

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

MELVI SAMUEL PEREZ PEREZ,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	
KEVIN GUTHRIE et al.	)	
	)	
Respondents.	)	

Case No. 2:26-cv-730-SPC-NPM

**PETITIONER’S MOTION TO ENFORCE COURT ORDER AND INCORPORATED
MEMORANDUM OF LAW**

I. INTRODUCTION

Petitioner moves this Court to issue an order finding that Respondents failed to conduct the constitutionally required “bond hearing” prescribed by statute and ordered by this Court, as the hearing he was provided did not comport with due process. The Immigration Judge made findings unsupported by the record. The manner in which the hearing was held was violative of Petitioner’s due process rights. Further, Respondents are attempting to make an end-run around the judiciary’s near-unanimous rejection of the “bond denial policy” they attempted to promulgate through the flawed *Yajure Hurtado* decision.

II. LEGAL BACKGROUND

Federal courts retain jurisdiction to review constitutional challenges to immigration detention under 8 U.S.C. § 1226. Although Section 1226(e) limits judicial review of discretionary custody determinations, it does not preclude review of constitutional claims or challenges to the procedures employed in bond proceedings. See *Jennings v. Rodriguez*, 583 U.S. 281, 303–05 (2018). Courts within the Eleventh Circuit, including the Middle District of Florida, have recognized that due process challenges to immigration detention are properly brought in

habeas proceedings. See *Sopo v. U.S. Attorney General*, 825 F.3d 1199, 1214–15 (11th Cir. 2016), vacated as moot, 890 F.3d 952 (11th Cir. 2018); *Alvarez v. Warden, Baker County Jail*, No. 3:19-cv-1267-J-32JBT, 2020 WL 2573242 (M.D. Fla. May 21, 2020).

The Fifth Amendment guarantees that noncitizens in removal proceedings are entitled to due process of law. Detention pursuant to Section 1226 must therefore comport with both substantive and procedural due process requirements. Courts in the Middle District of Florida have acknowledged that prolonged detention without adequate procedural safeguards may raise constitutional concerns. See *Basulto-Solis v. U.S. Attorney General*, No. 8:20-cv-1234-CEH-AAS, 2020 WL 7024875 (M.D. Fla. Nov. 30, 2020).

In assessing custody determinations under Section 1226(a), immigration judges generally consider a non-exclusive set of factors identified in *Matter of Guerra*, 24 I. & N. Dec. 37 (BIA 2006). These factors include: (1) whether the noncitizen has a fixed address in the United States; (2) the length of residence in the United States; (3) family ties in the United States; (4) employment history; (5) record of appearance in court; (6) criminal history, including the nature, recency, and seriousness of any offenses; (7) history of immigration violations; (8) any attempts to evade authorities; and (9) the manner of entry into the United States. While not constitutionally mandated, these factors are commonly used to guide individualized determinations of flight risk and danger to the community.

The process that is constitutionally due in immigration detention proceedings is evaluated under the framework set forth in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). Under *Mathews*, courts consider: (1) the private interest affected by the government action; (2) the risk of erroneous deprivation of that interest through the procedures used, and the probable value of additional safeguards; and (3) the government's interest, including the administrative burden of

additional procedures. The Supreme Court has emphasized that due process is a flexible concept that requires procedural protections tailored to the specific circumstances of each case. *Jennings*, 583 U.S. at 314 (quoting *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972)).

III. THE BOND DENIAL POLICY, THE ONGOING IMMIGRATION COURT DEFIANCE OF COURT ORDERS, AND THE ADMINISTRATION'S ONGOING INTERFERENCE WITH THE INDEPENDENCE OF IMMIGRATION JUDGES

Central District of California Federal Judge Sunshine Sykes issued both declaratory and injunctive relief holding that members of a class of 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 Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025). On January 13, 2026, Chief Immigration Judge Teresa L. Riley sent an email to all immigration judges nationwide 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."¹

¹ Am. Immigr. Laws. Ass'n, Practice Alert: EOIR Issues Nationwide Guidance on *Maldonado Bautista*, AILA Doc. No. 26011404 (Jan. 16, 2026), <https://www.aila.org/library/practice-alert-eoir-issues-nationwide-guidance-on-maldonado-bautista>.

