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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

Nery Godinez Sales,

Petitioner,

vs.

Warden, Otay Mesa Detention Center,

San Diego Field Office Director,
Enforcement and Removal Operations,
U.S. Immigration and Customs
Enforcement,

U.S. Attorney General,

Respondents.

Case No.: '25CV3125 BAS BJW

PETITION FOR HABEAS CORPUS

PETITION FOR HABEAS CORPUS

Petitioner Nery Godinez Sales (“Mr. Godinez”) is being unlawfully detained without a bond hearing. An immigration judge found that he is ineligible for bond because his first removal proceeding commenced many years ago after he was

1 apprehended near the border. However, any detention authority associated with
2 that proceeding ended years ago because that removal proceeding was dismissed in
3 2022. U.S. Immigration and Customs Enforcement (“ICE”) recently redetained
4 him and began a new removal proceeding. Since his current removal proceeding
5 began after he was apprehended in the interior of the United States, he is eligible
6 for bond. Mr. Godinez asks the Court to order his release and/or that he be
7 provided a bond hearing.
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10 JURISDICTION AND VENUE

- 11 1. The Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas
12 corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the
13 United States Constitution (Suspension Clause).
14
- 15 2. Venue is proper under 28 U.S.C. § 1391(c)(1) because Petitioner is detained at
16 the Otay Mesa Detention Center in San Diego, California.
17

18 THE PARTIES

- 19 3. Petitioner Nery Godinez Sales is a citizen of Guatemala who has been in ICE’s
20 custody since August 2, 2025.
21
- 22 4. Respondent San Diego Field Office Director is responsible for the
23 implementation and enforcement of the Immigration and Nationality Act, and
24 they oversee Petitioner’s detention by ICE. They are a legal custodian of
25 Petitioner.
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- 1 5. Respondent U.S. Attorney General oversees the immigration court system,
2 which is denying Respondent a bond hearing.
3
4 6. Respondent Warden of the Otay Mesa Detention Center is responsible for
5 Petitioner's detention and is a legal custodian of him.
6
7 7. All government Respondents are sued in their official capacities.

8 **FACTUAL ALLEGATIONS**

9 Family Life and Work

- 10 8. Mr. Godinez resides in Chester, Virginia.
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12 9. Mr. Godinez's partner of over three years is Yancy Romero Torres ("Ms.
13 Romero").
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15 10. Mr. Godinez and Ms. Romero are evangelical Christians. They have been
16 members of Iglesia de Dios Betsaida since 2019 and 2021, respectively.
17
18 11. Mr. Godinez owns and operates a mechanic shop.
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20 12. Mr. Godinez and Ms. Romero own their own home.
21
22 13. Mr. Godinez also works as a journalist. Known as "El Neron," he operated the
23 "Curiosidades de Richmond VA" Facebook page, which has 58,000 followers.
24 He frequently posted about ICE operations in the area of Richmond, Virginia on
25 various social media platforms. His posts would often get over 200,000 views.
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Immigration Proceedings

1
2 14. Mr. Godinez is a native and citizen of Guatemala. *See* Ex. 1 – ICE Detainee
3 Locator. He last arrived in the United States in or around April 2015. He has
4 remained in the United States since that time.
5

6 15. Mr. Godinez was first apprehended within three days of entering the U.S. Ex. 2
7 – Credible Fear Worksheet at 1.
8

9 16. Mr. Godinez asserted a fear of persecution or torture, and he was referred to an
10 asylum officer for a Credible Fear Interview. *Id.*; *see* 8 U.S.C. 1225(b)(1)(A)(i)
11 (providing such interviews to screen applicants for asylum and related relief).
12

13 17. Mr. Godinez was found to have a credible fear of torture. Ex. 2 – Credible Fear
14 Worksheet at 4.
15

16 18. On May 11, 2015 he was issued a Notice to Appear and placed in removal
17 proceedings before an immigration judge. Ex. 3 – Notice to Appear.
18

19 19. ICE released Mr. Godinez from detention.
20

21 20. An immigration judge terminated the removal proceedings based on a joint
22 motion by Mr. Godinez and ICE on June 24, 2022. Ex. 4 – Order Dismissing
23 Removal Proceedings.

