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UNITED STATES DISTRICT COURT  
COLORADO

JAVIER A. CARVAJAL-SERNA,

Petitioner,

v.

JUAN BALTASAR, Warden of the Denver  
Contract Detention Facility, Aurora, Colorado,  
in his official capacity;  
ROBERT HAGAN, Field Office Director,  
Denver Field Office, U.S. Immigration and  
Customs Enforcement, in his official capacity;  
KRISTI NOEM, Secretary, U.S. Department of  
Homeland Security, in her official capacity;  
TODD LYONS, Acting Director of Immigration  
and Customs Enforcement, in his official  
capacity;  
PAMELA BONDI, U.S. Attorney General, U.S.  
Department of Justice, in her official capacity;

Respondents.

Case No. 1:26-cv-00820

**PETITION FOR WRIT OF  
HABEAS CORPUS**

1 **INTRODUCTION**

2 1. Petitioner Javier Carvajal-Serna brings this petition for a writ of habeas corpus to  
3 seek enforcement of their rights as members of the Bond Denial Class certified in *Maldonado*  
4 *Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (C.D. Cal.) Petitioner is in the physical  
5 custody of Respondents at the U.S. Immigration and Customs Enforcement (“ICE”) Denver  
6 Contract Detention Facility located in Aurora, Colorado. He now faces unlawful detention  
7 because the Department of Homeland Security (DHS) and the Executive Office for Immigration  
8 Review (EOIR) have refused to abide by the declaratory judgment issued on behalf of the  
9 certified class in *Maldonado Bautista v. Santacruz*.

10 2. On November 20, 2025, the district court granted partial summary judgment on  
11 behalf of individual plaintiffs and on November 25, 2025, certified a nationwide class and  
12 extended declaratory judgment to the certified class. *Maldonado Bautista v. Santacruz*, No. 5:25-  
13 CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3289861, at \*11 (C.D. Cal. Nov. 20, 2025)  
14 (order granting partial summary judgment to named Plaintiffs-Petitioners); *Maldonado Bautista*  
15 *v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3288403, at \*9 (C.D.  
16 Cal. Nov. 25, 2025) (order certifying Plaintiffs-Petitioners’ proposed nationwide Bond Eligible  
17 Class, incorporating and extending declaratory judgment from Order Granting Petitioners’  
18 Motion for Partial Summary Judgment).

19 3. The declaratory judgment held that the Bond Denial Class members are detained  
20 under 8 U.S.C. § 1226(a) and thus may not be denied consideration for release on bond under §  
21 1225(b)(2)(A). *Maldonado Bautista*, 2025 WL 3289861, at \*11.

22 4. Nonetheless, the Executive Office for Immigration Review and its subagency the  
23 Immigration Court and the Department of Homeland Security (DHS) have blatantly refused to  
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1 abide by the declaratory relief and have unlawfully ordered that Petitioner be denied the  
2 opportunity to be released on bond.

3 5. Petitioner Javier A. Carvajal-Serna is a member of the Bond Eligible Class, as he:

4 a. does not have lawful status in the United States and is currently detained at the  
5 ICE Denver Contract Detention Facility located in Aurora, Colorado. He was  
6 apprehended by immigration authorities on January 24, 2026. Exhibit 1, “Notice  
7 to Appear issued to Petitioner by the Department of Homeland Security on  
8 January 24, 2026”;

9 b. entered the United States without inspection over 22 years ago and was not  
10 apprehended upon arrival, *cf. id.*; *see* Exhibit 1; and

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

12  
13 6. After apprehending Petitioner on January 24, 2026, the DHS placed him in  
14 removal proceedings pursuant to 8 U.S.C. § 1229a. DHS has charged Petitioner as being  
15 inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i), as someone who entered the United States  
16 without inspection. *See* Exhibit 1.

17 7. The Court should expeditiously grant this petition.

18 8. Respondents are bound by the judgment in *Maldonado Bautista*, as it has the full  
19 “force and effect of a final judgment.” 28 U.S.C. § 2201(a). Nevertheless, Respondents continue  
20 to flagrantly defy the judgment in that case and continue to subject Petitioner to unlawful  
21 detention despite his clear entitlement to consideration for release on bond as a Bond Eligible  
22 Class member.

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1 9. Immigration judges have informed class members in bond hearings that they have  
2 been instructed by “leadership” that the declaratory judgment in *Maldonado Bautista* is not  
3 controlling, even with respect to class members, and that instead IJs remain bound to follow the  
4 Board of Immigration Appeals’ prior decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216  
5 (BIA 2025).

