UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. _____

KHAIR AHMAD NAIKPAY,

Plaintiff,

v.

ELISA M. SUKKAR,
Assistant Chief Immigration Judge,
Miami Krome (Detained) Immigration Court,
Executive Office for Immigration Review,

FIELD OFFICE DIRECTOR,
Miami Field Office,
U.S. Immigration and Customs Enforcement,

Defendants.
_____/

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS
AND COMPLAINT FOR INJUNCTIVE RELIEF

The plaintiff, Khair Ahmad Naikpay, submits this Verified Petition for Writ of Habeas Corpus and Complaint for Injunctive Relief, by and through undersigned counsel, and alleges:

INTRODUCTION

1. The plaintiff is an Afghan national who has resided in the United States for over three years since he arrived in Calexico, California on December 12, 2022. **App.**, at 1.

2. Upon arrival, the plaintiff was apprehended by Customs and Border Patrol (CBP) and expressed a fear of returning to Afghanistan. **App.**, at 2.

3. Upon information and belief, the plaintiff was placed in expedited removal proceedings pending a credible fear interview, but was never served with the corresponding paperwork.

4. On January 23, 2023, the plaintiff was released from custody, without a credible fear interview, and issued a Form G-56, Call-In Letter requiring him to report to Immigration and Customs Enforcement (ICE). **App.**, at 3.

5. On January 29, 2023, the plaintiff was issued an Interim Notice Authorizing Parole allowing him to remain in the country while he complied with his ICE reporting requirements. **App.**, at 4-5.

6. On October 26, 2023, the plaintiff affirmatively applied for asylum before the U.S. Citizenship and Immigration Services (USCIS). **App.**, at 6.

7. On March 28, 2024, USCIS denied the plaintiff's application for employment authorization based upon his parole out custody, informing him for the first time that he had been, allegedly, subjected to expedited removal upon his arrival in the United States. **App.**, at 7–13.

8. On July 21, 2025, USCIS issued a discretionary Notice to Appear (NTA)[1] against the plaintiff which placed in him removal proceedings under section 8 U.S.C. § 1229a. **App.**, at 14.

9. By issuing a discretionary NTA, the government necessarily "concluded," *Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018), whatever prior expedited removal proceedings might have been pending, and thus concluded the plaintiff's (supposed) subjection to mandatory detention under § 1225(b)(1)(B)(iii)(IV). See *id.* ("Read most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants for admission until certain proceedings have concluded.").

10. With the discretionary NTA's initiation of new and full removal proceedings before

[1] A discretionary NTA is an NTA issued against someone who does not have rights to a full removal proceeding under 8 U. S. C. § 1229a, such as a person in expedited removal proceedings who has not yet or been able to be transferred into full removal proceedings after demonstrating a credible fear of persecution or torture under § 1225(b)(1)(B)(ii) and its implementing regulations. **App.**, at 14 (boxes regarding credible fear and related regulations are unchecked).

an Immigration Judge under § 1229a, any future detention of the plaintiff would have to be governed by § 1226(a). **App.**, at 14–16.

11. Later, on December 4, 2025, ICE agents arrested the plaintiff at his workplace and has held him in civil immigration custody since that time. **App.**, at 17.

12. By freshly detaining the plaintiff on December 4, 2025, ICE made a new "initial custody determination" that should be reviewable by an immigration judge under the implanting regulations for 8 U.S.C. § 1226(a). See 8 CFR §§ 1236.1(d) ("Appeals from custody determination"), (d)(1) ("Application to immigration judge. After an **initial custody determinatio**n by the district director, including the setting of a bond, the respondent may, at any time before an order under 8 CFR part 1240 becomes final, request amelioration of the conditions under which he or she may be released.") (emphasis added), and 1003.19(a) (custody review by an immigration judge).

13. The plaintiff is being held now at the so-called "Florida Soft Side South" (Alligator Alley) facility in Ochopee, Florida. **App.**, at 17.

