

Eli Goldmann
6664 Coral Springs Cir
Las Vegas, NV 89108
(503) 893-9243
e.goldmann@icloud.com

Attorney for Petitioner

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Jose Luis Fabian-Perez,
Petitioner,

v.

Eric Rokosky, Warden, Eloy Detention
Center; Christopher McGregor, Phoenix
Acting Field Office Director, Immigration
and Customs Enforcement and Removal
Operations ("ICE/ERO"); Todd
Lyons, Acting Director of U.S.
Immigration and Customs Enforcement
("ICE"); Pamela Bondi, Attorney
General of the United States;
U.S. Immigration and Customs
Enforcement; Executive Office for
Immigration Review; and U.S. Department
of Homeland Security,

Respondents.

No. _____

**PETITION FOR WRIT OF
HABEAS CORPUS PURSUANT
TO 28 U.S.C. § 2241**

INTRODUCTION

1. Petitioner, Jose Luis Fabian-Perez ("Petitioner"), has lived in the United States for more than twenty-five years since his arrival on February 14, 2000. He has built a life in this country, where he has raised a family of five children, maintained steady employment at [REDACTED] since 2012, and contributed to his community, including as a volunteer firefighter with the Aguila Fire Department since March 2020. Immigration Judge Memorandum Decision at 3 (Feb. 11, 2026) (attached hereto as "Ex. A") ("Bond Exh. 4 at 50-52"). He has three United States citizen children, two additional children, and deep familial and community ties. *Id.* (Bond Exh. 4 at 7). Yet, Respondents continue to detain Petitioner pursuant to a constitutionally deficient bond determination.

2. This case follows a prior habeas proceeding in which the United States District Court for the District of Arizona granted relief and ordered that Petitioner be provided a bond hearing or released. Order at 3, *Fabian-Perez v. Cantu*, No. CV-25-04992-PHX-JJT (D. Ariz. Jan. 9, 2026). The district court held that Petitioner's detention is governed by 8 U.S.C. § 1226(a), not mandatory detention, and that he is entitled to a bond hearing. *Id.*

3. Prior to that order, an Immigration Judge denied bond solely for lack of jurisdiction but explicitly determined that, if jurisdiction existed, Petitioner warranted release on a \$3,500 bond with conditions. Order of the Immigration Judge at 1 (Dec. 30, 2025) (attached hereto as "Ex. B"). That determination reflects a finding that Petitioner is neither a danger nor a flight risk that cannot be mitigated by bond.

4. But at the subsequent bond hearing ordered by the district court, a different Immigration Judge disregarded that prior finding, ignored governing law, and denied bond based on speculation untethered to the record. The Immigration Judge concluded that Petitioner had an "impulse to flee" based solely on the denial

of his application for cancellation of removal, notwithstanding his decades-long residence and strong ties. Ex. A at 3.

5. The denial of bond in this case mirrors a pattern that federal courts have identified and condemned in recent months. Critically, this very Court has already confronted Respondents' defiance of federal court orders in bond proceedings. In *Iylmaz v. Cantu*, No. CV-25-03331-PHX-DJH (D. Ariz. Feb. 4, 2026), Doc. 41, Judge Humetewa found that an Immigration Judge was "acutely aware" of the court's order requiring a bond hearing within seven days and "chose to disregard" it, and that Respondents' "dilatory action" obstructed the petitioner's ability to prepare. *Id.* at 1-2. The court ordered immediate release as the appropriate remedy. *Id.* at 2.

6. The pattern extends well beyond this district. In *Garcia v. Hyde*, the District of Rhode Island granted habeas relief where an Immigration Judge denied bond based on evidence that was not "probative and specific" and where the IJ disregarded current evidence contradicting the government's flight risk theory. No. 25-cv-585-JJM-PAS, 2025 WL 3466312, at *9 (D.R.I. Dec. 3, 2025). In *W.T.M. v. Bondi*, the Western District of Washington found an IJ's bond denial constitutionally deficient where "there are no circumstances in which the IJ could plausibly establish that Petitioner posed a flight risk." 2026 WL 262583, at *4 (W.D. Wash. Jan. 30, 2026). In *S.E. v. Noem*, the Eastern District of California found that an IJ's flight risk determination violated due process where the government presented no evidence of flight risk and the IJ applied blanket characterizations rather than individualized analysis. 2026 WL 627456, at *3-4 (E.D. Cal. Mar. 5, 2026). And in *Loya Medina v. Hernandez*, No. 2:26-cv-772, Doc. 1 (W.D. Wash. Mar. 6, 2026), the petitioner challenged an IJ's "no bond" order that was issued after a 15-minute hearing and consisted of nothing more than checked boxes on a boilerplate form with no factual findings.

