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2 UNITED STATES DISTRICT COURT  
3 MIDDLE DISTRICT OF GEORGIA  
4 COLUMBUS DIVISION

5 Hernandez Nava, Hector,

6 Petitioner,

7 v.

8 George STERLING, Field Office  
9 Director of Enforcement and Removal  
10 Operations, Atlanta Field Office,  
11 Immigration and Customs Enforcement;  
12 Kristi NOEM, Secretary, U.S.  
13 Department of Homeland Security; U.S.  
14 DEPARTMENT OF HOMELAND  
15 SECURITY; Pamela BONDI, U.S.  
16 Attorney General; EXECUTIVE  
17 OFFICE FOR IMMIGRATION  
18 REVIEW; Jason STREEVAL, Warden  
19 of Stewart Detention Center,

20 Respondents.  
21  
22  
23  
24

Case No. 4:26-cv-439

**PETITION FOR WRIT OF  
HABEAS CORPUS**

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**I. INTRODUCTION**

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2  
3 1. Petitioner HECTOR HERNANDEZ NAVA, brings this petition for a writ of  
4 habeas corpus to seek enforcement of their rights as members of the Bond Denial Class certified  
5 in *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (C.D. Cal.) Petitioner is in  
6 the physical custody of Respondents at the Stewart Detention Center and now faces unlawful  
7 detention as the Department of Homeland Security (DHS) and the Executive Office for  
8 Immigration Review (EOIR) have refused to abide by the declaratory judgment issued on behalf  
9 of the certified class in *Maldonado Bautista v. Santacruz*.

10 2. Petitioner is not subject to an order of removal. He entered the United States on or  
11 around 1998. Respondent has a United State citizen child.

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

21 4. The declaratory judgment held that the Bond Denial Class members are detained  
22 under 8 U.S.C. § 1226(a), and thus may not be denied consideration for release on bond under §  
23 1225(b)(2)(A). *Maldonado Bautista*, 2025 WL 3289861, at \*11.

1           5.       Nonetheless, the Executive Office for Immigration Review and its subagency the  
2 Immigration Court and the Department of Homeland Security (DHS) have blatantly refused to  
3 abide by the declaratory relief and have unlawfully ordered that Petitioner be denied the  
4 opportunity to be released on bond under 8 U.S.C. § 1226(a) under an erroneous interpretation  
5 that Petitioner is encompassed within the ‘mandatory detention’ provision of 8 U.S.C. § 1225(b).

6           6.       The Department has blatantly refused to abide by the decision in *Maldonado*  
7 *Bautista* and appealed the district court’s decision and filed an emergency motion for a stay,  
8 pending the appeal. A temporary stay was granted on February 18, 2026. Nevertheless, despite  
9 decades of legal precedence showing class members such as Petitioner are eligible for a bond  
10 redetermination by an immigration judge, the Department under the current administration has  
11 raised bad-faith arguments misinterpreting precedential decisions. The Department has, in bad  
12 faith, appealed the district court’s declaratory judgment certifying a nationwide class member  
13 under *Maldonado Bautista* and vacating *Matter of Yajure Hurtado*.

14           7.       Petitioner is a member of the Bond Eligible Class, as he:

- 15           a.       does not have lawful status in the United States and is currently detained at the  
16 Stewart Detention Center. He was apprehended by immigration authorities on  
17 February 13, 2026;  
18           b.       entered the United States without inspection on or around 1998 and was not  
19 apprehended upon arrival, *cf. id.*; and  
20           c.       is not detained under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231.

21           8.       After apprehending Petitioner on February 13, 2026, DHS placed him in removal  
22 proceedings pursuant to 8 U.S.C. § 1229a on March 10, 2026.

23           9.       The Court should expeditiously grant this petition.

24           10.      Respondents are bound by the judgment in *Maldonado Bautista*, as it has the full  
“force and effect of a final judgment.” 28 U.S.C. § 2201(a). Nevertheless, Respondents continue

1 to flagrantly defy the judgment in that case and continue to subject Petitioner to unlawful  
2 detention despite his clear entitlement to consideration for release on bond as a Bond Eligible  
3 Class member, and have in bad faith appealed the district court's decision.

