

CO 242 (Rev. 09/17) Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

UNITED STATES DISTRICT COURT

for the
Southern District of Georgia



FILED
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA

2026 FEB 23 A 10:54

CLERK *Kam*

S.D. DIST. OF GA.

Irvin Bernal-Acosta
Petitioner

v.

Case No.

5:26 CV 00250
(Supplied by Clerk of Court)

Warden, Folkston D. Ray ICE Processing Center

Respondent

(name of warden or authorized person having custody of petitioner)

PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

Personal Information

1. (a) Your full name: Irvin Bernal-Acosta
(b) Other names you have used:
2. Place of confinement:
(a) Name of institution: Folkston D Ray ICE Processing Center
(b) Address: 3026 GA-252 E, Folkston, GA 3153
(c) Your identification number: 
3. Are you currently being held on orders by:
☒ Federal authorities ☐ State authorities ☐ Other - explain:
4. Are you currently:
☐ A pretrial detainee (waiting for trial on criminal charges)
☐ Serving a sentence (incarceration, parole, probation, etc.) after having been convicted of a crime
If you are currently serving a sentence, provide:
(a) Name and location of court that sentenced you:
(b) Docket number of criminal case:
(c) Date of sentencing:
☐ Being held on an immigration charge
☐ Other (explain):

Decision or Action You Are Challenging

5. What are you challenging in this petition:
☐ How your sentence is being carried out, calculated, or credited by prison or parole authorities (for example, revocation or calculation of good time credits)

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- ☐ Pretrial detention
- ☒ Immigration detention
- ☐ Detainer
- ☐ The validity of your conviction or sentence as imposed (for example, sentence beyond the statutory maximum or improperly calculated under the sentencing guidelines)
- ☐ Disciplinary proceedings
- ☐ Other (explain):

6. Provide more information about the decision or action you are challenging:

(a) Name and location of the agency or court:

(b) Docket number, case number, or opinion number:

(c) Decision or action you are challenging (for disciplinary proceedings, specify the penalties imposed):

(d) Date of the decision or action:

Your Earlier Challenges of the Decision or Action

7. **First appeal**

Did you appeal the decision, file a grievance, or seek an administrative remedy?

☐ Yes ☐ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court:

(2) Date of filing:

(3) Docket number, case number, or opinion number:

(4) Result:

(5) Date of result:

(6) Issues raised:

(b) If you answered "No," explain why you did not appeal:

8. **Second appeal**

After the first appeal, did you file a second appeal to a higher authority, agency, or court?

☐ Yes ☐ No

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(a) If "Yes," provide:

- (1) Name of the authority, agency, or court:
- (2) Date of filing:
- (3) Docket number, case number, or opinion number:
- (4) Result:
- (5) Date of result:
- (6) Issues raised:

(b) If you answered "No," explain why you did not file a second appeal: _____

9. Third appeal

After the second appeal, did you file a third appeal to a higher authority, agency, or court?

☐ Yes ☐ No

(a) If "Yes," provide:

- (1) Name of the authority, agency, or court:
- (2) Date of filing:
- (3) Docket number, case number, or opinion number:
- (4) Result:
- (5) Date of result:
- (6) Issues raised:

(b) If you answered "No," explain why you did not file a third appeal:

10. Motion under 28 U.S.C. § 2255

In this petition, are you challenging the validity of your conviction or sentence as imposed?

☐ Yes ☐ No

If "Yes," answer the following:

(a) Have you already filed a motion under 28 U.S.C. § 2255 that challenged this conviction or sentence?

☐ Yes ☐ No

AO 242 (Rev. 09/17) Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

If "Yes," provide:

- (1) Name of court:
- (2) Case number:
- (3) Date of filing:
- (4) Result:
- (5) Date of result:
- (6) Issues raised:

- (b) Have you ever filed a motion in a United States Court of Appeals under 28 U.S.C. § 2244(b)(3)(A), seeking permission to file a second or successive Section 2255 motion to challenge this conviction or sentence?

☐ Yes

☐ No

If "Yes," provide:

- (1) Name of court:
- (2) Case number:
- (3) Date of filing:
- (4) Result:
- (5) Date of result:
- (6) Issues raised:

- (c) Explain why the remedy under 28 U.S.C. § 2255 is inadequate or ineffective to challenge your conviction or sentence: I did not file a motion under 28 U.S.C. § 2255 because I am not being held under a federal criminal conviction. I am in immigration detention, which is civil, not criminal. A § 2255 motion does not apply to my case and cannot be used to challenge my immigration detention. Therefore, habeas corpus under 28 U.S.C. § 2241 is the only adequate way to challenge the legality.

