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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Jesus Maria **INESTROZA PAGUADA**,

**Petitioner,**

v.

Johnny **CHOATE**, Warden of Aurora  
Detention Center; Robert **HAGAN**, Field  
Office Director of Enforcement and Removal  
Operations, Denver Field Office, Immigration  
and Customs Enforcement; Kristi **NOEM**,  
Secretary, U.S. Department of Homeland  
Security; U.S.; Pamela **BONDI**, U.S. Attorney  
General, Executive Office for Immigration  
Review

**Respondents.**

Case No.: 25-3970

Agency No.:



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**PETITION FOR WRIT OF HABEAS CORPUS**

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1 INTRODUCTION

2 1. Petitioner Jesus Maria Inestroza Paguada (“Petitioner”) is in the physical custody  
3 of Respondents at the Aurora Detention Center, 14999 E Alameda Pkwy, Aurora, CO 80012. He  
4 faces unlawful detention because the Department of Homeland Security (DHS) and the  
5 Executive Office of Immigration Review (EOIR) have concluded Petitioner is subject to  
6 mandatory detention and have refused to abide by the declaratory judgment issued on behalf of  
7 the certified class in *Maldonado Bautista v. Santacruz*.

8 2. Petitioner brings this petition for a writ of habeas corpus to seek enforcement of  
9 his rights as members of the Bond Denial Class certified in *Maldonado Bautista v. Santacruz*,  
10 No. 5:25-CV-01873-SSS-BFM (C.D. Cal.).

11 3. On November 20, 2025, the district court granted partial summary judgment on  
12 behalf of individual plaintiffs and on November 25, 2025, certified a nationwide class and  
13 extended declaratory judgment to the certified class. *Maldonado Bautista v. Santacruz*, No. 5:25-  
14 CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3289861, at \*11 (C.D. Cal. Nov. 20, 2025)  
15 (order granting partial summary judgment to named Plaintiffs-Petitioners); *Maldonado Bautista*  
16 *v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3288403, at \*9 (C.D.  
17 Cal. Nov. 25, 2025) (order certifying Plaintiffs-Petitioners’ proposed nationwide Bond Eligible  
18 Class, incorporating and extending declaratory judgment from Order Granting Petitioners’  
19 Motion for Partial Summary Judgment).

20 4. The declaratory judgment held that the Bond Denial Class members are detained  
21 under 8 U.S.C. § 1226(a), and thus may not be denied consideration for release on bond under §  
22 1225(b)(2)(A). *Maldonado Bautista*, 2025 WL 3289861, at \*11.

1           5.       Nonetheless, the Executive Office for Immigration Review and its subagency the  
2 Immigration Court and the Department of Homeland Security (DHS) have blatantly refused to  
3 abide by the declaratory relief and have unlawfully ordered that Petitioner be denied the  
4 opportunity to be released on bond.

5           6.       Petitioner is a member of the Bond Eligible Class, as he:

- 6           a.       does not have lawful status in the United States and is currently detained at the  
7 Aurora Detention Center. He was apprehended by immigration authorities on  
8 May 10, 2025.  
9           b.       entered the United States without inspection in 1996 and was not apprehended  
upon arrival, *cf. id.*; and  
10          c.       is not detained under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231.

11          7.       After apprehending Petitioner on May 10, 2025, the DHS placed him in removal  
12 proceedings pursuant to 8 U.S.C. § 1229a. DHS has charged Petitioner as being inadmissible  
13 under 8 U.S.C. § 1182(a)(6)(A)(i), as someone who entered the United States without inspection.

14          8.       Respondents are bound by the judgment in *Maldonado Bautista*, as it has the full  
15 “force and effect of a final judgment.” 28 U.S.C. § 2201(a). Nevertheless, Respondents continue  
16 to flagrantly defy the judgment in that case and continue to subject Petitioner to unlawful  
17 detention despite his clear entitlement to consideration for release on bond as a Bond Eligible  
18 Class member.

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

23          10.       An immigration judge (IJ) denied Petitioner’s request for bond on December 8,  
24 2025, because he was not required to follow *Maldonado Bautista*.

1 11. In addition, based on the allegation of inadmissibility in Petitioner’s removal  
2 proceeding, EOIR previously denied Petitioner release from immigration custody, consistent  
3 with a new DHS policy issued on July 8, 2025, instructing all Immigration and Customs  
4 Enforcement (ICE) employees to consider anyone inadmissible under § 1182(a)(6)(A)(i)—i.e.,  
5 those who entered the United States without inspection—to be an “applicant for admission”  
6 under 8 U.S.C. § 1225(b)(2)(A) and therefore subject to mandatory detention.

