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6
7 UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

8 LEOBARDO GARCIA RINCON
9 Petitioner,

Case No. 2:26-cv-00396

1 v.

**PETITION FOR WRIT OF
HABEAS CORPUS**

0 THOMAS E. FEELEY, Director of
Enforcement and Removal Operations, Salt
1 Lake City Field Office, Immigration and
Customs Enforcement; KRISTI NOEM,
1 Secretary, U.S. Department of Homeland
Security; U.S. DEPARTMENT OF
1 HOMELAND SECURITY; PAMELABONDI,
U.S. Attorney General; EXECUTIVE OFFICE
2 FOR IMMIGRATION REVIEW; JOHN
MATTOS, Warden of NEVADA SOUTHERN
1 DETENTION CENTER, in their official
capacities

3 Respondents.
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INTRODUCTION

1. Petitioner, LEOBARDO GARCIA-RINCON, respectfully brings this Petition for a Writ of Habeas Corpus under 28 U.S.C. § 2241 to challenge his unlawful detention by Respondents. Petitioner is currently detained at the Nevada Southern Detention Center in Pahrump, Nevada. Petitioner asserts that his continued detention is unlawful under the Immigration and Nationality Act (INA) and violates his procedural and substantive due process rights under the Fifth Amendment to the United States Constitution. Petitioner seeks immediate release or, alternatively, a constitutionally compliant bond hearing under 8 U.S.C. § 1226(a).
2. Petitioner is a 38-year-old noncitizen who has continuously resided in the United States since entering without inspection in 2008- nearly eighteen years ago. He is married and is the father of three U.S. citizen children, Allison age 17, Alfredo, age 13, and Sofia age 5. His son, Alfredo, suffers from asthma and requires ongoing medical treatment. Petitioner operates a landscaping business and has been the primary financial provider for his family.
3. On January 24, 2026, Immigration Customs Enforcement (“ICE”) arrested Petitioner during a targeted immigration enforcement operation aimed at another individual for whom ICE had issued an administrative warrant. Petitioner was not the subject of the warrant. After querying the license plate of his trailer and following him, ICE officers conducted a stop and arrested him. He has remained in ICE custody continuously since that date.
4. Petitioner is charged with, inter alia, having entered the United States without inspection. 8 U.S.C. § 1182(a)(6)(A)(i).

- 1 5. ICE refused to issue bond to Petitioner based on a new ICE policy interpreting detention
2 statute that is unsupported by the law, its history and precedent as discussed below.
- 3 6. Petitioner sought individualized bond redetermination hearing by the Immigration Judge
4 (“IJ”)- Executive Office for Immigration Review (“EOIR”) pursuant to 8 C.F.R. § 1236.
- 5 7. The Immigration Court denied Petitioner any custody hearing—not based on danger,
6 flight risk, or individualized factors—but solely on the asserted ground that it lacked
7 jurisdiction to consider bond. The Department of Homeland Security (“DHS”) argued
8 that the court was divested of bond authority based on the Board of Immigration Appeals’
9 decision in *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), which purported
10 to eliminate immigration court bond jurisdiction in cases involving individuals deemed
11 not admitted to the United States. The IJ acknowledged the federal district court rulings
12 in *Maldonado Bautista v. Santacruz, et al.*, 2025 WL 3288403 (Nov. 25, 2025), and 2025
13 WL 3713987 (Dec. 18, 2025), recognizing constitutional concerns with this categorical
14 detention scheme.
15
- 16 8. Despite those rulings, the Immigration Court concluded that declaratory relief did not
17 invalidate or enjoin *Matter of Yajure-Hurtado* and therefore treated the BIA’s decision as
18 binding, effectively foreclosing any individualized custody determination. The court
19 reasoned that absent a nationwide injunction, it lacked authority to conduct a bond
20 hearing or order release.
21
- 22 9. As a result, Petitioner remains subject to automatic, categorical detention without any
23 neutral adjudicator assessing flight risk, danger, or the necessity of continued
24 confinement—precisely the type of deprivation of liberty that the Due Process Clause
25 prohibits.

