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5 **UNITED STATES DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA
6 **SAN DIEGO**

7 Miguel Flores Trejo,
Petitioner,

Case No. '26CV2125 TWR JLB

Agency No. 

8 v.

9 Attorney General of the United States,
Department of Justice;

10 Markwayne Mullin, Secretary of
11 Homeland Security;

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

14 Patrick Divver, Field Office Director of
15 the San Diego Immigration and
Customs Enforcement Office;


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

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

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

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2 **INTRODUCTION**

3 1. Petitioner, Miguel Angel Flores Trejo () (hereinafter “Petitioner” or
4 “Mr. Flores Trejo”), a 42-year-old Mexican national, has been detained at the
5 Otay Mesa Detention Center, in violation of his due process rights, since his
6 placement in removal proceedings a second time on February 26, 2026. Ex. A,
7 Declaration of Attorney Cabrera, ¶ 9. He is a longtime client of our office. *Id.* at ¶

8 1.

9 2. This petition alleges Mr. Flores Trejo has been re-detained unjustly in violation of
10 his Constitutional right to liberty. Therefore, he requests this court make an order
11 to show cause; that he may not be transferred during the pendency of this petition;
12 and that he be released immediately upon the conclusion of the review of all
13 filings. Alternatively, we request an order declaring Petitioner to be in custody
14 pursuant to 8 U.S.C. § 1226(a) and requiring a bond hearing before a fair and
15 neutral arbiter.

16 3. Petitioner prefers not to file a temporary restraining order given the clear legal
17 precedent in this case substantiating Petitioner’s claims, and would instead request
18 Respondents be required to provide a response within three days or alternatively
19 timing pursuant to Chief Judge Order No. 144.

20 **JURISDICTION**

21 4. This action arises under the Constitution of the United States and the Immigration

1 and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*

2 5. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus),
3 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States
4 Constitution (Suspension Clause).

5 6. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et.*
6 *seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs
7 Act, 28 U.S.C. § 1651.

8 7. The provisions in 8 U.S.C. §§ 1252(g) and 1252(b)(9) do not strip this Court of
9 jurisdiction. Petitioner is not contesting the commencement or adjudication of
10 removal proceedings against him, nor is he raising an issue with respect to the
11 execution of removal. Petitioner does challenge his re-detention and his
12 classification under Section 1225(b)(2) instead of Section 1226(a) and the Board
13 of Immigration Appeals' ("BIA") decision that immigration judges lack authority
14 to provide a bond under Section 1225(b)(2). The petition is independent of the
15 removal proceedings and all questions related to the commencement of removal
16 proceedings or any part of the removal process. "[C]laims that are independent of
17 or collateral to the removal process do not fall within the scope of § 1252(b)(9)."
18 *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1032 (9th Cir. 2016). Additionally, Section
19 1252(g) "does not prohibit challenges to unlawful practices merely because they
20 are in some fashion connected to removal orders." *Ibarra-Perez v. United States*,

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1 154 F.4th 989, 997 (9th Cir. 2025). Thus, this Court is not stripped of jurisdiction
2 by Sections 1252(g) and 1252(b)(9).

3 **VENUE**

4 8. Venue is proper because Petitioner is detained at the Otay Mesa Detention Center
5 in the County of San Diego, which is within the jurisdiction of this District.
6 Further, a substantial part of the events or omissions giving rise to his claims
7 occurred in this District (Petitioner was arrested on his way to work in Escondido,
8 California) and no real property is involved in this action. 28 U.S.C. § 1391(e).
9 See Ex. A, ¶ 10.


10 **REQUIREMENTS OF 28 U.S.C. § 2243**

11 9. The Court must grant the petition for writ of habeas corpus or issue an order to
12 show cause (OSC) to the respondents “forthwith,” unless the petitioner is not
13 entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Court
14 must require respondents to file a return “within *three days* unless for good cause
15 additional time, not exceeding twenty days, is allowed.” *Id.* (emphasis added).
16 10. Courts have long recognized the significance of the habeas statute in protecting
17 individuals from unlawful detention. The Great Writ has been referred to as
18 “perhaps the most important writ known to the constitutional law of England,
19 affording as it does a *swift* and imperative remedy in all cases of illegal restraint or
20 confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

PARTIES

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Petitioner

11. Petitioner, Mr. Flores Trejo, is a Mexican 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 husband reside in  California. He is in the custody, and under the direct control, of Respondents and their agents.

