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

7 Argenis PALMA-TENANGO,
Petitioner,

Case No. '26CV2138 TWR SBC

8 v.

Agency No. 

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

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

10 Markwayne Mullin, Secretary of
11 Homeland Security;

12 Todd Lyons, Senior Official
Performing the Duties of the Director
13 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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INTRODUCTION

1. Petitioner, Argenis Palma-Tenango ( (hereinafter “Petitioner” or “Mr. Palma-Tenango”), a 43-year-old Mexican national, has been detained at the Otay Mesa Detention Center, in violation of his due process rights, since his placement in removal proceedings on February 23, 2026. Ex. A, Declaration of Attorney Cabrera (“Cabrera Dec.”), ¶ 4.
2. Mr. Palma-Tenango’s last entry to the United States was in February 2000 at or near San Ysidro, California, without inspection, admission, or apprehension by U.S. immigration authorities. *Id.* ¶ 4; *see also* Ex. B, Notice to Appear (“NTA”). He has remained living in the United States since without departure. Ex. A, ¶ 4. 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.* ¶ 7.
3. On November 20, 2025, a district court granted partial summary judgment on behalf of individuals similar to Petitioner who entered the United States without inspection and admission and are eligible for a bond hearing under longstanding reading of 8 U.S.C. § 1226(a) 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

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

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

13 5. Petitioner, Mr. Palma-Tenango, is a member of the Bond Eligible Class, as he:

- 14 a. does not have lawful status in the United States and is currently
15 detained at the Otay Mesa Detention Center. He was apprehended
16 by immigration authorities on or about February 23, 2026;
- 17 b. entered the United States without inspection over 26 years ago and
18 was not apprehended upon arrival, *cf. id.*; and
- 19 c. is not detained under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231.
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1 6. Contrary to law, the Executive Office for Immigration Review (“EOIR”), and its
2 sub-agency the immigration court, and supported by the Department of Homeland
3 Security’s legal counsel, blatantly refused to find jurisdiction over bond
4 proceedings for persons similarly situated as Petitioner, citing to *Matter of Yajure*
5 *Hurtado*, 29 I&N Dec. 216 (BIA 2025), and completely disregarding the final
6 judgment in *Lazaro Maldonado Bautista et al. v. Santacruz*, No. 5:25-cv-01873-
7 SSS-BFM (C.D. Cal. Dec. 18, 2025). Ex. A, ¶ 11.

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

12 8. On March 6, 2026, the U.S. Court of Appeals for the Ninth Circuit (“Ninth
13 Circuit”) granted a stay on the final decision in *Maldonado Bautista*, temporarily
14 halting the enforcement of *Maldonado Bautista* outside of the Central District of
15 California until further briefing and oral arguments on the motion are finalized.
16 *Maldonado Bautista v. DHS*, No. 26-1044 (9th Cir. Mar. 6, 2026).

17 9. Therefore, Petitioner files this petition. Petitioner asks this Court to find that his
18 continued detention is unlawful without an opportunity for a bond hearing given
19 Petitioner is entitled to consideration for release on bond under 8 U.S.C.
20 § 1226(a); that he may not be transferred during the pendency of this petition; and
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1 that this court make an order to show cause. Petitioner requests Respondents be
2 required to provide a response within three days or alternatively timing pursuant to
3 Chief Judge Order No. 144.

4 **JURISDICTION**

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

7 11. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus),
8 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States
9 Constitution (Suspension Clause).

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

13 13. The provisions in 8 U.S.C. §§ 1252(g) and 1252(b)(9) do not strip this Court of
14 jurisdiction. Petitioner is not contesting the commencement or adjudication of
15 removal proceedings against him, nor is he raising an issue with respect to the
16 execution of removal. Petitioner does challenge his classification under Section
17 1225(b)(2) instead of Section 1226(a) and the Board of Immigration Appeals'
18 ("BIA") decision that immigration judges lack authority to provide a bond hearing
19 on that basis. The petition is independent of the removal proceedings and all
20 questions related to the commencement of removal proceedings or any part of the

1 removal process. “[C]laims that are independent of or collateral to the removal
2 process do not fall within the scope of § 1252(b)(9).” *J.E.F.M. v. Lynch*, 837 F.3d
3 1026, 1032 (9th Cir. 2016). Additionally, Section 1252(g) “does not prohibit
4 challenges to unlawful practices merely because they are in some fashion
5 connected to removal orders.” *Ibarra-Perez v. United States*, 154 F.4th 989, 997
6 (9th Cir. 2025). Thus, this Court is not stripped of jurisdiction by Sections 1252(g)
7 and 1252(b)(9).

