UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

JOSE GABRIEL ALONZO GASPAR,

Petitioner,

v.

George STERLING, Field Office Director of Enforcement and Removal Operations, Atlanta Field Office, Immigration and Customs Enforcement; Kristi NOEM, Secretary, U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; Pamela BONDI, U.S. Attorney General; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; WARDEN of Irwin Detention Center,

Respondents.

Case No. 4:26-cv-00524

PETITION FOR WRIT OF HABEAS CORPUS

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I. INTRODUCTION

1. Petitioner, JOSE GABRIEL ALONZO GASPAR, is a native and citizen of Guatemala. He has been in the United States for more than nine years. He entered the United States on or about September 6, 2016, and applied for admission in El Paso, Texas, but lacked requisite entry documents, and was then allowed into the United States. He was arrested on March 4, 2026, at a traffic stop, charged with driving without a license and alleged DUI, and subsequently entered immigration detention at Irwin County Detention Center, in Ocilla, Georgia. Petitioner is not subject to a removal order.

2. **Petitioner seeks an order granting his immediate release. Alternatively, he seeks a bond hearing overseen by *this Court*. He believes the immigration court is systematically unable or unwilling to provide non-citizens with due process of law.**[1] [2] [3] [4] [5] [6]

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[1] In 2025, the current administration has fired "nearly 100 [immigration] judges", leaving a total of 557 IJs as of February 20, 2026. See *Anusha Mathur, Ximena Bustillo, U.S. has a quarter fewer immigration judges than it did a year ago. Here's why*, NPR, published February 23, 2026 (https://www.npr.org/2026/02/23/g-s1-110911/trump-immigration-judges-dismissals-numbers).

[2] There has been a decline in asylum grant rates in 2025 to less than 20% grants as of August 2025. *See* George Fishman, *Why Have Asylum Grant Rates Been Plummiting?*, Published December 1, 2025 (https://cis.org/Report/Why-Have-Asylum-Grant-Rates-Been-Plummeting#:~:text=If%20so%2C%20this%20is%20a,in%20the%20shifting%20approval%20rates).

[3] See also TRAC Immigration, *Asylum Outcome Increasingly Depends on Judge Assigned* (available at https://tracreports.org/immigration/reports/447/ (Published December 2, 2016) ("the typical asylum seeker might have only a 15 percent chance of being granted asylum all the way up to a 71 percent chance *depending on the particular judge to whom their case is assigned*." Explaining the role of IJ judge assignment and regional variation in asylum outcomes, along with arguing "judge denial rates have significantly increased during the last six years.").

[4] See also Working Immigrants, *Chances a judge will grant you asylum*, published December 2024 (available at https://www.workingimmigrants.com/2024/12/chances-a-judge-will-grant-you-asylum/) ("Some judges deny 90% of cases; others deny 30%... The high variances within and between courts cast doubt on the trustworthiness of the courts.")

[5] *See* Radley Balko, *"The courts are dead." An interview with a fired immigration judge*, The Watch (Jan. 8, 2026), https://radleybalko.substack.com/p/the-courts-are-dead-an-interview ("*I can tell you that today, the immigration courts are substantively dead. They are completely absent of due process. Of fair hearings. They exist only for show, and in name only. Period. The courts are dead. If you're concerned about doing due process of fair hearings, they're gone. So we can start from that position.*" - George Pappas, former New York Immigration Judge).

[6] Pursuing bond in immigration court is futile because the agency has pre-decided the issues against bond applicants in apparent defiance or disregard of BIA case law and the due process clause. *See U.S. Const. Amend. V; 8 U.S.C. §*1226(a); *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006) (non-exhaustive list of factors to consider in deciding whether to grant bond, but noting the weight the immigration judge gives to the set of factors must be "reasonable");

3. **Alternatively, if the Court is unwilling to order immediate release or conduct its own Section 1226(a) bond hearing, then Petitioner seeks a Section 1226(a) bond hearing overseen by the Immigration Court.** Petitioner believes he will not receive due process in the immigration courts and urges the Court to order immediate release or conduct its own bond hearing to ensure Petitioner's constitutional rights are trampled no further.

4. Petitioner is being unlawfully detained by Respondents who erroneously deem Petitioner subject to 'mandatory detention' under 8 U.S.C. § 1225(b), in disregard of 8 U.S.C. § 1226(a), and several dozen federal court decisions which demonstrate Petitioner is detained under 8 U.S.C. § 1226(a) and therefore eligible to apply for bond. Respondent incorrectly argues 1225(b) applies. In support of this dubious legal position, Immigration Judges (IJ) routinely cite to BIA case law such as *Matter of Yajure-Hurtado*, which purports to strip IJs of authority to grant bond to all "applicants for admission", a class that encompasses more than 14 million people.[7] *See Matter of Yajure-Hurtado* 29 I&N Dec. 216 (BIA 2025) (BIA decides "Immigration Judges lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission."). The class of "applicants for admission" has been universally understood to be eligible to apply for bond under Section 1226(a) for several decades. The whims of the current executive administration now turn on a dime to disregard decades of settled

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Citing Carlson v. Landon, at 534 (denial of bail to an alien is within the Attorney General's lawful discretion as long as it has a "reasonable foundation.")). Per the experience of Counsel, the outcomes of bond hearings under Section 1226(a) are inconsistent and vary primarily based on whether the detainee gets a judge that denies fewer bond motions. Some Immigration Judge's routinely deny what seem to be apparent meritorious bond motions under dubious reasoning as to bond ineligibility based on "flight risk" or "danger to the community", while outright refusing to consider whether flight risk could be ameliorated by the setting of a bond.