24 21. On or around August 2, 2025, Mr. Godinez was taken into custody while eating
25 lunch in his car in front of his business. Ex. 6 – Notice of Address. On August
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1 24, 2025 he was transferred to the Otay Mesa Detention Center in San Diego,
2 California, where he is being held now. *Id.*; Ex. 1 – ICE Detainee Locator.

3
4 22. ICE issued a new Notice to Appear and commenced a new removal proceeding
5 for Mr. Godinez. Ex. 5 – Notice to Appear 2025.

6
7 23. Mr. Godinez filed a motion for bond. On August 20, 2025 an immigration
8 judge denied him bond, finding that the immigration court lacked jurisdiction to
9 set bond based on *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019). Ex. 7 – Order
10 Denying Bond.

11
12 24. On September 5, 2025, the Board of Immigration Appeals (“BIA”) issued
13 *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). The decision
14 proclaimed that any person who entered the United States without inspection is
15 detained under 8 U.S.C. § 1225(b)(2) and ineligible for release on bond. This
16 would mandate the detention of thousands or millions of people who have been
17 living peacefully in the United States, some of them for decades.

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20 25. Since Mr. Godinez entered the United States without a visa, he is not eligible
21 for a bond hearing under *Matter of Yajure Hurtado*, even if the obstacle
22 presented by *Matter of M-S-* were overcome. Since *Matter of Yajure Hurtado*
23 is binding on immigration judges, a bond hearing is unavailable and would be
24 futile. 8 C.F.R. § 1003.1(g).

MATTER OF M-S- DOES NOT APPLY

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2 26. The Immigration and Nationality Act provides for inspection of travelers
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4 arriving in the United States. *See* 8 U.S.C. § 1225. If a traveler is found to
5
6 have committed fraud or to lack valid entry documents, an immigration officer
7
8 generally orders them removed in expedited removal proceedings. 8 U.S.C. §
9
10 1225(b)(1)(A)(i). But there is one exception: if a traveler asserts a fear of
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12 persecution or an intention to apply for asylum, the immigration officer must
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14 refer them to an asylum officer for a Credible Fear Interview. 8 U.S.C. §
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16 1225(b)(1)(A)(ii).¹ If the asylum officer finds that they do *not* have a credible
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18 fear of persecution, the officer shall order the person removed without further
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20 hearing or review. 8 U.S.C. § 1225(b)(1)(B)(iii)(I). But if the asylum officer
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22 finds that the traveler *does* have a credible fear of persecution, the traveler is
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24 allowed “further consideration of the application for asylum.” 8 U.S.C. §
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26 1225(b)(1)(B)(ii). The traveler is placed in removal proceedings before an
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28 immigration judge for full consideration of the application for asylum. 8 C.F.R.
§ 208.30(f).

27. In 2019, Attorney General William Barr determined that noncitizens who are
placed into removal proceedings after showing a credible fear of persecution or

¹ The statute refers only to fear of persecution and claims for asylum. However, the same procedures are also made available for two similar forms of relief: people who fear a threat to their life or freedom and seek withholding of removal under 8 U.S.C. § 1231(b)(3) and people who fear torture and claim protection under the Convention Against Torture, 8 C.F.R. § 208.18.

1 torture are ineligible for release on bond. *Matter of M-S-*, 27 I&N Dec. 509
2 (A.G. 2019). This was based on statutory language stating that a person found
3 to have a credible fear “shall be detained for further consideration of the
4 application for asylum.” 8 U.S.C. § 1225(b)(1)(B)(ii).