14. The plaintiff's immigration custody is not lawfully authorized under 8 U.S.C. § 1225(b)(2)(A). Rather, his immigration custody is governed by § 1226(a), and he is entitled by agency rules and regulations to a bond hearing.

15. Notwithstanding the orders in *Bautista* v. *Santacruz*, — F. Supp. 3d —, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3289861 (C.D. Cal. Nov. 20, 2025) (partial summary judgment on declaratory relief), and *Bautista* v. *Santacruz*, — F.R.D. —, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025) ("Accordingly, Petitioners satisfy Rule 23(b)(2). When considering this determination with the MSJ Order, the Court extends the same declaratory relief granted to Petitioners to the Bond Eligible Class as a whole."), the Department

of Justice is taking the position that immigration judges must still follow the BIA's precedent in *Matter of Yajure Hurtado*. **App.**, at 18-27.

16. Per upper-level orders, immigration judges across the country are taking the position that the *Bautista* orders do not alter the binding nature of *Matter of Yajure Hurtado* upon them. **App.**, at 18-27.

17. Additionally, the Department of Justice has taken a similar position in habeas litigation. **App.**, at 28-38.

18. First, the petitioner brings an action for injunctive relief under the Administrative Procedure Act, 5 U. S. C. § 701, et seq., against the Assistant Chief Immigration Judge for the Miami Krome (Detained) Immigration Court, of the Department of Justice's Executive Office for Immigration Review, to enforce the *Bautista* court's class wide declaratory relief order in the plaintiff's favor.

19. Second, the plaintiff brings a non-core habeas petition for injunctive relief ordering that he be afforded a bond hearing in accordance with 8 U. S. C. § 1226 and its implementing regulations and case law.

PARTIES

20. The plaintiff, **Khair Ahmed Naikpay**, is currently detained for civil immigration purposes at the so-called "Florida Soft Side South" (Alligator Alley) facility in Ochopee, Florida. **App.**, at 17. He is in pending removal proceedings before, and is within the custody review jurisdiction of, the Miami Krome (Detained) Immigration Court.

21. The defendant **Elissa M. Sukkar** is sued in her official capacity as the Assistant Chief Immigration Judge (ACIJ) for the Miami Krome (Detained) Immigration Court, Executive Office for Immigration Review. In this capacity, she "oversee[s] the operations of" the Miami

Krome (Detained) Immigration Court. Immigr. Ct. Pract. Manual ch. 1.3(a)(4), available at: https://www.justice.gov/eoir/reference-materials/ic (accessed Dec. 8, 2025); see also 8 CFR §§ 1003.9(a) ("The Director may designate immigration judges to serve as Deputy and Assistant Chief Immigration Judges as may be necessary to assist the Chief Immigration Judge in the management of the OCIJ."), 1003.9(b) (including the power to "[i]ssue operational instructions and policy, including procedural instructions regarding the implementation of new statutory or regulatory authorities" among others).

22. The defendant **Field Office Director**, Miami Field Office, U.S. Immigration and Customs Enforcement, is sued in his or her official capacity. In this capacity, the Field Office Director has jurisdiction over the detention facility in which the plaintiff is held, is authorized to release the plaintiff, has "the power to produce" the plaintiff, *Munaf* v. *Geren*, 553 U. S. 674, 686 (2008), and is a legal custodian of the plaintiff.

JURISDICTION

23. This action arises under the Constitution of the United States of America, 28 U. S. C. § 2241 *et seq*. (habeas corpus), the Immigration and Nationality Act (INA), 8 U. S. C. § 1101 *et seq*., and Title 8 of the Code of Federal Regulations.

24. The Court has jurisdiction over this case under 28 U. S. C. § 2241 (habeas corpus), and § 1331 (federal question).

25. The Court may grant relief pursuant to the U.S. Const., art. I, § 9, cl. 2 (Suspension Clause), 5 U. S. C. §§ 701, et seq. (Administrative Procedure Act), 28 U. S. C. § 1651 (All Writs Act), 28 U. S. C. §§ 2201–02 (declaratory relief), and 28 U. S. C. § 2241 (habeas corpus).

