

1 Michael Martin, Esq.  
Martin & Farah Law, PC  
2 632 W. 11<sup>th</sup> Street, Suite 211  
Tracy, CA 95376  
3 TEL: 209-229-7977  
4 FAX: 209-229-7981  
mm@martinfarah.com

5 Attorney for Petitioner

6  
7 **UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF CALIFORNIA**

8  
9 **RODOLFO DANIEL GOMEZ GOMEZ,**

10 Plaintiff/Petitioner,

11 v.

12 **JEREMY CASEY**, Facility Administrator,  
Imperial Regional Detention Facility;  
13 **GREGORY J. ARCHAMBEAULT**, Acting  
Field Office Director of San Diego Office of  
14 Detention and Removal, U.S. Immigrations and  
Customs Enforcement; U.S. Department of  
15 Homeland Security;  
16 **TODD M. LYONS**, Acting Director of the  
United States Immigration and Customs  
17 Enforcement;  
18 **KRISTI NOEM**, Secretary of the United States  
Department of Homeland Security;  
19 **PAMELA JO BONDI**, United States Attorney  
General,  
20 *in their official capacities,*

21 Respondents.


Case No. **'25CV3674 AGS AHG**

**PETITION FOR WRIT OF HABEAS  
CORPUS UNDER 28 USC §2241  
AND COMPLAINT FOR INJUNCTIVE  
AND DECLARATORY RELIEF**

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1           **I.       INTRODUCTION**

- 2           1. Petitioner, Rodolfo Daniel Gomez Gomez (“Petitioner” or “Mr. Gomez Gomez”), is a  
3           long-time resident of the United States and a respondent in removal proceedings under  
4           Immigration and Nationality Act (“INA”) §240, 8 USC §1229a, before the San Francisco  
5           Immigration Court. His U.S.-citizen child, [REDACTED], suffers from complex renal and  
6           developmental conditions and requires intensive medical management and parental care.  
7           Mr. Gomez Gomez is no longer in a romantic relationship with [REDACTED] mother, but  
8           works with her to provide care for his son.  
9  
10          2. Mr. Gomez Gomez is currently detained by U.S. Immigration and Customs Enforcement  
11          (“ICE”) at the Imperial Regional Detention Facility (“IRDF”) in Calexico, California,  
12          within this District. He has no criminal history that would trigger mandatory detention  
13          under INA §236(c), 8 USC §1226(c). He has consistently complied with his immigration  
14          obligations, including appearing for hearings and check-ins.  
15  
16          3. On or about November 25, 2025, Mr. Gomez Gomez – a truck driver – was apprehended  
17          at a checkpoint by ICE/Enforcement and Removal Operations (“ERO”) near Calexico,  
18          California. Without any new allegation of misconduct or change in his immigration  
19          posture, ICE arrested him, placed him in custody, and transferred him to IRDF, where he  
20          remains detained.  
21  
22          4. Mr. Gomez Gomez’s removal case has proceeded for years under INA §240 before  
23          Immigration Judge (“IJ”) Slayton in the San Francisco Immigration Court. Through  
24          counsel, he submitted a comprehensive Form I-589 application for asylum, withholding  
25          of removal, and protection under the Convention Against Torture (“CAT”), along with an

1 extensive pre-hearing statement and supporting evidence. He has also applied for  
2 cancellation of removal under 8 USC §1229b(b), based in significant part on   
3 exceptional medical needs.

4 5. Notwithstanding the pendency of §240 proceedings, Respondents now assert that Mr.  
5 Gomez Gomez is detained not under INA §236(a), 8 USC §1226(a), but rather under INA  
6 §235(b)(2)(A), 8 USC §1225(b)(2)(A), as an “applicant for admission” subject to  
7 mandatory detention. Respondents appear to rely on a July 8, 2025, ICE “Interim  
8 Guidance Regarding Detention Authority for Applicants for Admission” and the Board of  
9 Immigration Appeals’ (“BIA”) precedential decision in Matter of Yajure Hurtado, 29 I. &  
10 N. Dec. 216 (BIA 2025), which together assert that noncitizens who entered without  
11 inspection and are charged under 8 USC §1182(a)(6)(A)(i) must be detained under  
12 §1225(b)(2).  
13

14 6. In light of this new policy and Yajure, it appears that ICE is detaining Mr. Gomez Gomez  
15 under §1225(b)(2), under which he is ineligible for bond. This was confirmed when an  
16 Immigration Judge issued an order stating that the Immigration Court had no jurisdiction  
17 to consider or grant a bond redetermination request. As a result, Mr. Gomez Gomez is  
18 held in civil immigration detention with no access to an individualized custody  
19 determination by a neutral decisionmaker.  
20

21 7. This detention is unlawful. The INA’s text, structure, and legislative history confirm that  
22 §1226(a) is the governing detention authority for noncitizens in Mr. Gomez Gomez’s  
23 posture: individuals apprehended in the interior, placed in §240 removal proceedings, and  
24 not subject to §1226(c), §1225(b)(1), or 8 USC §1231. Section 1225(b)(2) is a border-  
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1 facing provision tied to inspection and admission at or as if at the border. It does not  
2 authorize mandatory detention of long-term residents apprehended in the interior long  
3 after the initiation of §240 proceedings.

4 8. For decades after Congress enacted the current detention framework in 1996, the agency  
5 treated people like Mr. Gomez Gomez as detained under §1226(a) and entitled to bond  
6 consideration. When promulgating the current bond regulations in 1997, the former  
7 Immigration and Naturalization Service (“INS”) expressly confirmed that “inadmissible  
8 aliens, except for arriving aliens, have available to them bond redetermination hearings  
9 before an immigration judge” and that this “maintains the status quo.” *Inspection and*  
10 *Expedited Removal of Aliens*, 62 Fed. Reg. 10,312, 10,323 (Mar. 6, 1997).

11  
12 9. Recent amendments enacted through the Laken Riley Act (“LRA”) further confirm that  
13 Congress understands §1226(a) to govern the detention of individuals like Mr. Gomez  
14 Gomez. The LRA amended §1226(c)(1)(E) to specify that certain people who are  
15 inadmissible under 8 USC §1182(a)(6)(A)(i) (entry without inspection) or (a)(7) (lack of  
16 valid entry documents) and who have been arrested, charged with, or convicted of certain  
17 crimes are subject to mandatory detention under §1226(c). Those amendments  
18 presuppose that individuals charged under §1182(a)(6)(A)(i) and (a)(7) are otherwise  
19 detained under §1226(a). If, as DHS now asserts, all such individuals are detained under  
20 §1225(b)(2), the LRA’s amendments to §1226(c)(1)(E) would be meaningless.

21  
22 10. The July 8, 2025, ICE guidance and Yajure represent an abrupt departure from this  
23 statutory framework, the 1997 bond regulations, and decades of consistent practice. By  
24 recategorizing interior residents like Mr. Gomez Gomez as §1225(b)(2) “applicants for  
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1 admission,” they effectively nullify §1226(a) and EOIR’s bond regulations for a large  
2 class of noncitizens, vastly expanding the scope of mandatory detention beyond that  
3 which Congress authorized.

4 11. Multiple district courts have already rejected this new interpretation in cases brought by  
5 detainees in the same posture as Mr. Gomez Gomez, including Rodriguez Vazquez v.  
6 Bostock, 349 F.R.D. 333 (W.D. Wash. 2025), and regional class actions challenging the  
7 same DHS policy.

