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6 UNITED STATES DISTRICT COURT
7
8 SOUTHERN DISTRICT OF CALIFORNIA

9 FRANCISCO HERNANDEZ SIMON,
10
11 Petitioner,

12 v.

13 Patrick, DIVVER, Field Office Director of
Enforcement and Removal Operations, San
14 Diego Field Office, Immigration and Customs
Enforcement; Todd M. LYONS, Acting
Director, U.S. Immigration and Customs
15 Enforcement; Kristi NOEM, Secretary, U.S.
Department of Homeland Security; U.S.
16 DEPARTMENT OF HOMELAND
SECURITY; Pamela BONDI, U.S. Attorney
17 General; EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW; Christopher J.
18 LAROSE, Warden of Otay Mesa Detention
Facility,

19 Respondents.
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Case No. **'26CV0013 JES BJW**

**PETITION FOR WRIT OF
HABEAS CORPUS**

1 INTRODUCTION

2 1. Petitioner, Francisco Hernandez Simon, brings this petition for a writ of habeas
3 corpus to seek enforcement of their rights as members of the Bond Denial Class certified in
4 *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (C.D. Cal.) Petitioner is in the
5 physical custody of Respondents at the Otay Mesa Detention Facility. He now faces unlawful
6 detention because the Department of Homeland Security (DHS) and the Executive Office for
7 Immigration Review (EOIR) have refused to abide by the declaratory judgment issued on behalf
8 of the certified class in *Maldonado Bautista v. Santacruz*.

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

18 3. The declaratory judgment held that the Bond Denial Class members are detained
19 under 8 U.S.C. § 1226(a), and thus may not be denied consideration for release on bond under §
20 1225(b)(2)(A). *Maldonado Bautista*, 2025 WL 3289861, at *11.

21 4. On December 18, 2025, the Central District of California entered a final judgment
22 in *Maldonado Bautista*, certifying the nationwide class and declaring the policy of detaining
23 those individuals that entered the United States without inspection under § 1225(b)(2) unlawful.
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2 5. Nonetheless, the Executive Office for Immigration Review and its subagency the
3 Immigration Court and the Department of Homeland Security (DHS) have blatantly refused to
4 abide by the declaratory relief and have unlawfully ordered that Petitioner be denied the
5 opportunity to be released on bond.

6 6. Petitioner Francisco Hernandez Simon, is a member of the Bond Eligible Class, as
7 he:

- 8 a. does not have lawful status in the United States and is currently detained at the
9 Otay Mesa Detention Facility. He was apprehended by immigration authorities on
10 September 30, 2025;
11 b. entered the United States without inspection in 2012, more than 13 years ago and
12 was not apprehended upon arrival, *cf. id.*; and
13 c. is not detained under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231.

14 7. After apprehending Petitioner on September 30, 2025, the DHS placed him in
15 removal proceedings pursuant to 8 U.S.C. § 1229a. DHS has charged Petitioner as being
16 inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i), as someone who entered the United States
17 without inspection.

18 8. The Court should expeditiously grant this petition.

19 9. Respondents are bound by the judgment in *Maldonado Bautista*, as it has the full
20 “force and effect of a final judgment.” 28 U.S.C. § 2201(a). Nevertheless, Respondents continue
21 to flagrantly defy the judgment in that case and continue to subject Petitioner to unlawful
22 detention despite his clear entitlement to consideration for release on bond as a Bond Eligible
23 Class member.

24 10. 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

1 controlling, even with respect to class members, and that instead IJs remain bound to follow the
2 agency's prior decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

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

6 12. Alternatively, the Court should order Petitioner's release unless Respondents
7 provide a bond hearing under 8 U.S.C. § 1226(a) within seven days.

8 JURISDICTION

9 13. Petitioner is in the physical custody of Respondents. Petitioner is detained at the
10 Otay Mesa Detention Facility in San Diego, California.

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

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

16 VENUE

17 16. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-
18 500 (1973), venue lies in the United States District Court for the Southern District of California,
19 the judicial district in which Petitioner currently is detained.