1 10. This jurisdictional denial was predicated on Respondents' erroneous classification of
2 Petitioner as an "applicant for admission" subject to mandatory detention under 8 U.S.C.
3 § 1225(b)(2)(A), a provision applicable only to arriving aliens. By misapplying this
4 statute and invoking *Matter of Yajure-Hurtado* to strip the Immigration Court of custody
5 authority, Respondents have deprived Petitioner of the fundamental right to an
6 individualized bond hearing.

7
8 11. The Petitioner's continued detention on this basis violates both the plain language of the
9 INA and Due Process of the Fifth Amendment. 8 U.S.C. § 1225(b)(2)(A) does not apply
10 to individuals like the Petitioner who previously entered years ago, has been residing in
11 the United States for many years, legally supporting himself and his family with his
12 landscaping business, and was only recently detained by ICE during an interior
13 enforcement operation.

14 12. Instead, such individuals are subject to a different statute, 8 U.S.C. § 1226(a), which
15 allows for release on conditional parole or bond. That statute expressly applies to people
16 who, like the petitioners, are charged as inadmissible for having entered the United States
17 without inspection.

18 13. Respondents' new legal interpretation is plainly contrary to the statutory framework and
19 contrary to decades of agency practice applying § 1226(a) to people like Petitioner.

20 14. By misapplying § 1225(b)(2)(A) and invoking *Matter of Yajure-Hurtado* to eliminate
21 bond jurisdiction, Respondents have imposed automatic civil detention without statutory
22 authority and without constitutionally required procedural safeguards.
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AUTHORITY-RECENT DEVELOPMENTS

15. On November 20, 2025, the District Court 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. *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).

16. The declaratory judgment held that the Bond Denial 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.

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

18. Petitioner LEOBARDO GARCIA RINCON 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 NEVADA SOUTHERN DETENTION CENTER. He was apprehended by immigration authorities on January 24, 2026;

1 b. entered the United States without inspection over seventeen years ago and was not
2 apprehended upon arrival, *cf. id.*; and

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

4 19. Petitioner has never been arrested for, charged with, or convicted of any criminal offense.

5 On January 24, 2026, he was taken into custody during a targeted immigration
6 enforcement operation, despite not being the subject of the administrative warrant or the
7 intended target of the action. The operation was directed at another individual, yet
8 Petitioner was nevertheless apprehended and subsequently placed in removal proceedings
9 pursuant to 8 U.S.C. § 1229a. DHS has charged Petitioner as being inadmissible under 8
10 U.S.C. § 1182(a)(6)(A)(i), as someone who entered the United States without inspection.
11

12 **JURISDICTION**

13 20. Petitioner is in the physical custody of Respondents. He is detained at the NEVADA
14 SOUTHERN DETENTION CENTER in Pahrump, Nevada.

15 21. This Court has jurisdiction under 28 U.S.C. 2241(c)(3) (habeas corpus), 28 U.S.C. 1331
16 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the
17 Suspension Clause).

18 22. This Court may grant relief pursuant to 28 U.S.C. 2241, the Declaratory Judgment Act,
19 28 U.S.C. 2201 et seq. , and the All Writs Act, 28 U.S.C. 1651.
20

21 **VENUE**

22 23. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493- 500
23 (1973), venue lies in the United States District Court for the District of Nevada, the
24 judicial district in which Petitioner currently is detained.
25

1 24. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because
2 Respondents are employees, officers, and agencies of the United States, and because a
3 substantial part of the events or omissions giving rise to the claims occurred in the
4 District of Nevada.

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

6 25. The Court should grant the petition for writ of habeas corpus “forthwith,” unless the
7 petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued,
8 the Respondents must file a return “within three days unless for good cause additional
9 time, not exceeding twenty days, is allowed.” *Id.* Given that the legal issues presented
10 here have already been resolved for similarly situated class members in *Maldonado*
11 *Bautista*, there is no good cause for delay, and expedited resolution is warranted.

