

1 Rose M. Thompson, CalBar No. 214003
ROSE IMMIGRATION LAW
2 P.O. Box 23651
3 San Diego, CA 92193
(619) 500-2911

DETAINED

4 *Attorney for Petitioner*

5
6 **UNITED STATES DISTRICT COURT**
7 **SOUTHERN DISTRICT OF CALIFORNIA**

8 In the Matter of

9 **Veronica CRUZ ESCAMILLA,**

10 *Petitioner,*

11 v.

12 **Daniel A. BRIGHTMAN**, in his official
13 capacity as Field Office Director of the
14 Immigration and Customs Enforcement,
Enforcement and Removal Operations
15 San Diego Field Office; **Kristi NOEM**,
16 in her official capacity as Secretary of
the U.S. Department of Homeland
17 Security; **U.S. DEPARTMENT OF**
HOMELAND SECURITY; Pamela J.
18 **BONDI**, in her official capacity as U.S.
Attorney General; **EXECUTIVE**
19 **OFFICE FOR IMMIGRATION**
20 **REVIEW; Christopher J. LAROSE**, in
his official capacity as Warden of the
21 Otay Mesa Detention Center,

22 *Respondents*

Case No. '25CV3573 CAB JLB

Agency No. 

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

**IMMIGRATION HABEAS
CASE**

23
24 **PETITION FOR WRIT OF HABEAS CORPUS**

1 I. INTRODUCTION

2 1. Petitioner, Veronica CRUZ ESCAMILLA, brings this petition for a
3 writ of Habeas Corpus to seek enforcement of her rights as members of the Bond
4 Eligible Class certified in *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-
5 SSS-BFM (C.D. Cal.). Petitioner is in the physical custody of Respondents and faces
6 unlawful detention because the Department of Homeland Security (“DHS”) and the
7 Executive Office for Immigration Review (“EOIR”) have refused to abide by the
8 declaratory relief issued on behalf of the certified class in *Maldonado Bautista v.*
9 *Santacruz*.

10
11 2. As an initial matter, a Habeas petition was filed for Petitioner on
12 December 10, 2025. Because she had been transferred to San Luis, AZ, this Court
13 transferred her case to the District Court in Phoenix, AZ. Today, December 12, 2025,
14 we learned that Petitioner was transferred back to Otay Mesa, CA, in this Court’s
15 jurisdiction; therefore, we are refiling this Habeas and will withdraw the Habeas
16 transferred to Arizona.

17
18 3. On November 20, 2025, the district court granted partial summary
19 judgment on behalf of individual plaintiffs and on November 25, 2025, certified a
20 nationwide class and extended declaratory judgment to the certified class.
21 *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d -
22 ---, 2025 WL 3289861, at *11 (C.D. Cal. Nov. 20, 2025) (order granting partial
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1 summary judgment to named Plaintiffs-Petitioners); *Maldonado Bautista v.*
2 *Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3288403,
3 at *9 (C.D. Cal. Nov. 25, 2025) (order certifying Plaintiffs-Petitioners' proposed
4 nationwide Bond Eligible Class, incorporating and extending declaratory judgment
5 from Order Granting Petitioners' Motion for Partial Summary Judgment).

7 4. The declaratory judgment held that the Bond Eligible Class members
8 are detained under 8 U.S.C. § 1226(a) and thus may not be denied consideration for
9 release on bond under § 1225(b)(2)(A). *Maldonado Bautista*, 2025 WL 3289861, at
10 *11.

11 5. Nonetheless, the EOIR (including the Immigration Court) and the DHS
12 have blatantly refused to abide by the declaratory relief and have unlawfully ordered
13 that Petitioner be denied the opportunity to be released on bond.

15 6. Petitioner, Ms. Cruz Escamilla, is a member of the Bond Eligible Class,
16 as she:

- 17 a. does not have lawful status in the United States and is currently in the
18 custody of Immigration and Customs Enforcement ("ICE"). She was
19 apprehended by immigration authorities on November 24, 2025, while
20 at her Adjustment of Status interview at the USCIS San Diego Field
21 Office.
22

- 1 b. entered the United States without inspection approximately 25 years
2 ago, was not apprehended upon her arrival but instead many years
3 later at her adjustment of status interview, *cf. id.*; and
4
5 c. is not detained under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231.

6 7. The Court should expeditiously grant this petition.

