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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

E.L.D.M.,

Petitioner,

vs.

MOISES BECERRA, Field Office Director of
Enforcement and Removal Operations, San
Francisco Field Office, Immigration and Customs
Enforcement, in his official capacity; KRISTI
NOEM, Secretary of U.S. Department of
Homeland Security, in her official capacity; U.S.
DEPARTMENT OF HOMELAND SECURITY;
PAMELA BONDI, U.S. Attorney General of the
United States, in her official capacity;
EXECUTIVE OFFICE OF IMMIGRATION
REVIEW; RON MURRAY, Warden, Mesa Verde
ICE Processing Center, in his official capacity,

Respondents.

Case No.:

**VERIFIED PETITION FOR WRIT OF
HABEAS CORPUS**

INTRODUCTION

1. Petitioner E.L.D.M. brings this petition for a writ of habeas corpus to seek enforcement of his rights as a member of a class certified in *Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (C.D. Cal.). Petitioner is being detained unlawfully because the Department of Homeland Security (DHS) and the Executive Office for Immigration Review (EOIR) have refused to abide by the ruling issued on behalf of the certified class in *Bautista*.

2. On November 20, 2025, the district court granted partial summary judgment on behalf of individual plaintiffs, and on November 25, 2025, certified a nationwide class and extended relief to the certified class. *Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3289861, at *11 (C.D. Cal. Nov. 20, 2025) (*Bautista I*) (order granting partial summary judgment to named Petitioners); *Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025) (*Bautista II*) (order certifying Petitioners' proposed nationwide Bond Eligible Class and extending relief from summary judgment order to the class).

3. *Bautista* held that Bond Eligible Class members are detained under 8 U.S.C. § 1226(a) and cannot be denied consideration for release on bond under the separate mandatory detention provision of § 1225(b)(2)(A). See *Bautista I*, 2025 WL 3289861, at *7-11.

4. Nonetheless, the Government has refused to apply the decision in *Bautista* to the class. Petitioner therefore brings this individual action to obtain relief that he should enjoy as a matter of course by virtue of his status as a member of a class.

5. Because Respondents are detaining Petitioner in violation of *Bautista*, the Court should require his immediate release. Alternatively, the Court should order Petitioner's release unless Respondents provide a bond hearing under 8 U.S.C. § 1226(a) within seven days.

JURISDICTION AND VENUE

6. Petitioner is in the physical custody of Respondents as he is detained at the Mesa Verde ICE Processing Center located in Bakersfield, California.

7. This Court has jurisdiction under 28 U.S.C. § 2241, 28 U.S.C. § 1331, and Article I, section 9, clause 2 of the United States Constitution.

8. Venue is proper in this district pursuant to 28 U.S.C. § 2241(a) and 28 U.S.C. § 1391(b)(2) and (e)(1) because Petitioner is physically detained within this district.

EXHAUSTION

9. Exhaustion for habeas claims is prudential, not jurisdictional. *Laing v. Ashcroft*, 370 F.3d 994, 997 (9th Cir. 2004). Exhaustion should be waived because it would be futile for Petitioner to seek release by administrative means and because his continued unconstitutional detention causes him irreparable harm. *See id.* at 1000 (the prudential exhaustion requirement may be waived if “pursuit of administrative remedies would be a futile gesture, [or] irreparable injury will result”) (internal quotation marks omitted).

10. A request for a bond hearing would be futile as Respondents continue to refuse such hearings *despite* the ruling in the *Bautista* class action. For instance, immigration judges have informed class members in bond hearings that they have been instructed by “leadership” that the ruling in *Bautista* is not controlling, even with respect to class members, and that instead immigration judges remain bound to follow the agency’s prior decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025) (finding that all immigrants who entered without inspection and are still “applicants for admission” are subject to INA section 236(c) mandatory detention and are ineligible for bond hearings).

11. Further, requiring exhaustion would cause Petitioner irreparable harm by prolonging his unjustified detention.

REQUIREMENTS OF 28 U.S.C. § 2243

12. The Court should grant the petition for writ of habeas corpus or issue an order to show cause “forthwith.” 28 U.S.C. § 2243.

PARTIES

13. Petitioner is a citizen of Brazil who entered the United States without inspection. He has been present in the United States for over 20 years and lived with his wife and U.S. citizen son in San Pablo, California. Petitioner was arrested outside of his home when Immigration and Customs Enforcement (ICE) was apparently searching for another man who had lived at that residence in years past. He has been physically detained by Respondents since

1 November 19, 2025. Petitioner has never been arrested and has never had contact with
2 immigration before. He lives with his wife and 16-year-old U.S. citizen son who are both
3 suffering in his absence. Petitioner's wife suffers from mental health challenges including
4  While her condition has been treated, the additional stress of
5 having her husband detained is putting her at risk of decomposition. Petitioner's son is finding it
6 difficult to concentrate in school, is unable to focus, and has lost significant weight during this
7 time. Petitioner's wife is unable to have a full-time job, so the family relies on Petitioner as the
8 primary bread-winner and is therefore suffering financially due to his continued detention.
9 Petitioner also suffers from various medical issues and takes regular treatments for high blood
10 pressure and diabetes. He believes that his ongoing detention is not good for his health.

11 14. Respondent Moises Becerra is the Director of the San Francisco Field Office of
12 ICE's Enforcement and Removal Operations division. As such, Mr. Becerra is Petitioner's
13 immediate custodian and is responsible for Petitioner's detention and removal. He is named in
14 his official capacity.

