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5
6 **UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

8 Alan Sandoval Cruz,

9 Petitioner,

10 v.

11 Christopher D. McGregor, Acting Field
Office Director Of Enforcement And
12 Removal Operations, Phoenix Field
Office, Immigration And Customs
13 Enforcement; Kristi Noem, Secretary,
U.S. Department Of Homeland Security;
14 U.S. Department Of Homeland Security;
Pamela Bondi, U.S. Attorney General;
15 Executive Office For Immigration
Review; Luis Rosa Jr., Warden Of
16 Central Arizona Florence Correctional
Center.

17 Respondents.
18

Case No.

**PETITION FOR WRIT OF
HABEAS CORPUS**

1
2 **INTRODUCTION**

3 1. Petitioner Alan Sandoval Cruz brings this petition for a writ of habeas
4 corpus seeking immediate release from immigration custody as Respondents have
5 detained Petitioner in violation of his due process rights under the Fifth
6 Amendment of the United States Constitution.

7 2. Petitioner alternatively brings this petition for a writ of habeas corpus
8 to seek enforcement of his rights as a member of the Bond Denial Class certified in
9 *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (C.D. Cal.).
10 Petitioner is in the physical custody of Respondents in Florence, Arizona. He
11 currently faces unlawful detention because the Department of Homeland Security
12 (“DHS”) and the Executive Office for Immigration Review (“EOIR”) have refused
13 to abide by the declaratory judgment issued on behalf of the certified class in
14 *Maldonado Bautista v. Santacruz*. On December 18, 2025, the *Maldonado Bautista*
15 court entered final judgment against Respondents declaring that class members,
16 including Petitioner, are detained pursuant to 8 U.S.C. § 1226(a) and are entitled to
17 bond hearings and release under 8 U.S.C. § 1226(a).

18 3. Petitioner also brings this petition on grounds that Respondents will
19 unlawfully deny him an opportunity for a bond hearing conducted pursuant to 8
20 U.S.C. § 1226(a), the statutory grounds for his detention. Respondents’ have
21 unlawfully refused to consider detained aliens for release on their recognizance or
22 upon the posting of a bond pursuant to Respondents’ recent policy decisions to
erroneously classify Petitioner’s detention as arising from 8 U.S.C. § 1225(b)(2)(A)

1 notwithstanding Petitioner having resided in the United States for over two decades,
2 and notwithstanding Petitioner's strong ties to the United States.

3 JURISDICTION

4 4. Petitioner is in the physical custody of Respondents within the District
5 of Arizona. Petitioner is currently detained at the Central Arizona Florence
6 Correctional Center in Florence, Arizona.

7 5. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas
8 corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the
9 United States Constitution (the Suspension Clause).

10 6. This Court may grant relief pursuant to 28 U.S.C. § 2241, the
11 Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C.
12 § 1651.

13 VENUE

14 7. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410
15 U.S. 484, 493- 500 (1973), venue lies in the United States District Court for the
16 District of Arizona, the judicial district in which Petitioner currently is detained.

17 8. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e)
18 because Respondents are employees, officers, and agencies of the United States, and
19 because a substantial part of the events or omissions giving rise to the claims
20 occurred in the District of Arizona.

PARTIES

9. Petitioner Alan Sandoval Cruz is a native and citizen of Mexico who has been in immigration detention since approximately June 12, 2025.

10. Respondent Christopher D. McGregor, upon information and belief, is the Acting Field Office Director of the Phoenix Field Office of Immigration and Customs Enforcement's ("ICE") Enforcement and Removal Operations ("ERO") division. As such, Respondent McGregor is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity.

11. Respondent Kristi Noem is the Secretary of DHS. She is responsible for the implementation and enforcement of the Immigration and Nationality Act ("INA"), and oversees ICE, which is responsible for Petitioner's detention. Respondent Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

12. Respondent Department of Homeland Security is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of aliens.

13. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible for the Department of Justice, of which EOIR and the immigration court system it operates is a component agency. She is sued in her official capacity.

1 14. Respondent Executive Office for Immigration Review is the federal
2 agency responsible for implementing and enforcing the INA in removal and related
3 proceedings, including for custody redeterminations in bond hearings.

15. Respondent Luis Rosa Jr. is employed by CoreCivic as Warden of the Central Arizona Florence Correctional Complex, where Petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his official capacity.

