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9 UNITED STATES DISTRICT COURT  
10 SOUTHERN DISTRICT OF CALIFORNIA

11 Mohammad Khazaei,

12 Petitioner,

13 v.

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

Respondents.

Case No. '26CV0624 TWR VET

**PETITION FOR WRIT OF  
HABEAS CORPUS**

1 **INTRODUCTION**

2 Petitioner, Mohammad Khazaei has been detained pending his immigration  
3 proceedings for more than 10 months, since March 25, 2025. This Court should  
4 “join[] the majority of courts across the country in concluding that his  
5 unreasonably prolonged detention under 8 U.S.C. §1225(b) without an  
6 individualized bond hearing violates due process.” *Kydyrali v. Wolf*, 499 F. Supp.  
7 3d 768, 772 (S.D. Cal. 2020)(Battaglia J.).

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

18 **JURISDICTION**

- 19  
20 1. Petitioner is in the physical custody of Respondents. Petitioner is detained at  
21 the Otay Mesa Detention Facility in San Diego, California.

- 1 2. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28  
2 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the  
3 United States Constitution (the Suspension Clause).
- 4 3. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory  
5 Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. §  
6 1651.
- 7 4. The federal district courts have jurisdiction under Section 2241 to hear  
8 habeas claims by individuals challenging the lawfulness of their detention by  
9 ICE. *See Jennings v. Rodriguez*, 583 U.S. 281, 290-92 (2018).

#### VENUE

- 13 5. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S.  
14 484, 493- 500 (1973), venue lies in the United States District Court for the  
15 Southern District of California, the judicial district in which Petitioner  
16 currently is detained.
- 17 6. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because  
18 Respondents are employees, officers, and agencies of the United States, and  
19 because a substantial part of the events or omissions giving rise to the claims  
20 occurred in the Southern District of California.

#### REQUIREMENTS OF 28 U.S.C. § 2243

1 7. The Court should grant the petition for writ of habeas corpus “forthwith,” as  
2 the legal issues have already been resolved for class members in *Maldonado*  
3 *Bautista*.

4 8. Habeas corpus is “perhaps the most important writ known to the  
5 constitutional law . . . affording as it does a *swift* and imperative remedy in  
6 all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400  
7 (1963) (emphasis added). “The application for the writ usurps the attention  
8 and displaces the calendar of the judge or justice who entertains it and  
9 receives prompt action from him within the four corners of the application.”  
10 *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

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12 **PARTIES**

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14 9. Petitioner, Mohammad Khazaei, is a citizen of Iran who has been in  
15 immigration detention since March 25, 2025. After Petitioner was arrested in  
16 Roma, Texas, ICE did not set bond. Petitioner did not request review of his  
17 custody by an IJ as any such request would be futile. The Court in  
18 *Maldonado Bautista* entered a final judgment specifically because it found  
19 “troubling” evidence that the Department of Justice issued a memorandum  
20 instructing Immigration Judges to disregard the federal court’s prior orders  
21 and “hold the position that *Yajure-Hurtado* remains good law.” This judicial  
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1 finding confirms that administrative exhaustion is futile, as the agency has  
2 prejudged the issue in bad faith.

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

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

13  
14 12. Respondent Todd Lyons is the Director of ICE. He is responsible for the  
15 administration of ICE and the implementation and enforcement of the  
16 immigration laws, including immigrant detention. As such, Mr. Lyons is a  
17 legal custodian of Petitioner. He is sued in his official capacity.

18  
19 13. Respondent Pamela Bondi is the Attorney General of the United States. She  
20 is responsible for the Department of Justice, of which the Executive Office  
21 for Immigration Review and the immigration court system it operates is a  
22 component agency. She is sued in her official capacity.

