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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT, CALIFORNIA

ANA CAREN GARCIA AGUILAR,

Petitioner,

v.

Daniel BRIGHTMAN, Field Office Director of Enforcement and Removal Operations, San Diego Field Office, 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, Senior Warden of Otay Mesa Detention Center,

Respondents.

Case No. '26CV4768 TWR MSB

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 ANA CAREN GARCIA AGUILAR ("Petitioner") Petitioner brings this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241, challenging the legality of her continued immigration detention. Petitioner is in the physical custody of Respondents at the OTAY MESA DETENTION CENTER. She now faces unlawful detention because the Department of Homeland Security (DHS) and the Executive Office for Immigration Review (EOIR) incorrectly hold Petitioner detained under the mandatory detention provisions applicable to applicants for admission.

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. 5:25CV-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. S.C. § 1225(b) as an arriving alien. *See Matter of M-S-,* 27 I&N Dec. 509 (A.G. 2019).

4. On December 18, 2025, the Central District Court of California entered final judgement in the case of *Maldonado Bautista v. Santacruz,* No. 5:25-CV-01873-SSS-BFM (C.D. Cal.),

vacating DHS's policy described in the July 8, 2025. "Interim Guidance Regarding Detention Authority for Applicants for Admission" under the Administrative Procedure Act as not in accordance with law. 5 U.S.C. § 706(2)(A). The final judgement furthers orders that Bond Eligible Class members are not subject to mandatory detention under § 1225(b)(2) and are entitled to consideration for release on bond by immigration officers and, if not released, a custody redetermination hearing before an immigration judge.

5. Nonetheless, the Executive Office for Immigration Review and its subagency the Immigration Court and the Department of Homeland Security (DHS) continue to detain Petitioner under the mandatory detention provisions applicable to applicants for admission.

6. Petitioner meets the criteria for membership in the Bond Eligible Class, as she:

   a. does not have lawful status in the United States and is currently detained at the OTAY MESA DETENTION CENTER. She was apprehended by immigration authorities on August 14, 2026;

   b. entered the United States without inspection nearly three (3) years ago and was paroled after 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 November 7, 2023, the DHS exercised its discretion and paroled Petitioner pursuant to 8 U.S.C. § 1182(d)(5). Petitioner's parole expired on November 21, 2023. DHS placed her in removal proceedings on November 27, 2023 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.

8. Although the Ninth Circuit stayed portions of the district court's orders in *Maldonado Bautista* outside the certified class, the district court's statutory analysis remains persuasive.

The reasoning of that decision recognizes that detention authority under the INA depends upon the statutory posture of the noncitizen, not merely the fact of an unlawful entry. detention despite his clear entitlement to consideration for release on bond as a Bond Eligible Class Member.

9. Here, DHS's own initial charging allegations establish that Petitioner allegedly entered the United States without inspection in 2023 and has remained in the country since then. Whether such an individual may nevertheless be subjected to mandatory detention as an applicant for admission presents a legal question that is properly resolved through habeas review. *See Maldanado Bautista v. DHS*, No 26-1044 (9th Cir., Mar. 6, 2026).

10. To the extent that, because Petitioner was apprehended near the border upon arrival, this Court finds that Petitioner was an Arriving Alien upon entry to the United States, this Court should find that Petitioner's status became that of an entry without inspection upon expiration of her humanitarian parole on November 21, 2026, and thus the *Maldonado* framework applies.

11. Because Respondents are detaining Petitioner under inapplicable mandatory detention provisions, the Court should order that 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.

STATEMENT OF FACTS

13. Petitioner ANA CAREN GARCIA AGUILAR is a citizen of MEXICO who has resided in the United States since 2023. Petitioner entered the United States without inspection on November 7, 2023 and was apprehended in or near San Ysidro, CA, after crossing the border, though not at a port of entry. Petitioner was subsequently paroled under INA

Section 212(d)(5) with an expiration date of November 21, 2023. *See* Exhibit 3. On November 27, 2023, DHS personally served Petitioner with a Notice to Appear ("NTA") and placed in INA 240 Removal Proceedings, docketed with the San Diego Immigration Court at 880 Front St., Suite 4240, San Diego, CA 92101. DHS elected not to detain Petitioner upon serving the Notice to Appear. Petitioner was charged under 8 U.S.C. § 1182(a)(6)(A)(i) as an alien present in the United States without having been admitted nor paroled.

14. Petitioner's Removal Proceedings were terminated on December 11, 2024. Petitioner subsequently filed an application for asylum before the United States Citizenship and Immigration Services ("USCIS") on February 1, 2025. Petitioner's application for asylum remains pending before USCIS.

15. On August 14, 2026, Petitioner was detained by Immigration and Customs Enforcement ("ICE") upon accidentally turning into the San Diego Naval Base at 3380 Sturtevant St., San Diego, CA 92136.

16. Petitioner was subsequently placed in removal proceedings once again, this time charging Petitioner under 8 U.S.C. § 1182 (a)(7)(A)(i)(I) as an "Arriving Alien" applying for admission to the United States.

17. Petitioner has pursued, and continues to pursue, her asylum claim before USCIS, along with her three minor children whom she resides with. DHS has exercised its discretionary authority under 8 U.S.C. § 1182(d)(5) in paroling Petitioner into the United States upon her initial apprehension after entering the United States without Inspection. Petitioner's parole expired on November 21, 2023.

18. Moreover, there have been no circumstances supporting a finding, nor allegations, that Petitioner is a flight risk or danger to the community that could justify her detention. On the contrary, Petitioner has complied with all of her immigration obligations.

