**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF KANSAS**

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| **ELIAS ISAI AGUILAR GARCIA**<br><br>Petitioner<br><br>v.<br><br>**JACOB WELSH,**<br>Chase County, KS Sheriff and Warden<br>Of Chase County jail<br>(in his official capacity only);<br><br>**CHRISTOPHER CHAMBERLAIN**<br>Asst. Director Kansas City Field Office,<br>Immigration and Customs Enforcement<br>(in his official capacity only); and<br><br>**PAMELA BONDI,**<br>Attorney General of the United States,<br>(in her official capacity only);<br><br>**KRISTI NOEM,**<br>Secretary of Homeland Security,<br>(in her official capacity only);<br><br>Respondents | Civil No. 26-3028-JWL<br><br>**VERIFIED PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF FOR AN ORDER TO SHOW CAUSE** |

PRELIMINARY STATEMENT

1. Petitioner Elias Isai Aguilar Garcia brings this petition for a writ of habeas corpus to seek enforcement of his rights as a member 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 Chase County Jail. 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*. To date, he remains detained since February 6, 2026 - and he has STILL not been charged in immigration court. This is despite his lengthy residence in the United States, his Lawful Permanent Resident spouse, his three United States citizen children, and his being a Pastor of the Ministerios Ebenezer Kansas Church in Shawnee, Kansas.

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. On December 18, 2025, the Court had to clarify its prior orders due in part to Respondents refusing to comply with its prior orders: "IJs have cited to this Court's order, choosing to disregard the declaratory relief granted because it did not enter final judgment or due to some misunderstanding on part of the Immigration Judges as to the effect or nature of the Court's orders." *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, Doc. 92 at page 8 (C.D. Cal. Dec. 18, 2025) (order granting in part and denying in part Petitioners'

Ex Parte application for reconsideration or clarification at page ). That order specifically states:

> In spite of *Yajure Hurtado*, this Court determined that Petitioners and those similarly situated are not "applicants for admission," and therefore not subject to mandatory detention under § 1225. [MSJ Order at 12–17]. See *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 398–99 (2024) (requiring courts "to ignore, not follow, 'the reading the court would have reached' had it exercised its independent judgment). Although the MSJ Order does not grant vacatur of *Yajure Hurtado* **under the APA, Yajure Hurtado is no longer controlling; the legal conclusion underlying the decision is no longer tenable**. See, **Doc. 92** at 6 (emphasis added).

4. Despite even this order, the Respondents continue to claim that they are bound by the Board of Immigration Appeals decision in *Yajure Hurtado* and that they are not subject to the District Court's orders. The Kansas City Immigration Court has continued to find in similar cases that: "The Court lacks jurisdiction to hear the respondent's request for a bond as the respondent is an applicant for admission and is subject to mandatory detention under section 235(b)(2)(A) of the INA, 8 U.S.C. section 1225(b)(2)(A), and the regulation at 8 C.F.R. section 235.3(b)(1)(ii). See Matter of Yajure-Hurtado, 29 I&N Dec. 216 (BIA 2025)."

5. Petitioner, Elias Isai Aguilar Garcia 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 Chase County jail. He was apprehended by immigration authorities on February 6, 2026;

   b. entered the United States without inspection almost eighteen 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.

6. After apprehending Petitioner, the DHS has failed to file his Notice to Appear with the Kansas City Immigration Court which would place him in removal proceedings pursuant to 8 U.S.C. § 1229a. That is, after being detained without warrant, he has been held for more than

ten days before removal proceedings have even been instigated against him. He remains detained by the Respondents but has no ability to fight his case in Immigration Court due to their failure to charge him.

7. The Court should expeditiously grant this petition.

8. 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.

9. 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.

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

JURISDICTION

11. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et seq.

12. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Chase County jail.

13. 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).

14. 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.

VENUE AND TRIAL LOCATION DESIGNATION

15. Venue is proper because Petitioner is detained at Chase County Jail in Cottonwood Falls, Kansas which is within the jurisdiction of this District.

