**UNITED STATES DISTRICT COURT**
**FOR THE WESTERN DISTRICT OF TEXAS**
**El Paso Division**

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| Samual Hadege Mengis (A# [redacted]),<br><br>*Petitioner*,<br><br>v.<br><br>Kristi Noem, *Secretary, U.S. Department of Homeland Security*,<br><br>Todd Lyons, *Acting Director, U.S. Immigration and Customs Enforcement*,<br><br>Mary De Anda-Ybarra, *Director, San Antonio Field Office, U.S. Immigration and Customs Enforcement*,<br><br>Pamela Bondi, *Attorney General, U.S. Department of Justice*,<br><br>Warden, *El Paso Camp East Montana Detention Center*,<br><br>*Respondents.* | Civil Action No. 3:26-cv-370 |

**PETITION FOR WRIT OF HABEAS CORPUS**

Petitioner Samual Hadege Mengis (A# [redacted]) is a citizen of Eritrea. He last entered the United States without inspection between ports of entry on the U.S.-Mexico border in 2019. Mr. Mengis entered the United States seeking asylum. He was immediately detained by immigration authorities. In November 2019, Mr. Mengis released on an $8,000 bond and demonstrated exemplary compliance with all immigration requirements since. Almost 7 years later, Petitioner was detained by ICE under facts and circumstances that place him squarely within ICE's general detention authority 8 U.S.C. § 1226(a). Under that statute, Petitioner is eligible to

seek discretionary release on bond from an Immigration Judge ("IJ"). However, due to a reversal of policy announced by ICE in July 2025, and a September 2025 Board of Immigration Appeals (BIA) decision that similarly overturns decades of settled law, Respondents contend that Petitioner is actually detained under 8 U.S.C. § 1225(b)(2). While § 1225(b) requires mandatory detention and does not allow release on bond, it only applies to noncitizens apprehended at the border "seeking admission." Petitioner therefore brings this action for injunctive relief to restrain Respondents from subjecting Petitioner to mandatory detention under § 1225(b); and seeking an order that Respondents schedule him for a discretionary bond hearing pursuant to § 1226(a) before an IJ within 7 days.

## JURISDICTION AND VENUE

1. This Court has jurisdiction to hear this case under 28 U.S.C. § 2241 and 28 U.S.C. § 1331, Federal Question Jurisdiction. In addition, the individual Respondents are United States officials. 28 U.S.C. § 1346(a)(2).

2. This Court also has federal question jurisdiction, through the APA, to "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). APA review of a final agency action may proceed, absent a special statutory review proceeding, by "any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus, in a court of competent jurisdiction." 5 U.S.C. § 703.

3. Venue lies in this District because Petitioner is currently detained within the territorial jurisdiction of this division of this District; and each Respondent is an agency or officer of the United States sued in his or her official capacity. 28 U.S.C. § 2241; 28 U.S.C. § 1391(e)(1).

## THE PARTIES

4. Petitioner Samual Hadege Mengis is a citizen and native of Eritrea and is currently

detained by Respondents at the Ero El Paso Camp East Montana, within the territorial jurisdiction of this Court.

5. Respondent Kristi Noem is the Secretary of the Department of Homeland Security ("DHS"). She is the cabinet-level secretary responsible for all immigration enforcement in the United States.

6. Respondent Todd Lyons is the Acting Director of U.S. Immigration and Customs Enforcement ("ICE"). He is the head of the federal agency responsible for all immigration enforcement in the United States.

7. Respondent Mary De Anda-Ybarra is the Director of the El Paso ICE Field Office of U.S. Immigration and Customs Enforcement (ICE). Which has jurisdiction over Ero El Paso Camp East Montana where Petitioner is unlawfully detained. As the local ICE official overseeing enforcement operations in the region, he is responsible for Petitioner's continued detention and any actions related to his removal. He is therefore the Petitioner's immediate legal custodian for the purpose of habeas jurisdiction.

