6338, 2025 WL 3171639, at *1 (E.D. Pa. Nov. 13, 2025) (same); *see also* See *Jennings v. Rodriguez*, 583 U.S. 281, 292–95. (2018)).**R**

REQUIREMENTS OF 28 U.S.C. § 2243

12. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Respondents must file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*
13. Habeas corpus is “perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). “The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application.” *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

VENUE

14. Venue lies in the U.S. District Court for the Eastern District of Pennsylvania, the judicial district in which Petitioner is currently detained. *See Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973) (finding proper venue lies in the judicial district in which Petitioner is currently detained).

15. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the Eastern District of New Jersey.

PARTIES

16. Petitioner is Mauricio Lotero Cano, a thirty-two-year-old native of Colombia who has been detained at the Federal Detention Center in Philadelphia since February 19, 2025. He seeks issuance of a writ of *habeas corpus*.
17. Respondent J.L. Jamison, the warden of the Philadelphia Federal Detention Center, is sued in his official capacity, as he is the Petitioner's actual physical custodian and person who has direct control over Petitioner.
18. Respondent Michael T. Rose is sued in his official capacity as the Acting Field Office Director of U.S. Department of Homeland Security, Immigration and Customs Enforcement's Philadelphia Field Office. He is responsible for the administration and management of ICE Enforcement Removal Operations in Pennsylvania and exercises administrative control over Petitioner's custody.
19. Respondent Todd Lyons is sued in his official capacity as the Acting Director of the United States Immigration and Customs Enforcement (ICE), the department within the Department of Homeland Security. In this capacity, he is responsible for administering and enforcing the immigration laws in Pennsylvania and is Petitioner's legal custodian.

20. Respondent Pamela Jo Bondi is sued in her official capacity as the Attorney General of the United States. In this capacity she is responsible for administering and enforcing the immigration laws pursuant to 8 U.S.C. § 1103 and is the Petitioner's legal custodian.
21. Respondent Kristi Noem is sued in her official capacity as Secretary of the Department of Homeland Security, the agency in charge of administering and enforcing the immigration laws in New Jersey and is the Petitioner's legal custodian.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

22. There is no statutory requirement of exhaustion of administrative remedies where a noncitizen challenges the lawfulness of his detention. *Arango Marquez v. Immigr. & Naturalization Serv.*, 346 F.3d 892, 897 (9th Cir. 2003). Any requirement of administrative exhaustion is therefore purely discretionary. *See Santos v. Lowe*, No. 1:18-cv-1553, 2020 WL 4530728, at *2 (M.D. Pa. Aug. 2020) (“[T]he exhaustion requirement imposed by courts relating to habeas corpus petitions filed by immigration detainees is a prudential benchmark which is not compelled by statute.”).
23. In making that decision, the Court should consider the urgency of the need for immediate review. “Where a person is detained by executive order . . . the need for collateral review is most pressing . . . In this context the need for habeas corpus is more urgent.” *Boumediene v. Bush*, 553 U.S. 723, 783 (2008) (waiving administrative exhaustion for executive detainees).
24. Moreover, the exhaustion “doctrine is not without exception.” *Ashley v. Ridge*, 288 F. Supp. 2d 662, 666 (D.N.J. 2003). “Courts have found that the exhaustion of administrative

remedies may not be required when available remedies provide no opportunity for adequate relief, an administrative appeal would be futile, or if plaintiff has raised a substantial constitutional question.” *Id.* at 666-67.

25. Exhaustion before the EOIR would be futile because requiring exhaustion “would almost certainly result in the BIA persisting in its earlier rulings and applying those rulings to [Petitioner], all while he remains in detention[.]” *Del Cid v. Bondi*, No. 3:25-cv-00304, 2025 WL 2985150, at *13 (W.D. Pa. Oct. 23, 2025).
26. Further, the BIA does not have jurisdiction to adjudicate constitutional issues. *Qatanani v. Att’y Gen. of the U.S.*, 144 F.4th 485, 500 (3d Cir. 2025); *see also Ashley*, 288 F. Supp. 2d at 667 (internal citations omitted). Therefore, any administrative proceedings would be futile because petitioner raises a constitutional due process claim. *Id.*

FACTS

27. Petitioner is a thirty-two-year-old national of Colombia who entered the United States on or about November 5, 2024. He was paroled and then placed in removal proceedings through the issuance of a Notice to Appear. His case is currently pending in Immigration Court.
28. After his entry, Mr. Lotero Cano obtained a work permit and a Social Security Number and started working as a chef at  in Philadelphia. He is currently in a relationship with a lawful permanent resident. The couple is expecting their first child in April of this year and plans to get married as soon as possible.
29. Mr. Lotero Cano was arrested yesterday morning by ICE in front of his house. He is now held without bond at the Federal Detention Center in Philadelphia.

LEGAL FRAMEWORK

I. Section 1226(a) Governs the Detention of People Like Petitioner

30. The Immigration and Nationality Act contains several provisions authorizing detention of noncitizens. Section 1226(a) entitles most noncitizens with pending removal proceedings to a hearing before an Immigration Judge to determine whether they should be released on bond. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d). Section 1226(c) creates an exception to section 1226(a) and provides that noncitizens who are removable by virtue of certain criminal convictions must be detained without a bond hearing. Section 1225(b) provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals “seeking admission” under (b)(2). Finally, section 1231 governs the detention of noncitizens with a final order of removal.

31. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104-208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section 1226 was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025). “Upon passing IIRIRA, Congress declared that the new Section 1226(a) ‘restates the current provisions in the predecessor statute,’” which allowed noncitizens who entered without inspection to be released on bond. *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1258, 1260 (W.D. Wash. 2025) (citing H.R. Rep. No. 104-469, pt. 1, at 229; H.R. Rep. No. 104-828, at 210).

32. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered

detained under § 1225 and that they were instead detained under § 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (“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.”).

33. Thus, in the decades that followed, most people who entered without inspection and were thereafter arrested and placed in standard removal proceedings were eligible for and received bond hearings before an IJ, unless they have committed certain crimes. *Diaz Martinez v. Hyde*, No. 25-11613, 2025 WL 2084238, at *4 (D. Mass. July 24, 2025).
34. In recent months, Respondents have abruptly changed course. On May 15, 2025, the BIA issued a decision holding that a noncitizen who entered without inspection and was apprehended and paroled near the border was subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) when her parole was terminated and she was re-detained. *Matter of Q. Li*, 29 I&N Dec. 66, 70 (BIA 2025).
35. On July 8, 2025, Respondent Todd M. Lyons issued an internal memorandum stating that, “in coordination with the Department of Justice (DOJ),” DHS had “revisited” its legal position and believed that § 1225, not § 1226, governs the detention of noncitizens who are present in the United States without having been admitted. *Diaz Martinez*, 2025 WL 2084238, at *4.

36. On September 5, 2025, the BIA issued a precedential decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). In that decision, the BIA held that noncitizens “who are present in the United States without admission are applicants for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings.” 29 I&N Dec. at 220.
37. The BIA’s recent decisions contravene the INA. The plain text of the statute demonstrates that § 1226(a)—not § 1225(b)—governs individuals such as Petitioner.
38. Section 1226(a) applies to all persons “pending a decision on whether the [noncitizen] is to be removed from the United States.” See *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018) (describing 1226(a) as the “default rule” for detention of noncitizens pending removal).
39. Section 1226 covers all individuals charged as being inadmissible, including those who entered without inspection. See 8 U.S.C. § 1226(c)(1)(E). This year, Congress enacted the Laken Riley Act to add a subparagraph (E) to the section with the purpose of excluding certain noncitizens who entered without inspection and committed certain crimes from § 1226(a)’s default bond provision. As the *Rodriguez Vazquez* court explained, “[w]hen Congress creates “specific exceptions” to a statute’s applicability, it “proves” that absent those exceptions, the statute generally applies.” *Rodriguez Vazquez*, 2025 WL 1193850, at *12 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).
40. Under the BIA’s novel interpretation, almost all noncitizens subject to inadmissibility grounds are detained without the opportunity for a bond hearing under 8 U.S.C. §

1225(b), irrespective of their manner of entry or the time spent in the United States.

Matter of Yajure Hurtado, 29 I&N Dec. at 220; see 8 U.S.C. § 1182(a)(6); 8 U.S.C. § 1101(a)(14). This interpretation would render the mandatory detention provisions in § 1226(c), including the recently enacted Laken Riley Act amendments, superfluous. *See Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 386 (2013).

41. This statutory structure demonstrates that Congress did not intend to make § 1226(a) inapplicable to all inadmissible noncitizens but rather viewed it as the default bond provision for people arrested within the United States.

42. Section 1225(b) applies to people arriving at U.S. ports of entry or who very recently entered the United States. The statute’s entire framework is premised on inspections at the border of people who are “seeking admission” to the United States. 8 U.S.C. 8 U.S.C. § 1225(b)(2)(A); *see also Diaz Martinez*, 2025 WL 2084238, at *8 (“[O]ur immigration laws have long made a distinction between those [noncitizens] who have come to our shores seeking admission . . . and those who are within the United States after an entry, irrespective of its legality.” (quoting *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958))). Indeed, the Supreme Court has explained that this mandatory detention scheme applies “at the Nation’s borders and ports of entry, where the Government must determine whether a [] [noncitizen] seeking to enter the country is admissible.” *Jennings*, 583 U.S. at 287.

43. Applying § 1226(a), rather than § 1225(b), to people detained in the interior who had previously entered without inspection is consistent with the government’s longstanding practice, which “can inform a court’s determination of what the law is.” *Loper Bright*

Enter. v. Raimondo, 603 U.S. 369, 386 (2024). This longstanding practice further counsels against the BIA’s abrupt change in policy. *Maldonado*, 2025 WL 2374411, at *11.

44. Section 1182(d)(5)(A) authorizes DHS to parole applicants for admission into the United States on a case-by-case basis for urgent humanitarian reasons or significant public benefit. Once DHS exercises this statutory parole authority, the legal basis for mandatory inspection detention under 8 U.S.C. § 1225(b) no longer applies.
45. Section 1225(b) governs detention of applicants for admission pending inspection and removal proceedings. However, Congress expressly provided parole under § 1182(d)(5)(A) as a mechanism to release such individuals from custody. The Government cannot both grant parole under § 1182(d)(5)(A), and continue to treat Petitioner as subject to automatic mandatory detention under § 1225(b).
46. Finally, as discussed below, the BIA’s interpretation of § 1225(b) to mandate detention without a bond hearing for all noncitizens present in the United States without having been admitted presents serious constitutional concerns. Therefore, to the degree that the statute remains ambiguous, the Court should presume that Congress “did not intend the alternative which raises serious constitutional doubts” and reject that construction. *Clark v. Martinez*, 543 U.S. 371, 381-82 (2005). Therefore, § 1226(a), which permits bond hearings, not 8 U.S.C. § 1225(b)(2)(A), which does not, governs the detention of people like Petitioner.

