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9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 Jawad Zarif,

12 Petitioner,

13 v.

14 Patrick, DIVVER, Field Office Director
15 of Enforcement and Removal
16 Operations, San Diego Field Office,
17 Immigration and Customs Enforcement;
18 Todd M. LYONS, Acting Director, U.S.
19 Immigration and Customs Enforcement;
20 Kristi NOEM, Secretary, U.S.
21 Department of Homeland Security; U.S.
22 DEPARTMENT OF HOMELAND
23 SECURITY; Pamela BONDI, U.S.
24 Attorney General; EXECUTIVE
OFFICE FOR IMMIGRATION
REVIEW; Warden of Imperial Regional
Detention Facility,

Respondents.

Case No. '26CV1320 CAB DDL

**PETITION FOR WRIT OF
HABEAS CORPUS**

INTRODUCTION

Petitioner, Jawad Zarif has been detained pending his immigration proceedings for more than 12 months since February 23, 2025. This Court should “join[] the majority of courts across the country in concluding that his unreasonably prolonged detention under 8 U.S.C. §1225(b) without an individualized bond hearing violates due process.” *Kydrali v. Wolf*, 499 F. Supp. 3d 768, 772 (S.D. Cal. 2020)(Battaglia J.).

Petitioner further brings this petition for a writ of habeas corpus to seek enforcement of their rights as members of the Bond Denial 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 Otay Mesa Detention Facility. He 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*.

JURISDICTION

1. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Imperial Regional Detention Facility in Calexico, California.

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

4 3. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory
5 Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. §
6 1651.

7 4. The federal district courts have jurisdiction under Section 2241 to hear
8 habeas claims by individuals challenging the lawfulness of their detention by
9 ICE. *See Jennings v. Rodriguez*, 583 U.S. 281, 290-92 (2018).
10

11
12 **VENUE**

13 5. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S.
14 484, 493- 500 (1973), venue lies in the United States District Court for the
15 Southern District of California, the judicial district in which Petitioner
16 currently is detained.

17 6. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because
18 Respondents are employees, officers, and agencies of the United States, and
19 because a substantial part of the events or omissions giving rise to the claims
20 occurred in the Southern District of California.
21

22 **REQUIREMENTS OF 28 U.S.C. § 2243**
23
24

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

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

12 PARTIES

13
14 9. Petitioner, Jawad Zarif, is a citizen of Iran who has been in immigration
15 detention since February 23, 2025. After Petitioner was arrested in Roma,
16 Texas, ICE did not set bond. Petitioner did not request review of his custody
17 by an IJ as any such request would be futile. The Court in *Maldonado*
18 *Bautista* entered a final judgment specifically because it found “troubling”
19 evidence that the Department of Justice issued a memorandum instructing
20 Immigration Judges to disregard the federal court’s prior orders and “hold
21 the position that *Yajure-Hurtado* remains good law.” This judicial finding
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1 confirms that administrative exhaustion is futile, as the agency has prejudged
2 the issue in bad faith.

3 10. Respondent Patrick Divver (“Divver”) is the Director of the San Diego
4 Field Office of ICE’s Enforcement and Removal Operations division. As
5 such, Divver is Petitioner’s immediate custodian and is responsible for
6 Petitioner’s detention and removal. He is named in his official capacity.
7

8 11. Respondent Kristi Noem is the Secretary of the Department of Homeland
9 Security. She is responsible for the implementation and enforcement of the
10 Immigration and Nationality Act (INA), and oversees ICE, which is
11 responsible for Petitioner’s detention. Ms. Noem has ultimate custodial
12 authority over Petitioner and is sued in her official capacity.
13

14 12. Respondent Todd Lyons is the Director of ICE. He is responsible for the
15 administration of ICE and the implementation and enforcement of the
16 immigration laws, including immigrant detention. As such, Mr. Lyons is a
17 legal custodian of Petitioner. He is sued in his official capacity.
18

19 13. Respondent Pamela Bondi is the Attorney General of the United States. She
20 is responsible for the Department of Justice, of which the Executive Office
21 for Immigration Review and the immigration court system it operates is a
22 component agency. She is sued in her official capacity.
23
24

