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

Marvin Rocael Godinez Garcia,

*Petitioner,*

v.

Jeremy CASEY, Warden, Imperial Regional  
Detention Center, Calexico, California;  
Daniel A. BRIGHTMAN, Acting Field Office  
Director, San Diego Office of Detention and  
Removal, U.S. Immigrations and Customs  
Enforcement; Todd M. LYONS, Acting  
Director, Immigration and Customs  
Enforcement, U.S. Department of Homeland  
Security; Sirce OWEN, Acting Director for  
Executive Office for Immigration Review;  
Kristi NOEM, Secretary, U.S. Department of  
Homeland Security; Pam BONDI, Attorney  
General of the United States;

Respondents-Defendants.

Case No.: '26CV0187 JES DEB


**PETITION FOR WRIT OF HABEAS  
CORPUS AND ORDER TO SHOW  
CAUSE WITHIN THREE DAYS;  
COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

Challenge to Unlawful Incarceration Under  
Color of Immigration Detention Statutes:  
Request for Declaratory and Injunctive Relief

Agency File No.:



## INTRODUCTION

1. Petitioner Marvin Rocaél Godinez García  is a native and citizen of Guatemala whose terminally ill life-partner relies upon him as her sole caregiver. *See* Exhibit A. Petitioner was detained around November 2025 in Virginia while riding as a passenger in a company work truck.<sup>1</sup> To counsel's knowledge, he has no criminal convictions. U.S. Immigration and Customs Enforcement ("ICE") detained Mr. Godinez García and later transferred him to the Imperial Regional Detention Center in Imperial, California. Since that time, Mr. Godinez García has been subjected to numerous due process rights violations by ICE personnel, including his right to access to counsel prior to being asked to sign documents without counsel's knowledge or presence. *See* Exhibits B, C, and D.<sup>2</sup> Repeated requests for humanitarian parole release have been ignored by facility staff as well. *See* Exhibit E at supporting evidence, pages 2 thru 8-A.

2. At his Master Calendar Hearings held before the Immigration Court on December 10, 2025, and again on January 7, 2026, the Immigration Judge Halliday-Roberts directly requested of Department Counsels, David Coffman and Kara Mulkey, that the Department of Homeland Security explain the following:

- 1) how Petitioner was able to be asked by ICE counsel and personnel at the Detention Center, to sign a document on December 4, 2025, pro se, without attorney knowledge or

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<sup>1</sup> His employers have written his support letters which include evidence of economic support capacity and they plan to ensure any necessary employment adjustment processes are completed for Petitioner in future, following his hopeful release. *See* Exhibit E, supporting evidence at pages 9 thru 10-A and 11 thru 32.

<sup>2</sup> Furthermore, Mr. Godinez García is a Type 1 insulin-dependent diabetic, who has faced many health and fatigue issues since being detained due to the inconsistent administration of his insulin and lack of physiological familiarity with the different brand of insulin being used.

- signature thereon, agreeing to voluntary departure, despite a G-28 on file with ICE Enforcement and Removal Operations confirming representation since December 2, 2025,
- 2) how that pro se voluntary departure agreement was then also able to be filed into the electronic record of proceeding (EROP) by ICE Counsel on December 9, 2025, despite E-28 entry of appearance also in the EROP since December 2, 2025,
- 3) what precautionary measures will be taken by ICE counsel at the facility, to ensure prevention of any similar future violations of a similar nature, and
- 4) to ensure ICE Counsel engaged in communications with Petitioner's counsel for the purposes of negotiating prosecutorial discretionary (PD) humanitarian release to Virginia to care for his terminally ill partner. *See* Exhibit E Supporting Evidence, pages 4, 5, and 6.<sup>3</sup>

