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4

5 UNITED STATES DISTRICT COURT  
6 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

7 JOSE ROBERTO MENJIVAR  
8 LOPEZ,

Case No. '26 CV0554 CAB MMP

9 Petitioner,

VERIFIED PETITION FOR WRIT OF  
HABEAS CORPUS

10 v.

11 JEREMY CASEY, Warden of Imperial  
Regional Detention Facility; PATRICK  
12 DIVVER, Field Office Director, San  
Diego Field Office, Immigration and  
13 Customs Enforcement; TODD M.  
LYONS, Acting Director of United  
14 States Immigration and Customs  
Enforcement; KRISTI NOEM,  
15 Secretary of the United States  
Department of Homeland Security; and  
16 PAMELA BONDI, Attorney General  
of the United States,

17 Respondents.  
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1 **INTRODUCTION**

2 1. Petitioner Jose Roberto Menjivar Lopez is a 28-year-old citizen of El  
3 Salvador who has lived in the United States for nearly sixteen years. He entered the  
4 United States as a 13-year-old child fleeing gang violence in El Salvador.

5 2. In 2015, approximately five years after his entry, he was arrested by local  
6 police and turned over to immigration authorities. Immigration officials determined  
7 that he was not a flight risk or danger to the community and released him on his own  
8 recognizance under 8 U.S.C. section 1226.

9 3. For more than ten years thereafter, Petitioner complied with all conditions  
10 of his release, appeared for every immigration hearing and appointment, obtained  
11 employment authorization, graduated from high school, supported his now 8 year old  
12 U.S. citizen son, and became deeply integrated into his family and community.

13 4. On January 16, 2026, immigration officers arrested Petitioner at a  
14 checkpoint and detained him under 8 U.S.C. section 1225(b)(2), claiming that he is  
15 subject to mandatory detention without bond.

16 5. This detention is unlawful and Petitioner should be immediately released.  
17 First, section 1225(b)(2) does not apply to noncitizens arrested in the interior after  
18 prolonged residence in the United States; rather, such individuals are governed by  
19 section 1226(a). Section 1225 applies only to noncitizens actively seeking admission  
20 into the country, not to individuals like Petitioner who have been residing in the  
21 interior for nearly sixteen years. Petitioner's detention under section 1225(b)(2) is  
22 therefore contrary to law and he should be immediately released.

23 6. Second, Respondents violated Petitioner's Fifth Amendment right to due  
24 process by re-detaining him without a hearing after he had been living freely in the  
25 community for more than ten years. Because Petitioner's prior release reflected a  
26 determination that he was not a flight risk or danger to the community, and because  
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1 he complied with all release conditions for more than ten years, any change in his  
2 custody status should only be permitted *after* a hearing at which Respondents prove  
3 by clear and convincing evidence that circumstances have materially changed. The  
4 re-detention without such a hearing violates due process and requires immediate  
5 release.

6 7. In the alternative, should the Court determine that immediate release is not  
7 warranted, Petitioner is a member of the Bond Eligible Class certified in Maldonado  
8 Bautista v. Noem, No. 5:25-cv-01873-SSS-BFM, 2025 WL 3678485 (C.D. Cal. Dec.  
9 18, 2025), and is therefore entitled to an individualized custody determination under  
10 section 1226(a). The Court should order Respondents to provide Petitioner with a  
11 bond hearing before an Immigration Judge.

12 8. If the Court orders a bond hearing, Petitioner requests that the Court  
13 exercise its equitable authority to ensure that any favorable bond determination is not  
14 rendered futile by Respondents' invocation of the automatic stay provision at 8 C.F.R.  
15 section 1003.19(i)(2).

#### 16 JURISDICTION AND VENUE

17 9. This Court has jurisdiction over this matter pursuant to 28 U.S.C. section  
18 2241, which authorizes federal district courts to grant writs of habeas corpus to  
19 persons held in custody in violation of the Constitution or laws of the United States.

20 10. Venue is proper in the Southern District of California because Petitioner  
21 is detained at the Imperial Regional Detention Facility, located at 1572 Gateway  
22 Road, Calexico, California 92231, which is within this judicial district.

#### 23 PARTIES

24 11. Petitioner Jose Roberto Menjivar Lopez is a citizen of El Salvador who is  
25 detained at the Imperial Regional Detention Facility in Calexico, California.