1 14. Respondent Warden at the Imperial Regional Detention Center is the
2 Warden at the Imperial Regional Detention Center as Warden of the, where
3 Petitioner is detained. He has immediate physical custody of Petitioner. He
4 is sued in his official capacity.
5

6 **STATEMENT OF FACTS**

7 Petitioner, Jawad Zarif, is a 31-year-old native and citizen of Afghanistan
8 and was born [REDACTED] Petitioner experienced harm, mistreatment, and
9 threats in Afghanistan due to his political opinion. Petitioner left Afghanistan to
10 seek protection in the United States. He entered the United States on or about
11 February 23, 2025, without inspection. He then turned himself in to immigration
12 officials at or near Roma, Texas. He was issued a Notice to Appear on September
13 1, 2025. Proceedings were initiated at the Imperial Immigration Court after the
14 Notice to Appear was filed with the Immigration Court on September 3, 2025. He
15 has had seven mater calendar hearings November 6, 2025, December 4, 2025,
16 January 15, 2026, January 22, 2026, February 12, 2026, February 26 2026, and
17 March 2, 2026. Petitioner filed an application for asylum, withholding of removal,
18 and protection under the United Nations Convention Against Torture on January 1,
19 2026. His individual hearing is scheduled for March 16, 2026 at 1:00pm.
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LEGAL FRAMEWORK

A. *Maldonado- Bautista* Class Membership

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).

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.

On December 18, 2025, the Central District of California entered a final judgment in *Maldonado Bautista*, certifying the nationwide class and declaring the policy of detaining those individuals that entered the United States without inspection under § 1225(b)(2) unlawful. Nonetheless, the Executive Office for

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

5
6 Petitioner, Jawad, is a member of the Bond Eligible Class, as he:

- 7 a. does not have lawful status in the United States and is currently
8 detained at the Imperial Regional Detention Facility. He was
9 apprehended by immigration authorities following his unlawful entry
10 into the United States;
- 11 b. entered the United States without inspection on or about February 23,
12 2025, and was not apprehended upon arrival, *cf. id.*; and
- 13 c. is not detained under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231.

14 On February 18, 2026, the Central District of California entered an order granting
15 Petitioner's Motion to Enforce the Judgment in *Maldonado Bautista*. The Court
16 vacated *Matter of Yajure Hurtado* as contrary to law under the APA. Despite this
17 order, the Immigration Courts continue to deny bond finding lack of jurisdiction
18 and citing *Matter of Q.Li*, 29 I&N Dec. 66 (BIA 2025).

19 After apprehending Petitioner on or about February 23, 2025, the DHS placed
20 him in removal proceedings pursuant to 8 U.S.C. § 1229a. DHS has charged
21 Petitioner as being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i), as someone
22 who entered the United States without inspection. He has not been charged as an
23 arriving alien by the Department of Homeland Security.

24

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

8 Immigration judges have informed class members in bond hearings that they
9 have been instructed by “leadership” that the declaratory judgment in *Maldonado*
10 *Bautista* is not controlling, even with respect to class members, and that instead IJs
11 remain bound to follow the agency’s prior decision in *Matter of Yajure Hurtado*,
12 29 I. & N. Dec. 216 (BIA 2025).

14 Because Respondents are detaining Petitioner in violation of the declaratory
15 judgment issued in *Maldonado Bautista*, the Court should accordingly order that
16 within one day, Respondent DHS must release Petitioner. Alternatively, the Court
17 should order Petitioner’s release unless Respondents provide a bond hearing under
18 8 U.S.C. § 1226(a) within seven days.