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9 12. In addition, Mr. Gomez Gomez is a member of the nationwide Bond Eligible Class  
10 certified in Maldonado Bautista v. Santacruz, No. 5:25-cv-01873-SSS-BFM (C.D. Cal.),  
11 which encompasses noncitizens without lawful status who entered the United States  
12 without inspection, were not apprehended “upon arrival,” and are not detained under 8  
13 USC §§1226(c), 1225(b)(1), or 1231 at the time DHS makes an initial custody  
14 determination. The Maldonado Bautista court has already entered a declaratory judgment  
15 on behalf of this class, holding that the new DHS “no-bond” policy is unlawful and that  
16 detention of class members is governed by §1226, not §1225. As a class member, Mr.  
17 Gomez Gomez is entitled to that declaratory relief and to a bond hearing under §1226(a).  
18

19 13. This petition therefore advances two closely related bases for relief. First, because Mr.  
20 Gomez Gomez is a member of the Maldonado Bautista Bond Eligible Class, this Court  
21 should enforce the binding declaratory judgment and require Respondents, including  
22 EOIR, to provide him a prompt individualized bond hearing under §1226(a). Second, in  
23 the alternative, if this Court were to conclude that Mr. Gomez Gomez is not a class  
24 member, his detention is still unlawful for the reasons set forth in Counts One through  
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1 Four: the INA, DHS and EOIR regulations, the Administrative Procedure Act (“APA”),  
2 and the Fifth Amendment all require that his custody be governed by §1226(a) and that  
3 he be afforded an individualized custody determination.

4 14. Mr. Gomez Gomez brings this petition under 28 USC §2241, as well as an accompanying  
5 complaint for declaratory and injunctive relief. He seeks a declaration that §1226(a)  
6 governs his detention; that the July 8, 2025 ICE guidance and Yajure are contrary to law  
7 and arbitrary and capricious as applied to him; that his continued detention without  
8 access to a bond hearing violates DHS and EOIR regulations and the Fifth Amendment;  
9 and an order requiring Respondents either (a) to release him under reasonable conditions  
10 of supervision, or (b) to provide him a prompt individualized custody redetermination  
11 hearing before an immigration judge applying §1226(a), the Maldonado Bautista  
12 declaratory judgment, and the proper constitutional standards. Petitioner also challenges,  
13 as unconstitutional, DHS’s and EOIR’s use of the automatic stay provision at 8 C.F.R.  
14 §1003.19(i)(2) to nullify any future Immigration Judge bond order in his favor, and seeks  
15 to enjoin Respondents from invoking that automatic stay as to him.  
16

17 **II. JURISDICTION AND VENUE**  
18

19 15. This Court has jurisdiction over this habeas corpus action under 28 USC §2241(c)(3),  
20 because Mr. Gomez Gomez is “in custody in violation of the Constitution or laws or  
21 treaties of the United States.”

22 16. Mr. Gomez Gomez is detained at IRDF in Calexico, California, which lies within the  
23 Southern District of California. He is therefore “in custody” within this Court’s territorial  
24 jurisdiction for §2241 purposes.  
25

1 17. This Court also has jurisdiction under 28 USC §1331 because Mr. Gomez Gomez’s  
2 claims arise under the Constitution, the INA, and the Administrative Procedure Act  
3 (“APA”), 5 USC §§701–706.

4 18. This Court may grant declaratory relief under 28 USC §§2201–2202 and injunctive relief  
5 under 28 USC §1651 and its inherent equitable powers.

6 19. The jurisdiction-channeling provisions in 8 USC §1252 do not bar this Court’s review.  
7 Mr. Gomez Gomez does not seek review of any final order of removal, does not  
8 challenge the decision to commence or adjudicate removal proceedings, and does not ask  
9 this Court to enjoin execution of a removal order. Instead, he brings a collateral challenge  
10 to the statutory basis and procedures of his current detention. The Supreme Court has  
11 held that such detention challenges are properly brought under §2241 and are not  
12 channeled exclusively through petitions for review. See, e.g., Zadvydas v. Davis, 533  
13 U.S. 678 (2001); Demore v. Kim, 538 U.S. 510 (2003); Jennings v. Rodriguez, 583 U.S.  
14 281 (2018).

15 20. Section 1252(a)(5) and (b)(9) channel challenges to “orders of removal” and questions  
16 arising from those orders to the courts of appeals, but they do not preclude district-court  
17 habeas review of stand-alone detention claims. Jennings, 583 U.S. at 291–94. Mr. Gomez  
18 Gomez’s claims are independent of, and collateral to, the merits of his removal case.

19 21. Section 1252(g) strips jurisdiction only over three discrete actions: the decision or action  
20 to commence proceedings, adjudicate cases, or execute removal orders. Mr. Gomez  
21 Gomez challenges none of those. He contests only the statutory authority under which he  
22 is currently detained and the denial of bond jurisdiction.  
23  
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1 22. Section 1226(e) does not bar review either. Mr. Gomez Gomez does not ask this Court to  
2 review the substance of any discretionary bond decision; he has been categorically denied  
3 access to bond proceedings. He raises “constitutional claims or questions of law”  
4 regarding the statutory and regulatory limits on detention, which remain reviewable  
5 notwithstanding §1226(e). *Jennings*, 583 U.S. at 291.

6 23. Consistent with these principles, multiple district courts have exercised jurisdiction over  
7 materially identical detention challenges and rejected government arguments that §1252  
8 bars review.

9 24. Venue is proper in this District under 28 USC §1391(e) and §2241 because Mr. Gomez  
10 Gomez is detained within the Southern District of California, and a substantial part of the  
11 events giving rise to his claims occurred here.

12  
13 **III. REQUIREMENTS OF 28 USC §2243**

14 25. Section 2243 provides that a court entertaining a habeas petition “shall forthwith award  
15 the writ or issue an order directing the respondent to show cause why the writ should not  
16 be granted,” and that the respondent must file a return “within three days unless for good  
17 cause additional time, not exceeding twenty days, is allowed.”

18 26. The writ of habeas corpus is designed to be a “swift and imperative remedy in all cases of  
19 illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963). Courts in this  
20 Circuit have repeatedly emphasized that immigration-detention habeas petitions warrant  
21 expeditious consideration because they involve ongoing deprivations of liberty. *See Yong*  
22 *v. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000).

1 27. Mr. Gomez Gomez respectfully requests that the Court issue an order to show cause  
2 directed to Respondents and adjudicate his petition on an expedited basis.

3 **IV. PARTIES**

4 28. Petitioner RODOLFO DANIEL GOMEZ GOMEZ is a native and citizen of El Salvador.  
5 He was born in 1995, in Ciudad Victoria, Cabañas. He is the father of a US citizen son.  
6 He remains in immigration custody at the IRDF in Calexico, CA.

7  
8 29. Respondent JEREMY CASEY is the Facility Administrator of the Imperial Regional  
9 Detention Facility in Calexico, California, where Mr. Gomez Gomez is detained. The  
10 IRDF is owned by the City of Holtville and operated by the Management and Training  
11 Corporation (MTC). Mr. Casey is Mr. Gomez Gomez's immediate physical custodian  
12 and is sued in his official capacity.

13 30. Respondent GREGORY J. ARCHAMBEAULT is the Field Office Director for  
14 ICE/ERO's San Diego Field Office. He exercises authority over detention decisions,  
15 including Mr. Gomez Gomez's continued custody, and is sued in his official capacity.

