

FRANKLIN S. MONTERO, ESQ.
LAW OFFICES OF FRANKLIN S. MONTERO, LLC
451 CLIFTON AVENUE
CLIFTON, NJ 07011
P: 973-777-8718
F: 973-777-1710
Montero@FMonterolaw.com
Attorney for the Petitioner

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

VASQUEZ-SALAZAR

Petitioner,

v.

BONDI, *et al.*,

Respondents.

HON. CLAIRE C. CECCHI, U.S.DJ.

Civil Action No. 25-17195

**PETITIONER'S SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR WRIT OF
HABEAS CORPUS AND MOTION FOR ORDER TO SHOW CAUSE WITHIN THREE
DAYS**

I. INTRODUCTION

Petitioner Deyvis Gamaliel Vasquez Salazar respectfully submits this supplemental brief in support of his Petition for Writ of Habeas Corpus and moves this Court for an order requiring Respondents to show cause within three (3) days why the Petition should not be granted. Despite the binding nationwide class certification and declaratory relief in *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (C.D. Cal.), Immigration Judge Ramin Rastegar denied Petitioner's request for a custody redetermination on December 3, 2025, citing *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), and claiming lack of jurisdiction under 8 C.F.R. § 1236.

Petitioner is a member of the Bond Eligible Class certified in *Maldonado Bautista*, yet Respondents continue to subject him to mandatory detention under 8 U.S.C. § 1225(b)(2)(A), a statutory provision that does not apply to him as a matter of law. The immigration judge's refusal to conduct an individualized bond hearing under 8 U.S.C. § 1226(a) directly contravenes the declaratory judgment in *Maldonado Bautista*, which has "the full force and effect of a final judgment." 28 U.S.C. § 2201(a). Moreover, this denial occurred on the same day that this Court in *Diaz Rudecindo v. Florentino*, No. 25-16942 (D.N.J. Dec. 3, 2025), granted habeas relief and ordered a bond hearing under § 1226(a) for a petitioner in virtually identical circumstances.

Given the well-established legal precedent in this District, the December 3, 2025 decision in *Diaz Rudecindo* addressing identical facts, and Petitioner's ongoing unlawful detention, expedited consideration is warranted. Petitioner respectfully requests that this Court order Respondents to respond within three (3) days and grant the relief requested herein to prevent further irreparable harm.

II. SUPPLEMENTAL FACTUAL BACKGROUND

A. Petitioner's Immigration History and Custody Status

Petitioner is a nineteen-year-old native and citizen of Guatemala who was born on August 21, 2006. He entered the United States without inspection near El Paso, Texas on or about March 30, 2023, when he was sixteen years old, and was not apprehended upon arrival at that time. Upon his apprehension by immigration authorities, Petitioner was properly classified as an unaccompanied alien child and transferred to the custody of the Office of Refugee Resettlement within the Department of Health and Human Services.

Following a thorough vetting process, ORR released Petitioner to his uncle, Daniel Vasquez Asmen, at [REDACTED] on or about April 16, 2023. Since his release, Petitioner has resided continuously with his uncle in Keansburg, New Jersey, for over two years. He has established strong ties to the community, enrolled in Keansburg High School on May 11, 2023, and has complied with all immigration requirements. Petitioner has never failed to appear for any required immigration check-in or court hearing.

Petitioner has no criminal history whatsoever. He is eligible for Special Immigrant Juvenile (SIJ) relief and has taken affirmative steps to pursue this form of relief. On November 4, 2025, his counsel filed a Verified Complaint in the Superior Court of New Jersey, Chancery Division-Family Part, Monmouth County, seeking sole legal custody and the predicate findings necessary for SIJ status under 8 U.S.C. § 1255(h).