7. The Constitution requires more than conjecture to justify detention. The pattern of IJ noncompliance with federal court orders in this very district demonstrates that a remand for yet another bond hearing would only prolong unlawful detention. This Court should grant the writ and order Petitioner's immediate release.

JURISDICTION

8. This action arises under the Constitution and laws of the United States. This Court has subject matter jurisdiction under 28 U.S.C. §§ 2241 and 1331.

9. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, the All Writs Act, 28 U.S.C. § 1651, and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).

10. Federal courts retain jurisdiction to review constitutional and legal errors in immigration bond proceedings notwithstanding 8 U.S.C. § 1226(e). *Singh v. Holder*, 638 F.3d 1196, 1202 (9th Cir. 2011). Section 1226(e) does not preclude "habeas jurisdiction over constitutional claims or questions of law." *Hernandez v. Sessions*, 872 F.3d 976, 987 (9th Cir. 2017) (quoting *Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011)). As the court held in *Garcia v. Hyde*, challenges to whether an IJ provided a "constitutionally adequate bond hearing" are "precisely the types of claims that belong" in federal court. 2025 WL 3466312, at *5. Accord *W.T.M. v. Bondi*, 2026 WL 262583, at *2 (W.D. Wash. Jan. 30, 2026).

11. This Court has jurisdiction to review bond hearings for errors of law, including as to whether the IJ properly concluded someone is a flight risk or danger to the community. *Martinez v. Clark*, 124 F.4th 775, 783 (9th Cir. 2024).

12. A petition for writ of habeas corpus is the proper mechanism to challenge the constitutional adequacy of a bond hearing. "[A] petition for a writ of

habeas corpus, filed in the appropriate district court, is the only mechanism by which a noncitizen may seek judicial review of an IJ's bond decision." *Mayancela v. FCI Berlin, Warden*, No. 25-cv-348-LM-TSM, 2025 WL 3215638, at *4 (D.N.H. Nov. 18, 2025).

VENUE

13. Venue is proper because Petitioner is in Respondents' custody within the District of Arizona. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue lies in the judicial district in which Petitioner is currently in custody.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

14. On February 4, 2026, Petitioner timely appealed the IJ's bond denial to the Board of Immigration Appeals. Pet. Decl. ¶ 15. More than forty-five days have elapsed since the filing of that appeal, and the BIA has not acted. Petitioner has thus initiated the administrative process but should not be required to await its conclusion before seeking habeas relief from this Court.

15. As a threshold matter, this Petition does not seek initial habeas review of an IJ's bond determination in the first instance. It seeks relief from a constitutionally deficient bond hearing that was itself conducted pursuant to a prior order of this Court. Where the Government has not provided the relief ordered, the Court's enforcement authority is not conditioned on administrative exhaustion. *Leonardo v. Crawford*, 646 F.3d 1157, 1161 (9th Cir. 2011) (drawing the relevant line at whether the Government "complied exactly" with the court's order). The Government complied in form but not in substance: the resulting hearing was constitutionally deficient for the reasons set forth below.

16. The exhaustion requirement for habeas claims under 28 U.S.C. § 2241 is prudential, rather than jurisdictional. *Singh v. Holder*, 638 F.3d 1196, 1203 n.3 (9th Cir. 2011) (citing *Arango Marquez v. INS*, 346 F.3d 892, 897 (9th Cir. 2003)). Courts may waive the prudential exhaustion requirement if "administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void." *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017) (quoting *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004)); see also *Acevedo-Carranza v. Ashcroft*, 371 F.3d 539, 541 (9th Cir. 2004). The party moving the court to waive prudential exhaustion bears the burden of demonstrating that at least one of these *Laing* factors applies. *Aden v. Nielsen*, No. C18-1441RSL, 2019 WL 5802013, at *2 (W.D. Wash. Nov. 7, 2019).

17. Petitioner satisfies multiple *Laing* factors. First, continued detention inflicts irreparable harm. Petitioner has resided in the United States for over twenty-five years, is the father of five children including three United States citizen children, has maintained steady employment at  since 2012, has served as a volunteer firefighter with the Aguila Fire Department, and has no criminal record. Pet. Decl. ¶¶ 3-12. He remains detained despite these stabilizing factors because the January 13, 2026 proceeding did not meaningfully apply the governing legal standard or consider alternatives to detention. Each additional day of detention perpetuates an ongoing deprivation of physical liberty without the process this Court required. See *Ortega-Rangel v. Sessions*, 313 F. Supp. 3d 993, 1003-04 (N.D. Cal. 2018) (waiving exhaustion; finding irreparable harm from prolonged detention).