FIRST CLAIM FOR RELIEF

Violation of the Administrative Procedure Act

Contrary to Law and Arbitrary and Capricious Agency Policy

47. Petitioner re-alleges and incorporates by reference the above paragraphs.
48. The APA provides that a “reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A).
49. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to grounds of inadmissibility. It does not apply to Petitioner, who entered the United States in November 2024, after being paroled and placed in removal proceedings.
50. In taking a contrary position, the BIA has reversed decades of prior practice, and “would expand § 1225(b) far beyond how it has been enforced historically, potentially subjecting millions more undocumented immigrants to mandatory detention, while simultaneously narrowing § 1226(a) such that it would have extremely limited (if any) application.” *Lopez Benitez*, 2025 WL 2371588, at *8. Respondents have failed to articulate reasoned explanations for their decisions, which represent changes in the agencies’ policies and positions; have considered factors that Congress did not intend to be considered; have entirely failed to consider important aspects of the problem; and have offered explanations for their decisions that run counter to the evidence before the agencies.

51. The application of § 1225(b)(2) to Petitioner is arbitrary, capricious, and not in accordance with law, and as such, it violates the APA. See 5 U.S.C. § 706(2).

SECOND CLAIM FOR RELIEF

Violation of the Fifth Amendment Due Process Clause

Substantive Due Process

52. Petitioner re-alleges and incorporates by reference the above paragraphs.

53. The Due Process Clause of the Fifth Amendment forbids the government from depriving any “person” of liberty “without due process of law.” U.S. Const. amend. V. Substantive due process requires that immigration detention without a bond hearing be reasonably related to the goals of ensuring the appearance of noncitizens at future proceedings and preventing danger to the community. *Zadvydas*, 533 U.S. at 690.

54. The BIA’s application of mandatory detention under § 1225(b)(2) is not reasonably related to those goals and thus violates substantive due process. Petitioner is not a danger to the community. He is a law-abiding individual, who has never committed any crimes and is lawfully employed. Petitioner’s actions demonstrate that he had no intention to evade the court proceedings.

THIRD CLAIM FOR RELIEF

Violation of the Fifth Amendment Due Process Clause

Procedural Due Process

55. Petitioner re-alleges and incorporates by reference the above paragraphs.

56. The Due Process Clause of the Fifth Amendment forbids the government from depriving any “person” of liberty “without due process of law.” U.S. Const. amend. V. Courts apply the *Mathews v. Eldridge* balancing test to determine what procedures the due process clause requires. *Gayle v. Warden Monmouth Cnty. Corr. Inst.*, 12 F.4th 321, 331 (3d Cir. 2021).
57. The first factor is the private interest that will be affected by the official action. *Id.* Here, the deprivation of Petitioner’s liberty is a particularly weighty interest. Petitioner is confined in a detention facility and faces indefinite detention even though he did not commit any crime. His family suffers economic deprivation because Petitioner is unable to work and support his pregnant fiancée. Petitioner’s employer also suffers economic loss because it lost an essential employee.
58. The second factor is the risk of erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional safeguards. *Id.* Here, there is a great risk of unnecessary detention because the BIA’s interpretation of the statute does not permit any individualized determination of whether detention during removal proceedings is necessary. *See Ashley*, 288 F. Supp. 2d at 670. Petitioner is an individual that during his time spent in the United States showed a desire to become part of the American society. He has a family, a career and a child on the way. His detention without bond is not only unnecessary; it is cruel and unlawful.
59. The final factor is the Government’s interest. *Gayle*, 12 F.4th at 331. The government has no legitimate interest in detaining Petitioner when detention is not necessary to ensure appearance at future hearings or protect the community. *Hernandez-Lara*, 10

F.4th at 32-33; *see Ousman D. v. Decker*, No. 20-9646, 2020 WL 5587441, at *4 (holding that due process requires consideration of less restrictive alternatives to detention that would address the government’s legitimate purpose); *Hechavarria v. Whitaker*, 358 F. Supp. 3d 227, 241-42 (W.D.N.Y. 2019) (same). Petitioner has a viable asylum claim, and, additionally, because he was paroled, he might be able to obtain lawful status through marriage.

60. Therefore, Respondents’ detention of Petitioner without demonstrating that detention is necessary violates procedural due process.

