

JUDGE DAVID GUADERRAMA

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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

FILED
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WESTERN DISTRICT OF TEXAS
BY [Signature]
DEPUTY CLERK

OSCAR MARTINEZ CARRILLO,

Petitioner,

v.

FIELD OFFICE DIRECTOR Enforcement and
Removal Operations, Camp East Montana
Detention Facility, El Paso, Texas Field Office;

TODD M. LYONS, Acting/Director,
U.S. Immigration and Customs Enforcement

KRISTI NOEM, Secretary of the U.S.
Department of Homeland Security; and

PAM BONDI, Attorney General of the
United States, in their official capacities

Respondents.

Case No. _____

**PETITION FOR WRIT OF
HABEAS CORPUS**

EP 26 CV 0023

INTRODUCTION

1. Petitioner, Oscar Martinez Carrillo, brings this Petition for a Writ of Habeas Corpus to seek enforcement of his rights as a member of the Bond Eligible Class certified in *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (C.D. Cal.). Petitioner is in the physical custody of Respondents at the Camp East Montana Detention Facility, in El Paso, Texas, after an arrest by U.S. Immigration and Customs Enforcement (ICE), in Red Bank, New Jersey on

November 13, 2025. Petitioner now faces unlawful detention because the Department of Homeland Security (DHS) and the Executive Office for Immigration Review (EOIR) have refused to abide by the declaratory judgment issued on behalf of the certified class in *Maldonado Bautista v. Santacruz*.

2. On December 18, 2025, in *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01874-SSS-BFM (C.D. Cal. Dec 18, 2025) (order granting final judgment to Bond Eligible Class) Judge Sykes issued a final judgment on the Bond Eligible Class's claims, holding that class members are detained under 8 U.S.C. § 1226(a) rather than § 1225(b)(2)(A) and that DHS's July 8, 2025 "no-bond" policy is unlawful.

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

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

5. Nonetheless, the Executive Office for Immigration Review and its subagency, the

Immigration Court and the Department of Homeland Security (DHS) have blatantly refused to abide by the declaratory relief and have unlawfully ordered that Petitioner be denied the opportunity to be released on bond.

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

- a. does not have lawful status in the United States and is currently detained at the Camp East Montana detention facility. He was apprehended by immigration authorities on November 13, 2025;
- b. entered the United States without inspection nearly 25 years ago and was not apprehended upon arrival, *cf. id.*; and
- c. is not detained under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231.

7. Prior to Petitioner's apprehension, DHS had previously placed him in removal proceedings pursuant to 8 U.S.C. § 1229a. DHS charged Petitioner as being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i), as someone who entered the United States without inspection.

8. The Court should expeditiously grant this petition.

9. 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 to flagrantly defy the judgment in that case and continue to subject Petitioner to unlawful detention despite his clear entitlement to consideration for release on bond as a Bond Eligible Class member.

10. 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 Immigration Judges remain bound by the BIA's prior decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

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

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

13. The Petitioner, Oscar Martinez Carrillo, is a 43-year-old native, and citizen of Mexico, who last entered the United States without inspection in 2001 at the U.S.-Mexico border in Arizona and has continuously resided in the United States for nearly 25 years.

14. On or about November 13, 2025, the Petitioner was detained by Immigration and Customs Enforcement when he was transferred from criminal detention to federal immigration detention following the dismissal of his criminal charges. He was initially detained in Red Bank, New Jersey on charges of simple assault and resisting arrest due to an altercation with a coworker. The charges were later expunged. He was first held at the Delaney Hall Detention Facility in Newark, NJ and then transferred by ICE to the Camp East Montana Detention Center in El Paso, Texas.

15. On January 29, 2016, Petitioner filed an affirmative application for asylum on Form I-589, Application for Asylum, Withholding of Removal and Relief Under the U.N. Convention Against Torture (CAT)() , as an applicant for asylum, pursuant to INA §208 *et. seq.*, 8 U.S.C. § 1158 *et seq.*, INA § 241(b)(3) *et seq.*, 8 U.S.C. § 1231(b)(3), Dec. 10, 1984, art. 3, 1465 U.N.T.S. 85 (CAT).

