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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Faustino Nahuacatl-Luna)
)
Petitioner,)
)
v.)
)
Juan Baltazar, in his official capacity as Warden)
of the Denver Contract Detention Facility;)
Robert Hagan, in his official capacity as Field)
Office director, Denver Field Office, U.S.)
Immigration and Customs Enforcement; **KRISTI**)
NOEM, in her official capacity as Secretary of)
the U.S. Department of Homeland Security;)
PAMELA BONDI, in her official capacity as)
Attorney General of the United States,)
)
Respondents.)

Case No. _____

**PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF**

INTRODUCTION

1. Petitioner, Faustino Nahuacatl-Luna (“Petitioner”), has been residing in the United States since around 2010.
2. On or around February 9, 2026, he was apprehended by Immigration and Customs Enforcement (“ICE”) on his way to work when he was stopped in Landham, Maryland, without a warrant.
3. The basis for Petitioner’s detention is his presence in the United States without admission or parole. 8 U.S.C. § 1182(a)(6)(A)(i). He remains in unlawful detention, without the opportunity for a bond hearing, under *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).
4. *Matter of Yajure Hurtado*, 29 I&N Dec. 216 articulates a new Executive Office for Immigration Review (“EOIR”) policy that all persons who entered the United States without inspection, regardless of how long they have lived in the United States or how far they were apprehended from the border, are detained pursuant to 8 U.S.C. § 1225(b)(2)(A) and are thus ineligible for a discretionary bond hearing under § 1226(a).
5. This Board of Immigration Appeals (“BIA”) decision further reflects an ICE memorandum, issued in July 2025, that instructs its attorneys to coordinate with the Department of Justice, the agency housing EOIR, to reject custody redetermination hearings for applicants who arrived in the United States without documents.¹

¹ See “ICE declares millions of undocumented immigrant ineligible for bond hearings,” *The Washington Post* (Jul. 15, 2025) <https://www.washingtonpost.com/immigration/2025/07/14/ice-trump-undocumented-immigrants-bond-hearings/>.

6. The agencies' reading of the Immigration and Nationality Act's ("INA's") detention provisions is a violation of the statute and due process. As this Court has previously concluded in numerous cases, § 1225(b)(2)(A) does not apply to individuals like Petitioner who have been present in the United States for years. *See, e.g., Hernandez-Redondo v. Bondi*, No. 25-cv-03993-PAB, 2026 WL 290989, at *2 (D. Colo. Feb. 4, 2026); *Armeta v. Noem*, No. 26-cv-00236-PAB, 2026 WL 274634, at *1-5 (D. Colo. Feb. 3, 2026); *Martinez v. Baltazar*, No. 26-cv-00106-PAB, 2026 WL 194163, at *2-5 (D. Colo. Jan. 26, 2026); *Garcia Abanil v. Baltazar*, -- F.Supp.3d --, 2026 WL 100587, at *4 (D. Colo. Jan. 14, 2026); *Garcia-Perez v. Guadian*, No. 25-cv-04069-PAB, 2026 WL 89613, at *2-4 (D. Colo. Jan. 13, 2026); *Morales Lopez v. Baltazar*, 2026 WL 25161 (D. Colo. Jan. 5, 2026); *Alfaro Orellana v. Noem*, No. 25-cv-03976-PAB, 2025 WL 3706417, at *2-4 (D. Colo. Dec. 22, 2025); *Florez Marin v. Baltazar*, No. 25-cv-03697-PAB, 2025 WL 3677019, at *1-4 (D. Colo. Dec. 18, 2025). Instead, such individuals are subject to detention under § 1226(a) and are eligible for release on bond. *De La Cruz v. Juan Baltazar, Warden of the Denver Cont. Det. Facility*, No. 26-cv-00360-PAB, 2026 U.S. Dist. LEXIS 31966, *6 (D. Colo. Feb. 17, 2026) ("Because there is no evidence that petitioner has been provided a bond hearing, his current detention violates § 1226(a).").

7. Accordingly, Petitioner seeks an order of declaratory and injunctive relief and set aside relief under the Administrative Procedure Act ("APA") requiring that he is released immediately or, in the alternative, provided with a bond hearing before an immigration judge ("IJ").

JURISDICTION & VENUE

8. This Court has jurisdiction under 28 U.S.C. § 2241 (federal habeas statute); 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 2201-2 (declaratory judgment); and United States Constitution Article I, Section 9 (Suspension Clause).

