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5
6 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

7 **ALBERTO GALLARDO GATICA,**

8 Petitioner,

9 v.

10 **Markwayne MULLIN,** Secretary, U.S.
11 Department of
Homeland Security;

12 **Todd LYONS,** Acting Director, U.S.
13 Immigration and Customs Enforcement;

14 **Patrick DIVVER,** Field Office Director, San
15 Diego Field Office, U.S. Immigration and
Customs Enforcement.


16 **Christopher LAROSE,** Senior Warden, Otay
Mesa Detention Center;

17 **Sirce OWEN,** Acting Director of the Executive
18 Office for Immigration Review (EOIR),
U.S. Department of Justice.

19 **Pamela BONDI,** Attorney General, U.S.
20 Department of Justice.

21 Does 1-2
22 Respondents.

Case No.: '26CV2001 BJC JLB

Agency File No. 

**PETITION FOR WRIT OF
HABEAS CORPUS**

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1 INTRODUCTION

2 1. Petitioner Alberto Gallardo Gatica, (Petitioner) is a noncitizen and longtime
3 resident of the United States who has been harmed by Defendants-Respondents' (Defendants) new,
4 draconian policy reinterpreting the immigration detention statutes to preclude Petitioner from
5 eligibility for bond under the Immigration and Nationality Act (INA), 8 U.S.C. § 1226(a), and for
6 bond hearings under 8 C.F.R. §§ 1003.19(a), 1236.1(d). Instead, pursuant to this new policy,
7 Defendants now consider Petitioner as subject to mandatory detention under 8 U.S.C. §
8 1225(b)(2)(A), without the opportunity for release on bond during the pendency of his lengthy
9 removal proceedings.

10 2. Petitioner has lived in the United States continuously since 1995. Petitioner was
11 detained on March 16, 2026. He was transferred to the Otay Mesa Detention Facility in San Diego,
12 California, where he remains detained.

13 3. Petitioner is charged with, inter alia, having entered the United States without
14 inspection. *See* 8 U.S.C. § 1182(a)(6)(A)(i).

15 4. DHS denied Petitioner release from immigration custody. The denial was
16 consistent with a new DHS policy issued on July 8, 2025, instructing all ICE employees to consider
17 anyone alleged to be inadmissible under § 1182(a)(6)(A)(i) —i.e., those who entered the United
18 States without inspection—to be subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A)
19 and therefore eligible for release only on parole.

20 5. Petitioner sought a bond redetermination hearing before Immigration Catherine E.
21 Halliday-Roberts (“IJ Halliday-Roberts”) at the Otay Mesa Immigration Court on March 25, 2026.
22 Petitioner asserted the Court had jurisdiction to conduct a custody redetermination hearing
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1 pursuant to 8 USC §1226(a), and that he was a member of the bond eligible class, certified by the
2 Central District of California.

3 6. IJ Halliday-Roberts asked the Department's position on whether the Court had
4 jurisdiction to proceed with the bond hearing and the Department opposed, stating the Board's
5 precedent decision in *Matter of Yajure Hurtado* remains law, and that the Court was not bound by
6 the Central District Court declaratory order.

7 7. IJ Halliday-Roberts agreed explicitly with the Department's position and parroted
8 their reasoning in denying Petitioner a bond hearing deciding she had no jurisdiction. She
9 continued that Petitioner is an "applicant for admission" who is "seeking admission" and subject
10 to mandatory detention under § 1225(b)(2)(A). IJ Halliday-Roberts did not allow for any argument
11 or testimony regarding the merits and made no finding on the merits of whether the Petitioner is a
12 danger or flight risk.

13 8. Petitioner's detention on this basis violates the plain language of the INA and its
14 implementing regulations.