16. Venue is also proper in this District because Respondents are officers, employees, or agencies of the United States reside and a substantial part of the events or omissions giving rise to his claims occurred in this District. No real property is involved in this action. 28 U.S.C. § 1391(e).

REQUIREMENTS OF 28 U.S.C. § 2243 AND

APPLICATION FOR AN ORDER TO SHOW CAUSE

17. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the respondents "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Court must require respondents to file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." Id. (emphasis added).'

18. The Court should grant the petition for writ of habeas corpus "forthwith," as the legal issues have already been resolved for class members in *Maldonado Bautista.*

19. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains

it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

20. Pursuant to 28 U.S.C. § 2243, Petitioner, ("Petitioner or ") respectfully requests that the Court issue an order to all Respondents requiring them to show cause why the Petitioner's Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief pursuant to 28 U.S.C. § 2241; 28 U.S.C § 1331; Article I, § 9, cl. 2 of the United States Constitution; the All Writs Act, 28 U.S.C. § 1651; the Administrative Procedure Act, 5 U.S.C. § 701; and the Declaratory Judgment Act, 28 U.S.C. § 2201 should not be granted and why Respondents should not be ordered to release Petitioner from detention.

21. Pending adjudication of these claims, Petitioner asks for an order enjoining Respondents from transferring Petitioner from the jurisdiction of the Kansas City Field Office of the Immigration & Customs Enforcement ("ICE") Office of Enforcement and Removal Operations ("ERO") and this District.

PARTIES

22. Petitioner is currently detained in Chase County, Kansas. He entered the United States without authorization several years ago, in about 2008. He has three minor United States citizen children aged 10-18. Aguilar Garcia's wife has been a Lawful Permanent Resident of the United States for almost twenty years. He is also Pastor of the Ministerios Ebenezer Kansas Church in Shawnee, Kansas. Mr. Aguilar Garcia was arrested by the Department of Homeland Security but has YET to be placed in removal proceedings since then. He has been held in the Respondent's custody since February 6, 2026.

23. Respondent Jacob Welsh is the Chase County, Kansas Sheriff and Warden of the Chase County Jail. He has immediate physical custody of Petitioner pursuant to the facility's contract with U.S. Immigration and Customs Enforcement to detain noncitizens and is a legal custodian of Petitioner. Respondent Welsh is the legal custodian of Petitioner.

24. Respondent Christopher Chamberlain is the Assistant Field Office Director of the Kansas City Field Office, Immigration and Custom's Enforcement, Respondent Chamberlain is a legal custodian of Petitioner and has authority to release him.

25. Respondent Pamela Bondi is sued in her official capacity as the Attorney General of the United States. In this capacity, Respondent Bondi is responsible for the implementation and enforcement of the Immigration and Nationality Act and oversees the Immigration Court system via the Executive Office for Immigration Review ("EOIR"), a part of the Department of Justice. This agency, under her control, is responsible for conducting Bond hearings, ordering the release of individuals in removal proceedings, like Petitioner.

26. Respondent Kristi Noem is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security (DHS). In this capacity, Respondent Noem is responsible for the implementation and enforcement of the Immigration and Nationality Act and oversees U.S. Immigration and Customs Enforcement, the component agency responsible for Petitioner's arrest and detention. Respondent is a legal custodian of Petitioner.

## STATEMENT OF THE CASE

### Legal Background

#### Detention Provisions of the Immigration and Nationality Act

27. Congress drafted separate sections of the INA to deal with different bases for the detention of people coming to or already in the United States, who find themselves in removal proceedings.

