UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

RICARDO MORENO SANTANA, Petitioner, v. JUAN BALTAZAR, *in his official capacity* as Warden of the Aurora ICE Processing Center; ROBERT HAGAN, *in his official capacity* as Field Office Director of the Aurora Field Office of Enforcement and Removal Operations, U.S. Immigrations and Customs Enforcement; TODD M. LYONS, *in his official capacity* as Acting Director, Immigration and Customs Enforcement, KRISTI NOEM, *in her official capacity* as Secretary, U.S. Department of Homeland Security; and PAMELA JO BONDI, in her official capacity as Attorney General of the United States; Respondents.	Case No. 1:26-cv-00787 PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF **A #** [redacted]

INTRODUCTION

1. Petitioner, Mr. Ricardo Moreno Santana, is a citizen of Mexico. Based on information and belief, U.S. Immigration and Customs Enforcement ("ICE") officers apprehended him on or about December 23, 2025, in Colorado. ICE is now unlawfully detaining him pursuant to 8 U.S.C. §1225(b) (Immigration and Nationality Act ("INA") §235(b)).
2. Petitioner, Mr. Moreno Santana, is currently detained at the GEO Contract Detention Facility in Aurora, Colorado. *See* ICE Detainee Locator Results, Exhibit 1
3. Petitioner last entered the United States without inspection sometime on or about April 8, 2025. *See* EOIR-42B Application for Cancellation of Removal, Exhibit 7. He has not left since that date. He has lived in the country for more than twenty years without contact with immigration.
4. ICE apprehended Petitioner on December 23, 2025, issued a Notice to Appear and Petitioner was placed in removal proceedings. *See* Notice to Appear and DHS Custody Determination, Exhibit 4.
5. Petitioner has applied for Cancellation of Removal before the Immigration Court, and that application remains pending. *See* Application for Cancellation of Removal, Exhibit 7.
6. Petitioner appeared for a Custody Redetermination Hearing with the Immigration Court on January 12, 2026 and the Immigration Judge ("IJ") granted Petitioner release on bond in the amount of $5,000, after a determination that Petitioner was not a flight risk nor a danger to the community. *See* Order of the Immigration Judge, Exhibit 5 and Bond Memorandum, Exhibit 6.

7. The Department of Homeland Security ("DHS") appealed the IJ's order granting bond on January 20, 2026. *See* DHS Notice of Appeal, Exhibit 8.
8. Respondents have refused to release Petitioner on the bond granted by the IJ, on the grounds that that grant of bond is on appeal. *See* Exhibit 1.
9. Petitioner is currently scheduled for an Individual Hearing on May 4, 2026. If he is not released on the bond granted by the IJ, he will be have been detained for almost four months by the time of that hearing, despite having been granted bond. *See* EOIR Case Status. *See* EOIR Automated Case Information, Exhibit 2.
10. On July 8, 2025, the U.S. Department of Homeland Security ("DHS") issued a new policy memorandum to all employees of ICE stating that "this message serves as notice that DHS, in coordination with the Department of Justice ("DOJ"), has revisited its legal position on detention and release authorities. DHS has determined that section 235 of the INA, rather than section 236, is the applicable immigration detention authority for all applicants for admission. The following interim guidance is intended to ensure immediate and consistent application of the Department's legal interpretation while additional operational guidance is developed." Memorandum, U.S. Immigration & Customs Enf't, Interim Guidance Regarding Detention Authority for Applications for Admission (July 8, 2025), https://www.aila.org/ice-memo-interim guidance-regarding-detention-authority-for-applications-for-admission (last visited on November 15, 2025), attached hereto as Exhibit 3.
11. On September 5, 2025, the Board of Immigration Appeals ("BIA") issued a precedential decision that unlawfully reinterpreted the INA. See *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), *attached hereto as* Exhibit 9. Prior to this decision, noncitizens like

Petitioner who had lived in the U.S. for many years, and were apprehended by ICE in the interior of the country, were detained pursuant to 8 U.S.C. § 1226(a) and eligible to seek custody redetermination hearings before Immigration Judges ("IJs"). Instead, in conflict with nearly thirty years of legal precedent, Petitioner is now considered subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) through Respondents policies and has no opportunity for release on bond while his removal proceedings are pending.