Respondents

12. Respondent U.S. Attorney General¹ is sued in their 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, they have 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 U.S. Attorney General is a legal custodian of Petitioner.

13. Respondent Markwayne Mullin Secretary 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 the Immigration and Nationality Act, and oversees U.S.

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). Current U.S. Attorney General Pamela Bondi’s termination was announced on April 2, 2026.

1 Immigration and Customs Enforcement (“ICE”), the component agency
2 responsible for Petitioner’s detention and custody. Respondent Secretary is a legal
3 custodian of Petitioner.


4 14. Respondent Todd Lyons is sued in his official capacity as the Senior Official
5 Performing the Duties of the Director ICE. Respondent Lyons is the legal
6 custodian of Petitioner.

7 15. Respondent Patrick Divver is sued in his official capacity as the Field Office
8 Director of the San Diego ICE Office. Respondent Divver is a legal custodian of
9 Petitioner and has authority to release him.

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

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

16 **STATEMENT OF FACTS**

17 18. Petitioner, Mr. Flores Trejo, a 42-year-old Mexican national, who is a father to
18 four U.S. citizen children. His two adult U.S. citizen children live in Chicago,
19 Illinois. His 10 and 8 year old U.S. citizen children live with him and his partner
20 in  California. Ex. A, ¶ 5.

1 19. Mr. Flores Trejo's last entry to the United States was in April 2013 at or near El
2 Paso, Texas, without inspection, admission, or apprehension by U.S. immigration
3 authorities². *Id.* ¶ 4; *see also* Ex. B, Notices to Appear ("NTA")³. He has
4 remained living in the United States since without departure. Ex. A, ¶ 4.

5 20. ICE officers detained Mr. Flores Trejo and placed him in removal proceedings in
6 July 2020, following a detention only related to an argument with his partner. *Id.*
7 at ¶ 8.

8 21. Mr. Flores Trejo was found not to be subject to mandatory detention and was
9 released on a \$20,000 immigration bond in 2020. *Id.* ¶ 9. Mr. Flores Trejo does
10 have several misdemeanor convictions related to damage to property in 2007 and
11 driving during revocation/impoundment from 2011 and 2012. *Id.* ¶ 7. He has
12 complied with every order from the criminal courts. He also has an infraction for
13 marijuana possession in 2005. *Id.* *See* 8 U.S.C. 1226(b).

14 22. While in removal proceedings, he applied for protections under asylum and
15 related relief. Ex. A, ¶ 9. However, on September 14, 2022, an immigration judge
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18 _____
19 ² Mr. Flores Trejo's began living in the United States in 1999, when he was 15 years
old. *Id.*

20 ³ It's unclear why Mr. Flores Trejo's NTA indicates his last entry was on or about
21 February 11, 2015.

1 terminated⁴ his removal proceedings on an *unopposed* motion to terminate
2 proceedings because the NTA was defective. Ex. C, Order.

3 23. On October 6, 2022, Mr. Flores Trejo, with the help of counsel, applied for
4 asylum and related relief with the U.S. Citizenship and Immigration Services, an
5 agency housed under the Department of Homeland Security (“USCIS”), just like
6 ICE. Ex. A, ¶ 9.

7 24. Mr. Flores Trejo did not have any issues with law enforcement since his release
8 from immigration custody in 2020 and since the termination of his removal
9 proceedings and filing affirmative immigration relief applications, but ICE still
10 detained him while he was on his way to work on February 26, 2026. *Id.* at ¶ 10.

11 Mr. Flores Trejo showed the officers who stopped him that he had a pending
12 application with USCIS, but the officers still took him into custody and detained
13 him at the Otay Mesa Detention Center. *Id.*

14 25. DHS has charged Petitioner as being inadmissible under 8 U.S.C. §
15 1182(a)(6)(A)(i), as someone who entered the United States without inspection
16 and is present without admission. Ex. B.

