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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

Elmer OXLAJ PEREZ,

Petitioner,

v.

Jason STREEVAL, *in his official capacity as
Warden of Stewart Detention Center*, and Todd
LYONS, *in his official capacity as Acting
Director of Immigration and customs
Enforcement*, and Ladeon FRANCIS, *Field
Office Director ICE Atlanta Field Office*, and
Kristi NOEM, *Secretary of Homeland Security*,
and Pamela BONDI, *in her official capacity as
Attorney General, United States Department of
Justice*

Respondents.

Case No. 4:26-cv-278

**PETITION FOR WRIT OF
HABEAS CORPUS**

Alien File No.



1 **INTRODUCTION**

2 1. Petitioner, Elmer OXLAJ PEREZ is a thirty-year-old native and citizen of
3 Guatemala who entered the United States without inspection on or around the first of January of
4 2016 and has resided in the United States since that time.

5 2. Petitioner is in the physical custody of Respondents at the Stewart Detention
6 Center in Lumpkin, Georgia. He now faces unlawful detention because the Department of
7 Homeland Security (DHS) and the Executive Office of Immigration Review (EOIR) have
8 concluded Petitioner is subject to mandatory detention.

9 3. Upon information and belief, Petitioner is charged with, inter alia, having entered
10 the United States without admission or inspection. *See* 8 U.S.C. § 1182(a)(6)(A)(i).

11 4. Based on this allegation in Petitioner’s removal proceedings, DHS denied the
12 Petitioner release from immigration custody, consistent with a new DHS policy issued on July 8,
13 2025, instructing all Immigration and Customs Enforcement (ICE) employees to consider anyone
14 inadmissible under § 1182(a)(6)(A)(i)—i.e., those who entered the United States without
15 admission or inspection—to be subject to detention under 8 U.S.C. § 1225(b)(2)(A) and
16 therefore ineligible to be released on bond.

17 5. Similarly, on September 5, 2025, the Board of Immigration Appeals (BIA or
18 Board) issued a precedent decision, binding on all immigration judges, holding that an
19 immigration judge has no authority to consider bond requests for any person who entered the
20 United States without admission. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).
21 The Board determined that such individuals are subject to detention under 8 U.S.C. §
22 1225(b)(2)(A) and therefore ineligible to be released on bond.

1 6. Petitioner’s detention on this basis violates the plain language of the Immigration
2 and Nationality Act. Section 1225(b)(2)(A) does not apply to individuals like Petitioner who
3 previously entered and are now residing in the United States. Instead, such individuals are
4 subject to a different statute, § 1226(a), that allows for release on conditional parole or bond.
5 That statute expressly applies to people who, like Petitioner, are charged as inadmissible for
6 having entered the United States without inspection.

7 7. Respondents’ new legal interpretation is plainly contrary to the statutory
8 framework and contrary to decades of agency practice applying § 1226(a) to people like
9 Petitioner.

10 8. Further, on December 18, 2025, the District Court of Central California entered
11 Final Judgment in the nationwide class action *Maldonado Bautista v. Santacruz*. See *Maldonado*
12 *Bautista v. Santacruz*, 2025 U.S. Dist. LEXIS 262265 (C.D. Cal. Dec. 18, 2025). This final
13 judgment certified Bond Eligible Class members and declared that *Yajure-Hurtado* was no
14 longer tenable. See *Order Granting in Part and Denying in Part Petitioner’s Ex Parte*
15 *Application for Reconsideration or Clarification [DKT. No. 87]*, 5:23-cv-01873-SSS-BFM, EC
16 No. 92 at 6 (C.D. Cal. Dec. 18, 2025).

17 9. The judgment holds that Bond Denial Class members are detained under 8 U.S.C.
18 § 1226(a), and thus may not be denied consideration for release on bond under § 1225(b)(2)(A).

19 10. However, the Executive Office for Immigration Review and its subagency the
20 Immigration Court and the Department of Homeland Security (DHS) have blatantly refused to
21 abide by the declaratory relief and have unlawfully ordered that Petitioner be denied the
22 opportunity to be released on bond.

23 11. Petitioner is a member of the Bond Eligible Class, as he:
24

- 1 a. does not have lawful status in the United States and is currently detained at the
2 Stewart Detention Center. He was apprehended by immigration authorities on or
3 around February 9, 2026;
- 4 b. entered the United States without inspection over ten years ago and was not
5 apprehended upon arrival, *cf. id.*; and
- 6 c. is not detained under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231.

7 12. The Court should expeditiously grant this petition.

8 13. Respondents are bound by the judgment in *Maldonado Bautista*. Nevertheless,
9 Respondents continue to defy the judgment in that case and continue to subject Petitioner to
10 unlawful detention despite his clear entitlement to consideration for release on bond as a Bond
11 Eligible Class member.

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

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

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

21 JURISDICTION

22 17. Petitioner is in the physical custody of Respondents. Petitioner is detained at the
23 Stewart Detention Center in Lumpkin, Georgia.

24 18. 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).

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

3 **VENUE**

4 20. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-
5 500 (1973), venue lies in the United States District Court for the Middle District of Georgia
6 within the Columbus Division, the judicial district in which Petitioner currently is detained.

7 21. Respondent Streeval is his immediate custodian.

