

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

LAZARO EZEQUIEL AJCAC CULAY,

Petitioner,

v.

Case No. 1:25-cv-00900-JLS

JOHN DOE, Facility Director, Buffalo
Federal Detention Facility; TODD LYONS,
Acting Director, U.S. Immigration and
Customs Enforcement; KRISTI NOEM, U.S.
Secretary of Homeland Security; PAMELA
BONDI, U.S. Attorney General; JANE DOE,
Director of Executive Office for Immigration
Review,

Respondents.

**PETITIONER'S MEMORANDUM OF LAW IN
OPPOSITION TO RESPONDENTS' MOTION TO DISMISS**

- and -

**PETITIONER'S REQUEST FOR COURT ORDER
ENTITLING HIM TO A BOND HEARING ON THE MERITS**

Petitioner Lazaro Ezequiel Ajcac Culay ("Petitioner" or "Ajcac Culay") is a 22-year old Special Immigrant Juvenile ("SIJ") with no criminal record who was legally employed in Massachusetts as a cook at a cafe near Boston when he was suddenly arrested nearly three months ago by U.S. Immigration and Customs Enforcement ("ICE") near his home. ICE flew him to Batavia, New York, hours after his arrest and he remains detained there. But there is no lawful basis for his detention.

There was also no lawful basis for his arrest. Ajcac Culay's presence and employment in the United States at the time of his arrest was lawful, as he had been granted Deferred Action as well as Employment Authorization in 2023 after entering the country without inspection as an

Unaccompanied Child in 2021 and then voluntarily turning himself in to immigration authorities after being present in the United States. He was released, living with his father, attending and graduating high school, working, and waiting his turn in line for a green card. Ajcac Culay had followed the law at every turn at the time of ICE's legally baseless arrest. In a compounding act of lawlessness, the U.S. Citizenship and Immigration Services ("USCIS") then immediately revoked his Deferred Action, throwing him out of his place in line for eventual citizenship status, and doing so on no basis apart from his baseless arrest. The Court should not condone these wrongs, and, indeed, it should take action to right them.

Ajcac Culay seeks straightforward relief from this Court: an order that the U.S. Immigration Court provide him a bond hearing on the merits. Under clear and unanimous direction of the Second Circuit, *see infra* at 6-7 (discussion of *Black v. Almodovar, et al.*, 20-3224/G.M. v. *Almodovar, et al.*, 22-70 (2nd Cir. Oct. 24, 2025) (Decision Denying Rehearing *En Banc*)), Petitioner is entitled to such a hearing under 8 U.S.C. § 1226(a) because, as Respondents concede, he entered the country without inspection and is in removal proceedings. Ajcac Culay is also eligible for a bond hearing on the merits under the independent bases of being a member of a recently-certified nationwide class (*see infra* at 8-9) and by virtue of his SIJ status (*see infra* at 10).

The government does not appear to disagree to Ajcac Culay's entitlement to a discretionary bond hearing. Respondents assert as their first argument in their Memorandum of Law in Support of the Motion to Dismiss ("the "MTD Memo") that Petitioner "should be required to first seek a bond hearing in immigration court." MTD Memo, page 6 of 14. This is precisely what Petitioner wants as well. What Petitioner received instead was a ruling from an Immigration Judge on October 23, 2025, that that court had "no authority to hear bond requests or to grant bond to aliens

who are present in the United States without admission,” citing *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) (“*Hurtado*”). But *Hurtado* was a creation of ICE policy to further a widespread crackdown on undocumented aliens, not a decision based on the words of the pertinent statutory provisions or any other grounding in the law. At the conclusion of the October 23 proceedings before the Immigration Judge (Schultz, J.) he stated that his hands were presently tied by *Hurtado* and thus he could not proceed with a hearing on the merits “unless a federal court instructs me otherwise” (or words to that effect). Petitioner has filed a motion for bond redetermination with the Immigration Court again, but without direction from this Court it is unlikely he will be afforded a hearing on the merits. Ajcac Culay, who will undoubtedly prevail in such a hearing as there is zero evidence that this law-abiding high school graduate is a danger or a flight risk, respectfully asks this Court to grant him that opportunity to make his case for bond in Immigration Court, while also denying Respondents’ Motion to Dismiss.