15 9. Subparagraph 1225(b)(2)(A) applies to individuals who are apprehended on arrival
16 in the United States. It states that an "applicant for admission" who is "seeking admission" shall
17 be detained for a removal proceeding. *Id.* It does not apply to individuals like Petitioner, who was
18 arrested and detained by ICE after having entered and begun residing in the United States. Instead,
19 such individuals are subject to a different statute, 8 U.S.C. § 1226(a), that allows for release on
20 conditional parole or bond. That statute expressly applies to people like Petitioner, are charged as
21 inadmissible for having entered the United States without inspection.

22 10. Defendants' new legal interpretation is plainly contrary to the statutory framework
23 and its implementing regulations. Indeed, for decades, Defendants have applied § 1226(a) to
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1 people like Petitioner. Defendants' new policies are thus not only contrary to law, but arbitrary
2 and capricious in violation of the Administrative Procedure Act (APA). They were also adopted
3 without complying with the APA's procedural requirements.

4 11. On January 13, 2026, Executive Office of Immigration Review Chief Immigration
5 Judge Teresa L. Riley wrote an email directing all Immigration Judges that "Maldonado Bautista
6 is not a nationwide injunction and does not purport to vacate, stay, or enjoin *Yajure Hurtado*.
7 Therefore, *Yajure Hurtado* remains binding precedent on agency adjudicators. For clarification,
8 declaratory judgments differ from injunctions in that the former clarifies parties' legal rights
9 without ordering specific action, while the latter is a court order compelling to do or stop doing a
10 specific act. A declaratory judgment is not an equitable remedy, and does not, by itself, have the
11 effect of compelling specific action by a party." See Exhibit A: EOIR Chief Immigration Judge
12 Email.

13 12. On February 18, 2026, the Central District of California issued an Order to Enforce
14 Judgement in the matter of *Maldonado Bautista et al. v. Ernesto Santacruz Jr et al.*, 5:25-cv-
15 01873-SSS-BFM (Dkt No. 107) (Feb. 18, 2026). The Court chastised the Department of Homeland
16 Security and the Executive Office for Immigration Review for failing to adhere to its prior orders
17 certifying the class and instructing to provide bond hearings for persons like Petitioner. As a result
18 of the rejection and ignorance of the federal court orders, the Central District Court issued further
19 relief explicitly vacating *Matter of Yujare Hurtado* under the Administrative Procedure Act.

20 13. The District Court's order on February 18, 2026 orders bond eligible class members
21 such as Petitioner to have a bond hearing.

22 14. On March 6, 2026, the United States Court of Appeals for the Ninth Circuit issued
23 a temporary stay on the order pending a ruling on the government's emergency motion for a stay
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1 pending appeal. Thus, the Immigration Court is not recognizing the right to the hearing for those
2 outside the Central District of California.

3 15. Petitioner was entitled to a custody redetermination hearing under Immigration
4 and Nationality Act §236(a). At the custody redetermination hearing before IJ Halliday-Roberts
5 on March 25, 2026, it was clear that IJ Halliday-Roberts was incapable or unwilling to assert
6 independent adjudication regarding Petitioner's matter. IJ Halliday-Roberts refused to accept
7 jurisdiction over the matter. Her decision was legally erroneous.

8 JURISDICTION

9 16. Petitioner is in the physical custody of Respondents. Petitioner is detained at the
10 Otay Mesa Detention Center in San Diego, California.

11 17. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C.
12 § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the
13 Suspension Clause).

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

16 VENUE

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

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

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1 35. Petitioner has a US citizen sponsor willing to post his bond and ensure he appears for all
2 immigration hearings and check-ins. *See* Exhibit C (Sponsor’s affidavit and financial
3 documents).

4 36. Petitioner has zero criminal history. He has extensive family ties in the United States (US
5 citizen child and grandchildren) He is a person of good moral character. *See* Exhibit D
6 (Family Evidence, Letters of Support from Family and Friends).