28. 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an immigration judge (IJ). *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

29. Alternatively, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under § 1225(b)(2).

30. Last, the INA also provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)–(b).

31. The dispute here deals with sections §§ 1226(a) and 1225(b)(2). These detention provisions were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104–208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

32. After Congress enacted IIRIRA, EOIR promulgated its own regulations which stated that those who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a). *See* Inspection and Expedited Removal

of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

33. For almost thirty years, noncitizens who entered without inspection and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

34. Congress itself has amended who is subject to mandatory detention under 8 U.S.C. § 1226, adding the commission of certain crimes requiring people in removal proceedings to no longer be eligible for release on bond. See, Laken Riley Act. If Congress viewed all persons in the country without authorization subject to 8 U.S.C. § 1225, there would have been no need for the Laken Riley Act at all. Thus, under the Supreme Court's statutory interpretation canons, it follows that Congress did not intend for § 1225 to apply to noncitizens in the country who have not been inspected or admitted.

35. This year that all changed when ICE, "in coordination with" the Department of Justice (DOJ) issued a policy on July 8, 2025, that rejected the well-established understanding of the statutory framework and reversed decades of practice.

36. "Interim Guidance Regarding Detention Authority for Applicants for Admission,"[1] states that anyone who entered the United States without inspection is to be deemed subject to the mandatory detention provisions of § 1225(b)(2)(A), regardless of when they entered, where they entered, or when they were arrested by DHS, even if they had been physically present in the United States for decades.

37. The BIA issued *Matter of Yajure Hurtado* on September 5, 2025, which adopts this same argument, turning on its head decades of practice in the immigration courts. The Board found that any and all noncitizens placed in removal proceedings who entered without inspection or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for IJ bond hearings.

38. At the present time, the Kansas City Immigration Court has recently claimed that it is still bound by *Matter of Yajure Hurtado*, despite the nationwide class action of *Maldonado Bautista v. Santacruz,* and therefore will not hear bond motions for those who entered the country without authorization, irrespective of when they are detained or arrested by the Department of Homeland Security.

39. The overwhelming majority of District Courts have found that the government's change of position with respect to mandatory detention of all persons found to have previously entered the country without authorization is contrary to the plain language of the statute.[2] This includes several courts within the Tenth Circuit: *Diaz Colin v. Holt*, 2025 WL 3645176

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1 *Available at* https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission.

2 See, "Courts have ruled 4,400 times that ICE jailed people illegally. It hasn't stopped." By Nate Raymond, Kristina Cooke and Brad Heath, Reuters, updated Feb. 14, 2026. https://www.reuters.com/legal/government/courts-have-ruled-4400-times-that-ice-jailed-people-illegally-it-hasnt-stopped-2026-02-14/

(W.D. Okla. Dec. 16, 2025); *Duran Serrato v. Kopp*, 25-cv-245 (D. Wyo. Nov. 18, 2025); *Cortez-Gonzalez v. Noem*, No. 2:25-CV-00985-MLG-KK, 2025 WL 3485771 (D.N.M. Dec. 4, 2025); and *Jimenez Facio v. Baltazar*, 2025 WL 3559128 (D. Colo. Dec. 12, 2025), et al.[3]

Remedies

Direct Release or a Bail Hearing Held By This Court Are the Appropriate Remedies

40. The "equitable and flexible nature of habeas relief" affords district courts significant discretion over the appropriate remedies for violations of law and the Constitution. *Schlup v. Delo*, 513 U.S. 298, 319 (1995) ("[H]abeas corpus is, at its core, an equitable remedy"). This Court should order a remedy that fully addresses the statutory and constitutional violations in this case and is efficient to administer. *Carafas v. LaVallee*, 391 U.S. 234, 238 (1968) (the habeas statute "does not limit the relief that may be granted to discharge of the applicant from physical custody. Its mandate is broad with respect to the relief that may be granted").

41. Release is the customary remedy in habeas proceedings. *See* 28 U.S.C. § 2243 (the habeas should shall "dispose of the matter as law and justice require."); *Preiser v. Rodriguez,* 411 U.S. 475, 484 (1973) (finding "that the traditional function of the writ is to secure release from illegal custody"). The most appropriate remedy in a case like this, where Petitioner has been held for almost two weeks without even being placed in proceedings in violation of

[3] We note that recently the Fifth Circuit issued a decision reaching the opposite conclusions, agreeing with the position of the Respondents over a strenuous objection which sides with the majority of District Courts, including this one, who have found otherwise. See, *Buenrostro-Mendez v. Bondi*, Case No. 25-20496 (5th Circuit. 02/06/2026)[https://www.ca5.uscourts.gov/opinions/pub/25/25-20496-CV0.pdf].While the Fifth Circuit is the first to reach a decision, there are several Circuits in which decisions are expected shortly, and in any event the Fifth Circuit's decision does not bind this Court.

both the INA and due process, is release on recognizance without further conditions of release.

