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7 **UNITED STATES DISTRICT COURT**
8 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

9 Omar Catalbas,

10 Petitioner/Plaintiff,

11
12 vs.

13 CHRISTOPHER J. LAROSE, Warden,
14 Otay Mesa Detention Center; DANIEL
15 BRIGHTMAN, Field Office Director, San
16 Diego Office of Detention and Removal;
17 TODD M. LYONS, Acting Director, U.S.
18 Immigration and Customs Enforcement;
19 and PAMELA BONDI, Attorney General,
20 U.S. Department of Justice; and KRISTI
21 NOEM, Secretary, U.S. Department of
22 Homeland Security

23 Respondents/

24 Defendants

Case Number:
3:25-CV-3579-LL-DDL

TRAVERSE

TABLE OF AUTHORITIES

1
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CASES

Deniz v. Larose, 3:25-cv-3588-CAB-DEB, 2025 WL 3719320 (S.D. Cal. Dec. 23, 2025)3

Doe v. Noem, No. 25-cv-00633, 2025 WL 1141279 (W.D. Wash. Apr. 17, 2025).....2

GoTo.com, Inc. v. Walt Disney Co., 202 F.3d 1199 (9th Cir. 2000)2

Kuzmenko v. Phillips, No. 25-CV-00663, 2025 WL 779743 (E.D. Cal. Mar. 10, 2025)3

Maldonado Bautista v. Santacruz, 5:25-CV-01873-SSS-BFM, 2025 WL 3678487 (C.D. Cal. Dec. 18, 2025). 1, 4, 5,
6

Matter of Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025) 1, 6

Noori v. Larose, 25-cv-1824-GPC-MSB, 2025 WL 2800149 (S.D. Cal. Oct. 1, 2025)3

Ortiz Donis v. Chesnut, 1:25-CV-01228-JLT-SAB, 2025 WL 2879514 (E.D. Cal. Oct. 9, 2025).....2

Pinchi, v. Noem, 792 F. Supp. 3d 1025 (N.D. Cal. 2025).....2

Prieto-Cordova v. LaRose, et al., No. 3:25-cv-2824-CAB-DOL, 2025 WL 3228953 (S.D. Cal. Nov. 19, 2025)3

Shen v. Larose, 25cv3235-GPC-BLM, 2025 WL 3552747 (S.D. Cal. Dec. 11, 2025).....3

Zinerman v. Burch, 494 U.S. 113 (1990).....2

REGULATIONS

8 C.F.R. §1003.19(i)(2)7

8 C.F.R. §1236.1(d)(1)5

1 Petitioner submits this Traverse in response to Respondents' December 29,
2 2025 Return.

3 Respondents have conceded that Respondent is detained pursuant to 8 USC
4 §1226(a), and is thus eligible for bond under *Maldonado Bautista v. Santacruz*,
5 5:25-CV-01873-SSS-BFM, 2025 WL 3678487 (C.D. Cal. Dec. 18, 2025).
6

7 Petitioner, though, does not seek a bond hearing. Instead, we seek immediate
8 release as his detention is unlawful.
9

10 Ordering a bond hearing is not an adequate remedy, because 1) Petitioner
11 was re-detained in violation of his Due Process rights, and the only proper relief is
12 his immediate release to restore the status quo ante, 2) Many IJs continue to
13 disregard *Maldonado Bautista*, asserting that they lack jurisdiction over bond
14 pursuant to *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), and 3) The
15 Immigration Court is no longer independent and impartial, as it has become a
16 highly politicized entity controlled by the Executive Branch in which judges who
17 do not rule in favor of the Administration face termination.
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21 **A. The only appropriate remedy for Petitioner's unlawful**
22 **detention is his immediate release**

23 Petitioner does not seek a bond hearing before an Immigration judge. He seeks
24 immediate release under the same conditions as his March 18, 2024 order of release
25 on recognizance. Ex. 2.
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1 When DHS releases a noncitizen on his own recognizance, they are making
2 a determination that he is neither a flight risk nor a danger to his community. *See*
3 *Ortiz Donis v. Chesnut*, 1:25-CV-01228-JLT-SAB, 2025 WL 2879514, at *1 (E.D.
4 Cal. Oct. 9, 2025); *Pinchi, v. Noem*, 792 F. Supp. 3d 1025, 1034 (N.D. Cal. 2025).
5 There is no allegation that Petitioner has somehow transformed into a danger or
6 flight risk since his prior release. To the contrary, at the time of his re-arrest on June
7 5, 2025, DHS noted that he had no criminal history and that he was detained when
8 he dutifully attended his immigration court hearing. Ex. 4.