LEGAL FRAMEWORK

8 16. Aliens present in the United States receive protection from the
9 deprivation of life, liberty, or property without due process of law under the Fifth
10 Amendment of the United States Constitution. *Matthew's v. Diaz*, 436 U.S. 67,77
11 (1976).

Statutory Framework for Removal

17. In removal proceedings, the vast majority of aliens are placed into one of three categories: (1) those who have been admitted to the United States; (2) those who are present in the United States, but have not been inspected or admitted to the country; and, (3) those who are applying for admission to the United States. If entry into the United States is envisioned as a door, these aliens can be thought of as those who have come in through the door, those who went around the door, and those who are (sometimes constructively) knocking on the door.

18. This case deals with those who went around the door and find themselves in the United States without having been inspected. Within that group of aliens, there are two subgroups: (1) those apprehended at the time they enter, or

1 in close proximity thereto; and, (2) those that entered without inspection and have
2 remained in the United States for an extended period of time. Petitioner falls in the
3 latter category. The question presented here asks specifically under which statutory
4 ground of detention may DHS and Respondents detain those that entered without
5 inspection but have resided in the United States for an extended period.

6 **Detention Grounds**

7 19. The Immigration and Nationality Act (“INA”) provides three primary
8 statutory grounds for detention. 8 U.S.C. §§ 1225, 1226, and 1231.

9 20. The general statutory ground for detention resides in 8 U.S.C. §
10 1226, which authorizes the detention of aliens in removal proceeding before an
11 immigration judge. *See generally* 8 U.S.C. §§ 1226 and 1229a. Aliens detained
12 under 8 U.S.C. § 1226 are generally subject to discretionary detention, 8 U.S.C. §
13 1226(a), but may also be subject to mandatory detention, 8 U.S.C. § 1226(c).
14 Those detained under the discretionary provisions of 8 U.S.C. § 1226(a) are
15 generally entitled to a bond hearing before an immigration judge if DHS
16 determines that it will detain the alien for the pendency of removal proceedings.
17 *See* 8 C.F.R. §§ 236.1(d), 1003.19(a), and 1236.1(d). DHS may also unilaterally
18 release the alien on the posting of a bond or on their own recognizance. 8 U.S.C.
19 § 1226(a); 8 C.F.R. § 236.1(c)(8). Certain aliens who have been arrested for,
20 charged with, or convicted of certain offenses and/or conduct are subject to
21 mandatory detention and are not eligible for release. 8 U.S.C. § 1226(c).

22

21. The grounds for detention under 8 U.S.C. § 1225 exist under subsections 1225(b)(1)(B)(iii)(IV) and 1225(b)(2)(A). Both grounds require mandatory detention and do not generally provide for release upon the posting of a bond. *See* 8 U.S.C. §§ 1225(b)(1)(B)(iii)(IV) and (b)(2)(A). Aliens who are subject to the expedited removal provisions under 8 U.S.C. § 1225(b)(1) are generally subject to detention under 8 U.S.C. § 1225(b)(1)(B)(iii)(IV). *See* 8 U.S.C. § 1225(b)(1). Other aliens “seeking admission” to the United States are covered by 8 U.S.C. § 1225(b)(2)(A). *See* 8 U.S.C. § 1225(b)(2).

22. Lastly, the INA provides for detention of aliens subject to removal orders under the provisions of 8 U.S.C. § 1231. *See* 8 U.S.C. § 1231(a)-(b). This ground of removability is not at issue here.

23. This case presents the question of whether Petitioner’s detention arises from 8 U.S.C. § 1226(a) or 8 U.S.C. § 1225(b)(2).

History of the Relevant Detention Grounds

24. 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. Section 1226 was recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).

25. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and were instead detained

1 under § 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and
2 Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62
3 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (“Despite being applicants for admission,
4 aliens who are present without having been admitted or paroled (formerly referred
5 to as aliens who entered without inspection) will be eligible for bond and bond
6 redetermination”).

26. Thus, in the decades that followed, most people who entered without inspection and were thereafter arrested and placed in standard removal proceedings received consideration for release on bond and also received bond hearings before an immigration judge, unless criminal history rendered them ineligible. That practice was consistent with many more decades of prior practice, in which aliens who had entered the United States, even if without inspection, were entitled to a custody hearing before an immigration judge or other hearing officer. In contrast, those 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 229 (1996) (noting that § 1226(a) simply “restates” the detention authority previously found at § 1252(a)).

