UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT CINCINNATI

JAWAD SAFARI, Petitioner, vs. KEVIN RAYCRAFT, Acting Director of Enforcement and Removal Operations, Detroit Field Office, Immigration and Customs Enforcement; KRISTI NOEM, Secretary, U.S. Department of Homeland Security; PAMELA BONDI, U.S. Attorney General, Respondents.	Case No. 1:25-cv-00951 District Judge _____ Magistrate Judge _____ A244-441-399

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner, Jawad Safari, is a 40-year-old citizen of Afghanistan, and resident of Columbus, Ohio. He came to the United States in March 2024. DHS charged Mr. Safari as someone who entered without inspection and as with being present without admission or parole. 8 U.S.C. § 1182(a)(7)(A)(i). (See **Exhibit A**, Notice to Appear). Mr. Safari received an I-94 which granted him humanitarian parole. (See **Exhibit B**, Petitioner's I-94).
2. Mr. Safari subsequently filed a Form I-589, application for asylum and withholding of removal. The immigration court has not yet scheduled an individual hearing on his asylum application. On December 12, 2025, at a routine check-in appointment, ICE apprehended and detained Mr. Safari.

3. Petitioner, Mr. Safari brings this petition for a writ of habeas corpus to seek enforcement of his rights as a member of the Bond Eligible Class certified in *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (C.D. Cal.).

4. Petitioner is in the physical custody of Respondents at the Butler County Correctional Complex. He now 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 certified class in *Maldonado Bautista v. Santacruz*.

5. On November 20, 2025, the district court granted partial summary judgment on behalf of individual plaintiffs and on November 25, 2025, certified a nationwide class and extended declaratory judgement 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) (See **Exhibit C**, Order Granting Partial Summary Judgement to Named Plaintiffs-Petitioners); *Maldonado Bautista v. Santacruz*, No 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025) (See **Exhibit D**, Order Certifying the Proposed Nationwide Bond Eligible Class, Incorporating and Extending Declaratory Judgment). On December 18, 2025, the Court entered a final judgment declaring that Bond Eligible Class members are detained under 8 U.S.C. § 1226(a) and are not subject to mandatory detention under 8 U.S.C. § 1225(b)(2). *Maldonado Bautista v. Santacruz*, No 5:25-CV-01873-SS-BFM, --- F. Supp. 3d ----, at *2 (C.D. Cal. Dec. 18, 2025) (See **Exhibit E**, Final Judgment).

6. 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 8 U.S.C. § 1225(b)(2)(A). *Maldonado Bautista*, 2025 WL 3289861, at *11.
7. Nonetheless, the Executive Office for Immigration Review and its subagency, the Immigration Court and the Department of Homeland Security (DHS) have blatantly refused to abide by the declaratory relief and have unlawfully ordered that Petitioner be denied the opportunity to be released on bond.
8. Petitioner, Mr. Safari is a member of the Bond Eligible Class because he (1) does not have lawful status in the United States and is currently detained at the Butler County Correctional Complex after being apprehended on December 12, 2025, (2) entered the United States without inspection nearly two years ago and was not apprehended upon arrival, and (3) is not detained under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231.
9. DHS placed Petitioner in removal proceedings under 8 U.S.C. § 1229(a). DHS charged Petitioner as being inadmissible under INA § 212(a)(7)(A)(i)(I), as someone who entered the United States without inspection and without admission or parole. Petitioner was issued an I-94, which granted him humanitarian parole.
10. The Court should expeditiously grant this petition.
11. Respondents are bound by the judgement in *Maldonado Bautista*, as it has the full "force and effect of a final judgment." 28 U.S.C. § 2201(a). A final judgment has been entered. Nevertheless, Respondents continue to flagrantly defy the judgment in that case and subject Petitioner to unlawful detention despite his clear entitlement to consideration for release on bond as a Bond Eligible Class member.