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

18 **PARTIES**

19 27. Petitioner LEOBARDO GARCIA RINCON is a citizen of Mexico who has been in
20 immigration detention since January 24, 2026. After Petitioner was arrested in Las
21 Vegas, Nevada, ICE did not set bond, and Petitioner requested review of his custody
22 status by an IJ. On February 9, 2026, Immigration Judge denied his bond pursuant to
23 *Matter of Yajure v Hurtado*.
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1 28. Respondent THOMAS E. FEELEY is the Director of the Salt Lake City Field Office of
2 ICE's Enforcement and Removal Operations division. As such, THOMAS E. FEELEY is
3 Petitioner's immediate custodian and is responsible for Petitioner's detention and
4 removal. He is sued in his official capacity.

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

9 30. Respondent Department of Homeland Security (DHS) is the federal agency responsible
10 for implementing and enforcing the INA, including the detention and removal of
11 noncitizens.
12

13 31. Respondent Hon. Pamela Bondi is the Attorney General of the United States. She is
14 responsible for the Department of Justice, of which the Executive Office for Immigration
15 Review and the immigration court system it operates is a component agency. She is sued
16 in her official capacity.

17 32. Respondent Executive Office for Immigration Review (EOIR) is the federal agency
18 responsible for implementing and enforcing the INA in removal proceedings, including
19 for custody redeterminations in bond hearings.
20

21 33. Respondent JOHN MATTOS is employed by Core Civic, as Warden of the NEVADA
22 SOUTHERN DETENTION CENTER, where Petitioner is detained. He has immediate
23 physical custody of Petitioner. He is sued in his official capacity.

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LEGAL FRAMEWORK

34. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.

35. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an Immigration Judge (IJ). See 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally entitled to a bond hearing at the outset of their detention, see 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, see 8 U.S.C. § 1226(c).

36. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under § 1225(b)(2).

37. Last, the INA also provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)–(b).

38. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).

39. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104–208, Div. C, §§ 302–03, 110 Stat. 3009–546, 3009–582 to 3009–583, 3009–585. Section 1226 was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119–1, 139 Stat. 3 (2025).

40. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without admission or parole were not considered detained under § 1225 and that they were instead detained under § 1226(a). *See*

1 Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct
2 of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

3 41. Thus, in the decades that followed, most people who entered without admission or parole
4 and were placed in standard removal proceedings received bond hearings, unless their
5 criminal history rendered them ineligible. That practice was consistent with many more
6 decades of prior practice, in which noncitizens who were not deemed “arriving” were
7 entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a)
8 (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply
9 “restates” the detention authority previously found at § 1252(a)).
10

11 42. On July 8, 2025, ICE, “in coordination with” the Department of Justice, announced a new
12 policy that rejected this well-established understanding of the statutory framework and
13 reversed decades of practice.

14 43. The new policy, entitled “Interim Guidance Regarding Detention Authority for
15 Applicants for Admission,” claims that all persons who entered the United States without
16 admission or parole shall now be deemed “applicants for admission” under 8 U.S.C. §
17 1225, and therefore are subject to mandatory detention under § 1225(b)(2)(A). The policy
18 applies regardless of when a person is apprehended and affects those who have resided in
19 the United States for months, years, and even decades.
20

21 44. On September 5, 2025, the BIA adopted this same position in *Matter of Yajure Hurtado*.
22 There, the Board held that all noncitizens who entered the United States without
23 admission or parole are considered applicants for admission who are seeking admission
24 and are ineligible for IJ bond hearings.
25

1 45. Dozens of federal courts have rejected Respondents' new interpretation of the INA's
2 detention authorities.

3 46. Notably, long before ICE or the BIA changed its position nationwide, IJs in the Tacoma,
4 Washington, immigration court stopped providing bond hearings for persons who entered
5 the United States without admission or parole and who have since resided here. This
6 Court held that such a reading of the INA is likely unlawful and that § 1226(a), not §
7 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States.
8 *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025).

