

1 ANNA M HYSELL
CA SBN 232564
2 LAW OFFICES OF ANNA HYSELL
PO BOX 300278
3 ESCONDIDO, CA 92030
760-233-0800
4 COUNSEL FOR PETITIONER

5
6 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

7 **ERIK ZEPEDA ANDRES,**

8 Petitioner,

9 v.

10 **Kristi NOEM**, Secretary, U.S. Department of
Homeland Security;

11
12 **Todd LYONS**, Acting Director, U.S.
Immigration and Customs Enforcement;

13 **Patrick DIVVER**, Field Office Director, San
14 Diego Field Office, U.S. Immigration and
Customs Enforcement.

15 **Christopher LAROSE**, Senior Warden, Otay
16 Mesa Detention Center;

17 **Sirce OWEN**, Acting Director of the Executive
Office for Immigration Review (EOIR),
18 U.S. Department of Justice.

19 **Pamela BONDI**, Attorney General, U.S.
Department of Justice.

20 Does 1-2

21 Respondents.

Case No.: **'25CV3677 LL MSB**

Agency File No.: 

**PETITION FOR WRIT OF
HABEAS CORPUS**

22

23

24

1 **INTRODUCTION**

2 1. Plaintiff-Petitioner Erik Zepeda Andres, (Petitioner)(Plaintiff) is a noncitizen and
3 longtime resident of the United States who has been harmed by Defendants-Respondents'
4 (Defendants) new, draconian policy reinterpreting the immigration detention statutes to preclude
5 Petitioner from eligibility for bond under the Immigration and Nationality Act (INA), 8 U.S.C. §
6 1226(a), and for bond hearings under 8 C.F.R. §§ 1003.19(a), 1236.1(d). Instead, pursuant to this
7 new policy, Defendants now consider Plaintiff as subject to mandatory detention under 8 U.S.C.
8 § 1225(b)(2)(A), without the opportunity for release on bond during the pendency of his lengthy
9 removal proceedings.

10 2. Petitioner has lived in the United States continuously since 2005. Petitioner was
11 detained on October 8, 2025. He was transferred to the Otay Mesa Detention Facility in San
12 Diego, California, where he remains detained.

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

15 4. Based on this allegation in Plaintiff's removal proceedings, DHS denied Plaintiff
16 release from immigration custody. The denial was consistent with a new DHS policy issued on
17 July 8, 2025, instructing all ICE employees to consider anyone alleged to be inadmissible under
18 § 1182(a)(6)(A)(i) —i.e., those who entered the United States without inspection—to be subject
19 to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and therefore eligible for release only on
20 parole.

21 5. Plaintiff sought a bond redetermination hearing before an immigration judge (IJ)
22 at the Otay Mesa Immigration Court on December 4, 2025, but the IJ denied Plaintiff bond. The
23 IJs reached this conclusion by reasoning that, notwithstanding the decades Plaintiff has lived in
24

1 the United States, Plaintiff is nevertheless an “applicant for admission” who is “seeking
2 admission” and subject to mandatory detention under § 1225(b)(2)(A).

3 6. Plaintiff’s detention on this basis violates the plain language of the INA and its
4 implementing regulations.

5 7. Subparagraph 1225(b)(2)(A) applies to individuals who are apprehended on
6 arrival in the United States. It states that an “applicant for admission” who is “seeking
7 admission” shall be detained for a removal proceeding. *Id.* It does not apply to individuals like
8 Plaintiff, who was arrested and detained by ICE after having entered and begun residing in the
9 United States. Instead, such individuals are subject to a different statute, 8 U.S.C. § 1226(a), that
10 allows for release on conditional parole or bond. That statute expressly applies to people like
11 Plaintiff, are charged as inadmissible for having entered the United States without inspection.

12 8. Defendants’ new legal interpretation is plainly contrary to the statutory
13 framework and its implementing regulations. Indeed, for decades, Defendants have applied §
14 1226(a) to people like Plaintiff. Defendants’ new policies are thus not only contrary to law, but
15 arbitrary and capricious in violation of the Administrative Procedure Act (APA). They were also
16 adopted without complying with the APA’s procedural requirements.

