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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

DAVID LOPEZ-ROMERO, Petitioner, v. **TODD M. LYONS, Acting Director**, Immigration And Customs Enforcement **MARY DEANDRA-YBARRA, Director** of El Paso Field Office, Immigration and Customs Enforcement) **KRISTI NOEM,** Secretary of the U.S. Department Of Homeland Security; and **PAMELA JO BONDI** Attorney General of the United States, in their official capacities, Respondents.	Case No. 2:25-cv-01113-MIS-JHR **PETITION FOR WRIT OF HABEAS CORPUS**

PETITIONER'S REPLY IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS (28 U.S.C. § 2241) AND EMERGENCY RELIEF UNDER 28 U.S.C. § 2243

I. INTRODUCTION

Respondents' position turns on an unprecedented expansion of 8 U.S.C. § 1225(b)(2)(A) to reclassify long-present noncitizens arrested in the interior as "applicants for admission" subject to mandatory, no-bond detention. That theory conflicts with the INA's text, structure, and regulations; decades of practice; and the overwhelming weight of federal

decisions. Critically, it has now been rejected in a final declaratory judgment in *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal.), which held that noncitizens like Mr. Lopez are detained under § 1226(a) with bond eligibility, and extended that declaratory relief to a certified, nationwide "Bond Eligible Class" of which Mr. Lopez is a member. See Order Granting Partial Summary Judgment, Dkt. 81 (Nov. 20, 2025); Order Granting Class Certification, Dkt. 82 at 14–15 (Nov. 25, 2025); 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025).

The Court should grant the writ forthwith under 28 U.S.C. § 2243, declare that § 1226(a) governs Petitioner's custody, and order either immediate release on reasonable conditions or, at minimum, a prompt § 1226(a) bond hearing at which the government bears the burden by clear and convincing evidence.

II. BACKGROUND[1]

Mr. Lopez is a Guatemalan national who entered without inspection more than two decades ago and has lived in the United States approximately 24 years. He is a husband and father of three U.S.-citizen children, has no disqualifying criminal convictions, and is prima facie eligible for relief from removal. He was arrested in the interior (in his home state of Maryland) in October 2025 and transferred out of Maryland and remains detained at Otero County Processing Center in New Mexico. An Immigration Judge denied his request for bond based on *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), concluding the IJ lacked jurisdiction to consider bond under the government's § 1225(b)(2)(A) theory.

[1] Respondents admit Petitioner 'entered … without being inspected' and 'was found … and apprehended on or about October 13, 2025.' Gov't Resp. at 1 (¶¶ 2–3). He is in § 1229a proceedings and not detained under § 1226(c), § 1225(b)(1), or § 1231. These undisputed facts establish Petitioner's membership in the Maldonado Bautista Bond Eligible Class. The Court may take judicial notice of Dkts. 81 and 82. See Fed. R. Evid. 201.

III. ARGUMENT[2]

I. THIS COURT HAS HABEAS JURISDICTION; CHANNELING PROVISIONS DO NOT BAR REVIEW OF DETENTION CLAIMS, AND § 2243 REQUIRES PROMPT DISPOSITION.

A. CORE HABEAS JURISDICTION UNDER § 2241

Respondents' jurisdictional arguments fail. This is a habeas challenge under 28 U.S.C. § 2241 to the legality of present custody and the absence of constitutionally adequate procedures, not a challenge to a removal order. Habeas challenges to the legality of detention are not channeled through § 1252(b)(9) or (g), and exhaustion under § 1252(d)(1) does not apply to district-court habeas petitions or where the agency cannot grant the relief sought. See *Alejandro v. Olson,* No. 1:25-cv-020227-JPH-MKK , ECF 20 TRO Decision at 6–7 ('purely legal question' distinct from any discretionary decision to detain); See *Demore v. Kim*, 538 U.S. 510, 516–17 (2003); *Jennings v. Rodriguez*, 583 U.S. 281, 291–92 (2018); *Velasquez Salazar v. Dedos*, No. 1:25-cv-00835-DHU-JMR, Memorandum Opinion and Order at 4–6 (D.N.M. Sept. 17, 2025) (hearing and adjudicating detention habeas); *Alejandro v. Olson,* No. 1:25-cv-020227-JPH-MKK, ECF 20 TRO Decision at 4–10 (S.D. Ind. Oct. 11, 2025) (rejecting § 1252 jurisdictional arguments and finding detention habeas ripe); *Smit Patel v. Feeley*, No. 2:25-cv-15345-SDW (D.N.J. Oct. 28, 2025) (granting habeas and ordering § 1226(a) bond hearing); Order Granting Immediate Release, Ordonez Argueta v. Bondi, No. 1:25-cv-2192 (E.D. Va. Nov. 24, 2025).