15. On November 21, 2016, Petitioner was issued a Notice to Appear and placed into removal proceedings, charging him as an alien who is present in the United States without being admitted or paroled. Petitioner then filed an Application for Cancellation of Removal and

Adjustment of Status for Certain Nonpermanent Residents pursuant to INA § 240(A)(b) with the Immigration Court¹. On April 28, 2022, Petitioner appeared for a Merits Hearing before an Immigration Judge in the Newark Immigration Court, in Newark, New Jersey. The Immigration Judge indicated she would be reserving decision with an inclination to grant Petitioner's application once a visa number became available. At the time of Petitioner's arrest, he was in the queue awaiting the availability of a visa number.

17. Petitioner is currently scheduled for a Master Calendar Hearing before the Hon. Dean S. Tuckman on February 12, 2026 in the El Paso Immigration Court ().

18. Petitioner is currently languishing in detention since his arrest on November 13, 2025, without the opportunity for a bond hearing before an Immigration Judge, pursuant to a recently issued Board of Immigration Appeals (BIA) decision, *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025)(Immigration Judge lacks jurisdiction to hear Respondent's bond request for individuals who entered the U.S. without inspection and are therefore present without lawful admission and are considered "applicants for admission" and are subject to mandatory detention under INA § 235(b)(2)), 8 U.S.C. § 1125(b)(2)).

18. Petitioner is also being held in detention without the opportunity for bond based on a recent abrupt change in ICE policy.

19. On July 8, 2025, acting Director, Todd M. Lyons, (ICE) issued a policy memo which abruptly changed the detention and release policies that had been applied previously over several decades.

¹ 8 U.S.C. § 1229b (Section 240A of the Immigration and Nationality Act) is a discretionary form of relief from removal. To be eligible for this form of relief, an applicant must show (1) at least 10 years of continuous physical presence in the U.S.; (2) good moral character during those 10 years; (3) no disqualifying criminal convictions and (4) that removal would result in exceptional and extremely unusual hardship to a U.S. citizen or permanent resident spouse, parent, or child.

20. Prior to the July 8, 2025 Lyons Memo, individuals present and apprehended within the United States were afforded bond hearings pursuant to INA § 236.

21. The policy memo directed ICE employees to apply INA § 235(b) instead of INA § 236(a) to *all* applicants seeking admission to the United States, including individuals present in the United States without admission, thus making persons, such as the Petitioner - who has resided in the United States continuously for nearly 20 years - ineligible for release and mandatorily detained without the benefit of a bond hearing.

22. Many U.S. District Courts nationwide have rejected the application of detention and release policies found in INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A) to persons such as the Petitioner, who entered the United States many years earlier without inspection and then arrested or detained by ICE many years later, and have granted Habeas Corpus Petitions, including United States District Courts both in this district and other districts nationwide.

23. For a comprehensive list of district court favorable decisions finding that INA §236(a), 8 U.S.C. § 1226(a) (non detention and release) applies not INA §235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A) (mandatory detention and no release), *see* table entitled: Memorandum of the Hon. Paul S. Diamond, compiled as an Appendix in *Demirel v. Federal Detention Center Philadelphia*, No. 2:25-cv-054388 (E.D. Pa. Nov. 18, 2025).

24. On information and belief, Petitioner was arrested in 2003 and pled guilty to simple assault due to a misunderstanding with a friend. He was also arrested for a DUI in 2023 and he pled guilty. He has no history of driving under the influence other than this arrest.

25. Petitioner is not a danger to the community or a national security risk

26. Petitioner is gainfully employed in the construction industry, has paid his taxes and has strong community ties.

27. Petitioner is married to Ana Laura Valente Olivares and has two U.S. native-born children ages, a 21-year-old daughter and 6-year-old daughter.

28. Petitioner's wife, Ana also filed for Cancellation of Removal on Form EOIR 42B Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents pursuant to INA § 240A(b), 8 U.S.C. § 1229b(b), as additional relief from removal.

29. Petitioner's detention is unconstitutional, pursuant to the Fifth Amendment to the United States Constitution's right to Due Process and is unlawful pursuant to a long-standing statutory and regulatory practice of DHS releasing from detention noncitizens under INA § 236(a), 8 U.S.C. §1226(a) for a bond hearing.

