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**UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**ARMANDO PEREZ CRUZ,**  
*Petitioner,*

v.

**KRISTI NOEM**, Secretary of the U.S. Department of Homeland Security; **U.S. DEPARTMENT OF HOMELAND SECURITY; TODD LYONS**, Acting Director of the US. Immigration and Customs Enforcement; **EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; PAMELA BONDI**, Attorney General of the United States; **CARLO JIMINEZ**, Acting Assistant Field Office Director of the Houston Field Office of U.S. Immigration and Customs Enforcement; and **JOE SMITH**, Warden, Joe Corley Processing Center, in their official capacities.

Case No. 4:25-CV-05936

PETITION FOR WRIT OF  
HABEAS CORPUS

Date: December 10, 2025

*Respondents*

**PETITION FOR WRIT OF HABEAS CORPUS  
PURSUANT TO 28 U.S.C. § 2241**

TO THE HONORABLE UNITED STATES DISTRICT COURT JUDGE:

### INTRODUCTION

1. Petitioner, Armando Perez Cruz, is in physical custody of Respondents at the Joe Corley Processing Center. He now faces unlawful detention because the Department of Homeland Security (DHS) and the Executive Office of Immigration Review (EOIR) have concluded Petitioner is subject to mandatory detention.
2. Petitioner is charged with, inter alia, having entered the United States without inspection. 8 U.S.C. § 1182(a)(6)(A)(i). *See* Exhibit 1—Notice to Appear.
3. Based on this allegation in Petitioner’s removal proceeding, the DHS denied Petitioner release from immigration custody, consistent with a new DHS policy issued on July 8, 2025, instructing all Immigration and Customs Enforcement (ICE) employees to consider anyone inadmissible under 8 U.S.C. §1182(a)(6)(A)(i) – i.e. those who entered the United States without inspection – to be an “applicant for admission” under 8 U.S.C. §1225(b)(2)(A) and therefore subject to mandatory detention. The DHS policy states it was issued “in coordination with the Department of Justice (DOJ).”
4. Petitioner sought a bond determination hearing before an immigration judge (IJ), but on November 12, 2025, the IJ determined that Court lacked jurisdiction to consider the request. The IJ’s order specifically states that Petitioner is

deemed an “applicant for admission” and the IJ thus lacks jurisdiction to consider or grant bond. *See* Exhibit 2 – Order of the Immigration Judge dated November 12, 2025.

5. The IJ concluded that notwithstanding Petitioner’s 25 years of residing in the United States, he is nevertheless an “applicant for admission” who is “seeking admission” and subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A).
6. Petitioner’s detention on this basis violates the plain language of the Immigration and Nationality Act (INA). Section 1225(b)(2)(A) does not apply to individuals like Petitioner who previously entered and are now residing in the United States. Instead, such individuals are subject to a different statute, § 1226(a) that allows for release on conditional parole or bond. That statute expressly applies to people who, like Petitioner, are charged as inadmissible for having entered the United States without inspection.
7. Respondents’ new legal interpretation is plainly contrary to the statutory framework and contrary to decades of agency practice applying § 1226(a) to people like Petitioner.
8. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be released within one day under Maldonado Batista or, alternatively that the Respondents provide a bond hearing under § 1226(a) within seven (7) days.

9. Petitioner's continued detention is in violation of his Fifth Amendment rights to substantive and procedural due process.

10. Accordingly, Petitioner seeks declaratory relief establishing he is subject to detention under § 1226(a) and its implementing regulations and is therefore entitled to an individualized custody determination following apprehension by the DHS and, if not released, a bond determination by the Immigration Court.

### **JURISDICTION**

11. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Joe Corley Processing Center in Conroe, Texas.

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

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

### **VENUE**

14. Venue is proper in the Southern District of Texas because Petitioner is detained at the Joe Corley Processing Center, which is located in this District. *See* 28 U.S.C. § 2242.

15. Venue is also proper before this Court pursuant to 28 U.S.C. § 1391(e), because Respondents are employees, officers, and agencies of the United States, and

because a substantial part of the events or omissions giving rise to the claims occurred in the district.

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

16. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause “forthwith” unless the Petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, Respondents must file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*

17. Habeas corpus is “perhaps the most important writ known to the constitutional law...affording as it does a *swift* and imperative remedy in all cases of illegal restraint of confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). “The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application.” *Yong v. I.N.S.*, 208 F.3d 1116, 1220 (9th Cir. 2000) (citation omitted).