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11 Procedural due process generally “requires some kind of a hearing before the
12 State deprives a person of liberty or property.” *Zinerman v. Burch*, 494 U.S. 113,
13 127 (1990). Respondents violated Petitioner’s due process rights by detaining him
14 without notice or hearing, and Petitioner should not be subjected to a bond hearing,
15 nor should he be required to essentially pay a ransom, to buy his freedom.

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18 Remediating Petitioner’s unlawful arrest requires his immediate release from
19 custody to be restored to the status quo ante. The status quo ante refers to “the last
20 uncontested status which preceded the pending controversy.” *Doe v. Noem*, No. 25-
21 cv-00633, 2025 WL 1141279, at *9 (W.D. Wash. Apr. 17, 2025) (citing *GoTo.com,*
22 *Inc. v. Walt Disney Co.*, 202 F.3d 1199, 1210 (9th Cir. 2000)). In other words, the
23 status quo ante is the moment prior to the Petitioner’s illegal
24 detention. *See Kuzmenko v. Phillips*, No. 25-CV-00663, 2025 WL 779743, at *2

1 (E.D. Cal. Mar. 10, 2025) (granting TRO requiring immediate release of the
2 petitioner, as a restoration of the status quo).

3
4 Though Respondents now concede that Petitioner is detained under §1226(a)
5 and thus entitled to a bond hearing, they do not explain how Petitioner was lawfully
6 detained in the first place. Granting Petitioner a bond hearing now would not remedy
7 the Fifth Amendment violation he has already experienced. Only release from
8 detention can accomplish that. *See Deniz v. Larose*, 3:25-cv-3588-CAB-DEB, 2025
9 WL 3719320 (S.D. Cal. Dec. 23, 2025); *Shen v. Larose*, 25cv3235-GPC-BLM, 2025
10 WL 3552747 (S.D. Cal. Dec. 11, 2025) (noncitizen released on recognizance, then
11 re-detained without notice of hearing granted immediate release to restore status
12 quo); *Noori v. Larose*, 25-cv-1824-GPC-MSB, 2025 WL 2800149 (S.D. Cal. Oct. 1,
13 2025) (noncitizen released, then re-detained without notice or hearing when leaving
14 hearing granted immediate release); *Prieto-Cordova v. LaRose*, et al., No. 3:25-cv-
15 2824-CAB-DOL, 2025 WL 3228953 (S.D. Cal. Nov. 19, 2025) (immediate release
16 ordered where re-detention was unlawful).

17
18 A bond hearing before an IJ is a reconsideration of the Respondents' decision
19 to detain. 8 U.S.C. § 1226(a); 8 CFR § 1236.1(d)(1). However, the Respondents' re-
20 detention of the Petitioner was itself illegal. The proper response to this violation of
21 Constitutional rights, is to declare the detention unlawful and order release. To order
22 a custody redetermination by an IJ is to tacitly condone the Respondents' re-
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1 detention of Petitioner. Respondents have illegally incarcerated Petitioner for seven
2 months to date. He should not be detained for even one day more, nor should he have
3 to pay to remedy Respondents' violation of his due process rights.
4

5 **B. Immigration Judges continue to ignore *Maldonado Bautista* and**
6 **decline to exercise jurisdiction over bond hearings for**
7 **noncitizens present in the U.S. without admission or parole**

8 If this Court declines to order the immediate release of Petitioner, there is no
9 guarantee that a bond hearing will occur without a specific order from this court. It
10 matters not that Respondents concede in these proceedings that Petitioner is entitled
11 to a bond hearing, as many immigration courts continue to ignore *Maldonado*
12 *Bautista* and deny bond hearings to noncitizens who entered the U.S. without being
13 admitted or paroled.
14

15 The *Maldonado Bautista* Court noted with concern that the DOJ has instructed
16 IJs to disregard its order, and that "Immigration judges continue to deny bond
17 hearings for members of the Bond Eligible Class" despite the Court's determination
18 that the DHS Policy is unlawful. *Maldonado Bautista*, 2025 WL 3678487, at *3.
19

20 Nor is the DOJ's defiance of the *Maldonado Bautista*'s Court order a one-off.
21 The DOJ's contempt for the judicial branch is made manifest by a carefully
22 researched catalogue of "noncompliance with judicial orders" published by Just
23 Security, an independent, non-partisan law and policy journal based at the New York
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1 University School of Law. Just Security's publication discloses DOJ's repeated
2 defiance of court orders under this Administration. Ex. 11.

