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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT

Vianey Hernandez-Diaz,

Petitioner,

v.

Divver, Field Office Director of Enforcement and Removal Operations, San Diego Field Office, Immigration and Customs Enforcement; et al.

Respondents.

Case No. '26CV4261 JAO GC

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner Vianey Hernandez-Diaz ("Mr. Hernandez-Diaz") brings this petition for a writ of habeas corpus to seek enforcement of his rights as member 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 Center. 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. Petitioner Mr. Hernandez-Diaz 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 Center. He was apprehended by immigration authorities on July 22, 2026.

b. entered the United States without inspection at or near Tecate, California, in the year 2000, 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.

3. After apprehending Petitioner on July 22, 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.

4. The Court should expeditiously grant this petition.

5. 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.

6. 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).

7. 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.

8. Alternatively, the Court should order Petitioner's release unless Respondents provide a bond hearing under 8 U.S.C. § 1226(a) within seven (7) days.

JURISDICTION

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

10. 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).

11. 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

12. 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, the judicial district in which Petitioner currently is detained.

13. 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.

REQUIREMENTS OF 28 U.S.C. § 2243

14. 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.*

15. 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

16. Petitioner, Mr. Hernandez-Diaz, is a native and citizen of Mexico who has been in immigration detention since July 22, 2026. Mr. Hernandez-Diaz entered the United States near Tecate, California, in the year 2000, without being admitted or paroled.

17. Respondent Patrick Divver is the Field Office Director of ICE Enforcement and Removal Operations, San Diego Field Office. In that official capacity, he is responsible for Petitioner's immigration custody and continued detention within this District. He is sued in his official capacity only.

18. Respondent Christopher J. LaRose is the Warden of the Otay Mesa Detention Center, where Petitioner is detained. He has day-to-day physical custody of Petitioner and is sued in his official capacity only.

19. Respondent Department of Homeland Security is the federal agency responsible for implementing and enforcing the Immigration and Nationality Act, including the detention and removal of noncitizens.

20. This Petition challenges Petitioner's present physical confinement under 28 U.S.C. § 2241. Respondents are the officials and agency responsible for Petitioner's custody and continued detention.

CLAIM FOR RELIEF

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

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

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

23. *Maldonado Bautista* holds that Respondents violate the INA in applying the mandatory detention statute at § 1225(b)(2) to class members.

24. 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 *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 as permitted by law; and

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

DATED this July 24, 2026.

/s/ Jose Torres
Jose Torres
Counsel for Petitioner