30. Petitioner's release from custody is not reasonably foreseeable and is futile because the DHS has recently changed its policy from entertaining bond hearing requests for the release of noncitizens from detention pursuant to INA § 236(a) 8 U.S.C. § 1226(a) to a policy of asserting mandatory detention, nationwide, pursuant to INA § 235(b), 8 U.S.C. §1225(b) without a right to a bond hearing. *See, Matter of Yajure Hurtado*, 29 I&N Dec. (BIA 2025).

31. Therefore, exhaustion of Petitioner's administrative remedies would be futile and is not required.

32. Habeas corpus review is necessary and a temporary and permanent injunction is requested to enjoin Respondents from detaining Petitioner unless provided a bond hearing by an Immigration Judge; or in the alternative, releasing Petitioner from custody on his own recognizance; and enjoining the Respondents from transferring, moving, relocating the Petitioner to another location or detention facility, pending a hearing on this matter.

33. Accordingly, to vindicate the Petitioner's rights to Due Process and unlawful custody pursuant to the U.S. Constitution, and in violation of federal statutes and regulations, this Court

should grant the instant petition for a writ of habeas corpus.

34. Absent an order from this Court, the Petitioner will be unlawfully and mandatorily detained, for the foreseeable future, in violation of his due process rights, and in violation of federal statute and regulation.

35. Petitioner has not previously sought or requested a bond hearing from an Immigration Judge, because the same would be futile. *See, Matter of Yajure Hurtado*, 29 I&N Dec. (BIA 2025).

JURISDICTION

36. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*

37. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).

38. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

VENUE

39. Venue is proper because Petitioner is detained at Camp East Montana Detention Facility in El Paso, Texas, which is within the jurisdiction of this District.

40. Venue is proper in this District because Respondents are officers, employees, or agencies of the United States and a substantial part of the events or omissions giving rise to his claims occurred in this District, Petitioner resides in this District, and no real property is involved in this action. 28 U.S.C. § 1391(e).

REQUIREMENTS OF 28 U.S.C. § 2243

41. The Court must grant the petition for writ of habeas corpus and issue an injunction and temporary restraining order (TRO) to the Respondents “forthwith,” unless the Petitioner is not entitled to relief.

42. If an injunction and temporary restraining order is issued, the Court must require respondents to file a return “within *three days* unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.* (emphasis added).

43. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as “perhaps the most important writ known to the constitutional law of England, affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

PARTIES

44. Petitioner is a native and citizen of Mexico, who last entered the U.S. without inspection at the U.S.-Mexico border, in 2001. Petitioner has continuously resided in the U.S. for nearly 25 years. Petitioner is currently detained at the Camp East Montana Detention Facility, in El Paso, Texas, and has been in ICE custody since his arrest in Red Bank, NJ, on November 13, 2025. Camp East Montana is located in El Paso County, Texas. The Petitioner is a resident of Camp East Montana Detention Facility, in El Paso County, Texas. Petitioner is in custody and under the direct control of Respondents and their agents.

45. Petitioner is in the custody of the Field Director of the Camp East Montana Detention Facility, and he has immediate physical custody of Petitioner pursuant to the facility’s contract with U.S. Immigration and Customs Enforcement to

detain noncitizens and is a legal custodian of Petitioner. Respondent Field Director of the Camp East Montana detention facility has authority to release Petitioner. He is sued in his official capacity.

46. Respondent, Todd M. Lyons, is sued in his official capacity as the Acting Director, United States Immigration and Customs Enforcement.

47. Respondent, Kristi Noem, is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security (DHS). In this capacity, Respondent Noem is responsible for the implementation and enforcement of the Immigration and Nationality Act, and oversees U.S. Immigration and Customs Enforcement, U.S. Customs and Border Protection, the component agency responsible for Petitioner's detention/custody. Respondent Noem is a legal custodian of Petitioner.

48. Respondent, Pam Bondi, is sued in her official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice (DOJ). In that capacity, she has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review (EOIR), which administers the Immigration Courts, and the Board of Immigration Appeals. Respondent Noem is a legal custodian of Petitioner.

