PRACTICE ADVISORY
Seeking Bond Hearings for *Maldonado Bautista* Class Members –
Those Who Entered Without Inspection and Are Subject to *Yajure-Hurtado*

Updated December 3, 2025

On November 25, 2025, the U.S. District Court for the Central District of California issued an order in *Maldonado Bautista v. Santacruz*, certifying a nationwide class of noncitizens who are in immigration detention and being denied access to a bond hearing based on the government's allegation that they entered the United States without admission or inspection (colloquially referred to as "entered without inspection" or "EWI"). **The Court granted declaratory relief to the entire class**, holding that the government is unlawfully subjecting them to mandatory (meaning no-bond) detention and that class members are eligible for release on bond under the immigration laws. Thus, under the Court's order, class members should be able to request a bond hearing in immigration court before an immigration judge (IJ) who must consider whether they are suitable for release on bond while their removal proceedings are pending. However, initial reports from practitioners indicate that the Department of Justice (DOJ) has instructed IJs to ignore the Court's order. As a result, we have also provided information for what to do if that occurs in your case.

This advisory provides a synopsis of the Court's decisions, as well as information for how to request a bond hearing. This advisory also briefly describes potential next steps in the *Maldonado Bautista* litigation. The situation is evolving, and we will update this advisory as circumstances change.

In the meantime, we are interested to hear how the Court's decision is impacting detention and access to bond hearings for class members. Please contact the email address below if you would like to share information, or if you have any questions about the *Maldonado Bautista* case.

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Background on the Government's No-Bond Policy

For decades, noncitizens who entered without inspection, were arrested in the United States and were placed into removal proceedings were generally subject to discretionary detention under 8 U.S.C. § 1226(a) (and its predecessor statute). Under that framework, they could be considered for release on bond or conditional parole by the Department of Homeland

Security ("DHS") and receive a bond hearing in immigration court before an IJ who could order release if found not to pose an undue flight risk or danger that justified continued detention.

The government upended this long-held understanding of the law in 2025.[1] First, on July 8, 2025, U.S. Immigration and Customs Enforcement ("ICE") issued an interim guidance memo stating that anyone who entered without inspection was ineligible for release on bond and could not challenge their detention at a bond hearing in immigration court, regardless of how long an individual has lived in the United States. As a result, DHS attorneys started arguing, and some IJs started finding, that such individuals were not eligible for bond hearings in immigration court. Then, on September 5, 2025, the Board of Immigration Appeals ("BIA") issued a precedential decision, binding on all IJs, holding that an IJ had no authority to consider bond requests for any person who entered the United States without inspection. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The BIA determined that such individuals are subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible for release on bond. Although such individuals are technically eligible for release on humanitarian parole under 8 U.S.C. § 1182(a)(d)(5)(A), in practice, DHS is not exercising this authority. As a result, thousands of people are facing months or years in detention without any individualized consideration for whether they should be detained.

Mandatory detention under 8 U.S.C. § 1225(b)(2)(A) applies "in the case of [a noncitizen] who is an applicant for admission, if the examining immigration officer determines that [a noncitizen] seeking admission is not clearly and beyond a doubt entitled to be admitted[.]" The government's position is that anyone who entered without inspection remains an "applicant for admission" who is "seeking admission" and thus subject to § 1225(b)(2). The vast majority of district court judges who have considered this legal issue, however, have rejected the government's position and have held that such individuals are subject to § 1226(a) and thus eligible for a bond hearing. Partner organizations have developed practice advisories and other resources on seeking release for those subject to § 1225(b).

Maldonado Bautista and the District Court's Orders

On July 18, 2025, several weeks after the new DHS policy was announced, a nationwide class action was filed on behalf of four detained petitioners in the Central District of California challenging the new mandatory detention policy. That case, *Maldonado Bautista v. Santacruz* (Case No. 5:25-cv-1873) is litigated by the American Civil Liberties Union Immigrants' Rights Project ("ACLU IRP"), ACLU of Southern California ("ACLU SoCal"), Northwest Immigrant Rights Project ("NWIRP"), and USC Gould School of Law Immigration Clinic ("USC Immigration Clinic") (collectively referred to as "Class Counsel").

