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6 **Xiao Wu**

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10 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT

11 Xiao Wu,

12
13 Petitioner,

14 v.

15 Divver, Field Office Director of Enforcement
and Removal Operations, San Diego Field
16 Office, Immigration and Customs Enforcement;
et al.

17 Respondents.

Case No. **'26CV3836 AGS DEB**

**PETITION FOR WRIT OF
HABEAS CORPUS**

INTRODUCTION

1
2 1. Petitioner Xiao Wu (“Mr. Wu”) brings this petition for a writ of habeas corpus to
3 seek enforcement of his rights as member 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 Otay Mesa Detention Center. He now faces unlawful detention
6 because the Department of Homeland Security (DHS) and the Executive Office for Immigration
7 Review (EOIR) have refused to abide by the declaratory judgment issued on behalf of the
8 certified class in *Maldonado Bautista v. Santacruz*.

9 2. Petitioner Mr. Wu is a member of the Bond Eligible Class, as he:
10 a. does not have lawful status in the United States and is currently detained at the
11 Otay Mesa Detention Center. He was apprehended by immigration authorities on
12 February 2026.
13 b. entered the United States without inspection at or near Tecate, California, on or
14 about June 12, 201, and was not apprehended upon arrival, *cf. id.*; and
15 c. is not detained under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231.

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

19 4. The Court should expeditiously grant this petition.

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

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

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

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

JURISDICTION

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

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

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

VENUE

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

13. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a

1 substantial part of the events or omissions giving rise to the claims occurred in the Southern
2 District.

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

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

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

12 **PARTIES**

13 16. Petitioner, Mr. Wu, is a native and citizen of China who has been in immigration
14 detention since at least early February 2026. Mr. Wu entered the United States near Tecate,
15 California, on or about June 12, 2019, without being admitted or paroled. He has lived in
16 California for years, including in San Diego County, where he established a stable residence and
17 community ties. Mr. Wu previously appeared in removal proceedings that were dismissed
18 without prejudice, first because of a non-compliant Notice to Appear and later based on
19 prosecutorial discretion. He also pursued protection through an affirmative asylum application,
20 which remains pending with USCIS. Before his current detention, Mr. Wu lived in Escondido,
21 California, and maintained a California driver’s license showing that address. He has family ties
22 in the United States, including his wife and son, and a U.S. citizen sponsor, Junting Lu, who has
23
24

1 offered him a safe place to live in Murrieta, California if released. Mr. Wu is currently detained
2 at the Otay Mesa Detention Center.

3 17. Respondent Patrick Divver is the Field Office Director of ICE Enforcement and
4 Removal Operations, San Diego Field Office. In that official capacity, he is responsible for
5 Petitioner's immigration custody and continued detention within this District. He is sued in his
6 official capacity only.

7 18. Respondent Christopher J. LaRose is the Warden of the Otay Mesa Detention
8 Center, where Petitioner is detained. He has day-to-day physical custody of Petitioner and is sued
9 in his official capacity only.

10 19. Respondent Department of Homeland Security is the federal agency responsible
11 for implementing and enforcing the Immigration and Nationality Act, including the detention
12 and removal of noncitizens.

13 20. This Petition challenges Petitioner's present physical confinement under 28
14 U.S.C. § 2241. Respondents are the officials and agency responsible for Petitioner's custody and
15 continued detention.
16

17 CLAIM FOR RELIEF

18 Violation of the INA: 19 Request for Relief Pursuant to *Maldonado Bautista*

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

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

24 23. *Maldonado Bautista* holds that Respondents violate the INA in applying the
mandatory detention statute at § 1225(b)(2) to class members.

24. 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 *Maldonado Bautista*.

PRAYER FOR RELIEF

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

- a. Assume jurisdiction over this matter;
- b. Issue a writ of habeas corpus requiring that within one day, Respondents release Petitioner;
- c. Alternatively, issue a writ of habeas corpus requiring Respondents to release Petitioner unless they provide a bond hearing under 8 U.S.C. § 1226(a) within seven days;
- d. Award Petitioner attorney's fees as permitted by law; and
- e. Grant any other and further relief that this Court deems just and proper.

DATED this July 01, 2026.

/s/ Jose Torres
Jose Torres
Counsel for Petitioner