STATEMENT OF FACTS

49. Petitioner is a 43-year-old native and citizen of Mexico. Petitioner last arrived in the United States in 2001 and has continuously resided in the United States for nearly 25 years.

50. Petitioner is married to a non-US citizen. He has two children who are both U.S.-native born citizens ages 21 and 6 years old.

51. On January 29, 2016, Petitioner filed an affirmative application for asylum on Form I-589, Application for Asylum Withholding of Removal and Relief Under the U. N.

Convention Against Torture, and for refugee status as defined in 8 U.S.C. §1101(a)(42)(A), pursuant to INA § 208 et. seq., 8 U.S.C. § 1158 et. seq. (asylum),

52. On information and belief, on November 21, 2016, the Petitioner was served with an NTA (Form I-862, Notice to Appear), charging him with removability under INA § 212(a)(6)(A)(i) as an alien present in the U.S. without being admitted or paroled or who arrived in the U.S. at any time or place other than as designated by the Attorney General and INA § 212(a)(7)(A)(i)(I) as an immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card or other suitable travel document.

53. Petitioner is eligible for relief from removal from the United States under INA §240A(b)(1) Cancellation of Removal and Adjustment of Status for Certain Non-Permanent Residents. On April 28, 2022, Petitioner appeared for a Merits Hearing before an Immigration Judge in the Newark Immigration Court, in Newark, New Jersey. The Immigration Judge indicated she would be reserving decision with an inclination to grant Petitioner's application once a visa number became available.. Petitioner is currently scheduled for a Master Calendar Hearing before the Hon. Dean S. Tuckman, on February 12, 2026, in El Paso, TX (



54. Immigration Judges across the country have been denying custody redetermination requests for noncitizens similarly situated as the Petitioner, based on lack of jurisdiction, and relying on, *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025)(finding that any noncitizen who is present in the United States without having been inspected and admitted is subject to detention pursuant to INA § 235(b)(2), 8 U.S.C. § 1225(b)(2) not INA § 236(a), 8 U.S.C. § 1226).

55. *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) has been rejected by numerous courts, including: *Buenrostro-Menez v. Bondi*, No. 25-cv-3726, 2025 WL 2886346 (S.D. Tex. Oct. 7, 2025); *Covarrubias v. Nergara*, No. 25-cv-112, 2025 WL 2950097 (S.D. Tex. Oct. 8, 2025); *Angel Fuentes v. Lyons*, No. 25-cv-00153, Doc. No. 15 (S.D. Tex. Oct. 16, 2025). For a comprehensive survey of district court decisions finding that INA §236(a), 8 U.S.C. § 1226(a) (non detention and release) applies not INA §235(b)(2), 8 U.S.C. § 1225(b)(2)(A) (mandatory detention and no release), as Respondents' assert, *see* table entitled: Memorandum of the Hon. Paul S. Diamond, compiled as an Appendix in *Demirel v. Federal Detention Center Philadelphia*, No. 2:25-cv-054388 (E.D. Pa. Nov. 18, 2025).

56. Therefore, Petitioner seeks habeas corpus relief that is necessary for adjudication of his request for a bond hearing and release from unlawful custody.

57. Petitioner seeks a Temporary Restraining Order (TRO) preliminarily enjoining and restraining Respondents from transferring or removing Petitioner to another jurisdiction or location outside the United States.

LEGAL FRAMEWORK

58. This Court possesses jurisdiction to issue a Writ of Habeas Corpus, to issue an order to preliminarily enjoin Respondents from removing the Petitioner, and to order the release of Petitioner on bond pursuant to § 236(a) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1226(a), when there is a violation of the U.S. Constitution's Due Process Clause and violations of federal statute and regulation.

59. Petitioner is a noncitizen who entered the United States without inspection or parole in 2001 at the U.S.-Mexico border in Phoenix, AZ— nearly 25 years ago.