1 14. Respondent Christopher LaRose (“LaRose”) is the Senior Warden at the  
2 Otay Mesa Detention Center as Warden of the, where Petitioner is detained.  
3 He has immediate physical custody of Petitioner. He is sued in his official  
4 capacity.  
5

6 **STATEMENT OF FACTS**

7 Petitioner, Mohammad Khazaei, is a 31 year old native and citizen of Iran  
8 and was born on [REDACTED] Petitioner fears harm, mistreatment, threats,  
9 and death in Iran due to his sexual orientation. Because of this, Petitioner left Iran  
10 to seek protection in the United States. He entered the United States on or about  
11 March 25, 2025, without inspection. He was then detained by immigration  
12 officials at or near San Ysidro, California. He was issued a Notice to Appear on  
13 July 7, 2025. Proceedings were initiated at the Otay Mesa Immigration Court after  
14 the Notice to Appear was filed with the Immigration Court on July 8, 2025. He has  
15 had six mater calendar hearings August 13, 2025, September 17, 2025, October 7,  
16 2025, October 29, 2025, November 19, 2025, and January 26, 2026. Petitioner  
17 filed an application for asylum, withholding of removal, and protection under the  
18 United Nations Convention Against Torture on September 13, 2025. His next  
19 scheduled hearing is February 24, 2026. Should Petitioner’s applications be denied,  
20 he anticipates filing an appeal, resulting in further detention.

21 **LEGAL FRAMEWORK**

22 **A. Maldonado- Bautista Class Membership**

23 On November 20, 2025, the district court granted partial summary judgment on  
24 behalf of individual plaintiffs and on November 25, 2025, certified a nationwide

1 class and extended declaratory judgment to the certified class. *Maldonado Bautista*  
2 *v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL  
3 3289861, at \*11 (C.D. Cal. Nov. 20, 2025) (order granting partial summary  
4 judgment to named Plaintiffs-Petitioners); *Maldonado Bautista v. Santacruz*, No.  
5 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3288403, at \*9 (C.D.  
6 Cal. Nov. 25, 2025) (order certifying Plaintiffs-Petitioners' proposed nationwide  
7 Bond Eligible Class, incorporating and extending declaratory judgment from Order  
8 Granting Petitioners' Motion for Partial Summary Judgment).

9  
10 The declaratory judgment held that the Bond Denial Class members are  
11 detained under 8 U.S.C. § 1226(a), and thus may not be denied consideration for  
12 release on bond under § 1225(b)(2)(A). *Maldonado Bautista*, 2025 WL 3289861,  
13 at \*11.

14  
15 On December 18, 2025, the Central District of California entered a final  
16 judgment in *Maldonado Bautista*, certifying the nationwide class and declaring the  
17 policy of detaining those individuals that entered the United States without  
18 inspection under § 1225(b)(2) unlawful. Nonetheless, the Executive Office for  
19 Immigration Review and its subagency the Immigration Court and the Department  
20 of Homeland Security (DHS) have blatantly refused to abide by the declaratory  
21 relief and have unlawfully ordered that Petitioner be denied the opportunity to be  
22 released on bond.  
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1 Petitioner, Mohammad Khazaei, is a member of the Bond Eligible Class, as he:

- 2
- 3 a. does not have lawful status in the United States and is currently  
4 detained at the Otay Mesa Detention Facility. He was apprehended by  
5 immigration authorities following his unlawful entry into the United  
6 States;
- 7 b. entered the United States without inspection on or about March 25,  
8 2025, and was not apprehended upon arrival, *cf. id.*; and
- 9 c. is not detained under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231.

10 After apprehending Petitioner on or about February 21, 2025, the DHS placed him  
11 in removal proceedings pursuant to 8 U.S.C. § 1229a. DHS has charged Petitioner  
12 as being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i), as someone who entered  
13 the United States without inspection.

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

20 Immigration judges have informed class members in bond hearings that they  
21 have been instructed by “leadership” that the declaratory judgment in *Maldonado*  
22 *Bautista* is not controlling, even with respect to class members, and that instead IJs  
23 remain bound to follow the agency’s prior decision in *Matter of Yajure Hurtado*,  
24 29 I. & N. Dec. 216 (BIA 2025).

1 Because Respondents are detaining Petitioner in violation of the declaratory  
2 judgment issued in *Maldonado Bautista*, the Court should accordingly order that  
3 within one day, Respondent DHS must release Petitioner. Alternatively, the Court  
4 should order Petitioner's release unless Respondents provide a bond hearing under  
5 8 U.S.C. § 1226(a) within seven days.  
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8 **B. Prolonged Detention**

9 **II. The Fifth Amendment's Due Process Clause prohibits prolonged  
immigration detention without a bond hearing**