7 12. Petitioner had previously sought a bond redetermination hearing before the IJ, but  
8 on October 3, 2025, the IJ denied bond pursuant to the reasoning in *Matter of Yajure-Hurtado*.  
9 Indeed, the DHS policy states it was issued “in coordination with the Department of Justice  
10 (DOJ).” The IJ concluded that notwithstanding Petitioner’s 29 years of residing in the United  
11 States, he is nevertheless an “applicant for admission” who is “seeking admission” and subject to  
12 mandatory detention under § 1225(b)(2)(A).

13 13. Petitioner’s detention on this basis violates the plain language of the Immigration  
14 and Nationality Act. Section 1225(b)(2)(A) does not apply to individuals like Petitioner who  
15 previously entered and are now residing in the United States. Instead, such individuals are  
16 subject to a different statute, § 1226(a), that allows for release on conditional parole or bond.  
17 That statute expressly applies to people who, like Petitioner, are charged as inadmissible for  
18 having entered the United States without inspection.

19 14. Respondents’ new legal interpretation is plainly contrary to the statutory  
20 framework and contrary to decades of agency practice applying § 1226(a) to people like  
21 Petitioner.

22 15. The Court should expeditiously grant this petition.  
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1 16. Because Respondents are detaining Petitioner in violation of the declaratory  
2 judgment issued in *Maldonado Bautista*, the Court should accordingly order that within one day,  
3 Respondent DHS must release Petitioner.

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

6 **JURISDICTION**

7 18. Petitioner is in the physical custody of Respondents. Petitioner is detained at the  
8 Aurora Detention Center, Aurora, CO.

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

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

14 **VENUE**

15 21. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-  
16 500 (1973), venue lies in the United States District Court for the District of Colorado, the judicial  
17 district in which Petitioner currently is detained.

18 22. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because  
19 Respondents are employees, officers, and agencies of the United States, and because a  
20 substantial part of the events or omissions giving rise to the claims occurred in the District of  
21 Colorado.



1 27. Respondent Robert Hagan is the Director of the Denver Field Office of ICE's  
2 Enforcement and Removal Operations division. As such, Field Office Director Hagan is  
3 Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is  
4 named in his official capacity.

5 28. Respondent Kristi Noem is the Secretary of the Department of Homeland  
6 Security. She is responsible for the implementation and enforcement of the Immigration and  
7 Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Ms.  
8 Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

9 29. Respondent Pamela Bondi is the Attorney General of the United States. She is  
10 responsible for the Department of Justice, of which the Executive Office for Immigration Review  
11 and the immigration court system it operates is a component agency. She is sued in her official  
12 capacity.

### 13 LEGAL FRAMEWORK

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

16 31. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal  
17 proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally  
18 entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d),  
19 while noncitizens who have been arrested, charged with, or convicted of certain crimes are  
20 subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

21 32. Second, the INA provides for mandatory detention of noncitizens subject to  
22 expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission  
23 referred to under § 1225(b)(2).  
24

1 33. Last, the INA also provides for detention of noncitizens who have been ordered  
2 removed, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)–(b).

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

4 35. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the  
5 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No.  
6 104–208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section  
7 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1,  
8 139 Stat. 3 (2025).

9 36. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining  
10 that, in general, people who entered the country without inspection were not considered detained  
11 under § 1225 and that they were instead detained under § 1226(a). *See* Inspection and Expedited  
12 Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings;  
13 Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

14 37. Thus, in the decades that followed, most people who entered without inspection  
15 and were placed in standard removal proceedings received bond hearings, unless their criminal  
16 history rendered them ineligible. That practice was consistent with many more decades of prior  
17 practice, in which noncitizens who were not deemed “arriving” were entitled to a custody  
18 hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep.  
19 No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply “restates” the detention authority  
20 previously found at § 1252(a)).

21 38. On July 8, 2025, ICE, “in coordination with” DOJ, announced a new policy that  
22 rejected well-established understanding of the statutory framework and reversed decades of  
23 practice.  
24

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

7 40. In a May 22, 2025, unpublished decision from the Board of Immigration Appeals  
8 (BIA), EOIR adopted this same position.<sup>2</sup> That decision holds that all noncitizens who entered  
9 the United States without admission or parole are considered applicants for admission and are  
10 ineligible for immigration judge bond hearings.

11 41. ICE and EOIR have adopted this position even though federal courts have  
12 rejected this exact conclusion. For example, after IJs in the Tacoma, Washington, immigration  
13 court stopped providing bond hearings for persons who entered the United States without  
14 inspection and who have since resided here, the U.S. District Court in the Western District of  
15 Washington found that such a reading of the INA is likely unlawful and that § 1226(a), not §  
16 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States.  
17 *Rodriguez Vazquez v. Bostock*, --- F. Supp. 3d --- 2025 WL 1193850 (W.D. Wash. Apr. 24,  
18 2025); *see also Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at \*8 (D. Mass.  
19 July 7, 2025) (granting habeas petition based on same conclusion); *see also Garcia Cortes v.*  
20 *Noem*, No. 1:25-cv-02677-CNS, 25 WL 2652880 (D. Colo. Sept. 16, 2025)(same).

