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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF GEORGIA  
WAYCROSS DIVISION

DARWIN J. GUTIERREZ CRUZ

Petitioner,

v.

George STERLING Field Office Director of  
Enforcement and Removal Operations, Atlanta  
Field Office, Immigration and Customs  
Enforcement; Kristi NOEM, Secretary, U.S.  
Department of Homeland Security; U.S.  
DEPARTMENT OF HOMELAND  
SECURITY; Pamela BONDI, U.S. Attorney  
General; EXECUTIVE OFFICE FOR  
IMMIGRATION REVIEW; Mike BRECKON,  
Warden of Folkston D. Ray James Correctional  
Facility,

Respondents.

Case No. 5:25-cv-218

**PETITION FOR WRIT OF  
HABEAS CORPUS**

1 INTRODUCTION

2 1. Petitioner Darwin J. Gutierrez Cruz brings this petition for a writ of habeas corpus  
3 to seek enforcement of his rights as a member of the Bond Denial Class certified in *Maldonado*  
4 *Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (C.D. Cal.).

5 2. Petitioner also brings this petition for a writ of habeas corpus as an individual  
6 unlawfully detained and stripped of bond jurisdiction by an improvident and unlawful change in  
7 analysis as to who is “seeking admission” to the United States. *See, Matter of Yajure Hurtado*,  
8 29 I. & N. Dec. 216 (BIA 2025).

9 3. Petitioner is in the physical custody of Respondents at the Folkston D. Ray James  
10 Correction Facility. He now faces unlawful detention because the Department of Homeland  
11 Security (DHS) and the Executive Office for Immigration Review (EOIR) have refused to abide  
12 by the declaratory judgment issued on behalf of the certified class in *Maldonado Bautista v.*  
13 *Santacruz*, and also challenging the broad classification of all entrants to the United States  
14 without inspection as “applicants for admission,” such that all such individuals be detained  
15 without jurisdiction for the courts to grant bond. Respondent alleges that the continued  
16 classification of detention authority as pursuant to 8 U.S.C. § 1225 for all individuals present  
17 without inspection or admission, is erroneous and a violation of law.

18 4. On November 20, 2025, the district court granted partial summary judgment on  
19 behalf of individual plaintiffs, and on November 25, 2025 it certified a nationwide class and  
20 extended declaratory judgment to the certified class. *Maldonado Bautista v. Santacruz*, No. 5:25-  
21 CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3289861, at \*11 (C.D. Cal. Nov. 20, 2025)  
22 (order granting partial summary judgment to named Plaintiffs-Petitioners); *Maldonado Bautista*  
23 *v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3288403, at \*9 (C.D.  
24

1 Cal. Nov. 25, 2025) (order certifying Plaintiffs-Petitioners' proposed nationwide Bond Eligible  
2 Class, incorporating and extending declaratory judgment from Order Granting Petitioners'  
3 Motion for Partial Summary Judgment).

4 5. The declaratory judgment held that the Bond Denial Class members are detained  
5 under 8 U.S.C. § 1226(a) and thus may not be denied consideration for release on bond under §  
6 1225(b)(2)(A). *Maldonado Bautista*, 2025 WL 3289861, at \*11.

7 6. Nonetheless, the Executive Office for Immigration Review and its subagency, the  
8 Immigration Court, and the Department of Homeland Security (DHS) have blatantly refused to  
9 abide by the declaratory relief and have unlawfully ordered that Petitioner be denied the  
10 opportunity to be released on bond.

11 7. Petitioner Darwin J. Gutierrez Cruz is a member of the Bond Eligible Class, as he:

- 12 a. does not have lawful status in the United States and is currently detained at the  
13 Folkston D. Ray James Correctional Facility. He was apprehended by  
14 immigration authorities on or about November 26, 2025;  
15 b. entered the United States without inspection over 18 years ago and was not  
16 apprehended upon arrival, *cf. id.*; and  
17 c. is not detained under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231.

18 8. After apprehending Petitioner on November 26, 2025, consequent to a criminal  
19 arrest which was subsequently dismissed, the DHS placed him in removal proceedings pursuant  
20 to 8 U.S.C. § 1229a. DHS has charged Petitioner as being inadmissible under 8 U.S.C. §  
21 1182(a)(6)(A)(i), as someone who entered the United States without inspection.

22 9. The Court should expeditiously grant this petition.

23 10. Respondent was not encountered at a port of entry at any time, and thus, he is not  
24 "seeking admission" to the United States.

