UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
WAYCROSS JUDICIAL CIRCUIT

LARREA CRUZ, JESUS

Petitioner,

v.

George STERLING, Field Office Director of Enforcement and Removal Operations, Atlanta Field Office, Immigration and Customs Enforcement; Kristi NOEM, Secretary, U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; Pamela BONDI, U.S. Attorney General; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; WARDEN of Folkston Detention Center

Respondents.

Case No. 5:26-cv-045

PETITION FOR WRIT OF HABEAS CORPUS

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I. INTRODUCTION

1. Petitioner Jesus Larrea 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 Folkston ICE Processing Center and now faces unlawful detention as 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. **Petitioner is Jesus Larrea Cruz. He is from Mexico and entered the United States without inspection in the year 2019. He is not subject to a removal order. He was arrested on December 12, 2025, and is presently detained at Folkston ICE Processing Center. He has not yet applied for bond as doing so would be futile.**

3. 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 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).

4. 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.

5. Nonetheless, the Executive Office for Immigration Review and its subagency the Immigration Court and the Department of Homeland Security (DHS) have blatantly refused to abide by the declaratory relief and have unlawfully ordered that Petitioner be denied the opportunity to be released on bond under 8 U.S.C. § 1226(a) under an erroneous interpretation that Petitioner is encompassed within the 'mandatory detention' provision of 8 U.S.C. § 1225(b).

6. Petitioner is a member of the Bond Eligible Class, as he:

a. does not have lawful status in the United States and is currently detained at the Folkston ICE Processing Center. He was apprehended by immigration authorities on December 12, 2025;

b. entered the United States without inspection over 6 years ago and was not apprehended upon arrival, *cf. id.*; and

c. is not detained under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231.

7. After apprehending Petitioner, DHS placed him/her in removal proceedings pursuant to 8 U.S.C. § 1229a. DHS has charged Petitioner as being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as someone who entered the United States without inspection, and as inadmissible under and 8 U.S.C. § 1182(a)(7)(A)(i)(I) as someone who entered the United States without proper admission documents.

8. The Court should expeditiously grant this petition.

9. Respondents are bound by the judgment in *Maldonado Bautista*, as it has the full "force and effect of a final judgment." 28 U.S.C. § 2201(a). Nevertheless, Respondents continue to flagrantly defy the judgment in that case and continue to subject Petitioner to unlawful

detention despite his clear entitlement to consideration for release on bond as a Bond Eligible Class member.

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

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

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

II. JURISDICTION

13. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Folkston ICE Processing Center in Folkston, Georgia.

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

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

III. VENUE

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

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

18. If venue is proper at the time of filing, the district court ordinarily retains jurisdiction even if Petitioner is transferred to another district. *Ex Parte Endo*, 323 U.S. 283, 304-305 (1944).

IV. REQUIREMENTS OF 28 U.S.C. § 2243

19. Petitioner is presently kept in immigration detention and is therefore "in custody" of Respondents by and through their various agents. *Carafas v. LaVallee*, 391 U.S. 234, 237-38 (1968) ("... the 'in custody' determination is made at the time the habeas petition is filed."); *Spencer v. Kemna*, 523 U.s. 1, 7 (1998) (Same); *Rumsfeld v. Padilla*, 542 U.S. 426, 437 (2004) ("[O]ur understanding of custody has broadened to include restraints short of physical confinement.").

20. 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. Quoting* 28 U.S.C. § 2243.

21. 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).

V. PARTIES

22. Petitioner is Jesus Larrea Cruz. He is from Mexico and entered the United States without inspection in the year 2019. He is not subject to a removal order. He was arrested on December 22, 2025, and is presently detained at Folkston ICE Processing Center. He has not yet applied for bond as doing so would be futile. ICE has not yet set a bond in this matter.

23. Respondent George Sterling is the Director of the Atlanta Field Office of ICE's Enforcement and Removal Operations division. As such, George Sterling is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is sued in his official capacity.

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

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

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

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

28. Respondent "Warden of Folkston Detention Center", is the Warden of Folkston ICE Processing Center, where Petitioner is detained. The Warden has immediate physical custody of Petitioner. He or she is sued in his or her official capacity.