6 10. On February 18, 2026, The District Court of the Central District of California  
7 vacated the Board of Immigration Appeals' decision in *Matter of Yajure Hurtado*. See  
8 *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2026 U.S.  
9 Dist. LEXIS 34057 at \*34, (C.D. Cal. Feb. 18, 2026).

10 11. Respondents also are detaining Petitioner in Violation of 8 U.S.C. § 1226(a), INA  
11 Bond Regulations (8 C.F.R. §§ 236.1, 1236.1 & 1003.19), the Administrative Procedures Act (5  
12 U.S.C. § 706(2)), and in violation of Petitioner’s Fifth Amendment Due Process Rights.

13 12. Because Respondents are detaining Petitioner in violation of the declaratory  
14 judgment issued in *Maldonado Bautista*, 8 U.S.C. § 1226(a), INA Bond Regulations, the  
15 Administrative Procedures Act, and Petitioner’s Fifth Amendment Due Process Rights, the Court  
16 should accordingly order that within one day, Respondent DHS must release Petitioner.

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

19 **JURISDICTION**

20 14. Petitioner is in the physical custody of Respondents. Petitioner is detained at the  
21 U.S. Immigration and Customs Enforcement Denver Contract Detention Facility located in  
22 Aurora, Colorado.

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1 15. This Court has jurisdiction under 28 U.S.C. § 2241(c)(3) (habeas corpus), the  
2 Immigration and Naturalization Act (INA) and its implementing regulations, the Administrative  
3 Procedures Act (5 §§ U.S.C. 500-596, 701-706), and Article I, section 9, clause 2 of the United  
4 States Constitution (the Suspension Clause).

5 16. This Court also has federal question jurisdiction pursuant to 28 U.S.C. § 1331, as  
6 this is a civil action arising under the law of the United States of America.

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

9 **VENUE**

10 18. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-  
11 500 (1973), venue lies in the United States District Court for the District of Colorado, the judicial  
12 district in which Petitioner currently is detained.

13 19. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because  
14 Respondents are employees, officers, and agencies of the United States, and because a  
15 substantial part of the events or omissions giving rise to the claims occurred in the District of  
16 Colorado and Petitioner is a resident of the District of Colorado.

17 **REQUIREMENTS OF 28 U.S.C. § 2243**

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

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

3 **PARTIES**

4 22. Petitioner Javier A. Carvajal-Serna is a citizen of Mexico who has been in  
5 immigration detention at the ICE Denver Contract Detention Facility in Aurora, Colorado since  
6 January 24, 2026. After Petitioner was arrested in Wyoming, ICE did not set bond. Petitioner is  
7 the loving husband of a U.S. Citizen and the loving father of two U.S. citizens, one whom is four  
8 years old and another who is two years old. Petitioner has a criminal conviction for a Driving  
9 While Ability Impaired charge in 2021 and does not have any other convictions which are not  
10 minor traffic infractions. Petitioner has no pending criminal cases. Petitioner has continuously  
11 resided in the United States since entering without inspection on February 7, 2004. Exhibit 2,  
12 “Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent  
13 Residents filed by Petitioner on December 11, 2025”. Petitioner has resided in the United States  
14 for over 22 years. *See Exhibit 2*. Petitioner has not yet applied for a bond hearing before the  
15 Immigration Judge at the Aurora Immigration Court. The Immigration Judges at the Aurora  
16 Immigration Court have repeatedly and uniformly stated in previous bond decisions that IJs have  
17 no jurisdiction to set bond under *Matter of Yajure Hurtado* if an individual last entered the  
18 United States without inspection. *See Exhibit 3*, “Order of the Immigration Judge Issued on  
19 February 7, 2026 for Monserrat Y. Cardoso Anaya”. Courts may waive any requirement that  
20 Petitioners exhaust administrative remedies if “administrative remedies are inadequate or not  
21 efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will  
22 result, or the administrative proceedings would be void.” *Laing v. Ashcroft*, 370 F.3d 994, 1000  
23 (9th Cir. 2004) (quoting *S.E.C. v. G.C. George Sec., Inc.*, 637 F.2d 685, 688 (9th Cir. 1981)).  
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1 Without an order from this Court that Respondents release Petitioner or provide Petitioner a bond  
2 hearing, a bond request to the Aurora Immigration Court would be a futile gesture as the IJ will  
3 likely find Petitioner subject to § 1225(b)(2) under *Matter of Yajure Hurtado*.