8. Respondent Pamela Bondi is the Attorney General of the United States. She is the head of the U.S. Department of Justice, which oversees the Executive Office for Immigration Review, including the Board of Immigration Appeals and the Immigration Court judges, who decide removal cases and applications for bond as her designees.

9. Respondent Warden of the ERO El Paso Camp East Montana and is the immediate custodian who is currently holding Petitioner in physical custody in El Paso, TX.

10. All government Respondents are sued in their official capacities.

## LEGAL BACKGROUND

### A. Immigration Detention Legal Framework

11. When a noncitizen is alleged to have violated immigration laws, they are generally placed into traditional removal proceedings, during which an immigration judge will determine whether they are removable and then whether they have a legal basis to remain in the United States. 8 U.S.C. § 1229a.

12. Detention is authorized for "certain aliens already in the country pending the outcome of removal proceedings under § 1226(a) and 1126(c)." *See Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). The statute provides that an individual may be subject to either discretionary detention under 8 U.S.C. § 1226(a) generally, or mandatory detention under 8 U.S.C. § 1226(c) if they have been arrested or convicted of certain crimes. Discretionary detention under § 1226(a) has been described as the "default" provision for immigration detention for those subject to traditional removal proceedings. *Id.* at 288. Under § 1226(a), "'[e]xcept as provided in subsection (c) of this section,' the Attorney General 'may release' an alien detained under § 1226(a) 'on ...bond' or 'conditional parole.'" *Id.*

13. Alternatively, mandatory detention is authorized for "certain aliens *seeking admission* into the country under §§ 1225(b)(1) and 1225(b)(2)," [emphasis added]. *Jennings*, 583 U.S. at 289. Individuals inspected under § 1225(b) and determined to be "applicants for admission" may be subject to mandatory detention under two separate subsections. Applicants for admission include someone:

> "present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for the purposes of this chapter to be an applicant for admission."

§ 1225(a)(1).

14. The first subset, under 8 U.S.C. § 1225(b)(1), may be subject to expedited removal and mandatory detention if they are determined to be an "arriving alien," and if they have not been physically present in the United States continuously for a two-year period immediately prior. Regulations define an "arriving alien" as:

> "an applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry, or an alien interdicted in international or United States waters and brought into the United States by any means, whether or not to a designated port-of-entry, and regardless of the means of transport."

8 C.F.R. § 1.2.

15. Otherwise, 8 U.S.C. § 1225(b)(2) provides for the detention of "applicant for admission" specifically when "the examining immigration officer determines that an alien *seeking admission* is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title," i.e. for traditional removal proceedings [emphasis added].

16. An "arriving alien" or an applicant for admission "seeking admission" may only be released from detention on parole (which is a form of release on recognizance), under 8 U.S.C. § 1182(d)(5). *Jennings*, 583 U.S. at 288. There is no bond available to an arriving alien or applicant for admission seeking admission. *Id.* There is no such thing as a "parole bond" – a release must be either parole under § 1182(d)(5) or a bond (conditional parole) under § 1226(a). *Id.*

17. For a noncitizen subject to discretionary detention under 8 U.S.C. § 1226(a), ICE makes an initial custody determination to either set a bond or hold the individual at no bond. The noncitizen may then seek a review of ICE's initial custody determination before the IJ (a "custody review hearing"), who has the authority to modify ICE's custody determination and set bond in a

case in which ICE has designated no bond, lower bond when ICE has set a cash bond amount, or deny bond completely. 8 C.F.R. § 1003.19.

18. Custody review hearings are separate from hearings in the underlying removal proceedings. 8 C.F.R. § 1003.19(d). At a custody review hearing, once jurisdiction over bond is established, the IJ's inquiry is limited to whether the detainee is a danger to the community or a flight risk, and bond may only be granted when an IJ has determined that the detainee meets his burden of proof that he is neither. *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006). If a noncitizen is granted bond by the IJ, she must still appear in immigration court for the IJ to determine her removability and hear any claim for relief from removal.