17 JURISDICTION

18 9. Petitioner is in the physical custody of Respondents. Petitioner is detained at the
19 Otay Mesa Detention Center in San Diego, California.

20 10. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28
21 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States
22 Constitution (the Suspension Clause).

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

3 **VENUE**

4 12. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-
5 500 (1973), venue lies in the United States District Court for the Southern District, the judicial
6 district in which Petitioner currently is detained.

7 13. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because
8 Respondents are employees, officers, and agencies of the United States, and because a
9 substantial part of the events or omissions giving rise to the claims occurred in the Southern
10 District of California.

11 **REQUIREMENTS OF 28 U.S.C. § 2243**

12 14. The Court should grant the petition for writ of habeas corpus “forthwith,” as the
13 legal issues have already been resolved for class members in *Maldonado Bautista*.

14 15. Habeas corpus is “perhaps the most important writ known to the constitutional
15 law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or
16 confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). “The application for the
17 writ usurps the attention and displaces the calendar of the judge or justice who entertains it and
18 receives prompt action from him within the four corners of the application.” *Yong v. I.N.S.*, 208
19 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

20 **PARTIES**

21 16. Petitioner Erik Zepeda Andres is a citizen of Mexico who has been in
22 immigration detention since October 8, 2025. Petitioner was arrested in San Diego, CA. ICE did
23 not set bond, and Petitioner requested review of his custody by an IJ. On December 4, 2025,
24

1 Petitioner was denied bond by an IJ at the Otay Mesa Immigration Court because he was deemed
2 an “applicant for admission.” Petitioner has resided continuously in the United States since 2005.

3 17. Respondent, Patrick Divver, is the Director of the San Diego Field Office of
4 ICE’s Enforcement and Removal Operations division. As such, Patrick Divver is Petitioner’s
5 immediate custodian and is responsible for Petitioner’s detention and removal. He is named in
6 his official capacity.

7 18. Respondent, Todd Lyons, is the Acting Director of US Immigration and customs
8 enforcement. As such, Todd Lyons is responsible for Petitioner’s detention and is named in his
9 official capacity.

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

14 20. Respondent Department of Homeland Security (DHS) is the federal agency
15 responsible for implementing and enforcing the INA, including the detention and removal of
16 noncitizens.

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

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

1 23. Respondent Christopher LAROSE is employed by CoreCivic as Warden of the
2 Otay Mesa Detention Facility where Petitioner is detained. He has immediate physical custody of
3 Petitioner. He is sued in his official capacity.

4 **LEGAL FRAMEWORK**

5
6 24. Petitioner, Erik Zepeda Andres, brings this petition for a writ of habeas corpus to
7 seek enforcement of his statutory right to a custody redetermination hearing pursuant to Section
8 236(a) of the Immigration and Nationality Act (8 USC 1226(a) and his rights as a member of the
9 Bond Denial Class certified in *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM
10 (C.D. Cal.) Petitioner is in the physical custody of Respondents at the Otay Mesa Detention
11 Center. He now faces unlawful detention because the Department of Homeland Security (DHS)
12 and the Executive Office for Immigration Review (EOIR) have refused to abide by the statute
13 and the declaratory judgment issued on behalf of the certified class in *Maldonado Bautista v.*
14 *Santacruz*.

15 25. On November 20, 2025, the district court granted partial summary judgment on
16 behalf of individual plaintiffs and on November 25, 2025, certified a nationwide class and
17 extended declaratory judgment to the certified class. *Maldonado Bautista v. Santacruz*, No. 5:25-
18 CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3289861, at *11 (C.D. Cal. Nov. 20, 2025)
19 (order granting partial summary judgment to named Plaintiffs-Petitioners); *Maldonado Bautista*
20 *v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3288403, at *9 (C.D.
21 Cal. Nov. 25, 2025) (order certifying Plaintiffs-Petitioners' proposed nationwide Bond Eligible
22 Class, incorporating and extending declaratory judgment from Order Granting Petitioners'
23 Motion for Partial Summary Judgment).