11. **Appeals of immigration proceedings**

Does this case concern immigration proceedings?

☐ Yes

☐ No

If "Yes," provide:

- (a) Date you were taken into immigration custody:
- (b) Date of the removal or reinstatement order:
- (c) Did you file an appeal with the Board of Immigration Appeals?

☐ Yes

☐ No

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If "Yes," provide:

- (1) Date of filing:
- (2) Case number:
- (3) Result:
- (4) Date of result:
- (5) Issues raised:

(d) Did you appeal the decision to the United States Court of Appeals?

☐ Yes

☐ No

If "Yes," provide:

- (1) Name of court:
- (2) Date of filing:
- (3) Case number:
- (4) Result:
- (5) Date of result:
- (6) Issues raised:

12. **Other appeals**

Other than the appeals you listed above, have you filed any other petition, application, or motion about the issues raised in this petition?

☐ Yes

☐ No

If "Yes," provide:

- (a) Kind of petition, motion, or application:
- (b) Name of the authority, agency, or court:

(c) Date of filing:

(d) Docket number, case number, or opinion number:

(e) Result:

(f) Date of result:

(g) Issues raised:

Grounds for Your Challenge in This Petition

13. State every ground (reason) that supports your claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground. Any legal arguments must be submitted in a separate memorandum.

GROUND ONE:

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

I am currently detained by immigration authorities at the Florida Baker Correctional Institution in Sanderson, Florida. My present detention is continuing without a new and meaningful custody determination explaining why detention is necessary at this time. I have not been provided a current individualized decision justifying my continued confinement.

(b) Did you present Ground One in all appeals that were available to you?

☒ Yes

☐ No

GROUND TWO: Unlawful Detention

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

Since my re-detention, I have not received a meaningful custody hearing that evaluates my current circumstances. No neutral decision-maker has made a present finding that I pose a danger to the community or a risk of flight. A meaningful custody determination must consider my history of release on bond, years of compliance, stable residence, family ties, and willingness to appear for proceedings. These critical facts have not been meaningfully evaluated in connection with my present confinement. Because my detention continues without a current individualized custody determination, my continued imprisonment is unlawful.

(b) Did you present Ground Two in all appeals that were available to you?

☒ Yes

☐ No

GROUND THREE: Continued Civil Detention That Is Excessive, Unnecessary, and Harmful

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

Immigration detention is civil and preventive, not punitive. Its only legitimate purposes are to ensure appearance at proceedings and protect the community. My history demonstrates that detention is unnecessary. My continued detention has caused serious hardship. I am separated from my family, unable to support them, and unable to participate in daily family life. My loved ones are experiencing emotional and financial strain because of my confinement. Because less restrictive alternatives to detention are available, including the bond previously set by the Immigration Judge, my continued detention is excessive, unnecessary, and unlawful.

(b) Did you present Ground Three in all appeals that were available to you?

☒ Yes

☐ No

GROUND FOUR:

Lack of a Meaningful Individualized Custody Hearing Considering Family and Community Ties

(a) Supporting facts (Be brief. Do not cite cases or law.):

My immigration proceedings remain pending, and I continue to pursue relief through lawful legal processes.

I am being detained while my case is unresolved. I have a stable residence and strong family ties in the United States. I am the father of a U.S. citizen daughter, my family depends on my emotional and financial support. My detention has caused significant hardship to my child and family. I am not a danger to the community or a risk of flight. My continued detention without a meaningful individualized custody determination is unlawful.

(b) Did you present Ground Four in all appeals that were available to you?

☒ Yes

☐ No

14. If there are any grounds that you did not present in all appeals that were available to you, explain why you did not:

Request for Relief

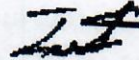
15. State exactly what you want the court to do: Petitioner respectfully requests that this Court exercise jurisdiction over this matter; order Respondents to justify the legality of Petitioner's detention; declare that Petitioner's continued detention is unlawful and unconstitutional; grant habeas relief by ordering Petitioner's immediate release or, in the alternative, an individualized bond hearing before a neutral decisionmaker; prohibit Petitioner's transfer outside this judicial district without prior approval of the Court; and grant such other and further relief as the Court deems just and proper.