19. For decades, it has been Respondents' practice to afford § 1226(a) discretionary bond hearings and custody review hearings to those individuals who have been encountered neither at a point of entry nor seeking admission to the United States. *See Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099, at *10 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted sub nom. Rocha Rosado v. Figueroa*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025) ("Respondents' proposed application of § 1226 is also belied by the Department of Homeland Security's 'longstanding practice' of treating noncitizens taken into custody while living in the United States, including those detained and found inadmissible upon inspection and then released into the United States with the government's acquiescence, who have committed no crime after release, as detained under § 1226(a)." citing *Loper Bright Enter. v. Raimondo*, 603 U.S. 369, 386 (2024)).

**B. New ICE memo reinterpreting 8 U.S.C. § 1225(b)(2)**

20. On July 8, 2025, Respondent ICE issued new interim guidance that announced a breathtakingly broad interpretation of 8 U.S.C. § 1225(b)(2). *See* ICE memorandum "Interim

Guidance Regarding Detention Authority for Applications for Admission."[1] This memo concerns the detention of "applicants for admission" as defined by § 1225(a)(1). "Effective immediately, it is the position of DHS that such aliens are subject to detention under INA § 235(b) [8 U.S.C. § 1225(b)(2)] and may not be released from ICE custody except by INA § 212(d)(5) [8 U.S.C. § 1182(d)(5)]." *Id.* DHS is explicit that this new policy is a marked deviation from prior interpretation and treatment of affected noncitizens. *Id.* ("For custody purposes, these aliens are now treated in the same manner that "arriving aliens" have historically been treated.")

21. In addition to the announcement re-interpreting § 1225(b)(2), the memo further clarifies that "[t]he only aliens eligible for a custody determination and release on recognizance, bond or other conditions under INA § 236(a) [8 U.S.C. § 1226(a)] during removal proceedings are aliens admitted to the United States and chargeable with deportability under INA § 237 [8 U.S.C. § 1227], with the exception of those subject to mandatory detention under INA § 236(c) [8 U.S.C. § 1226(c)]." *Id.*

22. Moreover, ICE maintains that "DHS does not take the position that prior releases of applicants for admission pursuant to INA § 236(a) were releases on parole under INA § 212(d)(5) based on this change in legal position." *Id.* ICE fails to clarify under what legal authority, then, those prior releases were effectuated. Rather, ICE signals the resulting lack of "correct" paperwork is nonetheless permissible. *Id.* ("Accordingly, ERO and HIS are not required to 'correct' the release paperwork by issuing INA § 212(d)(5) parole paperwork.")

23. Nationwide implementation of the ICE § 1225(b)(2) mass detention policy ensued.

**C. BIA decision *Matter of Yajure Hurtado***

[1] Available at: https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission (last visited Sept. 25, 2025).

24. On September 5, 2025, the Board of Immigration Appeals (BIA), which oversees all appeals of IJ decisions including custody redeterminations, upheld ICE's re-interpretation of § 1225(b)(2). *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

25. The BIA held that the respondent was an "applicant for admission" within the scope of § 1225(b), and therefore subject to mandatory detention.

26. The BIA characterized the issue before it as "one of statutory construction: Does the INA require that *all* applicants for admission, even those like the respondent who have entered without admission or inspection and have been residing in the United States for years without lawful status, be subject to mandatory detention for the duration of their immigration proceedings, and thus the Immigration Judge lacks authority over a bond request filed by an alien in this category?" [emphasis added]. *Id.* at 220.

27. The BIA reasoned that individuals "who surreptitiously cross into the United States remain applicants for admission until and unless they are lawfully inspected and admitted by an immigration officer." *Id.* at 228.