42. Dozens of courts across the country have agreed. *See, e.g., Munoz Materano v. Arteta*, 2025 WL 2630826, at *20 (S.D.N.Y. Sept. 12, 2025) (ordering immediate release); *Chipantiza- Sisalema v. Francis*, 2025 WL 1927931, at *4 (S.D.N.Y. July 13, 2025) (same); *Rueda Torres v. Francis*, No. 25-cv-8408, 2025 WL 3168759, at *6 (S.D.N.Y. Nov. 13, 2025) (same); *Cifuentes v. Soto*, No. 25-cv-18029, 2025 WL 3771380, at *4 (D.N.J. Dec. 31, 2025) (same); *Gonzalez Centeno v. Lowe*, No. 3:25-cv-2518, 2026 WL 94642, at *4 (M.D. Pa. Jan. 13, 2026) (same); *Feisal O. v. Noem,* No. 26-cv-81, 2026 WL 92857, at *3 (D. Minn. Jan. 13, 2026) (same); *Garcia Covarrubias v. Holston*, No. 2:25-cv-02445, 2026 WL 25970, at *4 (D. Nev. Jan. 5, 2026) (same) *Kenzhebaev v. Noem*, No. 1:25-cv-1786, 2025 WL 3737975, at *9 (W.D. Mich.Dec. 29, 2025) (same); *Kobilov v. O'Neill*, No. 26-cv-0058, 2026 WL 73475, at *3 (E.D. Pa. Jan. 8, 2026) (same, finding a bond hearing unnecessary where there was no record indication petitioner was a danger or flight risk); *Ortega-Aguirre v. Noem*, No. 4:25-cv-04332, 2025 WL 3684697, at *4 (S.D. Tex. Oct. 10, 2025) (same); *Bumbila Iza v. Arnott*, No. 6:25-cv-3392, 2026 WL 67152, at *5 (W.D. Mo. Jan. 8, 2026) (same); *see also Mata Velasquez v. Kurzdorfer*, --- F. Supp. 3d ---, No. 25-cv-493, 2025 WL 1953796 (W.D.N.Y. July 16, 2025) (ordering release and that petitioner could not be re-detained without a pre-deprivation hearing); *Gil v. Warden, Otay Mesa Det. Ctr.*, No. 3:25-cv-03279, 2025 WL 3675153, at *4 (S.D. Cal. Dec. 17, 2025) (same); Sekhon v. Warden of Golden State Annex Det. Facility, No. 1:25-cv-1692, 2026 WL 74151, at *4 (E.D. Cal. Jan. 9, 2026) (same).

43. Release is the only appropriate remedy for the constitutional violations in this case, including the lack of pre-deprivation notice or individualized review before Petitioner's arrest, which cannot be remedied by a post-deprivation hearing. *See Alfaro Herrera v. Baltazar*, No. 1:25-cv-04014, 2026 WL 91470, at *13 (D. Colo. Jan. 13, 2026) (given that petitioner had been previously released to the community and holding a bond hearing would prolong his unlawful detention, "[r]espondents' violations of Petitioner's rights are best remedied by ordering Petitioner's immediate release from immigration detention."); *Qasemi v. Francis*, No. 25-cv- 10029, 2025 WL 3654098 at *14, (S.D.N.Y. Dec. 17, 2025) (a bond hearing would not be an adequate remedy for the due process violations in petitioner's sudden arrest and detention); *Crespo Tacuri v. Genalo*, No. 25-cv-06896, 2026 WL 35569, at *7 (E.D.N.Y. Jan. 6, 2026)(ordering release, finding that post-deprivation review cannot remedy the due process violation of detaining petitioner with no process or individualized assessment); *Moctezuma Macias v. Henkey*, No. 1:25-CV-00741-BLW, 2026 WL 18809, at *5 (D. Idaho Jan. 2, 2026) (given that the government's repeated use of unlawful detention policies across the country, causing petitioners to "sit in jail waiting for a judicial decision," the court would order immediate release instead of causing additional delay through a bond hearing).