12. Petitioner's detention pursuant to §1225(b)(2)(A) violates the plain language of the INA and its implementing regulations. Petitioner, who has resided in the U.S. and who was apprehended in the interior of the U.S., should not be considered an "applicant for admission" who is "seeking admission." Rather, he should be detained, if at all, pursuant 8 U.S.C. § 1226(a), which allows for release on conditional parole or bond, and the IJ has already granted Petitioner bond under § 1226(a). *See* Order of the Immigration Judge, Exhibit 5 and Bond Memorandum, Exhibit 6.

13. Through this petition, Mr. Moreno Santana asks this Court to find that Respondents have unlawfully detained him under §1225(b)(2)(A), and that his detention, if any, is appropriate under §1226(a). Further, Mr. Moreno Santana asks this Court to reinstate the Immigration Court's initial custody redetermination issued on January 12, 2026, in the amount of $5,000, and order the immediate release of Petitioner from custody. *See Zadvydas v. Davis*, 533 U.S. 678, 687-88 (2001).

14. Petitioner seeks enforcement of his rights as a member of the Bond-Eligible 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 GEO Contract Detention ICE Facility in Aurora, Colorado. He now faces unlawful detention because the Department

of Homeland Security (DHS) and the Executive Office for Immigration Review (EOIR), through DOJ policy memorandums and BIA decisions, refuse to abide by the judgments issued on behalf of the certified class in *Maldonado Bautista v. Santacruz*.

15. On November 20, 2025, the United States District Court for the Central District of California 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), *attached hereto as* Exhibits 10 and 11.

16. On December 18, 2025, the United States District Court for the Central District of California entered final judgment in *Maldonado Bautista*, declaring that the class members "are detained under 8 U.S.C. § 1226(a) and are not subject to mandatory detention under § 1225(b)(2)," and "are entitled to consideration for release on bond by immigration officers and, if not released, a custody redetermination hearing before an immigration judge." *See* Exhibit 12.

17. The declaratory judgment held that the Bond Denial Class members are detained under 8 U.S.C. § 1226(a) and thus **may not be denied consideration for release on bond** under § 1225(b)(2)(A). *See* Exhibits 10 through 12.

18. Nonetheless, the Executive Office for Immigration Review and its subagency, the Immigration Court and the Department of Homeland Security (DHS) have blatantly refused to abide by the declaratory relief and have unlawfully ordered that Petitioner be denied the opportunity to be released on bond. Immigration judges have informed class members in bond hearings that they have been instructed by "leadership" that the declaratory judgment in *Maldonado Bautista* is not controlling, even with respect to class members, and that instead IJs remain bound to follow the agency's prior decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). *See* Guidance to all Immigration Judges as sent by Chief Immigration Judge (January 13, 2026), Exhibit 13.

19. On January 13, 2026, Chief Immigration Judge Teresa L. Riley issued a "Guidance" to all Assistant Chief Immigration Judges declaring that

> "Maldonado Bautista is not a nationwide injunction and does purport to vacate, stay, or enjoin *Yajure Hurtado*. Therefore, *Yajure Hurtado* remains binding legal precedent on agency adjudicators. For clarification, declaratory judgments differ from injunctions in that the former clarifies parties' legal rights and relationship without ordering specific action, while the latter is a court order compelling a party to do or stop doing a specific act. A declaratory judgement is not an equitable remedy and does not, by itself, have the effect of compelling specific action by a party." *See* Guidance to all Immigration Judges as sent by Chief Immigration Judge (January 13, 2026), Exhibit 13.

20. On February 18, 2026, the District Court in *Maldonado* granted a Motion to Enforce Judgment **and vacated *Matter of Yajure Hurtado* "as contrary to law under the [Administrative Procedure Act ("APA")]" pursuant to the District Court's authority under U.S.C. Section 2202.** *See* Order Granting Plaintiff Petitioners' Motion to Enforce Judgment (February 18, 2026), Exhibit 14.

