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Counsel for Petitioner
Martin Perez Molina

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MARTIN PEREZ MOLINA,
Petitioner,

v.

Kristi NOEM, Secretary, U.S. Department of
Homeland Security; Pamela BONDI, U.S. Attorney
General; Todd LYONS, Acting Director,
Immigration and Customs Enforcement; JOSEPH
FREDEN, Acting Field Office Director, U.S.
Immigration & Customs Enforcement (ICE),
CHRISTOPHER J. LAROSE, Senior Warden, Otay
Mesa Detention Facility; EXECUTIVE OFFICE
FOR IMMIGRATION REVIEW; IMMIGRATION
AND CUSTOMS ENFORCEMENT; and U.S.
DEPARTMENT OF HOMELAND SECURITY,
Respondents.

Case No. '26CV0079 DMS DEB

**PETITION FOR WRIT OF
HABEAS CORPUS UNDER 28
U.S.C. § 2241; VERIFIED
PETITION**

PETITIONER'S A NO. 

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I. INTRODUCTION

1. Petitioner Martin Perez Molina (“Petitioner”), a long-term U.S. resident who entered without inspection circa 1990–91, is unlawfully detained without the opportunity for a bond hearing. He has no prior deportation order, is in removal proceedings under INA §240, and has three U.S. citizen children, (including an 11-year-old adopted son with severe medical/developmental disabilities). He has no criminal convictions or prior removal orders.
2. Despite these equities and the statutory scheme, Petitioner’s IJ denied his bond request on Nov. 3, 2025, citing *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025) – holding (wrongly) that admission status bars bond. But under the Immigration and Nationality Act (“INA”) and recent federal rulings, Petitioner is detained under 8 U.S.C. §1226(a), not §1225(b), entitling him to an individualized custody redetermination.
3. In *Maldonado Bautista v. Santacruz*, a federal court granted class-wide relief, holding that noncitizens like Petitioner (in the U.S. without lawful status and not subject to mandatory detention under §§236(c), 235(b)(1), or 241) must be detained under §1226(a), not §1225(b)(2)(A). The court certified a nationwide “Bond Eligible Class” and entered judgment declaring that ICE’s blanket no-bond policy was unlawful.
4. This petition seeks habeas relief (1) declaring that Petitioner’s detention violates §1226(a) and (2) obtaining his release or bond hearing under §1226(a).

II. JURISDICTION

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5. This Court has jurisdiction under **28 U.S.C. § 2241** because Petitioner is “in custody” at the Otay Mesa Detention Facility, which is located within this judicial district, and he challenges the legality and constitutionality of his ongoing immigration detention under federal law. See **28 U.S.C. §§ 2241(a), 2243**; *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973) (holding that habeas corpus is the proper vehicle for challenging unlawful custody).
6. Federal courts have long recognized that § 2241 confers jurisdiction to review claims asserting that immigration detention violates statutory or constitutional limits.
7. This Court’s jurisdiction is further supported by the Administrative Procedure Act, 5 U.S.C. § 706, which authorizes judicial review of final agency action that is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, as well as agency action that is contrary to constitutional right. Petitioner also invokes the protections of the Fifth Amendment’s Due Process Clause, which guarantees that no person shall be deprived of liberty without due process of law.
8. Petitioner does not seek review of a removal order or prosecutorial discretion decisions but instead challenges the legality of his continued detention and the government’s failure to provide adequate procedural safeguards. Accordingly, this Court has jurisdiction to adjudicate Petitioner’s claims and to grant appropriate habeas relief.

III. VENUE

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1. Venue is proper in this District pursuant to 28 U.S.C. § 1391(e) because Petitioner is detained within the Southern District of California, specifically at the Otay Mesa Detention Facility in San Diego County, and Respondents are officers and employees of the United States who operate and maintain immigration detention facilities within this District;
2. and under *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493–500 (1973), because Petitioner’s custodian is located in this District and Petitioner’s confinement is within the territorial jurisdiction of this Court.

IV. REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243

9. Section 2241 authorizes issuance of the writ to any person in federal custody who is “in custody in violation of the Constitution or laws” of the United States. Section 2243 further commands that the Court “summarily hear and determine” the petition and order the petitioner’s release unless the respondent can show lawful cause for continued detention. Together, these provisions reflect Congress’s intent that habeas corpus serve as a swift and effective remedy against unlawful restraints on liberty, particularly where detention is prolonged and unsupported by an individualized justification.
10. Petitioner squarely satisfies these statutory requirements. He is presently detained under color of federal immigration authority and alleges that his continued detention without a bond hearing is unauthorized by statute and violates due process. The record supports these allegations, demonstrating that Petitioner has been deprived of an individualized assessment of flight risk or danger.