60. Petitioner filed an affirmative application for relief from removal on January 29, 2016, on Form I-589 Application for Asylum, Withholding of Removal and Relief Under the U.N. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), INA § 208 *et. seq.*, 8 U.S.C. §1158 *et. seq.* (asylum), INA § 241(b)(3), 8 U.S.C. §1231(b)(3)(withholding of removal), and 8 C.F.R. § 208.16-208.18 (CAT).

61. Petitioner is eligible for relief from removal and has filed Form EOIR-42B Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents.

62. Petitioner was not detained by DHS/ICE or CBP (U.S. Customs & Border Patrol) at a U.S. border or port of entry, until on or about November 13, 2025, in Red Bank, NJ – in the interior of the United States. He was transferred from criminal detention to immigration detention following the dismissal of his charges.

63. For decades, DHS took the position that noncitizens like Petitioner were eligible for release on bond pursuant to INA § 236(a), 8 U.S.C. § 1226(a), unless they fell under the mandatory detention provisions of INA § 236(c), 8 U.S.C. § 1226(c).

64. However, on July 8, 2025, DHS issued an internal memo that abruptly changed its longstanding position. DHS now takes the position that *all* noncitizens who entered the U.S. without inspection or parole are actually “applicants for admission” pursuant to INA § 235(b), 8 U.S.C. § 1225(b) and therefore are ineligible for release on bond regardless of how long they have resided in the United States.

65. DHS’ new position is without legal support, and this Court should find that DHS’s new interpretation of INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A) violates the Petitioner’s right for a bond hearing under the U.S. Constitution’s Fifth Amendment Due Process Clause, and that a Writ of Habeas Corpus and a TRO and preliminary injunction should issue,

enjoining Respondents from removing, transferring, relocating the Petitioner, and immediately releasing Petitioner from custody or in the alternative be afforded a bond hearing.

66. INA § 236, 8 U.S.C. § 1226 is the default rule for discretionary detention. It applies to anyone who is detained “pending a decision on whether the [noncitizen] is to be removed from the United States.” *See, Jennings v. Rodriguez*, 583 U.S. __ (2018)(slip op. at 4)

67. Noncitizens detained under INA § 236, 8 U.S.C. § 1226 are eligible for custody redetermination hearings unless they fall under the mandatory detention provisions of INA § 236(c), 8 U.S.C. § 1226(c).

68. First, the carve out under INA § 236(c), 8 U.S.C. § 1226(c), including the most recent passage of the Laken Riley Act (“LRA”), Pub. L. No. 119-1, 139 Stat. 3 (2025), illustrates that Congress intended INA § 236(a), 8 U.S.C. § 1226(a) to serve as the default detention authority for individuals like Petitioner who have lived in the U.S for many years. When Congress creates specific exceptions to a statute’s applicability, it proves that absent those exceptions, the statute generally applies. LRA supports the Petitioner’s position of detention authority under INA § 236, 8 U.S.C. § 1226(c) applies rather than application of INA § 235, 8 U.S.C. § 1225 because INA § 235, 8 U.S.C. § 1225 applies mostly to noncitizens who are recently arriving noncitizens at the border (governing inspection and mandatory detention) and not to persons like Petitioner who have been arrested and detained by ICE long after the arrival in the interior of the United States, under INA § 236, 8 U.S.C. § 1226 (governing detention and bond hearings).

69. Second, canons of statutory interpretation, legislative history, and longstanding agency practice clearly demonstrate that Congress *did not* intend noncitizens like Petitioner to be subject to mandatory detention under INA § 235(b), 8 U.S.C. § 1225(b).

70. DHS' position runs contrary to the plain meaning of the text and how INA § 235(b), 8 U.S.C. § 1225(b) has been consistently applied in the past and finds no basis in the context of the statutory schemes governing immigration detention.

71. To find otherwise would render significant parts of INA § 236(a), 8 U.S.C. § 1226(a) obsolete, redundant or superfluous, which clearly Congress did not intend to do.

72. Third, DHS' position is not supported by its past practice and interpretation of statutes that consistently applied detention and release authority found in INA § 235(b), 8 U.S.C. § 1225(b) to those who are "arriving aliens" at the border and INA § 236(a), 8 U.S.C. § 1226(a) to those noncitizens who have resided in the U.S. for many years to be afforded bond. *See* for example, Todd M. Lyons, Acting Director Immigration, Customs and Enforcement (ICE) internal memo dated July 8, 2025, abruptly changing DHS policy directing employees to treat *all* noncitizens as "applicants for admission" and are subject to detention under INA § 235(b), 8 U.S.C. § 1225(b) and not under INA § 236(a), 8 U.S.C. § 1226(a).

