UNITED STATES DISTRICT COURT
Eastern District of Wisconsin

Wilmer GARCIA GUERRERO, Petitioner, v. Scott SMITH, Jail Captain, Dodge County Jail; Sam OLSON, Field Office Director of Enforcement and Removal Operations, Chicago Field Office, Immigration and Customs Enforcement; Kristi NOEM, Secretary of the U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; Pamela BONDI, Attorney General of the United States; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, in their official capacities, Respondents.	Case No. 2:25-cv-1975 **PETITION FOR WRIT OF HABEAS CORPUS**

INTRODUCTION

1. Petitioner Wilmer Garcia Guerrero is in the physical custody of Respondents at the Dodge County Jail in Juneau, Wisconsin. He faces unlawful detention because the Department of Homeland Security (DHS) and the Executive Office for Immigration Review ("Immigration Court") of the Department of Justice (DOJ) have erroneously concluded Petitioner is subject to mandatory detention.

2. Petitioner is charged with, inter alia, having entered the United States without inspection. 8 U.S.C. § 1182(a)(6)(A)(i).

3. Petitioner's request for bond redetermination before Immigration Court failed, and, there are separate reasons why this conclusion is erroneous. Respondent's new legal interpretation is plainly contrary to the statutory framework and contrary to decades of agency practice applying §1226(a) to people like Petitioner, violating the INA and due process. Additionally, the Immigration Court is bound by *Maldonado Bautista v. Santacruz*, vacating the application of mandatory detention to a class of which Mr. Garcia Guerrero claims membership.

Violation of Due Process and the INA

4. Prior to July 8, 2025, individuals like Petitioner, charged with entering the United States without inspection, would receive a bond hearing at which an immigration judge would determine whether they could be released on bond pending their immigration hearing.

5. On July 8, 2025, DHS issued a new policy instructing all Immigration and Customs Enforcement (ICE) employees to consider anyone inadmissible under §

1182(a)(6)(A)(i)—i.e., those who entered the United States without inspection—to be an "applicant for admission" under 8 U.S.C. § 1225(b)(2)(A) and therefore subject to mandatory detention.

6. Because of this new policy, DHS denied Petitioner release from immigration custody—meaning he will be detained until his final immigration hearing, something that could take months to occur.

7. Any request by Petitioner for bond redetermination before Immigration Court would be futile. DHS's policy states that it was developed "in coordination with the Department of Justice," and in a recent published decision by the Board of Immigration Appeals (BIA), *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), Respondent Immigration Court adopted the same position as DHS, classifying noncitizens like Petitioner as applicants for admission and statutorily ineligible for bond under § 1225(b)(2)(A).

8. Indeed, Petitioner requested a custody redetermination hearing in immigration court on December 11, 2025, which was denied because, according to the Immigration Judge, "Immigration Judges lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission. *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025)." In the order denying bond, the Immigration Judge further stated: "The respondent argues that because the court in *Bautista v. Noem*, 5:25-cv-01873SSS-BFM (C.D. Cal.), granted class certification and partial summary judgment for the plaintiffs in that case, the

respondent is eligible for a bond hearing. However, the *Bautista* court has not yet issued a final judgment."

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

10. Respondents' new legal interpretation is plainly contrary to the statutory framework and contrary to decades of agency practice applying § 1226(a) to people like Petitioner.

Request for Relief Pursuant to Maldonado Bautista

11. On November 20, 2025, the Honorable Sunshine S. Sykes, United States District Court Judge for the Central District of California, granted summary judgment in a nationwide class action challenging the government's new reading of 1225(b)(2), concluding that the government's interpretation does not comport with statute. *Lazaro Maldonado Bautista et al v. Ernesto Santacruz Jr. et al*, No. 5:25-cv-01873, Doc. 81, (In Chambers) Order Granting Petitioner's Motion for Partial Summary Judgment and Denying Request to Enter Final Judgment (Cent. Dist. Cal. Nov. 20, 2025). Judge Sykes determined that the government's expansive

interpretation of "applicants for admission" would effectively nullify a portion of the INA, violating separation of powers. *Id.*, Doc 81 at 16.

12. On November 25, 2025, Judge Sykes certified a class consisting of: "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." *Lazaro Maldonado Bautista et al v. Ernesto Santacruz Jr. et al*, No. 5:25-cv-01873, Doc. 82, (In Chambers) Order Granting Plaintiff Petitioner's Motion for Class Certification (Cent. Dist. Cal. Nov. 25, 2025). The class certification states that although final judgment has not yet been entered, the order "extends the same declaratory relief granted to Petitioners to the Bond Eligible Class as a whole." *Id.*, Doc. 82 at 14.