1 11. Because Petitioner has made a prima facie showing that his custody is unlawful, §
2 2243 obligates the Court to act promptly by ordering Respondents to show cause
3 why the writ should not be granted or, in the absence of such cause, to order
4 Petitioner’s immediate release or a constitutionally adequate bond hearing.
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6 **V. PARTIES**

7 12. Petitioner MARTIN PEREZ MOLINA (“Mr. Perez Molina) is an adult male born
8 September 16, 1962, in Mexico. He has resided continuously in the United States
9 since entering without inspection around 1990–1991. He is currently detained by
10 U.S. Immigration and Customs Enforcement (“ICE”) at the Otay Mesa Detention
11 Facility in San Diego, California.
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13 13. Mr. Perez Molina is married to a spouse who lacks lawful immigration status. He
14 has three children who are United States citizens. His eldest child is 33 years-old,
15 the second is 24 years-old and the youngest is his 11-years-old son whom
16 Petitioner legally adopted from his biological mother and who suffers from
17 serious medical and developmental disabilities requiring ongoing and extensive
18 care.
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20 14. Petitioner’s removal proceedings remain pending, with a hearing scheduled for
21 January 15, 2026. In November 2025, Petitioner timely requested a custody
22 redetermination (bond hearing) before the Immigration Judge, which was denied.
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24 **VI. RESPONDENTS**

25 15. Respondent CHRISTOPHER J. LAROSE is the warden of Otay Mesa Detention
26 Facility and has immediate physical custody over Petitioner. As the local
27 custodian, the Warden is responsible for the day-to-day administration of the
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1 detention facility where Petitioner is held. The Warden is sued in his/her official
2 capacity as a representative of the entity exercising direct custody over Petitioner.

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4 16. Respondent JOSEPH FREDEN is the Acting Field Office Director of U.S.
5 Immigration and Customs Enforcement (ICE), in San Diego California. ICE is the
6 component of the Department of Homeland Security (DHS) which is responsible
7 for detaining and removing noncitizens according to immigration law and
8 oversees custody determinations. Mr. Freden is named in his official capacity. In
9 his official capacity, he is a legal custodian of the petitioner.

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11 17. Respondent KRISTI NOEM, in her official capacity as the Secretary of the
12 Department of Homeland Security, is the highest-ranking official in DHS. She has
13 ultimate authority over ICE and the enforcement of immigration laws, including
14 detention policy. DHS, under Respondent Noem's direction, is responsible for the
15 decision to continue Petitioner's detention and to designate him as subject to
16 mandatory custody. She is sued in her official capacity.

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18 18. Respondent PAMELA BONDI, in her official capacity as the Attorney General of
19 the United States, oversees the U.S. Department of Justice, which includes the
20 Executive Office for Immigration Review (EOIR). EOIR encompasses the
21 nation's Immigration Courts and the Board of Immigration Appeals (BIA). The
22 Attorney General has ultimate authority over immigration court procedures,
23 including the availability of bond hearings and the interpretation of detention
24 statutes through precedent decisions. Respondent Bondi is sued in her official
25 capacity.
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1 19. Respondent EOIR (Executive Office for Immigration Review) is a component of
2 the U.S. Department of Justice responsible for adjudicating immigration
3 proceedings. EOIR includes the Immigration Judges who conduct removal and
4 bond proceedings, as well as the BIA which issues appellate administrative
5 decisions. EOIR is sued as a Respondent because it is responsible for
6 administering the bond hearing process (or lack thereof) at issue in this case.
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8 EOIR has failed to provide Petitioner a custody redetermination process, and
9 Petitioner seeks relief to compel EOIR to perform its duty to afford him a bond
10 hearing under the correct legal standards.
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12 VII. LEGAL FRAMEWORK

13 20. Federal immigration law provides for the detention of noncitizens under several
14 distinct statutory provisions, depending on the circumstances. Proper
15 classification under these statutes is crucial, as it determines whether a person is
16 eligible for release on bond or must be kept in custody. The Immigration and
17 Nationality Act (INA) draws a fundamental distinction between those noncitizens
18 who may be released on bond and those whom Congress has mandated must be
19 detained. INA § 236(a) (8 U.S.C. § 1226(a)), Discretionary Detention with Bond
20 Eligibility:
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22 21. Section 236(a) is the default detention authority for persons in removal
23 proceedings who are already present in the United States. It provides that the
24 Attorney General (now the DHS Secretary by delegation) “may” arrest and detain
25 an alien pending a decision on removal, and “may release” the alien on bond or
26 conditional parole (except as provided in subsection (c)). In other words, unless a
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1 specific mandatory detention provision applies, the noncitizen can seek release on
2 bond. This is the provision under which most noncitizens with pending removal
3 cases are held.