26 12. Respondent Jeremy Casey is the Warden of the Imperial Regional  
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1 Detention Facility, has custody of Petitioner, and is sued in his official capacity.

2 13. Respondent Patrick Divver is the Field Office Director of the San Diego  
3 Field Office of U.S. Immigration and Customs Enforcement, is responsible for  
4 Petitioner's detention, and is sued in his official capacity.

5 14. Respondent Todd M. Lyons is the Acting Director of U.S. Immigration and  
6 Customs Enforcement, is responsible for the enforcement of immigration laws  
7 including Petitioner's detention, and is sued in his official capacity.

8 15. Respondent Kristi Noem is the Secretary of the U.S. Department of  
9 Homeland Security, is responsible for the administration and enforcement of the  
10 nation's immigration laws, and is sued in her official capacity.

11 16. Respondent Pamela Bondi is the Attorney General of the United States, is  
12 responsible for supervising the immigration courts and the Board of Immigration  
13 Appeals, and is sued in her official capacity.

14 **STATEMENT OF FACTS**

15 17. Petitioner is a 28 year old native and citizen of El Salvador. He was born  
16 on [REDACTED] in Canton San Francisco Del Monte, in the Department of Cabanas,  
17 El Salvador. (See Exhibit A, Birth Certificate of Jose Roberto Menjivar Lopez).

18 18. When Petitioner was two years old his parents moved to the United States,  
19 leaving him in the care of an uncle. When he was 9 years old he was sent to live with  
20 his grandparents in Canton Agua Zarca, also in the Department of Cabanas, El  
21 Salvador.

22 19. Both locations in El Salvador where Petitioner lived suffered from extreme  
23 poverty and violence. Canton Agua Zarca was dominated by the [REDACTED]

24 [REDACTED] A member of the [REDACTED] lived near Petitioner's  
25 home.

26 20. When Petitioner was 12, the [REDACTED] was arrested. After the  
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1 arrest, Petitioner witnessed a group of gang members confronting a neighbor about  
2 the arrest. Shortly thereafter, Petitioner saw the neighbor chased into his home by a  
3 group of gang members, who shot and killed his neighbor.

4 21. Petitioner told his parents in the United States about the killing, and they  
5 agreed that it was not safe for Petitioner to remain in El Salvador. Petitioner's family  
6 made arrangements for Petitioner to travel to the United States. He left El Salvador  
7 on his 13th birthday.

8 22. Petitioner entered the United States without inspection on or about July 5,  
9 2010, near El Paso, TX. He was not stopped or arrested by U.S. immigration  
10 authorities when he entered. (See Exhibit C, Notice to Appear (Form I-862); Exhibit  
11 B, Record of Deportable/Inadmissible Alien (Form I-213)).

12 23. Immediately after entering the United States, Petitioner went to live with  
13 his mother, [REDACTED] in Yuma, AZ. Petitioner also lived with his  
14 younger sisters, [REDACTED] born on [REDACTED] and [REDACTED]  
15 [REDACTED] born on [REDACTED] who are U.S. citizens. Petitioner's mother is now a  
16 U.S. lawful permanent resident. (See Exhibit F, Evidence of Family Ties to U.S.  
17 Citizens and Lawful Permanent Residents).

18 24. Upon arriving in the United States, Petitioner attended Crane Middle  
19 School and Cibola High School in Yuma, AZ. He earned his diploma and graduated  
20 in 2017. (See Exhibit G, High School Diploma).

21 25. Petitioner turned 18 on [REDACTED] 2015.

22 26. On June 13, 2015, Petitioner was seated in a parked car when he was  
23 approached by an officer of the Yuma Police Department. The police officer asked  
24 Petitioner for identification, but Petitioner did not have any. The police officer asked  
25 Petitioner his immigration status, and Petitioner admitted that he did not have lawful  
26 immigration status.

1 27. The police officer arrested Petitioner, telling him that he was going to take  
2 him to Border Patrol. Petitioner was never charged with committing a crime. (See  
3 Exhibit B, Record of Deportable/Inadmissible Alien (Form I-213)).

4 28. The police officer brought Petitioner to the Yuma, AZ Border Patrol  
5 Station and handed him over to U.S. Border Patrol. (See Exhibit B, Record of  
6 Deportable/Inadmissible Alien (Form I-213)).