4 11. Immigration judges have informed class members in bond hearings that they have  
5 been instructed by "leadership" that the declaratory judgment in *Maldonado Bautista* is not  
6 controlling, even with respect to class members, and that instead IJs remain bound to follow the  
7 agency's prior decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

8 12. The respondents have acted in bad faith and delayed petitioners' ability to apply  
9 for bond by previously issuing *Matter of Yajure Hurtado* and now by refusing to abide by  
10 *Maldonado Bautista* and appealing in bad faith. The state's meritless assertions constitute  
11 dilatory tactics intended to obstruct the petitioners' timely application for bond. Should a  
12 petitioner reach a point in their removal proceedings where they are ordered removed,  
13 petitioners' become ineligible to apply for bond redetermination with a final order of removal  
14 under § 1252(d)(1). Because Respondents are detaining Petitioner in violation of the declaratory  
15 judgment issued in *Maldonado Bautista*, and have appealed in bad faith, the Court should  
16 accordingly order that within one day, Respondent DHS must release Petitioner.

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

## 19 II. JURISDICTION

20 14. Petitioner is in the physical custody of Respondents. Petitioner is detained at the  
21 Stewart Detention Center in the city of Lumpkin, Georgia.

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

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

6 **III. VENUE**

7 17. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-  
8 500 (1973), venue lies in the United States District Court for the Middle District of Georgia, the  
9 judicial district in which Petitioner currently is detained.

10 18. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because  
11 Respondents are employees, officers, and agencies of the United States, and because a  
12 substantial part of the events or omissions giving rise to the claims occurred in the Middle  
13 District of Georgia.

14 19. If venue is proper at the time of filing, the district court ordinarily retains  
15 jurisdiction even if Petitioner is transferred to another district. *Ex Parte Endo*, 323 U.S. 283, 304-  
16 305 (1944).

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

18 20. Petitioner is presently kept in immigration detention and is therefore “in custody”  
19 of Respondents by and through their various agents. *Carafas v. LaVallee*, 391 U.S. 234, 237-38  
20 (1968) (“... the ‘in custody’ determination is made at the time the habeas petition is filed.”);  
21 *Spencer v. Kemna*, 523 U.S. 1, 7 (1998) (Same); *Rumsfeld v. Padilla*, 542 U.S. 426, 437 (2004)  
22 (“[O]ur understanding of custody has broadened to include restraints short of physical  
23 confinement.”).





1 (10<sup>th</sup> Cir. Aug. 31, 2011); *see also* William Funk, *Exhaustion of Administrative Remedies – New*  
2 *Dimensions Since Darby*, 18 Pace Environmental Law Review (2000) (Tracing the doctrine out  
3 of common law and federal equity jurisdiction).

4 32. When Congress imposes an exhaustion remedy by statute, exhaustion is generally  
5 required. *Coit Indep. Jt. Venture v. FSLIC*, 489 U.S. 561, at 579 (1989) (citing *Weinberger v.*  
6 *Salfi*, 422 U.S. 749, 766 (1975); *Myers v. Bethlehem Shipbuilding Corp.*, 303 U.S. 41, 50-51  
7 (1938). If exhaustion is not *explicit* in a statute, then “courts are guided by congressional intent in  
8 determining whether application of the doctrine would be consistent with the statutory scheme.  
9 *Coit, supra* (citing *Patsy v. Florida Board of Regents*, 457 U.S. 496, 502 (1982).

10 33. The INA does have an exhaustion provision, which only applies in the context of  
11 “final orders of removal.” 8 U.S.C. § 1252(d)(1) (“A court may review a final order of removal  
12 only if the alien has exhausted all administrative remedies ...”). This exhaustion provision is not  
13 jurisdictional. *Santos-Zacaria v. Garland*, 498 U.S. \_\_\_\_ (2023).

14 34. Petitioner is not subject to a final order of removal (or any order of removal); so,  
15 § 1252(d)(1) is inapplicable. So, the INA does not impose an explicit exhaustion requirement  
16 that can apply here. Nor can § 1252(d)(1) be read to *implicitly* impose an exhaustion  
17 requirement. The Court need not engage in statutory interpretation as “[w]here statutory  
18 language is plain and unambiguous, courts give effect to the statute as written without engaging  
19 in statutory construction.” *In re Adoption of Doe*, 156 Idaho 345, 349.

