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10
11 **UNITED STATES DISTRICT COURT**
12 **SOUTHERN DISTRICT OF CALIFORNIA**

13 ELTON EMMANUEL MUGENI,
14
15 Petitioner,

Civil Case No.: 26-cv-2311-BAS

16 v.

**Amended¹ Petition
for a
Writ of Habeas Corpus²**

17 MARKWAYNE MULLIN, Secretary of
18 the Department of Homeland Security,
19 TODD BLANCHE, Acting Attorney
20 General, TODD M. LYONS, Acting
21 Director, Immigration and Customs
22 Enforcement, JESUS ROCHA, Acting
23 Field Office Director, San Diego Field
24 Office, CHRISTOPHER LAROSE,
25 Warden at Otay Mesa Detention Center,
26
27 Respondents.

28

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

² On April 16, 2026, this Court requested Federal Defenders to screen Mr. Mugeni’s case and determine whether appointment of counsel was warranted. After interviewing Mr. Mugeni and speaking with his immigration attorney, undersigned counsel determined his case is meritorious and he financially qualifies for Federal Defenders’ services.

1 INTRODUCTION

2 This petition arises from a sudden change in the way that the Board of
3 Immigration Appeals interprets 8 U.S.C. §§ 1225, 1226. “For decades, and across
4 administrations, DHS has acknowledged that § 1226(a) applies to individuals who
5 entered the United States unlawfully, but who were later apprehended within the
6 borders of the United States[.]” *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1260
7 (W.D. Wash. 2025) (quoting Petitioner’s brief and noting that Respondents had not
8 contested that claim). But in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA
9 2025), the Board of Immigration Appeals (“BIA”) accepted the government’s new
10 position that inadmissible immigrants are not eligible for bond under § 1226(a),
11 even if they have been present in the United States for some time. Instead, the BIA
12 held that all inadmissible immigrants are subject to the mandatory detention
13 provisions in 8 U.S.C. § 1225(b)(2)(A).

14 Courts do not agree. The government has lost this argument in districts across
15 the United States, *see, e.g., Rodriguez*, 779 F. Supp. 3d at 1260; *Romero v. Hyde*,
16 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Martinez v. Hyde*, 2025 WL 2084238
17 (D. Mass. July 24, 2025); *Lopez Benitez v. Francis*, 2025 WL 2371588 (S.D.N.Y.
18 Aug. 13, 2025); *Leal-Hernandez v. Noem*, 2025 WL 2430025 (D. Md. Aug. 24,
19 2025); *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Lopez-*
20 *Campos v. Raycroft*, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Carmona-*
21 *Lorenzo v. Trump*, No. 4:25CV3172, 2025 WL 2531521, at *5 (D. Neb. Sept. 3,
22 2025); *Zaragoza Mosqueda v. Noem*, 2025 WL 2591530, at *7 (C.D. Cal. Sept. 8,
23 2025); *Hernandez Nieves v. Kaiser*, 2025 WL 2533110 (N.D. Cal. Sept. 3, 2025);
24 *Rosado v. Figueroa*, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), including this
25 one, *see Vasquez Garcia v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025)
26 (Sabraw, J.). This Court should reject that argument, too, and order that Mr. Mugeni
27 receive a prompt bond hearing with oversight before an immigration judge (“IJ”).
28

1 **STATEMENT OF FACTS**

2 Elton Emmanuel Mugeni entered the United States without detection in
3 December 2025. Exhibit A, Attorney John Wells Decl. at ¶ 2. On April 10, 2026,
4 Mr. Mugeni appeared before the IJ to be heard regarding bond. *Id.* at ¶ 3. Instead,
5 the IJ informed Mr. Mugeni that he did not have jurisdiction over the bond hearing.
6 *Id.* His immigration case remains pending. *Id.* at ¶ 4. He has not gotten a bond
7 hearing. *Id.*

8 **LEGAL BACKGROUND**

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

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

13 This habeas petition turns on the BIA’s recent decision in *Yajure Hurtado*.
14 The issue in *Yajure Hurtado* revolves around two statutes, 8 U.S.C. § 1226(a) and
15 8 U.S.C. § 1225(b)(2)(A).

