UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

FAUSTO MARTINEZ REYES,

Petitioner,

v.

KRISTI NOEM, in her official capacity as Secretary of the U.S. Department of Homeland Security; **PAMELA BONDI,** in her official capacity as Attorney General of the United States; **MARY ANDA-YBARRA,** in her official capacity as El Paso Field Office Director, U.S. Immigration and Customs Enforcement and Removal Operations ("ICE/ERO"); **TODD M. LYONS,** in his official capacity as Acting Director of US. Immigration and Customs Enforcement ("ICE"); **WARDEN OF THE DETENTION FACILITY AT CAMP EAST MONTANA** in their official capacity,

Respondents

Case no: 3:25-cv-658

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

REQUEST FOR ORDER TO SHOW CAUSE

REQUEST FOR EMERGENCY TEMPORARY RESTRAINING ORDER

ORAL ARGUMENT REQUESTED

Expedited Hearing Requested

INTRODUCTION

1. Petitioner Fausto Martinez Reyes ("Fausto" or "Petitioner") brings this petition for a writ of habeas corpus to seek enforcement of his rights as a member of the Bond Denial Class certified in *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (C.D. Cal.) Petitioner is in the physical custody of Respondents at Camp East Montana, Fort Bliss, El Paso, Texas. He now faces unlawful detention because the Department of Homeland Security (DHS) and the Executive Office for Immigration Review (EOIR) have refused to abide by the declaratory judgment issued on behalf of the certified class in *Maldonado Bautista v. Santacruz.*

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

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

4. Nonetheless, the Executive Office for Immigration Review and its subagency the Immigration Court and the Department of Homeland Security (DHS) have blatantly refused to abide by the declaratory relief and have unlawfully ordered that other class members in Petitioner's position be denied the opportunity to be released on bond.

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

    a. does not have lawful status in the United States and is currently detained at Camp East Montana, Fort Bliss. He was apprehended by immigration authorities on September 9, 2025;

    b. entered the United States without inspection over six years ago and was not apprehended upon arrival; and

c. is not detained under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231.

6. After apprehending Petitioner on September 9, 2025, the DHS placed him in removal proceedings pursuant to 8 U.S.C. § 1229a. DHS has charged Petitioner as being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i), as someone who entered the United States without inspection, and 8 USC § 1182(a)(6)(A)(i)), as an "immigrant" not in possession of any valid entry document.

7. The Court should expeditiously grant this petition.

8. 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.

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

10. Petitioner submitted a bond request to the Immigration Court on December 3, 2025. The hearing has been set for December 16, 2025. However, Petitioner believes that the bond request is futile because of Respondents' continued policy of following *Matter of Yajure Hurtado.*

11. 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. *See. e.g., Tinoco Pineda v. Noem*, No. SA-25-CA-01518-XR, 2025 WL 3471418 (W.D. Tex. Dec. 2, 2025); *Granados v. Noem*, No. SA-25-CA-01464-XR, 2025 WL 3296314 (W.D. Tex. Nov. 26, 2025); Galdamez *Martinez v. Noem*, No. SA-25-CV-01373-JKP, 2025 WL 3471575 (W.D. Tex. Nov. 26, 2025); *Martinez Orellana v. Noem*, No. 5:25-CV-1028-JKP, 2025 WL 3471569 (W.D. Tex. Nov. 24, 2025).

12. Alternatively, the Court should order Petitioner's release unless Respondents provide a bond hearing under 8 U.S.C. § 1226(a) within five days, during which the burden should shift to DHS to show why Petitioner cannot be released from custody. *See, e.g., Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Martinez v. Noem*, No. EP-25-CV-430-KC, 2025 WL 2965859 (W.D. Tex. Oct. 21, 2025); *Zafra v. Noem*, No. EP-25-CV-00541-DB, 2025 WL 3239526 (W.D. Tex. Nov. 20, 2025).

13. Additionally, Petitioner's continued detention is unlawful because he has been granted Deferred Action and cannot be removed.

JURISDICTION

14. Petitioner is in the physical custody of Respondents. Petitioner is detained at Camp East Montana, Fort Bliss.

15. 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).