7 29. On June 14, 2015 U.S. Border Patrol served Petitioner with a Notice to  
8 Appear, which charged him with being subject to removal pursuant to INA section  
9 212(a)(6)(A)(i) (8 U.S.C. section 1182(a)(6)(A)(i)) as "an alien present in the United  
10 States without being admitted or paroled, or who arrived in the United States at any  
11 time or place other than as designated by the Attorney General." (See Exhibit C,  
12 Notice to Appear (Form I-862)).

13 30. Also on June 14, 2015, U.S. Border Patrol served Petitioner with a Form  
14 I-286, Notice of Custody Determination, stating that Petitioner was detained  
15 "[p]ursuant to the authority contained in section 236 of the Immigration and  
16 Nationality Act". (See Exhibit D, Notice of Custody Determination (Form I-286)).

17 31. On June 16, 2015 an officer of U.S. Immigration and Customs  
18 Enforcement ("ICE") ordered Petitioner released on his own recognizance. The order  
19 states: "You have been arrested and placed in removal proceedings. In accordance  
20 with section 236 of the Immigration and Nationality Act ... you are being released on  
21 your own recognizance[.]" (See Exhibit E, Order of Release on Recognizance).


22 32. The Notice to Appear was filed with the Executive Office for Immigration  
23 Review on December 10, 2015, commencing removal proceedings. Petitioner's  
24 removal proceedings remain pending today. (See Exhibit C, Notice to Appear (Form  
25 I-862)).

26 33. Petitioner has applied for asylum in removal proceedings. His asylum  
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1 application remains pending today. (See Exhibit H, Proof of Filing of Form I-589,  
2 Application for Asylum).

3 34. Petitioner has been granted employment authorization by U.S. Citizenship  
4 and Immigration Services ("USCIS") and at the time of his recent ICE detention he  
5 was working legally in the United States. (See Exhibit I, Employment Authorization  
6 Document).

7 35. Petitioner has a California Class A Commercial Driver's License, and until  
8 his recent ICE detention he was employed as a truck driver for a transportation  
9 company in Salinas, CA, transporting produce between California and Arizona. (See  
10 Exhibit J, California Class A Commercial Driver's License; Exhibit K, Employment  
11 Verification Letter Written by Petitioner's Employer).

12 36. Petitioner has an 8 year old son,  who lives in  
13 Yuma, AZ. Petitioner's son is a U.S. citizen. Petitioner regularly provides financial  
14 support for his son and regularly spends time with his son. Petitioner's son depends  
15 on Petitioner for both emotional and financial support. (See Exhibit F, Evidence of  
16 Family Ties to U.S. Citizens and Lawful Permanent Residents).

17 37. Since being released from DHS custody in 2015, Petitioner has always  
18 complied with the conditions of his release. He has appeared as scheduled for every  
19 hearing in removal proceedings. He has appeared as scheduled for every appointment  
20 scheduled by ICE – at least 17 times over the past 10 years – and his release has  
21 always been renewed and extended under the same terms. (See Exhibit E, Order of  
22 Release on Recognizance).

23 38. Petitioner has never been charged with committing a crime in the United  
24 States or anywhere in the world.

25 39. On or about January 16, 2026 Petitioner was driving his truck when he was  
26 stopped at a check point set up by immigration officers. The officers asked Petitioner  
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1 about his immigration status and he showed them his employment authorization. The  
2 officers arrested Petitioner based on a claim that he was subject to mandatory  
3 detention under 8 U.S.C. 1225(b)(2).

4 40. Petitioner remains detained at the Imperial Regional Detention Facility at  
5 1572 Gateway Rd, Calexico, CA 92231.

#### 6 EXHAUSTION OF ADMINISTRATIVE REMEDIES

7 41. "There is no statutory requirement under § 2241 to exhaust direct appeals  
8 before filing a petition for habeas corpus." Beltran v. Noem, 2025 WL 3078837, at  
9 \*7 (S.D. Cal. Nov. 4, 2025). The exhaustion requirement may be excused when  
10 administrative remedies are inadequate or not efficacious, pursuit of administrative  
11 remedies would be a futile gesture, irreparable injury will result, or the administrative  
12 proceedings would be void. Hernandez v. Sessions, 872 F.3d 976, 988 (9th Cir.  
13 2017); Laing v. Ashcroft, 370 F.3d 994, 1001 (9th Cir. 2004). All of these  
14 circumstances are present here.

