UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JEAN CARLOS MEDINA MARTINEZ and JESUS ORLANDO PEREZ FUENTES,

Petitioners,

v.

KEVIN RAYCRAFT, Acting Detroit Field Office Director for U.S. Immigration and Customs Enforcement, in their official capacity; TODD LYONS, Acting Director of U.S. Immigration and Customs Enforcement, in their official capacity; and KRISTI NOEM, Secretary of the U.S. Department of Homeland Security, in her official capacity,

Respondents.

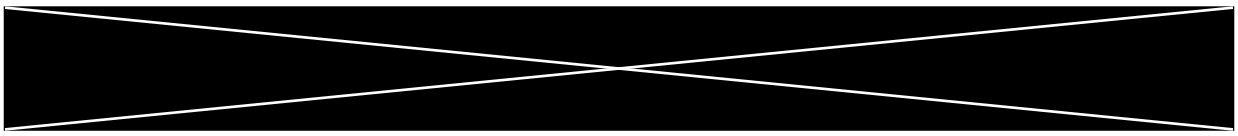
Case No. 1:26-cv-551

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. Petitioners Jean Carlos Medina Martinez and Jesus Orlando Perez Fuentes ("Mr. Medina Martinez" and "Mr. Perez Fuentes" or "Petitioners") are citizens of Venezuela and a married couple who were paroled into the United States on October 8, 2003 for a period of two (2) years at the Customs and Border Protection port of entry in San Ysidro, California pursuant to 8 U.S.C. § 1182(d)(5) based on appointments made via the CBP One mobile application. This is indicated by the Class of Admission Code "DT" on the Petitioners' I-94 Arrival/Departure Records. **[See Exhibit 1 – Original I-94 Arrival/Departure Record of Jesus Perez Fuentes]**

2. Mr. Medina Martinez timely filed for asylum, withholding of removal, and relief under the Convention Against Torture, with Mr. Perez-Fuentes as his rider/derivative spouse, based on [redacted] **[Exhibit 2 – Proof of Pending I-589, Application for Asylum and for Withholding of Removal]**



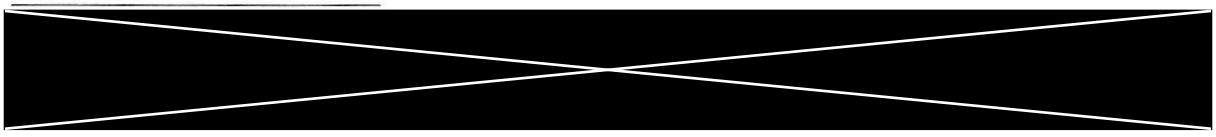
4. The timely filing of Mr. Medina Martinez's asylum application with Mr. Perez-Fuentes as their derivative spouse places both Petitioners in a "period of stay authorized by the Secretary of Homeland Security."

5. On or about April 18, 2025, Respondents unlawfully terminated the Petitioners' parole based on a blanket decision by Respondent Noem to terminate parole granted by the prior Administration. **[Exhibit 3 – Updated I-94 Arrival Departure Records for Petitioners showing date of termination as April 18, 2025]**

6. On or about December 3, 2025, Mr. Perez Fuentes was detained by Respondents without a valid warrant and without basis and transferred to the North Lake Processing Center, a detention facility located in Baldwin, Michigan.

7. On or about January 8, 2026, Mr. Medina Martinez was detained by Respondents without a valid warrant and without basis and was also transferred to the North Lake Processing Center.

8. Petitioners are currently unlawfully detained in the physical and legal custody of Respondents at the North Lake Detention Center in Baldwin, Michigan without being provided a bond hearing. The Department of Homeland Security ("DHS") and the Department of Justice's ("DOJ"'s) Executive Office of Immigration Review ("EOIR") have concluded Petitioners are subject to mandatory detention, and that he is not entitled to a bond hearing.



9. EOIR has issued precedential a decision of the Board of Immigration Appeals ("BIA") that purports to unlawfully subject the Petitioners to indefinite, mandatory detention in violation of their Due Process rights under the Constitution, and in violation of the Immigration and Nationality Act ("INA").

10. Respondents' detention of Petitioners without an individualized determination of flight risk or risk to public safety is unlawful.

11. Respondents have detained the Petitioners based not on their personal circumstances or individualized facts but because of Respondents' incorrect categorical determination that, the Fifth Amendment notwithstanding, noncitizens are not entitled to due process of law.[2]

12. But Respondents cannot evade the law so easily. The U.S. Constitution requires the Respondents provide Petitioners at minimum with the rights available to Petitioners after releasing him into the United States and instituting full proceedings in immigration court.

13. To the extent that the Respondents intend to subject the Petitioners to indefinite, mandatory detention throughout the remainder of all their proceedings in the United States based on the BIA's recent precedential decisions in *Matter of Q. Li*, 29 I. & N. Dec. 66, 69 (BIA 2025) (holding that "all noncitizens who fall within the scope of 8 U.S.C. § 1225(b)(1) (arriving aliens) must be detained under that section and are "ineligible for any subsequent release on bond" under § 1226(a)," Petitioners' detention is unlawful, in violation of their Due Process rights and the INA.

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[2]*See, e.g.,* NBC News, Meet the Press interview of President Donald Trump (May 4, 2025), https://www.nbcnews.com/politics/trump-administration/read-full-transcript-president-donald-trump-interviewed-meet-press-mod-rcna203514 (in response to a question whether noncitizens deserve due process under the Fifth Amendment, President Trump replied "I don't know. It seems—it might say that, but if you're talking about that, then we'd have to have a million or 2 million or 2 million trials.").

14. Any characterization of Petitioners' status as "arriving aliens" pursuant to 8 U.S.C. § 1225(b) and their detention without bond by Immigration and Customs Enforcement ("ICE"), an agency within the Department of Homeland Security ("DHS"), is in violation of 8 U.S.C. § 1226(a).

15. Accordingly, to vindicate Petitioners' rights, this Court should grant the instant petition for a writ of habeas corpus. Petitioners asks this Court: (a) to find that Respondents' attempts to detain and transfer Petitioners are arbitrary and capricious and in violation of the law; (b) to immediately issue an order preventing Petitioners' transfer out of this district; and (c) to order either a bond hearing before an immigration judge **under safeguards** or to order the Respondent's immediate release from detention, **or, in the alternative**, to show cause in writing within three (3) days why the writ of habeas corpus and other relief requested in the petition should not be granted.

JURISDICTION AND VENUE

16. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et. seq.

17. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), the INA, 8 U.S.C. §§ 1101–1537, regulations implementing the INA, the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 701–706, and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

18. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 et. seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et. seq., the All Writs Act, 28 U.S.C. § 1651, and the Immigration and Nationality Act, 8 U.S.C. § 1252(e)(2).

19. The federal government has waived its sovereign immunity and permitted judicial review of agency action under 5 U.S.C. § 702. In addition, sovereign immunity does not bar claims against federal officials that seek to prevent violations of federal law (rather than provide monetary relief).

20. Venue is proper because Petitioners are detained in Respondents' custody at the North Lake Processing Center in Baldwin, Michigan. The federal district courts have jurisdiction to hear habeas corpus claims by noncitizens challenging the lawfulness or constitutionality of their immigration detention. *See, e.g.*, *Demore v. Kim*, 538 U.S. 510, 516-17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

21. Venue is further proper 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 Western District of Michigan.

22. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue lies in the United States District Court for the Western District of Michigan, the judicial district in which the Petitioners are currently detained.

REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243

23. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, 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).

24. There is no statutory exhaustion requirement in 28 U.S.C § 2241. In the absence of a statutory exhaustion requirement, "prudential" exhaustion may be judicially required. *Island*

Creek Coal Co. v. Bryan, 937 F.3d 738, 746 (6th Cir. 2019). Whether or not to require prudential exhaustion falls within this Honorable Court's sound judicial discretion, provided that such discretionary requirement complies with statutory schemes and the intent of Congress. *See Shearson v. Holder*, 725 F.3d 588, 593-594 (6th Cir. 2013) (internal citation/quotation omitted).

25. The United States Court of Appeals for the Sixth Circuit has not yet issued a precedential decision as to whether courts or not should impose administrative exhaustion in the context of a noncitizen's habeas petition for unlawful mandatory detention. *See, e.g., Jose O. Puerto-Hernandez v. Robert Lynch, et al.*, No. 25-1097, 2025 WL 3012033 (W.D. Mich. Oct. 28, 2025) (internal citations omitted).

