



United States in November of 2004 without inspection. The Petitioner's wife and his seven children, 6 of which are United States Citizens, reside in the United States. While in the United States the Petitioner has been convicted of a minor traffic infraction of Driving without a valid license. Mr. Salgado Gutierrez is being held without the possibility of bond at the Stewart Detention Center based on the Department of Homeland Security's reinterpretation of the statutes and regulations regarding bond eligibility. Additionally, the Executive Office for Immigration Review (EOIR) and the Department of Homeland Security have refused to abide by the declaratory judgment issued on behalf of the certified class in *Maldonado Bautista v. Santacruz*. Petitioner seeks enforcement of their rights as members of the Bond Denial Class certified in *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (C.D. Cal.).

2. On November 20, 2025 the district court granted partial summary judgement 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) (order granting partial summary judgment 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) (order certifying Plaintiffs-Petitioners' proposed nationwide Bond Eligible Class, incorporating and extending declaratory judgment from Order Granting Petitioners' Motion for Partial Summary Judgment). On December 18, 2025 the United States District Court of California entered Final Judgement in the Nationwide class action *Maldonado Bautista v. Santacruz*. *Id.* The Court in this case rejected the Government's argument that the class certification was merely interlocutory. It entered Final Judgement on Counts I-III certifying the class and declaring the policy unlawful. As a class member, petitioner's rights are now

adjudicated, and the Government is collaterally estopped from relitigating their detention status. The Court entered Final Judgement specifically because it found troubling evidence that the Department of Justice issued a memorandum instructing Immigration Judges to disregard the Federal Court's prior orders and hold the position that Yajure Hurtado remains good law. This judicial finding confirms that administrative exhaustion is futile as the agency has prejudiced the issue in bad faith. Yajure Hurtado is no longer tenable the Court explicitly held that "core holding of Yajure Hurtado cannot be squared with the [Court's] Order...the legal conclusion underlying the decision is no longer tenable."

3. Under INA § 235(b)(2)(A) and 8 U.S.C. § 1225(b)(2)(A) an individual who is apprehended on arrival to the United States is an "applicant for admission" who is "seeking admission" and is therefore subject to Mandatory detention. Historically this has not applied to individuals such as the Petitioner who entered the United States without inspection. Such individuals are typically eligible for bond under INA § 236(a) and 8 U.S.C. § 1226(a) which allows for conditional release on bond and specifically applies to those like the Petitioner who were charged as inadmissible for having entered the United States without inspection. The new interpretation of the statutory framework is contrary to precedent which holds that individuals like the petitioner qualify for a bond before an Immigration Judge. Further, the Petitioner's prolonged detention violates his rights under the Fifth Amendment Due Process Clause of the U.S. Constitution.

4. The Petitioner respectfully requests that this Court grant him a Writ of Habeas Corpus ordering his release from custody as the Respondents are detaining Petitioner in violation of the ruling in *Maldonado Bautista*, the Court should accordingly order that within one day Respondent Department of Homeland Security must release the Petitioner. Alternatively, the

Court should order Petitioner's release unless Respondents provide a bond hearing under 8 U.S.C. § 1226(a) within seven days. The Petitioner also seeks declaratory relief that establishes that he is subject to detention under § 1226(a) and that he is therefore eligible for a bond and release from detention.

### **JURISDICTION AND VENUE**

5. Petitioner is currently in the physical custody of Respondents in the Stewart Detention Center in Lumpkin, Georgia.

6. This Court has jurisdiction under 28 U.S.C. § 2241 (Habeas Corpus), 28 U.S.C. § 1331 (Federal Question), 28 U.S.C. § 1651 (All Writs Act), 28 U.S.C. § § 2201-02 (Declaratory relief), 5 U.S.C. § 702 of the APA; and art. I sec. 9, cl. 2 of the United States Constitution (Suspension Clause), as the Petitioner is presently in custody under or by color of the authority of the United States and challenges his custody as in violation of the Constitution, law, or treaties of the United States.