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5 22. INA § 236(c) (8 U.S.C. § 1226(c)), Mandatory Detention for Certain Criminal,
6 Terrorism Cases: Section 236(c) carves out a narrow class of aliens (principally
7 those with specified criminal convictions or terrorism ties) for whom detention is
8 mandatory. These individuals must be detained once taken into immigration
9 custody and generally cannot be released on bond (except in limited
10 circumstances like witness protection). Detention under § 236(c) is meant to
11 prevent those with serious criminal backgrounds from absconding or endangering
12 the community.

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14 23. The Supreme Court upheld this provision in *Demore v. Kim*, 538 U.S. 510 (2003),
15 but emphasized that mandatory detention under § 236(c) is typically brief and has
16 a definite endpoint in the removal process (often lasting around 1.5 to 5 months).

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18 24. INA § 235(b) (8 U.S.C. § 1225(b)) , Mandatory Detention of “Applicants for
19 Admission”: Section 235(b) generally governs the treatment of arriving aliens or
20 those deemed to be seeking admission into the U.S. It provides that if an alien
21 who is an “applicant for admission” is not “clearly and beyond a doubt” entitled
22 to admission, the alien “shall be detained” for removal proceedings. This category
23 historically covers individuals who present themselves at a port of entry or who
24 are apprehended at the border while attempting to enter without inspection. By
25 statute, such persons are to be detained throughout their immigration proceedings
26 (unless paroled for urgent humanitarian reasons).
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1 25. INA § 235(b)(1) deals with expedited removal for certain recent entrants or those
2 with fraudulent documents, and § 235(b)(2) is a catch-all provision for other
3 applicants for admission not in expedited removal. Notably, § 235(b) applies to
4 “aliens arriving in the United States” or those who have not been admitted or
5 paroled and are encountered seeking entry.
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7 26. In sum, Congress intended that true arriving aliens , individuals at the threshold of
8 entry , could be kept in custody during proceedings without bond as a general
9 rule.
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11 27. INA § 241(a) (8 U.S.C. § 1231) , Post Removal Order Detention: This provision
12 kicks in once a noncitizen has a final order of removal. It mandates detention
13 during a 90-day “removal period” and permits continued detention beyond that
14 period in certain circumstances. Section 241 is not at issue here because Mr.
15 Martin Perez Molina does not have a final removal order, his case is still pending.
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17 28. The critical question in Mr. Perez Molina case is whether his detention is properly
18 under § 236(a) (which would allow a bond hearing) or under § 235(b) (which
19 would not). The government contends he is an “applicant for admission” subject
20 to § 235(b) mandatory detention, simply because many years ago he entered
21 without inspection and was never formally admitted to the U.S. However, this
22 position represents a misreading of the statutory framework and has been rejected
23 by federal courts, including:
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- 25 • Beltran v. Noem, No. 25-cv-2650 LL, 2025 WL 3078837, at *5 (DEB) (S.D. Cal.
26 Nov. 4) (Lopez, J.) (“The Court finds the plain text of § 1225(b)(2) does not
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1 support Respondents' contention that it applies to any noncitizen present in the
2 United States who has not been admitted.”).

- 3 • Lopez v. Warden, Otay Mesa Det. Ctr., No. 25-CV-2527-RSH-SBC, 2025 WL
4 3005346, at *4 (S.D. Cal. Oct. 27, 2025) (Huie, J.) (“The Court concludes that
5 Petitioner is not subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A),
6 and that detention, bond, and release in Petitioner’s case are instead governed by
7 8 U.S.C. § 1226(a).”).
- 8 • Esquivel-Ipina v. LaRose, No. 25-CV-2672 JLS (BLM), 2025 WL 2998361, at *5
9 (S.D. Cal. Oct. 24, 2025) (Sammartino, J.) (“Therefore, the Court concludes that
10 Petitioner is not an applicant for admission under § 1225(b) and is entitled a bond
11 hearing under § 1226(a).”).
- 12 • Martinez Lopez v. LaRose, No. 25-CV-2717-JES-AHG, 2025 WL 3030457, at *6
13 (S.D. Cal. Oct. 30, 2025) (Simmons Jr., J.) (“[T]he Court concurs with its sister
14 courts and concludes that Section 1226(a), rather than Section 1225(b)(2)(A),
15 applies to Martinez Lopez.”).
- 16 • Garcia v. Noem, No. 25-CV-02180-DMS-MMP, 2025 WL 2549431, at *8 (S.D.
17 Cal. Sept. 3, 2025) (Sabraw, J.) (“Respondents must provide Petitioners with
18 individualized bond hearings under § 1226(a) within fourteen days of this Order.
19 Respondents shall not deny Petitioners’ bond on the basis that § 1225(b)(2)
20 requires mandatory detention.”).

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25 29. By law, an individual like Mr. Martin Perez Molina, who entered the country
26 around 1990 and established residence, should be treated as a person “already
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1 present” in the United States and placed in removal proceedings under § 240, not
2 as an arriving alien at the border.

