

Jessie Agatstein

Cal. Bar No. 319817

Federal Defenders of San Diego, Inc.

225 Broadway, Suite 900

San Diego, California 92101-5030

Telephone: (619) 234-8467

Facsimile: (619) 687-2666

jessie_agatstein@fd.org

Attorneys for Mr. Garcia Garcia¹

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

JOEL GARCIA GARCIA,

Petitioner,

v.

MARKWAYNE MULLIN, Secretary of
the Department of Homeland Security,
TODD BLANCHE, Acting Attorney
General, TODD M. LYONS, Acting
Director, Immigration and Customs
Enforcement, JESUS ROCHA, Acting
Field Office Director, San Diego Field
Office, JEREMY CASEY, Warden at
Imperial Regional Detention Center,

Respondents.

Case No.: 26-cv-2177-JLS-MSB

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

¹ Federal Defenders of San Diego, Inc., has met with Mr. Garcia Garcia and believes appointment of counsel would be beneficial. His financial eligibility for counsel is included in an under-oath statement submitted as an attachment to this amended petition. This amended petition is filed pursuant to this Court's April 13, 2021 order.

INTRODUCTION

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

Courts do not agree. The government has lost this argument in districts across the United States, *see, e.g., Rodriguez*, 779 F. Supp. 3d at 1260; *Romero v. Hyde*, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Martinez v. Hyde*, 2025 WL 2084238 (D. Mass. July 24, 2025); *Lopez Benitez v. Francis*, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Leal-Hernandez v. Noem*, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Lopez-Campos v. Raycroft*, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Carmona-Lorenzo v. Trump*, No. 4:25CV3172, 2025 WL 2531521, at *5 (D. Neb. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, 2025 WL 2591530, at *7 (C.D. Cal. Sept. 8, 2025); *Hernandez Nieves v. Kaiser*, 2025 WL 2533110 (N.D. Cal. Sept. 3, 2025); *Rosado v. Figueroa*, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), including in this one, *Esquivel-Ipina*, 812 F. Supp. 3d 1073 (S.D. Cal. 2025).

This Court should reject that argument, too, and order Petitioner either be immediately released or receive a bond hearing before an immigration judge (“IJ”).

1 **STATEMENT OF FACTS**

2 Joel Garcia Garcia entered the United States without detection around
3 2002. Exhibit A at ¶ 2. He has lived in Los Angeles since. *Id.* He was very badly
4 beaten in Los Angeles in 2020 and, in the aftermath, has been in the process of
5 applying for a U visa. *Id.* at ¶ 3.

6 This January, ICE arrested Mr. Garcia Garcia while he was selling tamales
7 on the sidewalk in Los Angeles. *Id.* ¶ 4. He was brought to the Imperial Regional
8 Detention Center; his immigration case remains pending. *See* Exhibit B
9 (Automated Case Information reporting his next hearing is a master calendar
10 hearing, the equivalent of a status hearing, on May 14, 2026.) He has not received
11 a bond hearing. Exhibit A at ¶ 5.

12 **LEGAL BACKGROUND**

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

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

17 This habeas petition turns on the BIA's recent decision in *Yajure Hurtado*.
18 The issue in *Yajure Hurtado* revolves around two statutes, 8 U.S.C. § 1226(a) and
19 8 U.S.C. § 1225(b)(2)(A).

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

1 Section 1225(b)(2)(A) provides that “in the case of an alien who is an
2 applicant for admission, if the examining immigration officer determines that an
3 alien seeking admission is not clearly and beyond a doubt entitled to be admitted,
4 the alien shall be detained for” certain immigration proceedings. 8 U.S.C.
5 § 1225(b)(2)(A). Federal regulations do not prescribe bond hearings for people
6 detained under that section. Instead, “DHS has the sole discretion to temporarily
7 release on parole ‘any alien applying for admission to the United States’ on a
8 ‘case-by-case basis for urgent humanitarian reasons or significant public
9 benefit.’” *Hernandez Nieves*, 2025 WL 2533110, at *3 (quoting 8 U.S.C.
10 § 1182(d)(5)(A)).