26. As noted above, the precedential decisions issued by the BIA in *Matter of Q. Li* stands for the proposition that the Petitioners are subject to indefinite, mandatory detention and are ineligible for a bond hearing before an immigration judge.

27. The BIA's precedential decisions "serve as precedents in all proceedings involving the same issue or issues." 8 C.F.R. §§ 1003.1(g)(2), (d)(1). Therefore, requiring the Petitioners to seek a bond hearing and, when denied, appeal that denial to the BIA will certainly result in a holding that anyone who is deemed "[a]n alien present in the United States without being admitted or paroled," will be subjected to mandatory detention without bond under 8 U.S.C. § 1225(b)(2).

28. Moreover, the fundamental question presented by this petition is whether 8 U.S.C. § 1225 or 8 U.S.C. § 1226 applies to the Petitioners' detention, which is a purely legal question of statutory interpretation which would not be impacted by any administrative record developed in immigration court or on appeal to the BIA.

29. This Honorable Court is not bound by and is not required to give deference to any agency interpretation of a statute. *See Loper Bright Enter. v. Raimondo*, 603 U.S. 369, 413 (2024)

(holding that federal judges are not required to, and pursuant to the APA are not to defer to an agency interpretation of the law simply because a statute is ambiguous, as that is the role of the federal courts).

30. Finally, the Petitioners' constitutional challenge to their detention does not require exhaustion. The Sixth Circuit has noted that due process challenges, such as the one raised by Petitioners here, generally do not require exhaustion because the BIA cannot review constitutional challenges. *See Sterkaj v. Gonzalez*, 439 F.3d 273, 279 (6th Cir. 2006).

31. Thus, requiring prudential exhaustion is a futile exercise, and will only result in the extended, unlawful detention of the Petitioners.

32. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the Respondents "forthwith," unless the Petitioners are not entitled to relief. 28 U.S.C. § 2243. If an OSC is issued, the Court must require Respondents to file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

33. Petitioners are "in custody" for the purpose of § 2241 because Petitioners were arrested and are currently still detained by Respondents.

PARTIES

34. Petitioner Jean Carlos Medina Martinez is a 33-year-old citizen of Venezuela who has resided in the United States since October 8, 2023, was paroled into the United States for a period of two (2) years (through October 5, 2025), and who has a pending I-589, Application for Asylum and for Withholding of Removal. His parole was unlawfully terminated early pursuant to a blanket termination of parole by Respondent Noem on April 18, 2025. The Petitioner has been in immigration detention since his arrest on January 8, 2026. ICE did not set bond, and Petitioners are unable to obtain review of their custody by an IJ, pursuant to the Board's decision in *Matter of*

Q. Li, 29 I. & N. Dec. 66, 69 (BIA 2025). The Petitioner is present within the Western District of Michigan as of the time of filing this petition, as he is currently detained at the North Lake Processing Center in Baldwin, Michigan.

35. Petitioner Jesus Orlando Perez Fuentes is a 31-year-old citizen of Venezuela who has resided in the United States since October 8, 2023, was paroled into the United States for a period of two (2) years (through October 5, 2025), and who is a derivative spouse on Petitioner Medina Martinez's pending I-589, Application for Asylum and for Withholding of Removal. His parole was unlawfully terminated early pursuant to a blanket termination of parole by Respondent Noem on April 18, 2025. The Petitioner has been in immigration detention since his arrest on December 3, 2026. ICE did not set bond, and Petitioners are unable to obtain review of their custody by an IJ, pursuant to the Board's decision in *Matter of Q. Li*, 29 I. & N. Dec. 66, 69 (BIA 2025). The Petitioner is present within the Western District of Michigan as of the time of filing this petition, as he is currently detained at the North Lake Processing Center in Baldwin, Michigan.

36. Respondent Kevin Raycraft is the Acting Director of the Detroit Field Office of ICE's Enforcement and Removal Operations division, a component of the Department of Homeland Security. As such, he is Petitioners' immediate custodian for purposes of habeas and is responsible for Petitioners' detention and removal. *See Roman v. Ashcroft*, 340 F.3d 314 (6th Cir. 2003). He is sued in their official capacity.

37. Respondent Todd Lyons is the Acting Director of U.S. Immigration and Customs Enforcement, the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens, and a component agency of the Department of Homeland Security. He is sued in their official capacity.

38. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the INA, and oversees ICE, which is responsible for Petitioners' detention. Ms. Noem has ultimate custodial authority over Petitioners and is sued in her official capacity.

LEGAL FRAMEWORK

Release and Indefinite, Mandatory Detention

39. As this Honorable Court has jurisdiction over this Petition for a Writ of Habeas Corpus, it must next determine whether the Petitioners' detention is governed by the mandatory detention provisions in 8 U.S.C. § 1225(b)(2) or the discretionary detention provisions in 8 U.S.C. § 1226(a).

40. Respondents have begun widespread arrests and detentions of persons such as the Petitioners, who were paroled into the United States, after the blanket terminations of such parole by Respondent Noem. Respondents' position is that such persons, including the Petitioners, are subject to indefinite, mandatory detention under 8 U.S.C. § 1225(b)(2).

41. Section 1225(a)(1) provides that a noncitizen "present in the United States who has not been admitted or who arrives in the United States . . . shall be deemed for purposes of this chapter an applicant for admission." The statute defines an "applicant for admission" as "[a]n alien present in the United States who has not been admitted or who arrives in the United States . . . ." 8 U.S.C. § 1225(a)(1).

42. Section 1225(b)(2)(A) generally requires mandatory detention of certain "applicant[s] for admission" during their removal proceedings. Noncitizens detained under Section 1225(b)(2) must remain in custody for the duration of their removal proceedings, while those detained under Section 1226(a) are entitled to a bond hearing before an IJ at any time before entry

of a final removal order." *See Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1247 (W.D. Wash. 2025).

43. Individuals subject to mandatory detention under Section 1225(b)(2)(A) may, however, be "temporarily released on parole 'for urgent humanitarian reasons or significant public benefit.'" *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018) (quoting 8 U.S.C. § 1182(d)(5)(A)). This parole "shall not be regarded as an admission" of the noncitizen. 8 U.S.C. § 1182(d)(5)(A).

44. The decision to grant parole pursuant to 8 U.S.C. § 1182(d)(5)(A) is determined "on a case-by-case basis." 8 U.S.C. § 1182(d)(5)(A).

45. Then, "when the purpose of the parole has been served," Section 1182(d)(5)(A) provides that "the alien shall **forthwith** return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States." *Jennings*, 583 U.S. at 288 (quoting 8 U.S.C. § 1182(d)(5)(A)) (emphasis added).

46. To terminate the previously granted parole, the agency must comply with the applicable regulatory and statutory requirements. As set forth in 8 C.F.R. § 212.5(e)(2)(i), which governs the "[t]ermination of parole,"

> In cases not covered by paragraph (e)(1) of this section,
>
> upon accomplishment of the purpose for which parole was authorized or when in the opinion of one of the officials listed in paragraph (a) of this section, neither humanitarian reasons nor public benefit warrants the continued presence of the alien in the United States, parole shall be terminated upon written notice to the alien and he or she shall be restored to the status that he or she had at the time of parole.

8 C.F.R. § 212.5(e)(2)(i).

47. That is, "[u]nder the governing regulation, [§ 1182(d)(5)(A)] parole may be terminated only if the purpose of parole is accomplished, or humanitarian reasons and the public

benefit no longer warrant parole." *Rodriguez v. Raycraft,* No. 1:25-CV-1560, 2025 WL 3673583, at *4–6 (W.D. Mich. Dec. 18, 2025) (citing *Loaiza Arias v. LaRose*, No. 3:25-cv-02595-BTM-MMP, 2025 WL 3295385, at *3 (S.D. Cal. Nov. 25, 2025) (citing 8 C.F.R. § 212.5(e)); *cf. Coal. for Humane Immigrant Rts. v. Noem*, No. 25-cv-872 (JMC), 2025 WL 2192986, at *2 (D.D.C. Aug. 1, 2025) (holding that the government failed to follow the applicable statutory and regulatory provisions and that paroled noncitizens cannot be subject to expedited removal proceedings); *Salgado Bustos v. Raycraft*, No. 25-13202, 2025 WL 3022294, at *5–7 (E.D. Mich. Oct. 29, 2025) (same); *E.V. v. Raycraft*, No. 4:25-cv-2069, 2025 WL 2938594, at *10 (N.D. Ohio Oct. 16, 2025) (same).