[7] See Jeffrey S. Passel and Jens Manuel Krogstad, *U.S. Unauthorized Immigrant Population Reached a Record 14 Million in 2023*, Pew Research, Sept. 12, 2025, accessible at https://www.pewresearch.org/race-and-ethnicity/2025/08/21/u-s-unauthorized-immigrant-population-reached-a-record-14-million-in-2023/#:~:text=The%20number%20of%20unauthorized%20immigrants%20in%20the%20United%20States%20reached,a%20comprehensive%20and%20detailed%20estimate (Describing that "Unauthorized immigrants were 27% of the U.S. foreign-born population in 2023", consisting of "14.0 million [people]…")

statutory understanding to "reinterpret" into existence a legal standard that does is not supported by the INA, its legislative history, and in clear violation of the due process clause and the broader tenor of liberty interests protected by the U.S. Constitution.

5. *Matter of Yajure Hurtado* is not entitled to deference.[8]

6. Habeas is further warranted because Respondents violate the *Maldonado-Bautista* class action.[9]

7. Petitioner is a member of the *Maldonado-Bautista* Bond Eligible Class, as he:
   a. does not have lawful status in the United States and is currently detained at the Stewart Detention Center. He was apprehended by immigration authorities on March 9, 2026;
   b. entered the United States without inspection over 10 years ago and was not apprehended upon arrival, *cf. id.*; and
   c. is not detained under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231.

8. Dozens of Federal Courts have held Respondents' position, of supposed Section 1225(B) applicability, as legally wrong. For twenty-eight such decisions, see footnote 10.[10]

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[8] *Matter of Yajure-Hurtado* 29 I&N Dec. 216 (BIA 2025) (BIA decides "Immigration Judges lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission."). See *Loper Bright Enterprises v. Raimondo*, 603 U.S. ___ (2024) (Ending the 'Chevron doctrine' of *Chevron U.S.A. Inc. v. NRDC, 467 U.S. 837 (1984)*, under which courts previously deferred to agency interpretations of ambiguous statutory provisions so long as the interpretation was "reasonable.") Even if *Chevron* applied, *Yajure-Hurtado* would still not be binding because it is not a "reasonable" agency interpretation because it violates the plain text of the INA and the Due Process Clause.

[9] *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (C.D. Cal.) In that case, the 9th circuit vacated *Yajure-Hurtado* as incompatible with the Administrative Procedure Act, invalidating the decision nationwide. See *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3289861, at *11 (C.D. Cal. Nov. 20, 2025) (order granting partial summary judgment to Plaintiffs-Petitioners); *see also Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025) (order certifying Plaintiffs-Petitioners' proposed nationwide Bond Eligible Class, incorporating and extending declaratory judgment from Order Granting Petitioners' Motion for Partial Summary Judgment). The declaratory judgment held that the Bond Denial Class members are detained under 8 U.S.C. § 1226(a) and may not be denied consideration for release on bond under Section 1225(b)(2)(A). *Maldonado Bautista*, 2025 WL 3289861, at *11. On March 6, 2026, the 9th Circuit issued a temporary stay of the Maldonado-Bautista order making that case temporary not binding nationwide; however, as soon as the stay is dropped Petitioner anticipates that case will once again become binding nationwide.

[10] For a list of decisions favorable to Petitioner's position that Section 1226(a) governs his detention, and Section 1225(b) does not, see the following cases:

First Circuit:

- Sampiao v. Hyde, 2025 WL 2607924 (D. Mass. Sept. 9, 2025) (Noting disagreement with BIA analysis in *Yajure-Hurtado*);
- Jimenez v. FCI Berlin, Warden, No. 25-cv-326-LM-AJ (D.N.H. Sept. 8, 2025) (Ruling the Petitioner was entitled to a bail hearing);

- *Doe v. Moniz*, 2025 WL 2576819 (D. Mass. Sept. 5, 2025) (Ordering a bond hearing and ruling that detaining an individual solely on the basis of his prior arrest violates due process);
- *Romero v. Hyde*, 2025 WL 2403827 (D. Mass. Aug. 19, 2025) (Ordering that Petitioner receive a bond hearing governed by section 1226 rather than 1225(b));
- *Martinez v. Hyde*, 2025 WL 2084238 (D. Mass. July 24, 2025) (Court found detention unlawful and ordered his release, denying the Government's motion for reconsideration);
- *dos Santos v. Noem*, 2025 WL 2370988 (D. Mass. Aug. 14, 2025) (Ordering ICE to release the Petitioner within 48 hours); *Gomes v. Hyde*, 2025 WL 1869299 (D. Mass. July 7, 2025) ("The government's interpretation contravenes the plain text of Section 1226(a) and would render superfluous Section 1226(c)…");

Second Circuit:

- *Lopez Benitez v. Francis*, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025) (Granting the Petition, where ICE agents "violently detained" Petitioner as he left a scheduled immigration court appearance in Manhattan "in violation of the Due Process Clause and the Fourth Amendment.");
- *Samb v. Joyce*, 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025) (Granting petition for the writ of habeas corpus);