44. We note again that he was arrested on February 6, 2026 without his charging document being filed in Immigration Court. Ordering his immediate release and facilitating his return to his residence is the most appropriate remedy in this case.

Bail Hearing by the Habeas Court

45. In the alternative, the habeas court can hold its own custody hearing and determine whether the government can prove by clear and convincing evidence that Petitioner must remain in custody, or whether he may be released on recognizance, an appropriate bond in light of his ability to pay, or supervised release. This is a more efficient and effective remedy than ordering an immigration judge to conduct a hearing, which may lead to additional enforcement proceedings and delays before the unlawful detention in this case is remedied. *See L.G.M. v. LaRocco*, 788 F.Supp.3d 401, 405-07 (E.D.N.Y. 2025) (ordering a bond hearing held by the habeas court, as this would be more efficient than delegating the task to the agency and ensure proper constitutional oversight); *Flores-Powell v. Chadbourne*, 677 F.Supp.2d 474-78 (D. Mass 2010) (granting petition and discussing at length habeas court's equitable power, which includes power to hold its own bail hearing); *see also Santos v. Lowe*, No. 1:18-CV-1553, 2020 WL 4530728, at *4 (M.D. Pa. Aug. 6, 2020) (finding that habeas court-ordered bond hearing was not individualized and did not comport with due process, and granting motion to enforce to hold the court's own bond determination); *Ramirez v. Watkins*, No. 10-cv-126, 2010 WL 6269226, at *19-20 (S.D. Tex. Nov. 3, 2010), *rep. and rec not reached,* (S.D. Tex. Dec. 8, 2010) (dismissing case as moot) (recommending the habeas court conduct its own bail inquiry, as it would be more efficient, ensure supervision over any compliance issues, and avoid further proceedings).

46. In this case, Mr. Aguilar Garcia has three United States citizen children, a Lawful Permanent Resident spouse, with whom he has been paying taxes in the United States. He has been Pastor of the Ministerios Ebenezer Kansas Church in Shawnee, Kansas since about 2014. He has no significant criminal history. Thus he has lengthy and substantial ties to the

United States and is not a danger to his community. The Court should order him released immediately or else hold a custody hearing to consider the issue itself.

Enforcement Problems in Immigration Court Bond Hearings

47. A bond hearing by an immigration judge (IJ) is not the most appropriate or efficient use of this court's equitable authority. Recent actions by ICE attorneys and immigration judges during and after habeas court-ordered bond hearings have necessitated enforcement proceedings across the country, creating significant extra work for the court and the parties while petitioners' unlawful detention continues.

48. In the last year, ICE has frequently appealed the IJ's grant of bond to the Board of Immigration Appeals (BIA) and invoked the "automatic stay" regulation, 8 C.F.R. § 1003.19(i)(2). This stay, which keeps the petitioner detained despite an IJ bond grant, was rarely invoked in prior years but has now become common. Dozens of habeas courts have ruled that the automatic stay violates due process and have had to order Respondents to allow a petitioner to post his bond. *See, e.g.*, *Otilio B.F. v. Andrews*, No. 1:25-cv-01398, 2025 WL 3152480, at *11 (E.D. Cal. Nov. 11, 2025) (finding the automatic stay likely violates due process); *M.P.L. v. Arteta*, No. 25-cv-5307, 2025 WL 3288354, at *7 (S.D.N.Y. Nov. 25, 2025) (same, noting that "at least 50 district court decisions across the United States in the last 6 months alone" have found that DHS's use of the automatic stay provision violates or likely violates due process, and collecting cases at n.6); *Guasco v. McShane*, No. 1:25-cv-1650, 2025 WL 3270201, at *2 (M.D. Pa. Nov. 24, 2025) (noting that other habeas courts have "assailed the Government's practice of acting both as the prosecution and the judge in making a unilateral and unreviewed decision as to detention") (internal citation omitted).