B. SECTION 1252(E)(3) (D.D.C. VENUE) AND OTHER CHANNELING PROVISIONS DO NOT APPLY

Respondents' reliance on § 1252(e)(3) and related channeling provisions is misplaced. This is an individual habeas challenge to the legality of present custody and the governing detention statute, not a facial attack on expedited-removal policies or a petition for review of a

[2] Petitioner does not challenge any final order of removal or the conduct of removal proceedings; he challenges only the statutory authority and constitutionality of his present detention.

removal order. See *Jennings v. Rodriguez*, 583 U.S. 281, 291–92 (2018) (district courts may hear detention habeas claims); *Demore v. Kim*, 538 U.S. 510, 516–17 (2003) (same). Courts addressing this precise issue have held that § 1252(b)(9), § 1252(g), and § 1252(e)(3) do not strip jurisdiction where petitioners assert that § 1226—not § 1225—governs their custody. See *Maldonado Bautista*, Order Granting Partial Summary Judgment, Dkt. 81 at 6–7 (C.D. Cal. Nov. 20, 2025) (rejecting § 1252(e)(3) where premise is that § 1226 governs); Order Granting Class Certification, Dkt. 82 at 5–6 (Nov. 25, 2025) (same); *Velasquez Salazar v. Dedos*, No. 1:25-cv-00835-DHU-JMR, Mem. Op. at 4–6 (D.N.M. Sept. 17, 2025); *Alejandro v. Olson*, No. 1:25-cv-020227-JPH-MKK, ECF 20 TRO Decision at 6–7 (S.D. Ind. Oct. 11, 2025) (this is a "purely legal question" separate from any discretionary decision to detain). Because Petitioner does not seek review of any removal order and challenges only the legal basis for his detention, the Court has jurisdiction under 28 U.S.C. § 2241.

C. Exhaustion/ripeness: not required for this purely legal detention challenge; agency cannot grant relief

Exhaustion under § 1252(d)(1) applies to court-of-appeals petitions for review, not district-court habeas. The claim is purely legal and the agency cannot grant the relief sought, making further exhaustion unnecessary. See *Alejandro* TRO at 6–7; Demore, 538 U.S. at 516–17.

D. SECTION 2243 REQUIRES PROMPT DISPOSITION

Section 2243 directs the Court to "forthwith award the writ or issue an order directing the respondent to show cause" and to "summarily hear and determine the facts and dispose of the matter as law and justice require." With the Maldonado Bautista declaratory judgment and class certification now final, and with no material factual dispute about Petitioner's class membership, this case is ready for immediate disposition.

II. SECTION 1226(A), NOT § 1225(B)(2)(A), GOVERNS PETITIONER'S CUSTODY.

A. TEXT, STRUCTURE, AND REGULATIONS FORECLOSE DHS'S EFFORT TO EXPAND § 1225(B)(2)(A) TO LONG-PRESENT INTERIOR ARRESTS.

The INA sets out distinct detention regimes. Section 1225 addresses initial inspections and, in limited circumstances, detention of applicants for admission at or near the border or in expedited removal. Section 1226 governs discretionary arrest and detention "pending a decision on whether the alien is to be removed" in standard § 1229a proceedings, and it provides bond eligibility and implementing procedures. See 8 U.S.C. § 1226(a); 8 C.F.R. § 236.1 (IJ bond authority); see also *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1202 (9th Cir. 2022) (§ 1226(a) and its regulations provide robust procedural protections unavailable under other provisions). The Supreme Court has explained that '§ 1225(b) applies primarily to aliens seeking entry into the United States ("applicants for admission"),' while '§ 1226 applies to aliens already present in the United States,' and '§ 1226(a) creates a default rule' that permits release on bond. Jennings v. Rodriguez, 583 U.S. 281, 297, 303 (2018). Courts in this District have applied that framework to long-present interior arrestees and ordered § 1226(a) bond hearings. See *Salazar*, 2025 WL 2676729, at *4; *Garcia Domingo*, 2025 WL 2941217, at *4; *Pastrana-Saigado*, No. 2:25-cv-00950, Docs. 17, 24; *Cortez-Gonzalez*, No. 2:25-cv-00985, Docs. 2, 16.