7. The federal district courts have jurisdiction under Section 2241 to hear habeas claims by individuals challenging the lawfulness of their detention by ICE. *See, e.g., Zadvydas v. Davis*, 533 U.S. 678 (2011); *Demore v. Kim*, 538 U.S. 510 (2003). The United States Supreme Court has upheld the federal courts' jurisdiction to review such claims in *Jennings v. Rodriguez*, 583 U.S. 281, 292-96 (2018).

8. Venue is proper in the Middle District of Georgia, Columbus Division pursuant to 28 U.S.C. § § 1391 and 2241(d) because Petitioner is detained within the District at the Stewart Detention Center in Lumpkin, Georgia.

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

9. The Court should grant the petition for writ of habeas corpus "forthwith" as the

legal issues have already been resolved for class members in *Maldonado Bautista*. If an order to show cause is issued, the Court must require respondents to file a return “within *three days* unless for good cause additional time, not exceeding twenty days, is allowed.” 28 U.S.C. § 2243 (emphasis added).

### **PARTIES**

10. Petitioner Gilberto Salgado Gutierrez is a native and citizen of Mexico unlawfully detained at the Stewart Detention Center in Lumpkin, Georgia since October of 2025. After the Petitioner was arrested ICE did not set bond.

11. The Warden of the Stewart Detention Center controls the detention center where Petitioner is currently detained under the authority of ICE. As such, they have direct control over Petitioner and are his immediate physical custodian. They are sued in their official capacity.

12. Respondent George Sterling is the acting Director of ICE’s Atlanta Field Office which has jurisdiction over ICE detention facilities including the Stewart Detention Center and thus is Petitioner’s immediate custodian. He is sued in his official capacity.


13. Respondent Todd Lyons is the acting Director of ICE. He is responsible for the admission of ICE and the implementation of enforcement of the Immigration laws, including immigrant detention. As such Mr. Lyons is a legal custodian of the Petitioner. He is sued in his official capacity.

14. Respondent Kristi Noem is the Secretary of DHS which is responsible for the administration of ICE, a subunit of DHS, and the implementation and enforcement of the Immigration laws. As such, Ms. Noem is the ultimate legal custodian of the Petitioner. She is sued in her official capacity.

15. Respondent Pamela Bondi is the Attorney General of the United States and head of the Department of Justice which encompasses the Board of Immigration Appeals (“BIA”) and the Immigration Courts. Ms. Bondi shares responsibility for implementation and enforcement of the Immigration laws with Respondents Lyons and Noem. Ms. Bondi is a legal custodian of Petitioner. She is sued in her official capacity.

16. Respondent Daren K. Margolin is the Acting Director of EOIR and has ultimate responsibility for overseeing the operation of the Immigration Courts and the BIA including bond hearings. He is sued in his official capacity.

#### **STATEMENT OF FACTS**

17. Petitioner was born in Guerrero, Mexico on  and he entered the United States last in November of 2004 without inspection. The Petitioner has filed an EOIR 42B Application for Cancellation of Removal with the Immigration Court. The Respondent has never been arrested or convicted of any aggravated felonies or disqualifying crimes in the United States. Just months ago, the Petitioner would have had an easy case to be released on bond. However, due to the Respondents’ new interpretation of the relevant statutes and regulations, the Petitioner is being forcibly and illegally separated from his family and community. Petitioner is currently set for an Individual Hearing on his application for relief based on the hardship his United States Citizen children would suffer, one of which has enlisted into the armed forces.

18. Petitioner remains detained and away from his family and community and is being forced to litigate his right to be released on bond in federal court.

#### **LEGAL FRAMEWORK**

19. Under 8 U.S.C. § 1226(a) individuals are generally entitled to discretionary bond determinations when detained. 8 C.F.R. § § 1003.19(a), 1236.1(d). Certain noncitizens who are

arrested, charged with, or convicted of certain crimes are subject to mandatory detention until removal proceedings are concluded. 8 U.S.C. § 1226(c).