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

24 Section 1225(b)(2)(A) provides that “in the case of an alien who is an
25 applicant for admission, if the examining immigration officer determines that an
26 alien seeking admission is not clearly and beyond a doubt entitled to be admitted,
27 the alien shall be detained for” certain immigration proceedings. 8 U.S.C.
28 § 1225(b)(2)(A). Federal regulations do not prescribe bond hearings for people

1 detained under that section. Instead, “DHS has the sole discretion to temporarily
2 release on parole ‘any alien applying for admission to the United States’ on a ‘case-
3 by-case basis for urgent humanitarian reasons or significant public benefit.”
4 *Hernandez Nieves*, 2025 WL 2533110, at *3 (quoting 8 U.S.C. § 1182(d)(5)(A)).

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

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

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

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

28

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

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

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

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

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

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

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

28

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

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

27 On its face, the phrase “seeking admission” suggests an active attempt to
28 enter the country. Congress’s use of the present and present progressive tenses

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

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

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

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

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

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

1 Thus, the best reading of 8 U.S.C. §§ 1225, 1226 shows that Mr. Mugeni is
2 eligible for bond. And under the Supreme Court’s recent decision in *Loper Bright*
3 *v. Raimondo*, this Court must independently interpret the meaning and scope of
4 §§ 1225(b), 1226(a) using the traditional tools of statutory construction. 603 U.S.
5 369, 385, 401 (2024); *see also Rodriguez*, 779 F. Supp. 3d at 1251; *Kostak*, 2025
6 WL 2472136, at *2 n.29; *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL
7 1869299, at *8 n.9 (D. Mass. July 7, 2025). Because the BIA’s decision in *Yajure*
8 *Hurtado* is a deviation from the agency’s long-standing interpretation of §§ 1225,
9 1226; is not guidance issued contemporaneously with enactment of the relevant
10 statutes; and contradicts the statutory interpretations of dozens of federal courts,
11 this Court should give it no weight. If anything, the government’s “decades of
12 practice” providing bond hearings to those who entered without inspection is a
13 more persuasive guide. *Martinez*, 2025 WL 2084238, at *4.

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

20 The statute and regulations implement the due process protection that attends
21 any civil detention. *See Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018)
22 (expressing “grave doubts that any statute that allows for arbitrary prolonged
23 detention without any process is constitutional or that those who founded our
24 democracy precisely to protect against the government’s arbitrary deprivation of
25 liberty would have thought so”). The Supreme Court has “repeatedly recognized
26 that civil commitment for any purpose constitutes a significant deprivation of
27 liberty that requires due process protection,” including an individualized detention
28 hearing. *Addington v. Texas*, 441 U.S. 418, 425 (1979); *see also United States v.*

1 *Salerno*, 481 U.S. 739, 755 (1987); *Foucha v. Louisiana*, 504 U.S. 71, 81–83
2 (1992); *Kansas v. Hendricks*, 521 U.S. 346, 357 (1997).

3 Here, Mr. Mugeni never received the bond hearing required under § 1226(a),
4 but the government detained him anyway. That violated the statute, regulations, due
5 process, and the Administrative Procedures Act. This Court should therefore grant
6 the petition and order that Mr. Mugeni receive an appropriate bond hearing.