Fourth Circuit:

- *Leal-Hernandez v. Noem*, 2025 WL 2430025 (D. Md. Aug. 24, 2025) (Respondents arrested Petitioner while he was on his way to work, took him into custody, Petitioner was then granted a bond by an immigration judge who concluded § 1226(a) governed, Respondents refused to accept payment of the bond, the government invoked a regulatory stay pursuant to 8 C.F.R. § 1003.19(i)(2) to continue detaining the Petitioner as his favorable bond decision was on appeal before the BIA, the Court grants the petition for the writ);

Fifth Circuit:

- *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025) (Court finds (1) habeas jurisdiction encompasses a challenge to the statutory authority by which Respondent contends her detention without bond unlawful, (2) Court did not find persuasive Respondents argument that Petitioner failed to exhaust administrative remedies "because this Court is the proper form in which Petitioner can bring her …constitutional claims." (3) Court grants Temporary Restraining Order concluding Petitioner is likely to succeed on the merits in showing mandatory detention under § 1225 "was erroneous" and that "she is entitled to a bond hearing under section 1226(a).");

Sixth Circuit:

- *Pizarro Reyes v. Raycraft*, 2025 WL 2609425 (E..D. Mich. Sept. 9, 2025) (disagreeing with BIA's analysis in Yajure Hurtado);
- *Lopez-Campos v. Raycraft*, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025) (Granting writ, finding detention without a bond hearing is unlawful, a violation of Petitioner's due process rights, and ordering his immediate release – or alternatively – a bond hearing within seven (7) days);

Eighth Circuit:

- *Carmona-Lorenzo v. Trump*, 2025 WL 2531521 (D. Neb. Sept. 3, 2025) (Ordering release on bond);
- *Cortes Fernandez v. Lyons*, 2025 WL 2531539 (D. Neb. Sept. 3, 2025) (Court finds "the government is unlawfully detaining Petition in violation of his Due Process rights by invoking a unilateral automatic stay of the bond duly appointed by" an immigration judge, and "orders Respondents to immediately release Petitioner.");
- *Palma Perez v. Berg*, 2025 WL 2531566 (D. Neb. Sept 3, 2025) (Same as *Cortes Fernandez, supra*);
- *O.E. v. Bondi*, 2025 WL 2466670 (D. Minn. Aug. 27, 2025) (Court concludes § 1226's discretionary detention scheme applies);
- *Jacinto v. Trump*, 2025 WL 2402271 (D. Neb. Aug. 19, 2025) (Judge ruled the Petitioner was being held unlawfully and ordered her released on bond);
- *Maldonado v. Olson*, 2025 WL 2374411 (D. Minn. Aug. 15, 2025) (Granting Preliminary Injunction favoring Petitioner);
- *Garcia Jimenez v. Kramer*, 2025 WL 2374223 (D. Neb. Aug. 14, 2025) (Judgment favoring Petitioner);

9. After apprehending Petitioner, DHS placed him/her in removal proceedings pursuant to 8 U.S.C. § 1229a. DHS charged Petitioner as being inadmissible under INA § 212(a)(7)(A)(i)(I) [8 U.S.C. § 1182] alleging Petitioner did not have requisite entry documents at the time of application for admission.

10. Respondents erroneously deem Petitioner detained under Section 1225(b), when Petitioner is actually detained under Section 1226(a). Respondents deprive Petitioner of the right to apply for bond out of detention and violate his rights. He seeks an order awarding immediate release, or alternatively an order that the Federal Court will oversee a bond hearing under Section 1226(a); or as a last resort, an order that the immigration court must provide Petitioner a bond hearing under Section 1226(a).

II. JURISDICTION

11. Petitioner is in the physical custody of Respondents. Petitioner is detained at Irwin Detention Center in Ocilla, Georgia. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause). This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

Ninth Circuit:

- Cuevas Guzman v. Andrews, 2025 WL 2617256, at *3 n.4 (E.D. Cal. Sept. 9, 2025) (distinguishing Yajure Hurtado);
- Caicedo Hinestroza v. Kaiser, 2025 WL 2606983 (N.D. Cal. Sept. 9, 2025) (Granting TRO ordering Respondents to immediately release Petitioners from custody, enjoining re-detention without a pre-detention hearing before a neutral decisionmaker, and, inter alia, enjoining Respondents from transferring Petitioners out of custody without the Court's prior approval);

III. VENUE

12. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue lies in the United States District Court for the Middle District of Georgia, the judicial district in which Petitioner currently is detained. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the Middle District of Georgia. If venue is proper at the time of filing, the district court ordinarily retains jurisdiction even if Petitioner is transferred to another district. *Ex Parte Endo*, 323 U.S. 283, 304-305 (1944).

IV. REQUIREMENTS OF 28 U.S.C. § 2243

13. Petitioner sleeps in a jail cell and is held in immigration detention. He is therefore "in custody" under 28 U.S.C. § 2243.[11]

V. PARTIES

14. Petitioner is JOSE GABRIEL ALONZO GASPAR. He is not subject to a removal order. He has been in the United States since on or around 2016 when he entered the United States allegedly without requisite entry documents. Petitioner has not yet applied for a bond out of immigration detention.

15. Respondent George Sterling is the Director of the Atlanta Field Office of ICE's Enforcement and Removal Operations division. As such, George Sterling is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is sued in his official capacity.