20 **B. Prolonged Detention**

21 **II. The Fifth Amendment’s Due Process Clause prohibits prolonged**
22 **immigration detention without a bond hearing**

1 This habeas petition presents a question about whether and when the Fifth
2 Amendment's Due Process Clause countermands the government's statutory
3 authority to detain immigrants without bond hearings. "[N]early all district courts
4 that have considered the issue agree that prolonged mandatory detention pending
5 removal proceedings, without a bond hearing, will—at somepoint—violate the
6 right to due process." *Id.* (cleaned up) (collecting cases). These courts have taken
7 their cues largely from *Zadvydas v. Davis*, 533 U.S. 678 (2001). There, the
8 Supreme Court applied the constitutional avoidance canon to hold that persons
9 detained following a final removal order may not be subjected to indefinite
10 detention. *Id.* at 699. Though *Zadvydas*'s holding rests on statutory rather than
11 constitutional grounds, the Court justified its constitutional avoidance approach by
12 describing the serious due process concerns that indefinite detention would
13 occasion:
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16 A statute permitting indefinite detention of an alien would raise a
17 serious constitutional problem. The Fifth Amendment's Due Process
18 Clause forbids the Government to 'depriv[e]' any 'person ...
19 of ...liberty ... without due process of law.' Freedom from
20 imprisonment—from government custody, detention, or other forms of
21 physical restraint—lies at the heart of the liberty that that Clause
22 protects. *See Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). And this
23 Court has said that government detention violates that Clause unless the
24 detention is ordered in a criminal proceeding with adequate procedural
protections, *see United States v. Salerno*, 481 U.S. 739, 746 (1987), or,
in certain special and 'narrow' nonpunitive 'circumstances,' *Foucha*,
supra, at 80, where a special justification, such as harm-threatening
mental illness, outweighs the 'individual's constitutionally protected

1 interest in avoiding physical restraint.’ *Kansas v. Hendricks*, 521 U.S.
2 346, 356 (1997).

3 As the Ninth Circuit put it in *Jennings v. Rodriguez*’s 583 U.S. 281, 297
4 (2018) wake, these considerations raise “grave doubts that any statute that allows
5 for arbitrary prolonged detention without any process is constitutional or that those
6 who founded our democracy precisely to protect against the government’s arbitrary
7 deprivation of liberty would have thought so.” *Rodriguez v. Marin*, 909 F.3d 252,
8 256 (9th Cir. 2018). The same concerns have led district courts to conclude that
9 immigrants cannot be detained indefinitely without bond hearings pending their
10 immigration proceedings.
11

12 **III. Courts have reached different conclusions about when immigration**
13 **detention becomes indefinitely prolonged, but Petitioner would**
14 **prevail under any standard**

15 Though courts agree that due process mandates a bond hearing when detention
16 grows unreasonably prolonged, they disagree about how to assess whether a
17 particular individual’s detention has reached that point. *Sanchez-Rivera v.*
18 *Matuszewski*, No. 22-CV-1357-MMA (JLB), 2023 WL 139801, at *5-6. (S.D. Cal.
19 Jan 9, 2023) (Anello J.) (surveying the various approaches). Some courts have
20 “conclude[d]...that detention becomes prolonged after six months and entitles [a
21 petitioner] to a bond hearing.” *Rodriguez v. Nielson*, No. 18-CV-04187-TSH, 2019
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23
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1 WL 7491555, at *6 (N.D. Cal. Jan 7, 2019). In that case, Petitioner would
2 automatically qualify, as he has been detained for over 12 months.

3 Other courts have adopted various factors tests. *See Sanchez-Rivera*, 2023
4 WL 139801, at *5-6 (surveying different approaches). Courts generally agree
5 that the relevant factors include:
6

7 (1) “the total length of detention to date,”

8 (2) “the likely duration of future detention,” and

9 (3) The delays in the removal proceedings caused by the petitioner and the
10 government.”
11

12 *Id.* Some courts also consider:

13 (1) “the conditions of detention,” and

14 (2) “the likelihood that the removal proceedings will result in a different
15 final order.”
16

17 *Id.*; *but see Lopez v. Garland*, 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022) (holding
18 that the fourth and fifth factors and “not particularly suited to assisting the Court in
19 determining whether detention has become unreasonable and due process requires
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1 a bond hearing”); *Sanchez-Rivera*, 2023 WL 139801, at *5-6 (agreeing with
2 *Lopez*).¹ Petitioner would prevail under any of these factors tests.