18. Second, the BIA appeal is demonstrably futile and is prolonging unlawful confinement in real time. Petitioner filed his appeal on February 4, 2026, and the BIA has taken no action in over forty-five days. This delay is consistent with systemic BIA backlogs: in 2024, EOIR data showed an average processing time of

204 days for bond appeals, and between 2015 and 2024, bond appeal cases took a year or longer to resolve. *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1248-49 (W.D. Wash. 2025). There is no defined timeframe within which the BIA is required to rule, and any further delay will only compound the injury arising from Petitioner's continued detention without a constitutionally adequate bond redetermination. See *Fuentes-Barnett v. Sessions*, No. CV-17-00858-PHX-DGC-JZB, 2017 WL 6888719, at *3 (D. Ariz. June 16, 2017) (declining to require exhaustion where BIA review would entail indeterminate delay and prolong unlawful detention); *Rianto v. Holder*, No. CV-11-0137-PHX-FJM, 2011 WL 3489613, at *2 (D. Ariz. Aug. 9, 2011) (waiving prudential exhaustion where prolonged detention risked irreparable injury). Indeed, the lengthy delays in BIA adjudication often moot pending bond appeals before they are resolved, rendering the entire process inadequate. *Loya Medina v. Hernandez*, No. 2:26-cv-772, Doc. 1 at 20 (W.D. Wash. Mar. 6, 2026).

19. Third, Petitioner raises a constitutional challenge over which the Immigration Court and the BIA lack any authority to adjudicate, rendering the pending appeal futile as to the claims asserted here. See *Matter of Cruz de Ortiz*, 25 I. & N. Dec. 601, 605 (B.I.A. 2011) ("[N]either we nor the Immigration Judges have authority to rule on the constitutionality of the statutes we administer."); *Garcia*, 2025 WL 3466312, at *7 (waiving exhaustion because "the BIA does not have jurisdiction to adjudicate constitutional issues"); *W.T.M.*, 2026 WL 262583, at *2-3 (finding all three *Puga* factors weighed against requiring prudential exhaustion where petitioner raised constitutional challenge to bond hearing).

20. Reliance on *Leonardo* is unavailing. In *Leonardo*, the petitioner failed to exhaust administrative remedies not only because he did not appeal to the BIA, but also because he failed to demonstrate any grounds for excusing exhaustion. 646 F.3d at 1160-61. Here, Petitioner has done both: he filed a timely BIA appeal on February 4, 2026, and has independently demonstrated that the *Laing* factors excuse

any further waiting. Moreover, the premise in *Leonardo* was exact compliance with the court's order. *Id.* at 1161. Here, Respondents did not comply with this Court's prior order because the resulting bond hearing was constitutionally deficient. *Leonardo* therefore does not bar this Petition. *See also Martinez v. Gutierrez*, No. CV-22-00505-TUC-RM (AMM), 2023 WL 6466490, at *3 (D. Ariz. July 14, 2023).

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

21. 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 petitioner is 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.*

22. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. *See Fay v. Noia*, 372 U.S. 391, 400 (1963).

PARTIES

23. Petitioner Jose Luis Fabian-Perez is a longtime resident of the United States who has lived in this country for over twenty-five years. He is currently detained in Respondents' custody at the Eloy Detention Center within the District of Arizona.

24. Respondent Eric Rokosky is the Warden of the Eloy Detention Center, where Petitioner is detained. He has immediate physical custody of Petitioner.

25. Respondent Christopher McGregor is the Acting Field Office Director for ICE's Phoenix Field Office. The Phoenix Field Office is responsible for local custody decisions relating to noncitizens charged with being removable from the United States, including the arrest, detention, and custody status of noncitizens.

26. Respondent Todd Lyons is the Acting Director of ICE and has authority over the actions of ICE. Respondent Lyons is a legal custodian of Petitioner.

27. Respondent Pamela Bondi is the Attorney General of the United States and, as such, has authority over the Department of Justice and is charged with faithfully administering the immigration laws of the United States.

28. Respondent ICE is the federal agency responsible for custody decisions relating to noncitizens charged with being removable from the United States, including the arrest, detention, and custody status of noncitizens.

29. Respondent DHS is the federal agency that has authority over the actions of ICE and all other DHS Respondents.

30. Respondent EOIR is the federal agency that has authority over the actions of the immigration court.

31. This action is commenced against all Respondents in their official capacities.

LEGAL FRAMEWORK

Detention Authority Under the Immigration & Nationality Act

32. The Immigration and Nationality Act authorizes the DHS to detain noncitizens who are in removal proceedings. This case concerns the detention provision at 8 U.S.C. § 1226(a) and its implementing regulations.