16 31. Respondent TODD M. LYONS is the Acting Director of U.S. Immigration and Customs  
17 Enforcement. He is responsible for ICE's nationwide detention policies and practices and  
18 is sued in his official capacity.

19  
20 32. Respondent KRISTI NOEM is the Secretary of the U.S. Department of Homeland  
21 Security ("DHS"). DHS oversees ICE and is ultimately responsible for Mr. Gomez  
22 Gomez's detention and for the July 8, 2025, ICE guidance. She is sued in her official  
23 capacity.

1 33. Respondent PAMELA JO BONDI is the Attorney General of the United States and the  
2 head of the U.S. Department of Justice. She oversees the Executive Office for  
3 Immigration Review (“EOIR”), which runs the immigration courts and the BIA. She is  
4 sued in her official capacity. EOIR is the Department of Justice component responsible  
5 for adjudicating removal proceedings and bond hearings. Through its immigration judges  
6 and the BIA, EOIR has adopted and implemented the position that individuals in Mr.  
7 Gomez Gomez’s posture are detained under §1225(b)(2) and are ineligible for bond  
8 hearings.  
9

10 **V. STATUTORY AND REGULATORY FRAMEWORK**

11 **A. The Division Between §1225 and §1226**

12 34. The INA’s detention framework divides authority between 8 USC §1225 and 8 USC  
13 §1226.

14 35. Section 1225 governs “applicants for admission,” a term that includes individuals  
15 arriving at a port of entry and certain others “present in the United States who have not  
16 been admitted.” 8 USC §1225(a)(1). Subsection (a) sets out the inspection process;  
17 subsections (b)(1) and (b)(2) address treatment of such applicants during inspection.  
18 Section 1225(b)(1) governs expedited removal for certain recent entrants encountered at  
19 or near the border; §1225(b)(2)(A) provides that, with limited exceptions, other  
20 applicants for admission “shall be detained” for an admissibility determination.  
21

22 36. Section 1226, by contrast, governs detention “pending a decision on whether the alien is  
23 to be removed from the United States.” 8 USC §1226(a). Section 1226(a) authorizes the  
24 arrest and detention of noncitizens in removal proceedings and expressly allows for their  
25

1 release on bond or conditional parole. Section 1226(c) creates a narrow mandatory-  
2 detention scheme for specified categories of criminal noncitizens.

3 37. The statutory text, structure, and history confirm that §1226(a) is the general detention  
4 authority for noncitizens apprehended in the interior and placed in §240 removal  
5 proceedings, while §1225(b) governs front-end, border-facing processing of applicants  
6 for admission. Reading §1225(b)(2) as DHS now does—to cover essentially all  
7 noncitizens who were never formally “admitted,” no matter when or how they are  
8 apprehended—collapses this distinction, makes much of §1226 superfluous, and expands  
9 mandatory detention far beyond what Congress enacted.  
10

11 **B. The 1997 Bond Regulations and Preservation of Bond Eligibility**

12 38. When INS promulgated the current bond regulations shortly after IIRIRA, it explicitly  
13 addressed how noncitizens “present without admission or parole” would be treated. INS  
14 explained that the regulations maintained pre-IIRIRA practice by making bond  
15 redetermination available to such individuals, except for those who were “arriving”  
16 aliens.  
17

18 39. In the Federal Register notice accompanying 8 C.F.R. §1003.19, INS stated that  
19 “inadmissible [aliens], except for arriving [aliens], have available to them bond  
20 redetermination hearings before an immigration judge” and that this “maintains the status  
21 quo.” 62 Fed. Reg. at 10,323. EOIR has never rescinded or amended this regulatory  
22 understanding.  
23

24 40. For decades thereafter, DHS and EOIR implemented this scheme by treating individuals  
25 in Mr. Gomez Gomez’s posture—noncitizens who entered without inspection, were

1 apprehended in the interior, and were placed in §240 proceedings—as detained under  
2 §1226(a). ICE custody forms and EOIR bond procedures reflected this practice, and  
3 immigration judges routinely exercised bond jurisdiction in such cases.

4 **C. The Laken Riley Act Confirms §1226(a) Governs Individuals in**  
5 **Petitioner’s Posture**

- 6 41. In 2025, Congress enacted the Laken Riley Act, which amended §1226(c)(1)(E) to  
7 expand mandatory detention for certain noncitizens who are inadmissible under 8 USC  
8 §1182(a)(6)(A)(i) (presence without admission or parole) or §1182(a)(7) (lack of valid  
9 entry documents) and who have been arrested, charged with, or convicted of certain  
10 crimes.
- 11 42. By explicitly adding inadmissible individuals under §1182(a)(6)(A)(i) and (a)(7) to the  
12 list of noncitizens subject to §1226(c) mandatory detention in defined circumstances,  
13 Congress made clear that such individuals are within the §1226(a) universe in the first  
14 place. The LRA’s amendments presuppose that, absent the specific criminal triggers in  
15 §1226(c)(1)(E), people who entered without inspection or without valid documents are  
16 detained, if at all, under §1226(a), with access to bond and bond redetermination.
- 17 43. If, as DHS now contends, all nonadmitted noncitizens must be detained under  
18 §1225(b)(2), then the LRA’s amendments to §1226(c)(1)(E) do no meaningful work.  
19 That outcome is inconsistent with the rule that courts should presume Congress intends  
20 its statutory amendments to have “real and substantial effect,” not to be surplusage.  
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1           **D.     The July 8, 2025, ICE Guidance and Matter of Yajure Hurtado**

2           44. On or about July 8, 2025, ICE issued an “Interim Guidance Regarding Detention  
3           Authority for Applicants for Admission.”<sup>1</sup> That guidance instructs officers that  
4           noncitizens charged as inadmissible under 8 USC §1182—including individuals present  
5           without admission or parole and apprehended in the interior—are detained under  
6           §1225(b)(2) and are therefore subject to mandatory detention and ineligible for bond  
7           hearings.

8  
9           45. On September 5, 2025, the BIA issued Matter of Yajure Hurtado, 29 I. & N. Dec. 216  
10           (BIA 2025), adopting this interpretation in a precedential decision. Yajure held that  
11           individuals present without admission or parole are detained under §1225(b)(2) rather  
12           than §1226(a), and that immigration judges therefore lack jurisdiction to provide bond  
13           hearings in such cases.

14           46. Together, the July 8, 2025, guidance and Yajure effect a sweeping change in detention  
15           policy. They reclassify large numbers of interior noncitizens in §240 proceedings—like  
16           Mr. Gomez Gomez—as §1225(b)(2) “applicants for admission,” strip them of bond  
17           eligibility under EOIR’s longstanding regulations, and substantially expand the scope of  
18           mandatory immigration detention without any clear authorization from Congress.  
19

20           **E.     The Rodriguez Vazquez Litigation and Other Decisions**

21           47. In Rodriguez Vazquez v. Bostock, 349 F.R.D. 333 (W.D. Wash. 2025), the Western  
22           District of Washington confronted the same policy shift in the context of detainees at the  
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<sup>1</sup> Available at <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>

*PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 USC §2241*  
Gomez Gomez v. Casey, et al.

1 Northwest ICE Processing Center. After full briefing, the court held that noncitizens who  
2 (1) entered without inspection, (2) were not apprehended upon arrival, and (3) are not  
3 subject to §1226(c), §1225(b)(1), or §1231 are detained under §1226(a), not §1225(b)(2).  
4 The court certified a “Bond Denial Class” and rejected DHS’s argument that §1225(b)(2)  
5 applies to all nonadmitted noncitizens.