48. Federal district courts that have addressed the termination of § 1182(d)(5)(A) parole "have found that just as a grant of parole requires an individualized review, revocation of parole requires a case-by-case assessment to comply with the statute." *Rodriguez v. Raycraft*, 2025 WL 3673583, at *5 (citing *Mata Velasquez v. Kurzdorfer*, 794 F. Supp. 3d 128, 146 (W.D.N.Y. 2025) (internal citations omitted) (addressing this issue, and granting the petitioner's motion for preliminary injunction and ordering that the petitioner be released); *see, e.g.*, *Y-Z-L-H*, 792 F. Supp. 3d at 1137–47 (addressing this issue, and granting the petitioner's habeas petition and ordering that the petitioner be released from custody); *Loaiza Arias*, 2025 WL 3295385, at *2–4 (same); *Noori v. LaRose*, No. 25-cv-1824-GPC-MSB, 2025 WL 2800149, at *10–13 (S.D. Cal. Oct. 1, 2025) (same); *Munoz Materano v. Arteta*, No. 25 CIV. 6137 (ER), --- F. Supp. 3d ----, 2025 WL 2630826, at *14–17 (S.D.N.Y. Sept. 12, 2025) (same); *Gabriel B.M. v. Bondi*, No. 25-cv-4298 (KMM/EMB), 2025 WL 3443584, at *6–7 (D. Minn. Dec. 1, 2025) (addressing this issue, and granting the petitioner's request for a preliminary injunction and ordering the petitioner's release from custody); *Orellana v. Francis*, No. 25-cv-04212 (OEM), 2025 WL 2822640, at *2–3

(E.D.N.Y. Oct. 3, 2025) (addressing the issue in the context of a motion for reconsideration filed by the respondents, and affirming the court's grant of habeas relief to the petitioner and the court's order to release the petitioner)).

49. If Respondents did not follow those requirements, then they did not have the authority to arrest and detain Petitioners, "unless there [wa]s some other valid reason to arrest [them]." *Id.* (citing *Mata Velasquez*, 794 F. Supp. 3d at 145; *cf. Norfolk S. Ry. Co. v. U.S. Dep't of Lab.*, No. 21-3369, 2022 WL 17369438, at *6 (6th Cir. Dec. 2, 2022) (discussing that "an agency's action that fails to observe the procedures required by its own regulations should be set aside" (citation omitted)); *Wilson v. Comm'r of Soc. Sec.*, 378 F.3d 541, 545 (6th Cir. 2004) ("It is an elemental principle of administrative law that agencies are bound to follow their own regulations[,]...[and] '[a]n agency's failure to follow its own regulations tends to cause unjust discrimination and deny adequate notice and consequently may result in a violation of an individual's constitutional right to due process.' " (additional internal quotation marks omitted) (quoting *Sameena, Inc. v. U.S. Air Force*, 147 F.3d 1148, 1153 (9th Cir. 1998)))).

50. Due to the multiple failure by the Respondents to comply with the law with regard to Section 1225(b) which cannot be cured after the fact, the Petitioner's detention is necessarily pursuant to Section 1226(a).

51. The Immigration and Nationality Act does not define "forthwith." However, according to Black's Law Dictionary, the ordinary meaning of "forthwith" is: "1. Immediately; without delay. 2. Directly; promptly; within a reasonable time under the circumstances; with all convenient dispatch." Black's Law Dictionary (10th ed. 2014). Merriam-Webster defines "forthwith" as "without any delay" or "immediately." The Oxford English Dictionary defines "forthwith" as "Immediately, at once, without delay or interval."

52. It is undisputed that from the termination of Petitioners' parole on April 12, 2025, through their collateral arrests without a warrant on January 8, 2026 and December 3, 2025, respectively, the Petitioners were not in custody.

53. Respondents made no effort for seven to eight months to return Petitioners to custody, nor did they send any communication to Petitioners requesting that they appear to surrender themselves.

54. Thus, Respondents failed to properly return Petitioners to custody "forthwith" as required in order to subject them to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2). Having failed to make an individualized, case-by-case decision regarding termination of parole and failed to properly return Petitioners to custody "forthwith" as required by the statute, Respondents cannot now claim that they are detained pursuant to that same statute.

55. From April 18, 2025 through their respective dates of detention, Respondents have constructively released Petitioners into the interior of the United States.

56. By contrast, Section 1226(a) sets forth "the default rule" for detaining noncitizens "already present in the United States." *Jennings*, 583 U.S. at 303. Section 1226(a) provides that, "[o]n a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a).

57. Unlike Section 1225(b)(2)(A), noncitizens who fall under Section 1226(a) are not subject to mandatory detention. Pending a removal decision, the Attorney General may continue to detain an arrested noncitizen, release them on bond, or release them on conditional parole, unless they fall within certain exceptions involving criminal offenses and terrorist activities. *See* 8 U.S.C. § 1226(a) (1)-(2), (c).

58. Respondents have taken the position in courts across the country that § 1226(a), and the possibility of release on bond, only applies to individuals who are present in the country with lawful status but are in removal proceedings. However, section 1226(a) does not contain a requirement of lawful status, and "courts are not free to read into the language [of a statute] what is not there." *See O'Hara v. Nika Techs., Inc.*, 878 F.3d 470, 475 (4th Cir. 2017).

59. Further, applying § 1225 to all persons who have not been admitted into the United States would conflict with the statute's broader structure, the Supreme Court's traditional understanding of the relationship between §§ 1225(b) and 1226(a), and decades of immigration practice. "[O]ne of the most basic . . . . canons" of statutory interpretation is that "a statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant." *Corley v. United States*, 556 U.S. 303, 314 (2009) (quoting *Hibbs v. Winn*, 542 U.S. 88, 101 (2004)) (internal brackets omitted).

60. By contrast, the Respondents' position that § 1225(b) applies to all persons who have not been admitted into the United States would render multiple provisions of § 1226 superfluous. For instance, § 1226(c)(1)(A), (D), and (E) already require mandatory detention of certain categories of inadmissible noncitizens. Indeed, Congress added § 1226(c)(1)(E)—which requires detention for certain inadmissible noncitizens charged with crimes including burglary, theft, and larceny—just this year through the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).

61. If § 1225(b) already required mandatory detention of all noncitizens who have not been admitted, these provisions would be meaningless.

62. The Respondents' theory also conflicts with the Supreme Court's previous interpretation of the relationship between §§ 1225(b) and 1225(a). In *Jennings*, the Supreme Court

explained that § 1225(b) governs noncitizens "seeking admission into the country," whereas § 1226(a) governs noncitizens "already in the country" who are subject to removal proceedings. *Jennings*, 583 U.S. at 289. That interpretation is consistent with the core logic of our immigration system. "[O]ur immigration laws have long made a distinction between those aliens who have come to our shores seeking admission . . . and those who are within the United States after an entry, irrespective of its legality.

63. In the latter instance the Court has recognized additional rights and privileges not extended to those in the former category who are merely 'on the threshold of initial entry.'" *Leng May Ma*, 357 U.S. at 187 (*quoting Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953)); *accord Zadvydas*, 533 U.S. 678, 693 (2001) ("The distinction between an alien who has effected an entry into the United States and one who has never entered runs throughout immigration law.").

64. Given this precedent, it is doubtful that Congress intended Section 1225(b)(2) to apply to individuals like the Petitioners who have now been detained after being present in the U.S. for more than seven months, who have not committed any crimes, and who were fully compliant with all immigration legal requirements and actively pursuing relief.

65. Respondents' position is at odds with DHS's own historic understanding of the statute's meaning. DHS's longstanding interpretation of § 1226 "like any other interpretive aid—can inform a court's determination of what the law is." *Hasan v. Crawford*, No. 1:25-cv-1408, 2025 WL 2682255 at *9 (E.D. Va. Sept. 19, 2025) (*quoting Loper Bright Enter. v. Raimondo*, 603 U.S. 369, 386 (2024)). "DHS's long-standing interpretation has been that § 1226(a) applie[d] to those who have crossed the border between ports of entry and are shortly thereafter apprehended." *Id.* (quoting Transcript of Oral Argument at 44:24–45:2, *Biden v. Texas*, 597 U.S. 785 (2022) (No.

21-954)); *see also Benitez v. Francis*, No. 25-cv-5937, 2025 WL 2371588 at *8 (S.D.N.Y. Aug. 13, 2025) (observing that DHS's "novel position would expand § 1225(b) far beyond how it has been enforced historically").

66. DHS's historic practice reinforces § 1226(a)'s application to noncitizens in the Petitioners' position who are arrested well after arriving to this country.