33. To be constitutional, civil immigration detention must be non-punitive. *Zadvydas v. Davis*, 533 U.S. 678, 690-92 (2001). The government may not detain a noncitizen unless needed to prevent flight or danger to society. *Id.* Due process requires both that immigration detention be "reasonabl[y] relat[ed]" to its purposes of preventing flight and danger to the community, and that it be accompanied by adequate procedures to ensure those purposes are met. *Id.* at 690-91. *Accord Demore v. Kim*, 538 U.S. 510, 527 (2003).

34. Under 8 U.S.C. § 1226(a), detention is discretionary, and release must be granted where the Government fails to justify continued custody. *Jennings v. Rodriguez*, 583 U.S. 281, 303 (2018). In making release decisions under § 1226(a), the regulations provide that a noncitizen must demonstrate he or she does not pose a danger to property or persons, and that he or she is "likely to appear for any future proceeding." 8 C.F.R. § 1236.1(c)(8); *see also Matter of Guerra*, 24 I. & N. Dec. 37, 38 (B.I.A. 2006).

35. Respondents were required to provide Petitioner with a bond hearing that complied with the procedural requirements set forth in *Singh v. Holder*, 638 F.3d 1196 (9th Cir. 2011). To comport with due process, a bond hearing before a neutral IJ must meet the following requirements: (1) the burden of establishing that continued detention is justified falls on the government, *id.* at 1203; (2) the government must prove by clear and convincing evidence that petitioner is a flight risk or a danger to the community in order to justify denial of bond, *id.* at 1203-05; (3) the IJ should consider the factors set forth in *Matter of Guerra*, 24 I. & N. Dec. 37, 40 (B.I.A. 2006), when determining whether petitioner must be released on bond, *id.* at 1206; and (4) the government must make a contemporaneous record of the bond hearing, *id.* at 1208.

36. The Government must consider a range of evidence bearing on flight risk and danger, including: (a) whether the noncitizen has a fixed address in the United States; (b) the noncitizen's length of residence in the United States; (c) the noncitizen's family ties in the United States, and whether they may entitle the noncitizen to reside permanently in the United States in the future; (d) the noncitizen's employment history; (e) the noncitizen's record of appearance in court; (f) the noncitizen's criminal record, including the extensiveness of criminal activity, the recency of such activity, and the seriousness of the offenses; (g) the noncitizen's history of immigration violations; (h) any attempts by the noncitizen to flee

prosecution or otherwise escape from authorities; and (i) the noncitizen's manner of entry to the United States. *Matter of Guerra*, 24 I. & N. Dec. at 38; *Matter of R-A-V-P-*, 27 I. & N. Dec. 803, 805 (B.I.A. 2020); *Ortega-Rangel v. Sessions*, 313 F. Supp. 3d 993, 1000-01 (N.D. Cal. 2018).

37. For noncitizens who may present some level of flight risk, the Government must also consider the noncitizen's financial ability to pay a bond and whether the noncitizen may be released on alternative conditions of supervision, alone or in combination with a lower bond amount, that are sufficient to mitigate flight risk. *Hernandez v. Sessions*, 872 F.3d 976, 986-87 (9th Cir. 2017). Because of the liberty interest at stake, "there are seldom circumstances where no combination of conditions, including bond, could mitigate any flight risk." *See Loya Medina v. Hernandez*, No. 2:26-cv-772, Doc. 1 at 8 (W.D. Wash. Mar. 6, 2026) (collecting cases).

38. A bond determination that rests on speculation, ignores material evidence, or fails to apply the correct legal framework violates due process. *Garcia v. Hyde*, 2025 WL 3466312, at *9-10; *W.T.M. v. Bondi*, 2026 WL 262583, at *4; *S.E. v. Noem*, 2026 WL 627456, at *3-4.

FACTUAL BACKGROUND

Petitioner's Background

39. Petitioner has resided in the United States for over twenty-five years, since his arrival on February 14, 2000. Ex. A at 3; Declaration of Jose Luis Fabian-Perez in Support of Petition for Writ of Habeas Corpus ("Pet. Decl.") ¶ 3.

40. He has three United States citizen children, two additional children, and extensive family ties in this country, including his partner Lourdes del Carmen Cubedo Ruiz and his children who reside at the family home in Aguila, Arizona. *Id.* (Bond Exh. 4 at 7); Pet. Decl. ¶¶ 4-6.

41. He has a long history of gainful employment and has provided financial support to his family. *Id.* (Bond Exh. 4 at 8, 37-48); Pet. Decl. ¶ 8.