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

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

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

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

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

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

This systematic institutional defiance of federal court orders, orchestrated by EOIR leadership, cannot be permitted to proceed when the liberty interest affected by it is so fundamental. No clearer evidence of institutional capture could exist: when presented with a federal court order protecting noncitizens' rights, EOIR's response was to order judges to violate it.

Bond hearings in immigration court sadly no longer provide even a semblance of adequate due process protection, in no small part because of Trump administration interference with the quasi-independence of the immigration courts. There has been an initiative to fire immigration judges based on perceived political lines. As of September 26, 2025, the administration has terminated 128 immigration judges (“IJs”). Former New York IJ David K.S.

Kim explained the targeting criteria: "I do not know the exact reason for my termination, but most of those dismissed, including myself, were judges with high asylum approval rates."²

Former Baltimore IJ Emmett Soper stated: "I think the current administration of the immigration courts does not fundamentally see the immigration courts as neutral decision-makers. I think that they see the immigration courts as a tool for this administration to advance its policy objectives."³ Former San Francisco IJ Jeremiah Johnson similarly understood "the hint that they should be hearing cases a certain way, deciding cases a certain way. Move faster. Less due process, essentially."⁴ Former San Francisco IJ George Pappas was even more direct: "We were told to facilitate deportation... Due process is dead in immigration courts."⁵ Former Baltimore IJ David C. Koelsch described it as "an atmosphere of paranoia and fear, which is exactly what they want."⁶ Former Annandale, Virginia 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."⁷ Former New York IJ Carmen Maria Rey Caldas similarly described immigration judges working "under 'constant

² 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>.

³ 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>.

⁴ 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/>.

⁵ 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>.

⁶ Poggio, *supra* note 8.

⁷ Eric Katz, *'Climate of Fear': Immigration Judges Say Functioning of Their Court System Is in Jeopardy Due to Trump's Firings*, Gov't Executive (Nov. 14, 2025), <https://www.govexec.com/management/2025/11/climate-fear-immigration-judges-say-functioning-their-court-system-jeopardy-due-trumps-firings/409544/>.

threat' of getting fired if they don't follow certain rules from leadership."⁸ Former San Francisco IJ Elizabeth Young explained: "I've talked to many of [the judges still serving], and they're like, 'When I go into court, I am concerned about applying the law, but I'm also concerned that I should deny more, because if I don't, then I'll get fired.'"⁹ Former Boston IJ Sarah Cade reached her breaking point: "I felt I might have to compromise my ethics and might be put in a place where I felt like I was going to be asked to violate due process. So, I left and I went to private practice."¹⁰

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

A parallel purge occurred at the BIA which was reduced from 28 members to 15 members. All Biden appointees on the BIA were fired.¹¹ The statistical impact is stark. As of January 22, 2026, the reconstituted BIA has issued 71 published decisions.¹² Of those, 69 decisions (97%) favored the administration.¹³ By contrast, during the entire four-year span of the

⁸ 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/>.

⁹ Poggio, *supra* note 8.

¹⁰ Poggio, *supra* note 8.

¹¹ 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/>.

¹² Exec. Off. for Immigr. Rev., *Volume 29*, U.S. Dep't of Just. (Jan. 21, 2025), <https://www.justice.gov/eoir/volume-29>.

¹³ Of the remaining two decisions: 1 decision was neutral (involving attorney sanctions) and 1 decision disfavored the administration

prior administration, the BIA issued 76 published decisions.¹⁴ 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.

To replace purged judges, the DOJ launched recruitment for what it explicitly marketed as "deportation judges."¹⁵ DHS—a party in immigration proceedings before EOIR—promoted these openings on social media with enforcement-focused language: "Bring the hammer down on criminal illegal aliens" and "Defend your communities, your culture, your very way of life."¹⁶

Beyond personnel changes, EOIR's new acting director, Sirce E. Owen, quickly issued "a string of sharply worded policy memos" that immediately "[set] the tone for her leadership."¹⁷ "Sources familiar with Owen described her as a "restrictionist loyalist" with a reputation for denying cases."¹⁸ 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."¹⁹ 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

¹⁴ 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)

¹⁵ Murphy Marcos *supra* note 2.