On October 20, 2025, Immigration and Customs Enforcement (ICE) apprehended Petitioner in the interior of the United States outside of his home at 49 Maple Ave, Keansburg, NJ 07734, nearly two years after his ORR release. Since his apprehension, Petitioner has been

detained at Delaney Hall Detention Facility located at 451 Doremus Avenue, Newark, NJ 07105. ICE did not set bond for Petitioner following his arrest.

B. The December 3, 2025 Bond Hearing

Petitioner requested review of his custody by an Immigration Judge pursuant to 8 C.F.R. § 1236. On November 26, 2025, the Petitioner filed a Bond Redetermination Request before the Elizabeth Immigration Court. On December 3, 2025, IJ Ramin Rastegar conducted a custody redetermination hearing at the Elizabeth Immigration Court. At this hearing, IJ Rastegar denied Petitioner's request for a change in custody status, citing solely to *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

IJ Rastegar made no individualized determination regarding whether Petitioner poses a flight risk or danger to the community. He conducted no bond hearing pursuant to 8 U.S.C. § 1226(a) and did not assess Petitioner's eligibility for SIJ relief, his lack of criminal history, his over two years of residence in the United States, his perfect compliance record since his ORR release, his status as a former unaccompanied alien child, or any other factor relevant to an individualized custody determination under § 1226(a). The December 3, 2025, Order of the Immigration Judge states only: "Denied, because *Matter of Hurtado*, 29 I&N Dec. 216 (BIA 2025)." Despite reserving his right to appeal, Petitioner remains detained without any opportunity for release on bond. *See Exhibit A.*

C. Membership in the Maldonado Bautista Bond Eligible Class

Petitioner is a member of the Bond Eligible Class certified in *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (C.D. Cal. Nov. 25, 2025). Specifically, Petitioner does not have lawful status in the United States and is currently detained; he entered the United States without inspection over two years ago on March 30, 2023, and was not apprehended upon

arrival; he is not detained under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231; and he has been charged as inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as reflected in his Notice to Appear dated March 31, 2023. The declaratory judgment in *Maldonado Bautista* applies directly to Petitioner and entitles him to consideration for release on bond under § 1226(a).

III. ARGUMENT

I. RESPONDENTS ARE VIOLATING THE DECLARATORY JUDGMENT IN MALDONADO BAUTISTA

A. The Maldonado Bautista Judgment Is Binding on Respondents

On November 20, 2025, the United States District Court for the Central District of California granted partial summary judgment in *Maldonado Bautista v. Santacruz*, holding that class members like Petitioner are detained under 8 U.S.C. § 1226(a) and thus may not be denied consideration for release on bond under § 1225(b)(2)(A). *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3289861, at *11 (C.D. Cal. Nov. 20, 2025). On November 25, 2025, the court certified a nationwide class and extended the declaratory relief to all class members. *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025).

The declaratory judgment has "the full force and effect of a final judgment." 28 U.S.C. § 2201(a). Respondents are parties to *Maldonado Bautista* and are bound by the court's declaratory judgment. Federal courts have consistently recognized that declaratory judgments in immigration cases bind government officials. *See Rodriguez v. Robbins*, 715 F.3d 1127, 1138 (9th Cir. 2013) (holding that district court's class certification and injunctive relief bound government officials).

B. IJ Rastegar's December 3, 2025 Order Directly Violates the Maldonado Bautista Judgment

IJ Rastegar's order denying Petitioner a bond hearing under § 1226(a) is in direct violation of the *Maldonado Bautista* declaratory judgment. The order explicitly relies on *Matter of Yajure Hurtado* as the sole basis for denying Petitioner relief, the very agency decision that the *Maldonado Bautista* court found violates the Immigration and Nationality Act. IJ Rastegar provided no individualized determination of flight risk or danger to the community as required by § 1226(a) and established Supreme Court precedent. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

The denial was categorical and automatic, based solely on Petitioner's classification as an "applicant for admission" under the government's interpretation of § 1225(b)(2)(A). According to statements made to class counsel in other *Maldonado Bautista* class member cases, immigration judges have been instructed by "leadership" at EOIR that the *Maldonado Bautista* declaratory judgment is not controlling, even with respect to class members. This instruction constitutes a flagrant defiance of a federal court order and undermines the rule of law.