Current Policy Changes

27. In recent months, however, Respondents have unprecedentedly departed from this settled understanding of the INA's grounds for detention. On July 8, 2025, ICE, in coordination with the Department of Justice announced a policy asserting that all aliens who have entered the United States without

1 inspection are subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A),
2 regardless of when the alien is apprehended.

3 28. On September 5, 2025, the Board of Immigration Appeals (“BIA”)
4 issued a precedent decision holding that the plain language of 8 U.S.C. §
5 1225(b)(2)(A) mandates that immigration judges across the United States lack
6 authority to consider requests for bond from aliens who entered the United States
7 without inspection. *Matter of Hurtado*, 29 I&N Dec. 216 (BIA 2025). In its
8 decision, the BIA set aside decades of legal practice and myopically focused on
9 the language in 8 U.S.C. § 1225(b)(2)(A), where it found all aliens present in the
10 United States without inspection to be “applicants for admission.” *Id.* As a result,
11 it determined all such aliens are subject to the mandatory detention ground in 8
12 U.S.C. § 1225(b)(2)(A). *See Id.* The BIA erroneously held that “the statutory text
13 of the INA is not ‘doubtful and ambiguous’ but is instead clear and explicit in
14 requiring mandatory detention of all aliens who are applicants for admission...”
15 *Id.* at 226. In arriving at its conclusion, it further glossed over additional clauses
16 in the text of 8 U.S.C. § 1225(b)(2)(A) that require a determination by an
17 examining immigration officer and require the alien in question to seek admission
18 to the United States. *Id.* at 221. Lastly, it failed to properly consider the interplay
19 between § 1225(b)(2)(A) and § 1226. *Id.* at 221-222.

20 29. This erroneous decision flies in the face of decades of precedent and
21 practice. Section 1226(a) applies by default to all persons “pending a decision on
22 whether the alien is to be removed from the United States.” These removal

1 hearings are held under § 1229a, to “decid[e] the inadmissibility or deportability
2 of an alien.” 8 U.S.C. § 1229a(a)(1).

3 30. The text of § 1226 also explicitly applies to aliens charged as
4 inadmissible, including those who entered without inspection. See 8 U.S.C. §
5 1226(c)(1)(E). Just this year, Congress enacted subparagraph (E) in the Laken
6 Riley Act to exclude certain aliens who entered without inspection from §
7 1226(a)’s default bond provision. Subparagraph (E)’s reference to persons
8 inadmissible under § 1182(6)(A), i.e., persons inadmissible for entering without
9 inspection, makes clear that, by default, such people are afforded a bond hearing
10 under subsection (a). As the *Rodriguez Vazquez* court explained, “[w]hen
11 Congress creates “specific exceptions” to a statute’s applicability, it “proves” that
12 absent those exceptions, the statute generally applies. *Rodriguez Vazquez v.*
13 *Bostock*, 779 F.Supp.3d 1239, 1256-57, 2025 WL 1193850, at *12 (citing *Shady*
14 *Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).
15 Section 1226 therefore leaves no doubt that it applies to people who face charges
16 of inadmissibility to the United States, including those who are present without
17 admission or parole.

18 31. By contrast, § 1225(b) applies to people arriving at U.S. ports of
19 entry or who very recently entered the United States. The statute’s entire
20 framework is premised on inspections at the border of people who are “seeking
21 admission” to the United States. 8 U.S.C. § 1225(b)(2)(A); *see also Diaz Martinez*
22 *v. Hyde*, 792 F.Supp.3d 211, 222, 2025 WL 2084238, at *8 (“[O]ur immigration

1 laws have long made a distinction between those aliens who have come to our
2 shores seeking admission . . . and those who are within the United States after an
3 entry, irrespective of its legality.” (quoting *Leng May Ma v. Barber*, 357 U.S. 185,
4 187 (1958))). Indeed, the Supreme Court has explained that this mandatory
5 detention scheme applies “at the Nation’s borders and ports of entry, where the
6 Government must determine whether an alien seeking to enter the country is
7 admissible.” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

8 32. Accordingly, the mandatory detention provision of § 1225(b)(2)
9 does not apply to aliens like Petitioner, who have already entered and were
10 residing in the United States at the time of apprehension.