11 By their terms, these statutes apply to different groups of immigrants.
12 “Section 1226(a) sets out the default rule,” which governs unless some other,
13 more specific detention provision overrides it. *Rodriguez* 779 F. Supp. 3d at 1246
14 (cleaned up). Section 1225(b)(2)(A) is more specific, but it applies only to an
15 “applicant for admission” who is also an “alien seeking admission.” 8 U.S.C.
16 § 1225(b)(2)(A).

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

25 On appeal to the BIA, the respondent conceded that he was an “applicant
26 for admission” in the meaning of § 1225(b)(2)(A), *id.* at 221, because he had not
27 been legally “admitted”—that is, he had not effected a “lawful entry . . . into the
28 United States after inspection and authorization by an immigration officer.”

1 8 U.S.C. § 1101(a)(13)(A). But he argued that he did not fall within
2 § 1225(b)(2)(A)’s ambit because he was not actively “seeking admission” at the
3 border. 29 I&N Dec. at 221. He had crossed the border and proceeded to the
4 country’s interior years ago. *Id.*

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

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

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

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

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

28

B. Courts disagree with the BIA’s reasoning.

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

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

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

Second, consistent with the statute’s overall focus on the moment of physical entry, § 1225(b)(2)’s plain language limits the statute’s reach to persons actively attempting to enter the United States. The statute applies only to those

1 who are *both* “applicants for admission” *and* in the process of “seeking
2 admission.” 8 U.S.C. § 1225(b)(2)(A). Because the statute’s first clause already
3 limits the provision to “applicants for admission,” the phrase “seeking admission”
4 must have a different meaning. Any other reading would constitute “an obvious
5 violation of the rule against surplusage.” *Romero*, 2025 WL 2403827, at *10.

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

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

26 The BIA’s contrary reading of the legislative history is not persuasive.
27 True, IIRIRA “altered the typology of immigration *proceedings* to ‘place[] on
28 equal footing’ ‘all immigrants who have not been lawfully admitted.’” *Romero*,

2025 WL 2403827, at *12 (emphasis added) (quoting *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020)). But that “says nothing about *detention* pending the outcome of those proceedings.” *Id.* (emphasis added). All these indicators suggest that § 1225(b)(2)(A) applies only to recent arrivals at the border or ports of entry, not people who have already entered the country.

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

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

Second, § 1226(a)’s legislative history supports Petitioner’s reading. “After passing the IIRIRA, Congress declared the new § 1226(a) ‘restates the current provisions in [the predecessor statute] regarding the authority of the Attorney

1 General to arrest, detain, and release on bond’ a noncitizen ‘who is not lawfully in
2 the United States.’” *Rosado*, 2025 WL 2337099, at *9. Because noncitizens
3 deemed inadmissible “were entitled to discretionary detention under § 1226(a)’s
4 predecessor statute, and Congress declared the statute’s scope unchanged by
5 IIRIRA,” § 1226(a) must “allow for a discretionary release on bond for”
6 inadmissible noncitizens, too. *Id.*

7 Thus, the best reading of 8 U.S.C. §§ 1225, 1226 shows that Petitioner is
8 eligible for bond. And under the Supreme Court’s recent decision in *Loper Bright*
9 *v. Raimondo*, this Court must independently interpret the meaning and scope of
10 §§ 1225(b), 1226(a) using the traditional tools of statutory construction. 603 U.S.
11 369, 385, 401 (2024); *see also Rodriguez*, 779 F. Supp. 3d at 1251; *Kostak*, 2025
12 WL 2472136, at *2 n.29; *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL
13 1869299, at *8 n.9 (D. Mass. July 7, 2025). Because the BIA’s decision in *Yajure*
14 *Hurtado* is a deviation from the agency’s long-standing interpretation of §§ 1225,
15 1226; is not guidance issued contemporaneously with enactment of the relevant
16 statutes; and contradicts the statutory interpretations of dozens of federal courts,
17 this Court should give it no weight. If anything, the government’s “decades of
18 practice” providing bond hearings to those who entered without inspection is a
19 more persuasive guide. *Martinez*, 2025 WL 2084238, at *4.