6  
7 48. Rodriguez Vazquez explained that DHS’s interpretation violates basic canons of statutory  
8 construction by rendering portions of §1226 superfluous, conflicts with the 1997 bond  
9 regulations, and cannot be squared with the LRA’s recent amendments to §1226(c). The  
10 court also held that §1252 does not strip jurisdiction over such detention claims. Similar  
11 reasoning has led other courts to enjoin DHS’s application of the July 8, 2025, guidance  
12 and Yajure to interior detainees and to hold that §1226(a) and EOIR’s bond regulations  
13 govern detention of noncitizens in petitioners’ posture.

14 49. Subsequently, court after court has adopted the same reading of the INA’s detention  
15 authorities and rejected ICE and EOIR’s new interpretation. See, e.g., Gomes v. Hyde,  
16 No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); Diaz Martinez v.  
17 Hyde, No. CV 25-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24,  
18 2025); Rosado v. Figueroa, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D.  
19 Ariz. Aug. 11, 2025), report and recommendation adopted, No. CV-25-02157-PHX-DLR  
20 (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); Lopez Benitez v. Francis, No. 25  
21 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); Maldonado v. Olson,  
22 No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); Arrazola-  
23 Gonzalez v. Noem, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal.  
24  
25

1 Aug. 15, 2025); Romero v. Hyde, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass.  
2 Aug. 19, 2025); Samb v. Joyce, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y.  
3 Aug. 19, 2025); Ramirez Clavijo v. Kaiser, No. 25-CV-06248-BLF, 2025 WL 2419263  
4 (N.D. Cal. Aug. 21, 2025); Leal-Hernandez v. Noem, No. 1:25-cv-02428-JRR, 2025 WL  
5 2430025 (D. Md. Aug. 24, 2025); Kostak v. Trump, No. 3:25-cv-01093-JE-KDM, 2025  
6 WL 2472136 (W.D. La. Aug. 27, 2025); Jose J.O.E. v. Bondi, No. 25-CV-3051  
7 (ECT/DJF), --- F. Supp. 3d ----, 2025 WL 2466670 (D. Minn. Aug. 27, 2025); Lopez-  
8 Campos v. Raycraft, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug.  
9 29, 2025); Vasquez Garcia v. Noem, No. 25-cv-02180-DMS-MM, 2025 WL 2549431  
10 (S.D. Cal. Sept. 3, 2025); Zaragoza Mosqueda v. Noem, No. 5:25-CV-02304 CAS  
11 (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); Pizarro Reyes v. Raycraft, No. 25-  
12 CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); Sampiao v. Hyde, No. 1:25-  
13 CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); see also, e.g., Palma Perez  
14 v. Berg, No. 8:25CV494, 2025 WL 2531566, at \*2 (D. Neb. Sept. 3, 2025) (noting that  
15 “[t]he Court tends to agree” that §1226(a) and not §1225(b)(2) authorizes detention);  
16 Jacinto v. Trump, No. 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 at \*3 (D. Neb. Aug.  
17 19, 2025) (same); Anicasio v. Kramer, No. 4:25-cv-03158-JFB-RCC, 2025 WL 2374224  
18 at \*2 (D. Neb. Aug. 14, 2025) (same).

21 **F. The Maldonado Bautista Litigation and the Bond Eligible Class**

22 50. In Lazaro Maldonado Bautista v. Santacruz, No. 5:25-cv-01873-SSS-BFM (C.D. Cal.),  
23 the Central District of California considered the legality of the same DHS “no-bond”  
24 policy at issue here. On November 20, 2025, the court granted Petitioners’ motion for  
25

1 partial summary judgment, holding that the policy unlawfully treats certain noncitizens  
2 who entered without inspection and are in §240 proceedings as detained under  
3 §1225(b)(2) rather than §1226(a).

4 51. Five days later, on November 25, 2025, the court certified a nationwide “Bond Eligible  
5 Class” and expressly extended the same declaratory relief it had granted to the named  
6 petitioners to the class “as a whole.” Maldonado Bautista v. Santacruz, 2025 WL  
7 3288403, at \*9 (C.D. Cal. Nov. 25, 2025).

8  
9 52. As described in the court’s class-certification order and the accompanying practice  
10 advisory, the Bond Eligible Class consists of noncitizens in the United States without  
11 lawful status who entered without inspection, were not apprehended “upon arrival,” and  
12 are not detained under 8 USC §§1226(c), 1225(b)(1), or 1231 at the time DHS makes an  
13 initial custody determination.

14 53. Petitioner asserts that the class definition covers at least two groups of people: (1) those  
15 who entered the United States without inspection, were not apprehended at or near the  
16 border or close in time to their entry, and were later arrested by immigration authorities;  
17 and (2) those who were apprehended at or near the border and close in time to their entry,  
18 were released on recognizance, and were later re-detained in the interior after residing in  
19 the United States. HE further asserts that “apprehension” for purposes of determining  
20 whether someone was apprehended “upon arrival” should be the most recent arrest,  
21 especially where the person was taken into custody after years of residence in the interior.  
22

23 54. Petitioner asserts that the Maldonado Bautista court entered a declaratory judgment under  
24 28 USC §2201, that EOIR and DHS are defendants in that case, and that the declaratory  
25

1 relief therefore has the force and effect of a final judgment binding on those agencies and  
2 their officers unless stayed, modified, or overturned on appeal. Declaratory judgments  
3 function as the practical equivalent of injunctions in suits against government officials  
4 because courts presume that federal officials will comply with the law as declared.

5 55. Finally, Petitioner asserts that class members are not precluded from filing habeas  
6 petitions asserting that they are unlawfully detained because Respondents have denied  
7 them the statutory right to a bond hearing recognized in Maldonado Bautista. He  
8 contends that a petition, like this one, can both (a) assert class membership and seek  
9 enforcement of the Maldonado Bautista declaratory judgment, and (b) in the alternative,  
10 argue that even if the person is not deemed a class member, they are detained under  
11 §1226(a) and entitled to a bond hearing for the reasons articulated in the Maldonado  
12 Bautista and related decisions.  
13

## 14 VI. FACTUAL ALLEGATIONS

### 15 A. Mr. Gomez Gomez's Background and Family

16 56. Mr. Gomez Gomez grew up in El Salvador, where he experienced severe childhood  
17 sexual abuse and escalating gang violence. By his mid-teens, gangs had taken control of  
18 his town, demanded extortion payments, and threatened to kill him when he resisted  
19 recruitment. Fearing for his life, he fled to the United States. Exh. 1.

20 57. Mr. Gomez Gomez entered the United States without inspection on or about August 8,  
21 2013. After crossing the border, he walked inland into the United States, away from the  
22 immediate border area. Later that same day, while he was already within U.S. territory,  
23 immigration authorities apprehended him. Exh. 1. He was not arrested while presenting  
24  
25

1 himself for inspection at a port of entry or at the literal line of the border. Rather, DHS  
2 treated him as a non-arriving noncitizen in the interior and placed him in standard §240  
3 removal proceedings. Exhs. 3, 5.

4 58. Over the years, Mr. Gomez Gomez has built a life in California, working hard, paying  
5 taxes, and forming deep ties to his faith community and extended family. Exh. 1.