II. PETITIONER IS DETAINED UNDER § 1226(a), NOT Section 1225(b)(2)(A)

A. The Plain Language of § 1225(b)(2)(A) Does Not Apply to Petitioner

Section 1225(b)(2)(A) applies only to noncitizens who are inspected by immigration officials at or near the border or its functional equivalent. *See* 8 U.S.C. § 1225(b)(2)(A) (applying to "an alien who is an applicant for admission"). For nearly thirty years, § 1225 has applied to noncitizens seeking entry to the United States or with a close nexus to the border, while § 1226 has applied to those arrested within the interior of the United States. *Rivera Zumba v. Bondi*, No. 25-14626, 2025 WL 2753496, at *9 (D.N.J. Sept. 26, 2025).

The Supreme Court has "explicitly adopt[ed] this distinction, describing § 1225 as the detention statute for noncitizens affirmatively 'seeking admission' into the United States, and §

1226 as the detention statute for noncitizens who are 'already in the country.'" *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). Petitioner was not apprehended at the border or its functional equivalent. Rather, he was arrested by ICE in the interior of the United States, nearly two years after his entry. At the time of his arrest on October 20, 2025, Petitioner had been residing in the United States for over two years since his March 30, 2023, entry.

The Notice to Appear issued to Petitioner on March 31, 2023, identifies him as "present in the United States" and charges him as "an alien present in the United States who has not been admitted or paroled." Notably, the issuing officer declined to designate Petitioner as an "arriving alien," the active language used to define the scope of § 1225(b)(2)(A). *See Garcia-Alvarado v. Warden*, No. 25-16109, 2025 WL 3268606, at *3 (D.N.J. Nov. 24, 2025).

B. Every Court in the District of New Jersey to Address This Issue Has Rejected the Government's Interpretation

To date, every court in this District to consider the issue has rejected Respondents' expansive interpretation of § 1225(b)(2)(A) and held that noncitizens like Petitioner are detained under § 1226(a). *See, e.g., Diaz Rudecindo v. Florentino*, No. 25-16942, 2025 WL [____], at *5 (D.N.J. Dec. 3, 2025) (granting habeas petition and ordering bond hearing under § 1226(a)) *See Exhibit B*; *Kaly Bah v. Soto*, No. 25-17337, 2025 WL 3295569, at *1 (D.N.J. Nov. 26, 2025); *Mejia v. Cabezas*, No. 25-17094, 2025 WL 3294405, at *2 (D.N.J. Nov. 26, 2025); *Ochoa Molina v. Soto*, No. 25-16880, 2025 WL 3281820, at *2-3 (D.N.J. Nov. 25, 2025); *Garcia-Alvarado v. Warden*, No. 25-16109, 2025 WL 3268606, at *2-3 (D.N.J. Nov. 24, 2025); *Perez v. Lyons*, No. 25-17186, 2025 WL 3238540, at *1-3 (D.N.J. Nov. 19, 2025); *Sandhu v. Tsoukaris*, No. 25-14607, 2025 WL 3240810, at *3-6 (D.N.J. Nov. 20, 2025); *Ramos v. Rokosky*, No. 25-15892, 2025 WL 3063588, at *3-9 (D.N.J. Nov. 3, 2025); *Lomeu v. Soto*, No. 25-16589, 2025

WL 2981296, at *4-9 (D.N.J. Oct. 23, 2025); *Rivera Zumba v. Bondi*, No. 25-14626, 2025 WL 2753496, at *4-11 (D.N.J. Sept. 26, 2025).