73. DHS's position is not supported by any precedential Board of Immigration Appeals ("BIA" or "Board") case law. *Matter of Q. Li* is distinguishable and concerned a noncitizen who was detained shortly after crossing the border and who was subsequently released on parole under INA § 212(d)(5)(A), 8 U.S.C. § 1182(d)(5)(A), but later re-detained.

74. Unlike the Petitioner in the instant case, who entered the U.S. in 2001 – nearly 25 years ago and has continuously resided in the U.S. and was not arrested or detained at or near the border but was arrested and detained in Red Bank, NJ, in the interior of the U.S., the noncitizen in *Matter of Q. Li* was arrested at or near the border shortly after entry.

75. Under those circumstances, the Board found in *Matter of Q. Li* that the noncitizen was an applicant for admission and subject to mandatory detention under INA § 235(b), 8 U.S.C. § 1225(b).

76. Crucially, the Board's holding in *Matter of Q. Li* reiterated the well-established understanding that INA § 236(a), 8 U.S.C. § 1226(a) applies to noncitizens already present in the United States, while INA § 235(b), 8 U.S.C. § 1225(b), applies primarily to noncitizens seeking entry into the United States and authorizes DHS to detain them without a warrant at the border. However, the Board's decision in *Matter of Q. Li* is distinguishable on the facts in Petitioner's case because the noncitizen in *Matter of Q. Li* was arrested at or near and soon after entry at the border, unlike the Petitioner who was arrested and detained in Red Bank, NJ in the interior of the United States and long after residing in the U.S. for 24 years.

77. More recently, the BIA decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) should not be given deference to statutory interpretation when the BIA's decision is contrary to agency consistency and lack of thorough reasoning. *See Choglló Chafila v. Scott*, No. 2:25cv-00439-SDN, 2025 WL (D.Me. Sept. 18, 2025).

78. This interpretation is also supported by the Supreme Court's decision in *Jennings v. Rodriguez* and *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024) (overruling the Chevron deference doctrine and that under the Administrative Procedure Act, courts must exercise independent judgment in determining whether an agency acted within its statutory authority, rather than deferring to an agency's interpretation simply because a statute is ambiguous) and numerous recent district court decisions, including decisions of U.S. district courts from the Fifth Circuit, that have granted preliminary injunctive relief and enjoined the application of INA § 235(b), 8 U.S.C. § 1225(b) to individuals similarly situated to Petitioner.

See Memorandum of the Hon. Paul S. Diamond attached as an Appendix in *Demirel v. Federal Detention Center Philadelphia*, No. 2:25-cv-05488 (E.D. Pa. Nov. 18, 2025).

79. The Respondents' position is further undercut by *Matter of Akhdemov*, 29 I&N Dec. 166 (BIA 2025) in circumstances much like the Petitioner, applying INA § 236(a), 8 U.S.C. § 1226(a) to noncitizens already in the U.S. and affording them a bond hearing.

CLAIMS FOR RELIEF

COUNT ONE

Violation of Fifth Amendment Right to Due Process

80. The allegations in the above paragraphs 1-79 are realleged and incorporated herein.

81. The Petitioner is currently being detained at Camp East Montana Detention Facility in El Paso, Texas, after his arrest in Red Bank, NJ on November 13, 2025, in violation of the Petitioner's rights to seek a bond hearing pursuant to INA § 236(a), 8 U.S.C. § 1226(a).

82. If Petitioner were to make a motion for a bond hearing, it would be denied based on the Immigration Court's lack of jurisdiction. See *Matter Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025)(Immigration Judge lacks jurisdiction to hear Respondent's bond request for individuals who entered the U.S. without inspection and are therefore present without lawful admission and are considered "applicants for admission" and are subject to mandatory detention under INA § 235(b)(2)), 8 U.S.C. § 1125(b)(2).