11 **FACTUAL BACKGROUND**

12 33. Petitioner is a native and citizen of Mexico. Exhs. 1-3. Petitioner
13 made his first and only entry into the United States in or around May 1st, 2000
14 near Nogales, Arizona. Exhs. 1. He entered without inspection as a five-year old
15 child. Exhs. 1. Upon information and belief, Petitioner has lived in the United
16 States for approximately 25 years. He has no criminal history whatsoever. He is
17 the father of one minor U.S. Citizen child and his mother, Rosa Cruz Loreda is a
18 Legal Permanent Resident. Exh 3-4, and as such, is eligible for relief from removal,
19 Exh. 3.

20 34. On June 13, 2025, DHS issued a Notice to Appear ("NTA") charging
21 Petitioner as removable for being present in the United States without admission or
22

1 parole. Exh. 1. Petitioner was taken into ICE custody on June 12, 2025, and is
2 currently detained at the Central Arizona Florence Correctional Complex. Exh. 2.

3 35. Petitioner now respectfully requests that this Court grant him relief
4 from this unlawful order and order Respondents to provide Petitioner with an
5 individualized bond hearing where the Immigration Judge must exercise jurisdiction
6 over the request.

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

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

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

18 **CLAIM FOR RELIEF**

19 **COUNT I**

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

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

1 39. In the *Maldonado Bautista* class action, the district court granted
2 partial summary judgment on behalf of individual plaintiffs on November 20, 2025,
3 and on November 25, 2025, certified a nationwide class and extended declaratory
4 judgment to the certified class. *Maldonado Bautista v. Santacruz*, No. 5:25-CV-
5 01873-SSS-BFM, --- F. Supp. 3d ---, 2025 WL 3289861, at *11 (C.D. Cal. Nov. 20,
6 2025) (order granting partial summary judgment to named Plaintiffs-Petitioners);
7 *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d -
8 ---, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025) (order certifying Plaintiffs-
9 Petitioners' proposed nationwide Bond Eligible Class, incorporating and extending
10 declaratory judgment from Order Granting Petitioners' Motion for Partial Summary
11 Judgment).

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

16 41. On December 18, 2025, the *Maldonado Bautista* court took further
17 action, issuing final judgement for members of the Bond Eligible Class, declaring
18 that class members are detained under 8 U.S.C. § 1226(a), declaring that class
19 members are not subject to 8 U.S.C. § 1225(b)(2), and declaring that class members
20 are entitled to custody redetermination before an immigration judge. *Maldonado*
21 *Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3678485, at *1
22 (C.D. Cal. Dec. 18, 2025).

1 42. Nonetheless, EOIR and DHS have refused to abide by the declaratory
2 relief and have unlawfully ordered that Petitioner be denied the opportunity to be
3 released on bond.

4 43. Petitioner is a member of the Bond Eligible Class, as he:

- 5 a. does not have lawful status in the United States and entered the United
6 States without inspection over twenty-five years ago;
7 b. was not apprehended upon arrival; and,
8 c. was not subject to detention under the provisions of 8 U.S.C. §
9 1226(c), § 1225(b)(1), or § 1231 when DHS made its initial custody
10 determination nor when it detained him in 2025.

11 44. After apprehending Petitioner, DHS placed him in removal
12 proceedings pursuant to 8 U.S.C. § 1229a. DHS has charged Petitioner as being
13 inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i), as someone who entered the United
14 States without inspection and 8 U.S.C. § 1182(a)(7)(A)(i)(I), as someone who
15 entered the United States without inspection and lacks valid entry documents.

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

21

22

1 46. Because Respondents are detaining Petitioner in violation of the
2 declaratory judgment issued in *Maldonado Bautista*, the Court should order
3 Respondent

4 47. As a member of the Bond Eligible Class, Petitioner is entitled to
5 consideration for release on bond under 8 U.S.C. § 1226(a). Given that Petitioner
6 has no serious criminal history, significant family ties, a Legal Permanent Resident
7 mother, his father has been granted deferred action based on a pending U1
8 Nonimmigrant status application and three U.S. citizen siblings. Respondents
9 should be ordered to provide a custody redetermination hearing immediately.

10 48. The order granting partial summary judgment in *Maldonado Bautista*
11 holds that Respondents violate the INA in applying the mandatory detention statute
12 at § 1225(b)(2) to class members.

13 49. The order granting class certification in *Maldonado Bautista* further
14 orders that “[w]hen considering this determination with the MSJ Order, the Court
15 extends the same declaratory relief granted to Petitioners to the Bond Eligible Class
16 as a whole.” (emphasis added).

