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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO

Luis Fernando RAX GOMEZ,
Petitioner,

v.

Pamela J. Bondi, Attorney General of the United States, Department of Justice;

Secretary of Homeland Security;

Todd Lyons, Senior Official Performing the Duties of the Director of U.S. Immigration and Customs Enforcement;

Daniel A. Brightman, Field Office Director of the San Diego Immigration and Customs Enforcement Office;

Jorge Velarde, Assistant Field Office Director of the Immigration and Customs Enforcement, Otay Mesa Detention Center;

Christopher J. LaRose; Senior Warden, Otay Mesa Detention Center;

Respondents.

Case No. '26CV1553 JO DEB

Agency No. [redacted]

PETITION FOR WRIT OF HABEAS CORPUS BY A PERSON IN FEDERAL CUSTODY UNDER 28 U.S.C. § 2241 AND ORDER TO SHOW CAUSE

INTRODUCTION

1. Petitioner, Luis Fernando Rax Gomez ([redacted]) (hereinafter "Petitioner" or "Mr. Rax Gomez"), a 33-year-old Guatemalan national, is at this moment detained at the Otay Mesa Detention Center, in violation of his due process rights. Exh. A, Declaration of Attorney Cabrera ("Cabrera Dec.").

2. Mr. Rax Gomez has one single entry to the United States. In 2015, he crossed the U.S.-Mexico border without inspection, admission, or apprehension by U.S. immigration authorities. *Id.*; *see also* Exh. B, Notice to Appear ("NTA"). He has remained living in the United States since. Exh. A, Cabrera Dec. He has no criminal record or any aggravating circumstance that should prevent his eligibility for an immigration judge to conduct a bond hearing, according to the Immigration and Nationality Act ("INA"). *Id.* In fact, Mr. Rax Gomez was denied the opportunity for a bond hearing on March 6, 2026, when represented by previous counsel because the immigration judge found no jurisdiction under *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). *Id.*

3. On November 20, 2025, the district court granted partial summary judgment on behalf of individual plaintiffs and on November 25, 2025, certified a nationwide class and extended declaratory judgment to the certified class. *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3289861, at *11 (C.D. Cal. Nov. 20, 2025) (order granting partial summary

judgment to named Plaintiffs-Petitioners); *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025) (order certifying Plaintiffs-Petitioners' proposed nationwide Bond Eligible Class, incorporating and extending declaratory judgment from Order Granting Petitioners' Motion for Partial Summary Judgment) (hereinafter generally "*Maldonado Bautista*"). The declaratory judgment held that the Bond Denial Class members are detained under 8 U.S.C. § 1226(a), and thus may not be denied consideration for release on bond under § 1225(b)(2)(A). *Maldonado Bautista*, 2025 WL 3289861, at *11.

4. On December 18, 2025, the district court issued a final order in the matter. *Lazaro Maldonado Bautista et al. v. Santacruz*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. Dec. 18, 2025).

5. Petitioner, Mr. Rax Gomez, is a member of the Bond Eligible Class, as he:

   a. does not have lawful status in the United States and is currently detained at the Otay Mesa Detention Center. He was apprehended by immigration authorities on or about January 16, 2025;

   b. entered the United States without inspection over 33 years ago and was not apprehended upon arrival, *cf. id.*; and

   c. is not detained under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231.

6. Contrary to law, the Executive Office for Immigration Review ("EOIR"), and its sub-agency the immigration court, and supported by the Department of Homeland Security's legal counsel, has continued to blatantly refuse to find jurisdiction over bond proceedings for persons similarly situated as Petitioner, citing to *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), and completely disregarding the final judgement in *Lazaro Maldonado Bautista et al. v. Santacruz*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. Dec. 18, 2025).