4 23. Respondent Juan Baltazar is employed by GEO Group, Inc. as Warden of the U.S.  
5 Immigration and Customs Enforcement Denver Contract Detention Facility located in Aurora,  
6 Colorado, where Petitioner is detained. He has immediate physical custody of Petitioner. He is  
7 sued in his official capacity.

8 24. Respondent Robert Hagan is the Director of the Denver Field Office of ICE's  
9 Enforcement and Removal Operations division. As such, Robert Hagan is Petitioner's immediate  
10 custodian and is responsible for Petitioner's detention and removal. He is named in his official  
11 capacity.

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

16 26. Respondent Todd Lyons is the Acting Director of the United States Immigration  
17 and Customs Enforcement Agency. He oversees ICE, has custodial authority over Petitioner, and  
18 is responsible for Petitioner's detention and removal. He is sued in his official capacity.

19 27. Respondent Pamela Bondi is the Attorney General of the United States. She is  
20 responsible for the Department of Justice, of which the Executive Office for Immigration Review  
21 and the immigration court system it operates is a component agency. She is sued in her official  
22 capacity.

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1 28. Respondent Department of Homeland Security (DHS) is the federal agency  
2 responsible for implementing and enforcing the INA, including the detention and removal of  
3 noncitizens.

4 29. Respondent Executive Office for Immigration Review (EOIR) is the federal  
5 agency responsible for implementing and enforcing the INA in removal proceedings, including  
6 for custody redeterminations in bond hearings.

7 **FACTUAL BACKGROUND**

8 30. ICE's authority to jail noncitizens is proscribed by statute. Section 1226(a) of 8  
9 U.S.C. establishes discretionary detention for noncitizens ICE arrests "[o]n a warrant issued by  
10 the Attorney General" and then place in 8 U.S.C. § 1229a removal proceedings. 8 U.S.C. §  
11 1226(a). Those noncitizens may then request an IJ to redetermine the arresting immigration  
12 officer's "initial custody determination" at any time prior to a final order of removal. *Id.*; 8  
13 C.F.R. §§ 236.1(d)(1), 1003.19(a), (b). During the custody redetermination request, i.e., bond  
14 hearing, the IJ determines whether the noncitizen establishes by the preponderance of the  
15 evidence if they are a risk of flight or danger to the community. *See generally Matter of Guerra*,  
16 24 I. & N. Dec. 37 (B.I.A. 2006).

17 31. Section 1226(c) of 8 U.S.C. establishes mandatory detention for noncitizens with  
18 certain criminal legal contacts in § 1229a removal proceedings. 8 U.S.C. § 1226(c). IJs do not  
19 have the authority to consider these noncitizens' request for release on bond unless ICE is  
20 substantially unlikely to establish that the noncitizen falls within one of § 1226(c)'s mandatory  
21 detention provisions. *See generally Matter of Joseph*, 22 I. & N. Dec. 799 (B.I.A. 1999).

22 32. The statute also provides for mandatory detention of a narrow subset of  
23 noncitizens subject to an expedited removal pursuant to § 1225(b) or for other noncitizen  
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1 “applicants for admission” to the U.S. who are apprehended at the border or port of entry. *See* 8  
2 U.S.C. § 1225(b)(2). Section 1225 focuses on noncitizens “arriv[ing]” “whether or not at a  
3 designated port of arrival,” and applies to people like those who were “interdicted in  
4 international or United State waters” (§ 1225(a)(1)), are “stowaways” (§ 1225(a)(2)), and who  
5 are otherwise “applicants for admission” into the U.S. (§ 1225(a)(3)). In contrast to § 1226, §  
6 1225 discusses matters such as “screening” “claims for asylum” (§ 1225(b)(1)(A)(i)-(ii)) at the  
7 border, “inspection” by an immigration officer to determine if a noncitizen “is ... clearly and  
8 beyond a doubt entitled to be admitted” (§ 1225(b)(2) & (d)), and “removal” of “an arriving  
9 [noncitizen]” (§ 1225(c)(1)).

10 33. Finally, the statute provides for detention of noncitizens with final removal  
11 orders. 8 U.S.C. § 1231(a), (b).

12 34. Petitioner does not have criminal legal contact rendering him subject to 8 U.S.C. §  
13 1226(c). Petitioner’s Driving While Ability Impaired conviction in 2021 does not fall within the  
14 scope of the offenses listed in 8 U.S.C. § 1226(c). He is also not subject to § 1231 detention  
15 because he does not have a final removal order. Rather, this case concerns the discretionary  
16 detention provision at 8 U.S.C. § 1226(a) and Respondents’ erroneous assertion that mandatory  
17 detention pursuant to § 1225(b) applies.