8 VENUE

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

14 REQUIREMENTS OF 28 U.S.C. § 2243


15 15. The Court must grant the petition for writ of habeas corpus or issue an order to
16 show cause (OSC) to the respondents “forthwith,” unless the petitioner is not
17 entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Court
18 must require respondents to file a return “within *three days* unless for good cause
19 additional time, not exceeding twenty days, is allowed.” *Id.* (emphasis added).

20 16. Courts have long recognized the significance of the habeas statute in protecting
21 individuals from unlawful detention. The Great Writ has been referred to as

1 “perhaps the most important writ known to the constitutional law of England,
2 affording as it does a *swift* and imperative remedy in all cases of illegal restraint or
3 confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

4 **PARTIES**

5 ***Petitioner***

6 17. Petitioner, Mr. Palma-Tenango, is a Mexican national who is in custody at the
7 Otay Mesa Detention Center located at 7488 Calzada De La Fuente, San Diego,
8 CA 92154. When at liberty, he and his family reside in  California. He
9 is in the custody, and under the direct control, of Respondents and their agents.

10 ***Respondents***

11 18. Respondent U.S. Attorney General¹ is sued in their official capacity as the
12 Attorney General of the United States and the senior official of the U.S.
13 Department of Justice (“DOJ”). In that capacity, they have the authority to
14 adjudicate removal cases and to oversee the Executive Office for Immigration
15 Review (“EOIR”), which administers the immigration courts and the Board of
16 Immigration Appeals. Respondent U.S. Attorney General is a legal custodian of
17 Petitioner.

18 19. Respondent Markwayne Mullin Secretary of U.S. Department of Homeland
19 Security (“DHS”) is sued in their official capacity as the Secretary of the DHS. In

20 ¹ According to the federal rules, a U.S. government official may be named by official
21 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 this capacity, Respondent Secretary is responsible for the implementation and
2 enforcement of the Immigration and Nationality Act, and oversees U.S.
3 Immigration and Customs Enforcement, the component agency responsible for
4 Petitioner's detention and custody. Respondent Secretary is a legal custodian of
5 Petitioner.

6 20. Respondent Todd Lyons is sued in his official capacity as the Senior Official
7 Performing the Duties of the Director ICE. Respondent Lyons is the legal
8 custodian of Petitioner.

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

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

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

18 **STATEMENT OF FACTS**

19 24. Petitioner, Mr. Palma-Tenango, a 43-year-old Mexican national, has lived in the
20 United States since his last entry without inspection or admission in
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1 approximately February 2000, when he was 17 years old. Ex. A, ¶ 4. He has firm
2 roots in the United States. He obtained his General Education Degree and
3 completed some college in the United States. *Id.* ¶ 5.

4 25. Mr. Palma-Tenango is a loving husband to his wife, who has Deferred Action for
5 Childhood Arrivals, and loving father to their two U.S. citizen children ages 18
6 and 13. Ex. A, ¶ 6. His 13-year-old is particularly fragile and really struggling
7 without his father. *Id.*

8 26. According to Mr. Palma-Tenango, ICE officers initially detained him in 2012,
9 processed him for removal proceedings, and released him on his own
10 recognizance but there was a failure to prosecute and proceedings did not initiate².

