

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

JURISDICTION

2. This action arises under the Constitution of the United States; the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101, *et seq.*; and the Administrative Procedures Act ("APA"), 5 U.S.C. § 500, *et seq.*

3. This court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus); 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 1651 (All Writs Act); 5 U.S.C. § 701 *et seq.* (APA); and 28 U.S.C. §§ 2201-2202 (Declaratory Judgment Act).

4. The court may grant relief under the habeas corpus statutes, the Declaratory Judgment Act, and the All-Writs Act, 28 U.S.C. § 1651.

VENUE

5. Venue is proper because Petitioner is detained at the Otay Mesa Detention Facility, in San Diego, California, which is within the jurisdiction of this District.

6. Venue is also proper in this judicial district pursuant to 28 USC §1391(e) because at least one federal respondent is in this District; and a substantial part of the events or omissions giving rise to the claims in this action took place in this District. No real property is involved.

REQUIREMENTS OF 28 U.S.C. § 2243

7. The Court must grant the habeas corpus petition or issue an order to show cause (OSC) to the respondents "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Court must require respondents to file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

8. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, 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).

PARTIES

9. Petitioner SALVADOR RODRIGUEZ ROSALES ("Petitioner") is a 54-year-old citizen of Mexico. He is detained by the Respondents at the Adelanto Detention Center.

1 16. The "usual removal process" involves an evidentiary hearing before an immigration
2 judge. *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 108 (2020). Proceedings are initiated
3 under 8 U.S.C. § 1229(a), also known as "full removal," by filing a Notice to Appear with the
4 Immigration Court. *Matter of E-R-M- & L-R-M-*, 25 I. & N. Dec. 520, 520 (BIA 2011). Section § 1226
5 provides that while removal proceedings are pending, a noncitizen "may be arrested and detained" and
6 that the government "may release the alien on ... conditional parole." § 1226(a)(2); *accord*
7 *Thuraissigiam*, 591 U.S. at 108 (during removal proceedings, applicant may either be "detained" or
8 "allowed to reside in this country").

9 17. When a person is apprehended under § 1226(a), an ICE officer makes the initial
10 custody determination. *Diaz v. Garland*, 53 F.4th 1189, 1196 (9th Cir. 2022) (citing 8 C.F.R. §
11 236.1(c)(8)). A noncitizen will be released if he or she "demonstrate[s] to the satisfaction of the
12 officer that such release would not pose a danger to property or persons, and that the alien is likely
13 to appear for any future proceeding." *Id.* (citing 8 C.F.R. § 236.1(c)(8)). "Federal regulations
14 provide that aliens detained under § 1226(a) receive bond hearings at the outset of detention."
15 *Jennings v. Rodriguez*, 583 U.S. 281, 306 (2018) (citing 8 CFR §§ 236.1(d)(1)). If, at this hearing,
16 the detainee demonstrates by the preponderance of the evidence that he or she is not "a threat to
17 national security, a danger to the community at large, likely to abscond, or otherwise a poor bail
18 risk," the IJ will order his or her release. *Diaz*, 53 F.4th at 1197 (citing *Matter of Guerra*, 24 I. & N.
19 Dec. 37, 40 (B.I.A. 2006)).

20 18. While "§ 1226 applies to *aliens already present in the United States*," U.S.
21 immigration law also "authorizes the Government to detain certain *aliens seeking admission into the*
22 *country* under §§ 1225(b)(1) and (b)(2)," a process that provides for expedited removal. *Jennings*,
23 583 U.S. at 303 (2018) (emphasis added). Under § 1225, a noncitizen "who has not been admitted
24 or who arrives in the United States" is considered "an applicant for admission." 8 U.S.C. §
25 1225(a)(1). For certain applicants for admission, 8 U.S.C. § 1225 authorizes "expedited removal." §
26 1225(b)(1).

27 19. Respondents' central argument is that petitioner is subject to mandatory detention
28 pending removal proceedings under 8 U.S.C. § 1225(a)(1), 1225(b)(2)(A). Respondents rely on the

1 BIA's recent decision in *Yajure Hurtado*, 29 I & N Dec. 216 (BIA 2025), affirming the
2 government's new interpretation of § 1225.

3 20. As a threshold matter, the BIA decision *Yajure Hurtado* is entitled to little or no
4 deference by the District Court. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 400 (2024)
5 (observing that while "agencies have no special competence in resolving statutory ambiguities,"
6 "[c]ourts do").

7 21. Multiple District Courts across the entire United States have recently concluded that
8 the government's proposed interpretation of the statute (a) disregards the plain meaning of section
9 1225(b)(2)(A); (b) disregards the relationship between sections 1225 and 1226; (c) would render a
10 recent amendment to section 1226(c) superfluous; and (d) is inconsistent with decades of prior
11 statutory interpretation and practice. The following quote is a representative example:

12 "The Court follows other decisions in this Circuit finding that "seeking admission
13 requires an affirmative act such as entering the United States or applying for status,
14 and that it does not apply to individuals who, like [Petitioner], have been residing in
15 the United States and did not apply for admission or a change of status." *Mosqueda*
16 *v. Noem*, No. 25-CV-2304 CAS (BFM), 2025 WL 2591530, at *5 (C.D. Cal. Sept. 8,
17 2025); *see, e.g., Vazquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY, 2025 WL
18 2676082, at *11-16 (D. Nev. Sept. 17, 2025); *Rodriguez*, 2025 WL 2782499, at *1
19 ("Every district court to address this question has concluded that the government's
20 position belies the statutory text of the INA, canons of statutory interpretation,
21 legislative history, and longstanding agency practice."); *Guzman v. Andrews*, No. 25-
22 CV-1015-KES-SKO (HC), 2025 WL 2617256, at *4-5 (E.D. Cal. Sept. 9, 2025)
23 (finding that petitioner who was released on bond and rearrested was entitled to a
24 bond hearing under § 1226); *Garcia*, 2025 WL 2549431, at *8 (providing petitioner
25 with an individualized bond hearing under § 1226(a)); *Valdovinos v. Noem*, No. 25-
26 CV-2439 TWR (KSC), slip op. at 9 (S.D. Cal. Sept. 25, 2025) (same)."