[11] *Carafas v. LaVallee*, 391 U.S. 234, 237-38 (1968) ("... the 'in custody' determination is made at the time the habeas petition is filed."); *Spencer v. Kemna*, 523 U.s. 1, 7 (1998) (Same); *Rumsfeld v. Padilla*, 542 U.S. 426, 437 (2004) ("[O]ur understanding of custody has broadened to include restraints short of physical confinement.")

16. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.[12]

17. Respondent Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

18. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. She is sued in her official capacity.

19. Respondent Executive Office for Immigration Review (EOIR) is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings.

20. Respondent Jason Streeval is employed by "CoreCivic" as Warden of Stewart Detention Center, where Petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his official capacity.

VI. EXHAUSTION OF REMEDIES

21. This action is not barred by the exhaustion of remedies doctrine. That doctrine does not apply either explicitly or by implication. Even if it did apply, Petitioner satisfies ample

[12] On March 5, 2026, Kristi Noem was fired from her former position as Secretary of Homeland Security and seemingly replaced by Senator Markwayne Mullin. See Jackeline Luna, NYTimes, *President Fires Noem as Homeland Security Secretary*, Published March 5, 2026 (available at https://www.nytimes.com/video/us/politics/100000010756485/trump-noem-mullin-dhs.html#:~:text=President%20Trump%20fired%20Kristi%20Noem%2C%20his%20embattled,her%20with%20Senator%20Markwayne%20Mullin%20of%20Oklahoma). Notwithstanding whether Kristi Noem is still the formal secretary, Petitioner wishes to name as Respondent whoever the acting Secretary of Homeland Security is.

exceptions to it because exhaustion would be "futile" as the immigration court "is biased or has predetermined the issue" due to *Matter of Yajure-Hurtado*. *Quoting Iddir v. INS*, 301 F.3d 492, 500. To respect the Court's finite resources, Petitioner includes remaining argument on why the doctrine of exhaustion of remedies does not apply in a footnote. Should further argument be necessary, Petitioner wishes to reserve the right to brief the issue further.[13]

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[13] Under the doctrine of exhaustion of remedies, a petitioner must generally 'exhaust' all administrative remedies before seeking relief in federal court. *Thompson v. United States Marine Corp*, D.C. Docket No. 09-80312-CV-KLR (unpublished). Exhaustion is a prudential requirement rather than jurisdictional. *Hull v. IRS*, No. 10-1410, 2011 WL 3835402 (10th Cir. Aug. 31, 2011); *see also* William Funk, *Exhaustion of Administrative Remedies – New Dimensions Since Darby*, 18 Pace Environmental Law Review (2000) (Tracing the doctrine out of common law and federal equity jurisdiction).

When Congress imposes an exhaustion remedy by statute, exhaustion is generally required. *Coit Indep. Jt. Venture v. FSLIC*, 489 U.S. 561, at 579 (1989) (*citing Weinberger v. Salfi*, 422 U.S. 749, 766 (1975); *Myers v. Bethlehem Shipbuilding Corp.*, 303 U.S. 41, 50-51 (1938). If exhaustion is not *explicit* in a statute, then "courts are guided by congressional intent in determining whether application of the doctrine would be consistent with the statutory scheme. *Coit*, *supra* (*citing Patsy v. Florida Board of Regents*, 457 U.S. 496, 502 (1982).

The INA does have an exhaustion provision that applies only in the context of "final orders of removal." 8 U.S.C. § 1252(d)(1) ("A court may review a final order of removal only if the alien has exhausted all administrative remedies …"). This exhaustion provision is not jurisdictional. *Santos-Zacaria v. Garland*, 498 U.S. ___ (2023). Petitioner is not subject to a removal order; so, § 1252(d)(1) does not apply here to impose an *explicit* exhaustion requirement.

Nor can the INA be read to impose an exhaustion requirement *by implication*. The Court need not engage in statutory interpretation as "[w]here statutory language is plain and unambiguous, courts give effect to the statute as written without engaging in statutory construction." *In re Adoption of Doe*, 156 Idaho 345, 349. Even if this Court found § 1252(d)(1) to be ambiguous, straightforward application of plain text interpretation reveals § 1252(d)(1) does not impose an applicable exhaustion requirement. *See* e.g. Antonin Scalia & Bryan A. Gardner, *Reading Law: The Interpretation of Legal Texts* (1st Ed. 2012) (The "Supremacy of the Text Principle" (The words of a governing text are of paramount concer, and what they convey, in their context, is what the text means), "Omitted Case Canon" (*casus omissus pro omisso habendus est* – nothing is to be added to what the text state or reasonably implies), "Negative Implication Canon" (*expression unius est exclusion alterius* – the expression of one thing implies the exclusion of alternatives*)*, and the "Whole Text Canon" (The text must be construed as a whole) each demonstrate Congress did not impose an exhaustion requirement – either expressly or by implication. See also *A Dozen Canons of Statutory and Constitutional Text Construction*, Judicature.duke.edu Articles, available at https://judicature.duke.edu/articles/a-dozen-canons-of-statutory-and-constitutional-text-construction/).

Even if the doctrine of exhaustion did apply, Petitioner satisfies several exceptions to it. Exhaustion is excused if:

(1) Requiring exhaustion of administrative remedies causes prejudice, due to unreasonable delay or an 'indefinite timeframe for administrative action';
(2) The agency lacks the ability or competence to resolve the issue or grant the relief requested;
(3) Appealing through the administrative process would be futile because the agency is biased or has predetermined the issue; or
(4) where substantial constitutional questions are raised.