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8 **LEGAL FRAMEWORK**

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10 37. Petitioner, Alberto Gallardo Gatica, brings this petition for a writ of habeas corpus
11 to seek enforcement of his statutory right to a custody redetermination hearing pursuant to Section
12 236(a) of the Immigration and Nationality Act (8 USC 1226(a) and his rights as a member of the
13 Bond Denial Class certified in *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM
14 (C.D. Cal.) Petitioner is in the physical custody of Respondents at the Otay Mesa Detention Center.
15 He now faces unlawful detention because the Department of Homeland Security (DHS) and the
16 Executive Office for Immigration Review (EOIR) have refused to abide by the statute and the
17 declaratory judgment issued on behalf of the certified class in *Maldonado Bautista v. Santacruz*.

18 38. On November 20, 2025, the district court granted partial summary judgment on
19 behalf of individual Petitioners and on November 25, 2025, certified a nationwide class and
20 extended declaratory judgment to the certified class. *Maldonado Bautista v. Santacruz*, No. 5:25-
21 CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3289861, at *11 (C.D. Cal. Nov. 20, 2025)
22 (order granting partial summary judgment to named Petitioners-Petitioners); *Maldonado Bautista*
23 *v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3288403, at *9 (C.D.
24 Cal. Nov. 25, 2025) (order certifying Petitioners-Petitioners’ proposed nationwide Bond Eligible

1 Class, incorporating and extending declaratory judgment from Order Granting Petitioners' Motion
2 for Partial Summary Judgment).

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

6 40. Nonetheless, the Executive Office for Immigration Review and its subagency the
7 Immigration Court and the Department of Homeland Security (DHS) have blatantly refused to
8 abide by the declaratory relief and have unlawfully ordered that Petitioner be denied the
9 opportunity to be released on bond. On March 25, 2026, Petitioner had a custody hearing in which
10 IJ Halliday-Roberts refused to assert proper jurisdiction and stubbornly followed the outdated DHS
11 position. The Immigration Court continues its improper jurisdictional deflection via *Matter of*
12 *Yajure Hurtado*, 29 I&N Dec. 216, 225 (BIA 2025).

13 41. Petitioner, Alberto Gallardo Gatica, is a member of the Bond Eligible Class, as he:

- 14 a. does not have lawful status in the United States and is currently detained at the Otay
15 Mesa Detention Center. He was apprehended by immigration authorities on March
16 16, 2026.
17 b. entered the United States without inspection in 1995 and was not apprehended upon
18 arrival, cf. *id.*; and
19 c. is not detained under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231.

20 42. After apprehending Petitioner on March 16, 2026 the DHS placed him in removal
21 proceedings pursuant to 8 U.S.C. § 1229a. DHS has charged Petitioner as being inadmissible under
22 8 U.S.C. § 1182(a)(6)(A)(i), as someone who entered the United States without inspection.
23 Petitioner is subject to Section 236(a) of the Immigration and Nationality Act, and is not subject
24 to mandatory detention pursuant to Section 236(c) or Section 235 of the Act. The Court should
expeditiously grant this petition.

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

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

9 45. Because Respondents are detaining Petitioner in violation of the declaratory
10 judgment issued in *Maldonado Bautista*, the Court should accordingly order that within one day,
11 Respondent DHS must release Petitioner.

12 46. Alternatively, the Court should order Respondents to provide a custody
13 redetermination hearing under 8 U.S.C. § 1226(a) within seven days.

14 **CLAIM FOR RELIEF**

15 **1. Violation of the INA and Unlawful Detention As Class Member:**
16 **Request for Relief Pursuant to *Maldonado Bautista***

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

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

21 49. The order granting partial summary judgment in *Maldonado Bautista* holds that
22 Respondents violate the INA in applying the mandatory detention statute at § 1225(b)(2) to class
23 members.
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- e. Alternatively order prompt constitutionally compliant bond hearing within five (5) days;
- f. Award Petitioner attorney’s fees and costs as permitted by law; and
- g. Grant any other and further relief that this Court deems just and proper.

DATED this 30th of March, 2026.

/S/ ANNA M HYSELL
Attorney for Petitioner