VENUE

26. Venue is proper in this district for the plaintiff's Administrative Procedure Act

claim in Count I because "a defendant in the action resides" in this district, 28 U. S. C. § 1391(e)(1)(A), and because "a substantial part of the events or omissions giving rise to the claim occurred" in this district, § 1291(e)(1)(B).

27. As for the plaintiff's habeas claim under Count II, it is a non-core habeas claim seeking injunctive relief in the form of a bond hearing where a determination as to whether he should be released (or not) will be made. Compare *Garland* v. *Aleman Gonzalez*, 596 U. S. 543, 551 (2022) ("Both District Courts entered injunctions requiring the Government to provide bond hearings . . . ."); *Dep't of Homeland Sec.* v. *Thuraissigiam*, 591 U. S. 103, 118 (2020) ("respondent did not ask to be released;" "[s]uch relief might fit an injunction . . . but that relief falls outside the scope of the common-law habeas writ"); *Wilkinson* v. *Dotson*, 544 U. S. 74, 80 (2005) ("an otherwise proper injunction enjoining the *prospective* enforcement of invalid prison regulations" **does not "necessarily . . . mea[n] immediate release or a shorter period of incarceration;" it "attack[s] only the wrong procedures, not the wrong result"**) (emphasis added) (citation and punctuation omitted); with *Preiser* v. *Rodriguez*, 411 U. S. 475, 489 (1973) (a "challenge to the fact or duration of [one's] confinement" lies at "the core of habeas corpus"); see also *Bautista* v. *Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025) ("Any differences that may exist in class members' entitlement to be released is a different matter than their entitlement to a hearing.").

28. Like here, "the immediate physical custodian rule, by its terms, does not apply when a habeas petitioner challenges something other than his present physical confinement." *Rumsfeld* v. *Padilla*, 542 U. S. 426, 438 (2004).

29. In such cases, like here, "a habeas petitioner who challenges a form of 'custody' other than present physical confinement may name as respondent the entity or person who

exercises legal control with respect to the challenged 'custody.' " *Padilla*, 542 U. S., at 438 (citation omitted).

30. This is especially true "when a federal immigrant detainee is housed in a contract facility, the federal official charged with overseeing the detainees in that facility is more akin to the 'immediate custodian'—the individual with the power to produce the body of the petitioner before the court—than a non-federal warden." *Masingene* v. *Martin*, 424 F. Supp. 3d 1298, 1302 (S.D. Fla. 2020) (citing *Padilla*, 542 U. S., at 434).

31. Therefore, venue is proper in this district under 28 U. S. C. § 2241 because this is the district where the "the custodian can be reached by service of process." *Rasul* v. *Bush*, 542 U. S. 466, 478–79 (2004).

EXHAUSTION OF ADMINISTRATIVE REMEDIES

32. For the plaintiff's APA claim under Count I, there are no administrative remedies available that the plaintiff is required to exhaust under *Darby* v. *Cisneros*, 509 U. S. 137 (1993).

33. As for the plaintiff's Count II habeas claim, there are no administrative remedies that he must pursue under the futility rule. *Boffill* v. *Field Off. Dir.*, No. 25-CV-25179-BECERRA, 2025 WL 3246868, at *4–*5 (S.D. Fla. Nov. 20, 2025) (collecting cases).

FACTUAL BACKGROUND

34. The plaintiff is an Afghan national who has resided in the United States for over three years since he arrived in Calexico, California on December 12, 2022. **App.**, at 1.

35. Upon arrival, the plaintiff was apprehended by Customs and Border Patrol and expressed a fear of returning to Afghanistan. **App.**, at 2.

36. Upon information and belief, the plaintiff was placed in expedited removal proceedings pending a credible fear interview, but was never served with the corresponding

paperwork.

37. On January 23, 2023, the plaintiff was released from custody, without a credible fear interview, and issued a Form G-56, Call-In Letter requiring him to report to ICE. **App.**, at 3.