6 59. Mr. Gomez Gomez's son [REDACTED] is a U.S. citizen who suffers from complex renal and  
7 developmental conditions requiring ongoing medical care, frequent appointments, and  
8 close monitoring. Exh. 7. Mr. Gomez Gomez has taken [REDACTED] to his appointments,  
9 managed medications, coordinated care with specialists, and provided daily support.  
10 Exhs. 1, 6, 7.

11 60. Mr. Gomez Gomez's detention at IRDF has devastated his family. [REDACTED] has lost a  
12 primary caregiver and is struggling emotionally and medically. Mr. Gomez Gomez's  
13 detention has cut off the family's primary source of financial and caregiving support.  
14 Exh. 6.

15  
16 **B. Removal Proceedings in the San Francisco Immigration Court**

17 61. DHS initiated removal proceedings against Mr. Gomez Gomez by issuing and filing a  
18 Notice to Appear ("NTA") in the San Francisco Immigration Court, charging him as  
19 inadmissible under INA §212(a)(6)(A)(i), 8 USC §1182(a)(6)(A)(i), as present in the  
20 United States without being admitted or paroled. Exh. 3.

21 62. Mr. Gomez Gomez's case has proceeded under INA §240 before IJ Slayton. Through  
22 counsel, he has submitted an I-589 application seeking asylum, withholding of removal,  
23 and CAT protection based on his past sexual abuse, gang violence, and the risk of future  
24  
25

1 persecution and torture if returned to El Salvador. Exh. 8. He has also sought cancellation  
2 of removal based on his lengthy continuous presence, good moral character, and the  
3 exceptional and extremely unusual hardship that J.D.G.R. would suffer if Mr. Gomez  
4 Gomez were removed. Exh. 8.

5 63. Mr. Gomez Gomez has appeared at scheduled hearings. Exh. 4. The immigration court  
6 has scheduled an individual merits hearing for July 8, 2026. Exh. 4. Venue remains in the  
7 San Francisco Immigration Court even though Mr. Gomez Gomez is now detained at  
8 IRDF, hundreds of miles away. Exh. 5.

9  
10 **C. Arrest at Checkpoint and Detention at IRDF**

11 64. On or about November 25, 2025, Mr. Gomez Gomez was driving in Southern California  
12 – he is a truck driver. He was stopped at an immigration checkpoint near Calexico, CA.  
13 Immigration authorities arrested Mr. Gomez Gomez and placed him in custody. ICE  
14 subsequently transferred him to IRDF in Imperial, California. Exh. 5.

15 65. Mr. Gomez Gomez’s counsel has been given no information about the statutory basis for  
16 detention. Presumably, because Mr. Gomez Gomez is charged as inadmissible under  
17 §1182(a)(6)(A)(i) and “has not been admitted,” ICE is treating him as an “applicant for  
18 admission” detained under §1225(b)(2), in accordance with the July 8, 2025 guidance.

19  
20 **D. Futility of Bond Redetermination Under Yajure**

21 66. Mr. Gomez Gomez, through counsel, filed a motion for custody redetermination (bond)  
22 with the Immigration Court in Imperial. Exh. 2.

23 67. The Immigration Judge issued an order on December 17, 2025 finding that the court had  
24 no jurisdiction to consider bond, pursuant to Yajure, and agreed with the DHS’s  
25

1 interpretation of the law. The position is that under Matter of Yajure Hurtado, noncitizens  
2 in Mr. Gomez Gomez’s posture are detained under §1225(b)(2) as “applicants for  
3 admission,” and thus the immigration court lacks authority to consider a bond request.  
4 Exh. 9. The IJ also stated that Petitioner was not a Maldonado Bautista class member  
5 because the findings and orders in that case were not “final”, and were thus not binding.

6 Exh. 9.

7  
8 68. As a result, Mr. Gomez Gomez has been categorically barred from any individualized  
9 custody determination. No neutral decisionmaker has assessed whether he poses a danger  
10 or risk of flight, or whether less restrictive conditions—such as reporting requirements,  
11 electronic monitoring, or a reasonable bond—could ensure his appearance and  
12 community safety.

13 69. DHS has also repeatedly invoked the automatic stay provision at 8 C.F.R. §1003.19(i)(2)  
14 to prevent release of similarly situated noncitizens after favorable bond decisions by  
15 Immigration Judges, and counsel reasonably fears the same will occur if an IJ orders  
16 Petitioner released. Exh. 2.

17 **E. Ongoing Harm from Unlawful Detention**

18  
19 70. Mr. Gomez Gomez’s detention at IRDF, far from his family and counsel, has caused  
20 severe and ongoing harm. It has separated J.D.G.R. from his caregiver, disrupted  
21 complex medical care, and created significant emotional and financial strain for the  
22 family. Exh. 6.

23 71. Detention has also impeded Mr. Gomez Gomez’s ability to prepare for his upcoming  
24 individual hearing. Distance and detention restrictions limit counsel’s access to him,  
25

1 make it more difficult to gather evidence and coordinate witnesses, and chill his ability to  
2 participate fully in presenting his case for relief.

3 72. Mr. Gomez Gomez is experiencing profound anxiety, stress, and fear as a result of his  
4 detention and the uncertainty surrounding his case. These harms are irreparable and  
5 cannot be compensated by monetary damages. Exh. 6.

6 **F. Mr. Gomez Gomez’s Eligibility for the Maldonado Bautista Bond Eligible**  
7 **Class**

8 73. As described above, Mr. Gomez Gomez entered the United States without inspection on  
9 or about August 8, 2013, and was apprehended later that day within the United States,  
10 after crossing the border and travelling into the interior. Exhs. 1, 3, 5. He was not stopped  
11 while “arriving” at a port of entry or at the front-end of the inspection process, and he  
12 was not placed in expedited removal under §1225(b)(1). Instead, DHS initiated standard  
13 §240 removal proceedings against him by issuing an NTA to the San Francisco  
14 Immigration Court. Exh. 3. He was not charged as an arriving alien, and was charged as  
15 inadmissible under 8 USC §1182(a)(6). Exh. 3.

16  
17 74. At the time of the current detention, Mr. Gomez Gomez has long resided in the interior  
18 United States. He has no criminal history that would bring him within INA §236(c), 8  
19 USC §1226(c). He is not detained under §1225(b)(1) or §1231. ICE’s current custody  
20 decision arises from his 2025 arrest at a random checkpoint, years after his entry and after  
21 a lengthy period of residence in California.

22  
23 75. Under the Bond Eligible Class definition, Mr. Gomez Gomez meets each element. He is a  
24 noncitizen without lawful status who entered the United States without inspection; he was  
25 not apprehended “upon arrival” in the sense used by the Maldonado Bautista court, which

1 distinguished interior apprehensions from front-end, border-inspection detention; and he  
2 is not detained under §1226(c), §1225(b)(1), or §1231 at the time of DHS’s current  
3 custody determination.