7
8 **C. The Ninth Circuit’s stay in *Maldonado Bautista* does not prevent
this Court from granting relief.**

9 In *Maldonado-Bautista v. DHS*, 25-cv-1873-SSS-BFM (C.D. Cal.), a district
10 judge granted national, class-wide relief to plaintiffs challenging the BIA’s
11 interpretation of §§ 1225, 1226. *Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-
12 BFM, 2025 WL 3713987, at *32 (C.D. Cal. Dec. 18, 2025), *judgment entered sub*
13 *nom. Maldonado Bautista v. Noem*, No. 5:25-CV-01873-SSS-BFM, 2025 WL
14 3678485 (C.D. Cal. Dec. 18, 2025). The Ninth Circuit subsequently stayed the
15 order, “insofar as the district court’s judgment extends beyond the Central District
16 of California.” *Maldonado Bautista v. DHS*, No. 26-1044, Dkt. No. 5.1 (Mar 6,
17 2026). The Ninth Circuit left the judgement in place in the Central District. *Id.*

18 Because of the stay order, the government is no longer required to follow
19 *Maldonado Bautista* in this district. But the stay order does not indicate any opinion
20 on the stay order’s merits or prevent this Court from finding in Mr. Mugeni’s favor.
21 It means only that this Court must do an independent evaluation on the merits. For
22 the reasons given above, that independent evaluation demands relief here.

23 **II. Because immigration judges’ neutrality has been compromised, this
24 Court must order outright release, or at least put in place additional
25 safeguards.**

26 In a perfect world, this Court could remedy the due process violation by
27 ordering a bond hearing before a neutral IJ, allowing the IJ to determine whether
28 Mr. Mugeni posed a risk of danger or flight. Unfortunately, attacks on IJ

1 independence under the current administration have severely compromised IJs’
2 neutrality. As a result, there is a serious risk that an IJ will order Mr. Fernandez’s
3 continued detention even if he poses no danger or flight risk. Several data points
4 support that conclusion.

5 Most importantly, reports are streaming in from this district and elsewhere
6 that court-ordered “bond hearings [are], effectively, stacked against detainees from
7 the start.” Kyle Cheney, *How ICE Defies Judges’ Orders to Release Detainees,*
8 *Step by Step*, Politico (Feb. 10, 2026),
9 [https://www.politico.com/news/2026/02/10/ice-immigration-detention-court-](https://www.politico.com/news/2026/02/10/ice-immigration-detention-court-orders-00771727)
10 [orders-00771727](https://www.politico.com/news/2026/02/10/ice-immigration-detention-court-orders-00771727). In a recently filed declaration, local attorney Edward Perez
11 attests that some immigration judges at Otay Mesa have shown a concerning pattern
12 of resistance to implementing habeas orders requiring bond hearings. *Elsayed v.*
13 *Noem*, Case No. 26-cv-368, Doc. 5-2 at ¶ 7 (S.D. Cal. Feb. 9, 2026). These IJs have
14 begun denying bond on the ground that court hearings are coming up, and release
15 would disrupt the hearing schedule. *Id.* Of course, that logic could justify any
16 asylum seeker’s detention, and it has nothing to do with danger or flight. *Id.*
17 Furthermore, the Department of Homeland Security (“DHS”) has started appealing
18 bonds to take advantage of the automatic stay. *Id.* Both of these strategies ensure
19 that even those who pose no risk of danger or flight will stay in detention. *Id.*

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

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

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

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

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

25 And in *Picado v. Hyde*, a district judge ordered outright release after two
26 deficient bond hearings. No. 26-CV-065-JJM-PAS, 2026 WL 352691, at *7 (D.R.I.
27 Feb. 9, 2026). The IJ in the second hearing had deemed the immigrant a danger to
28

1 the community based on an uncorroborated police report accusing him of driving
2 90 mph in a 55-mph zone. *Id.*