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4 30. As courts in the Southern District of California have likewise recognized, the
5 mandatory detention provision of 8 U.S.C. § 1225(b)(2)(A) does not apply to
6 noncitizens who entered the United States without inspection years ago and were
7 living in the interior of the country before being apprehended and placed in
8 removal proceedings. Rather, such individuals are detained under 8 U.S.C. §
9 1226(a) and are entitled to seek release on bond through an individualized custody
10 redetermination hearing before an Immigration Judge, unless a separate
11 mandatory detention provision applies. Because Mr. Martin Perez Molina is a
12 long-term resident apprehended in the interior, with no criminal convictions and
13 no final order of removal, his detention is governed by § 1226(a), not § 1225(b),
14 and he is therefore bond-eligible.
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17 31. This interpretation accords with decades of practice and the long-standing
18 regulations. Indeed, immigration regulations have long provided that Immigration
19 Judges have authority to conduct bond hearings for detainees in regular removal
20 proceedings, except for defined groups like “arriving aliens” and those in § 236(c)
21 or post-order detention (see 8 C.F.R. §§ 236.1(c)(8), 1236.1(d), 1003.19(h)).
22

23 32. By classifying Mr. Perez Molina as an arriving alien, the government is
24 attempting to place him in a category that the law reserves for individuals literally
25 caught at entry or seeking initial admission.

26 33. In *Maldonado Bautista v. Santacruz*, the U.S. District Court for the Southern
27 District of California confronted this precise legal issue. That case involved a
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1 class of noncitizens who, like Petitioner, entered without inspection years ago and
2 were living in the U.S. before being detained. The court held that such individuals
3 are detained under INA § 236(a) and must be provided the opportunity for a bond
4 hearing, because they are not truly “applicants for admission” in the sense
5 intended by § 235(b). In reaching this conclusion, the court found that DHS’s new
6 policy (of denying bond hearings to this group) was inconsistent with the plain
7 language of the INA.
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9 34. The court emphasized that § 235(b) was never meant to apply to every person
10 who entered without inspection, regardless of circumstances, rather, § 236(a)
11 remains the default authority for those who have been within the United States
12 and are placed in removal proceedings outside the immediate context of arrival.
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14 35. Furthermore, in *Maldonado Bautista*, Judge Sunshine S. Sykes issued a
15 nationwide declaratory judgment and certified the aforementioned Bond Eligible
16 Class. The class was defined as: “All noncitizens in the United States without
17 lawful status who (1) have entered or will enter the United States without
18 inspection, (2) were not or will not be apprehended upon arrival, and (3) are not
19 or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or §
20 1231 at the time the Department of Homeland Security makes an initial custody
21 determination.” This definition precisely covers Mr. Martin Perez Molina and
22 others in his situation.
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24 36. The district court not only certified this class but also extended to the class the
25 benefit of its earlier ruling, it “extend[ed] the same declaratory relief granted to
26 Petitioners to the Bond Eligible Class as a whole,” thereby conclusively
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1 establishing that class members are entitled to bond hearings under § 236(a). In
2 effect, the court struck down DHS’s July 2025 no-bond policy as unlawful when
3 applied to class members. DHS’s blanket treatment of long-term EWI residents as
4 § 235(b) mandatory detainees was declared contrary to law.
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6 37. Consequently, as a matter of federal law, Mr. Perez Molina should be recognized
7 as an individual detained pursuant to § 236(a), with the attendant right to seek
8 release on bond. Respondents’ refusal to provide him with a bond hearing is not
9 only wrong as a matter of statutory interpretation, it is in direct violation of the
10 binding declaratory judgment.
11

12 38. Mr. Perez Molina’s detention is governed by INA § 236(a), since no applicable
13 mandatory detention provision (such as § 236(c) or § 235(b)(1)) applies to him.
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15 39. Under § 236(a), he has a right to an individualized bond hearing where an
16 Immigration Judge can determine if he poses any flight risk or danger warranting
17 continued detention. Given his spotless record and equities, he is a prime
18 candidate for release.

19 40. The government’s attempt to label him as an “arriving alien” under § 235(b) is
20 legally unfounded for someone in his posture and has been flatly rejected by the
21 courts.
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23 41. This Court should therefore apply the correct legal framework, recognize Mr.
24 Martin Perez Molina’s eligibility for a bond hearing, and grant relief to end his
25 unlawful detention.
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VIII. FACTS

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42. Petitioner, Mr. Perez Molina entered the United States without inspection over between 1990 and 1991 and has remained here continuously ever since.

43. He is married and has three U.S. children. Until the events giving rise to this case, Mr. Martin Perez Molina had no prior encounters with immigration enforcement. He has been a model resident, abiding by the law and contributing to his community.

