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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

JORGE ANTONIO GUTIERREZ
VALTIERRA,

Petitioner,

v.

CHRISTOPHER LAROSE, Warden at
Otay Mesa Detention Center, KRISTI
NOEM, Secretary of the Department of
Homeland Security, PAMELA JO
BONDI, Attorney General, TODD M.
LYONS, Acting Director, Immigration
and Customs Enforcement, GREGORY J
ARCHAMBEAULT, Field Office
Director, San Diego Field Office, US
ICE, US DHS,

Respondents.

CIVIL CASE NO.: 26-cv-1343-BAS

**Amended¹ Petition
for a
Writ of Habeas Corpus**

¹ Federal Rule of Civil Procedure 15(a)(1)(A) permits a party to “amend its pleading once as a matter of course no later than 21 days after serving it.” Fed. R. Civ. Pro. 15(a)(1)(A) (punctuation altered). It is less than 21 days since service. Mr. Gutierrez-Valtierra therefore files this amended petition as of right.

INTRODUCTION

This petition arises from a sudden change in the way that the Board of Immigration Appeals interprets 8 U.S.C. §§ 1225, 1226. “For decades, and across administrations, DHS has acknowledged that § 1226(a) applies to individuals who entered the United States unlawfully, but who were later apprehended within the borders of the United States long after their entry.” *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1260 (W.D. Wash. 2025) (quoting Petitioner’s brief and noting that Respondents had not contested that claim). But in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), the Board of Immigration Appeals (“BIA”) accepted the government’s new position that inadmissible immigrants are not eligible for bond under § 1226(a), even if they have been living in the United States for years or decades. Instead, the BIA held that all inadmissible immigrants are subject to the mandatory detention provisions in 8 U.S.C. § 1225(b)(2)(A).

Courts do not agree. The government has lost this argument in districts across the United States, *see, e.g., Rodriguez*, 779 F. Supp. 3d at 1260; *Romero v. Hyde*, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Martinez v. Hyde*, 2025 WL 2084238 (D. Mass. July 24, 2025); *Lopez Benitez v. Francis*, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Leal-Hernandez v. Noem*, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Lopez-Campos v. Raycroft*, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Carmona-Lorenzo v. Trump*, No. 4:25CV3172, 2025 WL 2531521, at *5 (D. Neb. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, 2025 WL 2591530, at *7 (C.D. Cal. Sept. 8, 2025); *Hernandez Nieves v. Kaiser*, 2025 WL 2533110 (N.D. Cal. Sept. 3, 2025); *Rosado v. Figueroa*, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), including this one, *see Vasquez Garcia v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025) (Sabraw, J.). This Court should reject that argument, too, and order Petitioner’s immediate release on the bond imposed by the immigration judge (“IJ”)

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STATEMENT OF FACTS

Jorge Antonio Gutierrez-Valtierra was born in Mexico on  Exh. A at ¶ 1. He came to the United States around 2004. *Id.* He has remained here ever since. *Id.* On March 14, 2025, police arrested him after a domestic incident, for which he received 3 months in state custody. *Id.* at ¶ 2. He was then transferred to ICE custody on June 4, 2025. *Id.* Since then, he has never received a bond hearing. *Id.* Mr. Gutierrez-Valtierra was ordered removed on February 5, 2026, at which point he appealed. *Id.* at ¶ 4. His appeal remains pending.

LEGAL BACKGROUND

I. Noncitizens who enter without inspection are entitled to a bond hearing under 8 U.S.C. § 1226(a).

A. In *Yajure Hurtado*, the BIA stripped most noncitizens who enter without inspection of the right to seek bond.

This habeas petition turns on the BIA's recent decision in *Yajure Hurtado*. The issue in *Yajure Hurtado* revolves around two statutes, 8 U.S.C. § 1226(a) and 8 U.S.C. § 1225(b)(2)(A).

"Section 1226(a) provides for the arrest and detention of noncitizens 'pending a decision on whether the alien is to be removed from the United States.'" *Hernandez Nieves*, 2025 WL 2533110, at *3. It instructs that the Attorney General "may continue to detain" arrestees or "may release [them] on bond of at least \$1,500 with security approved by, and containing conditions prescribed by, the Attorney General." 8 U.S.C. § 1226(a) (punctuation altered). "Federal regulations" implementing this statute "provide that aliens detained under § 1226(a) receive bond hearings at the outset of detention." *Jennings v. Rodriguez*, 583 U.S. 281, 306 (2018) (citing 8 C.F.R. § 1236.1(d)(1)).

Section 1225(b)(2)(A) provides that "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for" certain immigration proceedings. 8 U.S.C.

1 § 1225(b)(2)(A). Federal regulations do not prescribe bond hearings for people
2 detained under that section. Instead, “DHS has the sole discretion to temporarily
3 release on parole ‘any alien applying for admission to the United States’ on a ‘case-
4 by-case basis for urgent humanitarian reasons or significant public benefit.’”
5 *Hernandez Nieves*, 2025 WL 2533110, at *3 (quoting 8 U.S.C. § 1182(d)(5)(A)).