13. Petitioner is a member of the *Maldonado Bautista* "Bond Eligible Class" as he (1) entered the United States without inspection over 11 years ago; (2) was not apprehended upon arrival; and (3) is not subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security made an initial custody determination. Because Petitioner is a member of the "Bond Eligible Class", he is eligible for a bond hearing in immigration court.

14. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be released within 48 hours or alternatively issue a writ of habeas corpus requiring

Respondents to release Petitioner unless they provide a bond hearing pursuant to 8 U.S.C. § 1226(a) within 3 days

JURISDICTION

15. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Dodge County Jail, 216 W. Center St., Juneau, Wisconsin 53039. (ICE detainee locator printout, Exhibit A).

16. 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).

17. 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

18. 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 Eastern District of Wisconsin, the judicial district in which Petitioner currently is detained.

19. 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 Eastern District of Wisconsin.

REQUIREMENTS OF 28 U.S.C. § 2243

20. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith," unless the Petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

21. 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).

22. 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.*

PARTIES

23. Petitioner Wilmer Garcia Guerrero is a citizen of Venezuela and Colombia who has been in immigration detention since October 16, 2025. ICE did not set bond after arresting Petitioner when he reported to his ICE check-in at the Milwaukee-ICE office in Wisconsin. Petitioner requested review of his custody by an immigration judge on December 4, 2025, and the immigration judge continued his

case until December 11, 2025, ultimately denying his request for bond on jurisdictional grounds without reaching the merits of Petitioner's custody redetermination motion. Petitioner has resided in the United States since April 4, 2022.

24. Upon information and belief Respondent Scott Smith is employed by Dodge County, Wisconsin. Respondent Smith is Jail Captain of the Dodge County Jail, where Petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his official capacity.

25. Respondent Sam Olson is the Director of the Chicago Field Office of ICE's Enforcement and Removal Operations division. As such, Sam Olson is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity.

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

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

28. Respondent Executive Office for Immigration Review (EOIR) (hereinafter referred to as "Immigration Court") is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings.

LEGAL FRAMEWORK & ARGUMENT

Violation of Due Process and the INA

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

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

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

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

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

34. 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(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

35. Following the enactment of the IIRIRA, the Immigration Court drafted new regulations explaining that, in general, people who entered the country without inspection 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).

36. Thus, in the decades that followed, most people who entered without inspection and were placed in standard removal proceedings 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 immigration judge 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)).

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

38. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission,"[1] claims that all persons who entered the United States without inspection shall now be deemed "applicants for admission" under 8 U.S.C. § 1225, and therefore are subject to mandatory detention provision 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.

39. On September 5, 2025, the Board of Immigration Appeals (BIA) issued a published decision adopting this same position. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). That decision holds that all noncitizens who entered the United States without admission or parole are considered applicants for admission and are ineligible for immigration judge bond hearings.

40. ICE and Immigration Court have adopted this position even though numerous federal courts have rejected this exact conclusion. For example, after immigration judges in the Tacoma, Washington, immigration court stopped providing bond hearings for persons who entered the United States without inspection and who have since resided here, the U.S. District Court in the Western District of Washington found that such a reading of the INA is likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, --- F. Supp. 3d --- 2025 WL 1193850 (W.D. Wash. Apr. 24, 2025); *see also Gomes v. Hyde*, No.

[1] *Available at* https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission.

1:25-CV-11571-JEK, 2025 WL 1869299, at *8 (D. Mass. July 7, 2025) (granting habeas petition based on same conclusion).

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

42. Section 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]."

43. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to such people makes clear that, by default, such people are afforded 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*, 2025 WL 1193850, at *12 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

44. 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.

45. 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).