[1] Before this, around 2022, IJs in Tacoma, Washington, stopped providing bond hearings to those who entered the United States without inspection, but it was not until July 2025 that DHS adopted this position nationwide.

The Court granted a temporary restraining order and ordered bond hearings for the four named petitioners. Because of limits on the availability of classwide injunctive relief,[2] the petitioners quickly filed a motion for class certification and partial summary judgment. Specifically, the petitioners sought a declaration that all class members are detained under § 1226(a) and not § 1225(b)(2), and are thus eligible for consideration for bond, and also sought vacatur of the new DHS and BIA mandatory detention policies.

On November 20, 2025, the Court granted partial summary judgment for the four petitioners, holding that the government's policy is inconsistent with the plain language of the Immigration and Nationality Act ("INA"), and that petitioners are properly subject to § 1226(a). *See Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3289861 (C.D. Cal. Nov. 20, 2025). Five days later, on November 25, 2025, the Court certified a nationwide class of individuals who are being subject to the government's new no-bond policy—the Bond Eligible Class—and expressly "extend[ed] the same declaratory relief granted to Petitioners to the Bond Eligible Class as a whole." *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) (emphasis added).

Who is a Class Member?

The district court certified the following Bond Eligible Class:

> All noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination.

Maldonado Bautista, 2025 WL 3288403, at *9. Under this class definition, there are two groups of people who have claims to relief. First, there are those who entered the United States, were not apprehended at or near the border or close in time to their entry, and who were later arrested by immigration authorities. Second, there are those who were apprehended at or near the border and close in time to their entry, were released on recognizance, and then were re-detained by immigration authorities after residing in the United States.

The first group of persons has a straightforward claim to class membership that the government should not contest (so long as the person claiming class membership does not have other complicating facts, like criminal history that potentially subjects the person to § 1226(c)).

[2] In *Garland v. Aleman Gonzalez*, the Supreme Court interpreted 8 U.S.C. § 1252(f)(1) to prohibit classwide injunctive relief regarding certain immigration detention statutes like the ones at issue here. 596 U.S. 543 (2022). However, § 1252(f)(1) does not bar other forms of relief, like classwide declaratory relief. *See, e.g.*, *Al Otro Lado v. Exec. Off. for Immigr. Rev.*, 138 F.4th 1102, 1123–24 (9th Cir. 2025).

However, the government is likely to contest class membership for the second group identified above. Among other arguments, advocates may want to assert that the adjudicating court should look to the most recent arrest to determine whether or not someone was apprehended "upon arrival." In addition, the *Maldonado Bautista* court's reasoning and language also indicate that the relevant inquiry for determining class membership should be a person's most recent arrest. Advocates asserting class membership for a person who falls in the second group may need to add an alternative argument that even if they are not found to be class members, the same legal analysis dictates that they are detained under § 1226(a) and must be granted a bond hearing.[3]

How to Request a Bond Hearing in Immigration Court

As noted above, since *Maldonado Bautista* district court issued its judgment on behalf of the Bond Eligible Class, the government appears to have instructed IJs not to abide by the order.

This leaves advocates with two options. Because the government has instructed IJs not to honor the *Maldonado Bautista* judgment, advocates may wish to proceed directly to filing a petition for writ of habeas corpus based on class membership. Once a habeas petition is granted, advocates should submit a bond hearing request with a copy of the court order granting the habeas petition via ECAS.

Alternatively, some advocates may wish to have a bond hearing before an IJ prior to filing a petition for writ of habeas corpus if they believe the IJ will either (1) grant a bond or (2) be amenable to issuing an order specifying a bond amount in the alternative, as this may lead to quicker release. In some places, IJs have denied bond based on *Matter of Yajure Hurtado*, but then issued an alternative finding on whether the IJ would release on bond but for the perceived lack of jurisdiction and, if so, on what amount (i.e., set an "alternative bond"). An individual can then petition for a writ of habeas corpus, requesting that the court order the person released on the alternative bond as a *Maldonado Bautista* class member. Seeking an alternative bond holding would obviate the need to go through another bond hearing. However, for most cases, it is not worth delaying the habeas petition to await a bond hearing.