6 By their terms, these statutes apply to different groups of immigrants.
7 “Section 1226(a) sets out the default rule,” which governs unless some other, more
8 specific detention provision overrides it. *Rodriguez* 779 F. Supp. 3d at 1246
9 (cleaned up). Section 1225(b)(2)(A) is more specific, but it applies only to an
10 “applicant for admission” who is also an “alien seeking admission.” 8 U.S.C.
11 § 1225(b)(2)(A).

12 *Yajure Hurtado* considered which of these provisions—the default rule in
13 § 1226(a) or the mandatory detention provision in § 1225(b)(2)(A)—applies to
14 immigrants who enter the United States without inspection but live for years in the
15 country’s interior. 29 I.&N. Dec. at 216. The respondent in *Yajure Hurtado* had
16 entered without inspection in November 2022, before obtaining Temporary
17 Protected Status (“TPS”). *Id.* at 216–17. He was arrested after his TPS expired in
18 April 2025. *Id.* An immigration judge (“IJ”) ruled that he was subject to mandatory
19 detention under § 1225(b)(2)(A). *Id.* at 217.

20 On appeal to the BIA, the respondent conceded that he was an “applicant for
21 admission” in the meaning of § 1225(b)(2)(A), *id.* at 221, because he had not been
22 legally “admitted”—that is, he had not effected a “lawful entry . . . into the United
23 States after inspection and authorization by an immigration officer.” 8 U.S.C.
24 § 1101(a)(13)(A). But he argued that he did not fall within § 1225(b)(2)(A)’s ambit
25 because he was not actively “seeking admission” at the border. 29 I&N Dec. at 221.
26 He had crossed the border and proceeded to the country’s interior years ago. *Id.*

1 The BIA disagreed, holding that only noncitizens who were legally admitted
2 retain bond eligibility. *Id.* at 218, 223. The BIA gave three reasons to support that
3 conclusion.

4 First, the BIA rejected the distinction between immigrants who are
5 “applicants for admission” and those who are “seeking admission.” In the BIA’s
6 view, that distinction would leave people like Mr. Yajure Hurtado without any
7 “legal status” and would create a line-drawing problem. *Id.* at 221.

8 Second, the BIA rejected the argument that interpreting § 1225(b)(2) to cover
9 noncitizens like Mr. Yajure Hurtado renders superfluous much of § 1226(c).
10 Instead, it asserted without explanation that limiting the reach of § 1225(b)(2)
11 would render that provision superfluous. *Id.* at 221–22.

12 Third, the BIA claimed that the legislative history supported its construction
13 of § 1225, because in enacting IIRIRA, Congress sought to remedy the inequity of
14 the prior statutory scheme, which provided greater procedural and substantive
15 rights to noncitizens who entered without inspection (and were placed in
16 deportation proceedings) than those who presented themselves to authorities for
17 inspection (and were placed in exclusion proceedings). *Id.* at 223–25. But the BIA
18 did not cite any legislative history specifically addressing detention statutes or
19 custody determinations that would support its interpretation. *Id.*

20 For these reasons, the BIA concluded that noncitizens who enter without
21 inspection have no right to seek bond from an IJ, regardless of how long they have
22 been residing in the country and irrespective of whether they were apprehended by
23 immigration authorities. *Id.* at 228.

24 **B. Courts disagree with the BIA’s reasoning.**

25 Since *Yajure Hurtado* was decided, many immigrants who otherwise would
26 have received bond hearings under § 1226(a) have challenged that decision in the
27 federal courts. Courts broadly agree that the BIA’s novel constructions of
28 § 1225(b)(2)(A) and § 1226(a) are not correct.

1 On the one hand, § 1225(b)(2)(A) is best read to apply to immigrants who
2 are at or near the border or other ports of entry, for at least three reasons.

3 *First*, § 1225(b)(2)(A)’s statutory context strongly suggests that it applies
4 only to persons apprehended at or near the border. As the Supreme Court
5 recognized in *Jennings*, § 1225(b) is concerned “primarily [with those] seeking
6 entry,” and is generally imposed “at the Nation’s borders and ports of entry, where
7 the Government must determine whether [a noncitizen] seeking to enter the country
8 is admissible.” 583 U.S. at 297, 287. Throughout its text, the statute refers to
9 “inspections”—a term not defined in the INA but which typically connotes an
10 examination upon or soon after physical entry. 8 U.S.C. § 1225 (“Inspection by
11 immigration officers; expedited removal of inadmissible arriving [noncitizens];
12 referral for hearing”); *id.* § 1225(b)(1)–(2) (referring to “inspections” in their titles);
13 *id.* § 1225(d)(1) (authorizing immigration officials to search certain conveyances
14 in order to conduct “inspections” where noncitizens “are being brought into the
15 United States”). Many statutory provisions, various regulations, and BIA precedent
16 discuss “inspection” in the context of admission processes at ports of entry, further
17 supporting the conclusion that § 1225 has a limited temporal and geographic scope.
18 8 U.S.C. § 1187(h)(2)(B)(i); 8 U.S.C. § 1225a; 8 U.S.C. § 1752a; 8 C.F.R. § 235.1;
19 *Matter of Quilantan*, 25 I&N Dec. 285 (BIA 2010). Petitioner’s interpretation
20 accords

21 *Second*, consistent with the statute’s overall focus on the moment of physical
22 entry, § 1225(b)(2)’s plain language limits the statute’s reach to persons actively
23 attempting to enter the United States. The statute applies only to those who are *both*
24 “applicants for admission” *and* in the process of “seeking admission.” 8 U.S.C.
25 § 1225(b)(2)(A). Because the statute’s first clause already limits the provision to
26 “applicants for admission,” the phrase “seeking admission” must have a different
27 meaning. Any other reading would constitute “an obvious violation of the rule
28 against surplusage.” *Romero*, 2025 WL 2403827, at *10.