28. The BIA acknowledged the decades of precedent preceding its decision that authorized release of individuals present without having been inspected and admitted or paroled under § 1226(a). *Id.* at 225, FN6 ("We acknowledge that for years Immigration Judges have conducted bond hearings for aliens who entered the United States without inspection. However, we do not recall either DHS or its predecessor, the Immigration and Naturalization Service, previously raising the current issue that is before us. In fact, the supplemental information for the 1997 Interim Rule titled 'Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures,' 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997), reflects that the Immigration and Naturalization Service took the position at that time

that '[d]espite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination.'")).

29. Ultimately, the BIA upheld the decision that the IJ lacked jurisdiction under 8 U.S.C. § 1225(b)(2) to consider the respondent for discretionary bond. *Id.* at 229.

30. The BIA decision is binding on all immigration judges nationwide.

31. Respondents' new policy and interpretation of 8 U.S.C. § 1225(b)(2) stand to sweep millions of noncitizens into mandatory detention, without any consideration for release on bond (regardless of their ties to their community or lack of dangerousness or flight risk). *Rosado*, 2025 WL 2337099, at *11 ("It has been estimated that this novel interpretation would require the detention of millions of immigrants currently residing in the United States.")

**D. Class Action In *Maldonado Bautista***

32. On November 25, 2025, the court in *Maldonado Bautista* certified a class of individuals who were seeking a bond hearing in the wake of the BIA's *Yajure Hurtado* decision:

> "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, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025). Previously, the court had partially granted summary judgment in favor of the putative class, rejecting the reasoning in *Yajure Hurtado* and holding that the new ICE policy subjecting the putative class to mandatory detention under 8 U.S.C. § 1225(b)(2) was unlawful. *Maldonado Bautista v. Santacruz*, 2025 WL 3289861 (C.D. Cal. Nov. 20 2025) at *10 ("Thus, Respondents' expansive interpretation of 'applicants for admission' would

effectively nullify a portion of the INA through the DHS's legislative or interpretive exercise of power. Neither is appropriate under the separation of powers.").

33. On December 18, 2025, the court granted the motion to reconsider, in light of the fact that immigration judges nationwide were refusing to follow the court's prior summary judgment decision, and granted a final judgment. *Maldonado Bautista*, No. 5:25-cv-01873-SSS-BFM, 2025 WL 3678485 (C.D. Cal. Dec. 18, 2025). "A notice of appeal was then filed by the *Bautista* defendants on December 18, 2025, ECF No. 95." *Engonga v. Noem*, No. 5:25-CV-03479-FWS-MAA, 2025 WL 3764077, at *3 (C.D. Cal. Dec. 23, 2025). "However, the Ninth Circuit has held the filing of an appeal does not suspend the preclusive effect of a lower court judgment." *Osuna v. Casey*, No. 25CV3668-LL-MMP, 2026 WL 50755, at *1 (S.D. Cal. Jan. 7, 2026) (citing *Hawkins v. Risley*, 984 F.2d 321, 324 (9th Cir. 1993)).

34. On January 13, 2026, Chief Immigration Judge ("CIJ") Teresa L. Riley issued nationwide guidance instructing all immigration judges that: "*Maldonado Bautista* is not a nationwide injunction and does not purport to vacate, stay or enjoin *Yajure Hurtado*." *See* American Immigration Lawyers Association Practice Alert "EOIR Issues Nationwide Guidance on *Maldonado Bautista*." [2] CIJ Riley then instructed immigration judges to continuing to apply *Yahure Hurtado*, on the guidance that declaratory judgments are not binding or preclusive. *Id.*

**FACTS**

35. Petitioner, Samual Hadege Mengis, is a native and citizen of Eritrea. fled his home country of Eritrea due to the detention, torture and other harms he was subjected to and due to fear of further persecution by [redacted]. He entered into the United States without inspection through the border near San Diego, California. on or about July

[2] *Available at*: https://www.aila.org/library/practice-alert-eoir-issues-nationwide-guidance-on-maldonado-Bautista (last visited Jan. 29, 2026).