49. In other cases, ICE has applied onerous electronic GPS ankle monitors or other unnecessary conditions of release that neither the habeas court nor the immigration court ordered, requiring additional litigation. *See Diahn v. Lowe*, No. 1:24-cv-1936, 2026 WL 84576, at *5 (M.D. Pa. Jan. 12, 2026) (ordering ICE to remove ankle monitor it had unilaterally imposed after IJ granted bond without further conditions); *Orellana Juarez v. Moniz*, 788 F. Supp. 3d 61, 70 (D. Mass. 2025) (same, finding this presented a "real constitutional risk" and defeated the purpose of neutral third-party review of custody); *Menjivar Sanchez v. Wofford*, No. 1:25-CV-01187, 2025 WL 3089712, at *9 (E.D. Cal. Nov. 5, 2025) (same, in preliminary injunction context); *N- N- v. McShane*, No. 25-cv-5494, 2025 WL 3143594, at *4 (E.D. Pa. Nov. 10, 2025) (finding ICE's imposition of an ankle monitor, check-ins, and travel restrictions, which the IJ did not order in setting bond, violated due process and the *Accardi* doctrine).

50. Still other cases have left habeas courts unclear whether Respondents intend to comply with the court's orders to hold a bond hearing at all. *See, e.g., Gomez Rodriguez v. Noem*, No. 2:25-cv-01115, 2025 WL 3771268, at *2 (M.D. Fla. Dec. 31, 2025) (noting that "[i]n other cases before this Court, the respondents have claimed they cannot direct the EOIR when to conduct a bond hearing," and ordering release if the government does not comply); *Khogiani v. Raycraft*, No. 25-cv-13744, 2025 WL 3753532, at *4 (E.D. Mich. Dec. 29, 2025) (noting the government's argument that given the "overwhelming caseload" in the immigration courts, it likely could not comply with an order to hold a bond hearing within five days, but re-setting a short deadline anyway given the petitioner's five months of unlawful detention); *Vargas v. Bondi*, No. 25-cv-1023, 2025 WL 3300446, at *5 (W.D. Tex. Nov. 12, 2025), *report*

*and recommendation adopted*, No. 25-cv-1023, 2025 WL 3300141 (W.D. Tex. Nov. 26, 2025) (recommending immediate release, in part because respondents argued that "if this Court ordered a hearing, it would require the immigration judge to do that which, in light of BIA precedent, the judge would not believe he had any authority to do").

Strong Procedural Protections If the Court Orders an Immigration Court Hearing

51. As a final option, this court could grant an immigration court bond hearing that follows clear guidelines and keeps jurisdiction over this case until satisfied that an individualized, constitutionally adequate review was held. *See Hernandez-Fernandez v. Lyons*, No. 5:25-CV-00773, 2025 WL 2976923, at *10 (W.D. Tex. Oct. 21, 2025) (holding that the proper remedy given the due process concerns is a bond hearing where the government bears the burden of proof); *Gomez v. Olson*, No. 25-cv-15300, 2025 WL 3768242, at *6 (N.D. Ill. Dec. 31, 2025) (noting the "overwhelming consensus" that the burden in a court-order bond hearing should be placed on the government).