42. He has served his community as a volunteer firefighter. *Id.* (Bond Exh. 4 at 50-52); Pet. Decl. ¶ 9.

Petitioner's Prior Habeas Proceedings

43. On December 30, 2025, an Immigration Judge denied bond solely for lack of jurisdiction but expressly found that, if jurisdiction existed, Petitioner would be released on a \$3,500 bond. Ex. B at 1 (Dec. 30, 2025).

44. On January 9, 2026, the United States District Court for the District of Arizona granted Petitioner's habeas petition and ordered Respondents to provide a bond hearing or release Petitioner. Order at 3, *Fabian-Perez v. Cantu*, No. CV-25-04992-PHX-JJT (D. Ariz. Jan. 9, 2026).

Petitioner's Post-Habeas IJ Custody Proceeding and Agency Decision

45. On January 13, 2026, a custody redetermination hearing was conducted pursuant to the district court's order. Ex. A at 2.

46. The Immigration Judge found that Petitioner is not a danger to the community. *Id.* at 2.

47. Nevertheless, the Immigration Judge denied bond, finding that Petitioner posed a "significant flight risk." *Id.*

48. The Immigration Judge's reasoning rested primarily on the denial of Petitioner's application for cancellation of removal, which the court deemed a "significant change in Respondent's circumstances." *Id.* at 3.

49. The Immigration Judge further concluded that "the impulse to flee would be irresistible," despite acknowledging Petitioner's substantial equities. *Id.*

50. The Immigration Judge discounted Petitioner's equities, including his family ties, employment, and community service, based on speculation regarding the likelihood of relief. *Id.*

51. Petitioner has appealed the denial of his application for cancellation of removal and continues to pursue relief through lawful channels. *Id.* at 2-3; Pet. Decl. ¶ 15. On February 4, 2026, Petitioner also timely appealed the IJ's bond denial to the Board of Immigration Appeals. Pet. Decl. ¶ 15. As of the date of this filing, more than forty-five days have elapsed and the BIA has taken no action on the appeal.

Pattern of IJ Noncompliance with Federal Court Orders in This District

52. Petitioner's experience is not an isolated incident. This Court is aware of a documented pattern of Immigration Judges in this district disregarding federal court orders in bond proceedings. In *Iylmaz*, Doc. 41 at 1-2, Judge Humetewa reviewed the audio recording of a bond hearing held pursuant to a prior court order and found that the IJ "was acutely aware of the Order's requirements and he chose to disregard them." *Id.* at 2. The court found that Respondents gave the petitioner only one day's notice of his bond hearing, thereby "obstructing his (or his counsel's) ability to prepare." *Id.* at 1-2. The court concluded that "[b]y its own dilatory action, Respondents failed to provide Petitioner with a meaningful bond hearing within 7 days, as this Court ordered." *Id.* at 2.

53. The remedy in *Iylmaz* was immediate release: "the Court finds that Petitioner's immediate release, rather than requiring he remain detained while awaiting a bond hearing, is the appropriate remedy." *Id.* The court ordered the petitioner "immediately released from custody under the same conditions that existed before his detention" and required Respondents to "file a Notice of Compliance within 24 hours." *Id.*

54. Here, as in *Iylmaz*, this Court already ordered Respondents to provide Petitioner with a bond hearing. Respondents complied in form but not in substance: the resulting hearing was constitutionally deficient. A second IJ disregarded a prior IJ's finding that Petitioner warranted release on a \$3,500 bond, ignored the *Matter of Guerra* factors, and denied bond on the basis of rank speculation. This pattern of IJ noncompliance with federal court orders demonstrates that a remand for yet another bond hearing would only prolong Petitioner's unlawful detention.

CLAIMS FOR RELIEF

COUNT ONE

Violation of Fifth Amendment Right to Procedural Due Process

Failure by DHS to Conduct Individualized Determination

(Against Respondents DHS, McGregor, Lyons)

55. Petitioner restates and realleges all paragraphs as if fully set forth here.

56. 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.

57. Due process requires that government action be rational and non-arbitrary. *See United States v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007). While the government has discretion to detain individuals under 8 U.S.C. § 1226(a), this discretion is not "unlimited" and must comport with constitutional due process. *See Zadvydas*, 533 U.S. at 698.

58. Under the Due Process Clause, immigration detention must always "bear[] a reasonable relation to the purpose for which the individual was committed." *Demore*, 538 U.S. at 527 (quoting *Zadvydas*, 533 U.S. at 690).

59. Petitioner's detention does not bear a "reasonable relation" to either preventing flight risk or preventing danger to the community.

60. Respondents' failure to conduct an individualized custody determination and provide an opportunity for Petitioner to be heard in that process prior to or contemporaneous with Petitioner's detention violates his due process rights. *See Gonzalez v. Joyce*, 2025 WL 2961626, at *5 (S.D.N.Y. 2025) (requiring a "deliberative process prior to, or contemporaneous with, the initial decision to strip a person of the freedom that lies at the heart of the Due Process Clause"); *Loya Medina v. Hernandez*, No. 2:26-cv-772, Doc. 1 at 9-10 (W.D. Wash. Mar. 6, 2026).

