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**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

ALEJANDRO BAUTISTA MARTINEZ,)

Civil Case No. 25CV3695 AGS B JW

Petitioner,)

**PETITION FOR WRIT OF
HABEAS CORPUS AND
COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

v.)

Kristi NOEM, Secretary, Department of)
Homeland Security; Pam BONDI, Attorney)
General; EXECUTIVE OFFICE FOR)
IMMIGRATION REVIEW; Todd LYONS,)
Executive Associate Director of ICE)
Enforcement and Removal)
Operations (ERO); and Christoper J.)
LAROSE, Otay Mesa Detention Center)
Director,)

Respondents.)

INTRODUCTION

1. ALEJANDRO BAUTISTA MARTINEZ (hereinafter, “Petitioner”) has been residing in the United States since in or about the year 2003. He was

1 apprehended by Immigration and Customs Enforcement (hereinafter, “ICE”)
2
3 on or about October 28, 2025.

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5 2. Petitioner is currently detained at the ICE Otay Mesa Detention Center, has
6 been placed in removal proceedings, and is not scheduled for a master
7 hearing until January 21, 2026.

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9 3. He is only charged with having entered the United States without inspection
10 (hereinafter, “EWI”). 8 U.S.C. § 1182(a)(6)(A)(i).

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12 4. Petitioner was denied release by the Department of Homeland Security
13 (hereinafter, “DHS”) and has sought a bond redetermination hearing before
14 an Immigration Judge (hereinafter, “IJ”).

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16 5. More specifically, Petitioner was scheduled for a bond redetermination
17 hearing before an IJ on December 12, 2025. Based on new agency policy
18 that all persons who entered the United States EWI are deemed applicants
19 for admission to the U.S. and are ineligible for release in bond
20 redetermination hearings based on the immigration statute, 8 U.S.C. §
21 1225(b)(2)(A), he was denied release on bond for lack of jurisdiction as a
22
23 “mandatory detainee.”
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26 6. Section 1225(b)(2)(A) states that an applicant for admission seeking
27 admission shall be detained for a removal proceeding. It is the position of
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2 the Executive Office for Immigration Review (hereinafter, “EOIR”), which
3 includes both the Board of Immigration Appeals (hereinafter, “Board” or
4 “BIA”) and Immigration Judges, that 8 U.S.C. § 1225(b)(2)(A) applies to all
5 individuals who arrived in the United States without inspection, regardless
6 of how long they have lived in the United States and regardless of how far
7 they were apprehended from the border.
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10 7. Section 1225(b)(2)(A), however, does not apply to individuals, like
11 Petitioner, who are present in the United States. Instead, such individuals are
12 subject to detention under a different statute, § 1226(a), and are eligible for
13 release on bond.
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16 8. Nevertheless, in July of 2025, ICE released a memorandum instructing its
17 attorneys to coordinate with the U.S. Department of Justice (hereinafter,
18 “DOJ”), the agency housing EOIR, to reject bond redetermination hearings
19 for applicants who arrived in the United States without documents.¹
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23 ¹ “ICE Says Many In Immigration Detention No Longer Qualify For Bond
24 Hearings,” CBS News (Jul. 15, 2025),
25 <https://www.cbsnews.com/news/ice-immigration-detention-bond-hearings/>;
26 “ICE declares millions of undocumented immigrants ineligible for bond hearings,”
27 The Washington Post (Jul. 15, 2025)
28 <https://www.washingtonpost.com/immigration/2025/07/14/ice-trump-undocumented-immigrants-bond-hearings/>