7 8. Respondents are bound by the judgment in *Maldonado Bautista*, as it
8 has the full “force and effect of a final judgment.” 28 U.S.C. § 2201(a). Nevertheless,
9 Respondents continue to subject Petitioner to unlawful detention despite her clear
10 entitlement to consideration for release on bond as a Bond Eligible Class member.

11 9. Immigration judges (“IJ”) have almost uniformly denied jurisdiction in
12 bond proceedings stating that the declaratory judgment in *Maldonado Bautista* is not
13 controlling, even with respect to class members, and that instead IJs remain bound
14 to follow the agency’s prior decision in *Matter of Yajure Hurtado*, 29 I.&N. Dec.
15 216 (BIA 2025). This is what has occurred in the instant case.

16
17 10. On December 8, 2025, an Otay Mesa Immigration Judge denied
18 Petitioner’s request for a bond re-determination hearing, stating that “[t]he
19 Immigration Judge lacks authority to hear the respondent’s request for a bond. Based
20 on the plain language of section 235(b)(2)(A) of the Immigration and Nationality
21 Act, 8 U.S.C. § 1225(b)(2)(A), Immigration Judges lack authority to hear bond
22 requests or to grant bond to aliens who are present in the United States without
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1 admission. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).” *See*
2 Exhibit A – Order of the Immigration Judge, dated December 8, 2025.

3 11. Because Respondents are detaining Petitioner in violation of the
4 declaratory relief issued in *Maldonado Bautista*, the Court should accordingly order
5 Respondents provide a bond hearing under 8 U.S.C. § 1226(a) *promptly* per
6 *Maldonado Bautista v. Santacruz*’s declaratory relief.
7

8 II. JURISDICTION

9 12. Petitioner is in the physical custody of Respondents. She was originally
10 detained at the Otay Mesa Detention Center (“OMDC”), in San Diego, California.
11 On December 10, 2025, at approximately 5:00 a.m., ICE officers physically removed
12 Petitioner from her cell at the OMDC and transferred her to the San Luis Regional
13 Detention Center in San Luis, Arizona. On December 12, 2025, Petitioner was
14 returned to the OMDC, placing her once again within the jurisdiction of the United
15 States District Court for the Southern District of California.
16

17 13. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (Habeas
18 Corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the
19 United States Constitution (the Suspension Clause).
20

21 14. This Court may grant relief pursuant to 28 U.S.C. § 2241, the
22 Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C.
23 § 1651.
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III. VENUE

15. 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 Southern District of California, the judicial district in which Petitioner is currently detained.

16. 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 Southern District.

IV. EXHAUSTION

17. Petitioner is not required to exhaust administrative remedies. Exhaustion for Habeas claims is prudential, not jurisdictional. *See Laing v. Ashcroft*, 370 F.3d 994, 997 (9th Cir. 2004). The prudential exhaustion requirement may be waived if “administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, [or] irreparable injury will result...” *Id.* at 1000.

18. Administrative remedies would be futile, inadequate, and not efficacious for Petitioner. Exhausting her constitutional claim would be futile because the agency does not have the authority to rule on constitutional questions. *See Wang v. Reno*, 81 F.3d 808, 815–16 (9th Cir. 1996) (per curiam) (“the inability

1 of the INS to adjudicate the constitutional claim completely undermines most, if not
2 all, of the purposes underlying exhaustion”).

3 19. Even if exhaustion were not futile, waiver is warranted because
4 Petitioner’s claim presents purely legal issues, and no purpose is served by requiring
5 an administrative appeal. *See Hernandez v. Sessions*, 872 F.3d 976, 988–89 (9th Cir.
6 2017).

8 **V. REQUIREMENTS OF 28 U.S.C. § 2243**

9 20. The Court should grant the petition for writ of Habeas Corpus
10 “forthwith,” as the legal issues have already been resolved for class members in
11 *Maldonado Bautista*.

12 21. Habeas Corpus is “perhaps the most important writ known to the
13 constitutional law . . . affording as it does a *swift* and imperative remedy in all cases
14 of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis
15 added). “The application for the writ usurps the attention and displaces the calendar
16 of the judge or justice who entertains it and receives prompt action from him within
17 the four corners of the application.” *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir.
18 2000) (citation omitted).