9. The federal district courts have jurisdiction under 28 U.S.C. § 2241 to hear habeas claims by individuals challenging the lawfulness of their detention. *See, e.g., Zadvydas v. Davis*, 533 U.S. 678 (2001); *Demore v. Kim*, 538 U.S. 510 (2003). In *Jennings v. Rodriguez*, 583 U.S. 281, 292-96 (2018), the Supreme Court again upheld the federal courts' jurisdictions to review such claims.

10. Venue is proper in this district and division pursuant to 28 U.S.C. § 2241(c)(3) and 28 U.S.C. § 1391(b)(2) and (e)(1) because Petitioner is detained within this district.

THE PARTIES

11. Petitioner is a citizen of Mexico who entered the United States in or around 2010. He is currently detained at the Denver Contract Detention Facility in Aurora, Colorado.

12. Juan Baltazar is Warden of the Denver Contract Detention Facility and is a federal agent. Mr. Baltazar is a legal custodian of Petitioner and is sued in his official capacity.

13. Robert Hagan is the Field Office Director of the Denver Field Office, U.S. ICE and is a federal agent. Mr. Hagan is a legal custodian of Petitioner and is sued in his official capacity.

14. Kristi Noem is the Secretary of the U.S. Department of Homeland Security ("DHS"). DHS oversees ICE, which is responsible for administering and enforcing the

immigration laws. Secretary Noem is the ultimate legal custodian of Petitioner. She is sued in her official capacity.

15. Pamela Bondi is the Attorney General of the United States. She oversees the immigration court system, which is housed within EOIR and includes all IJs and the BIA. She is sued in her official capacity.

REQUIREMENTS OF 28 U.S.C. § 2241

16. The Court must grant the petition for a writ of habeas corpus or order Respondents to show cause “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, Respondents must file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*

17. “Habeas is the exclusive remedy for a prisoner who seeks immediate or speedier release from confinement.” *Skinner v. Switzer*, 562 U.S. 521 (2011) (cleaned up); *see also Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020) (“Blackstone wrote that habeas was a means to ‘remov[e] the injury of unjust and illegal confinement.’”) (quoting 3 W. Blackstone, Commentaries on the Laws of England 137); *Soberanes v. Comfort*, 388 F.3d 1305, 1310 (10th Cir. 20024) (“Challenges to immigration detention are properly brought directly through habeas.”).

18. “The fundamental purpose of a § 2241 habeas proceeding is the same as that of 2254 habeas and § 2255 proceedings: they are an ‘attack by a person in custody upon the legality of that custody, and . . . the traditional function of the writ is to secure release from illegal custody.’” *McIntosh v. U.S. Parole Com’n*, 115 F.3d 809, 811 (10th Cir. 1997) (quoting *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973)).

19. Petitioner requests that the Court issue an Order to Show Cause, and direct Respondents to file a response within three days, in light of the significant restraint on his liberty and clear Constitutional violations in this case.

LEGAL BACKGROUND

I. OVERVIEW OF THE INA'S DETENTION FRAMEWORK

20. Relevant to this case, the INA includes two provisions that primarily govern the detention of noncitizens.

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

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

23. 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. 104208, Div. C, §§ 30203, 110 Stat. 3009-546, 3009 582 to 3009583, 3009 585.

24. Following the enactment of IIRIRA, 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).

25. Thus, in the decades that followed, most people who entered without inspection, unless they were subject to some other detention authority, received bond hearings.

26. This practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed “arriving” were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply restates the detention authority previously found at § 1252(a)).

II. RESPONDENTS HAVE ENACTED A POLICY THAT VIOLATES INA’S STATUTORY SCHEME

27. In July 2025, ICE released a memorandum instructing its attorneys to coordinate with EOIR to reject bond hearings for applicants who arrived in the United States without documents.

28. Thereafter, on September 5, 2025, the BIA published *Matter of Yajure Hurtado*, 29 I&N Dec. 216, which confirms that EOIR is taking the position that noncitizens who entered the United States without admission or parole are ineligible for IJ bond hearings.

29. As *Matter of Yajure Hurtado* is binding on IJs, it represents the widespread position that EOIR is applying across the United States.

30. EOIR’s interpretation defies the INA.

31. The plain text of the provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

32. Section 1226(a) applies by default to all persons “pending a decision on whether the [noncitizen] is to be removed from the United States.”

33. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. To that end, § 1226(c)(1)(E), which was recently added by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025), expressly references 8 U.S.C. § 1182(a)(6)(A)(i), making clear that, by default, such people are afforded a bond hearing under subsection (a). Respondents' interpretation of § 1225(b)(2) renders § 1226(c)(1)(E) superfluous.