20 Thus, Petitioner may be detained, if at all, pursuant to 8 U.S.C. § 1226(a).
21 Both the statute and its associated regulations entitle Petitioner to a bond hearing.
22 *See* 8 C.F.R. §§ 326.1(d), 1236.1, 1003.19(a)-(f). Accordingly, the Fifth
23 Amendment’s due process clause requires the government to provide the legally
24 required bond hearing before Petitioner is detained. *See Hernandez-Lara v. Lyons*,
25 10 F.4th 19, 27 (1st Cir. 2021).

26 The statute and regulations implement the due process protection that
27 attends any civil detention. *See Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir.
28 2018) (expressing “grave doubts that any statute that allows for arbitrary

1 prolonged detention without any process is constitutional or that those who
2 founded our democracy precisely to protect against the government's arbitrary
3 deprivation of liberty would have thought so"). The Supreme Court has
4 "repeatedly recognized that civil commitment for any purpose constitutes a
5 significant deprivation of liberty that requires due process protection," including
6 an individualized detention hearing. *Addington v. Texas*, 441 U.S. 418, 425
7 (1979); *see also United States v. Salerno*, 481 U.S. 739, 755 (1987); *Foucha v.*
8 *Louisiana*, 504 U.S. 71, 81–83 (1992); *Kansas v. Hendricks*, 521 U.S. 346, 357
9 (1997).

10 Here, Petitioner never received the bond hearing required under § 1226(a),
11 but the government detained him anyway. That violated the statute, regulations,
12 due process, and the Administrative Procedures Act. This Court should therefore
13 grant the petition and order that Mr. Garcia Garcia receive an appropriate bond
14 hearing.

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

17 In *Maldonado-Bautista v. DHS*, 25-cv-1873-SSS-BFM (C.D. Cal.), a
18 district judge granted national, class-wide relief to plaintiffs challenging the
19 BIA's interpretation of §§ 1225, 1226. *Bautista v. Santacruz*, No. 5:25-CV-
20 01873-SSS-BFM, 2025 WL 3713987, at *32 (C.D. Cal. Dec. 18, 2025), *judgment*
21 *entered sub nom. Maldonado Bautista v. Noem*, No. 5:25-CV-01873-SSS-BFM,
22 2025 WL 3678485 (C.D. Cal. Dec. 18, 2025). The Ninth Circuit subsequently
23 stayed the order, "insofar as the district court's judgment extends beyond the
24 Central District of California." *Maldonado Bautista v. DHS*, No. 26-1044, Dkt.
25 No. 5.1 (Mar 6, 2026). The Ninth Circuit left the judgement in place in the
26 Central District. *Id.*

27 Because of the stay order, the government is no longer required to follow
28 *Maldonado Bautista* in this district. But the stay order does not indicate any

1 opinion on the stay order's merits or prevent this Court from finding in
2 Petitioner's favor. It means only that this Court must do an independent
3 evaluation on the merits. For the reasons given above, that independent evaluation
4 demands relief here.

5 **II. Because immigration judges' neutrality has been compromised, this**
6 **Court must order outright release, or at least put in place additional**
7 **safeguards.**

8 In a perfect world, this Court could remedy the due process violation by
9 ordering a bond hearing before a neutral immigration judge ("IJ"), allowing the IJ
10 to determine whether Mr. Garcia Garcia posed a risk of danger or flight.

11 Unfortunately, attacks on IJ independence under the current administration have
12 severely compromised IJs' neutrality. As a result, there is a serious risk that an IJ
13 will order Mr. Fernandez's continued detention even if he poses no danger or
14 flight risk. Several data points support that conclusion.