11 *Id.* ¶ 6. Without verification of this,

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13 ² If verified by Respondents, Counsel does believe this means he has a significant
14 liberty interest. Noncitizens living in the United States, like Petitioner, have a
15 protected liberty interest in their ongoing freedom from confinement. *See Zadvydas*,
16 533 U.S. at 690. “Given the civil context [of immigration detention], [the] liberty
17 interest [of noncitizens released from custody] is arguably greater than the interest of
18 parolees in *Morrissey*.” *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019)
19 (citing *Morrissey*, 408 U.S. at 487). “[E]ven when ICE has the initial discretion to
20 detain or release a noncitizen pending removal proceedings, after that individual is
21 released from custody she has a protected liberty interest in remaining out of custody.”
Pinchi v. Noem, 792 F. Supp 3d 1025, 1032 (N.D. Cal. 2025) (citing *Romero v.*
Kaiser, No. 22-cv-02508, 2022 WL 1443250, at *2 (N.D. Cal. May 6, 2022); *Jorge*
M. F. v. Wilkinson, No. 21-cv-01434, 2021 WL 783561, at *2 (N.D. Cal. Mar. 1,
2021); *Ortiz Vargas v. Jennings*, No. 20-cv-5785, 2020 WL 5074312, at *3 (N.D. Cal.
Aug. 23, 2020); *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019)).
Requests for noncitizens’ immigration records through the Freedom of Information
Act (“FOIA”) request process take months, and sometimes up to a year in counsel’s
experience. Petitioner deserves at minimum access to a bond hearing before such time.

1 27. On February 23, 2026, while Mr. Palma-Tenango was on his way to work, ICE
2 officers stopped him, arrested, him, and eventually transferred Mr. Palma-
3 Tenango to the Otay Mesa Detention Center, where he remains today. *Id.*

4 28. After apprehending Mr. Palma-Tenango on or about February 23, 2026, the DHS
5 placed him in removal proceedings pursuant to 8 U.S.C. § 1229a. DHS has
6 charged Petitioner as being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i), as
7 someone who entered the United States without inspection and is present without
8 admission. Ex. B.

9 29. Mr. Palma-Tenango is a Bond Eligible Class member to the class outlined in
10 *Maldonado Bautista*. Moreover, as fully discussed therein, he is detained under 8
11 U.S.C. § 1226(a) and eligible for bond.

12 30. Petitioner is detained pursuant to 8 U.S.C. 1226(a), which governs the detention
13 of noncitizens “inside the United States” and “present in the country.” *Jennings v.*
14 *Rodriguez*, 583 U.S. 281, 288–89 (2018).

15 31. Section 1225(b)(2), in contrast, authorizes the detention of applicants for
16 admission who are “seeking admission” but “not clearly and beyond a doubt
17 entitled to be admitted.” Unlike section 1226(a), section 1225(b)(2) provides that
18 individuals who fall under its authority “shall be detained” during the pendency
19 of proceedings, though they too remain eligible for release through the parole
20 process. *Jennings*, 583 U.S. at 300 (holding that release on “parole” under 8
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1 U.S.C. 1182(d)(5)(A) remains available even for people held under otherwise-
2 mandatory detention pursuant to section 1225(b)). Courts in this district have
3 repeatedly reached the same conclusion. *See, e.g., Arias Torres v. Bondi*, No. 25-
4 cv-2457-BAS-MSB, 2025 WL 3214773 (S.D. Cal. Nov. 18, 2025); *Martinez*
5 *Lopez v. LaRose*, No. 25-cv-2717-JES-AHG, 2025 WL 3030457 (S.D. Cal. Oct.
6 302025); *Beltran v. Noem*, No. 25cv2650-LL-DEB, 2025 WL 3078837 (S.D. Cal.
7 Nov. 4, 2025); *Garcia v. Noem*, 803 F. Supp. 3d 1064 (S.D. Cal. 2025); *Esquivel-*
8 *Ipina v. LaRose*, No. 25-CV-2672 JLS (BLM), 2025 WL 2998361 (S.D. Cal. Oct.
9 24, 2025); *Lucas-Miguel v. LaRose*, No. 25-cv-3022-RSH-JLB, 2025 WL
10 3251580 (S.D. Cal. Nov. 21, 2025); *Vasquez-Diaz v. LaRose*, No. 25-cv-3038-
11 TWR-JLB, ECF No. 6 (S.D. Cal. Nov. 13, 2025); *Cardoso v. LaRose*, No. 25-cv-
12 3043-BJC-VET, ECF No. 7 (S.D. Cal. Dec. 12, 2025); *Maceda-Garcia v. Noem*,
13 No. 25-cv-2968-JO-JLB, ECF No. 9 (S.D. Cal. Nov. 13, 2025); *A.S. v. LaRose*,
14 No. 25-cv-2876-RBM-VET, ECF No. 9 (S.D. Cal. Nov. 19, 2025); *Prieto-Cordova*
15 *v. LaRose*, No. 25-cv-2824-CAB-DDL, 2025 WL 3228953 (S.D. Cal. Nov. 19,
16 2025); *Lagarda-Vega v. Noem*, No. 25-cv-2970-GPC-DDL, 2025 WL 3558931
17 (S.D. Cal. Dec. 11, 2025); *Nayyer v. LaRose*, No. 25-cv-3111-AGS-DDL, ECF
18 No. 7 (S.D. Cal. Dec. 12, 2025); *Amaya v. Noem*, No. 25cv2892-BTM-DEB,
19 2025 WL 3182998 (S.D. Cal. Nov. 13, 2025).