1 11. Respondents are bound by the judgment in *Maldonado Bautista*, as it has the full  
2 “force and effect of a final judgment.” 28 U.S.C. § 2201(a). They are also bound by the statutory  
3 authority of the Immigration and Nationality Act. The holding in *Yajure Hurtado* is plainly  
4 erroneous, as not all individuals who entered without inspection are also “seeking admission.”  
5 Nevertheless, Respondents continue to flagrantly defy the judgment in the *Maldonado Bautista*  
6 case, disregard a growing number of District Court decisions, and continue to subject Petitioner  
7 to unlawful detention despite his clear entitlement to consideration for release on bond as a Bond  
8 Eligible Class member.

9 12. Immigration judges have informed class members in bond hearings that they have  
10 been instructed by “leadership” that the declaratory judgment in *Maldonado Bautista* is not  
11 controlling, even with respect to class members, and that instead IJs remain bound to follow the  
12 agency’s prior decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

13 13. Because Respondents are detaining Petitioner in violation of the declaratory  
14 judgment issued in *Maldonado Bautista*, and also in violation of the statutory framework under  
15 the Immigration and Nationality Act, the Court should accordingly order that within one day,  
16 Respondent DHS must release Petitioner.

17 14. Alternatively, the Court should order Petitioner’s release unless Respondents  
18 provide a bond hearing under 8 U.S.C. § 1226(a) within seven days.

19 **JURISDICTION**

20 15. Petitioner is in the physical custody of Respondents. Petitioner is detained at the  
21 Folkston D. Ray James Correctional Facility.

1 16. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28  
2 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States  
3 Constitution (the Suspension Clause).

4 17. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory  
5 Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

#### 6 **VENUE**

7 18. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-  
8 500 (1973), venue lies in the United States District Court for the Southern District of Georgia,  
9 the judicial district in which Petitioner currently is detained.

10 19. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because  
11 Respondents are employees, officers, and agencies of the United States, and because a  
12 substantial part of the events or omissions giving rise to the claims occurred in the Southern  
13 District of Georgia.

#### 14 **REQUIREMENTS OF 28 U.S.C. § 2243**

15 20. The Court should grant the petition for writ of habeas corpus “forthwith,” as the  
16 legal issues have already been resolved for class members in *Maldonado Bautista*. This Court  
17 has also specifically ordered Respondents to accord bond hearings to similarly situated  
18 individuals, who have entered the United States without inspection in the past, but were not  
19 encountered at entry. *Aguirre Villa v. Normand*, 5:25-cv-89 (S.D.G.A. Nov 4 2025) *see Exhibit*  
20 *I*.

21 21. Habeas corpus is “perhaps the most important writ known to the constitutional  
22 law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or  
23 confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). “The application for the  
24

1 writ usurps the attention and displaces the calendar of the judge or justice who entertains it and  
2 receives prompt action from him within the four corners of the application.” *Yong v. I.N.S.*, 208  
3 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

4 **PARTIES**

5 22. Petitioner Darwin J. Gutierrez Cruz is a citizen of Honduras who has been in  
6 immigration detention since November 26, 2025. After Petitioner was arrested in Asheville,  
7 North Carolina, ICE did not set bond. Filing a motion for custody redetermination (bond) would  
8 be futile in this situation as the immigration judges with jurisdiction over the detention center  
9 where Petitioner is being held have continued to hold that *Matter of Yajure Hurtado* strips  
10 jurisdiction for bond redetermination from all entrants to the United States without inspection,  
11 and that the *Maldonado Bautista* class action order is not final and such, not binding. Petitioner  
12 will undoubtedly be deemed an “applicant for admission” pursuant to DHS arguments. Petitioner  
13 has resided in the United States since approximately 2006 or 2007.

14 23. Respondent George Sterling is the Director of the Atlanta Field Office of ICE’s  
15 Enforcement and Removal Operations division. As such, George Sterling is Petitioner’s  
16 immediate custodian and is responsible for Petitioner’s detention and removal. He is named in  
17 his official capacity.

18 24. Respondent Kristi Noem is the Secretary of the Department of Homeland  
19 Security. She is responsible for the implementation and enforcement of the Immigration and  
20 Nationality Act (INA), and oversees ICE, which is responsible for Petitioner’s detention. Ms.  
21 Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

1 25. Respondent Department of Homeland Security (DHS) is the federal agency  
2 responsible for implementing and enforcing the INA, including the detention and removal of  
3 noncitizens.

4 26. Respondent Pamela Bondi is the Attorney General of the United States. She is  
5 responsible for the Department of Justice, of which the Executive Office for Immigration Review  
6 and the immigration court system it operates is a component agency. She is sued in her official  
7 capacity.

8 27. Respondent Executive Office for Immigration Review (EOIR) is the federal  
9 agency responsible for implementing and enforcing the INA in removal proceedings, including  
10 for custody redeterminations in bond hearings.