18 35. The Supreme Court summarizes the interplay between §§ 1226 and 1225 as  
19 follows: “In sum, U.S. immigration law authorizes the Government to detain certain  
20 [noncitizens] seeking admission into the country under §§ 1225(b)(1) and (b)(2). It also  
21 authorizes the Government to detain certain [noncitizens] already in the country pending the  
22 outcome of removal proceedings under §§ 1226(a) and (c).” *Jennings v. Rodriguez*, 582 U.S.  
23 281, 289 (2018) (Alito, J., emphasis added).

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1           36. Both the § 1226 and § 1225 detention provisions were enacted as part of the  
2 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No.  
3 104-208, Div. C, §§ 302-03, 110 Stat. 3009-546, 3009-582 to 3009-583, 3009-585. Section  
4 1226(a) was most recently amended in early 2025 by the Laken Riley Act (LRA), Pub. L. No.  
5 119-1, 139 Stat. 3 (2025).

6           37. Following the enactment of the IIRIRA in 1996, EOIR wrote regulations  
7 applicable to proceedings before IJs explaining that, in general, people who entered the country  
8 without inspection (also known as “present without admission”) were *not* detainable under §  
9 1225 and instead could only be detained under § 1226(a). *See* Inspection and Expedited Removal  
10 of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum  
11 Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (“Despite being applicants for admission,  
12 aliens who are present without having been admitted or paroled (formerly referred to as aliens  
13 who entered without inspection) will be eligible for bond and bond redetermination”).

14           38. Thus, in the following decades, people who entered without inspection and did  
15 not have certain criminal legal contacts could receive § 1226(a) bond hearings when placed in §  
16 1229a proceedings. That practice was consistent with additional decades of pre-IIRIRA practice,  
17 in which noncitizens who were not “arriving” or seeking entry into the United States were  
18 entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994);  
19 see also H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting the new § 1226(a) simply “restates”  
20 the detention authority previously found at § 1252(a)).

21           39. This practice — both pre- and post-enactment of the IIRIRA— is consistent with  
22 the fact that noncitizens present in the U.S. have constitutional rights. “[T]he Due Process Clause  
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1 applies to all ‘persons’ within the United States, including [noncitizens], whether their presence  
2 is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

3 40. Despite this long-standing practice and the plain text of the statute, the Board of  
4 Immigration Appeals (BIA) issued an unpublished decision on May 22, 2025 holding that  
5 noncitizens who entered the United States without inspection were subject to §1225(b)(2)  
6 mandatory detention as “applicants for admission.”

7 41. On July 8, 2025, ICE, “in coordination with” the DOJ announced a new policy  
8 consistent with the unpublished BIA decision from May 22, 2025. The new ICE/DOJ policy,  
9 titled “Interim Guidance Regarding Detention Authority for Applicants for Admission,” claims  
10 that all noncitizens present within the U.S. who entered without inspection — no matter how  
11 long ago, no matter where, and no matter how — are deemed “applicants for admission” under 8  
12 U.S.C. § 1225, and thus subject to mandatory detention under § 1225(b)(2)(A). The new policy  
13 applies regardless of when and where a person was apprehended and affects people who have  
14 resided in the U.S. for years.

15 42. On September 5, 2025 the BIA published a precedential decision finding the  
16 same. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

17 43. On February 18, 2026, The District Court of the Central District of California  
18 vacated the BIA’s decision in *Matter of Yajure Hurtado* as contrary to law under the  
19 Administrative Procedures Act. *See Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-  
20 SSS-BFM, --- F. Supp. 3d ----, 2026 U.S. Dist. LEXIS 34057 at \*34 (C.D. Cal. Feb. 18, 2026).