20 35. Even if this Court found § 1252(d)(1) to be ambiguous, which it is not, plain text  
21 interpretation reveals § 1252(d)(1) does not impose an applicable exhaustion requirement. *See*  
22 Antonin Scalia & Bryan A. Gardner, *Reading Law: The Interpretation of Legal Texts* (1<sup>st</sup> Ed.  
23 2012) (The “Supremacy of the Text Principle” (The words of a governing text are of paramount  
24

1 concer, and what they convey, in their context, is what the text means), “Omitted Case Canon”  
2 (*casus omissus pro omisso habendus est* – nothing is to be added to what the text state or  
3 reasonably implies), “Negative Implication Canon” (*expression unius est exclusion alterius* – the  
4 expression of one thing implies the exclusion of alternatives), and the “Whole Text Canon” (The  
5 text must be construed as a whole) each demonstrate Congress did not impose an exhaustion  
6 requirement – either expressly or by implication.<sup>1</sup>

7 36. Even if the doctrine of exhaustion did apply, Petitioner satisfies several  
8 exceptions to it. Exhaustion is excused if:

- 9 (1) Requiring exhaustion of administrative remedies causes prejudice, due to  
10 unreasonable delay or an ‘indefinite timeframe for administrative action’;  
11 (2) The agency lacks the ability or competence to resolve the issue or grant the  
12 relief requested;  
13 (3) Appealing through the administrative process would be futile because the  
14 agency is biased or has predetermined the issue; or  
15 (4) where substantial constitutional questions are raised.

16 *Iddir v. INS*, 301 F.3d 492, 500 (7<sup>th</sup> circuit case citing *McCarthy v. Madigan*, 503 U.S.  
17 140, 146-48 (1992); *Bowen v. City of New York*, 476 U.S. 467, 483 (1986); *Mathews v.*  
18 *Diaz*, 426 U.S. 67, 76 (1976); *Gibson v. Berryhill*, 411 U.S. 564, 575 (1973); *Houghton v.*  
19 *Shafer*, 392 U.S. 639, 640 (1968); *McNeese v. Board of Educ.*, 373 U.S. 668, 675  
20 (1963)).

21

22

1           37. Here, exhaustion would be futile. Immigration judges continue to rely on a  
2 September 5, 2025 BIA decision, *Yajure-Hurtado*, which holds “Based on the plain  
3 language of [...] 8 U.S.C. § 1225(B)(2)(A) (2018), Immigration Judges lack authority to  
4 hear bond requests or grant bond to aliens who are present in the United States without  
5 admission. *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025). BIA therefore  
6 asserts that all “applicants for admission”, a class that encompasses more than fourteen  
7 million people<sup>2</sup>, are detained under 8 U.S.C. § 1225(b) and therefore subject to  
8 “mandatory detention” and ineligible for release on bond. This interpretation is wrong. It  
9 defies due process, plain text interpretation of the INA, common sense, and at least one  
10 federal court order discussed more thoroughly below. *See Lazaro Maldonado Bautista v.*  
11 *Ernesto Santacruz Jr*, 5:25-cv-01873, (C.D. Cal.) (A declaratory judgment binds the  
12 immigration courts and expressly forbids the interpretation of 8 U.S.C. § 1225(b)  
13 advanced by BIA in *Yajure-Hurtado*). Immigration judges continue to make this  
14 interpretation in apparent reliance on the orders of executive branch supervisors as to the  
15 supposed inapplicability of the *Maldonado-Bautista* class action, or misguided  
16 interpretation of 8 U.S.C. § 1225(b), § 1226(a), and the general tenor of the due process  
17 clause and its historical foundations. Furthermore, *Maldonado-Bautista* has been  
18 temporarily stayed pending the government’s appeal.

19           38. See also *McCarthy v. Madigan*, 503 U.S. 140, 148 (1992) (“an  
20 administrative remedy may be inadequate where the administrative body is shown to be  
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22 <sup>2</sup>See Jeffrey S. Passel and Jens Manuel Krogstad, *U.S. Unauthorized Immigrant Population Reached a Record 14*  
23 *Million in 2023*, Pew Research, Sept. 12, 2025, accessible at <https://www.pewresearch.org/race-and-ethnicity/2025/08/21/u-s-unauthorized-immigrant-population-reached-a-record-14-million-in-2023/#:~:text=The%20number%20of%20unauthorized%20immigrants%20in%20the%20United%20States%20reached,a%20comprehensive%20and%20detailed%20estimate> (Describing that “Unauthorized immigrants were 27% of  
24 the U.S. foreign-born population in 2023”, consisting of “14.0 million [people]...”)