11 28. Respondent Mike Breckon is employed by GEO Group as Warden of the Folkston  
12 D. Ray James Correctional Facility, where Petitioner is detained. He has immediate physical  
13 custody of Petitioner. He is sued in his official capacity.

14 **CLAIM FOR RELIEF**

15 **Violation of the INA:**

16 **Request for Relief Pursuant to *Maldonado Bautista* and Unlawful Legal Characterization of  
17 Detention**

18 **A. Petitioner is entitled to relief pursuant to the *Maldonado Bautista* Class  
19 Certification.**

20 29. At the outset, there is no statutory requirement of administrative exhaustion  
21 before immigration detention may be challenged in federal court by a writ of habeas corpus. *See*  
22 8 U.S.C. § 1252(d)(1); *Garza-Garcia v. Moore*, 539 F. Supp. 2d 899, 904 (S.D. Tex. 2007)  
23 (“Under the INA exhaustion of administrative remedies is only required by Congress for appeals  
24 on final orders of removal.”). The Supreme Court has recognized that exhaustion is not required  
where a plaintiff “may suffer irreparable harm if unable to secure immediate judicial  
consideration of her claim.” *McCarthy v. Madigan*, 503 U.S. 140, 147 (1992). This is the case

1 here, where Plaintiff raises constitutional and statutory claims that the agency cannot redress, and  
2 where each day that passes is one in which she is being unconstitutionally deprived of his liberty.

3 30. The Court has the authority to grant a writ of habeas corpus to a petitioner who  
4 demonstrates that he is being held in custody in violation of federal law. 28 U.S.C. § 2241(a),  
5 (c)(3); *see INS v. St. Cyr*, 533 U.S. 289, 301 (2001) (“[T]he writ of habeas corpus has served as a  
6 means of reviewing the legality of Executive detention, and it is in that context that its  
7 protections have been strongest.”); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001) (noting that §  
8 2241 habeas corpus proceedings are available to challenge the lawfulness of immigration-related  
9 detention).

10 31. Petitioner repeats, re-alleges, and incorporates by reference each and every  
11 allegation in the preceding paragraphs as if fully set forth herein.

12 32. As a member of the Bond Eligible Class, Petitioner is entitled to consideration for  
13 release on bond under 8 U.S.C. § 1226(a).

14 33. The order granting partial summary judgment in *Maldonado Bautista* holds that  
15 Respondents violate the INA in applying the mandatory detention statute at § 1225(b)(2) to class  
16 members.

17 34. The order granting class certification in *Maldonado Bautista* further orders that  
18 “[w]hen considering this determination with the MSJ Order, the Court extends the same  
19 declaratory relief granted to Petitioners to the Bond Eligible Class as a whole.”

20 35. Respondents are parties to *Maldonado Bautista* and bound by the Court’s  
21 declaratory judgment, which has the full “force and effect of a final judgment.” 28 U.S.C.  
22 § 2201(a).

23 36. By denying Petitioner a bond hearing under § 1226(a) and asserting that he is  
24 subject to mandatory detention under § 1225(b)(2), Respondents violate Petitioner’s statutory  
rights under the INA and the Court’s judgment in *Maldonado Bautista*.

1 **B. Petitioner is entitled to relief independently as an individual because Respondents**  
2 **are subjecting him to unlawful detention pursuant to 8 U.S.C. § 1225(b), when he is**  
3 **properly an individual detained pursuant to 8 U.S.C. § 1226(a).**

4 37. U.S.C. § 1225 covers “inadmissible arriving aliens” who are “applicants for  
5 admission” “present in the United States who [have] not been admitted.” *Gomes v. Hyde*, No.  
6 25-cv-11571, 2025 WL 1869299, at \*2 (D. Mass. July 7, 2025) (alteration in original; citation  
7 and footnote call number omitted). Section 1225(a)(3) requires all applicants for admission,  
8 including those “seeking admission,” to be inspected by an immigration officer, see 8 U.S.C. §  
9 1225(a)(3); and certain applicants for admission may be subject to removal proceedings under  
10 section 1225(b). 8 U.S.C. § 1225(a) – (b); see also *Dep’t of Homeland Sec. v. Thuraissigiam*,  
11 591 U.S. 103, 108–09 (2020) (citations omitted). Relevant here, § 1225(b)(2) applies where an  
12 arriving alien is “seeking admission” into the United States, and that provision mandates  
13 detention for aliens who are “applicants for admission.” 8 U.S.C. § 1225(b)(2)(A). “Because  
14 Section 1225 is mandatory, a ‘noncitizen detained under Section 1225(b)(2) may be released  
15 only if he is paroled for urgent humanitarian reasons or significant public benefit.’” *Barrera v.*  
16 *Tindall*, No. 25-cv-541, 2025 WL 2690565, at \*2 (W.D. Ky. Sept. 19, 2025) (quoting *Gomes*,  
17 2025 WL 1869299, at \*1).

