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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT, CALIFORNIA

MARCOS ALBA Petitioner, v. CHRISTOPHER J. LAROSE, Senior Warden of Otay Mesa Detention Center; GREGORY J. ARCHAMBEAULT, Field Office Director of Enforcement and Removal Operations, San Diego Field Office, Immigration and Customs Enforcement; TODD BLANCHE, U.S. Attorney General; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, MARKWAYNE MULLIN, Secretary, U.S. Department of Homeland Security. Respondents.	Case No. **'26CV3326 JAO BJW** Agency No. [redacted] **PETITION FOR WRIT OF HABEAS CORPUS; FOR AN ORDER TO SHOW CAUSE WITHIN 3 DAYS; AND TO ENJOIN TRANSFER FROM THE JURISDICTION**

INTRODUCTION

1. Petitioner, Marcos Alba (hereinafter "Petitioner"), brings this petition for a writ of habeas corpus to seek enforcement of his right to a custody hearing under *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (C.D. Cal.), as well as under long standing statutory and constitutional law. Petitioner is in the physical custody of Respondents at the Otay Mesa Detention Center.

2. He now faces continued unlawful detention because the Department of Homeland Security (DHS) has refused to abide by the declaratory judgment issued in *Maldonado Bautista v. Santacruz*.

3. 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).

4. Although the Ninth Circuit stayed the district court's order in *Maldonado Bautista* outside the scope of the certified class, the decision's statutory analysis remains highly persuasive. Petitioner's entry without inspection does not, by itself, justify mandatory detention without a bond hearing. Because Petitioner was apprehended after having entered and remained in the United States, his detention is more appropriately governed by 8 U.S.C. § 1226(a), which provides for an individualized custody determination, rather than by a mandatory detention

provision that categorically denies consideration for release on bond. *See Maldanado Bautista v. DHS, No 26-1044 (9th Cir., Mar. 6, 2026).*

5. Nevertheless, the Department of Homeland Security (DHS) continues to argue that the Immigration Court lacks jurisdiction to conduct a bond hearing under INA § 236, and the Immigration Court denied Petitioner's request for a custody redetermination on that basis. Specifically, the Immigration Judge concluded that, despite Petitioner's entitlement to the declaratory relief recognized in *Maldonado Bautista*, the Petitioner is subject to mandatory detention based on the Board's decision in *Matter of Yajure-Hurtado, 29 I&N Dec. 216 (BIA 2025). See* Exhibit 2.

6. This petition seeks habeas relief to end Petitioner's unlawful detention and to compel Respondents to provide the individualized custody process required by law, i.e. a prompt bond hearing under INA § 236(a) before an Immigration Judge with jurisdiction to adjudicate release.

STATEMENT OF FACTS

7. Petitioner last entered the United States without being admitted in or about April 2000, at or near San Ysidro, California. He has remained in the United States since that entry and was not apprehended at the border at the time of entry. *See* Exhibit 1.

8. Petitioner is in a long-term relationship with Luvia Mijangos. Petitioner purchased a mobile home in El Cajon, CA that he currently rents out. Petitioner is also a tenant at the apartment that he shares with his partner in San Diego, CA. Their monthly lease payment is approximatel[redacted] and total monthly household bills are approximately [redacted] Since Petitioner's detention, his partner has been helping pay these expenses by herself, and she fears losing their home.

9. For more than four years, Petitioner has been employed with [redacted] as a contractor performing granite work. Before that, he worked consistently for years as a contractor for various locations. Petitioner has also filed tax returns since his arrival to the U.S.

10. Petitioner's criminal history is limited to two DUI convictions in 2009 and 2024, separated by approximately fifteen years and reflecting no pattern of ongoing criminal conduct. In both cases, Petitioner fully complied with all court-ordered requirements, including DUI programs, fines, fees, and community service, demonstrating rehabilitation and that he does not pose a danger to the community or a flight risk.

11. DHS issued Petitioner a Notice to Appear (NTA) dated March 31, 2026. *See* Exhibit 1. On that same date, Petitioner was detained in the parking lot of Home Depot in Oceanside, CA and then taken to the Otay Mesa Detention Center, where he remains detained. *See* Exhibit 3. He was subsequently given a Master Hearing scheduled for June 1st, 2026.

12. Petitioner has a serious medical condition involving silicosis, a serious chronic lung disease that impairs lung function and increases the risk of respiratory complications. Continued detention places Petitioner at heightened medical risk because his condition requires ongoing monitoring and specialized pulmonary care that may be difficult to adequately provide in a detention setting.

13. On May 22, 2026, the Immigration Court denied Petitioner's bond hearing. *See* Exhibit 2. The Immigration Judge found that he lacked authority to redetermine the petitioner's custody based on case precedent from the Immigration Board of Appeals in *Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) despite the District Court's subsequent order in *Maldonado Bautista. 2025 WL 3289861, at *11.*

14. Although the Ninth Circuit stayed the broader application of *Maldonado Bautista*, its statutory analysis remains persuasive. Petitioner's entry without inspection does not automatically subject him to mandatory detention, and he should instead be eligible for an individualized bond determination under 8 U.S.C. § 1226(a). *See Maldanado Bautista v. DHS, No 26-1044 (9th Cir., Mar. 6, 2026).*

VENUE AND JURISDICTION

15. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Otay Mesa Detention Center, located within San Diego County, and Christopher J. LaRose is his immediate custodian as the Warden of the facility. As such, venue is proper in this Court. 28 U.S.C. section 2241(d) and 1391 (e) Braden *v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493- 500 (1973).