16. 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

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

18. Venue is also properly in 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 Western District of Texas.

REQUIREMENTS OF 28 U.S.C. § 2243

19. The Court should grant the petition for writ of habeas corpus "forthwith," as the legal issues have already been resolved for class members in *Maldonado Bautista.*

20. 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 or 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, 1120 (9th Cir. 2000) (citation omitted).

PARTIES

21. Petitioner Fausto Martinez Reyes ("Petitioner" or "Fausto") is a twenty-five-year-old citizen of Mexico. He has an approved petition for Special Immigrant Juvenile Status, a grant of Deferred Action, and a pending application for adjustment to lawful permanent residence. Fausto is currently detained at Camp East Montana, Fort Bliss, El Paso, Texas. He is in the custody, and under the direct control, of Respondents and their agents.

22. Respondent Kristi Noem is sued in her official capacity as Secretary of Homeland Security. As the head of the Department of Homeland Security ("DHS"), the agency tasked with enforcing immigration laws and overseeing immigration detention, Secretary Noem is Petitioner's ultimate legal custodian.

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. Department of Justice (DOJ). In that capacity, she has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the Board of Immigration Appeals. Respondent Bondi is a legal custodian of Petitioner.

24. Respondent Mary Anda-Ybarra is sued in her official capacity as Field Office Director at the El Paso Field Office, Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement. She is a legal custodian of Petitioner.

25. Respondent Todd M. Lyons is sued in his official capacity as Acting Director of ICE. As the Acting Director of ICE, Respondent Lyons is a legal custodian of Respondent.

26. Respondent Warden of Camp East Montana is sued in their official capacity as the Warden of the detention facility at Camp East Montana, Fort Bliss, where Petitioner is detained. They are a legal custodian of Petitioner.

RELEVANT FACTS AND PROCEDURAL HISTORY

27. Fausto is a twenty-five-year-old Mexican national with no criminal history who has lived in the United States since 2019. Until his sudden and arbitrary arrest on September 9, 2025, he was living with his brother, a lawful permanent resident, and working pursuant to a valid work authorization. Fausto has deep ties to the United States and stable employment. He has never been arrested or accused of a crime.

28. Fausto came to the United States at age 19. The Triqui region of Mexico, where he grew up, was plagued by paramilitary and gang violence, and he sought to escape the unstable environment. Both his mother and father were alcoholics who physically abused him and did not work or provide necessities for Fausto or his siblings. From the age of four, Fausto relied on charitable school shelters for food, shelter and education.

29. In March 2021, USCIS granted Fausto Special Immigrant Juvenile Status ("SIJS"), which put him on a path to lawful permanent resident status in the United States. (See Exhibit 1.) SIJS is a humanitarian immigration protection enshrined in federal statute that is designed to afford certain immigrant children, like Fausto, who have suffered parental abuse, abandonment, neglect, or similar mistreatment the opportunity to remain safely and permanently in the United States. In granting SIJS to Fausto, USCIS accepted a finding by a state family court that Fausto could not be reunified with his parents due to abuse, abandonment, and neglect, and that it was not in his best interests to be returned to Mexico.

30. On October 6, 2021, Fausto submitted an application to USCIS to adjust status to lawful permanent residence based on his approved SIJS petition. He also applied for and received work authorization. Fausto complied with all requirements of his Form I-485 adjustment petition and diligently pursued his case.[1] (See Exhibit 2.)

31. Fausto's application to adjust status remained pending in September 2025 when he was suddenly stopped and arrested by Respondents' agents on his way from his fixed address to his regular workplace. Fausto was not accused of any crime. Upon information and

[1] For procedural reasons that are not critical to the understanding of this petition, Fausto has two applications for lawful permanent residence that are substantially similar currently pending before USCIS.

belief, the agents did not have a warrant for his arrest but targeted him based on his race and neighborhood. Fausto cooperated with the agents and did not resist.