21 **VI. PARTIES**

22 22. Petitioner, Veronica Cruz Escamilla, is a citizen of Mexico, who has
23 been in immigration detention since November 24, 2025. After Petitioner was
24

1 arrested in San Diego at her Adjustment of Status Interview, ICE did not set bond,
2 and Petitioner requested review of her custody. Undersigned counsel asserted before
3 the IJ that Petitioner is eligible for a bond hearing based grant of partial summary
4 judgment in *Bautista v. Noem*, 5:25-cv-01873-SSS-BFM (C.D. Cal.).
5

6 23. Respondent, Daniel A. Brightman, is the Director of the San Diego
7 Field Office of ICE's Enforcement and Removal Operations division. As such, Mr.
8 Brightman is Petitioner's immediate custodian and is responsible for Petitioner's
9 detention and removal. He is named in his official capacity.

10 24. Respondent Kristi Noem is the Secretary of the Department of
11 Homeland Security. She is responsible for the implementation and enforcement of
12 the Immigration and Nationality Act ("INA"), and oversees ICE, which is
13 responsible for Petitioner's detention. Ms. Noem has ultimate custodial authority
14 over Petitioner and is sued in her official capacity.
15

16 25. Respondent Department of Homeland Security ("DHS") is the federal
17 agency responsible for implementing and enforcing the INA, including the detention
18 and removal of noncitizens.
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20 26. Respondent Pamela J. Bondi is the Attorney General of the United
21 States. She is responsible for the Department of Justice, of which the Executive
22 Office for Immigration Review and the immigration court system it operates is a
23 component agency. She is sued in her official capacity.
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1 27. Respondent Executive Office for Immigration Review (“EOIR”) is the
2 federal agency responsible for implementing and enforcing the INA in removal
3 proceedings, including for custody redeterminations in bond hearings.

4 28. Respondent, Christopher LaRose, is employed by CoreCivic, as
5 Warden of the Otay Mesa Detention Center, where Petitioner is currently detained.
6 He is sued in his official capacity.
7

8 VII. FACTUAL ALLEGATIONS

9 29. Petitioner is a Mexican citizen who entered the U.S. without inspection
10 near San Ysidro, California in or about January 2000. She has lived in the U.S.
11 continuously since then, with the exception of a brief departure in 2003, after which
12 she reentered without inspection near San Ysidro, CA and was not caught.
13

14 30. On July 8, 2025, ICE issued an interim guidance memo stating that
15 anyone who entered without inspection was ineligible for release on bond and could
16 not challenge their detention at a bond hearing in immigration court, regardless of
17 how long an individual has lived in the United States.

18 31. On July 18, 2025, several weeks after the new DHS policy was
19 announced, a nationwide class action was filed on behalf of four detained petitioners
20 in the Central District of California challenging the new mandatory detention policy.
21 *Maldonado Bautista v. Santacruz* (Case No. 5:25-cv-1873).
22

1 32. The Central District Court of California granted a temporary restraining
2 order and ordered bond hearings for the four named petitioners. Because of limits
3 on the availability of class-wide injunctive relief, the petitioners quickly filed a
4 motion for class certification and partial summary judgment. Specifically, the
5 petitioners sought a declaration that all class members are detained under § 1226(a)
6 and not § 1225(b)(2), and are thus eligible for consideration for bond, and also
7 sought vacatur of the new DHS and BIA mandatory detention policies.
8

9 33. On September 5, 2025, the BIA issued a precedential decision, binding
10 on all IJs, holding that an IJ had no authority to consider bond requests for any person
11 who entered the United States without inspection. *See Matter of Yajure Hurtado*, 29
12 I. & N. Dec. 216 (BIA 2025). The BIA determined that such individuals are subject
13 to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and therefore are ineligible
14 for release on bond.
15

16 34. On November 20, 2025, the Central District Court of California granted
17 partial summary judgment in *Maldonado Bautista v. Santacruz* for the four
18 petitioners, holding that the government's policy is inconsistent with the plain
19 language of the Immigration and Nationality Act ("INA"), and that petitioners are
20 properly subject to § 1226(a). *See Maldonado Bautista v. Santacruz*, No. 5:25-CV-
21 01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3289861 (C.D. Cal. Nov. 20, 2025).
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1 35. On November 24, 2025, Petitioner attended her Adjustment of Status
2 interview at the San Diego office and was arrested and taken into custody by ICE,
3 and held at the OMDC.