6 28. *Matter of M-S-* has a checkered history. It reversed a 14-year-old precedent that
7 permitted asylum applicants to seek bond. *Matter of X-K-*, 23 I&N Dec. 731
8 (BIA 2005). *Matter of M-S-* was enjoined nationwide, and the injunction as
9 affirmed by the Ninth Circuit before being vacated without explanation by the
10 Supreme Court. *Padilla v. ICE*, 379 F.Supp.3d 1170 (W.D.W.A. 2019),
11 affirmed by *Padilla v. ICE*, 953 F.3d 1134 (9th Cir. 2020), vacated by *ICE v.*
12 *Padilla*, 141 S. Ct. 1041 (2021). At least one district court has recently
13 disagreed with *Matter of M-S-* and refused to give it deference. *Jimenez v. FCI*
14 *Berlin, Warden*, No. 25-CV-326-LM-AJ, 2025 WL 2639390, n7 at *6 (D.N.H.
15 Sept. 8, 2025).

17 29. *Matter of M-S-* does not apply by its own terms. The decision held that a
18 noncitizen found to have a credible fear of persecution or torture “must be
19 detained until his removal proceedings conclude, unless he is granted parole.”
20 *Matter of M-S-*, 27 I&N Dec. 509, 509 (A.G. 2019). Mr. Godinez’s removal
21 proceeding concluded in 2022 when an immigration judge dismissed the
22 proceedings. Ex 4 - Order Dismissing Removal Proceedings.
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1 30. Any detention authority from Mr. Godinez’s encounter at the border dissipated
2 when the proceedings concluded in 2022 (if not before). *Matter of M-S-* does
3 not mandate Mr. Godinez’s detention.
4

5 **MR. GODINEZ IS DETAINED UNDER 8 U.S.C. § 1226(A)**

6 31. When ICE redetained Mr. Godinez in 2025, he was not subject to mandatory
7 detention. Rather, he was and is subject to detention under 8 U.S.C. § 1226(a),
8 which allows for release on bond.
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10 32. The expedited removal statute at 8 U.S.C. § 1225(b)(2) does not apply to
11 Petitioner. Rather, his detention is governed by 8 U.S.C. § 1226(a), meaning
12 that he is entitled to a bond hearing. He has been unlawfully denied a bond
13 hearing.
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16 33. The Supreme Court recognized in *Jennings v. Rodriguez* that § 1225(b) is
17 concerned “primarily [with those] seeking entry,” and is generally imposed “at
18 the Nation’s borders and ports of entry, where the Government must determine
19 whether [a noncitizen] seeking to enter the country is admissible.” *Jennings v.*
20 *Rodriguez*, 583 U.S. 281, 297, 187 (2018). By contrast, § 1226 detention
21 relates to people “inside the United States” and “present in the country.” *Id.* at
22 288.
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25 34. There are clear statutory signals that § 1225(b) is only concerned with
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1 “inspection” of travelers arriving in the United States.² The term “inspection”
2 is not defined in the Immigration and Nationality Act. However, numerous
3 statutes, regulations, and agency precedents discuss “inspection” in the context
4 of admission processes at ports of entry.³ This supports the conclusion that §
5 1225 is limited temporally and geographically to the inspection process of
6 travelers arriving at the border.
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9 35. Section 1225 and its implementing regulations use present and present
10 progressive verbs, referring to people who are actively arriving and seeking
11 admission. Section § 1225(b)(1) is limited to presently “arriving” noncitizens
12 and those apprehended within two years of entry, and § 1225(b)(2) is limited to
13 those in the process of “seeking admission.” Likewise, the regulation at 8
14 C.F.R. § 1.2 addresses noncitizens who are presently “coming or attempting to
15 come into the United States at a port-of-entry.” These word choices show that §
16 1225 does not apply to people like Petitioner who were apprehended in the
17 interior more than two years after entry because they are no longer in the
18 process of arriving or seeking admission to the United States.
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23 ² 8 U.S.C. § 1225 (titled “Inspection by immigration officers; expedited removal of inadmissible
24 arriving aliens; referral for hearing”); 8 U.S.C. §§ 1225(b)(1)-(2) (referring to “inspection” in
25 their titles); 8 U.S.C. § 1225(d)(1) (authorizing immigration officials to search certain
26 conveyances in order to conduct “inspections” where noncitizens “are being brought into the
United States”).