17 26. Therefore, upon consideration of the legal bases below, Mr. Flores Trejo requests
18 this court issue a habeas order requiring he be immediately released from custody
19 because there is no basis for his re-detention or that he be provided a lawful bond

20 ⁴ Presumably, Mr. Flores Trejo’s \$20,000 bond was refunded when his removal
21 proceedings were terminated.

1 hearing before a fair, neutral, and open-minded arbiter so that his unlawful
2 detention does not continue.

3 **LEGAL FRAMEWORK**

4 27. The Immigration and Nationality Act (“INA”) prescribes three basic forms of
5 detention for the vast majority of noncitizens in removal proceedings conducted
6 pursuant to 8 U.S.C. § 1229a. The INA provides for mandatory detention of
7 noncitizens subjected to an expedited removal order imposed pursuant to 8 U.S.C.
8 § 1225(b)(1) and for certain other noncitizen applicants for admission to the U.S.
9 who are deemed not clearly entitled to be admitted. *See* 8 U.S.C. § 1225(b)(2).

10 28. DHS will allege Petitioner is ineligible for a bond hearing pursuant to *Yajure*
11 *Hurtado*, 29 I&N Dec. 216 (BIA 2025). Ex. A, ¶ 12. The DHS and EOIR now
12 consider him a mandatory detainee even though he was released on a \$20,000
13 bond in 2020. They consider him a mandatory detainee even though he never
14 violated the conditions of his previous bond, never missed a court hearing,
15 unopposed his motion to terminate removal proceedings in 2022, and knew he had
16 filed an application for asylum that has been pending since October 2022 when
17 they re-detained him.

18 29. Despite Respondents’ contention, Petitioner is detained pursuant to 8 U.S.C.
19 1226(a), which provides, in pertinent part, that

20 On a warrant issued by the Attorney General, a [noncitizen]
21 may be arrested and detained pending a decision on whether

1 the [noncitizen] is to be removed from the United States.
2 Except as provided in subsection (c) and pending such
3 decision, the Attorney General-- (1) may continue to detain the
4 arrested [noncitizen]; and (2) may release the [noncitizen] on
(A) bond of at least \$1,500 with security approved by, and
containing conditions prescribed by, the Attorney General; or
(B) conditional parole.

5 30. Section 1226(a) governs the detention of noncitizens “inside the United States”
6 and “present in the country.” *Jennings v. Rodriguez*, 583 U.S. 281, 288–89 (2018).

7 31. Section 1225(b)(2), in contrast, authorizes the detention of applicants for
8 admission who are “seeking admission” but “not clearly and beyond a doubt
9 entitled to be admitted.” Unlike section 1226(a), section 1225(b)(2) provides that
10 individuals who fall under its authority “shall be detained” during the pendency of
11 proceedings, though they too remain eligible for release through the parole
12 process. *Jennings*, 583 U.S. at 300 (holding that release on “parole” under 8
13 U.S.C. 1182(d)(5)(A) remains available even for people held under otherwise-
14 mandatory detention pursuant to section 1225(b)).

15 32. Petitioner was unquestionably detained in the interior of the United States
16 following the issuance of his second NTA issued five years after his initial NTA.
17 Ex. B; Ex. A, ¶ 8. Thus, he was not “seeking admission” at the time of his
18 redetention, so his detention is governed by section 1226(a). *See, e.g., Arias*
19 *Torres v. Bondi*, No. 25-cv-2457-BAS-MSB, 2025 WL 3214773 (S.D. Cal. Nov.
20 18, 2025); *Martinez Lopez v. LaRose*, No. 25-cv-2717-JES-AHG, 2025 WL