29. The immediate custodian is generally the warden or officer in charge of the detention facility. See *Vazquez v. Reno*, 233 F.3d 688, 693-696 (1st Cir. 2000); *Kholyavskiy v. Achim*, 443 F.3d 946, 949-53 (7th Cir. 2006); *Anariba v. Dir. Hudson Cnty. Corr. Ctr.*, 17 F.4th 434, 444-45 (3d Cir. 2021); *Doe v. Garland*, 109 F.4th 1188, 1194-96 (9th Cir. 2024). Howeverwhere the immediate custodian is "unknown" there is a possible exception. *Rumsfeld v. Padilla*, 542 U.S. 426, 450 n.18 (2004). This exception applies here as Petitioner is not sure of the name of the Warden or Officer in charge of Folkston ICE Processing Center, so that "Warden" is a properly named Respondent.

VI. EXHAUSTION OF REMEDIES

30. This action is not barred by the exhaustion of remedies doctrine. That doctrine in inapplicable as exhaustion is not explicitly or implicitly required in this context. Even if exhaustion were required, Petitioner satisfies ample exceptions to it as exhaustion would be futile as the immigration court "is biased or has predetermined the issue" due to *Matter of Yajure-Hurtado*. *Quoting Iddir v. INS*, 301 F.3d 492, 500.

31. Under the doctrine of exhaustion of remedies, a petitioner must generally 'exhaust' all administrative remedies before seeking relief in federal court. *Thompson v. United States Marine Corp*, D.C. Docket No. 09-80312-CV-KLR (unpublished). Exhaustion is a prudential requirement rather than jurisdictional. *Hull v. IRS*, No. 10-1410, 2011 WL 3835402 (10th Cir. Aug. 31, 2011); *see also* William Funk, *Exhaustion of Administrative Remedies – New*

Dimensions Since Darby, 18 Pace Environmental Law Review (2000) (Tracing the doctrine out of common law and federal equity jurisdiction).

32. When Congress imposes an exhaustion remedy by statute, exhaustion is generally required. *Coit Indep. Jt. Venture v. FSLIC*, 489 U.S. 561, at 579 (1989) (*citing Weinberger v. Salfi*, 422 U.S. 749, 766 (1975); *Myers v. Bethlehem Shipbuilding Corp.*, 303 U.S. 41, 50-51 (1938). If exhaustion is not *explicit* in a statute, then "courts are guided by congressional intent in determining whether application of the doctrine would be consistent with the statutory scheme. *Coit*, *supra* (*citing Patsy v. Florida Board of Regents*, 457 U.S. 496, 502 (1982).

33. The INA does have an exhaustion provision, which only applies in the context of "final orders of removal." 8 U.S.C. § 1252(d)(1) ("A court may review a final order of removal only if the alien has exhausted all administrative remedies …"). This exhaustion provision is not jurisdictional. *Santos-Zacaria v. Garland*, 498 U.S. ___ (2023).

34. Petitioner is not subject to a final order of removal (or any order of removal); so, § 1252(d)(1) is inapplicable. So, the INA does not impose an explicit exhaustion requirement that can apply here. Nor can § 1252(d)(1) be read to *implicitly* impose an exhaustion requirement. The Court need not engage in statutory interpretation as "[w]here statutory language is plain and unambiguous, courts give effect to the statute as written without engaging in statutory construction." *In re Adoption of Doe*, 156 Idaho 345, 349.

35. Even if this Court found § 1252(d)(1) to be ambiguous, which it is not, plain text interpretation reveals § 1252(d)(1) does not impose an applicable exhaustion requirement. *See* Antonin Scalia & Bryan A. Gardner, *Reading Law: The Interpretation of Legal Texts* (1st Ed. 2012) (The "Supremacy of the Text Principle" (The words of a governing text are of paramount concer, and what they convey, in their context, is what the text means), "Omitted Case Canon"

(*casus omissus pro omisso habendus est* – nothing is to be added to what the text state or reasonably implies), "Negative Implication Canon" (*expression unius est exclusion alterius* – the expression of one thing implies the exclusion of alternatives), and the "Whole Text Canon" (The text must be construed as a whole) each demonstrate Congress did not impose an exhaustion requirement – either expressly or by implication. See also *A Dozen Canons of Statutory and Constitutional Text Construction*, Judicature.duke.edu Articles, available at https://judicature.duke.edu/articles/a-dozen-canons-of-statutory-and-constitutional-text-construction/).