REMEDY

A. Because Petitioner is Detained Under the Wrong INA Provision, his Custody is Ultra Vires and Must End

61. Where DHS detains a noncitizen under an inapplicable statutory provision, the detention is not merely procedurally defective—it is unauthorized by law. In such instances, the role of a habeas court is not to adjust the manner of detention, but to terminate it. A habeas court has “the power to order the conditional release of an individual unlawfully detained—though release need not be the exclusive remedy and is not the appropriate one in every case in which the writ is granted.” *Boumediene v. Bush*, 553 U.S. 723, 779 (2008). A federal district court is authorized to grant a writ of habeas corpus where the petitioner is “in custody under or by color of the authority of the United States ... in violation of the Constitution or laws or treaties of the United States.” *Patel v. McShane*, No. CV 25-5975, 2025 WL 3241212 (E.D. Pa. Nov. 20, 2025) (citing 28 U.S.C. §§ 2241(c)(1), (3)); *see also, Kashranov v. Jamison*, No. 2:25-CV-05555-JDW, 2025 WL 3188399 (E.D. Pa. Nov. 14, 2025).

62. The Third Circuit has made clear that immigration detention authority is implicitly limited, and once those limits are exceeded—or where detention lacks statutory footing altogether—continued custody is unlawful. *Diop v. ICE/Homeland Sec.*, 656 F.3d 221, 232–33 (3d Cir. 2011). Detention that is not authorized by statute cannot be cured by further administrative process because “the statute no longer permits it.” *Id.*
63. Petitioner is detained under the wrong provision of the INA, which makes his detention unlawful. As a matter of law, DHS therefore lacks authority to continue holding him. The only remedy that restores Petitioner to the position he would have occupied absent the statutory violation is release from custody. See *Leslie v. Att’y Gen.*, 678 F.3d 265, 271–72 (3d Cir. 2012). See also *Patel v. McShane*, No. CV 25-5975, 2025 WL 3241212 (E.D. Pa. Nov. 20, 2025); *Kashranov v. Jamison*, No. 2:25-CV-05555-JDW, 2025 WL 3188399 (E.D. Pa. Nov. 14, 2025)..

B. An Immigration Judge Bond Hearing is not a Legally Adequate Habeas Remedy

64. The Government may argue that any defect can be remedied by ordering an Immigration Judge to conduct a bond hearing. That argument fails for three independent reasons.
65. First, Immigration Judges lack authority to cure statutory misclassification. Bond proceedings presuppose lawful detention under a bond-eligible statute. Immigration Judges have no authority to reclassify DHS’s custody determination or to declare detention *ultra vires*. They accept DHS’s asserted detention authority as a given and merely assess discretionary release within that framework. Accordingly, where detention itself is unauthorized, a bond hearing cannot cure the violation. Habeas relief cannot consist of referring a petitioner back to an adjudicator who lacks jurisdiction to address

the legal defect. See *Guerrero-Sanchez v. Warden York Cnty. Prison*, 905 F.3d 208, 224–25 (3d Cir. 2018) (habeas courts retain authority to define the remedy necessary to cure unlawful detention).

66. Second, Article III courts may not delegate their habeas function to EOIR. The writ of habeas corpus requires a court to order relief that ends unlawful custody, not one that merely initiates another administrative proceeding. The Third Circuit has repeatedly emphasized that habeas relief must be meaningful and effective, not theoretical. *Chavez-Alvarez v. Warden York Cnty. Prison*, 783 F.3d 469, 475–78 (3d Cir. 2015).
67. Ordering an Immigration Judge to hold a bond hearing improperly delegates the Court’s core Article III function to an Executive Branch tribunal that is institutionally subordinate to the Attorney General; lacks authority to correct DHS’s statutory error; and cannot guarantee release even where detention is unlawful. Such delegation is incompatible with the habeas court’s duty to independently remedy unlawful executive detention. *Guerrero-Sanchez*, 905 F.3d at 224.
68. Last, bond hearings in Immigration Court are non-curative in practice. Immigration Judge bond hearings—particularly in post-habeas cases—have become systematically predetermined exercises designed to maintain detention regardless of individual circumstances.
69. Immigration practitioners have witnessed a corresponding and unprecedented surge in fundamentally unfair bond denials that seems to follow the same pattern.

70. The Immigration Judges who meaningfully questioned DHS detention positions were abruptly reassigned from detained dockets. *See* **Petitioner’s Exhibit A**, Statement of (retired) Immigration Judge Lawrence O. Borman. Bond has been categorically denied in cases that previously warranted release. *Id.* Judges rely on pretextual rationales that would make bond impossible for virtually any detained noncitizen. *Id.* *See also* **Petitioner’s Exhibit B**, Affidavit of Attorney Matthew Archambeault; **Petitioner’s Exhibit C**, Affidavit of Attorney Noemi Simbron; **Petitioner’s Exhibit D**, Affidavit of Attorney Eric Mark. The pattern is uniform, coordinated, and temporally linked to federal habeas grants. This evidence establishes that remand to EOIR would be futile and would render this Court’s habeas jurisdiction meaningless. Habeas relief cannot consist of an “illusory remedy” that predictably fails to secure liberty. *See Chavez-Alvarez*, 783 F.3d at 475.

71. Where detention is unauthorized and administrative remedies are ineffective, the habeas court must order immediate release, subject only to reasonable conditions of supervision if necessary. *See Leslie*, 678 F.3d at 271–72.