4 76. Even if the government were to characterize his initial 2013 apprehension as having  
5 occurred “at or near the border and close in time to his entry,” Mr. Gomez Gomez would  
6 still fall within the class as a person who was initially apprehended near the border but  
7 after entry, released on recognizance, and later re-detained after residing in the United  
8 States for some time. For that group, Petitioner asserts that adjudicators must look to the  
9 most recent arrest in determining whether someone was apprehended “upon arrival” and  
10 whether the person fits within the Bond Eligible Class. From that perspective, the  
11 relevant apprehension for class-membership purposes is Mr. Gomez Gomez’s 2025  
12 arrest, which did not occur “upon arrival.”  
13

14 77. Accordingly, Mr. Gomez Gomez is a member of the Maldonado Bautista Bond Eligible  
15 Class. As such, he is entitled to the benefit of the declaratory judgment entered in that  
16 case, which holds that DHS’s “no-bond” policy is unlawful and that the detention of class  
17 members is governed by §1226(a), not §1225(b)(2). Respondents, including EOIR, are  
18 bound by that declaratory judgment and must treat Mr. Gomez Gomez as detained under  
19 §1226(a) and eligible for a bond hearing.  
20

21 78. Even if he is not a class member, his detention pursuant to the flawed reading of 8 USC  
22 1225(b)(2), rather than the plain and obvious rules set out in §1226(a), is unlawful.  
23  
24  
25

1 **VII. CLAIMS FOR RELIEF**

2 **COUNT ONE**

3 **Violation of the Immigration and Nationality Act**  
4 **(INA §236(a), 8 USC §1226(a))**

5 79. Petitioner repeats and incorporates by reference the allegations set forth above.

6 80. Mr. Gomez Gomez is a noncitizen who entered the United States without inspection, was  
7 not apprehended upon arrival, has been residing in the interior for many years, and is in  
8 removal proceedings under INA §240 before the San Francisco Immigration Court.

9 81. He is not subject to detention under INA §236(c), §235(b)(1), or 8 USC §1231. His  
10 removal proceedings are ongoing, and no final order of removal has been issued.

11 82. Under the INA's text, structure, and history, §1226(a) governs detention of noncitizens in  
12 Mr. Gomez Gomez's posture: those apprehended in the interior and placed into §240  
13 proceedings, except for the narrow categories covered by §1226(c), §1225(b)(1), and  
14 §1231.

15 83. Section 1225(b)(2) is a front-end, border-facing provision that governs detention of  
16 applicants for admission at or as if at the border during inspection. It does not authorize  
17 mandatory detention of long-term residents in interior §240 proceedings.

18 84. For decades, DHS and EOIR treated individuals like Mr. Gomez Gomez as detained  
19 under §1226(a) and eligible for bond hearings, consistent with the 1997 bond regulations  
20 and the Federal Register's statement that "inadmissible aliens, except for arriving aliens,  
21 have available to them bond redetermination hearings before an immigration judge" and  
22 that this "maintains the status quo."  
23

1 85. The Laken Riley Act’s amendments to §1226(c)(1)(E) confirm that individuals charged  
2 as inadmissible under §1182(a)(6)(A)(i) and (a)(7) are within the §1226(a) universe and  
3 are subject to §1226(c)’s mandatory detention only when specific additional conditions  
4 are met. If, as DHS now asserts, all such individuals must be detained under §1225(b)(2),  
5 the LRA’s amendments are rendered meaningless.

6  
7 86. By detaining Mr. Gomez Gomez under §1225(b)(2) instead of §1226(a), and by treating  
8 him as subject to mandatory detention as an “applicant for admission,” Respondents are  
9 acting in excess of and contrary to the detention authority Congress conferred in the INA.

10 87. Mr. Gomez Gomez is therefore in custody “in violation of the . . . laws . . . of the United  
11 States” within the meaning of 28 USC §2241(c)(3).

12 **COUNT TWO**  
13 **Violation of DHS and EOIR Regulations**  
14 **(8 C.F.R. §§236.1, 1236.1, 1003.19)**

15 88. Petitioner repeats and incorporates by reference the allegations set forth above.

16 89. DHS and EOIR regulations implement the §1226(a) detention scheme by providing for  
17 custody determinations and bond redetermination hearings. See 8 C.F.R. §§236.1,  
18 1236.1, 1003.19.

19 90. These regulations, and the accompanying 1997 Federal Register commentary, make clear  
20 that noncitizens present in the United States without admission or parole who are not  
21 arriving aliens are eligible for bond and bond redetermination hearings before  
22 immigration judges.

23 91. Mr. Gomez Gomez falls squarely within this category: he is present without admission or  
24 parole, was not apprehended while “arriving” in the United States, and is in §240 removal  
25

1 proceedings. Under the regulations, he is entitled to seek a custody redetermination  
2 before an immigration judge.

3 92. By instructing immigration judges to deny bond jurisdiction in cases like Mr. Gomez  
4 Gomez's based on the July 8, 2025, guidance and Yajure, and by refusing to allow Mr.  
5 Gomez Gomez any opportunity to seek bond, Respondents are acting contrary to 8 C.F.R.  
6 §§236.1, 1236.1, and 1003.19.

7  
8 93. The IJ's conclusion that she has no bond jurisdiction over Mr. Gomez Gomez is  
9 inconsistent with those regulations and the 1997 Federal Register's explanation that bond  
10 redetermination remains available to non-arriving inadmissible noncitizens. Respondents'  
11 refusal to provide Mr. Gomez Gomez with a bond hearing, therefore, violates binding  
12 regulations and further renders his custody unlawful under §2241(c)(3).

13 **COUNT THREE**

14 **Violation of the Administrative Procedure Act**  
15 **(5 USC §706(2): Contrary to Law, In Excess of Authority, Arbitrary and Capricious)**

16 94. Petitioner repeats and incorporates by reference the allegations set forth above.

17 95. The July 8, 2025, ICE "Interim Guidance Regarding Detention Authority for Applicants  
18 for Admission," the BIA's decision in Matter of Yajure Hurtado, and EOIR's resulting  
19 policy of denying bond jurisdiction in cases like Mr. Gomez Gomez's constitute final  
20 agency action as applied to him. They determine his legal status as a §1225(b)(2)  
21 detainee, dictate that he is ineligible for bond, and have concrete, ongoing consequences  
22 for his liberty.

23 96. By interpreting §1225(b)(2) to govern detention of interior noncitizens already in §240  
24 proceedings, and by denying the applicability of §1226(a) and EOIR's bond regulations  
25

1 to such individuals, the July 8, 2025 guidance and Yajure exceed the authority conferred  
2 by the INA and conflict with the statute’s text, structure, and history.

3 97. These agency actions are therefore “not in accordance with law” and “in excess of  
4 statutory jurisdiction, authority, or limitations” within the meaning of 5 USC §706(2)(A),  
5 (C).

6 98. The challenged policy also represents an unexplained and unjustified departure from  
7 decades of prior practice under which noncitizens like Mr. Gomez Gomez were detained,  
8 if at all, under §1226(a) and afforded bond hearings. DHS and EOIR have not adequately  
9 acknowledged or explained this shift, have not accounted for reliance interests, and have  
10 not addressed obvious alternatives.

11 99. By effectively nullifying §1226(a) and EOIR’s bond regulations for a large population  
12 and dramatically expanding mandatory detention without a reasoned explanation, the July  
13 8, 2025, guidance and Yajure are arbitrary and capricious under 5 USC §706(2)(A).

14 100. Because Mr. Gomez Gomez’s detention rests on these unlawful and arbitrary  
15 policies, he is entitled to relief under the APA and §2241.

16  
17  
18 **COUNT FOUR**  
**Violation of the Fifth Amendment Due Process Clause**

19 101. Petitioner repeats and incorporates by reference the allegations set forth above.

20 102. The Fifth Amendment guarantees that “[n]o person shall . . . be deprived of life,  
21 liberty, or property, without due process of law.” Noncitizens in removal proceedings are  
22 entitled to due process protections.