15 42. First, there exists no administrative mechanism to challenge the  
16 constitutionality of detention under section 1225(b)(2) or the re-detention without a  
17 hearing. The Board of Immigration Appeals lacks authority to declare statutes or  
18 regulations unconstitutional or to grant relief from facially invalid policies. See 8  
19 C.F.R. section 1003.1(d)(1).

20 43. Second, the Board of Immigration Appeals has held in Matter of Yajure  
21 Hurtado, 29 I&N Dec. 216, 228 (BIA 2025), that Immigration Judges lack  
22 jurisdiction to conduct bond hearings for noncitizens who are classified as applicants  
23 for admission under section 1225. The Board's decision holds that section 1225(b)(2)  
24 applies to all noncitizens who entered without inspection, regardless of how long they  
25 have lived in the United States. While Petitioner contends that this classification is  
26 incorrect and that he is properly subject to section 1226(a), the Board's decision  
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1 makes clear that further administrative appeals would be futile absent relief from this  
2 Court.

3 44. Third, even if this Court were to order a bond hearing and an Immigration  
4 Judge were to grant release, the administrative remedy would be illusory because  
5 Respondents possess unilateral authority under 8 C.F.R. section 1003.19(i)(2) to  
6 nullify any favorable bond determination through an automatic stay. See, e.g., Silva  
7 v. LaRose, 2025 WL 2770639, at \*8 (S.D. Cal. Sept. 29, 2025) (describing this power  
8 as "anomalous in our legal system" because it allows the losing party to unilaterally  
9 override a judicial decision). The regulation empowers DHS to immediately detain  
10 Petitioner, potentially for months, while the Board of Immigration Appeals decides  
11 an appeal. *Id.* Such invocation of the automatic stay would constitute a further  
12 violation of due process by allowing DHS to override a neutral arbiter's determination  
13 without any procedural safeguards. This structural defect in the administrative  
14 process justifies direct district court intervention to ensure that habeas relief, if  
15 granted, will be meaningful and not rendered illusory.

16 45. Fourth, this Court should assume jurisdiction over this matter because  
17 prolonged detention without any opportunity for review causes irreparable harm that  
18 cannot be remedied through subsequent administrative proceedings.

19 **CLAIMS FOR RELIEF**

20 **COUNT I**

21 **PETITIONER'S DETENTION UNDER 8 U.S.C. SECTION 1225**

22 **VIOLATES THE LAW**

23 46. Petitioner incorporates by reference all prior allegations as if fully set forth  
24 herein.

25 47. The statutory text of section 1225 demonstrates that it applies only to  
26 noncitizens who are actively seeking admission into the United States, not to  
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1 individuals arrested in the interior of the United States after they have been residing  
2 here.

3 48. The Supreme Court has distinguished between the detention of noncitizens  
4 seeking admission at the border and those already present in the country. Jennings v.  
5 Rodriguez, 583 U.S. 281, 289 (2018).

6 49. Section 1225 applies to "applicants for admission" who are "seeking  
7 admission" and subject to inspection at the border. Section 1226(a) governs detention  
8 of noncitizens arrested in the interior pending removal proceedings.

9 50. The statutory text of section 1225(b)(2)(A) requires that an "alien seeking  
10 admission is not clearly and beyond a doubt entitled to be admitted" before mandatory  
11 detention applies. The phrase "seeking admission" requires an affirmative act of  
12 applying for entry or status, not mere physical presence without lawful status.

13 51. Section 1225 refers to actual applications for admission submitted at a  
14 distinct point in time. See Torres v. Barr, 976 F.3d 918, 926 (9th Cir. 2020) (en banc)  
15 ("Given that an immigrant submits an application for admission at a distinct point in  
16 time, stretching the phrase at the time of application for admission to refer to a period  
17 of years would push the statutory text beyond its breaking point."); accord United  
18 States v. Gambino-Ruiz, 91 F.4th 981, 989 (9th Cir. 2024) (explaining that the court  
19 already "rejected the view that an alien remains in a perpetual state of applying for  
20 admission"). As the court in Amaya v. Noem explained, "Contrary to Hurtado, every  
21 noncitizen living in the United States without lawful status is not necessarily an  
22 applicant for admission." Amaya v. Noem, 2025 WL 3182998, at \*3 (S.D. Cal. Nov.  
23 13, 2025).

24 52. Multiple judges of this Court have held that noncitizens arrested in the  
25 interior after prolonged residence in the United States are not "seeking admission"  
26 within the meaning of section 1225(b)(2) and are instead subject to section 1226(a).

