

1 Tina Malek, Esq. (CSBN 265543)  
MALEK LAW GROUP, APC  
2 402 W. Broadway, Ste 1260  
San Diego, CA 92101  
3 Tel: 619-565-0600  
Fax: 619-374-8573  
4 tmalek@malek-law.com

5 Attorney for Petitioner

6 UNITED STATES DISTRICT COURT  
7 SOUTHERN DISTRICT OF CALIFORNIA  
8

9 ROGELIA HERNANDEZ CRUZ,  
10  
Petitioner,

11 v.

12 Patrick, DIVVER, Field Office Director of  
13 Enforcement and Removal Operations, San  
Diego Field Office, Immigration and Customs  
14 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. '26CV0081 AGS DEB

**PETITION FOR WRIT OF  
HABEAS CORPUS**

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## INTRODUCTION

1. Petitioner, Rogelia Hernandez Cruz, brings this petition for a writ of habeas corpus to seek 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.) Petitioner is in the physical custody of Respondents at the Otay Mesa Detention Facility. He now faces unlawful detention because the Department of Homeland Security (DHS) and the Executive Office for Immigration Review (EOIR) have refused to abide by the declaratory judgment issued on behalf of the certified class in *Maldonado Bautista v. Santacruz*.

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

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

4. On December 18, 2025, the Central District of California entered a final judgment in *Maldonado Bautista*, certifying the nationwide class and declaring the policy of detaining those individuals that entered the United States without inspection under § 1225(b)(2) unlawful.

1  
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, Rogelia Hernandez Cruz, is a member of the Bond Eligible Class, as  
7 she:

- 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  
10 On December 2, 2025, following her interview for adjustment of status;  
11 b. entered the United States without inspection on or about 1999, more than 26 years  
ago and was not apprehended upon arrival, *cf. id.*; and  
12 c. is not detained under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231.

13 7. After apprehending Petitioner on December 2, 2025, the DHS placed him in  
14 removal proceedings pursuant to 8 U.S.C. § 1229a. DHS has charged Petitioner as being  
15 inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i), as someone who entered the United States  
without inspection.

16 8. The Court should expeditiously grant this petition.

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

22 10. Immigration judges have informed class members in bond hearings that they have  
23 been instructed by “leadership” that the declaratory judgment in *Maldonado Bautista* is not  
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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.







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DATED this 6 of January, 2026

Respectfully Submitted:

/s/ Tina Malek  
Tina Malek  
402 W. Broadway, Ste 1260  
619-566-0600  
CA Bar No. 265543  
*Counsel for Petitioner*

1 ADAM GORDON  
United States Attorney  
2 BETSEY BOUTELLE  
Assistant United States Attorney  
3 Cal. Bar No. 299754  
Office of the U.S. Attorney  
4 880 Front Street, Room 6293  
San Diego, CA 92101-8893  
5 Telephone: (619) 546-8764  
Email: betsey.boutelle@usdoj.gov

6 Attorneys for Respondents  
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9 **UNITED STATES DISTRICT COURT**  
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 Rogelia HERNANDEZ CRUZ,  
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13 Petitioners,

14 v.

15 Patrick DIVVER, et al.,  
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17 Respondents.  
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Case No.: 26-cv-0081-AGS-DEB

**RESPONSE TO PETITION**

1 In response to the Court’s order of January 8, 2026 (ECF No. 2), Respondents  
2 respectfully submit that Petitioner appears to be a member of the Bond Eligible Class  
3 certified in *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp.  
4 3d ---, 2025 WL 3288403 (C.D. Cal. Nov. 25, 2025). The *Bautista* court has entered final  
5 judgement as to the Bond Eligible Class. *Bautista*, ECF No. 94. Accordingly, Respondents  
6 acknowledge that Petitioner is detained under 8 U.S.C. § 1226(a) and is entitled to an order  
7 from this Court directing a bond hearing be held pursuant to 8 U.S.C. § 1226(a).<sup>1</sup>

8 Respondents reserve the right to supplement this response in the event of a stay of  
9 enforcement of the *Bautista* final judgment, appellate relief, or a change in DHS policy.

10 DATED: January 12, 2026

Respectfully submitted,

11 ADAM GORDON  
United States Attorney

12 *s/ Betsey Boutelle*  
13 BETSEY BOUTELLE  
Assistant United States Attorney

14 Attorneys for Respondents  
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27 <sup>1</sup> To the extent the Court issues an order directing a bond hearing under 1226(a),  
28 considering heavy caseloads and staffing levels, Respondents respectfully request that such  
order provide the government 14 days from issuance to hold such bond hearing.