1 On its face, the phrase “seeking admission” suggests an active attempt to
2 enter the country. Congress’s use of the present and present progressive tenses
3 “necessarily requires some sort of present-tense action,” excluding noncitizens in
4 the interior who are no longer in the process of seeking admission to the U.S.
5 *Romero*, 2025 WL 2403827, at *9 (cleaned up); *accord Rosado*, 2025 WL
6 2337099, at *11 (similar); *Lopez Benitez*, 2025 WL 2371588, at *6 (noting the
7 statute’s “present-tense active language”). “Realistically speaking,” it is hard to
8 accept that the statute’s plain language could mean anything else: “[I]f Congress’s
9 intention” to detain everyone who entered without inspection “was so clear, why
10 did it take thirty years to notice?” *Romero*, 2025 WL 2403827, at *12.

11 *Third*, the statutory history supports a limited reading of § 1225(b)’s reach.
12 When Congress amended § 1225(b)’s predecessor statute—which authorized
13 detention only of arriving noncitizens—to include individuals who had not been
14 admitted, legislators expressed concerns about recent arrivals to the United States
15 who lacked the documents to remain in the country. H.R. Rep. No. 104-469, pt. 1,
16 at 157–58, 228–29 (1996); H.R. Rep. No. 104-828, at 209 (1996) (Conf. Rep.).
17 There was no suggestion in the legislative history that Congress intended to subject
18 all people present in the United States after an unlawful entry to mandatory
19 detention and thereby transform immigration detention and sweep millions of
20 noncitizens into § 1225(b).

21 The BIA’s contrary reading of the legislative history is not persuasive. True,
22 IIRIRA “altered the typology of immigration *proceedings* to ‘place[] on equal
23 footing’ ‘all immigrants who have not been lawfully admitted.’” *Romero*, 2025 WL
24 2403827, at *12 (emphasis added) (quoting *Torres v. Barr*, 976 F.3d 918, 928 (9th
25 Cir. 2020)). But that “says nothing about *detention* pending the outcome of those
26 proceedings.” *Id.* (emphasis added). All these indicators suggest that
27 § 1225(b)(2)(A) applies only to recent arrivals at the border or ports of entry, not
28 people who have already entered the country.

1 On the other hand, § 1226(a) is best read to apply to some inadmissible
2 persons. It cannot plausibly be the case that all inadmissible persons fall under
3 § 1225(b)(2)(A) and none fall under § 1226(a).

4 *First*, § 1226(a)'s statutory structure makes clear that it reaches some
5 individuals who have not been admitted and have entered without inspection.
6 Section 1226(c) exempts specific categories of noncitizens from the default
7 eligibility to seek release on bond in § 1226(a). "Among the individuals carved out
8 and subject to mandatory detention are certain categories of 'inadmissible'
9 noncitizens." *Rodriguez*, 779 F. Supp. 3d at 1246 (quoting 8 § 1226(c)(1)(A), (D),
10 (E)). The 2025 Laken Riley Act ("LRA") added to that list. "This 'new' category"
11 of persons not eligible for bond "includes those noncitizens who are deemed
12 inadmissible, including for being 'present in the United States without being
13 admitted or paroled,' and who have been arrested, charged with, or convicted of
14 certain crimes." *Rosado*, 2025 WL 2337099, at *9 (citing 8 U.S.C. § 1226(c)(1)(E);
15 LRA, Pub. L. No. 119-1). If § 1226(a) did not apply to inadmissible noncitizens,
16 then the longstanding carve outs that refer to inadmissibility and Congress' most
17 recent amendments would all be surplusage. *See Garcia*, 2025 WL 2549431, at *6.
18 The better reading is the Supreme Court's in *Jennings*: that § 1226(a) "applies to
19 aliens already present in the United States." 583 U.S. at 303.