4
5 36. On November 25, 2025, the Court certified a nationwide class of
6 individuals who are being subject to the government’s new no-bond policy—the
7 Bond Eligible Class—and expressly “extend[ed] the same declaratory relief granted
8 to Petitioners to the Bond Eligible Class as a whole.” *Maldonado Bautista v.*
9 *Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3288403,
10 at *9 (C.D. Cal. Nov. 25, 2025) (emphasis added)

11
12 37. On December 8, 2025, an Otay Mesa Immigration Judge denied
13 Petitioner’s request for a bond re-determination hearing, stating that “[t]he
14 Immigration Judge lacks authority to hear the respondent’s request for a bond. Based
15 on the plain language of section 235(b)(2)(A) of the Immigration and Nationality
16 Act, 8 U.S.C. § 1225(b)(2)(A), Immigration Judges lack authority to hear bond
17 requests or to grant bond to aliens who are present in the United States without
18 admission. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).” *See*
19 Exhibit A – Order of the Immigration Judge, dated December 8, 2025.

20
21 38. On December 10, 2025, at approximately 5:00 a.m., ICE officers
22 physically removed Petitioner from her cell at the OMDC without notice to
23 undersigned counsel, whose office had been monitoring the ICE Detainee Locator
24

1 System which continued to list Petitioner as detained at the OMDC until
2 approximately 2:00 p.m. when it showed “no result”, and then at 3:03pm, indicated
3 that she was being held at San Luis Regional Detention Center in San Luis, AZ,
4 outside this Court’s jurisdiction. Later that same day, undersigned counsel filed a
5 petition for writ of Habeas Corpus before this Court, Case Number 3:25-cv-03518-
6 RBM-BLM, requesting Petitioner’s return to the OMDC as the transfer impeded her
7 access to counsel and violated her constitutional due process rights.
8

9 39. On December 12, 2025, Petitioner’s case was transferred to the U.S.
10 District Court for the District of Arizona. However, by mid-morning that day, ICE
11 returned Petitioner to the OMDC, restoring the jurisdiction of this Court. Given this
12 return, Petitioner now re-files the instant Petition for Writ of Habeas Corpus to
13 remedy the violations against the Immigration and Nationality Act.
14

15
16 **VIII. CLAIM FOR RELIEF**
17 **Violation of the INA:**
18 **Request for Relief Pursuant to *Maldonado Bautista***

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

21 41. As a member of the Bond Eligible Class, Petitioner is entitled to
22 consideration for release on bond under 8 U.S.C. § 1226(a).
23
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1 42. The order granting partial summary judgment in *Maldonado Bautista*
2 holds that Respondents violate the INA in applying the mandatory detention statute
3 at § 1225(b)(2) to class members.

4 43. The order granting class certification in *Maldonado Bautista* further
5 orders that “[w]hen considering this determination with the motion for summary
6 judgment order, the Court extends the same declaratory relief granted to Petitioners
7 to the Bond Eligible Class as a whole.”

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

11 45. By denying Petitioner a bond hearing under § 1226(a) and asserting that
12 she is subject to mandatory detention under § 1225(b)(2), Respondents violate
13 Petitioner’s statutory rights under the INA and the Court’s judgment in *Maldonado*
14 *Bautista*.

15
16
17 **IX. PRAYER FOR RELIEF**

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

- 19
- 20 a. Assume jurisdiction over this matter;
 - 21 b. Issue a writ of Habeas Corpus requiring Respondents release Petitioner
22 unless they provide a bond hearing under 8 U.S.C. § 1226(a) within
23 seven days;
- 24

- 1 c. Award Petitioner attorney’s fees and costs under the Equal Access to
2 Justice Act (EAJA), as amended, 28 U.S.C. § 2412, and on any other
3 basis justified under law; and
4
5 d. Grant any other and further relief that this Court deems just and proper.
6

7 Date: December 12, 2025

Respectfully submitted,

8 /s/ Rose M. Thompson

9 Rose M. Thompson
10 Attorney at Law
11 *Attorney for Petitioner*
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1 **VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF**
2 **PURSUANT TO 28 U.S.C. § 2242**

3 I am submitting this verification on behalf of the Petitioner because I am one
4 of the Petitioner's attorneys. I have discussed with the Petitioner the events described
5 in this Petition. Based on those discussions, I hereby verify that the statements made
6 in the attached Petition for Writ of Habeas Corpus are true and correct to the best of
7 my knowledge.