23 103. Civil immigration detention implicates a fundamental liberty interest. Even where  
24 Congress authorizes detention, due process requires that detention be reasonably related  
25

1 to the government’s legitimate purposes—such as ensuring appearance and protecting the  
2 community—and that adequate procedural safeguards exist to guard against erroneous  
3 deprivations of liberty.

4 104. Mr. Gomez Gomez’s current detention is mandatory and categorical. Because  
5 Respondents have designated him as a §1225(b)(2) detainee and EOIR has denied bond  
6 jurisdiction, he has no access to any individualized custody determination before a  
7 neutral decisionmaker.

8  
9 105. No adjudicator has ever found, by any standard of proof, that Mr. Gomez Gomez  
10 is a danger to the community or a flight risk that cannot be mitigated by conditions of  
11 release. He has no criminal history, deep community ties, and a compelling reason to  
12 appear for all hearings: his applications for protection and relief from removal and his  
13 desire to remain with and care for J.D.G.R.

14 106. The government’s interests in ensuring attendance at proceedings and protecting  
15 the community can be fully served by the individualized, discretionary detention scheme  
16 Congress created in §1226(a), including bond hearings and conditions of supervision.  
17 Treating Mr. Gomez Gomez as subject to mandatory detention under §1225(b)(2) is  
18 neither necessary nor narrowly tailored to those interests.

19  
20 107. By detaining Mr. Gomez Gomez without providing him with any opportunity to  
21 seek release through a bond hearing at which the government must justify continued  
22 detention, Respondents have deprived him of liberty without due process of law in  
23 violation of the Fifth Amendment.

**COUNT FIVE**  
**Enforcement of the *Maldonado Bautista* Declaratory Judgment  
and Alternative Claim Regarding Detention Authority**

108. Petitioner repeats and incorporates by reference the allegations set forth above.

109. In Maldonado Bautista v. Santacruz, the Central District of California granted partial summary judgment to petitioners challenging DHS’s “no-bond” policy, holding that the policy unlawfully treats certain noncitizens who entered without inspection and are in §240 proceedings as detained under §1225(b)(2) rather than §1226(a). The court entered declaratory relief to that effect.

110. Subsequently, in its November 25, 2025, order, the Maldonado Bautista court certified a nationwide Bond Eligible Class and extended the same declaratory relief previously granted to the named petitioners to the class as a whole. The class includes noncitizens without lawful status who entered without inspection, were not apprehended upon arrival, and are not detained under §1226(c), §1225(b)(1), or §1231 at the time DHS makes an initial custody determination.

111. As alleged above, Mr. Gomez Gomez falls within this class definition. He is a noncitizen without lawful status who entered without inspection; he was not apprehended “upon arrival,” but after he had crossed the border and moved into the interior; and at the time of his current custody determination, he is not detained under §1226(c), §1225(b)(1), or §1231. In the alternative, even if his initial 2013 apprehension were deemed “at or near the border and close in time to his entry,” Mr. Gomez Gomez still fits within the second group identified by class counsel: individuals who were apprehended near the border, released, and later re-detained after residing in the interior. For such

1 individuals, the Maldonado Bautista court’s reasoning and language indicate that the  
2 relevant “apprehension” for purposes of class membership should be the most recent  
3 arrest—which, here, is Mr. Gomez Gomez’s 2025 arrest at a routine checkpoint.

4 112. The Maldonado Bautista declaratory judgment is binding on Respondents,  
5 including EOIR and DHS, pursuant to 28 USC §2201(a). Declaratory judgments have the  
6 practical effect of fixing the parties’ legal entitlements, and courts presume that federal  
7 officers will comply with the law as declared, absent a stay or reversal.  
8

9 113. Respondents, therefore, must treat Mr. Gomez Gomez, as a class member, as  
10 detained under §1226(a), and provide him with an opportunity to seek bond under  
11 EOIR’s bond regulations.

12 114. By continuing to treat Mr. Gomez Gomez as detained under §1225(b)(2), denying  
13 bond jurisdiction, and refusing to provide him with a bond hearing, Respondents are  
14 violating the Maldonado Bautista declaratory judgment and depriving him of the  
15 statutory rights recognized there. Their conduct is contrary to the INA, the APA, and the  
16 Fifth Amendment, and it renders Mr. Gomez Gomez’s continued detention unlawful  
17 within the meaning of 28 USC §2241(c)(3).  
18

19 115. In the alternative, if this Court were to conclude that Mr. Gomez Gomez is not a  
20 member of the Maldonado Bautista Bond Eligible Class, his detention would still be  
21 unlawful for the reasons set forth in Counts One through Four. Even independent of the  
22 class judgment, the INA’s text and structure, DHS and EOIR’s regulations, the APA, and  
23 the Constitution all require that Mr. Gomez Gomez’s detention be governed by §1226(a)  
24 and that he be afforded an individualized custody determination. The same legal analysis  
25

1 that underlies the Maldonado Bautista decision therefore compels the conclusion that Mr.  
2 Gomez Gomez is detained under §1226(a) and must be granted a bond hearing,  
3 regardless of how the Court resolves the question of formal class membership.

4 **COUNT SIX**

5 **Use of the Automatic Stay of an IJ's Bond Order Under 8 C.F.R. §1003.19(i)(2)**  
6 **Violates Substantive and Procedural Due Process**

7 116. Petitioner repeats and incorporates by reference the allegations set forth above.

8 117. Mr. Gomez Gomez's statutory and regulatory challenge is directed primarily at  
9 Respondents' effort to classify him as a §1225(b)(2) detainee with no access to bond. But  
10 even if this Court concludes that his detention is governed by §1226(a) and orders, an  
11 individualized bond hearing that results in an order of release, Respondents may attempt  
12 to nullify that relief by invoking the automatic stay provision at 8 C.F.R. §1003.19(i)(2).  
13 Exh. 2. That regulation allows DHS, simply by filing a notice of intent to appeal, to  
14 automatically stay an IJ's bond grant—without any contemporaneous individualized  
15 finding by the BIA, without notice or opportunity to be heard, and without regard to the  
16 IJ's determination that the person is not a danger or flight risk.

17 118. This scheme is incompatible with both substantive and procedural due process  
18 once an IJ has found a noncitizen eligible for bond. Substantively, civil immigration  
19 detention must “bear a reasonable relation” to its nonpunitive purposes. See Zadvydas v.  
20 Davis, 533 U.S. 678, 690–91 (2001). Any detention that is “excessive in relation to  
21 [those] purposes” becomes constitutionally problematic. Id. When a neutral adjudicator—  
22 applying the standards Congress built into §1226(a)—has already found that a person is  
23 neither dangerous nor likely to flee, continued detention ceases to be reasonably related  
24  
25

1 to the government’s interests and begins to resemble punishment for its own sake, in  
2 violation of the Fifth Amendment. See Demore v. Kim, 538 U.S. 510, 527–28 (2003)  
3 (upholding only “limited” detention closely tied to its regulatory goals). By authorizing  
4 DHS unilaterally to nullify an IJ’s bond order and keep a noncitizen in custody with no  
5 new neutral determination, §1003.19(i)(2) creates an additional, judge-made category of  
6 effective mandatory detention beyond what Congress authorized in §1226(c).