34. On the contrary, § 1225(b) applies to people arriving at United States ports of entry or who recently entered the United States. The statute's entire framework is premised on inspections at the border of people who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A). Indeed, the title of § 1225(b) indicates that it specifically applies at the point of "inspection for applicants for admission."

35. Moreover, EOIR's interpretation of the INA's detention framework contradicts Supreme Court precedent.

36. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to Petitioner and his immediate release is warranted. *See Martinez-Orellana v. Hagan, et al.*, No. 1:26-cv-00355 (WJM) (D. Colo. Feb. 13, 2026) ("In these circumstances—where Respondents have clearly violated Martinez-Orellana's due process rights by depriving him of the administrative process to which he is entitled—the Court concludes that immediate release is warranted.").

III. *Maldonado Bautista* Rejected Respondents' Detention Policy and Ordered that Nationwide Class Members Are Entitled to Bond Hearings

37. On November 20, 2025, the Central District of California issued an order granting partial summary judgment ("MSJ Order") in *Lazaro Maldonado Bautista et al.*

v. Ernesto Santacruz Jr. et al., which rejected Respondents' policy governing Petitioner's continued detention. *Bautista v. Santacruz*, No. 5:25-cv-01873, 2025 U.S. Dist. LEXIS 233085, *29 (C.D. Cal. Nov. 20, 2025).

38. Shortly thereafter, the *Maldonado Bautista* court granted a nationwide class certification covering all noncitizens in the United States without lawful status who: (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time DHS makes an initial custody determination. *Bautista v. Santacruz*, No. 5:25-cv-01873, 2025 U.S. Dist. LEXIS 231977, *26 (C.D. Cal. Nov. 25, 2025).

39. The court concluded that class members are detained under 8 U.S.C. § 1226(a) and must be afforded a bond hearing before an IJ. *Id.* at *25 (“Respondents have failed, on a systemic basis, to provide Petitioners and putative class members with the necessary safeguards imbued by the INA in violation of their rights.”).

40. Following the *Maldonado Bautista* court's decisions, Respondents took the position that, because the MSJ Order was not final, it was merely an advisory opinion. *Bautista v. Santacruz*, No. 5:25-cv-01873, 2025 U.S. Dist. LEXIS 269220, *16 (C.D. Cal. Dec. 18, 2025).

41. Thus, on December 18, 2025, the *Maldonado Bautista* court granted the Plaintiffs' request to issue a clarifying decision and enter a final judgment. *Id.* at * 22. In doing so, the court declared Respondents' detention policy unlawful and, thus, vacated it under the APA. *Id.* The Court further clarified that, while the MSJ Order did not grant vacatur of *Matter of Yajure Hurtado* under the APA, the decision could not “be squared with

the MSJ Order.” *Id.* at *12. Accordingly, *Matter of Yajure Hurtado* is “no longer controlling; the legal conclusion underlying the decision is no longer tenable.” *Id.*

42. On February 18, 2026, the *Maldonado Bautista* court took one step further and expressly vacated *Matter of Yajure Hurtado*. See *Bautista v. Santacruz*, C.D. Cal. No. 5:25-cv-01873, Dkt. 116.

43. As Petitioner is a *Maldonado Bautista* class member, he is entitled to a bond hearing under 8 U.S.C. § 1226(a).

FACTS

44. Petitioner is a 43-year-old native and citizen of Mexico who entered the United States without inspection in or around 2010. He was never apprehended by immigration authorities until his recent arrest.

45. After entry, Petitioner established a stable residence in Maryland. Since September 2025, he has resided with his partner, two United States citizen children, and a United States citizen stepson in Hyattsville, Maryland.

46. As a dedicated partner and father, Petitioner has provided unwavering physical, emotional, and financial support to his family members. In addition to the members of his household, he financially supports his mother in Mexico.

47. Petitioner has maintained stable employment as a machine operator at a factory in Greenbelt, Maryland, for the past eight years and previously worked in the same capacity for another company for several years. He and his partner have been working parents to their three children; since Petitioner’s detention, however, the family has struggled to make ends meet, as his partner’s income alone is insufficient to sustain the household.

48. Outside of work, Petitioner is dedicated to his family. He has been actively involved in taking his 11-year-old child, who has a genetic growth condition and a spinal issue, to medical appointments. Petitioner spends weekday evenings and weekends caring for his children, helping his partner with housework, and cooking for the household.

49. Petitioner is deeply loved by his family and community. Since his detention, his children have stopped eating regularly and are reluctant to attend school. Petitioner's conduct and role within his family and community reflect strong ties to the United States and a clear history of compliance with legal obligations.