¹⁶ dhsgov, Instagram (Nov. 21, 2025), <https://www.instagram.com/p/DRVt8DmCOKD/?hl=en>.

¹⁷ *US army lawyer fired as immigration judge after defying Trump deportation agenda*, The Guardian (Dec. 19, 2025), <https://www.theguardian.com/us-news/2025/dec/19/army-lawyer-fired-immigration-trump-deportation>.

¹⁸ Dias, *supra* note 8.

¹⁹ 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>.

examination and potential action”;²⁰ 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;²¹ and memorandums restricting immigration judges’ ability to grant continuances²² and administrative closure.²³

Thus, it is clear that Petitioner cannot receive a fair bond hearing in compliance with due process from an immigration court system that has been co-opted into a deportation machine.

IV. ISSUES WITH PETITIONER’S PURPORTED “BOND HEARING”

Petitioner was granted a bond hearing on April 10, 2026, but Respondents did not conduct that hearing in accordance with the law. See **Exhibit A**, Declaration of Felipe Alexandre. Counsel further notes that this hearing proceeded only after this Court issued a Writ of Habeas Corpus, which enabled the Immigration Judge to exercise jurisdiction over Petitioner’s custody determination.

Petitioner was not afforded due process in his bond hearing, as is legally required even in immigration court proceedings. Bond was denied entirely, despite Petitioner’s strong ties to the

²⁰ Exec. Off. for Immigr. Rev., Policy Memorandum 25-33, Neutrality and Impartiality in Immigration Court Proceedings (June 27, 2025), https://iptp-production.s3.amazonaws.com/media/documents/2025.06.27_EOIR_-_PM_25-33.pdf.

²¹ 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>.

²² 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>.

²³ Exec. Off. for Immigr. Rev., Policy Memorandum 25-29, Cancellation of Director’s Memorandum 22-03 (Apr. 18, 2025), <https://www.justice.gov/eoir/media/1397161/dl?inline>.

United States, including extensive community support, a stable residence history, and a pending application for asylum demonstrating a continued intent to pursue relief before the immigration court.

Specifically, the record included six letters from members of the community attesting to Petitioner's good moral character and longstanding ties. These included a financial sponsor willing to assume responsibility for ensuring Petitioner's future appearances before the Court; a letter from his fiancée, who has been in a relationship with him since 2017 and provides both emotional and financial support; and a letter from a pastor confirming Petitioner's consistent attendance at church services every Sunday. Additional letters similarly confirm Petitioner's long-term residence and integration into the community.

Notwithstanding this evidence, the Immigration Judge found Petitioner to be a flight risk based primarily on three convictions for Driving Without a License in 2016, 2018, and 2026. The record reflects that counsel explained these infractions occurred in the context of Petitioner's need to maintain employment and support himself while residing in the United States.

Counsel further requested that the Immigration Judge consider whether any bond amount or alternative conditions of release could reasonably mitigate any perceived risk of nonappearance. The Immigration Judge nonetheless indicated that no bond amount would be sufficient and denied bond in full.

Counsel advised that the decision may be appealed to the Board of Immigration Appeals. However, administrative review may not provide timely or adequate relief given Petitioner's continued detention.

Petitioner respectfully submits that the denial of bond reflects a failure to meaningfully consider the totality of the circumstances, including substantial community ties, lack of serious criminal history, and documented eligibility for relief. Petitioner further submits that the Immigration Judge did not adequately consider whether alternatives to detention or an appropriately set bond amount could reasonably satisfy the Government's interests in ensuring appearance at future proceedings.