21  
22  
23 <sup>1</sup> Available at <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>.

24 <sup>2</sup> Available at <https://nwirp.org/our-work/impact-litigation/assets/vazquez/59-1%20ex%20A%20decision.pdf>.

1 42. DHS's and DOJ's interpretation defies the INA. As the *Rodriguez Vazquez* court  
2 explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b),  
3 applies to people like Petitioner.

4 43. Section 1226(a) applies by default to all persons "pending a decision on whether  
5 the [noncitizen] is to be removed from the United States." These removal hearings are held under  
6 § 1229a, to "decid[e] the inadmissibility or deportability of a[] [noncitizen]."

7 44. The text of § 1226 also explicitly applies to people charged as being inadmissible,  
8 including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph  
9 (E)'s reference to such people makes clear that, by default, such people are afforded a bond  
10 hearing under subsection (a). As the *Rodriguez Vazquez* court explained, "[w]hen Congress  
11 creates "specific exceptions" to a statute's applicability, it "proves" that absent those exceptions,  
12 the statute generally applies. *Rodriguez Vazquez*, 2025 WL 1193850, at \*12 (citing *Shady Grove*  
13 *Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

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

17 46. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who  
18 recently entered the United States. The statute's entire framework is premised on inspections at  
19 the border of people who are "seeking admission" to the United States. 8 U.S.C.  
20 § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme  
21 applies "at the Nation's borders and ports of entry, where the Government must determine  
22 whether a[] [noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583  
23 U.S. 281, 287 (2018).

1 47. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to  
2 people like Petitioner, who have already entered and were residing in the United States at the  
3 time they were apprehended.

4 **FACTS**

5 48. Petitioner has resided in the United States since October 5, 1996, and lives in New  
6 Jersey.

7 49. On May 10, 2025, Petitioner was arrested for the first and only time by ICE  
8 officers, who encountered him at a traffic light in Trenton, NJ, while he was driving to work.  
9 There was no traffic infraction; ICE identified him as someone who was undocumented and  
10 arrested him.

11 50. Following Petitioner's arrest, ICE issued a custody determination stating that he  
12 was subject to discretionary detention under 8 U.S.C. § 1226(a). Petitioner was originally  
13 detained at Delaney Hall in Newark, NJ, but was transferred on or about June 15, 2025, to the  
14 Aurora Detention Center, Colorado, where he is now detained.

15 51. DHS placed Petitioner in removal proceedings before the Newark, NJ  
16 Immigration Court, and charged Petitioner with being inadmissible under 8 U.S.C. §  
17 1182(a)(6)(A)(i) as someone who entered the United States without inspection.

18 52. Petitioner has two U.S. citizen sons, one who is 25 years old, and who has  
19 graduated from college, and the other who is a senior in high school. Their mother is Petitioner's  
20 long-term partner, and who has been granted Temporary Protected Status. He has been gainfully  
21 employed during his long residency in the U.S., has always filed his taxes, attends church, and is  
22 involved in many community and volunteer activities. Petitioner is eligible for, and has filed, an  
23 application for cancellation of removal for non-permanent residents, which, if granted, would  
24

1 allow him to become a lawful permanent resident of the U.S. Although testimony has been  
2 completed and all documentary evidence has been submitted, the case remains pending before  
3 the Immigration Court without a new hearing date or a decision on his application.

4 53. Other than his arrest by ICE in May 2025, Petitioner has only one other encounter  
5 with law enforcement. In 1997, he was arrested for fondling a child. However, he has always  
6 maintained his innocence, and contested the charge. He believed, based on information from a  
7 previous criminal attorney, that the charge had been dismissed in 1998. However, the case was  
8 not dismissed, and, as a result, he had an outstanding warrant in that case. An IJ denied his initial  
9 bond request in a decision dated July 9, 2025, but advised the parties that he would reconsider  
10 his decision should the charge be dismissed.