21 44. The federal courts, including courts in the District of Colorado, have resoundingly  
22 rejected Respondents’ position in more than 30 district court decisions. *See Diallo v. Baltazar*,  
23 No. 1:25-cv-3548-SKC, 2026 U.S. Dist. LEXIS 17341, \*4-8 (D. Colo. Jan. 29, 2026); *see Lopez*

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1 v. *Noem*, No. 25-cv-04089-NYW, 2026 U.S. Dist. LEXIS 14990, \*4-11 (D. Colo. Jan. 27, 2026);  
2 see *Garcia-Perez v. Guadian*, No. 25-CV-04069-PAB, 2026 U.S. Dist. LEXIS 6570, \*5-6 (D.  
3 Colo. Jan. 13, 2026); see *Trejo v. Baltazar*, No. 1:25-cv-4026-SKC-NRN, 2026 U.S. Dist.  
4 LEXIS 3563, \*3-5 (D. Colo. Jan. 8, 2026); see *Briales-Zuniga v. Baltazar*, No. 25-cv-03439-  
5 NYW, 2026 U.S. Dist. LEXIS 1751, \*4-9 (D. Colo. Jan. 6, 2026); see *Lopez v. Baltazar*, No. 25-  
6 CV-3078-WJM-KAS, 2026 U.S. Dist. LEXIS 912, \*12 (D. Colo. Jan. 5, 2026); see *Hernandez v.*  
7 *Baltazar*, No. 1:25-cv-3688-SKC-SBP, 2025 U.S. Dist. LEXIS 265306, \*6-19 (D. Colo. Dec. 23,  
8 2025); see *Orellana v. Noem*, No. 25-cv-03976-PAB, 2025 U.S. Dist. LEXIS 264245, \*12 (D.  
9 Colo. December 22, 2025); see *Rico v. Baltazar*, No. 1:25-cv-03943-CNS, 2025 U.S. Dist.  
10 LEXIS 259962, \*3-5 (D. Colo. December 16, 2025); see *Rodriguez-Vazquez v. Bostock*, No. 779  
11 F.Supp.3d 1239 (W.D. Wash. 2025) (granting preliminary relief); *Gomes v. Hyde*, No. 1:25-CV-  
12 11571-JEK, 2025 WL 1869299, \*8 (D. Mass. July 7, 2025) (granting individual *habeas* relief);  
13 *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp.3d ---, 2025 WL 2084238, \*9 (D.  
14 Mass. July 24, 2025) (denying reconsideration of individual *habeas* relief); *Maldonado Bautista*  
15 *v. Santacruz*, No. 5:25-cv-01874-SSS-BFM, \*13 (C.D. Cal. Feb. 18, 2026) (vacating *Yajure*  
16 *Hurtado*); *Escalante v. Bondi*, No. 25-cv-3051, 2025 WL 2212104 (D. Minn. July 31, 2025)  
17 (report and recommendation to grant preliminary relief, adopted *sub nom O.E. v. Bondi*, 2025  
18 WL 2235056 (D. Minn. Aug. 4, 2025)); *Lopez Benitez v. Francis*, No. 25-Civ-5937, 2025 WL  
19 2267803 (S.D. N.Y. Aug. 8, 2025) (granting individual *habeas* relief); *de Rocha Rosado v.*  
20 *Figuroa*, No. CV 25-02157, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025) (report and  
21 recommendation to grant *habeas* relief, adopted without objection at 2025 WL 2349133 (D.  
22 Ariz. Aug. 13, 2025)); *Dos Santos v. Noem*, No. 1:25-cv-12052-JEK, 2025 WL 2370988 (D.  
23 Mass. Aug. 14, 2025) (granting *habeas* relief); *Aquilar Maldonado v. Olson*, No. 25-cv-3142,  
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1 2025 WL 2374411 (D. Minn. Aug. 15, 2025) (same); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-  
2 01789-ODW, 2025 WL 2379285 (C.D. Cal. Aug 15, 2025) (same); *Romero v. Hyde*, ---  
3 F.Supp.3d ----, 2025 WL 2403827 (D. Mass. Aug. 19, 2025) (same); *Leal-Hernandez v. Noem*,  
4 No. 1:25-cv-02428- JRR, Doc. 20 (D. Md. Aug. 24, 2025) (same); *Benitez v. Noem*, No. 5:25-cv-  
5 02190, Doc. 41 (C.D. Cal. Aug. 26, 2025) (granting preliminary relief); *Kostak v. Trump*, No.  
6 3:25-dev-01093-JE, Doc. 20 (W.D. La. Aug. 27, 2025) (same); *Jose J.O.E. v. Bondi*, ---  
7 F.Supp.3d---, 2025 WL 2466670 (D. Minn. Aug. 27, 2025) (same); *Lopez-Campos v. Raycraft*, --  
8 -F.Supp.3d --- , 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025) (granting individual *habeas* relief  
9 and enjoining pursuit of detention on the basis of § 1225(b)(2)(A)); *Palma Perez v. Berg*, ---  
10 F.Supp.3d --- , 2025 WL 2531566 (D. Neb. Sept. 3, 2025) (finding ‘little support’ in the statute  
11 for detention under § 1225(b)(2) and ordering release on other grounds); *Cortes Fernandez v.*  
12 *Lyons*, No. 8:25-cv-506, 2025 WL 2531539 (D. Neb. Sept. 3, 2025) (same); *Carmona-Lorenzo v.*  
13 *Trump*, No. 4:25-cv-3172, 2025 WL 2531521 (D. Neb. Sept. 3, 2025) (same); *Hernandez Nieves*  
14 *v. Kaiser*, No. 25-cv-06921-LB, 2025 WL 2533110 (N.D. Cal Sept. 3, 2025) (granting injunctive  
15 relief, ordering release and enjoining redetention without a bond hearing); *Vasquez Garcia et al.*  
16 *v. Noem*, No. 25-cv-02180-DMS-MMP, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025) (granting  
17 TRO in part, finding detention pursuant to § 1226(a) and ordering a bond hearing); *Doe v.*  
18 *Moniz*, No. 1:25-cv-12094-IT, 2025 WL 2576819 (D. Mass. Sept. 5, 2025) (granting *habeas*  
19 finding detention pursuant to § 1226(a)).