36. Even if the doctrine of exhaustion did apply, Petitioner satisfies several exceptions to it. Exhaustion is excused if:

> (1) Requiring exhaustion of administrative remedies causes prejudice, due to unreasonable delay or an 'indefinite timeframe for administrative action';
> (2) The agency lacks the ability or competence to resolve the issue or grant the relief requested;
> (3) Appealing through the administrative process would be futile because the agency is biased or has predetermined the issue; or
> (4) where substantial constitutional questions are raised.

Iddir v. INS, 301 F.3d 492, 500 (7th circuit case citing *McCarthy v. Madigan*, 503 U.S. 140, 146-48 (1992); *Bowen v. City of New York*, 476 U.S. 467, 483 (1986); *Mathews v. Diaz*, 426 U.S. 67, 76 (1976); *Gibson v. Berryhill*, 411 U.S. 564, 575 (1973); *Houghton v. Shafer*, 392 U.S. 639, 640 (1968); *McNeese v. Board of Educ.*, 373 U.S. 668, 675 (1963)).

37. Here, exhaustion would be futile. Immigration judges continue to rely on a September 5, 2025 BIA decision, *Yajure-Hurtado*, which holds "Based on the plain language of […] 8 U.S.C. § 1225(B)(2)(A) (2018), Immigration Judges lack authority to hear bond requests or grant bond to aliens who are present in the United States without admission. *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025). BIA therefore asserts that all "applicants for admission", a class that encompasses more than fourteen

million people[1], are detained under 8 U.S.C. § 1225(b) and therefore subject to "mandatory detention" and ineligible for release on bond. This interpretation is wrong. It defies due process, plain text interpretation of the INA, common sense, and at least one federal court order discussed more thoroughly below. *See Lazaro Maldonado Bautista v. Ernesto Santacruz Jr*, 5:25-cv-01873, (C.D. Cal.) (A declaratory judgment binds the immigration courts and expressly forbids the interpretation of 8 U.S.C. § 1225(b) advanced by BIA in Yajure-Hurtado). Immigration judges continue to make this interpretation in apparent reliance on the orders of executive branch supervisors as to the supposed inapplicability of the Maldonado-Baustista class action, or misguided interpretation of 8 U.S.C. § 1225(b), § 1226(a), and the general tenor of the due process clause and its historical foundations.

38. See also *McCarthy v. Madigan*, 503 U.S. 140, 148 (1992) ("an administrative remedy may be inadequate where the administrative body is shown to be biased or has otherwise predetermined the issue before it." Citing *Gibson* v. *Berryhill,* 411 U. S., at 575, n. 14; *Montana National Bank of Billings* v. *Yellowstone County,* 276 U. S. 499, 505 (1928) (taxpayer seeking refund not required to exhaust where "any such application [would have been] utterly futile since the county board of equalization was powerless to grant any appropriate relief" in face of prior controlling court decision – here, similarly, BIA has expressly demonstrated its belief that IJs lack jurisdiction to grant a bond to the Petitioner); *Houghton* v. *Shafer,*

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[1]See Jeffrey S. Passel and Jens Manuel Krogstad, *U.S. Unauthorized Immigrant Population Reached a Record 14 Million in 2023*, Pew Research, Sept. 12, 2025, accessible at https://www.pewresearch.org/race-and-ethnicity/2025/08/21/u-s-unauthorized-immigrant-population-reached-a-record-14-million-in-2023/#:~:text=The%20number%20of%20unauthorized%20immigrants%20in%20the%20United%20States%20reached,a%20comprehensive%20and%20detailed%20estimate (Describing that "Unauthorized immigrants were 27% of the U.S. foreign-born population in 2023", consisting of "14.0 million [people]…")

392 U. S. 639, 640 (1968); *Association of National Advertisers, Inc.* v. *FTC,* 201 U. S. App. D. C. 165, 170-171, 627 F.2d 1151, 1156-1157 (1979) (bias of Federal Trade Commission chairman), cert. denied, 447 U. S. 921 (1980); *Patsy* v. *Florida International University, 634 F.2d 900, 912-913 (CA5 1981) (en banc)* (administrative procedures must "not be used to harass or otherwise discourage those with legitimate claims"), rev'd on other grounds sub nom. *Patsy v. Board of Regents of Florida*, 457 U. S. 496 (1982)).