20 *Second*, § 1226(a)'s legislative history supports Petitioner's reading. "After
21 passing the IIRIRA, Congress declared the new § 1226(a) 'restates the current
22 provisions in [the predecessor statute] regarding the authority of the Attorney
23 General to arrest, detain, and release on bond' a noncitizen 'who is not lawfully in
24 the United States.'" *Rosado*, 2025 WL 2337099, at *9. Because noncitizens deemed
25 inadmissible "were entitled to discretionary detention under § 1226(a)'s
26 predecessor statute, and Congress declared the statute's scope unchanged by
27 IIRIRA," § 1226(a) must "allow for a discretionary release on bond for"
28 inadmissible noncitizens, too. *Id.*

Thus, the best reading of 8 U.S.C. §§ 1225, 1226 shows that petitioner is eligible for bond. And under the Supreme Court’s recent decision in *Loper Bright v. Raimondo*, this Court must independently interpret the meaning and scope of §§ 1225(b), 1226(a) using the traditional tools of statutory construction. 603 U.S. 369, 385, 401 (2024); *see also Rodriguez*, 779 F. Supp. 3d at 1251; *Kostak*, 2025 WL 2472136, at *2 n.29; *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *8 n.9 (D. Mass. July 7, 2025). Because the BIA’s decision in *Yajure Hurtado* is a deviation from the agency’s long-standing interpretation of §§ 1225, 1226; is not guidance issued contemporaneously with enactment of the relevant statutes; and contradicts the statutory interpretations of dozens of federal courts, this Court should give it no weight. If anything, the government’s “decades of practice” providing bond hearings to those who entered without inspection is a more persuasive guide to the proper outcome here. *Martinez*, 2025 WL 2084238, at *4.

C. The Ninth Circuit’s stay in *Maldonado Bautista* does not prevent this Court from granting relief.

In *Maldonado-Bautista v. DHS*, 25-cv-1873-SSS-BFM (C.D. Cal.), a district judge granted national, class-wide relief to plaintiffs challenging the BIA’s interpretation of §§ 1225, 1226. *Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3713987, at *32 (C.D. Cal. Dec. 18, 2025), *judgment entered sub nom. Maldonado Bautista v. Noem*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3678485 (C.D. Cal. Dec. 18, 2025). The Ninth Circuit subsequently stayed the order, “insofar as the district court’s judgment extends beyond the Central District of California.” *Maldonado Bautista v. DHS*, No. 26-1044, Dkt. No. 5.1 (Mar 6, 2026). The Ninth Circuit left the judgement in place in the Central District. *Id.*

Because of the stay order, the government is no longer required to follow *Maldonado Bautista* in this district. But the stay order does not indicate any opinion on the stay order’s merits or prevent this Court from finding in Petitioner’s favor.

1 It means only that this Court must do an independent evaluation on the merits. For
2 the reasons given above, that independent evaluation demands relief here.

3 **II. Because an appeal to the BIA would be futile and Mr. Gutierrez-**
4 **Valtierra faces irreparable harm, exhaustion is not required.**

5 Petitioners raising this argument need not exhaust remedies by appealing to
6 the BIA. “Here, no statute requires exhaustion.” *Romero v. Hyde*, No. CV 25-
7 11631-BEM, 2025 WL 2403827, at *5 (D. Mass. Aug. 19, 2025). Rather,
8 “exhaustion here is a prudential requirement.” *Garcia v. Noem*, No. 25-CV-02180-
9 DMS-MMP, 2025 WL 2549431, at *4 (S.D. Cal. Sept. 3, 2025). “[A] court may
10 waive the prudential exhaustion requirement if . . . pursuit of administrative
11 remedies would be a futile gesture [or] irreparable injury will result.” *Hernandez v.*
12 *Sessions*, 872 F.3d 976, 988 (9th Cir. 2017) (cleaned up).

13 “Here, exhausting administrative remedies would be futile because all ICE
14 employees have been directed by DHS’ and DOJ’s new policy to consider anyone
15 arrested in the United States and charged with being inadmissible under
16 § 1182(a)(6)(A)(i) to be an ‘applicant for admission’ under § 1225(b)(2)(A) and
17 therefore be subject to mandatory detention.” *Garcia v. Noem*, No. 25-CV-02180-
18 DMS-MMP, 2025 WL 2549431, at *5 (S.D. Cal. Sept. 3, 2025) (cleaned up). In
19 June, “DHS issued an internal memorandum, ‘in coordination with the Department
20 of Justice (DOJ),’ affirming that section 1225 ‘is the applicable immigration
21 detention authority for all applicants for admission.’” *Romero v. Hyde*, No. CV 25-
22 11631-BEM, 2025 WL 2403827, at *7 (D. Mass. Aug. 19, 2025). “The BIA, as part
23 of the Executive Office for Immigration Review (‘EOIR’), operates under DOJ
24 authority,” and an appeal here would be “foreclosed by BIA precedent.” *Romero v.*
25 *Hyde*, No. CV 25-11631-BEM, 2025 WL 2403827, at *7 (D. Mass. Aug. 19, 2025).

26 Furthermore, Petitioner “is likely to experience irreparable harm if he is
27 unable to seek habeas relief until the BIA decides ICE’s appeal of the Immigration
28 Judge’s order granting his release on bond.” *Sampiao v. Hyde*, No. 1:25-CV-11981-

1 JEK, 2025 WL 2607924, at *6 (D. Mass. Sept. 9, 2025). “According to data
2 released by the Executive Office for Immigration Review, the average processing
3 time for bond appeals exceeded 200 days in 2024.” *Id.* If required to complete a
4 BIA appeal, then, Petitioner “is likely to endure several additional months of
5 detention that may be unlawful. Such a prolonged loss of liberty would, in these
6 circumstances, constitute irreparable harm.” *Sampiao v. Hyde*, No. 1:25-CV-
7 11981-JEK, 2025 WL 2607924, at *6 (D. Mass. Sept. 9, 2025).