Mr. Lopez was not apprehended at or upon arrival; he was arrested in the interior after many years of residence and placed in § 1229a proceedings. The statutory text and long-standing practice place such custody under § 1226(a), not § 1225(b)(2)(A). Multiple courts across the country—including courts in this circuit and district—have rejected DHS's recent effort to invert this structure by treating nearly all non-admitted interior arrestees as § 1225(b)(2)(A) detainees. See, e.g., *Velasquez Salazar v. Dedos*, No. 1:25-cv-00835-DHU-JMR (D.N.M. Sept. 17, 2025) (entertaining habeas claim that § 1226 governs); *Alejandro v. Olson,*

No. 1:25-cv-020227-JPH-MKK, ECF 20 TRO Decision at 14–15 (rejecting § 1225(b)(2)(A) theory and ordering relief); Order, *Cabrera-Hernandez v. Bondi*, No. 5:25-cv-197 (S.D. Tex. Dec. 2, 2025) (holding § 1226 applies, ordering bond reinstatement or new bond hearing); *Aguirre Villa v. Normand*, No. 5:25-cv-89, 2025 WL 3095969, at *12 (S.D. Ga. Nov. 4, 2025), report and recommendation adopted, 2025 WL 3188406 (S.D. Ga. Nov. 14, 2025) (same); Order Granting Habeas, *Roldan v. Bondi,* No. 1:25-cv-1802 (E.D. Va. Oct. 27, 2025) (ordering § 1226(a) bond hearing and enjoining reliance on § 1225(b)(2)); *Smit Patel* (D.N.J. Oct. 28, 2025) (same).

Interpreting § 1225(b)(2) to encompass virtually all non-admitted noncitizens in the interior 'would render superfluous provisions of § 1226 that apply to certain categories of inadmissible noncitizens.' ECF 46 *Aguirre Villa* at 20 (quoting Rodriguez v. Bostock, 779 F. Supp. 3d 1239, 1258 (W.D. Wash. 2025)); see also Ortiz Donis, 2025 WL 2879514, at *9.

Courts in this District have repeatedly ordered § 1226(a) bond hearings for long-present interior arrestees. See *Salazar*, 2025 WL 2676729, at *4 ('not "seeking admission" and subject to § 1226(a)'); *Garcia Domingo*, 2025 WL 2941217, at *4 ('likely to succeed' on erroneous 'applicant for admission' classification); *Pastrana-Saigado*, No. 2:25-cv-00950, Docs. 17, 24; *Cortez-Gonzalez*, No. 2:25-cv-00985, Docs. 2, 16.

B. MALDONADO BAUTISTA'S FINAL DECLARATORY JUDGMENT AND CLASS CERTIFICATION ARE DISPOSITIVE.

On November 20, 2025, the U.S. District Court for the Central District of California granted partial summary judgment declaring unlawful DHS's policy of treating long-present, interior arrestees as mandatorily detained under § 1225(b)(2)(A) and held instead that § 1226(a) governs such custody. See *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM, Order Granting Partial Summary Judgment, Dkt. 81 (C.D. Cal. Nov. 20, 2025) (2025 WL 3289861). Five days later, the court certified the "Bond Eligible Class" and "extend[1] the same declaratory relief granted to Petitioners to the Bond Eligible Class as a whole." Order

Granting Class Certification, Dkt. 82 at 14–15 (C.D. Cal. Nov. 25, 2025); 2025 WL 3288403, at *9. The Executive Office for Immigration Review is a defendant there and is bound by that declaratory judgment. Mr. Lopez satisfies the class definition: he entered without inspection, was not apprehended upon arrival, and is not detained under § 1226(c), § 1225(b)(1), or § 1231. No stay has been issued in *Maldonado Bautista.* See Dkts. 81, 82. As a certified class member, Petitioner is entitled to the declaratory relief pronounced there; at minimum, this Court should accord that final merits ruling substantial persuasive weight and comity in granting congruent habeas relief.

Although this Court is not bound by a sister district's declaratory judgment, Maldonado Bautista's final, un-stayed merits ruling—expressly extended to a certified nationwide class that includes Mr. Lopez—warrants substantial persuasive weight and comity. It also aligns with the overwhelming national consensus and the repeated rulings within this District that § 1226(a) governs long-present, interior arrestees.

Respondents' reliance on *Matter of Yajure Hurtado* cannot override Article III judgments or the statute's text. Post–*Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (2024), the BIA's interpretation merits, at most, Skidmore respect, which it does not earn where it conflicts with statutory text, structure, regulations, decades of practice, and a federal court's final merits ruling. See *Clark v. Martinez*, 543 U.S. 371, 380–82 (2005).