20. Under 8 U.S.C. § 1225(b)(1) certain noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) are subject to mandatory detention as are recent arrivals “seeking admission” under INA § 1225(b)(2).

21. Following enactment of these statutes EOIR drafted new regulations stating that people who entered the country without inspection were not considered detained under § 1225 but 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. 10312, 10323 (Mar. 6, 1997) (“Despite being applicants for admission aliens who are present without having been admitted or paroled.... will be eligible for bond and bond redetermination.”). Thus from 1997 till a few months ago noncitizens like the Petitioner were eligible for bond upon detention.

22. Now, Respondents have adopted a new interpretation of the statute requiring detention for all noncitizens like Petitioner. The Petitioner is not the first to challenge this cruel and illegal reading of the statutes governing detention. In fact, research suggests that every district court to have addressed this issue has agreed with his position finding that the Respondents’ 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 Vazquez v. Bostock*, No. 3:25-CV-0520-TMC, --- F. Supp. 3d ---, 2025 WL 1193850 (W.D. Wash. Apr. 24, 2025); *Gomes v. Hyde*, No. 1:25-CV11571-JEK, 2025 WL 1869299, at \*8 (D. Mass. July 7, 2025) (same) *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp. 3d --- 2025 WL

2084238, at \*9 (D. Mass. July 24, 2025) (same); *Otero Escalante v. Bondi*, 2025 WL 2212104 (D. Minn. July 31, 2025).

23. DHS' and DOJ's interpretation defies the INA as these courts have found as a plain reading of the text of the statute supports the Petitioner's position that he is detained under § 1226(a) and therefore is eligible for bond. The text of § 1226(a) explicitly applies to those charged as inadmissible after entering after inspection. See 8 U.S.C. § 1226(c)(1)(E). Congress enacted this subsection in the Laken Riley Act to exclude from bond eligibility noncitizens who entered without inspection who commit certain offenses so if Congress wanted all nonimmigrants to be ineligible for bond it could have done so. There would be no need for Congress to specify that noncitizens who entered without inspection who also committed certain crimes are ineligible for bond under § 1226(c)(1)(E) if they were inherently ineligible under § 1225(b)(2)(A) for entering without inspection.

24. The Petitioner's approach is consistent with binding precedent in the Eleventh Circuit in *Ortiz-Bouchet v. U.S. Att'y Gen.*, 714 F.3d 1353 (11th Cir. 2013). The Eleventh Circuit in *Ortiz-Bouchet* found that noncitizens were not "applicants for admission" because they were seeking to adjust status while inside the United States as opposed to someone who was applying for entry at the border. This is also consistent with Supreme Court precedent which has held that mandatory detention applies "at the Nation's borders and ports of entry, where the Government must determine whether an alien seeking to enter the country is inadmissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

**CLAIMS FOR RELIEF**

**COUNT I.**

**Violation of 8 U.S.C. § 1226(a)**

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

26. The mandatory detention provision of § 1225(b)(2) does not apply to all noncitizens. Despite the plain of reading the statute that has been the predominant interpretation for over 25 years, Respondents have adopted a new reading and applied it to the Petitioner in violation of the INA.

**COUNT II.**

**Violation of the Bond Regulations, 8 C.F.R. §§ 236.1, 1236.1, and 1003.19**

27. Petitioner realleges and incorporates by reference each and every allegation contained in the preceding paragraphs as is set forth fully herein.

28. Congress and Respondents have made clear in the past that individuals who have entered without inspection were eligible for bond under § 1226 and its implementing regulations.

29. Despite this, Respondents have continued their policy of unlawfully detaining the Petitioner by misapplying § 1225(b)(2) in violation of the bond regulations, 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

30. Because the Petitioner's detention has been unaccompanied by the procedural protections that such a significant deprivation of liberty requires under the Due Process Clause of the Fifth Amendment to the U.S. Constitution his continued detention without a bond hearing is unlawful.