8 **III. Because immigration judges’ neutrality has been compromised, this**
9 **Court must order outright release, or at least put in place additional**
10 **safeguards.**

11 In a perfect world, this Court could remedy the violation by ordering a bond
12 hearing before a neutral immigration judge (“IJ”), allowing the IJ to determine
13 whether Mr. Gutierrez-Valtierra posed a risk of danger or flight. Unfortunately,
14 attacks on IJ independence under the current administration have severely
15 compromised IJs’ neutrality. As a result, there is a serious risk that an IJ will order
16 Mr. Gutierrez-Valtierra’s continued detention even if he poses no danger or flight
17 risk. Several data points support that conclusion.

18 Most importantly, reports are streaming in from this district and elsewhere
19 that court-ordered “bond hearings [are], effectively, stacked against detainees
20 from the start.” Kyle Cheney, *How ICE Defies Judges’ Orders to Release*
21 *Detainees, Step by Step*, Politico (Feb. 10, 2026),
22 [https://www.politico.com/news/2026/02/10/ice-immigration-detention-court-](https://www.politico.com/news/2026/02/10/ice-immigration-detention-court-orders-00771727)
23 [orders-00771727](https://www.politico.com/news/2026/02/10/ice-immigration-detention-court-orders-00771727); see also Kyle Cheney, *Judges Keep Ordering Immigration*
24 *Hearings – But Say the Results are Often a Sham*, Politico (March 6, 2026),
25 [https://www.politico.com/news/2026/03/06/immigration-case-hearings-judges-](https://www.politico.com/news/2026/03/06/immigration-case-hearings-judges-00815660)
26 [00815660](https://www.politico.com/news/2026/03/06/immigration-case-hearings-judges-00815660).

27 In *Yin v. Moldanado*, for example, a court expressed consternation at an
28 IJ’s “conclusory, two-line determination of flight risk” for a person whom DHS

1 had previously agreed “to release . . . on his own recognizance” and who
2 “attend[ed] [all] immigration check-ins” during his release. No. 26-CV-0103
3 (PKC), 2026 WL 295389, at *3 (E.D.N.Y. Feb. 4, 2026).

4 In *Said v. Noem*, a court ordered a bond hearing for a habeas petitioner,
5 only to learn that “[t]he IJ denied Petitioner the opportunity to present testimony,
6 declined to consider the sworn, documentary evidence submitted by Petitioner,
7 and based his decision on an uncorroborated, unauthenticated claim by a
8 government official that Petitioner failed to share his location for the ISAP.” No.
9 3:25-CV-938-MOC, 2026 WL 295651, at *5 (W.D.N.C. Feb. 4, 2026). The
10 original habeas “Order presupposed that this hearing would be conducted in
11 accordance with Petitioner’s due process rights,” the court wrote. “It was not.” *Id.*

12 And in *Picado v. Hyde*, a district judge ordered outright release after two
13 deficient bond hearings. No. 26-CV-065-JJM-PAS, 2026 WL 352691, at *7
14 (D.R.I. Feb. 9, 2026). The IJ in the second hearing had deemed the immigrant a
15 danger to the community based on an uncorroborated police report accusing him
16 of driving 90 mph in a 55-mph zone. *Id.*

17 “Similar cases have emerged in New York, Virginia, north Carolina,
18 Michigan, Virginia, Massachusetts, and a slew of other states.” *Judges Keep*
19 *Ordering Immigration Hearings, supra.*

20 In a recently filed declaration, local attorney Edward Perez attests that he has
21 similar concerns about some immigration judges at Otay Mesa. In his experience,
22 some Otay Mesa IJs are resistant to implementing habeas orders requiring bond
23 hearings. *Elsayed v. Noem*, Case No. 26-cv-368, Doc. 5-2 at ¶ 7 (S.D. Cal. Feb. 9,
24 2026). These IJs have begun denying bond on the ground that court hearings are
25 coming up, and release would disrupt the hearing schedule. *Id.* Of course, that logic
26 could justify any asylum seeker’s detention, and it has nothing to do with danger or
27 flight. *Id.* Furthermore, the Department of Homeland Security (“DHS”) has started
28 appealing bonds to take advantage of the automatic stay. *Id.* Both of these strategies

1 ensure that even those who pose no risk of danger or flight will stay in detention.
2 *Id.*

3 He is far from the only one to express concerns. In a declaration filed in
4 *Briceno Solano v. Mason*, No. 26-CV-00045, 2026 WL 311624 (S.D.W. Va. Feb.
5 4, 2026), Former ICE Counsel Jorge Artieda attests to seeing “a seismic shift in
6 bond hearing outcomes for individuals who had been granted federal habeas relief
7 and ordered § 1226(a) bond hearings . . . in the Eastern District of Virginia.” Exh.
8 C at 2. The pattern of granting bond in appropriate cases “abruptly and uniformly
9 ceased” in early January, in a way that “suggests coordinated institutional
10 direction.” *Id.* IJs there now rely on a “remarkably narrow and predictable set of
11 rationales to deny bond—rationales that appear to bear little relationship to genuine
12 individualized risk assessment and that would not have been deemed sufficient to
13 justify denial just weeks earlier.” *Id.* at 3. In Mr. Artieda’s professional opinion, the
14 IJs’ rationales “do not appear to be grounded in legitimate risk assessment” but are
15 “pretexts designed to ensure denial of bond regardless of the individual facts of
16 each case.” *Id.* at 4.

