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6
7 UNITED STATES DISTRICT COURT
8 SOUTHERN DISTRICT OF CALIFORNIA

9 Marcos Martinez TAPIA,

10
11 Petitioner,

12 v.

13 Patrick, DIVVER, Field Office Director of
Enforcement and Removal Operations, San
14 Diego Field Office, Immigration and Customs
Enforcement; Todd M. LYONS, Acting
15 Director, U.S. Immigration and Customs
Enforcement; Markwayne Mullin, Secretary,
U.S. Department of Homeland Security; U.S.
16 DEPARTMENT OF HOMELAND
SECURITY; Todd BLANCE, U.S. Attorney
17 General; EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW; Christopher J.
18 LAROSE, Warden of Otay Mesa Detention
Facility,

19 Respondents.
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Case No. **'26CV2205 BJC MSB**

**PETITION FOR WRIT OF
HABEAS CORPUS**

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

6 6. Petitioner, Marcos Martinez Tapia, is a member of the Bond Eligible Class, as he:

7 a. does not have lawful status in the United States and is currently detained at the
8 Otay Mesa Detention Facility. He was apprehended by immigration authorities on
January 17, 2026, on his way to work.

9 b. entered the United States without inspection on or about 1996, and was not
10 apprehended upon arrival. He last entered the United States in 2011, without
inspection, *cf. id.*; and

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

12 7. After apprehending Petitioner on January 17, 2026, the DHS placed him in
13 removal proceedings pursuant to 8 U.S.C. § 1229a. DHS has charged Petitioner as being
14 inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i), as someone who entered the United States
15 without inspection.

16 8. The Court should expeditiously grant this petition.

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

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

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

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

8 JURISDICTION

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

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

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

16 VENUE

17 16. 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 of California,
19 the judicial district in which Petitioner currently is detained.

20 17. 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
22 substantial part of the events or omissions giving rise to the claims occurred in the Southern
23 District of California.

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DATED this 8 of April, 2026

Respectfully Submitted:

/s/ Tina Malek
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Counsel for Petitioner