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

REQUIREMENTS OF 28 U.S.C. § 2241, 2243

17. The Court should grant the petition for writ of habeas corpus "forthwith," as the legal issues have already been resolved by its sister court in *Maldonado Bautista.* If an OSC is issued, the Court must require Respondents to file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." 28 U.S.C. § 2243.

18. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and

receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

19. Petitioners are "in custody" for the purpose of § 2241 because they were arrested and remain detained by the Respondents.

PARTIES

20. Petitioner Marcos Alba is a 46-year-old native of Mexico who has been in immigration detention since March 31, 2026. Petitioner was immediately detained on the same day his NTA was issued, where he remains detained at the Otay Mesa Detention Center. *See* Exhibit 3.

21. Respondent Gregory J. Archambeault is the Field Office Director of ICE's Enforcement and Removal Operations division, San Diego, CA. As such, Archambeault is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity.

22. Respondent Markwayne Mullin is the Secretary of the Department of Homeland Security. He is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Mr. Mullin has ultimate custodial authority over Petitioner and is sued in his official capacity.

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

24. Respondent Todd Blanche is the Attorney General of the United States. He is responsible for the Department of Justice, of which the Executive Office for Immigration Review

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

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

26. Respondent Christopher J. LaRose is employed as Warden of the Otay Mesa Detention Center, where Petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his official capacity.

EXHAUSTION OF REMEDIES

27. No statutory exhaustion requirement applies. *8 U.S.C. section 2241; Laing v. Ashcroft, 370 F.3d 994, 998 (9th Cir. 2004).* Nonetheless Petitioner requested a hearing which the Immigration Judge declined to hear on May 22, 2026. Moreover, additional agency steps would be futile as the Board of Immigration Appeals ["BIA"] published the decision in *Matter of Yajure Hurtado, 28 I&N Dec. 216 (BIA 2025).* In its decision the BIA shares DHS's reading of 8 U.S.C. section 1225(b) (2), finding that noncitizens who entered the country without inspection are ineligible for release on bond. Thus, Petitioner has exhausted his administrative remedies to the extent required by law, and his only remedy is by this judicial action.

CLAIMS FOR RELIEF

The Petitioner's Detention without a Custody Hearing is in Direct Conflict with Precedential Case Law and Statutory Law

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

29. The legal framework to be part of a Bond Eligible Class Member requires:

a. The petitioner have no lawful status and be detained by DHS;

b. Entered the U.S. without inspection and was not apprehended upon arrival;

c. Is not detained under 8.U.S.C. sections 1226 (c), 1225(b), or 1231.

Petitioner satisfies all requirements. Petitioner is entitled to consideration for release on bond under 8 U.S.C. § 1226(a).

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

31. Although Petitioner recognizes that the broader application of the district court's order in *Maldonado Bautista* has been stayed, he is still entitled to relief because the court's statutory analysis remains persuasive authority supporting the conclusion that noncitizens who have already entered and remained in the United States should not automatically be subjected to mandatory detention without an individualized bond determination. *See Maldanado Bautista v. DHS, No 26-1044 (9th Cir., Mar. 6, 2026).*

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

33. 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.*

The Petitioner's Detention without a Custody Hearing Violates Due Process and the Fifth Amendment

34. Petitioner reiterates and incorporates by reference paragraphs 1 through 33 as if fully set forth herein.

35. Additionally, the Fifth Amendment forbids deprivation of liberty without notice and a meaningful opportunity to be heard before a neutral decision maker. Due process protects all persons within the U.S. regardless of legal status. *Zadvydas v. Davis*, 533 U.S. 678, 698 (2001) A vital liberty interest is at stake when an individual is subject to detention by the

government. According to Zadvydas, the government may only deprive a non-citizen of physical liberty when it serves a legitimate purpose, commonly understood to include securing one's appearance at future hearings.

36. The BIA's new interpretation of 8 U.S.C. section 1225(b) set forth in *Yajure* strips Petitioner of that protection by randomly classifying him as an "applicant for admission" despite his last entry being 26 years ago wherein he was not stopped by DHS. An arbitrary designation as an arriving alien precludes him from the opportunity to establish that he is neither a flight risk nor a threat to the community. His continued confinement thus bears no reasonable, non-punitive relationship to any legitimate aim and is constitutionally arbitrary.

37. Applying the long-standing precedent of *Mathews v. Eldridge*, 424 U.S. 319 (1976), Petitioner's liberty interest is paramount, and the risk of erroneous deprivation is extreme as he is given no venue to show that he is not subject to mandatory detention under section 1226 (c). The risk is further heightened by the apparent lack of an independent adjudicator. *Marcello v. Bonds, 39 U.S. 302, 305-306 (1955).*

38. Counsel thus posits that the Defendants are in violation of the *Maldonado Bautista* precedent, the statutory framework in the INA and the code of federal regulations, as well as the Fifth Amendment/ Due Process Clause.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

a. Assume jurisdiction over this matter;

b. Enjoin Respondents from transferring Petitioner out of the jurisdiction during the pendency of these proceedings;

c. Order Respondents to file a response within 3 business days of the filing of this petition as to why Petitioner should not be given a custody hearing;

d. Issue a writ of habeas corpus requiring Respondents to release Petitioner within one day;

e. 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;

f. 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

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

DATED: May 29, 2026

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28 U.S.C. § 2242 VERIFICATION STATEMENT

I am submitting this verification on behalf of the petitioner because I am the Petitioner's attorney. I have discussed with the Petitioner the events described in this Petition and Complaint. On the basis of those discussions, I hereby verify that the statements made in this Petition and Complaint are true and correct to the best of my knowledge.

DATED: May 29, 2026

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