JURISDICTION

19. Petitioner is in the physical custody of Respondents. Petitioner is detained at the OTAY MESA DETENTION CENTER in SAN DIEGO, CALIFORNIA.

20. 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).

21. 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

22. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Otay Mesa Detention Center, an ICE detention center, located within San Diego County, and Christopher J. LAROSE is her immediate custodian as the Warden of the facility. 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 CALIFORNIA SOUTHERN DISTRICT, the judicial district in which Petitioner currently is detained.

23. 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 CALIFORNIA SOUTHERN DISTRICT.

24. 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

25. The Court should grant the petition for writ of habeas corpus "forthwith," as required by 28 U.S.C. § 2243. When a petitioner alleges unlawful immigration detention and seeks immediate judicial review, 28 U.S.C. § 2243 mandates prompt action: the Court must either award the writ or issue an Order to Show Cause without delay. If an OSC is issued, Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." 28 U.S.C. § 2243.

26. 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).1 "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).

27. Petitioner is "in custody" for the purpose of § 2241 because they were arrested and remain detained by the Respondents.

PARTIES

28. Petitioner ANA CAREN GARCIA AGUILAR is a citizen of MEXICO who has been in immigration detention since August 14, 2026. Petitioner entered the United States on or about November 7, 2023, and has since resided and remained detained at the OTAY MESA DETENTION CENTER in San Diego, CA.

29. Respondent Daniel BRIGHTMAN is the Director of the San Diego Field Office of ICE's Enforcement and Removal Operation division. As such, Daniel Brightman is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity.

30. 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.

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

32. Respondent Todd Blanche is the Attorney General of the United States. She 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. She is sued in her official capacity.

33. Respondent Christopher J. LAROSE is employed as Senior 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.

CLAIM FOR RELIEF

Violation of Fifth Amendment Right to Due Process

34. Petitioner re-alleges and incorporates by reference the paragraphs above as though fully set forth herein.

35. This petition presents a pure question of statutory interpretation: whether Respondents possess authority under the Immigration and Nationality Act to continue detaining

Petitioner as an applicant for admission where DHS's Notices to Appear alleges that Petitioner entered the United States without inspection on or about November 7, 2023, and has remained present in the United States since that time.

36. DHS's original charging document alleges that Petitioner is "an alien present in the United States who has not been admitted or paroled." The Notice to Appear does not allege that Petitioner is an arriving alien or that she is presently seeking admission into the United States. *See* Exhibit 1.

37. DHS's most recent charging document alleges that Petitioner is "an alien present in the United States who has not been admitted or paroled." The Notice to Appear does allege that Petitioner is an arriving alien and charges Petitioner as presently seeking admission into the United States. *See* Exhibit 2. DHS continues to concede, however, that Petitioner entered the United States without inspection on November 7, 2023. Furthermore, Petitioner's parole expired on November 21, 2023.

38. 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.

39. Although the Ninth Circuit stayed portions of the district court's orders in *Maldonado Bautista* outside the certified class, the district court's statutory analysis remains persuasive. That decision recognized that the mandatory detention provisions of INA § 235 do not automatically apply to noncitizens who entered the United States without inspection years earlier and have remained continuously present in the country. *See Maldanado Bautista v. DHS*, No 26-1044 (9th Cir., Mar. 6, 2026).

40. Respondents nevertheless continue to detain Petitioner under INA § 235 despite the allegations contained in their own charging document.

41. Because Petitioner's continued detention rests upon an erroneous interpretation of the detention statutes, Respondents are acting in excess of their statutory authority. Accordingly, Petitioner's continued detention is unlawful, and he is entitled to relief under 28 U.S.C . § 2241.

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

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

43. 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.

44. The BIA's new interpretation of 8 U.S.C. section 1225(b) set forth in Yajure strips Petitioner of that protection by misclassifying him as an "applicant for admission," despite her last entry having been over nearly 3 years ago without inspection. An arbitrary designation as an arriving alien precludes her from the opportunity to establish that she is neither a flight risk nor a threat to the community, despite having been paroled upon entry to the United States with her three young children. Her continued confinement thus bears no reasonable, non-punitive relationship to any legitimate aim and is constitutionally arbitrary.

45. 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)

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

47. To the extent that the Court finds that Petitioner is an Arriving Alien, or was an applicant for admission upon arrival in the United States, the Court should find that Petitioner should be treated as an undocumented immigrant who entered the United States without inspection. This district and others have held that one "has a protected liberty interest in remaining out of custody even after his [humanitarian] parole expired." *Duarte Barcia v. Marrero* et. al., No. 3:26-cv-04163 (S.D. Cal. Aug. 7, 2026).

48. Although Petitioner's parole expired approximately over two years before her detention, there is no indication that during that DHS has tried to detain Petitioner since. Petitioner was not detained on November 27, 2023, after the expiration of her parole, but was rather personally served with a Notice to Appear for removal proceedings in immigration court. Instead, Petitioner's arrest occurred as a result of an incorrect turn into the San Diego Naval Base while undocumented. Thus, until the wrong turn leading to her arrest occurred, Petitioner justifiably continued to rely on and take advantage of her continued freedom, constituting a strong, protected liberty interest. *Id.* The deprivation of such interest requires procedural protections under *Mathews v. Eldridge* 424 U.S. at 334-335.

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 that within one day, Respondents release Petitioner;

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

DATED this 20th of April, 2026.

/s/ Victor E. Hernandez

Victor E. Hernandez

Attorney for Petitioner

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: August 20, 2026

/s/ Victor E. Hernandez

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