Declaration Under Penalty Of Perjury

If you are incarcerated, on what date did you place this petition in the prison mail system:

I declare under penalty of perjury that I am the petitioner, I have read this petition or had it read to me, and the information in this petition is true and correct. I understand that a false statement of a material fact may serve as the basis for prosecution for perjury.

Date: 02/18/2026



Signature of Petitioner

Signature of Attorney or other authorized person, if any

Irvin Bernal-Acosta

A Number: 

PRO SE

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA**

IN THE MATTER OF:

BERNAL-ACOSTA, Irvin

v.

Field Office Director, Atlanta Field Office,
Immigration and
Customs Enforcement,
Enforcement and Removal Operations
("ICE/ERO"); WARDEN, Folkston D. Ray
ICE Processing Center; TODD
LYONS, Acting Director of
Immigration and Customs Enforcement
("ICE"); U.S. IMMIGRATION AND
CUSTOMS ENFORCEMENT; KRISTI
NOEM, Secretary of the Department of
Homeland Security ("DHS"); U.S.
DEPARTMENT OF HOMELAND
SECURITY; and PAMELA BONDI,
Attorney General of the United States

Respondents,

Respondents,

Case No.

**PETITION FOR WRIT OF HABEAS
CORPUS, PURSUANT TO 28 U.S.C. §
2241; AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF UNDER 8 U.S.C. § 1226(a) AND
THE ADMINISTRATIVE PROCEDURE
ACT, 5 U.S.C. § 706**

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner Irvin Bernal-Acosta 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 Folkston D. Ray ICE Processing Center in Georgia. He now faces unlawful detention because the Department of Homeland Security (“DHS”) and the Executive Office for Immigration Review (“EOIR”) have refused to comply with the declaratory judgment issued on behalf of the certified class in *Maldonado Bautista v. Santacruz*.

2. On November 20, 2025, the district court granted partial summary judgment on behalf of individual plaintiffs and on November 25, 2025, certified a nationwide class and extended declaratory judgment to the certified class. *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ---, 2025 WL 3289861, at *11 (C.D. Cal. Nov. 20, 2025); *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).

3. On December 18, 2025, the U.S. District Court for the Central District of California issued a final judgment in *Lazaro Maldonado Bautista et al. v. Ernesto Santacruz Jr. et al.*, holding that detention of certain noncitizens is governed by 8 U.S.C. § 1226(a), not mandatory detention. The Court ruled that DHS’s challenged policy was unlawful, vacated it classwide under the Administrative Procedure Act, and confirmed that affected individuals are entitled to bond hearings before an Immigration Judge.

4. The declaratory judgment held that 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. Nevertheless, the Executive Office for Immigration Review, including the Immigration Court, and the Department of Homeland Security (“DHS”) have refused to abide by this binding declaratory relief and have unlawfully ordered that Petitioner be denied the opportunity to be considered for release on bond.

6. Petitioner Irvin Bernal-Acosta 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 D. Ray ICE Processing Center in Georgia. Petitioner was apprehended by on or about November 13, 2025.

b. entered the United States without inspection approximately in October 1, 2002, was not apprehended at the border, and has remained in the United States for decades, establishing substantial family and community ties; and

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

7. After apprehending Petitioner on or about November 14, 2026, DHS placed him in removal proceedings pursuant to 8 U.S.C. § 1229a. DHS charged Petitioner as inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i), alleging that he is an alien present in the United States without being admitted or paroled.

8. Petitioner is currently pursuing relief from removal in the form of Cancellation of Removal for Nonpermanent Residents under INA § 240A(b), based on his long-term residence in the United States, his good moral character, and the

exceptional and extremely unusual hardship that his removal would cause to his United States citizen children.

9. The Court should expeditiously grant this petition. 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).

10. Nevertheless, Respondents continue to defy the judgment and continue to subject Petitioner and other class members to unlawful detention by ordering immigration judges to deny bond eligibility. 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 immigration judges 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.

JURISDICTION

13. Petitioner, Irvin Bernal-Acosta, is detained in the custody of Respondents at the Folkston D. Ray ICE Processing Center in Georgia. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et seq.

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

15. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 et seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., and the All Writs Act, 28 U.S.C. § 1651, because Petitioner challenges the legality of his continued detention and Respondents' refusal to provide a bond hearing under 8 U.S.C. § 1226(a).

VENUE

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

17. Venue is also proper 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 Southern District of Georgia.

REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243

18. 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 OSC 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.*

19. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as

“perhaps the most important writ known to the constitutional law of England, 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).