Iddir v. INS, 301 F.3d 492, 500 (7th circuit case citing *McCarthy v. Madigan*, 503 U.S. 140, 146-48 (1992); *Bowen v. City of New York*, 476 U.S. 467, 483 (1986); *Mathews v. Diaz*, 426 U.S. 67, 76 (1976); *Gibson v. Berryhill*, 411 U.S. 564, 575 (1973); *Houghton v. Shafer*, 392 U.S. 639, 640 (1968); *McNeese v. Board of Educ.*, 373 U.S. 668, 675 (1963)).

Here, exhaustion would be futile. Immigration judges continue to rely on a September 5, 2025 BIA decision, *Yajure-Hurtado*, which holds "Based on the plain language of […] 8 U.S.C. § 1225(B)(2)(A)

VII. LEGAL FRAMEWORK

22. At least twenty-eight federal court decisions support Petitioner's position that 8 U.S.C. § 1226(a) governs his detention and 8 U.S.C. § 1225(b) does not. See footnote 11 at page 4. The immigration courts are structurally incapable of reliably providing Petitioner with a due process-compliant Section 1226(a) bond hearing.

23. If the immigration court is unable or unwilling to provide Petitioner with due process of law, then this Court should fill the gap. Petitioner seeks (1) immediate release, or (2) conducting its own bond hearing under Section 1226(a). If the Court is unwilling to grant either remedy, then Petitioner alternatively seeks a Section 1226(a) bond hearing in immigration court, though he does not believe this Court will afford him a fair shot at arguing his case for bond or comply with the due process clause.[14]

A. DUE PROCESS REQUIRES THAT AN IMPARTIAL ADJUDICATOR DECIDE IF PETITIONER'S CONTINUED DETENTION BEARS A REASONABLE RELATION TO FLIGHT RISK AND DANGER TO THE COMMUNITY

24. Due process requires that immigration detention "'bear[] a reasonable relation to the purpose for which the individual was committed.'"[15] Immigration detention should not be used as a punishment and should only be used when, under an individualized determination, a

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(2018), Immigration Judges lack authority to hear bond requests or grant bond to aliens who are present in the United States without admission. *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025). BIA therefore asserts that all "applicants for admission", a class that encompasses more than fourteen million people[13], are detained under 8 U.S.C. § 1225(b) and therefore subject to "mandatory detention" and ineligible for release on bond. This interpretation is wrong. It defies due process, plain text interpretation of the INA, common sense, and several federal court decisions. *See Lazaro Maldonado Bautista v. Ernesto Santacruz Jr*, 5:25-cv-01873, (C.D. Cal.). *See also McCarthy v. Madigan*, 503 U.S. 140, 148 (1992) ("an administrative remedy may be inadequate where the administrative body is shown to be biased or has otherwise predetermined the issue before it.")[13]

Dozens of federal district courts, in addition to Maldonado-Bautista, have concluded 8 U.S.C. § 1226(a) does generally govern the detention of an applicant for admission, and that 8 U.S.C. § 1225(b) does not. See footnote 9, supra. For twenty-eight such decisions outside the eleventh circuit, see footnote 3.[13] Within the eleventh circuit, see also J.A.M. v. Streeval, No. 4:25-CV-342 (CDL), 2025 WL 3050094 (M.D. Ga. Nov. 1, 2025) (Granting habeas relief in a consolidated case with similar facts, ordering bond hearings under 8 U.S.C. § 1226(a)).

[14] In the experience of Counsel and other attorneys who regularly practice in the immigration court, whether a non-citizen gets released on bond has far more to do with whether the non-citizen gets assigned one of the 'good judges' or gets burdened with one of the 'bad.' Justice by coin flip is not justice at all. While some non-citizens have indeed been released on bond, it does not follow that those whose bonds were denied lacked meritorious cases.

[15] *Demore v. Kim*, 538 U.S. 510, 527 (2003) (quoting *Zadvydas v. Davis*, 533 U.S. 678, 690) (2001))

noncitizen is a flight risk because they are unlikely to appear for Court, or is a danger to the community.[16]

25. The immigration court system is not an independent adjudicative body. It operates under the Department of Justice (DOJ). In the past year, the Executive Office for Immigration Review (EOIR) and Board of Immigration Appeals (BIA) have systematically dismantled the integrity of the immigration court system and turned it into a de facto extension of the Department of Homeland Security (DHS). Evidence of EOIR institutional capture falls into five categories, each independently sufficient to establish bias: (1) the ongoing mass-scale purge of immigration judges who, seemingly, disobey the current administration's deportation agenda; (2) the parallel purge and reconstitution of BIA, resulting in a 97% pro-government decision rate; (3) the recruitment and installation of explicitly enforcement aligned "deportation judges" with dramatically reduced qualification; (4) EOIR policy directives demonstrating pro-government adjudication bias; and (5) explicit instructions to defy federal court rulings that impede DHS enforcement goals.