38. On January 29, 2023, the plaintiff was issued an Interim Notice Authorizing Parole allowing him to remain in the country while he complied with his ICE reporting requirements. **App.**, at 4-5.

39. On October 26, 2023, the plaintiff affirmatively applied for asylum before the USCIS. **App.**, at 6.

40. On March 28, 2024, USCIS denied the plaintiff's application for employment authorization based upon his parole out custody, informing him for the first time that he had been, allegedly, subjected to expedited removal upon his arrival in the United States. **App.**, at 7–13.

41. On July 21, 2025, USCIS issued a discretionary NTA against the plaintiff which placed in him removal proceedings under section 8 U.S.C. § 1229a. **App.**, at 14.

42. By issuing a discretionary NTA, the government necessarily concluded whatever prior expedited removal proceedings might have been pending, and thus concluded the plaintiff's (supposed) subjection to mandatory detention under § 1225(b)(1)(B)(iii)(IV). *Jennings*, 583 U.S. at 297.

43. With the discretionary NTA's initiation of new and full removal proceedings before an Immigration Judge under § 1229a, any future detention of the plaintiff would have to be governed by § 1226(a). **App.**, at 14–16.

44. Later, on December 4, 2025, ICE agents arrested the plaintiff at his workplace and has held him in civil immigration custody since that time. **App.**, at 17.

45. By freshly detaining the plaintiff on December 4, 2025, ICE made a new "initial

custody determination" that should be reviewable by an immigration judge under the implanting regulations for 8 U. S. C. § 1226(a). See 8 CFR §§ 1236.1(d) ("Appeals from custody determination"), (d)(1) ("Application to immigration judge. After an **initial custody determinatio**n by the district director, including the setting of a bond, the respondent may, at any time before an order under 8 CFR part 1240 becomes final, request amelioration of the conditions under which he or she may be released.") (emphasis added), and 1003.19(a) (custody review by an immigration judge).

46. The plaintiff remains detained at the Florida Soft Side South facility in Ochopee, Florida. **App.**, at 17.

47. On November 20, 2025, the District Court for the Central District of California entered a partial summary judgment order granting, *Bautista* v. *Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3289861, at *11 (C.D. Cal. Nov. 20, 2025), declaratory relief that the government's policies relating to denying bond hearings is unlawful, *id.*, at *2, but denying entry of final judgment "[b]ecause Petitioners have filed a pending motion for class certification," *id.*, at *11.

48. Five days later, the District Court for the Central District of California certified the following class:

> **Bond Eligible Class:** All noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination.

Bautista v. *Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025).

49. Further, the Court extended its partial summary judgment order in favor of the

entire class. *Bautista*, 2025 WL 3288403, at *9 ("When considering this determination with the MSJ Order, the Court extends the same declaratory relief granted to Petitioners to the Bond Eligible Class as a whole.").

50. On December 4, 2025, the plaintiffs-petitioners in the *Bautista* case filed an application for reconsideration and clarification "to address the government's ongoing refusal to comply with this Court's orders and provide class members with bond hearings," and requesting, among other things, entry of a final judgment. Ex Parte Application for Reconsideration and Clarification (D.E. 87), *Maldonado Bautista* v. *Noem*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. Dec. 4, 2025).

51. The next day, the Court entered an order requiring the government to respond by 12 pm on December 10, 2025. (In Chambers) Order (D.E. 89), *Maldonado Bautista* v. *Noem*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. Dec. 5, 2025)