27 *Esquivel-Pina v. LaRose*, No. 25-CV-2672, 2025 WL 2998361 at 8 (S.D. Cal. Oct. 24,
28 2025).

1
2 **FACTUAL ALLEGATIONS**

3 22. Petitioner has lived in the United States since 1989. He is married. He has three
4 children, ages 23, 21, and 18, and 6. His wife and children are all United States citizens. Petitioner
5 works in demolition. He has a minor criminal record, consisting of a 2001 misdemeanor DUI.

6 23. In February 2011, the DHS detained Petitioner and issued him a Notice to Appear
7 (NTA) for a removal hearing. The immigration judge apparently set a bond and petitioner was
8 released from custody. Petitioner filed applications for cancellation of removal and withholding of
9 removal. In April 2022, the removal case was dismissed via a joint motion.

10 24. On November 12, 2025, petitioner was at work at a building in Culver City,
11 California when it was raided by ICE agents. The ICE agents detained petitioner and sent him to the
12 Adelanto ICE Processing Center.

13 25. The DHS started a new removal proceeding by filing a Notice to Appear with the
14 Adelanto Immigration Court. The NTA charges Petitioner with removability under 212(a)(6)(A)(i)
15 of the INA, as an alien present in the USA without being admitted or paroled.

16 26. Petitioner concedes removability on the charge in the NTA. As relief from removal,
17 petitioner qualifies to apply for cancellation of removal and withholding of removal.

18 27. Petitioner filed a motion for a custody redetermination hearing, which has not yet
19 been scheduled for a hearing. Petitioner expects that the immigration judge will deny the bond
20 request, concluding there is no jurisdiction to redetermine bond per *Matter of Yajure Hurtado*.

21 **CAUSES OF ACTION**

22 **COUNT 1**

23 (Violation of the Immigration and Nationality Act)

24 28. Petitioner incorporates by reference the allegations set forth in paragraphs 1 to 27.

25 29. The DHS detains petitioner pursuant to 8 U.S.C. § 1226, not 8 U.S.C. § 1225;
26 therefore he is entitled to a bond redetermination hearing before an immigration judge.

27 30. Petitioner's continued detention under Section 1226(a) in the absence of a bond
28 hearing and decision on the merits violates the INA.

//

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

COUNT 2

(Violation of the Administrative Procedure Act)

31. Petitioner incorporates by reference the allegations set forth in paragraphs 1 to 30.

32. Section 706 of 5 U.S.C. provides that a reviewing court shall compel agency action unlawfully withheld and hold unlawful and set aside agency action not in accordance with law. 5 U.S.C. § 706(1)-(2).

33. Petitioner has a statutory and due process right to have an Immigration Judge conduct a bond hearing pursuant to 8 U.S.C. § 1226.

34. Moreover, the respondents' detention of petitioner in the apparent absence of an arrest warrant smacks of racial profiling and may be unlawful.

35. Defendants' refusal to provide a bond hearing to petitioner harms him and constitutes final agency action for purposes of the APA.

36. There are no other adequate available remedies.

36. Respondents' actions constitute an unlawful withholding of an agency action and unlawful agency action in violation of the APA.

COUNT 3

(Violation of the Due Process Clause)

37. Petitioner incorporates by reference the allegations set forth in paragraphs 1 to 35.

38. Respondents detain petitioner and argue that the immigration judge has no jurisdiction to conduct a custody redetermination hearing.

39. The detention of petitioner without a bond hearing violations both the INA and the Due Process Clause of the Fifth Amendment to the United States Constitution

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests this Court to grant the following:

(1) Assume jurisdiction over this matter;

(2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;

1 (3) Declare that Petitioner's detention violates the Due Process Clause of the Fifth
2 Amendment, the INA, and the APA;

3 (4) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately or
4 schedule a bond hearing on the merits before an immigration judge;

5 (5) Issue an order prohibiting respondents from continuing to detain petitioner on the basis
6 that he is subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2);

7 (6) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act (28
8 U.S.C. § 2412), and any other applicable statute or regulation; and

9 (7) Grant any further relief this Court deems just and proper.

10 DATED: 11 December 2025

11 Respectfully submitted,

12 */s/ William Baker*

13
14 _____
15 William Baker (157 906)
16 MORENO & ASSOCIATES
17 2082 Otay Lakes Road, Suites 102
18 Chula Vista, California 91913
19 Telephone: (619) 422-4885
20 william.baker@morenoandassociates
21 Attorney for petitioner
22
23
24
25
26
27
28

VERIFICATION

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury under the laws of the United States that I am the petitioner; I have read the petition or had it read to me in a language I understand, and the information in the petition is true and correct. I understand that a false statement of a material fact may serve as the basis for prosecution for perjury.

VERIFICATION

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury under the laws of the United States that I am the petitioner; I have read the petition or had it read to me in a language I understand, and the information in the petition is true and correct. I understand that a false statement of a material fact may serve as the basis for prosecution for perjury.



Salvador Rodriguez Rosales
Petitioner