27 ³ See, e.g., 8 U.S.C. §§ 1187(h)(2)(B)(i), 1225(a); 8 U.S.C. § 1752a; 8 C.F.R. § 235.1; *Matter of*
28 *Quilantan*, 25 I&N Dec. 285 (BIA 2010).

1 36. By contrast, 8 U.S.C. § 1226 clearly includes individuals who have not been
2 admitted. While § 1226(a) generally permits bond to be granted, § 1226(c)
3 disqualifies noncitizens with certain criminal convictions. Some of these
4 exceptions are specifically targeted at noncitizens who have not been admitted.
5 Section 1226(c) provides that a person is ineligible for bond if they are
6 inadmissible due to criminal convictions or terrorism.⁴ The grounds of
7 inadmissibility only apply to people who have not been admitted. There would
8 be no need to exempt certain unadmitted people from bond if all unadmitted
9 people were already ineligible for bond under section 1225. When “Congress
10 has created specific exceptions” to a rule, it proves the general applicability of
11 the rule. *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S.
12 393, 400 (2010).

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17 37. Congress recently passed the Laken Riley Act, which added another exception
18 to bond eligibility that applies only to unadmitted people.⁵ Under the
19 government’s reading, the contentious public debate and passage of the Laken
20 Riley Act was pointless and redundant because all unadmitted people were
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24 ⁴ 8 U.S.C. § 1226(c)(1) (exempting from bond any alien who “is inadmissible by reason of
25 having committed any offense covered in 8 U.S.C. § 1182(a)(2)” or who “is inadmissible under 8
26 U.S.C. § 1182(a)(3)(B).”).

27 ⁵ 8 U.S.C. § 1226(c)(1)(E), *as amended by* Laken Riley Act, Pub. L. 119-1, 139 Stat. 3 (2025)
28 (disqualifying from bond any noncitizen who “is inadmissible under section 1182(a)(3)(B) of
this title or deportable under section 1227(a)(4)(B) of this title” and has an inchoate offense of
theft, assault on a law enforcement officer, or causing death or serious bodily injury.).

1 already ineligible for bond. But “[w]hen Congress acts to amend a statute, we
2 presume it intends its amendment to have real and substantial effect.” *Stone v.*
3 *I.N.S.*, 514 U.S. 386, 397 (1995) (citations omitted).
4

5 38. Longstanding statutory and regulatory authority confirms that § 1225 does not
6 apply to people apprehended within the interior of the United States more than
7 two years after entry. The last major revision to the detention framework was
8 in 1996 when Congress passed the Illegal Immigration Reform and Immigrant
9 Responsibility Act (“IIRIRA”) of 1996. IIRIRA maintained nearly a century of
10 statutory tradition of allowing people inside the United States to seek release on
11 bond.⁶ Immediately after the passage of IIRIRA, the Immigration and
12 Naturalization Service issued a regulation confirming the tradition of providing
13 bond hearings to people apprehended inside the United States who had not been
14 admitted.⁷ That interpretation has held steady for decades, across
15 administrations, until recently. *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239,
16 1260 (W.D. Wash. 2025).
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22 ⁶ See 34 Stat. 904-905, § 20 (1907) (providing for release on bond for noncitizens alleged to have
23 entered the United States unlawfully); 39 Stat. 874, 890-91, §§ 19, 20 (1917) (similar); 66 Stat.
24 163, §§ 241(a)(2), 242(a) (1952) (last codified at 8 U.S.C. § 1252(a)(1) (1994)) (providing for
release on bond, including for noncitizens alleged to have entered the United States without
inspection).