20 45. The federal courts’ overwhelming rejection of Respondents’ position continues  
21 after *Matter of Yajure Hurtado*. See e.g., *Zaragoza Mosqueda v. Noem*, No. 5:25-cv-02304, 2025  
22 WL 2591530 (C.D. Cal. Sept. 8, 2025) (enjoining continued detention without a §1226(a) bond  
23 hearing within seven days); *Sampiao v. Hyde*, --- F.Supp.3d ---, 2025 WL 2607924 (D. Mass.

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1 Sept. 9, 2025) (ordering release on bond); *Pizzaro Reyes v. Raycraft*, No. 25-cv-12546, 2025 WL  
2 2609425 (E.D. Mich. Sept. 9, 2025) (granting *habeas* relief); *Cuevas Guzman v. Andrews*, No.  
3 1:25-cv-01015-KES-SKO (HC), 2025 WL 2617256, (E.D. Cal. Sept. 9, 2025) (granting a  
4 preliminary injunction and ordering release); *Hinestroza v. Kaiser*, No. 25-cv-07559-JD, 2025  
5 WL 2606983 (N.D. Cal. Sept. 9, 2025) (granting TRO and finding § 1225(b)(2) inapplicable);  
6 *Jimenez v. FCI Berlin, Warden et al.*, --- F.Supp.3d ---, 2025 WL 2639390 (D.N.H. Sept. 9,  
7 2025) (finding detention pursuant to § 1226(a) and ordering a bail hearing); *Salcedo Aceros v.*  
8 *Kaiser et al.*, No 25-cv-06924-EMC (EMC), 2025 WL 2637503 (N.D. Ca. Sept. 12, 2025)  
9 (granting PI and finding § 1225(b)(2) inapplicable).

10 46. That includes the District of Colorado where Judge Sweeney explains, *inter alia*,  
11 that the Government's argument for § 1225(b)(2) detention must fail when a noncitizen is not  
12 “seeking admission” into the United States. *Garcia Cortes v. Noem et al.*, No. 1:25-cv-02677-  
13 CNS, 2025 WL 2652880 at \*3 (D. Colo. Sept. 16, 2025) (“Because Petitioner is not, nor was he  
14 at the time he was arrested, seeking admission, § 1225(b)(2)(A)'s mandatory detention  
15 requirement does not apply”).

16 47. As evidenced by the federal court decisions, the interpretation by DHS, DOJ,  
17 EOIR, and ICE that § 1225(b) governs detention in this case defies the plain language of the  
18 INA, fundamental canons of statutory construction, and the agency's long-extant implementing  
19 regulations.

20 48. Indeed, the statute’s plain text demonstrates § 1226(a) — not § 1225(b) — applies  
21 to people like Petitioner. Section 1226(a) is the “default rule” applying to all persons “pending a  
22 decision on whether the [noncitizen] is to be removed.” *Rodriguez Vazquez*, 779 F.Supp.3d at  
23 1246; *Jennings*, 582 U.S. at 281.