PRAYER FOR RELIEF

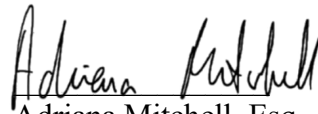
WHEREFORE, Petitioner respectfully requests that this Court:

1. Assume jurisdiction over this habeas corpus action pursuant to 28 U.S.C. §§ 2241 and 1331;
2. Issue a Writ of *Habeas Corpus* and order Petitioner’s immediate release from custody;
3. In the alternative, hold a bond hearing at which the government must establish by clear and convincing evidence that Petitioner presents a risk of flight or danger, even after

consideration of alternatives to detention that could mitigate any risk that Petitioner's release would present;

4. Award Petitioner his costs and reasonable attorney fees in this action as provided for by the Equal Access to Justice Act, as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified under law; and
5. Grant such further relief as the Court deems just and proper.

Dated: February 20, 2026



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Attorney for Petitioner

EXHIBITS

Exhibit A: Statement of (Ret.) Immigration Judge Lawrence O. Borman

Exhibit B: Affidavit of Attorney Matthew Archambeault

Exhibit C: Affidavit of Attorney Noemi Simbron

Exhibit D: Affidavit of Attorney Eric Mark

**VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF PURSUANT
TO 28 U.S.C. § 2242**

I am submitting this verification on behalf of the Petitioner because I am Petitioner's attorney, and I have discussed the claims with the Petitioner. Based on those discussions, I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

DATED: February 20, 2026

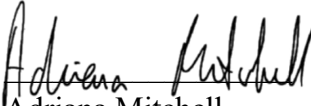

Adriana Mitchell
Attorney for Petitioner

EXHIBIT A

AFFIDAVIT OF LAWRENCE O. BURMAN

I, Lawrence O. Burman, swear under penalty of perjury, that the following information is true and correct to the best of my knowledge, information, and belief:

Experience

1. I am over 18 years of age, and a citizen of the United States.
2. I was admitted to the Maryland Bar in November 1978 and have maintained active status since that time.
3. I was employed by the United States Department of Justice from September 1988 until my retirement on December 31, 2025.
4. I served as an Immigration Judge from my appointment in April 1998 until my retirement.
5. Before that, I worked as an assistant district counsel for the former Immigration and Naturalization Service (INS) in Baltimore, Maryland, from 1991 to 1998 – a role now absorbed by the Department of Homeland Security.
6. Prior to that, from 1990 to 1991, I served as assistant general counsel at INS Headquarters in Washington, D.C.
7. From 1988 to 1990, I worked as a general attorney for INS in Baltimore.

Experience as an Immigration Judge

8. During my 27 years as an Immigration Judge, I presided over both detained and non-detained dockets in Memphis TN and Northern Virginia. I also heard detained cases on detail to detention facilities in Texas, California, New Mexico, Louisiana and Pennsylvania. I was assigned to the Annandale VA detained docket most recently in December 2025 for a short period to cover judges who were on leave.
9. While presiding over the detained docket, I adjudicated requests for custody redetermination (also known as bond hearings). In making these adjudications, I considered whether the alien was a flight risk or a danger to the community.
10. I have been asked to prepare this affidavit to explain my decades of experience as an Immigration Judge regarding the application of “flight risk” when denying a bond, as well as my professional observations regarding recent adjudicatory patterns and their potential implications.
11. Over my time on the bench, I found that concerns about flight risk were usually addressed by setting an appropriate bond amount. It was rare for a bond to be denied solely based on flight risk; more often, a higher bond amount was imposed to ensure the individual’s appearance at future hearings.
12. In my experience, bond was not denied solely due to a person’s manner of entry into the United States or because they had not yet applied for relief before being encountered by immigration officials. Such factors were never the main reason for denial, and generally not considered at all.

13. It was also extremely rare to see a bond denial based on flight risk where the alien had a fixed address, a job, a proposed application for relief, or family ties to the United States.
14. In my experience, bonds in excess of \$15,000 were relatively uncommon on the dockets on which I served. This is largely because a person's ability to pay a bond should be considered when adjudicating a bond request, and because immigration delivery bonds generally require payment of the full amount to post.
15. Earlier in my tenure, judges typically maintained a regular detained docket. In the last decade, the Immigration Court in Annandale, Virginia, assigned certain judges to detained matters on a full-time basis, while others would substitute when needed.
16. Since around 2017, Immigration Judges Raphael Choi and Karen Donoso-Stevens had been assigned to the detained dockets. IJ Choi was previously the Chief Counsel of the Office of Principal Legal Advisor for Arlington, Virginia, and IJ Donoso-Stevens was a senior attorney for the detained docket for the Office of Principal Legal Advisor for Arlington, Virginia
17. I recently learned that both IJ Choi and IJ Donoso-Stevens were abruptly removed from the detained docket in January 2026, in the middle of their morning dockets, and were replaced by newly-appointed judges.

Concerns about the Immigration Court System

18. Since January 2025, I have observed a troubling trend of Immigration Judges being terminated without explanation or notice. In all my years on the bench, I have never witnessed such a high level of turnover.
19. From conversations within the immigration bench and professional organizations, including the National Association of Immigration Judges (of which I was an officer), it is clear that judges were removed for their strong commitment to due process for those appearing before them.
20. Although immigration judges are expected to act as neutral adjudicators, I have noticed increasing concern among members of the bench about institutional intimidation and the perception that decisions unfavorable to the government could negatively affect judicial tenure.
21. I am concerned that the notable rise in bond denials and adverse case outcomes undermines due process and erodes confidence in the Immigration Court system.

Signed this 14th day of February 2026 in the County of Arlington, Commonwealth of Virginia.