1 biased or has otherwise predetermined the issue before it.” Citing  
2 *Gibson v. Berryhill*, 411 U. S., at 575, n. 14; *Montana National Bank of*  
3 *Billings v. Yellowstone County*, 276 U. S. 499, 505 (1928) (taxpayer seeking refund not  
4 required to exhaust where “any such application [would have been] utterly futile since the  
5 county board of equalization was powerless to grant any appropriate relief” in face of  
6 prior controlling court decision – here, similarly, BIA has expressly demonstrated its  
7 belief that IJs lack jurisdiction to grant a bond to the Petitioner); *Houghton v. Shafer*,  
8 392 U. S. 639, 640 (1968); *Association of National Advertisers, Inc. v. FTC*, 201 U. S.  
9 App. D. C. 165, 170-171, 627 F.2d 1151, 1156-1157 (1979) (bias of Federal Trade  
10 Commission chairman), cert. denied, 447 U. S. 921 (1980); *Patsy v. Florida*  
11 *International University*, 634 F.2d 900, 912-913 (CA5 1981) (*en banc*) (administrative  
12 procedures must “not be used to harass or otherwise discourage those with legitimate  
13 claims”), rev’d on other grounds sub nom. *Patsy v. Board of Regents of Florida*, 457 U. S.  
14 496 (1982)).

15 39. Immigration judges make this erroneous interpretation of the INA in apparent  
16 reliance on the orders of supervisors as to the supposed inapplicability of *Maldonado-Bautista*,  
17 or on various misguided interpretations of 8 U.S.C. § 1225(b) and § 1226(a), and a failure to  
18 account for the general tenor of the due process clause and its historical roots. Immigration  
19 judges continue to treat *Yajure-Hurtado* as binding, while treating the federal class action  
20 *Maldonado-Bautista* as if it is not. This flips *Loper-Bright* on its head. *Loper-Bright Enterprises*  
21 *v. Raimondo*, 603 US \_\_\_\_ (2024) (Overturning the Chevron doctrine, *Chevron U.S.A. Inc. v.*  
22 *NRDC*, 467 U.S. 837 (1984), and providing that agency interpretations of ambiguous statutory  
23 provisions are not entitled to deference).

1 40. Dozens of federal district courts, in addition to Maldonado-Bautista, have  
2 concluded 8 U.S.C. § 1226(a) does generally govern the detention of an applicant for admission,  
3 and that 8 U.S.C. § 1225(b) does not. For twenty-eight such decisions outside the eleventh  
4 circuit, see footnote 3.<sup>3</sup> Within the eleventh circuit, see also *J.A.M. v. Streeval*, No. 4:25-CV-342

5  
6 <sup>3</sup> For twenty-eight district court decisions favorable to the Petitioner's position that 8 U.S.C. § 1226(a) governs the  
7 Petitioner's detention (each from outside the 11th circuit), see the following set of cases.

8 **First Circuit:**

- 9 • *Sampiao v. Hyde*, 2025 WL 2607924 (D. Mass. Sept. 9, 2025) (Noting disagreement with BIA analysis in *Yajure-Hurtado*);
- 10 • *Jimenez v. FCI Berlin, Warden*, No. 25-cv-326-LM-AJ (D.N.H. Sept. 8, 2025) (Ruling the Petitioner was entitled to a bail hearing);
- 11 • *Doe v. Moniz*, 2025 WL 2576819 (D. Mass. Sept. 5, 2025) (Ordering a bond hearing and ruling that detaining an individual solely on the basis of his prior arrest violates due process);
- 12 • *Romero v. Hyde*, 2025 WL 2403827 (D. Mass. Aug. 19, 2025) (Ordering that Petitioner receive a bond hearing governed by section 1226 rather than 1225(b));
- 13 • *Martinez v. Hyde*, 2025 WL 2084238 (D. Mass. July 24, 2025) (Court found detention unlawful and ordered his release, denying the Government's motion for reconsideration);
- 14 • *dos Santos v. Noem*, 2025 WL 2370988 (D. Mass. Aug. 14, 2025) (Ordering ICE to release the Petitioner within 48 hours); *Gomes v. Hyde*, 2025 WL 1869299 (D. Mass. July 7, 2025) ("The government's interpretation contravenes the plain text of Section 1226(a) and would render superfluous Section 1226(c)...");