21. The Court held that "Respondents cannot relitigate the validity of the Court's final judgment here nor continue to endorse an executive interpretation of law that is contrary to the final judgment's declaration of law." *See* Order Granting Plaintiff Petitioners' Motion to Enforce Judgment (February 18, 2026), Exhibit 14 at pg. 14.

22. In this case, Petitioner is a member of the Bond Eligible Class, as he:

    i. does not have lawful status in the United States and is currently detained at the GEO Contract Detention Facility in Aurora, Colorado. He was apprehended by immigration authorities on or about December 23, 2025. *See* Exhibit 4.

    ii. entered the United States without inspection in 2005 and was not apprehended upon arrival, *cf. Id.*; and

    iii. is not detained under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231. *See* Exhibit 11.

23. As Petitioner is clearly a class member certified by the court in *Maldonaldo Bautista*, this Court should expeditiously grant this petition and order his immediate release on the bond granted by the IJ.

24. Respondents are bound by the class certification in *Maldonado Bautista*, as, contrary to the Chief IJ's assertion, the District Court for the Central District of California's declaration of the rights of the class has the full "force and effect of a final judgment." 28 U.S.C. § 2201(a).

25. Even if the Chief Immigration Judge and the EOIR maintain the position that *Maldonado Bautista* does not compel a specific action, in the "Guidance" email the Chief Immigration Judge acknowledges that, at the least, *Maldonado Bautista* "clarifies parties' legal rights and relationships." *See* Exhibit 12. In this case, the legal rights and relationship being clarified are that Petitioner is not subject to mandatory detention and may not be denied consideration for release on bond under Section 1225(b)(2)(A). *See* Exhibits 10 through 12 and 14.

26. 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 granted by the IJ, as a Bond Eligible Class member. Even if Respondents were not bound by the earlier rulings in *Maldonado Bautista*, they are now bound by the final judgment of December 18, 2025 and the Order granting the Motion to Enforce Judgment of February 18, 2026, which vacated *Matter of Yajure Hurtado* in its entirety, and ordered class wide notice of class-member eligibility. *See* Exhibits 12 and 14.

27. Because Respondents are detaining Petitioner in violation of the judgments issued in *Maldonado Bautista,* the Court should accordingly order that within one day, Respondent DHS must release Petitioner on the bond granted by the IJ.

CUSTODY

28. Petitioner is currently in the custody of ICE at the GEO Aurora Contract Detention Facility. *See* Exhibit 1. He is therefore in "'custody' of the Department of Homeland Security, ICE, within the meaning of the habeas corpus statute." *Jones v. Cunningham*, 371 U.S. 236, 243 (1963).

JURISDICTION

29. This court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause), and the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et. seq.*

30. 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.*, the All Writs Act, 28 U.S.C. § 1651, and the Immigration and Nationality Act, 8 U.S.C. § 1252(e)(2).

31. Federal district courts have jurisdiction to hear habeas claims by non-citizens challenging both the lawfulness and the constitutionality of their detention. *See Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

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

32. The Court must grant the petition for writ of habeas corpus or issue an order to show cause ("OSC") to Respondents "forthwith," unless Petitioner is not entitled to relief. *See* 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.*

33. Petitioner is "in custody" for the purpose of § 2241 because he was arrested and remains detained by Respondents despite the grant of a bond by the Immigration Court.

34. 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. See* 2025 WL 3289861, at *11 and 2025 WL 3288403, at *9; *See* Exhibits 10 through 12 and 14.

VENUE

35. Venue is properly before this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees or officers of the United States acting in their official capacity and because a substantial part of the events or omissions giving rise to the claim occurred in the District of Colorado. Petitioner is under the jurisdiction of ICE's Denver Field Office, and he is currently detained in Aurora, Colorado, at the GEO Aurora Contract Detention Facility. *See* Exhibit 1.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

36. Administrative exhaustion is unnecessary as it would be futile. *See, e.g., Aguilar v. Lewis*, 50 F. Supp. 2d 539, 542–43 (E.D. Va. 1999).