(i) Bond hearings in immigration court do not have due process when immigration judges act under express or implied threat of being fired for going against pro-detention executive branch policy preferences

26. In *Tumey v. Ohio*, 273 U.S. 510 (1927), the Court noted "it certainly violates the Fourteenth Amendment … to subject [a person's] liberty or property to the judgment of a court the judge of which has a direct, personal, substantial, pecuniary interest in reaching a conclusion against him in his case." Furthermore:

> [U]nder the Due Process Clause, no judge 'can be a judge in his own case [or be] permitted to try cases where he has an interest in the outcome.' *In re Murchison*, 349 U.S. 133, 136 (1955). He went on to acknowledge that what degree or kind of interest is sufficient to disqualify a judge from sitting 'cannot be defined with precision.' […]

[16] *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001)

> Nonetheless, a reasonable formulation of the issue is whether the 'situation is one "which would offer a possible temptation to the average … judge to … lead him not to hold the balance nice, clear and true."'

Aetna Life Ins. Co. v. Lavoie, 475 U.S. 813, at 822-823 (1986) (quoting *In re Murchison*).

27. As such, *Murchison* shows it violates due process for a judge to have too great of an 'interest' in the outcome of a case, noting what kinds of interests are disqualifying 'cannot be defined with precision." *Id.* Furthermore, it may violate due process for a judge to oversee a case in "[a] situation … which would offer a possible temptation to the average judge to lead him not to hold the balance nice, clear and true." *Tumey v. Ohio*, supra.

28. Immigration Judges are not Article III judges. Immigration Judges are part of the executive branch and operate under EOIR, which itself operates under the Attorney General who answers to the President. Immigration Judges do not have heightened protection from removal (firing) from office. If an IJ does something with which the executive disagrees, it can fire the immigration judge. Since 2025, the executive branch has fired "nearly 100 [immigration] judges", leaving a remaining total of 557 Immigration Judges as of February 20, 2026. See *Anusha Mathur, Ximena Bustillo, U.S. has a quarter fewer immigration judges than it did a year ago. Here's why*, NPR, published February 23, 2026 (https://www.npr.org/2026/02/23/g-s1-110911/trump-immigration-judges-dismissals-numbers). Given the incentives at play it is, to Counsel, perhaps unsurprising that the current iteration of BIA has promulgated such decisions as Yajure-Hurtado.[17] Immigration judges are incentivized to obey executive policy at risk of being fired for disobedience. This erodes due process rights and shows the immigration courts

[17] Which purports to deny access to bond hearings to the class of all "applicants for admission", a class that encompasses more than 14 million people. For the 14 million number, see Jeffrey S. Passel and Jens Manuel Krogstad, *U.S. Unauthorized Immigrant Population Reached a Record 14 Million in 2023*, Pew Research, Sept. 12, 2025, accessible at https://www.pewresearch.org/race-and-ethnicity/2025/08/21/u-s-unauthorized-immigrant-population-reached-a-record-14-million-in-2023/#:~:text=The%20number%20of%20unauthorized%20immigrants%20in%20the%20United%20States%20reached,a%20comprehensive%20and%20detailed%20estimate (Describing that "Unauthorized immigrants were 27% of the U.S. foreign-born population in 2023", consisting of "14.0 million [people]…")

are incapable of affording non-citizens with due process of law in adjudication of a bond hearing held under 8 U.S.C. § 1226(a).

29. Because Immigration Judges are in a "situation … which would offer a possible temptation … to lead him [or her] not to hold the balance nice, clear and true", such judges have demonstrated their lack of ability or willingness to provide Petitioner with a due process compliant bond hearing under Section 1226(a). *Quoting Aetna Life Ins.*, supra.

30. Per the experience of instant counsel, and per communications with other immigration attorneys who regularly appear in the Georgia immigration courts, there are some judges who seemingly will not grant bonds except in exceptional cases. This flips due process on its head and imposes a de facto rule of detention by default. The immigration judges apply a standard under which the burden is assigned to the non-citizen to show that he or she is not a flight risk or danger to the community.

31. Immigration judges make barebones findings of 'flight risk' or 'danger' often with no greater explanation of the reasons why the judge made such decision. This is unfair and violates the Due Process Clause.[18]

(ii) BIA does not fairly adjudicate appeals

32. In parallel to the purge of the immigration courts, the Board of Immigration Appeals (BIA) has endured a similar purge in which its formerly 28 member board was reduced to 15 members. All BIA appointees to BIA were fired.[19] As of January 22, 2026, the new administration's BIA issued 71 published decisions, of which 69 decisions (97%) favored the

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[18] For evidence of the lack of due process in immigration court, *see also*: 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/; 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; Eric Katz, *'Climate of Fear': Immigration Judges Say Functioning of Their Court System Is in Jeopardy Due to Trump's Firings*, Gov't Executive (Nov. 14, 2025), https://www.govexec.com/management/2025/11/climate-fear-immigration-judges-say-functioning-their-court-syste m-jeopardy-due-trumps-firings/409544/; *and see* 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/.