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

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

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

1 This has had the predictable effect on those who remain. According to
2 former San Francisco IJ Elizabeth Young, “I’ve talked to many of [the judges still
3 serving], and they’re like, ‘When I go into court, I am concerned about applying
4 the law, but I’m also concerned that I should deny more, because if I don’t, then
5 I’ll get fired.’” Marco Poggio, *Judges See an Immigration Court Gutted from*
6 *Inside*, Law360 (Oct. 31, 2025),
7 [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)
8 [gutted-from-inside](https://www.law360.com/articles/2381003/judges-see-an-immigration-court-gutted-from-inside). Meanwhile, Department of Justice recruitment materials seek
9 “deportation judges” to fill the empty IJ slots, Coral Murphy Marcos, *US Justice*
10 *Department Recruiting Legal Experts to Serve as ‘Deportation’ Judges*,
11 *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)
12 [department-ad-deportation-judges](https://www.theguardian.com/us-news/2025/nov/21/us-justice-department-ad-deportation-judges), inviting candidates to “bring the hammer
13 down on criminal illegal aliens” and “defend your communities, your culture,
14 your very way of life.” dhsgov, Instagram (Nov. 21, 2025),
15 <https://www.instagram.com/p/DRVT8DmCQKD/?hl=en>.

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

1 I&N Dec. 214 (BIA 2021), issued 01/22/2021). Of those, 46 decisions (60%)
2 favored the administration. The transformation from 60% to 97% pro-government
3 outcomes—achieved through wholesale termination of one administration's
4 appointees —speaks for itself.

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

10 The policy directives include: a memorandum dated June 27, 2025 warning
11 judges not to demonstrate “bias directed against DHS” or to be “adjudicatory
12 outliers,” at risk of “close examination and potential action,” Exec. Off. for
13 Immigr. Rev., Policy Memorandum 25-33, Neutrality and Impartiality in
14 Immigration Court Proceedings (June 27, 2025), [https://iptp-](https://iptp-production.s3.amazonaws.com/media/documents/2025.06.27_EOIR_-_PM_25-33.pdf)
15 [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)
16 [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
17 full evidentiary hearings, styled as efficiency guidance but functioning as a
18 directive to reduce due process protections, Exec. Off. for Immigr. Rev., Policy
19 Memorandum 25-28, Pretermission of Legally Insufficient Application for
20 Asylum (Apr. 11, 2025), <https://www.justice.gov/eoir/media/1396411/dl?inline;>
21 and memoranda restricting immigration judges’ ability to grant continuances,
22 Exec. Off. for Immigr. Rev., Policy Memorandum 25-27, Cancellation of
23 Director's Memorandum 23-01 and Reinstatement of Policy Memorandum 19-13
24 (Mar. 21, 2025), <https://www.justice.gov/eoir/media/1394086/dl>, and
25 administrative closure, Exec. Off. for Immigr. Rev., Policy Memorandum 25-29,
26 Cancellation of Director's Memorandum 22-03 (Apr. 18, 2025),
27 <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 does
9 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 that
12 the former clarifies parties' legal rights and relationships without
13 ordering specific action, while the latter is a court order compelling a
14 party to do or stop doing a specific act. A declaratory judgment is not
15 an equitable remedy and does not, by itself, have the effect of
16 compelling specific action by a party. Thank you for your attention to
17 this matter.

18 Am. Immigr. Laws. Ass'n, Practice Alert: EOIR Issues Nationwide Guidance
19 on *Maldonado Bautista*, AILA Doc. No. 26011404 (Jan. 16, 2026),
20 [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)
21 [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,
22 calling out “Respondents’ deliberate choice to continue defying the final
23 judgment entered in *Bautista*.” *Palomera Baltazar v. Janecka*, No. 5:26-cv-
24 00019-SSS-BFM at *2-3 (C.D. Cal. Jan. 16, 2026).