1 32. Petitioner was unquestionably detained in the interior of the country following
2 the issuance of the NTA. Ex. B.

3 33. Therefore, Mr. Palma-Tenango requests this court issue a habeas order requiring
4 a lawful bond hearing before a fair, neutral, and open-minded arbiter be held for
5 Mr. Palma-Tenango so that his unlawful detention does not continue.

6 **CLAIM FOR RELIEF**
7 **Violation of the INA**

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

10 35. As a member of the Bond Eligible Class, Petitioner is entitled to consideration for
11 release on bond under 8 U.S.C. § 1226(a). While a stay is in place precluding
12 enforcement of class membership presently, the legal framework supporting Mr.
13 Palma-Tenango's eligibility for bond under 8 U.S.C. § 1226(a) remains.

14 36. The final order in *Maldonado Bautista* holds that Respondents violate the INA in
15 applying the mandatory detention statute at § 1225(b)(2) to class members. A
16 multitude of cases have concluded the same, that 8 U.S.C. § 1226(a) is the
17 appropriate standard for bond in Petitioner's circumstance and that applying
18 Section 1225 "(1) disregards the plain meaning of section 1225(b)(2)(A); (2)
19 disregards the relationship between sections 1225 and 1226; (3) would render a
20 recent amendment to section 1226(c) superfluous; and (4) is inconsistent with

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1 decades of prior statutory interpretation and practice.” *Lepe v. Andrews*, 801 F.
2 Supp. 3d 1104, 1112 (E.D. Cal. 2025) (citing cases).

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

6 **PRAYER FOR RELIEF**

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

- 8 a. Assume jurisdiction over this matter;
- 9 b. Issue an order preventing Respondents from transferring Petitioner away from
10 the Otay Mesa Detention Center;
- 11 c. Issue an order to show cause and require a response within three days from
12 Respondents as to why this petition should not be granted, pursuant to 28 U.S.C. §
13 2243;
- 14 d. Issue a writ of habeas corpus requiring Respondents to release Petitioner unless
15 they provide a bond hearing under 8 U.S.C. § 1226(a) and that the bond hearing must
16 be before a fair, neutral, open-minded arbiter, and if the bond hearing is not fair and
17 neutral, Petitioner be released immediately;
- 18 e. Award Petitioner attorney’s fees and costs under the Equal Access to Justice
19 Act (EAJA), as amended, 28 U.S.C. § 2412, and on any other basis justified under
20 law; and
- 21 f. Grant any other and further relief that this Court deems just and proper.

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Dated: April 6, 2026

Respectfully submitted,

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

LIST OF EXHIBITS

EXHIBIT A: Declaration of Tessa Cabrera

EXHIBIT B: Notice to Appear

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

I represent Petitioner, Argenis Palma-Tenango, 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 6th day of April, 2026.

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