15 Most importantly, reports are streaming in from this district and elsewhere
16 that court-ordered "bond hearings [are], effectively, stacked against detainees
17 from the start." Kyle Cheney, *How ICE Defies Judges' Orders to Release*
18 *Detainees, Step by Step*, Politico (Feb. 10, 2026), [https://www.politico.com/news/](https://www.politico.com/news/2026/02/10/ice-immigration-detention-court-orders-00771727)
19 [2026/02/10/ice-immigration-detention-court-orders-00771727](https://www.politico.com/news/2026/02/10/ice-immigration-detention-court-orders-00771727).

20 Roughly one in seven immigration judges have been fired in the last year.
21 Nicholas Nehamas *et al.*, *How Trump Purged Immigration Judges to Speed Up*
22 *Deportations*, N.Y. Times (Apr. 13, 2026) ("more than 100 immigration judges
23 out of about 750").² In reporting based on interviews of "more than 85 people,
24 including immigration judges, administration officials, asylum seekers and
25 lawyers," as well as "analy[sis] [of] data on millions of immigration court cases
26 dating back to 2009," a New York Times investigation published this month

27 ² Available at [https://www.nytimes.com/2026/04/09/us/politics/trump-miller-](https://www.nytimes.com/2026/04/09/us/politics/trump-miller-immigration-judges-purge.html?unlocked_article_code=1.a1A.1EXX.GRnQuMzs9Oen&smid=url-share)
28 [immigration-judges-purge.html?unlocked_article_code=1.a1A.1EXX.](https://www.nytimes.com/2026/04/09/us/politics/trump-miller-immigration-judges-purge.html?unlocked_article_code=1.a1A.1EXX.GRnQuMzs9Oen&smid=url-share)
[GRnQuMzs9Oen&smid=url-share](https://www.nytimes.com/2026/04/09/us/politics/trump-miller-immigration-judges-purge.html?unlocked_article_code=1.a1A.1EXX.GRnQuMzs9Oen&smid=url-share).

1 found that “[t]he Trump administration has systematically pressured the nation’s
2 immigration judges, threatening them with disciplinary action if they do not
3 deport more people and firing those seen as insufficiently supportive of the
4 president’s aggressive enforcement agenda.” *Id.*

5 The chief immigration judge “has received daily reports about bond rulings,
6 according to a Justice Department official. Her office has sometimes emailed
7 judges asking for an explanation about their decisions to grant bond, three people
8 said.” *Id.* One current judge “said that there was a requirement to inform a
9 supervisor every time bond was granted, underscoring how closely the
10 administration was monitoring decisions.” *Id.*

11 Local attorney Edward Perez attests that some immigration judges at Otay
12 Mesa have shown a concerning pattern of resistance to implementing habeas
13 orders requiring bond hearings. *Elsayed v. Noem*, Case No. 26-cv-368, Doc. 5-2 at
14 ¶ 7 (S.D. Cal. Feb. 9, 2026). These IJs have begun denying bond on the ground
15 that court hearings are coming up, and release would disrupt the hearing schedule.
16 *Id.* Of course, that logic could justify any asylum seeker’s detention, and it has
17 nothing to do with danger or flight. *Id.* Furthermore, the Department of Homeland
18 Security (“DHS”) has started appealing bonds to take advantage of the automatic
19 stay. *Id.* Both of these strategies ensure that even those who pose no risk of
20 danger or flight will stay in detention. *Id.*

21 He is far from the only one to express concerns. In a declaration filed in
22 *Briceno Solano v. Mason*, No. 26-CV-00045, 2026 WL 311624 (S.D.W. Va. Feb.
23 4, 2026), Former ICE Counsel Jorge Artieda attests to seeing “a seismic shift in
24 bond hearing outcomes for individuals who had been granted federal habeas relief
25 and ordered § 1226(a) bond hearings . . . in the Eastern District of Virginia.” Exh.
26 C at 2. The pattern of granting bond in appropriate cases “abruptly and uniformly
27 ceased” in early January, in a way that “suggests coordinated institutional
28 direction.” *Id.* IJs there now rely on a “remarkably narrow and predictable set of

rationales to deny bond—rationales that appear to bear little relationship to genuine individualized risk assessment and that would not have been deemed sufficient to justify denial just weeks earlier.” *Id.* at 3. In Mr. Artieda’s professional opinion, the IJs’ rationales “do not appear to be grounded in legitimate risk assessment” but are “pretexts designed to ensure denial of bond regardless of the individual facts of each case.” *Id.* at 4.