Advocates who opt to request bond before filing a petition for writ of habeas corpus should include copies of the order granting partial summary judgment and granting class certification. In addition, they should assert the facts necessary to demonstrate their client is a class member and that the declaratory judgment constitutes a binding ruling that requires the IJ to consider their client detained under 8 U.S.C. § 1226(a).

Appendix A has sample language that practitioners may wish to include to present this argument to the IJ.

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[3] Advocates can look at a recent district court decision making a similar alternative finding with respect to a regional class covering persons detained in Tacoma, Washington. Order, *Del Valle Castillo v. Wamsley*, No. 2:25-cv-02054-TMC (W.D. Wash. Nov. 26, 2025), Dkt. 28, at *4 ("[T]he fact that Petitioners are not Bond Denial Class members does not prevent them from seeking habeas relief on similar legal grounds.").

Filing a Habeas Petition to Enforce *Maldonado Bautista*

So long as the government refuses to comply with the declaratory judgment in *Maldonado Bautista*, advocates will need to file petitions for writs of habeas corpus. These petitions should assert that the person is a class member in *Maldonado Bautista*, and that by virtue of the final declaratory judgment issued in that case, the person is entitled to a bond hearing under 8 U.S.C. § 1226(a). Advocates can download a Word version of a template petition for writ of habeas corpus here. While the mechanics of filing petitions for writs of habeas corpus are beyond the scope of this advisory, there are many publicly accessible resources to guide advocates, including this advisory from the National Immigration Litigation Alliance.

Notably, *Maldonado Bautista* did not include habeas claims on behalf of the class. Thus, class members are not precluded from filing habeas petitions that assert that they are unlawfully detained because Defendants have denied them their statutory rights to a bond hearing, as determined by the district court's orders in *Maldonado Bautista*.

IJs have provided different rationale for refusing to comply with the declaratory judgment. Some have mistakenly asserted that the court did not provide classwide declaratory judgment. Advocates should point to the express language in the order that "the Court extends the same declaratory relief granted to Petitioners to the Bond Eligible Class as a whole." *Maldonado Bautista*, --- F. Supp. 3d ----, 2025 WL 3288403, at *9.

Other IJs have stated that EOIR has taken the position that the *Maldonado Bautista* is not a binding, final judgment. This argument is wrong and is at odds with the *Maldonado Bautista* court's orders. The confusion stems from the fact the district court granted a partial summary judgment, as Plaintiffs did not move for summary judgment on all of their claims (e.g., their due process claim and APA claims relating to arbitrary and capricious action and rulemaking). As such, those claims remain pending, which is why the district court scheduled a status conference to determine how to address them. Under Federal Rules of Civil Procedure 54(b), a court may nonetheless order a final judgment even if it has not yet resolved all claims. In this case, the Court initially declined to do so in granting summary judgment because the Court had not yet ruled on the motion for class certification. This does not change the fact that the Court has granted summary judgment in the form of declaratory relief on behalf of the class and all parties remain bound by that order unless it is stayed, overturned on appeal, or the district court modifies the order.

However, should DOJ assert this position in a habeas petition, and should a federal judge agree, a habeas petitioner may seek to amend their petition for writ of habeas corpus to present a claim that the detained person is detained under § 1226(a), independent of any claim to class membership, just as advocates have done prior to the *Maldonado Bautista* orders.

Similarly, if DOJ asserts and a judge agrees that a habeas petitioner is not a class member, that person may seek to amend their habeas petition to assert a claim that, regardless of *Maldonado Bautista* class membership, the person is detained under 8 U.S.C. § 1226(a).

What Happens Next?

Because of the government's noncompliance with the *Maldonado Bautista* order, Class Counsel will likely be seeking further relief from the district court, including further clarification of the order granting summary judgment. The government has not yet indicated whether it intends to appeal.