[19] 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-undoc umented-immigrants/.

administration.[20] For comparison, during the prior four-year administration, 60% of BIA appeal outcomes in published opinions favored the administration.[21]

(iii) The Executive Branch slacked recruiting standards to try to stack the immigration Court to advance its enforcement agenda

33. To replace purged judges, DOJ launched a recruitment campaign explicitly marketed as seeking "deportation judges." 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."[22] DOJ also authorized up to 600 military lawyers to serve as temporary immigration judges for a renewable term not to exceed six months, while simultaneously eliminating requirements to serve as a temporary immigration judge.[23] Previously, temporary judge candidates were required to have previously served as an immigration judge, appellate immigration judge, or administrative judge within another agency, or have at least 10 years of immigration law experience. The administration gutted these requirements allowing "any attorney" to be selected as a temporary immigration judge, and furthermore reduced training to approximately two weeks.[24]

VIII. CLAIMS FOR RELIEF

COUNT ONE: Request for Relief Pursuant to *Maldonado Bautista*

34. Petitioner incorporates by reference each allegation in the preceding paragraphs as if fully set forth herein.

35. As a member of the Bond Eligible Class, Petitioner is entitled to consideration for release on bond under 8 U.S.C. § 1226(a) per Maldonado-Bautista. The order granting partial

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[20] Exec. Off. for Immigr. Rev., *Volume 29*, U.S. Dep't of Just. (Jan. 21, 2025), https://www.justice.gov/eoir/volume-29; Of the remaining two decisions: 1 decision was neutral (involving attorney sanctions) and 1 decision disfavored the administration.

[21] 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)

[22] dhsgov, Instagram (Nov. 21, 2025), https://www.instagram.com/p/DRVT8DmCQKD/?hl=en.

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

[24] Corey R. Lewandowski (@CLewandowski_), X (Sept. 2, 2025, 1:47 PM), https://x.com/clewandowski_/status/1962950546652070269.

summary judgment in *Maldonado Bautista* holds that Respondents violate the INA in applying the mandatory detention statute at § 1225(b)(2) to class members. The order granting class certification in *Maldonado Bautista* further orders that "[w]hen considering this determination with the MSJ Order, the Court extends the same declaratory relief granted to Petitioners to the Bond Eligible Class as a whole." Respondents are parties to *Maldonado Bautista* and bound by the Court's declaratory judgment, which has the full "force and effect of a final judgment." 28 U.S.C. § 2201(a).

36. By denying Petitioner a bond hearing under § 1226(a) and asserting that he is subject to mandatory detention under § 1225(b)(2), Respondents violate Petitioner's statutory rights under the INA and the Court's judgment in *Maldonado Bautista*.

COUNT TWO: Violation of Fifth Amendment Due Process

37. Respondents are unlawfully detaining the Petitioner by depriving him of a bond hearing under 8 U.S.C. § 1226(a) and erroneously considering him to be bound by 8 U.S.C. § 1225(b). "Freedom from imprisonment-from government custody, detention, or other forms of physical restraint- lies at the heart of the liberty that Clause protects." *Zadvydas*.

38. Notwithstanding applicability of Maldonado-Bautista, Petitioner remains eligible for habeas relief because his detention violates the due process clause. U.S. Const. Amend. V. The Due Process Clause entitles aliens to due process in deportation proceedings. *Reno v. Flores*, 507 U.S. 292, 306 (1993); *Demore v. Kim*, 538 U.S. 510 (2003); *Zadvydas v. Davis*, 533 U.S. 678 (2001); *see also Jackson v. Indiana*, 406 U.S. 715, 738 (1972) (Criminal law case in which the Supreme Court noted in dicta that "At the least, due process requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed.")

39. "[I]mpermissible punishment before trial" violates substantive due process protections. *United States v. Salerno*, 481 U.S. 739, 746 (1987).). In *Salerno*, the Court

analyzed whether the Bail Reform Act of 1984 complied with the requirements of Fifth Amendment due process. Justice Rehnquist writing for the majority held the Bail Reform Act of 1984 did *not* violate the substantive due process clause, reasoning: "[p]reventing danger to the community is a legitimate regulatory goal and the incidents of detention are not excessive in relation to that goal, ***since the Act carefully limits the circumstances under which detention may be sought to the most serious of crimes, the arrestee is entitled to a prompt hearing, the maximum length of detention is limited by the Speedy Trial Act, and detainees must be housed apart from convicts***. Thus, the Act constitutes a permissible regulation, rather than impermissible punishment." (emphasis added).

40. Unlike Salerno, the interpretation of 8 U.S.C. § 1225(b) Respondent's and BIA in *Yajure-Hurtado* put forward does not "carefully limit" the circumstances of detention – it does the polar opposite and transmutes a narrow exception into a general rule to the utter disregard of the manner in which this transmogrification renders 8 U.S.C. § 1226(a) superfluous along with other broad swathes of the INA. Nor does it afford Petitioner or those like him a "prompt hearing" - it does the polar opposite, and claims authority to strip away Petitioner's right to request a bond hearing or receive bond. Nor does it describe any limits whatsoever as to how long people like Petitioner may continue to be detained. Salerno therefore shows application of 8 U.S.C. § 1225(b) is "impermissible punishment before trial" demonstrating the unconstitutionality of such interpretation.

COUNT THREE: Violation of the Eighth Amendment

41. The Eighth Amendment provides "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. Amend. VIII.

42. By denying Petitioner the right to any amount of bail and erroneously applying 8 U.S.C. § 1225(b) to him, Respondents violate the Eighth Amendment.

43. Respondents also violate the Eighth Amendment because the detention is an "impermissible punishment before trial." *Salerno*, discussed above.