1 3030457 (S.D. Cal. Oct. 30, 2025); *Beltran v. Noem*, No. 25cv2650-LL-DEB, 2025
2 WL 3078837 (S.D. Cal. Nov. 4, 2025); *Garcia v. Noem*, 803 F. Supp. 3d 1064
3 (S.D. Cal. 2025); *Esquivel-Ipina v. LaRose*, No. 25-CV-2672 JLS (BLM), 2025
4 WL 2998361 (S.D. Cal. Oct. 24, 2025); *Lucas-Miguel v. LaRose*, No. 25-cv-3022-
5 RSH-JLB, 2025 WL 3251580 (S.D. Cal. Nov. 21, 2025); *Vasquez-Diaz v. LaRose*,
6 No. 25-cv-3038-TWR-JLB, ECF No. 6 (S.D. Cal. Nov. 13, 2025); *Cardoso v.*
7 *LaRose*, No. 25-cv-3043-BJC-VET, ECF No. 7 (S.D. Cal. Dec. 12, 2025);
8 *Maceda-Garcia v. Noem*, No. 25-cv-2968-JO-JLB, ECF No. 9 (S.D. Cal. Nov. 13,
9 2025); *A.S. v. LaRose*, No. 25-cv-2876-RBM-VET, ECF No. 9 (S.D. Cal. Nov.
10 19, 2025); *Prieto-Cordova v. LaRose*, No. 25-cv-2824-CAB-DDL, 2025 WL
11 3228953 (S.D. Cal. Nov. 19, 2025); *Lagarda-Vega v. Noem*, No. 25-cv-2970-
12 GPC-DDL, 2025 WL 3558931 (S.D. Cal. Dec. 11, 2025); *Nayyer v. LaRose*, No.
13 25-cv-3111-AGS-DDL, ECF No. 7 (S.D. Cal. Dec. 12, 2025); *Amaya v. Noem*,
14 No. 25cv2892-BTM-DEB, 2025 WL 3182998 (S.D. Cal. Nov. 13, 2025).

15 33. Immigration detention “has two regulatory goals: ensuring the appearance of
16 [noncitizens] at future immigration proceedings and preventing danger to the
17 community.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (internal citations
18 omitted); *see also* 8 U.S.C. 1226(a), (b); 8 C.F.R. 1236.1(c)(8).

19 34. Someone like Mr. Flores Trejo who was previously released from custody has
20 been deemed, through the mitigation of a bond, to be neither a flight risk nor a
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1 danger. 8 C.F.R. 1236.1(c)(8) (authorizing release of noncitizens under 1226(a) if
2 they “would not pose a danger to property or persons,” and are “likely to appear
3 for any future proceeding”); 8 C.F.R. 212.5(b) (authorizing parole from custody of
4 noncitizens deemed “neither a security risk nor a risk of absconding”).

5 35. In cases of individuals previously released by DHS, re-detention under section
6 1226(a) requires an individualized determination of a material change in
7 circumstances relating to flight risk or danger. *See Ortega*, 415 F.Supp.3d at 968
8 (“DHS re-arrests individuals only after a ‘material’ change in circumstances.”
9 (citing *Saravia*, 280 F.Supp.3d at 1197)); *see also Matter of Sugay*, 171 I&N Dec.
10 637, 640 (BIA 1981) (“[W]here a previous bond determination has been made by
11 an immigration judge, no change should be made by [DHS] absent a change of
12 circumstance.”).

13 36. The Constitution establishes due process rights for “all ‘persons’ within the
14 United States, including [noncitizens], whether their presence here is lawful,
15 unlawful, temporary, or permanent.” *Hernandez v. Sessions*, 872 F.3d 976, 990
16 (9th Cir. 2017) (quoting *Zadvydas v. Davis*, 533 U.S. 678 (2001)). These due
17 process rights are both substantive and procedural.

18 37. “The touchstone of due process is protection of the individual against arbitrary
19 action of government,” *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), including
20 “the exercise of power without any reasonable justification in the service of a
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1 legitimate government objective.” *Cnty. of Sacramento v. Lewis*, 523 U.S. 833,
2 846 (1998).

3 38. These protections extend to noncitizens facing detention, as “[i]n our society
4 liberty is the norm, and detention prior to trial or without trial is the carefully
5 limited exception.” *United States v. Salerno*, 481 U.S. 739, 755 (1987).
6 Accordingly, “[f]reedom from imprisonment—from government custody,
7 detention, or other forms of physical restraint—lies at the heart of the liberty that
8 [the Due Process] Clause protects.” *Zadvydas*, 533 U.S. at 690.

