

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

WALTER BAMACA PEREZ,

Petitioner,

v.

KRISTI NOEM, Secretary of the
Department of Homeland Security;

PAMELA BONDI, Attorney General of
The United States;

TODD M. LYONS, Acting Director of
U.S. Immigration and Customs
Enforcement;

MARY DE ANDA-YBARRA, El Paso
Field Office Director, U.S. Immigration
and Customs Enforcement; and

WARDEN of ERO El Paso Camp East
Montana.

Respondents.

Civil Action No: 3:25-cv-00702

**VERIFIED PETITION FOR A WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241 AND REQUEST FOR ORDER TO SHOW
CAUSE**

INTRODUCTION

1. Petitioner, Walter Bamaca Perez, ("Petitioner or "Bamaca") 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 *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (C.D. Cal.). Petitioner is in the physical custody of the U.S. Department of Homeland Security, Immigration and Customs Enforcement ("ICE") officials at the ERO El Paso Camp East Montana located in El Paso, Texas. *See, Exhibit A, DHS Online Detainee Locator*. He faces unlawful detention because the Department of Homeland Security (DHS) and the Executive Office for Immigration Review (EOIR) have refused to abide by the declaratory judgment issued on behalf of the Bond Eligible Class certified in *Maldonado Bautista v. Santacruz*.

2. Immigration judges ("IJ") have informed class members in bond hearings that they have been instructed by "leadership" that the declaratory judgment in *Maldonado Bautista* is not controlling, even with respect to class members, and that instead IJs remain bound to follow the agency's prior decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

3. On November 20, 2025, the U.S. District Court for the Central District of California 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. Santaacruz*, 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).

4. The declaratory judgment held that the Bond Denial 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.

5. Nonetheless, the Executive Office for Immigration Review (EOIR) and the Department of Homeland Security (DHS) have blatantly refused to abide by the declaratory relief and are unlawfully ordering that class members be denied the opportunity to be released on bond.

6. Petitioner is a member of the Bond Eligible Class certified in *Maldonado Bautista*, as he:

a. Is a noncitizen in the United States without lawful status and is currently detained at the ERO El Paso Camp East Montana in El Paso, Texas. On or about September 6, 2025, during ICE surveillance conducted as part of "Operation the District" in Washington, D.C., Petitioner was racially profiled and subjected to a pretextual traffic stop. ***See, Exhibit B, Record of Deportable/Inadmissible Alien.***

During this encounter, Petitioner was questioned about his immigration status, arrested, and taken into custody. *Id.*

b. Entered the United States without inspection on or about February 12, 2007 (over 18 years ago) and was not apprehended upon arrival; and

c. Is not subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231.

7. On December 18, 2025, the court in *Maldonado Bautista* entered an Order Granting in Part and Denying in Part Petitioners' Ex Parte Application for Reconsideration or Clarification [DKT. NO. 87], entering a final judgment as to Counts I, II, and III of the Amended Class Complaint. *See, Exhibit C, Maldonado Bautista Order.*

8. The Court should expeditiously grant this petition.

9. 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). Nevertheless, Respondents continue to flagrantly defy the judgment in that case and continue to subject Petitioner to unlawful detention despite his clear entitlement to consideration for release on bond as a Bond Eligible Class member.

10. Because Respondents are detaining Petitioner in violation of the declaratory judgment issued in *Maldonado Bautista*, the Court should accordingly order Respondents to release Petitioner within one day.

11. 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

12. Petitioner is detained in the custody of the U.S. Department of Homeland Security, Immigration and Customs Enforcement ("ICE") officials at the ERO El Paso Camp East Montana located in El Paso, Texas. He has been detained by ICE since September 6, 2025.

13. This Court has subject matter jurisdiction over this petition for writ of habeas corpus under 28 U.S.C. § 2241 (habeas corpus authority); U.S. Const. art. 1, § 9, cl. 2. (Suspension Clause), 28 U.S.C. § 1331 (federal question); U.S. Const. amend. V (the Due Process Clause of the U.S. Constitution).