February 14, 2026



Lawrence O. Burman

EXHIBIT B



Matthew J. Archambeault, Esq.

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December 12, 2025

AFFIDAVIT OF MATTHEW J. ARCHAMBEAULT

I swear, under the penalty of perjury, the following is true and correct. I have been a practicing immigration attorney for over 23 years. I practice primarily in removal defense, including the representation of detained individuals. I have appeared in immigration courts in Pennsylvania, New Jersey, New York, Maryland, Florida, Georgia, North Carolina, Texas, Louisiana, Colorado, California, Washington, Puerto Rico, St. Thomas, and St. Lucia over my career. I have also represented immigrants in federal court at both the District and Circuit levels.

I write this affidavit for general use for my colleagues for submission in any court proceedings they feel appropriate.

I have represented hundreds of clients over the years and done scores of bond redetermination hearings. Under the current administration, bond redeterminations have undergone a noticeable shift, most notably in the issuance of the BIA precedent decision *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). This decision illegally concluded that a vast swath of immigrants, who entered without inspection, were subjected to mandatory detention pursuant to INA 235(b)(2), and not eligible for bond. Decades of practice and legal precedent found the same individuals eligible for bond and detained under INA 236(a). Hundreds of federal district courts have ruled against the administration following a flood of habeas corpus petitions nationwide. The result of this litigation has been that immigrants are either released or afforded an opportunity to have a bond hearing before an immigration judge.

I represent Jorge Perez Florez in both immigration court and the New Jersey District Court (case no. 2-25-cv-17865-SDW). Mr. Perez Florez was detained by ICE on November 24, 2025, and transported to the Elizabeth Detention Center in Elizabeth, New Jersey. I filed a habeas corpus petition on his behalf on the same day, and the Honorable Susan D. Wigenton of the New Jersey District Court issued a text order directing that a bond hearing be held by December 1, 2025. Immigration Judge Ramin Rastegar conducted a bond hearing on December 1, 2025, at the Elizabeth Immigration Court in Elizabeth, New Jersey.

Mr. Jorge Perez Florez is a Mexican immigrant who has been in the United States for more than 18 years, lives with his long-term partner and their 15-year-old U.S. citizen daughter in Maple Shade, New Jersey. Mr. Perez Florez has resided at the Maple Shade, New Jersey, address for more than 8 years and in the immediate area for the entirety of his time in the United States. Mr. Perez Florez has never been arrested in the United States or anywhere else in the world. Mr. Perez Florez is eligible to apply for Cancellation of Removal for Certain Non-

Permanent Residents, as he has been in the United States for more than ten years, has a US citizen child who would suffer extreme and unusual hardship if he were removed, and has been a person of good moral character and worthy of discretion. Mr. Perez Florez's US citizen daughter had been recently hospitalized for anxiety disorder and was beginning treatment. Mr. Perez Florez had numerous persons write on his behalf, and a US citizen sponsor was prepared to post any bond issued by the immigration judge.

The Department of Homeland Security raised the following negative factor: Mr. Perez Florez had previously attempted to enter the United States more than 18 years ago, was voluntarily returned, and then re-entered undetected. DHS also concluded that Mr. Perez had received a traffic ticket in 2009, when it appears he did not have a license, as an indicator of dangerousness. DHS further questioned a "learner's permit" from Maryland obtained by Mr. Perez Florez, despite his never appearing to live in Maryland.

These sets of facts would traditionally have earned Mr. Perez Florez a bond, as his lack of criminal history indicates he is not a danger to the community, and his long-term, stable residency in the United States with a family, relief from removal available, and support from the community would indicate he is not a flight risk. In my professional experience, one would expect a bond ranging from \$2,500 to \$10,000. This was not the case this time.

Immigration Judge Rastegar ruled that he posed a danger to the community and a flight risk so significant that no amount of bond would ensure his appearance for deportation if he lost his case. Immigration Judge Rastegar refused to explain why Mr. Perez Florez was a flight risk, indicating we could read it in his bond memorandum if we appealed. He did explain that Mr. Perez Florez's long-term residency here was a negative factor, as he never attempted to "fix" his immigration status, despite the fact that no options for doing so existed. After extensive questioning, Judge Rastegar concluded that Mr. Perez Florez was not credible based on his receiving a "driver's license" from Maryland, even though it was apparent he never lived there, and questions regarding an educational program Mr. Perez Florez completed in Camden, NJ. Judge Rastegar also held the fact that no application for relief had not been submitted to the immigration court, despite the fact that he had yet to appear for his first initial master calendar hearing (bond proceedings are separate and distinct from removal proceedings), which was scheduled for December 8, 2025 and pleadings on the allegations alleged by the Department of Homeland Security had not been completed. Judge Rastegar refused to recognize Mr. Perez Florez's long-term, committed relationship with the mother of their child because they were not married. Lastly, Judge Rastegar concluded that, because there was scant documentation of the medical condition affecting his 15-year-old USC daughter, he could not meet his burden to approve any Cancellation of Removal Application submitted, and that no amount of bond would be sufficient to ensure Mr. Perez Florez would appear for his ordered removal. Judge Rastegar did not even consider other restrictions on Mr. Perez Florez's liberty that could have ensured his compliance, such as electronic monitoring and/or reporting to ICE.