9
10 47. Since the *Rodriguez Vazquez* preliminary injunction decision, court after court has
11 adopted the same reading of the INA's detention authorities and rejected ICE's new
12 policy and EOIR's new interpretation. *See, e.g., Gomes v. Hyde*, No. 1:25-CV-11571-
13 JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. CV 25-
14 11613-BEM, --- F. Supp. 3d , 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v.*
15 *Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11,
16 2025), report and recommendation adopted, No. CV-25-02157-PHX-DLR (CDB), 2025
17 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937
18 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-
19 03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v.*
20 *Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025);
21 *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb*
22 *v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez*
23 *Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025);
24 *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24,

2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d, 2025 WL 2466670 (D. Minn. Aug. 27, 2025) *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); see also, e.g., *Palma Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at *2 (D. Neb. Sept. 3, 2025) (noting that “[t]he Court tends to agree” that § 1226(a) and not § 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 at *3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-RCC, 2025 WL 2374224 at *2 (D. Neb. Aug. 14, 2025) (same).

48. Courts have uniformly rejected DHS’s and EOIR’s new interpretation because it defies the INA. As the *Rodriguez Vazquez* court and others have explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

49. Subsection 1226(a) applies by default to all persons “pending a decision on whether the [noncitizen] is to be removed from the United States.” These removal hearings are held under § 1229a, to “decid[e] the inadmissibility or deportability of a[] [noncitizen].”

50. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without admission or parole. See 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)’s reference to such people makes clear that, by default, such people are

1 afforded a bond hearing under subsection (a). As the *Rodriguez Vazquez* court explained,
2 “[w]hen Congress creates ‘specific exceptions’ to a statute’s applicability, it ‘proves’ that
3 absent those exceptions, the statute generally applies.” *Rodriguez Vazquez*, 779 F. Supp.
4 3d at 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S.
5 393, 400 (2010)).

6
7 51. Section 1226 therefore leaves no doubt that it applies to people who face charges of being
8 inadmissible to the United States, including those who are present without admission or
9 parole.

10 52. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently
11 entered the United States. The statute’s entire framework is premised on inspections at the
12 border of people who are “seeking admission” to the United States. 8 U.S.C. §
13 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention
14 scheme applies “at the Nation’s borders and ports of entry, where the Government must
15 determine whether a[] [noncitizen] seeking to enter the country is admissible.” *Jennings v.*
16 *Rodriguez*, 583 U.S. 281, 287 (2018).

17 53. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to people
18 like Petitioner, who have already entered and were residing in the United States at the
19 time they were apprehended.

20
21 54. On November 20, 2025, the district court granted partial summary judgment on behalf of
22 individual plaintiffs and on November 25, 2025, certified a nationwide class and
23 extended declaratory judgment to the certified class. *Maldonado Bautista v. Santacruz*,
24 No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3289861, at *11 (C.D. Cal.
25 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).

55. The declaratory judgment held that the Bond Denial 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.

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

57. Petitioner LEOBARDO GARCIA RINCON 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 NEVADA SOUTHERN DETENTION CENTER. He was apprehended by immigration authorities on January 24, 2026;
- b. entered the United States without inspection over seventeen 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.

58. DHS has charged Petitioner as being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i), as someone who entered the United States without inspection.

59. The Court should expeditiously grant this petition.

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

6 61. Immigration judges have informed class members in bond hearings that they have been
7 instructed by “leadership” that the declaratory judgment in *Maldonado Bautista* is not
8 controlling, even with respect to class members, and that instead IJs remain bound to
9 follow the agency’s prior decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA
10 2025). This is both unlawful and constitutionally impermissible.

11 62. Because Respondents are detaining Petitioner contrary to a binding federal judgment,
12 issued in *Maldonado Bautista*, the Court should accordingly order that within one day,
13 Respondent DHS must release Petitioner.

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

16 FACTS

17 64. Petitioner entered the United States without inspection in 2008 and has resided in the
18 country for over seventeen years. He is married and has three U.S. citizen children,
19 Allison age 17, Alfredo, age 13, and Sofia age 5. His son, Alfredo, suffers from asthma
20 and requires constant medical care.