9 39. Substantive due process thus requires that all forms of civil detention—including
10 immigration detention—bear a “reasonable relation” to a non-punitive purpose.
11 *See Jackson v. Indiana*, 406 U.S. 715, 738 (1972). The Supreme Court has
12 recognized only two permissible non-punitive purposes for immigration detention:
13 ensuring a noncitizen’s appearance at immigration proceedings and preventing
14 danger to the community. *Zadvydas*, 533 U.S. at 690–92; *see also Demore v. Kim*,
15 538 U.S. 510, 519–20, 527–28, 31 (2003).

16 40. Generally, “the Constitution requires some kind of a hearing *before* the State
17 deprives a person of liberty or property.” *Zinerman v. Burch*, 494 U.S. 113, 127
18 (1990) (emphasis added). This is so even in cases where that freedom is lawfully
19 revocable. *See Hurd v. D.C., Gov’t*, 864 F.3d at 683 (citing *Young v. Harper*, 520
20 U.S. 143, 152 (1997) (re-detention after pre-parole conditional supervision

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1 requires pre-deprivation hearing)); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973)
2 (same, in probation context); *Morrissey v. Brewer*, 408 U.S. 471 (1972) (same, in
3 parole context).

4 41. After an initial release from custody on conditions, even a person paroled
5 following a conviction for a criminal offense for which they may lawfully have
6 remained incarcerated, has a protected liberty interest in that conditional release.
7 *Morrissey* at 408 U.S. at 482. As the Supreme Court recognized, “[t]he parolee
8 has relied on at least an implicit promise that parole will be revoked only if he
9 fails to live up to the parole conditions.” *Id.* “By whatever name, the liberty is
10 valuable and must be seen within the protection of the [Constitution].” *Id.*

11 42. This reasoning applies with equal if not greater force to people who were granted
12 bond from civil immigration detention and were apprehended before their removal
13 order became final, like Petitioner. Noncitizens living in the United States, like
14 Petitioner, have a protected liberty interest in their ongoing freedom from
15 confinement. *See Zadvydas*, 533 U.S. at 690. “Given the civil context [of
16 immigration detention], [the] liberty interest [of noncitizens released from
17 custody] is arguably greater than the interest of parolees in *Morrissey*.” *Ortega v.*
18 *Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019) (citing *Morrissey*, 408 U.S. at
19 487).

1 43. Moreover, even should Petitioner’s detention be deemed permissible, he remains
2 eligible for a bond hearing for the same reasons provided in *Maldonado Bautista*,
3 that Section 1226(a) governs the detention of noncitizens “inside the United
4 States” and “present in the country.” *Jennings v. Rodriguez*, 583 U.S. 281, 288–89
5 (2018).

6 **CLAIM FOR RELIEF**

7 **CLAIM ONE**

8 **Violation of the Fifth Amendment to the United States Constitution
(Substantive Due Process – Detention)**

9 44. Petitioner incorporates by reference the allegations of fact set forth in the
10 preceding paragraphs.

11 45. The Due Process Clause of the Fifth Amendment protects all “person[s]” from
12 deprivation of liberty “without due process of law.” U.S. Const. amend.
13 V. “Freedom from imprisonment—from government custody, detention, or other
14 forms of physical restraint—lies at the heart of the liberty that [the Due Process]
15 Clause protects.” *Zadvydas*, 533 U.S. at 690.

16 46. Immigration detention is constitutionally permissible only when it furthers the
17 government’s legitimate goals of ensuring the noncitizen’s appearance during
18 removal proceedings and preventing danger to the community. *See id.* When the
19 Government has previously decided to release a noncitizen and there is no
20 evidence in the record of any changed circumstance that might have caused the
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1 Government to reconsider its initial decision to release the noncitizen, courts
2 have found the Government's interest in re-detention is low. *Doe v. Chestnut*,
3 No. 1:25-cv-01372CDB (HC), 2025 WL 3295154, at *10 (E.D. Cal. Nov. 26,
4 2025) (citations omitted).