46. As most federal courts have recognized, the mandatory detention provision of § 1225(b)(2) does not apply to people like Petitioner, who have already entered and were residing in the United States at the time they were apprehended. Upon information and belief, over 300 petitions for habeas corpus have been filed on this issue throughout the country over the past several months. The vast majority of federal courts that have considered Respondents' new interpretation of the INA, since ICE implemented its July 8, 2025 memo, have rejected the government's new interpretation. *See, e.g., Martinez v. Hyde*, CV 25-11613-BEM, 2025 WL 2084238 (D. Mass. July 24, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Garcia Jimenez v. Kramer*, No. 4:25-cv-03162-JFB-RCC, 2025 WL 2374223 (D. Neb. Aug. 14, 2025); *Aguilar Maldonado v. Olson*, No. 25-CV-3142 (SRN/SGE), 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v Noem*, 5:25-cv-01789-ODW-DFM, 2025 WL 2379285 (C.D. CA Aug 15, 2025); *Jacinto v. Trump, et al.*, 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 (D. Neb. August 19, 2025); *Leal-Hernandez v. Noem*, 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Minn. Aug. 24, 2025); *Herrera Torralba v. Knight*, 2:25-cv-03166-RFB-DJA, 2025 WL 2581792 (D. Nev. Sep. 5, 2025). Courts have

rejected the BIA's interpretation of the INA in *Matter of Yajure Hurtado* for the same reasons. *See, e.g., Pizarro Reyes v. Raycraft*, 2025 WL 2609425, at *6-8 (E.D. Mich. Sept. 9, 2025) (disagreeing with BIA's analysis and according no deference under *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 413 (2024)); *Sampiao v. Hyde*, 2025 WL 2607924, at *8 n.11 (D. Mass. Sept. 9, 2025) (same).

47. Similarly, with limited exceptions, district courts within the Seventh Circuit have also uniformly followed the majority of other courts holding in favor of petitioner's interpretation and finding § 1226(a) applicable.[2]

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48. Additionally, 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

[2] *See, e.g., Campos Leon v. Forestal*, 1:25-cv-1774, 2025 WL 2694763 (S.D. Ind. Sept. 22, 2025); *Alejandro v. Olson*, No. 1:25-cv-2027, 2025 WL 2896348 (S.D. Ind. Oct. 11, 2025); *Ochoa Ochoa v. Noem*, No. 25-cv-10865, 2025 WL 2938779 (N.D. Ill. Oct. 16, 2025); *H.G.V.U. v. Smith*, No. 25-cv-10931, 2025 WL 2962610 (N.D. Ill. Oct. 20, 2025); *Padilla v. Noem*, No. 25-cv-12462, 2025 WL 2977742 (N.D. Ill. Oct. 22, 2025); *Patel v. Crowley*, No. 25-cv-11180, 2025 WL 2996787 (N.D. Ill. Oct. 24, 2025); *Sanchez v. Olson*, No. 25-cv-12453, 2025 WL 3004580 (N.D. Ill. Oct. 27, 2025); *Corona Diaz v. Olson*, No. 25-cv-12141, 2025 WL 3022170 (N.D. Ill. Oct. 29, 2025); *Ramirez Valverde v. Olson*, No. 25-cv-1502, 2025 WL 3022700 (E.D. Wis. Oct. 29, 2025); *Singh v. Bondi*, No. 25-cv-2101, 2025 WL 3029524 (S.D. Ind. Oct. 30, 2025); *Valencia v. Noem*, No. 25-cv-12829, 2025 WL 3042520 (N.D. Ill. Oct. 31, 2025); *Rosales Ponce v. Olson*, No. 25-cv-13037, 2025 WL 3049785 (N.D. Ill. Oct. 31, 2025); *Loza Valencia v. Noem*, No. 25-cv-12829, 2025 WL 3042520 (N.D. Ill. Oct. 31, 2025); *Flores v. Olson*, No. 25-cv-12916, 2025 WL 3063540 (N.D. Ill. Nov. 3, 2025); *Galvis Cortes v. Olsen*, No. 25-cv-06293, 2025 WL 3063636 (N.D. Ill. Nov. 3, 2025); *Reyes Arizmendi v. Noem*, No. 25-cv-12342, 2025 WL 3089107 (N.D. Ill. Nov. 5, 2025); *Lira Perez v. Noem*, No. 25-cv-13442, 2025 WL 3140692 (N.D. Ill. Nov. 10, 2025); *Ramirez Martinez v. Noem*, No. 25-cv-12029, 2025 WL 3145103 (N.D. Ill. Nov. 11, 2025); *Guaita Quinapanta v. Bondi*, No. 25-cv-00795, 2025 WL 3157867 (W.D. Wis. Nov. 12, 2025); *Delgado Avila v. Crowley*, No. 25-cv-00533, 2025 WL 3171175 (S.D. Ind. Nov. 13, 2025); *Quishpe-Guaman v. Noem*, No. 25-cv-00211, 2025 WL 3201072 (S.D. Ind. Nov. 17, 2025); *Rivas Alonso v. Olson*, No. 25-cv-01660, 2025 WL 3240928 (W.D. Wis. Nov. 20, 2025); *Paredes Padilla v. Galovich*, No. 25-cv-00863, 2025 WL 3251446 (W.D. Wis. Nov. 21, 2025); *but see Cirrus Rojas v. Olson*, No. 25-cv-01437, 2025 WL 3033967 (E.D. Wis. Oct. 30, 2025); *Ugarte-Arenas v. Olson*, No. 2:25-cv-01721, Doc. 12 (E.D. Wis. Dec. 8, 2025).