Mr. Artieda further attests that to having “communicated with numerous immigration attorneys practicing all over the United States who handle detention cases.” *Id.* at 5. “These conversations have confirmed that the pattern [he] ha[s] observed is widespread and consistent.” *Id.* Based on these conversations, Mr. Artieda believes that these bond denials are part of a “coordinated institutional effort.” *Id.* at 6.

Courts have started to notice the same problems. In *Yin v. Moldanado*, a court expressed consternation at an IJ’s “conclusory, two-line determination of flight risk” for a person whom DHS had previously agreed “to release . . . on his own recognizance” and who “attend[ed] [all] immigration check-ins” during his release. No. 26-CV-0103 (PKC), 2026 WL 295389, at *3 (E.D.N.Y. Feb. 4, 2026).

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

And in *Picado v. Hyde*, a district judge ordered outright release after two deficient bond hearings. No. 26-CV-065-JJM-PAS, 2026 WL 352691, at *7

1 (D.R.I. Feb. 9, 2026). The IJ in the second hearing had deemed the immigrant a
2 danger to the community based on an uncorroborated police report accusing him
3 of driving 90 mph in a 55-mph zone. *Id.*

4 These trends are consistent with sustained attacks on IJs' independence
5 under this administration. Several examples illustrate the point.

6 *First*, the Trump administration has eliminated 128 IJs insufficiently
7 aligned with the administration's priorities, illustrating to the remaining IJs the
8 cost of resistance. *See* Woo-Sun Lim, *Former judge highlights legal failures in*
9 *U.S. worker detentions*, The Dong-A Ilbo (Sept. 20, 2025),
10 <https://www.donga.com/en/article/all/20250920/5859412/1>.

11 These IJs are under no illusions about why they were let go. Former
12 Baltimore IJ Emmett Soper stated: "I think the current administration of the
13 immigration courts does not fundamentally see the immigration courts as neutral
14 decision-makers. I think that they see the immigration courts as a tool for this
15 administration to advance its policy objectives." Geoff Bennett & Ali Schmitz,
16 *Ousted Immigration Judge Describes Deepening Court Backlog*, PBS NewsHour
17 (Nov. 12, 2025), [https://www.pbs.org/newshour/show/ousted-immigration-judge-](https://www.pbs.org/newshour/show/ousted-immigration-judge-describes-deepening-court-backlog)
18 [describes-deepening-court-backlog](https://www.pbs.org/newshour/show/ousted-immigration-judge-describes-deepening-court-backlog). Former San Francisco IJ Jeremiah Johnson
19 similarly understood "the hint that they should be hearing cases a certain way,
20 deciding cases a certain way. Move faster. Less due process, essentially." Hilda
21 Gutierrez, Michael Bott & Son Vo, *'An all-out attack on immigration court: ' SF*
22 *immigration judges speak out after firings*, NBC Bay Area (Nov. 25, 2025),
23 [https://www.nbcbayarea.com/investigations/san-francisco-immigration-judges-](https://www.nbcbayarea.com/investigations/san-francisco-immigration-judges-speak-out-firings/3986850/)
24 [speak-out-firings/3986850/](https://www.nbcbayarea.com/investigations/san-francisco-immigration-judges-speak-out-firings/3986850/). Former San Francisco IJ George Pappas was even
25 more direct: "We were told to facilitate deportation... Due process is dead in
26 immigration courts." Isabela Dias, *"Fired for No Reason": Former Immigration*
27 *Judges Speak Out Against Trump's Assault on the Courts*, Mother Jones (Oct. 9,
28 2025), <https://www.motherjones.com/politics/2025/10/immigration-court-judge->

1 [trump-assault-purge-dhs-ice/](#).