52. The plaintiff is a member of the class certified by the *Bautista* court.

ALLEGATIONS OF LEGAL ERROR

53. As several Judges in this District have already held, the plaintiff and persons like him are not subject to mandatory detention under 8 U. S. C. § 1225(b)(2), and thus have a right to pursue the custody review processes afforded by § 1226 and its implementing regulations and case law. E. g., Order (D.E. 6) at *7, *Franco* v. *Att'y Gen.*, No. 25-25466-CV-WILLIAMS (S.D. Fla. Dec. 1, 2025) ("The IJ and Respondents' interpretation of the INA 'directly contravenes the statute, disregards decades of settled precedent,' and is erroneous.") (citations omitted); *id.*, at *11 n. 4 (noting "the continued onslaught of litigation being generated by Respondents' widespread illegal detention practices"); *id.*, at *7–*12 (collecting cases across the country); *Fernandez* v. *Ripa*, Order (D.E. 17) at *10–*16, 1:25-cv-24981-LEIBOWITZ (S.D. Fla. Nov. 25, 2025); *Ardon-*

Quiroz v. *Assistant Field Off. Dir.*, No. 25-CV-25290-BECERRA, 2025 WL 3451645, at *5–*7 (S.D. Fla. Dec. 1, 2025); *Boffill* v. *Field Off. Dir.*, No. 25-CV-25179-BECERRA, 2025 WL 3246868, at *5–*7 (S.D. Fla. Nov. 20, 2025); *Puga* v. *Assistant Field Off. Dir., Krome N. Serv. Processing Ctr.*, No. 25-24535-CIV-ALTONAGA, 2025 WL 2938369, at *3–*5 (S.D. Fla. Oct. 15, 2025); *Merino* v. *Ripa*, No. 25-23845-CIV-MARTINEZ, 2025 WL 2941609, at *3 (S.D. Fla. Oct. 15, 2025); see also *id.*, at *4 (ruling that automatic stay regulations violate procedural due process).

54. It cannot be said that someone who is present in the United States who has not been admitted, § 1225(a)(1), but is not in the process of "arriv[ing] in the United States," cannot be said to be actually "apply[ing] for" §1101(a)(4), "admission," § 1101(a)(13)(A), because they are no longer in a position or state where they can seek "lawful entry . . . into the United States after inspection and authorization by an Immigration Officer," § 1101(a)(13)(A); *State* v. *Meadows*, 88 F. 4th 1331, 1339 (CA11 2023).

55. As for the plaintiff, although he was apprehended while arriving in the United States and was previously being processed for a proceeding under § 1229(a), that proceeding came to an end when the government chose to dismiss those proceedings.

56. "Read most naturally, § 1225(b)(1) and (b)(2) thus mandate detention of applicants for admission until certain proceedings have concluded." *Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018) (emphasis added).

57. The government "**concluded**," *id.* (emphasis added), the removal proceedings against the plaintiff via dismissal of his affirmative asylum claim. **App**., at 7. At that point, the USCIS officer issued a discretionary Notice to Appear placing the plaintiff in full removal proceedings under § 1226. **App**., at 15. See *Jennings v. Rodriguez*, 583 U.S. at 297, whatever prior

expedited removal proceedings might have been pending, and thus concluded the plaintiff's (supposed) subjection to mandatory detention under § 1225(b)(1)(B)(iii)(IV). *Id.* ("Read most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants for admission until certain proceedings have concluded."). *Id.*

58. The fact that the plaintiff is a class member in the *Bautista* case does not preclude him from seeking individualized injunctive relief via the APA or habeas.

59. First, class wide injunctive relief was prohibited by 8 U. S. C. § 1252(f) in the *Bautista* case, which is why the Court's order there was declaratory in nature. *Bautista*, 2025 WL 3288403, at *7–*8.