Since December 10, 2025, the Department has continuously failed to adhere to Immigration Court requests by:

first, following the submission of draft Prosecutorial Discretion Agreements via email to Department Counsel David Coffman, on December 11, 2025, with follow up email on December 18, 2025, no reply nor acknowledgement occurred prior to the continued Master Calendar Hearing on January 7, 2026 (so-continued to allow for PD negotiation to occur) (*see* Exhibit E, supporting evidence, pages 5, 6, 7, 8, and 8A)

and

second, Department Counsel Kara Mulkey, in reply to the Immigration Judge Halliday Roberts requests made on the record at the continued Master Calendar Hearing held January 7, 2026, confirmed on behalf of DHS **that the Department has no finite way to**

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<sup>3</sup> This included the Immigration Judge Halliday Roberts' dismissal of the claimed-agreement to voluntary departure

**prevent similar rights violations against Petitioner as that which occurred on December 4, 2025 and December 9, 2025, from occurring again in future while he remains detained by DHS at Imperial Regional ICE Detention Facility. Id.**

3. As a result of this/these failure/s and record statement/s as to his future constitutional rights assurances in ICE detention, the next day, Petitioner through counsel filed a Motion to Terminate the removal proceedings against him on January 8, 2026, noting that in addition to same, the Department has been unable to provide any evidence in satisfaction of their legal burden to proceed with removal under 8 USC 1240.8. *See* Exhibit E, including the Department's I-213 Attachment, at Department's Exhibit A, the Erroneous/Incomplete I-213 filing.

4. The Department of Homeland Security has determined that Mr. Godinez Garcia is detained under INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A), pursuant to a July 2025 DHS policy and the BIA's decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Under this interpretation, Immigration Judges are stripped of jurisdiction to conduct custody redetermination, and individuals like Mr. Godinez Garcia are categorically denied bond despite decades of contrary agency and judicial practice.<sup>4</sup>

5. Mr. Godinez Garcia's detention under § 1225(b)(2)(A) violates the text and structure of the INA and its implementing regulations. Federal courts across the country have rejected DHS's new interpretation of § 1225(b)(2) and have held that detention of people detained at the border and later released, as well as long-time residents apprehended in the interior years

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<sup>4</sup> The Immigration Judge Halliday Roberts has confirmed at the Master Calendar Hearing held on December 10, 2025 that any request for bond by Petitioner would require a finding in accordance with same per agency requirements.

later, is governed by § 1226(a). These courts recognize that applying § 1225(b)(2) to such individuals is not accurate.

6. Most importantly, this Court has already determined that individuals like Mr. Godinez Garcia are eligible for bond because they are detained pursuant to § 1226(a), and thus this Court ordered that immigration courts subject to this court's jurisdiction ensure they determine whether such individuals are eligible for discretionary bond. *See Arrazola-Gonzalez v. Noem*, Civ. No. 5:25-cv-01789, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025). *See also Cuevas Guzman v. Andrews*, Civ. No. 1:25-cv-01015, 2025 WL 2617256 (E.D. Cal. Sept. 9, 2025). *See also Maldonado Baustista v. Santacruz*, 5:25-cv-01873, (C.D. Cal. Nov. 25, 2025).

7. Mr. Godinez Garcia also falls within the Bond Eligible Class in the U.S. District Court for the Central District of California's holding in the class action lawsuit in *Maldonado Baustista v. Santacruz*, 5:25-cv-01873, (C.D. Cal. Nov. 25, 2025). That class includes all individuals 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. *Id.* That order extended a grant of summary judgment to the Petitioners in that case to the entire Bond Eligible Class as a whole, finding that such individuals are detained pursuant to 8 U.S.C. § 1226 and therefore eligible for bond. *Id.* The district court then entered final judgment on December 18, 2025. *Maldonado Bautista v. Noem*, 5:25-cv-01873, 2025 WL 3678485 (C.D. Cal. Dec. 18, 2025).

8. Mr. Godinez Garcia respectfully requests that this Court: (a) declare that his detention is governed by § 1226(a); (b) find as the Court has requested the Department to do, that he is entitled to humanitarian release to care for his terminally ill partner, by applying § 1226(a)

to the unique circumstances of his case; and (c) order his release from custody under reasonable bond and appropriate conditions of supervision.