7  
8 119. Procedurally, the automatic stay regime fails the balancing test set out in Mathews  
9 v. Eldridge, 424 U.S. 319, 334–35 (1976). The private interest at stake—the petitioner’s  
10 physical liberty—is at its apex. Hernandez v. Sessions, 872 F.3d 976, 994–95 (9th Cir.  
11 2017). The risk of erroneous deprivation is high when a favorable bond decision by a  
12 neutral IJ is automatically overturned based solely on DHS’s notice of appeal, without  
13 any new evidence, hearing, or individualized reasoning. And the probable value of  
14 additional safeguards is substantial: the regulations already provide a tailored tool—an  
15 emergency stay mechanism under 8 C.F.R. §1003.19(i)(1)—that allows the BIA, as a  
16 neutral adjudicator, to consider whether a particular IJ bond order should be stayed based  
17 on case-specific factors. See Rodriguez Diaz v. Garland, 53 F.4th 1189, 1206 (9th Cir.  
18 2022) (applying Mathews to §1226(a) custody proceedings and recognizing the need for  
19 procedures adequate to protect the liberty interest at stake).

20  
21 120. District courts that have examined §1003.19(i)(2) have concluded that it violates  
22 due process because it permits the enforcement arm of the government, after losing  
23 before the IJ, to unilaterally wipe out the IJ’s bond determination and continue detention  
24 with no contemporaneous, neutral decision. In Zavala v. Ridge, 310 F. Supp. 2d 1071,  
25

1 1078–79 (N.D. Cal. 2004), the court held §1003.19(i)(2) unconstitutional and emphasized  
2 that any legitimate government interest in preventing release after a disputed bond order  
3 can be served through the individualized emergency-stay procedure in §1003.19(i)(1). In  
4 Zabadi v. Chertoff, 2005 WL 1514122, at \*2–4 (N.D. Cal. June 17, 2005), the court  
5 adopted Zavala’s reasoning and concluded that §1003.19(i)(2) violates both substantive  
6 and procedural due process because it creates a new class of de facto mandatory detention  
7 outside the limits Congress set in §1226(c) and allows continued detention without a  
8 neutral, case-specific determination.  
9

10 121. The Constitution requires, at a minimum, that any continued detention after a  
11 favorable bond order rest on a case-specific determination by a neutral decisionmaker,  
12 not merely on DHS’s filing of a form. Zadvydas, 533 U.S. at 690–91; Mathews, 424 U.S.  
13 at 334–35. Accordingly, as applied to Petitioner, any future invocation of 8 C.F.R.  
14 §1003.19(i)(2) to block his release following an IJ’s bond order would violate both  
15 substantive and procedural due process under the Fifth Amendment, and Petitioner is  
16 entitled to declaratory and injunctive relief prohibiting such use of the automatic stay,  
17 without prejudice to Respondents’ ability to seek an individualized emergency stay from  
18 the BIA pursuant to 8 C.F.R. §1003.19(i)(1).  
19

20 **VIII. PRAYER FOR RELIEF**

21 WHEREFORE, Petitioner respectfully requests that this Court:

- 22 A. Assume jurisdiction over this matter;
- 23 B. Issue an order to show cause under 28 USC §2243 directing Respondents to show cause  
24 why the writ of habeas corpus should not be granted;
- 25

- 1 C. After consideration of Respondents' return and any traverse, grant the petition for writ of  
2 habeas corpus and declare that Petitioner's detention under INA §235(b)(2), 8 USC  
3 §1225(b)(2), is unlawful;
- 4 D. Declare that INA §236(a), 8 USC §1226(a), governs Petitioner's detention as a noncitizen  
5 apprehended in the interior and placed into §240 removal proceedings, and that he is  
6 eligible for release on bond or conditions of supervision and for custody redetermination  
7 hearings before an immigration judge;
- 8 E. Declare that DHS's July 8, 2025, "Interim Guidance Regarding Detention Authority for  
9 Applicants for Admission," the BIA's decision in *Matter of Yajure Hurtado*, and EOIR's  
10 resulting bond-denial policy are contrary to the INA, inconsistent with 8 C.F.R. §§236.1,  
11 1236.1, and 1003.19, and unlawful and arbitrary and capricious as applied to Petitioner;
- 12 F. Declare that Petitioner is a member of the Bond Eligible Class certified in Maldonado  
13 Bautista v. Santacruz, No. 5:25-cv-01873-SSS-BFM (C.D. Cal.), and that, under the  
14 declaratory judgment entered in that case, his detention is governed by 8 USC §1226(a)  
15 and he is entitled to seek release on bond under EOIR's bond regulations;
- 16 G. Enjoin Respondents from detaining Petitioner under §1225(b)(2) or otherwise treating  
17 him as subject to mandatory detention as an "applicant for admission," and require that  
18 any further detention of Petitioner be governed by §1226(a) and subject to individualized  
19 custody determinations in accordance with 8 C.F.R. §§236.1, 1236.1, and 1003.19;
- 20 H. Order Respondents, including EOIR, to provide Petitioner with a prompt individualized  
21 bond hearing before an immigration judge under §1226(a), at which the government  
22 bears the burden of justifying continued detention by clear and convincing evidence and  
23  
24  
25

1 the IJ considers alternatives to detention and Petitioner’s family and medical  
2 circumstances;

3 I. In the alternative, if the Court concludes that Petitioner is not a member of the  
4 Maldonado Bautista Bond Eligible Class, declare nonetheless that Petitioner is detained  
5 under §1226(a) and that his continued detention without access to a bond hearing violates  
6 the INA, DHS and EOIR regulations, the APA, and the Fifth Amendment, and order  
7 Respondents to provide him with a prompt individualized bond hearing or release him  
8 under reasonable conditions of supervision;

9  
10 J. Enjoin Respondents from invoking the automatic stay provision at 8 C.F.R.  
11 §1003.19(i)(2) in this case to prevent Petitioner’s release pursuant to any Immigration  
12 Judge bond order finding him eligible for release, on the grounds that such use of the  
13 automatic stay, and the resulting prolongation of detention despite a finding of bond  
14 eligibility, would violate both procedural and substantive due process; this injunction is  
15 without prejudice to Respondents’ ability to seek a discretionary, case-specific emergency  
16 stay from the Board of Immigration Appeals under 8 C.F.R. §1003.19(i)(1);

17  
18 K. Award Petitioner his costs and reasonable attorneys’ fees to the extent authorized by law;  
19 and

20 L. Grant such other and further relief as the Court deems just and proper.

21 Respectfully submitted this December 19, 2025,

22  
23 By: /s/Michael S. Martin  
24 MICHAEL S. MARTIN  
25 Attorney for Plaintiff

1                   **VERIFICATION BY SOMEONE ACTING ON PETITIONER’S BEHALF**  
2                   **PURSUANT TO 28 USC §2242**

3 I am the Petitioner’s attorney. I hereby certify that I am familiar with the case of the named  
4 petitioner and that the facts as stated above are true and correct to the best of my knowledge and  
5 belief.

6 Date: December 19, 2025

7 /s/Michael S. Martin

8                   **SIGNATURE ATTESTATION**

9 I hereby attest that I have on file all holographic signatures corresponding to any signatures  
10 indicated by a conformed signature (/S/) within this e-filed document.

11 /s/Michael S. Martin

12                   **CERTIFICATE OF SERVICE**

13 I hereby certify that on December 19, 2025, I electronically filed the foregoing with the Clerk of  
14 the Court for the United States District Court for the Southern District of California using the  
15 Southern District’s CM/ECF system. I certify that all participants in the case are registered  
16 CM/ECF users and that service will be accomplished by the CM/ECF system.

17 I declare under penalty of perjury that the foregoing is true and correct. Executed on December  
18 19, 2025 in Tracy, CA by

19 /s/Michael S. Martin  
20  
21  
22  
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25