12. Immigration Judges 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).

13. Because Respondents are detaining Petitioner in violation of the declaratory judgment issued in *Maldonado Bautista*, the Court should accordingly order that within one day, Respondent DHS must release Petitioner.

14. 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

15. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Butler County Correctional Complex in Hamilton, Ohio. (See **Exhibit F**, ICE Detainee Locator; See **Exhibit G**, ICE Form I-830E, Notifying EOIR of Petitioner's Address Change).

16. This Court has jurisdiction under 28 U.S.C. § 2241 (Habeas Corpus); 28 U.S.C. § 1331 (Federal Question); Article I, section 9, clause 2 of the United States Constitution (Suspension Clause).

17. This Court may grant relief pursuant to 28 U.S.C. § 2241 *et. seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et. seq.*, the All Writs Act, 28 U.S.C. § 1651.

VENUE

18. Venue is proper in the United States District Court for the Southern District of Ohio, specifically in the Western Division at Cincinnati, because Petitioner is currently detained

in the Butler County Correctional Complex in Hamilton, Ohio. 28 U.S.C. § 2241; 28 U.S.C. § 1391; S.D. Ohio Civ. R. 82.1(b).

19. Venue is also proper in this Court because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims and relevant facts occurred in the Southern District. 28 U.S.C. § 1391(e).

REQUIREMENT OF 28 U.S.C. § 2243

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

21. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Nola*, 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

22. Petitioner, Mr. Jawad Safari, is an 40-year-old native and citizen of Afghanistan who has resided in the United States since March 14, 2024 and been in immigration detention at Butler County Correctional Complex in Hamilton, Ohio since December 12, 2025. After taking custody of Mr. Safari, ICE did not set bond. Mr. Safari requested review of his custody by an Immigration Judge (IJ). On December 19, 2025, Petitioner requested a bond

hearing pursuant to *Maldonado Bautista* (See **Exhibit H**, Petitioner's Pending Bond Request Filed in the Buffalo Immigration Court). No hearing has been scheduled.

23. Respondent Kevin Raycraft is the Acting Director of the Detroit Field Office of ICE's Enforcement and Removal Operations division. As such, Acting Director Raycraft is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. *See Roman v. Ashcroft*, 340 F.3d 314, 320-21 (6th Cir. 2003). He is named in his official capacity.

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

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

LEGAL FRAMEWORK

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

27. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in removal proceedings before an IJ. *See* 8 U.S.C. 1229a. Under § 1226(a), individuals who are taken into immigration custody pending a decision on whether they are to be removed can be detained

but are generally entitled to a bond hearing at the outset of their detention.[1] *See* 8 C.F.R. §§ 1003.19(a), 1236.1(d); *see also Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018) (explaining that § 1226(a) applies to those who are "already in the country" and are detained "pending the outcome of removal proceedings"). Section 1226(a) is the statute that, for decades, has been applied to people like Mr. Safari who have been living in the United States and are charged with inadmissibility under 8 U.S.C. § 1182(a)(7)(A)(i)(I).

28. Second, the INA provides for mandatory detention of certain recently arrived noncitizens, namely those subject to expedited removal under 8 U.S.C. § 1225(b)(1), and other recent arrivals seeking admission under § 1225(b)(2). *See Jennings*, 583 U.S. at 289 (explaining that § 1225(b)(2)'s mandatory detention scheme applies "at the Nation's borders and ports of entry" to noncitizens "seeking admission into the United States."). Section 1225(b)(2) is the statute that Respondents have suddenly decided is applicable to people like Mr. Safari. Respondent is currently in removal proceedings under INA § 240.

29. Third, the INA also provides for detention of noncitizens who have already been ordered removed. *See* 8 U.S.C. § 1231(a)-(b). Section 1231 is not relevant here.

30. This case concerns Respondents' erroneous decision that Mr. Safari is subject to mandatory detention without bond under § 1225(b)(2), rather than being bond-eligible under § 1226(a).

31. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104-208, Div. C. §§ 302-03, 110 Stat. 3009-546, 3009-582 to 3009-583, 3009-585. Section

[1] Section 1226 contains an exception for noncitizens who have been arrested, charged with, or convicted of certain crimes, who are subject to mandatory detention without bond. 8 U.S.C. § 1226(c). That exception is not relevant here.

1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).

32. Following the 1996 enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10,312, 10,323 (Mar. 6, 1997) (explaining that "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination.").

33. Thus, in the three decades that followed, people who entered without inspection and were subsequently placed in removal proceedings received bond hearings if ICE chose to detain them, unless their criminal history rendered them ineligible. That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority found at § 1252(a)).

34. However, on July 8, 2025, ICE, "in coordination with" DOJ, suddenly announced a new governmental policy that rejected the well-established understanding of the statutory framework and reversed decades of agency practice.

35. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission," claims that all persons who entered the United States without inspection are subject to mandatory detention without bond under § 1225(b)(2)(A). The policy applies

regardless of when a person is apprehended and affects those who have resided in the United States for months, years, and even decades.

36. On September 5, 2025, the BIA adopted this position in a published decision, *Matter of Yajure Hurtado*. There, the Board held that all noncitizens who entered the United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for IJ bond hearings.

37. Since Respondents adopted their new policies, dozens of federal courts have rejected *Matter of Yajure Hurtado*, which adopts the same reading of the statute as ICE. For example, after IJs in Tacoma, Washington, immigration courts stopped providing bond hearings for people who entered the United States without inspection and who have since resided here, the U.S. District Court in the Western District of Washington found that such a reading of the INA is likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. *Rodriguez Vasquez v. Bostock*, 779 F. Supp. 3d 1239, 2025 WL 1193850 (W.D. Wash. Apr. 24, 2025) (granting preliminary injunction).

38. DHS's and DOJ's interpretation defies the INA. As the aforementioned courts have explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Mr. Safari.

39. Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States.". 8 U.S.C. § 1226(a). These removal hearings are held under § 1229a to "decid[e] the inadmissibility or deportability of a[] [noncitizen].". 8 U.S.C. § 1229a(a)(1).

40. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a). As the *Rodriguez Vazquez* court explained, "[w]hen Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies.". *Rodriguez Vazquez*, 779 F. Supp. 3d at 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

41. Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole.

42. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. The statute's entire framework is premised on inspections at the border of people who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A); *see also Jennings*, 583 U.S. at 287 (explaining that this mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible.").

43. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like Petitioner, who have already entered and were residing in the United States at the time they were apprehended. In accordance with this, *Maldonado Bautista* certified the Bond Eligible Class. The government is refusing to comply with the *Maldonado Bautista* order.

44. Any months-long appeal of an IJ's decision to the BIA would be futile. By the time the BIA could even issue an appeal—a process that typically takes approximately six months, *Rodriguez Vazquez,* 779 F. Supp. 3d at 1253—the harm of his unlawful detention will be impossible to remediate. Nor will the downstream effects of continued detention be remediable.

45. Further, the position of the BIA is clear. The new governmental policy was issued "in coordination with DOJ," which oversees the immigration courts, including the BIA—up to and including the ability of the Attorney General to modify or overrule decisions of the BIA. *See* 8 C.F.R. § 1003.1(h). Administrative exhaustion would be futile. *See Zaragoza Mosqueda v. Noem*, 2025 WL 2591530, at *7 (C.D. Cal. Sept. 8, 2025) (noting that BIA's decision in *Yajure Hurtado* renders exhaustion futile).

CLAIMS FOR RELIEF

COUNT 1
Violation of the INA

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

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

48. The order granting partial summary judgment in *Maldonado Bautista* holds that Respondents violate the INA in applying the mandatory detention statute at 8 U.S.C. § 1225(b)(2) to class members.

49. 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." *Maldonado Bautista*, 2025 WL 3288403, at *14.