7. On February 18, 2026, the Honorable Sunshine S. Sykes granted the petitioners' motion to enforce the judgment given the EOIR's blatant disregard to the final order issued on December 18, 2025. *Lazaro Maldonado Bautista v. Ernesto Santacruz Jr*, 5:25-cv-01873, (C.D. Cal. Feb. 18, 2026).

8. Mr. Rax Gomez did receive help from a nonprofit organization to file a habeas petition, seeking an order to require an immigration judge find jurisdiction to hold a bond hearing as he is a part of the Bond Eligible Class. That petition was filed on February 11, 2026 (Case No. 3:26-cv-00871-RSH-BLM). The petition was dismissed on February 19, 2026, presumably because of the aforementioned decision to enforce the December 18, 2026 order. From approximately February 18, 2026, until March 6, 2026, most immigration judges found jurisdiction for a bond hearing for immigrant detainees similarly situated to Petitioner under the nation-wide class in *Maldonado Bautista*.

9. On March 6, 2026, the U.S. Court of Appeals for the Ninth Circuit ("Ninth Circuit") granted a stay on the final decision in *Maldonado Bautista*, temporarily halting the enforcement of *Maldonado Bautista* outside of the Central District of California until further briefing on the motion is finalized. *Maldonado Bautista v. DHS*, No. 26-1044 (9th Cir. Mar. 6, 2026).

10. Therefore, Petitioner files this petition. Petitioner asks this Court to find that his continued detention is unlawful without an opportunity for a bond hearing given Petitioner is entitled to consideration for release on bond under 8 U.S.C. § 1226(a); that he may not be transferred during the pendency of this petition; and that this court make an order to show cause. Petitioner prefers not to file a temporary restraining order given the clear legal precedent in this case substantiating Petitioner's claims, and would instead request Respondents be required to provide a response within three days.

JURISDICTION

11. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq*.

12. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).

13. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et.*

seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq*., and the All Writs Act, 28 U.S.C. § 1651.

14. The provisions in 8 U.S.C. §§ 1252(g) and 1252(b)(9) do not strip this Court of jurisdiction. Petitioner is not contesting the commencement or adjudication of removal proceedings against him, nor is he raising an issue with respect to the execution of removal. Petitioner does challenge his classification under Section 1225(b)(2) instead of Section 1226(a) and the Board of Immigration Appeals' ("BIA") decision that Immigration Judges lack authority to provide a bond under Section 1225(b)(2). While the detention of Petitioner is pursuant to 8 U.S.C. § 1225(b)(2), the petition is independent of the removal proceedings and all questions related to the commencement of removal proceedings or any part of the removal process. "[C]laims that are independent of or collateral to the removal process do not fall within the scope of § 1252(b)(9)." *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1032 (9th Cir. 2016). Additionally, Section 1252(g) "does not prohibit challenges to unlawful practices merely because they are in some fashion connected to removal orders." *Ibarra-Perez v. United States*, 154 F.4th 989, 997 (9th Cir. 2025). Thus, this Court is not stripped of jurisdiction by Sections 1252(g) and 1252(b)(9).

VENUE

15. Venue is proper because Petitioner is detained at the Otay Mesa Detention Center

in the County of San Diego, which is within the jurisdiction of this District. Further, a substantial part of the events or omissions giving rise to his claims occurred in this District (Petitioner was arrested at Camp Pedleton, California) and no real property is involved in this action. 28 U.S.C. § 1391(e).

REQUIREMENTS OF 28 U.S.C. § 2243

16. The Court must grant the petition for writ of habeas corpus 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.* (emphasis added).

17. 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) (emphasis added).

PARTIES

18. Petitioner is a Guatemalan national who is in custody at the Otay Mesa Detention Center located at 7488 Calzada De La Fuente, San Diego, CA 92154. When at liberty, he and his family reside in Van Nuys, California. He is in the custody, and under the direct control, of Respondents and their agents.

19. Respondent Christopher J. LaRose is sued in his official capacity as the Senior Warden, Otay Mesa Detention Center. Respondent LaRose is the direct physical custodian of Petitioner and has direct authority to release him.