52. The court should order that in that hearing, DHS bears the burden of proof to justify continued detention by clear and convincing evidence, and DHS is barred from invoking the automatic stay regulation if the immigration judge grants bond. *See, e.g., O.F.C,* 2026 WL 74262, at *16 (to ensure due process, ordering DHS to justify detention by clear and convincing evidence, and enjoining DHS from invoking the automatic stay on a bond grant or arguing that the IJ lacked jurisdiction); *Lopez-Romero v. Lyons*, No. 2:25-cv-01113, 2026 WL 92873, at *7 (D.N.M. Jan. 13, 2026) (to ensure due process, requiring the government justify detention by clear and convincing evidence, and that the immigration judge consider petitioner's ability to pay bond); *Perez-Regalado v. Feeley*, No. 2:25-cv-02409, 2026 WL

36112, at *6 (D. Nev. Jan. 6, 2026) (enjoining the government from invoking an automatic stay after a bond grant); *Rueda Torres*, 2025 WL 3168759, at *6 (same); *Garay v. Perry*, No. 1:25-CV-2215, 2025 WL 3540070, at *4 (E.D. Va. Dec. 10, 2025) (releasing petitioner immediately, ordering a bond hearing within 14 days, and enjoining the government from arguing the IJ lacks jurisdiction or from invoking the automatic stay).

## CAUSES OF ACTION

### Count I - Violation of the INA: Request for Relief Pursuant to *Maldonado Bautista*

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

54. As a member of the Bond Eligible Class, Petitioner is entitled to consideration for release on bond under 8 U.S.C. § 1226(a). Respondents violate the INA in applying the mandatory detention statute at § 1225(b)(2) to class members.

55. 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).

56. 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*.

57. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. Mr. Aguilar Garcia entered the United States almost 18 years ago, and was never apprehended by DHS. As such he is not an arriving alien. He has no significant criminal history and therefore, cannot be subject to any of the mandatory detention provisions based

on criminal history. Noncitizens such as Mr. Aguilar Garcia are properly detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

58. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates the INA.

Count II- Violation of the Administrative Procedure Act

59. Mr. Aguilar Garcia realleges and incorporates by reference the allegations above.

60. The Administrative Procedure Act provides that courts "shall . . . hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

61. The Department of Homeland Security is now holding Mr. Aguilar Garcia without bond alleging that he is detained under 8 U.S.C. § 1225(b), based on flawed legal analysis, which is inherently arbitrary and capricious.

62. Mr. Aguilar Garcia's continued detention and the threat of removal has caused and continues to cause him irreparable harm.

Count III- Violation of Fifth Amendment Right to Substantive Due Process

63. The allegations in the above paragraphs are realleged and incorporated herein.

64. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

65. Immigration detention is "civil, not criminal" and must be "nonpunitive in purpose and effect." *Id.* Accordingly detention is only permitted in order to serve two goals: "ensuring the

appearance of [noncitizens] at future immigration proceedings" and "preventing danger to the community." *Id.*

66. Subjecting Mr. Aguilar Garcia to unlawful detention violates his Fifth Amendment right to freedom from detention.

Count IV - Violation of Fifth Amendment Rights to Procedural Due Process

67. The allegations in the above paragraphs are realleged and incorporated herein.

68. Under the Fifth Amendment to the United States Constitution, those threatened with the loss of liberty or property due to actions by the federal government are entitled to due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." *Zadvydas*, 533 U.S. at 690 .

69. Mr. Aguilar Garcia has a fundamental interest in liberty and being free from official restraint.

70. The government's detention of Mr. Aguilar Garcia without a bond redetermination hearing to determine whether he is a flight risk or danger to others violates his right to due process.

RELIEF REQUESTED

71. WHEREFORE, Petitioner prays that this Court:

a. Assume jurisdiction over the 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. Enjoin Respondents from transferring the Petitioner outside the jurisdiction of the District of Kansas pending the resolution of this case;

f. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment, 8 U.S.C. § 8 U.S.C. § 1101(a)(15)(U); see also 8 C.F.R. § 214.14, et al.

g. Grant any further relief this Court deems just and proper.

Respectfully submitted this 16th day of February, 2026:

By: */s/* Jonathan Willmoth
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**Verification**

I declare under penalty of perjury that the facts set forth in the foregoing Verified Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge, information, and belief.

/s/ Jonathan Willmoth
Jonathan Willmoth

*Feb. 16, 2026*