17, 2019. In November 2019, an immigration bond was set at $8,000. Mr. Mengis's family paid the bond. *See* Ex. 1. EOIR Notification, with Receipt of bond payment;

36. Following his release from custody, Petitioner filed his I-589 application for asylum. Ex. 2. USCIS I-589 Biometrics Appt Notice, stamped.

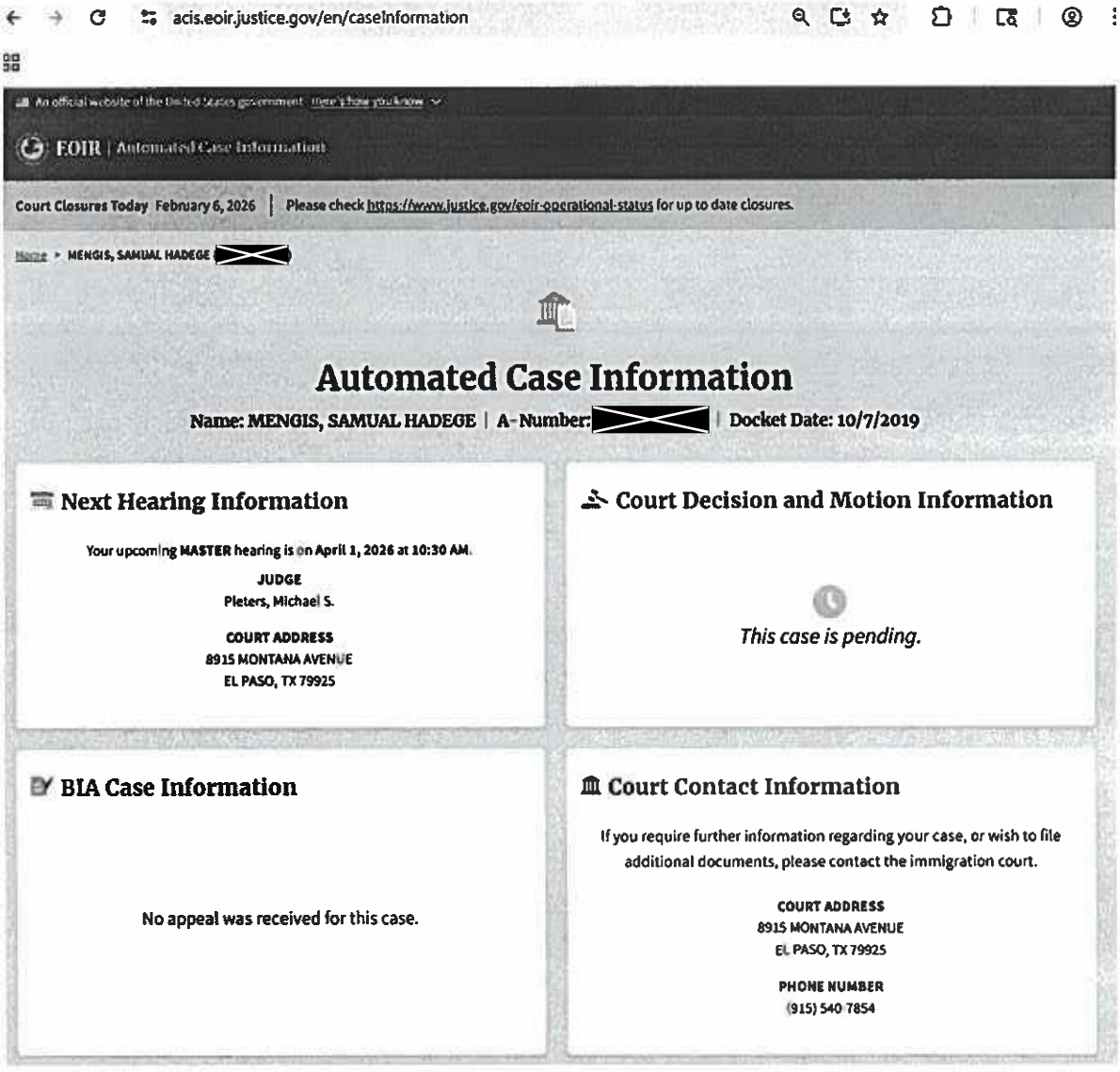
37. During his years of liberty, Mr. Mengis established deep roots in the United States. He resided in Oakland, California, with his mother, a Lawful Permanent Resident. and his sibling. Mr. Mengis obtained employment as a long-distance truck driver, a role in which he contributed to the national economy, paid taxes, and supported his household. Throughout this period, he maintained an unblemished record with no criminal history or contact with law enforcement.