20. Petitioner is “in custody” for the purpose of § 2241 because he is arrested and detained by Respondents.

PARTIES

21. Petitioner Irvin Bernal-Acosta (“Petitioner”) is a 36-year-old citizen of Mexico, born on . He has resided in Florida, and is currently detained at the Folkston D. Ray ICE Processing Center in Folkston, Georgia, at the time of the filing of this petition.¹

22. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for carrying out the immigration enforcement functions vested in the Department, including establishing national immigration enforcement policies and priorities. See 6 U.S.C. § 202(3), (5). She is sued in her official capacity.

23. Respondent Pamela Bondi is the Attorney General of the United States. The Attorney General has statutory authority over the Executive Office for Immigration Review (“EOIR”) and is charged with the administration of removal proceedings and immigration adjudication under the Immigration and Nationality Act. See 8 U.S.C. §§ 1103(g)(1), 1229a. She is sued in her official capacity.

¹ 2 Petitioner seeks leave to proceed anonymously because his public identification creates a retaliatory physical harm risk because his status as an asylum seeker in the United States and the nature of his claim is sensitive and highly personal. See *Does I thru XXIII v. Advanced Textile Corp.*, 214 F.3d 1058, 1068 (9th Cir. 2000). The Ninth Circuit has identified several different situations in which parties have been permitted to proceed under a fictitious name, including “(1) when identification creates a risk of retaliatory physical or mental harm, . . . ; (2) when anonymity is necessary ‘to preserve privacy in a matter of sensitive and highly personal nature,’ . . . ; and (3) when the anonymous party is ‘compelled to admit [his or her] intention to engage in illegal conduct, thereby risking criminal prosecution.’” *Id.* (collecting cases; internal citations omitted). The Petitioner would provide his identity to the Respondents and the Court under seal.

24. Respondent Todd Lyons is the Acting Director of United States Immigration and Customs Enforcement ("ICE"). He is responsible for the nationwide enforcement and detention operations of ICE, including oversight of the apprehension and detention of noncitizens pending removal proceedings. See 6 U.S.C. §§ 251(2), 252(a)(3); 8 U.S.C. § 1103(a). He is sued in his official capacity.

25. Respondent Field Office Director, Atlanta Field Office, United States Immigration and Customs Enforcement and Removal Operations ("ICE/ERO"), is the supervisory official responsible for immigration detention and custody determinations within the Atlanta Area of Responsibility, which includes the State of Georgia, where Petitioner is currently detained. This Respondent is sued in his official capacity..

26. Respondent Warden, Folkston D. Ray ICE Processing Center, is the immediate custodian of Petitioner and bears direct responsibility for detaining him pending removal proceedings. Petitioner is currently confined at the Folkston D. Ray ICE Processing Center in Folkston, Georgia, within this District. The Warden is sued in his official capacity.

27. Respondent Executive Office for Immigration Review ("EOIR") is a component agency of the Department of Justice responsible for conducting removal proceedings and bond hearings for noncitizens. EOIR is comprised of Immigration Courts administered by Immigration Judges and an appellate body known as the Board of Immigration Appeals ("BIA"). Immigration Judges issue custody redetermination and bond decisions, which are subject to administrative appeal. EOIR is sued in its official capacity.

28. This action is commenced against all Respondents in their official capacities.

LEGAL FRAMEWORK

29. The Immigration and Nationality Act ("INA") establishes the framework governing the detention and removal of noncitizens placed in removal proceedings under section 240. Individuals in such proceedings are entitled to the procedural protections of a full hearing before an Immigration Judge pursuant to 8 U.S.C. § 1229a.

30. Noncitizens placed in regular removal proceedings under INA § 240 may seek statutory relief from removal, including Cancellation of Removal for Nonpermanent Residents under INA § 240A(b). This form of relief is available to individuals who demonstrate, among other requirements, long-term continuous physical presence in the United States, good moral character, and that removal would result in exceptional and extremely unusual hardship to qualifying United States citizen family members. 8 U.S.C. § 1229b(b).

31. Petitioner Jose Gregorio Resendiz-Breña is currently in regular removal proceedings under § 1229a and is pursuing relief in the form of Cancellation of Removal under INA § 240A(b), based on his long-term residence in the United States since approximately March 2000, his family and community ties, and the hardship his removal would cause to his United States citizen children.

32. The INA separately provides the statutory framework governing civil immigration detention during removal proceedings. As a general matter, noncitizens in pending removal proceedings are detained under 8 U.S.C. § 1226(a), which authorizes detention subject to an individualized custody determination and consideration for release on bond.