FACTUAL BACKGROUND

Ajcac Culay lived with his mother and brothers in his native country of Guatemala, where they endured extreme poverty and violence. See Affidavit of Lazaro Ezequiel Ajcac Culay, dated June 12, 2022 (“Ajcac Culay Aff.,” a true copy of which is attached to the Declaration of Benjamin B. Tymann, Esq. (“Tymann Decl.”) at *Exhibit 1*), at ¶¶ 6-9. Ajcac Culay’s father left Guatemala in order to find work in the United States and be able to support family back in Guatemala. *Id.* ¶ 6. His mother did not work and relied entirely on the father’s income being sent from the U.S. to support herself and her children. *Id.* ¶ 7. The money coming back to Guatemala was minimal and meant that Petitioner often went without any access to healthcare, consistent education, and food. *Id.* ¶ 8. Ajcac Culay’s parents decided that protecting him from the gang violence that pervaded

his neighborhood necessitated sending him, alone, to the United States to work and live with his father in Massachusetts. *See id.* ¶¶ 9 & 13.

Petitioner entered the United States without inspection on January 14, 2021, at or near Sasabe, Arizona as an unaccompanied minor. Notice to Appear (“NTA”) a true copy of which is attached to the Tymann Decl., *Exhibit 2*. The NTA issued to Petitioner states in at least three places that he was detained as “*an alien present in the United States who has not been admitted or paroled.*” He was placed with the Office of Refugee Resettlement (“ORR”) in the unaccompanied children program under control of the Department of Health and Human Services. ORR released Ajcac Culay into the custody of his father. He and his father proceeded through guardianship proceedings in Family Court where his father was granted guardianship. Petitioner applied for SIJ status on February 9, 2023, and USCIS approved the petition on June 15, 2023, and granted him deferred action. Tymann Decl., *Exhibit 3*. On August 17, 2023, Petitioner applied for employment authorization, which was approved on October 11, 2023, pursuant to 8 CFR 274a.12(c)(14) (allowing noncitizens who have deferred action to apply for employment authorization). Tymann Decl., *Exhibit 4*.

Ajcac Culay graduated from [REDACTED] and was legally working while he awaited for his priority date to become current so that USCIS could adjust his citizenship status. Tymann Decl., *Exhibits 5 & 6*. On November 30, 2023, the Immigration Court granted Petitioner administrative closure of his immigration proceedings, allowing him to stay in the United States while awaiting a visa number to become available so he could apply for adjustment of status.

Ajcac Culay was arrested in Burlington, Massachusetts, on his way to work on September 16, 2025. He has no criminal record in the United States or elsewhere. No basis or reason was provided for his arrest. Around 4:30 PM or 5:30 PM on September 16, the same day as his arrest,

Petitioner was put on an aircraft in Bedford, Massachusetts and transferred to a detention facility in Batavia, New York where he continues to be detained. About 1-2 hours after the flight departed Massachusetts, Petitioner's attorney filed a writ of habeas corpus in the U.S. District Court for the District of Massachusetts. *Ajcaac Culay v. Moniz*, 25-cv-12611 (D. Mass. Sep. 17, 2025). On September 17, the District Court of Massachusetts ordered the government to not deport Petitioner and required written notice and explanation of any intention to transfer him to another judicial district. Unbeknownst to Petitioner's counsel or the District Court in Massachusetts, Petitioner was no longer present in the state.

FRCP 12(b)(6) LEGAL STANDARD

The standard for a motion to dismiss under Fed. R. Civ. P. Rule 12(b)(6) for failure to state a claim is well settled. The Court presumes that the complaint's factual allegations are true and draws all reasonable inferences in favor of the nonmoving party, *Aboushama v. EMF Corp.*, 214 F. Supp. 3d 202, 205 (W.D.N.Y. 2016), citing *Mantena v. Johnson*, 809 F.3d 721, 727-28 (2d Cir. 2015). Nevertheless, to survive a motion to dismiss, the factual matter, accepted as true, must be sufficient to 'state a claim to relief that is plausible on its face' and "enough to raise a right to relief above the speculative level." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal citations and quotations omitted). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Turkmen v. Ashcroft*, 589 F.3d 542, 546 (2d Cir. 2009) (citing *Ashcroft v. Iqbal*, *supra*, 556 U.S. 662 (2009)). "In considering a motion to dismiss for failure to state a claim pursuant to Rule 12(b)(6), a district court may consider the facts alleged in the complaint, documents attached to the complaint as exhibits, and documents incorporated by reference in the complaint." *White v.*

Montesano, 466 F. Supp. 3d 331, 334 (W.D.N.Y. 2020), citing *DiFolco v. MSNBC Cable L.L.C.*, 622 F.3d 104, 111 (2d Cir. 2010).