32. ICE agents took Fausto to the Buffalo Federal Detention Facility in Batavia, New York and initiated removal proceedings against him by filing a Notice to Appear (NTA) with the immigration court. (See Exhibit 3[2].) The Notice to Appear alleges that Fausto is removable from the United States on grounds of being a noncitizen "present in the United States who has not been admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General" (INA § 212(a)(6)(A)(i), 8 USC § 1182(a)(6)(A)(i)) and for being an "immigrant" not in possession of any valid entry document (INA § 212(a)(7)(A)(i)(I), 8 USC § 1182 (a)(7)(A)(i)(I)).

33. Respondents then transferred Fausto over 1,900 miles away to Camp East Montana at Fort Bliss, in El Paso, Texas, where he remains in immigration detention.

34. Fausto has never been arrested or accused of a crime. He worked two jobs, six or seven days a week. He has deep ties to the United States, including a lawful permanent resident brother and steady employment. He was highly valued by his employer for his hard work, reliability, skill, and dedication.

35. Fausto has been granted Deferred Action by USCIS and has received an employment authorization document on grounds of deferred action. (See Exhibit 4.) A grant of deferred action reflects an individualized assessment by USCIS that Fausto merits a positive exercise of discretion.

36. Fausto has requested a bond hearing but believes this request to be futile. As described above, DHS has enacted a policy of detaining all noncitizens who entered without

[2] Exhibit 3 is the most current NTA, which superseded the one issued immediately upon Fausto's arrest. They are substantially similar.

inspection, on their new theory that all such persons are ineligible for bond because they are subject to mandatory detention under 8 USC § 1225(b)(2)(A). This new policy has been adopted by DHS and ratified by the Department of Justice (under which the Board of Immigration Appeals operates) in *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025). Despite the judgment in *Maldonado Bautista* finding this policy to be unlawful, EOIR has indicated that it will not abide by that judgment. *Maldonado Bautista,* No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025).

LEGAL FRAMEWORK

A. Fausto's Detention Is Not Governed by 8 U.S.C. § 1225(b)(2)(A).

37. The Court in *Maldonado Bautista* has already ruled that the detention of noncitizens such as Fausto, who are within the Bond Eligible Class, is not governed by 8 U.S.C. § 1225(b)(2)(A) but instead is governed by 8 U.S.C. § 1226(a). *Maldonado Bautista,* No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025).

38. In the alternative, this court can independently hold, as many others already have across the country, that the detention of the Petitioner in this case is governed by 8 U.S.C. § 1226(a) rather than § 1225(b)(2)(A).

39. The INA prescribes three basic forms of detention for most noncitizens in removal proceedings. Of these, the two forms of detention relevant to this case are described at 8 U.S.C. §§ 1226(a) and 1225(b)(2).

40. 8 U.S.C. § 1226 "authorizes the Government to detain certain [noncitizens] already in the country pending the outcome of [Section 240] removal proceedings." *Jennings v.*

Rodriguez, 583 U.S. 281, 289 (2018). Individuals detained under Section 1226(a) are generally entitled to a bond hearing at the outset of their detention. *See* 8 C.F.R. §§ 1003.19(a), 1236.1(d).

41. On the other hand, 8 U.S.C. 1225(b)(2) provides that a person alleged to be an "applicant for admission" who is "seeking admission" and whom an "examining immigration officer determines . . . is not clearly and beyond a doubt entitled to be admitted" is subject to mandatory detention – that is, detention without the right to a bond hearing. *See* 8 U.S.C. § 1225(b)(2)(A).

42. 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).

43. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without admission or parole 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).

44. Thus, in the decades that followed, most people who entered without admission or parole were arrested under 8 U.S.C. § 1226(a), were placed in standard removal proceedings and received bond hearings, unless their criminal history rendered them ineligible. That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an IJ or other

hearing officer. *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)).

45. On July 8, 2025, ICE, "in coordination with" the Department of Justice, announced a new policy that rejected this well-established understanding of the statutory framework and reversed decades of practice.

46. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission," claims that all persons who entered the United States without admission or parole shall now be deemed "applicants for admission" under 8 U.S.C. § 1225, and therefore are subject to mandatory detention 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.