Maldonado Bautista v. Santacruz, No. 5:25-CV-01873-SSS-BFM (C.D. Cal.) Petitioner faces unlawful detention because the DHS and the Immigration Court have refused to abide by the declaratory judgment issued on behalf of the certified class in *Maldonado Bautista v. Santacruz.*

49. 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). The declaratory judgment held that the Bond Eligible 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.

50. The Bond Eligible Class consists of: "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." *Lazaro Maldonado Bautista et al v. Ernesto Santacruz Jr. et al*, No. 5:25-cv-01873, Doc. 82, (In Chambers) Order Granting Plaintiff Petitioner's Motion for Class Certification (Cent. Dist. Cal. Nov. 25, 2025). The class certification states that although final judgment has not yet been entered, the Judge "extends the same declaratory relief granted to Petitioners to the Bond Eligible Class as a whole." *Id.*, Doc. 82 at 14.

51. Petitioner is a member of the Bond Eligible Class, as he is a noncitizen in the United States without lawful status who entered the United States without inspection, was not apprehended because upon information and belief he was granted 212(d)(5) parole upon entry, and is not subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security made its initial custody determination. In further support of his class membership Petitioner points to the DHS's theory of removal set forth in its charging document, the Notice of Intent to Appear, alleging that Petitioner is an alien present in the United States who has not been admitted or paroled. (Exhibit E). This allegation is consistent with class membership in *Maldonado Bautista*.

52. 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). Nonetheless, the Immigration Court and DHS have refused to abide by the declaratory relief and continue to subject Petitioner to unlawful detention despite his clear entitlement to consideration for release on bond as a Bond Eligible Class member.

FACTS

53. Petitioner has resided in the United States since April 4, 2022. Before being detained by DHS, he lived in Milwaukee, Wisconsin.

54. On October 16, 2025, DHS arrested Petitioner when he reported to the Milwaukee-ICE office for a scheduled biometrics appointment. Petitioner previously held Temporary Protected Status "TPS" as a Venezuelan citizen (2023 designation), but that legal status has been subject to extensive litigation in federal court.[3] At

[3] On January 17, 2025, the Department of Homeland Security issued a decision granting the extension of the 2023 designation of TPS for Venezuelans, through October 2, 2026. Fed. Register Vol. 90, No. 11 (Jan. 17, 2025). Critically, the TPS extension would become effective only on April 3, 2025. *Id.* The order was published three days before the end of President Biden's presidential term. Nineteen days later, DHS reversed course. Fed. Register Vol. 90, No. 23 (Feb. 5, 2025). The Department of Homeland Security ("DHS") issued a notice terminating the 2023 designation of Temporary Protected Status ("TPS") for Venezuelans. *Id.* Litigation ensued over whether TPS designation shall remain effective until the expiration of its most recent previous extension, or, whether the Secretary of Homeland Security could designate a nearer termination date. *See Nat. TPS Alliance, et al. v. Noem, Sec., DHS, et al.*, No. 3:25-cv-01766 (N.D. Cal.). On March 31, 2025, the United States District Court for the Northern District of California entered a preliminary order postposting the date of TPS termination. *See Nat. TPS Alliance, et al. v. Noem, Sec., DHS, et al.*, No. 3:25-cv-01766 (N.D. Cal. March 31, 2025). With the stay in effect, the January 17, 2025 Federal Register notice, extending the 2023 designation of TPS for Venezuelans through October 2, 2026, controlled. The United States Supreme Court granted an emergency stay of the District Court order, pending appeal. *Noem, Sec., DHS, et al. v. Nat. TPS Alliance, et al.*, 605 U.S. __ (May 19, 2025). The Ninth Circuit Court of Appeals affirmed the district court's order granting preliminary relief. *Nat. TPS Alliance, et al. v. Noem, Sec., DHS, et al.*, No. 25-2120 (9th Cir. Aug. 29, 2025). And, on September 5, 2025 the Court set aside Secretary Noem's decision to terminate Venezuelan TPS early. *See Nat. TPS Alliance, et al. v. Noem Sec., et al.*, No. 25-5724 (9th Cir. Sept. 17, 2025). Again, DHS sought and received an emergency stay from the United States Supreme Court. *Noem, Sec., DHS, et al. v. Nat. TPS Alliance, et al.*, 606 U.S. ___(October 3, 2025). The end result is that only those who applied for TPS status before February 5, 2025 (when the Noem decision rescinding TPS status was published in the Federal Register) still retain the protections of TPS during ongoing litigation. *See Nat. TPS Alliance, et al. v. Noem, Sec., DHS, et al.*, 3:25-cv-01766 at 11 (N.D. Cal. May 30, 2025). Respondent concedes that as his TPS extension documents were submitted on April 4, 2025, he does not qualify for an auto-extension of his status, which comes with it the protections against removal. However, should litigation result in affirming the extension of Venezuelan TPS status through 2027, Mr. Garcia Guerrero may receive this immigration benefit.