21 65. Petitioner has never been arrested for, charged with, or convicted of any criminal offense.
22 On January 24, 2026, he was taken into custody during a targeted immigration
23 enforcement operation, despite not being the subject of the administrative warrant or the
24
25

1 intended target of the action. The operation was directed at another individual, yet
2 Petitioner was nevertheless apprehended and placed in removal proceedings under 8
3 U.S.C. § 1229a. Respondents have improperly classified Petitioner under 8 U.S.C.
4 1225(b)(2)(A), a statute reserved for arriving aliens and denied him bond jurisdiction
5 pursuant to *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

6
7 66. Petitioner is detained under 8 U.S.C. § 1226(a), which permits release on bond. The
8 governments new interpretation of § 1225(b)(2) contradicts statutory text, legislative
9 history, and longstanding agency practice. This longstanding practice reflects an
10 understanding that such detention must comport with due process requirements. The
11 sudden reversal of this practice without clear statutory mandate raises serious
12 constitutional red flag. This classification is legally erroneous and contrary to the
13 reasoning of the District of Nevada in Case No. 2:25-cv-01819-RFB-BNW, 2:25-cv-
14 02409-RFB-EJY, and dozens of similar challenges which granted habeas relief to a
15 similarly situated long-term interior resident.

16 67. Section 1225(b)(2)(A) applies only to arriving aliens, not long-term interior residents like
17 Petitioner.

18 68. Petitioner's continued detention violates statutory and constitutional limits governing
19 immigration detention, as confirmed by Supreme Court, Ninth Circuit, and district court
20 precedent. Thus, Respondents' reliance on that statute is unlawful.

21 69. Petitioner's continued detention without a bond hearing violates both statutory constraints
22 and constitutional requirements required by the Supreme Court, Ninth Circuit and
23 relevant district courts
24
25

1 70. Petitioner has received no individualized custody review, and the automatic stay
2 provision under 8 C.F.R. § 1003.19(i)(2) deprives Petitioner of meaningful procedural
3 safeguards, resulting in arbitrary and unreasonably prolonged detention.

4 71. Petitioner's continued detention would result in exceptional and extremely unusual
5 hardship to his U.S. Citizen children especial to his son, Alfredo who suffers from
6 asthma. Relocation to a country with limited medical resources and instability may
7 worsen these emotional challenges, especially during adolescence, critical developmental
8 period. *Figueroa v. Mukasey*, 543 F.3d 487 (9th Cir. 2008), significant medical needs of
9 qualifying children are central to hardship analysis.

10 72. In addition to his son's, medical challenges posed, Alfredo's hardship is significantly
11 worsened by the fact that his father, the Petitioner is the primary and, in many respects,
12 the only source of financial support, emotional stability and logistical coordination for his
13 medical treatment. If his father continues to be detained, Alfredo will face immediate and
14 severe disruptions to his medical treatment, which goes well beyond ordinary hardship.
15 The loss of financial support directly exacerbates the medical hardship recognized by
16 court such as *Figueroa v. Mukasey*, where inability to afford ongoing care was a major
17 hardship factor.
18

19 73. Petitioner's continued detention is not merely a family separation. It directly threatens the
20 son's ability to receive life altering medical care. This factor alone, combined with other
21 hardship elements meets the "exceptional and extremely unusual hardship" standard.
22

23 **DUE PROCESS VIOLATIONS**

24 74. The Constitution guarantees every person in the United States due process of law,
25 including persons who are not United States citizens. E.g., *Lopez v. Heinauer*, 332 F.3d

507, 512 (8th Cir. 2003) (“The Supreme Court has long recognized that deportable aliens are entitled to constitutional protections of due process.” (citing *Yamataya v. Fisher*, 189 U.S. 86, 100-01, 23 S.Ct. 611, 47 L.Ed. 721 (1903))); see also, e.g., *Trump v. J.G.G.*, 604 U. S. —, —, 145 S. Ct. 1003, 1006, — L.Ed.2d — (2025) (per curiam) (“It is well established that the Fifth Amendment entitles aliens to due process of law’ in the context of removal proceedings.” (quoting *Reno v. Flores*, 507 U.S. 292, 306, 113 S.Ct. 1439, 123 L.Ed.2d 1 (1993))); *Zadvydas v. Davis*, 533 U.S. 678, 695, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001) (“[T]he Due Process Clause applies to all persons within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.”).