1 See, e.g., Amaya v. Noem, 2025 WL 3182998, at \*3 (S.D. Cal. Nov. 13, 2025)  
2 (Moskowitz, J.); Bautista-Santiago v. Noem, 25-cv-03209-DMS-DDL, at \*4 (S.D.  
3 Cal. Nov. 26, 2025) (Sabraw, J.); Beltran v. Noem, 2025 WL 3078837, at \*11-14  
4 (S.D. Cal. Nov. 4, 2025) (Lopez, J.); Castellanos Lopez v. Warden, 2025 WL  
5 3005346, at \*5-8 (S.D. Cal. Oct. 27, 2025) (Huie, J.); Esquivel-Ipina v. LaRose, 2025  
6 WL 2998361, at \*8 (S.D. Cal. Oct. 24, 2025) (Sammartino, J.); Martinez Lopez v.  
7 Noem, 2025 WL 3030457, at \*6-12 (S.D. Cal. Oct. 30, 2025) (Simmons, J.); Faizyan  
8 v. Casey, 2025 WL 3208844, at \*8-11 (S.D. Cal. Nov. 17, 2025) (Montenegro, J.).

9 53. Petitioner entered the United States without inspection on or about July 5,  
10 2010, when he was 13 years old. He was not apprehended upon arrival. He lived  
11 continuously in the United States for nearly five years before his first arrest in June  
12 2015. During that time, he attended middle school and high school in Yuma, Arizona,  
13 and lived with his mother and U.S. citizen sisters.

14 54. When Petitioner was first arrested in June 2015, immigration officials  
15 correctly determined that his detention was governed by section 236 of the  
16 Immigration and Nationality Act, 8 U.S.C. section 1226. (See Exhibit D, Notice of  
17 Custody Determination (Form I-286)). Officials determined that Petitioner was not  
18 a flight risk or danger to the community and released him on his own recognizance  
19 on June 16, 2015. (See Exhibit E, Order of Release on Recognizance).

20 55. From June 2015 until January 2026 – a period of more than ten years –  
21 Petitioner lived continuously in the United States under release conditions. During  
22 this period, he graduated from high school, obtained employment authorization from  
23 USCIS, worked as a commercial truck driver, provided financial and emotional  
24 support to his U.S. citizen son, and became fully integrated into his family and  
25 community.

26 56. When immigration officers arrested Petitioner on January 16, 2026, he was  
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1 not seeking admission to the United States. He was living and working in the interior  
2 of the country, more than fifteen years after his initial entry. He is not an applicant for  
3 admission within the meaning of section 1225.

4 57. The government's original custody determination in 2015 correctly  
5 identified section 1226 as the detention authority. Petitioner's circumstances have not  
6 changed in any way that would justify applying a different statutory framework. He  
7 remains subject to section 1226(a), not section 1225(b)(2).

8 **COUNT II**

9 **PETITIONER'S RE-DETENTION VIOLATED THE FIFTH AMENDMENT**

10 58. Petitioner incorporates by reference all prior allegations as if fully set forth  
11 herein.

12 59. Petitioner possesses a protected liberty interest in remaining free from  
13 detention. The Supreme Court has held that "freedom from imprisonment – from  
14 government custody, detention, or other forms of physical restraint – lies at the heart  
15 of the liberty that [the Due Process] Clause protects." Zadvydas v. Davis, 533 U.S.  
16 678, 690 (2001).

17 60. When the government releases a noncitizen from custody, it creates an  
18 implicit promise that the noncitizen's liberty will be revoked only if the noncitizen  
19 fails to comply with release conditions or circumstances materially change. Morrissey  
20 v. Brewer, 408 U.S. 471, 482 (1972) (finding an "implicit promise that parole will be  
21 revoked only if [an individual] fails to live up to the parole conditions").

22 61. A noncitizen who has been living in the community, complying with  
23 release conditions, and establishing community ties has a legitimate expectation of  
24 continued liberty that the government cannot revoke without due process. See Ortega  
25 v. Bonnar, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019) ("Just as people on preparole,  
26 parole, and probation status have a liberty interest, so too does [a noncitizen released  
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1 from immigration detention] have a liberty interest in remaining out of custody on  
2 bond.").