50. Petitioner has no criminal record in the United States, other than a few traffic violations, for which he paid fines or received probation before judgment. A 2013 tort charge was dismissed.

51. Petitioner had never been in removal proceedings prior to his recent arrest and detention, and he is currently exploring potential forms of relief.

52. Petitioner was detained by ICE on or around February 9, 2026, while on his way to work, when he was stopped by ICE agents without a warrant in Lanham, Maryland. The agents asserted that Petitioner's license plates indicated he is an immigrant, suggesting the stop was based on immigration status. Petitioner was taken to a detention facility in Baltimore, Maryland, then transferred to Arizona, and subsequently to Aurora, Colorado,

where he remains in custody. It is unknown whether or when Petitioner was served with a Notice to Appear.

53. Any request for a bond hearing before the Immigration Court is futile.

CAUSES OF ACTION

COUNT ONE

Violation of 8 U.S.C. § 1226(a) Unlawful Denial of Bond Hearing

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

55. The mandatory detention provision at 8 U.S.C. § 1225(b)(2)(A) does not apply to noncitizens who are subject to inadmissibility as being present in the United States without admission or parole. Such noncitizens are detained under § 1226(a), unless they are subject to another detention provision, such as § 1225(b)(1), § 1226(c), or § 1231.

56. The application of § 1225(b)(2)(A) to bar Petitioner from receiving a bond hearing before an IJ violates the INA.

COUNT TWO

Violation of the Administrative Procedure Act Unlawful Denial of Bond Hearing

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

58. The mandatory detention provision at 8 U.S.C. § 1225(b)(2)(A) does not apply to noncitizens who are subject to inadmissibility as being present in the United States without

admission or parole. Such noncitizens are detained under § 1226(a), unless they are subject to another detention provision, such as § 1225(b)(1), § 1226(c) or § 1231.

59. The application of § 1225(b)(2) to bar Petitioner from receiving a bond hearing before an IJ is arbitrary, capricious, and not in accordance with law, and as such, it violates the APA. *See* 5 U.S.C. § 706(2).

COUNT THREE

Violation of Due Process Unlawful Denial of Bond Hearing

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

61. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects.” *Zadvydas*, 533 U.S. at 690.

62. Petitioner has a fundamental interest in liberty and being free from official restraint. Respondents’ detention of Petitioner without a bond hearing to determine whether he is a flight risk or danger to others violates his right to due process.

COUNT FOUR

Violation of Maldonado Bautista Unlawful Denial of Bond Hearing

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

64. Petitioner is a member of the nationwide class certified in *Lazaro Maldonado Bautista et al. v. Ernesto Santacruz Jr. et al.*, No. 5:25-cv-01873.

65. Respondents' detention of Petitioner without a bond hearing violates the *Maldonado Bautista* court's final order that class members are detained pursuant to § 1226(a).

PRAYERS FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

- (1) Assume jurisdiction over this matter;
- (2) Order under the All Writs Act that Petitioner not be removed from this District while this petition is pending;
- (3) Issue an order requiring Respondents to show cause why this Petition should not be granted within three days;
- (4) Declare that 8 U.S.C. § 1225 does not govern Petitioner's detention by U.S. immigration authorities;
- (5) Declare that Petitioner is entitled to a bond hearing as a *Maldonado Bautista* class member;
- (6) Set aside Respondents' unlawful detention policy under the APA, 5 U.S.C. § 706(2);
- (7) Issue a writ of habeas corpus requiring that Respondent immediately releases Petitioner with all of his personal belongings or, alternatively, provide the bond hearing to which he is entitled within 7 days, at which the Government bears the burden of justifying, by clear and convincing evidence, that he is a flight risk and a danger to the community;
- (8) If the Court orders Petitioner's release on the immigration judge's bond, order that ICE is precluded from automatically staying the immigration judge's bond order by filing a form EOIR-43;

- (9) If the Court orders Petitioner's release on the immigration judge's bond, order Respondents to release Petitioner immediately upon the posting of bond, notwithstanding any reservation for appeal by DHS;
- (10) Grant attorneys' fees and costs of this suit under the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412(2), *et seq.*; and
- (11) Order further relief as this Court deems just and appropriate.

Respectfully submitted,

/s/ Ivan Yacub

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Date: February 20, 2026

Attorney for Petitioner

I affirm, under penalty of perjury, that the foregoing statements are true and correct to the best of my knowledge, information, and belief.

Afirmo bajo pena de perjurio que las declaraciones precedentes son verdades y correctas según mi conocimiento, información y creencia.

Celia Flor Ene Herrera Vivar
Petitioner's Partner
Pareja del Peticionario

2/19/26

Date
Fecha