44. Mr. Martin Perez Molina intends to apply for cancellation of removal under INA § 240A(b), non-LPR cancellation, in his removal proceedings. He appears statutorily eligible for such relief, he has well over ten years of continuous physical presence, has demonstrated good moral character (e.g., through the absence of any disqualifying convictions and his regular tax filings), and his removal would cause exceptional and extremely unusual hardship to his U.S. citizen child.

45. These pending immigration avenues underscore that Mr. Perez Molina has viable paths to lawful status and strong incentives to appear for all hearings.

46. Mr. Perez Molina has deep and longstanding ties to the community. He maintained steady employment until his detention, and employers have noted his strong work ethic.

47. Despite his long-term presence and exemplary record, Mr. Perez Molina was suddenly arrested and detained by ICE in September, 2025 (during a routine stop far from any border). He was placed in removal proceedings under INA § 240, 8 U.S.C. § 1229a.

1 48. However, the government has taken the position that Mr. Perez Molina is not
2 entitled to any bond hearing before an Immigration Judge. ICE refused to set a
3 bond, and when relief was sought through the immigration court, the government’s
4 attorneys argued, and the immigration judge agreed, that Mr. Perez Molina is
5 treated as an “arriving alien” subject to mandatory detention under INA § 235(b).
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7 49. In other words, the government asserts that because he entered without inspection,
8 he must be detained until his case is concluded, with no opportunity for release on
9 bond. This position is extraordinary and represents a drastic departure from prior
10 practice. Under longstanding policy and understanding, individuals like Mr. Perez
11 Molina (who entered the U.S. years ago and were living in the interior) would be
12 detained, if at all, under INA § 236(a), which permits release on bond by ICE or an
13 immigration judge. Indeed, until mid-2025, such individuals routinely received
14 bond hearings.
15

16 50. The government abruptly upended this practice in July 2025, when ICE issued an
17 interim policy memo instructing that anyone who entered without inspection is
18 ineligible for bond and cannot even seek a bond hearing, regardless of how long
19 they have lived in the United States.
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21 51. Shortly thereafter, on September 5, 2025, the Board of Immigration Appeals issued
22 a precedential decision adopting this sweeping new interpretation. In *Matter of*
23 *Yajure Hurtado*, 29 I. and N. Dec. 216 (BIA 2025), the BIA announced that an
24 Immigration Judge has no authority to consider bond for any person who entered
25 the U.S. without inspection, reasoning that such individuals are “applicants for
26 admission” subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A).
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52. According to this view, even long-time residents with deep ties, like Mr. Martin Perez Molina, must remain locked up during their proceedings, with release available only if DHS grants discretionary parole in its unfettered discretion, a rarity, which DHS has not offered here.

53. The government’s aggressive no-bond stance in Mr. Perez Molina case is thus part of a new, controversial policy. Critically, that policy has already been challenged in court and found unlawful.

54. The Southern District of California’s decision in *Maldonado Bautista v. Santacruz* directly addresses this issue. In that case, a class of detainees, the Bond Eligible Class, just like Mr. Martin Perez Molina challenged DHS’s blanket policy of treating them as arriving aliens subject to § 235(b) detention.

55. The district court expressly rejected the government’s position. It held that individuals who entered without inspection and were living in the United States, and who are not separately subject to criminal detention under § 236(c) or expedited removal under § 235(b)(1), are detained under INA § 236(a), not § 235(b). As such, they are entitled to seek release on bond.

56. The court issued a declaratory judgment confirming that DHS’s July 2025 no-bond policy is unlawful and cannot be applied to class members. In fact, the “vast majority” of federal courts that have considered this legal question similarly rejected the government’s position even before the class action was decided. ICE and EOIR nonetheless continued to enforce the no-bond policy until the class-wide relief was ordered. Mr. Perez Molina continued detention reflects that now-discredited policy.

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57. Mr. Perez Molina is a member of the certified Bond Eligible Class under *Maldonado Bautista*. He meets all the criteria, he entered the U.S. without inspection (over three decades ago), he was not apprehended immediately upon arrival (indeed, he lived openly in the community for years), and he is not detained under INA §§ 236(c), 235(b)(1), or 1231.

58. Despite the binding declaratory judgment in *Maldonado Bautista*, Respondents have thus far failed to afford Mr. Perez Molina a bond hearing. He remains detained at the Otay Mesa Detention Center, suffering the strain of confinement and separation from his family. Every additional day of detention gravely harms Mr. Martin Perez Molina and his family, without lawful justification. These facts compel the urgent intervention of this Court to enforce the law and prevent further irreparable harm.

IX. FIRST CLAIM FOR RELIEF

Mr. Perez Molina’s Detention is in Violation of 8 U.S.C. § 1226(a)

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

60. Section 1225(b)(2)’s mandatory detention provisions do not apply to Petitioner because he has been present and residing in the United States for nearly three decades.