COUNT TWO

Violation of Fifth Amendment Right to Procedural Due Process Failure by Immigration Court to Conduct Fair Custody Redetermination (Against Respondents EOIR, Bondi)

61. Petitioner restates and realleges all paragraphs as if fully set forth here.

62. "Freedom from imprisonment, from government custody, detention or other forms of physical restraint, lies at the heart of the liberty that [Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690.

63. The bond hearing ordered by the district court did not comply with *Singh v. Holder*. The Immigration Judge did not require the Government to prove flight risk by clear and convincing evidence. Instead, the decision rests on speculation that Petitioner would flee following the denial of relief. Ex. A at 3.

64. The Immigration Judge's conclusion that Petitioner has an "impulse to flee" is unsupported by any evidence in the record. *Id.* Courts have rejected bond denials based on speculative reasoning. *See Garcia v. Hyde*, 2025 WL 3466312, at *9 (finding due process violation where IJ relied on evidence that was not "probative and specific"); *S.E. v. Noem*, 2026 WL 627456, at *3-4 (finding abuse of discretion

where IJ's flight risk finding relied on "blanket characterizations about circumstances common to many individuals in immigration proceedings, not individualized determinations").

65. The Immigration Judge improperly disregarded the prior bond determination. The prior Immigration Judge explicitly found that Petitioner warranted release on a \$3,500 bond. The subsequent Immigration Judge did not identify any material change in circumstances sufficient to justify a contrary conclusion. Such unexplained inconsistency is arbitrary and violates due process. *See Doung v. Kaiser*, 800 F. Supp. 3d 1030, 1042 (N.D. Cal. 2025) (requiring a "material change of circumstances" before bond can be revoked or modified); *S.E. v. Noem*, 2026 WL 627456, at *3-4 (finding that absence of changed circumstances relative to a prior release determination demonstrated abuse of discretion).

66. The Immigration Judge failed to apply *Matter of Guerra*. The record demonstrates overwhelming positive equities, including decades of residence, five children including three U.S. citizen children, steady employment at Martori Farms since 2012, and community service as a volunteer firefighter. Ex. A at 3 (Bond Exh. 4 at 7-52). The Immigration Judge acknowledged these factors but failed to give them meaningful weight. *See Cole v. Holder*, 659 F.3d 762, 771 (9th Cir. 2011) (explaining that if "the agency did not consider all the evidence before it, a catchall phrase does not suffice, and the decision cannot stand"); *S.E. v. Noem*, 2026 WL 627456, at *4 (finding that IJ's "passing reference" to evidence was "insufficient to show that the IJ meaningfully considered" it).

67. The Immigration Judge's reliance on the denial of cancellation of removal as dispositive of flight risk was legally improper. The Government may contend that the denial of 42B relief constitutes a "material change in circumstances" that increases flight risk because Petitioner now allegedly faces removal with no remaining avenue for relief. That argument fails for three independent reasons.

68. First, the premise is factually wrong. Petitioner has appealed the denial of his cancellation of removal application and continues to pursue relief through lawful channels. Ex. A at 2-3; Pet. Decl. ¶ 15. He has also timely appealed the IJ's bond denial to the BIA. Pet. Decl. ¶ 15. The filing of not one but two appeals is itself powerful evidence of intent to remain in the jurisdiction and submit to the authority of the courts. A person who intends to abscond does not actively litigate his case on multiple fronts simultaneously. *See Chi Thon Ngo v. INS*, 192 F.3d 390, 398 (3d Cir. 1999) (requiring assessment of flight risk "on a current basis").

69. Second, accepting the Government's theory would mean that every noncitizen who loses a merits hearing is per se unbondable, because every such person "faces removal with no remaining avenue for relief" at the trial level. That rule would swallow the *Matter of Guerra* framework entirely. The whole purpose of *Guerra*'s multi-factor, individualized analysis is to prevent exactly this kind of categorical reasoning. **If the denial of relief alone were sufficient to establish flight risk, there would be no need for IJs to weigh family ties, length of residence, employment history, community connections, or any of the other *Guerra* factors.** Congress did not design the bond system to function as an automatic detention trigger upon denial of a merits claim.