### **PARTIES**

18. Petitioner Armando Perez Cruz is a citizen of Mexico who has resided in the United States since 2000. Petitioner has been in immigration detention since September 24, 2025.

19. After arresting Petitioner, ICE did not set bond and Petitioner requested review of his custody by an IJ. On November 12, 2025, Petitioner was denied bond by an IJ at the Conroe Immigration Court because the IJ deemed him an “applicant for admission” and found he had “no jurisdiction” to consider his bond request. *See Exhibit 2, supra.*

20. Respondent, Kristi Noem, is the Secretary of the Department of Homeland Security (DHS). She has responsibility over the administration of U.S. immigration laws, has authority over ICE and its offices, and has the authority to release the Petitioner. She has legal custody of the Petitioner. She is sued in her official capacity.

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

22. Respondent, Todd Lyons, is the Acting Director of ICE. He is responsible for the policies, practices, and procedures of ICE, including those related to detaining individuals. He has legal custody of the Petitioner. He is sued in his official capacity.

23. Respondent Pamela Bondi is sued in her official capacity as the Attorney General of the United States and the senior official of the U.S. DOJ. In that capacity, she has the authority to adjudicate removal cases and oversees the

Executive Office for Immigration Review (EOIR), which administers the immigration courts and the BIA.

24. Respondent EOIR is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including authority of hearing custody redeterminations in bond hearings for noncitizens who are detained by the DHS.

25. Respondent, Carlo Jiminez, is the Acting Assistant Field Office Director for ICE ERO at the Houston Field Office. He exercises control and custody over all detainees held at the IAH Polk Adult Detention Facility. He has legal custody of the Petitioner. He is sued in his official capacity.

26. Respondent, Joe Smith, is the Warden of the Joe Corley Processing Center, where Petitioner is detained. Therefore, he has immediate physical custody of the Petitioner. He is sued in his official capacity.

### **LEGAL FRAMEWORK**

27. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.

28. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally entitled to a bond hearing at the outset of their detention. *See* 8 C.F.R. §§ 1003.19(a), 1236.1(d). At the same time, noncitizens

who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention until their removal proceedings are concluded. *See* 8 U.S.C. § 1226(c).

29. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals “seeking admission” referred to under § 1225(b)(2).

30. Last, the INA also provides for detention of noncitizens who have received a final order of removal from the United States, including individuals in withholding-only proceedings. *See* 8 U.S.C. § 1231(a) - (b).

31. This case concerns the detention provisions at § 1226(a) and § 1225(b)(2).

32. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104-208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section 1226 was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).

33. Following the enactment of the IIRIRA, the EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures,

62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (“Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination”).

34. Thus, in the decades that followed, most people who entered without inspection and were thereafter arrested and placed in standard removal proceedings were considered for release on bond and also received bond hearings before an IJ, unless their criminal history rendered them ineligible. That practice was consistent with many more decades of prior practice, in which noncitizens who had entered the United States, even if without inspection, were entitled to a custody hearing before an IJ or other hearing officer. In contrast, those who were stopped at the border were only entitled to release on parole. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply “restates” the detention authority previously found at § 1252(a)).

35. In *Jennings v Rodriguez*, the United States Supreme Court analyzed the differences between § 1225 and § 1226, noting that § 1225 “applies primarily to aliens seeking entry into the United States” and § 1226 “applies to aliens already present in the United States.” *Jennings v. Rodriguez*, 583 U.S. 281, 297-303 (2019).

36. On July 8, 2025, ICE, “in coordination with” DOJ, announced a new policy that rejected well-established understanding of the statutory framework and reversed decades of practice.

37. The new policy, entitled “Interim Guidance Regarding Detention Authority for Applicants for Admission,”<sup>1</sup> claims that all persons who entered the United States without inspection shall now be deemed “applicants for admission” under 8 U.S.C. § 1225, and therefore are subject to mandatory detention provision under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended and affects those who have resided in the United States for months, years and even decades.

38. On May 22, 2025, following an unpublished decision from the Board of Immigration Appeals (BIA), the EOIR adopts this same position.<sup>2</sup> That decision holds that all noncitizens who entered the United States without admission or parole are considered applicants for admission, and are therefore ineligible for IJ bond hearings under 8 U.S.C. § 1225(b)(2)(A).