11 54. Petitioner was successful in having the charge nolle prossed, and the warrant  
12 was vacated. Petitioner filed a motion to reopen the bond proceedings based on changed  
13 circumstances, which was granted by a second IJ on October 3, 2025. However, that IJ issued an  
14 order the same day denying his request for bond pursuant to *Matter of Yajure Hurtado*. On  
15 November 26, 2025, Petitioner filed a second bond request based on changed circumstances, to  
16 wit: the *Maldonado Bautista* decision, because Petitioner is a member of the class. The IJ gave  
17 Respondents 10 days to respond; they did not file a response. However, on December 8, 2025,  
18 the IJ denied bond again, finding that *Maldonado Bautista* did not apply to Petitioner, and that he  
19 was still subject to mandatory custody pursuant to *Matter of Yajure Hurtado*. Petitioner is neither  
20 a flight risk nor a danger to the community, has significant equities, including long residence in  
21 this country, and strong family and community ties, and is eligible for relief from removal.

22 55. Nonetheless, Petitioner remains in detention. Without relief from this court, he  
23 faces the prospect of additional months, or even years, in immigration custody, separated from  
24

1 his family and community, who cannot even visit him despite being U.S. citizens because he is  
2 detained in Colorado and they do not have the funds to travel from New Jersey to visit him.

3 56. Any appeal to the BIA is futile. DHS's new policy was issued "in coordination  
4 with DOJ," which oversees the immigration courts. Further, as noted, the most recent  
5 unpublished BIA decision on this issue held that persons like Petitioner are subject to mandatory  
6 detention as applicants for admission. Finally, in the *Rodriguez Vazquez* litigation, where EOIR  
7 and the Attorney General are defendants, DOJ has affirmed its position that individuals like  
8 Petitioner are applicants for admission and subject to detention under § 1225(b)(2)(A). *See* Mot.  
9 to Dismiss, *Rodriguez Vazquez v. Bostock*, No. 3:25-CV-05240-TMC (W.D. Wash. June 6,  
10 2025), Dkt. 49 at 27–31.

## 11 CLAIMS FOR RELIEF

### 12 COUNT I

#### 13 **Violation of Due Process Clause of the Fifth Amendment to the U.S. Constitution** 14 **(Procedural Due Process)**

15 57. Petitioner incorporates by reference the allegations of fact set forth in the  
16 preceding paragraphs as if fully set forth therein.

17 58. As a member of the *Maldonado Bautista* Bond Eligible Class, Petitioner is  
18 entitled to consideration for release on bond under 8 U.S.C. § 1226(a).

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

22 60. The order granting class certification in *Maldonado Bautista* further orders that  
23 "[w]hen considering this determination with the MSJ Order, the Court extends the same  
24 declaratory relief granted to Petitioners to the Bond Eligible Class as a whole."



1 Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S.Ct. 2491, 150 L.Ed.2d 653  
2 (2001).

3 67. Petitioner has a fundamental interest in liberty and being free from official  
4 restraint.

5 68. The government’s continued detention of Petitioner without a bond  
6 redetermination hearing violates his right to due process.

7 **PRAYER FOR RELIEF**

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

- 9 a. Assume jurisdiction over this matter;
- 10 b. Issue a writ of habeas corpus requiring that Respondents immediately release  
11 Petitioner or provide Petitioner with a bond hearing pursuant to 8 U.S.C. §  
12 1226(a) within 7 days;
- 13 c. Award Petitioner attorney’s fees and costs under the Equal Access to Justice Act  
14 (“EAJA”), as amended, 28 U.S.C. § 2412, and on any other basis justified under  
15 law; and
- 16 d. Grant any other and further relief that this Court deems just and proper.

17 DATED this 11<sup>th</sup> of December 2025.

18  
19 /s/ Susan G. Roy, Esq.  
20 Susan G. Roy, Esq.  
21 Law Office of Susan G. Roy, LLC  
22 163 Cranbury Road, Suite 101  
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24 (609) 716-7400  
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*Attorney for Petitioner*

**VERIFICATION PURSUANT TO 28 U.S.C. § 2242**

I represent Petitioner Jesus Maria Inestroza Paguada, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

DATED this 11<sup>th</sup> day of December 2025 /s/ Susan G. Roy, Esq.

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**LIST OF EXHIBITS  
IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS**

Exhibit A.	Notice to Appear, dated May 10, 2025.....	1-4
Exhibit B.	Notice of Custody Determination, dated May 10, 2025 .....	5-6
Exhibit C.	IJ order granting change of venue to Denver, CO dated June 23, 2025	7-8
Exhibit D.	IJ order denying bond to Petitioner, dated July 9, 2025 .....	9-10
Exhibit E.	IJ order granting Petitioner’s motion for bond reconsideration, dated October 3, 2025 .....	11-12
Exhibit F.	IJ order denying bond to Petitioner, dated October 3, 2025 .....	13-14
Exhibit G.	IJ order denying bond to Petitioner, dated December 8, 2025 .....	15-18
Exhibit H.	Screenshot of the EOIR case portal for Petitioner, showing that the removal proceedings remain pending with no scheduled hearing date	19