17 Mr. Artieda further attests that to having “communicated with numerous
18 immigration attorneys practicing all over the United States who handle detention
19 cases.” *Id.* at 5. “These conversations have confirmed that the pattern [he] ha[s]
20 observed is widespread and consistent.” *Id.* Based on these conversations,
21 Mr. Artieda believes that these bond denials are part of a “coordinated institutional
22 effort.” *Id.* at 6. That coordinated effort supports outright release or, at a minimum,
23 additional scrutiny from this Court.

24 These trends are consistent with sustained attacks on IJs’ independence under
25 this administration. Several examples illustrate the point.

26 *First*, the Trump administration has eliminated 128 IJs insufficiently aligned
27 with the administration’s priorities, illustrating to the remaining IJs the cost of
28 resistance. *See Woo-Sun Lim, Former judge highlights legal failures in U.S.*

1 *worker detentions*, The Dong-A Ilbo (Sept. 20, 2025),
2 <https://www.donga.com/en/article/all/20250920/5859412/1>.

3 These IJs are under no illusions about why they were let go. Former
4 Baltimore IJ Emmett Soper stated: "I think the current administration of the
5 immigration courts does not fundamentally see the immigration courts as neutral
6 decision-makers. I think that they see the immigration courts as a tool for this
7 administration to advance its policy objectives." Geoff Bennett & Ali Schmitz,
8 *Ousted Immigration Judge Describes Deepening Court Backlog*, PBS NewsHour
9 (Nov. 12, 2025), [https://www.pbs.org/newshour/show/ousted-immigration-judge-](https://www.pbs.org/newshour/show/ousted-immigration-judge-describes-deepening-court-backlog)
10 [describes-deepening-court-backlog](https://www.pbs.org/newshour/show/ousted-immigration-judge-describes-deepening-court-backlog). Former San Francisco IJ Jeremiah Johnson
11 similarly understood "the hint that they should be hearing cases a certain way,
12 deciding cases a certain way. Move faster. Less due process, essentially." Hilda
13 Gutierrez, Michael Bott & Son Vo, *'An all-out attack on immigration court:' SF*
14 *immigration judges speak out after firings*, NBC Bay Area (Nov. 25, 2025),
15 [https://www.nbcbayarea.com/investigations/san-francisco-immigration-judges-](https://www.nbcbayarea.com/investigations/san-francisco-immigration-judges-speak-out-firings/3986850/)
16 [speak-out-firings/3986850/](https://www.nbcbayarea.com/investigations/san-francisco-immigration-judges-speak-out-firings/3986850/). Former San Francisco IJ George Pappas was even
17 more direct: "We were told to facilitate deportation... Due process is dead in
18 immigration courts." Isabela Dias, *"Fired for No Reason": Former Immigration*
19 *Judges Speak Out Against Trump's Assault on the Courts*, Mother Jones (Oct. 9,
20 2025), [https://www.motherjones.com/politics/2025/10/immigration-court-judge-](https://www.motherjones.com/politics/2025/10/immigration-court-judge-trump-assault-purge-dhs-ice/)
21 [trump-assault-purge-dhs-ice/](https://www.motherjones.com/politics/2025/10/immigration-court-judge-trump-assault-purge-dhs-ice/).

22 This has had the predictable effect on those who remain. According to
23 former San Francisco IJ Elizabeth Young, "I've talked to many of [the judges still
24 serving], and they're like, 'When I go into court, I am concerned about applying
25 the law, but I'm also concerned that I should deny more, because if I don't, then
26 I'll get fired.'" Marco Poggio, *Judges See an Immigration Court Guttled from*
27 *Inside*, Law360 (Oct. 31, 2025),
28 <https://www.law360.com/articles/2381003/judges-see-an-immigration-court->

1 gutted-from-inside. Meanwhile, Department of Justice recruitment materials seek
2 “deportation judges” to fill the empty IJ slots, Coral Murphy Marcos, *US Justice*
3 *Department Recruiting Legal Experts to Serve as ‘Deportation’ Judges*,
4 Guardian, [https://www.theguardian.com/us-news/2025/nov/21/us-justice-](https://www.theguardian.com/us-news/2025/nov/21/us-justice-department-ad-deportation-judges)
5 [department-ad-deportation-judges](https://www.theguardian.com/us-news/2025/nov/21/us-justice-department-ad-deportation-judges), inviting candidates to “bring the hammer
6 down on criminal illegal aliens” and “defend your communities, your culture,
7 your very way of life.” dhsgov, Instagram (Nov. 21, 2025),
8 <https://www.instagram.com/p/DRVt8DmCQKD/?hl=en>.