5 47. "[E]ven when ICE has the initial discretion to detain or release a noncitizen
6 pending removal proceedings, after that individual is released from custody she
7 has a protected liberty interest in remaining out of custody." *Pinchi v. Noem*, 792
8 F. Supp 3d 1025, 1032 (N.D. Cal. 2025) (citing *Romero v. Kaiser*, No. 22-cv-
9 02508, 2022 WL 1443250, at *2 (N.D. Cal. May 6, 2022); *Jorge M. F. v.*
10 *Wilkinson*, No. 21-cv-01434, 2021 WL 783561, at *2 (N.D. Cal. Mar. 1, 2021);
11 *Ortiz Vargas v. Jennings*, No. 20-cv-5785, 2020 WL 5074312, at *3 (N.D. Cal.
12 Aug. 23, 2020); *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019)).

13 48. Many courts in this district have joined a number of district courts to recognize
14 that noncitizens have a significant liberty interest in both "continued freedom
15 after release on own recognizance," *Alegria Palma v. Larose*, No. 25-cv-1942-
16 BJC-MMP, ECF No. 14, at *6 (S.D. Cal. Aug. 11, 2025) (emphasis added), and
17 in "freedom from imprisonment" after "the government grants a [noncitizen]
18 parole into the country," *Sanchez v. LaRose*, No. 25-CV-2396-JESMMP, 2025
19 WL 2770629, at *3 (S.D. Cal. Sept. 26, 2025) (emphasis added). *See also Prieto-*
20 *Cordova*, No. 25-cv-2824-CAB-DDL, 2025 WL 3228953 (S.D. Cal. Nov. 19,

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1 2025); *Faizyan v. Casey*, No. 25-cv-02884-RBM-JLB, 2025 WL 3208844 (S.D.
2 Cal. Nov. 17, 2025); *Ramazan M. v. Andrews*, No. 25-cv-01356-KES-SKO (HC),
3 2025 WL 3145562 (E.D. Cal. Nov. 20, 2025); *Gomez Vilela v. Robbins*, No. 25-
4 cv-01393-KES-HBK (HC), 2025 WL 3101334 (E.D. Cal. Nov. 6, 2025); *Pablo*
5 *Sequen v. Albarran*, No. 25-cv-06487-PCP, 2025 WL 2935630 (N.D. Cal. Oct.
6 15, 2025); *Hyppolite v. Noem*, No. 24-cv-4304 (NRM), 2025 WL 2829511 (E.D.
7 N.Y. Oct. 6, 2025); *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL
8 2691828 (W.D. Tex. Sept. 22, 2025); *Ramirez Tesara v. Wamsley*, No. 25-cv-
9 01723-MJPTLF, 2025 WL 2637663 (W.D. Wash. Sept. 12, 2025); *E.A. T.-B. v.*
10 *Wamsley*, No. C25-1192-KKE, 2025 WL 2402130 (W.D. Wash. Aug. 19, 2025).

11 49. Petitioner is not a flight risk or danger to the community, as evidenced by his
12 over six years at liberty without issue. Accordingly, Petitioner is being detained
13 in violation of the Due Process Clause of the Fifth Amendment.

14 CLAIM TWO

15 Violation of the Fifth Amendment to the United States Constitution (Procedural Due Process – Detention)

16 50. As part of the liberty protected by the Due Process Clause, Petitioner has a
17 weighty liberty interest in avoiding re-detention after his release. *See Young v.*
18 *Harper*, 520 U.S. 143, 146–47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781–
19 82 (1973); *Morrissey*, 408 U.S. at 482–83; *see also Ortega*, 415 F. Supp. 3d at
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1 969–70 (holding that a noncitizen has a protected liberty interest in remaining out
2 of custody following an IJ’s bond determination).

3 51. Accordingly, “[i]n the context of immigration detention, it is well-settled that
4 due process requires adequate procedural protections to ensure that the
5 government’s asserted justification for physical confinement outweighs the
6 individual’s constitutionally protected interest in avoiding physical
7 restraint.” *Hernandez*, 872 F.3d at 990 (cleaned up); *Zinermon*, 494 U.S. at 127
8 (Generally, “the Constitution requires some kind of a hearing *before* the State
9 deprives a person of liberty or property.”). In the immigration context, for such
10 hearings to comply with due process, the government must bear the burden to
11 demonstrate, by clear and convincing evidence, that the noncitizen poses a flight
12 risk or danger to the community. *See Singh v. Holder*, 638 F.3d 1196, 1203 (9th
13 Cir. 2011); *see also Martinez v. Clark*, 124 F.4th 775, 785, 786 (9th Cir. 2024).