44. Courts have found deportation to not be a "punishment" for a crime. *Wong Wing v. United States*, 163 U.S. 228, 236 (1896) (*Citing Fong Yue Ting v. United States*, 149 U.S. 698, 730 (1893) *Elia v. Gonzales*, 431 F.3d 268, 276 (6th Cir. 2005); *Briseno v. Immigr. & Naturalization Serv.*, 192 F.3d 1320, 1323 (9th Cir. 1999); *Oliver v. U.S. Dep't of Just., Immigr. & Naturalization Serv.*, 517 F.2d 426, 428 (2d Cir. 1975) (despite its "severe … consequences," deportation is not a criminal punishment) (*Quoting Harisiades v. Shaughnessy*, 342 U.S. 580, 594 (1952)). From this premise, Courts have sometimes noted in dicta that Immigration Law is an area of "civil law" and subsequently concluded that 6th amendment protections – the right to counsel, etc. – have been found to not apply.

45. Here, Petitioner does not assert otherwise. Petitioner agrees the current legal framework does not recognize deportation or "removal" to be a punishment for a crime. From this premise though, it does not then follow that no detention – however gruesome its conditions, arbitrary its imposition, or whatever set of other Constitutional rights get trampled over to accomplish such detention – could *ever* amount to "punishment" such that Eighth Amendment protections extend. Rather, the Eighth Amendment can apply to immigration detention in certain circumstances which, admittedly, the Supreme Court has not yet gotten around to delineating. However, that Court has never held the Eighth Amendment cannot apply to immigration. See *Hariasiades v. Shaughnessy*, Justice Douglas's dissent 342 U.S. 580, 598-600 (1952) ("The power of deportation is … an implied one. The right to life and liberty is an express one. Why

this implied power should be given priority over the express guarantee of the Fifth Amendment has never been satisfactorily answered … The expulsion of a race may be within the inherent powers of a despotism. History, before the adoption of this constitution, was not destitute of examples of the exercise of such a power, and its framers were familiar with history, and wisely … they gave to this government no general power to banish … Banishment is punishment in the practical sense. It may deprive a man and his family of all that makes life worthwhile.") See also *Estelle v. Gamble*, 429 U.S. 97, 106 (1976) (Describing the deliberate indifference standard for Eighth Amendment claims based on deliberate indifference to serious medical needs); Helling v. McKinney, 509 U.S. 25, 33 (1933) (Even where the harm has not yet occurred, a prisoner can still file a successful Eighth Amendment claim regarding the conditions of his or her confinement, recognizing a remedy for unsafe conditions where a tragic event has not yet occurred); *see also* Carl Kenneth Lipscombe, Tylenol and an Ice Pack: An Inadequate Prescription for HIV/AIDS in Immigration Detention Centers, 11 CARDOZO PUB. L. POL'Y & ETHICS J. 529 (2013); *Jones v. Cunningham*, 371 U.S. 236, 238–40 (1963) (noting that habeas corpus is not limited to situations where the applicant is in custody, but can be used by aliens, members of the military and other situations where one's liberty is restrained); *Bell v. Wolfish*, 441 U.S. 520, 526 n.6 (1979) (Supreme Court has "left for another day the question of the propriety of using a writ of habeas corpus to obtain review of the conditions of confinement, as distinct from the fact or length of the confinement itself.", also at page 535 noting pretrial detainees "may not be punished prior to an adjudication of guilt in accordance with due process of law.")

46. Here, Respondents have detained Petitioner and others like him at Stewart Detention Center operated by a private company, CoreCivic. Migrants have accused that

company of inhumane living conditions, medical negligence, physical and sexual abuse, overcrowding, understaffing, use of excessive force, prolonged use of solitary confinement, and CoreCivic has been sued for forcing noncitizens to work for minimal wages as low as $1.00 per day.[25] Respondents deny Petitioner his right to request or receive a bond hearing under 8 U.S.C. § 1226(a). This raises a colorable Eighth Amendment claim providing Petitioner with another basis for habeas relief.

COUNT FOUR: Violation of the Immigration and Nationality Act

47. Respondents are detaining the Petitioner and assert the detention is under 8 U.S.C. § 1225(b) depriving Petitioner of the right to request or receive bond from the immigration court. This misapplies 8 U.S.C. § 1225(b) to the Petitioner as 8 U.S.C. § 1226(a) properly governs his detention, under which Petitioner is statutorily eligible to apply for and receive a bond at a bond hearing upon a showing of certain facts.

48. By violating the INA, Respondents provide Petitioner with another avenue for habeas corpus relief, because Respondents are depriving Petitioner of his statutory right to a bond hearing. Therefore, Petitioner is also eligible for habeas relief under the INA.

IX. PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

a. Assume jurisdiction over this matter;

b. Issue a writ of habeas corpus requiring Respondents to release Petitioner within three days;

c. Alternatively, issue an order under which this Court will conduct a Section 1226(a) hearing of its own,

[25] *CoreCivic*, CorpWatch.org, available at https://www.corpwatch.org/company/corecivic, accessed December 11th, 2025.

d. Alternatively, issue an order requiring Respondents to provide Petitioner with a bond hearing under 8 U.S.C. § 1226(a) within five days.

e. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act (EAJA), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and

f. Grant any other and further relief that this Court deems just and proper.

DATED this March 31, 2026.

Respectfully Submitted,

David Kennedy & Associates, Attorneys at Law, P.C.

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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, JOSE GABRIEL ALONZO GASPAR, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Submitted this March 31, 2026.

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