25 ⁷ Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of
26 Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10,312, 10,323 (“Despite being
27 applicants for admission, aliens who are present without having been admitted or paroled
(formerly referred to as aliens who entered without inspection) will be eligible for bond and bond
redetermination.”).
28

1 39. The United States Solicitor General recently affirmed the traditional position to
2 the Supreme Court. *Martinez v. Hyde*, No. 25-11613, 2025 WL 2084238, at *4
3 n.9 (D. Mass. July 24, 2025) (citing the United States Solicitor General’s
4 representation to the Supreme Court at oral argument that “DHS’s long-
5 standing interpretation has been that 1226(a) applies to those who have crossed
6 the border between ports of entry and are shortly thereafter apprehended.”).

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9 40. In July 2025 DHS and DOJ colluded to upend this century-long tradition, even
10 though DOJ is supposed to operate the immigration courts independently of the
11 ICE prosecutors housed at DHS.⁸ The immigration courts have been subjected
12 to political interference on this issue and not been left to operate in a normal,
13 orderly fashion. Unsurprisingly, a few months later the Board of Immigration
14 Appeals issued a decision purporting to adopt this new practice as precedent.
15 *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 216 (BIA 2025) (holding that
16 “Immigration Judges lack authority to hear bond requests or to grant bond to
17 aliens who are present in the United States without admission.”). Even though
18 the precedent is only a month weeks only, dozens of district court decisions
19 have already refused to give it deference.⁹

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24 ⁸ Interim Guidance Regarding Detention Authority for Applicants for Admission,
25 [https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-](https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission)
26 [for-admission](https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission), July 8, 2025 (DHS announcing change of practice “in coordination” with DOJ).

27 ⁹ See, e.g., *Chogollo Chafra v. Scott*, No. 25-437, 2025 WL 2688541, at *7 (D. Me. Sept. 21,
28 2025) (“I find Yajure Hurtado to be unavailing . . .”); *Hilario Rodriguez v. Moniz*, No. 25-
12358, at 4 n.4 (D. Mass. Sept. 18, 2025); *Sampiao v. Hyde*, 1:25-cv-11981, 2025 WL 2607924,

1 41. At least 209 district court decisions have recently ruled in conflict with *Matter*
2 *of Yajure-Hurtado* and held that petitioners apprehended in the interior of the
3 United States are eligible for bond under § 1226. Several such decisions are
4 from this district. *See, e.g., Vasquez Garcia v. Noem*, 3:25-cv-2180, 2025 WL
5 2549431 (S.D. Cal. Sept. 3, 2025) (Sabraw, J.); *Chavez Valdovinos v. Noem*,
6 3:25-cv-2439 (S.D. Cal. Sept. 25, 2025) (Robinson, J.); *Martinez Lopez v.*
7 *Noem*, 3:25-cv-2734 (S.D. Cal. Oct. 23, 2025) (Robinson, J.); *Beltran v. Noem*,
8 No. 25-CV-2650, 2025 WL 3078837 (S.D. Cal. Nov. 4, 2025) (Lopez, J.);
9 *Esquivel-Ipina v. Larose*, No. 25-CV-2672, 2025 WL 2998361 (S.D. Cal. Oct.
10 24, 2025) (Sammartino, J.); *Lopez v. Warden, Otay Mesa Det. Ctr.*, No. 25-CV-
11 2527, 2025 WL 3005346 (S.D. Cal. Oct. 27, 2025) (Huie, J.).

12 42. The courts have spoken with remarkable clarity in rejecting this attempted
13 change in how the immigration laws function.

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19 **FIRST CAUSE OF ACTION:**
20 **8 U.S.C. § 1226(A) AND ASSOCIATED REGULATIONS**

21 43. Petitioner incorporates the foregoing paragraphs by reference.