33. Detention under § 1226(a) is civil in nature and may not be used as punishment. See *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

34. The Due Process Clause of the Fifth Amendment guarantees that noncitizens physically present in the United States are entitled to fundamental procedural protections before being deprived of liberty. *Reno v. Flores*, 507 U.S. 292, 306 (1993). This includes meaningful access to immigration court proceedings and protection against unlawful civil detention.

35. Although the government may detain individuals during removal proceedings, due process requires that detention decisions be made through procedures consistent with the statutory framework Congress established, including individualized custody determinations where provided by law.

36. The INA also contains a separate and narrow scheme known as “expedited removal,” codified at 8 U.S.C. § 1225(b)(1). Expedited removal permits immigration officers, rather than Immigration Judges, to issue removal orders without further hearing or review in limited circumstances described by statute.

37. Under the expedited removal statute, certain noncitizens who are inadmissible on specified grounds—including fraud or lack of valid entry documents—may be ordered removed through this summary process. 8 U.S.C. § 1225(b)(1)(A)(i); 8 U.S.C. § 1182(a)(6)(C), (a)(7).

38. Expedited removal is a truncated process that does not provide the same procedural protections available in full removal proceedings under INA § 240. Accordingly, it has significant consequences for individuals who are subject to it.

39. DHS issued a January 2025 designation expanding the application of expedited removal nationwide. However, nothing in the designation unmistakably

PETITION FOR WRIT OF HABEAS CORPUS

authorizes retroactive application to individuals who, like Petitioner, have lived in the United States for decades and are already placed in regular § 240 proceedings.

40. The Supreme Court has held that administrative rules “will not be construed to have retroactive effect unless their language requires this result.” *Landgraf v. USI Film Products*, 511 U.S. 244, 272 (1994). Applying a new enforcement regime to long-completed conduct, absent clear authorization, raises serious due process concerns.

41. Congress has made clear that individuals in regular removal proceedings are generally governed by the civil detention framework of § 1226(a), which provides for bond consideration and individualized custody review. In *Maldonado Bautista v. Santacruz*, the district court held that DHS’s policy of denying bond eligibility by treating certain individuals as subject to mandatory detention under § 1225(b)(2) was unlawful, vacated the policy classwide, and declared that affected individuals are entitled to bond hearings.

42. Thus, noncitizens like Petitioner, who entered the United States in March 2000, have established deep family ties, and are pursuing Cancellation of Removal under INA § 240A(b), are entitled to individualized custody consideration under § 1226(a) and may not be categorically denied bond eligibility through unlawful detention policies.

43. Immigration detention must remain narrowly tied to its civil purpose and cannot be used as a punitive tool or as a means of depriving individuals of the statutory opportunity to seek relief in full § 240 proceedings.

FACTUAL BACKGROUND

44. The Petitioner is a citizen of Mexico. He was born on  Petitioner has resided in Florida and is the father of a United States citizen child, born
PETITION FOR WRIT OF HABEAS CORPUS

on January 16, 2017. Prior to his detention, Petitioner lived in the community and provided emotional and practical support to his child. Petitioner's continued detention and potential removal would cause significant hardship to his United States citizen child by disrupting an established parent-child relationship and support system.

45. Petitioner entered the United States without inspection on or about October 1, 2002, was not apprehended at or near the time of entry, and has remained in the United States continuously since that date. He is currently detained at the Folkston D. Ray ICE Processing Center in Folkston, Georgia.

46. Petitioner was previously released from immigration custody on bond in May 2019 following an Immigration Judge's custody determination. After residing in the community for several years, Petitioner was taken back into immigration custody in November 2025 and has remained detained since that time.

47. Petitioner's continued detention has imposed significant and ongoing hardship on his United States citizen child and family. Petitioner is the father of a minor United States citizen child who depends on his emotional and practical support. Petitioner's detention has disrupted this parent-child relationship and the stability of the family unit, placing his child at risk of substantial emotional hardship.

46. Petitioner has pending immigration relief in removal proceedings before the Executive Office for Immigration Review. Petitioner is pursuing relief in the form of Cancellation of Removal for Nonpermanent Residents (INA § 240A(b)), based on his long-term residence in the United States, his good moral character, and the exceptional and extremely unusual hardship that his removal would cause to his United States citizen children.