38. On or about November 24, 2025, while lawfully performing his duties as a truck driver, Mr. Mengis was stopped at a Border Patrol checkpoint in Texas. Despite presenting valid identification and documentation of his pending asylum case, and notwithstanding his five-year history of perfect compliance, Border Patrol officers took him into custody. The detention was executed with total disregard for the practical consequences; Mr. Mengis was forced to leave his truck and cargo at the checkpoint, resulting in the immediate loss of his employment and income.

39. Petitioner is currently detained at the ERO El Paso Camp East Montana Detention Facility in El Paso, Texas (*see* Ex. 3. ICE I-830E Notice to EOIR: Alien Address) within the territorial jurisdiction of this Court. *See also* ICE Detainee Locator information (available at https://locator.ice.gov/ (last visited on February 5, 2026)):




40. Petitioner has pending removal proceedings with a Master Calendar Hearing scheduled for April 1, 2026; he is not subject to a final order of removal. *See* EOIR Automated Case Information, (*available at* https://acis.eoir.justice.gov/ (last visited February 5, 2026)):




41. Since being placed in the Camp East Montana facility, Mr. Mengis's physical and mental health have severely deteriorated. For approximately two weeks during his current detention, Mr. Mengis suffered from a serious illness. Despite repeated and desperate requests for medical attention, detention staff denied him timely and adequate care. This denial of care caused Mr. Mengis significant physical suffering and profound emotional distress. Furthermore, the conditions of confinement have caused severe re-traumatization. As a survivor of torture in

Eritrea, being detained again, and being denied medical help while sick, has triggered intense anxiety, fear, and feelings of helplessness, directly mirroring the abuse he fled.

42. All Respondents consider that Petitioner is detained pursuant to 8 U.S.C. § 1225(b)(2). *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216. Accordingly, it would be futile for Petitioner to request a bond from an Immigration Judge. Exhaustion of administrative remedies would therefore be futile.

**FIRST CLAIM FOR RELIEF:**
**No-Bond Detention in Violation of 8 U.S.C. § 1226(a)**

43. Petitioner re-alleges and incorporates by reference paragraphs 1-42.

44. Since Petitioner is not an applicant for admission "seeking admission" or "an arriving alien" subject to 8 U.S.C. §§ 1225(b)(1) or (b)(2), and has no disqualifying criminal arrests or convictions subject to 8 U.S.C. § 1226(c), he is entitled to a bond redetermination hearing by an immigration judge pursuant to 8 U.S.C. § 1226(a).

45. First, Petitioner was granted bond under 8 U.S.C. § 1226(a) in 2019. If Respondents wish to revoke the bond, Petitioner must be taken into custody and subject to the same warrant and authority as previously detained. 8 U.S.C. § 1226(b). Thus, when Petitioner was rearrested, it was pursuant to the original 8 U.S.C. § 1226(a) authority, and he is entitled to discretionary bond hearing on that basis today.