37. It would be futile for Petitioner to seek Respondents' compliance with the IJ's order granting him release on bond before the BIA, in response to DHS's appeal, because of the BIA decision holding that anyone who has entered the U.S. without inspection is now considered an "applicant for admission" who is "seeking admission" and therefore subject to mandatory detention under § 1225(b)(2)(A). See *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025); see also Zaragoza Mosqueda v. Noem, 2025 WL 2591530, at *7 (C.D. Cal. Sept. 8, 2025) (noting that BIA's decision in *Yajure Hurtado* renders exhaustion futile).

38. Although *Matter of Yajure Hurtado* has been vacated by the District Court for the Central District of California, there is no evidence that the Respondents are abiding by that Court's orders. DHS's appeal of the IJ's order granting Petitioner's bond cites *Yajure Hurtado* in support of its argument that the IJ lacked jurisdiction to grant bond, and uses the same logic as the *Yajure Hurtado* decision in arguing that Petitioner is an "applicant for admission" and is subject to 8 U.S.C. §1225(b)(2)(A). *See* DHS Notice of Appeal, Exhibit 8. By appealing the IJ's grant of bond based on this argument after the repeated orders of the Court in *Maldonado Bautista*, including the final judgment, Respondents have demonstrated their intent to continue their refusal to comply with those orders. *Id.* Based on this pattern of noncompliance, this Court should conclude that Respondents will also refuse to comply with Central District of California's order vacating *Yajure Hurtado*. It

would therefore be futile for Petitioner to await the BIA's decision on DHS's appeal of his bond grant before seeking relief from this Court.

39. DHS's appeal, while mostly dedicated to arguing that Petitioner is an "applicant for admission" and is subject to 8 U.S.C. §1225(b)(2)(A), it very briefly claims that Petitioner did not meet his burden in the custody redetermination hearing before the IJ to "establish that he is not a significant flight risk." *See* DHS Notice of Appeal, Exhibit 8 at pg. 22-23. DHS claims that the evidence Petitioner presented at his bond hearing did not prove his eligibility for Cancellation of Removal and claims that his "2014 arrest for assault, child abuse, and crimes against a person" makes him a flight risk. *Id.* This section of DHS's appeal does not acknowledge that the IJ's order and memorandum had addressed these questions, stating:

> "The DHS argued simply that Respondent poses a flight risk because he had not yet filed any relief application in removal proceedings. Yet, the record showed he is prima facie eligible to apply for cancellation of removal for certain nonpermanent residents." *See* Bond Memorandum, Exhibit 6 at pg. 3.

The IJ also noted that the criminal charges DHS later referred to in its appeal were dismissed, and that DHS's own submissions in the proceeding acknowledged that Petitoner has no criminal convictions. *Id.* In this section of its appeal argument, DHS cites authority for the proposition that a noncitizen must demonstrate that he is not a significant flight risk in order to be granted bond, it cites no authority for why the IJ's conclusion that Petitioner had demonstrated he was a low flight risk was erroneous. *See* DHS Notice of Appeal, Exhibit 8 at pg. 22-23. The cursory, summary, and conclusory nature of DHS's argument on the issue of flight risk, together with Respondents' widespread pattern of failure to

comply with their obligations under *Maldonado Bautista*, as found by the District Court for the Central District of California, indicates that the inclusion of the flight risk issue in DHS's appeal to the BIA was a mere pretext to prevent Petitioner from obtaining relief from this Court. *See* Exhibit 14. By including this issue in the appeal, however brief and unsupported the argument, DHS will likely claim that the statutory issue of whether Petitioner is detained under 8 U.S.C. § 1225(b)(2)(A) or §1226(a), which has already been firmly resolved by *Maldonado Bautista*, is not the sole issue in the appeal pending before the BIA and that Petitioner should therefore be required to await the conclusion of the BIA appeal process before seeking relief from this Court.