Asylum and Refugee Law

67. The Refugee Act of 1980, the cornerstone of the U.S. asylum system, provides a right to apply for asylum to individuals seeking safe haven in the United States. The purpose of the Refugee Act is to enforce the "historic policy of the United States to respond to the urgent needs of persons subject to persecution in their homelands." Refugee Act of 1980, § 101(a), Pub. L. No. 96-212, 94 Stat. 102 (1980).

68. The "motivation for the enactment of the Refugee Act" was the United Nations Protocol Relating to the Status of Refugees, "to which the United States had been bound since 1968." *INS v. Cardoza-Fonseca*, 480 U.S. 421, 424, 432-33 (1987). The Refugee Act reflects a legislative purpose "to give 'statutory meaning to our national commitment to human rights and humanitarian concerns.'" *Duran v. INS*, 756 F.2d 1338, 1340 n.2 (9th Cir. 1985).

69. The Refugee Act established the right to apply for asylum in the United States and defines the standards for granting asylum. It is codified in various sections of the INA.

70. The INA gives the Attorney General or the Secretary of Homeland Security discretion to grant asylum to noncitizens who satisfy the definition of "refugee." Under that definition, individuals generally are eligible for asylum if they have experienced past persecution or have a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion and if they are unable or unwilling to

return to and avail themselves of the protection of their homeland because of that persecution of fear. 8 U.S.C. § 1101(a)(42)(A).

71. Although a grant of asylum may be discretionary, the right to apply for asylum is not. The Refugee Act broadly affords a right to apply for asylum to any noncitizen "who is physically present in the United States or who arrives in the United States[.]" 8 U.S.C. § 1158(a)(1).

72. Because of the life-or-death stakes, the statutory right to apply for asylum is robust. The right necessarily includes the right to counsel, at no expense to the government, *see* 8 U.S.C. § 1229a(b)(4)(A), § 1362, the right to notice of the right to counsel, *see* 8 U.S.C. § 1158(d)(4), and the right to access information in support of an application, *see* § 1158(b)(1)(B) (placing the burden on the applicant to present evidence to establish eligibility.).

73. Noncitizens seeking asylum are guaranteed Due Process under the Fifth Amendment to the U.S. Constitution. *Reno v. Flores*, 507 U.S. 292, 306 (1993).

74. Noncitizens who are applicants for asylum are entitled to a full hearing in immigration court before they can be removed from the United States. 8 U.S.C. § 1229a. Consistent with due process, noncitizens may seek administrative appellate review before the Board of Immigration Appeals of removal orders entered against them and judicial review in federal court upon a petition for review. 8 U.S.C. § 1252(a) *et seq*.

Right to a Neutral Arbiter in Immigration Court

75. As relevant here, due process requires that immigration detention "'bear[] a reasonable relation to the purpose for which the individual was committed.'" *Demore v. Kim*, 538 U.S. 510, 527 (2003) (quoting *Zadvydas,* 533 U.S. at 690).

76. Federal regulations provide that the relevant factors for consideration for bond in immigration court are that "release would not pose a danger to other persons or to property" and that the detainee would be "likely to appear for any scheduled proceeding or interview." 8 C.F.R. § 1003.19(h)(3).

77. Thus, immigration detention must be reasonably related to the government's goals of preventing flight and protecting the community from harm and be accompanied by adequate procedural protections to ensure that those goals are being served. *See Zadvydas*, 533 U.S. at 690-91.

78. Chief among these procedural protections is "the guarantee of an impartial and disinterested tribunal," which the Due Process Clause requires "in both civil and criminal cases." *Marshall v. Jerrico*, Inc., 446 U.S. 238, 242 (1980).

79. Further, pursuant to 8 C.F.R. § 1003.10(b), "In all cases, immigration judges shall seek to resolve the questions before them in a timely and impartial manner consistent with the Act and regulations."

80. An IJ is "an attorney whom the Attorney General appoints as an administrative judge within the Executive Office for Immigration Review." 8 U.S.C. § 1101(b)(4).

81. The Office of Personnel Management has categorized career attorney positions as Schedule A. 5 C.F.R. § 213.3102. All IJs are career Schedule A appointees. Consequently, the Civil Service Reform Act of 1978 ("CRSA") set forth at 5 U.S.C. §§ 2301 and 2302 outlined below apply to the appointment of IJs.

82. As outlined above, IJs are required to exercise independent judgment, and to serve as impartial arbiters, following the statute and regulations. IJ's decisions are final unless they are formally appealed to the BIA.

83. Similarly, the BIA is composed of fifteen (15) Board Members, including the Chairman and Vice Chairman. Board Members are "attorneys appointed by the Attorney General." 8 C.F.R. § 1003.1(a)(2).

84. The BIA Chair is a career Senior Executive Service ("SES") position. Under the regulations, the Attorney General "may designate one or two Vice Chairmen to assist the Chairman."

85. Both Vice Chair positions are career positions, not political appointments. The remainder of the BIA member positions are also career Schedule A positions.

86. Thus, the civil service laws set forth at 5 U.S.C. §§ 2301 and 2302 apply to all IJs and BIA Board Members, including the Chair and Vice Chair(s).

87. CRSA Section 2302 sets forth a list of "prohibited personnel practices" and states that "[a]ny employee who has authority to take, direct others to take, recommend, or approve any personnel action shall not, with respect to such authority…take or fail to take, or threaten to take or fail to take, any personnel action against any employee or applicant for employment because of—…refusing to obey an order that would require the individual to violate a law, a rule or regulation." 5 U.S.C. § 2302(b)(9)(D).

FACTUAL BACKGROUND

88. Petitioners entered the United States via an appointment made with the CBP One mobile application on October 8, 2023. They resided in the United State haves ever since, and have a pending application for asylum, withholding of removal, and relief under the Convention Against Torture with Mr. Medina Martinez as the principal applicant and Mr. Perez Fuentes as the derivative spouse.

89. Petitioners are clearly neither a flight risk nor a danger to the community. He has been regularly employed, and he has participated fully and actively in pursing relief under the laws of this country.

90. As a result, Petitioners remain in detention and without relief from this court, face the prospect of months, or even years, in immigration custody, separated from their family and community.

91. At the same time, Respondents, in conjunction with the Attorney General of the United States, have taken steps to deprive the Petitioners of a neutral arbiter in immigration court.

92. As former New York IJ George Pappas has stated publicly, "*I can tell you that today, the immigration courts are substantively dead. They are completely absent of due process. Of fair hearings. They exist only for show, and in name only. Period. The courts are dead. If you're concerned about doing due process of fair hearings, they're gone. So we can start from that position.*"[3]

93. The immigration court system is not an independent adjudicative body. It operates under the DOJ. In the last year the DOJ and its sub-agencies, the EOIR and the BIA, in apparent

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[3] Radley Balko, *"The courts are dead." An interview with a fired immigration judge*, The Watch (Jan. 8, 2026), https://radleybalko.substack.com/p/the-courts-are-dead-an-interview (Last visited Feb. 4, 2026).

coordination with the Respondents, have systematically dismantled the integrity of the immigration court system to turn it into an extension of DHS' deportation and detention operations.

94. The evidence of EOIR's institutional capture falls into seven categories, each independently sufficient to establish bias, but together demonstrating systematic destruction of judicial independence: (a) the ongoing mass-scale purge of IJs perceived as obstacles to DHS' enforcement agenda; (b) the parallel purge and reconstitution of the BIA, resulting in a 97% pro-government decision rate; (c) the recruitment and installation of explicitly enforcement-aligned "deportation judges" with dramatically reduced qualifications; (d) EOIR policy directives establishing expectations that adjudications favor the government over noncitizens; (e) explicit instructions to defy district court rulings that impede DHS's enforcement goals; (f) new instructions to EOIR judges to find a reason to deny bond after a federal court has issued a writ of habeas corpus; and (g) the destruction of the right to appeal to the Board of Immigration Appeals.

Ongoing, Mass-Scale Purge of IJs
Perceived as Obstacles to the Government's Enforcement Agenda.

95. As of September 26, 2025, the administration has terminated 128 immigration judges ("IJs"), which constituted more than one seventh of the immigration bench.[4]

96. Former New York IJ David K.S. Kim has explained the targeting criteria publicly, stating, "I do not know the exact reason for my termination, but most of those dismissed, including myself, were judges with high asylum approval rates."[5]

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[4] *Trump Administration Continues Firing Immigration Judges -- IFPTE responds*, IFPTE (Sept. 26, 2025), https://www.ifpte.org/news/trump-administration-continues-firing-immigration-judges-ifpte-respondsnbsp (Last visited Feb. 4, 2026).