18 38. On the other hand, § 1226 has historically “authorize[d] the Government to detain  
19 certain aliens *already in the country* pending the outcome of removal proceedings[.]” *Jennings v.*  
20 *Rodriguez*, 583 U.S. 281, 289 (2018) (emphasis added).

21 39. In addition, courts around the country have given no weight to *how* longtime  
22 noncitizen residents entered the United States when rejecting Respondent’s interpretation of  
23 § 1225(b)(2). *Garcia v. Noem, et. al.*, No. 1:25-CV-1271, 2025 WL 3017200, at \*4 (W.D. Mich.  
24 Oct. 29, 2025); *Diaz v. Olson, et. al.*, No. 25 CV 12141, 2025 WL 3022170, at \*5 (N.D. Ill. Oct.  
29, 2025); *Rodriguez v. Noem, et. al.*, No. 1:25-CV-1196, 2025 WL 3022212, at \*6 (W.D. Mich.  
Oct. 29, 2025); *Puga*, 2025 WL 2938369; *Lopez-Campos*, 2025 WL 2496379, at \*8; *see also*  
*Rodriguez*, 779 F. Supp. 3d at 1256–61; *Singh v. Lewis*, No. 4:25-cv-96, 2025 WL 2699219, at  
\*3–5 (W.D. Ky. Sept. 22, 2025); *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337, 2025 WL 2691828,

1 at \*7–12 (W.D. Tex. Sept. 22, 2025); *Campos Leon v. Forestal*, No. 1:25-cv-1774, 2025 WL  
2 2694763, at \*2–5 (S.D. Ind. Sept. 22, 2025); *Hasan v. Crawford*, No. 1:25-cv-1408, 2025 WL  
3 2682255, at \*5–9 (E.D. Va. Sept. 19, 2025); *Garcia Cortes v. Noem*, No. 1:25-cv-2677-CNS,  
4 2025 WL 2652880, at \*2–3 (D. Colo. Sept. 16, 2025); *Kostak v. Trump et al.*, No. 3:25-cv-  
5 01093, 2025 WL 2472136, at \*2–4 (W.D. La. Aug. 27, 2025); *Romero*, 2025 WL 2403827, at  
6 \*8–13 (D. Mass. Aug. 19, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142, 2025 WL 2374411,  
7 at \*9–16 (D. Minn. Aug. 15, 2025); *dos Santos v. Noem*, No. 1:25-cv-12052, 2025 WL 2370988,  
8 at \*6–9 (D. Mass. Aug. 14, 2025); *Lopez Benitez*, 2025 WL 2371588, at \*3–9; *Rosado*, 2025 WL  
9 2337099, at \*6–11, report and recommendation adopted, 2025 WL 2349133 (D. Ariz. Aug. 13,  
2025).

10 40. Because Petitioner in this matter was not encountered *at entry*. He should not be  
11 detained pursuant to 1225(b). Rather, he should be entitled to release or, in the alternative, a  
12 bond hearing, pursuant to 1226.

13 41. Thus, Petitioner should expeditiously be ordered released or, in the alternative, at  
14 least accorded a bond hearing within seven days.

#### 15 **PRAYER FOR RELIEF**

16 WHEREFORE, Petitioner prays that this Court grant the following relief:

- 17 a. Assume jurisdiction over this matter;
- 18 b. Issue a writ of habeas corpus requiring that within one day, requiring that  
19 Respondents release Petitioner;
- 20 c. Alternatively, issue a writ of habeas corpus requiring Respondents to release  
21 Petitioner unless they provide a bond hearing under 8 U.S.C. § 1226(a) within  
22 seven days;
- 23 d. Award Petitioner attorney’s fees and costs under the Equal Access to Justice Act  
24 (EAJA), as amended, 28 U.S.C. § 2412, and on any other basis justified under  
law; and

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

DATED this 9<sup>th</sup> of December, 2025.

/s/ Mary Lynn A. Tedesco  
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**28 U.S.C. § 2242 VERIFICATION STATEMENT**

I am submitting this verification on behalf of the Petitioner because I am the Petitioner's attorney. I have discussed with Petitioner's family members and have reviewed various documents for Petitioner. On the basis of those discussions, I hereby verify that I have reviewed the foregoing Petition and that the facts and statements made in this Petition and Complaint are true and correct to the best of my knowledge or belief pursuant to 28 USC § 2242.

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