

UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF CALIFORNIA

Tomas Morales Ajpacaja
Petitioner,

v.


John Doe, Warden, Otay Mesa Detention Center;
John Doe, Field Office Director, San Diego Field
Office, United States Immigration and Customs
Enforcement; TODD M. LYONS, Acting Director,
United States Immigration and Customs
Enforcement; KRISTI NOEM, Secretary of
Homeland Security; PAMELA JO BONDI, United
States Attorney General, *in their official capacities,*

Respondents.

Civil Action No.: 25-cv-3436-AGS-DEB

**TRAVERSE TO RESPONDENTS'
RETURN TO HABEAS PETITION**

TRAVERSE

1. Petitioner Tomas Morales Ajpacaja  expressly incorporates and realleges each fact alleged in the Petition for Writ of Habeas Corpus filed in this Court on December 4, 2025.
2. Petitioner entered the United States without inspection in December, 1999.
3. Petitioner did not enter through a designated port of entry.
4. Petitioner did not encounter immigration authorities upon entry and was not detained.
5. Petitioner lived in the U.S. following this entry without legal immigration status and without being detained by immigration authorities, prior to his current detention.

6. Since entering the U.S., Petitioner met his wife and has fathered three U.S. citizen children with her.
7. Petitioner has not left the U.S. since his entry in 1999.
8. Petitioner is being charged in EOIR as an alien being present without admission or parole and not as an arriving alien. Exh. 1.
9. The Department of Homeland Security has submitted as evidence in the Petitioner's removal case with EOIR Form I-213, which narrates the Petitioner's entry in 1999 and confirms that he has no prior apprehensions by immigration authorities. Exh. 2.

Argument

A. Petitioner's claims are not jurisdictionally barred

This Court has jurisdiction because the Petitioner is not challenging a removal order or the execution of a removal order, but rather the Respondents' position that he should be subject to mandatory custody under Section 1225. Respondents contend that 8 U.S.C. § 1252(g) strips this Court of jurisdiction "to review a decision to commence or adjudicate removal proceedings or execute removal orders." Res. at 6. However, this petition is challenging Respondents' position that Petitioner is subject to mandatory detention under Section 1225 and the resulting bond denial and as such 8 U.S.C. § 1252(g) is not applicable. *See Martinez Lopez v. LaRose*, No. 3:25-cv-02717-JES-AGH, at 4 (S.D. Cal. Oct. 30, 2025); *Rodriguez Barron v. Doe*, No. 3:25-cv-03434-JES-AGH, at 3 (S.D. Cal. Dec. 15, 2025).

The Respondents also argue that this Court is stripped of jurisdiction under 8 U.S.C. §§ 1252(b)(9) and (a)(5). Res. at 7 – 9. A plain reading of these statutes indicate that they intend to make final orders of removal under the exclusive review of courts of appeal, but not every order issued in a removal proceeding. *See Martinez Lopez* at 5.

Finally, the Respondents urge the Court to ensure that administrative remedies have been

exhausted. Res. at 9. In this case, Respondent requested and received a bond redetermination with EOIR and was granted bond by the immigration judge, only for the Board of Immigration Appeals to overturn the bond decision. Pet. ¶ 42. Additionally, the appellate body for bond redeterminations is the Board of Immigration Appeals. As noted in the Petition, ¶ 31, the BIA decided *Matter of Yajure Hurtado*, 29 I&N Dec. 216, (2025), a precedential decision holding that all persons who entered the U.S. without inspection are subject to mandatory detention under § 1225. In this case, any further appeal to the BIA would be futile and exhaustion should be waived. See *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017).

B. Petitioner is unlawfully detained and his petition should be granted.

Petitioner reiterates the arguments for why his detention is unlawful under Section 1225 as made in his petition. Petitioner's circumstances are similar to the circumstances of other petitioners in a plethora of *habeas corpus* petitions across the country challenging their detention under Section 1225. An overwhelming majority of courts are finding that the circumstances of these detentions are unlawful and that instead these petitioners should be allowed a substantive bond hearing under Section 1226. See *Martinez Lopez* at 8 – 9 (compiling cases).

Conclusion

For the foregoing reasons, the Court should grant the Petitioner's prayer for relief.

Dated: December 23, 2025

Respectfully submitted,

/s/Scott A. Emerick, Esq.

Scott A. Emerick
Bolour / Carl Immigration Group, APC
COUNSEL FOR PETITIONER

Verification by Someone Acting on Petitioner's Behalf Pursuant to 28 U.S.C. 2242

I am submitting this verification on behalf of Petitioner because I am Petitioner's attorney. I and others working under my supervision have discussed with Petitioner the events described in this Petition. I hereby verify that the statements made in the attached Traverse are true and correct to the best of my knowledge.

/s/Scott A. Emerick

Date: December 23, 2025