### **JURISDICTION AND VENUE**

9. Mr. Godinez Garcia is currently in the physical custody of Respondent at the Imperial Regional Detention Center in Imperial, California.

10. This Court has jurisdiction under 28 U.S.C. § 2241 (*habeas corpus*), 28 U.S.C. § 1331 (*federal question*), 28 U.S.C. § 1651 (*All Writs Act*), 28 U.S.C. §§ 2201–2202 (*Declaratory Judgment Act*), 5 U.S.C. § 702 (*APA*), and Article I, Section 9, Clause 2 of the United States Constitution (*Suspension Clause*). Mr. Godinez Garcia is presently in custody under color of the authority of the United States and challenges his custody as in violation of the Constitution, laws, or treaties of the United States.

11. Federal district courts have jurisdiction under § 2241 to hear habeas claims by individuals challenging the lawfulness of their detention by ICE. See, e.g., *Zadvydas v. Davis*, 533 U.S. 678 (2001); *Demore v. Kim*, 538 U.S. 510 (2003). The Supreme Court has repeatedly upheld such jurisdiction, most recently in *Jennings v. Rodriguez*, 583 U.S. 281, 292–96 (2018).

12. Venue is proper in the Southern District of California, pursuant to 28 U.S.C. §§ 1391 and 2241(d), because Petitioner is detained within this District at the Imperial Regional ICE Detention Center.

### **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

1. In habeas claims, exhaustion of administrative remedies is prudential, not jurisdictional. *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017). A court may waive the prudential exhaustion requirement if “administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the

administrative proceedings would be void.” *Id.* (quoting *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (citation and quotation marks omitted)). Exhaustion should be waived because administrative remedies are (1) futile and (2) his continued detention results in irreparable harm.

2. Pursuant to the Board’s recent precedential decisions in *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025) and *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), an immigration judge would not take jurisdiction over any custody redetermination hearing. Per those decisions, contravening decades of law and practice by Respondents, Petitioner is erroneously deemed an applicant for admission ineligible for a bond hearing before an immigration judge (IJ).

3. No statutory exhaustion requirements apply to Petitioner’s claim of unlawful custody in violation of his due process rights, and there are no administrative remedies that he needs to exhaust. *See Am.-Arab Anti-Discrimination Comm. v. Reno*, 70 F.3d 1045, 1058 (9th Cir. 1995) (finding exhaustion to be a “futile exercise because the agency does not have jurisdiction to review” constitutional claims); *In re Indefinite Det. Cases*, 82 F. Supp. 2d 1098, 1099 (C.D. Cal. 2000) (same).

4. Exhausting administrative remedies here is futile because Respondents contend Petitioner is subject to mandatory detention and no parole request to release Petitioner from custody would be considered by ICE. Moreover, in contravention to the INA and long-standing precedent and practice, the Board of Immigration Appeals and Attorney General have deemed no noncitizen eligible for bond before an immigration judge (with the exception of noncitizens who entered the U.S. on a visa). As such, any attempts to exhaust administrative remedies would be entirely futile.

5. More importantly, every day that Petitioner remains detained causes his partner and himself, additional harm that cannot be repaired. His continued detention puts his terminally ill

partner at risk of sooner death as well as his own physical health as a Type-I diabetic and his mental health knowing his life partner has no one else to regularly care for her in his absence, at even greater risk, further warranting a finding of irreparable harm and the waiver of the prudential exhaustion requirement. The Court must consider this in its irreparable harm analysis of the effects on him as his detention continues. *See De Paz Sales v. Barr*, No. 19-CV-07221-KAW, 2020 WL 353465, at \*4 (N.D. Cal. Jan. 21, 2020) (noting that petitioner “continues to suffer significant psychological effects from his detention, including anxiety caused by the threats of other inmates and two suicide attempts,” in finding that petitioner would suffer irreparable harm warranting waiver of exhaustion requirement).