In my 23-year professional career, I have never had a bond flatly denied under similar facts. It is clear that I am not alone. The New Jersey AILA listserve is replete with similar, and even more egregious examples of bond denials from the judges at the Elizabeth Immigration Court and other courts across the country. I observed a bond hearing for an immigrant who has been in the United States for over 20 years, several US citizen children, one with a serious heart

condition, and no criminal record, denied a bond by Immigration Judge Wilson, finding he was a flight risk because he resided so long in the United States without being detected and that no amount of bond would be sufficient to ensure he complied with a deportation order. Now immigration judges are using immigrants' long-term residency and deep ties to the community as evidence of their flight risk. This is not normal.

Despite the losses of over 200 federal district court cases on the issue of detention pursuant to INA 235(b)(2), DHS persists in illegally denying immigrants their statutory right to a bond hearing, causing the current flood of litigation that is taking the time of US Attorneys who could be working on essential cases affecting our security as a nation, and time away from District Court judges and their staff. DHS has no incentive to change its practice if the result is immigrants spending thousands of dollars for legal representation and a rigged bond hearing, designed only to deny deserving immigrants the ability to receive a bond and return to their families and community as Congress intended.

We implore District Court judges to address this issue by either ordering the straight release from detention when it is shown that the detention is illegal, or conducting their own bond analysis and making their own determination regarding the issuance of bond, the amount, and any other restrictions the Court deems necessary.

We sincerely appreciate the Court's attention to this matter.

Respectfully,

/s/Matthew J. Archambeault

Matthew J. Archambeault

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EXHIBIT C

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AFFIDAVIT OF NOEMI C. SIMBRON IN HER CAPACITY AS AN IMMIGRATION ATTORNEY

I have been a member of the New Jersey Bar of Attorneys and of the New Jersey Federal District Court since 2016. I have been a solo practitioner concentrating mainly in representing immigrants before the USCIS and in Removal Proceedings in immigration Court. Before I was admitted to the Bar, I worked as a legal assistant for respected counsels also from our district for 8 years. Accordingly, I have personally handled and participated in documenting hundreds of cases before immigration courts all over the country.

I am writing this statement in good faith to provide the Federal Court with my testimony of the obvious change in impossible standards that immigration judges are currently applying to individuals who are seeking release under bond. Over the course of my career, I have witnessed individuals being provided with a fair opportunity to be released under bond when they are able to show that there is neither a danger to the community nor a flight risk. Whenever an adjudicator immigration judge found that an individual had less than ideal ties to the community, he or she would even grant a larger amount so as to secure their continued appearances at future hearings. This practice seems to have been eradicated since July of 2025.

There seems to be internal instructions to judges to find ways to deny release under bond which were never there before. For instance, I recently represented a 42-year-old Mexican lady, Ms. Eva Alvarez Coeto, before the immigration court (A221-491-571) and this honorable tribunal (2:25-cv-17789-B). Ms. Alvarez entered the United States without inspection in the year 2002. Over the course of her 22-year life span in the U.S., she bore four U.S.C. children (ages 21, 18, 13 and 12)– all of whom resided with her up until the time she was detained. The two youngest children have learning and speech disabilities. Also, she heavily cooperated with the Passaic Police Department in prosecuting the father of her younger children when he showed pornographic videos to her oldest daughter. This participation led to the criminal conviction of this individual, thereby making Ms. Alvarez Coeto also eligible to apply for U visa status. In August of 2025, Ms. Alvarez moved into the father of her older children's father's home following a reduction of her hours at work. The father of her children attempted to kiss Ms. Alvarez against her will and she slapped him once due to unwanted advances before leaving his house. This incident was reported to the police by the father of Ms. Alvarez's children and she was charged with simple assault in the city of Clifton, NJ on or about August 27, 2025. Ms. Alvarez was arrested pursuant to that incident for the first and only time after being present in

the United States for 22 years. She was then referred to immigration detention and is currently being held at the Delaney Hall Detention Center.

On November 20, 2025, this counsel was retained to represent Ms. Alvarez Coeto for a Petition for Habeas Corpus. In preparation for the petition for Habeas Corpus, this counsel requested a bond hearing before the Immigration Court. The immigration Court scheduled a bond redetermination hearing on December 9, 2025. This counsel provided the Court with the children's birth certificates, their medical records showing that the youngest 2 suffer from learning disabilities, evidence of Ms. Alvarez Coeto's work history in the 22 years she has lived here, and a statement from Ms. Alvarez Coeto describing the underlying circumstances leading to the arrest as well as the consequences of her detention, including the fact that custody of the youngest children is being handled by the State's Children's Services because their father is prohibited from approaching them due to the existence of his record as a sexual predator. After hearing legal arguments, Immigration Judge Shana Chen found that she lacked jurisdiction pursuant to Yajure-Hurtado, 29 I&N 216 (BIA 2025) and Maldonado Bautista "not controlling on [that] Court." In the alternative, Judge Chen found that the Respondent "only acknowledged what she could not hide [from the arrest]," and that she was a danger to the community based upon this sole isolated incident in 22 years of history of hard work and raising American children. She also found that Ms. Alvarez Coeto was a flight risk despite her undeniable ties to the community due to the existence of minor children, and her eligibility to obtain status through the U visa statute for indirect victims of crimes as well as through Cancellation of Removal for Nonimmigrants.