3
4 Ordering Petitioner's immediate release is the only way to ensure that his
5 rights are protected and his liberty restored.

6 **C. Immediate release is the only way to bring finality to this**
7 **matter, as Respondents have reserved the right to withdraw**
8 **their consent to a bond hearing in the event of "a stay of**
9 **enforcement of the *Bautista* final judgment, appellate relief, or**
a change in DHS policy"

10 Respondents state in their response that they "reserve the right to supplement
11 this response in the event of a stay of enforcement of the *Bautista* final judgment,
12 appellate relief, or a change in DHS policy." It is not just possible, but likely, that
13 the Administration will challenge the District Court's *Maldonado Bautista* decision
14 and seek a stay. Petitioner should not be expected to remain in detention while the
15 *Maldonado Bautista* parties battle out the merits of the case at the appellate level.
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17
18 Moreover, if this Court orders a bond hearing before an IJ, DHS may appeal
19 any grant of bond and invoke an automatic stay of the noncitizen's release. 8
20 C.F.R. §1003.19(i)(2). Such a stay would further prolong Petitioner's unlawful
21 detention which has already stretched on for seven months.
22

23
24 In order to ensure that Petitioner does not have to return to this Court to seek
25 vindication of his due process rights, immediate release is required.

26 **D. Immigration courts are unable to exercise impartial judgment**
27 **in the current political climate as they are employees of the**
28

1 **Executive Branch and risk being terminated if they do not rule**
2 **as instructed by the DOJ and DHS**

3 As amply demonstrated by the litigation in *Maldonado Baustista*, the
4 immigration courts can no longer be considered neutral adjudicators. Rather, they
5 are under the legal authority of the Attorney General/Department of Justice who is
6 a Respondent in this case. The Department of Justice is not impartial and should not
7 be given the authority to decide whether Petitioner must remain incarcerated.
8

9 The *Maldonado Bautista* decision stated that it is “troubling” that the
10 Respondents in that action, including the DOJ, directed “IJs that they should
11 *disregard* this Court’s orders.” The Court referred to a DOJ memo instructing IJs to
12 “hold the position that *Yajure Hurtado* remains good law.” *Maldonado Bautista*,
13 Civil Minutes, Dec. 18, 2025. Ex. 10.
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15 Another DOJ memo from August 2025 patently reminded immigration
16 judges that the Attorney General sets policy for the immigration courts, and that a
17 “determination and ruling by the Attorney General with respect to all questions of
18 law *shall* be controlling.” Ex. 12. The memo, ironically titled “Adjudicator
19 Independence and Impartiality,”¹ warns that IJs are “inferior officers subject to
20 both appointment and removal by the Attorney General,” and that the President
21 may remove those who “disobey his commands,” and “those who exercise their
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27 ¹ DOJ Memo to EOIR, Adjudicator Independence and Impartiality, Aug. 22, 2025, PM 25-42.
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1 discretion in a way that is not intelligent or wise, those who have different views of
2 policy. . .and those in whom he has simply lost confidence.” IJs with “statistically
3 improbable outcome metrics” (high grant rates) “warrant[] close examination and
4 potential action.” *Id.* It is not possible for IJs to exercise independent and impartial
5 judgment when their jobs are on the line.
6

7
8 Since President Trump took office, 1 in every 7 immigration judges have
9 been dismissed from their positions, often for ideological/political differences. Ex.

10 13. To fill these vacancies, DHS is recruiting for “Deportation Judges,” and
11 military attorneys with no prior immigration experience are being appointed. Ex.
12

13 14. It is difficult to perceive how immigration judges recruited by DHS as
14 “deportation judges” can be considered neutral.
15


16 The Immigration Court can no longer be considered unbiased, and it makes
17 little sense for the Executive Branch to sit as both party to and adjudicator of a bond
18 hearing, particularly when bucking the Administration’s immigration agenda is
19 grounds for the IJ’s termination
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21
22 For the above-stated reasons, we ask that Petitioner be released from custody
23 immediately. Should this Court instead determine that a bond hearing is necessary,
24 we ask that it be conducted by this Court due to concerns regarding the neutrality of
25 the Department of Justice’s immigration courts under the current administration.
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Date: December 31, 2025

Respectfully submitted,



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