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

28 The “equitable and flexible nature of habeas relief” affords district
courts significant discretion over the appropriate remedies for violations of
law and the Constitution. *Velasco Lopez v. Decker*, 978 F.3d 842, 855 (2d Cir.
2020); *see also Schlup v. Delo*, 513 U.S. 298, 319 (1995) (“[H]abeas corpus

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

7
8 **CLAIM AND PRAYER FOR RELIEF**

9 **Detaining Petitioner Without a Bond Hearing Violates the Fifth
10 Amendment’s Due Process Clause**

11 Here, because ordering a bond hearing before a randomly selected IJ would
12 not properly redress the constitutional violations present in this matter, Petitioner
13 urges the court to provide an alternative corrective measure. That might include
14 outright release. *See, e.g.*, Order, ECF No. 14 at 19, *Miri v. Bondi*, No. 5:26-CV-
15 00698-MEMF (C.D. Cal. March 5, 2026); *Moctezuma v. Henkey*, No. 1:25-CV-
16 00741-BLW, 2026 WL 18809, at *5 (D. Idaho Jan. 2, 2026). Or it could mean
17 holding a bond hearing in district court. *See, e.g.*, *L.G.M. v. LaRocco*, 788
18 F.Supp.3d 401, 405-07 (E.D.N.Y. 2025).

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

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

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

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

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

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

9 (3) Prohibit ICE from invoking the automatic stay provisions under 8 C.F.R.
10 § 1003.19(i)(2) to defeat the IJ's bond determination.

11 Finally, this Court should order all other relief that the Court deems just and
12 proper.

13
14 Respectfully submitted,
15
16 Dated: April 21, 2026 s/ Camille Fenton
17 Camille Fenton
18 Federal Defenders of San Diego, Inc.
19 Attorneys for Mr. Mugeni
20 Email: camille_fenton@fd.org
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EXHIBIT A

1 **Camille Fenton**
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4 San Diego, California 92101-5030
5 Telephone: (619) 234-8467
6 Facsimile: (619) 687-2666
7 camille_fenton@fd.org

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

10 ELTON EMMANUEL MUGENI,
11
12 Petitioner,

Civil Case No.: 26-cv-2311-BAS

13 v.

14 MARK WAYNE MULLIN, Secretary of
15 the Department of Homeland Security,
16 TODD BLANCHE, Acting Attorney
17 General, TODD M. LYONS, Acting
18 Director, Immigration and Customs
19 Enforcement, JESUS ROCHA, Acting
20 Field Office Director, San Diego Field
21 Office, CHRISTOPHER LAROSE,
22 Warden at Otay Mesa Detention Center,

**Declaration of
Immigration Attorney John Wells in
Support of Amended Petition
for a Writ of Habeas Corpus**

23 Respondents.

24 I, John Wells, declare:

- 25 1. I represent Elton Emmanuel Mugeni in immigration court. I have
26 represented him since January 23, 2026.
- 27 2. Mr. Mugeni entered the United States without inspection. His notice to
28 appear explains that he is “an alien present in the United States who has not
been admitted or paroled.” It also states that he entered the United States at
an unknown location on or about December 18, 2025.
3. I made a request that Mr. Mugeni receive a bond hearing before the
immigration judge (“IJ”) on April 3, 2026. On April 10, 2026, we appeared
before the IJ for that hearing. After the Department of Homeland Security
 (“DHS”) cited its opposition to Mr. Mugeni’s bond request due to a lack of

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jurisdiction, the IJ informed us that he also believed he did not have jurisdiction over the bond hearing. As such, we withdrew Mr. Mugeni's bond request at the hearing.

- 4. Mr. Mugeni's immigration case remains pending. Due to the lack of jurisdiction and our subsequent withdrawal of the bond request due to the lack of jurisdiction, Mr. Mugeni has not received a bond hearing to date.

I declare under penalty of perjury that the foregoing is true and correct, executed on April 21, 2026.

/s/ John Wells

JOHN WELLS
Declarant

EXHIBIT B

DECLARATION OF JORGE E. ARTIEDA

I, Jorge E. Artieda, declare as follows under penalty of perjury pursuant to 28 U.S.C. § 1746:

I. PROFESSIONAL BACKGROUND AND QUALIFICATIONS

1. I am an attorney licensed to practice law in the Commonwealth of Virginia and am admitted to practice before the United States District Courts for the Eastern and Western Districts of Virginia.