47. On September 5, 2025, the BIA adopted this same position in *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 considered applicants for admission who are "seeking admission" and are ineligible for IJ bond hearings.

48. Even before the decision in *Maldonado Bautista,* Court after court had rejected ICE's new policy and EOIR's new interpretation. See, e.g., *Vazquez v. Bostock,* 3:25-cv-05240-TMC, 2025 U.S. Dist. LEXIS 193611, (W.D. Wash. Sept. 30, 2025); *Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425, 2025 U.S. Dist. LEXIS 175767 (E.D. Mich. Sept. 9, 2025) (citing District Court cases around the country rejecting this interpretation).

49. Courts have resoundingly rejected DHS's and EOIR's new interpretation because it defies the INA. The plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Fausto.

50. Subsection 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]."

51. Just this year, Congress amended 8 USC §1226(c)(1) to add subparagraph (E) in the Laken Riley Act. The amendment provided that certain noncitizens who entered without inspection and who are charged with or convicted of certain crimes are ineligible for bond under § 1226(a)'s default bond provision. Subparagraph (E)'s reference to such people makes clear that, by default, noncitizens who entered without inspection but did *not* have the criminal history described by the Laken Riley Act are entitled to 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*, 779 F. Supp. 3d at 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)). Further, "when Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect." *Stone v. I.N.S.*, 514 U.S. 386, 397 (1995). 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 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. 8 U.S.C. § 1225(b)(2)(A). 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. 281, 287 (2018).

53. The mandatory detention provision in 8 USC 1225(b)(2)(A) reads: "[I]n the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien *seeking admission* is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title." 8 U.S.C. § 1225(b)(2)(A) (emphasis added).

54. Section 1225(b), according to its text, applies to "applicants for admission" who are "seeking admission." This text, including the use of the present tense in "seeking admission", indicates that section 1225(b) is applicable only to noncitizens who are actively seeking admission into the United States. *Baquedano Lagos v. Vergara*, No. 5:25-cv-01411, 8 (W.D. Tex. Nov 18, 2025) ("When ICE detained her in 2025, Baquedano Lagos was not seeking entry, much less "lawful entry . . . after inspection and authorization.'"); *Hervert v. Bondi*, No. 1:25-cv-01763 (W.D. Tex. Nov 14, 2025) ("However, 8 U.S.C. § 1225(b)(2) references not just an "applicant for admission," but an "applicant for admission" who is "seeking admission.""); *Galdamez Martinez v. Noem*, No. SA-25-CV-01373-JKP, 2025 WL 3471575 (W.D. Tex. Nov. 26, 2025)) (finding that detained is wrongfully detained under INA § 235(b)(2) because he is not "seeking admission" despite classification as "applicant for admission.")

55. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to people like Fausto, who had already entered and was residing in the United States at the time he was apprehended.

56. Additionally, as described more fully below, Fausto has been granted Special Immigrant Juvenile Status (SIJS). An award of SIJS confirms that a noncitizen is an "alien present in the United States," not one "seeking admission." *See Rodriguez v. Perry*, 747 F. Supp. 3d 911, 916 (E.D. Va. 2024). Addressing whether SIJS beneficiaries are properly detained under 8 U.S.C. §§ 1225 or 1226, the *Rodriguez* court ruled that, because "the INA defines a 'special immigrant' as 'an immigrant who is present in the United States,'" a noncitizen's "SIJ status weighs in favor of finding that . . . he was an 'alien present' in the United States and was entitled to a bond hearing" under 8 U.S.C. § 1226. Id.; see also § 1101(a)(27)(J).