40. If Petitioner is required to respond to DHS's appeal to the BIA and await the BIA's decision before he is released on the bond granted by the I.J., this is likely to be a long process, with no certainty as to when the BIA will make a decision, and Petitioner would be unlawfully detained throughout that time, contrary to his statutory and constitutional rights. The BIA would be unlikely to make a decision prior to Petitioner's scheduled Individual Hearing before the IJ on May 4, 2026. *See* Exhibit 2. If, at that hearing, the IJ denies Petitioner's application for Cancellation of Removal, he would then be required to appeal that decision to the BIA, and ultimately to the Tenth Circuit Court of Appeals. 8 U.S.C. §1252(a)(5). By the time his case reached the Tenth Circuit, the question of whether he may be lawfully detained under §1225(b) or §1226(a) during his removal proceedings would be moot; after a final order of removal is issued, detention and release are instead governed under §1231(a). Therefore, to require Petitioner to exhaust the BIA appeals process before seeking relief from this Court would be illogical, futile, and in violation of Petitioner's constitutional due process and statutory rights. It would allow Respondents to entirely

evade judicial review of their improper application of §1225(b) to persons whose detention is properly governed by §1226(a).

41. Additionally, the agency does not have jurisdiction to review Petitioner's claim of unlawful custody in violation of his due process rights, and it would therefore be futile for him to pursue administrative remedies. *Reno v Amer.-Arab Anti-Discrim. Comm.*, 525 U.S. 471, 119 S.Ct. 936, 142 L.Ed.2d 940 (1999) (finding exhaustion to be a "futile exercise because the agency does not have jurisdiction to review" constitutional claims).

PARTIES

42. Petitioner is from Mexico and has resided in the U.S. since 2005. He is currently detained in the Aurora Contract Detention Facility in Aurora, Colorado.

43. Respondent Juan Baltazar is sued in his official capacity as Warden of the Aurora ICE Processing Center. In his official capacity, Juan Baltazar is Petitioner's immediate custodian.

44. Respondent Robert Hagan is sued in his official capacity as Field Office Director, Denver Field Office, Enforcement and Removal Operations, ICE. In his official capacity, Respondent Robert Hagan is the legal custodian of Petitioner.

45. Respondent Todd M. Lyons is sued in his official capacity as Acting Director of ICE. As the Acting Director of ICE, Respondent Lyons is a legal custodian of Petitioner.

46. Respondent Kristi Noem is sued in her official capacity as Secretary of Homeland Security. As the head of the U.S. Department of Homeland Security, the agency tasked with enforcing immigration laws, Secretary Noem is Petitioner's ultimate legal custodian.

47. Respondent Pamela Jo Bondi is sued in her official capacity as the Attorney General of the United States. As Attorney General, she has authority over the Department of Justice and is charged with faithfully administering the immigration laws of the United States.

LEGAL BACKGROUND AND ARGUMENT

48. The INA prescribes basic forms of detention for noncitizens in removal proceedings.

49. First, individuals detained pursuant to 8 U.S.C. § 1226(a) are generally entitled to a custody redetermination hearing, unless they have been arrested, charged with, or convicted of certain crimes and are subject to mandatory detention. *See* 8 U.S.C. §§ 1226(a), 1226(c) (listing grounds for mandatory detention); *see also* 8 C.F.R. §§ 1003.19(a) (immigration judges may review custody determinations made by DHS), 1236.1(d) (same).

50. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) as well as other recent arrivals deemed to be "seeking admission" under § 1225(b)(2).

51. Third, the INA authorizes detention of noncitizens who have received a final order of removal, including those in withholding-only proceedings. *See* 8 U.S.C. § 1231 (a)-(b).

52. The detention provisions at § 1226(a) and § 1225(b)(2) 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, 300-582 to 3009-583, 3009-585. Section 1226 was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).

53. Following the enactment of the IIRIRA, the U.S. Department of Justice's Executive

Office of Immigration Review ("EOIR") drafted new regulations explaining that, in general, people 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) ("Despite being applicants for admission, aliens who are present without having been admitted or paroled (formed referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination").

54. Thus, in the decades that followed, most people who entered without inspection and were thereafter detained and placed in standard removal proceedings were considered for release on bond and also received bond hearings before an Immigration Judge, unless their criminal history rendered them ineligible. That practice was consistent with many more decades of prior practice, in which noncitizens who had entered the United States, even if without inspection, were entitled to a custody hearing before an IJ or other hearing officer. In contrast, those who were stopped at the border were only entitled to release on parole. See 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 220 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

55. For decades, long-term residents of the U.S. who entered without inspection and were subsequently apprehended by ICE in the interior of the country have been detained pursuant to § 1226 and entitled to custody redetermination hearings before an IJ, unless barred from doing so due to their criminal history.