In the past, such mild criminal offense would have never been the basis to find an individual such as Ms. Alvarez to be a danger to the community— especially in light of the obvious isolated nature of this offense. Most importantly, the extent of ties that Ms. Alvarez has to this community in her children and the heightened responsibilities of addressing their disabilities *on her own* because the father is under a permanent restraining order and is required to be registered as a sexual predator pursuant to Meghan's Laws is undeniable. In the past, a reasonable finder of fact would have considered that this woman would have a great incentive to pursue relief because her circumstances squarely fit eligibility for U visa status and Cancellations of Removal. Even the most conservative of judges in the country would have at least considered release under higher bond to assure the Respondent's future appearances and to discourage any further potential criminal actions. But this is not the case now. As I waited for my case to be called, I have heard other hearings handled by colleagues who are also being denied release due to absurd reasons which would have never led to denials in the past. This sort of stories about denials are also being shared by numerous of my colleagues within our listserve in the American Immigration Attorneys Association (AILA).

This internal change in the standards for release under bond has to be merely a plot to have immigrants be denied their due process rights because they know individuals who are hard-working and that do not engage in criminal conduct will not be able to withstand being in detention for extended periods of time. They also know that cutting those individuals' access to earn a living will cripple their ability to be represented by counsel causing a flood of them to give up their rights and just ask to voluntarily depart or be deported. And what happens with our

judicial system? Our constitutional rights? Our communities? As this Court is aware, access to bond has been cut by recently published case law to several categories of immigrants who would've been able to be released and to have a real opportunity to exercise their due process rights. For instance, under Qu Li, 29 I&N Dec. 66 (BIA 2025), there are no more bonds for individuals who are deemed "applicants for admissions," that if they had a stop and/or were processed near the border or a port of entry. Under Matter of M-S-, 27 I&N Dec. 509 (A.G. 2019), there is no more access to bond for individuals who were placed in expedited removal, or subjected to administrative deportation, even after they obtain a favorable result of a filter mechanism to be able to see a judge called a credible fear interview. Now, under Yajure-Hurtado, the government sought to subject every immigrant who may have entered without status at any time to mandatory detention. It is solely because of the intervention of the Federal Courts that this smaller group of individuals— those who are present unlawfully but are not deemed applicants for admission because they were arrested within the territory and are here for a lengthy period of time after their initial entry— have now access to bond when a Petition for Habeas is granted. But, what good does it do if the cases fall back into the same pattern through (presumably) unpublished instructions being received by the immigration judges who are still being mandated to find alternate ways to deny our clients of their due process rights?

Through this letter, I unite my plea to my colleagues to please order our clients released after conducting a fair analysis through this tribunal as we had in the immigration court before the current impossible standards for release were internally mandated. Thank you in advance for your attention.

Respectfully,

/s/ Noemi C. Simbron

Noemi C. Simbron, Esq

EXHIBIT D

AFFIDAVIT OF ERIC M. MARK, ESQ.

I have been practicing criminal defense and immigration for more than 15 years and have represented dozens, or hundreds, of clients during bond proceedings before the Immigration Court.

Presently, I am the attorney representing Pablo Martinez Ron before the Immigration Court and before the U.S. District Court for the District of New Jersey before the Hon. Michael E. Farbiarz on a Petition for Habeas Corpus.

Judge Farbiarz ordered a bond hearing for Mr. Martinez Ron that was conducted by Immigration Judge Counihan of the Batavia Immigration Court. Mr. Martinez Ron has been present in the United States for approximately two years. He has no criminal history. He was initially on the docket in Maryland and appeared there once for a hearing.

Subsequently, he changed his address with the court and venue was transferred to New Jersey. He was awaiting a hearing in New Jersey. Substantial documentary evidence was submitted demonstrating that he was engaged to be married and lived with his fiancé and his fiancé's mother in a house owned by his fiancé's mother. The couple had begun IVF treatments, including blood draws and payments and this was also documented to the court. His fiancé was present at the bond hearing.

Despite this evidence, the immigration judge found Mr. Martinez Ron did not have a meaningful family tie in the United States, and that he might have such a tie if he got married. The immigration judge found he did not have a fixed address in the U.S. because he had previously lived at other addresses, was not on the deed and there was no lease. The judge also held against him, without articulating why, that he made \$500 - \$700 per week.

In the past, such facts would have resulted in a low bond based on decades of caselaw. Her the immigration judge created an impossible standard. Evidence of stable employment was somehow held against the non-citizen. Living with a fiancé and going through IVF was somehow not sufficient to establish a meaningful tie to the U.S. Merely having prior addresses, something that virtually every person on the face of the Earth has, was held against him even though he updated the court when he moved and appeared in court when scheduled.

It is evident that immigration judges have been instructed not to issue bonds and what rationales to rely on to do so. Judges who have been issuing bonds for years, if they have not been terminated, have suddenly stopped issuing bonds. Facts and evidence that were sufficient evidence in 2024 are completely discarded or held against the non-citizens in

2025. The burden of proof has been elevated to such a level that it is impossible to meet and is far beyond what is constitutionally permissible or statutorily authorized.

I affirm that the foregoing statements are true and correct and that any willfully false statement is punishable under the penalty of perjury.

Dated: Decemeber 11, 2025

/s/ Eric M. Mark

Eric M. Mark, Esq.