ARGUMENT

I. Under the law of this Circuit, Petitioner is entitled to a bond hearing under 8 U.S.C. § 1226(a)

As the Second Circuit has stated plainly, as recently as this past October:

8 U.S.C. § 1226 governs the procedures for detaining noncitizens during the pendency of their removal proceedings. Section 1226(a) establishes the default rule, providing that “[o]n a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States.” Following the arrest of a noncitizen under this subsection, the government may continue to detain the noncitizen or instead release him on bond or conditional parole.

Black v. Almodovar, et al., 20-3224 / *G.M. v. Almodovar, et al.*, 22-70 (2d Cir. Oct. 24, 2025) (Decision Denying Rehearing *En Banc*) (“*Black/G.M. Decision*,” a true copy of which is attached as ***Exhibit 7*** to the Tymann Decl.) (Nardini, J., joined by Livingston, J., Sullivan, C.J., Park, J., and Menashi, J., dissenting from the denial of rehearing *en banc*) (emphasis added), at 6, and in the same *Black/G.M. Decision*:

Section 1226 contains two relevant subsections, (a) and (c), which establish different regimes for the government’s detention of noncitizens whom it charges with removability. Section 1226(a) authorizes the government to detain a noncitizen “pending a decision on whether the alien is to be removed from the United States.” 8 U.S.C. § 1226(a). As the Supreme Court explained in *Jennings v. Rodriguez*, “Section 1226(a) sets out the default rule: The Attorney General may issue a warrant for the arrest and detention of an alien” pending a removal decision, and “‘may release’ an alien detained under § 1226(a) ‘on . . . bond’ or ‘conditional parole.’” 583 U.S. 281, 288 (2018) (quoting 8 U.S.C. § 1226(a)).

Id. (Chin, S.J., Carney, S.J., joined by Lohier, J., Lee, J., Robinson, J., Pérez, J., Nathan, J., Merriam, J. and Khan, J.), at 4.

There is no dispute that Ajcac Culay is in removal proceedings. MTD Memo, at 3. On that basis alone, his detention, under the unmistakable direction of the Second Circuit, falls under Section 1226(a).

As these recent majority and dissenting opinions in *Black/G.M.* make clear, there is unanimity in the Second Circuit that noncitizens such as Petitioner who entered the United States without inspection and are in removal proceedings, and are thus subject to Section 1226(a), are entitled to a bond hearing on the merits. These opinions in the *Black/G.M.* Decision stated, for example:

- “Under § 1226(a), on the other hand, Congress merely authorized the *discretionary* detention of any noncitizen pending a removal decision, and the implementing regulations *guarantee detainees an initial bond hearing* (with the possibility of additional hearings).” *Black/G.M.* Decision (Nardini, J., joined by Livingston, J., Sullivan, C.J., Park, J., and Menashi, J., dissenting from the denial of rehearing *en banc*), at 12 (emphasis in original for first italicization, emphasis added for second).
- “§ 1226(a) detainees are afforded multiple opportunities to challenge their detention: at the point of arrest, at multiple bond hearings, and on appeal. Notably, § 1226(a) detainees receive an initial bond hearing when first detained” *Black/G.M.* Decision (Chin, S.J., Carney, S.J., joined by Lohier, J., Lee, J., Robinson, J., Pérez, J., Nathan, J., Merriam, J. and Khan, J.), at 4; *see also id.* at 20-21 (“The opportunities available for § 1226(a) detainees to challenge their detention and seek release are several”) & 35 (“procedures governing § 1226(a) bond hearings that are provided as a matter of course”).

Accordingly, this Court must grant Ajcac Culay’s request that it effectuate a bond hearing on the merits. *See* Petition, at 10, Request for Relief ¶ 5. The Court should order that the Immigration Court do so without further delay.

II. **Petitioner is part of a nationwide class whose members, a U.S. District Court recently ruled in a decision binding on all district courts, must be afforded a bond hearing under 8 U.S.C. § 1226(a)**

Ajcaac Culay is a class member in *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (C.D. Cal.). *See* Tymann Decl., *Exhibit 8*. In *Maldonado Bautista* the court certified the Bond Eligible Class, defined as:

All noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination.

Maldonado Bautista v. Santacruz, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025).

Ajcaac Culay is a noncitizen who, since USCIS revoked his Deferred Action and Work Authorization, is without lawful status and who (1) entered the United States without inspection, (2) was not apprehended upon arrival, and (3) is not subject to mandatory detention pursuant to 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231. Respondents have not and cannot dispute that Petitioner meets the first two of these three criteria, and to the extent that Respondents claim that Ajcaac Culay is subject to mandatory detention, that view flies in the teeth of unanimous Second Circuit direction as most recently articulated in the *Black/G.M.* Decision. Accordingly, as a member of the Bond Eligible Class, Petitioner is entitled to the application of the law as stated in the *Maldonado Bautista* orders granting summary judgment and class certification. *See* 2025 WL 3288403, at *9 (“When considering this determination with the MSJ Order, the Court extends the same declaratory relief granted to Petitioners to the Bond Eligible Class as a whole.”).