39. Immigration judges make this erroneous interpretation of the INA in apparent reliance on the orders of supervisors as to the supposed inapplicability of *Maldonado-Bautista*, or on various misguided interpretations of 8 U.S.C. § 1225(b) and § 1226(a), and a failure to account for the general tenor of the due process clause and its historical roots. Immigration judges continue to treat *Yajure-Hurtado* as binding, while treating the federal class action *Maldonado-Bautista* as if it is not. This flips *Loper-Bright* on its head. *Loper-Bright Enterprises v. Raimondo*, 603 US ___ (2024) (Overturning the Chevron doctrine, *Chevron U.S.A. Inc. v. NRDC*, 467 U.S. 837 (1984), and providing that agency interpretations of ambiguous statutory provisions are not entitled to deference).

40. DHS has classified Petitioner as an applicant for admission; therefore, requesting bond in immigration court would be futile, as the immigration court is highly likely to deny it and erroneously apply 8 U.S.C. § 1225(b) to him. *See Matter of Yajure-Hurtado*.

41. Dozens of federal district courts, in addition to Maldonado-Bautista, have concluded 8 U.S.C. § 1226(a) does generally govern the detention of an applicant for admission, and that 8 U.S.C. § 1225(b) does not. For twenty-eight such decisions outside the eleventh

circuit, see footnote 3.[2] Within the eleventh circuit, see also J.A.M. v. Streeval, No. 4:25-CV-342 (CDL), 2025 WL 3050094 (M.D. Ga. Nov. 1, 2025) (Granting habeas relief in a consolidated case with similar facts, ordering bond hearings under 8 U.S.C. § 1226(a)).

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[2] For twenty-eight district court decisions favorable to the Petitioner's position that 8 U.S.C. § 1226(a) governs the Petitioner's detention (each from outside the 11th circuit), see the following set of cases.

First Circuit:

- *Sampiao v. Hyde*, 2025 WL 2607924 (D. Mass. Sept. 9, 2025) (Noting disagreement with BIA analysis in *Yajure-Hurtado*);
- *Jimenez v. FCI Berlin, Warden*, No. 25-cv-326-LM-AJ (D.N.H. Sept. 8, 2025) (Ruling the Petitioner was entitled to a bail hearing);
- *Doe v. Moniz*, 2025 WL 2576819 (D. Mass. Sept. 5, 2025) (Ordering a bond hearing and ruling that detaining an individual solely on the basis of his prior arrest violates due process);
- *Romero v. Hyde*, 2025 WL 2403827 (D. Mass. Aug. 19, 2025) (Ordering that Petitioner receive a bond hearing governed by section 1226 rather than 1225(b));
- *Martinez v. Hyde*, 2025 WL 2084238 (D. Mass. July 24, 2025) (Court found detention unlawful and ordered his release, denying the Government's motion for reconsideration);
- *dos Santos v. Noem*, 2025 WL 2370988 (D. Mass. Aug. 14, 2025) (Ordering ICE to release the Petitioner within 48 hours); *Gomes v. Hyde*, 2025 WL 1869299 (D. Mass. July 7, 2025) ("The government's interpretation contravenes the plain text of Section 1226(a) and would render superfluous Section 1226(c)…");

Second Circuit:

- *Lopez Benitez v. Francis*, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025) (Granting the Petition, where ICE agents "violently detained" Petitioner as he left a scheduled immigration court appearance in Manhattan "in violation of the Due Process Clause and the Fourth Amendment.");
- *Samb v. Joyce*, 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025) (Granting petition for the writ of habeas corpus);

Fourth Circuit:

- *Leal-Hernandez v. Noem*, 2025 WL 2430025 (D. Md. Aug. 24, 2025) (Respondents arrested Petitioner while he was on his way to work, took him into custody, Petitioner was then granted a bond by an immigration judge who concluded § 1226(a) governed, Respondents refused to accept payment of the bond, the government invoked a regulatory stay pursuant to 8 C.F.R. § 1003.19(i)(2) to continue detaining the Petitioner as his favorable bond decision was on appeal before the BIA, the Court grants the petition for the writ);

Fifth Circuit:

- *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025) (Court finds (1) habeas jurisdiction encompasses a challenge to the statutory authority by which Respondent contends her detention without bond unlawful, (2) Court did not find persuasive Respondents argument that Petitioner failed to exhaust administrative remedies "because this Court is the proper form in which Petitioner can bring her …constitutional claims." (3) Court grants Temporary Restraining Order concluding Petitioner is likely to succeed on the merits in showing mandatory detention under § 1225 "was erroneous" and that "she is entitled to a bond hearing under section 1226(a).");