2 This has had the predictable effect on those who remain. According to
3 former San Francisco IJ Elizabeth Young, “I’ve talked to many of [the judges still
4 serving], and they’re like, ‘When I go into court, I am concerned about applying
5 the law, but I’m also concerned that I should deny more, because if I don’t, then
6 I’ll get fired.’” Marco Poggio, *Judges See an Immigration Court Gutted from
7 Inside*, Law360 (Oct. 31, 2025),
8 [https://www.law360.com/articles/2381003/judges-see-an-immigration-court-](https://www.law360.com/articles/2381003/judges-see-an-immigration-court-gutted-from-inside)
9 [gutted-from-inside](#). Meanwhile, Department of Justice recruitment materials seek
10 “deportation judges” to fill the empty IJ slots, Coral Murphy Marcos, *US Justice
11 Department Recruiting Legal Experts to Serve as ‘Deportation’ Judges*,
12 Guardian, [https://www.theguardian.com/us-news/2025/nov/21/us-justice-](https://www.theguardian.com/us-news/2025/nov/21/us-justice-department-ad-deportation-judges)
13 [department-ad-deportation-judges](#), inviting candidates to “bring the hammer
14 down on criminal illegal aliens” and “defend your communities, your culture,
15 your very way of life.” dhsgov, Instagram (Nov. 21, 2025),
16 <https://www.instagram.com/p/DRVt8DmCQKD/?hl=en>.

17 *Second*, a parallel purge occurred at the BIA, which was reduced from 28
18 members to 15 members. All Biden appointees on the BIA were fired. Am. Imm.
19 Council, *BIA Decision Strips Immigration Judges of Bond Authority, All but
20 Guaranteeing Mandatory Detention for Undocumented Immigrants* (Sept. 12,
21 2025), [https://www.americanimmigrationcouncil.org/blog/bia-ruling-](https://www.americanimmigrationcouncil.org/blog/bia-ruling-immigration-judges-bond-mandatory-detention-undocumented-immigrants/)
22 [immigration-judges-bond-mandatory-detention-undocumented-immigrants/](#). The
23 statistical impact is stark. As of January 22, 2026, the reconstituted BIA has
24 issued 71 published decisions. Exec. Off. for Immigr. Rev., *Volume 29*, U.S.
25 Dep’t of Just. (Jan. 21, 2025), <https://www.justice.gov/eoir/volume-29>. Of those,
26 69 decisions (97%) favored the administration. By contrast, during the entire four-
27 year span of the prior administration, the BIA issued 76 published decisions.
28 Exec. Off. for Immigr. Rev., *Volume 28*, U.S. Dep’t of Just. (June 13, 2025),

1 <https://www.justice.gov/eoir/volume-28>. (First decision, *Matter of DIKHTYAR*,
2 28 I&N Dec. 214 (BIA 2021), issued 01/22/2021). Of those, 46 decisions (60%)
3 favored the administration. The transformation from 60% to 97% pro-government
4 outcomes—achieved through wholesale termination of one administration's
5 appointees —speaks for itself.

6 *Third*, beyond personnel changes, EOIR's new acting director, Sirce E.
7 Owen, has issued “a string of sharply worded policy memos” encouraging IJs to
8 side with the government over immigrants and minimize due process. E. Tammy
9 Kim, *Inside Donald Trump's Attack on Immigration Courts*, New Yorker,
10 <https://www.newyorker.com/inside-donald-trumps-attack-on-immigration-court>.