61. Relevant here, Section 1225(b)(2) does not apply to those who previously entered the country and have been present and residing in the United States prior to their apprehension and removal proceedings. That is, Section 1225(b)(2) applies only to individuals who are “applicants for admission” at the time of apprehension

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62. As a long term resident Petitioner is properly detained under Section 1226(a), which permits release on bond unless Section 1226(c) or Section 1231 govern, neither of which apply here. Mr. Perez Molina’s continued detention under Section 1225(b)(2) without a bond hearing is unlawful and violates the plain language of the statutory provisions.

63. Courts have consistently held that § 1225(b)(2) applies only at or near the time of entry and not to individuals apprehended in the interior. (See *Orozco v. Garland*, 60 F.4th 684, 695 (9th Cir. 2023); *Mendoza v. Sessions*, 891 F.3d 672, 678 (7th Cir. 2018)).

X. SECOND CLAIM FOR RELIEF

Violation of the Administrative Procedure Act (APA) (5 U.S.C. § 706 – Agency Action Not in Accordance with Law, in Excess of Authority, and Arbitrary and Capricious)

64. Petitioner incorporates by reference all preceding paragraphs as if set forth fully herein: Under the Administrative Procedure Act, a court must “hold unlawful and set aside agency action” that is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with the law, that is “contrary to constitutional right [or] power,” or that is “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right.” 5 U.S.C. § 706(2)(A)–(C). The APA ensures that federal agencies act reasonably, within statutory authority, and with proper justification.

1 65. Petitioner’s detention under Section 1225(b)(2) is arbitrary and capricious, exceeds
2 the agency’s statutory authority, and is not in accordance with the law. It violates the
3 INA and Mr. Perez Molina’s’s Fifth Amendment right to due process.

4 66. Agency reinterpretations that contradict the INA’s text and long-standing practice
5 violate the APA. (See *DHS v. Regents of the Univ. of Cal.*, 591 U.S. 1, 16–17
6 (2020); *Perez v. Mortg. Bankers Ass’n*, 575 U.S. 92, 105 (2015))

7 67. Accordingly, Respondents’ actions contravene 5 U.S.C. § 706(2) and should be set
8 aside as unlawful agency action.

9
10 **XI. THIRD CLAIM FOR RELIEF**

11 **Violation of the Fifth Amendment (Due Process Clause)**
12 **(Unconstitutional Prolonged Detention Without Individualized Hearing)**

13 68. Petitioner incorporates by reference all preceding paragraphs as if set forth fully
14 herein:

15 69. The Fifth Amendment to the United States Constitution guarantees that no person
16 shall be deprived of liberty without due process of law. This protection extends to
17 all “persons” on United States soil, including noncitizens like Mr. Martin Perez
18 Molina.

19 70. Due process has both substantive and procedural components, and Respondents’
20 treatment of Petitioner violates both.

21 71. By detaining Petitioner for a prolonged period with no opportunity to contest his
22 confinement, Respondents have deprived him of liberty in an arbitrary manner,
23 without the fundamental procedural safeguard of a hearing.
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1 72. Such detention is unconstitutional. Procedural Due Process: At minimum, due
2 process requires that the government follow fair procedures before depriving an
3 individual of liberty.

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5 73. A core tenet is that a person must have an opportunity to be heard “at a
6 meaningful time and in a meaningful manner” when challenging the deprivation.

7 74. Here, Petitioner has been jailed for an extended time with absolutely no hearing to
8 determine if his detention is justified. He has not been allowed to appear before a
9 neutral adjudicator to argue for release or to contest the government’s assertions.
10 This complete denial of any process is a glaring violation of the Fifth
11 Amendment.
12

13 75. When analyzing procedural due process, courts consider the factors from
14 *Mathews v. Eldridge*, 424 U.S. 319 (1976): (1) the private interest at stake; (2) the
15 risk of erroneous deprivation of that interest under current procedures, and the
16 value of additional safeguards; and (3) the government’s interest and burdens.
17 Here, the private interest, Petitioner’s fundamental interest in freedom from
18 bodily restraint, is among the highest in our constitutional system.
19

20 76. The risk of erroneous deprivation is extraordinarily high when no hearing is
21 provided: the government has made a unilateral decision to detain, and without a
22 hearing, there is a significant risk that a person who is neither dangerous nor a
23 flight risk (like Mr. Martin Perez Molina) is being needlessly locked up.
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25 77. Additional safeguards (specifically, a bond hearing where an impartial judge
26 assesses risk factors) have immense value in preventing wrongful detention.
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78. On the other side, the government’s interest in preventing flight or danger can be addressed through a bond hearing procedure, indeed, that is precisely why such hearings exist, to strike a balance between liberty and the government’s enforcement concerns.

79. Providing a bond hearing imposes minimal administrative burden on the government, yet the government has refused to do so. Weighing these factors, it is clear that due process entitles Petitioner to at least a hearing.