24

1 49. Notably, the plain language of § 1226 applies to people charged as inadmissible  
2 for entering without inspection. *E.g.*, 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to  
3 inadmissible individuals makes clear that, by default, inadmissible individuals not subject to  
4 subparagraph (E)(ii) are entitled to a bond hearing under subsection (a). As the *Rodriguez-*  
5 *Vazquez* court explained, “[w]hen Congress creates ‘specific exceptions’ to a statute’s  
6 applicability, it ‘proves’ that absent those exceptions, the statute generally applies.” *Rodriguez-*  
7 *Vazquez*, 779 F.Supp.3d at 1256-57 (citing *Shady Grove Orthopedic Assocs., PA. v. Allstate Ins.*  
8 *Co.*, 559 U.S. 393, 400 (2010)).

9 50. Thus, § 1226 applies to noncitizens like Petitioner who are present without  
10 inspection, face related inadmissibility charges in removal proceedings and who do not have  
11 certain criminal legal contacts.

12 51. By contrast, § 1225(b) applies to people *arriving* at U.S. ports of entry or *who*  
13 *recently entered* the U.S. and are encountered *at or near the border*. Section 1225's entire  
14 framework is premised around inspection at the border of people who are “seeking admission” to  
15 the U.S. 8 U.S.C. § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory  
16 detention scheme applies “at the Nation’s borders and ports of entry, where the Government  
17 must determine whether al] [noncitizen] seeking to enter the country is admissible.” *Jennings*,  
18 582 U.S. at 287.

19 52. Accordingly, contrary to Respondents’ erroneous interpretation of the statute, the  
20 mandatory detention provisions of § 1225(b)(2) do not apply to people like Petitioner who  
21 “arrived” in the country long ago and have resided in Colorado for years before ICE jailed them.

22 **CLAIMS FOR RELIEF**

23 **COUNT I**

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

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

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

6 55. The order granting partial summary judgment in *Maldonado Bautista* holds that  
7 Respondents violate the INA in applying the mandatory detention statute at § 1225(b)(2) to class  
8 members.

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

12 57. Respondents are parties to *Maldonado Bautista* and bound by the Court’s  
13 declaratory judgment, which has the full “force and effect of a final judgment.” 28 U.S.C.  
14 § 2201(a).

15 58. By adopting the position that individuals who entered without inspection are  
16 subject to mandatory detention under § 1225(b)(2), Respondents violate Petitioner’s statutory  
17 rights under the INA and the Court’s judgment in *Maldonado Bautista*.

18 **COUNT II**

19 **Respondents Detain Petitioner in Violation of 8 U.S.C. § 1226(a)**

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

22 60. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to  
23 Petitioner because he was present and residing in the U.S., has been placed in § 1229a removal  
24

1 proceedings, and charged with inadmissibility pursuant to 8 U.S.C. § 1182. Simply, § 1225 does  
2 not apply to people like Petitioner who previously entered the country and reside in the U.S.  
3 prior to being detained and placed in removal proceedings. Such noncitizens may only be  
4 detained pursuant to § 1226(a), unless they are subject to mandatory detention provisions  
5 irrelevant here. Detention under § 1226(a) requires access to bond.

6 61. Applying § 1225 to Petitioner unlawfully mandates his continued detention  
7 without a bond hearing and violates 8 U.S.C. § 1226(a).

8 **COUNT III**

9 **Respondents Detain Petitioner in Violation of INA Bond Regulations (8 C.F.R. §§**  
10 **236.1, 1236.1 & 1003.19)**

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

13 63. Respondent EOIR and the then Immigration and Naturalization Service issued a  
14 rule to interpret and apply the IIRIRA under the heading “Apprehension, Custody, and Detention  
15 of [Noncitizens],” which explained: “Despite being applicants for admission, [noncitizens] who  
16 are present without having been admitted or paroled (formerly referred to as [noncitizens] who  
17 entered without inspection) *will be eligible for bond.*” 62 Fed. Reg. at 10323 (emphasis added).  
18 Respondents thus long-ago made clear that people like Petitioner who had entered without  
19 inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. §  
20 1226 and the implementing regulations.

21 64. Nonetheless, Respondents here deem individuals who entered the U.S. without  
22 inspection, like Petitioner, subject to mandatory detention under § 1225.

23

24

1 65. Applying § 1225 to Petitioner instead unlawfully mandates his continued  
2 detention under § 1225(b)(2).

3 66. Respondents' application of § 1225(b)(2) to Petitioner unlawfully requires his  
4 continued detention in violation of 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

5 **COUNT IV**

6 **Respondents Detain Petitioner in Violation of the Administrative Procedures Act (5**

7 **U.S.C. § 706(2))**

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

10 68. Under the APA, a court must “hold unlawful and set aside agency action” that is  
11 “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law,” that  
12 is “contrary to constitutional right [or] power,” or that is “in excess of statutory jurisdiction,  
13 authority, or limitations, or short of statutory right.” 5 U.S.C. § 706(2)(A)-(C).