1 26. The declaratory judgment held that the Bond Denial Class members are detained
2 under 8 U.S.C. § 1226(a), and thus may not be denied consideration for release on bond under §
3 1225(b)(2)(A). *Maldonado Bautista*, 2025 WL 3289861, at *11.

4 27. Nonetheless, the Executive Office for Immigration Review and its subagency the
5 Immigration Court and the Department of Homeland Security (DHS) have blatantly refused to
6 abide by the declaratory relief and have unlawfully ordered that Petitioner be denied the
7 opportunity to be released on bond. On December 4, 2025, Petitioner had a custody hearing in
8 which the Immigration Court refused to assert proper jurisdiction. The Immigration Court
9 continues its improper jurisdictional deflection via *Matter of Yajure Hurtado*, 29 I&N Dec. 216,
10 225 (BIA 2025).

11 28. Petitioner, Erik Zepeda Andres, is a member of the Bond Eligible Class, as he:

- 12 a. does not have lawful status in the United States and is currently detained at the
13 Otay Mesa Detention Center. He was apprehended by immigration authorities on
14 October 8, 2025.
- 15 b. entered the United States without inspection over 20 years ago and was not
16 apprehended upon arrival, cf. *id.*; and
- 17 c. is not detained under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231.

18 29. After apprehending Petitioner on October 8, 2025 the DHS placed him in removal
19 proceedings pursuant to 8 U.S.C. § 1229a. DHS has charged Petitioner as being inadmissible
20 under 8 U.S.C. § 1182(a)(6)(A)(i), as someone who entered the United States without inspection.

21 30. The Court should expeditiously grant this petition.

22 31. Respondents are bound by the judgment in *Maldonado Bautista*, as it has the full
23 “force and effect of a final judgment.” 28 U.S.C. § 2201(a). Nevertheless, Respondents continue
24 to flagrantly defy the judgment in that case and continue to subject Petitioner to unlawful

1 detention despite his clear entitlement to consideration for release on bond as a Bond Eligible
2 Class member.

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

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

10 34. Alternatively, the Court should order Respondents to provide a custody
11 redetermination hearing under 8 U.S.C. § 1226(a) within seven days.

12 **CLAIM FOR RELIEF**

13 **Violation of the INA:**

14 **Request for Relief Pursuant to *Maldonado Bautista***

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

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

19 37. The order granting partial summary judgment in *Maldonado Bautista* holds that
20 Respondents violate the INA in applying the mandatory detention statute at § 1225(b)(2) to class
21 members.

22 38. The order granting class certification in *Maldonado Bautista* further orders that
23 “[w]hen considering this determination with the MSJ Order, the Court extends the same
24 declaratory relief granted to Petitioners to the Bond Eligible Class as a whole.”

AO 242 (Rev. 09/17) Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

UNITED STATES DISTRICT COURT
for the
Southern District of California

Erik Zepeda Andres

Petitioner

v.

Christopher Larose, Warden Otay Mesa Detention Center, et al. (See Brief)

Respondent

(name of warden or authorized person having custody of petitioner)

Case No. '25CV3677 LL MSB

(Supplied by Clerk of Court)

PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

Personal Information

- 1. (a) Your full name: Erik Zepeda Andres
(b) Other names you have used:
2. Place of confinement:
(a) Name of institution: Otay Mesa Detention Facility
(b) Address: 7488 Calzada De La Fuente
San Diego CA 92154
(c) Your identification number: Alien Number [redacted]
3. Are you currently being held on orders by:
[X] Federal authorities [] State authorities [] Other - explain:
Department of Homeland Security; Immigration and Customs Enforcement
4. Are you currently:
[] A pretrial detainee (waiting for trial on criminal charges)
[] Serving a sentence (incarceration, parole, probation, etc.) after having been convicted of a crime
If you are currently serving a sentence, provide:
(a) Name and location of court that sentenced you:
(b) Docket number of criminal case:
(c) Date of sentencing:
[X] Being held on an immigration charge
[] Other (explain):