3 62. Petitioner has a substantial private interest in remaining free from  
4 detention because he has lived in the United States for more than fifteen years, has  
5 been released from custody for more than ten years, has been granted employment  
6 authorization, supports his U.S. citizen son, and has deep family and community ties.  
7 Judges of this Court have recognized that noncitizens released from custody possess  
8 a significant liberty interest in remaining free. See, e.g., Faizyan v. Casey, 2025 WL  
9 3208844, at \*12 (S.D. Cal. Nov. 17, 2025) (Montenegro, J.); Gonzalez Salazar v.  
10 Casey, 2025 WL 3063629, at \*7 (S.D. Cal. Nov. 3, 2025) (Sammartino, J.); Noori v.  
11 LaRose, 2025 WL 2800149, at \*18 (S.D. Cal. Oct. 1, 2025) (Curiel, J.); Sanchez v.  
12 LaRose, 2025 WL 2770629, at \*5 (S.D. Cal. Sept. 26, 2025) (Simmons, J.); Silva v.  
13 LaRose, 2025 WL 2770639, at \*6 (S.D. Cal. Sept. 29, 2025) (Simmons, J.); Sun v.  
14 LaRose, 26-cv-0193-GPC-JLB, at \*8 (S.D. Cal. Jan. 21, 2026) (Curiel, J.).

15 63. To determine what process is due, the Court must evaluate the three-part  
16 test set forth in Mathews v. Eldridge, 424 U.S. 319, 334-335 (1976). Under Mathews,  
17 courts consider: (1) the private interest affected by government action; (2) the risk of  
18 erroneous deprivation of that interest through the procedures used and the value of  
19 additional or substitute procedural safeguards; and (3) the government's interest,  
20 including the fiscal and administrative burdens that additional procedures would  
21 entail.

22 64. The first Mathews factor – Petitioner's substantial private interest in  
23 remaining free – weighs heavily in his favor. Detention disrupts employment,  
24 separates families, and imposes significant hardship. Petitioner's release from custody  
25 on June 16, 2015 reflected a determination by the government that he was neither a  
26 flight risk nor a danger to the community. During the more than ten years he lived  
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1 freely in the community, Petitioner justifiably relied on this determination by securing  
2 lawful employment, supporting his U.S. citizen son, and developing deep family ties.

3 65. The second Mathews factor – the risk of erroneous deprivation and the  
4 value of additional procedural safeguards – weighs heavily in favor of requiring a  
5 hearing before re-detention. Without a hearing before a neutral decisionmaker, there  
6 is a substantial risk that noncitizens will be erroneously detained based on outdated  
7 information or without consideration of changed circumstances. See, e.g., Gonzalez  
8 Salazar v. Casey, 2025 WL 3063629, at \*8-9 (S.D. Cal. Nov. 3, 2025) (Sammartino,  
9 J.) (holding that revoking a noncitizen's release without a hearing creates a high risk  
10 of erroneous deprivation).

11 66. When Petitioner was released in 2015, the government determined that he  
12 did not pose a flight risk or danger to the community. Petitioner complied with all  
13 conditions of his release for more than ten years. He appeared for every scheduled  
14 hearing and appointment. His order of release includes a log of appointments where  
15 he reported as required by immigration authorities at least 17 times and his order of  
16 release was consistently renewed and extended. (See Exhibit E, Order of Release on  
17 Recognizance). He has never been charged with or convicted of any crime. The  
18 government has not articulated any change in Petitioner's circumstances that would  
19 justify re-detention. A hearing before a neutral decisionmaker would significantly  
20 reduce the risk of erroneous deprivation by allowing Petitioner to present evidence  
21 of his continued compliance, community ties, and lack of flight risk or danger.

22 67. The deprivation of Petitioner's liberty interest is further exacerbated by the  
23 risk that, even if this Court orders a bond hearing and an Immigration Judge  
24 determines that release is warranted, DHS retains the unilateral power to override that  
25 determination through the automatic stay regulation at 8 C.F.R. section 1003.19(i)(2).  
26 See, e.g., Silva v. LaRose, 2025 WL 2770639, at \*9 (S.D. Cal. Sept. 29, 2025)

1 (explaining that the regulation creates a "substantial risk of erroneous and arbitrary  
2 confinement" because it contains "no identifiable standard" and allows DHS to  
3 override an Immigration Judge's release order based solely on its own discretion). A  
4 bond hearing cannot satisfy due process requirements if the government prosecutor  
5 retains the authority to unilaterally suspend a neutral arbiter's release determination.  
6 The existence of this regulation compounds the due process violation by rendering  
7 any administrative remedy potentially illusory.