3 First, the “most important factor,” the length of detention, favors Petitioner. *Banda*,
4 385 F. Supp. 3d. at 1118. In assessing this factor, “[i]t is important to bear in mind
5 the context: The detention that is being examined here is the detention of a person
6 who has never been found to pose a danger to the community or to be likely to flee
7 if released.” *Jamal A. v. Whitaker*, 358 F. Supp. 3d. 853, 859 (D. Minn. 2019).

9 With that context, courts have granted bond hearings for persons detained between
10 nine and eleven months, shorter than Petitioner’s twelve months in detention. *See*
11 *Ashemuke v. ICE Filed Off. Dir.* No. C23-1592-RSL-MLP, 2024 WL 1683797, at
12 *4 (W.D. Wash. Feb. 29, 2024), *report and recommendation adopted*, No. C23-
13 1592-RSL, 20241676681 (W.D. Wash. Apr. 18, 2024) (“approximately eleven
14 months”); *Brissett v. Decker*, 324 F. Supp. 3d 444, 452 (S.D.N.Y. 2018) (“over
15 nine months”); *Perez v. Decker*, No. 18-CV-5279 (VEC), 2018 WL 3991497, at *5
16 (S.D.N.Y) Aug. 20, 2018) (“More than nine months”).
17

18
19 Second, Petitioner has reason to anticipate significant future detention
20 during his removal proceedings. Although his case is set for an individual hearing,
21 if either party appeals the Court’s decision, Petitioner will remain detained. *See*
22

23 ¹ Courts also disagree about whether to account for any criminal convictions that led to the deportation. *Sanchez-*
24 *Rivera*, 2023 WL 139801, at *5-6. But such factors – if appropriate at all – are irrelevant where, as here, the
individual is not being removed due to criminal convictions.

1 *Banda*, 385 F. Supp. 3d at 1119. All told, “[t]his process may take up to two years
2 or longer.” *Id.* Because “Petitioner’s future detention can last several more months
3 or even years[,]” this factor favors Mr. O. *Abdul Kadir v. LaRose*, No. 25-CV-
4 1045-LL-MMP, 2025 WL 2932654, at *5 (S.D. Cal. Oct. 15 2025) (Lopez, J.).
5

6 Third, Petitioner did not delay his asylum proceedings, but moved forward
7 expeditiously. He has complied with every filing deadline. His case has been
8 reassigned to multiple judges and delayed due to administrative inefficiencies
9 within the Executive Office for Immigration Review.

10 Fourth, Petitioner conditions of confinement weigh in favor of a bond
11 hearing. At the Imperial Regional Detention Center, Petitioner is housed under
12 similar conditions as the Otay Mesa Detention Center. There, detainees are “locked
13 up behind razor wire and concrete walls in a secured facility, forced to wear a
14 color-coded prisoner jump suit, forbidden from accessing the internet, restricted
15 access to outdoor space, restricted on visitation, and guarded at all times with
16 armed guards authorized to inflict punishment for violations of rule.” *Abdul Kadir*,
17 2025 WL 2932654, at *5. “Petitioner’s confinement at OMDC is ‘indistinguishable
18 from penal confinement.’” *Abdul Kadir*, 2025 WL 2932654, at *5 (quoting
19 *Kydyrali*, 499 F. Supp. 3d at 773).
20
21

22 Fifth, there is a likelihood that the removal proceedings will result in a grant
23 of some form of protection-based relief. Petitioner has submitted evidence that he
24

1 meets the elements necessary for a grant of asylum, withholding of removal, and
2 protection under the United Nations Convention Against Torture.

3 Under any test, then, Petitioner is entitled to a bond hearing and an
4 individualized finding as to whether he is a flight risk or a danger to the
5 community.
6

7 **CLAIM FOR RELIEF**

8 **Violation of the INA:**

9 **Request for Relief Pursuant to *Maldonado Bautista* and the *Fifth Amendment Due Process Clause***

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

12 16. The Fifth Amendment Due Process Clause prohibits the government from
13 continuing to detain Petitioner a bond hearing.

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

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

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

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

21. By denying Petitioner 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 2 of March 2026

Respectfully Submitted:

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