20. Respondent Jorge Velarde is sued in his official capacity as Assistant Field Office Director of the ICE at the Otay Mesa Detention Center. Respondent Velarde is a legal custodian of Petitioner and has direct authority to release him.

21. Respondent Daniel A. Brightman is sued in his official capacity as the Field Office Director of the San Diego ICE Office. Respondent Brightman is a legal custodian of Petitioner and has authority to release him.

22. Respondent Todd Lyons, is sued in his official capacity as the Senior Official Performing the Duties of the Director ICE. Respondent Lyons is the legal custodian of Petitioner.

23. Respondent Secretary[1] of U.S. Department of Homeland Security ("DHS") is sued in their official capacity as the Secretary of the DHS. In this capacity, Respondent Secretary is responsible for the implementation and enforcement of

[1] According to the federal rules, a U.S. government official may be named by official title instead of the official's name. Fed. R. Civ. P. 17(d). Secretary Kristi Noem's termination as Department of Homeland Security ("DHS") Secretary was announced on March 5, 2026 in a social media post by President Donald Trump. In the post, the President also announced that her replacement will take over "effective March 31, 2026." Donald J. Trump, Truth Social, March 5, 2026, found at: https://truthsocial.com/@realDonaldTrump/posts/116178030946996760. It is unclear if that means that Ms. Noem is still the Secretary of Homeland Security until March 31st, but counsel cannot locate an announcement of an Acting Secretary.

the Immigration and Nationality Act, and oversees U.S. Immigration and Customs Enforcement, the component agency responsible for Petitioner's detention and custody. Respondent Secretary is a legal custodian of Petitioner.

24. Respondent Pamela Bondi is sued in her official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice ("DOJ"). In that capacity, she has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review ("EOIR"), which administers the immigration courts and the Board of Immigration Appeals. Respondent Bondi is a legal custodian of Petitioner.

STATEMENT OF FACTS

25. Petitioner, Mr. Rax Gomez, a 33-year-old Guatemalan national, who has lived in the United States since his initial and only entry to the United States in 2015, where he entered the United States at an undesignated location at or near McAllen, Texas, without inspection or admission. Exh A, Cabrera Dec.

26. Mr. Rax Gomez is a loving husband and father. He has 4 children with his longtime partner and wife. *Id.* In 2017, his wife and then only daughter were permitted entry to the United States when they presented themselves at the U.S.-Mexico border and requested asylum. *Id.* Since, he and his wife have had three children in the United States, including twins who are age seven (7) and a two (2) year old. Mr. Rax Gomez is the breadwinner for his family. *Id.*

27. Mr. Rax Gomez has a clean criminal record. He has suffered no criminal arrests or convictions since his over 11 years residing in the United States. *Id.*

28. Mr. Rax Gomez has proven to be a valuable member of the U.S. community. He has cooperated with law enforcement to apprehend, arrest, and investigate a violent criminal related to an incident in 2016. *Id.* Accordingly, Mr. Rax Gomez has a pending U visa application since July 27, 2020, and has corresponding deferred action and lawful employment.

29. Mr. Rax Gomez's immigration proceedings were initiated when he was arrested on Christmas Eve 2025 after he and his family went to spend the holiday with family who live on the U.S. Marine base at Camp Pendleton, California. Upon their approach to the base, military personnel contacted Immigration and Customs Enforcement ("ICE"), who arrested and detained the entire family. ICE released Mr. Rax Gomez's wife and children and took Mr. Rax Gomez to the Otay Mesa Detention Center, where he remains today.

30. After apprehending Mr. Rax Gomez on or about December 25, 2025, the DHS placed him in removal proceedings pursuant to 8 U.S.C. § 1229a. DHS has charged Petitioner as being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i), as someone who entered the United States without inspection and is present without admission. Exh. B, Notice to Appear.