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

1 *Fourth*, EOIR personnel have at times directed IJs to ignore federal court
2 orders related to bond hearings. On January 13, 2026, in the wake of *Maldonado*
3 *Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3289861 (C.D.
4 Cal. Nov. 20, 2025); *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-
5 BFM, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025), Chief Immigration
6 Judge Teresa L. Riley sent all IJs the following instructions:

7 Please provide the following guidance to all immigration judges
8 forthwith: *Maldonado Bautista* is not a nationwide injunction and
9 does not purport to vacate, stay, or enjoin *Yajure Hurtado*. Therefore
10 *Yajure Hurtado* remains binding precedent on agency adjudications.
11 For clarification, declaratory judgments differ from injunctions in
12 that the former clarifies parties' legal rights and relationships
13 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.

14 Am. Immigr. Laws. Ass'n, Practice Alert: EOIR Issues Nationwide Guidance
15 on *Maldonado Bautista*, AILA Doc. No. 26011404 (Jan. 16, 2026),
16 [https://www.aila.org/library/practice-alert-eoir-issues-nationwide-guidance-](https://www.aila.org/library/practice-alert-eoir-issues-nationwide-guidance-on-maldonado-bautista)
17 [on-maldonado-bautista](https://www.aila.org/library/practice-alert-eoir-issues-nationwide-guidance-on-maldonado-bautista). A few days later, Judge Sykes issued a scathing order,
18 calling out "Respondents' deliberate choice to continue defying the final
19 judgment entered in *Bautista*." *Palomera Baltazar v. Janecka*, No. 5:26-cv-
20 00019-SSS-BFM at *2-3 (C.D. Cal. Jan. 16, 2026).

21 IJs' resistance to granting bond therefore accords with the larger
22 movement to eliminate or silence IJs who side with immigrants, while
23 bringing those that remain into line with the administration's priorities.

24 The "equitable and flexible nature of habeas relief" affords district
25 courts significant discretion over the appropriate remedies for violations of
26 law and the Constitution. *Velasco Lopez v. Decker*, 978 F.3d 842, 855 (2d Cir.
27 2020); *see also Schlup v. Delo*, 513 U.S. 298, 319 (1995) ("[H]abeas corpus
28 is, at its core, an equitable remedy"). This Court should order a remedy that

1 fully addresses the statutory and constitutional violations in this case and is
2 efficient to administer. *Carafas v. LaVallee*, 391 U.S. 234, 238 (1968) (the
3 habeas statute “does not limit the relief that may be granted to discharge of the
4 applicant from physical custody. Its mandate is broad with respect to the relief
5 that may be granted”).

6 **CLAIM AND PRAYER FOR RELIEF**

7 **I. Detaining Petitioner Without a Bond Hearing Violates 8 U.S.C. § 1226**

8 Here, because ordering a bond hearing before a randomly selected IJ would
9 not properly redress the violations present in this matter, Petitioner urges the court
10 to provide an alternative corrective measure. That might include outright release.
11 *See, e.g.*, Order, ECF No. 14 at 19, *Miri v. Bondi*, No. 5:26-CV-00698-MEMF
12 (C.D. Cal. March 5, 2026); *Moctezuma v. Henkey*, No. 1:25-CV-00741-BLW,
13 2026 WL 18809, at *5 (D. Idaho Jan. 2, 2026). Or it could mean holding a bond
14 hearing in district court. *See, e.g.*, *L.G.M. v. LaRocco*, 788 F. Supp. 3d 401, 405–
15 07 (E.D.N.Y. 2025).

16 Another option would be to order a bond hearing with certain procedural
17 protections. Specifically, the Court should order:

- 18 1. Respondents provide Petitioner with a hearing and individualized
19 bond determination within **fourteen days** of its order.
 - 20 (a) At that hearing, the government shall bear the burden of
21 establishing by clear and convincing evidence that Petitioner
22 poses a danger or flight risk.
 - 23 (b) The IJ shall consider alternative conditions of release and
24 Petitioner’s ability to pay bond if he or she determines bond is
25 appropriate.
 - 26 (c) Respondents shall make a complete record of the bond hearing
27 available to Petitioner and his counsel.