47. Upon information and belief, Petitioner has complied with and regularly appeared for all required immigration proceedings to date.

48. On January 20, 2025, President Donald Trump issued several executive actions relating to immigration, including “Protecting the American People Against Invasion,” an executive order (“EO”) setting out a series of interior immigration enforcement actions. The Trump administration, through this and other actions, has outlined sweeping, executive branch-led changes to immigration enforcement policy, establishing a formal framework for mass deportation. The “Protecting the American People Against Invasion” EO instructs the DHS Secretary “to take all appropriate action to enable” ICE, CBP, and USCIS to prioritize civil immigration enforcement procedures including through the use of mass detention.

49. On January 21, 2025, Acting Deputy Secretary of DHS Benjamin Huffman issued for public inspection and effective immediately a designation expanding the scope of expedited removal to apply nationwide and to certain noncitizens who are unable to prove they have been in the country continuously for two years. On January 24, 2025, DHS published a Notice that expanded the application of expedited removal. Office of the Secretary, Dep’t of Homeland Security, Designating Aliens for Expedited Removal, 15 Fed. Reg. 8139 (“January 2025 Designation”). The designation was “effective” on January 21, 2025.

50. The January 2025 Designation expands the pool of noncitizens who can be subjected to the summary removal process substantially to include noncitizens who are apprehended anywhere in the United States and who have not been in the United States continuously for more than two years. *Id.* at 8140.

51. The January 2025 Designation does not state that it applies to noncitizens who were in the United States before its effective date.

52. On information and belief, Respondents failed to provide Petitioner with an opportunity to be heard before depriving him of his liberty.

53. On information and belief, Respondents are using the immigration detention system, including civil detention and removal proceedings, as a means to punish individuals for exercising their statutory and constitutional rights under the immigration laws, including the right to seek relief from removal.

54. On information and belief, Petitioner has no criminal record.

CLAIMS FOR RELIEF

COUNT ONE

Violation of the INA: Request for Relief Pursuant to *Maldonado Bautista*

55. Petitioner restates and realleges all paragraphs as if fully set forth here.

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

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

58. 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.

59. 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.”

60. 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).

61. By denying Petitioner a bond hearing under § 1226(a) and asserting that he is subject to mandatory detention under § 1225(b)(2), Respondents violate the INA.

62. Indeed, on January 7, 2026, the Immigration Judge denied bond explicitly on the ground that the Court was “bound by *Matter of Yajure Hurtado*” and “lacks jurisdiction to grant bond,” notwithstanding the binding declaratory judgment in *Maldonado Bautista*.

COUNT TWO

Violation of Fifth Amendment Right to Due Process Procedural Due Process

63. Petitioner restates and realleges all paragraphs as if fully set forth here.

64. The Due Process Clause of the Fifth Amendment to the U.S. Constitution prohibits the federal government from depriving any person of “life, liberty, or property, without due process of law.” U.S. Const. Amend. V. Due process protects “all persons” within the United States, including [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent. *Zadvydas*, 533 U.S. at 693.

65. Due process requires that government action be rational and non-arbitrary. *See* U.S. v. Trimble, 487 F.3d 752, 757 (9th Cir. 2007).

66. While immigration relief may be discretionary, the right to apply for relief from removal and to be heard in removal proceedings is not. Any noncitizen

placed in removal proceedings is entitled to seek relief authorized by the INA, including applications for cancellation of removal and other forms of statutory relief. *See* 8 U.S.C. § 1229a.

67. Because the denial of the opportunity to apply for relief from removal and to receive an individualized custody determination can result in serious and irreparable harm, the statutory right to apply is robust and meaningful. It includes the right to legal representation, and notice of that right, *see id.* §§ 1229a(b)(4)(A), 1362; the right to present evidence in support of eligibility for relief, *see id.*; the right to appeal an adverse decision to the Board of Immigration Appeals and to seek judicial review in the federal courts, *see id.* § 1252; and the right to request reopening or reconsideration of a decision determining removability, *see id.* § 1229a(c)(6)–(7).

68. Civil immigration detention, in contrast, severely limits the availability of such rights when an individual is deprived of liberty without a meaningful opportunity to be heard. The denial of a bond hearing under 8 U.S.C. § 1226(a) prevents Petitioner from obtaining the individualized custody review that Congress and the Constitution require.

69. Although noncitizens in removal proceedings retain the right to counsel and to pursue relief under the INA, those rights are undermined when detention is imposed categorically and without an individualized determination of flight risk or danger. Detention under such circumstances becomes arbitrary and violates procedural due process.