III. RESPONDENTS' RELIANCE ON JENNINGS AND THURAISSIGIAM IS MISPLACED.

Jennings addressed whether the text of §§ 1225(b), 1226(c), and 1226(a) could be construed to impose periodic bond hearings; the Court rejected that approach and remanded constitutional questions. 583 U.S. at 297–303. *Jennings* did not hold that § 1225(b)(2)(A) governs interior arrests or that § 1225(b)(2)(A) displaces § 1226(a) for long-present noncitizens in § 1229a proceedings. Nor did it preclude due process requirements for prolonged civil detention. See, e.g., *Velasco Lopez v. Decker*, 978 F.3d 842, 855–57 (2d Cir. 2020); *German*

*Santos v. Warden Pike Cnty. Corr. Fac*ility, 965 F.3d 203, 213–15 (3d Cir. 2020); *Hernandez-Lara v. Lyons*, 10 F.4th 19, 43–45 (1st Cir. 2021).

Department of Homeland Security v. Thuraissigiam, 591 U.S. ___, 140 S. Ct. 1959 (2020), involved expedited removal and the Suspension Clause's application to challenges to the procedures leading to removal. Mr. Lopez is not in expedited removal. He brings a traditional habeas challenge to the legality of custody—a core function of habeas the Supreme Court has repeatedly affirmed. See I*.N.S. v. St. Cyr*, 533 U.S. 289, 301 (2001); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

IV. ALTERNATIVELY, DUE PROCESS INDEPENDENTLY REQUIRES A PROMPT INDIVIDUALIZED BOND HEARING WITH THE GOVERNMENT'S BURDEN.

Even if § 1225(b) applied (it does not), continued civil detention without an individualized assessment violates the Fifth Amendment. Courts have repeatedly required, at least where detention is prolonged, an individualized bond hearing at which the government must prove by clear and convincing evidence that no condition or combination of conditions can reasonably assure appearance or safety. See *Velasco Lopez*, 978 F.3d at 855–57; *German Santos*, 965 F.3d at 213–15; *Hernandez-Lara*, 10 F.4th at 43–45; *Singh v. Holder*, 638 F.3d 1196, 1203–05 (9th Cir. 2011); *Addington v. Texas*, 441 U.S. 418, 425–33 (1979). Numerous district courts have applied those principles in granting relief to similarly situated detainees. See, e.g., Order Granting Habeas, *Roldan* (E.D. Va. Oct. 27, 2025) (ordering § 1226(a) bond hearing and enjoining reliance on § 1225(b)(2)); *Smit Patel* (D.N.J. Oct. 28, 2025) (ordering § 1226(a) bond hearing).

V. SECTION 1252(F)(1) DOES NOT BAR INDIVIDUAL HABEAS RELIEF.

Garland v. Aleman Gonzalez, 142 S. Ct. 2057 (2022), limits certain classwide injunctions; it does not bar individual habeas relief or individual orders requiring an individualized bond hearing or release. Petitioner seeks individual relief that district courts

across the country have granted. See, e.g., *Cabrera-Hernandez* (S.D. Tex. Dec. 2, 2025); *Alejandro v. Olson,* No. 1:25-cv-020227-JPH-MKK, ECF 20 TRO Decision (granting individual TRO relief and rejecting § 1252 arguments).

IV. REMEDY

The Court should grant the writ forthwith pursuant to 28 U.S.C. § 2243; declare that § 1226(a), not § 1225(b)(2)(A), governs Petitioner's custody consistent with the final declaratory judgment and class certification orders in *Maldonado Bautista*; and order Respondents to do one of the following within seven days:

1. immediately release Petitioner on reasonable conditions; or
2. provide Petitioner a bond hearing before an Immigration Judge under § 1226(a), at which the government bears the burden to prove danger or flight risk by clear and convincing evidence, and, if it does not, the IJ must set bond at an amount Petitioner can reasonably afford and/or impose the least restrictive conditions necessary to ensure appearance and community safety.
3. If the IJ grants release, Respondents should not invoke 8 C.F.R. § 1003.19(i)(2)'s automatic stay to nullify the hearing ordered by this Court. See Order, Cabrera-Hernandez (S.D. Tex. Dec. 2, 2025) at 6 (petitioner may challenge any automatic stay if invoked). Petitioner reserves the right to seek immediate relief if the automatic stay is applied.
4. Enjoin Respondents from denying bond on the basis that Petitioner is detained under § 1225(b)(2)(A). See *Roldan* (E.D. Va. Oct. 27, 2025) (ordering same).

The Court should also enjoin Respondents from transferring Petitioner outside this District during the pendency of this habeas absent further order and require a prompt status report following the bond hearing.

V. CONCLUSION

Respondents' attempt to impose § 1225(b)(2)(A) mandatory detention on long-present interior arrestees is contrary to the INA and is now foreclosed by the final declaratory judgment in Maldonado Bautista, which extends to Mr. Lopez as a class member. The Court should grant the writ forthwith under § 2243 and provide the relief described above.

Dated: December 5, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 5, 2025, I filed the foregoing with the Clerk via CM/ECF, which will serve all counsel of record.

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