8 Date: December 12, 2025

Respectfully submitted,

9
10 /s/ Rose M. Thompson

11 Rose M. Thompson
12 Attorney at Law

13 *Attorney for Petitioner*
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1 Rose Thompson, Cal Bar No. 214003
ROSE IMMIGRATION LAW
2 P.O. Box 23651
3 San Diego, CA 92193
(619) 500-2911

DETAINED

4 *Attorney for Petitioner*

5
6 **IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

7 In the Matter of)

8 **Veronica CRUZ ESCAMILLA,**)

9 *Petitioner,*)

10 v.)

11 **Daniel A. BRIGHTMAN**, in his official)
12 capacity as Field Office Director of the)
13 Immigration and Customs Enforcement,)

14 Enforcement and Removal Operations San)
15 Diego Field Office; **Kristi NOEM**, in her)

16 official capacity as Secretary of the U.S.)
17 Department of Homeland Security; U.S.)

18 **DEPARTMENT OF HOMELAND)
SECURITY; Pamela J. BONDI**, in her)

19 official capacity as U.S. Attorney General;)
20 **EXECUTIVE OFFICE FOR)
IMMIGRATION REVIEW;**)

21 **Christopher J. LAROSE**, in his official)
22 capacity as Warden of the Otay Mesa)

23 Detention Center,)

24 *Respondents*)

Case No.

Agency No. 

**MOTION FOR TEMPORARY
RESTRAINING ORDER AND
SUPPORTING MEMORANDUM**

ORAL ARGUMENT REQUESTED

Expedited hearing requested

25 **MOTION**

MOTION AND MEMORANDUM FOR TEMPORARY RESTRAINING ORDER
Page 1 of 9

1 Petitioner moves the court for the following relief by way of a temporary
2 restraining order (“TRO”):

3 a) Issuance of an immediate order barring the Respondents from removing
4 Petitioner from the Southern District Court’s jurisdiction, should the Petitioner be
5 present in the State of California at the time such order is issued, without notice to
6 the court and approval by the court;

7 b) Issuance of an order to show cause why this petition should not be
8 granted within three (3) days.

9 **SUPPORTING MEMORANDUM**

10 **I. LEGAL STANDARD**

11 The standard for a TRO is the same as for preliminary injunction. See *New*
12 *Motor Vehicle Bd. of Cal. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1347 n.2 (1977). A
13 TRO is “an extraordinary remedy that may only be awarded upon a clear showing
14 that the plaintiff is entitled to such relief.” *Winter v. Nat. Res. Def. Council, Inc.*,
15 555 U.S. 7, 24 (2008).

16 For preliminary relief, a party must show (a) likelihood of success on the
17 merits, (b) likely irreparable harm without preliminary relief, (c) the balance of
18 equities tips in party, and (d) an injunction is in the public interest. *Stormans, Inc.*
19 *v. Selecky*, 586 F.3d 1109, 1127 (9th Cir. 2009) (citing *Winter*, 555 U.S. at 20).

20 As alternative test is if “serious questions going to the merits were raised and
21 the balance of the hardships tips sharply in the plaintiff’s favor,” thereby allowing
22 preservation of the status quo when complex legal questions require further
23 inspection or deliberation. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127,

1 1134- 35 (9th Cir. 2011).

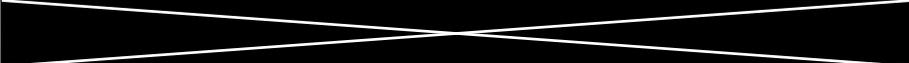
2 **II. ARGUMENT.**

3 **A. Petitioner will likely suffer irreparable harm.**

4 Without a TRO, Respondents will likely transfer Petitioner again out of the
5 jurisdiction of the Southern District of California, as they did on the morning of
6 December 10, 2025, when ICE officers physically removed Petitioner from her
7 cell at the Otay Mesa Detention Center (“OMDC”), without notice to undersigned
8 counsel. The ICE Detainee Locator System listed Petitioner as detained at the
9 OMDC until approximately 2:00 p.m. when it showed “no result” and then at
10 3:03pm indicated that she was being held at San Luis Regional Detention Center
11 in San Luis, AZ, outside this Court’s jurisdiction.