70. Here, Respondents' continued detention of Petitioner without providing an opportunity for a bond hearing deprives him of meaningful access to the procedural

protections guaranteed in removal proceedings, and effectively forecloses his ability to participate fully and fairly in his pending immigration case.

71. In sum, pursuing immigration relief in regular removal proceedings comes with a panoply of greater procedural protections as compared with summary or categorical detention without individualized review. See *Immigrant Defenders Law Center v. Mayorkas*, 2023 WL 3149243, at *29 (C.D. Cal. Mar. 15, 2023) (“Individuals in regular removal proceedings enjoy far more robust due process protections because Congress has conferred additional statutory rights on them.”).

72. Here, Petitioner was not provided meaningful notice or an opportunity to be heard in a manner consistent with the bundle of rights associated with his pending applications for immigration relief. Because Petitioner is detained under 8 U.S.C. § 1226(a), due process requires that he receive an individualized bond hearing at which an Immigration Judge has jurisdiction to consider release on bond. Respondents’ categorical refusal to provide such a hearing, and their continued reliance on a vacated detention policy, deprives Petitioner of liberty without the procedural protections guaranteed by the Fifth Amendment.

COUNT THREE

Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A) Not in Accordance with Law and in Excess of Statutory Authority Unlawful Detention

73. Petitioner restates and realleges all paragraphs as if fully set forth here.

74. Under the APA, a court 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).

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75. An action is an abuse of discretion if the agency “entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” *Nat’l Ass’n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (quoting *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

76. To survive an APA challenge, the agency must articulate “a satisfactory explanation” for its action, “including a rational connection between the facts found and the choice made.” *Dep’t of Com. v. New York*, 139 S. Ct. 2551, 2569 (2019) (citation omitted).

77. By categorically denying Petitioner the opportunity for an individualized custody determination and continuing to detain him under an asserted mandatory detention policy, Respondents have violated the APA.

78. Respondents have made no finding that Petitioner is a danger to the community.

79. Respondents have made no finding that Petitioner is a flight risk.

80. By detaining Petitioner categorically without consideration of his individualized facts and circumstances—including his family ties and pending immigration relief—Respondents have further abused their discretion.

81. Respondents have failed to account for Petitioner’s demonstrated equities and circumstances, including the hardship to his United States citizen children, in maintaining his continued detention without bond consideration.

COUNT FOUR

Violation of Fifth Amendment Right to Due Process: Illegal Retroactive

Application of January 2025 Expedited Removal Designation

82. Petitioner restates and realleges all paragraphs as if fully set forth herein.

83. Administrative rules “will not be construed to have retroactive effect unless their language requires this result.” *Landgraf v. USI Film Products*, 511 U.S. 244, 272 (1994). When a “new provision attaches new legal consequences to events completed before its enactment,” the provision is not retroactive unless Congress or the agency has made that intent unmistakably clear. *Id.*

84. Applying the January 2025 expedited removal designation to Petitioner—who entered the United States without inspection approximately in March 2000 and has remained in the country for decades—would attach new legal consequences to long-completed events, including the loss of significant statutory and constitutional protections afforded to individuals placed in regular removal proceedings under INA § 240.

85. Petitioner is currently in removal proceedings pursuant to 8 U.S.C. § 1229a and is pursuing relief in the form of Cancellation of Removal for Nonpermanent Residents under INA § 240A(b), based on his long-term residence, good moral character, and the exceptional and extremely unusual hardship his removal would cause to his United States citizen minor daughter.

86. The January 2025 expedited removal designation does not unmistakably apply to individuals such as Petitioner, who entered the United States long before its effective date and who are entitled to pursue relief from removal in full § 240 proceedings, including eligibility for bond consideration under 8 U.S.C. § 1226(a).

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87. Accordingly, Respondents' reliance on the January 2025 expedited removal designation as a basis to deny Petitioner the procedural protections of regular § 240 removal proceedings—including eligibility for an individualized custody determination and bond consideration under 8 U.S.C. § 1226(a)—constitutes an unlawful retroactive application of the designation and violates Petitioner's Fifth Amendment right to due process.

COUNT FIVE

Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A)

88. Petitioner restates and realleges all paragraphs as if fully set forth here.

89. Respondents' conduct has deprived Petitioner of rights and protections guaranteed to him under the Due Process Clause of the Fifth Amendment.

