UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

Jose Edixon VELASQUEZ ESCALONA,

Petitioner,

v.

Sylvester ORTEGA, Field Office Director of Enforcement and Removal Operations, San Antonio Field Office, Immigration and Customs Enforcement; Kristi NOEM, Secretary, U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; Pamela BONDI, U.S. Attorney General; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; Bobby THOMPSON, Warden of South Texas ICE Processing Center,

Respondents.

Case No. 5:26-cv-00271

FIRST AMENDED PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner Jose Edixon VELASQUEZ ESCALONA brings this first amended petition for a writ of habeas corpus to seek enforcement of their rights under the due process clause, the Immigration and Nationality Act and as a member of the Bond Denial Class certified in *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (C.D. Cal.) Petitioner submits the amended petition pursuant to Fed. R. Civ. P. 15(a)(1)(A) or (B).

2. Petitioner entered the United States without inspection and was placed in expedited removal under 8 U.S.C. § 1225(b)(1). After he established a credible fear of persecution, removal proceedings were initiated under 8 U.S.C. § 1229a. He was released on parole pursuant to 8 U.S.C. § 1212(d)(5)(A). He reported to an immigration office in Chicago, as required. He was enrolled in Intensive Supervision Appearance Program and had an application downloaded onto his phone. The application allowed for virtual "check-ins" and GPS location. Petitioner checked-in, as required, every Friday. He has no criminal record in the United States or any other country. Despite complying with the conditions of his release, the Petitioner was abruptly and unlawfully re-detained by the Department of Homeland Security on November 18, 2025 and has been held at the South Texas Detention Complex in Pearsall, Texas since. *See* E.C.F. 5-1.

3. Prior to re-detaining the Petitioner, Respondents did not provide any written notice explaining the basis for the revocation of his release. Likewise, Respondents did not assess whether the Petitioner presented a flight risk or a danger to the community prior to his re-arrest. Nor did the Respondent provide a hearing before a neutral decisionmaker, to justify the re-detention. It appears the Department of Homeland Security simply changed their mind, the

result of which was the Petitioner's loss of liberty. By failing to provide a hearing, Respondents have violated Petitioner's constitutional right to due process.

4. Furthermore, the Respondents are detaining the Petitioner in violation of the Immigration and Nationality Act. The expedited removal section of the Immigration and Nationality Act states that once an individual has established a credible fear of persecution that individual "shall be detained for further consideration of the application for asylum." 8 U.S.C. § 1225(b)(1)(B)(ii). An individual who is in expedited removal proceedings is subject to mandatory detention under 8 U.S.C. § 1225(b)(1)(B)(ii), however, once those proceedings have been vacated, the regular statutory detention scheme comes into play. This had been the position of the Board of Immigration Appeals for decades until *Matter of M-S-*, which was a decision decided by the Attorney General in April 2019. *See Matter of X-K-*, 23 I&N Dec. 731 (BIA 2005) *and Matter of M-S-*, 27 I&N Dec. 509 (AG 2019). As this Court knows, the Board of Immigration Appeals' interpretation of the INA can at times be at odds with the plain language reading of the statute.

5. Section 1225(b)(1) requires detention for certain aliens undergoing expedited removal proceedings. 8 U.S.C. § 1225(b)(1), (b)(1)(B)(ii), (b)(1)(B)(iii)(IV). But Respondents agree that Petitioner is currently in "full" removal proceedings. ECF No. 5 at 2. Even if Section 1225(b)(1) could at the time of entry apply to Petitioner, he is not currently subject to expedited removal proceedings and "thus is not subject to Section 1225(b)(1)'s detention provisions." *See Guo v. Vergara*, SA-25-CA-01814-XR (W.D. Tex. Jan 05, 2026)

6. Petitioner entered the United States without inspection, was released from custody after he was put in "full removal proceedings", as such 8 U.S.C. § 1226(a) applies to Petitioner's detention. *See* ECF 5-2. This case does in fact fall into the *Matter of Yajure Hurtado*

cases. 29 I&N Dec. 220 (BIA 2025). Because he entered without inspection and was later re-detained, Petitioner is a member of the *Maldonado Bautista* class.

7. Accordingly, this Court should grant this petition for a writ of habeas corpus and order the Petitioner's immediate release.

JURISDICTION

1. Petitioner is in the physical custody of Respondents. Petitioner is detained at the South Texas ICE Processing Center in Pearsall, Texas.

2. 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).

3. 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

4. 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 Western District of Texas, the judicial district in which Petitioner currently is detained.

5. 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 substantial part of the events or omissions giving rise to the claims occurred in the Western District of Texas.

REQUIREMENTS OF 28 U.S.C. § 2243

6. The Court should grant the petition for writ of habeas corpus expeditiously, as the legal issues have already been resolved by this Court in numerous cases with similar facts.

7. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . 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). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

PARTIES

8. Petitioner Jose Edixon VELASQUEZ ESCALONA, has been in immigration detention since November 17, 2025.

9. Respondent Sylvester M. ORTEGA is the Director of the San Antonio Field Office of ICE's Enforcement and Removal Operations division. As such, Sylvester M. ORTEGA is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity.

10. Respondent Kristi NOEM is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Ms. NOEM has ultimate custodial authority over Petitioner and is sued in her official capacity.

11. Respondent Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

12. Respondent Pamela BONDI is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review

and the immigration court system it operates is a component agency. She is sued in her official capacity.

13. Respondent Executive Office for Immigration Review (EOIR) is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings.