57. Moreover, as another court recently stressed, SIJS status "'bespeak[s] a substantial legal relationship between [SIJS beneficiaries] and the United States—a relationship far more significant than' the relationship possessed between an initial entrant into this country." *Del Cid Del Cid v. Bondi*, No. 3:25-CV-00304, 2025 WL 2985150, at *16 (W.D. Pa. Oct. 23, 2025). For these reasons, numerous other courts have agreed that SIJS beneficiaries—regardless of how they entered the United States—are detained under § 1226(a). See *Diaz- Calderon v. Barr*, No. 2:20-cv-11235-TGB, 2020 WL 5645191 at *11 (E.D. Mich. Sept. 22, 2020); *Duchi-Naula v. Tatum*, No. 1:25-cv-00247-LM-AJ, Doc. 17 (D.N.H. July 7, 2025); *Tocagon v. Moniz*, Case 1:25-cv0-12453-MJJ (D. Mass. Sept. 29, 2025); *Casun v. Hyde*, No. 25-CV-427-JJM-AEM, 2025 WL 2806769, at *2 (D.R.I. Oct. 2, 2025).

58. Here, Fausto has lived in the United States for six years and been granted SIJS; he was detained in September while present in the United States; and he has been charged as being present in the United States and as an "immigrant" lacking necessary documentation. It would be absurd to consider him to be "seeking admission" under these circumstances. See *Torres*, 2025 WL 2855379, at *3-5; R.D.T.M, 2025 WL 2686866, at *4; accord *Contreras Maldonado v. Cabezas*, No. 25– 13004, 2025 WL 2985256 (D.N.J. Oct. 23, 2025) (finding the "invocation of 1225(b) as applied to Petitioner," a former UC who had resided in the United States for years, to be "inconsistent with the statutory framework distinguishing between entry-based and interior detention authority"). In any event, this Court owes no deference to *Matter of Yajure Hurtado* under *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 394 (2024). *Cf. Rodriguez Vasquez*, 2025 WL 2782499, at *1, n.3 (rejecting and noting many other cases rejecting the BIA's statutory interpretation in *Matter of Yajure Hurtado*)).

B. A Person with Deferred Action Cannot be Removed

59. Deferred action is an act of prosecutorial discretion that defers efforts to deport a noncitizen from the United States for a certain period.

60. Deferred action does not confer lawful status and does not prevent an immigration judge from issuing a removal order. However, unless and until terminated, a grant of deferred action prevents immigration authorities from physically removing a noncitizen from the United States. See *Primero v. Mattivelo*, 2025 U.S. Dist. LEXIS 130195, *15 (D. Mass July 9, 2025) (there is no significant likelihood of removal in the foreseeable future for an individual with a grant of deferred action); *Guerra Leon v. Noem*, 3:25-cv-01495-TAD-KDM (W.D. La. Oct. 30, 2025) (an individual with deferred action cannot be removed).

61. Once deferred action is granted, fundamental procedural due process protections attach to the recipient, such as the right to notice and an opportunity to contest the revocation of deferred action. See *Maldonado v. Noem*, No. 4:25-CV-2541, 2025 WL 1593133, at *2 (S.D. Tex. June 5, 2025) (finding that Petitioner was "likely to succeed on his Due Process claim" because he was denied "notice, a hearing, or any opportunity to contest the revocation of his deferred action.").

62. Fausto's deferred action has not been revoked; rather, USCIS granted him employment authorization based on deferred action on November 17, 2025.

C. SIJS Classification Provides a Pathway to Permanent Status for Certain Vulnerable Young People

63. In 1990, Congress created SIJS to protect vulnerable immigrant children and provide them a pathway to citizenship. Immigration Act of 1990, Pub. L. No. 101-649, § 153, 104 Stat. 4978 (1990) (amending various sections of the INA); Special Immigrant Status, 58 Fed. Reg. 42843, 43844 (Aug. 12, 1993) ("This rule alleviates hardships experienced by some dependents of United States juvenile courts by providing qualified [noncitizens] with the opportunity to apply for special immigrant classification and lawful permanent resident status, with [the] possibility of becoming citizens of the United States in the future."). Since 1990, Congress has amended the INA multiple times to expand the protections of SIJS, most recently in 2008, through the TVPRA, Pub. L. 110- 457, § 235(d), 122 Stat. 5044 (2008).