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25 at *8 n.11 (D. Mass. Sept. 9, 2025) (“[T]he Court disagrees with the BIA for the reasons given
26 herein.”); *Pizarro Reyes v. Raycraft*, No. 25-12546, 2025 WL 2609425, at *7 (E.D. Mich. Sept.
27 9, 2025) (“[T]he BIA’s decision to pivot from three decades of consistent statutory interpretation
28 and call for [petitioner’s] detention under § 1225(b)(2)(A) is at odds with every District Court
that has been confronted with the same question of statutory interpretation.”).

1 44. Petitioner is entitled to a bond hearing under 8 U.S.C. § 1226(a) and its
2 associated regulations. *See* 8 C.F.R. §§ 1236.1(d), 1003.19(a)-(f).¹⁰
3

4 **SECOND CAUSE OF ACTION:**
5 **DUE PROCESS**

6 45. Petitioner incorporates the foregoing paragraphs by reference.

7 46. The government may not deprive a person of life, liberty, or property without
8 due process of law. U.S. Const. amend. V. “Freedom from imprisonment—
9 from government custody, detention, or other forms of physical restraint—lies
10 at the heart of the liberty that the Clause protects.” *Zadvydas v. Davis*, 533 U.S.
11 678, 690 (2001).
12

13 47. Petitioner has a fundamental interest in liberty in being free from official
14 restraint.
15

16 48. Due Process requires balancing three concerns: the private interest affected by
17 official action, the risk of erroneous deprivation of that interest through the
18 procedures used and probable value of additional safeguards, and the
19 government’s interest including the function involved and the fiscal or
20 administrative burden of additional procedures. *Mathews v. Eldridge*, 424 U.S.
21 319, 335 (1976). Mr. Godinez has a weighty interest in being free from
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25 ¹⁰ 8 C.F.R. § 1236.1(d) (“After an initial custody determination by [ICE], including the setting of
26 a bond, the respondent may, at any time before an order [of removal] becomes final, request
27 amelioration of the conditions under which he or she may be released.”); 8 C.F.R. § 1003.19(a)
28 (“Custody and bond determinations made by the service pursuant to 8 CFR part 1236 may be
reviewed by an Immigration Judge....”).

1 detention, there has been no impartial assessment that his detention is necessary
2 to serve the purposes of the immigration laws, and a bond hearing is liable only
3 to save government resources given the exorbitant cost of detention. Due
4 Process requires that Mr. Godinez receive a bond hearing.
5

6 49. The government's detention of Petitioner without a bond hearing violates his
7 right to due process.
8

9 **REQUEST FOR RELIEF**

10 Therefore, Petitioner respectfully asks this Court to grant the following relief:
11

- 12 1) Order that Petitioner not be transferred outside the district;
- 13 2) Declare that Petitioner's detention is governed by 8 U.S.C. § 1226(a);
- 14 3) Declare that Petitioner's detention without a bond hearing is unlawful;
- 15 4) Order Petitioner's release from detention and/or order that he receive a
16 bond hearing before an immigration judge at which the government is
17 enjoined from finding him subject to mandatory detention under 8 U.S.C.
18 § 1225;
- 19 5) Award costs and fees under the Equal Access to Justice Act; and
- 20 6) Grant any other relief the Court deems just and proper.

21 Dated: November 12, 2025

22 Respectfully submitted,
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Signature: /s/Alexandra Fuxa Ramirez

Alexandra Fuxa Ramirez

VERIFICATION

I, Yancy Romero Torres, am the partner of Petitioner Nery Godinez Sales and we live together. He is unable to sign this verification himself because he is detained. I am familiar with the facts mentioned in the petition and I submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: November 12, 2025



Yancy Romero Torres

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Index of Exhibits

Number	Description
1	ICE Detainee Locator
2	Credible Fear Worksheet
3	Notice to Appear 2015
4	Order Dismissing Removal Proceedings
5	Notice to Appear 2025
6	Notice of Address
7	Order Denying Bond

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