2. I have over two decades of experience in immigration law and federal law enforcement, including:

a. Service as a prosecutor in New York City;

b. Service as legal counsel to Immigration and Customs Enforcement (ICE) Headquarters in Washington, D.C.;

c. Service as Assistant Chief Counsel for ICE in Virginia;

d. Service as a Special Assistant United States Attorney in Virginia; and

e. For the past decade, private practice as an immigration attorney specializing in detention and removal defense, including routine representation of detained individuals in bond proceedings before Immigration Judges in the Eastern District of Virginia.

3. I am proud of my years of service as a government attorney. My time working within the City of New York, Immigration and Customs Enforcement, and as a federal prosecutor was among the most meaningful work of my career. I remain grateful for the opportunity to have served the public in those capacities and continue to hold deep respect for the dedicated public servants who work within these institutions to faithfully administer our immigration laws.

4. Based on this extensive experience on both sides of immigration enforcement and litigation, I am intimately familiar with the standards, practices, and norms governing bond determinations in immigration proceedings in this district.

II. PURPOSE OF THIS DECLARATION

5. I submit this declaration to provide the Court with direct, firsthand observations of a dramatic and systematic change in bond hearing outcomes that have occurred over the past three weeks in immigration proceedings in Virginia and Maryland, particularly before Immigration Judges assigned to the detained docket.

6. This declaration is based on: (a) my personal observations of bond hearings I have attended; (b) my review of written bond decisions issued to clients; (c) communications with numerous immigration attorneys practicing in this district; and (d) my professional knowledge of historical bond practices in this jurisdiction spanning more than a decade.

7. I authorize any attorney representing detained individuals in habeas corpus proceedings or emergency motions for immediate release to use and file this declaration in support of their clients' cases.

III. THE SEISMIC SHIFT: SYSTEMATIC DENIAL OF BOND IN POST-HABEAS CASES

8. Beginning in or around the first week of January 2026, I began observing what can only be described as a seismic shift in bond hearing outcomes for individuals who had been granted federal habeas relief and ordered § 1226(a) bond hearings by this Court and other judges in the Eastern District of Virginia.

9. Prior to this shift, while bond amounts had increased in recent months, bond was *routinely granted* in post-habeas cases where individuals demonstrated: (a) lack of significant criminal history; (b) strong family ties in the United States; (c) lengthy residence in the country; (d) viable claims for relief from removal; and (e) community support including stable housing and employment prospects.

10. Beginning approximately three weeks ago, this pattern *abruptly and uniformly ceased*. In numerous cases I have personally observed or learned about from colleagues, Immigration Judges have denied bond in circumstances that, weeks earlier, would have resulted in bond being set.

11. In my professional observation, the consistency, timing, and uniformity of these denials cannot be readily explained by coincidence, changes in individual case facts, or independent judicial decision-making. The pattern appears systematic and suggests coordinated institutional direction.

IV. THE REASSIGNMENT OF IMMIGRATION JUDGES CHOI AND DONOSO-STEVENSON

12. What I believe to be compelling evidence of possible institutional coordination occurred in early January 2026, when two Immigration Judges who had been assigned to the Annandale detained docket for years—Immigration Judge Raphael Choi and Immigration Judge Karen Donoso-Stevens—were abruptly reassigned to the non-detained docket.

13. Prior to their reassignment from the detained docket, these judges were conducting what appeared to be meaningful individualized bond assessments in

post-habeas cases. They were granting bond in appropriate cases and, critically, had begun questioning—*on the record*—the government's blanket detention positions and the Department of Justice's insistence on maintaining detention under circumstances that appeared not to justify continued custody.

14. The timing and circumstances of their reassignment are, in my view, extraordinary. Judges who appeared to be fulfilling their duty to conduct individualized bond assessments and who were openly questioning government positions were removed from the very docket where such assessments are most critical.