60. Thus, individualized injunctive relief (via the APA or habeas) by class members is not barred by claim preclusion because such relief was not and is not being sought by the class representatives in the *Bautista* case. *Hiser* v. *Franklin*, 94 F. 3d 1287, 1291 (CA9 1996) ("Hiser's claims for damages and individual injunctive relief are clearly not barred by res judicata because they could *not* have been brought in the *Cleary* litigation."); see also *Fortner* v. *Thomas*, 983 F. 2d 1024, 1031 (CA11 1993) ("It is clear that a prisoner's claim for monetary damages or other particularized relief is not barred if the class representative sought only declaratory and injunctive relief, even if the prisoner is a member of a pending class action.") (citations and footnote omitted); *Spears* v. *Johnson*, 859 F. 2d 853, 855 (CA11 1988), opinion vacated in part on reconsideration, 876 F.2d 1485 (CA11 1989) ("Because Spears **seeks relief different from that requested by the class representatives** in *Newman,* we may conclude from our decisions in *Herron, Jordan* and *Bogard* that Spears' petition should not have been dismissed.") (emphasis added); *Herron* v. *Beck*, 693 F. 2d 125, 127 (CA11 1982) ("First, although the class action in *Brown v. Beck v. Evans, supra,* did involve various conditions in the same jail, the class representatives sought only

declaratory and injunctive relief, not damages. Thus, the appellant's claim for damages would not be barred by the class action.") (citations omitted).

61. Second, the Department of Justice and the immigration judge corps are uniformly taking the position, across the country, that *Bautista* class members are not entitled to bond hearings notwithstanding the District Court's orders in that case, hence the need for this Court's intervention. **App.**, at 32–52.

62. Third, the party who would be precluded by the *Bautista* Court's order would be the government under the doctrine of issue preclusion, specifically, with regard to the statutory issue of whether 8 U. S. C § 1225(b)(2)(A) or § 1226 applies to a person like the plaintiff here. See *Parklane Hosiery Co.* v. *Shore*, 439 U. S. 322, 331–33 (1979) (allowing use of non-mutual offensive collateral estoppel by plaintiffs in subsequent litigation).[2]

63. Fourth, in this Circuit, non-final orders in a case, such as partial summary judgment orders, that were fully and fairly litigated, as occurred in the *Bautista* case, are entitled to issue preclusion. *Christo* v. *Padgett*, 223 F. 3d 1324, 1339 (CA11 2000) ("It is widely recognized that the finality requirement is less stringent for issue preclusion than for claim preclusion."); *id.*, at 1338–40 (applying issue preclusion to findings in an order on a motion to dismiss that was not a final judgment); *Dana* v. *E.S. Originals, Inc.*, 342 F. 3d 1320, 1325 (Fed. Cir. 2003) ("The *Christo* case makes clear (as does our decision in *RF Delaware*) that the Eleventh Circuit follows the more flexible approach employed by the Restatement of Judgments, which gives collateral estoppel effect to orders that do not constitute final, appealable judgments if they are 'sufficiently firm to be accorded conclusive effect.' ") (quoting *Christo,* 223 F. 3d, at 1339 n. 47); *id.*, at 1324 ("With

[2] But seeing that the plaintiff is a *Bautista* class member, his argument for offensive collateral estoppel would be a mutual one, not non-mutual.

regard to whether the party to be estopped had a full and fair opportunity to litigate and whether the partial summary judgment orders were sufficiently final to be accorded preclusive effect, this case is closer to *Christo* than to *RF Delaware*.").

64. Last, individualized lawsuits can be brought by members of a class to obtain relief on claims which are based on issues that were previously decided in the class litigation. E. g., *Brown* v. *R.J. Reynolds Tobacco Co.*, 611 F. 3d 1324, 1326–29 (11th Cir. 2010) (describing *Engle* litigation).

CLAIMS FOR RELIEF

COUNT I:
Injunction to Enforce Class Wide Declaratory Relief

65. The allegations in paragraphs 1-64 are realleged and incorporated herein.

66. Notwithstanding that the plaintiff is a *Bautista* class member, and that he is a beneficiary of the declaratory relief ordered in that case, the Miami Krome (Detained) Immigration Court—under the operational instructions, policy, and procedural instructions of Assistant Chief Immigration Judge Sukkar per 8 CFR § 1003.9(b)(1)—will not afford him a bond hearing in accordance with 8 U. S. C. § 1226(a) and its implementing regulations and case law.

67. The actions of the Miami Krome (Detained) Immigration Court are part of a nationwide pattern and practice of the Immigration Courts under the purview of the Department of Justice's Executive Office of Immigration Review.