[5] Woo-Sun Lim, *Former judge highlights legal failures in U.S. worker detentions*, The Dong-A Ilbo (Sept. 20, 2025), https://www.donga.com/en/article/all/20250920/5859412/1 (Last visited Feb. 4, 2026).

97. Former Baltimore IJ Emmett Soper has stated publicly, "I think the current administration of the immigration courts does not fundamentally see the immigration courts as neutral decision-makers. I think that they see the immigration courts as a tool for this administration to advance its policy objectives."[6]

98. Former San Francisco IJ Jeremiah Johnson has stated publicly that he got "the hint that they should be hearing cases a certain way, deciding cases a certain way. Move faster. Less due process, essentially."[7]

99. San Francisco IJ George Pappas was even more direct in their public assessment, stating, "We were told to facilitate deportation… Due process is dead in immigration courts."[8]

100. In support of the lack of due process available to the Petitioners in immigration court, in addition to all the publicly available materials, the Petitioners attaches the declaration of a former immigration judge (retired), Lawrence O. Burman, submitted under penalty of perjury.

[Exhibit 4 – Declaration of Retired IJ Lawrence O. Burman]

The Government has imposed a pervasive climate of fear designed to ensure compliance with its deportation agenda by IJs.

101. Former Baltimore IJ David C. Koelsch describes the current environment as "an atmosphere of paranoia and fear, which is exactly what they want."[9]

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[6] Geoff Bennett & Ali Schmitz, *Ousted Immigration Judge Describes Deepening Court Backlog*, PBS NewsHour (Nov. 12, 2025), https://www.pbs.org/newshour/show/ousted-immigration-judge-describes-deepening-court-backlog (Last visited Feb. 4, 2026).

[7] Hilda Gutierrez, Michael Bott & Son Vo, *'An all-out attack on immigration court:' SF immigration judges speak out after firings*, NBC Bay Area (Nov. 25, 2025), https://www.nbcbayarea.com/investigations/san-francisco-immigration-judges-speak-out-firings/3986850/ (Last visited Feb. 4, 2026).

[8] Marco Poggio, *Judges See an Immigration Court Gutted from Inside*, Law360 (Oct. 31, 2025), https://www.law360.com/articles/2381003/judges-see-an-immigration-court-gutted-from-inside (Last visited Feb. 4, 2026).

[9] Poggio, *supra* note 8.

102. Former Annandale IJ Anam Petit observed: "There's a climate of fear…Judges feel like, if they step a toe out of line right now…or they're one [asylum] grant away from being fired because of the arbitrary nature of the firings."[10]

103. Former New York IJ Carmen Maria Rey Caldas similarly described judges working "under 'constant threat' of getting fired if they don't follow certain rules from leadership."[11]

Judicial independence is compromised when the self-interest of IJs requires favoring the government.

104. As former San Francisco IJ Elizabeth Young has stated publicly, "I've talked to many of [the judges still serving], and they're like, 'When I go into court, I am concerned about applying the law, but I'm also concerned that I should deny more, because if I don't, then I'll get fired.'"[12]

105. Former Boston IJ Sarah Cade has stated publicly, "I felt I might have to compromise my ethics and might be put in a place where I felt like I was going to be asked to violate due process. So I left and I went to private practice."[13]

106. It is wholly illegal for the Government to terminate IJs who are granting relief by impartially applying the law to the facts to the best of their ability; however, that is exactly what is happening.

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[10] Eric Katz, *'Climate of Fear': Immigration Judges Say Functioning of Their Court System Is in Jeopardy Due to Trump's Firings*, Gov't Executive (Nov. 14, 2025), https://www.govexec.com/management/2025/11/climate-fear-immigration-judges-say-functioning-their-court-syste m-jeopardy-due-trumps-firings/409544/ (Last visited Feb. 4, 2026).

[11] Isabela Dias, *"Fired for No Reason": Former Immigration Judges Speak Out Against Trump's Assault on the Courts*, Mother Jones (Oct. 9, 2025), https://www.motherjones.com/politics/2025/10/immigration-court-judge-trump-assault-purge-dhs-ice/ (Last visited Feb. 4, 2026).

[12] Poggio, *supra* note 8.

[13] Poggio, *supra* note 8.

107. IJs have essentially been unlawfully forbidden from following the statute and regulation where in conflict with the Government's mass deportation agenda. No adjudicator can remain impartial when faced with the choice between upholding due process and keeping their position. Any immigration judge assigned to Petitioners' bond hearing now operates under the understanding that granting bond may cost them their livelihood.

The BIA Purge and Resulting Statistical Evidence of Bias.

108. A parallel purge occurred at the BIA which was reduced from 28 members to 15 members. All Biden appointees on the BIA were fired.[14]

109. The statistical impact of this purge is stark. As of February 4, 2026, the reconstituted BIA has issued 73 published decisions.[15] Of those, 71 decisions (97%) favored the administration.[16]

110. By contrast, during the entire four-year span of the prior administration, the BIA issued 76 published decisions.[17] Of those, 46 decisions (60%) favored the administration. The transformation from 60% to 97% pro-government outcomes—achieved through wholesale termination of one administration's appointees —speaks for itself.

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[14] Am. Imm. Council, *BIA Decision Strips Immigration Judges of Bond Authority, All but Guaranteeing Mandatory Detention for Undocumented Immigrants* (Sept. 12, 2025), https://www.americanimmigrationcouncil.org/blog/bia-ruling-immigration-judges-bond-mandatory-detention-undocumented-immigrants/ (Last visited on Feb. 4, 2026).

[15] Exec. Off. for Immigr. Rev., *Volume 29*, U.S. Dep't of Just. (Jan. 21, 2025), https://www.justice.gov/eoir/volume-29 (Last visited on Feb. 4, 2026).

[16] *Id.* Of the remaining two decisions: one decision was neutral (involving attorney sanctions) and one decision disfavored the administration.

[17] Exec. Off. for Immigr. Rev., *Volume 28*, U.S. Dep't of Just. (June 13, 2025), https://www.justice.gov/eoir/volume-28 (First decision, *Matter of DIKHTYAR*, 28 I&N Dec. 214 (BIA 2021), issued 01/22/2021) (Last visited on Feb. 4, 2026).

The Installation and Recruitment of Judges Aligned with Enforcement Agenda.

111. To replace purged judges, the DOJ launched recruitment for what it explicitly marketed as "deportation judges."[18] Respondent Noem/DHS–a party in immigration proceedings before EOIR via its subagency Respondent Lyons/ICE– promoted these openings on social media (Instagram and X) with enforcement-focused language, stating "Bring the hammer down on criminal illegal aliens" and "Defend your communities, your culture, your very way of life."[19]

112. In addition, the DOJ in conjunction with the Department of Defense has authorized up to 600 military lawyers to serve as temporary IJs for a renewable term not to exceed six months, while simultaneously eliminating requirements to serve as temporary IJs.[20]

113. Previously, temporary judge candidates were required to have served as a former immigration judge, appellate immigration judge, or administrative judge within another agency, or to have at least 10 years of immigration law experience.

114. The Government removed those requirements entirely, allowing "any attorney" to be selected as a temporary immigration judge and reduced training to approximately two weeks—far less than the standard training for permanent IJs, which includes six weeks of initial training, one year of mentorship by an experienced judge, and two years of quarterly reviews.[21]

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[18] Coral Murphy Marcos, "U.S. justice department recruiting legal experts to serve as 'deportation' judges," The Guardian (Nov. 21, 2025) , https://www.theguardian.com/us-news/2025/nov/21/us-justice-department-ad-deportation-judges (Last visited on Feb. 4, 2026).

[19] *See* https://x.com/DHSgov/status/1991887545236701694; *see also* https://www.instagram.com/p/DRVT8DmCQKD/?hl=en (Nov. 21, 2025) (Last visited on Feb. 4, 2026).

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

[21] Margy O'Herron, *Using Military Lawyers as Immigration Judges is Ill-Advised and Potentially Illegal*, Brennan Ctr. for Just. (Sept. 29, 2025), https://www.brennancenter.org/our-work/analysis-opinion/using-military-lawyers-immigration-judges-ill-advised-an d-potentially (Last visited on Feb. 4, 2026).

115. Corey Lewandowski, an adviser to Respondent DHS Secretary Noem, responded to the announcement by posting on social media, stating, "I see more deportations of illegal immigrants in the near future"[22]—an explicit acknowledgment of the mass deportation policy objective underlying these appointments and the erosion of institutional boundaries between DOJ and DHS.

116. In December 2025, one of the appointed temporary judges was fired just a month into their six-month term. "That judge, Christopher Day, had granted asylum claims in just over half the cases he heard."[23]

EOIR Policy Memoranda Establishing Expectations that Adjudications Favor the Government over Noncitizens.