39. This erroneous interpretation of the INA would require a person’s detention any time that immigration authorities arrest one of the millions of immigrants

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<sup>1</sup> Available at <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>.

<sup>2</sup> Available at <https://nwirp.org/our-work/impact-litigation/assets/vazquez/591%20ex%20A%20decision.pdf>.

residing in the United States who entered without inspection and who has not since been admitted or paroled.<sup>3</sup>

40. Nationwide, pursuant to its July 8, 2025, policy,<sup>4</sup> the DHS is now asserting that all persons who entered without inspection are subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A).

41. The new policy, entitled “Interim Guidance Regarding Detention Authority for Applicants for Admission,”<sup>4</sup> claims that all persons who entered the United States without inspection shall now be subject to mandatory detention provision under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended and affects those who have resided in the United States for months, years, and even decades.

42. On September 5, 2025, the Board of Immigration Appeals (BIA or the Board) adopted this same position in a published decision, *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). There, the Board held that all noncitizens who entered the United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for IJ bond hearings.

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<sup>3</sup> Maria Sacchetti & Carol D. Leonnig, ICE declares millions of undocumented immigrants ineligible for bond hearings, *Washington Post* (July 14, 2025), <https://www.washingtonpost.com/immigration/2025/07/14/ice-trumpundocumented-immigrants-bond-hearings/> [https://perma.cc/5ZTR-EN4B].

<sup>4</sup> Available at <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>.

43. Since Respondents adopted their new policies, dozens of federal courts have rejected their new interpretation of the INA's detention authorities. Courts have likewise rejected *Matter of Yajure Hurtado*,<sup>4</sup> *supra*, that adopted the same reading of the statute as ICE.

44. Even before ICE or the BIA introduced these nationwide<sup>4</sup> policies, IJs in the Tacoma, Washington, immigration court stopped providing bond hearings for persons who entered the United States without inspection and who have since resided here. There, the U.S. District Court in the Western District of Washington found that such a reading of the INA is likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025).

45. Subsequently, court after court adopted the same reading of the INA's detention authorities and rejected ICE and EOIR's new interpretation. *See, e.g., Gomes v. Hyde*, No. 1:25-CV-11571-JEK (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. CV-25-11613-BEM, 2025 W: 2084238 (D. Mass. July 24, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y.

Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d ----, 2025 WL 2466670 (D. Minn. Aug. 27, 2025) *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *see also, e.g., Palma Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at \*2 (D. Neb. Sept. 3, 2025) (noting that “[t]he Court tends to agree” that § 1226(a) and not § 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-

JFB-RCC, 2025 WL 2402271 at \*3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-RCC, 2025 WL 2374224 at \*2 (D. Neb. Aug. 14, 2025) (same).

46. Recently, the U.S. District Court in the Western District of Louisiana also found that a Petitioner with similar circumstances was not subject to mandatory detention and ordered Respondents to provide a bond hearing before an immigration judge. *Lopez Santos v. Noem*, No. 3:25-CV-01193 SEC P (W.D. La. Sept. 11, 2025) (Mem. Op. & Order granting bond hearing).

47. The Southern District of Texas, Houston Division, issued an order on October 7, 2025, which cites to the “tsunami” of cases granting relief on these exact claims. *Buenrostro-Mendez v. Bondi*, et al., No. H-25-3726 (S.D. Tex. Oct. 7, 2025), citing *Roa v. Albarran*, No. 25-cv-7802, 2025 WL 2732923, at \*1 (N.D. Cal. Sep. 25, 2025). The Western District of Texas has issued a similar opinion. *Lopez-Arevalo v. Ripa*, No. EP-25-CV-337-KC (W.D. Tex. Sept. 22, 2025).

48. The DHS’ and the DOJ’s interpretation defies the statute. As the *Rodriguez Vazquez* court and other courts explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Plaintiffs.

49. Section 1226(a) applies by default to all persons “pending a decision on whether the [noncitizen] is to be removed from the United States.” These

removal hearings are held under § 1229a, to “decid[e] the inadmissibility or deportability of a[] [noncitizen].”

50. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Just this year, Congress enacted subparagraph (E) in the Laken Riley Act to exclude certain noncitizens who entered without inspection from § 1226(a)’s default bond provision. Subparagraph (E)’s reference to persons inadmissible under § 1182(6)(A), i.e., persons inadmissible for entering without inspection, makes clear that, by default, such people are afforded a bond hearing under subsection (a). As the *Rodriguez Vazquez* court explained, “[w]hen Congress creates “specific exceptions” to a statute’s applicability, it “proves” that absent those exceptions, the statute generally applies. *Rodriguez Vazquez*, 2025 WL 1193850, at \*12 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

51. Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole.

52. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who very recently entered the United States. The statute’s entire framework is premised on inspections at the border of people who are “seeking admission” to

the United States. *See* 8 U.S.C. § 1225(b)(2)(A); *see also Diaz Martinez*, 2025 WL 2084238, at \*8 (“[O]ur immigration laws have long made a distinction between those [noncitizens] who have come to our shores seeking admission . . . and those who are within the United States after an entry, irrespective of its legality.” (quoting *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958))). Indeed, the Supreme Court has explained that this mandatory detention scheme applies “at the Nation’s borders and ports of entry, where the Government must determine whether [a] [noncitizen] seeking to enter the country is admissible.” *Jennings v. Rodriguez*, 583 U.S. at 287.

53. Accordingly, the mandatory detention provision of 8 U.S.C. § 1225(b)(2) does not apply to people like Plaintiff, who have already entered and were residing in the United States at the time they were apprehended.

54. The Supreme Court has made clear that “[c]ourts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority,” and “may not defer to an agency interpretation of the law simply because a statute is ambiguous.” *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412 (2024). The text of § 1225 and § 1226, together with binding High Court precedent interpreting those provisions, all lead to the conclusion that Petitioner is subject to § 1226(a)’s discretionary detention scheme.

55. Finally, Petitioner is a class member in *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873- SSS-BFM (C.D. Cal.), where the Federal 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).

56. In turn, Petitioner is a noncitizen without lawful status detained by the DHS who: (1) entered the United States without inspection, (2) was not apprehended upon arrival, and (3) is not subject to mandatory detention pursuant to INA §§ 236(c); 235(b)(1); or 241. 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.”).

57. Respondents are bound by the judgment in *Maldonado Bautista*, as it has the full “force and effect of a final judgment.” 28 U.S.C. § 2201(a). Nevertheless, Respondents continue to flagrantly defy the judgment in that case and continue

to subject Petitioner to unlawful detention despite his clear entitlement to consideration for release on bond as a Bond Eligible Class member.

58. 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).

59. 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).

### FACTS

60. Petitioner has resided in the United States since 2000 and lives in Houston, Texas.
61. On September 24, 2025, Petitioner was stopped and taken into ICE custody at the Montgomery Processing Center. On September 29, 2025, he was moved to the Joe Corley Processing Center where he is still currently detained.
62. The DHS placed Petitioner in removal proceedings before the Conroe Immigration Court pursuant to 8 U.S.C. § 1229a. ICE has charged Petitioner with, *inter alia*, being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i), as one who entered the United States without inspection. *See Exhibit 1, supra*.
63. Petitioner has four children who are United States citizens, has been employed with the same employer since 2016, and has only one blemish on his record, for a misdemeanor assault on his brother back from 2010, i.e., fifteen years ago,

which was subsequently deferred and dismissed by the criminal court.

Therefore, Petitioner is neither a flight risk nor a danger to the community.

64. Following Petitioner's arrest and transfer to the Joe Corley Processing Center, ICE issued a custody determination to continue Petitioner's detention without an opportunity to post bond or be released on other conditions.

65. Petitioner subsequently requested a bond redetermination hearing before an IJ.

66. On November 12, 2025, a Conroe Immigration Court IJ issued a decision that the court lacked jurisdiction to conduct a bond redetermination hearing because Petitioner was an applicant for admission under § 1225(b)(2)(A). *See* Exhibit 2, *supra*.

67. As a result, Petitioner remains in detention. Without relief from this court, he faces the prospect of months, or even years, in immigration custody, separated from his family and community.

68. Any appeal to the BIA is futile. The DHS' new policy was issued "in coordination with DOJ," which oversees the immigration courts. Further, the BIA's recent decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) on this issue held that persons like Petitioner are subject to mandatory detention as applicants for admission. Finally, in the *Rodriguez Vasquez* litigation, where the EOIR and the Attorney General are respondents, the DOJ has affirmed its position that individuals like Petitioner are applicants for

admission and subject to detention under 8 U.S.C. § 1225(b)(2)(A). *See* Mot. to Dismiss, *Rodriguez Vasquez v. Bostock*, No. 3:25-CV-05240-TMC (W.D. Wash. June 6, 2025), Dkt. 49 at 27-31. *See also* *Sampiao v. Hyde*, No. 1:25-cv-11981-JEK (D. Mass. Sept. 9, 2025) (finding that waiver of exhaustion requirement is warranted because Petitioner is likely to experience irreparable harm if unable to seek habeas relief until the BIA decides the appeal.).