6. Health concerns are one factor the Court should consider in its irreparable harm analysis of the effects on Petitioner as his detention continues. *See De Paz Sales v. Barr*, No. 19-CV-07221-KAW, 2020 WL 353465, at \*4 (N.D. Cal. Jan. 21, 2020) (noting that petitioner “continues to suffer significant psychological effects from his detention, including anxiety caused by the threats of other inmates and two suicide attempts,” in finding that petitioner would suffer irreparable harm warranting waiver of exhaustion requirement).

#### PARTIES

7. Petitioner Marvin Rocaél Godinez Garcia is a native and citizen of Guatemala unlawfully detained at the Imperial Regional Detention Center in Imperial, California. He is not subject to a final order of removal. Under DHS’s July 2025 policy and the BIA’s decision in *Matter of Yajure Hurtado*, Immigration Judges no longer have jurisdiction to redetermine custody for individuals like Mr. Godinez Garcia. As a result, he has been categorically denied a bond.

8. Petitioner is currently in Respondents' legal and physical custody at the Imperial Regional Detention Center in Calexico, California. CoreCivic, Inc., a Maryland corporation, operates that facility.

9. Respondent Daniel A. BRIGHTMAN is the Field Office Director of ICE in San Diego, California and is named in his official capacity. ICE is the component of DHS that is responsible for detaining and removing noncitizens according to immigration law and oversees custody determinations. In his official capacity, he is the legal custodian of Petitioner.

10. Respondent Todd M. LYONS is the Acting Director of ICE and is named in his official capacity. Among other things, ICE is responsible for the administration and enforcement of the immigration laws, including the removal of noncitizens. In his official capacity as head of ICE, he is the legal custodian of Petitioner.

11. Respondent Sirce OWEN is the Acting Director of EOIR and has ultimate responsibility for overseeing the operation of the immigration courts and the Board of Immigration Appeals, including bond hearings. Executive Office for Immigration Review (EOIR) is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings. She is sued in her official capacity.

12. Respondent Kriti NOEM is the Secretary of the DHS and is named in her official capacity. DHS is the federal agency encompassing ICE, which is responsible for the administration and enforcement of the INA and all other laws relating to the immigration of noncitizens. In her capacity as Secretary, Respondent Noem has responsibility for the administration and enforcement of the immigration and naturalization laws pursuant to section 402 of the Homeland Security Act of 2002, 107 Pub. L. No. 296, 116 Stat. 2135 (Nov. 25, 2002); *see also* 8 U.S.C. § 1103(a). Respondent Noem is the ultimate legal custodian of Petitioner.

13. Respondent Pam BONDI is the Attorney General of the United States and the most senior official in the U.S. Department of Justice (DOJ) and is named in her official capacity. She has the authority to interpret the immigration laws and adjudicate removal cases. The Attorney General delegates this responsibility to the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the BIA.

14. Respondent Jeremy CASEY is the Warden of the Imperial Regional Detention Center in Calexico, California, where Petitioner is being held. Respondent Jeremy CASEY oversees the day-to-day operations of the Imperial Regional Detention Center and acts at the direction of Respondents Brightman, Lyons and Noem. Respondent Christopher CASEY is a custodian of Petitioner and is named in their official capacity.

#### FACTS

13. Petitioner Marvin Rocael Godinez Garcia is a native and citizen of Guatemala, unlawfully detained at the Imperial Regional Detention Center in Imperial, California. ICE has held him in custody since November 2025 after being detained while traveling to work as a passenger. He has Type-I Insulin-Dependent diabetes and a partner who is terminally ill with lung cancer and relies upon him as her sole/primary caregiver. *See* Exhibit A & B.

14. Mr. Godinez Garcia has no criminal convictions to counsel's knowledge. He has never been convicted of any crime that would subject him to mandatory detention under INA § 1226(c). He is not subject to a final order of removal, and his rights are at risk of being repeatedly violated while he remains in ICE custody. *See* Exhibits A, B, C, D, and E.