**COUNT III.**

**Violation of the Administrative Procedure Act Contrary to Law and Arbitrary and  
Capricious Agency Policy**

31. Under the APA, a “reviewing Court shall...hold unlawful and set aside agency action, findings, and conclusions found to be...arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A).

32. As discussed mandatory detention under § 1225(b)(2) does not apply to all noncitizens residing in the United States. Despite this, Respondents are implementing their new policy applying mandatory detention to all noncitizens like Petitioner in contradiction to the INA. Such application is arbitrary, capricious, and not in accordance with law, in violation of the APA. 5 U.S.C. § 706(2).

**COUNT IV.**

**Violation of the Administrative Procedure Act Failure to Observe Required  
Procedures**

33. Petitioner realleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

34. Under the APA, a “reviewing court shall...hold unlawful and set aside agency action, findings, and conclusions found to be...without observance of procedure required by law.” 5 U.S.C. § 706(2)(D). The APA requires agencies to follow public notice-and-comment rulemaking before promulgating new regulations or amending existing regulations. 5 U.S.C. § 553(b), (c).

35. Respondents failed to comply with the APA by adopting its policy and departing from its regulations without any rulemaking, notice, or opportunity to comment. Respondents failed to publish any new rule, as required by 5 U.S.C. § 533(d).

**COUNT V.**

**Violation of the Fifth Amendment of the U.S. Constitution**

36. Petitioner realleges and incorporates by reference each and every allegation contained in the preceding paragraph as if set forth fully herein.

37. Under the Fifth Amendment to the Constitution, “[n]o person” shall be “deprived of life, liberty, or property, without due process of law.”

38. “Freedom from imprisonment from imprisonment--from government custody, detention, or other forms of physical restraint-lies at the heart of the liberty that Clause protects” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). “The Due Process Clause applies to all ‘persons’ within the United States including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.” *Jd.* at 693.

39. Respondents’ mandatory detention of the Petitioner without the possibility of release on bond violates his due process rights.

**COUNT VI.**

**Request for Relief Pursuant to Maldonado Bautista**

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

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

42. The Order granting partial summary judgement in *Maldonado Bautista* holds that Respondents violate the INA in applying the mandatory detention status at § 1225(b)(2) to class members.

43. The order granting certification in *Maldonado Bautista* further orders the Court extends the same declaratory relief granted to Petitioners to the Bond Eligible class as a whole.

44. Respondents are parties to *Maldonado Bautista* and bound by the Court's judgement. 28 U.S.C. § 2201(a).

45. Respondents violate the Petitioner's statutory rights under the INA and the Court's judgement in *Maldonado Bautista*.

#### **PRAYER FOR RELIEF**

WHEREFORE, Petitioner prays that this Court grant the following relief:

- (1) Assume jurisdiction over this matter;
- (2) Issue a writ of habeas corpus requiring that within one day, Respondents release Petitioner.
- (3) Alternatively issue a writ of habeas corpus requiring Respondents to release Petitioner unless they provide a bond hearing under 8 U.S.C. § 1226(a) within seven days.
- (4) Order Respondents to show cause why the writ should not be granted within **three days** pursuant to 28 U.S.C. § 2243;
- (5) Declare that Petitioner's detention violates the INA;
- (6) Declare that Petitioner's detention violates the Due Process Clause;
- (7) Declare that Petitioner's detention is arbitrary and capricious and in violation of the Administrative Procedures Act;

- (8) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412 and on any other basis justified under law; and
- (9) Grant any further relief this Court deems just and proper.

Dated: December 29, 2025

Respectfully submitted,

/s/ Stephen Elijah Bennett  
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**VERIFICATION PURSUANT TO 28 U.S.C. § 2242**

I represent Petitioner, Gilberto Salgado Gutierrez, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 29<sup>th</sup> day of December, 2025.

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