70. Third, the IJ's speculation that Petitioner has an "impulse to flee" is contradicted by twenty-five years of evidence to the contrary. Petitioner has lived in this country since February 2000, raised five children including three United States citizen children, maintained steady employment at Martori Farms since 2012, served as a volunteer firefighter with the Aguila Fire Department since March 2020, owns property and vehicles in Arizona, regularly attends Our Lady of Guadalupe Catholic Church with his family, and has never attempted to flee or evade authorities. Pet. Decl. ¶¶ 3-12. These facts demonstrate the opposite of flight risk. They demonstrate a person with overwhelming reasons to remain. *See S.E.*, 2026 WL 627456, at *4

(condemning reliance on "blanket characterizations" rather than individualized analysis); *W.T.M.*, 2026 WL 262583, at *4-5 (finding that "continued detention of a petitioner on the basis that he is a 'flight risk'" based on legally insufficient evidence "poses a serious risk of erroneous deprivation of liberty, and does not protect any significant government interest").

71. Where the Government fails to meet its burden, release is required. *See Gomes v. Hyde*, 804 F. Supp. 3d 265, 268-70 (D. Mass. 2025); *Garcia v. Hyde*, 2025 WL 3466312, at *2. The Government presented no evidence that Petitioner poses a flight risk that cannot be mitigated by bond. The record demonstrates the opposite: Petitioner has lived in the United States for decades, maintained strong family and community ties, and continues to pursue relief through appeal. If Petitioner had any impulse to flee, he would not be actively litigating his case.

72. Moreover, a remand for another bond hearing is not an adequate remedy. This Court already ordered Respondents to provide a bond hearing, and the resulting hearing was constitutionally deficient. A judge in this District confronted identical circumstances in *Iylmaz*, where the IJ deliberately disregarded the court's prior order. Judge Humetewa concluded that "immediate release, rather than requiring he remain detained while awaiting a bond hearing, is the appropriate remedy." Doc. 41 at 2.

73. The appropriate remedy is immediate release subject to the conditions already set by a prior IJ. A prior Immigration Judge already determined on December 30, 2025, that Petitioner warranted release on a \$3,500 bond. Ex. B at 1. That finding has not been meaningfully rebutted. In *Valera v. Baltazar*, No. 1:25-cv-03744-CNS, 2025 WL 3496174 (D. Colo. Dec. 5, 2025), the court confronted a noncitizen who had previously been released on bond by an IJ and was subsequently re-detained. The court held that ordering another bond hearing "would not address Petitioner's injury because, until then, he would remain in 'continued detention despite a

determination from an immigration judge' that already 'order[ed] his release on bond.'" *Id.* at *3 (quoting *Garcia-Arauz v. Noem*, 2025 WL 3470902, at *9 (D. Nev. Dec. 3, 2025)). The court ordered immediate release subject to the prior IJ's bond conditions. *Id.* at *4. The same reasoning applies here with even greater force: not only has a prior IJ found Petitioner eligible for release on bond, but this Court has already ordered a bond hearing, and the resulting hearing was constitutionally deficient. Petitioner should not be subjected to a third attempt at the process that has twice failed to vindicate his rights.

74. Accordingly, Petitioner's detention violates the Due Process Clause of the Fifth Amendment.

COUNT THREE

Violation of the Immigration and Nationality Act and Bond Regulations

Unlawful Denial of Release on Bond

(Against All Respondents)

75. Petitioner restates and realleges all paragraphs as if fully set forth here.

76. Section 1226(a) is the statutory authority for detaining Petitioner "pending a decision on whether [he] is to be removed from the United States." It affords him a right to a fair, individualized bond hearing. *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018); *Matter of Guerra*, 24 I. & N. Dec. 37 (B.I.A. 2006).

77. The Immigration Judge has failed to provide any facts or probative and reasonable basis for the IJ's denial of bond. For a noncitizen otherwise eligible for release under § 1226(a), custody proceedings and decisions may not be arbitrary, irrational, irrelevant, or unreasonable. Custody proceedings and decisions must comport with the interest in being free from physical detention, which is "most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). *See also Loya Medina v. Hernandez*, No. 2:26-cv-772, Doc. 1 at 10 (W.D. Wash. Mar. 6, 2026).

78. Respondents have violated § 1226(a) and its implementing regulations by detaining Petitioner without providing him a fair, individualized release determination that the statute and regulations mandate.

GROUND FOR EMERGENCY AND INJUNCTIVE RELIEF

79. In the event the Court treats this Petition as a request for emergency relief, a temporary restraining order, or a preliminary injunction, Petitioner respectfully submits that all requirements for such relief are satisfied.

80. Petitioner is likely to succeed on the merits. As demonstrated above, the IJ's bond denial rested on impermissible speculation, failed to apply the correct legal standard, disregarded a prior IJ's contrary finding without identifying a material change in circumstances, and failed to give meaningful weight to the *Matter of Guerra* factors. Multiple federal courts have granted habeas relief on substantially identical facts. *See Garcia*, 2025 WL 3466312, at *9-11; *W.T.M.*, 2026 WL 262583, at *4-5; *S.E.*, 2026 WL 627456, at *3-4; *Iylmaz*, Doc. 41 at 2.