V. THE *MATHEWS* v. *ELDRIDGE* TEST

Under *Mathews v. Eldridge*, the three-part test is satisfied:

1. The private interest that will be affected by the official action:

The private interest affected by the official action is the most significant private interest there is – that of liberty. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty [the Due Process] Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Petitioner's private interest in his own liberty – to be free from confinement – is an interest so strong that many of the most fundamental concepts of our constitution exist to protect it. *See United States v. Haymond*, 588 U.S. 634, 637 (2019) (“Only a jury, acting on proof beyond a reasonable doubt, may take a person's liberty. That promise stands as one of the Constitution's most vital protections against arbitrary government.”). “In the United States, even a scoundrel has the right to remain free until due process has proven him a scoundrel.” *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 157 (W.D.N.Y. 2025); see also *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004) (finding that even accused enemy-combatants have a due process right to challenge their status). During the petitioner's detention, Yesenia, the petitioner's fiancée has been left to support herself on her own, despite the financial help Mr. Perez has consistently provided throughout their relationship since 2017.

In addition, the record shows that Mr. Perez has deep ties to his community. Multiple letters were submitted on his behalf, including from community members who have known him for years, a pastor who confirmed his regular church attendance every Sunday, and a financial sponsor willing to take responsibility for ensuring he appears in court. Despite all of this, bond was denied based solely on three driving-without-a-license convictions, without seriously considering his strong support system or whether any bond amount could address the court's concerns.

Taken together, these facts show that keeping Mr. Perez detained is unnecessarily harsh and ignores the reality of his situation, both in detention and in the community.

2. The risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards:

The process used in the purported "bond hearing" held by the Government in response to this Court's Order clearly has resulted in the erroneous deprivation of Petitioner's liberty interest because it was wholly inadequate to comport with due process requirements. The IJ used arbitrary reasons that would typically result in the denial of bond to virtually all detained noncitizens, to support his finding of "flight risk."

The value of additional or substitute procedural safeguards would be high. This Court could, for instance, order the Government to consider the relevant factors under *Miranda*. The Court could also order the Government to consider alternative to detention (such as an ankle monitor, for instance), that is a strong ameliorative factor to mitigate any potential flight risk. Placing the burden on the Government to prove by clear and convincing evidence that Petitioner is a flight risk would also help ensure due process.

Nevertheless, even if this Court issues concrete orders on how to conduct a bond hearing, the reality here is that the Immigration Court system is no longer a fair, neutral tribunal. The

administration has stamped out any semblance of decision-making independence through its ruthless purges of immigration judges, and its directives to disregard court orders and order noncitizens deported in an expeditious manner.

It is clear from the record of the bond proceedings in Petitioner's matter that he is not a flight risk.

While it will take a lot more to correct the course of this nation, this Court could potentially help ameliorate this particular injustice by issuing clear orders that direct IJs to hold bond hearings in a manner that affords due process, or by ordering immediate release.

3. The Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail:

The government has little, to no, legitimate interest in detaining Petitioner. The cost of providing additional safeguards is not burdensome. Indeed, it would be less of a fiscal and administrative burden for the Government to return Petitioner home to await a determination on his immigration proceedings than to continue to detain him. The Government's interest, as interpreted by this Court, a co-equal branch of government, is analogous to the interest of the people, and not necessarily the interest of the executive branch alone. Further, the Government "cannot reasonably assert that it is harmed in any legally cognizable sense by being enjoined from constitutional violations." *Zepeda v. U.S. Immigr. & Nat. Serv.*, 753 F.2d 719, 727 (9th Cir. 1983).

VI. CONCLUSION

Based on the foregoing, Petitioner asks this Court to 1) find that Respondents are not in compliance with this Court's order to hold a bond hearing given that the hearing that took place

did not comport with due process, and 2) order Petitioner immediately released and that Respondents may not re-detain him without a pre-deprivation hearing, with adequate advance notice of at least fourteen days, before a neutral arbiter, where the burden shall be on the government to establish by clear and convincing evidence that Petitioner is a danger to the community or a flight risk, and where the arbiter must take into consideration Petitioner's ability to pay any monetary bond amount that is set as well as any alternatives to detention that may be used to meet the government's interests in the least restrictive manner possible; or other such such relief as this Court may see fit.

Local Rule 3.01(g) Certificate

Pursuant to Local Rule 3.01(g), the undersigned conferred with Respondents' counsel who opposes the relief requested in this motion.

Dated: April 24, 2026

Respectfully submitted,

/s/Alice Carmen Burgos

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 24, 2026, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which sent notice of such filing to all parties.

/s/Alice Carmen Burgos
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