14 69. Respondents' detention of Petitioner pursuant to § 1225 is arbitrary and  
15 capricious, and in violation of the Fifth Amendment of the U.S. Constitution. Respondents do not  
16 have statutory authority under § 1225 to detain Petitioner.

17 70. Respondents' detention of Petitioner without access to bond is arbitrary,  
18 capricious, an abuse of discretion, violative of the U.S. Constitution, and without statutory  
19 authority, all in violation of 5 U.S.C. § 706(2).

20 **COUNT V**

21 **Respondents Detain Petitioner in Violation of Petitioner's Fifth Amendment Due**

22 **Process Rights**

23

24

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

3 72. The Government may not deprive a person of life, liberty, or property without due  
4 process of law. U.S. Const. Amend. V. “Freedom from imprisonment — from government  
5 custody, detention, or other forms of physical restraint — lies at the heart of the liberty that the  
6 [Fifth Amendment's due process] Clause protects.” *Zadvydas*, 533 U.S. at 690.

7 73. Petitioner has a fundamental interest in liberty and being free from official  
8 restraint, such as imprisonment in the ICE Denver Contract Facility located in Aurora, Colorado.

9 74. Respondents’ detention of Petitioner without providing him a bond  
10 redetermination hearing to determine whether he is a flight risk or danger to others violates his  
11 right to Due Process.

12 **PRAYER FOR RELIEF**

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

- 14 a. Assume jurisdiction over this matter;
- 15 b. Issue a writ of habeas corpus requiring that within one day, Respondents release  
16 Petitioner;
- 17 c. Alternatively, issue a writ of habeas corpus requiring Respondents to release  
18 Petitioner unless they provide a bond hearing under 8 U.S.C. § 1226(a) within  
19 seven days;
- 20 d. Award Petitioner attorney’s fees and costs under the Equal Access to Justice Act  
21 (EAJA), as amended, 28 U.S.C. § 2412, and on any other basis under the law;
- 22 e. Enjoin respondents from transferring Petitioner outside the jurisdiction of the  
23 District of Colorado pending resolution of this case; and  
24

1 f. Grant any other and further relief that this Court deems just and proper.

2 DATED this 27<sup>th</sup> day of February, 2026.

3 s/James Y. Chiu  
4 *Attorney for Petitioner*

5 **VERIFICATION**

6 I, James Y. Chiu, declare as follows:

- 7 1. I am an attorney admitted to practice law in the State of Colorado.  
8 2. Because many of the allegations in this petition require a legal knowledge not possessed  
9 by Petitioner, I am making this verification on her behalf.  
10 3. I have read the foregoing Petition for Writ of Habeas Corpus and know the contents  
thereof to be true to my knowledge, information, and belief.

11 I certify under penalty of perjury that the foregoing is true and correct and that this  
12 declaration was executed on February 27, 2026.

13 s/James Y. Chiu  
14 James Y. Chiu  
15 Law Offices of Miguel Martinez, P.C.  
16 1776 Vine Street  
Denver, CO 80206  
Phone: 303.964.3200  
Email: james@mmartinezlaw.com

17 **CERTIFICATE OF SERVICE**

18 I, James Chiu, hereby certify that on February 27, 2026, I filed the foregoing with the  
19 Clerk of Court using the CM/ECF system. I, James Chiu, hereby certify that I have mailed  
20 a hard copy of the document to the individuals identified below pursuant to Fed.R.Civ.P.  
4 via certified mail on February 27, 2026.

21 Kevin Traskos  
22 Chief, Civil Division  
23 U.S. Attorney's Office  
24 District of Colorado  
1801 California Street, Ste. 1600  
Denver, CO 80202

1 Pam Bondi  
Attorney General of the United States  
2 U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
3 Washington, D.C. 20530

4 And to:

5 Kristi Noem and Todd Lyons, DHS/ICE, c/o:  
6 Office of the General Counsel  
U.S. Department of Homeland Security  
7 2707 Martin Luther King Jr. Ave., SE  
Washington, D.C. 20528

8 And to:

9 Robert Hagan  
10 Denver ICE Field Office  
12445 E. Caley Ave.  
11 Centennial, CO 80111

12 And to:

13 Juan Baltasar  
GEO Group, Inc.  
14 3130 N. Oakland Street  
Aurora, CO 80010

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