75. To determine whether a civil detention violates a detainee's due process rights, courts apply a three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976). See *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022) (collecting cases and noting that, “when considering due process challenges to [discretionary noncitizen detention] other circuits ... have applied the Mathews test”).

76. Under *Mathews*, courts weigh the following three factors: (1) “the private interest that will be affected by the official action”; (2) “the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards”; and (3) “the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” *Mathews*, 424 U.S. at 335, 96 S.Ct. 893.

77. The private interest in this case is significant; being free from physical detention. The Supreme Court has found this to be “the most elemental of liberty interests.” *Hamdi v.*

1 *Runsfeld*, 542 U.S. 507 at 529, 531, 124 S.Ct. 2633 (directing courts, when assessing the
2 first Mathews factor, to consider only the Petitioner's interests at stake in ongoing
3 detention without consideration of the respondents' justifications for the detention
4 (quotation omitted)); *see also Zadvydas v. Davis*, 533 U.S. 678, 690 (advising that an
5 individual's interest in being free from detention "lies at the heart of the liberty that [the
6 Due Process] Clause protects").

7
8 78. The Petitioner is being held at the Nevada Southern Detention Center and experiencing
9 the loss of contact with family and friends, loss of income and inability to provide for his
10 family, lack of privacy and lack of freedom. Pahrump is a far drive for his family
11 members to visit him regularly. He is particularly affected due to his inability to provide
12 daily care to his three minor children. Petitioner's children depend entirely on their father
13 for transportation, financial stability, emotional support, and continued medical
14 treatment.

15 79. The second *Mathews* factor is whether the challenged procedure creates a risk of
16 erroneous deprivation of individual rights and whether there are alternative procedures
17 that could ameliorate these risks. In this case, the risk of deprivation is very high because
18 Petitioner is subject to automatic, categorical detention without any individualized
19 assessment of flight risk or danger to the community. Under the current scheme,
20 detention turns solely on DHS's unilateral classification of Petitioner as subject to
21 mandatory detention, without neutral review by an immigration judge and without an
22 opportunity for Petitioner to present evidence of his community ties, lack of criminal
23 history, employment, or ability to comply with conditions of release. The challenged
24 regulation permits an agency official who is involved in the adversarial process and the
25

1 non-prevailing party to unilaterally override the immigration judge's decision. This
2 represents a conflict of interest disapproved by courts in other contexts. *See, e.g.*, 5
3 U.S.C. § 554(d)(2) (prohibiting agency employees engaged in prosecuting functions from
4 participating in the adjudicatory decision); *Marcello v. Bonds*, 349 U.S. 302, 305-06
5 (1955) (holding that the special inquiry officer adjudicating over an immigration case
6 cannot also undertake the functions of prosecutor in the same matter).

7
8 80. When considering a bond redetermination request and immigration judge must consider
9 whether the applicant is a danger to society, a threat to national security or poses a flight
10 risk. 8 U.S.C. § 1226(a) (2018); *Matter of Guerra*, 24 I&N Dec. 37, 38 (BIA 2006); see
11 also *Matter of D-J-*, 23 I&N Dec. 572, 576 (A.G. 2003); *Matter of Adeniji*, 22 I&N Dec.
12 1102, 1112 (BIA 1999); 8 C.F.R. § 1236.1(c)(8). The immigration judge in each of these
13 cases considered these factors carefully, reviewed all of the evidence and, in all three
14 cases, found that a low bond was appropriate. the IJ concluded that *Matter of Yajure-*
15 *Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), stripped the court of bond jurisdiction and
16 therefore denied Petitioner's request for bond.