15 **Second Circuit:**

- 16 • *Lopez Benitez v. Francis*, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025) (Granting the Petition, where ICE agents "violently detained" Petitioner as he left a scheduled immigration court appearance in Manhattan "in violation of the Due Process Clause and the Fourth Amendment.");
- 17 • *Samb v. Joyce*, 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025) (Granting petition for the writ of habeas corpus);

18 **Fourth Circuit:**

- 19 • *Leal-Hernandez v. Noem*, 2025 WL 2430025 (D. Md. Aug. 24, 2025) (Respondents arrested Petitioner while he was on his way to work, took him into custody, Petitioner was then granted a bond by an immigration judge who concluded § 1226(a) governed, Respondents refused to accept payment of the bond, the government invoked a regulatory stay pursuant to 8 C.F.R. § 1003.19(i)(2) to continue detaining the Petitioner as his favorable bond decision was on appeal before the BIA, the Court grants the petition for the writ);

20 **Fifth Circuit:**

- 21 • *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025) (Court finds (1) habeas jurisdiction encompasses a challenge to the statutory authority by which Respondent contends her detention without bond unlawful, (2) Court did not find persuasive Respondents argument that Petitioner failed to exhaust administrative remedies "because this Court is the proper form in which Petitioner can bring her ... constitutional claims." (3) Court grants Temporary Restraining Order concluding Petitioner is likely to succeed on the merits in showing mandatory detention under § 1225 "was erroneous" and that "she is entitled to a bond hearing under section 1226(a).");

22 **Sixth Circuit:**

- 23 • *Pizarro Reyes v. Raycraft*, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025) (disagreeing with BIA's analysis in *Yajure Hurtado*);
- 24 • *Lopez-Campos v. Raycraft*, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025) (Granting writ, finding detention without a bond hearing is unlawful, a violation of Petitioner's due process rights, and ordering his immediate release – or alternatively – a bond hearing within seven (7) days);

**Eighth Circuit:**

1 (CDL), 2025 WL 3050094 (M.D. Ga. Nov. 1, 2025) (Granting habeas relief in a consolidated  
2 case with similar facts, ordering bond hearings under 8 U.S.C. § 1226(a)).

### 3 VII. LEGAL FRAMEWORK

4 41. Noncitizens in immigration proceedings are entitled to protections under the Fifth  
5 Amendment Due Process clause. *Reno v. Flores*, 507 U.S. 292, 306 (1993). Immigration  
6 detention should not be used as a punishment and should only be used when, under an  
7 individualized determination, a noncitizen is a flight risk because they are unlikely to appear for  
8 court or is a danger to the community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

9 42. At issue is the lawfulness of Petitioner's detention without bond. Petitioner  
10 anticipates the primary legal dispute in this case involves a question of statutory interpretation  
11 regarding what provision of the Immigration and Nationality Act (INA) governs his detention.  
12 Petitioner argues 8 U.S.C. § 1226(a) governs the detention and therefore that Petitioner may  
13 apply for and receive bond under a discretionary framework. More than twenty-eight federal  
14 district courts agree with Petitioner's position that 8 U.S.C. § 1226(a) governs and § 1225(B)  
15 does not. See *Footnote 3, above*. 8 U.S.C. § 1225(b) does not apply to Petitioner's detention, and