56. In July 2025, however, ICE began asserting that all individuals who entered without

inspection should be considered "seeking admission" and therefore subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A).

57. On September 5, 2025, the BIA issued a precedential decision adopting this interpretation, departing from the INA's text, federal precedent, and existing regulations. *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), attached hereto as Exhibit 9.

58. Defendants' new legal interpretation is plainly contrary to the statutory framework and its implementing regulations. Indeed, for decades, Defendants had applied § 1226(a) to people like the Petitioner. Defendants' new policies are thus not only contrary to law but are arbitrary and capricious in violation of the Administrative Procedure Act ("APA"). *See* 5 U.S.C. §706(2)(A). They were also adopted without complying with the procedural requirements of the APA. 5 U.S.C. §706(2)(D).

59. Numerous federal courts have rejected this interpretation and instead have consistently found that § 1226, not § 1225(b)(2), authorizes detention of noncitizens who entered without inspection and were later apprehended in the interior of the country. *See e.g.*, *Sampiao v. Hyde*, 2025 WL 2607924 (D. Mass. Sept. 9, 2025) (noting court's disagreement with BIA's analysis in *Yajure Hurtado*); *Leal-Santana v. Noem*, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Lopez Benitez v. Francis*, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Jimenez v. FCI Berlin, Warden*, No. 25-cv-326-LM-AJ (D.N.H. Sept. 8, 2025); *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Cuevas Guzman v. Andrews, 2025 WL 2617256, at *3 n.4 (E.D. Cal. Sept. 9, 2025); see also Lepe v. Andrews, No. 1:25-cv-01163-KES-SKO (HC) (E.D. Cal. Sept. 23, 2025), Lopez v. Hardin, No. 2:25-cv-830-KCD-NPM (M.D. Fla. Sept. 25, 2025); and Chafla v. Scott, No. 2:25-cv-00437-SDN (D. Maine Sept. 21, 2025).* The District Court for the

Eastern District of California vacated *Matter of Yajure Hurtado* in its most recent order in *Maldonado*. *See* Exhibit 14.

60. The District Court for the District of Colorado has also found that when a noncitizen has previously been granted bond, has complied with the terms of his release, and is subsequently re-detained by ICE, the appropriate remedy is immediate release, and not a new custody hearing. *See e.g. Manriquez Hernandez v. Baltazar, et. al.*, No. 1:26-cv-00529-CNS (D. Colo) (Feb. 20, 2026), ECF 9; *Cruz Valera v. Baltazar, et. al.*, No. 1:25-cv-03744-CNS (D. Colo) (Dec. 5, 2026), ECF 9.

61. Under the Supreme Court's recent decision in *Loper Bright v. Raimondo*, this Court should independently interpret the statute and give the BIA's expansive interpretation of § 1225(b)(2) no weight, as it conflicts with the statute, regulations, and precedent. 603 U.S. 369 (2024).

62. The detention provisions at § 1226(a) and § 1225(b)(2) 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. Following IIRIRA, the Executive Office for Immigration Review ("EOIR") issued regulations clarifying that individuals who entered the country without inspection were not considered detained under § 1225, but rather 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) ("Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination").

63. The statutory context and structure also make clear that § 1226 applies to individuals who have not been admitted and entered without inspection. In 2025, Congress added new mandatory detention grounds to § 1226(c) that apply only to noncitizens who have not been admitted. *See* The Laken Riley Act, Pub. L. No. 119-1, § 2, 139 Stat. 3, 3 (2025) (8 U.S.C. § 1226(c)(1)(E)).

64. By specifically referencing inadmissibility for entry without inspection under 8 U.S.C. § 1182(6)(A), Congress made clear that such individuals are otherwise covered by § 1226(a). Thus, § 1226 plainly applies to noncitizens charged as inadmissible, including those present without admission or parole.