117. In addition to unfounded personnel changes, EOIR's initial acting director Sirce E. Owen (replaced by Director Daren K. Margolin in October 2025) quickly issued "a string of sharply worded policy memos" that immediately "[set] the tone for her leadership."[24]

118. "Sources familiar with Owen described her as a "restrictionist loyalist" with a reputation for denying cases."[25]

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[22] Corey R. Lewandowski (@CLewandowski), X (Sept. 2, 2025, 1:47 PM), https://x.com/clewandowski/status/1962950546652070269 ((Last visited on Feb. 4, 2026).

[23] *US army lawyer fired as immigration judge after defying Trump deportation agenda*, The Guardian (Feb. 10, 2025), https://www.theguardian.com/us-news/2025/dec/19/army-lawyer-fired-immigration-trump-deportation (Last visited on Feb. 4, 2026).

[24] E. Tammy Kim, *Inside Donal Trump's Attack on Immigration Courts*, The New Yorker (Oct. 23, 2025) https://www.newyorker.com/inside-donald-trumps-attack-on-immigration-court (Last visited on Feb. 4, 2026).

[25] Dias, *supra* note 11.

119. The Catholic Legal Immigration Network (CLINIC) observed that "these memos also seem intended to reshape EOIR, which is meant to be a neutral arbiter, into a politically driven tool advancing the Trump administration's clearly anti-immigrant views."[26]

120. The policy directives include: a memorandum dated June 27, 2025 warning judges not to demonstrate "bias directed against DHS" or to be "adjudicatory outliers," at risk of "close examination and potential action";[27] a memorandum encouraging judges to deny asylum applications without full evidentiary hearings, styled as efficiency guidance but functioning as a directive to reduce due process protections;[28] and memoranda restricting IJs' ability to grant continuances[29] and administrative closure.[30]

EOIR Issuance of Explicit Directives to Ignore Federal District Court Rulings that Impede DHS's Policy Objectives.

121. The clearest evidence that EOIR has abandoned its role as a neutral tribunal comes from its responses to federal court orders protecting the right to a bond hearing in habeas.

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[26] Cath. Legal Immigr. Network, Inc., *Navigating EOIR Directives Under Trump 2.0: Practical Guidance for Advocates and Programs* (Apr. 22, 2025), https://www.cliniclegal.org/file-download/download/public/77642 (Last downloaded on Feb. 4, 2026).

[27] Exec. Off. for Immigr. Rev., Policy Memorandum 25-33, Neutrality and Impartiality in Immigration Court Proceedings (June 27, 2025), https://iptp-production.s3.amazonaws.com/media/documents/2025.06.27EOIR-PM25-33.pdf (Last visited on Feb. 4, 2026).

[28] Exec. Off. for Immigr. Rev., Policy Memorandum 25-28, Pretermission of Legally Insufficient Application for Asylum (Apr. 11, 2025), https://www.justice.gov/eoir/media/1396411/dl?inline (Last visited on Feb. 4, 2026).

[29] Exec. Off. for Immigr. Rev., Policy Memorandum 25-27, Cancellation of Director's Memorandum 23-01 and Reinstatement of Policy Memorandum 19-13 (Mar. 21, 2025), https://www.justice.gov/eoir/media/1394086/dl (Last visited on Feb. 4, 2026).

[30] Exec. Off. for Immigr. Rev., Policy Memorandum 25-29, Cancellation of Director's Memorandum 22-03 (Apr. 18, 2025), https://www.justice.gov/eoir/media/1397161/dl (Last visited on Feb. 16, 2026). https://www.justice.gov/eoir/media/1397161/dl?inline (Last visited on Feb. 4, 2026).

122. In 2025 the Administration radically reinterpreted existing law in order to find all noncitizens who ever entered the United States without inspection subject to indefinite, mandatory detention in a July 8, 2025 ICE Policy Memorandum.[31]

123. In response, on July 28, 2025, the American Civil Liberties Union ("ACLU") and the Northwest Immigration Rights Project ("NWIRP") filed *Maldonado Bautista v. Santacruz* in the Central District of California.

124. *Maldonado Bautista v. Santacruz* is a nationwide class action on behalf of noncitizens who entered the United States without inspection but who were not apprehended at the border seeking declaratory and injunctive relief that the class is eligible for bond hearings pursuant to 8 U.S.C. § 1226(a), and not subject to indefinite, mandatory detention pursuant to 8 U.S.C. § 1225(b)(2).

125. On September 5, 2025, the BIA issued a decision in *Matter of Yajure-Hurtado*, 29 I.&N. Dec. 216 (BIA 2025) (holding that under the plain language of section 235(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1225(b)(2)(A) (2018), IJs lack jurisdiction to hear bond requests or to grant bond to noncitizens who are present in the United States without admission).

126. In November 2025, United States District Judge Sunshine Sykes issued both declaratory and injunctive relief in *Maldonado-Bautista v. Santacruz*, holding that noncitizens who entered without inspection but were not apprehended at the border are detained under § 1226(a), not § 1225(b)(2), and are therefore entitled to bond hearings. *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3289861 (C.D. Cal. Nov. 20, 2025); *Maldonado*

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[31] Maria Sacchetti and Carole D. Leonnig, " *ICE declares millions of undocumented immigrants ineligible for bond hearings*," The Washington Post (July 15, 2025), https://www.washingtonpost.com/immigration/2025/07/14/ice-trump-undocumented-immigrants-bond-hearings/ (Last visited on Feb. 4, 2026).

Bautista v. Santacruz, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025).

127. Judge Sykes certified a nationwide class and entered final judgment. *Id.*

128. Rather than comply with the order, EOIR leadership directed all IJs to ignore the order. On January 13, 2026, Chief Immigration Judge Teresa L. Riley sent an email to all IJs instructing:

> "Please provide the following guidance to all immigration judges forthwith: *Maldonado Bautista* is not a nationwide injunction and does not purport to vacate, stay, or enjoin *Yajure Hurtado*. Therefore *Yajure Hurtado* remains binding precedent on agency adjudications. For clarification, declaratory judgments differ from injunctions in that the former clarifies parties' legal rights and relationships without ordering specific action, while the latter is a court order compelling a party to do or stop doing a specific act. A declaratory judgment is not an equitable remedy and does not, by itself, have the effect of compelling specific action by a party. Thank you for your attention to this matter."

[Exhibit 5 - Am. Immigr. Laws. Ass'n, Practice Alert: EOIR Issues Nationwide Guidance on *Maldonado Bautista*][32]

129. The effect was immediate: ACLU lawyers reported that IJs who had begun granting bond hearings in compliance with Judge Sykes' ruling reversed course after receiving Chief Judge Riley's directive.[33]

130. IJs were placed in an impossible position—comply with a federal district court order and risk termination or defy the federal court and retain their positions.

131. On January 16, 2026, Judge Sykes issued a scathing order directly addressing the government's systematic defiance of her orders:

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[32] *See* AILA Doc. No. 26011404 (Jan. 16, 2026), https://www.aila.org/library/practice-alert-eoir-issues-nationwide-guidance-on-maldonado-bautista (Last visited on Feb. 4, 2026).

[33] *Immigration judges told to ignore rulings on bond hearings, documents show,* Massachusetts Lawyer Weekly (Jan. 20, 2026), https://masslawyersweekly.com/2026/01/20/immigration-judges-ignore-bond-hearing-rulings/ (Last visited on Feb. 4, 2026).

> "This matter is yet another in a slew of habeas petitions following the Court's ruling in *Bautista v. Santacruz* that has unfortunately become routine in this Court. ... But individuals filing these habeas petitions are not to blame; rather, the current volume of habeas petitions and temporary restraining orders being filed can be attributed to ***Respondents' deliberate choice to continue defying the final judgment entered in Bautista***. ...
>
> Despite the clarity of the Court's previous orders and legal doctrines that preclude Respondents from relitigating issues at the heart of these requests, Respondents continue to manufacture arguments for sake of opposition. At this point in time, ***the Court can no longer confer Respondents with the benefit of the doubt as to the intent of their filings.***"

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

132. Judge Sykes' found that the government is not merely disagreeing with her legal conclusions—it is engaged in "deliberate" defiance, "manufacturing arguments," and instructing IJs to rely on "interpretations that were expressly found unlawful."

133. In other words, when presented with a federal court order protecting noncitizens' rights, EOIR's response was to order judges to violate it.