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- 16 • *Carmona-Lorenzo v. Trump*, 2025 WL 2531521 (D. Neb. Sept. 3, 2025) (Ordering release on bond);
  - 17 • *Cortes Fernandez v. Lyons*, 2025 WL 2531539 (D. Neb. Sept. 3, 2025) (Court finds “the government is  
18 unlawfully detaining Petition in violation of his Due Process rights by invoking a unilateral automatic stay  
19 of the bond duly appointed by” an immigration judge, and “orders Respondents to immediately release  
20 Petitioner.”);
  - *Palma Perez v. Berg*, 2025 WL 2531566 (D. Neb. Sept 3, 2025) (Same as *Cortes Fernandez, supra*);
  - *O.E. v. Bondi*, 2025 WL 2466670 (D. Minn. Aug. 27, 2025) (Court concludes § 1226's discretionary  
21 detention scheme applies);
  - *Jacinto v. Trump*, 2025 WL 2402271 (D. Neb. Aug. 19, 2025) (Judge ruled the Petitioner was being held  
22 unlawfully and ordered her released on bond);
  - *Maldonado v. Olson*, 2025 WL 2374411 (D. Minn. Aug. 15, 2025) (Granting Preliminary Injunction  
23 favoring Petitioner);
  - *Garcia Jimenez v. Kramer*, 2025 WL 2374223 (D. Neb. Aug. 14, 2025) (Judgment favoring Petitioner);

#### 24 Ninth Circuit:

- *Cuevas Guzman v. Andrews*, 2025 WL 2617256, at \*3 n.4 (E.D. Cal. Sept. 9, 2025) (distinguishing *Yajure  
Hurtado*);
- *Caicedo Hinestroza v. Kaiser*, 2025 WL 2606983 (N.D. Cal. Sept. 9, 2025) (Granting TRO ordering  
Respondents to immediately release Petitioners from custody, enjoining re-detention without a pre-  
detention hearing before a neutral decisionmaker, and, inter alia, enjoining Respondents from transferring  
Petitioners out of custody without the Court's prior approval);

1 Respondents' "interpretation" that it does is legally incorrect. Petitioner is being deprived of his  
2 right to request or receive bond based on improper, ultra vires application of § 1225(b).

3 43. Agency interpretations of ambiguous statutory provisions are not entitled to  
4 deference. *Loper Bright Enterprises v. Raimondo*, 602 U.S. 574 (2024) (Overruling *Chevron*  
5 *U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), noting agency  
6 interpretations are entitled to "respect" only to the extent those interpretations have the power to  
7 persuade (citing *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944)). Therefore, this Court is not  
8 bound by *Yajure-Hurtado*, *supra*.

### 9 **VIII. CLAIMS FOR RELIEF**

#### 10 **COUNT ONE: Request for Relief Pursuant to *Maldonado Bautista***

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

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

15 46. The order granting partial summary judgment in *Maldonado Bautista* holds that  
16 Respondents violate the INA in applying the mandatory detention statute at § 1225(b)(2) to class  
17 members.

18 47. The order granting class certification in *Maldonado Bautista* further orders that  
19 "[w]hen considering this determination with the MSJ Order, the Court extends the same  
20 declaratory relief granted to Petitioners to the Bond Eligible Class as a whole."

21 48. Respondents are parties to *Maldonado Bautista* and bound by the Court's  
22 declaratory judgment, which has the full "force and effect of a final judgment." 28 U.S.C.  
23 § 2201(a).

24 49. 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 judgment in *Maldonado Bautista*.

#### **COUNT TWO: Violation of Fifth Amendment Due Process**

1           50. Respondents are unlawfully detaining the Petitioner by depriving him of a bond  
2 hearing under 8 U.S.C. § 1226(a) and erroneously considering him to be bound by 8 U.S.C. §  
3 1225(b). “Freedom from imprisonment-from government custody, detention, or other forms of  
4 physical restraint- lies at the heart of the liberty that Clause protects.” *Zadvydas*.

5           51. Notwithstanding applicability of Maldonado-Bautista, Petitioner remains eligible  
6 for habeas relief because his detention violates the due process clause. U.S. Const. Amend. V.  
7 The Due Process Clause entitles aliens to due process in deportation proceedings. *Reno v. Flores*,  
8 507 U.S. 292, 306 (1993); *Demore v. Kim*, 538 U.S. 510 (2003); *Zadvydas v. Davis*, 533 U.S.  
9 678 (2001); *see also Jackson v. Indiana*, 406 U.S. 715, 738 (1972) (Criminal law case in which  
10 the Supreme Court noted in dicta that “At the least, due process requires that the nature and  
11 duration of commitment bear some reasonable relation to the purpose for which the individual is  
12 committed.”)