65. The Supreme Court has explained that § 1225(b) is concerned "primarily [with those] seeking entry," and is generally imposed "at the Nation's borders and ports of entry, where the Government must determine whether [a noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 297, 2987 (2018). In contrast, Section 1226 "authorizes the Government to detain certain aliens *already in the country* pending the outcome of removal proceedings." *Id.* at 289 (emphases added).

66. Furthermore, § 1225(b)(2) specifically applies only to those "seeking admission," and the implementing regulations at 8 C.F.R. § 1.2 address noncitizens who are "coming or attempting to come into the United States." The use of the present progressive tense would exclude noncitizens like Petitioner who are apprehended in the interior years after they entered, as they are no longer "seeking admission" or "coming [...] into the United States." *See Martinez v. Hyde*, 2025 WL 2084238 at *6 (D. Mass. July 24, 2025) (citing the use of present and present progressive tense to support conclusion that INA § 1225(b)(2) does not apply to individuals apprehended in the interior); *see also Al Otro*

Lado v. McAleenan, 394 F. Supp. 3d 1168, 1200 (S.D. Cal. 2019) (construing "is arriving" in INA § 235(b)(1)(A)(i) and observing that "[t]he use of the present progressive, like use of the present participle, denotes an ongoing process").

67. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to Petitioner, who had entered the U.S. years before he was apprehended. Additionally, Petitioner's removal proceedings remain pending and he is scheduled for an Individual Hearing to adjudicate his application for Cancellation of Removal, he would be eligible to appeal to the BIA if his application were to be denied, and there is no certainty about when the BIA would make a decision on that appeal. Petitioner could be waiting for years for the decision with no certainty, which would be an illegal detention.

68. Further, Petitioner is not a danger to the community, as an IJ already assessed his case and granted him release on bond in January 2026. This initial custody redetermination required a legal inquiry as to whether Petitioner was a danger to the community or a flight risk. In granting the bond request, the Immigration Judge determined that he was neither and that he merited a favorable exercise of discretion, and should be released on bond. *See* Order of the Immigration Judge, Exhibit 5, and Bond Memorandum, Exhibit 6. The IJ's order "reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk." *See Saravia v. Sessions*, 280 F. Supp. 3d. 1168, 1176 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018).

69. Mr. Moreno Santana's prior bond grant creates a protected liberty interest that has long been recognized in the criminal detention context, and an "implied promise" that the person will not be re-detained unless they fail to live up to their conditions of release.

See Morrissey v. Brewer, 408 U.S. 471, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972); *see also Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973). This doctrine, although it developed in criminal legal context, has also been applied in the immigration context. *See Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. 2019); *Pinchi v. Noem*, -F. Supp.3d-, 2025 WL 2084921 (N.D. Cal. July 24, 2025).

70. Petitioner's continued detention without the opportunity for release on a bond that he was granted by an IJ is unlawful.

STATEMENT OF FACTS

71. Petitioner is a citizen of Mexico.
72. Upon information and belief, Petitioner has resided in the U.S. since 2005.
73. ICE initially detained Petitioner in December 2025 and he was granted release on bond in the amount of $5,000 bond by an IJ on January 12, 2026. *See* Exhibits 5 and 6.
74. DHS appealed the IJ's order granting bond on January 20, 2026. *See* DHS Notice of Appeal, Exhibit 8.
75. Petitioner remains in detention at the GEO Contract Detention Center in Aurora, CO.
76. Petitioner has sought relief in the form of Cancellation of Removal and that application remains pending with the Immigration Court. *See* Exhibit 7.
77. Petitioner has not been released on the bond granted by the IJ due to Respondents' blatant refusal to abide by the District Court for the Central District of California's orders in *Maldonado Bautista.* See Exhibits 10 through 12 and 14.
78. Without relief from this Court, Petitioner faces continued detention without release.

COUNT I

Violation of 8 U.S.C. § 1226(a)

Unlawful Denial of Release on Bond

79. Petitioner restates and re-alleges all paragraphs 1 to 78 as if fully set forth herein.

80. Petitioner may be detained, if at all, pursuant to 8 U.S.C. § 1226(a).

81. Petitioner has been provided with a custody redetermination hearing but has not been, and will not be, released on the bond granted by the IJ due to the Respondents' refusal to abide by Court rulings and the controlling statutes as required by law.