12 Later that same day, counsel filed a Petition for Writ of Habeas Corpus with
13 a Motion for TRO before this Court, Case Number 3:25-cv-03518-RBM-BLM,
14 requesting Petitioner’s return to the OMDC as the transfer impeded her access to
15 counsel and violated her constitutional due process rights. On December 12, 2025,
16 Petitioner’s case was transferred to the U.S. District Court for the District of
17 Arizona. However, by mid-morning, ICE returned her to the OMDC, restoring the
18 jurisdiction of this Court.

19 Given the recent pattern of transfers, Petitioner faces a high risk of being
20 removed again, which would cause her and her family severe and irreparable
21 harm. Petitioner is the primary caregiver for her 17-year-old U.S. citizen son, who

22  Because of these
23 challenges, he depends heavily on Petitioner for guidance, daily care, financial
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1 and emotional stability. If she is removed from the District's jurisdiction, the child
2 will be left without a parent to look after him. This abrupt separation would result
3 in significant psychological and emotional trauma to both Petitioner and her son.

4 Petitioner also provides essential care for her elderly Lawful Permanent
5 Resident father who [REDACTED]

6 [REDACTED]
7 [REDACTED] Petitioner is
8 his main source of physical and emotional support. Her absence would likely
9 cause him significant emotional distress and could lead to a rapid deterioration in
10 his health.

11 Moreover, Petitioner provides financial assistance to her 21-year-old U.S.
12 citizen daughter, who is currently attending university. Without her help, her
13 daughter's ability to dedicate herself to her studies would be compromised,
14 potentially forcing her to work to cover her expenses and jeopardizing her
15 education.

16 Petitioner's further detention would also cause the immediate loss of her
17 employment, which is the sole source of financial support for her family, creating
18 an economic hardship that would exacerbate the emotional distress she and her
19 children are already at risk of experiencing.

20 Additionally, Petitioner heavily relies on the support of her family network,
21 including her children, her U.S. citizens siblings and extended relatives, all of
22 whom reside in the Southern District of California. Removal from this jurisdiction
23 would sever her from this essential support system, leaving her isolated and
24

1 hindering her ability to remain stable.

2
3 **B. Likely to succeed on the merits.**

4 Due process requires government action not be irrational and arbitrary. See
5 *United States v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007).

6 Petitioner is a citizen of Mexico who entered the United States without
7 inspection in or about January 2000 near San Ysidro, California. In 2003, she briefly
8 departed the country, but returned the same year without inspection near San
9 Ysidro, California. On June 5, 2025, she applied for adjustment of status before the
10 USCIS, and on November 24, 2025, she appeared for an adjustment of status
11 interview at the USCIS San Diego Field Office. During her interview, she was
12 detained and taken into custody by U.S. Immigration and Customs Enforcement
13 (“ICE”) officers who detained her at the OMDC.

14 Following her detention, Petitioner, through undersigned counsel, requested
15 an individualized custody hearing pursuant to the class-wide relief established in
16 *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (C.D. Cal.).
17 There, the Central District of California held that the Bond Eligible class consists
18 of all noncitizens in the U.S. who meet three criteria: “(1) have entered or will enter
19 the United States without inspection; (2) were not or will not be apprehended upon
20 arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226 , §
21 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an
22 initial custody determination.”.

1 Petitioner meets all of the requirements as recognized in *Maldonado Bautista*
2 as she entered the U.S. without inspection, was not apprehended at the time of her
3 entry, and is not detained under 8 U.S.C. § 1226, § 1225(b)(1), or § 1231

4 On November 25, 2025, the Court certified the nationwide bond eligible
5 class, and extended the same declaratory relief to all class members, making the
6 judgment binding on all Immigration Judges

7 Despite this clear framework, on December 8, 2025, Petitioner was denied a
8 bond hearing when an Otay Mesa Immigration Judge found, “[t]he Immigration
9 Judge lacks authority to hear the respondent’s request for a bond. Based on the plain
10 language of section 235(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C.
11 § 1225(b)(2)(A), Immigration Judges lack authority to hear bond requests or to
12 grant bond to aliens who are present in the United States without admission. *See*
13 *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).”