15. Historically, individuals like Mr. Godinez Garcia were detained under INA § 236(a), 8 U.S.C. § 1226(a), which provides for release on bond or conditional parole. After the BIA's decision in *Matter of Q. Li*, however, any noncitizen detained at the United States border

after entering without inspection was an “applicant for admission” under INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A), and deemed ineligible for bond. This was later extended to anyone who entered without inspection, regardless of whether they were detained at the border or hundreds of miles from the border and regardless of whether they were first apprehended decades from their initial entry in *Matter of Yajure Hurtado*.

16. As a result of this policy and decision, Immigration Judges lack jurisdiction to conduct custody redeterminations for individuals like Mr. Godinez Garcia. He has been categorically denied bond despite his strong community ties via his church, his employers, and that he has absolutely no criminal record.

17. Federal district courts across the country, like this one, have rejected *Matter of Q. Li*'s and *Matter of Yajure Hurtado*'s mandate of § 1225(b)(2) for individuals like Mr. Godinez Garcia, finding instead that detention of individuals like him is under § 1226(a). Nonetheless, ICE continues to hold him without access to bond release, without access to humanitarian release considerations, and without guaranteed access to legal counsel prior to requests for legal contractual agreements (the Department has twice responded to the Court confirming 1) they do not know how the legal violations occurred, 2) they have no finite system in place to prevent similar occurrences in future, and 3) has repeatedly failed to negotiate PD with counsel per the IJ request, following numerous attempts and just cause for same by Petitioner's counsel. ICE staff at the Imperial ICE facility similarly has failed to communicate with counsel since November 2025 as to his humanitarian parole release requests. *See* Exhibits A thru E.

#### **LEGAL FRAMEWORK**

18. Under 8 U.S.C. § 1226(a), individuals are generally entitled to discretionary bond determinations when detained. See 8 C.F.R. §§ 1003.19(a), 1236.1(d). Certain noncitizens who

are arrested, charged with, or convicted of specified crimes are subject to mandatory detention until removal proceedings are concluded under 8 U.S.C. § 1226(c).

19. By contrast, 8 U.S.C. § 1225(b) applies to noncitizens encountered at the border. According to that provision, “in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained.” 8 U.S.C. § 1225(b)(2)(A). Thus, unless the noncitizen is paroled into the country under 8 U.S.C. § 1182(d)(5)(A) for “urgent humanitarian reasons or significant public benefit,” such an individual is subject to mandatory detention and is ineligible for release on bond. *Jennings*, 583 U.S. at 288.

20. The U.S. Supreme Court has recognized that while “U.S. immigration law authorizes the Government to detain certain aliens seeking admission into the country under §§ 1225(b)(1) and (2),” “[i]t also authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings under §§ 1226(a) and (c).” *Id.* at 289.

21. Following enactment of these statutes, EOIR issued regulations clarifying that individuals who entered the country without inspection but who were apprehended in the interior were not detained under § 1225, but instead under § 1226(a). See *Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures*, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (“Despite being applicants for admission, aliens who are present without having been admitted or paroled...will be eligible for bond and bond redetermination.”). For nearly three decades, this was the consistent practice.

22. In *Matter of Q. Li*, the BIA upended years of precedent and understanding of which noncitizens were considered detained under § 1225 versus § 1226. In that case, the noncitizen was arrested and detained under § 1225 at the border and was subsequently paroled into the United

States. 29 I. & N. Dec. at 66. She was subsequently re-detained and denied bond because she was deemed to be an “applicant for admission” under § 1225, and her parole, which is the only exception to mandatory detention under § 1225, was later revoked when she was served with a Notice to Appear, thus returning her to her status under § 1225. *Id.*

23. In July 2025, DHS abruptly adopted a new interpretation expanding on *Q. Li* and requiring detention under § 1225(b)(2)(A) for all noncitizens charged as inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i). On September 5, 2025, the BIA issued *Yajure Hurtado*, 29 I&N Dec. 216, adopting DHS’s view and holding that all noncitizens present in the United States without admission are “applicants for admission” subject to mandatory detention under § 1225(b)(2)(A). As a result, any individual who entered the country without inspection is ineligible for bond.