This Court is obligated to apply the law to all class members, as determined in the binding, final judgment issued in *Maldonado Bautista*. The Executive Office for Immigration Review is a

Defendant in *Maldonado Bautista*, and is thus bound by the ruling there, which has the full "force and effect of a final judgment." 28 U.S.C. § 2201(a). It is a "basic proposition that all orders and judgments of courts must be complied with promptly," *Maness v. Meyers*, 419 U.S. 449, 458 (1975), and thus, in "suits against government officials and departments, [courts] assume that they will comply with declaratory judgments." *United Aeronautical Corp. v. United States Air Force*, 80 F.4th 1017, 1031 (9th Cir. 2023). This is because declaratory judgments like the one in *Maldonado Bautista* have "the same effect as an injunction in fixing the parties' legal entitlements." *Florida ex rel. Bondi v. U.S. Dep't of Health & Hum. Servs.*, 780 F. Supp. 2d 1307, 1316 (N.D. Fla. 2011). This understanding of declaratory judgments—and thus this court's obligation to comply with the declaratory judgment in *Maldonado Bautista*—is consistent with the decisions of many courts. *See, e.g., Sanchez-Espinoza v. Reagan*, 770 F.2d 202, 208 n.8 (D.C. Cir. 1985) (Scalia, J.) ("[T]he discretionary relief of declaratory judgment is, in a context such as this where federal officers are defendants, the practical equivalent of specific relief such as injunction or mandamus, since it must be presumed that federal officers will adhere to the law as declared by the court."), *abrogated on other grounds by, Schieber v. United States*, 77 F.4th 806 (D.C. Cir. 2023), *cert. denied*, 144 S. Ct. 688 (2024); *Smith v. Reagan*, 844 F.2d 195, 200 (4th Cir. 1988) (describing declaratory relief as "the functional equivalent of a writ of mandamus"); *Pub. Citizen v. Carlin*, 2 F. Supp. 2d 18, 20 (D.D.C. 1998) ("The government's decision to appeal this Court's ruling does not affect the validity of the declaratory judgment unless and until the judgment is reversed on appeal or the government seeks and is granted a stay pending appeal."), *rev'd on other grounds*, 184 F.3d 900 (D.C. Cir. 1999).

III. Petitioner is entitled to a bond hearing on the merits by virtue of his SIJ status

While Petitioner did enter the United States in 2021 without inspection, the Immigration and Nationality Act “expressly states that SIJS are considered paroled into the United States for purposes of adjustment under INA 245(a). Accordingly, the beneficiary of an approved SIJ petition is treated for purposes of the adjustment application as if the beneficiary has been paroled, regardless of the beneficiary’s manner of arrival in the United States.” (<https://www.uscis.gov/policy-manual/volume-7-part-f-chapter-7#S-C-1>; 8 U.S.C. §1255(h)). Under 8 U.S.C. §1101(a)(27)(J)(ii), an element of being granted SIJ is that there has been a determination “in administrative or judicial proceedings that it would not be in the alien’s best interest to be returned to the alien’s or parent’s previous country of nationality or country of last habitual residence.”¹

Furthermore, there is another U.S. District Court order, issued on November 19, 2025 in the Eastern District of New York, blocking rescission of the Special Immigrant Juvenile Status Deferred Action policy. Therefore, Ajcac Culay would again become eligible for deferred action because of his approved I-360 self-petition. See *A.C.R. et al. v. Kristi Noem*, 25-CV-3962 Memorandum and Order, November 19, 2025 (attached at Tymann Decl., **Exhibit 9**).

As Respondents concede, USCIS did not revoke Petitioner’s SIJ status. He has an independent right to a bond hearing on the merits based on that status, and this provides the third ground on which this Court should order that Ajcac Culay – a danger to no one with deep ties to

¹ Moreover, Ajcac Culay entered the country as an unaccompanied child. 6 U.S.C. § 279(g)(2). By statute, it is the government’s obligation, through the Office of Refugee Resettlement (“ORR”) to put unaccompanied children in the “least restrictive setting that is in the best interest of the child.” 8 U.S.C. §§ 1232(c)(2)(A). This is precisely what ORR did when it allowed Petitioner to join his father in Massachusetts in 2021, providing Petitioner with a safe and secure environment that enabled him to attend and graduate high school, obtain his work authorization, secure gainful employment, and earn his place on the pathway to citizenship. Though now 22 years of age, Ajcac Culay’s status as an unaccompanied child upon entry is yet a further reason why his detention at Batavia is unjust.

his Massachusetts community that virtually eliminates any risk of flight – be allowed to make his case on the merits that he meets bond criteria.