10 This habeas petition presents a question about whether and when the Fifth  
11 Amendment's Due Process Clause countermands the government's statutory  
12 authority to detain immigrants without bond hearings. "[N]early all district courts  
13 that have considered the issue agree that prolonged mandatory detention pending  
14 removal proceedings, without a bond hearing, will—at somepoint—violate the  
15 right to due process." *Id.* (cleaned up) (collecting cases). These courts have taken  
16 their cues largely from *Zadvydas v. Davis*, 533 U.S. 678 (2001). There, the  
17 Supreme Court applied the constitutional avoidance canon to hold that persons  
18 detained following a final removal order may not be subjected to indefinite  
19 detention. *Id.* at 699. Though *Zadvydas*'s holding rests on statutory rather than  
20 constitutional grounds, the Court justified its constitutional avoidance approach by  
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1 describing the serious due process concerns that indefinite detention would  
2 occasion:

3  
4 A statute permitting indefinite detention of an alien would raise a  
5 serious constitutional problem. The Fifth Amendment’s Due Process  
6 Clause forbids the Government to ‘depriv[e]’ any ‘person ...  
7 of ...liberty ... without due process of law.’ Freedom from  
8 imprisonment—from government custody, detention, or other forms of  
9 physical restraint—lies at the heart of the liberty that that Clause  
10 protects. *See Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). And this  
11 Court has said that government detention violates that Clause unless the  
12 detention is ordered in a criminal proceeding with adequate procedural  
13 protections, *see United States v. Salerno*, 481 U.S. 739, 746 (1987), or,  
14 in certain special and ‘narrow’ nonpunitive ‘circumstances,’ *Foucha*,  
15 *supra*, at 80, where a special justification, such as harm-threatening  
16 mental illness, outweighs the ‘individual’s constitutionally protected  
17 interest in avoiding physical restraint.’ *Kansas v. Hendricks*, 521 U.S.  
18 346, 356 (1997).

19 As the Ninth Circuit put it in *Jennings v. Rodriguez’s* 583 U.S. 281, 297  
20 (2018) wake, these considerations raise “grave doubts that any statute that allows  
21 for arbitrary prolonged detention without any process is constitutional or that those  
22 who founded our democracy precisely to protect against the government’s arbitrary  
23 deprivation of liberty would have thought so.” *Rodriguez v. Marin*, 909 F.3d 252,  
24 256 (9th Cir. 2018). The same concerns have led district courts to conclude that  
immigrants cannot be detained indefinitely without bond hearings pending their  
immigration proceedings.

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**III. Courts have reached different conclusions about when immigration detention becomes indefinitely prolonged, but Petitioner would prevail under any standard**

1        Though courts agree that due process mandates a bond hearing when detention  
2 grows unreasonably prolonged, they disagree about how to assess whether a  
3 particular individual’s detention has reached that point. *Sanchez-Rivera v.*  
4 *Matuszewski*, No. 22-CV-1357-MMA (JLB), 2023 WL 139801, at \*5-6. (S.D. Cal.  
5 Jan 9, 2023) (Anello J.) (surveying the various approaches). Some courts have  
6 “conclude[d]...that detention becomes prolonged after six months and entitles [a  
7 petitioner] to a bond hearing.” *Rodriguez v. Nielson*, No. 18-CV-04187-TSH, 2019  
8 WL 7491555, at \*6 (N.D. Cal. Jan 7, 2019). In that case, Petitioner would  
9 automatically qualify, as he has been detained for over 11 months.  
10

11            Other courts have adopted various factors tests. *See Sanchez-Rivera*, 2023  
12 WL 139801, at \*5-6 (surveying different approaches). Courts generally agree  
13 that the relevant factors include:  
14

- 15            (1) “the total length of detention to date,”
- 16            (2) “the likely duration of future detention,” and
- 17            (3) The delays in the removal proceedings caused by the petitioner and the  
18            government.”

19  
20 *Id.* Some courts also consider:

- 21            (1) “the conditions of detention,” and
  - 22            (2) “the likelihood that the removal proceedings will result in a different  
23            final order.”
- 24

1 *Id.*; but see *Lopez v. Garland*, 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022) (holding  
2 that the fourth and fifth factors and “not particularly suited to assisting the Court in  
3 determining whether detention has become unreasonable and due process requires  
4 a bond hearing”); *Sanchez-Rivera*, 2023 WL 139801, at \*5-6 (agreeing with  
5 *Lopez*).<sup>1</sup> Petitioner would prevail under any of these factors tests.