14. This Court may grant relief under the habeas corpus statute, 28 U.S.C. § 2241, the All Writs Act, 28 U.S.C. § 1651, and the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*

VENUE

15. Venue is proper because Petitioner is detained at an immigration detention center located in El Paso, Texas, which is within the jurisdiction of this District.

16. Venue is proper in this District under 28 U.S.C. § 1391(e), because Respondents are officers, employees, or agencies of the United States, a substantial

part of the events or omissions giving rising to his claims occurred in this district, and no real property is involved in this action.

REQUIREMENTS OF 28 U.S.C. § 2243

17. 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*.

18. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as “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. Noa*, 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).

PARTIES

19. Petitioner **Walter Bamaca Perez** is a native and citizen of Guatemala who has been in immigration detention since September 6, 2025, following his arrest after being racially profiled by ICE and subjected to a pretextual traffic stop conducted as part of “Operation the District” in Washington, D.C. After Petitioner’s arrest, ICE declined to set a bond, and the Immigration Court has likewise denied

bond for lack of jurisdiction. Petitioner has resided in the United States since entering without inspection on or about February 12, 2007. He is currently in the physical and legal custody of Respondents at the ERO El Paso Camp East Montana located in El Paso, Texas.

20. Respondent **Kristi Noem** is sued in her official capacity as the Secretary of the United States Department of Homeland Security ("DHS"). She exercises ultimate control and supervisory authority over all components and personnel of DHS, including U.S. Immigration and Customs Enforcement ("ICE"). She is responsible for the administration and enforcement of the nation's immigration laws pursuant to 8 U.S.C. § 1103(a). Accordingly, she is the Petitioner's ultimate legal custodian, as Petitioner's detention is maintained under DHS authority.

21. Respondent **Pamela Jo Bondi** is sued in her official capacity the Attorney General of the United States. She administers the Department of Justice ("DOJ"), including the Executive Office for Immigration Review ("EOIR"), the Board of Immigration Appeals ("BIA"), and the Immigration Courts. She is responsible for the administration and enforcement of the nation's immigration laws pursuant to 8 U.S.C. § 1103(g). Accordingly, she is one of Petitioner's legal custodians.

22. Respondent **Todd M. Lyons** is sued in his official capacity as the Acting Director of U.S. Immigration and Customs Enforcement ("ICE"), a component agency within DHS. He exercises authority over ICE operations nationwide, including enforcement, detention, and removal functions. Accordingly, he is one of Petitioner's legal custodians, as he has direct oversight of the agency responsible for Petitioner's custody.

23. Respondent **Mary De Anda-Ybarra** is sued in her official capacity as the El Paso Field Office Director for U.S. Immigration and Customs Enforcement ("ICE"), which has jurisdiction over the ERO El Paso Camp East Montana facility where Petitioner is detained. In that capacity, she exercises day-to-day supervisory authority over custody determinations and the conditions of detention within her jurisdiction. Accordingly, she is a proper Respondent as one of Petitioner's legal custodians.

24. Respondent **Warden** is sued in his/her official capacity as the Warden of the ERO El Paso Camp East Montana, where Petitioner is currently detained. The warden has immediate physical custody of Petitioner pursuant to a contract with ICE to detain noncitizens and is one of Petitioner's legal custodians.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

25. Petitioner Walter Bamaca Perez is a 36-year-old native and citizen of Guatemala.

26. On or about February 12, 2007, Petitioner entered the United States without inspection and was not apprehended upon arrival.

27. On or about July 23, 2023, Petitioner had an encounter with law enforcement after inadvertently making a wrong turn on a bridge near Niagara Falls, New York. Thereafter, the Department of Homeland Security issued a Notice to Appear charging Petitioner with removability under Section 212(a)(6)(A)(i) of the Immigration and Nationality Act and initiated removal proceedings before the Buffalo Immigration Court on or about August 16, 2023. **See, Exhibit D, Notice to Appear.**

28. Petitioner filed an application for cancellation of removal for certain nonpermanent residents with the immigration court as relief from removal. On December 3, 2024, an Individual Merits Hearing was conducted and continued to August 19, 2025. Thereafter, a final hearing was scheduled for September 25, 2025, for the submission of additional medical evidence and for the immigration judge to render a decision. **See, Exhibit E, Notices of Hearing.** All testimony and evidence were submitted, and the immigration judge closed the record.