68. The plaintiff has "suffer[ed] legal wrong," and has been "adversely affected" and "aggrieved" by these actions of the Miami Krome (Detained) Immigration Court. 5 U. S. C. § 702.

69. The actions of the Miami Krome (Detained) Immigration Court—under the operational instructions, policy, and procedural instructions of Assistant Chief Immigration Judge

Sukkar pre 8 CFR § 1003.9(b)(1)—are "arbitrary, capricious, an abuse of discretion, [and] otherwise not in accordance with law," and are "without observance of procedure required by law." 5 U. S. C. § 706(2)(A) & (D).

70. As such, the plaintiff is entitled to injunctive relief, § 703, to immediately enforce the declaratory relief afforded to him by the *Bautista* court.

COUNT II:
Civil Immigration Detention in Violation of Statute

71. The allegations in paragraphs 1-64 are realleged and incorporated herein.

72. No immigration statute aside from 8 U. S. C. § 1226(a) authorizes the plaintiff's ongoing and continued civil immigration detention.

73. And yet, the government continues to old him in detention denying his rights as guaranteed by him under § 1226(a) and its implementing regulations and case law.

74. The decision of *Matter of Yajure Hurtado*, 25 I. & N. Dec. 216 (BIA 2025), is unlawful, and the government's reliance upon it to deprive the plaintiff of a hearing under 8 U. S. C. § 1226(a) is also unlawful.

75. Therefore, the plaintiff is entitled to a writ of habeas corpus ordering that he be immediately given a custody redetermination hearing before an immigration judge in accordance with 8 U. S. C. § 1226(a) and its implementing regulations and case law.

PRAYER FOR RELIEF

WHEREFORE, the plaintiff prays that the Court grant the following relief:

(a) Assume jurisdiction over this matter;

(b) Set this matter for expedited consideration pursuant to 28 U.S.C. § 1657;

(c) Order the defendants to show cause why all the relief requested by the plaintiff should not be granted within three days, and allowing the plaintiff three days to file a traverse,

and, if necessary, set a hearing on this matter within five days of the submission of the return, pursuant to 28 U. S. C. § 2243;

(d) Order the defendants to refrain from transferring the petitioner out of the jurisdiction of this Court during the pendency of this proceeding and while the plaintiff remains in the defendants' custody;

(e) Grant the plaintiff an injunction compelling the defendants to comply with the class wide declaratory relief ordered by the District Court in *Bautista* v. *Santacruz*, — F. Supp. 3d —, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3289861 (C.D. Cal. Nov. 20, 2025), and *Bautista* v. *Santacruz*, — F.R.D. —, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3288403 (C.D. Cal. Nov. 25, 2025);

(f) Grant the plaintiff a writ of habeas corpus ordering that he be immediately given a custody redetermination hearing before an immigration judge in accordance with 8 U. S. C. § 1226(a) and its implementing regulations and case law;

(g) Award plaintiff attorneys' fees and costs under the Equal Access to Justice Act (EAJA), as amended, 5 U.S.C. § 2412, and on any other basis justified under law; and

(h) Grant any other and further relief that the Court deems just and proper.

Dated: December 11, 2025

s/ Maitte Barrientos
Fla. Bar No. 1010180
s/ Mark A. Prada
Fla. Bar No. 91997
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Counsel for Plaintiff

VERIFICATION BY SOMEONE ACTING ON THE PLAINTIFF'S BEHALF PURSUANT TO 28 U.S.C. § 2242

I, Maitte Barrientos, am submitting this verification on behalf of the plaintiff because I am the plaintiff's attorney in these proceedings. Based upon a review of the administrative record, and discussions with the plaintiff, I hereby verify that the statements made in the foregoing Petition for Writ of Habeas Corpus and Complaint for Injunctive Relief are true and correct to the best of my knowledge.

Dated: December 11, 2025

s/ Maitte Barrientos
Fla. Bar No. 1010180