Sixth Circuit:

- *Pizarro Reyes v. Raycraft*, 2025 WL 2609425 (E..D. Mich. Sept. 9, 2025) (disagreeing with BIA's analysis in Yajure Hurtado);
- *Lopez-Campos v. Raycraft*, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025) (Granting writ, finding detention without a bond hearing is unlawful, a violation of Petitioner's due process rights, and ordering his immediate release – or alternatively – a bond hearing within seven (7) days);

Eighth Circuit:

- *Carmona-Lorenzo v. Trump*, 2025 WL 2531521 (D. Neb. Sept. 3, 2025) (Ordering release on bond);

VII. LEGAL FRAMEWORK

42. Noncitizens in immigration proceedings are entitled to protections under the Fifth Amendment Due Process clause. *Reno v. Flores*, 507 U.S. 292, 306 (1993). Immigration detention should not be used as a punishment and should only be used when, under an individualized determination, a noncitizen is a flight risk because they are unlikely to appear for court or is a danger to the community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

43. At issue is the lawfulness of Petitioner's detention without bond. Petitioner anticipates the primary legal dispute in this case involves a question of statutory interpretation regarding what provision of the Immigration and Nationality Act (INA) governs his detention. Petitioner argues 8 U.S.C. § 1226(a) governs the detention and therefore that Petitioner may apply for and receive bond under a discretionary framework. More than twenty-eight federal district courts agree with Petitioner's position that 8 U.S.C. § 1226(a) governs and § 1225(B) does not. See *Footnote 3, above*. 8 U.S.C. § 1225(b) cannot be properly read to apply to Petitioner's detention. Petitioner is being deprived of his right to request or receive bond based on improper, ultra vires application of § 1225(b).

44. Agency interpretations of ambiguous statutory provisions are not entitled to deference. *Loper Bright Enterprises v. Raimondo*, 602 U.S. 574 (2024) (Overruling *Chevron*

- *Cortes Fernandez v. Lyons*, 2025 WL 2531539 (D. Neb. Sept. 3, 2025) (Court finds "the government is unlawfully detaining Petition in violation of his Due Process rights by invoking a unilateral automatic stay of the bond duly appointed by" an immigration judge, and "orders Respondents to immediately release Petitioner.");
- *Palma Perez v. Berg*, 2025 WL 2531566 (D. Neb. Sept 3, 2025) (Same as *Cortes Fernandez, supra*);
- *O.E. v. Bondi*, 2025 WL 2466670 (D. Minn. Aug. 27, 2025) (Court concludes § 1226's discretionary detention scheme applies);
- *Jacinto v. Trump*, 2025 WL 2402271 (D. Neb. Aug. 19, 2025) (Judge ruled the Petitioner was being held unlawfully and ordered her released on bond);
- *Maldonado v. Olson*, 2025 WL 2374411 (D. Minn. Aug. 15, 2025) (Granting Preliminary Injunction favoring Petitioner);
- *Garcia Jimenez v. Kramer*, 2025 WL 2374223 (D. Neb. Aug. 14, 2025) (Judgment favoring Petitioner);

Ninth Circuit:

- *Cuevas Guzman v. Andrews*, 2025 WL 2617256, at *3 n.4 (E.D. Cal. Sept. 9, 2025) (distinguishing Yajure Hurtado);
- *Caicedo Hinestroza v. Kaiser*, 2025 WL 2606983 (N.D. Cal. Sept. 9, 2025) (Granting TRO ordering Respondents to immediately release Petitioners from custody, enjoining re-detention without a pre-detention hearing before a neutral decisionmaker, and, inter alia, enjoining Respondents from transferring Petitioners out of custody without the Court's prior approval);

U.S.A. Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984), noting agency interpretations are entitled to "respect" only to the extent those interpretations have the power to persuade (citing *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944)). Therefore, this Court is not bound by *Yajure-Hurtado*, *supra*.

VIII. CLAIMS FOR RELIEF

COUNT ONE: Request for Relief Pursuant to *Maldonado Bautista*

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

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

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

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

49. Respondents are parties to *Maldonado Bautista* and bound by the Court's declaratory judgment, which has the full "force and effect of a final judgment." 28 U.S.C. § 2201(a).