31. Mr. Rax Gomez filed a habeas petition with the help of a nonprofit organization, but that petition was dismissed for unknown reasons but appear to be related to the judgment to enforce *Maldonado Bautista* on February 18, 2026, because the petition was dismissed on February 19, 2026. The dismissal may also be because Petitioner obtained new counsel, attorney Shant Jaburian ("Attorney Jaburian").

32. On or about February 18, 2026, Attorney Jaburian filed a motion for a bond hearing with the Otay Mesa Immigration Court on behalf of Mr. Rax Gomez. The bond hearing took place on March 6, 2026. The immigration judge declined to find jurisdiction, citing the Ninth Circuit stay of enforcement of *Maldonado Bautista* issued that same day.

33. Mr. Rax Gomez is a Bond Eligible Class member to the class outlined in *Maldonado Bautista.* Moreover, as fully discussed therein, he is detained under 8 U.S.C. § 1226(a) and eligible for bond.

34. Therefore, Mr. Rax Gomez requests this court issue a habeas order requiring a lawful bond hearing before a neutral arbiter be held for Mr. Rax Gomez so that his unlawful detention does not continue.

CLAIM FOR RELIEF
Violation of the INA

35. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

36. As a member of the Bond Eligible Class, Petitioner is entitled to consideration for release on bond under 8 U.S.C. § 1226(a). While a stay is in place precluding enforcement of class membership presently, the legal framework supporting Mr. Rax Gomez's eligibility for bond under 8 U.S.C. § 1226(a) remain.

37. The final order in *Maldonado Bautista* holds that Respondents violate the INA in applying the mandatory detention statute at § 1225(b)(2) to class members. A multitude of cases have concluded the same, that 8 U.S.C. § 1226(a) is the appropriate standard for bond in Petitioner's circumstance and that applying Section 1225 "(1) disregards the plain meaning of section 1225(b)(2)(A); (2) disregards the relationship between sections 1225 and 1226; (3) would render a recent amendment to section 1226(c) superfluous; and (4) is inconsistent with decades of prior statutory interpretation and practice." *Lepe v. Andrews*, 801 F. Supp. 3d 1104, 1112 (E.D. Cal. 2025) (citing cases).

38. By denying Petitioner a bond hearing under § 1226(a) and asserting that he is subject to mandatory detention under § 1225(b)(2), Respondents violate Petitioner's statutory rights under the INA.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

a. Assume jurisdiction over this matter;

b. Issue an order preventing Respondents from transferring Petitioner away from the Otay Mesa Detention Center;

c. Issue an order to show cause and require a response within three days from Respondents as to why this petition should not be granted, pursuant to 28 U.S.C. § 2243;

d. Issue a writ of habeas corpus requiring Respondents to release Petitioner unless they provide a bond hearing under 8 U.S.C. § 1226(a) within seven days and that the bond hearing must be before a neutral arbiter, and if the bond hearing is not neutral, Petitioner be released immediately;

e. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act (EAJA), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and

f. Grant any other and further relief that this Court deems just and proper.

Respectfully submitted,

Dated: March 12, 2026

/s/ Leah L. Chavarria
Leah L. Chavarria
Counsel for Counsel

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

I represent Petitioner, Luis Fernando Rax Gomez, and submit this verification on his behalf. I hereby verify under penalty of perjury under the laws of the United

States and the State of California that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 12th day of March, 2026.

/s/ *Leah L. Chavarria*
Leah L. Chavarria
Counsel for Petitioner

CERTIFICATE OF SERVICE

On March 12, 2026, pursuant to Fed. R. Civ. P. 65(b), Counsel sent a copy of this petition to the U.S. Department of Justice through email at the following email addresses:

- USACAS.Habeas2241@usdoj.gov

Dated: March 12, 2026

Respectfully submitted,

/s/ *Leah L. Chavarria*
Leah L. Chavarria
Counsel for Petitioner