90. Respondents' conduct also violates Petitioner's statutory rights under the INA, including his right to seek relief from removal in removal proceedings, including Cancellation of Removal for Nonpermanent Residents under INA § 240A(b).

91. Petitioner restates and realleges all paragraphs as if fully set forth here.

92. Under the Administrative Procedure Act ("APA"), a court shall "hold unlawful and set aside agency action, findings, and conclusions" found to be "not in accordance with law." 5 U.S.C. § 706(2)(A).

93. It is a well-established administrative principle that "agency action taken without lawful authority is at least voidable, if not void ab initio." *L.M.-M. v. Cuccinelli*, 442 F. Supp. 3d 1, 35 (D.D.C. 2020), citing *SW General, Inc. v. NLRB*, 796 F.3d 67, 79 (D.C. Cir. 2015); see also *Hooks v. Kitsap Tenant Support Servs., Inc.*, 816 F.3d 550, 555 (9th Cir. 2016) (invalidating agency action because it was taken by unauthorized official).

94. By categorically denying Petitioner an individualized custody determination and continuing to detain him under an asserted mandatory detention policy, Respondents have acted without lawful authority and contrary to the governing detention statute, 8 U.S.C. § 1226(a), as confirmed by the declaratory judgment in *Maldonado Bautista v. Santacruz*.

95. Respondents have made no finding that Petitioner is a danger to the community.

96. Respondents have made no finding that Petitioner is a flight risk.

97. By maintaining Petitioner's detention without consideration of his individualized facts and circumstances—including his long-term residence in the United States since October 1, 2002, his family ties, and his pending application for Cancellation of Removal under INA § 240A(b)—Respondents have further abused their discretion and violated the APA.

98. Accordingly, Respondents' unlawful categorical detention of Petitioner must be set aside as agency action "not in accordance with law" under 5 U.S.C. § 706(2)(A).

COUNT SIX

Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A)
Not in Accordance with Law and in Excess of Statutory Authority Unlawful
Detention

99. Petitioner restates and realleges all paragraphs as if fully set forth here.

100. Under the Administrative Procedure Act (“APA”), a court “shall ... hold unlawful ... agency action” that is “not in accordance with law,” “contrary to constitutional right,” “in excess of statutory jurisdiction, authority, or limitations,” or “without observance of procedure required by law.” 5 U.S.C. § 706(2)(A)–(D).

101. Congress has made clear that noncitizens placed in regular removal proceedings under section 240 of the Immigration and Nationality Act are governed by the civil detention framework of 8 U.S.C. § 1226(a), which provides for individualized custody determinations and consideration for release on bond.

102. Petitioner is not amenable to categorical denial of bond consideration where he is pursuing immigration relief in pending removal proceedings, including Cancellation of Removal under INA § 240A(b), and is entitled to the procedural protections afforded to individuals in regular proceedings under 8 U.S.C. § 1229a.

103. Respondents have nevertheless asserted that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b) and have denied him the opportunity for an individualized custody determination under § 1226(a), contrary to the INA and the declaratory judgment issued in *Maldonado Bautista*.

104. Because Petitioner remains detained without bond consideration despite his pending § 240 proceedings and statutory entitlement to individualized review, Respondents’ continued detention of Petitioner is unlawful and in excess of statutory authority.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests this Court to grant the following:

- (1) Assume jurisdiction over this matter;

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(2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;

(3) Declare that Petitioner's continued detention without an individualized custody determination violates the Due Process Clause of the Fifth Amendment;

(4) Declare that Respondents' categorical denial of bond consideration and refusal to provide a bond hearing under 8 U.S.C. § 1226(a), in violation of the declaratory judgment in Maldonado Bautista, is unlawful;

(5) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner from custody or, alternatively, to provide an individualized bond hearing forthwith;

(6) Issue an Order prohibiting the Respondents from transferring Petitioner from the district without the Court's approval;

(7) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and

(8) Grant any further relief this Court deems just and proper.

Dated: February 18, 2026.

Detained in ICE Custody at:

Folkston D. Ray ICE Processing Center

3026 GA-252 E, Folkston,
GA 31537



Irvin Bernal-Acosta

PROOF OF SERVICE

Irvin Bernal-Acosta

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I certify that on February 18, 2026, I served a copy of the Petition for Writ of Habeas Corpus,, on the Clerk's Office of the United States District Court:

Clerk of Court
U.S. District Court – Southern District of Georgia
PO Box 1636
Brunswick, GA 31521

Irvin Bernal-Acosta