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

19 16. Respondent Department of Homeland Security (DHS) is the federal agency
20 responsible for implementing and enforcing the Immigration and Nationality Act (INA),
21 including the detention and removal of noncitizens.

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

26 18. Respondent Executive Office for Immigration Review (EOIR) is the federal
27 agency responsible for implementing and enforcing the INA in removal proceedings, including
28 for custody redeterminations in bond hearings.

1 19. Respondent Ron Murray is employed by the GEO Group, Inc., as Warden of the
2 Mesa Verde ICE Processing Center, where Petitioner is detained. He has immediate physical
3 custody of Petitioner. He is sued in his official capacity.

4 **BACKGROUND**

5 20. After apprehending Petitioner on November 19, 2025, DHS placed him in
6 removal proceedings pursuant to 8 U.S.C. § 1229a. DHS has charged Petitioner as being
7 inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i), as someone who entered the United States
8 without inspection. He is detained pursuant to 8 U.S.C. § 1226(a). No bond was set.

9 21. *Bautista* certified the following Bond Eligible Class: “All noncitizens in the
10 United States without lawful status who (1) have entered or will enter the United States without
11 inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be
12 subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department
13 of Homeland Security makes an initial custody determination.” *Bautista II*, 2025 WL 3288403,
14 at *9

15 22. Petitioner is a member of the Bond Eligible Class. He is a noncitizen in the U.S.
16 who does not have lawful status. He entered the United States without inspection over 20 years
17 ago and was not apprehended upon arrival. He is not detained under 8 U.S.C. § 1226(c), §
18 1225(b)(1), or § 1231.

19 **CLAIMS FOR RELIEF**

20 **COUNT I**

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

22 23. Petitioner incorporates the allegations in the preceding paragraphs as if fully set
23 forth herein.

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

26 25. Under *Bautista*, Respondents violate the INA in applying the mandatory detention
27 statute at § 1225(b)(2) to class members.
28

26. As found by Chief Judge Troy L. Nunley, “the *Maldonado Bautista* court has already declared a statutory violation on behalf of Petitioner as a class member.” *Morales-Flores v. Lyons*, No. 1:25-cv-01640-TLN-EFB, 2025 WL 3552841, at *3.

27. By failing to provide Petitioner a bond hearing, Respondents violate Petitioner's statutory rights under the INA and improperly ignore the ruling in *Bautista*.

COUNT II

Violation of 8 U.S.C. § 1226(a): Unlawful Denial of Bond Hearing

28. Petitioner incorporates the allegations in the preceding paragraphs as if fully set forth herein.

29. The mandatory detention provision of 8 U.S.C. § 1225(b)(2) does not apply to noncitizens residing in the United States who are subject to 8 U.S.C. § 1182(a)(6)(A) inadmissibility ground for entering the country without inspection. Such noncitizens are detained under § 1226(a), unless they are subject to another detention provision, such as §§ 1225(b)(1), 1226(c), 1231.

30. Petitioner is charged as inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) and detained under 8 U.S.C. § 1226(a), which permits release on bond.

31. The application of §1225(b)(2) to bar Petitioner from receiving a bond hearing before an immigration judge is contrary to 8 U.S.C. § 1226(a).

COUNT III

Violation of Procedural Due Process

32. Petitioner incorporates the allegations in the preceding paragraphs as if fully set forth herein.

33. The Due Process Clause of the Fifth Amendment forbids the government from depriving any “person” of liberty “without due process of law.” U.S. Const. amend. V.

34. “Freedom from imprisonment – from government custody, detention, or other forms of physical restraint – lies at the heart of liberty that the Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Citizens and non-citizens alike are entitled to the Constitution’s due process guarantees. *Id.* at 693.

1 35. Petitioner has a fundamental interest in liberty and being free from official
2 restraint.

3 36. The government's detention of Petitioner without affording him a bond hearing to
4 determine whether he is a flight risk or a danger to others violates his right to due process.

5 **PRAYER FOR RELIEF**

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

- 7 a. Assume jurisdiction over this matter;
- 8 b. Issue a writ of habeas corpus requiring that Respondents release Petitioner immediately;
- 9 c. Alternatively, issue a writ of habeas corpus requiring Respondents to release Petitioner
10 unless they provide a bond hearing under 8 U.S.C. § 1226(a) within seven days;
- 11 d. Issue a temporary restraining order and a preliminary injunction granting the relief set
12 forth above;
- 13 e. Order Respondents not to re-detain Petitioner pending the culmination of removal
14 proceedings against him, including all administrative or judicial appeals, without a
15 constitutionally compliant hearing to determine whether such re-detention is justified;
- 16 f. Award costs and reasonable attorneys' fees under the Equal Access to Justice Act, and
17 any other applicable statute or regulation; and
- 18 g. Grant such further relief as the Court deems just and proper.

19
20 Dated: December 17, 2025

Otis Carl Landerholm
Landerholm Immigration, A.P.C.

Jonathan Weissglass
Law Office of Jonathan Weissglass

23 By: /s/ Otis Carl Landerholm
24 Otis Carl Landerholm

25 Attorneys for Petitioner
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VERIFICATION

I am one of Petitioner's attorneys and am submitting this verification on behalf of Petitioner as permitted under 28 U.S.C. § 2242 because he is being detained. On the basis of documents I have reviewed governing Petitioner's immigrations proceedings, statements from the Petitioner, and my own information and belief, I hereby verify that the factual statements made in the foregoing Verified Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: December 17, 2025

s/ Otis Carl Landerholm
Otis Carl Landerholm

Attorney for Petitioner