14. Respondent Bobby THOMPSON is employed by The Geo Group as Warden of the South Texas ICE Processing Center, where Petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his official capacity.

CLAIM FOR RELIEF:

Due Process Claim

15. Due process requires that when DHS seeks to re-arrest individuals who were previously released, provided future court dates, lived in the United States without incident following release, and complied with all conditions of release, the government must first provide a hearing before a neutral decisionmaker to determine whether re-detention is warranted based on flight risk or danger to the community. Such written notice and hearing must occur *prior* to any re-detention.

16. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty protected by the Due Process Clause." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). As this Court has recently recognized, this constitutes "the most elemental of liberty interests." *E.A. T.-B.*, 2025 WL 2402130, at *3 (citation modified); see also *Ramirez Tesara*, 2025 WL 2637663, at *3 (recognizing the petitioner's "exceptionally strong interest in freedom from physical confinement").

17. Consistent with this principle, individuals released on parole or other forms of conditional release possess a protected liberty interest in their continued freedom. *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972).

18. That liberty is protected by the Fifth Amendment because, "although indeterminate, it includes many of the core values of unqualified liberty," such as the ability to work and reside with family, and its termination imposes a "grievous loss" on the released individual and often on others. *Id.*

19. To guard against arbitrary re-detention, due process requires adequate procedural safeguards to assess whether the government's asserted grounds for confinement outweigh the individual's constitutionally protected interest in freedom from physical restraint. *Zadvydas*, 533 U.S. at 690 (citation modified).

20. Federal district courts across the nation have recognized that due process guarantees notice and an individualized hearing before revocation of an individual's release. *See, e.g.*, *Valdez v. Joyce*, No. 25 CIV. 4627 (GBD), 2025 WL 1707737 (S.D.N.Y. June 18, 2025) (ordering immediate release due to lack of pre-deprivation hearing); *Garro Pinchi v.Noem*, --- F. Supp. 3d ---, No. 5:25-CV-05632-PCP, 2025 WL 2084921 (N.D. Cal. July 24, 2025) (similar); *Maklad v. Murray*, No. 1:25-CV-00946 JLT SAB, 2025 WL 2299376 (E.D. Cal. Aug. 8, 2025) (similar); *Garcia v. Andrews*, No. 1:25-CV-01006 JLT SAB, 2025 WL 2420068 (E.D. Cal. Aug. 21, 2025) (similar).

21. The same framework applies here and compels Petitioner's immediate release.

Statutory claim

22. A district court may grant a writ of habeas corpus if the petitioner's detention is in violation of the Constitution or federal law. *See* 8 U.S.C. § 2241(c)(3).

23. The Department of Homeland Security ("DHS") asserts that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(1), despite Congress's separate detention framework in 8 U.S.C. § 1226(a), which governs interior arrests and provides discretionary bond and immigration-judge ("IJ") review. As discussed in the preceding section, Petitioner is in "full removal proceedings", not in expedited removal proceedings. Therefore, because he entered without inspection, his detention must fall under § 1226(a).

24. DHS's position was recently endorsed by the Board of Immigration Appeals in *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 220 (B.I.A. 2025). This interpretation contradicts the Immigration and Nationality Act's (INA) text, the canon against surplusage, longstanding administrative practice, and Due Process. It effectively erases section 236(a) of the INA, collapses Congress's dual-track detention scheme, and imposes categorical detention on individuals like the Petitioner, who present no danger and are not flight risks. This issue has been extensively addressed in the Western District of Texas. *See, e.g.*, *Diaz Perez v. Thompson*, No. 5:25-CV-1664-JKP, 2025 WL 3654333 (W.D. Tex. Dec. 15, 2025); *Davila Mercado v. Lyons*, No. 5:25-CV-1623-JKP, 2025 WL 3654268 (W.D. Tex. Dec. 11, 2025).

25. On November 25, 2025, a district court certified the following Bond Eligible Class: All noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination. *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). 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." *Maldonado Bautista v. Santacruz*, WL 3289861, at *14.

26. Under this class definition, there are two groups of people who have claims to relief. First, there are those who entered the United States, were not apprehended at or near the border or close in time to their entry, and who were later arrested by immigration authorities. Second, there are those who were apprehended at or near the border and close in time to their entry, were released on recognizance, and then were re-detained by immigration authorities after residing in the United States.

27. Petitioner Jose Edixon VELASQUEZ ESCALONA, falls into the second group of individuals in that he was apprehended upon arrival, released on his own recognizance, only to be re-detained by immigration authorities. The relevant inquiry for determining class membership is the Petitioner's last arrest.

28. Respondents are parties to *Maldonado Bautista* and are bound by the Court's declaratory judgment, which has the full "force and effect of a final judgment." 28 U.S.C. § 2201(a). It is a "basic proposition that all orders and judgments of courts must be complied with promptly," *Maness v. Meyers*, 419 U.S. 449, 458 (1975), and thus, in "suits against government officials and departments, [courts] assume that they will comply with declaratory judgments." *United Aeronautical Corp. v. United States Air Force*, 80 F.4th 1017, 1031 (9th Cir. 2023). This is because declaratory judgments like the one in *Maldonado Bautista* have "the same effect as an injunction in fixing the parties' legal entitlements." *Florida ex rel. Bondi v. U.S. Dep't of Health & Hum. Servs.*, 780 F. Supp. 2d 1307, 1316 (N.D. Fla. 2011).

29. By asserting that the Petitioner 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*.

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; and

c. Grant any other and further relief that this Court deems just and proper.

DATED this 30th day of January 2026.

Respectfully Submitted,

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