## CLAIMS FOR RELIEF

### COUNT I

#### **Violation of 8 U.S.C. §1226(a) Unlawful Denial of Release on Bond**

69. Plaintiffs incorporate by reference the allegations of fact set forth in paragraphs 1-68, as if fully set forth herein.

70. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a) and are eligible for release on bond, unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

71. Nonetheless, the DHS and the Conroe Immigration Court have adopted a policy and practice of applying § 1225(b)(2) to Petitioner.

72. The unlawful application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates the INA.

## COUNT II

### **Violation of the INA: Request for Relief Pursuant to *Maldonado Bautista***

73. Petitioner incorporates by reference the allegations of fact set forth in paragraphs 1-72, as if fully set forth herein.

74. Furthermore, as a member of the Bond Eligible Class, Petitioner is entitled to consideration for release on bond under 8 U.S.C. § 1226(a).

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

76. The order granting class certification in *Maldonado Bautista* further orders that “[w]hen 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.”

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

78. By denying Petitioner a bond hearing under § 1226(a) and asserting that he is 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*.

### COUNT III

#### **Violation of the Bond Regulations, 8 C.F.R. §§ 236.1, 1236.1 and 1003.19 Unlawful Denial of Release on Bond**

79. Petitioner incorporates by reference the allegations of fact set forth in paragraphs 1-78, as if fully set forth herein.

80. In 1997, after Congress amended the INA through the IIRIRA, the EOIR and the then-Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of "Apprehension, Custody, and Detention of [Noncitizens]," the agencies explained that "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination." 62 Fed. Reg. at 10323 (emphasis added). The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.

81. Nonetheless, the DHS and the Conroe Immigration Court have adopted a policy and practice of applying § 1225(b)(2) to Petitioner.

82. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates 8 C.F.R. §§ 236.1, 1236.1 and 1003.19.

#### **COUNT IV**

##### **Violation of Fifth Amendment Due Process Clause**

83. Petitioner incorporates by reference the allegations of fact set forth paragraphs 1-82, as if fully set forth herein.

84. The Fifth Amendment provides that “[n]o person” shall be “be deprived of life, liberty, or property, without due process of law.”

85. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

86. Moreover, “[t]he Due Process Clause applies to all ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.” *Id.* at 693.

87. Petitioner has a fundamental interest in liberty and being free from official restraint.

88. Respondents’ mandatory detention of Petitioner without consideration for release on bond or access to a bond hearing violates his due process rights.

**PRAYER FOR RELIEF**

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

- a. Assume jurisdiction over this matter;
- b. Because Respondents are detaining Petitioner in violation of the declaratory judgment issued in *Maldonado Bautista*, the Court should accordingly order that within one day, Respondent DHS must release Petitioner.
- c. Alternatively, the Court should order Petitioner's release unless Respondents provide a bond hearing under 8 U.S.C. § 1226(a) within seven days.
- d. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and
- e. Grant any other and further relief that this Court deems just and proper.

Dated this 10th day of December, 2025

Respectfully submitted,

GONZALEZ OLIVIERI, LLC

/s/ Frances Bourliot

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**UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**ARMANDO PEREZ CRUZ,**  
*Petitioner,*

v.

**KRISTI NOEM**, Secretary of the U.S. Department of Homeland Security; **U.S. DEPARTMENT OF HOMELAND SECURITY; TODD LYONS**, Acting Director of the US. Immigration and Customs Enforcement; **EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; PAMELA BONDI**, Attorney General of the United States; **CARLO JIMINEZ**, Acting Assistant Field Office Director of the Houston Field Office of U.S. Immigration and Customs Enforcement; and **JOE SMITH**, Warden, Joe Corley Processing Center, in their official capacities.

Case No. 4:25-CV-05936

*Respondents.*

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**INDEX OF EXHIBITS**

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Exhibit 1	Notice to Appear
Exhibit 2	Order of the Immigration Judge dated November 12, 2025