9 *Second*, a parallel purge occurred at the BIA, which was reduced from 28
10 members to 15 members. All Biden appointees on the BIA were fired. Am. Imm.
11 Council, *BIA Decision Strips Immigration Judges of Bond Authority, All but*
12 *Guaranteeing Mandatory Detention for Undocumented Immigrants* (Sept. 12,
13 2025), [https://www.americanimmigrationcouncil.org/blog/bia-ruling-immigration-](https://www.americanimmigrationcouncil.org/blog/bia-ruling-immigration-judges-bond-mandatory-detention-undocumented-immigrants/)
14 [judges-bond-mandatory-detention-undocumented-immigrants/](https://www.americanimmigrationcouncil.org/blog/bia-ruling-immigration-judges-bond-mandatory-detention-undocumented-immigrants/). The statistical
15 impact is stark. As of January 22, 2026, the reconstituted BIA has issued 71
16 published decisions. Exec. Off. for Immigr. Rev., *Volume 29*, U.S. Dep’t of Just.
17 (Jan. 21, 2025), <https://www.justice.gov/eoir/volume-29>. Of those, 69 decisions
18 (97%) favored the administration. By contrast, during the entire four-year span of
19 the prior administration, the BIA issued 76 published decisions. Exec. Off. for
20 Immigr. Rev., *Volume 28*, U.S. Dep’t of Just. (June 13, 2025),
21 <https://www.justice.gov/eoir/volume-28>. (First decision, *Matter of DIKHTYAR*, 28
22 I&N Dec. 214 (BIA 2021), issued 01/22/2021). Of those, 46 decisions (60%)
23 favored the administration. The transformation from 60% to 97% pro-government
24 outcomes—achieved through wholesale termination of one administration’s
25 appointees—speaks for itself.

26 *Third*, beyond personnel changes, EOIR’s new acting director, Sirce E.
27 Owen, has issued “a string of sharply worded policy memos” encouraging IJs to
28 side with the government over immigrants and minimize due process. E. Tammy

1 Kim, *Inside Donald Trump's Attack on Immigration Courts*, New Yorker,
2 <https://www.newyorker.com/inside-donald-trumps-attack-on-immigration-court>.
3 The policy directives include: a memorandum dated June 27, 2025 warning
4 judges not to demonstrate "bias directed against DHS" or to be "adjudicatory
5 outliers," at risk of "close examination and potential action," Exec. Off. for
6 Immigr. Rev., Policy Memorandum 25-33, Neutrality and Impartiality in
7 Immigration Court Proceedings (June 27, 2025), [https://iptp-](https://iptp-production.s3.amazonaws.com/media/documents/2025.06.27_EOIR_-_PM_25-33.pdf)
8 [production.s3.amazonaws.com/media/documents/2025.06.27_EOIR_-_PM_25-](https://iptp-production.s3.amazonaws.com/media/documents/2025.06.27_EOIR_-_PM_25-33.pdf)
9 [33.pdf](https://iptp-production.s3.amazonaws.com/media/documents/2025.06.27_EOIR_-_PM_25-33.pdf); a memorandum encouraging judges to deny asylum applications without
10 full evidentiary hearings, styled as efficiency guidance but functioning as a
11 directive to reduce due process protections, Exec. Off. for Immigr. Rev., Policy
12 Memorandum 25-28, Pretermission of Legally Insufficient Application for
13 Asylum (Apr. 11, 2025), [https://www.justice.gov/eoir/media/1396411/dl?inline](https://www.justice.gov/eoir/media/1396411/dl?inline;);
14 and memoranda restricting immigration judges' ability to grant continuances,
15 Exec. Off. for Immigr. Rev., Policy Memorandum 25-27, Cancellation of
16 Director's Memorandum 23-01 and Reinstatement of Policy Memorandum 19-13
17 (Mar. 21, 2025), <https://www.justice.gov/eoir/media/1394086/dl>, and
18 administrative closure, Exec. Off. for Immigr. Rev., Policy Memorandum 25-29,
19 Cancellation of Director's Memorandum 22-03 (Apr. 18, 2025),
20 <https://www.justice.gov/eoir/media/1397161/dl?inline>.

21 *Fourth*, EOIR personnel have at times directed IJs to ignore federal court
22 orders related to bond hearings. On January 13, 2026, in the wake of *Maldonado*
23 *Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3289861 (C.D.
24 Cal. Nov. 20, 2025); *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-
25 BFM, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025), Chief Immigration
26 Judge Teresa L. Riley sent all IJs the following instructions:
27 Please provide the following guidance to all immigration judges
28 forthwith: *Maldonado Bautista* is not a nationwide injunction and does
not purport to vacate, stay, or enjoin *Yajure Hurtado*. Therefore

1 *Yajure Hurtado* remains binding precedent on agency adjudications.
2 For clarification, declaratory judgments differ from injunctions in that
3 the former clarifies parties' legal rights and relationships without
4 ordering specific action, while the latter is a court order compelling a
5 party to do or stop doing a specific act. A declaratory judgment is not
6 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.

