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

10 Jorge Antonio Oyuela Tercero,

CASE NO. 3:26-cv-00325-GPC-JLB

11 Petitioner-Plaintiff,

FILE NO. A 240-862-446

12 vs.

**PETITIONER'S TRAVERSE**

13 CHRISTOPHER J. LAROSE, Senior

14 Warden, Otay Mesa Detention Center;

15 PATRICK DIVVER, Field Office

16 Director, San Diego Office of Detention

17 and Removal, U.S. Immigration and

18 Customs Enforcement; TODD M.

19 LYONS, Acting Director, U.S.

20 Immigration and Customs Enforcement,

21 U.S. Department of Homeland Security;

22 and KRISTI NOEM, Secretary, U.S.

23 Department of Homeland Security,

24 Respondents-Defendants.

1 Petitioner Mr. Oyuela Tercero, by and through pro bono undersigned counsel,  
2 hereby submits his Traverse in support of his Writ of Habeas Corpus, and states as  
3 follows:

#### 4 I. INTRODUCTION

5 Respondents are unopposed to Petitioner's entitlement to a bond hearing  
6 pursuant to 8 U.S.C. 1226(a). Accordingly, the central issue before the Court,  
7 whether Petitioner is entitled to a bond hearing, has been resolved in Petitioner's  
8 favor. The only remaining question is the appropriate relief.

#### 9 II. PETITIONER IS ENTITLED TO A BOND HEARING

10 Petitioner is detained pursuant to 8 USC 1226(a). He was previously granted  
11 release on bond after the Immigration Court determined that he was neither a danger  
12 to the community nor a flight risk. Thereafter, Petitioner was re-detained despite no  
13 change in circumstances that would justify re-detention. Because detention under  
14 1226(a) is discretionary rather than mandatory, due process requires that Petitioner be  
15 afforded a meaningful bond hearing at which the government bears the burden of  
16 justifying continued detention. Respondents' non-opposition affirms that he is  
17 entitled to such a bond hearing.  
18

#### 19 III. IMMEDIATE RELEASE IS THE APPROPRIATE REMEDY

20 Here, immediate release is warranted, because Petitioner's continued detention  
21 is unlawful, arbitrary, and unsupported by any legitimate government interest.

22 First, Petitioner has already been found not to be a danger to the community  
23 and not a flight risk by the Immigration Court. He was released on bond pursuant to  
24 that determination. The government subsequently revoked that bond without any  
25 change in circumstances. Where the government detains a noncitizen under 8 U.S.C.  
26 1226(a) after a prior bond grant and absent changed circumstances, continued  
27 detention violates due process and exceeds statutory authority.  
28

1 Further, Respondents do not oppose Petitioner's entitlement to a bond hearing  
2 under 1226(a). Respondents' concession is dispositive as the unlawfulness of  
3 Petitioner's current detention. As Petitioner is presently detained without a valid bond  
4 redetermination supporting custody, his detention is unconstitutional right now, not  
5 merely prospectively. Habeas relief must therefore address the ongoing deprivation  
6 of liberty, and not simple order future process.

7 Ordering another bond hearing would be inadequate under these circumstances.  
8 Petitioner already previously prevailed at a bond hearing, posted his bond, and the  
9 government has offered no lawful basis to disregard that ruling. Requiring Petitioner  
10 to remain detained while awaiting a redundant hearing would perpetuate the type of  
11 constitutional violation that habeas relief protects against.

12 This court possesses broad equitable authority to order release where detention  
13 violates due process. Here, particularly given that Petitioner (1) was previously  
14 granted bond, (2) no change in circumstances exists; and (3) Respondents do not  
15 dispute bond eligibility, there is no justification for continued custody, even  
16 temporarily. Importantly, continued detention serves no regulatory purpose. Indeed,  
17 Respondents'

#### 18 IV. CONCLUSION

19 Petitioner respectfully requests that this Court grant his immediate release, or  
20 alternatively, order a bond hearing within ten (10) days of the Order in which  
21 Department of Homeland Security (DHS) bears the burden of establishing his  
22 continued detention.

23  
24 Dated: January 26, 2026,

Respectfully submitted,

//s// Mario Portugal

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MARIO PORTUGAL,  
Attorney for Petitioner  
Jorge Antonio Oyuela Tercero