Decision or Action You Are Challenging


- 5. What are you challenging in this petition:
[] How your sentence is being carried out, calculated, or credited by prison or parole authorities (for example, revocation or calculation of good time credits)

AO 242 (Rev. 09/17) Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

- Pretrial detention
- Immigration detention
- Detainer
- The validity of your conviction or sentence as imposed (for example, sentence beyond the statutory maximum or improperly calculated under the sentencing guidelines)
- Disciplinary proceedings
- Other (explain): _____

6. Provide more information about the decision or action you are challenging:

(a) Name and location of the agency or court: Otay Mesa Immigration Court, 7488 Calzada De La Fuente, San Diego CA 92154

(b) Docket number, case number, or opinion number: A: 

(c) Decision or action you are challenging (for disciplinary proceedings, specify the penalties imposed):
Immigration Judge Mark Sameit Order Denying Petitioner Bond for Lack of Jurisdiction

(d) Date of the decision or action: 12/04/2025

Your Earlier Challenges of the Decision or Action

7. **First appeal**

Did you appeal the decision, file a grievance, or seek an administrative remedy?

- Yes
- No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: _____

(2) Date of filing: _____

(3) Docket number, case number, or opinion number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

(b) If you answered "No," explain why you did not appeal: The appeal to the Board of Immigration Appeals would be futile as they issued the erroneous agency decision setting the precedent stripping the jurisdiction for this Petitioner.

8. **Second appeal**

After the first appeal, did you file a second appeal to a higher authority, agency, or court?

- Yes
- No

AO 242 (Rev. 09/17) Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

(a) If "Yes," provide:

- (1) Name of the authority, agency, or court: _____
- (2) Date of filing: _____
- (3) Docket number, case number, or opinion number: _____
- (4) Result: _____
- (5) Date of result: _____
- (6) Issues raised: _____

(b) If you answered "No," explain why you did not file a second appeal: Appeals to the BIA are futile, they continue to cite Matter of Yajure Hurtado, 29 I&N Dec. 216, 225 (BIA 2025) to deny Immigration courts from having proper authority and jurisdiction to hold bond hearings for immigration detainees

9. **Third appeal**

After the second appeal, did you file a third appeal to a higher authority, agency, or court?

- Yes
- No

(a) If "Yes," provide:

- (1) Name of the authority, agency, or court: _____
- (2) Date of filing: _____
- (3) Docket number, case number, or opinion number: _____
- (4) Result: _____
- (5) Date of result: _____
- (6) Issues raised: _____

(b) If you answered "No," explain why you did not file a third appeal: _____

10. **Motion under 28 U.S.C. § 2255**

In this petition, are you challenging the validity of your conviction or sentence as imposed?

- Yes
- No

If "Yes," answer the following:

- (a) Have you already filed a motion under 28 U.S.C. § 2255 that challenged this conviction or sentence?
 - Yes
 - No

AO 242 (Rev. 09/17) Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

If "Yes," provide:

- (1) Name of court: _____
- (2) Case number: _____
- (3) Date of filing: _____
- (4) Result: _____
- (5) Date of result: _____
- (6) Issues raised: _____

(b) Have you ever filed a motion in a United States Court of Appeals under 28 U.S.C. § 2244(b)(3)(A), seeking permission to file a second or successive Section 2255 motion to challenge this conviction or sentence?

- Yes
- No

If "Yes," provide:

- (1) Name of court: _____
- (2) Case number: _____
- (3) Date of filing: _____
- (4) Result: _____
- (5) Date of result: _____
- (6) Issues raised: _____

(c) Explain why the remedy under 28 U.S.C. § 2255 is inadequate or ineffective to challenge your conviction or sentence: Not Applicable

11. Appeals of immigration proceedings

Does this case concern immigration proceedings?