15. Since their reassignment, the Immigration Judges who replaced them on the detained docket have, based on my observations, *systematically denied bond* in post-habeas cases. This pattern suggests that the reassignment may not have been administrative happenstance but rather a deliberate effort to ensure predetermined outcomes—continued detention—regardless of individual circumstances.

V. PRETEXTUAL AND LEGALLY INSUFFICIENT RATIONALES FOR DENYING BOND

16. Over the past three weeks, Immigration Judges have, in my observation, relied 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.

17. These rationales, which I believe to be pretextual, include but are not limited to:

- a. Treating the absence of a financial sponsor as dispositive of flight risk, even when other equities (family ties, length of residence, employment history, community support) overwhelmingly favor release;
- b. Finding that a sponsor who is not a *financial* sponsor is insufficient, despite no legal requirement that sponsors provide financial guarantees;
- c. Treating the fact that an individual did not seek relief from removal until after being detained as evidence of lack of intent to comply with immigration proceedings;
- d. Finding that applications for relief under INA § 240A(b) (cancellation of removal) are "speculative" and therefore do not mitigate flight risk, despite the fact that all immigration relief applications involve some degree of uncertainty and merit assessment;

e. Characterizing unlawful entry into the United States—*by itself*—as establishing flight risk, a rationale that would render bond impossible for the vast majority of detained individuals;

f. Treating the accumulation of unlawful presence (which is a civil violation, not a crime) as evidence of danger or disregard for the law;

g. Finding that unauthorized employment—a status violation shared by millions of undocumented immigrants—constitutes a significant negative factor warranting denial of bond;

h. Treating minor discrepancies in addresses listed on various documents as evidence of "deceitfulness," even when such discrepancies are readily explained and do not reflect any intent to mislead;

i. Questioning the accuracy of tax returns and suggesting "underreporting" based on subjective assessments of lifestyle (such as photographs showing children at Disneyland or a respondent in a vehicle), without any actual evidence of fraud or misrepresentation;

j. Imposing on respondents the burden of proving that they *will* appear for future court proceedings—an impossible burden that requires proving a negative—even though many respondents have never failed to appear for any prior proceeding because *they have never been required to appear* until being placed in removal proceedings; and

k. Dismissing applications for cancellation of removal as "pro forma" when they have not been fully completed or developed, even though detained individuals often lack access to the resources and legal support necessary to perfect such applications while in custody.

18. In my professional assessment, these rationales do not appear to be grounded in legitimate risk assessment. They appear to be pretexts designed to ensure denial of bond regardless of the individual facts of each case.

19. The rationales being employed to deny bond appear to depart significantly from the standards articulated in BIA precedent governing bond determinations.

20. The rationales I have observed over the past three weeks—treating unlawful entry alone as establishing flight risk, dismissing relief applications as inherently "speculative," requiring financial sponsorship as a prerequisite, and treating any immigration violation as dispositive—appear to represent a departure from these precedential standards. BIA case law requires that Immigration Judges consider the *specific circumstances* of each case and weigh multiple factors in reaching bond

determinations. The systematic application of categorical exclusions based on status violations common to the detained population does not appear consistent with the individualized, fact-specific analysis that BIA precedent mandates.

VI. OBSERVATIONS FROM JANUARY 14 and JANUARY 28, 2026, DETENTION DOCKET

21. On January 14 and January 28, 2026, I personally observed bond hearings before Immigration Judge Gardey at the Annandale Immigration Court. What I witnessed confirmed the systematic pattern of denial that has emerged over the past three weeks.

22. Multiple cases that would have resulted in bond being set just weeks earlier were denied. The denials were based on the same rationales I have described above: lack of financial sponsors, unauthorized work, the "speculative" nature of relief applications, and immigration violations that are endemic to the detained population.