14 Respondents are detaining Petitioner in violation of the declaratory judgment
15 issued in *Maldonado Bautista*, the Court should accordingly order Respondents
16 provide a bond hearing under 8 U.S.C. § 1226(a) within seven days per *Maldonado*
17 *Bautista v. Santacruz*’s declaratory relief.

18 As numerous courts have observed, the initial decision to release petitioner
19 under § 1226(a) precludes the government from later “switch[ing] tracks” to subject
20 him to mandatory detention under § 1225(b)(2) because petitioner’s release created
21 a “reliance interest . . . so long as [petitioner] abided by the terms of [his] release.”
22 *Salcedo Aceros v. Kaiser*, No. 25-cv-06924-EMC, 2025 WL 2637503, at *8 (N.D.
23 Cal. Sept. 12, 2025); see also *Oliveros v. Kaiser*, No. 25-cv-07117-BLF, 2025 WL

1 2677125, at *4 (N.D. Cal. Sept. 18, 2025) (“[A]s a matter of statutory authority,
2 ‘the Government cannot simply switch tracks’ from § 1226(a) to § 1225(b)(2).”) (citing Lopez Benitez v. Francis, No. 25- cv-05937-DEH, 2025 WL 2371588, at
3 *5–9 (S.D.N.Y. Aug. 13, 2025) (finding that the petitioner was detained pursuant
4 to § 1226(a) where he had been released under that statute and consistently treated
5 under that detention authority)); Souza v. Robbins, No. 1:25-cv-01597-DJC-JDP,
6 2025 WL 3263897, at *2 (E.D. Cal. Nov. 23, 2025) (finding that the petitioner was
7 released under § 1226(a) and could not subsequently be detained pursuant to §
8 1225(b)(2)); Otero ex rel. CaicedoRuiz v. Kaiser, No. 25-cv-06536-NC, 2025 WL
9 3301056, at *8 (N.D. Cal. Nov. 26, 2025) (“It follows that Caicedo-Ruiz was and
10 is subjected to § 1226(a), and not § 1225(b)(2), and therefore is protected by the
11 Due Process rights created by § 1226(a). A

12
13 **C. Balance of equities and public interest tips sharply in favor of**
14 **TRO.**

15 The balance of hardships tips substantially in favor of Petitioner. “[I]n
16 addition to the potential hardships facing Plaintiffs in the absence of the
17 injunction, the court ‘may consider . . . the indirect hardship to their friends and
18 family members.’” *Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017),
19 quoting *Golden Gate Rest. Ass’n v. City & Cty. of San Francisco*, 512 F.3d 1112,
20 1126 (9th Cir. 2008).

21 Removal from this jurisdiction would separate Petitioner from her family,
22 which includes a minor U.S. citizen son, aged 17, and her lawful permanent
23 resident father as well as an adult U.S. citizen daughter, aged 21. The loss of
24

1 parental guidance, emotional and physical support, combined with the loss of
2 financial security, would cause significant emotional distress, fear and anxiety for
3 her family.

4 Petitioner's son relies on her for basic daily needs, including meals
5 transportation, schooling and supervision. Disruption of these routines would
6 interfere with his development and stability. Additionally, no one else is able to
7 provide full-time care for him, leaving him unprotected. Given this sudden
8 detention, any harm resulting from continued separation would be immediate and
9 irreparable. Preventing this separation is crucial for the preservation of her son's
10 physical, emotional and psychological well-being.

11 The merits of the petition weigh the public interest toward a TRO.
12 "Generally, public interest concerns are implicated when a constitutional right has
13 been violated, because all citizens have a stake in upholding the Constitution."
14 *Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005); see also *Zepeda v. U.S.*
15 *I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983) ("INS cannot reasonably assert that it is
16 harmed in any legally cognizable sense by being enjoined from constitutional
17 violations"). "The public interest also benefits from a preliminary injunction that
18 ensures that federal statutes are construed and implemented in a manner that
19 avoids serious constitutional questions." *Rodriguez v. Robbins*, 715 F.3d 1127,
20 1146 (9th Cir. 2013).

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1 **III. CONCLUSION**

2 For the above reasons, a TRO should be granted.

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4 Date: December 12, 2025

Respectfully submitted,

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6 /s/ Rose M. Thompson

Rose M. Thompson

7 Attorney at Law

8 *Attorney for Petitioner*

Rose Thompson, Cal Bar No. 214003
ROSE IMMIGRATION LAW
P.O. Box 23651
San Diego, CA 92193
(619) 500-2911

DETAINED

Attorney for Petitioner

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

In the Matter of)

Veronica CRUZ ESCAMILLA,)

Petitioner,)

v.)