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

12
13 **REQUIREMENTS OF 28 U.S.C. § 2243**

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

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

22 **PARTIES**

1 25. Petitioner Elmer Oxlaj Perez is a citizen and national of Guatemala who has been
2 in immigration detention since on or about February 9, 2026. After detaining Petitioner in
3 Atlanta, Georgia, ICE did not set bond and Petitioner is unable to obtain review of his custody by
4 an immigration judge, pursuant to the Board's decision in *Matter of Yajure Hurtado*, 29 I. & N.
5 Dec. 216 (BIA 2025). Petitioner is currently detained at the Stewart Detention Center in
6 Lumpkin, Georgia.

7 26. Respondent Jason Streeval is the Warden of the Stewart Detention Center. As
8 such, Respondent Streeval is responsible for the operation of the Detention Center where
9 Petitioner is detained. As ICE contracts with price prisons such as the Stewart Detention Center
10 to house immigration detainees such as the Petitioner, Respondent Streeval has immediate
11 physical custody of the Petitioner.

12 27. Respondent Todd Lyons is the Director of the Field Office of ICE's Enforcement
13 and Removal Operations division. As such, Respondent Lyons is being sued in his official
14 capacity.

15 28. Respondent Ladeon Francis is the Atlanta Field Office Director for Immigration
16 and Customs Enforcement. As such, Respondent Francis is responsible for the oversight of ICE
17 operations at the Stewart Detention Center. Respondent Francis is being sued in his official
18 capacity.

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

1 37. Petitioner has resided in the United States since 2016 and lives in Atlanta,
2 Georgia.

3 38. Or our around February 9, 2026, Petitioner was detained in Fayette County while the
4 passenger in a car that was stopped. Upon detention by Fayette County, he was
5 transferred to DHS ICE custody and is currently being held at the Stewart Detention
6 Center. *See Exhibit 2, Online Detainee Locator.*

7 39. Petitioner has one United States citizen daughter, age 2. *See Exhibit 3, Birth*
8 *Certificate for Petitioner's USC Child.*

9 40. According to Petition, his criminal history consists only of minor traffic tickets
10 and he was charged with obstruction of law enforcement as a result of the February 9, 2026 car
11 stop. Petitioner is contesting this charge.

12 41. Petitioner is neither a flight risk nor a danger to the community.

13 42. Pursuant to *Matter of Yajure Hurtado*, the immigration judge is unable to consider
14 Petitioner's bond request.

15 43. As a result, Petitioner remains in detention. Without relief from this court, he
16 faces the prospect of months, or even years, in immigration custody, separated from his family
17 and community.

18
19 **CLAIMS FOR RELIEF**

20 **COUNT 1**

21 **Violation of the INA:**

22 **Request for Relief Pursuant to *Maldonado Bautista***

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

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

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

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

9 48. Respondents are parties to *Maldonado Bautista* and bound by the Court’s
10 declaratory judgment, which has the full “force and effect of a final judgment.” 28 U.S.C.
11 § 2201(a).

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

15 **COUNT II**

16 **Violation of the Bond Regulations**

17 50. Petitioner incorporates by reference the allegations of fact set forth in preceding
18 paragraphs.

19 51. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-
20 Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA.
21 Specifically, under the heading of “Apprehension, Custody, and Detention of [Noncitizens],” the
22 agencies explained that “[d]espite being applicants for admission, [noncitizens] who are present
23 without having been admitted or paroled (formerly referred to as [noncitizens] who entered
24

1 without inspection) will be eligible for bond and bond redetermination.” 62 Fed. Reg. at 10323
2 (emphasis added). The agencies thus made clear that individuals who had entered without
3 inspection were eligible for consideration for bond and bond hearings before Immigration Judges
4 under 8 U.S.C. § 1226 and its implementing regulations.

5 52. Nonetheless, pursuant to *Matter of Yajure Hurtado*, EOIR has a policy and
6 practice of applying § 1225(b)(2) to individuals like Petitioner.

7 53. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued
8 detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

9 **COUNT III**

10 **Violation of Fifth Amendment Right to Due Process**

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

13 55. The government may not deprive a person of life, liberty, or property without due
14 process of law. U.S. Const. amend. V. “Freedom from imprisonment—from government
15 custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the
16 Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

17 56. Petitioner has a fundamental interest in liberty and being free from official
18 restraint.

19 57. The government’s detention of Petitioner without a bond redetermination hearing
20 to determine whether he is a flight risk or danger to others violates his right to due process.

21 **PRAYER FOR RELIEF**

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

- 23 a. Assume jurisdiction over this matter;
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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/ Rebecca Rojas

Date: February 17, 2026

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CERTIFICATE OF SERVICE

This is to certify that on this 17th day of February 2026, the foregoing **PETITION FOR A WRIT OF HABEAS CORPUS** and its accompanying Exhibits were submitted to the Federal District Court for the Middle District of Georgia to be served upon Respondent’s in accordance with established court procedure.

The Rojas Firm, LLC
/s/ Rebecca Rojas
Rebecca Rojas, Esq.
GA Bar #: 306532

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
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Elmer OXLAJ PEREZ,

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Jason STREEVAL, *in his official capacity as Warden of Stewart Detention Center*, and Todd LYONS, *in his official capacity as Acting Director of Immigration and customs Enforcement*, and Ladeon FRANCIS, *Field Office Director ICE Atlanta Field Office*, and Kristi NOEM, *Secretary of Homeland Security*, and Pamela BONDI, *in her official capacity as Attorney General, United States Department of Justice*

Respondents.

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**PETITION FOR WRIT OF
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Alien File No.



List of Exhibits

<u>Exhibit</u>	<u>Description</u>
1.	<i>Petitioner's Passport.</i>
2.	<i>Online Detainee Locator</i>
3.	<i>Birth Certificate for Petitioner's USC Child</i>