- Yes
- No

If "Yes," provide:

- (a) Date you were taken into immigration custody: 10/08/2025
- (b) Date of the removal or reinstatement order: _____
- (c) Did you file an appeal with the Board of Immigration Appeals?

- Yes
- No

AO 242 (Rev. 09/17) Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

If "Yes," provide:

- (1) Date of filing: _____
- (2) Case number: _____
- (3) Result: _____
- (4) Date of result: _____
- (5) Issues raised: _____

(d) Did you appeal the decision to the United States Court of Appeals?

Yes No

If "Yes," provide:

- (1) Name of court: _____
- (2) Date of filing: _____
- (3) Case number: _____
- (4) Result: _____
- (5) Date of result: _____
- (6) Issues raised: _____

12. **Other appeals**

Other than the appeals you listed above, have you filed any other petition, application, or motion about the issues raised in this petition?

Yes No

If "Yes," provide:

- (a) Kind of petition, motion, or application: _____
- (b) Name of the authority, agency, or court: _____

- (c) Date of filing: _____
- (d) Docket number, case number, or opinion number: _____
- (e) Result: _____
- (f) Date of result: _____
- (g) Issues raised: _____

AO 242 (Rev. 09/17) Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

Grounds for Your Challenge in This Petition

- 13. State every ground (reason) that supports your claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground. Any legal arguments must be submitted in a separate memorandum.

GROUND ONE: He now faces unlawful detention because the Department of Homeland Security (DHS) and the Executive Office for Immigration Review have refused to abide by the declaratory judgment issued on behalf of the certified class in Maldonado Bautista v. Santacruz

(a) Supporting facts (Be brief. Do not cite cases or law.):

On November 20, 2025, the district court granted partial summary judgment on behalf of individual plaintiffs plaintiffs and on November 25, 2025, certified a nationwide class and extended declaratory judgment

(b) Did you present Ground One in all appeals that were available to you?

Yes No

GROUND TWO: On December 4, 2025, Petitioner had a custody hearing in which the Immigration Court refused to assert proper jurisdiction.

(a) Supporting facts (Be brief. Do not cite cases or law.):

Immigration Court is now claiming the class declaratory judgment in Maldonado Bautista v. Santacruz is not a "final order" and therefore can be ignored

(b) Did you present Ground Two in all appeals that were available to you?

Yes No

GROUND THREE: Petitioner is not subject to mandatory detention and therefore is entitled to have his bond eligibility determined by the immigration judge

(a) Supporting facts (Be brief. Do not cite cases or law.):

Petitioner entered the USA 20 years ago without inspection. He has US Citizen Brother and 4 US Citizen Children. Legal Permanent Resident Mother and Grandmother. No Criminal history. He was entitled to a bond hearing and appeals to the BIA are futile

(b) Did you present Ground Three in all appeals that were available to you?

Yes No

AO 242 (Rev. 09/17) Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

GROUND FOUR:

(a) Supporting facts (*Be brief. Do not cite cases or law.*):

(b) Did you present Ground Four in all appeals that were available to you?

Yes No

14. If there are any grounds that you did not present in all appeals that were available to you, explain why you did not:

Request for Relief

15. State exactly what you want the court to do: Assume Jurisdiction over this matter; Issue a writ of Habeas Corpus requiring that within one day, Respondent's release Petitioner; Alternatively, issue a write of Habeas Corpus requiring Respondents release Petitioner unless they provide a bond hearing under 8 U.S.C. § 1226(a) within seven days; 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 the law; and grant any other and further relief that this Court deems just and proper.

AO 242 (Rev. 09/17) Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

Declaration Under Penalty Of Perjury

If you are incarcerated, on what date did you place this petition in the prison mail system:

I declare under penalty of perjury that I am the petitioner, I have read this petition or had it read to me, and the information in this petition is true and correct. I understand that a false statement of a material fact may serve as the basis for prosecution for perjury.

Date: 12/18/2025



Signature of Petitioner



Signature of Attorney or other authorized person, if any