24. This Court has already rejected this interpretation, finding instead that individuals like Mr. Godinez Garcia are eligible for bond because they are detained pursuant to § 1226(a) and therefore eligible for release on discretionary bond. *See Arrazola-Gonzalez v. Noem*, Civ. No. 5:25-cv-01789, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025). *See also Cuevas Guzman v. Andrews*, Civ. No. 1:25-cv-01015, 2025 WL 2617256 (E.D. Cal. Sept. 9, 2025). *See also Maldonado Baustista v. Santacruz*, 5:25-cv-01873, (C.D. Cal. Nov. 25, 2025).

25. Over 300 district courts have also rejected this position and have granted habeas petitions for petitioners like Mr. Godinez Garcia. *See, e.g., Aguirre Villa v. Normand*, No. 5:25-cv-89, 2025 WL 3095969 (S.D. Ga. Nov. 4, 2025), *report and recommendation adopted sub nom. Aguirre Villa v. Normand*, No. 5:25-cv-100, 2025 WL 3188406 (S.D. Ga. Nov. 14, 2025); *Rodriguez Vazquez v. Bostock*, Civ. No. 3:25-cv-05240, 779 F. Supp. 3d 1239 (W.D. Wash. 2025); *Gomes v. Hyde*, Civ. No. 1:25-cv-11571, 2025 WL 1869299 (D. Mass. July 7, 2025), *Garcia v. Hyde*, Civ. No. 25-11513 (D. Mass. July 14, 2025); *Rosado v. Bondi*, Civ. No. 25-02157, 2025

WL 2337099 (D. Ariz. Aug. 11, 2025); *Lopez-Benitez v. Francis*, Civ. No. 25-5937, 2025 WL 2371588, ---F. Supp.3d ---- (S.D.N.Y. Aug. 13, 2025); *Dos Santos v. Lyons*, Civ. No. 1:25-cv-12052, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Aguilar Maldonado v. Olson*, Civ. No. 25-cv-3142, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Escalante v. Bondi*, Civ. No. 25-cv-3051, 2025 WL 2212104 (D. Minn. July 31, 2025); *O.E. v. Bondi*, Civ. No. 25-cv-3051, 2025 WL 2235056 (D. Minn. Aug. 3, 2025); *Arrazola-Gonzalez v. Noem*, Civ. No. 5:25-cv-01789, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Garcia Jimenez v. Kramer*, Civ. No. 25-cv-3162, 2025 WL 2374223 (D. Neb. Aug. 15, 2025); *Mayo Anicasio v. Kramer*, Civ. No. 4:25-cv-3158, 2025 WL 2374224 (D. Neb. Aug 14, 2025); *Rodriguez de Oliveira v. Joyce*, Civ. No. 2:25-cv-00291, 2025 WL 1826118 (D. Me. July 2, 2025); *Leal-Hernandez v. Noem*, Civ. No. 1:25-cv-02428, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Lopez-Campos*, Civ. No. 2:25-cv-12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Romero v. Hyde*, Civ. No. 25-11631, --- F. Supp. 3d ----, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Doe v. Moniz*, Civ. No. 1:25-cv-12094, 2025 WL 2576819 (D. Mass. Sept. 5, 2025); *Herrera Torralba*, Civ. No. 2:25-cv-01366, 2025 WL 2581792 (D. Nev. Sept. 5, 2025); *Kostak v. Trump*, Civ. No. 3:25-1093, 2025 WL 2473136 (W.D. La. Aug. 27, 2025); *Simpiao v. Hyde*, Civ. No. 1:25-cv-11981-JEK, 2025 WL 2607925 (D. Mass Sept. 9, 2024); *Garcia Cortes v. Noem*, Civ. No. 1:25-cv-02677, 2025 WL 2652990 (D. Colo. Sept. 16, 2026); *Jimenez v. Warden*, Civ. No. 25-cv-326, 2025 WL 2639390 (D.N.H. Sept. 8, 2025); *Cuevas Guzman v. Andrews*, Civ. No. 1:25-cv-01015, 2025 WL 2617256 (E.D. Cal. Sept. 9, 2025); *Velasquez Salazar v. Dedos*, Civ. No. 1:25-cv-00835, 2025 WL 2676729 (D.N.M. Sept., 17, 2025); *Hasan v. Crawford*, 1:25-cv-1408, 2025 WL 2682255 (E.D. Va., Sept. 19, 2025); ); *Singh v. Lewis*, Civ. No. 4:25-cv-96, 2025 WL 2699219 (W.D.Ky., Sept. 22, 2025); *Beltran Barrera v. Tindall*, Civ. No. 3:25-cv-541, 2025 WL 2690565 (W.D.Ky., Sept. 19, 2025); *Chogollo Chafra v. Scott*,