80. Substantive Due Process: Substantively, the Fifth Amendment guards against egregious, arbitrary governmental actions even if procedural protections are provided. Freedom from physical detention by one’s own government is a fundamental liberty interest.

81. Civil detention is permissible only in certain special and narrow circumstances, and it must bear a reasonable relation to the purposes for which the individual is detained (such as assuring presence at proceedings or protecting the community).

82. Here, Petitioner’s prolonged detention with no individualized findings is excessive and not reasonably related to any legitimate purpose. He has no criminal record and has demonstrated substantial ties; there is no particularized reason to think he would abscond or pose a danger.

83. Detention based solely on a general category (entry without inspection) is an arbitrary practice that does not account for the individual facts of his case.

84. The Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678 (2001), noted that civil immigration detention is constitutionally questionable when it becomes indefinite

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or potentially permanent; at some point, due process requires a sufficient justification for continued confinement.

85. While *Zadvydas* involved detention after a final removal order, the principle applies here as well: the government cannot constitutionally lock away a person like Mr. Martin Perez Molina for months or years without any opportunity to contest the need for confinement. Several lower courts, recognizing this, have held that due process requires a bond hearing after a certain period of pre-removal detention (e.g., six months), where the government must justify further detention.

86. In Petitioner’s case, there has been zero process from day one, and his detention has already become prolonged. This lack of any individualized assessment renders his detention arbitrary and substantively unreasonable, in violation of the Fifth Amendment.

87. To be clear, due process does not guarantee release in every case, but it does guarantee a fair chance to contest detention.

88. By denying Petitioner that chance entirely, Respondents have run afoul of constitutional requirements.

89. Petitioner’s continued incarceration without a bond hearing deprives him of liberty without due process of law.

90. This Court should declare such detention unconstitutional and order appropriate relief (immediate release or a prompt bond hearing with basic due process protections) to vindicate Petitioner’s Fifth Amendment rights.

XII. FOURTH CLAIM FOR RELIEF

Petitioner’s Detention Falls Under the *Maldonado Bautista* “Bond Eligible Class” Certification and DHS’s Interpretation of Section 1225(b)(2) As Applied to *Mr. Perez Molina* is Unlawful

91. Petitioner incorporates by reference all preceding paragraphs as if set forth fully herein:

92. Petitioner is a member of the certified Bond Eligible Class in *Maldonado Bautista v. Santacruz*. The continued denial of any bond hearing to Petitioner is in direct violation of the declaratory judgment and class-wide relief issued by the U.S. District Court in that case.

93. The *Maldonado Bautista* court explicitly declared that DHS’s policy of subjecting class members to mandatory detention under INA § 235(b) is unlawful, and it held that class members must be treated as detained under INA § 236(a) (8 U.S.C. § 1226(a)). This means that Mr. Perez Molina is legally entitled to a custody redetermination (bond) hearing before an Immigration Judge. By refusing to provide such a hearing and continuing to detain him as if § 235(b) applied, Respondents are flouting a binding federal judgment.

94. The Southern District of California’s decision in *Maldonado Bautista* is a nationwide declaratory judgment that binds DHS, EOIR, and their officers, which include Respondents here, with respect to all class members. Respondents Noem and Bondi, in their capacities as DHS Secretary and U.S. Attorney General, were defendants in that class action, or are in privity with the defendants, and are fully aware of the outcome. They have no lawful basis to ignore the court’s declaration.

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The judgment has effectively determined the rights of Petitioner, he must be afforded a bond hearing under § 236(a).

95. Continuing to detain Petitioner without a bond hearing not only violates the INA as construed by the court but also undermines the rule of law and the authority of a federal court judgment.

96. In *Maldonado Bautista*, the court found that the government’s new no-bond policy was inconsistent with the INA’s text and structure. It granted summary judgment to the class representatives, then extended that relief to the class. By detaining Petitioner without bond, Respondents are treating him in a manner that the court has declared unlawful. Each day of such detention is per se an ongoing legal violation.

97. Under the principle of res judicata and class action relief, Respondents cannot relitigate or disregard these determinations, they are obliged to comply. Accordingly, Petitioner asks this Court to enforce the declaratory relief from *Maldonado Bautista*. This Court should declare that Petitioner’s designation as an INA § 235(b) detainee is incorrect and unlawful, and that he is entitled to a bond hearing as a matter of law.

98. The Court should order Respondents to promptly provide Petitioner a bond hearing in compliance with the Maldonado Bautista judgment, or alternatively, order his immediate release. Habeas corpus relief is warranted because Petitioner is “in custody in violation of the laws of the United States,” specifically, in violation of the INA as authoritatively interpreted by the District Court.