29. On or about September 6, 2025, during ICE surveillance conducted as part of "Operation the District" in Washington, D.C., Petitioner was racially profiled and subjected to a pretextual traffic stop. *See, Exhibit B, Record of Deportable/Inadmissible Alien.* During this encounter, Petitioner was questioned about his immigration status, arrested, and taken into custody. *Id.*

30. Petitioner was initially detained at the Farmville Detention Center in Farmville, Virginia, and on or about September 26, 2025, he was transferred to the ERO El Paso Camp East Montana detention facility, where he remains detained. *See, Exhibit A, DHS Online Detainee Locator.*

31. As a result of his detention, Petitioner was unable to appear for his final immigration hearing before the Buffalo Immigration Court scheduled for September 25, 2025.

32. On December 9, 2025, Respondent's motion for a bond redetermination was denied by the El Paso SPC Immigration Court for lack of jurisdiction pursuant to the Board of Immigration Appeal's decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). *See, Exhibit F, Order of the Immigration Judge.*

33. Petitioner has extensive and longstanding family and community ties in the United States. He is the father of two minor U.S. citizen children, one of whom is severely autistic, to-wit: **W.A.T.B.**, born in 2014 (age 11), and **A.C.B.A.**, born in 2018 (age 7). Petitioner is the primary provider for his family, and his continued

detention has caused profound emotional and financial hardship to his children and partner.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

34. There is no statutory requirement of administrative exhaustion before immigration detention may be challenged in federal court by a writ of habeas corpus. *See* 8 U.S.C. § 1252(d)(1); *Garza-Garcia v. Moore*, 539 F. Supp. 2d 899, 904 (S.D. Tex. 2007) (“Under the INA exhaustion of administrative remedies is only required by Congress for appeals on final orders of removal.”).

35. The Supreme Court has recognized that exhaustion is not required where a plaintiff “may suffer irreparable harm if unable to secure immediate judicial consideration of her claim.” *McCarthy v. Madigan*, 503 U.S. 140, 147 (1992).

36. Even if the Court were to consider requiring exhaustion as a prudential matter, further action with the agency is unnecessary when pursuing administrative remedies would be futile or the agency has predetermined a dispositive issue. *McCarthy v. Madigan*, 503 U.S. 144, 147-48 (1992) (holding that an administrative remedy is inadequate when it “lacks institutional competence to resolve the particular type of issue presented, such as the constitutionality of a statute” or where the “challenge is to the adequacy of the agency procedure itself”).

37. In this case, exhaustion would be futile, because the Board of Immigration Appeals "BIA") issued a precedential decision in *Matter of Yajure*

Hurtado, 29 I&N Decision 216 (BIA 2025), holding that regardless of length of time in the United States, immigration judges lack authority to grant bond to noncitizens present in the United States without admission under 8 U.S.C. § 1225(b)(2)(A), which was the statutory construction disputed in *Maldonado Bautista*. Despite the declaratory judgment in *Maldonado Bautista* immigration judges continued to deny bond under the BIA's prior decision in *Matter of Yajure Hurtado*.

CLAIM FOR RELIEF

REQUEST FOR RELIEF PURSUANT TO *MALDONADO BAUTISTA*

38. Petitioner realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein.

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

40. 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.

41. 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.”

42. 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).

43. 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 respectfully requests that this Honorable Court grant the following relief.

- A. Exercise jurisdiction over this matter;
- B. Enjoin Petitioner's transfer outside the Western District of Texas during the pendency of this action;
- C. Issue a Writ of Habeas Corpus ordering Respondents to immediately release Petitioner from ICE custody;
- D. Alternatively, issue a Writ of Habeas Corpus requiring Respondents to release Petitioner unless they provide a bond hearing under 8 U.S.C. § 1226(a) within seven days;

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

F. Grant such other and further relief that this Court deems just and proper.

Dated: December 18, 2025

Respectfully submitted,

/s/ Veronica Semino
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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, **WALTER BAMACA PEREZ**, and submit this verification on his behalf. I hereby verify under penalty of perjury 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 18, 2025

Respectfully submitted,

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