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

COUNT TWO: Violation of Fifth Amendment Due Process

51. Respondents are unlawfully detaining the Petitioner by depriving him of a bond hearing under 8 U.S.C. § 1226(a) and erroneously considering him to be bound by 8 U.S.C. § 1225(b). "Freedom from imprisonment-from government custody, detention, or other forms of physical restraint- lies at the heart of the liberty that Clause protects." *Zadvydas*.

52. Notwithstanding applicability of Maldonado-Bautista, Petitioner remains eligible for habeas relief because his detention violates the due process clause. U.S. Const. Amend. V. The Due Process Clause entitles aliens to due process in deportation proceedings. *Reno v. Flores*, 507 U.S. 292, 306 (1993); *Demore v. Kim*, 538 U.S. 510 (2003); *Zadvydas v. Davis*, 533 U.S. 678 (2001); *see also Jackson v. Indiana*, 406 U.S. 715, 738 (1972) (Criminal law case in which the Supreme Court noted in dicta that "At the least, due process requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed.")

53. "[I]mpermissible punishment before trial" violates substantive due process protections. *United States v. Salerno*, 481 U.S. 739, 746 (1987).). In *Salerno*, the Court analyzed whether the Bail Reform Act of 1984 complied with the requirements of Fifth Amendment due process. Justice Rehnquist writing for the majority held the Bail Reform Act of 1984 did *not* violate the substantive due process clause, reasoning: "[p]reventing danger to the community is a legitimate regulatory goal and the incidents of detention are not excessive in relation to that goal, ***since the Act carefully limits the circumstances under which detention may be sought to the most serious of crimes, the arrestee is entitled to a prompt hearing, the maximum length of detention is limited by the Speedy Trial Act, and detainees must be housed apart from convicts***. Thus, the Act constitutes a permissible regulation, rather than impermissible punishment." (emphasis added).

54. Unlike Salerno, the interpretation of 8 U.S.C. § 1225(b) Respondent's and BIA in *Yajure-Hurtado* put forward does not "carefully limit" the circumstances of detention – it does the polar opposite and transmutes a narrow exception into a general rule to the utter disregard of the manner in which this transmogrification renders 8 U.S.C. § 1226(a) superfluous along with

other broad swathes of the INA. Nor does it afford Petitioner or those like him a "prompt hearing" - it does the polar opposite, and claims authority to strip away Petitioner's right to request a bond hearing or receive bond. Nor does it describe any limits whatsoever as to how long people like Petitioner may continue to be detained. Salerno therefore shows application of 8 U.S.C. § 1225(b) is "impermissible punishment before trial" demonstrating the unconstitutionality of such interpretation.

COUNT THREE: Violation of the Eighth Amendment

55. The Eighth Amendment provides "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. Amend. VIII.

56. By denying Petitioner the right to any amount of bail and erroneously applying 8 U.S.C. § 1225(b) to him, Respondents violate the Eighth Amendment.

57. Respondents also violate the Eighth Amendment because the detention is an "impermissible punishment before trial." *Salerno*, discussed above.

58. Courts have found deportation to not be a "punishment" for a crime. *Wong Wing v. United States*, 163 U.S. 228, 236 (1896) (*Citing Fong Yue Ting v. United States*, 149 U.S. 698, 730 (1893) *Elia v. Gonzales*, 431 F.3d 268, 276 (6th Cir. 2005); *Briseno v. Immigr. & Naturalization Serv.*, 192 F.3d 1320, 1323 (9th Cir. 1999); *Oliver v. U.S. Dep't of Just., Immigr. & Naturalization Serv.*, 517 F.2d 426, 428 (2d Cir. 1975) (despite its "severe … consequences," deportation is not a criminal punishment) (*Quoting Harisiades v. Shaughnessy*, 342 U.S. 580, 594 (1952)).