134. In addition, this Administration has, over the course of the past year, established a pattern and practice of defying federal court orders on the flimsiest of pretexts (or with no excuse whatsoever) when those orders did not further its immigration enforcement goals. In recent weeks, federal judges throughout the United States have criticized the systematic legal and constitutional abuses by the Administration.[34]

135. Below are just a few examples of rulings by federal district judges that address these issues.

- In addition to Judge Sykes' January 16, 2026 ruling in *Maldonado Bautista v. Santacruz*, in *Singh v. Bowen*, Case No. 5:26-cv-00016-SSS-BFM, 2026 WL

[34] Kyle Cheney, "*Judges across the country rebuke ICE for defying court orders*," Politico.com (Jan. 30, 2026) https://www.politico.com/news/2026/01/30/ice-immigration-court-orders-00757894 (Last visited on Feb. 4, 2026).

130587, at *3 (C.D. Cal. Jan. 15, 2026), she threatened to hold administration officials in contempt for what she labeled its "continued defiance" of valid court orders requiring bond hearings for detained immigrants.

- United States Chief Judge for the District of Minnesota Patrick Schiltz issued a ruling on January 28, 2026, stating that "ICE has likely violated more court orders in January 2026 than some federal agencies have violated in their entire existence." He estimated, conservatively, that the agency had violated court orders by federal district judges in Minnesota at least 96 times in the month of January 2026 alone. In their ruling, he further stated, "ICE is not a law unto itself." *Juan T.R. v. Noem*, Case No. 26-CV-0107-PJS-DLM, 2026 WL 232015, at *1 (D.Minn. Jan. 28, 2026).
- United States District Judge Christine O'Hearn chastised the Administration's defiance of her order to release a noncitizen detainee from ICE custody without any conditions, noting that they instead required him to submit to electronic monitoring. "Respondents blatantly disregarded this Court's Order…This was not a misunderstanding or lack of clarity; it was knowing and purposeful." *Cruz Santos v. Baker*, Case No. 1:25-cv-18959-CPO, (D.N.J. Jan. 27, 2026).
- United States District Judge Roy Dalton found that the U.S. Attorney and Assistant U.S. Attorney violated their duty of candor to the Court in their filings opposing a bond hearing for the habeas Petitioners and ordered them to show cause why they should not be sanctioned. *Gimenez Rivero v. Mina*, Case No. 6:26-cv-66-RBD-NWH, 2026 WL 199319, at *4-5 (M.D. Fla. Jan. 26, 2026).
- United States District Judge Mary McElroy held that the administration defied her orders regarding the location of an ICE detainee, who was moved to a facility in Massachusetts that she had previously deemed "wholly unsuitable." *Neto v. Hyde*, Case No. 25-00425-MSM-AEM, 2026 WL 205533, at *2 (D.R.I. Jan. 27, 2026). Judge McElroy further stated, "[i]t seems clear that the Court can conclude that the [administration] willfully violated two of this Court's orders and willfully misrepresented facts to the Court on January 23, 2026" and issued an Order to Show Cause. *Id.* at *3.
- United States District Judge Angel Kelley held that ICE moved a detained immigrant out of Maine without warning and in violation of an order to keep her in place which caused to miss her hearing for relief. Judge Kelley stated, "[t]he Court notes that ICE signing its own permission slip, citing its own operational needs as reason for the transfer, offers little comfort or justification for ignoring a Federal Court Order," *de Rodriquez v. Hyde*, Case No. 25-CV-13210-AK, 2026 WL 220416, at fn. 1 (D.Mass. Jan.28, 2026).
- United States District Judge Donovan Frank stated in a footnote that it is "deeply concerning" that ICE appears to be "attempting to hide the location of detainees, and thus, make habeas proceedings more difficult for a Petitioners and their counsel." *X.D.B. v. Noem*, Case No. 0: 26-cv-00588-DWF-DJF (D.Minn. Jan. 28, 2026).
- United States District Judge Michael J. Davis recently observed that "[t]here has been an undeniable move by the Government in the past month to defy court orders or at least to stretch the legal process to the breaking point in an attempt to deny noncitizens their due process rights… With the evidence currently before the Court,

> it can only conclude that Respondents are attempting to 'undermin[e] the regulatory and statutory authority of the immigration courts to coerce perpetual, infinite detention.'" *Marco M. v. Bondi*, Case No. 25-cv-4816-MJD-JFD, 2026 WL 194406, at *1 (D.Minn. Jan. 25, 2026).

136. There are many other examples of the Respondents failing to comply with federal court orders related to the Administration's immigration agenda, particularly with regard to habeas petitions for detained immigrants. However, other notable examples of the Administration's defiance of federal court orders requiring it to comply with the law and the Constitution include the case of Kilmar Abrego Garcia, in which the Administration defied orders from multiple federal district court judges, including United States District Judge James Boasberg and United States District Judge Paula Xinis.[35]

137. Moreover, the Abrego Garcia case resulted in former Acting Deputy Director for the DOJ's Office of Immigration Litigation coming forward as a whistleblower regarding the Administration's intentional defiance of the federal courts.[36]

138. Importantly, Mr. Reuveni's testimony establishes that he was instructed by Drew Ensign to not to communicate via e-mail (presumably to avoid a paper trail).[37] This is important, because it establishes a pattern when viewed in conjunction with the Respondents' attempts to evade the requirement that they provide noncitizens in immigration detention with a bond hearing

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[35] Erica Orden, "*Conservative Judge blasts Trump administration's 'shocking conduct' in Abrego Garcia case*," Politico.com (April 17, 2025), https://www.politico.com/news/2025/04/17/abrego-garcia-appeal-wilkinson-00298063 (Last visited on Feb. 4, 2026).

[36] Erez Reuveni, "*Protected Whistleblower Disclosure of Erez Reuveni Regarding Violation of Laws, Rules & Regulations, Abuse of Authority, and Substantial and Specific Danger to Health and Safety at the Department of Justice*," (June 24, 2025), https://www.judiciary.senate.gov/imo/media/doc/06-24-2025_-_Protected_Whistleblower_Disclosure_of_Erez_Reuveni_Redacted.pdf (Last visited on February 4, 2026).

[37] *Id.* at p. 19 (fn. 41 indicates that DOJ's implementation of restrictions on communications may be in violation of 5 U.S.C. § 2302(b)(13).

when required to do so by law, in that there have been alleged verbal instructions to IJs that they find grounds to deny bond after the issuance of a writ of habeas corpus.

EOIR Has Now Instructed IJs to Deny Bond After a Petition for a Writ of Habeas Corpus is Granted.

139. Since Respondents implemented their new detention policy guidance on July 8, 2025, there have been thousands of petitions for writ of habeas corpus filed throughout the United States. The overwhelming consensus of federal district judges is that the July 8, 2025 policy does not comport with the law. As a result, Respondents are regularly losing that argument in federal courts and have pivoted to a new strategy.

140. In early January 2026, two IJ assigned to the Annandale detained docket—Judges Raphael Choi and Karen Donoso-Stevens—were abruptly removed in the middle of a bond hearing after they had been granting bond and had begun on the record to question the government's blanket detention position. They were replaced by judges who have denied bond to noncitizens. **[Exhibit 4]**

141. The timing, consistency, and outcome of these assignments demonstrate institutional control over results. Judges who provide meaningful review are removed. Judges who deny bond remain. This is not independent adjudication. It is a system designed to nullify federal habeas relief.

142. On information and belief, in January 2026, IJs have received verbal guidance with regard to how they should handle a bond hearing after a writ of habeas corpus has been issued.

143. Even if the Respondents were to schedule a bond hearing for the Petitioners in this case, that remedy has now been rendered illusory. In post-habeas cases across this district, IJs are now systematically denying bond on pretextual grounds that bear no relationship to individualized risk assessments.

144. Since the week of January 5, 2026, when the two IJs handling detained cases were demoted, the IJs that replaced them have been relying on the same narrow set of justifications, repeated across cases:

- Minor or non-existent criminal history is treated as proof of danger.
- The mere fact of removal proceedings is cited as flight risk.
- Boilerplate language about "incentive to flee" replaces individualized analysis.
- Speculation about future conduct substitutes for evidence.
- Before January 5, 2026, bonds were set at high amount, but were set nonetheless. Now, that is a rare occurrence.

These rationales ensure detention regardless of the individual's actual circumstances.

145. The bond outcomes from the last few weeks have shifted dramatically. Many detainees who asked for bond had no criminal history, long residence in the United States, strong family ties, and viable claims for relief were given bond so they could go out and support their loved ones.