23. In each instance I observed, the Immigration Judge appeared to apply factors that, if consistently applied, would make bond impossible for virtually any detained individual in removal proceedings. There did not appear to be meaningful individualized assessment. The hearings appeared to be perfunctory exercises designed to create a veneer of due process while ensuring predetermined outcomes.

24. The cases I observed on the above dates, involved individuals with no criminal history, or only minor criminal history unrelated to violence or flight. These individuals had family members present in court, stable housing, employment prospects, and pending applications for relief. Under the standards that prevailed in this district for years—and indeed, as recently as three weeks ago—these individuals would have been granted bond.

VII. CORROBORATION FROM THE IMMIGRATION LEGAL COMMUNITY

25. My observations are not isolated. In recent weeks, I have communicated with numerous immigration attorneys practicing all over the United States who handle detention cases. These conversations have confirmed that the pattern I have observed is widespread and consistent.

26. Colleagues have reported the same experience: clients who were granted federal habeas relief and ordered § 1226(a) bond hearings are now being systematically denied bond based on rationales that would not have been deemed sufficient weeks earlier.

27. These attorneys have described bond hearings as appearing to be "pro forma" exercises where the outcome seems predetermined. Meaningful individualized

review appears to have been replaced by boilerplate language and cookie-cutter denials.

28. The consistency of these reports across multiple practitioners, representing different clients before different Immigration Judges, suggests that this is not a matter of individual judicial discretion or case-specific circumstances. It appears to be a coordinated institutional effort.

VIII. PROFESSIONAL ASSESSMENT AND CONCLUSION

29. Based on my two decades of experience in immigration law, including my service within the ICE, the pattern of events over the past three weeks—the abrupt reassignment of judges who were granting bond and questioning government positions, the immediate and uniform shift to systematic denial of bond, and the reliance on a narrow set of rationales across multiple judges and cases—suggests what appears to be a coordinated effort by the Executive Office for Immigration Review (EOIR) and the Department of Justice to undermine federal habeas relief.

30. In my professional judgment, this apparent coordination is the most plausible explanation for what I and my colleagues have observed. Independent adjudication does not typically produce this level of uniformity in outcome and reasoning across multiple judges and cases in such a compressed timeframe.

31. The bond hearings being provided to individuals who have been granted federal habeas relief do not appear to be genuine adjudications. They appear to be illusory remedies—proceedings designed to create the appearance of due process while ensuring that individuals remain detained indefinitely.

32. What I have witnessed over the past three weeks appears to be a systematic effort to nullify the constitutional protections that federal courts have recognized and enforced through habeas corpus. It appears to be a deliberate campaign to render meaningless the bond hearings that this Court and others have ordered.

33. I am profoundly concerned by what I have witnessed. As an attorney who has dedicated my career to the fair administration of immigration law—having served both as a government attorney enforcing those laws and as a private practitioner defending individuals subject to them—I find what appears to be a coordinated effort to undermine judicial authority and deny due process to be deeply troubling and inconsistent with the values I learned and embraced during my years of public service.

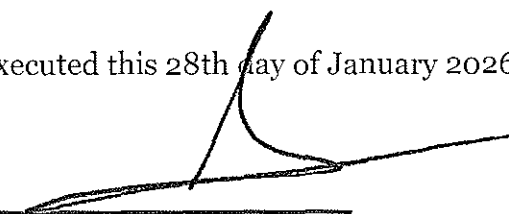
34. The individuals affected by this systematic denial of bond are not abstractions. They are human beings with families, with children, with jobs, with lives in this country. They have been found by federal courts to be entitled to bond hearings.

They are now being denied those hearings in any meaningful sense, held in detention not because they pose a danger or a flight risk, but because, in my observation, the Executive Branch appears to have decided to circumvent federal court orders through institutional means.

35. I submit this declaration in the hope that it will assist courts in understanding the reality of what appears to be occurring in immigration proceedings in this district and in ensuring that the constitutional right to habeas corpus is not rendered meaningless.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 28th day of January 2026, in Arlington, Virginia.



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