50. Respondents are parties to *Maldonado Bautista* and bound by the Court's declaratory judgment, which has the full "force and effect of a final judgement." 28 U.S.C. § 2201(a).

51. On July 8, 2025, ICE, "in coordination with" DOJ, announced a new policy,[2] entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission," which required that all persons who entered the United States without inspection are subject to mandatory detention without bond.

52. While Petitioner's bond hearing request has not yet been denied, the government has instructed Immigration Judges not to honor the *Maldonado Bautista* judgement and to revert back to the July 8th policy guidelines.

53. Without this Court asserting jurisdiction and a temporary restraining order to prohibit the transportation of Petitioner out of the Court's jurisdiction, it is likely that ICE will transport Petitioner out of the Court's jurisdiction before Petitioner is able to receive a decision on the pending bond request.

54. The anticipated denial of Petitioner's bond hearing request under 8 U.S.C. § 1226(a), based on the argument that he is subject to mandatory detention under 8 U.S.C. § 1225(b)(2), violates Petitioner's statutory rights under the INA and the Court's judgment in *Maldonado Bautista*.

55. Section 1225(b) does not apply to Petitioner because he was apprehended on December 12, 2025, after residing in the United States for nearly two years and was therefore not apprehended upon arrival or "seeking admission" when he was apprehended.

[2] *Available at* https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission [https://perma.cc/8SP7-TDDD].

56. Instead, Petitioner should be subject to the detention provisions of § 1226(a) and is therefore entitled to a custody determination by ICE, and if custody is continued, to a custody redetermination (i.e., a bond hearing) by an Immigration Judge.

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

COUNT 2
Violation of Due Process

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

59. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V.

60. The Due Process Clause of the United States Constitution applies to "all persons within the United States, including aliens, whether their presence is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 679 (2001). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the [Due Process] Clause protects." *Id.* at 690.

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

62. Immigration detention must further the twin goals of ensuring a non-citizen's appearance during removal proceedings and preventing danger to the community. In light of these goals, Petitioner's detention is wholly unjustified. Indeed, it bears no reasonable relation to any legitimate government purpose.

63. Petitioner is not a flight risk. Petitioner's, along with his wife and kids, resides in Columbus, Ohio. Petitioner also works (with authorization) in Columbus, Ohio. Petitioner has legitimate fears of persecution in Afghanistan—which is why he applied for asylum in

the United States. Petitioner has a pending asylum application and is therefore not currently removable from the United States.

64. Petitioner is not a danger to the community. He is a hard-working father of two young children with strong community ties. Petitioner has no criminal charges or convictions.

65. Because Petitioner's detention bears no reasonable relation to a legitimate government purpose, it is punitive.

66. Petitioner is being held in ICE detention as a civil detainee without bond and with no future individual hearing scheduled.

67. The justification of "preventing flight … is weak or nonexistent where removal seems a remote possibility at best." *Zadyvdas*, 533 U.S. at 690.

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

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Honorable Court will:

a. Assume jurisdiction over this matter;

b. Order that Petitioner not be transferred outside of this District pending the adjudication of this Petition;

c. Issue an Order to Show Cause requiring Respondents to show cause why this Petition should not be granted within three days;

d. Declare the Petitioner's detention is unlawful;

e. Issue a Writ of Habeas Corpus requiring that within one day, Respondents release Petitioner from custody; or alternatively,

f. Issue a Writ of Habeas Corpus requiring Respondents to release Petitioner unless they provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) within seven days;

g. 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

h. Grant any other and further relief that this Court deems just and proper to preserve Petitioner's statutory and constitutional rights.

Dated: December 19, 2025.

Respectfully submitted,

Julie C. Nemecek
Attorney for Petitioner
The Nemecek Firm, Ltd.
471 E Broad St, Suite 1200
Columbus, Ohio 43215
Telephone: (614) 459-2180
Email: julie@jnimmigration.com