81. Petitioner is suffering irreparable harm. The deprivation of physical liberty is the most elemental form of irreparable injury. *See Zadvydas*, 533 U.S. at 690; *Hamdi*, 542 U.S. at 529. Every day Petitioner remains detained, his five children, including three United States citizen children, are deprived of their father's care, guidance, and financial support. Pet. Decl. ¶¶ 3-7. His family is suffering severe emotional and financial hardship as a direct consequence of his continued detention, including the inability to meet mortgage obligations on the family home, vehicle loan payments, and basic utility costs. Pet. Decl. ¶¶ 16-18. This harm cannot be remedied by damages and is ongoing.

82. The balance of equities tips sharply in Petitioner's favor. Petitioner poses no danger to the community; the IJ expressly so found. Ex. A at 2. The Government's sole justification for detention is a speculative flight risk finding that

no court applying the correct legal standard could sustain. Against this, Petitioner has a fundamental liberty interest in freedom from physical restraint. *See Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017) (recognizing irreparable harms imposed on individuals in immigration detention).

83. The public interest favors release. The public has a strong interest in ensuring that the Government does not detain individuals without constitutional justification. *See S.E.*, 2026 WL 627456, at *4-5 (ordering immediate release after finding preliminary injunction violated). The preliminary injunction framework employed in *S.E.* is instructive: the court's initial order requiring a constitutionally compliant bond hearing gave it continuing jurisdiction to enforce its own order when the IJ failed to comply. *Id.* at *2. This Court is in the same posture. Having already ordered Respondents to provide a bond hearing in the prior habeas proceeding, this Court retains authority to enforce compliance and fashion appropriate relief when Respondents fail to meet the constitutional standard the Court mandated.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests this Court grant the following:

1. Assume jurisdiction over this matter;
2. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;
3. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment, the INA, and the implementing regulations;
4. Issue a Writ of Habeas Corpus ordering Respondents to immediately release Petitioner from custody subject to the \$3,500 bond and conditions previously set by the Immigration Judge on December 30, 2025. Ex. B at 1. Where a prior IJ has already determined that a petitioner warrants release on bond, ordering another bond hearing "would not address Petitioner's injury because, until then, he would

remain in 'continued detention despite a determination from an immigration judge' that already 'order[ed] his release on bond.'" *Valera v. Baltazar*, No. 1:25-cv-03744-CNS, 2025 WL 3496174, at *3 (D. Colo. Dec. 5, 2025) (ordering immediate release subject to prior IJ's bond conditions). A judge in this District has also ordered immediate release where Respondents failed to provide a constitutionally adequate bond hearing following a prior court order. *Iylmaz*, Doc. 41 at 2. *See also Garcia*, 2025 WL 3466312, at *11; *W.T.M.*, 2026 WL 262583, at *5; *S.E.*, 2026 WL 627456, at *4;

5. In the alternative, if the Court does not order immediate release, order Petitioner's release on a \$3,500 bond, which is the amount a prior Immigration Judge already determined was sufficient to mitigate any flight risk when that IJ conducted an individualized assessment of Petitioner's equities on December 30, 2025. Ex. B at 1. As the *Valera* court held, a noncitizen's injury arising from detention despite a prior IJ's bond determination may be "remedied by granting immediate release subject to the conditions set by the IJ." 2025 WL 3496174, at *4. That finding has not been meaningfully rebutted by any material change in circumstances, and the subsequent IJ's contrary conclusion rested entirely on impermissible speculation; and

6. Grant any further relief this Court deems just and proper.

Dated: March 24, 2026

Respectfully submitted,

/s/ Eli Goldmann

Eli Goldmann
Attorney for Petitioner
6664 Coral Springs Cir
Las Vegas, NV 89108
(503) 893-9243
e.goldmann@icloud.com

VERIFICATION

I, Eli Goldmann, attorney for the petitioner in the above-entitled proceeding, declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that I have read the foregoing Petition for Writ of Habeas Corpus and, based on information and belief and records reasonably available to me, verify that its contents are true and correct to the best of my knowledge. Because many of the allegations of this Petition require a legal knowledge not possessed by Petitioner, I am making this verification on his behalf.

Date: March 24, 2026

Respectfully submitted,

/s/ Eli Goldmann

Eli Goldmann
Attorney for Petitioner
6664 Coral Springs Cir
Las Vegas, NV 89108
(503) 893-9243
e.goldmann@icloud.com