64. To be granted SIJS, youths must first "satisfy[] a set of rigorous, congressionally defined eligibility criteria." *Osorio-Martinez v. U.S. Att'y Gen.*, 893 F.3d 153, 163 (3d Cir. 2018). Specifically, the INA provides that those eligible for SIJS designation, as relevant here,

are noncitizen youth who are present in the United States; who have been declared dependent on a state juvenile court; who cannot be reunified with one or more parents because of abuse, neglect, or abandonment; and for whom it has been determined that it is not in their best interest to return to their country of origin. 8 U.S.C. § 1101(a)(27)(J); 8 C.F.R. § 204.11(c).

65. Crucially, a noncitizen youth is eligible for SIJS only if he or she is "present in the United States." 8 U.S.C. § 1101(a)(27)(J) (emphasis added). This requirement makes perfect sense in light of the purpose of the SIJS statute. SIJS is predicated on a state court finding that the youth cannot be safely reunited with one or both parents, nor safely sent back to their country of origin. The design of this program, then, "show[s] a congressional intent to assist a limited group of abused children to remain safely in the country with a means to apply for LPR status." *Garcia v. Holder*, 659 F.3d 1261, 1271 (9th Cir. 2011) (abrogated on other grounds).

66. Youth can apply for SIJS upon receipt of a state court order finding they cannot be safely reunited with parent(s) nor safely sent back to their country of origin. The application process includes submitting a Form I-360 SIJS Petition to USCIS, along with the predicate state court order and other supporting evidence. See 8 C.F.R. § 204.ll (b). USCIS then considers the application and supporting documentation to determine whether to exercise its statutory "consent function" to approve the petition. See 8 U.S.C. § 1101(a)(27)(J)(iii). By exercising its statutory consent function to grant SIJS, the agency recognizes the state court's determinations, including that the child's return to their country of origin would be contrary to their best interests. 8 U.S.C. § 1101(a)(27)(J)(iii). The main benefit of SIJS—and indeed, its core purpose—is that it

confers on vulnerable young people like Fausto the right to seek LPR status while remaining in the United States, through a process called adjustment of status. See 8 U.S.C. 1255(h).

67. To facilitate this process, Congress removed numerous barriers to adjustment of status for SIJS beneficiaries through amendments to the SIJS provisions in 1991 and again in 2008. For example, SIJS youth are "deemed ... to have been paroled into the United States" for the purposes of adjustment of status. 8 U.S.C. § 1255(h)(l). Further, Congress exempted SIJS youth from many common inadmissibility grounds and created a generous waiver of many of the non-exempted inadmissibility grounds. 8 U.S.C. § 1255(h)(2). And Congress explicitly provided that certain grounds for removal "shall not apply to a special immigrant described in section 1101(a)(27)(J) of this title [the SIJS statute] based upon circumstances that existed before the date the [noncitizen] was provided such special immigrant status." 8 U.S.C. § 1227(c).

68. Taken together, the structure of the SIJS program—including the requirement that recipients remain in the United States to move forward in the process, the grant of parole for the purpose of adjustment, and the waiver of grounds of inadmissibility and removability—evinces Congress' intent that SIJS recipients remain safely in the United States until they can adjust to become LPRs. And given that they are only "a hair's breadth from being able to adjust their status" and have a "substantial legal relationship" with the United States, these individuals have been recognized as enjoying meaningful constitutional due process rights. *Osorio*, 893 F. 3d at 173-75.

CLAIMS FOR RELIEF

FIRST CLAIM

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

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

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

71. 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.

72. 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."

73. 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).

74. 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*.

SECOND CLAIM

Violation of 8 U.S.C. § 1226(a) and Implementing Regulations

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

76. Fausto's detention is governed by 8 U.S.C. § 1226(a), not 8 U.S.C. § 1225(b)(2)(A), given his valid SIJS grant, six years of presence in the United States, and interior apprehension. The application of 8 U.S.C. § 1225(b)(2)(A) to Fausto thus violates the INA.

THIRD CLAIM

Violation of the Due Process Clause of the Fifth Amendment (Procedural Due Process)

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

78. The procedural due process guarantees of the Fifth Amendment ensure that noncitizens cannot be deprived of liberty or property interests without due process of law. *Barrows v Burwell*, 777 F.3d 106, 113 (2d Cir. 2015) (quoting *Mathews*, 424 U.S. at 332). *See also, Vieira v. De Anda-Ybarra*, No. EP-25-CV-00432-DB, 2025 WL 2937880, at *5 (W.D. Tex. Oct. 16, 2025) ("Petitioner is entitled to the Fifth Amendment's Due Process Clause protections.").

