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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

Ismael Benjamin DOMINGO FELIPE,

Petitioner,

v.

Patrick, DIVVER, Field Office Director of Enforcement and Removal Operations, San Diego Field Office, Immigration and Customs Enforcement; Todd M. LYONS, Acting Director, U.S. Immigration and Customs Enforcement; Markwayne MULLIN, Secretary, U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; Todd BLANCHE, U.S. Attorney General; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; Christopher J. LAROSE, Warden of Otay Mesa Detention Facility,

Respondents.

Case No. **'26CV4059 RSH JLB**

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner, Ismael Benjamin Domingo Felipe, 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*.

2. 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).

3. 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.

4. 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.

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

6. Petitioner, Ismael Benjamin Domingo Felipe, 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 Otay Mesa Detention Facility. He was apprehended by immigration authorities on April 25, 2026, while at work

b. entered the United States without inspection on or about 2012, 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.

7. After apprehending Petitioner on April 26, 2026, the DHS placed him in removal proceedings pursuant to 8 U.S.C. § 1229a. 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 and under 8 U.S.C. § 1182(a)(7)(A)(i)(I) as an alien lacking valid documentation.

8. The Court should expeditiously grant this petition.

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

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

11. Because Respondents are detaining Petitioner in violation of the declaratory judgment issued in *Maldonado Bautista,* the Court should accordingly order that within one day, Respondent DHS must release Petitioner.

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

JURISDICTION

13. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Otay Mesa Detention Facility in San Diego, California.

14. 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).

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

VENUE

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

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

REQUIREMENTS OF 28 U.S.C. § 2243

18. The Court should grant the petition for writ of habeas corpus "forthwith," as the legal issues have already been resolved for class members in *Maldonado Bautista.*

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

PARTIES

20. Petitioner, Ismael Benjamin Domingo Felipe, is a citizen of Guatemala who has been in immigration detention since April 25, 2026. After Petitioner was arrested, ICE did not set bond. Petitioner did not request review of his custody by an IJ as any such request would be futile. The Court in *Maldonado Bautista* entered a final judgment specifically because it found "troubling" evidence that the Department of Justice issued a memorandum instructing Immigration Judges to disregard the federal court's prior orders and "hold the position that *Yajure-Hurtado* remains good law." This judicial finding confirms

that administrative exhaustion is futile, as the agency has prejudged the issue in bad faith.

21. Respondent Patrick Divver ("Divver") is the Director of the San Diego Field Office of ICE's Enforcement and Removal Operations division. As such, Divver 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 her official capacity.

23. 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 her official capacity.

24. Respondent Christopher LaRose ("LaRose") is the Senior Warden at the Otay Mesa Detention Center as Warden of the, where Petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his official capacity.

25.

CLAIM FOR RELIEF
Violation of the INA:
Request for Relief Pursuant to *Maldonado Bautista*

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

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

28. 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) to class members.

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

30. 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).

31. 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 where the Government bears the burden of establish risk of fight and dangerousness;

d. Order that Petitioner shall not be transferred outside the Southern District of California.

e. Order that Respondents shall not re-detain or continue to detain Petitioner absent a material change in circumstances;

f. Order that Respondents shall provide Petitioner's counsel with advance written notice of their position in advance of any bond hearing;

g. 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

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

DATED this 5 of June, 2026

Respectfully Submitted:

/s/ Tina Malek

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