13           52. “[I]mpermissible punishment before trial” violates substantive due process  
14 protections. *United States v. Salerno*, 481 U.S. 739, 746 (1987). ). In *Salerno*, the Court  
15 analyzed whether the Bail Reform Act of 1984 complied with the requirements of Fifth  
16 Amendment due process. The majority held the Bail Reform Act of 1984 did *not* violate the  
17 substantive due process clause, reasoning: “[p]reventing danger to the community is a  
18 legitimate regulatory goal and the incidents of detention are not excessive in relation to that  
19 goal, *since the Act carefully limits the circumstances under which detention may be sought to*  
20 *the most serious of crimes, the arrestee is entitled to a prompt hearing, the maximum length*  
21 *of detention is limited by the Speedy Trial Act, and detainees must be housed apart from*  
22 *convicts*. Thus, the Act constitutes a permissible regulation, rather than impermissible  
23 punishment.” (emphasis added).

1 53. Unlike Salerno, the interpretation of 8 U.S.C. § 1225(b) Respondent's and BIA in  
2 *Yajure-Hurtado* put forward does not "carefully limit" the circumstances of detention – it does  
3 the polar opposite and transmutes a narrow exception into a general rule to the utter disregard of  
4 the manner in which this transmogrification renders 8 U.S.C. § 1226(a) superfluous along with  
5 other broad swathes of the INA. Nor does it afford Petitioner or those like him a "prompt  
6 hearing" - it does the polar opposite, and claims authority to strip away Petitioner's right to  
7 request a bond hearing or receive bond. Nor does it describe any limits whatsoever as to how  
8 long people like Petitioner may continue to be detained. Salerno therefore shows application of  
9 8 U.S.C. § 1225(b) is "impermissible punishment before trial" demonstrating the  
10 unconstitutionality of such interpretation.

11 **COUNT THREE: Violation of the Eighth Amendment**

12 54. The Eighth Amendment provides "Excessive bail shall not be required, nor  
13 excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. Amend. VIII.

14 55. By denying Petitioner the right to any amount of bail and erroneously applying 8  
15 U.S.C. § 1225(b) to him, Respondents violate the Eighth Amendment.

16 56. Respondents also violate the Eighth Amendment because the detention is an  
17 "impermissible punishment before trial." *Salerno*, discussed above.

18 57. Courts have found deportation to not be a "punishment" for a crime. *Wong Wing*  
19 *v. United States*, 163 U.S. 228, 236 (1896) (Citing *Fong Yue Ting v. United States*, 149 U.S. 698,  
20 730 (1893) *Elia v. Gonzales*, 431 F.3d 268, 276 (6<sup>th</sup> Cir. 2005); *Briseno v. Immigr. &*  
21 *Naturalization Serv.*, 192 F.3d 1320, 1323 (9<sup>th</sup> Cir. 1999); *Oliver v. U.S. Dep't of Just., Immigr.*  
22 *& Naturalization Serv.*, 517 F.2d 426, 428 (2d Cir. 1975) (despite its "severe ... consequences,"  
23 deportation is not a criminal punishment) (Quoting *Harisiades v. Shaughnessy*, 342 U.S. 580,  
24

1 594 (1952)). From this premise, Courts have sometimes noted in dicta that Immigration Law is  
2 an area of “civil law” and subsequently concluded that 6th amendment protections – the right to  
3 counsel, etc. – have been found to not apply.

4 58. Here, Petitioner does not assert otherwise. Petitioner agrees the current legal  
5 framework does not recognize deportation or “removal” to be a punishment for a crime. From  
6 this premise though, it does not then follow that no detention – however gruesome its conditions,  
7 arbitrary its imposition, or whatever set of other Constitutional rights get trampled over to  
8 accomplish such detention – could *ever* amount to “punishment” such that Eighth Amendment  
9 protections extend. Rather, the Eighth Amendment can apply to immigration detention in certain  
10 circumstances which, admittedly, the Supreme Court has not yet gotten around to delineating.  
11 However, that Court has never held the Eighth Amendment cannot apply to immigration. See  
12 *Hariasiades v. Shaughnessy*, Justice Douglas’s dissent 342 U.S. 580, 598-600 (1952) (“The  
13 power of deportation is ... an implied one. The right to life and liberty is an express one. Why  
14 this implied power should be given priority over the express guarantee of the Fifth Amendment  
15 has never been satisfactorily answered ... The expulsion of a race may be within the inherent  
16 powers of a despotism. History, before the adoption of this constitution, was not destitute of  
17 examples of the exercise of such a power, and its framers were familiar with history, and wisely  
18 ... they gave to this government no general power to banish ... Banishment is punishment in the  
19 practical sense. It may deprive a man and his family of all that makes life worthwhile.”) See also  
20 *Estelle v. Gamble*, 429 U.S. 97, 106 (1976) (Describing the deliberate indifference standard for  
21 Eighth Amendment claims based on deliberate indifference to serious medical needs); *Helling v.*  
22 *McKinney*, 509 U.S. 25, 33 (1933) (Even where the harm has not yet occurred, a prisoner can  
23 still file a successful Eighth Amendment claim regarding the conditions of his or her  
24