2025 WL 2688541, (D.Me., Sept. 21, 2025); *Chiliquinga Yumbillo v. Stamper*, Civ. No. 2:25-cv-00479 (D.Me., Sept. 19, 2025).

26. The government's interpretation defies INA's text and structure. Section 1226(a) explicitly applies to individuals charged as inadmissible after entry without inspection. Congress reinforced this point in 2025 by amending § 1226(c) through the Laken Riley Act to exclude from bond eligibility certain noncitizens who entered without inspection and committed crimes. If Congress had intended all such individuals to be subject to mandatory detention under § 1225(b)(2)(A), it would not have needed to create these specific carve-outs. Construing § 1225(b)(2)(A) as the government suggests renders § 1226(c)(1)(E) superfluous, in violation of the canon against surplusage. See *Corley v. United States*, 556 U.S. 303 (2009).

27. This approach is consistent with Ninth Circuit precedent found in *Arrazola-Gonzalez v. Noem*, Civ. No. 5:25-cv-01789, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025), *Cuevas Guzman v. Andrews*, Civ. No. 1:25-cv-01015, 2025 WL 2617256 (E.D. Cal. Sept. 9, 2025), and *Maldonado Baustista v. Santacruz*, 5:25-cv-01873, (C.D. Cal. Nov. 25, 2025).

28. In *Maldonado Baustista v. Santacruz*, 5:25-cv-01873, (C.D. Cal. Nov. 25, 2025) the class of individuals entitled to bond was defined to include all individuals 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. *Id.* That order extended a grant of summary judgment to the Petitioners in that case to the entire Bond Eligible Class as a whole, finding that such individuals are detained pursuant to 8 U.S.C. § 1226 and therefore eligible for bond. *Id.*

29. The Supreme Court has likewise recognized that mandatory detention under § 1225(b) applies "at the Nation's borders and ports of entry, where the Government must determine

whether an alien seeking to enter the country is inadmissible.” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

30. Therefore, the mandatory detention provisions of § 1225(b)(2) do not apply to Mr. Godinez Garcia who was apprehended within the United States after initial entry, thousands of miles from the border in Virginia. He is detained under § 1226(a) and is eligible for bond release and/or humanitarian release considerations as originally requested by the Immigration Judge. The Department of Homeland Security is failing to abide these requests or to ensure Petitioner’s due process rights are respected while he is held in detention, knowing they have insufficient evidence.

**CLAIMS FOR RELIEF**

**COUNT I**

**Violation of 8 U.S.C. § 1226(a)  
Unlawful Denial of Release on Bond**

31. Petitioner realleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.

32. The mandatory detention provision of § 1225(b)(2) does not apply to noncitizens like Mr. Godinez Garcia who were apprehended inside the United States years after their initial entry. Such individuals are detained under § 1226(a) and are eligible for standard release considerations for humanitarian prosecutorial discretion/release on reasonable bond, as this Court has already found.