XIII. FIFTH CLAIM FOR RELIEF

Mr. Martin Perez’s Detention is in Violation of DHS and EOIR Bond Regulations

1 99. Petitioner incorporates by reference the allegations of fact set forth in the preceding
2 paragraphs:

3 100. In 1997, Congress amended the INA through the IIRIRA. EOIR, and the then-
4 Immigration and Naturalization Service issued an interim rule to interpret and apply
5 the IRRIRA. Specifically, under the heading of “Apprehension, Custody, and
6 Detention of [Noncitizens],” the agencies explained that “[d]espite being applicants
7 for admission, [noncitizens] who are present without having been admitted or
8 paroled (formerly referred to as [noncitizens] who entered without inspection) will
9 be eligible for bond and bond redetermination.” 62 Fed. Reg. at 10323.
10

11
12 101. The agencies thus made clear that individuals who had entered without inspection
13 were eligible for consideration for bond and bond hearings before immigration
14 judges under Section 1226 and its implementing regulations.

15 102. Nonetheless, under *Yajure Hurtado*, EOIR has a policy and practice of applying
16 Section 1225(b)(2) to aliens, such as Mr. Perez Molina. This application of Section
17 1225(b)(2) is unlawful and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.
18

19 103. By continuing to detain Mr. Perez Molina without providing a bond hearing,
20 Respondents are violating both the INA and the implementing regulations.

21 104. Their actions are arbitrary, capricious, contrary to law, and exceed their statutory
22 authority. Mr. Perez Molina is entitled to a bond hearing before an Immigration Judge
23 in accordance with § 1226(a) and the applicable EOIR regulations.
24

25 105. Respondents’ failure to provide such a hearing constitutes ongoing, unlawful
26 detention, justifying relief from this Court.

27 **XIV. PRAYER FOR RELIEF**

28 WHEREFORE, Petitioner respectfully requests that this Court grant the following relief:

- 1 a. Assume Jurisdiction over this Petition, as this matter falls squarely within the
- 2 Court’s habeas corpus and federal question jurisdiction;
- 3 b. Declare that Mr. Perez Molina’ detention is governed by 8 U.S.C. § 1226(a) and
- 4 that his detention under 8 U.S.C. § 1225(b)(2) is unlawful;
- 5 c. Declare that Petitioner’s detention under INA § 235(b) is unlawful. In particular,
- 6 Petitioner seeks a declaratory judgment that he is not properly classified as an
- 7 “applicant for admission” subject to mandatory detention, and that the continued
- 8 denial of a bond hearing violates the Immigration and Nationality Act, the
- 9 Administrative Procedure Act, and the Due Process Clause of the Fifth
- 10 Amendment;
- 11 d. Issue an Order to Show Cause ordering Respondents to show cause within three
- 12 days why this Petition should not be granted;
- 13 e. Declare that Petitioner is entitled to a custody redetermination hearing under INA §
- 14 236(a). This declaration should make clear that Petitioner must be treated as a §
- 15 236(a) detainee and afforded a prompt individualized hearing where the
- 16 government must justify his continued detention by clear and convincing evidence
- 17 of flight risk or danger, and where conditions of release (including bond or other
- 18 appropriate conditions) can be considered.
- 19 f. Issue a Writ of Habeas Corpus or Order directing Respondents to remedy
- 20 Petitioner’s unlawful detention, specifically by: a. Immediately releasing Petitioner
- 21 from custody under reasonable conditions of supervision (such as requiring him to
- 22 report to ICE or posting a reasonable bond), as an interim measure while his
- 23 removal proceedings are pending; OR b. In the alternative, if the Court elects not to
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order outright release, ordering Respondents to provide Petitioner with a constitutionally adequate custody redetermination hearing before an Immigration Judge within seven (7) days of the Court’s Order. Such a hearing should comport with due process, including placing the burden on DHS to prove by clear and convincing evidence that Petitioner’s continued detention is necessary because he poses a flight risk or danger, in light of his strong equities. If the Immigration Judge does not issue a bond decision within that timeframe, the Court should require Petitioner’s immediate release.

- g. Enjoin Respondents from transferring Petitioner outside the jurisdiction of the Southern District of California during the pendency of this action. Such an injunction is necessary to preserve the Court’s jurisdiction and to prevent Respondents from frustrating Petitioner’s ability to seek relief (for example, by moving him to a far-flung facility or attempting to moot the petition by transferring him).
- h. Grant any other and further relief that this Court deems just and proper.

Respectfully submitted on:

Dated: January 5, 2026

/s/ Daniel S. Castaneda
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28 U.S.C. § 2242 VERIFICATION STATEMENT

I, Daniel S. Castaneda, submit this verification on behalf of the petitioner because I am the Petitioner's attorney. I have discussed with the Petitioner the events described in this Petition and Complaint. On the basis of those discussions, I hereby verify that the statements made in this Petition and Complaint are true and correct to the best of my knowledge.

Respectfully submitted on:

Dated: January 5, 2026

/s/ Daniel S. Castaneda
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