17
18 81. In the third step of the *Mathews* test, the court must weigh the private interests at stake
19 and the risk of erroneous deprivation against the government's interest in persisting with
20 the regulation, including the fiscal and administrative burdens of a substitute procedural
21 requirement. Given that the petitioner satisfies all the requirements for release on bond, it
22 is difficult to see any legitimate purpose for continued detention. The process by which
23 an immigration judge issues a bond redetermination account for the government's safety
24 and flight concerns.
25

1 82. If the purpose of the detention is not to facilitate deportation, protect against the risk of
2 flight or danger to the community, then it must be solely for the purpose of incarceration
3 and in this administration, motivated largely by politics.

4 83. Any government interest can be addressed by the regulation which provides a process to
5 request a stay from the BIA pending appeal of the immigration judge's bond decision. 8
6 C.F.R. § 1003.19(i)(1). The government can do this in any case in which it believes that
7 the IJ's decision was erroneous.
8

9 84. In this case, the Petitioner availed himself of the procedural safeguards by requesting a
10 bond redetermination with evidence that he was not a flight risk, not a danger to the
11 community and should be granted bond.

12 85. The regulation on its face and its application to these cases that contain no risk factors of
13 release violates due process.

14 86. The Fifth Amendment guarantees notice, an opportunity to be heard, and review by a
15 neutral decision-maker. Petitioner has been denied these protections.

16 87. Petitioner received no individualized bond hearing and no opportunity to challenge DHS's
17 misclassification, which was imposed solely on the basis of *Matter of Yajure-Hurtado*, 29
18 I. & N. Dec. 216 (BIA 2025) a decision expressly rejected in an analogous circumstance
19 by the District of Nevada. See. 2:25-cv-01819-RFB-BNW. Under *Jennings v. Rodriguez*,
20 138 S. Ct. 830 (2018), *Rodriguez v. Robbins*, 715 F.3d 1127 (9th Cir. 2013), *Casas-*
21 *Castrillon v. Dep't of Homeland Sec.*, 535 F.3d 942 (9th Cir. 2008) 2008), and *Diouf v.*
22 *Napolitano*, 634 F.3d 1081 (9th Cir. 2011) (*Diouf II*), 634 F.3d 1081 (9th Cir. 2011)
23 federal courts retain the authority to review the constitutionality of detention even when
24 the statute appears to limit bond hearings.
25

1 88. Petitioner should have been detained, if at all, under § 236(a), which affords him an
2 opportunity to seek release on bond. Yet, relying on *Matter of Yajure-Hurtado*, 28 I&N
3 Dec. 757 (BIA 2024), the Immigration Judge declined jurisdiction to consider bond,
4 leaving Petitioner with no administrative forum in which to challenge his custody. While
5 *Yajure-Hurtado* treats certain EWI respondents as “applicants for admission” for
6 purposes of detention, this District has already rejected that interpretation when applied
7 to long-term interior residents in *Maldonado Bautista*, and federal courts are not bound
8 by BIA decisions that conflict with statute or the Constitution.
9

10 89. Nor does *Demore v. Kim*, 538 U.S. 510 (2003), authorize Petitioner’s detention. *Demore*
11 approved narrow, time-limited mandatory detention under 8 U.S.C. § 1226(c) for certain
12 criminal noncitizens during the “brief” period of removal proceedings, but Petitioner is
13 not detained under § 1226(c), has no criminal convictions, and his custody is neither brief
14 nor tied to the narrow class of individuals Congress identified as mandatorily detainable.
15 Finally, *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018), confirms that although some
16 detention statutes may not be re-written by constitutional avoidance, noncitizens remain
17 free to bring constitutional challenges to the fact and length of their detention through
18 habeas corpus. Taken together, *Zadvydas*, *Casas*, *Diouf II*, *Rodriguez*, *Demore*, *Jennings*,
19 *Yajure-Hurtado*, and, most pointedly, *Maldonado Bautista* (2:25-cv-01819-RFB-BNW)
20 establish that Petitioner’s detention under § 235(b)(2)(A) is unauthorized by statute,
21 devoid of meaningful process, and arbitrary in duration. His continued confinement
22 therefore violates both the INA and the Fifth Amendment, and this Court should grant the
23 writ and order his immediate release, or at minimum, a prompt bond hearing under §
24 236(a) with the government bearing the burden of justifying continued custody.
25