The government has already appealed multiple decisions granting habeas relief to individuals who were subject to § 1225(b)(2) mandatory detention. It is therefore likely that the courts of appeals will weigh in on the legal issue over the coming months. ACLU IRP is tracking and coordinating those appeals, so please reach out if you have a case that has been appealed: My Khanh Ngo (mngo@aclu.org). In the Ninth Circuit, where the *Maldonado Bautista* case is being litigated, several appeals are already pending. There, the lead case appears to be NWIRP's regional class action for people detained at the Northwest ICE Processing Center, *Rodriguez Vazquez v. Bostock*, No. 3:25-CV-05240-TMC (W.D. Wash.). Briefing is set to be complete in that matter by February. There are also appeals pending, several with expedited briefing schedules, in the following circuits: First, Fifth, Sixth, Seventh, Eighth, Ninth, and Eleventh Circuits.

In addition to *Maldonado Bautista*, there are several pending regional class actions challenging the government's no-bond for EWIs policy. If you have questions about the interaction between *Maldonado Bautista* and any regional class actions, please contact us.

Compliance with the Court's declaratory relief will likely remain an issue. Please feel free to contact Class Counsel regarding issues with compliance and any other questions about the ongoing *Maldonado Bautista* litigation.

Appendix A – Sample Bond Request Language Regarding Declaratory Judgments

Mr. XX is a class member in *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (C.D. Cal.). In *Maldonado Bautista* the court certified the Bond Eligible Class, defined as:

> All noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination.

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). Mr. XX is a noncitizen without lawful status detained at the [detention center] who (1) entered the United States without inspection, (2) was not apprehended upon arrival, and (3) is not subject to mandatory detention pursuant to 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231. Accordingly, as a member of the Bond Eligible Class, Mr. XX is entitled to the application of the law as stated in the *Maldonado Bautista* orders granting summary judgment and class certification. *See* 2025 WL 3288403, at *9 ("When 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.").

This Court is obligated to apply the law to all class members, as determined in the binding, final judgment issued in *Maldonado Bautista*. The Executive Office for Immigration Review is a Defendant in *Maldonado Bautista*, and is thus bound by the ruling there, which has the full "force and effect of a final judgment." 28 U.S.C. § 2201(a). It is a "basic proposition that all orders and judgments of courts must be complied with promptly," *Maness v. Meyers*, 419 U.S. 449, 458 (1975), and thus, in "suits against government officials and departments, [courts] assume that they will comply with declaratory judgments." *United Aeronautical Corp. v. United States Air Force*, 80 F.4th 1017, 1031 (9th Cir. 2023). This is because declaratory judgments like the one in *Maldonado Bautista* have "the same effect as an injunction in fixing the parties' legal entitlements." *Florida ex rel. Bondi v. U.S. Dep't of Health & Hum. Servs.*, 780 F. Supp. 2d 1307, 1316 (N.D. Fla. 2011). This understanding of declaratory judgments—and thus this court's obligation to comply with the declaratory judgment in *Maldonado Bautista* —is consistent with the decisions of many courts. *See, e.g.*, *Sanchez-Espinoza v. Reagan*, 770 F.2d 202, 208 n.8 (D.C. Cir. 1985) (Scalia, J.) ("[T]he discretionary relief of declaratory judgment is, in a context such as this where federal officers are defendants, the practical equivalent of specific relief such as injunction or mandamus, since it must be presumed that federal officers will adhere to the law as declared by the court."), *abrogated on other grounds by*, *Schieber v. United States*, 77 F.4th 806 (D.C. Cir. 2023), *cert. denied*, 144 S. Ct. 688 (2024); *Smith v. Reagan*, 844 F.2d 195, 200 (4th Cir. 1988) (describing declaratory relief as "the functional equivalent of a writ of mandamus"); *Pub. Citizen v. Carlin*, 2 F. Supp. 2d 18, 20 (D.D.C. 1998) ("The government's decision to appeal this Court's ruling does not affect the validity of the declaratory judgment unless and until the judgment is reversed on appeal or the government seeks and is granted a stay pending appeal."), *rev'd on other grounds*, 184 F.3d 900 (D.C. Cir. 1999).