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2 9. EOIR has already applied this reasoning in a May 22, 2025 BIA decision,
3 finding that a noncitizen who had been residing in the United States for
4 almost ten (10) years and had entered into the United States without
5 inspection was ineligible for bond.
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7 10. Further, despite a legal ruling in *Rodriguez v. Bostock*, 2025 WL 1193850
8 (W.D. Wa. Apr. 24, 2025), rejecting this position, Respondents continue to
9 maintain that noncitizens who entered the United States without documents
10 are not eligible for bond redetermination hearings because they are
11 applicants for admission within the meaning of 8 U.S.C. § 1225(b)(2)(A).
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14 11. This reading is a violation of the statute and due process.
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16 12. In addition, on November 25, 2025, the U.S. District Court for Central
17 District of California issued an order certifying a nationwide class consisting
18 of noncitizens who have entered the United States without inspection, who
19 were not apprehended upon arrival, and who are not otherwise subject to
20 detention under INA §§ 236(c), 235(b)(1), or 241. *Maldonado Bautista v.*
21 *Santacruz*, No. 5:25-CV-01873-SSS-BFM (Nov. 25, 2025 C.D. Cal.) (Order
22 Granting Plaintiff-Petitioners' Motion for Class Certification). On
23 November 20, 2025, the Court issued an order granting declaratory relief
24 concluding that the detention of class members is governed by Section
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2 236(a) of the Immigration and Nationality Act (hereinafter, “INA” or “the
3 Act”) and that class members are not subject to mandatory detention
4 pursuant to INA § 235(b)(2).² *Maldonado Bautista v. Santacruz*, No.
5 5:25-CV-01873-SSS-BFM (Nov. 20, 2025 C.D. Cal.) (Order Granting
6 Petitioners’ Motion for Partial Summary Judgement). *Maldonado Bautista*
7 rejected the Board’s decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216
8 (BIA 2025).
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11 13. As such, Petitioner seeks an order of declaratory and injunctive relief and set
12 aside relief under the Administrative Procedure Act (hereinafter, “APA”)
13 requiring that he be provided an IJ bond redetermination hearing and that he
14 not be denied such hearing due to an alleged lack of jurisdiction.
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17 **JURISDICTION AND VENUE**

18 14. This Court has jurisdiction under 28 U.S.C. § 2241 (federal *habeas* statute);
19 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 2201-2 (declaratory
20 judgment); United States Constitution Article I, Section 9 (Suspension
21 Clause).
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25 ² The Court’s Partial Summary Judgment order was issued before the Class
26 Certification order, but in the Class Certification order, the Court “extend[ed] the
27 same declaratory relief granted to Petitioners to the Bond Eligible Class as a
28 whole.” See Order Granting Plaintiff-Petitioners’ Motion for Class Certification at
p. 14.

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2 15.Venue properly lies within the Southern District of California under 28
3 U.S.C. § 1391, because this is a civil action in which Respondents are
4 agencies of the United States, Petitioner is detained in this District, and a
5 substantial part of the events or omissions giving rise to this action occurred
6 in the District.
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9 **PARTIES**

10 16.Petitioner resides in Maywood, California and is currently detained at the
11 Otay Mesa Detention Center.
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13 17.Respondent Kristi Noem is the Secretary of DHS, and is sued in her official
14 capacity. The Secretary of Homeland Security is charged with the
15 administration and enforcement of immigration laws. 8 U.S.C. § 1103(a).
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17 18.Respondent Pam Bondi is the Attorney General (hereinafter, "AG") of the
18 United States and is sued in her official capacity as the head of the DOJ. The
19 AG is responsible for the fair administration of the laws of the United States.
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21 19.Respondent EOIR is a component agency of the DOJ responsible for
22 conducting removal and bond hearings of noncitizens. EOIR is comprised of
23 a lower adjudicatory body administered by Immigration Judges and an
24 appellate body known as the BIA.
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2 20.IJs issue bond redetermination hearing decisions, which are then subject to
3 appeal to the Board.

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5 21.Respondent Todd Lyons is the Acting Director of ICE and is sued in his
6 official capacity. ICE is responsible for the Petitioner's detention.

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8 22.Christopher J. LaRose is the Director of the Otay Mesa Detention Center and
9 is sued in his official capacity. Respondent LaRose is also responsible for the
10 detention of Petitioner.