7 Am. Immigr. Laws. Ass'n, Practice Alert: EOIR Issues Nationwide Guidance
8 on *Maldonado Bautista*, AILA Doc. No. 26011404 (Jan. 16, 2026),
9 [https://www.aila.org/library/practice-alert-eoir-issues-nationwide-guidance-](https://www.aila.org/library/practice-alert-eoir-issues-nationwide-guidance-on-maldonado-bautista)
10 [on-maldonado-bautista](https://www.aila.org/library/practice-alert-eoir-issues-nationwide-guidance-on-maldonado-bautista). A few days later, Judge Sykes issued a scathing order,
11 calling out “Respondents’ deliberate choice to continue defying the final
12 judgment entered in *Bautista*.” *Palomera Baltazar v. Janecka*, No. 5:26-cv-
13 00019-SSS-BFM at *2-3 (C.D. Cal. Jan. 16, 2026).

14 IJs’ resistance to granting bond therefore accords with the larger
15 movement to eliminate or silence IJs who side with immigrants, while
16 bringing those that remain into line with the administration’s priorities.

17 The “equitable and flexible nature of habeas relief” affords district
18 courts significant discretion over the appropriate remedies for violations of
19 law and the Constitution. *Velasco Lopez v. Decker*, 978 F.3d 842, 855 (2d Cir.
20 2020); *see also Schlup v. Delo*, 513 U.S. 298, 319 (1995) (“[H]abeas corpus
21 is, at its core, an equitable remedy”). This Court should order a remedy that
22 fully addresses the statutory and constitutional violations in this case and is
23 efficient to administer. *Carafas v. LaVallee*, 391 U.S. 234, 238 (1968) (the
24 habeas statute “does not limit the relief that may be granted to discharge of the
25 applicant from physical custody. Its mandate is broad with respect to the relief
26 that may be granted”).
27
28

CLAIMS AND PRAYER FOR RELIEF

Detaining Petitioner Without a Bond Hearing Violates 8 U.S.C. § 1226(a), Associated Regulations, the Administrative Procedures Act, and the Fifth Amendment Right to Due Process.

For the reasons just given, Petitioner may be detained, if at all, pursuant to 8 U.S.C. § 1226(a). Both the statute and its associated regulations entitle Petitioner to a bond hearing. *See* 8 C.F.R. §§ 326.1(d), 1236.1, 1003.19(a)-(f). Accordingly, the Fifth Amendment’s due process clause requires the government to provide the legally required bond hearing before Petitioner is detained. *See Hernandez-Lara v. Lyons*, 10 F.4th 19, 27 (1st Cir. 2021).

The statute and regulations implement the due process protection that attends any civil detention. *See Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018) (expressing “grave doubts that any statute that allows for arbitrary prolonged detention without any process is constitutional or that those who founded our democracy precisely to protect against the government’s arbitrary deprivation of liberty would have thought so”). The Supreme Court has “repeatedly recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection,” including an individualized detention hearing. *Addington v. Texas*, 441 U.S. 418, 425 (1979); *see also United States v. Salerno*, 481 U.S. 739, 755 (1987); *Foucha v. Louisiana*, 504 U.S. 71, 81–83 (1992); *Kansas v. Hendricks*, 521 U.S. 346, 357 (1997).

Here, Petitioner never received the bond hearing required under § 1226(a), but the government detained him anyway. That violated the statute, regulations, due process, and the Administrative Procedures Act. This Court should therefore grant the petition.

This Court should also fashion relief that guards against the possibility of IJ bias. That might include outright release. *See, e.g.,* Order, ECF No. 14 at 19, *Miri v. Bondi*, No. 5:26-CV-00698-MEMF (C.D. Cal. March 5, 2026); *Moctezuma v.*

1 *Henkey*, No. 1:25-CV-00741-BLW, 2026 WL 18809, at *5 (D. Idaho Jan. 2, 2026).
2 Or it could mean holding a bond hearing in district court. *See, e.g., L.G.M. v.*
3 *LaRocco*, 788 F.Supp.3d 401, 405-07 (E.D.N.Y. 2025).

4 A third option would be to craft an order like Judge Simmons's procedure
5 in the *Sandesh* case. *See* Order, ECF No. 13, *Sandesh v. LaRose*, No. 3:26-CV-
6 00846-JES (S.D. Cal. March 5, 2026). Specifically, the Court should order:

7 (1) Respondents provide Petitioner with a hearing and individualized bond
8 determination within **ten days** of its order. *Id.*

9 (a) At that hearing, the government shall bear the burden of establishing
10 by clear and convincing evidence that Petitioner poses a danger or flight
11 risk, while further specifying that concerns about interrupting court
12 schedules is not a ground to deny bond. *Id.*

13 (b) The IJ shall consider alternative conditions of release and Petitioner's
14 ability to pay bond if he or she determines bond is appropriate. *Id.*

15 (c) Respondents shall make a complete record of the bond hearing
16 available to Petitioner and his counsel. *Id.*

17 (2) Respondents are ordered to file a Notice of Compliance within **five days**
18 of providing Petitioner with the bond hearing, including apprising the
19 Court of the results of the hearing. *Id.*

20 (3) Prohibit ICE from invoking the automatic stay provisions under 8
21 C.F.R. § 1003.19(i)(2) to defeat the IJ's bond determination.

22 Finally, this Court should order all other relief that the Court deems just and
23 proper.
24
25
26
27
28

Respectfully submitted,

Dated: March 9, 2026

s/ Katie Hurrelbrink

Katie Hurrelbrink

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