46. Second, Petitioner appears to be part of a class that was certified in *Maldonado Bautista* on November 25, 2025: "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, 2025

WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025). The court recently issued a final judgment, which granted vacatur of ICE's July 2025 policy to apply 8 U.S.C. § 1225(b)(2) to class members. *Maldonado Bautista*, No. 5:25-cv-01873-SSS-BFM, 2025 WL 3678485 (C.D. Cal. Dec. 18, 2025). However, relief sought here is injunctive, i.e. ordering Respondents to provide Petitioner with a bond hearing, or outright release. *See infra* – Request for Relief. The court in *Maldonado Bautista* is stripped of jurisdiction to provide such injunctive relief to the class by 8 U.S.C. § 1252(f). Accordingly, this Court is not precluded from granting relief on the instant habeas petition. *See, e.g. Shi v. Lyons*, --F.Supp.3d--, 2025 WL 3637288, at *FN5 (S.D. Tex. Dec. 12, 2025); and *Lopez-Neria v. Bondi*, No. 5:25-CV-1650-JKP, 2025 WL 3654329, at *5 (W.D. Tex. Dec. 12, 2025).

47. Respondents' actions, as set forth herein, violate Petitioner's statutory right to a bond redetermination hearing in front of an immigration judge.

**SECOND CLAIM FOR RELIEF:**
**Detention in Violation of Due Process**

48. Petitioner re-alleges and incorporates by reference paragraphs 1-42.

49. After entering the United States, Petitioner went on to develop ties to the community over the course of nearly seven years. Petitioner is therefore a "person" within the meaning of the Due Process Clause of the Fifth Amendment to the U.S. Constitution and has a liberty interest in freedom from physical restraint.

50. While the government's authority to revoke a discretionary bond is in their sole discretion, it must still comport with due process. Immigration detention is civil, not criminal, in nature. There are only two permissible reasons for immigration detention: to avoid flight risk, and to avoid danger to the community. "To determine whether a civil detention violates a detainee's

due process rights, courts apply the three-part test set forth in *Mathews v. Eldridge*." *Lopez-Arevelo v. Ripa*, 801 F. Supp. 3d 668, 685 (W.D. Tex. 2025), citing 424 U.S. 319 (1976).

51. First, a revocation of bond is only warranted in the context of changed circumstances. *Matter of Sugay*, 17 I. & N. Dec. at 640. *See also Luna Sanchez v. Bondi*, No. 1:25-CV-018888-MSN-IDD, 2025 WL 3191922, at *4 (E.D. Va. Nov. 14, 2025). "In practice, the DHS re-arrests individuals only after a 'material' change in circumstances." *Mayo v. Semaia*, No. 5:25-CV-3003-MEMF-E, 2025 WL 3496774, at *3 (C.D. Cal. Dec. 5, 2025), citing *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018). "DHS has incorporated [*Sugay*'s] holding into its practice, requiring a showing of changed circumstances both where the prior bond determination was made by an immigration judge and where the previous release decision was made by a DHS officer." *dos Santos v. Noem*, No. 1:25-CV-12052-JEK, 2025 WL 2370988, at *9 (D. Mass. Aug. 14, 2025), citing *Saravia v. Sessions*, 280 F. Supp. 3d at 1197. Accordingly, in revoking a bond, due process requires Respondents to show changed circumstances.

52. There is no apparent change in circumstances that would justify the de facto revocation of Petitioner's bond, and none of were furnished by immigration agents prior to Petitioner's rearrest. The record reflects that Petitioner has resided peacefully in the United States since 2019, and has been employed and supporting his family on valid work authorization. Courts have held that merely establishing identity and immigration history is insufficient to justify re-detention. *Luna Sanchez*, 2025 WL 3191922, at *4-5. *See also Portillo-Argueta v. Simon,* No. 1:25-CV-2285 (AJT-WEF), 2026 WL 184194, at *4 (E.D. Va. Jan. 23, 2026) (same). "Such arbitrary detention violates Petitioner's right to substantive due process." *Luna Sanchez*, 2025 WL 3191922, at *5. The same is true here.