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

REQUIREMENTS OF 28 U.S.C. § 2243

18. 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*.

19. 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. Noia*, 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

20. Petitioner, Francisco Hernandez Simon, is a citizen of Mexico who has been in immigration detention since September 30, 2025. After Petitioner was arrested in San Diego, California, ICE did not set bond. On December 3, 2025, Petitioner’s request for custody redetermination was denied by the Immigration Judge for lack of jurisdiction. The Court in *Maldonado Bautista* entered a final judgment 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 prejudged the issue in bad faith.

21. Respondent Patrick Divver (“Divver”) is the Director of the San Diego Field Office of ICE’s Enforcement and Removal Operations division. As such, Divver is Petitioner’s immediate custodian and is responsible for Petitioner’s detention and removal. He is named in his official capacity.

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

5 23. Respondent Department of Homeland Security (DHS) is the federal agency
6 responsible for implementing and enforcing the INA, including the detention and removal of
7 noncitizens.

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

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

15 26. Respondent Christopher LaRose ("LaRose") is the Senior Warden at the Otay
16 Mesa Detention Center as Warden of the, where Petitioner is detained. He has immediate
17 physical custody of Petitioner. He is sued in his official capacity.

18 **CLAIM FOR RELIEF**

19 **Violation of the INA:**

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

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

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

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

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

7 31. Respondents are parties to *Maldonado Bautista* and bound by the Court’s
8 declaratory judgment, which has the full “force and effect of a final judgment.” 28 U.S.C.
9 § 2201(a).

10 32. By denying Petitioner bond hearing under § 1226(a) and asserting that he is
11 subject to mandatory detention under § 1225(b)(2), Respondents violate Petitioner’s statutory
12 rights under the INA and the Court’s judgment in *Maldonado Bautista*.

12 PRAYER FOR RELIEF

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

- 14 a. Assume jurisdiction over this matter;
- 15 b. Issue a writ of habeas corpus requiring that within one day, Respondents release
16 Petitioner;
- 17 c. Alternatively, issue a writ of habeas corpus requiring Respondents to release
18 Petitioner unless they provide a bond hearing under 8 U.S.C. § 1226(a) within
19 seven days;
- 20 d. Award Petitioner attorney’s fees and costs under the Equal Access to Justice Act
21 (EAJA), as amended, 28 U.S.C. § 2412, and on any other basis justified under
22 law; and
- 23 e. Grant any other and further relief that this Court deems just and proper.
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1 DATED this 1 of January, 2026

Respectfully Submitted:

2 /s/ Tina Malek

3 Tina Malek

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5 619-566-0600

6 CA Bar No. 265543

7 *Counsel for Petitioner*

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9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 FRANCISCO HERNANDEZ SIMON,
12

13 Petitioners,

14 v.

15 PATRICK DIVVER, *et al.*,

16 Respondents.
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Case No.: 3:26-cv-00013-JES-BJW

RETURN TO PETITION

1 Petitioner appears to be a member of the Bond Eligible Class certified in *Maldonado*
2 *Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F.R.D. ----, 2025 WL 3288403
3 (C.D. Cal. Nov. 25, 2025). The *Bautista* court has entered final judgement as to the Bond
4 Eligible Class. *Bautista*, ECF No. 94. Accordingly, Respondents acknowledge that
5 Petitioner is detained under 8 U.S.C. § 1226(a) and is entitled to an order from this Court
6 directing a bond hearing be held pursuant to 8 U.S.C. § 1226(a).

7 To the extent the Court issues an order directing a bond hearing under 8 U.S.C.
8 § 1226(a), considering heavy caseloads and staffing levels, Respondents respectfully
9 request that such order provide the Government 14 days from issuance to hold such a bond
10 hearing.

11 DATED: January 6, 2026.

ADAM GORDON
United States Attorney

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13 s/ Robbin Lee
Robbin O. Lee
Assistant United States Attorney
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