59. Here, Petitioner does not assert otherwise. Petitioner agrees the current legal framework does not recognize deportation or "removal" to be a punishment for a crime. However, it does not follow from this premise that no immigration detention – however

gruesome its conditions, however arbitrary its imposition, or whatever set of Constitutional rights get trampled over to accomplish such detention, as with the right to apply for and receive a bond out of detention – could *ever* amount to "punishment" such that Eighth Amendment protections would extend. Rather, the Eighth Amendment can and does apply to immigration detention in certain circumstances. Admittedly, the Supreme Court has not yet had opportunity to lay out the precise contours of those circumstances as the Supreme Court has not yet addressed the issue. The Supreme Court has never held the Eighth Amendment does not apply to immigration. See *Hariasiades v. Shaughnessy*, Justice Douglas's dissent 342 U.S. 580, 598-600 (1952) ("The power of deportation is … an implied one. The right to life and liberty is an express one. Why this implied power should be given priority over the express guarantee of the Fifth Amendment has never been satisfactorily answered … The expulsion of a race may be within the inherent powers of a despotism. History, before the adoption of this constitution, was not destitute of examples of the exercise of such a power, and its framers were familiar with history, and wisely … they gave to this government no general power to banish … Banishment is punishment in the practical sense. It may deprive a man and his family of all that makes life worthwhile."); See also *Estelle v. Gamble*, 429 U.S. 97, 106 (1976) (Describing the deliberate indifference standard for Eighth Amendment claims based on deliberate indifference to serious medical needs); Helling v. McKinney, 509 U.S. 25, 33 (1933) (Even where the harm has not yet occurred, a prisoner can still file a successful Eighth Amendment claim regarding the conditions of his or her confinement, recognizing a remedy for unsafe conditions where a tragic event has not yet occurred); *see also* Carl Kenneth Lipscombe, Tylenol and an Ice Pack: An Inadequate Prescription for HIV/AIDS in Immigration Detention Centers, 11 CARDOZO PUB. L. POL'Y & ETHICS J. 529 (2013); *Jones v. Cunningham*, 371 U.S. 236, 238–40 (1963) (noting that

habeas corpus is not limited to situations where the applicant is in custody, but can be used by aliens, members of the military and other situations where one's liberty is restrained); *Bell v. Wolfish*, 441 U.S. 520, 526 n.6 (1979) (Supreme Court has "left for another day the question of the propriety of using a writ of habeas corpus to obtain review of the conditions of confinement, as distinct from the fact or length of the confinement itself.", also at page 535 noting pretrial detainees "may not be punished prior to an adjudication of guilt in accordance with due process of law.")

60. Respondents are detaining Petitioner at Folkston ICE Processing Center. People have died in detention at this location.[3] Respondents deny Petitioner his right to request a bond hearing under 8 U.S.C. § 1226(a). This creates a colorable Eighth Amendment claim and provides another basis for habeas relief.

COUNT FOUR: Violation of the Immigration and Nationality Act

61. As discussed above, Respondents are detaining the Petitioner and asserting his detention is under 8 U.S.C. § 1225(b) forcing Petitioner to be in 'mandatory detention' and ineligible for bond. This misapplies 8 U.S.C. § 1225(b) to the Petitioner as 8 U.S.C. § 1226(a) properly governs his detention, under which Petitioner is statutorily eligible to apply for and receive a bond at a bond hearing upon a showing of certain facts.

[3] For discussion on the death of Jaspal Singh, a 57 year old man from India at Folkston ICE Processing Center, See *Advancing Justice Atlanta.org.* Shut Down Folkston ICE Processing Center Campaign Statement on Death of Jaspal Singh, Statement Released in April 2024, (Available at https://www.advancingjustice-atlanta.org/news/statement-on-death-of-jaspal-singh) ("To prevent what they referred to as an 'Indian Mass Hunger Strike' ICE and the private prison company guards retaliated by putting hunger strikers in solitary confinement, placing them on suicide watch, blocking access to commissary and medicine, using intimidation tactics to force individuals into eating, and transferring Sikh asylum seekers to detention centers where they would be isolated from other Sikhs… individuals from Cuba and Pakistan also went on hunger strike, … numerous men were hospitalized … ICE force-fed at least one Indian national who was transferred to Stewart [Detention Center] in May 2018.")

62. By violating the INA, Respondents provide Petitioner with another avenue for habeas corpus relief, because Respondents are depriving Petitioner of his statutory right to a bond hearing. Therefore, Petitioner is also eligible for habeas relief under the INA.

IX. PRAYER FOR RELIEF

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

a. Assume jurisdiction over this matter;

b. Issue a writ of habeas corpus requiring that within one day, Respondents release Petitioner;

c. 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;

d. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act (EAJA), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and

e. Grant any other and further relief that this Court deems just and proper.

DATED this 12th of January, 2026.

Respectfully Submitted,

David Kennedy & Associates, Attorneys at Law, P.C.

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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Jesus Larrea Cruz, 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.

Submitted this 12th of January, 2026.

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