7 First, the “most important factor,” the length of detention, favors Petitioner.  
8 *Banda*, 385 F. Supp. 3d. at 1118. In assessing this factor, “[i]t is important to bear  
9 in mind the context: The detention that is being examined here is the detention of a  
10 person who has never been found to pose a danger to the community or to be likely  
11 to flee if released.” *Jamal A. v. Whitaker*, 358 F. Supp. 3d. 853, 859 (D. Minn.  
12 2019). With that context, courts have granted bond hearings for persons detained  
13 between nine and eleven months, shorter than or equal to Petitioner’s ten months  
14 and one week in detention. See *Ashemuke v. ICE Filed Off. Dir.* No. C23-1592-  
15 RSL-MLP, 2024 WL 1683797, at \*4 (W.D. Wash. Feb. 29, 2024), *report and*  
16 *recommendation adopted*, No. C23-1592-RSL, 20241676681 (W.D. Wash. Apr.  
17 18, 2024) (“approximately eleven months”); *Brissett v. Decker*, 324 F. Supp. 3d  
18 444, 452 (S.D.N.Y. 2018) (“over nine months”); *Perez v. Decker*, No. 18-CV-5279  
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23 <sup>1</sup> Courts also disagree about whether to account for any criminal convictions that led to the deportation. *Sanchez-*  
24 *Rivera*, 2023 WL 139801, at \*5-6. But such factors – if appropriate at all – are irrelevant where, as here, the  
individual is not being removed due to criminal convictions.

1 (VEC), 2018 WL 3991497, at \*5 (S.D.N.Y) Aug. 20, 2018) (“More than nine  
2 months”).

3           Second, Petitioner has reason to anticipate significant future detention  
4 during his removal proceedings. His case has been set for an individual hearing.  
5 Should he appeal any unfavorable outcome, such appeal is likely to take from  
6 several month to more than one year. *See Banda*, 385 F. Supp. 3d at 1119. All told,  
7 “[t]his process may take up to two years or longer.” *Id.* Because “Petitioner’s  
8 future detention can last several more months or even years[,]” this factor favors  
9 Mr. O. *Abdul Kadir v. LaRose*, No. 25-CV-1045-LL-MMP, 2025 WL 2932654, at  
10 \*5 (S.D. Cal. Oct. 15 2025) (Lopez, J.).

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13           Third, Petitioner did not delay his asylum proceedings, but moved forward  
14 expeditiously. He has complied every filing deadline and has only sought  
15 additional time to file evidence to support his protection claims.

16           Fourth, Petitioner conditions of confinement weigh in favor of a bond  
17 hearing. At Otay Mesa Detention Center, detainees are “locked up behind razor  
18 wire and concrete walls in a secured facility, forced to wear a color-coded prisoner  
19 jump suit, forbidden from accessing the internet, restricted access to outdoor space,  
20 restricted on visitation, and guarded at all times with armed guards authorized to  
21 inflict punishment for violations of rule.” *Abdul Kadir*, 2025 WL 2932654, at \*5.  
22 “Petitioner’s confinement at OMDC is ‘indistinguishable from penal  
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1 confinement.”” *Abdul Kadir*, 2025 WL 2932654, at \*5 (quoting *Kydyrali*, 499 F.  
2 Supp. 3d at 773).

3 Fifth, there is a likelihood that the removal proceedings will result in a grant  
4 of some form of protection-based relief. Petitioner has submitted evidence that he  
5 meets the elements necessary for a grant of asylum, withholding of removal, and  
6 protection under the United Nations Convention Against Torture.  
7

8 Under any test, then, Petitioner is entitled to a bond hearing and an  
9 individualized finding as to whether he is a flight risk or a danger to the  
10 community.  
11

12 **CLAIM FOR RELIEF**

13 **Violation of the INA:**

14 **Request for Relief Pursuant to *Maldonado Bautista* and the Fifth Amendment  
15 *Due Process Clause***

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

18 16. The Fifth Amendment Due Process Clause prohibits the government from  
19 continuing to detain Petitioner a bond hearing.

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

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

19. The order granting class certification in *Maldonado Bautista* further orders  
that “[w]hen considering this determination with the MSJ Order, the Court

1 extends the same declaratory relief granted to Petitioners to the Bond  
2 Eligible Class as a whole.”

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

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

### 10 **PRAYER FOR RELIEF**

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

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

23 DATED this 2 of February 2026

24 Respectfully Submitted:

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/s/ Tina Malek  
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