8 68. The third Mathews factor – the government's interest – does not outweigh  
9 Petitioner's liberty interest. The government's legitimate interests in ensuring  
10 appearance for removal proceedings and protecting public safety can be adequately  
11 protected through a bond hearing at which the government can present evidence of  
12 flight risk or danger. Bond hearings are routine procedures that do not impose  
13 significant administrative burdens on the government.

14 69. The government re-detained Petitioner on January 16, 2026 without  
15 providing him any opportunity to be heard before a neutral decisionmaker. The  
16 government did not prove by clear and convincing evidence that re-detention was  
17 necessary to prevent flight or danger to the community. See Singh v. Holder, 638 F.3d  
18 1196, 1203 (9th Cir. 2011) (holding that the government must prove by clear and  
19 convincing evidence that detention is justified).

20 70. Because all three Mathews factors weigh in favor of requiring a  
21 pre-deprivation hearing, the government violated the Fifth Amendment's Due Process  
22 Clause when it re-detained Petitioner without first providing him an opportunity to  
23 be heard before a neutral decisionmaker.

24 **COUNT III**

25 **PETITIONER IS A MEMBER OF THE MALDONADO BAUTISTA BOND**  
26 **ELIGIBLE CLASS**

1 71. Petitioner incorporates by reference all prior allegations as if fully set forth  
2 herein.

3 72. As demonstrated in Counts I and II, Petitioner's detention under section  
4 1225(b)(2) is contrary to law and violates the Fifth Amendment's guarantee of due  
5 process. His re-detention without a pre-deprivation hearing showing materially  
6 changed circumstances established by clear and convincing evidence is unlawful.  
7 Petitioner should be immediately released from custody without the need for a bond  
8 hearing before an Immigration Judge.

9 73. In the alternative, should the Court decline to order immediate release, the  
10 Court should order Respondents to provide Petitioner with an individualized bond  
11 hearing under section 1226(a) because Petitioner is a member of the Bond Eligible  
12 Class certified in Maldonado Bautista v. Noem, No. 5:25-cv-01873-SSS-BFM, 2025  
13 WL 3678485 (C.D. Cal. Dec. 18, 2025).

14 74. On December 18, 2025, the United States District Court for the Central  
15 District of California issued a final judgment in Maldonado Bautista v. Noem,  
16 certifying a nationwide class and holding that the Department of Homeland Security's  
17 policy of detaining noncitizens under section 1225 based on interior arrests violates  
18 the Immigration and Nationality Act. Id.

19 75. The court certified the Bond Eligible Class, defined as: "All noncitizens  
20 in the United States without lawful status who (1) have entered or will enter the  
21 United States without inspection; (2) were not or will not be apprehended upon  
22 arrival; and (3) are not or will not be subject to detention under 8 U.S.C. section  
23 1226(c), section 1225(b)(1), or section 1231 at the time the Department of Homeland  
24 Security makes an initial custody determination." Maldonado Bautista, 2025 WL  
25 3678485, at \*51.

26 76. Petitioner is a member of the Bond Eligible Class. He entered the United  
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1 States without inspection on July 5, 2010. He was not apprehended upon arrival. He  
2 is not subject to detention under section 1226(c) because he has never been convicted  
3 of any crime specified in that section. He is not subject to detention under section  
4 1225(b)(1) because he was not subjected to expedited removal proceedings. He is not  
5 subject to detention under section 1231 because he does not have a final order of  
6 removal.

7 77. The Maldonado Bautista court held that DHS's interpretation of section  
8 1225, which treats all noncitizens arrested in the interior as applicants for admission  
9 subject to mandatory detention, is contrary to the unambiguous text of the statute and  
10 therefore violates the Administrative Procedure Act. *Id.* at \*35.

11 78. For members of the Bond Eligible Class, detention under section 1225 is  
12 unlawful and they are entitled to bond hearings under section 1226(a). Petitioner's  
13 detention must be governed by section 1226(a), which provides for individualized  
14 custody determinations.