11 **LEGAL BACKGROUND**

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13 23.The Immigration and Nationality Act prescribes three (3) basic forms of
14 detention for noncitizens in removal proceedings.

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16 24.First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard
17 non-expedited removal proceedings before an Immigration Judge. *See* 8
18 U.S.C. § 1229a. Individuals in § 1226(a) detention are entitled to a bond
19 hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a),
20 1236.1(d), while noncitizens who have been arrested, charged with, or
21 convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C.
22 § 1226(c).
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2 25. Second, the INA provides for mandatory detention of noncitizens subject to
3 expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals
4 seeking admission referred to under § 1225(b)(2).
5

6 26. Last, the Act also provides for detention of noncitizens who have been
7 previously ordered removed, including individuals in withholding-only
8 proceedings, *see* 8 U.S.C. § 1231(a)–(b).
9

10 27. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).

11 28. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part
12 of the Illegal Immigration Reform and Immigrant Responsibility Act
13 (hereinafter, “IIRIRA”) of 1996, Pub. L. No. 104–208, Div. C, §§ 302–03,
14 110 Stat. 3009–546, 3009–582 to 3009–583, 3009–585. Section 1226(a) was
15 most recently amended earlier this year by the Laken Riley Act, Pub. L.
16 No. 119–1, 139 Stat. 3 (2025).
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20 29. Following the enactment of IIRIRA, EOIR drafted new regulations
21 explaining that, in general, people who entered the country without
22 inspection were not considered detained under § 1225 and that they were
23 instead detained under § 1226(a). *See* Inspection and Expedited Removal of
24 Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings;
25 Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).
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2 30. Thus, in the decades that followed, most people who entered without
3 inspection—unless they were subject to some other detention
4 authority—received bond hearings. That practice was consistent with many
5 more decades of prior practice, in which noncitizens who were not deemed
6 “arriving” were entitled to a custody hearing before an IJ or other hearing
7 officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt.
8 1, at 229 (1996) (noting that § 1226(a) simply “restates” the detention
9 authority previously found at § 1252(a)).

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13 31. Respondents’ new policy turns this well-established understanding on its
14 heads and violates the statutory scheme.

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16 32. Indeed, this legal theory that noncitizens who entered the United States
17 without admission or parole are ineligible for bond hearings was already
18 rejected by a District Court in the Western District of Washington, finding
19 that such individuals are entitled to bond redetermination hearings before
20 IJs, and rejecting the application of § 1225(b)(2) to such cases. *Rodriguez v.*
21 *Bostock*, No. 3:25-CV-05240-TMC, 2025 WL 1193850, at *12 (W.D. Wash.
22 Apr. 24, 2025).

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25 33. Despite this finding from a federal court, in July 2025, ICE released a
26 memorandum instructing its attorneys to coordinate with the Department of
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2 Justice, the agency housing EOIR, to reject bond redetermination hearings
3 for applicants who arrived in the United States without documents.

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5 34.A May 22, 2025 unpublished BIA decision confirms that EOIR is taking this
6 same position that noncitizens who entered the United States without
7 admission or parole are ineligible for immigration judge bond hearings.

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9 35.This is now a widespread position applying across the United States.

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11 36.This interpretation defies the INA. The plain text of the statutory provisions
12 demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

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14 37.Section 1226(a) applies by default to all persons “pending a decision on
15 whether the [noncitizen] is to be removed from the United States.” These
16 removal hearings are held under § 1229a, which “decid[e] the
17 inadmissibility or deportability of a[] [noncitizen].”

