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

DAVID TEJEDA HERNANDEZ,  
Petitioner,

v.

WARDEN, Otay Mesa Detention Center,  
Respondents.

CIVIL CASE NO.:  
26-cv-03391-BAS-MSB

**Amended<sup>1</sup> Petition  
for a  
Writ of Habeas Corpus**

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<sup>1</sup> 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. Tejeda Hernandez therefore files this amended petition as of right.

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 this one, *see Vasquez Garcia v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025) (Sabraw, J.). This Court should reject that argument, too, and order Petitioner’s immediate release on the bond imposed by the immigration judge (“IJ”).

1 **STATEMENT OF FACTS**

2 David Tejeda Hernandez entered the United States without detection in  
3 November of 2014. *See* Dkt Doc. 1. He lived in the U.S. for over 10 years, working  
4 and raising his two young children. He has never been in trouble with the law. *See*  
5 *id.* On April 29, 2026, ICE arrested him. *Id.* His immigration case remains  
6 pending. He has not gotten a bond hearing. *Id.*

7 **LEGAL BACKGROUND**

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

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

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

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

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

1 release on parole ‘any alien applying for admission to the United States’ on a ‘case-  
2 by-case basis for urgent humanitarian reasons or significant public benefit.’”  
3 *Hernandez Nieves*, 2025 WL 2533110, at \*3 (quoting 8 U.S.C. § 1182(d)(5)(A)).

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

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

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 Petitioner’s reading. “After  
21 passing the IIRIRA, Congress declared the new § 1226(a) ‘restates the current  
22 provisions in [the predecessor statute] regarding the authority of the Attorney  
23 General to arrest, detain, and release on bond’ a noncitizen ‘who is not lawfully in  
24 the United States.’” *Rosado*, 2025 WL 2337099, at \*9. Because noncitizens deemed  
25 inadmissible “were entitled to discretionary detention under § 1226(a)’s  
26 predecessor statute, and Congress declared the statute’s scope unchanged by  
27 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 petitioner 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, Petitioner 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 Petitioner is detained. *See Hernandez-Lara v. Lyons*,  
19 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, Petitioner 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. Tejeda Hernandez receive an appropriate bond  
7 hearing.

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

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

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

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

27 In a perfect world, this Court could remedy the due process violation by  
28 ordering a bond hearing before a neutral immigration judge (“IJ”), allowing the IJ  
to determine whether Mr. Tejeda Hernandez posed a risk of danger or flight.

1 Unfortunately, attacks on IJ independence under the current administration have  
2 severely compromised IJs' neutrality. As a result, there is a serious risk that an IJ  
3 will order Mr. Tejeda Hernandez's continued detention even if he poses no danger  
4 or flight risk. Several data points 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).

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

6 *First*, the Trump administration has eliminated 128 IJs insufficiently aligned  
7 with the administration's priorities, illustrating to the remaining IJs the cost of  
8 resistance. *See* Woo-Sun Lim, *Former judge highlights legal failures in U.S.*  
9 *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-immigration-](https://www.americanimmigrationcouncil.org/blog/bia-ruling-immigration-judges-bond-mandatory-detention-undocumented-immigrants/)  
22 [judges-bond-mandatory-detention-undocumented-immigrants/](#). The statistical  
23 impact is stark. As of January 22, 2026, the reconstituted BIA has issued 71  
24 published decisions. Exec. Off. for Immigr. Rev., *Volume 29*, U.S. Dep’t of Just.  
25 (Jan. 21, 2025), <https://www.justice.gov/eoir/volume-29>. Of those, 69 decisions  
26 (97%) favored the administration. By contrast, during the entire four-year span of  
27 the prior administration, the BIA issued 76 published decisions. Exec. Off. for  
28 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*, 28  
2 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](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 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  
F.Supp.3d 401, 405-07 (E.D.N.Y. 2025).

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

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

23 (a) At that hearing, the government shall bear the burden of  
24 establishing by clear and convincing evidence that Petitioner poses a  
25 danger or flight risk, while further specifying that concerns about  
26 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: June 23, 2026

s/ Anthony E. Colombo, Jr.

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