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

20 51. By denying Petitioner a bond hearing under § 1226(a) and asserting
21 that he is subject to mandatory detention under § 1225(b)(2), Respondents violate
22

1 Petitioner's statutory rights under the INA and the court's judgment in *Maldonado*
2 *Bautista*.

3 **COUNT II**

4 **Violation of 8 U.S.C. § 1226(a)**

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

7 53. The provisions of 8 U.S.C. § 1225(b)(2) requiring mandatory
8 detention do not apply to all aliens residing in the United States who are subject to
9 the grounds of inadmissibility. As relevant to Petitioner, it does not apply to those
10 who previously entered the United States and have spent a significant period of time
11 residing in the country prior to apprehension and the initiation of removal
12 proceedings. Aliens in this situation, like Petitioner, are detained under 8 U.S.C. §
13 1226(a) and are eligible for release on bond unless they are subject to alternative
14 mandatory grounds of detention pursuant to 8 U.S.C. §§ 1225(b)(1), 1226(c), or
15 1231.

16 54. Notwithstanding the above, Respondents have refused to release
17 Petitioner on the posting of bond finding his continued detention is justified and
18 mandatory under 8 U.S.C. § 1225(b)(2).

19 55. The unlawful application of 8 U.S.C. § 1225(b)(2) to Petitioner
20 violates the INA and Petitioner's continued detention violates his right under 8
21 U.S.C. § 1226(a) for consideration of release on bond or conditional parole.
22

COUNT III

Violation of Bond Regulations – 8 C.F.R. §§ 236.1, 1236.1, and 1003.19

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

57. 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 Aliens,” the agencies explained that “[d]espite 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.” 62 Fed. Reg. at 10323 (emphasis added). 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.

58. Nevertheless, Respondents have refused to permit Petitioner the opportunity for release on bond.

59. The application of 8 U.S.C. § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates DHS and Department of Justice regulations 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

COUNT IV

Violation of the Administrative Procedure Act

Contrary to Law and Arbitrary and Capricious Agency Policy

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 APA provides that a “reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A).

62. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all aliens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such aliens are detained under § 1226(a) and are eligible for release on bond, unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

63. Nevertheless, Respondents have refused to permit Petitioner the opportunity for release on bond finding that he is subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2).

64. Additionally, Respondents have failed to properly articulate reasoned explanations for their decisions, which represent changes in the positions of their respective agencies' longstanding policies and positions; have considered factors that Congress did not intend to be considered; have entirely failed to consider important aspects of the problem; and, have offered explanations for their decisions that run counter to the evidence before the agencies and contrary to established legal precedent.

65. Respondents' application of 8 U.S.C. § 1225(b)(2) to Petitioner is arbitrary, capricious, and not in accordance with law, and as such, it violates the APA. *See* 5 U.S.C. § 706(2).

COUNT V

Violation of the Administrative Procedure Act

Failure to Observe Required Procedures

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

67. The APA provides that a “reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . without observance of procedure required by law.” 5 U.S.C. § 706(2)(D). Specifically, the APA requires agencies to follow public notice-and-comment rulemaking procedures before promulgating new regulations or amending existing regulations. See 5 U.S.C. § 553(b), (c).

22

74. “Freedom from imprisonment—from government custody, detention,
or other forms of physical restraint—lies at the heart of the liberty that Clause
protects.” *Zadvydas v. Davis*, 533 U.S. 578, 690 (2001).

75. Additionally, “[t]he Due Process Clause applies to ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.” *Id.* at 693.

7 76. Respondents' mandatory detention of Petitioner without
8 consideration for release on bond or access to a legitimate bond hearing violates his
9 due process rights.

PRAYER FOR RELIEF

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

- 12 a. Assume jurisdiction over this matter;
- 13 b. Issue a writ of habeas corpus requiring Respondents to provide
- 14 Petitioner with an individualized bond hearing within seven (5) days
- 15 before an Immigration Judge who must exercise jurisdiction over the
- 16 request pursuant to the declaratory judgment in *Maldonado Bautista*;
- 17 c. Award Petitioner attorney's fees and costs under the Equal Access to
- 18 Justice Act (EAJA), as amended, 28 U.S.C. § 2412, and on any other
- 19 basis justified under law; and,
- 20 d. Grant any other and further relief that this Court deems just and proper.

1 DATED this 10th Day of March 2025.

2
3 /s/Delia Salvatierra, Esq.

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