Second, Petitioner has accrued due process rights as any other individual who has remained present in the United States for a number of years. Respondents have violated Petitioner's procedural due process. Just as in *Lopez-Arevalo*, the Court should similarly apply *Mathews v. Eldridge*, 424 U.S. 319, 96 (1976), and hold that Petitioner's ongoing detention without access to a bond hearing violates due process. 801 F.Supp.3d at 685-87. *See also Hernandez-Fernandez v. Lyons*, No. 5:25-CV-00773-JKP, 2025 WL 2976923, at *8-10 (W.D. Tex. Oct. 21, 2025) (same); *Luna Sanchez*, 2025 WL 3191922, at *5 (same). All factors similarly cut in Petitioner's favor, as his private interest is in his own liberty is "the most elemental of liberty interests: the interest in being free from physical detention." *Id.*, citing *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004) [internal quotations omitted]. Petitioner also has shown a strong likelihood of erroneous deprivation absent an order from this Court. *Id. See also Portillo-Argueta,* 2026 WL 184194, at *5 (holding the same, "particularly in light of petitioner's prior release on bond"). Lastly, as Petitioner was already afforded a bond hearing previously, "DHS already has additional procedural safeguards that it could have employed to avoid an erroneous deprivation of liberty, namely the procedures for revoking bond outlined in § 1226(b)." *Id.* Any further governmental interest in detaining Petitioner without access to a bond has been typically held to be "minimal." *Portillo-Argueta,* 2026 WL 184194, at *5.

53. Accordingly, all *Mathews* factors militate in favor of Petitioner, and Respondents' actions in detaining Petitioner without a bond hearing before a neutral and detached magistrate have therefore deprived Petitioner of his rights without due process of law.

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**REQUEST FOR RELIEF**

Petitioner prays for judgment against Respondents and respectfully requests that the Court enters an order:

a) Issuing an Order to Show Cause, ordering Respondents to justify the basis of Petitioner's detention in fact and in law, forthwith;

b) Enjoin Respondents from holding Petitioner subject to detention under 8 U.S.C. § 1225(b)(2) and denying him a bond hearing on that basis;

c) Enjoin Petitioner's transfer outside of this judicial district pending this litigation;

d) Enjoin Respondents from re-arresting Petitioner subject to § 1225(b)(2);

e) Order Petitioner's immediate release from custody;

f) Order, in the alternative, Petitioner's immediate release and that Respondents conduct a bond hearing for Petitioner pursuant to 8 U.S.C. § 1226(a) within 7 days;

g) Grant the writ of habeas corpus and order Respondents to release Petitioner forthwith, upon payment of the bond as ordered by the Immigration Judge;

h) Award Petitioner his costs of suit; and

i) Grant any other relief that this Court deems just and proper.

Respectfully submitted,

Date: February 6, 2026

*/s/ Simon Sandoval-Moshenberg*

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*Counsel for Petitioner*

**LIST OF EXHIBITS**

Ex. 1. EOIR Notification, with Receipt of bond payment;

Ex. 2. USCIS I-589 Biometrics Appt Notice, stamped;

Ex. 3. ICE I-830E Notice to EOIR: Alien Address.

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that on this date, I uploaded the foregoing, with all attachments thereto, to this court's CM/ECF system, which will send a Notice of Electronic Filing (NEF) to all case participants. I furthermore will send a copy by certified U.S. mail, return receipt requested, to:

Civil Process Clerk
U.S. Attorney's Office for the
Western District of Texas
700 E. San Antonio, Suite 200
El Paso, Texas 79901

Office of the General Counsel
U.S. Department of Homeland Security
245 Murray Lane, SW, Mail Stop 0485
Washington, DC 20528-0485

Pamela Bondi, Attorney General of the
United States 950 Pennsylvania Avenue,
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Mary De Anda-Ybarra
Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement
500 12th Street SW, Mail Stop 5902
Washington, DC 20536-5902

Warden,
El Paso Camp East Montana Detention
Center. 6920 Digital Road
El Paso, TX 79936.

Respectfully submitted,

Date: February 6, 2026

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