the time of Petitioner's biometrics appointment with ICE, he was not protected by TPS because his April 4 2025 application remained pending with USCIS and he did not qualify for an automatic TPS extension. (TPS approval, Exhibit B); (Receipt for TPS approval, Exhibit C).

55. The warrant for Petitioner's arrest issued by DHS indicates that DHS was exercising its detention authority pursuant to section 236 of the Immigration and Nationality Act (8 U.S.C. § 1226). (Arrest warrant, Exhibit D). The DHS warrant for arrest does not reference section 235 of the Immigration and Nationality Act (8 U.S.C. § 1225). (*Id.*)

56. DHS placed Petitioner in removal proceedings before the Chicago Immigration Court pursuant to 8 U.S.C. § 1229a. ICE has charged Petitioner with, inter alia, being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as someone who entered the United States without inspection. (Notice to Appear, Exhibit E).

57. Petitioner avers that he has never been convicted of any crime in the United States or in any other country.

58. Following Petitioner's arrest and transfer to Dodge County Jail in Wisconsin, ICE issued a custody determination to continue Petitioner's detention without an opportunity to post bond or be released on other conditions.

59. On December 4, 2025 and December 11, 2025, Petitioner requested bond before the Immigration Court, which was denied because, according to the Immigration Judge, "Immigration Judges lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission.

Matter of Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025)" and because although the court in *Bautista v. Noem*, 5:25-cv-01873SSS-BFM (C.D. Cal.) granted class certification and partial summary judgment for the plaintiffs, "the *Bautista* court has not yet issued a final judgment." (Graham Dec., Exhibit F).

60. As a result, Petitioner remains in mandatory detention. Absent relief from this Court, he faces the prospect of months in immigration custody, separated from his community without ever receiving an individualized hearing justifying his detention. Petitioner seeks affirmance of the rights afforded to him under the INA to be heard on the issue of bond. Moreover, Petitioner seeks the most fundamental of due process rights: the right to challenge his detention by ICE. Finally, Petitioner seeks relief pursuant to *Maldonado Bautista*.

CLAIMS FOR RELIEF

COUNT I

Violation of the INA

61. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

62. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens

are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

63. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates the INA.

COUNT II

Violation of Due Process

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

65. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001).

66. Petitioner has a fundamental interest in liberty and being free from official restraint.

67. The government's detention of Petitioner without a bond redetermination hearing to determine whether he is a flight risk or danger to others violates his right to due process.

COUNT III

Request for Relief Pursuant to Maldonado Bautista

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

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

70. 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.

71. 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."

72. 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).

73. 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*.

PRAYER FOR RELIEF

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

a. Assume jurisdiction over this matter and issue and accelerate briefing schedule given the nature of the unlawful incarceration and the fact that Petitioner's next hearing in immigration court is January 9, 2025;

b. Issue a writ of habeas corpus requiring that within 48 hours, Respondents release Petitioner or alternatively issue a writ of habeas corpus requiring Respondents to release Petitioner unless they provide a bond hearing pursuant to 8 U.S.C. § 1226(a) within 3 days;

c. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and

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

Signed this 16th day of December, 2025 in Waupaca, WI.

Respectfully submitted,

Wilmer Garcia Guerrero, *Petitioner*

/s/ electronically signed by KFD

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PETITION VERIFICATION

I, the undersigned, hereby declare under the penalty of perjury that the foregoing information is true and correct.

Signed this 16th day of December, 2025 in Madison, WI.

Electronically signed by Laura Graham

Laura Graham
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