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19 38.The text of § 1226 also explicitly applies to people charged as being
20 inadmissible, including those who entered without inspection. *See* 8 U.S.C. §
21 1226(c)(1)(E). Subparagraph (E)’s reference to such people makes clear that,
22 by default, such people are afforded a bond hearing under subsection (a).
23
24 Section 1226 therefore leaves no doubt that it applies to people who face
25 charges of being inadmissible to the United States, including those who are
26 present without admission or parole.
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2 39. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or
3 who recently entered the United States. The statute's entire framework is
4 premised on inspections at the border of people who are "seeking
5 admission" to the United States. 8 U.S.C. § 1225(b)(2)(A).
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7 40. Accordingly, the mandatory detention provision of § 1225(b)(2) does not
8 apply to people like Petitioner who are alleged to have entered the United
9 States without admission or parole.
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11 **FACTS**
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13 41. Petitioner has resided in the United States since 2003 and lives in Maywood,
14 California.
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16 42. In October of 2025, he was arrested by immigration authorities as part of a
17 widescale immigration enforcement action in Los Angeles, California.
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19 43. He was placed into removal proceedings to appear before an IJ, and he was
20 charged with having entered the United States without inspection and being
21 present without valid immigration documents. 8 U.S.C. § 1182(a)(6)(A)(i), §
22 1182(a)(7)(A)(i).
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24 44. ICE denied Petitioner's request for release, and he has requested a bond
25 redetermination hearing before an immigration judge.
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2 45. Petitioner has no criminal history whatsoever. He has been steadily
3 employed throughout his tenure in this country.

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5 46.. Petitioner is neither a danger to others nor a flight risk.

6 47. The Immigration Judge denied Petitioner release on bond on December 12,
7 2025 because he is considered an “applicant for admission.”

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9 48. Any appeal to the BIA would be futile.

10 **CAUSES OF ACTION**

11 **COUNT I**

12 **Violation of 8 U.S.C. § 1226(a)**

13 **Unlawful Denial of Bond Hearing**

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

18
19 50. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply
20 to noncitizens residing in the United States who are subject to the grounds of
21 inadmissibility because they previously entered the country without being
22 admitted or paroled. Such noncitizens are detained under § 1226(a), unless
23 they are subject to another detention provision, such as § 1225(b)(1), §
24 1226(c), or § 1231.
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2 51. The application of § 1225(b)(2) to bar Petitioner from receiving a bond
3 redetermination hearing before an immigration judge violates the
4 Immigration and Nationality Act.
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6 **COUNT II**

7 **Violation of the Administrative Procedure Act**

8 **Unlawful Denial of Bond**

9
10 52. Petitioner repeats, re-alleges, and incorporates by reference each and every
11 allegation in the preceding paragraphs as if fully set forth herein.
12

13 53. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply
14 to noncitizens residing in the United States who are subject to the grounds of
15 inadmissibility because they originally entered the United States without
16 inspection or parole. Such noncitizens are detained under § 1226(a), unless
17 they are subject to another detention provision, such as § 1225(b)(1), §
18 1226(c) or § 1231.
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21 54. The application of § 1225(b)(2) to bar Petitioner from receiving a bond
22 redetermination hearing before an immigration judge is arbitrary, capricious,
23 and not in accordance with law, and as such, it violates the APA. *See* 5
24 U.S.C. § 706(2).
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COUNT III

Violation of Procedural Due Process

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

56. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001).

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

58. The government’s detention of Petitioner without a *bona fide* 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 respectfully requests that this Court:

- a. Assume jurisdiction over this matter;

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- 2 b. Declare that the refusal to allow Petitioner a bond redetermination
- 3 hearing before an Immigration Judge violates the INA, APA, and Due
- 4 Process;
- 5
- 6 c. Issue a writ of *habeas corpus* requiring that Respondents release him
- 7 or provide the bond hearing to which he is entitled within fourteen
- 8 (14) days;
- 9
- 10 d. Set aside Respondents' unlawful detention policy under the APA, 5
- 11 U.S.C. § 706(2);
- 12
- 13 e. Award reasonable attorneys' fees and costs pursuant to the Equal
- 14 Access to Justice Act, 28 U.S.C. § 2412(d), 5 U.S.C. § 504, or any
- 15 other applicable law; and
- 16
- 17 f. Order further relief as this Court deems just and appropriate.

18 Dated: December 19, 2025

19 Respectfully Submitted,

20 /s/Jose R. Jordan, Esq.

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