These decisions have consistently held that the plain language of § 1225(b)(2)(A) does not apply to noncitizens arrested in the interior of the United States years after entry. Most recently, on December 3, 2025, the same day as Petitioner's bond hearing, this District granted habeas relief in *Diaz Rudecindo v. Florentino*, finding that the petitioner's "detention pursuant to § 1225(b)(2)(A)" was unlawful and ordering Respondents to provide a bond hearing under § 1226(a). *Diaz Rudecindo*, 2025 WL [____], at *5. The reasoning in *Diaz Rudecindo* applies with equal force here.

III. PETITIONER'S CONTINUED DETENTION VIOLATES DUE PROCESS

Even assuming *arguendo* that some ambiguity exists regarding the applicable detention statute, Petitioner's prolonged detention without an individualized bond hearing violates his Fifth Amendment right to due process. "Freedom from imprisonment, from government custody, detention, or other forms of physical restraint, lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690. The Supreme Court has held that prolonged immigration detention without an individualized hearing raises serious constitutional concerns. *See Jennings*, 583 U.S. at 305-06 (noting constitutional concerns with prolonged mandatory detention).

Petitioner has been detained since October 20, 2025, a period of approximately 45 days as of this filing, without any individualized determination that he poses a flight risk or danger to the community. Petitioner has no criminal history. He is eligible for SIJ relief, demonstrating both a legal pathway to lawful status and strong incentive to comply with immigration proceedings. On November 4, 2025, counsel filed a Verified Complaint in New Jersey state court

seeking the predicate findings necessary for his SIJ petition, demonstrating his active pursuit of this humanitarian relief.

Petitioner has resided in the United States for over two years since his March 2023 entry and has established substantial community ties. He was released by ORR in April 2023 following a comprehensive vetting process that determined he posed no flight risk or danger to the community. Since that release, he has: resided continuously at the same address with his uncle; enrolled in and attended Keansburg High School since May 11, 2023; appeared for all required immigration check-ins and proceedings; and never attempted to abscond or evade immigration authorities. His immigration case has been pending before the Newark Immigration Court, with his master calendar hearing initially scheduled for July 9, 2026, providing adequate time to pursue relief from removal.

Under these circumstances, continued detention without an individualized bond hearing violates due process. The facts demonstrate overwhelmingly that Petitioner poses no flight risk or danger to the community. ICE has identified no changed circumstances, new criminal conduct, or evidence of flight risk that would justify detaining Petitioner after over two years of successful compliance with supervision conditions following his ORR release.

IV. THE IMMIGRATION JUDGE'S RELIANCE ON MATTER OF YAJURE HURTADO CONFLICTS WITH BINDING FEDERAL COURT AUTHORITY

The *Maldonado Bautista* declaratory judgment is clear and unambiguous: class members may not be denied consideration for release on bond under § 1225(b)(2)(A). The declaratory judgment has "the full force and effect of a final judgment." 28 U.S.C. § 2201(a). Despite this binding authority, IJ Rastegar's December 3, 2025, order denied Petitioner a bond hearing based

solely on *Matter of Yajure Hurtado*, the very agency decision that federal courts, including the *Maldonado Bautista* court, have found to be contrary to law.

This pattern of continued reliance on *Yajure Hurtado* after entry of the *Maldonado Bautista* declaratory judgment demonstrates the urgent need for this Court's intervention. According to information provided to class counsel in other *Maldonado Bautista* class member cases, immigration judges have indicated they received guidance from leadership regarding the applicability of the declaratory judgment to their proceedings. The consistent denial of bond hearings to class members despite binding federal court authority undermines the rule of law and denies individuals like Petitioner their statutory and constitutional rights.

This Court's clear articulation of the controlling law is necessary to ensure that Petitioner and other similarly situated individuals receive the individualized custody determinations to which they are entitled under § 1226(a). As this Court recognized in *Diaz Rudecindo v. Florentino*, No. 25-16942 (D.N.J. Dec. 3, 2025)—decided the same day as Petitioner's custody hearing—individuals arrested in the interior of the United States years after entry are detained under § 1226(a) and entitled to bond hearings before an immigration judge.