83. It would be futile to pursue continued administrative remedies in this case. Petitioner would be prejudiced if bond hearing relief were not immediately granted, and Petitioner would be irreparably be harmed.

84. Consequently, for these reasons, Petitioner's unlawful detention without

the right to a bond hearing violates the Due Process Clause of the Fifth Amendment.

COUNT TWO

Violation of 8 U.S.C. § 1226(a), INA § 236(a) and Implementing Regulations

85. The allegations in the above paragraphs 1-84 are realleged and incorporated herein.

86. INA § 236(a), 8 U.S.C. § 1226(a) applies to noncitizens already present in the United States, while INA § 235(b), 8 U.S.C. § 1225(b), applies primarily to noncitizens seeking entry into the United States and authorizes DHS to detain them without a warrant at the border.

87. Because Petitioner entered the U.S. in 2001 and has been present in the U.S. for nearly 25 years, and was detained in the interior, the Petitioner should be afforded a bond hearing.

88. Petitioner's detention is unlawful in violation of 8 U.S.C. § 1226(a), INA § 236(a) and the Writ of Habeas Corpus and an order to preliminarily enjoin Respondents from removing, transferring or relocating Petitioner should be granted, immediately releasing Petitioner or in the alternative afford a bond hearing.

COUNT THREE

Petitioner is a Class Member in *Maldonado Bautista* and Is Entitled to Be Immediately Released From ICE Custody or Afforded a Bond Hearing

89. The allegations in the above paragraphs 1-88 are realleged and incorporated herein.

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

91. The orders granting final judgment and partial summary judgment in *Maldonado*

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

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

93. Respondents are parties to *Maldonado Bautista* and bound by the Court’s grant of partial summary and final judgment, which have the full “force and effect of a final judgment.” 28 U.S.C. § 2201(a).

94. 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 final judgment in *Maldonado Bautista*

95. Pursuant to the final judgment and grant of class certification in *Maldonado Bautista*, Petitioner is a class member in that case and by virtue of the final judgment issued in that case, Petitioner is entitled to be immediately released from ICE custody or in the alternative, afforded a bond hearing under 8 U.S.C. § 1226(a).

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

- (1) Assume jurisdiction over this matter;
- (2) Declare that Petitioner is a class member in *Maldonado Bautista v. Moniz*, and by virtue of the final judgment issued, Petitioner is entitled to be immediately released from ICE custody without bond or in the alternative, afforded a bond hearing under 8 U.S.C. § 1226(a);
- (3) Declare that Petitioner is detained under § 1226(a) and not under § 1225(b)(2) and is therefore entitled to a bond hearing, as asserting mandatory detention under

§ 1225(b)(2) violates Petitioner's statutory rights under the INA and the Court's latest judgements in *Maldonado Bautista*, overruling the Court's prior decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025);

- (4) Issue a Temporary Restraining Order and Order to Show Cause under Fed. R. Civ. P. 65(b) and Local Rule CV-, enjoining and restraining the Respondents from further transferring, removing or relocating Petitioner;
- (5) Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment to the U.S. Constitution, 8 U.S.C. § 1226(a), INA §236(a);
- (6) Issue a Writ of Habeas Corpus ordering Respondents immediately release Petitioner;
- (7) Schedule a bond hearing before an Immigration Judge and, at such hearing, affording Petitioner to be released from custody;
- (8) That this Court retain jurisdiction of this matter;
- (9) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
- (10) Grant any further relief this Court deems just and proper.

Respectfully submitted,

/s/ Steven Lyons, Esq.
Counsel for Petitioner

Dated: January 7, 2026
New York, NY

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Oscar Martinez Carrillo and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 7th day of January 2026.

/s/ Steven Lyons, Esq.
Steven Lyons, Esq.

CERTIFICATE OF SERVICE

On January 7, 2026, I, Steven Lyons, Esq., certify that I served a copy of the Civil Cover Sheet, Petition for Writ of Habeas Corpus, Motion/Order to Show Cause for Preliminary Injunction and Temporary Restraining Order with attached exhibits on the following:

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Dated: 01/07/2026

/s/ Steven Lyons
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