IV. Petitioner need not exhaust his administrative remedies before gaining relief from this Court

Respondents state that dismissal of Petitioner’s habeas petition is warranted because he allegedly failed to exhaust his administrative remedies by not requesting a bond hearing. That contention, of course, is factually incorrect. Ajcac Culay sought a bond hearing in front of an immigration judge, and he is seeking one anew based on the *Maldonado Bautista* class certification. But such request is likely to be futile unless and until this Court orders that the Immigration Court provide him such a hearing.

Respondents’ suggestion that Petitioner must first exhaust administrative remedies is also contrary to settled Second Circuit law. 28 USC § 2241 expressly empowers federal district courts to review the legality of civil immigration detention. “§ 2241 authorizes a district court to grant a writ of habeas corpus whenever a petitioner is in custody in violation of the laws or treaties of the United States.” *Singh v. Barr*, 20-CV-1315-LJV, slip op. at 3 (W.D.N.Y. Dec. 15 2020). The Second Circuit confirmed the same principle in *Hechavarria v. Sessions*, 891 F.3d 49, 56-57 (2d Cir. 2018), recognizing that immigration detainees may invoke habeas review “at any time” to challenge the statutory or constitutional basis of detention. Exhaustion in this context is prudential, not jurisdictional, and courts routinely excuse it when the agency cannot grant the requested relief. See *Hechavarria v. Whitaker*, 358 F. Supp. 3d 227, 239-40 (W.D.N.Y. 2019) (post-Jennings habeas relief despite no prior bond hearing).

Here, exhaustion would be futile. The Department of Homeland Security (“DHS”) takes the position – based on *Matter of Yajure Hurtado*, 29 I.&N. Dec. 216 (BIA 2025) – that individuals such as Ajcac Culay are ***categorically ineligible for bond***. Requiring him to request a hearing that

an Immigration Judge is forbidden to grant would be a meaningless formality inconsistent with due process. Under *Walker v. Searls*, No. 23-CV-140-LJV, 2024 WL 1735213, at 6–8 (W.D.N.Y. Apr. 23 2024), and *Hemans v. Searls*, 2019 WL 955353 (W.D.N.Y. Feb. 27 2019), this Court properly exercises habeas jurisdiction to test the legality of detention notwithstanding the absence of administrative exhaustion.²

WDNY has repeatedly and correctly entertained detention habeas petitions without dismissing them for failure to exhaust where the question is the legality of custody, and where the alternative administrative route cannot provide the requested relief. See, e.g., *Walker v. Searls*, No. 23-CV-140-LJV, 2024 WL 1735213, at *6–*8 (W.D.N.Y. Apr. 23, 2024) (ordering a prompt individualized hearing as a habeas remedy), *Hechavarria v. Whitaker*, 358 F. Supp. 3d 227, 239–40 (W.D.N.Y. 2019) (post-*Jennings* due-process analysis of detention with habeas relief).

CONCLUSION

As demonstrated herein, Petitioner has three separate and distinct legal bases, each one binding on the Court, supporting his habeas petition’s request that he be granted a bond hearing on the merits. Accordingly, the court should deny Respondents’ motion to dismiss and order that Petitioner be afforded a bond hearing under Section 1226(a) in Immigration Court.

² Unfortunately, it appears that immigration judges have been instructed by their superiors at the U.S. Department of Justice not to abide by *Maldonado Bautista*’s order that individuals like Ajcac Culay who qualify for the nationwide class be afforded a bond hearing on the merits. See also TRUMP ADMINISTRATION FIRES 8 IMMIGRATION JUDGES IN NEW YORK, *New York Times*, Dec. 1, 2025, available at <https://www.nytimes.com/2025/12/01/nyregion/immigration-judges-fired-trump.html> (“about 90 immigration judges had been fired this year across the United States”).

Dated: December 5, 2025

Respectfully submitted,

/s/ Benjamin B. Tymann

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CERTIFICATE OF SERVICE

I, Benjamin B. Tymann, hereby certify that on this 5th day of December, 2025, I served a copy of the foregoing via ECF filing on:

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