33. Respondent’s decision to detain Mr. Godinez Garcia under § 1225(b)(2)(A) unlawfully denies him access to a bond hearing in violation of the INA.

**COUNT II**

**Violation of the Bond Regulations, 8 C.F.R. §§ 236.1, 1236.1, and 1003.19**

34. Petitioner realleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

35. For decades, both Congress and the agencies charged with implementing the INA have recognized that individuals who were detained after entering without inspection are detained under § 1226(a) and eligible for bond, as reflected in implementing regulations at 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

36. Despite this clear regulatory framework, Respondent has unlawfully detained Mr. Godinez Garcia by misapplying § 1225(b)(2).

37. Because Petitioner's detention has been unaccompanied by the procedural protections that such a significant deprivation of liberty requires, including access to counsel prior and access to a bond hearing or consideration of parole release, his continued detention violates the INA, its implementing regulations, and the Due Process Clause of the Fifth Amendment.

### **COUNT III**

#### **Violation of the Fifth Amendment Due Process**

38. Petitioner realleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.

39. Under the Fifth Amendment of the Constitution, no person shall be deprived of their right to access to counsel nor of liberty without due process of law. Access to one's attorney without being asked by the government to enter into legal agreements pro se without hired counsel's knowledge or awareness and freedom from imprisonment by government custody are values which lie at the core of the liberty interests protected by the Due Process

Clause. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The protections of the Due Process Clause extend to all persons within the United States, regardless of immigration status. *Id.* at 693.

40. Respondent's detention of Mr. Godinez Garcia under § 1225(b)(2), without ensuring his access to duly hired counsel prior to Department requests for his signature on legally binding documents, without ensuring Department compliance with Court requests for their communication with his counsel to negotiate humanitarian release or parole eligibility, and without so much as the Department's assurance that repeat instances of rights violations will not recur in future, means he is held without the possibility of release on bond nor any meaningful custody redetermination in blatant and repeated violation of his legal rights to counsel and due process of law under the Fifth Amendment.

#### **PRAYER FOR RELIEF**

WHEREFORE, Petitioner Marvin Rocael Godinez Garcia, through counsel, requests that this Court grant the following relief:

1. Assume jurisdiction over this matter;
2. Order Respondent to show cause why the writ should not be granted within **three days**, pursuant to 28 U.S.C. § 2243;
3. Grant a writ of habeas corpus declaring that Petitioner detention is governed by INA § 236(a), 8 U.S.C. § 1226(a), and ordering Respondent to release him from custody under reasonable conditions of supervision so he may return to Virginia to care for his terminally ill partner and continue employment processes with his employer;
4. Expedite consideration of this action pursuant to 28 U.S.C. § 1657 because it is an action brought under chapter 153 (habeas corpus) of Title 28;

5. In the event the Court determines a genuine dispute of material fact exists regarding Petitioner's entitlement to habeas relief, schedule an evidentiary hearing pursuant to 28 U.S.C. § 2243;
6. Enter preliminary and permanent injunctive relief enjoining Respondent from further unlawful detention of Petitioner;
7. Declare that Petitioner's detention violates the INA;
8. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment;
9. Award reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412; and
10. Grant such further relief as this Court deems just and proper.

Dated: January 12, 2026

Respectfully submitted,

By: /s/ Bashir Ghazialam  
Bashir Ghazialam

And

/s/ Lauren O'Neal  
Lauren O'Neal, Pro Hac Vice

Attorneys for Petitioner

**VERIFICATION PURSUANT TO 28 U.S.C. 2242**

I, Lauren O’Neal, counsel for Petitioner hereby verify under penalty of perjury pursuant to 28 U.S.C. § 2242 that the factual allegations in this petition are true and correct to the best of my knowledge, information, and belief, based upon the records available and information provided by Petitioner.

Executed on this January 12, 2026, in San Diego, California.

Respectfully submitted,

/s/ Lauren O’Neal

Lauren O’Neal, Pro Hac Vice

Attorney for Petitioner