1 90. While *Maldonado Bautista v. ICE*, Case No. 2:25-cv-01819-RFB-BNW, remains
2 pending, the statutory challenge in that action is directly relevant. The reasoning
3 advanced there makes clear that DHS's practice of classifying long-term interior EWIs as
4 § 235(b)(2)(A) detainees find no support in the INA. Individuals apprehended years after
5 entering and residing in the interior fall under 8 U.S.C. § 1226(a) and must be afforded
6 bond eligibility. Applying that statutory framework here, DHS had—and has—no lawful
7 basis to classify Petitioner as a § 235(b) detainee. His detention under § 235(b) is
8 therefore unlawful and constitutionally suspect from the outset.

9
10 91. Petitioner has strong family ties, has resided in the U.S. for over seventeen years, he has
11 no criminal charges, and he is the sole provider for his family, performs skilled yard-
12 maintenance work, and is highly regarded by his clients—as demonstrated by the
13 attached loyal patrons.

14 92. Critically, Petitioner was never afforded the opportunity to present this substantial
15 evidence of community ties, good character, and eligibility for release. This procedural
16 failure constitutes a clear violation of Due Process and has directly prevented him from
17 meaningfully contesting his detention.

18 **UNLAWFUL DETENTION UNDER THE INA**

19
20 93. By statutory text, § 1225(b)(2)(A) applies only to individuals seeking admission, arriving
21 at a port of entry, or encountered at the border. Petitioner was apprehended in the interior
22 of the United States after almost two decades of residence and is not an arriving alien.

23 94. Petitioner's detention must therefore proceed under 8 U.S.C. § 1225(b)(2) which provides
24 for bond consideration.
25

1 95. Respondents' new interpretation of § 1225(b)(2)(A) is ultra vires, contrary to statutory
2 text, legislative intent, and longstanding agency practice.

3 96. Thus, when the statutory, constitutional, and precedential framework is properly applied,
4 Petitioner's detention is unlawful under the INA, violates procedural due process because
5 he was denied any opportunity to contest custody, and violates substantive due process
6 because the detention is unauthorized, prolonged, and arbitrary. Accordingly, this Court
7 must grant the writ and order Petitioner's immediate release or, at minimum, a
8 constitutionally compliant bond hearing under § 1226(a).
9

10 **VIOLATION OF THE INA:**

11 **REQUEST FOR RELIEF PURSUANT TO *MALDONADO BAUTISTA***

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

14 98. The order granting partial summary judgment in *Maldonado Bautista* holds that
15 Respondents violate the INA in applying the mandatory detention statute at § 1225(b)(2)
16 to class members.

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

20 100. Respondents are parties to *Maldonado Bautista* and bound by the Court's
21 declaratory judgment, which has the full "force and effect of a final judgment." 28 U.S.C.
22 § 2201(a).
23
24
25

101. 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 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;
- 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 and costs under the Equal Access to Justice Act (EAJA), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and
- e. Grant any other and further relief that this Court deems just and proper.

Dated this 13th day of February 2026.

/s/ Krista Lianne P. De Vera, Esq.
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AFFIDAVIT OF KRISTA LIANNE P. DE VERA

STATE OF NEVADA)
)
COUNTY OF CLARK) **ss:**

Before me appeared personally KRISTA LIANNE P. DE VERA, ESQ., who swore as follows:

I, Krista Lianne P. De Vera, Esq., Attorney for the Petitioner, hereby swear that I know the contents of this pleading, that the pleading is true of my own knowledge, except as to those matters stated on information and belief, and that as to such matters I believe them to be true. I further affirm that I have been specifically authorized by the Petitioner to file this Petition.

KRISTA LIANNE P. DE VERA, ESQ.

SUBSCRIBED AND SWORN TO:

Before me this 13th day of February, 2026.

NOTARY PUBLIC in and for said

County of Clark and State of Nevada.

NOTARY PUBLIC