Daniel A. BRIGHTMAN, in his)
official capacity as Field Office)

Director of the Immigration and)
Customs Enforcement, Enforcement)

and Removal Operations San Diego)
Field Office; **Kristi NOEM,** in her)

official capacity as Secretary of the)
U.S. Department of Homeland)

Security; **U.S. DEPARTMENT OF)
HOMELAND SECURITY; Pamela)**

J. BONDI, in her official capacity as)
U.S. Attorney General; **EXECUTIVE)**

**OFFICE FOR IMMIGRATION)
REVIEW; Christopher J. LAROSE,**)

in his official capacity as Warden of the)
Otay Mesa Detention Center,)

Respondents)

Case No.

Agency No.



**DECLARATION IN SUPPORT OF
MOTION FOR TEMPORARY
RESTRAINING ORDER**

**ORAL ARGUMENT
REQUESTED**

Expedited hearing requested

1 Under penalty of perjury, the undersigned does solemnly declare:

- 2 1. My name is Rose M. Thompson. I am a member of the California State Bar
3 and admitted to practice before this court. If called upon to testify in this
4 matter, I would be able to give the following evidence:
- 5 2. Petitioner is a citizen of Mexico who entered the United States without
6 inspection near San Ysidro, California in or about January 2000. She briefly
7 exited in 2003 and reentered without inspection in 2003. She was *not* caught
8 after her most recent entry.
- 9 3. On November 24, 2025, Petitioner appeared for her Adjustment of Status
10 interview at the USCIS San Diego Field Office. During that interview, she
11 was detained by U.S. Immigration and Customs Enforcement (“ICE”) and
12 taken into custody at the Otay Mesa Detention Center (“OMDC”).
- 13 4. Following her detention, I requested a bond hearing on her behalf pursuant
14 to the class-wide relief established in *Maldonado Bautista v. Santacruz*, No.
15 5:25-CV-01873-SSS-BFM (C.D. Cal.).
- 16 5. On December 8, 2025, an Otay Mesa Immigration Judge denied Petitioner’s
17 request for a bond re-determination hearing, stating that “[t]he Immigration
18 Judge lacks authority to hear the respondent’s request for a bond. Based on
19 the plain language of section 235(b)(2)(A) of the Immigration and
20 Nationality Act, 8 U.S.C. § 1225(b)(2)(A), Immigration Judges lack
21 authority to hear bond requests or to grant bond to aliens who are present in
22 the United States without admission. See *Matter of Yajure Hurtado*, 29 I&N
23 Dec. 216 (BIA 2025).”
- 24

- 1 6. On December 8, 2025, the San Diego AUSA office was notified via email
2 that a Habeas petition and TRO would be filed. No response was received.
- 3 7. On December 10, 2025, at approximately 5:00 a.m., ICE officers physically
4 removed Petitioner from her cell at the OMDC, without notice to
5 undersigned counsel, whose office had been monitoring the ICE Detainee
6 Locator System, which continued to list Petitioner as detained at the OMDC
7 until approximately 2:00 p.m. when it showed “no result” and then at
8 3:03pm indicated that she was being held at San Luis Regional Detention
9 Center in San Luis, AZ, outside this Court’s jurisdiction. Later that same
10 day, undersigned counsel filed a petition for writ of Habeas Corpus before
11 this Court, Case Number 3:25-cv-03518-RBM-BLM, requesting
12 Petitioner’s return to the OMDC as the transfer impeded her access to
13 counsel and violated her constitutional due process rights.
- 14 8. On December 12, 2025, Petitioner’s case was transferred to the U.S.
15 District Court for the District of Arizona. However, by mid-morning that
16 day, ICE returned Petitioner to the OMDC, restoring the jurisdiction of this
17 Court. Given this return, Petitioner re-filed the Petition for Writ of Habeas
18 9. I have conducted an appropriate inquiry into the circumstances of this case,
19 and I believe that all factual allegations contained in the Petition for Habeas
20 Corpus are true.

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Date: December 12, 2025

Respectfully submitted,

/s/ Rose M. Thompson
Rose M. Thompson
Attorney at Law

Attorney for Petitioner