79. Respondents violated Fausto's right to procedural due process by arresting and detaining him in September 2025, without providing adequate procedural protections before (or after) the resultant deprivation of his liberty, including an individualized review of his detention through a bond hearing.

FOURTH CLAIM

Violation of the Due Process Clause of the Fifth Amendment (Substantive Due Process)

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

81. Fausto has a grant of Deferred Action from USCIS, valid through 2027, such that he cannot be removed. The Deferred Action has not been revoked. Because his removal is not reasonably foreseeable and there is no other justification for his detention, his detention is not authorized by statute or related to any legitimate government interests, in violation of the substantive due process protections of the Fifth Amendment.

82. In order to satisfy the substantive due process requirements of the Fifth Amendment, a noncitizen's detention must be tied to some lawful purpose, which does not exist when the individual is not a flight risk or a danger to the community. *Zadvydas*, 533 U.S. at 690. Here, Fausto is not a flight risk nor is he a danger to the community. He has deep ties to the United States, a clear path to lawful status, and no criminal record. Indeed, in granting him deferred action, DHS has already made an individualized determination that Fausto merits a positive exercise of discretion.

83. Further, the government's interest in preventing flight is a "weak or nonexistent" justification for detention when a person cannot actually be removed. *Zadvydas,* 533 U.S. at 690; *Phan v. Reno*, 56 F. Supp. 2d 1149, 1156 (W.D.Wash 1999) ("Detention by the INA can be lawful only in aid of deportation.")

84. Respondents' detention of him is therefore impermissibly punitive and unlawful.

PRAYER FOR RELIEF

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

a. Assume jurisdiction over this matter;

b. Declare that Petitioner's arrest and detention violates the Due Process Clause of the Fifth Amendment and the INA and implementing regulations;

c. Declare that Petitioner may not be removed from the United States because he has a current grant of Deferred Action;

d. Issue a writ of habeas corpus requiring that within one day, Respondents release Petitioner, under the same conditions as existed prior to his detention;

e. Alternatively, issue a writ of habeas corpus requiring Respondents to release Petitioner immediately unless they provide a bond hearing under 8 U.S.C. § 1226(a) within five days, at which hearing Respondents will bear the burden of justifying Petitioner's continued detention by clear and convincing evidence of dangerousness or flight risk;

f. Issue an Emergency Temporary Restraining Order prohibiting Respondents from removing Petitioner from the United States or transporting Petitioner out of this jurisdiction during the pendency of this petition unless it is to transfer him back to New York State;

g. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days, and set a hearing on this Petition within five days of the return, as required by 28 USC § 2243;

h. Issue an Order prohibiting Respondents from re-detaining Petitioner without a pre-deprivation hearing before this Court where the government bears the burden of justifying re-detention by clear and convincing evidence;

i. Issue an Order prohibiting Respondents from seeking a stay of any order granting bond by the Immigration Judge, including by filing a form EOIR-43 (Notice of Service Intent to Appeal Custody Redetermination) or a motion for emergency stay;

j. 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

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

Dated: December 15, 2025

Austin, Texas

Respectfully submitted,

/s/ Robert Painter
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Attorneys for the Petitioner

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

I represent Petitioner Fausto Martinez Reyes 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 15 day of December, 2025.

/s/ Michelle Fon Anne Lee

Michelle Fon Anne Lee

CERTIFICATE OF SERVICE

Under penalties as provided by law pursuant, the undersigned certifies and states that the true and correct copies of this Petition for Writ of Habeas Corpus, with Exhibits (37 pages) will be served upon all counsels of record via the online CM/ECF system, on or before December 15, 2025.

/s/ Robert Painter
Robert Painter
TX Bar No.24150717
MN Bar No. 0393321
Texas Immigration Law Council