1 confinement, recognizing a remedy for unsafe conditions where a tragic event has not yet  
2 occurred); *see also* Carl Kenneth Lipscombe, *Tylenol and an Ice Pack: An Inadequate*  
3 *Prescription for HIV/AIDS in Immigration Detention Centers*, 11 *CARDOZO PUB. L. POL'Y*  
4 *& ETHICS* J. 529 (2013); *Jones v. Cunningham*, 371 U.S. 236, 238–40 (1963) (noting that  
5 habeas corpus is not limited to situations where the applicant is in custody, but can be used by  
6 aliens, members of the military and other situations where one's liberty is restrained); *Bell v.*  
7 *Wolfish*, 441 U.S. 520, 526 n.6 (1979) (Supreme Court has “left for another day the question of  
8 the propriety of using a writ of habeas corpus to obtain review of the conditions of confinement,  
9 as distinct from the fact or length of the confinement itself.”, also at page 535 noting pretrial  
10 detainees “may not be punished prior to an adjudication of guilt in accordance with due process  
11 of law.”)

12 59. Here, Respondents have detained Petitioner and others like him at Stewart  
13 Detention Center operated by a private company, CoreCivic. Migrants have accused that  
14 company of inhumane living conditions, medical negligence, physical and sexual abuse,  
15 overcrowding, understaffing, use of excessive force, prolonged use of solitary confinement, and  
16 CoreCivic has been sued for forcing noncitizens to work for minimal wages as low as \$1.00 per  
17 day.<sup>4</sup> Respondents deny Petitioner his right to request or receive a bond hearing under 8 U.S.C. §  
18 1226(a). This raises a colorable Eighth Amendment claim providing Petitioner with another basis  
19 for habeas relief.

20 **COUNT FOUR: Violation of the Immigration and Nationality Act**

21 60. As discussed above, Respondents are detaining the Petitioner and asserting his  
22 detention is under 8 U.S.C. § 1225(b) forcing Petitioner to be in ‘mandatory detention’ and

23 \_\_\_\_\_  
24 <sup>4</sup> *CoreCivic*, CorpWatch.org, available at <https://www.corpwatch.org/company/corecivic>, accessed December 11th, 2025.

1 ineligible for bond. This misapplies 8 U.S.C. § 1225(b) to the Petitioner as 8 U.S.C. § 1226(a)  
2 properly governs his detention, under which Petitioner is statutorily eligible to apply for and  
3 receive a bond at a bond hearing upon a showing of certain facts.

4 61. By violating the INA, Respondents provide Petitioner with another avenue for  
5 habeas corpus relief, because Respondents are depriving Petitioner of his statutory right to a  
6 bond hearing. Therefore, Petitioner is also eligible for habeas relief under the INA.

7  
8 **IX. PRAYER FOR RELIEF**

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

- 9 a. Assume jurisdiction over this matter;
- 10 b. Issue a writ of habeas corpus requiring that within one days, Respondents release  
11 Petitioner;
- 12 c. Alternatively, issue a writ of habeas corpus requiring Respondents to release  
13 Petitioner unless they provide a bond hearing under 8 U.S.C. § 1226(a) within  
14 seven days;
- 15 d. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act  
16 (EAJA), as amended, 28 U.S.C. § 2412, and on any other basis justified under  
17 law; and
- 18 e. Grant any other and further relief that this Court deems just and proper.

18 DATED this 20th of March, 2026.

19 Respectfully Submitted,

20 **David Kennedy & Associates, Attorneys at Law, P.C.**

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