82. Petitioner's continuing detention is therefore unlawful.

COUNT II

Violation of the Bond Regulations, 8 C.F.R. §§ 236.1, 1236.1 and 1003.19 Unlawful Denial of Release on Bond

83. Petitioner restates and realleges paragraphs 1 to 78 as if fully set forth here.

84. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of "Apprehension, Custody, and Detention of [Noncitizens]," the agencies explained that "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination." 62 Fed. Reg. at 10323. The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.

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

COUNT III

Violation of Fifth Amendment Right to Due Process

86. Petitioner restates and realleges paragraphs 1 to 78 as if fully set forth here.

87. The Fifth Amendment's Due Process Clause prohibits the federal government from depriving any person of "life, liberty, or property, without due process of law." U.S. Const. Amend. V.

88. The Supreme Court has repeatedly emphasized that the Constitution generally requires a hearing before the government deprives a person of liberty or property. *Zinermon v. Burch*, 494 U.S. 113, 127 (1990).

89. Under the *Mathews v. Eldridge* framework, the balance of interests strongly favors Petitioner's release. 424 U.S. 319, 334-335 (1976).

90. Petitioner's private interest in freedom from detention is profound. The interest in being free from physical detention is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004); *see also Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) ("Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.").

91. The risk of erroneous deprivation is exceptionally high. Petitioner has ties to the community, including his Lawful Permanent Resident spouse and U.S. citizen children.

92. The government's interest in detaining Petitioner without due process is minimal. Immigration detention is civil, not punitive, and may only be used to prevent danger to

the community or ensure appearance at immigration proceedings. *See Zadvydas*, 533 U.S. at 690.

93. Furthermore, the "fiscal and administrative burdens" of providing Petitioner with a bond hearing are minimal, particularly when weighed against the significant liberty interests at stake. *See Mathews*, 424 U.S. at 334–35.

94. Petitioner has already had a bond hearing and was granted a bond. *See* Exhibits 5 and 6. The IJ's grant of bond reflects a determination that he is not a danger to the community and not a flight risk.

COUNT IV

Violation of the INA:

Request for Relief Pursuant to *Maldonado Bautista*

95. Petitioner restates and re-alleges all paragraphs 1 to 78 as if fully set forth herein.

96. On February 18, 2026, the District Court in *Maldonado* Bautista issued an Order Granting Plaintiff Petitioners' Motion to Enforce Judgment in which it clarified the rights and eligibility of the *Maldonado* class-members for bond. As a member of the Bond Eligible Class, Petitioner is entitled to consideration for release on bond under 8 U.S.C. § 1226(a), as has already been found by an IJ. *See* Exhibits 5 and 6.

97. The Order Granting Plaintiff Petitioners' Motion to Enforce Judgment in *Maldonado Bautista* holds that Respondents continue to violate the INA and waste the court's limited resources in their continued unlawful application of the mandatory detention statute at § 1225(b)(2) to class members, such as Petitioner. *See* Exhibit 14.

98. 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). They are also bound by the final judgment issued on December 18, 2025 and the Order Granting Plaintiff Petitioners' Motion to Enforce Judgment. *See* Exhibits 12 and 14.

99. 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 orders in *Maldonado Bautista*.

100. Considering these factors, Petitioner respectfully requests that this Court order his immediate release from custody.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court will:

(1) Assume jurisdiction over this matter;

(2) Order that he not be transferred outside of this District;

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

(4) Declare that his detention is unlawful;

(5) Issue a Writ of Habeas Corpus ordering Respondents to release him from custody pursuant to the bond granted by the IJ within one day;

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

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

Date: February 25, 2026

Respectfully Submitted,

/s/Scott Brian Petiya

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

I, Scott Brian Petiya, hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief under 28 U.S.C. § 2242 or under the U.S. Constitution are true and correct to the best of my knowledge.

Dated this 25th day of February, 2026.

/s/ Scott Brian Petiya. Esq.