V. CONCLUSION

Petitioner Deyvis Gamaliel Vasquez Salazar is a member of the Bond Eligible Class in *Maldonado Bautista v. Santacruz*. As such, he is entitled to consideration for release on bond under 8 U.S.C. § 1226(a). The December 3, 2025 order by IJ Rastegar denying Petitioner this right, based solely on the BIA's decision in *Matter of Yajure Hurtado*, directly violates the declaratory judgment issued in *Maldonado Bautista* and conflicts with the uniform holdings of every court in this District, including this Court's decision in *Diaz Rudecindo v. Florentino* issued the same day.

Petitioner has been unlawfully detained since October 20, 2025—over 45 days—without any individualized determination that he poses a flight risk or danger to the community. He is a nineteen-year-old former unaccompanied minor with no criminal history, strong community ties, perfect compliance with supervision since his ORR release in April 2023, and active pursuit of Special Immigrant Juvenile relief. His continued detention serves no legitimate government interest and violates his statutory and constitutional rights.

Given the urgency of this matter and the clear legal authority supporting Petitioner's position, this Court should require Respondents to respond within three (3) days and act swiftly to enforce the law and protect Petitioner's rights.

VI. PRAAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

A. Order Respondents to show cause within three (3) days of the date of entry of this Court's order why a Writ of Habeas Corpus should not be issued ordering Respondents to immediately release Deyvis Gamaliel Vasquez Salazar from custody;

B. Issue a Writ of Habeas Corpus ordering Respondents to immediately release Deyvis Gamaliel Vasquez Salazar from custody to his sponsor under appropriate conditions of supervision;

C. Declare that Petitioner's detention violates: (i) the plain language of 8 U.S.C. § 1225(b)(2)(A) and § 1226(a); (ii) the declaratory judgment in *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (C.D. Cal.); (iii) the Due Process Clause of the Fifth Amendment; and (iv) the Immigration and Nationality Act as consistently interpreted by courts in this District;

D. Alternatively, order Respondents to provide Petitioner with an individualized bond hearing under 8 U.S.C. § 1226(a) within seven (7) days, at which an immigration judge shall: (i)

assess whether Petitioner presents a flight risk or danger to the community; (ii) apply the legal standard set forth in *Maldonado Bautista* and § 1226(a); (iii) not rely on *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), or any interpretation subjecting Petitioner to mandatory detention under § 1225(b)(2)(A); and (iv) place the burden on the government to establish by clear and convincing evidence that detention is necessary;

E. Enter a permanent injunction prohibiting Respondents from: (i) denying Petitioner or other *Maldonado Bautista* class members consideration for bond under § 1226(a); (ii) applying mandatory detention under § 1225(b)(2)(A) to individuals arrested in the interior of the United States years after entry; and (iii) relying on *Matter of Yajure Hurtado* to deny bond hearings to individuals who are detained under § 1226(a);

F. Retain jurisdiction to ensure compliance with this Court's orders;

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

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

Respectfully submitted,

s/ Franklin S. Montero
Franklin S. Montero Esq.
Law Office of Franklin S. Montero
451 Clifton Ave
Clifton NJ 07011
Montero@fmonterolaw.com
(973) 777-8718

Dated: December 4, 2025

CERTIFICATE OF SERVICE

I, Franklin S. Montero, hereby certify that on November 18, 2025, a true and correct copy of the foregoing **Supplemental Brief in Support of Petition for Writ of Habeas Corpus and Motion for Order to Show Cause Within Three Days** was filed electronically with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

Respectfully submitted,

s/ Franklin S. Montero
Franklin S. Montero Esq.
Law Office of Franklin S. Montero
451 Clifton Ave
Clifton NJ 07011
Montero@fmonterolaw.com
(973) 777-8718

Dated: December 4, 2025