14 52. Petitioner’s re-detention without a pre-deprivation hearing violated due
15 process. Over five years after his first bond hearing in 2020, Respondents re-
16 detained Petitioner with no notice, no explanation of the justification for his re-
17 detention, and no opportunity to contest his re-detention in front of a neutral
18 adjudicator before being taken into custody.

19 53. Petitioner has a profound personal interest in his liberty. *See Alvarenga Matute v.*
20 *Wofford*, 2025 WL 2996577, * 4 (E.D. Ca. Oct. 24, 2025) (confirming that

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1 noncitizen with an outstanding removal order had a protected liberty interest due
2 to his previous conditional release).

3 54. Prior to his re-detention in February of 2026, Petitioner had no notice of
4 Respondents' intention to re-detain him and no opportunity to contest that action.
5 Because the private interest in freedom from immigration detention is substantial,
6 due process requires the government to bear the burden of proving by clear and
7 convincing evidence that Petitioner is a flight risk or danger to the community
8 before re-detaining him. *See e.g., Rodriguez Diaz v. Kaiser*, 2025 WL 3011852,
9 *11 (N.D. Ca. Sep. 16, 2025).

10 55. The government has no legitimate interest in detaining Petitioner without a
11 hearing. *See e.g., Peters v. Wofford*, 2025 WL 2299801, *7 (E.D. Ca. Aug. 8,
12 2025) (finding that "the government's asserted interest is hinged on mere
13 speculation about [the noncitizen's] risk of flight or dangerousness" given that
14 noncitizen was complying with terms of his probation when detained); *Noori*,
15 2025 WL 2800149 at *11 ("Respondents did not provide Petitioner
16 individualized notice and reasoning prior to his arrest and detention on June 12,
17 2025 and have presented no legitimate reason for why those decisions were
18 made. Any governmental interest of efficient administration of immigration laws
19 . . . does not outweigh these first two factors."). Bond hearings are a routine part
20 of immigration court proceedings, imposing a minimal cost to the government.

21

1 57. As a member of the Bond Eligible Class, Petitioner is entitled to consideration
2 for release on bond under 8 U.S.C. § 1226(a). While a stay is in place precluding
3 enforcement of class membership presently, the legal framework supporting Mr.
4 Flores Trejo’s eligibility for bond under 8 U.S.C. § 1226(a) remain.

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

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

17 **PRAYER FOR RELIEF**

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

- 19 1) Assume jurisdiction over this matter;
- 20
- 21

- 1 2) Issue an order preventing Respondents from transferring Petitioner away from the
2 Otay Mesa Detention Center, the closest detention center to counsel's office;
- 3 3) Issue an order to show cause and require a response within three days from
4 Respondents as to why this petition should not be granted, pursuant to 28 U.S.C. §
5 2243;
- 6 4) Issue a writ of habeas corpus requiring Respondents to release Petitioner because
7 he is detained in violation of his due process rights, or that they must provide a
8 bond hearing under 8 U.S.C. § 1226(a) and that the bond hearing must be before a
9 fair, neutral, open-minded arbiter, and if the bond hearing is not fair and neutral,
10 Petitioner be released immediately;
- 11 5) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act
12 (EAJA), as amended, 28 U.S.C. § 2412, and on any other basis justified under law;
13 and
- 14 6) Grant any other and further relief that this Court deems just and proper.

15
16 Dated: April 3, 2026

Respectfully submitted,

17 /s/ Leah L. Chavarria
18 Leah L. Chavarria
19 Counsel for Petitioner
20
21

1 **LIST OF EXHIBITS**

2 EXHIBIT A: Declaration of Tessa Cabrera

3 EXHIBIT B: Notices to Appear

4 EXHIBIT C: Immigration Judge Order of Termination

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

6 I represent Petitioner, Miguel Angel Flores Trejo, and submit this verification
7 on his behalf. I hereby verify under penalty of perjury under the laws of the United
8 States and the State of California that the factual statements made in the foregoing
9 Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

10 Dated this 3rd day of April, 2026.

11 */s/ Leah L. Chavarria*
12 *Leah L. Chavarria*
13 *Counsel for Petitioner*