15 79. Judges of this Court have recognized the binding effect of the Maldonado  
16 Bautista class judgment. See, e.g., Ruiz Estrada v. Divver, No. 25-CV-3801, at \*2  
17 (S.D. Cal. Jan. 9, 2026) (Sammartino, J.); Chavez v. Noem, No.  
18 3:25-cv-02325-CAB-SBC (S.D. Cal. Jan. 15, 2026) (Bencivengo, J.).

19 80. As a member of the Bond Eligible Class, Petitioner is entitled to the relief  
20 provided by the Maldonado Bautista judgment: a determination that his detention is  
21 governed by section 1226(a), not section 1225(b)(2), and an individualized custody  
22 determination with the possibility of release on bond.

**PRAYER FOR RELIEF**

WHEREFORE, Petitioner respectfully requests that this Court:

1. Declare that Petitioner’s detention under 8 U.S.C. § 1225(b)(2) is unlawful;
2. Declare that Respondents violated the Due Process Clause of the Fifth Amendment by re-detaining Petitioner, who had been released on recognizance for over ten years, without providing him notice, a pre-deprivation hearing, or a finding of changed circumstances before a neutral decisionmaker;
3. Issue a Writ of Habeas Corpus ordering Respondents to IMMEDIATELY RELEASE Petitioner from custody under the same conditions of release previously granted to him, or under reasonable conditions of supervision;
4. Permanently Enjoin Respondents from re-detaining Petitioner absent a showing of materially changed circumstances established by clear and convincing evidence at a pre-deprivation hearing that satisfies the requirements of Due Process;
5. In the Alternative, should the Court decline to order immediate release:
  - a. Find that Petitioner is a member of the "Bond Eligible Class" certified in Maldonado Bautista v. Noem, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. Dec. 18, 2025), and is therefore entitled to an individualized custody determination under 8 U.S.C. § 1226(a);
  - b. Order Respondents to provide Petitioner with an individualized bond hearing before an Immigration Judge pursuant to 8 U.S.C. § 1226(a) within seven (7) days of this Court’s order, at which the government bears the burden of proving by clear and convincing evidence that Petitioner is a flight risk or danger to the community; and
  - c. Order that, should the Immigration Judge grant bond, Respondents are

1 enjoined from invoking the automatic stay provision of 8 C.F.R. §  
2 1003.19(i)(2) to stay Petitioner's release, and that the Immigration  
3 Judge's release order shall be effective immediately upon Petitioner's  
4 posting of bond;

- 5 6. Award Petitioner reasonable costs and attorney's fees pursuant to the Equal  
6 Access to Justice Act (EAJA), 28 U.S.C. § 2412; and  
7 7. Grant such other and further relief as the Court deems just and proper.  
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9 Dated: January 28, 2026  
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11 Respectfully submitted,  
12 s/ Andrew M. Kaufman

13 ANDREW M. KAUFMAN

14 Attorney for Petitioner  
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1 **VERIFICATION**

2 I, Andrew M. Kaufman, am the attorney of record for Petitioner Jose Roberto  
3 Menjivar Lopez. I have read the foregoing Verified Petition for Writ of Habeas  
4 Corpus and know its contents. Based on my review of the case file, my  
5 communications with Petitioner, and my review of publicly available court records  
6 and legal authorities, I declare under penalty of perjury under the laws of the United  
7 States of America that the factual allegations set forth in the Petition are true and  
8 correct to the best of my knowledge, information, and belief.

9 I declare under penalty of perjury that the foregoing is true and correct.

10 Executed on January 28, 2026 at Walnut Creek, California.

11  
12 s/ Andrew M. Kaufman

13 ANDREW M. KAUFMAN  
14 Attorney for Petitioner

15 **EXHIBIT LIST**

- 16 **Exhibit A:** Birth Certificate of Jose Roberto Menjivar Lopez  
17 **Exhibit B:** Record of Deportable/Inadmissible Alien (Form I-213)  
18 **Exhibit C:** Notice to Appear (Form I-862)  
19 **Exhibit D:** Notice of Custody Determination (Form I-286)  
20 **Exhibit E:** Order of Release on Recognizance  
21 **Exhibit F:** Evidence of Family Ties to U.S. Citizens and Lawful Permanent  
22 Residents  
23 **Exhibit G:** High School Diploma  
24 **Exhibit H:** Proof of Filing of Form I-589, Application for Asylum  
25 **Exhibit I:** Employment Authorization Document  
26 **Exhibit J:** California Class A Commercial Driver's License  
27 **Exhibit K:** Employment Verification Letter Written by Petitioner's Employer