146. Before this wave of habeas litigation, similarly situated individuals routinely received bond. Suddenly, bond hearings began resulting in denials or very high bonds in much larger numbers. The sudden and uniform shift cannot be explained by coincidence. The pattern is consistent and predictable: habeas granted, bond hearing ordered, bond denied, detention continues.

147. On information and belief, nationally renowned immigration attorney and litigator Charles Kuck has submitted a Freedom of Information Act ("FOIA") request seeking from EOIR, "Copies of all correspondence, emails, phone records, hand written notes, or any other form of communication or notetaking related to communications from the Head EOIR office or field offices, officials or judges by any leadership staff related to instructions to IJs on bond hearings related to habeas corpus related cases, the Maldonado Injunction or any other type of bond hearing, suggesting, instructing, ordering or otherwise discussing bond cases, or the need to make bond

harder to obtain or denying bond any ground, including but not limited to speculative relief, sponsor support, length of time in the United States, prior arrests without disqualifying convictions, or for any other reason." That request is currently pending.

148. The bond hearings being provided in immigration court are now *pro forma* proceedings with predetermined outcomes to give the appearance of due process while denying its substance.

149. Ordering a bond hearing in this matter will not vindicate Petitioners' rights. It will only delay relief and allow the government to claim technical compliance while continuing unlawful detention.

150. When the government fails to provide a required bond hearing, or when that hearing is rendered a *pro forma* exercise, immediate release is the only adequate remedy.

151. As the Supreme Court held in *Zadvydas v. Davis*, 533 U.S. 678 (2001), when detention loses its relationship to its underlying purpose—such as when there is no significant likelihood of a lawful hearing or removal in the reasonably foreseeable future—it loses its legal justification.

152. Due to the Government's own actions, immediate release under an Order of Supervision is now the only outcome that satisfies the requirements of due process because the bond hearing remedy has been rendered meaningless through institutional manipulation.

The Destruction of the Right to Appeal to the Board of Immigration Appeals.

153. On February 6, 2026, DOJ published an "Interim, Final Rule" in the Federal Register to take effect on March 9, 2026 (unsurprisingly, in violation of the Administrative Procedure Act) which fully strips due process from the BIA appellate process. 91 Fed. Reg 5267 (Feb. 6, 2026) to be codified at 8 C.F.R. §§ 1003, 1208, and 1240.

154. Under the new rule, summary dismissal becomes the default: for most future appeals, the BIA will automatically dismiss unless a majority of permanent Board members vote within 10 days to accept the case *en banc*. If no vote occurs, the appeal is dismissed within 15 days, and the IJ's decision is adopted as the final agency decision for judicial review. *Id.*

155. Other major changes include: the reduction of the deadline to file an appeal from 30 days to 10 days, with, with limited asylum-related exceptions; briefing is compressed into a single 20-day simultaneous briefing period for the rare, accepted cases, with no reply briefs and extensions only for exceptional circumstances; IJ transcript review for error is eliminated. *Id.*

156. This represents a major and unprecedented shift in the immigration appellate system and is likely to face significant legal challenges.

157. Just as the Respondents' radical reinterpretation of the law 1225(b) and 1226(a) have flooded federal district courts nationwide with habeas petitions with no end in sight,[38] this new, dramatic change is expected to inundate the federal circuit courts with appeals, as automatic summary dismissals and compressed procedures push more cases into petitions for review.

158. The conversion of the immigration court system by Respondents into an enforcement arm of the Administration, in collusion with DOJ, and the consistent and intentional recalcitrance of the Respondents to comply with valid federal court orders when it conflicts with the Respondents' immigration enforcement goals, requires a more robust remedy than merely ordering a bond hearing in immigration court and trusting the Respondents to act in good faith. Simply put, Respondents have lost the benefit of the doubt.

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[38] Nate Raymond, Kristina Cooke, and Brad Heath. "*Courts have ruled 4,400 times that ICE jailed people illegally. It hasn't stopped*," Reuters (Feb. 14, 2026) https://www.reuters.com/legal/government/courts-have-ruled-4400-times-that-ice-jailed-people-illegally-it-hasnt-stopped-2026-02-14/ (Last visited Feb. 16, 2025).

CLAIMS FOR RELIEF

COUNT ONE
Violation of Fifth Amendment Right to Due Process
Procedural Due Process

159. Petitioners restates and realleges all paragraphs as if fully set forth here.

160. The Due Process Clause of the Fifth Amendment to the U.S. Constitution prohibits the federal government from depriving any person of "life, liberty, or property, without due process of law." U.S. Const. Amend. V. Due process protects "all 'persons' within the United States, including [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693.

161. To determine whether a civil detention violates a detainee's Fifth Amendment procedural due process rights, courts apply the balancing test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976). *United States v. Silvestre-Gregorio*, 983 F.3d 848, 852 (6th Cir. 2020) (applying the *Matthews v. Eldridge* test in the context of immigration).

162. *Matthews v. Eldridge* requires a court to consider the following three factors: "(1) the private interest that will be affected by the official action; (2) the risk of erroneous deprivation of that interest; and (3) the government's interest, including the fiscal and administrative burdens that the additional or substitute procedures entail." *See Lopez-Campos v. Raycraft, et al.*, No. 2:25-cv-12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025) at *9 (*citing Mathews*, 424 U.S. at 335).

163. The Petitioners were detained and are being denied a bond hearing based on no individualized circumstances applicable to them. Further, the Petitioners was detained without notice or any opportunity to contest the redetermination of their custody after their initial parole into the United States.

164. All of the foregoing violates their due process rights.

COUNT TWO
Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A), the Immigration and Nationality Act – 8 U.S.C. § 1226, and Federal Regulations
Not in Accordance with Law and in Excess of Statutory Authority
Unlawful Detention

165. Petitioners restate and reallege all paragraphs as if fully set forth here.

166. Under the APA, a court shall "hold unlawful and set aside agency action" that is an abuse of discretion. 5 U.S.C. § 706(2)(A).

167. An action is an abuse of discretion if the agency "entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (*quoting Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

168. To survive an APA challenge, the agency must articulate "a satisfactory explanation" for its action, "including a rational connection between the facts found and the choice made." *Dep't of Com. v. New York*, 139 S. Ct. 2551, 2569 (2019) (citation omitted).

169. On information and belief, Respondents have made no individualized finding that Petitioners are a danger to the community or a flight risk.

170. By categorically detaining the Petitioners and transferring Petitioners away from their homes and jobs without consideration of Petitioners' individualized facts and circumstances, Respondents have violated the INA, implementing regulations, and the APA.

171. By detaining and transferring the Petitioners categorically, Respondents have further abused their discretion.

172. At a minimum, the Petitioners must be provided with a fair bond hearing before a neutral arbiter who shall make an individualized determination as to whether or not the Respondents are a flight risk or danger to the community.

PRAYER FOR RELIEF

On the basis of the foregoing, the Petitioners respectfully request that this Honorable Court issue a Writ of Habeas Corpus:

1. Ordering Respondents to release Petitioners from custody immediately, or, in the alternative, hold its own bond hearing before this Court.

2. In the event that the Court instead orders Respondents to promptly provide the Petitioners with a bond hearing before an immigration judge, the Petitioners respectfully request the following additional safeguards:

    a. That the Respondents shall bear the burden of establishing by clear and convincing evidence that the Petitioners are a danger or flight risk;

    b. That the Government shall not take into account or argue against bond based on any *ultra vires* factors outside the regulations;

    c. That any bond set shall take into account the Petitioners' ability to pay and to the greatest extent possible utilize alternatives to detention;

    d. That any order denying bond based on flight risk or danger shall detail with specificity the evidentiary/factual basis for such finding, and disclose the substance of any communications of any kind (direct or indirect, verbal, written, or in any other form) received by the Immigration Judge issuing the order after December 1, 2025 regarding bond determinations for noncitizens after a writ habeas corpus has been issued;

    e. That the Court shall retain jurisdiction to review the bond decision to ensure compliance with the Court's order and due process; and

    f. That Respondents shall be prohibited from invoking the automatic stay provisions under 8 C.F.R. § 1003.19(i)(2) as that regulation violates the procedural due process rights of noncitizens granted bond.

Dated: February 18, 2026

Respectfully submitted,

s/ Amy Maldonado
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ATTORNEY FOR PETITIONER

VERIFICATION

On this 16th day of February, 2026, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. I make this verification in lieu of and acting on behalf of the Petitioners Marius Rad, because the Petitioners are currently detained and because of the urgent nature of the relief requested. I am authorized to make this verification as a member of the legal team representing the Petitioners Marius Rad.

Dated: 2/18/2026

East Lansing, MI

s/ Amy Maldonado

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